TITLE: FEDERAL REGISTER.

REEL NO: 5 of 9

VOLUME: 55 issues: 185 - 198
pages: 38,969 - 41,656

DATE: SEPTEMBER 24 - OCTOBER 12, 1990

PUBLICATION NO: 2575.00

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9-24-90
Vol. 55 No. 185

VOL
55
ISS
185
SE
24
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UMI

9-24-90
Vol. 55 No. 185

federal register

Monday
September 24, 1990

United States
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SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
55
ISS
185
SE
24
1990
UMI

9-24-90
Vol. 55 No. 185
Pages 38969-39130

federal register

Monday
September 24, 1990

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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Title 3—

The President

Proclamation 6181 of September 20, 1990

Religious Freedom Week, 1990

By the President of the United States of America

A Proclamation

Many of the first colonists to settle in this country during the 17th century were driven by their desire to worship God freely, without fear of persecution. Devout in their faith and determined to enjoy the freedom denied to them in the lands of their birth, they braved the vast uncharted waters of the Atlantic in cramped wooden vessels and sought refuge in the New World. These early settlers were members of many different religious groups, yet all yearned for freedom and tolerance. Thus, by the time our Nation's Founders framed our Constitution and Bill of Rights, a unique tradition of religious liberty had already taken root in America.

Our Constitution provides that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." However, the most celebrated guarantee of religious liberty in U.S. law is contained in the First Amendment to the Constitution. It states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

For well over 200 years, we Americans have maintained that religious freedom is not bestowed by government; rather, religious freedom is an inherent and unalienable right that not only precedes the social contract of government but also imposes a fundamental limitation on government power. Ten years before the delegates to the Federal Convention framed our Constitution, in his draft Bill for Establishing Religious Freedom in Virginia, Thomas Jefferson eloquently expressed this belief:

> Almighty God hath created the mind free, and manifested His supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments or burthens . . . are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in His Almighty power to do. . . .

Thus recognizing Man's free will as both the design and gift of the Creator, the members of the Virginia House of Delegates affirmed the view of religious liberty as an inherent and unalienable right and guaranteed "that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no [way] diminish, enlarge, or affect their civil capacities."

Throughout our Nation's history, the free exercise of religion has not only enriched the lives of individual believers but also strengthened the moral fabric of our society. The American people's faith in God, free from the weight of government oppression and interference, has shaped our Nation's most cherished values and institutions. It has also inspired our efforts to defend the cause of freedom and justice, both here at home and around the world.

In 1807, during his second term as President, Thomas Jefferson observed: "Among the most inestimable of our blessings is that . . . of liberty to worship our Creator in the way we think most agreeable to His will; a liberty deemed in other countries incompatible with good government and yet proved by our experience to be its best support." This week, we celebrate the enduring truth of his words.

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In recognition of the importance of religious freedom and the spirit of tolerance in our society, the Congress, by Senate Joint Resolution 331, has designated the week beginning September 23, 1990, as "Religious Freedom Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 23 through September 29, 1990, as Religious Freedom Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

[FR Doc. 90-22734
Filed 9-20-90; 4:23 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6182 of September 20, 1990

National Teacher Appreciation Day, 1990

By the President of the United States of America

A Proclamation

The United States is currently engaged in a nationwide effort to restore excellence to our educational system. Today more and more parents, educators, and elected officials are determined to set high standards for our schools and to meet them. Recognizing the importance of learning, not only in and of itself, but also as a means of maintaining the Nation's strength and productivity in an increasingly competitive world, we have established ambitious national education goals for the year 2000. If we are to succeed, we must reaffirm our support for a group of men and women who are working hard to achieve these goals—our Nation's teachers.

Education is a lifelong process of learning and discovery that begins in a child's home and extends through years of schooling and experience. On this National Teacher Appreciation Day, we honor teachers for their unique and important role in advancing our children's education. By helping their students to grow in knowledge, skill, and reasoning ability, teachers not only open the doors of opportunity for them but also help them to become responsible, productive citizens. In this way, the dedicated men and women who educate our Nation's youth also help to shape the future of the United States. That is why their work is so important to all of us.

Whether they work in the traditional academic setting, vocational training, continuing education, or special education, teachers influence both the personal and the intellectual development of their students. Indeed, teachers who convey a genuine commitment to excellence—as well as respect for authority and a sense of responsibility and concern for others—are among the best role models a young person can have. When a teacher cultivates in his or her students not only knowledge but also a lifelong love of learning, that teacher has given them a great and lasting gift. The work of a good teacher endures, long after his or her students have said farewell.

As we advance in years, we cannot fail to remember gratefully our best teachers—perhaps the elementary school teacher who recognized our potential and patiently helped us to develop it; or the high school English instructor who challenged and inspired us; or the college history professor who breathed life into ancient texts and enabled us to become a thrilled companion on the journeys of entire nations. We can never thank these teachers enough, and we can never fully trace the extent of their influence in our lives.

For all they do on behalf of our children and the Nation, teachers merit our abiding respect and gratitude. Let us ensure that we express both, not only on National Teacher Appreciation Day, but also throughout the year.

In grateful recognition of America's teachers, the Congress, by Senate Joint Resolution 313, has designated October 3, 1990, as "National Teacher Appreciation Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 3, 1990, as National Teacher Appreciation Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-22735
Filed 9-20-90; 4:24 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6183 of September 20, 1990

Leif Erikson Day, 1990

By the President of the United States of America

A Proclamation

When Leif Erikson landed in North America nearly a millennium ago, he helped to chart a course that would one day be followed by generations of brave European explorers and missionaries. He also established the first of the now centuries-old ties between the peoples of this continent and those of northern Europe.

The son of Eric the Red, who led the first group of Europeans to colonize Greenland, Leif Erikson is believed to have returned to his native Norway in the year 1000. There, according to the Icelandic Saga of Eric, the young navigator became a convert to Christianity. Later commissioned by King Olaf Tryggvason (Olaf I) to return to Greenland as a missionary, Erikson set sail once more.

During a number of his journeys on the open seas, "Leif the Lucky" explored portions of North America. Many others eventually followed in his wake, hoping to see for themselves the rich and beautiful territories he had called Helluland, Vinland, and Markland.

Since Leif Erikson first set foot on the North American continent, generations of Nordic men and women have come to the United States, bringing with them the wealth of their unique cultural heritage. Over the years immigrants from Iceland, Greenland, Norway, Denmark, Sweden, and Finland have greatly enriched our country and added their own chapters to the ever-unfolding story of America's development.

Each October 9, as we remember Leif Erikson, the bold Son of Iceland and Grandson of Norway, we also celebrate our Nation's magnificent Nordic heritage. This daring navigator with a missionary zeal, whose name is so often associated with images of adventure and romance, is also a beloved symbol of the deep and enduring ties between the people of the United States and our friends in all the Nordic countries.

In honor of Leif Erikson and our Nordic American heritage, the Congress, by joint resolution approved on September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), has authorized and requested the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 9, 1990, as Leif Erikson Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. I also encourage the people of the United States to observe this occasion by learning more about our rich Nordic American heritage and the early history of our continent.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-22736
Filed 9-20-90; 4:25 pm]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-188]

Pink Bollworm; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the pink bollworm regulations by removing Chicot, Drew, Jefferson, Lincoln, Monroe, and Phillips Counties, and a portion of Desha County, Arkansas, from the list of suppressive areas. We have determined that the pink bollworm has been eradicated from these areas. This action removes unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATES: October 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 644, Federal Building, 6505 Belcreast Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective July 12, 1990 (55 FR 28595-28598, Docket Number 90-070) we amended the pink bollworm regulations (7 CFR 301.52 *et seq.*) by removing Chicot, Drew, Jefferson, Lincoln, Monroe, and Phillips Counties, and a portion of Desha County, Arkansas, from the list of suppressive areas in § 301.52-2a.

Comments on the interim rule were required to be received on or before September 10, 1990. We did not receive any comments. The facts represented in the interim rule still provide a basis for this rule. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from specified areas in Arkansas. There are 21 cotton growers, processors, and seed producers within these areas that will experience a modest economic benefit as a result of this rule, since they will no longer be required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately $100 per year in compliance costs. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of Arkansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which required intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301.52-2a and that was published at 55 FR 28595-28596 on July 12, 1990.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 19th day of September 1990.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22580 Filed 9-21-90; 8:45 am]
BILLING CODE 3410-34-M

7 CFR Part 318

[Docket No. 89-121]

Sharwil Avocados From Hawaii: Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending "Subpart—Hawaiian Fruits and Vegetables" quarantine and regulations to allow interstate movement of untreated Sharwil avocados from Hawaii to any destination. Movement will be authorized by a certificate upon compliance with certain harvesting and handling requirements designed to prevent spread of the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly. Previously, certified Sharwil avocados could be moved interstate only to Alaska; this change allows their movement to any State.

EFFECTIVE DATE: October 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Griffin, Operations Officer, Port Operations, PPQ, APHIS, USDA, room 631, Federal Building, 6505 Belcrest

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Road, Hyattsville, MD 20782, 301–436–8645.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations (contained in 7 CFR 318.13 through 318.13–16 and referred to below as the regulations), among other things, govern the interstate movement from Hawaii of avocados in a raw or unprocessed state. Regulation is necessary to prevent spread of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)), the melon fly (*Dacus cucurbitae* (Coq.)), and the Oriental fruit fly (*Dacus dorsalis* (Hendel)). These fruit flies, commonly referred to as "Trifly," infest Hawaii but not the rest of the United States.[1]

Beginning in the early 1980's, Agricultural Research Service (ARS) scientists have conducted research [2] that has determined that Sharwil avocados are not hosts to Trifly if they are picked with a stem attached and, within 24 hours after being picked, certain handling procedures are followed and the avocados are packed in cartons impervious to Trifly.

On March 7, 1989, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (54 FR 9453–9455, Docket No. 87–082) a proposal to amend the regulations to allow interstate movement of untreated Sharwil avocados from Hawaii to any destination pursuant to certificates based on compliance with certain harvesting and handling provisions. The proposal solicited comments postmarked or received by May 8, 1989. We subsequently published three other **Federal Register** documents, on May 1, 1989 (54 FR 18528–18529, Docket No. 89–065), May 16, 1989 (54 FR 21069–21070, Docket No. 89–087), and June 28, 1989 (54 FR 36767, Docket No. 89–116), that announced a public hearing, held on June 1, 1989, and reopened and extended the comment period to consider comments received by July 3, 1989.

[1] From time to time, localized infestations of these flies have occurred and have been eradicated in the continental United States. As of September 1989, localized infestations of Mediterranean fruit fly and Oriental fruit fly exist in areas of California, and these areas are being subjected to Federal and State quarantine and eradication programs.

[2] The initial ARS research was conducted during Hawaii's January–March 1985 harvesting season on 38,241 Sharwil avocados. At our request, ARS continued the study until February 1987. A total of 114,112 Sharwil avocados were ultimately inspected during the 24-hour post-picking period. No Trifly eggs or larvae were found. Documents concerning the ARS research may be obtained from Mr. Robert Griffin, Operations Officer, Port Operations, Operational Support, PPQ, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8645.

We are adopting the provisions of the proposed rule for the reasons set forth in the proposal and in this supplementary information section.

Comments and Responses.

We received a total of 77 written comments opposed to the proposed rule and 34 in favor of it. At the public hearing, 17 persons spoke in opposition to the proposed rule and one person spoke in favor of it.

Comments received on the proposed rule and our responses to them are discussed below.

Comment: The proposed rule did not contain a clear statement of how APHIS will enforce the requirements of the rule or the steps APHIS will take if Sharwil avocado growers or packers do not comply with the rule's requirements.

Response: We did not propose new enforcement provisions because enforcement provisions are already in place in "Subpart—Hawaiian Fruits and Vegetables," the subpart to which we proposed adding requirements for Sharwil avocados. In § 318.13–16, "Withdrawal of certificates, limited permits, or compliance agreements," the regulations state, "Any certificate, limited permit, or compliance agreement which has been issued or authorized may be withdrawn by an inspector orally or in writing, if such inspector determines that the holder thereof has not complied with all conditions under the regulations for the use of such document." Withdrawal of the certificate or compliance agreement will be the primary means used to enforce compliance with the requirements for Sharwil avocados, as it is now used to enforce compliance with other requirements of "Subpart—Hawaiian Fruits and Vegetables."

In proposed § 318.13–4(c), the proposed rule did contain a clear statement that APHIS will only certify Sharwil avocados for movement if the provisions of the regulations are met. Additional steps APHIS may take against individual violators, such as imposing civil penalties or seeking criminal prosecution, will depend largely on the circumstances of individual violation cases and our operational experience in enforcing the regulations. If APHIS develops any additional guidelines or policies on enforcing these regulations during the course of implementing them, these guidelines or policies will be published in the **Federal Register**.

Comment: The successful shipment of Sharwil avocados to Alaska without spreading fruit flies does not prove the fruit involved were free of flies because the flies could not propagate in Alaska and demonstrate their presence. The proposal provide no information to show how Alaskan Sharwil shipments were inspected, or whether any of the Sharwils shipped to Alaska were cut open to look for fly larvae or held in a rearing facility to determine if any of the fruit were infested.

Response: All Sharwil avocados certified for shipment to Alaska were packed under supervision of a USDA inspector, who was present in the packing facility throughout the packing process to monitor procedures and inspect the avocados for signs of infestation. These inspections in Hawaii, not the absence of fruit fly propagation in Alaska, demonstrated that the Sharwil avocados shipped to Alaska were not infested. Upon arrival in Alaska inspectors confirmed the documentation of the Sharwil avocados and they were subjected to the routine inspection applied to fruits shipped from Hawaii, which do not involve cutting fruit or holding it in a rearing facility unless there are signs of infestation. No shipments of Sharwil avocados to Alaska showed signs of infestation, so no Sharwil avocados in Alaska were cut or held in a rearing facility. We agree that Trifly propagation and spread in Alaska is unlikely, and we did not rely on the absence of such spread as evidence that the Sharwil avocados shipped to Alaska were free of Trifly.

Comment: The proposal is not sufficiently descriptive of the Animal and Plant Health Inspection Service (APHIS) role in inspecting and monitoring Sharwil harvest and packing activities in Hawaii. It does not describe how APHIS will ensure that no Sharwils picked from the ground will be shipped, how often APHIS will check packing facilities for infestation, the size or level of samples to be inspected by APHIS during monitoring of packing, the number of inspectors needed to ensure the reliability of this system, or the amount of funds that APHIS will commit to ensure reliability.

Response: The provisions of the proposed and final rules state that all activities related to the harvesting and handling of the avocados (picking, holding prior to transportation to a packing facility, transportation to a packing facility, and handling at the packing facility) will be subject to monitoring by APHIS inspectors. It has not been APHIS regulatory practice, and we do not believe it is necessary, to include in our regulations the number of our inspectors involved in enforcing regulatory provisions or the percent of inspector time devoted to particular

activities. These decisions must be made at an operational level and depend on a number of variables that cannot be predicted by a general rule, e.g., the amount of regulated articles processed, the experience of inspectors enforcing provisions, and the history of violations and problems accumulated over time as a program is implemented. Also, we cannot predict in advance the amount of funds that will be available for particular programs, which depends on the annual budget process. Our position is that APHIS Sharwil avocado inspecting and monitoring activities will be implemented at levels sufficient to ensure compliance with the regulations. Sharwil avocados will not be certified unless program resources for monitoring and inspection are available at adequate levels to ensure compliance with the regulations.

Comment: The proposal did not supply convincing scientific data and test results demonstrating that the Sharwil avocado is not a fruit fly host.

Response: In the proposed rule and the notices of public hearing we offered to send documents describing ARS research on the host status of Sharwil avocados to anyone requesting them. These documents were also distributed at the public hearing. Further, the principal ARS researcher presented a summary of the research at the hearing.

The ARS research involved individual examination of 114,112 commercially harvested Sharwil avocados. None of the avocados, even the culls with detached stems and severe surface damage, was found to be infested with Trifly or contain Trifly eggs or larvae. Forced infestation studies of Sharwil avocados were also done, by confining 3 gravid female fruit flies with each avocado tested. Even under these forced infestation conditions, no Sharwil avocado with an intact skin and stem attached became infested during 24 hours of exposure. Overall, the ARS research concluded that a mature green Sharwil avocado is not a Trifly host if its stem is attached, its skin is undamaged, and it is packed within 24 hours of harvest.

Comment: Even under optimum conditions with rigorous enforcement, the proposed inspection and monitoring systems cannot maintain the same reliability as current methyl bromide treatment procedures.

Response: We disagree. Sharwil avocados harvested and packed in compliance with the final rule's requirements do not present a risk of spreading Trifly. There is a slight, controllable risk that occasionally a Sharwil avocado will be shipped that was not harvested and packed in compliance with those requirements. We believe this risk is no greater than the risks associated with requiring fumigation as a condition of shipment. These risks include the lack of strict harvesting and packing requirements for fumigated articles, the possibility that the fumigation may be improperly conducted on occasion, and the possibility that some shipments required to be fumigated may be shipped unfumigated as a result of procedural or paperwork errors.

Comment: The rule should require Sharwil packers to treat the packing sheds with insecticide prior to the start of operations, remove all fruit fly host material from an area of at least 200 feet from the packing sheds, and remove all culls and debris at least 200 feet from the packing sheds and treat them with an appropriate insecticide.

Response: Paragraph (d)(1) of § 318.13–4h requires packing facilities operating in accordance with the regulations to be maintained free of all Trifly host material, other than Sharwil avocados packed in accordance with the regulations. This requirement is the same requirement applied to Sharwill avocados shipped to Alaska. In the April 20, 1988, **Federal Register**, this requirement was added to the regulations for Sharwil avocados shipped to Alaska, in place of a requirement that there be "no Trifly host material within 100 feet of the packing facility" (53 FR 12909, Docket No. 88–003). At that time, we replaced the 100-foot requirement because experience and research revealed it to be unnecessary. We have concluded that even if Trifly existed within 100 feet of the packing facility, they would be precluded entry into the facility by the requirement that all doors and other openings be maintained under conditions determined by an inspector as adequate to prevent the entry of Trifly. Also, even if Trifly gained entry, the ARS research indicates that Trifly will not infect even a severely damaged Sharwil avocado within the 24-hour period allowed between the time they are picked and the time they are packed in Trifly-impervious containers. For these reasons, the final rule does not require removal of fruit fly host material, culls, and debris from a 200 foot area around the packing facility, or require treatment of culls or Trifly host material in the vicinity of the packing facility.

Comment: The rule should require the packer's name, location, date, and compliance agreement number on a certificate accompanying the shipping containers.

Response: The final rule requires a certificate to accompany each shipment of Sharwil avocados. The certificate records the packer's name, location, date, and compliance agreement number. Although not required by the final rule, each carton of fruit shipped interstate from Hawaii also normally bears a packer's label that would allow individual cartons to be traced back to the packer.

Comment: All packing should be done under supervision of a USDA inspector.

Response: All activities related to the harvesting and handling of Sharwil avocados, including packing, are subject to monitoring by USDA inspectors. Inspectors will directly supervise packing in each packing facility to the extent necessary to ensure compliance with the requirements of the regulations, based on inspector findings during implementation of the program. All packing of the Sharwil avocados shipped to Alaska was done with USDA inspectors present at the packing facility, and we will maintain this level of packing supervision if it seems necessary based on inspectors' reports. However, we may reduce the level of direct inspector supervision of packing if we determine that continuous supervision of packing is not necessary to ensure compliance with the requirements of the regulations.

Comment: APHIS inspectors involved in the program should be specifically trained to differentiate Sharwil avocados from other varieties and to identify evidence of infestation, skin and stem defects, and other standards of the rule.

Response: We agree, and APHIS inspectors involved in the program will be so trained. No change to the rule is necessary to accomplish this.

Comment: No procedure for shipping Sharwils can guarantee zero risk of spreading fruit flies. Any fruit fly spread risk is unacceptable, given the $100 million cost of battling the last serious Medfly outbreak in California. Given this potential cost, the rule should be considered a "major rule."

Response: APHIS recognizes that any movement of fruit or other plant products or related articles presents some risk of spreading pests, and also recognizes that the cost of eradicating outbreaks of certain pests could be very high. To attempt to eliminate all risks, we would have to ban imports and interstate movements of almost all agricultural products and related articles, and even then some risk would exist due to smuggling, which tends to increase when articles are banned, and accidents. APHIS policy is to allow movement of fruit when the risks associated with the movement are

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reduced to insignificant levels. We believe the final rule reduces the risks associated with interstate movement of Sharwil avocados to an insignificant level.

A rule is considered a "major rule" in accordance with Executive Order 12291 if the rule is likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. APHIS does not agree that adoption of the final rule is likely to result in any of these effects. These effects would only be likely to occur if the requirements of the rule failed to prevent the introduction of a serious pest, and if that pest became established and spread in the United States. APHIS has carefully designed the requirements of the rule to prevent such an occurrence. The economic impacts we expect to occur fall far short of the $100 million range, and are discussed in the Executive Order 12291 and Regulatory Flexibility Act section of this rule.

Comment: Sharwil avocados are natural hosts to Trifly.

Response: We disagree. Comprehensive research discussed in the proposed and final rules indicates that mature green Sharwil avocados with attached stems and intact skins will only become Sharwil hosts under forced and artificial conditions.

Comment: There is no economic sense in risking infestation of mainland fruit industries for the benefit of a small Hawaiian Sharwil industry.

Response: We do not believe that adopting the final rule presents a significant risk of infesting mainland fruit industries, based on the ARS research of Sharwil host status.

Comment: Sharwil avocados should be fumigated with methyl bromide as a shipment condition. An article by Dr. Philip J. Ito states that Sharwils can be treated with methyl bromide with minimal effects on quality.

Response: There are two approved methyl bromide treatments for avocados, contained in §§ 318.13–4d and 318.13–4e. The first treatment involves a 4-hour exposure and the second treatment involves a 2½ hour exposure followed by refrigeration for 7 days. Based on extensive experience with these treatments, APHIS has determined that the first treatment frequently causes pitting and internal and external discoloration in Sharwil avocados and reduces the shelf life of the avocado by 2 to 4 days. The second treatment has been found to be slightly injurious to Sharwil avocados, and the 7 day refrigeration period means there is insufficient shelf life to market avocados following this treatment. We believe that Sharwil avocados cannot be effectively fumigated with methyl bromide without causing an economically significant fraction of shipments to suffer effects that reduce their marketability. We differ with Dr. Ito's findings in terms of what constitutes a minimal effect; we have found that treatment with methyl bromide causes effects that are not minimal in terms of the marketability of the avocados, and accordingly, APHIS includes this disclaimer in the methyl bromide treatment schedule for avocados: "This treatment is recognized as one which may be marginal as to varietal tolerance of avocados and the owner or shipper is warned of possible injury."

Comment: APHIS cannot practically ensure that growers, pickers and packers will follow the fruit selection, handling and time requirements in the rule. Some nicked, bruised, cut, or stem-out fruit will inevitably be shipped.

Response: We believe that the compliance agreement, monitoring, and enforcement provisions of the final rule are a practical means of ensuring that Sharwil avocados that present a pest risk will not be certified and shipped. The rule provides multiple levels of requirements for screening out ineligible avocados, including enforcement of compliance agreement provisions by the grower, monitoring of harvest activities by APHIS inspectors, enforcement of packing standards by the packers, and monitoring of packing by APHIS inspectors.

Comment: APHIS cannot expect pickers and packers to reliably distinguish between Sharwils and other avocado breeds when assembling shipments for the mainland.

Response: Our experience with the Sharwil avocado shipments packed for movement to Alaska indicates that pickers and packers can and do reliably distinguish between Sharwil avocados and other breeds. Also, the location of Sharwil and non-Sharwil plants are clearly distinguished in the compliance agreements under which each grower operates.

Comment: Some growers and even inspectors are amenable to graft, which could result in ineligible Sharwil avocados being shipped.

Response: Any regulation may be considered ineffective if you assume subornation of the officials responsible for enforcing its provisions. Comparing the relatively small profits involved in shipping Sharwil avocados to the risks involved in attempted bribery, we do not consider this a likely event. However, such attempts may occur. APHIS and USDA maintain controls to guard against graft in all of their programs, and believe these controls to be effective.

Comment: Hawaiian Sharwil growers should be encouraged to ship to non-fruit growing areas overseas, rather than to the U.S. mainland.

Response: Selecting markets for growers is outside the legal authority of APHIS. We are limited to prohibiting or restricting movement to domestic markets if the movement presents unacceptable risks. This is not the case with regard to the final rule.

Comment: In addition to Trifly, Sharwils may spread the Malaysian or solanaceous fruit fly, *Dacus latifrons*.

Response: Dacus latifrons exists in Hawaii only on the island of Oahu, and there are no Sharwil avocado groves on Oahu. Also, *Dacus latifrons* is a pest of solanaceous fruits such as eggplants, peppers, and tomatoes. Research by ARS has shown that *Dacus latifrons* is extremely unlikely to attack avocados except under forced and unnatural conditions.

Comment: A study by Oi and Mau concluded that Sharwil avocados can serve as a potential host of Mediterranean and Oriental fruit flies under reasonable normal harvesting and handling conditions.

Response: We disagree with that conclusion of the Oi-Mau study. The study was not a good model of infestation possible under natural conditions. In the study, the number of flies confined with each Sharwil avocado (35 gravid females) was many times the level found under natural conditions. Our conclusions are based on ARS research on the host status of Sharwil avocados, discussed above.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse impact on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Hawaiian Sharwil avocado industry is small. In 1986–1987, production was limited to about 100 acres, yielding approximately 80 tons of Hawaiian Sharwil avocados. In contrast, the total annual United States avocado production was 273,000 tons during this same period. Foreign-grown avocados imported for consumption by American consumers totaled 5,622 tons in 1985 (the last year for which figures are available). Thus, the amount of Sharwil avocados moved interstate from Hawaii constitutes less than one-tenth of one percent of the total annual United States avocado production.

It further appears that allowing shipments to any interstate destination will not significantly increase Hawaiian Sharwil avocado production. Sharwil avocados can be grown only under certain climatic and soil conditions, which are not widely available throughout the Hawaiian Islands. Thus, the possibility of increases in Sharwil avocado production is limited.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 318

Agricultural commodities, Avocados, Guam, Hawaii, Plant diseases, Plant pests, Plants (Agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands.

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

Accordingly, 7 CFR part 318 is amended as follows:

1. The authority citation for 7 CFR part 318 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 318.13, 318.13a, 318.13–2, 318.13–3, 318.13–4, 318.13–4a, 318.13–4b, 318.13–4c, 318.13–4d, 318.13–4e, 318.13–4g, 318.13–4h, 318.13–5, 318.13–15, and 318.13–16 [Amended]

2. Section 318.13a(a)(2) is amended by removing "§ 318.13–1(c)" and inserting "§ 318.13–1" in its place.

3. Sections 318.13(b), 318.13–2(a)(1), 318.13–3(b), 318.13–4(b), 318.13–4a(b), 318.13–4a(d), 318.13–4c introductory text 318.13–4d introductory text, and 318.13–4e introductory text are amended by removing "Deputy Administrator of the Plant Protection and Quarantine Programs", and inserting "Administrator of the Animal and Plant Health Inspection Service" in its place.

4. Section 318.13–3(b)(1) is amended by removing "§ 318.13–1(c)" and inserting in "§ 318.13–1" in its place.

5. Paragraph (b)(2)(iii) of § 318.13–4g is amended by removing "§ 318.13–4(d)" and inserting "§ 318.13–4(e)" in its place.

6. Sections 318.13–4h(a) and 318.13–16 are amended by removing "Deputy".

7. Sections 318.13–4b(a)(3), 318.13–4b(a)(4), 318.13–4c(a)(1), 318.13–4c(b), 318.13–4d(a)(1), 318.13–4d(b), 318.13–4e(a)(1), 318.13–4e(b), 318.13–5, and 318.13–15 are amend by removing "Plant Protection and Quarantine Programs", and inserting "Animal and Plant Health Inspection Service" in its place.

§ 318.13–1 [Amended]

8. Section 318.13–1 is amended as follows:

a. The definition of "Compliance agreement" is amended by removing "§ 318.13–4(g)" and inserting in its place "§ 318.13–4(e), § 318.13–4g and § 318.13–4h".

b. The definition of "Deputy Administrator" is removed.

c. A new definition is added in alphabetical order for "Animal and Plant Health Inspection Service".

As amended, § 318.13–1 reads as follows:

§ 318.13–1 Definitions.

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

* * * * *

§ 318.13–2 [Amended]

9. Section 318.13–2 is amended by removing paragraph (a)(2) and the designating (1) in paragraph (a).

§ 318.13–3 [Amended]

10. Section 318.13–3 is amended by removing paragraph (b)(2) and the designating (1) in paragraph (b).

§ 318.13–4 [Amended]

11. Section 318.13–4 is amended as follows:

a. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively.

b. A new paragraph (c) is added.

c. Newly redesignated paragraph (d) is revised.

d. Newly redesignated paragraph (e) is amended by adding "or (c)" immediately following the phrase "paragraph (b)".

As amended, § 318.13–4 reads as follows:

§ 318.13–4 Conditions governing the issuance of certificates or limited permits.

* * * * *

(c) *Certification of Sharwil avocados.* Certificates will be issued for the interstate movement of Sharwil avocados only if the provisions of § 318.13–4h are met.

(d) *Limited Permits.* Limited permits may be issued by an inspector for the movement of noncertified regulated articles designated in § 318.13–3(b).

* * * * *

§ 318.13–4h [Amended]

12. Section 318.13–4h is amended as follows:

a. The section heading is amended by removing "limited permits for Sharwil avocados for movement to Alaska" and inserting "certification of Sharwil avocados".

b. The introductory paragraph is amended by removing "limited permit for movement from Hawaii to Alaska" and inserting "certificate for interstate movement from Hawaii".

c. Paragraph (e) is amended by removing "and were clearly marked 'To be distributed in the United States only in Alaska' ".

d. Paragraph (f) is amended by removing "Plant Protection and Quarantine" and inserting "the Animal and Plant Health Inspection Service" in its place, and by removing "movement from Hawaii to Alaska" and inserting "interstate movement from Hawaii" in its place.

e. Paragraph (f)(2) is amended by removing "Plant Protection and Quarantine" and inserting "Animal and Plant Health Inspection Service" in its place.

f. Paragraph (g) is amended by removing "Plant Protection and Quarantine" and inserting "the Animal

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and Plant Health Inspection Service" in its place, by removing "limited permit" and inserting "certificate" in its place, and by removing "marked".

Done in Washington, DC, this 19th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22571 Filed 9-21-90; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 929

[FV-90-187FR]

Expenses and Assessment Rate for Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 929 for the 1990-91 fiscal year established under the cranberry marketing order. This action is needed for the Cranberry Marketing Committee (Committee), the agency responsible for the local administration of the order, to incur operating expenses during the 1990-91 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: September 1, 1990, through August 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3920.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that an assessment rate for a particular fiscal year shall apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the committee are producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses for the 1990-91 fiscal year which began on September 1, 1990.

The Committee conducted a mail vote and recommended 1990-91 marketing order expenditures of $159,850 and an assessment rate of $0.037 per 100-pound barrel of cranberries shipped. In comparison, 1989-90 marketing year budgeted expenditures were $172,602, and the assessment rate was $0.037 per 100-pound barrel of cranberries shipped. Assessment income for 1990-91 is estimated at $149,850 based on a crop of 4,050,000 barrels of cranberries. Interest income expected to be received is estimated at $10,000, bringing total income to $159,850. Major budget categories for 1990-91 are $70,995 for salaries, $39,500 for travel and meeting expenses, and $34,425 for administrative expenses. Comparable budgeted expenditures for the 1989-90 crop were $71,860, $44,000, and 39,667, respectively.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 929.231 and is based on Committee recommendations and other available information. A proposed rule was published in the August 3, 1990, issue of the **Federal Register** (55 FR 31606). Comments on the proposed rule were invited from interested persons until August 13, 1990. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 929.231 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 929.231 Expenses and assessment rate.

Expenses of $159,850 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.037 per 100-pound barrel of assessable cranberries is established for the fiscal year ending August 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: September 18, 1990.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 90-22565 Filed 9-21-90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 90-136]

Importation of Fresh, Chilled, and Frozen Meat and Milk and Milk Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fresh, chilled, and frozen meat, and milk and milk products, that are from ruminants and swine and that originate in countries free of rinderpest and foot-and-mouth disease exists en route to the United States. This action will allow officials to seal the container, rather than the entire hold or compartment of a carrier, if the meat to be imported is containerized. The action will also allow these meat, milk and milk products, which must be shipped under seal, to remain eligible for entry into the United States under certain circumstances, even if the seal is broken or has a different number than is recorded on the documents accompanying the meat, milk, or milk products. These amendments will relieve restrictions that are not necessary to prevent the introduction of rinderpest or foot-and-mouth disease into the United States.

EFFECTIVE DATE: October 24, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Blackwell, Import-Export Products Staff, VS, APHIS, USDA, room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (the regulations), govern the importation into the United States of animal products. With some exceptions, the regulations prohibit the importation of ruminants and swine, and milk, milk products, and fresh, chilled, and frozen meat of ruminants and swine, that originate in or are shipped from a country where rinderpest or foot-and-mouth disease (FMD) exists or that enter a port in or otherwise transit such a country. However, the regulations allow the importation, under certain conditions, of fresh, chilled, and frozen meat of ruminants or swine raised and slaughtered in a country free of rinderpest and foot-and-mouth disease, even if the meat enters a port or otherwise transits a country where rinderpest or FMD does exist. Likewise, the regulations allow the importation, under certain conditions, of milk and milk products that originate in and are shipped from countries free of rinderpest and FMD, but that enter a port or otherwise transit a country where one of these diseases exists.

On May 2, 1990, we published in the **Federal Register** (55 FR 18342-18345, Docket Number 85-095), a document proposing to amend the regulations governing the importation of fresh, chilled, and frozen meat, and milk and milk products, that are from ruminants and swine and that originate in countries free of rinderpest and foot-and-mouth disease but enter a port or otherwise transit a country where a rinderpest or foot-and-mouth disease exists en route to the United States, to allow officials to seal the container, rather than the entire hold or compartment of a carrier, if the meat to be imported is containerized; and to allow the meat, and milk and milk products, shipped under seal, to remain eligible for entry into the United States under certain conditions, even if the seal is broken or has a different number than is recorded on the documents accompanying the meat, milk, or milk products.

Our proposal invited the submission of written comments, which were required to be received on or before July 2, 1990. We received two comments. The first comment, from an association of meat importers, supported the proposed rule. The comment stated that the amendments acknowledge modern shipping techniques and promote a more convenient way to transact business.

The other commenter, a state farm bureau, opposed the proposed rule. The commenter acknowledged the safeguards but asserted that, even with the safeguard provisions, the proposed rule would put the health and prosperity of the United States dairy and livestock industries at risk. However, the commenter did not indicate why it felt the rule would put those industries at risk. No changes are made based on this comment. For the reasons explained in the proposed rule at 55 FR 18343-18344, we have determined that the amendments in this final rule relieve restrictions that are not necessary to prevent the introduction of rinderpest or foot-and-mouth disease into the United States.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this action will have an effect on the economy of less than $100 million; will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Allowing shipments of meat, milk and milk products to remain eligible for entry into the United States even though they arrive in a container with a seal that has been broken or changed could result in economic benefit to some importers. However, the volume of meat, and milk and milk products affected by this change is unlikely to be more than a small percentage of any importer's goods. Further, based on the size of these shipments (40,000 to 45,000 pounds

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per container), it appears that few, if any, of the potentially affected importers are small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579-0015.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 94

African swine fever, Animal diseases, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, and Swine vesicular disease.

Accordingly, the regulations in 9 CFR part 94 are amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.0 [Amended]

2. In § 94.0, a definition of "Container" is added, in alphabetical order, to read as follows:

* * * * *

Container. For the purposes of § 94.1(c) and § 94.16(c), this term means a receptacle, sometimes refrigerated, which is designed to be filled with cargo, sealed, and then moved, without unsealing or unloading, aboard a variety of different transporting carriers.

* * * * *

§ 94.1 [Amended]

3. In § 94.1(c), the introductory text is amended by removing the word "if" before the colon and adding in its place the phrase "provided that all of the following conditions are met".

§ 94.1 [Amended]

4. In § 94.1, paragraph (c)(2) is amended by removing the words "hold or compartment which" and adding the words "hold, compartment, or, if the meat is containerized, in a container that" in their place; by removing the words "after the hold or compartment" and adding the words "after the hold, compartment, or container" in their place; and by removing the words "such sealed hold or compartment," and adding the words "the sealed hold, compartment, or container," in their place.

§ 94.1 [Amended]

5. In § 94.1, paragraphs (c)(3), (c)(4), and (c)(5) are redesignated as paragraphs (c)(4), (c)(5), and (c)(6), and a new paragraph (c)(3) is added to read as follows:

* * * * *

(c) * * *

(3) If any foreign official breaks a seal applied in the country of origin in order to inspect the meat, he or she then reseals the hold, compartment, or container with a new serially numbered seal; and, if any member of a ship's crew breaks a seal, the serial number of the seal, the location of the seal, and the reason for breaking the seal are recorded in the ship's log.

* * * * *

§ 94.1 [Amended]

6. In § 94.1, redesignated paragraph (c)(4) is amended by removing the words "hold or compartment of the transporting carrier" and adding "hold, compartment, or container" in their place.

§ 94.1 [Amended]

7. In § 94.1, redesignated paragraph (c)(5) is revised to read as follows:

* * * * *

(c) * * *

(5) Upon arrival of the carrier in the United States port of arrival, the seals are found by an APHIS representative to be intact, and the representative finds that there is no evidence indicating that any seal has been tampered with; *Provided that,* if the representative finds that any seal has been broken or has a different number than is recorded on the foreign meat inspection certificate, then the meat may remain eligible for entry into the United States only if APHIS personnel are available to inspect the hold, compartment, or container, the packages of meat, and all accompanying documentation; and the importer furnishes additional documentation (either copies of pages from the ship's log signed by the officer-in-charge, or certification from a foreign government that the original seal was removed and the new seal applied by officials of that government) that demonstrates to the satisfaction of the Administrator that the meat was not contaminated or exposed to contamination during movement from the country of origin to the United States; and

* * * * *

§ 94.16 [Amended]

8. In § 94.16, paragraph (c)(1) is amended by changing the period to a semicolon and adding a phrase to read as follows:

* * * * *

(c) * * *

(1) * * *; except that, if any seal applied at the point of origin was broken by any foreign official to inspect the shipment, an authorized representative of that country applied a new serially numbered official seal to the hold, compartment, or container in which the milk or milk products were transported; and if any member of a ship's crew broke a seal, the serial number of the seal, the location of the seal, and the reason for breaking the seal were recorded in the ship's log.

* * * * *

§ 94.16 [Amended]

9. In § 94.16, paragraph (c)(3) is amended by changing the period to a semicolon and adding a phrase to read as follows:

* * * * *

(c) * * *

(3) * * *; *Provided that,* if the representative finds that any seal has been broken or has a different number than is recorded on the accompanying document, then the milk or milk products may remain eligible for entry into the United States only if APHIS personnel are available to inspect the hold, compartment, or container, the cartons or other containers of milk or milk products, and all accompanying documentation; and the importer furnishes additional documentation (either copies of pages from the ship's log signed by the officer-in-charge, or certification from a foreign government that the original seal was removed and the new seal applied by officials of the government) that demonstrates to the satisfaction of the Administrator that the milk or milk products were not contaminated or exposed to contamination during movement from the country of origin to the United States.

Done in Washington, DC, this 19th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22570 Filed 9-21-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Parts 4b and 17

Technology Administration

37 CFR Chapters IV and V

[Docket No. 900540-0140]

Organizations and Functions; Office of Technology Policy

AGENCY: Office of the Secretary, Commerce, Technology Administration, Commerce.

ACTION: Final rule; nomenclature change.

SUMMARY: The National Institute of Standards and Technology Authorization Act for Fiscal Year 1989 (the "Act"), Public Law No. 100-519, enacted on October 23, 1988), as implemented by Department Organization Orders 10-16 and 10-19, brought about several administrative and organizational changes within the Department of Commerce. For example, the duties and responsibilities of the now-defunct Office of the Assistant Secretary for Productivity, Technology and Innovation were transferred to either the Under Secretary of Commerce for Technology or the Assistant Secretary for Technology Policy. Also, several of the duties and responsibilities of the Under Secretary of Commerce for Economic Affairs were transferred to the Under Secretary for Technology. The purpose of this notice is to update our regulations to reflect these administrative and organizational changes.

EFFECTIVE DATE: October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Philip J. Greene (202) 377-5304.

SUPPLEMENTARY INFORMATION: Because this rulemaking document concerns agency organization and management, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that order.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, no regulatory flexibility analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This rule does not contain collections of information for purposes of the Paperwork Reduction Act.

For the reasons set forth in the Preamble, 15 CFR Subtitle A and 37 CFR Chapters IV and V are amended as follows:

15 CFR Subtitle A, 37 CFR Chapters IV and V [Amended]

1. The authority citations for 37 CFR parts 401 and 404 are revised to read as follows:

Authority: 35 U.S.C. 206 and the delegation of authority by the Secretary of Commerce to the Assistant Secretary of Commerce for Technology Policy at sec. 3(g) of DOO 10-16.

2. Further, the authority citation for 37 CFR part 501 is revised to read as follows:

Authority: Sec. 4, E.O. 10096, 3 CFR, 1949-1953 Comp., p. 292, as amended by E.O. 10930, 3 CFR, 1959-1963 Comp., p. 456; and delegations of authority by the Secretary of Commerce, January 4, 1990, DOO 10-17 and DOO 10-18.

3. In the list below, for each citation indicated in the left column, remove the title or information indicated in the middle column and add the title or information indicated in the right column.

CFR Citation	Remove	Add
15 CFR Part 4b, Appendix A, Footnote 2	Office of the Assistant Secretary for Productivity, Technology and Innovation.	(No addition.)
15 CFR 17.22(c)	Assistant Secretary means the Assistant Secretary for Productivity, Technology and Innovation.	Under Secretary means the Under Secretary for Technology.
15 CFR 17.24 introductory text, (c)	Assistant Secretary	Under Secretary.
15 CFR 17.25(a), (b)	Assistant Secretary	Under Secretary.
15 CFR 17.26(a), (b), (c)	Assistant Secretary	Under Secretary.
37 CFR Chapter IV (Heading)	Productivity, Technology and Innovation	Technology Policy.
37 CFR Chapter V (Heading)	Economic Affairs	Technology.
37 CFR 501.3(a)	Economic Affairs	Technology.

Dated: September 13, 1990.

Robert M. White,

Under Secretary of Commerce for Technology.

[FR Doc. 90-22327 Filed 9-21-90; 8:45 am]

BILLING CODE 3510-BW-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of calculation and interest.

SUMMARY: This notice advises the public of the interest rates for overpayments and underpayments of Customs duties. The rates are 11 percent for underpayments and 10 percent for overpayments for the quarter beginning October 1, 1990. This notice is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, (317) 298-1245.

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SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the Federal Register on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621. Interest rates are determined based on the short-term federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

The rates of interest for the period of October 1, 1990–December 31, 1990, are 10 percent for overpayments and 11 percent for underpayments. These rates will remain in effect through December 31, 1990, and are subject to change on January 1, 1991.

Dated: September 18, 1990.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 90-22532 Filed 9-21-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin and Clorsulon Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories providing for safe and effective use of IVOMEC-F® (ivermectin/clorsulon) injection in cattle for treating and controlling infections caused by certain species of gastrointestinal nematodes, lungworms, liver flukes, grubs, lice, and mites.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Diane T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Rahway, NJ 07065, filed NADA 140-833, providing for subcutaneous use of IVOMEC-F® (1 percent weight per volume (w/v) ivermectin and 10 percent w/v clorsulon) injection for cattle for treatment and control of infections caused by certain gastrointestinal nematodes, lungworms, liver flukes, grubs, lice, and mites. Separate drug products containing ivermectin for treatment and control of all the parasites listed above except flukes, and clorsulon for treatment and control of flukes are currently approved. The subject product is intended to provide for combination administration.

The NADA was approved by a letter dated September 17, 1990, and 21 CFR 522.1193 is added to reflect the approval. The basis for approval is discussed in the freedom of information summary.

This approval qualifies for 3 years of marketing exclusivity beginning September 17, 1990, because the criteria for such exclusivity under the Generic Animal Drug and Patent Term Restoration Act of 1988, section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)) have been met.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.1193 is added to read as follows:

§ 522.1193 Ivermectin and clorsulon injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 10 milligrams (1 percent) of ivermectin and 100 milligrams (10 percent) of clorsulon.

(b) *Sponsor.* See 000006 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.163 and 556.344 of this chapter.

(d) *Conditions of use*—(1) *Amount.* 1 milliliter (10 milligrams of ivermectin and 100 milligrams of clorsulon) per 50 kilograms (110 pounds).

(2) *Indications for use.* It is used in cattle for the treatment and control of gastrointestinal nematodes (adults and fourth-stage larvae) (*Haemonchus placei, Ostertagia ostertagi* (including inhibited larvae), *O. lyrata, Trichostrongylus axei, T. colubriformis, Cooperia oncophora, C. punctata, C. pectinata, Oesophagostomum radiatum, Nematodirus helvetianus* (adults only), *N. spathiger* (adults only), *Bunostomum phlebotomum;* lungworms (adults and fourth-stage larvae) (*Dictyocaulus viviparus*); liver flukes (adults only) (*Fasciola hepatica*); grubs (parasitic stages) (*Hypoderma bovis, H. lineatum*); lice (*Linognathus vituli, Haematopinus eurysternus, Solenopotes capillatus*); mites (*Psoroptes ovis* (syn. *P. communis* var. *bovis*), *Sarcoptes scabiei* var. *bovis*).

(3) *Limitations.* For subcutaneous use only. Not for intravenous or intramuscular use. Do not treat cattle within 49 days of slaughter. Because a withdrawal time in milk has not been established, do not use in female dairy cattle of breeding age. Do not use in other animal species because severe adverse reactions, including fatalities in dogs, may result. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: September 17, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-22525 Filed 9-21-90; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Sponsors of Exchange Visitor Camp Counselor Programs; Correction

AGENCY: United States Information Agency.

ACTION: Notice of correction of telephone number.

SUMMARY: This notice corrects the telephone number for the contact person in the policy statement on Exchange Visitor Camp Counselor Programs previously published in the Federal Register July 23, 1990, (55 FR 29843), as set forth below.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, (202) 619-6329.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-22484 Filed 9-21-90; 8:45 am]

BILLING CODE 8230-01-M

22 CFR Part 514

Exchange Visitor Summer Student Travel/Work Programs; Corrections

AGENCY: United States Information Agency.

ACTION: Statement of policy and notice to sponsors; correction.

SUMMARY: This notice corrects the second sentence under the Supplementary Information of the policy statement on Exchange Visitor Summer Student Travel/Work Programs previously published in the Federal Register August 13, 1990, (55 FR 2906). The sentence should read "That report questions the appropriateness of some of the summer student travel/work programs under the J-visa." This notice also corrects the telephone number for the contact person.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, (202) 619-6329.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-22485 Filed 9-21-90; 8:45 am]

BILLING CODE 8230-01-M

22 CFR Part 514

Sponsors of Exchange Visitor Training Programs; Correction

AGENCY: United States Information Agency.

ACTION: Notice of correction of telephone number.

SUMMARY: This notice corrects the telephone number for the contact person in the policy statement on Exchange Visitor Training Programs previously published in the Federal Register August 13, 1990, (55 FR 32907), as set forth below.

FOR FURTHER INFORMATION CONTACT: Merry Lymn (202) 619-6329.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-22486 Filed 9-21-90; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-90-3097; FR-2939-N-02]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Rome, GA Market Area—Fiscal Year 1988

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document establishes new FMRs for the Rome, Georgia market area for Fiscal Year 1988 (FY 1988). These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Telephone (202) 708-0624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide FMRs established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff.

The FY 1988 FMRs were previously promulgated by the Department on December 1, 1989, at 54 FR 49686. These rents reflected the Department's cost containment efforts in relation to housing assistance provided in the section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the FY 1988 FMR schedule applicable to the Rome, Georgia market area. The Atlanta Regional Office requested that the Department establish new rents for the Rome, Georgia market area. The FMRs set forth below reflect data submitted by the Atlanta Regional Office.

Where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for market rents is that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal. Careful analysis and reanalysis of the FY 1988 FMRs for

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this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of the FY 1988 FMRs for this market area is needed.

The Department published on July 13, 1990 at 55 FR 28776, a notice proposing the FMRs listed below. The public was given a 30-day comment period, and no comments were received. Accordingly, the FMRs proposed on July 13, 1990, are established as set forth below. The applicability of this schedule is the same as set forth in the preamble to the original 1988 FMR schedule, published on December 1, 1989, at 54 FR 49868.

Other Information

HUD regulations at 24 CFR part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(l), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (section 8).

Accordingly, the following amendments to the FY 1988 FMR schedule are established for the Rome, Georgia market area.

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES' PROGRAMS)

[Region 4—Atlanta Regional Office, Market: Rome, Georgia; Special Revision of FY 1988 Fair Market Rents]

Structure Type	Number of Bedrooms				
	0	1	2	3	4
Detached			460	536	577
Semi-Detached/Row	319	348	398	474	530
Walk-up	307	333	384	461	516
Elevator 3-4 Story	369	395	462		
Elevator 5+ Story	439	449	517		

Dated: September 14, 1990.

Arthur J. Hill,

Acting Assistant, Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 90-22462 Filed 9-21-90; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 888

[Docket No. N-90-3066; FR-2641-N-02]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—St. Croix, Virgin Island Market Area—Fiscal Year 1988

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document establishes new FMRs for the St. Croix, Virgin Islands market area for Fiscal Year 1988 (FY 1988).

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Telephone (202) 708-0624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide FMRs established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff.

The FY 1988 FMRs were previously promulgated by the Department on December 1, 1989, at 54 FR 49868. These rents reflected the Department's cost containment efforts in relation to housing assistance provided in the section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the FY 1988 FMR schedule applicable to the St. Croix, Virgin Island market area. The Caribbean Office requested that the Department establish new rents for the St. Croix, Virgin Islands market area. The FMRs set forth below reflect data submitted by the Caribbean Office.

Where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for market rents is that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal. Careful analysis of the request from the Caribbean Office indicates that the FY 1988 FMRs for this market area are not adequate, since the FY 1988 FMRs for that market area did not have published FMRs for the two-to-four story elevator category.

Accordingly, FMRs for the two-to-four story elevator category are added to the schedule applicable to the St. Croix, Virgin Islands market area. The applicability of this schedule is the same as set forth in the preamble to the original 1988 FMR schedule, published on December 1, 1989, at 54 FR 49868.

The Department published on July 11, 1990, at 55 FR 28413, a notice proposing the FMRs listed below. The public was given a 30-day comment period, and no comments were received. Accordingly, the FMRs proposed on July 11, 1990, are established as set forth below.

Other Information

HUD regulations at 24 CFR 50, implementing section 102(2)(c) of the

National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(l), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (section 8).

Accordingly, the following amendments to the FY 1988 FMR schedule are established for the St. Croix, Virgin Islands market area.

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES' PROGRAMS)

[Region 4—Atlanta Regional Office, Market: St. Croix, Virgin Islands; Special Revision of FY 1988 Fair Market Rents]

Structure Type	Number of Bedrooms				
	0	1	2	3	4
Detached			653	737	848
Semi-Detached/Row	432	504	562	664	778
Walk-up	367	422	525	591	598
Elevator 2-4 Story	488	566	666		

Dated: September 14, 1990.

Arthur J. Hill,

Acting Assistant, Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 90-22463 Filed 9-21-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of a proposed amendment to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Indiana program pursuant to Indiana Senate Enrolled Act No. 513 which was enacted by the 1989 session of the Indiana General Assembly. The proposed amendments concern the powers and duties of the director, bond pool fund, and cessation orders, and are intended to clarify and improve the Indiana program.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204; Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register (47 FR 32071). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 914.10, 914.15 and 914.16.

II. Submission of Amendment

By letter dated December 4, 1989, (Administrative Record No. IND-0721), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Code (IC) 13-4-6 and IC 13-4.1-2, IC-13-4.1-6.5 and IC-13-4.1-11. The proposed amendment is contained in Indiana's 1989 Senate Enrolled Act 513 which was promulgated by the State on June 11, 1989. The IC 13-4 is limited to surface mining other than surface coal mining; therefore, the changes to IC 13-4 do not affect the approved Indiana program and will not be discussed here.

OSM announced receipt of the proposed amendments in the January 31, 1990, Federal Register (55 FR 3223), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on March 2, 1990. No hearing was held because no one requested an opportunity to provide testimony.

By letter dated August 9, 1990 (Administrative Record Number IND-0794), Indiana informed OSM that Indiana Senate Enrolled Act No. 362, which was passed during the 1990 legislative session, created the Bureau of Mine Reclamation within the Department of Natural Resources. The Division of Reclamation has been placed in the new Bureau, but an advisory council for the new Bureau was not created. Therefore, Indiana withdrew the proposed amendments at IC 13-4.1-2-3 concerning the Bureau of Water and Minerals Advisory Council.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below concern nonsubstantive wording changes or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. IC 13-4.1-2-3 Powers and Duties of the Director

Indiana is revising paragraph (a)(3) of this provision to require the director of IDNR to order any person who does not hold a valid permit to reclaim the area effected to the standards required by article IC 13-4.1. The existing language which is being amended only required the director of IDNR to order any person who does not hold a valid permit to cease operations.

The approved Indiana program at IC 13-4.1-1-7 states that a person who engages in surface coal mining operations and is not a permittee is subject to the criminal, civil, and regluatory provisions of IC 13-4.1 as if the person were a permittee. The proposed amendment, therefore, provides the Director of IDNR with the necessary authority consistent with the requirement at IC 13-4.1-1-7 to require reclamation by persons conducting surface coal mining operations without a valid permit.

SMCRA at section 506(a) prohibits surface coal mining operations without a valid permit. The Federal regulations at 30 CFR 701.11(d) state that the requirements of subchapter K concerning the permanent program performance standards shall apply to each surface coal mining and reclamation operation for which the

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surface coal mining operation is required to obtain a permit under SMCRA. That is, any person who conducts surface coal mining operations under SMCRA, even if they are operating without a valid permit, are subject to the coal mining and reclamation requirements of the Federal regulations. The Director finds, therefore, that the proposed provision is consistent with SMCRA and the Federal regulations at 30 CFR 701.11(d).

2. IC 13-4.1-6.5-5 Bond Pool Fund

This section is proposed to be amended by the addition of subsection (e) which states that the bond pool entrance fee required under subsection (a) is refundable if the application is rejected. In addition, subsection (d) would be amended to add a reference to new subsection (e) as an exception to the provision at (d) which states that all fees and payments under chapter IC 13-4.1-6.5 are not refundable.

On March 18, 1988 (Administrative Record No. IND-0559), Indiana submitted to OSM proposed amendments to the Indiana program which would create the Indiana bond pool fund. OSM is in the process of conducting a thorough review of the proposed bond pool fund and has had numerous communications with Indiana concerning the proposed bond pool fund. Therefore, the Director is deferring any action on these proposed rules and will include a decision on these rules in the decision on the proposed bond pool fund, when completed.

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions. Therefore, since the proposed bond pool fund at IC 13-4.1-6.5 is not approved by OSM and the bond pool fund is not a part of the approved Indiana program, the Director cannot approve the proposed amendments to IC 13-4.1-6.5-5.

3. IC 13-4.1-11-5 Cessation Orders

Subsection (d) is added and states that a cessation order issued under subsection (a) of IC 13-4.1-11-5 is effective when served upon the permittee. The Director finds that the proposed revision is in accordance with SMCRA at section 521(a)(2) and no less effective than the Federal regulations at 30 CFR 843.11(a)(1) and 843.14(a) concerning the issuance of cessation orders.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the January 31, 1990, Federal Register ended on March 2, 1990. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were also solicited from various Federal agencies with an actual or potential interest in the Indiana program. The Environmental Protection Agency (EPA) and the Fish and Wildlife Service responded with comments pertaining to IC 13-4. As stated above in the section titled "SUBMISSION OF AMENDMENT," the IC 13-4 is limited to surface mining other than surface coal mining, and the changes to IC 13-4 do not affect the approved Indiana surface coal mining program. Therefore, the comments submitted will not be addressed here.

The EPA also stated that, with regard to the Clean Water Act, their review indicated that the proposed revisions demonstrate the legal authority, administrative capability, and technical conformity with controlling Federal National Pollutant Discharge Elimination System (NPDES) regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act as amended (33 U.S.C. 1251 *et seq.*).

V. Director's Decision

Based on the above finding, the Director is approving the Indiana program amendment as submitted by Indiana on December 4, 1989, and as amended on August 9, 1990, except as noted below. As discussed in Finding 2 above, the Director is deferring action on the proposed amendment to IC 13-4.1-6.5-5 concerning the proposed bond pool.

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provision and that EPA concurrence is, therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (bb) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(bb) The following amendment to the Indiana regulatory program, as submitted to OSM on December 4, 1989, and amended on August 9, 1990, is approved, except for IC 13-4.1-6.5-5 concerning the Indiana bond pool, effective September 24, 1990. Amendment to the Indiana Code at IC 13-4.1-2-2 concerning powers and duties of the director and IC 13-4.1-11-5 concerning cessation orders.

[FR Doc. 90-22473 Filed 9-21-90; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Regulatory Program; Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 37 Revised) incorporates statue and rule changes initiated by the State which are intended to incorporate the additional flexibility afforded by the revised Federal statutes. The amendment will allow the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) to approve alternate effluent limitations for the remining of previously mined areas with pollutional discharges. The amendment also establishes special requirements for permit applications, special performance standards, and bond release criteria and procedures where such alternate effluent limits apply.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 Federal Register (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated January 20, 1989 (Administrative Record No. OH-1131), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Progam Amendment No. 37 to the Ohio program. The proposed amendments were initiated by Ohio to take advantage of the increased flexibility afforded to the Ohio Environmental Protection Agency (OEPA) under the amended Clean Water Act. Ohio's proposed amendments were intended to create incentives for mine operators to enter, mine, and reclaim areas that were previously affected by mining and which, as a result, have continuing water pollution.

On February 7, 1989, OSM published a notice in the Federal Register (54 FR 5940) announcing receipt of proposed Program Amendment No. 37 and inviting public comment on its adequacy. The public comment period ended on March 9, 1989. The public hearing scheduled for March 6, 1989 was not held because no one requested an opportunity to testify.

By letter dated July 26, 1989 (Administrative Record No. OH-1203), OSM requested additional information from Ohio concerning several aspects of the proposed amendment.

By letter dated August 16, 1989 (Administrative Record No. OH-1201) Ohio submitted responses to OSM's questions about proposed Program Amendment No. 37. With its responses, Ohio submitted Revised Program Amendment No. 37 (37R) incorporating changes resulting from OSM's questions and from revisions to chapter 1513 of the Ohio Revised Code (ORC) enacted through House Bill No. 399 of the Ohio General Assembly.

On September 12, 1989, OSM published a notice in the Federal Register (54 FR 37982) announcing receipt of proposed Program Amendment No. 37R and inviting public comment on its adequacy. The public comment period ended on October 12, 1989. The public hearing scheduled for October 10, 1989, was not held because no one requested an opportunity to testify.

Following a review of the Revised Proposed Amendment No. 37R, OSM informed Ohio by a letter dated March 27, 1990 (Administrative Record No. OH-1294) of proposed amendment provisions that needed to be corrected or clarified. Ohio responded by letter dated May 8, 1990, and submitted revisions to the proposed rules to address OSM's comments (Administrative Record No. OH-1307). OSM reopened the public comment period on June 5, 1990, (55 FR 22929). The public comment period ended on July 5, 1990. The public hearing scheduled for July 2, 1990, was not held because no one requested an opportunity to testify.

The proposed amendments include the addition of Ohio Administrative Code (OAC) 1501:13-4-15, authorization to conduct coal mining on previously mined areas; revisions to Ohio Revised Code (ORC) 1513.07 permits; and

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revisions to ORC 1513.16 reclamation standards.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal Regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Revisions not specifically discussed below concern wording changes which are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

1. Permitting Requirements and Performance Standards

The proposed amendments to ORC 1513.07(B)(2)(s) authorize, and the addition of section OAC 1501:13-4-15 to the regulations establish certain requirements to be met by persons seeking approval of alternate effluent limitations on areas to be covered by the permit that were affected by coal mining operations before August 3, 1977, and that have resulted in continuing water pollution from or on the previously mined areas. As specified in paragraph OAC 1501:13-4-15(A)(2) of the proposed rules, these requirements are in addition to, not in place of, the permitting requirements applicable to all proposed surface coal mining operations under ORC chapter 1513, and OAC 1501:13 unless otherwise specifically provided in the proposed rules. To obtain an authorization for alternate effluent limitations, the applicant must delineate on a map the pollution abatement area within the permit area, prepare an abatement plan for preexisting discharges from this area, and submit monitoring data to document the baseline pollutional load under variations of season and precipitation.

Pursuant to ORC 1513.07(E)(7) (a) through (e), to approve an application for alternate effluent limitations, the Chief must find, based on an affirmative demonstration by the applicant, that the proposed abatement plan represents best available technology economically achievable (defined as measures and practices designed to abate or ameliorate possible pollutional discharges to the maximum extent possible), that the operation will not cause additional surface or groundwater pollution or degradation, and that the remining operation has the potential to improve water quality. Section OAC 1501:13-4-15(A)(1) limits the applicability of the alternate effluent limitations to surface coal mining operations proposing to remine previously mined areas which contain pollutional discharges at the time of application. Ohio has defined such a "preexisting discharge" at proposed OAC 1501:13-4-15(B) to mean a discharge from surface or subsurface waters which is located on lands disturbed or affected by earlier coal mining operations that were not reclaimed in accordance with the requirements of ORC chapter 1513, as effective August 3, 1977 and thereafter. Remining authorizations, therefore, can only be obtained for areas which were mined prior to August 3, 1977, and which were not reclaimed in accordance with ORC chapter 1513.

Section OAC 1501:13-4-15 (B) also defines the terms "abatement plan," "base line pollution load," "best available technology economically achieveable," "pollution abatement area," and "remining *NPDES* permit," as used in these amendments. In addition, OAC 1501:13-4-15 (E)(3) prohibits issuance of a remining authorization unless there are one or more pre-existing discharges from or on the pollution abatement area, and OAC 1501:13-4-15(E)(4) restricts the authorization for alternate effluent limits to apply only to the pollution abatement area and not to other areas of the permit.

Proposed sections ORC 1513.07(E)(7)(f) and OAC 1501:13-4-15(E)(1) add specific requirements prohibiting the Chief from granting a remining authorization unless the applicant affirmatively demonstrates that neither the applicant nor any person who owns or controls the applicant has: Any continuing liability for treating the discharges of water pollutants from or on the pollution abatement area, or reclaiming the pollution abatement area; had a permit suspended or revoked based on a determination of a demonstrated pattern of willful violations with respect to water quality, effluent limitations, or surface- and ground-water monitoring; or has ever forfeited a coal or surface mining bond or security deposited in lieu of bond.

Proposed new section 1501:13-4-15(F) establishes additional performance standards to be met by operations with approved alternate effluent limitations. Section (F) requires the permittee to implement the abatement and monitoring plans approved under section (E). Section (F) also requires the permittee to notify the Chief immediately prior to the completion of each step of the abatement plan and to provide a certification by the supervising professional engineer of the proper construction of certain steps of the abatement plan which may include, but not be limited to, the completion of mine seals, compaction tests, subsurface drains and, where necessary, stability analyses.

Section OAC 1501:13-4-15(G) establishes requirements for the treatment of preexisting discharges and for monitoring those discharges in accordance with the approved abatement plan. It also establishes procedures and conditions under which the Division may approve discontinuance of treatment when the untreated discharge is meeting the alternate effluent limitations specified in the Ohio National Pollutant Discharge Elimination System (NPDES) permit required under section OAC 1501:13-4-15(E).

SMCRA and its implementing Federal regulations do not differentiate between remining operations and other surface mining operations with respect to effluent limitations. Ohio is still requiring remining operations to meet the approved permitting and performance standards at OAC 1501:13 and in addition, to meet the standards in their proposed remining rules at OAC 1501:13-4-15. While SMCRA and the implementing Federal regulations do not have specific requirements concerning remining operations, the Federal performance standards at 30 CFR 816.42 and 817.42 do require that discharges of water from areas disburbed by surface or underground mining activities be made in compliance with all applicable State and Federal water quality laws and regulations and with the NPDES effluent limitations for coal mining as promulgated by EPA at 40 CFR part 434. The EPA rules also contain no distinction between mining and remining.

However, as enacted on February 4, 1987, Public Law 100-4 added section 301(p) of the Federal Water Pollution Control Act (FWPCA) to authorize the issuance of NPDES permits with modified effluent limitations for pH, iron and manganese on previously mined sites with preexisting discharges, defined as those discharges in existence at the time of permit application. The applicant must demonstrate that the remining operation has the potential of improving the quality of the preexisting discharges. Any modified effluent limitations would apply only to discharges from remined areas on which coal mining was conducted before the effective date of SMCRA (August 3, 1977) and which were not reclaimed in accordance with the requirements of chapter 1513. No NPDES permit may allow discharges of pollutants in excess of those being discharged prior to the remining operation. In addition, no discharge from or affected by the remined area may exceed State water quality standards.

As described and discussed above, the Ohio amendment as submitted on January 20, 1989, and modified on August 16, 1989, and May 8, 1990, incorporates the provisions and restrictions of section 301(p) of the FWPCA. The proposed statutory amendment at ORC 1513.07(B)(2)(s) and the proposed definition of "base line pollution load" at OAC 1501:13-4-15(B)(2) specifically limit the characterization of the material being discharged from or on the pollution abatement area, and for which the remining authorization applies, to the mass loadings of only pH, iron, and manganese. In addition, the proposed rule at OAC 1501:13-4-15(E)(5) states that no remining authorization may be granted until a remining NPDES permit has been issued by the Ohio Environmental Protection Agency and a copy of the remining NPDES permit has been provided to the chief. Since the amended Federal provisions at section 301(p) of the FWPCA limit effluent limitation modifications to pH, iron, and manganese, the proposed Ohio modifications of effluent limitations are consistent with those of the FWPCA.

By letters dated October 12, 1989, and July 6, 1990 (Administrative Record Numbers OH-1231 and OH-1336 respectively), EPA concurred with the revised Ohio amendments. Therefore, for the reasons discussed above, and since EPA is primarily responsible for establishing effluent limitations, the Director finds Ohio proposed revisions to its statute at sections ORC 1513.07(B)(2)(s) and (E)(7) and additions to its regulations at sections OAC 1501:13-4-15(A) through (G), to be no less effective than the Federal regulations concerning effluent limitations for coal mining at 30 CFR 816.42 and 817.42.

2. Bond Release Requirements

Amended sections ORC 1513.16(F)(3) (a) through (c) and proposed additional provisions in the Ohio Revised Code at ORC 1513.16(F)(3) (a) through (c) require compliance with the approved pollution abatement plan and all additional requirements established in rules governing coal mining and reclamation operations on pollution abatement areas.

Proposed new sections OAC 1501:13-4-15(H) and 1501:13-4-15(I) establish criteria and schedules for the release of performance bonds on areas subject to the alternate effluent limitations authorized in accordance with proposed sections OAC 1501:13-4-15(A) and 1501-13-4-15(G). New section OAC 1501:13-4-15(H) requires compliance with new section 1501:13-4-15(I) for release of bonds for pollution abatement areas authorized by this rule, and states that paragraph (B) of rule 1501:13-7-05 of the Administrative Code shall not apply to such release of bonds.

OAC 1501:13-4-15(I)(1):

To achieve Phase I bond release of up to 50 percent of the amount of bond for the authorized pollution abatement area, the operator must have satisfactorily completed backfilling, regrading, and drainage control in accordance with the approved reclamation plan and each pertinent step of the approved abatement plan.

OAC 1501:13-4-15(I)(2):

To achieve Phase II bond release of an amount not to exceed 35 percent of the amount of bond for the authorized pollution abatement area, the operator must have replaced the topsoil or material conserved pursuant to rule OAC 1501:13-9-03, completed planting and established revegetation in accordance with the approved reclamation plan, and achieved the standards of success for such revegetation as set forth in OAC 1501:13-9-15(F)(3)(b). The operator must not be causing or contributing to any surface water pollution or ground water degradation by reaffecting or mining the pollution abatement area. For a period of 12 months after discontinuance of treatment pursuant to new section (AC 1501:13-4-15(G)(5), the operator must not have exceeded the effluent limitations established in the remining NPDES permit as shown by all ground- and surface-water monitoring. In addition, the operator must have implemented all pertinent steps in the approved abatement plan.

OAC 1501:13-4-15(I)(3):

To achieve final bond release, the operator must have successfully completed all of the approved abatement plan and the reclamation plan, and the pollution abatement area must be capable of supporting the post-mining land use approved under OAC 1501:13-9-17. The operator must also have complied with all of the requirements of the permit and the authorization, chapter 1513 of the Revised Code and section 1501:13 of the Ohio Administrative Code unless specifically provided in new section OAC 1501:13-4-15. In addition, the operator must not have exceeded the effluent limitations established in the remining NPDES permit from the time of bond release pursuant to new paragraph OAC 1501:13-4-15(I)(2) for a period of two years from the discontinuance of treatment pursuant to new paragraph OAC 1501:13-4-15(G)(5), and the applicable liability period under OAC 1501:13-9-15(F)(5) has expired.

SMCRA and its implementing regulations do not differentiate between remining operations and other surface coal mining operations with respect to effluent limitations. At ORC 1513.16(F)(3) and OAC 1501:13-4-15(I), Ohio is proposing additional bond release criteria for the pollution abatement areas of remining operations. Since these criteria are in addition to, not in place of, the existing bond release criteria in ORC 1513.16(F)(3), and since they do not in any way negate or alter the existing criteria, the Director finds that the proposed revisions to ORC 1513.16(F)(3) and the addition of OAC 1501:13-4-15(I) will not render the State program inconsistent with the corresponding Federal bond release criteria set forth in section 519(c) of SMCRA and 30 CFR 800.40(c). (The State's existing bond release criteria in ORC 1513.16(F)(3) are substantively identical to those of SMCRA and the Federal regulations.)

However, proposed OAC 1501:13-4-15(H) states in part that OAC 1501:13-7-05(B), which repeats and expands the statutory bond release criteria of ORC 1513.16(F)(3), does not apply to bond releases for pollution abatement areas. Unlike OAC 1501:13-7-05(B), proposed OAC 1501:13-4-15(I), the bond release criteria for pollution abatement areas, does not repeat the statutory criteria. To be no less stringent than section 519(c) of SMCRA and no less effective than the Federal regulations at 30 CFR 800.40(c), the statutory requirements of ORC 1513.16(F)(3) must be met in addition to those specified in the State rules at OAC 1501:13-4-15(I). The Director recognizes that statutory provisions do not lose their effect merely because they are not repeated in regulations. The Director finds, therefore, that the Ohio amendment is not inconsistent with the Federal bond release requirements at 30 CFR 800.40 and is, therefore, approving this amendment.

IV. EPA Concurrence

Sections 503(b)(2) of SMCRA and 30 CFR 732.17(h)(11)(ii) require that the Administrator of the EPA concur with all State program provisions relating to water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). Since the proposed amendment would alter effluent limitations established pursuant to the Clean Water Act (also

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known as the Federal Water Pollution Control Act) and its implementing regulations, EPA's concurrence is required before the Director may approve this amendment.

The Director solicited EPA's concurrence with the proposed amendments by letter dated January 26, 1988. By letter dated April 3, 1989 (Administrative Record Number OH-1185), EPA provided concurrence with the understanding that the proposed modifications will be implemented to fully comply with all applicable Clean Water Act requirements. On August 24, 1989, the Director solicited EPA's concurrence on revised amendment Number 37R which was submitted by Ohio by letter dated August 16, 1989. By letter dated October 12, 1989 (Administrative Record Number OH-1231), EPA had no comments on the proposed amendments addressing program authority and the criteria and standards applicable to coal remining operations. EPA also concluded that the proposed amendments to Ohio's program demonstrate the legal authority, administrative capability, and technical conformity with controlling NPDES regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). On May 24, 1990, the Director solicited EPA's concurrence on revisions to revised amendment Number 37R which were submitted by Ohio by letter dated May 8, 1990. By letter dated July 6, 1990, EPA concurred with the proposed amendments. A discussion of EPA's comments and the Director's response can be found in the section of this notice entitled "Public and Agency Comments."

V. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the February 7, 1989 **Federal Register** ended on March 9, 1989. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The public comment period was subsequently reopened and announced in the September 12, 1989 and again in the June 5, 1990 **Federal Register**. The comment periods ended on October 12, 1989 and July 5, 1990, respectively. No public comments were received and the scheduled public hearings were not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing requirements at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. In response to the January 20, 1989, submittal of proposed amendment Number 37, the U.S. Environmental Protection Agency (EPA) concurred with the proposed amendments provided the proposed modifications will be implemented to fully comply with applicable Clean Water Act requirements. In response, the Director notes that the proposed rule at OAC 1501:13-4-15(E)(5) as amended on August 16, 1989 (Administrative Record Number OH-1201), provides that no authorization may be granted under the proposed rules at OAC 1501:13-4-15 until a remining NPDES permit has been issued by the Ohio Environmental Protection Agency and a copy of the remining NPDES permit has been provided to the Chief. The addition of this provision will assure that all remining authorizations issued under the proposed amendments will comply with the applicable provisions of the Clean Water Act.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) (Administrative Record Number OH-1324) stated that the criteria changes for issuing a permit to mine under the proposed regulations is not within their jurisdiction. In addition, MSHA stated that nothing under the proposed amendments should be interpreted or construed as providing relief or exemption from the Mine Safety and Health Act. In response, the Director notes that the proposed rule at OAC 1501:13-4-15(A)(2) states that all of the provisions of chapter 1513. of the Revised Code and the implementing rules at OAC 1501:13 shall apply to operations with authorizations to mine areas with pre-existing pollutional discharges, unless otherwise specifically provided in the proposed remining rules. In addition, there are no such exemptions in the proposed rules. Therefore, authorizations issued under the proposed amendments are also subject to the provisions of the Mine Safety and Health Act.

In response to the August 16, 1989, and the May 8, 1990, submittals, the EPA commented on October 12, 1989, and July 6, 1990 (Administrative Record Numbers OH-1231 and OH-1385 respectively). On both occasions, EPA concurred with the proposed amendment and noted in the July 6, 1990, response that all remining activity must be conducted in accordance with the Clean Water Act (CWA) and any National Pollutant Discharge Elimination System (NPDES) permit issued by the State.

VI. Director's Decision

Based on the above findings, the Director is approving Program Amendment Number 37 Revised, as submitted by Ohio on January 20, 1989, and revised and resubmitted on August 16, 1989 and May 8, 1990.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VII. Procedural Determinations

1. Compliance with the National Environmental Policy Act.

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act.

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from requirement to prepare a Regulatory Impact Analysis, and regulatory review by OMB is not required.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act.

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 11, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the Preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The Authority Citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (rr) is added to read as follows:

§ 935.15 Approval of Regulatory Program Amendments.

* * * * *

(rr) The following amendment to the Ohio permanent regulatory program, as submitted by letter dated January 20, 1989, and revised and resubmitted on August 16, 1989, and May 8, 1990, is approved effective September 24, 1990: Amendment No. 37 Revised, which concerns alternate effluent limitations for the remining of previously mined areas with pollutional discharges, and which consists of revisions to the Ohio Revised Code (ORC) at sections 1513.07 and 1513.16, and the addition of the following rules of chapter 1501 of the Ohio Administrative Code:

13-4-15(A) General.
13-4-15(B) Definitions.
13-4-15(C) Applicability.
13-4-15(D) Application for Authorization.
13-4-15(E) Approval or Denial by the Chief.
13-4-15(F) Performance Standards.
13-4-15(G) Treatment of Discharges.
13-4-15(H) Request for Bond Release.
13-4-15(I) Criteria and Schedule for Release of Bonds on Pollution Abatement Area.

* * * * *

[FR Doc. 90-22474 Filed 9-21-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AD49

Nondiscrimination Against Alcohol and Drug Abusers and Persons Infected With the Human Immunodeficiency Virus

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations to protect persons infected with the human immunodeficiency virus against discrimination in admission or treatment by any Department of Veterans Affairs health care facility. This amendment is in response to a change in the law contained in the Veterans' Benefits and Services Act of 1988 (Pub. L. 100-322).

EFFECTIVE DATE: This amendment is effective October 24, 1990.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division (136F), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2143.

SUPPLEMENTARY INFORMATION: Under the VA's regulations for determining eligibility for hospital, nursing home or domiciliary care (38 U.S.C. 1504(a)(9); Pub. L. 96-466, section 101(a)), "eligible veterans who are alcoholic or drug abusers and who are suffering from medical disabilities shall not be discriminated against in admission or treatment."

This amendment, contained in the Veterans' Benefits and Services Act of 1988 Public Law 100-322, expands the nondiscrimination rule to include persons infected with the human immunodeficiency virus.

VA finds, for good cause, advance publication for notice and public comment is not required. The regulatory amendment merely updates VA regulations consistent with the recent change in law and does not involve any substantive change in VA policy or regulations. Thus, in accordance with the provisions of 38 CFR 1.12, advance publication in the **Federal Register** is unnecessary. Accordingly, the change in the regulations is now published as final.

These final regulatory amendments do not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulations. These regulatory amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary hereby certifies that these regulations will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 606-612. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the regulatory analysis requirements of 5 U.S.C. 603 and 604. The reason for this certification is that these regulations protect the confidentiality of information about veterans with the human immunodeficiency virus and the changes have no economic implications.

The catalog of Federal Domestic Assistance Numbers are 64.009 and 62.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Human immunodeficiency virus, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: August 9, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 17, Medical is amended as follows:

PART 17—[AMENDED]

In § 17.48 paragraph (k) is revised to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

* * * * *

(k) Veterans eligible for treatment under chapter 17 of 38 U.S.C. who are alcohol or drug abusers or who are infected with the human immunodeficiency virus (HIV) shall not be discriminated against in admission or treatment by any Department of Veterans Affairs health care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection. This does not preclude the rule of clinical judgment in determining appropriate treatment which takes into account the patient's immune status and/or the infectivity of the HIV or other pathogens (such as tuberculosis, cytemegalovirus, cryptosporidiosis, etc.). Hospital Directors are responsible for assuring that admission criteria of all programs in the medical center do not discriminate solely on the basis of alcohol, drug abuse or infection with human immunodeficiency virus. Quality Assurance Programs should include indicators and monitors for nondiscrimination.

Authority: 38 U.S.C. 4133.

* * * * *

[FR Doc. 90-22373 Filed 9-21-90; 8:45 am]

BILLING CODE 8320-01-M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A1-023-FRL-3752-4]

Approval and Promulgation of Implementation Plans; Alabama: Revisions for PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing the approval of revisions to the Alabama State Implementation Plan (SIP) for particulate matter. On July 1, 1987, EPA promulgated new ambient air quality standards for particulate matter which are based upon the measurement of particles having an aerodynamic diameter of 10 microns or less (PM_{10}). Consequently, states are required to develop plans which provide for attainment and maintenance of these new standards. The Alabama statewide SIP revision demonstrates that the existing SIP for total suspended particulates (TSP) is adequate to provide for attainment and maintenance of the PM_{10} standards.

DATES: This action will become effective on November 24, 1990, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Beverly T. Hudson of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit, Library System Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
EPA Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.
Alabama Department of Environmental Management, 1751 Congressman William L. Dickinson Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, Air Programs Branch, EPA Region IV, at the above address and telephone number, (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require the Environmental Protection Agency (EPA) to review periodically and, if appropriate, revise the criteria on which each National Ambient Air Quality Standard (NAAQS) is based, along with the standard itself. In response to these requirements, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary NAAQS by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. These particles are referred to as "PM_{10}." The PM_{10} standard covers a size range of particles different than the range of particles covered by the former particulate standard, total suspended particulate (TSP). This means the states have to develop and implement PM_{10} control programs. This process will follow the basic approach used in the development and implementation of TSP control programs. First, the air quality across the state is examined and areas where improvement is needed are delineated. Then, the degree of improvement needed is determined. Next, the sources contributing to the problem are inventoried and a strategy is developed to reduce emissions from those sources to bring about attainment of the NAAQS. Finally the strategy is implemented and steps are taken to ensure that the NAAQS will not be violated.

EPA, in conjunction with the states, has completed the first two steps in the development and implementation of control programs. Areas have been categorized into three groups. They are:

Group I—Areas for which the existing particulate matter SIP may need substantial revision to be adequate for attaining and maintaining PM_{10} standards.

Group II—Areas for which the existing particulate matter SIP may be adequate or need only minor adjustment.

Group III—Areas for which the existing particulate matter SIP's are believed adequate to attain and maintain the PM_{10} standards.

EPA evaluated the probabilities of PM_{10} air quality levels predicted from actual TSP data and concluded that Alabama is a Group III area except fot two areas, North Birmingham and Leeds, which are Group II areas. The approval for the Group II areas will be processed in a separate notice. However, this notice contains the Group III area (remaining areas in Alabama) which address the PM_{10} NAAQS in the following ways:

a. To include State ambient air quality standards for PM_{10} at least as stringent as the NAAQS;

b. To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM_{10} emissions;

c. To invoke the emergency episode plan to prevent PM_{10} concentrations from reaching the significant harm level of 600 ug/m^3;

d. To meet ambient PM_{10} monitoring requirements of 40 CFR Part 58; and

e. To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM_{10} (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

On June 29, 1988, the State of Alabama submitted to EPA revisions to the State Implementation Plan (SIP). Subsequent to the June 29 submittal, by letter of December 20, 1988, EPA noted deficiencies in the revision. As a result of the noted deficiencies, the State's rulemaking process was reinitiated, culminating in a public hearing on July 13, 1989. All of EPA's comments and revisions are reflected in the following regulations which Alabama resubmitted on October 3, 1989. Revisions to Chapter 335-3-4 (Coke Oven Emissions) were also included in the October 3, 1989 submittal. The revisions to Chapter 335-3-4 will be approved in a subsequent notice.

On March 15, 1989, Alabama submitted the Jefferson County Department of Health PM_{10} revisions for Group II areas to EPA. This submittal will also be processed in a separate notice.

The Alabama Environmental Management Commission adopted, approved, and published a recodification of the rules and regulations of the Air Division Administrative Code rules on May 17, 1989. These rules became effective on June 22, 1989. The recodified Air Division's Administrative Code Rules were then submitted to EPA for approval as a revision to Alabama's State Implementation Plan (SIP). The current codification is used in this notice.

SIP Amendments

I. Definitions—335-3-1-.02(1)

335-3-1.02(1)(xx)—The definition of "Particulate Matter" reverts to the definition that applied prior to the May 4, 1988 revision. Particulate matter shall mean any finely divided material, except uncombined water, which is a liquid or solid at the conditions of the applicable test methods.

335-3-.02(1)(aaa)—The definition of PM_{10} was added which means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers * * * in accordance with part 53, title 40 Code of Federal Regulations.

335-3-1-.02(1)(bbb)—The definition of PM_{10} emission was amended by replacing the phrase "40 CFR 60, Appendix A" with the phrase "40 CFR".

335-3-1-.02(1)(ddd)—The phrase "Code of Federal Regulations" was inserted in the definition of Priority Classification.

335-3-1-.02(1)(mmm)—The word "total" was inserted in the definition of Soiling Index.

335-3-1-.02(1)(www)—The definition of "Total Suspended particulate" was added which means particulate matter as measured by the method described in Appendix B or part 50, title 40 Code of Federal Regulations.

II. Air Pollution Emergency—335-3-2

Paragraphs 2.2.4 (b) and (c) were deleted and replaced by paragraphs 2.2.4(b) recodified as 335-3-2-.02 (4)(b).

Paragraphs 2.2.4 (d), (e), and (f) became paragraphs 2.2.4 c), (d), and (e) and recodified by 335-3-2-.02 (4) (c), (d) and (e).

Paragraphs 2.2.5 (b) and (c) were deleted and replaced by paragraph 2.2.5(b) recodified as 335-3-2-.02 (5)(b).

Paragraphs 2.2.5 (d), (e) and (f) became paragraphs 2.2.5 (c), (d), and (e) recodified as 335-3-2-.02(5) (c), (d), and (e).

Paragraphs 2.2.6 (b) and (c) were deleted and replaced by paragraph 2.2.6(b) recodified as 335-3-2-.02(6)(b).

Paragraphs 2.2.6 (d), (e), and (f) became paragraphs 2.2.5 (c), (d), and (e) recodified as 335-3-2-.02 (6), (c), (d), and (e).

III. Permits—335-3-14

Subparagraph 335-3-14-.03(1)(g)(1), included the phrase "or would not" between "* * * does not and meet the NAAQS;" in the last sentence.

Paragraph 16.3.1(g) recodified as 16.3.1(g)(1) and then to 335-3-14-.03(1)(g)(1) deleted the phrase "as will allow significant deterioration of existing air quality" at the end of the paragraph and added:

"A new source or modification will be considered to interfere with attaining or maintaining a standard when such source or modification would, at a minimum, exceed the significance levels at any locality that does not or would not meet the NAAQS." The revision also included the averaging time for the pollutants SO_2, PM_{10}, NO_2 and CO.

Also added were subparagraphs 16.3.1 (g) (2) and (3) recodified as 335-3-14-.03(1)(g) 2 and 3 which follows:

2. A proposed major source or major modification subject to this paragraph may reduce the impact of its emissions upon air quality by obtaining * * * the significance levels of Subparagraph 16.3.1(g)(1) above. In the absence of such emission reductions, the Director shall deny the proposed construction.

3. The requirements of Paragraph 16.3.1(g) shall not apply to a major stationary source * * * designated as nonattainment pursuant to section 107 of the Federal Clean Air Act.

Subparagraph 16.3.2(b)(11)(i) recodified as 335-3-14-.03(2)(b)(11)(i) deleted "Particulate matter: 25" and added subparagraph 16.4.2 (w)(1) recodified as 335-3-14-.04(2)(w)(1) to read "PM_{10} * * * 15".

Subparagraph 16.4.2(w)(2) was deleted, however, it is not part of the PM_{10} SIP revision. This section was acted upon in a separate notice.

Paragraph 16.4.3 recodified as 335-3-14-.04(3) replaced the term "Particulate matter" with "total suspended particulates" under the Class I, Class II, and Class III columns.

The following subparagraphs were deleted as a housekeeping measure in this SIP revision, but are not part of the PM_{10} SIP revision:

Subparagraphs 16.4.8(d) (1), (2), (3), (4), and (5) recodified as 335-3-14-.04(8) (1), (2), (3), (4), and (5) respectively.

Subparagraph 16.4.8(h)(1) recodified as 335-3-14-.04(8)(h)(1) included the term "PM_{10}-10ug/m^3, 24-hour average". The averaging period for lead was corrected from "24-hour" to "3-month,". Air quality impacts for beryllium and hydrogen sulfide were corrected from "0.0005" and "0.04" to "0.001" and "0.2" respectively.

Subparagraph 16.4.8(h)(3) recodified as 335-3-14-.04(8)(h)(3) was added which states "The owner or operator of the stationary source or modification submits an application under * * * the shorter period of data gathering will suffice to meet the requirements of section 16.4.12."

Paragraphs 16.4.8 (i) and (j) were deleted as a housekeeping measure, but not part of the PM_{10} SIP revision.

Paragraph 16.4.8(k) recodified as 335-3-14-.04(8)(k) was added which states "At the discretion of the Director, the requirements for air quality monitoring of PM_{10} * * * in subparagraph 16.4.12 (a) (1) through (4)."

Paragraph 16.4.8(l) recodified as 335-3-14-.04(8)(l) was added which states the "requirements for air quality monitoring of PM_{10} in subparagraph 16.4.12(a) (2) and (4) * * * analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that subparagraph 16.4.12(a)(3) requires shall have been gathered over that shorter period." Subparagraphs 16.4.12(a)(5), 16.4.12(a)(5) (i) and (ii) were deleted as a housekeeping measure but were not part of the PM_{10} revision.

Subparagraphs 16.4.12(a) (7) and (8) recodified as 335-3-14-.04 (12)(a) (7) and (8) were added as follows:

(7) For any application that becomes complete, except as to the requirements of subparagraph 16.4.12(a) (3) and (4) pertaining to PM_{10}, after December 1, 1988 * * * the data that subparagraph 16.4.12(a)(3) requires shall have been gathered over that shorter period.

(8) With respect to any requirements for air quality monitoring of PM_{10} under paragraphs 16.4.8 (k) and (l) * * * such approved monitoring method in accordance with estimating procedures approved by the Director.

Subparagraph 16.4.15(c) recodified as 335-3-14-.04(15) deleted "Particulate matter" and included the phrase "Total suspended particulates."

Paragraph 16.4.19(a) recodified as 335-3-14-.04(19)(a) was replaced by the phrase "under part 16.4 as in effect on July 30, 1987 or any earlier version of this part." This was a housekeeping measure and not part of the PM_{10} SIP revision.

In order to complete Alabama's PM_{10} SIP submittal, the Department of Environmental Management submitted a list of the regulations relied upon to maintain the PM_{10} National Ambient Air Quality Standards along with the corresponding Federal Register approval dates.

Final Action

EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR part 51. Therefore, EPA approves the Alabama PM_{10} revisions. However, the revisions for the Coke Oven Emissions will be dealt with in a forthcoming notice.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. section 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional

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Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 1990. This action may be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for State of Alabama was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 9, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulation, is amended as follows:

PART 52—[AMENDED]

Subpart B—Alabama

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.50 is amended by adding paragraph (c)(52) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(52) Provisions for PM_{10} submitted on June 20, 1988 and October 3, 1989, by the Alabama Department of Environmental Management.

(i) Incorporation by reference.

(A) The following revisions submitted on June 20, 1988, to Chapters 1, 2 and 16 were effective June 16, 1988. These Chapters were recodified as Chapters 335–3–1, 335–3–2 and 335–3–14, respectively, effective June 22, 1989.

(*1*) Definitions—1.2.1 recodified 335–3–1–.02(1) bbb, eee, nnn, and yyy.

(*2*) Air Pollution Emergency—Chapter 2 recodified as 335–3–2.

(*3*) Permits—Chapter 16 recodified as 335–3–14, except .03(1)(g)(1).

(B) The following revisions submitted on October 3, 1989, to Chapters 35–3–1 and 335–3–14 were effective September 21, 1989.

(*1*) Definitions—335–1–.02 (1) (yy) and (ccc).

(*2*) Permits—335–3–14.

(*3*) 335–3–14–.03(1)(g)(1).

[FR Doc. 90–19568 Filed 9–21–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[TN-086; FRL-3833-7]

Designation of Areas for Air Quality Planning Purposes; Tennessee: Redesignation of a Tennessee Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today is approving the request by the Tennessee Department of Health and Environment that Nashville-Davidson County be redesignated from nonattainment to attainment for carbon monoxide (CO). The redesignation is based on eight quarters of ambient monitoring data that show no violations of the CO standards and on implementation of the EPA-approved CO control strategies.

DATES: This action will be effective November 24, 1990 unless notice is received by October 24, 1990 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Vickie Boothe of the Region IV Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal working hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Tennessee Department of Health and Environment, Customs House, 701 Broadway, Nashville, Tennessee 37219.

Metropolitan Nashville/Davidson County Health Department, 311–23rd Avenue North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Vickie Boothe, Air Programs Branch, EPA Region IV, at the above address and phone number (404) 347–3864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On May 3, 1979, EPA designated Nashville/Davidson County as nonattainment for CO. This designation was based on carbon monoxide concentrations measured at 9th and Broadway in downtown Nashville in 1977. On August 13, 1980, EPA granted Metropolitan Nashville Davidson County an extension until December 31, 1987, to meet the CO standard. The extension was granted with the stipulation that Nashville adopt transportation control measures (TCMs), and a Vehicle Inspection and Maintenance Program. EPA gave full approval of Davidson County's Carbon Monoxide Implementation Plan in the Federal Register on June 3, 1986 (51 FR 19836).

Tennessee has requested that EPA change the attainment status of Davidson County from nonattainment to attainment for CO. In order to redesignate a CO nonattainment area, EPA policy requires the most recent eight consecutive quarters of quality assured, representative ambient air quality data plus evidence of an implemented control strategy that EPA had fully approved. Tennessee submitted data which show Metropolitan Nashville/Davidson County's measured concentration of carbon monoxide over the past three years. This data shows that the 8-hour National Ambient Air Quality Standard for CO was exceeded only once, December 2, 1989 at Site 031 (NE. Corner of 9th and Broadway). Tennessee also submitted data from Site 028 (Donelson Library), and Site 031, (Douglas Park). There were no exceedances of either the one-hour or eight-hour standards from January 1987 through December 1989 at either of these sites. Therefore, there were no violations of either the one-hour or the eight-hour standard during the most recent eight quarters.

Tennessee has also submitted evidence of implementation of the control strategies required by the SIP for Davidson County. The required vehicle inspection and maintenance (I/M) program was adopted on January 1, 1985, and implemented in Davidson County. An EPA audit of the I/M program conducted on November 5–7, 1985, showed that the program exceeded the reasonably available control technology (RACT) requirements.

Tennessee also submitted a letter from Mr. Robert Kurzynske, Planner for the Metropolitan Planning Commission, which certifies that the seven transportation control measures approved in the SIP have been implemented. The TCMs include:

1. Improve bus speed.
2. Subsidize employee transit costs.
3. Variable work hours.
4. Study of transit fare structure.
5. Two cent gasoline tax equivalent.
6. Traffic flow improvements.
7. Ride sharing program.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Final Action

EPA is today approving the redesignation of the Metropolitan-Davidson County CO nonattainment area to attainment on the basis of eight quarters of air quality data and on a fully implemented control strategy approved by EPA.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective November 24, 1990 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such a notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 24, 1990.

Under section 5 U.S.C. 605(b), I certify that this request will not have significant impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 17, 1990.

Winston A. Smith,

Acting Regional Administrator.

PART 81—[AMENDED]

Part 81 of chapter I, title 40, Code of Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.343 the attainment status table titled "Tennessee—CO" is amended by removing the entry for Davidson County. As revised, the table reads as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
That portion of Shelby County located in downtown Memphis.	X	
Rest of State		X

* * * * *

[FR Doc. 90–22550 Filed 9–21–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL-3833-6]

Georgia; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final authorization for revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revision. Georgia's application for program revision is available for public review and comment.

DATES: Final authorization for Georgia's program revision shall be effective November 24, 1990 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business October 24, 1990.

ADDRESSES: Copies of Georgia's program revision application are available during 8 a.m.–4 p.m. at the following addresses for inspection and copying: Georgia Department of Natural Resources, Land Protection Branch, room 1154, 205 Butler Street SE., Floyd Towers East, Atlanta, Georgia 30334; (404) 656–2833; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: (202) 382–5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumer, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section

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3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266 and 124 and 270.

B. Georgia

Georgia initially received final authorization for its base RCRA program effective on August 21, 1984. Georgia received authorization for revisions to its program effective on September 18, 1986. Georgia also received authorization for revisions to its program on September 24, 1990. On July 31, 1990, Georgia submitted a program revision application for additional program approval. Today, Georgia is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application, and has made an immediate final decision that Georgia's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision until October 24, 1990. Copies of Georgia's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Georgia's program revision shall become effective November 24, 1990 unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Georgia is today seeking authority to administer the following Federal requirement promulgated on April 22, 1988 for Non-HSWA Cluster III.

Federal requirement	FR reference	Federal promulgation date	State authority
Technical Correction; Identification and Listing of Hazardous Waste	52 FR 13382	4/22/88	391-3-11-.02(2) 391-3-11-.07(1)

Georgia is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Georgia's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 604(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: September 5, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90-22549 Filed 9-21-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-66006J; FRL 3801-7]

Polychlorinated Biphenyls (PCB's): Manufacturing, Processing, and Distribution in Commerce, Technical Amendment.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical Amendment.

SUMMARY: Section 6 of the Toxic Substances Control Act (TSCA) generally prohibits the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCB's). It also provides a procedure where persons may petition the Administrator, for good cause shown, for an exemption from these prohibitions. EPA published the Polychlorinated Biphenyls (PCB's) Exemption Rule in the **Federal Register** (55 FR 21023) on May 22, 1990. This is a technical amendment to add paragraphs for class exemptions and automatic renewals which were inadvertently omitted in the codified section of that PCB Exemption Rule.

EFFECTIVE DATE: This technical amendment is effective as of September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 Telephone: (202) 554-1404, TDD: (202) 554-0551.

ADDRESSES: The official record for the PCB exemptions is located in the TSCA Public Docket Office, Rm. NE-G004, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The record is available for copying and inspection from 8 a.m. to 12 noon, and from 1 p.m. to 4:30 p.m. Monday through Friday, excluding holidays.

SUPPLEMENTARY INFORMATION: EPA is issuing a technical amendment to § 761.80 to reinsert text that was inadvertently omitted from the codified section of the May 22, 1990 Exemptions Rule. The technical amendment will, thus, reinstate the automatic renewals and class exemptions into the codified section of the PCB Exemption Rule. To clarify any confusion within the regulated community, the entire codified section has been reprinted in this technical amendments.

Dated: September 9, 1990.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

2. Section 761.80 is correctly revised to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

(a) The Administrator grants the following petitioner(s) an exemption for 1 year to process and distribute in commerce PCBs for use as a mounting medium in microscopy:

(1) McCrone Accessories Components, Division of Walter C. McCrone Associates, Inc., 2820 South Michigan Avenue, Chicago, IL. 60616.

(2) [Reserved]

(b) The Administrator grants the following petitioner(s) an exemption for 1 year to process and distribute in commerce PCBs for use as a mounting medium in microscopy, an immersion oil in low fluorescence microscopy and an optical liquid:

(1) R.P. Cargille Laboratories, Inc., 55 Commerce Road, Cedar Grove, N.J. 07009.

(2) [Reserved]

(c) The Administrator grants the following petitioner(s) an exemption for 1 year to export PCBs for use in small quantities for research and development:

(1) Accu-Standard, New Haven, CT. 06503.

(2) [Reserved]

(d) The Administrator grants the following petitioner(s) an exemption for 1 year to import (manufacture) into the United States, small quantities of existing PCB fluids from electrical equipment for analysis:

(1) Unison Transformer Services, Inc., Tarrytown, N.Y. 10591, provided each of the following conditions are met:

(i) The samples must be shipped in 5.0 ml or less, hermetically sealed vials.

(ii) The exemption is limited to no more than 250 total samples per year.

(iii) Unison makes quarterly inspections of its laboratories to ensure that proper safety procedures are being followed.

(iv) Unison annually notifies and describes to EPA its attempts to have samples analyzed abroad.

(2) [Reserved]

(e) [Reserved]

(f) The Administrator grants the following petitioner(s) an exemption for 1 year to manufacture PCBs for use in small quantities for research and development:

(1) California Bionuclear Corp.,Sun Valley, CA 91352 (ME-13).

(2) Foxboro Co., North Haven, CT 06473 (ME-6).

(3) ULTRA-Scientific, Inc.,Hope, RI 02831 (ME-99.1).

(4) Midwest Research Institute, Kansas City, MO 64110 (ME-70.1).

(5) Pathfinder Laboratories, St. Louis, MO 63146 (A division of Sigma Aldridge Corporation, St. Louis, MO, 63178 (ME-76).

(6) Radian Corp., Austin, TX 78766 (ME-81.2).

(7) Wellington Sciences USA, College Station, TX 77840 (ME-104.1).

(8) Accu-Standard, 25 Science Park, New Haven, CT. 06503.

(g) The Administrator grants a class exemption to all processors and distributors of PCBs in small quantities for research and development provided that the following conditions are met:

(1) All processors and distributors must maintain records of their PCB activities for a period of 5 years.

(2) Any person or company which expects to process or distribute in commerce 100 grams (.22 lb) or more PCBs in 1 year must report to EPA identifying the sites of PCB activities and the quantity of PCBs to be processed or distributed in commerce.

(h) The Administrator grants the following petitioner(s) a class exemption to its members for 1 year to process and distribute in commerce non-porous transformer component parts which have been decontaminated of PCB residues and to buy and sell PCB Transformers or PCB-Contaminated Transformers to which only double-rinsed, non-porous component parts have been added:

(1) Electrical Apparatus Service Association, 1331 Baur Boulevard, St. Louis, MO. 63123.

(2) [Reserved]

(i)–(l) [Reserved]

(m) The Administrator grants the following petitioner(s) an exemption for 1 year to process and export small quantities of PCBs for research and development:

(1) Chem Service, Inc., West Chester, PA 19380 (PDE-41).

(2) Foxboro Co., North Haven, CT 06473 (ME-6).

(3) PolyScience Corp., Niles, IL 60648 (PDE-178).

(4) ULTRA-Scientific, Inc., Hope, RI 02831 (PDE-282.1).

(5) Supelco, Inc., Bellefonte, PA 16823-0048 (PDE-41.2).

(6) Radian Corp., Austin, TX 78766 (PDE-182.1).

(n) The 1-year exemption granted to petitioners in paragraphs (a) through (f) and (m) of this section shall be renewed automatically unless a petitioner notifies EPA of any increase in the amount of PCBs to be processed and distributed, imported (manufactured), or exported; or of any change in the manner of processing and distributing, importing (manufacturing), or exporting of PCBs and unless EPA initiates rulemaking to terminate the exemption. Until EPA acts on the petition, the petitioner will be allowed to continue the activities for which it requests exemption.

(o) The 1-year class exemption granted to all processors and distributors of PCBs in small quantities for research and development in paragraph (g) of this section shall be renewed automatically unless information is submitted affecting EPA's conclusion that the class exemption, or the activities of any individual or company included in the exemption, will not pose an unreasonable risk of injury to health or the environment. EPA will evaluate the information, issue a proposed rule for public comment, and issue a final rule affecting the class exemption or individuals or companies included in the class exemption. Until EPA issues a final rule, individuals and companies included in the class exemption will be allowed to continue processing and distributing PCBs in small quantities for research and development.

[FR Doc. 90-22554 Filed 9-21-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

Satellite Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: These technical amendments are being made to correct errors that have been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiera (202) 634-1781

Part 25 of title 47 of the Code of Federal Regulations is amended as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 is revised to read as follows:

Authority: Sections. 101-404, 76 Stat. 419-427; 47 U.S.C. 701-744. Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 382, 48 Stat. 1082, as amended; 47 U.S.C. 303.

2. All authority citations at the subpart or sectional levels in part 25 are removed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22575 Filed 9-21-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM-201B; Amendment No. 173-222]

RIN 2137-AE36

Shippers; Use of Tank Car Tanks With Localized Thin Spots; Corrections and Response to a Petition for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule, corrections and response to a petition for reconsideration.

SUMMARY: This document makes certain corrections to a final rule, regarding the use of tank car tanks with localized thin spots, issued under Docket HM-201B (January 5, 1990; 55 FR 422). In addition, this document responds to a petition for reconsideration.

EFFECTIVE DATE: September 24, 1990. This rule is being made effective immediately because it merely corrects minor discrepancies in existing regulations.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, RRS-2, Washington, DC 20590, Telephone (202) 366-0897.

SUPPLEMENTARY INFORMATION: On January 5, 1990 (55 FR 422), RSPA published a correction document to a final rule issued under Docket HM-201B (February 28, 1989; 54 FR 8336), concerning the use of tank car tanks with localized thin spots. In § 173.31(a)(11)(vi) and (ix) of the final rule, certain tanks were erroneously referred to as "DOT specification 206W tank car tanks" instead of "AAR 206W tank car tanks". Also, in § 173.31(a)(11)(vi) of the final rule, the phrase "lower half of the outer shell" is used. The correct phrases should be "lower half of the heads of the tank car tank" and "the lower half of the heads of the outer shell of a class DOT 115 tank car tank or an AAR 206W tank car tank." These errors are corrected in this document.

In the preamble of the correction document (page 422), under a discussion entitled "Meaning of part 179 Standards", RSPA stated, in part:

> RSPA and FRA have concluded that the shell thickness issue can be resolved only through a careful rulemaking process exploring all aspects of the issue * * * DOT has a current, companion rulemaking proceeding, Docket HM-201, in which these issues will be resolved. An NPRM under that docket addressing these issues will be issued soon. Until a final rule emerges in that docket, the shell thickness requirements specified in part 179, as amended, by this final rule, are the minimum in service shell thickness requirements throughout the life of a tank car.

The Railway Progress Institute (RPI) objected to these comments. RPI petitioned RSPA to "reconsider its position as announced on January 5, 1990, that tank shell thickness requirements apply during the life of the tank car and that it defer issuing an interpretation of its regulations until the completion of rulemaking HM-201, in which the tank shell thickness issue may be addressed with the benefit of a full record."

RSPA's position that the shell thickness of a tank car tank may not fall below the required minimum thickness prescribed by part 179 is consistent with that for other bulk packagings, such as cargo tanks. On April 7, 1983 (48 FR 15127), RSPA published a Rule Related Notice concerning continuing qualification of cargo tanks. In that document, shippers and motor carriers offering hazardous materials in cargo tanks were made aware that:

> * * * the minimum thickness requirement * * * is an essential function in determining the continuing qualification of a cargo tank as an authorized packaging. For example, if an MC 310 cargo tank has a capacity of 2000 gallons, its minimum thickness may be no less than ⅜ inch. If the tank is less than ⅜ inch at any point, e.g., as a result of internal or external corrosion, it may no longer be marked "MC 310" on its identification plate, nor may it be used as a specification cargo tank under the HMR.

RSPA takes this same position with respect to tank car tanks with localized reductions in wall thickness. The amendments issued on January 5, 1990, under HM-201B, grant relief to shippers by permitting the use of certain railroad tank car tanks with shell thickness in localized areas that otherwise would not conform to the applicable specifications.

The procedures set forth in 49 CFR 106.35 provide for persons to petition for reconsideration of any regulation issued. These procedures prescribe that the petition must contain an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest. In its petition, RPI offers no objection to amendments allowing tank car tanks with localized reductions of shell thickness due to tank repairs to continue in service. Instead, RPI's petition pertains to a statement found in the preamble discussion rather than a regulation issued under HM-201B. Therefore, the petition is denied.

Furthermore, although RPI seeks reconsideration of the preamble language in the January 5, 1990 correction document as a "new" interpretation, the RSPA position objected to was apparent when the rulemaking in HM-201B began in 1987. As noted in the preamble to the final rule issued February 28, 1989, commenters had raised the issue of whether the minimum tank car shell thickness required by the specification applied to cars in use. (See 54 FR 8337.) The answer then and now is that the rules now require maintenance of the requirements of the specification, but that the merits of required maintenance of tank car tank shell thickness will be fully explored in Docket HM-201. Thus the study submitted with RPI's petition here ("Railroad Tank Car Safety Assessment" prepared by Failure Analysis Associates) will be considered in that rulemaking.

Administrative Notices

RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental entities; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

A regulatory evalution developed for Amendment No. 173-209 is available for review in the Docket. This rule does not change the assessments made in that regulatory evaluation.

Based on information concerning the size and nature of entities likely to be affected by this final rule, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on States, on the Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications as defined in Executive Order 12612 and, therefore, no Federalism Assessment has been prepared.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Regulatory Agenda.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, packaging and conainers.

In consideration of the foregoing, 49 CFR part 173 is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, and 1808; 49 CFR part 1.

2. In § 173.31, paragraphs (a)(11)(vi) and (a)(11)(ix) are revised to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *

(11) * * *

(vi) There are no reductions in shell thickness on the lower half of the heads of—

(A) The tank car tank; or

(B) The outer shell of a class DOT 115 tank car tank or an AAR 206W tank car tank;

* * * * * *

(ix) For a class DOT 115 tank car tank or an AAR 206W tank car tank, there are no reductions in the thickness of the inner tank.

* * * * * *

Issued in Washigton, DC on September 18, 1990, under authority delegated in 49 CFR 1.53.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 90-22536 Filed 9-21-90; 8:45 am]

BILLING CODE 4910-60-M

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Proposed Rules

Federal Register
Vol. 55, No. 185
Monday, September 24, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1005

[DA-90-031]

Milk in the Carolina Marketing Area; Proposed Temporary Revision of Pool Distributing Plant Route Disposition Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to decrease temporarily the route disposition requirements applicable to a pool distributing plant under the Carolina milk order. For the months of September through November 1990 and January and February 1991, the percentage of route disposition by a pool distributing plant would be decreased from 60 percent to 50 percent. The action was requested by a cooperative association and a proprietary handler. Proponents contend that this action is needed to avoid some additional costs in pooling milk at one of two distributing plants operated by the handler.

DATES: Comments are due no later than October 1, 1990.

ADDRESSES: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would eliminate the need to make uneconomic shipments of milk to meet the pooling standards of the order.

The proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and paragraph (a)(2) of § 1005.7 of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Carolina marketing area is being considered for the months of September through November 1990 and January and February 1991.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The time for filing comments is limited to 7 days in order to complete the necessary procedures and make the revision applicable for the month of September if such revision is warranted.

Statement of Consideration

The provision proposed to be revised is the route disposition percentage applicable to a pool distributing plant pursuant to § 1005.7(a)(2). The revision would be effective for the months of September through November 1990 and January and February 1991. The specific revision would decrease the route disposition percentages, applicable to a pool distributing plant, by 10 percentage points during such months.

Southern Milk Sales, Inc. and Hunter Jersey Farms, Inc. (Hunter Jersey) requested the action. The proponents indicated that Hunter Jersey operates two distributing plants located in the marketing area. One of the two plants is expected to have about 50 percent route disposition and the other plant is expected to have about 86 percent route disposition. The combined route disposition of the two plants would be about 72 percent.

Proponents also requested that the order be amended to permit any handler that operates two or more distributing plants to combine the receipts and utilization of milk and milk products at such plants for reporting purchases. Pending the completion of such amendatory proceeding, proponents have requested the Director of the Dairy Division to lower the 60 percent route disposition standard by 10 percentage points.

The proponents indicated that unless this action is granted, Hunter Jersey would have to incur additional costs in order to pool the milk received at the plant having about 50 percent route disposition. The other alternative would be to not pool the plant which would result in a reduction in income for the dairy farmers supplying such plant.

In view of the foregoing, it may be appropriate to decrease the route disposition requirement applicable to a distributing plant for the months of September through November 1990 and January and February 1991. Interested parties are invited to comment on the need for the proposed temporary revision.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

Authority: (Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

Signed at Washington, DC, on: September 18, 1990.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 90-22566 Filed 9-21-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1030

[DA-90-033]

Milk in the Chicago Regional Marketing Area; Proposed Revision of Supply Plant Shipping Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rules.

SUMMARY: This notice invites written comments on a proposal to revise certain provisions of the Chicago Regional milk order for the months of September and October 1990. The proposal would reduce the shipping percentages for pooling individual supply plants by 3 percentage points (from 5 to 2 percent of receipts) and units of supply plants by 5 percentage points (from 10 to 5 percent of receipts). The reductions were requested by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The organization contends that the action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants. The organization has requested that the shipping standard be reduced for September and has indicated that a similar reduction may be necessary for October. Thus, comments are being requested on a reduction of the shipping standards for both months.

DATES: Comments are due no later than October 1, 1990.

ADDRESSES: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O Box 96456, Washington, DC 20090-6456 (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action would reduce the regulatory impact on milk handlers and tend to insure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1030.7(b)(5) of the order, the revision of certain provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered for the months of September and October 1990.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include September in the revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the months of September and October 1990. The proposed action would reduce the shipping percentage for individual supply plants by 3 percentage points (from 5 to 2 percent of receipts) and for supply plant units by 5 percentage points (from 10 to 5 percent of receipts).

Currently, the order provides that individual supply plants must ship at least 5 percent of milk receipts to other plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes during the months of September through December. During other months the shipping standards are 3 percent for individual plants and 6 percent for a unit of plants.

The Chicago order provides that the market administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points for up to 3 months. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of the producers who supply the market. CMPC contends that a reduction of the shipping percentages is necessary to prevent uneconomic shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and sales estimates, CMPC requested that the market administrator reduce the shipping percentages by 2 percentage points during the months of August through October. CMPC indicates that the reduction for August by the market administrator permitted the use of nearby milk to satisfy fluid milk needs and saved substantial transportation costs because milk did not have to be shipped from distant supply plants. An identical reduction of the shipping percentages for September has also been issued by the market administrator.

Based on the most recent supply and demand estimates, CMPC contends that a further reduction of the shipping percentages for September is necessary. CMPC contends that in order to make the most efficient use of available milk supplies, as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the month of September, CMPC contends that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to 2 and 5 percent of receipts, respectively. In addition, CMPC indicates that it may be necessary for the October shipping standards to be reduced in a similar fashion.

In view of the supply/demand relationship, it may be necessary to reduce the supply plant shipping percentages as proposed to provide for the efficient and economic marketing of milk during the months of September and October.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

The authority citation for 7 CFR part 1030 continues to read as follows:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Signed at Washington, DC, on: September 18, 1990.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 90-22567 Filed 9-21-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1106

[DA-90-034]

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal for the months of September 1990 through January 1991

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that would suspend the shipping standards for supply plants under the Southwest Plains order. The action was requested by Kraft, Inc., Associated Milk Producers, Inc., and Mid-America Dairymen, Inc. The proponents contend that the action is necessary to eliminate costly and inefficient movements of milk from supply plants that would have to be made to assure the continued pricing and pooling the milk of producers who have historically supplied the market's fluid milk needs.

DATES: Comments are due no later than October 1, 1990.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of September 1990 through January 1991.

1. In § 1106.0, the words "during the month".

2. In § 1106.7(b)(1), the words, "of February through August until any month of each period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transferes and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposal for September 1990 through January 1991 would suspend the shipping standards for supply plants that were previously associated with the market. The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It further provides that in order to be pooled under the order during the months of September through January, 50 percent of a supply plant's receipts must be shipped to distributing plants each month. Also, a supply plant that was pooled during each of the immediately preceding months of September through January shall continue to be pooled during the following months of February through August if 20 percent of its receipts are shipped to distributing plants. The requested action would remove all shipping standards during the months of September 1990 through January 1991 for supply plants that were pooled under the order during the immediately preceding September through January period.

The suspension was requested by Kraft, Inc., a handler who operates a supply plant that is pooled under the order. The proposed action is supported by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial number of producers who supply the market. The organizations contend that there are ample supplies of direct-ship milk located near to distributing plants that are available to supply the fluid milk needs of such plants during the months of September 1990 through January 1991. Thus, the organizations contend that supplemental shipments from supply plants will not be needed during such months. The organizations contend that in the absence of a suspension action, costly and inefficient movements of milk from supply plants would have to be made to assure the continued pooling of milk of dairy farmers who have historically supplied the market's fluid milk needs.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR part 1106 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on September 18, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-22568 Filed 9-21-90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-022]

Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning brucellosis, to (1) allow movement of cattle from approved intermediate handling facilities to quarantined feedlots; (2) require that approved intermediate handling facilities be separate and apart from livestock facilities for breeding cattle and breeding bison, rather than from all other livestock facilities; (3) change the allowable minimum number of live organisms in official calfhood vaccines to 2.7 billion per 2 ml. dose; (4) expand the conditions under which the standard card test may be used as an official test; (5) allow reinstatement of "certified free herd" status after a reactor is found, if sufficient evidence shows that the reactor's herd is not infected with field strain *Brucella abortus*; (6) remove the adjusted MCI reactor rate as a standard for Class Free States; and (7) provide for the interstate movement of rodeo bulls on the basis of a single annual test. We believe these amendments are warranted to remove unnecessary restrictions without

significantly increasing the risk of the spread of brucellosis.

DATES: Consideration will be given only to comments received on or before November 24, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-022. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6188.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the interstate spread of brucellosis, a serious, infectious, and contagious disease of animals and man. The regulations are part of a cooperative Federal and State program to eradicate the disease and to protect States and areas where eradication efforts have been successful. In this document, we are proposing to make a number of amendments to the regulations.

Movement From Intermediate Handling Facilities to Quarantined Feedlots

The current regulations allow cattle that are being moved interstate to be moved from an approved intermediate handling facility only to a recognized slaughtering establishment. An intermediate handling facility, which must meet certain criteria to be approved, is used as an assembly point at which cattle from various sources are brought together. By assembling the cattle at one location, full truckloads of cattle can more easily be formed for movement to slaughter. Representatives of the cattle industry have requested that the regulations be amended to allow cattle at an approved intermediate handling facility to move to a quarantined feedlot, as well as to a recognized slaughtering establishment. The representatives of the cattle industry stated that if this movement is allowed, it will be easier to assemble full truckloads before moving cattle to quarantined feedlots. In this document, we are proposing to make such an amendment to the regulations. We believe that making such a change would not significantly increase the risk of spreading brucellosis. Although the regulations do allow movement from a quarantined feedlot to locations other than a recognized slaughtering establishment, the ultimate destination of the cattle so moved, and any cattle they may come in contact with, must be a recognized slaughtering establishment.

Approved Handling Facilities

One of the criteria in the current regulations for an approved intermediate handling facility is that the facility be separate and apart from other livestock handling facilities. We believe that this provision is more restrictive than is necessary. The primary risk of the spread of brucellosis occurs when breeding cattle or breeding bison are infected with brucellosis. Therefore, we are proposing to amend the regulations to require that an approved intermediate handling facility be separate and apart from other livestock handling facilities for breeding cattle and breeding bison.

Official Calfhood Vaccinate

The current regulations contain a definition of "Official calfhood vaccinate." According to this definition, female cattle or bison are considered official calfhood vaccinates if they are vaccinated while from 4 through 12 months of age by a Veterinary Services representative, state representative, or accredited veterinarian, with a reduced dose approved brucella vaccine containing at least 3.0 billion and not more than 10 billion live cells per 2 ml. dose. However, research conducted on varying dosages of vaccine at the Animal and Plant Health Inspection Service (APHIS) National Veterinary Services Laboratories, and by the Agricultural Research Service, United States Department of Agriculture, has determined that reducing the minimum level of live cells to 2.7 billion per 2 ml. dose would not create a statistically significant difference in the immunity level of the cattle and bison immunized. We are therefore proposing to make such a change in the regulations.

Standard Card Test

The definition of "official test" in the regulations contain a list of tests that have been approved by APHIS to determine the brucellosis disease status of test-eligible cattle and bison. Included in the definition of "official test" are conditions under which several tests, including the standard card test, may be considered official tests. In this document, we are proposing to expand the definition of official test to also consider the standard card test are official test, if it is used in specifically approved stockyards, when the state animal health official designates the standard card test as the official test for non-vaccinated cattle and bison, and designates the standard plate test, the Rivanol test, and/or the CITE test as supplemental diagnostic tests for officially vaccinated cattle and bison. Because the standard card test is a sensitive test, it sometimes indicates a positive reaction in vaccinated cattle and bison, even if the cattle and bison are not infected with brucellosis. Confirmation of a positive result on the standard card test requires further testing. Under the current regulations, if any cattle or bison that are official vaccinates test positive to the standard card test, any other cattle or bison in the same shipment as the animal that tested positive may not be released, except to slaughter, pending futher testing of the samples at a laboratory. The change we are proposing would allow the standard card test to be used with supplemental tests at the stockyard, which would allow for more orderly processing of cattle, without an increase in disease risk.

We are also proposing to establish a method for determining the disease status of cattle and bison at specifically approved stockyards when different tests yield different results in those States where the standard card test would be used with supplemental tests. We are proposing that officially vaccinated cattle and bison that are positive to the standard card test shall be classified as suspects if all of the supplemental tests that are conducted disclose a negative or suspect reaction. We believe this conclusion would be necessary because, as noted above, the standard card test is so sensitive that it sometimes yields false positives in vaccinated cattle and bison, and cannot be relied on alone to identify an infected animal. Additionally, we are proposing that officially vaccinated cattle or bison that are positive to the standard card test shall be classified as reactors if even one supplemental test conducted on the cattle or bison has a reactor result. Our experience has indicated that confirmation of a positive standard card test by even one supplemental test makes it likely that the animal being tested is infected with brucellosis.

We are also proposing to make a clarification regarding the standard card test in the definition of "Official test." Currently, the heading for "Standard

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card test" in the definition of "Official test" is followed by the parenthetical phrase "(standard sensitivity ph 3.8)." However, we believe that the parenthetical phrase may be misleading, because it could imply, erroneously, that some other card test, with a different sensitivity, is available. For this reason, we are proposing to remove the parenthetical phrase "(standard sensitivity ph 3.8)" from the regulations.

Reinstatement as a Certified Brucellosis-Free Herd

The current regulations provide criteria for a herd of cattle or bison to be considered a certified brucellosis-free herd. Under the regulations, a herd of dairy cattle qualifies as a certified brucellosis-free herd if a minimum of four consecutive negative brucellosis ring tests are conducted at not less than 90-day intervals, followed by a negative herd blood test within 90 days after the last negative brucellosis ring test. Additionally, any herd of cattle or bison qualifies as a certified brucellosis-free herd if two consecutive negative herd blood tests are conducted not less than 10 months nor more than 14 months apart.

Currently, if a brucellosis reactor is found in a certified free herd, that herd may be recertified only if the certification process is repeated. In this document, we are proposing that a herd in which a brucellosis reactor has been found may be reinstated as a certified brucellosis-free herd, without the certification process being repeated, if epidemiological and bacteriological culture information shows that the herd is not infected with field strain *Brucella abortus*. It is possible for cattle and bison to be identified as brucellosis reactors without being infected with field strain *Brucella abortus*. This situation occurs most commonly in vaccinated cattle and bison. Unless the cattle or bison are infected with field strain *Brucella abortus*, they are incapable of transmitting brucellosis to other cattle and bison. For this reason, we are proposing that any herd in which a brucellosis reactor is found, but that is not infected with field strain *Brucella abortus*, is not required to undergo the certification process to be reinstated as a certified brucellosis-free herd.

MCI Reactor Prevalence Rate in Class Free States

The regulations currently provide criteria for States and areas to be categorized into one of four different "class" designations, depending on various factors regarding the incidence of brucellosis in each State or area, and the establishment in the State or area of a brucellosis eradication program. Among the factors considered in categorizing each State or area is the "MCI reactor prevalence rate." Under the regulations, all States have established a market cattle identification (MCI) program for identifying brucellosis-affected cattle in the State. Under the MCI program, blood samples must be collected at each recognized slaughtering establishment from 95 percent of cows and bulls 2 years of age or over and then must be subjected to an official test. Among other factors, the "class" designation of a State or area depends on what percentage of cattle tested are identified as reactors. This percentage is called an "MCI reactor prevalence rate."

The MCI reactor prevalence rate is adjusted downward to accommodate certain factors that would otherwise skew the rates. Among the factors taken into account when adjusting the MCI reactor prevalence rate are cattle traced to herds with negative herd blood tests. This adjustment is made in order to eliminate from the rate cattle that are MCI reactors for some reason other than infection with brucellosis. Our experience conducting brucellosis programs indicates that if a herd in a Class Free State from which an MCI reactor comes tests negative for brucellosis, it is highly unlikely the reactor was infected with brucellosis.

The practice of using negative herd testing to adjust the MCI reactor prevalence rate encourages the testing of herds that otherwise might not be tested, and thus provides for early detection of infection. Although this provision seems to be effective in States or areas in which brucellosis is present, it appears that requiring such an adjusted MCI reactor prevalence rate for retention of Class Free status may be resulting in unnecessary testing.

To maintain Class Free status, a State or area must maintain a 12 consecutive month MCI reactor prevalence rate of not more than one brucellosis reactor per 2,000 cattle tested (0.050 percent). If even a small number of MCI reactors are found in a Class Free state or area, a significant number of the herds from which these animals come must then be tested negative to adjust the rate to the level necessary to maintain Class Free status. Our experience in Class Free States and areas has been that testing of herds done simply to lower the adjusted MCI reactor prevalence rate rarely finds affected herds, and that when affected herds are found, epidemiological evidence would have suggested the advisability of testing the herd. The fact that a State or area has achieved Class Free status indicates that the brucellosis program in the State or area has been conducted effectively enough to eradicate brucellosis there. We expect the effectiveness of these brucellosis programs to continue, even if the current provision regarding the adjusted MCI reactor prevalence rate for Class Free States and areas is removed. Further, it appears that, in some instances, conducting tests that are unnecessary for health reasons is creating antipathy toward, rather than support for, the brucellosis program in the State. We are therefore proposing: (1) To remove the requirement that to retain Class Free status a State or area maintain a 12 consecutive month MCI reactor prevalence rate of no more than one brucellosis reactor per 2,000 cattle tested (0.50 percent); and (2) to remove the provision that the MCI reactor prevalence rate in Class Free areas be adjusted for cattle traced to herds with negative herd blood tests. However, both the current rate requirement and the adjustment for cattle traced to herds with negative blood tests would continue to be applied when determining whether a State or area qualifies to attain Class Free status.

Although we are proposing to remove the current MCI reactor prevalance rate for retention of Class Free status, we believe it is necessary to include some provision in the regulations to provide for the termination of Class Free status should the MCI reactor prevalence rate rise significantly. Therefore, we are proposing to add to the regulations a provision requiring that, for retention of Class Free status, a State or area maintain a 12 consecutive month MCI reactor prevalence rate not more than 10 percent greater than that for the previous 12 month period, except that this rate may not equal or exceed the MCI reactor prevalence rate established for Class A status, which is the next most stringent classification level.

Also, under the current regulations, the MCI reactor prevalence rate is adjusted for cattle that are traced to herds known to be affected with brucellosis. Because by definition there are no herds known to be affected in Class Free States and areas, the language including such a factor in the regulations with regard to those states and areas is unnecessary. We are therefore proposing to remove that language from the regulations.

Rodeo Bulls

The regulations define certain cattle or bison as "test eligible." These are cattle or bison that pose enough of a risk of being effected with brucellosis that they must be tested negative for the disease in order to be moved interstate. Under the current regulations, bulls that are used for rodeos are considered test eligible and must be tested within 30 days of moving interstate. It appears, however, that there would be no significant risk of the transmission of brucellosis if bulls that are used solely for competition in rodeos are not tested every time they are moved interstate. If these animals are not used for breeding while on the rodeo circuit, they would pose no significant risk of transmitting or becoming affected with brucellosis at that time. Therefore, we are proposing to amend the regulations to provide that rodeo bulls that are otherwise test-eligible and that are from herds not known to be affected may be moved interstate if they have been tested negative for brucellosis on an official test less than 365 days before the day of movement.

This "effective period" following the date of testing would enable a bull to be used on a year-long rodeo circuit without being tested each time it is moved interstate. We would add a definition of "rodeo bull," to define such bulls as male cattle that are kept solely for performance at rodeos. We are also proposing to specify in the regulations that if such a bull is used for breeding during the 365 day period following an official test, it may not be moved interstate unless it otherwise meets the testing requirements of 9 CFR part 78.

In order to maintain the identity of rodeo bulls, we would require that the bulls be individually identified with an official eartag, that there be no change of ownership, and that a certificate accompany each movement. In order to allow monitoring of the location of the rodeo bulls, we would require that the bull be issued a "permit for entry" from the state animal health official of the state of destination prior to each movement interstate.

Miscellaneous

We are also proposing to amend part 78 by revising the Office of Management and Budget (OMB) control number citations contained in the part. This action would be nonsubstantive and would be taken to comply with the Paperwork Reduction Act and OMB regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed changes that would have some economic impact are discussed in this and the following paragraphs. The proposed change to the regulations to allow movement of cattle from approved intermediate handling facilities to quarantined feedlots would make it easier to assemble full truckloads before moving cattle to quarantined feedlots. This would result in lower transportation costs for some cattle owners, because it would reduce the number of trips to quarantined feedlots, for which carriers usually charge on a per mile basis. It would also result in some decrease in income for carriers. However, we believe these economic effects would be insignificant in comparison to the total number of cattle moved by carrier each year. The great majority of cattle that are moved to slaughter do not go through a quarantined feedlot. Further, even though assembling such cattle at intermediate handling facilities would eliminate some trips, those cattle so assembled will still have to be moved by some form of carrier to the quarantined feedlot.

The proposed change to reduce the allowable minimum number of live organisms in official calfhood vaccines to 2.7 billion per 2 ml. dose would extend the shelf life of the vaccine. An estimated 375,000 additional doses of the vaccine would be able to be administered because of this extended shelf life. This increase in the number of doses, which would be spread among purchasers of the vaccine nationwide, represents less than 4 percent of the approximately 10 million doses administered annually, and would provide a savings to purchasers of only $.20 per additional dose.

The proposed change to allow supplemental tests to be used with the standard card test at specifically approved stockyards would decrease the amount of time that cattle accompanying an animal testing positive to the standard card test would be detained at the stockyard. Currently, such animals are detained for an average of 2 to 6 days. This delay would be unnecessary if supplemental test results were obtained in a day. Although statistics are not kept on the number of animals at stockyards considered to be suspect, we believe, based on experience, that the number of cattle affected by the change in the regulations would be insignificant in relation to the total number of cattle moved through specifically approved stockyards each year.

Another of the changes proposed in this docket is to allow reinstatement of "certified free herd" status after a reactor is found, if sufficient evidence shows that the reactor's herd is not infected with field strain *Brucella abortus*. In fiscal year 1988, there were 15,879 certified free herds in the United States, of which approximately 0.5 percent would have been affected by this proposed change. Based on an average herd size of 75 animals, and average test costs of between one dollar and three dollars per animal, the savings would have ranged from between $75 to $225 per herd affected by the change. We do not expect this savings estimate to change significantly for fiscal year 1989.

The proposed change to remove the adjusted MCI reactor prevalence rate as a standard for Class Free states would make unnecessary herd testing that is done merely to lower that rate. Based on the 1982 "Census of Agriculture," there were more than 1.2 million herds of cattle in the United States at that time. In fiscal year 1988, 927 of the herds in Class Free states were tested negative. Those 927 herds contained a total of 56,360 cattle. We estimate that epidemiological evidence would have made unnecessary the testing of approximately three-fourths of those cattle. Based on estimated handling and testing costs of between $2.25 and $4.25 per head, the savings from not testing those cattle would have totalled between $95,107 and $179,647. Averaged over the number of herds that we believe were tested in fiscal year 1988 merely to lower the MCI reactor prevalence rate, the savings per herd would have ranged from $137 to $260. We do not expect this savings estimate to change significantly for fiscal year 1989.

One of the changes proposed in this docket would provide for the interstate movement of rodeo bulls on the basis of a single annual test. We estimate that approximately 3,750 bulls would be affected by this proposed change, with an average of five fewer tests conducted per bull each year. Based on an estimated cost per test of $6.00, the annual savings per bull would be approximately $30.

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Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V). We have carried out the required consultation in accordance with the Executive Order.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, it is proposed to amend 9 CFR part 78 as follows:

1. The authority citation for part 78 would continue to read as set forth below:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.1 [Amended]

2. In § 78.1, definition of "Approved intermediate handling facility", introductory text, first sentence, the words "and quarantined feedlots" would be added immediately after "establishments".

§ 78.1 [Amended]

3. In § 78.1, definition of "Approved intermediate handling facility", fifth sentence, the words "or a quarantined feedlot" would be added immediately after "establishment".

§ 78.1 [Amended]

4. In § 78.1, definition of "Approved intermediate handling facility", sixth sentence, paragraph (a), the words "for breeding cattle and breeding bison" would be added immediately after "facilities".

§ 78.1 [Amended]

4. In § 78.1, definition of "Approved intermediate handling facility", sixth sentence, paragraph (f), the words "or a quarantined feedlot" would be added immediately after "slaughter".

§ 78.1 [Amended]

6. In § 78.1, definition of "Certified brucellosis-free herd", paragraph (b) would be amended by removing the last sentence and by adding a new last sentence to read:

§ 78.1 Definitions.

* * * * *

Certified brucellosis-free herd.

* * * * *

(b) * * * A herd decertified because a brucellosis reactor is found may be recertified only by repeating the certification process, except that the herd certification may be reinstated without repeating the certification process if epidemiological studies and bacteriological cultures conducted by APHIS representatives or State representatives show that the herd was not infected with field strain *Brucella abortus*.

* * * * *

7. In § 78.1, definition of "Class Free State or area", paragraph (c) would be revised to read as follows:

§ 78.1 Definitions.

* * * * *

Class Free State or area.

* * * * *

(c) *MCI reactor prevalence rate.* (1) To attain classification as Class Free, the State or area must maintain a 12 consecutive month MCI reactor prevalence rate not to exceed 1 brucellosis reactor per 2,000 cattle tested (0.050 percent).

(2) For retention of Class Free status, the State or area must maintain a 12 consecutive month MCI reactor prevalence rate not more than 10 percent greater than that for the previous 12 month period, except that this rate may not equal or exceed the MCI reactor prevalence rate for Class A status, as set forth in paragraph (c) of the definition of "Class A State or area" in this section.

(3) For purposes of State or area classification, cattle that are not official vaccinates and that are positive to the standard card test, and officially vaccinated cattle positive to the Rivanol test at 1:25 serum titer or greater, will be counted as MCI reactors. The MCI reactor prevalence rate is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in the MCI test cattle. For initial classification as a Class Free State or area, the MCI reactor prevalence rate is adjusted for out-of-State and out-of-area cattle, recordkeeping errors, and cattle traced to herds with negative herd blood tests. For retention of Class Free status, the MCI reactor prevalence rate is adjusted for out-of-State and out-of-area cattle, and for recordkeeping errors. Special consideration of a State or area MCI reactor prevalence rate will be permitted when it is affected by unusual marketing conditions.

* * * * *

§ 78.1 [Amended]

8. In § 78.1, definition of "Market cattle identification test cattle", first sentence, the words "quarantined feedlots," would be added immediately after the word "stockyards,".

§ 78.1 [Amended]

9. In § 78.1, definition of "Market cattle identification test cattle", second sentence, the words "quarantined feedlot," would be added immediately after the word "stockyard."

§ 78.1 [Amended]

10. In § 78.1, definition of "Official calfhood vaccinate", paragraph (a)(1), the words "3 billion" would be removed, and the words "2.7 billion" would be added in their place.

§ 78.1 [Amended]

11. In § 78.1, definition of "Official test", paragraphs (a)(1) introductory text and (a)(1)(i)(C) would be revised, and new paragraphs (a)(1)(i)(C)(*1*) and (*2*) would be added, to read as follows:

§ 78.1 Definitions.

* * * * *

Official test. (a) * * *

(1) *Standard card test.* (i) * * *

(C) In specifically approved stockyards when the State animal health official either:

(*1*) Designates the standard card test as the official test for classifying reactors in all specifically approved stockyards in the state. In these States, no other official test except the Buffered Acidified Plate Antigen test shall be used in specifically approved stockyards; or

(*2*) Designates the standard card test as the official test for non-vaccinated cattle or bison, and designates the Standard plate test, Rivanol test, and/or the CITE© test as supplemental diagnostic tests on officially vaccinated cattle or bison that test positive to the standard card test. If supplemental tests are conducted, officially vaccinated cattle or bison that are positive to the standard card test shall be classified as suspects if all the supplemental tests run disclose a negative or suspect reaction, and shall be classified as reactors if any one of the supplemental tests run has a reactor test result; or

* * * * *

§ 78.1 [Amended]

12. Section 78.1, definition of "Permit", third sentence, the words "the approved intermediate handling facility" would be removed, and the words "the approved intermediate handling facility, a quarantined feedlot," would be added in their place.

§ 78.1 [Amended]

13. In § 78.1, definition of "Permit", fourth sentence, the words "If such a permit lists a recognized slaughtering establishment" would be removed, and the words "If such a permit lists a quarantined feedlot or a recognized slaughtering establishment" would be added in their place.

§ 78.1 [Amended]

14. In § 78.1, definition of "Permit", fourth sentence, the words "to the quarantined feedlot or" would be added immediately after "cattle or bison".

§ 78.1 [Amended]

15. In § 78.1, definition of "Quarantined feedlot", the words "then directly to a recognized slaughtering establishment" would be removed, and the words "then directly to another quarantined feedlot or a recognized slaughtering establishment" would be added in their place in paragraph (a)(2) and in paragraph (a)(5).

§ 78.1 [Amended]

16. In § 78.1, definition of "Quarantined pasture", the ninth sentence would be revised to read as follows:

§ 78.1 Definitions.

* * * * *

Quarantined pasture. * * * All cattle and bison, except steers and spayed heifers, leaving the quarantined pasture must move directly to a recognized slaughtering establishment or quarantined feedlot, or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment, or directly to an approved intermediate handling facility and then directly to a quarantined feedlot and then directly to a recognized slaughtering establishment. * * *

* * * * *

17. In § 78.1, a definition of "Rodeo bulls" would be added, in alphabetical order, to read as follows:

§ 78.1 Definitions.

* * * * *

Rodeo bulls. Male cattle kept solely for performance at rodeos.

* * * * *

§ 78.1 [Amended]

18. In § 78.1, definition of " 'S' brand permit", fifth sentence, the words "either the approved intermediate handling facility or a recognized slaughtering establishment" would be removed, and the words "either the approved intermediate handling facility, a quarantined feedlot, or a recognized slaughtering establishment" would be added in their place.

§ 78.1 [Amended]

19. In § 78.1, definition of " 'S' brand permit", sixth sentence, the words "If such an "S" brand permit lists a recognized slaughtering establishment" would be removed, and the words "If such an "S" brand permit lists a quarantined feedlot or a recognized slaughtering establishment" would be added in their place.

§ 78.1 [Amended]

20. In § 78.1, definition of " 'S' brand permit", sixth sentence, the words "from the approved intermediate handling facility to the quarantined feedlot or" would be added immediately after "cattle and bison".

§ 78.1 [Amended]

21. In § 78.1, definition of " 'S' brand permit", a seventh sentence would be added to read:

§ 78.1 Definitions.

* * * * *

"S" brand permit.

* * * Subsequent movements from the quarantined feedlot shall be subject to the permit requirements set forth in the definition of "quarantined feedlot" in this part.

* * * * *

22. In § 78.8, paragraph (b), the introductory text would be revised to read as follows:

§ 78.8 Brucellosis exposed cattle.

* * * * *

(b) *Movement to quarantined feedlot.* Brucellosis exposed cattle for which no claim for idamnity is being made by the owner under Part 51 of this chapter may be moved interstate directly to a quarantined feedlot, or from a farm of origin directly to a specifically approved stockyard approved to receive brucellosis exposed cattle and then directly to a quarantined feedlot, or from a farm of origin directly to an approved intermediate handling facility and then directly to a quarantined feedlot, or from a farm of origin directly to a specifically approved stockyard approved to receive brucellosis exposed cattle and then directly to an approved intermediate handling facility and then directly to a quarantined feedlot, if the cattle are:

* * * * *

23. In § 78.9, paragraphs (a)(2), (b)(2)(i), (c)(2)(i)(B), and (d)(2)(i)(B) would be revised, and paragraphs (c)(2)(i)(C) and (d)(2)(i)(C)would be added, to read as follows:

§ 78.9 Cattle from herds not known to be affected

(a) * * *

(2) *Movement to quarantined feedlots.* Such cattle may be moved interstate without restriction under this subpart directly to a quarantined feedlot, or directly to a specifically approved stockyard and then directly to a quarantined feedlot, or directly to a specifically approved stockyard and then directly to an approved intermediate handling facility and then directly to a quarantined feedlot, or directly to an approved intermediate handling facility and then directly to a quarantined feedlot.

* * * * *

(b) * * *

(2) *Movement to quarantined feedlots.* (i) Such cattle may be moved interstate from a farm of origin directly to a guarantined feedlot, or directly to a specifically approved stockyard and then directly to a quarantined feedlot, or directly to a specifically approved stockyard and then directly to an approved intermediate handling facility and then directly to a quarantined feedlot, or directly to an approved intermediate handling facility and then directly to a quarantined feedlot, if identity to the farm of origin is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from one farm or state or area apart from other animals.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) A specifically approved stockyard and then directly to a quarantined feedlot or directly to an approved intermediate handling facility and then

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directly to a quarantined feedlot, if the cattle are "S" branded upon arrival at the specifically approved stockyard and are accompanied to the quarantined feedlot by an "S" brand permit; or

(C) An intermediate handling facility and then directly to a quarantined feedlot, if the cattle are "S" branded upon arrival at the intermediate handling facility and are accompanied to the quarantined feedlot by an "S" brand permit.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(B) A specifically approved stockyard and then directly to a quarantined feedlot, or directly to an approved intermediate handling facility and then directly to a quarantined feedlot, if the cattle are "S" branded upon arrival at the specifically approved stockyard and are accompanied to the quarantined feedlot by an "S" brand permit; or

(C) An intermediate handling facility and then directly to a quarantined feedlot, if the cattle are "S" branded upon arrival at the intermediate handling facility and are accompanied to be quarantined feedlot by an "S" brand permit.

* * * * *

24. In § 78.10, the first sentence in paragraph (a) and the first sentence in paragraph (b) would be revised to read as follows:

§ 78.10 Official vaccination of cattle moving into and out of Class B and Class C states or areas.

(a) Female dairy cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move interstate into or out of a Class B State or area [4] unless they are moved interstate directly to a recognized slaughtering establishment or quarantined feedlot, or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment, or directly to an approved intermediate handling facility and then directly to a quarantined feedlot and then directly to a recognized slaughtering establishment.

* * *

(b) Female cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move into a Class C State or area [4] unless they are moved interstate directly to a recognized slaughtering establishment, or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment, or directly to an approved intermediate handling facility and then directly to a quarantined feedlot and then directly to a recognized slaughtering establishment.

* * *

* * * * *

§ 78.11 [Amended]

25. In § 78.11, paragraph (b), the words "or directly to an approved intermediate handling facility and then directly to a quarantined feedlot and then directly to a recognized slaughtering establishment" would be added immediately after the word "establishment".

§ 78.12 [Amended]

26. In § 78.12, paragraph (d)(1)(ii), the words "or directly to an approved intermediate handling facility and then directly to a quarantined feedlot and then directly to a recognized slaughtering establishment" would be added immediately after the word "establishment".

§ 78.12 [Amended]

27. In § 78.12, paragraph (d)(1)(iii), the words "or directly to an approved intermediate handling facility and then directly to a quarantined feedlot and then directly to a recognized slaughtering establishment" would be added immediately after the word "establishment".

28. In § 78.12, paragraph (d)(2)(i) would be revised to read as follows:

§ 78.12 Cattle from quarantined areas.

(d) * * *

(2) * * *

(i) Cattle from qualified herds in a quarantined area may be moved interstate from a farm or origin directly to a quarantined feedlot, or directly to a specifically approved stockyard and then directly to a quarantined feedlot, or directly to an approved intermediate handling facility and then directly to a quarantined feedlot if they are negative to an official test within 30 days prior to such interstate movement and are accompanied by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

* * * * *

29. A new § 78.14 would be added to read as follows:

§ 78.14 Rodeo bulls.

(a) A rodeo bull that is otherwise test-eligible and that is from a herd not known to be affected may be moved interstate if:

(1) The bull is tested negative to an official test less than 365 days before the date of movement;

(2) The bull is individually identified with an official eartag;

(3) There is no change of ownership;

(4) A certificate accompanies each movement; and

(5) The bull is issued a permit for entry prior to each movement interstate.

(b) A bull that would otherwise qualify as a rodeo bull, but that is used for breeding purposes during the 365 days following the date of being tested, may move interstate only if it otherwise meets the testing requirements for test-eligible cattle in this subpart.

(Approved by the Office of Management and Budget under control number 0579-0047)

§§ 78.1, 78.2, 78.7, 78.8, 78.9, 78.11, 78.12, 78.22, 78.23, 78.24, 78.31, and 78.32 [Amended]

30. In addition to the amendments set forth above, §§ 78.1, 78.2, 78.7, 78.8, 78.9, 78.11, 78.12, 78.22, 78.23, 78.24, 78.31, and 78.32 would be amended by revising the OMB control number citation at the end of the each of these sections to read as follows: "(Approved by the Office of Management and Budget under control number 0579-0047)".

Done in Washington, DC, this 19th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22572 Filed 9-21-90; 8:45 am]

BILLING CODE 3410-34-M

[4] Female cattle imported into the United States may be exempt from the vaccination requirements of this paragraph with the concurrence of the State animal health official of the State of destination. This concurrence is required prior to importation of the cattle into the United States.

7 CFR Part 360

[Docket No. 90-158]

Noxious Weeds; Notice of Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings; request for comments.

SUMMARY: We are announcing that two public meetings will be held to obtain information concerning whether melaleuca should be designated as a Federal noxious weed.

DATES: Consideration will be given only to comments received on or before November 24, 1990. The public meetings will be held on October 29, 1990, in Fort Lauderdale, Florida, and on October 31, 1990, in San Francisco, California.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 868, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-158. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The public meetings will be held in Room 422 of the Broward County Governmental Center, 115 South Andrews Avenue, Fort Lauderdale, Florida, on October 29, 1990; and in Room 1415, 630 Sansome Street, San Francisco, California, on October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION: Florida has requested that the Animal and Plant Health Inspection Service (APHIS) add *Melaleuca quinquenervia* (cav.) (referred to below as melaleuca) to the list of noxious weeds in 7 CFR part 360. This action would give APHIS authority to regulate the interstate movement of melaleuca and to cooperate with Florida State authorities in managing this plant.

Section 3 of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2802(c)) defines a noxious weed as any living stage of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish and wildlife resources of the United States or the public health.

Under section 4 of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2803) and the Noxious Weed Regulations (7 CFR part 360, referred to below as the regulations), a listed noxious weed may be moved into or through the United States only pursuant to a written permit. The regulations provide for the issuance of a written permit only upon a determination that the movement of the noxious weed would not involve a danger of dissemination of the noxious weed in the United States.

Before making a decision concerning Florida's request, we feel it necessary to gather public input concerning whether melaleuca should be added to the list of noxious weeds. We are therefore soliciting written comments and scheduling two public meetings.

Background

Melaleuca was introduced into Florida in the early 1900's. During the 1940's, hundreds of thousands of seedlings were planted to provide erosion protection for the Lake Okeechobee levee project. By the 1950's, melaleuca was in widespread use by the landscape industry in southern Florida. It is also found in California, Hawaii, Texas and Puerto Rico.

In addition to its erosion prevention capabilities, this fast-growing plant was valued for its use as a natural fence and windbreak, for its wood, and for its ornamental characteristics. Melaleuca remains in wide use by the nursery and landscaping industries. Beekeepers also value melaleuca; Florida has become a haven for overwintering bees due to the food that melaleuca supplies when many other plants are not flowering.

In recent years, however, concern has arisen in South Florida that the continued, uncontrolled spread of melaleuca may eventually destroy the Everglades, eliminate certain rare, threatened, and endangered plant and animal species; and impact future water supplies. Melaleuca now covers approximately 1.5 million acres in southern Florida, and control measures have begun at the local, regional and State levels to manage its spread.

Public Meeting Procedures

An APHIS representative will preside at the meetings, where comments will be heard concerning any issue relevant to the subject of adding melaleuca to the list of noxious weeds. Interested persons may appear and be heard in person, by attorney, or other representative. Each meeting will begin at 10 a.m. and end at 5 p.m., local time; however, the meetings may end earlier if all persons desiring to speak have been heard. Persons who wish to speak should register before the meeting. Pre-meeting registration will be conducted at each meeting location from 9:30 a.m. to 10 a.m. on the meeting date. Registered persons will be heard in the order of registration. Unregistered persons who wish to speak will be afforded the opportunity after the registered persons have been heard. Since the time for each speaker may be limited, speakers are encouraged to submit written comments and to summarize these comments at the public meetings.

We will consider all comments received during the comment period and at the public meetings. Following the comment period and the public meetings, we will decide whether to issue a rule proposing to add melaleuca to the list of noxious weeds. If a rule is proposed, it would appear in a subsequent issue of the Federal Register and would invite further comment on the subject. Also, if requested by any interested person, we would hold a public hearing on the proposal.

Authority: Secs. 4, 10; 88 Stat. 2149, 2151; 7 U.S.C. 2803, 2809; 41 FR 4251.

Done in Washington, DC, this 19th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22581 Filed 9-21-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ASW-25]

Proposed Revision of Control Zones; McAlester, OK and Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposal rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed the revision of the McAlester and Tulsa, OK, Control Zones. The NPRM is being withdrawn as a result of a reevaluation of applicable data.

DATES: The withdrawal is effective September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On June 7, 1990, a Notice of Proposed Rulemaking was published in the Federal Register to revise the control zones at McAlester and Tulsa, OK (55 FR 23233). The proposal was intended to provide a means to inform airport users of temporary losses of basic services provided within control zones.

Conclusion

The FAA received no comments to the proposed rule. However, after a reevaluation of all applicable data, the FAA has determined that present

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regulations provide sufficient means for informing users of a temporary loss of basic services provided within a full-time control zone. The control zones at McAlester and Tulsa, OK, are designated as full-time, and statements included in a control zone designation to inform users when control zones would not be in effect would be applicable only for those control zones designated as part-time.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 90-ASW-25, as published in the **Federal Register** on June 7, 1990 (55 FR 23233), is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a) 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Fort Worth, TX, on September 4, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-22423 Filed 9-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASW-23]

Proposed Revision of Control Zones: Albuquerque, NM and Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposal rule; withdrawal.

SUMMARY: This actions withdraws the Notice of Proposed Rulemaking (NPRM) which proposed the revision of the Albuquerque and Roswell, NM, Control Zones. The NPRM is being withdrawn as a result of a reevaluation of applicable data.

DATES: The withdrawal is effective September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On June 8, 1990, a Notice of Proposed Rulemaking was published in the **Federal Register** to revise the control zones at Albuquerque and Roswell, NM, (55 FR 23233). The propesal was intended to provide a means to inform airport users of temporary losses of basic services provided within control zones.

Conclusion

The FAA received no comments to the proposed rule. However, after a reevaluation of all applicable data, the FAA has determined that present regulations provide sufficient means for informing users of a temporary loss of basic services provided within a full-time control zone. The control zones at Albuquerque and Roswell, NM, are designated as full-time, and statements included in a control zone designation to inform users when controls zones would not be in effect would be applicable only for those control zones designated as part-time.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 90-ASW-23, as published in the **Federal Register** on June 8, 1990 (55 FR 23448), is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Fort Worth, TX, on September 5, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-22422 Filed 9-21-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Coal Surface Mining Reclamation Fund Special Assessment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, the Viriginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to changes in Virginia's Coal Surface Mining Reclamation Fund (hereinafter, Pool Bond Fund). The amendment is intended to strengthen the Pool Bond Fund's assets by assessing each participating permit a one time fee of five hundred dollars.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is required.

DATES: Written comments must be received on or before 4:00 p.m. on October 24, 1990. If requested, a public hearing on the proposed amendment will be held on October 19, 1990; requests to present testimony at the hearing must be received on or before 4 p.m. October 9, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Deputy Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-8100.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Deputy Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15 and 946.16.

II. Discussion of Amendments

By letter dated August 31, 1990, (Administrative Record No. VA-760) Virginia submitted a proposed amendment to its program pursuant to SMCRA. The intent of the amendment is to strengthen the Pool Bond Fund's assets by assessing each participating permit a one time fee of five hundred dollars. Virginia has already adopted the changes at Section 45.1-270.4:1 of the Code of Viriginia. The effective date of the State legislation was July 1, 1990. OSM does not recognize these changes as part of the approved program until the proposed amendment is processed by OSM and a decision is rendered either approving or disapproving the amendment.

The proposed changes are reprinted below.

The Code of Virginia is amended by adding a section numbered

45.1-270.4:1 as follows:

45.1-270.4:1 Special Assessment.—A. In addition to the tax assessed pursuant to 45.1-270.4 and in order to ensure Fund solvency, the Commissioner of the Division of Mined Land Reclamation may require each permittee to pay any special assessment made pursuant to subsection B of this section.

B. On and after July 1, 1990, the Commissioner of the Division of Mined Land Reclamation shall assess each permit in the Fund the amount of five hundred dollars. This assessment shall be made only one time and all revenues collected shall be applied to the balance of the Fund. The permittee shall be responsible for payment of the assessment.

C. Failure to tender moneys assessed pursuant to the provisions of this statute within thirty calendar days of assessment shall constitute a violation of the Virginia Coal Surface Mining Control and Reclamation Act.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by close of business on October 9, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-22472 Filed 9-21-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE58

Statutory Changes Affecting the Vocational Rehabilitation Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans' Benefits Amendments of 1989 eliminate requirements for reducing payment of an allowance to veterans in non-college degree programs when the veteran is absent for more than 30 days during a 12-month period. In addition the provisions for work-study allowances are amended to allow the Secretary of Veterans Affairs to base payment on the higher of the Federal minimum wage or the State minimum wage, enable veterans pursuing training on a three-quarter or greater rate to participate in the work-study program, and make certain other changes. The intended effect of these proposed regulatory amendments is to implement the provisions of the law.

DATES: Comments must be received on or before October 24, 1990. The changes affecting work-study allowances are proposed to be effective May 1, 1990, as specified in the statute. Proposed amendments concerning leaves of absence will be effective December 18, 1989, the date of enactment.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, 202-233-6496.

SUPPLEMENTARY INFORMATION: Under the law veterans who are pursuing programs of education or training may be eligible for work-study allowance benefits. Veterans may participate in

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this program by agreeing to perform certain types of services. Public Law 101–237, the Veterans' Benefits Amendments of 1989, makes the following changes in this program.

1. The name of the program is changed from "Veteran-Study Services" to "Work-Study Allowance;"

2. Veterans pursuing training at a ¾ time or greater rate are eligible for work-study allowances;

3. VA is given discretion to pay work-study allowances at the higher of the federal minimum wage or the minimum wage of the state in which the veteran is pursuing a vocational rehabilitation program;

4. The maximum number of hours a student may work during an enrollment period is limited to 25 times the number of weeks in the student's enrollment period.

Public Law 101–237 eliminates the statutory provision requiring reduction of subsistence allowance payments to students pursuing non-college degree programs if the student exceeds 30 days of absence in a 12-month period. Existing regulations governing the authorization of leaves of absence for persons pursuing a vocational rehabilitation program have provided authority to grant additional absences of up to 15 days for persons pursuing college degree programs. In view of the abolition of the 30-day absence limitation imposed on those pursuing non-college degree training, VA is amendment the regulations to extend the additional leave authority of 15 days to cases involving all types of training, including those training in non-college degree programs.

VA has determined that these proposed regulations do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The proposed regulatory amendments are retroactively effective. Proposed amendments affecting leaves of absence for veterans in non-college degree programs are effective December 18, 1989, the date of enactment. Proposed amendments to the work-study program are effective May 1, 1990, as provided by section 406, Public Law 101–237. These are interpretive rules which implement statutory provisions.

Moreover, VA finds that good cause exists for making these rules retroactively effective. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit.

The Secretary certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the proposed amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 30, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.272 paragraphs (a) and (d) through (f) are revised to read as follows:

§ 21.272 Work-study allowance.

(a) *Eligibility.* Veterans who are pursuing a rehabilitation program under chapter 31 on a three-quarter or full-time basis are eligible to receive a work-study allowance.

(Authority: 38 U.S.C. 1504(a)(4), 1685, Pub. L. 101–237.)

* * * * *

(d) *Rate of payment.* (1) In return for the veterans' agreement to perform services for VA totaling 25 times the number of weeks contained in an enrollment period, VA will pay an allowance equal to the higher of:

(i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the veteran has agreed to work; or

(ii) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran has agreed to work.

(2) VA will pay proportionately less to a veteran who agrees to perform a lesser number of hours of services.

(Authority: 38 U.S.C. 1504(a)(4), 1685, Pub. L. 101–237.)

(e) *Payment in advance.* VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract.

(Authority: 38 U.S.C. 1504(a)(4), 1685.)

(f) *Veteran reduces rate of training.* In the event the veteran reduces his or her training to less than three-quarter time before completing an agreement, the veteran, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be at least a three-quarter time student.

(Authority: 38 U.S.C. 1504(a)(4), 1685, Pub. L. 101–237.)

* * * * *

§ 21.342 [Amended]

2. In § 21.342, remove the words "offered by an institution of higher learning which leads to a standard college degree" from paragraph (b) and add "; Pub. L. 101–237" after "38 U.S.C. 1510" in the authority citation at the end of the section.

§ 21.344 [Amended]

3. In § 21.344, remove the words "for a veteran in a program leading to a standard college degree" from paragraph (c)(2) and add "; Pub. L. 101–237" after "38 U.S.C. 1510" in the authority citation at the end of the section.

[FR Doc. 90–22371 Filed 9–21–90; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 21

RIN 2900–AE55

Vocational Rehabilitation Program; Payment of Subsistence Allowance

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans' Benefits Amendments of 1989 provide for an increase of 7.5 percent in the subsistence allowance rates for service-disabled veterans pursuing a rehabilitation program. The intended effect of these proposed regulatory amendments is to implement the increase provided by law.

DATES: Comments must be received on or before October 24, 1990. Comments will be available for public inspection until November 5, 1990. The effective date of these proposed amendments will be January 1, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, 202–233–6496.

SUPPLEMENTARY INFORMATION: Public Law 101–237, the Veterans' Benefits Amendments of 1989, provides for a 7.5 percent increase in the subsistence allowance paid under the vocational rehabilitation program, effective January 1, 1990. In addition a provision under which a veteran could elect payment of subsistence allowance at the educational assistance rate paid under chapter 34 is deleted. VA may not pay subsistence allowance at the chapter 34 educational assistance rate for training taken after December 31, 1989.

VA has determined that these proposed regulations do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulations. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

It is proposed that these regulatory amendments will be made retroactively effective to January 1, 1990. These are interpretive rules which implement statutory provisions. Moreover, VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactively effective to January 1, 1990. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of increased subsistence allowance to a veteran who is entitled by law to that benefit or payment of an allowance at the chapter 34 rate after the period during such payment may be made.

The Secretary certifies that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 29, 1990.

Edwards J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education is proposed to be amended as follows:

PART 21—[AMENDED]

In § 21.260 paragraphs (a) and (b) are revised to read as follows:

§ 21.260 Subsistence allowance.

(a) *General.* A veteran in a rehabilitation program under chapter 31 will receive a monthly subsistence allowance at rates specified in paragraph (b) of this section, unless he or she has elected to receive payment at the rate of the monthly educational allowance paid under chapter 30 for similar training. See § 21.264 for election of payment at the chapter 30 rate and §§ 21.7136, 21.7137, and 21.7138 to determine the applicable rate.

(Authority: 38 U.S.C. 1506(a), 1506(f), 1662(e); Pub. L. 98–525.)

(b) *Rate of payment.* Subsistence allowance is paid at the following rates effective January 1, 1990.

Type of Program	Monthly rate of subsistence allowance			
	No dependent	One dependent	Two dependents	Add'l amt. for each dep. over two
Institutional: [1]				
Full-time	$333	$413	$486	$35
¾ time	250	310	364	27
½ time	167	207	244	18
Nonpay on-job training in a Federal agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:				
Full-time only	333	413	486	35
Nonpay work experience in a Federal agency:				
Full-time	333	413	486	35
¾ time	250	310	364	27
½ time	167	207	244	18
Farm cooperative; apprenticeship, nonpay on-job training or work experience in a state and local agency, or on-job training: [2]				
Full-time only	291	352	405	26
Combination (institution and OJT) (Full-time only):				
Institutional greater than ½ time	333	413	486	35
OJT greater than ½ time	291	352	405	26
Non-farm cooperative (Full time only):				
Institutional	333	413	486	35
On-job	291	352	405	26
Improvement of rehabilitation potential:				
Full time only	333	413	486	35
Independent living; Extended evaluation:				
Full-time	333	413	486	35

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Type of Program	Monthly rate of subsistence allowance			
	No dependent	One dependent	Two dependents	Addl amt. for each dep. over two
¾ time	250	318	364	27
½ time	167	207	244	18
¼ time	84	103	121	10

[1] Reimbursement at rate of pursuit (21.4276-21.4275).
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(Authority: 38 U.S.C. 1606; Pub. L. 101-237.)

* * * * *

[FR Doc. 90-22372 Filed 9-21-90; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-030; FRL-3833-4]

Approval and Promulgation of Implementation Plans Florida: Inspection/Maintenance

AGENCY: Environmental Protection Agency, Region IV.
ACTION: Proposed rule.

SUMMARY: EPA today proposes approval of a request by the State of Florida, through the Florida Department of Environmental Regulation (FDER), that a centralized vehicle Inspection/Maintenance (I/M) program be incorporated into the Florida State Implementation Plan (SIP). Vehicles in Florida ozone and carbon monoxide nonattainment areas would be required to participate in this program in order to renew registration. This plan has been submitted by the FDER in anticipation of continued non-attainment of the National Ambient Air Quality Standard (NAAQS) for Ozone. FDER analysis indicated that since the majority of the volatile organic compound (VOC) inventory in Florida results from vehicular emissions, an I/M program is an effective method of controlling these emissions. These regulations meet all EPA requirements and therefore EPA is proposing approval of the requested SIP revisions. The public is invited to submit written comments on this proposed action.

DATES: To be considered, comments must be submitted on or before October 24, 1990.

Written comments should be addressed to Dale Aspy of EPA, Region IV Air Programs Branch, at the address below.

ADDRESSES: Copies of the materials submitted by Florida may be inspected at the following locations during normal business hours:

EPA Region IV, Air Programs Branch, 345 Courtland St., NE., Atlanta, GA 30365.

Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

FOR FURTHER INFORMATION CONTACT: Dale Aspy at the above address or (404) 347-2864 (FTS257-2864).

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1987, the Florida Legislature created the Motor Vehicle Emissions Study Commission. This was in response to two key issues: (1) Continued ozone nonattainment in various Florida counties; and (2) a Florida Department of Environmental Regulation study that demonstrated that over 70% of the emission of VOC's in Florida resulted from mobile sources. The Motor Vehicle Emission Study Commission was charged with the responsibility of making a recommendation on a program design that would be effective at both reducing vehicular emissions and protecting the health of the citizens of Florida.

The commission members visited various I/M programs throughout the country to evaluate alternative program designs. Public hearings were also conducted in the non-attainment counties to solicit citizen input. The Florida Motor Vehicle Study Commission delivered its report to Governor Bob Martinez on March 1, 1988. The report concluded that "A centralized, contractor-operator I and M program is best suited to Florida's needs." The report also addressed enforcement, compliance, fleets, waivers, and public education elements. The Department of Environmental Regulation was charged by the Florida Clean Outdoor Air Law to develop test procedures, regulations and emission standards. After a series of public hearings, the Florida Environmental Regulation Commission, on December 7, 1988, approved Florida Administrative Code, chapter 17-242, Mobile Source—Motor Vehicle Emission Standards and Test Procedures Rule. This rule was adopted by the Florida D.E.R. by filing with the Florida Secretary of State on January 31, 1989. The Florida I/M program was scheduled to begin operation by March, 1990, or as soon thereafter as possible. Due to the required one year public information phase, to be conducted by the Florida Department of Motor Vehicles, the program will begin operation on January 2, 1991. All counties that are nonattainment for ozone or carbon monoxide will require the program. Currently, Dade, Broward, Palm Beach, Hillsborough, Pinellas, and Duval counties are designated as nonattainment for ozone. There are no counties designated as nonattainment for CO. The centralized, contractor run program will operate using an annual registration denial enforcement mechanism. Virtually all gas or diesel vehicles, 1975 and newer, that have a net vehicle weight less than 5,000 pounds, or a gross vehicle weight less than 10,000 pounds, must be tested yearly to renew registration. A three point anti-tampering check and "fast pass" idle emissions test will be conducted on each vehicle except those randomly selected for nitrogen oxides (NO_x) testing. The three components of the anti-tampering check are the catalytic converter, unvented fuel cap, and the fuel inlet restrictor. The "fast pass" test consists of measuring the exhaust emissions of a vehicle at idle with no load applied to the dynamometer. See Table 1 for the emission standards. Vehicles failing the idle test will be preconditioned in the loaded mode on a dynamometer, in which a specified resistance will be applied against the driving wheels. The vehicles will be immediately retested at idle. Passing this test and the anti-tampering check allows a vehicle owner to renew registration. Vehicles failing either portion of the I/M test can be retested at either the centralized testing location or at an approved decentralized retesting facility. These retesting facilities must meet all the requirements, including dynamometers, as the centralized facilities. A full tampering check, including underhood components, must be conducted if the vehicle fails the initial three point tampering test.

The Florida program also requires that NO_x emissions data be gathered for information purposes only. Approximately one percent of all vehicles tested will be randomly selected for loaded mode and NO_x testing. The data that is collected will be shared with EPA to develop NO_x emission standards.

TABLE 1.—FLORIDA MOTOR VEHICLE EXHAUST EMISSIONS STANDARDS

Groups Model Year	Maximum emission concentrations HC (ppm)	CO (percent)
Light duty vehicles:		
1975-1977	500	5.0
1978-1979	400	4.0
1980	300	3.0
1981+	220	1.2
Light duty trucks (GVWR of 6,000 pounds or less):		
1975-1977	500	6.0
1978-1979	450	5.0
1980	300	3.0
1981-1984	250	2.0
1985+	220	1.2
Light duty trucks (GVWR of 6,001 pounds to 10,000 pounds):		
1975-1977	750	6.5
1978-1979	600	5.5
1980	400	4.5
1981-1984	300	3.0
1985+	220	1.2

Proposed Action

The Florida I/M program meets all of the federal requirements. Therefore, EPA is today proposing to approve this revision to the Florida SIP.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Carbon monoxide, Hydrocarbons, Lead, Nitrogen dioxide, Oxone, Particulate matter, Sulfur oxides.

Note: Incorporation by reference of the Florida State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 7, 1989.

Lee A. Dahlhus, III,

Acting Regional Administrator.

[FR Doc. 90-22548 Filed 9-21-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-3834-3]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Phase I VOC Regulations

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions correct deficiencies in the State's volatile organic compound (VOC) regulations in response to EPA's May 25, 1988 Ozone SIP call. The intended effect of this action is to propose approval of revisions ot Maine's SIP which incorporate the current federal reasonably available control technology (RACT) requirements for VOC. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before October 24, 1990. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Region I, room 2313, JFK Federal Bldg., Boston MA 02203 and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Lynne A. Hamjian, (617) 565-3250; FTS 835-3250.

SUPPLEMENTARY INFORMATION: On September 29, 1989 and December 5, 1989, the Maine Department of Environmental Protection (DEP) submitted revisions to its SIP. These revisions correct deficiencies in Maine's VOC regulations.

Background

On November 24, 1987, EPA published a proposed Post-1987 Policy for Ozone and Carbon Monoxide in the Federal Register. The policy stated that air quality monitors revealed continued exceedances of the ozone standard in parts of Maine and that EPA would issue a SIP call. (See 52 FR 45044.) A SIP call is a finding by EPA under section 110(a)(2)(H) of the Clean Air Act that the SIP does not provide for attainment by the required date, and thus amounts to a revocation for certain purposes of EPA's approval of the SIP and the attainment demonstration. Since publishing this notice, data from air quality monitors in Maine revealed exceedances of the Ozone standard during 1987, 1988, and 1989.

Based on the monitored ozone exceedances in Maine, EPA sent letters to the Governor of Maine on May 25, 1988 and November 8, 1988 informing him that the Maine SIP was substantially inadequate to achieve the national ambient air quality standard (NAAQS) for ozone in parts of Maine pursuant to section 110(a)(2)(H) of the Clean Air Act. EPA's letters requested that the Maine DEP respond in two phases. The first phase entails correcting deficiencies in Maine's existing SIP, adopting regulations previously required or committed to but never adopted, and updating the base year emissions inventory. The second phase will entail adopting additional measures when EPA publishes its final Post 1987 Policy Statement and/or Congress amends the Clean Air Act.

On June 16, 1988, EPA sent a SIP-call follow-up letter to the Maine Department of Environmental Protection (DEP) identifying specific technical inadequacies and inconsistencies in Maine's volatile organic compound (VOC) regulations. The follow-up letter also outlined specific deficiencies in three source-specific licenses for paper coating sources which were incorporated into the Maine SIP as part of its ozone attainment plan. The three sources are the following: S. D. Warren of Westbrook, Eastern Fine Paper of Brewer, and Pioneer Plastics of Auburn.

Maine's Revisions

In response to the first phase of EPA's SIP call and EPA's follow-up letter, Maine adopted revisions on August 10, 1988 and September 27, 1989 to its two existing VOC regulations: Chapter 111 "Petroleum Liquid Storage Vapor Control," and chapter 112 "Petroleum Liquid Transfer Vapor Recovery." The Maine DEP also amended its definition of VOC in chapter 100 "Definitions." In addition, Maine adopted a new regulation chapter 123 entitled "Paper Coater Regulation." The paragraphs below briefly summarize the changes in Maine's regulations.

Chapter 100—Definitions

In response to EPA's SIP call, Maine submitted a revised definition of VOC in chapter 100(76). This definition is

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consistent with the current federal definition of VOC. It no longer includes a vapor pressure cut-off and it correctly lists the fifteen exempt compounds which EPA has determined to have negligible photochemical reactivity. EPA is approving this definition in the final rulemaking notice on Maine's New Source Review and Related Revisions which is a separate action.

Chapter 111—Petroleum Liquid Storage Vapor Control

In response to EPA's SIP call, the Maine DEP amended chapter 111 of its VOC regulations by adding recordkeeping requirements and language which clarifies the regulation to make existing requirements more easily enforceable. In addition, the Maine DEP chose to expand the applicability of this regulation from southern Maine to the entire State.

Chapter 112—Petroleum Liquids Transfer Vapor Recovery

In response to EPA's SIP call, the Maine DEP amended chapter 112 of its VOC regulations by adding definitions, gasoline storage and disposal requirements, instantaneous compliance requirements, and language which clarifies the regulation to make existing requirements more easily enforceable. In addition, the Maine DEP chose to expand the applicability of this regulation from southern Maine to the entire State.

Chapter 123—Paper Coater Regulation

In response to the deficiencies listed in EPA's SIP call for the three source-specific licenses for paper coaters in the existing SIP, the Maine DEP adopted a new paper coating regulation, chapter 123. This regulation includes emission limitations, compliance time frames, EPA test methods, recordkeeping requirements, reporting requirements, and monitoring provisions. In addition, the Maine DEP chose to expand regulation of paper coating sources from southern Maine to the entire State. Chapter 123 requires final compliance by October 3, 1990. This paper coater regulation will replace the three source-specific licenses for the following sources: S.D. Warren of Westbrook, Eastern Fine Paper of Brewer, and Pioneer Plastics of Auburn. Pursuant to the Maine DEP's request, EPA is proposing to withdraw the three licenses from Maine's SIP as of October 3, 1990 or the effective date of EPA's final action approving chapter 123 into Maine's SIP, whichever is later.

EPA has evaluated these revisions and found that the revisions correct the deficiencies listed in EPA's SIP call follow-up letter. In addition, with the exception of the provisions discussed below, the revised regulations make Maine's VOC regulations consistent with the applicable EPA control techniques guidelines (CTGs) and the following Federal guidance documents: "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (May 25, 1988), and "Recordkeeping Guidance Document for Surface Coating Operations and the Graphic Arts Industry" (EPA 340/1-88-003). Maine's regulations and EPA's evaluation are detailed in a memorandum dated February 7, 1990 entitled "Technical Support Document—Maine VOC Regulations." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

Amendments Necessary Prior to Final Rulemaking

The definition of tank truck in chapter 112 includes an exemption for trucks with capacities of less than or equal to 3500 gallons. The Maine DEP stated that less than one percent of the total gasoline throughput is transferred by these "small capacity" tank trucks which the regulation exempts from control requirements. Therefore, EPA is proposing to approve this capacity cut-off. The Maine DEP must justify this cut-off with a 5 percent demonstration. In addition, the definition of tank truck is still unclear. Prior to final rulemaking, the Maine DEP must amend this definition to clarify that the 3500 gallon capacity cut-off in this definition applies to the total capacity of the tank truck or trailer including all of the compartments.

Chapter 112 (Maine's Bulk Gasoline Terminal Regulation) applies to sources in existence prior to December 31, 1978. This regulation does not apply to sources which have constructed after that date. The applicable new source performance standard (NSPS) for bulk terminals (40 CFR part 60, subpart XX) is applicable to sources which constructed or modified after December 17, 1980. The NSPS for bulk gasoline terminals is as stringent as the RACT requirements for bulk gasoline terminals. However, sources which constructed in the State of Maine after December 31, 1978 but before December 17, 1980 are not required to comply with RACT or the NSPS. Prior to final rulemaking, the Maine DEP must delete this cut-off from chapter 112(1)(B) or certify that there are no sources in the State of Maine which constructed during the time period indicated above.

EPA is proposing to approve the Maine SIP revisions provided that Maine makes the changes described in this notice, and is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this notice.

Proposed Action

EPA is proposing to approve chapter 111 "Petroleum Liquid Storage Vapor Control," chapter 112 "Petroleum Liquid Transfer Vapor Recovery," and chapter 123 "Paper Coater Regulation," with the understanding that prior to final rulemaking, the Maine DEP will revise chapter 112 of its regulations and submit the documentation required by this notice. In addition, EPA is proposing to withdraw from the Maine SIP three source-specific licenses for the following paper coating sources: S.D. Warren, Eastern Fine Paper, and Pioneer Plastics. The withdrawal will take effect as of October 3, 1990 or the effective date of EPA's final action approving chapter 123 into Maine's SIP, whichever is later. EPA is proposing approval on the condition that the Maine DEP will make the amendments outlined in this notice prior to final approval.

Under 5 U.S.C. 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove these SIP revisions will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: February 13, 1990.

Julie D. Belaga,

Regional Administrator, Region I.

[FR Doc. 90-22545 Filed 9-21-90; 8:45 a.m.]

BILLING CODE 6560-50-M

40 CFR Part 81

[GA-010; FRL-3834-2]

Designation of Areas for Air Quality Planning Purposes Georgia: Redesignation of a Georgia Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA today proposes to approve a March 21, 1989, request by the State of Georgia to redesignate the Atlanta carbon monoxide (CO) nonattainment area to attainment. The redesignation request is based on ambient air quality monitoring data from 1985 to 1988 and a fully implemented control strategy. The data show no violations of the CO National Ambient Air Quality Standards (NAAQS) have occurred since the end of 1985. The redesignation request is therefore proposed for approval, in accord with EPA policy.

DATES: The public is invited to submit written comments on this proposed action. To be considered, comments must be received by October 24, 1990.

ADDRESSES: Written comments should be addressed to Brenda Johnson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the materials submitted by Georgia may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, Northeast, Atlanta, Georgia 30365.

Georgia Department of Natural Resources, 205 Butler Street, Southeast, Suite 1252, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Brenda Johnson of the Region IV Air Programs Branch at (404) 347-2864 or FTS 257-2864 and at the above address.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, Federal Register notice (43 FR 8962) the Atlanta area was designated as nonattainment for carbon monoxide (CO). The nonattainment area consists of those portions of Clayton, DeKalb, and Fulton Counties that exist within the Interstate 285 highway perimeter. In April 1979, the State of Georgia submitted the initial CO SIP to EPA. The CO plan projected that the Atlanta nonattainment area could not meet the standards by 1982. Under part D of title I of the Clean Air Act (CAA), Georgia requested and EPA approved (January 24, 1980, 45 FR 5998) an extension of the CO attainment deadline until December 31, 1987. On April 1, 1982, a Reasonably Available Control Technology (RACT) level inspection and maintenance (I&M) program was implemented in the Atlanta nonattainment area as required for all major CO extension areas. A CO SIP revision was submitted by Georgia on July 30, 1982. EPA fully approved the SIP revision on November 10, 1982 (45 FR 51632). On March 21, 1989, the Department of Natural Resources of the State of Georgia requested that EPA redesignate the Atlanta CO nonattainment area to attainment.

Redesignation of a CO nonattainment area requires the most recent eight consecutive quarters of quality assured ambient air quality data showing no violations of the NAAQS. More than one exceedance per year of the CO standard (i.e., 9 parts per million (ppm) for an 8-hour average concentration, and 35 ppm for a 1-hour average concentration) constitutes a violation (40 CFR 50.8 (1989)). In addition to maintaining the CO standard, EPA redesignation policy requires that the EPA approved control strategy must be fully implemented. This requires that transportation control measures (TCMs) committed to in the SIP and a RACT level I&M program, where required, have been fully implemented.

Georgia's redesignation request is based on four years (1985 to 1988) ambient air data from an EPA approved CO monitoring network. The monitor sites and their Air Information Retrieval System numbers are Midtown (13-121-0050), Peachtree Center (13-121-0051), Brookwood (13-121-0052), and DeKalb Tech (13-089-1002). The monitoring data indicate that a CO violation has not occurred since the end of 1985. The maximum and second highest CO readings for each year and station are summarized in Table I.

TABLE I

	1985		1986		1987		1988	
	Max	2nd	Max	2nd	Max	2nd	Max	2nd
1—Hour Average (ppm)								
Midtown	7.5	7.5	9.7	8.2	8.6	8.5	10.0	8.8
Pree Center	18.9	17.1	17.8	12.7	11.3	9.5	19.5	17.5
Brookwood	14.4	13.0	15.9	11.9	11.8	11.7	11.3	10.4
DeKalb Tech	7.5	7.0	10.2	9.7	9.0	8.5	9.8	9.0
8—Hour Averages (ppm)								
Midtown	5.6	5.5	5.8	5.5	6.7	6.2	6.0	5.9
Pree Center	10.3	9.4	8.9	8.2	8.3	8.0	9.2	8.0
Brookwood	6.1	6.0	7.0	6.3	6.4	6.0	6.0	5.6
DeKalb Tech	6.1	5.5	6.0	5.9	7.2	5.8	5.7	5.3

	Percent Data Recovery	1985	1986	1987	1988
Midtown	97.4		99.9	93.1	94.0
Pree Center	95.0		91.4	91.7	95.5
Brookwood	99.9		98.2	93.3	97.5
DeKalb Tech	98.1		95.4	99.0	98.3

In addition to the monitoring data, the attainment demonstration from the State of Georgia included the implementation of the part D control strategy approved by EPA (February 3, 1983, 48 FR 5038). The SIP required a CO emission reduction of 44% from the 1980 base year emission level of 279,040 tons per year (tpy). These emission reductions were projected to be achieved from the Federal Motor Vehicle Control Program (FMVCP), an I&M program and various TCMs.

The FMVCP is a program that has been instituted nationwide by EPA to reduce emissions from vehicles. It has been very successful in reducing CO emissions due to the installation of emission controls in new vehicles. The gradual replacement of older vehicles with newer cleaner ones has resulted in significant reductions in CO emissions.

All major urban areas that needed an extension beyond 1982 to attain the CO standard were required to implement a vehicle I&M program as a part of the control strategy. The Georgia RACT level I&M program was approved by EPA on January 24, 1980 (45 FR 5696) and has been in operation since April 1, 1982, in the Atlanta nonattainment area. On April 1, 1985 Gwinnett County was added after meeting the requirements for participation in the program. The I&M program is achieving its designed emission reductions and the EPA requirements for a RACT level program.

Section 108 of the CAA lists TCMs that must be evaluated for their feasibility to be implemented as a part of the control strategy. The Georgia SIP contained commitments to implement those TCMs which were determined to be feasible. The 1982 CO SIP Reasonable Further Progress demonstration includes a two percent emission reduction from the 1980 base year emissions of 279,040 tpy which equates to 5580.8 tpy. Calculations by the Atlanta Regional Commission (ARC) indicate that 5920.7 tpy in annual CO emission reductions were achieved due to the implementation of the TCMs. (See Table II for a listing of TCMs used in determining this reduction.)

TABLE II

TCM	Reduction (tons/year
Expanded Transit	1463.1
Express Transit to Park/Ride Lots	155.1
Informal Park/Ride Lots	1233.8
Improved Traffic Flow	1750.9
Pedestrian Malls, Bridges	134.0
Expand I&M Program	454.8
Fleet Vehicle Idling/Tuneup	739.0

TABLE II—Continued

TCM	Reduction (tons/year
Total	5920.7

Proposed Action

On the basis of four years of air quality data showing no violations of the NAAQS for CO and a fully implemented EPA-approved control strategy, EPA proposes to redesignate the Atlanta CO nonattainment area to attainment. The public is invited to participate in this rulemaking by submitting written comments on this proposed action.

Under 5 U.S.C. 605(b), I certify that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical economic and environmental factors and in relation to relevant statutory and regulatory requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: February 9, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90–22346 Filed 9–21–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90–358; FCC 90–282]

Establishment of Standards for Conducting Comparative Renewal Proceedings in the Domestic Public Cellular Radio Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This rule making proceeding will establish standards for conducting comparative renewal proceedings in the Domestic Public Cellular Radio Telecommunications Service (cellular radio service). Currently there are no specific rules governing the conduct of comparative cellular renewal proceedings. The proposed rules would create: (1) Criteria for comparing a cellular radio renewal applicant and any challengers; (2) basis qualifications standards for challengers; and (3) procedures for preventing possible abuses in the comparative renewal process.

DATES: Comments must be filed by November 13, 1990. Reply comments are due by November 28, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in CC Docket No. 90–358, adopted August 1, 1990, and released September 20, 1990.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this notice may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The following collection of information contained in these proposed rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should direct their comments to Eyvette Flynn, (202) 395–3785, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632–7513.

OMB number: None.

Title: Amendment of part 22 of the Commission's Rules to Establish Standards for Conducting Comparative Cellular Renewal Proceedings.

Action: Proposed New Collection.

Respondents: Businesses or other for profit (including small businesses).

Frequency of response: On occasion.

Estimated annual burden: 50 responses; 100 hours total; 2 hours average burden per response.

Needs and uses: The proposed rules seek to establish standards for conducting comparative renewal proceedings between an applicant seeking renewal of its license in the Domestic Public Cellular Radio Telecommunications Service and challengers filing competing applications. Applicants filing applications which would compete with renewal applications would be required to submit information, at the time they file their applications, to demonstrate the availability of their proposed transmitter-antenna sites and to demonstrate their financial qualifications. The proposed rules would impose the same restrictions on payments made to petitioners and competing applications which the Commission has previously adopted for broadcast renewal proceedings. Affected public are applicants competing with current licensees and entities filing petitions concerning renewal applications.

Summary of Notice of Proposed Rule Making

1. The Notice of Proposed Rule Making (NPRM) seeks to establish standards for conducting comparative renewal proceedings between an applicant seeking renewal of its license in the Domestic Cellular Radio Telecommunications Service (cellular radio service) and challengers filing competing applications. The NPRM proposes granting renewal expectancies in the cellular radio service for the past performance of licensees. Tentatively, a renewal expectancy would be granted to a licensee which (1) Has substantially used its spectrum for its intended purpose; (2) has substantially complied with applicable Commission rules, policies and the Communications Act and (3) has not otherwise engaged in substantial relevant misconduct. A renewal expectancy would be more significant than any other preference awarded in comparative renewal proceedings.

2. The NPRM also proposes certain criteria for comparing applicants in a cellular renewal proceeding. Thus, applicants would be compared with respect to their performance in the cellular industry or another business of comparable type and size. Further, standard issues would be included to compare the areas and population which each applicant plans to serve, the demand for cellular service in those areas and the applicants' ability to meet that demand, the applicants' proposals for expanding system capacity to meet increasing demand, and the nature and extent of the extent of the applicants' service proposals. The NPRM requests comments as to whether the Commission should utilize "paper" hearings before administrative law judges, rather than the usual trial-type hearing procedures. In addition, the NPRM asks for comments on whether it is possible to streamline the comparative renewal process by bifurcating that process.

3. Given the Commission's continued over the filing of speculative applications for the cellular service, the NPRM proposes to impose strict basic qualifications requirements on challenging applicants to protect the integrity of the renewal process and the public from having to accept service from unqualified licenses. Thus, applicants filing applications which would compete with renewal applications would be required to submit information, at the time they file their initial applications, to demonstrate the availability of their proposed transmitter-antenna sites and to demonstrate their financial qualifications.

4. The NPRM also proposes additional rules to prevent abuse of the comparative cellular renewal process by speculative applicants and petitioners who seek primarily to obtain payments for incumbent licensees. Thus, the NPRM suggests that the Commission should incorporate into the cellular renewal process the restrictions on payments made to petitioners and competing applicants which the Commission adopted in BC Docket No. 81–742 concerning broadcast renewal proceedings. An applicant filing a competing application against a cellular renewal application could only receive payment for withdrawing its application if it withdrew after the Initial Decision stage of the hearing and any payments would be limited to the legitimate and prudent expenses incurred in preparing, filing and prosecuting its application.

5. Lastly, to insure continuity of service and discourage speculators who would seek to acquire cellular licenses in cellular renewal proceedings for the purpose of selling them at a high price soon after acquisition, the NPRM seeks comments on whether the Commission should adopt a rule which prohibits the transfer of a cellular authorization prior to operation of the system for at least three years, when that authorization is awarded to an applicant for the first time in a comparative renewal proceeding.

6. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for the governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 22

Communications common carriers, Domestic public cellular radio telecommunications service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–22578 Filed 9–21–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[Docket No. 87–8; FCC 90–279]

Television Satellite Stations Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks further comment on issues regarding the authorization of television satellite stations in urban areas. Comment is requested regarding retention of the case-by-case approach for analyzing satellite applications, and the possible definition of a class of circumstances in which satellite operation would be presumptively in the public interest. This action will assist the Commission in developing a satellite policy that provides more definitive guidance to applications while balancing appropriate policy considerations.

DATES: Comments must be submitted on or before November 19, 1990, and reply comments on or before December 19, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Further Notice of Proposed Rule Making* (*"Further NPRM"*) in MM Docket No. 87–8, adopted August 1, 1990, and released September 18, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may

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also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

1. This *Further NPRM* is a continuation of our inquiry into the policies and rules regarding television satellite stations. Television satellite stations are full-power terrestrial TV stations that rebroadcast all or most of the programming of a commonly owned parent station. A satellite which rebroadcasts all of the programming of its parent station is referred to as a 100% satellite station, whereas a satellite that has a local studio and originates some local programming, but not more than 5% local programming, is referred to as a "primarily satellite" station.

2. We initiated this proceeding in *Notice of Inquiry and Notice of Proposed Rule Making* ("*NOI*"), 52 FR 7282 (March 10, 1987). The *NOI* requested comment on two main proposals regarding TV satellite stations. First, we proposed to adopt a strict prohibition against, or a stronger policy disfavoring, satellite stations in larger, more urban markets. Second, we proposed that once a satellite operation had been justified in truly rural or more sparsely populated areas, any unnecessary restraint on the amount of locally originated programming should be removed by eliminating direct or indirect origination limits or by establishing a definitional ceiling that provides for Maximum feasible licensee discretion.

3. Since the release of the *NOI*, the number of requests for satellite authorization has increased, and we anticipated that this trend will continue. A higher level of certainty and predictability as to the treatment of these requests may prove especially beneficial for applicants and the Commission's staff. In addition, our concern for spectrum efficiency is heightened as competing demands for spectrum in urban areas increase, particularly in light of the anticipated demand for spectrum for high definition TV. Because of these developments, we believe we should continue our efforts to develop a satellite policy that provides more definitive guidance to applicants while balancing appropriate policy considerations. Therefore, we seek further comment on issues regarding our satellite policy for urban areas.

4. First, we wish to consider whether we should retain our existing case-by-case approach to examining satellite applications. Pursuant to this approach, we evaluate a number of factors, including the degree of overlap between the parent and proposed satellite operation and the small size of the market, economic analyses and projections, a history of financial losses in the case of a operating station, and unsuccessful efforts to sell a license or permit to an entity that would operate the station as a full-service station. We also evaluate the number of services in the overlap area, the extent to which the proposed satellite would provide service to underserved areas, whether there is a TV station licensed to the community, and whether satellite status would ensure continued operation of a community's only TV station. Retention of this approach provides flexibility in analyzing satellite applications. However, we may want to refine or alter the factors employed under this approach in order to afford applicants a higher degree of certainty. We seek comment on whether all of these factors remain relevant in today's broadcasting environment, and whether we should examine additional factors. We also seek comment on whether we should rank the factors to reflect their relative importance and, if so, what the priorities should be.

5. As an alternative, we could adopt an approach that would define a fixed class of circumstances in which satellite operation would be presumptively in the public interest because the area could not support a full service station and receives little or no service. Applications not presumptively in the public interest would be examined on a case-by-case basis. This approach would provide additional predictability and certainty in the satellite authorization process that could not result from retention of the case-by-case approach. We request comment on how we could fashion such a presumption, when it should be applied, and whether the use of a presumption would meet our goals of balancing appropriate policy considerations and providing guidance to applicants.

6. The core of any presumption would be a definition of what constitutes an underserved area, based on the number of signals received. We request comment on what that number should be. In the event that the Commission adopts such a definition, we request comment on whether we should count each signal received, or whether we should consider duplicated signals to constitute one signal. Furthermore, in determining the availability of signals, should we, consistent with general practice, consider the Grade B service contours of full service stations and, if so, should we consider predicted or actual Grade B service?

7. We seek comment on whether in determining the number of available signals, we should consider only signals provided by full-power commercial stations, or the signals of noncommercial stations, television translator stations, or LPTV stations as well. We also request comment on whether we should account for the availability of cable television service in the area.

8. We seek comment regarding the effect that adoption of a presumption may have on the consideration of factors traditionally considered relevant to satellite proposals. How might we reconcile a presumption with our traditional concern about the degree of overlap of the stations? Should we consider applicants that propose Grade A overlap ineligible for the presumption, or should we balance the percentage of overlap area against the value of the new service to determine the applicant's eligibility? Should the economic base of support for television service affect the application of a presumption? Finally, should we account for the availability of a full complement of network signals in setting the number of signals received that define an underserved area?

9. In most instances, the number of services provided within a proposed service area will vary among segments of that area. This suggests a need to define some minimum total service area or population on a percentage or absolute basis that must be considered underserved before we would consider a satellite to serve the underserved area. We seek comment on whether we should adopt a minimum percentage and, if so, what that percentage should be.

10. In responding to the issues presented above, commenters are invited to related to their comments the issue of whether the amount of programming satellite stations are authorized to originate should be limited.

11. Until the resolution of this proceeding, applications requesting satellite status that are currently on file, as well as any received in the interim, will be examined on a case-by-case basis pursuant to our existing satellite precedent.

Further Initial Regulatory Flexibility Analysis

12. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding, depending on the final action taken, should have a positive impact on all broadcasters by clarifying and solidifying the Commission's policies regarding television satellite stations. Public comment is requested on the further initial regulatory flexibility analysis set out in full in the Commission's complete decision.

13. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared a Further Initial Regulatory Flexibility Analysis (FIRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the FIRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the Further Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

Comment Instructions

14. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 19, 1990, and reply comments on or before December 19, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ex Parte Information

15. This is a non-restricted notice and comment rule making proceeding. *See generally* § 1.1200 *et seq.* of the Commission's Rules, 47 CFR 1.1200 *et seq.*, for rules governing permissible *ex parte* contacts.

Paperwork Reduction Act Statement

16. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

17. Accordingly, the Commission adopts this *Further Notice of Proposed Rule Making* pursuant to the authority contained in sections 4 (i) and (j), 303(r) and 403 of the Communications Act of 1934 as amended.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 90-22475 Filed 9-21-90; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900795-0235]

RIN 0648-AD58

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would (1) add wreckfish to the management unit; (2) require permits to fish for wreckfish; (3) require catch and effort reports from selected, permitted vessels; (4) require that fish in the snapper-grouper fishery be made available for inspection, upon request, to an authorized officer; (5) require permitted vessels to display their official numbers; (6) establish a fishing year for wreckfish that commences on April 16; (7) make vessel operators responsible for ensuring that fish in the snapper-grouper fishery aboard their vessels comply with the minimum size limits and are maintained intact; (8) establish a trip limit for wreckfish of 10,000 pounds (4,536 kilograms); (9) prohibit the possession of dynamite aboard vessels in the snapper-grouper fishery; (10) exclude wreckfish from the calculations for determining when a vessel with a trawl aboard is in a directed fishery for fish in the snapper-grouper fishery; (11) establish a spawning-season closure for wreckfish from January 15 through April 15; (12) establish a wreckfish quota and provisions for closure of the fishery for wreckfish; (13) provide for annual modifications of specified wreckfish management measures; (14) prohibit interference with law enforcement functions under the Magnuson Fishery Conservation and Management Act (Magnuson Act); and (15) reorder the regulations and make other minor changes. The intended effects of this rule are to conserve and manage the wreckfish resource, to enhance enforcement of the snapper-grouper regulations, to reorder and restate the regulations for clarity, and to conform the existing regulations with current usage.

DATES: Written comments must be received on or before October 18, 1990.

ADDRESSES: Requests for copies of Amendment 3, which includes a regulatory impact review/initial regulatory flexibility analysis/environmental assessment (RIR/IRFA/EA) should be sent to the South Atlantic Fishery Management Council (Council), 1 Southpark Circle, Southpark Building, Suite 306, Charleston, South Caroline 29407-4699.

Comments on the proposed rule should be sent to Robert A. Sadler, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements that would be imposed by this rule should be sent to: Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, D.C. 20503 (Attention: Desk Officer for NOAA).

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the FMP prepared by the Council, and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Act. Amendment 3 to the FMP proposes conservation and management measures for wreckfish, a definition of overfishing, as it relates to wreckfish, and a proposal to establish a control date of March 28, 1990, after which anyone entering the wreckfish fishery will not be assured of future participation.

Background

Relatively little is known about wreckfish. This species can reach 220 pounds (100 kilograms), but has an average weight of about 30 pounds (13.6 kilograms). Wreckfish are pelagic for the earlier years of their life and are often associated with floating debris during that time. Adults are abyssal and are generally distributed from Newfoundland to Argentina; however, fishable concentrations have been found only in a limited area of the Blake Plateau, approximately 100 nautical miles off the coasts of South Carolina and Georgia.

The fishing grounds have depths ranging between 240 and 330 fathoms (450 and 600 meters), and are characterized by a rocky ridge having a

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vertical relief of over 27 fathoms (50 meters). The substrate in areas of the Blake Plateau exhibiting significant relief is generally composed of manganese-phosphate pavements, phosphorite slabs, and coral banks. Wreckfish concentrations occur primarily on the manganese-phosphate bottoms. Portions of the fishing grounds characterized by an unevenness of the ridge are relatively unproductive, and further limit the area suitable for fishing.

The fishery began in 1987, with two vessels landing wreckfish in South Carolina, and has since expanded to approximately 50 vessels. Fishermen who have been displaced from other heavily exploited or stressed fisheries, such as those for snapper-grouper, mackerel, shrimp, or swordfish, may enter the wreckfish fishery, add to the rapidly increasing amount of effort, and cause additional stress on the fishery.

Initial catch rates in the fishery were impressive, ranging between 10 and 12 thousand pounds (4.5–5.4 thousand kilograms) per 7–9 day trip. Catch rates for some of the more productive vessels now range upwards of 30,000 pounds (13,600 kilograms) for a 7–9 day trip. Several of the vessels operate with a very short interval between trips, resulting in disproportionately high shares of the total harvest.

The resource is harvested with modified "bandit" gear similar to that used on other members of the snapper-grouper complex. Bandit gear consists of heavy duty hydraulic reels spooled with ½-inch cable and a terminal rig of a large weight and 8–12 large circle hooks. The wreckfish harvest in 1987 was approximately 29,000 pounds (13,154 kilograms), and has increased exponentially in succeeding years. The 1989 harvest level was 2 million pounds (907,194 kilograms) and that amount has been substantially exceeded in 1990. Landings through July, 1990, were 4.23 million pounds (1.9 million kilograms).

The geographically limited extent of the fishing grounds, the biological characteristics of wreckfish, the rapid increase in participation in the fishery, and lack of regulation make the fishery vulnerable to rapid depletion, and necessitate immediate action to prevent a resource collapse.

Accordingly, the Council requested and the Secretary of Commerce (Secretary) implemented an emergency rule to (1) Add wreckfish to the management unit of the FMP; (2) establish a fishing year for wreckfish beginning April 16, 1990; (3) establish a wreckfish quota of 2 million pounds (907,194 kilograms) for the 1990/1991 fishing year; (4) close the wreckfish fishery when the quota is reached; (5) establish a wreckfish trip limit of 10,000 pounds (4,536 kilograms) per vessel; and (6) exclude wreckfish from the calculations for determining when a vessel with a trawl aboard is in a directed fishery for fish in the snapper-grouper fishery. The emergency rule was published on August 8, 1990 (55 FR 32257), and is effective through November 1, 1990. The 2 million-pound quota, effective since April 16, was reached on August 8, 1990, and the fishery was closed for the period August 9, 1990, through November 1, 1990 (55 FR 32635; August 10, 1990). The emergency rule and the closure may be extended for an additional period of not more than 90 days.

In addition to the management measures contained in the emergency rule, Amendment 3 would (1) Require permits to fish for wreckfish; (2) require catch and effort reports from selected, permitted vessels; (3) establish a spawning-season closure for wreckfish from January 15 through April 15; (4) provide for annual specification or modification of the wreckfish maximum sustainable yield (MSY), total allowable catch (TAC), quota, trip limit, fishing year, spawning-season closure, fishing year, and permit requirements; and (5) define overfishing for wreckfish.

The rationale for the management measures in the emergency rule were included in the preamble to that rule and are not repeated here.

Additional Management Measures

Data on the wreckfish fishery are very limited. A permit system would identify the universe of fishermen from whom information could be collected on catch, effort, and size and age composition of wreckfish, all of which are important in monitoring the biological status of the fishery and its level of exploitation. The combination of a permit system and mandatory reporting by selected, permitted vessels would insure accuracy and completeness of the information collected.

Fishermen have observed that wreckfish caught during the January through April period are in spawning condition. Preliminary research results provided by the South Carolina Wildlife and Marine Resources Division support the conclusion of a January through April spawning season. Fishermen have also stated that wreckfish bite baited hooks very aggressively during the spawning period. A spawning-season closure would help protect the wreckfish resource from recruitment failure and was strongly supported during the public hearing process.

To avoid long delays in making adjustments and to take advantage of data as it becomes available, Amendment 3 would establish a procedure for modifying certain wreckfish management measures, as follows:

1. The Councils would appoint an assessment group (Group) that would assess the condition of the wreckfish resource in the management unit on an annual basis. The Group would present a report of its assessment and recommendations to the Council.

2. The Council would consider the report of the Group and hold public hearings to discuss the Group's report at a time and place of the Council's choosing. The Council could convene the Advisory Panel and the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, the Council would make findings on the need for changes.

3. If changes were needed in MSY, TAC, quota, trip limit, fishing year, spawning-season closure, or criteria for permits, the Council would advise the Director, Southeast Region, NMFS (Regional Director) in writing of its recommendations, accompanied by the Group's report, relevant background material, draft regulations, and a summary of public comments. This report would be submitted each year by such date as agreed upon by the Council.

4. The Regional Director would review the Council's recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejected the recommendations, he would provide written reasons for the rejection to the Council and existing regulations would remain in effect until the issue was resolved.

5. If the Regional Director initially concurred that the Council's recommendations were consistent with the goals and objectives of the FMP, the national standards, and other applicable law, he would recommend that the Secretary publish notice in the Federal Register of the proposed changes with a minimum of 15 days for public comment. After review of the public comments and final determinations of consistency with the goals and objectives of the FMP, the national standards, and other applicable law, the approved changes would be published as a final rule.

6. Appropriate adjustments that could be implemented by the Secretary via proposed and final rules under this procedure would be:

(a) Initial specification of MSY and subsequent adjustment of the best estimate of MSY.

(b) Setting of TAC for wreckfish, not exceeding 6 million pounds (3.629 million kilograms).

(c) Modification of the quota or trip limit.

(d) Modification of the fishing year and/or the spawning-season closure by not more than one month.

(e) Modification of the criteria for obtaining a permit.

Based on the Council's intent to protect the long-term production of the resource, Amendment 3 would define "overfished" and "overfishing," as they relate to wreckfish, as follows:

1. Wreckfish are overfished when the stock is below the level of 30 percent of the spawning stock biomass per recruit that would occur in the absence of fishing.

2. When wreckfish are overfished, overfishing is defined as harvesting at a rate that is not consistent with a program that has been established to rebuild the stock or stock complex to the 30 percent spawning stock biomass per recruit level.

3. When wreckfish are not overfished, overfishing is defined as harvesting at a rate that, if continued, would lead to a state of the stock or stock complex that would not allow a harvest of at least optimum yield on a continuing basis.

Additional information on the wreckfish fishery, the proposed management measures, and the definition of overfishing, as it relates to wreckfish, is contained in Amendment 3, the availability of which was announced in the Federal Register on August 14, 1990 (55 FR 33143). For a document establishing a control date of March 28, 1990, after which anyone entering the wreckfish fishery may not be assured of future participation, see a notice published elsewhere in this issue.

Additional Changes

In addition to the changes to the existing regulations necessary to implement Amendment 3, NOAA proposes other changes to facilitate enforcement and to clarify the regulations and conform them to current usage.

In addition to the requirement that fishermen and dealers make fish in the snapper-grouper fishery available to authorized statistical reporting agents, such fish would be required to be made available to authorized officers. This addition would enhance enforcement.

A permitted vessel in the wreckfish fishery would be required to display prominently its official number, i.e., its Coast Guard documentation number or state registration number. Such display would assist enforcement of the vessel trip limit, the prohibition of transfer at sea of wreckfish, and the quota closure provisions.

A general prohibition on interference with law enforcement functions under the Magnuson Act would significantly enhance enforcement.

A specification of an operator's responsibility for compliance aboard his vessel with the minimum size limits and the requirement that fish subject to a minimum size be maintained intact would clarify that responsibility and would be in accord with the definition of "operator" at 50 CFR 620.2, which includes the phrase "in charge of that vessel."

To enforce effectively the prohibition on use of explosives, this proposed rule would prohibit the possession of dynamite or a similar explosive substance aboard a vessel in the snapper-grouper fishery. NOAA is not aware of any legitimate use of dynamite or a similar explosive substance aboard a vessel in that fishery.

Other minor changes are proposed to reorder and restate the regulations for clarity and to conform them with current usage.

Endangered Species Impacts

Pursuant to section 7 of the Endangered Species Act of 1973, a biological assessment was prepared on Amendment 3 that concludes that implementation of the amendment would not adversely affect any populations of endangered or threatened species. The Regional Director concurs with that conclusion.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99–659, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 3, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) for Amendment 3 that concludes that this rule, if adopted, would have overall net economic benefits, which are summarized as follows: Adding wreckfish to the snapper-grouper management unit; requiring an annual permit to fish for, land, or sell wreckfish; and requiring vessel reports of catch and effort information would have no significant short-term economic effects on participants in the fishery. The criteria for obtaining a permit could be met by documentation of prior sale of wreckfish or by orders or invoices for specific fishing gear, such gear being a prerequisite for entry into the fishery in any case. The information to be reported by selected, permitted vessels is information that is readily available. Potential long-term economic benefits would come from having better data, with resulting improved management of the fishery. There would be short- and long-term costs in administering and enforcing the management regime. Estimates of those costs are not available.

The long-term benefits from the quota, trip limit, and closure provisions, combined, are expected to far outweigh the short-term losses to fishermen that may result from those proposed management measures. Some short-term losses to consumers are expected because wreckfish landings will probably be smaller than they would have been without those proposed measures. These short-term losses will probably be felt as higher prices to consumers at the retail level, but these losses will be more than compensated for in the long term if the proposed management measures are successful in ensuring a sustainable yield from the wreckfish resource.

A copy of the RIR may be obtained (see ADDRESSES).

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR that describes the effects this rule, if adopted, would have on small business entities, summarized as

follows. The number of vessels (small entities) that would be affected by this rule is uncertain, and there is a broad range of cost/price variabilities that may result from this rule. Nevertheless, it is expected that small entities may suffer short-term losses that will be outweighed by long-term benefits. A copy of the IRFA may be obtained (see ADDRESSES).

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained (see ADDRESSES) and comments on it are requested.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, South Carolina, and North Carolina. Georgia does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule contains two new collections of information subject to the Paperwork Reduction Act, namely, applications for annual vessel permits and catch and effort reports from selected, permitted vessels. Requests to make these collections have been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burdens for these collections of information are estimated to average 15 and 6 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposed rule restates, for clarity, the application procedure for obtaining a vessel and gear identification number and color code, applicable to a vessel from which a fish trap is deployed, and redesignates that paragraph as § 646.6(b)(1). That collection of information was previously approved under OMB control number 0648-0205. The public reporting burden for that collection of information was estimated to average 15 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see ADDRESSES).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 17, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.2, in the definition of Fish in the snapper-grouper fishery, after the listing of Snappers—Lutjanidae, a new family and species are added; and a new definition of Trip is added in alphabetical order to read as follows:

§ 646.2 Definitions.

* * * * *

Fish in the snapper-grouper fishery means the following species:

* * * * *

Temperate basses—Percichthyidae
Wreckfish—*Polyprion americanus*

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

§§ 646.4-646.8 [Redesignated as §§ 646.5-646.9]

3. Sections 646.4 through 646.8 are redesignated as §§ 646.5 through 646.9, and a new § 646.4 is added to read as follows:

§ 646.4 Permits.

(a) *Applicability.* To fish for wreckfish in the EEZ, land wreckfish from the EEZ, or sell wreckfish in or from the EEZ, an owner or operator of a vessel must obtain an annual vessel permit.

(b) *Application for permit.* (1) An application for an annual vessel permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of the vessel's state registration certificate;

(ii) The vessel's name, official number, length, home port, and engine horsepower;

(iii) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(iv) Name, mailing address including ZIP code, and telephone number of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner;

(vi) Documentation that wreckfish caught by the vessel were sold during the 12 months preceding the application or, in lieu thereof, documentation that equipment required specifically for use in the wreckfish fishery was on order or purchased for the vessel during the 12 months preceding the application; and

(vii) Any other information concerning vessel and gear characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (b)(2) of this section must be submitted in writing to the Regional Director by the permit holder within 30 days of any such change. The permit is void if any change in the information is not reported.

(c) *Issuance.* (1) The Regional Director will issue a permit at any time during the fishing year to an applicant if:

(i) The application is complete; and

(ii) The applicant has complied with all applicable reporting requirements of § 646.5 during the 12 months immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 646.5 during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(d) *Duration.* A permit remains valid for the remainder of the fishing year for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(e) *Transfer.* A permit issued under this section is not transferable or assignable. A person purchasing a vessel with an annual vessel permit must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale.

(f) *Display.* A permit issued under this section must be carried on board the permitted vessel at all times and such vessel must be identified as provided for in § 646.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(g) *Sanctions and denials.* Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(h) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(i) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application.

4. Newly redesignated § 646.5 is revised to read as follows:

§ 646.5 Recordkeeping and reporting.

(a) *Permitted vessels.* The owner or operator of a vessel for which a permit has been issued under § 646.4(a), and that is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than the 7th day of the end of the reporting period. If no fishing occurred during a month, a report so stating must be submitted on one of the forms. If fishing occurred, the following information must be reported for each trip:

(1) Name and official number of vessel;

(2) Date(s) of trip and fishing location(s) by statistical area(s) (see Figure 1);

(3) Pounds of catch of wreckfish;

(4) Type and quantity of gear fished;

(5) Duration (hours) of vessel fishing effort;

(6) Port of landing;

(7) Name of dealer;

(8) Condition of fish landed (whole or gutted); and

(9) Average depth of fishing effort in feet.

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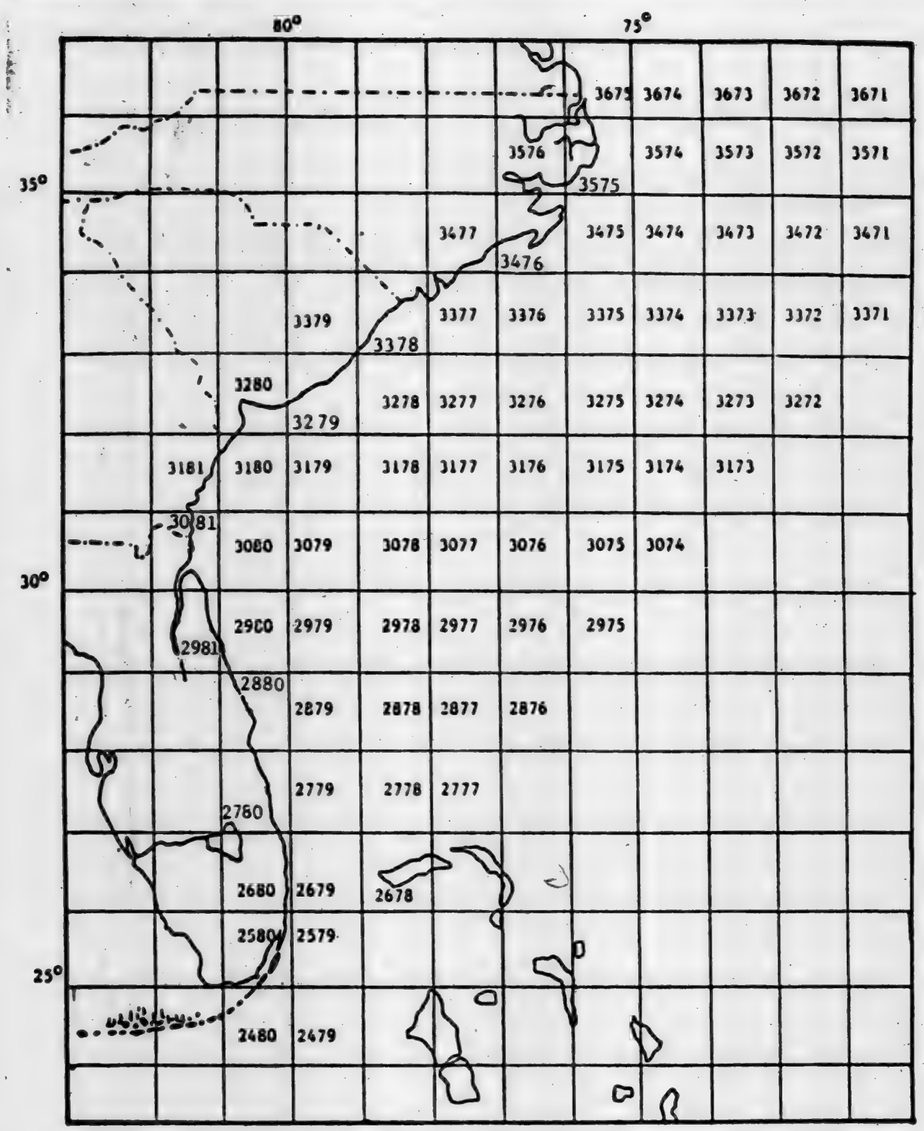

Figure 1. STATISTICAL AREAS FOR THE SOUTH ATLANTIC

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(b) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers.

(1) An owner or operator of a fishing vessel and a dealer or processor are required, upon request, to make fish in the snapper-grouper fishery, or parts thereof, available for inspection by the Science and Research Director or an authorized officer.

(2) The owner or operator of a vessel for which a permit has been issued under § 646.4(a), and that is not selected by the Science and Research Director to maintain a fishing record under paragraph (a) of this section, must, upon request, provide to an authorized statistical reporting agent the information specified in paragraphs (a)(1) through (6) of this section for a specific trip.

5. Newly redesignated § 646.6 is revised to read as follows:

§ 646.6 Vessel and gear identification.

(a) *Permitted vessels.* A vessel for which a permit has been issued under § 641.4 must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 centimeters) in height for fishing vessels over 65 feet (19.8 meters) in length and at least 10 inches (25.4 centimeters) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Vessels fishing with fish traps.* The owner or operator of a fishing vessel from which a fish trap, other than a black sea bass trap, is deployed in the EEZ is required to obtain a vessel and gear identification number and color code from the Regional Director and to prominently display the number and color code. In addition, the number and color code must be displayed on traps and buoys.

(1) *Application.* (i) An application for a vessel and gear identification number and color code under this part must be signed by the owner or operator of the vessel and submitted on an appropriate form obtained from the Regional Director. A fisherman who has an existing number and color code from another fishery may indicate on the application his preference to use that same identification system for the fish trap fishery. Whenever possible, the Regional Director will reissue the requested number and color code adding only a single letter prefix to indicate that the vessel and gear are engaged in the fish trap fishery. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires receipt of the vessel and gear identification number and color code.

(ii) An applicant must provide the following information:

(A) Name, mailing address including ZIP code, and telephone number of the owner of the vessel;

(B) Name and official number of the vessel;

(C) Home port or principal port of landing, gross tonnage, and length of the vessel;

(D) Engine horsepower and year the vessel was built;

(E) Number, dimensions, and estimated cubic volume of the fish traps that will be fished;

(F) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(G) A statement that the applicant will allow authorized officers reasonable access to his property (vessel and dock) to inventory fish traps for compliance with these regulations.

(iii) Any change in the information specified in paragraph (b)(1)(ii) of this section must be submitted in writing to the Regional Director by the applicant within 15 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a rebuttable presumption that the information is still accurate and current.

(2) *Issuance.* The Regional Director will issue a color code, vessel and gear identification number, and fish trap tags imprinted with the vessel and gear identification number to the applicant not later than 30 days from the date of receipt of a completed application.

(3) *Display*—(i) *Vessels.* A vessel must permanently and conspicuously display its identification number and color code in a manner so as to be readily identifiable from the air and water.

(A) To be visible from the air, the identification number and color code must be permanently affixed to the uppermost structural portion of the vessel or other similar area. The color code must be in the form of a circle at least 20 inches (50.8 centimeters) in diameter, and the areas surrounding the circle must be of a contrasting color. The identification number must be at least 10 inches (25.4 centimeters) in height and must be affixed adjacent to the 20-inch (50.8-centimeter) diameter circle.

(B) To be visible from the water, the identification number and color code must be permanently affixed to both starboard and port sides of the vessel near amidships. The color code must be in the form of a circle at least 8 inches (20.3 centimeters) in diameter and the area surrounding the circle must be of a contrasting color. The identification number must be at least 4 inches (10.2 centimeters) in height and must be affixed adjacent to the 8-inch (20.3-centimeter) diameter circle.

(ii) *Fish traps.* Each fish trap must have affixed to it permanently the numbered identification tag supplied by the Regional Director.

(iii) *Buoys.* The use of buoys to identify fish traps is not required. If a buoy is used, it must display the identification number and color code so as to be easily distinguished, located, and identified. The identification number must be in legible figures at least 2 inches (5.1 centimeters) in height and affixed to each buoy.

(4) *Presumption of ownership.* A fish trap fished in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to a fish trap that is lost or sold if the owner of such trap reports the loss or sale within 15 days to the Regional Director.

(5) *Unmarked traps.* An unmarked fish trap deployed in the EEZ, other than a black sea bass trap, is illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of the unmarked trap can be ascertained, such owner remains subject to appropriate civil penalties.

(c) *Duties of operator or person.* The operator of each fishing vessel specified in paragraphs (a) and (b) of this section must—

(1) Keep the official number, or identification number and color code, clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel or structure, its rigging, fishing gear, or any other material aboard obstructs the view of the official number, or identification number and color code, from an enforcement vessel or aircraft.

6. Newly redesignated § 646.7 is revised to read as follows:

§ 646.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify information specified in § 646.4(b)(2) on an application for a vessel permit.

(b) Fail to display a permit, as specified in § 646.4(f).

(c) Falsify or fail to provide information required to be submitted or reported, as required by § 646.5(a) and § 646.5(b)(1)(ii).

(d) Fail to make fish in the snapper-grouper fishery, or parts thereof, available for inspection, as required by § 646.5(b).

(e) Falsify or fail to display and maintain vessel and gear identification, as required by § 646.6 (a), (b)(3), and (c).

(f) Possess a fish in the snapper-grouper fishery smaller than the minimum size limits, as specified in § 646.21(a).

(g) Possess a fish in the snapper-grouper fishery without its head and fins intact, as specified in § 646.21(b).

(h) Operate a vessel with fish in the snapper-grouper fishery aboard that are smaller than the minimum size limits or do not have head and fins intact, as specified in § 646.21(c).

(i) Possess wreckfish in or from the EEZ in excess of the trip limit, as specified in § 646.21(d)(1).

(j) Transfer wreckfish at sea, as specified in § 646.21(d)(2).

(k) [Reserved].

(l) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 646.22(a).

(m) Use or possess in the EEZ a fish trap that does not conform to the requirements for degradable openings and mesh sizes specified in § 646.22(b)(1) and (2).

(n) Use a fish trap in the prohibited area south and west of Fowey Rocks Light, Florida, as specified in § 646.22(b)(3).

(o) Attach a buoy line to a trap south of Fowey Rocks Light, Florida, that is less than 125 feet (38 meters) in length, as specified in § 646.22(b)(4).

(p) Pull or tend a fish trap, except during the hours specified in § 646.22(b)(5); or tend, open, pull, or otherwise molest or have in possession another person's fish trap, except as specified in § 641.22(b)(6).

(q) Use trawl gear in a directed snapper-grouper fishery in the EEZ between Cape Hatteras, North Carolina, and Cape Canaveral, Florida, as specified in § 646.22(c)(1).

(r) Transfer at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(c) (2) and (3).

(s) During the spawning-season closure or after a quota closure, harvest or possess wreckfish in or from the EEZ, or purchase, barter, trade, offer for sale, or sell wreckfish taken from the EEZ, as specified in § 646.23 and § 646.24(b).

(t) Harvest or fail to release a jewfish within a special management zone, as specified in § 646.26(b)(1).

(u) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.26 (b)(2) and (c).

(v) Interfere with, obstruct, delay or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

7. Sections 646.20 and 646.21 are revised to read as follows:

§ 646.20 Fishing year.

The fishing year for wreckfish begins on April 16 and ends on April 15.

§ 646.21 Harvest limitations.

(a) *Minimum sizes.* The following minimum size limits apply for the possession of fish in the snapper-grouper fishery in, or taken from, the EEZ:

(1) Red snapper, yellowtail snapper, red grouper, and Nassau grouper—12 inches (30.5 centimeters) total length.

(2) Black sea bass south of Cape Hatteras, North Carolina—8 inches (20.3 centimeters) total length.

(b) *Head and fins intact.* A fish in the snapper-grouper fishery subject to a minimum size limit specified in paragraph (a) of this section possessed in the EEZ must have its head and fins intact and such fish taken from the EEZ must have its head and fins intact through landing. Such fish may be eviscerated, but must otherwise be maintained in a whole condition.

(c) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish in the snapper-grouper fishery possessed aboard that vessel comply with the minimum sizes specified in paragraph (a) of this section and are maintained with head and fins intact as specified in paragraph (b) of this section.

(d) *Wreckfish trip limit.*

(1) No vessel on any trip may possess wreckfish in or from the EEZ in excess of 10,000 pounds (4,536 kilograms).

(2) Wreckfish taken in the EEZ may not be transferred at sea; and wreckfish may not be transferred at sea in the EEZ, regardless of where such wreckfish were taken.

(e) *Jewfish prohibition.* [Reserved]

8. In § 646.22, the heading, paragraph (a)(1), and paragraph (c)(1) are revised; in paragraph (b)(2) introductory text, the reference to "Figure 1" is revised to read "Figure 2"; in paragraph (b)(4), the phrase "(38 meters)" is added immediately after "125 feet"; Figure 1 is redesignated as Figure 2; and new paragraphs (b) (5) and (6) are added, to read as follows:

§ 646.22 Gear restrictions.

(a) * * *

(1) Explosives (except explosives in powerheads) may not be used in the EEZ to fish for fish in the snapper-grouper fishery. A vessel in the snapper-grouper fishery may not possess on board any dynamite or similar explosive substance.

* * * * *

(b) * * *

(5) A fish trap in the EEZ in the Atlantic Ocean south of 28°24.5' N. latitude (Cape Canaveral, Florida) may be pulled or tended only during the period from 1 hour before sunrise to 1 hour after sunset.

(6) A fish trap may be tended or pulled only by a person (other than an authorized officer) aboard the fish trap owner's vessel(s), or aboard another vessel, if such vessel has on board written consent of the fish trap owner.

(c) * * *

(1) In the EEZ between Cape Hatteras, North Carolina (35°15' N. latitude), and Cape Canaveral, Florida (28°35.1' N. latitude—due east of the NASA Vehicle Assembly Building), the use of trawl gear in a directed snapper-grouper fishery is prohibited. A vessel with trawl gear and more than 200 pounds (90.7 kilograms) of fish in the snapper-grouper fishery, excluding wreckfish, aboard is considered to be in a directed snapper-grouper fishery. It is a rebuttable presumption that a vessel with more than 200 pounds (90.7 kilograms) of fish in the snapper-grouper fishery, excluding wreckfish, aboard harvested such fish in the EEZ.

* * * * *

9. Section 646.23 is redesignated as § 646.27, § 646.24 is redesignated as § 646.26, and new §§ 646.23, 646.24, and 646.28 are added to read as follows:

§ 646.23 Wreckfish spawning-season closure.

During the period January 15 through April 15, each year, fishing for wreckfish in the EEZ, landing wreckfish from the EEZ, or selling or attempting to sell wreckfish in or from the EEZ is prohibited. This prohibition does not apply to trade in wreckfish that were harvested, landed, and bartered, traded, or sold prior to January 15 and were held in cold storage by a dealer or processor.

§ 646.24 Wreckfish quota and closure.

(a) Persons fishing for wreckfish are subject to a quota of 2 million pounds (907,194 kilograms) each fishing year.

(b) When the quota is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the Federal Register. After the effective date of such notice, for the remainder of the fishing year, wreckfish may not be harvested or possessed in or from the EEZ and the purchase, barter, trade, offer for sale, and sale of wreckfish taken from the EEZ is prohibited. This prohibition does not apply to trade in wreckfish that were harvested, landed, and bartered, traded, or sold prior to the effective date of the notice in the Federal Register and that were held in cold storage by a dealer or processor.

§ 646.26 Annual modification of wreckfish management measures.

(a) The Councils will appoint an assessment group (Group) that will assess the condition of the wreckfish resource in the management unit on an annual basis. The Group will present a report of its assessment and recommendations to the Council.

(b) The Council will consider the report of the Group and hold public hearings to discuss the Group's report at a time and place of the Council's choosing. The Council may convene the Advisory Panel and the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, the Council will make findings on the need for changes.

(c) If the changes are needed in MSY, TAC, quota, trip limit, fishing year, spawning-season closure, or criteria for permits, the Council will advise the Regional Director, Southeast Region, NMFS (Regional Director) in writing of its recommendations accompanied by the Group's report, relevant background material, draft regulations, and a summary of public comments. This report will be submitted each year by such date as agreed upon by the Council.

(d) The Regional Director will review the Council's recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejects the recommendations, he will provide written reasons for the rejection to the Council and existing regulations will remain in effect until the issue is resolved.

(e) If the Regional Director initially concurs that the Council's recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, he will recommend that the Secretary publish notice in the Federal Register of the proposed changes with a minimum of 15 days for public comment. After review of the public comments and final determinations of consistency with the goals and objectives of the FMP, the national standards, and other applicable law, the approved changes will be published as a final rule.

(f) Appropriate adjustments that may be implemented by the Secretary via proposed and final rules under this procedure are:

(1) Initial specification of MSY and subsequent adjustment of the best estimate of MSY.

(2) Setting TAC for wreckfish, not exceeding 8 million pounds (3.629 million kilograms).

(3) Modifying the quota or trip limit.

(4) Modifying the fishing year and/or the spawning-season closure by not more than one month.

(5) Modifying the criteria for obtaining a permit.

[FR Doc. 90-22415 Filed 9-18-90; 3:52 pm]
BILLING CODE 3510-22-M

VOL 55 ISS 185 SEP 24 1990 UMI

Notices

Federal Register
Vol. 55, No. 185
Monday, September 24, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Intend to Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Isthmus Engineering and Manufacturing Cooperative, Madison, Wisconsin, on U.S. Patent 4,343,169, "Method and Apparatus for Edgewise Compression Testing of Flat Sheets," (U.S. Patent Application Serial No. 06/152,874), and its continuation-in-part U.S. Patent 4,446,743, "Method and Apparatus for Edgewise Compression Testing of Flat Sheets," (U.S. Patent Application Serial No. 06/366,754). Notices of Availability were given on August 31, 1982, and July 6, 1984, respectively, in the Federal Register.

DATES: Comments must be received by October 24, 1990.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 401, BARC–W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344–2786, (FTS) 344–2786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant to Isthmus Engineering and Manufacturing Cooperative an exclusive license to practice the said inventions. Patent rights to these inventions are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Isthmus Engineering and Manufacturing Cooperative has submitted a complete, sufficient, and verified application for a license and has entered into a Cooperative Research and Development Agreement with the Forest Service providing for manufacturing and sale of the inventions.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 and will conform to the intent of 15 U.S.C. 3710a. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which established that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 and the intent 15 U.S.C. 3710a.

William H. Tallent,
Assistant Administrator.

[FR Doc. 90–22360 Filed 9–21–90; 8:45 am]
BILLING CODE 3410–03–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Special Population Census.
Form Number: SC–19, SC–19AR.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 10,417 hours.
Number of Respondents: 125,000.
Avg Hours Per Response: 5 minutes.
Needs and Uses: The special census program is a service offered and performed contractually by the Census Bureau for states, counties, and other governmental units which require current population data between decennial censuses. Since many states distribute funds based on current population statistics, many local jurisdictions use the special census data to apply for state funds. The Census Bureau also uses special census data as a part of the Bureau's local population estimates calculations.

Affected Public: Individuals or households.
Frequency: As requested.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, [202) 377–3271, Department of Commerce, room H5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 18, 1990.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organizations.

[FR Doc. 90–22480 Filed 9–21–90; 8:45 am]
BILLING CODE 3510–07–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATES: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald or Paul McGarr, Office of Antidumping Compliance or Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2104/2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 1991.

Antidumping duty proceedings and firms	Periods to be reviewed
Italy:	
Granular PTFE Resin	
A–475–703	
Montefluos S.p.A	08/01/89–07/31/90
Tapered Roller Bearings	
A–475–803	
Gnutti Carlo S.p.A	08/01/89–07/31/90
Israel:	
Industrial Phosphoric Acid	
A–508–604	
Negev Phosphates Ltd	08/01/89–07/31/90
Haifa Chemical Ltd	08/01/89–07/31/90
Netherlands:	
Brass Sheet and Strip	
A–421–701	
Outokumpu Copper Products B.V.	08/01/89–07/31/90
Taiwan:	
Clear Sheet Glass	
A–583–023	
Hsinchu Glass Works	08/01/89–07/31/90
Taiwan Glass Corp	08/01/89–07/31/90
Yotak Trading Co	08/01/89–07/31/90
International Trade Co	08/01/89–07/31/90
Japan:	
Tapered Roller Bearings	
A–588–054	
Koyo Seiko	08/01/89–07/31/90
Nippon Seiko	08/01/89–07/31/90
Nachi-Fujikoshi	08/01/89–07/31/90

Countervailing duty proceedings and firms	Periods to be reviewed
Canada:	
Live Swine	
C–122–404	04/01/89–03/31/90
Israel:	
Industrial Phosphoric Acid	
C–508–605	01/01/89–12/31/89
Venezuela:	
Certain Electrical Conductor Aluminum Redraw Rod	
C–307–702	01/01/89–12/31/89

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 353.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1988).

Dated: September 18, 1990.
Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.

[FR Doc. 90–22528 Filed 9–21–90; 8:45 am]
BILLING CODE 3510–25–M

[A–583–008]

Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Taiwan were being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of MMF sweaters from Taiwan.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of MMF sweaters, except those of Jia Farn Manufacturing Co. (Jia Farn), made on or after April 27, 1990, the date on which the Department published its preliminary determination in the Federal Register (55 FR 17788), will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

This notice and order clarifies the scope of the antidumping duty order and corrects certain ministerial errors contained in our final determination.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Carole A. Showers, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230: (202) 377–3217.

Scope of Investigation.

The products covered by this investigation include sweaters wholly or in chief weight of man-made fiber. For purposes of this investigation, sweaters of man-made fiber are defined as garments for outerwear that are knit or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom and cuffs on the sleeves (if any), encompassing garments of various lengths, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This includes sweaters 23 percent or more by weight of wool. It includes men's, women's, boys', or girls' sweaters, as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, it includes only those with a knit-on rib at the bottom.

Garments which extend below mid-thigh or cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not considered sweaters and are excluded from the scope of this investigation. Also specifically excluded from the scope of this investigation are sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Taiwan and entering under *Harmonized Tariff Schedule* (HTS) item number 9902.61.

The subject merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.60, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.60, 6110.30.10.10, 6110.30.20.20, 6110.30.20.10, and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

SUPPLEMENTARY INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act), on August 10, 1990, the Department made its final determination that MMF sweaters from Taiwan are being sold at less than fair value (55 FR 34585, August 23, 1990). On September 10, 1990, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act, the Department will direct U.S. Customs

officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of MMF sweaters from Taiwan. These antidumping duties will be assessed on all unliquidated entries of MMF sweaters from Taiwan entered, or withdrawn from warehouse, except those of Jia Farn, for consumption on or after April 27, 1990, the date on which the Department published its preliminary determination notice in the Federal Register.

In our preliminary determination, we clarified the scope of this investigation by deleting the phrase "but most typically ending at the waist." In our final determination, we further clarified the scope by adding the phrase "a product or garment will not be considered a sweater nor included in the scope of this investigation if it extends to mid-calf or below and is lined." We have solicited and received comments from interested parties concerning these clarifications. After reviewing the petition, these comments and other information on the record, including the treatment by the U.S. Customs Service of this merchandise under the Multifiber Arrangement, we have concluded that (1) garments which extend below mid-thigh, and (2) cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not properly considered sweaters and are excluded from the scope of this antidumping duty order.

In our final determination, we stated that sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Taiwan are excluded from the scope of this investigation. This exclusion was due, in part, to the current customs classification of sweaters assembled in Guam under HTS item number 9902.61 and to the unique circumstances which justify this classification. Therefore, for purposes of this order, we are further clarifying the exclusion to cover only those sweaters from Guam entering under HTS item number 9902.61.

Prior to our final determination, the American International Knitters Corp. and Commonwealth Garment Manufacturing Inc. (AIKC/CGM) requested that we also exclude from the scope of this investigation certain MMF sweaters assembled in the Commonwealth of Northern Mariana Islands (CNMI) from knit-to-shape component parts knit in and imported from Taiwan. AIKC/CGM assert that, because certain MMF sweaters from Guam have been excluded from the scope of this investigation, the Department is required to exclude like imports from the CNMI. AIKC/CGM base their argument on 48 U.S.C. 1681, Note, which requires that CNMI be treated the same as Guam for customs purposes. We have reviewed all comments received and other information on the record pertaining to this issue. Contrary to AIKC/CGM's claim, 48 U.S.C. 1681, Note, does not require the Department to treat imports from Guam and CNMI the same for purposes of the antidumping and countervailing duty laws. Even if the Department were required to consider customs treatment in these proceedings, sweaters assembled in CNMI from imported knit-to-shape component parts are not, in fact, treated the same for customs purposes as those assembled in Guam. Subsequent to the passage and in derogation of 48 U.S.C. 1681, Note, Congress enacted HTS 9902.61, which provides unique tariff treatment for sweaters assembled in Guam. However, Congress did not include in this provision, nor in any other HTS provision, similar treatment with respect to MMF sweaters assembled in CNMI. Accordingly, through the enactment of HTS 9902.61, Congress specifically modified and superceded the general language of 48 U.S.C. 1681, Note.

In addition, AIKC/CGM did not, as the Guam producer did in supporting that exclusion request, establish its exclusive right to quota for sweaters exported from CNMI over the lifetime of the quota regime. Finally, petitioners have opposed the exclusion of Taiwan sweaters assembled in the CNMI, whereas they requested such an exclusion for sweaters assembled in Guam.

Therefore, for the reasons addressed above, we are not excluding MMF sweaters assembled in the CNMI from the scope of this antidumping duty order.

Allegation of Clerical Error

Subsequent to the Department's final determination, Chung Tai Industries Co., Ltd., alleged that certain clerical errors had been made with respect to the calculation of the margin assigned to six of its U.S. sales. The Department conducted a review based on these comments and hereby amends its final determination to correct clerical errors in the calculations with respect to four of Chung Tai's U.S. sales. These corrections change Chung Tai's weighted-average dumping margin for MMF sweaters from 4.75 percent to 4.02 percent and the "all-others" rate for MMF sweaters from 21.38 percent to 21.30 percent.

With respect to Chung Tai's allegation on two other U.S. sales, errors were contained in the data submitted by Chung Tai. Therefore, we have determined that no error was made by the Department in the margin calculation with regard to these sales and no modification has been made to our determination for these sales.

Suspension of Liquidation

On or after date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins, except for Jia Farn, as noted below:

Manufacturers/producers/exporters	Margin percentage
Bay/Joy Flower Knitting Co., Ltd., and all related companies	24.02
Bonanza Industries Co., Ltd., and all related companies	23.72
Chen Hwa Knitting Factory, Ltd., and all related companies including: Dragonlex Enterprise Co	24.02
Chung Ling Co., Ltd., and all related companies including: Three Bell Knitting Manufacturer, Ltd	24.02
Chung Tai Industries Co., Ltd., and all related companies	4.02
Goodman Knitting Co., Ltd., and all related companies	24.02
Jia Farn Manufacturing Co., Ltd., and all related companies	[1] 0.00
Knitwear Express Co., Ltd., and all related companies	24.02
Modern Knitting Mills Inc., and all related companies	5.68
New Northern Knitting Co., Ltd., and all related companies	24.02
Nicewave Knitting Co., Ltd., and all related companies	24.02
Oriental Knitting Co., Ltd., and all related companies, including: Tung Yi Enterprises Co., Ltd	24.02
Superlex Knitting Co., Ltd., and all related companies	24.02
Tain Yung Enterprise Co., Ltd., and all related companies	24.02
All others	21.30

[1] Excluded.

This constitutes the antidumping duty order with respect to MMF sweaters from Taiwan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: September 19, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-22728 Filed 9-23-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-582-602]

Antidumping Duty Order: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Hong Kong were being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of MMF sweaters from Hong Kong.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of MMF sweaters, made on or after April 27, 1990, the date on which the Department published its preliminary determination in the Federal Register (55 FR 17760), will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

This notice and order clarifies the scope of the antidumping duty order.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Carole A. Showers, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; (202) 377-3217.

Scope of Investigation

The products covered by this investigation include sweaters wholly or in chief weight of man-made fiber. For purposes of this investigation, sweaters of man-made fiber are defined as garments for outerwear that are knit or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom and cuffs on the sleeves (if any), encompassing garments of various lengths, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's, women's boy's, or girls' sweaters, as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stiches per two linear centimeters horizontally, it includes only those with a knit-on rib at the bottom.

Garments which extend below mid-thigh or cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not considered sweaters and are excluded from the scope of this investigation. Also specifically excluded from the scope of this investigation. Also specifically excluded from the scope of this investigation are sweaters assembled in Guam that are produced from knit-to shape component parts knit in and imported from Hong Kong and entering under *Harmonized Tariff Schedule* (HTS) item number 9902.61.

The subject merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.60, 6110.30.10.10, 6110.30.10.20, 6110.30.20.10, and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. This HTS item numbers are provided for convenience and Customs purposes. This written description remains dispositive as to the scope of the product coverage.

SUPPLEMENTARY INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act), on July 18, 1990, the Department made its final determination that MMF sweaters from Hong Kong are being sold at less than fair value (55 FR 30733, July 27 1990). On September 10, 1990, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of MMF sweaters from Hong Kong. These antidumping duties will be assessed on all unliquidated entries of MMF sweaters from Hong Kong entered, or withdrawn from warehouse, for consumption on or after April 27, 1990, the date on which the Department published its preliminary determination notice in the Federal Register.

In our preliminary determination, we clarified the scope of this investigation by deleting the phrase "but most typically ending at the waist." In our final determination, we further clarified the scope by adding the phrase "a product or garment will not be considered a sweater nor included in the scope of this investigation if it extends to mid-calf or below and is lined." We have solicited and received comments from interested parties concerning these clarifications. After reviewing the petition, these comments and other information on the record, including the treatment by the U.S. Customs Service of this merchandise under the Multifiber Arrangement, we have concluded that (1) garments which extend below mid-thigh, and (2) cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not properly considered sweaters and are excluded from the scope of this antidumping duty order.

In our final determination, we stated that sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Hong Kong are excluded from the scope of this investigation. This exclusion was due, in part, to the current customs classification of sweaters assembled in Guam under HTS item number 9902.61 and to the unique circumstances which justify this classification. Therefore, for purposes of this order, we are further clarifying the exclusion to cover only those sweaters from Guam entering under HTS item number 9902.61.

Prior to our final determination, the American International Knitters Corp. and Commonwealth Garment Manufacturing Inc. (AIKC/CGM) requested that we also exclude from the scope of this investigation certain MMF sweaters assembled in the Commonwealth of Northern Mariana Islands (CNMI) from knit-to-shape component parts knit in and imported from Hong Kong. AIKC/CGM assert that, because certain MMF sweaters from Guam have been excluded from the scope of this investigation, the Department is required to exclude like

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imports from the CNMI. AIKC/CGM base their argument on 48 U.S.C. 1681, Note, which requires that CNMI be treated the same as Guam for customs purposes. We have reviewed all comments received and other information on the record pertaining to this issue. Contrary to AIKC/CGM's claim, 48 U.S.C. 1681, Note, does not require the Department to treat imports from Guam and CNMI the same for purposes of the antidumping and countervailing duty laws. Even if the Department were required to consider customs treatment in these proceedings, sweaters assembled in CNMI from imported knit-to-shape component parts are not, in fact, treated the same for customs purposes as those assembled in Guam.

Subsequent to the passage and in derogation of 48 U.S.C. 1681, Note, Congress enacted HTS 9902.61, which provides unique tariff treatment for sweaters assembled in Guam. However, Congress did not include in this provision, nor in any other HTS provision, similar treatment with respect to MMF sweaters assembled in CNMI. Accordingly, through the enactment of HTS 9902.61, Congress specifically modified and superseded the general language of 48 U.S.C. 1681, Note.

In addition, AIKC/CGM did not, as the Guam producer did in supporting that exclusion request, establish its exclusive right to quota for sweaters exported from CNMI over the lifetime of the quota regime. Finally, petitioners have opposed the exclusion of Hong Kong sweaters assembled in the CNMI, whereas they requested such an exclusion for sweaters assembled in Guam.

Therefore, for the reasons addressed above, we are not excluding MMF sweaters assembled in the CNMI from the scope of this antidumping duty order.

Suspension of Liquidation

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Comitex Knitters, Ltd., and all related companies	5.86
Crystal Knitters, Ltd., and all related companies, including:	[1] 0.00
Clevermark Industrial, Ltd.	
Crystal Garments, Ltd.	
Crystal Textiles, Ltd.	
Crystal Woven, Ltd.	
Elegance Ind. Co., Ltd.	
Horson, Ltd.	
Sinotex Development, Ltd.	
Laws Fashion Knitters, Ltd., and all related companies, including:	[1] 0.22
Cordial Knitting Co., Ltd.	
Law Falcon Apparel Co., Ltd.	
Laws Garments, Ltd.	
Lita, Ltd.	
Matsue Industrial Company Ltd.	
Prosperity Clothing Co., Ltd./Estero Enterprises, Ltd., and all related companies	115.15
All others	5.86

[1] Excluded.

This constitutes the antidumping duty order with respect to MMF sweaters from Hong Kong, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: September 19, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-22721 Filed 9-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-806]

Antidumping Duty Order: Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from the Republic of Korea (Korea) were being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of MMF sweaters from Korea.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of MMF sweaters, made on or after April 27, 1990, the date on which the Department published its preliminary determination in the **Federal Register** (55 FR 17788), will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

This notice and order clarifies the scope of the antidumping duty order.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230: (202) 377-0161.

Scope of Investigation

The products covered by this investigation include sweaters wholly or in chief wieght of man-made fiber. For purposes of this investigation, sweaters of man-made fiber are defined as garments for outerwear that are knit or crocketed, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom and cuffs on the sleeves (if any), encompassing garments of various lenghts, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's women's boys', or girls' sweaters, as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitiches per centimeter, provided that, with regard to sweaters having more than nine stiches per two linear centimeters horizontally, it includes only those with a knit-on rib at the bottom.

Garments which extend below mid-thigh or cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not considered sweaters and are excluded from the scope of this investigation. Also specifically excluded from the scope of this investigation are sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Korea and entering under *Harmonized Tariff Schedule* (HTS) item number 9902.61.

The subject merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.66, 6110.30.10.20, 6110.30.10.25, 6110.30.20.10, and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.60 and 6110.30.30.65. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

SUPPLEMENTAL INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act), on August 2, 1990, the Department made its final determination that MMF sweaters from Korea are being sold at less than fair value (55 FR 32060, August 10, 1990). On September 10, 1990, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 730 and 751 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foregin market value of the merchandise exceeds the United States price for all entries of MMF sweaters from Korea. These antidumping duties will be assessed on all unliquidated entries of MMF sweaters from Korea entered, or withdrawn from warehouse, for consumption on or after April 27, 1990, the date on which the Department pulbished its preliminary determination notice in the Federal Register.

In our preliminary determination, we clarified the scope of this investigation by deleting the phrase "but most typically ending at the waist." In our final determination, we further clarified the scope by adding the phrase "a product or garment will not be considered a sweater nor included in the scope of this investigation if it extends to mid-calf or below and is lined." We have solicited and received comments from interested parties concerning these clarifications. After reviewing the petition, these comments and other information on the record, including the treatment by the U.S. Customs Service of this merchandise under the Multifiber Arrangement, we have concluded that (1) garments which extend below mid-thigh, and (2) cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not properly considered sweaters and are excluded from the scope of this antidumping duty order.

In our final determination, we stated that sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Korea are excluded from the scope of this investigation. This exclusion was due, in part, to the current customs classification of sweaters assembled in Guam under HTS item number 9902.61 and to the unique circumstances which justify this classification. Therefore, for purposes of this order, we are further clarifying the exclusion to cover only those sweaters from Guam entering under HTS item number 9902.61.

Prior to our final determination, the American International Knitters Corp. and Commonwealth Garment Manufacturing Inc. (AIKC/CGM) requested that we also exclude from the scope of this investigation certain MMF sweaters assembled in the Commonwealth of Northern Mariana Islands (CNMI) from knit-to-shape component parts knit in and imported from Korea. AIKC/CGM assert that, because certain MMF sweaters from Guam have been excluded from the scope of this investigation, the Department is required to exclude like imports from the CNMI. AIKC/CGM base their argument on 48 U.S.C. 1681, Note, which requires that CNMI be treated the same as Guam for customs purposes. We have reviewed all comments received and other information on the record pertaining to this issue. Contrary to AIKC/CGM's claim, 48 U.S.C. 1681, Note, does not require the Department to treat imports from Guam and CNMI the same for purposes of the antidumping and countervailing duty laws. Even if the Department were required to consider customs treatment in these proceedings, sweaters assembled in CNMI from imported knit-to-shape component parts are not, in fact, treated the same for customs purposes as those assembled in Guam. Subsequent to the passage and in derogation of 48 U.S.C. 1681, Note, Congress enacted HTS 9902.61, which provides unique tariff treatment for sweaters assembled in Guam. However, Congress did not include in this provision, nor in any other HTS provision, similar treatment with respect to MMF sweaters assembled in CNMI. Accordingly, through the enactment of HTS 9902.61, Congress specifically modified and superceded the general language of 48 U.S.C. 1681, Note.

In addition, AIKC/CGM did not, as the Guam producer did in supporting that exclusion request, establish its exclusive right to quota for sweaters exported from CNMI over the lifetime of the quota regime. Finally, petitioners have opposed the exclusion of Korean sweaters assembled in the CNMI, whereas they requested such an exclusion for sweaters assembled in Guam.

Therefore, for the reasons addressed above, we are not excluding MMF sweaters assembled in the CNMI from the scope of this antidumping duty order.

Suspension of Liquidation

On or after the date of publication of this notice in the **Federal Register** U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Chunji Industrial Co., Ltd., and all related companies, including: U Young	1.30
Hanil Synthetic Fiber Ind. Co. Ltd., and all related companies	3.17
Shinwon Tongsang and all related companies, including: Shinwon Development	1.11
Young Woo & Co., Ltd., and all related companies, including: Young Chang	0.79
Yurim Company, Ltd., and all related companies, including: Koo Ho	0.92
All others	1.30

This notice constitutes the antidumping duty order with respect to MMF sweaters from Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: September 19, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-22722 Filed 9-21-90; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Los Angeles, CA

AGENCY: Minority Business Development Agency, HHS.

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ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $780,300 in Federal funds and a minimum of $137,700 in non-Federal contributions for the budget period April 1, 1991 to March 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Los Angeles, California geographic service area.

The I.D. Number for this project will be 09-10-91002-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is October 30, 1990. Applications must be postmarked on or before October 30, 1990.

ADDRESS: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time. Minority Business Development Agency U.S. Department of Commerce, San Francisco, California 94105, October 10, 1990 at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Iglehart, Acting Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: September 18, 1990.

John F. Iglehart,

Acting Regional Director, San Francisco Regional Office.

[FR Doc. 90-22543 Filed 9-21-90; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: San Diego, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $346,800 in Federal funds and a minimum of $61,200 in non-Federal contributions for the budget period April 1, 1991 to March 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the San Diego, California geographic service area.

The I.D. Number for this project will be 09-10-91003-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is October 30, 1990. Applications must be postmarked on or before October 30, 1990.

ADDRESS: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, October 10, 1990 at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Iglehart, Acting Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: September 18, 1990.

John F. Iglehart,

Acting Regional Director, San Francisco Regional Office.

[FR Doc. 90-22544 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

[Docket No. 900843-0243]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the wreckfish fishery off the South Atlantic states.

SUMMARY: This notice announces that anyone entering the wreckfish fishery in the Exclusive Economic Zone (EEZ) off the South Atlantic states between 30° and 33°N. latitude after March 28, 1990 (control date), may not be assured of future access to the wreckfish fishery in this area if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This notice is intended to promote awareness of potential eligibility criteria for access to the wreckfish fishery in the aforementioned area and to discourage new entries into the fishery based on economic speculation while the South Atlantic Fishery Management Council (Council) continues discussions on whether and how fishery access to the wreckfish resource should be controlled. This announcement does not prevent establishment of any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed by the Council or being implemented by the Secretary of Commerce (Secretary).

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) prepared by the Council, and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Act. Amendment 3 to the FMP proposes to add wreckfish to the snapper-grouper management unit and to implement conservation measures for wreckfish. For a document relating to implementation of Amendment 3, including discussion of the biological characteristics of wreckfish, description of the fishing grounds, and a discussion of the development of the fishery, see a proposed rule published elsewhere in this issue.

NOAA is publishing this notice separately from the proposed rule because NOAA considers that the control date is not properly a management measure that must be approved or disapproved by the Secretary under the procedures of the Magnuson Act. Although the Notice of Availability of the amendment, published on August 14, 1990, at 55 FR 33143, stated that the control date is a "proposed action," NOAA is following the normal procedures by announcing the control date in this Notice.

A recent, rapid increase in the number of vessels in the fishery, the limited area where fishable concentrations have been located, and the biological characteristics of wreckfish have caused concern for the future viability of the fishery if effort remains unrestricted. The Council is investigating effective alternative controls on fishing effort, including those that govern access to the fishery.

The Council voted to establish March 28, 1990, as a control date for new entrants into the wreckfish fishery in the EEZ off the South Atlantic states between 30° and 33°N. latitude and requested that a notice be published in the Federal Register announcing that anyone entering the wreckfish fishery after the control date will not be assured of future participation if the Council develops, and the Secretary approves and implements, an effort-controlled fishery management regime limiting the number of participants in the fishery. The Council will evaluate participation in the fishery by documentation of landings of wreckfish prior to the control date.

In establishing a control date and making this announcement, the Council intends to discourage speculative entry into the wreckfish fishery while the Council discusses possible limited entry or access-controlled management regimes for the fishery. As the Council discusses development of a limited entry or access-controlled management regime, certain fishermen who do not currently fish for wreckfish, and never have done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial wreckfish landings. In the absence of a control date, such a record generally may be considered indicative of economic dependence on the fishery. On this basis, such fishermen may successfully lay claim to access to a wreckfish fishery that the Council may intend to be limited to traditional participants. New fishery entrants subsequent to the establishment of any limited entry or access-controlled system may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant subsequent to establishment of a limited entry or access program.

When management authorities begin to consider use of a limited access management regime, speculative entry into a fishery often is responsible for a rapid increase in fishing effort in fisheries already fully or over-developed. Those seeking possible windfall gain from a potential management change can exacerbate the original problems. To help distinguish *bona fide* and established wreckfish

fishermen from speculative entrants to the fishery, a fishery management council may set a control date before beginning discussions and planning of limited access regimes. As a result, fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation.

This establishment of a control date does not commit the Council or the Secretary to any particular management regime or criterion for entry into the wreckfish fishery. Fishermen are not guaranteed future participation in the wreckfish fishery, regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may subsequently choose a different control date, or it may choose a management regime that does not make use of such a date. The Council is free to apply other qualifying criteria for fishery entry. The Council may give varying considerations to fishermen in the fishery before and after the control date. Finally, the Council also may choose to take no further action to control entry or access to the fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 17, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-22414 Filed 9-18-90; 3:53 pm]

BILLING CODE 3510-22-M

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Government of Panama has not submitted documentary evidence to establish that the average rate of incidental taking of marine mammals by its tuna vessels did not exceed 2.0 times the average rate of incidental taking of marine mammals by U.S. tuna vessels during the same period. As a result, yellowfin tuna and tuna products from Panama cannot be imported into the United States until such time as documentary evidence is presented by the Government of Panama to demonstrate that the required standards for comparability have been met.

DATES: This filing is effective September 18, 1990 and remains until superseded.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514-6196.

SUPPLEMENTARY INFORMATION: On March 30, 1990, the NMFS promulgated a final rule (55 FR 11921) to implement portions of the Marine Mammal Protection Act Amendments of 1988. This rule governs the importation of yellowfin tuna caught by purse seining in the eastern tropical Pacific Ocean (ETP). Additionally, on May 10, 1989 (54 FR 20171), the NMFS published a final determination to accept an alternative international observer coverage program for 1989, establishing observer coverage requirements for the non-U.S. tuna fleet in the ETP.

On August 28, 1990, the United States District Court for the Northern District of California ordered an embargo of all yellowfin tuna and yellowfin tuna products harvested with purse seines in the ETP by foreign nations until the Secretary of Commerce made affirmative findings based upon documentary evidence provided by the government of the exporting nation that the average rate of the incidental taking by vessels of such foreign nations is no more than 2.0 times that of United States vessels during the same period.

The Assistant Administrator, after consultation with the Department of State, finds that the Government of Panama has not submitted documentary evidence which establishes under the tuna importation provisions of 50 CFR 216.24(e), that the average rate of the incidental taking by its vessels is no more than 2.0 times that of the U.S. vessels during the same period. As a result of this negative finding, yellowfin tuna and tuna products from Panama cannot be imported into the United States until such time as further documentary evidence is presented by the Government of Panama that the required standards for a comparable program have been met.

The action taken to ban the importation of yellowfin and tuna products from Panama will initiate additional importation requirements for nations which export yellowfin tuna and tuna products to the United States and also import yellowfin tuna and tuna products from Panama. Under 50 CFR 216.24(e)(ix), intermediary nations must certify to the Assistant Administrator that they have acted within 60 days of the U.S. ban to prohibit imports of yellowfin tuna and tuna products from Panama.

Yellowfin tuna and tuna products from intermediary nations which fail to provide such certification within 90 days will not be allowed to enter the United States.

Dated: September 18, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-22409 Filed 9-18-90; 4:56 pm]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Navy Planning and Steering Advisory Committee

ACTION: Establishment of the Navy Planning and Steering Advisory Committee.

SUMMARY: Under the provisions of Public Law 92-463, "Federal Advisory Committee Act," notice is hereby given that the Navy Planning and Steering Advisory Committee (Navy PSAC) is being established.

The Navy PSAC will advise the Technology Panel of the Chief of Naval operations, Executive Board, and other Navy officials, regarding matters connected with ballistic missile security and anti-submarine warfare. The scope of the Navy PSAC advisory functions will encompass: Making in-depth technical assessments of U.S. and Soviet anti-submarine warfare developments and related technologies; critically reviewing programs which potentially impact on ballistic missile survivability, and, evaluating intelligence efforts to identify and define anti-submarine warfare and ballistic missile security and survivability threats.

The Navy PSAC will be composed of approximately 25 members, including both government and non-government individuals, who will represent well-balanced points of view and be experts in the subject areas to be examined. Non-government members will be selected from among technical experts and leaders in their respective fields from industry, academia, and private institutes. Government members will be chosen from such relevant disciplines as oceanography, naval intelligence, and undersea areas of scientific endeavors.

Dated: September 19, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-22584 Filed 9-21-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.017]

International Research and Studies Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1991 under the International Research and Studies Program.

PURPOSE: The International Research and Studies Program provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and related fields needed to provide full understanding of the places in which the modern foreign languages are commonly used.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: November 20, 1990.

APPLICATIONS AVAILABLE: September 20, 1990.

AVAILABLE FUNDS: The Administration's budget request includes $1,450,000 for this program for FY 1991. However, the actual level of funding is contingent on final Congressional action.

ESTIMATED AVERAGE SIZE OF AWARDS: $72,500.

ESTIMATED NUMBER OF AWARDS: 20.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: 12 to 36 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 82, 85, and 86.

(b) The regulations for the International Research and Studies Program in 34 CFR parts 655 and 660.

PRIORITIES: Pursuant to 34 CFR 75.105(c), the Secretary gives a competitive preference to applications that meet one or more competitive priorities as well as an absolute preference to applications that meet one or more of the absolute priorities.

Competitive Priorities: The Secretary gives a competitive preference to applications that meet one or more of the following priorities. These priorities are taken from the list of priorities established in the regulations governing this program (34 CFR 660.10 and 660.34).

(a) Applications which focus on the development of materials for one or more of the following regions:

(1) The Caribbean Basin, including Mexico, Belize, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, and the island nations of the Caribbean Sea.

(2) Southern Africa, including the Republic of South Africa, Botswana, Namibia, Swaziland, Lesotho, Angola, Mozambique, Malawi, Zambia, and Zimbabwe.

(3) The Pacific Rim, defined as all of the area encompassing the Pacific littoral of East Asia, Southeast Asia, Australia, New Zealand, Latin America, and Canada.

(4) Central and Eastern Europe.

Under this competitive priority, the Secretary invites applications that study Central and Eastern Europe in the broader context of a unified Europe.

However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over applications that do not meet this invitational priority.

(5) The Middle East, Inner Asia and Islamic Republics of the USSR.

Under this competitive priority, the Secretary invites applications that study the economic, social, and political aspects of the modern Middle East, Inner Asia and Islamic Republics of the USSR.

However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over applications that do not meet this invitational priority.

(6) The European Community (EC).

Under this competitive priority, the Secretary invites applications that deal with the economic, social, and political aspects of the EC and the EC's interaction with other nations and regions of the world.

However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over applications that do not meet this invitational priority.

(b) Applications for research that will serve to enhance international understanding.

Under this competitive priority, the Secretary invites applications that deal with—

(1) The relationship of trade, law, and monetary and economic policy to global stability;

(2) Conflicts and the resurgence of nationalism and regionalism;

(3) Environmental issues which cross national borders;

(4) The political mediation of ethnic and cultural differences within nations;

(5) Politics, law, and the economics of transition to democratic rule; and

(6) Geopolitical implications of north/south interrelationships in the contemporary world.

However, under 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over applications that do not meet these invitational priorities.

Under 34 CFR 75.105(c)(2)(i), an application that meets one or more of these competitive priorities in a particularly effective way receives from the Secretary up to 5 points in addition to any points the application earns under the selection criteria for the program.

Absolute Priorities: In accordance with 34 CFR 75.105(c)(3), the Secretary also gives an absolute preference to applications that meet one or more of the following priorities. The Secretary reserves a portion of the program's funds solely for applications that meet one or more of these priorities. The Secretary will establish the amount reserved for applications that meet these priorities after determining the number of high quality applications received. These absolute priorities are taken from the list of priorities established in the regulations governing this program (34 CFR 660.10 and 660.34).

(a) Applications that focus on one or both of the following topics:

(1) Effective methodology of instruction in modern foreign languages; and

(2) Language acquisition processes.

Under these absolute priorities, the Secretary invites study of the application of technology and development of special methodologies designed to reduce the amount of time required to train specialists in the uncommonly taught modern foreign languages and to ensure retention of language acquisition.

However, under 34 CFR 75.105(c)(1), an application that meets this invitation priority does not receive competitive or absolute preference over applications that do not meet this invitational priority.

(b) Applications that focus on evaluation of competency in foreign languages, area studies, or related fields.

Under this absolute priority, the Secretary invites applications that—

(1) Survey the extent to which U.S. commerce and industry commit themselves to employment and efficient utilization of individuals with background and training in modern foreign languages and area studies; and

(2) Survey comparative government spending at the national and state or provincial levels on modern foreign language competency and foreign area studies expertise for the Federal Republic of Germany, France, the United

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Kingdom, Italy, Sweden, the Netherlands, Japan, Korea, Taiwan, Singapore, and Brazil.

However, under 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over applications that do not meet these invitational priorities.

(c) Applications for research that serves to enhance international understanding.

Under this priority, the Secretary invites applications that—

(1) Develop one or more models for the internationalization of university curricula; and

(2) Study the feasibility of U.S. participation in international programs for cross-national recognition of academic credit and credentials for accademic purposes and entry into professions.

However, under 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over applications that do not meet these invitational priorities.

FOR APPLICATIONS OR INFORMATION CONTACT: Jose L. Martinez, U.S. Department of Education; 400 Maryland Avenue SW., Room 3053, ROB-3, Washington, DC. 20202-5331. Telephone: (202) 708-9297.

Authority: 20 U.S.C. 1125.

Dated: September 13, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90-22487 Filed 9-21-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

San Francisco Operations Office, Financial Assistant Award (Grant)

AGENCY: U.S. Department of Energy (DOE), San Francisco Operations Office.

ACTION: Notice of restriction of eligibility for award.

SUMMARY: The U.S. DOE, San Francisco Operations Office announces That it intends to award a grant to the Electric Power Research Institute, Palo Alto, CA, in the amount of $25,000 to co-sponsor for the Fifth National Demand Side Management Conference to be held in Boston, MA from July 30 through 1 August 1991. Pursuant to DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(i), DOE/SAN has determined that it is restricting eligibility for this grant award to the Electric Power Research Institute under Criterion (2). A Determination of Non-competitive Financial Assistance Award has been prepared and executed in accordance with applicable DOE policy. That determination is included in the contract (Grant) File.

Grant No. DE-FG03-90SF16768

SCOPE: The fifth National Utility Demand Side Management (DSM) Conference will provide an opportunity for utility and State energy efficiency program managers to meet and store current information on the planning and operation of utility DSM programs. The conference has two primary objectives: To facilitate the exchange of DSM research and implementation results and encourage the advancement of knowledge, and to publish and distribute the technical papers presented at the conference. DOE's contribution, $25K, is approximately seven percent of the total conference cost. DOE has determined that co-sponsoring this conference would help fulfill its mandate to provide technical assistance under its Residential and Commercial Conservation Program.

FOR FURTHER INFORMATION CONTACT: W. E. "Bill" O'Neal, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, September 13, 1990.

Kathleen M. Day,

Director, Contracts Management Division.

[FR Doc. 90-22559 Filed 9-21-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award: Yakima Indian Nation

AGENCY: U.S. Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE, Richland Operations Office, Environmental Restoration Division in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award a noncompetitive grant to the Yakima Indian Nation (YIN). Under the terms of the award, the YIN will conduct activities related to the protection of YIN treaty rights which may be impacted by activities associated with DOE's environmental restoration activities at the Hanford Site. This award implements elements of the DOE Five-Year Plan recognizing DOE's commitment to the participation of affected Indian tribes in the planning and implementation of the Five-Year Plan.

DOE has determined that award on a noncompetitive basis is appropriate because the recipient is a unit of government and the activities to be supported are related to the performance of governmental functions within the jurisdiction of that unit of government, thereby precluding DOE provision of support to another entity. Since the award relates to agreements and treaties already made between the United States Government and the YIN, it would clearly be inappropriate for DOE to consider funding any other entity to be responsible for carrying out these activities. The duration of the grant shall be 12 months from the effective date of the award. The amount of funds awarded for this 12 month effort shall not exceed $200,000.

FOR FURTHER INFORMATION CONTACT: Marcia N. Roske, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376-7265.

Dated: September 14, 1990.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 90-22561 Filed 9-21-90; 8:45 am]

BILLING CODE 6450-01-M

San Francisco Operations Office; Financial Assistance Award (Cooperative Agreement)

AGENCY: U.S. Department of Energy, San Francisco Operations.

ACTION: Notice of restriction of eligibility for award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to extend the cooperative agreement in the amount of $100,000 for the 10MWe Solar Pilot Power Plant, Solar One for two years. Pursuant to the Assistance Rules, 10 CFR 600.7(b)(2)(i), DOE/SAN has determined that eligibility for this cooperative agreement award shall be limited to the Southern California Edison Company under criterion (A), continuation of an existing DOE cooperative agreement. In accordance with current agency guidance, a determination of noncompetitive financial assistance award has been approved by this office.

Cooperative Agreement No. DE-FC03-79SF10501

SCOPE OF PROJECT: The current, caretaker, status will be extended for two years pending a decision by the Department of Energy on whether to modify the plant for future experiments or to begin site restoration.

The Southern California Edison Company currently conducts research under DE-FC03-79SF10501. The proposed effort is a continuation of this cooperative agreement.

FOR FURTHER INFORMATION CONTACT: W.E. "Bill" O'Neal, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, September 14, 1990.

Kathleen M. Day,

Director, Contracts Management Division.

[FR Doc. 90-22560 Filed 9-21-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-1923-000, et al.]

East Tennessee Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Co.

[Docket No. CP90-1923-000]

September 11, 1990.

Take notice that on August 7, 1990, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed an application in Docket No. CP90-1923-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interim increase in contract demands of certain of its customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to increase the contract demands of the following customers for the one-year period beginning November 1, 1990:

EAST TENNESSEE NATURAL GAS COMPANY CONTRACT DEMAND INCREASES

[Mcf 14.73 psia]

Customer	Rate schedule	Current CD	Proposed interim CD
Resale Customers:			
Zone 1—			
City of Athens	G-1	5100	5500
City of Cookeville	G-1	5500	6500
Elk River Public Ut. Dist.	CR-1	12500	14000
City of Jamestown	SG-1	1900	2800
City of Knoxville	G-1	40000	48000
City of Lewisburg	G-1	4880	4800
City of Livingston	SG-1	1961	2281
City of Loudon	G-1	4400	8300
Town of Madisonville	SG-1	1150	1350
Middle Tennessee Ut. Dist.	CR-1	24000	28000
Powell-Clinch Utility Dist.	G-1	5800	6200
City of Rockwood	SG-1	3052	3500
Zone 2—			
Jefferson-Cocke Co. Utility Dist. Jefferson City	SG-2	3200	3400
Natural Gas Utility District of Hawkins County	G-2	4175	4500
Direct Sales Customers:			
Zone 1—			
Olin Corporation	(firm)	0	150

Applicant states that it proposes to utilize supplies purchased from Tenngasco Corporation to be delivered at the existing interconnections of Applicant and Tennessee Gas Pipeline Company, in the amount of 10,000 Mcf per day and winter service volumes purchased from Chattanooga Gas Company in the amount of 13,080 Mcf per day. Applicant indicates that the Tenngasco and Chattanooga supplies are for one year commencing November 1, 1990.

Applicant states that due to the location of the supplies entering the East Tennessee system, no facilities would be required to render the proposed contract demand increases.

Comment date: September 28, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Gas Pipe Line Corp.

[Docket No. CP90-2163-000]

September 11, 1990.

Take notice that on September 10, 1990, Texas Gas Pipe Line Corporation (TGPL), P.O. Box 4000, The Woodlands, Texas 77387-4000, filed in Docket No. CP90-2163-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its 5.4 mile pipeline, 750 horsepower compressor unit and related facilities, which constitutes all of the facilities owned and operated by TGPL and to abandon the service rendered to its two customers, Texas Eastern Transmission Corporation (TETCO) and Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL states that it is authorized to provide sales service TO TETCO under Rate Schedule G-1 and to Transco under Rate Schedule G-2 and a *de minimis* level of transportation service to TETCO under Rate Schedule T-1. It is stated that on May 10, 1990, TETCO reduced its takes (combined sales and transportation) to 866 Mcf per day. In addition, TETCO has advised TGPL that it would cease taking gas entirely on October 1, 1990. It is stated that TGPL's other customer, Transco, curtailed its purchases entirely on July 14, 1990 and then gave notice on August 21, 1990, of its intention to terminate its service agreement altogether. TGPL states that consequently it is now providing service at an intolerably low throughput level and, effective October 1, 1990, will have no throughout on its system at all. TGPL states that it has sought to renegotiate service agreements with its customers, but it has been to no avail, thus it must now seek abandonment of its jurisdictional operations. TGPL states that it seeks permission to abandon and sell to Winnie Pipeline Company, an

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affiliated company its facilities at the depreciated book value.

Comment date: October 2, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. Questar Pipeline Co. et al.

[Docket No. CP90-2145-000 et al.]

September 11, 1990.

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the Shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: October 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day average annual [1]	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CO90-2145-000 (9-5-90)	Questar Pipeline Co., 79 South State Street, Salt Lake City, UT 84111.	Coastal Gas Marketing Co.	5,000 3,000 225,000	WY, CO, UT	UT	7-12-90, IT-2	CP86-550-000, ST90-4111-000.
CP90-2146-000 (9-6-90)	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Stellar Gas Company.	1,000,000dth 1,000,000dth 365,000,000dth	TX, LA, Off TX, Off LA, MA, MS, AL, NJ, TN, WV, PA, OH, NY, CT, KY.	TX, LA, MA, NJ, MS, AL, WV, RI, PA, CT, TN, OH, KY, NY.	7-23-90, Int.	CP87-115-000, ST90-4475-000.
CP90-2148-000 (9-6-90)	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Stellar Gas Company.	10,000,000dth 10,000,000dth 3,650,000,000dth	Off LA, Off TX, LA, TX, MS, AL.	LA, MS, KY, WV, OH, PA, NY, MA, NJ, TX, TN, AL, CT.	7-23-90, Int.	CP87-115-000, ST90-4474-000.
CP90-2149-000 (9-6-90)	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Stellar Gas Company.	60,000dth 60,000dth 21,900,000dth	Off LA, Off TX, LA, TX, MS, AL.	MS, AL, TN, WV, NY, OH, KY, TX, LA, MA, PA.	7-23-90, Int.	CP87-115-000, ST90-4473-000.
CP90-2150-000 (9-6-90)	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Stellar Gas Company.	1,000,000dth 1,000,000dth 365,000,000dth	Off TX, Off LA, TX, LA, MS, AL, NJ, OH, KY, TN.	TX, LA, MA, NY, NJ, MS, PA, WV, AL, RI, NH, CT, TN, OH, KY, AR.	7-24-90, Int.	CP87-115-000, ST90-4472-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Natural Gas Pipeline Co. of America

[Docket No. CP90-2134-000]

September 11, 1990.

Take notice that on September 5, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-2134-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to retain and operate existing delivery facilities located on Natural's Gulf Coast mainline in Piatt County, Illinois (University of Illinois delivery point) as a new delivery point for Illinois Power Company (Illinois Power), an existing firm sales customer of Natural, and for other jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations.

It is stated that the delivery facilities consist of two 6-inch taps located on Natural's 30-inch and 36-inch Gulf Coast lines in Piatt County, Illinois. It is further stated that Natural completed construction of the taps on January 19, 1990, at a total cost of $96,682. Natural states that the delivery facilities were originally constructed for and have been used solely for the transportation of natural gas pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 and subpart B of part 284 of the Commission's Regulations. Natural also states that based on typical operating pressures, the maximum daily delivery capacity of the facilities is approximately 40,000 Mcf per day.

It is stated that Natural is currently providing transportation services at the University of Illinois delivery point under Rate Schedules ITS and FTS pursuant to subpart B of part 284 of the Commission's Regulations. It is stated that Natural has received a request from Illinois Power for the delivery of sales gas under Natural's Rate Schedule DMQ-1 for Illinois Power at the University of Illinois delivery point. Natural states that this service would be accomplished without increasing the total certificated daily contract quantity of 90,000 Mcf per day under the service agreement between Natural and Illinois Power dated December 15, 1989. It is further stated that Natural and Illinois Power propose to shift delivery of 10,000 Mcf per day from the existing Deland, Illinois delivery point to the University of Illinois delivery point. Natural states that it has sufficient capcacity to provide the requested level of firm sales service for Illinois at the University of Illinois delivery point without detriment or disadvantage to Natural's peak day and annual delivery capability.

[1] These prior notice requests are not consolidated.

Comment date: October 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Co. et al.

[Docket No. CP90-2138-000 et al.]

September 11, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: October 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day average, annual	Points of		Start up date, rate schedule	Related dockets [1]
				Receipt	Delivery		
CP90-2138-000 (9-5-90)	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Chevron U.S.A., Inc..	30,000Mcf 30,000Mcf 10,950,000Mcf	IL, LA, TN, TX, Off. LA, Off. TX.	Off. LA	7-1-90, PT	CP86-586-000, ST90-4303-000.
CP90-2139-000 (9-5-90)	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-16432.	Bethlehem Steel Corp.	2,199Mcf 2,199Mcf 802,635Mcf	IL, LA, TN, TX, Off. LA, Off. TX.	IL	7-1-90, PT	CP86-586-000, ST90-4302-000.
CP90-2140-000 (9-5-90)	Williams Natural Gas Company, P.O. Box 3288, Tulsa, Oklahoma 74101.	Ladd Gas Marketing, Inc. and Powersmith Cogeneration Project Limited Partnership.	27,400dth 27,400dth 3,299,000dth	KS, OK, WY	OK	8-16-90, ITS	CP86-631-000, ST90-4452-000.
CP90-2141-000 (9-5-90)	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, TX 77252.	Cimarron Gas Transmission, Inc.	20,400dth 20,400dth 7,446,000dth	LA, MS, AL	AL, MS, MA, TN	8-1-90, IT	CP87-115-000, ST90-4374-000.
CP90-2142-000 (9-5-90)	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, TX 77252.	Victoria Gas Corporation.	116,000dth 110,000dth 40,150,000dth	Off. TX, Off. LA, LA, TX, NY.	LA, MA, AL, PA, CT, TN, MS, WV, TX, KY.	8-1-90, IT	CP87-115-000, ST90-4470-000.

[1] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Natural Gas Pipeline Co. of America; Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-2156-000, CP90-2157-000]

September 11, 1990.

Take notice that Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, and Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-582-000 and Docket No. CP86-435-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached.

Comment date: October 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

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Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP90-2156-000 (9-7-90)	Louis Dreyfus Energy Corporation (marketer).	100,000 40,000 14,600,000	Various	Various	1-5-90, [1] ITS, Interruptible.	ST90-4626-000, 7-1-90.
CP90-2157-000 (9-7-90)	PSI, Inc. (marketer)	20,557 15,493 7,539,805	Offshore Texas	Iowa	7-1-90, IT-1, Interruptible.	ST90-4106-000, 7-1-90.

[1] As amended March 20, 1990

7. Paiute Pipeline Co.

[Docket No. CP90-2130-000]

September 11, 1990.

Take notice that on September 5, 1990, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP90-2130-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct, install and operate a new sales tap and abandon two minor sales taps for providing the sale for resale and delivery of natural gas to Southwest Gas Corporation—Northern Nevada (Southwest), a local distribution company, under Paiute's blanket certificate issued in Docket No. CP84-739-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Paiute proposes to construct and operate a new city gate, referred to as the Stagecoach City Gate, and to abandon two minor sales taps, referred to as the Stagecoach Road and Max Calico Residence taps, located near the intersection of Paiute's Yerington and Carson laterals in Lyon County, Nevada. It is stated that the proposed new sales tap and the abandonment of the two existing minor sales taps would enable Paiute to efficiently provide additional quantities of natural gas to Southwest.

Paiute states that proposed additional deliveries to Southwest would be within the current authorized sales entitlement for Southwest. Paiute states further that it would be reimbursed by Southwest for all costs associated with the construction of the Stagecoach City Gate and the abandonment of the two minor sales taps.

Comment date: October 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Sabine Pipe Line Co.

[Docket No. CP90-1961-000]

September 12, 1990.

Take notice that the above referenced company (Applicant) filed in Docket No. CP90-1961-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule.

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket Number (date filed)	Applicant	Shipper name	Peak Day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets [2]
CP90-1961-000 (8-31-90) [3]	Sabine Pipe Line Company, P.O. Box 4781, Houston, TX 77210-4781.	Union, Exploration Partners, Ltd..	5,000 5,000 5,475,000	Off. LA	Off. LA	4-20-89, IT-1	CP 86-522-000, ST89-4125-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] The request was tendered for filing on August 14, 1990; however, the fee required by Section 381.208 of the Commission's Rules was not paid until August 31, 1990. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

9. Trunkline Gas Co.

[Docket Nos. CP90-2171-000, CP90-2172-000]

September 12, 1990.

Take notice that on September 10, 1990, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 to the Natural Gas Act, all as more full set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

[4] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name	Peak day avg. annual [2]	Points of [3] Receipt	Points of [3] Delivery	Start up date, rate schedule, service type	Related docket contract date [1]
CP90-2171-000 (9-10-90)	Hadson Gas Systems, Inc	50,000 50,000 18,250,000	OLA	OLA	8-1-90, PT, Interruptible.	ST90-4362-000, 8-7-90.
CP90-2172-000 (9-10-90)	Alsey Refractories Company	365 365 140,525	IL, LA, OLA, OTX, TN, TX	IL	8-1-90, PT, Interruptible.	ST90-4377-000, 8-7-90.

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in Mcf.
[3] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

10. Midwestern Gas Transmission Co. et al.

[Docket No. CP90-2147-000 et al.]

September 12, 1990.

Take notice that Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, and Alabama-Tennessee Natural Gas Company, P.O. Box 918, Forence, Alabama 35631, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP90-174-000, Docket No. CP86-586-000, and Docket No. CP89-2201-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual Dth	Points of Receipt	Points of Delivery	Contract date rate schedule service type	Related Docket, start up date
CP90-2147-000 (9-6-90)	Nortech Energy Corporation (Marketer).	20,000 20,000 7,300,000	TX, LA, OLA, OTX	TN, IL, IN, KY	7-20-90, IT, Interruptible.	ST90-4566-000, 8-1-90.
CP90-2151-000 (9-6-90)	Panhandle Trading Company (Marketer).	125,000 125,000 45,625,000	TX, LA, IL TN, OLA, OTX	IL	11-20-90, PT, Interruptible.	ST90-4364-000, 8-1-90.
CP90-2153-000 9-7-90)	PSI, Inc. (Marketer).	20,000 20,000 7,300,000	Various	Various	5-15-90, IT, Interruptible.	ST90-4395-000, 8-15-90.

[1] Offshore Louisiana and offshore Texas are shownn as OLA and OTX

11. Williston Basin Interstate Pipeline Co.

Docket No. CP90-2178-000 [6] et al.]

September 13, 1990.

Take notice that the above reference companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certficates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provided the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

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Docket number	Applicant	Shipper name	Peak day[1] avg. annual	Points of Receipt	Points of Delivery	Start up date, rate schedule, service type	Related dockets[2]
CP90-2176-000	Williston Basin Interstate Pipeline Company, 304 East Rosser Avenue Bismarck, ND 58501.	Rainbow Gas Company.	65,100 9,243 24,126,500	WY	WY	8-1-90, IT-1 Interruptible.	CP89-1118-000, ST89-4613-000.
CP90-2178-000	Northern Natural Gas Company, Div. of Enron Corp. P.O. Box 1188 Houston, TX 77251.	Enron Gas Marketing.	20,000 15,000 7,300,000	Various	Various 7-3-90, IT-1, Interruptible.	CP86-435-000 ST90-3958-000.	
CP90-2185-000 U-TOS System Supply P.O. Box 1396 Houston, TX 77251	Wisconsin Southern Gas Company.		85,000 85,000 31,025,000	OA	LA	8-1-90, IT, Interruptible.	Order No. 509, ST90-4469-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

12. ANR Pipeline Co.

[Docket No. CP90-2166-000 et al.]

September 12, 1990.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 29, 1990, in accordance with Standard Paragraph F at the end of the notice.

[3] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day avg. annual/ 1/	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets / 2/
CP90-2165-000 9-10-90	ANR Pipeline company, 500 renaissance Center, Detroit, MI 48243.	Chevron U.S.A. Inc.	15,000dth 15,000dth 5,475,000dth	Off LA	Off LA, LA	7-12-90, ITS	CP88-532-000, ST90-4229-000.
CP90-2167-000 9-10-90	ANR Pipeline Company, 500 Renaissance Center, Detroit, MI 48243.	Kerr-McGee Corp.	60,000dth 60,000dth 21,900,000dth	LA, TX, Off LA, Off TX	Off LA	7-26-90, ITS	CP88-532-000, ST90-4231-000.
CP90-2168-000 9-10-90	ANR Pipeline company, 500 Renaissance Center, Detroit, MI 48243.	Consolidated Fuel Corp.	10,000dth 10,000dth 3,650,000dth	MI	MI	7-19-90, ITS	CP88-532-000, ST90-4232-000.
CP90-2169-000 9-10-90	ANR Pipeline Company 500 Renaissance Center Detroit, MI 48243.	Mobil Natural Gas, Inc.	100,000dth 100,000dth 36,500,000dth	LA, OK, KS, TX, WI, Off TX, Off LA.	MI	7-19-90, ITS	CP88-532-000, ST90-4230-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

13. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-2165-000]

September 13, 1990.

Take notice that on September 10, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-2165-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a new delivery point and appurtenant facilities as a jurisdictional sales facility to accommodate natural gas deliveries to Midwest Gas, a Division of Iowa Public Service Company (Midwest), a local distribution company, certain appurtenant facilities, under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to install and operate one new small volume measurement station tap for use as a jurisdictional sales delivery point to Midwest under Northern's Rate Schedules CD-1, SS-1, WPS-1 and PS-1 so that Midwest may serve Malco Manufacturing (Malco), a commercial end-user located in Wright County, Minnesota. Northern states that installation of the proposed facilities will be financed in accordance with Paragraph 2 of the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1.

Northern states that it estimates that the peak day and annual volumes that would be delivered to Midwest at the proposed delivery point for Malco would be 63 Mcf and 2,100 Mcf, respectively. Northern further states that the required volumes for Malco would be within the currently authorized level of firm entitlements for Midwest as authorized in Docket No. CP89-1209-000, on June 15, 1989. According to Northern, these volumes are also within the reduced levels of service, which reflect Midwest's third-year conversions of sales entitlements to transportation which is pending in Docket No. CP90-1595-000. Northern states that the proposed volumes for Malco will be served from the total entitlements currently assigned to the community of Annandale, Minnesota. Northern avers that there will not be any firm entitlements assigned to Malco.

Northern states that the total volumes of gas to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern further states that the proposal is not prohibited by its existing tariff and that it has sufficient capacity to accomplish the changes proposed without detriment or disadvantage to its other customers.

Northern states that to insure compliance with § 157.206(d) of the Commission's Regulations, it will contact the applicable State Historic Preservation Office as well as the U.S. Fish and Wildlife Service with regard to the specific details of the proposal contained herein.

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. U-T Offshore System

[Docket No. CP90-2159-000 et al.]

September 13, 1990.

Take notice that on September 7, 1990, U-T Offshore System (U-TOS), 2800 Post Oak Boulevard, P.O. Box 1396, Houston, Texas 77251, filed requests with the Commission in the above referenced dockets pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under U-TOS' blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the NGA, corresponding to the rates, terms, and conditions filed in Docket Nos. RP88-14-001 and RM88-15-000, all as more fully set forth in the requests which are open to public inspection.

U-TOS has provided applicable information for each transaction, including the shipper's identify; the peak day, average day, and annual volumes; the receipt and delivery points; the appropriate transportation rate schedule for the service; the related ST docket numbers and service initiation dates of the 120-day transactions under § 284.223(a) of the Regulations, as summarized in the attached appendix.

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual Mcf	Points of Receipt [1]	Points of Delivery	Contract date rate schedule service type	Related docket, startup date
CP90-2159-000 (9-7-90)	Northwestern Mutual Life Insurance Co. (Producer).	115,000 115,000 41,975,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4309-000, 7-27-90.
CP90-2160-000 (9-7-90)	Tejas Power Corporation (Marketer).	350,000 350,000 127,750,000	OLA	LA	7-19-90, IT, Interruptible.	ST90-4310-000, 7-27-90.
CP90-2161-000 (9-7-90)	American Central Gas Marketing Company (Marketer).	100,000 100,000 36,500,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4288-000, 7-17-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

15. Texas Eastern Transmission Corp.

[Docket No. CP90-2170-000]

September 13, 1990.

Take notice that on September 10, 1990, Texas Eastern Transmission Corporation (TETCO), P.O. Box 2521, Houston, Texas 77252-2521, filed in Docket No. CP90-2170-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new bidirectional point to its existing service agreement with Tejas Power Corporation (Tejas) under the authorization issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to § 157.212 of the Commission's Regulations, as amended, TETCO proposes to add a new delivery point, M&R Station No. 7122, to its service agreement covering service to Tejas under TETCO's Rate Schedule IT-1 of its FERC Gas Tariff, Fifth Revised Volume No. 1. TETCO states that it had entered into a service agreement with Tejas dated January 23, 1989, pursuant

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to section 311 of the Natural Gas Policy Act of 1978. However, TETCO avers that under the provisions of the Commission's Interim Rule in Docket No. RM89-13 issued August 13, 1990, such agreement no longer qualified under the stricter interpretation of the "on behalf of" standard and was converted to service pursuant to TETCO's blanket transportation certificate issued in Docket No. CP86-136-000. As a result, TETCO states that it entered into a restated service agreement with Tejas dates August 21, 1990 for Rate Schedule IT-1 service.

TETCO states that no new facilities are to be constructed and that M&R Station No. 7122 is located in Chambers County, Texas where TETCO's pipeline system interconnects with pipeline facilities owned by Tejas.

TETCO states that the service agreement establishes a Maximum Daily Transportation Quantity (MDTQ) for Rate Schedule IT-1 of 293,000 dekatherms (Dth). According to TETCO, there will be no increase in the total contract quantities, and that the natural gas quantities delivered to Tejas will be utilized as storage cushion gas by Tejas.

TETCO further states that the addition of M&R Station No. 7122 will have no effect on its peak day or annual deliveries. To the extent that deliveries are made at M&R Station No. 7122, TETCO states that deliveries may be reduced at the other points on a day-to-day operational basis. Therefore, TETCO submits that the addition of this new delivery point to the service agreement as proposed will not result in any change in the total contract quantities under the Rate Schedule IT-1 agreement. TETCO states that its existing tariff does not prohibit the addition of M&R Station No. 7122 and that the proposal herein will be accomplished without detriment or disadvantage to its other customers.

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. Colorado Interstate Gas. Co.

[Docket No. CP90-2191-000, Docket No. CP90-2192-000]

September 13, 1990.

Take notice that on September 12, 1990, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket Nos. CP90-2191-000 and CP90-2192-000 requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under CIG's blanket certificate issued in Docket No. CP88-588-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the relative rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by CIG and is sumarized in the attached appendix. It is explained that the gas would be received by CIG at designated points on its system in Wyoming and would be delivered for the shipper's accounts at designated points of interconnection.

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket No.	Shipper	Volumes—Mcf peak, avg., annual	Related docket [1]	Commencement date	Rate schedule
CP90-2191-000	Phillips Pipe Line Company	200 200 73,000	ST90-3741	7/1/90	TF-1.
CP90-2192-000	LL&E Gas Marketing, Inc.	75,000 20,000 7,300,000	ST90-4529	8/15/90	TI-1.

[1] CIG reported the 120-day transportation service in the referenced ST dockets.

7. Natural Gas Pipeline Co. of America

[Docket No. CP90-2188-000 et al.]

September 13, 1990.

Take notice that Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, and Florida Gas Transmission Company (Florida Gas), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificate issued to Natural in Docket No. CP86-582-000 and under the blanket certificate issued to Florida Gas by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket Nos. RP89-50, *et al.*; in both instances pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Points of Receipt	Points of Delivery	Contract date rate schedule service type	Related docket start up date
CP90-2188-000 (9-12-90)	Gas Energy Development Company (Marketer).	50,000 25,0000 8,125,000	Various	Various	3-21-89 ITS Interruptible.	ST90-4149-000, 7-7-90.
CP90-2189-000 (9-12-90)	Amoco Production Company (Producer).	250,000 187,000 91,250,000	Various [1]	TX, LA, MS, AL, FL	2-23-88 ITS-1 Interruptible.	ST90-4431-000, 8-1-90.
CP90-2190-000 (9-12-90)	Enron Gas Marketing Inc. (Marketer).	585,250 423,945 206,319,609	Various [1]	TX, LA, MS, AL, FL	2-23-88 ITS-1 Interruptible.	ST90-4443-000, 8-1-90.

[1] Receipt points are listed in the Appendix to Florida Gas' Rate Schedule PTS-1.

18. Tennessee Gas Pipeline Co.

[Docket No. CP90-2111-000]

September 13, 1990.

Take notice that on August 31, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-2111-000 an application pursuant to section 7[b] of the Natural Gas Act for permission and approval to abandon certain pipeline facilities located in Vermilion Parish, Louisiana, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to abandon approximately 8 miles of pipeline which was originally installed to receive gas into Tennessee's system from various producers. It is stated that Tennessee has not received gas from these producers for several years prior to 1989 and that all gas purchase agreements with these producers had been terminated. It is asserted that Tennessee has determined that the repairs needed to restore the facilities to operating conditions would cost an estimated $250,000 and could not be justified. Tennessee proposes to abandon the facilities by selling them to Reese Energy Corporation (Reese), a producer of natural gas, which would operate them as gathering facilities. It is asserted that any repairs needed would be made at Reese's expense. It is explained that any gas which might become available in the future from the producers attached to the subject facilities would be received into Tennessee's system at the point where the facilities interconnect with Tennessee's system, with the shippers being responsible for transportation to that point.

Comment date: October 4, 1990, in accordance with Standard Paragraph F at the end of this notice.

19. ANR Pipeline Co.

[Docket No. CP90-2152-000]

September 13, 1990.

Take notice that on September 6, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-2152-000 an application pursuant to section 7(b) of the natural Gas Act for permission and approval to abandon a transportation service which ANR was providing for Southern Natural Gas Company (Southern), all as more fully detailed in the application which is on file with the Commission and open to public inspection.

ANR proposes to abandon the service in which the Commission authorized ANR in an order issued December 10, 1984, in Docket No. CP84-658-000, to transport up to 4,000 Mcf of natural gas per day for Southern from Tensas Parish, Louisiana, to St. Mary Parish, Louisiana, amended July 22, 1986, to provide for the transportation of an additional 2,750 Mcf per day. It is stated that Southern advised ANR in a letter dated may 25, 1990, that is wished to terminate the transportation agreement, on file with the Commission as Rate Schedule X-146, effective January 12, 1991. It is asserted that the proposed abandonment would not involve any abandonment of facilities. It is further asserted that there would be no adverse impact on Southern's customers, because ANR would be the only customer affected.

Comment date: October 4, 1990, in accordance with Standard Paragraph F at the end of this notice.

20. United Gas Pipe Line Co.

Docket Nos. CP90-2180-000 [10]

September 14, 1990.

Take notice that on September 11, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the contract number, the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under 284.223 of the Commission's Regulations has been provided by the United and is included in the attached appendix.

It is stated that United would provide the proposed service for each shipper under an executed transportation agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

[10] These prior notice requests are not consolidated.

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Docket No. (Contract No.)	Applicant	Shipper name	Peak day avg. annual [1]	Points of Receipt	Points of Delivery	Start Up Date Rate Schedule Service Type	Related Dockets [2]
CP90-2180-000 (2669)	United Gas Pipe Line Company.	Polaris Pipeline Company.	51,500 51,500 18,797,500	TX	LA	7-13-90 ITS Interruptible.	ST90-4411-000.
CP90-2181-000 (1812)	United Gas Pipe Line Company.	Texaco, Inc.	51,500 51,500 18,797,500	TX	TX	8-6-90 ITS Interruptible.	ST90-4388-000.
CP90-2182-000 (4363)	United Gas Pipe Line Company.	Kerr-McGee Corporation.	154,500 154,500 56,392,500	LA, TX, MS, & AL	LA, FL, AL, & MS	7-24-90 ITS Interruptible.	ST90-4389-000.
CP90-2183-000 (4363)	United Gas Pipe Line Company.	Kerr-McGee Corporation.	154,500 154,500 56,392,500	LA, TX, MS, & LA	LA, AL, MS, & FL	7-6-90 ITS Interruptible.	ST90-3990-000.
CP90-2184-000 (1912)	United Gas Pipe Line Company.	Polaris Pipeline Company.	25,750 25,750 9,396,750	TX & LA	TX	7-13-90 ITS Interruptible.	ST90-4412-000.
CP90-2185-000 (1812)	United Gas Pipe Line Company.	Texaco, Inc.	51,500 51,500 18,797,500	TX & LA	TX	8-6-90 ITS Interruptible.	ST90-4338-000.

[1] Quantities are shown in MMBtu.
[2] The ST docket represents that a 120-day transportation service was reported in it.

21. Columbia Gas Transmission Corp.

[Docket No. CP90-678-001]

September 14, 1990.

Take notice that on September 6, 1990,[1] Columbia Gas Transmission Corporation (Columbia Gas), Post Office Box 1273, Charleston, West Virginia 25325, filed a petition in Docket No. CP90-678-001 to amend its pending application in Docket No. CP90-678-000 to reflect the rearrangement of deliveries on its system so that it could implement a firm sales service to Piedmont Natural Gas Company (Piedmont), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Columbia Gas states in its original application that for Columbia Gas to commence service to Piedmont it would be necessary for Commonwealth Pipeline Corporation (Commonwealth) to construct approximately 11.6 miles of 24-inch pipeline in Virginia and install one 650 horsepower compressor unit at the new Boswell Compressor Station. It is indicated that on August 2, 1990, Columbia Gas advised the Commission staff that Commonwealth had encountered difficulties with the precise location of the Boswell Compressor Station which would delay construction of the station past November 1, 1990. Columbia Gas further states that it would still have the ability to provide the service to Piedmont effective November 1, 1990, by rearranging the deliveries of natural gas to Transcontinental Gas Pipe Line Corporation (Transco) for Piedmont's account without the installation of Commonwealth's proposed Boswell Compressor Station, on a temporary basis. Columbia now proposes that the 30,000 dt equivalent of natural gas per day of temporary service for the 1991 contract year would be provided directly to Piedmont by Transco. Columbia Gas proposes that to supply the volumes it would back off deliveries from Transco at the following receipt points:

10,000 Dt/day—Downingtown, Chester County, Pennsylvania
10,000 Dt/day—Dranesville-Rockville, Montgomery County, Maryland
10,000 Dt/day—Emporia, Greensville County, Virginia

Comment date: October 5, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

22. Natural Gas Pipeline Co. of America

[Docket No. CP90-2162-000]

September 14, 1990.

Take notice that on September 7, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-2162-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Acacia Gas Corporation (Acacia), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP88-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport, on a interruptible basis, up to 50,000 MMBtu equivalent of natural gas on a peak day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 25,000 MMBtu equivalent on an average day and 9,125,000 on an annual basis for Acacia. It is stated that Natural would receive the gas at existing interconnections in Arkansas, Colorado, Iowa, Illinois, Kansas, Louisiana, Texas, offshore Louisiana, offshore Texas, Missouri, Nebraska, New Mexico, and Oklahoma, and would deliver equivalent volumes at points on Natural's system in Kansas, Oklahoma, Louisiana, Texas, offshore Louisiana, offshore Texas, Illinois, Missouri, New Mexico, Iowa, Colorado, Arkansas and Nebraska. It is asserted that the transportation would be affected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced July 1, 1990, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-4625.

Comment date: October 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Texas Gas Transmission Corporation

[Docket No. CP90-688-001]

September 14, 1990.

Take notice that on September 4, 1990, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP90-688-001 an amendment to its pending application, filed February 2, 1990, in Docket No. CP90-688-001 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct facilities and to implement a firm transportation service on behalf of Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Initially, applicant requested authorization in Docket No. CP90-688-001 [12] to transport on a firm basis 283,625 MMBtu per day of natural gas on behalf of Transco from points of receipt on its system in Texas, Louisiana, and Arkansas, for delivery to CNG Transmission Corporation (CNG) at an existing interconnection at Lebanon, Ohio. Applicant further asserted that such natural gas will be received by CNG for further transportation and delivery to Transco at an existing interconnection between Transco and CNG in Clinton County, Pennsylvania. Applicant explained that Transco would then deliever such gas to various downstream markets located in the Northeastern United States. As consideration for providing firm transportation service to Transco, Applicant proposed to assess rates which would be determined in accordance with section 4 of Applicant's Rate Schedule FT contained in Applicant's FERC Gas Tariff, Original Volume No. 2-A. Applicant proposed that the term of firm transportation service on behalf of Transco would be fifteen years and year to year thereafter. In order to provide the proposed firm transportation service for Transco, Applicant requested in Docket No. CP90-688-000 authorization to construct and operate transmission facilities which consisted of:

(1) 24.49 miles of 36-inch pipeline looping beginning at Applicant's Hardinsburg Compressor Station and extending through Breckinridge, Hancock, Ohio, Daviess Counties, Kentucky;

(2) 13.07 miles of 36-inch pipeline looping beginning Applicant's existing 36-inch No. 1 Line and extending southward into Jefferson Couny, Kentucky;

(3) 25.66 miles of 36-inch pipeline looping beginning at Applicant's existing 36-inch No. 1 Line and extending northward through Jefferson, Oldham and Trimble Counties, Kentucky;

(4) 9.47 miles of 36-inch pipeline looping beginning at Applicant's Dillsboro Compressor Station and extending northward, all in Dearborn County, Indiana;

(5) 15.75 miles of 36-inch pipeline looping at the south end of Applicant's existing 36-inch No. 1 Line (located in Ohio) and extending southward through Warren and Butler Counties, Ohio; and

(6) the addition of a 12-inch orifice meter run at the existing CNG Transmission Corperation natural gas sales meter station at Lebanon, Ohio.

Applicant estimated that the cost to construct the above facilities to be $111,743,720.

In Docket No. CP90-688-001, Applicant requests authorization to phase the proposed transportation service on behalf of Transco and the construction of the above facilities. Furthermore, Applicant proposes to construct certain additional facilities in the supply area of its system in order to receive the volumes of natural gas proposed to be transported on behalf of Transco. Applicant proposes to transport for Transco, beginning November 1, 1991, the equivalent volumes necessary to redeliver 176,497 MMBtu per day of natural gas to CNG at Lebanon, Ohio. Beginning on November 1, 1992, Applicant proposes to increase this firm transportation service by 87,128 MMBtu per day, for a total delivered volume of 283,625 MMBtu per day. In order to effectuate this phasing of the proposed firm transportation service, Applicant proposed to phase the construction of the following facilities:

1991 Construction (First Year)

(1) 16.36 miles of 36-inch pipeline loop on Applicant's 26-inch main lines in Hancock and Breckinridge Counties, Kentucky;

(2) 6.86 miles of 36-inch pipeline loop on Applicant's 26-inch main lines in Jefferson County, Kentucky;

(3) 13.70 miles of 36-inch pipeline loop on Applicant's 26-inch main lines in Jefferson and Oldham Counties, Kentucky;

(4) 2.67 miles of 36-inch pipeline loop on Applicant's 26-inch main lines, in Dearborn County, Indiana;

(5) 15.75 miles of 36-inch pipeline loop on Applicant's 26-inch main lines, in Warren and Butler Counties, Ohio;

(6) One additional 12-inch orifice run at the CNG sales meter station located at the terminus of Applicant's system near Lebanon, Warren County, Ohio.

1992 Construction (Second Year)

(1) 8.13 miles of 36-inch pipeline on Applicant's 26-inch main lines in Daviess, Ohio and Hancock Counties, Kentucky;

(2) 4.29 miles of 36-inch pipeline loop on Applicant's 26-inch main lines in Jefferson County, Kentucky;

(3) 6.96 miles of 36-inch pipeline loop on Applicant's 26-inch main lines in Oldham and Trimble Counties, Kentucky;

(4) 7.66 miles of 36-inch pipeline loop on Applicant's 26-inch main lines in Dearborn County, Indiana.

Applicant also requests authorization to construct the following facilities on its Sharon-Carthage System in order to receive an incremental 100,000 MMBtu per day which Transco will cause to be delivered to Applicant beginning November of 1991:

(1) 21.1 miles of 24-inch pipeline loop on Applicant's Sharon-Carthage system in Claiborne and Lincoln Parishes, Louisiana;

(2) One 2,650 horsepower reciprocating compressor unit for Applicant's Sharon Compressor Station in Claiborne Parish, Louisiana; and

(3) One 2,000 horsepower reciprocation engine/compressor unit on Applicant's Sharon-Carthage System in Bossier Parish, Louisiana (Haughton Compressor Station).

Applicant estimates the total direct cost of construction to be $140,067,000. The First Year construction costs (including $31,814,000 for the proposed supply area facilities) is estimated to be $106,709,000. The estimated cost of construction for the Second Year facilities is estimated to be $37,356,000.

Applicant asserts that the need for phasing of the proposed project is necessary to accommodate the availability and lead times required for compression equipment to be purchased by CNG and the financial risks associated with the commitments for material and equipment by CNG prior to Commission approval of this project, as well as the changes in the timing and makeup of the markets to be served by CNG and Transco.[3] Applicant asserts that the additional 100,000 Mcf per day of capacity on its Sharon-Carthage system is needed to provide receipt point since current capacity is already committed for firm services to Applicant's existing customers. Applicant contemplates that Transco's remaining 79,497 MMBtu of firm deliveries in the first year will be received at existing points of receipt on Applicant's system in South Louisiana, such as the "Henry Hub", "Mamou" and "Richie". In the second year, applicant estimates that it will continue to receive

[1] The petition was tendered for filing on August 24, 1990; however, the fee required by § 381.208 of the Commission's Rules was not paid until September 6, 1990. § 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[12] Companion applications were filed by ANR Pipeline Company (ANR) in Docket No. CP90-687-001, CNG in Docket No. CP90-686-001, and Transco in Docket No. CP90-687-000.

[3] It is noted that CNG and Transco simultaneously filed amendments to their respective Docket Nos. CP90-686-000 and CP90-687-000.

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100,000 MMBtu of natural gas on its Sharon-Carthage system as well as approximately 100,000 MMBtu of natural gas at the "Henry Hub" and the remaining volumes at the other existing points named above.

Comment date: October 5, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

24. Southern Natural Gas Co.

[Docket No. CP90-2155-000]

September 14, 1990.

Take notice that on September 7, 1990, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-2155-000, an application pursuant to section 7(c) of the Commission's Regulations, to construct, install, and operate certain pipeline facilities in federal offshore waters, all as more fully set forth in the request, which is on file with the Commission.

Southern requests authority to construct a pipeline, appurtenant measurement and regulation facilities, compression facilities and interconnections in order to provide access on its system to gas supplies to be produced in and around Mississippi Canyon Area Blocks 354 and 397 in federal offshore water. Southern states that it has contract with Exxon Corporation (Exxon) to purchase and transport certain gas supplies in and around Mississippi Canyon Area Blocks 353, 354, 355, 397, 398, 399 and Ewing Bank Area Block 438.

Southern contends that the facilities would include approximately 59.3 miles of 20-inch pipeline extending from a production platform to be constructed by Exxon in Mississippi Canyon Area Block 397 to an interconnection with Southern's existing 22-inch Venice—Lake Washington pipeline at or near Mile Post 0.0 in Plaquemines Parish, Louisiana. In addition, Southern plans to install a receiving station and 2,700 horsepower of compression facilities on the proposed Exxon Mississippi Canyon Area Block 397 platform and a regulating station at the onshore interconnection between the proposed pipeline and Southern's existing facilities. Southern further indicates that a new subsea interconnect would be installed on Southern's existing 18-inch West Delta Block 105 Line in West Delta Area Block 75 in order to alleviate present and future capacity constraints in Southern's West Delta Area pipeline system.

Southern states that the estimated cost of the pipeline, measurement facilities, compression facilities and the interconnections is $47,583,080. Southern further states that although the exact plan of financing has not been determined, it expects that the cost of constructing and installing the proposed facilities would be financed initially by short-term financing or cash from current operations, or both, and ultimately from permanent financing.

Southern states that the proposed facilities would be used to obtain access to gas supplies located in and around Mississippi Canyon Area Blocks 354 and 397. Such access would benefit Southern's customers by making additional gas supplies available and it would impact Exxon's development in this area by providing a means to interconnect its gas reserves with an interstate pipeline system.

Comment date: October 5, 1990, in accordance with Standard Paragraph F at the end of this notice.

25. Valero Interstate Transmission Co.

[Docket No. CP81-168-014]

September 14, 1990.

Take notice that on September 12, 1990, Valero Interstate Transmission Company (Vitco), 530 McCullough Avenue, San Antonio, Texas 78215, filed a petition in Docket No. CP81-168-014 to further amend its current authorization issued October 22, 1981, in Docket No. CP81-168-000, as amended, to reflect modifications to its sales arrangement with El Paso Natural Gas Company (El Paso), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Vitco requests authority to modify its sales arrangement with El Paso which would (1) authorize an increase in the maximum daily swing quantity from a range of 18,250 Mcf to 31,250 Mcf to a range of 5,000 million Btu to 50,000 million Btu, (2) delete the existing delivery points and add one new delivery point located at the Falfurrias Measuring Station, Jim Wells County, Texas, and (3) substitute a replacement contract providing for the sales of gas from spot market purchases rather than from specifically dedicated producer contracts and supplies. Vitco requests that the Commission issue a singe order or contemporaneous orders addressing both this application as well as the customer settlement of recovery of take-or-pay costs as proposed in Docket No. RP90-187-000.

Comment date: October 5, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 90-22499 Filed 9-21-90; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 10546-001—Arkansas]

Millwood Hydro Associates; Surrender of Preliminary Permit

September 17, 1990.

Take notice that Millwood Hydro Associates, permittee for the Millwood Dam Project, located on the Little River in Hempstead County, Arkansas, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 9, 1988, and would have expired on August 31, 1991. The permittee has determined that the construction and operation of this project is not feasible at this time.

The permittee filed the request on August 23, 1990, and the preliminary permit for Project No. 10546 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,
Secretary.

[FR Doc. 90-22405 Filed 9-21-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM90-13-23-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 13, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on September 11, 1990, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, *et al.*, and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed six (6) copies of the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 210
First Revised Sheet No. 211
First Revised Sheet No. 212

The tariff sheets are proposed to become effective on August 1, 1990.

The purpose of the filing is to reflect changes in tariff language to permit CNG to bill to Corning Natural Gas Corporation take-or-pay costs that are billed to CNG (Corning) by Tennessee Gas Pipeline Company.

CNG states that a copy of this filing was served upon CNG's customers as well as interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990).) All such protests should be filed on or before September 20, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-22491 Filed 9-21-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-149-001]

NATGAS U.S. Inc.; Compliance Filing

September 13, 1990.

Take notice that on September 7, 1990, NATGAS U.S. Inc. ("NATGAS"), 500, 707 Eighth Avenue SW., Calgary, Alberta, Canada T2P 3V3, tendered for filing in Docket No. RP90-149-001 Second Substitute First Revised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 2.

NATGAS states that, in compliance with the Commission's August 17, 1990 letter order in this proceeding, it is submitting this substitute tariff sheet revising its demand charges to reflect changes in the charges of Northern Border Pipeline Company resulting from the Commission's August 15, 1990 order in Docket No. RP90-145-000.

NATGAS states that, along with the substitute tariff sheet, it has submitted schedules and work papers which explain the derivation of its demand charges. It further states that a copy of this filing, including the tariff sheet and the attached schedules and work papers, has been served on all parties to this proceeding.

In accordance with the August 17, 1990 letter order, NATGAS requests that the substitute tariff sheet be made effective on July 1, 1990, and that the Commission provide any waivers necessary to permit effectuation of the tariff sheet on that date.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before September 20, 1990. Protests will be considered by the Commission on determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-22492 Filed 9-21-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-186-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

September 13, 1990.

Take notice that on Septemer 11, 1990 Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets, to be part of its FERC Gas Tariff.

First Revised Volume No. 1

Fourth Revised Sheet No. 11
Sixth Revised Sheet No. 32
Sixth Revised Sheet No. 33
Fifth Revised Sheet No. 34
Fourth Revised Sheet No. 36
Fifth Revised Sheet No. 41
Sixth Revised Sheet No. 101
Second Revised Sheet No. 102
Third Revised Sheet No. 104
Fourth Revised Sheet No. 105
Second Revised Sheet No. 108
Third Revised Sheet No. 120
Eighth Revised Sheet No. 123
Eleventh Revised Sheet No. 125
Fourteenth Revised Sheet No. 126
Eleventh Revised Sheet No. 126-A

Original Volume No. 1-A

Fourth Revised Sheet No. 318
Fourth Revised Sheet No. 401
First Revised Sheet No. 402
Third Revised Sheet No. 404
Second Revised Sheet No. 406
Second Revised Sheet No. 407
Second Revised Sheet No. 408
First Revised Sheet No. 412
Fourth Revised Sheet No. 414-A
Third Revised Sheet No. 417
First Revised Sheet No. 424
First Revised Sheet No. 425
First Revised Sheet No. 431

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The above sheets were revised to (1) Reflect more accurately the actual operating conditions of the pipeline, (2) comply more fully with Order No. 497-A, and (3) make some minor corrections to facilitate Northwest's anticipated electronic filing to comply with Order No. 493.

Northwest has requested an effective date of October 11, 1990 for the tendered sheets.

Northwest states that a copy of this filing is being served on all customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 20, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 90-22683 Filed 9-21-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GT90-44-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 13, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 205
Third Revised Sheet No. 330
Fourth Revised Sheet No. 500
Fourth Revised Sheet No. 501
2nd Revised Third Revised Sheet No. 509
Fourth Revised Sheet No. 552
Fourth Revised Sheet No. 553

Texas Eastern states that the Commission issued an interim rule on August 2, 1990 in Docket No. RM90-13-000 which revised the interpretation of the "on behalf of" standard in section 311 of the Natural Gas Policy Act of 1978 for transportation services by interstate pipelines under § 284.102 of the Commission's regulations (18 CFR 284.102). The revised definition requires that the "on behalf of" entity in such transactions (1) Have physical custody of and transport the natural gas at some point during the transaction, or (2) hold title to the natural gas at some point during the transaction for a purpose related to its status and functions as an intrastate pipeline or local distribution company, as applicable.

Texas Eastern states that in order to reflect the revised interpretation in Texas Eastern's Rate Schedules FT-1 and IT-1 and related request forms the tariff sheets listed above incorporate the Commission's revised standard into Texas Eastern's Rate Schedules FT-1 and IT-1 and related request forms effective August 2, 1990.

The proposed effective date of the tariff sheets listed above is August 2, 1990.

Texas Eastern states that copies of the filing were served on all current Rate Schedules FT-1 and IT-1 shippers, Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 20, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-22484 Filed 9-21-90; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of July 27 Through August 3, 1990

During the Week of July 27 through August 3, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice of the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 18, 1990.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 27 through August 3, 1990]

Date	Name and location of applicant	Case No.	Type of submission
7/30/90	Exxon Corporation/Victor C. Smith, Nashville, TN	RR307-10	Motion for Reconsideration. If granted: The Decision and Order issued on June 27, 1990 (Exxon Corporation/Victor C. Smith) would be modified regarding the firm's repayment of a duplicate Exxon refund.
7/30/90	Vickers Energy Corporation/OK	RM1-216	Request for Modification/Rescission of Second Stage Refund Proceedings and Request for Second Stage Refund. If granted: The May 7, 1985, December 30, 1988, and October 13, 1989 Decisions and Orders (Case Nos. RC1-530; RQ21-163, RQ6-162, RQ5-161, RQ13-431 and RQ251-489) would be modified regarding Oklahoma's application for refund submitted by the Vickers, AMOCO I, Belridge, Palo Pinto, OKC and AMOCO II second stage refund proceedings and Oklahoma's plan for disbursing refund monies from the Worldwide Energy second stage refund proceeding would be approved.
	Standard Oil of Indiana (Amoco)/OK	RM21-217,	
	Belridge Oil Company/OK	RM5-218	
	Palo Pinto Oil and Gas/OK	RM5-219	
	OKC Corporation/OK	RM13-220	
	Standard Oil of Indiana (Amoco)/OK	RM251-223	
	Worldwide Energy Corporation/OK Oklahoma City, Oklahoma.	RQ81-553	

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 27 through August 3, 1990]

Date	Name and location of applicant	Case No.	Type of submission
8/2/90	Colonial Gas Company, Lowell, MA	LEE-0016	Exception to the Reporting Requirements. If granted: Colonial Gas Company would not be required to file Form EIA-857 with the Energy Information Administration.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
7/27/90 thru 8/3/90	Crude Oil Refund Applications Received	RF272-78047 thru RF272-78541.
7/27/90 thru 8/3/90	Texaco Oil Refund Applications Received	RF321-8345 thru RF321-8613.
7/27/90 thru 8/3/90	Gulf Oil Refund Applications Received	RF300-11236 thru RF300-11256.
7/27/90 thru 8/3/90	Shell Oil Refund Applications Received	RF315-10017 thru RF315-10032.
7/31/90	Wally's Arco	RF304-11951.
7/31/90	Jamie Towers	RA272-26.
8/2/90	Paragon Oil Company	RF325-1.
8/3/90	Lee Dyeing Co. of No. Carolina	RA272-27.
8/3/90	Tren-Star, Inc	RA272-28.

[FR Doc. 90-22562 Filed 9-21-90; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY (FRL-3834-1)

Open Meetings on October 23 and 24, 1990 of the National Advisory Council for Environmental Policy and Technology

Under Public Law 92463 (the Federal Advisory Committee Act), EPA gives notice of the fall meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT) on October 24, 1990, from 8:30 a.m. to 3:30 p.m. in the Madison Hotel, 15th and M Streets NW, Washington, DC. EPA also gives notice of the meetings on October 23, 1990, of the five standing committees of NACEPT at the Madison Hotel, and one affiliate committee at the Hotel Washington, 515 15th Street, NW., Washington, DC 20004.

The agenda for the October 24th NACEPT full council meeting will include the following:

(1) Reports from NACEPT's committees and discussion by the NACEPT membership of these reports. The committees reporting are:

—Education and Training Committee
—State and Local Programs Committee
—International Environment Committee
—Technology Innovation and Economics Committee
—Chemical Accident Prevention Committee
—Environmental Financial Advisory Board Committee (affiliate);

(2) The Council will discuss two key contemporary environmental issues, the subject of which will be determined at a later date;

(3) A review and discussion of NACEPT's Bylaws and other new business.

The meeting locations of the five standing NACEPT committees will be listed in the lobby of the Madison Hotel, in Washington, DC, on October 23rd. The meeting location of the Environmental Financial Advisory Board will be posted in the lobby of the Hotel Washington on the same date. The meetings will begin at 8:30 a.m. and conclude at 5 p.m.

Members of the public wishing to make comments to NACEPT or any of its committees are invited to submit them in writing to Mr. R. Thomas Parker, Designated Federal Official for NACEPT, By October 18, 1990. Please send comments to Mr. R. Thomas Parker, U.S. Environmental Protection Agency, 401 M Street., SW., Washington, DC 20460.

The meetings will be open to the public. Additional information on the meeting may be obtained from Mr. R. Thomas Parker or Mr. Robert L. Hardaker at the above address or by calling at (202) 475-9741.

Dated: September 17, 1990.

Robert Hardaker,
Acting Designated Federal Official, National Advisory Council for Environmental Policy and Technology.

[FR Doc. 90-22553 Filed 9-21-90; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59895; FRL 3803-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 48066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 23 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 90-260, 90-261, August 26, 1990.
Y 90-262, August 28, 1990.
Y 90-263, 90-264, September 2, 1990.
Y 90-265, 90-266, September 3, 1990.
Y 90-267, 90-268, September 5, 1990.
Y 90-270, 90-271, 90-272, September 9, 1990.
Y 90-273, September 10, 1990.
Y 90-274, 90-275, September 11, 1990.
Y 90-276, 90-277, 90-278, 90-279, 90-280, September 17, 1990.
Y 90-282, September 19, 1990.
Y 90-283, September 24, 1990.
Y 90-284, September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-545, 401 M Street, SW., Washington,

VOL 55 ISS 185 SE 24 1990 UMI

DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 90-280

Manufacturer. Himent USA, Inc.
Chemical. (G) 1-Propene polymer with styrene.
Use/Production. (S) Injection molded articles; formed. Prod. range: 455,000-2,730,000 kg/yr.

Y 90-281

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 90-282

Manufacturer. Confidential.
Chemical. (G) Modified soya fatty acid isophthalate alkyd.
Use/Production. (S) Binder for general metal coatings. Prod. range: Confidential.

Y 90-283

Importer. Kuraray International Corporation.
Chemical. (S) Hydrogenated styrene isoprene/butadiene block copolymer.
Use/Import. (G) Injection goods of automotive and industrial impact; modifier of automotive adhesive and sealant goods. Import range: 1000,000-5,000,000 kg/yr.

Y 90-284

Importer. Ann-LanChem.
Chemical. (G) Hydroxy acrylic resin.
Use/Import. (S) Resin used to manufacture industrial coatings. Import range: Confidential.

Y 90-285

Manufacturer. Confidential.
Chemical. (S)
Use/Production. (G) Coating for open nondispersive use in original equipment manufacture. Prod. range: 300,000-600,000 kg/yr.

Y 90-286

Manufacturer. Confidential.
Chemical. (G).
Use/Production. (G) Coating for open nondispersive use in original equipment manufacture. Prod. range: 300,000-600,000 kg/yr.

Y 90-287

Manufacturer. Hickory Springs Manufacturing Company.
Chemical. (S) Ethanol, 2,2',2'-nitrilotris, polymer with 1,3-diisocyanatomethylbenzene and methyloxirane polymer with oxirane ether with 1,2,3-propanetriol (3:1).
Use/Production. (S) Polymer polyol for polyurethane foam. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Acute dermal toxocity: LD50 > 2 g/kg species (Rabbit). Inhalation toxicity: LC50 > 191 mg/l.

Y 90-288

Manufacturer. Hickory Springs Manufacturing Company.
Chemical. (S) Ethanol, 2,2'-iminobis, polymer with 1,3-diisocyanatomethylbenzene; methyloxirane polymer with oxirane ether with 1,2,3-propanetriol (3:1) and 2,2,2'-nitrilotrisethanol.
Use/Production. (S) Polymer polyol for production of flexible polyurethane foam. Prod. range: Confidential.

Y 90-270

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane resin.
Use/Production. (S) Wood varnishes. Prod. range: Confidential.

Y 90-271

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Alkyd copolymer resin.
Use/Production. (S) Metal coatings. Prod. range: Confidential.

Y 90-273

Manufacturer. Confidential.
Chemical. (G) Saturated polyester.
Use/Production. (G) Polymer for industrial (exclusively) finishing. Prod. range: 25,000-500,000 kg/yr.

Y 90-273

Manufacturer. Bostik Inc.
Chemical. (G) Polyester.
Use/Production. (S) Intermediate for solvent based adhesives. Prod. range: Confidential.

Y 90-274

Importer. Toyobo New York.
Chemical. (G) Aromatic/aliphatic copolymer with sodium sulfo isophthalic acid.
Use/Import. (S) Ribbon in binder. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

Y 90-275

Importer. Rembrandtin USA, Inc.
Chemical. (G) Water miscible acrylic copolymer.
Use/Import. (S) Additive for metal coating. Impost range: Confidential.

Y 90-276

Manufacturer. Confidential.
Chemical. (G) Saturated polyester.
Use/Production. (S) Component in paint. Prod. range: 235,000-1,400,000 kg/yr.

Y 90-277

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial coating. Prod. range: Confidential.

Y 90-278

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial coating. Prod. range: Confidential.

Y 90-279

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial coating. Prod. range: Confidential.

Y 90-280

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial coating. Prod. range: Confidential.

Y 90-282

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 90-283

Manufacturer. Mazer Chemicals.
Chemical. (G) Siloxanes and silicones, Me alkyl, Me aryl.
Use/Production. (S) Die cast lubricant; mold release for plastics. Prod. range: Confidential.

Y 90-284

Manufacturer. Confidential.
Chemical. (G) Long oil sunflower-safflower alkyd resin solution.
Use/Production. (S) Interior color-retentive architectural enamels. Prod. range: Confidential.

Dated: September 17, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-22555 Filed 9-21-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3833-5]

Draft "Citizen's Guide to Radon" Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that EPA's draft "Citizen's Guide to Radon" and accompanying Technical Support Document are available for public review and comment. EPA will address comments on the proposed recommendations and supporting analyses at the end of the comment period. The Agency plans to release a final "Citizen's Guide to Radon" and Technical Support Document this winter.

DATES: Comments must be received on or before October 24, 1990.

ADDRESSES: Copies of the draft "Citizen's Guide to Radon" and Technical Support Documents are available upon request from: Mike Walker, U.S. Environmental Protection Agency, Radon Division, Room 200, NE Mall (ANR-464), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mike Walker at the address given above; telephone 202/475-8607.

SUPPLEMENTARY INFORMATION: The "Citizen's Guide To Radon" articulates EPA's policy recommendations on radon testing and mitigation. An original Citizen's Guide was published in 1986, when naturally occurring radon problems were a fairly recent discovery. A great deal of information on radon has been collected since the original publication, and EPA believes that the public would benefit from revised guidance. The draft Citizen's Guide reflects the requirements established by Congress in the 1988 Indoor Radon Abatement Act. It also reflects the findings of radon risk communication studies, improved radon mitigation technologies, and updated radon health risk information, and provides options for preventing risk from radon. The draft Technical Support Document summarizes analyses of various action level and testing strategy options for public consideration.

Margo T. Oge,

Director, Radon Division.

[FR Doc. 90-22551 Filed 9-21-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3833-6]

Public Water Supply Supervision Program; Program Revision for the State of Oregon

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Oregon is revising its approved State Public Water Supply Supervision Primacy Program. Oregon has adopted (1) Drinking water regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690) and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted October 24, 1990, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by October 24, 1990, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective October 24, 1990.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Drinking Water Section, Oregon State Health Division, 1400 SW. 5th Avenue, Portland, Oregon 97201; and

Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Drinking Water Programs Branch, at the Seattle address given above; telephone (206) 442-1930.

Dated: September 13, 1990

Thomas P. Dunne,

Acting Regional Administrator.

[FR Doc. 90-22552 Filed 9-21-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 17, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0091.

Title: Monitoring Program for Impact of Federal-State Joint Board Decisions.

Form Number: FCC Form 498.

Action: Revision.

Respondents: State or local governments, businesses or other for-profit.

Estimated Annual Burden: 811 responses; 2.122 hours average burden per response; 1,722 hours total annual burden.

Needs and Uses: The Commission has a monitoring program which requires the periodic reporting by states participating in the lifeline program and local exchange carriers. The monitoring program is necessary for the Commission, the Joint Board, Congress, and the general public to assess the impact of the Joint Board decisions. Failure to implement this program will make it impossible to determine the impact of these

decisions and to assure that they do not produce unanticipated results contrary to the public interest.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 90-22579 Filed 9-21-90; 8:45 am]
BILLING CODE 6712-01-M

[DA 90-879]

Average Schedule Disbursements

AGENCY: Federal Communications Commission.

ACTION: Notice of order.

SUMMARY: On June 29, 1990, the Chief, Common Carrier Bureau released an order approving National Exchange Carrier Association, Inc. ("NECA") proposed revisions to the average schedules and addressing other issues that were raised by average schedule companies (*see* Supplementary Information below). This action was taken to facilitate disbursements to average schedule companies from the NECA administered interstate revenue pools in accordance with the requirements that are contained in § 69.606 of the Commission's Rules, 47 CFR 69.606.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson, Policy and Program Planning Division, Common Carrier Bureau, (202)-632-6363.

SUPPLEMENTARY INFORMATION: On June 29, 1990, the Chief, FCC Common Carrier Bureau, issued a Memorandum Opinion and Order (DA 90-879)[hereinafter, "Order"], approving National Exchange Carrier Association, Inc. ("NECA") proposed revisions to the average schedules that were published in the Federal Register on February 21, 1990, at paragraphs 2-4, 55 FR 6018-6019. In addition, the Order: (1) Required NECA to modify the plan for equal access reimbursement (Order at paras. 24-25); (2) addressed the Consolidated Telephone Company's Petition for Reconsideration (Order at paras. 1, 28-34, 44-54, 59); (3) directed NECA to provide direct reimbursement of the lease costs of centralized SS7 services (Order at para. 27); (4) provided, under specified circumstances, supplemental transition payments to certain average schedule companies pending determination of weather conversion to cost study status would be appropriate (Order at paras. 35-43); (5) authorized supplemental payments for National Utilities, Inc. (Order at paras. 55-27). The summary provided above summaries the Common Carrier Bureau's Memorandum Opinion and Order (DA 90-879), adopted June 28, 1990, and released June 29, 1990. The full text of the decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Federal Communications Commission.
Richard M. Firestone,
Chief, Common Carrier Bureau.

[FR Doc. 90-22524 Filed 9-21-90; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Report to Congressional Committees Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives regarding differences in capital and accounting standards among the Federal banking and thrift agencies.

SUMMARY: This report has been prepared by the Federal Reserve Board pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Section 1215 requires each Federal banking and thrift agency to report annually to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate; and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives regarding any differences between the capital standards used by such agency and capital standards used by other banking and thrift agencies. The report must also contain an explanation of the reasons for any discrepancy in such capital standards. Finally, the report must be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Manager (202/728p5883), Kelly S. Shaw, Senior Financial Analyst (202/452-3054), Charles H. Holm, Senior Financial Analyst, (202/452-3502), or Robert E. Motyka, Financial Analyst (202/452-3621), Division of Banking Supervision and Regulation, Board of Governors. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies.

Capital Standards

The three federal bank regulatory agencies [1] have, for a number of years, employed a common regulatory framework that establishes uniform minimum ratios of capital to total assets (leverage ratios) for commercial banking organizations. This framework requires that banking organizations maintain a level of primary capital (principally, permanent shareholders' equity, general loan loss reserves, and certain mandatory convertible securities) equal to at least 5.5 percent of total assets. Banking organizations have also been required to maintain a level of total capital (primary capital plus secondary capital components, such as subordinated debt) equal to at least 6.0 percent of total assets. It should be emphasized that these standards have been viewed by the banking agencies as minimum requirements, and that most commercial banking organizations have been expected to operate with capital positions above the minimum levels. In addition, the Federal Reserve has required banking organizations seeking to expand to maintain strong capital positions substantially above the minimum supervisory benchmarks.

More recently, the federal banking agencies have adopted a common risk-based capital framework based upon the international Capital Accord developed by the Basle Committee on Banking Supervision (Basle Accord) and endorsed by the central bank governors of the G-10 countries. This framework establishes minimum ratios of total and Tier 1 (core) capital to risk-weighted

[1] At the federal level, the Federal Reserve System has primary supervisory responsibility for state-chartered banks that are members of the Federal Reserve System. The Federal savings banks. National banks are supervised by the Office of the Comptroller of the Currency (OCC). The Office of Thrift Supervision (OTS) has primary responsibility for savings asociations.

assets. At the end of 1990, banking organizations will be expected to have total capital equal to at least 7.25 percent of risk-weighted assets. This requirement is to be fully phased-in by the end of 1992, when banking organizations will be required to maintain total capital equal to at least 8 percent of risk-weighted assets. One-half of the total capital requirement, or a minimum of 4 percent, must consist of Tier 1 capital (principally, common shareholders' equity and qualifying perpetual preferred stock). The other half, Tier 2, may include certain supplementary items, such as general loan loss reserves and subordinated debt.

As with the existing leverage ratios, the risk-based capital requirements are viewed by the banking agencies as minimum standards. In addition to identical ratios, the risk-based framework being implemented by the banking agencies includes a common definition of regulatory capital and a uniform system of risk weights and categories. While the minimum standards and risk weighting framework used by the banking agencies are the same, there are some technical differences in language and interpretation among the agencies that are discussed in Section One.

The banking agencies are also in the process of implementing new minimum capital to total assets, or leverage, ratios that will employ a definition of Tier 1 capital that is consistent with the risk-based capital definition. The Federal Reserve has recently adopted such a new leverage standard. This ratio starts with a minimum 3 percent Tier 1 base and, for all but the most highly-rated institutions that are free of any supervisory weaknesses, requires institutions to maintain an additional cushion of at least 100 to 200 basis points depending upon the institution's financial condition and risk profile. In addition, the OCC has proposed a 3 percent Tier 1 leverage ratio that it views as a minimum standard. The FDIC is also in the process of developing a revised leverage proposal. It is the understanding of the Federal Reserve staff that the FDIC is considering an approach that would build upon a 3 percent minimum Tier 1 ratio by requiring an appropriate additional cushion of capital, possibly in the range of 100 to 200 basis points. In all cases, these minimum Tier 1 leverage ratios would supplement the banking agencies' minimum risk-based capital requirement of 8 percent.

As required by FIRREA, the Office of Thrift Supervision (OTS) has adopted a 1.5 percent tangible and 3 percent core capital to total assets standard. OTS has also adopted risk-based capital standards for thrift institutions which, while generally parallel to those of the banking agencies, are different in some aspects.

The differences in the capital standard between the banking agencies and the OTS are set forth in Section One. The staffs of the banking agencies and the OTS meet regularly to identify and address differences and inconsistencies in their capital standards. The agencies are committed to continuing this process in an effort to resolve in an appropriate fashion any item that require further attention.

Accounting Standards

Over the years, the commercial banking agencies, under the auspices of the Federal Financial Institutions Examination Council, have developed uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the banking agencies are substantially consistent, aside from a few limited exceptions, with generally accepted accounting principles (GAAP) as they are applied by commerical banks. The uniform bank Call Report serves as the basis for calculating risk-based capital and leverage ratios, as well as for other regulatory purposes. Thus, material differences in regulatory accounting and reporting standards among commercial banks and FDIC-supervised savings banks do not exist.

The OTS requires each thrift institution to file the Thrift Financial Report (TFR), which is consistent with GAAP as it is applied by thrifts. The TFR differs in some respects from the bank Call Report. One reason for this is that thrift GAAP is different in a few limited areas from GAAP as it is applied by banks. Another explanation lies in the few isolated areas in which the bank Call Report departs from bank GAAP. A summary of the differences in accounting and reporting standards between the bank Call Report and the TFR is presented in section Two.

Simplification and Reduction of Differences in Accounting and Reporting Standards

Commercial banks and FDIC-supervised savings banks are generally subject to uniform accounting and reporting standards. The federal banking agencies and OTS continue to study ways to simplify and reduce differences in reporting standards between commercial banks and savings and loan associations. One way to approach this would be to explore the possibility of extending to a broader range of depository institutions the type of uniform reporting framework currently applicable to all commercial banks and FDIC-supervised thrift institutions. Another way would be to encourage greater consistency between bank GAAP and thrift GAAP. In this regard, the Financial Accounting Standards Board and the American Institute of Certified Public Accountants have been asked by the FDIC to consider eliminating the differences in GAAP as applied by thrifts and by banks. Finally, the bank regulatory agencies are continuing to study ways in which the limited differences between bank Call Report standards and GAAP can be eliminated or reduced, consistent with the agencies' supervisory responsibilities.

Section One

Summary of Differences in Capital Standards Among Federal Banking and Thrift Supervisory Agencies

Leverage Capital Ratios

Throughout most of the 1980s, the banking agencies have required banking organizations to meet minimum capital to total assets (leverage) ratios. Currently, these requirements include a minimum 5.5 percent primary capital ratio and a minimum 6.0 percent total capital ratio. For purposes of these leverage standards, primary capital consists principally of permanent shareholders' equity (common and perpetual preferred stock), general loan loss reserves, and certain perpetual or mandatory convertible debt instruments. Total capital includes primary capital plus limited amounts of subordinated notes and debentures and limited-life preferred stock.

The banking agencies have generally viewed regulatory capital ratios as aminimum standards; most banking organizations have been expected to operate well above the minimum ratios. As a general rule, the banking agencies have excluded goodwill from the definition of bank regulatory capital. (The treatment of other intangible assets is discussed below.)

The banking agencies are currently in the process of developing revised leverage standards based upon the common definition of Tier 1 capital contained in the banking agencies' risk-based capital guidelines. In this connection, the Federal Reserve has adopted a new leverage ratio that after 1990 will replace the existing primary and total capital ratios. This new standard will require all but the

strongest and most highly-rated institutions to meet a minimum Tier 1 capital ratio of 3 percent, plus an additional cushion of at least 100 to 200 basis points, depending upon an organization's financial condition. OCC has proposed a 3 percent Tier 1 leverage ratio that it views as a minimum for national banks. The FDIC is also in the process of developing a revised leverage ratio. It is the understanding of the Federal Reserve staff that the FDIC is considering a proposal that would build upon a minimum 3 percent Tier 1 capital ratio by including an appropriate additional capital requirement somewhere in the range of 100 to 200 basis points. For all of the banking agencies, these new leverage standards are being viewed as minimum requirements that will supplement the 8 percent risk-based capital standard.

OTS has established a 3 percent core capital ratio and a 1.5 percent tangible capital leverage requirement for thrift institutions, as required by FIRREA. The components of core capital for thrifts generally parallel those for Tier 1 bank capital, with the exception of certain adjustments discussed below and the inclusion of qualifying supervisory goodwill. Such goodwill is to be phased out of thrift core capital by the end of 1994, after which time the treatment of goodwill for thrift institutions will be consistent with that of the banking agencies.

Risk-Based Capital Ratios

The three federal banking agencies have adopted risk-based capital standards consistent with the Basle Accord. These standards establish for all commercial banking organizations a minimum ratio of total capital (Tier 1 plus Tier 2) to risk-weighted assets of 7.25 percent for year-end 1990; this minimum standard increases to 8 percent as of year-end 1992.[3] Core or Tier 1 capital comprises common stockholders' equity, qualifying perpetual preferred stock and minority interests in consolidated subsidiaries, less goodwill. Since Tier 1 capital must make up at least 50 percent of the total risk-based capital requirement, the risk-based framework also establishes a minimum ratio of Tier 1 capital to risk-weighted assets of 4 percent. Tier 2 capital includes such components as general loan loss reserves, subordinated term debt, and certain other perpetual or convertible debt capital instruments, subject to appropriate limitations and conditions. Risk-weighted assets are calculated by assigning risk weights of 0, 20, 50 and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risks.

As has historically been true of bank leverage ratios, the banking agencies view the risk-based standard as a minimum supervisory benchmark. In part, this is because the risk-based standard focuses primarily on credit risk; it does not take full or explicit account of certain other banking risks, such as exposure to changes in interest rates. The full range of risks to which banks are exposed are reviewed and evaluated carefully during on-site examinations. In view of these risks, most banking organizations are expected to operate above the minimum risk-based and leverage capital requirements.

The Federal Reserve is working with the other U.S. banking agencies and the regulatory authorities on the Basle Supervisors' Committee to develop possible methods to measure and address certain market and price risks. These risks include exposures resulting from foreign exchange positions, changes in interest rates, and holdings of equity securities. If appropriate and practicable, these methods could be used to supplement and expand the basic risk-based capital framework. One important reason for addressing these risks on an international level is to develop supervisory approaches that do not undermine the competitiveness of U.S. banking organizations. As already noted, banking organizations subject to these additional risks are expected to maintain capital positions well above the minimum levels.

OTS has adopted a risk-based capital standard that in many respects is similar to the framework adopted by the banking agencies. The OTS standard currently requires a minimum risk-based capital ratio equal to 6.4 percent of risk-adjusted assets. This ratio will increase to 7.2 percent as of year-end 1990 and 8 percent by year-end 1992. OTS is also contemplating an additional element for interest rate risk.

Equity Investments

To the extent that commercial banks are allowed to invest in equity securities under applicable federal or state law, such investments are generally assigned to the 100 percent risk category, for risk-based capital purposes, by all three of the federal banking agencies. The Federal Reserve's guidelines also permit deduction of equity investments from the parent bank's capital or other options to assess an appropriate capital charge above the minimum requirement. In general, state member banks supervised by the Federal Reserve are not permitted to invest in equity securities, nor are state member banks generally permitted to engage in real estate investment or development activities. (The Federal Reserve's treatment of investments in subsidiaries is discussed below.)

The OTS risk-based capital standards require that thrift institutions deduct equity investments from capital over a five year phase-in period.

FSLIC/FDIC—Covered Assets (Assets Subject to Guarantee Arrangements by the FSLIC or FDIC)

The federal banking agencies generally place these assets in the 20 percent risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned.

The OTS places these assets in the zero percent risk category.

Repossessed Assets and Assets More Than 90 Days Past Due

The federal banking agencies require that foreclosed real estate be written down to fair value (see Section 2, "Specific Valuation Allowances for, and Charge-Offs of, Troubled Real Estate Loans not in Foreclosure" and "Valuation of Foreclosed Real Estate" for further details) and the resulting asset assigned to the 100 percent risk category. The write down effectively results in a reduction of capital. Assets 90 days or more past due, including 1 to 4 family mortgages, are assigned to the 100 percent risk weight category. When such assets are eventually charged-off, capital is effectively adjusted for any resulting loss.

Consistent with the Basle Accord, the 100 percent risk weight is the highest risk category under the risk-based capital guidelines of the banking agencies. As noted above, however, the bank risk-based capital standards represent minimum ratios. Consequently, organizations with high levels of risk, including a significant volume of nonperforming or past due assets, are expected to maintain capital ratios above minimum levels. In this way, the risk-based capital framework of the banking agencies provides the latitude to place a higher than minimum capital charge on assets of this type.

The OTS risk-based capital framework has a 200 percent risk category to which repossessed assets and assets more than 90 days past due are assigned. An exception exists for 1-to-4 family mortgages more than 90 days past due, which are assigned to the 100 percent risk weight category.

Limitation on Subordinated Debt and Limited-Life Preferred Stock

Consistent with the Basle Accord, the federal bank regulatory agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital. This limit, in effect, states that these components together may not exceed 50 percent of Tier 1 capital. In addition, maturing capital instruments must be discounted by 20 percent in each of the last five years prior to maturity.

Neither of these capital components is a permanent source of funds, and subordinated debt cannot absorb losses while the bank continues to operate as a going concern. On the other hand, both components can provide a cushion of protection to the FDIC insurance fund. Thus, this limitation permits the inclusion of some subordinated debt in capital, while assuring that permanent stockholder's equity capital remains the predominant element in bank regulatory capital.

The OTS has no limitation on the total amount of limited-life or maturing instruments that may be included within Tier 2 capital. However, OTS allows thrifts the option of: (1) Discounting maturing capital instruments, issued on or after November 7, 1989, by 20 percent a year over the last 5 years of their term—the approach required by the banking agencies; or (2) Including the full amount of such instruments provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital.

Subsidiaries

Consistent with the Basle Accord and long-standing banking practices, the federal bank regulatory agencies generally consolidate all significant majority-owned subsidiaries of the parent organization. The purpose of this is to assure that capital requirements are related to all of the risks to which the banking organization is exposed. The Federal Reserve's risk-based capital guidelines provide a degree of flexibility for subsidiaries that are not consolidated for supervisory or accounting reasons. Investments in such subsidiaries can be deducted entirely from parent bank capital, or the parent organization can be required to maintain a level of capital above the minimum standard that is sufficient to compensate for any risks associated with the investment.

In the case of financial subsidiaries that are not consolidated, the Federal Reserve, consistent with the Basle Accord, generally deducts investments in such subsidiaries from the parent banking organization's capital. For example, the Federal Reserve deducts investments in, and unsecured advances to, section 20 securities subsidiaries from the parent bank holding company's capital. The FDIC accords similar treatment to securities subsidiaries of state nonmember banks established pursuant to § 337.4 of the FDIC regulations. The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent banking organization. In deducting investments in and advances to certain subsidiaries from the parent's capital, the Federal Reserve expects the parent banking organizations to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary.

Under OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries that are engaged in activities that are permissible for national banks and subsidiaries that are engaged in "impermissible" activities for national banks. Subsidiaries of thrift institutions that engage only in permissible activities are consolidated on a line-for-line basis if majority-owned and on a pro-rata basis if ownership is between 5 percent and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent. However, investments, including loans, outstanding as of April 12, 1989 to subsidiaries that were engaged in impermissible activities prior to that date are grandfathered and will be phased out of capital over five years. During this transition period, investments in subsidiaries engaged in impermissible activities that have not been phased out of capital are to be consolidated on a pro-rata basis.

Qualifying Multifamily Mortgage Loans

The banking agencies place multifamily mortgage loans (five units or more) in the 100 percent risk-weight category. The reason for this is that the risk associated with such assets is more akin to commercial risk, which is assigned to the 100 percent risk category, than it is to the risk associated with 1–4 family residential mortgages. The OTS allows certain multifamily mortgage loans to quality for the 50 percent risk-weight category. This would apply, for example, to loans secured by buildings with 5–36 units, provided these loans had a maximum 80 percent loan to value ratio and an 80 percent occupancy rate.

Nonresidential Construction and Land Loans

The banking agencies assign loans for real estate development and construction purposes to the 100 percent risk-weight category. Weaknesses or losses associated with such loans would require reserves or charge-offs that would generally have the effect of reducing the capital base.

OTS generally assigns these loans to the same 100 percent risk category, however, if the amount of the loan exceeds 80 percent of the fair value or the property, that excess portion is deducted from capital in accordance with the same five years phase-in arrangement as described above for "Equity investments."

Mortgage-Backed Securities (MBS)

The federal banking agencies, in general, place privately-issued MBS in either the 50 percent or 100 percent risk-weight category, depending upon the appropriate risk category of the underlying assets. However, privately-issued MBS, collateralized by government agency or government-sponsored agency securities, are generally assigned to the 20 percent risk-weight category.

The OTS assigns privately-issued high quality mortgage-related securities to the 20 percent risk-weight category. These are, generally, privately-issued MBS with AA or better investment ratings.

Intangible Assets

The banking agencies do not allow goodwill to be included in risk-based capital for commercial banks and FDIC-supervised savings banks. Bank holding companies may include goodwill acquired prior to March 12, 1988 in Tier 1 for risk-based capital purposes until the end of 1992. After 1992, all goodwill is to be deducted from bank holding company capital. Goodwill is also excluded from the capital of banking organizations under the Federal Reserve's recently adopted Tier 1 leverage ratio.

Pursuant to FIRREA, OTS allows "qualifying supervisory goodwill" to be included as part of core capital through year-end 1994. After this date, thrift institutions must meet their minimum 3

[3] In order to assist banking organizations in the transaction period, the Federal Reserve permits organizations it supervises to meet through the end of 1990 either the existing primary and total capital leverage ratios or the year-end 1990 risk-based standard.

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percent core capital requirement without reliance on goodwill.

In considering whether other intangible assets should be included in capital, the banking agencies and OTS employ a a three-part test. This test considers the reliability of the cash flows associated with the intangible asset, the existence of active and liquid markets for the asset, and the separability of the intangible asset from the bulk of the institution's other assets.

In addition to these considerations, the OCC imposes a limit of 25 percent of Tier 1 capital on the amount of qualifying intangible assets, including purchased mortgage servicing rights, that can be included in the risk-based capital calculation.

The Federal Reserve expects banks to avoid over reliance on any intangible assets, including purchased mortgage servicing rights, within capital. In addition to excluding goodwill, the Federal reserve gives close scrutiny to any other intangible assets that exceed 25 percent of Tier 1 capital, and, generally, would expect intangibles not to exceed this threshold. Furthermore, the Federal Reserve assesses an organization's tangible capital ratio [net of all intangibles], on a case-by-case basis, whenever the organization is undertaking expansion, engaging in new activities, or experiencing unusual risks. As a general rule, the Federal Reserve requires banking organizations seeking to expand to maintain capital positions substantially above minimum supervisory levels without significant reliance on intangible assets.

Currently, the FDIC deducts intangible assets, except purchased mortgage servicing rights, in calculating the leverage and risk-based capital ratios of banks and FDIC-sponsored savings banks. At present, the FDIC has no specific limitation on the amount of purchased mortgage servicing rights that may be included in capital, but the FDIC has issued a proposal that would deduct purchased mortgage servicing rights that exceed 25 percent of Tier 1 capital in calculating both leverage and risk-based capital ratios. Furthermore, the FDIC's discussion in this matter will affect OTS-supervised savings institutions pursuant to FIRREA and section 5(t)(4)(c) of the revised Home Owner's Loan Act of 1933.

The OTS has no 25 percent limitation on intangible assets at this time. However, as required by FIRREA, OTS permits thrift institutions to include only 90 percent of the fair market value of purchased mortgage servicing rights in the calculation of their risk-based capital ratio.

Assets Sold With Recourse

In general, recourse arrangements allow the purchaser of an asset to "put" the asset back to the originating institution under certain circumstances, for example if the asset ceases to perform satisfactorily. This in turn can expose the originating institution to any loss associated with the asset. As a general rule, the federal banking agencies require that sales of assets involving any recourse be reported as financings and that the assets be retained on the balance sheet. This, in turn, has the effect of requiring a full leverage and risk-based capital charge whenever assets are sold with recourse, including limited recourse. The Federal Reserve generally applies a capital charge to any recourse arrangement that is the equivalent of an off-balance sheet guarantee, regardless of the nature of the transaction that gives rise to the recourse obligation.

An exception to this general rule involves pools of 1-to-4 family residential mortgages (see Section 2, "Sales of Assets With Recourse", for further details). Certain recourse transactions involving these assets are reported in the bank Call Report as sales, thereby removing these transactions from leverage ratio calculations. These transactions, which are the equivalent of off-balance sheet guarantees, involve the type of credit risk that is addressed by bank risk-based capital requirements, although some questions in this regard have been raised because of the treatment afforded these transactions for leverage purposes. The Federal Reserve is reviewing its risk-based capital guidelines with the aim of clarifying that recourse sales involving residential mortgages are to be taken into account for determining compliance with risk-based capital requirements.

In general, OTS also requires a full capital charge against assets sold with recourse. However, in the case of limited recourse, OTS limits the capital charge to the lesser of the amount of recourse or the actual amount of capital that would otherwise be required against that asset, that is, the normal full capital charge.

Some securitized asset arrangements involve the issuance of senior and subordinated classes of securities. When a bank originates such a transaction and retains a subordinated piece, the banking agencies require that capital be maintained against the entire amount of the asset pool. When a bank acquires a subordinated security in a pool of assets that it did not originate, the banking agencies assign the investment in the subordinated piece to the 100 percent risk-weight category. In addition, the Federal Reserve carefully reviews these instruments to determine if additional reserves, asset write-downs, or capital are necessary to protect the bank.

OTS requires that capital be maintained against the entire amount of the asset pool in both of the situations described in the preceding paragraph. Additionally, the OTS applies a capital charge to the full amount of assets being serviced when the servicer is required to absorb credit losses on the assets being serviced.

The federal bank and thrift supervisory agencies under the Federal Financial Institutions Examination Council have issued for public comment a fact finding paper pertaining to the full range of issues relating to recourse arrangements. These issues include the definition of "recourse" and the appropriate reporting and capital treatments to be applied to recourse arrangements, as well as so-called recourse servicing arrangements and limited recourse. The objective of this effort is to develop in a comprehensive and consistent fashion an appropriate and uniform approach to recourse arrangements for capital adequacy, reporting, and other regulatory purposes.

Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to title VIII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984 and December 31, 1991. The program also applies to losses incurred between January 1, 1983 and December 31, 1991, as a result of reappraisals and sales of agricultural Other Real Estate Owned and agricultural personal property. Thrifts are not eligible to participate in the agricultural loan loss amortization program established by this statute.

Treatment of Junior Liens on 1–4 Family Properties

In some cases, a banking organization may make two loans on a single residential property, one loan secured by a first lien, the other by a second lien. In such a situation, the Federal Reserve and the FDIC view these two transactions as a single loan, provided there are no intervening liens. This could result in assigning the total amount of these transactions to the 100 percent risk weight category, if, in the aggregate, the two loans exceeded a prudent loan-to-value ratio and, therefore, did not qualify for the 50 percent risk weight. This approach is intended to avoid possible circumvention of the capital requirement and capture the risks associated with the combined transactions.

The OCC and OTS generally assign the loan secured by the first lien to the 50 percent risk-weight category and the loan secured by the second lien to the 100 percent risk-weight category.

Phase-in Requirements

The banking agencies, consistent with the Basle Accord, have adopted transition rules for a two year period beginning December 31, 1990. During this period, banks will be required to maintain at least 7.25 percent risk-based capital, and may take advantage of certain transitional rules. For example, up to 10 percent of Tier 1 capital can be comprised of Tier 2 capital elements through the end of 1992. On December 31, 1992, the transition rules expire and all banks must maintain at least an 8 percent risk-based capital ratio. After 1992, Tier 1 is limited to core capital elements. As a practical matter, most banking organizations are evaluating themselves in relation to the 1992 definition and have been urged to meet this tighter standard as soon as possible. As already noted, all of the risk-based standards are minimums and banking organizations are generally expected to operate above the minimum levels.

OTS was required by statute to implement its risk-based capital guidelines by December 7, 1989. FIRREA also provides for a different set of transition rules than those afforded banks, although the ultimate date for full implementation is approximately the same. Thrifts are required to maintain 80 percent of the 8 percent risk-based capital standard from December 7, 1989 to December 30, 1990; 90 percent from December 31, 1990 to December 30, 1992; and 100 percent thereafter.

Pledged Deposits and Nonwithdrawable Accounts

The capital guidelines of OTS permit thrift institutions to include in capital certain pledged deposits and nonwithdrawable accounts that meet OTS criteria. Income Capital Certificates and Mutual Capital Certificates held by OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks and therefore they are not addressed in the banking agencies' capital guidelines.

Mutual Funds

The banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. The purpose of this is to take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund in view of the fact that the future composition and risk characteristics of the fund's holdings cannot be known in advance.

The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. In addition, the OTS guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a pro-rata basis in a manner consistent with the actual composition of the mutual fund.

Section Two

Summary of Differences in Reporting Standards Among Federal Banking and Thrift Supervisory Agencies

Under the auspices of Federal Financial Institutions Examination Council, the three Federal banking agencies have developed uniform reporting standards for commercial banks which are used in the preparation of the Reports of Condition and Income ("Call Report"). The FDIC has also applied these uniform Call Report standards to savings banks under its supervision. The income statement and balance sheet accounts presented in the Call Report are used by the Federal bank supervisory agencies for determining the capital adequacy of banks and for other regulatory, supervisory, surveillance, analytical, and general statistical purposes. The reporting standards set forth in the Call Report are based almost entirely on generally accepted accounting principles for banks, and, as a matter of policy, deviate from GAAP only in those instances where statutory requirements or overriding supervisory concerns warrant a departure from GAAP. Thus, in so far as the Federal bank supervisory agencies are concerned, uniform accounting standards for regulatory purposes have been established.

The OTS has developed and maintains a separate reporting system for the thrift institutions under its supervision. This report, known as the Thrift Financial Report (TFR), is based on GAAP as applied by thrifts, which differs in some respects from GAAP for banks. The following discussion addresses these differences.

Specific Valuation Allowances for, and Charge-offs of, Troubled Real Estate Loans not in Foreclosure

The banking agencies generally consider real estate loans that lack acceptable cash flow or other ready sources of repayment, other than the collateral, as "collateral dependent." When a real estate loan is considered to be collateral dependent and the fair value of the collateral has declined below the loan balance, a charge-off is taken or a specific valuation allowance is created to reduce the value of the loan to the fair value of the collateral. Fair value is generally determined by a current appraisal. The banking agencies believe that this approach accurately reflects the amount of recovery a financial institution is likely to receive if it is forced to foreclose on the underlying collateral. This approach, followed by the banking agencies, is basically consistent with GAAP for banks.

OTS generally requires specific valuation allowances for troubled real estate loans based on the estimated net realizable value (NRV) of the collateral. NRV represents the estimated future sales price reduced by certain expenses and direct holding costs, including the cost of capital. Thus, NRV is based on the expected cash flows derived from the property discounted by the institution's cost of capital. NRV may exceed fair value. If additional safety and soundness concerns exist, OTS examiners may require additional general valuation allowances based on historical experience and other criteria.

General Valuation Allowances for Troubled Real Estate Loans

The banking agencies expect the general valuation allowance to be sufficient to cover an estimate of anticipated losses on all loans in the portfolio, including the remaining balances of individual loans that have been partially charged-off or for which specific valuation allowances have been established. This approach appropriately reflects the risk of additional loss from possible error in the sepcific loss estimates. The general valuation allowance required by the banking agencies and GAAP are basically consistent.

OTS ordinarily does not require general valuation allowances for those loans that have been specifically reviewed and for which a specific loss reserve has been provided. Under the OTS approach, the additional risk of any loss associated with troubled loans is taken into consideration as part of the

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application of their risk-based capital standards. This difference is attributable to differences in GAAP as practiced by banks and thrifts.

Valuation of Foreclosed Real Estate

The banking agencies require that foreclosed real estate be valued at the lower of book value or fair value at the date of foreclosure. The banking regulators usually require additional write-downs of such other real estate owned to fair value when fair value declines after foreclosure. The approach followed by the banking agencies is basically consistent with GAAP for banks.

OTS also requires foreclosed real estate to be valued at the lower of book value or fair value at the date of foreclosure. However, valuation allowances for real estate owned after the acquisition date are generally based on the NRV of the property using a cost of capital discount rate. Under the risk-based capital guidelines of OTS, real estate owned (i.e., foreclosed property) is risk-weighted at 200 percent, that is, it receives double the capital charge that standard risk assets receive. OTS believes that this approach adequately compensates for any additional risk. This difference is attributable to differences in GAAP as practices by banking organizations and thrifts.

Futures Contracts, Forwards and Standby Contracts

The banking agencies, as a general rule, do not permit the deferral of losses by banks on futures, forwards, and standby contracts whether or not they are used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income, and standby contracts must be reported at the lower of cost or market value. The banking agencies adopted this reporting standard as a supervisory policy prior to the adoption of FASB Statement No. 80, which allows hedge or loss deferral accounting, under certain circumstances. Contrary to this general rule, hedge accounting in accordance with FASB Statement No. 80 is permitted for futures and forward contracts used in mortgage banking operations. A proposal to permit banks to use hedge accounting for futures contracts beyond their mortgage banking operations is currently under consideration.

OTS practice is to follow FASB Statement No. 80 for futures contracts. In accordance with this statement, when hedging criteria are satisfied, the accounting for the futures contract is related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged items are recognized. Such reporting can result in deferred losses which would be reflected as assets on the thrift's balance sheet in accordance with GAAP.

Excess Servicing Fees

As a general rule, the banking agencies do not follow GAAP for excess servicing fees, but require a more conservative treatment. Excess servicing results when loans are sold with servicing retained and the stated servicing fee rate is greater than the normal servicing fee rate. With the exception of sales of pools of residential mortgages for which the banking agencies' approach is consistent with FASB Statement No. 65, excess servicing fee income in banks must be reported as realized over the life of the transferred asset, not recognized up front.

OTS allows the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach is consistent with FASB Statement No. 65.

In-substance Defeasance of Debt

The banking agencies do not permit banks to report defeasance of their debt obligations in accordance with FASB Statement No. 76. Defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust solely for satisfying the debt. Where this is permitted, the assets in the trust and the defeased debt are removed from the balance sheet and a gain or loss for the current period can be recognized. Commercial banks are not permitted to defease their debt obligations for reporting or supervisory purposes. Thus, banks may not remove assets or liabilities from their balance sheets or recognize resulting gains or losses. The banking agencies have not adopted FASB Statement No. 76 because of uncertainty regarding the irrevocable trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors.

OTS practices is to follow FASB Statement No. 76.

Sales of Assets With Recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse is recognized as a sale if: (1) The transferor surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The practice of the banking agencies is generally to require commercial banks to report transfers of receivables with recourse as sales only when the transferring institution: (1) retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, virtually no transfers of assets with recourse can be reported as true sales. However, this rule has not historically been applied to the transfer of 1-to-4 family or agricultural mortgage loans under certain government-sponsored programs (including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation). Transfers of mortgages under these programs are generally treated as sales for Call Report purposes. Furthermore, private transfers of mortgages are also reported as sales if the transferring institution retains only an insignificant risk of loss on the assets transferred. However, the seller's obligation under any recourse provision related to sales of mortgage loans under the government programs is viewed as an off-balance sheet exposure. Thus, for risk-based capital purposes, capital is generally expected to be held for recourse obligations associated with such transactions.

OTS policy is to follow FASB Statement No. 77. However, in the calculation of risk-based capital under OTS guidelines, off-balance sheet recourse obligations are converted at 100 percent. This effectively negates the sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes.

Board of Governors of the Federal Reserve System, September 18, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-22523 Filed 9-21-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. C-3303]

Central Soya Company, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a soy protein concentrate ("SPC") company based in Fort Wayne, Ind., to obtain FTC approval, for 10 years, before acquiring any interest in any SPC assets of any company engaged in manufacturing SPC within the United States.

DATES: Complaint and Order issued August 27, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Katharine Alphin, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367.

SUPPLEMENTARY INFORMATION: On Tuesday, June 12, 1990, there was published in the Federal Register, 55 FR 23806, a proposed consent agreement with analysis In the Matter of Central Soya Company, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 90-22534 Filed 9-21-90; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Docket No. C-3302]

The Vons Companies, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Michigan based corporation that operates grocery stores in Calif. and Nev. from misrepresenting the extent to which any food contains pesticides and from making any representation concerning the presence or health effects of any pesticide applied to or present in any food, unless respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation.

DATES: Complaint and Order issued August 27, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Steven Shaffer, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Friday, June 15, 1990, there was published in the Federal Register, 55 FR 24314, a proposed consent agreement with analysis In the Matter of The Vons Companies, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 53)

Donald S. Clark,

Secretary.

[FR Doc. 90-22535 Filed 9-21-90; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90E-0246]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ethmozine®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ethmozine® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy B. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Tardemarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ethmozine® Ethmozine® (moricizine hydrochloride) is indicated for the treatment of documented ventricular arrhythmias, such as sustained ventricular tachycardia, that, in the judgment of the physician, are life-threatening. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Ethmozine® (U.S. Patent No. 3,864,487)

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from E.I. du Pont de Nemours and Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated August 8, 1990, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period. The letter also stated that the active ingredient, moricizine, hydrochloride represented the first permitted commercial marketing or use. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Ethmozine® is 5,158 days. Of this time, 4,135 days occurred during the testing phase of the regulatory review period, while 1,023 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* May 7, 1976. The applicant claims April 7, 1976, as the date the investigational new drug (IND) application became effective. However, FDA records indicate that the IND effective date was May 7, 1976, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* September 1, 1987. FDA has verified the applicant's claim that the new drug application (NDA) (NDA 19-753) was filed on September 1, 1987.

3. *The date the application was approved:* June 19, 1990. FDA has verified the applicant's claim that NDA 19-753 was approved on June 19, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before November 26, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before March 23, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 31, 1990.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 90-22526 Filed 9-21-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public hearing.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a hearing of the Advisory Council on Social Security.

DATES: The hearing will be held on September 27, 1990 from 10 a.m. to 5 p.m., and will be open to the public.

ADDRESSES: The University of New Hampshire, University Center, 400 Commercial Street, Manchester, New Hampshire 03101.

FOR FURTHER INFORMATION CONTACT: Olga Nelson, Administrative Office, Advisory Council on Social Security, room 638-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, 202-245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. An Advisory Council on Social Security (the Council) examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;
- Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1981, and projected buildups in the OASDI trust funds; and
- Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A. L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress by January 1991.

II. Agenda

The Council will hear testimony on Social Security and health care issues.

The agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivors Insurance)

Dated: September 18, 1990.

Barbara Cooper,

(Acting) Executive Director, Advisory Council on Social Security.

[FR Doc. 90-22613 Filed 9-21-90; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Function, and Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Care Financing Administration, with the authority to redelegate and to authorize further redelegation my authority to impose civil monetary penalties under sections 1819(h)(2) (A) and (B)(ii); 1846; 1891(e) (1), (2), and (3) and (f)(2)(A)(i); and 1919(h)(3) (A), (B), and (C)(ii) of the Social Security Act, as amended. I also delegate to you with the authority to redelegate and to authorize further redelegation my authority to develop criteria under sections 1819(h)(2), 1846(b), and 1919(h)(3) as to when and how civil monetary penalties should be applied.

To the extent inconsistent with the foregoing delegation, this delegation supersedes the July 13, 1988 and September 14, 1988 delegations of the authorities specified herein to the Inspector General.

This delegation is effective immediately.

Dated: September 13, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-22530 Filed 9-21-90; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) for approval a Notice of Proposed Rulemaking [NPRM] that contains new collection of information requirements. The NPRM is entitled Eligibility, Recruitment, Selection, Enrollment and Attendance in the Head Start Program. It was published on July 23, 1990 (55 FR 29970).

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Notice of Proposed Rulemaking 45 CFR part 1305—Eligibility, Recruitment, Selection, Enrollment and Attendance in Head Start

OMB No.: N/A

Description: The NPRM proposes specific categories of information that are to be collected and analyzed as part of the community needs assessment. The purpose of the community needs assessment is to assist grantees in making decisions regarding the children and families to be served by the program and the kinds of services that will best meet the needs of the community served.

While Head Start grantees have always been required to complete a community needs assessment as part of the application for refunding, in the past the grant application instructions have not included specific data requirements of explicit requirements for analyzing the data to determine key program decisions. The added specificity will assist grantees by focusing their community needs assessment efforts on those data that will enable them to make key program decisions, including which children, from among all of those eligible, will be served by the program.

Annual number of respondents	430
Annual frequency	1
Average burden hours per response	40
Total burden hours	17,200

Dated: September 17, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90-22477 Filed 9-21-90; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

National Center for Research Resources, Meeting of the General Clinical Research Centers Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, National Center for Research Resources (NCRR), October 23-24, 1990, at the Georgetown Marbury Hotel, Stafford/Sheffield/Pemberton Room, 3000 M Street NW., Washington, DC 20007.

The meeting will be open to the public on October 23, 1990 from 8:30 a.m. to 10 a.m. during which time there will be comments by the Director, NCRR; and an update on the General Clinical Research Centers Program by Dr. Judith L. Vaitukaitis, Director, GCRC Program, NCRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 23 from 10 a.m. to 6 p.m., and on October 24 from 8 a.m. to 4 p.m., for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James J. Doherty, Information Officer, NCRR, NIH, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Bela J. Gulyas, Executive Secretary, General Clinical Research Centers Committee, NCRR, (301) 402-0327, will furnish information on the agenda upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: September 10, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-22518 Filed 9-21-90; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute, Meeting of the Clinical Trials Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, October 21-23, 1990, Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

The meeting will be open to the public on October 21, from 7 p.m. to approximately 8 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 21, from approximately 8 p.m. to adjournment on October 23, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Belicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A-21,

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National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4230, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, room 550B, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: September 11, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-22519 Filed 9-21-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases, Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on October 19, 1990, Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland. The meeting will be open to public on October 19 from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public from 9 a.m. on October 19 to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin H. Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, room 5A07, Bethesda, Maryland 20892, (301) 496-0754.

Ms. Suzanne Sangalan, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, room 4C27, Bethesda, Maryland 20892, 301-496-0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health.)

Dated: September 10, 1990.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 90-22520 Filed 9-21-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences, Meeting of Board of Scientific Counselors, Division of Biometry and Risk Assessment

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DBRA, October 30-31, 1990, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public from 8:30 a.m. to 5 p.m. on October 30, for the purpose of presenting an overview of the organization and conduct of research in the Statistics and Biomathematics Branch.

Attendance by the public will be limited to space available. In accordance with the provisions set forth in section 552b(c)(6) of title 5 U.S. Code and section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 31, from 8:30 a.m. to adjournment, for the evaluation of the Statistics and Biomathematics Branch, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David Hoel, Director, Division of Biometry and Risk Assessment, NIEHS, Research Triangle Park, N.C. 27709, telephone (919) 541-3441, FTS 629-3441, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: September 12, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-22521 Filed 9-21-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 55 FR 22101, May 31, 1990) is amended to reflect the title change of the Division of Tuberculosis Control, Center for Prevention Services, to Division of Tuberculosis Elimination.

Section HC-B, Organization and Functions, is hereby amended as follows: Delete the title for the Division of Tuberculosis Control (HCM3) and substitute the following title: Division of Tuberculosis Elimination (HCM3).

Dated: September 10, 1990.

William L. Roper,

Director, Centers for Disease Control.

[FR Doc. 90-22540 Filed 9-21-90; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-910-00-4830-02-ADVB]

Northern Alaska Advisory Council

The Northern Alaska Advisory Council will hold a public meeting October 24, 1990, at BLM's Fairbanks Office Building, 1150 University Avenue, Fairbanks, Alaska. The meeting will begin at 8:30 a.m., public comment will be taken from 1 to 2 p.m., and the meeting will end at 5 p.m.

Topics of discussion will be (1) BLM-Alaska's revised planning schedule, (2) the FY91 budget overview, (3) the Fort Egbert Cultural Resource Management Plan, and (4) subsistence.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474-2231.

Dated: September 17, 1990.

Jack C. Meller,

Acting Designated District Manager.

[FR Doc. 90-22542 Filed 9-21-90; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 681220

Applicant: Harry Orrin Thomas, Sarasota, FL.

The applicant requests a permit to export and reimport captive-bred tigers (*Panthera tigris*) for exhibits during which the applicant provides information to the public regarding the tiger's ecological role and conservation needs.

PRT 750165

Applicant: Taxidermy International, Clayton, NC.

The applicant requests a permit to export an Eld's deer (*Cervus eldi*) trophy that was legally taken on Priour Brothers Ranch, Ingram, Texas, by Canadian hunter, Arnold Alward. The animal was culled from Priour Brothers' managed herd and now ready for shipment to Arnold Alward, Havelock, New Brunswick, Canada.

PRT 752843

Applicant: Arizona-Sonora Desert Museum, Tucson, AZ.

The applicant requests a permit to import 50 one ml. blood samples taken from wild San Esteban Island chuckwallas (*Sauromalus varius*) that inhabit Isla San Esteban in the Gulf of California, Mexico. The blood samples are to be imported for analysis of mitochondrial DNA and DNA fingerprinting for determination of genetic variation in wild and captive populations of this species.

PRT 750553

Applicant: William C. McClure, Pittsburgh, PA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 750539

Applicant: Francisco Acevedo C., Chula Vista, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. Theo Erasmus, Farm Gelulk, Kroonstad District, Orange Free State, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 750537

Applicant: Oscar Acevedo Marquez, Chula, Vista, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. Theo Erasmus, Farm Geluk, Kroonstad District, Orange Free State, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 750558

Applicant: Metro Washington Park Zoo, Portland, OR.

The applicant requests a permit to import two male, two female and one juvenile Lhoest's monkeys (*Cercopithecus lhoesti*) from Stanley Park Zoo, Vancouver, B.C., Canada, for purposes of zoological display and breeding.

PRT 751345

Applicant: Baxter Consulting Services, Perris, CA.

The applicant requests a permit to live-trap and release Stephens' kangaroo rats (*Dipodomys stephensi*) in western Riverside County and Northern San Diego County, California, to determine this species' presence or absence on approved sites.

PRT 751404

Applicant: Marlo Mertens, Valrico, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. Al Spaeth, "Dornboom", Walmer, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 751699

Applicant: Rosemary Miner, Holland, NY.

The applicant requests a permit to purchase two pairs of captive-hatched Hawaiian (=nene) geese (*Nesochen* (=*Branta*) *sandvicensis*) from Mr. Louis Strait, Warren, Indiana, for captive breeding purposes.

PRT 750512

Applicant: American Type Culture Collection, Rockville, MD.

The applicant requests a permit to sell in interstate commerce cultures of the following species of endangerd and threatened plants which are artifically propagaged at their facility: *Coryphantha minima, Coryphantha sneedii* var. *sneedii, Echinocereus viridiflorus* var. *davisii, Echinocereus fendleri* var. *kuenzleri, Pediocactus knowltonii, Pediocactus peeblesianus* var. *peeblesianus, Pediocactus bradyi, Coryphantha sneedii* var. *leei, Sclerocactus glaucus,* and *Sclerocactus mesae-verdae.* All cultures of species were obtained from Dr. Gregory Phillips, Plant Cellular and Developmental Biology, Department of Agronomy and Horticulture, New Mexico State University, Las Cruces, New Mexico.

PRT 750510 & PRT 750511

Applicant: American Type Culture Collection, Rockville, MD.

The applicant requests a permit for multiple exports and to sell in foreign commerce cell lines derived from the white-handed gibbon (*Hylobates lar*) for the purpose of scientific research.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: September 18, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-22517 Filed 9-21-90; 8:45 am]

BILLING CODE 4310-55-M

Preparation of an Environmental Impact Statement on Anticipated Permit Application to Incidentally Take the Threatened Northen Spotted Owl in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) anticipates receiving a permit application under section 10(a) of the Endangered Species Act of 1973, as amended (Act) that would authorize the incidental take of the threatened northern spotted owl *(Strix occidentalis*

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courina) from privately owned forested lands in California. The California Board of Forestry intends to develop such a permit application, including the accompanying habitat conservation plan, for lands under its jurisdiction. In response to the anticipated proposal, the Service will gather necessary information to prepare a joint Federal Environmental Impact Statement (Impact Statement) and State Environmental Impact Report (Impact Report).

This notice describes the anticipated action and possible alternatives, and outlines the scoping process that will be used in preparing the Impact Statement/Impact Report. This notice is being furnished pursuant to the Act (50 CFR 17.32) and the National Environmental Policy Act (40 CFR 1501.7) regulations.

DATES: Three public scoping meetings will be held to provide an opportunity for verbal comments by agencies, organizations, and interested individuals. The public meetings are scheduled as follows:

- Ukiah, Mendocino County, on Tuesday, November 13, 1990, from 7 to 10 p.m., Carl Purdy Pavilion, Redwood Empire Fairgrounds, 1055 N. State Street;
- Eureka, Humboldt County, on Wednesday, November 14, 1990, from 7 to 10 p.m., Eureka High School Auditorium, 1915 "J" Street; and
- Redding, Shasta County, on Thursday, November 15, 1990, from 7 to 10 p.m., Fusero Hall, Shasta District Fairgrounds, 1890 Briggs Street.

Written comments related to the scope and content of the joint document will be accepted at the address below until December 15, 1990.

ADDRESSES: Information, comments, or questions relating to the proposed Impact Statement/Impact Report or scoping process should be addressed to Mr. Wayne S. White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip J. Detrich, U.D. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846, 916-978-4866 or 8-460-4866). Interested parties are encouraged to attend a scoping meeting to identify and discuss major issues and alternatives that should be discussed in the Impact Statement/Impact Report. Interested parties are reminded that the primary purpose of the scoping process is to identify rather than debate or argue, the significant issues related to the anticipated action.

SUPPLEMENTARY INFORMATION:

The northern spotted owl was listed as a threatened species on June 26, 1990 (55 FR 26114). This regulation became effective on July 23, 1990. Section 9(a) of the Act prohibits the "take" of endangered species. Regulations provide the same taking prohibitions for threatened species (50 CFR 17.31). The Act defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." "Harm" is further defined by regulation as any act that kills or injures listed wildlife species. Harm may include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." However, the Service, under limited circumstances, may issue permits pursuant to section 10(a) of the Act to take listed wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing "incidental take" permits for threatened species are at 50 CFR 17.32.

As required under the State Forest Practices Act, the California Board of Forestry (Board) regulates timber harvest activities on private lands. Because the northern spotted owl occurs in privately owned forests, otherwise lawful harvest activities on private timberlands may result in the take of the owl. As a result, the Board passed several emergency rules on July 11, 1990, which will ensure that Board-approved timber harvest plans will not incidentally take the northern spotted owl. Though these rules are valid for only 120 days, the Board likely will extend these emergency rules for at least an additional 120 days. In the interim, the Board intends to apply for an incidental take permit pursuant to section 10(a) of the Act that, if approved, would authorize the incidental take of the spotted owl from privately owned forested lands in California. Consequently, the Board will develop a conservation plan, which will accompany the permit application.

The purpose of this anticipated planning effort is that the conservation plan and accompanying permit application, if approved, will ensure the continued existence of the northern spotted owl on the private timberlands addressed in the plan, while resolving potential conflicts arising from otherwise lawful timber harvest activities on private lands in California. The Service's underlying need is that the agency must decide, when it receives the application, whether to issue the incidental take permit to the Board. Congress has directed that such permits be issued in accordance with the requirements of section 10(a) of the Act.

A preliminary list of six alternatives that are being considered by the Board include: (1) Provide no additional protection on private lands (No-Action Alternative); (2) maintain only dispersal habitat on private lands adjacent to Federal lands being managed for the northern spotted owl; (3) maintain high habitat capability on State and private lands that are intermixed with owl-managed Federal lands; (4) implement a comprehensive conservation plan to provide for viable owl populations on private lands; (5) maintain suitability of existing habitat on all private lands; and (6) prevent any timber harvest in habitat on State or private lands (Continuation of Emergency Rules or No-Permit Alternative).

A tentative list of issues, concerns, and opportunities has been developed. There will be a discussion of potential effects from each preliminary alternative in relation to the following issues: (1) Northern spotted owl and its habitat; (2) candidate species and other wildlife; (3) vegetation; and (4) fisheries; (5) soil and water quality; (6) timber supply; (7) regional income and employment; (8) county and State revenues; (9) recreation and aesthetics; and (10) cultural resources; and (11) institutional impacts.

Dated: September 18, 1990.

Marvia L. Pleafert,

Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 90-22541 Filed 9-21-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Meeting; Committee for the Preservation of the White House

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, DC at 2 p.m., Friday, October 5, 1990. It is expected that the agenda will include discussion of policies, goals and refurbishing plans. The meeting will be open, but subject to appointment and security clearance requirements including providing clearance information by September 28, 1990.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m., weekdays at (202) 619-7239. Written comments may be sent to Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive SW., Washington, DC, 20242

Dated: September 17, 1990.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 90-22527 Filed 9-21-90; 8:45 am]

BILLING CODE 4310-10-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-298 (Panel Remand)]

Fresh, Chilled, or Frozen Pork From Canada

AGENCY: United States International Trade Commission.

ACTION: Remand proceedings.

SUMMARY: The commission hereby gives notice of its remand proceedings order by an Article 1904 Binational Panel with respect to the Commission's final countervailing duty investigation No. 701-TA-298 (Final), Fresh, Chilled, or Frozen Pork from Canada. These remand proceedings will be conducted under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671(d)) (the act) to reexamine data concerning Canadian production, exports, imports, and apparent consumption; production capacity at Fletcher's Fine Foods and the Canadian industry as a whole; and Japanese imports of pork from Taiwan and canada as well as the Commission majority's reliance on that data.

FOR FURTHER INFORMATION CONTACT: Bruce Cates, (202-252-1287), Office of Investigations U.S. International Trade Commission, 500 E Street SW Washington, DC, 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1990, an Article 1904 U.S.-Canada Binational Panel, established to review the Commission's determination in Fresh, Chilled, or Frozen Pork from Canada, Inv. No. 701-TA-298, remanded the Commission's final affirmative determination to the Commission for additional proceedings.

Specifically, the panel noted that a table contained in the Commission's staff report on Canadian production, imports, exports, and apparent consumption, contained faulty use of statistics, in particular an overstated increase in Canadian production. The panel concluded that because several of the Commission's findings were based on the use of those statistics, the determination had to be remanded. The panel suggested that the smaller Canadian production increase might lead the Commission to give additional weight to other factors. The panel also expressed concern about the Commission's conclusions as to the impact on the Canadian pork packing industry of the closure of the Fletcher's Fine Foods packing plant. In addition, the panel noted that the record evidence on canadian exports to Japan did not support the Commission majority's conclusion that pork exports would be diverted from Japan to the United States.

The Commission will reopen the record to gather information on three narrow aspects of its investigation. It will seek new data concerning (1) Canadian production, imports, exports, and apparent consumption; (2) the production capacity and utilization of the Fletcher's Fine Foods pork packing plant in Red Deer, Alberta and of the Canadian pork packing industry as a whole; and (3) Japanese imports of pork from Taiwan and Canada. The data sought will cover only the period of the commission's original investigation. The Commission will, to the extent possible, make available in a timely fashion copies of its staff's findings on these issues in order that the parties may comment on them in their briefs. The Commission will report the results of such remand determination within 60 days of the date of the panel order, August 24, 1990.

Participation in these proceedings

Only those persons who were interested parties and parties to the proceeding (*i.e.*, persons listed on the Commission Secretary's service list) may participate in this remand determination.

Service List

Pursuant to § 201.11(d) to the Commission's rules, (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who were interested parties and parties to the Commission's initial determination. In accordance with §§ 201.16(c) and 207.3 of the Commission's rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the remand investigation (as identified by the service list), and a certificate of service must accompany the document. The secretary will not accept a document for filing without a certificate of service.

Written Submissions

All legal arguments, economic analyses, and factual material relevant to the remand investigation should be included in briefs, limited to 25 pages in length, in accordance with Commission rule 207.24 (19 CFR 207.94) and must be submitted no later than close of business October 1, 1990. No new factual material may be submitted to the Commission other than that relating to: (1) Canadian production, imports, exports, and apparent consumption; (2) production capacity and capacity utilization of Fletcher's Fine Foods and capacity utilization of the Canadian pork industry; and (3) Japanese imports of pork from Taiwan and Canada. No new legal or economic arguments, other than those raised in the panel order, may be raised by the parties.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business confidential information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any information for which business confidential treatment is requested must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Business Confidential Information." Business confidential submissions and requests for business confidential treatment must conform with the requirements of §§ 201.6 and 207.7 of the commission's rules (19 CFR 201.6 and 207.7).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 19, 1990.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 90-22552 Filed 9-21-90; 8:45 am]
BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

[EX PARTE NO. 290 (Sub No. 5) (90-4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of Rail Cost Adjustment Factor and decision.

SUMMARY: The Commission has approved the fourth quarter 1990 Rail Cost Adjustment Factor [RCAF] and cost index filed by the Association of American Railroads. The fourth quarter RCAF (Adjusted) is 1.058, an increase of 1.4 percent over the third quarter RCAF (Adjusted) of 1.043. The fourth quarter RCAF (Unadjusted) is 1.126. Maximum fourth quarter RCAF rate levels may not exceed 101.4 percent of maximum third quarter 1990 RCAF rate levels.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT:
William T. Bono, (202) 275-7354
Robert C. Hasek, (202) 275-0838
TDD for hearing impaired, (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington DC 20423, or telephone (202) 289-4357 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Decided: September 18, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 90-22573 Filed 9-21-90; 8:45 am]
BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-76)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by October 24, 1990. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 755-1480.

Reports

Title: Survey of NASA Space Physics Community.
OMB Number: New.
Type of Request: New collection.
Frequency of Report: As required.
Type of Respondent: State or local governments, businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
Number of Respondents: 2500.
Responses per Respondent: 1.
Annual Responses: 2500.
Hours per Response: .5.
Annual Burden Hours: 1250.
Abstract-Need/Uses: This survey form is to be used to obtain data in the Space Physics Community including human resources and funding trends, availability to computer resources and graduate students, and community opinions and perceptions. This will provide necessary information for the NASA Space Physics Division to plan its resources effectively.

Dated: September 13, 1990.

D.A. Gerstner,
Director, IRM Policy Division.

[FR Doc. 90-22530 Filed 9-21-90; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before October 24, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, room 310, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786-0494) and Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, room 310, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Application Instructions and Forms for the Collaborative Projects Category.
Form Number: Not applicable.
Frequency of Collection: Annual.
Respondents: Humanities researchers and institutions.
Use: Application for funding.
Estimated Number of Respondents: 98 per year.
Frequency of Response: Once.
Estimated Hours for Respondents to Provide Information: 52 per respondent.
Estimated Total Annual Reporting and Recording Burden: 9,056 hours.

Thomas S. Kingston,
Assistant Chairman for Operations.

[FR Doc. 90-22478 Filed 9-21-90; 8:45 am]
BILLING CODE 7536-01-M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before October 24, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, Room 310, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786-0494) and Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, room 310, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Application Instructions and Forms for the Archaeology Projects Category.
Form Number: Not applicable.
Frequency of Collection: Annual.
Respondents: Humanities researchers and institutions.
Use: Application for funding.
Estimated Number of Respondents: 58 per year.
Frequency of Response: Once.
Estimated Hours for Respondents to Provide Information: 52 per respondent.
Estimated Total Annual Reporting and Recording Burden: 5,896 hours.

Thomas S. Kingston,
Assistant Chariman for Operations.

[FR Doc. 90-22479 Filed 9-21-90; 8:45 am]
BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctica Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 22, 1990. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant 90-24,* William R. Fraser, Department of Oceanography, Old Dominion University, Norfolk, VA.

Activity for Which Permit Requested

Taking. Import into USA. The applicant is conducting a study of the effects of oil spilled into the marine environment on seabirds. He proposes to take birds by (1) banding, (2) stomach pumping, (3) weighing and measuring, and (4) affixing/removing radio transmitters. The following specimens will be taken:

	Number
Adelie penguins	5,640
Giant Fulmar	400
Kelp Gull	100
South Polar Skua	1200
Brown Skua	80
Blue-eyed Shag	200

All birds will be released at the conclusion of the measurements/observations.

Location

Palmer Station and vicinity, Antarctica.

Dates

November 1990—March 1991.

2. *Applicant 90-25,* William R. Fraser, Department of Oceanography, Old Dominion University, Norfolk, VA.

Activity for Which Permit Requested

Enter specially protected area. The applicant is conducting a study of the effects of oil and spilled into the marine environment. He proposes to enter Litchfield Island specially protected Area to census penguins and other seabirds breeding at the site.

Location

Litchfield Island specially protected area, near Palmer Station, Antarctica

Dates

November 1990—March 1991.

3. *Applicant 90-26,* W. Scott Drieschman, P.O. Box 65, Palomar Mountain, CA 92060.

Activity For Which Permit Requested

Taking. The applicant proposes to collect up to 60 each Adelie, Chinstrap, and Gentoo penguin incubating eggs and transport them in incubators to Japan. The eggs will be hatched and the penguins reared in a temperature controlled rearing/holding facility for Adventure World, Shirahama, Nishimuro-gun, Wakayama Marine Zoological Park. Data on growth rates will be compiled and made available to interested researchers.

Location

Antarctic Peninsula area

Dates

November 1990—December 1990.

Charles E. Myers,

Permit Office.

[FR Doc. 90-22481 Filed 9-21-90; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD1-90-153]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on October 10, 1990, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Managment Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of dredging operations in New York harbor.
4. Update on Vessel Traffic Service.
5. Topics from the floor.
6. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.E. Bussey, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 333 Third floor, Governors Island, New York, NY 10004; or by calling (212) 668-7429.

Dated: September 11, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 90-22537 Filed 9-21-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 18, 1990.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-0675
Form number: 1040EZ
Type of review: Resubmission
Title: Income Tax Return for Single Filers With No Dependents
Description: This form is used by certain single individuals to report their income subject to income tax and to figure their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistical use.
Respondents: Individuals or households
Estimated number of respondents: 19,440,201
Estimated burden hours per response/recordkeeping:
Recordkeeping—5 minutes
Learning about the law or the form—34 minutes
Preparing the form—40 minutes
Copying, assembling, and sending the form to IRS—40 minutes
Frequency of response: Annually
Estimated total recordkeeping/reporting burden: 26,142,121 hours
Clearance/Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-22529 Filed 9-21-90; 8:45 am]

BILLING CODE 4830-01-M

Customs Service

[T.D. 90-76]

Revocation of Corporate Customs Broker's License No. 10121 Issued to Exim Customs Brokers, Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the corporate Customs broker license (number 10121) issued to Exim Customs Brokers, Inc., has been revoked by operation of law pursuant to section 641 (b)(5), Tariff Act of 1930, as amended (19 U.S.C. 1641 (b)(5)), for failure to have for a continuous period of 120 days at least one validly licensed officer of the corporation. Such revocation was effective September 11, 1989.

Dated: September 13, 1990

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 90-22533 Filed 9-21-90; 8:45 am]

BILLING CODE 4820-02-M

Office of Thrift Supervision

First Savings Bank of Hempstead, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Savings Bank of Hempstead, F.S.B., Hempstead, Texas on September 14, 1990.

Dated: September 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22516 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

Capitol City Federal Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owners' Loan Act* of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Capitol City Federal Savings Association, Austin, Texas, Docket No. 8606, on September 14, 1990.

Dated: September 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22510 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

City Federal Savings & Loan Association; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivison (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for City Federal Savings and Loan Association, Birmingham, Alabama, with the Resolution Trust Corporation as sole Receiver for the Association on September 14, 1990.

Dated: September 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22507 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

Crest Federal Savings & Loan Association; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivison (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Crest Federal Savings and Loan Association, Kankakee, Illinois, with the Resolution Trust Corporation as sole Receiver for the Association on September 14, 1990.

Dated: September 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22508 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

Equity Federal Savings Bank; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Equity Federal Savings Bank, Denver, Colorado, Docket No. 5776, on September 14, 1990.

Dated: September 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22511 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Bank of Hempstead; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings Bank of Hempstead, Hempstead, Texas, OTS Docket No. 8499, on September 14, 1990.

Dated: September 18, 1990.

By the Office of Thrift Supervision

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22512 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Sooner Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Sooner Federal Savings Association, Tulsa, Oklahoma, Docket No. 6690, on September 14, 1990.

Dated: September 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22514 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

Suburban Savings Assoc.; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Suburban Savings Association, San Antonio, Texas with the Resolution Trust Corporation as sole Receiver for the Association on September 14, 1990.

Dated: September 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22509 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

Williamsburg Federal Savings and Loan Assoc.; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the

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Resolution Trust Corporation as Conservator for Williamsburg Federal Savings and Loan Association, Salt Lake City, Utah, with the Resolution Trust Corporation as sole Receiver for the Association on September 14, 1990.

Dated: September 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22515 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-52; OTS NO. 0654]

Ames Savings Bank, FSB, Ames, IA; Notice of Final Action; Approval of Conversion Application

Notice is hereby given that on August 13, 1990, the designee of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Ames Savings Bank, FSB, Ames, Iowa, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Des Moines District Office, 907 Walnut Street, Des Moines, Iowa 50309.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22503 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-48; OTS NO. 0913]

Centennial Savings Bank, FSB, Cheviot, Ohio; Notice of Final Action; Approval of Conversion Application

Dated: September 10, 1990.

Notice is hereby given that on August 1, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Centennial Savings Bank, FSB, Cheviot, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Cincinnati District Office, 200 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45201-0598.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22499 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-53; OTS NO. 5745]

Coastal Federal Savings Bank, Myrtle Beach, SC; Notice of Final Action; Approval of Conversion Application

Dated: September 10, 1990.

Notice is hereby given that on August 13, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Coastal Federal Bank, Myrtle Beach, South Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street NE., Atlanta, Georgia 30348-5217.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22504 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-49; OTS No. 3342]

First Federal Savings & Loan Association of Donalsonville, Donalsonville, GA; Notice of Final Action, Approval of Conversion Application

Dated: September 10, 1990.

Notice is hereby given that on August 10, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of First Federal Savings and Loan Association of Donalsonville, Donalsonville, Georgia, for permisison to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street NE., Atlanta, Georgia 30348-5217.Q04

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22500 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-51; OTS No. 0850]

First Carolina Federal Savings Bank, Kings Mountain, NC; Notice of Final Action; Approval of Conversion Application

Dated: September 10, 1990.

Notice is hereby given that on August 13, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of First Carolina Federal Savings Bank, Kings Mountain, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street NE., Atlanta, Georgia 30348-5217.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22505 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-55; OTS NO. 7459]

InterFirst Federal Savings Bank, Ypsilanti, MI; Notice of Final Action Approval of Conversion Application

Dated: September 10, 1990.

Notice is hereby given that on August 24, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of InterFirst Federal Savings Bank, Ypsilanti, Michigan, for permisison to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Indianapolis District Office, 8250 Woodfield Crossing Blvd., suite 305, Indianapolis, Indiana 46240.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22501 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-50; OTS NO. 4100]

Ludington Savings Bank, F.S.B., Ludington, MI; Notice of Final Action Approval of Conversion Application

Dated: September 10, 1990.

Notice is hereby given that on August 13, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Ludington Savings Bank, F.S.B., Ludington, Michigan, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Indianapolis District Office, 8250 Woodfield Crossing Blvd., suite 305, Indianapolis, Indiana 46240.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22502 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-54; OTS NO. 5272]

Public Service Bank, a Federal Savings Bank, St. Louis, MO; Notice of Final Action, Approval of Conversion Application

Dated: September 10, 1990.

Notice is hereby given that on August 13, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Public Service Bank, a federal savings bank, St. Louis, Missouri, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Des Moines District Office, 907 Walnut Street, Des Moines, Iowa 50309.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22506 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-56 OTS No. 1709]

Yankton Savings & Loan Assoc. Yankton, SD; Final Action Approval of Voluntary Supervisory Conversion Application and Related Applications

Date: September 17, 1990.

Notice is hereby given that the Principal Senior Deputy Director, acting pursuant to authority delegated to him by the Director, of the Office of Thrift Supervision on August, 1990, approved the application of Yankton Savings and Loan Association, Yankton, South Dakota ("Association"), for permission to convert into a Federal stock savings bank ("Savings Bank") pursuant to a voluntary supervisory conversion, and the acquisition of all the conversion stock by Norwest Corporation, Minneapolis, Minnesota ("Corporation"). Also approved are a related holding company application by Corporation and related applications for Savings Bank to transfer its assets and voluntarily dissolve under OTS regulations.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22513 Filed 9-21-90; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection: (2) the title of the information collection: (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by October 24, 1990.

Dated: September 13, 1990.

By direction of the Secretary:

Kenneth H. Hoffmann,

Director, Policy and Standards Service.

Extension

1. Office of Finance and Planning.
2. Work Study Time Record (Veteran-Student Services).
3. VA Form 4-8690.
4. The form is used to record hours worked by work study participants under VA Work Study Program and to support payment allowance. The information is used by VA to process payment to the work study participant.
5. On occasion.
6. Individuals or households; Small businesses or organizations.
7. 41,520 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 90-22470 Filed 9-21-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total

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number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by October 24, 1990.

Dated: September 13, 1990.

By direction of the Secretary:

Kenneth H. Hoffmann,

Director, Policy and Standards Service.

Extension

1. Office of Finance and Planning.
2. Application for Refund of Educational Contributions.
3. VA Form 4-5281.
4. The form is used by veterans and service persons who have disenrolled from the program to request a refund of their contributions to the Post-Vietnam Veterans Educational Assistance Program. The information is used by VA to process the refund payment.
5. One-time.
6. Individuals or households; Federal agencies or employees.
7. 75,000 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90-22471 Filed 9-21-90; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Department of Veterans Affairs Scientific Review and Evaluation Board for Rehabilitation Research and Development has been renewed for a two-year period beginning September 12, 1990 through September 11, 1992.

Dated: September 14, 1990.

By direction of the Secretary.

Sylvia C. Lang,

Committee Management Officer.

[FR Doc. 90-22469 Filed 9-21-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 185
Monday, September 24, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:12 p.m. on Tuesday, September 18, 1990, the Corporation's Board of Directors determined, on motion of C.C. Hope, Jr., Director (Appointive), seconded by T. Timothy Ryan, Jr., Director (Office of Thrift Supervision), concurred in by Robert L. Clarke, Director (Comptroller of the Currency), Andrew C. Hove, Jr., Vice Chairman of the Board Directors, and L. William Seidman, Chairman of the Board of Directors, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe and Unsound Banking Practices," which prohibit the acceptance of brokered deposits by any undercapitalized insured depository institution after December 7, 1990, except on specific application to and waiver of the prohibition by the Corporation.

The Board further determined, by the same majority vote, that no notice of the change in the subject matter of the meeting earlier than September 17, 1990, was practicable.

Dated: September 19, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-22639 Filed 9-20-90; 9:33 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3 p.m. on Tuesday, September 18, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Application of The Citizens Bank of Cochran, Cochran, Georgia, a Bank Insurance Fund member and an insured State nonmember bank, for consent to acquire certain assets and assume the liability to pay deposits of the Cochran Branch of Georgia Federal Bank, F.S.B., Atlanta, Georgia, a Savings Association Insurance Fund member and a Federally chartered thrift institution; and for consent to convert deposits from the Savings Association Fund to the Bank Insurance Fund as contemplated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Application of The Citizens Bank, Fort Valley, Georgia, a Bank Insurance Fund member and an insured State nonmember bank, for consent to acquire certain assets and assume the liability to pay deposits of the Fort Valley Branch of Georgia Federal Bank, F.S.B., Atlanta, Georgia, a Savings Association Insurance Fund member and a Federally chartered thrift institution; and for consent to convert deposits from the Savings Association Fund to the Bank Insurance Fund as contemplated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Application for exemption from cross-guarantee provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Administrative enforcement proceedings.

Matters relating to the possible closing of certain insured banks.

Recommendation regarding an assistance agreement with a depository institution.

Recommendation regarding the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of C.C. Hope, Jr., Director (Appointive), seconded by Robert L. Clarke, Director (Comptroller of the Currency), concurred in by T. Timothy Ryan, Jr., Director (Office of Thrift Supervision), Andrew C. Hove, Jr., Vice Chairman of the Board of Directors, and L. William Seidman, Chairman of the Board of Directors, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Amphitheater of the Resolution Trust Corporation Building located at 801-17th Street, NW., Washington, DC

Dated: September 19, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-22640 Filed 9-20-90; 9:33 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 8:30 a.m. on Thursday, September 27, 1990, to consider the following matter:

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which sets the assessment to be paid by Bank Insurance Fund members during calendar year 1991, and the rates to be paid by Savings Association Insurance Fund members in 1991 and later years.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 898-3813.

Dated: September 20, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

FR Doc. 22666 Filed 9-20-90; 2:13 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—September 28, 1990.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Maritime Restrictions in Foreign Trades: (A) Japan—Harbor Management Fund, and (B) Korea—Various Trade Restrictions on U.S. Carriers.

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2. Docket No. 90-07—*Credit Practices of Sea-Land Service, Inc. and Nedlloyd Lijnen, B.V.—Discussion of the Record.*
3. Docket No. 90-09—*Matson Navigation Company, Inc., Proposed General Rate Increase of 3.8 Percent Between United States Pacific Coast Ports and Hawaii Ports—Discussion of the Record.*

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.

FR Doc. 22870 Filed 9-20-90; 2:14 pm]
BILLING CODE 6730-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2 p.m., Wednesday, October 3, 1990

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of September, 1990.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5820.

Date of notice: September 11, 1990.

William A. Gill, Jr.,
Executive Director, National Mediation Board.

[FR Doc. 90-22853 Filed 9-20-90; 10:26 am]
BILLING CODE 7550-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:11 p.m. on Tuesday, September 18, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) resolution of failed thrift institutions; (2) oversight of RTC resolutions by the primary insurer and the primary regulator; and (3) delegation of authority to RTC Regional Directors to prepare powers of attorney and to Regional Counsels to affix the Corporate seal.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), and concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Amphitheater of the RTC Building at 801-17th Street, NW., Washington, DC.

Dated: September 19, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 90-22698 Filed 9-20-90; 2:15 pm]
BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session at 2 p.m. on Tuesday, September 25, 1990 to consider the following matters:

Summary Agenda:

No Cases

Discussion Agenda:

A. *Memorandum re:* Collateralized Letters of Credit

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416-7282.

Dated: September 20, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 90-22699 Filed 9-20-90; 2:15 pm]
BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 17, 1990.

A closed meeting will be held on Tuesday, September 18, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 18, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement future.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Hirsch at (202) 272-2100.

Dated: September 18, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-22638 Filed 9-19-90; 5:02 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 55, No. 185
Monday, September 24, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

Correction

In notice document 90-19726 beginning on page 38192 in the issue of Monday, September 17, 1990, make the following correction:

On page 38196, in the table, under *Rehabilitation Services Administration*, in the fourth column, the application deadline date for CFDA No. 84-132 (Centers for Independent Living) now reads "3/28/91" and it should read "3/14/91"

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1990-11]

Domestic Subsidiaries of Foreign Nationals

Correction

In proposed rule document 90-19741 beginning on page 34280 in the issue of Wednesday, August 22, 1990, make the following corrections:

On page 34281, in the first column, in the fifth line, "purposes" should read "purpose".

On the same page, in the same column in the 11th line "jurisdictions" was misspelled.

§ 110.4 [Corrected]

On the same page, in the second column, in § 110.4(a)(4)(iv), in the third line, "not" should be deleted.

BILLING CODE 1505-01-D

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federal register

Monday
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Part II

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

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OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1990, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. title 5, Code of Federal Regulations, § 213.103(c) further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Operations Division, Room 6A12, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 606–0960.

The following exceptions were current on June 30, 1990:

Schedule A

Section 213.3102 Entire executive civil service.

(a) Positions of Chaplain and Chaplain's Assistant.

(b) [Reserved]

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., position excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by (1) appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent grade level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8457 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion, or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (l) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Administration, and in the International Boundary and Water Commission; or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional, or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS–7, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be (1) bona fide high school science or mathematics teachers; or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly relates to a scientific, professional, or technical curriculum—or in excess of 1040 working hours a year. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)–(s) [Reserved]

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v) Between May 13 and September 30 only, temporary Summer Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by OPM; or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions, the duties of which involve routine work up to and including the GS–4 level of difficulty or equivalent under the Federal Wage System, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met: (1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full time during any period in which their school is officially closed and during any school vacation period.

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. *However*, such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed one additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) Positions at grade GS–2 and below for summer employment as defined in § 213.3101(d), of assistants to scientific, professional, and technical employees, when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc) Positions at GS–15 and below when filled by persons identified as Interchange Executives by the President's Commission on Executive Exchange. Appointments made under this authority may not extend beyond 2 years.

(dd)–(ee) [Reserved]

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Pub. L. 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service

(gg)–(hh) [Reserved]

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS-9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS-9 through -15 on the staff of the Council.

(d)–(f) [Reserved]

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS-15; Policy Analyst, GS-11/14; and Policy Research Assistant, GS-9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 35 positions, GS-15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts. Appointments under this authority may not exceed January 20, 1994.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS-15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2)–(5) [Reserved]

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) [Reserved]

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrumentmen, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any one calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS-18.

(f) [Reserved]

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS-5 through 11 on the staff of the office.

(h) *Bureau of Administration.* (1) One Presidential Trip Specialist. No new appointments may be made under this authority after June 11, 1991.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS-13 through GS-17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) [Reserved]

(3) Positions of part-time, intermittent, or temporary Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS-9 and for not more than 130 working days in a service year.

(4) [Reserved]

(5) Positions at GS-9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer, Customs Aid (sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his/her service year. An individual appointed under this exception may not be employed in the Bureau of Customs under a combination of this and any other exception for more than 700 hours in his/her service year.

(6) Twenty-five positions of Criminal Investigator for special assignments.

(7)–(8) [Reserved]

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1990.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(2) Two positions of Senior Visiting Pension Actuary, GS-1510-14/15. Appointments to these positions must be for periods not to exceed 24 months.

(f) [Reserved]

(g) *Bureau of Alcohol, Tobacco and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) [Reserved]

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS-5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1) Not to exceed 30 positions at grades GS-6/15 in the Defense Mobilization Systems Planning Activity, Office of the Deputy Assistant Secretary of Defense (Mobilization Planning and Requirements.) No new appointments may be made under this authority after March 31, 1993.

(2)–(5) [Reserved]

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the Staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or the separation of a dependent's sponsor: *Provided*, that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to one additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Fifteen secretarial and staff support positions at GS-12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM-511-14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, or estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of Dean, Associate Dean, Assistant Dean, faculty members, postdoctoral fellows, research associates, senior research associates, and visiting scientists.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS-15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS-10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, Va.* (1) The Provost and professors in grades GS-13 through 15.

Section 213.3107 Department of the Army

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS-1700 occupational group and the GS-1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) [Reserved]

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG-6 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, chapel organist and choir-master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and Librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.* (1) Positions of Translator (Typing), GS-1040-5/9, and Supervisory Translator, GS-1040-11. No new appointments may be made under this authority after December 31, 1985.

(f) *Central Identification Laboratory.* (1) One position of Scientific Director, GM-190-15, and four positions of Forensic Scientist, GM-190-14. Initial appointment to these positions is NTE 3-5 years, with provision for indefinite numbers of renewals in 1-, 2-, or 3-year increments.

(g) *Defense Language Institute.* (1) All positions on the faculty and staff which are classified in the GS-1700 occupational group, the GS-1040

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Language Specialist series, and the GS-303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, Pa.* (1) Five positions of Educational Specialist for employment of not to exceed 1 year: Provided, that such employment may, with the prior approval of OPM, be extended for not to exceed one additional year.

(2) Nine senior policy analyst positions, GS-14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(3) Five research oriented faculty positions, GS-14/15, with the U.S. Army War College, at Carlisle Barracks, Pennsylvania, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) [Reserved]

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head and Instructor.

Section 213.3108 Department of the Navy

(a) *General.* (1) [Reserved]

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed one year.

(3) [Reserved]

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from non-Federal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5353–54.

(5) [Reserved]

(6) Positions of student operating room technician for temporary, part-time or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating non-Federal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided*, That the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a non-Federal institution in an approved program of educational and clinical training that meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) [Reserved]

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in non-Federal institutions. Employment under this authority may be filled on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of medical intern at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating non-Federal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating non-Federal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval dental centers, clinics, and departments, when filled by students who are enrolled in an approved dental assistant program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) [Reserved]

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS-12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) [Reserved]

(g) *Office of Naval Research.* (1) Not to exceed five positions of Liaison Scientists, GS-13/15, in the Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period not to exceed 2 years. With the prior approval of OPM, total employment under this authority may be for as long as 3 years.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Sixty-five positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS-11 through GS-15, in Detachments 6 and 51, SM-ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education, Instructors in Music (Choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists (Athletic Trainers).

(e) Not to exceed five positions, GS-12 through GS-15, in the Specialized Management Office (WR-ALC/QL) at Robins Air Force Base, Georgia, which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authority is not to exceed May 30, 1986.

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 250 positions of Criminal Investigators/Intelligence Research Specialists, GS-5 through GS-15.

(g) Not to exceed eight positions, GS-12 through GS-15, in Headquarters Air Force Logistics Command, DCS Materiel Management, Office of Special Activities, Wright Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) [Reserved]

(i) *Air Force Institute of Technology, Wright-Paterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM-346-14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) [Reserved]

(3) U.S. Marshal in the Virgin Islands.

(b) *Immigration and Naturalization Service.* (1) Not to exceed 3,500 positions at grades GS-15 and below engaged in planning for and implementing the processing of claims for resident status which may be submitted by aliens already in the United States as authorized by immigration control and reform legislation. New appointments under this authority may not be made after December 31, 1990.

(2) Not to exceed 25 positions, GS-15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, USSR. Employment under this authority may not exceed 4 years. No new appointments may be made under this authority after September 30, 1991.

(c) *Drug Enforcement Administration.* (1) [Reserved]

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS-132 series, grades GS-9 through GS-15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS-7/11.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS-7, WG-10, or equivalent in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS-7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided*, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS-7 or below in Alaska, as follows: Positions in non-professional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum rate. Employment under this authority may not exceed 10 weeks.

(b) [Reserved]

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) [Reserved]

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) [Reserved]

(2) Not to exceed four positions of Territorial Management Interns, grades GS-5, GS-7, or GS-9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship.

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Employment under this authority may not exceed 6 months.

(3) [Reserved]

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS–2 through GS–5 to perform practical and technical work supporting the management of Park Service areas and resources in the functional areas of interpretation, resources management, visitor protection, and visitor services; and positions at salaries equivalent to grades GS–6 and GS–7 in which the duties are supervisory or consist of highly specialized technical work in support of National Park Service operations in the functional areas delineated above. The total number of Park Ranger and Park Technician positions at salaries equivalent to GS–6 and GS–7 excepted under this paragraph shall not exceed 200. Employment under this paragraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by OPM and the Department. These standards include as a minimum the following number of previous seasons' experience at a salary equivalent to the next lower grade or equivalent experience in a Federal, State, or local park:

(i) For IGS–7: Two seasons at IGS–6 level in the National Park Service.

(ii) For IGS–6: Two seasons at IGS–5 level in the National Park Service.

(iii) For IGS–5: One season at IGS–4 level or its equivalent in experience.

(iv) For IGS–4: One season at IGS–3 level or its equivalent in experience.

(v) For IGS–3: One season at IGS–2 level or its equivalent in experience.

Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) [Reserved]

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Pub. L. 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values or conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided*, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial ManagementInterns, GS 5, when filled by persons selected by the Government (: of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural Commodity grader (grain) and (meat), (poultry), and (dairy) agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) [Reserved]

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; forest workers engaged primarily for fire prevention or suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; agricultural helpers, helper-leaders, and workers in the L Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 160 working days in a service year: *Provided*, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102.

(6) [Reserved]

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b) [Reserved]

(c) *Forest Service.* (1) [Reserved]

(2) Positions in Alaska of Laborers, Boat Operators, Mechanics, Equipment Operators, and Carpenters whose dutiesrequire the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stabilization and Conservation Service.* (1) Not to exceed 34 positions of Agricultural Program Specialist, GS–1145–7/12, engaged in conversion of ASCS' directives and information system to a completely automated format. Appointments to these positions may be made initially at the GS–7/11 levels and may not exceed September 30, 1989.

(2) Members of State Committees: *Provided*, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Farmers Home Administration.* (1) [Reserved]

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM, be further extended for additional periods not to exceed 1 year each.

(4)–(5) [Reserved]

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists at grades GS–11 and below; Clerks, Clerk-Typists, and Computer Clerks at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of Milk Market Administrators.

(g)–(i) [Reserved]

(j) *Food and Nutrition Service.* (1) [Reserved]

(2) Three hundred fifty positions of Food Assistance Program Specialist, GS–5/7, under the Child Nutrition Summer Feeding Program, for temporary employment not to begin before March 1 and not to exceed September 30 of each year, on a full-time, part-time, or intermittent basis.

(k) [Reserved]

(l) *Food Safety and Inspection Service.* (1)–(2) [Reserved]

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–6/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) [Reserved]

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) [Reserved]

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District Offices (MDO) and Processing Offices (PO): *Provided*, that temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)–(h) [Reserved]

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethel, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) [Reserved]

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any one calendar year.

(5) Field positions, GS–9 and below, in the National Marine Fisheries Service conducting fish and processed fish products inspection, funded by the private sector. New appointments under this authority may not be made after July 1, 1991.

(k) [Reserved]

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

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Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1994.

(c) [Reserved]

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) [Reserved]

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) All positions in the Public Health Service Hospital, Carville, La.

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the cooperating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided*, that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351—5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year.

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(c) [Reserved]

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(e) [Reserved]

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants, The President's Council on Physical Fitness.

(g)–(i) [Reserved].

(j) *Health Care Financing Administration.* (1) [Reserved]

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) [Reserved].

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3126 Defense Nuclear Facilities Safety Board

(a) All positions on the staff. No new appointments may be made under this authority after December 26, 1991.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Pub. L. 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3129 Thrift Oversight Board

(a) All positions. No new appointments may be made under this authority after December 31, 1994.

Section 213.3130 Securities and Exchange Commission

(a)–(b) [Reserved]

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows: (1) Seven positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year terms; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2).

(e) Not to exceed 10 positions of accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years.

Section 213.3131 Department of Energy

(a) [Reserved].

(b) *Bonneville Power Administration.* (1) Five Area Managers.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 6 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation

(a) All Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks or savings and loan institutions, of liquidating loans to banks or savings and loan institutions, or of paying the depositors of closed insured banks or savings and loan institutions. New appointments may be made under this authority only during the 5-year period following a bank or savings and loan institution closing and/or establishment of a consolidated liquidation site.

(b) Not to exceed 300 positions in field offices of the Resolution Trust Corporation. No new appointments may be made under this authority after September 30, 1992.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) [Reserved].

(b) Positions when filled by member-residents of the Home.

Section 213.3137 General Services Administration

(a) [Reserved].

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

Section 213.3138 Federal Communications Commission

(a) Fifteen positions of Telecommunications Policy Analyst, GS–301–13/14/15. Initial appointment to these positions will be for a period of

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not to exceed 2 years with provision for two 1-year extensions.

Section 213.3141 National Labor Relations Board

(a) Election Examiners for temporary, part-time or intermittent employment in connection with elections under the Labor-Management Relations Act.

Section 213.3142 Export-Import Bank of the United States

(a) One Special Assistant to the Board of Directors, grade GS-14 and above.

Section 213.3146 Selective Service System

(a) State Directors.
(b)–(c) [Reserved]
(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.

(c)–(e) [Reserved]

(f) Positions of Program Coordinator/Counselor at grades GS-7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office

(a) Not to exceed three positions of Research Associate at grades GS-15 and below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed one additional year.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3166 Commission on Civil Rights

(a) Twenty-five positions at grade GS-11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Pub. L. 88-352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3174 Smithsonian Institution

(a) Not to exceed 25 positions at grades GS-11 and below which support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connection with any one Festival.

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, and one Social Science Program Administrator.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.* (1) Until September 30, 1990, one position of Assistant Director, Artists-in-Education Programs, Office for Partnership, GS-301-14.

(2) Until September 30, 1990, one position of Assistant Director for State Programs.

(3) Until September 30, 1990, one position of Director of Literature Programs.

(4) Until September 30, 1990, one position of Assistant Director of Theatre Programs.

(5) Until September 30, 1990, one position of Director of Folk Arts Programs.

(6) Until September 30, 1990, one position of Director, Opera/Musical Theatre Programs.

(7) Until September 30, 1990, one position of Assistant Director of Opera/Musical Theatre Programs.

(8) Until September 30, 1990, one position of Assistant Director of Literature Programs.

(9) Until September 30, 1990, one position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.

(10) Until September 30, 1990, one position of Deputy Chairman for Public Partnership.

(11) Until September 30, 1990, four Project Evaluators.

(12) Until September 30, 1990, one position of Director of Museum Programs.

(13) Until September 30, 1990, one position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.

(14) Until September 30, 1990, one position of Assistant Director of Music Programs.

(15) Until September 30, 1990, one position of Director of Expansion Arts Programs.

(16) Until September 30, 1990, one position of Director of Media Arts Programs.

(17) Until September 30, 1990, one position of Director, Challenge and Advancement Grant Program.

(18) Until September 30, 1990, one position of Assistant Director, Challenge and Advancement Grant Programs.

(19) [Reserved]

(20) Until September 30, 1990, one position of Director of Inter Arts Program.

(21) Until September 30, 1990, one position of Assistant Director of Expansion of Arts Programs.

(22) Until September 30, 1990, one position of Assistant Director of Media Arts Programs.

(23) Until September 30, 1990, one position of Assistant Director of Design Arts Program.

(24) Until September 30, 1990, one position of Assistant Director of Dance Programs.

(25) Until September 30, 1990, one position of Assistant Director of Visual Arts Programs.

(26) Until September 30, 1990, one position of Assistant Director of Museum Programs.

(27)–(29) [Reserved]

(30) Until September 30, 1990, one position of Director of Education Programs.

(31) Until September 30, 1990, one position of Director of Music Programs.

(32) Until September 30, 1990, one position of Director of Theater Programs.

(33) Until September 30, 1990, one position of Director of Dance Programs.

(34) Until September 30, 1990, one position of Director of Visual Arts Programs.

(35) Until September 30, 1990, one position of Director of Design Arts Program.

(36) [Reserved]

(37) Until September 30, 1990, one Director for State Programs.

(38) Until September 30, 1990, one Director for Artists-in-Education Programs.

Section 213.3191 Department of Housing and Urban Development

(a) One position of Special Advisor to the Regional Administrator, GS-301-14, in San Francisco. Employment under this authority may not exceed 2 years.

Section 213.3187 Federal Housing Finance Board

(a) All positions. No new appointments may be made under this authority after December 31, 1992.

Section 213.3191 Office of Personnel Management

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.

(b)–(c) [Reserved].

(d) Part-time and intermittent positions of test examiners at grades GS-8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS-11 and below for temporary, intermittent or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) [Reserved]

(c) *Federal Highway Administration.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS-5 for subprofessional engineering aide work on the highway surveys and construction projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) [Reserved]

(e) *Maritime Administration.* (1)–(2) [Reserved]

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) [Reserved]

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS-15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93-288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS-15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93-288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 9 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 300 professional and technical positions at grades GS-6 through GS-15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary organizations

(a) Positions at GS-15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s) does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS-15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire executive civil service

The provisions established under paragraphs (a) through (f) are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by

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OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for formally arranged schedules of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy the requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S. Truman Foundation Scholarship Program under the provisions of Public Law 93-642 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the Harry S. Truman Scholarship Foundation and the employing agency and provide the experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Student positions established in support of the Cooperative Education (Vocational Education) Programs for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(f) Positions under the Federal junior Fellowship Program, a career-related work-study program covered under the provisions of Executive Order 12015.

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(h)–(i) [Reserved]

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding three years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) [Reserved]

(m) Positions when filled under any of the following conditions:

(1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

Section 213.3203 Executive Office of the President

(a) [Reserved]

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) [Reserved]

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 and GS–12 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 2½ years.

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Pub. L. 99-190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contracts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employments under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever occurs first.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) [Reserved]

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) [Reserved]

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(c) *National Defense University.* (1) Sixty-one positions of professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–981–15, U.S. European Command.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency programs. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

Section 213.3209 Department of the Air Force

(a) Not to exceed eight interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) [Reserved]

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(d) Twenty-eight positions of professor, associate professor, or professional academic staff at the Air University, Maxwell Air Force Base, Alabama, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) [Reserved]

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) *Office of International Cooperation and Development.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 2 years on a single project for any individual. No more than 30 new appointments may be made under this authority in any 12-month period.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate

Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to two additional years.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) [Reserved]

(2) Not to exceed 80 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b) [Reserved]

(c) *Minority Business Development Agency.* (1) One position of minority business opportunity specialist at grades GS–9 through GS–15. This authority may not be used for new appointments after December 31, 1977.

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

Section 213.3216 Department of Health and Human Services

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Centers for Disease Control, Atlanta, Georgia.

(b)–(c) [Reserved]

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–7, the incumbents of which will be trainees in theLibrary Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 600 principal investigatory, scientific, professional and technical positions at grades GS–11 and above in the medical research program. Employment under this authority may not exceed 7 years for any individual.

Section 213.3228 U.S. Information Agency

(a) *Voice of America.* (1) Not to exceed 150 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, D.C. Appointments under this authority shall not exceed 3 years.

Section 213.3233 Federal Deposit Insurance Corporation

(a) Up to 569 positions at GS–15 and below engaged in exploring methods to promote stability in the thrift industry, restore the industry to profitability, and protect individual savers. No additional appointments may be made under this authority after September 30, 1990.

Section 213.3234 Federal Trade Commission

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) Three GS–11 Medical Officer positions under a fellowship program on geriatrics.

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3237 General Services Administration

(a) One position of Deputy Director of Network Services.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3257 National Credit Union Administration

(a) *Central Liquidity Facility.* (1) All managerial and supervisory positions at pay levels greater than the equivalent of GS–13.

Section 213.3259 ACTION

(a) *Office of Domestic and Anti-Poverty Operations.* (1) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15.

(b) *Office of Policy and Research.* (1) Three positions of Program Specialist at grades GS–7 through GS–15.

Section 213.3264 U.S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3272 Administrative Office of the U.S. Courts

(a) Not to exceed 31 positions of Federal Probation System Administrator in the Division of Probation, when filled by Federal Probation Officers and/or Pretrial Services Officers on active service in the U.S. Courts.

(b) [Reserved]

(c) Six positions of Clerks Liaison Officer in the Division of Clerks of Court.

Section 213.3274 Smithsonian Institution

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) [Reserved]

(b) *National Endowment for the Humanities.* (1) Until September 30, 1990, Humanities Administrator, Reference Materials Programs, Division of Research Programs.

(2) Until September 30, 1990, Humanities Administrator (Assistant Director), Humanities Projects in Higher Education Program, Division of Education Programs.

(3) Until September 30, 1990, Deputy Director, Division of Education Programs.

(4) Until September 30, 1990, Director, Division of Research Grants.

(5) Until September 30, 1990, one position of Director, GS–1701–15, one position of Deputy Director, GS–1701–14, and seven positions of Humanities Administrator, GS–1701–13, Division of State Programs.

(6) Until September 30, 1990, one Director and one Deputy Director, Division of Fellowships and Seminars.

(7) Until September 30, 1990, one Humanities Administrator, Fellowships for College Teachers, Division of Fellowships.

(8) Until September 30, 1990, seven positions of Humanities Administrator, Media Program, Division of General Programs.

(9) Until September 30, 1990, one position of Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(10) Until September 30, 1990, one position of Assistant Director for the Elementary and Secondary Education Program, Division of Education Programs.

(11) Until September 30, 1990, one position of Assistant Director for the Museums and Historical Organizations Program, Division of General Programs.

(12) Until September 30, 1990, four positions of Humanities Administrator, Museums and Historical Organizations Program, Division of General Programs.

(13) Until September 30, 1990, four positions of Humanities Administrator, Elementary and Secondary Education Program, Division of Education Programs.

(14) Until September 30, 1990, Director of General Programs.

(15) Until September 30, 1990, one Assistant to the Director, General Programs.

(16) Until September 30, 1990, one Humanities Administrator, Younger Scholars Programs, Division of General Programs.

(17) Until September 30, 1990, one Humanities Administrator, Public Humanities Projects, Division of General Programs.

(18) Until September 30, 1990, one position of Director, Division of Education Programs.

(19) Until September 30, 1990, one Humanities Administrator (Assistant Director), Texts Programs, Division of Research Programs.

(20) Until September 30, 1990, one Humanities Administrator, Centers for Advanced Study, Division of Research Programs.

(21) Until September 30, 1990, one Challenge Grants Officer.

(22) Until September 30, 1990, one Assistant Director, Media Program, Division of General Programs.

(23) Until September 30, 1990, one position of Humanities Administrator, Publications Program, Division of Research Grants.

(24) Until September 30, 1990, one Deputy Director, Division of Research Grants.

(25) Until September 30, 1990, one Humanities Administrator, Summer Seminars for College Teachers, Division of Fellowships and Seminars.

(26) Until September 30, 1990, two positions of Humanities Administrator, Humanities Libraries Projects, Division of General Programs.

(27) Until September 30, 1990, one position of Humanities Projects Assessment Officer and one position of Humanities Administrator, Office of the Assistant Chairman for Programs.

(28) Until September 30, 1990, one position of Humanities Administrator, Public Humanities Projects, Division of General Programs, GS–14.

(29) Until September 30, 1990, one position of Humanities Administrator, GS–1701–14, in the Interpretive Research Programs, Division of Research Programs.

(30) Until September 30, 1990, one Humanities Administrator, Office of Challenge Grants.

(31)–(33) [Reserved]

(34) Until September 30, 1990, one Humanities Administrator, GS–1701–12, Humanities Projects in Higher Education Program, Division of Education Programs.

(35) Until September 30, 1990, one Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(36) Until September 30, 1990, three Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(37) Until September 30, 1990, two Humanities Administrators, Summer Seminars for Secondary School Teachers, Division of Fellowships and Seminars.

(38) Until September 30, 1990, one Humanities Administrator, Summer Stipends, Division of Fellowships and Seminars.

(39) Until September 30, 1990, one Humanities Administrator, Travel to Collections, Division of Fellowships and Seminars.

(40) Until September 30, 1990, one Humanities Administrator, Translation Program, Reference Works Program, Division of Research Programs.

(41) Until September 30, 1990, one Humanities Administrator, Editions Program, Reference Works Program, Division of Research Programs.

(42) [Reserved]

(43) Until September 30, 1990, one Humanities Administrator, Foundations of American Society Program, Division of Fellowships and Seminars.

(44) Until September 30, 1990, one Humanities Administrator, Humanities Projects in Museums and Historical Organizations, Division of General Programs.

(45) Until September 30, 1990, four Humanities Administrators, Office of Preservation.

(46) Until September 30, 1990, one Director, Office of Preservation.

(47) Until September 30, 1990, one Humanities Administrator (Program Officer), Regrant Programs, Division of Research Programs.

(48) Until September 30, 1990, one Director, Office of Planning and Budget.

(49) Until September 30, 1990, one Humanities Administrator, Tools Program, Reference Materials Program, Division of Research Programs.

(50) Until September 30, 1990, one Humanities Administrator, Access Program, Reference Materials Program, Division of Research Programs.

(51) Until September 30, 1990, one Humanities Administrator, Project Research, Interpretive Research Program, Division of Research Programs.
(52) Until September 30, 1990, one Humanities Administrator, Humanities, Science, and Technology Program, Interpretive Research Program, Division of Research Programs.
(53) Until September 30, 1990, one Humanities Administrator, Office of the Assistant Chairman for Programs and Policy.

Section 213.3286 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.
(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3294 Department of Transportation

(a) *Federal Railroad Administration.*
(1) Regional Director of Railroad Safety, Fort Worth Texas.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisors
CEA 1 Secretary to the Chairman.
CEA 4 Secretary to the Chairman.
CEA 5 Secretary to the Council Member.
CEA 6 Secretary to the Council Member.

Council on Environmental Quality
CEQ 2 Executive Assistant to the Chairman.
CEQ 3 Confidential Assistant to the Chairman.
CEQ 4 Confidential Assistant to the Chairman.

Office of Management and Budget
OMB 10 Confidential Assistant to the Associate Director for Natural Resources, Energy, and Science.
OMB 11 Secretary to the Associate Director, National Security and International Affairs.
OMB 21 Confidential Assistant to the Director.
OMB 30 Special Assistant to the Associate Director for Congressional Affairs.
OMB 50 Legislative Assistant to the Associate Director for Congressional Affairs.
OMB 59 Public Affairs Assistant to the Director of External Affairs.
OMB 65 Legislative Assistant to the Associate Director for Congressional Affairs.
OMB 66 Secretary to the Associate Director for Economic Policy.
OMB 72 Confidential Assistant to the Associate Director for Human Resources, Veterans and Labor.
OMB 74 Special Assistant to the Associate Director for Congressional Affairs.
OMB 75 Deputy Director of External Affairs.
OMB 76 Confidential Assistant to the Associate Director for Congressional Affairs.
OMB 77 Confidential Assistant to the Deputy Director.
OMB 78 Secretary to the Administrator, Office of Information and Regulatory Affairs.
OMB 79 Special Assistant to the Deputy Director.
OMB 80 Confidential Assistant to the Executive Assistant to the Director.
OMB 82 Confidential Assistant to the Executive Assistant to the Director.

Office of National Drug Control Policy
ONDCP 1 Special Assistant to the Director and White House Liaison (Executive Secretariat).
ONDCP 2 Staff Assistant to the Deputy Director, Demand Reduction.
ONDCP 3 Confidential Assistant to the Deputy Director, Demand Reduction.
ONDCP 4 Legislative Assistant to the Director, Congressional Relations.
ONDCP 5 Legislative Assistant to the Director, Congressional Relations.
ONDCP 7 Confidential Assistant to the Special Assistant to the Director and White House Liaison.
ONDCP 8 Confidential Assistant to the Chief of Staff.
ONDCP 9 Staff Assistant to the Director, Public Affairs.
ONDCP 10 Special Assistant to the Chief of Staff.
ONDCP 11 Staff Assistant to the Chief of Staff.
ONDCP 12 Staff Assistant to the Chief of Staff.
ONDCP 13 Deputy Chief of Staff.
ONDCP 14 Confidential Assistant to the Director.
ONDCP 15 Legislative Assistant to the Director, Congressional Relations.
ONDCP 16 Legislative Assistant to the Director, Congressional Relations.
ONDCP 17 Confidential Assistant to the Deputy Director, Demand Reduction.
ONDCP 18 Staff Assistant for Scheduling to the Confidential Assistant to the Director.
ONDCP 19 Special Assistant to the Director.
ONDCP 20 Staff Assistant to the Special Assistant to the Director and White House Liaison.
ONDCP 21 Confidential Assistant to the Special Assistant to the Director.
ONDCP 22 Confidential Assistant to the Deputy Chief of Staff.
ONDCP 23 Confidential Assistant to the Director.
ONDCP 25 Confidential Assistant to the General Counsel.
ONDCP 26 Confidential Assistant to the Executive Assistant to the Director.
ONDCP 27 Confidential Assistant to the Director, Congressional Relations.
ONDCP 29 Special Assistant for Prevention to the Deputy Director, Demand Reduction.
ONDCP 30 Special Assistant for Treatment/Health for State and Local Affairs to the Associate Director, State and Local Affairs.
ONDCP 31 Special Assistant for Prevention/Education for State and Local Affairs to the Associate Director, State and Local Affairs.
ONDCP 32 Staff Assistant to the Special Assistant to the Director.
ONCP 33 Staff Assistant to the Deputy Director, Supply Reduction.
ONDCP 34 Confidential Assistant to the Associate Director, State and Local Affairs.
ONDCP 35 Staff Assistant to the Special Assistant to the Director.
ONDCP 36 Special Assistant to the Chairman, President's Drug Advisory Council.
ONnp 37 Staff Assistant to the Chairman, President's Drug Advisory Council.
ONDCP 38 Staff Assistant for Scheduling to the Executive Assistant to the Director.
ONDCP 39 Staff Assistant to the Associate Director, State and Local Affairs.

ONDCP 40 Law Clerk to the General Counsel.
ONDCP 41 Special Assistant to the Deputy Director, Supply Reduction.

Office of Science and Technology Policy
OSTP 1 Public Information Assistant to the Director.
OSTP 5 Confidential Secretary to the Director.

President's Commission on Executive Exchange
PCEE 5 Public Affairs Specialist to the Executive Director.
PCEE 6 Staff Assistant to the Executive Director.
PCEE 7 Staff Assistant (Typing) to the Executive Director.
PCEE 8 Secretary (Typing) to the Executive Director.
PCEE 11 Associate Director for Education to the Executive Director.
PCEE 12 Public Affairs Specialist to the Executive Director.

Office of the United States Trade Representative
USTR 14 Confidential Secretary to the Ambassador/United States Trade Representative.
USTR 20 Deputy Assistant United States Trade Representative for Congressional Affairs.
USTR 21 Confidential Assistant to the Deputy United States Trade Representative.
USTR 25 Confidential Assistant to the General Counsel.
USTR 26 Congressional Affairs Officer to the Assistant United States Trade Representative for Congressional Affairs.
USTR 30 Confidential Assistant to the Deputy United States Trade Representative—Geneva.
USTR 31 Confidential Secretary to the Ambassador/United States Trade Representative.

Section 213.3304 Department of State

ST 38 Staff Assistant to the Under Secretary for Management.
ST 51 Special Assistant to the Legal Adviser.
ST 59 Secretary (Steno) to the Under Secretary for Economic Affairs.
ST 68 Staff Assistant to the Under Secretary for Management.
ST 79 Special Assistant to the United States Representative to the United Nations.
ST 88 Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs.
ST 100 Secretary (Steno) to the United States Representative to the United Nations.
ST 105 Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs.
ST 107 Secretary (Typing) to the Assistant Secretary, Bureau of Economic and Business Affairs.
ST 112 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 116 Staff Assistant to the Counselor of the Department.
ST 117 Confidential Clerk to the Secretary.
ST 119 Secretary (Typing) to the Assistant Secretary, Bureau of Oceans and International Scientific and Environmental Affairs.
ST 122 Staff Assistant to the Under Secretary for Management.
ST 124 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 126 Confidential Assistant to the Assistant Secretary for Public Affairs.
ST 127 Secretary (Steno) to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 132 Secretary (Typing) to the Assistant Secretary, Bureau of International Organization Affairs.
ST 134 Secretary (Steno) to the Deputy Secretary.
ST 139 Protocol Officer (Visits) to the Chief of Protocol.
ST 149 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 155 Protocol Officer (Visits) to the Chief of Protocol.
ST 161 Secretary (Steno) to the Under Secretary for Management.
ST 167 Protocol Officer (Visits) to the Chief of Protocol.
ST 168 Staff Assistant to the Legal Adviser.
ST 170 Special Assistant to the Deputy Secretary.
ST 172 Staff Assistant to the Under Secretary for Management.
ST 173 Special Assistant to the Under Secretary for Management.
ST 178 Secretary (Steno) to the Assistant Secretary for International Narcotics Matters.
ST 179 Congressional Relations Officer to the Principal Deputy Assistant Secretary for Legislative and Intergovernmental Affairs.
ST 180 Director of Programs to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 182 Special Assistant to the Assistant Secretary, Bureau of Consular Affairs.
ST 183 Public Affairs Advisor to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 185 Congressional Liaison Officer to the Ambassador-at-Large for Refugee Affairs.
ST 186 Staff Assistant to the Assistant Secretary for International Narcotics Matters.
ST 190 Special Assistant to the Ambassador-at-Large and Special Advisor to the Secretary.
ST 203 Staff Assistant to the Counselor of the Department.
ST 205 Secretary (Steno) to the Assistant Secretary for East Asian and Pacific Affairs.
ST 209 Protocol Officer (Visits) to the Chief of Protocol.
ST 213 Secretary (Typing) to the Principal Deputy Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 214 Secretary (Typing) to the Assistant Secretary, Bureau of Economic and Business Affairs.
ST 216 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 217 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 225 Foreign Affairs Officer to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 226 Special Assistant to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs.
ST 227 Staff Assistant to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 229 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 242 Special Program Assistant to the Director of Human Rights Legislation and Public Diplomacy, Bureau of Human Rights and Humanitarian Affairs.
ST 243 Program Specialist to the Chief of Protocol.
ST 244 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs.
ST 248 Special Assistant to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 249 Staff Assistant to the Deputy Secretary.
ST 250 Public Information Officer to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 252 Protocol Officer (Visits) to the Chief of Protocol.
ST 256 Policy and Press Advisor to the U.S. Permanent Representative to the U.S. Mission to the

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Organization of American States.
ST 258 Secretary (Steno) to the Inspector General.
ST 259 Special Assistant to the Legal Adviser.
ST 260 Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 261 Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 262 Associate Director, Office of Equal Employment Opportunity and Civil Rights, to the Deputy Assistant Secretary for Equal Employment Opportunity and Civil Rights.
ST 263 Special Assistant to the Secretary.
ST 264 Coordinator, Intergovernmental Affairs, to the Deputy Assistant Secretary for Public Diplomacy.
ST 265 Staff Assistant to the Secretary.
ST 266 Special Assistant to the Secretary.
ST 267 Secretary to the Assistant Secretary, Bureau of Public Affairs.
ST 268 Staff Assistant to the Secretary.
ST 269 Supervisory Protocol Officer to the Chief of Protocol.
ST 271 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 272 Staff Assistant to the Deputy Secretary.
ST 273 Secretary (Typing) to the Secretary.
ST 274 Special Assistant to the Head of the U.S. Delegation to Geneva for Arms Reduction Negotiations.
ST 275 Staff Assistant to the Special Assistant to the Under Secretary for Management.
ST 277 Special Assistant to the Director, Policy Planning Staff.
ST 278 Secretary (Steno) to the Director, Policy Planning Staff.
ST 279 Staff Assistant to the Coordinator of Intergovernmental Affairs.
ST 280 Special Programs Assistant to the Director of Human Rights Legislation and Public Diplomacy, Bureau of Human Rights and Humanitarian Affairs.
ST 281 Foreign Affairs Officer (Visits) to the Chief of Protocol.
ST 282 Special Assistant to the Ambassador-at-Large for Refugee Affairs.
ST 283 Secretary (Typing) to the Under Secretary for Management.
ST 285 Staff Assistant to the Assistant Secretary for International Narcotics Matters.
ST 286 Secretary (Steno) to the United States' Permanent Representative to the Organization of American States.
ST 290 Secretary (Steno) to the Ambassador-at-Large for Burdensharing.
ST 291 Senior Policy Advisor to the Assistant Secretary for Legislative Affairs.
ST 292 Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs.
ST 293 Special Assistant to the U.S. Negotiator for Defense and Space.
ST 294 Secretary (Steno) to the Under Secretary for Security Assistance, Science and Technology.
ST 295 Secretary (Steno) to the Assistant Secretary, Bureau of Consular Affairs.
ST 296 Secretary (Steno) to the Chief Financial Officer.
ST 297 Foreign Affairs Officer to the Chief of Protocol.
ST 298 Deputy Assistant Secretary for Passport Services to the Assistant Secretary, Bureau of Consular Affairs.
ST 299 Staff Assistant to the Secretary.
ST 302 Staff Assistant to the U.S. Negotiator for Defense and Space.

Section 213.3305 Department of the Treasury

TREA 27 Executive Assistant to the Secretary.
TREA 39 Special Assistant to the Assistant Secretary for Legislative Affairs.
TREA 44 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 92 Director, Consumer Affairs, to the Assistant Secretary for Business and Consumer Affairs.
TREA 94 Executive Assistant to the Commissioner of Customs.
TREA 122 Public Affairs Specialist to the Assistant Secretary for Policy, Planning and Communications.
TREA 126 Staff Assistant to the Director of the Mint.
TREA 128 Confidential Assistant to the Secretary.
TREA 139 Director of Scheduling to the Assistant Secretary for Policy Management.
TREA 145 Travel Assistant to the Deputy Assistant Secretary for Administration.
TREA 146 Legislative Assistant to the Assistant Secretary for Legislative Affairs.
TREA 153 Legislative Specialist to the Assistant Secretary for Legislative Affairs.
TREA 156 Special Assistant to the Assistant Secretary for Policy Development.
TREA 157 Congressional Liaison Officer to the Associate Commissioner of Customs for Congressional and Public Affairs.
TREA 170 Assistant Director for Travel and Special Event Services, to the Deputy Assistant Secretary for Administration.
TREA 185 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 186 Public Affairs Specialist to the Treasurer of the United States.
TREA 187 Deputy Assistant Secretary for Policy Review to the Assistant Secretary for Policy Development.
TREA 188 Special Assistant (Policy Analysis) to the Secretary.
TREA 189 Special Assistant (Personnel) to the Secretary.
TREA 190 Special Assistant to the Director of Scheduling.
TREA 191 Special Assistant to the Deputy Assistant Secretary for Departmental Finance and Management.
TREA 192 Confidential Assistant to the Secretary.
TREA 193 Director, Office of Intergovernmental Affairs, to the Deputy Assistant Secretary for Public Liaison.
TREA 196 Confidential Assistant to the Executive Secretary.
TREA 199 Executive Assistant to the Deputy Secretary.
TREA 200 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 201 Deputy Assistant Secretary for Legislative Affairs.
TREA 202 Director, Office of Legislative Affairs, to the Assistant Secretary for Legislative Affairs.
TREA 203 Staff Assistant (Correspondence Review) to the Executive Secretary.
TREA 204 Staff Assistant to the Assistant Secretary for Policy Management.
TREA 205 Director, Office of Corporate Finance, to the Deputy Assistant Secretary for Corporate Finance.
TREA 207 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 209 Special Assistant to the Under Secretary for Finance.
TREA 210 Staff Assistant to the Director of the Mint.
TREA 213 Confidential Assistant to the Assistant Secretary for Legislative Affairs.
TREA 214 Special Assistant to the Deputy Assistant Secretary for Corporate Finance.
TREA 216 Special Assistant to the Assistant Secretary for Policy Management.
TREA 217 Special Assistant to the Assistant Secretary for International Affairs.
TREA 218 Special Assistant to the Deputy Assistant Secretary for Corporate Finance.
TREA 219 Special Assistant to the Assistant Secretary for Economic Policy.
TREA 220 Secretary to the Commissioner of Internal Revenue.
TREA 221 U.S. Executive Director, African Development Bank, to the Assistant Secretary for International Affairs.
TREA 222 Special Assistant to the Under Secretary for International Affairs.
TREA 223 Special Assistant to the Deputy Assistant Secretary for Law Enforcement.
TREA 226 Assistant to the Commissioner of Internal Revenue.
TREA 227 Special Assistant to the Assistant Secretary for Management.
TREA 228 Assistant and Press Secretary to the Director of the Mint.
TREA 229 Senior Advisor to the Secretary for Economic Policy Coordination.
TREA 230 Staff Assistant to the Director of Public Affairs.
TREA 231 Special Assistant to the Deputy Treasurer of the United States.
TREA 233 Deputy Executive Secretary.
TREA 235 Special Assistant for Administrative Operations to the Deputy Assistant Secretary for Management.
TREA 236 Staff Assistant to the Deputy Assistant Secretary for Public Liaison.

Section 213.3306 Department of Defense

DOD 5 Private Secretary to the Deputy Secretary.
DOD 19 Personal and Confidential Assistant to the Assistant Secretary for Program Analysis and Evaluation.
DOD 22 Private Secretary to the Assistant to the Secretary (Atomic Energy).
DOD 23 Confidential Assistant to the Military Assistant to the Secretary.
DOD 24 Chauffeur to the Secretary.
DOD 30 Secretary (Steno) to the Defense Advisor to U.S. NATO.
DOD 31 Confidential Assistant to the Assistant Secretary for Legislative Affairs.
DOD 33 Personal Secretary to the Deputy Secretary.
DOD 34 Private Secretary to the Principal Deputy Assistant Secretary for International Security Affairs.
DOD 35 Confidential Assistant to the Special Assistant to the Secretary and Deputy Secretary.
DOD 51 Private Secretary to the Assistant Secretary for Reserve Affairs.
DOD 54 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 55 Private Secretary to the Chief Judge, U.S. Court of Military Appeals.
DOD 56 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 62 Management Officer to the Chairman, President's Intelligence Oversight Board.
DOD 75 Chauffeur to the Deputy Secretary.
DOD 89 Secretary (Typing) to the Principal Deputy Assistant Secretary for Public Affairs.
DOD 101 Personal and Confidential Assistant to the Director of Net Assessment.
DOD 119 Private Secretary to the Principal Deputy Assistant Secretary for Program Analysis and Evaluation.
DOD 133 Public Affairs Specialist to the Assistant Secretary for Public Affairs.
DOD 171 Special Assistant to the Deputy Assistant Secretary for Reserve Affairs.
DOD 174 Private Secretary to the Under Secretary for Policy.
DOD 175 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 178 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 205 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 217 Personal and Confidential Assistant to the Assistant Secretary for Command, Control, Communications and Information.
DOD 234 Deputy Assistant to the Secretary.
DOD 236 Director for Programs to the Assistant Secretary for Public Affairs.
DOD 239 Confidential Assistant to the Assistant to the Secretary.
DOD 241 Personal and Confidential Assistant to the Assistant Secretary for International Security Policy.
DOD 250 Director for Editorial Services to the Assistant Secretary for Public Affairs.
DOD 254 Special Assistant for Emergency Planning to the Assistant Secretary (Production and Logistics).
DOD 255 Personal and Confidential Assistant to the Deputy Secretary.
DOD 256 Staff Assistant to the Assistant Secretary for Force Management and Personnel.
DOD 261 Special Assistant for European Security and Political Affairs to the Deputy Assistant Secretary for European and NATO Policy.
DOD 270 Private Secretary to the Director, Strategic Defense Initiative Organization.
DOD 271 Private Secretary to the Principal Deputy Assistant Secretary for Reserve Affairs.
DOD 274 Security Advisor to the Deputy Assistant to the President/Director, White House Military Office.
DOD 275 Assistant for European Security Negotiations to the Deputy Assistant Secretary (Negotiations Policy).
DOD 279 Personal and Confidential Assistant to the Director, Operational Test and Evaluation.
DOD 283 Special Assistant to the Assistant Secretary for Public Affairs.
DOD 287 Special Assistant for Strategic Defense and Space Arms Control Policy to the Deputy Assistant Secretary (Nuclear Forces and Arms Control Policy).
DOD 294 Staff Specialist to the Deputy Director, Strategic Defense Initiative Organization.
DOD 298 Confidential Assistant to the Under Secretary for Acquisition.
DOD 301 Personal and Confidential Assistant to the Assistant Secretary for Production and Logistics.
DOD 304 Assistant to the Deputy Director, Policy, External Affairs and Special Programs, Office of Operational Test and Evaluation.
DOD 306 Attorney Advisor (Military) to the Judge, U.S. Court of Military Appeals.
DOD 308 Director, Low-Intensity Conflict, to the Deputy Assistant Secretary for Low-Intensity Conflict.
DOD 310 Staff Assistant to the Chairman, Joint Chiefs of Staff.
DOD 311 Staff Assistant to the

Assistant to the Chairman, Joint Chiefs of Staff.
DOD 313 Staff Assistant to the Deputy Assistant Secretary for Family Support, Education, and Safety.
DOD 314 Personal and Confidential Assistant to the Under Secretary for Acquisition.
DOD 316 Attorney Adviser (Military) to the Judge, U.S. Court of Military Appeals.
DOD 319 Executive Assistant, National Defense Stockpile, to the Special Assistant to the Assistant Secretary (Production and Logistics) for Stockpile Policy and Programs.
DOD 320 Executive Assistant to the Secretary.
DOD 321 Staff Assistant to the Assistant to the Vice President for National Security Affairs.
DOD 322 Personal and Confidential Assistant to the U.S. Ambassador to NATO.
DOD 323 Deputy Protocol Officer to the Protocol Officer.
DOD 324 Confidential Assistant to the Comptroller.
DOD 325 Special Assistant for Foreign Affairs to the Assistant Secretary for Legislative Affairs.
DOD 326 Special Assistant for International Security Affairs to the Assistant Secretary for Legislative Affairs.
DOD 327 Special Assistant for Strategic Systems to the Assistant Secretary for Legislative Affairs.
DOD 328 Administrative Assistant to the Assistant to the Secretary.
DOD 329 Special Assistant to the Under Secretary for Policy.
DOD 332 Personal and Confidential Assistant to the Assistant Secretary for International Security Affairs.
DOD 333 South American Country Director to the Assistant Secretary for International Security Affairs.
DOD 334 Public Affairs Specialist to the Assistant Secretary for Public Affairs.
DOD 335 Public Affairs Specialist to the Assistant Secretary for Public Affairs.
DOD 336 Public Affairs Specialist to the Assistant Secretary for Public Affairs.
DOD 337 Special Assistant (Operations) to the Assistant Secretary for Public Affairs.
DOD 338 Public Affairs Specialist to the Assistant Secretary for Public Affairs.
DOD 340 Speechwriter to the Assistant Secretary for Public Affairs.
DOD 344 Program Analyst to the Deputy Under Secretary for Industrial and International Programs.
DOD 345 Program Analyst to the Deputy Under Secretary for International Programs.
DOD 346 Program Analyst to the Deputy Under Secretary for International Programs.
DOD 348 Special Assistant for Technology Transfer to the Deputy Under Secretary for Trade Security Policy.
DOD 349 Special Assistant to the Assistant Secretary for International Security Affairs.
DOD 350 Special Assistant to the Deputy Under Secretary for Security Policy.
DOD 351 Special Assistant to the Assistant Secretary for International Security Affairs.
DOD 352 Confidential Assistant to the General Counsel.
DOD 354 Special Assistant to the Principal Deputy Under Secretary for Strategy and Resources.
DOD 355 Special Assistant for Strategic Modernization to the Assistant Secretary for Legislative Affairs.
DOD 356 Director, Humanitarian Assistance, to the Deputy Assistant Secretary for Global Affairs.
DOD 357 Director, Atlantic-Pacific Issues, to the Assistant Deputy Under Secretary for Policy Planning.
DOD 358 Assistant for Multi-Lateral Negotiations to the Assistant Secretary for International Security Affairs.
DOD-359 Private Secretary to the Principal Deputy Assistant Secretary for Special Operations/Low Intensity Conflict.
DOD 361 Special Assistant for Production and Logistics and Energy to the Assistant Secretary for Legislative Affairs.
DOD 362 Education Programs Officer to the Deputy Assistant Secretary for Drug Enforcement Policy.
DOD 363 Research Analyst to the Deputy Assistant Secretary for Drug Enforcement Policy.
DOD 364 Assistant Airlift Coordinator to the Special Assistant for Airlift Operations to the Director, White House Military Office.
DOD 365 Staff Assistant to the Deputy Director, Office of Presidential Personnel.
DOD 366 Private Secretary to the Associate Director, Office of Presidential Personnel.
DOD 367 Special Assistant to the Principal Deputy Under Secretary for Strategy and Resources.
DOD 368 Personal and Confidential Secretary to the Assistant Secretary for Legislative Affairs.
DOD 371 Private Secretary to the Deputy Under Secretary for Acquisition Planning.
DOD 372 Special Assistant to the Assistant Secretary for Production and Logistics.

Section 213.3307 Department of the Army.

ARMY 3 Secretary (Steno) to the Assistant Secretary (Manpower and Reserve Affairs).
ARMY 5 Secretary (Steno) to the Assistant Secretary (Installations, Logistics and Environment).
ARMY 6 Secretary (Steno) to the Assistant Secretary (Research, Development and Acquisition).
ARMY 21 Secretary (Steno) to the General Counsel.
ARMY 55 Secretary (Typing) to the Assistant Secretary (Financial Management).
ARMY 57 Staff Assistant to the Assistant Secretary (Manpower and Reserve Affairs).
ARMY 58 Staff Assistant to the Secretary.
ARMY 59 Staff Assistant to the Secretary.
ARMY 60 Staff Assistant to the Assistant Secretary (Financial Management).
ARMY 61 Staff Assistant to the Assistant Secretary (Manpower and Reserve Affairs).
ARMY 62 Congressional Liaison Specialist to the Secretary.
ARMY 64 Plans Coordinator to the Chief of Public Affairs.
ARMY 65 Confidential Assistant to the Under Secretary.

Section 213.3308 Department of the Navy

NAV 2 Staff Assistant to the Secretary.
NAV 7 Private Secretary to the Assistant Secretary for Research, Engineering and Systems.
NAV 20 Special Assistant to the Military Assistant to the President.
NAV 23 Special Assistant to the Military Assistant to the President.
NAV 24 Private Secretary to the Assistant Secretary for Manpower and Reserve Affairs.
NAV 25 Special Assistant to the Under Secretary.
NAV 30 Staff Assistant to the Deputy Under Secretary for Policy.
NAV 31 Staff Assistant to the Under Secretary.
NAV 42 Staff Assistant to the Under Secretary.

NAV 43 Staff Assistant to the Under Secretary.
NAV 44 Staff Assistant to the Under Secretary.

Section 213.3309 Department of the Air Force

AF 1 Secretary (Steno) to the Secretary.
AF 5 Secretary (Steno) to the Assistant Secretary for Research, Development and Logistics.
AF 6 Secretary (Steno) to the Assistant Secretary for Manpower and Reserve Affairs, Installations and Environment.
AF 8 Secretary (Steno) to the General Counsel.
AF 20 Secretary (Steno) to the Military Assistant to the President.
AF 22 Secretary (Typing) to the Assistant to the Vice President for National Security Affairs.
AF 28 Special Assistant to the General Counsel.
AF 33 Confidential Information Assistant to the Secretary.
AF 34 Secretary (Steno) to the Assistant Secretary for Space.
AF 35 Special and Confidential Assistant to the Secretary.
AF 36 Special Assistant to the Assistant to the Vice President for National Security Affairs.
AF 37 Confidential Assistant to the Under Secretary.

Section 213.3310 Department of Justice

JUS 21 Confidential Assistant to the Assistant Attorney General, Antitrust Division.
JUS 35 Confidential Assistant to the Assistant Attorney General, Office of Legal Counsel.
JUS 83 Confidential Assistant to the Attorney General.
JUS 100 Confidential Assistant to the Director of Congressional and Public Affairs, Immigration and Naturalization Service.
JUS 132 Special Assistant for Policy Development to the Commissioner, Immigration and Naturalization Service.
JUS 149 Counsel to the Assistant Attorney General, Land and Natural Resources Division.
JUS 166 Assistant to the Attorney General.
JUS 227 Staff Assistant to the Director, Community Relations Service.
JUS 240 Special Assistant to the Deputy Assistant Attorney General for Legislation and Litigation, Civil Rights Division.
JUS 262 Staff Assistant to the Director, Bureau of Justice Statistics.
JUS 269 Special Assistant to the Assistant Attorney General, Office of Legislative Affairs.
JUS 271 Confidential Assistant to the Director, Office of Policy Development.
JUS 294 Special Assistant to the Assistant Attorney General, Tax Division.
JUS 297 Attorney-Advisor (Special Assistant) to the Assistant Attorney General, Civil Division.
JUS 301 Attorney-Advisor (Special Assistant) to the Principal Deputy Assistant Attorney General, Civil Division.
JUS 305 Deputy Director of Congressional Affairs, Immigration and Naturalization Service.
JUS 315 Confidential Assistant to the Director, National Obscenity Enforcement Unit, Criminal Division.
JUS 320 Special Assistant to the Assistant Attorney General, Antitrust Division.
JUS 323 Confidential Assistant to the Assistant Attorney General, Office of Justice Programs.
JUS 331 Special Assistant to the Director, National Institute of Justice.
JUS 340 Chief of Staff to the Director, Community Relations Service.
JUS 342 Confidential Assistant to the Commissioner, Immigration and Naturalization Service.
JUS 344 Confidential Assistant to the Attorney General.
JUS 345 Special Assistant to the Director, Community Relations Service.
JUS 348 Staff Assistant to the Attorney General.
JUS 350 Special Assistant to the Assistant to the Attorney General.
JUS 351 Staff Assistant to the Attorney General.
JUS 353 Confidential Assistant to the Solicitor General.
JUS 354 Attorney Adviser to the General Counsel.
JUS 355 Special Assistant to the Chairman, Foreign Claims Settlement Commission.
JUS 356 Staff Assistant to the Attorney General.
JUS 357 Confidential Assistant to the Deputy Attorney General.
JUS 358 Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 359 General Attorney to the Assistant Attorney General, Office of Justice Programs.
JUS 360 Assistant Director, Asylum Policy and Review Unit, Office of Policy Development.
JUS 361 Special Assistant to the Assistant Attorney General, Office of Justice Programs.
JUS 362 Special Assistant to the Director, Office of Policy Development.
JUS 363 Special Assistant to the Assistant Attorney General, Land and Natural Resources Division.
JUS 364 Special Assistant to the Deputy Assistant Attorney General, Office of Justice Programs.
JUS 366 Counsel to the Director, United States Marshals Service.
JUS 367 Confidential Assistant to the Executive Assistant to the Attorney General.
JUS 368 Attorney Advisor (Special Counsel) to the Assistant Attorney General, Civil Division.
JUS 369 Deputy Director, Office of Policy Development.
JUS 370 Special Counsel to the Director, Office of Liaison Services.
JUS 371 Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 372 Public Affairs Specialist to the Director, Office of Liaison Services.
JUS 373 Deputy Director, Office of Liaison Services.
JUS 374 Staff Assistant to the Director, Office of Liaison Services.
JUS 375 Staff Assistant to the Attorney General.

Section 213.3312 Department of the Interior

INT 21 Confidential Assistant to the Assistant Secretary for Fish and Wildlife and Parks.
INT 92 Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 124 Special Assistant to the Assistant Director, Refuges and Wildlife, Fish and Wildlife Service.
INT 162 Special Assistant to the Assistant Secretary for Territorial and International Affairs.
INT 182 Special Assistant to the Under Secretary.
INT 191 Special Assistant to the Director, Bureau of Land Management.
INT 201 Deputy Assistant Secretary for Territorial and International Affairs.
INT 206 Congressional Liaison Officer to the Director, Minerals Management Service.
INT 212 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 238 Director, Office of External Affairs, to the Commissioner of Reclamation.
INT 288 Special Assistant to the Director, Office of Surface Mining

Reclamation and Enforcement.
INT 274 Congressional Liaison Specialist to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 287 Assistant to the Director and Deputy Director, Office of External Affairs, Bureau of Land Management.
INT 288 Staff Assistant to the Director, Bureau of Land Management.
INT 300 Special Assistant to the Solicitor.
INT 308 Public Affairs Specialist to the Director, External Affairs Office, Bureau of Reclamation.
INT 309 Special Assistant to the Director, Fish and Wildlife Service.
INT 311 Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 317 Special Assistant to the Assistant Director of External Affairs, Fish and Wildlife Service.
INT 327 Special Assistant to the Director, National Park Service.
INT 329 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 330 Deputy Director, Office of Public Affairs, to the Assistant to the Secretary and Director, Office of Public Affairs.
INT 332 Special Assistant for Control and Correspondence to the Special Assistant for Policy and Programs (Chief of Staff).
INT 334 Staff Assistant for Intergovernmental Affairs to the Assistant to the Secretary and Director, External Affairs.
INT 335 Special Assistant to the Assistant Secretary for Indian Affairs.
INT 336 Special Assistant to the Director, Bureau of Land Management.
INT 337 Special Assistant to the Solicitor.
INT 338 Confidential Assistant to the Secretary.
INT 340 Special Assistant to the Director, Bureau of Land Management.
INT 342 Assistant Director, Legislative and Congressional Affairs, to the Director, National Park Service.
INT 343 Special Assistant to the Director, External Affairs Office, Bureau of Reclamation.
INT 344 Special Assistant to the Commissioner of Reclamation.
INT 345 Special Assistant to the Director, Fish and Wildlife Service.
INT 346 Confidential Assistant to the Deputy Director, Minerals Management Service.
INT 348 Special Assistant to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 349 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 350 Legislative Assistant to the Deputy Director, Minerals Management Service.
INT 351 Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 352 Program Assistant to the Deputy Director, Minerals Management Service.
INT 354 Special Assistant to the Director, National Park Service.
INT 355 Special Assistant to the Assistant Secretary for Territorial and International Affairs.
INT 356 Special Assistant to the Director, Bureau of Mines.
INT 358 Special Assistant to the Director, National Park Service.
INT 359 Staff Assistant to the Assistant to the Secretary and Director, Office of Public Affairs.
INT 360 Special Assistant to the Director, Bureau of Mines.
INT 361 Staff Assistant to the Director, Bureau of Land Management.
INT 362 Special Assistant to the Under Secretary.
INT 363 Special Assistant to the Director, National Park Service.
INT 365 Special Assistant to the Director, National Park Service.
INT 366 Deputy Assistant Secretary for Territorial and International Affairs.
INT 367 Special Assistant to the Director, National Park Service.
INT 368 Special Assistant to the Deputy Assistant Secretary for Land and Minerals Management.
INT 369 Staff Assistant to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 370 Special Assistant to the Director, Bureau of Land Management.
INT 371 Special Assistant to the Director, Bureau of Mines.
INT 372 Special Assistant to the Assistant Secretary for Policy, Budget and Administration.
INT 374 Special Assistant (External Affairs) to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 375 Special Assistant to the Deputy Director, Minerals Management Service.
INT 377 Special Assistant to the Assistant Secretary for Land and Minerals Management.
INT 378 Special Assistant to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 379 Special Assistant to the Assistant Director for Fisheries, Fish and Wildlife Service.
INT 380 Special Assistant to the Assistant Secretary for Indian Affairs.
INT 381 Confidential Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 382 Congressional Affairs Officer (Chief, Congressional Affairs) to the Deputy Director, External Affairs, Bureau of Land Management.
INT 383 Special Assistant to the Director, Fish and Wildlife Service.
INT 384 Confidential Assistant to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 385 Special Assistant to the Assistant Secretary for Policy, Budget and Administration.
INT 386 Chief, Division of Public Affairs, to the Deputy Director, External Affairs, Bureau of Land Management.
INT 387 Congressional and Legislative Affairs Officer to the Deputy to the Assistant Secretary for Indian Affairs (Operations).
INT 388 Congressional Liaison Specialist to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 389 Special Assistant to the Deputy Commissioner, Bureau of Reclamation.
INT 390 Special Assistant to the Deputy to the Assistant Secretary for Indian Affairs (Operations).
INT 391 Special Assistant to the Assistant Secretary for Policy, Budget and Administration.
INT 392 External Affairs Officer to the Director, Minerals Management Service.

Section 213.3313 Department of Agriculture

AGR 1 Staff Assistant to the Executive Assistant for Operations and Correspondence to the Secretary.
AGR 5 Special Assistant to the Chief of Staff.
AGR 8 Chauffeur to the Secretary.
AGR 12 Private Secretary to the Under Secretary for International Affairs and Commodity Programs.
AGR 24 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 26 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 28 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 29 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 30 Private Secretary to the Manager, Federal Crop Insurance Corporation.
AGR 32 Special Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 33 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 34 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 35 Private Secretary to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 44 Private Secretary to the Assistant Secretary for Economics.
AGR 47 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 49 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 56 Private Secretary to the Assistant Secretary for Congressional Relations.
AGR 62 Confidential Assistant to the Under Secretary for Small Community and Rural Development.
AGR 74 Private Secretary to the Deputy Assistant Secretary for Food and Consumer Services.
AGR 76 Confidential Assistant to the Assistant Secretary for Marketing and Inspection Services.
AGR 77 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 79 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 81 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 96 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 103 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 105 Director, Programs and Planning, to the Director, Office of Public Affairs.
AGR 106 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 109 Deputy Director, Programs and Planning, Office of Public Affairs.
AGR 110 Confidential Assistant to the General Counsel.
AGR 114 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 116 Confidential Assistant to the Director, Office of Public Liaison, Office of Public Affairs.
AGR 118 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 128 Private Secretary to the Administrator, Federal Grain Inspection Service.
AGR 139 Staff Assistant to the Secretary.
AGR 141 Confidential Assistant to the Administrator, Food Safety and Inspection Service.
AGR 151 Executive Assistant to the Administrator, Agricultural Marketing Service.
AGR 158 Private Secretary to the Assistant Secretary for Science and Education.
AGR 161 Confidential Assistant to the Director, Office of Public Affairs.
AGR 162 Confidential Assistant to the Administrator, Federal Grain Inspection Service.
AGR 164 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 167 Administrator, Human Nutrition Information Services, to the Assistant Secretary for Food and Consumer Services.
AGR 169 Private Secretary to the Deputy Assistant Secretary for Economics.
AGR 175 Confidential Assistant to the Director, Office of Public Affairs.
AGR 177 Confidential Assistant to the Administrator, Office of Transportation.
AGR 179 Private Secretary to the Director, Office of Public Affairs.
AGR 184 Staff Assistant to the Secretary.
AGR 188 Northeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 189 Southeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 190 Midwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 191 Northwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 192 Southwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 194 Private Secretary to the Under Secretary for Small Community and Rural Development.
AGR 200 Confidential Assistant to the Assistant Secretary for Administration.
AGR 201 Confidential Assistant to the Special Assistant to the Secretary.
AGR 203 Confidential Assistant to the Special Assistant to the Secretary.
AGR 206 Director, Office of the Consumer Advisor to the Assistant Secretary for Food and Consumer Services.
AGR 207 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 208 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 209 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 213 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 218 Staff Assistant to the Assistant Secretary for Administration.
AGR 222 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 224 Director, Congressional and Public Affairs Division, to the Manager, Federal Crop Insurance Corporation.
AGR 225 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 226 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 231 Deputy Director, Intergovernmental Affairs, Office of Public Affairs.
AGR 232 Confidential Assistant (Director, Legislative Affairs and Public Information Staff) to the Administrator, Farmers Home Administration.
AGR 234 Confidential Assistant to the Administrator, Office of International Cooperation and Development.
AGR 236 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service.
AGR 237 Private Secretary to the Administrator, Agricultural Marketing Service.
AGR 242 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 243 Confidential Assistant to the Director, Programs and Planning, Office of Public Affairs.
AGR 244 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 247 Private Secretary to the

Inspector General.
AGR 257 Executive Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 258 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 262 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 263 Confidential Assistant to the Assistant Secretary for Natural Resources and Environment.
AGR 266 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 267 Staff Assistant to the Director, Public Liaison, Office of Public Affairs.
AGR 268 Director of Legislative Affairs and Public Information to the Administrator, Rural Electrification Administration.
AGR 274 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 275 Special Assistant to the Secretary.
AGR 276 Confidential Assistant to the Administrator, Agricultural Research Service.
AGR 277 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 281 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 283 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 284 Confidential Assistant to the Administrator, Food Safety and Inspection Service.
AGR 285 Staff Assistant to the Secretary.
AGR 286 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 287 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 288 Staff Assistant to the Administrator, Foreign Agricultural Service.
AGR 289 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 290 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service.
AGR 291 Special Assistant to the General Counsel.
AGR 293 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 294 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service.
AGR 295 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 296 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 298 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 299 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 300 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 301 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 302 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 303 Staff Assistant to the Chief, Soil Conservation Service.
AGR 304 Staff Assistant to the Administrator, Food and Nutrition Service.
AGR 305 Staff Assistant to the Director, Office of Advocacy and Enterprise.
AGR 306 Confidential Assistant to the Press Secretary.
AGR 307 Staff Assistant to the Director, Publishing and Visual Communications, Office of Public Affairs.
AGR 308 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 309 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 311 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 312 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 313 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 315 Staff Assistant to the Director, Programs and Planning, Office of Public Affairs.
AGR 316 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 317 Executive Assistant to the Administrator, Farmers Home Administration.
AGR 318 Staff Assistant to the Administrator, Foreign Agricultural Service.
AGR 319 Confidential Assistant to the Deputy Director, Office of Operations.

Section 213.3314 Department of Commerce

COM 3 Deputy to the Chief of Staff.
COM 4 Confidential Assistant to the Counsellor to the Secretary.
COM 5 Special Assistant to the Director, Office of White House Liaison.
COM 12 Confidential Assistant to the Deputy Secretary.
COM 19 Chauffeur to the Secretary.
COM 21 Congressional Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs.
COM 22 Deputy Director for Congressional Affairs to the Deputy Assistant Secretary for Congressional Affairs.
COM 70 Director, Office of Congressional Relations, to the Assistant Secretary for Economic Development.
COM 136 Special Assistant to the Deputy Assistant Secretary for Export Enforcement.
COM 151 Confidential Assistant to the Chief of Staff.
COM 158 Director of Public Affairs to the Under Secretary for Travel and Tourism.
COM 161 Confidential Assistant to the Deputy Under Secretary for International Trade.
COM 162 Executive Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration.
COM 173 Special Assistant to the Deputy Assistant Secretary for Economic Development.
COM 183 Confidential Assistant to the Assistant Secretary for Communications and Information.
COM 190 Director, Office of Congressional Affairs, to the Assistant Secretary for Communications and Information.
COM 194 Special Assistant to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.
COM 201 Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 204 Special Assistant to the Chief Scientist, National Oceanic and Atmospheric Administration.
COM 207 Deputy Director for Congressional Affairs to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 210 Special Assistant to the Assistant Secretary for Oceans and Atmosphere.
COM 217 Special Assistant to the Director, Office of Public Affairs.
COM 218 Special Assistant to the Assistant Secretary for Oceans and Atmosphere.
COM 224 Executive Assistant to the Under Secretary for International Trade.
COM 225 Director, Congressional Affairs Staff, to the Under Secretary for Export Administration.
COM 227 Confidential Assistant to the Director, Minority Business Development Agency.
COM 232 Special Assistant to the Assistant Secretary for Economic Development.
COM 236 Special Assistant to the Secretary.
COM 248 Special Assistant to the Deputy Secretary.
COM 257 Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration.
COM 259 Director of Congressional Affairs to the Under Secretary for International Trade.
COM 263 Confidential Assistant to the Managing Director, Export Promotion Services, International Trade Administration.
COM 265 Special Assistant to the Deputy Assistant Secretary for Export Administration.
COM 267 Confidential Assistant to the Assistant Secretary for Export Administration.
COM 268 Confidential Assistant to the Chief of Staff.
COM 272 Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 273 Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration.
COM 274 Confidential Assistant to the Director, Office of Business Liaison.
COM 275 Confidential Assistant to the Director, Office of Business Liaison.
COM 278 Special Assistant to the Under Secretary for Export Administration.
COM 280 Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 282 Special Assistant to the Deputy Director, Office of Congressional Affairs.
COM 285 Deputy Director, Office of Intergovernmental Affairs, to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 287 Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 288 Confidential Assistant to the Director, Office of Business Liaison.
COM 289 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 291 Confidential Assistant to the Director, Office of Public Affairs.
COM 292 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 293 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 296 Confidential Assistant to the Deputy Counsellor to the Secretary.
COM 298 Special Assistant to the Assistant Secretary for Communications and Information.
COM 302 Special Assistant to the Director, Office of Public Affairs, National Oceanic and Atmospheric Administration.
COM 303 Confidential Assistant to the Assistant Secretary for Administration.
COM 304 Special Assistant to the Under Secretary for Travel and Tourism.
COM 306 Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs.
COM 308 Executive Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 310 Confidential Assistant to the Deputy Under Secretary for Travel and Tourism.
COM 311 Confidential Assistant to the Director, Office of White House Liaison.
COM 312 Confidential Assistant to the Director General, U.S. and Foreign Commercial Service.
COM 314 Special Assistant to the Director, Office of White House Liaison.
COM 316 Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration.
COM 319 Confidential Assistant to the Deputy Assistant Secretary for Compliance, International Trade Administration.
COM 320 Confidential Assistant to the Director, Office of External Affairs.
COM 321 Director, Office of Public Affairs, to the Under Secretary for International Trade.
COM 324 Director, Office of Policy Coordination, to the Deputy Assistant Secretary for International Economic Policy, International Trade Administration.
COM 325 Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy, International Trade Administration.
COM 328 Confidential Assistant to the Deputy Assistant Secretary for Automotive and Consumer Goods, International Trade Administration.
COM 329 Congressional Liaison Assistant to the Director of Congressional Affairs, International Trade Administration.
COM 331 Confidential Assistant to the Assistant Secretary for Tourism Marketing.
COM 332 Confidential Assistant to the Deputy Assistant Secretary for Capital Goods and International Construction, International Trade Administration.
COM 336 Special Assistant to the Assistant Secretary for Export Enforcement.
COM 337 Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 340 Special Assistant to the Under Secretary for Oceans and Atmosphere.
COM 342 Confidential Assistant to the Director, Office of White House Liaison.
COM 345 Confidential Assistant to the Under Secretary for International Trade.
COM 346 Confidential Assistant to the Director, Office of Executive Programs.
COM 347 Confidential Assistant to the Director, Office of Public Affairs.
COM 350 Deputy Director to the Director, Office of Business Liaison.
COM 351 Confidential Assistant to the Deputy General Counsel.
COM 352 Confidential Assistant to the Chief of Staff.
COM 355 Confidential Assistant to the Deputy Assistant Secretary for Export Development.
COM 356 Confidential Assistant to the Director, Minority Business Development Agency.
COM 360 Director of Congressional Affairs to the Under Secretary for Economic Affairs.
COM 363 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 365 Confidential Assistant to the Director, Minority Business Development Agency.
COM 370 Chief of Congressional Affairs to the Director, Minority Business Development Agency.

COM 371 Confidential Assistant to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 374 Congressional Affairs Specialist to the Congressional Affairs Advisor, Bureau of the Census.
COM 376 Confidential Assistant to the Director, Office of White House Liaison.
COM 378 Congressional Liaison Officer to the Under Secretary for Economic Affairs.
COM 386 Confidential Assistant to the Deputy Under Secretary for Travel and Tourism.
COM 390 Confidential Assistant to the Under Secretary for Economic Affairs.
COM 391 Confidential Assistant to the Chief Economist.
COM 399 Special Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 395 Confidential Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service.
COM 397 Congressional Affairs Advisor to the Director, Bureau of the Census.
COM 398 Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations, International Trade Administration.
COM 399 Confidential Assistant to the Deputy Assistant Secretary for Grant Programs, Economic Development Administration.
COM 400 Confidential Assistant to the Deputy Under Secretary for International Trade.
COM 401 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 405 Confidential Assistant to the Deputy Assistant Secretary for Science and Electronics, International Trade Administration.
COM 408 Confidential Assistant to the General Counsel.
COM 409 Confidential Assistant to the Director, Office of External Affairs.
COM 410 Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration.
COM 412 Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration.
COM 414 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 415 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 416 Director, Office of Consumer Affairs, to the Director, Office of Public Affairs.
COM 419 Confidential Assistant to the Under Secretary for International Trade.
COM 420 Special Assistant to the Director General, U.S. and Foreign Commercial Service.
COM 421 Confidential Assistant to the Deputy Assistant Secretary for Basic Industries, International Trade Administration.
COM 423 Director of Congressional Affairs to the Assistant Secretary and Commissioner of Patents and Trademarks.
COM 425 Director, Office of Public Affairs, to the Under Secretary for Export Administration.
COM 429 Confidential Assistant to the Director, Office of Executive Programs.
COM 430 Special Assistant to the Assistant Secretary for Export Administration.
COM 432 Confidential Assistant to the Director, Office of Commercial Space Programs.
COM 433 Senior Advisor to the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.
COM 435 Confidential Assistant to the Counselor to the Deputy Secretary.
COM 436 Director, Office of Private Sector Initiatives, to the Director, Office of Business Liaison.
COM 438 Confidential Assistant to the Director, Office of Business Liaison.
COM 439 Special Counsel to the General Counsel.
COM 440 Confidential Assistant to the Director, Office of Executive Programs.
COM 441 Special Assistant to the Deputy Under Secretary for Economic Affairs.
COM 442 Director of Public Affairs to the Assistant Secretary for Communications and Information.
COM 443 Director, Office of External Affairs, to the Chief of Staff.
COM 444 Director for Internal Analysis to the Assistant Secretary for Economic Development.
COM 445 Director, Office of Public Affairs, to the Assistant Secretary for Economic Development.
COM 446 Special Assistant to the Under Secretary for Export Administration.
COM 447 Confidential Assistant to the Chief of Staff.
COM 448 Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration.
COM 449 Director, Office of General Industrial Machinery, to the Deputy Assistant Secretary for Capital Goods and International Construction, International Trade Administration.
COM 450 Special Assistant to the Director, Bureau of the Census.
COM 452 Confidential Assistant to the Chief of Staff.
COM 454 Special Assistant to the Assistant Secretary for Technology Policy.
COM 455 Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 456 Confidential Assistant to the Assistant Secretary for Technology Policy.
COM 459 Confidential Assistant to the Director, Office of External Affairs.
COM 460 Director, Office of Intergovernmental Affairs, to the Assistant Secretary for Legislative and Intergovernmental Affairs.
COM 461 Confidential Assistant to the Director, Office of External Affairs.
COM 462 Deputy Director of Congressional Affairs to the Assistant Secretary and Commissioner of Patents and Trademarks.
COM 464 Confidential Assistant to the Deputy Assistant Secretary for Loan Programs, Economic Development Administration.
COM 467 Confidential Assistant to the Director, Office of External Affairs.

Section 213.3315 Department of Labor

LAB 3 Special Assistant to the Secretary.
LAB 15 Confidential Assistant to the Assistant Secretary for Employment Standards.
LAB 17 Special Assistant to the Assistant Secretary for Congressional Affairs.
LAB 24 Staff Assistant to the Deputy Under Secretary for International Labor Affairs.
LAB 25 Senior Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 43 Special Assistant to the Assistant Secretary for Occupational Safety and Health.

LAB 44 Senior Liaison Officer to the Assistant Secretary for Congressional Affairs.
LAB 55 Special Assistant to the Associate Assistant Secretary for Intergovernmental Affairs.
LAB 62 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 64 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 66 Special Assistant to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration.
LAB 76 Special Assistant to the Director, Women's Bureau.
LAB 83 Staff Assistant to the Assistant Secretary for Pension and Welfare Benefits.
LAB 86 Staff Assistant to the Assistant Secretary for Employment Standards.
LAB 91 Confidential Staff Assistant to the Deputy Under Secretary for Congressional Affairs.
LAB 93 Special Assistant to the Chief of Staff.
LAB 99 Special Assistant to the Assistant Secretary for Education and Training.
LAB 100 Special Assistant to the Deputy Under Secretary for International Labor Affairs.
LAB 103 Secretary's Representative.
LAB 104 Secretary's Representative.
LAB 105 Secretary's Representative.
LAB 107 Secretary's Representative.
LAB 108 Secretary's Representative.
LAB 109 Secretary's Representative.
LAB 110 Secretary's Representative.
LAB 111 Secretary's Representative.
LAB 112 Secretary's Representative.
LAB 115 Secretary (Typing) to the Secretary's Representative.
LAB 116 Secretary (Typing) to the Secretary's Representative.
LAB 122 Assistant to the Secretary's Representative.
LAB 125 Special Assistant to the Assistant Secretary for Employment Standards.
LAB 126 Special Assistant to the Assistant Secretary for Employment Standards.
LAB 127 Staff Assistant to the Director, Office of Workers' Compensation Programs, Employment Standards Administration.
LAB 129 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 130 Special Assistant to the Secretary.
LAB 131 Special Assistant to the Assistant Secretary for Employment and Training.
LAB 132 Senior Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 133 Special Assistant to the Director, Women's Bureau.
LAB 139 Executive Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration.
LAB 145 Executive Assistant to the Assistant Secretary for Congressional Affairs.
LAB 146 Confidential Assistant to the Solicitor.
LAB 150 Secretary (Typing) to the Director, Women's Bureau.
LAB 153 Staff Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 154 Senior Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 160 Confidential Assistant to the Secretary.
LAB 169 Special Assistant to the Deputy Assistant Secretary for Program Economics and Research and Technical Support.
LAB 171 Staff Assistant to the Secretary.
LAB 172 Confidential Assistant to the Deputy Secretary.
LAB 179 Executive Assistant to the Assistant Secretary for Employment Standards.
LAB 180 Senior Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 181 Staff Assistant to the Deputy Under Secretary for International Labor Affairs.
LAB 183 Staff Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 186 Special Assistant to the Director, Women's Bureau.
LAB 189 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 190 Special Assistant to the Assistant Secretary for Policy.
LAB 191 Staff Assistant to the Assistant Secretary for Policy.
LAB 195 Special Assistant to the Assistant Secretary for Employment and Training.
LAB 198 Executive Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 199 Deputy Legislative Officer to the Associate Assistant Secretary for Congressional Affairs.
LAB 200 Special Assistant (Speech Writer) to the Assistant Secretary for Employment and Training.
LAB 204 Special Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 205 Deputy Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 208 Deputy Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 209 Confidential Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 210 Special Assistant to the Assistant Secretary for Policy.
LAB 212 Staff Assistant to the Secretary.
LAB 213 Special Assistant to the Assistant Secretary for Employment and Training.
LAB 217 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 219 Special Assistant to the Director, Office of Intergovernmental Affairs.
LAB 220 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 221 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 224 Staff Assistant to the Assistant Secretary for Mine Safety and Health.
LAB 226 Confidential Assistant to the Assistant Secretary for Pension and Welfare Benefits.
LAB 229 Staff Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 231 Staff Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 232 Special Assistant to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration.
LAB 233 Staff Assistant to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration.
LAB 234 Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 238 Assistant to the Secretary's Representative.
LAB 240 Assistant to the Secretary's Representative.
LAB 241 Special Assistant to the Director, Office of Information and Public Affairs.
LAB 243 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 245 Assistant to the Secretary's Representative.
LAB 246 Assistant to the Secretary's Representative.
LAB 247 Staff Assistant to the Associate Assistant Secretary for

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Congressional Affairs.
LAB 248 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 249 Assistant to the Secretary's Representative.
LAB 251 Staff Assistant to the Assistant Secretary for Mine Safety and Health.
LAB 252 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 253 Staff Assistant to the Secretary.
LAB 254 Senior Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 256 Staff Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 256 Staff Assistant to the Assistant Secretary for Labor Management Standards.
LAB 257 Special Assistant to the Assistant Secretary for Labor Management Standards.
LAB 258 Deputy Secretary's Representative.
LAB 260 Special Assistant to the Assistant Secretary for Public Affairs.
LAB 261 Staff Assistant to the Deputy Assistant Secretary for Mine Safety and Health.
LAB 262 Staff Assistant to the Assistant Secretary for Employment Standards.
LAB 264 Staff Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration.
LAB 265 Special Assistant for Public Affairs to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration.
LAB 266 Staff Assistant to the Deputy Under Secretary for International Labor Affairs.

Section 213.3316 Department of Health and Human Services.

HHS 5 Writer to the Secretary.
HHS 14 Special Assistant to the Executive Secretary.
HHS 17 Director, Scheduling, Security, and Protection, to the Secretary.
HHS 31 Special Assistant to the Secretary.
HHS 119 Confidential Secretary to the General Counsel.
HHS 167 Executive Director, Federal Council on Aging, to the Assistant Secretary for Human Development Services.
HHS 213 Steward to the Secretary.
HHS 233 Confidential Assistant to the Director, Office of Consumer Affairs.
HHS 264 Special Assistant to the Secretary.
HHS 276 Special Assistant for Liaison to the Associate Commissioner for Legislative Affairs, Food and Drug Administration.
HHS 305 Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Boards and Commissions.
HHS 330 Special Assistant to the Director, Office of Consumer Affairs.
HHS 331 Special Assistant to the Administrator, Health Care Financing Administration.
HHS 340 Executive Assistant to the Assistant Secretary for Legislation.
HHS 353 Confidential Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Boards and Commissions.
HHS 356 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison).
HHS 359 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison).
HHS 363 Special Assistant to the Director, Office of Public Affairs, Office of Human Development Services.
HHS 371 Confidential Assistant to the Executive Assistant to the Secretary.
HHS 372 Special Assistant to the Director, Office of Policy, Planning and Legislation, Office of Human Development Services.
HHS 374 Confidential Assistant to the Executive Secretary.
HHS 375 Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Boards and Commissions.
HHS 394 Confidential Assistant to the Executive Secretary.
HHS 406 Special Assistant to the Assistant Secretary for Health.
HHS 415 Confidential Assistant to the Secretary.
HHS 424 Staff Assistant (Scheduling) to the Secretary.
HHS 435 Executive Assistant to the Director, Office of Child Support Enforcement.
HHS 436 Associate Commissioner for Family and Youth Services to the Commissioner, Administration for Children, Youth and Families.
HHS 442 Director, Office of Adolescent Pregnancy Programs, to the Deputy Assistant Secretary for Population Affairs.
HHS 445 Staff Assistant to the Associate Commissioner for Public Affairs, Social Security Administration.
HHS 449 Deputy Director, Office of Refugee Resettlement.
HHS 451 Confidential Staff Assistant to the Director, Office of Community Services, Family Support Administration.
HHS 457 Special Assistant to the Under Secretary.
HHS 462 Special Assistant for Liaison Activities to the Administrator, Alcohol, Drug Abuse and Mental Health Administration, Public Health Service.
HHS 468 Deputy Director, Office of Community Services, Family Support Administration.
HHS 473 Director, Office of Policy, Planning, and Legislation, to the Assistant Secretary for Human Development Services.
HHS 479 Special Assistant to the Associate Commissioner for Public Affairs, Food and Drug Administration.
HHS 495 Confidential Staff Assistant to the Associate Administrator, Office of Communications, Family Support Administration.
HHS 497 Special Assistant to the Director, Office of Community Services, Family Support Administration.
HHS 508 Congressional Relations Specialist to the Deputy Commissioner for Policy and External Affairs, Social Security Administration.
HHS 510 Deputy Director, Office of Public Liaison, Health Care Financing Administration.
HHS 511 Special Assistant to the Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families.
HHS 523 Special Assistant to the Assistant Secretary for Health.
HHS 524 Private Sector Initiatives Coordinator to the Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).
HHS 525 Special Assistant for Legislative Affairs to the Director, Office of Child Support Enforcement.
HHS 526 Confidential Staff Assistant to the Administrator, Health Care Financing Administration.
HHS 527 Staff Assistant (Scheduling) to the Director, Scheduling, Security and Protection.
HHS 528 Special Assistant to the Deputy Assistant Secretary for Human Development Services.

HHS 530 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison).
HHS 531 Special Assistant to the Assistant Secretary for Management and Budget.
HHS 532 Special Assistant to the Commissioner, Social Security Administration.
HHS 533 Special Assistant to the Commissioner, Social Security Administration.
HHS 534 Confidential Assistant to the Executive Secretary.
HHS 535 Special Assistant to the Assistant Secretary for Health.
HHS 536 Confidential Staff Assistant to the Assistant Secretary for Health.
HHS 537 Special Assistant to the Associate Commissioner, Office of Public Affairs, Social Security Administration.
HHS 538 Special Assistant to the Deputy Commissioner for Programs, Social Security Administration.
HHS 539 Special Assistant to the General Counsel.
HHS 541 Director, Office of State and Project Assistance, to the Director, Office of Community Services, Family Support Administration.
HHS 542 Special Assistant to the Commissioner, Administration for Children, Youth and Families.
HHS 543 Special Assistant to the Commissioner, Food and Drug Administration.
HHS 544 Special Assistant to the Deputy Assistant Secretary for Population Affairs.
HHS 545 Special Assistant to the Associate Commissioner for Public Affairs, Food and Drug Administration.
HHS 546 Special Assistant to the Associate Commissioner, Office of Public Affairs, Social Security Administration.
HHS 547 Confidential Assistant to the Associate Commissioner, Office of Public Affairs, Social Security Administration.
HHS 548 Confidential Assistant to the Director, Office of State and Project Assistance, Family Support Administration.
HHS 549 Speechwriter to the Assistant Secretary for Public Affairs.
HHS 551 Special Assistant for Legislative Affairs to the Associate Commissioner for Legislative Affairs, Food and Drug Administration.
HHS 552 Director, Office of External Affairs, to the Associate Commissioner, Office of Public Affairs, Social Security Administration.
HHS 553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Communications).
HHS 555 Legislative Liaison to the Associate Commissioner, Office of Legislation and Congressional Affairs, Social Security Administration.

Section 213.3317 Department of Education

EDU 1 Special Assistant to the Deputy Under Secretary for Planning, Budget, and Evaluation.
EDU 5 Confidential Assistant to the Under Secretary.
EDU 6 Confidential Assistant to the Executive Secretary.
EDU 8 Confidential Assistant to the Assistant Secretary, Office of Civil Rights.
EDU 9 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 11 Confidential Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 12 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 14 Special Assistant to the Deputy Under Secretary for Management.
EDU 15 Special Assistant to the Deputy Under Secretary for Management.
EDU 20 Steward to the Chief of Staff/Counsellor to the Secretary.
EDU 33 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 38 Special Assistant to the Assistant Secretary for Postsecondary Education.
EDU 46 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 47 Confidential Assistant to the Director, Fund for the Improvement and Reform of Schools and Teaching.
EDU 55 Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 66 Special Assistant to the Under Secretary.
EDU 65 Confidential Assistant to the Executive Assistant to the Under Secretary.
EDU 67 Special Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 74 Executive Assistant to the Assistant Secretary for Legislation.
EDU 82 Executive Assistant to the Deputy Under Secretary for Planning, Budget, and Evaluation.
EDU 84 Confidential Assistant to the Director, Division of Special Education, Rehabilitative Services and Research Analysis, Office of Planning, Budget, and Evaluation.
EDU 89 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 90 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 91 Special Assistant to the Assistant Secretary for Civil Rights.
EDU 93 Confidential Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs.
EDU 105 Secretary's Regional Representative.
EDU 106 Secretary's Regional Representative.
EDU 107 Secretary's Regional Representative.
EDU 108 Secretary's Regional Representative.
EDU 109 Secretary's Regional Representative.
EDU 110 Secretary's Regional Representative.
EDU 111 Secretary's Regional Representative.
EDU 113 Special Assistant to the Director, Division of Adult Education and Literacy, Office of Vocational and Adult Education.
EDU 116 Special Assistant to the Assistant Secretary for Postsecondary Education.
EDU 117 Director, Historically Black Colleges and Universities, to the Assistant Secretary for Postsecondary Education.
EDU 121 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 123 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 124 Secretary's Regional Representative.
EDU 129 Director, Center for International Education, to the Deputy Assistant Secretary for Higher Education Programs.
EDU 131 Secretary's Regional Representative.
EDU 133 Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation.
EDU 135 Confidential Assistant to the Assistant Secretary for Educational Research and

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Improvement.
EDU 136 Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 137 Special Assistant to the Comptroller.
EDU 138 Special Assistant to the Administrator for Management Services.
EDU 140 Special Assistant to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 147 Secretary's Regional Representative.
EDU 154 Executive Director, Intergovernmental Advisory Council on Education, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 158 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 159 Confidential Assistant to the Assistant Secretary for Postsecondary Education.
EDU 161 Special Assistant to the Deputy Assistant Secretary for Higher Education Programs, Office of Postsecondary Education.
EDU 162 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 163 Confidential Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs.
EDU 166 Special Assistant to the Under Secretary.
EDU 171 Director, Legislative Liaison, to the Deputy Assistant Secretary for Legislation.
EDU 173 Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 185 Staff Assistant to the Secretary's Regional Representative.
EDU 186 Staff Assistant to the Secretary's Regional Representative.
EDU 193 Executive Secretary to the Chief of Staff/Counsellor to the Secretary.
EDU 196 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 200 Director, Intergovernmental Affairs, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 202 Confidential Assistant to the Director, Intergovernmental Affairs.
EDU 203 Confidential Assistant to the Executive Assistant to the Under Secretary.
EDU 207 Director, Regional Liaison Staff, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 209 Special Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 220 Confidential Assistant to the Director, Recognition Division, Office of Educational Research and Improvement.
EDU 223 Confidential Assistant to the Chief of Staff/Counsellor to the Secretary.
EDU 226 Confidential Assistant to the Director, Public Affairs Service, Office of Planning, Budget, and Evaluation.
EDU 238 Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 240 Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 241 Director, Division of Adult Education and Literacy, to the Assistant Secretary for Vocational and Adult Education.
EDU 243 Special Assistant to the Administrator for Management Services.
EDU 244 Confidential Assistant to the Director, Private Sector Initiative Staff.
EDU 245 Confidential Assistant to the Chief of Staff/Counsellor to the Secretary.
EDU 256 Special Assistant to the Director, Legislative Liaison Staff, Office of Legislation.
EDU 258 Special Assistant to the Chief of Staff/Counsellor to the Secretary.
EDU 259 Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 262 Director, Interagency Operations Staff, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 275 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 280 Executive Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 287 Confidential Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs.
EDU 289 Confidential Assistant to the Director, Scheduling and Briefing.
EDU 293 Special Assistant to the General Counsel.
EDU 296 Confidential Assistant to the Director, Scheduling and Briefing.
EDU 297 Confidential Assistant to the Director, Scheduling and Briefing.
EDU 304 Confidential Assistant to the Executive Assistant, Private Education Staff.
EDU 310 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 311 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 313 Special Assistant to the Deputy Under Secretary for Management.
EDU 314 Confidential Assistant to the Deputy Assistant Secretary for Legislation.
EDU 315 Confidential Assistant to the Deputy Assistant Secretary for Legislation.
EDU 317 Confidential Assistant to the Deputy Under Secretary for Management.
EDU 318 Special Assistant to the Director, Interagency Operations Staff, Office of Intergovernmental and Interagency Affairs.
EDU 321 Confidential Assistant to the Director, Scheduling and Briefing.
EDU 324 Special Assistant to the Deputy Under Secretary for Planning, Budget, and Evaluation.
EDU 325 Director, Scheduling and Briefing Staff, to the Chief of Staff/Counselor to the Secretary.
EDU 328 Special Assistant to the Deputy Assistant Secretary for Higher Education Programs, Office of Postsecondary Education.
EDU 330 Special Assistant to the Secretary's Regional Representative.
EDU 332 Confidential Assistant to the Director, Scheduling and Briefing.
EDU 333 Confidential Assistant to the Director, Fund for the Improvement and Reform of Schools and Teaching, Office of Educational Research and Improvement.
EDU 334 Special Assistant to the Director, Fund for the Improvement and Reform of Schools and Teaching, Office of Educational Research and Improvement.
EDU 336 Staff Assistant to the Director, Regional Liaison Staff.
EDU 337 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 338 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 339 Special Assistant to the Director, Fund for the Improvement and Reform of Schools and Teaching, Office of Educational Research and Improvement.
EDU 340 Deputy Secretary's Regional Representative.
EDU 341 Confidential Assistant to the Deputy Under Secretary for Management.
EDU 343 Confidential Assistant to the Secretary's Regional Representative.
EDU 344 Confidential Assistant to the Comptroller.
EDU 345 Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 346 Deputy Secretary's Regional Representative.
EDU 347 Deputy Secretary's Regional Representative.
EDU 348 Deputy Secretary's Regional Representative.
EDU 349 Special Assistant to the Director, Public Affairs Service, Office of Planning, Budget and Evaluation.
EDU 350 Deputy Secretary's Regional Representative.

Section 213.3316 Environmental Protection Agency

EPA 5 Confidential Assistant to the Deputy Administrator.
EPA 18 Special Assistant to the Deputy Administrator.
EPA 19 Associate Assistant Administrator to the Assistant Administrator for Water.
EPA 41 Staff Assistant to the Associate Administrator for Communications and Public Affairs.
EPA 53 Special Assistant to the Deputy Administrator.
EPA 54 Congressional Liaison Specialist to the Director, Office of Congressional Liaison.
EPA 55 Special Assistant to the Administrator.
EPA 58 Director, Congressional Liaison Division, to the Associate Administrator for Congressional and Legislative Affairs.
EPA 61 Special Assistant to the Assistant Administrator for Administration and Resources Management.
EPA 62 Congressional Liaison Specialist to the Director, Office of Congressional Liaison.
EPA 64 Congressional Liaison Specialist to the Director, Congressional Liaison Division.
EPA 73 Congressional Relations Officer to the Director, Office of Congressional Liaison.
EPA 94 Special Assistant to the Regional Administrator.
EPA 98 Special Assistant to the Associate Administrator for Communications and Public Affairs.
EPA 99 Special Assistant to the Associate Assistant Administrator for Administration and Resources Management.
EPA 117 Staff Assistant to the Director, Office of Communications and Intergovernmental Relations.
EPA 118 Staff Assistant to the Assistant Administrator for Enforcement and Compliance Monitoring.
EPA 119 Staff Assistant to the Administrator.
EPA 120 Staff Assistant to the Administrator.
EPA 121 Special Assistant to the Associate Administrator for International Activities.
EPA 122 Congressional Liaison Specialist to the Director, Office of Congressional Liaison.
EPA 124 Deputy Associate Administrator to the Associate Administrator for Regional Operations and State/Local Relations.
EPA 125 Director, Regional Operations Division, to the Associate Administrator for Regional Operations and State/Local Relations.

Section 213.3319 Administrative Conference of the United States

ACUS 2 Confidential Assistant to the Chairman.
ACUS 4 Confidential Assistant to the Chairman.

Section 213.3322 Interstate Commerce Commission

ICC 1 Confidential Assistant to a Commissioner.
ICC 3 Confidential Assistant to a Commissioner.
ICC 6 Confidential Assistant to a Commissioner.
ICC 27 Staff Advisor (Economics) to a Commissioner.
ICC 29 Staff Advisor (Management) to a Commissioner.
ICC 48 Congressional Liaison Representative to the Director, Office of Government and Public Affairs.
ICC 49 Associate Director for Intergovernmental Affairs to the Director, Office of External Affairs.
ICC 50 Staff Assistant to the Director, Office of External Affairs.
ICC 51 Special Assistant to the Director, Office of Congressional and Legislative Affairs.

Section 213.3325 Tax Court of the United States.

TCOUS 40 Secretary and Confidential Assistant to the Judge.
TCOUS 41 Secretary and Confidential Assistant to the Judge.
TCOUS 42 Secretary and Confidential Assistant to the Judge.
TCOUS 43 Secretary and Confidential Assistant to the Judge.
TCOUS 44 Secretary and Confidential Assistant to the Judge.
TCOUS 46 Secretary and Confidential Assistant to the Judge.
TCOUS 47 Secretary and Confidential Assistant to the Judge.
TCOUS 48 Secretary and Confidential Assistant to the Judge.
TCOUS 49 Secretary and Confidential Assistant to the Judge.
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TCOUS 61 Secretary and Confidential Assistant to the Judge.
TCOUS 62 Secretary and Confidential Assistant to the Judge.
TCOUS 63 Secretary and Confidential Assistant to the Judge.
TCOUS 64 Secretary and Confidential Assistant to the Judge.
TCOUS 65 Secretary and Confidential Assistant to the Judge.
TCOUS 66 Trial Clerk to the Judge.
TCOUS 70 Trial Clerk to the Judge.
TCOUS 71 Trial Clerk to the Judge.
TCOUS 72 Trial Clerk to the Judge.
TCOUS 73 Trial Clerk to the Judge.
TCOUS 74 Trial Clerk to the Judge.
TCOUS 75 Trial Clerk to the Judge.
TCOUS 77 Trial Clerk to the Judge.
TCOUS 78 Trial Clerk to the Judge.
TCOUS 79 Trial Clerk to the Judge.

Section 213.3327 Department of Veterans Affairs

VA 2 Special Assistant to the

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Assistant Secretary for Human Resources and Administration.
VA 5 Special Assistant to the Principal Deputy Assistant Secretary for Acquisition and Facilities.
VA 11 Special Assistant to the Assistant Secretary for Information Resources.
VA 14 Special Assistant to the Director, National Cemetery System.
VA 50 Special Assistant to the Secretary.
VA 51 Director, Intergovernmental Affairs, to the Deputy Assistant Secretary for Veterans Liaison.
VA 52 Special Assistant to the Assistant Secretary for Finance and Planning.
VA 53 Special Assistant to the Assistant Secretary for Human Resources and Administration.
VA 54 Special Assistant to the Assistant Secretary for Veterans Liaison and Program Coordination.
VA 55 Special Assistant to the Deputy Assistant Secretary for Congressional Affairs.

Section 213.3328 United States Information Agency

USIA 12 Special Assistant to the Director, Office of Congressional Liaison.
USIA 14 Special Assistant to the Associate Director for Programs.
USIA 22 Director, New York Foreign Press Center, to the Associate Director for Programs.
USIA 28 Staff Assistant to the Associate Director for Programs.
USIA 29 Public Affairs Specialist to the Deputy Counselor for Press and Public Affairs.
USIA 34 Staff Assistant to the Director, Office of Private Sector Programs.
USIA 37 Staff Specialist to the Director, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs.
USIA 45 Special Assistant to the Associate Director for Programs.
USIA 57 Special Assistant to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs.
USIA 67 Chief, Voluntary Visitor Division, to the Associate Director for Educational and Cultural Affairs.
USIA 73 Executive Assistant (Cultural Property) to the Director, Creative Arts Division, Bureau of Educational and Cultural Affairs.
USIA 77 Special Assistant to the Associate Director for Management.
USIA 87 Staff Assistant to the Director, Office of Public Liaison.
USIA 91 Program Officer to the Coordinator, U.S.-Soviet Exchange Initiative.
USIA 93 Program Assistant to the Deputy Director.
USIA 98 Special Assistant to the Director.
USIA 101 Program Officer to the Director, New York Foreign Press Center.
USIA 102 Special Assistant to the Director, Private Sector Committees.
USIA 103 Equal Employment Manager to the Associate Director for Management.
USIA 104 Special Assistant to the Director, Private Sector Committees.
USIA 105 Special Assistant to the Director, Television and Film Service.
USIA 106 Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 108 Special Assistant to the Director, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs.
USIA 110 Staff Assistant to the Director, Office of Public Liaison.
USIA 111 Special Assistant to the Associate Director for Programs.
USIA 112 Special Assistant to the Director, Office of Program Coordination and Development.

Section 213.3330 Securities and Exchange Commission

SEC 3 Confidential Assistant to a Commissioner.
SEC 8 Secretary (Steno) to the Chief Accountant.
SEC 12 Supervisory Public Affairs Specialist to the Chairman.
SEC 15 Secretary (Steno) to the Director, Division of Market Regulation.
SEC 18 Secretary (Steno) to the Director, Division of Investment Management.
SEC 19 Secretary (Typing) to the Director, Division of Corporation Finance.
SEC 22 Staff Assistant to the Regional Administrator.
SEC 23 Confidential Assistant to the Regional Administrator.
SEC 25 Research Specialist to the Chairman.

Section 213.3331 Department of Energy

DOE 40 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 41 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 60 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 77 Staff Assistant to the Secretary.
DOE 103 Legal Advisor (Public Utilities), to the Chairman, Federal Energy Regulatory Commission.
DOE 105 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 106 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 108 Confidential Assistant to the Chief of Staff.
DOE 174 Special Assistant to the Assistant Secretary for Fossil Energy.
DOE 175 Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 185 Confidential Assistant to the Director, Press Services, Federal Energy Regulatory Commission.
DOE 186 Special Assistant to the Director, Public Affairs Division, Federal Energy Regulatory Commission.
DOE 200 Special Assistant to the Deputy Secretary.
DOE 212 Staff Assistant to the Assistant Secretary for Nuclear Energy.
DOE 214 Staff Assistant to the Chief of Staff.
DOE 230 Staff Assistant to the Chief of Staff.
DOE 250 Director, Public and Intergovernmental Affairs Division, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 251 Special Assistant to the Director, Congressional Affairs Division, Federal Energy Regulatory Commission.
DOE 267 Executive Assistant for Business and Education Programs to the Director, Office of Minority Economic Impact.
DOE 285 Executive Assistant to the Secretary.
DOE 292 Chauffeur to the Secretary.
DOE 314 Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 323 Special Assistant to the Assistant Secretary for Fossil Energy.
DOE 331 Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 353 Director, Office of Special Projects, to the Deputy Assistant Secretary and Staff Director for Management and Administration.

DOE 363 Staff Assistant to the Deputy General Counsel for Environment, Conservation, and Legislation.
DOE 364 Staff Assistant to the General Counsel.
DOE 365 Staff Assistant to the Director, Office of Public Affairs.
DOE 367 Staff Assistant to the Assistant Secretary for Nuclear Energy.
DOE 369 Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies.
DOE 370 Staff Assistant to the Chief of Staff.
DOE 371 Staff Assistant to the General Counsel.
DOE 373 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 374 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 376 Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 377 Staff Assistant to the Principal Deputy Assistant Secretary for Conservation and Renewable Energy.
DOE 380 Staff Assistant to the Assistant Secretary for Nuclear Energy.
DOE 381 Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 382 Staff Assistant to the Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.
DOE 383 Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 384 Staff Assistant to the Deputy Under Secretary for Policy, Planning and Analysis.
DOE 385 Staff Assistant to the Deputy Under Secretary for Policy, Planning and Analysis.
DOE 387 Staff Assistant to the Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.
DOE 389 Staff Assistant to the Director, Office of Civilian Radioactive Waste Management.
DOE 390 Staff Assistant to the Director, Office of Civilian Radioactive Waste Management.
DOE 393 Staff Assistant to the Chief of Staff.
DOE 396 Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 397 Staff Assistant to the Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.
DOE 400 Public Affairs Specialist to the Director, Office of Public Affairs.
DOE 401 Special Assistant to the Deputy Under Secretary for Policy, Planning and Analysis.
DOE 402 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison.
DOE 406 Director, Office of Consumer and Public Liaison, to the Deputy Assistant Secretary for Intergovernmental and Public Liaison.
DOE 408 Legislative Affairs Specialist to the Deputy Assistant Secretary for House Liaison.
DOE 409 Public Affairs Specialist to the Director, Office of Public Affairs.
DOE 410 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison.
DOE 412 Public Liaison Specialist to the Deputy Assistant Secretary for Intergovernmental and Public Liaison.
DOE 413 Legislative Affairs Specialist to the Deputy Assistant Secretary for House Liaison.
DOE 414 Special Assistant to the Deputy Secretary.
DOE 415 Special Assistant to the General Counsel.
DOE 416 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 417 Staff Assistant to the Executive Assistant to the Secretary.
DOE 420 Staff Assistant to the Director, Office of Public Affairs.
DOE 422 Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental and Public Liaison.
DOE 423 Staff Assistant to the Assistant Secretary for Environment, Safety and Health.
DOE 424 Staff Assistant to the Principal Deputy Assistant Secretary for Fossil Energy.
DOE 430 Senior Policy Specialist to the Director, Office of New Production Reactors.
DOE 434 Staff Assistant to the Director, Office of Energy Research.
DOE 437 Staff Assistant to the Director, Office of Public Affairs.
DOE 438 Staff Assistant to the Director of Administration and Human Resource Management.
DOE 439 Staff Assistant to the Deputy Secretary.
DOE 441 Staff Assistant to the Chief of Staff.
DOE 444 Staff Assistant to the Director, Office of Energy Research.
DOE 447 Special Assistant to the Assistant Secretary for Defense Programs.
DOE 448 Staff Assistant to the Director, Office of Energy Research.
DOE 449 Senior Program Analyst to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
DOE 451 Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 452 Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 453 Senior Program Analyst to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
DOE 454 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 455 Staff Assistant to the Deputy Under Secretary for Policy, Planning and Analysis.
DOE 456 Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental and Public Liaison.
DOE 457 Staff Assistant to the Deputy Under Secretary for Policy, Planning and Analysis.
DOE 458 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison.
DOE 459 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison.
DOE 460 Staff Assistant to the General Counsel.
DOE 461 Confidential Assistant (Secretary) to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
DOE 462 Public Affairs Specialist to the Press Secretary.
DOE 463 Principal Deputy to the Press Secretary.
DOE 464 Deputy Press Secretary for Issues Management to the Press Secretary.
DOE 465 Staff Assistant to the Press Secretary.
DOE 466 Staff Assistant to the Deputy Assistant Secretary for International Affairs.
DOE 467 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 468 Deputy Press Secretary for Field Operations to the Press Secretary.
DOE 469 Staff Assistant to the Assistant Secretary for Nuclear

Energy.
DOE 470 Staff Assistant to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
DOE 471 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 473 Special Assistant to the Deputy Secretary.
DOE 474 Director of the Executive Secretariat to the Director of Administration and Human Resource Management.

Section 213.3332 Small Business Administration

SBA 19 Executive Assistant to the Deputy Administrator.
SBA 39 Assistant Administrator for Public Communications.
SBA 45 Special Assistant to the Associate Administrator for Procurement Affairs.
SBA 51 Special Assistant to the Chief of Staff.
SBA 54 Special Assistant to the Assistant Administrator for Public Communications.
SBA 59 Deputy Assistant Administrator for Public Communications.
SBA 65 Special Assistant to the Regional Administrator.
SBA 66 Special Assistant to the Regional Administrator.
SBA 68 Special Assistant to the Regional Administrator.
SBA 69 Special Assistant to the Regional Administrator.
SBA 71 Special Assistant to the Regional Administrator.
SBA 73 Special Assistant to the Regional Administrator.
SBA 96 Special Assistant to the Associate Administrator for Business Development.
SBA 97 Confidential Assistant to the General Counsel.
SBA 100 Special Assistant to the Regional Administrator.
SBA 101 Special Assistant to the Associate Deputy Administrator for Management and Administration.
SBA 103 Confidential Assistant to the Administrator.
SBA 106 Director, Office of Private Sector Initiatives, to the Associate Deputy Administrator for Special Programs.
SBA 120 Special Assistant to the Assistant Administrator for Public Communications.
SBA 122 Special Assistant to the Regional Administrator.
SBA 124 Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs.
SBA 141 Special Assistant to the Associate Deputy Administrator for Special Programs.
SBA 142 Special Assistant to the Administrator.
SBA 143 Special Assistant to the Administrator.
SBA 144 Special Assistant to the Associate Deputy Administrator for Finance, Investment, and Procurement.
SBA 145 Director, Office of International Trade, to the Associate Deputy Administrator for Special Programs.
SBA 147 Deputy Associate Administrator for Business Development.
SBA 148 Deputy Director of Women's Business Ownership.
SBA 149 Special Assistant to the Administrator.
SBA 150 Special Assistant to the Administrator.
SBA 151 Director of External Affairs to the Chief of Staff.
SBA 152 Director of Intergovernmental Affairs to the Chief of Staff.

Section 213.3333 Federal Deposit Insurance Corporation

FDIC 2 Secretary to a Member.
FDIC 7 Special Assistant to the Director, Congressional Liaison Staff.
FDIC 10 Legislative Advisor to the Director, Office of Legislative Affairs.

Section 213.3334 Federal Trade Commission

FTC 6 Director, Office of Congressional Relations to the Chairman.
FTC 9 Staff Assistant to the Chairman.

Section 213.3337 General Services Administration

GSA 11 Executive Assistant to the Administrator.
GSA 16 Confidential Assistant to the General Counsel.
GSA 24 Special Assistant to the Commissioner, Public Building Service.
GSA 26 Confidential Assistant to the Commissioner, Public Building Service.
GSA 51 Confidential Assistant to the Deputy Administrator.
GSA 65 Confidential Assistant to the Commissioner, Information Resources Management Service.
GSA 70 Special Assistant to the Associate Administrator for Public Affairs.
GSA 73 Confidential Assistant to the Deputy Administrator.
GSA 74 Confidential Assistant to the Associate Administrator for Congressional Affairs.
GSA 75 Director of Legislation to the Associate Administrator for Congressional Affairs.
GSA 78 Confidential Assistant to the Regional Administrator.
GSA 79 Confidential Assistant to the Regional Administrator.
GSA 81 Staff Assistant to the Associate Administrator for Operations and Industry Relations.
GSA 85 Confidential Assistant to the Regional Administrator.
GSA 86 Confidential Assistant to the Regional Administrator.
GSA 89 Congressional Relations Officer to the Associate Administrator for Congressional Affairs.
GSA 90 Congressional Relations Officer to the Associate Administrator for Congressional Affairs.
GSA 93 Executive Assistant to the Associate Administrator for Operations.
GSA 94 Legislative Assistant to the Associate Administrator for Congressional Affairs.
GSA 98 Special Assistant to the Assistant to the Administrator for Child Care and Development Programs.
GSA 100 Director, Office of the Executive Secretariat, to the Administrator.
GSA 101 Staff Assistant for Special Projects to the Administrator.
GSA 102 Confidential Assistant to the Regional Administrator.
GSA 103 Confidential Assistant to the Director, Office of the Executive Secretariat.
GSA 106 Special Assistant to the Associate Administrator for Public Affairs.
GSA 109 Confidential Assistant to the Regional Administrator.
GSA 114 Confidential Assistant to the Regional Administrator.
GSA 116 Assistant General Counsel for Policy to the General Counsel.
GSA 117 Director of Regional Operations to the Associate Administrator for Operations and Industry Relations.
GSA 120 Legislative Assistant to the Associate Administrator for Congressional Affairs.
GSA 121 Intergovernmental Relations Officer to the Associate Administrator for Congressional Affairs.
GSA 122 Director of Client Relations to the Associate Administrator for Operations and Industry Relations.

Section 213.3338 Federal Communications Commission

FCC 11 Special Assistant to the Chief, Office of Public Affairs.
FCC 13 Congressional Liaison Specialist to the Director, Office of Legislative Affairs.
FCC 18 Confidential Staff Assistant to the General Counsel.
FCC 20 Special Assistant to the Chief, Office of Public Affairs.

Section 213.3339 U.S. International Trade Commission

ITC 1 Confidential Assistant to a Commissioner.
ITC 3 Staff Assistant (Economics) to a Commissioner.
ITC 5 Confidential Assistant to a Commissioner.
ITC 7 Staff Assistant (Economics) to a Commissioner.
ITC 9 Confidential Assistant to a Commissioner.
ITC 12 Staff Assistant (Economics) to a Commissioner.
ITC 13 Staff Assistant (Legal) to a Commissioner.
ITC 15 Confidential Assistant to a Commissioner.
ITC 17 Staff Assistant (Legal) to a Commissioner.
ITC 19 Staff Assistant (Economics) to a Commissioner.
ITC 20 Staff Assistant (Economics) to a Commissioner.
ITC 22 Staff Assistant (Legal) to a Commissioner.
ITC 24 Staff Assistant (Legal) to a Commissioner.
ITC 26 Staff Assistant (Legal) to a Commissioner.
ITC 27 Congressional Liaison to the Chairman.
ITC 29 Staff Assistant (Legal) to a Commissioner.
ITC 30 Confidential Assistant to a Commissioner.
ITC 31 Staff Assistant (Legal) to a Commissioner.
ITC 33 Staff Assistant to a Commissioner.
ITC 34 Staff Assistant (Legal) to a Commissioner.

Section 213.3340 National Archives and Records Administration

NARA 3 Presidential Diarist to the Archivist of the United States.
NARA 4 Assistant to the Presidential Diarist.

Section 213.3341 National Labor Relations Board

NLRB 3 Confidential Assistant to a Board Member.
NLRB 6 Confidential Assistant to a Board Member.

Section 213.3342 Export-Import Bank of the United States

EXIM 1 Executive Assistant to the President and Chairman.
EXIM 2 Personal and Confidential Assistant to the First Vice President and Vice Chairman.
EXIM 4 Administrative Assistant to a Director.
EXIM 5 Administrative Assistant to a Director.
EXIM 25 Secretary (Typing) to the President and Chairman.
EXIM 26 Administrative Assistant to the General Counsel.
EXIM 28 Secretary (Steno) to the Executive Vice President.
EXIM 30 Administrative Assistant to a Director.
EXIM 32 Special Assistant to the First Vice President and Vice Chairman.
EXIM 33 Secretary (Typing) to the Vice President for Congressional and External Affairs.
EXIM 34 Vice President for Congressional and External Affairs to the First Vice President and Vice Chairman.

Section 213.3343 Farm Credit Administration

FCA 1 Special Assistant to the Chairman.
FCA 3 Executive Assistant to the Chairman.
FCA 6 Executive Assistant to a Board Member.
FCA 8 Secretary to the Board.

Section 213.3346 Selective Service System

SSS 9 Assistant Director of Congressional and Intergovernmental Affairs.

Section 213.3348 National Aeronautics and Space Administration

NASA 1 Secretary (Steno) to the Administrator.
NASA 2 Secretary (Steno) to the Deputy Administrator.
NASA 13 Special Assistant to the Associate Administrator for External Relations.
NASA 14 Public Affairs Specialist to the Deputy Associate Administrator for Communications.

Section 213.3351 Federal Mine Safety and Health Review Commission

FM 1 Secretary (Steno) to a Commissioner.
FM 4 Confidential Secretary to a Commissioner.
FM 7 Attorney-Advisor (General) to a Commissioner.
FM 8 Attorney-Advisor (General) to a Commissioner.

Section 213.3356 Commission on Civil Rights

CCR 12 Special Assistant to a Commissioner.
CCR 13 Special Assistant to a Commissioner.
CCR 14 Deputy General Counsel to the General Counsel.
CCR 15 Special Assistant to a Commissioner.
CCR 27 Special Assistant to a Commissioner.
CCR 28 Special Assistant to a Commissioner.
CCR 30 Special Assistant to a Commissioner.

Section 213.3357 National Credit Union Administration

NCUA 9 Staff Assistant to the Chairman.
NCUA 12 Executive Assistant to the Vice Chairman.
NCUA 15 Secretary (Typing) to the President, Central Liquidity Facility.
NCUA 18 Special Assistant to the Chairman.
NCUA 39 Executive Assistant to a Board Member.

Section 213.3359 ACTION

ACT 29 Special Assistant to the Director.
ACT 44 Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 45 Director of Public Affairs to the Director.
ACT 72 Assistant Director for Older Americans Volunteer Programs to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 79 Assistant Director for VISTA/Student Community Service Programs to the Associate Director for Domestic and Anti-Poverty Operations.

Section 213.3360 Consumer Product Safety Commission

CPSC 7 Special Assistant (Legal) to a Commissioner.
CPSC 12 Special Assistant (Legal) to the Chairman.
CPSC 16 Director, Office of Congressional Relations, to the Chairman.
CPSC 20 Special Assistant (Legal) to a Commissioner.
CPSC 23 Special Assistant to a Commissioner.
CPSC 25 Staff Assistant to a Commissioner.
CPSC 48 Secretary (Typing) to the Chairman.

Section 213.3364 U. S. Arms Control and Disarmament Agency

ACDA 2 Secretary (Steno) to the Deputy Director.
ACDA 4 Secretary (Steno) to the Assistant Director for Verification and Intelligence.
ACDA 5 Secretary (Steno) to the Assistant Director for Nuclear and Weapons Control.
ACDA 11 Congressional Affairs Specialist to the Director, Office of Congressional Affairs.
ACDA 17 Secretary (Steno) to the Director.
ACDA 23 Staff Assistant to the Assistant Director for Multilateral Affairs.
ACDA 27 Special Assistant to the Director.
ACDA 29 Congressional Affairs Specialist to the Director of Congressional Affairs.
ACDA 30 Secretary (Steno) to the Special Advisor to the President and Secretary of State on Arms Control Matters.

Section 213.3367 Federal Maritime Commission

FMC 2 Confidential Assistant to a Commissioner.

FMC 5 Confidential Assistant to a Commissioner.

FMC 7 Secretary (Steno) to a Commissioner.

FMC 22 Special Assistant to the Chairman.

Section 213.3368 Agency for International Development

AID 48 Special Assistant to the Director, Office of Policy Development and Program Review.
AID 65 Supervisory Public Affairs Specialist to the Deputy Assistant Administrator for Public Affairs.
AID 68 Special Assistant to the Assistant Administrator for Private Enterprise.
AID 76 Public Affairs Specialist to the Director, Office of Public Liaison.
AID 81 Public Affairs Specialist to the Director, Office of Public Liaison, Bureau for External Affairs.
AID 82 Chief, Congressional Liaison Division, to the Deputy Assistant Administrator, Bureau of Legislative Affairs.
AID 84 Director, White House Liaison, to the Administrator.
AID 85 Director, Office of Private Sector Development, to the Assistant Administrator, Bureau for Asia and the Near East.
AID 86 Special Assistant to the Assistant Administrator, Bureau for Asia and the Near East.
AID 87 Special Assistant to the Deputy Administrator.
AID 88 Special Assistant to the Director, Office of Foreign Disaster Assistance.
AID 91 Special Assistant to the Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.
AID 92 Deputy Director (Program Manager), Office of Private and Voluntary Cooperation, to the Deputy Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

Section 213.3372 Administrative Office of the United States Courts

AOUSC 5 Secretary (Steno) to the Deputy Legislative and Public Affairs Officer.
AOUSC 7 Attorney Advisor (Legislative) to the Legislative and Public Affairs Officer.
AOUSC 8 Attorney-Advisor (Legislative) to the Legislative and Public Affairs Officer.
AOUSC 9 Public Information Officer to the Legislative and Public Affairs Officer.
AOUSC 10 Secretary (Typing) to the Legislative and Public Affairs Officer.
AOUSC 11 Writer-Editor to the Legislative and Public Affairs Officer.
AOUSC 12 Legislative Staff Assistant to the Legislative and Public Affairs Officer.

Section 213.3376 Appalachian Regional Commission

ARC 6 Legislative and Policy Advisor to the Federal Co-Chairman.

Section 213.3377 Equal Employment Opportunity Commission

EEOC 2 Special Assistant to the Chairman.
EEOC 5 Confidential Assistant to a Member.
EEOC 12 Media Contact Specialist to the Director, Office of Communications and Legislative Affairs.
EEOC 17 Special Assistant to a Member.
EEOC 22 Director, Legislative Affairs, to the Director, Office of Communications and Legislative Affairs.
EEOC 23 Special Assistant to a Member.
EEOC 25 Media Contact Specialist (Bilingual) to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 38 Legislative Affairs Specialist to the Director, Legislative Affairs Staff.
EEOC 40 Legislative Affairs Specialist to the Director, Office of Communications and Legislative Affairs.

Section 213.3379 Commodity Futures Trading Commission

CFTC 1 Administrative Assistant to the Chairman.
CFTC 3 Administrative Assistant to a Commissioner.
CFTC 6 Administrative Assistant to a Commissioner.
CFTC 12 Special Assistant to a Commissioner.
CFTC 21 Government Affairs Officer to the Chairman.
CFTC 23 Economist to the Chairman.

Section 213.3382 National Foundation on the Arts and the Humanities

National Endowment for the Arts
NEA 9 Congressional Liaison Officer to the Chairman.
NEA 23 Director, Office of Policy, Planning and Research, to the Chairman.
NEA 49 Associate Deputy Chairman for Programs.
NEA 50 Special Projects Coordinator (Development) to the Chairman.

National Endowment for the Humanities
NEH 56 Special Assistant to the Deputy Chairman.

Section 213.3384 Department of Housing and Urban Development

HUD 33 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 35 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 37 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 39 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 41 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 42 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 45 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 60 Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs.
HUD 64 Staff Assistant to the Deputy Assistant Secretary for Policy Development and Evaluation.
HUD 76 Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 120 Special Assistant to the Deputy Assistant Secretary for Public Affairs.
HUD 137 Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 170 Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 172 Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 174 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 175 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 177 Special Assistant to the Secretary.
HUD 182 Special Assistant to the Deputy Assistant Secretary for Multi-Family Housing Programs.
HUD 187 Special Assistant to the Deputy Assistant Secretary for Single Family Housing Programs.
HUD 188 Special Assistant to the Assistant Secretary for Administration.
HUD 190 Executive Assistant to the Assistant Secretary for Housing.
HUD 191 Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 192 Deputy General Counsel.
HUD 195 Special Assistant to the Deputy Assistant Secretary for Program Development.
HUD 200 Staff Assistant to the Assistant Secretary for Administration.
HUD 202 Executive Assistant to the Assistant Secretary for Legislation and Congressional Relations.
HUD 203 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 205 Senior Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 209 Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 209 Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 211 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 213 Staff Assistant to the Assistant Secretary for Program Development and Research.
HUD 215 Special Assistant to the Deputy Assistant Secretary for Multi-Family Housing Programs.
HUD 216 Special Assistant to the Assistant Secretary for Administration.
HUD 218 Executive Assistant to the Regional Administrator.
HUD 222 Staff Assistant to the Regional Administrator.
HUD 226 Special Assistant to the Regional Administrator.
HUD 228 Executive Assistant to the Regional Administrator.
HUD 230 Special Assistant to the Secretary.
HUD 247 Executive Assistant to the Assistant Secretary for Housing.
HUD 249 Intergovernmental Relations Specialist to the Deputy Under Secretary for Intergovernmental Relations.
HUD 255 Executive Assistant to the Assistant Secretary for Policy Development and Research.
HUD 258 Special Assistant to the Under Secretary.
HUD 260 Executive Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 264 Special Assistant to the Secretary for Indian and Alaska Native Programs.
HUD 266 Special Assistant to the General Deputy Assistant Secretary for Housing.
HUD 274 Special Assistant to the Secretary.
HUD 282 Special Assistant to the Regional Administrator.
HUD 285 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 286 Staff Assistant to the Special Assistant to the Secretary/Director, Executive Secretariat.
HUD 288 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 292 Special Assistant to the Deputy Assistant Secretary for Policy Development and Evaluation.
HUD 293 Special Assistant to the President, Government National Mortgage Association.
HUD 320 Special Assistant to the Assistant Secretary for Administration.
HUD 324 Special Assistant to the Regional Administrator.
HUD 330 Special Assistant (Scheduling) to the Assistant Secretary for Public Affairs.
HUD 337 Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs.
HUD 338 Special Assistant to the Deputy Assistant Secretary for Single Family Housing Programs.
HUD 339 Special Assistant to the Regional Administrator.
HUD 345 Special Assistant to the Deputy Assistant Secretary for Single Family Housing Programs.
HUD 350 Special Assistant to the Regional Administrator.
HUD 358 Special Assistant to the Regional Administrator.
HUD 364 Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 369 Special Assistant to the Regional Administrator.
HUD 382 Staff Assistant to the Assistant Secretary for Policy Development and Research.
HUD 383 Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 388 Special Assistant to the Regional Administrator.
HUD 389 Special Assistant to the Assistant Secretary for Housing.
HUD 373 Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs.
HUD 374 Executive Assistant to the Deputy Under Secretary for Field Coordination.
HUD 376 Special Assistant to the Regional Administrator.
HUD 377 Special Assistant to the Regional Administrator.
HUD 378 Assistant Director, Office of Executive Secretariat, to the Special Assistant to the Secretary/Director, Executive Secretariat.
HUD 384 Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 385 Special Assistant to the Assistant Secretary for Public Affairs.
HUD 386 Executive Assistant to the Under Secretary.
HUD 388 Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs.
HUD 390 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 392 Special Assistant to the Regional Administrator.
HUD 394 Staff Assistant to the Assistant Secretary for Community Planning and Development.

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HUD 401 Special Assistant to the Assistant Secretary for Housing.
HUD 402 Special Assistant to the Assistant Secretary for Housing.
HUD 404 Special Assistant to the Regional Administrator.
HUD 407 Executive Assistant to the Regional Administrator.
HUD 408 Special Projects Coordinator to the Deputy Assistant Secretary for Policy, Financial Management and Administration.
HUD 409 Special Assistant to the Deputy Assistant Secretary for Policy, Financial Management and Administration.
HUD 414 Associate Deputy General Counsel.
HUD 415 Special Assistant for Resident Management and Urban Homesteading to the Assistant Secretary for Public and Indian Housing.
HUD 416 Staff Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 417 Special Assistant to the Assistant Secretary for Administration.
HUD 418 Special Assistant to the Deputy Assistant Secretary for Public and Indian Housing.
HUD 419 Special Assistant to the Assistant Secretary for Public Affairs.
HUD 420 Regional Administrator—Regional Housing Commissioner.

Section 213.3388 President's Commission on White House Fellows

PCWHF 2 Associate Director.
PCWHF 3 Assistant Director for Educational Programs.
PCWHF 4 Confidential Assistant to the Director.

Section 213.3389 National Mediation Board

NMB 54 Confidential Assistant to the Chairman.

Section 213.3391 Office of Personnel Management

OPM 6 Executive Liaison to the Director for Administration and Special Projects.
OPM 7 Deputy Director for Congressional Relations to the Director, Office of Congressional Relations.
OPM 8 Confidential Assistant to the Director.
OPM 9 Confidential Assistant to the Director, Office of Executive Administration.
OPM 11 Confidential Assistant to the Director, Office of Executive Administration.
OPM 18 Staff Assistant to the Director, Office of Executive Administration.
OPM 19 Special Assistant to the Associate Director for Administration.
OPM 21 Special Assistant to the Director for Communications.
OPM 25 Special Assistant to the Director, Office of Congressional Relations.
OPM 29 Counselor to the Director.
OPM 33 Confidential Assistant to the Assistant Director for Congressional Relations.
OPM 36 Staff Assistant to the Director, Office of Executive Administration.
OPM 38 Confidential Assistant to the General Counsel.
OPM 41 Special Assistant to the Director, Office of Public Affairs.
OPM 43 Executive Assistant to the Director.
OPM 44 Director of Intergovernmental Affairs to the Director.
OPM 45 Deputy Director of Policy to the Director.
OPM 46 Special Assistant to the Director.
OPM 47 Special Assistant to the Deputy Director.
OPM 48 Staff Assistant to the Director, Office of Executive Administration.

Section 213.3393 Pension Benefit Guaranty Corporation

PBGC 6 Confidential Assistant to the Executive Director.
PBGC 7 Special Assistant to the Executive Director.

Section 213.3394 Department of Transportation

DOT 1 Staff Assistant to the Secretary.
DOT 14 Chauffeur to the Secretary.
DOT 20 Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 38 Special Assistant to the Administrator, National Highway Traffic Safety Administration.
DOT 54 Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 58 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 60 Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 69 Public Affairs Officer to the Administrator, Federal Railroad Administration.
DOT 70 Staff Assistant to the Assistant Secretary for Governmental Affairs.
DOT 78 Staff Assistant to the Assistant Secretary for Governmental Affairs.
DOT 94 Staff Assistant to the Administrator, Federal Aviation Administration.
DOT 100 Chief, Consumer Affairs Division, to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration.
DOT 127 Special Assistant to the Assistant Secretary for Budget and Programs.
DOT 128 Special Assistant to the Administrator, Federal Highway Administration.
DOT 147 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 148 Director, Office of Media Relations and Special Projects, to the Assistant Secretary for Public Affairs.
DOT 153 Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 185 Special Assistant to the Deputy Assistant Secretary for Policy and International Affairs.
DOT 192 Staff Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
DOT 197 Staff Assistant to the Secretary.
DOT 198 Special Assistant to the Administrator, Federal Highway Administration.
DOT 203 Staff Assistant to the Assistant Secretary for Governmental Affairs.
DOT 204 Chief of Staff to the Administrator, Federal Railroad Administration.
DOT 209 Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 217 Special Assistant to the Administrator, Research and Special Programs Administration.
DOT 233 Staff Assistant to the General Counsel.
DOT 235 Special Assistant for Scheduling to the Secretary.
DOT 236 Special Assistant to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration.
DOT 240 Special Assistant to the Assistant Administrator for Public Affairs, Federal Aviation Administration.
DOT 243 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 249 Deputy Executive Secretary for Policy to the Director, Executive Secretariat.
DOT 265 Special Assistant to the Director, Office of Public Affairs, Federal Highway Administration.
DOT 272 Special Assistant for Minority Affairs to the Director, Office of Small and Disadvantaged Business Utilization.
DOT 274 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 277 Special Assistant to the Deputy Administrator, Urban Mass Transportation Administration.
DOT 278 Staff Assistant to the Deputy Secretary.
DOT 285 Special Assistant to the Administrator, National Highway Traffic Safety Administration.
DOT 287 Staff Assistant to the Deputy Secretary.
DOT 288 Deputy Director of Industry Affairs to the Director, Office of Intergovernmental and Industry Affairs.
DOT 302 Staff Assistant to the Secretary.
DOT 307 Director, Office of Intergovernmental and Industry Affairs, to the Assistant Secretary for Governmental Affairs.
DOT 308 Deputy Director (Intergovernmental) to the Director, Office of Intergovernmental and Consumer Affairs.
DOT 309 Special Assistant to the Administrator, Federal Aviation Administration.
DOT 311 Staff Assistant to the Chief of Staff.
DOT 312 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 313 Director, Office of Public and Consumer Affairs, to the Administrator, National Highway Traffic Safety Administration.
DOT 314 Staff Assistant to the Associate Administrator for Policy, Planning and International Aviation, Federal Aviation Administration.
DOT 315 Director of Intergovernmental Affairs to the Administrator, National Highway Traffic Safety Administration.
DOT 316 Special Assistant to the Deputy Assistant Secretary for Policy and International Affairs.
DOT 317 Special Assistant to the Assistant Administrator for Government and Industry Affairs, Federal Aviation Administration.
DOT 318 Staff Assistant to the Secretary.
DOT 319 Congressional Liaison Officer to the Assistant Administrator for Government and Industry Affairs, Federal Aviation Administration.
DOT 320 Special Assistant to the Secretary for Special Projects.
DOT 321 Staff Assistant to the Administrator, Federal Highway Administration.
DOT 322 Special Assistant to the Special Assistant and Director for Drug Enforcement and Program Compliance.
DOT 323 Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
DOT 324 Staff Assistant to the Special Assistant for Personnel and Organization Management.

Section 213.3395 Federal Emergency Management Agency

FEMA 3 Director of Congressional Affairs to the Director of External Affairs.
FEMA 33 Director, Office of Regional Operations, to the Director.
FEMA 34 Executive Assistant to the Deputy Director.
FEMA 36 Confidential Assistant to the Associate Director, External Affairs Directorate.

Section 213.3396 National Transportation Safety Board

NTSB 1 Special Assistant to a Board Member.
NTSB 31 Confidential Assistant to a Board Member.
NTSB 32 Confidential Assistant to a Board Member.
NTSB 33 Confidential Assistant to a Board Member.
NTSB 98 Special Assistant to a Board Member.
NTSB 104 Special Assistant to a Board Member.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.
Constance Berry Newman,
Director.

[FR Doc. 90-22316 Filed 09-21-90; 8:45 am]
BILLING CODE 6325-01-M

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185

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federal register

Monday
September 24, 1990

Part III

The President

Proclamation 6184—Emergency Medical Services Week, 1990

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Federal Register
Vol. 55, No. 185
Monday, September 24, 1990

Presidential Documents

Title 3—

The President

Proclamation 6184 of September 20, 1990

Emergency Medical Services Week, 1990

By the President of the United States of America

A Proclamation

Each day, members of our Nation's emergency medical services (EMS) teams help to save lives. Providing swift, specialized care for seriously ill or injured persons—at all hours of the day or night and often while enduring difficult and even hazardous conditions—emergency medical personnel demonstrate daily the depth of their bravery, dedication, and compassion.

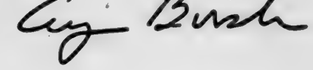
At some time in our lives, most of us will witness or even benefit from the extraordinary efforts of EMS personnel in the wake of a motor vehicle collision, an industrial or household accident, sudden illness, or natural disaster. Medical emergencies arise from many such sources, but emergency medical care is always a team effort. From the paramedics and emergency medical technicians who provide immediate care at the scene of a crisis to the physicians, nurses, and technical specialists who offer emergency care in the hospital setting, thousands of hardworking, highly skilled men and women labor together to ensure the success of our Nation's emergency medical services systems. The unsung heroes of our Nation's EMS teams include dispatchers and other communications specialists, transport personnel who move patients quickly to medical centers for treatment, administrators, and educators who provide training in emergency skills and accident prevention.

Whether full-time workers or volunteers, the dedicated men and women who serve their communities as members of EMS teams deserve the highest recognition and praise. This week, we applaud their lifesaving efforts in emergency care and accident prevention and express our determination to cooperate with them in building a safer, healthier America.

The Congress, by House Joint Resolution 568, has designated the week beginning September 16, 1990, as "Emergency Medical Services Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning September 16, 1990, as Emergency Medical Services Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-22788
Filed 9-21-90; 10:40 am]
Billing code 3195-01-M

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S. 2693/Pub. L. 101-364

To amend title 39, United States Code, to allow free mailing privileges to be extended to members of the Armed Forces while engaged in temporary military operations under arduous circumstances. (Sept. 18, 1990; 104 Stat. 737; 1 page) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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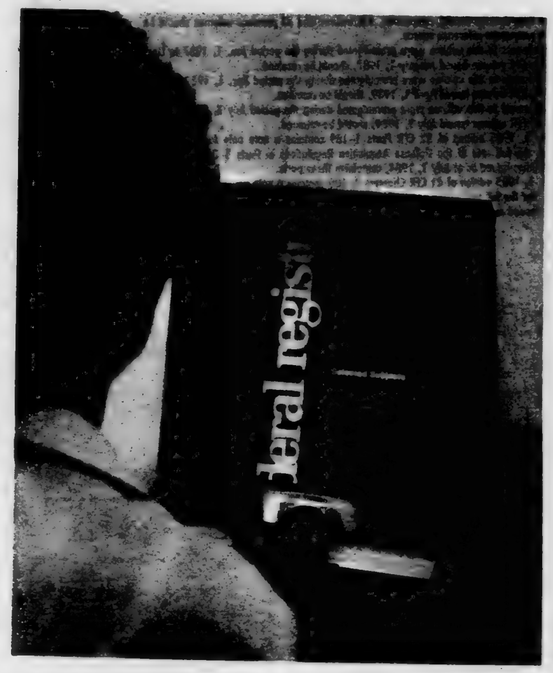

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program; Continuation of Coverage During a Period of Military Furlough in Support of Operation Desert Shield

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations that waive the employee share of the health benefits premium for employees who continue their coverage under the Federal Employees Health Benefits (FEHB) Program while they are on military furlough (leave without pay) because of military service in support of Operation Desert Shield.

DATES: Interim regulations are effective August 22, 1990. Comments must be received on or before October 25, 1990.

ADDRESSES: Written comments may be sent to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 606–0780, extension 207.

SUPPLEMENTARY INFORMATION: On August 22, 1990, the President signed Executive Order 12727, by which he ordered certain Armed Forces reservists to active military duty. Under OPM's regulations Federal employees who enter on a leave without pay status to perform active military service may continue their FEHB coverage if their share of the FEHB premium is paid. (They also have the option of postponing payment of their share until they return to their Federal position.) By continuing their FEHB coverage while they are in leave-without-pay status during military service, employees can ensure that their families are able to maintain established relationships with health care providers for up to 12 months of leave without pay.

The call to active service initiates a difficult period in the lives of these employees and their families. It is the responsibility of the Federal Government in its role as employer to make sure that employees who perform active military duty during this period are able to leave their employment temporarily with the knowledge that their affairs are in order and their rights are protected.

On August 23, 1990, the Director of the Office of Personnel Management issued a memorandum to heads of the executive departments and agencies urging them to minimize financial hardship on reservists called to active duty. In furtherance of this goal, OPM is issuing regulations to waive the employee's share of the FEHB premiums for employees who continue their FEHB coverage while they are in a leave-without-pay status because they are performing active military service in support of Operation Desert Shield. The regulations specify the authorities under which employees are called into service for this purpose. Section 673b of title 10, U.S. Code, covers reservists involuntarily recalled by the President's order. Section 688 of title 10, U.S. Code, covers military retirees involuntarily recalled. Section 672(d) of title 10, U.S. Code, covers volunteers who are ordered into military service in support of Operation Desert Shield.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. These interim regulations provide for up to 12 months of continued FEHB coverage for employees (and their families) who are serving in the active military service at no cost to the employee. Delaying the date of implementation of these regulations would be contrary to the public interest and would serve no useful purpose.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Life insurance.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c, and 4069c–1.

2. In § 890.502, paragraph (b)(1) is revised and a new paragraph (g) is added to read as set forth below:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b)(1) Except as provided in paragraphs (b)(2) and (g) of this section, an employee or annuitant is responsible for payment of the employee share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct premium payments are not made but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness due the United States in the amount of the proper employee withholding required for that pay period.

* * * * *

(g) *Military furlough.* Payment of the employee's share of the cost of enrollment is waived in the case of an employee whose coverage continues under § 890.303(e) following furlough or placement on leave of absence in accordance with the provisions of part

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363 of this chapter or other similar authority for the purpose of performing duty not limited to 30 days or less in a uniformed service, if ordered to active duty under 10 U.S.C. 673b or 10 U.S.C. 688, or under 10 U.S.C. 672(d) in support of Operation Desert Shield.

[FR Doc. 90-22681 Filed 9-24-90; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 90-152]

Hot Water Dip Treatments for Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule a proposal we made to amend the Plant Protection and Quarantine regulations concerning the importation of treated mangoes. This rule will allow the importation of all varieties of mangoes from all of South America, Central Ameria, and the West Indies that have been treated with an approved hot water dip treatment. The rule also slightly modifies the current hot water dip treatment for mangoes from the West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago. This change will allow importation into the United States of mangoes from these areas without the risk of introducing plant pests associated with them.

EFFECTIVE DATE: October 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fons, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service, United States Department of Agriculture (USDA). Section 300.1 of the regulations incorporates by reference the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). The PPQ Treatment Manual contains procedures and schedules for treating various regulated articles.

In a proposed rule published in the **Federal Register** on June 21, 1990 (55 FR 25313-25315, Docket 90-001), we proposed to amend the regulations in 7 CFR parts 300 and 319 by changing the treatment requirements for mangoes imported from various areas. The most significant provision of that document was a proposal to allow importation of mangoes from Panama and South America after they are treated with a hot water dip treatment similar to a treatment authorized for mangoes imported from other areas. This change would provide the first approved treatment for mangoes from Panama and South America since 1987, when as a result of action taken by the Environmental Protection Agency, ethylene dibromide (EDB) fumigation was disallowed as a treatment for mangoes moved into the United States.

The proposed rule was based on research by the Agricultural Research Service, USDA [1], that has shown that a hot water dip treatment is effective against *Anastrepha* species of fruit flies and the Mediterranean fruit fly in various varieties of mangoes. Specifically, research has shown a hot water dip treatment to be effective for mangoes of the varieties found in all of South America and Panama. The same research has shown that for a hot water dip treatment to be effective for mangoes of the varieties found in the West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago, the size, time and temperature requirements formerly listed in the treatment schedule for these mangoes should be adjusted slightly.

Comments on the proposed rule were required to be received on or before July 23, 1990. We received four comments prior to this closing date. Two comments from importers of mangoes supported the proposed rule. One comment from the California Department of Food and Agriculture (CDFA) opposed the proposed rule, and one comment from the Agricultural Export Promotion Project of the Regional Office of Central America and Panama of the United States Agency for International Development (ROCAP/USAID) requested a technical change to a time and temperature requirement in the treatment schedule. These latter two comments are discussed below.

The CDFA comment stated that the potential for artificial spread of serious fruit fly pests via improperly treated host fruits is of critical concern to CDFA. CDFA requested that each lot of mangoes imported in accordance with the regulations, in addition to undergoing the hot water dip treatment, be required to be inspected and sampled prior to treatment, and that any lot found to be infested be rejected for importation into the United States. CDFA requested that at least 300 fruits from each lot be cut open and inspected under close supervision of USDA or the appropriate agency in the origin country as part of this pretreatment inspection.

No change was made in response to this comment. The scientific data cited in support of the proposed rule showed that the proposed hot water dip treatments (HWDT) were efficacious against *Anastrepha* species and *Ceratitis capitata* for mangoes of the varieties we are allowing to be imported. We are approving these treatments because they effectively kill all life stages of these pests. We do not see any valid reason why shipments of mangoes that are treated with an effective treatment should also be required by the regulations to be subjected to extensive inspection. However, work plans developed for mango processing do require visual inspection of the fruit before treatment, and any mango shipments that are found infested during that inspection are not eligible for treatment and importation into the United States.

CDFA also requested that a protocol be developed and submitted for their approval, describing what steps will be taken to assure that hot water dip treatment facilities are properly constructed and tested, what monitoring or supervision is to be performed of the ongoing treatment operations, and what corrective action and penalties will be levied in the event that protocol failures or violations occur.

No change was made in response to this comment. Procedures for the design and operation of treatment facilities are already contained in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations. If a treatment facility fails to follow required procedures, the mangoes it treats would not meet regulatory requirements for importation into the United States, and would therefore be prohibited importation. Persons violating the regulations could also be subjected to civil or criminal penalties in accordance with various Federal statutes.

[1] This research is available upon written request from the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

The ROCAP/USAID comment requested a shorter hot water dip time for elongated and flattened varieties of mangoes from Mexico and Central America north of and including Costa Rica. The comment noted that the proposed rule called for all mangoes from these areas to be treated as follows: 75 minutes for mangoes up to 500 grams; 90 minutes for mangoes up to 700 grams. The comment then noted that for mangoes from Panama and South America, there are two treatment schedules: a shorter dip time for elongated, flattened varieties that heat quickly, and a longer dip time for more round varieties of mangoes. The commenter suggested that since some elongated, flattened varieties of mango, such as the Zill mango, exist in Mexico and Central America, these varieties should be subjected to the same dip time as similar varieties from Panama and South America.

We agree with this comment, and are changing the treatment schedule accordingly. As revised, the treatment schedule will require the same treatment for elongated, flattened types of mangoes from Mexico and Central America north of and including Costa Rica that is required for similarly shaped mangoes from Panama and South America. The required treatment for these mangoes is 65 minutes for mangoes weighing up to 375 grams, and 75 minutes for mangoes weighing up to 570 grams.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are revising the PPQ Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1, and the fruit and vegetable import regulations, which are contained in "Subpart—Fruits and Vegetables" in 7 CFR 319.56. The PPQ Treatment Manual, as revised, shows the following treatment schedules for mangoes:

Hot Water Dip Treatment for Mangoes

All mangoes must be at a temperature of 21.1 °C or higher before treatment begins. The mangoes must be submerged 4 inches below the surface of water that is heated to 46.1 °C. The water temperature must be kept at 46.1 °C, except that it may fall as low as 45.4 °C for no more than 10 minutes in any treatment lasting 65 to 75 minutes, and for no more than 15 minutes in any treatment lasting 90 minutes. The water temperature must not be allowed to fall below 45.4 °C at any time during the treatment.

Type of Mango	Submersion time
"Frandie" and similarly shaped mangoes (elongate, flattened types, including the "Carrot" variety) from Puerto Rico, the U.S. Virgin Islands, and the West Indies, excluding the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(maximum weight 570 g each) 75 minutes. (maximum weight 400 g each) 65 minutes.
Other varieties of mangoes from Central America north of and including Costa Rica, Mexico, Puerto Rico, the U.S. Virgin Islands, and the West Indies, excluding the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(maximum weight 700 g each) 90 minutes. (maximum weight 500 g each) 75 minutes.
"Francis" and similarly shaped mangoes (elongate, flattened types) from Central America north of and including Costa Rica, Mexico, Panama, South America, and the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(maximum weight 570 g each) 75 minutes. (maximum weight 375 g each) 65 minutes.
Other varieties of mangoes (Tommy Atkins, Kent, Keitt, Haden and similarly shaped) from Panama, South America, and the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(maximum weight 650 g each) 90 minutes. (maximum weight 425 g each) 75 minutes.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In the proposed rule we summarized the Initial Regulatory Flexibility Analysis we prepared in accordance with 5 U.S.C. 603, evaluating the potential impact of the proposed rule on small entities. Two importers commenting on the proposed rule noted that failure to adopt the proposed rule or delay in implementing its provisions could have adverse economic impact on growers, shippers, and importers involved in importing mangoes into the United States.

This rule allows hot water dip treatments for specified varieties and sizes of mangoes from certain areas where *Anastrepha* species of fruit flies and the Mediterranean fruit fly exist. These treatments will be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1.

In accordance with the Federal Plant Pest Act and the Plant Quarantine Act, the Secretary of Agriculture is authorized to promulgate regulations concerning the importation or interstate movement of fruits and other plant products to prevent the spread of injurious plant pests.

This rule affects domestic mango producers. Mangoes are a minor agricultural crop in the United States, which has few areas with suitable growing conditions for the fruit. In the continental United States, mango production is limited to about 2,300 acres on approximately 270 farms in Florida, all small entities. Most of these small entities do not produce mangoes as their major crop. Production of mangoes in Florida between 1985 and 1988 ranged from 20,250,000 pounds in 1987 to 19,250,000 pounds in 1988.

By comparison, imports of mangoes into the United States during that same time period ranged from 66,073,940 pounds in 1985 to 43,171,280 pounds in 1988, consistently accounting for more than two-thirds of the mangoes marketed in the continental United States. This rule will have a beneficial economic effect on importers of mangoes, by increasing the number of sources from which mangoes may be imported. Based on available information, most mangoes are imported by a small number of importers which are not small entities.

Mangoes imported into the United States come primarily from Mexico (85 to 95 percent during 1985-1988), with Haiti providing most of the others. In 1987, the last year that mangoes treated with ethylene dibromide could be imported into the United States from the countries that will be effected by this rule, countries other than Mexico and Haiti provided only about 2.2 percent of those mangoes. In 1985 and 1986, they provided between 1 and 2 percent. We anticipate that a resumption of mango imports from these countries will not result in a significant increase in the

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amount of mangoes imported into the United States, and therefore will not result in a significant economic impact on a substantial number of small entities.

This rule will not result in any significant increase in reporting, recordkeeping, or compliance requirements.

As an alternative to this rule, we considered retaining the former treatment schedule in the PPQ Treatment Manual. This alternative was rejected because given the existence of additional effective treatments for mangoes, there is no pest risk basis for not allowing use of these treatments.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

7 CFR Part 319

Agricultural commodities, Imports, Incorporation by reference, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions through October 1990, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In subpart—Fruits and Vegetables, a new § 319.56–2i is added to read as follows:

§ 319.56–2i Administrative instructions prescribing treatments for mangoes from Central America, Mexico, South America, and the West Indies.

(a) *Authorized treatments.* (1) Treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Central America, South America, and the West Indies. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(2) Treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Mexico. Manila mangoes from Mexico may also be imported into the United States in accordance with § 319.56–2f of this subpart. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter "Materials incorporated by reference."

(b) *Department not responsible for damage.* The treatments for mangoes prescribed in § 319.56–2f of this subpart and in the Plant Protection and Quarantine Treatment Manual are judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 19th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–22582 Filed 9–24–90; 8:45 am]

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9 CFR Part 77

[Docket No. 90–173]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis raising the designation of Idaho from a modified accredited State to an accredited-free State. We have determined that Idaho meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective September 25, 1990. Consideration will be given only to comment received on or before November 24, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–173. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations contained in 9 CFR part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," 1985 edition, which has been made part of the regulations via incorporation by reference. The status of States is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis eradication program.

Before publication of this interim rule, Idaho was designated in § 77.1 of the regulations as a modified accredited State. However, Idaho now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Idaho from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Idaho as an accredited-free State. This will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free State.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Idaho may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers perfer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. Section 77.1, paragraph (2) of the definition for "Modified accredited state" is amended by removing "Idaho,".

3. Section 77.1, paragraph (2) of the definition for "Accredited-free state" is amended by adding "Idaho," immediately before "Illinois,".

Done in Washington, DC, this 19th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–22685 Filed 9–24–90; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

RIN 3064–AB00

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: This regulation implements statutory provisions prohibiting undercapitalized insured depository institutions (banks and savings associations) from accepting, renewing or rolling over brokered deposits except on specific application to and waiver of the prohibition by the FDIC. The regulation provides guidance and further detail on when an institution is considered undercapitalized, when certain deposits are considered "brokered," and the circumstances under which a waiver from the prohibition may be granted. It replaces an interim rule that has been in effect since December 12, 1989, and which is scheduled to "sunset" or terminate on November 9, 1990. The final rule remains essentially unchanged from the interim provisions, except that the final rule expressly applies to insured branches of foreign banks and provides further clarification of the term "normal market area" used in defining the prohibition on paying significantly higher rates of interest on deposits without a waiver from the FDIC.

EFFECTIVE DATE: The final rule is effective October 25, 1990. The interim rule published at 54 FR 51012 (Dec. 12,

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1989), and amended at 55 FR 23186 (June 7, 1990) and at 55 FR 28664 (July 16, 1990), terminates on that date and is replaced by the final rule.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Supervision, (202) 898-6892, or Adrienne George, Attorney, Legal Division, (202) 898-3669, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in § 337.6(d) of the final rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064-0099. The information will be collected from undercapitalized insured depository institutions applying for a waiver from the prohibition on the acceptance or renewal of brokered deposits contained in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f).

The estimated annual reporting burden for the collection of information in this final rule is summarized as follows:

Number of Respondents	370
Number of Responses Per Respondent	1
Total Annual Responses	370
Hours Per Response	6
Total Annual Burden Hours	2,220

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), Room F-400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064-0099), Washington, DC 20503.

Regulatory Flexibility Act

The FDIC's Board of Directors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities because it largely tracks and clarifies strictures previously established by statute and affords a means by which undercapitalized insured depository institutions may avoid the application of those strictures by applying to the FDIC for a waiver. Moreover, it is anticipated that relatively few small entities will be impacted by the regulation since most insured depository institutions are adequately capitalized or, if undercapitalized, do not utilize brokered deposits. Finally, an entire grouping of undercapitalized institutions, namely, those in FDIC or Resolution Trust Corporation ("RTC") receivership or conservatorship, have effectively been excluded from the application of the regulation. Consequently, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

Discussion

Section 224 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") added a new section 29 to the Federal Deposit Insurance Act ("FDIA"). This new section prohibits the acceptance, renewal or rollover of brokered deposits by any "troubled"—*i.e.*, undercapitalized—insured depository institution (bank or thrift) after December 7, 1989, except on specific application to and waiver of the prohibition by the FDIC. On December 5, 1989, the FDIC adopted an interim rule, new § 337.6 of FDIC regulations, which provides guidance and further detail on when an institution is considered undercapitalized, when certain deposits are considered "brokered" for purposes of the prohibition, and the circumstances under which a waiver from the prohibition may be granted. The FDIC solicited comment on this interim rule with a view towards possible revision or modification at a later date. The interim rule adopted by the FDIC on December 5, 1989, was scheduled to terminate six months from its December 12, 1989 publication in the **Federal Register**, *i.e.*, on June 12, 1990. The FDIC, however, determined that it required more time to consider the issues. The FDIC, therefore, extended the effectiveness of the interim rule through amendments adopted on May 22, 1990, and on July 10, 1990. As extended, the interim rule is scheduled to terminate on November 9, 1990, unless sooner terminated, amended, or replaced by the FDIC.

The public comment period has expired and, based on a review and analysis of the comments received as well as the FDIC's experience to date with the interim rule, the FDIC believes the provisions of the interim rule should remain essentially unchanged except for the explicit extension of the rule to insured branches of foreign banks and some further clarification of a term used to define the prohibition on paying significantly higher rates of interest on deposits without a waiver from the FDIC. The comments received and the FDIC's responses are summarized below.

Insured Branches of Foreign Banks

Although the interim rule adopted the generic language of the statute in referring to "undercapitalized insured depository institutions" without explicitly mentioning insured branches of foreign banks, it is clear that the same policy considerations apply to insured branches as well. Consequently, the final rule is explicitly extended to insured branches of foreign banks.

Effect of Capital Plans

The final rule continues the position taken in the interim rule on the relationship between the new capital requirements established by FIRREA for savings associations and the prohibition on the acceptance of brokered deposits by undercapitalized institutions. More specifically, the FDIC continues to believe that any savings institutions whose capital plans have been approved by the Office of Thrift Supervision ("OTS") are not thereby exempted from the prohibition against brokered deposits. Nor is the existence of an approved capital plan grounds for an automatic grant of a waiver from the prohibition against brokered deposits. Of the three commenters that dealt with the capital plan issue, one agreed with the FDIC's position, while two argued that an institution which has submitted a capital plan acceptable to the OTS should be treated as being in compliance with its capital requirements, and therefore, not subject to the brokered deposits rule. The FDIC, however, believes that a capital plan is not capital and therefore, the mere existence of a capital plan and any decision to grant a waiver are separate issues. As a result, an undercapitalized savings association may not accept or renew brokered deposits without a waiver from the FDIC so long as it remains undercapitalized, whether or not it has a capital plan approved by the OTS. The same principle applies to any plan or forbearance approved by a banking regulator for an insured bank.

For purposes of applying for a waiver, an undercapitalized insured savings association may submit to the FDIC, in addition to the information otherwise required by this final rule, the same documentation regarding its capital plans that it submits to the OTS. The FDIC, however, will make its own judgment as to the sufficiency of any plan and its prospects for success in the context of deciding a particular waiver application. In this process, the FDIC will give due deference to the views and recommendation of the OTS or any other regulators that may be involved when insured banks apply for a waiver.

Significantly Higher Rates of Interest

The final rule continues the anomalous definition of brokered deposits contained in FIRREA. In addition to deposits obtained from or through the mediation of third-party brokers, the definition of deposit broker in FIRREA includes any insured depository institution that solicits deposits by offering rates of interest that are "significantly" higher than the prevailing rates of interest offered by other depository institutions with the same type of charter in its normal market area. In this regard, FIRREA makes no distinction between deposits obtained locally or out-of-territory through the operation of a so-called "money desk."

The final rule also adopts the determination set forth in the interim rule that more than 50 basis points is deemed "significant" for this purpose, and thus establishes what is believed to be a reasonable compromise between the need to permit even undercapitalized institutions to compete on a reasonable basis in their normal market and the need to prevent such institutions from bidding excessively for an increasing share of local deposits or paying excessive rates to fund themselves through the operation of a "money desk" soliciting deposits throughout the country.

One commenter suggested that 50 basis points may be "significant" now but insignificant at some future time in different interest rate environments. This commenter suggested the need for flexibility and possibly varying the interest rate margins deemed significant from time to time or for different types of deposits or in different regions of the country.

The FDIC believes these suggested approaches are more elaborate and burdensome than necessary for the purpose at hand since they would necessarily involve extensive tracking and compilation of interest rate data on an ongoing basis with respect to interest rates on different types of accounts in different areas by both banks and thrifts with frequent updates and notices to the affected bank and thrift industries. The FDIC believes a simple, clear, across-the-board rule is the much better alternative, particularly when exceeding the 50-basis-points difference merely results in the need to apply for a waiver in which context appropriate consideration of all relevant circumstances may be taken into account.

A number of commenters pointed out that banks and thrifts compete head-to-head for deposits in most markets and consequently, there is no basis for distinguishing between institutions based on their charter.

Whatever may be the merit of this argument, the distinction is drawn explicitly in the statute and the FDIC is without authority to alter that basic statutory scheme. Consequently, the final rule continues to distinguish between banks and thrifts when comparing interest rates offered in their normal market areas.

Prevailing Rates and Normal Market Area

One commenter suggested the need to clarify the concept of "prevailing rates" of interest, and two commenters suggested the need to clarify the concept of "normal market area." The FDIC believes the concept of the "prevailing rate" for a particular deposit is sufficiently clear without further elaboration. The final rule does clarify the concept of "normal market area" in a footnote to the relevant definition. Essentially, the "normal market" is the particular area in which a given deposit is being sought or solicited and may vary by office or groups of offices or from one type of deposit to another. The media used and their coverage bear importantly on how the normal market for a deposit is defined.

Definition of "Undercapitalized" Institution

One bank commented that the definition of "undercapitalized" was too strict since it includes many institutions that are not truly "troubled." This commenter suggested that a bank's CAMEL rating should be considered as well.

Regardless of the merits of this suggestion, FIRREA explicitly defines "troubled" in terms of institutions that fail to meet the minimum capital requirements applicable to them. In light of this statutory mandate, the final rule makes no change in the basic statutory definition of "troubled institution."

Other Comments

A savings association recommended that the definition of brokered deposit be revised to cover only deposits on which a commission is paid directly to the broker by the insured depository institution. Without this change, it is argued that an institution may be deemed to have accepted a brokered deposit even though it did not solicit the services of a deposit broker, did not pay a commission to the deposit broker, and did not know the depositor utilized the services or assistance of a deposit broker.

The specific recommended change is rejected since deposit transactions can be readily structured to avoid direct payment of a commission. Moreover, it is irrelevant who solicited the services of a deposit broker.

One commenter noted the differing definitions and approaches in the OTS regulation dealing with brokered deposits (12 CFR 563.4) and urged the FDIC to work with the OTS to make the provisions of the FDIC rule controlling, given the mandate granted the FDIC by FIRREA with respect to all undercapitalized depository institutions.

The OTS rule prohibits a savings association with insufficient regulatory capital from accepting more than five percent of its total deposits from brokers without a waiver from its principal supervisory agent. While there is considerable overlap between this OTS rule and the FDIC rule, the two are not inconsistent and savings associations can comply with both as each may be applicable in the circumstances. The FDIC rule, which implements the statutory prohibition imposed by FIRREA, is broader, uniform for all depository institutions and more stringent while at the same time providing a measure of flexibility on a case-by-case basis through the waiver application process which includes appropriate consultation with the OTS.

One deposit broker seemingly objected to any regulation of brokered deposits. However, this is not an option for the FDIC at this point since the statute (section 29 of the FDI Act) is already in place and would operate of its own force and effect even without a FDIC regulation to provide further guidance.

Another deposit broker emphasized that price is the critical consideration in the acceptance of brokered deposits and suggested the regulation should not preclude the use of "economical" deposits, even if they are brokered.

The FDIC agrees that price is an important consideration and for that reason, both the interim rule and the final rule indicate a waiver may be granted for brokered deposits that serve to reduce an institution's overall cost of funding. On the other hand, the FDIC does not believe that undercapitalized institutions should be permitted to grow through the use of brokered deposits, however "economical" those deposits might be. Margining deposit growth with adequate capital is and always has been a principal supervisory concern and will remain so regardless of the price of deposits. This is why both the interim

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and final rules preclude even growth resulting from the direct solicitation of deposits by paying excessive or significantly higher rates than other institutions with the same type of charter.

One commenter suggested that waivers be granted narrowly for brokered deposits of specified maturities with a view towards assuring their repayment in accordance with their original terms.

While repayment according to terms is always an appropriate public policy consideration, it is not the only one. Broader aspects of an institution's overall condition must be taken into account as well. While the FDIC in practice may well grant waivers narrowly to encourage reduced volumes of brokered deposits and short-term maturities, the FDIC believes it unwise to constrain its flexibility by attempting to prescribe waiver limitations by regulation. Consequently, the final rule contains no such limitations and continues to leave terms and conditions of a waiver to be decided on a case-by-case basis.

One commenter suggested that the RTC move aggressively to downsize or shrink savings associations in conservatorship or receivership in order to minimize destructive competition with solvent institutions.

While downsizing may well be an appropriate strategy for a variety of reasons, the FDIC sees no need to address this broad policy issue in the context of promulgating a final regulation on brokered deposits. Consequently, the final rule is silent on how savings associations in RTC conservatorship or receivership should be managed.

Two commenters suggested that by establishing the more than 50 basis points standard, the FDIC was regulating market interest rates without the necessary authority. Still another suggested that the FDIC should not define as brokered those deposits solicited by offering excessive rates. This commenter pointed out that the FDIC had cease-and-desist authority to remedy the payment of excessive interest rates.

The FDIC, of course, is not limiting or controlling the interest rates that insured depository institutions generally, or even undercapitalized institutions, may pay on their deposits. On the contrary, the FDIC is merely providing further and more precise guidance on what is considered "significant" for purposes of the statutory definition of brokered deposits which includes deposits which an insured depository institution is soliciting "by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market." 12 U.S.C. 1831f(f)(3). The FDIC has ample authority to provide such elaboration and further clarification.

Several commenters objected specifically to the exclusion of savings associations in RTC receivership or conservatorship from the prohibition on the acceptance of brokered deposits, particularly that portion of the definition designed to prevent the payment of excessive rates on deposits by undercapitalized institutions. These commenters contend that such institutions have contributed substantially to higher rates in many areas by paying "inflated rates" to attract funds which has resulted in many sound institutions having to pay higher rates to remain competitive.

It must be remembered, however, that the FDIC is the exclusive manager of the RTC and each institution under an RTC conservatorship or receivership is carefully monitored by an RTC managing agent. That managing agent is doing essentially what the FDIC does in granting a waiver—*i.e.* the agent is setting parameters for the institution's acceptance or renewal of brokered deposits to ensure that brokered deposits are both necessary and that any possible negative effect on the institution will be minimal. An institution in RTC conservatorship or receivership generally uses brokered deposits only when needed to meet essential liquidity needs and avoid unnecessary losses. Looking at the broader competitive issue, however, it is true that these institutions may from time to time (certainly less often than in the past) bid up the cost of deposits in certain local markets. This arguably unfair competition from institutions effectively under government control can be justified only as a temporary expedient in an effort to save taxpayer dollars (from which all benefit) by enabling such institutions to maintain necessary liquidity while preserving their franchise value until they can be sold or liquidated in an orderly fashion. Consequently, for purposes of the final regulation, the FDIC believes no change is warranted and savings associations in RTC conservatorship or receivership will continue to be excluded from the scope of application of the final rule.

Section 29(d) of the FDIA, as added by section 224 of FIRREA, authorizes the FDIC to grant an exception from the prohibition on the acceptance of brokered deposits for institutions in FDIC or RTC conservatorship or receivership if the FDIC determines that the acceptance of brokered deposits by such institutions "(1) is not an unsafe or unsound practice, and (2) either (A) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; or (B) is consistent with the conservator's fiduciary duty to minimize the losses of the institution." The FDIC Board of Directors is able to make these findings with respect to all insured depository institutions under FDIC or RTC conservatorship or receivership because such institutions are essentially under FDIC or RTC control and management and therefore pose no risk to the deposit insurance funds beyond the FDIC's control, and because the FDIC, in its own capacity and as exclusive manager for the RTC, intends to direct the brokered deposit activities of the various institutions under FDIC or RTC conservatorship or receivership to ensure that such deposits are used only as necessary to meet essential liquidity needs and minimize losses to the institutions. Accordingly, the FDIC Board has made the requisite findings and has determined to exclude from coverage under the brokered deposits prohibition any insured depository institution for which the FDIC or the RTC has been appointed conservator or receiver. As a result, no such institution need apply to the FDIC for a waiver from the prohibition.

FIRREA amends the Federal Deposit Insurance Act to provide authority to the FDIC to waive the prohibition against brokered deposits if the FDIC finds that acceptance of such deposits does not constitute an unsafe or unsound practice with respect to the affected institution. The FDIC has long recognized the importance of involving other affected agencies, where appropriate, in the exercise of its decision-making authority. For example, the FDIC's Division of Supervision currently has outstanding instructions that the "institution's principal federal and any state regulator, as appropriate, should be consulted by telephone or letter for their comments and any recommendations they may wish to make" in these circumstances. Memorandum to Regional Directors, entitled "Brokered Deposits in Undercapitalized Insured Depository Institutions", dated December 21, 1989, from Paul G. Fritts, Director, Division of Supervision, Federal Deposit Insurance Corporation.

In exercising its FIRREA authority to waive the prohibition against brokered

deposits, the Corporation will provide prior notice to the appropriate Federal and state regulatory agency in connection with action proposed to be taken pursuant to this regulation and will consult with such agency with respect to the appropriateness of any such action and any terms or conditions that would apply in connection with the granting of a waiver. The FDIC may waive the prior notice and/or consultation requirements when it determines that the circumstances of a particular case require the FDIC to do so.

Accordingly, notice is hereby given that the FDIC Board of Directors has adopted the following final rule on the acceptance, renewal or rollover of brokered deposits by undercapitalized insured depository institutions. The final rule becomes effective October 25, 1990. The interim rule published at 54 FR 51012 (Dec. 12, 1989), and amended at 55 FR 23186 (June 7, 1990) and at 55 FR 28884 (July 16, 1990), terminates on that date and is replaced by the final rule.

List of Subjects in 12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set forth in the preamble, the FDIC hereby amends part 337 of title 12 of the Code of Federal Regulations by revising § 337.6 to read as set forth below.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818(a), 1818(b), 1819, 1828(j)(2), 1821(f), 1831f.

2. Section 337.6 is revised to read as follows:

§ 337.6 Brokered deposits in undercapitalized insured depository institutions.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Brokered deposit.* The term "brokered deposit" means any deposit, as that term is defined in section 3(*l*) of the Federal Deposit Insurance Act (18 U.S.C. 1813(*l*)), that is obtained:

(i) From or through the mediation or assistance of a deposit broker; or,

(ii) By offering a rate of interest (with respect to such deposit) that is significantly higher than the prevailing rate of interest on a deposit with similar terms and conditions, including maturity, offered or paid by other insured depository institutions having the same type of charter (bank or thrift) in the institution's normal market area.[11] For this purpose, a rate of interest is deemed "significantly higher" if it is more than 50 basis points higher than the prevailing rate offered or paid at the time for a deposit of comparable amount, maturity and other terms by other insured depository institutions with the same type of charter (bank or thrift) in the institution's market area. A rate of interest on a deposit with an odd maturity is "significantly higher" if it is more than 50 basis points higher than the rate interpolated between the prevailing rates offered or paid by other depository institutions with the same charter on deposits of the next longer and shorter maturities offered in the market. For purposes of comparing interest rates offered on deposits by other insured depository institutions, an insured branch of a foreign bank is deemed to have a bank charter.

(2) *Deposit broker.* (i) The term "deposit broker" means:

(A) Any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions, or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and,

(B) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(ii) The term "deposit broker" does not include:

(A) An insured depository institution, with respect to funds placed with that depository institution;

(B) An employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) A trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) The trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) A person acting as a plan administrator or an investment advisor in connection with a pension plan or other employee benefit plan provided that person is performing managerial functions with respect to the plan;

(F) The trustee of a testamentary account;

(G) The trustee of an irrevocable trust (other than one described in paragraph (a)(2)(ii)(B) of this section), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) A trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986; or

(I) An agent or nominee whose primary purpose is not the placement of funds with depository institutions.

(3) *Employee.* The term "employee" means any employee:

(i) Who is employed exclusively by the insured depository institution;

(ii) Whose compensation is primarily in the form of a salary;

(iii) Who does not share such employee's compensation with a deposit broker; and

(iv) Whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(4) *Insured depository institution.* The term "insured depository institution" means any bank, savings association or branch of a foreign bank insured under the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(5) *Undercapitalized insured depository institution.* (i) The term "undercapitalized insured depository institution" means any insured depository institution that fails to meet the minimum capital requirements applicable to it at the time and includes any insured depository institution which:

(A) After giving effect to any charge-offs or other capital reductions directed by its principal federal or state regulator, fails to meet any applicable capital standard (e.g., tangible, core, primary, total, risk-based, or leverage) established by law or regulation promulgated by its principal federal or state regulator, as applicable; or

(B) Has been directed by a formal administrative order or advised in

[11] The "normal market area" is the area in which an institution is advertising and soliciting a particular type of deposit and may vary from office to office or for different types of deposits. For example, the market for passbook deposits will normally be local in character but may vary from office to office or groups of offices located in different geographic markets. By the same token, an institution may solicit large denomination certificates in a national market at one rate and offer the same certificate at a different rate in local areas in which it has a physical presence. In each case, the rates offered for the particular deposit must be compared to the rates offered by other institutions with the same type of charter, without regard to size, in the particular geographic market in which that deposit is being solicited, whether the market is national, regional or local in character. The media used to advertise and solicit a particular type of deposit and the normal coverage of those media are important considerations in defining the market for that deposit.

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writing by its principal federal or state regulator as part of the supervisory process to achieve a specific higher level of capital (*e.g.*, to margin additional risk inherent in its activities or assets, balance sheet structure, or off-balance sheet liabilities) and has not yet met that higher capital level.

(ii) The term "undercapitalized insured depository institution" includes an insured branch of a foreign bank that fails to maintain either:

(A) The pledge of assets required under § 346.19 of the Federal Deposit Insurance Corporation's rules and regulations (12 CFR 346.19) or;

(B) The required volume of eligible assets prescribed by § 346.20 of the Federal Deposit Insurance Corporation's regulations (12 CFR 346.20).

(iii) The determination of whether an insured depository institution or insured branch is an "undercapitalized depository institution," as defined in paragraphs (a)(5) (i) and (ii) of this section, shall be made without regard to whether it has been granted any forbearance or other relief from any statutory, regulatory, or other capital requirements by any federal or state regulator, whether the institution or branch has submitted to any such regulator a plan to meet applicable capital requirements or standards over time, or whether any such plan has been approved by a federal or state regulator.

(b) *Prohibition.* No undercapitalized insured depository institution may accept, renew or rollover any brokered deposit unless it has applied for and been granted a waiver of this prohibition by the Federal Deposit Insurance Corporation in accordance with the provisions of this section.

(c) *Waiver.* The Federal Deposit Insurance Corporation may, on a case-by-case basis and upon application by an undercapitalized insured depository institution, waive the prohibition on the acceptance, renewal or rollover of brokered deposits upon a finding that such acceptance, renewal or rollover does not constitute an unsafe or unsound practice with respect to such institution. The Federal Deposit Insurance Corporation may conclude that it is not unsafe or unsound and may grant a waiver when the acceptance, renewal or rollover of brokered deposits is necessary to maintain the institution's short-term liquidity or to facilitate a restructuring of its liabilities to reduce costs without materially lengthening maturities and with no significant increase in total assets. A waiver will not be granted to permit an institution to grow appreciably in size.

(d) *Application.* An undercapitalized insured depository institution wishing to accept, renew or rollover brokered deposits may apply to the appropriate Federal Deposit Insurance Corporation regional director for supervision for the region in which the head office of the institution is located. The application may be in letter form and shall be accompanied by a resolution of the board of directors or trustees of the institution authorizing the filing of the application and a copy of a recent consolidated financial statement, including income and cash flow statements. A copy of the application should be submitted to the institution's primary federal regulator and any state regulator, as appropriate. An application shall provide the following additional information:

(1) The institution's plans to meet applicable capital requirements within a reasonable time period;

(2) The volume, rates and maturities on brokered deposits currently held;

(3) The scope of the waiver sought in terms of the volume and cost of brokered deposits to be obtained or retained and the time period for which a waiver may be needed;

(4) Alternative funding sources available to the institution, including prospects for the sale of assets at fair market value;

(5) Reasons the institution believes the acceptance, renewal or rollover of brokered deposits does not constitute an unsafe or unsound practice in its particular circumstances. In this regard, the institution should seek to demonstrate that its acceptance, renewal or rollover of brokered deposits would not likely increase materially the credit, interest-rate or operating risk of the institution; and

(6) The institution's plans for eliminating entirely its reliance on and/or need for brokered deposits, including applicable time frames.

(e) *Decision.* The Federal Deposit Insurance Corporation Director, Division of Supervision, and when confirmed in writing by the Director, an associate director or the appropriate regional director, or deputy regional director, shall have the authority to approve or deny any waiver application properly filed. An application is properly filed when complete and accurate information addressing each of the informational elements stated in paragraph (d) of this section has been provided to the appropriate regional director. Any waiver granted will be for a fixed period, generally no longer than one year, but may be extended upon re-application. The Corporation will provide notice to the financial institution's appropriate Federal and state regulatory agency that a request for waiver has been filed so that such agency may have an opportunity to consult with the Corporation prior to the Corporation's taking action on the institution's request for a waiver. Notwithstanding the foregoing, prior notice and/or consultation shall not be required in any particular case where the Corporation determines that the circumstances require the Corporation to take action without giving such notice and opportunity for consultation.

(f) *Exclusion for institutions in FDIC or RTC conservatorship or receivership.* (1) No insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver shall be subject to this § 337.6 or to section 29 of the Federal Deposit Insurance Act.

(2) So long as the Federal Deposit Insurance Corporation is the exclusive manager of the Resolution Trust Corporation, no insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver shall be subject to this § 337.6 or to section 29 of the Federal Deposit Insurance Act.

(Approved by the Office of Management and Budget under control number 3064-0099)

By order of the Board of Directors.

Dated at Washington, DC this 18th day of September, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-22665 Filed 9-24-90; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule for Aluminum Sheet Products

AGENCY: Small Business Administration.

ACTION: Notice to waive the nonmanufacturer rule for aluminum sheet products.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "nonmanufacturer rule" for aluminum sheet products. The basis for a waiver is that no small business manufacturer is supplying this class of products to the Federal Government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the 8(a) program.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Chairperson, Size Policy Board, Tel: (202) 653-6635.

SUPPLEMENTARY INFORMATION: Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small business or 8(a) contracts must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the "nonmanufacturer rule." The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

This notice waives the nonmanufacturer rule for aluminum sheet products. The issue of a lack of small business manufacturers of aluminum sheet and plate products was recently brought to the attention of SBA by a dealer in the 8(a) program. In response to this concern, SBA initiated a review of small business manufacturers of aluminum sheet and plate products supplying these classes of products to the Federal Government.

To be considered in the Federal market, a small manufacturer must have been awarded a contract by the Federal Government within the last three years. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. In this case, the classes of products are aluminum sheet and plate products which are two items within the Product and Service Code (PSC) 9535 (Plate, Sheet, Strip and Foil: Nonferrous Base Metal). The definition of these terms is consistent with those previously used to establish a waiver of the nonmanufacturer rule for several types of construction equipment on December 28, 1989 (54 FR 53317), for dictionaries and thesauruses on August 3, 1990 (55 FR 31575), and with those included in a notice of proposed rulemaking to establish Agency procedures on nonmanufacturer waivers on May 17, 1990 (55 FR 20467).

SBA followed two approaches to identify the existence of small business manufacturers—examining contract data and requesting public comment through a Federal Register notice. First, SBA reviewed the Federal market by evaluating procurement statistics based on data originated by the U.S. General Services Administration's Federal Procurement Data Center (FPDC). Specifically, SBA examined Federal contract awards for 1987 and 1988 (the latest years available) which lists: the type of product (PSC), the manufacturer, and whether the manufacturer is a small business. The FPDC procurement data for fiscal years 1987 and 1988 initially indicated that no small business manufacturers of aluminum sheet and plate products had received Federal contracts for these products.

Second, on July 13, 1990, SBA published a notice with request for comment in the Federal Register proposing to waive the nonmanufacturer rule for aluminum sheet and plate products (55 FR 28773). The notice described the legal provisions for a waiver, the origin of the request, how SBA defines the Federal market, data sources, and requested information as to whether small businesses manufacture aluminum sheet and plate products and sold these classes of products to the Federal Government over the last 3 years.

The only written comment to this notice was a response by a Federal agency. This agency identified three small manufacturing firms that had sold aluminum materials to it within the last 3 years. In every case these materials were aluminum alloyed materials. One firm had both manufactured and sold aluminum plate to the Federal Government. Based on this information, the SBA is denying a waiver of aluminum plate. However, SBA has not found a small manufacturer of aluminum sheet which had sold such products to the Federal Government over the last 3 years and, therefore, is granting a waiver for aluminum sheet.

This waiver is being granted pursuant to statutory authority under section 303(h) of Public Law 100-656 for the designated class of products. The waiver for the designated class of products shall be issued for an indefinite period, but shall be subject to a regularly scheduled review (approximately every 2 years) or shall be reviewed if SBA receives information that the basis for the waiver is no longer valid. If SBA determines that the conditions required for a waiver no longer exist and that the waiver should be terminated, that decision shall be made through procedures similar to those followed by this notice.

A waiver of the nonmanufacturer rule is established for purposes of allowing an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer on a contract set aside for small business or awarded through the 8(a) program for the following class of products:

- Aluminum Sheet (PSC-9535).

Dated: September 14, 1990.

Sally B. Narey,

Acting Administrator, U.S. Small Business Administration.

[FR Doc. 90-22666 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule for Copper Cathodes, et al.

AGENCY: Small Business Administration.

ACTION: Notice to waive the nonmanufacturer rule for copper cathodes, nickel cathodes, and nickel briquettes.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "nonmanufacturer rule" for copper cathodes, nickel cathodes, and nickel briquettes. The basis for a waiver is that no small business manufacturer is supplying these classes of products to the Federal government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the 8(a) program.

EFFECTIVE DATES: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Chairperson, Size Policy Board, Tel: (202) 653-6635.

SUPPLEMENTARY INFORMATION: Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small business or 8(a) contracts must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the "nonmanufacturer rule." The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

This notice waives the

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nonmanufacturer rule for copper cathodes, nickel cathodes and nickel brickettes, but denies a waiver for zinc slabs and zinc ingots. The issue of a lack of small business manufacturers of these products was recently brought to the attention of SBA by a dealer in the 8(a) program. In response to this concern, SBA initiated a review of small business manufacturers supplying these classes of products to the Federal government.

To be considered in the Federal market, a small manufacturer must have been awarded a contract by the Federal government within the last 3 years. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. In this case, the class of products are: copper cathodes, nickel cathodes, nickel brickettes, zinc slabs, and zinc ingots, five items within PSC-9650 (Nonferrous Base Metal Refining and Intermediate Forms, Includes Ingots and Slabs). The definition of these terms is consistent with those previously used to establish a waiver of the nonmanufacturer rule for several types of construction equipment on December 28, 1989 (54 FR 53317) and for dictionaries and thesauruses on August 3, 1990 (55 FR 31575), and with those included in a notice of proposed rulemaking to establish Agency procedures on nonmanufacturer waivers on May 17, 1990 (55 FR 20467).

SBA followed two approaches to identify the existence of small business manufacturers—examining contract data and requesting public comment through a **Federal Register** notice. First, SBA reviewed the Federal market by evaluating procurement statistics based on data originated by the U.S. General Services Administration's Federal Procurement Data Center (FPDC). Specifically, SBA examined Federal contract awards for 1987 and 1988 (the latest years available) which lists: the type of product (PSC), the manufacturer, and whether the manufacturer is a small business. The FPDC procurement data for fiscal years 1987 and 1988 indicated that no small business manufacturers of copper cathodes, nickel cathodes and nickel brickettes had sold these products to the Federal Government over these years.

Second, on July 13, 1990, SBA published a notice, with request for comment in the **Federal Register** proposing to waive the nonmanufacturer rule for copper cathodes, nickel cathodes and brickettes, and zinc slabs and ingots (55 FR 28774). The notice described the legal provisions for a waiver, the origin of the request, how SBA defines the Federal market, data sources, and requested information as to whether small businesses manufacture these items and have sold them to the Federal government over the past 3 years. SBA received one written comment on this notice by a Federal agency involved in the purchase of metallurgical products. This agency provided the names of three small manufacturing firms which sold some of these classes of products to the Federal government over this period.

The SBA investigated the procurement activities of these three firms with regard to the Federal government. While none of these three firms produce copper cathodes, nickel cathodes or nickel brickettes, two firms produce zinc slabs and zinc ingots, both in a pure and alloyed form, and had sold these products to the Federal government over the last three years. As a result, this notice is denying the request for waivers for zinc slabs and zinc ingots, but granting waivers for copper cathodes, nickel cathodes and nickel brickettes.

This waiver is being granted pursuant to statutory authority under section 303(h) of Public Law 100-656 for the designated classes of products. The waiver for the designated classes of products shall be issued for an indefinite period, but shall be subject to a regularly scheduled review (approximately every 2 years) or shall be reviewed if SBA receives information that the basis for the waiver is no longer valid. If SBA determines that the conditions required for a waiver no longer exist and that the waiver should be terminated, that decision shall be made through procedures similar to those followed by this notice.

A waiver of the nonmanufacturer rule is established for purposes of allowing an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer on a contract set aside for small business or awarded through the 8(a) program for the following classes of products:

- Copper Cathodes (PSC-9650).
- Nickel Cathodes (PSC-9650).
- Nickel Brickettes (PSC-9650).

Dated: September 14, 1990.

Sally B. Narey,

Acting Administrator, U.S. Small Business Administration.

[FR Doc. 90-22069 Filed 9-24-90; 8:45 am]
BILLING CODE 8025-01-M

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 803

Regulations and Procedures for Review of Projects

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Final rules.

SUMMARY: The Susquehanna River Basin Commission hereby amends its project review regulations in order to clarify language, eliminate redundant sections and modify requirements that are outdated or difficult to implement.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, Secretary to the Commission, SRBC, 1721 N. Front St., Harrisburg, PA. 17102-2391, Telephone: (717) 238-0423.

SUPPLEMENTARY INFORMATION: On August 11, 1989, the Susquehanna River Basin Commission published for public comment in the **Federal Register** (54 FR 33036) an initial proposal to amend 18 CFR part 803. The Commission also published notices of rulemaking in the "New York Register" on August 23, 1989 at page 92, the "Pennsylvania Bulletin" on February 3, 1990 at page 513 and the "Maryland Register" on April 20, 1990 at page 979. The "Maryland Register" notice simply referenced the previous **Federal Register** notice.

In addition, public hearings were held on the proposed regulations on May 10, 1990 at Painted Post, NY and on June 28, 1990 at Harrisburg, PA. Notices of these respective public hearings were published in the **Federal Register** on March 22, 1990 (55 FR 10629) and on May 24, 1990 (55 FR 21390). Hearing notices also appeared in the "New York Register" on April 4, 1990, the "Pennsylvania Bulletin" on June 2, 1990, the "Maryland Register" on June 15, 1990 and in numerous newspapers throughout the Susquehanna Basin. Written comment periods of 45 days were provided after each Register or Bulletin publication and a 30-day written comment period was provided after each public hearing.

Review of Public Comments

Most comments submitted on the proposed amendments were supportive. There were several suggested changes, however, which are discussed and addressed as follows:

1. Susquehanna River Basin Electric Utilities Group (SRBEUG)

Written comments: SRBEUG commented on three sections of the proposed amendments. With respect to § 803.61(c)(1)(iii), it is suggested that the word "reasonably" be inserted before the phrase "assure no diminution of flow * * *." SRBEUG pointed out that SRBC's own studies performed in connection with the development of the Cowanesque Water Storage Project Operations Plan demonstrated the difficulty of strict adherence to this concept of no diminution in flow.

On § 803.61(c)(2), SRBEUG suggested adding "stipulating that the monetary payment shall be in amounts which reasonably reflect the cost that the Commission would incur to provide an equivalent amount of compensation."

Finally, SRBEUG recommends that § 803.61(g) not be adopted because, in their opinion, it unfairly exempts public water suppliers who have numerous small consumptive users on their systems from the consumptive use make-up requirements. These small consumptive users often add up to one large consumptive use which exceeds in magnitude the effect of a single large user who is subject to the regulation.

Response: The Commission has no objection to adding the word "reasonably" to § 803.61(c)(1)(iii) as indicated above.

As for SRBEUG's suggestion on § 803.61(c)(2), the Commission agrees that the cost to the Commission to provide an equivalent amount of compensation should be a factor in the determination of an equitable monetary charge. However, the Commission wishes to retain the right to consider other factors as well in setting a charge by resolution of the Commission.

On § 803.61(g), it is obvious that the Commission cannot charge the consumer and the water purveyor. The Commission feels that the charge should be imposed upon the actual consumptive user rather than the public water supplier who merely purveys the water to a consumptive user.

As far as the cumulative effect of small consumptive uses, consumptive users who consume no more than 20,000 gpd from private sources such as wells are exempt from the regulation though they too may have a cumulative effect. Consumptive users from public distribution systems should be treated in the same way.

2. Merck Chemical Manufacturing Division

Written comments: Merck Chemical Manufacturing Division commented that § 803.62 should be revised to include an exemption for ground water removals that are part of an EPA or Pennsylvania DER ordered or permitted ground water remediation program. Merck argued that requiring Commission approval is an unnecessary duplication of effort because these remediation programs are so carefully monitored by other agencies.

Response: The Commission has routinely permitted such remediation programs with a minimum of difficulty to the applicant. Often, certain requirements of § 803.62 are waived because of the remedial nature of the projects. The Commission feels that its permitting of these type of projects is not duplication because the ground-water information supplied to the Commission is useful in the Commission's overall mission of basinwide water resources management.

3. NY Department of Environmental Conservation

In developing the proposed amendments, the Commission consulted with its signatory parties. Signatory representatives met at the Commission headquarters on May 30, 1989 to review the amendments. After a consensus was reached by the meeting attendees on language and format, the amendments were submitted to the Commission which, at its July 13, 1989 meeting, ordered their publication as proposed regulations. NY DEC nevertheless submitted a few additional comments, as follows:

Written Comments: a. Section 803.61(c)(1)(ii)—It may be appropriate for the Commission to elaborate on how or what options the Commission will use in identifying the appropriate stream gaging station for determining the applicable low flow.

b. Section 803.61(c)(2)—The monetary alternative of compensation does not provide any help during a "low flow" period. It should be made clear that monetary compensation is a temporary option that will be acceptable only under extreme conditions.

c. Section 803.62 (Introductory Text)—The terms "permanent loss" and "substantial impact" need more clarification or defining.

d. Section 803.62(e)—It would seem approvals should be subject to review or modification anytime new information is obtained.

e. Section 803.62(f)—Whose "projection" will be used? Also, who is submitting the required water resources development plan?

f. Section 803.62 (General)—Why has the conservation requirement been deleted in § 803.62?

Response: a. Commission technical staff feels that the inclusions in the regulation of all of the factors used to identify the appropriate gaging station would be too lengthy and cumbersome. This is a task that Commission staff needs to accomplish applying their expertise and judgment to the data presented in each individual case.

b. While a monetary payment alternative does not provide direct relief during low flow, funds so collected will be funneled into a special escrow fund to be used for programs or projects designed to improve flows. The Commission has already made it quite clear by numerous policy pronouncements at its public meetings that it prefers water over monetary payments. In accordance with this policy, staff has, in most cases, recommended monetary payments as an interim measure only. There may, however, be instances where a permanent arrangement for monetary payment may be necessary where, for example, the location of a user in the headwaters of a stream prevents the applicant from locating an adequate source of upstream storage and impacts on that reach of stream are not significant.

c. The loss of aquifer storage capacity occurs through aquifer compaction as a result of excessive withdrawal of ground water (this is primarily a problem in unconsolidated aquifers). Occasionally, the loss in storage capacity is easily observed as land subsidence near the pumping well. More often, the loss in storage is difficult to measure. However, the loss of storage can be minimized by not allowing excessive drawdowns or allowing aquifers to be dewatered. The word "permanent" in the paragraph may be a little misleading. In reality, an aquifer may, through time, regain some or all of the lost storage—if pumping is discontinued. For practical purposes, however, within the timeframe of the project's lifetime, the loss is essentially permanent.

Use of the word "substantial" in describing impact is deliberate as opposed to trying to define some numerical level of impact. This allows for flexibility in management (e.g. the Commissioners can evaluate how "substantial" an impact is based on the use (or value) of a stream).

d. A five-year review period was included for two reasons:

(1) It alerts the applicant that there will be periodic reviews; and

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(2) It provides a level of protection to the project sponsor's investment (no major changes to the approval will be made for five years).

There are other provisions within the regulations and in the language of each docket decision that would allow modification of an approval should any unforeseen impacts occur.

e. "Projections" will primarily be those of the Commission, however, any organization or individual can provide information relative to future constraints on a proposed withdrawal.

The project sponsor will be required to develop and submit a plan.

f. The conservation requirement was deemed to be redundant since the Commission has since adopted § 803.63 of the Regulations stipulating conservation requirements for public water suppliers, industrial users and agricultural users.

4. SRBC Staff

After considering the new language of §§ 803.61(b)(2) and 803.62 (Introductory Text) referring respectively to a thirty-day average of 20,000 gpd consumptive use and a thirty-day average of 100,000 gpd ground-water withdrawal SRBC staff suggested that a less ambiguous way of stating such an average, would be to say, "an average of 20,000 gpd (or 100,000 gpd) for any consecutive 30-day period." This editorial change has been incorporated into the final version of the Regulations which appear below.

List of Subjects in 18 CFR Part 803

Administrative practice and procedure, Water resources.

The Amendment

Accordingly, pursuant to the authority granted under the Susquehanna River Basin Compact, Public Law 91–575; 84 Stat. 1509 *et seq.*, the Susquehanna River Basin Commission amends part 803 of its regulations and procedures for review of projects (18 CFR part 803) as follows:

PART 803—REVIEW OF PROJECTS

1. The authority citation for part 803 continues to read as follows:

Authority: Sec. 3.4(9), 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

2. Section 803.4 is amended by revising the section heading, the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

§ 803.4 Projects requiring review and approval.

(a) As determined from applications or otherwise, the Commission shall review and either approve, approve with conditions, or disapprove the following proposed projects within the Susquehanna River Basin.

* * * * *

(2) Any project involving either the consumptive use of water (as described in § 803.61), a ground-water withdrawal (as described in § 803.62), or the transfer of water into or from the basin.

* * * * *

3. Subpart B, § 803.22 is amended by revising the introductory texts of paragraphs (a) and (b) to read as follows:

§ 803.22 Submission of application.

(a) Except as stated in paragraph (b) of this section, projects requiring a permit or other form of regulatory approval from a State or Federal agency having authority regarding water resources use, development, control and conservation.

* * * * *

(b) Projects not subject to the jurisdiction of the above agencies and projects involving a consumptive use of water as regulated under § 803.61 or a ground-water withdrawal as regulated under § 803.62.

* * * * *

4. Subpart B, § 803.23 is amended by revising the introductory texts of paragraphs (a) and (b), paragraph (b)(1) and by removing and reserving paragraph (c)(2)(vii)(*b*) to read as follows:

§ 803.23 Contents of application.

(a) Except as stated in paragraph (b) of this section, projects requiring a permit or other form of regulatory approval from a State or Federal agency having regulatory authority regarding water resources use, development, control and conservation.

* * * * *

(b) Projects not subject to the jurisdiction of the above agencies and projects involving a consumptive use of water as regulated under § 803.61 or a ground-water withdrawal as regulated under § 803.62.

(1) With the exception of applications for ground-water withdrawals under § 803.62 hereof, the sponsor's application shall address the aspects pertinent to the project listed in paragraph (c) of this section. The requirements for ground-water withdrawal applications are described in § 803.62.

* * * * *

5. Subpart D, § 803.61 is amended by revising paragraphs (a)(1), (b)(1), (b)(2), (c)(1) (ii) and (iii), (c)(2), (c)(3), the fourth sentence of (d) and by adding new paragraph (a)(3), (c)(1)(iv) and (g) to read as follows:

§ 803.61 Consumptive uses of water.

(a) * * *

(1) *Consumptive use.* Water withdrawn from ground water or surface water, via a man-made conveyance system, and not returned to the ground water or surface water of the basin thereby making it unavailable for other water uses or purposes.

* * * * *

(3) *Compensation.* Water provided from surface storage or ground water as make-up for a project's consumptive use.

(b) * * *

(1) Compensation shall be required for consumptive uses of water during periods of low flow. Compensation is required during periods of low flow for the purposes of protection of public health; stream quality control; economic development; protection of fisheries; recreation; dilution and abatement of pollution; the regulation of flows and supplies of surface and ground waters; the prevention of undue salinity; protection of the Chesapeake Bay; and other purposes as determined by the Commission.

(2) Consumptive uses by a project not exceeding an average of 20,000 gpd for any consecutive thirty-day period from surface or ground waters are exempt from the requirement unless such uses adversely affect the purposes outlined in paragraph (b)(1) of this section.

(c) * * *

(1) * * *

(ii) *Ground-water source.* Compensation for the project's consumptive use of ground water shall be required when the stream flow is less than the applicable low flow criterion. For the purposes of implementing this regulation, the Commission will identify the appropriate stream gaging station for determining the applicable low flow.

(iii) The required amount of compensation shall be provided by the applicant or project sponsor at the point of taking (for a surface source) or another appropriate site as approved by the Commission to satisfy the purposes outlined in paragraph (b)(1) of this section. If compensation for consumptive use from a surface source is to be provided upstream from the point of taking, such compensation shall reasonably assure no diminution of the flow immediately downstream from the point of taking which would otherwise exist naturally, plus any other dedicated augmentation.

(iv) Compensation may be provided by one, or a combination of the following:

(*a*) Construction or acquisition of storage facilities.

(*b*) Purchase of available water supply storage in existing public or private storage facilities, or in public or private facilities scheduled for completion prior to completion of the applicant's project.

(*c*) Purchase of water to be released as required from a water purveyor.

(*d*) Releases from an existing facility owned and operated by the applicant.

(*e*) Use of water from a public water supplier utilizing raw water storage that maintains a conservation release or flow-by, as applicable, of Q7–10 or greater at the public water supplier's point of taking.

(*f*) Ground water.

(*g*) Purchase and release of waters stored in other subbasins or watersheds.

(*h*) Other alternatives.

(2) Alternatives to compensation may be appropriate such as discontinuance of that part of the project's operation that consumes water, imposition of conservation measures, utilization of an alternative source that is unaffected by the compensation requirement, or a monetary payment to the Commission in an amount to be determined by the Commission from time-to-time.

(3) The Commission shall, in its sole discretion, determine the acceptable manner of compensation or alternatives to compensation, as applicable, for consumptive uses by a project. Such a determination will be made after considering the project location, anticipated amount of consumptive use and its effect on the purposes set forth in paragraph (b)(1) of this section, and any other pertinent factors.

(d) * * * When the project is operational, the Commission shall be responsible for determining when compensation is required and shall notify the project sponsor accordingly.

* * *

* * * * *

(g) Public water suppliers, except to the extent that they are diverting the waters of the basin, shall be exempt from the requirements of this section; provided, however, that nothing herein shall be construed to exempt individual consumptive users connected to any such public water supply system from the requirements of the section.

6. Subpart D, § 803.62 is, revised to read as follows:

§ 803.62 Ground-water withdrawals.

Any project sponsor proposing to withdraw ground water from a single well or a well field in excess of an average of 100,000 gpd for any consecutive thirty-day period or proposing to increase an existing withdrawal to more than an average of 100,000 gpd for any consecutive thirty-day period shall obtain Commission approval of the withdrawal. These withdrawals may be limited by the Commission to the amount (quantity and rate) of ground water that can be withdrawn from an aquifer or aquifer system without causing long-term progressive lowering of ground-water levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential ground or surface water use, causing permanent loss of aquifer storage capacity, or having substantial impact on low flow of perennial streams. Projects withdrawing more than an average of 100,000 gallons per day for any consecutive thirty-day period prior to the effective date of this section are exempt from the above approval requirements, provided that the current withdrawal rate does not exceed the amount withdrawn before the said effective date. Any such exempted project that increases the said average withdrawal to a level above that which it was withdrawing prior to the said effective date shall be subject to the monitoring and reporting requirements described in paragraph (c) of this section and the 5-year review described in paragraph (e) of this section. Any sponsor of a project subject to Commission review and approval shall complete a ground-water withdrawal application. Also, after obtaining approval for the withdrawal, the sponsor shall comply with metering, monitoring, and conservation requirements as follows:

(a) Withdrawal Application (Form SRBC #24). Information required by the Commission is specified in the ground-water withdrawal application and includes but is not limited to the following:

(1) Drillers' and/or geologists' reports.

(2) Location map(s) showing all project wells and other pertinent information.

(3) Results of a minimum, 48-hour constant rate pumping test. Note: Review and approval of the test procedures to be used by the applicant are necessary before the test is started.

(4) A chemical analysis of ground water from the proposed source.

(b) Metering. Ground-water users shall meter all approved ground-water sources. The meters shall be accurate to within five percent of the actual flow. Withdrawals for all commercial farm irrigation, sand and gravel operations, and temporary dewatering operations shall be exempt from the requirement for metering. They shall, however, record pump capacity and elapsed hours of operation. This information shall be reported as monthly totals annually or more frequently, if required, by the permitting agency.

(c) Monitoring and Reporting. Periodic monitoring and reporting of water levels, well production, and ground-water quality are required of all approved ground-water withdrawals. The required information is listed in Form SRBC #30 (Ground-Water Withdrawal Reporting Form) and includes but is not limited to the following:

(1) Ground-water levels shall be measured weekly in all approved production wells and reported to the Commission annually. Additional water levels may be required in one or more observation wells as determined by the Commission.

(2) Production from approved ground-water sources shall be recorded weekly and reported to the Commission annually.

(3) Samples of ground water for water quality analysis shall be obtained and the results reported to the Commission every three years. The required chemical constituents to be included in the analysis are listed in Form SRBC #30. Note: The information may be provided to the Commission either on Form SRBC #30 or other similar document containing all of the required information.

(d) The Commission may, in its discretion, modify the requirements of paragraphs (a), (b), or (c) of this section if the essential purposes of the ground-water program continue to be served.

(e) Approvals by the Commission for ground-water withdrawals shall be subject to review at intervals of 5 years, after which the Commission may, at its discretion, choose to modify the approval based on information obtained from monitoring or other sources.

(f) Planning. If projections indicate that a project's ground-water supply will be constrained in the future by either the quantity or quality of available ground water, the Commission may, in its discretion, require the submission of a water resource-development plan prior to accepting any new withdrawal applications for the same or related projects.

(g) Interference with Existing Wells. If review of the application or other substantial data demonstrates that operation of a proposed ground-water withdrawal will significantly affect or interfere with an existing well or wells, the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

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Dated: September 17, 1990.
Robert J. Biele,
Executive Director.
[FR Doc. 90-22301 Filed 9-24-90; 8:45 am]
BILLING CODE 7905-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 260

Appeals Procedures

AGENCY: Railroad Retirement Board.
ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends part 260 to make various nomenclature changes. This action is being taken as a result of a reorganization of the claims adjudication functions of the Board under the Railroad Retirement Act, and should eliminate any confusion which could arise from the use of the term "Bureau of Retirement Claims" in part 260 and the use of the amended terms in the Board's correspondence with the public.

EFFECTIVE DATE: This final rule is effective September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: This amendment is being made to remove the term "Bureau of Retirement Claims", as that term is used throughout part 260 of the Board's regulations, and to add various terms as appropriate wherever "Bureau of Retirement Claims" appears in that part. The change results from a reorganization of the claims adjudication functions of the Board under the Railroad Retirement Act. Those functions which previously were located in the Bureau of Retirement Claims have been allocated to the following units:

Bureau of Disability and Medicare Operations
Bureau of Retirement Benefits
Bureau of Survivor Benefits
Office of Retirement and Survivor Programs

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601-611). For purposes of the collection of information within the meaning of the Paperwork Reduction Act of 1980, this nomenclature change will have no legal effect.

List of Subjects in 20 CFR Part 260

Appeal procedures, Railroad employers, Railroad retirement.

For the reasons set forth in the preamble the Board amends part 260 of title 20 of the Code of Federal Regulations as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF DISABILITY AND MEDICARE OPERATIONS, BUREAU OF RETIREMENT BENEFITS, BUREAU OF SURVIVOR BENEFITS, OFFICE OF RETIREMENT AND SURVIVOR PROGRAMS, AND THE BUREAU OF RESEARCH AND EMPLOYMENT ACCOUNTS

1. The authority for part 260 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

2. The title of part 260 is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs" as set forth above.

3. The title of § 260.1 is revised to read as follows:

§ 260.1 Initial decisions by the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Supervisor Benefits and Office of Retirement and Survivor Programs.

4. Section 260.1(a) is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits and Office of Retirement and Survivor Programs".

5. Section 260.1(b) is amended by removing the term "Director of Retirement Claims" and inserting in lieu thereof the term "Director of the appropriate bureau or office".

6. Section 260.1(d) is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "appropriate bureau or office" everywhere it appears.

§ 260.3 [Amended]

7. The title of section 260.3 is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs".

8. Section 260.3(a) is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits or Office of Retirement and Survivor Programs".

9. Section 260.3(c) is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs".

§ 260.4 [Amend]

10. The title of § 260.4 is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits or Office of Retirement and Survivor Programs".

11. Section 260.4 is amended by removing the term "Director of Retirement Claims" wherever it appears in paragraphs (b), (c), (d), (g), (h), and (i) and inserting in lieu thereof the term "Director of the bureau or office which issued the erroneous payment decision".

12. Section 260.4 is amended by removing the term "Bureau of Retirement Claims" wherever it appears in paragraph (c) and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits or Office of Retirement and Survivor Programs".

§ 260.5 [Amended]

13. The title of 260.5 is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs".

14. Section 260.5 is amended by removing the term "Bureau of Retirement Claims" wherever it occurs in paragraphs (a), (b), and (c) and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs".

Dated: September 17, 1990.
By Authority of the Board.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 90-22567 Filed 9-24-90; 8:45 am]
BILLING CODE 7905-01-M

20 CFR Parts 395, 396, 397, and 398

RIN 3220-AA88

Employee Protection Benefits

AGENCY: Railroad Retirement Board.
ACTION: Final rule; removal.

SUMMARY: The Railroad Retirement Board (Board) hereby removes part 395, "Regulations Under title VII of the Regional Rail Reorganization Act," part 396, "Regulations Under section 106 of the Rock Island Railroad Transition and Employee Assistance Act," part 397, "Supplementary Unemployment Insurance," and part 398, "New Career Training Assistance," because these parts are now obsolete.

EFFECTIVE DATE: This regulation is effective September 25, 1990.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4945 (FTS 386-4945).

SUPPLEMENTARY INFORMATION: In 1979, 1980, and 1981, three separate pieces of legislation were enacted which, although they did not amend the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) or the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*), affected the Railroad Retirement Board insofar as they imposed new, additional duties on the agency. Those three statutes—The Milwaukee Railroad Restructuring Act (Pub. L. 96-101, November 4, 1979, 93 Stat. 748), the Rock Island Railroad Transition and Employee Assistance Act (Pub. L. 96-254, May 30, 1980, 94 Stat. 401), and the Northeast Rail Service Act of 1981, which was a part of the Omnibus Budget Reconciliation Act (Pub. L. 97-35, August 13, 1981, 95 Stat. 357)—extended to employees of certain financially troubled railroads a number of protective provisions which were to be administered by the Board.

Parts 397 and 398 of the Board's regulations were published simultaneously as a final rule in a newly established Subchapter I of chapter II of title 20 of the Code of Federal Regulations on December 31, 1980 (45 FR 86423), pursuant to the authorization in The Milwaukee Railroad Restructuring Act (MRRA) for the Board to administer the payment of supplementary unemployment insurance and new career training assistance benefits. The regulations in those parts explained the eligibility requirements for those benefits, described how and when individuals were to file applications for those benefits, and explained the computation of the amount of benefits to be paid. Under section 10 of the MRRA (45 U.S.C. 998), the supplementary unemployment insurance benefits would not be payable after April 1, 1984, unless the employee had not received these benefits for at least eight months by that date. See also 20 CFR 397.3(a). Section 12 of the MRRA (45 U.S.C. 911) provided that no new career training assistance would be provided after April 1, 1984. See also 20 CFR 398.3. Since the programs to which parts 397 and 398 applied have expired, these parts have become obsolete.

Part 396 of the Board's regulations was published as an Interim Final Rule on November 1, 1983 (48 FR 50308), to provide for administration of the benefit schedules issued pursuant to Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (RITA), as amended by the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982 (title II of Pub. L. 97-468, 96 Stat. 2543) (45 U.S.C. 1005). The benefit schedule, as prescribed by the Federal Railroad Administrator, provided for the payment of benefits to former employees of the Rock Island Railroad. The Board had the responsibility to administer the benefit schedule, including the adjudication of claims and award of benefits. Part 396 explained the types of benefits available, the eligibility requirements for those benefits, and the procedures to be followed in claiming benefits. A total of $35 million was appropriated for the benefit schedule pursuant to an authorization for that amount in section 504(c)(2) of Public Law 97-468, and virtually all payments had been made by the end of March 1986. Because part 396 has become obsolete, it is being removed.

Part 395 of the Board's regulations was published as a final rule on November 8, 1984 (49 FR 44277), to provide for the implementation of the benefit schedules issued by the Secretary of Labor under section 701 of the Regional Rail Reorganization Act of 1973 (the "3-R Act") (45 U.S.C. 797), as enacted by section 1143 of the Northeast Rail Service Act of 1981, Public Law 97-35, August 13, 1981. The Board had been delegated the responsibility to administer the benefit schedules, which provided benefits for employees of the Consolidated Rail Corporation (Conrail) who had been deprived of employment as a result of actions taken under the 3-R Act and the Northeast Rail Service Act. Part 395 described the types of benefits available, the eligibility requirements for those benefits, and the procedures to be followed in making claims for benefits.

Section 4024(a) of the Conrail Privatization Act, enacted as part of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, October 21, 1986, 100 Stat. 1874, amended section 701(d)(2) of the 3-R Act (45 U.S.C. 797(d)(2)) to provide that the administration of the benefit provisions under the benefit schedules was to be turned over to Conrail. This transfer was to occur upon the earlier of the exhaustion of appropriated funds available for payment of benefits or expenses of administration or on the expiration of 60 days after the date of enactment of the Conrail Privatization Act. Thus, effective 60 days after October 21, 1986, that amendment to section 701 of the 3-R Act transferred the responsibility to pay title VII benefits to Conrail.

Conrail and the Board entered into a Transitional Employee Protection Implementation Agreement, dated January 30, 1987. That Agreement set forth the procedures by which benefits would be paid from December 20, 1986, until the date of the sale of Conrail, at which time the title VII employee benefits program would expire. Pursuant to that Agreement, the Board continued to determine eligibility for title VII benefits, and Conrail assumed responsibility for payment of those benefits, upon certification to Conrail by the Board.

Conrail was sold on April 2, 1987. For a time thereafter, the Board performed responsibilities necessary to close out the title VII benefit program. Since the title VII benefit program has expired, part 395 of the Board's regulations is now obsolete.

Because this rule simply removes regulations which are now clearly out of date, public comment was not considered necessary and, thus, this rule was not published in proposed form.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Parts 395, 396, 397, and 398.

Employee benefit plans, Manpower training programs, Railroad employees, Railroad retirement, Relocation assistance.

Under the authority provided in 45 U.S.C. 362(l), and for the reasons set out in the preamble, chapter II of title 20 of

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the Code of Federal Regulations is amended as follows:

SUBCHAPTER I—[REMOVED AND RESERVED]

1. The title of Subchapter I is removed and reserved.

PART 395—[REMOVED AND RESERVED]

2. Part 395, consisting of §§ 395.1 through 395.10, is hereby removed and reserved.

PART 396—[REMOVED AND RESERVED]

3. Part 396, consisting of §§ 396.1 through 396.10, is hereby removed and reserved.

PART 397—[REMOVED AND RESERVED]

4. Part 397, consisting of §§ 397.1 through 397.8, is hereby removed and reserved.

PART 398—[REMOVED AND RESERVED]

5. Part 398, consisting of §§ 398.1 through 398.7, is hereby removed and reserved.

Dated: September 17, 1990.
By Authority of the Board.

Beatrice Ekeroki,
Secretary of the Board.

[FR Doc. 90-22368 Filed 9-24-90; 8:45 am]
BILLING CODE 7035-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3832-9]

Disapproval of State Implementation Plans; Colorado Carbon Monoxide Plan for the Denver Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: This notice announces that EPA is disapproving the Better Air Campaign (BAC) as an emission reduction measure in the Colorado Carbon Monoxide (CO) State Implementation Plan (SIP) for the Denver Metropolitan Area.

On June 24, 1982, the State of Colorado submitted to EPA a CO nonattainment area plan for Denver which included, in part, the episodic share-a-ride program (re-named the BAC). EPA originally proposed approval of the BAC as an emission reduction measure on July 14, 1987 (52 FR 26419). Information since received from the State of Colorado indicates that the BAC cannot be given credit for reducing CO emissions in the metro Denver area. Additionally, the State of Colorado has since revised the program, making the BAC as identified in the notice of proposed approval obsolete.

DATES: This action will become effective on November 24, 1990, unless notice is received October 25, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State submittal are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Colorado Department of Health, Air Pollution Control Division, 4210 East 11th Avenue, Denver, Colorado 80220.

FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769, (FTS) 330-1769.

SUPPLEMENTARY INFORMATION:

Background

The BAC, as outlined in the July 14, 1987, **Federal Register** notice (52 FR 26419), consisted of two components which were in effect between December 15 and January 15, the CO high pollution season for Denver. The first component requested that drivers voluntarily leave their vehicles at home one weekday per week. This "no-drive day" was based on the vehicle's license plate number. The second component requested that everyone voluntarily curtail non-essential driving when a high pollution day was forecasted. This program was in effect during the 1984-85, 1985-86, and 1986-87 high pollution seasons.

Original State Analysis

The State's analysis of the first three years of the BAC indicated that the planned no-drive day portion of the BAC resulted in a vehicle miles traveled (VMT) reduction of about eight percent. For the 1986-87 high pollution season, the eight percent VMT reduction was estimated to result in a nine percent decrease in ambient CO levels. However, the high pollution day driving reduction component was found to have no additional impact on VMT. Also, the 1986-87 BAC included voluntary (mandatory in Denver, Boulder, and Lakewood) restrictions on woodburning during high pollution days, resulting in an additional three percent reduction in ambient CO levels.

The BAC was expanded for the 1987-88 and 1988-89 seasons to run from November 1 through January 31. For the 1988-89 BAC, the no-drive component was revised to encourage drivers to leave their vehicles at home one weekday per week, not according to license plate numbers, but on a weekday that was most convenient. Drivers were also asked to reduce driving whenever possible, especially on forecasted high pollution days. Additionally, many more metropolitan area cities adopted mandatory woodburning bans on high pollution days, which supplemented the voluntary woodburning restrictions.

For the 1987-88 BAC, the State reported a ten percent reduction in ambient CO levels due to the voluntary no-drive program (based on a nine percent reduction in VMT) and a seven percent reduction in ambient CO levels due to the voluntary and mandatory woodburning bans. Thus, the total reduction in ambient CO credited to the 1987-88 BAC was seventeen percent.

Re-evaluation of the No-drive Program and Revised Results

As indicated above, the no-drive program was given credit for up to a ten percent reduction in ambient CO levels during previous BACs. This reduction was based on a computer-modeled comparison of VMT in the base year, 1983-84 (before the inception of the BAC), and VMT during each year of the program. The modeling calculated VMT reductions directly attributable to the BAC. Due to public skepticism of the State's claim of VMT reductions resulting from the no-drive program, the State conducted an evaluation of the program's modeling efforts.

This evaluation concluded that: (1) The model used to determine the no-drive program's effect on VMT was adequate (although it was not sensitive enough to detect a two percent or less change), and (2) the VMT data for the 1983-84 base year, which was acquired from the Colorado Department of Highways, overestimated VMT for the base year by approximately ten percent. Using corrected base year VMT data, the State revised the VMT reduction results from past BACs and for the 1988-89 BAC, finding no measurable VMT reduction and, thus, no ambient CO reduction.

Therefore, for the 1988-89 BAC, the State reported no-significant reduction in ambient CO levels from the voluntary no-drive program. However, the woodburning component of the BAC reduced ambient CO levels by six to eight percent.

Realizing that the public was not participating in the BAC's voluntary VMT reduction program, the State informed EPA in a letter dated April 7, 1989 (from Bradley J. Beckham, Director of the Colorado Department of Health's Air Pollution Control Division to EPA's Douglas M. Skie, Chief of the Air and Toxics Division's Air Programs Branch) that the BAC would be revised and become a State-wide, year-round program to address the various air pollutants (not just CO) emitted from many different sources. The program would no longer include an intensive public advertising campaign to encourage drivers to reduce driving during the high pollution season. Instead, the State envisioned an outreach program directed at businesses, schools, and government agencies to achieve emission reductions for all air pollutants throughout the year. Additionally, the State did not identify the specifics of the program, nor the means for measuring its success. The State requested EPA to "* * * finalize the BAC as a SIP measure, but refrain from assigning an emission reduction to it until such time as the program is more clearly defined."

EPA Action

On May 17, 1989, EPA responded to Colorado (in a letter from EPA's Douglas M. Skie to Colorado's Brad Beckham), stating, "Because the BAC can no longer claim that the voluntary no-drive program reduces vehicle miles traveled and, subsequently, CO emissions, EPA cannot take final action on the proposed approval of the BAC as an emission reduction measure." Additionally, EPA stated, "EPA cannot approve the BAC in a final action because the structure of the revised BAC * * * is different than the program described in the proposed rulemaking." On that occasion, EPA also encouraged the State to resubmit the BAC for inclusion into the SIP when the program elements are specifically defined. Emission reduction credits could then be assigned to the revised program. Such a program, called "Clean Air Colorado", is now being developed by the State.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective November 24, 1990 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 24, 1990.

Final Action

EPA is today disapproving the BAC as an emission reduction measure in the Colorado CO SIP for metropolitan Denver.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Authority: 42 U.S.C. 7401-7642.

Dated: September 12, 1990.

James J. Scherer,
Regional Administrator.

[FR Doc. 90-22373 Filed 9-24-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3833-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a revision to the Indiana State Implementation Plan (SIP) for ozone. On October 15, 1987, the Indiana Department of Environmental Management (IDEM) submitted amendments to the Indiana Administrative Code (IAC) 8-2, Surface Coating Emission Limitations, as a proposed revision to the Indiana SIP.[1] The revision pertains to the control of volatile organic compound (VOC) emissions from wood furniture and cabinet coating facilities, located in the nonattainment counties of Clark, Floyd, Lake, and Porter. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of part D of the Clean Air Act (Act).

DATES: This action will be effective November 24, 1990, unless notice is received by October 25, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available at the following addresses for review: (It is recommended that you telephone E. Marie Huntoon at (312) 886-6034, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of today's revision to the Indiana SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW, Washington, DC 20460.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

[1] On April 8, 1988, the State recodified title 325 of the Indiana Administrative Code (IAC) to title 326. The State submitted this recodification to the USEPA for approval on November 16, 1988. USEPA is currently taking actions to recodify title 325 of the IAC, which will appear in a subsequent **Federal Register** notice. This rule was formally submitted as 325 IAC 8-2.

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FOR FURTHER INFORMATION CONTACT: E. Marie Huntoon, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: Under section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For Indiana, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.315. For these areas, part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. Part D allows USEPA though, to grant extensions of up to December 31, 1987, to those States that could not demonstrate attainments of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution program. Indiana requested, and received, an extension to December 31, 1987, for achieving the ozone NAAQS for four counties: Clark, Floyd, Lake, and Porter.

Policy and Guidance

The requirements for an approvable SIP are described in the "General Preamble" for part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

On January 22, 1981 (46 FR 7182), USEPA published guidance for the development of 1982 ozone SIPs in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension" (46 FR 7182). The Act requires that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT)[2] to sources of VOC.

In partial response to the requirement for RACT VOC rules, on October 15, 1987, the State submitted to the USEPA regulations for incorporation into the Indiana Ozone SIP, which control VOC emissions from wood furniture and cabinet coating sources located in Indiana's post-1982 ozone nonattainment counties. The submittal consists of amendments to 326 IAC 8-2-1, Applicability of rule, and the inclusion of a new rule, 326 IAC 8-2-12, Wood furniture and cabinet coating. USEPA's review of the State's submittal is contained in a technical support document, which is available at the Region V office. The following provides a summary of the State's submittal:

Summary of State's Submittal

1. 326 IAC 8-2-1, Applicability of rule, was amended to state that the requirements of 326 IAC 8-2-12 apply to facilities located in Clark, Floyd, Lake, and Porter Counties, which have potential VOC emissions of 90.7 megagrams (100 tons) or greater per year.

2. 326 IAC 8-2-12(a) provides a description of the types of surface coated furnishings which are affected by this rule.

3. 326 IAC 8-2-12(b) states that an owner or operator of a wood furniture or cabinet coating operation shall apply all coating material using one or more of the following application systems; airless spray, air-assisted airless spray, electrostatic spray, electrostatic bell or disc, heated airless spray, roller coat, brush or wipe, or dip-and-drain. Touch-up and repair operations are exempt provided that no more than ten gallons of such coatings per day are used.

4. 326 IAC 8-2-12(c) states that compliance with the provisions of 326 IAC 8-2-12 shall be achieved on or before December 31, 1987. An owner or operator may submit a petition to the Commissioner to establish an extended schedule for compliance. All such extension requests will be submitted to the USEPA as revisions to the SIP. Final compliance shall in no case extend beyond December 31, 1988.

Summary of USEPA's Final Rulemaking

USEPA concurs with Indiana's determination that its rules are RACT for these Indiana sources. USEPA hereby approves the incorporation of the State's revised 326 IAC 8-2-1 and the new 326 IAC 8-2-12 into the Indiana Ozone SIP.

Because USEPA considers today's action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on November 24, 1990. However, if we receive notice by October 25, 1990 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Ozone.

Note—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator of Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

The USEPA published Control Technique Guideline (CTGs) in order to assist the State in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the USEPA considers the "presumptive norm" for RACT. RACT I regulations cover sources which are contained in USEPA's first set of CTGs, i.e., those which were published before January 1, 1978. These CTGs are referred to as "Group I CTGs" and pertain to "Group I Sources". Similarly, RACT II regulations cover sources which are contained in USEPA's second set of CTGs, published between January 1, 1978, and January 1, 1979. These CTGs are referred to as "Group II CTGs" and pertain to "Group II Sources". RACT III regulations cover sources which are contained in USEPA's CTGs published after January 1, 1979. These CTGs are referred to as "Group III CTGs" and pertain to "Group III Sources". As part of Indiana's control strategy for attainment of the NAAQS for ozone, the State has submitted, and USEPA has approved, regulations limiting emissions at all stationary source of VOCs in Indiana covered by CTGs.

All other sources which are not covered by Groups I, II, or III CTGs are referred to as "non-CTG" sources. Major "non-CTG sources" are sources which have the potential to emit more than 100 tons of VOC per year and for which a CTG was not published.

Dated: September 4, 1990.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.770 is amended by adding new paragraph (c)(80) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(80) On October 15, 1987, the State submitted 325 IAC 8-2-13, Wood Furniture and Cabinet Coating, as a portion of its 1982 ozone plan, which gives provisions and requirements for controlling volatile organic compound (VOC) emissions from sources located in Clark, Floyd, Lake and Porter Counties. On November 16, 1988, the State submitted this rule recodified as 326 IAC 8-2-12, Wood Furniture and Cabinet Coating.

(i) Incorporation by reference.

(A) Title 326 Air Pollution Control Board, Indiana Administrative Code (IAC) 8-2-1, Applicability of rule; and 326 IAC 8-2-12, Wood furniture and cabinet coating, as published in the April 1, 1988, "Indiana Register" (IR), at 11 IR 2536 and corrected on March 1, 1989, at 12 IR 1394. Filed with the Secretary of State on March 10, 1988.

* * * * *

[FR Doc. 90-22676 Filed 9-24-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[AA-250-90-4370-02; Circular No. 2629]

RIN 1004-AB63

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Private Maintenance; Supporting Information and Certification for Private Maintenance of More Than 4 Wild Horses or Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking prohibits the use of power of attorney to adopt wild horses or burros when the adoption would result in the maintenance in one location of more than 4 wild horses or burros whose titles have not been conveyed by the United States. Public Law 92-195, as amended, commonly referred to as the Wild Free-Roaming Horse and Burro Act, limits the number of animals that may be adopted by any individual to not more that 4 per year unless "the Secretary determines in writing that such individual is capable of humanely caring for more than four animals * * *". Section 4750.3-3 of title 43 of the Code of Federal Regulations regulates approval of adoption applications where the applicant requests to adopt more than 4 animals per year or where more than 4 adopted wild horses or burros, title to which remains in the United States, are to be maintained in one location. The purpose of the rulemaking is to prohibit an individual from gaining control of more than 4 wild horses or burros by using one or more powers of attorney. The rule allows the use of power of attorney for transporting wild horses or burros on behalf of an adopter.

EFFECTIVE DATE: October 25, 1990.

ADDRESSES: Inquiries or suggestions should be sent to: Director (250), Bureau of Land Management, Premier Building, Room 901, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the address given above; telephone (202) 653-9215.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to amend the existing regulation on "Supporting information and certification for private maintenance of more than 4 wild horses or burros" was published in the Federal Register on February 6, 1990 (55 FR 3989). Comments were invited for a period of 30 days ending March 8, 1990, during which period two comments were received, one from a private individual, and one on behalf of two humane organizations.

Both comments supported the intent of the proposed rulemaking. One comment expressed general support for the proposed rule. The other comment raised additional issues. That comment expressed concern that the proposed rulemaking did not address the matter of enforcement. Enforcement is not addressed in the proposed rulemaking because the rule merely states a limitation on the circumstances under which the BLM will approve adoptions where four or more animals will be maintained in one location or where four or more animals will be transported by an individual on behalf of an adopter. If an individual circumvents or attempts to circumvent this provision, the Bureau of Land Management will apply the enforcement provisions found in Subpart 4760—Compliance, and Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties.

The comment urged that BLM further define its enforcement strategy. Such a definition is not appropriately placed in the regulations, but rather is properly addressed in policy statements and program guidance.

The comment also noted that the proposed rulemaking does not define the term "commercial use." The proposed rule makes no reference to commercial use, and therefore a definition would be unnecessary and beyond the scope of the rule.

The proposed rule is adopted without change.

The principal author of this final rule is John S. Boyles, Chief, Division of Wild Horses and Burros, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

The information collection requirements contained in § 4750.3-3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the authority of the Act of September 8, 1959 (18 U.S.C. 47), the Act of December 15, 1971, as amended (16 U.S.C. 1331-1340), the Act of October 21, 1976 (43 U.S.C. 1701 *et seq.*), and the Act

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of June 28, 1934, as amended (43 U.S.C. 315), part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4700—[AMENDED]

1. The authority citation for part 4700 continues to read as follows:

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331–1340), Act of Oct. 21, 1976 (43 U.S.C. 1701 *et seq.*), Act of Sept. 8, 1959 (18 U.S.C. 47), Act of June 28, 1934 (43 U.S.C. 315)

2. Section 4750.3–3 is amended by removing the word "for" the first time it appears in the introductory text of paragraph (a) and replacing it with the words "to adopt", removing paragraph (b)(7), redesignating paragraph (b) as paragraph (c), by adding a new paragraph (b) and revising newly designated paragraphs (c) introductory text, (c)(3), (c)(5), and (c)(6) to read as follows:

§ 4750.3–3 [Amended]

* * * * *

(b) The Authorized Officer will not approve an adoption in which the Private Maintenance and Care Agreement will be signed by an individual holding the power of attorney of the adopter where the adopted animals will be maintained in groups of more than 4 untitled wild horses or burros in one location.

(c) Any individual holding one or more powers of attorney to sign the Private Maintenance and Care Agreement(s) and who will transport more than 4 wild horses or burros on behalf of adoption applicants shall provide the following:

* * * * *

(3) Names, addresses, and telephone numbers of all applicants represented by a power of attorney submitted with the request.

* * * * *

(5) A distribution plan for delivering the animals to their assigned adopters; and

(6) Names, addresses, and a concise summary of the experience of the individuals who will handle the adopted animals during transportation and distribution.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 90-22667 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6802

[NV-930-00-4214-10; N-50250]

Withdrawal of Public Land To Maintain the Physical Integrity of the Subsurface Environment, Yucca Mountain Project; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 4,255.50 acres of public land from the mining and mineral leasing laws for a period of 12 years in order to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site characterization by the Department of Energy at Yucca Mountain are not invalidated or otherwise adversely impacted.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6530.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from location under the United States mining laws (30 U.S.C. ch. 2), and from leasing under the mineral leasing laws, in order to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site characterization by the Department of Energy at Yucca Mountain are not invalidated or otherwise adversely impacted:

Mount Diablo Meridian

T. 13 S., R. 49 E. (Pro. Dia. No. 44),
Secs. 7, 8 and 9;
Secs. 10 and 15, except those lands withdrawn by PLO 2566;
Secs. 16 and 17;
Sec. 20, NE¼;
Sec. 21, N½, N½S½;
Sec. 22, N½, N½S½, except those lands withdrawn by PLO 2566.

The area described contains approximately 4,255.50 acres in Nye County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining and mineral leasing laws. BLM will obtain written concurrence from the Department of Energy prior to issuing any use authorizations on the withdrawn lands.

3. The withdrawal will expire 12 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 17, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-22615 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-HC-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 88-2 Phase I; DA 90-1201]

Miscellaneous Rules Relating to Communications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: On August 6, 1990, five Bell Operating Companies (BOCs) filed petitions seeking partial reconsideration and/or clarification of the Commission's *BOC ONA Amendment Order*, Memorandum Opinion and Order, Filing and Review of Open Network Architecture Plans, CC Docket No. 88–2, Phase I, published July 3, 1990 (55 FR 27468). The BOCs that filed petitions are BellSouth, NYNEX, Pacific Bell, Southwestern Bell, and US West.

DATES: (Oppositions to these petitions must be filed on or before October 25, 1990. Replies to an opposition must be filed within 15 days after the time for filing oppositions has expired).

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

Pleading Cycle Established for Oppositions and Replies to Petitions for Partial Reconsideration and/or Clarification of BOC ONA Amendment Order

[CC Docket No. 88-2, Phase I]

Released: September 17, 1990.

On August 6, 1990, five Bell Operating Companies (BOCs) filed petitions seeking partial reconsideration and/or clarification of the Commission's *BOC ONA Amendment Order*, Memorandum Opinion and Order, Filing and Review of Open Network Architecture Plans, CC Docket No. 88–2, Phase I, 5 FCC Rcd 3103 (1990). The BOCs that filed petitions are BellSouth, NYNEX, Pacific Bell, Southwestern Bell, and US West.

Pacific and Southwestern seek reconsideration of the Commission's decisions concerning access to Operation Support Systems (OSS) and in the alternative request clarification of these requirements. Bell South, NYNEX, and US West also seek clarification of the Commission's decision regarding OSS access.

In the *BOC ONA Amendment Order*, the Commission required that the BOCs' enhanced service operations take the same access to OSS ONA services that the BOC provides independent enhanced service providers (ESPs) once the structural separation requirements are lifted. In their amended ONA plans, the BOCs proposed to offer ESPs indirect access to OSS through gateways. The Commission, however, determined that the current record did not provide enough information to allow the FCC to conclude that the indirect gateway access proposed by the BOCs is comparably efficient to direct access.

In its petition, BellSouth also seeks reconsideration of the geographic deployment projection requirement established in the *BOC ONA Amendment Order* so that it may provide end-of-the-year projections instead of mid-year projections.

The full text of these petitions is available for review and copying in Room 239, 1919 M Street, NW., Washington, DC, and copies may be purchased from the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. Oppositions to these petitions must be filed within 30 days of the date of public notice of the petitions in the Federal Register. Replies to an opposition must be filed within 15 days after the time for filing oppositions has expired. *See* § 1.4(b)(1) of the Commission's Rules, 47 CFR 1.4(b)(1). For purposes of this proceeding, the filing deadlines established in § 1.429 of the Commission's Rules, 47 CFR 1.429, are waived.

For further information contact Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau at (202) 632–4047.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22577 Filed 9-24-90; 8:45 am]

BILLING CODE 6712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 705, 706, 719, 726, and 752

[AIDAR Notice 90-2 (Final)]

Disadvantaged Enterprises

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to adopt as final and make amendments to an interim rule that implemented the provisions of section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, (Pub. L. 101–167), concerning requirements for contracting and subcontracting with disadvantaged enterprises.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen O'Hara, MS/PPE, telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: The Agency is implementing the provisions in section 579 of Public Law 101–167 covering contracts with small disadvantaged business concerns (SDBs) using other than full and open competition, notification of AID's Office of Small and Disadvantaged Business Utilization, and a requirement for subcontracting with disadvantaged enterprises.

An interim final rule was issued February 20, 1990 and published in the Federal Register on March 8, 1990 (55 FR 8469) with a 30-day comment period. A summary of the comments received and their disposition follows.

Congressman William H. Gray III indicated that the Director of AID's Office of Small and Disadvantaged Business Utilization (OSDBU) should be involved with the contracting officer to determine when to set aside procurements for Small Disadvantaged Businesses under other than full and open competition and when there are no realistic opportunities for U.S. subcontracts. Both suggestions have been implemented by requiring the contracting officer to consult with the Director of OSDBU. In the event of disagreement between the two, the head of the contracting activity will make the final determination.

As a result of Congressman Gray's concerns, the provision for using other than full and open competition makes it clear that an award under the Small Business Administration 8(a) program must be considered first and that the set aside procedure in AIDAR 706.302–71 is competitive.

Congressman Gray also suggested that the definition of economically disadvantaged individuals should reference Section 8(d) of the Small Business Act, rather than 8(a). In reviewing the definition, however, it was determined that section 579 requires that the determination of economic disadvantage shall include consideration of assets and net worth of socially disadvantaged individuals. The new definition states that a person will not be considered economically disadvantaged if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question. Because of the definition change, the FAR certifications for small disadvantaged businesses and women-owned businesses are not appropriate; therefore, 752.226–1 contains a new certification on status as a small disadvantaged business.

Other changes result from comments and questions raised within the Agency. The definitions of ownership and control by socially and economically disadvantaged individuals are separated since, in the case of private voluntary organizations, control alone is relevant.

The subcontracting requirement is clarified to show that the requirement applies to new contracts and modifications outside the scope of an existing contract that constitute new procurement when, and only when, more than $500,000 of covered funds are involved.

The changes being made by this Notice are not considered significant rules under FAR section 1.301 and subpart 1.5. This notice will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. It is not considered a major rule under Executive Order 12291, and has been submitted to OMB for review. This notice does not establish any information collection as contemplated by the Paperwork Reduction Act.

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List of Subjects

48 CFR Parts 705 and 706

Government procurement.

48 CFR Part 719

Government procurement, Small business.

48 CFR Part 752

Government procurement, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the Preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in parts 705, 706, 719, and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

1a. The interim amendments to 48 CFR parts 705, 706, 719, 726 and 752 published on March 8, 1990, at 55 FR 8469 are adopted as final with the following changes.

PART 705—PUBLICIZING CONTRACT ACTIONS

Subpart 705.2—Synopsis of Proposed Contract Actions

2. Section 705.202(c) is adopted as final and republished to read as follows:

705.202 Exceptions.

* * * * *

(c) In accordance with section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, (Pub. L. No. 101-167) advance notice is not required for contract actions described in 706.302-71.

3. Section 705.207 is revised to read as follows:

705.207 Preparation and transmittal of certain synopses.

In accordance with section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, the responsible contracting officer shall notify AID's Office of Small and Disadvantaged Business Utilization (OSDBU) at least seven business days before publicizing a solicitation in the Commerce Business Daily for an acquisition (a) which is to be funded from amounts made available for fiscal year 1990 for any development assistance and for assistance for famine recovery and development in Africa and (b) which is expected to exceed $100,000. For exceptions, see 726.104.

PART 706—COMPETITION REQUIREMENTS

Subpart 706.3—Other Than Full and Open Competition

4. Section 706.302-5 is adopted as final and republished to read as follows:

706.302-5 Authorized or required by statute.

AID has authority under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, to contract with small business concerns owned and controlled by socially and economically disadvantaged individuals using other than full and open competition. The provisions implementing this authority are set forth in 706.302-71 and part 726.

5. Section 706.302-71 is revised to read as follows:

706.302-71 Small Disadvantaged Businesses.

(a) *Authority.* (1) Citation: Section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, Public Law No. 101-167, 103 Stat. 1195, 1248-49 [1989].

(2) Section 579(a) of Public Law 101-167 requires that, except to the extent otherwise determined by the Administrator, not less than ten percent of amounts made available for fiscal year 1990 for development assistance and for assistance for famine recovery and development in Africa be used only for activities of disadvantaged enterprises (as defined in 726.101). In order to achieve this goal, section 579(b) authorizes AID to use other than full and open competition to award contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses), as the terms are defined in 726.101.

(b) *Application.* This authority may be used only if the Agency determines in accordance with 726.103 that:

(1) The acquisition is to be funded from amounts referred to in paragraph (a)(2) of this section;

(2) Award of the acquisition to a small disadvantaged business is appropriate to meet the requirement in paragraph (a)(2) of this section;

(3) After considering whether the acquisition can be made under the authority of section 8(a), award of the acquisition under section 8(a) is not practicable; and

(4) Two or more responsive offers from responsible small disadvantaged businesses can reasonably be expected.

(c) *Limitations.* (1) Offers shall be requested from as many small disadvantaged businesses as is practicable under the circumstances.

(2) Use of this authority is not subject to the requirements in FAR 6.303 and FAR 6.304, provided that the contract file includes a certification by the contracting officer stating that the procurement is being awarded pursuant to 706.302-71 and that the application requirements and limitations of 706.302-71 (b) and (c) have been complied with.

PART 719—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 719.2—Policies

6. Section 719.272 is adopted as final and republished to read as follows:

719.272 Small disadvantaged business policies.

In addition to the requirements in FAR part 19, part 726 provides for contracting and subcontracting with small disadvantaged businesses and other disadvantaged enterprises based on the provisions of section 579 of Public Law 101-167.

7. Part 726 is revised to read as follows:

PART 726—OTHER SOCIOECONOMIC PROGRAMS

Sec.

726.000 Scope of part.

Subpart 726.1—General

726.101 Definitions.
726.102 Policy.
726.103 Determination to use other than full and open competition.
726.104 Exceptions.

Subpart 726.2—Determination of Status

726.201 Determination of status as a small disadvantaged business.

Subpart 726.3—Subcontracting Requirement

726.301 Subcontracting with disadvantaged enterprises.

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O.12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

726.000 Scope of part.

This part supplements FAR part 19 and implements certain provisions of section 579 of the Foreign Operations Export Financing, and Related Programs Appropriations Act, 1990 (Pub. L. 101-167, 103 Stat. 1195, 1248-49 [1989]), which provides in general that not less than ten percent of the aggregate amount made available for fiscal year 1990 for development assistance and for assistance for famine recovery and development in Africa shall be made available to disadvantaged enterprises.

See part 705 and part 706 for additional provisions implementing section 579 with respect to publicizing contract actions and using other than full and open competition.

Subpart 726.1—General

726.101 Definitions.

Disadvantaged enterprises means U.S. organizations or individuals that are:

(a) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;

(b) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities;

(c) Colleges or universities having a student body in which more than 40 percent of the students are Hispanic American; or

(d) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

Controlled by socially and economically disadvantaged individuals means management and daily business are controlled by one or more such individuals.

Owned by socially and economically disadvantaged individuals means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

Economically disadvantaged individuals means socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others who are not socially disadvantaged. An individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

Small disadvantaged business means any small business concern (as defined in FAR 19.001) that is owned and controlled by socially and economically disadvantaged individuals as the terms are defined in this 726.101.

Socially disadvantaged individuals means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Women and any individual who certifies that he or she is a Black American, Hispanic American, Native American (as defined in FAR 19.001), Asian-Pacific American (as defined in FAR 19.001), or a Subcontinent-Asian American (as defined in FAR 19.001) shall be presumed to be a socially disadvantaged individual.

726.102 Policy.

AID promotes participation in its projects by disadvantaged enterprises. In order to achieve the goals in section 579(a) of Public Law 101-167, contracts which are to be funded from amounts made available for fiscal year 1990 for development assistance and for famine recovery and development in Africa are subject to the following policies:

(a) Authority in section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall be used to the maximum practicable extent;

(b) Other than full and open competition in contracting with small disadvantaged businesses shall be authorized in accordance with 706.302-71;

(c) Subcontracting with disadvantaged enterprises shall be carried out in accordance with subpart 726.3;

(d) In accordance with 705.207, the Office of Small and Disadvantaged Business Utilization (OSDBU) shall be notified at least seven business days before publicizing a proposed procurement in excess of $100,000.

726.103 Determination to use other than full and open competition.

The determinations required in order to use the authority under 706.302-71 for other than full and open competition shall be made by the contracting officer in consultation with the Director of OSDBU. In the event of a disagreement between the contracting officer and the Director of OSDBU, the head of the contracting activity shall make the final determination.

726.104 Exceptions.

The notification requirement in 705.207 and the subcontracting requirement in 726.301 are based on statutory requirement and may not be deviated from under the provisions of subpart 701.4. Pursuant to section 579(b) of Public Law 101-167, the Administrator or designee may determine that these requirements do not apply to a particular contract or category of contracts. The Procurement Executive has been designated to make such determinations. One such determination concerning subcontracting is set out in 726.301(b).

Subpart 726.2—Determination of Status

726.201 Determination of status as a small disadvantaged business.

(a) To be eligible for an award under AIDAR 706.302-71 providing for other than full and open competition, the contractor must qualify as a small disadvantaged business, as defined in 726.101, as of both the date of submission of its offer and the date of contract award. The contracting officer shall insert the provision at 752.226-1 in any solicitation or contract to be awarded under the provisions of 706.302-71.

(b) The contracting officer shall accept an offeror's representations and certifications under the provisions referenced above that it is a small disadvantaged business unless he or she determines otherwise based on information contained in a challenge of the offeror's status by the Small Business Administration or another offeror, or otherwise available to the contracting officer.

Subpart 726.3—Subcontracting Requirement

726.301 Subcontracting with disadvantaged enterprises.

(a) In addition to the requirements in FAR subpart 19.7, any new contract or modification which constitutes new procurement (except for a contract or modification with a disadvantaged enterprise as defined in 726.101) with respect to which more than $500,000 is to be funded with amounts made available for fiscal year 1990 for development assistance or for assistance for famine recovery and development in Africa shall contain a provision requiring that not less than ten percent of the dollar value of the contract must be subcontracted to disadvantaged entities.

(b) This requirement does not apply when the contracting officer, with the concurrence of the Director of OSDBU, certifies there is no realistic expectation of U.S. subcontracting opportunities and so documents the file. If the contracting officer and the Director of OSDBU do not agree, the determination will be made by the head of the contracting activity. See 726.104 for guidance on other potential exceptions.

(c) The contracting officer shall insert the clause in 752.226-2 in any solicitation or contract as provided in paragraph (a) of this section, unless exempted in accordance with the provisions of paragraph (b) of this section.

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PART 752—TEXTS OF PROVISIONS AND CLAUSES

8. Section 752.226–1 is revised to read as follows:

752.226–1 Determination of status as a small disadvantaged business.

As prescribed in 726.201, insert the following provision:

Small Disadvantaged Business Representation (July 1990)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a small disadvantaged business.

(b) *Definitions.*

Asian Pacific Americans, as used in this provision means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

Native Americans, as used in this provision means American Indians, Eskimos, Aleuts, and native Hawaiians.

Small business concern, as used in this provision, means a U.S. concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

Small disadvantaged business, as used in this provision, means a small business concern that (a) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals.

Subcontinent Asian Americans, as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and women, provided that an individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

(End of Provision)

9. Section 752.226–2 is revised to read as follows:

752.226–2 Subcontracting with disadvantaged enterprises.

As prescribed in 726.301, insert the following clause:

Subcontracting With Disadvantaged Enterprises (July 1990)

Note: This clause does not apply to prime contractors that qualify as disadvantaged enterprises as described below.

(a) Not less than ten (10) percent of the dollar value of this contract must be subcontracted to disadvantaged enterprises as described in paragraph (b) of this clause.

(b) *Definitions.*

Disadvantaged enterprises means U.S. organizations or individuals that are: (1) business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals; (2) institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities; (3) colleges and universities having a student body in which more than 40 percent of the students are Hispanic American; or (4) private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

Controlled by socially and economically disadvantaged individuals means management and daily business are controlled by one or more such individuals.

Owned by socially and economically disadvantaged individuals means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

Socially disadvantaged individuals means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Any individual who certifies that he or she is a Black American, Hispanic American, Native American (as defined in FAR 19.001), Asian-Pacific American (as defined in FAR 19.001), Subcontinent-Asian American (as defined in FAR 19.001), or a woman shall be presumed to be a socially disadvantaged individual.

Economically disadvantaged individuals means socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others who are not socially disadvantaged. An individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a disadvantaged enterprise.

(End of Clause)

Dated: August 14, 1990.

John F. Owens,

Procurement Executive.

[FR Doc. 90–22269 Filed 9–24–90; 8:45 am]

BILLING CODE 6116–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1807

[NASA FAR Supplement Directive 89–4]

RIN 2700–AA92 and 2700–AB04

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Correction

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule, correction.

SUMMARY: NASA is correcting an error in an amendment to part 1807 which reflected miscellaneous changes to the NASA FAR Supplement (NFS) and which appeared in the **Federal Register** on June 29, 1990 (55 FR 27088).

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8250.

SUPPLEMENTARY INFORMATION: NASA has published miscellaneous amendments to the NASA FAR Supplement. An amendment to part 1807 is in error which is discussed briefly below and is corrected by this notice.

Dated: September 19, 1990.

S.J. Evans,

Assistant Administrator for Procurement.

The following correction is made in the NASA FAR Supplement Directive 89–4, part 1807, published in the **Federal Register** on June 29, 1990 (55 FR 27088).

1807.103 [Corrected]

On page 27088, 3rd column, line 16, change the reference "(a)(1)(i)(A)," to "(a)(1)(i)(B)".

[FR Doc. 90–22701 Filed 9–24–90; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511–0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment and closure.

SUMMARY: NOAA announces an increase in the quota for coho salmon in the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, from 20,000 to 23,600 fish, effective August 30, 1990. NOAA also announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, at midnight, September 14, 1990, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial fishery quota of 23,600 coho salmon for the subarea will be reached by September 14, 1990. The closure is necessary to conform to the preseason announcement of 1990 management measures. This action is intended to allow maximum harvest of ocean salmon quotas established for the 1990 season and to ensure conservation of coho salmon.

DATES: *Effective:* Modification of the coho salmon quota for the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective at 0001 hours local time, August 30, 1990, and closure of the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, to commercial salmon fishing is effective at 2400 hours local time, September 14, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1990).

Comments: Public comments are invited until October 5, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In its preseason notice of 1990 management measures (55 FR 18884, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon species in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, would begin on the earlier of 3 days after the August closure of the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, or September 1, and continue through the earliest of October 15 or the attainment of either a subarea quota of 20,000 coho salmon or the overall quota of 37,500 chinook salmon north of Cape Falcon, Oregon. Furthermore, impacts from quota overages or underages from one fishing period or subarea will be subtracted from or added to later fishing periods of the same user group. Inseason modification of quotas is authorized by 50 CFR 661.21(b)(1).

Commerical landings in the fishery from the U.S.-Canada border to Cape Falcon, Oregon, which closed August 26, totaled 78,400 coho salmon, leaving 3,600 fish unharvested of the 82,000 coho quota. Accordingly, the coho salmon quota for the commerical fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, should be increased by 3,600, from 20,000 to 23,600 fish.

Regulations at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

The commercial fishery from Leadbetter Point to Cape Falcon opened on August 30, 1990. According to the best available information on September 14, the commercial fishery catch in the subarea is projected to reach the 23,600 coho salmon quota by midnight, September 14, 1990. Therefore, the fishery in this subarea is closed to further commercial fishing effective 2400 hours local time, September 14, 1990.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this action was given prior to 2400 hours local time, September 14, 1990, by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz. NOAA issues this notice to increase the quota for coho salmon in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, to 23,600 fish, and to close the commercial salmon fishery in the EEZ from Leadbetter Point to Cape Falcon. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this action. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 5, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 1990.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management.

[FR Doc. 90–22656 Filed 9–20–90; 10:48 am]

BILLING CODE 3510–22–M

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Proposed Rules

Federal Register
Vol. 55, No. 186
Tuesday, September 25, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 13

RIN 3150-AD71

Program Fraud Civil Remedies Act, Implementation

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes regulations to implement the Program Fraud Civil Remedies Act of 1986. The Act authorizes certain Federal agencies, including the Nuclear Regulatory Commission, to impose, through administrative adjudication, civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the agency. These proposed regulations establish the procedures the Commission will follow in implementing the provisions of the Act and specifies the hearing and appeal rights of persons subject to penalties and assessments under the Act.

DATES: The comment period expires on November 24, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to the Office of the Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays. Copies of any comments received may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC between the hours of 7:45 am and 4:15 pm Federal workdays.

FOR FURTHER INFORMATION CONTACT: John Cho, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-1585.

SUPPLEMENTARY INFORMATION:

Background

In October 1986, Congress enacted the Program Fraud Civil Remedies Act, Pub. L. No. 99-509 (codified 31 U.S.C. 3801 through 3812), to establish an administrative remedy against any person who makes a false claim or written statement to any of certain Federal agencies. In brief, it requires the affected Federal agencies to follow certain procedures in recovering penalties (up to $5000 per claim) and assessments (up to double the amount falsely claimed) against persons who file false claims or statements for which the liability is $150,000 or less. The Act further requires each affected agency to promulgate rules and regulations necessary to implement its provisions.

Following the Act's enactment, at the request of the President's Council on Integrity and Efficiency (PCIE) an interagency task force was established under the leadership of the Department of health and Human Services to develop model regulations for implementation of the Act by all affected agencies. This action was in keeping with the stated desire of the Senate Governmental Affairs Committee that "the regulations would be substantially uniform throughout the government" (S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). Upon their completion, the PCIE recommended adoption of the model rules by all affected agencies.

At that time, the Act did not apply to the Nuclear Regulatory Commission. However, that Act has since become applicable to the Commission as a result of the enactment of the Inspector General Act Amendments, Pub. L. 100-504, October 18, 1988. Those amendments, *inter alia*, added the Nuclear Regulatory Commission as an "establishment" under the Inspector General Act and, by doing so, operated to bring the Commission within the provisions of the Program Fraud Civil Remedies Act.

These proposed regulations are essentially the same as the model rules recommended by the PCIE. They incorporate, where appropriate, definitions to fit the Commission's organization. They prescribe the procedure under which false claims and statements subject to the Act will be investigated and reviewed, and the rules under which any ensuing hearing will be conducted.

Statutory Scheme

Under the Act, false claims and statements subject to its provisions are to be investigated by an agency's investigating official. The results of the investigation are then reviewed by an agency reviewing official who determines whether there is adequate evidence to believe that the person named in the report is liable under the Act. Upon an affirmative finding of adequate evidence, the reviewing official sends to the Attorney General a written notice of the official's intent to refer the matter to a presiding officer for an administrative hearing. The agency institutes administrative proceedings against the person only if the Attorney General or the Attorney General's designee approves. Any penalty or assessment imposed under the Act may be collected by the Attorney General through the filing of a civil action, or by offsetting amounts, other than tax refunds, owed the particular party by the Federal government.

For purposes of this Act, these proposed regulations designate the Inspector General or the Assistant Inspector General for investigations as the agency's investigating official. They also designate the Deputy General Counsel for Licensing and Regulation or his or her designee as the reviewing official. Any administrative adjudication under the Act will be presided over by an Administrative Law Judge and any appeals from the Administrative Law Judge's decision will be decided by the Commission.

A more detailed discussion of the model rules' provisions is found in the promulgations of several of the agencies that adopted them earlier, including those of the Departments of Justice (53 FR 4034; February 11, 1988 and 53 FR 11645; April 8, 1988); Health and Human Services (52 FR 27423; July 21, 1987 and 53 FR 11656, April 8, 1988); and Transportation (52 FR 36868; October 2, 1987 and 53 FR 880, January 14, 1988). Anyone desiring further explanation of

the model rules is referred to the cited references.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The Program Fraud Civil Remedies Act of 1986 (Pub. L. 99-509, 31 U.S.C. 3801-3812) established an administrative remedy for false claims or statements submitted to various agencies. Under the Act, anyone who knowingly submits a false, fictitious, or fraudulent claim to any of these agencies is liable for up to a $5,000 penalty and an assessment of double damages. Each affected agency is required to issue implementing regulations governing the investigation of such claims and their adjudication by the agency. Although the Act did not apply to the NRC at the time of its enactment, its provisions became applicable to the NRC upon later enactment of the Inspector General Act Amendments, Pub. L. 100-504, October 18, 1988.

The proposed rule carries out the requirements of that Act.It essentially adopts the model rules prepared under the auspices of the President's Council on Integrity and Efficiency. This is in keeping with the expectation of the Senate Governmental Affairs Committee, expressed in its report on the Act, that the agency regulations throughout the Government would be substantively uniform, except as necessary to meet the specific needs of a particular agency or progam. S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the procedural mechanism for investigating and adjudicating allegations of false claims or statements made against affected agencies. The proposed rule, by itself, does not impose any obligations on entities including any regulated entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in Section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards found in 13 CFR part 121. These obligations would not be created until an order is issued, at which time the person subject to the order would have a right to a hearing in accordance with the regulations.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 13

Claims, Fraud, Organization and function (government agencies), Penalties.

1. A new part 13 is added to 10 CFR chapter I to read as follows:

PART 13—PROGRAM FRAUD CIVIL REMEDIES

Sec.
13.1 Basis and purpose.
13.2 Definitions.
13.3 Basis for civil penalties and assessments.
13.4 Investigation.
13.5 Review by the reviewing official.
13.6 Prerequisites for issuing a compliant.
13.7 Complaint.
13.8 Service of complaint.
13.9 Answer.
13.10 Default upon failure to file an answer.
13.11 Referral of complaint and answer to the ALJ.
13.12 Notice of hearing.
13.13 Parties to the hearing.
13.14 Separation of functions.
13.15 Ex parte contacts.
13.16 Disqualification of reviewing official or ALJ.
13.17 Rights of parties.
13.18 Authority of the ALJ.
13.19 Prehearing conferences.
13.20 Disclosure of documents.
13.21 Discovery.
13.22 Exchange of witness lists, statements, and exhibits.
13.23 Subpoenas for attendance at hearing.
13.24 Protective order.
13.25 Fees.
13.26 Form, filing and service of papers.
13.27 Computation of time.
13.28 Motions.
13.29 Sanctions.
13.30 The hearing and burden of proof.
13.31 Determining the amount of penalties and assessments.
13.32 Location of hearing.
13.33 Witnesses.
13.34 Evidence.
13.35 The record.
13.36 Post-hearing briefs.
13.37 Initial decision.
13.38 Reconsideration of initial decision.
13.39 Appeal to authority head.
13.40 Stays ordered by the Department of Justice.
13.41 Stay pending appeal.
13.42 Judicial review.
13.43 Collection of civil penalties and assessments.
13.44 Right to administrative offset.
13.45 Deposit in Treasury of United States.
13.46 Compromise or settlement.
13.47 Limitations.

Authority: Pub. L. 99-509, secs. 6101-6104, 100 Stat. 1874 (31 U.S.C. 3001-3812).

§ 13.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986) (31 U.S.C. 3801-3812). 31 U.S.C. 3809 requires each authority head to promulgate regulations necessary to implement the provisions of that Act.

(b) *Purpose.* This part:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 13.2 Definitions.

As used in this part:

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Nuclear Regulatory Commission.

Authority head means the Commission of five members or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974 (88 Stat. 1242).

Benefit means, in the context of "statement", anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

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(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 13.7.

Defendant means any person alleged in a complaint under § 13.7 to be liable for a civil penalty or assessment under § 13.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 13.10 or § 13.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Nuclear Regulatory Commission or the Assistant Inspector General for Investigations, Office of the Inspector General.

Knows or has reason to know means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization and includes the plural of that term.

Representative means any person designated by a party in writing.

Reviewing offical means the Deputy General Counsel for Licensing and Regulation of the Nuclear Regulatory Commission or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 13.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 13.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitable identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 13.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 13.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 13.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 13.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 13.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 13.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 13.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 13.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 13.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 13.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 13.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 13.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 13.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 13.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. Service of an answer shall be made by delivering a copy to the reviewing official or by placing a copy in the United States mail, postage prepaid and addressed to the reviewing official. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the

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time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 13.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 13.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 13.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 13.8 a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 13.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 13.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 13.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 13.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 13.8. At the same time, the ALJ shall send a copy of such notice to the representative of the authority.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the authority and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 13.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 13.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 13.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 13.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f) (1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of its review of the initial decision upon appeal, if any.

§ 13.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulation of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 13.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 13.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearances at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 13.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 13.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 13.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 13.9.

§ 13.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 13.22 and 13.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 13.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fai, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

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(5) The ALJ may grant discovery subject to a protective order under § 13.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 13.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 13.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other times as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 13.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 13.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 13.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 13.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed by opened only be order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 13.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 13.26 Form filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 13.8 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 13.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period,

unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 13.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may required that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 13.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 13.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 13.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 13.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence that ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 13.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 13.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 13.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be esssential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 13.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 13.24.

§ 13.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 13.24.

§ 13.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 13.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 13.3; and

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggrevating factors that he or she finds in the case, such as those described in § 13.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 13.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decison of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 13.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 13.39.

§ 13.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 13.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 13.38 has expired, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at each hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 13.3 is final and is not subject to judicial review.

§ 13.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 13.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 13.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 13.43 Collection of civil penalties and assessments.

Section 3806 and 3806(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 13.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 13.42 or § 13.43, or any amount agreed upon in a compromise or settlement under § 13.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 13.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 13.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 13.42 or during the pendency of any action to collect penalties and assessments under § 13.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 13.42 or

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of any action to recover penalties and assessments under 31 U.S.C. 3808.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 13.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 13.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to serve a timely answer, service of a notice under § 13.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated at Rockville, Maryland, this 19th day of September 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-22677 Filed 9-24-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 571

[No. 90-1494]

RIN 1550-AA05

Bonds for Directors, Officers, Employees, and Agents; Form and Amount of Bonds

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision ("Office") is proposing to amend its regulations pertaining to fidelity bond coverage in order to address the disparity between the fidelity bond insurance requirements of savings associations and those of commercial banks and to recognize the limitations of product availability in the insurance bond marketplace. The Office is proposing to substitute the requirement that savings associations obtain coverage under Standard Form No. 22 with the requirement that they obtain bond coverage under Standard Form No. 24. Savings associations currently holding bonds written on Standard Form No. 22 will be considered in compliance with the revised regulation.

DATES: Comments must be received on or before October 25, 1990.

ADDRESSES: Comments may be submitted to: Director, Information Services Division, Office of Communications, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at 1735 I Street NW., Ninth Floor.

FOR FURTHER INFORMATION CONTACT: William W. Templeton, Staff Attorney, Corporate and Securities Division, (202) 906-7354, Julie L. Williams, Deputy Chief Counsel for Securities and Corporate Structure, (202) 906-6549, Corporate and Securities Division; Linda Matthias, Policy Analyst, (202) 906-5747, Edward Charity, Jr., Policy Analyst, (202) 906-7933, Supervision Policy, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office is proposing to amend its regulations pertaining to fidelity bond coverage. This action is taken in order to address the disparity between the fidelity bond insurance requirements of savings associations and those of commercial banks and in recognition of the limitations of product availability in the insurance bond marketplace.

The Office recognizes that the insurance bond marketplace has undergone changes since 1968 when the Federal Home Loan Bank Board adopted the regulatory requirement that all FSLIC-insured savings associations obtain and maintain fidelity bond insurance under the form known as Standard Form No. 22. That form of coverage has not been widely available to the thrift industry since 1986. In its place, fidelity bond underwriters are offering to savings associations the same form of fidelity bond coverage that is available to commercial banks. The bond form known as the Financial Institution Bond, Standard Form No. 24 is the form of fidelity bond maintained by commercial banks in accordance with the provisions of 12 U.S.C. 1828(e).[1]

The Office notes that banks maintain fidelity bond coverage under Standard Form No. 24. In view of the provisions of 12 U.S.C. 1828(e), and because the Office sees no compelling reason why thrifts should not be placed in a position of parity with banks in this regard, the Office proposes to amend 12 CFR 563.190 to delete the requirement that savings associations must obtain coverage under Standard Form No. 22 and to substitute the requirement that savings associations obtain bond coverage under Standard Form No. 24. Savings associations that currently hold fidelity bonds written on Standard Form No. 22 will be deemed to comply with the amended regulation.[2]

While implementing the Standard Form No. 24 coverage requirement, the proposed amendment removes from the regulation the schedule of the required minimum amounts of coverage. In the Office's view, the appropriate levels of coverage are best determined by the management of each savings association. This position is shared by other bank regulatory agencies. It is the duty of the savings association's management to identify, analyze and treat the risk exposure created by its operations. Management, working together with a reliable insurance professional, can analyze the need for coverage and control the exposure to loss by choosing the appropriate levels of coverage and, when appropriate, purchasing endorsements or riders to the standard form that broaden the scope of coverage. Management should assess this fidelity loss risk by means of a thorough review of all aspects of the association's present and prospective operations. This comprehensive review of internal controls may also reveal the need to take additional procedural steps in order to limit a particular risk. Of course, examiner review and analysis of the adequacy of the savings association's insurance program is necessary.

The amended regulation also requires the board of directors to formally approve the savings association's bond coverage, to monitor the ongoing operations and to assess the need for additional coverage periodically. The Office expects that this amendment, together with regulatory bulletins to be issued subsequently, will provide management with clear guidance on the proper course to set for meeting the savings association's fidelity bond coverage needs. Any deviations from the prudent identification, assessment and treatment of fidelity related loss exposure will be viewed as a matter of supervisory concern.

Section 571.14 is removed by this amendment. The Office will provide supplementary guidance on acceptable bond underwriters through supervisory bulletins.

[1] Section 18(e) of the Federal Deposit Insurance Act reads as follows:

The Corporation may require any insured depository institution to provide protection and indemnity against burglary, defalcation and other similar insurable losses. Whenever any insured depository institution refuses to comply with such requirement, the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.

12 U.S.C. 1828(e) (1982), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, § 301, 103 Stat. 183 (1989).

[2] Throughout this preamble, "fidelity bond coverage" refers to the coverage provided under Standard Form No. 24.

Executive Order 12291

The Office has determined that this proposal does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Regulatory Flexibility Act

It is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Act Analysis is not required.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Accounting, Conflicts of interest, Cold, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend chapter v, title 12, Code of Federal Regulations, as set forth below.

PART 563—[AMENDED]

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 287 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

2. Section 563.190 is revised to read as follows:

§ 563.190 Bonds for directors, officers, employees, and agents; form of and amount of bonds.

(a) Each savings association shall maintain bond coverage with a bonding company acceptable to the Office, in the form known as Standard Form 24. The bond shall cover each director, officer, employee, and agent who has control over or access to cash, securities, or other property of such savings association.

(b) The amount of coverage to be required of each savings association shall be determined by the association's management, based on its assessment of the association's potential exposure to risk. The association's board of directors shall approve management's determination of the association's bond coverage, management and the board of directors shall consider factors including, but not necessarily limited to, the following:

(1) The size of the association's asset portfolio and its deposit base;

(2) An overall assessment of the effectiveness of the association's internal operating controls;

(3) The amount of cash, securities, and other property normally held by the association;

(4) The number of the association's employees, their experience and levels of authority, and the turn-over rate in the association's personnel;

(5) The extent of trust powers or EDP activities conducted by the association; and

(6) The extent of coverage provided under the bond coverage of a holding company or other affiliated entity.

(c) Each savings association may maintain bond coverage in addition to that provided by the Standard Form 24, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the association's board of directors, circumstances warrant additional coverage.

(d) The board of directors of each savings association shall formally approve the association's bond coverage, including the adequacy of both the standard and supplemental coverages. Documentation of the board's approval shall be included as a part of the minutes of the meeting at which the board approves coverage. Additionally, the board of directors shall review the association's bond coverage at least annually to assess the ongoing adequacy of coverage.

PART 571—[AMENDED]

3. The authority citation for part 571 continues to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 386, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.14 [Removed]

4. Section 571.14 is removed.

Dated: August 9, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 90-22706 Filed 9-24-90; 8:45 am]

BILLING CODE 6720-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-3814-8]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Year 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a revision of the Phase I federal gasoline and alcohol blend volatility regulations which were promulgated on March 22, 1989 (54 FR 11868). This proposed revision would apply only to the State of Texas during the 1991 RVP season. The current federal rule requires eastern Texas to comply with a Reid Vapor Pressure (RVP) standard in most summer months that is different from that required for western Texas. The proposed revision would provide a uniform set of federal RVP standards for the entire state for 1991. The federal RVP standard for eastern Texas during the month of May is proposed to change from 10.5 pounds per square inch (psi) to 9.5 psi. During the months of June, July, and August the federal RVP standerd is proposed to change from 9.5 psi to 9.0 psi. This proposed revision is in response to a petition submitted to EPA by the Texas Oil Marketers Association (TOMA) requesting that EPA reconsider the federal Phase I RVP standards for Texas.

DATES: EPA will hold a public hearing to take comments on this proposal. The public hearing will be held at 9 a.m. on November 14, 1990. The public comment period will remain open through December 17, 1990.

ADDRESSES: The public hearing will be held at the Texas Air Control Board's auditorium at 6330 Highway 290 East, Austin, Texas. Requests to speak at the hearing and written questions for the hearing should be directed no later than 7 days before the hearing date, to Alfonse Mannato, Field Operations and Support Division, Environmental Protection Agency, EN-397F, 401 M Street SW., Washington, DC 20460.

Materials relevant to the rulemaking have been placed in Docket A-90-17.

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Comments on the proposal should be sent to Docket A-90-17 at: Air Docket Section (A-130), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The docket is located in Room M-1500 Waterside Mall and may be inspected from 8:30 a.m. to 12:00 noon and from 1:30 to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato, (202) 382-2640 or FTS 382-2640.

SUPPLEMENTARY INFORMATION: On August 18, 1987, the Agency proposed a two-phase reduction in summertime gasoline volatility (52 FR 31274). On March 22, 1988 (54 FR 11868), EPA published a notice of final rulemaking promulgating Phase I of these volatility control regulations. These Phase I regulations included a list of applicable standards for geographical areas throughout the 48 contiguous states for the period of May 1 through September 15, effective June 1, 1989.[1]

In the final rule for the Phase I program, the State of Texas was divided along the 99th degree meridian of longitude in accordance with the geographical classification scheme historically used by the American Society of Testing and Materials (ASTM) to designate volatility classes. This was consistent with the August 1987 proposal. Prior to promulgation, no comments were received concerning the proposed division of Texas into two RVP regions.

In the summer of 1989 there was an exchange of correspondence between the State of Texas, TOMA and EPA regarding the perceived problems created in Texas by the division of the state into two volatile classes. In fact TOMA requested, in a letter dated July 10, 1989, that the border within Texas be moved westward to approximately the 105th meridian of longitude. EPA was unable to resolve this issue during the 1989 volatility season. Although there were no reports of severe supply shortages, a number of supply and pricing distortions were reported. (See public docket.)

On December 6, 1989, the Texas Air Control Board adopted reduced volatility standards for the nine-county region in the Dallas/Fort Worth area of 9.0 psi for the period May 1 through September 16 of each year. (This 9.0 psi standard is equivalent to the June, July and August federal Phase I standards for West Texas.) On April 30, 1990 (55 FR 18005), EPA proposed to approve, and on August 3, 1990 (55 FR 31584), EPA approved the State RVP regulation for the Dallas/Fort Worth area as a State Implementation Plan (SIP) revision. Under section 211(c)(4)(A) of the Clean Air Act (the Act), EPA's national RVP regulations preempt state RVP regulation which are not identical to EPA's regulation. However, section 211(c)(4)(C) of the Act provides for approval of state control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary National Ambient Air Quality Standard which the plan implements. In a letter dated January 26, 1990, TOMA asserted that this adoption of the 9.0 psi standard for the Dallas/Fort Worth area would further complicate the distribution and pricing situation for gasoline in Texas.

On March 8, 1990, EPA wrote a letter to William P. Clements, Jr., Governor of Texas, conveying the concerns that had been raised regarding the division of the State of Texas by the current federal volatility standards for the summer months. In the letter, EPA referred to correspondence submitted to the Agency from TOMA which stressed concern that the division within the State in the federal RVP standard would lead to gasoline shortages and/or distribution problems and higher prices. On March 28, 1990 Governor Clements responded to EPA stating his believe that a single set of federal RVP standards for the State would be in the best interest of Texas consumers.

In a letter dated April 26, 1990, TOMA reiterated its concerns regarding the problems with the division of the State of Texas in the federal volatility program. In that letter, TOMA petitioned EPA to take action immediately to establish a uniform federal volatility standard for Texas.

On June 11, 1990 EPA published a notice of final rulemaking promulgating Phase II of a two-phase nationwide reduction in summertime commercial gasoline volatility (55 FR 23658). These federal standards will take effect in the summer of 1992. As part of the Phase II standards, the traditional ASTM boundaries which split various states into separate areas are eliminated. This change was intended to simplify the program in order to make enforcement and compliance easier and to reduce the likelihood of intrastate "border issues" such as the one this rulemaking is addressing. Also, the Phase II regulations provide a mechanism for changes to standards based on unique localized impacts created by the federal Phase II standards. Beginning in 1992, the Phase II standards for the entire state of Texas will be 9.0 psi in May and 7.8 psi for June through September 15.

EPA believes that there will be environmental benefits associated with the reduction of volatility levels proposed in this rulemaking. The level of benefits are discussed in the proposed Texas SIP approval referenced above (see 55 FR 18005). While there will be some incremental costs associated with the production of the lower volatility gasoline in East Texas, these costs will be small and may be offset by the elimination of inequities in the local market which exist under the current dual standards. As noted earlier, both the State of Texas and local gasoline marketers support this proposed revision.

EPA has reviewed TOMA's petition and proposes to find that the request to apply a uniform set of federal RVP standards throughout Texas for 1991 is appropriate because many refiners, jobbers and citizens have expressed concerns regarding gasoline production, transportation and availability along the 99th meridian of longitude. EPA proposes to revise the Phase I volatility standards to make the same set of federal standards applicable to the whole state for 1991. Specifically, for the part of Texas east of the 99th degree meridian of longitude, EPA is proposing to change the federal phase I RVP standard for the month of May from 10.5 psi to 9.5 psi, and for the months of June, July, and August from 9.5 psi to 9.0 psi. Because 1991 is the only remaining year of the phase I program, these standards are proposed only for calendar year 1991. Beginning in the summer of 1992, the federal standards promulgated for the phase II program will apply; this rulemaking action in no way affects the phase II program.

Because of the existence of the approved state standard of 9.0 psi in the nine-county Dallas/Fort Worth area, whenever the State standard is more stringent than the applicable federal standard, the State standard will continue to take precedence. Therefore, even if this action is finalized and put into effect for 1991 as being proposed today, the more stringent State standard for May 1991 and for the period from September 1 through September 16, 1991 will be in effect, unless revised by the State.

Administrative Requirements

The Agency has determined that this action is not a "major" rule as defined in Executive Order (E.O.) 12291. Therefore, a regulatory impact analysis has not been prepared. This regulation was submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any written comments have been placed in the rulemaking docket.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulatory revision promulgated in this notice will not have a significant adverse impact on a substantial number of small entities. The regulatory revision should have little economic impact. Therefore, a regulatory flexibility analysis has not been prepared.

This proposed rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060-0178.

Authority for the action promulgated in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: September 18, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 will continue to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. In § 80.27(a) the table is amended by revising under the Texas heading the first entry "East of 99° Longitude" to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

Applicable Standards [1]

[(1) 1989-1991]

State	May	June	July	Aug.	Sept.
Texas:					
East of 99° Longitude	9.5	9.0	9.0	9.0	9.5

[1] Standards are expressed in pounds per square inch (psi).

[FR Doc. 90-22074 Filed 9-24-90; 8:45 am]

BILLING CODE 6560-50-M

[1] In 1989, the standards did not go into effect until June 1.

40 CFR Part 180

[OPP-300225; FRL-3802-6]

Procymidone Residues in Wine; Request for Comment On Potential EPA Actions Under Federal Food, Drug, and Cosmetic Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking (ANPR).

SUMMARY: This document solicits public comment on EPA consideration of Sumitomo Chemical Corp.'s petition to establish a tolerance of 5 parts per million (ppm) for residues of the fungicide procymidone on grapes and to establish immediately an interim tolerance of 7 ppm to last 1 year. The Agency is issuing this ANPR to (1) give its preliminary assessment of the risk posed by procymidone residues in imported wine; (2) set out its options for a decision; and (3) request public comment on key scientific and policy questions raised by this petition for tolerance.

DATES: Comments, identified by the document control number [OPP-300225], must be received on or before October 25, 1990.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday and Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, telephone: (703)-557-1900.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Food and Drug Administration (FDA) has discovered residues of the pesticide procymidone in wine imported from Europe. That pesticide is not registered for use in this country under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and no tolerances exist for residues of the pesticide under the Federal Food, Drug, and Cosmetic Act (FFDCA). The manufacturer of the pesticide, the Sumitomo Chemical Corp., has petitioned EPA to establish a tolerance covering the residues and has requested expedited consideration of the petition. Wine exporting countries in Europe as well as American wine importers have urged EPA to take immediate action to prevent a major disruption in trade. This advanced notice of proposed rulemaking does the following: (1) Gives a preliminary assessment of the risk posed by procymidone residues in imported wine; (2) sets out EPA's options for a decision on procymidone; and (3) requests public comment on key scientific and policy questions raised by this proceeding.

II. Background

In February 1990, residues of the fungicide procymidone were discovered in shipments of imported wine from Italy during a spot inspection performed by

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the FDA in Nashville, Tennessee. Procymidone is widely used in wine-producing nations of Europe to control the grape disease botrytis. Procymidone, however, is not registered under FIFRA, and there are no tolerances for procymidone under FFDCA. Because there are no established tolerances, a food containing any detectable residue of procymidone is considered adulterated under FFDCA.

FDA subsequently expanded its monitoring for the chemical and found many more violative shipments of wine originating from France, Italy, and Spain. Once a wine product was found to contain procymidone, future shipments of that product have also been detained by FDA unless the products could be certified procymidone-free. Representatives from European countries have claimed that in response to these detentions, wine exporters have undertaken a massive sampling operation to determine if wine intended for export contains procymidone.

The United States currently imports approximately 1 billion dollars worth of wine per year with European Community nations accounting for over 95 percent of this value. It is difficult to estimate how much of this trade in wine will be affected by the FDA's detentions. EPA has information indicating that the acres of wine grapes treated with procymidone are within the range of 12 to 25 percent in France and 4 to 16 percent in Italy. These two countries account for nearly 80 percent of U.S. wine imports. The figures on the extent of use indicate that between 10 and 20 percent of wine imports may be affected by the FDA detentions. EPA does not have high confidence in this estimate, however, because of (1) no direct independent confirmatory evidence on the percent of acres treated with procymidone; (2) uncertainty whether there is direct equivalence between the acres treated with procymidone and amount of wine which will contain procymidone; and (3) uncertainty as to whether exporting nations can segregate their wine stock such that only procymidone-free wine can be shipped to the United States.

On April 13, 1990, Sumitomo Chemical Corp. of Japan, Ltd., the manufacturer of procymidone, petitioned EPA to establish a tolerance of 5 parts per million (ppm) for residues of procymidone on grapes and to establish immediately an interim tolerance of 7 ppm to last 1 year. Sumitomo submitted 55 volumes of data with the petition. Much of the data, however, was illegible, and a legible copy of these data was not submitted until May 21, 1990. In its petition, Sumitomo noted that the CODEX Committee on Pesticide Residues (CCPR) had proposed a maximum residue limit (MRL) of 5 ppm for procymidone on grapes. The CCPR is a subcommittee of the Codex Alimentarius Commission (CODEX) which is an international body established by the Food and Agricultural Organization (FAO) and the World Health Organization (WHO) for the purpose of setting international food standards. Advice to the CCPR and CODEX concerning the establishment of MRL's is provided by a body of experts called the Joint FAO/WHO Meeting on Pesticide Residues (JMPR). The CODEX MRL is not expected to be final for several years. Groups representing both the exporting countries and U.S. wine importers have met with EPA to stress the importance of quick action on this petition.

EPA has placed review of the procymidone tolerance on an expedited track. EPA estimates it will take from 6 to 9 months from May 21, 1990, to complete review of the petition. However, EPA has made preliminary determinations concerning the quality of the data base and the potential risks from the proposed tolerance, and these are described below.

III. Risk Assessment

A. Summary

The toxicological data submitted by the petitioner have many deficiencies. Although they are not rigorous enough to provide definite conclusions about the effects of procymidone, the studies do not raise expectations of serious risk of health effects from the levels of procymidone which have been found in wine. EPA has made preliminary conclusions regarding the risks of cancer, other chronic effects, and reproductive and developmental toxicity.

EPA is still reviewing the carcinogenicity studies on procymidone. The data suggest that procymidone is carcinogenic, and a preliminary estimate of the risk of cancer has been made. There are a number of uncertainties in this preliminary assessment of risk, due to uncertainties not only in the carcinogenicity studies, but also in the residue data and in the consumption estimates. EPA believes that the overall uncertainty in the preliminary risk assessment is mitigated to a degree by the fact that most of the assumptions used are likely to overestimate the risk.

With these qualifications, the risk assessment appears to show that the risk of cancer for wine consumers is negligible over a period of a few years, and possibly even for the entire 50-plus year period over which an adult may drink wine. Risk even for the 99th percentile wine drinker is below the level that raises concern under most circumstances.

In addition, the risk of other chronic effects appears to be low, since the no-observed-effect level (NOEL) determined in the chronic toxicity study is several orders of magnitude higher than the exposure expected from wine. In addition, procymidone does not appear to cause birth defects, when examined in traditional developmental toxicity tests, although this needs to be confirmed by a second study in rats.

Procymidone does appear to cause effects on reproduction. The data provide evidence for frank effects only at levels that are 5 orders of magnitude above the levels to which humans are likely to be exposed through wine. However, since microscopic examination of tissues was not reported for lower doses, it is possible that changes could be occurring at these doses. Thus, no definitive conclusions can be drawn regarding how close the expected human exposure levels might be to levels which could cause microscopic changes until additional data are submitted.

B. Hazard Concerns

The toxicity studies considered essential for the establishment of a tolerance include a battery of three mutagenicity tests, developmental toxicity studies in rats and rabbits, a combined chronic toxicity/carcinogenicity study in rats, a 1-year chronic toxicity study in dogs, an oncogenicity study in mice, a general metabolism study, and a multigeneration reproductive toxicity study in rats. EPA has reviewed most of the data on the health effects of procymidone. For certain studies, additional review is intended. At this time, it appears that only two of the toxicology studies that have been submitted by the petitioner are fully acceptable in support of the establishment of a tolerance, based on current criteria for acceptability of studies for the reregistration of pesticides: the chronic toxicity/carcinogenicity study in rats and the developmental toxicity study in rabbits. This conclusion may change as review progresses. Six other studies either do not meet guideline requirements and should be repeated or were never performed. These are the developmental toxicity study in rats, the carcinogenicity study in mice, the 1-year chronic toxicity study in dogs, a multigenerational reproductive toxicity study in rats, the general metabolism study in rats, and the mutagenicity studies.

1. *Acceptable studies.* The studies currently considered to be acceptable are the following:

a. *Chronic feeding study in rats.* This study was conducted as both a chronic study and a carcinogenicity study. Rats were fed 0, 100, 300, 1,000, or 2,000 ppm in the diet. In addition to the effects which are described as part of the carcinogenicity section below, enlarged cells in the liver were seen in both sexes at 1,000 and 2,000 ppm, and increased liver weights were found in females fed 1,000 ppm and in both sexes fed 2,000 ppm.

A conservative approach was used to establish the lowest effect level (LEL) since an inadequate number of males were available for evaluation at termination in each of the 100- and 300-ppm groups. Although body weight/liver effects were not seen at either the 100 or 300 ppm doses, the LEL was established at 300 ppm. This study was sufficient to establish a NOEL of 100 ppm (5.0 mg/kg/day) for chronic effects other than cancer.

b. *Developmental toxicity study in rabbits.* The highest dose tested (1,000 mg/kg/day) was a limit dose (the highest dose that it is practical to test in laboratory animals). Treatment did not induce maternal toxicity at any level nor was any developmental toxicity evident. The NOEL is greater than 1,000 mg/kg/day.

2. *Studies still being reviewed.* EPA has reviewed the two carcinogenicity studies that were submitted in support of this tolerance petition. It intends to submit these studies to further internal and external peer review. The initial review indicates the following:

a. *In mice.* There were increases in the incidence of hepatocellular adenomas and carcinomas, as well as the combination of the two, in both treated males and females. However, these increases were not always dose related or statistically significant, and most were within the range of reported historical control data for each category. Of the four dose groups tested (30, 100, 300, and 1,000 ppm), all treated male groups showed an increase in adenomas, while increased carcinomas were found in 100, 300, and 1,000 ppm males; increased adenomas and combined adenomas/carcinomas were noted in 300 and 1,000 ppm females. There was also an increase in the incidence of hepatoblastomas (observed in male groups only) at 300 and 1,000 ppm. Hepatoblastomas have been classified by the National Cancer Institute, the National Toxicology Program, and the National Center for Toxicological Research as a variant of hepatocellular carcinoma. The combined incidence of adenomas/carcinomas/blastomas was increased in all treated male groups.

The animals in this study could possibly have tolerated higher dosages of procymidone. This question will be addressed in peer review and will be important in determining the acceptability of this study in support of a tolerance petition.

b. *In rats.* Rats were given 0, 100, 300, 1,000, or 2,000 ppm in the diet. There was a dose-related increased incidence of testicular interstitial cell tumors and hyperplasia at the 1,000 and 2,000 ppm dietary levels. There was also an increased incidence of ovarian stromal hyperplasia and pituitary adenomas at 2,000 ppm in females. The conclusions about carcinogenicity that can be drawn from this study will be decided following peer review.

3. *Unacceptable or missing studies.* The subchronic feeding studies in rats and dogs, the developmental toxicity study in rats, the reproductive toxicity study in rats, the mutagenicity studies, and the general metabolism studies in rats and mice are all unacceptable as currently received from the petitioner. The reasons for considering these studies unacceptable are given below. Descriptions of effects (or lack thereof) that were seen in the studies are given, but it should be noted that the deficiencies in the studies do not allow rigorous conclusions to be drawn about the effects of procymidone. In addition, it should be noted that a 1-year nonrodent study was not submitted, but is required.

a. *Subchronic feeding studies—*i. *In rats.* Usually only summary data were provided. Concentrations in the diet and homogeneity of the test material were not verified. The method of animal selection was not indicated; randomness in assignment to dosage groups cannot be verified.

Dose groups were 0, 150, 500, and 1,500 ppm in the diet (0, 7.5, 25, and 75 mg/kg/day). Increased relative liver weight was seen in females at the 500-ppm level. At the high-dosage level after 6 months, lower body weights in both sexes, increased liver weight in both sexes, and increased relative brain weight in females were noted. After 9 months at the high dose level, increased relative brain weight in both sexes and increased absolute and relative testes weight were seen. The NOEL in this study is considered to be 150 ppm (7.5 mg/kg/day).

It seems unlikely that the data on individual animals, which would be needed to interpret this study, will be available from the petitioner since the study is over 10 years old. However, if peer review confirms that the chronic toxicity study in the rat is acceptable, the subchronic study will not have to be repeated.

ii. *In dogs.* Purity and stability of the procymidone used in the test were not adequately specified. The test may be considered to be acceptable if acceptable data on these two factors are submitted.

Dose groups were 0, 30, 100, and 500 mg/kg/day. There were no changes at 20 and 100 mg/kg/day that could be clearly associated with treatment. The high-dose level (500 mg/kg/day) appeared to cause an increased incidence of emesis (gastric juice/food) in both sexes, an increased incidence of diarrhea in females only, a suggestion of elevated alkaline phosphatase levels in both sexes, and a statistically significant increase in blood urea nitrogen in males. There were no histopathological changes which correlated with these findings.

b. *Developmental toxicity study in rats.* The dose levels in this study were not high enough to make an adequate assessment of the potential for developmental and/or maternal toxicity. This in itself is serious enough to require that the study be repeated. In addition, the investigator did not justify the selection of doses, or provide data from a pilot study. The data did not express the litter as the experimental unit of measure; instead, effects on individual fetuses were discussed. (In most developmental toxicity studies, it is the incidence per litter or the number of litters with a particular endpoint that is of concern. A high number of individual fetuses with effects could be of less significance if they are from a small percentage of litters than if they are from a large percentage of litters.) Also, the report did not include historical control data from the test facility for 2 years prior and 2 years subsequent to this study.

There was no evidence of maternal toxicity at any dosage level (30, 100, or 300 mg/kg/day delivered in corn oil via gavage). There was also no evidence of treatment-related developmental toxicity at any dose level.

c. *Reproductive toxicity study in rats.* Data on the ingestion of the substance and on the microscopic findings for the low and mid-dose groups were not provided. If the omitted data are submitted and found to be acceptable, this study may be acceptable. Peer

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review would then determine the conclusions about reproductive toxicity that may be made from this study.

Dose groups were 50, 250, or 750 ppm in the diet (2.5, 12.5, or 37.5 mg/kg/day). Systemic toxicity was observed in adults and pups at 250 ppm and above in the form of decreased body weight gain and food consumption (statistically significant in the high-dose group), increased absolute and relative liver weights in the males, increased testes weights and combined and adjusted testes volume, along with decreases in pup prostate and epididymal absolute and relative weights. This toxicity was further corroborated by evidence of macroscopic and microscopic changes in the liver and male external genitalia (data were available only on the high-dose group).

Reproductive/developmental toxicity at the high-dose level caused abnormalities of external genitalia (reduced ano-genital distance and hypospadias) in F_1 and F_2 males and infertility in F_1 males, presumed to be a consequence of malformation induced by *in utero* exposure during late gestation. Minor histological changes in the pituitary and a reduction in size and weight of the accessory sex organs were also seen in these animals. There were no similar effects at any other dose level or on F_0 males.

It should be noted that these results are not inconsistent with the negative results of the developmental toxicity study in rabbits, which is an acceptable study. It is possible that the effects seen in the study of reproductive toxicity were not observed in the developmental toxicity study because of the differences in dosing regimens and/or species.

If the histopathology results for the low and mid dose groups are submitted by the petitioner and found to be acceptable, the results will determine whether a LEL and/or a NOEL can be established from this study. If either of these values can be established, an estimate of how close the exposure from wine consumption would be to the NOEL or LEL may be possible. However, if neither a NOEL nor a LEL can be established from this study, the study will have to be repeated.

At this time, since neither a NOEL nor a LEL has been established, the risk of these effects from procymidone in wine cannot be estimated quantitatively.

d. *Mutagenicity tests.* Procymidone has been tested in several mutagenicity studies, but all of these have been classified by EPA as unacceptable because of various serious deficiencies in methodology. All of the studies appear, on the surface, to be negative.

e. *General metabolism study in rats and mice.* Although this study provided useful information on the metabolism of procymidone in rats and mice, it did not satisfy all of the EPA data requirements for a metabolism study. An acceptable study would include groups of rats of both sexes which receive (1) a single intravenous low dose of labeled material, (2) a single oral low dose of labeled material, (3) a series of single daily oral doses of unlabeled material for 14 days followed by a single oral dose (on day 15) of labeled material, and (4) a single oral high dose of labeled material. All of these regimens are important because both the size of the dose(s) and the number of doses can influence metabolic pathways.

In both rats and mice, a single oral dose of 100 mg/kg was readily absorbed from the gastrointestinal tract and distributed to all tissues examined. Absorption appeared to be slightly faster in mice than in rats, whereas available data indicated that distribution, metabolism, and excretion were comparable between rats and mice. Procymidone-derived radioactivity was cleared from the major tissues at approximately the same rate in both species. Both species metabolized procymidone extensively, so that within 48 hours of administration only minor quantities of the parent were excreted in urine and feces. The metabolic profile in both species was qualitatively and quantitatively comparable.

4. *Additional studies.* The petitioner submitted several additional toxicity studies. A mouse subchronic toxicity study provided evidence that the liver is a target organ. Other studies in mice and rats demonstrated that procymidone is capable of increasing serum testosterone and luteinizing hormone levels and that it has a weak binding affinity for androgen receptors on rodent prostate. These latter studies add support to the concern that procymidone can cause effects on reproduction and development.

C. Exposure Concerns

1. *Residue levels.* EPA based its residue level estimate used in the risk assessment on monitoring data obtained by the Food and Drug Administration in its import sample analysis program. There are 678 samples of wine, from 18 countries, that have been analyzed for procymidone, 75 of which contained procymidone at levels of 0.02 ppm or above. (The limit of quantitation of the analytical method is 0.02 ppm.) Residues were found in both red and white wines. The levels in the samples whose concentration of procymidone could be quantified ranged from 0.02 ppm to 0.28 ppm. For its risk assessment, EPA used 0.3 ppm as the level that it assumed would be found in all wines that contain procymidone, realizing that this may be an overestimate.

The petitioner provided residue data from several field trials of procymidone on grapes conducted in West Germany, Italy, France, Spain, and South Africa during 1976, 1977, and 1978. Insufficient details were given about the conduct and analysis of several of these trials; analyses in other studies were performed using procedures different from the proposed enforcement methodology. In general, the data are not sufficient to support a permanent tolerance since raw data and other supporting information were not submitted, and since the data are not geographically representative.

2. *Consumption of procymidone-containing wine.* Procymidone is currently not allowed on any food items in the U.S. Therefore, EPA assumed in its risk assessment that the only exposure to procymidone would come from wine. The assumptions used in estimating exposure to procymidone through wine are explained below.

a. *Total consumption of all wine.* Estimates of total wine consumption were obtained from the Alcohol Epidemiologic Data System of the National Institute on Alcohol Abuse and Alcoholism (NIAAA). The most recent pertinent information available is for 1987; data were gathered as part of the Cancer Epidemiology section of the Supplement to the 1987 National Health Interview Survey, which is conducted by the National Center for Health Statistics. This section of the survey included 22,060 people of ages 18 and over, and was designed to be representative of the civilian, noninstitutionalized population residing in the United States.

The data were obtained by asking the respondent to estimate the number of glasses of wine he or she consumed per day, week, month, or year, over the previous year, and to report whether the glasses were large, medium, or small. The NIAAA assumed that the volumes of wine for each glass size were 5, 4, and 3 fluid ounces respectively, when it converted the survey responses to number of fluid ounces consumed per day. Both the reliance on recall and the necessity of assuming the volume of wine in a "glass" introduce error in the risk assessment; a discussion of the uncertainties in wine consumption data is included below.

b. *Correction for consumption of imported wine only.* Since procymidone is not allowed to be used on grapes grown in the U.S., EPA assumed that exposure to procymidone would come only from imported, not domestic, wine. The assessment of risk therefore considered the likelihood of drinking imported, rather than domestic wine. EPA knows of no data which would allow identification of particular groups of people (e.g., based on geographic or socioeconomic factors), which are more likely than other groups to drink imported wine as opposed to domestic wine. It therefore assumed that each consumer has the same likelihood of drinking imported wine as any other consumer, when he or she drinks any wine at all. This likelihood was assumed to be the same as the percent of commercially produced wine entering distribution channels in the U.S. from foreign sources (i.e., the percentage of wine that is imported each year). The most recent value for this parameter is 14.5 percent (Wine Institute, Economic Research Report ER 55, August 1989). Thus, EPA assumed that 14.5 percent of the wine that each person consumes is imported.

c. *Percent of imported wine that contains procymidone.* EPA is aware, from the monitoring data available from FDA, that not all imported wine contains quantifiable levels of procymidone. The FDA monitoring program under which the procymidone levels have been found is not designed to provide statistically representative information, but it found that only 75 of 678 samples (11 percent) had quantifiable residues. A higher value of 20 percent was chosen for use in this risk assessment, to allow for a reasonable amount of error that might be due to a sampling program that is not statistically valid. This value is supported by the estimate that the highest percentage of wine containing quantifiable amounts of procymidone that is imported from any single country is around 20 percent, and by the estimate that the highest percentage of the wine-grape crop treated in any single country is around 20 percent.

D. Estimate of the Risk of Effects on Health

1. *Cancer.* Although the carcinogenicity studies must still be reviewed by internal and external peer review committees, EPA has proceeded under the assumption that procymidone may be carcinogenic and has done a preliminary quantitative risk assessment. Peer review may persuade EPA that the data do not support a finding of carcinogenicity, or that even if they do, quantification of the potency is not appropriate.

EPA believes at this time that the data on female mouse liver tumors can be used to provide a preliminary estimate of carcinogenic potency; it estimates a Q^* (upper-bound estimate of potency) value of 0.023 $(mg/kg/day)^{-1}$, using the linearized multistage procedure. Q^*s estimated from male mouse liver tumors and male rat testicular tumors are 0.016 and 0.021 $(mg/kg/day)^{-1}$, respectively; the similarity in the values lends support to the value derived from the female mouse liver tumor data. The female mouse liver tumor data were used in this risk assessment because they provided the highest Q^* value; this maximizes the estimate of risk and is consistent with guidance provided in EPA's risk assessment guidelines for cancer.

EPA estimated the upper-bound risk of cancer for a given level of wine consumption by using the following formula:

Upper-bound risk = A * B * C * (D * E / F) * G * H where:

A = Concentration of procymidone in wine (assumed, 0.3 mg procymidone/kg wine).

B = Likelihood of drinking imported wine when any wine is consumed (assumed, 0.145, unitless).

C = Likelihood of imported wine containing quantifiable amounts of procymidone (assumed, 0.20, unitless).

D = Fluid ounces of wine consumed per day (variable; data from survey).

E = Grams of wine per fluid ounce (density assumed equal to that of water, 29.57 g/fl-oz).

F = Average body mass of an adult human, 18 or more years old (assumed, 70 kg).

G = Equivalence factor (1 kg wine/1,000 g wine)

H = Carcinogenic potency (estimated, 0.023 (mg procymidone/kg body weight/day)$^{-1}$).

The resulting number is an estimate of the upper-bound risk of cancer over a 70-year lifetime of exposure for a given level of wine consumption.

EPA estimates that it will take 5 years to generate additional information on carcinogenicity, if such information is needed to complete the petition for a tolerance. The upper bound to the risk of cancer that would be incurred during this period was estimated by multiplying the 70-year upper-bound risk by 5/70. Similarly, the upper-bound risk for a 2-year period which might be required in order to generate information on noncancer effects was estimated by multiplying the 70-year upper-bound risk by 2/70. The upper-bound risk over a wine-consuming lifetime of 52 years, representing continuous exposure from age 18 to age 70, was estimated by multiplying the 70-year upper-bound risk by 52/70.

By assuming that all the factors listed above are constant except for wine consumption rate, EPA estimated the carcinogenic risk for each level of wine consumption reported in the 1987 survey. The upper-bound risk at the mean, median, and 99th percentile of wine consumption, given the assumptions outlined above, are shown in Table I below. The median, mean, and 99th percentile of wine consumption were derived for consumers only, and do not include the 53 percent of the population who claimed not to have drunk any wine in approximately 1 year.

Table I.—Upper-bound Estimate to Risk of Cancer

Rate of wine consumption	g/kg/day	Glasses/day	No. people who drink X or more	Procymidone mg/kg/day	2 Years	5 Years	52 Years
Median	0.066	1 glass/25 days	40.4 million	5.9 E-7	4.5 E-10	9.9 E-10	1.0 E-8
Mean	0.321	1 glass/5.3 days	19.1 million	2.7 E-6	1.8 E-9	4.5 E-9	4.8 E-8
99.0 percentile	3.376	2 glasses/day	1.1 million	2.9 E-5	1.9 E-8	4.8 E-8	5.0 E-7

2. *Noncancer effects.* Procymidone appears to cause effects on reproduction and development of reproductive organs. Since neither a LEL nor a NOEL has been established, a quantitative assessment is not possible at this time. However, in view of the 5 orders of magnitude difference between the dose that did not cause frank effects in rats and the exposure expected for even the 99th percentile of wine consumers, it does not appear that reproductive effects would be expected.

The kinds of effects measured in the chronic toxicity study are not likely to result from exposure to procymidone in wine at 0.3 ppm. The NOEL for chronic effects was established at 5.0 mg/kg/day; the level of exposure for even the 99th percentile consumer of wine is

expected to be on the order of 10^{-8} mg/kg/day. However, the lack of effects needs to be confirmed in a nonrodent study.

Developmental toxicity is also not expected. The NOEL from the acceptable study is above 1,000 mg/kg/day; exposure to the 99th percentile of wine consumers is expected to be approximately 8 orders of magnitude less. However, the lack of effects must be confirmed in a second study before the EPA can confidently assess the risk.

It is difficult to evaluate the risk of effects from subchronic exposure to procymidone, since the studies are of poor quality. It appears that effects are seen only at relatively high doses: from the information available, the NOEL seems to be 7.5 mg/kg/day. This is 5 to 6 orders of magnitude higher than the exposure for the 99th percentile of wine consumers, if the wine contains procymidone at 0.3 ppm.

The risk of mutagenicity cannot be assessed either qualitatively or quantitatively at this time, because the studies are of such poor quality. However, since EPA has assumed that procymidone may be carcinogenic and has estimated that carcinogenic risks are negligible, even to high wine consumers, the results of additional mutagenicity tests are unlikely to increase the estimate of carcinogenic risk significantly.

E. Uncertainties

There are a large number of uncertainties in this risk assessment, most of which cannot be quantified or manipulated statistically due to a lack of sufficient data. While EPA believes it has chosen reasonable, if somewhat high, assumptions to use in its risk assessment, other values could have been chosen. The effects of other assumptions are examined here.

1. *Carcinogenic potency.* The most critical assumption is that procymidone is capable of causing cancer. As noted above, this assumption will be subjected to internal and external peer review. A decision that there is insufficient evidence for carcinogenicity, or that the data do not support quantification of potency, would preclude a quantitative risk assessment.

If peer review indicates that the "maximum tolerated dose" was not reached in the mouse study, it may be necessary to run the carcinogenicity test at a higher dose. Even assuming the worst case that could reasonably be expected in a repeat study (i.e., that the incidence of tumors would be at the upper end of the confidence limits for the doses tested in the current study, and as high as 80 percent at a dose that might reasonably be chosen as the next higher dose level), EPA would not expect the estimate of carcinogenic potency to increase by more than a factor of about 3. This would not change the estimate of carcinogenic risk significantly, given the current information about exposure.

2. *Level of procymidone in wine.* The monitoring information currently available was not derived from a statistically designed sampling program. Therefore, EPA felt it appropriate to assume a value that would be above the "normal" value seen in the monitoring program and yet still be reasonable. As noted above, it chose the highest value seen in the monitoring program, rounded to one significant digit (viz., 0.3 ppm).

If the monitoring data are representative of all wine entering the U.S., the mean of the quantifiable samples would be 0.06 ppm. The estimate of the upper-bound risk would be only 1/5th (i.e., 0.06/0.3), the level noted in Table I if the lower levels of procymidone seen in the monitoring program are taken into account.

3. *Likelihood of drinking imported wine when any wine is consumed.* It seems reasonable to believe that some segments of the population might drink mainly imported wine and that others drink mainly domestic wine. Socioeconomic factors, for example, may influence whether a person drinks imported wine or domestic wine when he or she drinks wine. Holding all other values at the levels assumed in the risk assessment given above, an assumption that a person drinks only imported wine would raise that person's risk by a factor of 7 (i.e., 100 / 14.5). As noted above, EPA has no way of estimating how many people fall into this category.

4. *Percent of imported wine that contains quantifiable amounts of procymidone.* As stated above, the monitoring data currently available may not be statistically representative of the wine coming into the U.S. If it were, the value of 11 percent might be appropriate to use for this factor, rather than the 20 percent which EPA used in its risk assessment. The estimates of upper-bound risk noted in Table I would be multiplied by 0.55 (i.e., would be roughly one-half the value noted in the table above).

EPA notes that wines from certain countries may be more likely to contain procymidone than wines from other countries. To the extent that a person drinks wine exclusively from a country whose average detection rate is different from the average for all countries, the risk forthat person will differ from what is presented here. EPA does not have any data from which to estimate the frequency of consumption of wines from specific countries.

5. *Fluid ounces of wine consumed per day.* EPA is aware that the National Health Interview Survey accounts for only 30 percent of the volume of wine sold in the U.S. in 1987. Underreporting appears to be a general problem with all surveys of alcohol consumption. EPA has not been able to locate information which might allow estimation of the degree of underreporting; it is only aware that underreporting is likely. If the wine consumption data were adjusted to account for total sales, the risk estimates would be multiplied by 3.3.

No correction has been attempted for consumption of those wines which are not made from grapes (e.g., Japanese sake), or wines which are unlikely to have been made from treated grapes because botrytis growth is desirable for those wines (e.g., certain dessert wines).

6. *Body mass of the consumer.* The NHIS survey collected information about the body mass of each individual who responded to the survey. Therefore, it should be possible to estimate more closely the grams of wine consumed per kilogram of body weight than is presented in EPA's risk assessment, which used an average for the U.S. population of 70 kg (154 pounds) per adult. However, even if it were assumed that all consumers of wine had an average body mass of only 50 kg (110 pounds), which is a rather extreme assumption, the estimates of risk would increase by a factor of only 70/50, or 1.4. Considering the other uncertainties involved, increasing the precision for body weight will negligibly affect the estimate of risk.

Finally, the risk assessment assumes that all values related to exposure through wine consumption remain constant for the period to which the risk assessment applies. Specifically, it assumes that the concentration of procymidone in wine, the percent of wine imported, the percent of imported wine that contains procymidone, and the amount of wine consumed will not change significantly. This appears to be a reasonable assumption for short-term extrapolation; no sudden, significant changes would be expected in these factors over a 2-to-5-year period. Trends in two of these factors, the percent of wine imported and the amount of wine consumed, suggest that consumption of imported wine has been decreasing, so that if the trends continue, exposure to procymidone may be less than what is estimated here, at least over the short term. Changes in these variables over the long term could affect the estimates for the 52-year upper-bound risk more significantly.

IV. Data Requested From Sumitomo

Sumitomo has been informed of the following data deficiencies pertaining to its tolerance request.

1. Product chemistry data:

a. Details concerning the beginning materials and the manufacturing process.

b. Details concerning the procedures for quantifying the amounts of major impurities. Sample chromatograms and spectra of standards should be submitted.

c. Additional information on the physical and chemical properties to fulfill requirements as outlined in guidelines sections 63-4, -6, -7, and 63-9 through 13.

d. The composition of the various formulations used on grapes and grape products which may be imported to the U.S.

2. Grape metabolism study.

3. Ruminant and poultry metabolism studies.

4. The analytical methodology specific for procymidone and any metabolites or impurities which must be regulated will have to be validated by an independent laboratory prior to EPA validation.

5. Field trial data conducted in geographically representative locations for representative grape varieties which will likely to be imported into the U.S.

6. A grape processing study.

7. Additional information concerning the amount of grape processed commodities which are exported to the U.S.

8. Additional information concerning the amount of meat and poultry products which are exported to the U.S.

9. Information on the use of procymidone on other commodities exported to the U.S. and whether tolerance petitions for these commodities will be forthcoming.

10. The labels of all procymidone products for all countries exporting grapes and grape products to the U.S.

11. The purity and stability of procymidone used in 6-month dog study.

12. A dog chronic feeding study.

13. A rat developmental toxicity (teratogenicity) study.

14. Substance intake data and microscopic findings on the low- and mid-dose groups for the multigenerational rat reproduction study.

15. Mutagenicity testing: (a) Gene mutation, (b) structural chromosomal aberration, and (c) other genotoxic effects.

16. General metabolism study.

17. The mouse oncogenicity study will undergo internal and external peer review. Apparently the animals in this study could possible have tolerated higher dosage of procymidone. If EPA determines that the maximum tolerated dose (MTD) was not achieved, this study will have to be repeated.

V. General Policy Issues

Because the Sumitomo petition presents EPA with important issues involving FFDCA tolerances and it is quite possible that the circumstances which produced this petition will recur, EPA is requesting comment on the general policy issues raised by the petition. These issues are summarized below.

A. What criteria should be used in deciding when EPA takes extraordinary action to grant interim relief in response to a tolerance petition?

Several factors are relevant to a decision to take extraordinary action: The potential impact on the food supply; the adequacy of the data base; the ability of EPA to ensure that any data gaps will be promptly filled; the degree to which the circumstances leading to the need for the tolerance were unanticipated by the petitioner; and the relative fairness to other parties with pending petitions.

As to impact on the food supply, the absence of a tolerance for residues of a pesticide may have a significant effect on the price and availability of the commodity either because of substantial prior use of the pesticide or because of the criticality of the pesticide to production of a food. Where use of a pesticide is not critical to food production, impact on the food supply generally will be less since agricultural producers can produce crops free of the offending pesticide in the next growing season. In regard to procymidone, the European countries and U.S. wine importers have argued that the availability of European wines for export to the United States has been drastically affected by the FDA detentions and the actions taken in Europe to prevent future detentions. Although it has not been asserted that use of procymidone is essential to the production of wine, ceasing the use of procymidone-treated grapes in wine now will not significantly affect the amount of wine marketed which contains procymidone for several years due to storage and aging of vintage wines. Thus, any disruption in trade cannot be quickly curtailed by altering agricultural or processing practices in the future. Although wine is not a critical part of the food supply, in evaluating the impact on the food supply, EPA will also have to take into consideration whether international reaction to import detentions potentially could result in other trade disruptions which have wider impacts on the adequacy and affordability of the food supply. EPA will also have to consider whether the United States foreign policy efforts to obtain compliance by other countries with FFDCA's requirements applicable to foods imported to the United States will be undermined if EPA fails to take extraordinary action in this instance.

An equally important factor is the adequacy of the data base. Certainly, no action can be taken in the total absence of data. However, as the procymidone situation illustrates, EPA may often be presented with data bases which do not meet EPA guidelines but still allow some preliminary judgments to be made regarding the risks posed by the pesticide. This issue is further discussed in section V.D. below. Related to the adequacy of the data base is the ability of EPA to compel prompt completion of any missing studies or the repetition of flawed studies. Where the petitioner is also seeking registration under FIFRA, EPA has sufficient authority in this regard. However, if the pesticide is not covered by FIFRA, EPA has limited authority to compel the production of data. Thus, in the situation where EPA is considering action only under the FFDCA, one of the key issues is what commitment for generating data should EPA expect before it considers extraordinary preliminary action on a tolerance petition.

Finally, in any case where EPA was to take extraordinary action, EPA would have to consider the effect on the perceived fairness of its tolerance system. Given EPA's limited resources, granting extraordinary relief to one petitioner may delay Agency action on other petitions or Agency responsibilities. Further, EPA believes it is important that all petitioners, whether the petition involves a domestic or foreign use of a pesticide, should be held to the same substantive data requirements and standards for the approval of tolerance petitions.

In the procymidone case, Sumitomo is a large pesticide manufacturer and presumably is aware of the requirements of the FFDCA and that procymidone was being used on grapes ultimately imported to the U.S. in the form of wine. Although procymidone was used for several years without any detention of procymidone in wine imported to the United States, procymidone was detected by FDA in

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Chilean grapes in 1986, and those grapes were detained. Detection of procymidone residues in wine has only occurred subsequent to FDA's refinement of the analytical method for detecting procymidone. Further, foreign growers did not violate the laws of their countries in using procymidone on grapes nor did the wine makers who purchased procymidone-treated grapes.

On the other hand, action on the petition in the timeframe demanded by the petitioner and other interested parties would have substantially delayed most, if not all, EPA toxicological reviews of other new chemicals and new uses as well as pesticides involved in reregistration. Additionally, as noted below, Sumitomo's petition is inadequate to establish a tolerance in that several of the major studies submitted by Sumitomo will have to be redone.

B. If some form of interim relief is appropriate when all of the data generally required for a tolerance is not available, what should be the mechanism for granting such relief?

One option which has been suggested for dealing with situations such as the one posed by the Sumitomo petition is for EPA to adopt as an interim tolerance level the MRL proposed by CODEX for that pesticide pending completion of action on the tolerance petition. This option would foster harmonization of international environmental standards. It would also not involve expedited review of data by EPA and a concomitant reshuffling of existing resource priorities.

Even temporary acceptance of CODEX MRL's without independent EPA review, however, is a controversial issue. In evaluating proposals concerning harmonization of CODEX MRL's and tolerances, EPA has noted several significant differences from EPA procedures in how the JMPR, the expert body which advises the CCPR, evaluates both toxicological and residue chemistry issues. As to toxicology, EPA takes a more conservative approach in cancer classification decisions regarding pesticides than the JMPR, especially in regard to substances that the JMPR finds to be nongenotoxic. Differences between the JMPR and EPA regarding residue chemistry analysis include the JMPR's liberal use of indicator compounds, JMPR's tendency to exclude outlier values in residue studies, and JMPR's definition of what constitutes a residue and good agricultural practices. These residue chemistry differences may result in the selection of dissimilar levels for tolerances and MRL's. The variances in approach to toxicological and residue issues between JMPR and EPA prevent EPA from adopting CODEX MRL's as permanent tolerances absent a complete review and evaluation of the underlying data.

Nonetheless, EPA believes that in appropriate circumstances it may be possible to rely upon CODEX MRL's for the establishment of interim tolerances pending final EPA action on a petition provided that EPA determines that U.S. consumption patterns of the treated food do not create an unacceptable risk. As to the acceptability of CODEX MRL's pending approval of a permanent tolerance, EPA notes that (1) CODEX is a group established under the auspices of the Food and Agricultural Organization and World Health Organization each of which is part of the United Nations; (2) the United States is a fully participating member of CODEX and the CCPR, and EPA scientists make significant contributions to the MRL-setting process through involvement with the JMPR; (3) CODEX MRL's are established following a detailed review of the appropriate scientific data by a committee of experts, the JMPR; and (4) where EPA and CODEX have established a tolerance for a pesticide on a similar commodity, in the overwhelming majority of situations, the CODEX MRL has been judged acceptable to EPA as long as EPA's definition of residue and the portion of the commodity tested are followed. In considering whether to accept a CODEX MRL, EPA would have to examine whether the scientific differences between CODEX and EPA would be likely to affect significantly how EPA would analyze the data and such other factors as whether the CODEX MRL had been given final approval and whether the MRL had been generally accepted by other nations.

A second option would be for EPA to expedite the process for establishment of a tolerance. EPA could take a number of steps to expedite the process. These steps could be used singly or in combination. For example, EPA could expedite the process by diverting a significant portion of its science staff to a review of the incoming studies. As noted above, this would delay work on other petitions as well as registration applications and reregistration actions. EPA could also hasten the establishment of a legal limit by setting an interim tolerance where time was needed to complete additional studies.

A third option would be for EPA to expedite its review of the scientific data base for the purpose of developing an enforcement level which could be recommended to FDA. The use of an enforcement level could also be used in combination with the other approaches laid out above.

C. What constraints should EPA place on any of these extraordinary measures to ensure that they are not requested as a routine matter?

EPA is looking at use of the following measures to ensure that petitioners do not treat these proposed extraordinary measures as a means of avoiding standard tolerance procedures. First, EPA would place strict time limitations on the duration of any extraordinary measure. Second, EPA would require special interim reports and updates to assure that the missing data will be supplied in a timely fashion and that the interim measure could be revoked if progress is not satisfactory. Third, if the extraordinary measure does not involve a CODEX MRL, EPA would establish the interim level in a manner which protects no commodities other than the commodities specifically involved in the petition. Care would also be taken to set a conservative level for the legal limit.

EPA requests comment on other steps which could be taken to limit the availability of these extraordinary measures.

D. What is the minimum level of scientific data on which a risk assessment can be done sufficient to support some form of interim tolerance or enforcement level? What scientific review procedures should EPA go through before making determinations on limited data?

In some instances, EPA will not only be asked to expedite its review but to make a risk determination on less than a complete data base. EPA will be faced with making difficult decisions on a case-by-case basis as to what amount of scientific data is necessary to make a reasonably certain scientific estimate of risk. For example, five of the seven major toxicological studies submitted with Sumitomo's petition are inadequate for various reasons. Residue studies supplied by the petitioner are spotty, and the sampling data from FDA are not a scientific sample of procymidone residues in wine. Although EPA believes its scientists can compute a risk estimate from these data, EPA does not have sufficient confidence in that risk estimate at this time to base a regulatory decision on it.

One check on making risk assessments with less than a complete data base available to EPA is seeking additional peer review. EPA has a number of alternatives in seeking peer review of its assessment of the data including its internal peer review process, the Science Advisory Panel (SAP) review, review by a SAP subcommittee, and other Agency review procedures.

VI. Course of Action EPA is Considering

EPA plans to consider carefully the public comments received on this document before taking any regulatory action on procymidone. As one of its options, EPA is considering proposing an interim tolerance for procymidone in the summer of 1991. At that time, EPA will have completed a review of data submitted with the petition as well as data to be submitted within the next 6 months. Because a permanent tolerance generally is not established before all needed studies have been submitted and reviewed, if a tolerance is proposed at that time it will be time-limited to ensure that all requested data are submitted. Although the FFDCA does not explicitly provide for the use of interim tolerances, EPA believes that that authority is inherent in the greater authority to establish permanent tolerances.

Because of the uncertainties in the risk assessment that result from deficiencies and gaps in the data base, EPA and FDA have decided that it would not be appropriate to establish a specific enforcement level at this time. EPA believes that a proposal for an interim tolerance may be appropriate in the summer of 1991 taking into consideration a number of factors. First, as detailed above, EPA's preliminary review of the data has revealed that procymidone residues in wine appear to pose, at most, negligible health risks to the public. Following this in-depth review of the already- submitted data and the additional information, EPA believes it may be able to confirm its preliminary risk assessment. By the summer of 1991, not only will EPA have had the opportunity to complete an in-depth review of the submitted data, but Sumitomo will have had time to provide supplementary information on deficient studies and to repeat some of those studies which cannot be repaired by providing further data to EPA. Second, Sumitomo has verbally agreed to all of EPA's requests concerning provision of additional data. Finally, the disruption of trade in wine caused by detentions of wine is of sufficient magnitude that some expedition of the tolerance establishment process is warranted. Although the exact extent of the affect on trade is difficult to quantify, whatever effects there are will be felt most strongly by those parties — wine grape growers, wine makers, and wine importers — least responsible for the absence of a procymidone tolerance.

At the same time, EPA remains troubled at the gaps in the data base due to the submission of inadequate studies. Although certain conclusion can be drawn about the risk from procymidone residues in wine despite the absence of a complete data base, EPA is concerned at the precedent set by disregarding established practices for making science determinations. Nonetheless, EPA recognizes that where confronted with extraordinary circumstances, extraordinary action may be appropriate. Those parties urging extraordinary action on the procymidone tolerance, however, bear the burden of demonstrating to EPA that further steps should be taken to expedite the tolerance in this instance.

One additional issue which may be raised by establishing a legal limit under the FFDCA for procymidone residues is whether such a limit would comply with the Delaney clause in section 409 of the FFDCA. The Delaney clause prohibits the establishment of a food additive regulation "if it is found * * * to induce cancer in man or animal." 15 U.S.C. 348(c)(3)(A). The Delaney clause is not applicable to the petition submitted by Sumitomo since it involves establishing a tolerance on the raw agricultural commodity grapes under section 408 of the FFDCA. Approval of a section 408 tolerance on grapes would legalize residues of procymidone on the processed food wine because procymidone does not concentrate in wine. See 15 U.S.C. 342(a)(2)(C). However, if EPA determines that procymidone is a carcinogen, and if in assessing the risk posed by residues of procymidone on both grapes and wine EPA finds the risk unacceptable, EPA may consider whether a section 409 food additive regulation covering only procymidone residues in wine should be established. Once EPA shifts from section 408 to section 409, the Delaney clause would govern any decision on procymidone. EPA could not approve a food additive regulation for procymidone unless the cancer risk of procymidone on wine fell within the *de minimis* exception to the Delaney clause. See the **Federal Register** of October 19, 1988 (53 FR 41104).

VII. Conclusion

As noted, EPA is considering proposing an interim tolerance for procymidone the summer of 1991. No proposal will be made, however, unless EPA can determine that establishment of a procymidone tolerance will conform to statutory requirements. At this time, EPA solicits comments on its planned course of action, its preliminary risk assessment, and the more general policy issues discussed in this notice. EPA will also closely consider all comments received on this advanced notice of proposed rulemaking in deciding on whether to issue a proposal.

Dated: September 18, 1990.

Linda J. Fisher,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 90-22706 Filed 9-24-90; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 300

[SW-FRL-3834-5]

National Oil and Hazardous Substances Contingency Plan; the National Priorities List; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete a site form the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Union Scrap Iron and Metal Co. site from the National Priorities List (NPL) and requests public comment. As specified in Appendix B of the National Oil and Hazardous Substances Pollution Contengency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), it has been determined that all appropriate Fund-financed responses under CERCLA have been implemented. EPA, in consultation with the State of Minnesota, has determined that no further cleanup is appropriate. Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such action, however. The purpose of this notice is to request public comment on the intent of EPA to delete the Union Scrap Iron and Metal Co. site from the NPL.

DATES: Comments concerning the proposed deletion of the site from the NPL may be submitted until October 25, 1990.

ADDRESSES: Comments may be mailed to James Van der Kloot (5HS-11), Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, IL 60604. The comprehensive information on the site is available at the local information repository located at the

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Minnesota Pollution Control Agency, 520 Lafayette Street, St Paul, MN 55155. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. The address for the Regional Docket Office is C. Freeman (5HS–12), Region V, U.S. EPA, 230 South Dearborn Street, Chicago, IL 60604, (312) 886–6214.

FOR FURTHER INFORMATION CONTACT: James Van der Kloot (5HS–11), U.S. EPA, Region V, Office of Superfund, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353–9309; or Gina Weber (5PA–14), Office of Public Affairs, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6128.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) announces its intent to delete the Union Scrap Iron and Metal site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300 (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Superfund (Fund) Fund-financed remedial actions. Any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this proposal for 30 days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The 1985 amendments to the NCP established the criteria the Agency uses to delete sites from the NPL. 40 CFR 300.66(c)(7), provide that sites "may be deleted or recategorized on the NPL where no further response is appropriate." In making this decision, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA have been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate.

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment.

Deletion of a site from the NPL does not preclude eligibility for subsequent additional Fund-financed actions if future site conditions warrant such actions. Section 300.68(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

Deletion of sites from the NPL does not itself create, alter or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in section 300.66(c)(7) has been met, EPA may formally begin deletion procedures. The first steps are the preparation of a Superfund Close Out Report and the establishment of the local information repository and the Regional deletion docket. These actions have been completed. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and deletion docket.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA still determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the **Federal Register.** However, it is not until the next official NPL rulemaking that the site would be actually deleted.

IV. Basis for Proposed Site Deletion

The following summary provides the Agency's rationale for deleting the Site from the NPL.

The Union Scrap Iron and Metal Co. site (the Site) is located at 1606 Washington Avenue North, in Minneapolis, Minnesota. The Site has an area of approximately ¼ acre. The Union Scrap Iron and Metal Company owned and operated a scrap metal and battery casing processing facility at the Site from approximately 1972 until 1983. The company filed for bankruptcy in 1985. As a result of these operations, the Site became contaminated with lead, PCBs and battery acid.

Beginning in 1979, a series of studies were conducted at the Site to determine the nature and extent of the environmental contamination. These studies indicated that the Site soils were highly contaminated with lead, PCBs and sulfate. The Site was placed on the National Priorities List in September, 1984 due to the presence of contaminated waste materials and soil on the Site. In 1985, a Site Assessment was performed by U.S. EPA.

Beginning in 1985, a series of response actions were taken at the Site; a security fence was constructed and the waste piles were stabilized with tarpaulins. In 1986 and 1987, a potentially responsible party (PRP), under the supervision of the U.S. EPA, removed approximately 773 tons of battery casing material from the Site.

In 1988, the U.S. EPA removed approximately 3,000 tons of contaminated materials from the Site. This included scrap materials, a cement pad, and the upper one to three feet of soil. Clean backfill materials were brought in, and used to bring the Site surface back up to grade.

A Remedial investigation was conducted at the Site during 1989 under the lead of the Minnesota Pollution Control Agency. Field data was collected to determine the concentrations of contaminants remaining in Site soils, and to determine whether the Site is a source of contamination of the groundwater. No Site-related contaminants were found in the Site soils or in the groundwater at levels which exceed the Applicable or Relevant and Appropriate Requirements (ARARs) or health-based levels.

Therefore, the conclusion of the site-specific Remedial Investigation and Risk Assessment was that the Site does not pose a current or potential threat to human health or the environment.

On March 30, 1990, the Regional Administrator of U.S. EPA Region V approved a Record of Decision which selected the No Action alternative as the remedy for the Union Scrap Iron and Metal Co. Site. This No Action remedy includes no further limitation of Site use, and no further monitoring or maintenance whatsoever. Therefore, no 5-year review of the selected remedy under section 121(c) of CERCLA will be required.

The EPA, with the concurrence of the Minnesota Pollution Control Agency, has determined that all appropriate responses under CERCLA at the Union Scrap Iron and Metal Co. Site have been completed.

Dated: September 18, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90–22705 Filed 9–24–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 90–25]

Publication and Filing of Payments Made by Common Carriers to Foreign Freight Forwarders and Ocean Freight Brokers in Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") proposes to amend its foreign tariff filing regulations to require common carriers and conferences to state in their tariffs the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders of ocean freight brokers. The Proposed Rule defines foreign freight forwarders and ocean freight brokers. The Proposed Rule also amends the FMC's service contract filing regulations to require common carriers and conferences to state in service contracts the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders or ocean freight brokers. The Proposed Rule will require public disclosure of any payments made by common carriers for services provided by foreign freight forwarders and ocean freight brokers, the proposal is intended to facilitate enforcement efforts to detect and prevent unlawful activity related to such payments.

DATES: Comments due November 24, 1990.

ADDRESSES: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street NW., Washington DC 20573–0001, (202) 523–5787.

SUPPLEMENTARY INFORMATION: The interrelationship of carriers and conferences and so-called "intermediaries" poses significant enforcement problems for the Commission and possible disruption in the industry. In many foreign countries such intermediaries are referred to as "freight forwarders" of "freight brokers." Their functions often go beyond those of licensed United Stated ocean freight forwarders. Some of these firms are conglomerates consisting of carriers, warehouse companies, trucking companies, etc. Commercial sources, particularly foreign ones, may refer to any and all of these entities as either "foreign freight forwarders" or "brokers". In comparison with FMC-licensed ocean freight forwarders, these intermediaries may have greater influence in determining the selection of a carrier, the selection of the providers of ancillary services, and the terms of the movement.[1]

The variety of activities and the lack of common terminology can obscure what services these intermediaries perform and for what services they are being paid by the carriers, i.e., for packing and warehousing, for inland transportation, for securing ocean transportation, for preparing documentation, etc. As a result, more and more intermediary entities are in a position to take advantage of this situation to pass some or all of the payments back to the shipper, directly or indirectly.

Sections 8(a)(1)(C) and 10(d)(3) of the 1984 Act, 46 U.S.C. app. 1707(a)(1)(C) and 1710(d)(3), require carriers and conferences to set forth in their tariffs the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments; FMC Tariff Rule No. 9, 46 CFR 580.5(d)(9), implements this requirement. There is, however, no express statutory requirement that carriers and conferences describe in their respective tariffs or service contracts compensation paid to "intermediary" entities that are not statutorily defined—e.g., forwarders on import shipments. Because the present tariff and service contract filing requirements apply only to licensed ocean freight forwarders, who operate only in the United States export trades, and do not cover common carrier and conference activities involving intermediaries operating in the United States import trades,[2] uncertainly exists concerning the responsibility of carriers and conferences to publish in their tariffs and service contracts the amount of payments to be made to such intermediaries. In order to ensure that it has the means to ascertain the extent and legality of such payments, the Commission has determined to impose these requirements by rule under the authority set forth below.

Section 8(a)(1) of the 1984 Act requires, inter alia, that carriers and conferences shall "* * * file with the Commission * * * tariffs showing all * * * practices * * * that have been established * * *." Furthermore, section 10(b)(2) of the 1984 Act, 46 U.S.C. app. 1709(b)(2), makes it unlawful for a "common carrier, either alone or in

[1] The terms "freight brokers" and "brokerage" are subject to varying interpretations. The FMC's rules at 46 CFR 510.2(m) define an ocean freight broker as a person who matches up cargo with available cargo space and who receives from the carrier a sum of money for that service (defined as "brokerage"). The industry often uses the term "broker" in the widest possible sense, meaning a party acting on behalf of another party, almost with the meaning of "agent". The industry also often uses "broker" to distinguish between those persons who arrange for booking cargo and who provide documentation service on outbound ocean shipment (defined in the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701, and by the Commissions as "ocean freight forwarders") and those who do parallel work on inbound shipments (i.e., persons currently defined neither by the 1984 Act, not by regulations issued by the Commission). This latter type of "broker" is usually foreign based, often has connections to foreign firms (including shippers and consignees) and provides a broader spectrum of services, including intermodal links, than an "ocean freight forwarder" as defined by the Commission. The situation is made more complex by the use of the term "brokerage" to describe what the Commission defines as "compensation" (i.e., payment by carriers to FMC licensed forwarders for services performed on outbound shipments) (46 CFR 510.2(d)).

[2] Section 3(19) of the 1984 Act, 46 U.S.C. app. 1702(19), defines an ocean freight forwarder as a person that dispatches shipments from the United States via common carriers, books space for those shipments and processes the documents incident to those shipments. Section 19 of the 1984 Act, 46 U.S.C. app. 1718, requires that persons who perform ocean freight forwarding functions obtain a license from the Commission and that only they are entitled to compensation from the carriers.

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conjunction with any other person, directly or indirectly, * * * (to) rebate, refund, or remit in any manner, or by any device, any portion of its rates except in accordance with its tariffs or service contracts." This would include rebates and refunds paid to intermediaries.

Section 8(c) of the 1984 Act, 46 U.S.C. app. 1707(c), requires not only the confidential filing of a service contract, but also the filing of a concise statement of its essential terms which are to be made available to the general public in tariff format. Those essential terms are to be made available to all shippers similarly situated. The FMC's service contract filing regulations at 46 CFR 581.4(a)(2)(i) require that service contracts contain the complete terms of the contract, including all essential terms.

Section 17 of the 1984 Act, 46 U.S.C. app. 1716, authorizes the Commission to prescribe rules and regulations necessary to carry out the purposes of the Act.

The Proposed Rule would (1) Define "foreign freight forwarder" and "foreign freight forwarder services"; (2) restate the definition of "ocean freight broker" (the pertinent language for this definition will be the same as that now set forth in 46 CFR 510.2(m)); (3) require common carriers and conferences to include in rule 23 of their tariffs any and all payments, whether direct or indirect, which are made to foreign freight forwarders or ocean freight brokers, along with the description of the services for which such payments are made; and (4) require service contracts to include an essential term with a statement of an and all payments, whether direct or indirect, which are made by ocean common carriers or conferences to foreign freight forwarders or ocean freight brokers, along with a description of the services for which the payments are made. Definitions of "foreign freight forwarder" and "ocean freight broker",[6] and a requirement that carrier tariffs and service contracts describe services and list payments connected to "foreign freight forwarders" or "ocean freight brokers", will facilitate enforcement of the 1984 Act's tariff-filing and essential terms-filing provisions as well as the proscriptions against rebating.

Commenting parties are encouraged to submit, along with any comments, draft language for any changes suggested.

The Commission has determined that this Proposed Rule is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission also finds that the Proposed Rule in this proceeding is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, regarding the economic impact on small entities. Section 601(2) of that Act excepts from its purview any "rule of particular applicability to rates or practices relating to such rates * * *." As the Proposed Rule relates to particular application of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this Proposed Rule have been submitted to the Office of Management and Budget for review under section 3503(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). Public reporting burden for this collection of information is estimated to be 20 minutes for each tariff and service contract revision. Since the common carriers and conferences already have commercial documentation procedures in operation for the handling of any payments made, only nominal time or paperwork will be required for any changes that result, if the Proposed Rule is adopted. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Parts 580 and 581

Freight, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Service contracts.

Therefore, pursuant to 5 U.S.C. 553; sections 8, 9, 10 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1708, 1709 and 1716, the Federal Maritime Commission proposes to amend parts 580 and 581 of title 46 of the Code of Federal Regulations as follows:

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. 1702–1705, 1707–1709, 1712, 1714–1716 and 1718.

2. Section 580.2 is amended by adding paragraphs (x), (y) and (z) as follows:

§ 580.2 Definitions.

* * * * *

(x) *Foreign freight forwarder* means a person that performs foreign freight forwarding services as specified in paragraph (y) of this section.

(y) *Foreign freight forwarding services* refers to the dispatching of shipments to the United States on behalf of others, in order to facilitate shipment by a common carrier, and may include but is not limited to, the following:

(1) Ordering cargo to port;

(2) Preparing and/or processing state-required shipping documentation not otherwise herein specified;

(3) Booking, arranging for or confirming cargo space;

(4) Preparing or processing delivery orders or dock receipts;

(5) Preparing and/or processing ocean bills of lading;

(6) Preparing or processing consular documents or arranging for their certification;

(7) Arranging for warehouse storage; and

(8) Arranging for cargo insurance.

(z) *Ocean freight broker* is an entity which is engaged by a carrier to secure cargo for such carrier and/or to sell or offer for sale ocean transportation services and which holds itself out to the public as one who negotiates between shipper or consignee and carrier for the purchase, sale, conditions and terms of transportation.

3. Section 580.5 is amended by adding and reserving paragraph (d)(22) and by adding paragaph (d)(23) as follows:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(22) [Reserved]

(23) *Payments by common carriers for services provided by foreign freight forwarders and ocean freight brokers operating in the import/export trades.* Common carriers and conferences shall specify in their tariffs any and all payments which are to be made by common carriers or conferences directly or indirectly to foreign freight forwarders or ocean freight brokers (as defined in § 580.2 (x) and (z), respectively, along with the description of the services for which such payments are made.

[6] Specifically those operating in the inbound trades.

PART 581—[AMENDED]

1. The following citation for part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

2. Section 581.5 is amended by redesignating paragraphs (a)(3)(vii) and (a)(3)(viii) as paragraphs (a)(3)(viii) and (a)(3)(ix), respectively, and by adding paragaph a new paragraph (a)(3)(vii) as follows:

§ 581.5 Content of essential terms; contingency clauses.

(a) * * *

(3) * * *

(vii) a statement of any and all payments which are to be made by ocean common carriers or conferences directly or indirectly to foreign freight forwarders or ocean freight brokers (as defined in § 580.2 (x) and (z), respectively, of this chapter, along with the description of the services for which such payments are made.

* * * * *

By the Commission.[4]

Joseph C. Polking,

Secretary.

Statement of Commissioner Quartel in Opposition to the Proposed Rule

While I am sympathetic to the enforcement concerns with which this rule is intended to deal, and while I certainly recognize that this is a proposed rather than final rule, the fact remains that any such proposal carries with it the weight of apparent reason and authority. The particular application of this proposed rule is both beyond the intent of the law and is a classic, albeit well-intended, case of regulatory overreach. Notwithstanding assertions to the contrary, the rule would clearly extend FMC regulation and possible jeopardy attendant to that regulation to certain kinds of services provided by a class of persons, the services of which are not now, nor were they countemplated to be, regulated; and, it would do so not directly as law would intend, but through an indirect third party means. Moreover, the rule as proposed would create another form of liability for carriers through a new tariff disclosure burden, and thus a new basis for future violations of the law. While I support the public comment process and will reserve final judgement until this process is completed, I oppose issuing this proposed rule for the reasons stated above.

[FR Doc. 90–22339 Filed 9–24–90; 8:45 am]

BILLING CODE 6730–01–M

[4] Statement of Commissioner Quartel is attached.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[DA 90–1209; (RM–7400)]

Establishment of Satellite and Terrestrial CD Quality Broadcasting Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the extension of comment date for a proposed rule regarding establishment of a satellite and terrestrial CD quality broadcasting service (DA 90–1183, September 5, 1990) which contains a typographical error. Specifically, in paragraph 3 of that document, the comment due date for the Notice of Inquiry, GEN Docket 90–357, originally published at 55 FR 34940 (August 27, 1990)), is listed as October 14, 1990. The correct due date is October 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Frequency Allocations Branch Office of Engineering and Technology (202) 653–8114.

SUPPLEMENTARY INFORMATION: In DA 90–1183 (RM–7400), released September 5, 1990, published September 11, 1990 (55 FR 37339), the following correction is made: (1) In paragraph 3, line 7, the date "October 14, 1990," should read October 12, 1990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–22578 Filed 9–24–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Feeding Wild Populations of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: On August 29, 1990 (55 FR 35328), NMFS issued a proposed rule that would amend the definition of "take" to include feeding marine mammals in the wild. The regulations would prohibit activities such as "dolphin feeding" cruises and feeding marine mammals from docks and piers. NMFS has scheduled a publich hearing on this proposed rule in Panama City, Florida (See **DATES** and **ADDRESSES**). The public is invited to provide comments on the proposed rule at the hearing. Additional hearings are being scheduled, and they will be announced in the **Federal Register**.

DATES: The public hearing will be held on Thursday, October 4, 1990, from 7 to 10 p.m. Written comments will be accepted until October 15, 1990.

ADDRESSES: The public hearing will be held in Room 115, Health Science's Building, Gulf Coast Community College, Highway 98 West, Panama City, Florida.

Written comments should be submitted to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD. 20910.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brown (813) 893–3366 or Margaret Lorenz (301) 427–2322.

Dated: September 19, 1990.

Dr. Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90–22626 Filed 9–24–90; 8:45 am]

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Vol. 55, No. 186
Tuesday, September 25, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intention To Solicit Comments on Matters Relating to Subsistence Take of Fish and Wildlife on Public Lands in Alaska

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Request for public comments.

SUMMARY: The Federal Subsistence Board (Board), on behalf of the Department of Agriculture and Department of the Interior land managing agencies in Alaska, announces that it will be conducting meetings and is soliciting comments on the environmental effects of a Federal subsistence management program and the effects of the program on the subsistence user and resources in accordance with the provisions of section 810 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Comments will be accepted on the adequacy of the present system of local advisory committee/regional councils. The Board is also soliciting public comments relative to rural/nonrural considerations and to the definition of "customary and traditional" use of fish and wildlife. Additionally, comments on the Temporary Subsistence Management Regulations (55 FR 27114) will be taken in order to begin drafting a set of proposed final subsistence management regulations at a later date.

DATES: Written comments will be accepted until December 31, 1990. Public meetings to receive comments will be held throughout Alaska, in Washington, DC and Seattle, Washington during October and November. Widespread local announcement of these meetings will be provided as soon as possible.

ADDRESSES: Comments should be addressed to the Chairman of the Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, ATTN: Richard Pospahala, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Richard Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447.

SUPPLEMENTARY INFORMATION: Title VIII of ANILCA (16 U.S.C. 3111-3126) requires the Secretaries of Agriculture and the Interior to implement a program to grant preference in favor of subsistence uses of fish and wildlife on Federal public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska had such a program that was found by the Department of the Interior to be consistent with ANILCA. In December 1989, however, the Alaska Supreme Court rules in *McDowell* v. *State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990. Once the decision took effect, State subsistence law was no longer in compliance with ANILCA.

As a result of the decision, the Departments of Agriculture and the Interior were required to take over implementation of title VIII of ANILCA on Federal public lands on July 1, 1990. The Federal Subsistence Board, as the managing entity, is continuing the process of collecting public comments relating to a number of issues on subsistence management on public lands.

Federal subsistence management would guide the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Air Force, Army and possibly other Federal land managing agencies.

Special efforts will be made to collect comments on environmental effects, potential restrictions to subsistence users and resources, rural/nonrural considerations, the definition of "customary and traditional" and the adequacy of the present local advisory committee/regional council system as it relates to subsistence users. Comments will also be accepted on the existing Temporary Subsistence Management Regulations in order that the Board may begin drafting a set of proposed regulations to be published for public review at a later date.

Environmental effects—As part of the evaluation of environmental effects, the Board will initially conduct meetings to determine the significant issues and concerns relative to the development of a Federal subsistence management program. These issues and concerns will be addressed in an appropriate National Environmental Policy Act (NEPA) document. After a draft NEPA document is developed, a public review period will be provided and meetings held to receive comments prior to the preparation of a final document.

Section 810—This section of ANILCA requires that Federal agencies evaluate the effects of proposed actions on Federal lands with regard to subsistence users and the resources.

Customary and traditional definition—The definition of "customary and traditional" is a key element in the regulations. ANILCA did not define "customary and traditional". A significant part of the Board's early actions will be to define "customary and traditional" as it applies to the use of fish and wildlife by rural communities of Federal public lands. In order to assist in developing the definition, the Board requests comments from the public. As required by the Temporary Subsistence Management Regulations, determinations of "customary and traditional" use of fish and wildlife on public lands will be made in the future. The information obtained from this public process will also serve as a source of information by the Board to make these determinations.

Regional councils and local advisory committees—Councils and committees are required by ANILCA Section 805. The existing State advisory system has broad responsibilities not only with subsistence take and uses but also sport and commercial take statewide. The temporary regulations require the Secretaries to review the existing subsistence resource regions, regional advisory councils and local advisory committees to determine their adequacy for fulfilling the functions outlined in section 805. This will be accomplished by June 30, 1991. If the Secretaries determined that the resouce regions, regional advisory councils or local advisory committees are inadequate to fulfill the functions outlined in section 805, then a system of resource regions, councils, and committees, which are focused on subsistence uses specific to public lands will be established.

Public involvement will occur throughout the process of making this determination. Establishment of councils and committees by the Board will occur within 12 months after the date of the Secretaries' determination if they determine that the existing regions, councils or committees do not adequately perform and fulfill the functions in section 805.

Rural determinations—The definition of rural is a key element in the regulations which ANILCA did not define. A significant part of the Federal Subsistence Board's early actions will be to make rural/nonrural determinations.

In order to allow the Board adequate time to effectively consider all current available information associated with making rural determinations, a separate announcement of the preliminary recommendations of the Board on this issue will be released during October. That announcement will solicit comments on the Baord's recommended rural/nonrural determinations and provide for a 60 day public comment period. The public comment period for the rural determinations will end December 10, 1990. The public meetings announced in this request will also be used to receive public comments on rural determinations.

As previously mentioned, this request solicits comments on environmental effects of the Federal program, the existing local advisory committee/regional council system, and on the definition of "customary and traditional" as it applies to the use of fish and wildlife by rural residents on federal public lands. Comments should delineate where concerns exist, provide information and data to support any comment and suggest proposed changes or offer new concepts.

In addition, comments are requested on current Federal Subsistence Regulations, and the public is being advised that a section 810 Evaluation will be prepared. The public is also being advised that a second Request for Public Comment will be published during October of 1990 which specifcially addresses rural determinations obtained from this process.

It remains the Federal government's intention to work in close cooperation with the State. Title VIII allows reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources on public lands by rural Alaskan residents for subsistence purposes are of paramount importance to the Federal government and to the public as a whole.

Extensive public involvement will also be included in the development of final regulations and annual setting of seasons and bag limits. The regulation writing effort will include a Notice of Intent, a public comment period and the acceptance of written and verbal comments throughout the process.

Walter O. Stieglitz,

Chairman, Federal Subsistence Board, Regional Director, U.S. Fish and Wildlife Service, For the Secretary of the Interior.

Michael A. Barton,

Regional Forester, USDA—Forest Service, For the Secretary of Agriculture.

[FR Doc. 90-22655 Filed 9-24-90; 8:45 am]
BILLING CODE 4310-55-M

Wildcat River Advisory Commission Meeting

AGENCY: Forest Service, USDA.

ACTION: Wildcat River Advisory Commission meeting.

SUMMARY: The Wildcat River Advisory Commission will meet on October 18, 1990 at the US Forest Service, Saco Ranger District Office in Conway, New Hampshire. The meeting will begin at 7 p.m. An agenda for the meeting includes review of a draft cooperative agreement between the Town of Jackson, State of New Hampshire and US Forest Service; a review of riverside activities currently underway in the Jackson area; and bridge construction on the Wildcat River.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Carl F. Gebhardt, Staff Officer, White Mountain National Forest, 719 Main Street, Laconia, NH 03247, (phone 603-528-8778).

Dated: September 14, 1990.

Rick D. Cables,

Forest Supervisor.

[FR Doc. 90-22584 Filed 9-24-90; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Mission-LaPawi Creek Watershed Protection Project, Lewis and Nez Perce Counties, Idaho

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho 83705, telephone (208) 334-1601.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mission-Lapwai Creek Watershed Protection Project, Lewis and Nez Perce Counties, Idaho.

The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Mission-LaPawi Creek Watershed Protection Project consists of a system of land treatment measures designed to protect the resource base, reduce off-site sediment and improve the quality of waters entering the Clearwater River. Planned land treatment practices include pasture and hayland planting, critical area planting, grassed wateways, terraces, and sediment basins.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register**

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Dated: September 14, 1990.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention Program, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Paul H. Calverley,

State Conservationist.

[FR Doc. 90-22664 Filed 9-24-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 466]

Resolution and Order Approving the Application of the Indianapolis Airport Authority for Subzone Status at the Alpine Auto Audio Products Plants Greenwood and Indianapolis, IN

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Indianapolis Airport authority, grantee of FTZ 72, filed with the Foreign-Trade Zones Board on October 29, 1987, requesting special-purpose subzone status for the automobile audio and electronic equipment manufacturing plant and warehouse of Alpine Electronics Manufacturing of America, Inc., located in Greenwood and Indianapolis, Indiana, adjacent to the Indianapolis Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Grant of Authority

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, Indianapolis, Indiana, has made application (filed October 29, 1987, FTZ Docket 27–87, 52 FR 43217), in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile audio equipement and electronic components manufacturing plant and warehouse facility of Alpine Electronics Manufacturing of America, Inc., located in Greenwood and Indianapolis, Indiana, adjacent to the Indianapolis Customs port of entry;

Whereas, Notice of said application has been given and published, and full opportunity has been offorded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act of the Board's regulations are satisfied and that the proposal is in the public interest;

Now, therefore, in accordance with the application filed October 29, 1987, the Board hereby authorizes the establishment of a subzone at the Alpine plants in Greenwood and Indianapolis, designated on the records of the Board as Foreign-Trade Subzone 72I at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is therefor subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revene of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its chairman and Executive Officer at Washington, DC, this 17th day of September, 1990, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-22663 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-201-504]

Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review

SUMMARY: On August 6, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. The review covers two manufacturers/exporters of this merchandise to the United States and the period December 1, 1987 through November 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in our preliminary results.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 31870) the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico (52 FR 43415; December 2, 1986). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 654.0018 of the *Tariff Schedules of the United States Annotated* (TSUSA). These products are currently classifiable under the *Harmonized Tariff Schedule* (HTS) item number 7323.94.00. Kitchenware currently entering under item number 7323.94.00.10 is not subject to the order. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters, Troqueles y Esmaltes, S.A. (TRES) and CINSA, S.A. de C.V., to the United States of Mexican porcelain-on-steel cooking ware and the period December 1, 1987 through November 30, 1988.

Final Results of the Review

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of our review, therefore, are the same as those presented in the preliminary results of review, and we determine the margins to be:

Manufacturer/ Exporter	Time Period	Margin (Percent)
TRES	12/1/87–11/30/88	1.02
CINSA	12/1/87–11/30/88	1.09

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review, the cash deposit will continue to be at the latest rate applicable to each of those firms. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1988 and who is unrelated to the reviewed firms or any previously reviewed firm, a cash deposit of 1.09 percent shall be required. These deposit requirements are effective for all shipments of Mexican porcelain-on-steel cooking ware entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 18, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-22861 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Open Meeting; European Community Common Approach to Standards Testing and Certification in 1992 Advisory Committee

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Federal Advisory Committee on the European Community Common Approach to Standards, Testing and Certification in 1992 was established on February 23, 1990, to advise the Secretary of Commerce for the purpose of keeping him adequately informed regarding EC '92 standards-related activities in order for him to: (a) Identify those standards, testing procedures, and certification processes which may substantially affect the commerce of the United States; (b) represent U.S. interests to EC organizations; and (c) develop strategies for improving the coordination and cooperation of U.S. Federal, State, local and private sector standards activities.

TIME AND PLACE: October 10, 1990 at 10 a.m.. The meeting will take place in the Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC.

Agenda

1. Introduction of Members and Structure of the Committee.
2. Overview and Discussion of EC Issues in Standards, Testing and Certification.
3. Overview and Discussion of U.S. issues in Standards and Product Acceptance.
4. Discussion of the Challege to U.S. Competitiveness from EC 1992 and the Response from the Standards and Business Community.
5. Open Discussion of Views from Advisory Committee.
6. Discussion of Next Step.

PUBLIC PARTICIPATION: The meeting will be open to the public, and a limited number of seats will be available. Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. Minutes will be available 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Charles M. Ludolph, Director, Office of European Community Affairs, room H3036, U.S. Department of Commerce, Washington, DC 20230, phone (202) 377–5276.

Dated: September 14, 1990.

Charles M. Ludolph

Director, Office of European Community Affairs.

[FR Doc. 90-22662 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a public meeting on September 24–25, 1990, beginning at 9 a.m. each day, at the Ala Moana Hotel, Anthurium Room, 410 Atkinson Drive, Honolulu, HI.

The SSC's meeting agenda items are: (1) National Marine Fisheries Service research results regarding bottomfish and lobsters; (2) a review of crustaceans overfishing amendment; (3) limited access for the Northwestern Hawaiian Islands lobster fishery; (4) a review of bottomfish overfishing amendment; (5) an evaluation of alternative management measures for Main Hawaiian Islands; (6) a report on the Bottomfish Advisory Review Board meeting; (7) a review of precious corals overfishing amendment; (8) Status of Federal regulations to improve compliance with State/Territorial reporting requirements; (9) emergency regulations for the longline fishery; (10)

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a review of pelagics draft amendment #1; (11) a report from Bottomfish and Pelagics Plan Monitoring Team meetings; (12) a review of Pelagics overfishing definition; (13) long-range planning; (14) Magnuson Act reauthorization; (15) a discussion of SSC duties; (16) other business.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: September 19, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Services.

[FR Doc. 90-22629 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold its 70th Council Meeting on September 26–28, 1990, at the Ala Moana Hotel, Anthurium Room, 410 Atkinson Drive, Honolulu, HI. The Council's Standing Committees will meet on September 26, beginning at 8 a.m., and the Council meeting will begin at 9 a.m. on September 27 and 28.

The Council will hear reports from islanders and government fisheries representatives from American Samoa, Guam, Hawaii, and the Northern Mariana Islands. The status of Fishery Management Plans (FMPs) covering crustaceans, bottomfish/seamount groundfish, pelagics and precious corals will be discussed. The Council will also discuss and take action, as appropriate, on the following: (1) A review of crustaceans overfishing amendment; (2) limited access in the Northwestern Hawaiian Islands lobster fishery; (3) the bottomfish annual report; (4) a review of bottomfish overfishing amendment; (5) an evaluation of alternative management measures for Main Hawaiian Islands; (6) a report on the Bottomfish Advisory Review Board meeting; (7) a review of Precious Corals overfishing amendment; (8) status of federal regulation to improve compliance with State/Territorial reporting requirements; (9) emergency regulations for the longline fishery; (10) a review of pelagics draft amendment #1; (11) a review of the pelagics overfishing definition; (12) further discussion of a control date for the longline fishery; (13) election of Council officers; (14) BARB, Plan Team and Advisory Panel appointments; (15) data needs; (16) the Council Milestone Document; and (17) Administrative matters and other business.

The Council will take comments from the public during the Council meeting. The public may also respond in writing to the address listed below.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: September 19, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

FR Doc. 90-22630 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License and Notice of Availability of the Invention; U.S. Bioscience

This notice is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the inventions embodied in U.S. Patents 4,146,622, "Aziridinyl Quinone Anti-Transplanted Tumor Agents", 4,233,215, "Aziridinyl Quinone Antitumor Agents", and 4,704,384, "Aziridinyl Quinone Antitumor Agents" to U.S. Bioscience having a place of business at Blue Bell, PA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive licenses may be granted unless, within ninety days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent 4,146,622 describes a method of treating tumors in mice comprising administering to a tumor-bearing mouse an antitumorically effective amount of the compound 2,5-diaziridinyl-3,6-bis (carboethoxyamino)-1,4-benzoquinone. U.S. Patent 4,233,215 describes 5 aziridinyl quinone antitumor compositions and U.S. Patent 4,704,384 describes a chemotherapeutic method for the treatment of malignant tumors located in the central nervous system of a human patient which comprises administering to said patient an antitumor-effective amount of (a) 2,5-diaziridinyl-3,6-bis (carboethoxyamino)-1,4-benzoquinone.

In accordance with 37 CFR 404.7(a)(1) the announcement is concurrently made that U.S. Patents 4,146,622, 4,233,215, and 4,704,384 are available for licensing.

Copies of these patents may be obtained for $1.50 each from: Box 9, U.S. Patent and Trademark Office, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90-22583 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Statutory Interpretation Concerning Forward Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Statutory interpretation.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing this statutory interpretation regarding certain commercial trnsactions. The development of these transactions has raised questions concerning their status under the Commodity Exchange Act ("Act"), 7 U.S.C. 1, *et seq.* Through this interpretation, the Commission is making clear that these transactions are excluded from regulation under the Act as sales of cash commodities for deferred shipment or delivery.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne T. Medero, General Counsel, or David R. Merrill, Deputy General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION: The Commission has received numerous inquiries concerning the applicability of the exclusion from Commission jurisdiction set forth in section 2(a)(1) of the Act for sales of cash commodities for deferred shipment or delivery (hereinafter "the section 2(a)(1) exclusion") to various, specific commercial transactions. For example, the Commission has recently received inquiries concerning the applicability of the exclusion to certain transactions for the purchase or sale of Brent crude oil commonly known as 15-day Brent contracts.[1] To date, the Commission generally has responded to such inquiries on a case-by-case basis.[2] However, the evolution of commercial transactions of this variety suggests that more guidance by the Commission is appropriate than can be accomplished through case-by-case analysis. Thus, the Commission is issuing this interpretation to make clear its view that certain transactions between commercial parties as discussed below are encompassed by the section 2(a)(1) exclusion and therefore are outside the scope of the Commission's regulatory jurisdiction under the Commodity Exchange Act.[3]

I. Description of Certain Commercial Transactions

As noted, recent inquiries to the Commission have focused on the market which has evolved in 15-day Brent contracts. The Commission understands this market, as currently constituted, to function in relevent part as follows.[4]

Brent system crude oil is a blend of the production of a number of fields in the North Sea which make up the Brent system. The production from these fields in pumped through an underwater pipeline to a loading terminal at Sullom Voe in Scotland.

Cargoes of Brent system crude oil are bought and sold among participants in the Brent market in privately negotiated transactions. A single cargo of Brent system crude oil consists of 500,000 barrels (plus or minus 5% at the buyer's option) of oil, having a current market value of approximately $17 million. The participants in the Brent market are commercial entities, including producers, processors, refiners and merchandisers of petroleum products as well as other entities that buy and sell petroleum products in connection with a line of business, all of which have the capacity to make or take delivery of Brent oil.

Brent oil is purchased and sold in two principal ways. "Dated Brent" contracts specify the date of delivery of the cargo at the time the contract is executed. "15-Day Brent" contracts specify that delivery of the cargo is to be made during a specific month in the future. The seller of the 15-Day Brent cargo must give the purchaser at least 15 day's prior notice of the three-day period during the delivery month in which the cargo must be lifted by the purchaser's designated vessel. While 15-day Brent contracts typically incorporate standard terms and conditions, the contract which governs transactions between particular counterparties is individually negotiated by such counterparties. These negotiations may address a number of the terms and conditions of such contracts, particularly credit terms. Because these tansactions involve a large dollar value, credit risk is substantial and, accordingly, financial terms take on great significance. 15-day Brent contracts have no right of offset, do not rely on a variation margining and settlement system and do not permit assignment of contractual obligations without counterparty consent. Thus, parties enter into such contracts with the recognition that they may be required to make or take delivery.

Each month's production of Brent system crude oil is allocated among the various producers of the crude oil which make up the Brent system, and the system's terminal operator identifies both a producer and a three-day range within each month for each cargo to be lifted. If a producer chooses to apply a particular cargo against its obligations under a contract for the sale of 15-day Brent, it must give the requisite 15-days notice to its purchaser who in turn must provide timely notice to its purchaser. This notification process is repeated forming a chain of buyers and sellers until notice is received by a buyer who elects not to pass the notice further or who has insufficient time to pass on the notice. Participants in the chain effect delivery as the cargo allocated to the particular producer initiating the chain is loaded onto a qualifying cargo vessel designated by the ultimate F.O.P. purchaser of the cargo and nominated in turn by each buyer in the chain to its seller. Title to the cargo passes through each intermediate participant in the chain as the crude oil passes the designated vessel's flange at the loading terminal. Each seller in the delivery chain must provide a bill of lading for the cargo to its purchaser. A seller that fails timely to produce an original bill of

[1] These inquiries were triggered by an opinion and order endered on April 26, 1990 in *Transnor (Bermuda) Limited* v. *BP North America Petroleum, et al.*, 88 Civ. 1403 (WCC) (S.D.N.Y.). Among other things, the District Court in its opinion and order, which denied the motion of several dependents for summary judgment, found that certain 15-day Brent contracts are futures contracts within the meaning of the Commodity Exchange Act. The facts found by the District Court for purposes of its summary judgment ruling indicate that the specific transactions at issue in *Transnor* apparently created no specific delivery obligations between the parties thereto because the contracts, which were entered into solely for purposes relating to the creation of tax benefits under United Kingdom law, were executed as part of an arrangement between the parties that they would be offset. *See* Opinion and Order at pp 13, 44, 53, 57.

[2] *See, e.g.*, CFTC Interpretative Letter No. 89-4 [Off-Exchange Task Force]; CFTC Interpretative Letter No. 88-7, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH ¶ 23,486 (Office of the General Counsel); CFTC Interpretative Letter No. 89-19 (Off-Exchange Task Force); "Characteristics Distinguishing Cash and Forward Contracts and 'Trade' Options", 50 FR 39656 (September 30, 1985). *See also* Letter from Andrea M. Corcoran and Joanne T. Medero, Co-Chairmen, Off-Exchange Task Force, Commodity Futures Trading Commission, dated May 16, 1990 which accompanies Commodity Futures Trading Commission News Release No. 3285-90 dated May 16, 1990; "Policy Statement Concerning Swap Transactions," 54 FR 30694 (July 21, 1989).

Additionally, the Commission in December 1987 published an Advance Notice of Proposed Rulemaking Concerning the Regulation of Hybrid and Related Instruments ("Advanced Notice") in which it solicited and received a number of written comments concerning the appropriateness of a no-action position for certain commercial-to-commercial transactions that resembled traditional forward contracts but for the lack of delivery as the normal culmination of the transactions. 52 FR 47022, 47026–47028 (December 11, 1987). These comments, four of which specifically addressed the market in 15-day Brent contracts, are contained in the Commission's public comment file pertaining to the Advance Notice. The Commission has taken these comments into consideration in issuing this statutory interpretation.

The Commission also has received a number of suggestions that the section 2(a)(1) exclusion should be interpreted to include certain commercial transactions which are only settled in cash. The Commission intends to address at a later date the status of transaction of this type under the Commodity Exchange Act.

[3] On June 29, 1990 the Commission publicly issued a draft of this Statutory Interpretation as prepared by its staff and invited public comment on the draft until July 13, 1990. In response, the Commission received a total of thirteen written comments. The Commision has taken these comments into consideration in finalizing this interpretation for publication.

[4] The Commission's understanding of this market is, in part, based upon information recently provided by participants in the market. *See, e.g.*, Letter to Joanne T. Medero, Esq. and Andrea M. Corcoran, Esq., Co-Chairman, Task Force on Off-Exchange Instruments, Commodity Futures Trading Commission, from Andrew Hall, President, Phibro Energy, Inc. dated May 2, 1990; Letter to Joanne T. Medero, Esq. and Andrea M. Corcoran, Esq., Co-Chairpersons, Task Force on Off-Exchange Instruments, Commodity Futures Trading Commission, from Christopher Fallon, Bear, Stearns & Co. Inc. dated April 30, 1990; Letter to Joanne T. Medero, Esq. and Andrea M. Corcoran, Esq., Co-Chairpersons, Task Force on Off-Exchange Instruments, Commodity Futures Trading Commission, from Neal A. Shear, Managing Director, Morgan Stanley Capital Group Inc. dated May 8, 1990; and Letter to Wendy Lee Gramm, Chairman, Commodity Futures Trading Commission from Richard A. Miller, Newmen, Tannenbaum Helpern Syracuse & Hirschtritt dated September 12, 1988. For a discussion of the market in Brent 15-day contracts, *see generally* R. Mabro, R. Bacon, M. Chadwick, M. Halliwell & D. Long, *The Market for North Sea Crude Oil* (1986).

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lading is obligated to provide its purchaser with a letter of indemnity.

Each purchaser in the delivery chain is obligated to pay to its seller the full purchase price negotiated by it for the cargo and each seller is responsible to its purchaser for the delivery of the cargo. As a result, each seller, in effect, is responsible to its purchaser for its performance regardless of the non-performance of its sellers in the chain, and similarly each purchaser in the chain assumes the risk of loss resulting from the failure of its purchaser to pay the purchase price of the cargo. The full purchase price of the cargo is paid in cash by each purchaser in the chain, in some cases more than once if the purchaser has more than one position in a single chain. The contracts do not contain any provisions specifying or requiring either party to consent to an offset or cash settlement. A party to a 15-day contract has no right under the contract to net obligations under one such contract against obligations arising under another such contract. Each purchaser has the right to require physical delivery under each contract.

The cost of inspection is passed on as part of the purchase price to each participant in the delivery chain. Demurrage charges resulting from overruns in the time permitted to load the cargo are similarly owed by each seller to its purchaser. The ultimate purchaser is obligated to pay any incurred demurrage charges to the ship owner.

In the course of entering into 15-day contracts for delivery of a cargo during a particular month, situations often arise in which two counterparties have multiple, offsetting positions with each other. These situations arise as a result of the effectuation of multiple, independent commercial transactions. In such circumstances, rather than requiring the effectuation of redundant deliveries and the assumption of the credit, delivery and related risks attendant thereto, the parties may, but are not obligated to and may elect not to, terminate their contracts and forego such deliveries and instead negotiate payment-of-differences pursuant to a separate, individually-negotiated cancellation agreement referred to as a "book-out."

Similarly, situations regularly arise when participants find themselves selling and purchasing oil more than once in the delivery chain for a particular cargo. The participants comprising these "circles" or "loops" will frequently attempt to negotiate separate cancellation agreements among themselves for the same reasons and with the same effect described above. Cancellation agreements may also be negotiated among three or more participants who can identify a "circle" or "loop" of transactions among themselves before a cargo is nominated into a chain. Such individually negotiated cancellation agreements can be entered into only with the agreement of all participants in the "circle" or "loop."

In addition to the market in 15-day Brent contracts, U.S. commercial entities participate in other similar markets, both domestic and foreign. Certain participants have represented that these markets use delivery processes analogous to those described above.

II. The Scope of the Commodity Exchange Act

Section 2(a)(1)(A) of the Act grants the Commission exclusive jurisdiction over "accounts, agreements * * * and transactions involving contracts of sale of a commodity for future delivery * * *." 7 U.S.C. 2. The Act requires that transactions in commodity futures contracts occur only on or subject to the rules of boards of trade which have been designated by the Commission as contract markets.[8]

Expressly excluded from the term future delivery under the Act and thus from the Commission's jurisdiction is "any sale of any cash commodity for deferred shipment or delivery" (the section 2(a)(1) exclusion). *Id.* Such sales are commonly referred to as cash forward contracts. The Act sets forth no further definitions of the terms "future delivery" or of the phrase "cash commodity for deferred shipment or delivery."

In determining whether a transaction constitutes a futures contract, the Commission and the courts have assessed the transaction "as a whole with a critical eye toward its underlying purpose." [9] Such an assessment entails a review of the "overall effect" of the transaction as well as a determination as to "what the parties intended." [7] Although there is no definitive list of the elements of futures contracts, the Commission and the courts recognize certain indicia as being characteristic of such contracts.[8]

Just as there is no definitive list of the elements of a futures contract, there is no definitive list of the elements of those transactions which are excluded from regulation under section 2(a)(1) of the Act. However, as is discussed more fully below, in considering whether a particular instrument falls within the section 2(a)(1) exclusion for forward contracts, the Commission and courts traditionally have considered various factors, predicated primarily on the congressional intent underlying the original enactment of the exclusion. The underlying postulate of the exclusion is that the Acts' regulatory scheme for futures trading simply should not apply to private commercial merchandising transactions which create enforceable obligations to deliver but in which delivery is deferred for reasons of commercial convenience or necessity.[9]

In *CFTC* versus *Co-Petro Marketing Group, Inc.*, the Court of Appeals for the Ninth Circuit expressed this traditional view by stating that "a cash forward contract is one in which the parties contemplate physical transfer of the actual commodity." 680 F.2d at 578. Similarly, in 1985, the Office of General Counsel issued an interpretive statement which contained this description of a forward contract:

> First, the contract must be a binding agreement on both parties to the contract: one must agree to make delivery and the other to take delivery of the commodity. Second, because forward contracts are commercial merchandising transactions which result in delivery, the courts and the Commission have looked for evidence of the transactions' use in commerce. Thus, the courts and the Commission have examined whether the parties to the contracts are commercial entities that have the capacity to make or take delivery and whether delivery, in fact, routinely occurs under such contracts.

50 FR 39657 (Sept. 30, 1985) (footnotes omited.)[10]

The Commission's emphasis on delivery as the feature distinguishing transactions within the scope of the section 2(a)(1) exclusion from futures contracts has it roots in the legislative history of the Act.[11] The section 2(a)(1) exclusion was first enacted in 1921 as part of the Future Trading Act. Originally, the exclusion referred to "grain"—the only agricultural commodities then covered by the law—and was intended to exclude from regulation off-exchange private commercial transactions where delivery of the grain was delayed. After the 1921 Act was declared unconstitutional in *Hill* v. *Wallace*, 259 U.S. 44 (1922), its substantive provisions were reenacted as the Grain Futures Act in 1922. That Act was amended in 1936 and renamed the Commodity Exchange Act. Among other things, in 1936 Congress expanded the jurisdiction of the Act to include agricultural "commodities" other than grain which had become the subject of exchange-traded futures contracts and it correspondingly modified the exclusion to refer to "any cash commodity" sold for deferred shipment or delivery. No substantive change was intended by this modification and, while the Act was substantially amended in 1974 again to expand the meaning of the term "commodity" to encompass a broad spectrum of items which may be the subject of futures contracts in addition to the enumerated agricultural commodities,[12] the language of the exclusion in section 2(a)(1) has remained unchanged.

Certain other distinguishing characteristics of such contracts have been identified. In this regard, forward contracts have been described as transactions entered into for commercial purposes related to the business of a producer, processor, fabricator, refiner or merchandiser who may wish to purchase or sell a commodity for deferred shipment or delivery in connection with the conduct of its business.[13] Thus forward contracts may be used to acquire raw material, to purchase and sell inventory or for other merchandising or commercial purposes and, concomitantly, to shift future price risks incident to commercial operations and other forward commitments. Forwards also typically have been described by reference to the commercial nature of the counterparties which have the capacity to make or take delivery. In addition, forward contracts generally are individually and privately negotiated principal-to-principal transactions. The contracts are generally not assignable without the consent of the parties, and do not provide for exchange-style offset. In addition, there is no clearinghouse and no variation margining or settlement system involved.

Despite the breadth of the amendments to the Act it has passed since 1922, Congress has not addressed the reach of the section 2(a)(1) exclusion in the content of today's commercial environment, including with regard to the concept of what constitutes delivery for purposes of the exclusion.[14] Against this background, since 1974 and with increasing frequency, there have evolved in the commercial segments of the economy a diverse variety of transactions involving commodities, examples of which have been described above. These transactions, which are entered into between commercial counterparties in normal commercial channels, serve the same commercial functions as did those forward contracts which originally were the subject of the section 2(a)(1) exclusion notwithstanding the fact that, in specific cases and as separately agreed to between the parties, the transactions may ultimately result in performance through the payment of cash as an alternative to actual physical transfer or delivery of the commodity.

As a result of this evolution, the Commission has determined to issue this statutory interpretation regarding the delivery features of commercial-to-commercial transactions involving commodities it considers to be within the scope of the section 2(a)(1) exclusion.[15] Specifically, with regard to transactions of the type described above, it is significant that the transactions create specific delivery obligations. Moreover, the delivery obligations of these transactions create substantial economic risk of a commercial nature to the parties required to make or take delivery thereunder. These include the risks of demurrage, damage, theft or deterioration of the commodity as well as other risks associated with owning the commodity delivered. All parties entering into these contracts must have the capacity to bear such risks and cannot discharge these obligations through exchange-style offset.

In the case of 15-day Brent contracts, as discussed above, the contracts mature when specific Brent cargos are identified or "nominated" for sale to those commercial participants who remain in the distribution chains resulting from contracts which have been previously entered into among the participants. As to these participants, delivery is effected by the physical loading of the cargo into a qualifying vessel, with title to the cargo as well as a bill of lading passing through the hands of each participant in the chain.

As is noted above, a party to contracts of this type may individually negotiate cancellation agreements, commonly known as "book-outs," "close-outs" or "by-passes," with other parties in a chain, circle or loop in a distribution chain and which may result

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[8] Specifically, section 4(a) of the Act provides, *inter alia*, that it is unlawful to enter into a transaction involving a commodity futures contract that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contact market' for such commodity 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. *Id.* The exchange trading requirement reflects Congress' view that such an environment would control speculation and promote hedging. H.R. Rep. No. 44, 67th Cong. 1st Sess. 2 (1921). *See also* section 3 of the Act, 7 U.S.C. 5 (Congressional findings concerning necessity for regulation of futures and commodity option transactions). Pursuant to section 4c(b) and 4c(d), 7 U.S.C. 6c(b) and 6c(d) of the Act, the Commission has authority to permit transactions involving commodity options which do not take place on contract markets.

[9] *CFTC* v. *Co Petro Marketing Group, Inc.*, 680 F.2d 573, 581(9th Cir. 1982).

[7] *CFTC* v. *Trinity Metals Exchange*, No. 85–1482–CV–W–3(W.D. Mo. January 21, 1986) (citing *CFTC* v. *National Coal Exchange, Inc.* [1980–1982 Transfer Binder] Comm. Fut. L. Rep (CCH) ¶ 21,424 at 26,046 (W.D. Tenn. 1982)).

[8] *See generally* Advance Notice, 52 FR 47022, 47023 (December 11, 1987) *(citing In the Matter of First National Monetary Corp.* [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 (CFTC 1985))). *See also CFTC* v. *CoPetro Marketing Group Inc., supra; CFTC* v. *Comercial Petrolera Internacional S.A.*, [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,222 at 25,088 (S.D.N.Y. 1981); Interpretative Statement, "The Regulation of Leverage Transactions and Other Off-Exchange Future Delivery Type Instruments," 50 FR 11658 (March 25, 1985).

[9] For a general discussion of the traditional usage of forward contracts, *see* A Paul. R. Heifner & J. Helmuth, *Farmers' Use of Forward Contracts and Futures Market* (U.S. Department of Agriculture, Agricultural Economic Report No. 320 (1976)).

[10] *See also In re Stovall, supra*, wherein the Commission reviewed the history of the forward exclusion in a case charging the unlawful sale of off-exchange futures contracts. The Commission concluded that the exclusion was enacted "to make clear that the 1921 [Future Trading] Act was not intended to interfere with the cash grain." ¶ 20,941 at 23,777. *Stovall* holds that "the cash commodity exclusion was intended to cover only contracts for sale which are entered into with the expectation that delivery of the actual commodity will eventually occur through performance on the contract. The seller would necessarily have the ability to deliver and the buyer would have the ability to accept delivery in fulfillment of the contract." *Id.*

[11] For a detailed discussion of the history of the forward contract exclusion, *see* the September 5, 1978 Memorandum to the Commission from its Office of the General Counsel appearing at 44 FR 13494, 13498 (March 12, 1979).

[12] In particular, the 1974 amendments to the Act, among other things, expanded the definition of "commodity" to include, in addition to enumerated agricultural products, all other goods and articles (except onions) as well as "all services, rights and interests in which contracts for future delivery are presently or in the future dealt in." Thus, since 1974, commodities of all varieties, both tangible and intangible, may be the subject of futures contracts.

[13] *See, e.g.*, T. Hieronymous, *Economics of Futures Trading for Commercial and Personal Profit*, 32, 75, 218 (1977).

[14] On several occasions during the 1970s, various members of Congress have introduced or proposed to introduce bills concerning forward contracting of domestic agricultural commodities, and Congress on several occasions held hearings concerning such contracts. For a detailed recitation of these bills and hearings, *see* Gillen and Jaeger, *Forward Contracting in Agricultural Commodities: A Case History Analysis of the Cotton Industry*, 12 John Marshall Journal of Practice and Procedure 253, 284–286 (1979). None of these bills or hearings, however, focused upon the applicability of the section 2(a)(1) exclusion to transactions of the type discussed herein.

[15] As has been noted above, as the range of commodities which are the subject of exchange-traded futures contracts has evolved and expanded, Congress has expanded the Act's definition of what constitutes a commodity which may be the subject of a futures contract regulated by the Commission. The Commission by this interpretation is not, at this time, addressing the applicability of the section 2(a)(1) exclusion to transactions involving commodities which cannot be physically delivered.

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in a cash payment-of-differences between the parties involved. It is noteworthy that while such agreements may extinguish a party's delivery obligation, they are separate, individually negotiated, new agreements, there is no obligation or arrangement to enter into such agreements, they are not provided for by the terms of the contracts as initially entered into, and any party that is in a position in a distribution chain that provides for the opportunity to book-out with another party or parties in the chain is nevertheless entitled to require delivery of the commodity to be made through it, as required under the contracts.

Under these circumstances, the Commission is of the view that transactions of this type which are entered into between commercial participants in connection with their business, which create specific delivery obligations that impose substantial economic risks of a commercial nature to these participants, but which may involve, in certain circumstances, string or chain deliveries of the type described above, are within the scope of the section 2(a)(1) exclusion from the Commission's regulatory jurisdiction.[10]

III. Conclusion

This statutory interpretation is intended to clarify the treatment of certain commercial transactions of the type discussed above in order to facilitate legitimate economic activity.

The Commission will continue to review on a case-by-case basis transactions that do not fall within the scope of section 2(a)(1) exclusion as discussed in this statutory interpretation.

Issued in Washington, DC on September 19, 1990 by the Commission (Chairman Gramm and Commissioners Hineman and Albrecht) (Commissioner West, dissenting).

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-22695 Filed 9-24-90; 8:45 am]

BILLING CODE 6351-01-M

[10] This does not mean, however, that these transactions or persons who engage in them are wholly outside the reach of the Commodity Exchange Act for all purposes. *See, e.g.*, section 6(d) of the Act, 7 U.S.C. 12(d), which directs the Commission to investigate the marketing conditions of commodities and commodity products and byproducts, including supply and demand for those commodities, cost to the consumer, and handling and transportation charges; and sections 6(b), 6(c) and 9(a), 7 U.S.C. 9, 13b, 13(b), which prescribe any manipulation or attempt to manipulate the price of any commodity in interstate commerce.

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration; DOE

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATED: Comments must be filed by October 25, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-73) Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Civilian Radioactive Waste Management.
2. RW-859.
3. 1901-0287.
4. Nuclear Fuel Data Form.
5. Revision.
6. Annually, on occasion.
7. Mandatory.
8. Businesses or other for profit.
9. 59 respondents.
10. 127 responses.
11. 30 hours per response.
12. 3,810 hours.
13. The Form RW-859 collects data to be used by the Office of Civilian Radioactive Waste Management to define, develop, and operate its programs which require information on spent nuclear fuel inventories, generation rates, and storage capacities. Respondents are all owners of nuclear power plants and owners of spent nuclear fuel.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a, and the Nuclear Waste Policy Act, 42 U.S.C. 10101 *et seq.*

Issued in Washington, DC, September 18, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-22710 Filed 9-24-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES90-48-000, et al.]

UtiliCorp United Inc., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES90-48-000]

September 14, 1990.

Take notice that on September 11, 1990, UtiliCorp United Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act authorizing the Applicant to issue up to and including 4,000,000 shares of common stock, par value $1.00 per share, and for exemption from the competitive bidding requirements of the Commission.

Comment date: October 10, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Upper Peninsular Power Co.

[Docket No. ES90-47-000]

September 17, 1990.

Take notice that on September 11, 1990, Upper Peninsula Power Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authority to issue $12,000,000 principal amount of short-term notes on or before October 1, 1992 with a final maturity date no later than October 1, 1993.

Comment date: September 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER90-568-000]

September 17, 1990.

Take notice that PSI Energy, Inc. (PSI) on September 4, 1990, tendered for filing an Interchange Agreement, dated August 31, 1990, between PSI Energy, Inc. and American Municipal Power-Ohio, Inc. (AMP-Ohio). The Agreement provides for the following types of interchange services from PSI:

1. Short-Term Power.
2. Scheduled Supplemental Power.
3. Bulk Transmission Service.

AMP-Ohio is to arrange with other utilities interconnected with PSI for receipt of such power and energy.

Also PSI and AMP-Ohio have agreed to terminate the present agreements between the parties as follows:

Rate schedule FERC No.	Description
237	Transmission Service Agreement.
238	Interim Power Agreement.
239	Short-Term Power Agreement.

Copies of the filing were served on AMP-Ohio, the Public Utilities Commission of Ohio, and the Indiana Utility Regulatory Commission.

The parties have requested a waiver on the Commission's Rules and Regulations to permit the proposed service to become effective August 1, 1990

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Metropolitan Edison Co.

[Docket No. ER90-569-000]

September 17, 1990.

Take notice that on August 30, 1990, Metropolitan Edison Company, pursuant to the Commission's order of July 19, 1990, tendered for filing requisite copies of the 1977 Agreement between General Public Utilities Corporation and its subsidiaries and Allegheny Electric Cooperative, Inc.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Safe Harbor Water Power Corp.

[Docket No. EL90-46-001]

September 17, 1990.

Take notice that on August 13, 1990, Safe Harbor Water Power Corporation tendered for filing its refund report in compliance with the Commission's order issued on July 20, 1990 in this docket.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Bangor Hydro-Electric Co., UNITIL Power Corp.

[Docket No. ER90-32-000]

September 17, 1990.

Take notice that Bangor Hydro-Electric Company (Bangor) and UNITIL Power Corporation (UNITIL) on August 31, 1990 tendered for filing as an Initial Rate Schedule, an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to UNITIL of 10,000 KW of electric generating capability during November 1, 1990 through October 31, 1990 and the total output associated therewith.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Dartmouth Power Associates Limited Partnership

[Docket No. ER90-278-000]

September 17, 1990.

Take notice that on September 10, 1990, Dartmouth Power Associates Limited Partnership, organized under the laws of the Commonwealth of Massachusetts, submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Commonwealth Electric Company. The initial rate schedule includes an August 3, 1990, amendment of the initial rate schedule filed by Dartmouth in this docket on March 21, 1990 to provide for the sale to Commonwealth of additional capacity and associated energy.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa Power Inc.

[Docket No. ER90-575-000]

September 17, 1990.

Take notice that on September 5, 1990, Iowa Power Inc. (Iowa Power) tendered for filing a Second Seasonal Diversity Exchange Agreement between Iowa Power and Central Iowa Power Cooperative (CIPCO) dated April 30, 1990.

Iowa Power states that the Second Diversity Exchange Agreement is a negotiated Agreement for the exchange of 20 MW of power and energy on a seasonal basis, with Iowa Power providing to CIPCO 20 MW of capacity for the 1990 winter season and CIPCO providing to Iowa Power 20 MW for the 1990 summer season; and Iowa Power states that the Iowa State Utilities Board and CIPCO have been mailed copies of the Agreement.

Iowa Power requests an effective date of May 1, 1990, and therefore requests waiver of the Commission's notice requirements.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Bangor Hydro-Electric Co., Public Service Co. of New Hampshire

[Docket No. ER90-21-000]

September 17, 1990.

Take notice that Bangor Hydro-Electric Company (Bangor) and Public Service Company of New Hampshire (PSNH) on August 31, 1990 tendered for filing as an Initial Rate Schedule an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to PSNH of 5,000 KW of electric generating capability during November 1, 1990 through April 30, 1990 and the total output associated therewith.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Power Administration

[Docket No. EF90-3011-000]

September 17, 1990.

Take notice that on August 29, 1990, the Deputy Secretary of Energy tendered for filing on behalf of the Southeastern Power Administration (Southeastern) for confirmation and approval on a final basis effective October 1, 1990, pursuant to Delegation Order No. 0204-108, Rate

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Schedules GA-1-C, GA-2-C, GA-3-B, GU-1-C, ALA-1-G, ALA-3-C, MiSS-1-G, MISS-2-C, SC-3-B, SC-4-A, SC-5-A, CAR-3-B, CAR-4-A, SCE-2-B, SCE-4-A, and GAMF-2-F for power from Southeastern's Georgia-Alabama System of Projects. The Deputy Secretary states that the rates have been approved on an interim basis through September 30, 1993. The Deputy Secretary also tendered Rate and Repayment Data and copies of power contract amendments not now contained in the Commission's files.

Comment date: October 1, 1990 in accordance with Standard Paragraph E at the end of this notice.

11. North Carolina Electric Membership Corp. v. Virginia Electric and Power Co.

[Docket No. EL90-49-000]

September 17, 1990.

Take notice that on September 10, 1990 North Carolina Electric Membership Corporation (NCEMC) tendered for filing a complaint against Virginia Electric Power Company (VEPCO) requesting the initiation of an investigation to determine whether VEPCO's present rates for wholesale firm power under FERC Rate Schedule 105, as well as the increased rates VEPCO has sought in its filing in Docket No. ER90-540-000 are unjust, unreasonable and unduly discriminatory and, if so, to decrease those rates to a just, reasonable and non-unduly discriminatory level. NCEMC also requests the Commission to set a refund effective date of not more than 60 days after the filing of the complaint or at the end of any suspension period ordered in Docket No. ER90-540-000 whichever is later, and to consolidate this docket with Docket No. ER90-540-0000.

Comment date: October 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Co.

[Docket No. FA89-17-000]

September 17, 1990.

On July 20, 1990, the Office of Chief Accountant issued a report on the examination of the books and records of Central Maine Power Company (Central Maine) for the years 1984-1988. 52 FERC ¶ 62,045. As noted in that report, Central Maine disagrees with Correcting Entry No. 1 on Schedule No. 2 and other Compliance Exception No. 1 on Schedule No. 5 concerning the accounting for premiums paid to reacquire preferred stock and the related expenses. By letter filed August 15, 1990, Central Maine consented to disposition of this matter under the shortened procedures set forth in 18 CFR part 41.

Therefore, initial memoranda of facts and arguments shall be due on or before October 17, 1990. Replies shall be due on or before November 6, 1990.

13. Northern States Power Co. (Minnesota)

[Docket No. ER90-344-000]

September 14, 1990.

Take notice that on August 22, 1990, Northern States Power Company (Minnesota) tendered for filing Supplement No. 5, dated August 17, 1990, to the Interconnection and Interchange Agreement, dated January 25, 1968, between NSP-MN, Northern States Power Company (Wisconsin Company), and Wisconsin Public Service Corporation (WSP).

This Supplement No. 5 serves as an amendment to NSP-MN's original filing (Docket No. ER90-344-000) which was submitted after Supplement No. 4 to the Interconnection and Interchange Agreement was executed.

The Interconnection and Interchange Agreement provides for interconnected electrical operation between the parties' systems, as well as for the interchange of electrical power and energy between the parties. Supplement No. 4, dated April 23, 1990, modified the agreement by adding the new Arpin Substation point of interconnection, and adding two new service schedules, System Power and Supplement Energy, under which NSP, as seller, may enter into transactions with WPS.

NSP-MN filed Supplement No. 4 with the Federal Energy Regulatory Commission on April 30, 1990. This filing is now being amended by this Supplement No. 5 which modifies NSP-MN's Supplemental Energy rate set forth in the service schedule.

As in the original filing, NSP-MN still requests that the Commission make May 1, 1990 the effective date of the proposed System Power and Supplemental Energy Schedules (Service Schedules G & H) to allow the parties to immediately realize the mutual benefits available. The parties are currently interchanging power and energy under those schedules, pending the outcome of this filing.

Comment date: September 28, 1990, in accordance with Standard Paragraph E at the end of this notice.

14. Gulf States Utilities Co.

[Docket No. ER90-578-000]

September 19, 1990.

Take notice that Gulf States Utilities Company (Gulf States) on September 7, 1990, tendered for filing a description of an oral agreement between Gulf States and Alabama Electric Cooperative, Inc. (AEC) for the short-term sale of up to 200 MW of replacement energy at a rate of 21.54 mills/kwh beginning September 8, 1990.

Gulf States states that it and AEC are currently negotiating an Interchange Agreement which, among other things, would provide for the sale and purchase of replacement energy. However, the negotiation of the Interchange Agreement will not be completed in time to allow for the short-term transaction beginning September 8, 1990.

Pursuant to § 35.11 of the Commission's regulations, Gulf States requests an effective date for the oral agreement of September 8, 1990, the date on which the short-term sale will begin. Gulf States requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to allow this effective date.

Copies of the filing were served on Alabama Electric Cooperative, Inc.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

15. Oklahoma Public Service Co.

[Docket No. ER90-580-000]

September 19, 1990.

Take notice that on September 7, 1990, Oklahoma Public Service Company (PSO) tendered for filing a proposed decrease in rates to its full-requirements wholesale customers. PSO seeks an effective date of September 1, 1990, and, accordingly, seeks waiver of the Commission's notice requirements.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Power & Light Co.

[Docket No. ER90-581-000]

September 19, 1990.

Take notice that on September 10, 1990, Wisconsin Power & Light Company (WP&L) tendered for filing the Amendment to the Wholesale Power Agreement between the Rock County Electric Cooperative and WP&L. WP&L states that this amendment amends the previous agreement between the WP&L and the Rock County Electric Cooperative dated November 17, 1989.

WP&L requests an effective date of July 30, 1990, and therefore requests waiver of the Commission's notice requirements.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

17. American Electric Power Service Corp.

[Docket Nos. ER84-348-013 and ER84-348-014]

September 19, 1990.

Take notice that on August 31, 1990, American Electric Power Service Corporation tendered for filing its Revised Compliance Report in the above referenced dockets.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corp.

[Docket No. ER90-583-000]

September 19, 1990.

Take notice that on September 10, 1990, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate schedule No. 142, an agreement between Niagara Mohawk and the Long Island Lighting Company (LILCO).

Rate Schedule No. 142 provides for the wheeling of certain loads by Niagara Mohawk to LILCO. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1990 and requests waiver of the Commission's notice requirements. In support thereof, Niagara Mohawk states that LILCO has consented to this proposed effective date.

Niagara Mohawk states that copies of this filing were served upon the Public Service Commission of the State of New York and the Long Island Lighting Company.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

19. Montaup Electric Co.

[Docket No. ER90-577-000]

September 19, 1990.

Take notice that on September 6, 1990 Montaup Electric Company (Montaup) filed a Letter Agreement under which Montaup sold 2.5685% (15 MW) of capacity and associated energy from Canal 2, an oil-fired cycling unit, to Boston Edison Company (BECo) for the period November 1, 1989 through April 30, 1990.

The sale provided BECo with needed capacity and energy while enabling Montaup to sell temporary surplus capacity. By paying the negotiated demand charge of $10.00/kW-month for the purchase of Canal 2, BECo avoided capacity deficiency charges from the New England Power Pool and filled a portion of the energy void caused by the prolonged outage of its Pilgrim nuclear power plant.

BECo's need for capacity and energy could not be determined in time to prepare and file the Letter Agreement in compliance with the required 60-day notice period. Montaup requests waiver of the notice requirement to permit the Letter Agreement to become effective on November 1, 1989 according to its terms.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER90-576-000]

September 19, 1990.

Take notice that on September 6, 1990, Southern Company Services, Inc. tendered for filing a new Short-term Unit Power Sales Agreement between Florida Power & Light Company and SCS.

Comment date: October 3, 1990, in accordance with Standard Paragraph E end of this notice.

21. Boston Edison Co.

[Docket No. ER90-585-000]

September 19, 1990.

Take notice that on September 14, 1990, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Cambridge Electric Light Company (Cambridge), under its FERC Electric Tariff, Original Volume No. IV, Non-Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Cambridge under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, May 1, 1990.

Edison states that it has served the filing on Cambridge and the Massachusetts Department of Public Utilities.

Comment date: October 4, 1990, in accordance with Standard Paragraph E end of this notice.

22. Pacific Gas and Electric Co.

[Docket No. ER90-586-000]

September 19, 1990.

Take notice that on September 14, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing as an initial rate schedule, an agreement entitled Special Facilities Agreement for Interconnection of NCPA's Combustion Turbine at Roseville (Special Facilities Agreement), between Northern California Power Agency and PG&E.

The Special Facilities Agreement pertains to the rate, terms, and conditions under which PG&E will own, operate, and maintain the facilities specially installed in order to provide the interconnection. Under the Special Facilities Agreement, PG&E charges NCPA a customer advance and a montly Cost of Ownership Rate, equal to the Cost of Ownership Rate for Transmission-level, Customer-financed facilities filed with the California Public Utilities Commission (CPUC) pursuant to Electric Rule 2. The Cost of Ownership Rate is expressed as a montly percentage of the installed cost of the facilities.

PG&E has also requested to be allowed automatic rate adjustments whenever the CPUC authorizes new Electric Rule 2 Cost of Ownership Rate.

Copies of this filing were served upon NCPA and the CPUC.

Comment date: October 4, 1990, in accordance with Standard Paragraph E end of this notice.

23. Montana Power Co.

[Docket No. ER90-584-000]

September 19, 1990.

Take notice that on September 13, 1990, Montana Power Company (MPC) tendered for filing the Notice of Assignment of Rate Schedule FPC No1. 40 and Supplement No. 14 (Supersedes Supplement No. 13 to Rate Schedule FPC No. 40), effective July 1, 1990, filed by MPC from Big Horn County Electric Cooperative, Inc. to Central Montana Electric Power Cooperative, Inc.

Comment date: October 4, 1990, in accordance with Standard Paragraph E end of this notice.

24. Gulf States Utilities Co.

[Docket No. ER90-583-000]

September 19, 1990.

Take notice that on December 12, 1990, Gulf States Utilities Company tendered for filing (1) an Agreement For Wholesale Electric Service between Gulf States Utilities Company (Gulf States) and Tex-La Electric Cooperative of Texas, Inc. (Tex-La) (Agreement), (2) Exhibit A to the Agreement, (3) Rate Schedule WPS—Wholesale Power Service, (4) Rider A to the Agreement, and (5) Service Schedule EP Emergency Power.

Gulf States that Tex-La will become a new wholesale customer of Gulf States. The rates for the wholesale service to be provided to Tex-La as set forth in Rate Schedule WPS are the same as Gulf States' rates for wholesale service to other customers.

Gulf States requests an effective date for the Agreement and rate and service

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schedule so that service may begin on December 3, 1990.

Copies of the filing were served on Tex-La and each wholesale customer of Gulf States which purchases service under Rate Schedule WPS or a comparable rate schedule.

Comment date: October 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

25. PSI Energy, Inc.

[Docket No. ER90-536-000]

September 19, 1990.

Take notice that on September 10, 1990, PSI Energy, Inc. submitted for filing additional information requested by Staff in this docket.

Comment date: October 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

26. Southern California Edison

[Docket No. ER90-579-000]

September 19, 1990.

Take notice that on September 10, 1990, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following Agreement, executed on July 27, 1990, by the respective parties:

Edison-PG&E Transmission Agreement

Between

Southern California Edison Company

and

Pacific Gas and Electric Company

The filed Agreement establishes the terms and conditions under which Transmission Service will be provided to PG&E from Edison over certain Edison facilities.

In addition, Edison requests implementation of the Commission Annual Charge Tariff to be reimbursed for the annual charge imposed by FERC under 18 CFR, part 382.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22631 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6310-000, Washington]

Gull Industries, Inc.; Availability of Environmental Assessment

September 18, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Barclay Creek Project located on Barclay Creek in Snohomish County near Baring, Washington, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commissioner's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22625 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3511-004 New York]

UAH-Groveville Hydro Associates, Availability of Environmental Assessment

September 19, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license for the Groveville Mills Hydroelectric Project to include 3-foot-high flashboards as part of the licensed project. The project is located on Fishkill Creek in Dutchess County, New York. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission' s Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22626 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-12-22-003]

CNG Transmission Corp. Proposed Supplemental Filing

September 18, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on September 14, 1990, pursuant to Section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, et al., and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Traiff, filed six (6) copies of the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Substitute First Revised Sheet No. 211

The tariff sheets are proposed to become effective on August 1, 1990.

The purpose of the filing is to correct an inadvertent error appearing on "First Revised Sheet No. 211." CNG also withdraws First Revised Sheet No. 211.

CNG states that copies of this filing were served upon CNG's customers as well as interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22620 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-14-001]

CNG Transmission Corp.; Proposed Supplemental Filing

September 18, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on September 14, 1990, pursuant to section 4 of the National Gas Act, the stipulation and agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, *et al.*, and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed six (6) copies of the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Substitute First Revised Sheet No. 53

The tariff sheets are proposed to become effective on September 1, 1990.

The purpose of the filing is to correct an inadvertent error appearing on "First Revised Sheet No. 53". CNG also withdraws First Revised Sheet No. 53.

CNG states that copies of this filing were served upon CNG's customers as well as interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22621 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-249-002]

Columbia Gulf Transmission Corp.; Motion to Supplement Compliance Filing

September 18, 1990.

Take notice that on September 10, 1990, Columbia Gulf Transmission Corporation (Columbia Gulf) filed a motion to supplement its March 27, 1990 compliance filing, which included a Motion to Place Proposed Rate Into Effect. The March 27 filings purported to list the tariff sheets to be placed into effect, but inadvertently omitted referencing certain of the tariff sheets originally filed by Columbia Gulf and accepted by the Commission. Columbia Gulf now seeks authorization to complete the list of tariff sheets included with its March 27 filing.

Columbia Gulf states that it submitted its compliance filing pursuant to the Commission's October 31, 1989 order that accepted subject to refund and suspension Columbia's tariff sheets, filed on September 29, 1989, with an effective date of April 1, 1990. *Columbia Gulf Transmission Corp.*, 49 FERC ¶ 61,110 (1989) (*Columbia Gulf*). The tariff sheets reflected proposed revisions to Columbia Gulf's FERC Gas Tariffs, Original Vol. Nos. 1 and 2. Columbia Gulf states that the Commission by order of April 30, 1990, accepted the March 27 filing, subject to refund.

Columbia Gulf states that it recently discovered that it had inadvertently omitted from the listing of tariff sheets contained in its Motion to Place Proposed Rates Into Effect some tariff sheets originally filed in the instant docket and which the Commission approved in *Columbia Gulf*. It asserts that acceptance of the omitted sheets accords with the Commission's intent, conforms Columbia Gulf's tariff with Columbia Gas Transmission Corporation's essentially identical tariff filing which was accepted effective April 1, 1990, and prejudices no party. Columbia Gulf also requests any necessary waivers to permit the tariff sheets to become effective on April 1, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22624 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 18, 1990.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on September 14, 1990 a revised tariff sheet included in appendix A attached to the filing. Such sheet is proposed to be effective October 1, 1990.

ESNG states that the purpose of the filing is to "track" Transcontinental Gas Pipe Line Corporation's (Transco) increased fixed monthly TOP charges as filed with the Federal Energy Regulatory Commission on August 31, 1990. The impact on ESNG is to increase its fixed monthly take-or pay costs by $3,593 per month for the twelve-month period commencing October 1, 1990.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22617 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7560-004-Texas]

Electric Utility Department of the City of Austin, TX; Surrender of Exemption

September 19, 1990.

Take notice that the Electric Utility Department of the City of Austin, Texas, exemptee for the Longhorn Dam Hydroelectric Project No. 7560 located on the Colorado River, in Travis County, Texas, has requested that its exemption from licensing be terminated. The exemption was issued on April 18, 1986. The exemptee states that no construction has been done on this project and that the project is not economically feasible.

The exemptee filed the request on July 12, 1990, and the exemption for Project No. 7560 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22627 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-2198-000]

Granite State Gas Transmission Inc.; Application

September 18, 1990.

Take notice that on September 14, 1990, Granite State Gas Transmission, Inc. (Applicant), 120 Royall Street, Canton, Massachusetts 02021, filed pursuant to section 7(c) of the Natural Gas Act, an application for a temporary and permanent certificate of public convenience and necessity, with pre-granted abandonment, authorizing interruptible transportation services for two shippers on its pipeline system during the 1990-91 winter season, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant proposes to transport up to 2,000 MMBtu per day for Domtar Gypsum, Inc. (Domtar), a wallboard manufacturer located in Newington, New Hampshire, and up to 3,500 MMBtu per day for WGP, Inc., a cogeneration facility located in Lewiston, Maine. Applicant proposes to provide the transportation services on an interruptible basis for the period from November 1, 1990, through March 31, 1991.

It is stated that both shippers require a short-term interim supply of gas to enable them to continue operations throughout the 1990-91 heating season. Domtar has planned to operate with propane but, because of a delay in contracting for the propane, it will not be available this winter; to meet its combined power supply and steam sales contracts with Central Maine Power and its industrial customers, WGP must have access to a gas supply. It is further stated that both shippers have arranged to purchase an interim supply of vaporized LNG from Distrigas of Massachusetts Corporation (DOMAC) which Tennessee Gas Pipeline Company (Tennessee) will receive through its connection with Boston Gas Company which, in turn, is connected with the DOMAC LNG terminal in Everett, Massachusetts. Tennessee will transport and deliver the gas to Applicant at the point where Tennessee and Granite State interconnect at Haverhill, Massachusetts. Both the Domtar plant in Newington, New Hampshire, and the WGP cogeneration facility in Lewiston, Maine, are located within distribution systems operated by Northern Utilities, Inc. (Northern Utilities), Applicant's affiliated distribution company customer. After receipt of the vaporized LNG from Tennessee, Applicant will transport the gas for the account of Domtar and WGP to existing connections with Northern Utilities, and Northern Utilities will complete the deliveries by transportation through its distribution systems in Newington and Lewiston. No new facilities are required to provide the proposed transportation services.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 1, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211 and the Regulations under the Natural Gas Act [18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22622 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-33-009]

Northern Border Pipeline Co.; Compliance Tariff Filing

September 18, 1990.

Take notice that on September 13, 1990, in compliance with the Commission's July 30, 1990 Order in Docket No. RP89-33-000, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Seventh Revised Sheet No. 156

As a result of Northern Border accepting on August 29, 1990 the Commission's July 30, 1990 order in Docket No. RP89-33, Northern Border has filed to decrease the Minimum Revenue Credit of Rate Schedule IT-1 from 3.809 to 2.656 cents per 100 Dekatherm-Miles.

Northern Border has requested that this compliance tariff sheet be effective July 1, 1990. Northern Border states that copies of this filing have been sent to all parties of record in this proceeding and to all concerned Shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22618 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-52-002]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

September 18, 1990.

Take notice that Western Gas Interstate Company ("Western"), on September 14, 1990, in compliance with the Commission's Order of July 31, 1990 in this proceeding, tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Twenty-Second Revised Sheet No. 10

The proposed effective date for the tariff sheet is August 1, 1990.

Western further states that the tariff sheet reflects in the cost of purchased gas based on the following:

(1) An increase in cost under Western's Rate Schedule G-N of 0.02 cents per Mcf; and (2) a decrease in cost under Western's Rate Schedule G-S of 9.34 cents per Mcf from Western's previously filed rates in this Docket No.

Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22619 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2195-000, et al.]

U-T Offshore System, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. U-T Offshore System

[Docket No. CP90-2195-000]

September 17, 1990.

Take notice that on September 13, 1990, U-T Offshore System (UTOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-2195-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas for CNG Producing Company (CNG), a producer of natural gas, under UTOS' blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-99, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

UTOS proposes to transport on an interruptible basis up to 103,000 Mcf of natural gas on a peak day, 103,000 Mcf on an average day and 37,595,000 Mcf on an annual basis for CNG. UTOS indicates that it would receive the gas at an existing interconnection with the High Island Offshore System at West Cameron Block 167, offshore Louisiana, and would deliver the gas for the account of CNG at the Johnson Bayou Plant in Cameron Parish, Louisiana. UTOS indicates that it would transport the gas for CNG pursuant to UTOS' Rate Schedule IT for a primary term of five years and on a yearly basis thereafter.

It is explained that the service commenced August 1, 1990, under the automatic authorization provisions of section 284.223 of the Commission's Regulations, as reported in Docket No. ST90-90-4487. UTOS indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. U-T Offshore System, Columbia Gulf Transmission Corp.

[Docket No. CP90-2173-000, Docket No. CP90-2174-000]

September 17, 1990.

Take notice that U-T Offshore System, 2800 Post Oak Boulevard, P.O. Box 1396, Houston, Texas 77251, and Columbia Gulf Transmission Corporation, P.O. Box 683, Houston, Texas 77001 (Applicants), filed requests with the Commission in the above-referenced dockets pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Order 509 and Docket No. CP86-239-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests that are open to public inspection.[1]

Information applicable to each transaction, including the shipper's identity, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket (start-up date)
CP90-2173-000 (9-10-90)	Seagull Marketing Services, Inc. (Marketer).	60,000 60,000 21,900,000	OKA	LA	7-1-90, IT, Interruptible	ST90-4495-000 (8-1-90)
CP90-2174-000 (9-10-90)	Entrade Corporation (Marketer).	75,000 30,000 10,950,000	OLA, LA	TN	8-31-90, ITS-1/ITS-2, Interruptible.	ST90-4154-000 (7-16-90)

[1] Offshore Louisiana is shown as OLA.

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3. Stingray Pipeline Co.; Florida Gas Transmission Co.

[Docket No. CP90-2176-000, Docket No. CP90-2177-000]

September 17, 1990.

Take notice that Stingray Pipeline Company, P.O. Box 1642, Houston, Texas 77251-1642, and Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 (Applicants), filed requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Order No. 509 and Docket No. RP89-50, *et al.*, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[1]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; and the initiation service dates with the related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points[1]	Delivery points[1]	Contract date, rate schedule, service type,	Related docket, (start-up date)
CP90-2176-000 (9-11-90).	Elf Exploration, Inc. (Marketer).	75,000 30,000 10,950,000	LA, OLA, OTX	LA, OTX	3-23-90, and 7-18-90 ITS, Interruptible.	ST90-4027 (7-1-90)
CP90-2177-000 (9-11-90).	Kerr-McGee Corporation, (Producer).	50,000 37,500 18,250,000	AL, FL, LA, OLA, MS, TX, OTX.	AL, LA, MS, TX	2-23-90, ITS, Interruptible.	ST90-4437 (8-1-90)

[1] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

4. Columbia Gas Transmission Corp.

[Docket No. CP90-2175-000]

September 17, 1990.

Take notice that on September 10, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue S.E. Charleston, West Virginia 25314, filed in Docket No. CP90-2023-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to construct and operate additional points of delivery for existing wholesale customers, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia requests authorization to construct and operate the facilities necessary to provide twenty-eight (28) additional points of delivery, i.e., 7 commercial, 16 residential, and 5 industrial for various wholesale customers detailed in the application. Columbia states that the volumes Columbia's currently authorized level of service and will be within existing peak day and annual proposed Seasonal Entitlements of such customers. Columbia indicates further that the sales to be made through the proposed points of delivery will be under Rate Schedule CDS and SGS.

Comment date: November 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Co. of America

[Docket No. CP90-2193-000]

Take notice that on September 13, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street Lombard, IL 60148, filed in Docket No. CP90-2193-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Mobil Natural Gas, Inc. (Mobil), a marketer of natrual gas, under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for Mobil between a receipt point in Oklahoma and a delivery point in Illinois.

Natural further states that the maximum daily, average daily and annual quantities that it would transport for Mobil would be 50,000 MMBtu equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 30,000 MMBtu equivalent of natural gas and 10,950,000 MMBtu equivalent of natural gas, respectively.

Natural indicates that it reported in Docket No. ST90-4725 that transportation service for Mobil had begun on July 12, 1990 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: November 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Co. of America

[Docket No. CP90-2164-000]

September 18, 1990.

Take notice that on September 10, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, IL 60148, filed an application in Docket No. CP90-2164-000, pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon Natural's Rate Schedule MS-3 storage service; for permission and approval to abandon its participation in related storage and transportation services provided by Michigan Consolidated Gas Company (MichCon) and ANR Pipeline Company; and request for consolidation of the filing herein with an application for abandonment filed April 10, 1990 by MichCon's Interstate Storage Division (ISD) in Docket No. CP90-1169-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it is currently a storage customer of MichCon under MichCon's Rate Schedule X-15, which among other things, is the subject of MichCon's abandonment filing in

Docket No. CP90-1169-000. Natural states that this service from MichCon support storage services provided under Natural's Rate Schedule MS-3 to thirteen of Natural's firm sales customers. Natural states that MichCon has advised Natural that it will not renew the storage agreement under Rate Schedule X-15, after April 1, 1991. Further, Natural states that because MichCon's storage service underlies Natural's Rate Schedule MS-3 service, it will no longer be possible for Natural to provide service under Rate Schedule MS-3 after April 1, 1991, and that abandonment of service as proposed herein is a necessary consequence of the decision by MichCon not to continue storage service to Natural.

Comment date: October 9, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropirate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commisson, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22623 Filed 9-24-90; 8:45 am]

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Office of Fossil Energy

[Docket No. FE C&E 90-20; Certification Notice-68]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another altrnate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Indeck Energy Services of Olean, Inc., Wheeling, IL	9-10-90	Combine Cycle.	79	Olean, NY

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for futher information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on September 19, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-22709 Filed 9-24-90; 8:45 am]

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Office of Hearings and Appeals, Issuance of Decisions and Orders During the Week of April 23 Through April 27, 1990

During the week of April 23 through April 27, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Center for Community Action, 4/27/90, LFA-0034

The Center for Community Action (CCA) filed an Appeal from a denial by the Office of Management and Review, Office of Conservation and Renewable Energy (CRE), of a Request for Information which the organization had

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submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that CRE correctly applied Exemption 5 of the FOIA to most of the information requested by CCA, but that certain factual information was incorrectly withheld under that exemption. In addition, the DOE found that the justification for withholding the names of DOE employees under Exemption 6 was insufficient. Accordingly, the DOE ordered CRE to release certain factual informaiton and to either release the DOE employee names or issue a new determination consistent with the criteria set forth in the Decision and Order. The DOE also ordered CRE to conduct a further search for responsive documents.

San Jose Mercury News, 4/25/90, KFA-0231

The San Jose Mercury News filed an Appeal from a determination issued by the San Francisco Operations Office in which San Francisco informed the San Jose Mercury News that the document requested in its Freedom of Information Act (the FOIA) request was classified. In considering the Appeal, the DOE found that much of the document, "Pillars of Fire in the Valley of the Giant Mushrooms: Working with X-Ray Laser Beams on the Valley Floor," had been declassified and released already. However, some information remained properly classified and is still exempt from mandatory disclosure. Accordingly, the Appeal was therefore granted in part and denied as to the portions still classified.

Refund Applications

Alabama River Pulp Co., Inc., 4/23/90, RF272-392, RD272-392

The DOE issued a Decision and Order concerning an Application for Refund filed by the Alabama River Pulp Company, Inc. (Alabama) in the subpart V crude oil special refund proceeding. Alabama was an end-user of petroleum products during the price control period. The DOE found no support for the contentions of a group of U.S. states and territories that the applicant had passed through the crude oil overcharges. Nor did the DOE find that augmentation of the cases through discovery was appropriate. As a result, the States' Motion for Discovery was denied. The DOE decided that Alabama is entitled to rely on the end-user presumption of injury and granted a total refund of $23,523.

Exxon Corp./Pargas, Inc., 4/24/90, RF307-5259

The DOE issued a Supplemental Decision and Order in the Exxon Corporation special refund proceeding regarding Pargas, Inc. in *Exxon Corp./Suburban Propane Gas Corp.*, 20 DOE ¶ 85, 104 (1990), the DOE granted a refund of $59,000 plus interest to Quantum Chemical Corp. (Quantum) for purchases made by its affiliates, Suburban Propane Gas, Vangas, Inc., and Pargas, Inc. The DOE had previously issued a Decision granting Pargas a refund for Exxon products purchased by its New Bern, N.C., facility. However, the New Bern purchases were duplicated in the Quantum filing. Accordingly, the refund granted to Quantum was reduced by the amount previously granted to the New Bern facility.

Getty Oil Co./Aristech Chemical Corp., 4/27/90, RF265-2662

Aristech Chemical Corporation (Aristech) filed an Application for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with Getty Oil. Since Aristech filed more than two and a half years after the established filing deadline and did not show good cause for the extremely late filing, the submission was dismissed with prejudice.

Gulf Oil Corp./Braddy's Auto Servicenter, et al., 4/23/90, RF300-8151, et Al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved under the presumption of injury. The total refund granted in this Decision, including accrued interest, is $5,297.

Gulf Oil Corp./Castleberry's, Inc. Big "A" Oil Co., 4/24/90, RF300-5700, RF300-5753

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Big "A" Oil Company, a reseller, and Castleberry's, Inc., a reseller and a consignee. Since Big "A" Oil Company and Castleberry's Inc., are commonly owned, their claims were considered on an aggregate basis. The firms' total allocable share as a reseller plus Castleberry's allocable share as a consignee exceeded $5,000. Therefore, under the presumption of injury, each firm received 40 percent of its allocable share as a reseller. In addition, Castleberry's received 10 percent of its allocable share as a consignee. The total refund granted in this Decision, including accrued interest, is $17,531.

Hilo Coast Processing Co., Michigan Sugar Co., 4/24/90, RF272-14165, RF272-21606

The DOE issued a Decision and Order concerning two Applications for Refund filed in the crude oil special refund proceeding being conducted by the DOE under 10 CFR part 205, subpart V. The DOE determined that the refund claims were meritorious and granted a refund of $70,636. A consortium of states and two territories of the United States filed Objections to these Applications. The DOE denied the objections finding that the industry-wide econometric data submitted by the states did not rebut the presumption that the Applicants were injured by the crude oil overcharges.

Holly Sugar Corp., 4/27/90, RF272-51725, RD272-51725

The DOE's (DOE) Office of Hearings and Appeals (OHA) granted an Application for Refund filed by Holly Sugar Corporation (Holly) in the subpart V crude oil special refund proceeding. A group of twenty-eight states and two territories of the United States (the States) filed consolidated Objections and Comments in opposition to Holly's application. The States also submitted a Motion for Discovery. OHA rejected the State's objections and Motions for Discovery. The refund granted in this case was $68,994.

International Financial Corp., 4/26/90, RR272-55

The DOE issued a Decision and Order which granted, in part, a Motion for Reconsideration submitted on behalf of the International Financial Corporation (IFC). IFC sought reconsideration of a Decision and Order in which its original Application for Refund was denied. *International Financial Corp.*, 20 DOE ¶85,005 (1990). During the period August 19, 1973, through January 27, 1981 (period of crude oil price controls), Saturn Petroleum, an IFC subsidiary, was a reseller of refined petroleum products. In its Motion for Reconsideration, IFC was unable to demonstrate that Saturn Petroleum was unable to pass through the crude oil overcharges to its down-stream customers, and therefore, IFC was unable to receive a refund based upon gallons purchased by Saturn Petroleum. However, in its Motion for Reconsideration, IFC also stated that a portion of its claim was based upon gallons purchased by Windward Air, another of its subsidiaries during the period of crude oil price controls. This Decision stated that because these gallons were purchased for ultimate end-use, we will presume that the firm was injured by crude oil overcharges with respect to this portion of its claim. Accordingly, based upon gallons purchased by Windward Air, the total refund granted to IFC in this Decision is $930.

J.P. Stevens & Co., Inc., 4/25/90, RF272-4531, RD272-4531.

The DOE issued a Decision and Order dismissing an Application for Refund filed by J.P. Stevens & Co., Inc., in the DOE's subpart V crude oil special refund proceeding. In that Decision and Order, the DOE found that J.P. Stevens had waived its right to a refund by filing an Application for Refund from the surface Transporter's escrow account. A Motion for Discovery filed by a consortium of states and territories was also dismissed.

Minnesota Mining Manufacturing Co. 4/26/90, RD272-5110, RF272-5110

The DOE issued a Decision and Order granting a refund from the crude oil overcharge funds to Minnesota Mining & Manufacturing Company (3M), a manufacturer of industrial chemicals, compounds, and consumer products. The Decision also denied a Motion for Discovery filed by a consortium of 31 states and two territories (States) of the United States in opposition to 3M's refund claim. During the period of price controls, 3M was an end-user of numerous refined petroleum products. These products were used to fuel company delivery and sales/service fleets, as chemical plant feedstock, for process heat, and facility heating. None of the products which form the basis of 3M's refund claim were purchased for resale. The States challenged 3M's refund claim, stating that the firm was not injured by crude oil overcharges because it passed these overcharges along to the purchasers of its products. The States supported their claim that 3M was not injured by reference to an analysis of the firm's financial and operating statements which indicated that 3M was a profitable enterprise during the period of price controls. The DOE rejected the States' objections to 3M's refund claim, noting that the fact that a firm generated profits during the price control period does not preclude that firm from receiving a refund for the crude oil refund proceeding. The DOE found that 3M was eligible for a refund of $348,926.

Murphy Oil Corp./Good Oil Comp., et al., 4/27/90, RF309-1040, et al.

The DOE issued a Decision and Order granting three Applications for Refund and denying two Applications for Refund, each filed by The Jacobus Company (Jacobus), in the Murphy Oil Corporation special refund proceeding. The claims were based upon the purchases made by Jacobus and the purchases of three companies which it acquired. The DOE determined that Jacobus was eligible to receive refunds based on its purchases and those of one company which it acquired through a purchase of corporate stock. However, the DOE found with respect to the remaining two acquisitions, that Jacobus was not the eligible recipient of any refunds based on the purchases made by those firms. Because Jacobus had only acquired certain specified assets of the two firms. The total volume approved in this Decision was 4,467,989 gallons and the total of the refund granted was $4,630 (comprised of $3,667 in principal and $963 in interest).

Newton Falls Paper Mills, Inc., 4/24/90, RF272-26238, RD272-26238

The DOE granted an Application for Refund filed by Newton Falls Paper Mills, Inc. (Newton) in the subpart V crude oil special refund proceeding. A group of twenty-eight states and two territories of the United States (the States) filed consolidated Objections and Comments in opposition to Newton's application. The States also submitted a Motion for Discovery. The DOE rejected the States' objections and the Motions for Discovery. The refund granted in this case was $63,884.

Okeelanta Corp. Hamakua Sugar Co., Inc., 4/27/90, RF272-18009, RD272-18009, RF272-41358, RD272-41358

The DOE issued a Decision and Order concerning two Applications for Refund filed in the subpart V crude oil special refund proceeding being conducted by the DOE under 10 CFR part 205, subpart V. The DOE determined that the refund claims were meritorious and granted a refund of $83,917. The DOE also denied a Motion for Discovery filed by a consortium of States and 2 Territories and rejected their challenge to the claims. The DOE denied the States' Objections, finding that the industry-wide economic data submitted by the States did not rebut the presumption that the Applicants were injured by the crude oil overcharges.

Ozarks Gas and Appliance Co., Inc. Ray Ralls Exxon Service, 4/25/90, RF273-51112, RF272-51558

The DOE considered and rejected two Applications for Refund filed in the subpart V crude oil special refund proceeding by the parties whose names appear above (the Parties). OHA found that the Parties were resellers or retailers who had failed to submit sufficient evidence of injury.

Pedersen Oil, Inc./West Star Corp., 4/25/90, RF316-3

The DOE issued a Decision and Order concerning an Application for Refund filed by West Star Corporation in the Pedersen Oil, Inc., special refund proceeding. West Star Purchased Maxwell Oil Company (one of the ERA-identified potential claimants) in February 1983 and claims the refund due to Maxwell. Based on the ERA audit file, Maxwell is eligible for a refund of $319 in principal. However, Maxwell is currently in default (over $8,700 in interest) in its obligations pursuant to a settlement agreement it entered into with the DOE on September 1, 1981. We have determined that Maxwell's refund in the Pedersen proceeding should be used to fund the firms's consent order escrow account therefore, Maxwell's refund of $483 ($319 in principal plus $164 in interest) will be remitted to the DOE Office of Departmental Accounting in partial satisfaction of its debt for interest accrued.

Redco Corp., Inc., 4/26/90, RC272-85

A Supplemental Decision was issued rescinding a refund previously granted to Redco Corporation in the subpart V crude oil special refund proceeding after the refund check sent to the firm was returned as undeliverable and efforts to locate the firm were unsuccessful.

Robert C. McGary/Lunar Oil Co./Bart McElvaney Service/Copeland Oil Co./Gentile Oil Co./Middletown Oil Co., 4/25/90, RR272-48, RR272-49, RR272-50, RR272-51, RR272-52, RR272-53

The DOE considered and rejected six identical Motions for Reconsideration of a decision to deny their Applications for Refund in the subpart V crude oil special refund proceeding. In the original decision, the DOE had found that the parties were resellers and retailers who failed to submit sufficient evidence of injury. The Parties claimed that their incorporation by reference of the testimony of an expert witness at the Stripper Well refiner evidentiary hearings, held by the DOE, was sufficient to establish that they were injured. OHA ruled that the testimony at that hearing was not relevant to the issues involved in the present motions.

Shippers Imperial, Inc., 4/26/90, RC272-84

The DOE issued a Supplemental Order rescinding a refund of $5,285 which had been granted to Shippers Imperial, Inc., in the subpart V crude oil special refund proceeding. Our original Decision and Order granting the funds

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had been returned to us, and we were unable to locate the applicant.

Texaco, Inc./Riggs Texaco, 4/26/90, RF321-1286, RF321-1790

The owner of Riggs Texaco filed two Applications for Refund in the Texaco special refund application on the Texaco refund proceeding. Both Applications were signed by the same person and requested a refund for the exact same purchases. Since the Applications were signed prior to the issuance of the Decision and Order implementing refund procedures in the Texaco proceeding, the applicant was required by that Decision to recertify his Applications. The applicant filed two recertifications, each of which certified that he had filed only one refund application in the Texaco refund proceeding. In view of these false certifications, the DOE determined that the applicant did not have "clean hands" and that both refund claims should therefore be denied.

The Hertz Corp., 4/24/90, RR272-11

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted by The Hertz Corporation. Hertz requested that the DOE reconsider a Decision and Order in which Hertz's Application for Refund in the subpart V crude oil special refund proceeding was denied. *National Car Rental; The Hertz Corp.; Ryder Truck Rental, Inc.*, 17 DOE ¶ 85,733 (1988). Hertz claimed that it was eligible for a subpart V crude oil refund under the end-user presumption of injury. To support this claim, Hertz argued that because it was denied a refund from the Retailers Escrow in the Stripper Well proceedings, it must therefore be considered an end-user in the OHA's subpart V crude oil proceeding. The OHA found Hertz's argument to be without merit and stated that for the purposes of DOE regulations and refund proceedings, rental car agencies are consistently considered to be retailers. As a retailer, Hertz failed to submit a detailed demonstration that it was injured by the crude oil overcharges, and accordingly, its Motion for Reconsideration was denied.

W.R. Johns, 4/26/90, RC272-86

The DOE issued a Supplemental Order rescinding the refund of $17 previously granted to W.R. Johns in *Russell J. Ham, et al.*, because the claimant's refund check had been returned to the DOE, and the DOE was unable to obtain a correct address for the claimant. The DOE also directed that no additional crude oil refunds be dispersed to W.R. Johns.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co., Hometown Gas Co., Inc., *et al.*	RF304-4553	4/24/90
Atlantic Richfield Co./ Ray's Arco, et al.	RF304-8904	4/26/90
Exxon Corp./Davis Oil Co., *et al.*	RF307-5066	4/23/90
Gulf Oil Corp./Dupree Tire & Supply Co. Inc., et al.	RF300-5987	4/25/90
Gulf Oil Corp./Heltzel & Son Gulf.	RF300-10266	4/24/90
Gulf Oil Corp./Ortego Services, Inc.	RF300-5767	4/23/90
Gulf Oil Corp./Palacia Gulf Service, et al.	RF300-10429	4/23/90
Gulf Oil Corp./Richard W. Kyke.	RF300-9310	4/27/90

Dismissals

The following submissions were dismissed:

Name	Case No.
A.B.C. Gas Co	RF321-269
Action Texaco	RF321-2186
Agnew Bros. Service	RF321-2612
Al Ranson's Texaco Service	RF321-734
Al's Texaco Service	RF321-741
Al's Texaco Service	RF321-2611
Allison Lane Texaco	RF321-750
Alverson Way Texaco	RF321-754
Anthony's Texaco at 909	RF321-2714
Arkmo Texaco	RF321-764
Armore Texaco	RF321-765
B.L. Womack	RF321-2722
B&J Texaco	RF321-774
B&L Texaco	RF321-776
BNZ Texaco	RF321-779
Baker's Texaco	RF321-2156
Barrett's Exxon	RF307-17
Barrow's Texaco	RF321-789
Bay & Quaker Texaco	RF321-2610
Bayou Texaco	RF321-2189
Beauregard Texaco	RF321-797
Beck's Texaco	RF321-798
Bell's Sc. University Tex	RF321-805
Belle Chasse Texaco	RF321-804
Ben's Texaco of La Crosse	RF321-2692
Bennis Field Texaco & Rad	RF321-2185
Berger's Texaco	RF321-813
Berry's Texaco	RF321-816
Bert's Texaco	RF321-2182
Berwick Exxon	RF307-208
Big John's Texaco	RF321-2613
Bill Loeffert Texaco	RF321-2701
Bill's Texaco	RF321-834
Bill's Texaco	RF321-837
Bob's Texaco	RF321-2186
Bob's Texaco in Seward	RF321-2706
Bowman & Sieber Texaco	RF321-875
Bowman's Texaco	RF321-876
Boyle's Texaco	RF321-880
Boysen's Texaco	RF321-881
Bozeman Teal Texaco	RF321-2725
Brackett Avenue Texaco	RF321-2614
Bradley's Texaco	RF321-2615
Brooks Texaco	RF321-894
Brown'sTexaco	RF321-896
Bryant Texaco	RF321-901
Buck's Texaco	RF321-907
Buff's Texaco	RF321-909
	RF321-910
Burden's Texaco & Towing	RF321-912
Burnett's Texaco	RF321-915
C&C Grocery	RF321-922
C&C Texaco	RF321-923
C.R. Mullins Texaco	RF321-926
Canterberry's Texaco	RF321-2203
Carroll's Texaco	RF321-951
Carter's Texaco	RF321-952
Central Garage, Inc	RF307-212
Chale's Texaco	RF321-2617
Chalem Park Texaco	RF321-1188
Charlie York Texaco	RF321-965
Charron's Texaco	RF321-969
Christian Texaco	RF321-106
Christie's Texaco	RF321-107
Christy's Texaco Stockton	RF321-108
Chuck's State St. Texaco	RF321-2218
Claudio's Texaco Service	RF321-125
Clint's Texaco	RF321-2618
Coe's Boulder Basic Texaco	RF321-871
Cookenour Texaco	RF321-2232
Cothern's Texaco	RF321-149
Cross Texaco	RF321-2229
Crowe Peel Texaco	RF321-2711
Crum's Texaco	RF321-2621
Curtis O. Labansky	RF321-159
Custer Road Texaco	RF321-160
D.H. Marshall Westgate Texaco	RF321-162
D.W. Texaco	RF321-165
D&D Texaco	RF321-2622
Dave Goulet's Texaco	RF321-172
Dave's Texaco	RF321-2603
Davis Texaco	RF321-2604
Dedham Avenue Texaco	RF321-182
Del's Texaco Service	RF321-183
Denison Texaco Service Center	RF321-186
Dennis Texaco	RF321-189
Dewayne Texaco on First	RF321-2793
Dick's Texaco	RF321-253
Dick's Texaco Service, Inc	RF321-1927
Dick's Texaco Stockton	RF321-3292
Dillon Texaco	RF321-975
Doc's Texaco	RF321-2626
Dodson Texaco	RF321-977
Donald E. Smith Texaco	RF321-987
Doug & Emile Texaco	RF321-990
Doug's Texaco	RF321-2527
East End Texaco	RF321-1006
East End Texaco	RF321-1007
Eastmont Texaco	RF321-1010
Ed's Texaco of Garberville	RF321-1021
Eddie's Texaco	RF321-1026
Eddie's Texaco	RF321-1941
Eddie's P.S. Texaco	RF321-2628
Edda Bohn's Texaco	RF321-1033
Elkn Texaco	RF321-2529
Elliott Petroleum	RF321-1031
Elmer's Texaco	RF321-1065
Elrod's Exxon	RF307-180
Embreston Texaco Service	RF321-1036
Emory & Steve's Texaco	RF321-2630
Engler's Texaco	RF321-204
Eudy's Texaco	RF321-210
Exit 19 Texaco	RF321-2631
Fairview Texaco, Inc	RF321-2704
Farlew's Texaco	RF321-2632
Felkins Texaco	RF321-218
Field Texaco Service	RF321-218
Fort Findlay Texaco	RF321-235
Frank's Arco	RF304-9342
Frankie Texaco	RF321-239
Frank's Texaco	RF321-244
Frank's Texaco of St. Pete	RF321-1622
Freeman's Texaco	RF321-258
Freeman's Texaco Service	RF321-257
G&M Texaco	RF321-367
Gates Texaco	RF321-275
Geo. Stone Texaco Service	RF321-2634
George's Texaco	RF321-286

Name	Case No.
George's Texaco Auto Clinic	RF321-2635
Gibson's Texaco	RF321-289
Gillespie Texaco	RF321-2661
Girton's Texaco	RF321-2662
Glaub's Texaco Service	RF321-1926
Glenn's Freeway Texaco	RF321-297
Gosbel's Texaco	RF321-2667
Grand River Texaco	RF321-307
Grant's Texaco	RF321-2665
Gregoire Distribution	RF321-312
Grimes Texaco	RF321-318
Gulf of Bay Texaco	RF321-324
Haddad and Brooks, Inc	LEE-0014
Hall's Texaco	RF321-2664
Han's Texaco	RF321-2940
Haner's Texaco	RF321-337
Hank's Texaco Service Station	RF321-338
Harold's Texaco on Div	RF321-344
Harrell's Texaco	RF321-345
Harry's Super Service	RF321-1956
Harry's Texaco	RF321-349
Heard's Texaco	RF321-2938
Heartwell Texaco	RF321-356
Henderson's Air Base Texaco	RF321-360
Henwood Texaco	RF321-2720
Herb's Texaco Service	RF321-364
Herndoe's Texaco	RF321-1952
Heskett Texaco Service	RF321-2689
High School Texaco	RF321-1037
Hilltop Texaco	RF321-1041
Homer's Exxon	RF307-897
Homer's Texaco	RF321-1055
Hudson's Texaco	RF321-1062
Hugo Service	RF321-3661
Ike's Texaco of Redwood	RF321-1072
Isakson Oil Co	RF321-2692
Israel Palomes Texaco Ser	RF321-1077
J.C. Auto Repair	RF321-1078
J.C. Murphy's Texaco #1&2	RF321-1079
	RF321-1080
Jack's Texaco	RF321-2641
Jacob's Northwest Texaco	RF321-1087
Jay's Texaco	RF321-1092
Jim's Texaco	RF321-1111
Joe's Texaco	RF321-1126
Joe's Texaco	RF321-1124
John's Texaco on 45th	RF321-2932
Johnny's Texaco on 45th	RF321-2643
Jone's Oil Co., Inc	RF321-2693
Julia's Service Station	RF321-1147
Juniura Gas Grocery	RF321-1150
K&D Texaco	RF321-1151
K&D Texaco	RF321-1152
Keith Nichols Texaco	RF321-542
Kelzer Texaco #1	RF321-545
Kelzer Texaco #2	RF321-546
Kelley's Texaco	RF321-2070
Ken's Texaco of Reno	RF321-1834
Kern Place Texaco	RF321-555
Kettler Tier Co	RF321-2696
Kim's Texaco	RF321-557
Kingaway Texaco	RF321-559
Kocian Texaco	RF321-564
Krause Texaco of Seguin	RF321-2699
Kuffel's Texaco Service	RF321-565
L.E. Ruffin	RF321-2715
Lake Texaco Service	RF321-573
Lakeview Service Station	RF321-575
Larry Powers Texaco	RF321-587
Larry's Texaco in Talega	RF321-2105
Leduc's Texaco	RF321-595
M&H Texaco	RF321-636
Mac's Texaco	RF321-641
Mac's Texaco	RF321-643
Main Street Texaco	RF321-648
Maine's Texaco	RF321-650
Mallory's Texaco #1, 2 & 3	RF321-651
	RF321-652
	RF321-653
Mark's Texaco Service Station	RF321-660
Mass University Texaco	RF321-792
Matt's Texaco	RF321-670
May's Texaco	RF321-674
Max's Texaco	RF321-2685
	RF321-2686
McCormix Corp.	RF304-8949
McCourt's Texaco	RF321-681
McCutcheon Texaco	RF321-2115
Merritt's Texaco	RF321-696
Miyakawa Service, Inc	RF321-373
Morales Brothers Texaco	RF321-378
Morris Texaco	RF321-386
Mullin's Texaco	RF321-393
Murphy's Texaco	RF321-395
Nelson's Texaco Station	RF321-402
Newby's Texaco	RF321-406
Nick's Texaco	RF321-408
Nick's Triangle Texaco	RF321-2133
Nine's Texaco Service	RF321-2638
Ninety Six Texaco	RF321-2132
Nixon's Texaco	RF321-412
No. 6 Texaco Service Sta	RF321-2671
Noble Texaco	RF321-413
Norm's Texaco	RF321-420
Norm's Texaco #1	RF321-419
North Hills Texaco	RF321-2910
North Market Texaco	RF321-424
North Star Mall Texaco	RF321-426
Northside Texaco	RF321-430
Odom's Texaco Service	RF321-439
Ole's Texaco Service	RF321-441
Ollie R. Brast Texaco Ser	RF321-2120
Olm's Texaco	RF321-444
Ordie's Texaco	RF321-446
Oregon City Texaco	RF321-447
Pacific Beach Texaco	RF321-1154
Parklane Texaco	RF321-1181
Pat's Texaco of Stockton	RF321-1166
Pesson's Texaco Ser	RF321-2147
Philpot Texaco	RF321-1192
Pineapple's Texaco	RF321-1197
Plantview Texaco	RF321-1199
Pollin Texaco	RF321-138
Pontel Service Center	RF321-1204
Pop's Texaco	RF321-1202
Porter Road Texaco	RF321-1205
Porter's Texaco on Bean	RF321-2712
Portillo's Texaco	RF321-1206
Porty's Texaco	RF321-2633
Puckett's Texaco	RF321-1212
Quisto Service	RF321-323
R&R Texaco	RF321-1218
Ramirez Bros. Texaco	RF321-1224
Ray Craig's Texaco Ser	RF321-2674
Ray's Texaco	RF321-1230
Reiter's Service Station	RF321-1243
Ritze's Texaco S/S	RF321-1259
Riverside Texaco	RF321-2023
Robin Wood Texaco	RF321-1362
Rockhill Texaco	RF321-1363
Roger's Texaco	RF321-1371
Ron's Texaco, Inc	RF321-1379
Rooney's Texaco	RF321-1384
Roy Akin Texaco	RF321-458
Roy's Texaco	RF321-460
Royal Texaco of Statesville	RF321-2032
Rudy Johnson's Texaco	RF321-3215
ET AL (See Attached List)	
Sample Texaco	RF321-2716
Sheckler's Texaco	RF321-2036
Shenandoah Hills Texaco	RF321-2039
Silver Spring Motor Service	RF321-496
Simmons Texaco	RF321-498
Sines & Son, Inc	RF321-502
Sitton Motor Co	RF321-503
Smith Brothers Texaco	RF321-2045
Sonny Young Texaco	RF321-2047
Sothmann's Texaco	RF321-515
South Main Texaco	RF321-517
South Main Texaco of Green	RF321-2049
Southside	RF321-525
Stanfield Texaco	RF321-1392
Stan's Texaco Service	RF321-1388
Stephan E. Tilley	LFA-0037
Stoker Texaco #1&2	RF321-1402
	RF321-1403
Sullivan Texaco	RF321-1407
Summer Street Texaco	RF321-2929
Sunny Texaco, Inc	RF321-1409
T-Anchor Texaco	RF321-1323
T.B. Lightfoot Texaco	RF321-1924
Tarrytown Texaco	RF321-1843
Terrytown Texaco	RF321-1934
Texaco Service Center #1&2	RF321-1341
	RF321-1342
Thompson's Texaco	RF321-1347
Tim's Texaco	RF321-1352
Tom Brown's Crater Lake Texaco	RF321-1356
Tom Smith's Texaco	RF321-1357
Tom's Glendale Texaco	RF321-2679
Tom's Texaco	RF321-1359
Tom's Texaco	RF321-2636
Totman's Texaco	RF321-1418
Tradewinds Texaco	RF321-1420
Traynor Texaco	RF321-1275
Trimmax Texaco	RF321-1278
Triphammer Texaco	RF321-2644
Tumwater Texaco Service	RF321-1429
Uscola Oil Co	RF321-1438
Van Aradele's Texaco	RF321-1443
Villa Capri Texaco	RF321-1455
Walt's Texaco	RF321-1991
Walter's Texaco of Longview	RF321-1475
Warren's Texaco	RF321-1477
Wayne Murphy's Texaco	RF321-384
Wayne's Texaco of Aberdeen	RF321-1482
Weinbach Texaco	RF321-1987
Well's Texaco	RF321-1490
Westside Texaco	RF321-1279
Willakenzie Texaco	RF321-1281
William's Texaco	RF321-1285
William's Texaco at 131	RF321-2724
Wilson Texaco	RF321-1288
Woody's Texaco	RF321-1974
Wright Texaco	RF321-1296
Wristen Texaco	RF321-1299
Yost Texaco Service	RF321-1303
Yakela Texaco	RF321-1306
3=Way Grocery	RF321-716
558 S. Main Street	RF321-2901
7646 Colonial Drive	RF321-271

APPENDIX

Name of applicant	Case No.
Rudy Johnson's Texaco Station	RF321-3215
Strickland Texaco	RF321-3214
Capitol Texaco	RF321-3210
Colorado County Oil Co., Inc	RF321-3211
McMinn Texaco	RF321-3212
Dan's Getty	RF321-2370
Charles R. Brown Inc	RF321-2377
Bratz Oil Corp	RF321-2381
Al's Auto Serv	RF321-2392
E.J. Skelly	RF321-2396
West Center Skelly	RF321-2397
Truck Harbor Stottlemyre TRK S	RF321-2398
Struble Gas Service	RF321-2399
Marvin's Texaco	RF321-2406
R & J Getty	RF321-2408
Five Corners Getty	RF321-2413
Farmers Co-Op. Grain & Supply	RF321-2414
S.A.C. Tire Service, Inc	RF321-2449
R.L. Auto SVC., Inc	RF321-2450
Mike's Texaco	RF321-2451
Marr Texaco	RF321-2452
Jim's Texaco Services	RF321-2453
Hayes' Texaco	RF321-2455
Bud's Getty	RF321-2456
Jack Sees' Auto Service	RF321-2457
D.S. Buck Inc	RF321-2458
Henry's Texaco	RF321-2459
Thacker's Texaco	RF321-2461

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APPENDIX—Continued

Name of applicant	Case No.
Robert L. Lamkin	RF321-2463
Conner's Texaco	RF321-2464
Albert J. Branch Texaco	RF321-2466
Wood's Texaco	RF321-2468
Warner's Central Garage, Inc	RF321-2469
Warren's Texaco	RF321-2470
Logan's Texaco	RF321-1693

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published losse leaf reporter system.

Dated: September 18, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-22714 Filed 9-24-90; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of June 15 Through June 22, 1990

During the Week of June 15 through June 22, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, which ever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 18, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 15 through June 22, 1990]

Date	Name and location of applicant	Case No.	Type of submission
June 18, 1990	Donald J. Anderson, Idaho Falls, Idaho	LFA-0052	Appeal of an information request denial. If granted: The May 11, 1990 Freedom of Information Request denial issued by the Albuquerque Operations Office would be rescinded, and Donald J. Anderson would receive access to requested documents stating the name of the DOE-RL Contract Specialist who prepared the memorandum addressed to Mr. Dave Fredrickson.
June 19, 1990	Posillico Brothers Asphalt Co., Farmingdale, New York.	RR272-58	Request for modification/rescission in the crude oil refund proceeding. If granted: The June 13, 1990 Dismissal Letter (Case No. RF272-34433) issued to Posillico Brothers Asphalt Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
June 20, 1990	Radiation Sterilizers, Inc., Washington, DC	LFA-0053	Appeal of an information request denial. If granted: The May 17, 1990 Freedom of Information Request Denial issued by the Oak Ridge Operations would be rescinded, and Radiation Sterilizers, Inc., would receive access to documents related to the Nuclear Regulatory Commission's licensing of Radiation sterilizers, Inc., to use radioactive cesium capsules owned by the DOE and manufactured at the Waste Encapsulation and Storage facility.
June 21, 1990	Grove, Inc., Seattle, Washington	LFA-0054	Appeal of an information request denial. If granted: The May 18, 1990 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and Grove, Inc., would receive access to the requested appraisal document titled "C-1 Building Cost Estimate."
June 21	Robert J. Martin, Washington, DC	LRD-0002	Motion for discovery. If granted: Discovery would be granted to Robert J. Martin in connection with the statement of objections submitted in the response to the proposed remedial order (Case No. LRO-0001) issued to Robert J. Martin.
June 21, 1990	Robert J. Martin, Washington, DC	LRH-0001	Request for evidentiary hearing. If granted: An evidentiary hearing would be convened in connection with statements of objections submitted by Robert J. Martin in response to the proposed remedial order issued to Robert J. Martin.

REFUND APPLICATIONS RECEIVED

[Week of June 15 through June 22, 1990]

Received	Name of firm	Case No.
4/30/90	Kelly's Texaco	RF321-4554
6/15/90 thru 6/22/90.	Texaco Oil Refund Applications Received.	RF321-6872 thru RF321-7217
6/15/90 thru 6/22/90.	ARCO Refund Applications Received.	RF304-11877 thru RF304-11890
6/18/90	Village Shop Food Store.	RF309-1405
6/15/90	Eddie Gato Spur	RF309-1406
6/18/90	N&A Auto Service	RF300-11145

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 15 through June 22, 1990]

Received	Name of firm	Case No.
6/18/90	BTU Energy Corporation.	RF300-11149
6/18/90	Suwanee Exxon	RF307-10128
6/19/90	Edward S. Zelley	RF307-10129
6/20/90	Victor C. Smith	RF307-10130
6/21/90	Spradlin Trucking Company.	RF272-78646
6/21/90	Kay & Herring Butane Gas Co.	RF300-11150

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 15 through June 22, 1990]

Received	Name of firm	Case No.
6/22/90	George R. Brown Lease Service.	RF300-11151
6/22/90	Carolina Feed Mills.	RF300-11152
6/22/90	Trezevent Gulf	RF300-11153
6/22/90	L G & R Service	RF300-11154

[FR Doc. 90-22711 Filed 9-24-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Cases Filed During the Week of July 13 through July 20, 1990

During the Week of July 13 through July 20, 1990, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 18, 1990.

George B. Breznay,

Director, Office of Hearing and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

Date	Name and Location of Applicant	Case No.	Type of Submission
July 16, 1990	Natural Resources Defense Council, Washington, DC.	LFA-0059	Appeal of an Information Request Denial. If Granted: The June 12, 1990 Freedom of Information Request Denial issued by the Office of Military Application of the Office of Defense Programs would be rescinded and the Natural Resources Defense Council would receive access to the briefing materials concerning the restart of plutonium processing activities at the Rocky Flats Plant.
July 17, 1990	Benton Pruet d/b/a P & R Trading Company, Clyde, TX.	LEF-0018	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the February 26, 1990 Consent Order entered into with Benton Pruet d/b/a P & R Trading Co.
July 17, 1990	Corum Energy, Houston, TX	LEF-0017	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the January 3, 1990 Consent Order entered into with Corum Energy.
July 17, 1990	Government Accountability Project Washington, DC.	LFA-0060	Appeal of an Information Request Denial. If Granted: The July 10, 1990 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and the Government Accountability Project would receive access to all records regarding the amount of time the agency and its contractor(s) have spent regarding all legal work billable to Edwin L. Bricker.
July 17, 1990	Trigon Exploration, Inc., Lafayette, LA	KEF-0019	Implementation of Special Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the April 21, 1987 Consent Order enterd into with Trigon Exploration Company, Inc. and C. William Rogers; Trigon Exploration Company, Inc. and Omni Drilling Partnership No. 1978-2; Trigon Exploration Company, Inc. and D. Bryan Ferguson; and Trigon Exploration Company, Inc. and Entex.
July 18, 1990	John R. Adams, Guymon, OK	LEF-0020	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the February 20, 1990 compromise settlement of a court judgment entered in the U.S. District Court for the Western District of Oklahoma with respect to a Consent Order with John R. Adams.
July 19, 1990	Davis & Forbes, Hebbronville, TX	LEF-0021	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the June 22, 1988 Agreed Judgment entered in the U.S. District Court for the Southern District of Texas in connection with the Remedial Order issued to Davis & Forbes.
July 20, 1990	Robert L. Jackman, Northport, WA	LFA-0061	Appeal of an Information Request Denial. If Granted: The June 25, 1990 Freedom of Information Request Denial issued by the Freedom of Information and Privacy Acts Branch would be rescinded and Robert L. Jackman would receive access to all DOE information concerning electrical health hazards and electrical efficiency or conservation techniques.

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REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
7/13/90 thru 7/20/90.	Texaco Refund, Applications Received.	RF321-7629 thru RF321-8076
Do	Crude Oil Refund, Applications Received.	RF272-78573 thru RF272-78719
7/13/90	Willie Thompson Arco.	RF304-11943
Do	Drake's Arco	RF304-11944
Do	Willis Harshberger	RF304-11945
Do	Varie Convenience	RF304-11946
7/16/90	Armco Steel Co. LP.	RF322-2
Do	Boise Cascade Corp.	RF323-1
Do	Chuck's Ballard Arco.	RF304-11947
Do	David Wagner Spur.	RF309-1409
Do	Red Carpet Car Wash.	RF315-10003
Do	Red Carpet Car Wash.	RF307-10138
7/17/90	Helmer Bros. Co., Inc.	RF300-11196
Do	A&M Gulf	RF306-11197

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
7/18/90	F.M. Wood Distributor.	RF309-11198
Do	C.M. Dukes Oil Co.	RF307-10140
7/19/90	H&I Grocery	RF304-11948
Do	Helena Marine Service.	RF300-11199
Do	Scott Paper Co.	RF323-2
Do	Transcontinental Shell.	RF315-10002
Do	Inter City Oil Co., Inc..	RF315-10004

[FR Doc. 90-22712 Filed 9-24-90; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed During the Week of August 10 Through August 17, 1990

During the week of August 10 through August 17, 1990, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of these regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 19, 1990.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 10 thorugh August 17, 1990]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 14, 1990	Texaco/Abbott's Texaco, Hardin, KY	RR321-14	Modification/Rescission in the Texaco Refund Proceeding. If Granted: The June 25, 1990 Decision and Order (Case Nos. RF321-21, RF321-5603) issued to Abbott's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Aug. 17, 1990	Rockwell International, Washington, DC	LFA-0063	Appeal of an Information Request Denial. If Granted: The July 16, 1990 Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded, and Rockwell International would receive access to the list of responsive documents.

REFUND APPLICATIONS RECEIVED

Date Received	Name of Refund Proceeding/Name of Refund Application	Case No.
8/10/90 thru 8/17/90.	Crude Oil Refund, Application Received.	RF272-78977 thru RF272-80490
Do	Texaco Oil Refund, Application Received.	RF321-8615 thru RF321-9089
Do	Gulf Oil Refund, Application Received.	RF300-11403 thru RF300-11538
8/10/90	Henry Oil Co., Inc.	RF323-3
Do	Hutter's Arco	RF304-11954
8/13/90	Clarke Bros., Inc.	RF323-4
Do	William Mills Fuel	RF304-11955
Do	Fred Partridge	RF304-11956
Do	Tires Unlimited Inc. #2.	RF309-1412

REFUND APPLICATIONS RECEIVED—Continued

Date Received	Name of Refund Proceeding/Name of Refund Application	Case No.
8/15/90	McGovern's Shell Gasoline.	RF315-10034
Do	Christie's Oil Co.	RF323-5
Do	Stewart's Exxon Center.	RF307-10146
8/16/90	Leonard Van Der Linden.	RA272-29
Do	Carroll L. Edwards	RC272-94
Do	Edwards Trucking	RC272-95
Do	Bothoff's Garage	RF304-11957
8/17/90	Earl L. Elliott Co.	RF323-6
Do	Scott Gardens	RA272-30

[FR Doc. 90-22713 Filed 9-24-90; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-810159; FRL-3799-5]

TSCA Chemical Substance Inventory; Removal of 207 Incorrectly Reported Chemical Substances from the TSCA Inventory; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of August 1, 1990 (55 FR 31312), EPA issued a notice announcing the removal of 207 incorrectly listed chemicals from the Toxic Substances Control Act (TSCA) Chemical Substances Inventory. The chemical substance cobaltate(3-), hexakis(cyano-C)-, zinc (2:3), (OC-6-11) was inadvertently listed as a chemical to be deleted from the TSCA Inventory. This document corrects that error. Therefore, the CAS Registry Number 14049-79-7 will be retained on the TSCA Inventory and removed from the list of 207 chemical substances being deleted from the Inventory, as it appears in the **Federal Register** of August 1, 1990, FR Doc. 90-17896, on page 31313, bottom table.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

Dated: September 18, 1990.

Linda A. Travers,
Director, Information Management Division, Office of Pesticides and Toxic Substances.

[FR Doc. 90-22707 Filed 9-24-90; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

[Agreement No. 207-011298]

FMG/CSAV Joint Service Agreement

Reference is made to the **Federal Register** Notice of September 6, 1990 (55 FR 36701).

The above named Agreement has been redesignated as Agreement No. 203-011298, FMG/CSAV Cooperative Working Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: September 19, 1990.

[FR Doc. 90-22649 Filed 9-24-90; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 212-011234-009
Title: U.S.A./South Europe Pool Agreement
Parties:
Compania Trasatlantica Espanola, S.A.
Costa Container Lines, S.p.A.
Evergreen Marine Corporation;
Italia di Navigazione S.p.A.
Lykes Lines
Nedlloyd Lines
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would permit any member to withdraw from the Agreement by giving written notice to the Pool Administrator, effective November 29, 1990. Any member withdrawing pursuant to this new provision would be required to fulfill all obligations under the Pool Agreement, excluding liquidated damages provided under Article 7.B.2, including payment for overcarriage, and compensation for undercarriage. This amendment also provides that any withdrawal under the agreement may be rescinded or postponed by written notice to the Pool Administrator. Any such postponement may not be for a period exceeding 30 days. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 19, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-22650 Filed 9-24-90; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 224-200419
Title: Georgia Ports Authority/Evergreen Marine Corporation (Taiwan), Ltd./Italia Di Navigazione/Compagnie Generale Maritime Terminal Agreement
Georgia Ports Authority (GPA)
Evergreen Marine Corporation (Taiwan), Ltd. (EMC) Italia Di Navigazione S.P.A. (Italia) Compagnie Generale Maritime (CGM)

Synopsis: The Agreement provides that GPA will perform certain terminal services for EMC, Italia and CGM at Containerport Savannah, Georgia. The Agreement sets forth a consolidated per container rate for wharfage, crane rental and slot lease applicable to containers loaded on an off ships, and dockage. The Agreement also provides that field services will be submittee on individual rate schedules, and services not included in consolidated rates will be performed at 80% of current tariff. The rates will increase each October 1 in an amount equal to the U.S. Consumer Price Index for the South but not to exceed 5% over the previous year's rate. The term of the Agreement is for three years and may be extended for successive 3-year periods continuing as long as the Lines have vessels calling Savannah.

Agreement no.: 224-200418
Title: Maryland Port Administration/Columbus Line Terminal Agreement
Parties:
Maryland Port Administraton (MPA)
Columbus Line (CL)

Synopsis: The Agreement provides CL with a $3.00 incentive per loaded container and $0.40 per ton for Ro/Ro cargo, restricted to containers and Ro/Ro Cargo coming into or going out of MPA marine terminals by direct vessel calls. The term of the Agreement ends December 31, 1990.

By Order of the Federal Maritime Commission.

Dated: September 19, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-22637 Filed 9-24-90; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 19, 1990.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on

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Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202-395-7340)

Final Approval Under OMB Delegated Authority of the Extension, Without Revision, of the Following Report:

Report title: Community Reinvestment Act Questionnaire.

Agency form number: FR 1283.

OMB Docket number: 7100-0052.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 1500

Estimated average hours per response: 2.5.

Number of respondents: 600.

Small businesses are affected:

General Description of Report

This information collection is voluntary [15 U.S.C. 325 and 2901(b)] and is given confidential treatment [5 U.S.C. 552(b)(8)].

During a comprehensive consumer affairs compliance examination, the state member bank is required to complete this form, which is called the CRA Questionnaire. After it is completed by a senior bank officer, the questionnaire provides information regarding the bank's efforts to serve the credit needs of its local community.

Board of Governors of the Federal Reserve System, September 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-22842 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

Amsterdam-Rotterdam Bank, N.V. et al.; Proposal to Engage in the Execution and Clearance of Securities, Futures Contracts, and Options on Futures Contracts; Correction

This notice corrects three previous Federal Register Notices. (FR Doc. 90-11020) published at page 19,786 of the issue for Friday, May 11, 1990; the correction notice (FR Doc. 90-12556) published at page 22098 of the issue for Thursday, May 31, 1990; and the correction notice (FR Doc. 90-19019) published at page 33189 of the issue for Tuesday, August 14, 1990.

The notice for ABN/AMRO Holding N.V., Preferred Stichting; and Priority Stichting is revised to read as follows:

1. The name of Applicants should read Amsterdam-Rotterdam Bank N.V.; Stichting Amro; ABN/AMRO Holding N.V.; Stichting Prioriteit ABN AMRO Holding and Stichting Administratiekantoor ABN ARMO Holding, all of The Netherlands.

Comments on this application must be received by October 9, 1990.

Board of Governors of the Federal Reserve System, September 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22843 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

Banc One Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to acquire Banc One Capital Corporation, Columbus, Ohio, and thereby engage in private placement and related advisory activities as approved by the Board in *Bankers Trust New York Corp.,* 75 Federal Reserve Bulletin 829 (1989) ("*Bankers Trust*") and *J.P. Morgan & Co., Inc.,* 75 Fed. Res. Bull. 26 (1990), and subject to limitations previously approved by the Board, and riskless principal activities as approved by the Board's 1989 *Bankers Trust* order, and subject to limitations previously approved by the Board. Applicant proposes to conduct these activities on a nationwide basis. Banc One Capital received Board approval on July 16, 1990, to engage in underwriting and dealing in bank-eligible securities as permitted by § 225.25(b)(16) of Regulation Y and in four types of bank-ineligible securities, namely, municipal revenue bonds, 1-4 family mortgage-related securities, commercial paper, and consumer receivable-related securities. At the same time, Banc One Capital also received Board approval to engage in offering futures commission merchant services, financial advisory services, and full-serve brokerage services. *Banc One Corp.,* 76 Fed. Res. Bull. ——— (July 16, 1990).

Board of Governors of the Federal Reserve System, September 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-22844 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

The Fuji Bank, Limited, et al.; Application To Engage de novo in Permissible Nonbanking Activities; correction

This notice corrects a previous Federal Register notice (FR Doc. 90-22115) published beginning at page 38581 of the issue for Wednesday, September 19, 1990.

Under the Federal Reserve Bank of New York, on page 38582 (first column), the entry for Fuji Securities Inc. is amended to read as follows:

1. *The Fuji Bank, Limited,* Tokyo, Japan; to engage *de novo* through its indirect subsidiary, Fuji Securities, Inc., Chicago, Illinois, in serving as investment adviser to an investment company registered under the Investment Company Act of 1940, including sponsoring, organizing and managing a closed-end investment company; providing portfolios investment advice to any other person; furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and providing financial advice to state and local governments, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

In addition, the heading should have read as set forth above.

Comments on this application must be received by October 8, 1990.

Board of Governors of the Federal Reserve System, September 19, 1990.

Jennifer J. Jonhson,

Associate Secretary of the Board.

[FR Doc. 90-22845 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

Midwest R & S Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Midwest R & S Corporation,* Brookings, South Dakota; to retain the general insurance agencies it currently operates as division of Midwest R & S Corporation, Fishback Insurance Agency, Bates Insurance Agency, and First Trust Agency pursuant to § 225.25(b)(8)(vi). These activities will be conducted in Brookings, South Dakota.

Board of Governors of the Federal Reserve System, September 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-22846 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

G. Thomas Wrenholdt; Change in Bank Control Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 9, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *G. Thomas Wrenholdt,* and Patty Lou Wrenholdt, Leadville, Colorado; to acquire an additional 28.44 percent of the voting shares of Ore Bancorporation, Inc., Leadville, Colorado, and thereby indirectly acquire First National Bank of Leadville, Leadville, Colorado.

Board of Governors of the Federal Reserve System, September 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-22847 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Omnibus Budget Reconciliation Act of 1989; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authority vested in the Secretary of Health and Human Services under the Omnibus Budget Reconciliation Act of 1989, as amended hereafter, as follows:

Section 6506(a) Development of Model Application for Maternal and Child Assistance Programs (42 U.S.C. 701 note).

Section 6507 Research and Infant Mortality and Medicaid Services (42 U.S.C. 701 note).

Section 6508 Health Insurance for Medically Uninsurable Children (42 U.S.C. 701 note).

Section 6509 Maternal and Child Health Handbook (42 U.S.C. 701 note).

These authorities are to be exercised only after consultation and in cooperation with the Health Care Financing Administration.

This delegation excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation became effective upon the date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: September 17, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-22864 Filed 9-24-90; 8:45 am]

BILLING CODE 4160-17-M

Centers for Disease Control

Assessment of Immunization Status in the Preschool Population; Meeting

The Center for Prevention Services (CPS) of the Centers for Disease Control (CDC) announces the following public meeting between CDC and State/local public health officials as well as statistician consultants.

Name: Assessment of Immunization Status in the Preschool Population.

Time and Date: 8:30 a.m.–4:30 p.m., October 9–10, 1990.

Place: Centers for Disease Control, Freeway Park Facility, room105, 1677 Tullie Circle, NE., Atlanta, Georgia 30329.

Status: Open to the public for participation, comments, and observation, limited only by the space available.

Purpose of Meeting: To obtain individual input and recommendations from officials currently working in State/local immunization programs and experts in sampling methods for the express purpose of developing procedures and methods to measure current preschool immunization levels in the United States.

Contact Person for More Information: Donald L. Eddins, Chief, Data Managment Branch, Division of Immunization, CPS, CDC, Mailstop E05, 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone 404/639–1875 or FTS 236–1875.

Dated: September 19, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–22887 Filed 9–24–90; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced.

Ophthalmic Devices Panel

Date, time, and place. October 11, 1990, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W.C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 27, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues and specific premarket approval applications (PMA's) and the specific requirements needed for PMA approval for intraocular lenses (IOL's), class III surgical or diagnostic devices, contact lenses, and other associated devices.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information relevant to PMA's for IOL's, surgical or diagnostic devices, contact lenses, or other ophthalmic devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Gastroenterology-Urology Devices Panel

Date, time, and place. October 18, 1990, 8:30 a.m., First Floor Conference Rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 4:30 p.m.; Ruth W. Hubbard, Center for Devices and Radiological Health (HUFZ–430), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1220.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an extracorporeal shockwave device to treat urinary incontinence.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding these devices. This portion of the meeting will be closed to permit discussion of ths information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. October 29, 1990, 8:30 a.m., Rms. 503–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2 p.m.; closed presentation of data, 2 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; Wolf Sapirstein, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 15, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an angioplasty stent, a percutaneous transluminal coronary angioplasty catheter, and a laser coronary angioplasty catheter.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding these devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 17, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–22887 Filed 9–24–90; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 15–16, 1990, Executive Plaza North, Conference Room H, 6130 Executive Boulevard Rockville, MD 20852.

This meeting will be open to the public on October 15 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on October 15 from 10 a.m. to recess and on October 16 from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10e06, National Institutes of

Health, Bethesda, MD 20692. 301/496-5708 will provide summaries of the meeting and rosters of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue, room 807, Bethesda, MD 20892 (301/496-7030) will furnish substantive program information.

Dated: September 14, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-22703 Filed 9-24-90; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Supplemental Security Income Modernization Project; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Social Security Administration (SSA) announces a meeting of the Supplemental Security Income (SSI) Modernization Project (the Project). This notice also describes the proposed agenda, purpose, and structure of the Project.

DATES: October 23-24, 1990, 9 a.m. to 5 p.m.

ADDRESSES: First Floor Central Auditorium, Harold Washington Social Security Center, 600 West Madison, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 300, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-3571.

SUPPLEMENTARY INFORMATION: SSA is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation over 16 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of this Project is intended to create a dialogue that provides a full examination of how well the SSI program serves the needy, aged, blind, and disabled.

To begin this dialogue, the Commissioner of Social Security has involved 25 people who are experts in the SSI program and/or related public policy areas. The experts include a wide range of representatives of the aged, blind, and disabled from private and nonprofit organizations and Federal and State government as well as former SSA staff. Like members of the public attending this meeting, the experts will be able to express their individual views and concerns about the SSI program. Dr. Arthur S. Flemming, former Secretary of Health, Education, and Welfare, will chair the meeting. The purpose of this initial dialogue is to exchange ideas and existing information about the program. This exchange will facilitate the sharing of ideas among attendees' constituencies, including advocacy groups, state and local government and academicians. The outcome will be a more informed public that has an interest in bringing individually produced innovative ideas for change in the SSI program to the Modernization Project.

The meeting is open to the public. Public officials, representatives of the professional and advocacy organizations, concerned citizens, and SSI recipients may speak and submit written comments on the issues to be discussed. (This is the third in a series of meetings to be held throughout the country. Each of these meetings will also be open to the public. All meetings will be announced in the **Federal Register**. If you are interested in the Project but cannot attend the meeting on October 23-24, 1990, please call the Project staff at (301) 965-3571 so we may notify you of future meetings.)

There will be a public comment portion of the meeting beginning in the afternoon of October 23, 1990. A second public comment session will be held on October 24, 1990, in the morning. In order to ensure that as many individuals as possible are given the opportunity to speak in the time allotted for public comment, each individual will be limited to a maximum of 10 minutes. Because of the time limitation, individuals are requested to present comments in their order of importance. A written copy of comments should be prepared and presented to us, preferably in advance of the meeting. To ensure our full understanding and consideration of all of each speaker's concerns, we welcome written comments that provide a detailed and elaborative discussion of the subjects presented orally, as well as further written comments on other issues not presented orally. Individuals unable to attend or speak at the meeting also may submit written comments. Written comments will receive the same consideration as oral comments.

To requests to speak, please telephone the Project Staff, at (301) 965-3571, and provide the following: (1) Name; (2) business or residence address; (3) telephone number (including area code) during normal working hours; (4) capacity in which presentation will be made; i.e., public official, representative of an organization, or citizen; and (5) time of day desired. To guarantee an opportunity to speak, requests must be received by October 16, 1990. Late requests to speak will be honored, if time permits.

A transcript of the meeting will be available at an at-cost basis. Transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

(Catalog of Federal Domestic Assistance Programs No. 93.807—Supplemental Security Income)

Dated: September 18, 1990.

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 90-22680 Filed 9-24-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Alaska Federal Subsistence Board Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

TIME AND DATE: 8:30 a.m.; September 26, 1990.

PLACE: Captain Cook Hotel, 5th and "K" Streets, Anchorage, Alaska.

STATUS: Parts of this meeting will be open to the public. The public is invited to attend and observe the proceedings. Public testimony, however, will not be accepted at this meeting. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: *Portions open to the public:* The board will discuss business relative to management of the Federal subsistence management program on Federal lands. The major categories to be discussed include:

a. **Federal Register** Announcement on Rural Determinations.

b. Regulation Corrections.

c. Appeals.

d. Communications to the Board.

e. National Environmental Policy Act Process.

f. Harvest Reports.

g. Indian Self Determination Act Proposals.

Portions closed to the public: The board will discuss business relative to management of the Federal Subsistence Board activities. The major categories to be discussed include:

a. Procedural and organizational items.

b. Relationship with the State of Alaska.

c. Litigation.

CONTACT PERSON FOR MORE INFORMATION: Richard Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447.

Walter O. Stieglitz,

Chairman, Federal Subsistence Board, Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-22658 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-55-M

Office of the Secretary

Privacy Act of 1974; Revision of System of Records

Pursuant to the provisions of the Privary Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a Departmentwide system of records maintained by the Office of Personnel in the Office of the Secretary. The notice being revised is titled "Employee Experience, Skills, Performance, Training and Career Development Records—Interior, Office of the Secretary—76," and was previously published in the **Federal Register** on March 8, 1984 (49 FR 8682). Except as noted below, all changes being published are editorial in nature, and reflect organizational changes and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register**.

The existing routine disclosure statement is being amended to add a compatible routine use disclosure to employees and contractors of the Department of Energy and the Nuclear Regulatory Commission in the conduct of quality assurance compliance audits of Department of the Interior programs related to high level nuclear waste.

The existing portions of the notice describing the system location, categories of individuals covered by the system, and retention and disposal are revised to reflect that: (1) The records on employees assigned to the Department's high level nuclear-waste activities are maintained in an appropriate local records center; (2) the categories of individuals include individuals who are current, former, and contract employees assigned to high level nuclear-waste activities of the Department of the Interior; and (3) the retention and disposal of records on current, former, and contract employees assigned to high level nuclear-waste activities are maintained for the life of the project to which the activities are applicable, and according to appropriate records disposition schedules. The revised notice is published in its entirety below.

5 U.S.C. 552a(e)(11) requires that the public be provided 30-days in which to comment on the proposed new routine use of the information in the system of records. Therefore, written comments on this notice can be addressed to the Department Privacy Act Officer, U.S. Department of the Interior, Office of the Secretary (PMI), Room 2242, 1849 C Street NW., Washington, DC 20240. Comments received on or before October 25, 1990, will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: September 12, 1990.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Interior/OS-76

SYSTEM NAME:

Employee Experience, Skills, Performance, Training, and Career Development Records—Interior, Office of the Secretary—76.

SYSTEM LOCATION:

Servicing personnel office and/or administrative office of all bureaus and offices of the Department of the Interior. For Contracting Officers' Warrant System records the head of each bureau's central contracting office and the Office of Acquisition and Property Management in the Office of the Secretary. Records on employees assigned to the Department's high level nuclear-waste activities are maintained in an appropriate local records center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Department of the Interior and current, former, and contract employees assigned to high level nuclear-waste activities of the Department of the Interior.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records relate to employees and contain such information as: Name; date of birth; social security number; office address and phone; service computation date; physical limitations or interests which might affect type or location of assignment; career interests; education history; work or skills experience; position descriptions; availability for geographic relocation; outside activities including membership in professional organizations; listing of special qualifications; licenses and certificates held; listing of honors and awards; career goals and objectives of the employee; training records; annual supervisory evaluation or proficiency statement; verification records of employment and education.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 2951, 4118, 4308, 4506, 3101, 43 U.S.C. 1457, Reorganization Plan 3 of 1950, Executive Order 10561, Executive Order 12352.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) by bureau officials for purposes of review in connection with transfers, promotions, reassignments, adverse actions, disciplinary actions, and determination of qualifications, of an individual, (b) by bureau officials for setting out career goals and objectives of the employee and for documenting attainment of these targets, and (c) by bureau and Departmental officials in monitoring qualifications for maintaining a Contracting Officer's Warrant.

Disclosures outside the Department of the Interior may be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting a violation or potential violation, or for enforcing or implementing a statute, regulation, rule, order, or license; (3) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual; and (4) to employees and contractors of the Department of Energy and the Nuclear Regulatory Commission in the conduct of quality assurance compliance audits of Department of the Interior programs related to high level nuclear waste.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained manually in file folders or on preprinted forms in file cabinets or on computer media.

Retrievability:

Records may be indexed by name of the subject employee.

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SAFEGUARDS:

Records are maintained with safeguards meeting minimum security requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Most records are maintained only on current employees. Records are destroyed upon departure of employees, except that records on current, former, and contract employees assigned to high level nuclear-waste activities are maintained for the life of the project to which the activities are applicable, and according to appropriate records disposition schedules.

SYSTEM MANAGER(S) AND ADDRESS:

For all records other than Contracting Officers' Warrant System Records: (1) The Personnel Officer of each bureau of the Department for records maintained in the bureau. (See Appendix for addresses of bureau headquarters offices), and (2) Chief, Division of Personnel Services, Office of Administrative Services, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240, for records maintained in the Office of the Secretary. For all Contracting Officers' Warrant System Records: Director, Office of Acquisition and Property Management, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

Individuals may inquire whether or not the system contains records pertaining to them by contacting the personnel officer and/or administrative officer servicing the facility where they are employed. Contracting Officers may submit inquiries regarding Contracting Officers' Warrant System Records to the head of the procuring activity of the bureau in which the individual is employed, or to the Director, Office of Acquisition and Property Management. See 43 CFR 2.60 for notification procedure requirements.

RECORD ACCESS PROCEDURES:

Employees who wish to gain access to their records should contact the same officials listed under "Notification procedure" above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Employees who wish to contest their records should contact the pertinent System Manager listed above. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or is derived from information he/she supplied, except information provided by agency officials.

[FR Doc. 90-22580 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[OR-000-00-4212-14; GPO-406; OR 46221]

Realty Action; Direct Sale of Public Lands; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—direct sale of public lands in Lane County, Oregon.

SUMMARY: The following land is suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 18 S., R. 1 W.
Sec. 33: Lot 5.
Containing 15.38 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered to Amvesco, Inc., dba Western Pioneer Title Co., using the direct sale procedures authorized under 43 CFR 2711.3-3. Direct sale is appropriate since the land has been inadvertently occupied and utilized as part of private ranching operations pursuant to private deeds originating in 1890 and direct sale will resolve the title conflict and unauthorized use while preserving the occupants' equity in the property.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. Direct purchasers must submit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

3. Patent will be issued subject to all valid existing rights and reservations of record.

DATES: Until November 9, 1990, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226, 1255 Pearl Street, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683-6403.

Date: September 17, 1990.

Ronald L. Kaufman,

District Manager.

[FR Doc. 90-22585 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-33-M

[NM-030-00-7122-09-8004]

Availability for the Final Environmental Impact Statement of Federal Coal Leasing in the Fence Lake Area of Catron and Cibola Counties, New Mexico

AGENCY: Bureau of Land Management, Las Cruces District, New Mexico.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of a Final Environmental Impact Statement (EIS) on the leasing of Federal coal on public land and Federal mineral ownership in the Fence Lake area of Catron and Cibola Counties, New Mexico.

The Draft EIS was made available for a 60-day public comment period from May 3 through July 2, 1990. Comments received were considered and incorporated in the Final EIS.

DATES: Written comments on the Final EIS must be postmarked on or before October 29, 1990.

ADDRESSES: Written comments should be sent to: Charles Hodgin, Project Coordinator, BLM Las Cruces District, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Charles Hodgin, Project Coordinator (505) 525-8228 or John Kenny, Environmental Specialist (505) 988-6204.

SUPPLEMENTARY INFORMATION: The regulations set forth in title 43 of the Code of Federal Regulations (CFR) provide the framework under which the Department of the Interior conducts leasing of rights to extract Federal coal. The objectives of these regulations are to establish policies and procedures for considering development of coal deposits through a leasing system involving land use planning and environmental impact analysis. Additionally, the regulations are intended to ensure that coal deposits are developed in consultation, cooperation, and coordination with State and local governments, Indian tribes, involved Federal agencies, and the general public.

Two primary alternatives were assessed in the Fence Lake Project Draft EIS. These are approval of a Federal coal lease and disapproval of a Federal coal lease (No Action). Under the lease-approval alternative, two separate leasing actions were assessed.

Lease-Approval Alternative 1, Salt River Project's (SRP) Lease Application, would involve SRP's proposed action to lease 6,840 acres of Federal coal. Lease-Approval Alternative 2 would involve a Federal coal lease of up to 8,780 acres. The additional coal areas added for Alternative 2 are based on preliminary estimates of acres that may be added to the lease to provide for enhanced recovery of the coal resource. BLM is preparing a Maximum Economic Recovery (MER) report which will review these estimates and the lease application in light of all available coal exploration drilling. Also under Alternative 2, certain areas may be deleted from leasing or have stipulations imposed to protect sensitive biological and cultural resources identified under the unsuitability and multiple-use coal screens in the Socorro Resource Management Plan.

For each of the Federal coal lease approval scenarios, the subsequent mining would encompass both the State, private, and Federal lease areas together as a unit.

The No Action Alternative consists of disapproval of a Federal coal lease for the Fence Lake Project. If a Federal coal lease were not approved, SRP would mine only its existing private and State coal leases in the Fence Lake Project area.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the Federal Register on December 30, 1988. Since that time several meetings, public hearings, and mailouts were conducted to solicit comments and concerns, including the Draft EIS which was made available for public comment for a 60-day period beginning on May 3, 1990. All comments presented throughout the process have been considered.

Following the end of the 30-day availability period on the Final EIS, a Record of Decision (ROD) will be prepared. Comments received on the Final EIS will be considered in the preparation of the ROD. Also, the final trace configuration (subject to surface owner consent) will be included in the ROD for the EIS and will take into account both sensitive biological and cultural resources and the results of the MER report.

Copies of the Final EIS have been distributed to a mailing list of identified interested parties. Single copies of the Final EIS may be obtained from the BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico; the BLM Santa Fe, New Mexico; and the Socorro Resource Area Office, 198 Neel Avenue NW., Socorro, New Mexico. Public reading copies are available for review at the BLM State Office, U.S. Federal Building, Santa Fe, New Mexico and at public and university libraries in Las Cruces, Socorro, Albuquerque, Truth or Consequences, Gallup, and Grants, New Mexico, the Apache County Library in St. Johns, Arizona, and the Native American Library in Window Rock, Arizona.

Dated: September 20, 1990.

Larry L. Woodard,

State Director.

[FR Doc. 90-22666 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Meeting; National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of National Park System Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the National Park System Advisory Board will be held at the Denver Service Center of the National Park Service, 12795 West Alameda Parkway, Lakewood, Colorado on October 23 and 24, 1990. The site is a few blocks west of the Denver Federal Center in Lakewood.

The general business session will start at 8 a.m. on Tuesday, October 23 in room 7 of the building and is planned to conclude by noon on Wednesday, October 24.

The Board will consider potential National Historic Landmark nominations, plus a variety of matters relating to the National Park System and other related areas. Potential National Historic Landmarks will be taken up about 10 a.m. the first morning, for approximately two hours. Other topics will include, but not be limited to, urban park issues, education and volunteerism in the National Park System, the Presidio of San Francisco, the upcoming Columbus Quincentennial, tourism matters and an American labor history study. Officials of the Department of the Interior and the National Park Service will also address the Board. The meeting will follow orientation tours and briefings on Rocky Mountain National Park and the National Park Service's Denver-area offices.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed.

This is also to notify all concerned and interested parties that under the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, commonly known as Gramm-Rudman-Hollings, a sequestration of funds may be necessary for the Federal Government's Fiscal Year 1991, which begins on October 1, 1990. If a sequestration should occur, this meeting may be cancelled on very short notice.

Those planning to attend may call the contact person below, after October 1, to ascertain whether the meeting will in fact occur.

Persons wishing further information concerning the meeting, who wish to submit written statements for it, or who wish to verify (after October 1) that it will occur, may contact, Mr. David L.

Jervis, Office of Policy, National Park Service. P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-208-4030).

Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in Room 1220, Main Interior Building, 18th and C Streets, NW., Washington, DC.

F. Eugene Hester,

Acting Deputy Director.

[FR Doc. 90-22652 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 15, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service. P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by October 10, 1990.

Carol D. Shull,

Chief of Registration, National Register.

DISTRICT OF COLUMBIA

District of Columbia (State equivalent)

Corcoran Hall, 721 21st St., NW., Washington, 90001545
Lisner Auditorium, 730 21st St., NW., Washington, 90001548
President's Office, George Washington University, 2003 G St., NW. and 700 20th St., NW., Washington, 90001544
Stockton Hall, 720 20th St., NW., Washington, 90001546
Strong Hattie M., Residence Hall, 620 21st St., NW., Washington, 90001547
Wetzel Margaret, House, 714 21st St., NW., Washington, 90001542
Woodhull, Maxuell, House, 2033 G St., NW., Washington, 90001543

FLORIDA

Pinellas County

Tarpon Springs High School, Old, 324 E. Pine St., Tarpon Springs, 90001538

MASSACHUSETTS

Suffolk County

Monument Square Historic Distric, Roughly bounded by Jamaicaway, Pond, Centre and Eliot Sts., Boston, 90001536
Upham's Corner Market, 600 Columbia Rd., Boston, 90001537

MISSOURI

Shannon County

Akers Ferry Archeological District, Address Restricted, Rector vicinity, 90001541

PENNSYLVANIA

Philadelphia County

US Court House and Post Office Building, Jct. of Ninth and Markets Sts., Philadelphia, 90001540

TEXAS

Bexar County

Guenther, Carl Hilmar, House 205 E. Guenther St., San Antonio, 90001539

The following property is also being considered for listing in the National Register:

PENNSYLVANIA

Chester County

Downing, Hunt, House (West Whiteland Township MRA), 600 W. Lincoln Hwy., West Whiteland Twp., 84003960

[FR Doc. 90-22651 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub 102X)]

Norfolk and Western Railway Company, Discontinuance Exemption; in Buchanan County, VA

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments and Discontinuances to discontinue service over its 0.4-mile line of railroad between milepost LS-0.0, at Long Spur Junction, and the end of the line near Grundy, in Buchanan County, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under "Oregon Short Line R. Co.—Abandonment—Goshen," 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 25, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues[1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)[2] must be filed by October 5, 1990. Petitions for reconsideration must be filed by October 15, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by September 28, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 18, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-22574 Filed 9-24-90; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* "Exemption of Out-of-Service Rail Lines," 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* "Exempt. of Rail Abandonment—Offers of Finan. Assist.", 4 I.C.C. 2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; CertainTeed Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 12, 1990 a Complaint and proposed Consent Decree in *United States* v. *CertainTeed Corp.*, DJ No. 90-11-2-538, were lodged with the United States District Court for the Eastern District of Pennsylvania. The United States' Complaint is being filed under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, for injunctive relief and reimbursement for the United States' response costs at the CertainTeed Pile, a portion of the "Ambler Asbestos Site" in Ambler, Pennsylvania.

The only defendant is CertainTeed Corp., which presently owns the CertainTeed Pile. The Consent Decree will resolve the United States' claims against CertainTeed. Under the Decree, CertainTeed will implement the remedy called for by EPA's Record of Decision regarding the CertainTeed Pile, and pay to EPA all of the response costs of which EPA advised it. In paragraph VI.A, CertainTeed has agreed to commence work prior to the entry of the Decree. CertainTeed has agreed to perform operation and maintenance at the Site for 30 years. (Para. V.D). The Decree contains in Paragraph VII.A the standard provision for the five-year reviews mandated under section 121(c) of CERCLA, 42 U.S.C. 9621(c), for sites at which hazardous substances will remain following completion of the remedy. In section IX, EPA has received all of the quality assurance and quality control measures which it requested. In section XVII, CertainTeed has agreed to reimburse the United States for all of its oversight costs, not inconsistent with the National Contingency Plan ("NCP"), incurred following entry of the Decree.

In return for these obligations, CertainTeed will receive a covenant not to sue, with standard reopener provisions provided for under section 122 of CERCLA, 42 U.S.C. 9622, and will receive the contribution protection provided for under section 113(f)(3) of CERCLA, 42 U.S.C. 9613(f)(3).

The United States has incurred thus far approximately $91,500 in costs at the CertainTeed Pile. It has expended these funds, *inter alia*, to review an Environmental Investigation performed by CertainTeed and to prepare a focused feasibility study regarding the CertainTeed pile.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *CertainTeed Corp.*, DOJ Ref. No. 90-11-2-538.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $16.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-22589 Filed 9-24-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Stanley Kessler & Company, Inc., et al.

Notice is hereby given that on September 6, 1990, a proposed consent decree in *United States* v. *Stanley Kessler & Company, Inc., et al.*, Civil Action Nos. 80-3438 and 80-7384, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree requires the defendants to perform a Remedial Investigation/Feasibility Study for the Site, to pay all costs incurred by EPA to oversee the RI/FS, and to pay a portion of the response costs incurred by the United States prior to October 13, 1988.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Stanley Kessler & Company, Inc., et al.*, Civil Action Nos. 80-3438 and 80-7384, DOJ Ref. No. 90-7-1-106. The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, 601 Market Street, Philadelphia, Pennsylvania, or at the office of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $34.50 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-22590 Filed 9-24-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: October 24, 1990, 1-5 p.m., rm. S-5310, Seminar Room 1-B, Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523-2752.

Signed at Washington, DC this 17th day of September.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 90-22641 Filed 9-24-90; 8:45 am]

BILLING CODE 4510-28-M

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OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OPM Form 1495 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, chapter 35), this notice announces a proposed unchanged extension to a form which collects information from the public. OPM Form 1495, Financial Eligibility Statement for Student and Summer Aid Programs, is completed by students applying for Federal positions in the Stay-in-School, Summer Aid and Federal Junior Fellowship Programs. Federal agencies use the information to determine if applications meet the financial needs criteria required by these programs. There are 10,000 individuals who respond annually for a total public burden of 2,500 hours. For copies of this proposal, call C. Ronald Trueworthy on (202) 606–2261.

DATES: Comments on this proposal should be received by October 5, 1990.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, room 6410, 1900 E Street NW., Washington, DC 20415.

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marsha Frost, (202) 606–0870.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–22882 Filed 9–24–90; 8:45 am]

BILLING CODE 6325–01–M

Personnel Management Demonstration Project; Alternative Personnel Management System at the National Institute of Standards and Technology

AGENCY: Office of Personnel Management.

ACTION: Final notice of amendment.

SUMMARY: This action provides for changes to the final project plan published October 2, 1987 (52 FR 37082), and amended August 16, 1989 (54 FR 33790) primarily to revise the performance appraisal system and the pay administration system in order to better link pay with performance. The proposed amendment with request for comments was published in the **Federal Register** on May 10, 1990 (55 FR 19688). On reviewing 13 written comments OPM has decided to finalize the proposed amendment without change.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: at the Office of Personnel Management, Marilyn Geldzahler, (202) 606–2890; at the National Institute of Standards and Technology, Allen Cassady, (301) 975–3031.

SUPPLEMENTARY INFORMATION: In the new performance appraisal system adjectival ratings to describe levels of performance will be replaced by numerical scores which allow managers to make finer distinctions among employees and rank them accordingly. Those given a score below a set cut-off point on any element will be rated "Unsatisfactory" and will not be considered for performance-based pay increases, bonuses, or total compensation comparability (TCC) increases. Those with scores above the cut-off point on all elements will be rated "Eligible" for consideration for performance-based pay increases and bonuses, and will receive TCC increases. The individual's rank in the pay pool determines the proportion of the possible percentage salary increase that employee will receive (within the range prescribed by the PMB), that is, each individual will be awarded a greater proportion of his or her possible increase than those ranked lower than that individual.

The May 10, 1990, amendment also (1) clarified the relationships between NIST pay bands and General Schedule grades for the purpose of applying OPM reduction-in-force regulations, (2) revised the membership of the Personnel Management Board (PMB) to anticipate plans for reorganizing major organizational components, (3) clarified the impact of pay for performance on student and faculty appointments, and (4) corrected a typographical error in the original plan.

Summary of Comments and Responses

OPM received 13 letters in response to our request for comments; one of these letters had fifteen signatures. NIST also made three presentations to employees during which questions were fielded and comments noted. Approximately 200 employees attended the first Gaithersburg, Maryland, meeting on May 25, 1990, and 13 had questions or comments. Approximately 250 employees attended the Boulder, Colorado, presentation on May 30, 1990; 31 had comments or questions. On June 7, 1990, approximately 100 employees attended the second presentation at the Gaithersburg NIST site, and 25 asked questions or offered comments. Most of the people speaking at these presentations asked for more information or for clarification of the design or implementation of the new performance appraisal system.

Eight letters and several of the comments at the presentations expressed concern over the competitive nature of a pay-for-performance system, especially one that used ranking among peers. OPM believes that competition is not necessarily unhealthy and that the new system is flexible enough to reward the cooperative aspects of work at NIST. For example, in units characterized by a high level of cooperative work, supervisors may include contributions to the team in performance plans and rate employees accordingly. To address related concerns that rankings might become public, the numerical rankings will not be publicized, although individuals may request information about their own rank. Records of ranks will be kept to calculate RIF credit; however, numerical rank will not be included in employees' Official Personnel Folders.

Another concern mentioned in one letter was the possible lack of management flexibility in a payout system which links rank directly with percent pay increases. OPM believes that the new system affords flexibility to all levels of management. Supervisors will continue to develop performance plans that reflect their expectations for each employee, considering the individual's experience, band, occupation, and position in the organization. Pay pool managers, in concert with supervisors, have latitude (within the guidelines set by the PMB) in how they interleave employees from different units, including the option of ranking two or more employees the same. The PMB retains the authority to change the payout matrix. For instance, if certain career paths or experience intervals have historically received fewer promotions and awards, the payout matrix can be adjusted. The PMB or its designee, at the request of the pay pool manager, may also grant a higher than normal pay increase for extraordinary achievement. Thus, the new performance management system gives management many opportunities to fine tune the match between salary increases and performance.

Three letters and some of the comments at the presentations expressed concerns about the complexity of the ranking system and the difficulty both supervisors and employees have with communicating about standards and performance ratings. NIST will be conducting training sessions throughout the organization which will address these issues.

No letters or comments addressed the other changes offered in the May 10, 1990, amendment.

After considering all comments, OPM has decided to make the May 10, 1990, proposed amendment to the NIST Personnel Management Demonstration Project effective as published.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–22883 Filed 9–24–90; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28450; File No. SR–NASD–89–12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Rule Change Requiring Display of Quote Size in NASDAQ

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 20, 1989, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and rule 19b–4 thereunder,[2] and amended on September 8, and December 20, 1989, a proposed rule change to require NASDAQ market makers to display quotation size equal to the maximum order size displayed in the Small Order Execution System ("SOES") and honor such size to all parties except firms making a market in the subject security. At the same time, with regard to the market maker exception to the honoring of quote size, the NASD requested a temporary, six-month exemption from the requirements of rule 11Ac1–1(c)(2) under the Act ("Quote Rule"),[3] which provides that a broker-dealer is obligated to execute any order to buy or sell a security in any amount up to the broker-dealer's published quotation size.

Notice of the proposal, together with the substance of the terms of the proposed rule change, was given by the issuance of a Commission release (Securities Exchange Act Release No. 27601, January 9, 1990) and by publication in the **Federal Register** (55 FR 1743, January 18, 1990). No comments were received on the proposal.

Under current practice, NASDAQ market makers are not obligated to display quotations in excess of the normal unit of trading, 100 shares. As a result, few market makers display larger quotations in NASDAQ. Nonetheless, market makers in NASDAQ generally trade in a size greater than that displayed in their published quotations. Indeed, the Rules of Practice and Procedure for SOES require NASDAQ market makers that are also SOES market makers to execute orders through SOES in sizes up to the maximum SOES order size, *i.e.*, 1,000, 500 or 200 shares, depending upon the trading characteristics of the particular security. Accordingly, as stated by the NASD, mandating the display of size in NASDAQ at least equal to the maximum size of an order eligible for automatic execution in SOES would provide a more realistic picture of the actual size of execution available and the depth of the market in each security.

The Commission agrees with the NASD that the proposed rule change will enhance the quality, liquidity and depth of the NASDAQ market and provide greater information to investors. Market makers presently are willing to execute trades well in excess of the 100 share size that is typically displayed on NASDAQ. For this reason, the Commission has favored realistic display of size since the early 1980s.[4] We believe that the NASD's proposal will have a minimal impact on market makers and will provide issuers and the public with a better view of the depth of the market in any particular security. This positive development in the over-the-counter market should be beneficial to the public, issuers, and the marketplace as a whole. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, with the requirements of section 15A(b)(6),[5] which requires that the Association's rules be designed to "remove impediments to and perfect the mechanism of a free and open market and a national market system," and section 15A(b)(11),[6] which requires that the Association's rules relating to quotations be designed to "produce fair and informative quotations." Indeed, the proposal also furthers Congressional expectations in enacting the Securities Acts Amendments of 1975 which were intended, in part, "to assure the prompt and accurate, reliable and fair * * * publication of (quotation and transaction information) and the fairness and usefulness of the form and content of information with respect to quotation(s) and transactions."[7] Moreover, the rule change permits investors greater access to market information concerning the depth of the market for a particular security that previously was not readily available to public investors.[8]

The Commission staff today also has granted the NASD a six month exemption from the firmness requirement of the Quote Rule. The Commission is concerned over the disparate treatment that may be provided NASDAQ market makers under such an exemption. Nevertheless, the Commission recognizes the concerns of some NASD members over the possible financial exposure resulting from the combined effect of the new size requirement and the NASD requirement that a market maker in a NASDAQ security deal with all other NASDAQ market makers in the security. Accordingly, the Commission believes that a temporary exemption from the Quote Rule's firmness requirement for market maker trades, while the NASD reviews the effect of its rules, is appropriate.[9]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] 17 CFR 240.11Ac1–1(c)(2) (1989). A letter granting an exemption from the Quote Rule has been issued. *See* letter from Richard G. Ketchum, Director, SEC, to Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated September 18, 1990.

[4] Securities Exchange Act Release No. 16590 at 51 (February 19, 1980); 45 FR 12391 (February 26, 1980) ("Vendor Display Rule Release"). Division of Market Regulation, "The October 1987 Market Break", (February 1988) at 9–27. *Cf.* "Report of the Special Committee of the Regulatory Review Task Force On the Quality of Markets," NASD, July 1988, at 28 ("Quality of Markets Committee") (similar recommendation made by the NASD's Committee).

[5] 15 U.S.C. 78o–3(b)(6) (1982).

[6] 15 U.S.C. 78o–3(b)(11) (1982).

[7] S. Rep. No. 94–75, 94th Cong., 1st Sess. 104, reprinted in 1975 U.S. Code Cong. and Ad. News 179, 282.

[8] The NASD has agreed to monitor participation by non-NMS market makers in SOES to determine whether the rule affects the level of voluntary participation in SOES by those market makers. *See* letter from Kathryn V. Natale, Assistant Director, SEC, to Robert E. Aber, Vice President and Deputy General Counsel, NASD, dated May 14, 1990, and reply letter dated June 6, 1990.

[9] After the expiration of the temporary exemption, the NASD has undertaken to monitor the effects of the proposed rule change on market makers to determine the extent to which the increase in the size requirement causes a problem with failed trades. The NASD agreed to report on

Continued

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It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-89-12, be, and hereby is, approved, effective December 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22605 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28439; File No. SR-NASD-90-47]

Self Regulatory Organizations; Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Order of Closing Arguments in Arbitration Proceedings

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 6, 1990 the National Association of Securities Dealers, Inc. ("NASD or Association") filed with the Securities and Exchange Commission ("SEC or Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change was filed by NASD in order to clarify that it is the practice in NASD arbitration proceedings to allow claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedures may however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present the respective cases.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is clarifying its practice with respect to the order of closing statements in NASD arbitration proceedings at the request of members of the public and the SEC. The purpose of the stated policy is to clarify that claimants in arbitration proceedings may proceed first in closing argument, with rebuttal argument being permitted, and that claimants may reserve their entire closing for rebuttal. This clarification is made with the caveat that the hearing procedures may, in the discretion of the arbitrators, be varied provided all parties are allowed a full and fair opportunity to present their respective cases.

The NASD believes that the policy is consistent with section 15A(b)(6) of the Act, which provides, *inter alia,* that the rules of a national securities association shall be designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that this rule change does not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period. (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and be submitted by October 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 17, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22633 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28438; File No. SR-NSCC-90-15]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corporation Regarding a Modification to its Fund/SERV Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify that NSCC may delete pending items from Fund/SERV with the exception of ACAT-Fund/SERV items, upon the withdrawal by a member from participation in Fund/SERV when such member continues as an NSCC member or is merged into or acquired by another member which is not a participant in Fund/SERV.

NSCC does not restrict a member's ability to withdraw from participation in Fund/SERV regardless of the status of the member's Fund/SERV orders. This rule makes it clear that upon withdrawal from participation NSCC may delete any pending item requiring further action in Fund/SERV. As with other items deleted from NSCC processing, the rule specifies that responsibility for the completion, if any, of pending transactions will be between the member and the Fund member or Mutual Fund processor.

Since the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions for which NSCC is responsible, it is consistent with the requirements of section 17A of the Act, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of NSCC. All submissions should refer to File No. SR-NSCC-90-15 and should be submitted by October 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 14, 1990

Margaret H. McFarland,

Deputy Secretary.

Amend NSCC's rule 52 as follows:

Italics indicate additions, [Brackets] indicate deletions.

Mutual Fund Settlement, Entry, and Registration Verification Service

* * * * *

Sec. 17. The Corporation may delete from the Fund/Serv Service any incompleted Fund/Serv items, with the exception of incompleted ACAT-Fund/Serv items, upon the withdrawal of a Settling Member from participation in Fund/Serv where such Settling Member continues as a Settling Member or is merged into or acquired by another Settling Member which is not a participant in the Fund/Serv Service.

* * * * *

[FR Doc. 90-22634 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28453; File No. SR-NYSE-90-39]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Amendments to Exchange Rule 72—Priority and Precedence of Bids and Offers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 72 to provide that agency block cross transactions, where both orders are for an account other than that of a member or member organization, can be effected without interference at the proposed cross price. It also provides that the cross may be broken up at a price that is better than the proposed price for one side or the other.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of

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the results of its monitoring within six months after expiration of the exemption. *See* letter from Robert E. Aber, Vice President and Deputy General Counsel, NASD, to Kathryn Natale, Assistant Director, SEC, dated June 6, 1990.

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these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*—A member who has an order to buy and an order to sell an equivalent amount of the same stock generally wishes to execute the orders against each other in what is commonly referred to as a "cross" transaction. In such instances, the member is not seeking to interact with other market interest, as he already has both sides of the trade. A member must, however, make a public bid and offer on behalf of both sides of the cross in accordance with the provisions of Exchange Rule 76.

Under the Exchange's auction market procedures as codified in Rule 72, a member who makes the first bid or offer at a particular price has "priority" at that price, which means that he is the first one in the market entitled to receive an execution at that price. If no member can claim priority, for example, when members announce their bids or offers simultaneously or after a trade takes place, all members who are bidding or offering at a particular price are deemed to be on "parity" with each other. When members are on parity and no member's bid or offer can fill the entire offer or bid, the member whose bid or offer is larger than other bids or offers may claim "precedence based on size," and thereby be entitled to the next execution at that price. "Precedence based on size" also may be claimed by members on parity who can fill a bid or offer in its entirety when others on parity cannot fill the entire bid or offer. This aspect of Rule 72 commonly is referred to as "sizing out" other market interest.

A member who tries to execute a cross transaction on the Exchange Floor may be "sized out" by other market interest at the same price or he may run the risk that other members will "break up" the cross by trading with either the bid or offer side of the transaction. The proposed amendment to Rule 72 would facilitate members being able to execute certain types of cross transactions on the Exchange at the cross price, while still providing the opportunity in the auction market for another member to offer price improvement to the buyer or seller, as the case may be.

The proposed amendment would allow a member who has an order to buy 10,000 shares or more and an order to sell an equal amount of the same security, where neither order is for the account of a member or member organization, to cross those orders at a price that is at the prevailing quotation without being broken up at such cross price, irrespective of pre-existing bids or offers at that price. The member must follow the crossing procedures of Exchange Rule 76 and make a public bid and offer on behalf of both sides of the cross. Another member may trade with either the bid or offer side of the cross transaction (as the case may be) to provide a price which is better than the proposed cross price, but he could not trade with a bid or offer which is the same as the cross price. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction.

This amendment maintains the auction market principle of price improvement by allowing the cross to be broken up at a better price. It also preserves the principle of priority by requiring that a member who wants to break up a cross by providing a better price first satisfy all other market interest having priority at that better price, before trading with any part of the cross transaction. Conversely, granting priority to a member at the cross price does not necessarily, as a practical matter, disadvantage other orders at that price. The proposal is limited to block-size transactions only, and does not disadvantage market interest of smaller size at the cross price, as, under current rules, the member may trade 100 shares, put himself on parity with other bids or offers at the cross price, and then claim precedence based on size as to such bids or offers and consummate the cross transaction. In situations where a member has probed the market on the NYSE Floor and determined that he will not be able to claim precedence based on size on behalf of the cross transaction, it is likely that the cross will be executed at another market center at the agreed-upon cross price with no opportunity for other orders to interact with the cross, either at the cross price or at a better price.

The proposal simply makes it easier for public customers to effect block-size transactions on the NYSE at the cross price, while still providing the opportunity for other market interest, consistent with auction market principles, to provide a better price to one side or the other of the cross. The proposal is limited to block-size orders of public customers only, and thus is neither applicable to, nor gives any advantage to, members and member organizations in their proprietary trading, including facilitations of block transactions.

2. Statutory Basis—The proposed rule change is consistent with the requirement under section 6(b)(5) of the Acts that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change. However, the Exchange has reviewed the proposal with Constituent Committees representing institutional and upstairs traders, and commission house and independent Floor brokers, all of whom expressed general support for the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Reigster** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-39 and should be submitted by October 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22693 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 17749; International Series Rel. No. 156; 812-7526]

Banco Hispano Americano, S.A.; Application

September 18, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Banco Hispano Americano, S.A.

RELEVANT 1940 ACT SECTION: Section 6(c).

SUMMARY OF APPLICATION: Applicant seeks a conditional order under section 6(c) exempting it from all of the provisions of the 1940 Act in connection with the issuance and sale of its equity securities in the United States.

FILING DATE: The application was filed on June 4, 1990, and an amendment was filed on September 7, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 15, 1990, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Clyde Mitchell, Esq., White & Case, 1155 Avenue of the Americas, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a commercial bank incorporated in Spain that is engaged primarily in the business of receiving time and demand deposits and making loans through itself and its subsidiaries and affiliated companies. Applicant maintains an extensive network of branches in Spain and maintains branches, subsidiaries, and/or agency offices in a number of other countries, including the United States. Applicant was the sixth largest bank in Spain in terms of total assets at the end of 1988.

2. The operations of applicant are subject to a wide range of regulation and administrative supervision under Spanish law. Applicant is authorized to conduct business by the banking laws of Spain, which provide for, among other things, the protection of depositors through continuing supervision and examination and regulation of statutory reserve deposits, foreign currency and exchange, loan policies, interest rates, and equity. Applicant is subject to regulation by the Bank of Spain, a public law institution and the central bank of Spain.

3. Applicant conducts its banking activities in the United States through a branch office in New York, New York, an agency office in Miami, Florida, and a representative office in Los Angeles, California. These banking activities subject applicant to the supervisory authority of the Board of Governors of the Federal Reserve System and the banking authorities of the States of New York, Florida, and California. Applicant is a registered foreign bank holding company subject to the Bank Holding Company Act of 1956 and the International Banking Act of 1978 (the "IBA").

4. Applicant wishes to have access to the United States capital markets through private placements or public offerings of its equity securities.

Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to issue conditional or unconditional exemptions from any provision of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]." Applicant submits that the application meets these requirements.

2. Applicant states that the proposed exemption will advance the policies underlying the IBA by expanding the United States market for applicant's securities. Affording applicant access to the United States market for its securities would provide applicant with a new source of capital and would thereby benefit applicant's United States depositors by increasing applicant's sources of capital.

3. Applicant submits that the exception for domestic banks from the 1940 Act definition of investment company was provided because the particular abuses against which the 1940 Act was directed, including excessive management fees and self-dealing, were not deemed applicable to commercial banking entities because of the comprehensive regulation and supervision to which such banks are subject. Applicant asserts that the same reasoning should apply to it because its operations in Spain are controlled and overseen by Spanish banking authorities and its United States operations are subject to United States banking laws and various state banking laws.

4. On August 15, 1990, the Commission approved for comment amendments to Rule 6C-9 under the 1940 Act. Investment Company Act Release No. 17682 (Aug. 17, 1990). In its present form, Rule 6c-9 provides a conditional exemption from the 1940 Act that permits foreign banks to offer and sell debt securities and non-voting preferred stock without registering under the 1940 Act.

The proposed amendments would, among other things, extend the exemption from registration under the 1940 Act to foreign banks offering or selling their equity securities in the United States. Applicant has agreed to comply with Rule 6c-9 as it is proposed to be amended and as it may be

reproposed, adopted, or amended in the future in connection with the issuance and sale of its securities in the United States.

Applicant's Condition

As a condition to the requested relief, applicant will comply with the proposed amendments to Rule 6c-9 under the 1940 Act as they are currently proposed and as they may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22689 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17751; 811-151]

National Aviation & Technology Corp.; Application for Deregistration

September 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: National Aviation & Technology Corporation.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on form N-8F was filed on September 4, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 16, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 50 Broe Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations.

1. Applicant was organized as a corporation under the laws of the State of New York on June 23, 1928. Applicant commenced operations as an investment company in 1928 and registered under the Act as a closed-end investment company in 1941. Applicant converted to an open-end investment company and filed a registration statement on Form N-1 pursuant to the Securities Act of 1933 on March 9, 1979. The registration statement became effective on May 1, 1979, and applicant's initial public offering as an open-end investment company commenced on that date.

2. On February 12, 1990, applicant's board of directors, including a majority of the directors who were not interested persons of applicant, approved a merger agreement between applicant and AFA Funds, Inc. ("AFA Funds"), a Maryland corporation organized in January 5, 1990, by which applicant would be merged into National Aviation & Technology Fund (the "Series"), a series of AFA Funds.

3. Applicant's stockholders approved the merger agreement at the annual meeting of stockholders held on April 25, 1990. In approving the agreement, the stockholders authorized applicant, as sole stockholder of the Series prior to the merger, to approve an investment management agreement between the Series and American Fund Advisors, Inc., applicant's investment adviser; to approve the election of directors of AFA Funds; and to ratify the selection of accountants. Applicant took such actions on April 26, 1990.

4. Pursuant to the merger agreement, on May 1, 1990, the Series assumed all of the assets and liabilities of applicant. Each share of applicant issued and outstanding immediately prior to the merger was converted by the merger into one share of the Series, with the same net asset value per share. Upon completion of the merger, the stockholders of applicant owned as many full and fractional shares of the Series, with the same net asset value, as the number of shares of applicant owned by the stockholders immediately before the merger.

5. The expenses incurred in connection with the merger were $57,014, of which $44,014 was for legal expenses and $13,000 was for proxy solicitation expenses. All expenses relating to the merger were borne by AFA Funds.

6. Applicant filed a Certificate of Merger dated April 25, 1990 with the New York State Secretary of State and Articles of Merger dated April 25, 1990 with the Maryland State Department of Assessments and Taxation.

7. As of the date of the application, applicant had no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22690 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17749; 811-6101]

The Poland Fund, Inc.; Application for Deregistration

September 18, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICATION: The Poland Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on September 10, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 16, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 141 East 56th Street, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2283, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland Corporation and a closed-end non-diversified management investment company registered under the Act. On April 19, 1990, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act.

2. Applicant has never made a public offering of its securities.

3. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22691 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17750; 811-4129]

Victory Fixed-Income Investments, Inc.; Application for Deregistration

September 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Victory Fixed-Income Investments, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on September 7, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 16, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Battery Park Plaza, New York, NY 10004

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2283, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland Corporation and an open-end diversified management investment company registered under the Act. On October 11, 1984, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On February 21, 1985, applicant filed a registration statement on Form N-1A.

2. At a meeting held on May 11, 1990, applicant's board of directors adopted a plan of liquidation under which applicant would liquidate all of its holding and then make a liquidating distribution to each of its shareholders, with each shareholder receiving a dollar amount per share representing the net asset value of each share on the distribution date.

3. Applicant's shareholders unanimously approved the plan of liquidation at a special meeting held on June 22, 1990. The liquidating distribution took place June 27, 1990.

4. Liquidation expenses of $27,915.41 were borne by applicant.

5. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22692 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17744; International Series Rel. No. 158; 812-7484]

Standard Chartered, PLC; Application

September 17, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Standard Chartered, PLC.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order exempting it from the provisions of the 1940 Act in connection with the offer and sale of its equity securities in the United States, either directly or in the form of American depositary shares represented by American Depositary Receipts, rights and other convertible or equity related securities, and its short and long term debt securities (the "Securities").

FILING DATE: The application was filed on March 5, 1990, and amended on July 23 and September 10, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o James M. Bartos, Esq., Shearman & Sterling, St. Helen's, One Undershaft, London EC3A 8HX, England.

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FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, at (202) 272-3567 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Research Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is the ultimate parent holding company of the Standard Chartered group of companies, one of the largest banking and financial groups in the United Kingdom. Like similar major financial institutions in the United Kingdom and the United States, Applicant, through its consolidated subsidiaries and associated companies (with Applicant, the "Group"), primarily operates as an international commercial bank, receiving deposits and making commercial loans. At December 31, 1989, on a consolidated basis, approximately 81% of the Group's total assests were represented by advances to customers and other accounts, and approximately 93% of its total liabilities (excluding shareholders' funds and minority interests) were current, deposit and other accounts.

2. The Group's activities are in the following main areas: commercial banking, merchant banking (including fund management and trustee services), treasury operations (including metal and energy futures trading) and installment finance and leasing.

3. The Group's banking operations are subject to comprehensive regulation by United Kingdom and United States national banking authorities by virtue of the Group's activities in those countries, as well as regulatory authorities in New York and certain other states of the United States and other jurisdictions in which the Group operates branches, agencies and representative offices.

4. Applicant wishes to be in a position to offer and sell its Securities in the United States. Such offers and sales may be accomplished through public offerings registered under the Securities Act of 1933, as amended (the "1933 Act"), or private placements made pursuant to an exemption from registration under the 1933 Act.

Applicant's Legal Analysis

1. Applicant submits that approval of this application is necessary or appropriate in the public interest. In this regard, such an approval is consistent with and would advance the policies underlying the International Banking Act of 1978, which seeks to place United States banks and foreign banks on a basis of competitive equality in their United States transactions. In this regard, the SEC previously has issued orders granting exemptions from the provisions of the 1940 Act to other foreign banks and foreign bank holding companies in order to enable them to sell their equity securities in the United States. Applicant submits that the circumstances descibed in the application are substantially identical to those which supported issuance of those orders. In addition, Applicant states that the granting of the relief requested would benefit institutional and other sophisticated investors in the United States by making Applicant's equity securities more readily available to such investors.

2. Applicant submits that the relief requested is consistent with the protection of investors for the same reasons that United States banks are exempt from the 1940 Act—there are already in place regulatory requirements which afford sufficient protection for investors. As set forth in the application, Applicant and the Group are extensively regulated under both United Kingdom and United States banking laws as well under the laws of other countries in which it maintains operations. The United States operations of Applicant are extensively controlled and overseen by state banking departments and are subject to the reserve requirements established by the Board of Governors of the Federal Reserve System.

3. Applicant states that approval of the application is consistent with the purposes of the 1940 Act because commercial banks were not intended to be regulated by the 1940 Act. Commercial bank operations do not give rise to the abuses sought to be prevented by the 1940 Act, and the legislative history of the 1940 Act supports the position that commercial banking groups, such as Applicant and the Group, were not within the intended purview of the 1940 Act.

Applicant's Condition

If the requested order is granted, Applicant agrees to comply with the proposed amendments to rule 6c-9 under the 1940 Act as they are currently proposed, and as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22636 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2454]

Tennessee; Declaration of Disaster Loan Area

Cumberland County and the contiguous counties of Bledsoe, Fentress, Morgan, Putnam, Rhea, Roane, and White in the State of Tennessee constitute a disaster area as a result of damages caused by severe storms and hail which occurred on August 29, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 15, 1990 and for economic injury until the close of business on June 14, 1991 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:

For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Businesses With Credit Available Elsewhere	8.000%
Business and Non-Profit Organizations Without Credit Available Elsewhere	4.000%
Others (including Non-Profit Organizations) With Credit Available Elsewhere	9.250%
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000%

The number assigned to this disaster for physical damage is 245411 and for economic injury the number is 713000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated September 14, 1990.

Kay Bulow,

Acting Administrator.

[FR Doc. 90-22673 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2453]

Texas, Declaration of Disaster Loan Area

Dimmit County and the contiguous counties of Frio, LaSalle, Maverick, Webb, and Zavala in the State of Texas constitute a disaster area as a result of damages caused by heavy rains and flooding which occurred July 15-17, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 13, 1990 and for economic injury until the close of business on June 13, 1991 at the address listed below: Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155 or other locally announced locations.

The interest rates are:

For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Businesses With Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) Without Credit Available Elsewhere	9.250%
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000%

The number assigned to this disaster for physical damage is 245306 and for economic injury the numbers is 712800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 13, 1990.

Sally Narey,

Acting Administrator.

[FR Doc. 90-22674 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2455, #2456 & #2457]

West Virginia and Contiguous Counties in Ohio and Pennsylvania; Declaration of Disaster Loan Area

Brooke County and the contiguous counties of Hancock and Ohio in the State of West Virginia Jefferson County in the State of Ohio, and Washington County in the State of Pennsylvania constitute a disaster area as a result of damages caused by flooding which occurred on September 6-7, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 15, 1990 and for economic injury until the close of business on June 14, 1991 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th FL., Atlanta, Georgia 30308 or other locally announced locations.

The interest rates are:

For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Businesses With Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250%
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000%

The numbers assigned to this disaster for physical damage are 245506 for the State of West Virginia, 245606 for the State of Ohio, and 245706 for the State of Pennsylvania. For economic injury the numbers are 713100 for West Virginia; 713200 for Ohio; and 713300 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 14, 1990.

Kay Bulow,

Acting Administrator.

[FR Doc. 90-22675 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting at 10 a.m. on Wednesday, October 10, 1990, in the James Cleveland Federal Building, Room B-16, 55 Pleasant Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, 55 Pleasant Street, Concord, New Hampshire 03302-1257, telephone (603) 225-1440.

Dated: September 18, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-22670 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Corpus Christi, will hold a public meeting at 1:30 p.m. on Tuesday, October 23, 1990, at the U.S. Small Business Administration Office, 400 Main Street, Suite 403, Corpus Christi, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call David Royal, Business Development Specialist, U.S. Small Business Administration, Government Plaza, 400 Main Street, Suite 403, Corpus Christi, Texas 78401 phone (512) 888-3333.

Dated: September 18, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-22671 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Rio Grande Valley, will hold a public meeting at 1 p.m. on Tuesday, October 30, 1990, at the Rio Grande Valley Chamber of Commerce, FM 1015 & Expressway 83, Weslaco, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Miguel A. Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas 78550, phone (512) 427-8625.

Dated: September 18, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-22672 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee and Services Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Investment Policy Advisory Committee (INPAC) to be held October 2, 1990 in Washington, DC, from 9:30 a.m. to 12:30 p.m., and the Services Policy Advisory Committee (SPAC) to be held October 25, 1990 in Washington, DC, from 1:30 p.m. to 5 p.m., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosures of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive

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Office of the President, Washington, DC 20500.

Julius L. Katz,
Acting United States Trade Representative.

[FR Doc. 90-22702 Filed 9-24-90; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 19, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and Clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB number: 1512-0058.
Form number: ATF F 5120.25.
Type of Review: Extension
Title: Application to Establish and Operate Wine Premises.
Description: AFT F 5120.25 is used to establish the qualifications of an applicant for a bonded wine cellar of winery. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use.
Respondents: Businesses or other for-profit, Small businesses or organizations,.
Estimated Number of respondents: 1,620.
Estimated burden hours per Response: 1 hour.
Fequency of response: On occasion.
Estimated total reporting burden: 810 hours.
Clearance officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB reviewer: Milo Sunderhauf (202) 395-6880 Office of Management and Budget room 3001, New Executive Office Building Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 90-22659 Filed 9-24-90 8:45 am]
BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

September 19, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB number: 1515-0020.
Form number: CF 7539.
Type of review: Extension.
Title: Drawback Entry Covering Rejected Merchandise and Same Condition Merchandise.
Description: CF 7539 is needed to establish the eligibility of rejected, same condition, substitution same condition or destroyed merchandise for return of duty. The form is used by the claimant to provide the necessary information for Customs to approve the drawback claim.
Respondents: Businesses or other for-profit.
Estimated number of respondents/recordkeepers: 2,100.
Estimated burden hours per response/recordkeeper: 2 hours.
Frequency of response: On occasion.
Estimated total reporting burden: 22,550 hours.
Clearance officer: Dennis Dore (202) 535-9287, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 90-22660 Filed 9-24-90; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by October 25, 1990.

Dated: September 20, 1990.
By direction of the Secretary.

Frank E. Lalley,
Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Statement of Marital Relations.
3. VA Form 21-4170.
4. The form is used to gather the necessary information to determine if the veteran has established an other than ceremonial marriage. The information is used to determine entitlement to spousal benefits.
5. On occasion.
6. Individuals or households.
7. 6,000 repsonses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90-22715 Filed 9-24-90; 8:45 am]
BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 55, No. 186
Tuesday, September 25, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, September 26, 1990, 10:00 a.m., Commission Meeting.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

ANPR on Infant Bean Bag Cushions

The staff will brief the Commission on an Advance Notice of Proposed Rulemaking (ANPR) concerning the risk of injury and death which may be presented by infant cushions filled with foam plastic beads or other granular material.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800

Dated: September 20, 1990.

[FR Doc. 90-22808 Filed 9-21-90; 3:36 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Friday, September 28, 1990, 2:00 p.m., Commission Meeting.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS# 4174

The Commission will consider issues related to enforcement matter OS# 4174.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301-492-6800

Dated: September 20, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-22809 Filed 9-21-90; 3:36 pm]

BILLING CODE 6355-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, September 28, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed revision of subpart B to Regulation J (Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks) to make it consistent with Article 4A of the Uniform Commercial Code, Funds Transfers. (Proposed earlier for public comment; Docket No. R-0697)

Discussion Agenda:

2. Proposed requirement that Federal Reserve Banks notify receivers of off-line Fedwire funds transfers. (Proposed earlier for public comment; Docket No. R-0690)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: September 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22759 Filed 9-21-90; 10:51 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Friday, September 28, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This matter was originally announced for a closed meeting on September 12, 1990.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22760 Filed 9-21-90; 10:51 am]

BILLING CODE 6210-01-M

UNITED STATES INSTITUTE OF PEACE

DATES: September 27 and 28, 1990.

TIME: 9:00 a.m. to 5:30 p.m.

PLACE: 1550 M Street, NW., Washington, DC (ground floor, Board Room).

STATUS: Open session—(portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. (98-525).

AGENDA: (Tentative):

Meeting of the Board of Directors convened. Chariman's Report. President Report. Committee Reports. Consideration of the Minutes of the Fortieth meeting of the Board of Directors. Consideration of grant application matters.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs, telephone (202) 457-1700.

Dated: September 20, 1990.

Ms. Bernice J. Carney,

Director of Administration, The United States Institute of Peace.

[FR Doc. 90-22732 Filed 9-20-90; 4:41 am]

BILLING CODE 3155-01-M

federal register

Tuesday
September 25, 1990

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 34

OJJDP Competition and Peer Review Procedures; Final Competition and Peer Review Regulation

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 34

OJJDP Competition and Peer Review Procedures

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Final competition and peer review regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has revised its competition and peer review regulation, originally published at 50 FR 31361, August 2, 1985, and codified at 28 CFR part 34, to implement the expanded competition and peer review requirements of section 262(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Public Law 100–690, November 18, 1988 (hereinafter "Act"). The regulation governs the award of categorical grant funds under part C—National Programs, of the Act.

EFFECTIVE DATE: This regulation is effective on September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Office of the Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, DC 20531. Telephone: (202) 307–0668.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided.

Background Information

A proposed rule was published in the **Federal Register** on February 7, 1989, for public comment. No comments were received. This final regulation is essentially the same as the proposed rule. However, the "Peer Review Manual" referenced in the proposed rule is hereinafter known as the "Peer Review Guideline" in conformity with the directives system of the Office of Justice Programs. Copies of "Guideline" are available upon request from the Office of the Administrator, 633 Indiana Avenue, NW., Washington, DC 20531.

This regulation implements the competition and peer review requirements added to OJJDP's categorical assistance programs by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Public Law 100–690, November 18, 1988. These amendments consolidated OJJDP'S title II categorical programs in part C of the Act. Previously, title II contained different, or had no, competition and peer review requirements for each of the three categorical programs established in parts A, B and C of title II. Now, pursuant to section 262(d), competition and peer review requirements have been standardized for all categorical programs funded under part C—National Programs. The technical assistance and training program authority, which had been in part A, is now incorporated in part C, subpart I. Special Emphasis Prevention and Treatment Programs which had been under part B, subpart II, are now covered under subpart II of part C. The National Institute for Juvenile Justice and Delinquency Prevention programs remain in part C under subpart I. The retitled part C consolidates all these categorical programs, and all part C funds are governed by this revised regulation unless expressly excluded. (See § 34.2.)

Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This rule does not have "significant" economic impact on substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

There are no collection of information requirements contained in this regulation required to be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 34

Grant programs, Juvenile delinquency.

Accordingly, title 28 Code of Federal Regulations, part 34, is revised to read as follows:

PART 34—OJJDP COMPETITION AND PEER REVIEW PROCEDURES

Subpart A—Competition

Sec.
34.1 Purpose and applicability.
34.2 Exceptions to applicability.
34.3 Selection criteria.
34.4 Additional competitive application requirements and procedures.

Subpart B—Peer Review

34.100 Purpose and applicability.
34.101 Exceptions to applicability.
34.102 Peer review procedures.
34.103 Definition.
34.104 Use of peer review.
34.105 Peer review methods.
34.106 Number of peer reviewers.
34.107 Use of Department of Justice staff.
34.108 Selection of reviewers.
34.109 Qualifications of peer reviewers.
34.110 Management of peer reviews.
34.111 Compensation.

Subpart C—Emergency Expedited Review [Reserved]

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 *et seq.*).

Subpart A—Competition

§ 34.1 Purpose and applicability.

(a) This subpart of the regulation implements section 262(d)(1) (A) and (B) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*). This provision requires that project applications, selected for categorical assistance awards under part C—National Programs shall be selected through a competitive process established by rule by the Administrator, OJJDP. The statute specifies that this process must include announcement in the **Federal Register** of the availability of funds for assistance programs, the general criteria applicable to the selection of applications for assistance, and a description of the procedures applicable to the submission and review of assistance applications.

(b) This subpart of the regulation applies to all grant, cooperative agreement, and other assistance awards selected by the Administrator, OJJDP, or the Administrator's designee, under part C—National Programs, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, except as provided in the exceptions to applicability set forth below.

§ 34.2 Exceptions to applicability.

The following are assistance and procurement contract award situations that OJJDP considers to be outside the scope of the section 262(d)(1) competition requirement:

(a) Assistance awards to initially fund or continue projects if the Administrator has made a written determination that the proposed program is not within the scope of any program announcement expected to be issued, is otherwise eligible for an award, and the proposed project is of such outstanding merit, as determined through peer review under subpart B of this part, that an assistance award without competition is justified (section 262(d)(1)(B)(i));

(b) Assistance awards to initially fund or continue training services to be funded under part C, section 244, if the Administrator has made a written determination that the applicant is uniquely qualified to provide proposed training services and other qualified sources are not capable of providing such services (section 262(d)(1)(B)(ii));

(c) Assistance awards of funds transferred to OJJDP by another Federal agency to augment authorized juvenile justice programs, projects, or purposes;

(d) Funds transferred to other Federal agencies by OJJDP for program purposes as authorized by law;

(e) Procurement contract awards which are subject to applicable Federal laws and regulations governing the procurement of goods and services for the benefit and use of the government;

(f) Assistance awards from the 5% "set aside" of Special Emphasis funds under section 261(e); and

(g) Assistance awards under section 241(f).

§ 34.3 Selection criteria.

(a) All individual project applications will, at a minimum, be subject to review based on the extent to which they meet the following general selection criteria:

(1) The problem to be addressed by the project is clearly stated;

(2) The objectives of the proposed project are clearly defined;

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives;

(4) The project management structure is adequate to the successful conduct of the project;

(5) Organizational capability is demonstrated at a level sufficient to successfully support the project; and

(6) Budgeted costs are reasonable, allowable and cost effective for the activities proposed to be undertaken.

(b) The general selection criteria set forth under paragraph (a) of this section, may be supplemented for each announced competitive program by program-specific selection criteria for the particular part C program. Such announcements may also modify the general selection criteria to provide greater specificity or otherwise improve their applicability to a given program. The relative weight (point value) for each selection criterion will be specified in the program announcement.

§ 34.4 Additional competitive application requirements and procedures.

(a) *Applications for grants.* Any applicant eligible for assistance may submit on or before such submission deadline date or dates as the Administrator may establish in program announcements, an application containing such pertinent information and in accordance with the forms and instructions as prescribed therein and any additional forms and instructions as may be specified by the Administrator. Such application shall be executed by the applicant or an official or representative of the applicant duly authorized to make such application and to assume on behalf of the applicant the obligations imposed by law, applicable regulations, and any additional terms and conditions of the assistance award. The Administrator may require any applicant eligible for assistance under this subpart to submit a preliminary proposal for review and approval prior to the acceptance of an application.

(b) *Cooperative arrangements.* (1) When specified in program announcements, eligible parties may enter into cooperative arrangements with other eligible parties, including those in another State, and submit joint applications for assistance.

(2) A joint application made by two or more applicants for assistance may have separate budgets corresponding to the programs, services and activities performed by each of the joint applicants or may have a combined budget. If joint applications present separate budgets, the Administrator may make separate awards, or may award a single assistance award authorizing separate amounts for each of the joint applicants.

(c) *Evaluation of applications submitted under part C of the Act.* All applications filed in accordance with § 34.1 of this subpart for assistance with part C—National Programs funds shall be evaluated by the Administrator through OJJDP and other DOJ personnel (internal review) and by such experts or consultants required for this purpose that the Administrator determines are specially qualified in the particular part C program area covered by the announced program (peer review). Supplementary application review procedures, in addition to internal review and peer review, may be used for each competitive part C program announcement. The program announcement shall clearly state the application review procedures (peer review and other) to be used for each competitive part C program announcement.

(d) *Applicant's performance on prior award.* When the applicant has previously received an award from OJJDP or another Federal agency, the applicant's noncompliance with requirements applicable to such prior award as reflected in past written evaluation reports and memoranda on performance, and the completeness of required submissions, may be considered by the Administrator. In any case where the Administrator proposes to deny assistance based upon the applicant's noncompliance with requirements applicable to a prior award, the Administrator shall do so only after affording the applicant reasonable notice and an opportunity to rebut the proposed basis for denial of assistance.

(e) *Applicant's fiscal integrity.* Applicants must meet OJP standard of fiscal integrity (see OJP M 7100.1C, par. 24 and OJP HB 4500.2B, par. 48 a and b).

(f) *Disposition of applications.* On the basis of competition and applicable review procedures completed pursuant to this regulation, the Administrator will either:

(1) Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions as the Administrator deems necessary or desirable for the completion of the approved project;

(2) Determine that the application is of acceptable quality for funding, in that it meets minimum criteria, but that the application must be disapproved for funding because it did not rank sufficiently high in relation to other applications approved for funding to qualify for an award based on the level of funding allocated to the program; or

(3) Reject the application for failure to meet the applicable selection criteria at a sufficiently high level to justify an award of funds, or for other reason which the Administrator deems compelling, as provided in the documentation of the funding decision.

(g) *Notification of disposition.* The Administrator will notify the applicant in writing of the disposition of the application. A signed Grant/Cooperative Agreement form will be issued to notify the applicant of an approved project application.

(h) *Effective date of approved grant.* Federal financial assistance is normally available only with respect to obligations incurred subsequent to the effective date of an approved assistance project. The effective date of the project will be set forth in the Grant/Cooperative Agreement form. Recipients may be reimbursed for costs resulting from obligations incurred before the

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effective date of the assistance award, if such costs are authorized by the Administrator in the notification of assistance award or subsequently in writing, and otherwise would be allowable as costs of the assistance award under applicable guidelines, regulations, and award terms and conditions.

Subpart B—Peer Review

§ 34.100 Purpose and applicability.

(a) This subpart of the regulation implements section 262(d)(2) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This provision requires that projects funded as new or continuation programs selected for categorical assistance awards under part C—National Programs shall be reviewed before selection and thereafter as appropriate through a formal peer review process. Such process must utilize experts (other than officials and employees of the Department of Justice) in fields related to the technical and/or subject matter of the proposed program.

(b) This subpart of the regulation applies to all applications for grants, cooperative agreements, and other assistance awards selected by the Administrator, OJJDP, for funding under part C—National Programs that are being considered for competitive and noncompetitive (including continuation) awards to begin new project periods, except as provided in the exceptions to applicability set forth below.

§ 34.101 Exceptions to applicability.

The assistance and procurement contract situations specified in § 34.2 (c), (d), (e), (f), and (g) of subpart A of this part are considered by OJJDP to be outside the scope of the section 262(d) peer review requirement as set forth in this subpart.

§ 34.102 Peer review procedures.

The OJJDP peer review process is contained in an OJJDP "Peer Review Guideline," developed in consultation with the Directors and other appropriate officials of the National Science Foundation and the National Institute of Mental Health. In addition to specifying substantive and procedural matters related to the peer review process, the "Guideline" addresses such issues as standards of conduct, conflict of interest, compensation of peer reviewers, etc. The "Guideline" describes a process that evolves in accordance with experience and opportunities to effect improvements. The peer review process for all part C—National Programs assistance awards subject to this regulation will be conducted in a manner consistent with this subpart as implemented in the "Peer Review Guideline".

§ 34.103 Definition.

Peer review means the technical and programmatic evaluation by a group of experts (other than officers and employees of the Department of Justice) qualified by training and experience to give expert advice, based on selection criteria established under subpart A of this part, in a program announcement, or as established by the Administrator, on the technical and programmatic merit of assistance.

§ 34.104 Use of peer review.

(a) *Peer review for competitive and noncompetitive applications.* (1) For competitive applications, each program announcement will indicate the program specific peer review procedures and selection criteria to be followed in peer review for that program. In the case of competitive programs for which a large number of applications is expected, preapplications (concept papers) may be required. Preapplications will be reviewed by qualified OJJDP staff to eliminate those pre-applications which fail to meet minimum program requirements, as specified in a program announcement, or clearly lack sufficient merit to qualify as potential candidates for funding consideration. The Administrator may subject both pre-applications and formal applications to the peer review process.

(2) For noncompetitive applications, the general selection criteria set forth under subpart A of this part may be supplemented by program specific selection criteria for the particular part C program. Applicants for noncompetitive continuation awards will be fully informed of any additional specific criteria in writing.

(b) When formal applications are required in response to a program announcement, an initial review will be conducted by qualified OJJDP staff, in order to eliminate from peer review consideration applications which do not meet minimum program requirements. Such requirements will be specified in the program announcement. Applications determined to be qualified and eligible for further consideration will then be considered under the peer review process.

(c) Ratings will be in the form of numerical scores assigned by individual peer reviewers as illustrated in the OJJDP "Peer Review Guideline." The results of peer review under a competitive program will be a relative aggregate ranking of applications in the form of "Summary Ratings." The results of peer review for a noncompetitive new or continuation project will be in the form of numerical scores based on criteria established by the Administrator.

(d) Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator's consideration of competitive, noncompetitive, applications and selection of applications for funding.

(e) Peer review recommendations are advisory only and are binding on the Administrator only as provided by section 262(d)(B)(i) for noncompetitive assistance awards to programs determined through peer review not to be of such outstanding merit that an award without competition is justified. In such case, the determination of whether to issue a competitive program announcement will be subject to the exercise of the Administrator's discretion.

§ 34.105 Peer review methods.

(a) For both competitive and noncompetitive applications, peer review will normally consist of written comments provided in response to the general selection criteria established under subpart A of this part and any program specific selection criteria identified in the program announcement or otherwise established by the Administrator, together with the assignment of numerical values. Peer review may be conducted at meetings with peer reviewers held under OJJDP oversight, through mail reviews, or a combination of both. When advisable, site visits may also be employed. The method of peer review anticipated for each announced competitive program, including the evaluation criteria to be used by peer reviewers, will be specified in each program announcement.

(b) When peer review is conducted through meetings, peer review panelists will be gathered together for instruction by OJJDP, including review of the OJJDP "Peer Review Guideline". OJJDP will oversee the conduct of individual and group review sessions, as appropriate. When time or other factors preclude the convening of a peer review panel, mail reviews will be used. For competitive programs, mail reviews will be used only where the Administrator makes a written determination of necessity.

§ 34.106 Number of peer reviewers.

The number of peer reviewers will vary by program (as affected by the volume of applications anticipated or

received). OJJDP will select a minimum of three peer reviewers (qualified individuals who are not officers or employees of the Department of Justice) for each program or project review in order to ensure a diversity of backgrounds and perspectives. In no case will fewer than three reviews be made of each individual application.

§ 34.107 Use of Department of Justice staff.

OJJDP will use qualified OJJDP and other DOJ staff as internal reviewers. Internal reviewers determine applicant compliance with basic program and statutory requirements, review the results of peer review, and provide overall program evaluation and recommendations to the Administrator.

§ 34.108 Selection of reviewers.

The Program Manager, through the Director of the OJJDP program division with responsibility for a particular program or project will propose a selection of peer reviewers from an extensive and varied pool of juvenile justice and delinquency prevention experts for approval by the Administrator. The selection process for peer reviewers is detailed in the OJJDP "Peer Review Guideline".

§ 34.109 Qualifications of peer reviewers.

The general reviewer qualification criteria to be used in the selection of peer reviewers are:

(a) Generalized knowledge of juvenile justice or related fields; and

(b) Specialized knowledge in areas or disciplines addressed by the applications to be reviewed under a particular program.

(c) Must not have a conflict of interest (see OJP M7100.1C, par. 94).

Additional details concerning peer reviewer qualifications are provided in the OJJDP "Peer Review Guideline".

§ 34.110 Management of peer reviews.

A technical support contractor may assist in managing the peer review process.

§ 34.111 Compensation.

All peer reviewers will be eligible to be paid according to applicable regulations and policies concerning consulting fees and reimbursement for expenses. Detailed information is provided in the OJJDP "Peer Review Guideline".

Subpart C—Emergency Expedited Review—[Reserved]

Dated: August 29, 1990.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 90-22632 Filed 9-24-90; 8:45 am]
BILLING CODE 4410-18-M

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federal register

Tuesday,
September 25, 1990

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs; Proposed Rule

VOL
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

RIN 1029-AB30

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend its bonding regulations to require a written affirmation of the completion of each phase of land reclamation when bond release for that phrase is being sought. The regulations are being amended to provide assurance that all applicable reclamation activities have been accomplished in accordance with the regulatory program and the individual's approved permit.

DATES: *Written comments*: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on November 24, 1990.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Knoxville, Tennessee on November 19, 1990. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on October 31, 1990. Individuals wishing to attened but not testify at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments*: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315A–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota and Washington will be announced prior to the hearings.

Request for public hearings: Submit requests orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Mr. John P. Mosesso, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 343–1480 (commercial and FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period or delivered to addresses other than those listed above (see "DATES") may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "DATES" 1and "ADDRESSES"). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Mosesso (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time October 31, 1990. If no one has contacted Mr. Mosesso to express an interest in participating in a hearing in a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Adminstrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and assure an accurate record, OSM requests that persons who testify at the hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

Current OSM regulations at 30 CFR 800.40 require that a permittee, when applying for a release of all or part of a performance bond, describe in a newpaper advertisement, the nature, extent and results of the reclamation work for which he is requesting bond release. In this requirement, it is implicit that all reclamation requirements of the regulatory program and the individual mining permit have been met. However, OSM believes that this procedure can be improved and better reclamation can be assured with an explicit statement regarding reclamation that has been completed.

III. Discussion of Proposed Rule

Both the Act (30 U.S.C. 1269) and the permanent program regulations (30 CFR 800.40), require that all reclamation requirements be completed before a permanent program bond can be fuily released. However, neither the Act nor the regulations require an explicit written statment by the permittee that all reclamation requirements specified in his permit have been completed. This rule would require such a statement as part of the bond release application. The notarized statement would increase the importance of the bond release request and would document the reclamation evolution of a site. It would be especially useful in cases where the release involved only a phase or increment of an operation. This certification would become part of the permit file maintained by the regulatory authority and would thereby help dispel issues regarding previously completed and released reclamation. Further, it would be of great value to individuals charged with processing bond release applications. Most importantly, the certification would serve as a written record that the permittee has examined the requirements of his permit, investigated the nature and extent of reclamation, and certifies as true, that all applicable reclamation

responsibilities have been completed. Such a statement would, at the final bond release stage, provide additional evidence of the fact that the operation is completed, has met all reclamation requirements and the site is no longer a "surface coal mining and reclamation operation", and that the reclaimed land was properly transferred from SMCRA control to land owner control without condition. Upon termination of jurisdiction under 30 CFR 70.11(d), this certification rule would assure that a misrepresentation of a material fact did not occur by the permittee.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

The proposed rules apply through cross-referencing in those States with Federal Programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal Programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947 respectively. The proposed rules also apply through cross-referencing to Indian Lands under Federal programs for Indian lands as provided in 30 CFR parts 750.

Federal Paperwork Reduction Act

The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB. Public reporting burden for this information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1029–0043, Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a Finding of No Significant Impact (FONZI) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see "ADDRESSES"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this rule is John P. Mosesso, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343–1480 (commercial and FTS).

List of Subjects in 30 CFR Part 800

Insurance, Reporting and record keeping requirements, Surety bonds, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR part 800 as set forth below:

Dated: August 16, 1990.

James M. Hughes,

Deputy Assistant Secretary for Land and Minerals Management.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. The authority citation for part 800 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. Section 800.40 is amended by adding paragraph (a)(3) to read as follows:

§ 800.40 Requirement to release performance bonds.

(a) *Bond release application.*

* * * * *

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

* * * * *

[FR Doc. 90–22664 Filed 9–24–90; 8:45 am]
BILLING CODE 4310–05–M

VOL
55
ISS
186
SE
25
1990
UMI

federal register

Tuesday,
September 25, 1990

Part IV

Department of Education

Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Year 1991; Notice

BEST COPY AVAILABLE

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ISS
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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Year 1991

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities.

SUMMARY: The Secretary proposes funding priorities for fiscal year 1991 for the following:

Research in Education of the Handicapped Program, 84.023

Small Grants Program
Initial Career Awards
Improving Learning Through Home/School Collaboration
Improving the Retention of Special Education Teachers
Examining High School Curricula and the Demands on Personnel Educating Students with Disabilities

Handicapped Special Studies Program, 84.159

State Agency/Federal Evaluation Studies Projects
State Agency/Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness

Technology, Educational Media and Materials for the Handicapped Program, 84.180

Educational Implications of Using Assistive Technology
Center to Advance the Use of Technology, Media, and Materials in Specially Designed Instruction for Children with Disabilities
Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities

These three programs are administered by the Office of Special Education Programs. To ensure wide and effective use of program funds, the Secretary proposes to select from among these program priorities in order to fund the areas of greatest need for fiscal year 1991. A separate competition will be established for each priority that is selected.

The Secretary has determined that it is more appropriate to use the term "children with disabilities" in place of "handicapped children." The term "children with disabilities" is commonly accepted. The Secretary anticipates that this term will replace the term "handicapped children" when the Education of the Handicapped Act (EHA) is reauthorized this year. The term "children with disabilities" is to be read as having the same meaning as "handicapped children" which is defined in section 602 of the EHA.

DATES: Comments must be received on or before October 25, 1990, for the Technology, Educational Media, and Materials for the Handicapped Program; November 24, 1990, for the Research in Education of the Handicapped Program; and December 26, 1990, for the Handicapped Special Studies Program.

ADDRESSES: Comments should be addressed to: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW (Switzer Building, Room 3095—M/S 2313–2640), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell. Telephone: (202) 732–1099.

SUPPLEMENTARY INFORMATION: This notice represents a consolidated notice of fiscal year (FY) 1991 proposed priorities for certain discretionary grant programs administered by the Office of Special Education Programs. The legislation authorizing these programs is currently being revised by Congress. These revisions may take effect for FY 1991 and may require changes in these priorities. Further, no funds have yet been appropriated for FY 1991. Publication of these priorities does not preclude the Secretary from changing these priorities, or publishing additional priorities, nor is there any limitation for the Secretary to fund only these priorities.

Title of Program: Research in Education of the Handicapped Program.

CFDA No: 84.023.

Purpose

The Research in Education of the Handicapped program, authorized by part E of the Education of the Handicapped Act (20 U.S.C. 1441–1444), supports research and related activities, surveys, and demonstration projects relating to the educational and early intervention needs of children with disabilities. Under this program, the Secretary makes awards for research and related activities to assist special education personnel, related services personnel, early intervention personnel, and other appropriate persons, including parents, in improving the special education and related services and early intervention services for infants, toddlers, children, and youth with disabilities; to conduct research, surveys, or demonstrations relating to the provision of services to infants, toddlers, children, and youth with disabilities; and research and related activities, surveys, or demonstrations related to physical education or recreation for children with disabilities.

Proposed Priorities

The Secretary proposes to establish the following priorities for the Research in Education of the Handicapped program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Small Grants Program (CFDA 84.023A)

This priority provides support for a broad range of research and related projects that can be completed within a 12–18 month time period, and that are budgeted at $75,000 or less for the entire project period. The projects supported by this priority must focus on early intervention services for infants and toddlers and special education for children and youth with disabilities, consistent with the purpose of the program as stated in 34 CFR 324.1. The purpose of this priority is not to fund product development but, rather, to advance knowledge and practice. This priority is for pilot studies, projects that employ new methodologies, descriptive studies, advances in assessment, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases. These projects must demonstrate the potential contribution and benefits to be derived from the research or related activities.

Pilot studies are initial inquiries designed to develop and determine the feasibility of sampling, measurement, data collection or analysis procedures. These pilot studies must be conducted in a manner that actually results in initial findings as well as provides evidence of feasibility of procedures.

Advances in assessment refer to studies designed to identify new constructs, improved scaling, new approaches, improved criteria for scoring, and improved methods of the administration of assessments.

Given the diversity of research and related activities that could be supported under this priority, projects must be rigorously designed. Projects that increase the access and use of a research knowledge base must demonstrate effective design principles for providing access, formatting

information, and providing knowledge support that utilizes a professional knowledge base for improving programs and practice. Evaluation activities must consider design effectiveness, implementation requirements, and advance understanding of administrative and teacher needs. A follow-up evaluation to their dissemination or utilization activity is required.

Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers and that can be submitted to ERIC by the U.S. Department of Education. As appropriate, projects must include activities to prepare findings in formats useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 2: Initial Career Awards (CFDA 84.023N)

This priority supports awards to eligible applicants for the support of individuals who have completed a doctoral program and graduated no earlier than the 1986–87 academic year. This priority supports projects to conduct research and related activities focusing on early intervention services for infants and toddlers, and special education for children and youth with disabilities consistent with the purpose of the program as stated in 34 CFR 324.1. This support is intended to allow individuals in the initial phases of their careers to initiate and develop promising lines of research that will improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. A line of research refers to a programmatic strand of research emanating either from theory or a conceptual framework. The line of research would be evidenced by a series of related questions which establish parameters for designing future studies extending beyond the support of this award. However, the projects supported under this priority are not intended to comprise an entire line of inquiry. Rather, they are expected to initiate a new line or advance an existing one.

The project must demonstrate promise that the potential contribution and benefits of the line of inquiry will substantially improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. The project must include sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to the conduct of the proposed research. These experts do not have to be at the same institution or agency as the applicant. The nature of this interaction must be of sufficient frequency and duration for the researcher to develop the capacity to effectively pursue the research into mid-career activities. However, the experts involvement must not usurp the project leadership role of the initial career researcher. An applicant may apply for up to three years of funding. At least 60 percent of the researcher's time must be devoted exclusively to the project.

Project procedures, findings, and conclusions must be prepared in a manner which is informative for other interested researchers, and which can be submitted to ERIC by the U.S. Department of Education. As appropriate, projects must include activities to prepare findings in formats useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 3: Improving Learning Through Home/School Collaboration (CFDA 84.023L)

The purpose of this priority is to support studies which focus on home and school collaboration related to children with disabilities dispositions, motivation, and learning; and to develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative designs for grading, promotion, and homework for children with disabilities. The topic focuses on two dimensions of educational reform which may differentially affect children with disabilities—homework and performance assessment.

Issue

Special education has a long history of recognizing the importance of the parent role and involvement in their child's development and learning. The school excellence and teacher effectiveness reforms have increasingly focused attention on the reality that schools alone can not provide the educational experiences, support, and motivation critical to student learning. Parents place value on learning and education and they provide recognition, motivation and support for their child's development. Parents set expectations for their child's engagement in school, level of effort, and performance.

The education summit involving our Nation's Governors and the President of the United States focused attention on the critical need for home and school collaboration. In contrast to other public trusts in government and professional services, education requires unique and complex partnerships. Community, business, family, and school must collaborate to create attitudes, resources, and opportunities that develop and achieve educational excellence for all children. Parents are the earliest, and can be the most consistent, and proximal influence in establishing and supporting lifelong learning.

Learning does not begin when children enter school and stop when children exit our formal educational system. Nevertheless, schools provide the predominant setting for formal learning and thus, significantly affect children's disposition towards learning, their motivation, achievement, and success. Evidence of this is illustrated by protections assuring parental involvement or consent related to assessment, development of individual educational programs, and educational placement. The importance of parental influence on the psychosocial development of children's dispositions and motivation to learn has been an underlying premise of adult literacy programs. Parent education level has consistently been associated with children's dispositions towards school, learning, and aspirations. Schools have increasingly relied on parents to assist in improving school attendance, student discipline, and student performance.

An essential component of the educational reform movement is the focus on increased performance expectations and accountability. These initiatives have emphasized greater accountability related to grades, report cards, and performance assessment of students and teachers. In addition, excellence initiatives have often been accompanied by increases in the amount and nature of homework assignments. Each of these educational actions represent a potentially significant event affecting the nature and climate of the learning environment at home and in school. The intent of increasing homework was to expand learning time and opportunities, and student accountability was designed to adjust the balance of teacher and student attention towards performance results.

Little is known as to how these reforms have effected children with disabilities, their families, or the home

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and school learning climate. It is not known whether performance assessment has resulted in teachers providing students increased successful learning experiences, teaching to the test, or greater negative feedback to the student. Further, it is unknown whether increased performance assessment has resulted in more frequent and focused home/school communication and cooperation or parent anxiety, frustration, and tensions with either their child or teachers. It is unknown whether performance assessment has contributed to a positive climate for learning, or an environment where performance is valued more than learning. The relationship of such assessment to course grades and failure is unknown. Similarly, little is known about the impact of increased and sometimes graded homework and school projects. Have these reforms provided increased time for practice, and expanded opportunities for applications of learning? Have these reforms resulted in a strategy for increasing the amount and rate of subject matter covered in class by relying on the home for guided and self-directed practice? Has the increased reliance on homework created a bridge between home and school or resulted in increased parent/child friction and need for tutorial services? Finally, the impact of these educational reform initiatives on special education teachers assigned to resource or self-contained classrooms, and their instruction and assignment practices is unknown.

Purpose

The purpose of this priority is to support studies which focus on home and school collaboration related to children with disabilities dispositions, motivation and learning; and to develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative designs for grading, promotion, and homework for children with disabilities. The topic focuses on two dimensions of educational reform which may differentially affect children with disabilities—homework and student performance assessment (e.g. standardized tests, competency tests etc.). Studies must consider current policy and practices related to grading student assignments, performance assessments, report cards, grade promotion, and their relationship to home and school collaboration. In addition, studies supported by this priority must consider practices related to assigning homework, its completion, and feedback about homework. Projects funded by this priority must determine the extent to which these prominent dimensions of educational reform are achieving their desired effects, and identify unintended side effects for children with disabilities and their families. In particular, these projects must determine whether these elements of educational reform place greater demands on home and the school relationship and whether schools have devised additional or different methods of home and school collaboration to meet these demands. These projects must develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative designs for grading, promotion, and homework for children with disabilities.

Activities

Sampling—Each project must include school age children having cognitive, physical, emotional, and sensory disabilities representing the full range of severity in their educational disabilities and educational placements. Projects must include a representative sample of children without disabilities for contrast purposes. Projects must select children, families, and schools in a manner reflecting considerations of: Disability; severity of disability; age level and type of school; parent education; family income; ethnic, cultural, and linguistic differences; and geography. School building and teacher participation must be obtained, as well as parent and student consent to participate.

Measurement—Projects must select or develop measurement approaches and instrumentation to consider the premises, context, understanding, meaning, emotions, and interactions among schools, parents, and children with disabilities related to homework and performance assessment. Measurement of homework, school and teacher assigned projects must include, but not be limited by, dimensions such as: Purpose of assignment; nature and extent of formative feedback to be provided by teachers and parents; peer assistance or collaboration; and teacher, parent, and student emotional response to, and understanding of, assignment and product expectation.

Measurement of performance assessment related to grading assignments, class tests, report card grading, and achievement tests (i.e., standardized, curriculum based, or competency) must, at a minimum, consider such dimensions as: Purpose; scale meaning; expectations of student, parent, and teacher for assessment of performance levels; student time and reactions to studying for tests; family tensions and involvement in preparations for the tests; and premises, understanding, and meaning attributed to grading policy and practices by teachers, parents, and students.

Measurement approaches and instrumentation must be piloted for content, understanding, and administrative feasibility with teachers, parents, and children with disabilities. In addition, each respondent group should be interviewed to determine if there was information which should be collected which is not in the pilot instrument.

Project design—The projects must include ongoing input from teachers, parents and, where appropriate, children with disabilities. Their input must be sought in relationship to a project's conceptual framework, hypotheses, variable, and instrument selection or development. Further, this participation must be evidenced in their involvement in interpreting results. Projects must consider the hidden instruction provided by peers and family outside of school. Educational reforms increasingly recognize the essential role of the home as the prime social context for reinforcing and supporting student learning. These projects must identify critical features for achieving effective home/school collaboration in order to fulfill these expectations. Projects supported under this priority must develop the knowledge necessary, as well as the issues to be addressed, if homework assignments and performance assessment are to be positive contributors to students with disabilities' learning.

Collaboration—Projects supported under this priority must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than that achieved by any single project. Projects must collaborate to determine a common core of descriptive marker variables (e.g. grade level, age). In addition, the feasibility of determining a common core of constructs and instrumentation must be explored. The intention of this collaboration is not to compare or aggregate data across projects. The purpose of this collaboration is to strengthen the confidence in the strength and generalizability of hypothesized relationships where possible; establish robustness of relationships; identify critical features for achieving effective home/school collaboration related to homework and performance assessment; and determine critical policy and practice issues requiring attention.

Before the end of the project, the Department will determine whether or

not to fund an optional six-month period. The purpose of the optional period would be to permit project personnel supported under this competition to collaboratively document their findings, and the implications these findings have for advancing knowledge and improving practice and programs. This period will also be used to disseminate findings through methods that capitalize on the existence of professional, advocacy and parent networks and communication systems for the exchange of project information. As appropriate, this period could be used to modify findings based on input and feedback from researchers and representatives of target audiences.

Dissemination—Project procedures, findings, and conclusions must be prepared in a manner which is informative for other interested researchers, and which can be submitted to ERIC by the U.S. Department of Education. Projects must also prepare findings in a manner useful to school administrators, teachers and parents, and if appropriate, students, related to improving current policies and practices associated with homework and performance assessment. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 4: Improving the Retention of Special Education Teachers (CFDA 84.023Q)

The purpose of this priority is to describe and understand the broad range of forces, including factors related to personnel preparation, which are contributing to the attrition rate of special education teachers in urban schools, and to develop a strategic action plan for implementation by participating urban schools.

Issue

The need for qualified special education personnel is significant and continues to increase. Critical special education teacher shortages are exacerbated by high rates of teacher attrition which are reported to be as great as 30 percent in some areas. Simultaneously, enrollments in personnel preparation programs are declining and the number of graduates from these programs has declined by 35 percent over the past decade. The decline in recruitment, growth in reported personnel shortages, projections for teacher retirements, expansion of services, and increases in numbers of children requiring special education make retention of the current work force critical. Retention problems are most acute in major urban areas where special education teacher shortages are considered to be the most severe.

Although these shortages signal an impending crisis in the provision of educational services to children with disabilities, they underrepresent the true magnitude of the problem. A host of State certification and waiver policies reduce the apparent special education teacher shortage by allowing personnel with various types of emergency or restricted certification to fill special education positions. By definition these personnel are not fully qualified special educators as they do not meet State standards for teaching in special education. The extent of such certification practices is not currently known, but it is estimated to be as high as 30 percent.

Concerns about both the quality and the diminishing supply of special education teachers have led to the rapid development of alternative programs for preparing special education teachers. Unlike emergency certification policies, these alternative programs involve sequences of professional preparation training experiences designed to prepare highly qualified personnel to meet State certification requirements. Program designs reflect different notions of what characterizes highly qualified instructional personnel and vary greatly in terms of the nature and amount of academic and fieldwork experiences required. The range of programs includes those that limit professional studies and stress the essential content knowledge to be derived from academic majors as well as programs that include traditional professional studies content and standards but employ alternative designs or target candidates who differ from those who have traditionally entered the field.

These programs provide broad parameters for characterizing different training/certification patterns or entry paths through which personnel first enter employment as special education teachers in urban schools. These paths include, but are not limited to: (1) Traditional preservice education leading to standard State certification, (2) emergency certification or waivers for individuals who have not completed and may have little exposure to a structured preparation program, (3) alternatively designed preparation programs stressing traditional content and standards, and (4) alternative certification based on standards that deviate from traditional State and professional standards and limit professional studies. The stratification of specific entry paths is further complicated by variations in State policies regarding prerequisite preparation and experience in general education teaching or in specific categorical areas of special education.

Increasing numbers of personnel are entering special education teaching through alternative paths. Urban IHEs with teacher preparation programs indicate that enrollments in traditional preservice special education teacher training programs is plummeting while enrollments of special education teachers holding limited or emergency certification is escalating. Depending upon the nature of State requirements, an undetermined number of personnel may continue to renew emergency certification or earn permanent certification, while never participating in a preparation program with a prescribed curriculum sequence, and possibly never participating in a supervised practicum with a master teacher and faculty supervisor. An implicit assumption underlying personnel preparation programs is that the nature and extent of special education teacher preparation interacts with the other factors that influence teaching effectiveness and teacher retention. Yet the relationship of teacher preparation, teaching effectiveness, and teacher retention has not been determined.

Issues of recruitment and information about supply and demand have been receiving increased attention, but little attention has been focused on the quality of the supply of special education teachers or on reasons for special education teacher attrition. We do not know whether we are losing qualified personnel who meet State certification standards, or unqualified instructional personnel. We do not know the differential rates of attrition associated with such factors as work conditions, nature of undergraduate and preservice teacher education, teaching assignment, case load or class size, and geographic location. While anecdotal and single case studies provide insights into issues related to burnout, second careers, and changing assignments to general education, inadequate information exists for designing efforts to reverse the trend.

Purpose

The purpose of this priority is to describe and understand the broad range of forces, including factors related to personnel preparation, which are contributing to the attrition rate of special education teachers in urban schools, and to develop a strategic action plan for implementation by the participating urban schools. Under this

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priority urban schools are defined as any local political jurisdiction (city) with a population of 300,000 or more people and a school enrollment of 25,000 or more. A major intent of this priority is to identify from the perspective of special education teachers the reasons for their decisions to continue or terminate their careers as teachers of handicapped children. The projects to be supported must be designed to secure information representative of teachers sampled in a specified urban area or areas and consider, but not be limited to, variables such as: School demographics, types of credentials, nature and extent of preservice and inservice preparation, type of teaching assignment. These studies must focus on who is leaving and why they are leaving as well as who is remaining and why they are remaining in the special education teaching force in urban schools.

Activities

Conceptual framework. The projects must articulate a conceptual framework for describing and understanding the complex of variables that are associated with teacher retention in urban areas. This framework must be based on a review of the relevant literature. Information and hypotheses as to the reasons for teacher attrition must be considered. This activity must include the identification and definition of salient marker variables and descriptions of their relationships to other variables. The framework must consider the many categories of variables that help to describe and may influence teacher retention including demographic, organizational, and professional and personal characteristics. The conceptual framework must be continually refined as other activities are implemented and completed, and various stakeholders have the opportunity to review and respond to the results. Variable selection for the projects must be consistent with this conceptual framework.

Sampling. Projects must sample teachers on the basis of number of years of experience and certification/training path. The projects must develop a scheme for classifying the various routes that teachers use for training and certification that must then be used as a stratifying variable in the sample selection. The projects must ensure that the sample includes personnel who teach students with the full range of disabilities and levels of severity. Sample selection must consider ethnic and cultural issues. The projects must obtain agreement to participate from the teachers selected. Sample size must be sufficient to yield adequate levels of precision for each of the alternative entry paths representative of the range of preparation and certification patterns that characterize the existing special education teaching force in urban schools.

Measurement. The projects must develop a practical method of measuring teacher retention. Measurement must consider teachers' demographic characteristics, professional expectations, salary and other incentives received, training, and other variables that the literature suggests as significant in teacher retention. Measures of working conditions must also be developed that include the nature of assignment, class size, decision making opportunities, planning time, and other important variables. All measurement techniques and instruments must be piloted before their full scale use.

Project design. The projects must include ongoing input from teachers (including those who are currently practicing as well as those who have left teaching), school administrators, and faculty from IHEs. Their input must be sought in relationship to the conceptual framework, hypotheses, and variable and instrument selection or development. Furthermore, this participation must be evidenced in their involvement in interpreting results. It is anticipated, that during the first six months projects will finalize the conceptual framework, project design, instrumentation, and sampling plan. By September 1991, the projects must be prepared to finalize the sample, obtain teacher consent for participation, and begin data collection. In September of 1992 and 1993, projects must determine teacher attrition over the preceeding year.

Strategic planning. Each project supported under this priority must develop a strategic action plan, based on the projects findings and their interpretations, for implementation by the participating urban schools and other stakeholders (e.g. interested parties) to support and retain qualified special education teachers. This activity must provide examples of principles and designs for implementing teacher retention initiatives. Projects must involve the multiple stakeholders concerned with this issue in a strategic planning process. Projects must be characterized by the participation of district administrators and teacher educators as well as representatives of State educational agencies, and the collective bargaining unit. That involvement must provide for minority participation and address multicultural issues related to teacher preparation and retention.

Collaboration. Projects supported under this priority must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than possible for any single project. Projects must jointly determine at the beginning a common core of marker variables and explore the feasibility of determining a common core of constructs and instrumentation. The intention of this collaboration is not to compare or aggregate data across projects. The purpose of this collaboration is to, where possible, substantiate hypothesized relationships; establish robustness of relationships; identify critical features for improving teacher retention; and determine critical policy and practice issues requiring address.

Before the end of the project, the Department will determine whether or not to fund an additional six-month period. The purpose of the additional period would be to permit project personnel supported under this competition to collaboratively document their findings, and the implications those findings have for advancing knowledge and improving practice and programs.

Dissemination. Projects must prepare findings in a manner useful to school administrators, teachers, teacher educators, and State and Federal administrators and policymakers. Projects must capitalize on the existence of the National Clearinghouse on Careers and Employment in Special Education, professional, advocacy and parent networks and communication systems for the exchange of project information. The projects must produce and disseminate materials addressing at least the following areas:

1. Initial data collection and analyses; describe the demographics of the current special education teacher workforce; analyze the various entry patterns, or paths, by which personnel become employed as special education teachers in the urban schools; and analyze retention attrition rates according to the reason for staying and leaving.

2. Analyze and describe the relationship of special education teacher retention and attrition, and alternative entry paths, demographic variables, and organizational variables.

3. A strategic and operational plan detailing the goals, objectives, opportunities and actions that the school district and other stakeholders will design and implement to support and retain special education teachers.

4. Describe the relationship of alternative entry paths to special education teachers' retention and career advancement.

5. For each of the designated alternative entry paths describe the types of support and the opportunities needed for teachers to (a) obtain satisfactory performance evaluations, and (b) earn appropriate State certification as a special education teacher.

Phasing

Year 1: The first six months of the project will focus on developing and piloting project methodology and measurement, and developing cooperation among projects. It is expected that key personnel from the successful projects will meet twice at a central location during the first year to facilitate these cooperative efforts. Projects must schedule activities to permit productive use of the information generated and exchanged at these meetings. Initial study of the teacher workforce will occur in the second half of the first year.

Years 2–3: The primary activities during this period will be further study of the teacher workforce, analysis, and completion of project findings for dissemination. Strategic planning activities are expected during year 3.

Priority 5: Examining High School Curricula and the Demands on Personnel Educating Students With Disabilities (CFDA 84.023U)

The purpose of projects supported under this priority is to study the curricula provided in high schools for students with disabilities as a foundation upon which to consider needed school, and teacher education reforms.

Issue

The restructuring of American high schools occurring as a result of educational reform initiatives continues to be premised on a basic concept of faculty subject matter specializations (i.e. English, mathematics, science). While curricular reform, teacher standards, and course requirements have received significant attention they have all been designed consistent with the concept of faculty specializations. This is evidenced in the departmental and program organizational structures of high schools.

Reform initiatives for addressing the diversity of ability, skills, interests, linguistic, and cultural differences of a student body are generally occuring independent of subject matter considerations. While curricula and teacher reforms have focused on content and teacher preparation they have not examined the implications for aligning specialized programs or services (i.e. vocational education, special education) with subject matter requirements.

Restructuring of the American high school consistent with encouraging school based management practices must address the needs of children with disabilities. Curricula, teacher reforms, accountability, and school restructuring initiatives must be designed to effectively provide an appropriate education for all children with disabilities. Achieving this objective is a complex, multi-dimensional challenge. The magnitude and depth of educational reform requires sustained and planned initiatives.

A starting point for designing and developing needed improvements or changes requires a representative mapping of the range of current curricula practices. While a wide array of snapshots have provided a college depicting course offerings, student access and participation, graduation requirements, and outcomes, insufficient detail exists to substantiate or provide direction for reforms. In determining the need for reforms and designing improvement and change in secondary education for students with disabilities it is essential to examine the nature of student and program outcomes related to subject matter (e.g., history, science, math), instructional (e.g. bilingual, remedial) and program (e.g., vocational, special education) specializations.

Purpose

The purpose of projects supported under this priority is to map the curricula provided in secondary high schools for students with disabilities as a foundation upon which to consider needed school and teacher education reforms. Curriculum outcomes are considered the primary building blocks for designing appropriate educational programs for children with disabilities. The mapping of curricula in relationship to desired student and program outcomes will provide direction for developing programs which effectively integrate the expertise of regular, vocational, and special education personnel. In addition, curricula descriptions and analysis of their requirements for teacher expertise provide a useful template for State agency review of certification requirements for secondary credentials and for institutions of higher education in designing personnel preparation programs.

Projects supported under this priority may focus the study of educational programs on any meaningful classification of student or program characteristics. These classifications might consider the students' disability, severity of disability, student or program outcomes, intensity of services required, or program type (e.g., college preparation, vocational). The projects must be directed toward improving the effectiveness of high school programs and curricula by achieving better outcomes for students with disabilities. The projects must examine educational programs, curricula and desired outcomes, and determine the requirements and demands they place on special education personnel expertise.

Activities

Conceptual framework and approach. Projects supported under this priority must develop and refine a conceptual framework and approach which will focus and provide direction for the required analytic and other activities. The conceptualization must consider the multiple dimensions used in constructing secondary curricula, as well as those used by personnel preparation program accreditation and teacher credentialing bodies. The conceptual framework must be developed with input from administrators, regular, vocational, special education, and related service personnel, and other relevant parties.

Sampling. The unit of analysis to be studied is the educational programs of students with disabilities enrolled in high school programs. The target population to be sampled must be justified and defined relevant to the project's selection of a classification scheme. The selection of a sample should recognize and address potential threats to the external validity of the study resulting from such factors as: Idiosynchratic building characteristics, non-representativeness of the educational programs sampled, and other relevant variables. The project must select a representative array of curricula scope and sequence, course syllabi, and experiences which fulfill a student's entire secondary school program requirements for graduation or program completion. The educational programs sampled should be targeted to allow generalizations to the knowledge, processes, skills, and attitudes teachers and other school personnel are expected to impart to a specified population of students with disabilities.

Project analysis. The projects supported under this priority must analyze the curriculum scope and sequence , course syllabi, basic skills,

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processes and strategies which comprise the content of regular, vocational, and special education courses and training opportunities for students with disabilities. Projects must examine the appropriateness of the educational program objectives and designs that can be identified through these curricular analyses. The projects must obtain access to existing documentation describing teacher and administrator professional preparation archived with professional and State accrediting bodies. Projects must conduct rigorous and thorough analyses to map the content comprising the educational programs being provided students with disabilities. The projects must draw implications for effectively integrating the specialized expertise of regular, special, and vocational education personnel in the delivery of educational programs for high school students with disabilities. Additionally, projects must analyze findings and derive implications for considering professional preparation programs, and for State and professional accreditation of teacher education programs.

Dissemination. The projects supported under this priority must be conducted in a manner that will facilitate the utility and use of project findings. Projects must work with existing networks, develop networks or collaborate with professional associations in conducting and affecting the use of project activities and results. The projects supported under this priority must develop strategies for communication among themselves that will facilitate in year 3 their collaborative effort to order and map their collective findings. This collaborative initiative must be designed to enhance the collective impact of the individual projects in focusing attention and stimulating reforms to improve secondary educational programs and school related outcomes for children with disabilities.

Phasing

The projects supported under this priority have two phases. The first phase encompasses years 1 and 2, and the second phase year 3 activities. Phase 1 must involve the refinement of the conceptual framework and approach, selection of sample, development and piloting of measurement and documentation procedures, data collection and analysis of educational program curricula, State and professional accreditation standards, and teacher certification requirements.

In the second phase each project must focus on its individual dissemination strategies. In order to fulfill this objective projects will need to collaboratively order and map their collective findings in a format able to be exchanged with relevant professional associations and other national organizations relevant to improving secondary education programs and curricula for students with disabilities.

Program authority: 20 U.S.C. 1441–1444.

Title of program: Handicapped Special Studies Program.

CFDA No.: 84.159.

Purpose

To support studies to evaluate the impact of the Education of the Handicapped Act (EHA), including efforts to provide a free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities.

Proposed Priorities

Under section 618(c), the Secretary is expressly required to submit to the appropriate committees of each House of the Congress and publish in the Federal Register for review and comment proposed annual priorities for evaluations conducted under section 618. The Secretary proposes priorities under the Handicapped Special Studies Program, CFDA No. 84.159. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: State Agency/Federal Evaluation Studies Projects (CFDA No. 84.159A)

This priority supports cooperative agreements for evaluation studies for up to 24 months to be conducted by State agencies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

Within this proposed priority, the Secretary particularly invites studies which after the award will: (1) Document State and local progress and identify barriers in the provision of services under Part H of the Education of the Handicapped Act to infants and toddlers with disabilities, and in the delivery of special education and related services to preschoolers; (2) assess educational and post-school outcomes of students with disabilities; (3) assess State and local educational reform policies and practices and their impact on inclusionary activities; (4) determine the reasons for within State variations in graduation and drop-out rates, identification and placements of children with mental retardation, and use of segregated settings; (5) assess the impact and effectiveness of special education and related services utilizing States' extant data bases; and (6) investigate the effects of different certification options (i.e., provisional, emergency, waiver, internship) on the attrition rate of special education teachers.

However, in accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), (2), (3), (4), (5), and (6) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

Priority 2: State Agency/Federal Evaluation Studies Projects Feasibility Studies of Impact and Effectiveness (CFDA No. 84.159F)

The purpose of this priority is to support cooperative agreements for feasibility studies, up to 18 months, to be conducted by State agencies to address the impact and effectiveness of activities assisted under the Education of the Handicapped Act. This priority is for topics having significant potential but which require preliminary study to determine feasibility related to designs, measurement, and analysis. While collection and reporting of generalizable impact and effectiveness data are not expected for feasibility studies, pilot tests of data collection instruments and procedures are required.

Within this proposed priority, the Secretary particularly invites studies which after the award will: (1) Document State and local progress and identify barriers in the provision of services, under part H of EHA, to infants and toddlers with disabilities, and in the delivery of special education and related services to preschoolers; (2) assess educational and post-school outcomes of students with disabilities; (3) assess State and local educational reform policies and practices and their impact on inclusionary activities; (4) determine the reasons for within State variations in graduation and drop-out rates, identification and placements of children with mental retardation, and use of segregated settings; (5) assess the impact and effectiveness of special education and related services utilizing States' extant data bases; and (6) investigate the effects of different certification options (i.e., provisional, emergency, waiver, internship) on the attrition rate of special education teachers.

However, in accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), (2), (3), (4), (5), and (6) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

Program authority: 20 U.S.C. 1418.

Title of program: Technology, Educational Media, and Materials for the Handicapped Program.

CFDA No: 84.180.

Purpose

The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities. In creating part G, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

Proposed priorities

The Secretary proposes to establish the following funding priorities for the Technology, Educational Media, and Materials for the Handicapped Program, CFDA No. 84.180. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Educational Implications of Using Assistive Technology (CFDA 84.180R)

This priority supports studies that describe and explain how assistive technologies are used to achieve educational goals for students with disabilities. These goals are allowing greater access to learning environments and enhancing the range and effectiveness of learning experiences.

Issue

During the past few years, technology advances have increased the potential to integrate children with disabilities in educational and other domains of daily life, and to improve their educational experiences. Technological advances have enabled many children with disabilities to communicate more effectively, to control their environments, and to achieve greater mobility. A great deal of effort, research knowledge, and technical expertise continue to go into developing new technologies and technology applications to improve the lives of children with disabilities. Yet, as with all technological advances, their existence does not ensure that students will reap optimal benefits from new technologies. Many challenges face children with disabilities, their parents, teachers, and related services personnel in using technology effectively to achieve educational goals. Technology assistance has been growing, but there is a lack of information on how technology has been integrated into the full range of school-related activities, what issues have arisen with regard to its use, and the effects of using assistive technology on a broad range of outcomes.

Research Focus

This priority supports studies that describe and explain how assistive technologies are used to achieve educational goals for students with disabilities. These goals are allowing greater access to learning environments and enhancing the range and effectiveness of learning experiences. The studies supported by this priority must document the experiences of children who are using assistive technology in educational settings. In addition to documenting the benefits of using assistive technologies, studies must document intended and unintended implications or challenges that are encountered in the daily management of the technologies and their effects on students. In considering the experiences of children, these studies must document critical components of effective technology use. Some examples of such components are: (1) The abilities and preparation of teachers, both special education and regular teachers, and other personnel, to operate and maintain the assistive technologies and the procedures that are available when the equipment breaks down; (2) the methods that teachers and other school personnel use to manage the greater diversity of students in their classrooms that results from the integration of students who use assistive technologies (these methods could include approaches to classroom organization and grouping of students when classes include students who are aided by assistive technologies); (3) the way in which assistive technologies fit with the primary activities of instruction, such as teaching content, skills, cognitive strategies (this could include an examination of media and materials and their compatibility with assistive technologies, as well as the implications of using assistive technologies for the activities of professional personnel who must convey knowledge and skills to students); and (4) the implications for effective home-school collaboration, as well as for communication among all of the service providers and agencies that must address the needs of students who use assistive technologies.

Studies must not only describe how technologies are used by individual students, their parents and service providers, but must also document the outcomes of technology use in school and related settings. Assistive technology has the potential to expand opportunities for learning, productivity, social interactions, and personal fulfillment of students with disabilities. The studies supported by this priority must carefully examine a range of outcomes of using assistive technologies, including the broad educational experiences of the student, including academic performance as well as social and emotional outcomes. Studies must describe relationships such as those between students with disabilities and other students, their family members, teachers, or other service providers. Significant social and individual outcomes must be measured. For example self-concept and self-efficacy, and control over the environment are among important outcomes to consider. This priority is concerned with the implications of the use of technology on all aspects of the child and his/her environment—integration in least restrictive settings; organization of the classroom; instruction; curriculum; teacher preparation; peer interaction; home-school collaboration; communication among all service providers; school achievement; attitudes of teachers, parents and nondisabled students.

Project research goals. The following research goals are central to these

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studies and must be addressed in the studies, although projects will differ in their relative emphasis on these goals or others that researchers will wish to focus on: (1) Describe how assistive technologies are used in educational and related settings, the challenges and implications of these technologies related to teaching content, skills and strategies, and how these technologies affect the educational experiences of children with disabilities; (2) analyze the benefits of using technologies and the difficulties encountered in using them and any negative effects; and (3) determine the effects of using assistive technologies on a broad range of outcomes. In determining these effects, projects may need to develop or adapt appropriate outcome measures. Project designs and methodologies will differ depending on the relative emphasis given to these or other research goals, the needs of students who are being studied, and the technologies that they are using.

In all cases, where appropriate, projects must include input from teachers, related service professionals, parents, and children with disabilities. Their input must be sought in developing the project's conceptual framework and/or hypotheses, design, methodology, and choice of instruments, protocols or other forms of data collection.

Sample and methods. Each study must select a number of students for purposes of observation with differing functional and technology needs. To the extent possible, projects must select students who differ by age. Optimally, the students in the sample will attend a range of educational settings and placements so that comparisons can be made among them. Students must be observed in their usual educational settings during a large portion of the school year. Students must also be observed as they participate in extracurricular activities, as well as in home and community settings.

Each study may employ a range of methodologies and measures. Qualitative, case study, or observational approaches are an essential component of each project. For example, projects must involve tracking children through their day and over time during the school year to document their experiences using assistive technologies. In keeping with their research objectives, projects must select or develop measurement instruments or other methodological approaches that will adequately describe the experiences of children with disabilities, their family members, and service providers in using technologies. Where appropriate, and depending on the projects' conceptual framework, projects must consider and analyze relationships among variables of interest to the researchers.

Rigorous qualitative methodologies are acceptable, but journalistic or anecdotal descriptions are insufficient. Studies that develop new instruments or outcome measures, or adapt existing ones to this study, must pilot them for traditional psychometric properties as well as content, understanding and administrative feasibility with service providers, parents and children.

Collaboration among projects. Projects supported under this priority must collaborate with one another in order to achieve a collective and cumulative advancement in knowledge. Projects must collaborate to identify a core of research questions, variables, and approaches. While aggregation of data across projects is not anticipated, projects are expected to share initial hypotheses, compare approaches to measurement, explore the feasibility of using similar measures, where appropriate, identify critical features of effective uses of assistive technology, and identify critical issues of policy and practice.

Before the end of the project period, the Department will determine whether or not to fund an optional six months. The purpose of the optional period is to permit project personnel supported under this competition to collaboratively document their joint findings and implications for advancing knowledge and improving practice and programs.

Products and dissemination. Projects must produce: (1) descriptions of the benefits and possible unintended effects and challenges of using assistive technologies to enhance the educational experiences of children with disabilities; (2) analyses of the range of implementation issues and barriers, and suggested actions for improving the daily management and use of the technologies; and (3) guidance for teachers, students, parents, and administrators related to achieving effective use of assistive technologies by and for children with disabilities. Projects which developed new outcome measures must find appropriate methods of informing the research community about them. Projects must analyze and disseminate findings in a manner useful to State and local administrators, teachers, and service providers, parents, and students where appropriate. In addition, findings must be in a form to be disseminated to individuals who are in key positions to make decisions about the uses of technology for the education of students with disabilities. Projects must disseminate their results to relevant national centers, appropriate professional and advocacy organizations, and recipients of grants under the Technology Related Assistance Act (Pub. L. 200-407).

Priority 2: Center To Advance the Use of Technology, Media, and Materials in Specially Designed Instruction for Children With Disabilities (CFDA 84.180N)

This priority supports one cooperative agreement to establish a center that will examine and promote the effective use of technology, media, and materials in providing special education, related services, and early intervention to meet the unique needs of children with disabilities. The center is intended to promote effective educational experiences and inclusion in a full range of educational experiences so that children with disabilities can achieve enhanced learning, productivity, self-fulfillment, and social relationships with others. The center's activities and products will identify critical issues and effective practices, and will advance the professional development of special education, related services, early intervention, and regular education personnel so that they can effectively use technology, media, and materials to achieve better results for children with disabilities.

Issue

Effective use of technology, media, and materials is critical to support two aspects of the Education of the Handicapped Act (EHA). First, the EHA defines the term "special education" to mean "specially designed instruction * * * to meet the unique needs of a handicapped child." Other components of the EHA express the intent of Congress to support programs that address the unique instructional and related needs of children with disabilities.

Second, EHA provides that "to the extent appropriate, handicapped children * * * are educated with children who are not handicapped, and that * * * removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

While much progress has occurred during the past 14 years in implementing the procedural features of the EHA, there is a growing awareness of the need to examine and improve the craft and outcomes of special education. The ability of special education and related services personnel to provide specially designed instruction as well as to provide the supplementary aids and services necessary to maintain children in regular education settings can depend heavily on the effective use of technology, media, and materials. Special education and related services personnel must be knowledgeable about existing products and how to use them in order to provide effective educational experiences for children with disabilities. These experiences are the foundation for enabling and empowering children with disabilities to achieve better results.

Teachers and students spend more than 80 percent of their class time engaged with, or in discussion related to, textbooks, media, and materials. Technology also is assuming a critical role in the education of many children with disabilities. Yet, many products that are used or could be used in educational settings are not designed to fit the needs of students with disabilities. Teachers and other professionals need the skill and expertise to be able to align technology, media, and materials with curriculum and instructional approaches to effectively meet the unique learning needs of children with disabilities, to design effective educational experiences for them, and to afford them maximum access to and inclusion in a full range of educational experiences.

Part G of EHA authorizes grants and contracts to advance the availability, quality, and use of technology, media, and materials in the education of children with disabilities. The Division of Innovation and Development (DID) in the Office of Special Education Programs (OSEP) has funded many projects for this purpose. The effective use of technology, media, and materials by special education and related services personnel continues to require significant attention. When used well, technology, media, and materials can assist teachers and related services personnel to provide specially designed instruction, and to enhance access to the full range of educational activities, thus enabling professionals to achieve better results for children with disabilities.

Activities

The purpose of this priority is to fund a cooperative agreement to support a center to advance the use of technology, media, and materials by special education, related services, and early intervention personnel. The center must address these goals by:

(1) Developing a strategic framework and approach for activities that provide a foundation for aligning the use of technology, media, and materials with: (a) The needs of children with disabilities and their families; (b) the educational activities, curriculum, and instruction that are provided to children with disabilities; and (c) procedures used to provide special education, related services, and early intervention services, and promote access and inclusion in educational activities;

(2) Conducting analyses and syntheses of research and practices which document current practices and identify the knowledge, skills, competencies, and working conditions necessary to effectively use technology, media, and materials in delivering specially designed instruction and promoting maximum access and inclusion of children with disabilities;

(3) Providing networks and exchanges, and convening meetings and focus groups to review and advance special education, related service, and early intervention practice through effective use of technology, media, and materials; and

(4) Developing and disseminating materials which provide guidance to those responsible for designing and delivering professional development activities, in preservice and inservice training and in technical assistance, to foster effective use of technology, media, and materials.

Developing strategic framework and approach for activities. The activities of the center must reflect a strategic framework that provides a foundation for aligning the use of technology, media, and materials with: (1) The needs of children with disabilities and their families; (2) the educational activities, curriculum, and instruction that are provided to children with disabilities; and (3) procedures used to provide special education, related services and early intervention services and promote access and inclusion in educational activities. This framework must be grounded in an analysis of desired outcomes for children with disabilities and the ways in which the effective use of technology, media, and materials could enhance these outcomes. Examples of desired outcomes for children with disabilities are: Improved learning, greater long-term productivity, more and better social relationships with others, and greater self-fulfillment and self-determination. The center's framework and approach should examine current and potential uses of technology, media, and materials to achieve these outcomes; areas where technology, media, and materials could be used more effectively to achieve these outcomes; barriers to the effective use of technology, media, and materials; and knowledge skills, competencies and decision rules that special education and related services personnel need to select, adapt, align and use technology, media and materials; and identify and promote uses of technology, media, and materials that achieve desired outcomes for children with disabilities.

For each outcome, strategic goals and objectives must be identified. Potential activities which contribute to attaining goals and objectives also must be identified and criteria established for setting priorities among center activities. Annually, the objectives and proposed activities will be reviewed, and where required, modified or new initiatives proposed. The goals and objectives must be updated each year and must be the basis for delineating various center activities of research, development, meetings, and dissemination.

Conducting research analyses and syntheses. The center must conduct or commission special studies to contribute to advancing the professional knowledge base for the effective use of technology, media, and materials. Where appropriate, these studies must be related to the goals and objectives of the strategic framework and annual revisions. These studies may use both qualitative and quantitative techniques, and must incorporate both the review and synthesis of extant information as well as the design and implementation of center-initiated studies. Topics for studies might include, but need not be limited to: Documenting effective uses of technology, media, and materials by special education and related services personnel; synthesizing research findings about effective uses of technology, media, and materials; describing ways in which special education and related service professionals can achieve better alignment of technology, media, and materials with curriculum and instruction; and describing how technology, media, and materials can be used to achieve access and inclusion for children with disabilities. The center's studies, secondary analyses, or reviews must provide focus, parameters, and content direction for center materials that will provide guidance for the design and delivery of training and technical assistance activities, which will foster the development of special education, related service, and early intervention personnel. Thus, findings from studies conducted by the center must be interpreted and translated into

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principles, facts, and pragmatic approaches for advancing the effectiveness of knowledge and skills imparted to special education, early intervention, and related services personnel.

Developing and supporting networks. The primary target audiences for center products and dissemination activities must be the trainers, State and local administrators, technology coordinators, media specialists, curriculum coordinators, and other relevant parties responsible for preparing and assisting special education, early intervention, and related services personnel to use technology, media, and materials. The center must establish and maintain contacts with institutions of higher education, other organizations including recipients of grants under the Technology Related Assistance Act (Pub. L. 100-407), associations, agencies, and individuals who are involved in advancing the professional development of special education, related services, and early intervention personnel; and who can: (1) Participate in center efforts to identify and define effective practices; and (2) use and benefit from the information developed and disseminated by the center.

Fostering exchanges and convening meetings. The center must provide mechanisms for the timely exchange of ideas, information, and materials with trainers, administrators, technology, media, and curriculum coordinators, and other relevant parties involved in improving the professional capacities of special education, related services, and early intervention personnel to use technology, media, and materials. These mechanisms must include: (a) Planning and convening annual meetings to permit members of different target audience groups to interact, learn, and exchange information; and (b) designing and convening special focus groups, periodically throughout the project, to define and examine particular topics and issues. In addition, the center will maintain the ongoing exchange of information with the Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities (*see:* Priority 3, CFDA 84.180M).

Dissemination. The center must prepare 3–5 dissemination activities per year for specified target audiences. These activities must reflect the information developed from research, evaluation, and synthesis activities of the center as well as the results and deliberations of meetings, and exchanges. The center may also commission papers on selected topics or issues that will provide particular assistance to advance the use and implementation of center findings by members of networks that the center supports. The center must establish effective procedures for engaging specified audiences in the exchange, dissemination and use of center materials. Dissemination planning, and involvement of target groups, should be initiated early in the development of materials to enhance their exchange and use.

Time Frame

The Secretary will approve a cooperative agreement with a project period of 36 months subject to the requirements of 34 CFR 75.253(a) for continuation awards with an option for an additional two year continuation. Activities in the first year must include: Staffing; refinement of the conceptual framework and approach; specification and implementation of initial research, synthesis, and development activities; production of reports; establishment of networks and exchanges; and convening of the first annual meetings and focus groups.

At the outset of each subsequent year, the conceptual framework must be reviewed, topics and issues must be revised, and associated activities must be defined and implemented. Networks and exchanges must be continued, the annual meetings and any focus groups must be convened, and special studies must be implemented and reported.

In determining whether to continue the center for the two option years, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the center's performance to date and the added contribution that would accrue from the extension.

Priority 3: Center To Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children With Disabilities (CFDA 84.180M)

This priority supports one cooperative agreement to establish a center that will examine and promote the quality of technology, media, and materials in providing special education, related services, and early intervention to meet the unique needs of children with disabilities. The center's focus on the quality of technology, media, and materials is intended to promote effective educational experiences and inclusion in a full range of educational experiences so that children with disabilities can achieve enhanced learning, productivity, self-fulfillment, and social relationships with others. The center's activities and products will advance the knowledge of developers, producers, publishers, and distributors of technology hardware and software, media, and materials so that they can act to improve the quality of their developments and products to achieve better results for children with disabilities.

Issue

High quality technology, media, and materials are critical to support two aspects of the Education of the Handicapped Act (EHA). First, the EHA defines the term "special education" to mean "specially designed instruction * * * to meet the unique needs of a handicapped child." Other components of the EHA express the intent of Congress to support programs that address the unique instructional and related needs of children with disabilities.

Second, EHA provides that "to the extent appropriate, handicapped children * * * are educated with children who are not handicapped, and that * * * removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

The ability of special education and related services personnel to provide specially designed instruction as well as to provide the supplementary aids and services necessary to maintain children in regular education settings can depend heavily on the quality of technology, media, and materials that are available. Access to educational environments may depend on assistive technology, appropriate instructional technology, media, and materials that are adaptable to a wide diversity of learners. Specially-designed instruction also depends on the availability of a wide variety of high-quality technology, media, and materials that allow teachers and related services personnel to design effective educational experiences for children with disabilities. These experiences are the foundation for enabling and empowering children with disabilities to achieve better results.

Teachers and students spend more than 80 percent of their class time engaged with, or in discussion related to, textbooks, media, and materials. Technology also is assuming a critical role in the education of many children with disabilities. Yet, many products that are used or could be used in educational settings are not designed to fit the needs of students with disabilities, or to enable special education and related services personnel to design effective educational experiences for them. Improving the quality of technology, media, and materials requires knowledge of learner characteristics, expected outcomes, effective practices of teachers and related services personnel, and characteristics of the activities and settings in which technology, media, and materials are used. This knowledge is available from both researchers and practitioners. It would enable technology (hardware and software), media, and materials developers, producers, and distributors/publishers to design and produce better products in order to meet the needs of children and enhance the outcomes of their educational experiences.

Part G of EHA authorizes grants and contracts to advance the availability, quality, and use of technology, media, and materials in the education of children with disabilities. The Division of Innovation and Development (DID) in the Office of Special Education Programs (OSEP) has funded many projects for this purpose. The quality of products to be used to provide special education and related services, as well as to achieve more effective access to and inclusion in a full range of educational activities continues to require significant attention. New products, or adaptations of existing products, must be designed to include features which will permit children with disabilities to effectively participate in the range of activities that they encounter in regular and special education settings. Technology, media, and materials must also be aligned with curriculum and instructional approaches in the classroom, must exist in great variety and be of high quality to facilitate the uniquely tailored, specially designed instruction that is a cornerstone of special education. Well-designed technology, media, and materials can greatly influence and support the decisions of teachers and related services personnel in providing specially designed instruction, in enhancing access and inclusion to the maximum extent appropriate for each child with a disability, and in achieving better results for children with disabilities.

Activities

The purpose of this priority is to fund one cooperative agreement to support a center to advance the quality of technology, media, and materials used by students with disabilities and special education, related services, and early intervention personnel. The center must address these goals by:

(1) Developing a strategic framework and approach for activities that provide a foundation for aligning the design of technology, media, and materials with: (a) The needs of children with disabilities and their families; (b) the educational activities, curriculum and instruction that are provided to children with disabilities; and (3) the procedures used in providing special education, related services, and early intervention services, and promoting access and inclusion for children with disabilities;

(2) Conducting analyses and syntheses of the quality of technology (hardware and software), media, and materials, as well as of research and practices related to serving children with disabilities that have implications for enhancing the quality of technology, media, and materials;

(3) Providing networks and exchanges, and convening meetings and focus groups to review and exchange information about design features and educational approaches that have proven to be effective with children who are disabled and the implications of these for enhancing the quality of technology, media, and materials; and

(4) Developing and disseminating materials which provide guidance to technology (hardware and software), media, and materials developers, producers, and distributors/publishers to facilitate the design of better products that permit children who are disabled access to educational settings and instruction, and that facilitate the provision of specially designed instruction.

Developing strategic framework and approach for activities. The activities of the center must reflect a strategic framework that provides a foundation for aligning the design of technology, media, and materials with: (1) The needs of children with disabilities and their families; (2) the educational activities, curriculum and instruction that are provided to children with disabilities; and (3) the procedures used in providing special education, related services, and early intervention services, and promoting access and inclusion for children with disabilities. This framework must be grounded in an analysis of desired outcomes for children with disabilities and the ways in which high-quality technology, media, and materials could enhance these outcomes. Examples of desired outcomes for children with disabilities are: Improved learning, greater long-term productivity, more and better social relationships with others, and greater self-fulfillment and self-determination. The center's framework and approach should examine the availability and quality of technology, media, and materials that could achieve these outcomes; areas where technology, media, and materials could be designed to better achieve these outcomes; barriers to the availability and quality of technology, media, and materials, e.g., market size; and the knowledge that developers and publishers need to enhance the quality of their products; and identify and promote technology, media, and materials that encompass design features and educational principles that achieve desired outcomes for children with disabilities.

For each outcome, strategic goals and objectives must be identified. Potential activities which contribute to attaining goals and objectives must be identified and criteria established for setting priorities among center activities. Annually, the objectives and proposed activities will be reviewed, and where required, modified or new initiatives proposed. The goals and objectives must be updated each year and must be the basis for delineating various center activities of research, development, meetings, and dissemination.

Conducting research analyses and syntheses. The center must conduct or commission special studies to contribute to advancing the knowledge base for better product development. Where appropriate, these studies must be related to the goals and objectives of the strategic framework and annual revisions. These studies may use both qualitative and quantitative techniques, and must incorporate both the review and synthesis of extant information as well as the design and implementation of center-initiated studies. Topics for studies would include, but need not be limited to, documenting the relevant characteristics of children with disabilities; the activities of special education teachers and related services personnel; design features and educational principles of technology, media, and materials that are effective for children with disabilities; and the availability and quality of technology, media, and materials with features that would be needed by children with disabilities, their families, teachers, and related services personnel. The center's studies, secondary analyses, or reviews must provide focus, parameters, and content direction for center materials, which will provide guidance for the design and development of improved

technology, media, and materials by developers, publishers and distributors. Thus, findings from studies conducted by the center must be interpreted and translated into principles, facts, and pragmatic approaches for advancing the availability and quality of technology, media, and materials.

Developing and supporting networks. The primary target audiences for center products and dissemination activities must be technology (hardware and software), media, and materials developers, producers, and distributors/publishers and other relevant parties responsible for developing quality technology, media, and materials. The center must establish and maintain contacts with commercial and not-for-profit publishers and distributors, developers, and producers who can use and benefit from the information developed and disseminated by the center. As appropriate, the center will include in its networks researchers, practitioners, individuals with disabilities and their families. Individuals from these groups can help to identify and clarify the needs of children with disabilities, their teachers and related service providers.

Fostering exchanges and convening meetings. The center must provide mechanisms for the timely exchange of ideas, information, and materials with target audiences of the center involved in improving the quality of technology, media, and materials. These mechanisms must include: (a) Planning and convening annual meetings to permit members of different target audience groups to interact, learn, and exchange information; and (b) designing and convening special focus groups, periodically throughout the project, to actively define and examine particular topics and issues and the implications for the design of technology, media, and materials. In addition, the center will maintain the ongoing exchange of information with the Center to Advance the Use of Technology, Media, and Materials in Specially Designed Instruction for Children with Disabilities (*see:* Priority 2, CFDA 84.180N).

Dissemination. The center must prepare for 3–5 information dissemination activities per year for specified target audiences. The activities must reflect the information developed from research, evaluation, and synthesis activities of the center as well as the results and deliberations of meetings and exchanges. The center may also commission papers on selected topics or issues that will provide particular assistance to advance the use and implementation of center findings by members of networks that the center supports. The center must establish effective procedures for engaging specified audiences in the exchange, dissemination and use of center materials. Dissemination planning, and involvement of target groups, should be initiated early in the development of materials to enhance their exchange and use.

Time Frame

The Secretary will approve a cooperative agreement with a project period of 36 months subject to the requirements of 34 CFR 75.253(a) for continuation awards with an option for an additional two year continuation. Activities in the first year must include: staffing; refinement of the conceptual framework and approach; specification and implementation of initial research, synthesis, and development activities; production of reports; establishment of networks and exchanges; and convening of the first annual meetings and focus groups.

At the outset of each subsequent year, the strategic framework must be reviewed, topics and issues must be revised, and associated activities must be defined and implemented. Networks and exchanges must be continued, the annual meetings and any focus groups must be convened, and special studies must be implemented.

In determining whether to continue the center for the two option years, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the center's performance to date and the added contribution that would accrue from the extension.

Program authority: 20 U.S.C. 1461.

Intergovernmental Review

The Technology, Educational Media, and Materials Program for the Handicapped is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 78. The Research in Education of the Handicapped Program, and the Handicapped Special Studies Program are not subject to the Executive Order. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Dated: August 1, 1990.

(Catalog of Federal Domestic Assistance Numbers: 84.023, Research in Education of the Handicapped; 84.158, Handicapped Special Studies Program; and 84.180, Technology, Educational Media and Materials for the Handicapped Program)

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-22618 Filed 9-24-90; 8:45 am]

BILLING CODE 4000-01-M

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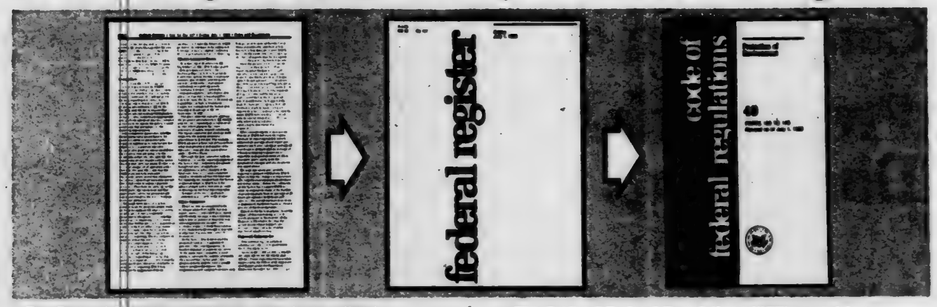

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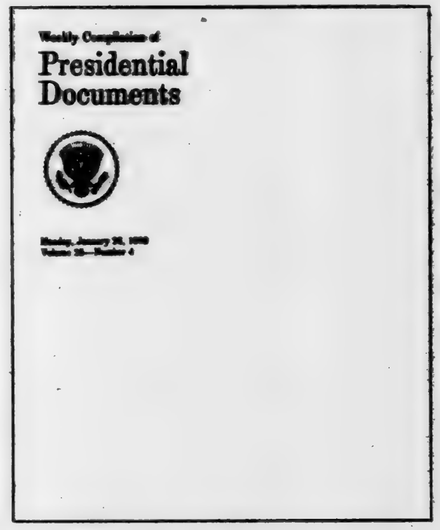

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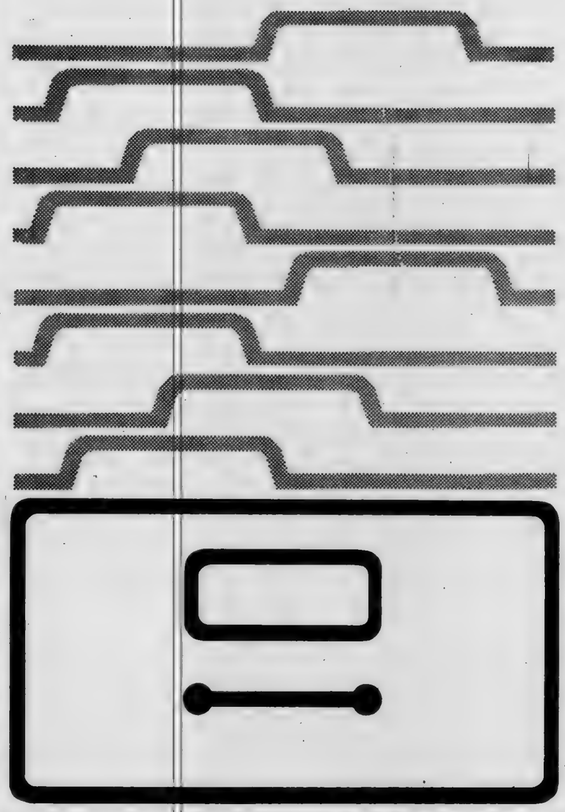

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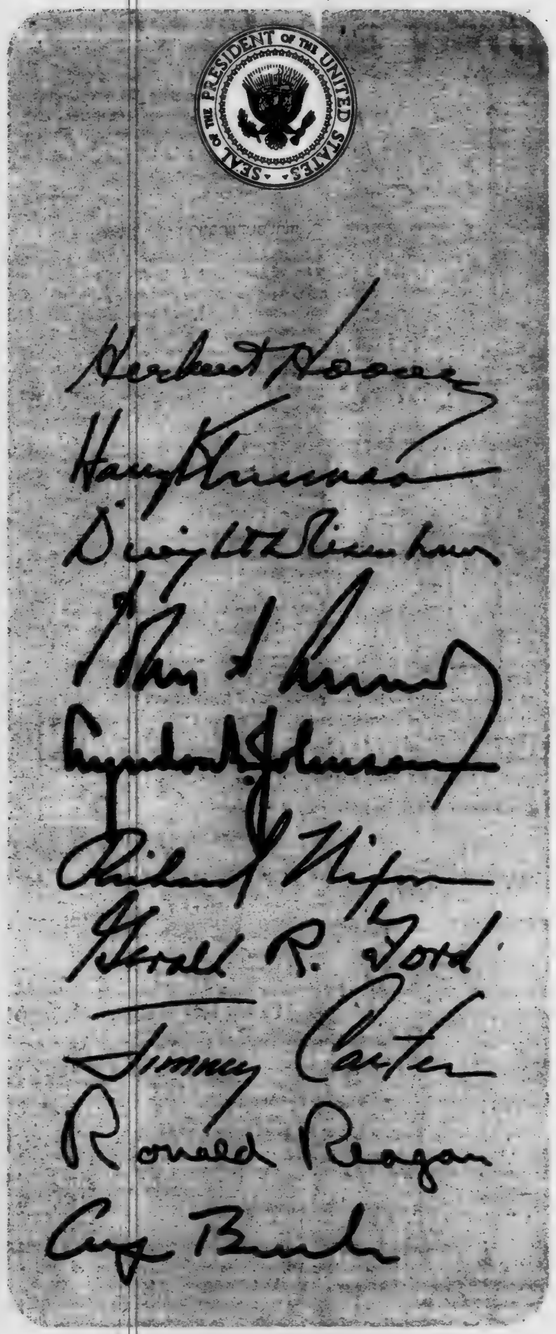

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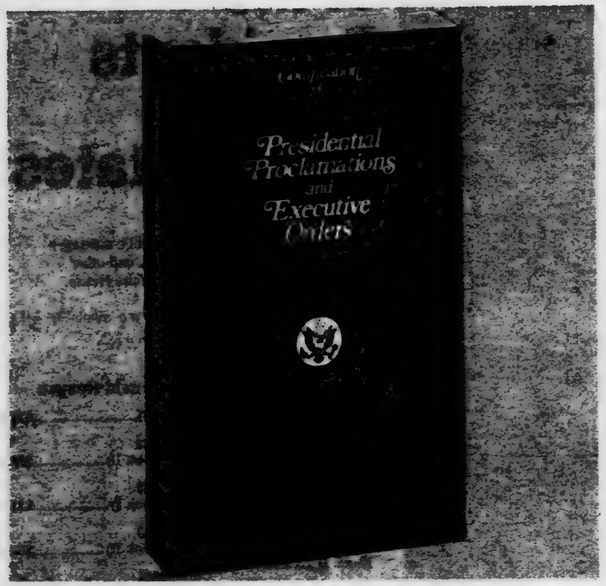

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6185 of September 24, 1990

National School Lunch Week, 1990

By the President of the United States of America

A Proclamation

Established less than half a century ago, the National School Lunch Program has become the mainstay of the United States' Child Nutrition programs. The National School Lunch Act of 1946 underscored the depth of our concern for our youngest and most vulnerable citizens. It also declared it to be our policy "as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food."

When he signed the National School Lunch Act on June 4, 1946, President Truman observed that, "in the long view, no nation is any healthier than its children or more prosperous than its farmers." By promoting good nutrition among our Nation's schoolchildren, as well as the purchase and distribution of U.S. agricultural products, the National School Lunch Act has benefitted not only America's youth and farmers but also the entire country.

Since its enactment, the National School Lunch Program has been expanded to include the School Breakfast Program. Legislation has also been enacted to provide free meals to children from families with very low incomes. Today the National School Lunch Program serves appetizing and nutritious meals to more than 23 million children in over 91,000 schools. Recognizing the importance of a good breakfast to learning, nearly half of these institutions also participate in the School Breakfast Program and provide nutritious morning meals to nearly 4 million children each day. Over 80 percent of these children receive breakfast without charge because they are from families with low incomes.

The School Breakfast and National School Lunch Programs not only encourage participating students to develop healthy eating habits, but also help to ensure that children come to class ready and able to learn. By providing the Nation's schoolchildren with nutritious meals, these valuable programs help to ensure that they have the energy, stamina, and good health needed to remain eager and attentive students. In so doing, these programs strengthen the educational process.

During National School Lunch Week, we pay due recognition to the many concerned Americans who devote their time and skill to providing children around the country with good nutrition at school. These individuals include Federal and State officials, food service professionals, school administrators, teachers, parents, local civic leaders, and many volunteers. Their generous cooperative efforts are a wonderful example of a successful partnership among Federal and State governments and local communities.

By joint resolution approved October 9, 1962 (Public Law 87–780), the Congress designated the week beginning on the second Sunday of October in each year as "National School Lunch Week" and requested the President to issue a proclamation in observance of that week.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning October 14, 1990, as National School Lunch Week. I call upon all Americans to recognize those dedicated and hardworking individuals who contribute to the success of the School Lunch Program.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-22258
Filed 9-24-90; 4:23 pm]
Billing code 3195-01-M

Presidential Documents

Memorandum of September 6, 1990

Determination Under Section 405(a) of the Trade Act of 1974, as Amended—the Czech and Slovak Federal Republic

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (P.L. 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I determine, pursuant to section 405(a) of the Trade Act, that the "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Czechoslovak Federative Republic" will promote the purposes of the Trade Act and is in the national interest.

You are authorized and directed to transmit copies of this determination to appropriate members of Congress and to publish it in the Federal Register.

George Bush

THE WHITE HOUSE,
Washington, September 6, 1990.

[FR Doc. 90-22921
Filed 9-24-90; 2:29 pm
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 55, No. 187
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-182]

Mediterranean Fruit Fly; Removal From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing from the list of quarantined areas in California a portion of Los Angeles County near Hancock Park, and the remaining quarantined area in San Bernardino County. We have determined that the Mediterranean fruit fly has been eradicated from these areas and that the restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from these areas.

DATES: Interim rule effective September 21, 1990. Consideration will be given only to comments received on or before November 27, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-182. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations), in a document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146). We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Orange, San Bernardino, and Santa Clara Counties, California, from the list of quarantined areas. Amendment affecting California were made effective on September 14, October 11, November 17, and December 7, 1989; and on January 3, January 25, February 16, March 9, May 9, June 1, August 3, September 6, and September 14, 1990 (54 FR 38643-38645, Docket Number 89-169; 54 FR 42478-42480, Docket Number 89-182; 54 FR 48571-48572, Docket Number 89-202; 54 FR 51189-51191, Docket Number 89-206; 55 FR 712-715, Docket Number 89-212; 55 FR 3037-3039, Docket Number 89-227; 55 FR 6353-6355, Docket Number 90-014; 55 FR 9719-9721, Docket Number 90-031; 55 FR 19241-19243, Docket Number 90-050; 55 FR 22320-22323, Docket Number 90-061; 55 FR 32236-32238, Docket Number 90-151; 55 FR 37697-37699, Docket Number 90-175; and 55 FR 38529-38530, Docket Number 90-179).

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), we have determined that the Mediterranean fruit fly has been eradicated from a portion of Los Angeles County near Hancock Part, and the remaining portion of San Bernardino County near Alto Loma. The last finding of the Mediterranean fruit fly was made on April 5, 1990, near Hancock Park in Los Angeles County; and on April 18, 1990, near Alto Loma in San Bernardino County. Since then, no evidence of infestations has been found in these areas. We have determined that the Mediterranean fruit fly no longer exists in these areas, and we are therefore removing them from the list of areas in § 301.78.3(3) quarantined because of the Mediterranean fruit fly. No quarantined areas remain in San Bernardino County as a result of this action; the Mediterranean fruit fly has been eradicated from this county. A description of those areas that remain quarantined is set forth in full in the rule portion of this document.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity public comment. The areas in California affected by this document were quarantined due to the possibility that the Mediterranean fruit fly could spread to noninfested areas of the United States. Since this situation no longer exists, and the continued quarantined status of these areas would impose unnecessary regulatory restrictions on the public, we have taken immediate action to remove restrictions from the noninfested areas.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendment we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information

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compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of certain articles from portions of Los Angeles and San Benardino Counties in California. Within these areas there are approximately 221 entities that could be affected, including 12 fruit/produce markets; 100 fruit vendors; 81 commercial growers; 79 nurseries; 6 farmers markets, and 3 flea markets.

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated articles primarily for local intrastate movement, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing.

Many of these entities also handle other items in addition to the previously regulated articles so that the effect, if any, on these entities is minimal. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allowed interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Mediterranean fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.78–3, paragraph (c), is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles and Orange Counties

That portion of the counties in the San Gabriel Valley, Brea, Lakewood, and Los Angeles areas bounded by a line drawn as follows: Beginning at the intersection of Towne Avenue and State Highway 60; then westerly along this highway to its intersection with the Los Angeles-San Bernardino County line; then southerly and westerly along this county line to its intersection with the Los Angeles-Orange County line, then westerly along this line to its intersection with State Highway 57, then southerly along this highway to its intersection with Chapman Avenue, then westerly along this avenue to its intersection with Commonwealth Avenue, then southerly and westerly along this avenue to its intersection with Beach Boulevard, then southerly along this boulevard to its intersection with Lincoln Avenue, then westerly along this avenue to its intersection with Carson Street, then westerly along this street to its intersection with Lakewood Boulevard, then northerly along this boulevard to its intersection with Del Amo Boulevard, then westerly along this boulevard to its intersection woth Downey Avenue, then northerly along this avenue to its intersection with Artesia Boulevard, then westerly along this boulevard to its intersection with Interstate Highway 710, then northerly along this highway to its intersection with State Highway 60, then westerly along this highway to its intersection with Soto Street, then northeasterly along this street to its intersection with Whittier Boulevard, then westerly along this boulevard to its intersection with 6th Street, then northwesterly along this street to its intersection with Broadway, then southwesterly along Broadway to its intersection with Interstate Highway 10, then westerly along this highway to its intersection with La Brea Avenue, then northerly along this avenue to its intersection with Hollywood Boulevard, then easterly along this boulevard to its intersection with Highland Avenue, then northerly along this avenue to its intersection with U.S. Highway 101, then northwesterly along this highway to its intersection with State Highway 134, then easterly along this highway to its intersection with Interstate Highway 210, then easterly along this highway to its intersection with State Highway 39 (Azusa Avenue), then northerly along this highway to its intersection with the Azusa City limits, then easterly and southerly along the Azusa City limits to its intersection with the Glendora City limits, then northerly and easterly along the Glendora City limits to its intersection with the San Dimas City limits, then easterly and southerly along the San Dimas City limits to its intersection with the Angeles National Forest boundary, then easterly along this boundary to its intersection with the La Verne City limits, then northerly, easterly, and southerly along the La Verne City limits to its intersection with the Angeles National Forest boundary, then easterly along this boundary to its intersection with the Los Angeles/San Bernardino County line, then southwesterly along this line to its intersection with Philadelphia Street, then westerly along this street to its intersection with Towne Avenue, then southerly along this avenue to the point of beginning.

Done in Washington, DC, this 21st day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–22780 Filed 9–25–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–AEA–06]

Alteration of Control Zone; Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice revises the Chantilly, VA, Control Zone by reducing the arrival extension to the north established for arriving aircraft at the Washington/Dulles International Airport, Washington, DC. This action reduces the controlled airspace to that amount which is actually required by the FAA to contain arriving aircraft at the airport. Additionally, the name of the airport and the actual geographic position are being updated.

EFFECTIVE DATE: 0901 u.t.c. December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

History

On June 15, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Chantilly, VA, Control Zone by reducing the north arrival extension and updating the name of the Washington Dulles International Airport, as well as amending the actual geographic location of the airport (55 FR 28227). The proposed action would in effect return that amount of controlled airspace which is not needed by the FAA, back to the public.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.8F, January 2, 1990.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Chantilly, VA, Control Zone by reducing the arrival extension to the north and updating the name of the Dulles International Airport to the Washington Dulles International Airport, as well as adjusting the geographic position of the airport to reflect the actual location.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Chantilly, VA [Amended]

Replace the first three occurrences of "Dulles International Airport" with "Washington Dulles International Airport";

Change "lat. 38°56'40" N., long. 77°27 24" W." to read "lat. 38°56'39" N., long. 77°27'26" W.";

Change "and within 3.5 miles each side of the Dulles International Airport Runway 19R ILS localizer course, extending from the 5.5-mile radius zone to 10 miles north of the OM.", to read "; within 1 mile west of the Washington Dulles International Airport Runway 19R ILS localizer course to 1 mile east of the Washington Dulles International Airport Runway 19L localizer course, extending from the 5.5-mile radius zone to 0.5 miles north of the Runway 19R OM.".

Issued in Jamaica, New York, on August 23, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90–22744 Filed 9–25–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26342; Amdt. No. 1435]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient used of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs mailed once every 2 weeks, are available from the U.S. Department of Transportation, Distribution Requirements Section, M–494.1. Washington, DC 20590.

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FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on September 14, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective December 13, 1990*

Corona, CA—Corona Muni, VOR-A, Amdt. 3
Peachtree City, GA—Falcon Field, VOR/DME-B, Amdt. 1
Peachtree City, GA—Falcon Field, RNAV RWY 31, Amdt. 2
MC Pherson, KS—MC Pherson, VOR/DME RWY 36, Amdt. 5
MC Pherson, KS—MC Pherson, NDB-A, Amdt. 4, CANCELLED
MC Pherson, KS—MC Pherson, NDB RWY 18, Orig.
EL Campo, TX—EL Campo Metro Airport, Inc., VOR/DME RWY 17, Amdt. 2
EL Campo, TX—EL Campo Metro Airport, Inc., VOR/DME RWY 35, Amdt. 4
EL Campo, TX—EL Campo Metro Airport, Inc., NDB RWY 35, Amdt. 3
MC Gregor, TX—MC Gregor Muni, VOR/DME RWY 17, Amdt. 4

** * * Effective November 15, 1990*

San Luis Obispo, CA—San Luis Obispo County—McChesney Field, LOC RWY 11, Amdt. 3
Lake Charles, LA—Lake Charles Regional, VOR-A, Amdt. 12
Lake Charles, LA—Lake Charles Regional, VOR/DME-B, Amdt. 7
Lake Charles, LA—Lake Charles Regional, LOC BC RWY 33, Amdt. 18
Lake Charles, LA—Lake Charles Regional, NDB RWY 15, Amdt. 18
Lake Charles, LA—Lake Charles Regional, ILS RWY 15, Amdt. 19
Lake Charles, LA—Lake Charles Regional, RADAR-1, Amdt. 4
Lake Charles, LA—Lake Charles Regional, RNAV RWY 5, Amdt. 3
Lake Charles, LA—Lake Charles Regional, RNAV RWY 23, Amdt. 3

** * * Effective October 18, 1990*

Detroit, MI—Detroit Metropolitan Wayne County, NDB RWY 3C, Amdt. 11
Detroit, MI—Detroit Metropolitan Wayne County, NDB RWY 3L, Amdt. 10
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 3L, Amdt. 12
Staples, MN—Staples Muni, NDB RWY 14, Orig.
Staples, MN—Staples Muni, NDB RWY 14, Amdt. 4, CANCELLED
Nacogdoches, TX—A L Mangham Jr. Regional, VOR/DME RWY 36, Orig.
Nacogdoches, TX—A L Mangham Jr. Regional, NDB RWY 15, Amdt. 3

** * * Effective September 14, 1990*

Elizabeth City, NC—Elizabeth City CG Air Station/Muni, VOR/DME RWY 1, Amdt. 11

** * * Effective September 13, 1990*

Farmington, NM—Four Corners Regional, VOR RWY 25, Amdt. 7
Farmington, NM—Four Corners Regional, ILS RWY 25, Amdt. 5

** * * Effective September 6, 1990*

New Bedford, MA—New Bedford Muni, LOC (BC) RWY 23, Amdt. 9

** * * Effective August 31, 1990*

Lawrence, KS—Lawrence Muni, VOR/DME-A, Amdt. 8

Note at the end of § 97.27 the FAA published an Amendment in Docket No. 28323, Amdt. No. 1434 to part 97 of the Federal Aviation Regulations (VOL 55 FR No. 176 Page 37320; dated 11 Sep 90) under § 97.23 effective October 18, 1990, which is hereby amended as follows:

Pittsburgh, PA—Greater Pittsburgh Intl, ILS 1 RWY 28L, Amdt. 4. . . . . should read Pittsburgh, PA—Greater Pittsburgh Intl, ILS RWY 28R, Amdt. 4.

[FR Doc. 90-22745 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 769

[Docket No. 900665-0166]

RIN 0694-AA95

Restrictive Trade Practices or Boycotts; Interpretation

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; interpretation.

SUMMARY: Section 769.2 of the Export Administration Regulations (EAR) prohibits U.S. persons from furnishing certain types of information with intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States. The Department is adding a new Supplement No. 16 to part 769 to clarify whether the antiboycott provisions of § 769.2 apply to the transmission of prohibited information to others by a U.S. person who has not authored such information.

EFFECTIVE DATE: This rule is effective September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Compliance Policy Division, Office of Antiboycott Compliance, Bureau of Export Administration, Telephone: (202) 377-4558.

SUPPLEMENTARY INFORMATION:

Background

The antiboycott regulations prohibit, among other things, the furnishing by U.S. persons of certain types of information, including information about U.S. persons' race, religion, sex, or national origin (§ 769.2(c)), business relationships with boycotted countries or blacklisted persons (§ 769.2(d)), and U.S. persons' association with certain charitable and fraternal organizations (§ 769.2(e)). To be prohibited, the information must be furnished with the intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States.

The Department has been asked frequently whether the regulations distinguish between transmitting, as hereinafter defined, and furnishing prohibited information, such that the former is not within the furnishing information prohibitions. This final rule clarifies whether the antiboycott provisions of § 769.2 apply to the transmission of prohibited information to others by a U.S. person who has not authored such information.

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Mary Martin, Compliance Policy Division, Office of Antiboycott Compliance, Bureau of Export Administration, Department of Commerce, room 6094, Washington, DC 20230.

List of Subjects in 15 CFR Part 769

Boycotts, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 769 of the Export Administration Regulations is amended as follows:

1. The authority citation for 15 CFR part 769 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 769—[AMENDED]

2. Part 769 is amended by adding a new Supplement No. 16 immediately following Supplement No. 15, as follows:

Supplement No. 16—Interpretation

Sections 769.2 (c), (d), and (e) of the Export Administration Regulations (EAR) prohibit United States persons from furnishing certain types of information with intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States. The Department has been asked whether prohibited information may be transmitted—that is, passed to others by a United States person who has not directly or indirectly authored the information—without such transmission constituting a furnishing of information in violation of § 769.2 (c), (d), and (e). Throughout this interpretation, "transmission" is defined as the passing on by one person of information initially authored by another. The Department believes that there is no distinction in the EAR between transmitting (as defined above) and furnishing prohibited information under the EAR and that the transmission of prohibited information with the requisite boycott intent is a furnishing of information violative of the EAR. At the same time, however, the circumstances relating to the transmitting party's involvement will be carefully considered in determining whether that party intended to comply with, further, or support an unsanctioned foreign boycott.

The EAR does not deal specifically with the relationship between transmitting and furnishing. However, the restrictions in the EAR on responses to boycott-related conditions, both by direct and indirect actions and whether by primary parties or intermediaries, indicate that U.S. persons who simply

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transmit prohibited information are to be treated the same under the EAR as those who both author and furnish prohibited information. This has been the Department's position in enforcement actions it has brought.

The few references in the EAR to the transmission of information by third parties are consistent with this position. Two examples, both relating to the prohibition against the furnishing of information about U.S. persons' race, religion, sex, or national origin (§ 769.2(c)), deal explicitly with transmitting information. These examples (§ 769.2(c), example (v), and § 769.3(e), example (vi)) show that, in certain cases, when furnishing certain information is permissible, either because it is not within a prohibition or is excepted from a prohibition, transmitting it is also permissible. These examples concern information that may be furnished by individuals about themselves or their families. The examples show that employers may transmit to a boycotting country visa applications or forms containing information about an employee's race, religion, sex, or national origin if that employee is the source of the information and authorizes its transmission. In other words, within the limits of ministerial action set forth in these examples, employers' actions in transmitting information are protected by the exception available to the employee. The distinction between permissible and prohibited behavior rests not on the definitional distinction between furnishing and transmitting, but on the excepted nature of the information furnished by the employee. The information originating from the employee does not lose its excepted character because it is transmitted by the employer.

The Department's position regarding the furnishing and transmission of certificates of one's own blacklist status rests on a similar basis and does not support the contention that third parties may transmit prohibited information authored by another. Such self-certifications do not violate any prohibitions in the EAR (see Supplement Nos. 1(I)(B), 2, and 5(A)(2); § 769.2(f), example (xiv)). It is the Department's position that it is not prohibited for U.S. persons to transmit such self-certifications completed by others. Once again, because furnishing the self-certification is not prohibited, third parties who transmit the self-certifications offend no prohibition. On the other hand, if a third party authored information about another's blacklist status, the act of transmitting that information would be prohibited.

A third example in the EAR (§ 769.6, example (xiv)), which also concerns a permissible transmission of boycott-related information, does not support the theory that one may transmit prohibited information authored by another. This example deals with the reporting requirements in § 769.6 of the EAR—not the prohibitions—and merely illustrates that a person who receives and transmits a self-certification has not received a reportable request.

It is also the Department's position that a U.S. person violates the prohibitions against furnishing information by transmitting prohibited information even if that person has received no reportable request in the transaction. For example, where documents accompanying a letter of credit contain prohibited information, a negotiating bank that transmits the documents, with the requisite boycott intent, to an issuing bank has not received a reportable request, but has furnished prohibited information.

While the Department does not regard the suggested distinction between transmitting and furnishing information as meaningful, the facts relating to the third party's involvement may be important in determining whether that party furnished information with the required intent to comply with, further, or support an unsanctioned foreign boycott. For example, if it is a standard business practice for one participant in a transaction to obtain and pass on, without examination, documents prepared by another party, it might be difficult to maintain that the first participant intended to comply with a boycott by passing on information contained in the unexamined documents. Resolution of such intent questions, however, depends upon an analysis of the individual facts and circumstances of the transaction and the Department will continue to engage in such analysis on a case-by-case basis.

This interpretation, like all others issued by the Department discussing applications of the antiboycott provisions of the EAR, should be read narrowly. Circumstances that differ in any material way from those discussed in this interpretation will be considered under the applicable provisions of the regulations.

Dated: September 21, 1990.

William V. Skidmore,

Director, Office of Antiboycott Compliance.

[FR Doc. 90-22780 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 90P-0268/CP]

General Administrative Rulings and Decisions; Chlorofluorocarbon Propellants in Self-Pressurized Containers; Amendment of Essential Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adding to the list of products containing a chlorofluorocarbon for an essential use metered-dose atropine sulfate aerosol administered by oral inhalation. The agency is taking this action in response to a citizen petition submitted by the Office of The Surgeon General, Department of the Army, requesting that its product be added to the list of uses considered essential. FDA concludes that this product provides a unique health benefit to military personnel that would be unavailable without the use of a chlorofluorocarbon.

DATES: Effective September 26, 1990. Comments by November 27, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

I. Background

Under § 2.125 (21 CFR 2.125), any food, drug, device, or cosmetic in a self-pressurized container that contains a chlorofluorocarbon propellant for a nonessential use is adulterated or misbranded, or both, under the Federal Food, Drug, and Cosmetic Act (the Act). This prohibition is based on scientific research indicating that chlorofluorocarbons may reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation may increase the incidence of skin cancer, change the climate, and produce other adverse effects of unknown magnitude on humans, animals, and plants.

Section 2.125(d) exempts from the adulteration and misbranding provisions of § 2.125(c) certain products containing chlorofluorocarbon propellants that FDA determines provide a unique health benefit that would not be available without the use of a chlorofluorocarbon. These products are referred to in the regulation as essential uses of chlorofluorocarbons and are listed in § 2.125(e).

Under § 2.125(f), a person may petition the agency to request additions to the list of uses considered essential. To demonstrate that the use of a chlorofluorocarbon is essential, the petition must be supported by an adequate showing that: (1) There are no technically feasible alternatives to the use of chlorofluorocarbon in the product; (2) the product provides a substantial health, environmental, or other public benefit unobtainable without the use of the chlorofluorocarbon; and (3) the use does not involve a significant release of chlorofluorocarbons into the atmosphere or, if it does, the release is warranted by the benefit conveyed.

II. Petition Received by FDA

The Office of The Surgeon General, Department of the Army, submitted a petition (dated August 3, 1990) under § 2.125(f) and part 10 (21 CFR part 10) requesting an addition to the list of chlorofluorocarbon uses considered essential. The petition is on file under the docket number appearing in the heading of this document and may be seen in the Dockets Management Branch (address above). It requests that § 2.125(e) be amended to include metered-dose atropine sulfate inhalation aerosol human drugs administered by oral inhalation as an antidote for organophosphorus poisoning as an essential use of chlorofluorocarbons. The petition contains a discussion supporting the position that there are no technically feasible alternatives to the use of chlorofluorocarbon in the product. It includes information showing that no alternative delivery systems or other substitute propellants can dispense the drug for effective inhalation therapy as safely and uniformly as chlorofluorocarbon propellants. Also, the petition states that the product provides a substantial health benefit for military personnel in the treatment of nerve gas poisoning that would not be obtainable without the use of chlorofluorocarbon, and states that the environmental hazards upon use are very small. In this regard, the petition contains information to support the use of this product. The petition asserts that metered-dose atropine sulfate would not result in a significant release of chlorofluorocarbon propellants into the atmosphere because the total amount released for this product is estimated to be less than 230 kilograms every 3 years.

III. FDA's Review of the Petition

The agency agrees that the use of metered-dose atropine sulfate provides a special benefit for military personnel that would be unavailable without the use of chlorofluorocarbons. FDA also agrees that the use of a metered-dose delivery system for this product does not involve a significant release of chlorofluorocarbons into the atmosphere. Therefore, FDA is amending § 2.125(e) to include metered-dose atropine sulfate administered by oral inhalation as an essential use chlorofluorocarbon propellants.

IV. Effective Date

FDA has determined that because of the urgent need to provide adequate medical support for current Department of Defense military operations involving the potential threat of nerve gas warfare, any delay in adoption of this rule would be contrary to the public interest. Specifically, because of the unexpected and emergency nature of this situation, and the need for immediate action to meet the requirements of national defense, FDA finds that, in accordance with section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)), it would be impracticable and contrary to the public interest to provide for notice and public comment. For these reasons, FDA also finds that, in accordance with section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), it has good cause to make this rule effective immediately. Therefore, this rule becomes effective on September 26, 1990. However, FDA is allowing 60 days for public comment on the rule in accordance with its procedural regulations (21 CFR 10.40(e)).

Interested persons may, on or before November 27, 1990, submit to the Dockets Management Branch (address above), written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Impact

The agency has carefully considered the potential environmental effects of this action under 21 CFR part 25 and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FDA has carefully analyzed the economic impact of the rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The rule adds one drug product to the list of products containing a chlorofluorocarbon as essential uses, thereby permitting the manufacturing and marketing of this drug product, provided the drug is subject to an approved new drug application. Therefore, the agency has determined that the rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 2 is amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 continues to read as follows:

Authority: Secs. 201, 301, 305, 402, 406, 409, 501, 502, 505, 507, 512, 601, 701, 702, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374); 15 U.S.C. 402, 409.

2. Section 2.125 is amended by adding new paragraph (e)(12) to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

* * * * *

(e) * * *

(12) Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation.

* * * * *

Dated: September 18, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22809 Filed 9-26-90; 12:05 pm]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Modification of Procedures for Inmates Transferred Pursuant to Treaty

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission solicited public comment on proposed amendments to its current procedures for conducting special transferee hearings for inmates transferred pursuant to treaty who committed their offenses on or after November 1, 1987. See 55 FR 12524 (April 4, 1990). After reviewing the comments, the Commission voted to adopt the two proposed amendments. One amendment requires a transferee to submit his objections to the postsentence report directly to the Commission rather than to the probation office as the prior rule required. Additionally, the Commission is amending the rule requiring the Commission to conduct a special transferee hearing within 60 days of entry into the United States, because experience has shown that it is impossible to conduct a special transferee hearing within 60 days. The amendment requires that the hearing normally take place within 120 days of entry into the United States.

Along with the final rule changes discussed above, the Commission is making two other changes to the treaty procedures, one procedural, the other interpretive. First, the Commission voted to modify 28 CFR 2.62(c) to include specific instructions that material sent by the transferring country be appended to the postsentence report. Second, the Commission clarified its interpretive regulation at 28 CFR 2.62(g) which outlines decisionmaking criteria. The modified rule includes a more detailed list of factors to be considered by the Commission when arriving at a determination as to what the comparable U.S. Code offense should be.

EFFECTIVE DATE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Md. 20815. Telephone: (301) 492–5959.

SUPPLEMENTARY INFORMATION: Under 18 U.S.C. 4106 and 4106A, the Parole Commission has jurisdiction over prisoners and parolees who are transferred from foreign countries pursuant to treaty. With regard to transferees who committed their offenses on or after November 1, 1987, the Commission has recently established special procedures for conducting special transferee hearings wherein the Commission determines a release date and a period and conditions of supervised release. The new procedures for this class of transferees have been in effect for approximately a year and a half.

After applying the new procedures to a number of cases, certain problems arose. A meeting was held in El Paso, Texas, with representatives from the U.S. Probation Office, the Federal Public Defender's Office for the Western District of Texas, the Bureau of Prisons and the U.S. Parole Commission, to discuss the problems. There was general agreement that the current rule requiring transferees to submit their objections to information contained in the postsentence report to the probation office was an unnecessary step that caused significant delays. All in attendance at the meeting agreed that the procedures could be streamlined if the objections were sent directly to the Commission. If there were any objections with which the probation office could assist in resolving, the Commission would forward those objections to the probation office with a request for additional information. It has been the experience of those involved with the transferee hearings that the vast majority of the objections can not be resolved by the probation officer and involved issues that could best be addressed at the special transferee hearing. It was agreed that this modification would help speed up the process by which special transferees were given release dates.

The Commission received three comments regarding the proposed change: one from the Chief Probation Officer for the Western District of Texas, one from a supervising probation officer for the Southern District of Texas, and one from the First Assistant Federal Public Defender for the Western District of Texas. The Chief Probation Officer for the Western District of Texas indicated that this change would be of "great assistance to our staff" since the Commission must ultimately rule on any controverted issue and having the transferee submit the objections directly to the Commission rather than to the probation officer "not only makes good sense, but in the long-run, will save a considerable amount of time". The First Assistant Federal Public Defender agreed and concluded that such a change is a "good idea". In light of the general agreement that the change should be made, the Commission approved the changes to § 2.62(d).

Also discussed at the meeting in El Paso were the difficulties for the Commission in conducting special transferee hearings within 60 days of the transferee's entry into the United States. This requirement was viewed by many to be unrealistic in light of the fact that it took approximately 60 days for the probation office to complete the postsentence investigation report. The preparation of this is similar to preparation of presentence investigation reports, for which the probation officer must contact several agencies and individuals to determine a transferee's prior record, as well as the transferee's educational, employment and personal background. In addition to the investigation, the probation officer must summarize the circumstances surrounding the transferee's foreign arrest and conviction and make a recommendation with regard to the application of the sentencing guidelines. In addition to the time needed to prepare a postsentence investigation report, the transferee is given 30 days after the disclosure of the completed report to transmit his or her objections. Therefore, assuming the probation officer was able to conduct the initial interview with the transferee on the date of the transferee's entry into the United States, a minimum delay of 90 days exists for the preparation of the postsentence report alone. Additional factors also cause delays. After the postsentence report has been prepared and the objections have been submitted, the Commission must determine if further investigation on the part of the probation officer is required. Appointment of counsel for indigent transferees must also be arranged. The Commission must also schedule a hearing at the convenience of all parties on the next available hearing docket at the institution following the completion of the presentence report and submission of objections. Since the practice of the Commission is to conduct hearing dockets every other month at federal institutions, there is a possibility that an additional 60 days may pass before the next hearing docket.

Based on the above factors, the Commission is amending its rule to provide that transferee hearings normally be conducted within 120 days after entry.

The Federal Public Defender's Office objected to the proposed change indicating that the delays experienced with the initial transfer treaty hearings were the result of "glitches" that have been worked out as the process has been streamlined. The Defender's Office noted that the probation officers are required to complete the postsentence reports within 30–45 days and that there was no need to give defense counsel 30 days to transmit objections to the report. The Defender's Office noted that the real reason why none of the transferees have been able to receive a hearing within 60 days is because of the Commission's docketing procedures wherein hearings are scheduled every month at the institutions. The Defender's Office recognized that 60 days was not enough time, but suggested that the rule be amended by increasing the time to 90 days, rather than 120 days as proposed.

The Chief Probation Officer for the Western District of Texas disagreed with the Federal Public Defender's Office noting that increasing the time from 60 to 120 days would benefit the entire process. He stated that exceptions to the scheduling of institutional hearings for those transferees who are already within the applicable guideline range can continue to be expedited on a case-by-case basis. The supervising U.S. probation officer in the Southern District of Texas noted that the proposed changes, including the increased time period, would be "most welcome" in his district. Recognizing that the 60 day time limit was unrealistic in practice and that it is possible to expedite the preparation of a postsentence report when necessary, the Commission approved the modification to 28 CFR 2.62(e) requiring hearings within 120 days.

In addition to the published proposed rule changes discussed above, the Commission is adopting a procedural rule change requiring that documents forwarded by the transferring country be submitted to the Commission along with the postsentence report. 28 CFR 2.62(c). That regulatory provision implements 18 U.S.C. 4106A(b)(1)(B) which requires that the Parole Commission consider any recommendation by the U.S. Probation Service including recommendations as to the applicable guideline range. The statute also requires the Commission to consider "any documents provided by the transferring country; relating to that offender".

The original regulation did not provide a procedure to insure that the documents from the transferring country be submitted to the Commission prior to the special transferee hearing and those documents have not always been considered. After discussing the problem with the Probation Service and the Bureau of Prisons, it was agreed that copies of all documents provided by the transferring country would be made available to the probation officers preparing the postsentence reports, who would then attach those documents to the postsentence report when submitting the report to the Commission. Modification to 28 CFR 2.62(c) did not require public comment as it is a procedural regulation implementing the obligation imposed by 28 U.S.C. 4106A(b)(2)(B)(ii).

Finally, the Commission adopted an interpretive regulation clarifying its authority to determine what is the "similar" U.S. Code offense for a transferee who is serving a sentence imposed for an offense committed abroad. Currently our regulation at 28 CFR 2.62(g) states that the Commission must apply the guidelines "as though the transferee were convicted in a United States District Court of a statutory offense most nearly similar to the offense of which the transferee was convicted in the foreign court." The reference to a foreign court "conviction" (as opposed to the underlying foreign offense) may lead to an unwarranted interpretation of the statutory provision that would severely limit the Commission's authority to compare the actual foreign offense behavior to similar U.S. Code offenses. It is the Commission's view that the statute requires the Commission to examine the underlying offense for which the transferee received a foreign sentence, as well as the foreign statutory offense, and determine what type of sentence would be imposed if the transferee were convicted in the United States. The statute does not limit the Commission to comparing the statutory language of the crime for which the individual was convicted in the foreign country with the statutory language of crimes described in the U.S. Code. The difficulties in making straight comparisons between widely different criminal codes was evident in at least one prior case. *See Hansen* v. *U.S. Parole Commission*, 904 F.2d 306 (5th Cir. 1990). Since the prior regulation was vulnerable to an erroneous interpretation, the Commission adopted a more detailed explanation of what factors Commission can consider in the often difficult task of comparing foreign offense behavior to domestic criminal statutes.

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Parole, Prisoners, and Probation.

PART 2—[AMENDED]

28 CFR part 2 is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. By revising § 2.62 (c), (d), (e) and (g) to read as follows:

§ 2.62 Prisoners transferred pursuant to treaty.

* * * * *

(c) *Postsentence report.* A postsentence investigation report, which shall include an estimated sentencing classification and sentencing guideline range, shall be prepared by the probation office in the district of entry (or the transferee's home district). Disclosure of the postsentence report shall be made as soon as the report is completed, by delivery of a copy of the report to the transferee and his or her counsel (if any). Confidential material contained in the postsentence investigation report may be withheld pursuant to the procedures of 18 U.S.C. 4208(c). Copies of all documents provided by the transferring country relating to the transferee shall be appended to the postsentence report when disclosed to the transferee and when transmitted to the Commission.

(d) *Opportunity to object.* The transferee (or counsel) shall have thirty calendar days after disclosure of the postsentence report to transmit any objections to the report he or she may have, in writing, to the Commission with a copy to the probation officer. The Commission shall review the objections and may request that additional information be submitted by the probation officer in the form of an addendum to the postsentence report. Any disputes of fact or disputes concerning application of the sentencing guidelines shall be resolved at the special transferee hearing.

(e) *Special transferee hearing.* A special transferee hearing shall be conducted within 120 days from the transferee's entry into the United States, or as soon as practicable, following completion of the postsentence investigation report along with any corrections or addendum to the report and appointment of counsel for an indigent transferee.

* * * * *

(g) *The decisionmaking criteria.* The Commission shall apply the guidelines promulgated by the United States Sentencing Commission, as though the transferee were convicted in a United States District Court of a statutory offense most nearly similar to the

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offense of which the transferee was convicted in the foreign court. The Commission shall take into account the offense definition under foreign law, the length of the sentence permitted by that law, and the underlying circumstances of the offense behavior, to establish a guideline range that fairly reflects the seriousness of the offense behavior committed in the foreign country.

* * * * *

Dated: September 12, 1990.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 90-22279 Filed 9-25-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154, 155, 156; 46 CFR Parts 32, 35, 39

[CGD 88-101]

RIN 2115-AE56

Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Final rule, correction.

SUMMARY: The Coast Guard is correcting errors in the Marine Vapor Control Systems rules which appeared in the Federal Register on Thursday, June 21, 1990 (55 FR 25368).

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert H. Fitch, Office of Marine Safety, Security, and Environmental Protection (G-MTH-1), (202) 267-1217, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published regulations for Marine Vapor Control Systems in the Federal Register on Thursday, June 21, 1990 (55 FR 25368). Several editorial errors are corrected by this notice.

Correction

In rule document 90-13488, beginning on page 25368 in the issue of Thursday, June 21, 1990, make the following corrections:

1. On page 25387, in the second sentence in the second paragraph in the third column, remove the "=" sign between "24" and "month".

2. On page 25404, the ninth sentence in the first paragraph under the discussion for 33 CFR 154.824 should read as follows:

"Reliable failure data on vapor control systems is not available, which reduces the confidence in a close comparison by a quantitative hazards analysis."

3. On page 25412, the second paragraph in the first column should read as follows:

"Two comments stated that explosion suppression systems should be tested, that design criteria should then be developed, and that provisions for such systems in lieu of inerting, enriching, or diluting systems should be added in the regulations. The Coast Guard agrees. After the successful testing and development of design criteria for such systems, the Coast Guard can initiate a rulemaking to allow the general use of these systems."

4. On page 25418, in the second sentence of the second paragraph under the discussion section for 33 CFR 154.826, the word "characteristics" should be singular and read "characteristic".

5. On page 25418, in the first sentence of the fourth paragraph under the discussion section for 33 CFR 154.826, the word "used" should be "used".

6. On page 25427, in the table for the Paperwork Reduction Act, the second section under 46 CFR which reads "35.35-30" should read "35.35-30".

Title 33—[Amended]

PART 154—[AMENDED]

§ 154.822 [Amended]

7. Paragraph (c) of § 154.822 is corrected to read as follows:

* * * * *

(c) Each flame screen required by this part must be either a single screen of corrosion resistant wire of at least 30 by 30 mesh, or two screens, both of corrosion resistant wire, of at least 20 by 20 mesh, spaced not less than 12.7 millimeters (1/2 in.) or more than 38.1 millimeters (1 1/2 in.) apart.

§ 154.824 [Amended]

8. Paragraph (a) of § 154.824 is corrected to read as follows:

§ 154.824 Inerting, enriching, and diluting systems.

(a) A vapor control system which uses inerting, enriching, or diluting gas must be capable of inerting, enriching, or diluting the vapor collection line prior to receiving cargo vapor.

* * * * *

9. On page 25438, in the second column, the first sentence of paragraph 14.3.2 of appendix A to part 154 is corrected to read as follows:

* * * * *

14.3.2 Flame speeds shall be measured by optical devices capable of providing accuracy of +/− 5%. * * *

* * * * *

Title 46—[Amended]

PART 39—[AMENDED]

§ 39.10-11 [Corrected]

10. On page 25447, the heading for § 39.10-11 is corrected to read as follows:

§ 39.10-11 Personnel training—TB/ALL.

11. On page 25448, in column one, in the second line of paragraph (b) of 39.10-11, "subpart" should read "section".

§ 39.10-15 [Corrected]

12. On page 25448, in column one, the heading for § 39.10-13 is corrected to read as follows:

§ 39.10-13 Submission of vapor control system designs—TB/ALL.

§ 39.30-1 [Corrected]

13. On page 25450, in column one, the heading for § 39.30-1 is corrected to read as follows:

§ 39.30-1 Operational requirements—TB/ALL.

14. On page 25450, in column one, in the last line of paragraph (d)(2) of § 39.30-1, the citation "§ 39.20.11(a)" should read "§ 39.20-11(a)".

§ 39.40-1 [Corrected]

15. On page 25450, in column three, in the second line of paragraph (e) of § 39.40-1, "topping. off" should read "topping-off".

§ 39.40-5 [Corrected]

16. On page 25451, in column three, the next to last line of paragraph (c) of § 39.40-5, which reads "collection system on the vessel receiving" should read "collection system on the vessel discharging".

Dated: September 20, 1990.

D. H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-22708 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3834-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a November 16, 1988, (53 FR 46094) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This SIP revision would allow the ATEC Industries, Incorporated (ATEC) architectural aluminum extrusion coating line (K001) in Mahoning County, Ohio to meet the volatile organic compounds (VOC) limitation of 3.5 pounds of VOC per gallon of coating, minus water (3.5 lbs of VOC/gal), as required by Ohio Administrative Code (OAC) 3745-21-09 (U)(1)(a)(iii), on a monthly volume-weighted average basis. USEPA's action is based upon one revision request and several amendments that were submitted by the State.

In today's Final Rulemaking, USEPA is taking action to disapprove this revision because the State did not demonstrate that it is infeasible to use add on controls to comply with the reasonable available control technology (RACT) emission limit on a daily basis and that an averaging period shorter than 1 month is not practicable.

EFFECTIVE DATE: This final rulemaking becomes effective October 26, 1990.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 43266-0149.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On June 17, 1985, July 30, 1985, and October 25, 1985, the Ohio Environmental Protection Agency (OEPA) submitted a revision request, with several amendments, to its ozone SIP for ATEC. This revision consists of (1) A monthly volume-weighted limitation (3.5 lbs. of VOC/gal), and (2) a never-to-be exceeded (5.5 lbs of VOC/gal for any coating used) limit for an architectural aluminum extrusion coating line (K001) located at ATEC in Mahoning County, Ohio, which is part of an urban nonattainment area for the national ambient air quality standard (NAAQS) for ozone.[1]

Under the existing federally approved SIP, each architectural aluminum extrusion coating line is subject to the VOC limitation contained in OAC Rule 3745-21-09 (U)(1)(a)(iii) (3.5 lbs. of VOC/gal) and is subject to the daily volume-weighted average compliance requirements contained in OAC Rule 3745-21-09 (B). USEPA approved these rules as meeting the RACT [2] requirements of the Clean Air Act on October 13, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28007).

In lieu of the daily volume-weighted average limitation required by the SIP, the State is proposing that the coatings used in the line (K001), which applies a wide variety of coatings to various types of architectural aluminum extrusions, shall not exceed 3.5 lbs of VOC/gal on a monthly volume-weighted average, and an instantaneous 5.5 lbs of VOC/gal for any coating used.

Criteria for Review in Relationship to ATEC

USEPA's January 20, 1984, policy memorandum entitled "Averaging Times for Compliance with VOC Emission Limits" contains the criteria for evaluating VOC requests for extended averaging times, which are as follows:

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

Criterion 2

The area must be covered by an approved ozone SIP and there must not be any measured violations of the ozone standard in the area.

Criterion 3

A demonstration must be made that the use of monthly averaging (greater than 24-hour averaging) will not jeopardize attainment of either ambient standards or the reasonable further progress (RFP) plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP for the area.

Criterion 4

Averaging times must be demonstrated to be as short as practicable and in no case longer than 30 days.

Proposed SIP Revision

In a November 16, 1988 (53 FR 46094), notice of proposed rulemaking, USEPA proposed to disapprove Ohio's revision request concerning the ATEC architectural aluminum extrusion coating line (K001) in Mahoning County, Ohio. Comments were received from ATEC during the public comment period. These comments from ATEC addressed the feasibility of add-on control equipment, the availability of complying coatings, and the feasibility of averaging over a shorter period. USEPA evaluation of these comments is provided below.

Feasibility of Add-On Control

ATEC provided additional information concerning the costs of add-on control equipment. However, ATEC still has not adequately demonstrated that it is economically infeasible to meet the SIP limit through the use of control equipment. In particular, ATEC's evaluation has the following deficiencies:

1. ATEC has provided no documentation of capital and operating costs. Without such documentation it is impossible to determine whether the cost estimates are realistic.

2. One of the reasons given for high costs is the relatively low concentration of VOCs in the exhaust stream. ATEC should have addressed the feasibility of using recirculation of the exhaust to increase the VOC concentration and reduce costs, but failed to do so.

3. The cost estimates were based on the use of incineration only for noncomplying coatings.

4. ATEC should have evaluated the feasibility of controlling only the oven exhaust. This should have included an explanation of how the booth/flash off/oven split was determined. Although this approach might not reduce emissions to the SIP-allowable level, it could be a way to significantly reduce emissions from this source.

It should also be noted that the Appendix A to the November 9, 1988 (53 FR 45285), Notice of Proposed Rulemaking for Easco states that the State should examine reasonably available information such as whether other similar sources in the State were

[1] OEPA submitted a redesignation request for Mahoning County from nonattainment to attainment for the ozone NAAQS. In a February 14, 1989, (54 FR 6733) Federal Register notice, USEPA proposed to disapprove the OEPA redesignation request for Mahoning County, Ohio.

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

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able to comply with the limit. Ohio has not provided such a survey of sources. In fact, there is at least one source in Ohio which is under a consent order to comply with the SIP limit using add-on control.

Availability of Complying Coating

As suggested by the Easco Appendix A, ATEC provided copies of and responses to an advertisement published in three trade journals. The responses indicate that none of the suppliers responding to the advertisement were able to provide a coating meeting the specified requirements. However, EPA does not consider this to be an adequate showing that complying coatings are unavailable. The advertisement placed by ATEC is unnecessarily restrictive in that it specifies an interest only in a high-solids flex paint. This eliminates the possibility of water-based or powder coatings. In addition, ATEC did not respond to at least one supplier that indicated a willingness to work with ATEC to develop an acceptable substitute for some coatings.

The Easco Appendix A contains examples of other approaches to demonstrate that complying coatings are unavailable; neither the State nor ATEC have addressed any of these approaches. These include a survey by the State of similar sources (as discussed above) and contact with trade associations that may have relevant information. In light of the above circumstances, EPA concludes that the State and ATEC have not made reasonable efforts to determine that complying coatings are unavailable.

Use of a Shorter Averaging Period

ATEC provided the following comment on the use of a shorter averaging period:

The 30 days averaging period originally proposed by the State is, in fact, the lowest practical averaging time with which ATEC can comply. A 15 month history of recent paint usage shows a VOC content averaging 3.22 lbs of VOC per gallon of paint during that period. This is already close to the 3.5 lb VOC of per gallon limit. Any shortening of the proposed 30 day averaging period will cause severe production restrictions at ATEC in order to be able to remain at or below 3.5 lbs of VOC per gallon limit.

ATEC has not provided any specific information concerning variations in emissions on a daily, weekly or monthly basis. Therefore, it has not adequately demonstrated whether or not 30 days is the shortest practical averaging time.

Final Action

USEPA is disapproving the ATEC revision because it has not been demonstrated that it is infeasible for ATEC to meet the SIP limit on a daily basis and that 30 days is the shortest practical averaging period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Comments relating to OMB and this action are available for public inspection at the USEPA Region V office listed above.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Ozone, Hydrocarbon, Intergovernmental offices.

Authority: 42 U.S.C. 7401–7642.

Dated: September 18, 1990.

William K. Reilly,
Administrator.

PART 52—(AMENDED)

Subpart KK—Ohio

Title 40 of the Code of the Federal Regulations, chapter 1, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1885 is amended by adding paragraph (n) to read as follows:

§ 52.1885 Control strategy: Ozone

* * * * *

(n) Disapproval—On June 17, 1985, July 30, 1985, and October 25, 1985, the Ohio Environmental Protection Agency submitted a revision request, with several amendments, to its ozone State Implementation Plan for ATEC Industries. This revision consisted of

(1) A monthly volume-weighted limitation of 3.5 pounds of volatile organic compounds (VOC) per gallon; and

(2) A never-to-be exceeded limit of 5.5 pounds of VOC per gallon for coatings used at an architectural aluminum extrusion coating line (K001), located at ATEC Industries in Mahoning County, Ohio.

[FR Doc. 90-22716 Filed 9-25-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6F3337/R1090; FRL-3798-2]

Pesticide Tolerance for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for the fungicide metalaxyl and its metabolites in or on strawberries at 10.0 parts per million (ppm). This regulation was requested in a petition submitted by the Ciba-Geigy Corp.

DATES: This regulation becomes effective September 26, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 6F3337/R1090], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 12, 1990 (55 FR 28657), EPA issued a proposed rule that gave notice that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a tolerance petition (PP) 6F3337 to EPA requesting the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose to establish tolerances for the fungicide metalaxyl [N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl) alanine methyl ester in or on strawberries at 10.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 11, 1990.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.408(a) is amended in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.408 Metalaxyl; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Strawberries	10.0
* * * * *	

* * * * *

[FR Doc. 90-22774 Filed 9-25-90; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 6E3416/R1088; FRL-3798-6]

Pesticide Tolerances for Linuron

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance of 0.25 part per million (ppm) for residues of the herbicide linuron in or on the raw agricultural commodity parsley. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested by the Interregional Research Project No. 4.

DATES: This regulation becomes effective September 26, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 6E3416/R1088], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 29, 1990 (55 FR 26705), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Brunswick, NJ 08903, had submitted pesticide petition (PP) 6E3416 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Florida, Ohio, and New Jersey.

This petition requested that the Administrator, pursuant to secton 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the raw agricultural commodity parsley at 0.25 part per million (ppm). The petitioner proposed that this use of linuron be limited to States east of the Mississippi River based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely effected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 1990.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.184 is amended by designating the current paragraph and list of tolerances as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.184 Linuron; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are

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established for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the following raw agricultural commodity:

Commodity	Parts per million
Parsley	0.25

[FR Doc. 90-22773 Filed 9-25-90; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-3834-9]

Hazardous Waste Management Program: Revisions to the Authorized State of Oklahoma Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Oklahoma application and has made a decision, subject to public review and comment, that the Oklahoma hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve the Oklahoma hazardous waste program revisions. The Oklahoma application for program revision is available for public review and comment.

DATES: Final authorization for Oklahoma shall be effective November 27, 1990, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Oklahoma program revision application must be received by the close of business October 26, 1990.

ADDRESSES: Copies of the Oklahoma program revision application are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Oklahoma State Department of Health, 1000 N.E. Tenth, Oklahoma City, Oklahoma 73152; U.S. EPA Region 6, Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202; and U.S. EPA Headquarters, Library, PM 211A, 401 M Street SW., Washington, DC 20460. Written comments referring to Docket Number OK-90-2 should be sent to the Regional Authorization Coordinator, Attention: Mr. Brett Jucha, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6760.

FOR FURTHER INFORMATION CONTACT: Mr. Brett Jucha, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6760.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266 and 124 and 270.

B. Oklahoma

On December 27, 1984, EPA published a **Federal Register** (*FR*) notice announcing its decision to grant final authorization, initially, to Oklahoma (See 49 FR 50362). Revisions to the State program were approved on June 18, 1990. On December 28, 1988, Oklahoma submitted the program revision application discussed herewithin in accordance with § 271.21(b)(3).

EPA has reviewed the Oklahoma application, and has made an immediate final decision that the Oklahoma hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization.

Consequently, EPA intends to grant final authorization for the additional program modifications to Oklahoma. The public may submit written comments on EPA's immediate final decision up until October 26, 1990. Copies of the Oklahoma application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of the Oklahoma program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The Oklahoma program revision application is based on changes to State regulations which were intended to make them equivalent to the analogous Federal regulations. Although the State's regulation changes included some changes based on provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA), the State is not seeking HSWA authorization with this application. EPA is not, therefore, authorizing the State's HSWA-type provisions with this notice. Consequently, EPA intends to grant final authorization to Oklahoma for only the program modifications which are described below.

The following chart lists the State rules (Rules and Regulations for Industrial Waste Management as amended April 28, 1988 (effective June 1, 1988) and the referenced State laws) that have been changed and that are being recognized as equivalent to the analogous Federal rules.

Federal citation	State analog
1. Radioactive mixed waste requirements—changes to 40 CFR parts 261 and 271—as published in the FR on July 3, 1986	1. Chapter 2, Sections 200 and 210 and 63 O.S. Supp. 1987, Sections 1-2002 and 1-2005.
2. Liability coverage—corporate guarantee—changes to 40 CFR parts 264, subpart H and 265, subpart H—as published in the FR on July 11, 1986	2. Chapter 2, Sections 210, 520-522.
3. Correction to the tank standards—changes to 40 CFR parts 260, 261, 262, 264, 265, and 270—as published in the FR on July 14, 1986	3. Chapter 2, Section 210.
4. Corrections to the listing of commercial chemical products and Appendix VIII constituents—changes to 40 CFR part 261, subpart D—as published in the FR on August 6, 1986	4. Chapter 2, Section 210.

Federal citation	State analog
5. Correction to the hazardous waste tank system requirements—as published in the FR on August 16, 1988	5. Chapter 2, Section 210.
6. Listing of spent pickle liquor correction—as published in the FR on September 22, 1988	6. Chapter 2, Section 210.
7. Revisions to Manual SW-846; amended incorporation by reference—changes to 40 CFR parts 260 and 270—as published in the FR on March 16, 1987	7. Chapter 2, Section 210
8. Closure, post-closure care for interim status surface impoundments—changes to 40 CFR part 265, subpart K—as published in the FR on March 19, 1987	8. Chapter 2, Section 210.
9. Definition of solid waste—technical correction—changes to 40 CFR parts 261, subpart D and 265, subpart C—as published in the FR on June 5, 1987	9. Chapter 2, Section 210.
10. Amendments to Part B information requirements for disposal facilities—changes to 40 CFR part 270, subpart B—as published in the FR on June 22, 1987	10. Chapter 2, Section 210.
11. Technical correction; identification and listing of hazardous waste—as published in the FR on April 22, 1988	11. Chapter 2, Section 210.

The Oklahoma provisions incorporating the Federal HSWA provisions concerning research, development, and demonstration (R, D, and D) permits have not been evaluated and are not a part of the authorized revisions, since Oklahoma is not applying for them at this time. Therefore, that portion of chapter 2, rule 210 that incorporates 40 CFR 270.10(a) providing for Research, Development, and Demonstration permits, is not being considered for authorization at this time. In addition, the State rule regarding fees (chapter 7, rules 740-743) was determined to be broader in scope than the Federal requirements, and therefore, is not part of the Oklahoma authorized program.

The following State rules regarding additional wastes were added to the State's hazardous waste regulations by adoption of the HSWA provisions. Because the State is not applying for authorization of these provisions at this time, these Federal requirements will not become part of the Oklahoma authorized program until the State applies for and receives authorization for them.

Additional Wastes

Oklahoma Rules and Regulations for Controlled Industrial Management, chapter 2, rules 210 (portion), April 28, 1988: Dioxin wastes (See FR 1978, January 14, 1985); TDI, DNT, and TDA wastes (See 50 FR 42936, October 23, 1985); Spent solvents (See 50 FR 53315, December 31, 1985); EDB wastes (See 51 FR 5330, February 13, 1986); and additional spent solvents (See 51 FR 6541, February 25, 1986).

The State also submitted revisions to the Program Description, Attorney General's Statement and the Memorandum of Agreement between the State of Oklahoma and EPA, Region 6.

No State hazardous waste permits will need to be modified to reflect this additional authority.

The State of Oklahoma is not authorized to operate on Indian lands.

C. Decision

I conclude that the Oklahoma application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oklahoma is granted final authorization to operate its hazardous waste program as revised. Oklahoma now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Oklahoma also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize the Oklahoma program and for incorporation by reference of those provisions of the Oklahoma statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. Subsequently, EPA will be amending part 272, subpart LL, under a separate notice.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 20, 1990.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 90-22776 Filed 9-25-90; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[MM Docket No. 87-268; FCC 90-295]

Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, et. seq.

AGENCY: Federal Communications Commission.

ACTION: Policy decision.

SUMMARY: This Report and Order sets forth several policy decisions that will affect the Commission's further study of technical matters concerning the introduction of Advanced Television (ATV) Service. The Commission has decided that it intends to select a "simulcast" high definition (HDTV) system, that is, a system that employs design principles independent of the existing NTSC technology, for ATV service. It also decided not to give further consideration to systems that require additional spectrum to augment the existing 6 MHz channel used for broadcast television. Finally, the Commission left open the possibility that it might entertain consideration of an enhanced definition television (EDTV), but stated that it does not envision that it would adopt an EDTV standard prior to teaching a decision on an HDTV standard. These decisions will enable the Commission to move forward promptly toward the goal of bringing the benefits of HDTV service to the public.

EFFECTIVE DATE: September 20, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 653-8162.

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SUPPLEMENTARY INFORMATION: This is a summary to the Commission's *Report and Order* in MM Docket No. 87-268, FCC 90-295, adopted August 24, 1990, and released September 21, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037

Summary of Action

1. The Commission finds that during the three years since the FCC and NTIA first began to consider ATV service, substantial progress has been made toward the selection of advanced television systems. The Commission stated that the efforts of its Advisory Committee on Advanced Television Service (Advisory Committee) and other industry parties have significantly advanced its ability to assess the merits of the various ATV technical concepts. It further observed that systems designers have made substantial progress in developing new technical schemes for delivering HDYV service using a 6 MHz channel. Based on this progress, the Commission made several policy decisions that will further narrow the focus of the ATV proceeding and enable it to move forward expeditiously towards a decision on ATV technical standards.

2. Consistent with its goal of ensuring excellence in ATV service, the Commission stated that it intends to select a simulcast high definition television system that is compatible with the current 6 MHz television channel plan. It also stated that it did not have sufficient information on the attributes of the individual candidate HDTV systems now to make even preliminary comparisons among them. The Commission therefore did not take a position on the desirability of any particular system as the standard to choose. The Commission concluded that it would not be useful to give further consideration to systems that use additional spectrum to "augment" an existing 6 MHz television channel. While it recognized that an augmentation system could provide quality HDTV service, it found that such a system would be less desirable than an independent, 6 MHz design.

3. The Commission stated that while it believes the simulcast option is the most appropriate for ATV service, it also believes it is desirable to keep open the possibility of adopting an EDTV system. Thus, it indicated that it will continue to examine all aspects of 6 MHz EDTV technologies. However, the Commission emphasized that its objective at this time is to select an HDTV system and to that end it would not select an EDTV standard, if at all, before reaching a final decision on a simulcast standard.

4. In conjunction with the above policy decisions and its goal to select a system as promptly as possible, the Commission stated that it is undertaking to expedite the completion of its program for testing and evaluation of the candidate ATV systems. To this end, it directed its staff to work closely with the testing laboratories, including actively participating in the testing process.

5. Finally, the Commission stated that it intends to maintain a flexible position with respect to new ATV developments that offer important new benefits and which are in a sufficiently concrete state of development to be considered with an existing systems. Thus, the Commission indicated that, with the assistance of the Advisory Committee, it intends to review carefully, but quickly, any such new developments early in 1992. It stated that if it finds any new systems that are sufficiently developed to be tested, it will supplement the testing schedule to accommodate them on a timely basis.

6. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose no new or modified information collection requirement on the public.

7. Accordingly, *It is ordered* that pursuant to 47 U.S.C. 151, 154 (i), (j), 301, 303 (g), (r), (s), and 403, the Advisory Committee on Advanced Television Service is to take the appropriate actions necessary to implement the decisions set forth herein.

Donna R. Searcy,

Secretary, Federal Communications Commission.

[FR Doc. 90-22796 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 0

Editorial Amendment of List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: September 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Cowden, Office of Managing Director, (202) 634-1535.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 14, 1990.
Released: September 21, 1990.

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, *It is ordered,* That § 0.408 of the rules is *Amended,* effective on the date of publication in the **Federal Register.**

6. Persons having questions on this matter should contact Jerry Cowden at (202) 634-1535.

List of Subjects in 47 CFR Part 0

Reporting and Recordkeeping requirements.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Part 0 of title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In 47 CFR 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding OMB control numbers:

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

47 CFR part or section where identified and described	Current OMB control No.
* * * * *	*
15.69(b)	3060-0329
* * * * *	*
15.623	3060-0372
15.814(b)	3060-0328
15.834(b)-(c)	3060-0329
18.203(b)	3060-0329
* * * * *	*
21.204	3060-0208
21.207	3060-0208
21.208	3060-0208
21.300	3060-0208
* * * * *	*
22.201	3060-0150
* * * * *	*
25.391(a)-(e)	3060-0343
25.392	3060-0359
* * * * *	*
63.01-63.63	3060-0149
63.65	3060-0148
63.66	3060-0149
63.71-63.601	3060-0149
* * * * *	*
76.58	3060-0376
* * * * *	*
80.110	3060-0276
* * * * *	*
90.135(c) (2)-(3)	3060-0226
* * * * *	*
97.36(c)	3060-0323
97.71	3060-0347
97.82	3060-0302
97.83	3060-0303
97.88	3060-0222
97.90	3060-0203
97.521	3060-0368

3. In 47 CFR 0.408, paragraph (b) is further amended by adding the following rule sections and their corresponding OMB control numbers to read as follows:

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

47 CFR part or section where identified and described	Current OMB control No.
* * * * *	*
1.65(c)	3060-0449
* * * * *	*
1.1206	3060-0430
* * * * *	*
15.644	3060-0372
* * * * *	*
22.609(e)	3060-0431
22.1101	3060-0451
* * * * *	*
25.391	3060-0343
* * * * *	*
63.01-63.601	3060-0149
* * * * *	*
68.5	3060-0422
* * * * *	*
74.913	3060-0425
* * * * *	*
90.19(f)(7)	3060-0434
* * * * *	*
90.135 (d) and (e)	3060-0226
* * * * *	*
97.5	3060-0303
97.9	3060-0302
97.213	3060-0222
97.311	3060-0347
97.525	3060-0368

[FR Doc. 90-22800 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 21

Domestic Public Fixed Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: These technical amendments are being made to correct the authority citation for part 21, Domestic Public Fixed Radio Services, that have been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Terrence E. Reideler, Common Carrier Bureau at (202) 634-1773.

Part 21 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 21 is revised to read as follows:

Authority: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 802; 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. All authority citations at subpart and section levels are removed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22797 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 34

Uniform System of Accounts for Radiotelegraph Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: These technical amendments are being made to correct errors that have been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Virginia Brockington, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau (202) 634-1861.

Part 34 of title 47 of the Code of Federal Regulations is amended as follows:

PART 34—[AMENDED]

1. The authority citation for part 34 is revised to read as follows:

Authority: Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307. Interpret or apply secs. 219, 220, 48 Stat. 1077, as amended, 1078, 47 U.S.C. 219, 220.

2. Authority citations at sectional levels are removed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22798 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 35

Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: These technical amendments are being made to correct errors that have been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE DATE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Virginia Brockington, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau (202) 634-1861.

Part 3 of title 47 of the Code of Federal Regulations is amended as follows:

PART 3—[AMENDED]

1. The authority citation for part 3 is revised to read as follows:

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Authority: Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307. Interpret or apply secs. 330, 330, 48 Stat. 1077, as amended, 1078; 47 U.S.C. 216, 220.

2. Authority citations at sectional levels are removed.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 90-22798 Filed 9-25-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 88-373; DA 90-1244]

Private Land Mobile Radio Services; Permit Business Radio Use of Certain Channels in the 150 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects editorial errors in the final rules adopted in the *Memorandum Opinion and Order on Reconsideration* PR Docket No. 88-373, released July 30, 1990, and published in the **Federal Register** on August 3, 1990 (55 FR 31598).

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: In PCC 90-253, PR Docket No. 88-373, appearing in 55 FR 31598-31599 (August 3, 1990), FR Doc. 90-18032 the following corrections are made:

1. On page 31598, paragraph 2, column 3, the Business Radio Service Frequency Table in § 90.75(b) is corrected by adding the frequencies 157.560 and 157.620, and by changing the Class of station(s) for the frequencies 157.575, 157.605, 157.635 and 157.665 as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
157.560	Base or mobile	9
157.575	Mobile	1,9
157.605	Mobile	1,9
*	*	*
157.620	Base or mobile	9
157.635	Mobile	1,9
157.665	Mobile	1,9
*	*	*

2. On page 31599, paragraph 4, column 2, the Combined frequency listing in § 90.555(b) is corrected by adding IB to the Services entry for frequency 157.560 MHz as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b) * * *

Frequency	Services	Special limitations
*	*	*
157.560	IB, LX	LX within SMAs over 50,000 pop.
*	*	*

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 90-22795 Filed 9-25-90; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 516, 517 and 552

[APD 2800.12A, CHGE 12]

General Services Administration Acquisition Regulation; Economic Price Adjustment Clause for Federal Supply Service

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), chapter 5, (APD 2800.12A), is amended by revising section 516.203-4 to add paragraph titles for paragraphs (a) and (b) and to add paragraph (c) to prescribe Economic Price Adjustment clauses based on the Producer Price Indexes (PPI) or other indicators of price change for stock and special order program contracts, and by making an editorial change in section 516.301-3; by adding section 517.208 to prescribe an Evaluation of Options provision for stock and special order program contracts that include options to extend the term of the contract and provide for economic price adjustments based on the PPI or other common standard; by adding section 552.216-72 to provide the text of the Economic Price Adjustment—Stock and Special Order Program Contracts clause and alternates; by adding section 552.217-70 to provide the text of the Evaluation of Options provision; and by revising the matrix referenced at section 552.301 to add a reference to the Evaluation of Options provision and the Economic Price Adjustment—Stock and Special Order Program Contracts clause. The matrixes are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets NW., Washington, DC 20405.

EFFECTIVE DATE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the **Federal Register** on July 10, 1990 (GSAR Notice 5-285, 55 FR 28246). No public comments were received. Comments received from various GSA offices have been considered and where appropriate incorporated in the final rule.

B. Background

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this rule.

The rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), since it merely extends a pricing adjustment mechanism used in multiyear contracts to contracts with options to extend the period of contract performance. Small businesses, comprising a majority of the contractors in the stock and special order programs, have not objected to the current mechanism in multiyear contracts. Therefore, a Regulatory Flexibility Analysis has not been prepared. This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 48 CFR Parts 516, 517, and 552

Government procurement.

1. The authority citation for 48 CFR parts 516, 517 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 516—[AMENDED]

2. Section 516.203-4 is revised to read as follows:

516.203-4 Contract clauses.

(a) *General.* When the contracting officer decides to use a clause providing for adjustments based on cost indexes of labor or material under FAR 16.203-4, a clause must be prepared with the assistance of counsel and approved by the contracting director.

(b) *FSS Multiple Award Schedules.* In Federal Supply Service (FSS) multiple award schedule (MAS) procurements, the contracting director will determine whether to use an Economic Price Adjustment (EPA) clause under FAR 16.203-2.

(c) *Stock or Special Order Program Contracts.* (1) The contracting officer shall insert the clause at 552.216-72, Economic Price Adjustment—Stock and Special Order Program Contracts, or a clause prepared as authorized in subparagraph (c)(2) of this section, in solicitations and contracts when the contracting officer has made the determination required by FAR 16.203-2 and the contract is a multiyear contract. If the contract includes one or more options to extend the term of the contract, the contracting officer shall use the clause with its Alternate I. If a multiyear contract with additional option periods is contemplated, the contracting officer may use a clause substantially the same as the clause at 552.216-72 with its Alternate I suitably modified. If the contract requires a minimum adjustment before the price adjustment mechanism is effectuated, the contracting officer shall use the basic clause or the Alternate I clause along with Alternate II.

(2) If the contracting officer decides that an economic price adjustment clause is needed but finds the Producer Price Index is not an appropriate indicator for price adjustment, the contracting officer may modify the clause to use an alternate indicator for adjusting prices. Similarly, if the contracting officer finds other aspects of the clause at 552.216-72 are not appropriate, the contracting officer may develop a clause in accordance with 516.203-4(a) for use instead of the clause at 552.216-72.

3. Section 516.301-3 is revised to read as follows:

516.301-3 Limitations.

The required determination and findings (D&F) must be prepared in the format prescribed by 501.704-70(a)(1) and be signed by the appropriate official (see 501.707).

PART 517—[AMENDED]

4. Section 517.208 is added to read as follows:

517.208 Solicitation provisions and contract clauses.

The Contracting Officer shall insert a provision substantially the same as the provision at 552.217-70, Evaluation of Options, in solicitations for procurements under the Federal Supply Service (FSS) stock or special order program when (a) The solicitation contains an option to extend the term of the contract and (b) A firm-fixed price contract with economic price adjustment based on the Producer Price Index or alternative indicator of market price changes is contemplated.

PART 552—[AMENDED]

5. Section 552.216-72 is added to read as follows:

552.216-72 Economic Price Adjustment—Stock and Special Order Program Contracts.

As prescribed in 516.203-4(c)(2), insert the following clause:

Economic Price Adjustment-Stock and Special Order Program Contracts (AUG 1990)

(a) "Producer Price Index" (PPI), as used in this clause, means the originally released index, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor (Labor) for product code _____ found under Table _____

(b) During the term of the contract, the award price may be adjusted once upward or downward a maximum of * percent. Any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released 12 months later (the updated index). The formula for determining the Adjusted Contract Price (ACP) applicable to shipments for the balance of the contract period is—

$$ACP = \frac{\text{Updated index}}{\text{Base index}} \times \text{Awarded price}$$

(c) If the PPI is not available for the month of the base index or the updated index, the month with the most recently published PPI prior to the month determining the base index or updated index shall be used.

(d) If a product code is discontinued, the Government and the Contractor will mutually agree to substitute a similar product code. If Labor designates an index with a new title and/or code number as continuous with the product code specified above, the new index shall be used.

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formula in (b) above is received by the Contracting Officer within 30 calendar days of the release of the updated index, the Contractor shall have waived its right to an upward price adjustment for the balance of the contract. Alternatively, the Contracting Officer will unilaterally adjust the award price downward when appropriate using the updated index defined in (b) above.

(f) Price adjustments shall be effective upon execution of a contract modification by the Government or on the 21st day following the release of the updated index, whichever is later, shall indicate the updated index and percent of change as well as the ACP, and shall not apply to delivery orders issued before the effective date.

(End of Clause)

Alternate I (AUG 1990). As prescribed in 516.203-4(c)(2), substitute the following paragraphs (b), (e) and (f) for paragraphs (b), (e) and (f) of the basic clause:

(b) In any option period, the contract price may be adjusted upward or downward a maximum of* percent.

(1) For the first option period, any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released in the third month before completion of the initial contract period stated in the solicitation (the updated index). This initial contract period may be less than 12 months. The formula for determining the Adjusted Contract Price (ACP) applicable to shipments during the first option period is—

$$ACP = \frac{\text{Updated index}}{\text{Base index}} \times \text{Award price}$$

(2) For any subsequent option period, the price adjustment shall be the percentage change between the previously updated index (the new base index) and the PPI released 12 months later (the most recent updated index). This percentage shall be applied to the Current Contract Price (CCP). The formula for determining the ACP applicable to shipments for the subsequent option period(s) is—

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$$ACP = \frac{\text{Most recent updated index}}{\text{New base index}} \times CCP$$

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formulas in (b) (1) or (2) above is received by the Contracting Officer within 30 calendar days of the date of the Government's preliminary written notice of its intent to exercise the option, the Contractor shall have waived its right to an upward price adjustment for that option period. Alternatively, the Contracting Officer in its written notice shall exercise the option at the CCP or at a reduced price when appropriate using the formulas in (b) (1) or (2) above.

(f) Price adjustments shall be effected by execution of a contract modification by the Government indicating the most recent updated index and percent of change and shall apply to delivery orders placed on or after the first day of the option period.

Alternate II (AUG 1990). As prescribed in 510.203-4(c)(2), add the following paragraph (g) to the basic clause.

(g) No price adjustment will be made unless the percentage change in the PPI is at least** percent.

*The appropriate percentage should be determined based upon the historical trend in the PPI for the product code. A ceiling of more than 10 percent must be approved by the Contracting Director.

**The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.

6. Section 552.217-70 is added to read as follows:

552.217-70 Evaluation of Options.

As prescribed in 517.208, insert the following provision:

Evaluation of Options (Aug. 1990)

(a) The Government will evaluate offers for award purposes by determining the lowest base period price. When option year pricing is based on a formula (e.g., changes in the Producer Price Index or other common standard); option year pricing is automatically considered when evaluating the base year price, as any change in price will be uniformly related to changes in market conditions. All options are therefore considered to be evaluated. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government will reject the offer if exceptions are taken to the price provisions of the Economic Price Adjustment clause, unless the exception results in a lower maximum option year price. Such offers will be evaluated without regard to the lower option year(s) maximum. However, if the offeror offering a lower maximum is awarded a contract, the award will reflect the lower maximum.

(End of Provision)

Dated: September 7, 1990.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-22098 Filed 9-25-90; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 66]

RIN 2127-AC13

Crash Tests With Unrestrained Test Dummies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends Standard No. 208, Occupant Crash Protection, by extending the period during which a Hybrid II test dummy will be the only dummy used in compliance tests of vehicles that employ means other than safety belts or air bags to meet the standard. The standard had formerly provided that a Hybrid III test dummy could be used to test such a vehicle manufactured on or after September 1, 1990. This rule delays the use of the Hybrid III test dummy for compliance testing of such vehicles until September 1, 1993. This additional time is needed to allow the agency to complete and evaluate the many research projects that are now underway examining the Hybrid III test dummy. Once this has been done, the agency will be able to establish requirements for the use of Hybrid III test dummies that will ensure both that vehicles that do not use safety belts or air bags will provide adequate protection for drivers and passengers in actual crashes and that the Hybrid III test dummy is equivalent to the Hybrid II test dummy in these situations. This rule does not affect the requirement that vehicle manufacturers have the option of specifying the use of either the Hybrid II or the Hybrid III test dummy in compliance testing of vehicles that use either air bags or safety belts to meet the standard.

DATES: *Effective date:* This rule takes effect on September 26, 1990.

Comment closing date: Comments on this rule must be received by NHTSA no later than November 13, 1990.

ADDRESSES: Comments should refer to the docket and notice number shown above, and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Backaitis can be contacted by telephone at (202) 366-4912.

SUPPLEMENTARY INFORMATION:

Background

The Hybrid II test dummy has been incorporated in subpart B of 49 CFR part 572 since August 1, 1973. This test dummy is used to assess the occupant protection afforded vehicle occupants in frontal crashes. To serve this purpose, instruments in the dummy measure the acceleration at the center of gravity of the dummy's head, the acceleration at the center of gravity of the dummy's upper thorax (chest), and the compressive force transmitted axially through each upper leg. These forces cannot exceed the maximum levels set forth in Standard No. 208, Occupant Crash Protection. NHTSA had concluded that the Hybrid II test dummy was a reasonable simulation of a human. The maximum force levels set forth in Standard No. 208 were set at levels that would minimize the likelihood of serious injury or death for vehicle occupants in frontal crashes.

For more than a decade, the Hybrid II test dummy was the only test dummy specified in NHTSA's regulations for use in Standard No. 208 compliance testing.

However, on July 25, 1988 (53 FR 28038), NHTSA published a rule establishing a second test dummy for use in Standard No. 208 compliance testing. This test dummy was the Hybrid III test dummy, and the specifications for it appear at subpart E of 49 CFR part 572. The agency concluded that this test dummy would allow the assessment of more types of potential injuries to vehicle occupants and that this test dummy appeared to be an even more accurate simulation of a human than the older Hybrid II test dummy. The rule establishing the Hybrid III test dummy for use in compliance testing required that the same force levels that are measured and recorded for the Hybrid II test dummy would be measured and recorded for the Hybrid III test dummy, and that the same maximum injury criteria levels would apply to both types of test dummies.

When either of two types of test dummies may be used for compliance testing for a safety standard, it is important that the two types be "equivalent," i.e., that they display only minimal differences in test results when they are exposed to equivalent crash environments. The importance of equivalence is that vehicles, which will pass or fail a safety standard using one type of dummy, will achieve essentially the same result using the other type of dummy. This ensures that compliance or noncompliance with a safety standard is entirely dependent upon vehicle attributes instead of differing attributes of the types of test dummies.

When the Hybrid III test dummy was incorporated into part 572, NHTSA concluded that the Hybrid II and III test dummies were equivalent when the dummies were restrained by safety belts or air bags. However, the agency concluded that the two types of test dummies were not equivalent when they were unrestrained. The chest acceleration measurements for unrestrained Hybrid III dummies were consistently lower than the chest acceleration measurements for unrestrained Hybrid II dummies. If the two test dummies were to be equivalent when they were unrestrained, some measurement of injury producing forces to the chest of the Hybrid III test dummy, in addition to the existing measurement of chest acceleration, would have to be made to compensate for the lower chest acceleration measurements for unrestrained Hybrid III test dummies. Chest injuries generally are caused by excessive loading on the chest, when the chest contacts the restraint system and possibly the steering system, if the occupant is restrained, or the steering system and/or other passenger compartment components, if the occupant is unrestrained. The agency concluded that a measurement of the amount the chest was deflected, or compressed, as measured approximately at the sternum, for the Hybrid III test dummy would appropriately compensate for that dummy's lower chest acceleration measurements when it was unrestrained. Hence, a limit was established on the amount of chest deflection permitted when the Hybrid III test dummy was used in compliance testing.

Both the notice of proposed rulemaking and the final rule adopting the Hybrid III test dummy divided all occupant protection systems into two groups. One chest deflection limit (3.0 inches) was established for air bags ("restraint systems that are gas inflated and provide distributed loading to the torso during a crash") and another chest deflection limit (2.0 inches) was established for all other occupant protection systems. The effect of this latter chest deflection limit was to treat as a single category vehicles in which occupants were restrained by safety belts and vehicles in which occupants were unrestrained. Subsequently, the agency determined that the limited data that were available called into question the wisdom of treating safety-belt restrained and unrestrained occupants as a single group for the purposes of the chest deflection limit.

Response to Petitions for Reconsideration of the Rule Establishing the Hybrid III Test Dummy

In response to the petitions for reconsideration of the final rule establishing the Hybrid III test dummy, NHTSA reexamined its previous decision to establish a single chest deflection limit for all occupant protection systems other than air bags. The available accident data suggested that, when the crash forces that produce as much as 2.9 inches of chest deflection in the Hybrid III test dummy are imposed on the human chest by 2-point safety belts, those forces appear not to expose vehicle occupants to a significant risk of serious chest injury. Since the agency had treated occupants restrained by safety belts in the same category as those that were unrestrained for the purposes of the chest deflection limit, one would infer that the same level of chest deflection that appeared not to expose safety belt-restrained occupants to significant risks of serious chest injury would likewise not expose unrestrained occupants to significant risks of serious chest injury. However, the accident data and the limited biomechanical data that were available for unrestrained occupants raised concerns about such an inference.

Further, as explained above, NHTSA was concerned that the Hybrid II and Hybrid III test dummies be equivalent. None of the limited data that were available suggested that a 3 inch chest deflection limit for unrestrained test dummies would make the Hybrid III equivalent to the Hybrid II test dummies in those situations.

Because of these concerns, the agency concluded that it should not permit the Hybrid III test dummy to be used for compliance testing with the automatic crash protection requirements of vehicles manufactured before September 1, 1990, which used means other than air bags or automatic safety belts to provide the automatic protection. To the best of the agency's knowledge, no manufacturer had any plans to certify a vehicle design as complying with the automatic crash protection requirements without using automatic safety belts or air bags. Hence, this temporary delay in the use of the Hybrid III test dummy for such vehicles was more significant in theory than in practice. NHTSA stated in the 1988 response to the petitions for reconsideration of the Hybrid III rulemaking that delaying until September 1, 1990 would be sufficient to allow the agency to investigate this subject further, to ensure that the chest deflection limit that would be established for unrestrained Hybrid III test dummies would both meet the need for safety and ensure equivalence of the Hybrid II and Hybrid III test dummies in unrestrained conditions.

Activities After the Response to Petitions for Reconsideration

At the time of the March 1988 response to petitions for reconsideration, the agency anticipated that the research needed to determine the appropriate chest deflection limit for unrestrained occupants would be completed early enough to allow the agency to make that determination by September 1, 1990. This anticipation reflected NHTSA's belief that the primary tasks of the research activities would be to develop more sophisticated and suitable instrumentation systems for measuring chest deflection and reviewing the existing biomechanical research to determine what chest deflection limit should be established. NHTSA promptly undertook research to address these tasks.

The research undertaken by the agency and test data received from

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sources outside the agency, including General Motors, Mercedes-Benz, Toyota, INRETS (a French government research and development group), and the Motor Industry Research Association (a British group), have shown that chest deflection dynamics within the Hybrid III test dummy are far more complex than the agency originally believed and that more sophisticated and suitable instrumentation systems would need to be developed to provide measurements of kinematic distortions of the dummy ribcage. In spite of these unexpected complexities, the agency believes it has developed instrumentation that could be of immediate use. However, the research and test data also raised more basic questions about biomechanical shortcomings of the existing thoracic structure of the Hybrid III test dummy. These biomechanical questions cannot yet be answered, as explained below.

Copies of the testing and research reports describing the testing and research of which the agency is aware and that have become available since March 1988 has been placed in the public docket for this rulemaking. Interested persons are advised to examine those documents for more details on the agency's testing and the results of testing by other entities.

The review of existing biomechanical research and the additional information that has become available since March 1988 raised questions about the suitability of evaluating the potential for thorax injury to vehicle occupants by means of a single point measurement of chest deflection. Test data now indicate that the Hybrid III dummy's centrally located chest deflection sensor measures actual chest deflection only when the load is symmetrically distributed around the chest deflection sensor in the plane of the sternum and when the dummy's chest moves primarily along a single axis, such as a forward-rearward direction, as is generally the case when the dummy is restrained by either a safety belt or an air bag. Agency tests and the test conducted by INRETS show that the existing deflection sensor does not appear to measure true thorax penetration when the thorax is subjected to loading that is concentrated in a small area, when the loading is not symmetrical, or when the impact with the thorax is off-center. The Toyota testing indicated that shifting the positioning of the shoulder belt relative to the Hybrid III dummy's chest deflection sensor affects the measured deflection value and may not indicate the true magnitude of the deflection that occurs.

In response to these questions, NHTSA initiated research to try to develop either supplementary or alternative technologies for measuring chest deflection in the Hybrid III test dummy. This research allowed the agency to develop two alternative technologies for measuring chest deflection. The first approach measures chest deflection by using string potentiometers at eight points mounted internally around the test dummy's thorax. The second approach consisted of developing an instrumented chestband called an External Peripheral Instrument for Deformation Measurement (EPIDM). NHTSA developed the EPIDM because of the extreme difficulties in measuring chest deflection levels of the cadaver thorax during impacts in vehicle crash environments. In addition to these agency research efforts, NHTSA has learned that Mercedes-Benz is exploring methods of determining chest deflections by measuring the strain imposed on the ribs during the impact.

Further, the Society of Automotive Engineers Committee on Human Biomechanics Simulation formed a task force on September 1, 1988. The mandate of this task force is to evaluate, compare, and recommend for practical application appropriate chest deflection measuring technologies. That task force is currently reviewing several existing methods to measure chest deflection in the Hybrid III test dummy. At this time, the agency understands that this task force expects to reach conclusions and make its recommendations by early 1991.

If the agency had been correct in its March 1988 belief that all that was needed to make the Hybrid III test dummy acceptable for use in testing unrestrained occupants was to develop more sophisticated and suitable instrumentation systems for measuring chest deflection, no additional postponement of the use of Hybrid III for testing unrestrained occupants would be needed. The eight-point chest deflection measurement could be proposed for use now, and the EPIDM and Mercedes' approach might enhance the measurement capabilities in the future. However, test data, particularly the INRETS and Toyota studies referenced earlier, that have become available since March 1988, have suggested shortcomings in the biofidelity of the Hybrid III thorax as it interacts with typical restraint systems.

In response to these data, NHTSA and other parties have undertaken biomechanical research to verify or disprove these studies and to determine if modifications to the Hybrid III thorax could address the problems suggested by the INRETS and Toyota data. The agency has placed in the docket for this rulemaking action a document listing those research activities relevant to the appropriate chest deflection limit for unrestrained Hybrid III test dummies that have been completed since March 1988 and those that are planned in the near future, both by this agency and by outside parties. The biomechanical research that is now necessary is far more complex and time-consuming than the research the agency anticipated was needed in March 1988. Additionally, biomechanical research is paced by the scarcity of cadavers for use in the testing. Accordingly, it was not possible for NHTSA to satisfactorily resolve the issue of the Hybrid III test dummy in unrestrained situations by September 1, 1990.

Requirements of and Need for This Interim Final Rule

The testing NHTSA now has planned or in progress should be completed and the agency's preliminary assessment of the test data available by the end of 1992. As this research progresses, it may be determined that the current Hybrid III thorax design will be shown to be adequate, if it includes new chest deflection measurement instrumentation with an appropriate chest deflection limit for unrestrained occupants. Alternatively, the Hybrid III thorax structure may be shown to need further refinements for use in certain types of crash loading situations, such as unrestrained. In that case, if alternative thorax designs are available and the alternative designs appear to overcome the problems of the current Hybrid III thorax in those crash loading situations, the agency would propose to incorporate those alternative designs into the Hybrid III test dummy. If the research program is unable to uncover solutions to any identified shortcomings, the agency would have to determine the most appropriate course of action.

Regardless of which of these scenarios eventually comes to pass, the results of the research program will enable the agency to determine the most appropriate course of action. That research program will be completed by December 1992. Hence, NHTSA believes that it will be able to determine the most appropriate course of action and complete the necessary rulemaking actions by September 1, 1993. The agency has also concluded that the public interest would be best served by prohibiting the use of the Hybrid III test dummy in crash situations where it would be unrestrained, until NHTSA has determined the appropriate chest deflection limits and measurement techniques for the Hybrid III test dummy in those crash situations. Accordingly, this rule specifies that any vehicles manufactured before September 1, 1993 that comply with the automatic restraint requirement without using any type of safety belt or inflatable restraint must use only the Hybrid II test dummy in testing for compliance with the automatic restraint requirement.

The agency finds for good cause that notice and opportunity for comment on this rule before it becomes effective would be impracticable and contrary to the public interest, as explained below. First, the circumstances that have forced this postponement were beyond the agency's control. In this instance, the agency did not anticipate that its research program would raise substantial biomechanical issues with respect to the Hybrid III thorax, nor was there an available body of data indicating that these results were likely. Since neither the need for, nor the appropriate direction of, the additional research were known to NHTSA or any other party, NHTSA had no influence or control over those circumstances.

Second, the agency acted diligently to initiate the supplemental biomechanical testing and to try to devise modifications to the Hybrid III thorax that would have allowed this test dummy to be used for compliance testing in unrestrained situations. However, the magnitude of the biomechanical issues that have become apparent was too great to allow the agency to propose an effective solution at this time.

Third, the agency announced in its 1988 final rule that Hybrid III test dummies could be used in unrestrained testing of vehicles manufactured on or after September 1, 1990. NHTSA fully intended to permit the Hybrid III to be used for unrestrained testing, even though the agency thought it might act at a later date to lower the chest deflection limit for the Hybrid III test dummy when unrestrained. This intention reflected the agency's belief that the basic approach of using chest deflection measurements on the Hybrid III dummy would insure acceptable protection against thoracic injury for unrestrained vehicle occupants in real world situations, even if the permissible amount of chest deflection were subsequently lowered for unrestrained occupants. However, the available research now suggests that chest deflection measurements on the Hybrid III dummy may not be an acceptable approach to ensuring safety protection for unrestrained vehicle occupants. Since ensuring occupant safety is NHTSA's mission, this recently available research has forced the agency to alter its previously announced intent on this subject.

Fourth, the postponement of the use of the Hybrid III test dummy in unrestrained situations is for a relatively short time, until September 1, 1993. Vehicle manufacturers have already begun the preliminary work on their 1993 models that will be produced before September 1, 1993. NHTSA is not aware of any manufacturer that plans to produce a 1993 model that does not rely on either safety belts or air bags to provide occupant protection. Thus, no manufacturer will have to change its plans in response to this postponement. On the other hand, this issue will be resolved quickly enough to allow manufacturers that wish to pursue development of occupant protection systems that do not use safety belts or air bags to proceed expeditiously.

Fifth, NHTSA will consider all comments that are received on this subject and promptly publish a permanent final rule reflecting NHTSA's evaluation of those comments. To the extent that this interim final rule imposes any unforseen burdens or otherwise affects some party, the permanent final rule will promptly resolve that problem.

After considering all these factors together, NHTSA has concluded that good cause exists to dispense with notice and comment before this interim final rule takes effect. This same good cause justifies making this final rule effective upon publication in the **Federal Register**, instead of 30 days after publication.

NHTSA has analyzed the impacts of this action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The postponement in the use of the Hybrid III test dummy in unrestrained seating positions should not adversely affect any person. No manufacturer currently produces a vehicle certified as complying with the occupant protection standard without using safety belts or air bags, nor is the agency aware of any plans to produce such a vehicle design before September 1, 1993. Hence, while there may be some theoretical impacts associated with this rule, there are no actual impacts. For this reason, a full regulatory evaluation has not been prepared.

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this interim final rule will not have a significant economic impact on a substantial number of small entities. This postponement will primarily affect motor vehicle manufacturers, few of which are small entities. As described above, no adverse impacts will be associated with this action. Further, since no price increases will result from this action, small organizations and small governmental entities will not be affected by this postponement when they purchase new vehicles.

The agency has analyzed this rule for the purposes of the National Environmental Policy Act and determined that this rule will not have a significant impact on the quality of the human environment.

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that the proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on this interim final rule. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this interim rule will be considered, and will be available for examination in the

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docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the permanent final rule will be considered as suggestions for further rulemaking action. Comments on the interim final rule will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S5 of Standard No. 208 is amended by revising the introductory text of S5.1 and the introductory text of S5.2.1, to read as follows:

* * * * *

S5. *Occupant crash protection requirements.*

S5.1 Vehicles subject to S5.1 shall comply with either S5.1(a) or S5.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1993 that comply with the requirements of S4.1.2.1(a) by means not including any type of seat belt or inflatable restraint shall comply with S5.1(a).

* * * * *

S5.2 *Lateral moving barrier crash test.*

S5.2.1 Vehicles subject to S5.2 shall comply with either S5.2.1(a) or S5.2.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1993 that comply with the requirements of S4.1.2.1(c) by means not including any type of seat belt or inflatable restraint shall comply with S5.2.1(a).

* * * * *

Issued on September 20, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90-22751 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 55, No. 187
Wednesday, September 26, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 16

RIN 3150-AD44

Salary Offset Procedures for Collecting Debts Owed by Federal Employees to the Federal Government

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to establish procedures to collect certain debts owned by Federal employees to the NRC and other Federal agencies by deduction(s) from their pay. This proposed rule established 10 CFR part 16 and is necessary to conform NRC regulations to the Debt Collection Act of 1982 which requires each agency to establish a salary offset program for the collection of these debts.

DATES: Submit comments by October 26, 1990. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, One White Flint North, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays.

Examine comments received at: The NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Diane B. Dandois, Chief, License Fee and Debt Collection Branch, Division of Accounting and Finance, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7225.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365) requires each agency to establish a salary offset program for the collection of debts owed by Federal employees to the Federal Government. Debt collection efforts under these programs resulted in the collection of $52 million in FY 1988.

The Office of Personnel Management (OPM) regulations governing the salary offset program establish certain minimum standards and procedures that must be incorporated into each agency's salary offset regulations (5 CFR 550.1104) and require each agency to submit proposed regulations to OPM for review and approval prior to their becoming final rules (5 CFR 550.1105). The NRC has forwarded a copy of this proposed rule to OPM in order to comply with 5 CFR 550.1105.

The NRC is proposing to establish a new part in 10 CFR chapter I (part 16) that would contain the provisions necessary to meet this obligation. The proposed 10 CFR part 16 provides procedures for the NRC to collect debts owed to the Federal Government by administrative offset from a Federal employee's salary without his or her consent. This rule applies to all Federal employees who owe debts to the NRC and to current employees of the NRC who owe debts to other Federal agencies.

Concurrently with publication of 10 CFR part 16 as a final rule, the NRC intends to amend 10 CFR part 15, Debt Collection Procedures, to specify that the salary offset provisions of 10 CFR part 16 apply to the collection of certain debts owed Federal employees to the NRC and other agencies.

Finding of No Significant Environmental Impact

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affection the quality of the human environment and therefore an environmental statement is not required. Amending the procedures to be used by the Commission to collect debts which are owed to it and other Federal agencies by Federal employees through salary offset will have no radiological environmental impact offsite and no impact on occupational radiation exposure onsite. The proposed rule does not affect nonradiological plant effluents and has no other environmental impact.

The environmental assessment and finding of no significant impact, on which this determination is based, are available for inspection at the NRC Public Document Room, 2120 L Street, (Lower Level), NW., Washington, DC.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirments of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

This proposed rule will bring NRC procedures for collecting debts owed it and other Federal agencies by Federal employees into conformance with current statutory and regulatory guidance and requirements and, as such, does not have a significant impact on state and local governments and geographical regions, health, safety, and the environment; nor does it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities since it does not cover debts owed the NRC by small entities. As a result, a regulatory flexibility analysis has not been prepared.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because it does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 16

Claims, Debt collection, Government employees, Wages.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended;

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the Energy Reorganization Act of 1974, as amended; the Debt Collection Act of 1982, as amended; the Federal Claims Collection Act of 1966, as amended; 5 CFR 550.1101–1108, subpart K; and 5 U.S.C. 552 and 553, the NRC is proposing to adopt 10 CFR part 16.

1. A new part 16 is added to 10 CFR chapter I.

PART 16—SALARY OFFSET PROCEDURES FOR COLLECTING DEBTS OWED BY FEDERAL EMPLOYEES TO THE FEDERAL GOVERNMENT

Sec.
16.1 Purpose and scope.
16.3 Definitions.
16.5 Application.
16.7 Notice requirements.
16.9 Hearing.
16.11 Written decision.
16.13 Coordinating offset with another Federal agency.
16.15 Procedures for salary offset.
16.17 Refunds.
16.19 Statute of limitations.
16.21 Non-waiver of rights.
16.23 Interest, penalties, and administrative costs.

Authority: Sec. 101, 80 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 3, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3711, 3717, 3718); sec. 5, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3716); Debt Collection Act of 1982, Pub. L. 97–365, 96 Stat. 1749–1758; Federal Claims Collection Standards, 4 CFR Parts 101–105; 5 U.S.C. 5514, as amended; 5 CFR 550.1101–550.1108.

§ 16.1 Purpose and scope.

(a) This part provides procedures for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal Government. This part applies to all Federal employees who owe debts to the Nuclear Regulatory Commission (NRC) and to current employees of the NRC who owe debts to other Federal agencies. This part does not apply when the employee consents to recovery from his/her current pay account.

(b) These procedures do not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;

(2) The Social Security Act, 42 U.S.C. 301 et seq.;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) These procedures do not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 et seq., 4 CFR parts 101 through 105.

(e) This part does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This part does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 16.3 Definitions.

For the purposes of this part, the following definitions apply:

Administrative charges are those amounts assessed by NRC to cover the costs of processing and handling delinquent debts due the Government.

Administrative offset means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the United States Government.

Agency means an executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal Government.

Creditor agency means the agency to which a debt is owed.

Debt means an amount which has been determined by an appropriate NRC official or an appropriate official of another agency to be owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay after required deductions for social security, Federal, state or local income tax; health insurance premiums; retirement contributions; life insurance premiums; Federal employment taxes; and any other deductions that are required to be withheld by law. Deductions described in 5 CFR 581.105 (b) through (f) are excluded when determining disposable pay subject to salary offset.

Employee means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

FCCS means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR parts 101–105.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed or the repayment schedule if not established by written agreement between the employee and the NRC, and who renders a decision on the basis of such hearing.

Paying agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 16.5 Application.

The regulations in this part are to be followed when:

(a) The NRC is owed a debt by an individual currently employed by another Federal agency;

(b) The NRC is owed a debt by an individual who is a current employee of the NRC; or

(c) The NRC employs an individual who owes a debt to another Federal agency.

§ 16.7 Notice requirements.

(a) If the NRC is the creditor agency, deductions will not be made unless the NRC provides the employee with a signed written notice of the debt at least 30 days before salary offset commences. The notice will be delivered in person or by certified or registered mail, return receipt requested, with receipt returned as proof of delivery.

(b) The written notice must contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The NRC's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that these charges will be assessed unless excused in accordance with the Federal Claims Collection Standards at 4 CFR part 101–105;

(5) The employee's right to inspect and copy government records pertaining to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of these records;

(6) If not previously provided, the opportunity (under terms agreeable to the NRC) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset (4 CFR 102.2(e)). The agreement must be in writing, signed by both the employee and the NRC, and documented in the NRC's files;

(7) The employee's right to a hearing conducted by an official arranged for by the NRC (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed in § 16.9;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representatives, or evidence may subject the employee to appropriate disciplinary procedures under chapter 75 of title 5, United States Code and 5 CFR part 752, penalties under the False Claims Act, sections 3729–3731 of title 31, United States Code or other applicable statutory authority, or criminal penalties under sections 286, 287, 1001 and 1002 of title 18, United States Code or any other applicable statutory authority;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 16.9 Hearing.

(a) *Request for hearing.* (1) An employee shall file a petition for a hearing in accordance with the instruction outlined in the creditor agency's notice of offset.

(2) If the NRC is the creditor agency, a hearing may be requested by filing a written petition addressed to the Controller stating why the employee disputes the existence or amount of the debt or the repayment schedule if it was established by written agreement between the employee and the NRC. The employee shall sign the petition and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, which the employee believes support his or her position. The petition for a hearing must be received by the Controller no later than fifteen (15) calendar days after receipt of the notice of offset unless the employee can show that the delay in meeting the deadline date was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(b) *Hearing procedures.* (1) The hearing will be presided over by a hearing official arranged by NRC (an administrative law judge or, alternatively, a hearing official not under the supervision or control of the head of the agency.)

(2) The hearing must conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden is on the employee to demonstrate either that the existence or the amount of the debt is in error or that the terms of the repayment schedule would result in undue financial hardship or would be against equity and good conscience.

(3) An employee is entitled to representation of his or her choice at any stage of the proceeding. NRC attorneys may not be provided as representatives for the debtor. The NRC will not compensate the debtor for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

§ 16.11 Written decision.

(a) The hearing official will issue a written opinion no later than 60 days after the hearing.

(b) The written opinion must include:

(1) A statement of the facts presented to demonstrate the nature and origin of the alleged debt;

(2) The hearing official's analysis, findings, and conclusions;

(3) The amount and validity of the debt; and

(4) The repayment schedule, where appropriate.

§ 16.13 Coordinating offset with another Federal agency.

(a) *The NRC as the creditor agency.* When the NRC determines that an employee of a Federal agency owes a delinquent debt to the NRC, the NRC will, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that NRC procedures for salary offset implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(3) If collection must be made in installments, the NRC must advise the paying agency of the amount or percentage of disposable pay to be collected in each intallment;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(5) Except as otherwise provided in this paragraph (a), the NRC must submit a debt claim containing the information specified in paragraphs (a) (2) through (4) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency;

(6) Upon receipt of notification that the emplyee has transferred to another agency before the debt is collected in full, the NRC will submit a properly certified claim to the new paying agency so that collection can be resumed;

(7) If the employee is in the process of separating, the NRC will submit its debt claim to the paying agency as provided in paragraphs (a) (2) through (5) of this section. The paying agency will certify any amounts already collected, notify the employee, and send a copy of the

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certification and notice of the employee's separation to the NRC. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it will certify to the agency responsible for making the payments that the employee owes a debt (including the amount) and that the provisions of this part have been followed. The NRC will submit a properly certified claim to the agency responsible for making such payments so collection can be made;

(8) If the employee has already separated and all payments due from the paying agency have been paid, the NRC may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The NRC as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, the NRC will schedule deductions to begin at the next established pay interval. The employee must receive written notice indicating that the NRC has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The NRC may not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) Upon receipt of an incomplete debt claim from a creditor agency, the NRC will return the debt claim to the creditor agency with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the NRC and before the debt is collected completely, the NRC will certify the total amount collected. The NRC will furnish one copy of the certification to the employee. The NRC will furnish a copy to the creditor agency with notice of the employee's transfer.

§ 16.15 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the NRC's notice of intention to offset as provided in § 16.7. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period may not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Offset against any subsequent payment due an employee who retires or resigns or whose employment or period of active duty ends before collection of the debt is completed is provided for in accordance with 31 U.S.C. 3716. These payments include but are not limited to final salary payment or lump-sum leave due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

§ 16.17 Refunds.

(a) The NRC will refund promptly any amounts deducted to satisfy debts owed to the NRC when the debt is waived, found not owed to the NRC, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by NRC to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required or permitted by law or contract, refunds under this section may not bear interest.

§ 16.19 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the NRC official or officials who were charged with the responsibility for discovery and collection of the debts.

§ 16.21 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutes or contract(s) to the contrary.

§ 16.23 Interest, penalties, and administrative charges.

Charges may be assessed for interest, penalties, and administrative charges in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated at Rockville, Maryland, this 14th day of September 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90-22770 Filed 9-25-90; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AA82

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed rule.

SUMMARY: In 1985, the FDIC adopted minimum supervisory leverage capital ratios of primary and total capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). In 1989, the FDIC adopted minimum supervisory risk-based capital ratios of core and total capital to risk-weighted assets.

The FDIC risk-based capital policy statement also indicated that the risk-based capital framework did not replace or eliminate the existing part 325 leverage ratios but that, once the risk-based framework was implemented, the FDIC would consider whether the part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended. In this regard, the FDIC now is proposing to amend part 325 to:

(1) Replace the primary and total capital definitions with a Tier 1 (core) capital definition;

(2) Eliminate the minimum 5.5 percent primary and 8 percent total capital ratio requirements for state nonmember banks and replace them with a minimum 3 percent Tier 1 leverage capital ratio requirement for the most highly-rated banks (i.e., those that would be assigned a composite CAMEL rating of (1) that are not anticipating or experiencing any significant growth; all other state nonmember banks would need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum, (i.e., an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth);

(3) Provide that state nonmember banks with capital below the minimum leverage capital requirement would be deemed to be engaging in an unsafe or unsound practice unless they have submitted, and are in compliance with, a capital plan approved by the FDIC;

(4) Replace the existing 3 percent leverage test, which is based on total capital, for determining when a depository institution is in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act with a new 2 percent test based solely on Tier 1 capital;

(5) Add to part 325 a number of references concerning certain supervisory responsibilities imposed on the FDIC by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), for determining the safety and soundness and capital adequacy of savings associations; and

(6) Reformat certain portions of part 325 and make conforming adjustments to the FDIC's 1989 Statement of Policy on Risk-Based Capital and to the FDIC's 1985 Statement of Policy on Capital to appropriately reflect the proposed changes; both of these policy statements also would be included as appendices to part 325.

DATES: Comments on this proposal must be received by November 13, 1990.

ADDRESSES: All comments should be addressed to Hoyle L. Robinson, Executive Secretary, Attention: Room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429 or delivered to Room F-400, 1776 F Street NW., between the hours of 9 a.m. and 5 p.m. on business days. Comments will be available for inspection and photocopying during normal business hours at the 1776 F Street address.

FOR FURTHER INFORMATION CONTACT: Robert F. Misilovich, Assistant Director, Division of Supervision (202/898-6918), Stephen G. Pfeiffer, Examination Specialist, Accounting Section (202/898-8904), or Claude A. Rollin, Senior Attorney, Legal Division (202/898-3985).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the collection of information should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064-0075), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-451, 550 17th Street NW., Washington, DC 20429. The collection of information in this regulation consists of capital plans that are required to be filed by state nonmember banks pursuant to § 325.3(c)(3) when these institutions fail to comply with the minimum leverage capital requirement set forth in § 325.3(b). Most state nonmember banks with less than the minimum leverage capital requirement have been identified as institutions that have more than normal levels of risk and already are subject to formal or informal proceedings which establish their minimum capital requirements and set forth capital plans for achieving the minimum requirements. However, it is anticipated that a relatively small number of state nonmember banks may fail the minimum leverage capital requirement set forth in § 325.3(b) but not yet be subject to formal or informal enforcement proceedings for achieving the required capital level. It is these institutions for which an additional reporting burden could arise pursuant to § 325.3(c)(3). The estimated annual reporting burden for these institutions is as follows:

Number of respondents: 5.

Number of responses per respondent: 1.

Total annual responses: 5.

Hours per response: 60.

Total annual burden hours: 300.

Background

The FDIC adopted in 1985 (50 FR 11130, March 19, 1985) minimum supervisory leverage ratios of capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). These minimums are contained in Part 325 of the FDIC's regulations (12 CFR part 325) and set forth a minimum primary capital ratio of 5.5 percent and a minimum total capital ratio (primary plus secondary) of 6 percent. The definition of primary capital includes common stockholders' equity (i.e., copy stock, surplus, and undivided profits), as well as perpetual preferred stock, minority interests in consolidated subsidiaries, the allowance for loan and lease losses, and limited amounts of mandatory convertible debt. Secondary capital consists of subordinated notes and debentures and limited-life preferred stock.

The FDIC adopted in 1989 (54 FR 11509, March 21, 1989) minimum supervisory risk-based capital ratios of capital to risk-weighted assets. These minimum risk-based ratios are defined in the policy statement included as Appendix A to part 325. The policy statement sets forth a minimum total capital ratio (core plus supplementary) of 8 percent that banks are generally expected to meet when the risk-based framework is fully phased in at year-end 1992, as well as an interim 7.25 percent ratio that banks are expected to meet by year-end 1990. When fully phased-in, at least one-half of the minimum total capital requirement (i.e., 4 percent) must be comprised of Tier 1 (core) capital elements. Core capital is comprised essentially of common stockholders' equity, noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries. Supplementary capital includes the allowance for loan losses, cumulative perpetual and long-term preferred stock, hybrid capital instruments such as mandatory convertible debt, and limited amounts of term subordinated debt and intermediate-term preferred stock.

The leverage and risk-based capital standards are only minimums that apply to sound, well-run institutions. As a result, most institutions are expected to and, in fact, do operate with capital ratios well above the minimum standards.

I. Leverage Standard

At the time the risk-based capital policy statement was adopted, the FDIC indicated that the risk-based capital framework did not replace or eliminate the existing part 325 leverage ratios but that, once the risk-based framework was implemented, the FDIC would consider whether the part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended. The FDIC is now proposing to amend the existing part 325 leverage standard and to retain this revised standard in conjunction with the minimum risk-based capital standard.

The FDIC believes that retention of some form of leverage standard is desirable in order to maintain some constraint on a bank's overall leverage. Retention of an overall leverage constraint is important since, in the absence of such a constraint and without a comprehensive measure for interest rate risk and various operational risks, the assignment of a significant volume of assets to the zero percent or other low risk-weight categories under the risk-based framework could allow a bank to

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assume an unwarranted degree of leveraging and risk-taking without an appropriate capital cushion.

However, the FDIC recognizes that different capital definitions for leverage and risk-based purposes carry the potential for confusion and perhaps an element of undue burden. As a result, the FDIC is proposing a revised leverage standard that is based on the definition of TIER 1 core capital presently used in the risk-based framework. In conjunction with this revision, the FDIC hopes to maintain an effective minimum leverage standard, using the proposed new definition of capital, that is consistent with the 6 percent leverage standard that uses the present definition of capital.

II. Proposed Minimum Leverage Capital Requirement

The proposed revisions to the leverage standard would result in a definition of capital (i.e., core capital) which, for most state nonmember banks, would only include common stockholders' equity, less all intengible assets other than mortgage servicing rights. (Most banks do not have any significant amounts of the other two Tier 1 capital elements, i.e., noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries.) This definition of capital is much narrower than the primery capital definition used in the existing leverage standard which, in addition to core capital, includes all forms of perpetual preferred stock, the entire amount of the allowance for loan and lease losses, and certain amounts of mandatory convertible debt. In view of the fact that these other primary capital elements usually do not comprise more than 1 to 2 percent of a bank's total assets, and since these elements no longer would be included in the definition of capital under the proposed leverage standard, the FDIC believes that a minimum leverage standard of 4 to 5 percent, based on core capital, is substantially equivalent with the 5.5 percent, primary capital and 6 percent total capital leverage standards that presently exist.

In view of this, the FDIC now is proposing to eliminate from the part 325 leverage regulation the current definitions for primary and total capital, replace them with a single definition of Tier 1 (or core) capital, and establish a minimum leverage standard of 3 percent Tier 1 capital to total assets for the most highly-rated banks (i.e., those that would be assigned a composite CAMEL rating of (1) that are not anticipating or experiencing any significant growth. All other state nonmember banks would need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum—that is, an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth.

The proposed minimum leverage standard is very similar in substance to the minimum leverage capital guidelines adopted on August 2, 1990 by the Board of Governors of the Federal Reserve System. In this regard, although the Federal Reserve Board adopted a 3 percent minimum leverage standard, that minimum would only apply to the most highly-rated institutions that are not experiencing or anticipating significant growth. Under the Federal Reserve's guidelines, all other institutions would need to meet a minimum leverage requirement of 3 percent "plus an additional cushion of at least 100 to 200 basis points"—that is, an effective minimum leverage standard of 4 to 5 percent. Once again, it is emphasized that this requirement is only a minimum and most institutions are expected to operate with capital levels well above the minimum that are commensurate with the institution's particular risk profile.

On the other hand, the 3 percent minimum core capital leverage standard that was adopted on November 7, 1989, by the Office of Thrift Supervision for savings associations (12 CFR part 567), and a similar leverage standard that was proposed by the Office of the Comptroller of the Currency for national banks on November 3, 1989, would appear to apply to all affected institutions rather than just to the most highly-rated institutions.

With respect to the FDIC's capital definitions, however, one difference exists in the definition of Tier 1 capital under the FDIC's proposed revisions to the leverage standard versus the Tier 1 definition under the FDIC's risk-based framework. For risk-based capital purposes, a transition period is allowed until year-end 1992, during which time frame certain supplementary capital elements that would otherwise be included in Tier 2 capital can be included as part of Tier 1 capital. Under the proposed leverage standard, no such transition or phase-in period is allowed and only those capital elements that technically meet the definition or core capital can be included as part of Tier 1 capital.

III. Unsafe or Unsound Practice

As under the current part 325 regulation, the revised rule would provide that any state nonmember bank not in compliance with the minimum leverage capital requirement does not have adequate capital and will be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act unless the bank is in compliance with a written agreement or has submitted and is in compliance with a written agreement or has submitted and is in compliance with a capital plan approved by the FDIC. (This, however, does not preclude the FDIC from taking action against any bank with capital above the minimum requirement if the specific circumstances deem such action to be appropriate.) The revised regulation would also require any state nonmember bank that has less than the minimum leverage capital requirement to submit to its FDIC regional director for review and approval a reasonable capital plan for achieving the minimum capital requirment, with such plan to be submitted within 60 days of the date as of which the bank fails to comply with the capital requirement.

Any FDIC-insured institution making an application to the FDIC that requires the FDIC to consider the adequacy of the institution's capital structure would also be deemed to have an inadequate capital structure if it does not meet this minimum leverage capital requirement and normally will not receive approval for such an application. Since FDIC now is also the insurer for savings associations, the revised leverage standard would also cover any applications filed by these institutions that require the FDIC to make an evaluation of the institution's capital adequacy. This could include applications for deposit insurance or for the right to exercise additional powers, as well as certain applications for mergers, acquisitions or other business combinations. This minimum leverage standard would not, however, apply in the case of remedial-type applications or notices, such as those relating to junk bond divestment plans or the rollover of brokered deposits in undercapitalized institutions.

Except in conjunctionn with the consideration of certain types of applications noted above, the part 325 minimum leverage capital requirement would not directly apply to savings associations for which the FDIC is not the primary regulator. Rather, savings associations are subject to the minimum capital requirements that are included in part 567 of the OTS regulations. These OTS standards require savings associations to meet a 1.5 percent tangible capital, a 3 percent core leverage, and a risk-based capital requirement that has a transition period until year-end 1992 for meeting a final 8 percent total capital to risk-weighted assets ratio. However, under the conditions set forth in section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), the FDIC may take section 8(b)(1) and/or 8(c) enforcement action against any savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure. In making this determination, the FDIC would evaluate whether the insured institution meets the minimum leverage capital standards set forth in part 325, but would also consider the extent to which the institution is in compliance with the capital requirements of its primary regulator and any related capital plans. Both the OTS and the FDIC capital rules represent minimum standards and institutions may be required to operate with capital levels well above the minimums.

IV. Unsafe or Unsound Condition

The current FDIC regulation contains a provision indicating that any FDIC-insured bank (including any national, state member or state nonmember bank) with a ratio of primary capital to total assets of less than three percent is deemed to be in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)). The FDIC believes it is appropriate to retain an "unsafe and unsound condition" provision in part 325 that would apply to all FDIC-insured depository institutions. At the same time, however, since the FDIC is eliminating the primary and total capital defintions and replacing them with one based on a more narrow definition of core capital, the FDIC believes it is also appropriate to reduce the ratio used in determining an unsafe or unsound condition from 3 percent to 2 percent.

Therfore, the FDIC is proposing to amend § 325.4(c) to indicate that any insured depository institution with a Tier 1 capital to total assets ratio of less than two percent is deemed to be in an unsafe or unsound condition pursuant to section 8(a) of the FDI Act unless the institution has entered into and is in compliance with a written agreement with the FDIC to increase its capital and take any other action deemed necessary for the institution to be operated in a safe and sound manner.

An institution with a Tier 1 leverage ratio in excess of two percent may also be operating in an unsafe or unsound condition. Thus, the FDIC is not precluded from bringing section 8(a) or other enforcement action against an institution with Tier 1 capital in excess of this amount if the circumstances deem such action to be appropriate, including those situations where the institution is experiencing adverse results or other problems with regard to asset quality, earnings, liquidity, interest rate risk, or other factors.

V. Application of Part 325 to Savings Associations

Certain provisions have been added to Part 325 to reflect the fact that the FDIC, in addition to insuring savings associations, also has certain additional supervisory authorities over these institutions. These include: the authority to approve or disapprove certain applications that require the FDIC to evaluate an institution's capital structure, such as applications for deposit insurance or the right to exercise additional powers and certain applications for mergers, acquisitions or business combinations; the authority to take section 8(b) and/or 8 (c) enforcement actions in accordance with section 8(t) of the FDI Act when an unsafe or unsound practice exists; and the authority to initiate section 8(a) termination of insurance proceedings when an institution is in an unsafe or unsound condition. These additional supervisory responsibilities were effectively given to the FDIC in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").

The FDIC, however, also recognizes that the Office of Thrift Supervision (OTS), as the primary federal regulator of savings associations, has established minimum Tier 1 (core) leverage, tangible capital and risk-based capital requirements for savings associations (see 12 CFR part 567). In this regard, certain differences exist between the methods used by the OTS to calculate a savings association's capital and the methods set forth by the FDIC in part 325. These differences include, among others, the Tier 1 capital treatment for investments in subsidiaries and for intangible assets such as qualifying supervisory goodwill. In determining whether a savings association's application should be approved, or whether an unsafe or unsound practice or condition exists, the FDIC will consider the extent of the savings association's capital as determined in accordance with part 325, including any qualifying supervisory goodwill that is eligible for core capital treatment pursuant to 12 CFR part 567. However, the FDIC will also consider the extent to which a savings association is in compliance with (a) The minimum capital requirements set forth by the OTS, (b) any related capital plans for meeting the minimum capital requirements, and/or (c) any other criteria deemed by the FDIC as appropriate based on the association's specific circumstances.

In addition, when evaluating the capital structure of a savings association that has qualifying supervisory goodwill which, over a phase-out period, counts as Tier 1 capital under the OTS capital standards but is not recognized under the FDIC's part 325 capital standard, the FDIC will accord special attention to the existence of this difference in capital standards. For example, in determining whether a savings association with less than 2 percent Tier 1 capital (as defined in part 325) is in an unsafe or unsound condition pursuant to section 8(a) of the FDI Act on account of the institution's inadequate capital structure, or whether the association has entered into and is in compliance with a written agreement acceptable to the FDIC, the presence of qualifying supervisory goodwill will be duly considered. A savings association with qualifying supervisory goodwill that is recognized as core capital by the OTS will be deemed to be compliance with the FDIC requirement for a written agreement for so long as the association is in compliance with the minimum capital requirements set forth by the OTS and, therefore, will not be deemed to be in an unsafe and unsound condition solely on account of its capital structure. However, it is also noted that, pursuant to section 18(n) of the FDI Act (12 U.S.C. 1828(n)), the federal banking agencies (including the OTS) cannot allow any insured depository institutions to include an unidentifiable intangible asset (i.e., goodwill in their calculation of compliance with the appropriate capital standards, if such intangible asset was acquired after April 12, 1989. In addition, for part 325 purposes, mutual savings associations with "nonwithdrawable accounts" or "pledged deposits" may include these instruments as Tier 1 capital to the extent these instruments are the functional equivalent of common equity capital or noncumulative perpetual preferred stock and to the exient they are allowed to be included as core capital under the OTS capital standards.

VI. Other Proposed Revisions

The FDIC also is proposing to reformat certain portions to part 325 and make conforming adjustments to the FDIC's Statement of Policy on Risk-Based Capital, which was adopted in 1989 and is included as Appendix A to part 325, and to the FDIC's Statement of Policy on Capital, which was adopted in 1985 when the original part 325 leverage

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standard was issued and which, under this proposal, would be added as a new appendix B to part 325.

In this regard, (1) New definitions would be added for Tier 1 (core) capital and for the various elements that comprise Tier 1 capital, replacing the existing definitions for primary, secondary and total capital, (2) definitions for mandatory convertible debt and term subordinated debt obligations would be moved from the body of the part 325 leverage regulation to the risk-based capital policy statement at Appendix A, since these instruments no longer would qualify as capital for the leverage standard under the proposed revision but will continue to qualify as Tier 2 capital under the risk-based framework, (3) the 1985 Statement of Policy on Capital would be updated to include references to certain of the new supervisory responsibilities for savings associations that were ganted to the FDIC pursuant to FIRREA, and (4) the two interpretations set forth in §§ 325.101 and 325.102 would be maintained but relocated to other parts of the FDIC capital standards, with interpretation 325.101 being incorporated into the risk-based capital policy statement at Appendix A and interpretation 325.102 being added to § 325.5(e) of the part 325 regulation.

VII. Purchased Mortgage Servicing Rights Proposal

On January 30, 1990, the FDIC proposed a rule (55 FR 4623, February 9, 1990) that would limit the amount of purchased mortgage servicing rights that state nonmember banks and savings associations could recognize for regulatory capital purposes. Any purchased servicing intangible assets above the limits would be deducted from assets and capital in determining the appropriate capital ratios, subject to certain exceptions for grandfathered purchased servicing intangibles and separately capitalized mortgage banking subsidiaries. This proposal remains outstanding and it is expected that any final decision on that proposal will be incorporated into the revised leverage standard without further comment.

VIII. Issues for Public Comment

The FDIC requests comment on all aspects of the proposed changes to the FDIC's capital requirements. In particular, the FDIC requests specific comment on the following:

(1) Is the Tier 1 definition of capital under the leverage standard appropriate, or should some other definition of capital be used?

(2) Is it appropriate to establish a minimum leverage capital requirement of 3 percent Tier 1 capital to total assets for highly-rated state nonmember banks (i.e., those that would be assigned a composite CAMEL rating of 1) that are not anticipating or experiencing any significant growth and to require all other institutions to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth), or should some other minimum leverage requirement by used?

(3) Is the 2 percent Tier 1 leverage test an appropriate benchmark to use for determining when an insured depository institution is operating in an unsafe or unsound condition, or is some other figure or mechanism more appropriate to use for this purpose?

(4) To the extent savings associations would be affected by these proposed changes to part 325, are the provisions appropriately applied, consistent with the FDIC's added supervisory responsibilities over savings associations that arose pursuant to FIRREA?

Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that the proposed amendments to part 325, if promulgated, will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, State nonmember banks, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1464(t), 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 3907, 3909.

2. Sections 325.1 through 325.6 are revised to read as follows:

§ 325.1 Scope.

The provisions of this part apply to those circumstances for which the Federal Deposit Insurance Act or this chapter requires an evaluation of the adequacy of an insured depository institution's capital structure. The FDIC is required to evaluate capital before approving various applications by insured depository institutions. The FDIC also must evaluate capital, as an essential component, in determining the safety and soundness of state nonmember banks it insures and supervises. This part establishes the criteria and standards FDIC will use in calculating the minimum leverage capital requirement and in determining capital adequacy. In addition, appendix A to this part sets forth the FDIC's risk-based capital policy statement and appendix B to this part includes a statement of policy on capital adequacy that provides interpretational and definitional guidance as to how this part will be administered and enforced.

§ 325.2 Definitions.

(a) *Allowance for loan and lease losses* means those general valuation allowances that have been established through charges against earnings to absorb losses on loans or lease financing receivables. Allowances for loan and lease losses exclude allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and specific reserves created against identified losses.

(b) *Assets classified loss* means:

(1) When measured as of the date of examination of an insured depository institution, those assets that have been determined by an evaluation made by a state or federal examiner as of that date to be a loss; and

(2) When measured as of any other date, those assets:

(i) That have been determined—

(A) By an evaluation made by a state or federal examiner at the most recent examination of an insured depository institution to be a loss; or

(B) By evaluations made by the insured depository institution since its most recent examination to be a loss; and

(ii) That have not been charged off from the insured depository institution's books or collected.

(c) *Bank* means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System.

(d) *Common stockholders' equity* means the sum of common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments; less net unrealized losses on marketable equity securities.

(e) *Identified losses* means:

(1) When measured as of the date of examination of an insured depository institution, those items that have been determined by an evaluation made by a state or federal examiner as of that date to be chargeable against income, capital and/or general valuation allowances such as the allowance for loan and lease losses (examples of identified losses would be assets classified loss, off-balance sheet items classified loss, liabilities not shown on the institution's books, estimated losses in contingent liabilities, and differences in accounts which represent shortages); and

(2) When measured as of any other date, those items:

(i) That have been determined—

(A) By an evaluation made by a state or federal examiner at the most recent examination of an insured depository institution to be chargeable against income, capital and/or general valuation allowances; or

(B) By evaluations made by the insured depository institution since its most recent examination to be chargeable against income, capital and/or general valuation allowances; and

(ii) For which the appropriate accounting entries to recognize the loss have not yet been made on the insured depository institution's books nor has the item been collected or otherwise settled.

(f) *Insured depository institution* means any depository institution (except for a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*)

(g) *Intangible assets* means those assets that are required to be reported as intangible assets in a banking institution's "Reports of Condition and Income" (Call Report) or in a savings association's "Thrift Financial Report."

(h) *Minority interest in consolidated subsidiaries* means minority interests in equity capital accounts of those subsidiaries that have been consolidated for the purpose of computing regulatory capital under this part, except that minority interests which fail to provide meaningful capital support are excluded from this definition.

(i) *Mortgage servicing rights* means those intangible assets that represent the purchased rights to perform the servicing function for a specific group of mortgage loans that are owned by others. Mortgage servicing rights must be amortized over a period not to exceed 15 years or their estimated useful life, whichever is shorter.

(j) *Noncumulative perpetual preferred stock* means perpetual preferred stock (and related surplus) where the issuer has the option to waive payment of dividends and where the dividends so waived do not accumulate to future periods nor do they represent a contingent claim on the issuer. Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market and remarketable preferred stock, are excluded from this definition of noncumulative perpetual preferred stock, regardless of whether the dividends are cumulative or noncumulative.

(k) *Perpetual preferred stock* means a preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.

(l) *Savings association* means any federally-chartered savings association, any state-chartered savings association, and any corporation (other than a bank) that the Board of Directors of the FDIC and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(m) *Tier 1 capital* or *core capital* means the sum of common stockholders' equity, noncumulative perpetual preferred stock (including any related surplus), and minority interests in consolidated subsidiaries, minus all intangible assets other than mortgage servicing rights and qualifying supervisory goodwill eligible for inclusion in core capital pursuant to 12 CFR part 567, minus identified losses, and minus investments in securities subsidiaries subject to 12 CFR 337.4.

(n) *Total assets* means the average of total assets required to be included in a banking institution's "Reports of Condition and Income" (Call Reports) or, for savings associations, the consolidated total assets required to be included in the "Thrift Financial Report," as these reports may from time to time be revised, as of the most recent report date (and after making any necessary subsidiary adjustments for state nonmember banks as described in §§ 325.5(c) and 325.5(d) of this part), minus intangible assets other than mortgage servicing rights and qualifying supervisory goodwill eligible for inclusion in core capital pursuant to 12 CFR part 567, and minus assets classified loss and any other assets that are deducted in determining Tier 1 capital. For banking institutions, the average of total assets is found in the Call Report schedule of quarterly averages. For savings associations, the consolidated total assets figure is found in Schedule CSC of the Thrift Financial Report.

(o) *Written agreement* means an agreement in writing executed by authorized representatives entered into with the FDIC by an insured depository institution which is enforceable by an action under section 8(a) and/or section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (a), (b)).

§ 325.3 Minimum leverage capital requirement.

(a) *General.* Banks must maintain at least the minimum leverage capital requirement set forth in this section. The captial standards in this part are the minimum acceptable for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. Where the FDIC determines that the financial history or condition, managerial resources and/or the future earnings prospects of a bank are not adequate, or where a bank has sizable off-balance sheet or funding risks, excessive interest rate risk exposure, or a significant volume of assets classified substandard, doubtful or loss or otherwise criticized, the FDIC may determine that the minimum amount of capital for that bank is greater than the minimum standards stated in this section. These same criteria will apply to any insured depository institution making an application to the FDIC that requires the FDIC to consider the adequacy of the institution's capital structure.

(b) *Minimum leverage capital requirement.* (1) Except for institutions qualifying under paragraph (b)(2) of this section, the minimum leverage capital requirement for a bank (or for insured depository institution making an application to the FDIC) shall consist of a ratio of Tier 1 capital to total assets of not less than 4 percent.

(2) The minimum leverage capital requirement for a bank (or an insured depository institution making application to the FDIC) shall consist of a ratio of Tier 1 capital to total assets of not less than 3 percent if the FDIC determines that the institution is not

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anticipating or experiencing significant growth and has no undue interest rate risk exposure, excellent asset quality, high liquidity, good earnings and other attributes indicative of an institution that would be assigned a composite rating of 1 under the Uniform Financial Institutions Rating System established by the Federal Financial Institutions Examination Council.

(c) *Insured depository institutions with less than the minimum leverage capital requirement.* (1) A bank (or an insured depository institution making an application to the FDIC) operating with less than the minimum leverage capital requirement does not have adequate capital and therefore has inadequate financial resources.

(2) Any insured depository institution operating with an inadequate capital structure, and therefore inadequate financial resources, will not receive approval for an application requiring the FDIC to consider the adequacy of its capital structure or its financial resources.

(3) A bank having less than the minimum leverage capital requirement shall, within 60 days of the date as of which it fails to comply with the capital requirement, submit to its FDIC regional director for review and approval a reasonable plan describing the means and timing by which the bank shall achieve its minimum leverage capital requirement.

(4) In any merger, acquisition or other type of business combination where the FDIC must give its approval, where it is required to consider the adequacy of the financial resources of the existing and proposed institutions, and where the resulting entity is either insured by the FDIC or not otherwise federally insured, approval will not be granted when the resulting entity does not meet the minimum leverage capital requirement.

(d) *Exceptions.* Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section:

(1) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital if it finds that such approval must be taken to prevent the closing of a depository institution or to facilitate the acquisition of a closed depository institution, or, when severe financial conditions exist which threaten the stability of an insured depository institution or of a significant number of depository institutions insured by the FDIC or of insured depository institutions possessing significant financial resources, such action is taken to lessen the risk to the FDIC posed by an insured depository institution under such threat of instability.

(2) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital or the financial resources of the insured depository institution where it finds that the applicant has committed to and is in compliance with a reasonable plan to meet its minimum leverage capital requirements within a reasonable period of time.

§ 325.4 Inadequate capital as an unsafe or unsound practice or condition.

(a) *General.* As a condition of federal deposit insurance, all insured depository institutions must remain in a safe and sound condition.

(b) *Unsafe or unsound practice.* Any bank which has less than its minimum leverage capital requirement is deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)). Except that such a bank which has entered into and is in compliance with a written agreement with the FDIC or has submitted to the FDIC and is in compliance with a plan approved by the FDIC to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the bank to be operated so as not to be engaged in such an unsafe or unsound practice will not be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)) on account of its capital ratios. The FDIC is not precluded from taking section 8(b)(1), section 8(c) or any other enforcement action against a bank with capital above the minimum requirement if the specific circumstances deem such action to be appropriate. Under the conditions set forth in section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), the FDIC also may take section 8(b)(1) and/or 8(c) enforcement action against any savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure.

(c) *Unsafe or unsound condition.* Any insured depository institution with a ratio of Tier 1 capital to total assets that is less than two percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)).

(1) A bank with a ratio of Tier 1 capital to total assets of less than two percent which has entered into and is in compliance with a written agreement with the FDIC (or any other insured depository institution with a ratio of Tier 1 capital to total assets of less than two percent which has entered into and is in compliance with a written agreement with its primary federal regulator and to which agreement the FDIC is a party) to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the insured depository institution to be operated in a safe and sound manner, will not be subject to a proceeding by the FDIC pursuant to 12 U.S.C. 1818(a) on account of its capital ratios.

(2) An insured depository institution with a ratio of Tier 1 capital to total assets that is equal to or greater than two percent may be operating in an unsafe or unsound condition. The FDIC is not precluded from bringing an action pursuant to 12 U.S.C. 1818(a) where an insured depository institution has a ratio of Tier 1 capital to total assets that is equal to or greater than two percent.

§ 325.5 Miscellaneous.

(a) *Intangible assets.* Any intangible assets that were explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis will be included in capital under the terms and conditions that were approved by the FDIC, provided that the intangible asset is being amortized over a period not to exceed 15 years or its estimated useful life, whichever is shorter. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12 U.S.C. 1828(n)), an unidentifiable intangible asset such as goodwill, if acquired after April 12, 1989, cannot be included in calculating regulatory capital under this part.

(b) *Reservation of authority.* Notwithstanding the definitions of "Tier 1 capital" in § 325.2(m) of this part and the risk-based capital definitions of Tier 1 and Tier 2 capital in appendix A to this part, the Director of the Division of Supervision may, if the Director finds a newly developed or modified capital instrument or a particular balance sheet entry or account to be the functional equivalent of a component of Tier 1 or Tier 2 capital, permit one or more insured depository institutions to include all or a portion of such instrument, entry, or account as Tier 1 or Tier 2 capital, permanently, or on a temporary basis, for purposes of this part. Similarly, the Director of the Division of Supervision may, if the Director finds that a particular Tier 1 or Tier 2 capital component or balance sheet entry or account has

characteristics or terms that diminish its contribution to an insured depository institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from Tier 1 or Tier 2 capital.

(c) *Securities subsidiary.* For purposes of this part, any securities subsidiary subject to 12 CFR 337.4 shall not be consolidated with its bank parent and any investment therein shall be deducted from the bank parent's Tier 1 capital and total assets.

(d) *Depository institution subsidiary.* Any domestic depository institution subsidiary that is not consolidated in the "Reports of Condition and Income" (Call Reports) of its insured parent bank shall be consolidated with the insured parent bank for purposes of this part. The financial statements of the subsidiary that are to be used for this consolidation must be prepared in the same manner as the "Reports of Condition and Income" (Call Reports). A domestic depository institution subsidiary of a savings association shall be consolidation also is required pursuant to the capital requirements of the association's primary federal regulator.

(e) *Restrictions relating to capital components.* To qualify as Tier 1 capital under this part or as Tier 1 or Tier 2 capital under appendix A to this part, a capital instrument must not contain or be subject to any conditions, convenants, terms, restriction, or provisions that are inconsistent with safe and sound banking practices. A condition, convenant, term, restriction, or provision is inconsistent with safe and sound banking practices if it:

(1) Unduly interferes with the ability of the issuer to conduct normal banking operations;

(2) Results in significantly higher dividends or interest payments in the event of deterioration in the financial condition of the issuer;

(3) Impairs the ability of the issuer to comply with statutory or regulatory requirements regarding the disposition of assets or incurrence of additional debt; or

(4) Limits the ability of the FDIC or a similar regulatory authority to take any necessary action to resolve a problem bank or failing bank situation.

Other conditions and covenants that are not expressly listed in paragraphs (e)(1) through (e)(4) of this section also may be inconsistent with safe and sound banking practices.

§ 325.6 Issuance of directives.

(a) *General.* A directive is a final order issued to a bank that fails to maintain capital at or above the minimum leverage capital requirement as set forth in §§ 325.3 and 325.4. A directive issued pursuant to this section, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as a final cease-and-desist order issued under 12 U.S.C. 1818(b).

(b) *Issuance of directives.* If a bank is operating with less than the minimum leverage capital requirement established by this regulation, the Board of Directors, or its designee(s), may issue and serve upon any insured state nonmember bank a directive requiring the bank to restore its capital to the minimum leverage capital requirement within a specified time period. The directive may require the bank to submit to the appropriate FDIC regional director, or other specified official, for review and approval, a plan describing the means and timing by which the bank shall achieve the minimum leverage capital requirement. After the FDIC has approved the plan, the bank may be required under the terms of the directive to adhere to the monitor compliance with the plan. The directive may be issued during the course of an examination of the bank, or at any other time that the FDIC deems appropriate, if the bank is found to be operating with less than the minimum leverage capital requirement.

(c) *Notice and opportunity to respond to issuance of a directive.* (1) If the FDIC makes an initial determination that a directive should be issued to a bank pursuant to paragraph (b) of this section, the FDIC, through the appropriate designated official(s), shall serve written notification upon the bank of its intent to issue a directive. The notice shall include the current Tier 1 leverage capital ratio, the basis upon which said ratio was calculated, the proposed capital injection, the proposed date for achieving the minimum leverage capital requirement and any other relevant information concerning the decision to issue a directive. When deemed appropriate, specific requirements of a proposed plan for meeting the minimum leverage capital requirement may be included in the notice.

(2) Within 14 days of receipt of notification, the bank may file with the appropriate designated FDIC official(s) a written response, explaining why the directive should not be issued, seeking modification of its terms, or other appropriate relief. The bank's response shall include any information, mitigating circumstances, documentation or other relevant evidence which supports its position, and may include a plan for attaining the minimum leverage capital requirement.

(3) After considering the bank's response, the appropriate designated FDIC official(s) shall serve upon the bank a written determination addressing the bank's response and setting forth the FDIC's findings and conclusions in support of any decision to issue or not to issue a directive. The directive may be issued as originally proposed or in modified form. The directive may order the bank to:

(i) Achieve the minimum leverage capital requirement established by this regulation by a certain date;

(ii) Submit for approval and adhere to a plan for achieving the minimum leverage capital requirement;

(iii) Take other action as is necessary to achieve the minimum leverage capital requirement; or

(iv) A combination of the above actions.

If a directive is to be issued, it may be served upon the bank along with the final determination.

(4) Any bank, upon a change in circumstances, may request the FDIC to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the minimum leverage capital requirement. The directive and plan continue in effect while such request is pending before the FDIC.

(5) All papers filed with the FDIC must be postmarked or received by the appropriate designated FDIC official(s) withing the prescribed time limit for filing.

(6) Failure by the bank to file a written response to notification of intent to issue a directive within the specified time period shall constitute consent to the issuance of such directive.

(d) *Enforcement of a directive.* (1) Whenever a bank fails to follow the directive or to submit or adhere to its capital adequacy plan, the FDIC may seek enforcement of the directive in the appropriate United States district court, pursuant to 12 U.S.C. 3907(b)(2)(B)(ii), in the same manner and to the same extent as if the directive were a final cease-and-desist order. In addition to enforcement of the directive, the FDIC may seek assessment of civil money penalties for violation of the directive against any bank, any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, pursuant to 12 U.S.C. 3909(d).

(2) The directive may be issued separately, in conjunction with, or in addition to, any other enforcement mechanisms available to the FDIC, including cease-and-desist orders, orders of correction, the approval or

denial of applications, or any other actions authorized by law. In addition to addressing a bank's minimum leverage capital requirement, the capital directive may also address minimum risk-based capital requirements that are to be maintained and calculated in accordance with appendix A to this part.

§§ 325.101 and 325.102 [Removed]

3. Sections 325.101 and 325.102 are removed.

4. The second paragraph of section I.A.2.(c)(4) of appendix A to part 325 is revised to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *
A. * * *
2. * * *
(c) * * *
(4) * * *

Mandatory convertible debt securities, which are subordinated debt instruments that require the issuer to convert such instruments into common or perpetual preferred stock by a date at or before the maturity of the debt instruments, will qualify as hybrid capital instruments provided the maturity of these instruments is 12 years or less and the instruments meet the criteria set forth below for "term subordinated debt." There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

* * * * *

5. The last sentence of the first paragraph of section I.A.2.(d) of appendix A to part 325 is revised and three new sentences are added at the end of the first paragraph of section I.A.2.(d) to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *
A. * * *
2. * * *

(d) * * * For state nonmember banks, a "term subordinated debt" instrument is an obligation other than a deposit obligation that:

(1) Bears on its face, in boldface type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation;

(2)(i) Has a maturity of at least five years; or

(ii) In the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least five years; provided that the Director of the Division of Supervision may permit the issuance of an obligation or issue with a shorter maturity or average maturity if the Director has determined that exigent circumstances require the issuance of such obligation or issue; provided further that the provisions of this paragraph I.A.2.(d)(2) shall not apply to mandatory convertible debt obligations or issues;

(3) States expressly that the obligation:

(i) Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors; and

(ii) Is ineligible as collateral for a loan by the issuing bank;

(4) Is unsecured;

(5) States expressly that the issuing bank may not retire any part of its obligation without the prior written consent of the FDIC or other primary federal regulator; and

(6) Includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

Subordinated debt obligations issued prior to December 2, 1987 that satisfied the definition of the term "subordinated note and debenture" that was in effect prior to that date also will be deemed to be term subordinated debt for risk-based capital purposes. An optional redemption ("call") provision in a subordinated debt instrument that is exercisable by the issuing bank in less than five years will not be deemed to constitute a maturity of less than five years, provided that the obligation otherwise has a stated contractural maturity of at least five years; the call is exercisable solely at the discretion or option of the issuing bank, and not at the discretion or option of the holder of the obligation; and the call is exercisable only with the express prior written consent of the FDIC under 12 U.S.C. 1828(i)(1) at the time early redemption or retirement is sought, and such consent has not been given in advance at the time of issuance of the obligation. Optional redemption provisions will be accorded similar treatment when determining the perpetual nature and/or maturity of preferred stock and other capital instruments.

* * * * *

6. A new Appendix B to part 325 is added to read as follows:

Appendix B to Part 325—Statement of Policy on Capital Adequacy

Part 325 of the Federal Deposit Insurance Corporation rules and regulations (12 CFR part 325) sets forth minimum leverage capital requirements for fundamentally sound, well-managed banks having no material or significant financial weaknesses. It also defines capital and sets forth sanctions which will be used against banks which are in violation of part 325. This statement of policy on capital adequacy provides some interpretational and definitional guidance as to how this part 325 will be administered and enforced by the FDIC.

I. Enforcement of Minimum Capital Requirements

Section 325.3(b)(2) specifies that FDIC-insured, state-chartered nonmember commercial and savings banks (or other insured depository institutions making applications to the FDIC that require the FDIC to consider the adequacy of the institution's capital structure) must maintain a minimum leverage ratio of Tier 1 (or core) capital to total assets of at least 3 percent; however, this minimum only applies to the most highly-rated banks (i.e., those that would be assigned a composite CAMEL rating of 1) that are not anticipating or experiencing any significant growth. All other state nonmember banks would need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum. That is, in accordance with § 325.3(b)(1), an absolute minimum leverage ratio of not less than 4 percent must be maintained by those banks that are not highly-rated or that are anticipating or experiencing significant growth.

In addition to the minimum leverage capital standards, Section III of Appendix A to Part 325 indicates that state nonmember banks generally are expected to maintain a minimum risk-based capital ratio of qualifying total capital to risk-weighted assets of 8 percent by December 31, 1992 (and at least 7.25 percent by December 31, 1990), with at least one-half of that total capital amount consisting of Tier 1 capital.

State nonmember banks (hereinafter referred to as "banks") operating with leverage capital ratios below the minimums set forth in part 325 will be deemed to have inadequate capital and will be in violation of part 325. Furthermore, banks operating with risk-based capital ratios below the minimums set forth in appendix A to part 325 generally will be deemed to have inadequate capital. Banks failing to meet the minimum leverage and/or risk-based capital ratios normally can expect to have any application submitted to the FDIC denied (if such application requires the FDIC to evaluate the adequacy of the institution's capital structure) and also can expect to be subject to the use of capital directives or other formal enforcement action by the FDIC to increase capital.

Capital adequacy in banks which have capital ratios at or above the minimums will be assessed and enforced based on the following factors (these same criteria will apply to any insured depository institutions making applications to the FDIC and to any other circumstances in which the FDIC is requested or required to evaluate the adequacy of a depository institution's capital structure):

A. Banks Which Are Fundamentally Sound and Well-Managed[1]

The minimum leverage capital ratios set forth in § 325.3(b) and the minimum risk-based capital ratios set forth in section III of appendix A to part 325 generally will be viewed as the minimum acceptable capital standards for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses.

While the FDIC will make this determination in each bank based upon its own condition and specific circumstances, this definition will generally apply to those banks evidencing a level of risk which is no greater than that normally associated with a Composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Banks meeting this definition which are in compliance with the minimum leverage and

risk-based capital ratio standards will not generally be required by the FDIC to raise new capital from external sources. The FDIC does, however, encourage such banks to maintain capital well above the minimums, particularly those institutions that are anticipating or experiencing significant growth, and will carefully evaluate their earnings and growth trends, dividend policies, capital planning procedures and other factors important to the continuous maintenance of adequate capital.

Adverse trends or deficiencies in these areas will be subject to criticism at regular examinations and may be an important factor in the FDIC's action on applications submitted by such banks. In addition, the FDIC's consideration of capital adequacy in banks making applications to the FDIC will also fully examine the expected impact of those applications on the bank's ability to maintain its capital adequacy. In all cases, banks should maintain capital commensurate with the level and nature of risks, including the volume and severity of adversely classified assets, to which they are exposed.

B. All Other Banks

Banks not meeting the definition set forth above, that is, banks evidencing a level of risk which is at least as great as that normally associated with a Composite rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System, will be required to maintain capital higher than the minimum regulatory requirement and at a level deemed appropriate in relation to the degree of risk within the institution. These higher capital levels will normally be addressed through Memorandums of Understanding between the FDIC and the bank or, in cases of more pronounced risk, through the use of formal enforcement actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

C. Capital Requirements of Primary Regulator

Notwithstanding the above, all banks (or other depository institutions making applications to the FDIC that require the FDIC to consider the adequacy of the institutions' capital structure) will be expected to meet any capital requirements established by their primary state or federal regulator which exceed the minimum capital requirement set forth in the FDIC's regulation. In addition, the FDIC will, when establishing capital requirements higher than the minimum set forth in the regulation, consult with an institution's primary state or federal regulator.

II. Capital Plans

Section 325.4(b) specifies that any which has less than its minimum leverage capital requirement is deemed to be engaging in an unsafe or unsound banking practice unless it has submitted, and is in compliance with, a plan approved by the FDI to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate.

A bank having less than the minimum leverage capital requirement is required to submit a reasonable plan to the FDIC within 60 days of the date as of which it fails to comply with the capital requirement (§ 325.3(c)(3)). The amount of time allowed to achieve the minimum leverage capital requirement will be evaluated by the FDIC on a case-by-case basis and will depend on a number of factors, including the viability of the bank and whether it is fundamentally sound and well-managed.

Banks evidencing more than normal levels of risk will normally have their minimum capital requirements established in a formal or informal enforcement proceeding. The time frames for meeting these requirements will be set forth in such actions and will generally require some immediate action on the bank's part to meet its minimum capital requirement. The reasonableness of capital plans submitted by depository institutions in connection with applications as provided for in § 325.3(d)(2) will be determined in conjunction with the FDIC's consideration of the application.

III. Written Agreements

Section 325.4(c)(1) requires that any insured depository institution with a tier 1 capital to total assets (leverage) ratio of less than 2 percent must enter into and be in compliance with a written agreement with the FDIC (or with its other primary federal regulatory with FDIC as a party to the agreement) to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate or be subject to a termination of insurance action by the FDIC. Except in the very rarest of circumstances, the FDIC will require that such agreements contemplate immediate efforts by the depository institution to acquire the required capital.

A bank which has received net worth certificates from the FDIC or approval from the FDIC to defer agricultural loan losses will be considered to be in compliance with this requirement for so long as it is in compliance with the FDIC requirements set forth in the net worth certificate program and/or agricultural loan loss deferral program, provided that both its board and the FDIC agree that the net worth certificate or agricultural loan loss deferral agreements they enter into or have entered into are written agreements as defined in the regulation. In addition, a savings association with qualifying supervisory goodwill that is being recognized as Tier 1 capital by the association's primary federal regulator will be considered to be in compliance with this requirement for so long as the association is in compliance with the minimum capital requirements set forth by its primary federal regulatory.

The guidance in this section is not intended to preclude the FDIC from taking section 8(a) or other enforcement action against any institution, regardless of its capital level, if the specific circumstances deem such action to be appropriate.

IV. Capital Components

Section 325.2 sets forth the definition of Tier 1 capital for the leverage standard as well as the definitions for the various instruments and accounts which are included therein. Although nonvoting common stock, noncumulative perpetual preferred stock, and minority interests in consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholder's equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests. The following provides some additional guidance with respect to some of these items that affect the calculation of Tier 1 capital.

A. Intangible Assets

The FDIC permits state nonmember banks to record intangible assets on their books and to report the value of such assets in the Consolidated Reports of Condition and Income ("Call Reports"). As noted in the instructions for preparation of the Consolidated Reports of Condition and Income (published by the Federal Financial Institutions Examination Council), intangible assets may arise from business combinations accounted for under the purchase method in accordance with Accounting Principles Board Opinion No. 16, as amended, and acquisitions of portions or segments of another institution's business, such as branch offices, mortgage servicing portfolios, and credit card portfolios.

Intangible assets created from such transactions may be booked in accordance with generally accepted accounting principles with one exception. For the purpose of reporting such assets on Call Reports, banks reporting to the FDIC shall amortize such assets over their estimated useful lives or a period not in excess of 15 years, whichever is shorter.

Notwithstanding the authority to report all intangible assets in the Consolidated Reports of Condition and Income, § 325.2(m) of the regulation specifies that mortgage servicing rights are the only intangible assets which will be allowed as Tier 1 capital.[1] The portion of equity capital represented by other types of intangible assets will be deducted from equity and assets in the computation of the bank's Tier 1 capital. Certain of these intangible assets may, however, be recognized for regulatory capital purposes if explicitly approved by the Director of the Division of Supervision as part of the bank's regulatory capital on a specific case basis. The intangibles will be included in regulatory capital under the terms and conditions that are specifically approved by the FDIC.[2]

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[1] Although intangible assets in the form of purchased mortgage servicing rights are generally recognized for regulatory capital purposes, the deduction of part or all of the mortgage servicing rights may be required if the carrying amounts of these rights are excessive in relation to their market value or the level of the bank's capital accounts.

[2] This specific approval must be received in accordance with § 325.5(b). In evaluating whether other types of intangibles should be recognized for regulatory capital purposes, the FDIC will accord special attention to the general characteristics of the intangibles, including: (1) The separability of the intangible asset and the ability to sell it separate and apart from the bank or the bulk of the bank's assets, (2) the certainty that a readily identifiable stream of cash flows associated with the intangible asset can hold its value notwithstanding the future prospects of the bank, and (3) the existence of a market of sufficient depth to provide liquidity for the intangible asset. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12

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In certain instances banks may have investments in unconsolidated subsidiaries or joint ventures that have large volumes of intangible assets. In such instances the bank's consolidated statements will reflect an investment in a tangible asset even though such investment will, in fact, be represented by a large volume of intangible assets. In any such situation where this is material and, consistent with the treatment of mortgage servicing rights set forth above, the bank's investment in the unconsolidated subsidiary will be divided into a tangible and an intangible portion based on the percentage of intangible assets to total assets in the subsidiary. The intangible portion of the investment will be treated as if it were an intangible asset on the bank's books in the calculation of Tier 1 capital.

B. Perpetual Preferred Stock

Perpetual preferred stock is defined as preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. Also, pursuant to section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)), a state nonmember bank cannot, without the prior consent of the FDIC, reduce the amount or retire any part of its preferred stock. (This prior consent is also required for the reduction or retirement of any part of a state nonmember bank's common stock or capital notes and debentures.)

Noncumulative perpetual preferred stock is generally included in Tier 1 capital. Nonetheless, it is possible for banks to issue preferred stock with a dividend rate which escalates to such a high rate that the terms become so onerous as to effectively force the bank to call the issue (for example, an issue with a low initial rate that is scheduled to escalate to much higher rates in subsequent periods). Preferred stock issues with such onerous terms have much the same characteristics as limited life preferred stock in that the bank would be effectively forced to redeem the issue to avoid performance of the onerous terms. Such instruments may be disallowed as Tier 1 capital and, for risk-based capital purposes, would be included in Tier 2 capital only to the extent that the instruments fall within the limitations applicable to intermediate-term preferred stock. Banks which are contemplating issues bearing terms which may be so characterized are encouraged to submit them for FDIC review prior to issuance. Nothing herein shall prohibit banks from issuing floating rate preferred stock issues where the rate is constant in relation to some outside market or index rate. However, noncumulative floating rate instruments where the rate paid is based in some part on the current credit standing of the bank, and all cumulative preferred stock instruments, are excluded from Tier 1 capital. These instruments are included in Tier 2 capital for risk-based capital purposes in accordance with the limitations set forth in Appendix A to part 325.

The FDIC will also require that issues of perpetual preferred stock be consistent with safe and sound banking practices. Issues which would unduly enrich insiders or which contain dividend rates or other terms which are inconsistent with safe and sound banking practices will likely be the subject of appropriate supervisory response from the FDIC. Banks contemplating preferred stock issues which may pose safety and soundness concerns are encouraged to submit such issues to the FDIC for review prior to sale.

C. Other Instruments or Transactions Which Fail To Provide Capital Support

Section 325.5(b) specifies that any capital instrument, transaction, or balance sheet entry which would increase an insured depository institution's capital but which does not provide support to the institution by providing a cushion to absorb losses shall be deducted from capital. An example involves certain types of minority interests in consolidated subsidiaries. Minority interests in consolidated subsidiaries have been included in capital based on the fact that they provide capital support to the risk in the consolidated subsidiaries. Certain transactions have been structured where a bank forms a subsidiary by transferring essentially risk-free or low-risk assets to the subsidiary in exchange for common stock of the subsidiary. The subsidiary then sells preferred stock to third parties.

The preferred stock becomes a minority interest in a consolidated subsidiary but, in effect, represents an essentially risk-free or low-risk investment for the preferred stockholders. This type of minority interest fails to provide any meaningful capital support to the consolidated entity inasmuch as it has a preferred claim on the essentially risk-free or low-risk assets of the subsidiary. In addition, certain minority interests are not substantially equivalent to perpetual equity in that the interests must be paid off on specified future dates, or at the option of the holders of the minority interests, or contain other provisions or features that limit the ability of the minority interests to effectively absorb losses. Capital instruments or transactions of this nature which fail to absorb losses or provide meaningful capital support will be deducted from Tier 1 capital.

D. Mandatory Convertible Debt

Mandatory convertible debt securities are subordinated debt instruments that require the issuer to convert such instruments into common or perpetual preferred stock by a date at or before the maturity of the debt instruments. The maturity of these instruments must be 12 years or less and the instruments must also meet the other criteria set forth in appendix A to part 325. Mandatory convertible debt is excluded from Tier 1 capital but, for risk-based capital purposes, is included in Tier 2 capital as a "hybrid capital instrument."

So-called "equity commitment notes," which merely require a bank to sell common or perpetual preferred stock during the life of the subordinated debt obligation, are specifically excluded from the definition of mandatory convertible debt securities and are only included in Tier 2 capital under the risk-based capital framework to the extent that they satisfy the requirements for "term subordinated debt" set forth in appendix A to part 325.

V. Analysis of Consolidated Companies

In determining a bank's compliance with its minimum capital requirements the FDIC will, with two exceptions, generally utilize the bank's consolidated statements as defined in the instructions for the preparation of Consolidated Reports of Condition and Income.

The first exception relates to securities subsidiaries of state nonmember banks which are subject to § 337.4 of the FDIC's rules and regulations (12 CFR 337.4). Any subsidiary subject to this section must be a bona fide subsidiary which is adequately capitalized. In addition, § 337.4(b)(3) requires that any insured state nonmember bank's investment in such a subsidiary shall not be counted towards the bank's capital. In those instances where the securities subsidiary is consolidated in the bank's Consolidated Report of Condition it will be necessary, for the purpose of calculating the bank's Tier 1 capital, to adjust the Consolidated Report of Condition is such a manner as to reflect the bank's investment in the securities subsidiary on the equity method. In this case, and in those cases where the securities subsidiary has not been consolidated, the investment in the subsidiary will then be deducted from the bank's capital and assets prior to calculation of the bank's Tier 1 capital ratio. (Where deemed appropriate, the FDIC may also consider deducting investments in other subsidiaries, either on a case-by-case basis or, as with securities subsidiaries, based on the general characteristics or functional nature of the subsidiaries.)

The second exception relates to the treatment of subsidiaries of insured banks that are domestic depository institutions such as commercial banks, savings banks, or savings associations. These subsidiaries are not consolidated on a line-by-line basis with the insured bank parent in the bank parent's Consolidated Reports of Condition and Income. Rather, the instructions for these reports provide that bank investments in such depository institution subsidiaries are to be reported on an unconsolidated basis in accordance with the equity method. Since the FDIC believes that the minimum capital requirements should apply to a bank's depository activities in their entirety, regardless of the form that the organization's corporate structure takes, it will be necessary, for the purpose of calculating the bank's Tier 1 and total capital ratios, to adjust a bank parent's Consolidated Report of Condition to consolidate its domestic depository institution subsidiaries on a line-by-line basis. The financial statements of the subsidiary that are used for this consolidation must be prepared in the same manner as the Consolidated Report of Condition.

The FDIC will, in determining the capital adequacy of a bank which is a member of a bank holding company or chain banking group, consider the degree of leverage and risks undertaken by the parent company or other affiliates. Where the level of risk in a holding company system is no more than normal and the consolidated company is adequately capitalized at all appropriate levels, the FDIC generally will not require additional capital in subsidiary banks under its supervision over and above that which would be required for the subsidiary bank on its own merit. In cases where a holding company or other affiliated banks (or other companies) evidence more than a normal degree of risk (either by virtue of the quality of their assets, the nature of the activities conducted, or other factors) or where the affiliated organizations are inadequately capitalized, the FDIC will consider the potential impact of the additional risk and excess leverage upon an individual bank to determine if such factors will likely result in excessive requirements for dividends, management fees, or other support to the holding company or affiliated organizations which would be detrimental to the bank. Where the excessive risk or leverage in such organizations is determined to be potentially detrimental to the bank's condition or its ability to maintain adequate capital, the FDIC may initiate appropriate supervisory action to limit the bank's ability to support its weaker affiliates and/or require higher than minimum capital ratios in the bank.

VI. Applicability of Part 325 to Savings Associations

Section 325.3(c) indicates that, where the FDIC is required to evaluate the adequacy of any depository institution's (including any savings association's) capital structure in conjunction with an application filed by the institution, the FDIC will not approve the application if the depository institution does not meet the minimum leverage capital requirement set forth in § 325.3(b).

Also, § 325.4(b) states that, under certain conditions specified in section 8(t) of the Federal Deposit Insurance Act, the FDIC may take section 8(b)(1) and/or 8(c) enforcement action against a savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure. Section 325.4(c) further specifies that any insured depository institution with a Tier 1 leverage ratio (as defined in part 325) of less than 2 percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act.

In addition, the Office of Thrift Supervision (OTS), as the primary federal regulator of savings associations, has established minimum core capital leverage, tangible capital and risk-based capital requirements for savings associations (12 CFR part 567). In this regard, certain differences exist between the methods used by the OTS to calculate a savings association's capital and the methods set forth by the FDIC in part 325. These differences include, among others, the core capital treatment for investments in subsidiaries and for intangible assets such as qualifying supervisory goodwill.

In determining whether a savings association's application should be approved pursuant to § 325.3(c), or whether an unsafe or unsound practice or condition exists pursuant to §§ 325.4(b) and 325.4(c), the FDIC will consider the extent of the savings association's capital as determined in accordance with part 325. However, the FDIC will also consider the extent to which a savings association is in compliance with (a) The minimum capital requirements set forth by the OTS, (b) any related capital plans for meeting the minimum capital requirements, and/or (c) any other criteria deemed by the FDIC as appropriate based on the association's specific circumstances.

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of September, 1990.

Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 90-22739 Filed 9-25-90; 8:45 am]

BILLING CODE 6714-01-M

U.S.C. 1828(n)), specific approval cannot be given for an unidentifiable intangible asset, such as goodwill, if acquired after April 12, 1989.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-90-23]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 26, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 19, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26315.

Petitioner: Aircraft Owners and Pilots Association.

Regulations affected: 14 CFR 23.1305(g).

Description of petition: To allow differential pressure transducer flow-indicated devices to serve as one means of indicating fuel pressure for pump-fed engines.

Petitioner's reason for the request: The petitioner believes granting the petition will lead to truly useful engine monitoring systems for general aviation. This will result in maximizing fuel efficiency, engine life, and power output without fear of damage or excessive wear.

Docket No.: 26281.

Petitioner: Aircraft Owners and Pilots Association.

Regulations affected: 14 CFR part 67.

Description of petition: To amend part 67 to: (1) Add a provision for continued limited pilot privileges pending FAA action on an application for renewal of a medical certificate. (2) Permit applicants for all classes of medical certificates to meet revised hearing standards in either or both ears with or without a corrective device. (3) Change the 2-year period of abstinence from alcohol to a period "reasonable to ensure abstinence." (4) Permit issuance of second- and third-class medical certificates to diabetics using hypoglycemic drugs other than insulin provided the Federal Air Surgeon finds that control is adequate and significant complications are absent.

Petitioner's reason for the request: The petitioner believes these amendments will, for the most part, conform the medical standards to current FAA certification policies. In doing so, they will relieve applicants and the FAA of time-consuming, often costly, administrative burdens in processing requests for exceptions from

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the present standards and, thus, will be in the public interest.

Docket No.: 28322.

Petitioner: Air Transport Association of America.

Regulations affected: 14 CFR Section 139.319.

Description of petition: To amend Section 139.319 to require that airport aircraft rescue and firefighting teams be equipped with the Emergency Response Guidebook.

Petitioner's reason for the request: The petitioner believes that the amendment will help both to assure the quickest possible aircraft evacuations in the event of an emergency and provide a comprehensive network of properly equipped and trained responders.

[FR Doc. 90-22743 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 77

RIN 1219-AA49

Inspections of Refuse Piles and Waste Impoundment Dams at Surface Coal Mines and Surface Work Areas of Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule revising safety standards that address refuse piles and impoundment structures used at coal mines to dispose of refuse or contain water, sediment or slurry.

DATES: Written comments must be received on or before October 19, 1990.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On June 15, 1990, MSHA published a proposed rule (55 FR 24526) to revise safety standards that address refuse piles and impoundment structures used at coal mines. Proposed revisions would also address certifications for hazardous refuse piles, frequency of inspections and the method of abandonment for impoundments and impounding structures. The comment period for the proposed rule was scheduled to close on September 21, 1990 but in response to a request from the mining community, MSHA is extending the comment period to October 19, 1990. All interested parties are encouraged to submit comments prior to this date.

Dated: September 21, 1990.

John B. Howerton,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 90-22801 Filed 9-25-90; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional information and revisions pertain to the proposed revegetation success guidelines. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Kansas program, the proposed amendment to that program, and the additional information are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4 p.m., c.d.t. October 11, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374-6405.

Kansas Department of Health and Environment, Surface Mining Section. Shirk Hall, 4th Floor, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231-8615.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office; telephone number (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 Fr 5892). Subsueqent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Proposed Amendment

By letter dated June 8, 1990 (Administrative Record No. KS-468), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment in response to a September 8, 1989, letter from OSM citing deficiencies in an amendment submitted June 29, 1989.

Kansas is proposing to adopt guidelines on the methods for determination of revegetation success prior to phase III bond release as required by 30 CFR 816.116(a)(1) and 817.116(a)(1).

OSM published a notice in the June 20, 1990, **Federal Register** (55 FR 25139) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS-475). The public comment period ended July 20, 1990.

During its review of the amendment, OSM identified concerns related to the technical adequacy of the proposed guidelines. OSM notified Kansas of the concerns by letter dated August 14, 1990 (Administrative Record No. KS-483). OSM held a public meeting on August 23, 1990 (Administrative Record No. KS-485), allowing Kansas to answer OSM's concerns on the technical adequacy of the guidelines. Kansas responded in letters dated September 14 and September 17, 1990 (Administrative Record No. KS-488), by submitting revised guidelines.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Kansas program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 90-22783 Filed 9-25-90; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-347; RM-6721]

Radio Broadcasting Services; Illinois City, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Proposed rule in 55 FR 36840, September 7, 1990, which dismisses a petition filed by Martin F. Beckey, requesting the allotment of Channel 223A to Illinois City, Illinois.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

In FR Doc. 90-21051, published in the **Federal Register** on page 36840, September 7, 1990, the following correction is made:

The entry for "(MM Docket No. 89-437; RM-6721)" should be corrected to read "(MM Docket No. 89-347; RM 6721)"

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22784 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018 AB52

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Six Plants From the Kokee Region, Island of Kauai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for six plants: *Chamaesyce halemanui* (no common name (NCN)), *Dubautia latifolia* (NCN), *Poa sandvicensis* (Hawaiian bluegrass), *Poa siphonoglossa* (NCN), *Stenogyne campanulata* (NCN), and *Xylosma crenatum* (NCN). These species are known only from the Kokee region of Kauai Island, Hawaii. The six species have been variously affected and are threatened by one or more of the following: Habitat degradation by feral animals; competition for space, light, nutrients, and/or water from alien plant species; road or trail maintenance activities; and an increased potential for extinction from stochastic events because of the small numbers of extant individuals and their restricted distributions. A limited gene pool may result in depressed reproductive vigor. Probable threats include predation by feral animals. A determination that these six species are endangered would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by November 27, 1990. Public hearing requests must be received by November 13, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to Ernest F. Kosaka, Field Station Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joan E. Canfield, at the above address (808/541-2749 or FTS-551-2749).

SUPPLEMENTARY INFORMATION:

Background

The island of Kauai is 627 square miles (mi) (1,624 square kilometers (km)) in area (Armstrong 1983). The island was formed about six million years ago by a single shield volcano, whose caldera was 9 to 12 mi (15 to 20 km) in diameter, the largest caldera in the Hawaiian Islands (Macdonald *et al.* 1983). The remains of this caldera now extend about 10 mi (16 km) in length, forming the Alakai Swamp, an extremely wet, elevated tableland. Faulting and erosion on the western side of the Alakai Swamp have carved the deeply dissected Waimea Canyon, 10 mi (16 km) long and 1 mi (1.6 km) wide, its near-vertical cliffs well over 2,000 feet (ft) (600 meters (m)) high. The distribution of the six species in this proposed rule centers at Kokee, which lies just above the northern reaches of Waimea Canyon, with the wet Alakai Swamp to the east, steep cliffs of the Na Pali coast to the north, and drier leeward ridges to the west. Kokee is not a strictly defined area; in this document, "Kokee" refers to the boundary of Kokee State Park, roughly 8 square mi (20 square km) in area. To most conveniently delimit the greater part of the range of these species, "Kokee region" used here refers to the uplands (above 3,500 ft (1,070 m)) surrounding upper Waimea Canyon: On the west side of Waimea Canyon from Kauhao Valley northeast to the rim of Kalalau Valley, and south to Kohua Ridge on the canyon's east side, an area of about 15 square mi (40 square km).

The historical range of the six species in this proposed rule included leeward slopes on the west side of Waimea Canyon as far south as Lapa Ridge, north to the rim of Kalalau Valley, and on the east side of Waimea Canyon as far south as Olokele Canyon. That area is approximately 9 by 7 mi (14 by 11 km) in size, with plant localities ranging from 2,200 to 3,900 ft (670 to 1,190 m) in elevation. The currently known range of these species differs primarily from the historical range only on the east side of Waimea Canyon, where Kohua Ridge is now the southernmost locality. The present range is circumscribed by an area 5 by 6 mi (8 by 10 km), from 2,500 to 3,900 ft (760 to 1,190 m) in elevation.

although most localities are above 3,500 ft (1,050 m). Hence, the range of these species may have been reduced by almost 50 percent.

In the Kokee region, the annual rainfall ranges from about 45 to 80 inches (in) (115 to 200 centimeters (cm)), with a sharp orographic gradient increasing to the east. The average annual temperature is about 62° F (17° C) (Armstrong 1983). These six species are primarily found on well-drained, gently sloping to very steep, silty clay loam (Foote *et al.* 1972). The vegetation of the Kokee region is primarily mesic to wet forests dominated by 'ohi' a (*Metrosideros polymorpha*) and koa (*Acacia koa*). Because of the island's age, abrupt topography, and sharp climatic gradient, the native flora of the Kokee region is quite diverse, with a high proportion of locally endemic species.

Discussion of the Six Species Proposed for Listing

Chamaesyce halemanui was first collected in 1840 on Kauai by the U.S. South Pacific Exploring Expedition (Degener and Degener 1956b). In 1936 Edward Sherff named that specimen *Euphorbia remyi* var. *wilkesii*, and also named specimens from one collection from the Halemanu drainage both *E halemanui* and *E remyi* var. *leptopoda* (Koutnik 1987). Otto and Isa Degener and L. Croizat (Degener and Croizat 1936, Degener and Degener 1956a, 1959b) transferred all of those names to the genus *Chamaesyce*. In 1987, Daryl Koutnik reduced the two varieties listed above, and *E. remyi* var. *molesta* (Sherff 1938), to synonymy under *Chamaesyce halemanui*.

All collections and confirmed sightings of this species are from seven areas: Kauhao and Makaha valleys in Na Pali-Kona Forest Reserve; Mahanalea Valley in Kuia Natural Area Reserve; the Halemanu drainage and near Waipoo Falls and Kokee Ranger Station in Kokee State Park; and Olokele Canyon on privately owned land (Hawaii Heritage Program (HHP) 1990a through 1990f). *Chamaesyce halemanui* is known to be extant at the Kauhao, Makaha, and Halemanu sites, all on State-owned land (HHP 1990c, 1990f; Timothy Flynn, Assistant Botanist, National Tropical Botanical Garden, Lawai, Kauai, pers. comm., 1990).

Chamaesyce halemanui is a scandent (climbing) shrub in the spurge family (Euphorbiaceae) with stems 3 to 13 ft (1 to 4 m) long. The egg-shaped to inversely lance-shaped leaves are decussate (successive pairs of leaves at right angles to the previous pair). The leaves are 1.8 to 5 in (4 to 13 cm) long and 0.4 to 1.8 in (1 to 4.5 cm) wide, with persistent stipules (leaf-like appendages on leaves). Groups of flowers (cyathia) are in dense, compact, nearly spherical clusters or occasionally solitary in leaf axils. The stems of cyathia are about 0.08 in (2 millimeters (mm)) long, or if solitary, about 0.2 in (5 mm) long. The fruits are in green capsules, about 0.1 in (3 mm) long, on recurved stalks, enclosing gray to brown seeds. *Chamaesyce halemanui* is distinguished from closely related species by its decussate leaves, persistent stipules, more compact flower clusters, shorter stems on cyathia and smaller capsules (Koutnik 1987, Koutnik and Huft 1990).

Chamaesyce halemanui typically grows on the steep slopes of gulches in mesic koa forests at an elevation of 2,160 to 3,600 ft (660 to 1,100 m) (HHP 1990a, 1990e). Associated native species include 'ohi'a *Alphitonia ponderosa* (kauila), *Antidesma Platyphyllum* (hame), *Coprosma* (pilo), *Diospyros* (lama), *Dodonaea viscosa* ('a'ali'i), *Elaeocarpus bifidus* (kalia), *Pisonia* (papala kepau), *Santalum freycinetianum* ('iliahi), and *Styphelia tameiameiae* (pukiawe) (HHP 1990a, 1990c, 1990e, 1990f; T. Flynn, pers. comm., 1990). Associated alien species include *Aleurites moluccana* (kukui), *Lantana camara* (lantana), *Psidium cattleianum* (strawberry guava), *Rubus argutus* (blackberry), and *Stenotaphrum secundatum* (St. Augustine grass) (HHP 1990e, 1990f; T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Chamaesyce halemanui* is competition for space and light from alien plants: St. Augustine grass, lantana, and strawberry guava (T. Flynn, pers. comm., 1990; Joel Lau, Assistant Botanist, HHP, pers. comm., 1990). Habitat degradation by feral pigs (*Sus scrofa*) (digging activity which destroys plants and leads to soil erosion and the invasion of alien plants) threatens the Kauhao and Makaha populations of this species (J. Lau, pers. comm., 1990). The 3 known populations, which extend over a distance of about 2 mi (3 km), contain fewer than 25 individuals (HHP 1990c, 1990f; T. Flynn, pers. comm., 1990). With such a small population size and restricted distribution, *C. halemanui* faces an increased potential for extinction resulting from stochastic events. This species' limited gene pool also constitutes a serious potential threat because of the possibility of depressed reproductive vigor.

Dubautia latifolia was first collected in the mountains of Kauai by the U.S. Exploring Expedition in 1840 (Carr 1982). Twenty-one years later, Asa Gray (1861) described that specimen as *Railliardia latifolia* (an orthographic error for *Railliardia latifolia*, as Sherff pointed out in 1935), in reference to its broad leaves. In 1936, David Keck transferred the name to the genus *Dubautia*. Sherff published the name *Railliardia latifolia* var. *helleri* in 1952, which Gerald Carr (1985) considered only a phenological variant not worthy of taxonomic recognition. All collections and confirmed sightings of this species are from six areas: Makaha and Awaawapuhi valleys in Na Pali-Kona Forest Reserve, Nualolo Trail and Valley in Kuia Natural Area Reserve, Halemanu in Kokee State Park, along Mohihi Road in both Kokee State Park and Na Pali-Kona Forest Reserve, along the Mohihi-Waialae Trail on Mohihi and Kohua ridges in both Na Pali-Kona Forest Reserve and Alakai Wilderness Preserve, and Kaholuamanu on privately owned land (Carr 1982; HHP 1990h through 1990m; T. Flynn, pers. comm., 1990). *Dubautia latifolia* is known to be extant at all but the Halemanu and Kaholuamanu sites (T. Flynn and J. Lau, pers. comms., 1990; Steven Perlman, Plant Collector, Hawaii Plant Conservation Center, Lawai, Kauai, pers. comm., 1990). The species is now known only from State-owned land.

Dubautia latifolia is a diffusely branched, woody vine in the aster family (Asteraceae) with stems up to 26 ft (8 m) long and occasionally up to 3 in (7 cm) in diameter near the base. The paired, egg- to oval-shaped leaves are 3 to 7 in (8 to 17 cm) long and 1 to 3 in (2.5 to 7 cm) wide. The leaves are conspicuously net-veined, with the smaller veins outlining nearly square areas. The distinct petioles (leaf stems) are usually about 0.2 in (5 mm) long. The flower clusters comprise a large aggregation of very small, yellow-flowered heads. The fruits are dry seeds, usually about 0.2 in (5 mm) long. *Dubautia latifolia* is distinguished from closely related species by its vining habit, distinct petioles, and broad leaves with conspicuous net veins outlining squarish areas (Carr 1982, 1985, 1990).

Dubautia latifolia typically grows on gentle to steep slopes on well-drained soil in semi-open, diverse montane mesic forest dominated by koa with 'ohi'a, at an elevation of 3,200 to 3,900 ft (975 to 1,200 m) (Carr 1982, 1990; HHP 1988; Perlman 1990a). Less often, this species is found in either closed forest, conifer plantations, or 'ohi'a-dominated forest, and as low as 2,600 ft (850 m) in elevation (HHP 1988, 1990j, 1990k; Perlman 1990a). The most common associated native species are kaulla, *Athyrium sandwicensis*, *Bobea* ('ahakea), *Coprosma waimeae* ('olena), *Dicranopteris linearis* (uluhe), *Hedyotis terminalis* (manono), *Ilex anomala* (aiea), *Melicope anisata* (mokihana), *Psychotria mariniana* (kopiko), and *Scaevola* (naupaka kuahiwi) (Carr 1982; HHP 1990g, 1990h, 1990j through 1990m). Associated alien species include blackberry, strawberry guava, *Acacia mearnsii* (black wattle), *Acacia melanoxylon* (Australian blackwood), *Hedychium* (ginger), *Lonicera japonica* (honeysuckle), *Myrica faya* (firetree), and *Passiflora mollissima* (banana poka) (Carr 1982; HHP 1990g, 1990l; T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Dubautia latifolia* is competition from alien plants. Banana poka, a vine now invading four of *D. latifolia*'s six diffuse populations, is the most serious threat (Carr 1982, 1985). Blackberry, honeysuckle, black wattle, Australian blackwood, ginger, and strawberry guava are other alien species that dominate the habitat of and/or threaten *D. latifolia* (HHP 1990g, 1990h, 1990k, 1990m; Perlman 1990a; T. Flynn, pers. comm., 1990). Habitat degradation by feral pigs currently threatens four populations of *D. latifolia* (HHP 1990m; T. Flynn and J. Lau, pers. comms., 1990). Black-tailed deer (*Odocoileus hemionus columbianus*) threaten two populations through trampling that destroys plants, and disturbs the ground leading to soil erosion or favoring the invasion of alien plants; predation by deer is also a probable threat (HHP 1989; Perlman 1990a; S. Perlman, pers. comm., 1990). Vehicle traffic and road maintenance constitute a potential threat to several *D. latifolia* individuals that overhang a State park road. This species suffers from a seasonal dieback that could be a potential threat (Gerald Carr, Professor of Botany, University of Hawaii, pers. comm., 1990).

Since at least some individuals of *D. latifolia* require cross-pollination, the wide spacing of individual plants (e.g., each 0.3 mi (0.5 km) apart) may pose a threat to the reproductive potential of the species (Carr 1982). The very low seed set noted in plants in the wild indicates a reproductive problem, possibly flowering asynchrony (G. Carr, pers. comm., 1990). Seedling establishment is rather rare in the wild (Carr 1982), presumably due to limited reproduction. The estimated 40 individuals of *D. latifolia* known to be extant are spread over a total distance of about 6.5 by 2.5 mi (10.5 by 4 km) (Carr 1982; HHP 1990h, 1990j through 1990m; S. Perlman, pers comm., 1990), comprising a limited gene pool that constitutes a potential threat to the species.

Probably the earliest collection of *Poa sandvicensis* was that of Horace Mann and William Brigham from "above Waimea" in 1864 or 1865 (Hillebrand 1888). This species was first described as *Festuca sandvicensis* by H.W. Reichardt in 1878, based on collections from Halemanu. Ten years later, William Hillebrand (1888) described Mann and Brigham's specimen, along with other material, as *Poa longeradiata*. In 1922, Albert Hitchcock combined these and additional collections under the name *Poa sandvicensis*.

All collections and confirmed sightings of this species are from six areas: The rim of Kalalau Valley in Na Pali Coast State Park; Halemanu and Kumuwela Ridge/Kauaikinana drainage in Kokee State Park; Awaawapuhi Trail in Na Pali-Kona Forest Reserve; Kohua Ridge/Mohihi drainage in both the Forest Reserve and Alakai Wilderness Preserve; and Kaholuamanu on privately owned land (HHP 1990n, 1990p, 1990q; Hitchcock 1922; Perlman 1990b; T. Flynn, pers. comm., 1990). *Poa sandvicensis* is known to be extant at the Kalalau, Awaawapuhi, Kumuwela/Kauaikinana, and Kohua/Mohihi localities; it is therefore currently known only from State-owned land. Hillebrand's (1888) questionable reference to a Maui locality is most likely an error.

Poa sandvicensis is a perennial grass (family Poaceae) with densely tufted, mostly erect culms (stems) 1 to 3.3 ft (0.3 to 1m) tall. The short rhizomes (underground stems) from a hardened base for the solid, slightly flattened culms. The leaf sheaths are closed and fused, but may split with age. The toothed ligule (appendage where leaf sheath and blade meet completely surrounds the culm and has a hard tooth extending upward from the mouth of the sheath. The leaf blades are 4 to 8 in (10 to 20 cm) long, and up to 0.2 in (6 mm) wide. The flowers occur in complex clusters with lower panicle (primary) branches up to 4 in (10 cm) long. The lemmas (inner bracts) have only a sparse basal tuft of cobwebby hairs. The fruits are golden brown to reddish brown, oval grains. *Poa sandvicensis* is distinguished from closely related species by its shorter rhizomes, shorter culms which do not become rush-like with age, closed and fused sheaths, relatively even-edged ligules, and longer panicle branches (O'Conner 1990).

Poa sandvicensis grows on wet, shaded, gentle to usually steep slopes, ridges, and rock ledges in semi-open to closed, mesic to wet, diverse montane forest dominated by 'ohi'a, at an elevation of 3,400 to 4,100 ft (1,035 to 1,250 m) (HHP 1990n through 1990q; Perlman 1990b). Associated native species include koa, kopiko, manono, naupaka kuahiwi, pilo, *Cheirodendron* ('olapa), and *Syzygium sandwicensis* ('ohi'a ha) (HHP 1990n, 1990p, 1990q; Perlman 1990b; T. Flynn, pers. comm., 1990). Associated alien species include blackberry, banana poka, ginger, and *Erigeron karvinskianus* (daisy fleabane) (HHP 1990p; T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Poa sandvicensis* is competition from alien plants. Daisy fleabane is the primary alien plant threat to the Kalalau population of *P. sandvicensis* (T. Flynn, pers. comm., 1990). Blackberry threatens the Awaawapuhi, Kalalau, and Kohua Ridge populations (HHP 1990q; T. Flynn, pers. comm., 1990). Banana poka and ginger also threaten the Awaawapuhi population (HHP 1990p). Erosion caused by pigs currently threatens the Kohua Ridge population, and both pigs and goats (*Capra hircus*) (which trample plants, cause erosion, and promote the invasion of alien plants) threaten the Kalalau population (HHP 1990m; T. Flynn and J. Lau, pers. comms., 1990). State forest reserve trail maintenance threatens the trailside Awaawapuhi population (HHP 1990p). While about 40 individuals of *P. sandvicensis* are known from 4 populations spread over a distance of about 5 by 2 mi (8 by 3 km), 80 percent of the plants are concentrated at 1 major site (HHP 1990n, 1990q; T. Flynn, pers. comm., 1990). This species is therefore subject to an increased potential for extinction resulting from stochastic events, because a single event could extirpate 80 percent of the known individuals. The small population size with its limited gene pool also constitutes a serious potential threat.

Poa siphonoglossa was first collected in 1910 by Abbe Urbain Faurie, and was described two years later by E. Hackel (1912). According to Hitchcock (1922), one of the two specimens on which Hackel based his description was actually *Poa mannii*. While the localities for Faurie's two specimens se confused, the specimen that Hitchcock designated as the type was most likely collected at an elevation of about 3,000 ft (1,000 m) above Waimea town, possibly near Kaholuamanu (Hitchcock 1922).

All collections and confirmed sightings of *Poa siphonoglossa* are from two sites: Kohua Ridge in Na Pali-Kona Forest Reserve, and near Kohaluamanu on privately owned land (HHP 1990r).

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Poa siphonoglossa is only known to be extant on Kohua Ridge, on State-owned land.

An additional *Poa* specimen sharing characteristics of both *P. siphonoglossa* and *P. mannii* was collected in 1986 by David Lorence from Kauiaula Valley in Puu Ka Pele Forest Reserve (David Lorence, Systematic Botanist, National Tropical Botanical Garden, Lawai, Kauai, pers. comm., 1990). Lorence and other local botanical authorities believe that the two species are conspecific, representing different growth stages. Even if the two names are combined, the plant remains extremely rare, since *Poa mannii* has not been collected since 1916 (O'Conner 1990). O'Conner (1990) treats *P. siphonoglossa* and *P. mannii* as distinct species.

Poa siphonoglossa differs from *P. sandvicensis* principally by its longer culms and shorter panicle branches. *Poa siphonoglossa* has extensive tufted and flattened culms that cascade from banks in masses up to 13 ft (4 m) long. The naked, rushlike older culms have bladeless sheaths; the sheaths do not split with age. The ligule has no hard tooth. The flat, loosely packed leaf blades are usually less than 4 in (10 cm) long and 0.1 in (3 mm) wide. The primary panicle branches are about 0.1 in (3 cm) long. The lemmas lack cobwebby hairs. The fruits are reddish brown and oval. *P. siphonoglossa* is distinguished from *P. mannii* and other closely related species by its shorter rhizomes, longer culms, closed and fused sheaths, and toothed ligules (O'Conner 1990).

Poa siphonoglossa typically grows on shady banks near ridge crests in predominantly native mesic 'ohi'a forest between about 3,300 and 3,900 ft (1,000 to 1,200 m) in elevation (HHP 1990r; Hitchcock 1922). Associated species include the natives a'ali'i, manono, *Melicope* (alani), and *Vaccinium* ('ohelo), and the alien blackberry (HHP 1990r). The population from Kaulaula Valley, whose characteristics are similar to both *P. siphonoglossa* and *P. mannii*, grows on a steep, shady slope in Koa Forest with occasional 'ohi'a at an elevation of 2,800 ft (860 m) (D. Lorence, pers. comm., 1988). Associated species include pukiawe, *Carex meyenii*, *Carex wahuensis*, and *Wilkesia gymnoxiphium* (iliau) (T. Flynn, pers. comm., 1988).

The primary threat to the survival of *Poa siphonoglossa* is habitat degradation by pigs and deer. The Kohua Ridge population of this species may be at risk due to erosion caused by pigs (J. Lau, pers. comm., 1990), and the presence of both pigs and deer may threaten the Kaulaula population (T. Flynn, pers. comm., 1990). Predation by deer is also a potential threat there. The alien blackberry invading Kohua Ridge constitutes a probable threat to that population (HHP 1990r). *Poa siphonoglossa* (including the Kaulaula population) numbers fewer than 30 known individuals located at 2 populations about 6 mi (10 km) apart (HHP 1990r; T. Flynn, pers. comm., 1990). A limited gene pool and potential for one disturbance event to destroy the majority of known individuals are serious threats to this species.

Stenogyne campanulata was discovered in 1986 by Steven Montgomery on sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley on Kauai. The species is known only from that single population. In 1988, Stephan Weller and Ann Sakai described the plant as a new species, naming it for the flowers' bell-shaped calyces. *Stenogyne campanulata* was last seen in 1987 and presumably still exists (T. Flynn, pers. comm., 1990). Known only from State-owned land, *S. campanulata* is restricted to Na Pali Coast State Park.

Stenogyne campanulata is a member of the mint family (Lamiaceae), described as a vine with four-angled, hairy stems. The hairy leaves are broadly oval, about 2 in (5 cm) long and 1 in (3 cm) wide. The flowers occur in clusters of about 6 per leaf axil. The very broadly bell-shaped, hairy calyces are about 0.5 in (13 mm) long, with teeth that are 0.1 in (3 mm) long and 0.2 in (5 mm) wide at the base. The petals are fused into a straight, hairy, white tube about 0.5 in (13 mm) long, with short purple lobes. The fruits of this species have not been seen, but all other members of the genus have fleshy nutlets. *Stenogyne campanulata* is distinguished from closely related species by its large and very broadly bell-shaped calyces that nearly enclose the relatively small, straight corollas, and by small calyx teeth that are half as long as wide (Weller and Sakai 1990).

Stenogyne campanulata grows on the rock face of a nearly vertical, north-facing cliff at an elevation of about 3,700 ft (1,130 m) (Weller and Sakai 1990; T. Flynn, pers. comm., 1990). The associated shrubby vegetation includes the native species *Artemisia australis* ('ahinahina), *Lepidium serra* ('anaunau), *Lysimachia glutinosa*, *Perrottetia sandwicensis* (olomea), and *Remya montgomeryi*, and alien blackberry and daisy fleabane (T. Flynn, pers. comm., 1990).

Habitat degradation by feral goats is the primary threat to the survival of *Stenogyne campanulata* (T. Flynn, pers. comm., 1990). The restriction of this species to virtually inaccessible cliffs suggests that predation by goats may have eliminated it from more accessible locations. Such predation remains a potential threat because goats may limit seedling establishment in more accessible areas and if they reached existing plants losses would occur. (T. Flynn, pers. comm., 1990). Feral pigs have disturbed vegetation in the vicinity of the only known population (T. Flynn, pers. comm., 1990). Erosion caused by goats or pigs exacerbates the potential threat of landslides to this population (T. Flynn, pers. comm., 1990). Daisy fleabane is the primary alien plant threatening *Stenogyne campanulata* (T. Flynn, pers. comm., 1990). *Stenogyne campanulata* is estimated to number 50 plants at the very most, all of which are concentrated at a single site. (T. Flynn, pers. comm., 1990). The small size of the single known population and its restricted distribution (probably well under 500 square ft (45 square m) in area) are serious potential threats to the species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance such as a landslide could destroy all known extant individuals.

Xylosma crenatum was first collected in 1917 by Charles Forbes on the west side of the Waimea drainage basin. However, the collection was misidentified as *Hibiscus waimeae* (HHP 1990s). Over 50 years later (in 1968), Robert Hobdy made the second collection of this plant, along the banks of Mohihi Stream at the edge of the Alakai Swamp. Finally in 1972, Harold St. John recognized the plant as a distinct species, and named it *Antidesma crenatum*, after the rounded teeth along the leaf edges (St. John 1972). In 1976, St. John transferred the name to the genus *Xylosma*.

All collections subsequent to 1968 and confirmed sightings of *Xylosma crenatum* are from two sites: Along upper Nualolo Trail in Kuia Natural Area Reserve and along Mohihi Road between Waiakoali and Mohihi drainages in Na Pali-Koke Forest Reserve (HHP 1990s, 1990t, T. Flynn, pers. comm., 1990; Robert Hobdy, Forester, State Division of Forestry and Wildlife, Maui District, pers. comm., 1990). *Xylosma crenatum* is apparently extant only at the latter site (HHP 1990s; R. Hobdy, pers. comm., 1990). This species is found only on State-owned land.

Xylosma crenatum is a dioecious (unisexual) tree in the flacourtia family (Flacourtiaceae), growing up to 40 feet (14 m) tall, and with dark gray bark. The somewhat leathery leaves are oval to elliptic-oval, about 4 to 8 in (10 to 20 cm) long and 2.5 to 4 in (6.5 to 10 cm) wide, with coarsely toothed edges and moderately hairy undersides. The female flowers (male flowers have not been described) occur in clusters of 3 to 11 per leaf axil. The four oval sepals are about 0.1 in (2.5 mm) long; petals are absent. The young berries are oval to elliptic-oval and about 0.3 in (7 mm) long (mature fruits have not been seen). *Xylosma crenatum* is distinguished from the other Hawaiian member of this genus by its more coarsely toothed leaf edges and the hairy undersides of its leaves (St. John 1972, Wagner *et al.* 1990).

Xylosma crenatum is known from diverse koa/'ohi'a montane mesic forest at an elevation of about 3,200 to 3,500 ft (975 to 1,065 m), sometimes along stream banks or within a planted conifer grove (HHP 1990t; St. John 1972; R. Hobdy, pers. comm., 1990). Associated species include the native manono and *Athyrium sandwicensis* and alien strawberry guava (HHP 1990s).

The three historical populations of *Xylosma crenatum* have apparently been reduced to one male individual (J. Lau, pers. comm., 1990), and as would be expected no regeneration is evident at the site (HHP 1990s). Because no surveys for this species have been conducted in its rather inaccessible habitat, it is hoped that additional research will reveal the presence of more individuals, including some female individuals. In any case, the total size of the population is probably very limited. Furthermore, a single man-caused or natural environmental disturbance (such as continued bulldozing during maintenance activities along the adjacent State forest reserve road) could easily destroy the only known individual of the species (J. Lau, pers. comm., 1990). *Xylosma crenatum* is also threatened by competition from alien plants, particularly strawberry guava, as well as the conifers dominating the only known site (HHP 1990s). In addition, feral pigs may threaten this species (T. Flynn, pers. comm., 1990).

Previous Federal Action

Federal action on these plant species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Chamaesyce halemanui* (as *Euphorbia halemanui*), *Dubautia latifolia* (as *D. latifolia* var. *latifolia*), *Poa sandvicensis*, and *Xylosma crenatum* (as *Antidesma crenatum*) were considered endangered. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Chamaesyce halemanui*, *Dubautia latifolia*, *Poa sandvicensis*, and *Xylosma crenatum*, to be endangered species pursuant to section 4 of the Act. The list of 1,700-plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication.

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), and September 27, 1985 (50 FR 39525). *Chamaesyce halemanui* (as *Euphorbia halemanui*), *Dubautia latifolia*, *Poa sandvicensis*, and *Poa siphonoglossa* were included as Category 1 candidates on both lists, indicating that the Service had substantial information warranting their proposal for listing as endangered or theatened. *Xylosma crenatum* was included as a Category 2 candidate species on both notices, meaning that the Service had some evidence of vulnerability, but not enough data to support a listing proposal at the time. In the last notice of review, published on February 21, 1990 (55 FR 6183), all six of the species included in this proposed rule were considered Category 1 candidates. *Stenogyne campanulata* was not included in prior notices, since it was not discovered until 1986.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The latter was the case for *Chamaesyce halemanui*, *Dubautia latifolia*, *Poa sandvicensis*, *Poa siphonoglossa*, and *Xylosma crenatum* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petition listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. Publication of the present proposal constitutes the final 1-year finding for these species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Chamaesyce halemanui* (Sherff) Croizat and Degener (NCN), *Dubautia latifolia* (A. Gray) Keck (NCN), *Poa sandvicensis* (Reichardt) hitchc. (Hawaiian bluegrass), *Poa siphonoglossa* Hack. (NCN), *Stenogyne campanulata* Weller and Sakai (NCN), and *Xylosma crenatum* (St. John) St. John (NCN) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The flora of the Kokee region is considered very vulnerable because of past and present land management practices, including grazing, deliberate alien plant and animal introductions, water diversion, and recreational development (Wagner *et al.* 1985). Feral animals have made the greatest overall impact, altering and degrading the vegetation and habitats of the Kokee region.

Cattle (*Bos taurus*) were introduced to Kauai by the 1820s and were allowed to run wild (Joesting 1984). Cattle not only feed on native vegetation, but trample roots and seedlings, cause erosion, and promote the invasion of alien plants by creating new sites for colonization, and by spreading seeds in their feces and in their coats (Scott *et al.* 1986). In addition, cattle trails provide new routes

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for feral pigs to expand their range (e.g., into the Alakai Swamp) (Paul Higashino, Maui Preserves Naturalist, The Nature Conservancy of Hawaii, pers. comm., 1981). Kokee was leased for cattle grazing in the 1850s (Ryan and Chang 1985). Large cattle ranching operations were underway on both flanks of Waimea Canyon by the 1870s, with many animals wandering into the upper forests. Feral cattle were common at Halemanu in Kokee at this time (Joesting 1984). Concerned over the destruction of upland forests by cattle and goats, Augustus Knudsen, the district forester and cattle rancher on the west side of Waimea Canyon, built a two mile (3 km) long fence in 1898 near the southwest corner of what became Kokee State Park in 1952 (Daehler 1973b). Knudsen had begun eliminating cattle from the northern (Kokee) side of this boundary in 1882. Three of the 6 Kokee plant species proposed for listing historically occurred within 0.5 mi (0.8 km) of this boundary on the Kokee side. Most of the Kokee region, as far southwest as Knudsen's boundary fence, was given forest reserve status (Na Pali-Kona Forest Reserve) in 1907 to protect the watershed from further erosion by feral animals and to ensure the future water supply for lowland use (Daehler 1973a). At that time, Knudsen described the area south of the boundary fence as grazing land outside any true forest (Daehler 1973b). One of the plants proposed for listing (*P. siphonoglossa*) occurs in this area, which in 1938 was designated Puu Ka Pele Forest Reserve and described as unsuitable for grazing because of excessive soil erosion (Daehler 1973b). On the east side of Waimea Canyon, efforts were underway by 1904 to eliminate cattle from the uplands, including the Alakai Swamp (Daehler 1973a). In 1916 considerable damage by cattle to the forests around the Alakai Swamp was reported (Daehler 1973a). Stray unbranded ranch stock still roamed the forests of Kokee and Puu Ka Pele in the 1960s (Tomich 1986). The State-owned portion of the Alakai Swamp was designated as a Wilderness Preserve in 1964. Today, very few if any cattle remain within the range of the six plant species.

Feral goats have inhabited the drier, more rugged areas of Kauai since the 1820s (Cuddihy and Stone 1990). Like cattle, feral goats consume native vegetation, trample roots and seedlings, cause erosion, and promote the invasion of alien plants (Scott *et al.* 1986). They have denuded many ridges of Waimea Canyon, including areas within the historical distribution of *Dubautia latifolia*, *Poa sandvicensis* and *P. siphonoglossa* (Daehler 1973a). During dry periods, goats venture into wet areas, including the Kokee region (Scott *et al.* 1986). They have degraded the forests at the drier edge of the Alakai Swamp, which lie within the present range of the six Kokee species proposed for listing (Scott *et al.* 1986). Although the State attempted to remove goats when the forest reserve was established in 1907, these animals are now managed by the State as a game species, with a limited hunting season (Daehler 1973a, Tomich 1986). Goats are considered a serious threat to the lower and drier outlying sections of the Kokee region (HHP and Hawaii Division of Forestry and Wildlife (DOFAW) 1989), coinciding roughly with the lower elevation limit of the six Kokee species proposed for listing. The primary threat to *Stenogyne campanulata* is habitat degradation by feral goats (T. Flynn, pers. comm., 1990). While browsing on vegetation, goats disturb the ground, accelerating erosion and creating sites for invasion by more aggressive alien plant species. The restriction of *Stenogyne campanulata* to virtually inaccessible cliffs suggests that predation by goats may have eliminated the species from more accessible locations, as is the case for many rare plants of the Na Pali region. Goats also threaten the Kalalau population of *Poa sandvicensis*, 0.3 mi (0.5 km) from the *Stenogyne* site (T. Flynn, pers. comm., 1990).

Feral pigs have inhabited forests of Kauai for at least 100 years (Cuddihy and Stone 1990). Pigs consume native plants, destroy vegetation by rooting and trampling, cause severe erosion, and spread alien plant seeds in their feces (Scott *et al.* 1986). Pig activity promotes the establishment of alien plants by creating open spaces and increasing soil fertility with their feces; without the disturbance and increase in nutrients many native species would have an advantage, because endemic species often are better adapted to less disturbed sites on poorer soils (Stone 1985).

Because pigs typically expand their range in forested areas by following trails made by other animals or human beings, their ingress into areas of native vegetation has been aided by various human activities (Culliney 1988). Cattle trails helped open the Alakai Swamp to pig traffic (P. Higashino, pers. comm., 1981). The sandalwood trade that flourished on Kauai between about 1810 and 1840 created innumerable minor trails, as Hawaiians dragged the logs on their backs down to Waimea on the southern coast from throughout the upland forests (Anonymous 1978, Joesting 1984). To provide irrigation for the expanding sugar cane industry in the lowlands, the extensive Kokee/Kekaha ditch and water diversion system was built in the 1920s. Access roads and trails to and along the ditch and tunnels enabled feral pigs to gain new access to Kokee's native forests (Culliney 1988). The food source provided by plum trees (*Prunus cerasifera* X *P. salicina*) planted in Kokee State Park during the 1930s has attracted greater concentrations of pigs to the general vicinity of several of the species proposed for listing.

Currently, pigs are recognized as the primary feral animal threat to the upland forests of the Kokee region (HHP and Dofaw 1989), common in both wet and mesic areas. At least five of these species are threatened by habitat degradation by feral pigs. Fresh pig sign was noted in November 1989 and May 1990 throughout the area of Kohua Ridge where populations of *Poa sandvicensis*, *P. siphonoglossa*, and *Dubautia latifolia* are located (HHP 1190m; J. Lau, pers. comm., 1990). At this steep site, erosion caused by pig activity is a present threat to the two *Poa* species (J. Lau, pers. comm., 1990). The extensive erosion scars on lower Kohua Ridge are expanding and gradually moving upslope toward these two species (J. Lau, pers. comm., 1990). Similarly, by increasing erosion, pig activity would exacerbate the potential threat of landslides to the only known population of *Stenogyne campanulata* on the nearly vertical rim of Kalalau (T. Flynn, pers. comm., 1990). Just 0.3 mi (0.5 km) from the *Stenogyne* population, there was considerable pig damage to vegetation adjacent to a population of *Poa sandvicensis* in May 1990 (T. Flynn, pers. comm., 1990). For *Dubautia latifolia*, pigs constitute a definite threat at the Awaawapuhi population and are known to have caused damage near the Nualolo population (HHP 1989; J. Lau, pers. comm., 1990). Pig sign has been reported from within 200 yards (180 m) of one *D. latifolia* individual in the Mohihi Road population, and from near the Kauhao and Makaha populations of *Chamaesyce halemanui* (T. Flynn and J. Lau, pers. comms., 1990). Pigs are a potential threat to the Kaulaula population of *Poa siphonoglossa* and may also threaten the only known individual of *Xylosma crenatum* (T. Flynn, pers. comm., 1990).

Black-tailed deer were first introduced to the forests of western Kauai in 1961 (Culliney 1988). The estimated 350 animals now occupy dry to mesic, alien-dominated forests up to an elevation of 4,000 ft (1,220 m), including the lower distributional range of these 6 Kokee plant species (Cuddihy and Stone 1990). Like other feral ungulates, deer feed on and trample native vegetation. Deer trails and loss of vegetation from deer foraging activities can cause erosion. Deer are a serious threat to the lower and drier outlying sections of the Kokee region (HHP and DOFAW 1989). Deer also are known to range into the wettest portion of the Kokee area during dry periods, constituting a potential threat to the wet forest habitat (Scott *et al.* 1986). Light to moderate damage by deer was reported from the vicinity of the Nualolo population of *Dubautia latifolia* in 1989 (also a former site of *Xylosma crenatum*) (HHP 1989). Deer occur in the area of the Kaulaula population of *Poa siphonoglossa* and the Makaha population of *Dubautia latifolia*, constituting a potential threat (Perlman 1990a; T. Flynn and S. Perlman, pers. comms., 1990).

In November 1982, Hurricane Iwa caused locally extensive damage to the forest canopy in many parts of Kauai, including numerous areas in the Kokee region. The vicinity of the *Dubautia latifolia* site (and former *Xylosma crenatum* site) along Nualolo Trail was one such area (R. Hobdy, pers. comm. 1990). Since the Nualolo population of *Xylosma crenatum* was not found during a recent survey of the Kuia Natural Area Reserve, it seems likely that the hurricane destroyed the two 40-foot (12 m) individuals that had constituted that population (HHP 1989). Hurricane Iwa's damage to the forest canopy also greatly exacerbated the invasion of fast-growing, light-loving alien plants, which pose a major threat to the native plants of the Kokee region (Wagner *et al.* 1985). Along Nualolo Trail, banana poka, strawberry guava, and blackberry have shown the greatest growth response, threatening *Dubautia latifolia* and other native species (HHP 1989, 1990j).

Of the six Kokee species being proposed for listing, *Dubautia latifolia* is most seriously threatened by competition from alien plants. Primary among these is banana poka, an aggressive vine introduced to Kokee about 50 years ago, now constituting a major infestation (Carr 1985, Smith 1985). Banana poka kills trees by smothering their canopies with its heavy vines. Once the trees fall, the increased sunlight in the understory favors other fast-growing alien species over native plants (Cuddihy and Stone 1990). With its climbing habit, *D. latifolia* occupies a niche similar to banana poka, often growing in close proximity to the agressive vine (Carr 1982). Banana poka is therefore considered a serious competitor and threat to *D. latifolia* (Carr 1982). Along with banana poka, alien species such as honeysuckle, black wattle, Australian blackwood, ginger, and strawberry guava dominate the habitat of and threaten the Mohihi Road population of *Dubautia latifolia* (HHP 1990g; T. Flynn, pers. comm., 1990). Alien species are also increasing at the site of the Awaawapuhi population of *D. latifolia* (HHP 1990h). Banana poka and blackberry are invading the Mohihi-Waialae Trail and Makaha populations of this species as well, with blackberry overgrowing the latter area (HHP 1990k, 1990m, Perlman 1990a). Over the past 40 years, blackberry has invaded much of the native wet and mesic forests of Kokee, where it forms dense thickets that compete with native understory species (Cuddihy and Stone 1990, Daehler 1973a). Blackberry threatens the Kalalua population of *P. sandvicensis* (T. Flynn, pers. comm., 1990). The westernmost section of the Kohua Ridge population of *P. sandvicensis* and an adjacent population of *P. siphonoglossa* are heavily invaded by blackberry (HHP 1990q, 1990r). Banana poka and ginger, as well as blackberry, threaten the Awaawapuhi population of *P. sandvicensis* (HHP 1990p). The Halemanu population of *Chamaesyce halemanui* is threatened by St. Augustine grass, whose thick growth prevents regeneration of this native tree (T. Flynn, pers. comm., 1990). The other two populations of *C. halemanui* are threatened by lantana and strawberry guava (J. Lau, pers. comm., 1990). Alien plants, particularly strawberry guava, are increasing at the only known site of *Xylosma crenatum* (HHP 1990t). Daisy fleabane is the primary alien plant threat to *Stenogyne campanulata* and the Kalalua population of *P. sandvicensis* (T. Flynn, pers. comm., 1990).

Several potentially threatening alien plant species were originally introduced deliberately for reforestation or timber utilization. These include conifers (such as the grove surrounding the only known *Xylosma crenatum* individual); firetree, planted on Waimea Canyon's eastern drainages; and karaka nut (*Corynocarpus laevigata*), one of the alien species aerially broadcast over the Kokee region in the 1920s (Daehler 1973a, Wagner *et al.* 1985). While these species do not directly threaten the six species proposed for listing, they may possibly have crowded out former populations, and eventually could invade extant populations. Marijuana (*Cannabis sativa*) is cultivated in the Kokee region, and that activity is considered a management threat to Kuia Natural Area Reserve, where *Chamaesyce halemanui* and *Dubautia latifolia* occur (HHP and DOFAW 1989). Native vegetation is destroyed when areas are cleared for marijuana cultivation. More significantly, other alien species are inadvertently introduced into the forest from soil and other material brought to the site. After the site is abandoned, it forms a locus for the spread of alien species (Medeiros *et al.* 1986).

Construction of water collection and diversion systems that began in the 1920s for the lowland sugar cane industry damaged the vegetation of Kokee (Wagner *et al.* 1985). Since the Kokee ditch and tunnel system and its access roads run through habitat of four of the six species proposed for listing (particularly *Xylosma crenatum*), it may possibly have destroyed former populations of these species. The ditch system created new routes for the invasion of alien plants and animals into intact native forest (Culliney 1988). Recreational development, concentrated in the 4,960 acre (1,900 hectare) Kokee State Park, has had an equally significant impact on the native vegetation (Wagner *et al.* 1985). Vacation cabins have existed in Kokee for well over a century. The construction and use of an extensive system of hiking, hunting, fishing, and horse trails (45 mi (72 km) in total) has resulted in the direct destruction of some habitat, and has accelerated rate of erosion and the spread of alien plants and animals enormously (Wagner *et al.* 1985). Three of the species proposed for listing are currently threatened by road or trail maintenance activities. State forest reserve road maintenance threatens the sole known individual of *X. crenatum*. Freshly bulldozed dirt was noted immediately adjacent to this plant in November 1989 (J. Lau, pers. comm., 1990). Forest reserve trail maintenance threatens the Awaawapuhi population of *Poa sandvicensis*. The single clump comprising that population had been cut back to the base by trail clearing, but was resprouting as of September 1990 (HHP 1990p). Several individuals of *Dubautia latifolia* overhang a State park road, and have been injured by passing vehicles. Road maintenance constitutes a potential threat to these plants.

While fire has been suggested as a threat to *Dubautia latifolia* (Center for Plant Conservation 1990, St. John 1931), experienced field botanists with the most direct knowledge of this species believe that the potential for fire within the mesic habitat of this species is quite low (T. Flynn, J. Lau, and S. Perlman, pers. comms., 1990). The same applies to

the other five Kokee species proposed for listing.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously threaten several of these species. For five of these species, disturbance to sites by trampling during recreational use (hiking, for example) could promote erosion and greater ingress by competing alien species. The site of the only known individual of *Xylosma crenatum* is relatively accessible. Overutilization is not a factor for *Stenogyne campanulata*, due to the virtually inaccessible location of the only known population. However, trampling of more accessible nearby areas would promote erosion and increased alien plant invasion. The same potential for erosion and weed ingress applies to *Chamaesyce halemanui, Dubautia latifolia, Poa sandvicensis* and *P. siphonoglossa*, which are somewhat more accessible than *S. campanulata*.

C. *Disease or predation.* Although there is no evidence of predation on these species, none of them are known to be unpalatable to goats or deer. Predation is therefore a probable threat at sites where those animals have been reported. Predation by goats is considered a probable threat to *Stanogyne campanulata* and *Poa sandvicensis* (T. Flynn, pers. comm., 1990). The restriction of *S. campanulata* to inaccessible cliffs suggests that predation by goats may have eliminated the species from more accessible locations. Predation by deer potentially threatens *Dubautia latifolia* and *Poa siphonoglossa*. No threat of predation has been reported for *Chamaesyce halemanui* or *Xylosma crenatum*. No evidence of disease is known for any of the species proposed herein except, perhaps *D. latifolia*, where a seasonal blackening and dieback of *D. latifolia* shoot tips could potentially be caused by a disease; however, it may instead be a natural phenological phenomenon (G. Carr, pers. comm., 1990).

D. *The inadequacy of existing regulatory mechanisms.* All of the known populations of the six Kokee plant species proposed for listing are located on State-owned land, either in forest reserves (five species), parks (four species), a natural area reserve (one species), or a wilderness preserve (two species). State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, those regulations are difficult to enforce due to limited personnel. Hawaii's Endangered Species Act (HRS, section 195D–4(a)) states, "Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * * *." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (section 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these six plant species would therefore reinforce and supplement the protection available to the species under State law. The Federal Act also would offer additional protection to these species because if they were listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The small number of populations and of individual plants of these species increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals of these species. *Xylosma crenatum* epitomizes the problem of small numbers of extant individuals. For this dioecious (unisexual) species, only one male tree is known. *Xylosma crenatum* may be reproductively extinct. If no female individuals remain in the wild, no further sexual reproduction would take place. *Stenogyne campanulata* numbers approximately 50 plants at the very most, concentrated at a single site (T. Flynn, pers. comm., 1990). *Poa siphonoglossa* numbers fewer than 30 known individuals at 2 populations (including the Kaulaula population that also exhibits characteristics of *P. mannii*) (HHP 1990r; T. Flynn, pers. comm., 1990). Whereas about 40 individuals of *Poa sandvicensis* are known from 4 populations, 80 percent of the plants are concentrated at 1 major site (HHP 1990n, 1990q; T. Flynn, pers. comm., 1990). The fewer than 25 known individuals of *Chamaesyce halemanui* are distributed fairly evenly between 3 populations, 2 of them reported to include seedlings as well as mature trees (HHP 1990c, 1990f; T. Flynn, pers. comm., 1990). Most *Dubautia latifolia* populations consist of fewer than 6 plants, often widely scattered (e.g., each 0.3 mi (0.5 km) apart). Individual localities are typically 270 to 1,600 square ft (25 to 150 square m) in area (Carr 1982). Only about 40 individuals of *D. latifolia* are known to be extant, also comprising a limited gene pool (Carr 1982; HHP 1990g through 1990m; S. Perlman, pers. comm., 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Chamaesyce halemanui, Dubautia latifolia, Poa sandvicensis, Poa siphonoglossa, Stenogyne campanulata,* and *Xylosma crenatum* as endangered. Total numbers of known individuals of these 6 species range from a low of 1 (*Xylosma crenatum*) to an estimated high of 50 (*Stenogyne campanulata*). These species are threatened by one or more of the following: competition from alien plants; habitat degradation by feral pigs, goats, and deer; and trail and road maintenance. Small population size makes these species particularly vulnerable to extinction from stochastic events. Given these circumstances, the determination of endangered status for these six species seems warranted.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the six Kokee species proposed for listing. The publication of descriptions and maps required in a proposal for critical habitat would increase the degree of threat to these species from possible take or vandalism and therefore could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants, and thus could make them attractive to researchers, curiosity seekers, or collectors of rare plants. As the result of its nearly inaccessible location, *Stenogyne campanulata* does not appear to be threatened by potential vandalism. However, actions of nearby curiosity seekers could result in increased erosion or cause land slides.

Because the known distributions of all six species are on State-owned land and there are no known or anticipated Federal actions for the areas in which the plants are located, designation of critical habitat would have no known benefit to these species. All involved parties and landowners have been notified of the location and importance of protecting the habitat of these species. Protection of the species' habitat will be addressed through the recovery process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time because such designation would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Since the six Kokee species being proposed are known to occur on State land, cooperation between Federal and State agencies is necessary to provide for their conservation. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. As none of these species are on Federal land and no Federal activities are currently anticipated in the area, no section 7 consultations or impact on activities of Federal agencies are anticipated as the result of this proposal.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to the six plants from the Kokee region, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; or to maliciously damage or destroy any such plants on any area under Federal jurisdiction; or to remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2104, FTS 921–2104, FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these six species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal concerning these six species of plants will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Office Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Office Supervisor (see **ADDRESSES** above).

Author

The primary author of this proposed rule is Dr. Joan E. Canfield, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850, (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

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Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rule
*	*	*	*	*	*	
Asteraceae—Aster family:						
Dubautia latifolia	None	U.S.A. (HI)	E		NA	NA
Euphorbiaceae—Spurge family:						
Chamaesyce halemanui	None	U.S.A. (HI)	E		NA	NA
Flacourtiaceae—Flacourtia family:						
Xylosma crenatum	None	U.S.A. (HI)	E		NA	NA
Lamiaceae—Mint family:						
Stenogyne campanulata	None	U.S.A. (HI)	E		NA	NA
Poaceae—Grass family:						
Poa sandvicensis	Hawaiian bluegrass	U.S.A. (HI)	E		NA	NA
Poa siphonoglossa	None	U.S.A. (HI)	E		NA	NA

(Proposal: *Chamaesyce halemanui, Dubautia latifolia, Poa sandvicensis, Poa siphonoglossa, Stenogyne campanulata,* and *Xylosma crenatum*—endangered.)

Dated: September 14, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–22740 Filed 9–25–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) nave submitted Amendment 1 to the Fishery Management Plan for the Coral and Coral Reefs of the Gulf of Mexico and South Atlantic (FMP) for review by the Secretary of Commerce (Secretary). Written comments are invited from the public.

DATES: Written comments must be received on or before November 20, 1990.

ADDRESSES: Copies of the amendment are available from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 681, Tampa, FL 33609 or the South Atlantic Fishery Management Council, Southpark Building, suite 306, One Southpark Circle, Charleston, SC 29407–4699.

Comments should be sent to Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Mark envelopes, "Comments on Amendment 1 to the Coral FMP."

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval or disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and comment. The Secretary will consider these comments in determining approvability of the document.

In July 1989, NOAA published revised guidelines interpreting the Magnuson Act's national standards for fishery management plans. In compliance with the revised guidelines, the Councils have submitted Amendment 1, which includes octocorals in the management unit as a controlled species; restates the determination of optimum yield to include octocorals; adds a definition of overfishing; provides for a limited harvest of certain octocorals through permit and data reporting requirements; includes a section on vessel safety considerations; and revises the FMP section on habitat of the stocks. The intended effect of this rule is to conserve and manage the coral resources.

Regulations proposed by the Councils to implement Amendment 1 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801, et seq.

Dated: September 20, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–22725 Filed 9–20–00; 4:14 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 187
Wednesday, September 26, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: Action.

ACTION: Information Collection Submitted to the Office of Management and Budget for review.

SUMMARY: The following form(s) have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments received by October 26, 1990. Send comments to both:

Janet Smith, Clearance Officer, ACTION, 1100 Vermont Avenue NW., Washington, DC 20525, Tel: (202) 634–9245.

and

Daniel Chenok, Desk Officer for ACTION, Office of Managment and Budget, 3002 New Executive Office Building, Washington, DC 20503, Tel: (202) 395–7316.

Title of Form(s): Project Application Form: Student Community Service Program.

ACTION Forms No(s): ACTION Form 424–SCS.

Need and Use: To assure that grantees meet program requirements; USE: the information provided is considered by ACTION with regard to initial and renewal funding.

Type of Request: Project Grant Application.

Respondent's Obligation to Reply: Required to obtain/retain benefits.

Descriptions of Respondents: Public agencies and private non-profits.

Frequency of Collection: Annual.

Estimated Number of Annual Responses: 177.

Average Burden Hours per Response:
New grantes—20.
Renewal grantees—10.

Estimated Annual Reporting or Disclosure Burden:
New grantees—20.
Renewal grantees—10.

Janet Smith,

Clearance Officer, ACTION.

[FR Doc. 90–22782 Filed 9–25–90; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90–135]

Scrapie Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to announce the fifth meeting in a series of sessions of the Scrapie Negotiated Rulemaking Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held on October 12, 1990, from 1 p.m. to 5 p.m., and on October 13, 1990, from 8 a.m. to 4 p.m. The meeting will be held at the National Center for Animal Health Information Systems, 555 South Howes Street, Fort Collins, Colorado 80521.

FOR FURTHER INFORMATION CONTACT: David Galbreath, Planning and Risk Analysis Systems, PPD, APHIS, USDA, room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8017.

SUPPLEMENTARY INFORMATION: In a Federal Register notice published on February 26, 1990 (55 FR 6662–6663, Docket No. 89–139), we announced our intent to establish a Scrapie Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92–463). The Committee will develop alternatives to the current regulatory program designed to control scrapie in sheep and goats. The first meeting of the Committee was held on May 8 and 9, 1990, with three subsequent meetings in July, August, and September, 1990. This notice announces the fifth meeting in a series of sessions of the Committee.

The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, representatives of the sheep industry, and representatives of other parties with a definable stake in scrapie issues to frame a recommended rulemaking proposal as an alternative to the current regulatory program for the control of scrapie.

The tentative agenda for the fifth meeting of the Committee is as follows:

First Day

Afternoon session—1 p.m.

Discussion of draft Scrapie Certification and Control Plan.

Second Day

Morning session—8 a.m.

Discussion of draft Scrapie Certification and Control Plan.

Afternoon session—1 p.m.

Committee Administrative Issues.
Discussion of Future Committee Meeting Agendas.
Public Comments.

The meetings will be open to the public. Public participation at the meetings will be allowed during periods announced at the meeting for this purpose. Anyone who wants to file a written statement with the Committee may do so before, at the time of the meeting, or after the meeting by sending the statement on or before October 26, 1990, to Helene Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to the Scrapie Negotiated Rulemaking Advisory Committee.

This notice of meeting is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92–463).

Done in Washington, DC, this 20th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–22781 Filed 9–25–90; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Sequoia National Forest, Timber Sales; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Hot Springs Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal any decisions related to the salvage of fire-damaged timber within the Stormy 1 analysis area on the Hot Springs Ranger District, Sequoia National Forest. This area includes approximately 1,500 acres of the 24,200 acre Stormy Complex fire. The fire was started by lightning strikes on August 5, 1990. The Forest Service proposes to salvage harvest approximately 15 million board feet (MMBF) of the estimated 27 MMBF of dead and dying timber within this 1,500 acre area. It is expected that approximately 12 MMBF of the dead and dying timber will not be salvaged because of economic, watershed, sensitive plants, and other environmental constraints.

The Stormy 1 analysis area is located approximately 6 air miles southeast of California Hot Springs, California, sections 7, 8, 17, 18, 19, 20, 21, and 28 of T24S, R32E, MDB&M. Terrain is suitable for cable yarding and tractor skidding systems. Some additional temporary access road construction and the reconstruction of some existing roads will be required. No new road construction is proposed. The value and volume of lumber recovered from burned timber declines rapidly as the wood deteriorates. Thus, the prompt removal of affected timber minimizes value loss. If dead timber is not removed promptly, the decline in value caused by deterioration will prevent economical removal.

If not removed in timber salvage operations, excessive numbers of dead trees can lead to heavy fuel concentrations. This compounds future fire suppression difficulty, which in turn increases the risk of further severe watershed disturbance. In some areas ground cover was completely consumed, effectively preparing the ground for the planting of trees. But to be effective in the long term, standing dead and damaged timber must first be removed. If left in place this timber will eventually fall, damaging planted trees and creating barriers to cultural activities such as thinning and weeding. If removal is delayed, the site preparation provided by the fire will be lost due to shrub and herbaceous regrowth, further delaying the time at which a new timber stand can be established.

Prompt timber harvest can replace some ground cover consumed in the fire with logging slash. Harvest activities also create disturbance that helps break up fire-caused "hydrophobic" soils that inhibit water infiltration. The combination of creating ground cover and increasing the ability of soils to absorb water helps to initiate watershed recovery in the shortest time possible.

A decision on the proposed salvage is expected by September 30, 1990. If subsequent projects are delayed because of administrative appeal, it is likely that the onset of winter weather would prevent salvage until the spring of 1991. This delay could cause an estimated loss of 10% of the wood volume to deterioration; and some portions of watershed restoration and reforestation to be delayed by as much as three years.

Pursuant to 36 CFR part 217.4(a)(11), it is my decision to exempt from appeal any decisions relating to the harvest and restoration of lands following fire-induced timber mortality within the Stormy 1 analysis area on the Hot Springs Ranger District, Sequoia National Forest. My decision is conditional upon the Forest Supervisor determining through analysis that there is good cause to proceed with projects to recover value in dead and dying timber and to rehabilitate National Forest lands affected by catastrophic fire.

Environmental documents under preparation will address the effects of the proposed action on the environment, will document appropriate levels of public involvement and will address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or James A. Crates, Forest Supervisor, Sequoia National Forest, 900 West Grand Avenue, Porterville, CA 93257, (209) 784–1500.

ADDITIONAL INFORMATION: Catastrophic damage caused by the Stormy Complex Fire covers approximately 24,200 acres. Within this area, trees containing approximately 150 MMBF of salvable timber, are severly damaged or killed. Selling value of the salvage volume is estimated at 9 million dollars. This does not included the many jobs and thousands of dollars in benefits that are realized in related service, supply and construction industries. An estimated volume of 15 MMBF, valued at approximately $900,000, is practical to salvage within the 1500 acre Stormy 1 analysis area.

A large percentage of the damaged timber in the 24,200 acre Stormy Complex Fire area lies within potential habitat delineations for California spotted owls (*Strix occidentalis occidentalis*) and a sensitive plant species, Shirley Meadow mariposa lily (*Calochortus westoni*). Appropriate surveys to determine the presence of these species cannot be done until the spring of 1991. However, the 1500 acre Stormy 1 analysis area is located outside all potential habitat for spotted owls, and outside most of the potential habitat for the mariposa lily.

Approximately 700 acres of potential mariposa lily habitat are included in the analysis area because they are considered to be critical in terms of watershed rehabilitation. Watershed rehabilitation needs that can be accomplished through either timber sale activities or appropriate cooperative deposits from timber sales will be determined through the analysis. Logging activity will be prohibited in potential habitat areas until a survey for locating existing plant populations is completed. Appropriate protection measures to protect plant populations found during the survey will be specified in the environmental document. Other sensitive plants are known to exist within the 24,200 acre burned area, but their habitat is not present in the Stormy 1 analysis area.

Damaged timber will be harvested using partial cutting and clearcutting prescriptions. Partial cutting will be prescribed where portions of an area have been burned, and there is an opportunity to save and protect the residual unburned and lightly burned trees. Clearcutting will be prescribed in areas burned at such as high intensity that essentially all trees are either dead or expected to die within the next few months. Some logging prescriptions will be designed specifically to meet watershed, wildlife habitat and other resource objectives. All proposed harvest areas are designated as suitable for timber harvest in the Sequoia National Forest Land and Resource Management Plan.

Salvage projects are not expected to adversely affect snag-dependent wildlife species. Snags will be left in numbers sufficient to meet or exceed guidelines stated in the Sequoia National Forest Land and Resource Management Plan. No giant Sequoia groves or threatened or endangered plants or animals are located in the projects areas.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damanged resources within the timber sale project areas during the rest of this field season. These delays would result in significant volume and value losses.

Dated: September 20, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-22760 Filed 9-25-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

[37-6001-581-431]

Oak Hollow Lake, Critical Area Treatment, RC&D Measure North Central Piedmont RC&D Area; Guilford County, NC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Oak Hollow Lake RC&D Measure, Guilford County, North Carolina. For further information contact Mr. Bobbye J. Jones, State Conservationist, 4405 Bland Road, Raleigh, North Carolina 27609; Phone (919) 790–2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing erosion and resulting sedimentation on the Oak Hollow Lake Park. The planned works of improvement include installing gabions, shaping and grading, and the establishment of vegetation. Grading and shaping will be done to fill in behind the gabions. All disturbed areas will be seeded with adapted permanent vegetation.

All construction activity will be carried out in accordance with an approved Sedimentation and Erosion Control Plan which meets the requirements of North Carolina's erosion and sedimentation control laws. The United States Army Corps of Engineers has determined that an individual 404 permit will be required for this project. The sponsors have submitted an application for this permit.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Bobbye J. Jones. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 14, 1990.

Bobbye J. Jones,

State Conservationist.

[FR Doc. 90-22782 Filed 9-25-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Application for Commission in the NOAA Corps.

Form Number: NOAA—85–42, 42A, 42C, 42D; OMB—0648–0047.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 185 respondents; 277 reporting hours; average hours per response—.375 hours.

Needs and Uses: This information collection is used to apply for a commission in the NOAA Corps. The information is used by NOAA to determine the service potential of applicants.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395–3084.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: September 20, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-22755 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Plant and Equipment Expenditures Survey.

Form Number(s): PE–1, PE–2, PE–3, PE–4, PE–4(P), PE–5, PE–5(P), PE–6.

Agency Approval Number: 0607–0041.

Type of Request: Revision of currently approved collection.

Burden: 27,175 hours.

Number of Respondents: 15,000.

Avg Hours Per Response: 42 minutes (avg.).

Needs and Uses: The Bureau of the Census uses the Plant and Equipment Expenditures Survey (P&E) to obtain data quarterly and annually on planned and actual capital spending of nonagricultural business firms. These estimates are one of the most important indicators used by business and public officials in assessing near-term economic activity. These quarterly data will also be collected annually from small companies and from those companies who have not responded to the quarterly forms.

Affected Public: Businesses or other for-profit organizations Non-profit institutions; Small businesses or organizations.

Frequency: PE–1, PE–2, PE–3, PE–4, PE–4(P)—Quarterly. PE–5, PE–5(P), PE–6—Annually.

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Respondent's Obligation: Quarterly forms—Voluntary. Annual forms—Mandatory.
OMB Desk Officer: Marshall Mills, 396–7340.

Copies of the above information collection proposal can be obtained by calling of writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 21, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–22791 Filed 9–25–90; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

Transportation and Related Equipment; Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held October 11, 1990, 9:30 a.m., Herbert C. Hoover Building, room 1629, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of the CORE List.
5. Discussion of the Annual Report.
6. Discussion of the Annual Plan.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 17, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: September 21, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 90–22788 Filed 9–25–90; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–588–055]

Acrylic Sheet From Japan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on acrylic sheet from Japan.

EFFECTIVE DATE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION: On August 2, 1990, the Department of Commerce (the Department published in the **Federal Register** (55 FR 31413) its intent to revoke the antidumping finding on acrylic sheet from Japan (41 FR 36497, August 30, 1976). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We had not received a request for an administrative review of the finding for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)(1990)).

On August 31, 1990, several interested parties objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: September 18, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–22756 Filed 9–25–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–355–001]

Leather Wearing Apparel From Uruguay, Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 23, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Uruguay. We have now completed that review and determine the net subsidy to be *de minimis* for the period January 1, 1988 through December 31, 1988.

EFFECTIVE DATE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 29875) the preliminary results of the administrative review of the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032; July 16, 1982). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. During the period of review, such merchandise was classifiable under items 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under item numbers 4203.10.4030, 4203.10.4060 and 4203.10.4090 of the Harmonized Tariff Schedule. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988, and four programs: (1) Export tax refunds; (2) bonification payments; (3) uncollected social security taxes; and (4) preferential export financing.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be 0.12 percent *ad valorem* during the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1988 and on or before December 31, 1988.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This waiver of deposit requirement shall remain in effect until publication of the final results of the next administrative review

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations (19 CFR 355.22).

Dated: September 19, 1990.

Marjorie A. Chorlins,

Acting Assistance Secretary for Import Administration.

[FR Doc. 90–22724 Filed 9–25–90; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 90–A0007."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 90–00007, which was issued on August 22, 1990 (55 FR 35445, August 30, 1990). The applicant has requested expedited review of the application.

Summary of Application

Applicant: United States Surimi Commission ("USSC") 4300 First Interstate Center, Seattle, Washington 98104–4082; Contact: Mr. Wm. Paul MacGregor, Legal Counsel; Telephone: 206/624–5950.

Application No.: 90–A0007.

Date deemed submitted: September 14, 1990.

Request for amended conduct: USSC seeks to amend its Certificate to:

1. Add "pollock roe" to the "Products" covered by the Certificate.

2. Revise the provisions appearing in Items 1 and 7 of the Export Trade Activities and Methods of Operation of the Certificate to specify that the restrictions imposed by those provisions will not apply to pollock roe.

Dated: September 20, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90–22765 Filed 9–25–90; 8:45 am]

BILLING CODE 3510–DR–M

Short-Supply Review: Certain Continuous Cast Steel Slabs

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain continuous cast steel slabs.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 215,000 net tons of certain continuous cast slabs for the fourth quarter of 1990 through the second quarter of 1991 under Article 8 of the U.S.-EC and U.S.-Brazil Arrangements and Paragraph 8 of the U.S.-Japan Arrangement

Short-Supply Review Number: 24.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990, 55

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FR 1348 ("Commerce's Short-Supply Regulations"), the Secretary hereby announces that a short-supply determination is under review with respect to certain continuous cast slabs for critical exposed applications. On September 18, 1990, the Secretary received an adequate petition from Rouge Steel Company ("Rouge Steel") requesting a short-supply allowance for 215,000 net tons of this product for the fourth quarter of 1990 and the first and second quarters of 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States Concerning Trade in Certain Steel Products, and Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States Concerning Trade in Certain Steel Products.

The requested material meets the following specifications:

1. Continuous cast slab—Class I, Class II, & Class III—Critical exposed material
2. Gauge—7.0 inches to 8.25 inches
3. Length—383 inches
4. Width—38 inches to 63 inches
5. Type—Class I: SAE C-1006 AK, Class II: SAE C-1010 AK, Class III: SAE 940 XF-950 XF

Tolerances:

1. Width: Plus or minus 0.5 inche
2. Thickness: Plus 0.25 inche or minus 0.5 inche
3. Length: Plus or minus 2.0 inches.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than October 18, 1990.

Comments: Interested parties wishing to comment upon this review must send written comments not later than October 3, 1990, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after October 3, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Kathleen McNamara or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-1390 or (202) 377-0159.

Dated: September 20, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-22757 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Public Law 95-202 and DODD 1000.20

In the matter of "Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations With and for the United States Armed Forces Within a Time Frame of December 7, 1941 to August 15, 1945.

Under the provisions of section 401, Public Law 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "Civilian Crewmen of United States Coast and Geodetic Survey Vessels who performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group is to be considered equivalent to active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (AFPC), Washington, DC 20330-1000. Copies of documents or other materials submitted cannot be returned. For further information, contact LtCol Harris, (202) 692-4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-22807 Filed 9-25-90; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Inland Waterways Users Board: Meetings

AGENCY: Department of the Army.

SUBAGENCY: Corps of Engineers.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: October 23, 1990.

Place: Executive Inn, 1 Executive Boulevard, Paducah, KY 42001, (Tel. (502) 443-8000).

Time: 8:30 a.m. to 5 p.m.

Proposed Agenda

A.M. Session

8:30—Registration

Business Session

9—
-Administrative Announcements
-Chairman's Call to Order
-Executive Director's Comments
-Approval of Prior Meeting Minutes

Presentation of Information to the Board

9:20—Trust Fund Analysis
9:45—Trust Fund Disbursements
10:15—Break
10:30—Investment Needs Assessment Phase 2 Results
11:30—Construction Projects Update
12—Lunch

P.M. Session

Ohio River Division Presentations

1—Olmsted Project Development Status and Schedule
2—Olmstead Gate Test at Smithland
2:15—Ohio River System Modernization
2:45—Break
3—Public Comment Period
4:45—Other Business/Instructions to Board Staff
5—Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION, CONTACT: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000 at (202) 272-0146.

Hugh F. Boyd III,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 90-22710 Filed 9-25-90; 8:45 am]

BILLING CODE 3710-03-M

Department of the Navy

Record of Decision for Proposed Developments at Naval Base Pearl Harbor, Oahu, HI

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), the Department of the Navy announces its decision to carry out the construction of various improvements at Naval Base Pearl Harbor, Oahu, Hawaii. The Final Environmental Impact Statement (EIS) providing full disclosure of this action was distributed for public review August 17, 1990. The U.S. Army Corps of Engineers and the U.S. Coast Guard were cooperating agencies in the preparation of the EIS. During preparation of the EIS, it was discovered that properties protected under section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303) will be affected by this section. Therefore, a separate document summarizing the EIS will be submitted with the request for bridge construction permit to comply with section 4(f).

Three major components are included in the action, although each component is functionally independent of the others and could be implemented as a separate action:

(1) A retractable bridge connecting Ford Island to the mainside of Naval Base Pearl Harbor,

(2) Further development of Ford Island, and

(3) Operational and personnel support facilities on Ford Island, Naval Station Pearl Harbor, and Naval Shipyard Pearl Harbor.

The improvements are required to support various activities, including the homeporting of a battleship and two cruisers in response to the Base Closure and Realignment Act (Pub. L. 100-526).

Retractable Floating Bridge

A retractable floating bridge will be constructed to improve access to Ford Island and to serve existing and future missions at Naval Base Pearl Harbor. Development of the mainside Pearl Harbor complex has reached the saturation point, while Ford Island contains 300 acres of open space (out of a total of 450 acres) which are not being used to the fullest possible potential by the Navy. Given improved access, approximately 2,800 feet of ship berthing space and other facilities could be put to more effective use. The slow and inefficient vehicular ferry and passenger boat transportation system presently in operation severely constrains the potential use of Ford Island vacant land and underused facilities.

The bridge will be a 4,100 feet long retractable floating bridge, consisting of a piling supported concrete bridge with a channel to allow passage of large Navy vessels through the retractable span, and a fixed side span of 30 feet vertical clearance and 100 feet horizontal clearance to allow passage for small boats. The bridge will have the following navigational clearances: Horizontal, 100 feet between fenders in the closed position and 650 feet in the open position; vertical, 30 feet above mean high water in the closed position and unlimited clearance in the open position. The Ford Island terminus of the retractable floating bridge would be to the north of the existing housing area, intersecting Saratoga Boulevard; the mainside terminus will be near Halawa Landing, north of the Bowfin Memorial and south of the Navy Marina. This bridge alignment is the environmentally preferred alternative.

Alternatives to the retractable floating bridge included no action, an expanded ferry system, fixed pile bridge without a moveable span, and sunken tube tunnel. Alternative termini on Ford Island for the retractable floating bridge, fixed bridge, and tunnel alternatives included a terminus passing north of the Public Works Center, intersecting the realigned Saratoga Boulevard west of its present junction with Princeton Place, and a terminus passing through the housing area on the east end of the island, intersecting Lexington Boulevard west of the Arizona Memorial. Alternative termini on mainside included the Richardson Recreation Center and McGrew Point.

Further Development of Ford Island

Development of Ford Island will include construction of up to 1200 units of family housing, a Service Craft pier, a Surveillance Towed Array Sensor System (SURTASS) pier and support facilities, fire fighting and damage control trainer facilities, and bachelor enlisted quarters. About 100 acres in the old runway area is available for family housing. An existing runway is currently used as a general aviation practice landing airfield. These general aviation practice exercises will be displaced. Alternatives considered included: No Action (build no new housing and have families find housing elsewhere, either in existing military housing or in the private sector); construct up to 1,200 housing units on Ford Island, which would consist of a mixture of low and mild-rise buildings; and construct about 600 to 700 units on Ford Island and accommodate the remaining units in existing military housing areas, new military housing at other locations, or in the private sector. Alternative sites considered for development in lieu of Ford Island are the Manana storage area and Pearl City Junction, which are the only large tracts of Navy-owned land near Naval Base Pearl Harbor. Another alternative to the development of Ford Island would be increased development on the Naval Station by the building of high-rise structures and more buildings with the concurrent loss of open space and parking.

Operational and Personnel Support Facilities

The following projects will be required to support the homeporting of a battleship and two cruisers in response to Congressional mandate. Support facilities include the upgrading of berth F-5 and construction of a new pier outboard of the existing pier on Ford Island to accommodate the battleship, including new and maintenance dredging (355,000 cubic yards), utilities improvements and shore support facilities; upgrading the fender system at

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Naval Station Wharf Bravo berths B–20 and B–21, and upgrading shore power outlets and electrical distribution at berths B–23 and B–24 to accommodate the two cruisers; new fender systems along berths B–15 to B–18, and upgrading shore power outlets and electrical distribution at berths B–25 and M–3 to support the existing ships displaced by the two cruisers; a 4,800 square foot pre-engineered building at Naval Shipyard Pearl Harbor to store parts for the homeported battleship; a 7,200 square foot addition to the Applied Instruction Building (Building 1377) at the Naval Station to provide additional training and administrative space required for Mobile Technical Unit One; two new buildings at the Naval Station to house transient enlisted personnel, administrative and shop space for the Transient Personnel Unit, and enlisted personnel assigned to the station; a 5,500 square foot addition to the club on Ford Island (Building 88) to house a snack bar, restrooms, and storage; and a Fleet Shoreside Support Center on Ford Island consisting of an amusement center, laundromat, outdoor basketball/volleyball courts, playing fields and racquetball courts. The siting for these facilities represents the environmentally preferred alternative.

Alternatives to these proposed operational and personnel support facilities include postponing the action and using other locations for specific projects. In accordance with provisions of the Base Closure and Realignment Act of 1988, the No Action alternative was not considered.

The following is a summary of the mitigative measures that will be taken during implementation of this action:

(1) Minimize noise, dust, and erosion impacts by incorporating best management practices.

(2) Upgrade sewage force mains and the Fort Kamehameha sewage treatment plant.

(3) Retain mature trees in the area of Pier F–5 to provide screening for the U.S.S. Arizona Memorial.

(4) Limit building heights to that of existing buildings on Ford Island.

(5) Provide visual screening/landscaping at the U.S.S. Bowfin Park.

(6) Install Coast Guard approved warning lights on the bridge.

(7) Replace small boat moorings that are displaced by bridge construction.

(8) Construct additional through and turning lanes on Kamehameha Highway, in cooperation with the State and City of Honolulu Departments of Transportation.

(9) Reconfigure Salt Lake Boulevard in cooperation with Hawaii DOT.

(10) Establish bridge operating procedures which provide for opening the bridge only during non-peak traffic hours, except for emergencies.

(11) Perform air quality monitoring at Richardson Recreation Center and move the child care center, if necessary, to reduce cumulative air quality impacts.

(12) Provide alternative means of mass transportation, such as a personnel boat shuttle, from Ford Island to mainside.

The Navy will continue a strong commitment to implement hazardous materials contingency plans, if necessary, and conduct all project activities located in contaminated areas in a manner that will ensure protection of human health and the environment.

The Environmental Protection Agency (EPA) has requested the Navy to coordinate with the Army Corps of Engineers (COE) to conduct supplemental studies to better quantify sediment characteristics in the area proposed to be dredged. Navy agrees with the request and will coordinate with COE/EPA to conduct the additional necessary sampling and analysis to support the proposed dredging and open ocean disposal. No dredging actions addressed for this Record of Decision will occur until these studies have been completed and until the regulatory agencies have approved the dredging and disposal actions. This, however, does not affect the Navy ability to proceed with the remainder of the action included in this Record of Decision.

Dated: September 20, 1990.

Jacqueline E. Schafer,

Assistant Secretary of the Navy (Installation and Environment).

Dated: September 21, 1990.

Saundra K. Melancon,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–22792 Filed 9–25–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 26, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: September 20, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Student Aid Report.
Frequency: Annually.
Affected Public: Individuals or households; businesses or other for profit; small businesses or organizations.
Reporting Burden:
Responses: 11,760,461.
Burden Hours: 1,607,106.
Recordkeeping Burdens:
Recordkeepers: 7,300.
Burden Hours: 505,647.

Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by eligible students to the participating institution of their choice. The institution submits part 3 of the SAR to the Department to receive funds for the applicant.

Office of Educational Research and Improvement

Type of Review: New.
Title: Application for the Educational Research Program.
Frequency: Annually.
Affected Public: Individuals or households; state or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 400.
Burden Hours: 11,200.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This form will be used by public or private organizations, individuals or institutions of higher learning to apply for funding under the Educational Research Program. The Department uses the information to make grant awards.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Study of the Elementary and Secondary Education Act Title VII Bilingual Education Personnel Training Program.
Frequency: One time only.
Affected Public: Individuals or households; non-profit institutions.
Reporting Burden:
Responses: 3,152.
Burden Hours: 1,709.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This study will collect descriptive information on title VII funded college and university education personnel training programs. The Department will use this information to assess the accomplishments of project goals and objectives and to aid in effective program management.

[FR Doc. 90–22723 Filed 9–25–90; 8:45 am]

BILLING CODE 4000–01–M

Office of Vocational and Adult Education

Intent To Award Grantback; California; Correction

AGENCY: Department of Education.

ACTION: Correction—notice of intent to award grantback of funds to the California state Department of Education as a result of final audit determination.

SUMMARY: On August 30, 1990 in 55 FR 35451, the notice of intent to award grantback of funds to the California State Department of Education was published. This notice corrects the several errors that appeared in that notice to read as follows:

(1) **DATES:** All comments must be received by September 29, 1990. On September 29th, comments may be hand delivered between the hours of 8 a.m. and 4:30 p.m. to James Jankowski, Switzer Building, room 4318, 300 C Street, SW., Washington, DC. Telephone: (202) 732–2423. Or, comments may be telefaxed to: (202) 732–3867.

(2) In column three, paragraph (ii) heading, the word "audit" should be changed to "Adult"; in lines six and nine, the word "audit" should be changed to "Adult".

(3) On page 35452, column one, paragraph two, the amount of money should read $40,693.

FOR FURTHER INFORMATION CONTACT: Dr. Marcel R. DeVall, (202) 732–2402; Dr. Carroll F. Towey, (202) 732–2391.

Dated: September 20, 1990.

(Catalog of Federal Domestic Assistance Number 84.048, Basic Grants for Vocational Education and Adult Education Catalog Number 84.002, State-Administered Basic Grant Program)

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 90–22741 Filed 9–25–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Invention Available for License

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of invention available for license.

SUMMARY: The Department of Energy hereby announces that U.S. Patent No. 4,878,442, entitled "NO_x Control for High Nitric Oxide Concentration Flows Through Combustion-Driven Reduction" is available for license, in accordance with 35 U.S.C. 207–209. A copy of the patent may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances provided that notice of the invention's availability for license has been announced in the Federal Register.

Issued in Washington, DC, on September 20, 1990.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 90–23004 Filed 9–25–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–71–NG]

Petro-Canada Hydrocarbons Inc.; Application To Extend Blanket Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office Of Fossil Energy.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on August 17, 1990, and amended August 22, 1990, by Petro-Canada Hydrocarbons Inc. (PCH) requesting to extend its blanket authorization to import Canadian natural gas for short-term sales to customers in the United States. Authorization is requested to import up to 150 Bcf of Canadian natural gas over a two-year period beginning March 4, 1991, the date PCH's present authority expires, through March 3, 1993.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the

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address listed below no later than 4:30 p.m., e.d.t., October 26, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: PCH, a wholly-owned subsidiary of Petro-Canada Inc. (PCI), is currently authorized by DOE/FE Opinion and Order 366 (Order 366) (1 FE 70,247), issued September 28, 1989, in FE Docket No. 89–30–NG, to import up to 75 Bcf of natural gas from Canada for one year beginning March 4, 1990, through March 3, 1991. The gas would continue to be supplied by PCI or such supply sources as may become available and sold by PCH on a short-term or spot basis to local gas distribution companies, natural gas pipelines, and direct sales customers in California, the Pacific Northwest, the Middle West, and other areas in the U.S. as market opportunities develop. PCH will act either as agent of PCI or will itself resell gas it has purchased. The specific terms of each import and sale would continue to be responsive to competitive market forces in the United States domestic gas market.

PCH intends to use existing facilities for the transportation of the natural gas. PCH would continue to file reports with FE within 30 days after the end of each calendar quarter giving the details of individual transactions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on these regulatory and policy considerations. The applicant asserts that the proposed imports will make competitively priced gas available to U.S markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PCH's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 20, 1990.

Clifford P. Tomaszewski,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–22805 Filed 9–25–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–54–NG]

Trans Marketing Houston, Inc., Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Trans Marketing Houston, Inc. (Trans Marketing) blanket authorization to import and export up to an aggregate of 100 Bcf of natural gas, including liquefied natural gas, over a two-year period beginning with the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–22806 Filed 9–25–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3835–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden.

DATES: Comments must be submitted on or before October 26, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Toxic Substances

Title: Toxic Chemical Release Inventory Reporting Form R and Petitions for Listing/Delisting (EPA ICR #1363.03; OMB #2070–0093). This ICR requests renewal of the existing clearance.

Abstract: This information collection combines two previously separate ICRs: the Toxic Chemical Release Inventory Reporting Form R (EPA #1363.02, OMB #2070–0093), and the Toxic Chemical Release Inventory Petitions (EPA #1357, OMB #2070–0090). In addition, this ICR is also being used for the "Sunset Rulemaking", which would make permanent two sections on Reporting Form R that would otherwise lapse after the 1989 reporting year: the range reporting option in section 5.A.1, and the optional waste minimization questions in section 6.

Under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), Form R must be used by owners and operators of certain facilities that manufacture, import, process or otherwise use listed toxic chemicals to annually report their releases of those chemicals to each environmental medium. These reports will provide the public with information about possible chemical hazards in their communities, and thereby encourage planning for response to chemical accidents. It will also be used by local, state and Federal authorities as a data source for regulatory and oversight activities.

Finally, with respect to the petitions, anyone may petition to add or delete a chemical from the list of toxic chemicals subject to annual reporting on Form R. EPA will use the information supplied in the petition to evaluate the need to add or delete the chemical.

Burden Statement: The annual burden of reporting on Form R is 117 hours per facility for those not required to comply with supplier notification. Given an average of 4 reports per facility, this is a burden of approximately 29 hours per report. For facilities with supplier notification, the annual burden is 135 hours per facility, or 34 hours per report. The public reporting burden for submitting a petition is estimated to average 138 hours per response, including time for reviewing the guidance document, conducting literature searches, analyzing the information, and writing and reviewing the petition.

Respondents: Owners or operators of facilities that have 10 or more full-time employees and manufacture or process more than 25,000 pounds or otherwise use more than 10,000 pounds of a listed toxic chemical, and are in Standard Industrial Classification (SIC) codes 20–39; public interest groups, or anyone else concerned about adding or deleting a chemical from the list.

Estimated Number of Respondents: 147,800.

Estimated Total Annual Burden on Respondents: 3,872,500.

Frequency of Collection: Annually for Form R, once per petition.

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460,

and

Timothy Hunt, Office of Management and Budget, Office of Management and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503, Telephone: (202) 395–3084.

Dated: September 20, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90–22777 Filed 9–25–90; 8:45 am]

BILLING CODE 6560–50–M

[ECAO–RTP–0804; FRL–3834–6]

Inhalation Reference Concentrations Methodology Draft

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of External Review Draft.

SUMMARY: This notice announces the availability of an external review draft of "Interim Methods for Development of Inhalation Reference Concentrations," prepared by the EPA's Environmental Criteria and Assessment Office of the Office of Health and Environmental Assessment.

DATES: The Agency will make the external review draft available for public review and comment on or about October 5, 1990. Comments must be in writing and postmarked by December 12, 1990.

ADDRESSES: To obtain a copy of the external review draft, interested parties should contact the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, or telephone (513) 569–7562 [FTS 684–7562] and request the external review draft of the "Interim Methods for Development of Inhalation Reference Concentrations." Please provide your name, mailing address, and the EPA document number, EPA/600/8–90/066A.

The external review draft will also be available for public inspection and copying at the EPA Library, EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC.

Comments on the external review draft should be sent to the Project Manager for Inhalation RfC Methodology, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541–4847, (FTS) 629–4847, [FAX] (919) 541–5078, (FTS) 629–5078.

FOR FURTHER INFORMATION CONTACT: Ms. Annie Jarabek, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: An inhalation reference concentration (RfC) is an estimate (with uncertainty spanning perhaps an order of magnitude) of continuous exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. The purpose of the inhalation RfC methodology set forth in the "Interim Methods for

Development of Inhalation Reference Concentrations" is to develop regulatory benchmarks for use in determining negligible and residual risk for non-cancer health of air toxics under the pending Clean Air Act Amendments

The document will be reviewed by EPA's Science Advisory Board (SAB) in a public meeting. The date and location of the SAB meeting will be announced in a subsequent **Federal Register** notice.

Dated: September 18, 1990.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 90-22778 Filed 9-25-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00293; FRL-3802-1]

Pesticidal Transgenic Plants; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: There will be a 2-day conference for the purpose of discussing potential risk assessment issues during the development, field testing, and commercialization of pesticidal transgenic plants. Experts will make presentations on various aspects of this subject followed by general discussion periods. The conference will be open to the public.

DATES: The conference will be held on Tuesday, November 6, 1990, from 8:30 a.m. to 5:30 p.m. and Wednesday, November 7, 1990, from 8:30 a.m. to 1 p.m. The deadline for registration is October 22, 1990.

ADDRESSES: The conference will be held at the: Annapolis Waterfront Hotel, 80 Compromise St., Annapolis, MD 21401, (301) 268-7555.

FOR FURTHER INFORMATION CONTACT: Pat Kottmann, Eastern Research Group, Inc., 6 Whittemore St., Arlington, MA, 02174, (617) 641-5341.

SUPPLEMENTARY INFORMATION: The conference will consist of three sessions covering the following topics: (1) The development and commercialization of pesticidal transgenic plants as products, (2) potential risk assessment issues, and (3) data needs for risk assessment. Each session will include presentations given by experts from EPA, academia, public interest groups, and industry. At the end of each session there will be an open discussion of the presentations given during the session. Through this exchange EPA is seeking information, not consensus advice, recommendation, or resolution of the issues raised.

Interested persons should contact Pat Kottmann for registration information at the telephone listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 20, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs

[FR Doc. 90-22771 Filed 9-25-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50710; FRL-3799-8]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale field testing of a nonindigenous strain of *Bacillus thuringiensis* from the E.I. duPont deNemours and Company, Inc.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-2690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the E.I. duPont deNemours and Company, Inc. of Wilmington, Delaware. The purpose of the proposed testing is to evaluate the efficacy of the nonindigenous *Bacillus thuringiensis* strain towards lepidopterous and coleopterous insect pests of vegetables. The field tests are to take place in California, Delaware, Florida, and Texas for a combined acreage not to exceed 2.0 acres. Following the review of the application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: August 30, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-22772; Filed 9-25-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL RESERVE SYSTEM

Bartow Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a

hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Bartow Bancshares, Inc.*, Cartersville, Georgia; to engage *de novo* through its subsidiary, New South Finance, Inc., Cartersville, Georgia, in making, acquiring, and servicing loans or other extensions of credit for its own account and for the account of others, pursuant to § 225.25(b)(1); and engage in insurance agency and underwriting activities pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peotone Bancorp, Inc.*, Peotone, Illinois; to engage *de novo* through its subsidiary, Rock River Bancorporation, Inc., Oregon, Illinois, in providing general insurance agency services in a town with a population of less than 5,000 pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Oregon, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *C & L Investment Co.*, Miller, South Dakota; to engage in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22752 Filed 9-25-90; 8:45 am]

BILLING CODE 6210-01-M

Charles H. Dutcher, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 10, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charles H. Dutcher*, Wichita, Kansas; to acquire 100 percent of the Class A voting common, and Sidney L. Sanders, Hutchinson, Kansas, to acquire an additional 20.63 percent of the voting common shares of Yoder Bankshares, Inc., Yoder, Kansas, and thereby indirectly acquire Farmers State Bank, Yoder, Kansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Richard Barsness*, Debra Holmes, and Robert Barsness, Prior Lake, Minnesota; to acquire an additional 52.2 percent of the voting shares of Norlo, Inc., Prior Lake, Minnesota, for a total of 100 percent, and thereby indirectly acquire Prior Lake State Bank, Prior Lake, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texarkana National Bancshares Employee Stock Ownership Stock Bonus Plan*, Texarkana, Texas; to acquire 15.39 percent of the voting shares of Texarkana National Bancshares, Inc., Texarkana, Texas, and thereby indirectly acquire The Texarkana National Bank, Texarkana, Texas.

Board of Governors of the Federal Reserve System, September 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22753 Filed 9-25-90; 8:45 am]

BILLING CODE 6210-01-M

Eurocapital, S.A., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 16, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Eurocapital, S.A.*, Madrid, Spain, and Banco Europeo de Finanzas, S.A., Madrid, Spain; to become bank holding companies by acquiring 65 percent of the voting shares of First Community Trust Company, San Juan, Puerto Rico.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Summit Bancorp*, Akron, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Summit Bank, Akron, Ohio, a *de novo* institution.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Anderson Brothers Bancshares, Inc.*, Mullins, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Anderson Brothers Bank, Mullins, South Carolina.

D. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *C&S/Sovran Corporation*, Atlanta, Georgia, formerly Avantor Financial Corporation; to acquire 100 percent of the voting shares of First Federal Savings Bank of Brunswick, Brunswick, Georgia. First Interim Bank of Brunswick, Brunswick, Georgia, will be the successor by conversion to First

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Federal Savings Bank of Brunswick, Brunswick, Georgia. First Interim Bank will be the surviving entity of a phantom merger transaction and will operate under the name The Citizens and Southern Bank of Glynn County, Brunswick, Georgia.

E. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FSB Bancorp, Inc.*, Pound, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank of Pound, Pound, Wisconsin.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *WNB Bancshares, Inc.*, Odessa, Texas; to merge with Kermit Financial Corporation, Kermit, Texas, and thereby indirectly acquire First National Bank of Kermit, Kermit, Texas.

G. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *CELCO Enterprises Incorporated*, Eugene, Oregon; to become a bank holding company by acquiring 98.64 percent of the voting shares of Liberty Savings Bank, Eugene, Oregon, as a result of the conversion of its subsidiary, Liberty Savings and Loan Association, Eugene, Oregon, to an Oregon state chartered savings bank to be called Liberty Savings Bank.

Board of Governors of the Federal Reserve System, September 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22754 Filed 9-25-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: NEW ORLEANS DISTRICT OFFICE, chaired by Robert O. Bartz, District Director. The topics to be discussed are food labeling proposals.

DATES: Thursday, October 4, 1990, 1 p.m.

ADDRESSES: Handsboro Arts Center, 1028 Cowan Rd., Gulfport, MS 39507.

FOR FURTHER INFORMATION CONTACT: Eileen P. Angelico, Consumer Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Avenue, New Orleans, LA. 70122, 504-589-2420.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 21, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22802 Filed 9-25-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement and Proposed Special Consideration for Grants for Geriatric Education Centers

The Health Resources and Services Administration (HRSA) announces the acceptance of applications for fiscal year (FY) 1991, Grants for Geriatric Education Centers under the authority of section 789(a) of the Public Health Service Act, as amended by Public Law 100-607. Applications will also be accepted under the authority of section 301 in the event that funds under this authority become available. Comments are being invited on the proposed special consideration stated below.

The Administration's budget request for fiscal year 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 789(a) of the PHS Act authorizes the award of grants to accredited health professions schools as defined by section 701(4), or programs for the training of physician assistants as defined by section 701(8), or schools of allied health as defined in section 701(10). Applicants conducting projects to be administered in other types of public or nonprofit private entities may be considered for geriatric education center grants under section 301 of the PHS Act. Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, or the Federated States of Micronesia.

Grants may be awarded to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), are established to facilitate training of medical, dental, optometric, pharmacy, podiatric, nursing, clinical psychology, health administration and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged.

Projects supported under these grants may address any combination of the statutory purposes listed below:

(a) Improve the training of health professionals in geriatrics;
(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;
(c) Expand and strengthen instruction in methods of such treatment;
(d) Support the training and retraining of faculty to provide such instruction;
(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and
(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Grant supported projects may be designed to accomplish the statutory purposes in a variety of ways, emphasizing multidisciplinary, as well as discipline-specific, approaches to the development of geriatric education resources. For example:

- Health professions schools within a single academic health center, or a consortium of several educational institutions, may share their educational resources and expertise through a Geriatric Education Center to extend a broad range of multidisciplinary educational services outward to other institutions, faculty, facilities and practitioners within a geographic area defined by the applicant.
- Educational institutions that have limited geriatric education resources and which traditionally have had linkages to a geographic area where substantial geriatric education needs exist, may seek to establish a geriatric education center. Such a center could be designed to enhance and expand the capability of collaborating professional schools to provide geriatric education resources in the geographic area in need.
- Projects may support the development of Geriatric Education Centers designed to focus on multidisciplinary geriatric education emphasizing high priority services and high risk groups among the elderly, minority aging, or other special concerns.

Review Criteria

The following criteria will be considered in the review of applications:

(1) The degree to which the proposed project adequately provides for the project requirements described in 42 CFR 57.4004;
(2) The extent to which the rationale and specific objectives of the project are based upon a needs assessment of the status of geriatrics training in the institutions to be assisted and/or the geographic area to be served;
(3) The ability of the project to achieve the project objectives within the proposed geographic area;
(4) The adequacy of educational facilities and clinical training settings to accomplish objectives;
(5) The adequacy of organizational arrangements involving professional schools and other organizations necessary to carry out the project;
(6) The adequacy of the qualifications and experience in geriatrics of the project director, staff and faculty;
(7) The administrative and managerial ability of the applicant to carry out the proposed project in a cost-effective manner, and;
(8) The potential of the project to continue on a self-sustaining basis.

The following mechanisms may be applied in determining the funding of approved applications:

(1) Funding preference—funding of a specific category or group of approved applications ahead of other categories of groups of applications, such as competing continuations ahead of new projects.
(2) Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.
(3) Special Consideration—enhancement of priority scores by individual merit reviewers of approved applications which address special areas of concern. Special consideration will be given when the special area being addressed is a matter of subjective professional judgment and generally not amenable to the application of a funding priority.

Funding Preference and Funding Priorities for Fiscal Year 1991

The following funding preference and funding priorities will be used in FY 1991. This funding preference and these funding priorities were implemented in FY 1989 after public comment and are extended in FY 1991.

Funding Preference

In determining the order of funding of competing applications which have been recommended for approval, a funding preference will be given to approved applications for projects which will offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine.

Funding Priorities

A funding priority will be given to:

1. Applications which identify minority faculty or scholars with expertise in minority aging who will have substantial roles in carrying out the project. (Only individuals already employed or recruited may be included.)
2. Applications which document formal linkages with predominantly minority educational institutions or health facilities for the purpose of carrying out specific aspects of the project. (Formal linkages may include subcontracts, clinical teaching affiliations, letters of understanding, etc.)
3. Applications proposing to provide for a high degree of areawide collaboration.

Proposed Special Consideration for Fiscal Year 1991

It is proposed to give special consideration to applications which provide didactic and clinical training experience concerning geriatric rehabilitation.

Considerable potential exists for improving the care of older persons as a result of closer cooperation between geriatrics and rehabilitation, areas of education and professional practice that do not ordinarily interact with one another despite common concerns and similar approaches to patient care (e.g., using multidisciplinary teams of health professionals for assessment, care planning, case management and treatment). Health professionals' ability to provide appropriate and effective care would be strengthened by integrating relevant advances in rehabilitation knowledge and skills into education and training programs for geriatric personnel.

Interested persons are invited to comment on the proposed special consideration. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the fiscal year 1991 award cycle, this comment period has been reduced to 30 days. All comments received on or before October 26, 1990 will be considered before the final special consideration is established. No funds will be allocated or final selections made until a final notice is published stating whether the final special consideration will be applied.

Written comments should be addressed to: Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8-101, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal Holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Questions concerning the programmatic aspects of grants should be directed to Chief, Geriatric Education Section, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8-103, Rockville, Maryland 20857, Telephone: (301) 443-6887.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Office (D-31), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-28, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be returned to the Grants Management office at the above address.

The standard application, form PHS 6025-1 HRSA Competing Training Grant Application, General Instructions and supplement for this program, have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060

The application deadline is December 10, 1990. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or
2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.969 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 23, 1990.
Robert G. Harmon,
Administrator.
[FR Doc. 90-22780 Filed 9-25-90; 8:45 am]
BILLING CODE 4160-15-M

Program Announcement for Nurse Anesthetist Traineeship Grants

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1991 Nurse Anesthetist Traineeship Grants will be accepted under the authority of section 831(a) of the Public Health Service Act, as amended. Applicants must also meet the requirements of the final regulations of 42 CFR part 57 subpart F.

The Administration's budget request for FY 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 831(a) of the Public Health Service Act, as amended, authorizes grants for traineeships to prepare licensed, registered nurses to become nurse anesthetists and for projects to develop and operate programs for the education of nurse anesthetists.

This announcement under section 831(a) is limited to traineeship assistance.

To be eligible to receive support, an applicant must be a public or private nonprofit institution located in a state which provides registered nurses with full-time nurse anesthetist training. The training program must be accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs and must currently have full-time students who are registered nurses enrolled beyond the 12th month of study in the nurse anesthetist training program.

Review Criteria

To receive support, applicants must meet the requirements of final regulations in 42 CFR part 57, subpart F as specified below. The review of applications will take into consideration the following criteria:

(a) The qualifications of the Program Director;

(b) The number of full-time registered nurse students enrolled in the program who have completed 12 months of study; and

(c) The level of student support for nurse anesthetist training provided by the applicant.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

Funding Preference for Fiscal Year 1991

The Department notes that all eligible applications will be reviewed and given consideration for funding.

In determining the funding of applicants which have been recommended for approval, preference will be given to applications which satisfactorily demonstrate a commitment to increased enrollment and retention of minority students in their programs or show evidence of efforts to recruit minority students. This preference accords applicants an additional stipend amount.

This funding preference was implemented in 1989 after public comment and is being extended in FY 1991.

In determining the amount of the grant award, the Department will use the formula specified in § 57.506 of the governing regulations for this program. These regulations are included in the grant application kit.

The completed application must be submitted by November 1, 1990. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

For specific guidelines and information regarding this program contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-5763.

Requests for application materials, questions regarding grants policy and completed applications should be directed to: Grants Management Officer (A-22), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6857.

The standard application from PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 13.124 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 27, 1990.
Robert G. Harmon,
Administrator.
[FR Doc. 90-22749 Filed 9-25-90; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-00-4410-02-2411]

Boise District Advisory Council; Meetings

AGENCY: Boise District Bureau of Land Management Meetings, Department of Interior.

ACTION: Notice of meeting.

SUMMARY: The Boise District Advisory Council will meet October 10 to tour and discuss a proposed new county park facility near the Snake River Birds of Prey. The meeting is open to the public and a comment period will be held at 3 p.m.

DATES: The meeting will begin at 7:30 a.m. on Wednesday, October 10. A field tour to the proposed park site will be conducted from 7:30 a.m. to 11:30 a.m. An office meeting will be held from 1 p.m. to 5 p.m. in the district office conference room.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho, 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise District, BLM, 208-384-3393.

Dated: September 14, 1990.
J. David Brunner,
District Manager.
[FR Doc. 90-22718 Filed 9-25-90; 8:45 am]
BILLING CODE 4310-GG-M

Fish and Wildlife Service

Notice of Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 750579

Applicant: The Peregrine Fund, Inc., Boise, ID.

The applicant requests a permit to import four wild-caught Harpy eagles (*Harpia harpyja*) from the Consejo Ecuatoriano Para La Estudio Y Conservacion De Las Aves, Quiro, Ecuador, for captive propagation purposes.

PRT 750578

Applicant: The Peregrine Fund, Inc., Boise, ID.

The applicant requests a permit to import four wild-caught Harpy eagles (*Harpia harpyja*) from the Guyana Zoo, Georgetown, Guyana, for captive propagation purposes.

PRT 752357

Applicant: Ringling Bros.-Barnum & Bailey Circus, Vienna, VA.

The applicant requests a permit to import four female and five male captive-bred tigers (*Panthera tigris*) from Clubb-Chipperfield Ltd., United Kingdom, for circus performances in the U.S. during which the applicant intends to educate the public with regard to the tigers' ecological role and conservation needs.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 433, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: September 21, 1990.
Karen Willson,
Acting Chief, Branch of Permits, U.S. Office of Management Authority.
[FR Doc. 90-22784 Filed 9-25-90; 8:45 am]
BILLING CODE 4310-55-M

Issuance of Permit for Marine Mammals

On July 11, 1990, a notice was published in the **Federal Register** (Vol. 55 FR 133) that an application had been filed with the Fish and Wildlife Service by U.S. Fish and Wildlife Service, Alaska Fish and Wildlife Research Center (PRT# 750916) for a permit to allow take of sea otters (*Enhydra lutris*) for a study assessing physiological and genetic damage from chronic exposure to oil in the environment.

Notice is hereby given that on September 7, 1990, as authorized by the Marine Mammal Protection Act of 1972 (16 USC 1361-1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Office of Management Authority, 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203.

Dated: September 21, 1990.
Karen Willson,
Acting Chief, Branch of Permits, Office of Management Authority.
[FR Doc. 90-22785 Filed 9-25-90; 8:45 am]
BILLING CODE 4310-55-M

National Park Service

Jimmy Carter National Historic Site Advisory Committee; Meetings

AGENCY: Interior, National Park Service, Jimmy Carter National National Historic Site.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 1 p.m. at the following location and date.

DATE: November 8, 1990.

ADDRESSES: The University of Georgia, Agricultural Experiment Station, Meeting Room, Highway 280, Plains, Georgia 31780.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1, Box 85, Andersonville, Georgia 31711.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Professor Stephen Hochman, Professor James S. Young, Professor Donald B. Schewe, Dr. Henry King Stanford, Professor James David Barber, Director, National Park Service, Ex-Officio Member.

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: September 17, 1990.
C.W. Ogle,
Regional Director, Southeast Region.
[FR Doc. 90-22784 Filed 9-25-90; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 431 (Sub-No. 2)]

Review of the General Purpose Costing System

AGENCY: Interstate Commerce Commission.

ACTION: Request for Comments and Replies.

SUMMARY: By decision in Ex Parte No. 431 (Sub-No. 2), (not printed), served January 11, 1990, the Commission sought comment on the scope and proposed schedule for review of its general purpose costing system. The review is being conducted in accordance with the Railroad Accounting Principles Board's recommendation that the Commission's general purpose costing system be reviewed not less than every three years. After considering the comments, the Commission has decided to expand the scope and time schedule of the proceeding. Comments will be taken on (1) aggregation of accounts; (2) treatment of data for merged railroads; (3) econometric and statistical issues, including, but not limited to, evaluation of the underlying regressions, treatment of data for railroads that are statistical outliers, and review and correction of the data base; (4) evidence of whether general purpose costs might be improved or validated by engineering studies or other non-regression data; and (5) the proper time horizon for

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determining the extent to which capacity-related costs are fixed rather than variable.

DATES: Interim Progress Reports due: April 1, 1991.

Initial Statements due: August 14, 1991.

Replies due: December 18, 1991.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354 H. Jeff Warren (202) 275-7735 [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD Services at (202) 275-1721.]

This action will not significantly affect the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10705(a), and 10709.

Decided: September 14, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-22803 Filed 9-25-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6; Sub-No. 361X]

CSX Transportation, Inc.—Abandonment Exemption—In Orange County, IN

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.74-mile line of railroad (known as the French Lick Branch) between mileposts 0.00 and 0.17, and between mileposts D-0.02 and D-1.59, at Orleans, Orange County, IN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 26, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 9, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 16, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 1, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 13, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-22697 Filed 9-25-90; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

White House Conference Advisory Committee; Meeting

Date and time: Oct. 15th 1990 9 a.m. to 9 p.m.; Oct. 19th 1990 10:45 a.m. to 4 p.m.

Place: Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036, Ph. 1 202 483-6000. White House Conference Advisory Committee (WHCAC) in Embassy room A. Subcommittee meeting rooms to be announced at the meeting.

Status: All meetings are Open.

Matters to be Discussed: White House Conference on Library and Information Services (WHCLIS). Advisory Committee meeting:

Oct. 15, 1990

—9-11:45 a.m.
—Presentation of plans for the White House Conference on Library and Information Services.
—11:45 a.m.-Noon
—Meeting of Subcommittee Chairs.
-Noon-1 p.m. (Working Lunch)
—National Conference Program Planning.
—1:15-2 p.m.
—Task Group Meetings.
—2-5 p.m.
—Subcommittee Meetings.
—5:10-7 p.m.
—Field Tour for WHCAC Members.
—7:30-9 p.m. (Working Dinner).

Oct. 16, 1990

—8:30-11 a.m.
—Field Tour for WHCAC Members.
—11 a.m.-12:30 p.m.
—WHCAC Chairman's Report.
—Presentation of FY 1991 Spending Plan for WHCLIS.
—12:30-2:30 p.m. (Working Lunch)
—WHCAC Subcommittee Reports.
—2:30-3 p.m.
—Public Comment Time.
—3-4 p.m.

—Future Meeting Dates.
—WHCLIST Update.
—Old and New Business.
—4 p.m.
—Adjourn.

Persons appearing before, or submitting only written statements to the Advisory Committee, are asked to hand over to the Committee prior to presenting testimony, 80 copies of their prepared statement. This will insure that ample copies are available for the members of the Advisory Committee, the attending press and the observers.

To request further information or to make special arrangements for handicapped individuals, contact Mark Scully (1 202) 254-5100, no later than one week in advance of the meeting.

Dated: September 20, 1990.

Mary Alice Hedge Rezsetar,

Designated Federal Official for WHCAC.

[FR Doc. 90-22733 Filed 9-25-90; 8:45 am]

BILLING CODE 7527-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Computation Research; Meeting

The National Science Foundation announces the following meeting:

Name: advisory Committee for Computer and Computation Research.

Date: October 10-12, 1990.

Place: St. James Hotel, Boardroom, 950 24th St., NW., Washington, DC.

Type of Meeting: Closed—10/10/90-8:30-5 pm; Open—10/11/90-8:30 am-5 pm; 10/12/90-9 am-2:30 pm.

Contact Person: Richard A. DeMillo, Director, Division of Computer and Computation Research, room 304, National Science Foundation, 1800 G St., NW, Washington, DC 20550, telephone: (202) 357-9747, email: Rdemillo.note.nsf.gov. Anyone planning to attend the open portion of this meeting should notify Dr. DeMillo no later than October 5, 1990.

Summary Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To carry out the Committee of Visitors review of the Division and to provide advice and recommendations concerning support of Computer Research.

AGENDA:

October 10, 1990

Closed—8:30-5 pm; The Committee of Visitors will be reviewing the following Programs: Computer and Computation Theory, Numeric and Symbolic Computation, Computer Systems Architecture, Software Systems and Software Engineering which includes examination of proposals, reviewer comments, and other privileged material.

October 11, 1990

8:30-11 am—Welcome and Opening Remarks;
11 am-1:30 pm—Reports of the Oversight Committee;
1:30-3:30 pm—Reports of the Subcommittees, Software Research Issues, Symbolic Computation, Post Doctoral Awards;
3:30-5 pm—Reports on Special Projects, Research Agenda for Software Engineering, Software Artifact Research, National Computer Research Conference.

October 12, 1990

9-11:30 am—Educational Issues at NSF, View from the Foundation, View from CISE, Open Discussion;
11:30am-12—New Business, Discussion of New Advisory Committee Projects, Formation of New Subcommittees, Planning for Next Meeting;
12-1:30 pm—Working Lunch to plan report to CISE AD;
1:30-2:30 pm—Meeting with CISE AD.

Reason for Closing: The COV review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed and predecisional intra-agency records not available by law. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: September 20, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-22726 Filed 9-25-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* Information Notice, "Notification of Mishaps Involving Low-Level Radioactive Waste Forms Prepared for Disposal"

3. *The form number if applicable:* Not applicable.

4. *However often the collection is required:* Reports are made only when the licensee or waste processor experiences a mishap that is reportable under the guidelines described in the Information Notice.

5. *Who will be required or asked to report:* Nuclear power reactor licensees, waste processors, and part 61 licensees.

6. *An estimate of the number of responses:* Approximately 40 responses are expected annually.

7. *An estimate of the total number of hours needed to complete the requirement of request:* 320 (8 hours per response).

8. *An indication of whether section 3504(h), Public Law 96-511 applies:* Not applicable.

9. *Abstract:* The Information Notice encourages voluntary reporting of waste form mishaps. This Information Notice is part of NRC's program to assure that Class B and C low-level radioactive waste forms meet 10 CFR § 61.56 requirements. The Information Notice encourages licenses and waste processors to notify NRC within 30 days after knowledge of the mishap.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document room, 2120 L Street, NW (Lower Level), Washington, DC

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minisk, Paperwork Reduction Project, (3150-), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 19th day of September 1990.

For the Nuclear Regulatory Commission.

George H. Messenger,

Designated Senior Official for Information Resources Management.

[FR Doc. 22768 Filed 9-25-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power

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Station, Unit No. 1 located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS's) relating to incorporation of ASME section III, 1971 Edition, code requirements for the Main Steam Safety Valves' (MSSV's) setpoints versus citing specific setpoints for each of the MSSVs in accordance with Toledo Edison Company's application dated March 4, 1988 and supplemented by letters dated May 4 and December 6, 1988. Specifically, the proposed amendment would:

(1) Revise the Technical Specification Basis 3/4.7.1.1 to reflect the ASME section III, 1971 Edition code requirements and how they are met;

(2) Revise Technical Specification 3.7.1.1 to incorporate the ASME section III, 1971 Edition code requirements by specifying

(a) A minimum of two OPERABLE safety valves per steam generator, at least one with a setpoint not greater than 1050 psig (+/−1%), and

(b) A maximum setpoint of 1100 psig (+/−1%) for any OPERABLE safety valve.

(3) Modify Technical Specification Table 4.7–1 to reflect: 2 lower capacity (563,574 lb/hr or approximately 5% rated capacity) MSSVs with lift setting at 1050 psig (±1%.); 7 higher capacity (845,759 lb/hr or approximately 7% rated capacity) MSSVs with lift setting at 1100 psig (±1%);

(4) Delete Technical Specification Table 4.7–1, "Main Steam Line Safety Valve Lift Settings";

(5) Remove the reference to Table 4.7–1 from the Technical Specification Surveillance Requirement 4.7.1.1;

(6) Revise Technical Specification 3.7.1.1 to specify that the High Flux Trip Setpoint is reduced per Equation 3.7–1;

(7) Delete Technical Specification Table 3.7–1, "Maximum Allowable High Flux Trip Setpoint with Inoperable Steam Line Safety Valves";

(8) Revise the Technical Specification Basis 3/4.7.1.1 to incorporate Equation 3.7–1 and its graphic representation for the Reduced High Flux Trip Setpoint.

Items (1), (2) and (3) have been amended through Amendment Numbers 117 (TAC No. 67394) dated August 24, 1988. Items (4) through (8) are addressed by the current amendment (TAC No. 68250).

The Need for the Proposed Action

The proposed changes are needed to support greater flexibility in the requirements for valve set pressure and in valve replacement, while maintaining required overpressure protection for the steam generators and main steam system consistent with the requirements of ASME Boiler and Pressure Vessel Code, section III, 1971 Edition.

Environmental Impacts of the Proposed Action

The Davis-Besse MSSVs provide steam generator and main steam system overpressure protection following turbine trip from rated power coincident with a total loss of condenser heat sink. This overpressure protection is accomplished by assuring that the total relieving capacity of the MSSVs is at least as large as the steam produced during operation at rated thermal power, and that the valve lift settings are in accordance with the ASME Code. With the proper relieving capacity of the valves, the pressure will not exceed 110 percent of the design pressure for any system upset conditions. The proposed amendment would only incorporate the requirements of ASME Boiler and Pressure Vessel Code, section III, 1971 Edition into the ACTION statement for Limiting Condition for Operation (LCO) 3.7.1.1 in place of Technical Specification Table 4.7.–1. The reduced High Flux Trip Setpoint, by using Equation 3.7–1, eliminates the unnecessary conservatisms while maintaining the required level of main steam system overpressure protection and does not impact any analyzed events in chapter 15 of USAR. The integrated steam mass released through the MSSVs to the atmosphere is independent of this change and, therefore, previously postulated off-site doses due to the mass release are unaffected by these changes.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined and occupational radiation exposure is unaffected. Neither does the proposed amendment otherwise affect radiological plant effluents during normal operation. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves changes to the Main Steam Safety Valve setpoints and the reduced High Flux Trip setpoint. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 24, 1988 (53 FR 18831). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in the MSSV setpoints remaining as they are specifically cited presently in the Technical Specifications.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental imact statement for the proposed amendment. Based upon the foregoing environmental assessment, we concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 4, 1988 and supplemental letters dated May 4 and December 6, 1988 which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 5th day of September 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–22760 Filed 9–25–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Co.; Consideration of Issuance of Amendments To Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–31 and DPR–41 issued to Florida Power and Light Company (the licensee) for operation of the Turkey Point Plant located in Dade County, Florida.

By letter dated July 2, 1990, as supplemented September 6, 1990, the licensee has proposed a number of design changes as part of its Emergency Power System (EPS) enhancement project. The proposed amendments would modify the electrical power systems, including the addition of two emergency diesel generators, two additional battery chargers, an additional battery bank, and the associated support equipment and electrical distribution equipment such as motor control centers, load centers, and switchgear. The amendments would also modify the Technical Specifications (TS), primarily those concerning electric power supplies, so that they are applicable to the improved design. The proposed TS are consistent with Standard Technical Specifications (STS), where the Turkey Point design permits, which are in general use in the industry.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In Attachment 1 of its July 2, 1990 amendment request, the licensee submitted its not significant hazards evaluation (NSHE) of the proposed changes, in the context of the proposed changes to TS, against the three standards of 10 CFR 50.92 cited above. The licensee has identified and characterized the changes (see Table 1) as belonging to five categories: (1) EPS enhancements, (2) administrative changes, (3) changes that are more restrictive, (4) changes that relax requirements, and (5) deletions of requirements.

The staff reviewed the licensee's NSHE provided in Attachment 1 of its July 2, 1990 license amendment proposal. Based on that review, the staff agrees with the licensee's conclusions that the proposed amendments involve no significant hazards consideration. The staff has selected examples of the proposed TS changes in each of the five categories of characterization (administrative, more restrictive, etc.) employed by the licensee, and they are discussed below. These examples are considered to be typical of the proposed changes. The staff's evaluation of no significant hazards is presented below.

TABLE I. CATEGORIZATION OF CHANGES TO THE TECH SPECS

Proposed TS No.	Licensed TS No.[1]	Type of change[2]	NSH[3] page reference
3.1.2.3	3.1.2.3	5	5–6
3.1.2.3, Action	3.1.2.3 Actions a-c	2,5	6–7
Table 3.3–3, Item 7b,c	Table 3.3–3, Item 7b,c	1	8
3.3.3.4, Action b,c	3.3.3.4 Action b,c	2	11
Table 3.3–6, Fire zone 25		1	9
Table 3.3–6, Fire zones 72–75	Table 3.3–6, Fire zones 72–75	1,2	9–10
Table 3.3–6, Fire zones 72,73	Table 3.3–6, Fire zones 72,73	2	10
	Table 3.3–6 footnote ***	5	10
Table 3.3–6, Fire zones 133–136, 138–141		1	9
3.5.2.a	3.5.2.a	1	12–13
3.5.2, Action c,d	3.5.2, Action c,d	1	13–15
3.5.2, Actions e,f		1	13–15
4.5.2.g.2	4.5.2.g.2	2	15
3.7.8.2.c	3.7.8.2.c	2	16–17
3.7.8.2.d	3.7.8.2.d	1	16
3.7.8.2.e		1	16
3.7.8.2, Action a	3.7.8.2, Action a	2	17
Table 3.7–5, HY28	Table 3.7–5, FH6	1	18–19
Table 3.7–5, HY18		1	18–19
Table 3.7–5, HY-	Table 3.7–5, FH-	2	19
Table 3.7–5, HY10,11	Table 3.7–5, FH10,11	2	19
3.8.1.1	3.8.1.1	1,2,3	20–22
3.8.1.1, Applicability	3.8.1.1, Applicability	2	23
3.8.1.1, Action a-f	3.8.1.1, Action a-f	2,3,4,5	23–30
4.8.1.1.1	4.8.1.1.1	2	31
4.8.1.1.2	4.8.1.1.2	1,2,3,4,5	32–39
4.8.1.1.3	4.8.1.1.3	3	39–40
	4.8.1.1.4	5	40
Table 4.8–1	Table 4.8–1	3	36–37
3.8.1.2.a	3.8.1.2.a	2	41–42
3.8.1.2.b	3.8.1.2.b,c	1,2,3	41–43
3.8.1.2, Applicability	3.8.1.2, Applicability	2	43

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TABLE I. CATEGORIZATION OF CHANGES TO THE TECH SPECS—Continued

Proposed TS No.	Licensed TS No.[1]	Type of change [2]	NSH [3] page reference
3.8.1.2, Action	3.8.1.2, Action	2	44
4.8.1.2	4.8.1.2	2,3	45–46
3.8.2.1.a-d	3.8.2.1.a,b	1,2	47–50
3.8.2.1, Applicability	3.8.2.1, Applicability	2	50
3.8.2.1, Action b	3.8.2.1, Action a,b	1	51–55
3.8.2.1, Action a	3.8.2.1, Action b	1	51–55
	Table 3.8–1	1	51–55
4.8.2.1.a-l	4.8.2.1.a-g	1,2,3,4,5	55–60
Table 4.8–2	Table 4.8–2	2,5	56–57, 59–60
3.8.2.2	3.8.2.2	1,2	61–62
3.8.2.2, Applicability	3.8.2.2, Applicability	2	62
3.8.2.2, Action	3.8.2.2, Action	1,2	63–64
3.8.3.1.a-o	3.8.3.1.a-d	1,2,3,5	65–68
3.8.3.1, Applicability	3.8.3.1, Applicability	2	69
3.8.3.1, Actions a-d	3.8.3.1, Actions a-l	1,3,4	69–72
Table 3.8–1		1	69–70
Table 3.8–2		1	69–70
3.8.3.2.a-c	3.8.3.2.a	1,2,5	73–75
3.8.3.2, Applicability	3.8.3.2, Applicability	2	75–76
3.8.3.2, Action	3.8.3.2, Action	2	73–76

Notes:
[1] Amendments 137 and 132, issued August 28, 1990.
[2] Types of changes: 1—EPS Enhancements; 2—Administrative; 3—More restrictive; 4—Relaxations; 5—Deletion of selected requirements.
[3] FPL proposed license amendment submittal dated July 2, 1990, Attachment 1, No Significant Hazards Determination.

Category 1—EPS Enhancement Changes

EPS enhancement changes are changes to values and requirements resulting from the plant reconfiguration for reasons of design. These changes do not result in either relaxed or more restrictive requirements; rather, the technical requirements remain unchanged. Examples of these types of changes are described below.

Example 1—Addition of Two Diesel Generators and Modification of Existing Electrical Distribution System

The licensee has evaluated this change beginning on page 20 of its NSHE in the context of TS 3/4.8.1.1 (AC Sources—Operating), Limiting Condition for Operation. The licensee has addressed the three criteria of 10 CFR 50.92(c) and determined that they are satisfied. The licensee's evaluation follows; note that the evaluation refers to PTP (Plant Turkey Point), and to reference 1, which is a letter from K.N. Harris to U.S. NRC dated June 4, 1990 and designated L–90–196. Some other acronyms frequently used throughout the licensee's evaluations include: MCC (motor control center), LC (load center), LOOP (loss of offsite power), EDG (emergency diesel generator), LBLOCA (large break loss of coolant accident), and AOT (allowed outage time).

The EPS Enhancement Project at PTP adds two Class 1E EDGs and modifies the existing distribution system (for design details and a safety analysis of these modifications see Reference 1). As a result of these modifications each Unit requires three EDGs (the two associated with the Unit and either one of the EDGs associated with the opposite Unit) to meet the single failure criterion and to mitigate an accident. Also, the fuel requirements for the new Unit 4 EDG fuel systems are added to the LCO.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

As postulated, LOOP and LBLOCA require the start and operation of Engineered Safety Features (ESF) equipment. The enhanced system with load redistribution and addition of swing 4 kV switchgear, swing 480V LCs, and 480 V MCCs provides a greater degree of power source availability to power the required equipment. Required ESF loads are accommodated with the enhanced EPS configuration, and no single failure will prevent the enhanced EPS from performing its required safety function in the event of an accident on either unit. The LBLOCA analysis as presented in the FSAR remains bounding under the enhanced EPS configuration. The added fuel requirements for the new Unit 4 EDG fuel systems provide requirements which are commensurate with the requirements for the existing EDG fuel systems.

Since the EDGs are not initiators of accidents, there is no increase in the probability of an accident.

There is also no increase in the consequences of an accident previously evaluated. The enhanced EPS configuration provides an improved response to the existing FSAR limiting Design Basis Accident (DBA) by providing enhanced equipment availability on the accident unit with increased EDG loading margin.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change introduces no basic changes in operation or new modes of operation. These changes have not resulted in new types of plant operating requirements given that the requirements for the new EDGs and the associated level of detail is commensurate with the requirements for the existing TS.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The addition of two new EDGs enhances the margin of safety by providing added onsite AC capacity and increased equipment availability.

The staff agrees with the licensee's conclusion that there are no significant hazards considerations, with the following comments. The changes reduce the probability and consequences of an accident because additional emergency power redundancy and capacity are provided to prevent an accident and to provide power to accident-mitigating systems. No new or different kind of accident will be created because the changes add more redundancy and capacity. Accidents resulting from a loss of power have been previously considered in the design and analyzed. Safety margins will be enhanced by the availability of added electrical power sources.

Example 2—Addition of Battery Bank, Two Battery Chargers, and Associated Equipment

The licensee has evaluated this change beginning on page 47 of its NSHE in the context of TS 3/4.8.2.1 (DC Sources—Operating), Limiting Condition for Operation. The licensee has addressed the three criteria of 10 CFR 50.92(c) and determined that they are satisfied. The licensee's description of the changes, and portions of the licensee's lengthy evaluation follow; note that the evaluation refers to the RTS which are the Revised Technical Specifications issued by NRC as Amendments 137 and 132 for Units 3 and 4, respectively, on August 28, 1990.

The proposed change revises the specification to reflect the existence following the completion of the EPS Enhancement Project, of a spare 125-volt Battery Bank (D–52) and eight (8) dedicated (2 per battery) full capacity battery chargers (currently there are four (4) dedicated and two (2) swing battery chargers). The proposed change specifies which battery charger(s) can be supplying power to a required battery bank for the battery bank to be considered OPERABLE. In addition the proposed change adds the specific MCC which powers a specified battery charger for credit to be taken for a battery charger being OPERABLE. The proposed change also requires, via a new footnote, that each of the battery chargers used to satisfy this LCO be powered by a different MCC. It also, [sic] identifies the EDG(s) associated with each MCC required to be OPERABLE to supply emergency power (swing MCCs 3D and 4D require two EDGs 3A and 3B or 4A and 4B, respectively) with a clarifying footnote, identified by a "*" symbol, identifying that inoperability of the EDG(s) specified in the LCO does not constitute inoperability of the associated battery chargers or battery banks.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

The number of D.C. electrical sources required to be OPERABLE following this amendment remains the same as in the RTS; only existence of a new full capacity 125-volt D.C. Battery Bank (D–52) has been added. The new "spare" battery bank OPERABILITY will be assured by the new battery bank undergoing the same surveillances as the existing battery banks * * * The addition of this battery bank allows one battery bank to be taken out of service without the unit(s) entering into an ACTION statement.

With the enhanced EPS design two battery chargers are being added and the two existing "swing" chargers are being dedicated to a particular battery. Though the number of battery chargers required to be OPERABLE decreases from five (5) to four (4), each OPERABLE battery bank will be connected to an OPERABLE full capacity charger. The criteria used for the existing LCO and for the proposed LCO for the new design is identical * * *.

This amendment adds additional requirements for equipment associated with an OPERABLE battery bank. The revised specification provides requirements as to which MCC must be supplying power to a battery charger for it to be considered OPERABLE. The addition of this requirement assures that no single failure of an MCC concurrent with a LOOP can result in more than one battery bank without an OPERABLE charger.

Following the EPS Enhancement Project completion, each unit will require 3 EDGs to be OPERABLE to supply emergency power (both of its and one of the other unit's EDGs) * * *. The addition of this requirement assures that no single failure of [an] EDG concurrent with a LOOP can result in more than one battery bank without an AC emergency power source * * *.

The equipment involved in this change are not initiators of FSAR evaluated accidents and the proposed requirements will ensure that no single failures, as assumed in the FSAR analyses, will prevent the plant from mitigating the consequences of an accident as evaluated in the FSAR, thus there is no significant increase in the probability of the occurrence of an accident or significant increase in the consequences of previously analyzed accidents.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The added requirements are in accordance with the design details and safety analysis as presented in Reference 1, and assure that no single failure concurrent with a LOOP can result in the loss of more than one D.C. electrical system. As discussed in this safety evaluation, a Failure Modes and Effects Analysis has been performed and no new accidents are created. The proposed change introduced no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety * * *. The number of required OPERABLE D.C. electrical systems remains the same between the proposed requirements and the RTS.

The PTP D.C. system requires 3 of 4 D.C. busses (and associated chargers) to be operable to perform its accident functions. RTS (existing system) require chargers 3B, 4A and 4S to be OPERABLE (at all times) and 2 of 3 chargers 3A, 3S and 4B to be OPERABLE for the plant to not be in an ACTION statement (Note: Table 3.8.1 matrix of the RTS shows these conditions) * * *. (o)perator action is still required to align the swing charger 3S to either the 4A or 3B D.C. bus so that 3 D.C. busses are energized via the chargers * * *.

For the new system, the proposed TS require a select 4 of 8 chargers to be OPERABLE. The new design of the Enhanced EPS, eliminates the * * * condition where failure of the 3A or 4B battery/bus results in the condition of two D.C. busses being without a battery charger * * *.

Thus, the new design does not rely on (o)perator action and its reliability is * * * greater than the existing when the minimum equipment required by the LCO is satisified * * *.

The staff agrees with the licensee's conclusion that there are no significant hazards considerations, with the following comments. The addition of one more battery bank and two battery chargers provides increased reliability of D.C. power supplies at the plant. Because D.C. power supplies provide power for equipment to prevent and mitigate accidents, there is no increase in the probability or consequences of an accident; rather, the probability of an accident is expected to be reduced. The consequences of an accident will not be increased and, depending on the accident scenario, the consequences could be reduced because of the added D.C. power capability. No new or different kind of accident is created because the changes add more safety equipment of a type that already exists at the plant. The added reliability of D.C. power supplies will enhance safety margins.

The staff further concludes that, throughout the amendment request, where EPS enhancement changes are proposed, there are no significant hazards considerations.

Category 2—Administrative Changes

The proposed administrative changes to the TS include editorial changes, reformatting, and changes for consistency.

Examples of administrative changes are evaluated by the licensee beginning on page 21 of its NSHE in the context of TS 3/4.8.1.1 (A.C. Sources—Operating), Limiting Condition for Operation. The licensee has addressed the three criteria of 10 CFR 50.92(c) and determined that they are satisfied. The licensee's evaluation follows.

The LCO has been reformatted (items b and c) to enhance consistency with the STS by combining all requirements to assure EDG OPERABILITY in one LCO (new 3.8.1.1b). A new associated footnote was added to this LCO to ensure that if one or more of the four EDG's is out-of-service that compliances with Technical Specifications 3.5.2 and 3.8.2.1 is reviewed. This administrative change also includes the consolidation of the EDG support requirements by adding the MCCs required to power each EDG's auxiliaries. Also, the rating of the startup transformers was deleted to enhance consistency with the STS and since this information was not pertinent to the LCO.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The reformatting including the new associated footnote is intended to make the TS easier to use for plant operations personnel. The addition of the MCC requirements with this LCO consolidates the OPERABILITY requirements of the EDGs. The consolidation of the EDG

OPERABILITY requirements into one item improves the TS organization.

The transformer rating is FSAR design data that is not required by the reactor operators or other personnel by whom the TS are used. There are only two startup transformers at PTP and the removal of the nameplate rating will not affect identification of the startup transformers.

The above changes have not resulted in any new plant operating requirements. No accident initiating events are affected. These administrative changes do not affect the probability of the occurrence or the consequences of an accident.

2. Based on the above discussions it can also be concluded that operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new types of equipment are added by this change. The proposed change introduces no basic changes in operation or new modes of operation. The changes are administrative only.

3. Based on the above discussion it can also be concluded that operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The changes only enhance the TS by deleting unnecessary information, consolidating requirements, and providing an additional reminder note resulting in improved TS organization and clarity.

The staff agrees with the licensee's evaluation and conclusion that there are no significant hazards considerations. The staff further concludes that there are no significant hazards considerations associated with administrative changes throughout the amendment request.

Category 3—Requirements Which are More Restrictive

Examples of proposed changes in requirements which are more restrictive than those currently licensed are described below. These examples include changes to frequency of verifying operability and changes in surveillance requirements.

Example 1—Verification of Startup Transformer Operability

Technical Specification 3/4.8.1 (pages 3/4 8–1 and 8–2 of Attachment 2 of the July 2, 1990 amendment request) describes proposed requirements for operability of A.C. power sources. For example, the present TS 3/4 8.1 (License Amendment 137 and 132, issued August 28, 1990) requires that, if one of two startup transformers, an associated circuit or a required EDG is inoperable, the remaining startup transformer(s) be demonstrated operable within 24 hours. The licensee proposes increasing the frequency of verification from 24 to 8 hours for the operable startup transformers. This proposed time limit is consistent with the STS.

In the licensee's no significant hazards evaluation, Attachment 1 of the July 2, 1990 amendment request, pages 25 and 26, the licensee evaluated more restrictive changes, including startup transformer operability verification frequency in accordance with the three standards of 10 CFR 50.92 and concluded that the changes do not involve a significant hazards consideration. The licensee's evaluation follows.

The frequency for verification of OPERABILITY of the OPERABLE startup transformers as required by ACTIONs "a", "b" and existing "d" and "e", has been increased from once every 24 hours to once every eight hours. The allowable time to reduce power to less than or equal to 30% in ACTION "a" has been reduced from 30 hours to 24 hours. If power is not reduced to less than or equal to 30% within 24 hours, the associated unit must be shut down within the next 54 hours if the startup transformer remains inoperable. This provision is incorporated into ACTIONs "a" and the new "e". The existing TS allows continued operation at a maximum of 30% reactor power for 30 days before requiring shutdown. Also in ACTIONs "b" and new "f", the number of hours for reaching hot shutdown has been reduced from twelve hours to six hours.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The increase in the surveillance of the startup transformer(s) is more restrictive than the existing requirements. This change will provide added assurance that the OPERABLE startup transformer(s) is (are) available to perform its (their) function, if needed. The reduction in the time for reducing power on the loss of a startup transformer will result in the plant being in a low power, stable condition sooner than required in the existing TS. Because these requirements are more restrictive than the existing requirements, the probability of an accident and its consequences are reduced. The reduction in the time allowed to reach hot shutdown from twelve hours to six hours is a direct result of the elimination of the dual unit shutdown requirement (see discussion below on deletions). This change makes this time period consistent with the rest of the TS when only a single unit shutdown is required and is more restrictive than before.

The requirement to restore an inoperable startup transformer within 72 hours following loss of an associated startup transformer with no compensatory ACTIONs (i.e., reduction of reactor power to less than or equal to 30%) reduces the AOT from 30 days to 72 hours. This new AOT for the startup transformers is consistent with the STS and NRC guidelines. This AOT change reduces the likelihood of an accident (LOOP) being initiated with the reactor at power. Therefore, this proposed change would reduce the probability of a previously evaluated accident.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The margin of safety would be enhanced because the plant operators would take compensatory ACTIONs sooner and additional assurance of equipment OPERABILITY would be provided. Also, the startup transformers are not required for mitigation of a design basis accident. While offsite power, via the startup transformer, is normally utilized during plant shutdown, PTP has the capability of maintaining stable conditions assuming a reaction trip with no offsite power available.

The staff adds the following clarification of the first paragraph of the licensee's above evaluation. In ACTION "a," if power is not reduced to less than or equal to 30% within 24 hours, the associated unit must be in HOT STANDBY (Mode 3), as opposed to shutdown, within 54 hours and COLD SHUTDOWN within the following 30 hours. Also, in the last paragraph of item 1, above, the licensee has referred to LOOP (loss of offsite power) as an accident. The staff does not consider LOOP, by itself, to be an accident.

The staff agrees with the licensee's conclusion that more frequent verification of transformer operability is a more restrictive requirement, and that the three criteria of 10 CFR 50.92 are satisfied and there are no significant hazards considerations.

Example 2—Verification of Diesel Generator Operability

Technical Specification 4.8.1.1.2 (pages 3/4 8–4 through 8–6 of Attachment 2 of the July 2, 1990 amendment request) adds requirements to verify the inventory, quality, and availability of EDG lubricating oil in storage, as well as verifying certain other EDG test and operability requirements. For example, the licensee added a requirement to check lubricating oil in storage because the Unit 3 EDGs require the addition of lubricating oil after 3 days of operation. Verifying the inventory, quality, and availability of lubricating oil in storage provides assurance that an EDG can operate for a minimum of 7 days as required.

In the licensee's no significant hazards evaluation, Attachment 1 of the July 2, 1990 amendment request, pages 36 and 37, the licensee evaluated more restrictive changes to section 4.8.1.1.2 of the Technical Specifications in accordance with the three standards of 10 CFR 50.92 and concluded that the changes do not involve a significant hazards consideration. The licensee's evaluation follows.

The following new restrictions are proposed: Surveillance 4.8.1.1.2a.3) requires verification of lubricating oil inventory in storage. Surveillance 4.8.1.1.2a.5 requires verification [of] automatic transfer of fuel from the day tank to the skid-mounted tank on Unit 3. Surveillance 4.8.1.1.2 c through f are added in their entirety to add requirements concerning the EDG fuel oil. These requirements include, at least once per 31 days, checking for and removing accumulated water from the fuel oil storage and day tanks (Units 3 & 4) and the skid-mounted fuel tanks (Unit 3). Also, at least once per 31 days obtaining a sample from the fuel oil storage tank and verifying that the total particulate contamination is less than 10mg/liter when checked in accordance with the applicable industry standard. In addition, requirements are included to test new fuel oil in accordance with the applicable industry standards for items such as appearance, flash point, viscosity, and API Gravity. These requirements replace the current requirement to at least once per 92 days verify a sample of fuel oil is within acceptable limits for viscosity, water and sediment (4.8.1.1.2b in the RTS). In Surveillance 4.8.1.1.2a.4), 2d.1)a. 2d.4), and 2e, the voltage tolerance of ±624 volts is reduced to ±420 volts. Table 4.8–1, "DIESEL GENERATOR TEST SCHEDULE," is modified to add testing frequency requirements associated with the number of failures in the last 100 valid tests. This included deleting the word "valid" in the footnotes for Table 4.8.1. Also, the word "prior" before "NRC" in the first footnote of Table 4.8–1 is deleted. These Table 4.8–1 changes enhance conformance to the STS. In Surveillance Requirement 4.8.1.1.2g.7 (4.8.1.1.2d.5 in the RTS), the test duration is extended from 8 hours to 24 hours of EDG operation (this extension provides enhanced consistency with the STS). Surveillance Requirement 4.8.1.1.2g.10 verifies that a Safety Injection signal overrides an EDG operating in the test mode. Surveillance Requirement 4.8.1.1.2g.12 verifies OPERABILITY of the automatic load sequence timer. Surveillance Requirement 4.8.1.1.2g.13 verifies proper operation of the EDG lockout relay. Finally, Surveillance Requirement 4.8.1.1.2i specifies a pressure test of the Unit 4 (only) diesel fuel oil system designed to ASME Section III, Subsection ND. This surveillance requirement also specifies a drain-down and cleaning of each EDG fuel oil storage tank to ensure a reliable source of high quality fuel.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The additional surveillance will have no impact on the probability of an accident since EDGs are not initiators of FSAR analyzed Design Basis Accidents (DBAs). Extending the duration of EDG operation during testing, and adding the additional surveillance requirements to verify lube oil storage inventory, verify Unit 3 automatic fuel transfer to the skid mounted tank, and checking and analyzing diesel fuel oil serve to provide increased confidence that the EDGs will function as designed. The tightening of the tolerance allowed for the voltage provided by the EDG is more restrictive and will provide added assurance that the equipment powered by the EDGs can function as designed. The addition of testing frequency requirements associated with the number of failures in the last 100 valid tests provides increased confidence of EDG OPERABILITY by requiring an increased testing frequency due to the total number of failures in the last 100 valid tests instead of just the last 20. The required tests to ensure that a Safety Injection signal overrides the EDG test mode circuitry; the automatic load sequence time operates per design; and the EDG lockout relay prevents EDG starts, all verify that the control circuitry of the EDGs operate properly. This provides greater confidence that the EDGs will operate, as designed, to power required accident loads. Finally, the new Unit 4 EDG fuel oil system pressure test verifies the integrity of this required system and reduces the probability of EDG failure due to fuel starvation during a design accident. Thus, there will be no increase in accident consequences.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed change would enhance the margin of safety by reducing the possibility of an EDG failure due to contaminated fuel or fuel starvation, ensuring an adequate supply of lube oil for an extended EDG run, ensuring proper operation of the EDG control circuits, ensuring a voltage well within the design tolerance of the required electrical equipment, providing increased confidence of EDG reliability by requiring increased EDG testing due to the total number of failures in the last 100 valid tests, and by lengthening the EDG run test from 8 to 24 hours which provides added assurance the EDG will function as designed.

The staff agrees with the licensee's conclusion that there are no significant hazards considerations associated with these added and more restrictive requirements. The added requirements improve surveillance and alert operators to problems sooner. Therefore, the three criteria of 10 CFR 50.92 are met. Furthermore, throughout the amendment request where additional or more restrictive requirements are imposed, the staff concludes there are no significant hazards considerations.

Category 4—Changes that Relax Requirements

Relaxations are changes which result in reduced requirements, but not a significant reduction in safety. Examples of relaxations are described below.

Example 1—Testing of Diesel Generators

The licensee has proposed a change to Technical Specifications 3.8.1.1. b and c (pages 3/4 8–2 and 3/4 8–3 of Attachment 2 of the July 2, 1990 amendment request) whereby if an EDG is intentionally made inoperable due to pre-planned maintenance or testing, special testing of the remaining EDGs is not required. In Attachment 1 of the amendment request, pages 28 and 27, the licensee evaluated the proposed changes against the three standards of 10 CFR 50.92 and concluded there are no significant hazards considerations. The licensee's evaluation is reproduced below.

In ACTIONs "b" and "c" an exception to the requirement to demonstrate the OPERABILITY of the remaining required EDGs is added for the case when the EDG became inoperable because of preplanned preventative maintenance or testing.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Consistent with the STS and current NRC guidance, testing of the redundant (i.e., remaining required EDGs) EDGs are to be performed after any failure or any problem which renders the EDG inoperable. The purpose of this testing is to demonstrate that the redundant EDGs have not been degraded by a similar problem. When an EDG is intentionally taken out of service, the above concern does not exist. Therefore, it is acceptable to provide an exemption to this testing when an EDG is taken out of service for preplanned preventive maintenance or testing. Reducing the number of unnecessary EDG tests is in accordance with Generic Letter 84–15 and current NRC guidance. Since the EDGs are not initiators of FSAR analyzed accidents and this change serves to enhance EDG reliability, there is no increase in the probability or consequences of a previously analyzed accident.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The change only affects the number of times an EDG OPERABILITY demonstration may be performed. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. This change serves to enhance EDG reliability by reducing the number of unnecessary EDG tests which minimizes EDG wear.

The staff agrees with the licensee's evaluation and concludes that the three criteria of 10 CFR 50.92 are satisfied and

that there are no significant hazards considerations.

Example 2—Battery Pilot Cell Surveillance

The licensee has proposed relaxing the surveillance interval for the station battery pilot cell specific gravity surveillance (TS 4.8.2.1.a, page 3/4 8–14 of Attachment 2 of the July 2, 1990 amendment request) from once per 24 hours to once per 7 days. The proposed surveillance interval is consistent with the STS. In Attachment 1 of the amendment request, pages 58 and 59, the licensee evaluated this proposed change against the three standards of 10 CFR 50.92 and concluded there are no significant hazards considerations. The licensee's evaluation is reproduced below.

The required surveillance (4.8.2.1a) frequency for verifying the pilot cell specific gravity for each 125 volt battery bank is reduced from once per 24 hours to once per 7 days. The revised surveillance frequency conforms to the requirements of the STS.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Since PTP received its operating license in the early 1970's, industry experience on nuclear safety-related 125 volt battery banks, as concluded in IEEE 450, has determined that a rapid drop in pilot cell specific gravity during a 7-day period is highly unlikely. For this reason, the NRC has specified a 7-day surveillance frequency for 125 volt battery bank pilot cell specific gravity in the STS. The 24-hour surveillance requirement is inconsistent with present NRC guidelines.

Since IEEE 450 has determined that a 7-day surveillance frequency is acceptable for pilot cell specific gravity, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new types of equipment are added by this change. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. Based on the above discussion, IEEE 450 and NRC guidance indicates that a 7-day surveillance frequency versus a 24-hour surveillance frequency does not significantly reduce the margin of safety.

The staff agrees with the licensee's evaluation and conclusions. The staff also notes that in footnote 1 of Table 4.8–2 of the proposed TS (page 3/4 8–16 of Attachment 2 of the July 2, 1990 amendment request), the failure of a Category A parameter, such as pilot cell specific gravity, to be within the TS limits is not sufficient to indicate an inoperable battery.

The staff concludes that the three criteria of 10 CFR 50.92 have been met and there are no significant hazards considerations.

Example 3—Diesel Generator Testing

In another example, described on pages 32–35 of Attachment 1 of the July 2 amendment request, the licensee has provided a lenthly and detailed evaluation of certain EPS enhacement changes and administrative changes related to testing of the EDGs. Among these changes, the test loading for the Unit 3 EDGs has been relaxed from 250kw to permit a test load band of 2300–2500kw. A new higher test load band is specified for the two new EDG's of Unit 4. In addition, the proposed test procedure permits warming the EDGs with gradual loading instead of cold, fast test starts. The technical basis for these relaxations was described in more detail in the staff's Generic Letter 84–15. Bascially, it was to reduce stress and wear on the engine that accompanies cold, fast test starts, and which could lower the reliability of the EDGs. The staff agrees with the licensee's evaluation and conclusions regarding these changes, but would characterize the changes as relaxations rather than EPS enhancements or administrative changes.

Throughout the proposed TS, where relaxations have been proposed by the licensee, the staff concludes that the proposed changes involve no significant hazards considerations.

Category 5—Deletions

The licensee has identified TS requirements that are to be deleted. Generally, these deletions are a natural result of the design changes associated with the Emergency Power System upgrade. In a few cases the deletions are made to complete the conversion to STS, which are based on significantly more operating experience than were the original plant custom TS. Examples of deletions are described below.

Example 1—Operability Requirement for Cranking Diesel Generators

The licensed Technical Specifications (TS 3/4.8.1, pages 3/4 8–1 through 3/4 8–7 of Amendments 137 and 132 issued August 28, 1990) require that, with one startup transformer inoperable or one startup transformer and one EDG inoperable, two cranking diesel generators be demonstrated operable. This requirement is intended to provide an additional non-safety grade source of power to assist in the safe shutdown of the unit without its associated startup transformer, if required. Implementation of the EPS enhancement project will add two safety-grade EDGs to the plant with capability for cross-connect between units, replacing the need to have two cranking EDGs operable as backup to the safety EDGs or startup transformer. The EPS design eliminates this requirement with better design based on safety-grade EDGs.

In Attachment 1 of the July 2, 1990 amendment request, pages 27 through 30 and on page 40, the licensee presented a lengthy and detailed evaluation of this change against the three standards of 10 CFR 50.92 and determined there is no significant hazards consideration associated with this change. The staff's evaluation is provided below.

In the current design, Turkey Point has two safety-grade EDGs, with any two out of five non-safety cranking diesels available as backup. In the proposed design, the plant will have four safety-grade EDGs with the non-safety cranking diesels available as backup. The two additional safety EDGs will have a complete set of TS, and thus replace the cranking diesels with higher capability and more reliable equipment. The cranking diesels will be maintained and available as a backup power source. In addition, a requirement for surveillance of the cranking diesels every 18 months is imposed on page 3/4 7–11 of the licensed TS. However, it is no longer necessary for the TS to require a demonstration of operability of the cranking diesels when a safety EDG and/or startup transformer is inoperable.

The deletion of this requirement is more than compensated for by the two additional safety EDGs which are required to be operable as described in the proposed TS.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the requirement to demonstrate operability of cranking diesel generators is more than compensated for by the new requirement to demonstrate operability of the additional safety EDGs, as stated in LCO 3.8.1.1.b and in ACTION b of proposed TS 3.8.1.1 on pages 3/4 8–1 and 8–2 of Attachment 2 of the July 2, 1990 amendment request. The proposed change does not create the possibility of a new or different kind of accident because the cranking diesels will still be maintained and available and because no change in potential accident initiators has occurred. The addition of two safety-grade EDGs helps to make the plant safer and provide added protection. The proposed change does not involve a significant reduction in a margin of safety because the added safety EDGs provide additional safety margin. In addition, the cranking diesels will still be available.

Therefore, the staff concludes that there are no significant hazards considerations associated with deleting the TS requirement to demonstrate operability of the cranking diesels when a safety EDG and/or startup transformer is inoperable.

Example 2—Surveillance of D.C. Power Sources

The licensee proposes to delete certain DC power surveillances as described on pages 59 and 60 of Attachment 1 of the July 2, 1990 amendment request. The licensee's description of the proposed changes and no significant hazards evaluation follows.

Surveillances 4.8.2.1c and e have been deleted. Surveillances 4.8.2.1c required rotating the pilot cell and checking water level every 31 days. This surveillance requirement is a maintenance activity only and does not verify battery OPERABILITY. Surveillance 4.8.2.1e required performance of a battery charger visual inspection quarterly. This surveillance requirement is a preventive maintenance activity and does not verify battery charger OPERABILITY. Also, the requirement to verify a battery equalizing charge is started, found in Notes 1 and 2 of Table 4.8–2, has been deleted.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Surveillances 4.8.2.1e and e are maintenance activities only. NRC guidance indicates that the above deleted surveillance requirements are not required to verify OPERABILITY of this equipment. The latest STS do not contain these surveillance requirements. Instead, Surveillance 4.8.2.1a contains a requirement to verify pilot cell electrolyte level weekly. Also, the requirement in Table 4.8–2, Notes 1 and 2, to start an equalizing charge when a battery's cell does not comply with the category A and B limits of the table, is not included in STS. An equalizing charge will be applied, as needed.

Therefore, based on the above discussion, the probability or consequences of a previously evaluated accident is not significantly increased.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or a different kind of accident from any accident previously evaluated. No new types of equipment are added by this change. The proposed change introduces no basic changes in operation or new modes of operation. They only delete extraneous surveillance requirements that are not contained in the STS.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The deleted surveillance requirements (4.8.2.1c and e) are preventive maintenance items only. Failure to perform Surveillance 4.8.2.1c will have no effect on the margin of safety because Surveillance 4.8.2.1a, which is performed more frequently than Surveillance 4.8.2.1c (weekly versus monthly), verifies redundant pilot cell requirements. The Surveillance 4.8.2.1e deletion does not significantly affect the margin of safety because its requirement inspection of the battery chargers does not determine if this equipment is OPERABLE or not. Finally, deletion of the requirement to verify that an equalizing charge is started in Notes 1 and 2 of Table 4.8–2 has no affect on the margin of safety, because the OPERABILITY requirements of the batteries are determined by the battery parameter limits of Table 4.8–2. An equalizing charge will be applied as needed, to conform with the OPERABILITY requirements.

The staff notes that comprehensive surveillance requirements of D.C. power sources are provided in the proposed TS on pages 3/4 8–14 through 8–18 of Attachment 2 of the July 2, 1990 amendment request. In particular, requirements for important battery parameters are shown in Table 4.8–2 on page 3/4 8–16. The staff agrees with the licensee's evaluation and conclusions and concludes that the three criteria of 10 CFR 50.92 have been met and there are no significant hazards considerations involved in deleting the surveillance requirements described above.

The staff also concludes that, throughout the amendment request, where deletions are proposed, there are no significant hazards considerations involved.

For all the reasons given above, including those given (above) by the licensee, the staff agrees with the licensee's determination, and therefore proposes to determine that the amendments do not involve a significant hazard consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filings of requests for hearing and petitions for leave to intervene is discussed below.

By October 26, 1990, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendments and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(A)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated July 2, 1990, as supplemented September 6, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Rockville, Maryland, this 20th day of September 1990.

For the Nuclear Regulatory Commission.

Gordon E. Edison, Sr.,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–22709 Filed 9–25–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-397]

Washington Public Power Supply System; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the Washington Public Power Supply System (WPPSS) (the licensee) to withdraw its April 18, 1990 application for an amendment to Facility Operating License No. NPF–21, issued to the licensee for operation of the WPPSS Nuclear Project No. 2, located in Benton County, Washington. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on May 30, 1990 (55 FR 21982).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to remove the requirements of 3.0.4 from the specifications related to accident monitoring instrumentation.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Therefore, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) The application for amendment dated April 18, 1990, and (2) the staff's letter dated September 5, 1990.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 5th day of September, 1990.

For the Nuclear Regulatory Commission.

Patricia L. Eng,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–22707 Filed 9–25–90; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28451; File Nos. 600–19 and 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Amended Application for Full Clearing Agency Registration and a Request for Extension of Temporary Registration as a Clearing Agency

September 18, 1990.

Notice is hereby given that on August 22, 1990, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(a) of the Securities and Exchange Act of 1934 ("Act"), an amended form CA–1 as an application for full registration as a clearing agency under section 17A of the Act. On September 13, 1990, MBSCC's also filed a request for extension of its registration as a clearing agency under section 17A of the Act for a period of one year.[1]

On February 2, 1987, the Commission granted the application of MBSCC for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Act, and Rule 17Ab2–1(c) thereunder, for a period of 18 months.[2] At that time, the Commission granted MBSCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[3] By letter dated July 18, 1989, MBSCC withdrew its request for an exemption from compliance with section 17A(b)(C) of the Act. On August 2, 1988, and July 31, 1989, the Commission extended MBSCC's registration as a clearing agency through September 29, 1990.[4]

MBSCC provides clearance and settlement services for members in processing transactions in mortgage-backed securities. Among other things, MBSCC provides trade-for-trade and net settlement accounting facilities for transactions in Government National Mortgage Association pass-through securities.

Interested persons are invited to submit written data, views and arguments concerning the foregoing within 30 days of the date of publication of this notice in the **Federal Register**. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the application and all written comments will be available for inspection at the Commission's Public Reference room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to file numbers 600–19 and 600–22 and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–22730 Filed 9–25–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28445; File No. SR–MBSCC–90–02]

Self-Regulatory Organizations; Notice of Proposed Rule Change by MBS Clearing Corporation Concerning Settlement Balance Order Market Differential Payments

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission the proposed rule change on March 5, 1990, and an amendment to the proposed rule change on August 21, 1990, as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBSCC proposes to: (i) Require the earlier payment of a participant's settlement balance order market differential ("SBOMD") amounts; (ii) revise the form of letter of credit eligible for deposit in the participant's fund, and, (iii) impose additional fines for a participant's failure to make timely payments of SBOMD amounts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to further clarify and enhance MBSCC's rules regarding a participant's failure to make timely payments of SBOMD amounts.

Under its rules, MBSCC calculates and collects SBMOD payments (generally, the difference between the contract value of a transaction and the SBO trade price). MBSCC collects SBOMD amounts from participants with a payment obligation to MBSCC and makes corresponding payments in federal funds to those participants with a receive obligation from MBSCC.

It may be possible that MBSCC may be unable to immediately fund corresponding payments to a receiving participant when a paying participant fails to make timely payments on its SBOMD. Even though a defaulting paying participant has sufficient collateral on deposit with MBSCC (in the form of cash, government securities and letters of credit from MBSCC approved banks), MBSCC may not be able to realize or liquidate the collateral by the appropriate federal funds cut-off time.

MBSCC proposes several changes which are designed to significantly reduce any real or perceived liquidity concerns caused by participant defaults

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[1] *See* letter from Jeff Lewis, Associate Counsel, MBSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated September 13, 1990.

[2] *See* Securities and Exchange Act Release No. 24046 (February 2, 1987) 52 FR 4218.

[3] Section 17(A)(b)(3)(C) requires that MBSCC's rules assure fair representation of its shareholders (or members) in the selection of its directors and administration of its affairs.

[4] *See* Securities and Exchange Act Release Nos. 25967 and 27079 (August 2, 1988 and July 31, 1989) 53 FR 29287 and 54 FR 32012.

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in SBOMD's. The first change revises MBSCC's form letter of credit to make it clear that an issuing bank will honor drafts in accordance with MBSCC's instructions by 4:30 p.m. on the day of presentation. MBSCC is, therefore, assured, to a significantly greater degree, that the issuing bank will not delay in making funds available, notwithstanding any contrary provisions in the uniform commercial code.

A second change involves the acceleration by one business day the date that participants are required to make SBOMD payments. Participants will now be required to pay MBSCC on the day before the settlement date, rather than on settlement date. However, MBSCC will continue to distribute SBOMD payments to receiving participants on settment date.

The earlier payment requirement will enable MBSCC to liquidate a defaulting participant's collateral on deposit or secure alternative financing, thereby significantly reducing any potential disruptions in payments to corresponding participants. In the unlikely event (and as a last resort) that MBSCC must reduce corresponding payments to receiving participants due to its inability to fund the full amount of payment obligations, MBSCC will be to provide such participants with earlier notice of potential payment reductions. Non-defaulting participants are, therefore, afforded one additional business day to obtain any necessary financing.

MBSCC will invest all SBOMD payments received overnight. Investment income, less handling costs, will be rebated to paying participants. Under MBSCC's current rules, MBSCC may invest cash in, among other investments, U.S. government securities, certificates of deposit or cash funds, in accordance with an investment policy approved by the Board of Directors.

Finally, MBSCC proposes to impose new penalty fees on those participants who fail to pay SBOMD obligations on the required date. Under the new penalty fee, participants who fail to pay the SBOMD by the close of the business day will be subject to a penalty fee of 300 basis points over the cost of funds, with a $1,000 minimum fee. Participants will also continue to remain obligated to reimburse MBSCC for the cost of overnight funds financing, separate from the penalty fee.

MBSCC believes the proposed rule change is consistent with section 17A of the Act because it enhances MBSCC's ability to safeguard the funds and securities for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were formally solicited from participants via bulletins provided to participants. No written comments have been received. However, the proposed rule change received the unanimous support of MBSCC's risk management and new products/services committees.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR–MBSCC–90–02 and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pusuant to delegated authority.

Dated: September 17, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–22700 Filed 9–25–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28447; File No. SR–NASD–90–1]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Reconfirmation and Pricing Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 4, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the NASD's Uniform Practice Code (the "CODE"). The proposed rule change adds a new section to mandate in certain cases participation in confirmation and pricing services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most signficant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change to section 69 of the Code is to require NASD members that are participants in a registered clearing agency for purposes of clearing over-the-counter transactions to participate in

fail reconfirmation and pricing services that are offered by the registered clearing agency of which they are a member. The NASD Board of Governors approved the proposed amendment at the recommendation of the Association's Uniform Practice Committee. In June of 1987, the National Securities Clearing Corporation ("NSCC") offered to its participants a new fail reconfirmation and pricing service ("RECAPS") which allowed participants to reconfirm open aged fails, reprice such fails to the current market and, where possible, net the confirmed and repriced fails. To date, NSCC is the only clearing corporation with this service and is considering expanding this service to interface with other clearing corporations. When first offered, this voluntary service was limited to municipal bonds. It subsequently has been expanded to include all over-the-counter equity securities. Aged fails in these eligible securities may be submitted even though the original settlement occurred "exclearing". The RECAPS service establishes new settlement dates for transactions which in combination with the mark-to-the-market aspect of the service will alleviate potential capital charges pursuant to the uniform net capital rule as they apply to aged fails. The NASD believes that required participation by NASD members which are participants in a registered clearing corporation offering services of this nature will be of an overall benefit to the clearance and settlement process and will assist in compliance with SEC rules 17a–13 (quarterly audits) and 15c3–3 (possession or control).

The proposed rule change to section 69 of the Code would facilitate utilization of this type of a repricing service by providing for the cancellation of buy-in notices which are pending during a RECAPS processing cycle and would prohibit the entry of a new notice of buy-in until the first business day after the last RECAPS settlement date. This procedure will provide added protection for members against potential liability or losses associated with an unnecessary buy-in execution.

The NASD has adopted the proposed rule change pursuant to sections 15A(b)(2) and 15A(b)(6) under the Act. In pertinent part, section 15A(b)(2) requires that the Association enforce compliance by its members with the provisions of the Act, the rules and regulations thereunder, and section 15A(b)(6) mandates that the rules of a national securities association be designed to "* * * foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities * * *." The NASD believes that the proposed rule change is consistent with these objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were solicited in NASD Notice to Members 89–4. A total of seven comments were received. Five commentators strongly endorsed the adoption of a mandatory RECAPS rule; one commentator, while expressing no opinion, requested clearing corporation charges for the service and the details associated with the submission of data; and one commentator, while also expressing no opinion, sought clarification of the benefits of the service and cost information. The NASD obtained information regarding the costs and procedures for such services from NSCC and forwarded it on to the commentators. The NASD notes that registered clearing agencies are subject to the requirements of section 17A of the Act and that under that section the rules of such registered clearing agencies must provide for the "equitable allocation of reasonable dues, fees and other charges among its participants," and "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of" the Act. Registered clearing agency rules are subject to filing and approval of the SEC under section 19(b) of the Act.

The NASD further notes that several of the comment letters expressed their support for the proposal because of the significant benefits that can be derived through the use of such services, such as the immediate identification of potential fail problems and a reduction in a firm's market exposure without reuiring additional staffing or salary expense. The NASD believes that mandatory participation in RECAPS will result in significant reductions in aged fail contracts and buy-ins and their associated operational costs and in attendant capital charges. The NASD, therefore, adopted the proposed rule change.

One commentator noted that current nonparticipants in RECAPS may need time to comply with the mandatory requirement. The NASD has requested a 60- to 90-day period for effectiveness after Commission approval, so as to have the rule coincide with the quarterly RECAPS cycle and believes that this period of time should be adequate.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Comission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission s Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority 17 CFR 200.30–3(a)(12).

Dated: September 17, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–22727 Filed 9–25–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-28440; File No. SR-NYSE-90-40]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Rules 116.40, 123A.43 and 13 Regarding Procedures for Handling Market-on-Close Orders on Expiration Fridays

Pursuant to section 19(b)(1) of the securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to modify current NYSE procedures for handling and executing market-on-close ("MOC") orders [1] on expiration Fridays [2] as provided in Exchange Rule 116.40 by allowing for partial executions of MOC orders with the approval of a Floor Governor when significant imbalances occur. The proposal would also amend NYSE Rule 123A.43 and 13 to conform the language of these rules with the proposed amendments to NYSE Rule 116.40.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] Pursuant to current NYSE Rule 13, an MOC order is defined as a market order which is to be executed in its entirety at the closing price on the Exchange, of the stock named in the order, and if not so executed, is to be treated as cancelled.

[2] "Expiration Friday" is the one Friday per month on which stock index futures, stock index options and options on stock index futures (collectively, "derivative instruments") expire.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change to NYSE Rules 116.40, 123A.43 and 13 is to allow for partial executions of MOC orders where significant imbalances exist which can contribute to, or exacerbate, excess market volatility at the close on expiration Fridays.[3] Currently NYSE Rule 116.40 requires specialists to execute MOC orders in their entirety unless trading in the stock has been halted;[4] or the order contains a restriction, such as the instruction that the order be executed on a "minus" tick, which renders the order non-executable if the closing transaction is on a "plus" tick.[5]

The Exchange is concerned that imbalances of MOC orders on expiration Fridays which must be executed (unless trading is halted or a tick condition cannot be met) may result in significant price swings at the close, which add to investor concerns about excess market volatility and the orderliness of the Exchange market.

On expiration Friday, July 20, 1990, cancellations or reductions of MOC orders entered prior to 3 p.m., and the entry in large size of offsetting MOC orders, reversed previously published buy-side imbalances in the 52 pilot stocks, placing significant selling pressure on these stocks, without a corresponding oppportunity to attract contra-side buying interest. The resulting sharp decline in the DJIA (35 points during the last hour of trading) adds to investor perceptions that the markets have become unduly volatile, particularly on expiration days.

Under the proposed rule change, the specialist would be permitted to give partial execution to the MOC orders he is holding where the depth of the contra side interest is not sufficient for all such orders to be executed in their entirety. The specialist would be permitted, with the prior approval of a Floor Governor, to give partial executions of MOC orders by assigning 10 shares in turn to each MOC order on the imbalance side of the market up to the total number of shares of the imbalance to be filled. Where the number of shares to be executed against the imbalance is not sufficient to permit the assignment of 100 shares to each MOC order on the imbalance side, the specialist would assign 100 shares to such orders based on their order of receipt. The unexecuted portion of any MOC order will be deemed to be cancelled. The proposed amendments would be applicable to MOC orders only on expiration Fridays.[6]

While the proposed rule change can be expected to help minimize excess market volatility on the close, the Exchange continues to believe that the settlement of derivative index products based on the opening price on the Exchange provides a more orderly means of ensuring that an appropriate equilibrium is reached as to buying and selling interest. Exchange opening procedures provide for dissemination of price indications where a substantial price change is anticipated. These procedures allow for a minimum of 15 minutes between a first indication and stock's opening, with re-indications as appropriate, and ensure that a sudden influx of orders on one side of the market will not have an immediate, sudden effect on a stock's price, as may occur during the compressed time period at the close of the trading day on expiration Friday.

At the present time there are a total of six derivative instrument products whose settlement is based on the NYSE opening price: one version of the Chicago Board Options Exchange's ("CBOE") S&P 500 option contract ("NSX"); the Chicago Mercantile Exchange's ("CME") S&P 500 index futures contract and the options of that index future contract (except as noted below); and three contracts traded on the New York Futures Exchange related to the NYSE Composite Index. The following derivative instruments base their settlement value on the closing NYSE price on expiration Fridays: One version of the CBOE S&P 500 options contract ("SPX") and the S&P 100 options contract ("OEX"); the CME's options on the S&P 500 contract futures contract (non-quarterly); the American Stock Exchange's XMI option contract and the options contract on its Institutioinal Index ("XII"); the CBOT MMI index futures contract and options thereon; the Kansas City Board of Trade Value Line Futures contract; the Philadelphia Stock Exchange's options contract on the Value Line Index, options contract on the Utility Index, options contract on Over-the-Counter ("OTC") Stock Index ("XOC"), and the Philadelphia Board of Trade's futures contract on the XOC (inactive).

The Exchange's opening procedures have proven to be very effective in minimizing any excess volatility that may be associated with the expiration of those derivative index products whose settlement value is based on the NYSE opening price. The Exchange is continuing to urge that the settlement value of *all* derivative index products be based on the NYSE opening price.

2. Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5) which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, alll written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-40 and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22728 Filed 9-25-90; 8:45 am]

BILLING CODE 8010-01-M

[3] The current procedures for handling and executing MOC orders on monthly expiration Fridays originally were approved by the Commission for a one year pilot program beginning in November, 1988. The pilot program subsequently has been extended through October 31, 1990. (*See* Securities Exchange Act Releases No. 26326 (November 17, 1988), 53 FR 47393 and 26486 (December 20, 1988), 54 FR 343 (approving File No. SR-NYSE-88-37); and Securities Exchange Act Release No. 27468 (november 18, 1989) 54 FR 48343 (noticing and granting accelerated approval to File No. SR-NYSE-89-38). The expiration Friday procedures apply to 52 pilot stocks on a list consisting of the 50 highest-weighted Standard & Poor's ("S&P") 500 index stocks, based on market values, and any of the 20 Major Market Index ("MMI") stocks not among the 50 highest-weighted stocks.

[4] For example, trading may be halted to allow for the dissemination of material infomation about a security (a regulatory, or news pending; trading halt); or because of a sudden influx of orders for a security (an order imbalance trading halt). Trading also may be halted when the Dow Jones Industrial Average (a service mark of Dow Jones & Company, Inc.) ("DJIA") reaches a value 250 or more points below its closing value on the previous trading day. *See* NYSE Rule 80B.

[5] A "minus" tick (or downtick) refers to a sale price lower than the last "regular way" sale of the

[6] The auxiliary closing procedures on Expiration Fridays for the pilot stocks are described in detail in an Information Memo distributed to the NYSE membership each month. Generally, the current procedures preclude: (1) Entry of any MOC orders relating to the liquidation of any positions that relate to a trading strategy involving any derivative instrument after 3 p.m. and (2) entry of other MOC orders after the imbalance publication unless they

[Rel. No. 34-28446; File No. SR-OCC-90-05]

Self-Regulatory Organizations; the Options Clearing Corporation; Filing of Proposed Rule Change Relating to Acceptance of Options Transactions

Pursuant to secton 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, on March 30, 1990, and amended the proposed rule change on August 7, 1990. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would require OCC to accept all options transactions that are executed and matched and are reported to OCC on a timely basis by the responsible market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to codify OCC's existing policy of accepting all options transactions that are reported to OCC on a timely basis by the responsible market, whether or not the purchasing clearing member meets its premium settlement obligations.

Under its current By-Laws, OCC has discretion, either by a general rule or resolution adopted by its board of directors ("Board") or by action of its officers with respect to specific transactions, to reject any or all opening and closing purchase transactions effected in an account in the event OCC fails to receive payments at or before the settlement time of all premiums owing in that account. However, OCC has never in its history exercised that right, and its policy of accepting all duly reported trades is reflected in its prospectus.[1]

This rule change would implement one of the recommendations made by a special subcommittee (hereinafter referred to as the "Subcommittee") of the margin committee of OCC's Board. After reviewing this issue, the

[1] *See* page 5 of OCC's prospectus dated April 21, 1988. A new preliminary prospectus reflecting this proposed rule change was filed with OCC's Registration Statement on Form S-20 on or about March 28, 1990.

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Subcommittee concluded that an options trade should be considered cleared when executed and matched and that any losses resulting from options trades with an insolvent clearing member should be borne by the industry as a whole, via OCC. Accordingly, the Subcommittee recommended that this rule change, as amended, be filed to codify OCC's policy and to resolve any uncertainty that investors may have with respect to the finality of trades.

The Subcommittee's recommendation applied only to options (which were the only products then cleared by OCC), and the proposed rule change is similarly limited. Under the proposal, OCC would retain the right to reject transactions in market baskets for nonpayment of premiums. The premiums for these products would vastly exceed option premiums on a per-contract basis. If a clearing member failed to make settlement with OCC after purchasing a substantial number of market baskets, OCC might not have sufficient liquidity to effect timely settlement with other clearing members,[5] and any failure by OCC to effect timely settlement could set off a chain reaction of defaults and have other destabilizing effects. Although OCC's policy will be to accept trades in market baskets whenever possible notwithstanding nonpayment of premiums, OCC believes that it would be imprudent to obligate itself to accept all such trades regardless of the circumstances.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934 because it would further the public interest by removing any uncertainty that the public may have with respect to the finality of options trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

[5] OCC is obligated to pay those Clearing Members that have not "balanced" within one hour after collecting from those Clearing Members that have not "pays."

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-OCC-90-05 and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 17, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22729 Filed 9-25-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0206]

The Franklin Corporation SBIC; Notice of Surrender of License

Notice is hereby given that the Franklin Corporation SBIC, 767 Fifth Avenue, New York, New York 10153 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (The Act). The Franklin Corporation SBIC was licensed by the Small Business Administration on September 17, 1959.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on September 7, 1990, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: September 17, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-22737 Filed 9-25-90; 8:45 am]

BILLING CODE 8025-01-M

Approval of a Small Business Defense Production Pool; Flomega Associates

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given that in accordance with the Defense Production Act of 1950, 64 Stat. 798, as amended, and section 11 of the Small Business Act, 15 U.S.C. 640, the Small Business Administration (SBA) has approved an application for a Small Business Defense Production Pool submitted by the Flomega Associates, Cornwall, Pennsylvania. The Flomega pool was approved as required by section 11 of the Small Business Act with the advice and consent of the Attorney General and the Chairman of the Federal Trade Commission. Pursuant to the Small Business Act and 13 CFR 125.7, this notice contains summaries of the purpose, qualifications, and proposed activities of Flomega and an identification of individual pool members.

DATES: Flomega Associates was authorized to enter into contracts with the Federal Government effective June 11, 1990.

FOR FURTHER INFORMATION CONTACT: Roy Rodgers, Director, Office of Prime Contracts, Office of Procurement Assistance, room 600, 1441 L Street NW., Washington, DC 20416. Telephone (202) 653-6826.

SUPPLEMENTARY INFORMATION: Defense Production Pools involve the voluntary pooling of small business concerns. The pooling of the resources and capabilities of small firms increases their productive and research and development capabilities. These pools contribute to the national defense effort by obtaining and performing, as a group, contracts for the production of articles, equipment, supplies and materials, and furnishing of services necessary for military and related defense purposes. The small firms gain some of the advantages of "big business" under the protection of a granted exemption from the Federal antitrust laws and the Federal Trade Commission Act. This enables them to carry out larger, more complex defense contracts; undertake and utilize applied research; undertake new product development; and exploit patents.

Certain conditions are necessary for Government approval of a pool: (1) All proposed member concerns must qualify as "small businesses" under the size standards of the SBA; (2) A defense production pool must limit its activities to the production of products necessary for military and related defense purposes; (3) New members must be admitted upon equitable terms, subject to the approval of the SBA Administrator; (4) Member companies must be permitted to withdraw, if they desire to do so, upon fulfilling their current and outstanding commitments. The SBA Administrator must be notified of each withdrawal from membership; and (5) Each member must be permitted to solicit and perform work independently of the pool.

The Flomega Associates Pool has fulfilled all the foregoing requirements and have executed a Small Business Defense Production Pool Agreement. The agreement states that the Pool desires to combine their distinct capabilities for the purpose of obtaining and performing as a group, contracts for the production of products needed for the defense program of the United States. Specifically, the primary purpose of the Pool is to provide design and engineering services and to manufacture specialty valves and other specially machined articles or components required for the defense program.

The formation of said pool has been approved by the Attorney General with concurrence of the Chairman of the Federal Trade Commission. The activities of this approved pool are, therefore, immune from prosecution under antitrust laws and the Federal Trade Commission Act only insofar as the operations of the pool and the participation of its members in the operations are held within the strict limits of the voluntary program approved by the Government as stated in the pool agreement. Approval of this pool in no way constitutes Government sponsorship of these businesses, their combination, or the purpose they seek to achieve. The approval means only that the Government has authorized the pool to carry on its proposed program exempt from certain provisions of the antitrust laws and the Federal Trade Commission.

The pool members of the Flomega Associates are: Mr. Herman L. Paul, Jr., President, Flomega Industries, Inc., Box 345, Rexmont Road, Cornwall, Pennsylvania 17016, Telephone No. (717) 273-5836, and Mr. Charles L. Lantz, Jr., Executive Vice President, Brenner Machine Company, P.O. Box 193, Cornwall, Pennsylvania 17016, Telephone No. (717) 274-3411.

This notice is published pursuant to section 11(b) of the Small Business Act, as amended.

Dated: September 19, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-22738 Filed 9-25-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1269]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 11, 1990 at 1 p.m. in room 6310 at Coast Guard Headquarters, 2100 Second Street SW.; Washington, DC.

The purpose of this Working Group meeting is to prepare for the 35th Session of the International Maritime Organization Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for February 4 to 8, 1991. Items of discussion will include the following: Subdivision and damage stability of dry cargo ships, including Ro-Ro ships less than 100 meters; the new Code of Intact Stability; subdivision and damage stability standards for passenger ships; basic principles for future revisions to the 1966 Load Line Convention; safety of fishing vessels, including discussions on external forces caused by fishing gear and development of protocol to the 1977 Torremolinos Convention; stability, load line, and tonnage aspects of open-top container ships; livestock carriers; fitting of topside tank non-return valves; hull cracking in large ships; review of the stability requirements for dynamically supported craft; adequacy of IMO instruments to prevent and mitigate marine pollution incidents; role of the human elements in marine casualties; the Work Program of SLF 35; and review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information contact Mr. Cojeen or LCDR Gilbert at (202) 267-2988, U.S. Coast Guard Headquarters (G-MTH-2/13), 2100 Second Street SW., Washington, DC 20593-0001.

Dated: September 13, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90-22760 Filed 9-25-90; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as amended by Public Law 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, TN 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Employment Applications.

Frequency of Use: On occasion.

Type of Affected Public: Individuals.

Small Businesses or Organizations Affected: No.

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Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 89,350.

Estimated Total Annual Burden Hours: 29,675.

Estimated Average Burden Hours Per Response: .5.

Need For and Use of Information: Applications for employment are needed to collect information on qualifications, suitability for employment, and eligibility for veterans preference. The information is used to make comparative appraisals and to assist in selections. The affected public consists of individuals who apply for TVA employment.

Louis S. Casade,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 90-22761 Filed 9-25-90; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-90-39]

Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 16, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 19, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26048.

Petitioner: National Test Pilot School.

Sections of the FAR affected: 14 CFR 21.191.

Description of relief sought: To allow petitioner to train its test pilots and flight test engineers in experimental aircraft owned and operated by the petitioner.

Docket No.: 26255.

Petitioner: Air Transport International, Inc.

Sections of the FAR affected: 14 CFR 121.613, 121.623, and 121.625.

Description of relief sought: To allow petitioner to release a flight to an airport at which the weather forecast includes an "occasionally," a "briefly," an "intermittently," or a "chance of" condition that does not meet the flight release requirements of the regulations.

Dispositions of Petitions

Docket No.: 28079.

Petitioner: Tempelhof Airways USA, Inc.

Sections of the FAR affected: 14 CFR 135.117 (a)(4) and (a)(8).

Description of relief sought: To allow petitioner to use graphic passenger briefing cards instead of oral briefings to describe the opening of passenger entry doors and emergency exits and the location and use of fire extinguishers.

Denial, September 13, 1990. Exemption No. 5235.

[FR Doc. 90-22748 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 166—Lithium Batteries; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the First meeting of RTCA Special Committee 166 on Lithium Batteries held October 25-26, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, Commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory Remarks; (2) Review and approve Terms of Reference, RTCA Paper No. 252-90/SC166-1; (3) Discuss Facts Bearing on the Problem; (4) Develop Initial Work Program and a plan for Accomplishment. Items to consider are: (a) serial by battery type; (b) serial by topic (safety, testing, etc.); (c) battery-type working groups; (d) topic working groups; and (e) schedule; (5) Plan and activities for next meeting; (6) Assignment of Tasks; (7) Other Business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 18, 1990.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-22742 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 90-77]

Approval of Chamberlain and Associates as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval of Chamberlain and Associates as a commercial gauger.

SUMMARY: Chamberlain and Associates of Deer Park, Texas recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Chamberlain and Associates meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Chamberlain and Associates, 1417 Roosevelt, P.O. Box 752, Deer Park, Texas 77536 is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: September 10, 1990.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant For Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW, Washington, DC 20229 (202-566-2446).

Dated: September 18, 1990.

John B. O'Loughlin,

Director, Office of Laboratories, and Scientific Services.

[FR Doc. 90-22731 Filed 9-25-90; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

Federal Tax Deposit Fee Elimination

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that if sequestration occurs, the Department of the Treasury plans to eliminate the fees paid to Treasury Tax and Loan (TT&L) depositaries in the note option Class A and remittance option Class 2 categories, and to all depositaries in the Minority Bank Deposit Program regardless of classification.

Depositaries in the note option Class A and remittance option Class 2 categories and all depositaries participating in the Minority Bank Deposit Program will not be paid fees for Federal Tax Deposit (FTD) payments processed during the October reporting cycle, which begins October 4, 1990. Treasury will continue to review its policy on FTD fees and, at the beginning of Fiscal Year 1991 will determine the feasibility of resuming fee payments to these depositaries during the Fiscal Year.

DATES: Comments must be received by October 12, 1990.

ADDRESS: Comments may be mailed to the Treasury Programs Branch, Financial Management Service, U.S. Department of the Treasury, room 420, Liberty Center, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Elaine Fleishell on (202) 287-0560.

SUPPLEMENTARY INFORMATION: Announcement of Treasury's intent to terminate the fees for depositaries in the note option Class B and Class C and remittance option Class 1 categories, effective October 4, 1990, was published in the **Federal Register** on August 6, 1990. If sequestration occurs, Treasury will expand the termination of FTD fees to include all other depositaries. All depositaries will be paid fees in October for FTDs processed during the September reporting cycle.

Reasons for Treasury's policy concerning the elimination of FTD fee payments include: First, budgetary constraints and the prospect of additional budget cuts to be effective in Fiscal Year 1991 have required Treasury to review the current FTD fee structure. Second, depositaries that choose to participate in the FTD/TT&L Program may earn interest on the overnight use of funds deposited as Federal tax payments.

Treasury procedural instructions found in the "Treasury Financial Manual" on paying fees to financial institutions for processing FTD payments and maintaining Treasury Tax and Loan accounts will be revised to reflect this change. The "Treasury Financial Manual" may be obtained from any Federal Reserve Bank.

Future notice of any subsequent changes in the fees paid to depositaries for processing FTD payments will be provided to the affected financial institutions through the Federal Reserve Banks. Distribution of the revised "Treasury Financial Manual" to the Federal Reserve Banks and TT&L depositaries will be coordinated with the elimination of the fees.

W.E. Douglas,

Commissioner.

[FR Doc. 90-22747 Filed 9-25-90; 8:45 am]

BILLING CODE 4810-35-M

VOL 55 ISS 187 SEP 26 1990 UMI

Sunshine Act Meetings

Federal Register
Vol. 55, No. 187
Wednesday, September 26, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

Notice

(September 19, 1990)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

DATE AND TIME: September 26, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street NE., Room 9308, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 823rd Meeting—September 26, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 9711-001, Inghams Corporation
CAH-2.
Project No. 9712-001, Beardslee Corporation
CAH-3.
Project No. 10533-001, Franklin Hydro, Inc.
CAH-4.
Project No. 10923-001, Town of Westernport, Maryland
Project No. 10921-000, Jennings Randolph Hydro Associates
CAH-5.
Project No. 10655-004, Manter Corporation
CAH-6.
Project Nos. 10935-001 and 10813-000, Town of Summersville, West Virginia
CAH-7.
Project Nos. 663-003 and 004, Puerto Rico Electric Power Authority
CAH-8.
Project No. 10869-001, Robert A. Davis III and Michael P. O'Brien
CAH-9.
Docket No. UL87-8-001, Upper Peninsula Power Company
CAH-10.
Docket No. UL89-31-001, City of Crystal Falls, Michigan
CAH-11.
Docket No. UL86-30-001, David Zinkie
CAH-12.
Docket No. E-7319-001, Wolverine Power Company

Consent Agenda—Electric

CAE-1.
Docket No. ER90-535-000, Madison Gas and Electric Company
CAE-2.
Docket No. ER90-544-000, Northern States Power Company (Wisconsin)
CAE-3.
Docket Nos. ER90-525-000 and ER90-526-000, New England Power Company
CAE-4.
Docket Nos. ER90-348-000 and ER90-406-000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE-5.
Docket No. ER90-527-000, Northern States Power Company (Minnesota)
CAE-6.
Docket No. ER90-355-000 Pacific Gas & Electric Company
Docket No. EL89-34-000, Northern California Power Agency v. Pacific Gas & Electric Company
CAE-7.
Docket No. ER90-395-001, Northeast Utilities Service Company
CAE-8.
Docket Nos. EL89-11-001 and ER90-312-001, Vermont Yankee Nuclear Power Corporation
CAE-9.
Docket Nos. ER88-630-006, ER88-631-006 and ER89-38-006, (Phase I and II), New England Power Company
CAE-10.
Docket No. ER76-205-008, Southern California Edison Company
CAE-11.
Docket No. ER90-349-001, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE-12.
Docket No. EL90-24-000, Seminole Electric Cooperative, Inc. v. Florida Power & Light Company
CAE-13.
Docket No. EL90-33-000, Green Mountain Power Corporation
CAE-14.
Docket Nos. EL89-50-000, EL89-51-000, ER90-83-000, ER90-96-000 and ER90-195-000, Southwestern Public Service Company
CAE-15.
Docket No. RM84-9-000, Calculation of Cash Working Capital Allowance for Electric Utilities
CAE-16.
Docket No. RM87-35-003, Filing Fees Under the Independent Offices Appropriation Act of 1972

Consent Agenda—Gas and Oil

CAG-1.
Omitted
CAG-2.
Docket No. RP90-179-000, Transcontinental Gas Pipe Line Corporation
CAG-3.
Docket No. RP90-166-000, Trailblazer Pipeline Company
CAG-4.
Docket No. RP90-178-000, Panhandle Eastern Pipe Line Company
CAG-5.
Docket Nos. RP90-173-000, TM90-13-20-000 and TF90-3-20-000, Algonquin Gas Transmission Company
CAG-6.
Docket Nos. TQ91-1-7-000, 001 and TM91-1-7-000, Southern Natural Gas Company
CAG-7.
Omitted
CAG-8.
Docket Nos. TM91-2-33-000 and 001, El Paso Natural Gas Company
CAG-9.
Docket Nos. TQ91-1-9-000 and TM91-1-9-000, Tennessee Gas Pipeline Company
CAG-10.
Docket Nos. TM91-1-55-000 and 001, Questar Pipeline Company
CAG-11.
Docket No. TM91-2-38-000, Panhandle Eastern Pipe Line Company
CAG-12.
Docket No. TM91-2-28-000, Panhandle Eastern Pipe Line Company
CAG-13.
Docket Nos. TQ91-1-59-000 and TM91-1-59-000, Northern Natural Gas Company
CAG-14.
Docket Nos. TQ91-1-1-000 and TM91-1-1-000, Alabama-Tennessee Natural Gas Company
CAG-15.
Docket No. TM91-2-30-000, Trunkline Gas Company
CAG-16.
Docket Nos. TA91-1-32-000 and RP90-166-000, Colorado Interstate Gas Company
CAG-17.
Docket No. TM90-14-17-001, Texas Eastern Transmission Corporation
CAG-18.
Docket No. TM90-13-21-000, Columbia Gas Transmission Corporation
CAG-19.
Docket No. TA91-1-35-000, West Texas Gas, Inc.
CAG-20.
Docket Nos. TQ90-13-4-000 and TM90-8-4-000, Granite State Gas Transmission, Inc.
CAG-21.
Docket No. TQ90-8-83-000, Carnegie Natural Gas Company

CAG-22.
Docket Nos. TA89-1-21-002, TM89-2-21-002, TA90-1-21-001 and TM90-8-21-001, Columbia Gas Transmission Corporation
CAG-23.
Docket No. RP90-136-00, Florida Gas Transmission Company
CAG-24.
Docket No. RP90-163-000, MIGC, Inc.
CAG-25.
Docket Nos. RP90-185-000 and RP89-248-000, Mississippi River Transmission Corporation
CAG-26.
Docket No. CP82-487-032 (Phase II), Williston Basin Interstate Pipeline Company
CAG-27.
Docket No. RP90-130-000, Northern Natural Gas Company
CAG-28.
Docket No. TA90-1-49-002, Williston Basin Interstate Pipeline Company
CAG-29.
Docket No. TM90-5-16-001, Texas Gas Transmission Corporation
CAG-30.
Docket No. RP90-137-002, Williston Basin Interstate Pipeline Company
CAG-31.
Docket Nos. RP85-194-009 and RP85-49-002, Panhandle Eastern Pipe Line Company
CAG-32.
Docket Nos. RP82-58-027, RP82-105-010 and RP88-253-009, Panhandle Eastern Pipe Line Company
CAG-33.
Docket Nos. RP90-136-003, RP89-224-002 and RP89-203-005, Southern Natural Gas Company
CAG-34.
Docket Nos. RP86-86-007 and RP85-262-006, Panhandle Eastern Pipe Line Company
CAG-35.
Docket Nos. RP86-10-010 and CP86-110-002, Williston Basin Interstate Pipeline Company
CAG-36.
Docket Nos. CP86-578-031, CP89-1740-005 and RP90-147-001, Northwest Pipeline Corporation
CAG-37.
Docket Nos. TQ90-1-6-001 and TM90-1-6-001, Tennessee Gas Pipeline Company
CAG-38.
Docket Nos. RP90-104-002 and RP89-115-012, Texas Gas Transmission Corporation
CAG-39.
Omitted
CAG-40.
Docket No. RP89-185-001, Panhandle Eastern Pipe Line Company
CAG-41.
Docket No. RP88-35-006, Midwestern Gas Transmission Company
CAG-42.
Docket No. RP90-83-004, CNG Transmission Corporation
CAG-43.
Docket Nos. RP90-4-004 and RP88-48-009, Transwestern Pipeline Company
CAG-44.
Docket Nos. RP90-1-000 and 001, Nycotex Gas Transport
CAG-45.
Docket Nos. RP89-221-000, 001, 002, 003, 004, 005, 006, 007, TA90-1-1-000, 001 and 003, Alabama-Tennessee Gas Company
CAG-46.
Docket No. RP90-52-000, Texas Gas Transmission Corporation
CAG-47.
Docket No. RM87-3-000, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986
Docket Nos. TM91-1-20-000 and RP90-180-000, Algonquin Gas Transmission Corporation
Docket No. TM91-1-48-000, ANR Pipeline Company
Docket No. TM91-1-91-000, ANR Storage Company
Docket No. TM91-1-61-000, Bayou Interstate Pipeline System
Docket No. TM91-1-68-000, Black Marlin Pipeline Company
Docket No. TM91-1-83-000, Blue Dolphin Pipe Line Company
Docket No. TM90-1-67-000, Canyon Creek Compression Company
Docket No. TM91-1-83-000, Carnegie Natural Gas Company
Docket No. TM91-1-22-000, CNG Transmission Corporation
Docket No. TM91-1-32-000, Colorado Interstate Gas Company
Docket Nos. TM91-1-21-000 and RP90-177-000, Columbia Gas Transmission Corporation
Docket Nos. TM91-1-70-000 and RP90-176-000, Columbia Gulf Transmission Company
Docket No. TM91-1-23-000, Eastern Shore Natural Gas Company
Docket No. TM91-1-34-000, Equitrans, Inc.
Docket No. TM91-1-34-000, Florida Gas Transmission Company
Docket No. TM91-1-77-000, High Island Offshore Company
Docket No. TM91-1-63-00, Jupiter Energy Corporation
Docket No. TM91-1-53-000, K N Energy, Inc.
Docket No. TM91-1-46-000, Kentucky West Virginia Gas Company
Docket No. TM91-1-71-000, Michigan Consolidated Gas Company
Docket No. TM91-1-15-000, Mid Louisiana Gas Company
Docket No. TM91-1-47-000, MIGC, Inc.
Docket No. TM91-1-25-000, Mississippi River Transmission Corporation
Docket No. TM91-1-103-000, Moraine Pipeline Company
Docket No. TM91-1-28-000, Natural Gas Pipeline Company of America
Docket No. TM91-1-27-000, North Penn Gas Company
Docket No. TM91-1-76-000, Overthrust Pipeline Company
Docket Nos. TM91-1-73-000 and 001, Ozark Gas Transmission System
Docket No. TM91-1-84-000, Pacific Interstate Offshore Company
Docket No. TM91-1-41-000, Paiute Pipeline Company
Docket Nos. TM91-1-25-000, and RP90-183-000, Panhandle Eastern Pipe Line Company
Docket No. TM91-1-72-000, Pelican Interstate Gas System
Docket No. TM91-1-79-000, Sabine Pipe Line Company
Docket No. TM91-1-5-000, Sea Robin Pipeline Company
Docket No. TM91-1-80-000, Stingray Pipeline Company
Docket No. TM91-1-66-000, Superior Offshore Pipeline Company
Docket No. TM91-1-80-000, Tarpon Transmission Company
Docket Nos. TM91-1-17-000 and RP90-181-000, Texas Eastern Transmission Corporation
Docket Nos. TM91-1-18-000 and RP90-183-000, Texas Gas Transmission Corporation
Docket No. TM91-1-90-000, Texas Sea Rim Pipeline, Inc.
Docket No. TM91-1-66-000, Trailblazer Pipeline Company
Docket No. TM91-2-29-000, Transcontinental Pipeline Company
Docket No. TM91-1-43-000, Transwestern Pipeline Company
Docket Nos. TM91-1-30-000 and RP90-175-000, Trunkline Gas Company
Docket No. TM91-1-74-000, U-T Offshore Company
Docket No. TM91-1-11-000, United Gas Pipeline Company
Docket No. TM91-1-56-000, Valero Interstate Transmission Corporation
Docket No. TM91-1-62-000, Viking Gas Transmission Corporation
Docket No. TM91-1-43-000, Williams Natural Gas Company
Docket No. TM91-1-49-000, Williston Basin Interstate Pipeline Company
Docket No. TM91-1-78-000, Wyoming Interstate Company Ltd.
CAG-48.
Docket No. GP87-10-002, Union Texas Products Corporation
CAG-49.
Docket No. SA90-3-001, Wainoco Oil and Gas Company
CAG-50.
Docket No. RM90-14-001, Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities
CAG-51.
Docket No. RM90-13-001, Interim Revisions to Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates
CAG-52.
Docket No. RM90-13-000, Interim Revisions to Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates
CAG-53.
Docket No. CP90-843-001, Algonquin Gas Transmission Company
CAG-54.
Docket No. CP89-2067-001, Southern Natural Gas Company
CAG-55.
Omitted
CAG-56.
Docket No. CP89-1343-001, Northwest Pipeline Corporation

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CAG-57.
Docket No. CP89-533-001, Tennessee Gas Pipeline Company
CAG-58.
Docket Nos. CP89-283-000 and CP89-617-001, Panhandle Eastern Pipe Line Company
CAG-59.
Docket No. CP88-186-000, MIGC, Inc.
CAG-60.
Docket Nos. CP89-1743-000 and CP88-1743-000, Lone Star Gas Company, a Division of ENSERCH
CAG-61.
Docket No. CP90-772-000, Northwest Pipeline Corporation
CAG-62.
Docket No. CP90-367-000, Texas Gas Transmission Corporation
CAG-63.
Docket No. CP90-589-000, Transcontinental Gas Pipe Line Corporation
CAG-64.
Docket Nos. CP89-1223-000 and 001, Delta Pipeline Company
CAG-65.
Omitted
CAG-66.
Docket No. CP88-806-000, El Paso Natural Gas Company
CAG-67.
Docket No. CP90-2099-000, Colorado Interstate Gas Company
CAG-68.
Docket No. CP70-60-002, Northern Natural Gas Company, Division of Enron Corp. and Northern Natural Gas Company
CAG-69.
Docket Nos. RP88-44-000, RP85-56-017, RP88-203-000, RP89-57-000, CP88-700-000, RP88-184-000, RP89-132-000, RP90-81-000, TM89-3-33-000, CP88-434-000, RP88-185-000, CP88-203-000, CP88-270-000, TA85-1-33-000, TA88-1-33-000, TA88-3-33-000, TQ89-1-33-000, TM89-1-33-000, CP88-244-000, CP89-483-000, CP89-1723-000, CP90-1034-000, CP90-1094-000, CP90-1282-000, CP90-1281-000, CP90-1600-000, CP89-898-000, CP89-1540-000 and CP88-433-000, El Paso Natural Gas Company
Docket No. CP87-250-000, El Paso Production Company
Docket No. CP87-553-000, El Paso Natural Gas Company
Docket No. C188-605-000, People of the State California v. El Paso Natural Gas Company and Odessa Natural Gasoline Company
Docket No. CP87-44-000, Pacific Gas and Electric Company and Southern California Gas Company
CAG-70.
Docket No. RP90-102-001, 003, 004 and 005, Tarpon Transmission Company
CAG-71.
Docket Nos. CP88-712-003 and CP90-169-001, Texas Eastern Transmission Corporation
CAG-72.
Docket No. CP90-2222-000, United Gas Pipe Line Company
CAG-73.
Docket No. RP90-174-000, Transwestern Pipeline Company

Hydro Agenda

H-1.
Project No. 1417-017, Central Nebraska Public Power and Irrigation District.
Project No. 1835-030, Nebraska Public Power District. Order on rehearing of stay order.
H-2.
Project Nos. 588-004 and 2083-000, James River Inc. II. Order on petitions for declaratory order.

Electric Agenda

E-1.
Docket No. EC90-16-000, Kansas City Power & Light Company. Order on request for authorization and approval of a merger.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Omitted
PR-2.
Docket No. RP90-120-000, Gas Research Institute. Order on GRI's 1991-1995 RD plan and 1991 R&D program.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket No. CP89-2107-000, Arkla Energy Resources, Inc.
Docket No. CP90-5-002, CNG Transmission Corporation
Docket No. CP88-332-014, El Paso Natural Gas Company
Docket No. CP88-346-004, Equitrans, Inc.
Docket No. CP89-1179-001, Kentucky-West Virginia Gas Company
Docket No. CP88-312-006, Natural Gas Company of America
Docket No. CP88-2-010, Northern Natural Gas Company
Docket No. CP89-834-003, Panhandle Eastern Pipe Line Company
Docket No. CP88-473-004, Southern Natural Gas Company
Docket No. CP89-759-001, Transcontinental Gas Pipe Line Corporation
Docket No. CP88-99-012, Transwestern Pipeline Company
Docket No. CP90-235-001, Williams Natural Gas Company. Report on Interruptible Sales Service technical conference and order regarding changes in existing ISS certificates.

Lois D. Cashell,
Secretary.
[FR Doc. 90-22929, Filed 9-24-90; 3:54 pm]
BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Added for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that a meeting of the Corporation's June 30, 1990 financial results will be added to the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at approximately 8:30 a.m. on Thursday, September 27, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: September 21, 1990.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 90-22836 Filed 9-24-90; 10:28 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 Noon, Monday, October 1, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1991 Federal Reserve System personnel matters: (A) Reserve Bank officer salary structure adjustments; and (B) Board officer and employee salary structure adjustments and merit programs.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You can call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 21, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-22829 Filed 9-21-90; 4:26 pm]
BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-90-23]

TIME AND DATE: Thursday, October 4, 1990 at 10:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-445 (F) (Industrial Nitrocellulose from Yugoslavia—briefing and vote.
6. Inv. Nos. 701-TA-304 and 731-TA-470-472 (P) (Silicon Metal from Argentina, Brazil, & The People's Republic of China)—briefing and vote.
7. FY 92 Budget Request
8. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: September 18, 1990.
Kenneth R. Mason,
Secretary.
[FR Doc. 90-22835 Filed 9-24-90; 10:28 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, October 2, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue NW., Washington, DC 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31700, *Canadian Pacific Ltd.—Purchase & Trackage Rights—Delaware & Hudson*
Finance Docket No. 31393, *Brandywine Valley Railroad Company—Purchase—CSX Transportation, Inc., Lines in Florida* and Finance Docket No. 31393 (Sub-No. 1), *Brandywine Valley Railroad Company—Purchase—CSX Transportation, Inc., Lines in Florida, Petition for Review of an Arbitral Award*
Ex Parte No. 346 (Sub-No. 24), *Rail General Exemption Authority—Miscellaneous Manufactured Commodities*
Docket No. AB-12 (Sub-No. 124X), *Southern Pacific Transportation Company—Abandonment Exemption—In Mineral County, NV*
Ex Parte No. 346 (Sub-No. 19B), *Boxcar Car Hire and Car Service—Exemption—Bangor and Aroostook Railroad Company*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 90-22898 Filed 9-24-90; 3:38 pm]
BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 24, October 1, 8, and 15, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 24

Wednesday, September 26

2:00 p.m.
Periodic Briefing on the Status of Browns Ferry 2 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 28

2:00 p.m.
Briefing on Studies of Cancer in Populations Near Nuclear Facilities Including Three Mile Island (Public Meeting)

Week of October 1—Tentative

Monday, October 1

2:00 p.m.
Briefing on Conformity of Guidance on Low Level Waste Disposal Facilities with Requirements of 10 CFR Part 61 (Public Meeting)

Tuesday, October 2

1:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Petitions to Intervene and Requests for Hearing in Shoreham Operating License Amendment Proceeding (postponed from September 21).

Week of October 8—Tentative

There are no Commission meetings scheduled for the Week of October 8.

Week of October 15—Tentative

Monday, October 15

10:00 a.m.
Briefing on Regulatory Impact Survey Recommendations (Public Meeting)
2:00 p.m.
Briefing on Decoupling Siting Requirements from Future Designs and Update of Source Term Matters (Public Meeting)

Wednesday, October 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commissioin vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: September 20, 1990.
William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 90-22830 Filed 9-21-90; 4:28 pm]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 24, 1990.

A closed meeting will be held on Tuesday, September 25, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, a duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 25, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Report of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barabara Green at (202) 272-2000.

Dated: September 20, 1990.
Jonathan G. Katz,
Secretary.
[FR Doc. 90-22876 Filed 9-24-90; 12:03 pm]
BILLING CODE 8010-01-M

VOL 55 ISS 187 SE 26 1990 UMI

Corrections

Federal Register
Vol. 55, No. 187
Wednesday, September 26, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Harold Bennett

Correction

In notice document 90-22150 beginning on page 36574, in the issue of Wednesday, September 19, 1990, make the following correction:

On page 36574, in the second column, in the 22nd line from the bottom, "Harold Bennett, 26" should read "Harold Bennett, 25".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 900841-0241]

RIN 0648-AC43

Pacific Coast Groundfish Fishery

Correction

In proposed rule document 90-21831 beginning on page 38105 in the issue of Monday, September 17, 1990, make the following correction:

On page 38105, in the second column, under the DATES caption, in the second line "November 1, 1990" should read "October 28, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 900244-0234]

RIN 0648-AC90

Foreign Fishing; Groundfish of the Gulf of Alaska; Bering Sea and Aleutian Islands

Correction

In proposed rule document 90-21668 beginning on page 37907 in the issue of Friday, September 14, 1990, make the following correction:

On page 37907, in the first column, under the DATES caption, "October 29, 1990" should read "October 20, 1990."

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

Applications; Caprock Educational Broadcasting Foundation, et al

Correction

In notice document 90-20520 beginning on page 35461, in the issue of Thursday, August 30, 1990, make the following correction:

On page 35461, in the second column, under the heading III, in the third column of the table, in the first line, "90-263" should read "90-362".

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Parts 107, 114 and 9008

[Notice 1990-12]

Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions

Correction

In proposed rule document 90-19719 beginning on page 34287 in the issue of Wednesday, August 22, 1990, make the following corrections:

1. On page 34288, in the first column, in the fourth paragraph, in the 18th line "expense" should read "expenses".

2. On page 34289, in the second column, in the first full paragraph, in the second line from the end "state" should read "stale".

3. On the same page, in the third column, in first full paragraph in the fourth line "implement" should read "implements"; and in the third line from the end, insert "a" after "for".

4. On page 34270 in the first column, in the first full paragraph, in the 10th line, insert "in" after "addressed".

5. On the same page, in the same column in the second full paragraph, in the third and second lines from the end, the words "may" and "particular" were misspelled, respectively.

6. On the same page, in the second column, in the first full paragraph, on the ninth line, "used" should read "uses"; and in the second line from the end, "received" should read "receive".

§ 9008.3 [Corrected]

7. On page 34272, in § 9008.3(b)(2)(i), in the second column, on the third line, insert "of" after "as"; and in the seventh line, "the" should read "that".

§ 9008.6 [Corrected]

8. On page 34273, in the first column, in § 9008.6(d), in the fourth line, "agreement" was misspelled.

§ 9008.7 [Corrected]

9. On the same page, in the second column, in § 9008.7(a)(4)(iv), on the first line "or" should read "of".

§ 9008.7 [Corrected]

10. On the same page, in § 9008.7(b)(3), in the third column, on the second line from the bottom "parents" should read "parts".

§ 9008.8 [Corrected]

11. On page 34274, in the first column, in § 9008.8(a)(3), in the seventh line "2)" should read "(2)".

§ 9008.8 [Corrected]

12. On the same page, in § 9008.8(b)(2), in the same column, in the sixth line from the end "corporation" should read "corporations".

§ 9008.9 [Corrected]

13. On the same page, in the second column, in the heading for § 9008.9(a)(1), "Reduction" should read "Reductions".

§ 9008.9 [Corrected]

14. On the same page, in § 9008.9(a)(2), in the second column, in the last line, "business" should read "businesses".

§ 9008.12 [Corrected]

15. On page 34277, in § 9008.12, in the first column, the paragraphs designated (3) and (e) should be designated as (e) and (f), respectively.

§ 9008.14 [Corrected]

16. On the same page, in the second column, in § 9008.14(a)(1)(i), in the first line, "30" should be "20".

§ 9008.14 [Corrected]

17. On the same page, in the same column, in the heading of § 9008.14(b) "failure" was misspelled.

§9008.15 [Corrected]

18. On page 34278, in the first column, in § 9008.15(c), on the ninth line, "an" should read "any".

§ 9008.50 [Corrected]

19. On the same page, in the second column, in § 9008.50, in the 12th line, "expenditures" was misspelled.

§ 9008.51 [Corrected]

20. On the same page, in the third column, in § 9008.51(b)(3), in the first line "receipt" should read "receipts".

§ 9008.51 [Corrected]

21. On the same page, in the same column, in § 9008.51(c)(1), in the seventh line "or" should read "of".

§ 9008.53 [Corrected]

22. On page 34279, in the second column, in § 9008.50, in the section heading, and in the heading of paragraph (a), "corporation" should read "corporations".

§ 9008.53 [Corrected]

23. On the same page, in the same column, in § 9008.53(a)(2)(i), in the fifth line delete the comma.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-90-3136; FR-2864-N-01]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

Correction

In rule document 90-21401 beginning on page 37462, in the issue of Wednesday, September 12, 1990, make the following correction:

On page 37464, in the first column, under Region IV— HUD Field Office — Louisville Office, in the second line, "Oldham County, Bullet County," should have appeared on the first line after "Shelby County".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6797

[WY-930-00-4214-10; WYW 109115]

Withdrawal of Public Mineral Estate for Whiskey Mountain Bighorn Sheep Winter Range; Wyoming

Correction

In rule document 90-21742 appearing on page 37878, in the issue of Friday, September 14, 1990, make the following corrections:

1. On page 37878, in the first column, the Public Land Order should read as set forth above.

2. On the same page, in the second column, in the land description, under Sixth Principal Meridian, in the 13th line, "T. 41 N.," should read "T. 40 N.,".

BILLING CODE 1505-01-D

NATIONAL SCIENCE FOUNDATION

Systematic Biology Advisory Panel Meeting

Correction

In notice document 90-21639 appearing on page 37988, in the issue of Friday, September 14, 1990, make the following correction:

On page 37988, in the second column, in the file line at the end of the document, "FR Doc. 90-21634" should read "FR Doc. 90-21639".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 192

[T.D. 90-71]

Exportation of Self-Propelled Vehicles

Correction

In rule document 90-21513 beginning on page 37707 in the issue of Thursday, September 13, 1990, make the following correction:

On page 37708, in the first column, in the second paragraph, in the ninth line from the end, "landing" should read "lading".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Replacement of Conservator with a Receiver; American Home Savings and Loan Association, F.A.

Correction

In notice document 90-22070 beginning on page 36433, in the issue of Tuesday, September 18, 1990, make the following correction:

On page 36433, in the third column, in the file line at the end of the document, "FR Doc. 90-22-90" should read "FR Doc. 90-22070".

BILLING CODE 1505-01-D

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federal register

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Part II

State Justice Institute

Grant Guideline; Notice

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STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final Grant Guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1991 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 120 S. Fairfax St., Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $10–12 million is expected to be available for award in FY 1991.

FY 1991 Funding Schedule

With two exceptions noted immediately below, the FY 1991 concept paper deadline is December 3, 1990. Papers must be postmarked or bear other evidence of submission by that date. The Board of Directors will meet on March 7–10, 1991 to invite formal applications based on the most promising concept papers. Applications will be due May 14, 1991 and awards approved by the Board at its July 25–28, 1991 meeting.

The exceptions to this schedule are proposals to follow up on the "Future and the Courts" Conference held this past May in San Antonio under the joint sponsorship of the Institute and the American Judicature Society (see section II.B.2.d.), and proposals to sponsor a National Conference on State-Federal Judicial Issues (see section II.B.2.b.iv.(b)). As stated in the proposed Guideline, the submission deadline for concept papers in these two areas only is October 10, 1990. Grants to support projects in these areas will be awarded at the Board's March 7–10, 1991 meeting.

Changes in the Final Guideline

On August 6, 1990, the Institute published its proposed FY 1991 Grant Guideline in the **Federal Register** for public comment. 55 FR 32036. The changes made in the final Guideline are set forth below:

Special Interest Categories

Education and Training. The final Guideline revises the proposed target funding allocations in this category by reducing the Technical Assistance sub-category from the proposed $600,000 to $100,000 and raising the Renewal Funding sub-category from $750,000 to $1,250,000. The shift of $500,000 between these two sub-categories was made in light of last year's funding experience and anticipated applications in the affected subcategories. The overall $3,350,000 target allocation for education and training projects remains unchanged.

With respect to the "Implementation of In-State Education Programs" portion of the "State Initiatives" sub-category (II.B.2.b.i.(b)), the final Guideline modifies the proposed Guideline in two ways. First, the final Guideline clarifies that the $250,000 target allocation for implementation projects is flexible; the exact amount to be awarded depends on the number and quality of applications submitted for such projects as well as those submitted in other areas of the Guideline. In addition, the final Guideline explains that the Board of Directors has delegated the authority to approve "implementation" grants to the Board's Judicial Education Committee.

The final Guideline also invites proposals for a National Conference of State Supreme Court Justices. See Section II.B.2.b.iv.(d). With respect to the proposed National Conference on State-Federal Judicial Issues, the Board wishes to make clear that the conference is designed to address the interests of both the State and Federal courts in a balanced manner.

Substance Abuse. This category has been revised to clarify that projects addressing the impact of drug-related cases on other aspects of a court's caseload or operations would be within the category. See section II.B.2.j.

Responding to the Court-Related Needs of Victims of Crime. This category has been revised to include, among the types of projects that would be within the scope of the category, an examination of the effect of the relationship between spousal abuse and child abuse on the courts. See section II.B.2.k.

Responding to the Court-Related Needs of Elderly and Disabled Persons. The impact of the recently-enacted Americans With Disabilities Act on the State courts has been added to the list of possible project topics under this category.

Definitions

A comment was received requesting an explanation of the change in the definition of "match" clarifying that tuition income does not constitute match (section III.C.). In order to be considered match, cash or in-kind contributions must demonstrate the grantee's commitment to the project. Tuition fails to meet this test because of its speculative nature and because it does not demonstrate the grantee's commitment to the project, but rather the participants'.

Application Requirements

Section VII.C.8. of the proposed Guideline has been amended to require grantees whose projects produce wordprocessed products to submit a diskette of the text in ASCII to the Institute. For non-text products, a copy of an executive summary or a brief abstract in ASCII must be submitted. This requirement will greatly assist the Institute in its ability to efficiently disseminate information about grant-supported projects.

Enforcement of Statutory Anti-Lobbying Provisions

The proposed Grant Guideline added provisions to sections VII. and X. of the Guideline that would implement the antilobbying provisions of the State Justice Institute Act, 42 USC 10706(a)(1), and assure that Institute-supported projects are designed and implemented in an unbiased manner. The final Guideline is unchanged in this regard. In response to the comments of two organizations, however, the Board wishes to clarify that organizationally affiliated entities that have different governing bodies or are otherwise clearly separate organizations, e.g., the Conference of Chief Justices and the National Center for State Courts, or the American Bar Association and the National Judicial College, would not be considered parts of the same organization for the purposes of the anti-lobbying provisions of the Guideline.

No other changes (except typographical and grammatical corrections) have been made in the final Guideline.

Recommendations to Grantwriters

Over the past three years, Institute staff have reviewed approximately 1,100 concept papers and over 400 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals

that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. *What is the subject or problem you wish to address?*

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grantwriters regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. *How will others find out about it?* Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be clearly presented. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be clearly identified.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants are also encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: if, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?* Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, no matter what the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, applicants should use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?* The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $30,000=$15,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports×75 pages each×.05/page=$375.00).

Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form

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against those in the narrative will preclude such confusion.

10. *What travel regulations apply to the budget estimates?* Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. *May grant funds be used to purchase equipment?* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automatic data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. *To what extent may indirect costs be included in the budget estimates?* It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application. If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with section XI.H.3 of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year (applicants lacking an audit must budget all project costs directly). If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed for the applicant's use at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval.

13. *Does the budget truly reflect all costs required to complete the project?* After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

State Justice Institute Grant Guideline

The following Grant Guideline is accordingly adopted by the State Justice Institute for Fiscal Year 1991:

State Justice Institute Grant Guideline

Table of Contents

Summary
I. Background
II. Scope of the Program
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Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments; other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

It is anticipated that approximately $10–12 million will be available for grants, contracts, and cooperative agreements from FY 1991 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1991 funds. The concept paper submission deadline for all but two funding categories is December 3, 1990. Concept papers concerning the proposed National Conference on State/Federal Judicial Issues and concept papers proposing projects to follow-up on the Future and the Courts Conference must be mailed by October 10, 1990. This Guideline applies to all concept papers and formal applications submitted for FY 1991 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.*, as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1991 is expected to be approximately $10–12 million. Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with Federal agencies and other private grantors;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1991, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisidiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1991, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Courts and the Community.* This category includes research, demonstration, and evaluation projects to enhance communication and understanding between courts and the communities they serve. Examples of the issues that may be addressed include: the innovative use of community volunteers to enhance court operations and services; innovative programs that improve access to justice, other than those that provide legal representation; innovative methods of fairly and effectively handling cases involving pro se litigants; methods for improving the court system's responsiveness to public needs and expectations; innovative methods or materials for schools or citizens' groups to improve public understanding of the courts; and other innovative approaches to enhancing public understanding of the purpose and operations of the judicial system and the system's responsiveness to its citizenry.

The category also includes projects designed to examine or enhance relations between the courts and the media. Such projects might address the use of orders limiting access to courtrooms and sealing settlement agreements and dispositional orders, and the effect of such orders on public perceptions of the fairness of the court process.

b. *Education and Training for Judges and Other Key Court Personnel.* The Board of Directors anticipates allocating approximately $3,350,000 for judicial education projects in FY 1991. Of this amount, it is expected that up to $2,100,000 will provide support to projects which the Institute has not funded previously, and up to $1,250,000 will provide renewal funding for judicial education programs of proven merit under Section IX of the Guideline. The exact amount to be awarded in each subcategory listed below will depend on the number and quality of the applications submitted in both this Special Interest category and other areas of the Guideline. The Board anticipates allocating the $2,100,000 available for new awards in Fiscal Year 1991 as follows:

i. State Initiatives	$750,000
ii. National/Regional Training Programs	750,000
iii. Technical Assistance	100,000
iv. Conferences	500,000
Total	2,100,000

i. *State Initiatives.* This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

(a) *Development of In-State Education Programs:*

—The development of State-determined standards for judicial education;
—The preparation of State plans for judicial education, including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development);
—Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
—The development of a pre-bench orientation program and other training for new judges;
—The development of benchbooks and other educational materials; and
—Seed money for innovative continuing education and career development programs, including training which brings teams of judges, court managers and other court personnel together to address topics of mutual interest and concern.

(b) *Implementation of In-State Education Programs.* The Board proposes to reserve $250,000 of the $750,000 allocated for State Initiatives to provide support for in-State implementation of model curricula and/or model training previously developed with SJI support. The exact amount to be awarded for implementation grants will depend on the number and quality of the applications submitted in this area and other areas of the Guideline. Implementation projects may include in-State replication or State-specific modification of a model training program, model curriculum, or course module developed with SJI funds by any other State or any national organization; adaptation of a curriculum or a portion of a curriculum developed for a national or regional conference; or adaptation of curriculum for use as part of a State judicial conference or State training program for judges and other court personnel. Only State or local courts may apply for in-State implementation funding.

Grants to support in-State implementation of training programs previously developed with SJI funds are limited to no more than $20,000 each and will be awarded on the basis of criteria including: the need for outside funding; the certainty of implementation; and expressions of interest by the judges and/or court personnel (e.g., the State judicial educator, State Court Administrator or individual court manager) who would be directly involved in or affected by the project. The Institute will also consider such factors as diversity of subject matter and geographic diversity in making implementation awards. In lieu of concept papers and formal applications, applicants for in-State implementation grants may submit a detailed letter outlining the proposed project and addressing the three criteria listed above, at any time. The Board of Directors has delegated its authority to approve these grants to its Judicial Education Committee. Applicants seeking other types of funding must comply with the requirements for concept papers and applications set forth in Sections VI and VII or the requirements for renewal applications set forth in Section IX.

ii. *National and Regional Training Programs.* This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

—Training programs or seminars on topics of interest and concern that transcend State lines;
—Multi-State or regional training programs sponsored by national organizations, State courts or universities; and
—Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel.

iii. *Technical Assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate clearly their ability to work effectively with State judicial educators.

Within this category, priority will be given to the support of projects focused on State-to-State, State-to-national, and national-to-State transfer of ideas and information. Support and assistance to be provided by such projects may include:

—Development of educational curricula and support materials;
—Training faculty in adult education theory and practice;
—Consultation on planning, developing and administering State judicial education programs;
—Coordination and exchange of information among judicial education providers;
—Collection and dissemination of information about exemplary adult and continuing judicial education programs;
—Development of improved methods of evaluating court education programs; and
—On-site assistance in any of the areas listed above.

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel.

The Institute intends to support the planning and presentation of three conferences addressing the following three topics: The Impact of Substance Abuse Cases on the State Courts; State-Federal Judicial Issues; and The Improvement of the Adversary System.

(a) *The Impact of Substance Abuse Cases on the State Courts.* The Board of Directors is specifically interested in receiving proposals from national organizations, universities, courts, and others to conduct a major national conference focusing on the impact of substance abuse cases on the State courts. The envisioned conference should be planned in collaboration with judges, court administrators, experts in the field of substance abuse, prosecutors and representatives from the criminal defense bar, treatment programs and human services agencies. It should provide the judiciary and other court personnel with basic information on substance abuse; the management of drug-related cases in criminal, civil, domestic relations, and juvenile dockets; effective treatment programs for individuals who abuse alcohol and other drugs; and sentencing alternatives. The Board specifically invites comments regarding the specific issues that should be addressed at the proposed conference, in addition to or instead of those listed below.

1. How is substance abuse defined and what are the various theoretical contexts for understanding the characteristics and different stages of substance abuse?

2. How can substance abuse be effectively diagnosed and treated? What diagnostic tools exist to help court personnal detect and assess substance abuse? Are new tools needed? What kinds of treatment programs exist, how do they differ, and do new program models need to be developed?

3. What are the "special issues" court personnel must understand and address with regard to substance abuse, for example:

—the relationship between AIDS and substance abuse;
—the appropriate response courts can make to problems resulting from the increasing number of infants born with impairments resulting from maternal drug and alcohol abuse;
—the relationship between substance abuse, child abuse and family violence; and
—the cumulative effect of substance abuse throughout succeeding generations.

4. What do judges need to know to make informed treatment and dispositional decisions? What are appropriate "sentencing alternatives" for adjudicated substance abusers and in what circumstances should they be used? What are the difference in the motivations of drug users, drug sellers who also use drugs, and non-user drug distributors and how should these difference be reflected in sentencing? What are the public's expectations of the nature and effect of sentences in cases involving substance abuse and the illegal distribution of controlled substances?

5. What can or should judges do when the community does not have a sufficient number of treatment programs to which to refer substance abusers?

6. How are court dockets, both criminal and civil, impacted as a result of the increasing volume of substance abuse-related cases? How can a high volume of substance abuse-related cases best be managed fairly and expeditiously by the courts?

7. What resources already exist to help further educate judges and other court personnel on substance abuse, its causes, and its treatment.

(b) *National Conference on State-Federal Judicial Issues.* This conference, which will be considered by the Institute on an accelerated timetable, will focus on issues relating to the relationship between the State and Federal courts. Specifically, the Board expects the Conference to address the following topics, among others:

—the impact of possible revisions in habeas corpus procedures on the State and Federal judicial systems;
—coordination between State and Federal courts in the handling of mass tort litigation;
—reallocation of judicial business between the State courts, such as the recommendations made by the Federal Courts Study Committee, i.e., more drug case prosecutions in State courts and changes in Federal diversity of citizenship jurisdiction;
—the frequency, outcomes, and effect of Federal courts certifying questions of law for State Supreme Courts;
—the roles of local State-Federal Judicial Councils and a National State-Federal Judicial Council; and
—an exploration of the desirability and feasibility of better ways to share information between the State and Federal courts systems and to coordinate State and Federal judicial planning efforts.

The Board contemplates co-sponsoring the Conference with the Federal Judicial Center. In order to convene this important conference as soon as possible, the Board has approved an accelerated schedule for the consideration of concept papers and applications proposing the conference. Concept papers must be submitted no later than October 10, 1990. The Board will consider the concept papers and invite formal applications at its November 29–December 2, 1990 meeting. The applications will be considered at

the Board's meeting on March 7–10, 1991.

(c) *The Improvement of the Adversary System.* There have been a number of conferences and symposia addressing alternative dispute resolution procedures and their relationship to the courts. The Institute is now interested in supporting a conference that would examine the adversary system itself, including its strengths, its weaknesses, and what steps can be taken to improve both the system and the public's perception of the system.

Among the many topics that could be addressed at such a conference are: the types of cases for which the adversary process may be the most appropriate and the least appropriate; the role of the jury and the use of special or blue-ribbon juries; simplifying the pretrial process, including voir dire; the best way of presenting and adjudicating technically complex cases; methods for reducing trial length and expediting the trial process; the education of trial counsel and litigants about settlement techniques and methods for determining the value of their cases; the use and impact of Rule 11 and other sanctions; and improving access to the adversary process for poor and middle-income litigants. The conference should involve the participation of judges, attorneys, court managers, legal scholars, researchers, business leaders, citizen organizations, dispute resolution specialists, and media representatives.

(d) *State Supreme Court Justices Conference.* In light of the lack of opportunity for all members of the Supreme Courts of each of the States to meet together and discuss issues of common concern, the Institute invites proposals to sponsor an educational conference where State Supreme Court justices, legal scholars, and other participants would exchange information about:

—developing trends in civil, criminal, domestic relations, juvenile, and mental health law;
—emerging doctrines and principles in State constitutional law and the appropriate use of independent State grounds;
—problems and solutions in the relationship between State Supreme courts and the Federal court system;
—appellate procedures and case management techniques;
—the application of technology to assist the appellate process; and
—other developments in substantive law and judicial administration.

All court education programs should assure that faculty understand and apply adult education techniques and teaching methods; provide opportunities for structured interaction among participants; develop tangible products and materials for use by the faculty, participants and other judicial educators; employ a process for the recruitment of qualified and effective faculty; and develop sound methods for evaluating the impact of the training.

c. *Alternative Dispute Resolution (ADR).* This category covers the evaluation of new and existing dispute resolution procedures and programs that have a substantial likelihood of resolving mass tort and multi-party cases, matters involving domestic violence, and other court cases in a more fair, expeditious, and less expensive manner than traditional court processing, with special emphasis on the effect of such programs on the quality of justice, litigant and court costs, court workload, and case processing. The Institute also is interested in continuing to explore the appropriate uses of ADR, the proper relationship between ADR and the courts; the nature and effect of settlement practices; and the ethical issues that face judicial officers who are involved in settlement activities.

In previous funding cycles, grants have been awarded to support development and evaluation of: juvenile offender-victim mediation; divorce mediation; court-annexed arbitration of civil cases; court-annexed mediation of civil, criminal, and domestic relations cases; medical malpractice mediation; appellate mediation; alternatives to adjudication in child abuse and neglect cases; early neutral evaluation of motor vehicle cases; the impact of private judging on the State courts; evaluations of multi-door courthouse programs; and civil settlement processes.

Additional SJI-supported ADR projects include: technical assistance to courts interested in implementing or expanding multi-door courthouse programs; development of standards for court-annexed mediation programs; examination of the philosophy, purpose, and evolution of ADR programs; testing of a referral-based mediation program; the retention and productivity of volunteer community mediators; the applicability of various dispute resolution procedures to different cultural groups; an examination of whether mediation of matters involving domestic violence is safe and appropriate; and a national directory of ADR programs.

d. *The Future and the Courts.* The mission of the "Future and the Courts" Conference convened by SJI and the American Judicature Society in San Antonio in May, 1990 was to "formulate visions of the American judicial system over the next 30 years and beyond, establish goals for the long-term needs of the State courts, and identify an agenda for planning, action and research to achieve those goals." The Board has developed a list of Conference follow-up activities that would enable those at the Conference and others to begin to act on the agenda developed at the Conference in their own jurisdictions.

In order to expedite those activities, and preserve the momentum of the Conference, the Board has approved an accelerated schedule for Conference follow-up projects. Concept papers proposing such projects will be due October 10, 1990. The Board will review the concept papers at its November 29–December 2, 1990 meeting and invite applications that will be considered at the Board's meeting on March 7–10, 1991.

The Board will consider projects proposing:

(1) State futures commissions, conferences, and educational programs exposing judges and court staff to futures thinking and the trends that might impact their courts. *State futures commissions will be supported only if they are significantly different in approach and structure from futures commissions previously supported by the Institute in Arizona, Colorado, Massachusetts, Utah, and Virginia;*

(2) Development, implementation, and evaluation of institutionalized long-term planning efforts in individual States and local jurisdictions, e.g., the inclusion of environmental scanning and long-term futures planning as components of the courts' routine planning process;

(3) Conferences to bring together people from States that have engaged in futures efforts, States that are just beginning those efforts, and States that are just starting to think about them, in order to exchange experiences and identify major problem areas and solutions;

(4) Symposia dedicated to certain specific topics that could result in recommendations for future research, planning, training, and action;

(5) Development of informational materials and curricula to enable judges and court personnel to become more familiar with, and apply futures thinking and planning principles; and

(6) Establishment of an ongoing clearinghouse and technical assistance resource center for State and national futures efforts.

e. *Improving Communication and Coordination Among Courts.* This category includes the development, implementation and evaluation of innovative procedural, administrative, technological, and organizational methods to improve communication and coordination among State courts and between State and Federal courts hearing related cases. Among the circumstances in which such improved communication and coordination are particularly needed, are:

—Mass tort litigation;
—Instances in which a litigant in a State civil, criminal or domestic relations case is subject to a Federal bankruptcy proceeding;
—Instances in which a defendant has charges pending in both State and Federal court or in more than one State court;
—Post conviction challenges in capital cases; and
—Instances in which multiple cases are pending involving members of a single family (e.g., divorce, domestic violence, child support, and child custody proceedings).

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, "untested" refers to applications of technology that are not used widely by the courts or that include a unique element to enhance their usefulness to the courts. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support the *demonstration and evaluation of communications technology*, e.g.: an interactive computerized information system to assist pro se litigants, an electronic mail system and computer-based bulletin board to facilitate information transfer among criminal justice agencies in adjoining local jurisdictions, the effects of telephone conferencing in interstate child support cases, and the use of FAX technology by courts;

Demonstration and evaluation of records technology, e.g.: the effects, costs, and benefits of videotape as a technique for making the record of trial court proceedings; an automated microfilm system and an optical disk system for maintaining and retrieving court records; an automated Statewide records management system; the integration of bar-coding technology with an existing automated case management system, and an on-bench automated system for generating and processing court orders;

Court technology assistance services, e.g.: circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base and circulation of reports documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; and development of court automation performance standards.

Current grants also are supporting development of a hands-on seminar for judges and court managers in an automated "courtroom of the future", implementation and evaluation of a Statewide automated integrated case docketing and recordkeeping system, and a national assessment of the efforts to develop and implement Statewide automation of trial courts.

g. *Reduction of Litigation Expense and Delay.* This category includes the testing, implementation, and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in civil, criminal, domestic relations, juvenile or other types of litigation at the trial or appellate level (or both); and the examination of effective methods of limiting the expense and delay arising from the use of discovery procedures.

In previous funding cycles, grants have been awarded to support the examination of the causes of delay and the methods for improving case processing in trial courts in rural jurisdictions, limited jurisdiction urban trial courts, and in intermediate appellate courts. In addition, grant support has been awarded to projects testing or examining the impact of innovative procedures for: screening civil cases, handling medical malpractice cases, and expediting appellate dispositions.

The Institute also has supported studies of case processing in domestic relations cases and the extent of case processing problems caused by discovery, as well as assistance to trial courts in major urban areas and to appellate courts to improve case processing, adopt and implement time standards, and otherwise reduce litigation delay.

h. *The Use of Juries.* This category includes the examination of legal and administrative issues regarding the fair and effective use of juries. These include, but are not limited to: experiments testing the effect on case outcomes of varying methods of jury selection including use of persons selected from the panel of prospective jurors at random; the use of "blue-ribbon" or specially qualified juries for civil cases involving complex scientific, technical or economic issues; the extent of jury nullification and the characteristics of the cases in which it occurs; the more active participation of juries in the fact-finding process; and innovative methods for preventing attempts to intimidate or influence jurors.

i. *Design of Effective Orders.* This category includes projects that would test and evaluate whether well-designed court orders result in greater compliance in both civil and criminal cases. Such projects could include:

—testing methods of efficiently and reliably obtaining the information judges need to impose effective criminal sanctions (including probation conditions such as offender treatment plans, fines, and restitution), or equitable dispositional orders in juvenile delinquency, neglect and abuse, domestic relations, and mental health cases;
—identifying the types of incentives that facilitate defendants' compliance with orders, or disincentives that inhibit compliance; and
—developing methods such as "plain language" summaries, tape recordings, and other procedures to promote better understanding of, and compliance with the terminology used in court orders, particularly by parties who are illiterate, not fluent in English, or mentally or physically disabled.

j. *Substance Abuse.* This category includes the planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers and other court personnel to: examine court-related issues concerning drug and alcohol abuse; discuss the appropriate role of the courts in addressing the problem of substance abuse; and develop specific plans for how individual courts can respond to the impact of the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases on their ability to

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manage their overall caseloads fairly and efficiently.

In addition, this category includes the development and evaluation of innovative case management techniques for handling the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases fairly and expeditiously; the development and testing of programs which establish coordinated efforts between local courts and treatment providers; evaluation of innovative programs that minimize or reduce recidivism; and the development, and testing and evaluation of profiles, guides, risk assessment instruments and other tools to assist judges in making release, dispositional, treatment, and sentencing decisions in cases involving substance-abusing persons. In addition to the above, see also Section II.B.2.b.iv.(a) regarding a the Institute's interest in supporting a National Conference on the Impact of Substance Abuse Cases on the Courts.

In previous funding cycles, the Institute has supported demonstration projects which are evaluating the effectiveness of court-based alcohol and drug assessment programs; research on effective strategies for coping with increasing caseload pressures; and local education and training programs for judges and other court personnel on substance abuse and its treatment.

k. *Responding to the Court-Related Needs of Victims of Crime and Witnesses.* This category includes the implementation and evaluation of innovative court-based programs and procedures for providing fair treatment to victims of crime and witnesses. Court-based programs are those that are administered directly by the courts or through contracts negotiated between service providers and the courts. Programs and services operating in non-court settings, e.g., prosecutors' offices, ordinarily would not be favorably considered for funding.

Eligible projects may involve civil, criminal, domestic relations, juvenile and other types of cases, including but not limited to:

—Demonstrations and evaluations of innovative court policies and practices to protect victims and witnesses from threats and intimidation, particularly in drug and drug-related cases; and
—Programs and procedures to assure the fair, effective, and efficient handling of domestic violence cases, such as: the appropriate use of court-ordered domestic violence mediation programs; evaluations of innovative court-ordered treatment programs for offenders and their families; and implementation and evaluation of innovative procedures governing the issuance and enforcement of protective orders.
—Research projects examining, e.g., the impact of procedures designed to assist crime victims on the administration of the courts; and the identification of effective and appropriate approaches that courts may use in developing dispositional orders in cases involving both spousal and child abuse.

With respect to court-related domestic violence issues, SJI grants have previously been awarded to: study the effectiveness of probation as a sanction in child sexual abuse cases; evaluate the use of cognitive questioning of child witnesses; develop a model protocol for handling child victim cases in criminal court; examine the use of alternatives to adjudication in child abuse and neglect cases; determine when and how mediation can be used appropriately in domestic relations cases in which domestic violence is alleged; demonstrate and evaluate the use of domestic violence shelter staff to assist victims in filling out and filing requests for injunctions for protection, thereby alleviating the burden placed on court staff; and develop and evaluate judicial education programs on victimization and domestic violence issues.

Current grants also are supporting an examination of the effects of the terms and duration of protection orders in protecting domestic violence victims and deterring batterers; and the identification and documentation of court-related programs that offer effective responses to problems faced by the courts in handling family violence cases.

l. *Responding to the Court-Related Needs of Elderly and Disabled Persons.* This category includes research, demonstration, and evaluation projects on issues related to the fair and effective handling of cases affecting elderly and physically or mentally disabled persons, and access to the courts by those persons. The issues that may be addressed include but are not limited to:

—the fair and effective consideration of cases concerning the cessation of medical and other services to elderly or disabled persons including the determination of what constitutes clear and convincing evidence of a person's wish not to initiate or continue life-sustaining treatment;
—the impact on the State courts of the Federal Americans with Disability Act of 1990;
—the fair and effective consideration of cases concerning the competency of individuals;
—the design of appropriate guardianship/conservatorship orders; and
—the improvement of access to courthouses and court proceedings for litigants, jurors, witnesses, and victims of crime who have mobility or communication impairments.

In previous funding cycles, the Institute has supported: several projects to examine, identify and test procedures to improve the monitoring and enforcement of guardianship orders; a project to develop guidelines for judges in considering cases regarding the withdrawal of life-sustaining treatment; projects to develop training materials on guardianship for judges and potential guardians; projects to develop a benchbook and training materials regarding AIDS for judges, probation officers, and probationers; and a project to develop comprehensive guidelines for courthouse facilities. The Institute also is supporting a national conference on the court-related problems of elderly and disabled persons.

m. *The Relationship Between State and Federal Courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

—Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;
—Handling civil, criminal, domestic relations or other types of cases in which a party also is subject to a Federal bankruptcy proceeding;
—Processing complex multistate litigation in the State courts;
—Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and
—Otherwise allocating judicial burdens between and among Federal and State courts.

Other possible areas of research include studies examining the impact of the enforcement of selected Federal statutes on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases in which there is concurrent jurisdiction.

See also section II.B.2.b.iv.(b) soliciting proposals for a National Conference on State-Federal Judicial Issues.

C. Programs Addressing A Critical Need of a Single State or Local Jurisdiction

1. The Board will set aside up to $1,000,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or statutory Program Areas, and may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court in an urban, rural or suburban area.

2. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements for New Projects") and VII ("Application Requirements"), respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met solely with State and local resources within the foreseeable future.

3. All awards under this category are subject to the matching requirements set forth in section X.B.1.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. *Institute.* The State Justice Institute.

B. *State Supreme Court.* The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. *Designated Agency or Council.* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. *Grantor Agency.* The State Justice Institute.

E. *Grantee.* The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *Grantee* refers to the State Supreme Court.

F. *Subgrantee.* A State or local court which receives Institute funds through the State Supreme Court.

G. *Match.* The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Match does not include project-related income such as tuition or payments for grant products, or time of participants attending an education program.

H. *Renewal Funding.* A grant to support an existing project for an additional period of time. Renewal funding may take the form of a continuation grant or an on-going support grant.

I. *Continuation Grant.* A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

J. *On-going Support Grant.* A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

K. *Human Subjects.* Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705 (b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) the principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Amounts of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Size of Awards

1. Except as specified in paragraphs V.B. 2. and 3., concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000, although new and continuation awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds to support ongoing support grants may be awarded either entirely from the Institute's appropriations for the Fiscal Year of the

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award or from the Institute's appropriations for successive Fiscal Years beginning with the Fiscal Year of the award. When funds to support the full amount of an ongoing support grant are not awarded from the appropriations for the Fiscal Year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that Fiscal Year.

C. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement and the submission deadlines for concept papers and applications may be waived by the Board if it determines that time factors or other critical considerations justify the waiver.

A. Format and Content

Concept papers must include a cover sheet and a narrative.

1. The cover sheet must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper; and

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper.

2. The narrative must be no more than 10 doublespaced pages on 8 1/2 by 11 inch paper. Margins must not be less than 1 inch and no smaller than 12 point type must be used. The narrative should contain:

a. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed project. Applicants should explain the proposed project's relationship to a Program Area or Special Interest Category only if it is not obvious.

b. An explanation of the need for the project. If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, applicants should discuss the problems that the proposed project will address, and explain why existing materials, programs, procedures, services or other resources do not adequately resolve those problems.

c. A summary description of the approach to be taken;

d. A summary description of how the project will be evaluated, including the evaluation criteria;

e. A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated;

f. An explanation of the expected benefits to be derived from the project;

g. The identity of the key staff (if known) and a summary description of their qualifications;

h. A preliminary budget estimate including the anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories;

i. The amount, nature (cash or non-cash), and source of match to be provided (see section X.B.); and

j. A statement of whether financial assistance for the project has been or will be sought from other sources.

3. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. The Institute will not accept concept papers exceeding 10 pages. The page limit does not include letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

5. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the 10-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1991 must be sent by first class or overnight mail or by courier no later than December 3, 1990, except for concept papers addressing Special Interest categories b.iv.(a). (Conference on State-Federal Judicial Issues) and d. (The Future and the Courts) which must be sent by October 10, 1990. A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

The Board will meet to review the concept papers and invite applications for the Conference on State-Federal Judicial Issues and on The Future and the Courts on November 29–December 2, 1990. It will meet on March 7–10, 1991 to review concept papers and invite applications on all other topics. The Institute will send written notice to all submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

Except as specified in section VI., a foral application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project abstract and program narrative, and certain certifications and assurances. These documents are described below.

A. Forms

1. *Application Form* (FORM A)—The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. *Certificate of State Approval* (FORM B)—An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or designated agency or council will receive, administer, and be accountable for the awarded funds.

3. *Budget Forms* (FORM C or CI)—Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM CI. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to FORM C or CI, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See Section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. *Assurances* (FORM D)—This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and no smaller than 12 point type must be used. The page limit does not include appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. *Project Objectives.* A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects. A discussion should be included only if the relationship between the proposed project and the program areas and Special Interest categories is not obvious.

3. *Need for the Project.* If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

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4. *Tasks, Methods and Evaluation.*

a. *Tasks and Methods.* A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

For education and training projects, the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

For technical assistance projects, the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness of usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example, an appropriate evaluation approach for many research projects is reviewed by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

The most valuable approaches to evaluating educational or training programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach when an education project involves the development of curricular materials is the use of an advisory panel of relevant experts coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court what benefits resulted from the program?); and the replicability of the program or components of the program.

For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

5. *Project Management.* A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

6. *Products.* A description of the products to be developed by the project (e.g., monographs, training curricula and materials, videotapes, articles, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large. Ordinarily, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties. Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, for all wordprocessed products, grantees must submit a diskette of the text in ASCII. For non-text products, a copy of the executive summary or a brief abstract in ASCII must be submitted.

7. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705(b) (1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. *Staff Capability.* A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. *Organizational Capacity.* Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be certified by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. *Statement of Lobbying Activities.* Applicants must submit a form (to be prepared by the Institute) that states whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. *Letters of Support for the Project.* If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. *Justification of Personnel Compensation.* The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies.

2. *Fringe Benefit Computation.* The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. *Consultant/Contractual Services.* The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with section XI.H.2.c.

4. *Travel.* Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. *Supplies.* The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. *Construction.* Construction expenses are prohibited except for the limited purposes set forth in section X.G.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. *Telephone.* Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. *Postage.* Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. *Printing/Photocopying.* Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. *Indirect Costs.* Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate

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agreement should be attached to the application.

12. *Match.* The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented. Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.G., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 14, 1991. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project;

h. The demonstration of cooperation and support of other agencies that may be affected by the project;

i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B., and

j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.

3. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix A when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding—"continuation grants" and "on-going support grants." Pursuant to the procedures and requirements set forth below, the Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in Sections VI. and VII.

A. Continuation Grants

1. *Purpose and Scope.* "Continuation grants" are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent

extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. *Application Procedures—Letters of Intent.* In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. *Application Format.* An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should address:

a. *Need for Continuation.* Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

b. *Report of Current Project Activities.* Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why.

c. *Evaluation Findings.* Describe the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation. If the findings are not yet available, provide the date by which they will be submitted to the Institute.

d. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity.

e. *Task Schedule.* Present a detailed task schedule and time line for the next project period.

f. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

g. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

4. *References to Previously Submitted Material.* An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.—VIII.F.

B. On-going Support Grants

1. Purpose and Scope. On-going support grants are intended to support projects that are national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.B.2 and V.C.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period.

2. *Application Procedures—Letters of Intent.* The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.B.2.

In lieu of a concept paper, a grantee seeking an ongoing support grant must inform the Institute, by letter, of its

intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. *Application Procedures and Format.* An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period.

e. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

h. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested.

4. *References to Previously Submitted Material.* An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an ongoing support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620, as amended) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see Section III G.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VIII.B. above and XI.D).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

H. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

I. Reporting Requirements

Recipients of Institute funds shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

J. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

K. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

L. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

M. Disclaimer

Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

N. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

O. Inventions and Patents.

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

P. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Q. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. *Purpose.* The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. *References.* Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. *Grantee Responsibilities.* All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting for receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

2. *Responsibilities of State Supreme Court.* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.J. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. *Timing of Matching Contributions.* Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. *Records for Match.* All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See Section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. *Coverage.* The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. *Retention Period.* The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. *Maintenance.* Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. *Interest.* A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. *Royalties.* The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. *Registration and tuition fees.* Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. *Other.* Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements.

1. *Payment of Grant Funds.* The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

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b. *Termination of Advance Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports,

The Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. *Financial Reporting.* In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In the circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

3. *Consequences of Non-Compliance with Submission Requirements.* Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments.

H. Allowability of Costs

1. *General.* Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87*, Cost Principles for State and Local Governments; *A–21*, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122*, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. *Costs Requiring Prior Approval:*

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. *Travel Costs.* Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. *Indirect Costs.* These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.*

(i) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(ii) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(iii) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. *Procurement Standards.* For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102*. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110*.

2. *Property Management Standards.* The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

J. Audit Requirements

1. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. *Implementation.* Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1.c. and d. above have been satisfied.

3. *Resolution and Clearance of Audit Reports.* Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. *Consequences of Non-Resolution of Audit Issues.* It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. *Definition.* Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. *Grantee Close-Out Requirements.* Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted by the grantee to the Institute.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calender quarter of the project and the closeout period, including to whom project products have been disseminated; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met; and, if any of the objectives have not been met explain the reasons therefor.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which exceed or are expected to exceed 5 percent of the approved budget.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.Q.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment from the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/sub-grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made 30 days in advance of the end date of the grant. A request to change or extend the deadline for the final financial report or final progress report must be made 30 days in advance of the report deadline (see section XI.K.2.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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Sandra A. O'Connor, States Attorney of Baltimore County, Towson, Maryland

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Appendix—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Allen L. Tapley, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834-7990

Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264-0547

Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1314 North 3rd Street, Suite 200, Phoenix, Arizona 85004, (602) 255-4339

Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201, (501) 371-2295

Mr. William E. Davis, Administrative Director, State Building, 350 McAllister Street, Room 3154, San Francisco, California 94102, (415) 557-1561

Mr. James D. Thomas, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203-2416, (303) 861-1111, ext. 585

Ms. Faith A. Mandell, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566-3210

Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571-2480

Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, D.C. 20001, (202) 879-1700

Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399-1900, (904) 488-8621

Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street SW., Suite 300, Atlanta, Georgia 30334, (404) 656-5171

Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96910, 011 (671) 472-8901 through 8908

Dr. Irwin I. Tanaka, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548-4505

Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334-2246

Joseph F. Cunningham, Administrative Director of the Courts, Supreme Court Building, Springfield, Illinois 62701-1791, (217) 782-7770

Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232-2542

Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281-5241

Mr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (913) 296-4873

Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564-2350

Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112-1857, (504) 568-5747

Mr. Dana R. Baggett, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879-4792

Ms. Deborah A. Unitus, Assistant State Court Administrator, Technical and Information Services, Administrative Office of the Courts, P.O. Box 431, Annapolis, Maryland 21404, (301) 974-2353

Honorable Arthur M. Mason, Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725-8767

Honorable Dorothy Comstock Riley, Chief Justice, Supreme Court of Michigan, Law Building, Post Office Box 30052, Lansing, Michigan 48909, (517) 373-0128

Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296-2474

Ms. Krista Johns, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232-5955

Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd, Jefferson City, Missouri 65109, (314) 751-4585

Mr. R. James Oppedahl, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620-3001, (406) 444-2621

Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471-3643

Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885-5076

Honorable David A. Brock, Chief Justice, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271-3619

Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN-037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984-0275

Mr. Matthew T. Crosson, Chief Administrator of the Courts, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587-2004

Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Santa Fe, New Mexico 87503, (505) 827-4800

Mr. Franklin E. Freeman, Jr., Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (919) 733-7106/7107

Mr. William G. Bohn, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224-4216

Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266-0419, (614) 466-2653

Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1915 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521-2450

Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378-6046

Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795-2000

Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277-3263 or 277-3272

Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 758-2581

Honorable George W. Wuest, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773-4885

Mr. Cletus W. McWilliams, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741-2687

Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463-1625

William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533-6371

Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828-3281

Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-6680, ext. 348

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786-6455

Ms. Mary McQueen, State Court Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753-5780

Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402-E State Capitol, Charleston, West Virginia 25305, (304) 348-0145

Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701-1688, (608) 266-6828

Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777-7581

David I. Tevelin,

Executive Director.

[FR Doc. 90-22700 Filed 9-25-90; 8:45 am]

BILLING CODE 6820-SC-M

VOL
55
ISS
187
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federal register

Wednesday
September 26, 1990

Part III

Environmental Protection Agency

Solicitations for Research Grant Proposals—1991; Notice

VOL
55
ISS
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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3827-1]

Solicitation for Research Grant Proposals—1991

AGENCY: Environmental Protection Agency.

ACTION: Solicitation for Research Grant Proposals—1991 Exploratory Research Grants.

SUMMARY: The U.S. Environmental Protection Agency (EPA), through its Office of Exploratory Research (OER), is seeking grant applications to conduct exploratory environmental research in biology, health, chemistry, physics, engineering, or socioeconomics. Investigations are sought in these research disciplines which focus on any aspect of pollution identification, characterization, abatement or control, or address the effects of pollutants on human health or the environment. In addition, research is sought on environmental policy and its social and economic consequences.

DATES: See Table 1 under "Supplementary Information" in this Solicitation.

ADDRESSES: See "General Grant Program" in this Solicitation.

FOR FURTHER INFORMATION CONTACT: Appropriate individual(s) listed in Table 1 of this Solicitation.

SUPPLEMENTARY INFORMATION: This solicitation only concerns the research grants administered by EPA's Office of Exploratory Research, and outlines procedures for receiving grant assistance from that office.

In addition to this general annual solicitation, applications are sought periodically through more narrowly defined proposal requests, referred to as Requests for Applications (RFA). While this document does not contain any RFA solicitations, it does provide a preannouncement of tentative RFA titles and approximate issue dates for each proposed RFA.

Application Procedures

General Grants Program

Application forms, instructions, and other pertinent information for assistance programs are available in the EPA Research Grants Application/Information Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits are available from:

Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5266

or

Office of Exploratory Research (RD-675), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7445.

Proposed projects must be investigative research. Proposals will not be accepted that are state-of-the-art or market surveys, development of proven concepts, or the preparation of materials and documents, including process designs or instruction manuals.

Fully developed research grant applications, prepared in accordance with instructions in the Application for Federal Assistance Form SF-424, should be sent to the Grants Operations Branch at the above address. One copy of the application with original signatures plus eight copies are required. Informal, incomplete or unsigned proposals will not be considered.

The following special instructions apply to all applicants responding to this solicitation:

Applications must be identified by printing "OER-91" in the upper right hand corner of Application Form SF-424. The absence of this identifier from an application may lead to delayed processing or misassignment of the application.

The project narrative section of the application must not exceed twenty-five 8½ x 11 inch, consecutively numbered pages of standard type (10-12 characters per inch), including tables, graphs and figures. For purposes of this limitation, the "project narrative section" of the application consists of the following items in the Application/Information Kit:

(1) Description of Project
(2) Objectives
(3) Results or Benefits Expected
(4) Approach
(5) General Project Information
(6) Quality Assurance (if needed)

Attachments and appendices for the narrative section in excess of the 25 page limitation will not be forwarded to reviewers. The SF-424 and other forms, itemized budget, resumes, and abstract are not included in the 25 page limitation.

Resumes must not exceed two pages for each principal investigator and should focus on education, positions held and most recent or related publications.

A one page abstract should be included with the application.

While applicationss responding to this solicitation may be received by EPA at any time, they are evaluated on specific dates which are different for each disciplinary area. Closing dates and appropriate contacts within EPA are listed in Table 1. Generally, all funding decisions on applications are made within 6 months of the application's closing date.

Applicants should contact the appropriate individuals identified in Table 1 for further information on schedules and review procedures. Their address and phone number are: Office of Exploratory Research (RD-675), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7445.

TABLE 1.—Closing Dates and Contacts—General Solicitation

Discipline	Application closing dates	Contact
Biology	Mar. 15, 1991 Sept. 13, 1991	Clyde Bishop
Health	Oct. 19, 1990 Apr. 12, 1991	Clyde Bishop
Chem/Physics, Air	Feb. 15, 1991 Aug. 16, 1991	Deran Pashayan
Chem/Physics, Water/Soil	Jan. 18, 1991 July 19, 1991	Louis Swaby
Engineering	Feb. 8, 1991 Aug. 23, 1991	Louis Swaby
Socio-economics	Mar. 22, 1991 Sept. 20, 1991	Robert Papetti

Targeted Grants Program

The Office of Exploratory Research addresses specific research topics which appear to merit extra emphasis or special attention by issuing a separate RFA for each such topic. The RFA is a mechanism by which a formal announcement is released describing a high priority initiative in well defined scientific areas.

Applicants are invited to submit research applications for a one-time competition using the standard Application for Federal Assistance Form SF-424 and other forms described in the Grant Application Kit. One copy of the application with original signatures plus eight copies should be mailed directly to the Grants Operations Branch at the above address.

The deadline for receipt of applications is identified in the RFA announcement.

As in the case of the general grants program, an application for a targeted grant is only considered when a fully developed proposal is submitted. Special guidelines and limitations tailored to each RFA will be published in the individual RFA announcements.

In FY-1991, OER expects to issue four RFA's. Tentative titles and other information relevant to each RFA are provided in Table 2. However, the number of RFA's that will be issued is subject to the availability of funds in OER's FY-1991 budget for research grants.

Unless otherwise identified in individual RFAs, procedures, guidelines and limitations are the same for grants issued under the general and targeted grants programs.

This document does not constitute an RFA for any of the topics listed here. The RFAs will be published in the Federal Register in November 1990.

TABLE 2—TENTATIVE RFA TITLES

RFA title	Approximate issue date	Contact
Innovative Technologies for Removal of Heavy Metals at Superfund Sites	Nov. 1990	Louis Swaby
Improved Pump and Treat Processes for Remediation of Superfund Sites	Nov. 1990	Louis Swaby
Identification of Endpoints and Indicators of Terrestrial Ecosystem Stress	Nov. 1990	Clyde Bishop
Chemical Microsensors for Environmental Applications (All Media)	Nov. 1990	Louis Swaby

Guidelines and Limitations for the General Solicitation

The typical grant issued by OER is for approximately $100,000 per year for two or three years. Funding levels range from a minimum of about $40,000 to approximately $150,000 per year. All budget costs and justifications, particularly requests for equipment will be carefully reviewed. The maximum project period is three years; shorter periods are encouraged. Subcontracts for research to be conducted under the grant should not exceed approximately 40% of the total cost of the grant for each year in which the subcontract was awarded.

Eligibility

The following eligibility requirements apply to both general and targeted grants:

Nonprofit and educational institutions, and state or local governments are eligible under all existing authorizations. Profit-making firms are eligible only under certain laws, and then under restrictive conditions, including the absence of any profit from the project.

Potential applicants who are uncertain of their eligibility should study the restrictive language of the law governing the area of research interest or contact EPA's Grants Operations Branch at (202) 382-5266.

Federal agencies and federal employees are not eligible to participate in this program.

Investigators at minority institutions or those who have not previously received support are encouraged to submit applications.

Funding Mechanisms

For all general and targeted grants, the funding mechanism will consist of a grant agreement between EPA and the recipient.

Federal grant regulation 40 CFR 30.307 requires that all recipients provide a minimum of 5% of the total project cost, which may not be taken from Federal sources. OER will not support a request for a deviation from this requirement for any grant supported by its Research Grants Program.

Review Process

All general and targeted grant applications are initially reviewed by the Agency to determine their legal and administrative acceptability.

Acceptable applications are then reviewed by an appropriate peer review panel. This review is designed to evaluate and rank each proposal according to its scientific merit and utility as a basis for recommending Agency approval or disapproval. Each peer review panel is composed primarily of non-EPA scientists and engineers who are experts in their respective disciplines.

The panels use the following criteria in their reviews:

- Quality of the research plan (including theoretical and/or experimental design, originality, and creativity)
- Qualifications of the principal investigator and staff including knowledge of subject area
- Utility of the research including potential contribution to scientific knowledge
- Availability and adequacy of facilities and equipment
- Budgetary justification—in particular justification and cost requests for equipment will be carefully reviewed.

A summary of the scientific review and recommendation of the panel is provided to each applicant.

Minority Institutions Assistance

Preapplication assistance is available upon request from potential investigators representing institutions identified by the Secretary of the Department of Education as Historically Black Colleges or Universities (HBCU's), or the Hispanic Association of Colleges or Universities (HACU's).

The application Form SF-424, instructions, subject areas, and review procedures are the same as those for the general grants program.

For further information, contact: Virginia Broadway, U.S. Environmental Protection Agency (RD-675), 401 M Street, SW., Washington, DC 20460, (202) 382-7445.

Roger S. Cortesi,
Director, Office Exploratory Research.

[FR Doc. 90-22730 Filed 9-25-90; 8:45 am]
BILLING CODE 6560-50-M

VOL
55

ISS
187

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Wednesday
September 26, 1990

Part IV

The President

Proclamation 6186—National Hispanic Heritage Month, 1990

Executive Order 12729—Educational Excellence for Hispanic Americans

federal register

VOL
55
ISS
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SE
26
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UMI

Federal Register
Vol. 55, No. 187
Wednesday, September 26, 1990

Presidential Documents

Title 3—
The President

Proclamation 6186 of September 24, 1990

National Hispanic Heritage Month, 1990

By the President of the United States of America

A Proclamation

Each year, we pause during National Hispanic Heritage Month to recognize the many contributions that men and women of Spanish and Latin American descent have made to our country's history and culture.

Journeying to the New World nearly half a millennium ago, Spanish conquistadors were among the first Europeans to explore and establish settlements in what is now U.S. territory. In 1513, Ponce de León was the first European to discover Florida; in 1528, Álvar Núñez Cabeza de Vaca became the first Spaniard to land on Texas soil; by 1565—more than 25 years before British colonists landed at Jamestown—the Spanish had established a permanent settlement at St. Augustine. By that time, other Spaniards, including Franciscan missionaries, had begun to explore the Southwest. During the second half of the 18th century, the Franciscans established a chain of missions along the California coast. These early mission sites, known as "El Camino Real," grew into the thriving cities of San Diego, Los Angeles, and San Francisco. Centuries after men such as Coronado and Father Junipero Serra journeyed into the vast, uncharted territory of the New World, the influence of the Spanish colonial empire remains evident in communities throughout the southern and western United States.

The rich legacy we celebrate during National Hispanic Heritage Month is not limited, however, to the magnificent architecture and fascinating history and folklore of the American Southwest. Over the years, Hispanic Americans have made their mark across the country and in virtually every aspect of American life.

Time and again throughout our Nation's history, Hispanic Americans—many of whom have come to this country in search of the freedom denied to them by repressive regimes in their ancestral homelands—have demonstrated their dedication to the ideals upon which the United States is founded. In peacetime, as well as in times of conflict and peril, they have faithfully defended the principles of freedom and representative government. They have worked for the advancement of human rights and democratic ideals around the world, and they have helped to support many of our neighbors in Central and South America and the Caribbean in their own struggles for liberty and self-determination.

With faith and hard work, Hispanic Americans have reaped the blessings of freedom and opportunity, building strong families and proud communities and earning positions of leadership in business, education, sports, science, and the arts. Hispanic Americans have also excelled in government, serving as councilmen, mayors, governors, and as members of State legislatures, the Congress, and the Cabinet.

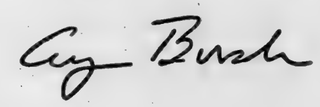
In December of 1989, to help ensure that young Hispanic Americans have ample opportunities to develop and demonstrate their great talent and potential, I directed my Secretary of Education, Dr. Lauro Cavazos, to form the Domestic Policy Council Task Force on Hispanic Education. The Task Force has worked to find ways to improve Federal education programs that serve Hispanic Americans. By enhancing the educational opportunities available to

Americans of Spanish and Latin American descent, we can help to promote their continued social and economic advancement.

In recognition of the outstanding achievements of Hispanic Americans, the Congress, by Joint Resolution approved September 17, 1968, as amended by Public Law 100-402, has authorized and requested the President to issue annually a proclamation designating the month beginning September 15 and ending October 15 as "National Hispanic Heritage Month."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month beginning September 15, 1990, and ending October 15, 1990, as National Hispanic Heritage Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-22904
Filed 9-25-90; 11:15 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of Sept. 24, 1990, on signing Proclamation 6166, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 39).

Presidential Documents

Executive Order 12729 of September 24, 1990

Educational Excellence for Hispanic Americans

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance the development of human potential, to strengthen the capacity to provide quality education, and to increase opportunities for Hispanic Americans to participate in and benefit from Federal programs, it is hereby ordered as follows:

Section 1. There shall be established, in the Department of Education, the President's Advisory Commission on Educational Excellence for Hispanic Americans. The members of the Commission shall be appointed by the President and shall report to the Secretary of Education. The Commission shall comprise representatives of educational, business, professional, and civic organizations that are committed to improving education, including organizations representing Hispanic Americans, as well as other persons deemed appropriate by the President.

Sec. 2. The Commission shall provide advice to the Secretary of Education on the progress of Hispanic Americans toward achievement of national education goals and on such other aspects of the educational status of Hispanic Americans as it considers appropriate.

Sec. 3. The Secretary of Education shall establish the White House Initiative ("Initiative") on Educational Excellence for Hispanic Americans. The Initiative shall be housed in, staffed, and supported by the Department of Education. The Initiative shall assist the Commission and the Secretary of Education in their activities to establish linkages between the Department of Education, Hispanic Americans, and the education and business community. The Initiative shall also assist the Secretary of Education in carrying out the Secretary's responsibilities under this order.

Sec. 4. To the extent permitted by law, the Commission shall provide advice to the Secretary of Education as the Secretary develops and monitors Federal efforts to promote quality education for Hispanic Americans. Particular emphasis shall be given to: enhancing parental involvement; promoting early childhood education; removing barriers to success in education and work, particularly limited proficiency in the English language; and, helping students to achieve their potential at all educational levels. The Commission will also provide advice on ways to increase private sector and community involvement in improving education.

Sec. 5. The Secretary of Education shall periodically report to the President on the progress achieved by Hispanic American students toward national education goals. The reports shall identify efforts of executive departments and agencies to improve the quality of education for Hispanic Americans and shall include data available on the participation of Hispanic Americans in Federal education programs. The reports shall also include any advice of the Commission and appropriate recommendations for improving Federal education programs.

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Sec. 6. To the extent permitted by law, executive departments and agencies shall be actively involved in helping advance educational opportunities for Hispanic Americans, including working with individuals and educational, business, and community groups serving Hispanic Americans. Executive departments and agencies, to the extent feasible, shall collect data on the participation of Hispanic Americans in Federal education programs. Executive departments and agencies, to the extent permitted by law, shall cooperate with the Secretary of Education in the preparation of the reports. The White House Office of National Service shall highlight and encourage the efforts of volunteers and the private sector to improve the quality of education for Hispanic Americans.

Sec. 7. The Secretary of Education is directed to establish an Advisory Commission entitled the President's Advisory Commission on Educational Excellence for Hispanic Americans. As provided in Section 1 of this order, the members of the Commission shall be appointed by the President. Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting to the Congress, which are applicable to the Advisory Commission to be established by this order, shall be performed by the Secretary of Education, in accordance with the guidelines and procedures established by the Administrator of General Services.

George Bush

THE WHITE HOUSE,
September 24, 1990.

[FR Doc. 90-22905
Filed 9-25-90; 11:34 am]
Billing code 3195-01-M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 568/Pub. L. 101-385

Designating the week beginning September 16, 1990, as "Emergency Medical Services Week". (Sept. 20, 1990; 104 Stat. 738; 1 page) Price: $1.00

S. 2597/Pub. L. 101-386

To amend the Act of June 20, 1910, to clarify in the State of New Mexico authority to exchange lands granted by the United States in trust, and to validate prior land exchanges. (Sept. 20, 1990; 104 Stat. 739; 2 pages) Price: $1.00

S.J. Res. 285/Pub. L. 101-387

To designate the period commencing September 9, 1990, and ending on September 15, 1990, as "National Historically Black Colleges Week". (Sept. 20, 1990; 104 Stat. 741; 1 page) Price: $1.00

S.J. Res. 289/Pub. L. 101-388

To designate October 1990 as "Polish American Heritage Month". (Sept. 20, 1990; 104 Stat. 742; 2 pages) Price: $1.00

S.J. Res. 309/Pub. L. 101-389

Designating the month of October 1990 as "Crime Prevention Month". (Sept. 20, 1990; 104 Stat. 744; 1 page) Price: $1.00

S.J. Res. 279/Pub. L. 101-390

To designate the week of September 16, 1990, through September 22, 1990, as "National Rehabilitation Week". (Sept. 21, 1990; 104 Stat. 745; 2 pages) Price: $1.00

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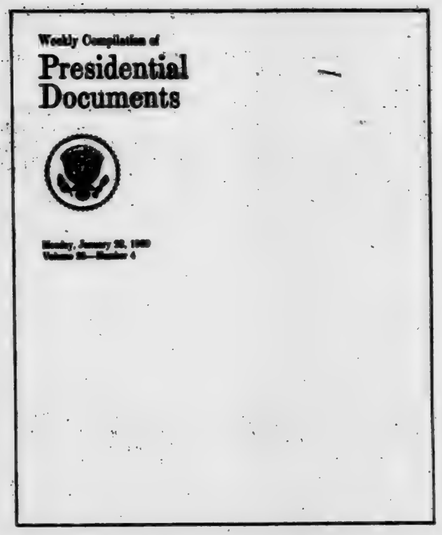

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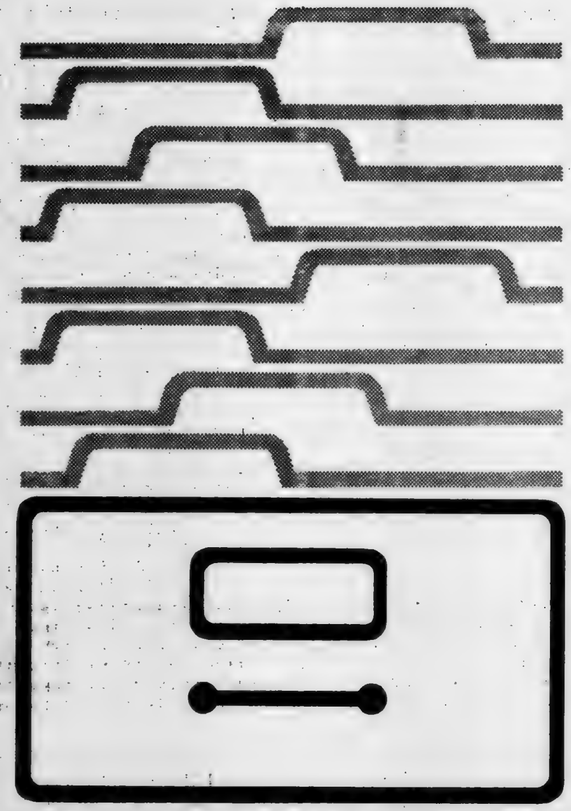

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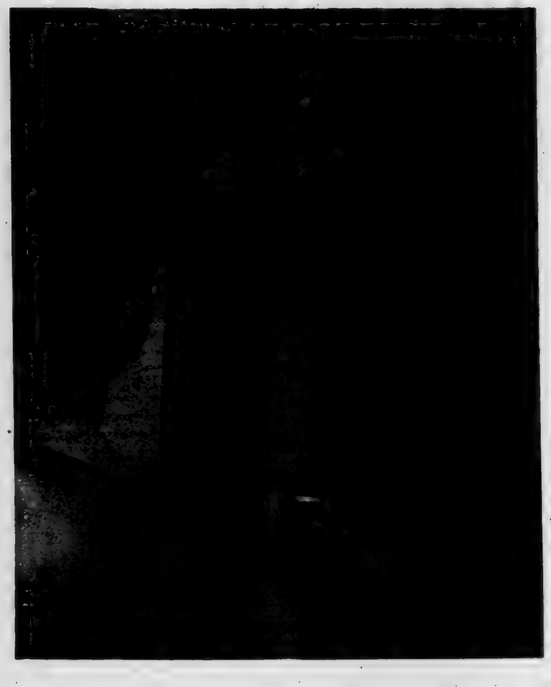

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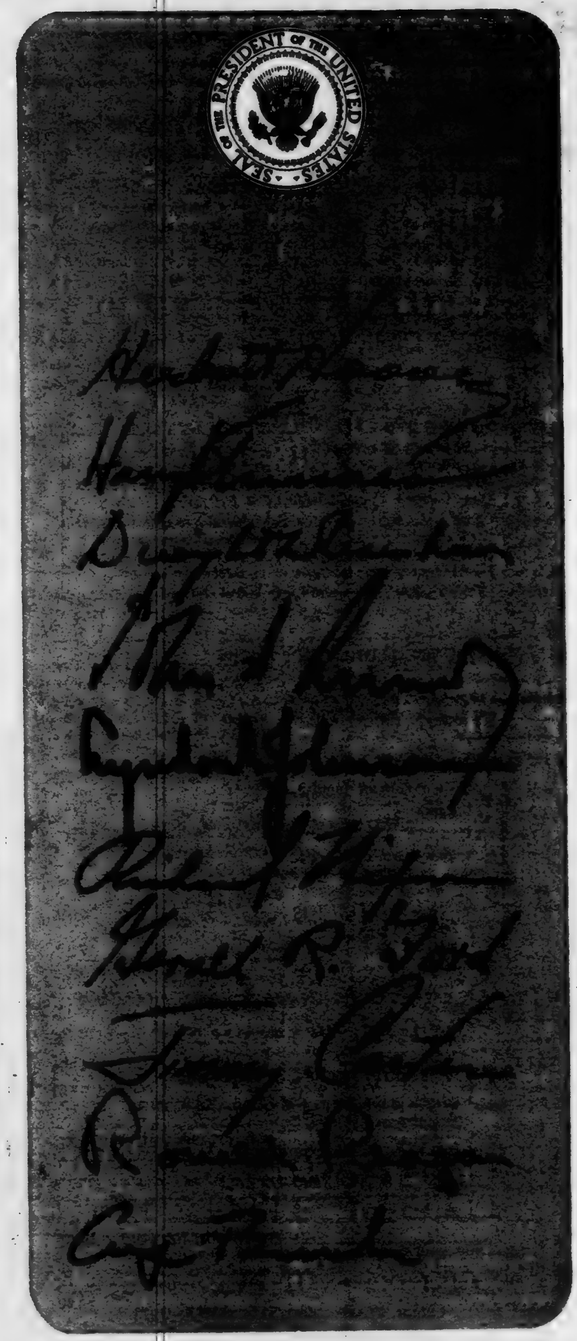

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Presidential Documents

Title 3—

The President

Memorandum of September 24, 1990

Annual Determination on Steel Industry Modernization

Memorandum for the United States Trade Representative

Section 806 of the Steel Import Stabilization Act (19 U.S.C. 2253 note) requires that I make an annual affirmative determination that specified conditions have been met by the domestic steel industry to justify continuation of authority under Section 805 to enforce steel restraint agreements. The attached *Report of the President under the Steel Import Stabilization Act* and the report prepared at my direction by the United States International Trade Commission, *Annual Survey Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize*, enumerate the actions taken by the domestic industry consistent with an affirmative determination under section 806.

Based on this information, I hereby make an affirmative determination for the first annual period (October 1, 1989–September 30, 1990) that during such period:

(A) The major companies of the steel industry, taken as a whole, have—

(i) committed substantially all of their net cash flow from steel product operations for the purposes of reinvestment in, and modernization of, that industry; and

(ii) taken sufficient action to maintain their international competitiveness;

(B) each of the major companies experiencing positive net cash flow committed not less than 1 percent of net cash flow to the retraining of workers; and

(C) the enforcement authority provided under section 805 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

You are hereby authorized and directed to report this determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. This memorandum shall be published in the **Federal Register**.

THE WHITE HOUSE,
Washington, September 24, 1990.

George Bush

[FR Doc. 90-23055
Filed 9-25-90; 3:03 pm]
Billing code 3195-01-M

VOL
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Rules and Regulations

Federal Register
Vol. 55, No. 188
Thursday, September 27, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Chapter XVI

Rural Electrification Administration

7 CFR Chapter XVII

Electric and Telephone Programs, Redesignation of Regulations

AGENCY: Rural Electrification Administration and Rural Telephone Bank, USDA.

ACTION: Final rule, redesignation.

SUMMARY: The Rural Electrification Administration (REA) is beginning a project to simplify, clarify and update Agency regulations. This project, when complete, will provide a more logical arrangement of Agency regulations to assist borrowers and others. One component of this project is to redesignate certain regulations and combine, either in part or as a whole, other regulations in order to have all policies, procedures, and requirements related to a subject in one regulation in the Code of Federal Regulations. The Rural Telephone Bank is updating the cross reference to 7 CFR chapter XVII under 1610.8.

EFFECTIVE DATE: This final rule is effective October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator-Management, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-0552.

SUPPLEMENTARY INFORMATION: REA is amending 7 CFR chapter XVII by redesignating, reorganizing, and adding and reserving certain parts. For the information of interested parties, a distribution table follows:

DISTRIBUTION TABLE

Old part or section	New part or section
Rural Development Regulation	
1709	1703.
Electric Regulations	
1710 Subparts A–B [Reserved.	Removed.
1710 Subpart C	1714 Subpart D.
1710.50	1714.150.
1710.51	1714.151.
1710.52	1714.152.
1710.53	1714.153.
1710.54	1714.154.
1710.55	1714.155.
Part 1711	1721 Subpart A.
1711.1	1721.1.
1715 Subpart A [Reserved].	Removed.
1715 Subpart B	1717 Subpart N.
1715.20	1717.850.
1715.21	1717.851.
1715.22	1717.852.
1715.23	1715.853.
1715.24	1717.854.
1715.25	1717.855.
1715.26	1717.856.
1715.27	1717.857.
1715.28	1717.858.
1729 Subpart A–B [Reserved].	Removed.
Part 1729 Subpart C	Part 1724 Subpart E.
1729.6	1724.41.
1729.7–1729.9	1724.42–1724.44.
1729.10	1724.45.
Part 1736	Part 1726 Subpart G.
1735.1	1726.300.
Part 1736	Part 1726.
Telephone Regulations	
1745 Subpart A	1735 Subpart A.
1745.1	Removed.
1745.2	1735.2.
1745.2(a)	1735.2(e).
1745.2(b)	1735.2(g).
1745.2(c)	1735.2(l).
1745.2(d)	1735.2(m).
17845.2(e)	1735.2(s).
1745.2(f)	1735.2(u).
1745.2(g)	1735.2(v).
1745.3	1735.3.
1745 Subpart B	1735 Subpart B.
1745 Subpart C	1735 Subpart C.
1745 Subpart D	1735 Subpart D.
1745 Subpart E	1735 Subpart E.
Part 1747	1744 Subpart B.
1747.1	1744.20.
1747.2	1744.21.
1747.10	1744.30.
1747.20	1744.40.
1747.30	1744.50.
1749.1	1737.1(a).
1749.2	1737.2.
1749.2(a)	1737.2(b).
1749.2(b)	1737.2(c).
1749.2(c)	1737.2(e).
1749.2(d)	1737.2(h).
1749.2(e)	1737.2(i).
1749.2(f)	1737.2(l).
1749.2(g)	1737.2(q).
1749.2(h)	1737.2(p).

DISTRIBUTION TABLE—Continued

Old part or section	New part or section
1749.2(i)	1737.2(r).
1749.3	1737.3.
1749 Subpart B	1737 Subpart B.
1749 Subpart C	1737 Subpart C.
1749 Subpart D	1737 Subpart D.
1749 Subpart E	1737 Subpart E.
1750.1(a)	1735.1(b).
1750.1(b)	1735.1(c).
1750.2	1735.1(d).
1750.3(a)	1735.2(a).
1750.3(b)	1735.2(b).
1750.3(c)	1735.2(c).
1750.3(d)	1735.2(d).
1750.3(e)	1735.2(e).
1750.3(f)	1735.2(f).
1750.3(g)	1735.2(g).
1750.3(h)	1735.2(h).
1750.3(i)	1735.2(i).
1750.3(j)	1735.2(k).
1750.3(k)	1735.2(l).
1750.3(l)	1735.2(m).
1750.3(m)	1735.2(n).
1750.3(n)	1735.2(o).
1750.3(o)	1735.2(p).
1750.3(p)	1735.2(q).
1750.3(q)	1735.2(r).
1750.3(r)	1735.2(s).
1750.3(s)	1735.2(t).
1750.3(t)	1735.2(u).
1750.4	1736.2.
1750 Subpart B	1735 Subpart F.
1750.10	1735.60.
1750.11	1735.61.
1750.12	1735.62.
1750 Subpart C	1735 Subpart G.
1750.20	1735.70.
1750.21	1735.71.
1750.22	1735.72.
1750.23	1735.73.
1750.24	1735.74.
1750.25	1735.75.
1750.26	1735.76.
1750.27	1735.77.
1750 Subpart D	1735 Subpart H.
1750.30	1735.80.
1750 Subpart E	1735 Subpart I.
1750.40	1735.90.
1750.41	1735.91.
1750.42	1735.92.
1750.43	1735.93.
1750.44	1735.94.
1750.45	1735.95.
1750 Subpart F	1735 Subpart J.
1750.50	1735.100.
1750.51	1735.101.
1751.1(a)	1737.1(a).
1751.1(b)	1737.1(c).
1751.2(a)	1737.2(a).
1751.2(b)	1737.2(b).
1751.2(c)	1737.2(d).
1751.2(d)	1737.2(e).
1751.2(e)	1737.2(f).
1751.2(f)	1737.2(g).
1751.2(g)	1737.2(j).
1751.2(h)	1737.2(k).
1751.2(i)	1737.2(l).
1751.2(j)	1737.2(m).
1751.2(k)	1737.2(n).
1751.2(l)	1737.2(o).
1751.2(m)	1737.2(p).
1751.2(n)	1737.2(q).
1751.2(o)	1737.2(a).

DISTRIBUTION TABLE—Continued

Old part or section	New part or section
1751 Subpart B	1737 Subpart F.
1751.10	1737.50.
1751.11	1737.51.
1751.12–1751.19	1737.52–1737.59.
1751 Subpart C	1737 Subpart G.
1751.20	1737.60.
1751.21	1737.61.
1751.22–1751.29	1737.62–1737.69.
1751 Subpart D	1737 Subpart H.
1751.30	1737.70.
1751.31–1751.39	1737.71–1737.79.
1751 Subpart E	1737 Subpart I.
1751.40	1737.80.
1751.41–1751.49	1737.81–1737.89.
1751 Subpart F	1737 Subpart J.
1751.50	1737.90.
1751.51	1737.91.
1751.52	1737.92.
1751.53–1751.59	1737.93–1737.99.
1751 Subpart G	1737 Subpart K.
1751.60	1737.100.
1751.61	1737.101.
1751.62–1751.69	1737.102–1737.109.
Part 1754	1744 Subpart C.
1754.1	1744.60.
1754.2	1744.61.
1754.3	1744.62.
1754.4	1744.63.
1754.5	1744.64.
1754.6	1744.65.
1754.7	1744.66.
1754.8	1744.67.
1754.9	1744.68.
1762.01	1755.93.
Part 1763	1753 Subpart B.
1763.1	1753.15.
1763.1	1753.15(a).
1763.2	1753.15(b).
1763.3	1753.15(c).
1763.4	1753.15(d).
1763.5	1753.15(e).
Subpart B	1753.16.
1763.20	1753.16(a).
1763.21	1753.16(b).
1763.22	1753.16(c).
Subpart C	1753.17.
1763.40	1753.17(a).
1763.41	1753.17(b).
1763.42	1753.17(c).
1763.43	1753.17(d).
1763.44	1753.17(e).
1763.45	1753.17(f).
1763.46–1763.99	1753.18–1753.20.
1765.1	1753.1.
1765.2	1753.2.
1765.3	1753.3.
1765.4	1753.4.
1765.5	1753.5.
1765.6	1753.6.
1765.7	1753.7.
1765.8	1753.8.
1765.9	1753.9.
1765.10	1753.10.
1765.11	1753.11.
1765.12–1765.14	1753.12–1753.14.
1765 Subpart B	1753 Subpart D.
1765.15	1753.25.
1765.16	1753.26.
1765.17	1753.27.
1765.18	1753.28.
1765.19	1753.29.
1765.20	1753.30.
1765.21–1765.25	1753.31–1753.35.
1765 Subpart C	1753 Subpart E.
1765.26	1753.36.
1765.27	1753.37.
1765.28	1753.38.
1765.29	1753.39.
1765.30–1765.36	1753.40–1753.45.
1765 Subpart D	1753 Subpart F.

DISTRIBUTION TABLE—Continued

Old part or section	New part or section
1765.36	1753.46.
1765.37	1753.47.
1765.38	1753.48.
1765.39	1753.49.
1765.40–1765.45	1753.50–1753.55.
1765 Subpart E	1753 Subpart G.
1765.46	1753.56.
1765.47	1753.57.
1765.48	1753.58.
1765.49–1765.55	1753.59–1753.65.
1765 Subpart F	1753 Subpart H.
1765.56	1753.66.
1765.57	1753.67.
1765.58	1753.68.
1765.59–1765.65	1753.69–1753.75.
1765 Subpart G	1753 Subpart I.
1765.66	1753.76.
1765.67	1753.77.
1765.68	1753.78.
1765.69	1753.79.
1765.70	1753.80.
1765.71	1753.81.
1765.72	1753.82.
1765.73–1765.80	1753.83–1753.90.
1765 Subpart H	1753 Subpart J.
1765.81	1753.91.
1765.82	1753.91.
1765.83	1753.93.
1765.84	1753.94.
1765.85	1753.95.
1765.86	1753.96.
1765.87–1765.99	1753.97–1753.99.
Part 1772	Part 1755.
1772.3	1755.3.
1772.97	1755.97.
1772.98	1755.98.
1772.370	1755.370.
1772.397	1755.397.

This action is simply a redesignation of these regulations with no change to substance. Therefore, no period for public comment is required. Changes to regulatory text are merely to update cross references, eliminate repetition and combine existing information from old parts into new parts.

Therefore, under the authority of the Administrator, Rural Electrification Administration, REA amends 7 CFR chapters XVI and XVII as follows:

CHAPTER XVII—[AMENDED]

PART 1709—[REDESIGNATED AS PART 1703]

1. 7 CFR Part 1709—RURAL DEVELOPMENT is redesignated as 7 CFR part 1703.

2. A new part 1714 is added as follows:

PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

Subparts A Through C—[Reserved]

Authority: 7 U.S.C. 901–950b, Rural Electrification Act of 1936, as amended; Pub. L. 99–591. Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subparts A Through C—[Reserved]

Subpart C of Part 1710—[Redesignated as Subpart D of Part 1714]

PART 1710—[REMOVED]

3. 7 CFR part 1710 subpart C is redesignated as subpart D of part 1714 as follows and part 1710 is removed:

Old designation	New designation
1710 Subpart C	1714 Subpart D.
1710.50	1714.150.
1710.51	1714.151.
1710.52	1714.152.
1710.53	1714.153.
1710.54	1714.154.
1710.55	1714.155.

PART 1717—[AMENDED]

4. Part 1717 is amended as follows:

a. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901–950b; title I, subtitle D, sec. 1402; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subparts K Through M of Part 1717—[Added and Reserved]

b. Subparts K through M are added and reserved.

Subpart B of Part 1715—[Redesignated as Subpart N of Part 1717]

PART 1715—[REMOVED]

5. 7 CFR part 1715 subpart B is redesignated as subpart N of part 1717 as follows and part 1715 is removed:

Old designation	New designation
1715 Subpart B	1717 Subpart N.
1715.20	1717.650.
1715.21	1717.651.
1715.22	1717.652.
1715.23	1717.653.
1715.24	1717.654.
1715.25	1717.655.
1715.26	1717.656.
1715.27	1717.657.
1715.28	1717.658.

6. A new part 1721, consisting of subpart A, is added as follows:

PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

Subpart A—Advance of Funds

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subpart A—Advance of Funds

§ 1711–1 Redesignated as § 1721.1]

PART 1711—[REMOVED]

7. Section 1711.1 is redesignated as § 1721.1 of subpart A of part 1721 as follows and part 1711 is removed:

Old designation	New designation
1711.1	Subpart A—Advance of Funds. 1721.1.

8. A new part 1724 is added as follows:

PART 1724—ELECTRIC SYSTEM PLANNING AND DESIGN POLICIES AND PROCEDURES

Subparts A Through D—[Reserved]

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subparts A Through D—[Reserved]

Subpart C of Part 1729—[Redesignated as Subpart E of Part 1724]

PART 1729—[REMOVED]

9. 7 CFR Part 1729 subpart C is redesignated as subpart E of part 1724 as follows and part 1729 is removed:

Old designation	New designation
1729 Subpart C	1724 Subpart E.
1729.6	1724.41.
1729.7–1729.9 [Reserved].	1724.42–1724.44 [Reserved].
1729.10	1724.45.

10. A new part 1726, consisting of subpart G, is added as follows:

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

Subparts A Through F—[Reserved]

Subpart G—Standard Forms of Electric Contracts

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subparts A Through F—[Reserved]

Subpart G—Standard Forms of Electric Contracts

§ 1735–1 [Redesignated as § 1726.300]

PART 1735—[REMOVED]

11. Section 1735.1 is redesignated as § 1726.300 in subpart G of part 1726 as follows and part 1735 is removed:

Old designation	New designation
1735.1	Subpart G—Standard Forms of Electric Contracts. 1726.300.

PART 1736—[REDESIGNATED AS PART 1728]

12. 7 CFR part 1736 is redesignated as new part 1728 and the part heading of newly designated part 1728 is revised to read as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

§ 1745. [Removed]

PART 1745—[REDESIGNATED AS PART 1735]

PART 1750—[AMENDED]

13. Section 1745.1 is removed, part 1745 is redesignated as new part 1735 and portions of the text of 7 CFR part 1750 are redesignated as subparts A and F through L of new part 1735 as follows:

Old designation	New designation
Part 1745	Part 1735.
1745 Subpart A	1735 Subpart A.
1745.1	Removed.
1745.2 heading and introductory text.	1735.2 heading and introductory text.
1745.2(a)	1735.2(e).
1745.2(b)	1735.2(g).
1745.2(c)	1735.2(j).
1745.2(d)	1735.2(m).
1745.2(e)	1735.2(o).
1745.2(f)	1735.2(u).
1745.2(g)	1735.2(v).
1745.3	1735.3.
	1735.4–1735.9 [Reserved].
1745 Subpart B	1735 Subpart B.
1745.10–1745.22	1735.10–1735.22.
	1735.23–1735.29 [Reserved].
1745 Subpart C	1735 Subpart C.
1745.30–1745.32	1735.30–1735.32.
	1735.33–1735.39 [Reserved].
1745 Subpart D	1735 Subpart D.
1745.40–1745.47	1735.40–1735.47.
	1735.48–1735.49 [Reserved].
1745 Subpart E	1735 Subpart E.
1745.50–1745.52	1735.50–1735.52.
	1735.53–1735.59 [Reserved].
1750.1(a)	1735.1(b).
1750.1(b)	1735.1(c).
1750.2 [end]	1735.1(d).
1750.3(a)	1735.2(a).
1750.3(b)	1735.2(b).
1750.3(c)	1735.2(c).
1750.3(d)	1735.2(d).
1750.3(f)	1735.2(f).
1750.3(h)	1735.2(h).
1750.3(i)	1735.2(i).
1750.3(j)	1735.2(k).
1750.3(k)	1735.2(l).
1750.3(m)	1735.2(n).
1750.3(n)	1735.2(o).
1750.3(o)	1735.2(p).
1750.3(p)	1735.2(q).
1750.3(q)	1735.2(r).
1750.3(s)	1735.2(t).
1750 Subpart B	1735 Subpart F.
1750.10	1735.60.
1750.11	1735.61.
1750.12	1735.62.
	1735.63–1735.69 [Reserved].
1750 Subpart C	1735 Subpart G.
1750.20	1735.70.
1750.21	1735.71.
1750.22	1735.72.
1750.23	1735.73.
1750.24	1735.74.
1750.25	1735.75.
1750.26	1735.76.
1750.27	1735.77.
	1735.78–1735.79 [Reserved].
1750 Subpart D	1735 Subpart H.
1750.30	1735.80.
	1735.81–1735.89 [Reserved].
1750 Subpart E	1735 Subpart I.
1750.40	1735.90.
1750.41	1735.91.
1750.42	1735.92.
1750.43	1735.93.
1750.44	1735.94.
1750.45	1735.95.
	1735.96–1735.99 [Reserved].
1750 Subpart F	1735 Subpart J.
1750.50	1735.100.
1750.51	1735.101.

PART 1750—[REMOVED]

14. Part 1750 is removed.

PART 1735—[AMENDED]

15. Section 1735.1 of newly designated part 1735 is revised to read as follows:

§1735.1 General statement.

(a) Subparts A through E of this part set forth the general policies, types of loans and loan requirements under the Telephones loan program.

(b) The standard REA security documents (see 7 CFR 1744 subpart D or REA Bulletins 320–4, 320–22, 321–2, 322–2, 323–1, 326–1) contain provisions regarding acquisitions, mergers, and consolidations. Subparts F through J of this part implement those provisions by

setting forth the policies, procedures, and requirements for telephone borrowers planning to acquire existing telephone lines, facilities, or systems with REA loan or other funds, or planning to merge or consolidate with another system. This part supersedes all REA Bulletins that are in conflict with it.

(c) Subparts F through M of this part also detail REA's requirements with respect to mergers and acquisitions involving REA loan funds.

PART 1749—[REDESIGNATED AS PART 1737]

PART 1751—[AMENDED]

16. 7 CFR part 1749 is redesignated as part 1737 and portions of the text of part 1751 are redesignated as sections in subpart A and as subparts F through K of part 1737 as follows with heading changes as indicated:

Old designation	New designation
Part 1749—Prelean Procedures and Requirements—Telephone Program.	Part 1737—Pre-Loan Policies and Procedures Common to Guaranteed and Insured Telephone Loans.
1749 Subpart A	1737 Subpart A.
1749.1 heading and text	1737.1 heading and (a).
1749.2 heading and introductory text.	1737.2 heading and introductory text.
1749.2(a)	1737.2(b).
1749.2(b)	1737.2(c).
1749.2(c)	1737.2(e).
1749.2(d)	1737.2(f).
1749.2(e)	1737.2(g).
1749.2(f)	1737.2(h).
1749.2(g)	1737.2(i).
1749.2(h)	1737.2(k).
1749.2(i)	1737.2(p).
1749.3	1737.2(r).
1749 Subpart B	1737.3, 1737.4–1737.9 [Reserved].
1749.10–1749.11	1737 Subpart B.
1749 Subpart C	1737.10–1737.11, 1737.12–1737.19 [Reserved].
1749.20–1749.22	1737 Subpart C.
1749 Subpart D	1737.20–1737–22, 1737.23–1737.29 [Reserved].
1749.30–1749.32	1737 Subpart D.
1749 Subpart E	1737.30–1737.32, 1737.33–1737.39 [Reserved].
1749.40–1749.42	1737 Subpart E.
1751.1(a)	1737.40–1737.42, 1737.43–1737.49 [Reserved].
1751.1(b)	1737.1(a).
1751.2(a)	1737.1(c).
1751.2(b)	1737.2(a).
1751.2(c)	1737.2(d).
1751.2(e)	1737.2(j).
1751.2(f)	1737.2(l).
1751.2(i)	1737.2(m).
1751.2(j)	1737.2(n).
1751.2(k)	1737.2(o).
1751.2(n)	1737.2(q).
1751.2(o)	1737.2(s).
1751 Subpart B—Review of Application.	1737 Subpart F—Review of Application Procedures.
1751.10	1737.50.
1751.11	1737.51.
1751.12–1751.19 [Reserved].	1737.52–1737.59 [Reserved].
1751 Subpart C—Estimate of Total Project Costs.	1737 Subpart G—Project Cost Estimation Procedures.
1751.20	1737.60.
1751.21	1737.61.
1751.22–1751.29 [Reserved].	1737.62–1737.69 [Reserved].
1751 Subpart D—Feasibility Study.	1737 Subpart H—Feasibility Determination Procedures.
1751.30	1737.70.
1751.31–1751.39 [Reserved].	1737.71–1737.79 [Reserved].
1751, Subpart E	1737, Subpart I.
1751.40	1737.80.
1751.41–1751.49 [Reserved].	1737.81–1737.89 [Reserved].
1751 Subpart F—Loan Approval.	1737 Subpart J—Final Loan Approval Procedures.
1751.50	1737.90.
1751.51	1737.91.
1751.52	1737.92.
1751.53–1751.59 [Reserved].	1737.93–1737.99 [Reserved].
1751 Subpart G—Release of Funds.	1737 Subpart K—Release of Funds Procedure.
1751.60	1737.100.
1751.61	1737.101.
1751.62–1751.69 [Reserved].	1737.102–1737.109 [Reserved].

PART 1751—[REMOVED]

17. Part 1751 is removed.

18. A new part 1744, consisting of subparts B and C, is added as follows:

PART 1744—POST LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

Subpart A—[Reserved]

Subpart B—Lien Accommodations and Subordination Policy

Subpart C—Advance and Disbursement of Funds

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subpart A—[Reserved]

Subpart B—Lien Accommodations and Subordination Policy

Subpart C—Advance and Disbursement of Funds

PART 1747—[REDESIGNATED TO SUBPART B OF PART 1744]

PART 1754—[REDESIGNATED TO SUBPART C OF PART 1744]

PARTS 1747 and 1754—[Removed]

19. The text of 7 CFR part 1747 is redesignated as sections in subpart B of part 1744, the text of part 1754 is redesignated as sections in subpart C of part 1744 as follows and parts 1747 and 1754 are removed:

Old designation	New designation
	Subpart B
1747.1	1744.20.
1747.2	1744.21.
1747.3–1747.9 [Reserved].	1744.22–1744.29 [Reserved].
1747.10	1744.30.
1747.11–1747.19 [Reserved].	1744.31–1744.39 [Reserved].
1747.20	1744.40.
1747.21–1747.29 [Reserved].	1744.41–1744.49 [Reserved].
1747.30	1744.50.
	1744.51–1744.59 [Reserved].
	Subpart C
1754.1	1744.60.
1754.2	1744.61.
1754.3	1744.62.
1754.4	1744.63.
1754.5	1744.64.
1754.6	1744.65.
1754.7	1744.66.
1754.8	1744.67.
1754.9	1744.68.
	1744.69 [Reserved].

PART 1765—[REDESIGNATED AS PART 1753]

PART 1763—[REDESIGNATED AS SUBPART B OF PART 1753]

20. 7 CFR part 1765 is redesignated as part 1753, the text of 7 CFR part 1763 is redesignated as subpart B of part 1753 as follows with heading changes as indicated, and part 1763 is removed:

Old designation	New Designation
Part 1765—Telephone Materials, Equipment and Construction—Telephone Program.	Part 1753—Telecommunications System Construction Policies and Procedures.
1765 Subpart A	1753 Subpart A.
1765.1	1753.1.
1765.2	1753.2.
1765.3	1753.3.
1765.4	1753.4.
1765.5	1753.5.
1765.6	1753.6.
1765.7	1753.7.
1765.8	1753.8.
1765.9	1753.9.
1765.10	1753.10.
1765.11	1753.11.
1765.12–1765.14 [Reserved].	1753.12–1753.14 [Reserved].
	Subpart B—Engineering Services
1763.1 heading	1753.15 heading.
1763.1 (a)–(c)	1753.15(a)(1)–(a)(3).
1763.1 (d)(1) and (d)(2)	1753.15 (a)(4)(i) and (a)(4)(ii).
1763.1(e)	1753.15(a)(5).
1763.2 introductory text	1753.15(b) introductory text.
1763.2(a)–(m)	1753.15 (b)(1)–(b)(13).
1763.3 text	1753.16(c).
1763.4 (a) and (b)	1753.15 (d)(1) and (d)(2).
1763.5 (a) and (b)	1753.15 (e)(1) and (e)(2).
1763 Subpart B heading	1753.16 heading.
1763.20 text	1753.16(a).
1763.21 (a)–(e)	1753.16 (b)(1)–(b)(5).
1763.22 (a)–(c)	1753.16 (c)(1)–(c)(3).
1763 Subpart C heading	1753.17 heading.
1763.40 (a) and (b)	1753.17 (e)(1) and (a)(2).
1763.41(a)	1753.17(b)(1).
1763.41 (a)(1) and (a)(2)	1753.17 (b)(1)(i) and (b)(1)(ii).
1763.41 (a)(2)(i)–(a)(2)(iv).	1753.17(b)(1)(i) (A)–(D).
1763.41(b)	1753.17(b)(2).
1763.42	1753.17(c).
1763.43 (a) and (b)	1753.17 (d)(1) and (d)(2).
1763.44 (a) and (b)	1753.17 (e)(1) and (e)(2).
1763.45 (a)–(d)	1753.17 (f)(1)–(f)(4).
1763.46–1763.49 [Reserved].	1753.18–1753.20 [Reserved].
	Subpart C [Reserved].
	1753.21–1751.24 [Reserved]
1765 Subpart B	1753 Subpart D.
1765.15	1753.25.
1765.16	1753.26.
1765.17	1753.27.
1765.18	1753.28.
1765.19	1753.29.
1765.20	1753.30.
1765.21–1765.25 [Reserved].	1753.31–1753.35 [Reserved].
1765 Subpart C	1753 Subpart E.
1765.26	1753.36.
1765.27	1753.37.
1765.28	1753.38.
1765.29	1753.39.
1765.30–1765.35 [Reserved].	1753.40–1753.45 [Reserved].
1765 Subpart D	1753 Subpart F.
1765.36	1753.46.
1765.37	1753.47.
1765.38	1753.48.
1765.39	1753.49.
1765.40–1765.45 [Reserved].	1753.50–1753.55 [Reserved].
1765 Subpart E	1753 Subpart G.
1765.46	1753.56.
1765.47	1753.57.
1765.48	1753.58.
1765.49–1765.55 [Reserved].	1753.59–1753.65 [Reserved].
1765 Subpart F	1753 Subpart H.
1765.56	1753.66.
1765.57	1753.67.
1765.58	1753.68.
1765.59–1765.65 [Reserved].	1753.69–1753.75 [Reserved].
1765 Subpart G	1753 Subpart I.
1765.66	1753.76.
1765.67	1753.77.
1765.68	1753.78.
1765.69	1753.79.
1765.70	1753.80.
1765.71	1753.81.
1765.72	1753.82.
1765.73–1765.80 [Reserved].	1753.83–1753.90 [Reserved].
1765 Subpart H	1753 Subpart J.
1765.81	1753.91.
1765.82	1753.92.
1765.83	1753.93.
1765.84	1753.94.
1765.85	1753.95.
1765.86	1753.96.
1765.87–1765.99 [Reserved].	1753.97–1753.99 [Reserved].

PART 1772—[REDESIGNATED AS PART 1755]

§ 1762.01 [Redesignated as § 1755.93]

21. 7 CFR part 1772 is redesignated as part 1755, § 1762.01 is redesignated as § 1755.93 as follows with heading changes as indicated, and part 1762 is removed:

Old designation	New designation
Part 1772—Telephone Standards and Specifications.	Part 1755—Telecommunications Standards and Specifications for Materials, Equipment and Construction.
	1755.1–1755.2 [Reserved].
1772.3	1755.3.
	1755.4–1755.92 [Reserved].
1762.01	1755.93.
	1755.94–1755.96 [Reserved].
1772.97	1755.97.
1772.98	1755.98.
	1755.99–1755.369 [Reserved].
1772.370	1755.370.
	1755.371–1755.396 [Reserved].
1772.397	1755.397.
	1755.398–1755.399 [Reserved].

22. The part heading of 7 CFR part 1785 is revised as follows:

PART 1785—LOAN ACCOUNT COMPUTATIONS, PROCEDURES AND POLICIES FOR ELECTRIC AND TELEPHONE BORROWERS

23. 7 CFR part 1789—REA Policy on Audits of Electric and Telephone Borrowers, is redesignated as 7 CFR part 1773.

24. The part heading of 7 CFR part 1794 is revised as follows:

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES FOR ELECTRIC AND TELEPHONE BORROWERS

25. All internal references in newly designated parts 1703, 1714, 1717, 1721, 1724, 1726, 1728, 1735, 1737, 1744, 1753, 1755, and 1773 are revised as set forth in the redesignation tables.

26. The following parts are added and reserved:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS [RESERVED]

PART 1712—PRE-LOAN POLICIES AND PROCEDURES FOR GUARANTEED ELECTRIC LOANS [RESERVED]

PART 1719—POST-LOAN POLICIES AND PROCEDURES FOR GUARANTEED ELECTRIC LOANS [RESERVED]

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE [RESERVED]

PART 1739—PRE-LOAN POLICIES AND PROCEDURES FOR GUARANTEED TELEPHONE LOANS [RESERVED]

PART 1741—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED TELEPHONE LOANS [RESERVED]

PART 1746—POST-LOAN POLICIES AND PROCEDURES FOR GUARANTEED TELEPHONE LOANS [RESERVED]

PART 1748—POST-LOAN POLICIES AND PROCEDURES FOR INSURED TELEPHONE LOANS [RESERVED]

PART 1751—TELECOMMUNICATIONS SYSTEM PLANNING AND DESIGN CRITERIA, AND PROCEDURE [RESERVED]

PART 1757—TELEPHONE SYSTEMS OPERATIONS AND MAINTENANCE [RESERVED]

CHAPTER XVI—[AMENDED]

PART 1610—[AMENDED]

1. The authority citation for 7 CFR part 1610 continues to read as follows:

Authority: 88 Stat. 29 et seq., 7 U.S.C. 941 et seq., as amended, at Pub. L. 93–32, 87 Stat. 70 et seq. and Pub. L. 100–203, 101 Stat. 1330, et seq.

2. Section 1610.8 of 7 CFR part 1610 is revised to read as follows:

§ 1610.8 Adoption of applicable REA policy.

The policies embodied in 7 CFR part 1610, in all parts of 7 CFR chapter XVII except those identified below, will be utilized by the Governor in carrying out the Bank's loan program to the extent that such policies are consistent with title IV of the Act (7 U.S.C. 941 et seq.)

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and to the extent that policies in 7 CFR chapter XVII are consistent with 7 CFR part 1610. The parts of 7 CFR chapter XVII applicable solely to the Electric Program and thus exceptions to this section are parts 1710 through 1734 inclusive.

Dated: September 21, 1990.

George E. Pratt,

Acting Administrator, Rural Electrification Administration; Acting Governor, Rural Telephone Bank.

[FR Doc. 90-22291 Filed 9-26-90; 8:45 am]

BILLING CODE 3410-15-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Standards of Conduct

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is hereby revising its procedural standards of conduct regulations dealing with the designation of authorized officials for purposes of making certain determinations relative to these regulations. It is also altering the composition of its Standards of Conduct Committee by appropriate regulatory change. This revision makes changes to improve the efficiency of the Agency's standards of conduct program. It will facilitate more expeditious resolution of standards of conduct issues that require Agency approval by streamlining the review process in certain cases.

EFFECTIVE DATE: These rules are effective September 29, 1990.

FOR FURTHER INFORMATION CONTACT: Robinson S. Nunn, Office of General Counsel, room 700, 1441 L Street NW., Washington, DC 20416, telephone (202) 653-6043.

SUPPLEMENTARY INFORMATION: The regulatory changes indicated below are intended to provide for the ability of SBA's Standards of Conduct Counselor (SCC) to make certain determinations presently required by regulation to be made by SBA's Standards of Conduct Committee (SOC). In this regard, present regulations require that the SOC approve provision of SBA assistance to a firm which has a business relationship or employment relationship with certain former SBA employees (see 13 CFR 105.804). They also require that requests for outside employment of certain Agency employees be approved by the SOC (see 13 CFR 105.510).

These final regulations will permit the SCC to make all determinations presently reserved to the SOC under 13 CFR 105.404. Thus, the SCC will be able to determine if approval may be granted to an applicant for SBA assistance, which has a business relationship of the nature described in the regulation, with an individual who was a former SBA employee, within one year of the request for assistance. These final regulations also expand the authority of the SCC and his or her Regional SCC's with respect to cases involving applications by Agency employees for approval of outside activities [13 CFR 105.510], which may be decided by those individuals, without reference to the SOC. In this regard, the Regional SCC's authority is expanded to cover all Regional employees graded GS-14 and below, and the SCC's authority is expanded to cover Central Office employees of GS-15 and below and all field employees.

In addition, these final regulations alter the composition of the Agency's SOC by substituting the Associate Deputy Administrator for Management and Administration for the Assistant Administrator for Administration and the Director of Personnel for the Director of Field Management, as members.

Due to the fact that this final rule governs matters of agency organization, management and personnel and makes no substantive change to the current regulation, SBA is not required to determine if these changes constitute a major rule for purposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to do a Federalism assessment pursuant to Executive Order 12612. Finally, SBA certifies that these changes will not impose an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35).

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(A).

List of Subjects in 13 CFR Part 105

Conflict of interests, Standards of conduct.

For the reasons set out in the preamble, chapter I, part 105 of title 13, Code of Federal Regulations is amended as follows:

PART 105—STANDARDS OF CONDUCT

1. The authority citation for part 105 revised to read as follows:

Authority: 15 U.S.C. 634; 15 U.S.C. 637(a)(18) and (a)(19); E.O. 12674; 3 CFR, comp., p. 215; 5 CFR 735.104.

2. Section 105.404 is revised to read as follows:

§ 105.404 SBA assistance to person employing former SBA employee.

(a) SBA shall not provide assistance to any person who has as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, any individual who, within one year prior to the request for such assistance was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor. The Standards of Conduct Counselor will refer matters of a controversial nature to the Standards of Conduct Committee for final decision. On all matters the decision of the Standards of Conduct Counselor is final.

(b) In reviewing applications for assistance, the Standards of Conduct Counselor will consider:

(1) The relationship of the former employee with the applicant concern;

(2) The nature of the SBA assistance requested;

(3) The position held by the former employee with SBA and its relationship to the assistance requested; and

(4) The appearance of a possible conflict of interest that might arise if the assistance were granted.

3. The last sentence of § 105.501(d)(1) is revised and two sentences are added to read as follows:

§ 105.501 Involvement in matters in which Government has substantial interest.

* * * * *

(d) * * *

(1) * * * In order to determine the possibility of any conflict of interest and the appearances of the arrangement, this function must first be reviewed and approved by the Standards of Conduct Counselor. The Standards of Conduct Counselor will refer matters of a controversial nature to the Standards of Conduct Committee for final decision. On all other matters the decision of the Standards of Conduct Counselor is final.

* * * * *

4. Section 105.510 is amended as follows:

a. In paragraph (b)(1)(i), by removing, from the first sentence the term "GS-13" and inserting the term "GS-15" in lieu thereof;

b. Paragraph (b)(1)(ii) is revised;

c. Paragraph (b)(2) introductory text and (b)(2)(i) are revised.

§ 105.510 Outside employment and activities.

* * * * *

(b) * * *

(1) * * *

(ii) All other SBA field office requests shall be reviewed by the Regional Standards of Conduct Counselor and forwarded with his written recommendations to the Agency Standards of Conduct Counselor for decision.

(2) For employees of SBA's Central Office, all submittals shall initially be made to the Agency Standards of Conduct Counselor, noted in § 105.502.

(i) Requests by employees of level of GS-15 and below and relating to outside activities of a noncontroversial, low visibility nature, having no apparent connection with SBA activities, having no significant "appearances" problems, and involving no apparent interference with the performance of official duties or official time shall be resolved by the Agency Standards of Conduct Counselor.

* * * * *

5. Section 105.601(a) introductory text and (b)(2) and (b)(3) are revised to read as follows:

§ 105.601 Standards of Conduct Committee.

(a) The Standard of Conduct Committee shall as provided for in these regulations:

* * * * *

(b) * * *

(2) The Associate Deputy Administrator for Management and Administration, or in his or her absence, the Assistant Administrator for Administration;

(3) The Director of Personnel, or in his or her absence the Deputy Director of Personnel.

6. Section 105.802(d) is revised to read as follows:

§ 105.802 Standards of Conduct Counselor.

* * * * *

(d) Where a specific ruling regarding a particular situation is required, the request should be directed to the Standards of Conduct Counselor for appropriate action.

Dated: September 20, 1990.

Susan S. Engeleiter,

Administrator.

[FR Doc. 90-22307 Filed 9-26-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

[TD 8309]

RIN 1545-AP00

Imposition of Backup Withholding Due to Notification of an Incorrect Taxpayer Identification Number

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to § 35a.3406-1 of the Temporary Income Tax Regulations under section 3406 of the Internal Revenue Code of 1986 (the "Code"). The amendments liberalize certain rules concerning the requirement for payors to backup withholding under section 3406(a)(1)(B) of the Code on certain reportable payments due to notification of an incorrect taxpayer identification number. These amendments affect payors, brokers, and payees of certain reportable payments and provide guidance necessary to comply with the law. The substance of § 35a.3406-1 of the regulations, as amended by this document, is included in the proposed regulations under section 3406 of the Code set forth in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: These amendments are effective on and after January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Renay Pearce (202-377-9344, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). The collection(s) of information contained in this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under control number 1545-0998.

The estimated average annual burden per respondent/recordkeeper, depending on individual circumstances, is .25 hours. These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning the collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

Background

This document contains amendments to part 35a of title 26 of the Code of Federal Regulations ("CFR"). The amendments provide guidance relating to the requirement under section 3406(a)(1)(B) of the Code that a payor backup withhold 20 percent from reportable payments due to an incorrect taxpayer identification number. This provision was added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98-67, 97 Stat. 369, 371). On November 23, 1987, the Internal Revenue Service published in the Federal Register temporary regulations [26 CFR part 35a.3406-1, T.D. 8163, 52 FR 44261] concerning the requirement to backup withhold under section 3406(a)(1)(B). Amendments to these temporary regulations were published in the Federal Register on April 11, 1989 (T.D. 8245, 54 FR 14341).

This issue of the Federal Register contains a notice of proposed rulemaking containing proposed regulations that, in large measure, would reorganize and restate in traditional regulation form various temporary regulations issued under section 3406. The substance of § 35a.3406-1, as amended by this Treasury decision, is included in such proposed regulations. Accordingly, the notice of proposed rulemaking provides an opportunity for the public to comment on all of the amendments made by this document.

Explanation of Provisions

Overview of the law prior to the amendments made by this Treasury decision

Section 3406 (a)(1)(B) of the Code requires a payor to institute backup withholding at a rate of 20 percent on any reportable payment to a payee if the Service or a broker notifies the payor that the taxpayer identification number ("TIN") provided by the payee is incorrect. After a payor receives a "B" notice from the Service or a broker, (i) the payor must promptly furnish a copy to the payee, (ii) the payor must

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commence backup withholding on reportable payments no later than the 30th day after receipt of the "B" notice, and (iii) the payee may prevent backup withholding from commencing or terminate backup withholding, as the case may be, by furnishing the payor with a name/TIN combination in the appropriate manner. Section 3406 (e)(2), (e)(5), and (h)(6). If the payor receives two "B" notices for the payee within any three-year period, the payee may prevent backup withholding from commencing or terminate backup withholding, as the case may be, only by obtaining a notice from the Service that a correct name/TIN combination has been provided (the "2/3 rule"). Section 3406 (h)(2).

Pursuant to the "B" notice temporary regulations, an incorrect TIN exists if the name/TIN combination provided on an information return does not match a name/TIN combination in the records of the Service or the Social Security Administration (the "match requirement"). Backup withholding applies to all reportable payments to accounts of the payee that have the same incorrect name/TIN combination as the one contained on the "B" notice and that the payor can locate using reasonable care (the "reasonable care requirement"). § 35a.3406–1 (b) (3) and (5).

The "B" notice temporary regulations require that a payor send a notice to the payee within 5 business days of having received the "B" notice (the "5-day requirement"). § 35a.3406–1 (c)(2). However, the preamble to the April 11, 1989 amendments to the "B" notice temporary regulations states that the Service will mail "B" notices 2 to 3 weeks in advance of the date that they will be considered to be effective. 54 FR 14342.

The "B" notice temporary regulations also provide, in part, that, with respect to accounts of the payee identified by the payor as having the same name/TIN combination, the payor must withhold 20 percent of either (i) withdrawals made after 7 business days following the payor's receipt of the "B" notice (to the extent of reportable payments made since such receipt) or (ii) reportable payments made after the 7-day period ("the 7-day requirement"). § 35a.3406–1 (d).

In addition, the "B" notice temporary regulations apply the 2/3 rule on a payee basis—that is, they require a payor to identify and backup withhold on any account of a payee with the incorrect TIN and for whom the payor has received two "B" notices. § 35a.3406–1 (f).

The amendments to the "B" notice temporary regulations made by this Treasury decision

Comments on the "B" notice temporary regulations have primarily focused on the match requirement, the reasonable care requirement, the 5-day requirement, the 7-day requirement, and the application of the 2/3 rule. The amendments contained in this Treasury decision are intended to address these concerns. The Service recognizes, however, that further changes in these and other areas of the "B" notice temporary regulations may be appropriate. Accordingly, the substance of the "B" notice temporary regulations, as amended by this Treasury decision, is included in the proposed regulations in the notice of proposed rulemaking under section 3406 of the Code in the Proposed Rules section of this issue of the Federal Register. This will allow persons to comment on areas where further changes might be appropriate.

The match requirement and certain multi-name fiduciary and nominee accounts.

Certain payors have informed the Service that they are likely to receive substantial numbers of "B" notices with respect to accounts maintained by fiduciaries or nominees even though the proper TIN for the ultimate taxpayer has been provided. These payors indicate that this may result, for example, because the Service's processing system does not read the full registration on certain multi-name fiduciary accounts (*i.e.*, it reads only the first 80 characters of any registration) or because only the name of the fiduciary or nominee and the TIN of the beneficial owner are listed on the account. Accordingly, the "B" notice temporary regulations are amended to provide that, until final regulations are issued with respect to this issue, backup withholding under section 3406(a)(1)(B) will not apply to accounts with respect to which at least one person named in the registration is identified as acting in the capacity as nominee or as administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law. Prior to the issuance of final regulations on this issue, for purposes of section 3406 (a)(1)(B), payors are requested, but not required, to send copies of the "B" notices (or an acceptable substitute therefor) to the payees of such fiduciary and nominee accounts. The Service invites comments from payors on how fiduciary and nominee accounts can be formatted on information returns so that the correct/TIN combination is identified.

Notwithstanding the exemption from backup withholding provided for fiduciary and nominee accounts described above, payors continue to be required to file information returns for reportable payments made to such accounts and to be subject to the penalty under section 6721 of the Code for providing an incorrect TIN on such an information return. However, the fact that a payor sends a copy of the "B" notice (or an acceptable substitute therefor) and other prescribed information to the payee of a fiduciary or nominee account exempted from backup withholding will be considered strong evidence of (but not a requirement for) qualification for the reasonable cause exception to the penalty under section 6721 for information returns filed subsequent to receipt of the "B" notice.

The match requirement and legal impediments to correcting a name or TIN on an account

Some payors have informed the Service that there may be situations in which there are legal impediments to correcting a name or TIN on an account. For example, state law may prohibit a payor from changing the name on a negotiable instrument without proper authorization from the holder of the instrument. The Service requests comments on how to accommodate these situations.

The reasonable care requirement. Certain payors have requested a less costly and time-consuming procedure for determining accounts of the payee that are potentially subject to backup withholding. Accordingly, the "B" notice temporary regulations are amended to provide that, where the "B" notice contains an account number or designation, backup withholding applies only to the account or accounts corresponding to that number or designation and containing the incorrect name/TIN combination. In a case where the "B" notice does not contain the account number or designation (because no account number or designation was provided on the related information return), backup withholding applies to all reportable payments made to accounts of the payee with the incorrect name/TIN combination that the payor can locate with reasonable care.

The 5-day requirement. Several payors have informed the Service that, in a substantial number of cases, they will be unable to comply with the 5-day requirement even where the Service mails the "B" notices by 2 to 3 weeks in

advance of their effective date because of the many tasks required of payers after receipt of "B" notices. However, lengthening the period allowed for a payor to notify a payee decreases day-for-day the period allowed for the payee to provide a certified TIN to the payor and prevent backup withholding from starting. The Service believes that 15 business days should serve the interests of both payors and payees. Therefore, the "B" notice temporary regulations are amended to provide that the period in which payors must notify payees of their incorrect TINs for purposes of backup withholding under section 3406(a)(1)(B) of the Code is extended from 5 to 15 business days.

The 7-day requirement. The Service is concerned that the 7-day requirement may have the effect of eliminating any chance that a payee could provide a new name/TIN combination (or correct an error) prior to the payor's commencing backup withholding. Accordingly, the 7-day requirement is eliminated. Payors are required to commence backup withholding only after the close of 30 business days following receipt of the "B" notice, although payors may still elect to impose backup withholding at any time after receipt of the notice. The Service will consider other enforcement measures, rather than requiring backup withholding on withdrawals, in collecting the appropriate tax from payees who withdraw funds during the 30-day grace period.

The 2/3 rule. Several payors have indicated that it is not feasible for them to apply the 2/3 rule on a payee basis. This requires them over time to correlate a payee with all accounts of the payee whether or not they have the same name/TIN combination as the one indicated on a "B" notice. This is especially difficult where the payor does not have a direct relationship with the payee. Accordingly, the 2/3 rule is amended to apply on an account, rather than a payee, basis. The 2/3 rule thus applies only where a payor receives a "B" notice twice within 3 calendar years with respect to the same account.

Concluding Comments

The amendments made by this Treasury decision are effective on and after January 1, 1990. Thus, a payor is only required to notify payees and backup withhold on payee accounts as required by these regulations if the payor receives a notice of an incorrect taxpayer identification number from the Internal Revenue Service on or after January 1, 1990. In this connection payors may notify payees by sending an acceptable substitute of the notice set forth in the appendix to § 35a.3406–1. For this purpose, the notice set forth in the Federal Register on November 23, 1987 (52 FR 44871), or such notice as amended on April 11, 1989 (54 FR 14342) or an acceptable substitute of either will satisfy the requirement that the payor send a "B" notice to a payee.

Special Analyses

These rules are not major rules as defined in Executive Order 12291 because the economic or other consequences are a direct result of a statute. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subject in 26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 35a is amended as follows:

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Paragraph 1. The authority citation for part 35a is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 35a.3406–1 also issued under 26 U.S.C. 3406 (a), (b), (e), (g), (h), and (i); 26 U.S.C. 6109; 26 U.S.C. 6676; and 26 U.S.C. 6721.

§ 35a.3406–1 [Amended]

Par. 2. Section 35a.3406–1 is amended as follows:

1. Paragraph (a)(1) is amended by removing the last two sentences and adding the following new sentences in their place: "See section 6721 for the penalty that may be imposed on a payor for providing an incorrect taxpayer identification number on an information return filed with the Internal Revenue Service unless there is reasonable cause for the error.".

§ 35a.3406–1 [Amended]

2. Paragraph (b)(2) is amended by removing the last sentence of the concluding text and adding the following sentence in its place: "See paragraph (b)(5)(ii) of this section for accounts of the payee with respect to which the broker is required to notify a payor under this paragraph (b) (2).".

§ 35a.3406–1 [Amended]

3. Paragraph (b)(5)(i)(B), second sentence, is amended by removing the words "name, taxpayer identification number, and the account number" and adding in their place the following words: "name and taxpayer identification number".

§ 35a.3406–1 [Amended]

4. The concluding text following paragraph (c)(1)(ii) is amended by removing the words "Federal Register on November 23, 1987 (52 FR 44871)" in the second and third sentences and adding in their place the words "appendix to this section".

§ 35a.3406–1 [Amended]

5. Paragraph (c)(2)(i) is amended by removing the word "5" and by adding in its place the word "15".

§ 35a.3406–1 [Amended]

6. Paragraph (c)(3) introductory text, second sentence, is amended by removing the words "Federal Register on November 23, 1987 (52 FR 44871)" and adding in their place the words "appendix to this section".

§ 35a.3406–1 [Amended]

7. Paragraph (c)(3)(vii) is amended by adding the word "and" at the end thereof.

§ 35a.3406–1 [Amended]

8. Paragraph (c)(3)(viii) is amended by removing the words "; and" at the end thereof and adding a period in their place.

§ 35a.3406–1 [Amended]

9. Paragraph (c)(3)(ix) is removed.

§ 35a.3406–1 [Amended]

10. Paragraph (d)(2)(i) is amended by removing the words "paragraph (d)(1)(i)" and adding the words "paragraph (d)(1)" in their place in the first sentence, and by removing the last sentence.

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§ 35a.3406-1 [Amended]

11. Paragraph (f)(2)(ii) is amended by removing the word "an" and by adding in its place the word "the" immediately before the words "account with the payor;".

§ 35a.3406-1 [Amended]

12. Paragraph (f)(2)(iii) is amended by removing the words "to existing accounts with the payor;" and by adding in their place the words "to the account;".

§ 35a.3406-1 [Amended]

13. Paragraph (f)(4)(i) is amended by removing the words "paragraph (f)(3)(i)" and inserting in their place the words "paragraph (f)(3)", and by removing the last sentence.

§ 35a.3406-1 [Amended]

14. Paragraph (g) is amended by adding the words "with respect to the same account" immediately after the words "provided an incorrect taxpayer identification number".

§ 35a.3406-1 [Amended]

15. The first paragraph of the appendix to § 35a.3406-1 is amended by removing the words "notice published in the Federal Register on November 23, 1987 (52 FR 44871) or to the".

§ 35a.3406-1 [Amended]

16. The second paragraph of the "Notice of Backup Withholding" in the appendix to § 35a.3406-1 is amended by removing the word "6676" and adding in its place the word "6723".

§ 35a.3406-1 [Amended]

17. The text in the "Notice of Backup Withholding" in the appendix to § 35a.3406-1 entitled "Remember" is amended by removing the last sentence in the first paragraph.

§ 35a.3406-1 [Amended]

18. Paragraph (a)(3)(x) is added; and paragraphs (b)(3), (b)(5)(i) introductory text, and (b)(5)(ii); (c)(3)(vi); (d)(1); (f)(1) introductory text, (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(2)(iv), and (f)(3); and (j) are revised. The added and revised provisions read as follows:

§ 35a.3406-1 Imposition of backup withholding due to notification of an incorrect taxpayer identification number.

(a) *Requirement that a payor backup withhold due to notification of an incorrect taxpayer identification number.* * * *

* * * * *

(3) *Reportable payments excluded from backup withholding.* * * *

* * * * *

(x) *Payments to certain fiduciary and nominee accounts.* Payments to a fiduciary or nominee account. For purposes of this paragraph, a fiduciary or nominee account means an account with respect to which at least one person named in the registration is identified as acting in the capacity as nominee or of administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law.

* * * * *

(b) *Notice regarding an incorrect taxpayer identification number.* * * *

* * * * *

(3) *Accounts subject to backup withholding.* After receiving notice from the Internal Revenue Service or from a broker, as provided in paragraph (b) (1) and (2) of this section, the payor is required to notify the payee in accordance with paragraph (c) of this section and to institute backup withholding as prescribed in paragraph (d) of this section on all reportable payments subject to backup withholding that are made to the account or accounts of the payee containing the incorrect taxpayer identification number. See paragraph (f) of this section for the rules that apply when a payor has received two notifications of an incorrect taxpayer identification number with respect to an account of the payee from the Internal Revenue Service or a broker within 3 calendar years. See paragraph (b)(5) of this section for the determination of the account or accounts of the payee containing the incorrect taxpayer identification number.

* * * * *

(5) *Determination of the account or accounts of the payee containing the incorrect taxpayer identification number*— (i) *Payors.* If an account number or designation is provided in the notice received under paragraph (b) (1) or (2) of this section, the payor need only determine whether the account or accounts corresponding to that number or designation contain the same name and incorrect taxpayer identification number provided in the notice. If no account number or designation is provided in the notice received under paragraph (b) (1) or (2) of this section, the payor must locate, using reasonable care, all accounts of the payee containing the same name and incorrect taxpayer identification number provided in the notice. A payor who satisfies the following two-part facts and circumstances test will be considered to have exercised reasonable care.

* * * * *

(ii) *Brokers.* Brokers are required to use the information and follow the procedures described in paragraph (b)(5)(i) of this section to locate accounts of the payee with respect to which a broker is required to notify a payor pursuant to paragraph (b)(2) of this section.

(c) *Notice from payors of backup withholding due to an incorrect taxpayer identification number.* * * *

* * * * *

(3) *Requirements of substitute notice to the payee.* * * *

* * * * *

(vi) Advises the payee that as a result of providing an incorrect taxpayer identification number, the payor is required under section 3406 (a)(1)(B) of the Internal Revenue Code to begin backup withholding 20 percent of the reportable payments made to the account of the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number by the Internal Revenue Service or a broker if the payor has not received the required Form W-9 (or an acceptable substitute form) as described in paragraph (e) of this section;

* * * * *

(d) *Period during which backup withholding is required due to notification of an incorrect taxpayer identification number*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, upon receiving a notice described in paragraph (b) (1) or (2) of this section, the payor must impose backup withholding on all reportable payments made to the account of the payee that are subject to backup withholding after the close of the 30th business day after the date the payor receives the notice described in paragraph (b) (1) or (2) of this section and on or before the close of the 30th calendar day after the day the payor receives from the payee the certified Form W-9 (or acceptable substitute form) as described in paragraph (e) of this section.

* * * * *

(f) *Notification of two incorrect taxpayer identification numbers within a 3-year period*—(1) *In general.* If a payor receives a notification as described in paragraph (b) (1) or (2) of this section twice within 3 calendar years, and in each case the payor pursuant to paragraph (b)(5) of this section identifies the same account as containing the incorrect taxpayer identification number, then the payor shall—

(i) Disregard any future certifications (described in paragraph (e) of this section) furnished by the payee with respect to the account;

(ii) Send the notice described in paragraph (f)(2) of this section to the payee (and not the notice required under paragraph (c) of this section) within 15 business days after the date that the payor receives the second notice described in this paragraph (f), and

(iii) Impose backup withholding on the account containing the incorrect taxpayer identification number for the period described in paragraph (f)(3) of this section.

* * * * *

(2) *Notice to payee who has provided two incorrect taxpayer identification numbers within 3 years.* * * *

* * * * *

(iv) As a result of providing an incorrect taxpayer identification number, the payor is required under section 3406 (a)(1)(B) to begin backup withholding 20 percent of reportable payments made to the account of the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number if the Internal Revenue Service has not notified the payor that the payee provided a correct taxpayer identification number to the Internal Revenue Service as described in paragraph (h) of this section; and

* * * * *

(3) *Period during which backup withholding is required due to a second notification of an incorrect number within 3 years.* Upon receiving the second notice of an incorrect taxpayer identification number from the Internal Revenue Service or a broker as described in paragraph (f)(1) of this section, the payor must backup withhold on all reportable payments subject to backup withholding made to the account of the payee after the close of the 30th business day after the day on which the payor receives a notice described in paragraph (b)(1) or (2) of this section and on or before the close of the 30th calendar day after the payor receives the notification from the Internal Revenue Service as described in paragraph (h) of this section.

* * * * *

(j) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). D opened an account with Bank O prior to 1984 and furnished a taxpayer identification number to O at the time he opened the account. O is open for business Monday through Friday. O pays interest on the account at the end of each calendar month and the account is a pre-1984 account as described in A-34 of § 35a.9999-1 and A-20 of § 35a.9999-2. On October 1, 1990, the Internal Revenue Service notifies Bank O that the taxpayer identification number provided by D is incorrect. O timely sends the notice information to D as required in paragraph (c)(1) of this section. O does not receive a certified Form W-9 or an acceptable substitute form (hereinafter "certification") from D as described in paragraph (e) of this section. O is required to backup withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O). Therefore, O is not required to backup withhold on the reportable payment made on October 31, 1990, but is required to backup withhold on the reportable payment made on November 30, 1990. O is required to continue to backup withhold under section 3406 (a)(1)(B) until O receives the certification described in paragraph (e) of this section from D.

Example (2). Assume the same facts as in *Example (1)* except that D furnishes a new taxpayer identification number to O on November 1, 1990, but does not certify, under penalties of perjury, that it is his correct taxpayer identificaton number as required in paragraph (e) of this section. Even though the account is a pre-1984 account, O is required to withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O), and before the date O receives the certification described in paragraph (e) of this section from D.

Example (3). Assume the same facts as in *Example (2)* except that D provides O with the certification described in paragraph (e) of this section on November 20, 1990. D elects pursuant to paragraph (d)(2)(ii) of this section to treat the certification as received on November 20, 1990. Even though D did not provide the certification to O within 30 business days after the Internal Revenue Service notified O that D provided an incorrect taxpayer identification number, O is not required to backup withhold under section 3406 (a)(1)(B) because O did not make any reportable payment to D after 30 business days after notification of an incorrect taxpayer identification number and before O received D's certification in the manner required in paragraph (e) of this section. Pursuant to section 3406 (a)(5)(B), O may elect to treat the certification as having been received at any time within 30 calendar days after it is provided by D.

Example (4). Individual F has two post-1983 accounts with Bank R that pay reportable interest: a savings account and a money market account. The money market account was opened in 1986, and the savings account was opened on February 1, 1991. R treats each of these accounts as a separate account with the Bank. F provided R with the certifications as described under A-32 of § 35a.9999-1 at the time each account was opened. On October 1, 1990, the Internal Revenue Service notified R pursuant to paragraph (b)(1) of this section that F furnished an incorrect taxpayer identification number with respect to the money market account. R timely sends F the notice required under paragraph (b)(1) of this section and receives the certification required under paragraph (e) of this section from F on November 1, 1990. On October 1, 1991, the Internal Revenue Service notifies R that F furnished an incorrect taxpayer identification number with respect to the money market account. Further, R determines from its business records that two notifications of an incorrect taxpayer identification number have been received with respect to the money market account within 3 calendar years. R must send F the notice required under paragraph (f)(2) of this section and must commence backup withholding on reportable interest paid on the money market account pursuant to paragraph (f)(3) of this section after November 14, 1991 (which is 30 business days after R received the second notice). R must continue to backup withhold on the money market account until R receives from the payee a copy of the notice that was provided to the payee by the Internal Revenue Service as described in paragraph (h) of this section. R is not required to backup withhold on the savings account until it receives notice under paragraph (b)(1) or (2) of this section with respect to the savings account.

* * * * *

There is a need for immediate guidance with respect to the amendments made in this Treasury decision. For this reason, it is found impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Approved August 27, 1990.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-22409 Filed 9-26-90; 10:53 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD30

Loan Guaranty: Processing Assumptions of VA Guaranteed Home Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations; correction.

SUMMARY: On pages 37466-37478 of the Federal Register of September 12, 1990 (55 FR 37466), the Department of Veterans Affairs (VA) published a final

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rule to amend its regulations for processing assumptions of VA guaranteed home loans to implement the requirements of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987. On page 37476, the mandatory language pertaining to § 36.4306 should have included instructions in reference to paragraph (a), to remove the words "paragraph (e)" and insert in their place, the words "paragraphs (b) or (c)". Also on page 37476, the OMB control number "2900-0516" was inadvertently omitted in the parenthetical statement at the end of § 36.4306 concerning OMB approval of recordkeeping requirements contained in that section. To avoid any confusion, VA is printing the amendatory language pertaining to § 36.4306, paragraph (a), and adding the OMB control number at the end of that section.

EFFECTIVE DATE: October 12, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, (202) 233-0376.

Approved: September 21, 1990.

Donald R. Howell,
Records Management Service.

PART 36—[AMENDED]

§ 36.4306 [Amended]

1. In § 36.4306, paragraph (a), remove the words "paragraph (e)" and insert in their place, the words "paragraphs (b) or (c)".

2. Section 36.4306 is further amended by adding a parenthetical statement at the end of the section to read as follows:

§ 36.4306 Transfer of title by borrower or maturity by demand or acceleration.

* * * * *

(Recordkeeping requirements contained in § 36.4306 were approved by the Office of Management and Budget under OMB control number 2900-0516)

[FR Doc. 90-22915 Filed 9-26-90; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-021; FRL-3831-5]

Approval and Promulgation of Implementation Plans; Alabama: New Source Review Regulatory Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions to the Alabama state implementation plan (SIP) which were submitted to EPA on April 17, 1987. Alabama has revised its regulation for new source review in nonattainment areas (NSR) to include a definition of fugitive emissions and specify two additional categories of nonexempt sources to be consistent with EPA's regulations. These revisions are identical to the requirements of 40 CFR 51.165(a)(1)(ix) and 51.165(a)(1)(iv)(*c*)(*26*) and (*27*) (formerly 40 CFR 51.18(j)(1)(ix) and 51.18(j)(1)(iv)(*c*)(*26*) and (*27*)).

DATES: This action will be effective November 27, 1990, unless notice is received within 30 days that adverse or critical comments will be submitted. Such notice may be submitted to Beverly T. Hudson at the EPA Regional Office address listed below. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson of the EPA Region IV Air Programs Branch, at the above address and telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On April 17, 1987, Alabama submitted regulation changes and revisions to the Alabama state implementation plan (SIP). This submittal contained certification that the revisions were preceded by adequate notice and a public hearing. EPA is approving these revisions as submitted on the above date.

On December 1, 1988, 53 FR 48552, EPA proposed approval of a relaxation of Alabama's NSR rule, which is largely in conformity with 40 CFR 51.165(a). Final approval of that relaxation is contingent upon Alabama's making two changes to that relaxed rule. The revisions being approved today are the two changes EPA required. A discussion of the revisions and the basis for EPA's action now follows.

Two revisions to chapter 16 of Alabama's Air Pollution Control Commission Rules and Regulations were adopted by the Alabama Department of Environmental Management (ADEM) on April 15, 1987. The revisions included a definition of fugitive emissions and expanded the applicability of subparagraph 16.3.2(1)(2). Up until this time, Alabama's SIP did not contain a definition of fugitive emissions as required by 40 CFR 51.165(a)(1)(ix). This definition will bring the State's regulation into conformance with federal requirements. Subparagraph 16.3.2(1)(2) has been added to specify two categories of nonattainment area sources which are not exempt from review under this new source review regulation. Exempt sources are those that become major solely because of their fugitive emissions. The list of source categories not exempted is now identical to those in EPA's nonattainment area exemption rule found at 40 CFR 51.165(a)(1)(iv)(*c*)(*26*) and (*27*).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One Notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Final Action

After reviewing Alabama's new source review SIP revisions, EPA has found that they substantially meet the requirements contained in 40 CFR 51.165(a)(1)(ix) and 51.165(a)(1)(iv)(*c*)(*26*) and (*27*). EPA is therefore approving them.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1990. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of the State Implementation Plan for the State of Alabama was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 11, 1990.

William K. Reilly,
Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.50 is amended by adding paragraph (c)(47) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(47) Revisions to Alabama's New Source Review regulations were submitted to EPA on April 17, 1987.

(i) Incorporation by reference.

(A) Letter of April 17, 1987, from the Alabama Department of Environmental Management.

(B) Revisions to Alabama regulation 16.3.2, adopted by the Alabama Department of Environmental Management (ADEM) on April 15, 1987.

(ii) Other material—none.

[FR Doc. 90-22904 Filed 9-26-90; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3835-5]

Standards of Performance for New Stationary Sources; Wyoming; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: EPA is today providing notice that it granted delegation of authority to Wyoming on September 6, 1990, to implement and enforce the New Source Performance Standards (NSPS) for 40 CFR part 60, subparts Db, Kb, AAA, BBB and TTT. This is a result of a request for delegation from the State of Wyoming on October 27, 1989.

EFFECTIVE DATE: September 6, 1990.

ADDRESSES: Copies of the submittal are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, CO 80202-2405.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, CO 80202-2405, (303) 293-1814, (FTS) 330-1814.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Clean Air Act permits EPA to delegate to the states the authority to implement and enforce standards set forth in 40 CFR part 60, NSPS.

On October 27, 1989, the State of Wyoming submitted revisions to its NSPS regulations. Such revisions included the addition of five NSPS for the following source categories: industrial-commercial-institutional steam generating units, volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984, new residential wood heaters, rubber tire manufacturing industry, and industrial surface coating: surface coating of plastic parts for business machines (40 CFR part 60, subparts Db, Kb, AAA, BBB and TTT, respectively). Pursuant to such submittal, on September 6, 1990 delegation was given with the following letter:

Hon. Mike Sullivan,
Governor of Wyoming, Office of the Governor, Cheyenne, Wyoming 82002

Dear Governor Sullivan: This letter is in response to your submittal dated October 27, 1989. That submittal contained additions and revisions to Section 22, New Source Performance Standards (NSPS), of the Wyoming Air Quality Standards and Regulations (WAQSR).

Subsequent to states adopting NSPS regulations, the Environmental Protection Agency (EPA) delegates the authority for the implementation and enforcement of those NSPS so long as those regulations are equivalent to, or more stringent than, the federal regulations. EPA, therefore, is acting on the delegation of authority to Wyoming for implementation and enforcement of five NSPS.

EPA has reviewed the pertinent statutes and regulations of the State of Wyoming and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of Wyoming. Therefore, pursuant to Section 111(c) of the Clean Air Act (CAA), as amended, and 40 CFR parts 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of Wyoming as follows:

(A) Responsibility for all sources located, or to be located in the State of Wyoming subject to the standards of performance for new stationary sources promulgated in 40 [FR part 60. The categories of new stationary sources covered by this delegation are as follows: industrial-commercial-institutional steam generating units (Db); volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984 (Kb); new residential wood heaters (AAA); rubber tire manufacturing industry (BBB); and industrial surface coating: surface coating of plastic parts for business machines (TTT).

(B) Not all authorities of NSPS can be delegated to states under section 111(c) of the CAA. The EPA Administrator retains the authority to implement those sections of NSPS that require: (1) approving equivalency determinations and alternative test methods; (2) decision making to ensure national consistency; and (3) EPA rulemaking to implement. With respect to this delegation, the following are the authorities in 40 CFR part 60 that EPA cannot delegate to the State:

i. 40 CFR 60.44b(f), 60.44b(g), and 60.44b(a)(4) in industrial-commercial-institutional steam generating units;

ii. 40 CFR 60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii) in volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;

iii. 40 CFR 60.530(c), 60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e), and 60.539 in new residential wood heaters;

iv. 40 CFR 60.543(c)(2)(ii)(B) in rubber tire manufacturing industry; and

v. 40 CFR 60.723(b)(1), 60.723(b)(2)(i)(c), 60.723(b)(2)(iv), 60.724(e), and 60.725(b) in industrial surface coating: surface coating of plastic parts for business machines.

(C) As 40 CFR part 60 is updated by EPA, Wyoming must revise its rules and regulations accordingly and in a timely manner or such delegation will be revoked.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 2, 1977, except that condition 6, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 3. If at any time there is a conflict between a State and Federal Regulation (40 CFR Part 60), the Federal Regulation must be applied if it is more stringent than that of the State, as stated in condition 9 of our letter dated August 2, 1977.

A copy of the August 2, 1977 letter was published in the notices section of the Federal Register of September 15, 1977 (42 FR 46386), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Wyoming (42 FR 46304). Copies of the Federal Register are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we

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receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Wyoming will be deemed to have accepted all the terms of this delegation. An information notice will be published in the Federal Register in the near future informing the public of this delegation. This letter will appear in such notice in its entirety.

Sincerely,
James J. Scherer,
Regional Administrator.

List of Subjects in 40 CFR Part 60

Air pollution control, Fossil fuel-fired steam generators, Incinerators, Industrial-commercial-institutional steam generating units, industrial surface coating, new residential wood heaters, petroleum, petroleum liquid storage vessels, rubber tire manufacturing industry, surface coating of plastic parts for business machines.

Authority: 42 U.S.C. 7411.

Dated: September 5, 1990.

Kerrigan Clough,
Acting Regional Administrator.

For the reasons set out in the preamble, part 60 of chapter I, title 40 of the *Code of Federal Regulations* is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Subpart A—General Provisions

2. Section 60.4(c) is amended by revising the table to read as follows:

§ 60.4 Address.

* * * * *

(c)* * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

(NSPS) for Region VIII

Subpart	State					
	CO	MT	ND	SD	UT	WY
A General provisions	(*)	(*)	(*)	(*)	(*)	(*)
D Fossil fuel fired steam generators	(*)	(*)	(*)	(*)	(*)	(*)
Da Electric utility steam generators	(*)	(*)	(*)		(*)	(*)
Db Industrial-commercial institutional steam generators	(*)	(*)	(*)		(*)	(*)
E Incinerator	(*)	(*)	(*)	(*)	(*)	(*)
F Portland cement plant	(*)	(*)	(*)	(*)	(*)	(*)
G Nitric acid plants	(*)	(*)	(*)		(*)	(*)
H Sulfuric acid plant	(*)	(*)	(*)		(*)	(*)
I Asphalt concrete plants	(*)	(*)	(*)	(*)	(*)	(*)
J Petroleum refineries	(*)	(*)	(*)		(*)	(*)
K Petroleum storage vessels (6/11/73–5/19/78)	(*)	(*)	(*)	(*)	(*)	(*)
Ka Petroleum storage vessels (5/18/78–7/23/84)	(*)	(*)	(*)		(*)	(*)
Kb Petroleum storage vessels (after 7/23/84)			(*)			
L Secondary lead smelters	(*)	(*)			(*)	(*)
M Secondary brass & bronze production plants	(*)	(*)			(*)	(*)
N Primary emissions from basic oxygen process furnaces (after 6/11/73)	(*)	(*)			(*)	(*)
Na Secondary emissions from basic oxygen process furnaces (after 1/20/83)	(*)	(*)			(*)	(*)
O Sewage treatment plants	(*)	(*)	(*)	(*)	(*)	(*)
P Primary copper smelters	(*)	(*)			(*)	(*)
Q Primary zinc smelters	(*)	(*)			(*)	(*)
R Primary lead smelters	(*)	(*)			(*)	(*)
S Primary aluminum reduction plants	(*)	(*)			(*)	(*)
T Phosphate fertilizer industry: Wet process phosphoric plants	(*)	(*)	(*)		(*)	(*)
U Phosphate fertilizer industry: Superphosphoric acid plants	(*)	(*)	(*)		(*)	(*)
V Phosphate fertilizer industry: Diammonium phosphate plants	(*)	(*)	(*)		(*)	(*)
W Phosphate fertilizer industry: Triple superphosphate plants	(*)	(*)	(*)		(*)	(*)
X Phosphate fertilizer industry: Granular triple superphosphate storage facilities	(*)	(*)	(*)		(*)	(*)
Y Coal preparation plants	(*)	(*)	(*)	(*)	(*)	(*)
Z Ferroalloy production facilities	(*)	(*)			(*)	(*)
AA Steel plants: Electric arc furnaces (10/21/74–8/17/83)	(*)	(*)			(*)	(*)
AAa Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels (after 8/7/83)	(*)	(*)			(*)	(*)
BB Kraft pulp mills	(*)	(*)	(*)		(*)	(*)
CC Glass manufacturing plants	(*)	(*)			(*)	(*)
DD Grain elevator	(*)	(*)	(*)	(*)	(*)	(*)
EE Surface coating of metal furniture	(*)	(*)			(*)	(*)
GG Stationary gas turbines	(*)	(*)	(*)	(*)	(*)	(*)
HH Lime manufacturing plants	(*)	(*)	(*)	(*)	(*)	(*)
KK Lead-acid battery manufacturing plants	(*)	(*)			(*)	(*)
LL Metallic mineral Processing plants	(*)	(*)		(*)	(*)	(*)
MM Automobile & light duty truck surface coating operations	(*)	(*)			(*)	(*)
NN Phosphate rock plants	(*)	(*)			(*)	(*)
PP Ammonium sulfate manufacturing	(*)	(*)			(*)	(*)
QQ Graphic arts industry: Publication rotogravure printing	(*)	(*)			(*)	(*)
RR Pressure sensitive tape & label surface coating	(*)	(*)			(*)	(*)
SS Industrial surface coating: Large appliances	(*)	(*)			(*)	(*)
TT Metal coil surface coating	(*)	(*)			(*)	(*)
UU Asphalt processing & asphalt roofing manufacture	(*)	(*)			(*)	(*)
VV Synthetic organic chemicals manufacturing: Equipment leaks of VOC	(*)	(*)	(*)		(*)	(*)
WW Beverage can surface coating industry	(*)	(*)			(*)	(*)
XX Bulk gasoline terminals	(*)	(*)	(*)		(*)	(*)
AAA Residential wood heaters	(*)	(*)			(*)	(*)

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS—Continued

(NSPS) for Region VIII

Subpart	State					
	CO	MT	ND	SD	UT	WY
BBB Rubber tires	(*)	(*)			(*)	(*)
FFF Flexible vinyl and urethane coating and printing	(*)	(*)	(*)		(*)	(*)
GGG Equipment leaks of VOC in petroleum refineries	(*)	(*)			(*)	(*)
HHH Synthetic fiber production	(*)	(*)			(*)	(*)
III VOC emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes	(*)	(*)			(*)	(*)
JJJ Petroleum dry cleaners	(*)	(*)	(*)		(*)	(*)
KKK Equipment leaks of VOC from onshore natural gas processing plants	(*)	(*)	(*)		(*)	(*)
LLL Onshore natural gas processing: SO2 emissions	(*)	(*)	(*)		(*)	(*)
NNN VOC emissions from the synthetic organic chemical manufacturing industry distillation operations	(*)	(*)			(*)	(*)
OOO Nonmetallic mineral processing plants	(*)	(*)	(*)	(*)	(*)	(*)
PPP Wool fiberglass insulation manufacturing plants	(*)	(*)			(*)	(*)
QQQ VOC emissions from petroleum refinery wastewater systems					(*)	
SSS Magnetic tape industry					(*)	
TTT Plastic parts for business machines coatings					(*)	(*)
VVV Polymeric coating of supporting substrates					(*)	

(*) Indicates delegation.

[FR Doc. 90-22810 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 9E3704/R1084; FRL-3772-6]

Pesticide Tolerances for 2,4-D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the herbicide 2,4-D in or on the raw agricultural commodity raspberries at 0.1 part per million (ppm). This regulation was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: This regulation becomes effective September 27, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 9E3704/R1084], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 14, 1990 (55 FR 24116), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3704 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Minnesota.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide 2,4-D [2,4-dichlorophenoxyacetic acid), in or on the raw agricultural commodity raspberries at 0.1 part per million (ppm). The petitioner proposed that this use of 2,4-D be limited to Minnesota based on the geographical representation of the residue data submitted. Additional data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 30, 1990.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.142 is amended by adding new paragraph (j), to read as follows:

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§ 180.142 2,4-D; tolerances for residues.

* * * * * *

(j) A tolerance with regional registration as defined in § 180.1(n) is established for the residues of 2,4-D (2,4-dichlorophenoxyacetic acid). The tolerance includes residues from the application of 2,4-D and its N-oleyl-1,3-propylenediamine salt on the following raw agricultural commodity:

Commodity	Parts per million
Raspberries	0.1

[FR Doc. 90-22906 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 9F3794/R1096; FRL-3799-7]

Pesticide Tolerances for Lactofen (1-(Carboethoxy)Ethyl-5-(2-Chloro-4-(Trifluoromethyl)Phenoxy)-2-Nitrobenzoate); Technical Amendment; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: In FR Doc. 90-19363 in the Federal Register of August 17, 1990, the following correction is made: In the first column of page 33695, in § 180.432(b) in the table therein, in the entry for cottonseed change "0.5" parts per million to read "0.05" parts per million. This change corrects an inadvertent typographical error.

DATES: Effective September 27, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Acting Product Manager (PM-23), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1830.

Dated: September 10, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-22907 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 185 and 186

[FAP 7H5544/R1092; FRL-3801-9]

Pesticide Tolerances for N,N-Dimethylpiperidinium Chloride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document renews temporary food additive and feed additive regulations to permit the plant growth regulator *N,N*-dimethylpiperidinium chloride in raisins at 6.0 parts per million (ppm), raisin waste at 26 ppm, and grape pomace (wet and dry) at 3.0 ppm. These regulations to establish the maximum permissible levels for residues of the pesticide in or on the commodities were requested pursuant to a petition by BASF Corp. These temporary tolerances expire June 30, 1991.

DATES: Effective on September 14, 1990.

ADDRESSES: Written objections, identified by the document control number, [FAP 7H5544/R1092], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 18, 1990 (55 FR 29267), EPA issued a notice which announced that it had received food/feed additive petition (FAP) 7H5544 from BASF Corp., Agricultural Chemicals Group, P.O. Box 13528, Research Triangle Park, NC 27709, proposing to establish tolerances for the plant growth regulator *N,N*-dimethylpiperidinium chloride in 40 CFR 185.2775 for the food commodity raisins at 6.0 ppm and in 40 CFR 186.2275 for the feed commodities raisin waste at 26.0 ppm and grape pomace (wet and dry) at 3.0 ppm. These tolerances were previously established as temporary tolerances in 21 CFR 193.48 and 561.197, respectively (redesignated as 40 CFR 185.2275 and 186.2275, respectively, in the Federal Register of June 29, 1988 (53 FR 24668) that expired on June 30, 1989. Food and feed additive regulations are established pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 348.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in the previous final rule. Based on the data and information considered, it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 751 (7 U.S.C. 136 et seq.)). These regulations are being issued in conjunction with Experimental Use Permit No. 7969-EUP-24. This Experimental Use Permit expires on June 30, 1991; therefore, these regulations will expire on this date. These regulations are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

Administrative practice and procedure, Animal feeds, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 14, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

b. By adding new § 185.2275, to read as follows:

§ 185.2275 N,N-dimethylpiperidinium chloride

(a) A tolerance of 6 parts per million (ppm) is established for residues of the plant growth regulator *N,N*-dimethylpiperidinium chloride in the processed fraction raisins, resulting from application of the plant regulator to the growing crop groups. Such residues may be present therein only as a result of the application of the plant growth regulator to the growing grapes in accordance with an experimental use permit that expires June 30, 1991.

(b) Residues in or on raisins not in excess of 6 ppm resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental use program will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the emergency use permit and food additive tolerance.

(c) BASF Corporation shall immediately notify the Environmental Protection Agency (EPA) of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of EPA or the Food and Drug Administration (FDA).

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 346.

b. In § 186.2275, by adding new paragraph (b), to read as follows:

§ 186.2275 N,N-dimethylpiperidinium chloride.

* * * * * *

(b) A feed additive regulation is established permitting the combined residues of the plant growth regulator *N,N*-dimethylpiperidinium chloride in or on the following feeds resulting from application of the plant growth regulator to grapes in accordance with an experimental use program. The conditions set forth below shall be met.

Feeds	Parts per million	Expiration date
Grape pomace (wet and dry)	3.0	6/30/91
Raisin waste	25.0	6/30/91

(1) Residues in the feed not in excess of the established tolerance resulting from the use described in this paragraph remaining after expiration of the experimental program will not be considered to be actionable if the plant growth regulator is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(2) The company concerned shall immediately notify EPA of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of EPA or FDA.

(3) These temporary tolerances expire June 30, 1991.

[FR Doc. 90-22905 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 261, 264, 265, 268, 271 and 302

[EPA/OSW-FR-90-020; SWH-FRL-3836-3]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Clarifications

AGENCY: EPA.

ACTION: Final rule; clarification.

SUMMARY: On March 29, 1990 (55 FR 11798), the Environmental Protection Agency (EPA) promulgated the Toxicity Characteristics (TC) rule to revise the existing EP toxicity characteristics, which are used to identify those wastes defined as hazardous and that are subject to regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. The preamble to these regulations included implementation guidance to assist the regulated community in understanding their regulatory obligation for managing new TC wastes. This notice is intended to clarify for the regulated community the following issues: (1) The regulatory status of surface impoundments managing newly regulated TC wastes, (2) ground-water monitoring requirements for newly regulated land disposal facilities, (3) section 3010 notification requirements, and (4) permit modification requirements.

DATES: Effective September 25, 1990.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Steve Cochran, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9551.

SUPPLEMENTARY INFORMATION:

A. Background

On March 29, 1990 (55 FR 11798), EPA promulgated a rule to revise the existing EP toxicity characteristics, which are used to identify those wastes which are hazardous and thus subject to regulation under subtitle C of RCRA. The rule broadened and refined the scope of the hazardous waste regulatory program and fulfilled specific statutory mandates under the Hazardous and Solid Waste Amendments of 1984.

Today's notice provides clarification regarding four implementation issues brought to the Agency's attention since the publication of the final rule. First, this notice provides clarification regarding the compliance options for surface impoundments managing newly regulated TC wastes. Secondly, this notice addresses the ground-water monitoring requirements that owner/operators of land disposal facilities managing newly regulated TC wastes must meet. Third, the Agency is providing additional clarification regarding § 3010 notification responsibilities for generators and owner/operators of treatment, storage, and/or disposal facilities (TSDFs) managing newly regulated TC wastes. Finally, the Agency is clarifying the permit modification requirements for hazardous waste management facilities with newly regulated wastes under the TC.

B. Surface Impoundments

The universe of newly regulated Toxicity Characteristic (TC) wastes includes (along with other wastes) both wastewaters and wastes generated from the treatment of wastewaters. Some of these watewaters and wastewater treatment wastes are generated or managed in surface impoundments. Surface impoundments receiving, generating, or actively managing newly regulated TC wastes on or after September 25, 1990 are subject to all applicable regulations for surface impoundments managing RCRA hazardous wastes. Some of the factors that determine the regulatory status of these surface impoundments for permitting purposes and the various compliance options are discussed below.

1. Impoundments ceasing operation prior to effective date.

Facilities with impoundments in which newly regulated TC wastes currently are generated, stored, and/or disposed may cease operation of the units prior to the effective date of the TC (i.e., September 25, 1990). If these units have wastes in place but are not being used for waste management after the TC effective date, these inactive units would not be subject to regulation under 40 CFR parts 264 or 265. However, it should be noted that inactive units that are located at facilities otherwise subject to subtitle C's interim status or permitting requirements are solid waste management units subject to corrective action requirements under sections 3008(h) and 3004(u) of RCRA. All facilities, of course, may be subject to CERCLA cleanup authorities.

In some cases facilities will choose to remove some or all of the wastes from the impoundments. If the removed wastes are not managed on or after the effective date of the TC rule, they will not be subject to subtitle C. However, any TC waste contained in inactive impoundments that is removed (i.e., actively managed) after the effective date would be subject to regulation. For example, if the TC waste was excavated for treatment and disposal, it would be regulated as hazardous waste at the time of excavation and would be required to be managed at a subtitle C facility. Such a removal activity in and of itself, however, does not subject the inactive impoundment to subtitle C.

2. Conversion to non-hazardous waste impoundment.

A facility with surface impoundments in which TC wastes have been generated and/or managed may choose to redesign or reconfigure the existing wastewater treatment system prior to the effective date such that only non-hazardous wastes are generated or managed in some or all units of the treatment train on or after the effective date of the rule. If all TC sludges are removed from the surface impoundments prior to the effective date of the rule, the units may continue to be used and will not be subject to subtitle C of RCRA (provided no other hazardous wastes are generated, managed, or disposed in the unit).

Under another scenario, there may be surface impoundments that (1) contain TC wastes deposited prior to the effective date, and (2) receive or generate only non-hazardous wastes by the effective date as a result of system reconfiguration or modification. The regulatory status of such units depends on how the residual TC waste is managed after the effective date of the rule. If (1) the TC wastes remain in the surface impoundment on or after the effective date of the rule, and (2) the unit does not receive or generate any other hazardous wastes on or after the effective date, and (3) the impoundment is the final disposal site for the wastes, then the unit is not subject to subtitle C. Note that EPA does not consider one time removal of waste from a unit on or after the TC effective date, in and of itself, to make the unit a storage unit and thus subject to subtitle C. The Agency does not view one time removal of waste as part of a closure as changing the status of the unit, as long as there has not been ongoing management of the waste in the impoundment. Removal of waste in the context of a closure provides human health and environmental benefits since it eliminates potential sources of ground water pollution. This approach is also consistent with current operational procedures for landfills under identical circumstances with respect to newly regulated TC wastes.

3. Active hazardous waste management impoundments.

Facilities with units in which TC wastes are managed on or after the effective date of the rule may continue to use these units to manage TC wastes if all applicable subtitle C requirements are satisfied. These facilities are required to obtain interim status and apply for a permit (or submit a change in interim status or a permit modification, if appropriate) in accordance with the appropriate compliance dates. The units will be subject to the applicable requirements of 40 CFR parts 264 and 265 as of the effective date of the TC.

As described in section 2 above, facility owners or operators may elect to manage only non-hazardous wastes in surface impoundments so that the unit will not be subject to subtitle C. However, there are a number of scenarios where these impoundments could become regulated. For example, if any TC waste remains in the surface impoundment on the TC's effective date and the impoundment is not the final disposal site for the wastes, then the impoundment is considered to be actively managing (e.g., storing) hazardous wastes and therefore is subject to the Subtitle C requirements upon the effective date of the rule. If a facility plans to remove on a periodic basis all or some of the TC waste from the unit on or after the effective date of the TC rule, the unit would be subject to subtitle C (including permitting, facility-wide corrective action, financial responsibility) on the effective date of the rule.

A second example would be where the non-hazardous wastewater influent to a unit causes a TC hazardous sludge (disposed prior to the effective date) to be scoured from the unit so that the effluent from the unit exhibits the TC on or after the effective date. In that case, the unit generating this TC wastewater and any surface impoundment receiving that hazardous effluent would be subject to the subtitle C management standards and would need to be under interim status or obtain a permit.

A third example is where a TC waste is generated within the unit from non-hazardous wastewater on or after the TC effective date. This could occur where the hazardous constituents in the wastewater become concentrated, or if a new TC sludge is formed by settling. In these examples, once the TC waste is generated and stored or disposed of in the unit, the unit is subject to subtitle C.

C. Ground-Water Monitoring Requirements

The Agency is aware of confusion regarding the timing of the subtitle C ground-water monitoring requirements as they apply to land disposal units or facilities that are newly regulated as a result of the final TC. Subpart F of 40 CFR part 265 describes the ground-water monitoring requirements for interim status land disposal facilities managing hazardous wastes. The applicability section of subpart F (see § 265.90) is not clear as to whether such units or facilities newly regulated under the toxicity characteristic must comply with the ground-water monitoring requirements on the effective date of the

TC (*i.e.*, September 25, 1990) or one year later on September 25, 1991.

In 1980, the Agency promulgated the interim status program, including the part 265, subpart F ground water monitoring requirements. The Agency allowed affected facilities an additional year from the effective date of the regulations for compliance with the groundwater monitoring requirements as codified at § 265.90(a): "within one year after the effective date of these regulations, the owner or operator * * * must implement a ground water monitoring program capable of determining the facility's impact on the quality of ground water. * * *" EPA provided this delayed compliance schedule for groundwater monitoring requirements in order to allow facilities sufficient time to properly plan and install groundwater monitoring systems (45 FR 33161, May 19, 1980). EPA believes that the rationale for allowing an additional year after the effective date of the initial regulations for full implementation of groundwater monitoring requirements is also applicable to newly regulated facilities. EPA believes that the 6 month effective date provided for RCRA regulations is insufficient to allow for proper site characterization and well placement. Thus, EPA interprets § 265.90(a) to provide a one year timeframe from the effective date of new listings or characteristics rules for the implementation of a complete groundwater monitoring program at newly regulated units or facilities. The Agency intends to codify this in a future rulemaking by modifying the appropriate sections of the regulations.

Consistent with EPA's implementation of the loss of interim status requirement for land disposal facilities in 1985 (50 FR 38946, September 25, 1985), land disposal facilities newly subject to the ground-water monitoring requirements must complete site characterization and design and installation of groundwater monitoring systems capable of determining the facility's impact on ground water quality by September 25, 1991. Therefore, owner/operators who have not already done so should immediately commence characterizing their facility's hydrogeology and designing and installing their groundwater monitoring systems to meet this deadline. As in 1985, EPA intends to rigorously enforce both the part 265 subpart F requirements and the loss of interim status requirements.

To certify compliance with these requirements, facilities must submit a ground-water monitoring system certification, certifications of financial responsibility and part B permit applications by September 25, 1991.

D. Section 3010 Notifications

In the preamble to the TC final rule (55 FR 11849), the Agency indicated that, pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify the Agency of their hazardous waste management activity within 90 days after the wastes are identified as hazardous. For the TC rule, the notification date was June 27, 1990. However, the Agency waived notification for those facilities that already have notified EPA of their hazardous waste activity under section 3010 of RCRA and have obtained an EPA identification number.

Based on inquiries received by various EPA offices concerning the notification requirements, and a review of the preamble language, the Agency understands that a significant number of regulated facilities may have been confused by certain language in the notification section of the TC preamble. As a result, the Agency is today clarifying the notification requirements for generators and TSDFs, and is also providing additional time for such notification.

Notification requirements for large quantity generators (those that generate more than 1,000 kg per month of total hazardous waste) and TSDFs, as specified in the TC final rule, required notification by June 27, 1990 unless they had already notified EPA of hazardous waste activity and obtained an EPA identification number. Based on inquiries received by various EPA offices, it is apparent that many persons did not understand that in order to have the notification requirement waived, a generator must have met two criteria: (1) They must have previously notified the Agency of hazardous waste management activity, and (2) they must have received an EPA identification number (see § 262.12). Some persons interpreted this section to mean that any previous notification under any Agency program (rather than under the RCRA program) was sufficient. Others took the interpretation that if they had an EPA identification number for any Agency program, that was sufficient to take advantage of the notification waiver. Both interpretations are incorrect. Due to this apparent confusion, the Agency is today allowing large quantity generators and TSDFs newly regulated by the TC additional time to notify the appropriate EPA Regional Office of their hazardous waste activity. Large quantity generators and TSDFs have until October 29, 1990 to notify the Agency of their hazardous waste management activity. This is done by completing a section 3010 notification form (EPA Form 8700-12, dated 7/90; see 55 FR 31388, August 2, 1990 for a copy of the form) and sending it to the appropriate EPA Regional Office. It is important to note that this extension applies only to the notification requirement, and does not provide an extension for any other requirement under TC rule, including the date by which an EPA ID number must be obtained.

For newly regulated TSDFs, RCRA specifies that in order for a newly regulated TSDF to be granted interim status, three conditions must be met: (1) The facility/unit must be in existence on the effective date of the rule; (2) the facility must submit a section 3010 notification (if required by the Agency) within the required time frame (for the TC the date was June 27, 1990); and (3) the facility must submit a part A by September 25, 1990. As indicated above, the Agency is today extending the time by which TSDFs must notify the Agency in order to be eligible for interim status to October 29, 1990. This is done by completing a section 3010 notification form (EPA Form 8700-12 as described above) and sending it to the appropriate EPA Regional Office. This extension of the section 3010 notification date does not affect the date part A applications are due, which remains September 25, 1990. It also does not affect the compliance date for any other requirement other than the section 3010 notification.

Notification requirements for small quantity generators (generators of between 100 and 1,000 kg of total hazardous waste per month) newly regulated as a result of the TC were already clarified in a TC correction notice published in the **Federal Register** on August 2, 1990 (see page 31387; see also editorial correction notice dated August 10, 1990, page 32733). Small quantity generators that are newly regulated by the TC are required to notify their respective EPA Regional Office by November 2, 1990 of their hazardous waste management activity. This is done by completing a section 3010 notification form (EPA Form 8700-12 as described above) and sending it to the appropriate EPA Regional Office.

E. Permit Modifications

The Toxicity Characteristic (TC) rule is expected to cause many permitted facilities to seek modifications to their permits. The TC is the first major expansion of regulated wastes under part 261 since the new permit modification rule was promulgated on September 28, 1988 (53 FR 37912). In the

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preamble to the TC rule, the Agency generally described the implementation of the permit modification procedures for newly regulated wastes (see 55 FR 11949, March 29, 1990). However, the Agency has received questions asking for clarification of certain provisions of the new modification rule.

Under the new permit modification procedures, permitted facilities that manage TC wastes must submit Class 1 permit modifications to the appropriate EPA Regional Office by the TC rule effective date, September 25, 1990, if they are to continue managing the newly regulated TC wastes in units that require a permit (see § 270.42(g)). A number of people have expressed confusion about the type and extent of information permitted facilities must submit with these Class 1 permit modifications. This confusion stems from the fact that § 270.42(g) does not clearly define what information must be contained in the Class 1 submission. The rule language for Class 1 modifications in § 270.42(a) suggests that facilities must also submit the detailed part B application information specified in §§ 270.13 through 270.21, 270.62 and 270.63. However, this is not the intent of the requirements under § 270.42(g) because there would be insufficient time for facilities to develop the necessary data by the effective date. Furthermore, the more extensive information requirements under § 270.42(a) are intended for facility changes initiated by an owner/operator, not for changes under § 270.42(g) resulting from new regulatory requirements imposed by the Agency.

The new waste provision of § 270.42(g) is analogous to the procedures required for interim status facilities or newly regulated facilities, where a facility can continue to manage newly regulated wastes by submitting basic information about the affected waste streams and units and then complying with the part 265 management standards for any newly regulated units until final permit conditions are developed. Therefore, the Class 1 submission would comprise a revised part A form clearly indicating all activities that are newly regulated as a result of the TC rule, and any other description that will clarify which units at the facility are managing the new wastes. This Class 1 permit modification serves as a notification to the Agency and the public of the newly regulated activities.

A subsequent Class 2 or 3 permit modification (if necessary) must be submitted 180 days after the TC effective date (i.e., March 24, 1991), and it is at this time that the detailed part B information must be submitted. It is expected that a Class 2 for 3 permit change will be necessary for virtually every facility that has wastestreams which are newly regulated as hazardous under the TC. In situations where a wastestream was already regulated as hazardous under the permit but now has additional waste codes associated with it due to the TC rule, only a Class 1 modification may be required.

Dated: September 24, 1990.

Henry L. Longest II,

Acting, Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 90-22961 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 2

Information Collection Requirements Approved by the Office of Management and Budget

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This amendment updates and displays the Office of Management and Budget (OMB) control numbers assigned by OMB for collections of information contained in, or authorized by, FEMA regulations. The update is necessary to make corrections to parts and sections and control numbers listed incorrectly, add new requirements, and delete requirements no longer needed or controlled.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Linda S. Borror, (202) 646-2625.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) seeks, in part, to minimize the Federal paperwork burden. The Act requires that agencies obtain OMB review and clearance of certain reporting and recordkeeping requirements/collections of information and give public notice of such clearance numbers. This rule amends 44 CFR part 2, subpart C to update and display the control numbers assigned by OMB to FEMA's collections of information which are contained in, or authorized by, FEMA regulations.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 551-553 *et seq.*) requiring advance notice and comment. FEMA has determined that this regulation will not impose unnecessary burdens on the economy or on individuals, and therefore, is not significant for the purposes of Executive Order 12291; that a regulatory analysis is not required; that environmental impact documents under the National Environmental Policy Act of 1969 are not required since the action is administrative and categorically exempt from 44 CFR part 10; and that the updated cumulative list of assigned OMB control numbers is not subject to further review and clearance by OMB under the Paperwork Reduction Act of 1980.

List of Subjects in 44 CFR Part 2

Authority delegations (government agencies), Organization and functions (government agencies), Reporting and recordkeeping requirements.

Accordingly, title 44, chapter I, subchapter A of the Code of Federal Regulations, part 2, subpart C is amended as follows:

PART 2—[AMENDED]

Subpart C—[Amended]

1. The authority citation for part 2, subpart C continues to read as follows:

Authority: 49 FR 36503, Sept. 18, 1984; as amended at 50 FR 40006, Oct. 1, 1985; 51 FR 34604, Sept. 30, 1986

§ 2.81 OMB control numbers assigned to information collections.

2. Section 2.81 is amended by revising the cumulative list of parts and sections in 44 CFR which identifies or describes FEMA's information collection requirements that have been assigned OMB control numbers as follows:

* * * * *

44 CFR part or section where identified or described:	Current OMB Control No.
7 Subpart E	3067-0177
11.36	3067-0122
11.54	3067-0122
11 Subpart D	3067-0167
59.22(a)	3067-0020
59.22(b)(2)	3067-0018
60.3, 60.4, 60.5	3067-0022
61, 61 App. A(1), 61 App. A(2)	3067-0022
62 Subpart C, 62 App. A, 62 App B	3067-0169
63 Subpart B	3067-0166
64.3(c)	3067-0020
65	3067-0147
66, 67	3067-0149
70	3067-0147
71	3067-0120
75 Subpart B	3067-0127
80, 81, 83	3067-0031
151 Subpart B	3067-0141
205.33	3067-0113
205.34	3067-0113
205.52(e)	3067-0009
205.54(e)	3067-0148
205.54(i), 205.54(j)	3067-0163
205.59	3067-0166
205.94	3067-0034
205.95	3067-0026
205 Subpart G	3067-0096
205.116	3067-0151
205.200(b)	3067-0048
205.207	3067-0048
205.208	3067-0048
208.95	3067-0113
208.96	3067-0113
208.101(e)	3067-0009
208.131(e)	3067-0148
208.131(i), 208.131(j)	3067-0163
208.171	3067-0166
208.202(c)	3067-0033
208.204	3067-0151
208.364	3067-0034
208.366	3067-0026
208 Subpart L	3067-0096
208.436	3067-0207
208.437	3067-0208
208.405	3067-0212
220.6	3067-0166
220.19	3067-0156
221.6	3067-0164
222.5, 222.6	3067-0136
302.3(a), 302.3(c)	3067-0123
302.3(b)	3067-0096
302.3(c)(1)	3067-0080
302.3(c)(3)	3067-0074
308.7	3067-0201
352.4	3067-0201
352.24	3067-0100
360.4(c)	
48 CFR part of section where identified or described:	
4452.225-01(a)	3067-0213

Dated: September 20, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-22977 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 72

RIN 3067-AB61

National Flood Insurance Program

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule revises the National Flood Insurance Program (NFIP) regulations dealing with reimbursement procedures for the review of proposed projects to determine if they would qualify for NFIP map revisions upon their completion. The rule increases the rates for review services, increases the threshold levels for notifying requestors of total costs and adds an additional fee category.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Charles A. Lindsey, Chief, Technical Operations Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472; telephone (202) 646-2760.

SUPPLEMENTARY INFORMATION: On January 1, 1986, the Federal Insurance Administration implemented 44 CFR, Part 72—Procedures and Fees for Obtaining Conditional Approval of Map Changes. Its purpose was to provide cost recovery for engineering review and administrative processing associated with the issuance of conditional Letters of Map Amendment (LOMAs) and conditional Letters of Map Revision (LOMRs) for proposed floodplain modification projects. The fee structure for the issuance of these conditional LOMAs and LOMRs was based upon the then prevailing private sector labor rates of $25.00 per hour.

A cost analysis conducted during 1988 resulted in revision of §§ 72.3 and 72.4 to reflect a revised cost of $30.00 per hour. This change was effective on March 23, 1989.

Based on a cost analysis conducted during March 1990, §§ 72.3 and 72.4 are again revised to reflect the currently prevailing private sector labor rate of $35.00 per hour. This rate will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate and fee schedule will be published as a notice in the Federal Register for each fiscal year if the rate increases or decreases. An additional fee category, Review of new hydrology, is added under § 72.3, along with a corresponding fee. This category will be used when FEMA is requested to review new hydrologic and hydraulic models which are not based on proposed changes in the floodplain. The number of hours allotted for the review of new hydrology is seven, and the corresponding fee, at $35.00 per hour, is $245.00. Additionally, the threshold levels at which requestors are notified of total costs are increased.

On July 19, 1990, FEMA published a notice of proposed rulemaking designed to notify interested parties of FEMA's intent to implement these rule changes. The final rule published today is essentially the same as the proposed rule.

In the summary of the proposed rule, FEMA invited the public to submit comments during the 32-day period which closed on August 20, 1990. No comments were received during the comment period.

FEMA has determined, based upon an Environmental Assessment, that this rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This rule will not have a significant economic impact on a substantial number of small entities and, hence, has not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this rule does not contain a collection of information as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 72

Flood insurance, Flood plains

Accordingly, 44 CFR chapter I, subchapter B, part 72 is amended as follows:

PART 72—PROCEDURE AND FEES FOR OBTAINING CONDITIONAL APPROVAL OF MAP CHANGES

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 72.3 [Amended]

2. Section 72.3 is amended by revising paragraphs (a)(1), (a)(2), (b)(1) through (b)(5) and by adding (b)(6) to read as follows:

§ 72.3 Initial fee schedule.

(a) * * *

(1) Single-lot	$175
(2) Multi-lot/Subdivision	$245

(b) * * *

(1) Review of new hydrology	$245
(2) New bridge or culvert (no channelization)	$490
(3) Channel modifications only	$560
(4) Channel modification and new bridge or culvert	$735
(5) Levees, berms or other structural measures	$945
(6) Structural measures on alluvial fans	$2,500

§ 72.4 [Amended]

3. Section 72.4 is amended by revising the introductory text to paragraph (c), (c)(2), (c)(3), and by adding paragraphs (c)(4) and (c)(5) to read as follows:

* * * * *

(c) Following completion of FEMA review for any conditional LOMA or conditional LOMR, the requester will be billed at the prevailing private section labor rate for any actual costs exceeding the initial fee incurred during the review. The rate (currently $35.00 per hour) will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published as a notice in the Federal Register for each fiscal year if the rate increases or decreases.

* * * * *

(2) Requestors of conditional LOMRs for the review of new hydrology, bridges or culverts, channel modifications, or combination bridge/culvert and channel modification will be notified of the anticipated total cost if the total cost of processing their request will exceed $1,500.

(3) Requestors of conditional LOMRs for the review of levees, dams or other structural measures will be notified of the anticipated total cost if the total cost of processing their request will exceed $2,500.

(4) Requestors of conditional LOMRs, for the review of structures on alluvial fans will be notified of the anticipated total cost if the total cost of processing their request will exceed $5,000.

(5) In the event that processing costs exceed the limits defined in paragraphs (c)(1) through (c)(4) of this section, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

Dated: September 21, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-22378 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Endangered Status for Four Snub-Nosed Monkeys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys. The last is reclassified from threatened status. All occupy restricted ranges in China or Vietnam, and are jeopardized by human habitat disruption and/or direct taking. This rule will implement the protection of the Endangered Species Act of 1973 for these four monkeys.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority; Mail Stop: Arlington Square, Room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 or telephone (703-358-1708 or FTS 921-1708).

SUPPLEMENTARY INFORMATION:

Background

The snub-nosed monkeys or langurs of eastern Asia are placed in the genus *Rhinopithecus*, which sometimes has been treated only as subgenus of *Pygathrix*, the Douc langurs, but which now is recognized as a full genus (Eudey 1987). There currently are thought to be four species: The Sichuan or golden snub-nosed monkey (*R. roxellana*), found in the mountainous region on the southeastern slopes of the Tibetan Plateau in the Chinese provinces of Hubei, Shaanxi, Gansu, Sichuan, and Yunnan; the Yunnan or black snub-nosed monkey (*R. bieti*), which occurs in the Yun-ling Mountain Range of Tibet and Yunnan; the Guizhou or gray snub-nosed monkey (*R. brelichi*), found in the Fan-jin Mountain Range south of the Middle Yangtze in Guizhou Province of China; and the Tonkin snub-nosed monkey (*R. avunculus*), of northern Vietnam (Brandon-Jones 1984; Eudey 1987). As indicated by the names, coloration varies between the species. In size, these monkeys range from about 20 to 33 inches (51 to 83 centimeters) in head and body length, and 20 to 38 inches (51 to 97 centimeters) in tail length. They inhabit high mountain forests, up to about 13,000 feet (4,000 meters), but may descend to lower elevations in winter. Part of their range is covered by snow for more than half the year.

It is known that these species are among the most critically endangered primates in the world. The Primate Specialist Group of the International Union for Conservation of Nature (IUCN) Species Survival Commission considers *R. bieti*, *R. brelichi*, and *R. avunculus* to have the "highest possible priority rating" for conservation action. Only one other Asian primate has been given this rating. *R. roxellana* has a "very high conservation rating" (Eudey 1987). The IUCN now formally classifies *R. bieti*, *R. brelichi*, and *R. avunculus* as endangered, and *R. roxellana* as vulnerable. All snub-nosed monkeys are on appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. In the Federal Register of October 19, 1976 (41 FR 45363), the U.S. Fish and Wildlife Service classified *R. avunculus* as threatened, pursuant to the Endangered Species Act of 1973. In order to more accurately express the bioconservation situation, as well as to help establish closer alignment between the Convention appendices and the U.S. List of Endangered and Threatened Wildlife, the Service proposed to reclassify *R. avunculus* as endangered and to determine endangered status for *R. roxellana*, *R. bieti*, and *R. brelichi* in the Federal Register of January 18, 1990 (55 FR 1668). In the proposal and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Three responses were received, all supportive.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys should be classified as endangered. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All four species have declined substantially in range and numbers in recent years. The main problem is habitat loss and environmental disturbance through human activities. An especially severe factor is the destruction of forests through slash and burn agriculture. *R. avunculus* also is thought to have suffered in association with military activity during the Vietnam War. A number of protected reserves exist in China and Vietnam, but even these areas appear to have large populations of people. Estimates of the numbers of surviving individuals for each species have fluctuated, but are now thought to be about 10,000 to 15,000 for *R. roxellana*, 600 to 800 for *R. bieti*, 200 to 670 for *R. brelichi*, and 880 for *R. avunculus* (Eudey 1987; MacKinnon and MacKinnon 1987; Wang and Quan 1988).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* All species have been hunted by people to obtain food, pelts, and parts for medicinal purposes. Tan (1985) reported a number of large-scale roundups of *R. roxellana*, during each of which up to about 200 individuals were captured for export. In another case, thousands of commune members encircled a mountain forest, gradually driving several hundred monkeys into a large stockade, where a "breeding farm" would be established. However, the monkeys therein rapidly died off and the project failed.

C. *Disease or predation.* Not now known to be immediate problems, but of potential concern in any situation in which a species is reduced to very limited numbers or habitat.

D. *The inadequacy of existing regulatory mechanisms.* Tan (1985) reported that commercial hunting was continuing in China, and suggested that protective measures are inadequate. Eudey (1987) indicated that nature reserves are not being properly protected in China, and MacKinnon and MacKinnon (1987) stated that only a small part of the habitat of *R. avunculus* is protected in Vietnam.

E. *Other natural or manmade factors affecting its continued existence.* None now known.

The decision to determine endangered status for the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. All four of these monkeys have very low numbers and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines are likely to occur. Critical habitat is not being determined, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (within the United States or upon the high seas), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with other such lawful activities. All such permits must also be consistent with the purposes and policy of the Act, as required by section 10(d) thereof. Except for *R. avunculus*, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. International trade in these four species is expected to be minimal.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register of October 25, 1983 (48 FR 49244).

Literature Cited

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MacKinnon, J., and K. MacKinnon. 1987. Conservation status of the primates of the Indo-Chinese subregion. Primate Conservation 8:187-195.

Tan Bangjie. 1985. The status of primates in China. Primate Conservation 6:85-91.

Wang Sung, and Quan Guoqiang. 1988. Primate status and conservation in China. In Benirschka, K., ed. Primates, the road to self-sustaining populations, Springer-Verlag, New York, pp. 213-220.

Author

The primary author of this rule is Dr. Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703-358-1708 or FTS 921-1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 is revised to read as follows:

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Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by removing the entry under MAMMALS for the "Langur, Tonkin snub-nosed (*Pygathrix (Rhinopithecus) avunculus*)" and by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Monkey (=langur), Guizhou snub-nosed.	*Rhinopithecus (=Pygathrix) brelichi*	China	Entire	E	400	NA	NA
Monkey (=langur), Sichuan snub-nosed.	*Rhinopithecus (=Pygathrix) roxellana.*	China	Entire	E	400	NA	NA
Monkey (=langur), Tonkin snub-nosed.	*Rhinopithecus (=Pygathrix) avunculus.*	Viet Nam	Entire	E	16,400	NA	NA
Monkey (=langur), Yunnan snub-nosed.	*Rhinopithecus (=Pygathrix) bieti*	China	Entire	E	400	NA	NA

Dated: September 20, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-22885 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening.

SUMMARY: NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, for two days, on September 18–19, 1990. This fishery was closed at midnight, September 14, 1990. Evaluation of landings data following closure of the fishery indicates that sufficient coho salmon remain to allow an additional two days of fishing. This action is intended to maximize the harvest of coho salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

DATES: *Effective:* Reopening of the EEZ to commercial salmon fishing from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective 0001 hours local time September 18, 1990, through 2400 hours local time September 19, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989).

Comments: Public comments are invited until October 9, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been complied in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.219(a)(2) that if a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours.

Management measures for 1990 were effective on May 1, 1990 (55 FR 18894, May 7, 1990). The 1990 commercial fishery for all salmon in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, commenced on August 30, 1990, and closed at midnight, September 14, 1990, upon the projected attainment of the revised subarea quota of 23,600 coho salmon. Subsequent evaluation of landing data indicated that this closure was based on an overestimate of actual catch.

According to the best available information, commercial catches through September 14, 1990 totaled 20,300 coho salmon, leaving 3,300 coho salmon available for harvest in the subarea coho quota. This amount of available coho salmon has been determined to be sufficient for an additional two days of fishing, on September 18–19, 1990. This action is being taken in as timely a manner as possible and is consistent with the management objectives for coho salmon in this subarea. As in the original season, Conservation Zone 1, the Columbia River mouth, is closed (55 FR 18894, May 7, 1990).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, September 18, 1990, by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial fishery in the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, which is effective 0001 hours local time September 18 through 2400 hours local time September 19, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 9, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 1990.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-22827 Filed 9-21-90; 4:45 pm]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 55, No. 188
Thursday, September 27, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AC25

Small Business Investment Companies; Portfolio Valuation

AGENCY: Small Busines Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule clarifies the requirements regarding the valuation of Small Business Investment Company (SBIC) portfolio companies which an independent public accountant (IPA) must follow in performing an audit on an SBIC (13 CFR part 107, appendix I). This action is proposed to ensure that SBIC audits are performed in accordance with the requirements of the U.S. Small Business Administration (SBA). It is expected that this proposed rule will eliminate uncertainty that may exist regarding the role of the IPA in the valuation process.

DATES: Written comments must be received on or before October 29, 1990.

ADDRESSES: Written comments should be directed to Thomas C. Bresnan, Staff Accountant, Small Business Administration, Office of Investment, 1441 L Street, NW., room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Thomas C. Bresnan, Staff Accountant, Telephone: (202) 653-6389.

SUPPLEMENTARY INFORMATION: SBA has determined that a clarification of its requirements regarding valuation of SBIC portfolio companies as set forth in Title 13, Code of Federal Regulations, Part 107, Appendix I—"Audit Guide for SBICs and Preparation of the Annual Report"—is appropriate. Recent hearings before the U.S. Senate Committee on Small Business and the preliminary results of a special study undertaken by SBA's Office of Inspector General (OIG) have shown that some IPAs who performed annual audits of SBICs did not perform such audits in accordance with the requirements of the Agency.

OIG found that, of five SBICs subjected to an on-site inspection for purposes of the special study, two did not have written procedures for determining valuations, and three did not have adequate support for their valuations. IPAs for each of the five SBICs had reviewed the valuation process in the course of their respective audits but had not critically reviewed the support for the valuations. This proposed rule would ensure that appropriate reviews are performed by the IPAs and reported.

This proposed rule clarifies the expectations of SBA regarding the role of the IPA performing an SBIC audit. Nothing in this proposed rule alters the division of responsibility between the SBIC and its auditor, the IPA, as to valuation of portfolio concerns. Responsibility for the valuation of portfolio investments remains with the Board of Directors/General Partner(s) of the SBIC. SBA Policy and Procedural Release No. 2006 contains the valuation guidelines a licensee should apply in valuing its portfolio securities.

The IPA, on the other hand, is responsible for reviewing the valuations in order to determine their reasonableness. As Section V., Subsection J. "Audit Procedures" already provides, "[t]he auditor is not to be an appraiser in the sense that he is to determine the value of the licensee's securities."

The text of this proposed rule is consistent with the established division of responsibility between an SBIC and its auditor. The first amendment of this proposed rule would revise Appendix I, Section III. *Scope of Audit* by replacing the final paragraph thereof with new text which would clarify what an IPA auditing an SBIC must do in order to be satisfied as to the reasonableness of a valuation arrived at by the Board/General Partner(s). The IPA would be required to assess the valuation procedures and determine that such procedures are adequate, that they were in fact followed and that they were consistently applied. The IPA would determine that the procedures include a requirement that the licensee make a reasonable analysis of all applicable facts. The IPA would also determine whether the valuation is adequately documented and whether the documentation is (1) appropriate for the particular investment and (2) sufficient, in the IPAs opinion, to support the valuation. The IPA would be required to inspect as many of the valuations as would represent at least 50% of the dollar value of the entire portfolio.

Under the proposed rule, if the IPA is unable to satisfy himself as to any of the items in the preceding paragraph, the IPA's report must so indicate.

The second amendment of this proposed rule would amend Appendix I, Section V., Subsection J. "Audit Procedures" by conforming the text of this subsection to the changes proposed to be made to *Scope of Audit* by the first amendment hereof.

This proposed rule would not require the IPA to substitute his judgment for that of the Board of Directors/General Partner(s) as to the amount of the proper valuation of a portfolio concern. Rather, the IPA would be expected to opine as to the reasonableness of such valuation, as he is currently expected to do under the existing rule.

This proposed rule would not generally require the IPA to make predictions as to the future of the portfolio concern. Under certain circumstances, however, projections of future profitability may be an indispensable component of the valuation process because the value of a firm is its value as a going concern, not its value on liquidation. It is expected that in most cases examination of historical and current data would be sufficient to establish a basis for valuation.

Compliance With the Regulatory Flexibility Act, Executive Orders 12291 and 12612, and the Paperwork Reduction Act

Regulatory Flexibility Act

SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities. No new obligations would be imposed on auditors by this proposed rule. Rather, this action is merely a clarification of existing responsibilities.

Executive Order 12291

SBA certifies that this proposed rule, if adopted in final form, would be a *nonmajor* rule for purposes of E.O. 12291, for the following reasons:

1. It is *not* likely to result in an annual economic effect on the national economy of $100 million or more; in this regard, SBA is satisfied that this proposed clarification of the Audit Guide will not increase the cost of audits performed under it.

2. It is *not* likely to result in a major increase in costs for consumers, the investment company industry, Federal, State, or local government agencies, or geographic regions.

3. It is *not* likely to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in the domestic or export markets.

Executive Order 12612

SBA certifies that this proposed rule, if promulgated as a final rule, would not have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Paperwork Reduction Act of 1980

If promulgated in final form, this rule would not impose any reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set out in the preamble, title 13, part 107 of the Code of Federal Regulations is proposed to be amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*, as amended, Public Law 100–590 and Public Law 101–162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Public Law 101–162; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Public Law 100–590.

2. Appendix I, Section III. *Scope of Audit* is amended by removing the final paragraph thereof and inserting the following in lieu thereof:

III. Scope of Audit

* * * * *

The independent public accountant is expected to satisfy himself as to the reasonableness of the basis used by the Board of Directors/General Partner(s) in determining the valuation of loans and investments.

This means that the accountant is to assess the procedures that the Board/General Partner(s) follows in valuing investments. The accountant must determine that the procedures are adequate (*i.e.*, that the procedures require a reasonable analysis of all applicable facts), that they were in fact followed and that they were consistently applied.

The accountant will inspect the documentation supporting the valuations made by the Board/General Partner(s) and determine whether such valuations are adequately documented in the licensee's files, and whether such documentation is both appropriate for the investment and sufficient in the accountant's opinion to support the valuation assigned.

The accountant will inspect a sufficient number of valuations to support his findings. A sufficient number of valuations shall mean valuations representing no less than 50% of the dollar value of the entire portfolio.

In cases where the accountant cannot satisfy himself that all the preceding requirements have been fulfilled, he must specifically so state in his opinion.

3. Appendix I, Section V. *Reporting Requirements—General,* Subsection J. "Audit Procedures", is amended by removing the final paragraph thereof and inserting the following in lieu thereof:

V. Reporting Requirements—General

* * * * *

J. Audit Procedures

* * * *

The auditor is not to be an appraiser in the sense that he is to determine the value of the licensee's securities. The auditor is expected to satisfy himself as to the reasonableness of the basis used by the Board of Directors/General Partner(s) in determining the valuation of loans and investments.

This means that the auditor is to assess the procedures that the Board/General Partner(s) follows in valuing investments. The auditor must determine that the procedures are adequate (*i.e.*, that the procedures require a reasonable analysis of all applicable facts), that they were in fact followed and that they were consistently applied.

The auditor will inspect the documentation supporting the valuations made by the Board/General Partner(s) and determine whether such valuations are adequately documented in the licensee's files, and whether such documentation is both appropriate for the investment and sufficient in the auditor's opinion to support the valuation assigned.

The auditor will inspect a sufficient number of valuations to support his findings. A sufficient number of valuations shall mean valuations representing no less than 50% of the dollar value of the entire portfolio.

In cases where the auditor cannot satisfy himself that all the preceding requirements have been fulfilled, he must specifically so state in his opinion.

Susan Engeleiter,

Administrator.

[FR Doc. 90–22839 Filed 9–26–90; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 107

Small Business Investment Companies; Miscellaneous Amendments

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: SBA proposes fifteen amendments to the regulations governing the Small Business Investment Company (SBIC) program which are presently in force. The proposed regulatory amendments are intended to clarify the present regulations and to state SBA's position on several new developments.

DATES: Comments will be accepted until November 27, 1990.

ADDRESSES: Written comments should be sent to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, Telephone (202) 653–6584.

SUPPLEMENTARY INFORMATION: SBA proposes fifteen regulatory amendments to the regulations governing the SBIC program.

The first proposal would limit (but not prohibit) pension fund participation in the SBIC program. This limitation would be stated in a new clause to the definition of "Private Capital" in § 107.3 of the Regulations. The amended definition would permit investments by pension funds but would henceforth not recognize them for purposes related to "Private Capital": licensing, leveraging and regulatory compliance. SBA does not think that, for the purposes of the SBIC program, pension funds are suitable investors, or SBICs suitable investments for pension funds, because pension funds need reliable and steady investment income. This need is incompatible with the venture capital mission of the SBIC program.

The proposed definition of "Subdivider and developer" in § 107.3 would clarify the meaing of that phrase, as it is used in § 107.901(c)(1)(i). That paragraph bans certain real estate investments, classified under Major Group 65 of the SIC Manual, but excepts from the prohibition subdividers and developers, who are also classified

under Major Group 65. The definition states that these industry groups buy new land which they subdivide, and make ready for construction, but which they sell as vacant lots, to be built on by others. This definition will resolve confusion by separating subdividers and developers from "operative builders for their own account"; the latter are classified under Major Group 15 (Building construction—general contractors and operative builders). The distinction between these two major groups and Major Group 70 (Hotels, Rooming Houses, etc.) becomes significant in relation to § 107.101(c) (2) and (3), where these major groups are treated differently for purposes of portfolio diversification.

A proposed new paragraph, to be added to § 107.201(b) will limit the automatic subordination of debentures sold with SBA's guarantee. At present, SBIC debentures guaranteed by SBA are generally subordinated to all other debts and obligations of the issuing SBIC. The Agency uses its discretionary authority to limit or deny subordination only rarely. This has resulted in considerable losses when SBA was required to honor its guarantee, and then turned to the SBIC for reimbursement. SBA now proposes to limit, after the effective date of this rule, the subordination of its claims based on newly guaranteed debentures in general to debt outstanding to State and Federally regulated commercial lenders to the extent that such debt aggregates no more than 200% of private capital or $10 million, whichever is less. An SBIC may at any time request SBA to extend the subordination to additional loans "in exercise of [SBA's] reasonable investment prudence and in considering the financial soundness of such company," 15 U.S.C. 683(b). It should be noted that the regulation is so drafted that the "old-style" subordination would expire with the "old-style" debentures. In the event of the "roll-over" of an old debenture the replacement debenture would not be automatically subordinated to all obligations of the Licensee, but only to the debt described above.

Section 107.204 Leverage for section 301(d) Licensees offers specialized SBIC's in its paragraph (d) preferred stock leverage in excess of 100% of private capital, up to the amount of such Licensee's "qualified investments." The definition of "qualified investments" includes "unsecured debt instruments." This phrase was sometimes misinterpreted to mean debt instruments which were not secured by the borrower's assets, but secured by the personal guarantees of third parties or a security interest in their assets, for example, the residence of the borrower company's owner. The current proposed amendment makes clear that only totally unsecured debt qualified for purpose of this section.

Section 107.304, setting forth requirements that must be met in connection with each investment, is proposed to be revised to require each prospective portfolio concern to provide the Licensee with financial statements and projections necessary to support its investment decision. If the Licensee makes the investment, the portfolio concern must transmit at least annually such financial statements certified by its chief financial officer, general partner or owner, as necessary to support the licensee's valuation. In appropriate cases, the Licensee may accept complete copies of Federal income tax returns. This requirement is necessary to enable the Licensee to value its investments on a current basis, as it is required to do by appendix I to part 107.

Section 107.321 states the conditions under which a Licensee may require a portfolio concern to redeem equity securities. As amended, the regulation would prohibit a put at a fixed price, because such a put effectively changes the nature of the equity security into a debt instrument. Rather, the parties must either agree on a formula, based on a book value or earnings at the time of redemption, or on an arbitration procedure by independent professional appraisers agreed to by both parties. Arbitration costs are to be shared by the portfolio concern and the License. SBA understands that it is important for Licensees to arrange for an exit from an investment, but such exit should not occur without regard to the small concern's financial health at the time of the put.

The proposed amendment to § 107.401, governing financial assistance by SBICs in the form of guarantees, prohibits loan guarantees among SBICs. It also describes a financing by the pledge of a Licensee's asset. The purpose of this amendment, to prohibit loan guarantees of portfolio loans between Licensees, is to prevent double-encumbrance of program funds for the same loan. A guarantor SBIC is not able to invest funds underlying a guarantee so long as the guarantee is not released; at the same time, the guaranteed SBIC has loaned its funds to the portfolio concern. Thus, twice the amount of the loan is committed, and unavailable for other investments. The original purpose of the regulation permitting Licensees to guarantee the debt of small concerns to third parties was to attract additional private capital (outside funds) into the small business sector of the economy. The use of this regulation for guarantees among Licensees, however, was counterproductive to this purpose: it shrank the available investment pool. The other purpose, equating a pledge on a nonrecourse basis of a Licensee asset in support of a small concern's debt to the lesser of such debt or the value of that asset, is to make clear that such a guarantee does not equal the amount guaranteed, unless the value of the asset equals or exceeds the amount of the guaranteed debt. For example, a Licensee may pledge a Certificate of Deposit (CD) in its portfolio, in support of a small concern's obligation to a creditor of the small concern. Such financial assistance amounts to the lesser of the value of the asset or the debt. If the value of the CD exceeds the debt, only the debt will measure the financing. If, on the other hand, the debt exceeds the value of the asset, the non-recourse provision of the financing will result in a financing equal to the value of the pledged asset.

Proposed paragraph (d), added to § 107.402, limits the commitment fee that may be charged on the undisbursed portion of a loan commitment, to the prime rate in effect on the date of commitment, to be computed from the date of commitment to the date of disbursement, or cancellation of the commitment. The reason for this regulation is that in some instances the commitment fee equalled or exceeded the interest rate which the portfolio concern would have paid, if the loan had been disbursed. This was so because the fee was calculated in advance, irrespective of disbursement, and because in some instances the disbursement followed within a few days of the commitment. In effect, such commitment fees amounted to "points". The regulation makes clear that any commitment fee exceeding the stated limit will be disallowed in its entirety for purposes of the exclusion of a good-faith commitment fee from the cost-of-money definition, resulting in its inclusion in the cost of money.

The amendment to § 107.403(b)(1) limits the interim financing in contemplation of a long-term financing by the Licensee to an amount that cannot exceed the long-term financing, and limits its term to one year or less. The reason for this amendment is SBA's experience with disproportionately large short-term financings in contemplation of much smaller long-term financings. Since, at the time of the interim financing the amount of the long-term

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financing cannot be determined, the regulation merely requires that the long-term financing at least equal the short-term financing. The one-year limit has the purpose of distinguishing between true interim or provisional financings during negotiations of the long-term investment, and short-term financings which use this regulation to avoid the long-term requirement of the statute.

The amendment to § 107.707 restricts, as of its effective date, exchanges and purchases of portfolio securities between Licensees to non-recourse transactions only. It has the same purpose as the amendment to § 107.401 to prevent the double-encumbrance of program funds. The prohibition against inter-Licensee loan guarantees would be easily avoided if a Licensee, instead of guaranteeing a loan, would make the loan and sell it with recourse to another Licensee. It is therefore necessary to bar inter-SBIC portfolio sales with recourse, in order to make the prohibition on loan guarantees effective.

The amendment to § 107.708 clarifies an ambiguity in the existing regulation. That regulation can be read to require so-called "idle funds" to be invested, among other options, either in one-year CDs in any bank, or in federally insured deposit accounts. The intent of this change is to restrict idle-funds investments to federally insured CD's or deposits up to the amount of federal insurance. Accordingly, the regulation now provides that CD's and deposits of idle funds must be federally insured in their full amounts. The regulation also raises the limit of the "petty cash" fund that SBICs may keep from $500 to $1,000.

The amendment to § 107.711 is primarily designed to prohibit leveraged buy-outs (LBOs) of concerns that are in fact large, but which qualify as small only because of their heavy debt structure caused by the LBO. This qualification became possible because one (of the two) applicable size standards, 13 CFR 121.802(a)(2)(i), focuses on net worth ($6 million) and 2-year average net income ($2 million), but does not consider total assets. It is therefore possible to show a net worth figure below $6 million, even where total assets are greatly in excess of that figure, by deducting from the gross asset figure the debt incurred by the target company as a result of the LBO. To prevent this result, the amendment limits the gross assets of a concern, the ownership change of which is to be financed by an SBIC, to $20 million. That number was arrived at by subjecting the gross asset limitation of $9 million, in effect until 1979 (13 CFR 121.3-11(a), 1979) to the inflation factor since that time. The gross asset limitation was discontinued Sept. 28, 1979 (44 FR 55815). (SBA is currently reviewing the size standards applicable to the SBIC and the development company programs with a view to an increase, similar to the increase set forth above.) Another change made by this amendment limits the aggregate of all ownership change financings to an amount equal to the Licensee's private capital. The purpose of this limitation is to prevent the development of LBO specialists. The regulation also limits permissible ownership changes to facilitate business ownership by disadvantaged persons to those where the disadvantaged person(s) will both own and manage the small concern. The purpose of this change is to preclude "fronting".

Section 107.901(c)(2) is amended to provide for the case, not now provided for, where a small concern seeks SBIC financing for the acquisition of an existing building, or to construct or renovate a building for its own use and for rental to others. The amendment makes clear that such a transaction is permissible if the small concern itself uses at least 51% of an existing, or two-thirds of a newly constructed or renovated building for its own use. The amendment conforms the SBIC rules to rules governing the business loan and the development company programs, where the same distinction is made. The amended regulation would require that the property be zoned for its intended use at the time of its acquisition.

Finally, the amendment to § 107.903(b) makes clear what was implicit before: that SBA approval of (otherwise prohibited) self-dealing transactions can be granted only before the subject transaction has been consummated. Licensees have sometimes assumed that such approvals will be given retrospectively ("*nunc pro tunc*"), but this is clearly not the intent of the statute (15 U.S.C. 687d), which requires SBA to control such conflicts of interest.

SBA advises that the numerical limitations, such as the $10 million limit in § 107.201, are set forth for discussion, and SBA invites comments and suggestions thereon. SBA further advises that, in addition to the size standard review mentioned above, other regulatory proposals are in preparation, to strengthen the program and reduce losses both to Licensees and to SBA. SBA also invites suggestions in this regard.

Compliance With Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291. SBA has determined that these proposed regulations, taken as a whole, will constitute a major rule for purposes of Executive Order 12291, because they are likely to have an annual impact on the national economy of $100 million or more. In this regard, the amendment to § 107.711 limiting leveraged buyouts to concerns with total assets not exceeding $20 million, would probably prevent such transactions in an aggregate of $100 million. The proposed limitation of SBA's subordination in § 107.201 is estimated to prevent SBIC losses up to $50 million. The proposed amendment to the definition of "Private Captial" eliminating pension fund contributions from consideration in the SBIC program would probably prevent up to $2 million in pension funds from being so invested.

Executive Order 12612. SBA certifies that these proposed regulations would have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Regulatory Flexibility Act. For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these proposed regulations may have a significant economic impact on a substantial number of small entities. Pursuant to E.O. 12291 and 5 U.S.C. 603, SBA offers the following regulatory flexibility and impact analysis.

1. This action, taken as a whole, is proposed to strengthen the original intent of the program as assistance to truly small businesses, to reduce losses being sustained by SBICs and by SBA as their guarantor, and to clarify certain regulations that have been misinterpreted to the detriment of the program.

2. The legal basis for these proposed regulations is section 306(c) of the Small Business Investment Act, 15 U.S.C. 687(c).

3. These proposed rules would apply to all 390 currently operating Licensees, including 134 section 301(d) companies.

4. The potential benefits of these 15 regulatory proposals have been set forth in the respective discussions of these proposals above, under **SUPPLEMENTARY INFORMATION.**

5. The potential costs of these regulations cannot be quantified or even estimated, as for the most part these regulatory proposals would only prevent transactions from being consummated, such as excessive leveraging of Licensees at the expense of SBA as guarantor of indebtedness subordinated to such excessive leverage. Other examples are prevention of the leveraged buy-outs of very large concerns with SBIC assistance (see discussion under § 107.711), of the investment of pension fund money, of fixed put prices, of inter-SBIC loan guaranties and sales of portfolio items with recourse, or the limitation of short-term interim financing to the contemplated long-term financing. Other proposed regulations, such as the requirement of financial information from potential and actual investees, merely codify good business practice already in place at well-managed Licensees. Similarly, the mistaken notion that a debt is unsecured even though it is secured by a third party, is corrected only because it has happened, and thus made this statement of the obvious necessary.

6. There are no federal rules which duplicate, overlap or conflict with these proposed rules.

7. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost, as explained above under No. 5.

Paperwork Reduction Act. For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35 we hereby certify that these regulations, if adopted, will impose one new record-keeping requirement. Proposed § 107.304(b) would provide that Licensees require prospective and actual portfolio concerns to furnish such financial statements and projections as will support the Licensee's investment decision and valuation. Approval of this requirement is being sought from the Office of Management and Budget.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and record-keeping requirements, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations, is proposed to be amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 et seq., as amended, Pub. L. 100-590 and Pub. L. 101-162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101-162; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100-590.

2. The Table of Contents of part 107 is amended by revising the caption of § 107.304 to read as follows:

* * * * *

§ 107.304 Size status and nondiscrimination; financial statements.

* * * * *

3. Section 107.3 is amended by revising the definition of "Private Capital"; by adding a definition for "Subdivider and Developer" in alphabetical order; and by revising footnote 4 in the definition of "SIC Manual" to read "[4] as of January 1990, the latest edition of the SIC Manual was 1987.":

§ 107.3 Definition of terms.[1]

* * * * *

Private Capital. "Private Capital" means:

General. "Private Capital" means the combined private paid-in capital and paid-in surplus of a Corporate Licensee, or the private partnership capital of an Unincorporated Licensee, exclusive of any funds borrowed by the Licensee from any source, obtained from SBA through the sale of Preferred Securities, or invested by a pension fund after [the effective date of these regulations].

* * * * *

Subdivider and Developer. "Subdivider and Developer" means a Small Concern whose primary business involves the acquisition of unimproved land and its subsequent improvement for the purpose of selling vacant lots to others.

* * * * *

4. Section 107.210 is amended by redesignating present paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), and adding a new paragraph (b)(2) to read as follows:

§ 107.201 Funds to licensee.

* * * * *

(b) * * *

(2) In the event SBA pays a claim under its guarantee, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee. With respect to debentures guaranteed after [the effective date of this regulation], SBA's claims against any Licensee shall be subordinated, in the event of the insolvency of such Licensee, only in favor of present and future indebtedness outstanding to Lending Institutions, and only to the extent that the aggregate amount of such indebtedness does not exceed the lesser of two hundred percent of such Licensee's Private Capital, or ten million dollars: Provided, however, That in its sole discretion SBA may agree in advance and in writing to a subordination in favor of one or more loans from Lending Institutions or other lenders and/or to loans that would cause the aggregate amount of outstanding senior debt to exceed the foregoing limitation; and Provided, Further, That nothing contained herein shall affect the seniority of any indebtedness created prior to [the effective date of this regulation] over the claims of SBA derived from any debentures outstanding as of that date.

4. Section 107.205 is amended by revising paragraph (d)(2) to read as follows:

§ 107.205 Leverage for Section 301(d) Licensees.

* * * * *

(d) * * *

(2) *Qualified Investments.* In no event shall the amount of preferred securities purchased by SBA in excess of one hundred percent of Private Capital exceed the amount of the Licensee's funds invested in, or legally committed to, qualified investments. As used herein, "qualified investments" means, subject to §§ 107.320 and 107.601, stock of any class (including preferred stock) or limited partnership interests in eligible small concerns, or shares of any eligible syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit; or unsecured debt instruments which are subordinated by their terms to all other borrowings (as distinguished from all other debts and obligations) of the issuer. "Qualified investments" shall not include a debt secured by any agreement with a third party, whether or not a security interest has been created in any asset of such third party, with or without recourse against such third party.

* * * * *

5. Section 107.304 is revised to read as follows:

§ 107.304 Size status and nondiscrimination; financial statements.

(a) *Size status and nondiscrimination.* No assistance shall be provided unless:

(1) The Licensee and the Small Concern have executed SBA Form 480, Size standards have been met, or SBA has determined at the request of the Licensee or of such concern that the latter is a Small Concern; and

(2) The Small Concern has certified on SBA Form 652-D that it will not illegally

[1] Terms defined in this section are capitalized hereafter.

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discriminate in its operations, employment practices or facilities as set forth in part 113 of this chapter.

Such forms shall be kept available for SBA's examination: *Provided, however,* That the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering (see § 107.404), in which event the Licensee shall keep the prospectus showing the small size status of the issuer as part of its records for SBA's examination.

(b) *Financial statements*—(1) *Initial Financing decision.* In considering any Financing for a Small Concern the Licensee shall require the concern to submit such financial statements, plans of operation, cash flow analyses and projections as are necessary to support the Licensee's investment decision, considering the size and type of the business, and the amount of the Financing in question. Such materials shall be in English and shall be retained by, and become a part of the permanent records of, the Licensee.

(2) *Subsequent reports.* The terms of the Financing shall require each Assisted Small Concern to forward to the Licensee, at least annually, such financial statements as are necessary to verify the financial condition of such Small Concern, and for the valuation of its investment therein. Such statements shall be in English and be certified by the chief financial officer, general partner, or proprietor of such Small Concern and shall be retained by, and become a part of the permanent records of, the Licensee. If the Licensee shall deem it appropriate, considering the size and type of the business involved, the Licensee may accept, instead, a complete copy of the Federal income tax return, including all appropriate schedules thereto, filed by the business or by the proprietor, as the case may be: *Provided, however,* That the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering (see § 107.404), in which event the Licensee shall keep copies of all reports furnished by such concern to the holders of its securities.

6. Section 107.321 is amended by revising paragraph (b) to read as follows:

§ 107.321 Redemption provisions.

* * * * *

(b) The redemption price shall not be stated as a fixed dollar amount, or as an alternative dollar amount. Not later than the date of the Licensee's first disbursement, the parties may agree upon a formula for determination of the redemption price, which must be legal and reasonable, and based upon book value and/or earnings (for the current period as of the time of redemption or over a representative period including the time of redemption, as the parties may determine) of the Small Concern; or they may agree that the redemption price may be fixed at the fair market value at the time of redemption by one or more disinterested appraisers (who are members of a recognized professional association) as agreed to by both parties. The redemption agreement shall not require the appraisers to assume any fact not in existence at the time of the appraisal. The expense of any such appraisal shall be borne by each party.

7. Section 107.401 is amended by revising paragraph (a), and by adding a new paragraph (a)(7), to read as follows:

§ 107.401 SBIC guaranty of loans.

(a) Subject to § 107.301(a) (Minimum Period of Financing), a Licensee may guaranty to any non-Associate creditor (other than another Licensee) the monetary obligation of a Small Concern: *Provided, however,* That:

* * * * *

(7) A guaranty limited to the pledge of a Licensee asset on a non-recourse basis shall be deemed a Financing equal to the lesser of the fair market value of such asset or assets, or the amount of the debt so guaranteed.

8. Section 107.402 is amended by adding a new paragraph (d) to read as follows:

§ 107.402 Commitments.

* * * * *

(d) *Limit on commitment fee.* The amount of any commitment fee shall not exceed interest at the prime rate, as printed in a national financial newspaper published each business day, in effect on the date of commitment, for the number of days from the date that the commitment is accepted in writing by the Small Concern to the date of disbursement or cancellation, as the case may be, inclusive of both dates. Any commitment fee that exceeds the limitation set forth herein shall be deemed in its entirety to be outside the scope of a "bona fide commitment fee" otherwise excludible from computation of the Small Concern's Cost of Money. See the definition of "Cost of Money" in § 107.3.

9. Section 107.403 is amended by revising paragraph (b)(1) to read as follows:

§ 107.403 Other permissible financing.

* * * * *

(b) * * *

(1) *Short-term Financing.* Financing with a term of less than five years when it constitutes interim financing in contemplation of long-term Financing of a Small Concern by the Licensee in an amount at least equal to such interim financing, or the protection of prior investments, or financing ownership change pursuant to § 107.711: Provided, however, That the maximum aggregate period for short-term Financing in contemplation of long-term Financing shall not exceed one year. This paragraph (b)(1) supplements the authority to make short term investments in Disadvantaged Concerns under § 107.301(a).

* * * * *

10. Section 107.707 is revised to read as follows:

§ 107.707 Purchases of securities from another Licensee.

After [the effective date of this regulation] a Licensee may exchange with or purchase for cash from another Licensee Portfolio securities (or any interest therein) only on a non-recourse basis: Provided, however, That:

(a) A Licensee shall not have at any time more than one-third of its total assets (valued at cost) invested in such securities; and

(b) A Licensee that has previously sold Portfolio securities (or any interest therein) on a recourse basis shall include the amount for which it may be contingently liable in its overline limit under § 107.303.

11. Section 107.708 is revised to read as follows:

§ 107.708 Deposits and investments of idle funds.

Except as hereinafter set forth, all funds of a Licensee shall be deposited without delay in an account in a federally-insured bank or savings and loan association. Funds of a Licensee not invested in Small Concerns and not reasonably needed for its day-to-day operations shall be invested in:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by the United States, the remaining maturities of which do not exceed fifteen months; or

(b) In federally-insured certificates of deposit maturing within one year or less, in a federally-insured bank or savings and loan institution, up to the limit of such insurance or

(c) In a federally-insured deposit account of such bank or institution, up to the limit of such insurance, subject to a withdrawal restriction not to exceed one year: Provided, however, That:

(1) A Licensee may maintain a petty cash fund of up to $1,000 and

(2) Corporate assets of a corporate general partner not invested in the Licensee shall be excluded from the time limits imposed by this section.

12. Section 107.711 is revised to read as follows:

§ 107.711 Financing changes of ownership.

(a) *General.* A Licensee may Finance, or participate in the Financing of, a change of ownership in a Small Concern when, in the reasonable judgment of the Licensee, it will promote the sound development or preserve the existence of the Small Concern as such, or will facilitate the ownership and management of the Small Concern by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

(b) *Business divestiture.* A Licensee may Finance, or participate in the Financing of, a business divestiture if, in the reasonable judgment of the Licensee, such divestiture will result in the creation of a Small Concern.

(c) *Special size standard.* For the purpose of this section "Small Concern" means a concern that qualifies as small under § 121.802(a)(2) of this Chapter and, together with all its affiliates, does not have gross assets in excess of twenty million dollars.

(d) *Restriction.* Subject to any lower limit imposed by § 107.403(b) (1) and (3), the aggregate of all Financings pursuant to this section shall not exceed the amount of the Licensee's Private Capital at the end of any fiscal year.

13. Section 107.901 is amended by revising the introductory text of paragraph (c)(2) to read as follows:

§ 107.901 Prohibited uses of funds.

* * * * *

(c) * * *

(2) If the Financing is to be used by a Small Concern, regardless of SIC classification, to acquire realty or to discharge an obligation relating to the prior acquisition of realty unless at least fifty-one percent of the square footage of an existing building that is to be acquired by the Small Concern or at least two-thirds of the square footage of a building that is to be built or renovated by the Small Concern is to be used by the Small Concern for business activity not prohibited by paragraph (c)(1); or such realty is to be promptly and substantially improved for sale to others; and all necessary zoning approvals have been obtained;

* * * * *

14. Section 107.909 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 107.909 Conflicts of interest.

* * * * *

(b) *Prohibitions.* Except where a prior written approval may be granted by SBA in special instances in furtherance of the purposes of the Act:

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 21, 1990.

Susan G. Engelstiz,

Administrator.

[FR Doc. 90-22356 Filed 9-25-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 301, and 602

[IA-224-82]

RIN 1545-AE20

Backup Withholding and Due Diligence

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations that relate to backup withholding under section 3406(a)(1) (A), (B), (C), and (D) of the Internal Revenue Code of 1986 (the "Code") when a payee fails to provide a taxpayer identification number in the manner required to a person required to make an information return, when the Internal Revenue Service or a broker notifies a payor or broker that a payee has furnished an incorrect taxpayer identification number, when a payee is subject to notified payee underreporting, or when a payee fails to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting. These proposed regulations also reference the provisions of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (part 35a) that were published in the Federal Register in question and answer format (part 35a) on October 4, 1983 (48 FR 45362), November 25, 1983 (48 FR 53106), December 20, 1983 (48 FR 56332), February 28, 1984 (49 FR 7227), August 22, 1984 (49 FR 33237, 33240), April 23, 1987 (52 FR 13430), November 23, 1987 (52 FR 44661), and April 21, 1988 (54 FR 14341) concerning the actions that payors must take to establish the due diligence defense to the penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number.

Changes to the applicable tax law that are reflected in this document were made by the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369), the Tax Reform Act of 1984 (98 Stat. 494), and the Tax Reform Act of 1986 (100 Stat. 2748). These regulations do not address the changes in law made by the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2106). These regulations affect payors, brokers, and payees of certain reportable payments and provide them with the guidance necessary to comply with the law.

DATES: Written comments and requests for a public hearing must be received by January 25, 1991. These regulations are proposed to be generally effective with respect to reportable payments made and transactions occurring after December 31, 1983.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, CC:CORP:T:R (IA-224-82) LR-224-82, room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis, III, of the Office of the Assistant Chief Counsel (Income Tax and Accounting) (202-377-9581) with respect to broker transactions, Teresa Hughes of the Office of the Associate Chief Counsel (International) (202-566-6284) with respect to foreign transactions, and with respect to all other provisions, Renay Frence of the Office of the Assistant Chief Counsel (Income Tax and Accounting) (202-377-9344), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. The telephone numbers provided above are not toll-free calls.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection-of-information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection-of-information requirements should be sent to the Office of Management and Budget, *Attention:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection-of-information requirements in this regulation are in

§ 31.3406(a)–1; § 31.6011(a)–11; § 31.6051–4(a); § 31.6302(c)–1(a)(1)(f)(d) and § 31.6413(a)–3. This information is required by the Internal Revenue Service to enable the Internal Revenue Service to enforce sections 3406, 6011, 6051, 6302, and 6413 of the Code. This information will be used to encourage compliance with respect to the reporting and payment of taxes on interest and dividend income and other reportable payments. The likely respondents and/or recordkeepers are: individuals, State or local governments, businesses, other for-profit institutions, Federal agencies, nonprofit institutions, and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total annual reporting and/or recordkeeping burden: 96,582 hours.

The estimated average annual burden per respondent/recordkeeper is approximately 1 hour. Estimated number of respondents and/or recordkeepers: 105,000.

Estimated annual frequency of responses: 17.

Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, the rules proposed in this document will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Background

This document contains proposed regulations relating to the requirement that a payor or broker withhold 20 percent from any reportable payment under section 3406(a)(1)(A) or (a)(1)(B), or 20 percent from any reportable interest or dividend payment under section 3406 (a)(1)(C) or (a)(1)(D) of the Code. These provisions were added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369, 371). These proposed regulations are proposed to be issued under the authority contained in section 3406 (a), (b), (c), (e), (g), (h), and (i), section 6042(c), section 6044(e), section 6049(c), section 6103(q), section 6109, section 6302(c), section 6676, and section 7805 of the Code.

On October 4, 1983, the Federal Register published Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR part 35a) under sections 3406 and 6676 (b) of the Internal Revenue Code of 1954 (26 CFR part 35a.9999–1; T.D. 7916, 48 FR 45362, as amended on November 25, 1983, by T.D. 7922, 48 FR 53111, on November 23, 1987, by T.D. 8163, 52 FR 44861, and on April 11, 1988, by T.D. 8248, 54 FR 14341). Additional temporary regulations were published in the Federal Register on November 25, 1983 (26 CFR part 35a.9999–2; T.D. 7922, 48 FR 53106, as amended on December 20, 1983, by T.D. 7929, 48 FR 56342, on March 13, 1984, by T.D. 7922, 49 FR 9417, and on November 23, 1987, by T.D. 8163, and on April 11, 1988, by T.D. 8248, 54 FR 14341), on December 20, 1983 (26 CFR part 35a.9999–3; T.D. 7929, 48 FR 56332, as amended on January 3, 1984, by T.D. 7933, 49 FR 63, on August 22, 1984, by T.D. 7966, 49 FR 33236, on November 23, 1987, by T.D. 8163, 52 FR 44861, and on April 11, 1988, by T.D. 8248, 54 FR 14341), on February 28, 1984 (26 CFR part 35a.9999–3A; T.D. 7946, 49 FR 7227), on August 22, 1984 (26 CFR part 35a.9999–4T, T.D. 7966, 49 FR 33237, as amended on August 29, 1984, by T.D. 7972, 49 FR 34340; and 26 CFR part 35a.9999–5, T.D. 7967, 49 FR 33240, as amended on September 19, 1984, by T.D. 7973, 49 FR 36845, on August 20, 1985, by T.D. 8046, 50 FR 33526, on April 3, 1986, by T.D. 8046, 51 FR 11447, and on December 19, 1986, by T.D. 8110, 51 FR 45453, on May 19, 1988, by T.D. 8202, 53 FR 17927), on April 23, 1987 (26 CFR part 35a.3406–2; T.D. 8137, 52 FR 13430), and on November 23, 1987 (26 CFR part 35a.3406–1; T.D. 8163, 52 FR 44861, as amended on April 11, 1988, by T.D. 8248, 54 FR 14341). Those regulations were published primarily to provide guidance under the Interest and Dividend Tax Compliance Act of 1983.

Explanation of Provisions

On August 31, 1983, after a news release was issued soliciting comments on backup withholding, a hearing was held at the Internal Revenue Service. The Service received numerous comments, all of which were carefully considered in preparation of both these proposed regulations and the temporary regulations that were published in question and answer format during 1983 and subsequently.

These proposed regulations generally reorganize and restate, in traditional regulation form, the rules contained in the previously published temporary regulations on backup withholding with changes in several areas where commentators have sought clarification. The Service recognizes that the proposed regulations are lengthy, but believes this is needed in order to provide clear guidance for the numerous situations where backup withholding is or is not applicable. In addition, an extensive table of contents has been added to make the regulations more accessible to readers.

General Rules

These proposed regulations require withholding by a payor or broker at a 20 percent rate in certain situations. In general, payments that are subject to backup withholding include: (1) Payments of rents, commissions, fees, or other forms of compensation for services and other fixed or determinable gains, profits, or income payments that are subject to reporting under section 6041 or 6041A (a); (2) payments of dividends that are subject to reporting under section 6042; (3) payments of patronage dividends that are subject to reporting under section 6044; (4) payments of interest and original issue discount that are subject to reporting under section 6049; (5) payments of certain fishing boat operators that are subject to reporting under section 6050A; (6) certain transactions effectuated by brokers and barter exchanges that are subject to reporting under section 6045; and (7) payments of royalties that are subject to reporting under section 6050N.

With respect to payments of interest, original issue discount, dividends, or patronage dividends (hereafter, "reportable interest or dividend payments"), backup withholding is required in four situations. First, backup withholding is required if a payee does not provide a taxpayer identification number to the payor in the manner required. An individual's taxpayer identification number is the individual's social security number. A nonindividual's taxpayer identification number is the entity's employer identification number. The term "nonindividual" means a trust, estate, corporation, or similar entity. With respect to pre-1984 accounts or instruments, the payee is required to provide his taxpayer identification number, either in writing or orally. With respect to accounts established or instruments acquired after 1983, the payee is required to certify, under penalties of perjury, that the payee's taxpayer identification number is correct. Second, backup withholding is required if the Internal Revenue Service or a broker notifies the payor that the payee's taxpayer identification number is incorrect. Third, backup withholding is required if the Internal Revenue Service or a broker notifies the payor that the payee is subject to backup withholding due to notified payee underreporting. Fourth, with respect to accounts established or instruments acquired after 1983, backup withholding is required if a payee fails to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting.

With respect to other reportable payments, backup withholding is required only in two situations. First, backup withholding applies if the payee does not provide a taxpayer identification number in the manner required. With respect to post-1983 brokerage or barter exchange relationships, the customer is required to certify, under penalties of perjury, that the taxpayer identification number provided is correct. With respect to all remaining types of reportable payments (e.g., rents, royalties, commissions, rents, pension or annuity distributions, etc.), the taxpayer identification number is not required to be certified under penalties of perjury. Second, backup withholding is required if the Internal Revenue Service or a broker notifies the payor that the payee's taxpayer identification number is incorrect.

Clarification and modifications

With respect to a "window transaction" as defined in these proposed regulations, backup withholding applies only if the payee fails to furnish a taxpayer identification number. The payee does not have to certify, under penalties of perjury, that the number provided is correct. In addition, commentators have questioned whether backup withholding is required with respect to a window transaction if the Internal Revenue Service notifies the payor to withhold either because of an incorrect taxpayer identification number under section 3406(a)(1)(B) or a notified payee underreporting under section 3406(a)(1)(C). Because requiring backup withholding on window transactions due to notification from the Service to withhold would create administrative problems for payors, these proposed regulations provide that the payor is required to withhold only on redemptions of United States savings bonds, or payments on interest coupons, commercial paper, or banker's acceptances, any of which are in definitive form, if the payee fails to provide a taxpayer identification number. Thus, payors of window transactions are not required to check their records to determine if the payee is subject to backup withholding under section 3406(a)(1) (B) or (C). Many commentators questioned the meaning of "in definitive form"; these proposed regulations provide a definition.

A person who furnishes a number that does not contain nine digits or contains an alpha character (i.e., an obviously incorrect number) is treated as failing to provide a taxpayer identification number. Thus, backup withholding applies to payments made to any payee who furnishes an obviously incorrect number. Commentators have questioned whether a number that contains nine identical digits (e.g., 999–99–9999) or nine sequential digits (e.g., 012–345–678) is a number with respect to which they should impose backup withholding on the account or instrument. Payors should not impose backup withholding when a payee furnishes such numbers because an obviously incorrect number for purposes of backup withholding is one that does not contain nine numerals. While the Service recognizes that these other numbers are likely to be erroneous, administrative problems for payors would result if the payor were required to determine whether a number containing nine digits is correct.

Backup withholding will apply with respect to numbers with nine numerals only when the Service notifies the payor that the number is incorrect. In this connection, payors are required to backup withhold only if the payor receives a notice of an incorrect number from the Internal Revenue Service under section 3406(a)(1)(B) on or after January 1, 1990.

Backup withholding only applies to reportable payments that are not withheld upon under another provision of the Code. Thus, payors are not required to withhold on a payment under more than one section of the Code.

Commentators requested clarification on the amount of a payment subject to backup withholding. These proposed regulations provide generally that the reporting threshold is to be ignored in determining the amount subject to backup withholding. Backup withholding, therefore, applies to the first dollar of any payment. There are limited exceptions to this rule, however, that are described in these proposed regulations. For example, a payor can elect not to withhold on reportable interest or dividend payments of $10 or less and which on an annualized basis would be $10 or less. This minimal payment rule means that payors look at the amount on a payment-by-payment basis. Thus, payors are not required to add the payments that they have made thus far in the year to determine whether the payee was paid more than $10 during the year. Payors are, however, required to annualize each payment. Annualization means that payors determine the amount the payment would have been for a 1-year period rather than for the period for which it is paid. For example, with respect to a savings account that pays interest quarterly, payors would not have to withhold on any quarterly payment that is $2.50 or less.

These proposed regulations do not require that a separate annualization computation be made for payments made on accounts opened between a payor's customary paying date. Because this could create administrative and programming problems for payors, these proposed regulations provide that, with respect to accounts opened during the payment cycle, a payor will be allowed to assume that the payment was made for the entire payment cycle.

Barter exchanges or brokers who effect sales of securities where the amount of the gross proceeds or other reportable payment under section 6045 is not more than $10 are also not required to withhold on those minimal amounts if the barter exchange or broker so elects. In addition, any window transaction that aggregates $10 or less is not subject to withholding if the payor so elects. Brokers, barter exchanges, or payors with respect to window transactions are not required to annualize the payments.

Commentators have requested guidance on whether backup withholding applies in instances where the sale of a fractional share results in less than $20 of gross proceeds that are not otherwise subject to information reporting under § 5f.6045–1(c)(3)(ix). Although section 3406 permits backup withholding regardless of the amount that must be paid before an information return is required to be made, these regulations provide that gross proceeds of less than $20 resulting from the sale of a fractional share will not be subject to backup withholding.

With respect to taxable reinvestment plans, the regulations allow payors to ignore fees, commissions, or any discount in the purchase price of the shares in determining the amount subject to withholding.

A payor may elect to reduce the amount of interest subject to withholding when a premature withdrawal penalty is imposed with respect to a time savings account, a certificate of deposit, or similar deposit.

These proposed regulations describe the procedures for determining the amount of original issue discount subject to backup withholding. Commentators have questioned whether

a subsequent holder of a short-term discount obligation is required to certify, under penalties of perjury, that the purchase price is correct. These proposed regulations provide that the holder is not required to certify such information.

With respect to payments that are subject to reporting under sections 6041 or 6041A(a) (e.g., rents, commissions, nonemployee compensation), the payor is generally not required to withhold on payments that aggregate less than $600 during a calendar year. Once the payment or payments aggregate $600, however, backup withholding applies to the entire payment that causes the amount to equal or exceed $600 and to any subsequent payments made to the payee during the year. For example, if a payor pays nonemployee compensation of $550 to a person on February 25 and pays $50 on December 3, these proposed regulations clarify that the payor is only required to withhold 20 percent of $50 even though $600 of reportable payments were paid during the year.

Exceptions to the $600 rule exist if the payor was required to make an information return for the preceding calendar year or the payor was required to impose backup withholding during the preceding calendar year. In these instances, the payor is required to withhold on the first dollar of any payment to the payee.

In the case of a corporate reorganization where a payee is required to exchange stock held in the former corporation for stock in the new corporation before the dividends which have been paid with respect to the stock in the new corporation will be provided to the payee, the temporary regulations provide that the dividend is considered paid for purposes of backup withholding on the payment date without regard to when the payee actually exchanges the stock and receives the dividend. Commentators have stated, however, that current industry practice for paying and recordkeeping purposes is to treat the dividend as paid on the date that the shares are exchanged since that is the date the payee receives the dividend. Thus, these proposed regulations provide that in the case of a corporate reorganization, the dividends are treated as paid for purposes of backup withholding on the date that the payee actually exchanges the stock in the former corporation and receives the dividend.

The temporary regulations and these proposed regulations provide similar rules for a person who is awaiting a taxpayer identification number and set forth the requirements for such a payee to qualify for a 60-day exemption period. Both regulations also provide that the exemption does not apply to window transactions. These proposed regulations provide further that the exemption does not apply to the redemption of a bearer bond that is subject to reporting under section 6045. As with window transactions, the payor with respect to a bearer bond would not have funds on which to withhold after the 60-day period if the payee did not provide a taxpayer identification number. Thus, these proposed regulations provide that a person who presents a bearer bond after September 27, 1990 will be subject to backup withholding unless the person provides a certified taxpayer identification number.

Moreover, with respect to other reportable gross proceeds under section 6045, the regulations provide that when a payee instructs a broker to sell or retire an obligation and the customer does not have a taxpayer identification number, the broker may allow the payee to furnish the number in the manner required within 60 days of the sale provided the customer provides an awaiting-TIN certificate and does not withdraw or reinvest more than 80 percent of the gross proceeds. If the broker does not receive the customer's taxpayer identification number in the manner required on or before the 60th day after the sale or redemption, the broker is required to withhold 20 percent of the gross proceeds.

Commentators have also requested a definition of a readily tradable instrument. Accordingly, these regulations provide a definition. In addition, with respect to a readily tradable instrument acquired through a broker and not held in street name, the regulations clarify that a payor may assume that the taxpayer identification number and other information received from a broker are correct. The broker is generally required only to notify the payor if the payee failed to provide a certification to the broker that the taxpayer identification number is correct or that the payee is not subject to backup withholding due to notified payee underreporting. The payor may ignore a notice from the broker that the payee has failed to make the certification to the broker, however, if the payor has received the certification directly from the payee.

The payor of an instrument acquired through a broker is required to send a notice to the payee if (1) the broker notifies the payor of the readily tradable instrument that the payee failed to provide the certifications (and the payor has not received that certification from the payee directly) or (2) the broker notifies the payor that the Internal Revenue Service notified the broker that the payee is subject to backup withholding or the Internal Revenue Service notifies the payor to impose backup withholding. Whenever the payor is required to notify the payee that backup withholding has commenced or will commence with respect to a readily tradable instrument, the notice must inform the payee of the condition or conditions for imposing backup withholding and explain what the payee must do to stop backup withholding. These proposed regulations amend the language of the notice that the payor sends to notify the payee that backup withholding has commenced or will commence as a result of a certification failure. With respect to the notice that a payor is required to send after being notified by the Service or a broker that a payee is subject to backup withholding under section 3406(a)(1)(B) or section 3406(a)(1)(C), these proposed regulations incorporate those requirements set forth in the temporary regulations.

Special rules exist when an account is established directly with, or an instrument is acquired directly from, the payor by means of electronic or mail communication. The temporary regulations provide that, at the payor's option, the payee may be given 30 days to provide the required certifications as long as the payee furnishes a taxpayer identification number at the time of acquisition. Many commentators asked whether this special rule in the temporary regulations is limited to mutual funds. These proposed regulations clarify that these special rules apply to an account or other readily tradeable instrument that is established directly with, or acquired directly from, any payor, including bank deposits, certificates of deposit, or repurchase agreements, provided the account or instrument is established or acquired by means of electronic or mail communication. In addition, these proposed regulations clarify that a broker who holds an instrument as nominee for a payee (*i.e.*, in street name) is considered a payor. Accordingly, these special rules apply where an instrument is acquired from a broker by means of electronic or mail communication and the broker holds the instrument in street name for a payee.

With respect to a post-1983 brokerage account through which a readily tradeable instrument is sold by electronic means (*i.e.*, by telephone or wire instruction), commentators requested clarification of the special rule that the broker may permit the customer to furnish the required certification that his taxpayer identification number is correct within 30 days of the sale, provided the customer furnishes his taxpayer identification number at the time of the sale and does not withdraw or reinvest more than 60 percent of the gross proceeds before furnishing the certification. Although the temporary regulations provide that reinvestment of up to 80 percent of the gross proceeds in other securities will not be considered a withdrawal, commentators objected to the provision that withdrawal of any amount of cash results in immediate imposition of backup withholding. These proposed regulations alter that rule and provide that as long as at least 20 percent of the gross proceeds are held in cash, the broker may permit the customer to furnish the required certification within 30 days of the sale. If no certified number is received within 30 days of the sale or if the customer withdraws or reinvests more than 80 percent of the gross proceeds before the broker receives the certification, however, the broker must withhold 20 percent of the reportable gross proceeds at that time. Thus, the broker rules more closely parallel the special 30-day rule with respect to reportable interest or dividends.

In the case of an issuer or its paying agent of a taxable interest coupon who receives an envelope or "shell" used for processing the coupon signed by the payee stating that the interest is exempt from taxation under section 103(a) (relating to interest on certain State or local governmental obligations), commentators requested clarification of whether the amount is subject to backup withholding if the interest is not, in fact, tax-exempt. Because the middleman payor (*e.g.*, bank or broker) may only treat the interest as tax-exempt by receiving a properly completed "shell" or envelope from the payee (including the payee's name, address, and taxpayer identification number) under § 1.6049-5(b)(2), the issuer will not be required to withhold even if the interest is taxable because the shell or envelope will contain the payee's taxpayer identification number. If the middleman payor does not receive a properly completed shell or envelope from the payee, including the payee's taxpayer identification number, the middleman payor is not permitted to treat the interest as tax-exempt. Accordingly, the middleman payor would be required to impose backup withholding if the interest is not, in fact, tax-exempt and the payee did not furnish his taxpayer identification number.

Many commentators questioned whether specific transactions are subject to broker reporting under section 6045. Examples provided in these regulations show that certain transactions are covered under section 6045 and thus are subject to backup withholding. Please note, however, that real estate transactions subject to information reporting by a real estate reporting person, as defined under section 6045(e)(2), are not subject to backup withholding (pursuant to section 3406(h)(5)(D)) except as provided in regulations. These proposed regulations do not contain backup withholding requirements with respect to real estate transactions.

Many commentators also questioned whether they were required to obtain a certificate each time a payee opens a new account or brokerage relationship even if the payor already has a certificate from the payee. These proposed regulations clarify that a payor, at its option, may require a payee to file only one Form W-9 for all accounts or instruments of the payee. If the payor elects this option and already has a certificate on file with respect to the payee, the payor is not required to obtain another certificate from the payee.

Many commentators questioned whether the payor or broker must provide the Form W-9 instructions to the payee with respect to new accounts or brokerage relationships where the payor or broker devises a substitute Form W-9. These proposed regulations provide that the instructions or the substance of those instructions do not have to be furnished to the payee. With respect to such accounts, the payee need only be instructed to strike out the language of the certification that relates to payee underreporting if the payee is subject to backup withholding due to notified payee underreporting.

Many commentators questioned whether a payee, who has never furnished a taxpayer identification number with respect to a pre-1984 account or a brokerage account other than a post-1983 brokerage account, must certify, under penalties of perjury, that his number is correct if the payee furnishes his taxpayer identification number for the first time after 1983. These proposed regulations clarify that the payee is not required to certify that his taxpayer identification number is correct if he is furnishing the number with respect to a pre-1984 account or a brokerage relationship other than a post-1983 brokerage account. Clarification has also been requested with respect to how backup withholding applies to accrued interest. The regulations under section 6049 provide that when a bond is purchased between interest payment dates, the portion of the purchase price attributable to accrued interest is not reportable under section 6049. If a broker is involved in the transfer of the obligation, however, the broker is required to report the gross proceeds of the sale. Accrued interest is a portion of the proceeds of the sale. The regulations under section 6045 provide that, in reporting the total gross proceeds, the broker is required to file a Form 1099-INT showing the amount of accrued interest and is required to file a Form 1099-B showing the remainder of the proceeds of the sale. Therefore, backup withholding will apply to the gross proceeds of the sale (including the accrued interest portion) if the payee does not provide a taxpayer identification number in the manner required or the Internal Revenue Service notifies the broker that the payee's number is incorrect.

Based on the questions received relating to the treatment of grantor trusts, these proposed regulations adopt the rule in the temporary regulations in the Federal Register on April 11, 1989 (54 FR 14341) that relate to grantor trusts with ten or fewer grantors. Accordingly, these proposed regulations provide that a grantor trust with ten or fewer grantors is not a payor for purposes of backup withholding. Such grantor trust is not required to impose backup withholding when it receives a reportable payment. However, the trustee of a grantor trust having ten or fewer grantors may not certify, under penalties of perjury, that the trust is not subject to backup withholding due to notified payee underreporting or that the taxpayer identification number provided by the trustee is correct unless each grantor has furnished the trustee with such certifications, and the trustee uses the taxpayer identification numbers provided by the grantors on the Form 1041 filed by the trustee. Grantor trusts that have more than ten grantors are considered payors of such payments to each grantor (payee), in proportion to each grantor's ownership of the trust.

Many commentators requested clarification in the depositing procedures for amounts withheld under backup withholding. These proposed regulations provide that the payor must remit the amounts withheld under backup withholding in the same manner that an employer remits social security and income tax withheld from wages. Thus, the eighth-monthly trigger procedures are used. A payor may aggregate amounts withheld for backup

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withholding with amounts withheld from wages to determine when to remit the withheld amounts. Alternatively, a payor may elect to remit amounts withheld under backup withholding separately from amounts withheld from wages. Regardless of the manner in which the payor elects to treat withheld amounts for purposes of determining the time within which such amounts are required to be deposited, a payor must report the amounts withheld under section 3406 on the same Form 941 that the payor uses to report the employment taxes deposited. The Form 941 has been revised to include a Schedule A to report amounts deposited for backup withholding. If the payor decides to treat backup withholding as a separate tax, the payor should mark 945 on the FTD coupon (Federal Tax Deposit coupon) in remitting backup withholding, should complete Schedule A, and should attach the schedule to Form 941 when the payor (employer) reports to the Internal Revenue Service the amounts remitted during the quarter. With respect to a payor who has a paying agent, the Service has issued Rev. Proc. 84–33 explaining the procedures for an agent to use in depositing and reporting withheld amounts.

Clarification also has been requested with respect to the refund of amounts erroneously withheld under section 3406. These proposed regulations provide that a payor may refund the amount erroneously withheld from the payee during the same calendar year. Payors must retain a receipt of the amount refunded. A cancelled check or a notation on the payee's statement will be treated as the required receipt. With respect to erroneous withholding on a payment to a middleman payor, the regulations provide that the middleman payor may adjust deposits of the tax which the middleman payor is required to make, by claiming a credit for the amount of tax withheld by the upstream payor. The middleman payor would pay the full amount to the payee if no condition for imposing backup withholding exists with respect to its payee.

For purposes of information reporting under section 6041 and backup withholding, a reportable gambling winning is any winning (other than from keno, bingo, or slot machines) that is $600 or more and that is based on betting odds of 300 to 1, or higher. Reportable gambling winnings will be subject to backup withholding if tax is not actually withheld under section 3402 (q) and the payee does not provide a taxpayer identification number.

Effect of the Tax Reform Act of 1984 on Backup Withholding. The Tax Reform Act of 1984 (98 Stat. 494) made three material technical corrections relating to backup withholding under section 3406. First, section 6042 was amended to provide that payments made to exempt recipients (as defined in section 6049(b)(4)) are not subject to information reporting under section 6042. Because such payments are not subject to information reporting, backup withholding will not apply to such payments of dividends. These proposed regulations, unlike the, temporary regulations, do not expand the class of payees to which backup withholding will not apply. For example, if the payment is reportable because it is made to a payee who is not an exempt recipient (determined under the applicable reporting section), then backup withholding will apply unless the payment is made to an organization exempt from taxation under section 501 (a) or an individual retirement plan, the United States, a State, a foreign government, an international organization, or any wholly owned agency or instrumentality of the foregoing). Because backup withholding is intended to be the enforcement mechanism of the information reporting system, these regulations do not provide any additional exempt recipients under section 3406(g)(1)(A) for purposes of backup withholding.

Second, the Act contains a technical correction to provide rules under section 643 to deal with the allocation of credit for amounts withheld from reportable payments to trusts, estates, and their beneficiaries.

Finally, the Act has a technical correction to coordinate pension and annuity withholding under section 3405 with information reporting under section 6041 and backup withholding under section 3406. The applicable regulations in this document concerning pension and annuity payments will continue to apply for such payments made prior to December 31, 1984, unless the payor elected otherwise, and to certain distributions made after June 30, 1984. See § 31.3406(g)–2(c)(1).

Effect of the Tax Reform Act of 1986 on Backup Withholding. The Tax Reform Act of 1986 ("the 1986 Act") made two significant changes in the law relating to backup withholding that are reflected in these proposed regulations. First, the 1986 Act added section 6050N to the Internal Revenue Code to require information reporting on royalty payments. Under prior law, royalty payments were reported under section 6041 to the extent the payments totaled $600 or more during a calendar year. These payments were treated as reportable under section 6041 and hence subject to backup withholding if one of the two conditions for imposing backup withholding existed. In addition, royalty payments under section 6041 were treated as "reportable" for backup withholding purposes if the payor was required to make an information return under section 6041 for the immediately preceding calendar year with respect to payments to the payee or if the payor was required to withhold during the preceding calendar year with respect to payments to the payee that were reportable under section 6041. In either of these two events the payor was required to withhold whether or not the payor's payments to the payee equalled or exceeded $600 for the year. After the enactment of section 6050N, however, royalty payments are only subject to information reporting and, hence, to backup withholding if the payments aggregate $10 or more during the calendar year.

The 1986 Act also imposes a statement mailing requirement for payee statements of royalties reportable under section 6050N (a), and it amends the separate mailing provisions under prior law by imposing an identical statement mailing requirement on payee statements of dividends, patronage dividends, and interest under sections 6042(c), 6044(e), and 6049(c). The Internal Revenue Service issued guidance to the public on the statement mailing requirement in Notice 87–17, 1987–1 C.B. 454. That notice specifically provided that the payee statement could not be perforated to a permissible enclosure in a statement mailing. Many commentators objected to this limitation and stated that the purpose of the liberalization of the separate mailing requirement was, in part, to permit a perforated statement.

Upon reconsideration, the Internal Revenue Service issued Notice 87–70, 1987–2 C.B. 360, to permit the statement to be perforated to a check or statement of a payee's account. These proposed regulations reflect the statement-mailing rules in Notice 87–17 as modified by Notice 87–70. The proposed rules in this document containing the statement mailing requirements will amend earlier proposed regulations on information reporting that were published in the Federal Register on February 29, 1988 (53 FR 5991).

Effect of the Omnibus Budget Reconciliation Act of 1989 on Due Diligence. These proposed regulations reference the questions and answers in the temporary regulations relating to the due diligence requirement under section 6676, which imposed a $50 penalty on a payor filing an information return with a missing TIN or an incorrect TIN unless the payor exercised due diligence. However, effective for information returns filed with respect to the 1989 calendar year and thereafter, the Act repealed section 6676. The questions and answers referenced in these proposed regulations thus apply only to information returns with respect to calendar years prior to 1989. These proposed regulations do not provide guidance with respect to the penalty under section 6721 for filing an information return with a missing or an incorrect taxpayer identification number.

Changes from the Temporary and Proposed Regulations Issued under Section 3406 (a)(1)(B), Backup Withholding due to an Incorrect TIN. The rules and regulations section of this issue of the Federal Register contains amendments to temporary regulation § 35a.3406–1, which provides rules for backup withholding under section 3406 (a) (1) (B). The substance of that regulation, as amended, is included in these proposed regulations.

One amendment made to § 35a.3406–1 exempts certain fiduciary and nominee accounts from backup withholding under section 3406(a)(1)(B) until final regulations are issued. Under these proposed regulations, such accounts would not be exempt from backup withholding under section 3406(a)(1)(B) following receipt of a "B" notice after final regulations are issued. The Service invites comments from payors on how fiduciary and nominee accounts can be formatted on information returns so that the correct name/TIN combination can be identified and backup withholding can be avoided.

Changes from the Temporary Regulations Issued under Section 3406 (a)(1)(C), Notified Payee Underreporting. The proposed regulations on backup withholding due to notified payee underreporting as set forth in § 31.3406 (c)–1 of this document incorporates those rules in the temporary regulations on this subject that were published in the Federal Register on April 23, 1987 (52 FR 13430), with several changes. This document clarifies the rules in the temporary regulations and adds examples to illustrate how some of the substantive provisions should apply.

For instance, the Internal Revenue Service received several inquiries concerning how a paying agent must impose backup withholding under section 3406 (a)(1)(C). The inquiry arises because a paying agent may remit reportable interest or dividend payments on behalf of a payor to a payee who also maintains a separate account with the paying agent that pays reportable interest or dividends. Thus, the question that has arisen is whether the paying agent must search its own accounts as well as the accounts of the instructing payor to impose backup withholding on the payee under section 3406(a)(1)(C). The proposed regulations in this document provide that the paying agent is only required to search the accounts of the payor stated on the notice using that payor's taxpayer identification number.

Payors also asked whether they must check their records each time a payee opens a new post-1983 account paying reportable interest or dividends and makes the certification required under section 3406(a)(1)(D). These proposed regulations clarify that payors do not have an affirmative duty to search their records in this circumstance.

Several payors were concerned about which information they should use to locate the accounts of a payee subject to backup withholding under section 3406(a)(1)(C) in those circumstances in which the notice from the Service instructing the payor to commence backup withholding under section 3406(a)(1)(C) lists information from a joint account. Because of this concern, the provisions in § 31.3406(c)–1 of these proposed regulations on joint accounts are clarified. In addition, these proposed regulations provided examples to show the application of backup withholding on a joint account.

Finally, the regulations under proposed § 31.3406(c)–1 provide that a payor who fails to send the notice required under section 3406(a)(4) to a payee subject to backup withholding under section 3406(a)(1)(C) may be subject to civil or criminal penalties.

Certain Reportable Payments Made Outside the United States by Foreign Persons, Foreign Offices of United States Banks and Brokers, and Others. The temporary regulations state that the applicability of the backup withholding rules to certain reportable payments made outside the United States is under consideration. *See* § 35a.9999–3 (A–34), (A–36); § 35a.9999–4 (A–1), (A–5). It has been decided not to require backup withholding with respect to such reportable payments unless the payor has actual knowledge that the payee is a United States person, and the proposed regulations reflect this decision at § 31.3406(g)–1(e).

Concluding Comments

The Internal Revenue Service, in proposing these regulations, has strived to provide as much flexibility as possible to payors in complying with the backup withholding rules. For example, many payors commented that they would need time to process taxpayer identification numbers or certificates that they receive from their payees. The regulations provide them with the needed flexibility by requiring that payors process a number or certificate within 30 days of filing, but permitting payors to process them sooner if they choose.

Many payors requested that they be able to prepare and provide certificates to their payees. The proposed regulations allow payors to devise their own certificates that may be incorporated into account signature cards or other instrument purchase agreements as long as the payor complies with the specifications of Rev. Proc. 83–69, 1983–2 C.B. 613. The Service has also given payors the authority to refuse to accept forms or certificates the payor itself has not prepared, so long as the payor promptly furnishes to the payee an acceptable form.

In response to requests by some payors, the proposed regulations provide that due to the volume of certificates payors receive, payors are permitted to retain only a microfilm or microfiche copy of the certificate and to destroy the paper certificates.

The temporary regulations provide that, with respect to the proceeds of a broker or barter exchange transaction, backup withholding applies on the sale date (*i.e.*, the date the transaction is entered on the books of the broker or barter exchange). Several commentators have indicated that this rule is difficult to administer because payment often occurs after the sale date. Accordingly, the proposed regulations provide that the obligation to backup withholding arises on the sale date, but that the broker or barter exchange is not required to satisfy its backup withholding liability until payment is made.

The proposed regulations describe exempt recipients and allow them to be treated as exempt recipients at the option of the payor even though they have not filed a certificate claiming exempt status with the payor. This rule is provided because some payors explained that they do not have the capability of determining whether the payee is an exempt recipient. Thus, the regulations provide that a payor may refuse to treat a payee as exempt unless the payee files a certificate and may treat a payee who does not file a certificate as a payee who is not an exempt recipient. Further, many payors

commented on the problems that would result if the payor withheld on such an exempt recipient. As a result of these concerns, if a payor withholds on an exempt recipient because the payee fails to provide a certificate, the proposed regulations allow a payor, at its option, to treat the amount as erroneously withheld and refund it to the exempt recipient.

With respect to a payment in property, the proposed regulations allow the payor to withhold from an alternative source. If the alternative account or source is not payable to the person or persons listed on the account subject to backup withholding, then the payor must obtain a written statement from the non-common owner(s) of the alternative source property allowing the payor to withhold from the alternative account or source. Additionally, payors expressed concern about their liability for backup withholding on a payment in property when there is no alternative source of cash available to withhold upon. Thus, these proposed regulations provide that, except with respect to prizes, awards and gambling winnings, the obligation to backup withhold may be deferred, at the payor's option, until the payor makes a cash payment to the account subject to backup withholding or cash is otherwise deposited in the account.

Finally, the Internal Revenue Service recognizes that there may be industry-specific business and regulatory constraints that make it difficult for certain types of payors to comply with certain backup withholding procedures. Accordingly, the Internal Revenue Service requests comments on these and other areas in which payors need additional flexibility. The Internal Revenue Service will attempt to accommodate such needs to the extent that doing so is consistent with the statute and would not unduly burden effective tax enforcement and administration.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably nine copies) to the Commissioner of Internal Revenue. Interested parties are encouraged to submit written comments by mail and to make oral comments on both the substantive and operational aspects of backup withholding under section 3406 and the penalty under section 6676 at any hearing that might be scheduled. All written comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who has submitted written comments. The Internal Revenue Service anticipates scheduling one hearing to accommodate requests (1) under this notice of proposed rulemaking, and (2) under the amendments to the temporary regulations under section 3406(a)(1)(B) concerning the imposition of backup withholding due to an incorrect taxpayer identification number in this issue of the **Federal Register**. Notice of the time and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting) Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding, Interest and Dividend Tax Compliance Act of 1983.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed amendments to the regulations

The proposed amendments to 26 CFR parts 1, 31, 301, and 602 read as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. Authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6042–5, as proposed on February 29, 1988 (53 FR 5995), is amended by adding the text of paragraph (c)(2) to read as set forth below:

§ 1.6042–5 Official statements to recipients of dividends paid after December 31, 1983.

* * * * *

(c) *Manner of providing the official statement to the recipient.* * * *

(2) *Statement mailing requirement for forms to be filed after October 22, 1986*—(i) *In general.* With respect to a Form 1099 that is required to be filed after October 22, 1986 (without regard to extensions), the mailing of a Form 1099 to a payee-recipient required under section 6042(c) must qualify as a statement mailing. A statement mailing shall contain the required Form 1099 (written statement). In addition, the mailing may contain the following enclosures:

(A) A check with respect to the account reported on the written statement,

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because a dividend has not been declared payable),

(C) A statement of the taxpayer's specific account with the payor if payments on such account are reflected on the written statement,

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement,

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W–2 and W–2P, and

(F) Any documents concerning the solicitation of the Form W–9 and Form W–8.

Further, to qualify as a statement mailing, the outside of the envelope in which the written statement is mailed and each nontax enclosure enclosed in the envelope must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Enclosed". For purposes of this paragraph, a nontax enclosure is any item listed in paragraph (c)(2)(i) (A), (B), or (C) of this section. A statement mailing includes a separate mailing as described under paragraph (c)(1) of this section. However, a payor is not required to include the legend on the outside of an envelope containing a separate mailing. The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any enclosures described in this paragraph by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (*i.e.*, Form 1099) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph, the payor shall be considered to have failed to mail the statement required under section 6042(c) and will be subject to the penalty under section 6722.

(ii) *Limitation on enclosures.* No enclosures, other than those permitted under paragraph (c)(2)(i) of this section, and no promotional or advertising material are permitted in the mailing of the written statement. Even a *de minimis* amount of such material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on nontax enclosures as described in paragraph (c)(2)(i) of this section does not violate the written statement requirement.

(iii) *Perforated written statement.* The written statement required under section 6042(c) and paragraph (c)(2) of this section may be perforated to a check or to a statement of the payee's specific account with the payor as described in paragraph 6042(c)(2)(i) (A) or (C). The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Attached".

* * * * *

Par. 3. Section 1.6044–6, as proposed on February 29, 1988 (53 FR 5998), is amended by adding the text of paragraph (c)(2) to read as set forth below:

§ 1.6044–6 Official statements to recipients for payments after December 31, 1983.

* * * * *

(c) *Manner of providing the official statement to the recipient.* * * *

(2) *Statement mailing requirement for forms to be filed after October 22, 1986*—(i) *In general.* With respect to a Form 1099 that is required to be filed after October 22, 1986 (without regard to extensions), the mailing of a Form 1099 to a payee-recipient required under section 6044(e) must qualify as a statement mailing. A statement mailing shall contain the required Form 1099 (written statement). In addition, the mailing may contain the following enclosures:

(A) A check with respect to the account reported on the written statement,

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because a dividend has not been declared payable),

(C) A statement of the taxpayer's specific account with the payor if payments on such account are reflected on the written statement,

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement,

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W–2 and W–2P, and

(F) Any documents concerning the solicitation of the Form W–9 and Form W–8.

Further, the outside of the envelope in which the written statement is mailed and each nontax enclosure included in the envelope must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Enclosed". For purposes of this paragraph, a nontax enclosure is any item listed in paragraph (c)(2)(i) (A), (B), or (C) of this section. A statement mailing includes a separate mailing as described under paragraph (c)(1) of this section. However, a payor is not required to include the legend on the outside of an envelope containing a separate mailing. The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any enclosures described in this paragraph by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (*i.e.*, the Form 1099) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph, the payor shall be considered to have failed to mail the statement required under section 6044(e) and will be subject to the penalty under section 6722.

(ii) *Limitation on enclosures.* No enclosures, other than those permitted under paragraph (c)(2)(i) of this section, and no promotional or advertising material are permitted in the mailing of the written statement. Even a *de minimis* amount of such material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on any enclosure as described in paragraph (c)(2)(i) of this section does not violate the written statement requirement.

(iii) *Perforated written statement.* The written statement required under section 6044(e) and paragraph (c)(2) of this section may be perforated to a check or to a statement of the payee's specific account with the payor as described in paragraph 6044(c)(2)(i) (A) or (C). The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Attached".

* * * * *

Par. 4. Section 1.6049–6(e), as proposed on February 29, 1988 (53 FR 6009), is amended by adding paragraphs (e)(5) (ii), (iii), and (iv) to read as set forth below:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations as to which there is attributable original issue discount.

* * * * *

(e) *Official statement to recipient for payments made after December 31, 1983.* * * *

* * * * *

(5) *Manner and time of providing the official statement to the recipient.* * * *

* * * * *

(ii) *Statement mailing requirement for forms to be filed after October 22, 1986.* With respect to a Form 1099 that is required to be filed after October 22, 1986 (without regard to extensions), the mailing of a Form 1099 to a payee-recipient required under section 6049(c) must qualify as a statement mailing. A statement mailing shall contain the required Form 1099 (written statement). In addition, the mailing may contain the following enclosures:

(A) A check with respect to the account reported on the written statement,

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because interest on the

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account has not been paid or credited to the account),

(C) A statement of the taxpayer's specific account with the payor if payments on such account are reflected on the written statement,

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement,

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W–2 and W–2P, and

(F) Any documents concerning the solicitation of the Form W–9 and Form W–8.

Further, to qualify as a statement mailing, the outside of the envelope in which the written statement is mailed and each nontax enclosure included in the envelope must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Enclosed". For purposes of this paragraph, a nontax enclosure is any item listed in paragraph (e)(5)(ii) (A), (B), or (C) of this section. A statement mailing includes a separate mailing as described under paragraph (e)(5)(i) of this section. However, a payor is not required to include the legend on the outside of an envelope containing a separate mailing. The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any permissible enclosures by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (*i.e.*, Form 1099) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph, the payor shall be considered to have failed to mail the statement required under section 6049 (c) and will be subject to the penalty under section 6722.

(iii) *Limitation on enclosures.* No enclosures, other than those permitted under paragraph (e)(5)(ii) of this section, and no promotional or advertising material are permitted in the mailing of the written statement. Even a *de minimis* amount of such material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on any enclosure as described in paragraph (e)(5)(ii) of this section does not violate the written statement requirement.

(iv) *Perforated written statement.* The written statement required under section 6049 (c) and paragraph (e)(5)(ii) of this section may be perforated to a check or to a statement of the payee's specific account with the payor as described in paragraph (e)(5)(ii) (A) or (C). The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Attached".

* * * * *

Par. 5. A new § 1.6050N–1 is added to read as follows:

§ 1.6050N–1 Statement to recipients of royalties paid after December 31, 1986.

(a) *In general*—(1) *Manner of providing the official statement to the payee.* With respect to a Form 1099 that is required to be filed after December 31, 1986 (without regard to extensions), reporting the payment of royalties under section 6050N, the payor making such payments is required under section 6050N (b) to furnish a written statement to each person whose name is required to be shown on the Form 1099 (recipient). The written statement shall be furnished either in person or in a statement mailing by first class mail. The requirement to furnish a written statement shall be met by furnishing an official Form 1099 to the recipient. The official Form 1099 shall be the form prescribed by the Secretary for the calendar year. For purposes of section 6050N (b) and this paragraph (a), a payor may use a form that contains provisions that are substantially similar to those of the official Form 1099 if the payor complies with all applicable revenue procedures relating to substitute Forms 1099. The mailing of a Form 1099 to a recipient required under section 6050N (b) must qualify as a statement mailing.

(i) *Statement mailing requirement.* A statement mailing shall contain the required Form 1099 (written statement). In addition, the mailing may contain the following enclosures:

(A) A check with respect to the account reported on the written statement,

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because a royalty payment has not been made),

(C) A statement of the taxpayer's specific account with the payor if payments on such account are reflected on the written statement,

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement,

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W–2 and W–2P), and

(F) Any documents concerning the solicitation of the Form W–9 and Form W–8.

Further, to qualify as a statement mailing, the outside of the envelope in which the written statement is mailed and each nontax enclosure included in the envelope must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Enclosed". For purposes of this paragraph, a nontax enclosure is any item listed in paragraph (a)(1)(i) (A), (B), or (C) of this section. However, a payor is not required to include the legend on the outside of an envelope that contains a mailing that would qualify as a separate mailing. See § 1.6042–5(c)(1). The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any enclosures described in this paragraph by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (*i.e.*, the Form 1099) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph, the payor shall be considered to have failed to mail the statement required under section 6050N(b) and will be subject to the penalty under section 6722.

(ii) *Limitation on enclosures.* No enclosures, other than those permitted under paragraph (a)(1)(i) of this section, and no promotional or advertising material are permitted in the mailing of the written statement. Even a *de minimis* amount of such material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on any enclosure as described in paragraph (a)(1)(i) of this section does not violate the written statement requirement.

(2) *Perforated written statement.* The written statement required under section 6050N(b) and paragraph (a)(1) of this section may be perforated to a check or to a statement of the payee's specific account with the payor as described in paragraph (a)(1)(i) (A) or (C). The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Attached".

(b) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6722.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 6. The authority for part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * section 31.3406(a)–1 also issued under 26 U.S.C. 3406 (a), (b), (c), (e), (g), (h), and (i); 26 U.S.C. 6103(g); and 26 U.S.C. 6302(c).

Par. 7. The following §§ 31.3406–O through 31.3406(i)–1 are added to read as follows:

§ 31.3406–O Outline of the backup withholding regulations.

This section lists paragraphs contained in §§ 31.3406–O through 31.3406(i)–1.

§ 31.3406(a)–1 Withholding requirement on reportable payments made after December 31, 1983.

(a) In general.
(b) Middlemen treated as payors.
(c) Exceptions.
(d) Examples.

§ 31.3406(a)–3 Amounts subject to backup withholding.

§ 31.3406(a)–4 Time when payments are considered to be paid and subject to backup withholding.

(a) Reportable interest or dividend payments.
(b) Other reportable payments.
(c) Middleman payor.
(1) In general.
(2) Special rule for common trust funds.
(d) Special rule for grantor trusts.
(e) Examples.

§ 31.3406(b)(1)–1 Reportable payment.

(a) In general.
(b) Reportable interest or dividend payment defined.
(c) Other reportable payment defined.

§ 31.3406(b)(2)–1 Reportable interest payment.

(a) Interest subject to withholding.
(1) In general.
(2) Special rule for tax-exempt interest.
(3) Examples.
(b) Amount subject to withholding.
(1) In general.
(2) Withholding adjustment for penalty for premature withdrawal.
(i) Special rule.
(ii) Examples.

§ 31.3406(b)(2)–2 Original issue discount.

(a) Original issue discount subject to withholding.
(b) Time and amount subject to backup withholding with respect to short-term obligations.
(1) No payment prior to maturity.
(2) Payment prior to maturity.
(c) Transferred short-term obligations.
(1) Subsequent holder may establish purchase price.
(2) If subsequent holder is unable to establish purchase price.
(3) If obligation is transferred.
(d) Time and amount subject to withholding with respect to long-term obligations.
(1) No payments prior to maturity.
(2) Registered long-term obligations with payments prior to maturity.
(3) Bearer long-term obligations with payments prior to maturity.
(i) Payments prior to maturity.
(ii) Payments at maturity.
(e) Transferred long-term obligations.
(1) Subsequent holder.
(2) If obligation is transferred.
(f) Examples.

§ 31.3406(b)(2)–3 Window transactions.

(a) Requirement to withhold.
(b) Window transaction defined.
(c) Manner of furnishing taxpayer identification number in the case of a window transaction.
(d) Examples.

§ 31.3406(b)(2)–4 Reportable dividend payment.

(a) Dividends subject to withholding.
(b) Examples.
(c) Dividends not subject to withholding.
(d) Amount subject to withholding.
(1) In general.
(2) Reasonable estimate of amount ofdividend subject to withholding.
(3) Reinvested dividends.

§ 31.3406(b)(2)–5 Reportable patronage dividend.

(a) Patronage dividends subject to withholding.
(b) Examples.
(c) Amount subject to withholding.
(1) Failure to provide taxpayer identification number or notification of incorrect taxpayer identification number.
(2) Notified payee underreporting or payee certification failure.
(3) Examples.

§ 31.3406(b)(3)–1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) Payments subject to withholding.
(b) Amount subject to withholding.
(1) In general.
(2) Special rule with respect to payments aggregating $600 or more for the calendar year.
(3) Determination of whether payments aggregate $600 or more.
(4) Exceptions.
(5) Examples.

§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) Transactions subject to withholding.
(b) Examples.
(c) Amount subject to withholding.
(1) In general.
(2) Foreign currency contracts, forward contracts, or regulated futures contracts.
(3) Security sales made through a margin account.
(4) Security short sales.
(i) Amount subject to backup withholding.
(ii) Time of withholding.
(5) Fractional shares.
(6) Examples.

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) Payments subject to withholding.
(b) Examples.
(c) Amount subject to withholding.
(1) In general.
(2) Examples.

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) Royalty payments subject to withholding.
(b) Amount subject to withholding.

§ 31.3406(b)(4)–1 Exemption for certain minimal payments.

(a) In general.
(b) Manner of making the election.
(c) Annualization.
(1) Reportable interest or dividend payment.
(2) Window transaction, original issue discount, and broker reporting.
(d) Examples.

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(a) Requirement to withhold.
(1) In general.
(2) Definition of notified payee underreporting.
(3) Definition of a payee underreporting.
(b) Notice to payors and brokers reporting backup withholding.
(1) Notice from the Internal Revenue Service.
(2) Notice from a broker.
(3) Accounts subject to backup withholding.
(c) Notice from payors of backup withholding due to a payee underreporting.
(1) In general.
(2) Form of the notice to the payee with respect to notified payee underreporting.
(3) Exceptions.
(4) Penalty for failure to provide notice.
(d) Notice to stop backup withholding.
(1) In general.
(2) Date notice to stop withholding will be provided.
(i) Underreporting corrected or bona fide dispute.
(ii) No underreporting or undue hardship.
(e) Period during which withholding is required.
(1) In general.
(2) Stop date.
(i) Underreporting corrected or bona fide dispute.
(ii) No underreporting or undue hardship.
(iii) Payor election to shorten or eliminate grace period.
(iv) Examples.
(f) Notice to payees from the Internal Revenue Service.
(1) Notice period.
(2) Payee subject to withholding.
(3) Disclosure of names of payors and brokers.

(4) Backup withholding certification.
(g) Determination by the Internal Revenue Service that backup withholding should not start or should be stopped.
(1) In general.
(2) No underreporting.
(3) Correcting any payee underreporting.
(i) Before issuance of a statutory notice of deficiency.
(ii) After issuance of a statutory notice of deficiency.
(4) Undue hardship.
(5) Bona fide dispute.
(h) Requests for determinations.
(1) In general.
(2) Determinations made during the notice period.
(3) Determinations made after the notice period.
(i) Reserved.
(j) Payees filing a joint return.
(1) In general.
(2) Exceptions.
(i) Innocent spouse.
(ii) Examples.
(iii) Divorced or legally separated payee.
(k) Penalties.
(l) Failure to withhold.
(2) False certification.
(i) Criminal penalty under section 7205(b).
(ii) Civil penalty under section 6682.
(A) In general.
(B) Waiver of penalty.
(C) Procedure for seeking a waiver.
(3) Delay of assessment.

§ 31.3406(d)–1 Manner required for furnishing a taxpayer identification number.

(a) Requirement to withhold.
(b) Reportable interest or dividend account.
(1) Manner required for furnishing a taxpayer identification number with respect to a pre-1984 account or instrument.
(2) Determination of pre-1984 account or instrument.
(i) In general.
(ii) Account or instrument automatically acquired on the maturity or termination of an account.
(iii) Special rule for short-term discount instrument acquired before January 1, 1985.
(iv) Insurance policies.
(v) Acquisitions and mergers.
(3) Manner required for furnishing a taxpayer identification number with respect to an account or instrument that is not a pre-1984 account.
(4) Special rule with respect to the acquisition of a readily tradable instrument in a transaction between parties unrelated to the payor if the parties act without the assistance of a broker.
(5) Examples.
(c) Brokerage account.
(1) Manner required for furnishing a taxpayer identification number with respect to a brokerage relationship that is not a post-1983 brokerage account.
(i) In general.
(ii) Definition of a brokerage account that is not a post-1983 brokerage account.
(iii) Definition of a post-1983 brokerage account.
(2) Manner required for furnishing a taxpayer identification number with respect to a post-1983 brokerage account.
(3) Examples.
(d) Rents, commissions, nonemployee compensation, and certain fishing boat operators, etc.
(1) Manner required.
(2) Example.

§ 31.3406(d)–2 Payee certification failure.

(a) Requirement to withhold.
(b) Exceptions.

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) Account or readily tradable instrument acquired directly from the payor (including a broker who holds an instrument in street name).
(1) Account or instrument acquired directly from the payor by electronic means.
(2) Account or instrument acquired directly from payor by mail communication.
(3) Examples.
(b) Special rule with respect to the sale of an instrument for a customer pursuant to a telephone or wire instruction.
(1) Special rule.
(2) Example.

§ 31.3406(d)–4 Special rules for readily tradable instruments acquired through a broker.

(a) Readily tradable instruments acquired through a broker who is not a payor.
(1) Instrument acquired through post-1983 brokerage accounts.
(2) Transactions entered into through a brokerage account that is not a post-1984 brokerage account.
(3) Payor must notify payee.
(i) Failure to provide certification.
(ii) Notified payee underreporting and incorrect taxpayer identification numbers.
(b) Notices.
(1) Form of notice by broker to payor.
(2) Form of notice by payor to payee.
(c) Payors' reliance on information from broker.
(1) In general.
(2) Amount subject to withholding.
(3) Examples.

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

(a) Requirement that a payor backup withhold due to notification of an incorrect taxpayer identification number.
(1) In general.
(2) Definition of reportable payment.
(i) In general.
(ii) Exceptions.
(3) Transitional exclusion for payments to a fiduciary or nominee account.
(4) Definition of incorrect taxpayer identification number.
(5) Definition of account.
(b) Notice regarding an incorrect taxpayer identification number.
(1) Notice from the Internal Revenue Service to payors and brokers.
(2) Notice from a broker to a payor.
(3) Accounts subject to backup withholding.
(4) Joint accounts.
(i) In general.
(ii) Exception.
(iii) Change in order of names.
(5) Payor determination of the account or accounts of the payee that contain the incorrect taxpayer identification number.
(i) Payors.
(ii) Brokers.
(c) Notice from payors of backup withholding due to an incorrect taxpayer identification number.
(1) In general.
(2) Procedures.
(i) In general.
(ii) Two or more notices for a payee in the same calendar year.
(3) Requirements of substitute notice to the payee.
(4) Payor must use newly provided certified number.
(d) Period during which backup withholding is required due to notification of an incorrect taxpayer identification number.
(1) In general.
(2) Grace periods.
(i) Starting backup withholding.
(ii) Stopping backup withholding.
(e) Manner required for payee to furnish certified taxpayer identification number.
(f) Notification of two incorrect taxpayer identification numbers within a 3-year period.
(1) In general.
(2) Notice to payee who has provided two incorrect taxpayer identification numbers within 3 years.
(3) Period during which backup withholding is required due to a second notification of an incorrect number within 3 years.
(4) Grace periods.
(i) Starting backup withholding.
(ii) Stopping backup withholding.
(g) Procedure for furnishing a correct taxpayer identification number to the Internal Revenue Service.
(h) Notice from the Internal Revenue Service to stop backup withholding.
(i) Reserved.
(j) Examples.

Appendix to § 31.3406(d)(5)—("B" Notice)

§ 31.3406(e)–1 Period during which withholding is required.

(a) In general.
(b) Special rule for determining when the payor receives a taxpayer identification number or certificate from a payee.
(c) Failure to furnish taxpayer identification number in the manner required.
(d) Payee certification failure.
(e) Notification of incorrect taxpayer identification number.
(f) Notified payee underreporting.
(g) Examples.

§ 31.3406(f)–1 Confidentiality of information.

(a) Confidentiality and liability for violation—In general.
(b) Permissible use of information.
(1) In general.
(2) Window transactions.
(c) Specific restrictions on the use of information.
(d) Examples.

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

(a) Exempt recipients.
(1) In general.
(2) Payments subject to reporting under section 6041 or 6041A(a).
(3) Determination of whether a person is described in paragraph (a)(1) of this section.
(4) Prepaid or advance premium life-insurance contracts.
(5) Examples.
(b) Middlemen.
(c) International organizations.
(d) United States deposits and accounts of foreign payees.
(e) Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.

§ 31.3406(g)–2 Exception for reportable payments for which withholding is otherwise required.

(a) In general.
(b) Payment of wages.
(c) Distribution from a pension, annuity, or other plan of deferred compensation.
(1) In general.
(2) Special rule.
(3) Distributions not subject to backup withholding.
(4) Examples.
(d) Payment with respect to an oil or gas interest.
(e) Gambling winnings.
(1) In general.
(2) Definition of a reportable gambling winning and determination of amount subject to backup withholding.
(f) Real estate transactions.
(g) Limited exception for certain payments immediately after a merger or an acquisition of accounts.
(h) Certain gross proceeds.

§ 31.3406(g)–3 Exemption while payee is awaiting for a taxpayer identification number.

(a) In general.
(1) Withholding not required for 60 days.
(2) Withholding during 60-day period on accounts paying reportable interest or dividends.
(i) Effective for awaiting-TIN certificates received after December 31, 1987, and before July 1, 1988.
(ii) Effective for awaiting-TIN certificates received on or after July 1, 1988.
(b) Special rule for readily tradable instruments.
(c) Exceptions.
(1) In general.
(2) Special rule for amounts subject to reporting under section 6045 other than redemptions of bearer obligations.
(d) Awaiting-TIN certificate.
(e) Form for certificate.
(f) Examples.

§ 31.3406(h)–1 Definitions.

(a) Taxpayer identification number
(1) In general.
(2) Obviously incorrect number.
(b) Examples.
(c) Broker.
(d) Readily tradable instrument.

§ 31.3406(h)–2 Special rules.

(a) Special rule for joint payees.
(1) In general.
(2) Special rule with respect to joint foreign persons.
(3) Examples.
(b) Withholding from an alternative source.
(1) In general.
(2) Payments made in property.
(3) Barter exchanges.
(4) Examples.
(c) Special rules for trusts.
(1) In general.
(2) Grantor trust with ten or fewer grantors.
(3) Grantor trust with more than ten grantors.
(d) Conditions for a trustee of a grantor trust with more than ten grantors to impose backup withholding.
(e) Examples.
(f) Adjustment of prior withholding.
(1) In general.
(2) Example.
(g) Conversion of amounts paid in foreign currency into United States dollars.
(1) Convertible foreign currency.
(2) Nonconvertible foreign currency.
[Reserved]
(h) Coordination with other sections.
(i) Penalties.
(j) To whom a payor is liable for amount withheld.

§ 31.3406(h)–3 Certificates.

(a) Prescribed form.
(b) Prescribed form to furnish a noncertified taxpayer identification number.
(c) Forms prepared by payors or brokers.
(1) Substitute forms; in general.
(2) Taxpayer identification number.
(3) Notified payee underreporting.
(4) Substitute form for both certifications.
(5) Form for exempt recipients.
(d) Special rule for brokers.
(e) Reasonable reliance on certificate.
(f) Who may sign the certificate.
(1) In general.
(2) Notified payee underreporting.
(g) Retention of certificate.
(i) Accounts or instruments that are not pre-1984 accounts or instruments and brokerage relationships that are post-1983 brokerage accounts.
(2) Accounts or instruments that are pre-1984 accounts or instruments and brokerage relationships that are not post-1983 brokerage accounts.

§ 31.3406(i)–1 Transitional rules.

§ 31.3406(a)–1 Withholding requirement on reportable payments made after December 31, 1983.

Except as provided in section 3406(g) and §§ 31.3406(g)–1, 31.3406(g)–2, and 31.3406(g)–3, every payor (as defined in section 3406(h)(4) and § 31.3406(a)–2) is required to deduct and withhold 20 percent of—

(a) Any reportable payment as defined in section 3406 (b) and § 31.3406(b)(1)–1 made after December 31, 1983, if—

(1) The payee does not furnish a taxpayer identification number (as defined in § 31.3406(h)–1(a)) in the manner required to the person required to file an information return with respect to such payment (as described in section 3406(a)(1)(A) and § 31.3406 (d)–1), or

(2) The Internal Revenue Service or a broker (as defined in section 3406(h)(5) and § 31.3406(h)–1(c)) notifies such payor that the taxpayer identification number that the payee furnished is incorrect (as described in section 3406(a)(1)(B) and § 31.3406(d)–5, or

(b) Any reportable interest or dividend payment (as defined in section 3406(b)(2) and § 31.3406(b)(1)–1(b)) made after December 31, 1983, if—

(1) The Internal Revenue Service or a broker notifies the payor that there has been payee underreporting (as described in section 3406(a)(1)(C) and § 31.3406(c)–1), or

(2) The payee fails to provide a certification to the person required to file a return with respect to the payment (as described in section 3406(a)(1)(D) and § 31.3406(d)–2).

Persons required to file an information return with respect to reportable payments subject to backup withholding are considered payors for purposes of backup withholding. Paragraph (a)(2) of this section provides a definition of persons considered payors for purposes of backup withholding and who therefore have an obligation to backup withhold if one of the conditions for imposing backup withholding exists with respect to a reportable payment. The payments which are subject to backup withholding are described in section 3406 (b) and § 31.3406(b)(1)–1. See § 31.3406(d)–1 for the rules regarding how a payee may furnish a taxpayer identification number in the manner required and certify that he is not subject to backup withholding due to notified payee underreporting. The period for which backup withholding under section 3406 is required is described in section 3406(e) and § 31.3406(e)–1. Exemptions from and exceptions to backup withholding are described in §§ 31.3406(g)–1, 31.3406(g)–2, and 31–3406(g)–3. Sections 31.3406(h)–1, 31.3406(h)–2, and 31.3406(h)–3 provide certain definitions and special rules relating to backup withholding.

§ 31.3406(a)–2 The obligation of payors to backup withhold.

(a) *In general.* A payor of an instrument or account is required to deduct and withhold the tax imposed by section 3406. The term "payor" means any person who is required to make an information return with respect to any reportable payment under section 6041, 6041A (a), 6042, 6044, 6045, 6049, 6050A,

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or 6050N as described in § 31.3406(b)(1)–1(a), including any middleman payor as described in paragraph (b) of this section. Thus, for example, with respect to reportable payments under section 6045, the payor is the broker having the closest contact with the payee (in terms of payments or crediting of gross proceeds) because that broker is required to file an information return with respect to reportable payments made to the payee.

(b) *Middlemen treated as payors.* Except as provided in paragraph (c) of this section, any person who receives or collects a reportable payment on behalf of or for the account of any other person shall be treated as the payor with respect to such payment. Such persons include—

(1) A custodian of a payee's account, such as a bank, financial institution or brokerage firm acting as custodian of an account,

(2) A nominee, including the joint owner of an account or instrument, except if such joint owners are husband and wife or if the payment is actually owned by another person whose name is also shown on the information return filed with respect to such payment,

(3) A broker holding a security (including stock) for a customer in "street name",

(4) A grantor trust with more than ten grantors,

(5) A common trust fund,

(6) Any partnership or S corporation that makes a reportable payment, and

(7) Any other person making a reportable payment and who is required to make an information return under the applicable information reporting section with respect to such payments.

(c) *Exceptions.* The following persons are not treated as payors for purposes of section 3406 if the person is not treated as a middleman, payor, or otherwise does not have a reporting obligation under the section on information reporting to which the payment relates:

(1) An agent of the payor which is acting on behalf of the payor in making the payment and who has not entered into an agreement with the payor pursuant to Revenue Procedure 84–33, 1984–1 (Part 1) C.B. 502, such as a bank that acts as a paying agent in making a payment of dividends on behalf of a corporation (although payments made by the agent are considered to be payments made by the payor, and thus are subject to backup withholding, reporting, and the depositing requirements pertaining to section 3406 as if they were made by the payor itself),

(2) A trust (other than a grantor trust with ten or more grantors) that files a Form 1041 and furnishes a beneficiary a Form K–1 containing information required to be shown on an information return, including amounts withheld under section 3406, or shown on an information return, including amounts withheld under section 3406, or

(3) A partnership making a distributive share to a partner of the partnership.

(d) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). Individual A presents a United States savings bond to be cashed at Bank M and fails to provide a social security number to M. Bank M is required to make an information return under section 6049. M is considered the payor with respect to such interest and is required to withhold under section 3406 because A has failed to provide M with a social security number.

Example (2). Bank N pays interest on a savings account held by Trust O which is an irrevocable trust required to include its items of income, deduction, and credit on a Form 1041. O is not an exempt recipient described in § 1.6049–4 (c)(1)(ii). N is required to make an information return under section 6049. N is considered the payor and is required to withhold if any condition for imposing backup withholding exists with respect to O. O as record owner is required to file a fiduciary return and furnishes a Schedule K–1 to each beneficiary. Therefore, O is not required to make an information return under § 1.6049–4 (c) (2). Thus, O is not considered a payor and is not required to withhold when O distributes income to a beneficiary because the payment does not constitute a reportable payment.

Example (3). In 1984, Corporation P pays dividends to Broker Q, a dealer in securities and registered as such under the laws of the United States. Q holds stock as nominee for Individual B. Q is considered an exempt recipient under section 6042 (b) (2) and does not provide its employer identification number to P. Thus, P is not required to make an information return under section 6042 showing the amount of dividends P pays Q. B has not furnished a social security number to Q. When Q pays or credits B's account with the dividends, Q is required to make an information return under section 6042 and § 1.6042–2 (a) (1) (ii). Q is considered the payor and is required to withhold under section 3406 since B failed to provide Q with a social security number.

Example (4). Individual C instructs Broker R to sell securities. C is a customer of R and has furnished R with an obviously incorrect social security number. R instructs Broker S to sell the securities. R is required to make an information return under section 6045 since R is the initiating broker who receives the instructions from C to sell the securities. Thus, R is considered the payor and is required to withhold on the gross proceeds under section 3406.

Example (5). Issuer T pays interest to Bank V with respect to obligations that Bank V holds in a custodial account for Individual D who has failed to furnish a social security number to V. T is not required to make an information return under section 6049 because it is making payment to an exempt recipient described in § 1.6049–4 (c) (1) (ii). Consequently, T is not considered a payor. V is required to make an information return under section 6049 with respect to the interest it receives for D's custodial account. V is considered the payor and is required to withhold under section 3406 since D failed to provide a social security number to V.

Example (6). W, a partnership, holds debentures of Corporation X. On June 30, 1984, X makes a payment of stated interest on the bonds held by W. X is required to make an information return under section 6049 showing the interest paid to W. X is considered a payor and is required to withhold if any of the four conditions for imposing backup withholding exists with respect to W. W makes a distribution of partnership income to its partners on December 31, 1984. W is not required to make an information return under section 6049. Thus, W is not considered a payor and is not required to withhold when W distributes each partner's distributive share of income on December 31, 1984, because the distribution does not constitute a reportable payment.

Example (7). Individual E owns property that Individual F leases. E has an agreement with Bank Y which provides that Y will collect the rental payments from F on behalf of E and will credit E's account with those amounts. Y's functions are limited solely to the receipt and crediting of those payments to E's account. Y is not required to make an information return under § 1.6041–3 (p); thus, Y is not considered a payor. F is required to make an information return under section 6041 showing the rental payments made to E if F makes the rental payments in the course of F's trade or business. Accordingly, F would be considered a payor and would be required to withhold if one of the two conditions for imposing backup withholding on the reportable payment exists with respect to E (as described in § 31.3406(b)(3)–1).

Example (8). Assume the same facts as in *Example (7)* except that Y not only collects the payment for E but pays other expenses for taxes, repairs, commissions, etc., and credits the net amount to E's account. Y's responsibilities are greater than the performance of a collection agent. Thus, Y is required to make an information return under section 6041 if F's payments to E are made in the course of F's trade or business. Y is considered the payor and is required to withhold if one of the two conditions for imposing backup withholding exists with respect to E (as described in § 31.3406(b)(3)–1).

Example (9). G and H own real estate and hire Z to manage the property. Z is a real estate agent for G and H. Lessees I, J, and K make rental payments to Z, and Z pays costs incidental to the property and pays commissions to L, an independent agent who locates tenants. Z pays the net amount of the rental payments to G and H. I, J, and K are not required to make an information return under § 1.6041–3 (e) with respect to the rental payments to Z because Z is a real estate agent; but Z is required to make an information return under section 6041 showing payment to G and H. Thus, Z is considered a payor and is required to withhold if one of the two conditions for imposing backup withholding exists with respect to G or H (as described in § 31.3406 (b) (3)–1). Z's payment of commissions to L also is subject to reporting under section 6041, withholding, and the depositing requirements under section 3406 (as described in § 31.3406(a)–2(c)(1)).

§ 31.3406(a)–3 Accounts subject to backup withholding.

A payor who is required to backup withhold under § 31.3406 (a)–1 is required to impose backup withholding on the specific account subject to withholding under § 31.3406 (a)–1(a)(1) or (b)(2) and, with respect to withholding under § 31.3406 (a)–1(a)(2) or (b)(1), on the accounts and according to the manner described respectively under § 31.3406(d)–5 (relating to notification of incorrect TIN) or § 31.3406(c)–1 (relating to notified payee underreporting).

§ 31.3406(a)–4 Time when payments are considered to be paid and subject to backup withholding.

(a) *Reportable interest or dividend payments.* With respect to a reportable interest or dividend payment (as defined in section 3406(b)(2) and § 31.3406(b)(1)–1(b)), backup withholding under section 3406 shall apply when the payor pays interest, dividends, patronage dividends, or original issue discount to an account that is subject to backup withholding. Amounts are paid when they are credited to the account of, or set apart for, the payee. Amounts are not considered paid solely because they are posted (e.g., an informational notation on the payee's passbook) or because they may be withdrawn by the payee, so long as they are not actually credited to the payee's account. They are paid, however, upon withdrawal or crediting to the payee's account. When bonds are sold between interest payment dates, the portion of the sales price representing interest accrued to the date of sale is not considered to be a payment of interest for purposes of section 6049, but is considered as a portion of a reportable payment of gross proceeds under section 6045 (provided that the accrued interest is not tax-exempt as described in section 103(a), relating to certain governmental obligations). In the case of stock for which the record date is earlier than the payment date, the dividends are considered paid on the payment date. In the case of a corporate reorganization, if a payee is required to exchange stock held in the former corporation for stock in the new corporation before the dividends which have been paid with respect to the stock in the new corporation will be provided to the payee, the dividend is considered paid on the date the payee actually exchanges the stock and receives the dividend.

(b) *Other reportable payments.* With respect to any other reportable payment (as defined in section 3406(b)(3) and § 31.3406(b)(1)–1(c)), except amounts reportable under section 6045, backup withholding under section 3406 shall apply at the time the payment is made. In the case of a transaction reportable under section 6045, except in the case of forward contracts, regulated futures contracts, foreign currency contracts, and security short sales, the obligation to backup withhold arises on the date the sale is entered on the books of the broker or the date the exchange occurs as provided in § 1.6045–1(f)(3). However, a broker is not required to satisfy its backup withholding liability until payment is made. See § 31.3406(b)(3)–2(c) for special rules applicable to forward contracts, regulated futures contracts, foreign currency contracts, and security short sales.

(c) *Middleman payor*—(1) *In general.* Any middleman payor (as described in § 31.3406(a)–2(b)) shall withhold under section 3406 at the time the reportable payment is received by or credited to the middleman payor. If the middleman payor makes or credits the reportable payment to the payee prior to the middleman payor's receipt of the corresponding payment, the middleman payor may withhold at the time the reportable payment is made or credited to the payee.

(2) *Special rule for common trust funds.* A common trust fund, as defined in section 584, shall withhold at the time the reportable payment is received by or credited to the common trust fund as provided in paragraph (c)(1) of this section, on the date on which the assets of the common trust fund are valued, or at the time the common trust fund pays or credits the reportable payment to the beneficiary of the common trust fund.

(d) *Special rule for certain grantor trusts.* With respect to certain grantor trusts (as described in § 31.3406(h)–2(c)(3)), reportable amounts (except gross proceeds subject to reporting under section 6045) are treated as paid to the grantor on the date that the distribution is made to the grantor by the trustee. Paragraph (b) of this section applies to a grantor trust with respect to when gross proceeds subject to reporting under section 6045 are subject to withholding.

(e) *Examples.* The application of the provisions of this section may be illustrated by the following examples in which it is assumed that the payee may be subject to backup withholding under section 3406(a)(1)(A):

Example (1). Bank P computes interest on savings account deposits by compounding the interest on a daily basis but credits the amount of interest that has accrued during a calendar quarter to the savings account on the last day of the quarter. Backup withholding under section 3406 applies at the time P credits interest to the accounts (*i.e.*, the end of each quarter).

Example (2). Credit Union Q computes dividends on regular share accounts by compounding the dividends on a daily basis. It credits the amount of dividends accrued during a calendar quarter on the last day of the quarter unless the account is closed, in which case it credits accrued dividends on the date the account is closed. A, an individual, opens a regular share account at Q on July 1, 1984. Backup withholding under section 3406 applies when Q credits accrued dividends to the account on September 30, 1984. If A closes the account on October 21, 1984, a payment would be considered to be made on October 21 when Q credits accrued dividends to A's account and A withdraws the dividends. Thus, backup withholding will apply on October 21.

Example (3). Corporation R declares a dividend on September 1, 1984, to its record holders as of September 15, 1984. The dividend on its stock is payable on October 1, 1984. Trust Company S holds stock of R in trust for Individual B. S credits the dividend to the account of the trust for B on October 1, even though in the normal course of business S may not receive the money until several days thereafter. At the discretion of S, backup withholding under section 3406 will apply when S credits the dividend on October 1, or when the money is actually received by S. See § 31.3406(a)–4(c)(1).

Example (4). Money Market Fund T declares dividends on its shares daily and credits the dividends to the investor's account on the last day of the month regardless of whether any shares have been redeemed during the month. Backup withholding under section 3406 applies to a reportable dividend payment made on the last day of the month when T credits the investor's account.

Example (5). The facts are the same as in *Example (4)* except that T credits the dividends to the investor's account daily. Backup withholding under section 3406 applies daily when T credits the investor's account.

Example (6). On January 1, 1984, individual C buys a 10-year corporate bond with attached semiannual interest coupons of $300 that may be cashed on January 1 and July 1 of each year. C sells the bond for $12,250 on April 1, 1984, to Bank U. Although $250 of the purchase price is attributable to accrued interest, it is not considered to be a reportable interest payment for purposes of section 6049. If U is a broker required to make an information return under 6045 with respect to a sale of a security, the gross proceeds of $12,250 (including the $250 accrued interest)

are subject to backup withholding on April 1, 1984.

Example (7). On April 1, 1984, Bank U sells the bond it purchased in *Example (6)* to Individual D. On July 1, 1984, D cashes the interest coupon for that date at U. Backup withholding under section 3406 applies on July 1 (the date the interest coupon is presented) to the $600 reportable interest payment.

Example (8). Bank V credits interest to its checking accounts on a quarterly basis. On August 3, 1984, Bank V accepts for payment a check which has been drawn on the account of E. E does not have sufficient funds posted in the account to pay the amount of the check. However, E's account has accrued interest since V's last crediting date which, net of withholding, is sufficient to pay the amount of the check. V pays the check after posting the interest that has accrued since V's last crediting date to E's account. Backup withholding under section 3406 applies on August 3, 1984, when V posts the accrued interest to E's account and before V pays the check. If the interest, net of withholding, were insufficient to pay the amount of the check, V would be required to impose backup withholding prior to paying the check, provided the interest is credited to E's account.

Example (9). F presents a Series E savings bond to Bank W to be cashed on July 1, 1984. Backup withholding under section 3406 applies on that date.

Example (10). On December 1, 1970, G purchases a $500 Series E savings bond. The amount paid for the bond is $375. On August 1, 1985, the bond is reissued by the Bureau of Public Debt by deleting G's name and inserting the name of G's child. At the time of reissue, the redemption value of the bond is $1,015.80. The accrued interest is $640.80 (i.e., $1,015.80–$375). The reissue is a taxable transaction, and G must include in income the accrued interest at the time of reissue. Backup withholding under section 3406 applies on the date of the reissuance (August 1, 1985) to $640.80 (the amount of accrued interest).

Example (11). Assume the same facts as in *Example (10)* except that G exchanges the bond for a Series HH savings bond in the amount of $1,000 issued in G's name. The exchange is tax-deferred under section 1037. A check in the amount of $15.80 is delivered to G. Backup withholding under section 3406 applies on the date of the exchange but only to the extent of $15.80, the amount subject to information reporting under § 1.6049–4(d)(9).

Example (12). Assume the same facts as in *Example (11)* except that the Series HH savings bond is reissued in the name of G's child. Accordingly, the exchange is not a tax-deferred exchange under section 1037 and backup withholding under section 3406 applies to $640.80 (the amount of accrued interest) on the date that the bond is exchanged.

Example (13). Broker H sells stock for Individual I and enters the transaction on H's books on September 24, 1990. Payment is made on September 28, 1990. The sale occurs on the date the sale is entered on the books. Accordingly, the obligation to backup withhold arises on September 24, 1990. However, H is not required to satisfy its backup withholding liability until September 28, 1990.

Example (14). Individual K is the trustee of Trust M, which is not a grantor trust as described in § 31.3406(h)–2(c)(3) or an exempt recipient as described in § 1.6049–4(c)(1)(ii). The corpus of the trust is stock of Corporation N. On August 31, 1984, N pays a dividend to M and is required to withhold 20 percent of the payment. On September 30, 1984, K makes a distribution of M's income to the beneficiaries of M. K is not required to withhold the tax under section 3406 on September 30, 1984, when K distributes M's income, because the payment is not a reportable payment and the trust is not a payor as described in § 31.3406(a)–2.

Example (15). L, an individual trustee of a grantor trust with 150 grantors, holds stock of Corporation T. L has provided the taxpayer identification number of L to T. B, a grantor of the trust, fails to provide a taxpayer identification number to L. T pays dividends on July 1 and is not required to withhold under section 3406 because no condition for imposing backup withholding exists with respect to L. L is required to withhold under section 3406, however, on the date that L distributes the reportable payment to B.

Example (16). O, a partnership, holds bonds of Corporation P. On July 1, 1984, P makes a payment of stated interest on the bonds held by O and is required to withhold 20 percent of the payment. O makes a distribution of income to its partners on December 31, 1984. O is not required to withhold under section 3406 on July 1, 1984, when it receives the payment of interest from P since O is not a middleman payor with respect to any reportable payment; O is the payee. In addition, O is not required to withhold under section 3406 on December 31, 1984, when O distributes income to its partners because the distribution is not a reportable payment.

Example (17). On February 26, 1985, Corporation R declares a dividend on its stock payable on April 1, 1985, to holders of record as of March 3, 1985. On March 1, 1985, Broker Q sells stock in Corporation R which it held in "street name" on behalf of B to Broker S. S purchases the stock on behalf of Individual C. R's stock transfer agent does not record the transfer until March 4, 1985. Accordingly, on April 1, 1985, R's paying agent pays the dividend declared by R to Q. R does not withhold under section 3406 since Q is an exempt recipient described in section 6042(b)(2)(B). Because Q is not able to identify immediately the owner of the dividend, Q places the dividend in a suspense account. On the same date, S credits C's account with the amount of the dividend payable by R on that date. On April 30, 1985, S makes a claim on Q for the amount of the dividend Q received on R's stock and Q pays the dividend to S. Q does not withhold under section 3406 since S is an exempt recipient. Unless C furnishes his social security number to S, S is required to withhold under section 3406 when it receives the dividend from Q on April 30, 1984, or, in its discretion, at the time it credits the dividend to C's account on April 1, 1984.

Example (18). On January 2, 1992, Individual D signs an agreement with Insurance Company Z. The agreement specifies that D will make one initial payment on the date the agreement is signed and Z will pay all future premiums when due by using a portion of D's previous payment including interest Z agrees to pay under the agreement. D does not furnish his social security number to Z. The yearly premiums are payable every July 1. Z credits the interest accruing during the year on the policy's anniversary date (July 1). Z is required to withhold 20 percent of the annual increase in value of the "prepaid premium" on July 1 (the date that the interest is credited to pay the premium due).

§ 31.3406(b)(1)–1 Reportable payment.

(a) *In general.* For purposes of backup withholding under section 3406, the term "reportable payment" means—

(1) Any reportable interest or dividend payment (as defined in section 3406(b)(2) and paragraph (b) of this section), and

(2) Any other reportable payment (as defined in section 3406 (b) (3) and paragraph (c) of this section).

The determination of whether a payment is reportable and thus subject to withholding under section 3406 is made without regard to the amount of the payment. A payor may elect under § 31.3406(b)(4)–1, however, not to withhold from certain minimal payments.

(b) *Reportable interest or dividend payment defined.* The term "reportable interest or dividend payment" means—

(1) Interest subject to reporting under section 6049 (as described in § 31.3406(b)(2)–1),

(2) Original issue discount subject to reporting under section 6049 (as described in § 31.3406(b)(2)–2),

(3) Window transactions subject to reporting under section 6049 (as described in § 31.3406(b)(2)–3),

(4) Dividends subject to reporting under section 6042 (as described in § 31.3406(b)(2)–4), and

(5) Certain patronage dividends subject to reporting under section 6044 (as described in § 31.3406(b)(2)–5).

(c) Other reportable payment defined. The term "other reportable payment" means—

(1) Rents, commissions, nonemployee compensation, and other payments subject to reporting under section 6041 or 6041A(a) (as described in § 31.3406(b)(3)–1),

(2) Barter exchange or broker transactions subject to reporting under section 6045 (as described in § 31.3406(b)(3)–2),

(3) Certain payments by certain fishing boat operators subject to reporting under section 6050A (as described in § 31.3406(b)(3)–3), and

(4) Payments of royalties subject to reporting under section 6050N (as described in § 31.3406(b)(3)–4).

§ 31.3406(b)(2)–1 Reportable interest payment.

(a) *Interest subject to withholding*—(1) *In general.* Backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6049 (relating to returns regarding interest and original issue discount), subject to the special rules of § 31.3406(b)(2)–2 (relating to original issue discount), and § 31.3406(b)(2)–3 (relating to window transactions). If the payment is not of a kind subject to reporting because the payment is not defined as "interest" in section 6049(b) and in § 1.6049–5 (a) and (b), then the payment is not subject to backup withholding. Additionally, if the payment is not to a payee subject to reporting under section 6049 because it is made to a person described in section 6049(b)(4) or § 1.6049–4(c)(1)(ii), the payment is not subject to backup withholding. After a determination is made under section 6049 that an information return is required, the payor is required to deduct and withhold the tax under section 3406 if any of the four conditions for imposing backup withholding exists with respect to a payee (as described in § 31.3406(a)–1 (a) and (b)). The amount subject to backup withholding under section 3406 is described in paragraph (b) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment described in § 31.3406(g)–1.

(2) *Special rule for tax-exempt interest.* When an issuer is required to make an information return under § 1.6049–4(d)(8) because a payee incorrectly provided a signed written statement on the envelope or "shell" claiming that the interest was exempt from taxation under section 103 (a) (as described in § 1.6049–5(b)(2)), the issuer is not required to impose backup withholding under section 3406.

(3) *Examples.* The application of the provisions of this paragraph (a) may be illustrated by the following examples:

Example (1). Bank M pays interest to A, an individual, on a deposit that A maintains with M. Since the payment is of a kind that is subject to reporting under section 6049 and § 1.6049–5(a)(3) and the payee is not an exempt recipient as defined in § 31.3406(g)–1, M is required to withhold under section 3406 if any of the four conditions for imposing backup withholding exists with respect to A.

Example (2). Assume the same facts as in *Example (1)* except that Bank M pays such interest to Corporation X. The payment to X is not subject to information reporting under section 6049 since M is making payment to a person described in § 1.6049–4(c)(1)(ii)(A). Accordingly, M is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to X.

Example (3). Individual B presents an interest coupon from a tax-exempt obligation to Bank N. B properly completes the "shell" used for processing the coupon (*i.e.*, he includes his name, address, and taxpayer identification number on the shell) and claims that the interest is exempt from taxation (as required by § 1.6049–5(b)(2)). N is not required to make an information return under section 6049 because the payment is not of a kind subject to reporting under section 6049 (as described in § 1.604–5(b)(2)). Accordingly, N is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to B. In addition, under paragraph (a)(2) of this section, the issuer who receives the shell is not required to withhold even if the interest is not exempt from taxation. If, however, B did not properly complete the shell, by including his taxpayer identification number, N may not treat the interest as tax-exempt and N is required to withhold because B did not include his taxpayer identification number on the shell.

Example (4). Credit Union O pays "dividends" that are considered interest under section 6049 to nonresident alien individual C on a deposit C has with O. C certifies on Form W–8 (or other permissible form as described in § 1.6049–5(g)) that he is not a United States citizen or resident. If O is required to make an information return under section 6049 with respect to the payment to C as required by § 1.6049–5(e)(2), O is not required to withhold under section 3406 as provided in § 31.3406(g)–1(d).

Example (5). Individual D places money in escrow with P to guarantee performance on a contract. P is not a financial institution that pays interest subject to reporting under section 6049(b)(1) (B) or (C) and § 1.6049–5(a) (2) or (3). P is not required to make an information return under section 6049 because the payment is not of a kind subject to reporting under section 6049 (as described in §§ 1.6049–5(b)(3) or 1.6049–5(b)(5)). Accordingly, P is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to D. If, however, P is a financial institution that pays interest described in section 6049(b)(1) (B) or (C) and § 1.6049–5(a) (2) or (3), P would be required to withhold under section 3406 if any of the four conditions for imposing backup withholding exists.

(b) *Amount subject to withholding*—(1) *In general.* The amount of interest subject to withholding under section 3406 is the amount subject to reporting under section 6049 except as provided in paragraph (b)(2) of this section.

(2) *Withholding adjustment for penalty for premature withdrawal*—(i) *Special rule.* Solely for purposes of computing the amount subject to backup withholding, the payor may elect not to withhold from the portion of any interest payment that is not received by the payee because of the imposition of a penalty for premature withdrawal of funds deposited in a time savings account, certificate of deposit, or similar class of deposit.

(ii) *Examples.* The application of the provisions of this paragraph (b)(2) may be illustrated by the following examples:

Example (1). A, an individual, deposits $10,000 in a 4-year savings account with Bank M on January 2, 1985, which earns 10.75 percent interest per annum payable quarterly. A does not provide M with a social security number. A must pay a penalty equal to the previous 3 months' interest if the funds are withdrawn prior to January 2, 1989. On March 31, 1985, A's funds earn $268.75 in interest. Backup withholding under section 3406 will apply to the amount of interest ($268.75) paid on that date. The fact that M may impose a penalty on A after the interest is paid and the tax is withheld should A prematurely withdraw the funds is irrelevant because M has not, in fact, imposed a penalty.

Example (2). Assume the same facts as in Example (1) except that A withdraws the funds on September 30, 1985. A penalty in the amount of $280.43 (*i.e.*, an amount equal to the previous 3 months' interest earned by A) is imposed on A. M is not required to withhold any amount on that date since the penalty imposed on A is equal to the interest earned by A that quarter. At M's option, however, M may withhold 20 percent of the $280.43 payment of interest. In either event, M is not relieved of the requirement under section 6049 to report the $280.43 of quarterly interest payment made to A.

§ 31.3406(b)(2)–2 Original issue discount.

(a) *Original issue discount subject to withholding.* Under section 6049(d)(6) and § 1.6049–5(k), original issue discount is treated as a payment of interest. The amount of original issue discount subject to backup withholding under section 3406 is the amount subject to reporting under section 6049, but is limited to the amount of cash paid. In addition, if an original issue discount obligation, subject to reporting under section 6045, is sold prior to maturity and a condition exists for imposing backup withholding on such gross proceeds, then backup withholding under § 31.3406(b)(3)–2 applies to the gross proceeds of the sale reportable under section 6045.

(b) *Time and amount subject to backup withholding with respect to short-term obligations*—(1) *No payment prior to maturity.* In the case of an obligation with a fixed maturity date not exceeding 1 year from the date of issue (a "short-term obligation") with respect to which there is no interest payable prior to maturity, backup withholding under section 3406 applies to the amount of original issue discount which is includible in the gross income of the

holder. Backup withholding applies at the maturity of the obligation when the face amount of the obligation is paid.

(2) *Payment prior to maturity.* In the case of a short-term obligation with respect to which there is interest payable prior to maturity, backup withholding under section 3406 applies only to the actual interest payments made prior to maturity and not to any amount of original issue discount. Backup withholding shall be computed on the stated interest payment, and 20 percent of the actual interest payment shall be withheld at the time the interest is paid. At maturity, the amount subject to backup withholding shall be the sum of any interest payment made at that time and the total original issue discount that is includible in gross income of the holder and shall be withheld upon at that time.

(c) *Transferred short-term obligations*—(1) *Subsequent holder may establish purchase price.* At maturity of a short-term obligation, a subsequent holder (*i.e.*, any person who purchased the obligation after the obligation was issued to the original holder) may establish the price at which the subsequent holder purchased the obligation. The purchase price paid by such a subsequent holder shall then be treated as the original issue price for purposes of computing the amount of original issue discount subject to backup withholding under section 3406. The purchase price of an obligation may be established by confirmation receipt or other record of a similar type or, if the obligation is redeemed by or through the person from which the obligation was purchased, by the records of the person from which or through which the obligation was purchased. The subsequent holder is not required to certify under penalties of perjury that the purchase price is correct.

(2) *If subsequent holder is unable to establish purchase price.* If a subsequent holder fails to establish the purchase price of the obligation (as provided in paragraph (c)(1) of this section), then the person redeeming the obligation shall determine the amount subject to backup withholding under section 3406 as though the obligation had been purchased by the holder on the date of issue. If the person redeeming the obligation is the issuer of the obligation, then the issuer shall determine the amount subject to backup withholding through its records. If the person redeeming the obligation is a person other than the issuer of the obligation, then the person shall determine the amount subject to backup withholding by using the issue price indicated in the Internal Revenue Service publication of publicly-traded original issue discount obligations or in standard financial sources. (See § 1.6049–5(k)). In the case of a Treasury bill, the purchase price shall be assumed to be the noncompetitive price of a Treasury bill having the earliest issue date of all Treasury bills with the same CUSIP number and the same maturity date as the bill being redeemed.

(3) *If obligation is transferred.* If a short-term obligation is transferred, no part of the purchase price is considered a reportable interest payment under section 6049. Backup withholding under section 3406 applies, however, to the gross proceeds of the sale of the obligation if the transfer is subject to reporting under section 6045 and a condition exists for imposing backup withholding. For the rules regarding backup withholding where an amount is subject to reporting under section 6045, see § 31.3406(b)(3)–2.

(d) *Time and amount subject to withholding with respect to long-term obligations*—(1) *No payments prior to maturity.* In the case of an obligation with a fixed maturity date that is more than 1 year from the date of issue (a "long-term obligation") with respect to which there are no cash payments (whether consisting of interest or principal) prior to maturity, backup withholding applies only at maturity and only with respect to the original issue discount includible in the income of the holder during the calendar year in which the obligation matures. For purposes of this section, the term "cash payments" includes checks and other monetary media of exchange.

(2) *Registered long-term obligations with payments prior to maturity.* In the case of a long-term obligation that is in registered form and that provides for cash payments (whether consisting of interest or principal) prior to maturity, the amount subject to backup withholding under section 3406 shall be the sum of the amount of stated interest paid and the amount of original issue discount that is includible in the gross income of the holder for that calendar year in which the cash payments are made. Backup withholding applies at the time the cash payments are made. The amount required to be withheld at the time of any cash payment, however, shall not exceed the amount of the cash payment made. If more than one payment is made during a calendar year, the tax that is required to be withheld with respect to original issue discount shall be allocated among all the cash payments in the ratio that each cash payment bears to the total of the cash payments. Thus, if two equal cash payments of stated interest are made during the calendar year, one-half of the original issue discount includible in gross income of the holder for that calendar year shall be taken into account in computing the tax which must be withheld from each cash payment.

(3) *Bearer long-term obligations*—(i) *Payments prior to maturity.* In the case of a long-term obligation that is in bearer form and with respect to which there is stated interest payable prior to maturity, backup withholding applies only to the stated interest payment and not to any amount of original issue discount. Backup withholding applies to the stated interest payment at the time the stated interest is paid.

(ii) *Payments at maturity.* Backup withholding applies to the sum of any stated interest payment made at maturity and the total amount of original issue discount that is includible in the gross income of the holder during the calendar year of maturity.

(e) *Transferred long-term obligations*—(1) *Subsequent holder.* In the case of a long-term obligation that is transferred after its issuance from the original holder, the amount subject to backup withholding is the amount of original issue discount includible in the gross income of all holders during the calendar year (without regard to any amount paid by a subsequent holder at the time of transfer). If the person redeeming the obligation at maturity is the issuer of the obligation, then the issuer shall determine the amount subject to backup withholding through its records by treating the holder as if he were the original holder. If the person redeeming the obligation at maturity is a person other than the issuer of the obligation, then the person shall determine the amount subject to backup withholding by using the original issue price indicated in the Internal Revenue Service publication of publicly-traded original issue discount obligations or in standard financial sources. (See § 1.6049–5(k)).

(2) *If obligation is transferred.* If a long-term obligation is transferred after original issuance, no part of the purchase price is considered a reportable interest payment under section 6049. Backup withholding under section 3406 applies, however, to the gross proceeds of the sale of the obligation if the transfer is subject to reporting under section 6045 and a condition exists as described in § 31.3406(a) for imposing backup withholding on such gross proceeds. For the rules regarding backup withholding where an amount is subject to reporting under section 6045, see § 31.3406(b)(3)–2.

(f) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). On January 1, 1990, individual A purchases at original issue, for $7,000 cash, X Corporation's 5-year bond which has a stated redemption price at maturity of $10,000. A does not furnish a social security number to X. The bond does not provide for any interest or principal payments prior to maturity. The ratable monthly portion of original issue discount determined under section 1272(a)(1) is $50. If A holds the bond for 12 months of his taxable year, A must include $600 (i.e., $50 × 12 months) in his gross income for that year and in each subsequent year that he holds the bond for the entire 12 months. No amount of the $600 of original issue discount includible in A's gross income each year is subject to backup withholding under section 3406 since no amount of cash has been paid. Assume that A holds the bond until maturity on December 31, 1994, and the bond is redeemed for $10,000 on that date. Since A has not furnished a social security number to X, backup withholding applies to the amount of original issue discount includible in A's gross income during the calendar year ($600). X is not required to make an information return under section 6045 (*i.e.*, the retirement is described in § 5f.6045–1(c)(3)(x)). X is required to withhold only on the $600 (the amount of original issue discount includible in A's gross income).

Example (2). Assume the same facts as in *Example (1)* except that A does not hold the bond until maturity but rather sells it to B on January 1, 1994, for $9,540. The gross proceeds of the sale are subject to backup withholding if the sale is required to be reported under section 6045. See § 31.3406(b)(3)–2. When X redeems the bond at maturity, the amount subject to backup withholding is the $600 of original issue discount accrued during 1994 even though B paid more for the bond than the sum of the original issue price and the amount of the original issue discount includible in A's gross income. Under paragraph (e)(1) of this section, B, as a subsequent holder, is treated the same as the original holder for purposes of determining the amount subject to withholding on redemption.

Example (3). Assume the same facts as in *Example (2)* except that the sale occurs on March 1, 1994, and B provides a social security number to X. Even though $100 (*i.e.*, $50 x 2 months) of original issue discount has accrued with respect to A (who has not provided a social security number to X) during 1994, no amount of original issue discount is subject to backup withholding at maturity since B has provided a social security number to X.

Example (4). On January 1, 1994, Individual D purchases a Treasury bill with a maturity of 52 weeks at the original issue price of $8,736. At maturity on December 31, 1994, D redeems the bill for $10,000 but fails to furnish a social security number. The amount subject to backup withholding on the date of maturity is $1,264 (the difference between the stated redemption price at maturity, $10,000, and D's purchase price for the obligation, $8,736).

Example (5). Assume the same facts as in *Example (4)* except that D sells the Treasury bill on March 1, 1994, to Individual E through Broker Y. E does not furnish a social security number to Y. E pays $8,940 for the bill. Although no part of the purchase price is a reportable interest payment under section 6049, Y is required to report the sales proceeds under section 6045. Consequently, Y is required to withhold 20 percent of the $8,940 gross proceeds paid to D under § 31.3406(b)(3)–2 if D does not furnish a social security number to Y. E redeems the Treasury bill through Y at maturity. E establishes through Y's records that E paid $8,940 for the Treasury bill on March 1, 1994. The amount subject to backup withholding at maturity is $1,060 (the difference between the stated redemption price at maturity, $10,000, and E's purchase price of $8,940).

Example (6). On January 1, 1985, F, an individual, purchases at original issue, for $7,500 cash, Z Corporation's 30-year bond which has a stated redemption price at maturity of $10,000. The bond provides for annual interest payments of $1,000. F does not furnish Z with a social security number. Assuming F holds the bond for all of calendar year 1985, the amount of original issue discount which is includible in F's gross income during 1985 is $7.83. On December 31, 1985, Z makes its $1,000 interest payment to F. Z must withhold $201.56 (i.e., 20 percent of $1,007.83) on that date.

Example (7). Broker G acquires a bond issued in 1980 by the United States Treasury through the Bureau of Public Debt. Broker G sells interests in the bond to the public after December 31, 1982. A purchaser may acquire an interest in any interest payment falling due under the bond or an interest in the principal of the bond. Under section 1273, each bond component is treated as an obligation issued with original issue discount equal to the excess of the stated redemption price at maturity over the purchase price of the bond component. The interests sold by G are obligations of a type offered to the public. The bond is held by Custodian H for the benefit of the persons acquiring these interests. On receipt of interest and principal payments under the bond, Custodian H transfers the amount received to the person whose ownership interest corresponds to the bond component giving rise to the payment. On January 1, 1984, Individual J, a calendar year taxpayer, purchases from G, for $828.45 cash, a $1,000 interest coupon payable on December 31, 1985. J does not provide G or H with a social security number. During 1984, J must include $82.65 in income (i.e., the amount of original issue discount accruing during 1984). No amount, however, is subject to backup withholding under section 3406 since no cash payment is made. During 1985, J must include $90.90 in income (i.e., the amount of original issue discount accruing during 1985). On December 31, 1985, H is required to withhold $18.18 (20 percent of $90.90) and then pays J $981.82 ($1,000 minus $18.18).

§ 31.3406(b)(2)–3 Window transactions.

(a) *Requirement to withhold.* Backup withholding under section 3406 applies to a "window transaction" as defined in section 3406(b)(7) and paragraph (b) of this section only where the payee does not furnish a taxpayer identification number to the payor in the manner required in paragraph (c) of this section. Backup withholding does not apply to a "window transaction" when the Internal Revenue Service notifies the payor of an incorrect taxpayer identification number or notified payee underreporting. The payee in a window transaction also is not required to certify under penalties of perjury that the payee is not subject to backup withholding due to notified payee underreporting (as described in § 31.3406(d)–2(b)(2)).

(b) *Window transaction defined.* The term "window transaction" means a payment of interest with respect to any of the following obligations:

(1) An interest coupon which is subject to taxation (*i.e.*, other than interest described in § 1.6049–5(b)(2)),

(2) A United States savings bond, or

(3) A discount obligation having a maturity at issue of 1 year or less, including commercial paper and bankers' acceptances that are in definitive form (*i.e.*, evidenced by a paper document other than a confirmation receipt) but not including short-term government obligations (as defined in section 1271 (a) (3) (B)).

(c) *Manner of furnishing taxpayer identification number in the case of a window transaction.* A payee must furnish his taxpayer identification number to the payor with respect to a window transaction either orally or in writing. The payee is not required to certify, under penalties of perjury, that the taxpayer identification number provided is correct. The number must be furnished at the time that the window transaction occurs. See § 31.3406(g)–3(c)(1)(i), which provides that a payee may not claim he is awaiting receipt of a taxpayer identification number with respect to a window transaction. Thus, a payor is required to withhold 20 percent of a reportable interest payment paid in a window transaction as described in this paragraph only if the payee fails to furnish a taxpayer identification number or furnishes an obviously incorrect number as described in § 31.3406(h)–1(a)(2).

(d) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). Individual A presents five Series EE savings bonds to Bank X for payment on January 3, 1994. Bank X is required to make an information return under section 6049 if $10 or more of interest is paid. A provides orally to X a social security number containing nine digits. A does not

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certify under penalties of perjury that the number provided is his correct social Security number. X is not required to withhold on such payment because payments of interest on United States savings bonds are window transactions and A has furnished a taxpayer identification number to X.

Example (2). Assume the same facts as in *Example (1)* except that A has other accounts with X and the Internal Revenue Service has notified X that the taxpayer identification number that A furnished on a savings account A maintains with X is incorrect (pursuant to section 3406(a)(1)(B)). X is not required to withhold on the payment on the savings bonds. X is not required to check its records to determine whether A has provided the taxpayer identification number which it has been notified is incorrect. X is only required to withhold if A does not provide a taxpayer identification number or provides an obviously incorrect number.

Example (3). Individual B presents a taxable interest coupon to Bank Y for payment. Bank Y is required to make an information return under section 6049 if the coupon represents $10 or more of interest. B maintains other accounts with Y and requests Y to deposit the amount of the interest coupon to his account. The Internal Revenue Service has notified Y that B is subject to backup withholding pursuant to section 3406(a)(1)(C). B furnishes a social security number to Y at the time of the window transaction. Because payments on interest coupons are window transactions, B is not required to certify that his taxpayer identification number is correct or that he is not subject to backup withholding due to notified payee underreporting. Y is also not required to check its records to see whether B is subject to backup withholding. Consequently, Y is not required to withhold on the coupon because B furnished his social security number in the manner required in paragraph (c) of this section.

Example (4). Partnership M requests that Bank Z redeem an interest coupon at maturity that Z is holding as a custodian for M and deposit the funds into M's account. Z is required to make an information return under section 6049 if $10 or more of interest is paid. Z asks M for its employer identification number, and M provides a nine-digit number. M does not certify its taxpayer identification number or certify that it is not subject to backup withholding due to notified payee underreporting. Z is not required to withhold since M has furnished its taxpayer identification number to Z. The payment on the interest coupon is considered a window transaction even though M does not present the interest coupon at a bank window for payment.

§ 31.3406(b)(2)–4 Reportable dividend payment.

(a) *Dividends subject to withholding.* Except as provided in paragraph (c) of this section, backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6042 (relating to returns regarding payments of dividends and corporate earnings and profits). If the payment is not of a kind subject to reporting under section 6042 because it is not defined as a "dividend" under section 6042 (b) or § 1.6042–3, then the payment is not subject to backup withholding. Additionally, if the payment is not to a payee subject to reporting under section 6042 because, for example, it is made to a payee that is excluded from the definition of a person (as described in § 1.6042–2(a)(2)) to whom a payment is subject to reporting under section 6042, the payment is not subject to backup withholding. After the determination is made under section 6042 that an information return is required, the payor is required to deduct and withhold the tax under section 3406 if any of the four conditions for imposing backup withholding exists (as described in § 31.3406(a)–1 (a) and (b)). The amount subject to backup withholding under section 3406 is described in paragraph (d) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment made to a payee described in § 31.3406(g)–1(a) (relating to exempt recipients).

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). Corporation Z makes a distribution to individual shareholder E who has not furnished a social security number to Z. The distribution is a dividend as defined in section 316 and is subject to reporting under section 6042(b)(1)(A) and § 1.6042–3(a)(1). Since Z is required to make an information return under section 6042 and E has not provided a social security number, Z is required to withhold under section 3406.

Example (2). Assume the same facts as in *Example (1)* except that Z makes payment to State Q. State Q is not a person (as defined in § 1.6042–2(a)(2)) a payment to whom is subject to reporting under section 6042. Since Z is not required to make an information return under section 6042, Z also is not required to withhold under section 3406 even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to Q.

Example (3). Assume the same facts as in *Example (1)* except that the distribution is not from current or accumulated earnings and profits but rather a return of capital. Because the distribution is not a dividend subject to reporting under section 6042, Z is not required to make an information return under section 6042. Accordingly, Z is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to E.

Example (4). Corporation S makes payment to foreign Corporation T. The payment is subject to withholding under section 1442 or would be subject to withholding under section 1442 but for the provisions of a treaty. The payment is not subject to reporting under section 6042 because it is excepted from the definition of a dividend subject to reporting under § 1.6043–3(b)(2). Because S is not required to make an information return under section 6042, S is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists.

(c) *Dividends not subject to withholding.* Except as provided in § 31.3406(b)(3)–2 (relating to transactions reportable under section 6045), backup withholding under section 3406 shall not apply to—

(1) Any amount treated as a taxable dividend by reason of section 302 (relating to redemptions of stock);

(2) Any amount treated as a taxable dividend by reason of section 306 (relating to disposition of certain stock);

(3) Any amount treated as a taxable dividend by reason of section 356 (relating to receipt of additional consideration in connection with certain reorganizations);

(4) Any amount treated as a taxable dividend by reason of section 1081(e)(2) (relating to certain distributions pursuant to an order of the Securities and Exchange Commission);

(5) Any exempt-interest dividend, as defined in section 852(b)(5)(A), paid by a regulated investment company;

(6) Any amount paid or treated as paid during a year by a regulated investment company provided that the payor reasonably estimates, as provided in paragraph (d)(2) of this section, that 95 percent or more of all dividends paid or treated as paid during the year are exempt-interest dividends; or

(7) Effective for distributions before 1986, any dividend that is reinvested pursuant to a qualified plan in stock of a public utility. For this purpose, the amount of the reinvested dividend paid to any person, the identity of the recipient, and whether the recipient makes the election required by section 305(e)(2)(B) are irrelevant.

(d) *Amount subject to withholding—*

(1) *In general.* The amount of a dividend subject to withholding under section 3406 is generally the amount subject to reporting under section 6042, including any dividend which is reinvested pursuant to a plan under which a shareholder may elect to receive stock as a dividend instead of property. Except as otherwise provided in this paragraph (d), backup withholding applies to the entire amount of the distribution.

(2) *Reasonable estimate of amount of dividend subject to withholding.* Pursuant to section 6042(b)(3) and § 1.6042–3(c), if the payor is unable to determine the portion of a distribution that is a dividend, the entire amount of the distribution shall be treated as a dividend for information reporting under section 6042. Hence, backup withholding applies to the entire amount of the distribution. If a payor is able reasonably to estimate under section 6042 and § 1.6042–3(c) the portion of a distribution that is not a dividend, however, the payor shall not withhold on that portion (which is not considered a dividend). A payor making a payment, all or a portion of which may not be a dividend, may use previous experience to estimate the portion of the payment which is not a dividend. An estimate of the portion of a distribution that is not a dividend shall be considered reasonable if:

(i) The estimate does not exceed the proportion of the distributions made by the payor during the most recent calendar year for which Form 1099 was required to be filed which was not reported by the payor as a dividend, and

(ii) The payor has no basis to expect that the proportion of the distribution that is not a dividend will be substantially different for the current year.

(3) *Reinvested dividends.* In the case of a dividend paid pursuant to a dividend reinvestment plan (other than a dividend described in paragraph (c)(7) of this section), backup withholding under section 3406 shall apply, pursuant to § 31.3406(a)–4(a), at the time the dividend is made available to the shareholder or credited to the shareholder's account. Backup withholding applies to the amount made available to the shareholder or credited to the shareholder's account. At the discretion of the payor, backup withholding under section 3406 need not be applied to any excess of the fair market value of the shares of stock received by the shareholder or credited to the shareholder's account over the purchase price of such shares (including shares acquired by the shareholder at a discount in connection with the dividend distribution) or to any fee that is paid by the payor in the nature of a broker's fee for purchase of the stock or service charge for maintenance of the shareholder's account. Thus, the payor is not required to impose backup withholding on any amount in excess of the actual cash value of the dividend declared that the payee would have received had the payee not been a participant in the dividend reinvestment plan.

The payor must, however, treat any excess amounts and fees on a consistent basis for each calendar year.

§ 31.3406 (b)(2)–5 Reportable patronage dividend.

(a) *Patronage dividends subject to withholding.* Except as otherwise provided in paragraph (c) of this section, backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6044 (relating to returns regarding patronage dividends). If the payment is not of a kind subject to reporting under section 6044 because it is not described in section 6044 (b) and § 1.6044–3, then such payment is not subject to backup withholding. Additionally, if the payment is not subject to reporting under section 6044 because it is made to a payee that is excluded from the definition of a person (as described in § 1.6044–2 (a)(2)) to whom a payment is subject to reporting under section 6044, the payment is not subject to backup withholding. After the determination is made under section 6044 that an information return is required, the payor is required to deduct and withhold the tax under section 3406 if any of the four conditions for imposing backup withholding exists with respect to the payee (as described in § 31.3406 (a)–1 (a) and (b)). The amount subject to withholding under section 3406 is described in paragraph (c) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment made to a payee described in § 31.3406 (g)–1 (a) (relating to exempt recipients).

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). Cooperative K pays Individual F a patronage dividend (as defined in section 1388 (a)). The payment is an amount subject to reporting under section 6044 and § 1.6044–3 (a) (1) (i). Since K is required to make an information return under section 6044, K is required to withhold 20 percent of the amount described in paragraph (c) of this section if any of the four conditions for imposing backup withholding exists with respect to F.

Example (2). Assume the same facts as in *Example (1)* except that the payment is made to a political subdivision of the United States, which is not a person (as defined in § 1.6044–2 (a) (2)) a payment to whom is subject to reporting under section 6044. K is not required to make an information return under section 6044 because K does not make payment to a payee subject to reporting. Accordingly, K is not required to withhold under section 3406 even if one of the four conditions for imposing backup withholding exists with respect to the political subdivision.

(c) *Amount subject to withholding—*

(1) *Failure to provide taxpayer identification number or notification of incorrect taxpayer identification number.* Except as provided in paragraph (c) (2) of this section, the amount of a payment of a kind and to a payee that is subject to withholding under section 3406 is the amount subject to reporting under section 6044, but only to the extent such payment is made in money. For purposes of this paragraph, money includes cash or a qualified check (as defined in section 1388 (c)(4)). Thus, the payor shall, when required, withhold 20 percent of the amount required to be reported under section 6044, but only if it is paid in cash or by qualified check.

(2) *Notified payee underreporting or payee certification failure.* For purposes of section 3406 (a)(1) (C) and (D), the amount of a payment that is subject to backup withholding under section 3406 is the amount subject to withholding under paragraph (c)(1) of this section, but only if 50 percent or more of that reportable amount is paid in money. Therefore, in the case where there has been a notified payee underreporting described in section 3406 (c) or § 31.3406 (c)–1 or there has been a payee certification failure described in section 3406 (d) or § 31.3406 (d)–2 and the payor makes a payment subject to reporting under section 6044 of which 50 percent or more is made in cash or by qualified check, the payor is required to withhold 20 percent of the cash or qualified check. If less than 50 percent of the payment is made in cash or by qualified check, no amount is subject to backup withholding.

(3) *Examples.* The application of the provisions of paragraph (c) of this section may be illustrated by the following examples:

Example (1). Cooperative L pays Individual G a $500 patronage dividend consisting of $100 in cash and $400 in a qualified written notice of allocation (as defined in section 1388 (c) (1) (B)). G does not furnish his taxpayer identification number to L. L is required to withhold $20 (20 percent of $100, the amount paid in cash or by qualified check).

Example (2). Assume the same facts as in *Example (1)* except that Individual G fails to certify with respect to a membership established on or after January 1, 1984, that he is not subject to backup withholding due to notified payee underreporting. In the case where there has been a payee certification failure, L is not required to withhold under section 3406 because less than 50 percent of the reportable payment is made in cash or by qualified check.

Example (3). Assume the same facts as in *Example (1)* except that G receives a $500 per-unit retain (as defined in section 1388 (f)) as a qualified per-unit retain certificate (as defined in section 1388 (g)) instead of cash or

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a qualified written notice of allocation. L is not required to withhold even though G failed to furnish his taxpayer identification number because backup withholding is limited to the amount paid in cash or by qualified check.

Example (4). Cooperative M pays individual H a patronage dividend consisting of $350 in cash, $280 by a qualified check, and $400 in a qualified written notice of allocation. H fails to certify with respect to a membership established on or after January 1, 1984, that he is not subject to backup withholding due to notified payee underreporting. Accordingly, M is required to withhold $120 (20 percent of $600, the amount paid in cash or by qualified check).

Example (5). Assume the same facts as in *Example (4)* except that the patronage dividend consists of $100 in cash, $250 by a qualified check, and $650 in a qualified written notice of allocation. M is not required to withhold even though there is a payee certification failure because less than 50 percent of the patronage dividend is paid in cash or by qualified check.

§ 31.3406(b)(3)–1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) *Section 6041 and 6041A (a) payments subject to withholding.* Backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6041 (relating to information reporting of rents, salaries, commissions, etc.) or with respect to any payment of a kind, and to a payee, that is required to be reported under section 6041A(a) (relating to information reporting of payments to nonemployees for services). If the payment is not subject to reporting under section 6041A(b) (relating to information reporting of direct sales), the payment is not subject to backup withholding. If the payment is not of a kind subject to reporting under section 6041 as described in § 1.6041–3, then the payment is not subject to backup withholding. Additionally, if the payment is not to a payee that is subject to reporting under section 6041 or 6041A(a), then the payment is not subject to backup withholding. See § 31.3406(g)–1(a)(3) for provisions relating to how a payor determines that a payee is exempt from information reporting under section 6041 or 6041A(a). Except as provided in paragraph (b)(2) of this section, after the determination is made that an information return is required under section 6041 or 6041A(a), the payor is required to deduct and withhold the tax under section 3406 if the payee does not furnish his taxpayer identification number to the payor in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the payor that the taxpayer identification number that the payee furnished the payor is incorrect as described in § 31.3406 (d)–5. The amount subject to withholding under section 3406 is described in paragraph (b) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment made to a payee described in § 31.3406(g)–1(a) (relating to exempt recipients).

(b) *Amount subject to withholding*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section, the amount subject to backup withholding under section 3406 is the amount subject to reporting under section 6041 or section 6041A(a). For purposes of this paragraph, any amount that is specifically excluded from information reporting under section 6042(a)(1), 6047(a), 6049(a), or 6050N(a) and the regulations issued thereunder is not thereby subject to backup withholding under § 31.3406(b)(3)–1.

(2) *Special rule with respect to payments aggregating $600 or more for the calendar year.* In making the determination of whether an information return is required to be made under section 6041 or 6041A(a), the payor shall determine whether the aggregate amount of the current payment and all previous payments to the payee during the calendar year aggregate $600 or more. See paragraph (b)(3) of this section for determining whether reportable payments aggregate $600. If payments to any person that are subject to reporting under section 6041 or 6041A(a) aggregate $600 or more during the calendar year, the payor is required to make an information return and correspondingly may be required to deduct and withhold 20 percent under section 3406. The amount subject to withholding is the entire amount of the payment that causes the total amount paid to the payee to equal $600 or more and the amount of any subsequent payments made to the payee until the payee furnishes or corrects the taxpayer identification number. If, however, the payor was required to make an information return under section 6041 or 6041A(a) for the preceding calendar year with respect to payments to the payee or the payor was required to withhold under section 3406 during the preceding calendar year with respect to payments to the payee that were reportable under section 6041 or 6041A(a), then the payor shall deduct and withhold 20 percent of any payment made to the payee during the calendar year, regardless of whether the payor's payments to the payee equal or exceed $600 for the year, until the payee furnishes or corrects the taxpayer identification number. See § 31.6051–4 for the requirement to furnish a statement to the recipient in all cases where tax is withheld under section 3406. The $10 minimal payment exception described in § 31.3406(b)(4)–1 does not apply with respect to payments subject to reporting under section 6041 or 6041A(a). This paragraph (b)(2) does not apply to gambling winnings (as provided in § 31.3406(g)–2(e)(1)).

(3) *Determination of whether payments aggregate $600 or more.* In making the determination of whether payments to a payee aggregate $600 or more during a calendar year for purposes of backup withholding, the payor must aggregate *only* payments of the same kind made to the same payee. For this purpose, payments are of the same kind if they are of the same type, not if they are reportable under the same section, For example, a payor is not required to aggregate rental payments to a payee with premium payments to the same payee even though both payments are reportable under section 6041. In addition, a payor with different paying departments making reportable payments of the same kind is not required to aggregate payments made by all the departments unless it is the payor's customary method to aggregate those payments, A payor may, in its discretion, aggregate—

(i) Payments not of the same kind to the same payee, reportable under either section 6041 or 6041A(a), and/or

(ii) Payments reportable under section 6041 with payments reportable under section 6041A(a).

(4) *Exceptions.* Backup withholding does not apply to net commissions paid to unincorporated special agents with respect to insurance policies that are subject to reporting under section 6041, provided that no cash is actually paid by the payor to the special agent.

(5) *Examples.* The application of the provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). A, in the course of his trade or business, pays rent to B, an individual who is not a real estate agent. A pays B $200 on June 30, 1984, and $200 on December 31, 1984. B does not furnish his taxpayer identification number to A. A has not made any rental payments to B in the preceding year. A is not required to make an information return under section 6041 since the aggregate payments to B do not exceed $600 during the calendar year. A is not required to withhold 20 percent of the payments under section 3406 because A is not required to make an information return under section 6041 and A did not make any payments to B in the preceding year that would have required A to withhold in 1984.

Example (2). Assume the same facts as in *Example (1)* except that A also pays $400 to B during 1984 as nonemployee compensation which is reportable under section 6041A (a). A is not required to aggregate the payments made to B under section 6041 with the payments made to B under section 6041A (a). Thus, the result is the same as in *Example (1)* because A did not pay B $600 or more during 1984 in payments of a type which are reportable under the same section. A may, however, aggregate the payments. If A aggregates the payments, A would be required to withhold under section 3406.

Example (3). Assume the same facts as in *Example (1)* except that A paid B over $600 of rental payments during 1983 (the preceding calendar year). A was required to make an information return for 1983. Even though A did not pay B $600 or more during calendar year 1984, A is required under section 3406 to withhold 20 percent of each $200 payment made to B in 1984 because A did not receive B's taxpayer identification number. A is required to continue to withhold on the rental payments made to B, including payments made in the subsequent calendar year, until A receives B's taxpayer identification number. A is required to file an information return with respect to the payments made to B in 1984 (even though such payments do not equal or exceed $600) because A backup withheld on those amounts.

Example (4). C, in the course of his trade or business, pays D $200 for machine hire on January 1, $100 on February 1, $50 on March 1, $75 on April 1, $115 on May 1, $60 on June 1, and $150 a month on the first day of each month from July through December of 1984. D does not furnish a taxpayer identification number to C at any time during 1984. C did not make any machine hire payments to D in the preceding calendar year. C is required to withhold 20 percent of the $60 payment made on June 1 (*i.e.*, the payment that causes the aggregate payments to D to equal or exceed $600) and of every payment made thereafter until C receives D's taxpayer identification number.

Example (5). Assume the same facts as in *Example (4)* except that C receives D's taxpayer identification number on March 19, 1984. C is not required to withhold 20 percent of the payments made during the year since C receives D's taxpayer identification number before C paid $600 of machine hire payments to D.

Example (6). Assume the same facts as in *Example (4)* except that C receives D's taxpayer identification number on June 15, 1984. C is required to withhold 20 percent of the payment on June 1 because D does not receive D's taxpayer identification number prior to the time that C's payments to D equal $600 for the calendar year. C is not required to withhold under section 3406 on any subsequent payments to D during the calendar year.

§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) *Transactions subject to withholding.* Backup withholding under section 3406 is required with respect to any amount of a kind, and to a payee, that any broker (as defined in section 6045(c) and § 1.6045–1(a)(1)) or any barter exchange (as defined in section 6045(c) and § 1.6045–1(a)(4)) is required to report under section 6045. If the amount is not of the kind subject to reporting under section 6045 (as described in § 1.6045–1(c)(3)), then that amount is not subject to backup withholding. Additionally, if the amount is not subject to reporting under section 6045 because it is made with respect to an exempt recipient (as described in § 5f.6045–1(c)(3)(i)) or it is made with respect to an exempt foreign person (as described in § 1.6045–1(g)), that amount is not subject to backup withholding. After the determination is made under section 6045 that an information return is required, the broker or barter exchange is required to deduct and withhold the tax under section 3406 if the payee does not furnish his taxpayer identification number to the broker or the barter exchange in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the broker or barter exchange that the taxpayer identification number the payee furnished to the broker or barter exchange is incorrect as described in § 31.3406(d)–5. The amount subject to withholding under section 3406 is described in paragraph (c) of this section. See § 31.3406(1)–1 for a special rule regarding the furnishing of taxpayer identification numbers after January 1, 1984, with respect to certain accounts.

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). Broker M effects the sale of a security for Individual E who is M's customer. M is required to make an information return under section 6045 showing the gross proceeds of the sale because E is a payee with respect to whom an information return is required. Since M is required to make an information return under section 6045, M is required to withhold 20 percent of the gross proceeds under section 3406 if E does not furnish a taxpayer identification number to M in the manner required in § 31.3406 (d)–1 or the Internal Revenue Service notifies M that E's taxpayer identification number is incorrect.

Example (2). Assume the same facts as in *Example (1)* except that M effects a sale for Corporation O which is M's customer. M is not required to make an information return under section 6045 showing the gross proceeds since O is an exempt recipient for purposes of broker reporting under § 5f.6045–1(c)(3)(i). Because M is not required to make an information return under section 6045, M is not required to withhold 20 percent of the gross proceeds even if one of the conditions for imposing backup withholding under section 3406 exists.

Example (3). Assume the same facts as in *Example (1)* except that Individual E is a person who has signed a statement as required in § 1.6045–1 (g) (3) (i), effective for the calendar year in question, that he is an exempt foreign person. M is not required to make an information return under section 6045 because the amount is not paid to a payee subject to information reporting. Because M is not required to make an information return under section 6045, M is not required to withhold 20 percent of the gross proceeds even if one of the conditions for imposing backup withholding under section 3406 exists.

Example (4). Broker N retires a Treasury bill (*i.e.*, a short-term government discount obligation as defined in section 1271 (a) (3) (B)) for Individual F. N is not required to make an information return under section 6045 showing the gross proceeds because that amount is a kind of payment excepted from broker reporting under § 5f.6045–1 (c) (3) (vi) (C). The amount of the original discount included in the income of the holder is subject to reporting at maturity, however, under section 6049. See § 31.3406 (b) (2)–2 for the requirement to withhold on the amount subject to reporting at maturity under section 6049.

Example (5). Assume the same facts as in *Example (4)* except that F instructs Broker N to sell F's Treasury bill before maturity for $9,800. Broker N is required to make an information return under section 6045 showing $9,800 as the gross proceeds of the sale since that amount is of a kind subject to reporting under section 6045. Because N is required to make an information return under section 6045, N is required to withhold 20 percent of $9,800 (the gross proceeds) under section 3406 if F does not furnish a taxpayer identification number to N in the manner required in § 31.3406 (d)–1 or the Internal Revenue Service notifies N that F's taxpayer identification number is incorrect.

Example (6). Individual G asks Broker O to redeem shares of a mutual fund (other than a redemption at issue price described in § 5f.6045–1 (c) (3) (v)). O is required to make an information return under section 6045 and, accordingly, is required to withhold 20 percent of the gross proceeds if G does not furnish a taxpayer identification number to O in the manner required in § 31.3406 (d)–1 or the Internal Revenue Service notifies O that G's taxpayer identification number is incorrect.

Example (7). Individual H asks Broker P to redeem a tax-exempt municipal bond at maturity with a redemption value of $10,000. A $500 interest coupon is also attached to the bond that is payable on the date of maturity. P is required to make an information return under section 6045 showing gross proceeds of $10,000. Correspondingly, P is required to withhold 20 percent of the gross proceeds ($10,000) if a condition for imposing backup withholding exists with respect to the gross proceeds under paragraph (a) of this section. If H properly completes the "shell" or envelope (*i.e.*, he includes his name, address, and taxpayer identification number) used for processing the coupon and states that the interest is exempt from taxation under section 103 (a) (as provided in § 1.6049–5 (b) (2)), P is not required to make an information return showing the tax-exempt interest portion ($800) of the gross proceeds because that amount is not required to be reported under either section 6045 or 6049. Accordingly, P is not required to withhold 20

percent of the $500 tax-exempt interest payment.

Example (8). Individual I instructs Broker Q to transfer a corporate debenture to J for $15,000 (of which $2,000 represents accrued interest). Q is required to make an information return under § 1.6045–1 (d) (5) on Form 1099–B showing $13,000 of gross proceeds. Q is also required to make an information return under § 1.6045–1 (d) (3) on Form 1099–INT showing $2,000 of interest. Both the $13,000 of gross proceeds and the $2,000 of interest are subject to backup withholding if I does not furnish his taxpayer identification number to Q or the Internal Revenue Service notifies Q that I's taxpayer identification number is incorrect. Because the accrued interest element is not a reportable interest payment under section 6049, Q is not required to withhold if the Internal Revenue Service notifies Q under section 3406 (a) (1) (C) relating to notified payee underreporting or if I fails to make the certification required in § 31.3406 (d)–2. The interest component of the gross proceeds is reportable as interest pursuant to § 1.6045–1 (d) (8) but in the manner and at the time required by Form 1099 and section 6049.

Example (9). Individual K requests Bank R to redeem a nontransferable certificate of deposit issued by R. The certificate of deposit is a book entry obligation with respect to which the relevant books and records indicate that no interim transfers have occurred. R is not required to make an information return under § 5f.6045–1 (c) (3) (x), and, accordingly, R is not required to withhold on the gross proceeds at maturity. R, however, is required to make an information return under section 6049 with respect to the interest on the obligation and is required to withhold on the reportable interest payment if any of the four conditions for imposing backup withholding under section 3406 exists (as described in § 31.3406 (a)–2 (a) and (b)).

Example (10). Depositary Trust S, which regularly acts as an escrow agent in corporate acquisitions, is the agent for Corporation W in a tender offer by W for the stock of Corporation T. Partnership L tenders T stock to S and is paid the tender offer price by S. Under section 6045, S is required to make an information return showing the gross proceeds paid by S to L for T stock. Consequently, S is required to withhold 20 percent of the gross proceeds under section 3406 if L does not furnish a taxpayer identification number in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies S that L's taxpayer identification number is incorrect.

Example (11). Issuer A arranges for Transfer Agent X to act as its disbursing agent with respect to dividends paid on its stock under its dividend reinvestment plan. The issuer has the reporting obligation for the dividends paid to the plan because it has the legal obligation to make those payments and hence any backup withholding liability that might exist. Thus, upon the reinvestment of the dividends to the plan by the holder, X has no reporting obligation under section 6042. Nor does X have a reporting obligation under section 6045. Although X is a broker under § 1.6045–1(a)(1) of the regulations, since it stands ready to purchase or redeem shares of Issuer A's stock there is no "sale" with respect to the holder of Issuer A's stock on the reinvestment of the dividends. However, if Issuer A's stock is redeemed by instruction from the holder to X and X will pay the holder redeemed, then X must report the gross proceeds under section 6045.

Example (12). Individual AA instructs Broker V to redeem shares of a qualified dividend reinvestment plan of a public utility. Although reinvested dividends of that plan are not subject to backup withholding under § 31.3406(b)(2)–4(c)(7) (with respect to distributions before 1986), V is required to make an information return under section 6045 showing the gross proceeds of the shares redeemed. Correspondingly, V is required to withhold 20 percent of the gross proceeds if AA does not furnish a taxpayer identification number to V in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies V that AA's taxpayer identification number is incorrect.

(c) *Amount subject to withholding*—(1) *In general.* Except as provided in paragraph (c) (2), (3), (4), and (5) of this section and § 31.3406(b)(4)–1, the amount subject to withholding under section 3406 is the amount subject to reporting under section 6045. The amount subject to withholding with respect to broker reporting is the amount of gross proceeds (as determined under § 1.6045–1(d)(5)). The amount subject to withholding with respect to barter exchanges is the amount received by any member or client (as determined under § 1.6045–1(f)(4)).

(2) *Foreign currency contracts, forward contracts, or regulated futures contracts.* If a customer is subject to backup withholding with respect to foreign currency contracts (as defined in section 1256(g) and reportable under § 1.6045–1(c)(5)) or with respect to an account through which forward contracts or regulated futures contracts are disposed of or acquired, the broker must withhold 20 percent of both of the following amounts:

(i) All cash or property withdrawn from the account by the customer during the relevant year. A withdrawal includes the use of money (including both gross proceeds and variation margin) or property in the account to purchase any property other than property acquired in connection with the closing of a contract. For this purpose, the acceptance of a warehouse receipt or other taking of delivery to close a contract is in connection with the closing of a contract only if the property acquired is disposed of by the close of the seventh trading day following the trading day that the customer takes delivery under the contract. In addition, making delivery to close a contract is in connection with the closing of a contract only if the broker is able to determine that the property used to close the contract was acquired no earlier than the seventh trading day prior to the trading day on which delivery is made. Withdrawals do not include repayments of debt incurred in connection with making or taking delivery that meets the requirements of this paragraph (c)(2). Withdrawals also do not include payments of commissions, fees, transfers of cash from the account to another futures account that is subject to this paragraph (c)(2) or cash withdrawals traceable to dispositions of property other than futures (not including profit on the contract separately reportable under § 1.6045–1(c)(5)(i)(*b*)); and

(ii) The amount of cash in the account available for withdrawal by the customer at the relevant year-end (including both gross proceeds and variation margin).

The determination of whether the customer is subject to backup withholding with respect to an account containing forward contracts or regulated futures contracts shall be made at the time of the cash or property withdrawals or the relevant year-end, whichever is applicable.

(3) *Security sales made through a margin account.* The amount subject to backup withholding in the case of a security sale made through a margin account (as defined in 12 CFR section 220 (Regulation T)) is the gross proceeds (as defined in § 1.6045–1(d)(5)) of such sale. The amount required to be withheld with respect to such a sale, however, is limited to the amount of cash available for withdrawal by the customer immediately after the settlement of the sale. For this purpose, the amount available for withdrawal by the customer does not include amounts required to satisfy margin maintenance under: Regulation T, rules and regulations of the National Association of Securities Dealers and national securities exchanges, and generally applicable self-imposed rules of the margin account carrier.

(4) *Security short sales*—(i) *Amount subject to backup withholding.* The amount subject to backup withholding with respect to a short sale of securities is the gross proceeds (as defined in § 1.6045–1 (d)(5)) of such short sale. At the option of the broker, however, the amount subject to backup withholding may be the gain upon the closing of the short sale (if any); consequently, the obligation to withhold would be deferred until the closing transaction. A broker may use this alternative method of determining the amount subject to backup withholding with respect to a short sale only if at the time the short sale is initiated the broker expects that the amount of gain realized upon the closing of the short sale will be determinable from the broker's records. If, due to events unforeseen at the time the short sale was initiated, the broker is unable to determine the basis of the property used to close the short sale, the property shall be assumed to have a basis of zero.

(ii) *Time of withholding.* The determination of whether a short seller is subject to backup withholding shall be made on the date of the initiation or closing, as the case may be, or on the date that the initiating or closing, as the case may be, is entered on the broker's books and records.

(5) *Fractional shares.* A broker is not required to withhold under section 3406 with respect to a sale of a fractional share of stock resulting in less than $20 of gross proceeds (as described in § 5f.6045–1 (c)(3) (ix)).

(6) *Examples.* The application of the provisions of this paragraph (c) may be illustrated by the following examples in each of which it is assumed that the payee failed to provide a taxpayer identification number in the manner required by § 31.3406(d)–1:

Example (1). A instructs Broker M to sell 200 shares of Corporation X's stock for $100 per share. The amount of gross proceeds subject to reporting under section 6045 and thus subject to backup withholding under section 3406 is $20,000.

Example (2). B instructs Broker N to retire a long-term bond at maturity where the stated redemption price at maturity is $10,000. The amount of gross proceeds subject to reporting under section 6045 and thus subject to backup withholding under section 3406 is $10,000.

Example (3). Assume the same facts as in *Example (2)* except that the bond has a $50 final interest coupon attached. The amount of gross proceeds subject to reporting under section 6045 and thus subject to withholding under section 3406 is $10,000. The $50 interest coupon is subject to reporting under section 6049 and, accordingly, is subject to backup withholding as described in § 31.3406(b)(2)–1.

Example (4). On March 1, 1984, C enters into a futures contract through O, a futures commission merchant. C deposits initial margin with O in the form of a $10,000 Treasury bill. The futures contract is closed on September 1, 1984, at a net profit of $5,000. In addition, on October 1, 1984, the Treasury bill matures, and O credits C's account with $10,000. C seeks to withdraw the $15,000 from the account on November 1, 1984. The amount subject to backup withholding is $5,000 (i.e., the amount which is a withdrawal under paragraph (c)(2)(i) of this section). The $10,000 proceeds from the redemption of the Treasury bill is not considered a withdrawal because the proceeds are traceable to the disposition of property other than futures contracts. The amount paid with respect to the maturity of the Treasury bill is subject to reporting under section 6049. See § 31.3406(b)(2)–2 for the amount subject to backup withholding at maturity of the Treasury bill.

Example (5). Assume the same facts as in Example (4) except that the futures contract is not closed on September 1. On December 31, 1984 (the end of C's taxable year), the cash available for C's withdrawal from the account is $2,000 due to a positive balance in the variation margin account. The amount subject to backup withholding is $2,000 under paragraph (c)(2)(ii) of this section.

Example (6). D maintains an account with Broker P through which D enters into forward contracts. D authorizes P to withdraw $50,000 cash from the account on April 1, 1984, in order to take delivery to close a forward contract. The amount subject to backup withholding is $50,000 under paragraph (c)(2)(i) of this section if the property delivered pursuant to the contract is not disposed of by the close of the seventh trading day following the trading day that the customer took delivery under the contract. Thus, for example, in a case where the property delivered pursuant to the contract is not disposed of until the tenth trading day following the trading day that the customer took delivery under the contract, Broker P must withhold $10,000 (20 percent of $50,000, the amount subject to backup withholding). If, however, property was disposed of by the close of the seventh trading day following the trading day that the customer took delivery under the contract, the total amount withdrawn would not have been subject to backup withholding.

Example (7). E maintains an account with Broker Q through which E engages in margin transactions. In order to satisfy the applicable margin requirements, Q sells $500 worth of stock for E's account. No amount of the $500 proceeds is subject to backup withholding under paragraph (c)(3) of this section since the entire amount of the proceeds is necessary to meet the margin requirement. Q would be required to withhold, however, to the extent, if any, that the proceeds of such a forced sale exceeded the amount needed to meet the margin requirements.

Example (8). F enters into a short sale through Broker R with respect to 100 shares of Corporation Y's stock for $50 a share. The amount subject to backup withholding is $5,000 under paragraph (c)(4) of this section. R may elect, however, to defer withholding until the short sale is closed, if at the time the short sale was initiated, R expected that the gain realized from the sale would be determinable from R's records. If R elects and R's records show the amount of the gain, the amount subject to backup withholding would be the gain realized on closing. If the amount of the gain cannot be determined from R's records at the time of closing, the property used to close the short sale must be assumed to have a basis of zero. Consequently, the amount of gain subject to backup withholding is $ 5,000.

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) *Payments subject to withholding.* Backup withholding under section 3406 is required with respect to any amount of a kind, and to a payee, that is required to be reported under section 6050A (relating to information reporting by certain fishing boat operators). If the payment is excepted from the definition of wages subject to wage withholding under section 3402, then that payment is subject to reporting under section 6050A and backup withholding. If the payment is not subject to reporting under section 6050A because the payee is treated as an employee performing services described in section 3121(b)(20) and § 31.3121(b)(20)–1, that payment is not subject to backup withholding because the payment is wages subject to wage withholding under section 3402. After the determination is made under section 6050A that an information return is required, the fishing boat operator is required to deduct and withhold the tax under section 3406 if the payee does not furnish his taxpayer identification number to the fishing boat operator in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the fishing boat operator that the taxpayer identification number that the payee furnished to the fishing boat operator is incorrect. The amount subject to withholding under section 3406 is described in paragraph (c) of this section.

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). K, an owner of a fishing boat, normally operates the boat with a captain and eight others performing services as crew members of the boat solely for cash representing a share of the catch. K is required to make an information return under section 6050A. Accordingly, K is required to withhold 20 percent of the amount described in paragraph (c) of this section if a crew member does not furnish his taxpayer identification number to the fishing boat operator in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the fishing boat operator that the taxpayer identification number that the crew member furnished the fishing boat operator is incorrect.

Example (2). Assume the same facts as in *Example (1)* except that K does not pay the crew members a share of the catch but rather pays them cash remuneration as wages for services performed. The payment is subject to income tax withholding under section 3402. Thus, K is not required to make an information return under section 6050A and, accordingly, K is not required to withhold under section 3406. K may be required to file a statement under section 6051(d).

(c) *Amount subject to withholding*—(1) *In general.* The amount subject to withholding under section 3406 is the amount subject to reporting under section 6050A, but only to the extent the amount is paid in money and represents a share of the proceeds of the catch. Thus, while the fair market value of the share of the catch that the payee receives generally must be reported under section 6050A, the fishing boat operator shall withhold under section 3406 only on the dollar amount the individual receives as his share of the proceeds of the catch (*i.e.*, the amount required to be included on Form 1099 under section 6050A and § 1.6050A–1(a)(5)).

(2) *Examples.* The application of the provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example (1). L, an owner of a fishing boat, normally employs nine people to work as the crew members of the boat. The only remuneration that L pays each crew member is his respective share of the catch in kind. L is required to make an information return under section 6050A showing the type and weight of the crew member's share of the catch and, if ascertainable, the fair market value of the catch. L is not required to withhold under section 3406, however, because backup withholding is limited to the extent of the cash received with respect to amounts subject to reporting under section 6050A.

Example (2). Assume the same facts as in *Example (1)* except that L pays each crew member his share of the proceeds of the catch. L is required to make an information return under section 6050A showing the dollar amount paid to each crew member. L is required to withhold under section 3406 on the dollar amount paid to a crew member who does not furnish a taxpayer identification number to L or with respect to whom the Internal Revenue Service has notified L that an incorrect taxpayer identification number has been furnished.

Example (3). Assume the same facts as in *Example (1)* except that, in addition to receiving a share of the catch, each crew member is entitled to receive $3 per hour for repairing nets, constructing new nets, splicing cable, and other incidental work while in port. Since each crew member is entitled to receive payment other than a share of the catch, he is considered an employee and thus subject to wage withholding under section 3402. Accordingly, none of L's payments to the crew members are reportable under section 6050A. Thus, L is not required to withhold under section 3406.

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) *Royalty payments subject to withholding.* Backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6050N (relating to information reporting of payments of royalties). If the payment is not of a kind subject to reporting under section 6050N, then the payment is not subject to backup withholding. Additionally, if the payment is not to a payee that is subject to reporting under section 6050N, then the payment is not subject to backup withholding. See section 6050N(c) for those payees that are not subject to information reporting under section 6050N and thus are not subject to withholding under this paragraph. After the determination is made that an information return is required under section 6050N, the payor is required to deduct and withhold the tax under section 3406 if the payee does not furnish his taxpayer identification number in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the payor that the taxpayer identification number that the payee furnished the payor is incorrect as described in § 31.3406(d)–5. The amount subject to withholding under section 3406 is described in paragraph (b) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment made to a payee described in § 31.3406(g)–1(a) (relating to exempt recipients).

(b) *Amount subject to withholding.* The amount subject to backup withholding under section 3406 is the amount subject to reporting under section 6050N.

§ 31.3406(b)(4)–1 Exemption for certain minimal payments.

(a) *In general.* A payor is required to withhold under section 3406 with respect to any payment that is of a kind and to a payee that is subject to information reporting if any condition for imposing backup withholding exists (as described in § 31.3406(a)–1). A payor of reportable interest or dividends (as defined in § 31.3406(b)(1)–1(b)) may elect, however, not to withhold from a payment which does not exceed $10 and which on an annualized basis does not exceed $10 (as computed in paragraph (c) of this section). In addition, a broker or barter exchange may elect not to withhold on gross proceeds of $10 or less. The broker or barter exchange is not required to annualize the amount of the gross proceeds. If a payor, broker, or barter exchange elects to withhold on amounts of $10 or less, the payor, broker, or barter exchange is required to make an information return under § 31.6051–1. A payment of more than $10 is subject to withholding under this section, regardless of the period for which the payment is made if any relevant condition for imposing backup withholding under section 3406 exists (as described in § 31.3406(a)–1). Therefore, the annualization computation of paragraph (c) of this section should not be performed for any payment exceeding $10.

(b) *Manner of making the election.* The election not to withhold from payments that do not exceed $10 can be made only for a reportable interest or dividend payment (as defined in § 31.3406(b)(1)–1(b)), for a royalty payment (as defined in § 31.3406(b)(3)–4), or by a broker or barter exchange with respect to gross proceeds (as described in § 31.3406(b)(3)–2). Thus, a payor of any other reportable payment (as defined in § 31.3406(b)(1)–1(c)) except royalty payments is required to withhold regardless of the amount except as provided in § 31.3406(b)(3)–1 with respect to amounts subject to reporting under section 6041 or 6041A(a). The minimal payment election is made with respect to a particular payment by complying with all the requirements of this section. The election not to withhold on payments that do not exceed $10 need not be made consistently, but may be made on a payment-by-payment basis.

(c) *Annualization*—(1) *Reportable interest or dividend payment.* Except as provided in paragraph (c)(2) of this section, with respect to any reportable interest or dividend payment (other than an amount paid in a window transaction or an amount that is original issue discount), the payor *shall* annualize the payments made. With respect to a payor who maintains records which reflect multiple holdings of one payee and the payor makes an aggregate payment with respect to all the payee's holdings (such as a dividend check that reflects payment on all stock owned by the payee), the payor shall annualize the aggregate payment made. To annualize a reportable interest or dividend payment, the payor shall calculate what the amount of the payment would be if it were paid for a 1-year period (instead of the period for which it actually is paid). The annualized amount shall be determined by dividing the amount of the payment by the number of days in the period for which it is being paid and then multiplying that result by the number of days in the year. If the annualized amount is $10 or less, the payor may elect not to apply backup withholding to that payment regardless of whether more than $10 may be or has been paid to the payee in other reportable payments during the calendar year. Conversely, if the annualized amount is more than $10, backup withholding applies even if $10 or less is actually paid to the payee during the calendar year. For purposes of computing the annualized amount, the payor may assume either that February always consists of 28 days and that the year consists of 365 days or that each month always consists of 30 days and that the year consists of 360 days. For amounts that are deposited with a payor in a new account or certificate between the dates on which the payor customarily pays or credits interest, the payor may assume that the period for which the interest is paid is the payor's customary period for paying or crediting interest.

(2) *Window transactions, original issue discount, and broker reporting.* No annualization is required for window transactions (as defined in § 31.3406(b)(2)–3(b)), original issue discount, or a broker reporting gross proceeds under section 6045. With respect to a window transaction, however, the payor is required to aggregate all payments made in the same transaction (*e.g.*, payments made with respect to coupons or obligations presented for payment at the same time as described in § 1.6049–4(e)(4)). A payor is not required to annualize any amount that is original issue discount on an obligation regardless of the period of time for which the payment is made. Thus, original issue discount (as described in § 31.3406(b)(2)–2) is subject to withholding under section 3406 only if it exceeds $10.

(d) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). A, an individual to whom payments are subject to backup withholding, maintains a savings account at Bank M. M credits interest on the account at the end of each calendar quarter. M credits $2.60 of interest to A's account on March 31, and $2.00 of interest on June 30, September 30, and December 31. The annualized amount for the payment credited on March 31 exceeds $10 determined for a 1-year period (*i.e.*, $2.60 (actual payment) divided by 90 (number of days in the quarter) multiplied by 360 is $10.40). Consequently, the payment to A is not a minimal payment, and M may not elect not to impose backup withholding on the payment. Therefore, M must withhold 52 cents ($2.60 multiplied by 20 percent) from the amount credited to A on March 31. M is not required to withhold on June 30, September 30, or December 31, because the annualized amount for each of the payments does not exceed $10 ($2.00 divided by 90 multiplied by 360 is $8.00).

Example (2). Assume the same facts as in *Example (1)* except that the payments on September 30 and December 31 are $3.00 each. The result is the same as in *Example (1)* with respect to the payments on March 31 and on June 30. M is required to withhold on the payments made on September 30 and December 31 since the annualized amount credited on each date exceeds $10 (*i.e.*, $3.00 divided by 90 multiplied by 360 is $12.00). Even though the total payments made to B during the 1-year period exceed $10, M is not required to withhold on June 30. M is not required to withhold more than 20 percent from the third or fourth quarterly payment to compensate for the earlier payment that was not subject to withholding.

Example (3). Individual C presents two Series EE savings bonds at Bank N to cash, on each of which $3 of interest has accrued. C also presents an interest coupon for a corporate bond on which $10 of interest is payable. Thus, the total amount of interest paid to C in the transaction is $16. N is required to withhold if C does not furnish a taxpayer identification number. If only the two savings bonds were presented, however, N would not be required to withhold since not more than $10 would be paid to C in the transaction. N is not required to annualize the payment under paragraph (b) of this section because it is a window transaction (as defined in § 31.3406(b)(2)–3).

Example (4). Corporation X pays quarterly dividends on shares owned by individual D. Each quarter X pays D $2.75 of dividends for all the shares D owns. X is required to withhold on each quarterly dividend because the annualized amount of each quarterly dividend exceeds $10 (*i.e.*, $2.75 divided by 90 multiplied by 360 is $11).

Example (5). Individual E opens a new savings account at O Bank on February 2, 1984, and fails to make the certifications required in § 31.3406(d)–1 or § 31.3406(d)–2. O customarily credits interest to accounts of this type at the end of each calendar quarter. On March 31, O credits $2.00 of interest to D's account. O may annualize the payment by dividing $2 by 59 (the number of days in the period for which the interest actually is paid) and multiplying that amount by 360. In that event, the annualized amount would be $12.20, and O would be required to withhold. Alternatively, O may treat the payment as made for the entire calendar quarter. Accordingly, O would annualize the payment by dividing $2 by 90 and multiplying that amount by 360, in which case the annualized amount would be $8.00 and O could elect not to withhold.

Example (6). Q is a middleman payor (as defined in § 31.3406(a)–2(b)(3)) with respect to dividends that are paid quarterly. Q maintains separate records for each instrument of the same issue owned by Individual F, who fails to furnish a social security number. Q pays $9 of dividends to F with respect to Y company stock and $2 of dividends to F with respect to Z company stock. While Q is not required to aggregate the two payments, Q is required to annualize each payment. Thus, Q must withhold on the quarterly dividend of $9 paid with respect to Y stock since the annualized amount exceeds $10 (*i.e.*, $9 divided by 90 multiplied by 360 is $36). Q is not required to withhold on the quarterly dividend of $2 paid with respect to Z stock since the annualized amount does not exceed $10 ($2.00 divided by 90 multiplied by 360 is $8).

Example (7). Assume the same facts as in *Example (6)* except that Q maintains records which reflect F's multiple holdings in Y and Z issues and Q makes an aggregate payment of $11.00 to C. Since the payment is more than $10, backup withholding applies.

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(a) *Requirement to withhold*—(1) *In general.* Backup withholding under section 3406(a)(1)(C) is required with respect to any reportable interest or dividend payment (as defined in section 3406(b)(2) and § 31.3406(b)(1)–1(b)) made to a payee if the Internal Revenue Service or a broker (as defined in section 3406(h)(5) and § 31.3406(h)–1(c) and pursuant to section 3406(d)(2)(B)(ii)(III)) notifies a payor (as defined in section 3406(h)(4) and § 31.3406(a)–2) that the payee is subject to backup withholding due to a notified payee underreporting (as defined in paragraph (a)(2) of this section). The payor is required under section 3406(c)(4) and paragraph (c)(1) of this section to inform the payee that backup withholding under section 3406(a)(1)(C) has begun. The requirements for the notice that a payor must send to a payee are set forth in paragraph (c) (2) and (3) of this section. The period for which backup withholding is required due to a notified payee underreporting is described in section 3406(e)(3)(A) and in paragraph (e)(1) of this section. See section 3406(c)(3) and paragraph (g) of this section for the rules regarding how a payee may obtain a determination from the Internal Revenue Service that withholding under section 3406(a)(1)(C) be stopped or not started.

(2) *Definition of notified payee underreporting.* The term "notified payee underreporting" means that the Internal Revenue Service has—

(i) Determined that there was a payee underreporting as defined in paragraph (a)(3) of this section,

(ii) Mailed at least four notices to the payee (over a period of at least 120 days) with respect to the underreporting as prescribed in paragraph (f)(1) of this section, and

(iii) Assessed any deficiency attributable to the underreporting in the case of any payee who has filed a return.

(3) *Definition of a payee underreporting.* The term "payee underreporting" means that the Internal Revenue Service has determined, for a taxable year, that—

(i) A payee failed to include in his return of tax under chapter 1 of the Internal Revenue Code for such year any portion of a reportable interest or dividend payment required to be shown on such tax return, or

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(ii) A payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

Reportable minimal payments (*i.e., small payments described in section 3406(b)(5) to the extent reported on an information return), patronage dividends, original issue discount, and window payments shall be taken into account in determining whether underreporting as defined in paragraph (a)(3) of this section has occurred, even though such payments may not be defined as reportable interest or dividend payments under section 3406(b)(2) and § 31.3406(b)(1)–1(b) or even though backup withholding under section 3406(a)(1)(C) may not apply to such payments.*

(b) *Notice to payors and brokers regarding backup withholding*—(1) *Notice from the Internal Revenue Service.* The Internal Revenue Service will notify:

(i) Payors to begin backup withholding on reportable interest or dividend payments due to a notified payee underreporting pursuant to section 3406(a)(1)(C); and

(ii) Brokers pursuant to section 3406(c)(5) that a payee is subject to backup withholding under section 3406(a)(1)(C).

(2) *Notice from a broker.* A broker who receives a notice from the Internal Revenue Service that a payee is subject to backup withholding due to a notified payee underreporting and through whom the payee subsequently acquires a readily tradable instrument (as defined in section 3406(h)(6)) with respect to which the broker is not the payor is required to notify the payor of that instrument that the payee is subject to backup withholding under section 3406(a)(1)(C) in the time and manner provided in § 31.3406(d)–4(a).

(3) *Accounts subject to backup withholding:*

(i) *Existing Accounts.* After receiving notice from the Internal Revenue Service or from a broker, as provided in section 3406(d)(2)(B) and paragraphs (b)(1)(i) and (2) of this section, that a payee is subject to backup withholding under section 3406(a)(1)(C), payors are required to withhold 20 percent of all reportable interest or dividend payments subject to backup withholding made with respect to all existing accounts of the payee (and all subsequent accounts that are thereafter opened by the payee which the payor treats as under one primary account) with that payor [*i.e.*, with the payor's Taxpayer Identification Number).

(ii) *New accounts; reliance on certification.* If paragraph (b)(3)(iii) of this section does not apply to a new account of a payee, then a payor may rely on a certification made by a payee under penalties of perjury as described in section 3406(a)(1)(D) and § 31.3406(d)–2 that he is not subject to backup withholding due to notified payee underreporting. A payor, however, may not rely on the certification if in the course of processing the certification or in administering the account to which the certification relates, the payor discovers that such certification is false (because the payor was notified by the Internal Revenue Service that the payee is subject to backup withholding under section 3406(a)(1)(C) and no notice was received to stop backup withholding pursuant to section 3406(c)(3) and § 34.3406(c)–1(d)(1) prior to the time the new account is opened). See § 31.3406(d)–2. After discovering that the certification is false, the payor must commence backup withholding on the next interest or dividend payment to the account that is subject to backup withholding. Backup withholding is required under section 3406(a)(1)(C) on the account until the payor receives a notice from the Internal Revenue Service or a copy of the certification provided to the payee pursuant to section 3406(c)(3).

(iii) *Joint accounts.* Payors are required to withhold on joint accounts if the payee subject to backup withholding under section 3406(a)(1)(C)—

(A) Is the first person listed on the account for tax purposes on the date that the payor receives the notice to begin backup withholding,

(B) Effective [DATE THAT IS 60 DAYS AFTER THE DATE THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION], was the first person listed on the account at any time during the 120-day period prior to the day the payor received the notice described in paragraph (b) (1) or (2) of this section to begin backup withholding, or

(C) Effective [DATE THAT IS 60 DAYS AFTER THE DATE THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION], should be the first person listed on the account for tax purposes on the date that the payor receives the notice to begin backup withholding and the payor has actual knowledge that the payee should be so listed.

Backup withholding shall apply to reportable interest and dividend payments made to a joint account, if required, even if the order of the names on the account is subsequently changed, so long as the name of the payee subject to backup withholding remains on the account.

(iv) *Withholding exception.* Payors are not required to withhold on reportable interest or dividend payments made with respect to an account of the payee that could not be located with reasonable care. The payor will be considered to have exercised reasonable care—

(A) If the payor uses the name and taxpayer identification number or names and taxpayer identification numbers (if a joint return was filed by the payees) provided on the notice from the Internal Revenue Service or from a broker as prescribed in paragraph (b)(1)(i) and (2) of this section and in certain circumstances identified in this paragraph (b)(3)(iv) any account numbers provided by the Internal Revenue Service in locating all accounts of a payee or payees;

(B) If the payor, using records kept in the ordinary course of business, can associate another surname with the name of the payee provided on the notice and the payor uses both surnames of a payee to locate accounts of a payee (*i.e.*, when the payee uses a different name on the account from the names stated in the notice from the Internal Revenue Service or from a broker, for instance due to marriage or adoption);

(C) If the payor uses any account numbers provided by the Internal Revenue Service or a broker to identify the payee and the payee's taxpayer identification number when the taxpayer identification number is not provided to the payor by the Internal Revenue Service or broker, or when the taxpayer identification number provided by the Internal Revenue Service or a broker does not match the taxpayer identification number of the payee on the records that the payor maintains in the ordinary course of business. The name of the payee and the payee's taxpayer identification number obtained as described in the preceding sentence must be used by the payor to locate other accounts of the payee and by the broker to locate the payors with respect to whom the payee subsequently acquires a readily tradable instrument through the broker; and

(D) If a payor that has several branches or divisions, each of which uses the same Taxpayer Identification Number for information reporting purposes, searches for the accounts of the payee pursuant to the rules described in paragraph (b)(3)(iv) (A), (B), or (C) of this section at all branches or divisions of the payor within a reasonable geographic area of the mailing address of the payee (*e.g.*, if the payor lives in a city, all branches or divisions within the metropolitan area).

(v) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). Corporation X declares a reportable dividend on its common stock and uses Bank A as its paying agent in making the dividend payments. The Internal Revenue Service notifies X to commence backup withholding under section 3406 (a)(1)(C) due to notified payee underreporting of reportable interest and dividend payments by several of its payees. The notice contains X's employer identification number (EIN) to further identify the payor who has the obligation to impose backup withholding under section 3406 (a)(1)(C). X sends the notice to its paying agent, A, and instructs A to commence backup withholding on the named payees. The payees subject to withholding also maintain savings accounts with A that pay reportable interest. A was not notified by the Internal Revenue Service with respect to the named payees. In determining which accounts are subject to backup withholding, A must review all the accounts it maintains for X with X's EIN. A does not have to review any of its accounts on which it is the payor or other accounts for which it acts as a paying agent.

Example (2). Assume the same facts in *Example (1)* except that A receives the notice to begin backup withholding due to payee underreporting from the Internal Revenue Service and the notice contains A's EIN. In determining which accounts are subject to backup withholding, A must review all of its accounts containing the EIN specified on the notice. A does not have to review other accounts it maintains as a paying agent.

Example (3). Bank B received notice from the Internal Revenue Service to begin backup withholding due to payee underreporting with respect to all accounts of C making reportable interest or dividend payments. The notice specifies C's name, taxpayer identification number, address, and an account number. While searching for other accounts, B discovers that C has a joint account with D, an individual. The account lists D's name first, but contains C's taxpayer identification number. If the account information reflects that C is the primary owner of the account and his name is reported first on information returns filed with the Internal Revenue Service, then B must withhold on that account. If, however, C's name is not reported first for information reporting, then, absent actual knowledge that C should, in fact, be the person listed first on the account, B should not withhold on that account because the name and taxpayer identification number information set forth in the notice from the Internal Revenue Service and such information set forth for the first named person on the account are not the same.

Example (4). Assume the same facts as in *Example (3)* except that the account number specified on the Internal Revenue Service notice concerns the joint account mentioned above. D's name is listed first on the account on B's records, and it is listed first for information reporting. B must withhold on the specified account but review its business records to determine whether the taxpayer identification number corresponds with D's or C's name and then use that information (name and taxpayer identification number) in locating other accounts that should be subject to backup withholding.

(c) *Notice from payors of backup withholding due to a payee underreporting*—(1) *In general.* A payor is required under section 3406 (c)(4) to notify the payee in accordance with paragraph (c)(2) of this section that backup withholding has begun because of a notified payee underreporting. Payors who are notified by a broker that a payee is subject to backup withholding under section 3406 (a)(1)(C) are also required to send the notice in accordance with paragraph (c)(2) of this section. As a result, the notice requirements provided in § 31.3406 (d)–4(b)(2) shall not apply to those payors notified by a broker that a payee is subject to backup withholding under section 3406 (a)(1)(C). The payor must send the notice required by paragraph (c)(2) of this section to the payee no later than 15 days after the date that the payor makes the first payment subject to backup withholding under section 3406 (a)(1)(C). The payor must send the notice of backup withholding by first-class mail to the payee at his last known address.

(2) *Form of the notice to the payee with respect to notified payee underreporting.* The notice to the payee required by paragraph (c)(1) of this section must state—

(i) That the Internal Revenue Service has given notice that the payee has underreported reportable interest or dividends;

(ii) That, as a result of such underreporting, the payor is required under section 3406(a)(1)(C) of the Internal Revenue Code to withhold 20 percent of reportable interest and dividend payments made to the payee no later than the close of the day 30 days after the date that the payor received the notice;

(iii) The date that the payor received the notice to begin backup withholding under section 3406(a)(1)(C);

(iv) Effective [DATE THAT IS SIXTY DAYS AFTER THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION], the account number(s) that will be subject to backup withholding due to notified payee underreporting;

(v) That the payee must obtain a determination from the Internal Revenue Service in order to stop the backup withholding under section 3406(a)(1)(C); and

(vi) That while the payee is subject to backup withholding due to payee underreporting, the payee may not certify to a payor making reportable interest or dividend payments (or to a broker acquiring a readily tradable instrument for the payee) that the payee is not subject to backup withholding under section 3406(a)(1)(C). (See section 3406(a)(1)(D) and § 31.3406(d)–2 for the backup withholding rules with respect to a payee's failure to make the certification under section 3406(a)(1)(D)).

(3) *Exceptions.* A notice provided to a payee on or before April 23, 1987, will be deemed to satisfy the provisions of paragraph (c)(2) of this section if it informs the payee that the payor has been instructed by the Internal Revenue Service to start backup withholding on reportable interest or dividend payments to the payee. If a payor who has started backup withholding due to notified payee underreporting on or before April 23, 1987, has not provided adequate notice to the payee on or before April 23, 1987, then the payor must provide notice to the payee in the manner prescribed in paragraph (c)(2) of this section by June 8, 1987.

(4) *Penalty for failure to provide notice.* A payor who fails to provide the notice required under section 3406(c)(4) to a payee (as described in paragraph (c)(2) of this section) may be subject to civil or criminal penalties as a result of that failure.

(d) *Notice to stop backup withholding*—(1) *In general.* The Internal Revenue Service will provide written certification to a payee that backup withholding is to stop and will notify payors who were contacted pursuant to paragraph (b) of this section to stop withholding after the Internal Revenue Service has made a determination under paragraph (g) of this section that backup withholding with respect to a payee should stop. The Internal Revenue Service will also notify brokers who were contacted pursuant to paragraph (b) of this section that the payee is no longer subject to backup withholding under section 3406(a)(1)(C) and that the brokers are no longer obligated to provide notices to payors under paragraph (b)(2) of this section. A broker who receives a notice from the Internal Revenue Service or a copy of the certification provided to a payee by the Internal Revenue Service is not required to notify any payors to whom the broker has previously provided the notice required under paragraph (b)(2) of this section that the payee is no longer subject to backup withholding under section 3406(a)(1)(C).

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(2) *Date notice to stop withholding will be provided*—(i) *Underreporting corrected or bona fide dispute.* If the Internal Revenue Service makes a determination as set forth in paragraph (g)(1) (ii) or (iv) of this section during the 12-month period ending on October 15 of any calendar year, the Internal Revenue Service will provide the certification and notice required by paragraph (d)(1) of this section no later than December 1 of such calendar year.

(ii) *No underreporting or undue hardship.* If the Internal Revenue Service makes a determination as set forth in paragraph (g)(1) (i) or (iii) of this section, the Internal Revenue Service will provide the notices required by paragraph (d)(1) of this section no later than the 45th day after the day on which the Internal Revenue Service makes its determination.

(e) *Period during which withholding is required*—(1) *In general.* Upon receiving notice from the Internal Revenue Service after April 23, 1987, to begin backup withholding under section 3406 (a)(1)(C) or notification from a broker stating that the payee is subject to backup withholding under section 3406 (a)(1)(C), the payor must impose backup withholding on all reportable interest and dividend payments made to the payee during the period beginning after the close of the 30th day after the day on which the payor receives the notice provided in paragraph (b) (1)(i) or (2) of this section and ending as of the close of the day before the stop date (as described in paragraph (e)(2) of this section). Pursuant to section 3406 (e)(5)(C), the payor may elect to begin backup withholding at any time during the 30-day period described in this paragraph.

(2) *Stop date*—(i) *Underreporting corrected or bona fide dispute.* In the case of a determination that the underreporting has been corrected or that a bona fide dispute exists (as defined in paragraph (g)(1) (ii) or (iv) of this section), the stop date is—

(A) January 1 following the 12-month period ending on October 15th of any calendar year in which the determination has been made or, if later,

(B) The day that is 30 days after the earlier of—

(*1*) The date on which the payor receives written notification from the Internal Revenue Service (under paragraph (d)(2) of this section) that withholding is to stop, or

(*2*) The date on which the payor receives a copy of the written certification provided to the payee by the Internal Revenue Service that withholding is to stop.

(ii) *No underreporting or undue hardship.* In the case of a determination that no payee underreporting occurred or that an undue hardship exists or could exist (as defined in paragraph (g)(1) (i) or (iii) of this section), the stop date is the date specified in paragraph (e)(2)(i)(B) of this section.

(iii) *Payor election to shorten or eliminate grace period.* The payor with respect to any payee may elect to determine the stop date without regard to the grace period provided in section 3406 (e)(5)(B) (*i.e.*, without regard to the words "the day that is 30 days after" in paragraph (e)(2)(i)(B) of this section) or by substituting a shorter grace period.

(iv) *Examples.* The provisions of this paragraph (e)(2) may be illustrated by the following examples:

Example (1). The Internal Revenue Service makes a determination by October 15, 1987, that any underreporting with respect to A has been corrected. X, a payor who has been notified to backup withhold on payments of interest to A due to notified payee underreporting, receives written notice from the Internal Revenue Service on December 1, 1987, informing X that A is no longer subject to backup withholding under section 3406(a)(1)(C) and that X must stop backup withholding as of the close of December 31, 1987, or, if later, the earlier of the close of the day 30 days after receipt of the notice from the Internal Revenue Service or receipt of the copy of the written certification provided to the payee by the Internal Revenue Service. The stop date, as provided in paragraph (e)(2)(i)(A) of this section, is January 1, 1988, and the payor must stop backup withholding as of the close of December 31, 1987.

Example (2). Assume the same facts as in *Example (1)* except that X, due to a change of address or for other reasons, does not receive the notice from the Internal Revenue Service to stop backup withholding until December 15, 1987. In addition, A does not provide X with a copy of the certification that was provided to A by the Internal Revenue Service until December 15, 1987. The stop date, as provided in paragraph (e)(2)(i)(B) of this section, is January 14, 1988 (30 days after December 15, 1987), because that date is later than January 1, 1988. However, if a payor elects pursuant to section 3406(e)(5)(C) and paragraph (e)(2)(iii) of this section to determine the stop date without regard to that 30-day grace period, the stop date is January 1, 1988.

Example (3). Assume the same facts as in *Example (2)* except that on December 10, 1987 (rather than on December 15, 1987), A provides X with a copy of the certification from the Internal Revenue Service. The stop date, as provided in paragraph (e)(2)(i)(B) of this section, is January 9, 1988 (30 days after December 10, 1987), because that date is earlier than January 14, 1988 (30 days after the day X received notice from the Internal Revenue Service), but later than January 1, 1988. However, if a payor elects pursuant to section 3406(e)(5)(C) and paragraph (e)(2)(iii) of this section to determine the stop date without regard to that 30-day grace period, the stop date is January 1, 1988.

(f) *Notice to payees from the Internal Revenue Service*—(1) *Notice period.* After the Internal Revenue Service determines that a payee underreporting exists as defined in paragraph (a)(3) of this section, the Internal Revenue Service, pursuant to section 3406(c)(1)(B), will mail to the payee at least four notices over a period of at least 120 days (the "notice period") before payors and brokers will be notified that the payee is subject to backup withholding due to a notified payee underreporting as provided in paragraph (b)(1) of this section. The notices may be incorporated with other notices provided to the payee by the Internal Revenue Service.

(2) *Payee subject to withholding.* After the Internal Revenue Service provides the notices described in paragraph (f)(1) of this section, the Internal Revenue Service will send the notices required by paragraph (b) of this section unless—

(i) A payee obtains a determination under paragraph (g) of this section, or

(ii) In the case of a payee who has filed a tax return, the Internal Revenue Service has not assessed the deficiency attributable to the underreporting.

(3) *Disclosure of names of payors and brokers.* The Internal Revenue Service pursuant to section 3406(c)(5) may require a payee subject to backup withholding due to a notified payee underreporting to disclose the names of all of his payors of reportable interest or dividend payments and the names of all of the brokers with whom the payee has accounts which may involve reportable interest or dividend payments. To the extent required in the request from the Internal Revenue Service, the payee shall also provide his account numbers and other information necessary to identify the payee's accounts.

(4) *Backup withholding certification.* After a payee receives a final notice from the Internal Revenue Service notifying him that his reportable interest or dividend payments are subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(C), the payee shall not certify to any payor or broker, under penalties of perjury, that he is not subject to backup withholding under section 3406(a)(1)(C). See paragraph (k)(2) of this section for the penalties that will apply to a payee who makes a false certification. The payee may not make the certification until the payee receives the certification provided in paragraph (d)(1) of this section from the Internal Revenue Service advising the payee that he is no longer subject to backup

withholding under section 3406(a)(1)(C) (as provided in § 31.3406(h)–3(f)(2)). See § 31.3406(d)–2 for the rule applicable to a payor who makes reportable interest or dividend payments to a payee who fails to certify that he is not subject to backup withholding due to notified payee underreporting.

(g) *Determination by the Internal Revenue Service that backup withholding should not start or should be stopped*—(1) *In general.* A payee may prevent backup withholding from starting or stop it once it has started if, for the taxable year with respect to which there is a notified payee underreporting and any other taxable years for which there is any payee underreporting, the payee:

(i) Shows that there was no payee underreporting (as provided in paragraph (g)(2) of this section);

(ii) Corrects any payee underreporting (as provided in paragraph (g)(3) of this section);

(iii) Shows that backup withholding will cause or is causing an undue hardship (as defined in paragraph (g)(4) of this section) and that it is unlikely that the payee will underreport interest or dividend payments again; or

(iv) Shows that a bona fide dispute exists as to whether any underreporting has occurred (as provided in paragraph (g)(5) of this section).

(2) *No underreporting.* A payee may show that no underreporting of interest or dividends exists by presenting receipts or other satisfactory documentation to the Internal Revenue Service showing that all taxes relating to such payments were reported or evidence showing that the payee did not have to file a return for the taxable year in question or that the underreporting determination is based upon a factual, clerical, or other mistake.

(3) *Correcting any payee underreporting*—(i) *Before issuance of a statutory notice of deficiency.* Before a statutory notice of deficiency is issued to a payee pursuant to section 6212, the payee may correct underreporting:

(A) By filing a return if one was not previously filed,

(B) By filing an amended return in the event a return was filed, or

(C) By consenting to the additional assessment according to applicable notices and forms sent to the payee by the Internal Revenue Service with respect to such underreporting, and paying taxes, penalties, and interest due with respect to any underreported interest or dividend payments.

(ii) *After issuance of a statutory notice of deficiency.* After a statutory notice of deficiency is issued to a payee, the payee may correct underreporting—

(A) At any time by filing a return if one was not previously filed and paying the entire deficiency and any other taxes including penalties and interest attributable to any payee underreporting of interest or dividend payments, or

(B) After the mailing of the statutory notice of deficiency but before the expiration of the 90-day or 150-day period described in section 6213(a), or, if a petition is filed with the United States Tax Court, before the decision of the Tax Court is final by making a remittance to the Internal Revenue Service of the amounts described in paragraph (g)(3)(ii)(A) of this section specifically designating in writing that the remittance is a "deposit in the nature of a cash bond." The payee will not be deemed to have corrected the payee underreporting under this paragraph (g)(3)(ii)(B) after the remittance is returned to the payee as described in subparagraph 2 of section 4.01 of Rev. Proc. 84–58, 1984–2 C.B. 501. Once the remittance is returned to the payee, the procedures under § 31.3406(c)–1 will apply. However, if the Internal Revenue Service previously contacted payors of the payee to commence backup withholding with respect to the payee underreporting, the Internal Revenue Service will recontact such payors to commence backup withholding under section 3406(a)(1)(C) and § 31.3406(c)–1(b) with respect to such payee underreporting without regard to section 3406(c)(1) and § 31.3406(c)–1 (f) of this section.

For example, under paragraph (g)(3)(ii)(A) of this section a payee may correct underreporting after assessment of a deficiency by paying the entire assessment of all taxes, penalties, and interest with respect to that deficiency for the taxable year and any other taxes including penalties and interest attributable to any payee underreporting of interest or dividend payments for other taxable years.

(4) *Undue hardship.* A determination of undue hardship will be based on the overall impact to the payee of having 20 percent of reportable interest and dividend payments withheld. Factors that will be considered in determining whether backup withholding causes undue hardship include, but are not limited to, the following:

(i) Whether estimated tax payments, and other credits for current tax liabilities, or amounts withheld on employee wages or pensions, in addition to backup withholding, would cause significant overwithholding;

(ii) The payee's health, including the payee's ability to pay foreseeable medical expenses;

(iii) The extent of the payee's reliance on interest and dividend payments to meet necessary living expenses and the existence, if any, of other sources of income;

(iv) Whether other income of the payee is limited or fixed (*e.g.*, social security, pension, and unearned income);

(v) The payee's ability to sell or liquidate stocks, bonds, bank accounts, trust accounts, or other assets, and the consequences of doing so;

(vi) Whether the payee reported and timely paid the most recent year's tax liability, including interest and dividend income; and

(vii) Whether the payee has filed a bankruptcy petition with the United States Bankruptcy Court.

In addition to the above factors, the Internal Revenue Service must conclude that it is unlikely that any payee underreporting will occur again.

(5) *Bona fide dispute.* The Internal Revenue Service may make a determination under this paragraph if there is a dispute between the payee and the Internal Revenue Service on a question of fact or law that is material to a determination under paragraph (g)(1)(i) and, based upon all the facts and circumstances, the Internal Revenue Service finds that the dispute is asserted in good faith by the payee and there is a reasonable basis for the payee's position. See the example provided in paragraph (j)(2)(ii) of this section for an illustration of this provision.

(h) *Requests for determinations*—(1) *In general.* A payee may request a determination under one or more of the provisions of paragraph (g) of this section. Following its review of a request for a determination under paragraph (g) of this section, the Internal Revenue Service will either provide the payee with a written certification as prescribed in paragraph (d) of this section if the evidence presented warrants the requested determination or will provide the payee with a written notice informing him that a determination was not made.

(2) *Determinations made during the notice period.* In general, if a determination is made during the notice period as defined in paragraph (f)(1) of this section, then the payee will not be subject to backup withholding due to a notified payee underreporting with respect to any taxable year for which a determination was made.

(3) *Determinations made after the notice period.* If a determination is made after the notice period, as defined in paragraph (f)(1) of this section, the Internal Revenue Service will provide a

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notice to payors and brokers, and a certification to the payee as provided in paragraph (d)(1) of this section.

(i) [Reserved].

(j) *Payees filing a joint return*—(1) *In general.* For purposes of section 3406(a)(1)(C), if payee underreporting is found to exist with respect to a joint return then the provisions of this section shall apply to both payees (*i.e.*, the husband and wife). As a result, both payees will be subject to backup withholding on accounts in their individual names as well as accounts in their joint names. Either or both payees may satisfy the criteria for a determination that no payee underreporting exists, that the underreporting has been corrected, or that a bona fide dispute exists (as provided in paragraph (g)(1) (i), (ii), or (iv) of this section). Both payees, however, must satisfy the criteria for a determination that backup withholding will cause or is causing undue hardship (as provided in paragraph (g)(1)(iii) of this section).

(2) *Exceptions*—(i) *Innocent spouse.* A spouse who files a joint return may obtain a determination that withholding should stop or not start with respect to payments made to his or her individual accounts, if the spouse—

(A) Shows that he or she did not underreport income because he or she is an innocent spouse as described in section 6013(e), or

(B) Shows that there is a bona fide dispute as to whether he or she is an innocent spouse and hence did not underreport income.

(ii) *Example.* The provisions of paragraph (j)(2)(i) may be illustrated by the following example:

Example. H and W filed a joint return in 1986 on which H failed to include $2,000 of interest income. In 1987, the Internal Revenue Service determined that a payee underreporting exists with respect to H and W for the 1986 tax year. After properly notifying H and W of the underreporting and assessing the tax, the Internal Revenue Service sent notices to payors to begin backup withholding on the joint and individual accounts of H and W and to brokers informing them that H and W are subject to backup withholding under section 3406(a)(1)(C) on their joint and individual accounts. W claims that she is an innocent spouse and requests a determination that she did not underreport interest or dividend income so that her individual accounts will not be subject to backup withholding.

The Internal Revenue Service questions her status as an innocent spouse. If the Internal Revenue Service determines, based upon all the facts and circumstances, that there is a reasonable basis for W's claim to be an innocent spouse and that the claim is made in good faith, W will have a bona fide dispute with the Internal Revenue Service. Consequently, the individual accounts of W will not be subject to further backup withholding due to a notified payee underreporting as provided in paragraph (g)(5) of this section.

The Internal Revenue Service will notify W's payors to stop backup withholding under section 3406(a)(1)(C) and will notify brokers that W is no longer subject to backup withholding under section 3406(a)(1)(C) on W's individual accounts. Backup withholding will not restart on those accounts unless the Internal Revenue Service ultimately determines that W is not an innocent spouse. In that event the Internal Revenue Service will notify the payors to start backup withholding under section 3406(a)(1)(C) and will notify the brokers that W is subject to backup withholding under section 3406(a)(1)(C) with respect to the individual accounts of W.

(iii) *Divorced or legally separated payee.* A payee who, at the time of the request for a determination under paragraph (g) of this section, is divorced or separated under State law may obtain a determination that undue hardship exists (or would exist) under paragraph (g)(1)(iii) of this section with respect to reportable interest and dividend payments made to his or her individual accounts if the divorced or legally separated payee satisfies the criteria for a determination under paragraph (g)(4) of this section.

(k) *Penalties*—(1) *Failure to withhold.* See § 31.3406(h)–2(i) for the penalties applicable to a payor who fails to withhold on reportable interest and dividend payments made to a payee subject to backup withholding.

(2) *False certification*—(i) *Criminal penalty under section 7205(b).* If any individual willfully makes a false certification under section 3406(d) (1) or (2), then that individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(ii) *Civil penalty under section 6682*—(A) *In general.* In addition to any criminal penalty provided by law, if any individual makes a statement under section 3406 which results in a decrease in the amounts deducted and withheld under chapter 24 of the Internal Revenue Code and, as of the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of $500 for the statement. The penalty is due upon notice and demand and pursuant to section 6682 collection is not subject to the deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code. See section 6682.

(B) *Waiver of penalty.* The payee may obtain a waiver (in whole or part) of the penalty imposed under section 6682(a) and paragraph (k)(2)(ii)(A) of this section if it is established to the satisfaction of the Internal Revenue Service that the taxes imposed under subtitle A of the Internal Revenue Code with respect to the payee for the taxable year in which the false certification was made are equal to or less than the sum of—

(*1*) The credits against taxes allowed by part IV of subchapter A of chapter 1 of the Internal Revenue Code, and

(*2*) The payments of estimated tax which are considered payments on account of such taxes.

(C) *Procedure for seeking a waiver.* To request a waiver under section 6682(b) and paragraph (k)(2)(ii)(B) of this section, the payee must submit to the Internal Revenue Service a written statement with supporting documents to establish all the facts necessary in order to obtain the waiver. The statement must be signed by the person who otherwise would be subject to the penalty imposed by section 6682(a) and paragraph (k)(2)(ii)(A) of this section and must contain a declaration that it is made under penalties of perjury.

(3) *Delay of assessment.* If a payee institutes or maintains a suit with the United States Tax Court primarily to delay assessment and the payee's position is frivolous or groundless, or the payee unreasonably failed to pursue available administrative remedies, the court may award up to $5,000 in damages under section 6673. The damages will be assessed against and collected from the payee in the same manner as the underlying tax.

§ 31.3406(d)–1 Manner required for furnishing a taxpayer identification number.

(a) *Requirement to withhold.* Backup withholding under section 3406(a)(1)(A) is required with respect to any reportable payment (as defined in § 31.3406(b)(1)–1(a)) if the payee does not furnish his taxpayer identification number to the payor in the manner required by this section. The period for withholding is described in § 31.3406(e)–1(c). See § 31.3406(d)–3(a) for special rules when an account is established directly with, or an instrument is acquired directly from, the payor by means of electronic or mail communication or an instrument is sold through a broker by means of electronic transmission (*i.e.*, telephone or wire instruction), and see § 31.3406(d)–4 for special rules relating to the acquisition of a readily tradable instrument through a broker. See also § 31.3406(g)–3 for rules as to when a payee is awaiting receipt of a taxpayer identification number. See the applicable information reporting sections and section 6109 and the regulations thereunder to determine whose taxpayer identification number should be provided.

(b) *Reportable interest or dividend account*—(1) *Manner required for furnishing a taxpayer identification number with respect to a pre-1984 account or instrument.* A payee shall furnish his taxpayer identification number to the payor with respect to any obligation, deposit, certificate, share, membership, contract, account, or other relationship or instrument established or acquired on or before December 31, 1983 (a "pre-1984 account"). The manner of determining whether an account or an instrument is a pre-1984 account is described in paragraph (b)(2) of this section. The payee of a pre-1984 account may furnish his taxpayer identification number to the payor orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct.

(2) *Determination of pre-1984 account or instrument*—(i) *In general.* An account that is in existence before January 1, 1984, will be considered a pre-1984 account, regardless of whether additional deposits are made to the account on or after January 1, 1984. Accounts established as an expansion of a credit union prime account in existence prior to January 1, 1984, shall constitute a pre-1984 account. If funds taken from one account in existence prior to January 1, 1984, are used to create a new account on or after such date, however, the new account so created does not constitute a pre-1984 account except as provided in the preceding sentence. For example, with respect to a disposition of shares in a mutual fund and the purchase of shares of another fund within a group of mutual funds which occurs after December 31, 1983, the shares acquired in the second fund may not be treated as a pre-1984 account unless the payee owned shares in the second fund prior to January 1, 1984. An instrument acquired prior to January 1, 1984, is a pre-1984 account. An instrument negotiated in a window transaction as defined in § 31.3406(b)(2)–3(b) after December 23, 1987, is treated as an instrument acquired after December 31, 1983. However, an obligation in bearer form, whenever acquired, that is redeemed after December 31, 1983, and subject to reporting under section 6045, is not a pre-1984 account. Any instrument, whenever acquired, that is held in a brokerage account shall be considered a pre-1984 account if the brokerage account is not a post-1983 brokerage account (as described in paragraph (c)(1) of this section). If shares of a corporation are held before January 1, 1984 (or considered held before such date by operation of this rule), and additional shares are acquired by the holder, irrespective of whether such shares are received by reason of a stock dividend, investing new cash, or otherwise, the new shares, in the discretion of the payor, may be considered a pre-1984 account. In the case of a qualified employee trust that distributes instruments in kind, any instrument distributed from the trust will be considered a pre-1984 account with respect to employees who were participants in the trust before 1984. Similarly, when a payor offers participants in a plan the opportunity to purchase stock of the payor after a specified time, using the money that the payee invested during that period of time, the stock so purchased after December 31, 1983, shall be considered a pre-1984 account with respect to participants in the plan who either owned shares or invested money in the plan before January 1, 1984.

(ii) *Account or instrument automatically acquired on the maturity or termination of an account.* When an account is opened, or an instrument is acquired, automatically on the maturity or termination of an account that was in existence or an instrument that was held before January 1, 1984 (or considered to have been in existence or held before such date by operation of this rule), without the participation of the payee, the new account or instrument will be considered to be a pre-1984 account, in the discretion of the payor. For purposes of the preceding sentence, a payee shall not be considered to have participated in the acquisition of the new account or instrument solely because the payee failed to exercise a right to withdraw funds at the maturity or termination of the old account or instrument.

(iii) *Special rule for short-term discount instruments acquired before January 1, 1985.* Where a discount instrument with a maturity not exceeding one year (a "short-term instrument") is acquired from the same payor immediately upon the maturity of the short-term instrument, the participation of the payee in the acquisition of the newly-acquired instrument shall not be taken into account, and the new instrument shall be considered to have been acquired automatically, unless the new instrument is acquired after December 31, 1984.

(iv) *Insurance policies.* In the case of insurance policies in effect on December 31, 1983, the election of a dividend accumulation option pursuant to which interest is paid (as defined in § 1.6049–5(a)(4)), or the creation of an "account" in which proceeds of a policy are held for the policy beneficiary, may, in the payor's discretion, be treated as a pre-1984 account.

(v) *Acquisitions and mergers.* In the case of any acquisition or merger including a tax-free reorganization under section 368, the acquiring-payor shall treat those persons who (A) held accounts or instruments in another payor immediately before the acquisition or merger of such payor and who (B) receive an account or instrument in the acquiring payor immediately after such acquisition or merger, as having the same status in the acquiring payor for information reporting, backup withholding, andrelated tax provisions as existed with respect to the payor whose accounts or instruments were acquired. In the event that the acquiring payor cannot determine the status of the acquired accounts or instruments from the business records of the payor from whom the accounts or instruments were acquired, then the acquiring payor shall treat such accounts or instruments as pre-1984 accounts or instruments.

(3) *Manner required for furnishing a taxpayer identification number with respect to an account or instrument that is not a pre-1984 account.* Except as provided in (b)(4) of this section, a payee is required to certify under penalties of perjury that the taxpayer identification number the payee furnishes to the payor is the payee's correct taxpayer identification number with respect to any account or instrument that is not a pre-1984 account as described in paragraph (b)(2) of this section. The certificate on which the certification shall be made is described in § 31.3406 (h)–3. With respect to an account or instrument that is not a pre-1984 account, see § 31.3406 (d)–2 for the requirement that the payee must certify under penalties of perjury that the payee is not subject to backup withholding due to notified payee underreporting. See also the special rule in § 31.3406 (d)–3 (a) with respect to an account established directly with, or an instrument acquired directly from, the payor by electronic or mail communication. See also the rules in § 31.3406 (d)–4 applicable to readily tradable instruments acquired through a broker.

(4) *Special rule with respect to the acquisition of a readily tradable*

instrument in a transaction between parties unrelated to the payor if the parties act without the assistance of a broker. When a readily tradable instrument is at any time acquired by a payee without the assistance of a broker, and the payee is unrelated to the payor of reportable payments on the instrument, the payee must furnish his taxpayer identification number to the payor prior to the time reportable payments are made on the instrument, but the payee is not required to certify under penalties of perjury that the number is correct. A broker shall be considered to be involved in the transaction if the person effecting the transaction would be required to make an information return under section 6045 if the instrument were sold. See § 31.3406 (d)–4 for the rules relating to an acquisition of a readily tradable instrument when a broker is involved.

(5) *Examples.* The application of the provisions this paragraph (b) may be illustrated by the following examples:

Example (1). Individual A maintains an interest bearing account with Bank Q that has been in existence since 1981. Because the account was in existence before January 1, 1984, the account is a pre-1984 account under paragraph (b)(2) of this section. A furnishes a taxpayer identification number to Q but does not certify under penalties of perjury that the number is his correct taxpayer identification number. A has furnished his taxpayer identification number in the manner required in paragraph (b)(1) of this section. Thus, withholding under section 3406(a)(1)(A) does not apply to any reportable interest payment on that account.

Example (2). Individual B, a shareholder of Corporation X, enrolls before January 1, 1984, in X's dividend reinvestment program to purchase additional shares of X stock and orally furnishes his taxpayer identification number to X at that time. The shares that B receives after December 31, 1983, may be considered payable to a pre-1984 account, in X's discretion. X decides to treat the account as a pre-1984 account as described in paragraph (b)(2)(i) of this section. Even if B does not certify his number, B has furnished his taxpayer identification number in the manner required in paragraph (b)(1) of this section with respect to a pre-1984 account. Thus, withholding under section 3406(a)(1)(A) does not apply to any reportable payment made with respect to the account.

Example (3). Assume the same facts as in Example (2) except that X does not treat the new shares as a pre-1984 account. B has not furnished his taxpayer identification number in the manner required in paragraph (b)(3) of this section with respect to accounts or instruments that are not a pre-1984 account. Thus, withholding under section 3406(a)(1)(A) applies to any reportable payment on the new shares until B certifies that the taxpayer identification number is correct. See § 31.3406(d)–4(c)(2) for rules applicable to aggregate payments made with respect to certain accounts.

Example (4). Individual C purchased 100 shares of Y Corporation stock directly from Y in 1982. Y did not receive C's certified taxpayer identification number at the time the stock was acquired. On April 16, 1984, C furnished the number orally to Y and did not certify under penalties of perjury that the number is correct. Since the 100 shares of stock are considered a pre-1984 account under paragraph (b)(2) of this section, C has furnished his taxpayer identification number in the manner required. Thus, Y is not required to withhold under section 3406(a)(1)(A) on reportable payments made after April 16, 1984, as described in § 31.3406(e)–1.

Example (5). Public Utility Company Z offers an investment program to consumers to invest in Z's stock. Under the plan, a consumer will invest $100 a month. At the end of the year, the money invested in the plan will be used to purchase shares of Z stock. Individual D participates in the plan during 1983. The shares acquired by D are considered a pre-1984 account under paragraph (b)(2) of this section. Accordingly, D is not required to certify his taxpayer identification number to Y. If D does not provide a taxpayer identification number to Z, however, withholding under section 3406(a)(1)(A) applies to reportable payments made with respect to the account until C furnishes his taxpayer identification number.

Example (6). E, an individual, transfers a bond issued by Corporation N to Individual F without the assistance of a broker (as defined in § 1.6045–1(a)). F furnishes his taxpayer identification number to N, but does not certify under penalties of perjury that it is his correct number. L, a transfer agent for N, is instructed to register the bond in F's name. Since the transaction is effected without the assistance of a broker and the parties are unrelated to the payor, F is not required to certify his taxpayer identification number. Thus, F has furnished his taxpayer identification number in the manner required in paragraph (b)(4) of this section. Consequently, N is not required to withhold under section 3406(a)(1)(A) on reportable payments made on the bond to E.

Example (7). Assume the same facts as in *Example (6)* except that E maintains a custodial account with Bank K that is not a pre-1984 account under paragraphs (b)(2)(i) and (c)(1) of this section. E instructs K to transfer the bond in the custodial account to F. K effects the transfer and instructs L to register the bond in F's name. K is considered a broker under section 6045. Since the transaction is effected with the assistance of a broker, F is required to certify his taxpayer identification number to K who is required to notify L if F fails to certify his number (as described in § 31.3406(d)–4). If F does not furnish his taxpayer identification number in the manner required in paragraph (c) of this section, L is required to withhold under section 3406(a)(1)(A).

(c) *Brokerage account—(1) Manner required for furnishing a taxpayer identification number with respect to a brokerage relationship that is not a post-1983 brokerage account—(i) In general.* With respect to any instrument, investment, or deposit made through a brokerage account that is not a post-1983 brokerage account, the payee shall furnish his taxpayer identification number to the broker either orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct. See § 31.3406(d)–1(b)(2)(i) for the rule that any instrument, whenever acquired, that is held in a brokerage account that is not a post-1983 brokerage account, shall be considered held in such account.

(ii) *Definition of a brokerage account that is not a post-1983 brokerage account.* A brokerage account that was established by a payee before January 1, 1984, through which during 1983 the broker either bought or sold securities for the payee or held securities on behalf of the payee as a nominee, is an account that is not a post-1983 brokerage account.

(iii) *Definition of a post-1983 brokerage account.* A brokerage account established after December 31, 1983, (or before January 1, 1984, and through which during 1983 the broker neither bought nor sold securities nor held securities on behalf of the payee in street name) is a post-1983 brokerage account.

(2) *Manner required for furnishing a taxpayer identification number with respect to a post-1983 brokerage account.* Except as provided in § 31.3406 (d)–3(b), the payee is required to certify under penalties of perjury that the taxpayer identification number furnished to a broker is correct with respect to a post-1983 brokerage account as described in paragraph (c)(1) of this section.

(3) *Examples.* The application of the provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Individual D established an account with Broker K before January 1, 1984, in which K held readily tradable securities in street name for D during 1983. The account is not a post-1983 brokerage account under paragraph (c)(1)(ii) of this section and instruments held in the account, whenever acquired, are pre-1984 accounts under paragraph (b)(2)(i) of this section. D furnishes his taxpayer identification number orally to K before January 1, 1984. D is treated as furnishing his taxpayer identification number in the manner required in paragraphs (c)(1) and (b)(1) of this section. Thus, withholding under section 3406 (a)(1)(A) shall not apply to any sale of any instrument in the account that is subject to reporting under section 6045 nor shall withholding apply to any reportable interest or dividend payment made with respect to any instrument in the account.

Example (2). Individual E established an account with Broker L before January 1, 1984, and furnished his taxpayer identification number to L. L neither bought nor sold instruments for E nor did L act as nominee for E anytime during 1983. The account is a post-1983 account under paragraph (c)(1)(iii) of this section. Although E furnished a taxpayer identification number to L, E did not certify under penalties of perjury that it was his correct taxpayer identification number. E has not, therefore, furnished his taxpayer identification number to L in the manner required in paragraph (c)(2) of this section. Thus, withholding under section 3406(a)(1)(A) shall apply to *any* sale of an instrument through that account that is subject to reporting under section 6045 unless E certifies to L prior to the sale of any instrument that E's taxpayer identification number is correct. (See § 31.3406 (d)–3(b) for the special rule if the instruction to sell was by means of telephone or wire instruction.) Since L did not act as nominee for E, L would not be making any reportable interest or dividend payments to E that would be subject to withholding under section 3406 (a)(1)(A) because E did not furnish his taxpayer identification number to L in the manner required in paragraphs (b)(1) and (c)(1) of this section. If any instrument was placed in the account after December 31, 1983, *i.e.*, L holds the instrument in street name, the instrument would not be a pre-1984 account under paragraph (b)(2)(i) of this section. Thus, payments made with respect to the instrument would be subject to withholding under section 3406 (a)(1)(A) because E did not furnish his taxpayer identification number to L in the manner required in paragraph (b)(3) of this section.

Example (3). F opens a brokerage account with Broker M on August 1, 1984. F does not certify under penalties of perjury that his taxpayer identification number furnished is correct. The account is a post-1983 brokerage account under paragraph (c)(1)(iii) of this section. F has not furnished his taxpayer identification number in the manner required in paragraph (c) of this section, and withholding under section 3406 (a)(1)(A) shall apply to any gross proceeds that are subject to reporting under section 6045. Thus, if Broker M sold securities for F through the account on August 1, 1984, the gross proceeds would be subject to withholding. (See § 31.3406(d)–3(b) for the special rule if the instruction to sell was by means of telephone or wire instruction.)

Example (4). Assume the same facts as in *Example (3)* except that F opens the account and purchases readily tradable instruments. M holds the instruments in street name for F. The instruments will pay reportable dividends on September 30, 1984. Since M is holding the instruments in street name for F, M is considered the payor of the reportable dividends (as defined in § 31.3406(a)–2). Because the account is a post-1983 brokerage account described in paragraph (c)(1)(iii) of this section, the instruments held in the account are not considered a pre-1984 account under paragraph (b)(2)(i) of this section regardless of when the instrument was acquired. Consequently, if F does not certify under penalties of perjury that his taxpayer identification number is correct before September 30, 1984, M is required to withhold under section 3406 (a)(1)(A) on the reportable dividend payment on such date. (See § 31.3406(d)–3(a) for the special rule if the acquisition is effected by telephone, wire, or mail.)

(d) *Rents, commissions, nonemployee compensation, and certain fishing boat operators, etc.—(1) Manner required for furnishing a taxpayer identification number.* With respect to accounts, contracts, or relationships where the payor is required to make an information return under section 6041 (relating to information reporting at source on rents, royalties, salaries, etc.), section 6041A(a) (relating to information reporting of payments for nonemployee services), section 6050A (relating to information reporting by certain fishing boat operators), or section 6050N (relating to information reporting of payments of royalties), the payee shall furnish his taxpayer identification number to the payor either orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct regardless of when the account, contract, or relationship is established.

(2) *Example.* The application of the provisions of this paragraph (d) may be illustrated by the following example:

Example. E performs services as a nonemployee to Y who pays $1,000 to E. Y's payment to E is reportable under section 6041A(a). E furnishes his taxpayer identification number to Y but does not certify under penalties of perjury that it is his correct number. E has furnished his taxpayer identification number in the manner required in paragraph (d) of this section. It is not relevant whether the relationship is or is not a pre-1984 account. Thus, withholding under section 3406(a)(1)(A) does not apply to the reportable payment to E.

§ 31.3406(d)–2 Payee certification failure.

(a) *Requirement to withhold.* Except as provided in paragraph (b) of this section, § 31.3406(d)–3(a), and § 31.3406(d)–4, backup withholding under section 3406(a)(1)(D) (relating to a payee certification failure) is required with respect to a reportable interest or dividend payment (as defined in section 3406(b)(2) and § 31.3406(b)(1)–1(b)) if, and only if, the payee fails to certify to the payor, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(C). Special rules are provided if § 31.3406(d)–3(a) when an account is established directly with, or an instrument is acquired directly from, the payor through electronic or mail communication. See § 31.3406(c)–1(b)(3)(ii) for rules with respect to a payor's reliance on a payee certification for a new account following notified payee underreporting. See § 31.3406(d)–4 for rules applicable to readily tradable instruments acquired through a broker.

The certificate on which the certification should be made is described in § 31.3406(h)–3. The period for which withholding is required is described in § 31.3406(a)–1(d).

(b) *Exceptions.* Backup withholding under section 3406(a)(1)(D) and paragraph (a) of this section does not apply in the case of—

(1) A reportable interest or dividend payment with respect to a pre-1984 account (as defined in § 31.3406(d)–1(b)(1));

(2) A reportable interest payment made in a window transaction (as defined in § 31.3406(b)(2)–3(b)); or

(3) A reportable interest or dividend payment made with respect to a readily tradable instrument that is described in § 31.3406(d)–4(a)(2).

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) *Accounts or readily tradable instruments acquired directly from the payor (including a broker who holds an instrument in street name)—(1) Account or instrument acquired directly from the payor by electronic means.* In the case of an account established directly with, or a readily tradable instrument acquired directly from, the payor by means of electronic transmission (*e.g.*, telephone or wire), the payor may permit the payee to furnish the certifications required in § 31.3406(d)–1(b)(3) (relating to certification that the payee's taxpayer identification number is correct) and § 31.3406(d)–2 (relating to certification of notified payee underreporting) within 30 days after the establishment or acquisition, provided that the payee furnishes a taxpayer identification number to the payor at the time of the acquisition or establishment and the payee does not make any withdrawals before the certifications are received. For purposes of this section, an account or instrument shall be considered "acquired directly from the payor" if the instrument was acquired by the payee without the assistance of a broker or the instrument was acquired directly from a broker who holds the instrument as nominee for the payee (*i.e.*, in street name) and who is considered a payor under § 31.3406(a)–2. If the payee makes any withdrawals before the certifications are received, the payor must withhold 20 percent of the amounts withdrawn to the extent of any reportable interest or dividend payments made to the payee during the 30-day period. In addition, the payor must commence withholding on all reportable interest or dividend payments made with respect to the account or instrument on and after the

31st day following acquisition or establishment if the payee has not provided the required certifications to the payor by that date. The rules of this paragraph (a)(1) also apply with respect to a payee from whom the payor is required to obtain a Form W–8 or substitute form (as described in § 1.6049–5(g)) or is to obtain other evidence of foreign status (as described in § 1.6049–5(h)), provided the payee represents to the payor, orally or otherwise, before or at the time of the acquisition or establishment that the payee is not a United States citizen or resident. A payee described in the preceding sentence is not required to furnish a taxpayer identification number at the time of establishment of the account or acquisition of the instrument in order for the special rule under this paragraph to apply.

(2) *Accounts or readily tradable instruments acquired directly from payor by mail communication.* The rules of paragraph (a)(1) of this section also apply to accounts established with, or instruments acquired directly from, the payor that are effected by mail before January 1, 1985. With respect to accounts established directly with, or instruments acquired directly from, the payor by mail on or after January 1, 1985, the payor is required to impose backup withholding on the reportable interest or dividend payments if the payee has not provided the required certifications by the time that a reportable payment is made (as described in § 31.3406(a)–4).

(3) *Examples.* The application of the provisions of this paragraph (a) may be illustrated by the following examples:

Example (1). G opens a new interest bearing account at Bank N on March 7, 1984, by appearing at N in person. Bank N will pay interest on the account at the end of each month. G provides his taxpayer identification number at the time that G opens the account but fails to certify under penalties of perjury that he is not subject to backup withholding due to notified payee underreporting as required in § 31.3406 (d)–2. N is required to withhold 20 percent of the payment made on March 31, 1984.

Example (2). Assume the same facts as in *Example (1)* except that G opens the account by calling Bank N and wiring the initial deposit by electronic funds transfer. G provides his taxpayer identification to N during the telephone call. N is not required to withhold on the March 31 payment date since G provided his taxpayer identification number on the date of acquisition (as provided in paragraph (a) (1) of this section). G provides the required certifications on April 6. Thus, N also is not required to withhold on the April 30 payment date since N received G's certifications within 30 days of opening the account and prior to the payment.

Example (3). Assume the same facts as in *Example (2)* except that G closes the account on April 2 and does not provide any certification before withdrawal. Under paragraph (a) (1) of this section, N is required to withhold 20 percent of the reportable interest payment made on March 31 as well as any reportable payment made at the time the account is closed and the funds are withdrawn (April 2).

Example (4). H purchases new shares in Mutual Fund O on February 14, 1984, that will pay reportable dividends daily. H acquires the shares by wiring money from his bank account to the mutual fund. H does not provide his taxpayer identification number at the time of acquisition. O is required to withhold 20 percent of any reportable amounts paid after February 14 until O receives H's certifications. Even if O receives H's taxpayer identification number after February 14, 1984, O is required to withhold from payments made to H because H did not furnish his taxpayer identification number at the time of acquisition as required in paragraph (a) (1) of this section. O may stop withholding only when O receives the required certifications from H.

Example (5). Assume the same facts as in *Example (4)* except that H provides his taxpayer identification number on February 14 (date of acquisition). On March 1, before providing the required certifications, H withdraws $5000. Two hundred dollars of dividends have been paid prior to that date. Four thousand eight hundred dollars are gross proceeds for the shares redeemed. O is required to withhold 20 percent of the reportable amount ($5000) on March 1, the date of withdrawal. The $200 is reportable under section 6042 and the $4800 is reportable under section 6045. O is required to withhold on the $200 under paragraph (a) (1) of this section since the $200 is assumed to be a reportable interest or dividend payment. O is also required to withhold on the $4800 since that amount is subject to reporting under section 6045 and H has not furnished his taxpayer identification number in the manner required in § 31.3406 (d)–1 (c)(2).

(b) *Special rule with respect to the sale of an instrument for a customer pursuant to a telephone or wire instruction*—(1) *Special rule.* In the case of a sale of an instrument through a post-1983 brokerage account (as described in § 31.3406 (d)–1(c)(1)) by means of electronic transmission (*e.g.*, telephone or wire), a broker who is required to report the gross proceeds of the sale under section 6045 (as described in § 31.3406 (b) (3)–2) may permit the customer to furnish the certification described in § 31.3406 (d)–1 (c)(2) (relating to certification that the customer's taxpayer identification number is correct) within 30 days after the sale, provided that the customer furnishes his taxpayer identification number to the broker before the sale and the customer does not withdraw or reinvest more than 60 percent of the proceeds of the sale before the required certification is provided. Thus, if at all times at least 20 percent of all gross proceeds reportable under section 6045 are held in cash by the broker, the gross proceeds of the sale will not be subject to backup withholding for 30 days. If the customer desires to withdraw or reinvest more than 60 percent of the proceeds of the sale before the 31st day and before the certification is received, the broker is required to withhold 20 percent of the reportable gross proceeds at the time of the withdrawal or reinvestment (or, if later, the time the proceeds are paid). If the customer does not provide the required certification within 30 days of the date of the sale, the broker must withhold 20 percent of the reportable gross proceeds on the 31st day after the date of the sale. The rules of this paragraph (b)(1) also apply with respect to a customer from whom the broker is required to obtain a Form W–8 (or substitute form) in accordance with § 1.6045–1(g)(1)(i)(A) or is required to obtain other evidence of foreign status in accordance with § 1.6045–1(g)(1)(i) (B) or (C) provided the customer represents to the broker before the sale, orally or otherwise, that the customer is not a United States citizen or resident.

(2) *Examples.* The application of the provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). Individual G establishes an account with Broker N on August 1, 1984, by calling N and wiring money to the account. N purchases shares of Y Corporation stock that N will hold in street name for G. G provides his taxpayer identification number but does not certify under penalties of perjury that it is his correct taxpayer identification number. The account is a post-1983 brokerage account under § 31.3406(d)–1(c)(2). On October 12, 1984, G telephones N and instructs N to sell all of the Y stock for $10,000 and to send him a check for $5,000. N is required to make an information return under section 6045 showing the $10,000 of gross proceeds. N, at its option, is not required to withhold $2,000 on October 12, 1984, even though G has not provided a certified taxpayer identification number. Under paragraph (b)(1) of this section, N may permit G to furnish the certification within 30 days since G has furnished his taxpayer identification number and G did not withdraw more than 60 percent of the proceeds of the sale. If N does not receive the certification by November 12, N is required to withhold $2,000 from G's account on November 13.

Example (2). Assume the same facts as in *Example (1)* except that G does not provide his taxpayer identification number prior to, or on October 12 (the date of the sale). Because G did not furnish his taxpayer identification number, N is not permitted under paragraph (b)(1) of this section to give G 30 days to furnish the certification. Thus, N is required to withhold $2,000 on October 12.

Example (3). Assume the same facts as in *Example (1)* except that G instructs N to sell the Y stock and reinvest $8,000 of the proceeds in stock of Z Corporation. Even though G has furnished his taxpayer identification number, N is required to withhold on October 12 because under paragraph (b)(1) of this section N may only permit G to furnish the required certification within 30 days of the sale if G does not withdraw more than 60 percent of the proceeds. The reinvestment is a withdrawal under paragraph (b)(1) of this section. Because G desired to withdraw (in the form of reinvestment) more than 60 percent of the gross proceeds, N is required to withhold $2,000 before purchasing Z stock for G. If G desired to withdraw (or reinvest) only $8,000 of the gross proceeds, N would not be required to withhold on October 12.

§ 31.3406(d)–4 Special rules for readily tradable instruments acquired through a broker.

(a) *Readily tradable instruments acquired through a broker who is not a payor*—(1) *Instruments acquired through post-1983 brokerage accounts.* When a readily tradable instrument is acquired through a post-1983 brokerage account (as defined in § 31.3406(d)–1(c)(2)) and the broker is not the payor of the instrument (as defined in § 31.3406(a)–2(b)(3)), the broker must—

(i) Obtain the certifications described in § 31.3406(d)–2(a) and § 31.3406(d)–1(b)(3) and (c)(2) from the payee (relating to certification of payee underreporting and taxpayer identification number, respectively), but the broker is required to obtain the certifications only once with respect to each account;

(ii) Furnish the payee's taxpayer identification number to the payor; and

(iii) Notify the payor to impose backup withholding if the payee fails to make either of the required certifications to the broker or if the broker has been notified by the Internal Revenue Service before the acquisition of the instrument that the payee is subject to backup withholding due to notified payee underreporting under section 3406 (a)(1)(C) or that the payee is subject to backup withholding because the payee's taxpayer identification number is incorrect (as described in § 31.3406(d)–5).

The broker is required to give the information required by paragraph (a)(1)(ii) and (iii) of this section to the payor in connection with the transfer instructions for the acquisition. The term "transfer instructions" includes the "fanfold" documents and account registration instructions transmitted by a broker in the case of acquisitions of shares in a mutual fund. A notice including the information described in paragraph (b)(1) of this section shall satisfy the broker's requirement to give notice to the payor. Once the broker transmits the transfer instructions containing the information required by this section, the broker has no further responsibility to obtain a missing taxpayer identification number or missing certification or to provide additional notices to the payee or payor with respect to the acquisition of the instrument. Upon receiving the notice from a broker, the payor must impose backup withholding on the account pursuant to § 31.3406(a)–1.

(2) *Transactions entered into through a brokerage account that is not a post-1983 brokerage account.* When a readily tradable instrument is acquired through a brokerage account that is not a post-1983 brokerage account (as defined in § 31.3406 (d)–1 (c)(1)) and the broker is not the payor of the instrument (as defined in § 31.3406 (a)–2 (a)), the broker is required to furnish the payee's taxpayer identification number to the payor. In addition, if the broker has been notified by the Internal Revenue Service that the payee is subject to backup withholding under section 3406 either because of an incorrect taxpayer identification number (as described in § 35a.3406–1) or due to notified payee underreporting under section 3406 (a)(1)(C), the broker must notify the payor (in connection with the transfer instructions) to impose backup withholding with respect to that payee. A notice that contains the information described in paragraph (b)(1) of this section shall satisfy the broker's requirement to give notice to the payor. After a payor receives a notice from a broker pursuant to section 3406 (d)(2)(B) and this paragraph, the payor must impose backup withholding on any accounts of the payee paying reportable interest or dividends as defined in § 31.3406 (b) (1)–1 (b) in accordance with § 31.3406 (a)–1.

(3) *Payor must notify payees*—(i) *Failure to provide certifications.* If a payor is notified by a broker, as required in paragraph (a) of this section, that a payee is subject to backup withholding because the payee failed to provide the certifications, as described in § 31.3406 (d)–2 (a) and § 31.3406 (d)–1 (b)(3) and (c)(1), then the payor is required to notify the payee that backup withholding has commenced (or will commence) no later than 15 days after the payor makes the first payment to the payee that is subject to backup withholding under section 3406. A notice that contains the information described in paragraph (b)(2) of this section shall satisfy the payor's requirement to give notice to the payee. If the broker notifies the payor that the payee failed to make a required certification and the payor has received the certification from the payee, the payor may disregard the notice from the broker.

(ii) *Notified payee underreporting and incorrect taxpayer identification number.* The payor is also required to notify the payee under this section when the Internal Revenue Service or a broker notifies the payor to withhold either because of an incorrect taxpayer identification number under section 3406(a)(1)(B) (as described in § 31.3406 (d)–5) or due to notified payee underreporting under section 3406 (a)(1)(C) (as described in § 31.3406 (c)–1). Whenever there is notification including notification from the Internal Revenue Service through a broker with respect to a readily tradable instrument, the payor may not ignore the notice even if the payor has received the required certification from the payee. See § 31.3406 (d)–5 (c) (1) and (2) and (f)(2) for requirements of the notice that a payor must provide to a payee when a payor is notified by the Internal Revenue Service or a broker that a payee is subject to backup with-holding under section 3406 (a) (1) (B) because the payee has furnished an incorrect taxpayer identification number as described in § 31.3406 (d)–5 (a) (4). See § 31.3406 (c)–1 (c)(2) for the requirements of the notice that a payor must provide to a payee when a payor is notified by the Internal Revenue Service or a broker that a payee is subject to backup withholding under section 3406 (a) (1) (C) due to a notified payee underreporting.

(b) *Notices*—(1) *Form of notice by broker to payor.* A broker who is required under paragraph (a) (1) (iii) and (2) of this section to notify the payor with respect to a readily tradable instrument shall include in the notice—

(i) The payee's name, address, and taxpayer identification number (if provided to the broker), and

(ii) A statement that the payee is subject to backup withholding under section 3406(a)(1) (A), (B), (C), or (D) of the Internal Revenue Code, whichever section applies, and

(iii) When applicable, a statement that the broker was notified by the Internal Revenue Service that the payee is subject to backup withholding under section 3406(a)(1) (B) or (C).

The broker may notify the payor in connection with the transfer instructions by means of magnetic media, machine readable document, or any other medium, provided that the notice includes the information described in the preceding sentence.

(2) *Form of notice by payor to payee.* A payor who receives notice from the broker or the Internal Revenue Service that the payee is subject to backup withholding shall notify the payee as required in paragraph (a)(3) of this

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section. The notice to the payee shall be substantially similar to the following:

(i) For a notification concerning a failure to provide a taxpayer identification number in the required manner under section 3406(a)(1)(A) or a failure to make the certifications described in section 3406(a)(1)(D):

Recently, you purchased (identify security acquired). Because of the existence of one or more of the following conditions, payments of interest, dividends, and other reportable amounts that are made to you will be subject to backup withholding of tax at a 20 percent rate: (specify the condition or conditions, described below, that are applicable)

(1) You failed to provide a taxpayer identification number, or failed to provide such number under penalties of perjury, in connection with the purchase of the acquired security. (An individual's taxpayer identification number is his or her social security number.)

(2) You failed to certify, under penalties of perjury, that you are not subject to backup withholding due to notified payee underreporting as required under section 3406(a)(1)(D) of the Internal Revenue Code.

If condition (1) applies, you may stop withholding by providing your taxpayer identification number on the enclosed Form W–9, signing the form, and returning it to us. If you do not have a taxpayer identification number, but have (or will soon) apply for one, you may so indicate on the Form W–9. Backup withholding may apply during the 60-day period you are awaiting for your taxpayer identification number. You must provide us with your taxpayer identification number promptly after you receive it in order to avoid withholding after the end of the 60-day period or to stop backup withholding if it has already begun. Certain persons, described on the enclosed Form W–9, are exempt from withholding. Follow the instructions on that form if applicable to you. If condition (2) applies, you may stop withholding by certifying on the enclosed Form W–9 that you are not subject to backup withholding due to notified payee underreporting, signing the form, and returning it to us.

If more than one condition applies, you must remove All applicable conditions to stop withholding.

Please address any questions concerning this notice to: [Insert Payor Identifying Information].

(Do not address questions to the broker who purchased the securities for you.)

(ii) For the form of the notice concerning imposition of backup withholding due to an incorrect taxpayer identification number under section 3406(a)(1)(B), see § 31.3406 (d)–5 and (f)(2).

(iii) For the form of the notice concerning the imposition of backup withholding due to a notified payee underreporting, see § 31.3406(c)–1(c)(2).

(c) *Payors' reliance on information from broker*—(1) *In general.* A payor of an instrument acquired by a payee through a broker may rely on the information that the payor receives from the broker pursuant to paragraphs (a) and (b) of this section. Thus, if the broker's transfer instructions to the payor include a taxpayer identification number and do not inform the payor that the payee failed to make a required certification, the payor is not required to impose backup withholding. If the broker's notice informs the payor that the payee failed to make a required certification, however, and the payor has not received the certification from the payee, the payor is required to impose backup withholding. In addition, if the broker's notice informs the payor that the payee is subject to backup withholding due to notification from the Internal Revenue Service, the payor is required to withhold during the period described in § 31.3406(c)–1 (e) and (f).

(2) *Amount subject to withholding.* The payor is required to withhold depending on the payor's customary method of making payment on an instrument or instruments owned by a payee. For example, if it is the practice of a payor to combine in one account all readily tradable instruments of the same issue owned by a payee and if certain of those instruments are subject to backup withholding and others are not subject to backup withholding, the payor is required to withhold 20 percent of the aggregate payment made with respect to all the instruments in the account. If it is not the practice of the payor to combine in one account all readily tradable instruments of the same issue owned by a payee, the payor is required only to withhold 20 percent of the payment made on the instrument or instruments with respect to which the payee is subject to backup withholding.

(3) *Examples.* The application of the provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Individual A owns 100 shares of X Corporation stock which were purchased directly from X in 1983. On July 1, 1985, A instructs Broker M to purchase 200 additional shares of X stock and have the shares registered in A's name. The 200 shares are acquired through a post–1983 brokerage account with M. X has received A's social security number, but A has not certified under penalties of perjury that the number provided is correct or certified that A is not subject to backup withholding due to notified payee underreporting. A fails to make the required certifications to M, and M notifies X of that fact as required in paragraph (a)(1)(iii) of this section. X, in accordance with its customary practice, combined in one account all 300 shares owned by A and made an aggregate payment with respect to all the instruments. X is required to withhold 20 percent of all reportable amounts under paragraph (c)(2) of this section.

Example (2). Assume the same facts as in *Example (1)* except that X, in accordance with its customary practice, separates the shares into two accounts. Under paragraph (c)(2) of this section, X is only required to withhold 20 percent of the reportable payments made with respect to the 200 shares of stock that A acquired through M because the 100 shares of X stock were acquired before January 1, 1984, directly from X.

Example (3). Assume the same facts as in *Example (1)* except that X received A's certifications that A's social security number was correct and that A was not subject to backup withholding due to notified payee underreporting. Even though M notified X that A failed to make the required certifications, X is not required to withhold since X has received the necessary certifications from A (as described in § 31.3406(d)–2(a)). Under paragraph (a)(3) of this section, because X has received the required certifications from A, X is not required to notify A.

Example (4). Assume the same facts as in *Example (1)* except that M does not notify X that A failed to make any certifications nor does M include A's taxpayer identification number. Since X already has A's taxpayer identification number, X is not required to withhold assuming no other condition for imposing backup withholding exists with respect to A.

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

(a) *Requirement that a payor backup withhold due to notification of an incorrect taxpayer identification number*—(1) *In general.* Except as otherwise provided in paragraph (a)(2)(ii) of this section, backup withholding under section 3406(a)(1)(B) applies to any reportable payment (as defined in section 3406(b) and paragraph (a)(2) of this section) made to an account (as defined in paragraph (a)(5) of this section) of a payee if, after December 31, 1989, the Internal Revenue Service or a broker notifies a payor that the payee's taxpayer identification number is incorrect (as defined in paragraph (a)(4) of this section) and such incorrect taxpayer identification number is used with respect to such account of the payee. The payor is required under section 3406(h)(8) and paragraph (c) of this section to send a copy of the notice received by the payor (from the Internal Revenue Service or a broker) to inform the payee that he has furnished an incorrect taxpayer identification number and that, as a result, he may be subject to backup withholding under section 3406(a)(1)(B). The requirements for the notice that a payor must send to a payee are set forth in paragraph (c)(3) of this section. An example of the notice required by paragraph (c)(3) is set forth in the appendix to this section. The period for which backup withholding applies due to notification of an incorrect taxpayer identification number is described in paragraph (d) of this section. See paragraph (e) of this section for the rules regarding how a payee may prevent backup withholding from starting or to stop it once it has begun. See paragraph (f) of this section for the applicable rules when the Internal Revenue Service or a broker notifies a payor twice within 3 calendar years that a payee has furnished an incorrect taxpayer identification number. See section 6721 for the penalty that may be imposed on a payor for providing an incorrect taxpayer identification number on an information return filed with the Internal Revenue Service unless there is reasonable cause for the error.

(2) *Definition of reportable payment*—(i) *In general.* See section 3406(b) and § 31.3406(b)(1)–1 for the definition of reportable payments.

(ii) *Exceptions.* For the payments that are not "reportable payments" for purposes of section 3406(a)(1)(B), see § 31.3406(b)(2)–1 through § 31.3406(b)(4)–1. Also see § 31.3406(g)–1 through § 31.3406(g)–3 for other exceptions.

(3) *Transitional exclusion for payments to a fiduciary or nominee account.* Reportable payments to a fiduciary or nominee account are not subject to backup withholding for purposes of section 3406(a)(1)(B). For purposes of this paragraph (a)(3), a fiduciary or nominee account means an account with respect to which at least one person named in the registration is identified as acting in the capacity as nominee or of administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law. This paragraph (a)(3) does not apply with respect to a notice from the Internal Revenue Service or a broker under paragraph (b) (1) or (2) of this section that is received by a payor after [THE DATE THAT THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION.]

(4) *Definition of incorrect taxpayer identification number.* An incorrect taxpayer identification number is any number that, at the time the Internal Revenue Service makes a determination that the taxpayer identification number is incorrect—

(i) Is not assigned under section 6109 to any surname of the payee, or

(ii) Is not assigned by the Internal Revenue Service to the same of a non-individual such as a corporation, estate, partnership, or trust, that was provided on an information return filed with respect to a payee.

(5) *Definition of account.* The term "account" means any account, instrument, or other relationship with a payor.

(b) *Notice regarding an incorrect taxpayer identification number*—(1) *Notice from the Internal Revenue Service to payors and brokers.* The Internal Revenue Service will notify—

(i) Payors that a payee's taxpayer identification number is incorrect and that the payor must commence backup withholding as required under section 3406(a)(1)(B) and paragraphs (d) and (f) of this section on reportable payments made to accounts of the payee as defined in paragraph (a)(5) of this section that contain such incorrect taxpayer identification number, and

(ii) Brokers that a payee's taxpayer identification number is incorrect and that the broker must notify a payor that the payee is subject to backup withholding under section 3406(a)(1)(B) on accounts of the payee as defined in paragraph (a) (5) of this section that contain that incorrect taxpayer identification number.

The Internal Revenue Service will furnish the payor or broker with a copy of the notice and the payor shall furnish such copy, or an acceptable substitute copy, to the payee as described in paragraph (c) of this section.

(2) *Notice from a broker to a payor.* A broker who receives a notice from the Internal Revenue Service pursuant to paragraph (b)(1)(ii) of this section that a payee has furnished an incorrect taxpayer identification number and through whom the payee subsequently acquires a readily tradable instrument with respect to which the broker is not the payor must notify the payor of that instrument of the following information:

(i) The fact that the broker was notified by the Internal Revenue Service that the payee furnished an incorrect taxpayer identification number and the date set forth on such notice from the Internal Revenue Service,

(ii) The name and taxpayer identification number of the payee with respect to whom the broker was notified, and

(iii) The fact that the named payee is subject to backup withholding under section 3406(a)(1)(B).

The broker is required to provide this information to the payor of the instrument in the time and manner provided in § 31.3406(d)–4. See paragraph (b)(5)(ii) of this section for accounts of the payee with respect to which the broker is required to notify a payor under this paragraph (b)(2).

(3) *Accounts subject to backup withholding.* After receiving notice from the Internal Revenue Service or from a broker, as provided in paragraph (b) (1) and (2) of this section, the payor is required to notify the payee in accordance with paragraph (c) of this section and to institute backup withholding as prescribed in paragraph (d) of this section on all reportable payments subject to backup withholding that are made to the account or accounts of the payee containing the incorrect taxpayer identification number. See paragraph (f) of this section for the rules that apply when a payor has received two notifications of an incorrect taxpayer identification number with respect to an account of the payee from the Internal Revenue Service or a broker within 3 calendar years. See paragraph (b)(5) of this section for the determination of the account or accounts of the payee containing the incorrect taxpayer identification number.

(4) *Joint accounts*—(i) *In general.* Generally, payors are required to backup withhold on reportable payments made to the account of joint payees if the payee subject to backup withholding under section 3406(a)(1)(B) is the first person listed on the account at the time the payor receives the notice under paragraph (b) (1) or (2) of this section.

(ii) *Exception.* In the case where the first person listed on the account is an exempt foreign person for information reporting purposes under the applicable information reporting provisions and the account contains the names of persons who are not foreign persons, the payor is required to backup withhold on the account if the incorrect taxpayer identification number matches the name and number combination of the person on the account used for information reporting.

(iii) *Change in order of names.* If the account of a payee may be subject to backup withholding as described in paragraph (b)(4) of this section, backup withholding shall apply, if required, even though the order of the names on the account is subsequently changed, provided that the incorrect taxpayer identification number giving rise to backup withholding remains on the account.

(5) *Payor determination of the account or accounts of the payees that contain the incorrect taxpayer identification number*—(i) *Payors.* If an account number or designation is provided in the notice received under paragraph (b) (1) or (2) of this section, the payor need only determine whether

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the account or accounts corresponding to that number or designation contain the same name and incorrect taxpayer identification number provided in the notice. If no account number or designation is provided in the notice received under paragraph (b) (1) or (2) of this section, the payor must locate, using reasonable care, all accounts of the payee containing the same name and incorrect taxpayer identification number provided in the notice. A payor who satisfies the following two-part facts-and-circumstances test will be considered to have exercised reasonable care.

(A) Part one of the test is satisfied if a payor identifies and uses the appropriate computer or other record system on which to locate accounts of the payee subject to backup withholding under section 3406(a)(1)(B). A payor with a centralized and fully integrated computer system containing all product lines of the payor that pay reportable payments will have identified and used the appropriate system if the payor searches on such system for all accounts of the payee described in paragraph (a)(5) of this section that are subject to backup withholding. A payor whose product lines paying reportable payments are on separate computer or records systems will have identified and used the appropriate system if the payor searches for accounts of the payee on the computer or record system that contains the product line with respect to which the payor received a notification of an incorrect taxpayer identification number pursuant to paragraph (b) (1) or (2) of this section.

(B) Part two of the test is satisfied if the payor uses or inputs the appropriate data or criteria into the system that is correctly identified under paragraph (b)(5)(i)(A) of this section. In general, a payor who uses or inputs the name and taxpayer identification number, provided on the notice from the Internal Revenue Service or a broker as described in paragraph (b)(1) or (2) of this section will satisfy part two of the test. In some cases the system of a payor cannot utilize the data enumerated in the preceding sentence for locating all accounts of the payee subject to backup withholding under section 3406(a)(1)(B). In such cases the payor must use or input the appropriate data or criteria, as determined by the capability of the payor's computer or record system.

(ii) *Brokers.* Brokers are required to use the information and follow the procedures described in paragraph (b)(5)(i) to locate accounts of the payee with respect to which a broker is required to notify a payor pursuant to paragraph (b)(2) of this section.

(c) *Notice from payors of backup withholding due to an incorrect taxpayer identification number*—(1) *In general.* If the name and taxpayer identification number listed on the notice from the Internal Revenue Service or a broker as described in paragraph (b)(1) or (2) of this section matches the name and taxpayer identification number used on the payee's account at the time the payor receives the notification of an incorrect taxpayer identification number—

(i) The payor who receives a notice from the Internal Revenue Service is required under section 3406(h)(8) to send a copy of the notice required by paragraph (b)(1) of this section or a substitute notice as described in paragraph (c)(3) of this section to the payee of the account in accordance with paragraph (c)(2) of this section (an example of the notice from the Internal Revenue Service required by section 3406(h)(8) and paragraph (b)(1) of this section is set forth in the Appendix to this § 31.3406(d)–5, and

(ii) The payor who receives notification of an incorrect taxpayer identification number from a broker as described in paragraph (b)(2) of this section must send a substitute notice as described in paragraph (c)(3) of this section to the payee in accordance with paragraph (c) (2) of this section.

However, a payor is not required to send a notice as described in this paragraph (nor backup withhold under paragraph (d) of this section) with respect to any account of a payee where, due to an error of the payor, the taxpayer identification number on such account is not the number that was provided to the payor on the applicable Form W–9 (or acceptable substitute form) because, for example, the payor transposed the taxpayer identification number when incorporating it into its business records. If a payor sends a substitute notice, such notice must include all the information set forth in paragraph (c)(3) of this section, or must be identical to the notice set forth in the appendix to this § 31.3406(d)–5, or must be an acceptable substitute of the notice set forth in the Appendix to this § 31.3406(d)–5. In addition to the copy of the notice required by paragraph (b)(1) of this section or the substitute notice described in paragraph (c)(3) of this section, the payor must include a Form W–9 or an acceptable substitute form (as described in § 31.3406(h)–(3)(c)(2)) with the notice for the payee to use to provide his name and taxpayer identification number and to certify that the taxpayer identification number is correct, or to provide his name and taxpayer identification number that was originally furnished and to certify that such taxpayer identification number is correct. The payor is required to include a reply envelope (self-addressed) with the notice to the payee which may be, but is not required to be, postage prepaid. The envelope containing the notice and the Form W–9 (or an acceptable substitute form) must state on the outside in a bold and conspicuous manner: "Important Tax Document Enclosed". The mailing may not include any material other than the notice, the Form W–9 (or an acceptable substitute form), any documents of the payor that are necessary to change the name or taxpayer identification number (or both) on the account of the payee, and the reply envelope of the payor. The notice required by paragraph (c) of this section shall also apply to those payors notified by a broker that a payee is subject to backup withholding under section 3406(a)(1)(B). For purposes of this section, the date set forth on the notice from the Internal Revenue Service (or a broker) shall be considered the date of receipt by and of notification to the payor. However, in the case of a dispute, if the payor demonstrates to the satisfaction of the Internal Revenue Service that the date of actual receipt of the notice is later than the date on the notice, the actual date shall be considered the date of receipt by and of notification to the payor.

(2) *Procedures*—(i) *In general.* The payor must send the notice described in paragraph (c) of this section to the payee within 15 business days after the date that the Internal Revenue Service or a broker notifies the payor pursuant to paragraph (b) (1) or (2) of this section. The payor must mail the notice to the payee's last known address by first-class mail. If it is the customary practice of the payor not to mail any correspondence to a payee, the payor may furnish the notice by personal delivery, by intra-office mail, or by any other means reasonably expected to furnish the notice to the payee promptly. A payor is not required to send the notice to the payee if there is currently a "do not mail" or a "stop mail hold" instruction with respect to the payee's account subject to backup withholding under section 3406(a)(1)(B). However, the payor must handle the notice in the same manner that the payor handles other correspondence of the payee.

(ii) *Two or more notices for a payee in the same calendar year.* A payor who receives, under the same payor employer identification number (or social security number), two or more notices described in paragraph (b) (1) or (2) of this section in a calendar year with respect to a payee may satisfy the requirements of this paragraph (c) with respect to such notices by sending one notice to the payee that satisfies the requirements of paragraph (c)(3) of this section.

(3) *Requirements of substitute notice to the payee.* If the payor does not send a copy of the notice received from the Internal Revenue Service pursuant to paragraph (b)(1) of this section or if the payor is notified by a broker as described in paragraph (b)(2) of this section that the payee provided an incorrect taxpayer identification number, the payor may send a substitute notice as provided for in this paragraph (c)(3). A notice to the payee will satisfy the requirements of section 3406(h)(8) and paragraph (c)(1) of this section if the notice is identical to the one set forth in the appendix to this § 31.3406(d)–5, is an acceptable substitute thereof, or if the notice—

(i) Informs the payee that the payor has been notified that the taxpayer identification number furnished by the payee is an incorrect taxpayer identification number (as defined in paragraph (a)(4) of this section);

(ii) Advises the payee of the name and taxpayer identification number combination that the Internal Revenue Service has determined to be incorrect;

(iii) Informs the payee that the payee must either—

(A) Correct the surname (or business name) or taxpayer identification number (or both) and certify, under penalties of perjury, that the newly provided taxpayer identification number is correct, or

(B) State—

(*1*) Under penalties of perjury that the taxpayer identification number originally furnished to the payor is correct and provide that number and the corresponding listed surname (or business name),

(*2*) That the Social Security Administration (or the local office of the Internal Revenue Service in the case of an incorrect employer identification number) has been contacted by the payee to resolve the problem giving rise to the notification of an incorrect taxpayer identification number, or

(C) In the case of a notification of an incorrect taxpayer identification number of an individual payee due to a name change by the payee when the payee has not communicated the change of name to the Social Security Administration—

(*1*) Contact the Social Security Administration and reassign the taxpayer identification number to the surname that is used on the account with the payor, certify under penalties of perjury, that the existing taxpayer identification number shown on the account is correct (and provide the corresponding surname used with that number), and provide a statement that the Social Security Administration has been contacted to reassign the taxpayer identification number to the surname shown on the account, or

(*2*) Use both surnames on the account with the payor (the surname currently shown on the account and the surname shown on the payee's Social Security Administration card if the payee is unable to contact the Social Security Administration at this time), provide the surnames, and certify under penalties of perjury that the furnished taxpayer identification number is correct, and

(*3*) Follow either paragraph (c)(3)(iii)(C) (*1*) or (*2*) of this section consistently with respect to all accounts with the payor;

(iv) Advises the payee of other necessary documentation (*i.e.*, account creation documents) that the payee must provide to the payor in order to change the name or taxpayer identification number (or both) on the account and how to provide such information and the information described in paragraph (c)(3)(iii) of this section to the payor;

(v) Advises the payee to contact the Social Security Administration to obtain a social security card if the payee was never assigned a social security number or to obtain a replacement social security card if the payee lost his card and does not remember his social security number;

(vi) Advises the payee that as a result of providing an incorrect taxpayer identification number, the payor is required under section 3406 (a)(1)(B) of the Internal Revenue Code to begin backup withholding 20 percent of the reportable payments made to the account of the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number by the Internal Revenue Service or a broker if the payor has not received the required Form W–9 (or an acceptable substitute form) as described in paragraph (e) of this section;

(vii) Gives the payee the date that the payor received the notice that the payee provided an incorrect taxpayer identification number; and

(viii) States that the payee must complete and return the enclosed Form W–9 (or an acceptable substitute form), and, if necessary, other documents of the payor as described in paragraph (c)(3)(iv) of this section, and the statement that the payee contacted the Social Security Administration (or the Internal Revenue Service) before the time described in paragraph (c)(3)(vi) of this section in order to prevent backup withholding under section 3406(a)(1)(B) from starting, or after the time described in paragraph (c)(3)(vi) of this section to stop backup withholding once it has begun and to avoid the imposition of the penalty for failure to provide a correct taxpayer identification number.

(4) *Payor must use newly provided certified number.* If the payor receives a certified Form W–9 (or an acceptable substitute form) from the payee in the manner required in paragraph (e) of this section before the end of a calendar year, the payor shall use the name and certified taxpayer identification number on the Form W–9 (or acceptable substitute form) on information returns that the payor is required to file for reportable payments made with respect to the payee for that year and subsequent calendar years. A payor who uses the name and certified taxpayer identification number on an information return as described in this paragraph will satisfy the requirement to provide this information to the Internal Revenue Service as prescribed in section 3406(h)(9).

(d) *Period during which backup withholding is required due to notification of an incorrect taxpayer identification number*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, upon receiving a notice described in paragraph (b) (1) or (2) of this section, the payor must impose backup withholding on all reportable payments made to the account of the payee that are subject to backup withholding after the close of the 30th business day after the date the payor receives the notice described in paragraph (b) (1) or (2) of this section and on or before the close of the 30th calendar day after the day the payor receives from the payee the certified Form W–9 (or acceptable substitute form) as described in paragraph (e) of this section.

(2) *Grace periods*—(i) *Starting backup withholding.* Pursuant to section 3406(e)(5)(A), the payor may elect, on a payee-by-payee basis or in general, to begin backup withholding at any time during the 30-business-day period described in paragraph (d)(1) of this section.

(ii) *Stopping backup withholding.* Pursuant to section 3406(e)(5)(B), the payor may elect, on a payee-by-payee basis or in general, to treat the certified Form W–9 or acceptable substitute form described in paragraph (e) of this section as having been received at any time within 30 calendar days after it is provided by the payee and to stop backup withholding at any time within such 30-day period. See section

3406(e)(5)(B) and § 31.3406(e)–1(b) for the application of the rules contained in this paragraph (d)(2).

(e) *Manner required for payee to furnish certified taxpayer identification number.* A payee with respect to whom the payor has been notified (as described in paragraph (b) of this section) that the payee's taxpayer identification number is incorrect is required to provide his name and taxpayer identification number and to certify, under penalties of perjury, that the taxpayer identification number being provided to the payor on a Form W–9 (or acceptable substitute form) is correct in order to prevent backup withholding from starting or to stop it once it has begun. Additionally, the payee may be required to state on the notice provided to the payor, as described in paragraph (c)(3)(iii)(C)(*1*) of this section, that the Social Security Administration (or the Internal Revenue Service) was contacted by the payee within 30 calendar days from the date of the notice from the payor. In general, the payee is required to provide the information described in this paragraph for each account, including any pre-1984 account or instrument (as defined in § 31.3406(d)–1 (b)(2) and (c)(1)(ii)) that contains the incorrect taxpayer identification number identified by the Internal Revenue Service pursuant to paragraph (b) (1) or (2) of this section unless § 31.3406(h)(3)(a) applies with respect to the accounts of a payee. See § 31.3406(h)–3 (a), (c), and (f) which respectively provide that the Form W–9 is the prescribed form for the payee to make the certification, permit the use of substitute forms, and explain who may sign the form. See paragraph (f)(1) of this section for the rules on obtaining a certified taxpayer identification number after a payor is notified twice within 3 calendar years that a payee's taxpayer identification number is incorrect.

(f) *Notification of two incorrect taxpayer identification numbers within a 3-year period*—(1) *In general.* If a payor receives a notification as described in paragraph (b) (1) or (2) of this section twice within 3 calendar years, and in each case the payor pursuant to paragraph (b)(5) of this section identifies the same account as containing the incorrect taxpayer identification number, then the payor shall—

(i) Disregard any future certifications (described in paragraph (e) of this section) furnished by the payee with respect to the account;

(ii) Send the notice described in paragraph (f)(2) of this section to the payee (and not the notice required under paragraph (c) of this section) within 15 business days after the date that the payor receives the second notice described in this paragraph (f), and

(iii) Impose backup withholding on the account containing the incorrect taxpayer identification number for the period described in paragraph (f)(3) of this section.

For purposes of this paragraph (f), a payor shall not count any notice as a first notice unless the payor was required to notify the payee about the incorrect taxpayer identification number pursuant to paragraph (c)(1) of this section. Additionally, a payor shall treat the receipt of two or more notices in a calendar year as described in paragraph (b) (1) or (2) of this section with respect to the same payee as the receipt of one notice for purposes of this paragraph. The preceding sentence applies only with respect to a payor who received such two or more notices under the same payor employer identification number (or social security number). The payor who receives such two or more notices may satisfy the requirements of this paragraph (f) by sending one notice to the payee that contains all the information described in paragraph (f)(1) of this section. The payor shall maintain sufficient records to determine whether the payor has received notices described in this paragraph and paragraph (b) (1) or (2) of this section twice within 3 calendar years with respect to a payee as described in this paragraph (f). The envelope containing the notice must state on the outside in a bold and conspicuous manner: "Important Tax Document Enclosed". The payor is not required to include a Form W–9, nor is the payor required to include a reply envelope in the mailing of the notice to the payee. The payor may not include any material in the mailing of the notice described in this paragraph (f). The notice requirements provided in this paragraph (f) shall apply to a payor notified by a broker that a payee is subject to backup withholding under section 3406(a)(1)(B). The mailing procedure described in paragraph (c)(2) of this section shall apply to the mailing of the notice described in paragraph (f) of this section. A payor is not required to send a notice described in paragraph (f)(2) of this section (nor backup withhold under paragraph (f)(3) of this section) with respect to any account of a payee where, due to an error of the payor, the taxpayer identification number on such account is not the number that was provided to the payor on the applicable Form W–9 (or acceptable substitute form) because, for example, the payor transposed the taxpayer identification number when incorporating it into its business records.

(2) *Notice to payee who has provided two incorrect taxpayer identification numbers within 3 years.* The notice to the payee required by paragraph (f)(1) of this section must list, in a bold and conspicuous manner, the date the payor was notified of the second incorrect taxpayer identification number, the payee's name, address (including street, city, state (or country), and zip (or mailing) code), and such other information that may be required by revenue procedures and revenue rulings. In addition the notice must state that—

(i) The payor has been notified that the taxpayer identification number furnished by the payee is incorrect, setting forth the name and taxpayer identification number that the Internal Revenue Service has determined to be incorrect and the specific account number that contains the incorrect taxpayer identification number;

(ii) The payor has been notified twice within 3 calendar years that the payee has furnished an incorrect taxpayer identification number on the account with the payor;

(iii) The payor is required to disregard any future taxpayer identification numbers, whether or not certified under penalties of perjury, received from the payee with respect to the account unless the Internal Revenue Service has notified the payor that such taxpayer identification number is correct;

(iv) As a result of providing an incorrect taxpayer identification number, the payor is required under section 3406(a)(1)(B) to begin backup withholding 20 percent of reportable payments made to the account of the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number if the Internal Revenue Service has not notified the payor that the payee provided a correct taxpayer identification number to the Internal Revenue Service as described in paragraph (h) of this section; and

(v) The payee must contact the Internal Revenue Service Center where the payee is required to file his income tax return in order to prevent backup withholding under section 3406(a)(1)(B) from starting or to stop it once it has begun.

(3) *Period during which backup withholding is required due to a second notification of an incorrect number within 3 years.* Upon receiving the second notice of an incorrect taxpayer identification number from the Internal Revenue Service or a broker as described in paragraph (f)(1) of this section, the payor must backup withhold on all reportable payments subject to backup withholding made to the account of the payee after the close of the 30th business day after the day on which the payor receives a notice described in paragraph (b) (1) or (2) of this section and on or before the close of the 30th calendar day after the payor receives the notification from the Internal Revenue Service as described in paragraph (h) of this section.

(4) *Grace periods*—(i) *Starting backup withholding.* Pursuant to section 3406(e)(5)(A), the payor may elect, on a payee-by-payee basis or in general, to begin backup withholding at any time during the 30-business-day period described in paragraph (f)(3) of this section.

(ii) *Stopping backup withholding.* Pursuant to section 3406 (e)(5)(B), the payor may elect, on a payee-by-payee basis or in general, to treat the notification from the Internal Revenue Service as described in paragraph (h) of this section as having been received at any time within 30 calendar days after such notification is provided by the Internal Revenue Service and to stop backup withholding at any time within 30 calendar days of receiving such notice. See § 31.3406(e)–1(b) for the application of the rule contained in this paragraph (f)(4)(ii).

(g) *Procedure for furnishing a correct taxpayer identification number to the Internal Revenue Service.* The procedure that a payee must follow after the Internal Revenue Service or a broker has notified a payor twice within 3 calendar years that the payee provided an incorrect taxpayer identification number with respect to the same account as described in paragraph (f)(1) of this section will be provided in a revenue procedure published by the Internal Revenue Service.

(h) *Notice from the Internal Revenue Service to stop backup withholding.* A payor who received a notice pursuant to paragraph (f) of this section will be notified by the Internal Revenue Service to stop backup withholding after the Internal Revenue Service receives a correct taxpayer identification number from the payee. A broker who received a notice pursuant to paragraph (b) of this section will be notified by the Internal Revenue Service that the payee is no longer subject to backup withholding under section 3406(a)(1)(B) and that the broker is no longer required to provide notices to payors under paragraph (b)(2) of this section. A broker who receives a notice under this paragraph (h) from the Internal Revenue Service is not required to provide the notice to any payor to which the broker has previously provided the notice required under paragraph (b)(2) of this section. The Internal Revenue Service will notify a payor or a broker pursuant to this paragraph by providing the payee with a Form W–9 on which the payee has certified, under penalties of perjury, that his taxpayer identification number is correct. The Form W–9 will bear an official stamp of the Internal Revenue Service verifying that the taxpayer identification number on the Form W–9 is correct as associated with the listed surname or business name. A payee may provide a copy of the Form W–9 to his payors or brokers in order to prevent backup withholding under paragraph (f)(3) of this section from beginning or to stop it under paragraph (f)(4)(ii) once it has begun. In lieu of receiving a copy of the Form W–9 described in this paragraph, in its discretion, a payor or broker may require the payee to set forth his name and certify, under penalties of perjury, that his taxpayer identification number is correct (as set forth on the Form W–9 verified by the Internal Revenue Service) on the payor's or broker's substitute Form W–9 in order to prevent backup withholding under paragraph (f)(3) from beginning or to stop it under paragraph (f)(4)(ii) once it has begun.

(i) [Reserved]

(j) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). D opened an account with Bank O prior to 1984 and furnished a taxpayer identification number to O at the time he opened the account. O is open for business Monday through Friday. O pays interest on the account at the end of each calendar month, and the account is a pre-1984 account as described in § 31.3406(d)–1 (b) (2) and (c) (1) (ii). On October 1, 1990, the Internal Revenue Service notifies Bank O that the taxpayer identification number provided by D is incorrect. O timely sends the notice information to D as required in paragraph (c)(1) of this section. O does not receive a certified Form W–9 or an acceptable substitute form (hereinafter "certification") from D as described in paragraph (e) of this section. O is required to backup withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O). Therefore, O is not required to backup withhold on the reportable payment made on October 31, 1990, but is required to backup withhold on the reportable payment made on November 30, 1990. O is required to continue to backup withhold under section 3406 (a) (1) (B) until O receives the certification described in paragraph (e) of this section from D.

Example (2). Assume the same facts as in *Example (1)* except that D furnishes a new taxpayer identification number to O on November 1, 1990, but does not certify, under penalties of perjury, that it is his correct taxpayer identification number as required in paragraph (e) of this section. Even though the account is a pre-1984 account, O is required to withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O), and before the date O receives the certification as described in paragraph (e) of this section from D.

Example (3). Assume the same facts as in *Example (2)* except that D provides O with the certification described in paragraph (e) of this section on November 20, 1990. D elects pursuant to paragraph (d) (2) (ii) of this section to treat the certification as received on November 20, 1990. Even though D did not provide the certification to O within 30 business days after the Internal Revenue Service notified O that D provided an incorrect taxpayer identification number, O is not required to backup withhold under section 3406 (a)(1)(B) because O did not make any reportable payment to D after 30 business days after notification of an incorrect taxpayer identification number and before O received D's certification in the manner required in paragraph (e) of this section. Pursuant to section 3406 (e)(5)(B), O may elect to treat the certification as having been received at any time within the 30 calendar days after it is provided by D.

Example (4). Individual F has two post-1983 accounts with Bank R that pay reportable interest: a savings account and a money market account. The money market account was opened in 1986, and the savings account was opened on February 1, 1991. R treats each of these accounts as a separate account with the Bank. F provided R with the certifications as described under § 31.3406 (a)–1 at the time each account was opened. On October 1, 1990, the Internal Revenue Service notified R pursuant to paragraph (b)(1) of this section that F furnished an incorrect taxpayer identification number with respect to the money market account. R timely sends F the notice required under paragraph (b)(1) of this section and receives the certification required under paragraph (e) of this section from F on November 1, 1990. On October 1, 1991, the Internal Revenue Service notifies R that F furnished an incorrect taxpayer identification number with respect to the money market account. Further, R determines from its business records that two notifications of an incorrect taxpayer identification number have been received with respect to the money market account within 3 calendar years. R must send F the notice required under paragraph (f)(2) of this section and must commence backup withholding on reportable interest paid on the money market account pursuant to paragraph (f)(3) of this section after November 14, 1991, which is 30 business days after R received the second notice. R must continue to backup withhold on the money market account until R receives from the payee a copy of the notice that was provided to the payee by the Internal Revenue Service as described in paragraph (h) of this section. R is not required to backup withhold on the savings account until it receives notice under paragraph (b) (1) or (2) of this section with respect to the savings account.

Appendix to § 31.3406 (d)–5

A notice required by paragraph (c)(3) of this section shall be substantially similar in content to the following.

Date_____

Important Tax Information—Please Read Carefully

You Must Provide Us With a Form W–9 (Even if we Already Have One on File For You)

Notice of Backup Withholding

We received a notice from the Internal Revenue Service (IRS) stating that the taxpayer identification number (TIN) on your account with us is incorrect. A TIN is incorrect if either the name or number shown on an account does not match a name and number combination shown on the records of the Social Security Administration (SSA) or IRS. You must act to correct this problem within 30 calendar days from the date shown above. Otherwise, we may be required to withhold 20% of the interest, dividends, and certain other payments that we make to your account.

Section 3406 of the Internal Revenue Code requires that we withhold 20% in tax, called backup withholding, when you do not give us your correct TIN. Further, you may be subject to a $50 penalty by the IRS under section 6723 of the Internal Revenue Code for failing to provide us with your correct TIN. This notice provides you with instructions to correct your account record in order to avoid backup withholding and the possible imposition of the penalty.

Instructions For Individuals

For individuals, the TIN is the social security number (SSN). Very often a TIN is incorrect because of a name change due to marriage, divorce, adoption or some other reason that has not been communicated to the Social Security Administration (SSA) and recorded on its records. Alternatively, the account may not contain the correct SSN of the actual owner. For example, an account in a child's name may contain a parent's SSN. An account should be titled in the name of the actual owner of the account with that person's SSN.

What to Do

To determine what actions you should take to correct your TIN, compare the name and SSN on your account with us (listed on page (insert the correct page number)) with the name and SSN shown on your social security card and then follow the chart below to determine what action you should take. (If you have never been assigned an SSN by SSA or if you lost your card and do not know your SSN, contact your local SSA office to apply for an original or a replacement SSN card, whichever is required. Also, if you have never been assigned an SSN, *read* the enclosed Form W–9, write the words "applied for" on the form according to its instructions, and return the form to us. You do not need to follow the chart below. You must send us your name and SSN, as shown on the SSN card that you get from SSA, on a Form W–9 within 60 days.)

IF—	*THEN—*
1. The last name and SSN on your account agree with the last name and SSN on your social security card.	1. Contact your local SSA office to ascertain why the information on SSA's records is different from that on your social security card and to resolve that problem. Also, put your name and SSN on the enclosed Form W–9 according to its instructions. Sign the Form W–9 and the statement below that you contacted SSA. Send both forms to us.
2. The SSN on your account is different from the SSN on your social security card, but the last name is the same on both.	2. Put your name and SSN, as shown on your social security card, on the enclosed Form W–9 according to its instructions, sign it and send it to us. No contact with SSA is necessary.
3. The last name on your account is different from the last name on your social security card, but the SSN is the same on both.	3. Take one of the following steps (but not all): If the last name on your account is correct, (a) Contact SSA to correct the name on your social security card. Put your SSN and name shown on your account on the enclosed Form W–9 according to its instructions, sign it and the statement that you contacted SSA. Send both forms to us. (b) If you are not able to contact SSA at this time, you can provide us with both last names. Put your SSN and the name shown on your social security card plus the last name shown on your account (in that order) on the enclosed Form W–9 according to its instructions, sign it, and return it to us. For example, if your social security card lists your maiden name, you can provide us with your SSN and your name in the following order: First/maiden/married name. Please note, however, that you should contact SSA as soon as possible. If the last name on your social security card is correct, (c) Put that name and your SSN on the enclosed Form W–9 according to its instructions, sign it, and return it to us. No contact with SSA is necessary.
4. Both the last name and SSN on your account are different from the last and SSN on your social security card.	4. If the last name and SSN on your social security card name are correct, (a) put that name and SSN on the enclosed Form W–9 according to its instructions, sign it, and send it to us. No contact with SSA is necessary. If the last name on your account and the SSN on your social security card are correct, (b) Follow procedures in section 3 (a) or (b) above. Be sure to put the name shown on your social security card on the Form W–9.

You must be consistent with the name and number (SSN) that you furnish (1) to us for all of your accounts and (2) to your other payors

in order to avoid a problem in the future. If you must visit SSA, take this notice, your social security card, and other relevant documents with you. You should call SSA first so they can explain to you what other documents you need to bring to the SSA office.

Instructions for Nonindividuals

For most nonindividuals (such as trusts, estates, partnerships, and similar entities), the taxpayer identification is the employer identification number (EIN). The EIN on your account may be incorrect because it does not contain the number of the actual owner of the account. For example, an account of an investment club or bowling league should reflect the organization's own EIN and name, rather than the SSN of a member. (The account of a sole proprietor who may have both an EIN and an SSN should reflect the individual name of the sole proprietor and his or her SSN.) Please put the name and EIN on the enclosed Form W–9, sign it, and send it to us.

Remember

YOU MUST SEND US A SIGNED FORM W–9 WITHIN 30 CALENDAR DAYS FROM THE DATE SHOWN AT THE TOP OF PAGE 1 even if the name and number (SSN or EIN) on your account with us match the name and number (SSN or EIN) on your social security card or the document issuing you an EIN. If we do not receive your Form W–9, any other documents that are necessary for us to change the name or TIN (or both) on your account to reflect the name and number on the newly provided Form W–9, and, if necessary, the statement that you contacted SSA or IRS within the 30-day period, we may be required to withhold 20% from any reportable payment that we pay to your account until we receive the necessary documents.

Please complete the form below if you are required to contact SSA or the IRS.

Detach and Return to Us

Statement of SSA or IRS Contact

I hereby state that I have contacted the Social Security Administration concerning my social security number (SSN) or the Internal Revenue Service concerning my employer identification number (EIN) to resolve the problem with my name or number which resulted in my being notified of an incorrect taxpayer identification number.

(Print Name)

(Signature)

By

(For Nonindividuals and Agents Only)

Date

(The portion below must be completed by the payor.)

Account Number

Current TIN on Account

Current Name on Account

§ 31.3406 (e)–1 Period during which withholding is required.

(a) *In general.* A payor shall withhold 20 percent of any reportable payment (as defined in § 31.3406 (b) (1)–1 (a)) made to a payee during the period described in this section. A payor shall continue to withhold until no condition for imposing backup withholding exists with respect to the payee. A payor shall not withhold more than 20 percent of any reportable payment irrespective of the number of conditions for imposing backup withholding that exist with respect to the payee.

(b) *Special rule for determining when the payor receives a taxpayer identification number or certificate from a payee.* In determining whether a payee has failed to provide a taxpayer identification number or any certification to a payor (including a Form W–8 or substitute form), a payor is required to process the taxpayer identification number or certification within 30 days after the payee or broker furnishes the taxpayer identification number or certification to the payor. Thus, the payor may take up to 30 days to treat the number or certificate as having been received. The payor, at its option, may treat the taxpayer identification number or certificate as having been received at any time within 30 days after the payee or broker furnishes the number or certification to the payor.

(c) *Failure to furnish taxpayer identification number in the manner required.* A payor is required to withhold 20 percent of any reportable payment (as defined in § 31.3406 (b) (1)–1 (a)) made to a payee if—

(1) The payor has not received the payee's taxpayer identification number in the manner required in § 31.3406 (d)–1, or

(2) The payor has received notice from a broker (as required by § 31.3406 (d)–4 (a) (1) (iii)) with respect to a readily tradable instrument that the payee did not furnish a taxpayer identification number to the broker in the manner required in § 31.3406 (d)–1 and the payor has not received the taxpayer identification number from the payee in such manner.

The payor shall continue to withhold 20 percent of any reportable payments made to the payee until the payor receives the taxpayer identification number from the payee in the manner required in § 31.3406 (d)–1. Once the payor receives the taxpayer identification number in the manner required, the payor must stop withholding under section 3406 (a) (1) (A) within 30 days after receiving the taxpayer identification number.

(d) *Payee certification failure.* A payor is required to withhold 20 percent of any reportable interest or dividend payment (as defined in § 31.3406 (b) (1)–1 (b)) made to a payee if—

(1) The payor has not received the certification required in § 31.3406 (d)–2, or

(2) The payor has received notice from a broker (as required in § 31.3406 (d)–4 (a) (1) (iii)) that the payee did not make the required certification and the payor has not received the required certification from the payee.

The payor shall continue to withhold 20 percent of any reportable payments made to the payee until the payor receives the required certification from the payee. Once the payor receives the required certification from the payee, the payor must stop withholding under section 3406(a)(1)(D) within 30 days after the certification is received.

(e) *Notification of an incorrect taxpayer identification number.* See §§ 31.3406(d)–5 (d) and (f)(3) for the period for which backup withholding is required in the case of notification of an incorrect taxpayer identification number.

(f) *Notified payee underreporting.* See § 31.3406(c)–1(e) for the period for which backup withholding is required in the case of Internal Revenue Service notification of payee underreporting.

(g) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). Individual A has maintained an interest bearing account with Bank M since 1981. M credits interest on the account on the first day of each month. A furnished a taxpayer identification number to M at the time that A opened the account, but A has not certified under penalties of perjury that the number is correct. Because the account is a pre-1984 account (as defined in § 31.3406(d)–1(b)(2)(i)), A has provided his taxpayer identification number in the manner required by § 31.3406 (d)–1. Moreover, no other condition for imposing backup withholding exists. Consequently, M is not required to withhold under section 3406 on payments made to A with respect to this account.

Example (2). Assume the same facts as in *Example (1)* except that A did not furnish a taxpayer identification number to M when A opened the account. A does not furnish his social security number to M until February 24, 1984. Under paragraph (b) of this section, M has up to 30 days in which to treat the number as having been received. M is required to withhold 20 percent of the reportable payment made on February 1. If M does not treat the number as having been received by March 1, M may withhold 20 percent of the reportable payment made on March 1. M may not, however, withhold 20 percent of the payment made on April 1.

Example (3). Individual B opens an interest bearing checking account with Bank N on January 9, 1984. N will pay interest on the account quarterly. B does not furnish his

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taxpayer identification number to N and also does not certify that he is awaiting receipt of a taxpayer identification number (as described in § 31.3406(g)–3). N is required to withhold under section 3406 on payments made to B until N receives B's taxpayer identification number and certification under penalties of perjury that B's taxpayer identification number is correct and that B is not subject to backup withholding due to notified payee underreporting. N is required to withhold only 20 percent under section 3406 on any reportable payments made to B even though two conditions for imposing backup withholding exist.

Example (4). Assume the same facts as in Example (3) except that B furnishes his taxpayer identification number and the required certifications to M on March 15, 1984. Under paragraph (b) of this section, M has up to 30 days to treat the certifications as having been received. If N treats the number and certifications as received before March 31, N is not required to withhold under section 3406 on the March 31 quarterly interest payment. If N does not treat the certifications as received before March 31, however, N is required to withhold on the March 31 interest payment. See § 31.6413(a)–3 (a) which provides that N may treat the amount withheld on March 31 as erroneously withheld and may refund the withheld amount to B. N is required to withhold only 20 percent of any reportable payments made to B even though two conditions for imposing backup withholding exist.

Example (5). Assume the same facts as in *Example (4)* except that B furnishes his taxpayer identification number and certifies, under penalties of perjury, that it is his correct number, but B does not certify that he is not subject to backup withholding due to notified payee underreporting as required under § 31.3406(d)–2. N treats the number as having been received on March 15, 1984. Even though B furnished his taxpayer identification number in the manner required in § 31.3406(d)–1 and N has received the number, N is required to withhold 20 percent of the March 31 interest payment because M has not received certification from B that B is not subject to backup withholding due to notified payee underreporting. N is required to continue to withhold until N receives such a certification from B.

Example (6). C opens a new account with Broker P on March 19, 1984, to purchase a readily tradable instrument of Corporation Z. P holds the instrument in street name for C. Payments of $1000 of stated interest on the instrument will be made on June 30 and December 31. C does not certify his taxpayer identification number or that C is not subject to backup withholding due to notified payee underreporting until July 1, 1984. Because the instrument is held in street name, P is the payor of the interest to C (as defined in § 31.3406(a)–2). Under paragraph (b) of this section, P treats the certifications as having been received on July 31, 1984. P is required to withhold $200 (20 percent of $1000 paid on June 30) under section 3406 even though two conditions for imposing backup withholding under section 3406 exist with respect to C. P is not required to withhold under section 3406 on the December 31 interest payment because P has received C's certifications and no other condition for imposing backup withholding exists.

Example (7). Assume the same facts as in *Example (6)* except that P does not hold the instrument in street name for C. Thus, P is not the payor of the reportable interest payment (as defined in § 31.3406(a)–2). P is required under § 31.3406(d)–4(a)(1)(iii) to notify Z in connection with the transfer instructions that C failed to make the required certifications. Z is required to notify C as described in § 31.3406(d)–4(a)(3), is required to seek the missing certifications, and is required to withhold 20 percent of any reportable payments made to C until Z receives C's certifications.

Example (8). Assume the same facts as in Example (7) except that C furnishes the required certifications to Z on June 1, 1984. Under paragraph (b) of this section, Z has up to 30 days to treat the certifications as having been received. If Z treats the certifications as having been received before June 30, 1984, Z is not required to withhold on the June 30 interest payment. If Z does not treat the certifications as having been received before June 30, Z is required to withhold 20 percent of the June 30 interest payment.

Example (9). Assume the same facts as in *Example (7)* except that before P's notification Z had already received the required certifications from C because C had acquired other instruments directly from Z. Z is not required to withhold due to P's notification since Z has received the required certifications from C.

Example (10). Assume the same facts as in *Example (7)* except that in addition to acquiring the Z instrument through P, C subsequently acquired additional Z instruments through Broker Q. Q does not hold the instruments in street name for C so Q is not the payor as defined in § 31.3406(a)–2. Q is required under § 31.3406(d)–4 to notify Z in connection with the transfer instructions if C fails to make any required certifications. Q's transfer instructions to Z include C's taxpayer identification number and do not inform Z of any payee certification failure. Unless Z has received the certifications from C, Z may not assume that there is no reason to solicit the certifications required by P's notification even though Q's transfer instructions did not inform Z of any certification failure. Z is required to seek the missing certifications (based on P's transfer instructions to Z), and Z is required to withhold 20 percent of any reportable payments made to C until Z receives C's certifications. Another broker's transfer instructions to a payor do not relieve the payor's responsibility with respect to an earlier broker's transfer instructions. Once one broker notifies the payor that there is a payee certification failure, the payor must withhold until the payor receives the certification from the payee. See § 31.3406(d)–4(c)(2) which provides that if Z makes an aggregate payment with respect to all Z Corporation instruments owned by C, Z is required to withhold 20 percent of the aggregate reportable payment.

§ 31.3406(f)–1 Confidentiality of information.

(a) *Confidentiality and liability for violation—In general.* No person may use any information obtained under section 3406 for any purpose except for the purpose of complying with the requirements of section 3406 or for purposes permitted under section 6103 (subject to the safeguards of section 6103). See section 7431 for civil damages for violating the confidential use of such information.

(b) *Permissible use of information—*(1) *In general.* A payor or broker may transmit information on a Form W–9 or other acceptable form relating to backup withholding to the department, institution, or firm (or to any employee therein) that is responsible for withholding or processing of taxpayer identification numbers, certifications described in § 31.3406(h)–3, or other substitute forms. In addition, a broker may notify the payor with respect to a readily tradable instrument of the requirement to withhold and the condition or conditions for imposing backup withholding (as described in § 31.3406(d)–4) that exist with respect to the payee. A payor or broker may, without violating the Internal Revenue Code, close an account of, refuse to open an account for, or issue an instrument to, or redeem an instrument for, a person who fails to furnish his taxpayer identification number in the manner required in § 31.3406(d)–1.

(2) *Window transactions.* In the case of a window transaction (as defined in § 31.3406(b)(2)–3(b)), a payor may, without violating the Internal Revenue Code, refuse to redeem or may refuse to make payment if the payee fails to provide a taxpayer identification number regardless of when the obligation was issued or acquired.

(c) *Specific restrictions on the use of information.* A payor or broker is not permitted to refuse to open an account or to issue an instrument if the person fails to certify, under penalties of perjury, that the person is not subject to withholding under section 3406(a)(1)(C) (relating to notified payee underreporting). A payor or broker is not permitted to use information obtained under section 3406, including a payee's failure or inability to certify that he is not subject to backup withholding due to notified payee underreporting or the fact that the account is subject to backup withholding, to surcharge an account, to open or close an account, to issue or redeem an instrument, or in deciding whether to extend credit to the payee. A payor or broker has surcharged an account if the payor or broker charged an account more than the fee charged a similar account that was not subject to backup withholding. If a payor or broker in good faith reasonably believes use of the information is permissible under this section, the payor or broker will not be liable under section 7431.

(d) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). A, an individual, attempts to open a savings account at Bank M on January 1, 1988. A fails to certify that he is not subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(B) and § 31.3406(d)–2. M refuses to open an account for A. A has a cause of action against M under section 7431 for an unauthorized use of information obtained under section 3406.

Example (2). Corporation N receives a notice from the Internal Revenue Service, pursuant to section 3406(a)(1)(B) and § 31.3406(d)–5, concerning an incorrect taxpayer identification number provided by B, a shareholder of N. N imposes backup withholding on reportable dividends paid to B and imposes a surcharge of $10 to cover the cost of backup withholding on B's account. B has a cause of action against N under section 7431 for an unauthorized use of information obtained by N under section 3406.

Example (3). Credit Union O receives a notice from the Internal Revenue Service, pursuant to section 3406(a)(1)(C), that C, a depositor of O, is subject to backup withholding due to notified payee underreporting. Based on this information, O refuses to approve C's credit application. C has a cause of action against O under section 7431 for an unauthorized use of information obtained pursuant to section 3406.

Example (4). Cooperative P receives a notice from the Internal Revenue Service, pursuant to section 3406(a)(1)(C), notifying P to withhold on payments made to E due to notified payee underreporting. P, pursuant to section 3406(c)(4), then provides notice to E of withholding at the time P begins withholding. E does not have a cause of action against P under section 7431, because this notice to E is an authorized use of information obtained pursuant to section 3406.

Example (5). Corporation Q receives notice from Broker R of the requirement to withhold with respect to F, a shareholder, who failed to certify that his taxpayer identification number was correct. Q provides notice to F of such withholding (as required in § 31.3406(d)–4(a)(3)). F does not have a cause of action against either Q or R for an unauthorized use of information obtained pursuant to section 3406.

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

(a) *Exempt recipients—*(1) *In general.* A payor of any reportable payment (as defined in § 31.3406(b)(1)–1(a)) shall not withhold under section 3406 if the payee is—

(i) A tax exempt organization as described in § 1.6049–4(c)(1)(ii)(B),

(ii) An individual retirement plan as described in § 1.6049–4(c)(1)(ii)(C),

(iii) The United States as described in § 1.6049–4(c)(1)(ii)(D),

(iv) A State as described in § 1.6049–4(c)(1)(ii)(E),

(v) A foreign government as described in § 1.6049–4(c)(1)(ii)(F), or

(vi) An international organization as described in § 1.6049–4(c)(1)(ii)(G).

(2) *Payments subject to reporting under section 6041 or 6041A(a).* In determining whether a payment is not reportable under section 6041 and 6041A(a) because it is made to a payee that is not subject to reporting under section 6041 or 6041A(a), the payor shall use the procedures provided in § 1.6049–4(c)(1)(ii) to determine whether an information return is required.

(3) *Determination of whether person is described in paragraph (a)(1) of this section.* The determination of whether a person is described in paragraph (a) of this section shall be made as provided in the applicable provision of § 1.6049–4(c)(1)(ii). A payor, even if permitted to treat a person as an exempt recipient without requiring a certificate under the provisions of § 1.6049–4(c)(1)(ii), may require a payee not required to file a certificate as to its exempt status to file a certificate and may treat a payee who fails to file such a certificate as a person who is not an exempt recipient. See § 31.3406(h)–3 for a description of the form or a substitute form prescribed under section 3406 for a person to claim exempt status.

(4) *Prepaid or advance premium life-insurance contracts.* A payor of a reportable payment (as defined in § 31.3406(b)(1)–1(a)) may, but is not required to withhold under section 3406 on reportable payments made from January 1, 1984, to December 31, 1991, on prepaid or advance premium life-insurance contracts to a payee who is the owner for tax purposes of the prepaid or advance premium life-insurance contract. However, a payor, at its discretion, may withhold on such payments. For purposes of this exception from backup withholding, a prepaid or advance premium life-insurance contract is one entered into on or before June 30, 1984, by the payee and under which the increment in value of the prepaid or advance premium is used for the payment of premiums during the period in which the exception from backup withholding applies.

(5) *Examples.* The application of the provisions of this paragraph (a) may be illustrated by the following examples:

Example (1). Corporation M pays $1000 to Broker N for services N performs for M. M's payment to N is in the course of M's trade or business. M is required to make an information return under section 6041 or 6041A(a) because the payment is of a kind (*i.e.*, nonemployee compensation paid in the course of a payor's trade or business) and to a payee subject to reporting (*i.e.*, payments to registered securities dealers are not excepted under § 1.6041–3 from information reporting under section 6041 or 6041A(a)). Thus, M is required to withhold under section 3406 if any of the two conditions for imposing backup withholding exists with respect to N as described in § 31.3406(b)(3)–1. N is also not an exempt recipient from backup withholding because N is not described in paragraph (a)(1) of this section.

Example (2). Assume the same facts as in *Example (1)* except that M pays the nonemployee compensation to P Co. While a payment to a corporation is excepted from information reporting under section 6041 or 6041A(a) and § 1.6041–3(c), M may not treat P Co. as exempt from information reporting without receiving a Form W–9 or substitute form from P Co. certifying that it is an exempt recipient. Because a payor may not treat a payee with "Co." in its name as an exempt recipient under § 1.6049–4(c)(1)(ii) without receiving a Form W–9 or substitute form from the payee, M, as payor of payments subject to reporting under section 6041 or 6041A(a), may not treat a payee with "Co." in its name as exempt from backup withholding without receiving a Form W–9 certifying as to its exempt status (as provided in paragraph (a)(2) of this section). If M does not receive a Form W–9 or acceptable substitute from P Co., M is required to make an information return under section 6041 or 6041A(a) and would be required to withhold under section 3406 if any condition for imposing backup withholding exists with respect to P (as described in § 31.3406(b)(3)–1) because P is not an exempt recipient described in paragraph (a)(1) of this section.

Example (3). Assume the facts as in *Example (2)* except that P's name is P Corp. M may treat P as an exempt recipient under section 6041 or 6041A(a) and § 1.6041–3(c) because P can be treated as a person described in § 1.6049–4(c)(1)(ii) without filing a certificate as to its exempt status. Since the payment to P Corp. is not subject to information reporting under section 6041 or 6041A(a), M is not required to withhold under section 3406 even though P is not described in paragraph (a)(1) of this section.

Example (4). Assume the same facts as in *Example (3)* except that P Corp. is a corporation engaged in providing medical and health care services or engaged in the billing and collection of payments in respect of medical and health care services (other than certain tax-exempt or governmental facilities described in § 1.6041–3(c) (1) and (2)). Notwithstanding paragraph (a)(2) of this section, M is required to make an information return under section 6041 because payments to such corporations are not excepted from information reporting under section 6041 or 6041A(a). Moreover, M would be required to backup withhold on the payments to P if P failed to provide its taxpayer identification number because P is not described in paragraph (a)(1) of this section.

Example (3). Corporation Q becomes a member of Barter Exchange R in 1984. Q provides goods for another member of R and receives a credit on the books of R for such goods. During 1984 members of R engage in more than 100 similar barter transactions. Consequently, R is required to make an information return with respect to the transaction engaged in by Q. Q fails to furnish its taxpayer identification number to R, under penalties of perjury, as required in § 31.3406(d)–1. Q is not exempt from information reporting under section 6045 as provided in § 1.6045–1(e). Q is also not exempt from backup withholding under section 3406 because Q is not described in paragraph (a)(1) of this section.

(b) *Middleman.* The transfer by a middleman (as defined by § 1.6049–4(f)(4)(i)) from within the United States of an interest coupon or discount obligation on behalf of a payee for presentation, payment, or collection outside the United States, although subject to information reporting under § 1.6049–4(b)(3)(ii), shall not be subject to backup withholding under section 3406. Thus, the middleman is not required to withhold under section 3406 with respect to the transfer.

(c) *International organizations.* An international organization as described in § 1.6049–4(c)(1)(ii)(G) (or a paying, transfer or other agent that is not also a payee's agent) is not required to withold under section 3406 on interest or principal paid with respect to an obligation issued by the international organization, provided the international organization is an organization of which the United States is a member and which enjoys immunity or exemption from any liability or obligation to pay, withhold, or collect tax pursuant to an international agreement having full force and effect in the United States.

(d) *United States deposits and accounts of foreign payees.* A payor of a reportable payment (as defined in § 31.3406(b)(1)–1(a)) is not required to withhold under section 3406 on amounts described in § 1.6049–5(e)(2).

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* A payor of a reportable payment (as defined in § 31.3406(b)(1)–1(a)) is not required to withhold under section 3406 if the reportable payment is made outside of the United States, the payor does not have actual knowledge that the payee is a United States person, and the payment is of—

(1) Interest described in § 1.6049–5(e)(1) (regarding interest payments made or collected by a person in the commercial banking business with respect to an account or deposit maintained at an office of such person outside the United States);

(2) Dividends that would be described in § 1.6042–3(b)(2) (regarding dividends from sources outside the United States that are distributed or paid outside the United States) but for the fact that they are actually owned by a United States person;

(3) Amounts that would be described in § 1.6045–1(g)(1)(i)(B) (regarding sales effected by a broker at an office of the broker outside the United States) but for the fact that the customer is a United States person; or

(4) Interest described in § 1.6049–5(f)(1) (regarding payments outside the United States by a middleman that, as an agent of the payee, collects the amount for or on behalf of the payee).

§ 31.3406(g)–2 Exception for reportable payments for which withholding is otherwise required.

(a) *In general.* A payor of a reportable payment (as defined in § 31.3406(b)(1)–1(a)) shall not withhold under section 3406 if tax is actually withheld from the payment under any other provision of the Code.

(b) *Payment of wages.* A payor who is required to make an information return under section 6041 with respect to a payment of wages (as defined in section 3401) because the employee makes a certification under section 3402(n) (relating to employees incurring no income tax liability) shall not withhold 20 percent of the wages under section 3406.

(c) *Distribution from a pension, annuity, or other plan of deferred compensation*—(1) *In general.* For payments prior to December 31, 1984, a payor who is required to make an information return under section 6041 with respect to a distribution from or under a pension, annuity, or other deferred compensation arrangement shall not withhold 20 percent of the distribution under section 3406 if tax is actually withheld from the distribution under section 3405 because the payee did not make an election under section 3405(a)(2) (relating to an election with respect to periodic distributions) or under section 3405(b)(3) (relating to an election with respect to nonperiodic distributions). Additionally, if tax is not actually withheld from the distribution under section 3405 because the payee made an applicable election or because the amount of the distribution is less than the minimum amount subject to withholding under section 3405 and if the payee does not provide a taxpayer identification number to the payor, then, except as provided in paragraph (c)(2) of this section, backup withholding shall apply to the distribution if any of the two conditions for imposing backup withholding exist (as described in § 31.3406(b)(3)–1).

(2) *Special rule.* If the annual distributions subject to reporting under section 6041 to a payee total $5,400 or less (in which case withholding on periodic payments under section 3405 generally is not required), and if the payor has no taxpayer identification number for the payee, the payor shall not impose backup withholding until the first payment made after June 30, 1984. If the payee does not provide a taxpayer identification number by that date backup withholding applies as described in § 31.3406(b)(3)–1 to distributions made after June 30, 1984.

(3) *Distributions not subject to backup withholding.* Backup withholding applies only to distributions from a pension, annuity, or other plans of deferred compensation that are subject to reporting under section 6041 and does not apply to distributions that are not reportable under section 6041. Thus, backup withholding does not apply to—

(i) Distributions from an individual retirement account (subject to reporting under sections 408(i) and 6047(d)),

(ii) Distributions from an owner-employee plan (subject to reporting under section 6047(b)),

(iii) Certain surrenders of life insurance contracts (subject to reporting under section 6047(e)), and

(iv) Distributions from a qualified bond purchase plan (subject to reporting under section 6047(c)).

(4) *Examples.* The application of the provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Corporation X maintains a qualified retirement plan for its employees and their beneficiaries. Distributions to retirees and beneficiaries are made by an employees' trust described in section 401(a) that is exempt under section 501(a). Individual A is an employee of Corporation X who has accrued substantial pension benefits. In June 1983, A dies and her beneficiary, Individual B, elects to receive the pension benefits from the retirement plan accrued on behalf of A in the form of an annuity, beginning January 1, 1984. The payments to B that are includible in B's gross income will aggregate approximately $10,000 per calendar year. In accordance with the requirements of section 3405 (relating to withholding from pensions, annuities, and other deferred income), X provided a notice to B of the right to elect out of withholding under section 3405. B returned the election form indicating that he did not want income tax withheld from his distributions, but B did not furnish his taxpayer identification number to X. Consequently, X is required to withhold 20 percent from all reportable payments made to B after December 31, 1983, under section 3406 until B furnishes a taxpayer identification number to X.

Example (2). Assume the same facts as in *Example (1)* except that the payments to B from the retirement plan that are includible in B's gross income will aggregate only $3000 per calendar year. In addition, assume that B did not return the form to elect out of withholding under section 3405. Under section 3405(a)(4), if no exemption certificate electing out of withholding is filed, the amount withheld is determined by treating the payee as a married individual claiming three withholding exemptions. Therefore, for 1984, the payments to B are not subject to withholding under section 3405 since the payments aggregate less than $5400 per year. Because B has not furnished X a taxpayer identification number, however, X must withhold 20 percent of the payments made after June 30, 1984, under section 3406 until B furnishes a taxpayer identification number to X. If B provides his taxpayer identification number to X before July 1, 1984, however, no withholding under section 3406 is required (as described in paragraph (c)(2) of this section).

Example (3). Bank Y sponsors an individual retirement account (as defined under section 408(a)) on behalf of individual C. C has attained the age of 59½ and requests scheduled payments from his IRA of $500 per month (or $6000 per year) beginning on January 1, 1984. Y reports such distributions under section 408(i) and section 6047(d). Because these distributions are not reportable under section 6041, Y is not required to withhold 20 percent of each payment under section 3406, even if C elects out of withholding under section 3405 and does not furnish a taxpayer identification number to Y.

(d) *Payment with respect to an oil or gas interest.* A payor who is required to make an information return under section 6041 with respect to a calendar year ending before January 1, 1987, or under section 6050N with respect to a calendar year ending after December 31, 1986, with respect to an oil or gas payment (including payments for working interests, delayed rental, or lease bonuses) shall not withhold 20 percent of such payment under section 3406 if the payor actually withholds windfall profit tax under section 4986. If windfall profit tax is not actually withheld from the payment (because, for example, payment is made with respect to "exempt royalty oil" (as defined in section 4994(f)), the payment is subject to backup withholding if any of the two conditions for imposing backup withholding exists (as described in § 31.3406(b)(3)–1). The amount subject to backup withholding under section 3406 is the net amount the payee receives (*i.e.*, the gross proceeds less production related taxes such as State severance tax). If the payor customarily makes an aggregate payment with respect to both an oil and gas payment to a payee, and windfall profit tax is actually withheld only upon the portion representing the oil interest, the aggregate payment is *not* subject to backup withholding. The payor shall not be liable to any person other than the United States for the amount of tax withheld as described in § 31.3406(h)–2(h).

(e) Gambling winnings—(1) *In general.* A payor of a reportable gambling winning shall not withhold 20 percent of the gambling winning under section 3406 if tax is actually withheld from the gambling winning under section 3402(q) (relating to the extension of withholding to certain gambling winnings). See paragraph (e)(2) of this section for the determination of a reportable gambling winning. If the reportable gambling winning is not withheld upon under section 3402(q), backup withholding shall apply to the gambling winning if, and only if, the payee does not furnish a taxpayer identification number to the payor. Section 31.3406 (b)(3)–1, (b)(2) does not apply to a reportable gambling winning. Thus, the payor of a reportable gambling winning is not required to aggregate all such winnings made to a payee during a calendar year, nor is the payor required to determine whether an information return was required to be made with respect to such payee for the preceding calendar year.

(2) *Definition of a reportable gambling winning and determination of amount subject to backup withholding.* For purposes of backup withholding, a reportable gambling winning is any gambling winning subject to information reporting under section 6041. The amount of a reportable gambling winning is—

(i) The amount paid with respect to the amount of the wager reduced, at the option of the payor, by

(ii) The amount of the wager.

Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount paid with respect to the wager. The determination of whether wagers are identical shall be made under § 31.3402(q)–1(c)(1)(ii). In addition, until further regulations are issued under section 6041 or section 3406, a gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is in excess of $600 and is based on betting odds of 300 to 1, or higher. See § 7.6041–1 to determine whether a winning from bingo, keno, or slot machines is a reportable gambling winning and thus subject to backup withholding.

(f) *Certain real estate transactions.* A real estate reporting person (the so-called "broker") as defined in section 6045(e)(2) shall not withhold under section 3406 on a payment made with respect to a real estate transaction that is subject to reporting under section 6045 (a) and (e) and § 1.6045.

(g) *Limited exception for certain payments after a merger or an acquisition of accounts.* A payor who acquires accounts or instruments of another payor by acquisition or merger and who is unable to determine from the business records of the merged payor or of the payor whose accounts or instruments were acquired whether any or all of such accounts or instruments are pre-1984 or post-1983 accounts or instruments may treat such accounts as pre-1984 accounts or instruments and may commence backup withholding under section 3406(a)(1)(A) and § 31.3406(d)–1 on any such accounts or instruments for which the payor does not have a taxpayer identification number from the payee or has an obviously incorrect taxpayer identification number as defined in § 31.3406(h)–1(a)(2) no later than sixty days following the date of the merger or acquisition of such accounts or instruments.

(h) *Certain gross proceeds.* No backup withholding is required with respect to any portion of the original issue discount on an instrument or security that is subject to backup withholding as reportable gross proceeds of such instrument or security under section 6045.

§ 31.3406(g)–3 Exemption while payee is waiting for a taxpayer identification number.

(a) *In general*—(1) *Withholding not required for 60 days.* Except as provided in paragraphs (b) and (c) of this section, a payor shall not withhold for 60 days if the payee is awaiting receipt of a taxpayer identification number unless the payee (or a joint payee in the case of a joint account) makes a withdrawal from an account described in paragraph (a)(2) of this section during the 60-day period. In order to qualify for the exemption, the payee must comply with paragraph (d) of this section which requires the payee to provide the payor a certification signed under penalties of perjury (an "awaiting-TIN certificate"). The payor must withhold under section 3406 from 60 days after the date that the payor receives an "awaiting-TIN certificate" described in paragraph (d) of this section if the payor has not received a taxpayer identification number from the payee in the manner required in § 31.3406(d)–1 by that date. Regardless of whether the payee provides an

awaiting-TIN certificate to a payor, the payor is required to withhold on reportable interest or dividend payments as described in § 31.3406(d)–2 if the payee fails to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting as required in § 31.3406(d)–2.

(2) *Withholding during 60-day period on accounts paying reportable interest or dividends*—(i) *Effective for awaiting-TIN certificates received after December 31, 1987, and before July 1, 1988.* A payor is required to withhold on reportable interest and dividend payments made during the 60-day period after the receipt of an awaiting-TIN certificate (which receipt occurs after December 31, 1987, and before July 1, 1988) if the payee made a withdrawal from the account after the close of 7 business days after the date the awaiting-TIN certificate is received and before the earlier of—

(A) The date that the payor receives a certified Form W–9 from the payee or an acceptable substitute form,

(B) The date the account is closed, or

(C) After the expiration of the 60-day exemption period when backup withholding applies.

For purposes of this paragraph (a)(2), a payor is also required to backup withholdings on any reportable interest or dividend payment made at the time the account or relationship is closed or at a time of the sale or redemption of an instrument. For purposes of this paragraph (a)(2), all cash withdrawals, in an amount up to the reportable payments, made from the day after the date of receipt of an awaiting-TIN certificate to the date of withdrawal are treated as reportable payments.

(ii) *Effective for awaiting-TIN certificates received on or after July 1, 1988.* On a payee-by-payee basis or in general, a payor may withhold on reportable interest or dividends—

(A) As described in paragraph (a)(2)(i) of this section, or

(B) As described in such paragraph but limiting the definition of cash to currency or a check issued to close out the account of a payee (For purposes of this paragraph (a)(2)(ii)(B) the term does not include a cash disbursement from an automatic teller machine or an electronic transfer.), or

(C) On the account no later than 7 business days after the date that the payor receives the awaiting-TIN-certification on reportable interest and dividend payments thereafter made to the account whether or not the payee makes a cash withdrawal and before the earliest of—

(*1*) The date that the payor receives a certified Form W–9 from the payee or an acceptable substitute form,

(*2*) The date the account is closed, or

(*3*) After the expiration of the 60-day exemption period when backup withholding applies.

Effective August 16, 1988, a payor who has elected to withhold under paragraph (a)(2)(ii)(C) of this section must refund the amounts withheld during the 60-day period in accordance with and to the extent permitted by the procedures described in § 31.6413(a)–3 if the payor receives the certified taxpayer identification number from the payee on or after August 16, 1988, and within the 60-day period provided that the payee is not subject to backup withholding under section 3406(a)(1) (C) or (D) during any part of such period. For purposes of the preceding sentence, amounts withheld are deemed to be withheld erroneously as described in § 31.6413(a)–3. If a certified taxpayer identification number is not received by the payor within the 60-day period, the amounts withheld shall not be refunded unless the amounts are erroneously withheld without regard to paragraph (a)(2)(ii)(C) of this section. The payor is also required to backup withhold after the 60-day period until a certified taxpayer identification number is received from the payee or the account is closed.

(b) *Special rule for readily tradable instruments.* The 60-day awaiting-TIN exemption described in paragraph (a)(1) of this section applies to payments made with respect to readily tradable instruments only if the payee provides an awaiting-TIN certificate directly to the payor. Thus, the payee does not qualify for the exemption by providing an awaiting-TIN certificate to a broker who effects a purchase of a readily tradable instrument for a payee (unless the instrument is held in street name). If a broker acquires a readily tradable instrument through a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)) for a payee who has no taxpayer identification number, the broker must advise the payor as required in § 31.3406(d)–4(a)(1) that the payee failed to provide a taxpayer identification number under penalties of perjury, regardless of whether the payee provides an awaiting-TIN certificate to the broker. Once a payor is notified by a broker that a payee failed to provide a taxpayer identification number in the required manner, or that the payee is subject to backup withholding under section 3406(a)(1) (B) or (C), the payor must impose backup withholding for the appropriate period described in § 31.3406(a)–1.

(c) *Exceptions*—(1) *In general.* The 60-day awaiting-TIN exemption described in paragraph (a) of this section does not apply to—

(i) Window transactions (as defined in § 31.3406(b)(2)–3(b)),

(ii) Redemptions of bearer obligations that are subject to reporting under section 6045 after September 27, 1990, or

(iii) Other amounts that are subject to reporting under section 6045 (except as described in paragraph (c)(2) of this section).

(2) *Special rule for amounts subject to reporting under section 6045 other than proceeds of redemptions of bearer obligations.* In any case in which a broker's customer does not provide a taxpayer identification number to the broker and the broker effects a sale that is subject to reporting under section 6045 (other than a redemption of a bearer obligation), § 31.3406(d)–3(b)(1) shall apply, whether or not the sale is pursuant to a telephone or wire instruction, if the customer provides an awaiting-TIN certificate to the broker before the sale, except that the 30-day period provided in § 31.3406(d)–3(b)(2) shall be a 60-day period.

(d) *Awaiting-TIN certificate.* A payee qualifies for the 60-day awaiting-TIN exemption provided in paragraph (a) of this section if the payee furnishes a written statement to the payor, signed under penalties of perjury, that the payee has not been issued a taxpayer identification number, that the payee has applied for a taxpayer identification number or intends to apply for a number in the near future, and that the payee understands that if the payee does not provide a number to the payor within 60 days, the payor is required to withhold 20 percent of any reportable payment thereafter made to the payee until the payor receives a number, or 20 percent of any withdrawal to the extent of reportable payments made to the payee during the 60-day period, as described in paragraph (a)(2) of this section. Language that is substantially similar to the following will satisfy the requirements of this paragraph:

"I certify, under penalties of perjury, that a taxpayer identification number has not been issued to me, and that I mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office (or I intend to mail or deliver an application in the near future). I understand that if I do not provide a taxpayer identification number to the payor within 60 days, the payor is required to withhold 20 percent of all reportable payments thereafter made to me or 20 percent of any withdrawal to the extent of reportable payments made to me during the 60 day period, until I provide a number."

(e) *Form for awaiting-TIN certificate.* A payor may use Form W–9 for the awaiting-TIN certificate, or a payor may include the language described in paragraph (d) of this section on any other document for the awaiting-TIN certification. See § 31.3406(h)–3 which provides that Form W–9 is the prescribed form but permits use of substitute forms, and specifies how long the payor is required to retain the form. If Form W–9 is used, the payee should write "Applied For" in the space reserved for the taxpayer identification number.

(f) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). Individual A opens a new account at Bank M on January 7, 1984, that pays reportable interest. A furnishes an awaiting-TIN certificate to M on January 7 (the date that he opened the account) and A also certifies, under penalties of perjury, that he is not subject to backup withholding due to notified payee underreporting as required in § 31.3406(d)–2(a). M treats the awaiting-TIN certificate as though received on such date as permitted in § 31.3406(e)–1(b). If M does not receive a taxpayer identification number from A within 60 days (March 7), M is required to withhold on payments made to A on or after such date until M receives a taxpayer identification number from A in the manner required in § 31.3406(d)–1.

Example (2). Assume the same facts as in *Example (1)* except that A does not certify, under penalties of perjury, that he is not subject to backup withholding due to notified payee underreporting as required in § 31.3406(d)–2(a). Notwithstanding that A provided an awaiting-TIN certificate to M, M is required to withhold because A failed to make the payee certification required in § 31.3406(d)–2(a).

Example (3). Individual B establishes a brokerage relationship with Broker O that is not a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(1)). B has never furnished his social security number to O. No reportable payments have been made with respect to any instruments in B's brokerage account until August 13, 1984, when B instructs O to sell stock of Z Corporation for $30,000. On that date B states that he is awaiting receipt of a social security number. Under paragraph (c)(2) of this section, B will be exempt from backup withholding for a 60-day period provided O receives an awaiting-TIN certificate from B (as described in paragraph (d) of this section). O receives B's awaiting-TIN certificate on August 13, 1984, as permitted in § 31.3406(e)–1(b). If B desires to withdraw or reinvest more than 80 percent of the proceeds of the sale (*i.e.*, $24,000) during the 60 days after the sale and before B certifies under penalties of perjury that his social security number furnished to O is correct, O is required to withhold 20 percent of the reportable gross proceeds on the date of withdrawal. (See § 31.3406(d)–3(b) for whether reinvestment will be considered a withdrawal.)

Example (4). Assume the same facts as in *Example (3)* except that, on October 12, 1984, B instructs O to send him a check for $10,000. Under paragraph (c)(2) of this section, B is exempt from withholding from August 13 to October 13 (60 days) provided B does not withdraw or reinvest more than 80 percent of the gross sale proceeds. Because B has not withdrawn more than 80 percent of the gross proceeds, O may not withhold on October 12 when B withdraws $10,000 (as provided in paragraph (a) of this section).

Example (5). Assume the same facts as in *Example (4)* except that, on September 12, 1984, B instructs O to reinvest all the gross proceeds of the sale in stock of R Corporation. Under § 31.3406(d)–3(b) the reinvestment is considered a withdrawal. Because B has not furnished his social security number certified under penalties of perjury before withdrawing more than 80 percent of the gross proceeds, O is required to withhold $8,000 (*i.e.*, 20 percent of $30,000) on October 12 (the date of withdrawal) even though within the 60-day exemption period described in paragraph (a) of this section.

Example (6). Individual C presents a taxable interest coupon on a corporate bond to Bank P after December 31, 1983. The payment is defined as a window transaction in § 31.3406(b)(2)–3(b). C furnishes an awaiting-TIN certificate to P at the time of the transaction. Under paragraph (c) of this section, the 60-day awaiting-TIN exemption does not apply with respect to the window transaction. Thus, P is required to withhold 20 percent of the payment made to C.

Example (7). Partnership D instructs Broker N to purchase Corporation Y's debentures on April 15 and instructs N to have them registered in D's name. Stated interest on the debentures will be paid on June 30 and December 31. D provides N on April 15 an awaiting-TIN certificate and certification that it is not subject to backup withholding due to notified payee underreporting. Under § 31.3406(d)–4(a) and paragraph (b) of this section, N is required to notify Y that D failed to furnish a taxpayer identification number. If Y does not receive either a taxpayer identification number in the manner required by § 31.3406(d)–1 or an awaiting-TIN certificate directly from D by June 30, Y is required to withhold 20 percent of the payment made on June 30.

Example (8). Assume the same facts as in *Example (7)* except that Y receives an awaiting-TIN certificate directly from D on May 1. Y must not withhold on June 30 because reportable payments made to D with respect to the instrument are exempt from backup withholding during the period from May 1 to June 30 (60 days). If Y does not receive a taxpayer identification number in the manner required by § 31.3406(d)–1 from D after June 30 and before December 31, however, Y is required to withhold 20 percent of the payment made on December 31.

§ 31.3406(h)–1 Definitions.

(a) *Taxpayer identification number*—(1) *In general.* The term "taxpayer identification number" shall mean the identifying number assigned to a person under section 6109 (relating to identifying numbers). Thus, the number for an individual is generally his social security number and the number for a corporation, estate, trust, or partnership is generally an employer identification number. The proper number of digits is nine for both the social security number and the employer identification number. An obviously incorrect number shall not be considered to be a taxpayer identification number. Thus, a payor shall treat the payee as having failed to furnish a taxpayer identification number if the payee furnishes an obviously incorrect number. See §§ 31.6011(b)–2 and 301.6109–1 for provisions relating to obtaining a taxpayer identification number.

(2) *Obviously incorrect number.* The term "obviously incorrect number" means a number that does not contain nine digits or a number that includes an alpha character as one of the nine digits.

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). Individual A provides Bank O with a social security number as 005–62–599. The number provided by A, because it does not contain nine digits, is an obviously incorrect number. Consequently, A is treated as not furnishing a taxpayer identification number.

Example (2). Individual B provides Bank P with a social security number as 606–6W–6599. The number provided by B, because it contains an alpha character, is an obviously incorrect number. Consequently, B is treated as not furnishing a taxpayer identification number.

Example (3). Partnership X provides its employer identification number as 12–2764. The number provided by X, because it does not contain nine digits, is an obviously incorrect number. Consequently, X is treated as not furnishing its taxpayer identification number.

Example (4). Individual C provides Bank Q with a social security number as 111–11–1111. The number provided by C, because it contains nine digits, is not an obviously incorrect number. Consequently, C is treated as furnishing a taxpayer identification number.

Example (5). Company Y provides Bank P with a employer identification number as 12–3456789. The number provided by Y, because it contains nine digits, is not an obviously incorrect number. Consequently, Y is treated as furnishing its taxpayer identification number.

(c) *Broker.* The term "broker" shall have the meaning given to such term by section 6045(c)(1) and § 1.6045–1(a)(1). If there could be more than one broker with respect to any acquisition, only the broker having the closest contact with the payee shall be treated as a broker.

The rules of § 5f.6045-1(c)(3) (ii) and (iii) shall apply to determine the broker with the closest contact with the payee. In the case of any instrument, the term "broker" shall not include any person who is the payor with respect to such instrument as described in § 31.3406(a)-2.

(d) *Readily tradable instrument.* The term "readily tradable instrument" means—

(1) Any instrument which is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)), or

(2) Any instrument which is regularly quoted by brokers or dealers making a market.

Thus, the term may include, but is not limited to, bonds, debentures, notes, certificates, and other evidences of indebtedness regardless of how denominated, repurchase agreements, stocks, shares in a mutual fund, United States government securities, State and local government obligations, and deposits with persons carrying on the banking business and persons that are mutual savings banks, cooperative banks, building and loan associations, homestead associations, credit unions, or similar organizations.

§ 31.3406(h)-2 Special rules.

(a) *Special rule for joint payees*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, for purposes of information reporting and backup withholding, any payment made to joint payees shall be treated as if the entire payment were made to the first person listed on the account or instrument giving rise to the payment. Therefore, except as provided in paragraph (a)(2) of this section, for purposes of information reporting and backup withholding, the taxpayer identification number that is required to be furnished is the number for the first person listed on the account or instrument. However, if the payor knows that the first person listed on the account is not the owner of the account for tax purposes and the payor does not treat such payee as the owner of the account, then the taxpayer identification number required to be provided is that of the owner (identified by the payor) listed on the account even though such owner is not listed first on that account. The requirement to provide the taxpayer identification number of the actual owner (as described in the immediately preceding sentence) is effective for accounts for which backup withholding under this section would begin [DATE THAT IS 60 DAYS AFTER THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION]. Payors are required to withhold on joint accounts if the payee subject to backup withholding is the first person listed on the account at the time the payor determines that the payee is required to provide a taxpayer identification number on the certificates described in § 31.3406(d)-2 to the payor and in the case where the payor is notified under section 3406(a)(1) (B) or (C), if the payee is the first person on the account at the time of such notification. Thus, for example, if the first person listed on the account or instrument does not provide a taxpayer identification number to the payor in the manner required in § 31.3406(d)-1, the payor shall withhold 20 percent of the payment under section 3406. A payor is required to withhold even if the order of the names on the account is subsequently changed, provided the name of the payee subject to backup withholding remains on the account.

(2) *Special rule with respect to joint foreign payees.* If the first payee listed on an account or instrument provides the penalties of perjury statement as to its foreign status (as described in § 1.6049-5(g) with respect to interest and original issue discount and § 1.6045-1(g)(3)(i) with respect to brokers), backup withholding shall apply unless—

(i) Every joint payee provides the statement as to foreign status, or

(ii) Any one of the joint payees who has not established foreign status provides a taxpayer identification number to the payor in the manner required in § 31.3406 (d)-1.

If any one of the joint payees who has not established foreign status provides a taxpayer identification number under paragraph (a)(2)(ii), such number is the taxpayer identification number that is required to be furnished for purposes of information reporting and backup withholding.

(3) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). G and H, United States citizens, jointly own an instrument of Corporation X. G is the first person listed on the account giving rise to the payment and does not provide a taxpayer identification number to X. X is required to withhold 20 percent of any reportable payment with respect to such instrument even if H provided a taxpayer identification number in the manner required in § 31.3406(d)-1 to X.

Example (2). Assume the same facts as in *Example (1)* except that G is a foreign person and provides a written certification to that effect on Form W-8. In order for backup withholding not to apply to the jointly held instrument, X must receive H's taxpayer identification number or awaiting-TIN certification.

(b) *Withholding from an alternative source*—(1) *In general.* Except with respect to a payment in property (as described in paragraph (b)(2) of this section) or a barter exchange (as described in paragraph (b)(3) of this section), a payor may not withhold from a source maintained by the payor other than the source with respect to which there exists a liability to withhold with respect to the payee. See section 3403 and § 31.3403-1 that provides that the payor is liable for the amount required to be withheld regardless of whether the payor withholds.

(2) *Payments made in property.* (i) In the case of a payment that is made in property (other than money), the payor is required under section 3406 to withhold 20 percent of the fair market value of the property determined immediately before or on the date of payment. The payor may withhold from the principal amount being deposited with the payor, or the payor may withhold from another source maintained by the payee with the payor. The source from which the tax is withheld must be payable to at least one of the persons listed on the account subject to backup withholding. If the account or source is not payable to, and only to, the same person or persons listed on the account subject to backup withholding, then the payor must obtain a written statement from all other persons to whom the account or source is payable authorizing the payor to withhold from the alternative account or source. A payor that elects to withhold from an alternative source may determine the account or source from which the tax is to be withheld, or, in its discretion, the payor may allow the payee to designate the alternative source. However, a payee may not require a payor to withhold from a specific alternative source.

(ii) If the payor cannot locate, using reasonable care, an alternative source of cash out of which the payor may satisfy its withholding obligation pursuant to paragraph (b)(2)(i) of this section, the payor may elect to defer its obligation to withhold until the payor makes a cash payment to the account subject to backup withholding or cash is otherwise deposited in the account. For purposes of this paragraph (b)(2)(ii), a payor is considered to exercise reasonable care in locating an alternative source of cash if the payor follows procedures substantially similar to those set forth in § 31.3406(d)-5(b)(5)(i) (A) and (B). This paragraph (b)(2)(ii) does not apply to reportable payments of property made in connection with prizes, awards, or gambling winnings.

(3) *Barter exchanges.* In the case of a barter exchange that issues scrip to, or credits the account of, a member or client of the exchange in payment for property or services, the barter exchange may withhold from the credit or scrip, or, alternatively, the barter exchange may withhold from any other source maintained by the exchange for the member or client. If the barter exchange elects to withhold from the credit or scrip, such credit or scrip must be converted to cash in order to satisfy the deposit requirements of section 6302 and § 31.6302(c)-1(a)(1). In the case of a barter exchange that does not provide for payment for property or services by means of a credit on the books of the barter exchange or scrip issued by the barter exchange, the barter exchange may withhold from an alternative source in the manner described in paragraph (b)(1) of this section.

(4) *Examples.* The application of the provisions of paragraph (b) of this section may be illustrated by the following examples:

Example (1). Individuals A and B maintain a joint checking account at Bank M. A also maintains a savings account at M. Payments to A are subject to backup withholding under section 3406. On December 31, 1994, M credits A's savings account with a $50 interest payment. Because the payment giving rise to the liability to withhold was not made in property, M may not withhold the tax imposed by section 3406 on the amount credited to A's savings account from A's and B's joint checking account. M is liable under section 3403 and § 31.3403-1 for the tax required to be withheld from the savings account under section 3406 regardless of whether M withholds from accounts maintained by A.

Example (2). Individual C opens an interest-bearing savings account in 1994 at Bank N with respect to which C will receive property in lieu of interest. C has a joint checking account at N with Individual D. C and D are not foreign persons. C is the first person listed on the checking account. When C opens the interest-bearing savings account and receives the property, C fails to certify that his taxpayer identification number is correct or that he is not subject to backup withholding due to notified payee underreporting. N is required to withhold under section 3406 at the time the reportable payment is made to C (*i.e.*, the time that N pays C the "interest" as described in § 31.3406(a)-2(a)). N may elect to withhold the tax from the principal C has deposited with N in the interest-bearing savings account, or N may elect to withhold the tax imposed by section 3406 from C's and D's joint checking account, provided that N obtains a written statement from D permitting N to withhold the tax from C's and D's joint checking account. N is liable under section 3403 and § 31.3403-1 for the tax required to be withheld under section 3406 regardless of whether N withholds.

Example (3). Broker O provides a payment of property as a dividend to Individual D whose stock has been borrowed in connection with a short sale. D does not provide O with a social security number. O may elect to withhold the tax imposed by section 3406 by creating a liability on the margin account that D maintains with O, or O may withhold from any alternative source D maintains with O. O is liable under section 3403 and § 31.3403-1 for the tax required to be withheld under section 3406 regardless of whether O withholds.

Example (4). Corporation E, a member of Barter Exchange P, provides goods for another member of P and receives a credit on the books of P for such goods. During the same calendar year, members of P engage in over 100 similar barter transactions. Consequently, P is required to make an information return (Form 1099-B) with respect to the transaction engaged in by E. Corporation E fails to provide its taxpayer identification number to P. See §§ 1.6045-1(e) and 31.3406(g)-1 (a) which provides that corporate members of barter exchanges are not exempt from backup withholding. Accordingly, P is required to withhold 20 percent of the fair market value of the credit received by E. P may elect to withhold from the credit or from any alternative source maintained by P for E. If P elects to withhold on the credit, the credit must be converted to cash. P is liable under section 3403 and § 31.3403-1 for the tax required to be withheld under section 3406 regardless of whether P withholds.

Example (5). Individual F, an independent travel agent, receives an airline ticket as an award for performing nonemployee services for Company X. F is not an employee of X as defined in section 3121(d). X is required to make an information return under section 6041 showing the fair market value of the airline ticket under § 1.6041-1 (d)(3) and (e). F does not furnish a social security number to X. Because the reportable payment is made in property, X may elect to withhold from an alternative source with F under paragraph (b)(1) of this section. X is liable under section 3403 and § 31.3403-1 for the tax required to be withheld under section 3406 regardless of whether X withholds. If F does not maintain another account with X, X may withhold by reducing the amount of the award by the 20 percent tax required to be withheld.

(c) *Special rules for trusts*—(1) *In general.* Backup withholding shall apply to a payment to a trust if any of the conditions for imposing backup withholding apply to the trust. Generally, a trust is not a payor. Therefore, except as provided in paragraph (3) of this section, a trust will not be required to withhold on reportable payments that the trust makes to a beneficiary who is subject to backup withholding. In addition, the trustee of a trust may certify that the trust's taxpayer identification number is correct and that the trust is not subject to backup withholding due to notified payee underreporting, without regard to the status of the individual beneficiaries of the trust.

(2) *Grantor trusts with ten or fewer grantors.* Backup withholding will apply to a reportable payment to a grantor trust with ten or fewer grantors that was established on or after January 1, 1984, if one of the conditions for imposing backup withholding exists with respect to the trust. The trustee of a grantor trust with ten or fewer grantors may not certify either that the trust is not subject to backup withholding due to notified payee underreporting or that the trust's taxpayer identification number provided by the trustee is correct unless each grantor has furnished the trustee with certifications, signed under penalties of perjury, that the grantor is not subject to backup withholding due to notified payee underreporting and that the grantor's taxpayer identification number provided to the trustee is correct, and the trustee uses such taxpayer identification numbers provided by the grantors on the Form 1041 that is filed by the trustee pursuant to section 671. A trustee of a grantor trust with ten or fewer grantors is not considered a payor as provided in § 31.3406(a)-2(e). Therefore, distributions by the trust of amounts to beneficiaries will not be considered payments of reportable amounts subject to backup withholding.

(3) *Grantor trust with more than ten grantors.* Trustees of a grantor trust with more than ten grantors are considered payors of reportable payments received by such trust for purposes of backup withholding. Payments of all reportable amounts (except gross proceeds reportable under section 6045) made to such trust are considered payments of the same kind made by the trust, as payor, to each grantor, as payee, in proportion to each grantor's ownership of the trust. Each grantor of such a trust is treated as having received his or her proportionate share of the reportable payment on the day the payment is received by the trust. Accordingly, any reportable payment made to the trust is treated as a reportable payment made by the trust to the grantor or grantors and is subject to backup withholding if one of the conditions specified in paragraph (d) of this section exists with respect to a grantor. If the reportable amount of the distribution is greater than the amount distributed, the trustee may, in its discretion, withhold on the entire reportable amount.

(d) *Conditions for a trustee of a grantor trust with ten or more grantors to impose backup withholding.* The trustee is required to withhold under section 3406 on the amount of any reportable payment (except gross

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proceeds reportable under section 6045) received by a trust attributable to a grantor if—

(1) The grantor fails to provide a taxpayer identification number to the trustee in the manner required in § 31.3406(d)–1,

(2) The grantor fails to certify to the trustee with respect to reportable interest or dividend payments (as defined in § 31.3406(b)(1)–1(b)) that he is not subject to backup withholding due to notified payee underreporting when required under § 31.3406(d)–2,

(3) The trustee is required to impose backup withholding under the rules applicable to readily tradable instruments which were not purchased from the issuer and are not held in "street name" by a broker, or

(4) The Internal Revenue Service notifies the trustee that the grantor provided an incorrect taxpayer identification number or that the grantor is subject to backup withholding due to notified payee underreporting.

The trustee of a grantor trust having more than ten grantors may certify that the trust's taxpayer identification number is correct and that the trust is not subject to backup withholding due to notified payee underreporting without regard to the status of, or certifications provided by, the grantors of the trust.

(e) *Examples.* The application of the provisions of paragraph (d) of this section may be illustrated by the following examples:

Example (1). Grantor Trust R has 100 grantors. R holds debentures of Corporation X that will pay stated interest. M is the trustee. A, one grantor of the trust, fails to provide the required certification to M that A's taxpayer identification number is correct and that A is not subject to backup withholding due to notified payee underreporting. Even though an individual grantor of the trust has failed to make the required certification, M certifies to X as described in paragraph (d) of this section as to R's taxpayer identification number and that R is not subject to backup withholding due to notified payee underreporting. X pays $100,000 of interest to R on July 1, 1964, and does not withhold. On September 30, 1984, M distributes $900 to each grantor (after deducting certain expenses). On September 30, 1964, M is required to withhold 20 percent of the $900 payment to A and any other grantor who is subject to backup withholding. M may withhold 20 percent of the amount reportable ($1,000).

Example (2). Assume the same facts in *Example (1)* except that R is a trust with 10 or fewer grantors. Under paragraph (c)(2) of this section, M may not certify that R's taxpayer identification number is correct or that the trust is not subject to backup withholding due to notified payee underreporting because the trustee has not received such certification from each grantor. Thus, X is required to withhold 20 percent of $100,000 payment on July 1, 1964. Because R has 10 or fewer grantors, R is not a payor under § 31.3406(a)–2, and M is not required to impose backup withholding on payments to A or any other grantor.

Example (3). Grantor Trust S is an oil royalty trust with 100 grantors. N is the trustee of the trust and B, a grantor of the trust, fails to furnish B's taxpayer identification number to N. On August 1, 1987, S receives a $1,000,000 oil royalty payment from X, an oil producer, subject to reporting under section 6050N. X does not withhold on the payment because N provided a taxpayer identification number to X. N distributes $8,000 to each grantor on December 31, 1964 (after deducting certain production-related taxes and expenses). On December 31, 1987, N is required to withhold 20 percent of the $8,000 payment made to B and to any other grantor who does not provide a taxpayer identification number to N.

Example (4). Trust T has 50 beneficiaries none of whom are grantors. Trust T maintains a savings account with Bank O that pays reportable interest. T has provided its taxpayer identification number to O. On August 10, 1967, Bank O makes a reportable interest payment to T. T has no information reporting obligation with respect to the interest it distributes to its beneficiaries because T is not a payor as described in § 31.3406(a)–2.

(f) *Adjustment of prior withholding by middlemen*—(1) *In general.* A middleman payor (as defined in § 31.3406(a)–2(b)) who receives a payment from which tax has been erroneously withheld under section 3406 may seek a refund of the tax withheld by the payor from whom the middleman payor received the payment (referred to as the "upstream payor"). Alternatively, the middleman payor may obtain a refund of the tax by claiming a credit for the amount of tax withheld by the upstream payor against the deposit of any tax imposed by this chapter which the middleman payor is required to withhold and deposit (as described in section 6413 and § 31.6413(a)–2). In either case, the middleman payor shall pay or credit the gross amount of the payment (including the tax withheld) to its payee as though it had received the gross amount of the payment from the upstream payor and shall withhold the tax imposed by section 3406 only if one of the conditions for imposing backup withholding exists with respect to its payee. If its payee is not subject to backup withholding under section 3406, the middleman payor shall pay or credit the full amount of the payment to the payee. See § 31.6413(a)–3 regarding repayment by a payor of tax erroneously collected from a payee.

(2) *Example.* The application of the provisions of this paragraph (f) may be illustrated by the following example:

Example. Broker M holds stock in Corporation N in "street name" for Individual A, who is not subject to backup withholding. M does not certify to N that M is not subject to backup withholding under section 3406 as N requires in order to treat M as an exempt recipient. Accordingly, N withholds 20 percent of its dividend payment to M. Rather than seek a refund of the erroneously withheld tax from N, M elects to credit the amount of tax withheld by N against any tax that M is required to withhold and deposit under section 6413 and § 31.6413(a)–2. Because A is not subject to backup withholding under section 3406, M pays the gross amount of the dividend payment to A.

(g) *Conversion of amounts paid in foreign currency into United States dollars*—(1) *Convertible foreign currency.* In the event that an amount is paid in convertible foreign currency, the amount shall be converted into United States dollars and the amount subject to withholding under section 3406 shall be computed on *that* amount expressed in United States dollars as of the date of the payment or crediting. The amount withheld shall be deposited in United States dollars. For purposes of this paragraph (g)(1), the term "convertible foreign currency" means currency of a foreign country that either is readily convertible into United States dollars or, effective from the date specified in a rule-related notice published in the **Federal Register**, is of a type the Secretary determines is to be treated as convertible foreign currency.

(2) *Nonconvertible foreign currency.* [Reserved]

(h) *Coordination with other sections.* For purposes of section 31, chapter 24 (other than section 3402(n)) of subtitle C of the Code (relating to employment taxes and collection of income tax at source) and so much of subtitle F (other than section 7205) of the Code (relating to procedure and administration) as relates to this chapter, and the regulations thereunder—

(1) An amount required to be withheld under section 3406 shall be treated as a tax required to be withheld under section 3402;

(2) An amount withheld under section 3406 shall be treated as an amount withheld under section 3402. Thus, an amount withheld under section 3406 shall be allowed to the payee of a reportable payment as a credit under section 31 against the tax imposed by subtitle A of the Code;

(3) The term "wages" includes the gross amount of any reportable payment (as defined in § 31.3406(b)(1)–1)) except for purposes of section 6014 (relating to election by the taxpayer not to compute the tax on his annual return);

(4) The term "employer" includes a payor who is required to withhold the tax under section 3406 (as defined in § 31.3406 (a)–2 (a)) with respect to any reportable payment (as defined in § 31.3406(b)(1)–1);

(5) The term "employee" includes a payee of any reportable payment: and

(6) The term "payroll period" includes the period described in § 31.3406(e)–1 during which the payor is required to withhold the tax imposed by section 3406.

Thus, the general procedures for withholding, deposit, payment, and reporting of Federal tax withheld shall apply to reportable payments and amounts withheld under section 3406. For example, section 6205 provides that an employer (payor) who makes an undercollection of income tax required to be withheld shall correct such error for the return period in which the undercollection is discovered. Section 6205 thus requires a payor to withhold amounts from subsequent payments to a payee that should have been withheld from prior payments, whether or not the subsequent payments are subject to backup withholding under section 3406. Accordingly, a payor who does not impose backup withholding under section 3406 when required must withhold from a subsequent payment to the payee even though the conditions for imposing backup withholding may not exist at the time the subsequent payment is made to the payee. See § 31.6302 (c)–1 for the rules relating to the timing for depositing withheld amounts.

(i) *Penalties.* A payor is subject to the same penalties for failing to impose backup withholding under section 3406 as an employer making a payment of wages. Consequently, under section 3403 and § 31.3403–1, a payor is liable for the tax required to be withheld whether or not the payor withholds the tax from a payee who is subject to backup withholding. A payor may be relieved of liability for an amount that was required to be withheld if the payor proves that the tax has been paid by the payee, as provided in section 3402 (d) and § 31.3402 (d)–1. The fact that a payor may be relieved of the liability for an amount that was required to be withheld will not relieve the payor of liability for any civil or criminal penalty. Additionally, a payor may be subject to civil and criminal penalties, including penalties under section 6651 (addition to the tax for failure to file certain tax returns and to pay any tax), section 6721 (failure to file certain information returns), section 6656 (failure to make deposit of taxes), section 6672 (failure to collect and pay over tax), section 6678 (failure to supply identifying numbers), section 6722 (failure to furnish certain statements), 6682 (false information with respect to withholding), section 7201 (willfully attempting to evade or defeat any tax or the payment of any tax), section 7202 (willful failure to collect or pay over any tax), section 7203 (willful failure to pay tax), section 7206 (2) (aid or assistance of fraud or false statement), section 7207 (fraudulent returns, statements, or other documents), and section 7215 (offenses with respect to collected taxes). In addition, a broker is subject to the penalty under section 6705 (failure of a broker to provide notice to a payor).

(j) *To whom payor is liable for amount withheld.* The payor is not liable to any person for any withheld amount under section 3406. The payor shall be liable only to the United States for an amount that was required to be withheld as provided in § 31.3403–1.

§ 31.3406(h)–3 Certificates.

(a) *Prescribed form to furnish information under penalties of perjury.* Except as provided in paragraph (c) of this section, Form W–9 is the form prescribed under section 3406 on which the payee may certify, under penalties of perjury, that—

(1) The taxpayer identification number furnished to the payor is correct (as required in § 31.3406(d)–1 and § 31.3406(d)–5),

(2) The payee is not subject to backup withholding due to notified payee underreporting (as required in § 31.3406(d)–2),

(3) The payee is an exempt recipient (as described in § 31.3406(g)–1), or

(4) The payee is awaiting receipt of a taxpayer identification number (as described in § 31.3406 (g)–3).

The Form W–9 shall be prepared in accordance with the instructions applicable thereto and shall set forth fully and clearly the data called for therein. A valid Form W–9 shall include the name, address, and taxpayer identification number of the payee. An obviously incorrect number shall not be considered to be a taxpayer identification number (see § 31.3406(h)–1(a)). Except as provided in paragraph (b) of this section, the payee must sign under penalties of perjury and date Form W–9 in order to satisfy the requirements of this section. Blank copies of Form W–9 will be supplied to payors, payees, and brokers upon request to the district director. A payor or broker may require a payee to furnish a separate Form W–9 for each obligation, deposit, certificate, share, membership, contract, or other instrument. Alternatively, a payor or broker may require a payee to furnish one Form W–9 for all the payee's obligations or relationships with the payor or broker. For example, a bank may permit a payee to file one Form W–9 for all savings, interest-bearing checking, or other accounts the payee has with the bank. In addition, a payee of a mutual fund that has a common investment advisor or common principal underwriter with other mutual funds may be permitted, in the discretion of the mutual fund, to provide one Form W–9 with respect to shares acquired or owned in any of the funds.

(b) *Prescribed form to furnish a noncertified taxpayer identification number.* With respect to accounts or other relationships where the payee is not required to certify, under penalties of perjury, that the taxpayer identification number being furnished is correct, the payor or broker may use Form W–9 or a substitute form, but the payee is not required to sign the form. Alternatively, the payor or broker may use any other document or may obtain the taxpayer identification number orally.

(c) *Forms prepared by payors or brokers*—(1) *Substitute forms; in general.* A payor or broker may prepare and use a form that contains provisions which are substantially similar to those of the official Form W–9 as described in paragraph (c) (2) and (3) of this section. A payor or broker may use any document relating to the transaction, such as the signature card for an account, so long as the certifications are clearly set forth. A payor or broker who uses a substitute form may furnish orally or in writing the instructions for Form W–9 that relate to the account. A payor or broker may refuse to accept certifications (including the official Form W–9) that are not made on the form or forms provided by the payor or broker. A payor or broker may refuse to accept a certification provided by a payee only if the payor or broker furnishes the payee with an acceptable form immediately upon receipt of an unacceptable form or within 5 business days of receipt of an unacceptable form. An acceptable form for this purpose must contain a notice that the payor or broker has refused to accept the form submitted by the payee and that the payee must submit the acceptable form provided by the payor in order for the payee not to be subject to backup withholding. If the payor or broker requires the payee to furnish a form for each account of the payee, the payor or broker is not required to furnish an acceptable form until the payee furnishes the payor or broker with the payee's account numbers. A payor or

broker may use separate substitute forms to have a payee certify under penalties of perjury that—

(i) The payee's taxpayer identification number is correct, and

(ii) The payee is not subject to backup withholding due to notified payee underreporting,

provided the language is substantially similar to the language in paragraph (c)(2) and (3) of this section or paragraph (c)(4) of this section if the payor or broker uses a single substitute form for both certifications.

(2) *Taxpayer identification number.* A payor or broker may use a substitute form for the payee to certify, under penalties of perjury, that the taxpayer identification number being furnished is correct, provided the language of the certification is substantially similar to the following:

"Under penalties of perjury, I certify that the taxpayer identification number furnished on this form is my correct taxpayer identification number."

(3) *Notified payee underreporting.* A payor or broker may use a substitute form for the payee to certify, under penalties of perjury, that such payee is not subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(C), provided the language of the certification is substantially similar to the following:

"Under penalties of perjury, I certify that I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or because the Internal Revenue Service has notified me that I am no longer subject to backup withholding."

(4) *Substitute form for both certifications.* A payor or broker may use a substitute form for both certifications described in paragraph (c)(2) and (3) of this section, provided the language of the certification is substantially similar to the following: "Under penalties of perjury, I certify that the taxpayer identification number shown on this form is my correct taxpayer identification number and that I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or because the Internal Revenue Service has notified me that I am no longer subject to backup withholding." If a payor or broker uses a single substitute form for both certifications which does not follow the Form W–9 format, the substitute form must contain an instruction to the payee to strike out the language certifying that the payee is not subject to backup withholding due to notified payee underreporting if the payee has been notified that he or she is subject to backup withholding due to notified payee underreporting, and if the payee has not received a notice from the Internal Revenue Service advising the payee that backup withholding due to notified payee underreporting has terminated.

(5) *Form for exempt recipients.* A payor or broker may use a substitute form for the payee to certify, under penalties of perjury, that the payee is an exempt recipient (described in § 31.3406(g)–1 or described in the respective reporting section), provided the form contains provisions that are substantially similar to those of the official Form W–9 relating to exempt recipients. A certificate shall be prepared in accordance with the instructions applicable to exempt recipients on Form W–9, and shall set forth fully and clearly the data called for therein. If a payor will treat the payee as an exempt recipient only if the payee files a certificate as to its exempt status, the certificate is valid only if it contains the payee's taxpayer identification number. Thus, a payee must include his taxpayer identification number on a certificate that a payor requires to be made in order to treat the payee as an exempt recipient.

(d) *Special rule for brokers.* A broker may act as the payee's agent for purposes of furnishing a taxpayer identification number or certification to a payor with respect to any readily tradable instrument (as defined in § 31.3406(h)–1(d)) provided the payee provides a taxpayer identification number or Form W–9 or other acceptable substitute form to the broker. The payor may rely on a taxpayer identification number provided by the broker unless the broker notifies the payor that the number was not certified when certification is required (as described in § 31.3406(d)–4).

(e) *Reasonable reliance on certificate.* A payor shall not be liable for the tax imposed under section 3406 if the payer's failure to deduct and withhold the tax is due to reasonable reliance on the taxpayer identification number provided by the payee or a broker which is in effect with respect to the payee at the time such tax is required to be deducted and withheld under section 3406. A payor or broker may reasonably rely on a Form W–9 or other acceptable substitute form only if the form contains a name and taxpayer identification number (or contains a name and states that the payee is awaiting receipt of a taxpayer identification number (*i.e.*, "an awaiting-TIN certificate") and is signed and dated by a payee. A payor or broker is not required to determine whether the statements made on the form are true. Any deletion of the jurat or other similar provisions of the statement by which the payee certifies or affirms the correctness of the information contained on the form that relates to the payee means, however, that the form may not be reasonably relied upon by the payor or broker. If a payor or broker receives a form that cannot be reasonably relied upon, the payor or broker shall treat the payee as if no form were provided.

(f) *Who may sign the certificate*—(1) *In general.* A Form W–9 or other acceptable form may be signed by any person who is authorized to sign a declaration under penalties of perjury on behalf of the payee as provided in section 6061 and the regulations thereunder (relating to who may sign generally for an individual, which includes certain agents who may sign returns and other documents), section 6062 and the regulations thereunder (relating to who may sign corporate returns), and section 6063 and the regulations thereunder (relating to who may sign partnership returns).

(2) *Notified payee underreporting.* Any payee who has not been notified that he is subject to backup withholding as a result of notified payee underreporting can make the certification related to notified payee underreporting. In addition, a payee who was subject to backup withholding due to notified payee underreporting may certify that he is not subject to backup withholding due to notified payee underreporting if the Internal Revenue Service has provided the payee with written certification that backup withholding due to notified payee underreporting has terminated.

(g) *Retention of certificate*—(1) *Accounts or instruments that are not pre-1984 accounts and brokerage relationships that are post-1983 brokerage accounts.* With respect to an account or instrument that is not a pre-1984 account (as described in § 31.3406(d)–1 (b) (3)) or with respect to a brokerage relationship that is a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)), the payor or broker who receives a Form W–9 or other acceptable substitute form related to backup withholding shall retain the form in its records for the same period of time that the payor or broker retains other account-creation or instrument-purchase agreements. The form may be retained on microfilm or microfiche in accordance with any applicable revenue procedures.

(2) *Accounts or instruments that are pre-1984 accounts and brokerage relationships that are not post-1983 brokerage accounts.* With respect to a pre-1984 account (as described in § 31.3406(d)–1(b)(1)) or with respect to a brokerage relationship that is not a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(1)), the payor or broker is not required to retain any Form W–9 or other acceptable substitute form on which—

(i) The payee has certified the correctness of the payee's taxpayer identification number,

(ii) The payee has certified that he is awaiting receipt of a taxpayer identification number ("an awaiting-TIN certificate" as described in § 31.3406(g)–3), or

(iii) The payee has certified that the payee is an exempt recipient described in § 31.3406(g)–1, provided the payor or broker can establish the existence of procedures that are reasonably calculated to ensure that a payee who has so certified is accurately identified in the payor's or broker's records. If, however, the payor or broker requires the payee to file only one Form W–9 or substitute form for all accounts or instruments of the payee, the payor or broker must retain the single form in the manner and for the period of time described in paragraph (g)(1) of this section if that form relates to any account or instrument that is not a pre-1984 account or relates to a post-1983 brokerage account.

§ 31.3406(l)–1 Transitional rules.

In general, the following transitional rules apply for the 1984 calendar year. In this connection, Question and answer 1 concerns certain payees of pre-1984 accounts or relationships who did not furnish a taxpayer identification number before January 1, 1984. Question and answer 2 concerns payments of gross proceeds before April 1984 and other similar payments.

Q–1. Did a special rule exist with respect to a payee who had not furnished a taxpayer identification number to a payor before January 1, 1984, with respect to a pre-1984 account (as described in § 31.3406(d)–1(b)(1)), a brokerage account that is not a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(1)), or other relationships established (as described in § 31.3406(d)–1(d)) before January 1, 1984?

A–1. Yes. All payees of such accounts, instruments or relationships were treated as if they were waiting for receipt of a taxpayer identification number, without any action on their part, until January 16, 1984. The payor was required to withhold 20 percent of any payment made after January 16, 1984, unless (1) the payee had certified that the payee was waiting for receipt of a taxpayer identification number (as provided in § 31.3406(g)–3) or (2) the payor received a taxpayer identification number from the payee. If, however, a payor had been provided with a Form W–9 (or substitute form) with an "Applied For" designation by a payee on an account, instrument, or relationship established before January 1, 1984, the form was valid for 60 days notwithstanding the fact that the supplemental instruction referred to in § 31.3406(h)–3 was not provided to the payee.

Assume, for example, that the payee of an account established before January 1, 1984, delivered an awaiting-TIN certification to the payor on December 30, 1983, and the payor processed the certification that day as permitted in § 31.3406(e)–1(b). The payor should not impose backup withholding on payments made to the payee prior to February 29, 1984, because the payee is treated under this paragraph as having provided a taxpayer identification number during that period. If the payor did not receive a number in the manner required in § 31.3406(d)–1 from the payee prior to February 29, 1984, the payor would be required to withhold 20 percent of any payment made to the payee on or after February 29, and before the payee provided a number. As another example, assume that a payee of an account established before January 1, 1984, delivered an awaiting-TIN certification to the payor on January 12, 1984, and processed it that day. The payor should not impose backup withholding on payments made between January 1 and 12 because the payee would be treated during that period as if he had provided a taxpayer identification number under the rule set forth above. Moreover, backup withholding would not apply to payments made during the 60 days following January 12, because the payee on that date delivered an awaiting-TIN certification. Backup withholding would begin only if the payor had not received a taxpayer identification number within that 60-day period. (See § 31.3406(e)–1(b), however, for the rules relating to the dates on which the payor may be treated as having received the certificate or the taxpayer identification number.)

Q–2. Did transition rules apply to backup withholding on gross proceeds reportable by brokers under section 6045 (as described in § 31.3406(b)(3)–2)?

A–2. Yes. The following transition rules applied until April 1, 1984. First, for purposes of backup withholding on gross proceeds reportable by brokers, the penalties of perjury certification required by § 31.3406(d)–1(c)(2) (for post-1983 accounts) may be waived at the broker's option until April 1, 1984. A customer who opens an account after December 31, 1983, and who consummates a sale prior to April 1, 1984, will not be subject to backup withholding provided that the customer furnishes a taxpayer identification number to the broker prior to the sale. The gross proceeds from sales made through post-1983 accounts after March 31, 1984, however, will be subject to backup withholding if the customer does not provide a taxpayer identification number certified under penalties of perjury. See § 31.3406(d)–3(b) for special rules applicable when a sale is made pursuant to a telephone or wire instruction.

Second, until April 1, 1984, the gross proceeds from a sale made through a pre-1984 account (as described in § 31.3406(d)–1(c)(1)) by a customer who has not provided a taxpayer identification number will not be subject to backup withholding at the broker's option provided that (1) the customer furnishes his number to the broker within 30 days after the date of the sale and (2) the customer does not withdraw the proceeds of the sale prior to the time his taxpayer identification number is furnished to the broker (or backup withholding is applied). For purposes of the preceding sentence, an investment of the cash proceeds in other property shall not be considered a withdrawal by the customer if, at all times during the 30-day period, at least 20 percent of all gross proceeds reportable under section 6045 are held in cash within the customer's account by the broker. If the customer does not furnish his taxpayer identification number within 30 days after the date of sale' the broker must withhold 20 percent of all reportable gross proceeds on the 31st day after the date of the sale.

If, with respect to forward contracts, regulated futures contracts, security short sales, or issuer payment of debt securities, the broker applies backup withholding on a date other than the sale date (see § 31.3406(b)(3)–2(c)) the rules of this paragraph shall apply as if any date on which the broker determines whether backup withholding applies were the sale date.

§ 31.6011(a)–5 [Amended]

Par. 8. Section 31.6011(a)–5(a) is amended by adding the phrase "or § 31.6011(a)–11" immediately after the phrase "§ 31.6011(a)–1 or § 31.6011(a)–(4)" wherever the latter phrase appears.

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and by adding the phrase "or payor" immediately after the term "employer" wherever it appears.

§ 31.6011(a)-6 [Amended]

Par. 9. Section 31.6011(a)-6 is amended by revising the heading and the first and third sentences of paragraph (a)(1) to read as follows:

§ 31.6011 (a)-6 Final returns.

(a) *In general*—(1) *Federal Insurance Contributions Act; income tax withheld from wages and certain reportable payments.* An employer or payor who is required to make a return on a particular form pursuant to § 31.6011(a)-1, § 31.6011(a)-4, § 31.6011(a)-5, or § 31.6011(a)-11, and who in any return period ceases to pay wages or other reportable payments in respect of which he is required to make a return on such form, shall make such return for such period as a final return. * * * Every such person filing a final return (other than a final return on Form 942 or Form 943) shall furnish information showing the date of the last payment of wages, as defined in section 3121(a) or section 3401(a), and, if appropriate, the date of the last payment of certain reportable payments as defined in section 3406. * * *

* * * * *

Par. 10. A new § 31.6011(a)-11 is added to read as follows:

§ 31.6011(a)-11 Returns of income tax withheld from any reportable payment.

(a) *Quarterly returns.* Except as otherwise provided in § 31.6011(a)-5, every payor or broker required to withhold taxes from any reportable payment pursuant to section 3406 shall make a return on Form 941 or Form 941E, whichever is the prescribed form regarding those taxes, for the first calendar quarter in which the payor or broker is required to deduct and withhold such tax and for each subsequent calendar quarter (whether or not the payor or broker is required to deduct and withhold the tax imposed by section 3406 during the quarter) until it has filed a final return in accordance with § 31.6011(a)-6.

(b) *Information returns on Form 1099.* See sections 6041, 6041A, 6042, 6044, 6045, 6049, and 6050A for requirements regarding information returns on Form 1099 with respect to any reportable payment.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns required under this section, see § 31.6071(a)-1 and § 31.6091-1, respectively.

(d) *Monthly returns.* The provisions of § 31.6011(a)-5 regarding monthly returns shall apply, as appropriate, to a payor or broker.

(e) *Final returns.* The provisions of § 31.6011(a)-6(a)(1) regarding final returns shall apply, as appropriate, to a payor or broker.

Par. 11. A new § 31.6051-4 is added to read as follows:

§ 31.6051-4 Statements required in case of backup withholding.

(a) *Statements required from payor.* Every payor of any reportable payment (as defined in section 3406(b) and §§ 31.3406(b)(1)-1) who is required to deduct and withhold tax under section 3406 shall furnish to the payee a written statement containing the information required by paragraph (c) of this section.

(b) *Prescribed form.* The prescribed form for the statement required by this section shall be Form 1099. In the case of any reportable interest or dividend payment as defined in § 31.3406(b)(1)-1(b), the prescribed form shall be the official Form 1099 required in § 1.6042-5 (relating to payments of dividends), § 1.6044-6 (relating to payments of patronage dividends), or § 1.6049-6(e) (relating to payments of interest or original issue discount). Statements required to be furnished by this section shall be treated as statements required by the respective sections with respect to any reportable payment, except that the statement required under this section shall include the amount of tax withheld under section 3406. In no event shall a statement be required under this section if a statement with the same information is required to be furnished to the recipient under another section. Thus, a payor is not required to furnish two statements of the same information to a recipient.

(c) *Information required.* Each statement on Form 1099 shall show the following:

(1) The name, address, and taxpayer identification number of the person receiving any reportable payment;

(2) The amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N whether or not the amount of the reportable payment is less than the amount for which an information return is required, if tax is withheld under section 3406 relating to backup withholding. If tax is withheld under section 3406, the statement shall show the amount of the payment withheld upon;

(3) The amount of tax deducted and withheld under section 3406;

(4) The name and address of the person filing the form;

(5) A legend stating that such amount is being reported to the Internal Revenue Service; and

(6) Such other information as is required by the form.

(d) *Time for furnishing statements.* The statement shall be furnished to the payee no later than January 31 of the year following the calendar year in which the payment was made.

(e) *Aggregation.* The payor or broker may combine the information required to be shown under this section with information required to be shown under another section even if they do not relate to the same type of reportable payment.

(f) *Cross references.* For provisions relating to the failure to file certain statements, see section 6722. For provisions relating to the penalties provided for the willful furnishing of a false or fraudulent statement, or for the willful failure to furnish a statement, see sections 6656, 6682 and 7215. For additional provisions relating to the inclusion of identification numbers and account numbers in statements on Form 1099, see §§ 31.6109-1 and 301.6109-1. For provisions relating to the penalty for failure to report an identification number or an account number, as required by § 31.6109-1 or § 301.6109-1, see section 6676 for statements required for 1988 or earlier calendar years and section 6721 for statements required for 1989 or later calendar years.

Par. 12. Section 31.6071(a)-1 is amended by revising the heading of paragraph (a) and the first sentence of paragraph (a)(1) to read as follows:

§ 31.6071(a)-1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages and certain reportable payments*—(1) *Quarterly or annual returns.* Except as provided in paragraph (a)(4) of this section, each return required to be made under § 31.6011(a)-1 in respect of the taxes imposed by the Federal Insurance Contributions Act, or required to be made under § 31.6011(a)-4 in respect of income tax withheld from wages, or required to be made under § 31.6011(a)-11 in respect of income tax withheld from certain reportable payments, shall be filed on or before the last day of the first calendar month following the period for which it is made. * * *

* * * * *

Par 13. Section 31.6302(c)-1 is amended by adding a new paragraph (a)(1)(i)(*d*), removing the term "and" at the end of paragraph (a)(1)(iii)(*b*), by adding the term ", and" at the end of paragraph (a)(1)(iii)(*c*), and by adding new paragraph (a)(1)(iii)(*d*). The added provisions read as follows:

§ 31.6302(c)-1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.

(a) *Requirement*—(1) *In general.*

(i) * * *

* * * * *

(*d*) A payor who withholds income tax with respect to reportable payments under section 3406 may elect, in accordance with the instructions provided with Form 941, to deposit such taxes under the rules of paragraphs (a)(1)(i) (*a*) or (*b*) of this section without taking into account the undeposited taxes described in paragraphs (a)(1)(iii) (*a*), (*b*), or (*c*) of this section for purposes of determining when taxes withheld under section 3406 must be deposited. A payor who makes this election shall not take tax withheld under section 3406 into account for purposes of determining when taxes described in paragraphs (a)(1)(iii) (*a*), (*b*), or (*c*) of this section must be deposited under paragraphs (a)(1)(i) (*a*) or (*b*) of this section.

* * * * *

(iii) * * *

(*d*) The income tax withheld under section 3406, relating to backup withholding with respect to reportable payments. (See paragraph (a)(1)(i)(*d*) of this section concerning the election payors may make regarding deposits of tax withheld under section 3406).

Par. 14. A new § 31.6413(a)-3 is added to read as follows:

§ 31.6413(a)-3 Repayment by payor of tax erroneously collected from payee.

(a) *In general.* If a payor or broker withholds from a payee in error or withholds more than the proper amount of the tax under section 3406, the payor or broker may refund the amount erroneously withheld as provided in section 6413 and this section. A payor or broker shall be considered to have withheld erroneously only if the amount is withheld because of an error by the payor or broker (*e.g.*, an error in "flagging" or identifying an account that is subject to backup withholding under section 3406) or the Internal Revenue Service directs the payor to refund an amount withheld pursuant to section 3406(a)(1)(C). If the payor or broker requires a payee described in § 31.3406(g)-1(e) or the respective reporting section (*e.g.*, a corporation) to certify that it is an exempt recipient, the payee fails to make the required certification, and the payor or broker subsequently withholds the tax imposed by section 3406 from a payment to such payee, the payor or broker may, in its discretion, treat the amount withheld as an amount erroneously withheld and refund it to the payee. The same rule applies if the payor or broker does not require such a payee to certify concerning its exempt status and the payor or broker withholds. If a payor or broker withholds from a payee after the payee provides a taxpayer identification number or required certification (including the certification relating to foreign status described in § 1.6049-5(g) or § 1.6045-1(g)(3)(i)) to the payor, but before the payor or broker treats the number or required certification as having been received under § 31.3406(e)-1(b), the payor or broker may, in its discretion, treat the amount withheld as an amount erroneously withheld and refund it to the payee. If a payor or broker withholds, however, because the payor or broker has not received a taxpayer identification number or required certification and the payee subsequently provides a taxpayer identification number or a required certification to the payor, the payor or broker may not refund the amount to the payee because the payor or broker has not erroneously withheld under section 3406.

(b) *Manner of refunding amounts erroneously withheld.* If a payor or broker withholds from a payee in error or withholds more than the correct amount under section 3406 as described in paragraph (a) of this section, the payor or broker may refund the amount erroneously withheld to the payee so long as the refund is made prior to the end of the calendar year and prior to the time the payor or broker furnishes a Form 1099 to the payee with respect to the payment for which the erroneous withholding occurred. If the amount of the erroneous withholding is refunded to the payee, the payor or broker shall keep as part of its records a receipt showing the date and amount of refund and the payor or broker must provide a copy or such receipt to the payee. For this purpose, a cancelled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax erroneously withheld. If the payor or broker has not deposited the amount of the tax prior to the time that the refund is made to the payee, the payor or broker shall not deposit the amount erroneously withheld. If the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Code which the payor or broker is required to make in the amount of the tax which has been refunded to the payee. A payor or broker shall not report on a Form 1099 as tax withheld any amount which the payor or broker has refunded to a payee.

(c) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). A, an individual, maintains an interest-bearing checking account with Bank M. A has not furnished a social security number to M. On March 31, 1994, M credits a payment of interest to A's account and withholds 20 percent of the payment pursuant to section 3406. On April 7, 1994, A receives a quarterly statement from M showing the tax withheld, provides M with a social security number, and requests that M refund the tax withheld. Since M did not have A's social security number on the date M made a payment to A, M has not erroneously withheld the tax imposed by section 3406 and may not refund the tax to A.

Example (2). B, an individual, has an interest bearing share account with Credit Union N. Although B has provided a social security number to N, N has failed to associate B's number with the account B maintains with N. N credits a payment of interest to B's account on February 1, 1994, and withholds 20 percent of the payment. When B receives a quarterly statement from N showing the tax withheld, B requests that N refund the amount of tax withheld. Upon examining its records, N determines that the tax was withheld because of its error in associating B's social security number with B's account. Accordingly, N may treat the amount as erroneously withheld under paragraph (a) of this section and refund the amount withheld to B as provided in section 6413 and paragraph (b) of this section.

Example (3). State C maintains an investment account with Bank O. C does not have a taxpayer identification number on file with O. Although O requires persons who are exempt from backup withholding under section 3406 to certify their exempt status to O, C fails to do so. O credits a payment of interest to C's account on January 31, 1994, and withholds 20 percent of the payment. On February 2, 1994, O realizes it has withheld the tax imposed by section 3406 from a payment to C. O may treat the amount withheld from C as an amount erroneously withheld under paragraph (a) of this section and refund the amount withheld to C as provided in section 6413 and paragraph (b) of this section.

Par. 15. Section 31.6682-1 is amended by revising the first sentence and by adding two new sentences after the second sentence of paragraph (a) to read as follows:

§ 31.6682-1 False information with respect to withholding.

(a) *Civil penalty.* If any individual makes a statement under section 3402 (relating to income tax collected at source) or section 3406 (relating to backup withholding) which results in a lesser amount of income tax actually deducted and withheld than is properly allowable under section 3402 or section 3406 and, at the time the statement was

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made, there was no reasonable basis for the statement, the individual shall pay a penalty of $500 for the statement. * * * There was a reasonable basis for a statement on a Form W-9 if the person included his correct taxpayer identification number assigned under section 6109 and, with respect to a reportable interest or dividend payment (as defined in § 31.3406(b)(1)-(1)(b), that person had a reasonable basis to certify under penalties of perjury that he was not subject to backup withholding if, prior to the time that the person made the statement, he had not been notified that he was subject to backup withholding as a result of notified payee underreporting. Additionally, a person who was subject to backup withholding due to notified payee underreporting had a reasonable basis to certify that he was not subject to backup withholding due to notified payee underreporting if, prior to the time that the person made the statement, the Service provided him with written certification that backup withholding due to notified payee underreporting had terminated. * * *

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 16. The authority citation for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 301.6109-1 also issued under 26 U.S.C. 6109.

Par. 17. Section 301.6109-1 is amended by revising paragraphs (a)(1) and (g), by redesignating paragraph (h) as paragraph (i), and by adding a new paragraph (h) to read as follows:

§ 301.6109-1 Identifying numbers.

(a) *In general*—(1) *Social security numbers and employer identification numbers.* Generally, there are two types of taxpayer identifying numbers: Social security numbers and employer identification numbers. Social security numbers take the form 000-00-0000, while employer identification numbers take the form 00-0000000. Social security numbers identify individual persons while employer identification numbers identify corporations, partnerships, nonprofit associations, trusts, estates of decedents, and similar nonindividual persons. Both types of taxpayer identifying numbers are used by individuals who are employers or who are engaged in trade or business as sole proprietors, as required by returns, statements or other documents and their related instructions. Such documents often require an individual's own social security number in connection with his individual taxes, and his employer identification number in connection with his business taxes. See paragraph (g) of this section for the rules with respect to the use of a taxpayer identification number for nonresident aliens.

* * * * *

(g) *Nonresident aliens.* In general, nonresident aliens who are treated as residents under section 6013 (g) or (h) must obtain a taxpayer identification number in the same form and manner that is required of U.S. residents. However, nonresident aliens with income effectively connected with a U.S. trade or business, or nonresident aliens who do not have such income but who must file a Form 1040NR to obtain a refund of tax withheld, must obtain a taxpayer identification number that takes the form 9xx-xx-xxxx. This number may be obtained from the Internal Revenue Service Center located in Philadelphia, Pennsylvania. Other nonresident aliens are not required to obtain a taxpayer identification number.

(h) *Other foreign persons.* A foreign corporation, foreign partnership, or foreign private foundation is not required to obtain a taxpayer identification number if it does not have income effectively connected with the conduct of a trade or business within the United States and does not have an office or place of business or fiscal or paying agent in the United States.

* * * * *

Par. 18. A new § 301.6676-2 is added to read as follows:

§ 301.6676-2 Due diligence defense.

For purposes of section 6676, the following questions and answers (Q/A's) concerning the actions that payors must take to establish due diligence are hereby referenced in this § 301.6676-2:

(a) Q/A-1, through Q/A-29, Q/A-31, Q/A-34 through Q/A-36, Q/A-38 through Q/A-42 B, and Q/A-48 through Q/A-56 of § 35a.9999-1;

(b) Q/A-1 through Q/A-8, Q/A-17 through Q/A-18, and Q/A-20 through Q/A-23 of § 35a.9999-2;

(c) Q/A-1, Q/A-3 through Q/A-4, Q/A-20, Q/A-29, Q/A-33 through Q/A-37, Q/A-41, Q/A-46, Q/A-48, Q/A-51 through Q/A-97, and Q/A-99 through Q/A-104 of § 35a.9999-3; and

(d) Q/A-3 and Q/A-5 of § 35a.9999-4T.

Par. 18(a). Sections 35a.3406-1 and 35a.3406-2 are removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 19. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 20. Section 602.101(c) is amended by inserting the following in the appropriate place in the table "§ 31.3406 . . . 1545-0112 and 1545-0979".

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 90-22490 Filed 9-20-90; 10:53 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 59

[DoD Directive 7330.1]

Voluntary Military Pay Allotments

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This document includes proposed changes to the existing rule on voluntary military pay allotments from the pay and allowances of active duty and retired service members. These changes were requested by the Military Departments. The intended purposes are to clarify, with examples, discretionary and nondiscretionary allotments; modify insurance allotments authorized to retirees; and delete allotments under 10 U.S.C. 1035.

DATES: Comments are requested by October 29, 1990.

ADDRESSES: Office of the Deputy Comptroller (Management Systems), room 3E825 the Pentagon, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Mr. James T. Jasinski, telephone (202) 697-0536.

SUPPLEMENTARY INFORMATION: This reissuance includes several administrative changes and authorizes active duty service members to have six discretionary allotments for undefined purposes. Written comments may be submitted to the addressees above. All comments will be available for examination upon request.

The prior publication of this rule can be found on 52 FR 34215 of September 10, 1987. This action is not a major rule as defined by Executive Order 12291. The rule will not have an annual effect on the economy of $100 million or more; result is a major increase in the cost or prices for consumers, industries, State or local governments; or adversely effect competition, employment, investment, productivity or innovation. The rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no Regulatory Flexibility Analysis was prepared.

Copies of other DoD publications referenced in this document may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects in 32 CFR Part 59

Military personnel, Wages.

Dated: September 7, 1990.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Accordingly, it is proposed that title 32 CFR, chapter I, be amended by revising part 59, to read as follows:

PART 59—VOLUNTARY MILITARY PAY ALLOTMENTS

Sec.
59.1 Purpose.
59.2 Applicability.
59.3 Policy.
59.4 Responsibilities.

Authority: 37 U.S.C. Ch. 13.

§ 59.1 Purpose.

This part updates the policies that implement title 37 of the United States Code, chapter 13, and govern voluntary allotments of pay and allowances for active duty (AD) and retired Service members.

§ 59.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments. The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 59.3 Policy.

(a) *General.* (1) The voluntary allotment system is provided primarily as a means to assist Service members in accommodating their personal and family financial responsibilities to the exigencies of military service. It is a convenience and privilege not to be exploited or abused. To avoid unjustifiable expense to the Government, that system's use shall be limited to the purposes in § 59.3 (a)(2) and (a)(3).

(2) All existing approved registered allotments of military pay and allowances for AD and retired Service members that were authorized previously by this part at the time registered may be continued as approved allotments. If any such allotments are discontinued, they may not be reestablished except as a new allotment in accordance with the requirements of this part. Any change in the allotment initiated by the Service member is considered a discontinuance, except those that are beyond the control of the Service member.

(3) Changes beyond the control of the Service member are administrative changes that are dictated by events incidental to the allotment. Examples of administrative changes that are beyond the control of the Service member are name and address changes by the payee or amount changes due to contractual obligation existing at the time the allotment was executed; i.e., a mortgage payment change because of a variable rate mortgage or changing escrow requirements. Although the changes in this paragraph (a)(3) do not constitute a discontinuance, such administrative changes that adjust the amount of the allotment shall be accepted only when communicated by the Service member on a new allotment request. Discontinuance occurs with any mortgage refinancing action.

(4) A change in allotment initiated by an organizational allottee may be accepted when the change is documented properly, is of an administrative nature, and does not increase the amount allotted.

(b) *Active military service.* Voluntary allotments of military pay and allowances of Service members in active Military Service shall be limited to the following:

(1) *Nondiscretionary allotments.* (i) The purchase of U.S. savings bonds.

(ii) The repayment of loans to the Navy Relief Society, Army Emergency Relief, Air Force Aid Society, and American Red Cross.

(iii) The voluntary liquidation of indebtedness to the United States, that includes the following:

(A) Indebtedness incurred by reason of defaulted notes insured by the Federal Housing Administration (FHA) or guaranteed by the Department of Veterans Affairs (VA).

(B) Payment of amounts due under the Retired Serviceman's Family Protection Plan, in the case of retired Service members serving on AD.

(C) Any other indebtedness to any Department or agency of the U.S. Government, except to the Department paying the Service member.

(D) Any repayment of debts owed to an organization for funds administered on behalf of the U.S. Government and any such debts assigned to a collection agency.

(iv) Charitable contributions to the following:

(A) A CFC, in accordance with DoD Directive 5035.1 [1] "Fund-Raising Within the Department of Defense," April 7, 1978, and DoD Instruction 5035.5 [2] "DoD Combined Federal Campaign-Overseas Areas (CFC-OA)," August 17, 1990.

(B) Army Emergency Relief, Navy Relief Society, or affiliates of the Air Force Assistance Fund.

(v) Allotments to the VA for deposit to the Post-Vietnam Era Veterans Education Account within the periodic and cumulative depository limitations specified in DoD Directive 1322.8,[3] "Voluntary Educational Programs for Military Personnel," July 23, 1987. Once authorized by the Service member, the allotments must run a minimum of 12 consecutive months, unless the Service member suspends participation or disenrolls from the program because of personal hardship.

(vi) Payment of delinquent State or local income or employment taxes.

(vii) Dental and health insurance allotments for the benefit of the families of Service members.

(2) *Discretionary allotments.* Service members are authorized no more than six purely discretionary allotments. The Service members shall certify that the allotment is within the limits of the law (i.e., allotments may not be used to repay gambling debts in a State where gambling is not permitted). Examples include, but are not restricted to, the following:

(i) Payment of commercial life insurance premiums.

(ii) Voluntary payment to a dependent.

(iii) Deposits to a financial institution, mutual fund company, or investment firm.

(iv) Payment of car insurance or loan.

(v) Payment of a personal loan.

(vi) Payment of mortgage or rent.

(c) *Retired military personnel.* (1) Voluntary allotments by Service members receiving retired or retainer pay shall be limited to the following:

(i) Purchases of U.S. savings bonds.

(ii) Payment of premiums to insurance companies for insurance on the life of the Service member.

(iii) Voluntary liquidation of indebtedness to the United States, subject to the limitations prescribed in § 59.3(b)(1)(iii).

(iv) Allotments to a spouse, former spouses, and/or children of the retired Service member having a permanent

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 59.3(b)(1)(iv)(A).

[3] See footnote 1 to § 59.3(b)(1)(iv)(A).

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residence other than that of the retired Service member.

(v) Charitable contributions to the Army Emergency Relief, Navy Relief Society, or affiliates of the Air Force Assistance Fund.

(vi) The repayment of loans to the Army Emergency Relief, Navy Relief Society, Air Force Aid Society, or American Red Cross.

(2) To assist personnel in the transition from AD to retired status, all allotments authorized for AD Service members may be continued, except those allotments in § 59.3 (b)(1)(iv)(A), (b)(1)(v), and (b)(1)(vi). If an allotment continued from AD, but not authorized by § 59.3(c)(1), is discontinued by the retiree, such an allotment may not be reestablished.

(d) *Exclusions and restrictions.* (1) The amount of pay and allowances that may be allotted shall exclude amounts required to be withheld for taxes, liquidation of indebtedness determined under applicable provisions of law to be chargeable against the Service member's pay account, or required premiums on Servicemen's Group Life Insurance.

(2) The total amount that may be allotted shall comply with the restrictions in the DoD Military Pay and Allowances Entitlements Manual [4] and DoD 1340.12–M,[5] "DoD Military Retired Pay Manual," March 1987.

(e) *Control and use of forms.* (1) Allotment requests shall be accepted only on authorized allotment forms, unless otherwise provided for in this part. Supplies of allotment forms shall not be made available to non-Federal organizations, except that each Military Department may authorize issuance of forms to the Army Emergency Relief, Navy Relief Society, Air Force Aid Society, and American Red Cross.

(2) Retired military personnel need not submit allotment requests on the prescribed forms. For allotments authorized for retired military personnel in § 59.3(c)(1), a signed personal letter may be used to support an allotment request, change, or cancellation by retired Service members if all required information is provided. Additionally, initiation or changes to National Service Life Insurance premiums are accomplished in accordance with instructions issued by the VA. The VA provides the Military Department with written documentation to support the allotment.

[4] Contact Defense Logistics Agency, ATTN: DLA–X, Cameron Station, Alexandia, VA 22304 for copies.

[5] See footnote 4 to § 59.3(d)(2).

§ 59.4 Responsibilities.

(a) The Comptroller of the Department of Defense (C, DoD) shall exercise primary management responsibility for the voluntary military pay allotment program and provide assistance to the Military Departments in the form of instructions, requirements, reviews, and other guidance.

(b) The Secretaries of the Military Departments shall ensure that this part is implemented by the Military Services concerned and shall establish criteria limiting the allotments in § 59.3(b)(2) to those that are administratively cost-effective to establish and process.

[FR Doc. 90–22346 Filed 9–26–90; 8:45 am]
BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3789/P517; FRL–3797–3]

Pesticide Tolerance for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (also called "sethoxydim") and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity sweet potato. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Written comments, identified by the document control number [PP 9E3789/P517], must be received on or before October 29, 1990.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4, (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 9E3789 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Arkansas, Florida, Louisiana, North Carolina, Oklahoma, and South Carolina.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity sweet potato at 2.0 parts per million (ppm). The petition was later revised to propose a tolerance level of 4.0 ppm in or on sweet potato.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a no-observed-effect level (NOEL) of 8.66/9.41 (male/female) milligrams (mg)/kilogram (kg)/day and a lowest-effect level (LEL) of 17.5 and 19.9 (male/female) mg/kg/day based on equivocal evidence of anemia.

2. A 2-year chronic feeding/oncogenicity study in rats with a NOEL for systemic effects at 18 mg/kg/day (highest dose tested). There were no carcinogenic effects observed under the conditions of the study at all dose levels tested (2, 6, and 18 mg/kg/day).

3. A mouse 2-year oncogenicity study with a systemic NOEL of 18 mg/kg/day and no carcinogenic potential observed under the conditions of the study at all dosage levels tested (0, 6, 18, 54, and 162 mg/kg/day).

4. A two-generation reproduction study in rats with a NOEL for reproductive effects at 54 mg/kg/day and a NOEL for systemic effects at 18 mg/kg/day.

5. A rabbit teratology study with a NOEL for developmental and maternal toxicity at 160 mg/kg/day and a lowest effect level for developmental effects of 480 mg/kg/day.

6. A teratology study in rats with a NOEL of 40 mg/kg/day for maternal toxicity and no observed developmental toxicity at 250 mg/kg/day (highest dose tested).

7. Mutagenicity studies including host-mediated assay (mouse with *S. typhimurium*, negative at 2.5 grams/kg/day) and recombinant assays and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (all negative at concentrations of the chemical up to 100 percent).

The reference dose (Rfd), based on the 1-year dog feeding study (NOEL of 8.66 mg/kg/day) and using a hundredfold uncertainty factor, is calculated to be 0.09 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) for existing uses, assuming residues at tolerance levels, is calculated to be 0.03155 mg/kg/day. The current action will increase the TMRC by 0.000156 mg/day. Published tolerances utilize 35 percent of the reference dose (RfD) for the overall U.S. population (71 percent of the RfD for the population subgroup for children 1 to 6 years of age); the current action will utilize less than 1 percent of the RfD.

The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography using sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, or eggs are expected since sweet potatoes are not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.412 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3789/P517]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 27, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.412(a) is amended by adding and alphabetically inserting a tolerance for the raw agricultural commodity sweet potato, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	*
Sweet potato	4.0
* * * * *	*

[FR Doc. 90-22308 Filed 9-26-90; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Saltwater Crocodile Populations in Australia From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: In December, 1989, the U.S. Fish and Wildlife Service (Service) received information from the Australian National Parks and Wildlife Service in support of removing the captive populations of saltwater crocodile (*Crocodylus porosus*) in Australia from the U.S. Endangered Species list. The Service seeks additional comments on this proposal to reclassify all populations of saltwater crocodiles in Australia from endangered to threatened. In addition, a special rule is proposed to allow for the import of ranched specimens into the United States in the course of a commercial activity.

DATES: Comments from all interested parties must be received by December 26, 1990. Public hearing requests must be received by November 13, 1990.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. Monday through Friday, in Room 750,

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4401 North Fairfax Drive, Arlington, Virginia, 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION:

Background

The saltwater or estuarine crocodile (*Crocodylus porosus*) ranges from southwest India and along its eastern coast, throughout Southeast Asia and through the Pacific Islands as far west as Fiji and south to the northern coast of Australia. The majority of populations have been reported from the following countries: Australia, Papua New Guinea, Indonesia, the Philippines, Malaysia, Thailand, Burma, Bangladesh, India, Cambodia, Vietnam, and Sri Lanka. It is the largest crocodilian species reaching lengths well over 20 feet (7 meters). The species inhabits estuaries, mangrove swamps, and tidal reaches of rivers (IUCN 1975).

At the 1979 meeting of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the saltwater crocodile was transferred from Appendix II to Appendix I, except for populations in Papua New Guinea which were retained on Appendix II. On December 18, 1979 (44 FR 75074), the Service listed all saltwater crocodile populations outside of Papua New Guinea as endangered. Both these actions were taken because the species had suffered serious losses of habitat throughout most of its range and it had been subject to extensive poaching for its hide. At the 1985 meeting of the CITES Parties, the Australian population was transferred from Appendix I to Appendix II of CITES pursuant to resolution Conf. 3.15 (ranching), and the Indonesian population from Appendix I to Appendix II pursuant to Conf. 5.21 (subject to export quotas approved by the Parties).

This proposed rule, if made final, would reclassify saltwater crocodile populations in Australia from endangered to threatened and would revise 50 CFR 17.11(h) by recognizing both wild and ranched saltwater crocodiles in Australia as threatened. It would also amend 50 CFR 17.42 by adding a new paragraph (e) which would allow for the importation of specimens from ranching operations into the United States. Saltwater crocodiles in other countries, except the Papua New Guinea populations, would remain in the endangered status; data are insufficient to propose downlisting in the other range states.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the list of endangered and threatened species. These factors and their applicability to populations of the saltwater crocodile in Australia are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The saltwater crocodile occupies a variety of tidal and non-tidal habitats across northern Australia from Maryborough on the Queensland east coast to Broome on the Western Australian west coast. The Northern Territory has more extensive areas of prime saltwater crocodile habitat than either Queensland or Western Australia (Bridgewater 1990). Exploitation of crocodiles in Australia began on a large scale in the late 1940's and extended into the early 1970's. During this time, populations in the rivers along the north coast were decimated with only small scattered populations remaining (King *et al.* 1979).

Export of saltwater crocodiles and their parts from Australia was prohibited in 1972. Today their habitats are largely intact across the whole of northern Australia and the species occupies the whole of their known historical range within the country. The species is protected in the three states where it occurs (the Northern Territory of Australia, Queensland and Western Australia), and management programs which allow limited utilization of wild stocks for ranching operations have been implemented by the states or territories in light of their increasing population size and threat to public safety.

According to Bridgewater (1990), the Northern Territory population of saltwater crocodiles has undergone a significant recovery since protection from hunting in 1972. Analysis of all available monitoring results from 1975 to 1987 show that the density of wild saltwater crocodiles in tidal rivers has tripled since surveying began. In 1984, Webb *et al.* (1989) estimated the total Northern Territory population of the saltwater crocodile to be at least 40,000 individuals and between 1984 and 1987, the monitoring results indicated that the tidal population increased by 16.5 percent. Assuming that the 16.5 percent increase can be applied to the population as a whole, the minimum estimate for 1989 would be 46,600 crocodiles in the Northern Territory.

Extensive helicopter surveys have been carried out in Cape York Peninsula, Queensland, across the entire range of habitat types present. Results of this large-scale helicopter survey of Cape York Peninsula, resulted in an actual sighting of some 2,400 animals. Actual population numbers are likely to be considerably higher. It is not possible to derive an estimate of absolute numbers for Queensland, but potential suitable habitats sampled yielded an average density index of 0.77 crocodile/km. Surveys in 1977–78 resulted in a population estimate of about 2,000 nonhatchlings for Western Australia. The population was resurveyed in 1986 and was estimated at 2,500 nonhatchlings. Although current population numbers are probably less than historic ones, and although crocodiles have not reoccupied all suitable habitat to carrying capacity, the Service believes that Australia's wild saltwater crocodile populations are no longer threatened with the possibility of extinction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Population estimates of the saltwater crocodile in Australia were not made prior to 1970. Overexploitation both for the skin trade and as vermin began in the late 1940's and did not subside until hunting was banned in 1972. The export of saltwater crocodiles and their parts from Australia was prohibited in 1972 by an amendment of the customs regulations. Many accessible populations had become seriously threatened with extinction. With the promulgation of state protection laws (Wildlife Conservation and Control Ordinance (1962)—Northern Territories; the Fauna Conservation Act (1974)—Queensland; and the Wildlife Conservation Act (1950)—Western Australia), the populations showed an immediate response to this protection and have tripled in numbers since surveying began in the late 1970's.

At the 1985 meeting of the Parties, the Australian population was transferred from Appendix I to Appendix II of CITES, pursuant to resolution Conf. 3.15 on ranching. The transfer was recommended by the Australian Council of Nature Conservation Ministers and the International Union for Conservation of Nature and Natural Resources' Crocodile Specialist Group. The Australian CITES proposal to transfer the Australian population of saltwater crocodile to Appendix II was based on a series of experimental egg harvests and quantification of the impacts of those harvests. The strategy relies on maximized egg harvests in a given area and no discernible impact has been detected on the number of crocodiles in subsequent age classes due to this egg harvest. Approval to harvest eggs incorporates a commitment that if any decline in the wild population occurred, a large number of one-year old crocodiles would be returned to the wild than would have survived had no eggs or hatchlings been removed from the wild.

As of June 30, 1989, the population on ranches in the Northern Territory was 10,374 animals with an additional 9,000 animals on ranches in Queensland and Western Australia. However, because specimens raised under these ranching provisions are removed from the wild and self sustaining captive populations are not achieved, they cannot be considered to be separate populations. Some ranches also raise young produced from captive animals, but it is not practical to consider them differently from the wild populations. In addition, nuisance animals when captured under permit (by state or territory authorities) are placed on the ranches and, if not required for captive breeding, can be harvested after one year. This time period is specifically required by federal regulation so as to remove the incentive for purposefully capturing wild specimens for use in the trade.

C. *Disease or predation.* None known at this time.

D. *The inadequacy of existing regulatory mechanisms.* As previously noted, the saltwater crocodile is protected by a series of wildlife acts in the three states in Australia where it occurs and exports are controlled by Australia's Wildlife Protection Act of 1982. In Australia, responsibility for management of native wildlife is vested with the state and territorial governments. The saltwater crocodile was recognized as a valuable resource and laws and regulations were introduced to prevent overexploitation of these animals. Since the ban on hunting in 1972, saltwater crocodile populations have undergone substantial increases in number. State wildlife laws govern the take, possession, and trade in saltwater crocodiles. Also, the Commonwealth Wildlife Protection Act of 1982, administered by Australian National Parks and Wildlife Service, protects wildlife that would be threatened by continuation of unregulated export trade. The substantial increase in the maximum penalties for attempting to export saltwater crocodile skins (increased from $1,000 to up to $200,000) is an effective deterrent to illegal export from Australia. In addition to internal legislation and policies regulating take within Australia, export of saltwater crocodiles is regulated by CITES of which Australia is a Party member. Regulation of take has been a factor in the continuous improvement of Australia's wild saltwater crocodile populations since the early 1970's. This significant improvement has prompted the Service to propose this reclassification.

E. *Other natural or manmade factors affecting its continued existence.* In Australia, a comprehensive system of nature conservation reserves has been developed, so that approximately 40 million hectares of all habitats throughout Australia or 5.3 percent of the total land surface is reserved under different categories. Parks, reserves, and sanctuaries in Northern Australia provide a mosaic of secure areas in which crocodiles and their habitats are protected. In addition, nearly 37 million hectares are protected under various marine and estuarine protected area categories (both State and National).

The Service has carefully assessed the best biological and status information regarding the past, present, and future threats faced by the species in proposing this rule.

Based on this evaluation, the preferred action is to reclassify Australia's saltwater crocodile populations from endangered to threatened. Criteria for reclassification of a threatened or endangered species, found in 50 CFR 424.11(d), include extinction, recovery of the species, or error in the original data for reclassification. This proposed rule is based upon data that Australia's populations of saltwater crocodiles have made a remarkable recovery and are no longer in danger of possible extinction. However, other populations throughout the species range are still threatened, to varying degrees, by taking. Identification of skins and products from crocodile ranching operations in Australia will ensure that illegal skins or products do not enter into commercial trade.

In light of increasing populations, little poaching, strict regulation, and ranching provisions, previous threats to the existence of the saltwater crocodile in Australia have been removed. Therefore, the Service believes that reclassification to threatened reflects the current status of populations in Australia.

Effects of This Rule Including the Proposed Special Rule

If this proposed rule is made final, it would change the status of populations of the saltwater crocodile in Australia from endangered to threatened; therefore, all populations (including wild and ranched) of saltwater crocodiles in Australia would be treated as threatened. By allowing the export of ranched animals and their parts and products (including meat), an incentive is created for captive production that in turn provides a safeguard against future population declines, since ranched animals would be available for restocking programs. Restocking at rates greater than natural reproduction rates is required under ranching provisions if a population decline occurs among populations from which eggs and hatchlings are being collected. The conservation program for saltwater crocodiles in Australia seeks to encourage the maintenance and management of habitats based on the commercial value of high quality skins. Sustained regulated international trade in products derived from approved ranching programs and identified accordingly, is thus an essential feature of programs based on commercial ranching.

Skins derived from saltwater crocodiles ranched or bred in captivity in Australia are currently exported to Europe (France) and Asia (Japan). Access to markets in the United States would substantially assist in the viability of ranching in Australia, and extend its potential beneficial influence to wild populations available for, but not presently subject to this form of management (annual egg and/or hatchling harvests).

Export of ranched saltwater crocodile skins or products (including flesh) to the United States will increase the range of markets available for the Australian products. This will reduce the potential that a restricted market may have in manipulating and destabilizing the maximum value of skins. Achieving a diverse export market will maintain the economic basis of crocodile ranching and the incentive for investment by Government and the private sector in commercial ranching as a viable strategy for the long-term management and conservation of saltwater crocodiles in Australia.

Those regulations specifically pertaining to threatened species (50 CFR 17.21 and 17.31) apply. A special rule included with this proposed rule would amend 50 CFR 17.42 to allow for the importation of live specimens, whole or

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partial skins and products (including meat) that originate from ranches in Australia without an endangered species permit for individual shipments otherwise required by 50 CFR part 17.

However, this rule would impose a marking scheme for all parts and products that would enable detection of any illegal products in trade. In addition, all requirements of CITES (50 CFR part 23), including proper export or re-export documents with respect to Appendix II species, as well as the laws of Australia, must be met prior to allowing the importation of ranched specimens (live, partial or whole skins, flesh, and finished products) into the United States. Moreover, the importation of skins or products would not be permitted from a country that has taken a reservation on the saltwater crocodile (presently only Singapore), even though the skins or products may have originated in Australia. Furthermore, this proposed rule will not change the status or protection given to other saltwater crocodile populations that occur outside of Australia.

Public Comments Solicited

The Service intends that any action resulting from this proposal is accurate and is as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, the trade industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning biological or commercial trade impacts on any other crocodilian populations, or other relevant data concerning any threat (or lack thereof) to the wild populations of saltwater crocodiles in Australia.

Final promulgation of the regulation on Australian populations of saltwater crocodiles will take into consideration the comments and any additional information received by the Service. Such communications may lead to adoption of final regulations that differ from those in the proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. All requests must be filed within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Office of Scientific Authority (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the Authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** (48 FR 49244) on October 29, 1983.

Literature Cited

International Union for Convervation of Nature and Natural Resources. 1975. *Red Data Book, Amphibia and Reptilia.* Morges, Switzerland.

King, F.W., H.W. Campbell, H. Messel, and R. Whitaker, 1979. Review of the status of the estuarine or saltwater crocodile, *Crocodylus porosus.* Unpub. Report. 33 pp.

Bridgewater, P. 1980. Evidence in support of a proposed petition by Australia to the U.S. Fish and Wildlife Service to remove captive populations of the saltwater crocodile *Crocodylus porosus* in Australia from the Endangered Species List under the U.S. Endangered Species Act of 1973. 39 pp. + references.

Webb, G.J.W., M.L. Dillon, G.E. McLean, S.C. Manolis, and B. Ottley, 1989. Monitoring the recovery of the saltwater crocodile (*Crocodylus porosus*) population in the Northern Territory of Australia. *In:* Proceedings of the 9th working meeting of the Crocodile Specialist Group of the Species Survival Commission of the International Union for Conservation of Nature and Natural Resources. October, 1988. Lae, Papua New Guinea.

Author

The primary author of this proposed rule is Dr. Richard M. Mitchell, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C.1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for "Crocodile, saltwater (=estuarine)" under "Reptiles" on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Crocodile, saltwater (=estuarine),	*Crocodylus porosus*	Southeast Asia, Australia, Papua-New Guinea, Pacific Islands.	Entire, except Papua-New Guinea and Australia.	E	87,___	NA	NA
Do	do	do	Australia	T	87,___	NA	17.42(e)

3. Section 17.42 is amended by adding a new paragraph (e), as follows.

§ 17.42 Special rules—reptiles.

* * * * *

(e) Saltwater crocodile (*Crocodylus porosus*)—(1) Except as noted in paragraph (e)(2) of this Section, all prohibitions of § 17.31 shall apply to saltwater crocodiles (*Crocodylus porosus*).

(2) Ranched saltwater crocodiles in Australia, consisting of live animals, partial or whole skins, flesh, or finished products may be imported into the United States provided:

(i) Specimens are tagged or otherwise identified as removed from ranches in accordance with the laws of Australia and in compliance with requirements of CITES for Appendix II species (50 CFR part 23),

(ii) The first receiving country must be a CITES member who regularly files annual trade reports with the CITES Secretariat,

(iii) Export documentation from Australia is sufficiently detailed and accurate so that export and import records can be used to detect illegal trade,

(iv) The specimens are imported into the United States directly, or, if reexported from a third party into the United States, that country is a member of CITES, has not taken a reservation on saltwater crocodiles, and the specimens were traded in accordance with the requirements of Australian laws and CITES requirements,

(v) The requirements of 50 CFR parts 14 and 23 are complied with.

(3) Unlawfully imported saltwater crocodiles. It shall be unlawful in the course of a commercial activity, to deliver, receive, carry, transport, or ship in interstate or foreign commerce any such wildlife imported unlawfully.

Dated: August 28, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–22884 Filed 9–26–90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[Docket No. 900823–0223]

RIN 0648–AC87

Atlantic Billfishes

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the regulations implementing the Fishery Management Plan for Atlantic Billfishes (FMP). This rule would (1) Broaden the definition of "dealer" to include any person, other than the consumer, who receives a billfish by way of purchase, barter, or trade, (2) require documentation of origin for related species of billfish for the limited purpose of ascertaining the eligibility for sale of a billfish possessed by a dealer or processor, (3) clarify the scope of the regulations in the broadest terms consistent with the FMP, (4) prohibit the removal at sea of the head, fins, or bill from a billfish, and (5) prohibit offering for sale a billfish harvested from its management unit. The intended effects of this rule are to ensure that a billfish harvested from its management unit is not purchased, bartered, traded, or sold in any state, to express clearly the intent of the FMP, to enhance enforceability of the regulations, and to clarify the regulations.

DATES: Written comments must be received on or before October 26, 1990.

ADDRESSES: Comments on the proposed rule should be sent to Rodney Co. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

SUPPLEMENTARY INFORMATION: The billfish fishery is managed under the FMP, prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils (Councils). Regulations implementing the FMP are promulgated at 50 CFR part 644, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Section 644.24 of the regulations prohibits the purchase, barter, trade, or sale in any state of a billfish (i.e., white and blue marlin, sailfish, and longbill spearfish) harvested from its management unit (specific areas of the Atlantic Ocean as defined at 50 CFR 644.2). In support of that prohibition, documentation that a billfish was harvested from outside its management unit is required for all billfish possessed by a seafood dealer or processor, except for a billfish landed in a Pacific state and remaining in the state of landing. This documentation of origin is intended to ensure that a billfish harvested from its management unit is not sold.

In their market form (i.e., headed, gutted, and fins removed), the four billfish species are indistinguishable from related species such as black marlin, striped marlin, and shortbill spearfish (exclusively or nearly exclusively Pacific Ocean species). The documentation of origin requirement does not apply presently to these related species. Accordingly, it is possible for a dealer to buy, illegally, a billfish harvested from its management unit and claim the fish is one of the related species not subject to the documentation of origin requirement. To resolve this regulatory deficiency, and to ensure enforceability of the prohibition on sale of a billfish harvested from its management unit, it is necessary and appropriate to require the documentation of origin for the related species (i.e., specifically for black marlin, striped marlin, and shortbill spearfish). To ensure the maximum enforceability of this added documentation of origin requirement, a black marlin, striped marlin, or shortbill spearfish possessed by a U.S. seafood dealer or processor (except those fish landed in a Pacific state and remaining in that state) will be presumed illegal unless accompanied by documentation showing that it is one of the three related species harvested from other than the Atlantic Ocean.

It is clear that the Councils intended that the FMP's original documentation of origin requirement apply to the related species. Billfish imports from Ecuador, significantly if not predominately black marlin and striped marlin, were known to account for 99.4 percent of the total billfish imports in 1987. The original estimate of the reporting burdens associated with the approved collection of information requirement for the documentation of origin included the imports from Ecuador. Accordingly, this proposed rule clearly carries out the intent of the FMP.

To ensure that a billfish harvested from its management unit is not sold in any state, it is essential that the documentation of origin required by 50 CFR 644.24(b) accompany both the regulated and related billfish species from the points of importation into the U.S. to their final destinations. The definition of "dealer" at 50 CFR 620.2 presently is not adequate to meet this requirement because "dealer" is confined to "the person who *first* receives fish by way of purchase, barter, or trade" (emphasis added). Accordingly, this rule would broaden the definition of "dealer" applicable to 50 CFR part 644 to include any person, other than the consumer, who receives billfish by way of purchase, barter, or trade.

This proposed rule would also modify the purpose and scope section (50 CFR 644.1) to express the scope of the regulations in the broadest possible terms consistent with the FMP. The public is better served by a general expression of scope in this section, with the specific scope of each major provision or management measure stated within that provision or measure. This approach minimizes the possibility of misleading fishermen, dealers, and processors as to the overall scope of part 644. Accordingly, a specification of regulatory scope for the measures concerning size limits and fish release procedures is added to 50 CFR 644.21 (a) and (b).

Some fishermen are removing a billfish's head, fins, and bill at sea in order to avoid the size limits and/or the

prohibition on sale. This proposed rule would prohibit such practice, thereby enhancing enforcement of both the size limits and the prohibition on sale.

To enhance enforcement, this proposed rule would prohibit offering for sale a billfish harvested from its management unit, in addition to the current prohibitions on purchase, barter, trade, or sale of such billfish. Enforcement of the no-sale provision for a billfish harvested from its management unit has been unnecessarily limited in some instances. Some billfish legally harvested from their management units and landed and held in an Atlantic, Gulf of Mexico, or Caribbean coastal state are being offered for sale. The current language of the prohibition regarding sale of such billfish (50 CFR 644.7(e)) requires consummation of sale before a violation of the regulations can be established.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that rule is necessary for the conservation and management of the Atlantic billfish fishery and that it is consistent with the Magnuson Act and other applicable law.

This rule would not result in a significant change in the original environmental impact statement for the FMP and, thus, is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographical regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small business entities. The broadened definition of "dealer" and the addition of related species to the list of species for which documentation of origin is required will increase both the number of dealers required to have the documentation of origin and the occasions for such documentation. Nevertheless, both the number of dealers affected and the occasions for documentation remain miniscule in comparison to the vast number of dealers and processors in the U.S. or to the number who import fish. In 1987, imported billfish and related species constituted less than 1/10 of one percent of all edible fishery products imported into the U.S. Further, the addition of dealers required to have documentation of origin will not have a significant economic impact because the documentation, once obtained by the first dealer, can be passed to subsequent dealers. The prohibition on removal at sea of the head, fins, or bill from a billfish affect only those few fishermen who have been attempting to avoid the size and/or no-sale provisions of the regulations. Such removals have not been a customary practice in the fishery. As significant impacts on a substantial number of small business entities are not expected, a regulatory flexibility analysis was not prepared.

In the final rule implementing the FMP, NOAA concluded that, to the maximum extent practicable, the FMP is consistent with the coastal zone management programs of the adjoining states that have coastal zone management programs. Because this rule does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and by the earlier consistency determination, a new consistency determination is not required.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This proposed rule would revise an existing collection of information requirement subject to the Paperwork Reduction Act which was previously approved by the Office or Management and Budget (OMB Control Number 0648-0216). A request to revise the requirement has been submitted to the Office of Management and Budget for approval. The revision would add species for which documentation of origin is required and increase the number of dealers required to maintain the documentation. The public reporting burden for the existing collection of information was estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The proposed revision would not change that estimate for the initial documentation of origin. The increased public reporting burden for additions to that documentation by dealers subsequently possessing the billfish is estimated to average 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on the reporting burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 21, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 644 is proposed to be amended as follows:

PART 644—ATLANTIC BILLFISHES

1. The authority citation for part 644 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 644.1, paragraph (b) is revised to read as follows:

§ 644.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of billfish off the Atlantic, Gulf of Mexico, and Caribbean coastal states, and regulates the possession or sale in any state of a billfish harvested from it management unit.

3. In § 644.2, new definitions for *Dealer, Related species,* and *EEZ* are added in alphabetical order to read as follows:

§ 644.2 Definitions.

* * * * *

Dealer, for the purposes of this part 644, means a person, other than the consumer, who receives fish by way of purchase, barter, or trade.

* * * * *

EEZ, for the purposes of this part 644, means the EEZ, as defined at 50 CFR 620.2, in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

* * * * *

Related species means black marlin, *Makaira indica;* striped marlin, *Tetrapturus audax;* or shortbill spearfish, *Tetrapturus angustirostris.*

* * * * *

4. In § 644.7, paragraphs (d) through (h) are redesignated as paragraphs (e) through (i); a new paragraph (d) is added; and newly redesignated paragraphs (f) and (h) are revised to read as follows:

§ 644.7 Prohibitions.

* * * * *

(d) Possess a billfish with its head, fins, or bill removed within the EEZ or through landing as specified in § 644.21(c).

* * * * *

(f) Purchase, barter, trade, sell, or offer for sale a billfish harvested from its management unit, as specified in § 644.24(a).

* * * * *

(h) As a dealer or seafood processor, possess a billfish or related species without the documentation, or with incomplete or falsified documentation, specified in § 644.24(b).

* * * * *

5. In § 644.21, paragraph (c) is redesignated as paragraph (d); the introductory text of paragraph (a) is revised; paragraph (b) is revised; and new paragraph (c) is added to read as follows:

§ 644.21 Size limits.

(a) The following minimum size limits, expressed in terms of lower jaw-fork length (LJFL), apply for the possession of billfish shoreward of the outer boundary of the EEZ, regardless of where caught:

* * * * *

(b) A billfish under the minimum size limit caught shoreward of the outer boundary of the EEZ must be released by cutting the line near the hook without removing the fish from the water.

(c) A billfish possessed aboard a fishing vessel shoreward of the outer boundary of the EEZ must have its head, fins, and bill intact, and a billfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state must have its head, fins, and bill intact through landing. Such billfish may be eviscerated but must otherwise be maintained in a whole condition.

* * * * *

6. In § 644.24, the introductory text of paragraph (b) is revised and paragraphs (b)(2) through (b)(4) are revised to read as follows:

§ 644.24 Restrictions on sale.

* * * * *

(b) Except for a billfish or related species landed in a Pacific state and remaining in the state of landing, a billfish or related species that is possessed by a seafood dealer or processor will be presumed to be a billfish harvested from its management unit unless it is accompanied by documentation that the billfish was harvested from outside its management unit or the related species was harvested from other than the Atlantic Ocean. Such documentation must contain:

(1) * * *

(2) The name and home port of the vessel harvesting the billfish or related species;

(3) The port and date of offloading from the vessel harvesting the billfish or related species; and

(4) A statement signed by the dealer attesting that each billfish was harvested from an area other than its management unit and each related species was harvested from other than the Atlantic Ocean.

[FR Doc. 90-22845 Filed 9-26-90; 8:45 am]
BILLING CODE 3510-22-M

VOL 55 ISS 188 SEP 27 1990 UMI

Notices

Federal Register
Vol. 55, No. 188
Thursday, September 27, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 21, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

- Agriculture Stabilization and Conservation Service.

7 CFR part 760, Indemnity Payment Programs; Dairy Indemnity Payment Program.
ASCS-373.
Monthly.
Farms; Business or other for-profit; 480 responses; 240 hours; not applicable under 3504(h).
Clarence Domire, (202) 447-7673.

New Collection

- Agriculture Stabilization and Conservation Service.

ASCS County Office Evaluation Questionnaire.
ASCS-95.
On occasion.
Farms; 10,000 responses; 830 hours; not applicable under 3504(h).
Jim Hallet, (202) 475-5715.

Reinstatement

- Forest Service.

Fee Calculation for Concession Permits, Reconciliation of Sales and Gross Fixed Assets.
FS-2700, FS2700-8, FS2700-19.
Annually.
State or local governments; business or other for-profit; small businesses or organizations; 300 responses; 750 hours; not applicable under 3504(h).
Linda F. Washington, (703) 235-8459.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 90-22883 Filed 9-26-90; 8:45 am]
BILLING CODE 3410-01-M

Office of the Secretary

National Arboretum Advisory Council Renewal of Advisory Council

The Department of Agriculture has renewed the National Arboretum Advisory Council for a 2-year period. The Council was last renewed March 8, 1988.

The purpose of the Council is to provide the Secretary of Agriculture with an independent overview of the work of the Arboretum by a body of qualified individuals who represent national organizations. The National Arboretum was created by Act of Congress (Pub. L. 799, 69th Congress, 20 U.S.C. 191-194) on March 4, 1927, for purposes of research and education concerning tree and plant life.

The Council meets annually at the National Arboretum in Washington, DC, to receive reports from the Arboretum staff on research progress with trees and environmental plants, educational activities, site development, and long-range goals. The Council's findings are reported in writing to the Secretary of Agriculture.

The Secretary has determined that the renewal of this Council would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Done at Washington, DC, this 21st day of September 1990.
Adis M. Vila,
Assistant Secretary for Administration.
[FR Doc. 90-22900 Filed 9-26-90; 8:45 am]
BILLING CODE 3410-08-M

Soil Conservation Service

Little Red River Watershed, AR; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR part 1500), and the Soil Conservation Service Guidelines (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Little Red River Watershed, White County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Gene Sullivan, State Conservationist, Soil Conservation Service, 5404 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone: (501) 378-5445.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Gene Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for increased availability for both ground and surface water within the hydrologic boundary of the 80,681 acre watershed. The plan includes the installation of on-farm irrigation systems. Systems will include one or more land treatment best management practices (BMP's) which will improve irrigation efficiency from 40 percent to 75 percent based on normal year condition. The recommended plan provides an adequate supply of irrigation water to 34,400 acres of cropland.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gene Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: September 19, 1990.
Ronnie D. Murphy,
Deputy State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

[FR Doc. 90-22882 Filed 9-26-90; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-437-601]

Preliminary Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to requests by both the petitioner, The Timken Company, and an importer, Marsuda-Rogers International, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the Republic of Hungary (Hungary). This review covers one manufacturer/exporter of this merchandise to the United States, and the period June 1, 1988 through May 31, 1989. We preliminarily determine the dumping margin to be 0.91 percent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Mary Jenkins, or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8371, 377-1756, or 377-3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 1990, the Department published in the Federal Register (55 FR 21066) the final results of its last administrative review of the antidumping duty order on TRBs from Hungary (52 FR 23319, June 18, 1987). The petitioner, The Timken Company, and an importer, Marsuda-Rogers International, requested that we conduct an administrative review in accordance with § 353.22(a) of the Department's regulations. We published a notice of initiation of this antidumping duty administrative review on July 25, 1989 (54 FR 30915). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On April 3, 1990, the Court of International Trade (CIT) affirmed a remanded determination by the ITC that the U.S. industry was neither materially injured nor threatened with such injury from import of TRBs from Hungary. *Marsuda-Rogers* v. *United States*, Court No. 87-07-00772, Slip Op. 90-35 (April 3, 1990). In accordance with the decision of the Court of Appeals for the Federal Circuit (CAFC) in *Timken Company* v. *United States*, Slip. Op. 89-1498 (January 4, 1990), the Department published a notice that the *Marsuda-Rogers* decision is not in harmony with the Department's determination, (55 FR 14990, April 20, 1990). The Department will not instruct the U.S. Customs Service to lift the suspension of liquidation of entries entered, or withdrawn from warehouse, for consumption on or after April 13, 1990, before there is a conclusive court decision in this lawsuit.

Scope of Review

Imports covered by this review are shipments of TRBs from Hungary. During the review period such merchandise was classifiable under items 680.30, 680.39, 681.10, and 692.32 of the Tariff Schedules of the United States. This merchandise is currently classifiable under HTS item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of Hungarian TRBs and the period June 1, 1988 through May 31, 1989.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Act. Purchase price was based on either the FOB Hamburg port price to unrelated purchasers or the ex-factory price to unrelated purchasers. With respect to FOB Hamburg sales, we made deductions for foreign inland freight and brokerage and handling charges. We valued the inland freight deductions using surrogate data based on Portuguese freight costs. We selected Portugal as the surrogate country for the reasons explained in the Foreign Market Value section of this notice. Deductions for brokerage and handling were based on the charges paid by the Hungarian producer, Magyar Gordulocsapagy Muvek (MGM), in freely convertible currency to a West German freight forwarder. We have used market-economy data where provided.

Foreign Market Value

We have concluded that Hungary is a non-market-economy country for purposes of this administrative review. Given that this review was initiated subsequent to the effective date of section 1316 of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act), section 773(c) of the Act requires us to use the constructed value based on the valuation of factors of production or prices of such or similar merchandise in a market economy country as the basis for determining foreign market value. The Act further provides that the Secretary will value the factors of production in a market economy country which is comparable in terms of economic development to the non-market country.

We used the factors of production valued in a comparable economy as the basis for determining foreign market value. We calculated constructed value based on the factors of production reported by MGM, except as described below. MGM accounts for all Hungarian exports to the United States of the subject merchandise.

Where possible, we valued the factors on the basis of prices paid by MGM to market-economy suppliers. Where market-economy prices were not provided, we obtained information for valuing the factors of production from publicly available sources in a market economy. We chose Portugal as the

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surrogate for valuing the factors of production because we were able to obtain more complete publicly available data pertaining to Portugal than for other potential surrogate countries with comparable economies.

The material costs for each component were determined by multiplying the gross weight of steel by the steel unit price less the salable scrap value. The scrap factor was adjusted to reflect only that portion considered salable; thus, the portion considered as waste is included in the cost of materials. The respondent did not identify waste and miscalculated the cost of materials by adding the scrap value to the net value of steel.

We valued the factors of production as follows:

- Certain raw material costs were valued based on MGM's imports of steel products from market economies which were paid for in freely convertible currency. We used market-economy values where provided.
- In the absence of market-economy prices charged to MGM, we determined that it was reasonable to value other raw material inputs using EUROSTAT data in the surrogate country. Given that Portugal does not have the capacity to produce the bearing quality steel rods that are used to produce TRBs, we used EUROSTAT Portuguese import data to value these types of steel. However, given that Portugal does produce the quality of steel strips used in the production of Hungarian TRBs, we used EUROSTAT Portuguese export data to value this type of steel.
- We valued steel scrap, factory overhead, and inland freight using information supplied by the American Embassy in Lisbon. The information provided by the Embassy reflected the cost a producer of TRBs would incur in Portugal.
- We valued labor using Portuguese labor rate data obtained from the U.S. Bureau of Labor Statistics. We used the OECD Main Economic Indicators Labor Wage Index to adjust the labor rate to coincide with the period of review. This rate is representative of actual labor rates in Portugal for all categories of labor workers.
- We used the OECD Main Economic Indicators Consumer Price Index to adjust factor values drawn from periods outside the review period. In the absence of data coinciding precisely with the review period, we determined that such adjustments would provide data representative of the period of review.
- We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.
- We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.
- Consistent with our valuation of packing in the *Final Determinations of Sales at Less than Fair Value: TRBs from the Hungarian People's Republic, 52 FR 17428 (May 8, 1989), TRBs from the Socialist Republic of Romania,* 52 FR 17433 (May 8, 1989), *TRBs from the People's Republic of China,* 52 FR 19748 (May 27, 1987), the value for packing was based on publicly available data contained in the public file at the fair value investigation of *TRBs from Italy,* 52 FR 24198 (June 29, 1987).

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Magyar Gordulocsopegy Muvek	6/1/88–5/31/89	0.91

The Department will issue appraisement instructions concerning MGM directly to the Customs Service.

Furthermore, the cash deposit rate for MGM or any other producer or exporter of Hungarian TRBs will be that established in the final results of this administrative review. This deposit requirement will be effective upon publication of the final results of this administrative review for all shipments of Hungarian TRBs entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration on or before October 11, 1990, and rebuttal briefs not later than October 18, 1990. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, on October 22, in room 3708 in the main Commerce Building, at 10 a.m., to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number, (2) the reasons for attending, (3) a list of the issues to be discussed, and (4) the number of participants.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Department's regulations (19 CFR 353.22(c)(5) (1989)).

Dated: September 20, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-22873 Filed 9-26-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-009]

Iron-Metal Construction Castings From Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances countervailing duty administrative review and revocation of countervailing duty order.

SUMMARY: On August 7, 1990, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on iron-metal construction castings from Mexico. We have now completed that review and determine to revoke the countervailing duty order effective August 24, 1986.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 28797) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on iron-metal construction castings from Mexico (48 FR 8834; March 2, 1983). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Mexican iron-metal construction castings (castings), including manhole covers, rings and frames, cleanout covers and grates, meter boxes and valve boxes. These castings are commonly called municipal or public works castings. During the review period, such merchandise was classifiable under items 657.0950, 657.0990, 657.2540 and 657.2550 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under item numbers 7325.10.0010 and 7325.10.0050 of the *Harmonized Tariff Schedule* (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments.

Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on iron-metal construction castings from Mexico. The effective date of revocation is August 24, 1986.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and refund any cash deposits of estimated countervailing duties made on any shipment of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 24, 1986.

Further, as a consequence of this revocation, the administrative review of calendar year 1987, initiated on April 27, 1988 (53 FR 15084) is terminated. Entries of this merchandise exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1988 are still subject to countervailing duties, and the administrative review initiated on April 22, 1987 (52 FR 13268) (preliminary results of the review published July 13, 1990 (55 FR 28797)) will proceed.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 355.22 and 355.25.

Dated: September 18, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-22874 Filed 9-26-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Species: Application for Permit: Steve W. Ross and Dr. Mary L. Moser (PA23A)

Notice is hereby given that an Applicant has filed in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service regulations governing endangered firsh and wildlife permits (50 CFR parts 217-222).

APPLICANT: Steve W. Ross, Dr. Mary L. Moser, BSEP Biology Laboratory, Box 10429, Southport, NC 28461.

TYPE OF PERMIT: Scientific Research.

NAME: Shortnose sturgeon (*Acipenser brevirostrum*).

TYPE OF TAKE AND NUMBERS: Up to forty (40) shortnose sturgeon will be collected using bottom-set, large-meshed gill nets (10.2-20.3 cm stretch mesh). All fish will be weighed, measured and tagged in the dorsal caudal fin with a Petersen disc tag. Up to ten (10) of the forty will be tagged internally with ultrasonci transmitters for tracking.

LOCATION AND DURATION OF ACTIVITY: Cape Fear and Brunswick Rivers, North Carolina from October 1, 1990 to December 31, 1992.

Written data or views or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, massachusetts 01930 (508/281-9200).

Dated: September 20, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-22812 filed 9-26-90; 8:45 am]

BILLING CODE 3510-22-M

Permits; Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Modification No. 1 to Permit No. 685 (P450).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407) and §§ 216.33(d) and (2) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 685 issued to Paul K. Dayton and Timothy J. Regen, Scripps Institution of Oceanography, University of California (San Diego), on October 5, 1989 (54 FR 42321) is modified as follows:

Section A.2. is revised to read

2. 140 pups and 10 adult females may be taken, restrained, attached with radio-transmitters and released. This second year of study will allow the Permit Holder to verify the first year's results. Additional monitoring will include monitoring from a vessel and from a fixed-wing aircraft. The study will be restricted to pups in the weight range of >15 kg. All transmitters will be attached to the animal's backs. Up to 2000 animals of both sexes and ages may be incidentally harassed during the course of activities on rookeries of St. Paul Island of the Pribilof Islands in the Bering Sea for a period of one year.

Add to Special Condition B.1:

B.1 . . . , and modification request dated April 27, 1990.

Add to Special Condition B.3:

B.3 . . . Padded noose poles shall be used in order to prevent the animals from sustaining broken teeth as a result of biting the noose poles during the capture process.

Change Special Condition B.5 to read:

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B.5. This Permit is valid with respect to the taking authorized herein until December 31, 1991.

All conditions currently contained in the Permit remain in effect.

This modification is effective upon publication in the **Federal Register**.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: September 20, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–22811 Filed 9–26–90; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Permit; Dr. Deane Renouf (P458)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. Deane Renouf, Associate Professor, Ocean Sciences Centre, Memorial University of Newfoundland, St. John's, Newfoundland, Canada A1C 5S7.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* One harp seal (*Phoca groenlandica*).

4. *Type of Take:* The harp seal is a blind beached/stranded animal held at Mystic Marinelife Aquarium and has been determined to be unsuitable for release or public display. The applicant proposes to conduct behavioral research in connection with sensory function and orientation. This blind seal would be recorded hydrophonically to catalogue its vocal repertoire to compare it to sighted conspecifics.

Duration of Activity: 5 years.

The arrangements and facilities for transporting and maintaining the marine mammal requested in this application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammal involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Adminiatrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., suite 7324, Silver Spring, Maryland 20910; Director, Southwest Region, National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Dated: September 20, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90–22813 Filed 9–26–90; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 25 October, 1990 at 10 a.m. in the Commission's offices in the Pension building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202–504–2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 20 September 1990.

Charles H. Atherton,

Secretary.

[FR Doc. 90–22867 Filed 9–26–90; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 19, 1990.

The USAF Scientific Advisory Board will hold its Fall General Board Meeting on 24–25 October 1990 from 8 a.m. to 5 p.m. at Fort Lesley J. McNair, Washington, DC.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

The purpose of this meeting is to provide attendees the opportunity to hear results of important SAB studies and to enable members and senior AF leaders to become better acquainted. Additionally, the attendees will begin planning for future studies.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–22868 Filed 9–26–90; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

DOE High Priority Defense Nuclear Facilities; Design, Construction, Operation and Decommissioning Standards; Supplemental Response to Recommendation 90–2 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of a supplemental response of the Secretary of Energy (Secretary) to Recommendation 90–2 of the Defense Nuclear Facilities Safety Board, 55 FR 9487–9488 (March 14, 1990), concerning high priority defense nuclear facilities; design, construction, operation, and decommissioning. DOE hereby requests public comments on the supplemental response of the Secretary to Recommendation 90–2.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before October 29, 1990.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 600 E Street NW., suite 675, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Steven Blush, Director, Office of Nuclear Safety, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: September 24, 1990.

Steven M. Blush,

Director, Office of Nuclear Safety.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 600 E Street NW., Suite 675, Washington, DC 20004

Dear Mr. Chairman, In accordance with section 315 of Public Law 100–456, enclosed is the Department of Energy's (DOE) supplemental response and implementation plan concerning standards for DOE defense nuclear facilities. This supplemental response and implementation plan is in accordance with Defense Nuclear Facilities Safety Board Recommendation 90–2, which I addressed in my letter to the Board dated June 8, 1990.

Our implementation plan is designed to provide the Board with the requisite information on a continuing basis. Initial reports for each major element of work will be followed by bi-monthly reports to indicate progress and to provide newly developed information as it becomes available.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 90–22890 Filed 9–26–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipated that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–867
3. 1905–0177
4. Annual Nonutility Power Producer Report
5. Revision
6. Annually
7. Mandatory
8. State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations
9. 2,079 respondents
10. 2.079 responses
11. 2.27 hours per response
12. 4,719 hours
13. EIA–867 is required annually from nonutility power producers who own or plan on installing electric generation equipment with a total capacity of 5 megawatts or more at an existing or proposed site. The data will be used to augment existing electric utility data, and our electric power forecasts and analyses.

Statutory Authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, September 21, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–22896 Filed 9–26–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES90–49–000, et al.]

Interstate Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 20, 1990.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Co.

[Docket No. ES90–49–000]

Take notice that on September 13, 1990, Interstate Power Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $60 million of short-term promissory notes to lending banks and/or commercial paper on or before December 31, 1992.

Comment date: October 12, 1990, in accordance with Standard Paragraph E end of this notice.

2. MDU Resources Group, Inc.

[Docket No. ES90–50–000]

Take notice that on September 4, 1990, MDU Resources Group, Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $50 million of short-term Indebtedness on or

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before December 31, 1992, with a final maturity date no later than December 31, 1993.

Comment date: October 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Indianapolis Power & Light Co.

[Docket No. ES90-51-000]

Take notice that on September 14, 1990, Indianapolis Power & Light Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $150 million of unsecured short-term promissory notes on or before December 31, 1992, with a final maturity date no later than December 31, 1993.

Comment date: October 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commisison, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22823 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2239-000, et al.]

Great Lakes Gas Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Great Lakes Transmission Co.

[Docket No. CP90-2239-000]

September 19, 1990.

Take notice that on September 18, 1990, Great Lakes Gas Transmission Company (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP90-2239-000 an application pursuant to section 7(c) of the Natural Gas Act for amendment to certificates of public convenience and necessity authorizing Great Lakes to continue interruptible and firm transportation of natural gas for a short-term extension of 120 days for 12 shippers, all as more fully described in the application which is on file and open to public inspection.

Great Lakes states that it provides firm transportation service for Northridge Petroleum Marketing, Inc., ADA Cogeneration Partnership, Texas Eastern Gas Transmission Corporation (TETCO), Tennessee Gas Pipeline Company (Tennessee), Northern Minnesota Utilities, a division of Utilicorp United, Inc. (NMU), and TransCanada PipeLines Limited. Great Lakes also seeks authorization to continue transportation of natural gas on an interruptible basis for NMU, Southeastern Michigan Gas Company, Ford Motor Company, Peoples Natural Gas Company, a division of Utilicorp United, Inc., Northern States Power Company, and Unicorp Energy, Inc. See the attached appendix for a list of the 12 shippers, the associated certificate proposed to be extended for a 120-day term by this application, the expiration date of the certificate to be extended, and the aggregate volumes for the interruptible and firm transportation service.

It is stated that in each of the certificates to be extended in this proposal, the Commission limited the term of the authority to the earlier of one year from the date of its last order in those proceedings, or the date that Great Lakes accepts a blanket certificate issued to it pursuant to part 284 of the Commission's Regulations. Great Lakes seeks authority to continue to provide these services on an interim basis for a period of 120 days from the date the Commission issues an order in this application. Great Lakes also requests that the authorization be granted prior to October 5, 1990, to prevent interruption in the existing authorizations for its firm and interruptible shippers.

It is alleged that in the event that the Commission is not able to issue a permanent certificate in this application prior to October 5, 1990, Great Lakes requests that the Commission issue temporary authorization to allow the continuation of the firm and interruptible transportation services. Great Lakes indicates that due to the urgency of submitting this application, it was not able to submit the information in this filing on electronic media as required by § 157.6 of the Commission's Regulations. As a result, Great Lakes requests waiver of this section of the Commission's Regulations.

Comment date: October 1, 1990, in accordance with Standard Paragraph F at the end of this notice.

Appendix

Docket No. CP90-2239-000, Great Lakes Gas Transmission Corporation

LIMITED TERM SHIPPERS

Docket No.	Shipper	Expiration date
CP88-719-001	Northern Minnesota Utilities	9/19/90
CP87-164-007	Southeastern Michigan Gas Company	10/5/90
CP87-474-008	Ford Motor Company	10/5/90
CP88-310-005	Peoples Natural Gas Company	10/5/90
CP88-307-007	Northern States Power Company	10/5/90
CP88-599-004	Unicorp Energy, Inc	10/5/90
CP89-1251-002	Northridge Petroleum Marketing, Inc	10/11/90
CP88-145-001	ADA Cogeneration Partnership	10/13/90
CP87-467-007	TETCO/Tennessee	10/18/90
CP88-110-040	TETCO/Tennessee	10/18/90
CP87-325-009	Northern Minnesota Utilities	10/26/90
CP88-397-005	TransCanada PipeLines Limited	10/26/90

VOLUMES (MCF/D) FOR LIMITED TERM SHIPPERS

Interruptible Transportation Shippers.	265,000—Summer; 355,000—Winter.
Firm Transportation Shippers.	212,792—Summer; 214,500—Winter.

2. Southern Natural Gas Co., Columbia Gas Transmission Corp.

[Docket Nos. CP90-2215-000, CP90-2216-000; CP90-2217-000; CP90-2218-000]

September 19, 1990.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, and Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-316-000 and Docket No. CP86-240-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak Day average day annual MMBTu	receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90-2215-000 (9-17-90)	Tenngasco Corporation (Marketer).	100,000 1,500 547,500	OTX, OLA, TX, LA, MS, AL.	MS	6-25-90, IT, Interruptible.	ST90-4252-000, 7-20-90.
CP90-2216-000 (9-17-90)	Virginia Electric & Power Company (End-user).	43,000 34,400 15,695,000	Leach, Kentucky	Richmond, Virginia	7-2-90, ITS, Interruptible.	ST90-4061-000, 7-14-90.
CP90-2217-000 (9-17-90)	Phoenix Diversified Ventures, Inc. (Marketer.	42,000 33,800 15,330,000	WV, KY [2]	Various	6-21-90, ITS, Interruptible.	ST90-4203-000, 7-4-90.
CP90-2218-000 (9-17-90)	Acces Energy Corporation (Marketer).	50,000 40,000 18,250,000	Various [3]	Various	11-21-89, [4] ITS Interruptible.	ST90-4062-000, 7-13-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Also, gas would be received from Phoenix's Appalachian Pool from various receipt points on Columbia's pipeline system.
[3] Gas would be received from Acces' Appalachian Pool from various Appalachian meters on Columbia's pipeline system.
[4] As amended.

3. Southern Natural Gas Co.

[Docket No. CP90-2197-000]

September 19, 1990.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicant), filed in the above-referenced docket a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Information applicable to the transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90-2197-000 (9-14-90)	Tenngasco Corporation (Marketer).	100,000 2,000 730,000	AL, LA, OLA, MS, TX, OTX.	LA	Interruptible	ST90-4255, 8-18-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

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4. ANR Pipeline Co.

[Docket No. CP90-2196-000]

September 20, 1990.

Take notice that on September 13, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP90-2196-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an additional sales delivery point for Wisconsin Public Service Corporation (WPSC) near Goodman, Wisconsin, under ANR's blanket certificate issued in Docket No. CP82-480-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANT states that sales to WPSC are made pursuant to a service agreement between the parties dated March 10, 1989. ANR further states that WPSC has requested the additional meter station in order to provide operational flexibility and reliability on WPSC's distribution system.

It is said that the maximum daily deliveries through the new sales delivery point would be within WPSC's currently existing peak day and annual entitlements from ANR.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. ANR Pipeline Co.

[Docket No. CP89-637-004]

September 20, 1990.

Take notice that on September 12, 1990,[1] ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-637-004 an amendment to its pending application in said docket for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities necessary to perform new transportation services, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

ANR intended to receive gas at various points on its system from seven shippers (and a certain amount from unspecified shippers to be transported in ANR's name), transport such gas through existing and proposed facilities, and deliver 142,711 Dt per day to CNG transmission Corporation (CNG) at Lebanon, Ohio, for ultimate redelivery by CNG to those shippers. In the instant amendment, ANR has filed new and amended precedent agreements which change the composition of the shippers and the volumes shipped. ANR now proposes to receive gas at various points on its system from ten shippers and deliver 134,095 Dt per day to CNG at Lebanon, Ohio, for ultimate redelivery by CNG to those shippers. In particular, the shippers and the associated volumes are listed below, before the instant amendment and with the instant amendment.

Shipper	Volumes in Dt per day	
	Prior to CP89-637-004	Including CP89-637-004
Kamine/Besicorp South Glens Falls	14,000	14,100
Northeast Energy Corp	11,794	12,078
Champion International Corp	15,547	0
Long Lake Congeneration Company	31,932	7,932
P&N Partners, L.P.	12,822	12,822
Berkshire Energy Group, Ltd	12,822	0
Delta Management Group, Ltd	12,822	12,822
ANR Pipeline Company	30,972	0
Sterling Power Partners, L.P	0	12,822
Onondaga Congeneration, L.P	0	16,054
Brookhaven Congeneration, L.P	0	15,707
Mid-Country Cogeneration, L.P	0	9,424
PG&E-Bechtel Generating Company	0	20,306
Total	142,711	134,095

Comment date: October 11, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Florida Gas Transmission Co.

[Docket Nos. CP90-2234-000; CP90-2235-000; CP90-2236-000]

September 20, 1990.

Take notice that Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under part 284 of it's blanket certificate issued in Order No. 509 corresponding to the rates and conditions set forth in Docket No. RP89-50, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by FGT and is summarized in the attached appendix.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] The amendment to application was tendered for filing on August 31, 1990; however, the fee required by Section 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until September 12, 1990. Section 381.108 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points	Delivery points	Contract date rate schedule service type	Related docket start up date
CP90-2234-000 (9-18-90)	Transworld Oil U.S.A. (Marketer).	100,000 75,000 365,000,000	Multiple	Various	2-23-90, ITS-1, Interruptible.	ST90-4437-000, 8-1-90.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points	Delivery points	Contract date rate schedule service type	Related docket start up date
CP90-2235-000 (9-18-90)	Transworld Oil U.S.A. (Marketer).	100,000 75,000 365,000,000	Multiple	Various	2-23-90, ITS-1, Interruptible.	ST90-4451-000, 8-1-90.
CP90-2236-000 (9-18-90)	Tejas Hydrocarbons Company (Marketer).	32,876 24,657 11,299,740	Multiple	Various	2-23-90, ITS-1, Interruptible.	ST90-4449-000, 8-1-90.

7. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90-2230-000]

September 20, 1990.

Take notice that on September 17, 1990, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-2230-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to expand and operate its facilities at the currently existing Eminence Salt Dome Storage Field (Eminence Storage Field), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Transco states that it desires to expand its facilities at the Eminence Storage Field, located adjacent to Transco's mainline in Covington County, Mississippi, to increase the working gas capacity to as total of 15 Bcf and the deliverability capacity to a total of 1.5 Bcf per day. Transco alleges that such expansion would be utilized to provide a force majeure backup service to its FT customers, as well as to facilitate the swing service characteristics of Transco's proposed FS sevice.

Transco contends that in intends to expand the Eminence Storage Field in two phases. During Phase I of the proposed expansion, the first expansion caverns would be constructed and placed in service. During Phase II, the third expansion cavern would be construced.

It is alleged that the expansion facilitates for which authorization is sought consist of approximately 1.56 miles of 30-inch pipeline loop from the existing storage facility lateral line to Transco's mainline, dehydration facilities, three additional storage caverns, and other necessary appurtenances located at the field. The proposed expansion would increase the amount of top gas to a total of approximately 15.0 Bcf. Each of the three proposed bottle-shaped caverns would have an approximate volumetric capacity of 3,167,100 barrels, and each is designed to hold approximately 4.07 Bcf of gas, at a maximum storage cavern pressure at 3,600 psia, for a total of approximately 12.20 Bcf additional capacity. Of the 12.20 Bcf, a total of approximately 8.76 Bcf would be top gas. The design deliverability of each cavern is 300 Mmcf per day at the minimum pressure. The overall deliverability of the storage facility is alleged to be a total of 2.5 Bcf per day.

The total costs of expansion at the Eminence Storage Field is estimated to be $60,883,671. The estimated Phase I costs are $50,731,421 and the estimated Phase II costs are $10,152,250. Transco proposes to allocate Phase I capacity and facility cost between FT and FS customers agreed to in the FS Settlement, filed on June 22, 1990, in Docket No. PR87-7-000, *et al.* It is alleged that 50 percent of the Phase I capacity and facilities costs would be allocated to FT customers and 50 percent would be allocated to FS customers. In addition to the facility costs which are allocated in the above described manner, Transco would also include in rate base the estimated costs associated with Transco's investment in top gas supplies required to provided the requested service to FT and FS customers. Transco estimates that the cost of such investment for Phase I would be $4,380,000 and $8,760,000 for Rate Schedule FS and FT customers, respectively.

Comment date: October 11, 1990, in accordance with Standard Paragraph F at the end of this notice.

8. CNG Transmission Corp.

[Docket No. CP89-636-002]

September 20, 1990.

Take notice than on August 31, 1990, CNG Transmission Corporation (CNG) amended its application for a certificate of public convenience and necessity failed pursuant to Section 7(c) of the Natural Gas Act of January 17, 1990, in Docket No. CP89-636-000 and as previously amended on February 2, 1990, in Docket No. CP89-636-001. The purpose of this amendment is to adjust levels of service in the project due to unavailabiity of certain equipment necessary to provide the previously proposed level of service scheduled to begin November 1, 1991, and to match the changed needs of the customers. CNG states that there are no significant changes to the facilities proposed in Docket Nos. CP89-636-000 and 001, however, the new level of service proposed for 1991 herein does require certain "auxiliary installations" at an existing CNG compressor station, as discussed below. These services are a part of the *ANR Project*, pursuant to the Principles of Settlement which were approved by the Commission on January 12, 1989, in *Northeast U.S. Pipeline Projects*, Docket No. CP87-451-016, 46 FERC 61,012.

In this application, as amended, on February 2, 1990, CNG requested authorization to render, beginning November 1, 1991, long-term, firm transportation service totalling 389,762 Dt per day for Beta Development Company (Beta) and Long Lake Cogeneration (Long Lake) 38,000 Dt per day), Trancontinental Gas Pipe Line Corporation (Transco) (251,762 Dt per day), and various designated ANR Pipeline Company (ANR) Shippers (ANR Shippers) (100,000 Dt per day). (CNG also requested authorization to construct and opeate certain required facilities and to render a compression service at Lebanon, Ohio, for ANR).

The plan (as described in the February 2, 1990 filing by CNG) as agreed to by ANR, Transco, and CNG called for facility construction and commencement of transportation services by CNG over a two year period. The first level of service would commence November 1, 1991, and the second and final level of service would commence November 1, 1992. This amendment scales back the 1991 level of service and construction, increases the 1992 level of construction, and slightly reduces the total level of service to be rendered upon completion from 389,762 Dt per day to 380,556 Dt per day.

While the total Transco requirements of 251,762 remain unchanged, Beta and Long Lake, along with the certain ANR Shippers, have altered requirements, delayed the date for commencement of service, or terminated agreements for service.

The following table shows all the changes in customer requirements (delivered volumes, Dt/day):

BEST COPY AVAILABLE

	Prior filings CP89-638-000 & 001	Current filing [1] CP89-638-002
1991 Service		
Transco	251,762	168,555 (Leidy).
ANR Shippers:		
Beta [2]	14,000	14,200 (Niagara Mohawk).
		12,245 (Niagara Mohawk).
Sterling	14,847	0
Champion	11,294	0
Northeast Energy	24,000	0
Long Lake		
Total 1991	315,873	195,000
1992 Service		
Transco	251,762	251,762 (Leidy).
ANR Shippers:		
Beta [4]	14,000	14,200 (Niagara Mohawk).
		12,245 (Niagara Mohawk).
Sterling	14,847	0
Champion	11,294	11,533 (Niagara Mohawk).
Northeast Energy	31,575	0
Long Lake		16,500 (Leidy).
Mid County Cogen		15,075 (Leidy).
Brookhaven Cogen	12,245	0
Berkshire	12,245	12,245 (Niagara Mohawk).
Delta Management	12,245	12,245 (Niagara Mohawk).
P & N Partners		15,360 (Niagara Mohawk).
Onondaga Cogen		19,393 (Niagara Mohawk).
PG & E Bechtel	29,579	0
Unassigned volumes for ANR Shippers	389,762	380,558
Total 1992		

[1] The downstream transporter for volumes delivered to Leidy will be Transco; the downstream transporter for volumes designated Niagara Mohawk will be Niagara Mohawk Power Corporation, a local distribution company in New York.
[2] Fuel retention of 4.5 percent must be added to calculate the volumes to be received at Lebanon, Ohio. The upstream transporter for Transco's volumes will be Texas Gas Transmission Corporation; the upstream transporter wil be ANR.
[3] Beta's volume 14,000 Dt/d was an error in the prior filings. Beta's contract has always called for 14,200 Dt/d.
[4] *Ibid.*

CNG states that the principle reasons for the amendment are the unavailability (due to the long lead time required in the manufacturing) of compression equipment, the substantial financial risks associated with CNG's commitments for materials and equipment prior to Commission certification, and changes in the timing and makeup of some of the markets. CNG will require a total of twenty two (22) compressor units for all of the proposed compression that is part of this project. In its February 2 filing, CNG proposed installing sixteen (16) units for 1991 service. The long lead time required in manufacturing installing and commissioning such equipment limits the number of compression units that can realistically be ready for service by November 1, 1991. In early June, 1990, CNG ordered from manufacturers, ten (10) compressor units at a cost of approximately $24,000,000. With Commission approval by early January, 1991, CNG believes that ten (10) compressor units and the associated pipeline can be ready for service by November 1, 1991.

CNG states that changes in the markets, as shown above in the table, also dictated a scaling back of the 1991 total of 195,000 Dt per day. CNG now proposes, and requests authorization reflecting: (1) A 1991 level of transport service from Lebanon, Ohio, to Leidy, Pennsylvania, or the Niagara Mohawk market area for certain ANR Shippers, of up to 195,000 Dt per day (168,555 Dt per day to Leidy for Transco, 26,445 Dt per day to Niagara Mohawk for Sterling and Beta), and (2) a 1992 level of transport service from Lebanon to Leidy or the Niagara Mohawk market area, of up to 380,558 Dt per day (251,762 Dt per day to Leidy for Transco, 31,575 Dt per day to Leidy and 97,221 Dt per day to Niagara Mohawk for designated ANR Shippers) and (3) to render a compression service at Lebanon for ANR as previously proposed in Docket No. CP89-638-001.

CNG states thta while it was necessary, due to long lead times for manufacturing compressors, for it to commit (in advance of FERC approval) to purchase $24,000,000 in compressor units required to provide this 1991 level service, it is also necessary due to long lead times to install and commission the units, for construction to begin in early April, 1991, in order to provide such service by November 1, 1991. Any condemnation proceedings required for

days in advance of construction, and Commission authorization is required to start such condemnation proceedings. Therefore, in order to serve the 1991 markets, CNG states that Commission approval is required no later than early January, 1991.

CNG states that there is no significant change in the required facilities as described in pages 8 through 10 of CNG's February 2 filing. However, in order to provide the level of services required on November 1, 1991, CNG states that it will need to make changes to the station piping, gas cooling equipment, and compressor valves/unloaders at its South Bend Station, near South Bend, Armstrong County, Pennsylvania. CNG states that all of this equipment falls under the definition of "auxiliary installations" appearing at § 2.55(a) of the Commission's Regulations; thus, no certificate authorization is needed to install this equipment. However, the estmated cost of this equipment has been included in revised Exhibits K and N of this amendment.

In order to provide 1991 and 1992 levels of service, CNG requests authorization to construct and operate the following previously proposed

1991 Facilities

8,400 HP compression addition at Lebanon Station
8,400 HP compression at Groveport Station
4,200 HP compression addition at Gilmore Station
6,400 HP compression Beaver Station
8,400 HP compression at Punxsutawney Station
4,200 HP compression addition at Finnefrock Station
Modification at Ardell Station (replacement of compressor impellers)
Modification at South Bend Station (auxiliary installations)
TL-479—26.2 miles of 30"—Rochester Mills to Home Camp
TL-479 Ext.1—31.4 miles of 24"—Ardell to Finnefrock
TL-479 Ext.2—8.5 miles of 24"—Finnefrock to Leidy
TL-400 Ext.1—only 2.5 miles of 24"—Beaver Jct. to Beaver Station

1992 Facilities

16,500 HP compression at Washington Station
3,200 HP compression addition at Groveport Station
16,500 HP compression at Newark Station [4]
3,200 HP compression addition at Gilmore Station
8,780 HP compression at Carroll Station
6,400 HP compression addition at Beaver Station
TL-400 Ext.1—52.1 miles of 24"—Beaver Station to Valley
TL-473 Ext.2—6.0 miles of 30"—Cayuta to Lesky Road
TL-485 Ext.1—13.0 miles of 24"—Utica to Deansboro

Since this amendment on levels of service and timing of construction affects the costs and rates of the project, CNG has provided revised cost estimates and rates in Exhibits K and N of the application. The estimated cost of all construction, inclusive of filing fees, is now $230,065,000 as compared to $219,057,250 in the prior filing. For comparison purposes CNG has provided the 100 percent load factor rates:

	Lebanon to leidy rate		Leidy to market rate	
	CP89-638-001	CP89-638-002	CP89-638-001	CP89-638-002
1991 Service:				
D-1=$2.2225	$2.44	$1.6568	$2.0000	
D-2=0.0730	0.0804	0.0545	0	
Comm.=0.1679	0.1807	0.1148	0	
Unit Rate=0.2140	0.3413	0.2239	0.0000	
1992 Service:				
D-1=2.1895	2.55	0.7478	0.85	
D-2=0.0719	0.0838	0.0246	0.0612	
Comm.=0.1572	0.1733	0.056	0.0771	
Unit Rate=0.3011	0.3410	0.1152	0.1395	

In Docket No. CP89-638-000, CNG originally proposed to charge Beta a one part, monthly demand rate. CNG now proposes to conform Beta's rate design to Modified Fixed Variable (MFV), so that Beta's rate is the same as all other shippers in this project.

Also, because CNG is not proposing any additional facilities here, it states that no additional environmental studies (Exhibits FI-FIV) are necessary. (The auxiliary installations under § 2.55(a), discussed on page 5, are all within an existing, fenced, station yard and do not require environmental studies. Additionally, the auxiliary equipment to be installed at CNG's South Bend Station does not effect air emissions or noise levels).

Comment date: October 11, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Texas Gas Transmission Corp.

[Docket No CP90-2194-000]

September 20, 1990.

Take Notice that on September 13, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-2194-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to the Cincinnati Gas and Electric Company (CG&E) in Butler County, Ohio, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it currently makes natural gas sales to CG&E pursuant to a service agreement dated August 1, 1990. The proposed new delivery point, it is said, would be located on Texas Gas' mainline system in Butler County, Ohio.

The proposed annual maximum quantity of natural gas to be delivered to CG&E at the new delivery point is said to be approximately 1,570,000 MMBtu. It is said that the natural gas delivered at this point would be consumed by a planned new electric generation facility, the Woodsdale Electric Generation Station, to be built by CG&E in Butler County, Ohio.

Texas Gas states further that the addition of this new delivery point would not result in an increase in CG&E's current daily contract demand and the service could be accomplished without detriment to Texas Gas' other customers.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Colorado Interstate Gas Co.; Algonquin Gas Transmission Co.

[Docket No. CP90-2223-000; CP90-2224-000; CP90-2225-000; CP90-2226-000; CP90-2227-000]

September 20, 1990.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket

[4] These prior notice requests are not consolidated.

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numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

Applicant: Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, CO 80944.
Blanket Certificate Issued in Docket No.: CP86-589-000.

Docket No. (date filed)	Shipper name	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related dockets[2]
			Receipt	Delivery		
CP90-2223-000 (09-17-90)	San Diego Gas & Electric Company).	90,000 10,000 3,650,000	TX, OK, WY	TX	07-20-90, TI-1	ST90-4183-000

Applicant: Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, MA 02135.
Blanket Certificate Issued in Docket No.: CP89-948-000.

Docket No. (date filed)	Shipper name	Peak day,[3] average annual	Points of		Start up date, rate schedule	Related dockets[2]
			Receipt	Delivery		
CP90-2224-000 (09-17-90)	Everett Energy Corp	42,000 NJ, 42,000 15,330,000		MA	06-14-90, AIT-1	ST90-4571-000
CP90-2225-000 (09-17-90)	Citizens Gas Supply Corp.	300,000 MA, 300,000 NJ 109,500,000	NY, CT,	MA	06-15-90, AIT-1	ST90-4572-000
CP90-2226-000 (09-17-90)	Tejas Power Corp	500,000 500,000 182,500,000	NJ, MA	CT	06-22-90, AIT-1	ST90-4570-000
CP90-2227-000 (09-17-90)	Catamount Natural Gas, Inc.	70,721 70,721 25,813,165	NJ, MA	CT	07-11-90, AIT-1	ST90-4574-000

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.
[3] Quantities are shown in MMBtu unless otherwise indicated.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designeee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 90-22825 Filed 9-26-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM91-1-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 20, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 17, 1990, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, a correction to a previously filed tariff sheet as set forth in the substitute sheet:

Proposed to be effective October 1, 1990
Sub 7 Rev Sheet No. 201A

Algonquin states that it is making the instant filing to eliminate the inadvertent inclusion of a Current Adjustment under Rate Schedule WS-1 Excess Commodity Rate in Sheet No. 201A as filed on August 31, 1990 in Docket No. TM90-14-20-000 and RP90-180-000. The instant tariff sheet eliminates the Current Adjustment and contains only the change of the ACA Unit Rate for Fiscal Year 1990 as intended. Sub 7 Rev Sheet No. 201A is proposed to become effective on October 1, 1990.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before September 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-22814 Filed 9-26-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP90-13-000]

ANR Pipeline Co. v. Ballard Exploration Co. Inc.; Complaint

September 20, 1990.

Take notice that on August 31, 1990, ANR Pipeline Company (ANR) filed a complaint under Rule 206 the Commission's rules of practice and procedure against Ballard Exploration Company, Inc. (Ballard). According to ANR, Ballard sold natural gas to ANR from the Henry No. 1 well in Calcasieu Pass Field, Louisiana between June 1982 and January 1983, pursuant to a gas sales purchase agreement between Michigan Wisconsin Pipeline Company (predecessor to ANR), and Ballard, dated April 20, 1982. ANR alleges that Ballard sold regulated gas to ANR at prices in excess of the applicable maximum lawful prices (MLP) under the Natural Gas Policy Act of 1978 (NGPA) and the Commission's regulations. ANR alleges that Ballard is obligated to refund that portion of the price, plus interest, which is in excess of the MLP. ANR states that the amount of the overcharge, including principal and interest, as of September 30, 1990, will be $33,961.71.

Any person desiring to be heard or to intervene should file a motion to intervene or protest in accordance with rules 214 (18 CFR 385.214 (1990)) or 211 (18 CFR 385.211 (1990)) of the Commission's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before October 22, 1990. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with rule 214. Copies of the complaint are on file with the Commission and are available for public inspection. Answers to the complaint shall be filed on or before October 22, 1990.

Lois D. Cashell,
Secretary.

[FR Doc. 90-22821 Filed 9-26-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-153-001]

El Paso Natural Gas Co.; Compliance Tariff Filing

September 20, 1990.

Take notice that on September 17, 1990, El Paso Natural Gas Company ("El Paso") filed pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations under the Natural Gas Act and in compliance with the "Order Accepting and Suspending Tariff Sheets, Subjectg to Refund and Conditions, and Establishing Technical Conference" issued August 31, 1990 at Docket No. RP90-153-000, Substitute First Revised Sheet No. 250 to El Paso's FERC Gas Tariff, Second Revised Volume No. 1 along with certain workpapers and explanations regarding the maximum rate under Rate Schedule IS-1.

El Paso states that on August 1, 1990 at Docket No. RP90-153-000, El Paso tendered for filing with the Commission certain tariff sheets which serve to (i) Provide that title transfer of interruptible sales gas shall occur at mainline receipt points and (ii) provide for the elimination of the minimum rate under Rate Schedule IS-1.

El Paso further states that the order issued August 31, 1990 accepted El Paso's tariff sheets for filing but suspended them for five (5) months to become effective February 1, 1991, subject to refund and conditions. Ordering paragraph (A)(3) of the August 31, 1990 order directed El Paso to file, within fifteen (15) days of the date of the order, tariff language stating that any discount from the overall maximum ISS rate shall be deemed to have come from the transportation component of the overall rate before coming from any other component of the overall rate. Accordingly, the tendered tariff sheet reflects changes to Section 3, Rate, of Rate Schedule IS-1 to provide that any discount to the maximum rate shall occur first in the transportation component of such rate.

El Paso also states that ordering paragraph (A)(2) of said order directed El Paso to file, within fifteen (15) days of the date of the order, workpapers with detailed calculations of the gas and non-gas components to support the calculation of the maximum rate under Rate Schedule IS-1 and address the questions set forth in Part E of the order. Such workpapers and explanations are included in El Paso's compliance filing.

El Paso requested waiver of the Commission's Regulations, as appropriate, in order that the tendered tariff sheet be accepted by the Commission and permitted to become effective on February 1, 1991, which is the end of the suspension period established by the Commission in the proceeding at Docket No. RP90-153-000.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso, all parties of record at Docket No. RP90-153-000, and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed

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on or before September 27, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22816 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-86-002]

MIGC, Inc.; Adjustment

September 20, 1990.

Take notice that on April 30, 1990, MIGC, Inc. (MIGC) filed with the Federal Energy Regulatory Commission its proposal for disposition of the balance remaining in its Unrecovered Purchased Gas Cost Account (Account No. 191) upon elimination of the purchased gas cost adjustment (PGA) provisions of its FERC Gas Tariff.

MIGC stated that in its March 1, 1990 general rate filing initiating the proceeding in RP90-86-000, MIGC proposed, among other things, to eliminate the PGA provisions of its tariff due to the termination of all of its jurisdictional sales of natural gas.

MIGC also stated as of April 30, 1990, that its Account No. 191 reflects a purchased gas cost underrecovery of $27,843,000, and that because MIGC is no longer making any jurisdictional sales of natural gas, that balance should be unaffected during the suspension period in RP90-86-000 except for the accural of interest in accordance with the Commission's PGA Regulations and the related provisions of MIGC's tariff. MIGC stated as of April 30, 1990, that it projects (at current interest rates) having an Account No. 191 unrecovered balanced of $28,656.00 as of September 1, 1990 (the actual balance will very slightly due to expected fluctuations in quarterly interest rates) which will be billed entirely to MGTC, Inc., MIGC's only sales customer purchasing gas from MIGC during the prior year.

MIGC further stated that due to both the relatively small size of the balance, as well as the fact that the balance is attributable to PGA purchases relating solely to resale sales to one jurisdictional customer, MIGC proposes to bill this amount in a single, lump-sum billing to such customer upon the effective elimination of its PGA clause as of September 1, 1990.

MIGC noted that copies of this letter and related worksheet were being served upon all MIGC customers and State Commissions, as well as all parties on the Commission's official service list in the proceeding in RP90-86-000.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 adn 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed on or before September 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22822 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-156-001]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

September 20, 1990.

Take notice that on September 14, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing Substitute Original Sheet No. 191 and Original Sheet No. 191A to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the tariff sheets are submitted in compliance with Ordering Paragraph B of the Commission's Order issued August 30, 1990, at Docket No. RP90-156-000.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective August 27, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before September 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22819 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-94-022, CP90-494-002, CP90-197-001, CP90-198-001, CP90-199-001]

Sea Robin Pipeline Co.; Compliance Filing

September 20, 1990.

Take notice that on May 29, 1990, Sea Robin Pipeline Company (Sea Robin), Post Office Box 1478, Houston, Texas, 77251-1478, filed the sheets listed in the attached Appendix A in its FERC Gas Tariff, Original Volume Nos. 1 and 2.

Sea Robin states the filing is being made to comply with the Federal Energy Regulatory Commission's (Commission) April 18, 1990 Order Modifying and Approving Settlement, Permitting Abandonment, and Dismissing Request for Rehearing (April 18 Order) in the above-referenced dockets. Further, Sea Robin notes that according to Article VI of the January 5, 1990 Settlement, the Settlement will not become effective until a final, non-appealable Commission order is issued in the proceedings. Sea Robin states that an order will be considered a final Commission order as of the date that rehearing on all issues is denied, or if rehearing is not applied for, the date on which the right to file a petition for rehearing expires.

Sea Robin also states that the tariff sheets filed in Volume No. 1 serve to implement the two rate periods and their respective rates as set forth in the January 5, 1990 Settlement (Settlement) and approved in the April 18 Order. Also filed in Volume No. 1 are sheets cancelling Fifty-Ninth Revised Sheet No. 4 and Fourth Revised Sheet No. 4-C, which are no longer effective under the provisions of the Settlement.

Sea Robin continues, saying that the sheets filed in Volume No. 2 serve to cancel Rate Schedules X-1, X-7, and X-13 with Southern Natural Gas Company, X-2, X-8, and X-12 with United Gas Pipe Line Company, and Rate Schedule X-13 with Natural Gas Pipeline Company of America.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22820 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-6-001]

Sea Robin Pipeline Co.; Filing of Revised Tariff Sheets

September 20, 1990.

Take notice that on September 18, 1990, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following tariff sheets to be effective October 1, 1990:

Original Volume No. 1

Substitute Thirty-Third Revised Sheet No. 4-A
Substitute Tenth Revised Sheet No. 4-A1
Substitute Ninth Revised Sheet No. 4-A2

These tariff sheets reflect an upward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1990 Annual Charges, pursuant to Order No. 472.

This revision authorizes Sea Robin to collect 0.22¢ per each jurisdictional Mcf for natural gas transported applicable to the 1990 Annual Charge assessed Sea Robin by the Commission under Part 382 of the Commission's Regulation.

Sea Robin also states that the tariff sheets are being mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22815 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-2187-000]

Southern Natural Gas Co.; Application

September 20, 1990.

Take notice that on September 11, 1990, Southern Natural Gas Company. (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP-90-2187-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of a transportation service for Phillips Petroleum Company (Phillips),[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that under the transportation agreement Phillips could deliver up to 15,000 Mcf of natural gas per month produced from the North Lake Washington Field in Plaquemines Parish, Louisiana, through Tennessee Gas Pipeline Company's (Tennessee)[2] existing facilities to the Bay St. Elaine Field in Terrebonne Parish, Louisiana. It is further stated that Southern would then deliver equivalent volumes to Phillips at the interconnection of Southern's Phillips' line for use in Phillips' gas lift operations in St. Elaine Field, Terrebonne Parish, Louisiana.

It is stated that effective December 1, 1987, Phillips sold its interest in the Bay St. Elaine Field. It is averred that on February 12, 1990, Phillips requested termination of the transportation service, to be effective March 1, 1990, or effective as of the Commission order allowing abandonment. Southern has agreed to terminate the agreement as of the date it receives a Commission's order allowing abandonment. Southern's Rate Schedule X-57 would be cancelled, effective upon receipt of the abandonment authorization, it is stated. Southern further states that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 11, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authroity contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22824 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[1] Transportation service is rendered under the terms of a September 10, 1980, agreement between Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (presently known as Tennessee Gas), Southern Natural Gas Company, and Aminoil of Louisiana, Inc (Aminoil). Phillips purchased Aminoil and has succeeded to the rights and obligations of Aminoil.

[2] Tennessee filed on February 23, 1990, in Docket No. CP90-833-000 to abandon its certificated portion of this service (55 FR 9,179, March 12, 1990).

[Docket No. TM91-1-11-001]

United Gas Pipeline Co.; Filing of Revised Tariff Sheets

September 20, 1990.

Take notice that on September 18, 1990, United Gas Pipe Line Company (United) tendered for filing the following

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tariff sheets to be effective October 1, 1990:

Second Revised Volume No. 1

Substitute Seventh Revised Sheet No. 4
Substitute Seventh Revised Sheet No. 4–A
Substitute Seventh Revised Sheet No. 4–B
Substitute Second Revised Sheet No. 4–E
Substitute Second Revised Sheet No. 4–F
Substitute Third Revised Sheet No. 4–H
Substitute Seventh Revised Sheet No. 4–I

These tariff sheets reflect an upward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1990 Annual Charges, pursuant to Order No. 472.

This revision authorizes United to collect 0.22¢ per each jurisdictional Mcf of natural gas sold or transported applicable to the 1990 Annual Charge assessed United by the Commission under Part 382 of the Commission's Regulation.

United also states that the tariff sheets are being mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed on or before September 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–22817 Filed 9–26–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA90–1–49–004]

Williston Basin Interstate Pipeline Co.; Compliance Filing

September 20, 1990.

Take notice that on September 14, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing Second Subtitute Twenty-fourth Revised Sheet No. 10 to First Revised Volume No. 1 of its FERC Gas Tariff and supporting schedules reflecting the correction of certain clerical errors and contained in the Company's August 30, 1990 Annual Purchased Gas Cost Adjustment Compliance Filing in Docket No. TA90–1–49–009.

The proposed effective date of the tariff sheet is August 1, 1990.

Williston Basin states that Second Substitute Twenty-fourth Revised Sheet No. 10 (First Revised Volume No. 1) reflects a revised Surcharge Adjustment of a negative .144 cents per dkt applicable to Rate Schedules G–1 and SGS–1 which results in an overall .026 cents per dkt decrease to Rate Schedules G–1 and SGS–1, as compared to the tariff sheet contained in the Company's August 30, 1990 PGA Compliance filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 27, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–22816 Filed 9–26–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket Nos. 90–36–NG and 90–37–NG]

North Canadian Marketing Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order Granting blanket authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting North Canadian Marketing Corporation (NCM) blanket authorization to import up to an aggregate of 146 Bcf of natural gas from Canada and to export up to an aggregate of 40 Bcf of domestic natural gas to Canada over a two-year term beginning on the date of first delivery.

A copy of the order is available for inspection and copying at the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 21, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–22886 Filed 9–26–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–72–NG]

Santanna Natural Gas Corp.; Application for Blanket Authorization To Import and Export Natural Gas and Liquefied Natural Gas

AGENCY: Office Of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas and liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 21, 1990, of an application filed by Santanna Natural Gas Corporation (Santanna), for blanket authorization to import and export from and to Canada, Mexico, and other countries up to a combined total of 73 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year term beginning with the date of first import or export. Santanna intends to use existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m. e.d.t., October 29, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Santanna, a Texas corporation with its principal place of business in Austin, Texas, and a natural gas marketer, requests authority to import natural gas and LNG on a short-term or spot market basis for its own account or as agent on behalf of other suppliers and purchasers.

Santanna states that the imported gas, including LNG, would make alternative supplies of gas available to a wide range of markets in the United States, including pipelines, local distribution companies, and commercial and industrial end-users. In regard to its request for export authority, Santanna proposes to export natural gas obtained from fields in various domestic gas producing states, or, utilizing import/export transactions, from non-U.S. suppliers. The specific terms of each import and export arrangement would be negotiated on an individual basis, including price and volume. Santanna maintains that such arrangements will enhance competition in the North American gas market.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the shot-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. Santanna also asserts that the proposed export volumes would result in a reduction of the current excess domestic natural gas supply, generate income and tax revenues, and reduce the U.S. trade deficit. Parties opposing the arrangement bear the burden of overcoming these assertions. Similar to other blanket authorizations, there would be no daily volume restrictions imposed by FE if Santanna is granted blanket import and export approval.

All parties should be aware that if this blanket import/export application is granted, the authorization may permit the import or export of natural gas (including LNG) at any international border point where existing transmission or processing facilities are located.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Santanna's application is available for inspection and copying in the Office of Fuels Programs, Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy

[FR Doc. 90–22887 Filed 9–26–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–73–NG]

Tenngasco Corp.; Application for Blanket Authorization To Import Natural Gas From Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 22, 1990, of a request by Tenngasco Corporation (Tenngasco) for blanket authority to import up to an aggregate of 200 Bcf of natural gas from Canada and Mexico over a two-year term beginning on the date of first delivery. Tenngasco

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contemplates using existing facilities and would comply with quarterly reporting requirements.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filled at the address listed below no later than 4:30 p.m., e.d.t., October 29, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1657

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Tenngasco, a Delaware corporation and wholly owned subsidiary of Tenneco Corporation, proposes to import gas on a short-term or spot basis for its own account or as an agent for Canadian and Mexican suppliers or U.S. purchasers. The specific terms of each import and export sale, including price and volumes, would be negotiated on an individual basis. Tenngasco contemplates the possibility of exercising the requested import authority in conjunction with its existing blanket export authority (DOE/ERA Opinion and Order No. 312, issued April 28, 1989) in order to utilize the most advantageous routes for transporting natural gas into and out of the United States.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on these regulatory and policy considerations. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. Parties opposing the arrangement bear the burden of overcoming these assertions. Similar to other blanket authorizations, there would be no daily volume restrictions imposed by FE if Tenngasco is granted blanket import approval.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR section 590.316.

A copy of Tenngasco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–22895 Filed 9–26–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PP 6G3350/T599; FRL 3796–6]

Carbon Disulfide; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the nematicide carbon disulfide in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire November 15, 1990.

FOR FURTHER INFORMATION CONTACT:

By mail: Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 229, CM# No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of February 22, 1990 (55 FR 6310), stating that a temporary tolerance had been renewed for residues of the nematicide carbon disulfide in or on the raw agricultural commodities grapefruit, grapes, oranges and potatoes at 0.1 part per million (ppm) resulting from soil applications of the nematicide sodium tetrathiocarbonate. These tolerances were renewed in response to pesticide petition (PP) 6G3350, submitted by Union Chemicals Division, Unocal, c/o Delta Management Group, 1414 Fenwick Lane, Silver Spring, MD 20910.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 612–EUP–1, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the peaticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active nematicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Unocal Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire November 15, 1990. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: September 10, 1990

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90–22910, Filed 9–26–90; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30362A; FRL–3797–7]

E. I. Du Pont de Nemours and Co; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by E. I. Du Pont de Nemours and Co., to conditionally register the pesticide products Du Pont Accent Herbicide and Du Pont Accent Technical, containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 22, 1989 (54 FR 48312), which announced that E. I. Du Pont de Nemours and Co., Inc., Agricultural Products Dept. Walker Mill Bldg., Barley Mill Plaza, Wilmington, DE 19880–0038, had submitted applications to register the pesticide products Du Pont Accent Herbicide and Du Pont Acccent Technical (EPA File Symbols 352–LGU and 352–LGL), containing the active ingredient 2-(((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl))aminosulfonyl))-*N,N*-dimethyl-3-pyridinecarboxamide, monohydrate at 75 and 68.5 percent respectively; an active ingredient not included in any previously registered products.

The applications were approved on June 29, 1990, as Du Pont Accent Herbicide (EPA Reg. No. 352–534) and Du Pont Accent Technical (EPA Reg. No. 352–535) for general use to control annual and perennial weeds in field corn.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of 2-(((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl))aminosulfonyl))-*N,N*-dimethyl-3-pyridinecarboxamide, monohydrate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 2-(((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl))aminosulfonyl))-*N,N*-dimethyl-3-pyridinecarboxamide, monohydrate, during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that the conditional registration is in the public interest. Use of the pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on 2-(((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl))aminosulfonyl))-*N,N*-dimethyl-3-pyridinecarboxamide, monohydrate.

A copy of the fact sheets, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's

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regulatory position and rationale, may be obtained from the Natural Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Docket, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM #2, Arlington, VA 22202 (703–557–4456). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: September 10, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90–22914 Filed 9–26–90; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180834; FRL 3800–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the eight States as listed below. Two crisis exemptions were initiated by the Michigan and Nebraska Departments of Agriculture. Two quarantine exemptions were also granted to the United States Department of Agriculture/APHIS. These exemptions were issued in June, except for one issued in May. They are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemptions requests from the Alabama Department of Agriculture and Industries, Florida Department of Agriculture and Consumer Services, and Georgia Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of hexakis on watermelons to control mites; June 19, 1990, to October 15, 1990. (Robert Forrest)

2. California Department of Food and Agriculture for the use of hexakis on sweet corn to control spider mites; June 15, 1990, to February 28, 1991. California had initiated a crisis exemption for this use. (Robert Forrest)

3. Georgia Department of Agriculture for the use of permethrin on southern peas to control cowpeas curculio; June 26, 1990, to October 31, 1990. (Robert Forrest)

4. Idaho Department of Agriculture for the use of hexakis on hops to control two-spotted spider mites; June 8, 1990, to September 15, 1990. (Robert Forrest)

5. Iowa Department of Agriculture and Land Stewardship for the use of pendimethalin on dry bulb onions grown on organic soil to control broadleaf weeds; June 11, 1990, to June 30, 1990. (Jim Tompkins)

6. Michigan Department of Agriculture for the use of pendimethalin on dry bulb onions grown on organic soil to control broadleaf weeds; June 11, 1990, to June 30, 1990. Michigan had initiated a crisis exemption for this use. (Jim Tompkins)

7. Michigan Department of Agriculture for the use of cypermethrin on onions to control thrips; June 15, 1990, to September 1, 1990. (Robert Forrest)

8. North Dakota Department of Agriculture for the use of benomyl on canola to control sclerotinia stem rot; June 19, 1990, to July 31, 1990. (Susan Stanton)

9. South Dakota Department of Agriculture for the use of chlorpyrifos on wheat to control aphids; June 8, 1990, to December 30, 1990. (Robert Forrest)

10. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of clomazone on cabbage to control velvetbean caterpillar; June 15, 1990, December 31, 1990. (Libby Pemberton).

Crisis exemptions were initiated by the:

1. Michigan Department of Agriculture on May 13, 1990, for the use of pendimethalin on dry bulb onions grown on organic soil to control broadleaf weeds. This program has ended. (Jim Tompkins)

2. Nebraska Department of Agriculture on June 18, 1990, for the use of cyfluthrin on sorghum to control chinch bugs. This program has ended. (Libby Pemberton)

EPA has granted quarantine exemptions to:

1. United States Department of Agriculture/APHIS for the use of malathion in Florida to eradicate Mediterranean fruit flies; June 17, 1990, to July 17, 1990. (Susan Stanton)

2. United States Department of Agriculture/APHIS for the use of diazinon in Florida to eradicate Mediterranean fruit flies; June 17, 1990, to July 17, 1990. (Susan Stanton)

EPA has denied specific exemption requests from the:

1. Alabama Department of Agriculture and Industries for the use of pirimiphos-methyl on stored peanuts to control storage insects. (Susan Stanton)

2. Florida Department of Agriculture and Consumer Services for the use of pirimiphos-methyl on stored peanuts to control storage insects. (Susan Stanton)

3. Georgia Department of Agriculture for the use of pirimiphos-methyl on stored peanuts to control storage insects. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: September 14, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90–22912 Filed 9–26–90; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50711; FRL 3800–5]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous and Genetically Modified Nonindigenous Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Monsanto Agricultural Co. a notification of intent to conduct small-scale field testing in the States of Indiana, Montana, Washington, Alabama, Missouri, and Illinois of a nonindigenous strain (Ps 2140) of *Pseudomonas corrugata* and a genetically modified strain (Ps. 2140RL3) of the same organism on wheat. The nonindigenous strain was isolated from soil in Australia. The genetically modified strain was derived by inserting genes isolated from *E. coli* bacteria into the nonindigenous strain for the purpose of providing a marker for detection of the modified organism at very low populations in the soil.

DATES: Comments must be received on or before October 11, 1990.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM–21), Registration Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)–557–1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the Monsanto Agricultural Co., St. Louis, MO. The purpose of the proposed testing is to evaluate the efficacy of the genetically modified and unmodified strains of *Pseudomonas corrugata* for the control of Take-All, a disease of wheat. The nonindigenous strain, which was isolated in Australia, has been modified by inserting genes isolated from *E. coli* bacteria which are designated as the *lac*ZY marker. The *lac*ZY marker is a tracking system which has been previously used as a means for monitoring the survival and location of similar organisms under field conditions. Proposals for small-scale field testing of organisms of the same species which contained these marker genes have been reviewed by scientists from both the Office of Pesticide Programs and the Office of Toxic Substances. The organisms were subsequently field tested with no observed adverse effects.

The main objective of the current tests is to confirm that the nonindigenous and *lac*ZY-marked organisms demonstrate potential as biological control agents under actual field conditions in differing geographical areas, soil types, and seasonal periods. In addition, Monsanto proposes to evaluate a new microencapsulation delivery system for some of the microorganisms used in this testing program. The proposed field tests would be carried out in collaboration with State universities in the States of Indiana, Montana, and Washington and at company research facilities in Alabama, Missouri, and Illinois. The tests would be conducted at seven sites with each site consisiting of 1.5 acres or less of wheat. The total acreage shall not exceed a total area of 10 acres.

Dated: September 6, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90–22913 Filed 9–26–90; 8:45 am]

BILLING CODE 6560–50–F

[PF–539; FRL 3795–9]

Pesticide Tolerance Petitions; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces amended filings for pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Address
Dennis Edwards (PM 12). Joanne Miller (PM 23).	Rm. 202, CM #2, 703–557–2386. Rm. 237, CM #2, 703–557–1830.	1921 Jefferson Davis Hwy., Arlington, VA. Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Amended Pesticide Petitions

1. *PP 0F3825.* NOR-AM Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, has submitted a revised Section F proposing to amend 40 CFR 180.287 for the insecticide and miticide amitraz (*N'*-[2,4-dimethylphenyl]-*N*-[[(2,4-dimethylphenyl)imino]methyl]-*N*-methylmethanimidamide) and its metabolites containing the *N*-(2,4-dimethylaniline) moiety (calculated as parent compound) by lowering the tolerance for beeswax from 7.0 parts per million (ppm) to 6.0 ppm. (The proposed tolerance of 1.0 ppm on honey remains unchanged). The analytical method is gas chromatography using electron detection. The original notice appeared in the **Federal Register** of February 22, 1990 (55 FR 6311). (PM 12)

2. *PP 5F3158.* Chevron Chemical Co., P.O. Box 4010, Richmond, CA 94804–0010, has submitted an amended notice of filing proposing to amend 40 CFR

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180.403 to establish tolerances for the combined residues of the herbicide thiobencarb [*S*-[(4-chlorophenyl)methyl]diethylcarbamothioate) and its chlorobenzyl and chlorophenyl moiety-containing metabolites in or on the following raw agricultural commodities: celery at 0.2 ppm, endive at 0.2 ppm, and lettuce at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23)

Authority: 7 U.S.C. 136a.

Dated: August 20, 1990.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-22911 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3825-6]

Proposed Settlement of Administrative Order by Consent

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Proposed *de minimis* Settlement.

SUMMARY: U.S. EPA is proposing to settle a claim under Section 122 of CERCLA with *de minimis* potentially responsible parties for costs that have been and will be incurred during remedial and removal activities at the Summit National Site in Deerfield, Ohio. Respondents have agreed to collectively pay $1,908,312 into a specially created escrow account that will be used by the *de maximus* settlors for remedial work at the Site, or, in the event a consent order is not entered into between U.S. EPA and the *de maximus* settlors, the money will be used to reimburse the U.S. EPA for costs incurred during U.S. EPA's removal and remedial actions at the Site. This action is being taken to settle all liability related to the Summit National site with the small quantity Respondents pursuant to the intent of section 122(g) of CERCLA, as amended.

DATES: Comments on this proposed settlement must be received on or before October 29, 1990.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Cheryl Allen at (312) 353-6196, before visiting the Region V Office).

U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible).

Cheryl Allen, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-6196.

FOR FURTHER INFORMATION CONTACT: Cheryl Allen, Office of Public Affairs, at (312) 353-6196.

SUPPLEMENTARY INFORMATION: The Summit National Site, which is listed on the National Priorities List, was operated as a waste disposal facility from 1974 until 1980, when it was closed by the State of Ohio. Due to the nature of the material received by the facility when it was in operation, the release or threatened release of hazardous substances into the environment has caused the U.S. EPA to take emergency removal actions at the Site and to conduct an investigation as to long term remedial measures necessary to rectify the environmental hazard at the Site.

The thirty-seven Respondents are small quantity generators and transporters of the hazardous substances sent to the Site. Each Respondent's share of the waste delivered to the Site does not exceed 0.2 percent of the total waste delivered to the Site, and as an aggregate all Respondents' shares do not exceed 2.0 percent of all waste delivered to the Site.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement. Comments should be sent to the Office of Public Affairs (5PA-14), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Peter M. Felitti,

Assistant Regional Counsel, U.S. Environmental Protection Agency.

[FR Doc. 90-22901 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59287; FRL-3804-2]

Toxic and Hazardous Substances; Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38.

EPA has designated this application as TME-90-18. The test marketing conditions are described below.

DATES: This approval is effective September 20, 1990. Written comments will be received until October 12, 1990.

ADDRESSES: Written comments, identified by the document control number "OPTS-59287" and the specific TME number "TME-90-18" should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Parent, New Chemical Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202) 245-4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-90-18. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. The test marketing period, production volume, use, and number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time.

The complete nonconfidential document is available in the TSCA Public Docket Office, NE G004 at the above address between 8 a.m. to noon, and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME-90-18:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who is reasonably likely to be exposed by inhalation in the work area to the substance as a dust is provided with, and is required to wear in accordance with 29 CFR 1910.134 and 30 CFR part 11, at a minimum, a NIOSH-approved respirator from one of the following categories:

a. Category 21C air-purifying respirator equipped with a full facepiece and high efficiency particulate filters.

b. Category 21C powered air-purifying respirator equipped with a tight-fitting facepiece and high efficiency particulate filters.

c. Category 21C powered air-purifying respirator equipped with a loose-fitting hood or helmet and high efficiency particulate filters.

d. Category 21C air-purifying respirator equipped with a high efficiency particulate filter including disposable respirators.

3. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Inhalation may be harmful. Chemicals similar in structure to this substance have been found to cause cancer and neurotoxicity. To protect yourself, you must wear a 21C respirator.

4. The Company must also obtain or develop a material safety data sheet (MSDS) for the substance. The MSDS must contain language requiring precautionary measures to control worker exposure that include the use of a NIOSH-approved 21C respirator.

5. The applicant shall maintain the following records until 5 years after the date they are created and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the labels affixed to containers of the substance or formulations containing the substance.

d. Copies of the MSDS.

e. Copies of the bill of lading that accompanies each shipment of the substance.

f. Copies of any determination under paragraph 2 above that the protective gloves used by the Company are impervious to the substance.

T-90-18

Date of Receipt: August 10, 1990.

Close of Review Period: September 23, 1990. The extended comment period will close October 12, 1990.

Applicant: American Cyanamid Company.

Chemical: (G) Substituted Heterocycle.

Use: Additive for dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified concerns for oncogenicity and neurotoxicity based on test data on analogous chemicals. However, exposure to workers will be mitigated by respirators. Therefore, the test market activities will not present an unreasonable risk of injury to health. EPA identified no significant environmental releases of the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: September 20, 1990.

Lawrence E. Culleen,

Acting Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc 90-22902 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Office of Training

Board of Visitors for the Emergency Management Institute; Notice of Continuation

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), GSA Regulation 41 CFR 101.6, and FEMA Regulation 44 CFR part 12, and after consultation with the General Services Administration, the Director of the Federal Emergency Management Agency (FEMA) has determined that the continuation of the FEMA Board of Visitors for the Emergency Management Institute (EMI) is in the public interest in connection with the performance of duties imposed on the Agency by law.

The objectives and the duties of the Board are to review the programs of EMI and continue to make comments and recommendations to the Director of the Office of Training regarding the operation of the Institute and any improvements therein which the Board deems appropriate.

1. In carrying out its responsibilities, the Board may include in its review:

a. A discussion of the Institute's programs to determine whether these programs further the basic mission of the EMI; and

b. Other appropriate subject areas that are related to the effectiveness of the delivery of the Institute's programs.

2. The Board shall draw on the expertise of its members and with the concurrence of the Director, Office of Training, such other experts as may be considered appropriate in order to provide advice and make recommendations to the Director, Office of Training.

3. The Board shall submit annually a written report to the Director, Office of Training, no later than April each year. This report shall provide detailed comments and recommendations regarding the operation of the Institute.

4. The Board shall function solely as an advisory board and comply fully with the provisions of the Federal Advisory Committee Act.

The Board consists of 12 members, including a chairperson. The Director, Office of Training, shall appoint the individuals to the Board, including the member to be designated as chairperson. The members of the Board, including the chairperson, represent the fields of emergency management, education, public administration and industry, and such professional

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organizations as will ensure a balance representation of interest. The members are appointed for a 2-year term.

Interested persons are invited to submit comments regarding the recommendation to continue the Board of Visitors. Such comments, as well as any inquiries, may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, Washington, DC 20472.

Dated: September 12, 1990.

Laura Buchbinder,

Acting Director, Office of Training.

[FR Doc. 90-22879 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-879-DR]

IOWA; Amendment to Notice of A Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-879-Dr), dated September 6, 1990, and related determinations.

DATED: September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Iowa, dated September 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1990:

The counties of Clinton and Pottawattamie for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-22881 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-02-M

Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, prescribes that grants made under Sec. 411, Individual and Family Grant Programs, and grants made under sec. 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under Sec. 411 of the Act, with respect to any single disaster, is increased to $11,000 for all disasters declared after October 1, 1990.

Notice is also hereby given that the amount of any grant made to the State, local government, or the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $38,500 for all disasters declared after October 1, 1990.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 5.6 percent for the prior 12-month period. The information was published by the Department of Labor on September 18, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 90-22880 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-02-M

Guidance on Offsite Emergency Radiation Measurement Systems, Phase 3—Water and Non-Dairy Food Pathway—Agency (FEMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Extension of due date for submittal of comments.

SUMMARY: The Federal Register Notice of May 7, 1990, Vol. 55, No. 88, pages 18948 and 18949, announced the availability of FEMA REP-13 and requested comments on the document by September 30, 1990. However, due to delays in the printing and distribution of the documents, it was not available at that time. FEMA REP-13, dated May 1990, is now available for distribution and the comment period is being extended.

Comments will be accepted through December 31, 1990, and should be addressed to: Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C Street Southwest, Washington, DC 20472. A single copy of this document may be obtained by writing FEMA, P.O. Box 70274, Washington, DC 20024.

If you have any questions, please contact Marlow J. Stangler at 202-646-2856 or FTS 676-2856 or by writing FEMA, Office of Natural and Technological Hazards, Room 633, 500 C Street Southwest, Washington, DC 20472.

Dated: September 17, 1990.

For the Federal Emergency Management Agency.

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 90-22882 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-007022-003.

Title: A.P. Moller-Maersk Line Joint Service Agreement.

Parties: Dampskibsselskabet AF 1912, Aktieselskabet, Aktieselskabet Dampskibsselskabet Svendborg.

Synopsis: The proposed amendment would restate the Agreement to conform with the Commission's format, organization and content requirements.

Agreement No.: 203-011271-002.

Title: United States/Peru Discussion Agreement.

Parties: Crowley Caribbean Transport, Inc., Empresa Naviera Santa, Lykes Line.

Synopsis: The proposed amendment would expand the scope of the Agreement to include Chile.

Dated: September 21, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22947 Filed 9-26-90; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1168.

Name: Barry Transfer & Storage Company dba Citrans International.

Address: 1209 17th St., San Francisco, CA 94107.

Date Revoked: July 10, 1990.

Reason: Failed to maintain a valid surety bond.

License Number: 552.

Name: Ramsay, Scarlett & Company, Inc.

Address: 19 South Street, Baltimore, MD 21202.

Date Revoked: August 16, 1990.

Reason: Failed to maintain a valid surety bond.

License Number: 1527R.

Name: West Coast Moving & Storage, Inc. dba West Coast International.

Address: 39685 Oberenda Road, Temecula, CA 92390.

Date Revoked: August 17, 1990.

Reason: Surrendered license voluntarily.

License Number: 2463.

Name: Scan-Shipping, Inc.

Address: 116 John Street, suite 320, New York, NY 10038.

Date Revoked: August 20, 1990.

Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Acting Director, Bureau of Domestic Regulation.

[FR Doc. 90-22846 Filed 9-26-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 090490 AND 091490

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Acadia Partners, L.P., Prudential Corporation plc, BMK Inc	90-2058	09/04/90
Heerema Trust, The Ceco Corporation, The Ceco Corporation	90-1971	09/05/90
Vornado, Inc., Alexander's, Inc., Alexander's, Inc	90-2000	09/05/90
Wace Group PLC, Parkway Group PLC, Parkway Group PLC	90-1963	09/06/90
Reed International P.L.C., Robert C. Legler, First Marketing Corporation of Florida	90-1994	09/06/90
Media General, Inc., Garden State Newspapers, Inc., Garden State Newspapers, Inc	90-1995	09/06/90
Rubbermaid Incorporated, Eldon Industries, Inc., Eldon Industries, Inc	90-2011	09/06/90
Greyhound Dial Corporation, American Cyanamid Company, Shulton Group's Breck Business	90-2025	09/06/90
Wesme Brothers, Limited, Qume Corporation, Qume Corporation	90-2030	09/06/90
The Dun & Bradstreet Corporation, Commercial Credit Group, Inc., American Credit Indemnity Company	90-2301	09/06/90
Fiat, S.p.A., Baxter International Inc., Baxter Healthcare Corporation	90-1965	09/07/90
Florida Progress Corporation, The United Company, Belthy Coal Corporation	90-1993	09/07/90
The Peninsular and Oriental Steam Navigation Company, Estate of E. Robert Street, MS Construction, Inc	90-2018	09/07/90
Westinghouse Electric Corporation, The Goldman Sachs Group, L.P., Skybound, Inc	90-2042	09/07/90
Mr. Edward H. Arnold, Robert Bosch Industriestreuhand KG, Gilmour Manufactoring Co	90-2057	09/07/90
Mr. Edward H. Arnold, Emerson Electric Company, Gilmour Manufacturing Co	90-2061	09/07/90
Heerema Trust, Petitjean S.A., Petitjean S.A	90-2091	09/07/90
Nelson Peltz, Equitable Bag Holding Company, Equitable Bag Holding Company	90-2038	09/10/90
American Business Products, Inc., Edward C. Leavy, Jen-Coat, Inc. & Leavy Realty	90-2058	09/10/90
Renouf Corporation Limited, Renouf Corporation Limited, Renouf Associates USA	90-2062	09/10/90
University of Detroit, Mercy College of Detroit, Mercy College of Detroit	90-2066	09/10/90
Renouf Corporation Limited, Ariadne Australia Limited, Renouf Associates USA	90-2067	09/10/90
Richard R. Kelley, Manufacturers Hanover Corporation, CFH, Inc	90-2071	09/10/90
Kobayashi Pharmaceutical Co., Ltd., C.R. Bard, Inc., Shield-California Health Care Center, Inc	90-2075	09/10/90
NCNB Corporation, Southmark Corporation, Fundamental Mortgage Corporation	90-2083	09/10/90
Chester C. Davenport, United Technologies Corporation, Hamilton Test Systems, Inc	90-2090	09/10/90
Kokusai Kogyo Kabushiki Kaisha, Stichting Pensioenfonds voorde Gezondheid, Geestelijke, Grand Cypress Resort	90-2084	09/10/90
Saratoga Partners II, L.P., Harry J. Pappas and Stella A. Pappas, Pappas Telecasting of the Carolinas, Inc	90-2088	09/10/90
Toyota Motor Corporation, Mr. Frederick R. Wolsmen, Mid-Atlantic Toyota Distributors, Inc	90-2099	09/10/90
Margaret Hunt Trust Estate, Caroline Hunt Trust Estate, Rosewood Resources, Inc	90-2101	09/10/90
Hilladown Holdings, PLC, Thomas R. Shelton, Case Foods, Inc	90-2109	09/10/90
FS Equity Partners II, L.P., American Stores Company, Buttray Food and Drug Division	90-2111	09/10/90
Hilladown Holdings plc, Hilladown Holdings plc, Case Foods, Inc	90-2115	09/10/90
The Estate of James Campbell, CH Greenspoint Retail #1 Limited Partnership, The Commons at Greenspoint Joint Venture	90-2118	09/10/90
The Estate of James Campbell, Deceased, American National Insurance Company, The Commons at Greenspoint Joint Venture	90-2119	09/10/90
Westlake Health System, "Newco", "Newco"	90-2022	09/12/90
Wheaton Franciscan Services, Inc., "Newco", "Newco"	90-2023	09/12/90

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 090490 AND 091490—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Pioneer International Limited, Beazer PLC, Beazer West, Inc	90-2050	09/12/90
Trefoil Capital Investors, L.P., CNC Holding Corporaton, Child World, Inc	90-2095	09/12/90
Modine Manufacturing Company, Sundstrand Corporation, Subsidiaries	90-2097	09/12/90
Norfolk Southern Corporation, Occidental Petroleum Corporation, Kentucky Ohio Transportation Co	90-2021	09/13/90
Jefferson Smurfit Group plc, PCL Industries Limited, PCL Industries Limited	90-2069	09/13/90
The Morgan Stanley Leveraged Equity Fund II, L.P., PCL Industries Limited, PCL Industries Limited	90-2070	09/13/90
Ashland Oil, Inc., Blue Diamond Coal Company, Blue Diamond Coal Company	90-2007	09/14/90
Tech-Sym Corporation, Varian Associates, Inc., Varian Continental Electronics Division	90-2020	09/14/90
Minorco, Danville Resources, Inc., Danville Resources, Inc	90-2073	09/14/90
Minorco, Adobe Resources Corporation, Adobe Resources Corporation	90-2074	09/14/90
President and Fellows of Harvard College, Berkshire Hathaway, Inc., NHP, Inc	90-2078	09/14/90
Thyssen Aktiengesellschaft, Harold A. O'Calleghan, Jr., Universal Builders Supply, Inc	90-2107	09/14/90
Thyssen Aktiengesellschaft, R. Anthony O'Calleghan, Universal Builders Supply, Inc	90-2108	09/14/90
Apache Corporation, Consolidated Natural Gas Co., Consolidated Natural Gas Co	90-2112	09/14/90
Intercontinental Affiliates, Lazard Freres & Co., institutional Leasing, Inc	90-2116	09/14/90
Code, Hennessy & Simmons Limited Partnership, Pioneer-American, Inc., Pioneer-American, Inc	90-2126	09/14/90

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 90-22872 Filed 9-26-90; 8:45 am]
BILLING CODE 6750-01-M

[Dkt. C-3304]

Jeep Eagle Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Highland Park, MI. successor to American Motors Corp. to conduct a computer search of its warranty claims files to implement a redress program to benefit original owners of new 1983, 1984 and 1985 Renault Alliance and 1984 and 1985 Encore automobiles that experienced four or more documented repair visits to correct specific automatic transmission fluid or engine oil leaks or related problems.

DATES: Complaint and Order issued September 4, 1990.[1]

[1] Copies of the Complaint, the Decision and Order, and the statement by Commissioner Azcuenaga are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:
Adrienne Williams, FTC/H-238, Washington, DC 20580. (202) 326-3121.

SUPPLEMENTARY INFORMATION: On Friday, November 24, 1989, there was published in the **Federal Register**, 54 FR 48681, a proposed consent agreement with analysis In the Matter of Jeep Eagle Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,
Secretary.

[FR Doc. 90-22871 Filed 9-26-90; 8:45 am]
BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Performance Review Board

September 21, 1990.

Effective immediately, the following officials are designated to serve on the GSA Performance Review Board in accordance with the HB, Senior Executive Service, Chapter 6 (ADM P 9920.1). Meetings are to be attended by those listed below; substitutes are not acceptable. Five members constitute a quorum.

James A. Lobmaster, Chairperson...Chief of Staff (AC) Tel. Ext. 501-1216
Carlene Bawden...Associate Administrator for Administration (C) Tel. Ext. 501-0945
John Meyer...Deputy Regional Administrator, National Capital Region (WAD) Tel. Ext. 708-6181
Roger D. Daneiro...Commissioner, Federal Supply Service (FD) Tel. Ext. 557-8667
Richard H. Hopf...Associate Administrator for Acquisition Policy (V) Tel. Ext. 501-1043
Don Zito...Regional Administrator, Region 5 (5A) Tel. Ext. 353-5395
June Huber...Controller, Public Building Service (PF) Tel. Ext. 501-0658
Judy Parks...Assistant Commissioner, Information Systems Tel. Ext. 501-1800
John F. Wynn...Director, Office of Small and Disadvantaged Business Utilization (AU) Tel. Ext. 501-1021

Richard G. Austin,
Administrator of General Services.

[FR Doc. 90-22858 Filed 9-26-90; 8:45 am]
BILLING CODE 6820-BR-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-050-09-4351-11]

Emergency Closure of Public Lands (Western Portion of the Shoshone BLM District)

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: Notice is hereby given that effective immediately all public lands located in the western portion of the Shoshone BLM District are closed to off road motorized travel. The closed area is bounded and generally described as follows:

That portion of Idaho Department of Fish and Game Unit 45, West of the Bliss-Hill City Road, and North of the Pioneer Road, to the Snake River, downstream to the confluence of King Hill Creek with the Snake River, up King Hill Creek to the Idaho Power two pole power line, east along the powerline to White Arrow ponds on the Bliss-Hill City Road the point of beginning.

All public lands administered by the Bureau of Land Management within the above described area are closed to off-road motorized vehicle use, from the date of the notice until April 1, 1991.

Exemptions from this closure for federal, state, and local government personnel on official duty, emergency service personnel including medical, search and rescue, utility services, and all other licensed/permitted individuals may be approved by the authorized officer.

The described area is currently experiencing high concentrations of Mule Deer hunters during a late season muzzleloader hunt season. The hunting activity has encouraged off-road motorized use which is opening tracks for excessive soil erosion during snowmelt or seasonal rains. The purpose of the closure is to protect the natural resources from excessive soil erosion caused by disturbances from off-road vehicle use.

The authority for this closure is 43 CFR 8364.1. The closure will remain in effect until April 1, 1991.

DATES: September 20, 1991.

ADDRESSES: BLM District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION AND APPLICATION FOR EXCLUSION PERMITS CONTACT: Robert D. Cordell, Bennett Hills Resource Area Manager, P.O. Box 2-B, Shoshone, Idaho 83352, Telephone (208) 886-2206.

K. Lynn Bennett,
District Manager.

[FR Doc. 90-22848 Filed 9-26-90; 8:45 am]
BILLING CODE 4310-GG-M

[OR-030-00-1540-11-N264; GPO-403]

Road Closure; Oregon

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following order, affecting approximately 4,000 feet of road along West Sutton Creek, on public land in T. 11 S., R. 40 E., WM, sections 12, 13 and 14, was issued on September 19, 1990.

This road suffered significant damage from recent storms in the area and is presently impassable. Any attempts to negotiate the road by vehicle or to reconstruct it would pose a significant threat to cultural, soil, vegetation and forest resources which have already suffered adverse impacts from storms and wildfire. Under the authority of 43 CFR 8364.1, the above road is closed to use by motorized vehicles. This closure shall remain in effect until further notice.

EFFECTIVE DATE: September 19, 1990.

FOR FURTHER INFORMATION CONTACT: Jack Albright, BLM Baker Resource Area, P.O. Box 987, Baker City, Oregon 97814, 503-523-6391.

Jack D. Albright,
Area Manager.

[FR Doc. 90-22855 Filed 9-26-90; 8:45 am]
BILLING CODE 4310-33-M

[MT-921-06-4121-14; NDM 78697]

Request for Public Comment on Environmental Analysis, Fair Market Value and Maximum Economic Recovery; Coal Lease Application NDM 78697—The Coteau Properties Co.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The land included in Coal Lease Application NDM 78697 is located in Mercer County, North Dakota, and is described as follows:

T. 145 N., R. 87 W., 5th P.M.
Sec. 6: SE¼
160.00 acres.

The Beulah bed, avaraging 15.4 feet in thickness, is the only economically minable coal seam within the tract. The tract contains an estimated 2,300,000 short tons of recoverable lignite. Coal quality, as received, averages 6,970 BTU/lb, 37.19 percent moisture, 5.80 percent ash, 0.53 percent sulfur, 31.90 percent fixed carbon, and 35.05 percent volatile matter. This coal bed is being mined in an adjoining tract on the south by the Coteau Properties Company.

The public is invited to submit written comments on the environmental analysis, fair market value, and the maximum economic recovery of the tract.

In addition, notice is also given that a public hearing will be held on Friday, October 26, 1990, on the environmental assessment, the proposed lease sale, the fair market value, and maximum economic recovery of the proposed lease tract.

DATES: Comments must be received on or before October 26, 1990. The public hearing will be held at 1 p.m. on the same date, at the BLM Dickinson District Office, 2933 Third Avenue West, Dickinson, North Dakota.

ADDRESSES: For more complete data on this tract, please contact Donald Gilchrist (telephone 406-255-2818), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107 or William Krech (telephone 701-225-9148), Bureau of Land Management, Dickinson District Office, 2933 Third Avenue West, Dickinson, North Dakota 58601. Copies of the environmental assessment are available at both addresses.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Coal Management regulations 43 CFR parts 3422 and 3425, not less than 30 days prior to publication of a notice of sale, the Secretary shall solicit public comments on the environmental assessment, the proposed sale, fair market value, and maximum economic recovery on the proposed lease tract. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, 222 North 32nd Street, Billings, Montana, during regular business hours 9 a.m. to 4 p.m.) Monday through Friday.

Comments should be sent to the Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107 and should include, but not necessarily be limited to the following:

1. The quality and quantity of the coal resources;

2. The mining method or methods which would achieve maximum economic recovery of the coal including specification of the seams to be mined, timing and rate of production, restriction to mining, and inclusion of the tract in an existing mining operation;

3. The fair market value appraisal including but not limited to the evaluation of the tract as an incremental unit of an existing mine, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate, and any comparable sales data of similar coal lands.

The values given above may or may not change as a result of comments received from the public and changes in

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market conditions between now and when final economic evaluations are completed.

Dated: September 18, 1990.

Robert W. Faithful,

Acting State Director.

[FR Doc. 90-22857 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-DN-M

[MT-070-00-4050-01-ADVB]

Postponement of District Advisory Council and Grazing Board Meetings

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Notice of postponement of meetings.

SUMMARY: The meetings scheduled on October 4 and 5 for the Butte District Advisory Council and the Butte District Grazing Board are hereby postponed. The meetings will be rescheduled and announced in a future Federal Register Notice.

The advisory council was scheduled to meet October 4 and 5, the grazing board on October 4. The meetings were to include a joint field tour.

The reason for the postponement is the unlikelihood of the availability of necessary travel funds in the district in early October.

The notices for both meetings appeared in the **Federal Register**, September 13, page 37773.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

James R. Owings,

District Manager.

[FR Doc. 90-22851 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-020-00-4320-12]

Kingman Resource Area Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting—Kingman Resource Area Grazing Advisory Board.

SUMMARY: Kingman Resource Area Grazing Advisory Board will hold a meeting on Thursday, November 15, 1990. The meeting will start at 9 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Election of Officers.
2. Update of the Bureau's Exchange Program.
3. Status of the Bureau's Planning and Environmental Impact Statements.
4. Report on Range Improvements for FY 90 and FY 91.
5. Range Policy Update.
6. Use of Helicopter and Motor Vehicles to Capture Wild Horses and Burros.
7. Request for Advisory Board Expenditures.
8. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven (7) days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 19, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90-22853 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-020-00-4320-12]

Phoenix/Lower Gila Resource Areas Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Phoenix/Lower Gila Resource Areas Grazing Advisory Board.

SUMMARY: The Phoenix/Lower Gila Resource Areas Grazing Advisory Board will hold a meeting on Tuesday, November 13, 1990. The meeting will start at 9 a.m. in the Phoenix District Office Conference Room, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Election of Officers.
2. Update of the Bureau's Exchange Program.
3. Status of the Bureau's Planning and Environmental Impact Statements.
4. Report on Range Improvements for FY 90 and FY 91.
5. Range Policy Update.
6. Request for Advisory Board Expenditures.
7. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven (7) days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 19, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90-22854 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-010-00-4212-14, IDI-26957, IDI-27777]

Realty Actions; Sales, Leases, Etc.: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended Notice of Realty Action, Sale of Public Land in Owyhee County, Idaho.

SUMMARY: A Notice of Realty Action was published November 6, 1989, (54 FR 46656) offering for sale certain parcels of land in Silver City, Idaho to the owners of the habitable buildings thereon. This amendment corrects the previous Notice of Realty Action to correctly show the owners and acreages of two lots shown below, and to correctly show the corresponding change in sale offering dates for these two lots. All other terms of the previous Notice of Realty Action remain in effect.

Serial No.	Building owner's name	Lot No.	Acres
IDI-26957.	Kenneth M. and Linda R. Jantz.	111	0.37
IDI-27777.	Gayland T. and Barbara L. Carr.	112	0.02

DATES: The sale offering for these two parcels will begin Tuesday, October 2, 1990, at 10 a.m., and continue until Tuesday, October 9, 1990, at 4 p.m., at which time and date this sale offering will be suspended.

ADDRESSES: The sale offering will be held at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the conditions of the sale can be obtained by contacting Blackie Bruegman at (208) 334-1582.

SUPPLEMENTAL INFORMATION: All other terms and conditions of the original Notice of Realty Action dated October 20, 1989, and published November 6, 1989, (54 FR 46656) remain unchanged.

Dated: September 18, 1990.

J. David Brunner,

District Manager.

[FR Doc. 90-22849 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-GG-M

[OR 46058; OR-080-00-4212-14; GPO-407]

Realty Action; Proposed Direct Sale; Oregon

September 18, 1990.

This notice amends the notice of realty action published in the **Federal Register** on July 3, 1990 (FR Doc. 90-15390).

The appraised fair market value has been determined to be $500.00.

The date that sealed written bids must be received is changed to October 19, 1990.

All other provisions, of the notice remain unchanged.

Peter J. Schay,

Acting Clackamas Area Manager.

[FR Doc. 90-22850 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-33-M

[MT-070-4050-91-355D]

Montana; Establishment of Supplementary Rule To Provide for the Protection of Public Lands and Resources

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Pursuant to 43 CFR 8365.1-6, a Supplementary Rule is established to prohibit the use of noncertified noxious weed seed free feeds and forage on certain public lands in the Dillon Resource Area in southwest Montana.

SUMMARY: Effective on the date of publication of this notice, all feeds and forage, to include hay, straw, whole or processed grains and pellets brought onto public lands within the following described areas shall be certified by an authorized federal, state, or county officer as being noxious weed seed free.

No person, department or agency is exempt from this rule.

The restricted area is described as Township 7S and Ranges 1E, 1W, 2W, 3W, 4W, PMM; Township 8S and Ranges 1E, 1W, 2W, 4W, PMM; Township 9S and Ranges 1E, 1W, 4W, 5W, PMM; Township 10S and Ranges 1E, 1W, 4W, 5W, 6W, PMM; Township 11S and Ranges 1E, 2E, 5W, 6W, PMM; Township 12S and Ranges 2E, 6W; PMM; Township 13S and Ranges 1E, 1W, 2W, 3W, 4W, 5W, PMM; Township 14S and Range 1E, PMM; and public lands within the Bear Trap unit of the Lee Metcalf Wilderness Area in Townships 3S, 4S, and Range 1E, PMM.

FOR FURTHER INFORMATION CONTACT: Jim Lewis, Area Manager, Dillon Resource Area, 1005 Selway Drive, Dillon, MT 59725.

SUPPLEMENTARY INFORMATION: This rule is issued to manage and prevent the spread of noxious weed seeds in the above-described area and to cooperate with the United States Forest Service and Madison and Beaverhead County Weed Districts to administer a weed seed free hay and feed zone.

Jim Lewis,

Area Manager, Dillon Resource Area.

[FR Doc. 90-22856 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-00-4214-10; GPO-409; OR-45928]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon; Correction

The land description in FR Doc. 90-6567, published on page 10701, in the issue of Thursday, March 22, 1990, is hereby corrected as follows:

On page 10701, under T. 37 S., R. 16 E., reads Sec. 28, "SE¼NE¼" and is corrected to read "SW¼NE¼".

Dated: September 19, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-22852 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-33-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-318]

Certain Anti-Knock Ignition Systems and Automobiles or Automobile Component Parts Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 20, 1990, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of John A. McDougal, P.E., 14388 Harbor Island, Detroit, MI 48215. The complaint was supplemented on September 5, 1990. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain anti-knock ignition systems and automobiles or component parts containing same by reason of alleged infringement of (1) claims 1, 7, and 21 of U.S. Letters Patent No. 3,903,856, (2) claims 1, 12, and 23 of U.S. Letters Patent No. 4,116,173, and (3) claims 10, 18, and 21 of U.S. Letters Patent No. 4,809,662, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, the supplement to the complaint, and the accompanying exhibits, except for exhibits claimed to contain confidential business information, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 18, 1990 *Ordered* That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain anti-knock ignition systems or automobiles or automobile component parts containing same by reason of alleged infringement of (1) claims 1, 7, or 21 of U.S. Letters Patent No. 3,903,856, (2) claims 1, 12, or 23 of U.S. Letters Patent No. 4,116,173, or (3) claims 10, 18, or 21 of U.S. Letters Patent No. 4,809,662, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

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(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served:

(a) *The complainant is:* John A. McDougal, P.E., 14388 Harbor Island, Detroit, MI 48215.

(b) The respondents are the following entities alleged to be in violation of section 337, and the parties upon which the complaint is to be served:

AB Volvo, Volvo Car Corp. S–40508 Gothenburg, Sweden.

Volvo North America Corp., One Volvo Drive, Rockleigh, NJ 07647.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401Q, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this Notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this Notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such respondent.

Issued: September 18, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–22833 Filed 9–26–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–455 (Final)]

Certain Laser-Light Scattering Instruments and Parts Thereof From Japan; Commission Determination to Deny Request for In Camera Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission has denied a request by Otsuka Electronics Co., Ltd. ("Otsuka"), respondent in the above-captioned final investigation, to conduct a portion of its hearing scheduled for September 25, 1990, in camera.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1087. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that wherever possible its business should be conducted in public. It has determined that the extraordinary measure of an in camera hearing is unnecessary and inappropriate in this investigation. With respect to that portion of Otsuka's request seeking an in camera proceeding concerning information submitted by petitioner Wyatt Technology Corp. ("Wyatt"), the Commission has concluded that discussion of proprietary company-specific data, although relevant to its investigation, is unnecessary at the hearing. With respect to that portion of the request seeking an in camera hearing devoted to presenting information proprietary to Otsuka, the Commission has concluded that any benefit it might receive in receiving additional information concerning Otsuka's operations at an in camera hearing is outweighed by the unfairness of such a procedure to Wyatt, which is proceeding *pro se* and would be excluded from participating in such an in camera session. Thus the Commission has determined that the public interest would be best served by a hearing that is entirely open to the public. *See* 19 CFR 201.36(c)(1).

By order of the Commission.

Issued: September 17, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–22832 Filed 9–26–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–52 (Sub-No. 71X)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment Exemption in Lyon County, KS

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6,686-foot line of railroad between mileposts 111 + 1597.8 feet and 1 + 1406 feet, at or near Emporia, Lyon County, KS.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 27, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

banking statements under 49 CFR 1152.29 must be filed by October 9, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 17, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 2, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 17, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–22696 Filed 9–26–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31726]

W. Robert Bentley, George M. Kloster, Daniel P. Moscato, and James T. Moore—Continuance in Control, Exemption—Massachusetts Central Railroad Corp. and Maine Coast Railroad Corp.

W. Robert Bentley, George M. Kloster, Daniel P. Moscato, and James T. Moore II filed a notice of exemption [1] to continue to control Massachusetts Central Railroad Corporation (MACE) and Maine Coast Railroad Corporation (MECO).

MACE is a class III rail carrier operating approximately 25 miles of line between Palmer and South Barre, MA. MECO is a newly organized corporation that has filed a notice for a modified rail certificate in Finance Docket No. 31727, *Maine Coast Railroad Corporation, Modified Rail Certificate*, to operate a line of railroad owned by the State of Maine. The line runs between Brunswick (milepost 33.79) and Rockland, ME (milepost 85.55), a distance of 51.76 miles. MECO will be a class III rail carrier.

Together, Messrs. Bentley, Kloster, Moscato, and Moore own, directly or beneficially, approximately 30 percent of MACE's outstanding stock.[2] Bentley is MACE's president; Kloster acts as MACE's sales representative; Moscato is in charge of MACE's rail operations; and Moore is MACE's chief mechanical officer. Furthermore, Bentley, Kloster, and Moscato are directors of MACE.

Bentley, Kloster, Moscato, and Moore each own 25 percent of MECO's stock. The four are MECO's only directors and perform for MECO the same duties that they perform for MACE.

This transaction involves the acquisition or continuance in control of nonconnecting carriers where: (1) The railroads would not connect with each other or any railroads in their corporate family; (2) the acquisition or continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on James E. Howard, Kirkpatrick & Lockhart, 84 State Street, Boston, MA 02109.

Decided: September 21, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–22867 Filed 9–26–90; 8:45 am]

BILLING CODE 7035–01–M

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] Applicants have also filed a motion to dismiss the notice of exemption, alleging that the Commission lacks jurisdiction over the matter. That motion will be handled in a subsequent decision, and, if jurisdiction is not found and the motion is granted, this notice will be revoked.

[2] In addition, Kloster is a party to a voting trust agreement that affects 50 percent of MACE's outstanding stock.

Release of Waybill Data for Use By Freight Equipment Management Research-Demonstration Program Association of American Railroads

The Commission has received a request from the Freight Equipment Management, Research-Demonstration Program of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1989 ICC Waybill Sample.

A copy of the request may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub–No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275–6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–22867 Filed 9–26–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 12, 1990, a proposed Consent Decree in *United States* v. *C. Robert Ivey, et al.*, Civil Action No. *89–CV–71179–DT* was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns the hazardous waste site known as the Liquid Disposal, Incorporated ("LDI") Site, located at 3901 Hamlin Road in Shelby Township, Macomb County, Michigan. The Consent Decree sets forth a settlement with three *de minimis* Defendants. Under the terms of the Consent Decree, the United States will recover approximately $605,000.

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The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *C. Robert Ivey, et al.*, D.J. Ref. 90-11-2-220A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Michigan, Office of the United States Attorney, 231 West Lafayette, Detroit, Michigan 48226 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202/347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page for reproduction costs) payable to Aspen Systems Corporation. Supporting documentation for the settlement is available at Region V of EPA and the Department of Justice.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-22864 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging Final Judgment by Consent Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 7, 1990 a proposed consent decree in *United States and Commonwealth of Pennsylvania* v. *Borough of Punxsutawney and the Municipal Authority of Punxsutawney*, Civil Action No. 89-2060, was lodged with the United States District Court for the Western District of Pennsylvania.

The complaint was filed by the United States in October 1989 to address alleged violations of the National Pollution Discharge Elimination System ("NPDES") permit for Punxsutawney's municipal sewage treatment plant, and applicable regulations under sections 301 and 307 of the Clean Water Act, 33 U.S.C. 1311 and 1317, relating to implementation of Punxsutawney's pretreatment program. In March 1990, the Commonwealth of Pennsylvania intervened as a co-plaintiff.

The proposed consent decree between the United States, the Commonwealth of Pennsylvania and the defendants resolves the subject violations by providing a detailed schedule to bring Punxsutawney's pretreatment program into compliance with the NPDES permit requirements and applicable regulations. The proposed decree contains stipulated penalties for non-compliance and provides for a $70,000 civil penalty to be paid by the defendants for past violations. Under the decree the Commonwealth receives $10,000 of the civil penalty; the remainder goes to the United States Treasury.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and Commonwealth of Pennsylvania* v. *Borough of Punxsutawney and the Municipal Authority of Punxsutawney*, DOJ Ref. No. 90-5-1-1-3399. The proposed consent decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 USPO & Courthouse, 7th and Grant Street, Pittsburgh, Pennsylvania. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $11.00 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-22863 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Massachusetts Institute of Technology and TV of Tomorrow Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Massachusetts Institute of Technology ("MIT") and TV of Tomorrow Consortium ("the venture") on June 25, 1990 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities, are given below.

The members of the ventures are:

BNR Inc., 5555 Spalding Drive, Norcross, GA 30092.

Eastman-Kodak Company, Kodak Park, Rochester, NY 14650-2010.

Hughes Aircraft Company, P.O. Box 92424, Los Angeles, CA 90009.

Massachusetts Institute of Technology, c/o The Media Laboratory, 20 Ames St., Cambridge, Massachusetts 02139.

Sharp Corporation, 273-1 Kashiwa, Kashiwa-shi, Chiba 277, Japan.

Sony Corporation, 6-7-35, Kitashinagawa, Shinagawa-ku, Tokyo 141, Japan.

Toppan Printing Co., Ltd., 1, Kanda Izumi-cho, Chiyoda-ku, Tokyo, Japan.

The nature of the venture is to conduct basic research into new digital systems, applications and techniques in an effort to develop and combine advanced computer and television technologies. This research will include, but will not be limited to, development of advanced methods of low-level and mid-level vision for use in motion analysis and image coding; development of scalable formats for video signals; studies of very high definition formats, brightness and contrast ratios, and advanced video display; development of advanced interface computation; and development of methods to produce three-dimensional images, data compression and interactive systems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-22865 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") on July 24, 1990, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notification was filed for the purpose of

extending the protections of section 4 of the Act limiting recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, OSF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on September 7, 1988 (FR 34594). On November 4, 1988, February 2, 1989, May 3, 1989, July 28, 1989, October 26, 1989, January 22, 1990, and April 19, 1990, OSF filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on November 25, 1988 (53 FR 47773), February 23, 1989 (54 FR 7893), August 25, 1989 (54 FR 35407), August 25, 1989 (54 FR 35408), November 29, 1989 (54 FR 49123), April 18, 1990 (55 FR 14469), and May 21, 1990 (55 FR 20861), respectively.

The identities of the new, non-voting members of OSF are as follows:

Member	Date
Malaysian Institute of Microelectronics	4/17/90
Chips & Technologies	4/18/90
Boston University	4/30/90
Cray Research, Inc.	5/02/90
Software Research Associates, Inc.	5/21/90
Naval Weapons Center	6/11/90
BP Exploration	6/13/90
Royal Signals and Radar Establishment	6/18/90
Institute Blaise Pascal	6/25/90
City Polytechnic of Hong Kong	6/29/90
Princeton University	6/29/90
U.R.A.C.O.M./University Paul Sebatier	6/29/90
Universitat Kaiserslautern	6/29/90
California Polytechnic State University	7/02/90
National Institutes of Health	7/11/90

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-22866 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Boot Camps for Juvenile Justice Offenders; Constructive Intervention and Early Support

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notices of changes to section VII and VIII. Procedures and criteria for selection.

This Notice is published to modify the application requirements and criteria for selection for the program announcement, "Boot Camps Juvenile Offenders Construction Intervention and Early Support", published in the Federal Register on July 12, 1990 Vol. 55. No. 134. The modfication incorporates an additional criteria and application requirement entitled, "Problem to be Addressed" and revises the point distribution among the criteria accordingly. In addition, this Notice modifies the expected start up date for projects and the date for beginning services for juvenile offenders referred to the program.

The following section should be inserted as section VII A. in the Program Announcement.

A. Problem Statement

Applicants must provide a clear and concise discussion of the community's need for an intermediate sanction with regard to its current juvenile offender populations; the lack of intermediate sanction resources in the community; the community's willingness to coordinate its existing human resources as a component of such a program; and the availability of resources with which to implement the program design.

All subsequent paragraphs in section VII are hereby redesignated as paragraphs B-H.

Because the submission date for applications was extended to October 30, 1990 (see the Federal Register Notices Dated August 13, 1990, 55 FR No. 159), the date for anticipated project start up in section V. is February 1, 1991; the date for commencing services to youth in section IV. C. is now August 1, 1991.

The following will be substituted for section VIII in the Program Announcement.

VIII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, problem statement, organizational capability, thoroughness and innovation in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B, published August 2, 1985, at 50 FR 31366-31367. The selection criteria and their point values (weights) are as follows:

A. Problem to be Addressed (10 Points)

Clear and concise discussion of the community's need for an intermediate sanction with regard to its current juvenile offender population; the community's willingness to coordinate its exiting human resources as a component of such a program; and the availability of resources with which to implement the program design.

B. Organizational Capability (20 Points)

1. The extent and quality of organizational experience in the development, delivery and coordination of juvenile supervision programs. (5 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (5 points)

3. Demonstrated capability to obtain commitments of specific State and local resources to implement the program design called for in this solicitation. (10 points)

C. Soundness of the Proposed Strategy (25 Points)

Appropriateness and technical adequacy of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

D. Qualifications of Project Staff (15 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (5 points)

E. Clarity and Appropriateness of the Program Implementation Plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

F. Budget (15 Points)

Completeness, reasonableness, appropriations and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews and site visits,

will assist the Administrator in considering competing applications and in selection of the applications for funding. The Administrator may also attempt to select projects that propose to serve different age groups. The final award decision will be made by the OJJDP Administrator.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 90-22810 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Open Meetings; Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits

SUMMARY: This notice announces three open meetings of the Advisory Commission on United Mine Workers of America Retiree Health Benefits. The Commission was established on March 12, 1990 to advise the Secretary of Labor on matters concerning health care issues arising from the United Mine Workers of America (UMWA) 1950 and 1974 Benefit Plans and the effects of resolving these issues on the coal industry as a whole.

Time and Place: 1. At 9 a.m. on Wednesday, October 10, 1990 a meeting of the Advisory Commission on United Mine Workers of America Retiree Health Benefits will be held in Conference Room S–2508 at the Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210–0001. This Advisory Commission has received requests for an additional meeting of the Commission to place on the record the views and opinions from interested members of the public, particularly regarding funding alternatives. The charter of this Advisory Commission states that the Commission is "* * * to make recommendations to the Secretary of Labor on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole." 55 FR 9228 (March 12, 1990). The Chairman of the Commission requested comments from the general public at each of the three public meetings of the Commission. Additionally, all of the Commission's meeting notices, which have been published in the Federal Register, have solicited public comments, and provided detailed instructions regarding the procedures for submitting comments. The Commission has agreed to have an additional meeting to afford all interested persons a further opportunity to present views to the Commission. To allow all interested persons to be heard in the available time, persons presenting views are requested to submit a written statement, if possible, and to be prepared to summarize orally their views.

It is important for the Advisory Commission to consider as much information as possible and to be exposed to a wide range of views. For this reason, I find that an exceptional circumstance exists to justify providing notice of less than 15 days before the date of the meeting on October 10, 1990. 5 U.S.C. app. II, sec. 10(a)(2); 41 CFR 101–6.1007(d)(2).

2. At 9:00 a.m. on Thursday, October 11, 1990 a meeting of the Advisory Commission on United Mine Workers of America Retiree Health Benefits will be held in Conference Room S–2508 at the Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210–0001. Due to the schedules of members of the Advisory Commission, the Commission must meet on October 11, 1990. For this reason, I find that an exceptional circumstance exists to justify providing notice of less than 15 days before the date of the meeting on October 10, 1990. 5 U.S.C. app. II, sec. 10(a)(2); 41 CFR 101–6.1007(d)(2).

3. At 9 a.m. on Wednesday, October 17, 1990 a meeting of the Advisory Commission on United Mine Workers of America Retiree Health Benefits will be held in Conference Room S–2508, at the Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210–0001.

Agenda: 1. The purpose of the meeting on October 10, 1990 is to receive and discuss views from the public concerning alternative structures and financing, and other issues relating to the Commission's considerations.

2. The purpose of the meeting on October 11, 1990 is to receive and discuss the preliminary report from the Noncollective Bargaining Subgroup regarding revised arrangements for the delivery of health care benefits and the financial status of the UMWA 1950 and 1974 Pension and Benefit Plans.

3. The purpose of the meeting on October 17, 1990 is to receive the final reports from the Noncollective Bargaining Subgroup and the Collective Bargaining Subgroup, and to receive and announce the findings and recommendations of the Advisory Commission, and to discuss implementation of recommendations of the Advisory Commission.

Public Participation: These meetings will be open to the public. Approximately 50 seats will be available for the public, including five seats reserved for the media. Seats will be available on a first-come first-serve basis.

Submissions: Anyone may submit information or position papers to the Commission. Submissions shall be made by sending 20 copies to:

Executive Director, Coal Commission, room S–2508, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210–0001

- Submissions must identify the interest asserted by the submitter.
- Submissions shall be accompanied by a computer readable copy of the submission on a 5¼" or 3½" magnetic disk (floppy disk) in either ASCII or Word Perfect format.
- The label on the diskette must identify the submitter, the date, the file name or names, and the format of the file.
- A 5¼" or 3½" magnetic disk need *not* accompany paper submissions, if a brief statement is attached to the paper explaining why forwarding a computer readable copy of the submission on a floppy disk is an unreasonable burden on the submitter.
- Submissions not exceeding "five typed pages" also may be sent to the Commission by electronic mail.
- Electronic mail submissions should be sent to the Coal Commission via CompuServe, account number: >COAL:US.COAL
- Submissions also may be forwarded to the Commission by fax. Submissions sent to the Commission's fax number, 202–523–3442, must be followed by mailing to the Commission a copy of the submission on a 5¼" or 3½" magnetic disk, or by forwarding a copy of the submission to the Commission by electronic mail in the manner described above.

Submissions received on or before Monday, October 8, 1990 will be accepted and included in the record of the meeting scheduled for October 11, 1990.

FOR FURTHER INFORMATION CONTACT: Jan Horbaly, Executive Director, Advisory Commission on UMWA Retiree Health Benefits, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2508, Washington, DC 20210–0001, Telephone (202) 523–8271.

Signed at Washington, DC this 25th day of September, 1990.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 90-23054 Filed 9-26-90; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services, Information Collection Submitted to OMB for Review

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of information collection submitted to OMB for review.

SUMMARY: The Institute of Museum Services (IMS) is submitting an information collection entitled GOS Evaluation Survey for review by the Office of Management and Budget under the Paperwork Reduction Act.

IMS needs this information to assess the effects of the General Operating Support program, and to determine how the program could be improved. The information will be used for a statistical analysis.

The respondents will be directors of nonprofit museums open to the public in the U.S.

The estimated average burden hours per response is 0.86, the frequency of response is once, and the estimated number of respondents is 140. The total annual reporting and recordkeeping burden is 123 hours.

ADDRESSES: Submit comments to Mr. Daniel Chenok, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Submit requests for information, including copies of the proposed collection of information and supporting documentation, to GOS Program Office, Institute of Museum Services, room 609, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Linda Bell,

Acting Director, Institute of Museum Services.

[FR Doc. 90-22894 Filed 9-26-90; 8:45 am]

BILLING CODE 7036-01-M

NATIONAL SCIENCE FOUNDATION

Agency Information Collections Activities Under OMB Review

In accordance with OMB Guidelines, the National Science Foundation is posting a final revised notice implementing "Changes in NSF Proposal Format," proposed in the Federal Register, Volume 54, No. 232, pages 50293–50294 on December 5, 1989, and amended in Federal Register, Volume 54, No. 238, page 51251 on December 13, 1989.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, (202) 357–7335.

TITLE: *Changes in NSF Proposal Format:* Importance of Education and Human Resources; and Importance of Quality of Publications in the Merit Review Process.

AFFECTED PUBLIC: Any institution/individual submitting a proposal to the National Science Foundation.

RESPONDENTS/BURDEN HOURS: NSF expects to receive over 37,000 proposals during FY 1991. It is estimated that 120 hours are required to submit a proposal. While some additional information is being requested, some information currently collected will now no longer be required. Therefore, this information collection will not affect the total amount of time required to submit a proposal.

SUPPLEMENTARY INFORMATION:

A. Background

The National Science Foundation (NSF) issued a public notice on December 13, 1989 (54 FR 51251). This notice announced proposed "Changes in NSF Proposal Format: Importance of Education and Human Resources; and Importance of Quality of Publications in the Merit Review Process." NSF received 32 public comments, as well as comments from OMB. Ten of those comments were from one institution. Twenty-five percent of the responses were strongly in favor of all changes. An additional 25 percent were supportive, but offered suggestions for change. Fifty percent offered negative comments. All comments have been considered in preparing this final rule. Significant comments received are discussed in detail below.

B. Public Notice

1. Importance of Education and Human Resources

Because of NSF's concern about the development of scientists and engineers for the future, NSF proposed a change that would require Principal Investigators (PIs) to specify the potential of the proposed research to contribute to the education and the development of human resources in science and engineering at the postdoctoral, graduate, and undergraduate levels. PIs are also asked to describe special effectiveness or achievement in the area of producing professional scientists and engineers from groups presently underrepresented.

- *Public Comment.* Comments concerning this area were centered around "excess paperwork" which some commenters thought would create an extra burden on the Principal Investigator in both preparation and record keeping.
- *NSF Response.* NSF has considerably reduced the proposed burden by focusing the information collection on demonstrated accomplishments. NSF will collect this information for each proposal for renewed support of a research project as well as progress reports for continuing increments. While this may cause some minor additional burden, it should not be significant since the PIs would be aware of their accomplishments in the areas of education and human resource development.

Though there is an established merit review criterion dealing with the impact of research on development of human resources, the reviewer was left to infer the extent to which this criterion was met. There were no data upon which to judge directly contributions to education. NSF has a statutory responsibility for the health of education in the sciences, engineering and mathematics. This information, as a part of the results of prior support, will give reviewers data with which to make better assessments with respect to this impact. NSF's goal continues to be selection of the most meritorious research projects for support, as evaluated against all four key criteria.

- *Public Comment.* The question was raised as to how this requirement would apply to applicants that are not universities. Respondents stated the policy would unfairly handicap non-university research institutions in obtaining future grants.
- *NSF Response.* Some museums and many non-profit organizations are actively engaged in education. This requirement would certainly not put them at a disadvantage. In any event, NSF policy has not changed. Effect of the research on the infrastructure of science and engineering is one of the 4 merit review criteria established by the National Science Board in 1981. Human resource development can, and should, take place in all research environments.

2. Importance of Quality of Publications in the Merit Review Process

a. *Listing of Ten Publications.* Rather than listing all publications for the last five years, PIs are asked to list up to five publications most relevant to the research proposed and up to five other significant research publications. Only the list of up to ten are to be used in merit review.

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• *Public Comment.* The public feared this policy would restrict the ability of the reviewers and panels to gauge properly the overall career of the applicants and that reviewers should see the listings of all publications for the last five years.

• *NSF Response.* This revised requirement is intended to reduce the burden on the Principal Investigator by having to prepare, and NSF to review, often lengthy curriculum vitae, the content of which is often marginally useful to reviewers and NSF staff. It will also replace long lists with fewer sheets of paper that include only ten or fewer relevant publications. The new format focuses attention on the scholarly publications specifically relevant to the application and furthers the overall quality of additional scholarly work.

b. *Names of Graduate Students.* NSF was asking that PIs submit a list of the names of graduate students with whom they have had an association as thesis advisor and postdoctoral scholars sponsored by the PI over the past five years, with a summary of the total number of graduate students advised and postdoctoral scholars sponsored.

• *Public Comment.* There was some objection to the data collection burden of this requirement.

• *NSF Response.* NSF will now only require that PIs identify those graduate students participating in the research projects specifically reported on in renewal applications.

c. *Inappropriate Reviewers.* To avoid potential biases or conflict of interests in merit review, PIs are asked to submit a list of scientists with whom they have had a long-term association and/or with whom they have collaborated on a project or a book, article, report or paper within the last 48 months; and their own graduate and postdoctoral advisors.

• *Public Comment.* Most comments stated that reviewers of NSF proposals should identify themselves if there was a conflict of interests or potential bias.

• *NSF Response.* This section has been revised to clarify and explain the requirements.

The conflict-of-interests regulations for NSF are very complex and not readily understood by casual reference in the course of reviewing a few proposals. NSF is responsible for making sure that documentation for recommending support is free of conflict of interests or other biases. Since NSF is responsible for avoiding situations where conflict of interests or other biases exist, it must be able to make those determinations and not rely solely on reviewers to do so.

Having this information when selecting appropriate reviewers permits NSF program officers to avoid obvious conflict of interests or bias situations. Previously, the information could be inferred from long, detailed publication lists. By reducing that requirement, potential conflicts could be overlooked. Further, failure to identify inappropriate reviewers in advance of review could delay the review process significantly.

Reading Room. All public comments are available for public inspection in room 208, at the above NSF address between the hours of 9 a.m. and 4 p.m.

Following is the full text of the revised NSF Important Notice No. 107, "Changes in NSF Proposal Format."

Important Notice to Presidents of Colleges and Universities and Heads of Other National Science Foundation Grantee Organizations

Notice No. 107.

Revision 1.

August 28, 1990.

This revision replaces Important Notice No. 107, issued September 11, 1989.

Subject: Changes in NSF Proposal Format.

The National Science Foundation is announcing two revisions in proposal format to underscore:

—The importance of education and human resources within research supported by the NSF; and

—The importance of quality of publications in the merit review process.

Importance of Education and Human Resources

Among the criteria established in 1981 by the National Science Board for the merit review of proposals is the effect of the proposed research on the infrastructure of science and engineering. This criterion permits reviewers to consider the potential of the proposal to improve the quality, institutional distribution, or effectiveness of the Nation's scientific and engineering research, education and work force.

NSF is especially concerned about the development of scientists and engineers for the future. To assure there is adequate information for merit review, PIs submitting proposals for renewed support will be asked to describe the relationship of the completed project to the infrastructure review criterion.

Importance of Quality of Publications in the Merit Review Process

Evaluation of scientific productivity places importance on the quality of published work rather than its quantity. To ensure this order of priority, NSF will now limit the number of publications considered in reviewing a grant application.

Reflecting these considerations, the following changes will apply to proposals submitted on or after January 1, 1991.

Proposal Format Changes

(1) Education and Human Resources: Each proposal for renewed support of a research project must include, as part of the required summary of results of the completed work, information describing its contribution to the development of human resources in science and engineering at the postdoctoral, graduate, and undergraduate levels. This may involve, but is not limited to, the role of the research in student training, course preparation, and siminars, particularly for undergraduates. Special accomplishments in the area of developing professional scientists and engineers from groups presently underrepresented should be described. Graduate students participating in the research should be identified by name.

Progress reports for continuing increments must also include the information described above, as appropriate.

(2) Biographical Sketches: In lieu of providing a complete list of publications for the past 5 years, senior personnel need only include a list of up to five publications most relevant to the research proposed and up to five other significant research publications. Items in press may be included.

Patents, copyrights, or software systems developed may be substituted for publications.

Publications listed may overlap with the continuing requirement for a list of all publications resulting from and citing prior NSF support. Only the list of up to ten publications will be considered in merit review.

NSF also requests that senior personnel identify those scientists, other than co-authors already listed, with whom they have had a long-term association and/or with whom they have collaborated on a project or a book, article, report or paper within the last 48 months; and their graduate and postdoctoral advisors. This information will help avoid delays in the review process caused by inadvertent selection of inappropriate reviewers.

These changes will be incorporated into the next revision of Grants for Research and Education in Science and Engineering (GRESE).

Erich Bloch,

Director.

Dated: September 21, 1990.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 90-22838 Filed 9-26-90; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Revision of SF 85 and SF 86 and of New Form SF 85p

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, chapter 35), this notice announces a proposed revision of two forms, and a new form, that collect information from the public.

The Standard Form 85, Questionnaire for Non-Sensitive Positions, is completed by appointees to Non-Sensitive duties with the Federal government. The information collected on this form is used by the Office of Personnel Management to initiate the background investigation required to determine basic suitability for Federal employment in accordance with 5 U.S.C. 3301, E.O. 10577 (5 CFR Rule V), or by various public laws. The number of respondents annually who are not Federal appointees is expected to be 1500 with total reporting hours of 630.

The Standard Form 86, Questionnaire for Sensitive Positions (For National Security), is completed by persons performing, or seeking to perform, national security duties for the Federal government. The information collected on this form is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required under E.O. 10450, Security Requirements for Government Employment, issued April 27, 1953; or by various public laws. The number of respondents annually who are not Federal employees is expected to be 42,600 with total reporting hours of 63,900.

The Standard Form 85P, Questionnaire for Public Trust Positions, is completed by persons seeking placement in positions that meet the moderate or high risk levels of the suitability and computer/ADP position criteria. The information collected on this form is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required to determine suitability for placement in public trust positions in accordance with 5 U.S.C. 3301, E.O. 10577 (5 CFR Rule V), issued 11/23/54, Office of Management and Budget Circular A-130, Management of Federal Information Resources, and its appendix III, Security of Federal Automated Computer Systems, issued 12/12/85, or by various public laws. The number of respondents annually who are not Federal employees is expected to be 1800 with total reporting hours of 1800.

For copies of this proposal call C. Ronald Trueworthy, on (202) 606-2261.

DATES: Comments on this proposal should be received by October 29, 1990.

ADDRESSES: Send or deliver comments to: Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, (202) 376-3800.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-22787 Filed 9-26-90; 8:45 am]

BILLING CODE 6325-01-M

Privacy Act of 1974; Proposed New Routine Use for an Existing System of Records

AGENCY: Office of Personnel Management.

ACTION: Notice of a proposed new routine use for an existing system of records.

SUMMARY: The purpose of this document is to propose a new routine use for the Office of Personnel Management's Civil Service Retirement and Insurance Records system (OPM/CENTRAL-1). The routine use, once in effect, will permit the disclosure of information from this system of records to enrollees in the Federal Employees Health Benefits Program (FEHBP) and their family members or authorized representatives and to health plans participating in the FEHBP.

The information will be used only for duly authorized reviews of disputed health benefits claims in accordance with 5 U.S.C. 8902(j). The information will not be disseminated for purposes other than for those required to adjudicate disputed health benefits claims.

DATES: Any interested party may submit written comments regarding this proposal. To be considered, comments must be received by October 29, 1990. Unless a notice to the contrary is published, this amendment will become effective 30 days after the end of the comment period.

ADDRESSES: Address comments to: Assistant Director for Retirement and Insurance Policy, Office of Personnel Management (Room 4351), 1900 E Street, NW., Washington, DC 20415. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ellie Goodwin, Insurance Policy Division, Office of Retirement and Insurance Policy, Retirement and Insurance Group, (202) 606-0775, ext. 207.

SUPPLEMENTARY INFORMATION: Federal law (5 U.S.C. 8902(j)) requires carriers participating in the FEHBP to pay for or provide a health service or supply if OPM finds that the enrollee or covered family member is entitled to the service or supply under the terms of the contract. Federal regulation (5 CFR 890.105(d)) sets up the procedure for OPM's review of disputed health benefits claims following a reconsideration by the carrier. Before beginning such a review, OPM asks that the patient (or the person with legal responsibility for the patient) complete form RI 77-6, "Medical Release and Privacy Act Authorization," which provides the patient's consent to the disclosure of the results of OPM's review to the health plan and to the enrollee (if the patient is someone other than the enrollee). The time required to obtain this consent can be an impediment to the prompt adjudication of disputed claims.

Federal law states, at 5 U.S.C. 552a(b), that such information may be disclosed without the patient's consent only if disclosure is in accordance with a published routine use. The following routine use, which will permit disclosure without consent, will be added to the OPM's system of records (OPM/CENTRAL-1). The current notice of this system is published at 55 FR 3816 et seq. (February 5, 1990).

The comment period on this addition to the existing routine uses of OPM/CENTRAL-1 ends at the close of business 30 days after the date of this notice. Unless a notice to the contrary is published, this new routine use, designated mm, will become effective 30 days after the end of the comment period.

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U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

OPM/CENTRAL-1

SYSTEM NAME:
Civil Service Retirement and Insurance Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

To disclose to a health plan participating in the Federal Employees Health Benefits Program (FEHBP) and to an FEHBP enrollee or covered family member or an enrollee or covered family member's authorized representative, in connection with the review of a disputed claim for health benefits, from information maintained within this system of records, the decision of OPM regarding the disputed claim review.

[FR Doc. 90-22870 Filed 9-26-90; 8:45 am]
BILLING CODE 6325-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2452; Amendment #1]

Iowa, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated September 13, 14, and 17, 1990, to the President's major disaster declaration of September 6, to include the Counties of Bremer, Clinton, Howard, Johnson, Pottawattamie, Winneshiek, and Worth in the State of Iowa as a disaster area as a result of damages caused by severe storms and flooding between July 25 and August 31, 1990.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Cass, Harrison, Louisa, Muscatine, Shelby, Scott, and Washington in the State of Iowa; Freeborn, Fillmore, Houston, and Mower in the State of Minnesota; Douglas, Sarpy, and Washington in the State of Nebraska; and Carroll, Rock Island, and Whiteside in the State of Illinois, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The number for economic injury for the State of Minnesota is 713400 and for the State of Illinois the number is 712100.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 5, 1990, and for economic injury until the close of business on June 6, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 19, 1990.

Michael E. Deegan,
Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90-22844 Filed 9-26-90; 8:45 am]
BILLING CODE 8025-01-M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of the Little Rock, will hold a public meeting at 10 a.m. on Tuesday, October 16, 1990, at the Capital Hotel, 111 W. Markham, Little Rock, Arkansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald L. Libbey, District Director, U.S. Small Business Administration, 321 W. Capitol, Suite, 601, Little Rock, Arkansas 72201, phone (501) 378-5871.

Dated: September 20, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 90-22840 Filedd 9-26-90; 8:45 am]
BILLING CODE 8025-01-M

Region IX Advisory Council Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of the Honolulu, will hold a public meeting at 9:30 a.m. on Wednesday, October 17, 1990, at the Prince Kuhio Federal Building, Conference Room 4113A, 300 Ala Moana Boulevard, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, phone (808) 541-2990.

Dated: September 20, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 90-22841 Filedd 9-26-90; 8:45 am]
BILLING CODE 8025-01-M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting from 1 p.m. to 5 p.m. on Tuesday, October 23, 1990, at Metro Tech Conference Center, 1900 Springlake Drive, Oklahoma City, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Truman Branscum, District Director, U.S. Small Business Administration, 200 NW. 5th Street, Suite 670, Oklahoma City, Oklahoma 73102 phone (405) 231-5237.

Dated: September 20, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 90-22842 Filed 9-26-90; 8:45 am]
BILLING CODE 8025-01-M

Region III Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Washington, DC, will hold a public meeting at 10 a.m. on Tuesday, October 2, 1990, at 1441 L Street, NW., 2nd Floor Conference Room, Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald A. Stedtler, District Director, U.S. Small Business Administration, Washington District Office, P.O. Box 19993, Washington, DC 20036, phone (202) 634-1500, extension 205.

Dated: September 20, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 90-22843 Filed 9-27-90; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1271]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Fire Protection; Meeting

The Working Group on Fire Protection of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 12, 1990 at 9 a.m. in room 6319 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to review the outcome of the 35th Session of the International Maritime Organization Subcommittee on Fire Protection (FP), which was held July 2 to 6, 1990 and develop initial U.S. response to those items which will be considered at the next IMO Fire Protection Sub-Committee meeting. There were three items discussed at the 35th Session which could have a major impact on the industry. These are: the role of the human element in marine casualties, major new regulations for passenger vessel design, and upgrading of fire protection on older passenger vessels not meeting SOLAS 74, as amended. This could include eventual phasing out of these older vessels.

Additional items of discussion will include the following: fire drills and on board training, formulation of fire test procedures for ignitability of primary deck coverings; testing criteria for mattresses and bedding, criteria for smoke and toxicity, revision of resolution A.517(13) (fire test procedures for A, B, and F Class bulkheads); and round robin tests of PV valves (DPPF's); analyses of research results in smoke control; analyses of fire casualty records; review of SOLAS requirements related to the use of Halons and its possible accelerated phase out; fire main and fire pump sizing; use of Halon 2402; interpretations of and amendments to regulations of SOLAS as approved by the Maritime Safety Committee; materials other than steel for pipes; fire-protection systems for passenger ship safety (this includes: maximum stowage height of survival craft, fire protection for survival craft, low-level lighting and escape route markings, main vertical zone length, "A-60" main vertical zones, uniform application of amended regulations II-1/8 and 20 of SOLAS, openings in "B" class corridors and bulkheads, fire doors in main vertical zone bulkheads, dead-end corridors, retrofitting of sprinkler and fire detection systems in existing ships); guidelines for the performance and testing criteria, and surveys of foam concentrates; protection of cargo spaces in non-purpose-built ships in which casks containing irradiated nuclear fuel are stowed; review of ventilation requirements of vehicle decks on ro-ro ships during loading and unloading; vapor emission control systems; provisions for helicopter facilities on ships; international shore connection for fire extinguishing gases; revision of fire protection requirements in the 1977 Torremolinos Convention; and the work program for FP 36.

Members of the public are invited to attend this meeting.

For further information contact Ms. Murtagh or Ms. Kupferman at (202) 267-2997, U.S. Coast Guard Headquarters (G-MTH-4), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: September 17, 1990.

Thomas J. Wajda,
Chairman, Shipping Coordinating Committee.

[FR Doc. 90-22861 Filed 9-26-90; 8:45 am]
BILLING CODE 4710-07-M

Office of the Acting Secretary

[Public Notice 1270, Delegation of Authority No. 185]

Delegation to the Chief of Transportation of the Authority To Request Insurance From the Department of Transportation Under the Provisions of Title XIII of the Federal Aviation Act of 1958, as Amended

By virtue of the authority vested in me as Acting Secretary of State, including by subsections 1304 (a) and (b) of the Federal Aviation Act of 1958, as amended, I hereby delegate to the Chief of Transportation, and any person acting in that position due to absence, disability or vacancy in office, the function delegated to me of requesting insurance from the Department of Transportation.

Dated: September 14, 1990.

Lawrence S. Eagleburger,
Deputy Secretary of State.

[FR Doc. 90-22860 Filed 9-26-90; 8:45 am]
BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1990, Public Law 101-164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish announcement in the Federal Register every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9301, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 forumla program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Livermore-Amador Valley Transit Authority San Francisco-Oakland, CA	CA-03-0334-00	$5,256,155	08/29/90
Massachusetts Bay Transportation Authority Boston, MA	MA-03-0157-00	53,356	08/29/90
Red Rose Transit Authority Lancaster, PA	PA-03-4007-00	72,336	09/10/90
Milwaukee County Milwaukee, WI	WI-03-0042-02	1,757,002	08/3/90

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
City of Phoenix Phoenix, AZ	AZ-90-X025-00	$15,840,930	08/15/90
Livermore-Amador Valley Transit Authority San Francisco-Oakland, CA	CA-90-X368-00	5,017,632	08/30/90
San Francisco Bay Area Rapid Transit District San Francisco-Oakland, CA	CA-90-X371-00	1,275,763	09/04/90
Greater Bridgeport Transit District Bridgeport, CT	CT-90-X165-09	1,059,600	08/29/90
Transit Authority of the Lexington-Fayette Urban County Govt. Lexington-Fayette, KY	KY-90-X050-00	1,750,293	09/12/90
Suburban Mobility Authority for Regional Transportation Detroit, MI	MI-90-X121-00	447,043	08/17/90
Kalamazoo Metro Transit Kalamazoo, MI	MI-90-X123-01	142,209	09/05/90
Capital Area Transportation Authority Lansing, MI	MI-90-X124-00	3,218,086	09/05/90
York Area Transportation Authority York PA	PA-90-X196-00	699,426	08/08/90
Spokane Transit Authority Spokane, WA	WA-90-X104-00	2,830,939	08/21/90

Brian W. Clymer,
Administrator.
[FR Doc. 90-22834 Filed 9-26-90; 8:45 am]
BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 188
Thursday, September 27, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 F.R. 35756.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., Friday, September 28, 1990.

CHANGE IN THE MEETING: The Commission has cancelled the closed meeting to discuss a rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90-22956 Filed 9-25-90; 11:10 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, September 28, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90-22960 Filed 9-25-90; 11:10 am]
BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, September 27, 1990, 10:00 a.m.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
[FR Doc. 90-22995 Filed 9-25-90; 12:43 pm]
BILLING CODE 6355-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 90-22468.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, September 27, 1990; 10:00 a.m.

Meeting Open to the Public

The Following Item Has Been Added to the Agenda:

AO 1990-10—
Carolyn F. Bigda on behalf of the Texas Air Corporation PAC

DATE AND TIME: Tuesday, October 2, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, October 3, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be Open to the Public.

Oral Presentation by the Larouche Democratic Campaign, Pursuant to 11 C.F.R. § 9038.2(c)(3).

DATE AND TIME: Thursday, October 4, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be Open to the Public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Draft Advisory Opinion 1990-18:
Marshall D. Chinen on behalf of the Oahu Educational Employees' Federal Credit Union in Honolulu, Hawaii
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer
Telephone: (202) 376-3155.

Hilda Arnold,
Administrative Assistant, Office of the Secretariat.
[FR Doc. 90-23064 Filed 9-25-90 3:40 p.m.]
BILLING CODE 6715-01-M

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Corrections

Federal Register
Vol. 55, No. 188
Thursday, September 27, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0687]

Truth in Lending; Home Equity Disclosure and Substantive Rule

Correction

In rule document 90-21974 beginning on page 38310 in the issue of Tuesday, September 18, 1990, make the following corrections:

§ 226.5b [Corrected]

1. On page 38312, in the second column, in § 226.5b(f)(3)(i), in the second line "extension" should read "extensions".

§ 226.9 [Corrected]

2. On the same page, in § 226.9(c)(3), in the same column, in the fourth line from the end, "actions" should read "action".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 205

[Docket No. 88N-0258]

RIN 0905-AC81

Applicability to Blood and Blood Components Intended for Transfusion; Guidelines for State Licensing of Wholesale Prescription Drug Distributors

Correction

In proposed rule document 90-21617 beginning on page 38027 in the issue of Friday, September 14, 1990, make the following correction:

On page 38027, in the first column, under the **DATES** caption, "October 13, 1990" should read "November 13, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR-3, Notice No. 2]

RIN 2130-AA44

Railroad Accidents/Incidents; Reports Classification and Investigations

Correction

In rule document 90-21508 beginning on page 37818 in the issue of Thursday, September 13, 1990, make the following corrections:

1. On page 37818, in the third column, in the third full paragraph, in the third line "railroad's" should "railroads' ".

2. On the same page, in the same column, in the next to last line, "issued" should read "issue".

3. On page 37819, in the third column, in the next to last line, insert "to" before "include".

4. On page 37823, in the second column, in the first full paragraph, in the seventh line, "rule" should read "rules".

5. On page 37825, in the second column, in the second full paragraph, in the next to last line, "constituting" was misspelled.

6. On page 37826, in the third column, in the table-of-contents entry for § 225.12, in the fourth line "Attachment" should be capitalized.

§ 225.12 [Corrected]

7. On page 37827, in § 225.12(g)(3), in the third column, in the sixth line from the end of the paragraph "PRS-13" should read "RRS-13,"

BILLING CODE 1505-01-D

federal register

Thursday
September 27, 1990

Part II

Department of Health and Human Services

Office of Human Development Services

45 CFR Parts 1355, 1356 and 1357

Title IV-B and Title IV-E of the Social Security Act: Data Collection for Foster Care and Adoption; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1355, 1356 and 1357

RIN 0980-AA 35

Title IV-B and Title IV-E of the Social Security Act: Data Collection for Foster Care and Adoption

AGENCY: Office of Human Development Services, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is issuing this Notice of Proposed Rulemaking in order to implement the requirements of section 479 of the Social Security Act. This section requires the Secretary to publish regulations that implement a system for the collection of adoption and foster care data in the United States. All States that administer State plans under title IV-B and title IV-E of the Social Security Act are subject to the proposed rule.

DATE: Comments must be received on or before December 20, 1990.

ADDRESSES: Comments should be mailed to the Associate Commissioner, Children's Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, Attention: Dan Lewis.

Comments received in response to this notice may be reviewed in room 2070, Switzer Building, 330 "C" Street, SW., Washington, DC 20201, between the hours of 9 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays, beginning two weeks after the close of the comment period.

In addition, any comments pertaining to the information collection requirements in this proposed rule should be filed with the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503. ATTN: Angela Antonelli, Desk Officer for the Office of Human Development Services.

FOR FURTHER INFORMATION CONTACT:
Dan Lewis, (202) 245-0618,
or
Beverly Stubbee, (202) 245-0821.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Title: Adoption and Foster Care Analysis and Reporting System.

Description: The proposed data collection system is designed to collect uniform, reliable information on all children, under the authority of the State title IV-B/IV-E agency, who are in foster care or who are adopted. The collection of adoption and foster care data is mandated by section 479 of the Social Security Act. The Department will use this information to respond to Congressional requests for current data on children in foster care or who have been adopted and to respond to questions and requests from other departments and agencies, the General Accounting Office, the Office of Inspector General, national advocacy organizations, States and others.

The Department will aggregate the data both by State and nationally and will issue quarterly summaries to each of the States and to any other group or organization on request. In addition, the data will be analyzed within the Department and used for preparing Congressional testimony and reports; proposing policy and legislative changes; determining foster care and adoption trends and projections; and making budget forecasts. The data also will be made available to researchers and evaluators.

Description of Respondents: State Title IV-B/IV-E Agencies.

Estimated Annual Reporting and Recordkeeping Burden:

The public reporting burden for the recordkeeping and reporting of information required in this proposed regulation, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and submitting the data in the required formats is as follows:

Section No.	Annual number of respondents	Average annual frequency	Average burden hours per response [3]	Annual burden hours
§ 1355.40(a) Recordkeeping:				
Foster Care:				
In care (336,000)	204	4	1,323.14	[4] 269,920
Entering care (253,000)	204	4	1,860.29	379,500
Exiting care (229,000)	204	4	112.25	22,900
Subtotal Foster Care				672,320
Adoption—Mandatory (35,000)	204	4	85.78	17,500
Adoption—Subsidy Cessation (5,000)	204	4	2.45	500
Adoption—Voluntary (115,000)	204	4	281.86	57,500
Subtotal Adoption				75,500
Total Recordkeeping Burden				747,820
§ 1355.40(b) Reporting:				
Foster Care	[1] 5,004	4	8	40,032
Adoption—Mandatory	[1] 5,004	4	4	20,016
Adoption—Cessation	[1] 5,004	4	1	5,004
Adoption—Voluntary	[1] 5,004	4	3	15,012
Total Reporting Burden				80,064
Total Annual Burden				827,884

[1] Number of respondents is based on 51 States reporting four times annually.
[2] Average burden is for each quarterly response.
[3] This number reflects both the start-up (initial input) activity and maintenance activity averaged over the first three years.
[4] The number in this column takes into account State supervised, County administered programs where the counties must submit information to the State prior to its aggregation and submittal to OHDS.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Children's Bureau, Administration for Children, Youth and Families, PO Box 1182, Washington DC 20013 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503. ATTN: Angela Antonelli, Desk Officer for the Office of Human Development Services.

II. Summary of the Notice of Proposed Rulemaking

Section 479 of the Social Security Act (the Act), 42 U.S.C. 679, directs the Secretary to promulgate regulations for the implementation of a system to collect data relating to adoption and foster care in the United States.

This Notice of Proposed Rulemaking (NPRM) proposes that State agencies administering or supervising the administration of titles IV-B and IV-E of the Act must implement data collection systems and report quarterly on data elements set forth in this proposed rule. States must report data on all children for whom the State agency is responsible who are in foster care or who have been adopted.

The proposed data elements and methodology for data collection are described in appendices to the proposed rule. These Appendices define the data elements and propose the specifications for submission format, record layouts and quality standards for data, including logic edits to assess the internal consistency of the data.

The NPRM proposes that States whose reports for any given quarter do not fully meet the reporting standards will be considered to be substantially out of compliance with the title IV-E State plan. Such States will be assessed penalties each quarter from title IV-E administrative expenditures. A finding of substantial noncompliance will be made when States do not report data or report data that are late, erroneous or otherwise defective. Penalties set forth in this proposed rule will be applied in all cases save those in which a State can document that an act of God, or some other circumstances beyond its control prevented the collection and transmission of the required data.

Finally, the NPRM proposes that the States' costs for the establishment and maintenance of data collection systems be matched as an administrative cost under title IV-E at the matching rate of 50 percent. The proposed rule requires States to allocate the costs of data collection and limits the amount a State may claim for the initiation, implementation and operation of a data collection system to a proportionate share of the children adopted and in foster care who are eligible under title IV-E.

III. Program Description

Title IV-B of the Act, Child Welfare Services, is a formula grant program. Each State receives a basic grant representing its share of $141 million and is eligible for a share of incentive funds beyond the basic grant if it provides certain protections, as required by section 427 of the Act, for children in foster care. The basic grant and the incentive funds provide States with Federal support for a wide variety of State child welfare services including preplacement preventive services to strengthen families and avoid placement of children, services to prevent abuse and neglect, and to provide foster care, and adoption services. The basic grant and incentive funds can be used to support services regardless of the income of the families and children who are in need of such services.

Title IV-E of the Act is an entitlement program whereby there is Federal financial participation (FFP) in the costs of foster care maintenance and adoption assistance payments. Federal matching of State foster care maintenance payments is available for children in foster care who meet certain eligibility criteria that are based, in part, on the child's eligibility under the Aid to Families With Dependent Children (AFDC) program. The adoption assistance program under title IV-E is designed to assist States in placing special needs children with adoptive families by the provision of an adoption assistance payment. In order to be eligible for this program, a child must be eligible for AFDC, title IV-E foster care or Supplemental Security Income for the Blind and Disabled (SSI) and must meet the statutory definition of "a child with special needs" according to section 473(c) of the Act.

Under section 473(c), the State title IV-E agency makes a determination as to whether or not a child has special needs, according to the following factors: (1) The child cannot or should not be returned to the home of the parents; (2) there exists a specific factor or condition (such as the child's age, ethnic background, emotional, physical or mental disability, or membership in a minority or sibling group) because of which it is reasonable to conclude that the child cannot be placed for adoption without providing adoption assistance; and, (3) except where it would be against the best interests of the child, a reasonable, but unsuccessful, effort has been made to place the child without adoption assistance.

There are several Federal programs which fund foster care and adoption assistance payments and services. For FY 1990, $1.2 billion was appropriated for title IV-E foster care maintenance payments and $125 million for title IV-E adoption assistance. Federal funds appropriated for child welfare services under title IV-B for the basic grant and incentive awards amounted to $253 million in FY 1990. Another major funding source to States for social services is the Social Services Block Grant (title XX of the Act), totaling $2.8 billion in FY 1990. While no specific figures are available on the amounts allocated by the States to adoption and foster care services under title XX, in FY 1988 31 States used some of these funds for adoption services and 27 States provided foster care services with these funds.

According to State agency information gathered by the American Public Welfare Association (APWA) under the Voluntary Cooperative Information System (VCIS), there were approximately 282,000 children in foster care on the last day of 1986. In fiscal year 1989, States claimed Federal funds under title IV-E for a monthly average of 152,000 children in foster care.

Although title IV-E of the Act is the major single source of Federal support for foster care and adoption assistance payments, over half the funds for adoption and foster care services come from State and local governments and the private sector.

In 1985, the most recent year for which complete data have been analyzed, a total of approximately 276,000 children were in foster care. Of these children, 37,264 had a plan for adoption and 16,197 had parental rights terminated and were waiting for adoptive homes.

IV. Past and Current Data Collection Efforts

From the late 1940's through the early 1970's, the Children's Bureau (and later, the former Social and Rehabilitation Service) collected data on foster care and adoption from the States on an annual and voluntary basis. When those voluntary efforts were terminated, national data on foster care and adoption were not available. However, the need for reliable and consistent data has always been a critical concern, especially for planning services and developing policy.

In 1978, the Child Abuse Prevention and Treatment and Adoption Reform

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Act (Pub. L. 95-266) was enacted. It required the Secretary to provide (either directly or by grant or contract) for the establishment and operation of a national adoption and foster care data gathering and analysis system. 42 U.S.C. 5113. Before 1976, there had never been a legislatively mandated national data collection system for foster care and adoption with standards and methodology set by Federal law and regulation.

In 1980, landmark legislation reforming the foster care system and initiating Federal financial participation in adoption assistance payments was passed. This Act is known as the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272), 42 U.S.C. 670. It contains two sections which address the subject of data collection. Section 476 of title IV-E of the Act states that, "Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care." In addition, States which apply for additional incentive funds under section 427 of title IV-B must have implemented and be operating a statewide information system that can readily identify the status, demographic characteristics, location and goals for placement of every child in foster care within the preceding 12 months. This requirement applies to all children in foster care under the responsibility of the State title IV-B/IV-E agency, not just those children eligible for title IV-E payments.

As indicated in the hearings prior to the passage of Public Law 96-272 (see *Congressional Record* for July 26, 1977, October 25 and 29, 1979), the impetus behind the passage of the Adoption Assistance and Child Welfare Act was the belief that the public child welfare system has become a receiving and holding system for children in foster care. *The National Study of Social Services to Children and Their Families*, conducted in 1977, documented that thousands of children remained in foster care with little hope of being reunited with their parents or placed with adoptive families. The prospect of adoption was particularly bleak if the child was a member of an ethnic or racial minority group, an older child, a member of a sibling group, or mentally or physically disabled.

Repeatedly in hearings and in testimony before the Congress, child advocates and practitioners expressed concern that the public child welfare systems in many of the States did not know how many children were actually in foster care; how long they had been in care; where they resided; their race, age, sex and special needs; or the plan for each child. They indicated that, although this was a problem at the State and local level, national attention and incentives were needed to focus attention on this lack of information and provide ways to encourage States and localities to develop this information. If the goal of permanency for each child was to be encouraged and achieved, national attention needed to be called to the importance of knowing the locations and characteristics of children in foster care so that those who could not return home might find families through adoption.

In 1982, in response to the legislative requirements in Public Law 95-266 and Public Law 96-272, the Department, through a grant to the American Public Welfare Association (APWA), implemented the Voluntary Cooperative Information System (VCIS) which collects aggregate information annually about children in foster care and special needs adoption from State child welfare agencies.

This voluntary system has been characterized by variation from State to State in reporting periods, the lack of common definitions for data elements and services, and inconsistent methodologies in reporting. In addition, the nature of the aggregate data limits the analyses that can be performed and does not have sufficient usefulness for purposes of planning or policy development at either the Federal or State levels.

V. Legislation Establishing New Data Collection Requirements

Section 9043 of the Omnibus Budget Reconciliation Act (OBRA) of 1986 (Pub. L. 99-509) amended title IV-E of the Social Security Act by adding section 479. This section sets forth directives for establishing and implementing an adoption and foster care data collection system. The law requires:

(1) The establishment of an Advisory Committee to the Secretary, the composition and tasks of which are mandated by the Act, and which include a Report to the Secretary and to the Congress on the results of a study on the development of a data collection system;

(2) The submission to the Congress, by the Secretary, of a subsequent report that, based on the Advisory Committee's Report, recommends a method of establishing, administering and financing a system for data collection on foster care and adoption in the United States; and

(3) The promulgation of regulations that set forth the requirements governing this data collection system.

Although prior legislation authorized data collection efforts, the 1986 OBRA amendments clearly reflected Congressional interest in establishing, administering and financing a system for the collection of data with respect to adoption and foster care.

The Advisory Committee on Adoption and Foster Care Information was established by the Secretary and included representation from private, nonprofit organizations, organizations representing State and local governmental agencies, Federal agencies and other major groups interested in adoption and foster care, as required by the statute. The Advisory Committee was to:

- Identify the types of data necessary to assess on a continuing basis the incidence, characteristics, and status of adoption and foster care in the U.S.;
- Develop appropriate national policies with respect to adoption and foster care;
- Evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;
- Assess the validity of various methods of collecting data with respect to adoption and foster care; and
- Evaluate the financial and administrative impact of implementing each method.

The Advisory Committee concluded its work and submitted its study findings and recommendations to the Secretary by the legislative deadline of October 1, 1987. Highlights of the report are summarized below:

- Despite some progress over the past decade, there remains a serious shortfall in the availability of adoption and foster care information, particularly for policy purposes.
- The VCIS, initiated by the Federal government in 1982 in concert with the APWA, is the major vehicle for collecting child welfare and adoption data through the voluntary participation of the States. However, not all States have provided reports over the years, reporting periods differ, common definitions and methodologies are lacking, and the nature of aggregate data limits the analyses that can be carried out.
- The VCIS should be phased out gradually so as to avoid a gap in the availability of data, and a mandatory data collection system should be created with separate components for adoption and foster care.
- Adoption data should be collected on all legalized adoptions, including relative and non-relative adoptions and adoptions under both public and private auspices, as well as privately arranged adoptions.
- Foster care data should be collected on all children under the care and responsibility of the State child welfare agency. The foster care data system should also include children placed privately in licensed private agencies.
- Foster care information should include demographic information on the child (sex, birth date, race, ethnicity, previous stays in foster care, service goals, availability for adoption, duration of care, funding sources, and what happens to the child after the period of foster care is concluded). Each child's data should also include relevant demographic information about that child's biological and foster parents.
- Similar information should be collected for all adoptions at the time the adoption is legalized.
- Special provisions need to be made for Indian children who are affected by requirements in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, especially section 1951 mandating submission of adoption data to the Bureau of Indian Affairs (BIA) of the Department of the Interior. Indian children served by the tribe would be reported to the BIA which would, in turn, report to ACYF.
- Individual child case data should be the basis of the data collection. The data must be kept confidential as the purpose of the data collection system is the conduct of program and policy analyses and not the tracking of individual children at the national level.
- Individual child and family identifiers should be eliminated in the data provided for Federal reporting purposes to preserve confidentiality.
- Nationwide data should be a subset of the same data used by State and local agencies in managing adoption and foster care programs on a day-to-day basis.
- Legislation should be enacted to require the Governor of each State to designate a lead institution to compile and transmit to ACYF Statewide data on adoptions.
- Foster care and adoption data should be maintained in computer files at the State level and the data transmitted electronically to ACYF on a quarterly basis.
- ACYF should generate reports on an annual basis to coincide with the Federal fiscal year. Summary reports should also be produced each quarter so data would be available for use by all States that would coincide with each State's annual fiscal period.
- There should be appropriate penalties for noncompliance and incentives to encourage timely compliance.
- Incentives should include, at a minimum, new Federal funding for 100 percent of add-on developmental expenses incurred by States in the transition to the new data collection system, plus Federal participation at 50 percent for ongoing operational costs.
- ACYF should also provide training and technical assistance support to the States in establishing the data collection system, commencing in FY 1989. An ongoing work group should be established by ACYF so that there is consultation with appropriate State officials as well as representatives from appropriate groups on the planning and design of the new data collection system.
- ACYF should be encouraged to conduct a variety of special studies to complement information compiled under the data collection system. Data from the system would contribute to the conduct of many of those studies.

The Secretary, as required by section 479(b)(1) of the Act, reviewed the Advisory Committee's Report and submitted to the Congress a report with recommendations for a new system. The Secretary's report proposed a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States; evaluated the feasibility and appropriateness of collecting data with respect to privately arranged foster care placements, adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies; and evaluated the impact of the system on the agencies with responsibility for implementing it.

This proposed rule is based on the Secretary's report and his recommendations to the Congress. The Secretary's report indicated that reporting frequency would be at least annually, and no more frequently than each quarter. This NPRM proposes quarterly reporting. All other aspects of the Secretary's proposed system are included in this NPRM.

Section 479 directs the Secretary to promulgate regulations that provide for full implementation of a data collection system for adoption and foster care no later than October 1, 1991.

According to section 479, this data collection system shall:

(1) Avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) Assure that any data that are collected are reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) Provide comprehensive national information with respect to—

- Demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,
- The status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),
- The number and characteristics of children placed in or removed from foster care and children adopted or with respect to whom adoptions have been dissolved, and
- The extent and nature of assistance provided by Federal, State and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) Utilize appropriate requirements and incentives to insure that the system functions reliably throughout the United States.

VI. Overview of Proposed Data Collection System

We are proposing several changes to the existing regulations in 45 CFR parts 1355, 1356 and 1357, as well as a new § 1355.40 entitled Foster care and adoption data collection. The new section, § 1355.40, along with appendices A through G, implement the data collection system as required by section 479 of the Act.

The objective of the proposed data collection system is to collect uniform, reliable information on all children, under the authority of the State title IV-B/IV-E agency, who are in foster care or who are adopted. The data to be collected are a subset of data States currently record on each affected child in order to provide for good case management. A simple electronic reporting procedure is being proposed whereby States will copy ("dump") the latest information on all children and submit it quarterly to the Department in an electronic form. This information, while child-specific, will not be reported in such a way that comprises the confidentiality of any client served by the reporting agency.

The Congress expects the Secretary to implement a system that can produce reliable and timely data on children in foster care and children who are adopted. In order to meet that expectation, we are proposing that failure to meet the levels of timeliness, completeness and internal consistency of the data proposed in this rule constitute substantial noncompliance with the State's title IV-E plan, and that

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the penalties outlined in this proposed regulation will be imposed until such time as the State establishes to the satisfaction of the Secretary, acting through ACYF, that it can fully comply with the State plan.

Recognizing that States will incur costs for establishing, operating and maintaining their data collection systems, the proposed rule makes clear that a portion of the costs of the system may be claimed as an administrative cost of title IV–E with Federal matching funds available at a 50 percent rate of reimbursement.

In addition, the Department is making arrangements to provide technical assistance, to any States desiring it, on the planning, development and implementation of the required system.

Because of our concern that such a system be implemented in the most effective manner possible, we encourage States, organizations and individuals to comment on the proposed data collection system, including:

- Frequency of reporting.
- 100 percent dump vs. sampling.
- Cost and time estimates for implementation.
- Penalties and sanctions.
- Five percent missing data standard.
- Reporting and administrative burden on States.
- Data collection and transmission method.

A. Data Elements and Definitions

There are four appendices attached to this proposed rule which contain the data elements and definitions for the information reported by the States. The terms used in each appendix are similarly defined and each appendix contains its own glossary.

Appendix A (Foster Care Data Elements), Appendix B (Adoption Data Elements—State Agency Form) and Appendix C (Adoption Data Elements—Subsidy Cessation—State Agency Form) contain the data elements required to be reported by States to the Department on a quarterly basis. Also included is Appendix D (Adoption Data Elements—General Adoption Form). The use of this appendix is optional because reporting on these data elements is voluntary. It contains the data element set for all adoptions completed in the State, including those with which the State agency had no involvement. For States which voluntarily report using this optional appendix, the data transmitted under appendix D will be processed by the Department.

For each child in foster care, the set of data elements in appendix A must be submitted each quarter. For adoption, the data in appendix B and appendix C must also be submitted quarterly on all children adopted that quarter as well as any adopted child whose adoption assistance ceased during that quarter. If States choosing to use optional appendix D, they should report quarterly.

A reporting number will be used to identify each child included in the State's report. The identity of the individual children, however, will be known only by the reporting State. This reporting number must be unique to each child and remain with the child throughout every reporting quarter. This same number must be used whenever the child re-enters the foster care or adoption system in that State.

In order to establish a standard reporting period, we propose that the child-specific information, along with a summary file of the quarter's data, shall be submitted for the foster care part and the adoption part of the report within 45 days of the quarter's end. The data must reflect the status of the child on one of the first five calendar days after the end of each quarter on which the State is reporting.

B. Submission of the Data

States must transmit the data on all children for whom they must report within 45 days following the end of the quarter on which they are reporting, or else the State will be cited or substantial noncompliance with the title IV–E State plan. In permitting a 45 day period for transmission of the data, we recognize that each State will have to follow its own system for internal clearance and data validation on the data report which may take several weeks to complete.

The way the data is to be submitted is described in appendix E. Appendix E proposes an electronic method, using either a modem or diskette for transmission, and describes the specifications that are to be used. Emphasizing the importance of the uniformity of data submission, the rule proposes record layouts (appendix F) for the individual child report as well as for the summary file of the quarterly child-specific data.

C. Standards for Compliance

Standards for compliance will be based on three criteria: timeliness of submission, adequacy of information, and timeliness of data entry.

Regarding timeliness of submission, if a foster care report is not submitted within 45 days, it becomes virtually useless because the data are supplemented with more current information in less than 90 days. A late submittal is considered the same as no submittal and invokes a penalty.

States which do not report adoption data in a timely way, i.e., within 45 days after the end of the reporting quarter, are subject to a compliance penalty. Furthermore, the penalty will continue to be assessed each subsequent quarter until the missing adoption data are transmitted and the Secretary is reasonably satisfied that the noncompliance will not recur.

The standards by which judgements about the adequacy of the information will be made are described in appendix G. A variety of internal data verification checks will be used to judge the internal coinsistency of the quarterly data submissions. The level of missing, inconsistent and untimely data should not be so great as to raise concerns about the quality of the State's data submission. Therefore, as long as each element has no more than five percent missing data, including data initially missing and data converted to missing because they failed internal consistency tests, no compliance action will be taken.

Regarding the third criterion, this NPRM proposes a standard of compliance for timeliness of data entry only in relation to foster care data. A minimum of 60 percent of the children reported as new entrants in foster care for the quarter must have actually entered foster care during that quarter and 60 percent of the children reported as exiting foster care in the quarter must have actually left foster care during the quarter. Using this standard, States are permitted to be approximately one month behind in data entry while at the same time assuring that most of the data are for the quarter for which the data are reported.

This standard is not applicable to adoption reports. We believe that the necessity to have the adoption data, even if they are late, outweighs the need to have them on time.

D. Plan Compliance and Penalties

The existence of reliable complete data on children in foster care and completed adoptions in essential to the data collection and information system envisioned by the Congress when it passed section 479 of the Act. In order to implement a reliable information system, States must be encouraged by some means to report fully in a timely way. The NPRM proposes to make the submission of the required data and the form and method of its transmission a matter of compliance with the provisions of the State plan under title IV–E. A finding of substantial noncompliance with the State plan for title IV–E will be made when States do not report data or report data that are late, erroneous or otherwise defective. As a result, compliance action will be initiated by the Department in all such cases. When it is determined that a State has failed to comply substantially with the State plan under title IV–E, after notice and opportunity for a hearing, the penalties set forth in this proposed rule shall be imposed. The penalties shall endure until such time that the Department is assured that there will be no recurrence of the noncompliance.

Without complete and accurate collection and transmission of data, the goal of obtaining reliable timely data from the information system on adoption and foster care cannot be met. The Advisory Committee recommended in its report that there be appropriate penalties for noncompliance and incentives to encourage timely compliance. Legislative authority does not extend to providing incentives; however, there is authority in the existing statute to apply sanctions based on substantial noncompliance with the State plan. We believe that when States are faced with the possibility of a finding of substantial noncompliance with the State plan, and the consequent imposition of penalties being proposed, they will be strongly motivated to ensure that correct data are submitted within the specified timeframes.

In developing the proposed system of penalties, we analyzed information related to compliance matters in the program of child welfare. Based on an analysis of appeals to the Departmental Appeals Board (DAB) related to the denial of incentive funds available under section 427 of the Act, we found that, in cases where States appealed, the amount of section 427 funds in jeopardy was at least twice as likely to exceed the range of 15 to 20 percent of the total IV–B allotment than in States which did not appeal.

It can be concluded that, once the amount of money at risk reaches a significant level (somewhere between 15 to 20 percent), a State considers such a loss of funds sufficient to initiate action to attempt to prevent the loss. We intend that the penalties for not complying with the requirements of the data collection system will be such that States will not want to risk the loss of funds and will be encouraged to report the foster care and adoption data accurately and in a timely way.

No compliance action (and no penalties) will be imposed during the first two years of reporting. Years One and Two (Federal fiscal years (FFY) 1992 and 1993) provide States a period when errors or mistakes may be made without fear of penalty. This period gives States the opportunity to refine their systems and take corrective action in order to avoid compliance action and penalties in the future.

During the third year of reporting (FFY 1994), States will be required to follow completely and fully the requirements for collecting and reporting data on adoption and foster care. However, the proposed penalties will be assessed at a lesser rate in Year Three. Should there be a Departmental finding of substantial noncompliance because data reports have greater than five percent missing data in any element, or do not meet the timeliness standard for any quarter during Year Three, the Department will assess fixed penalties for substantial noncompliance cumulative to a maximum of 10 percent of the portion of a State's title IV–E administrative expenditures subject to the penalty. For Year Four (FFY 1995) and thereafter, a finding of substantial noncompliance will result in fixed penalties being assessed cumulative to a maximum of 20 percent of that portion of a State's title IV–E administrative expenditures, subject to the penalty.

The penalties will be imposed not only for the quarters in which the State does not meet the requirements, but may continue until the Secretary is satisfied that the noncompliance will not recur. Therefore, States may incur penalties for quarters in which the data are reported without errors if the Secretary believes that it is necessary in order to assure that there will not be a recurrence of the noncompliance.

The standards by which judgments about the adequacy of the information will be made are described in appendix G. A variety of internal data verification checks will be used to judge the internal consistency of the quarterly data submissions. Failure to meet these standards or the standard for timeliness for the foster care data reports is considered a substantial failure to meet the provision of the title IV–E State plan.

VII. Section-by-Section Discussion of Proposed Rules

A. Definitions

In § 1355.20, definitions for the terms "adoption" and "foster care" have been added. Because definitions often vary from State to State, both these terms are defined so as to assure consistency in usage and understanding across States. The definition of "adoption" identifies the act of legalization as the point at which an adoption exists. All activity concerning children under the care and responsibility of the State agency before that point is considered pre-adoptive and, as such, falls under the definition of foster care.

The definition of "foster care" encompasses all out-of-home, 24 hour, substitute care for children under the responsibility and care of the title IV–B/IV–E agency regardless of who provides the substitute care, whether or not there is a State payment, or whether or not the foster care facility is licensed.

B. Population on Whom Data Are To Be Collected

Paragraph (a) of § 1355.40 describes the population on whom data are to be collected. For purposes of foster care, this includes all children in foster care as defined by § 1355.20.

The Department did not adopt the recommendation of the Advisory Committee that the system include children placed privately in foster care. While appreciating the concern that a comprehensive system cover all children in foster care placements, there is no legislative authority at this time which supports the collection of information on the private placement of children in private facilities. As the State does not have responsibility for the placement and care of these children, there is no statutory basis for the Department to require the reporting of data on these children.

For the purposes of adoption data collection, data are required to be reported by the State on all adopted children who were placed by the State title IV–B/IV–E agency, and all adopted children for whom the State agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. This includes all children whether they are adopted by a relative or non-relative, as well as children for whom the State has entered into an agreement with the adoptive parents for the payment of ongoing adoption assistance, the provision of services, or reimbursement of nonrecurring expenses of adoption.

The scope of the population for the adoption component of the data collection system also differs from that proposed by the Advisory Committee. The Advisory Committee report recommended that all adoptions under both public and private auspices be included. In the NPRM, we are proposing that adoption data encompass all legalized adoptions, including relative and non-relative adoptions, of children for whom the State title IV–B/IV–E agency consented to adoption or for whom the same State agency is providing adoption assistance.

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Appendix D includes the data element set for all adoptions, not just those with which the title IV–B/IV–E agency is associated. As indicated earlier, the use of appendix D by a State is optional; however, data transmitted to the Department under appendix D will be processed. We strongly encourage States that have the authority to collect data from courts, bureaus of vital statistics and other agencies that maintain records of adoptions to use appendix D and take advantage of the opportunity the Department is offering to process and analyze these data.

Case specific information on the individual child is the source of data in the collection system. The data elements to be maintained in the computerized State data collection system and reported nationally are uniformly defined. To preserve confidentiality, the data reported to the Federal government do not include any information that would enable specific children to be identified. The name, social security number and address of the child are not included in the data reported to the Department. The State will assign a reporting number to allow records to be distinguished and the State alone retains the information that identifies this number with the actual case. The proposed definitions of the data elements are contained in appendices A B, C and optional appendix D.

The data elements are similar to the elements recommended by the Advisory Committee. The changes that were made are based on an extensive review and analysis for relevance to Federal needs. The number of data elements was reduced and some were revised and simplified.

Information to be submitted on each child in foster care includes identifying data (i.e., State, child's reporting number); demographic information (e.g., date of birth, sex, race, ethnicity, nationality); disability (if any); school status; circumstances surrounding the child's removal from the home; termination of parental rights; type of current placement; goal of the permanent placement plan; sources of financial support; and date and reason for discharge from substitute care. Data on foster children also include the number of siblings as well as selected information on their biological and adoptive parents.

Information to be submitted on each adopted child includes the State's reporting number; demographic information; date of termination of parental rights; and placement information and status. Data on adoptive children also include information on the number of siblings as well as selected information on their biological and adoptive parents.

For certain adoptions that involve special funding support, whether from title IV–E, State or other public sources, additional information must be provided. This information includes whether the child meets the State's definition of special needs; the type of disability (if any); whether the adoption involves a non-recurring cost subsidy; and the sources of financial support.

For purposes of gathering adoption information, the data collection system requires input in the quarter that a child is adopted. However, in order to get baseline information on all children for whom a title IV–E adoption assistance agreement is in effect, we are proposing at § 1355.40(a)(4) that States be required by the end of the first quarter of Year Two to provide information on all children already adopted under a title IV–E adoption assistance agreement with the State. The information to be supplied is specified in appendix B.

Racial and ethnic categories for both foster care and adoption data are consistent with those reported in the U.S. Census. There are special provisions to identify Indian children that are consistent with the Indian Child Welfare Act of 1978.

C. Data Collection System Requirements: Foster Care and Adoption

Paragraph (b) of § 1355.40 describes the date collection system requirements for foster care and adoption. States are required to transmit information quarterly. Within 45 days of the end of each quarter for which it is reporting, the State must have provided official certification of the State's approval of the electronically transmitted data reports. The child-specific information, along with a summary file of the quarter's data, shall be submitted for the foster care part and the adoption part of the report within 45 days of the quarter's end. The data must reflect the status of the child on one of the first five calendar days after the end of each quarter on which the State is reporting. We believe this range of five calendar days is broad enough to accommodate processing considerations at the State level while providing sufficient standardization for the data across States.

1. Transmission of Data

Paragraph (b)(1) of § 1355.40 proposes that States transmit the required data to the Department in an electronic form. Appendix E, referenced in § 1355.40(b), requires that the records be written in ASCII standard characters and be transmitted to the Department via modem or on data diskettes.

We evaluated various alternatives for the transmission and receipt of the data, including an assessment of the States' and the Department's computer hardware, and attempted to project the status of computer technology at the time when the data collection system will be implemented.

A survey of States conducted by APWA in 1988 provides the most timely basis for estimating the likely immediate impact of the proposed data collection system on the responsible agencies at the State and local level. The APWA survey collected the following types of information:

- Data processing capacity (availability of computers at the State and local levels);
- Estimated costs to acquire the needed computers or software where they are lacking;
- Extent to which data elements recommended by the Advisory Committee are now collected;
- Additional staffing, if any, that might be required; and
- Time required for full implementation.

The survey revealed considerable diversity in the extent to which States and localities use information systems in managing their foster care and adoption programs. Few States claim they possess a complete adoption and foster care data collection system and none indicated that they presently meet all of the characteristics of the system proposed by the Advisory Committee. They, nonetheless, increasingly seem to accept the value and necessity of data collection as an integral part of their foster care and adoption program management. Computers, particularly microcomputers, are becoming more and more available, even at the county level.

A majority of responding States (26 out of 47, or 55 percent) reported that all their local agencies currently have automated data processing (ADP) capability to collect and store the recommended data. Virtually all States responded that they have an ADP system that can collect, process and analyze the data transmitted from local agencies. Most States indicated that their present child welfare information systems are automated, with 21 out of 47 States (45 percent) indicating a 100 percent level of automation. Several States reported that they were in the process of upgrading their foster care and adoption information system, usually with the caveat that they would defer critical actions until after the Department promulgates its regulations pursuant to section 479 of the Act.

We particularly wish to hear from States regarding their ability to meet the requirements specified in this NPRM based on the systems they are currently using or are in the process of developing.

With respect to the specific data items under consideration, the responses varied widely. All of the States collect at least some of the data elements, and 16 of the 47 respondents (34 percent) reported that they collect 80 percent or more of the data elements on a Statewide basis.

Cost estimates for hardware and software by the 47 reporting jurisdictions amounted to nearly $39 million; extrapolated to cover all States and the District of Columbia, costs for the hardware and software were estimated at $40 million. These costs span a three year period, since State estimates of the amount of time required to implement the system varied widely. An additional $6 million or more in annual staffing costs at the State and local level would also be required. Local needs represent two-thirds of the $46 million.

Hardware plus software cost projections typically averaged from $6,000 to $9,000 for microcomputer workstations. States that utilize minicomputer workstations. States that utilize minicomputers or mainframes tended to estimate substantially greater costs. These were explained as necessary to upgrade an existing computer system, to tie adoption and foster care into related programs at the State level, or to link with closely allied functions, most often financial management. Typical per person costs for additional staff reflected an annual salary of $24,000 to $30,000.

In response to a question about how long it would take to design the changes, advise staff, modify existing procedures or software, and implement the changes likely to be included in the new adoption and foster care data collection system, State estimates were diverse, but generally consistent with the timetable spelled out in section 479 of the Social Security Act which calls for full implementation by October 1, 1991. Three States replied that they could do it within one to two months. At the other extreme, three States indicated that it would take three years. Two-thirds of the States (30 out of the 47 respondents, or 64 percent) reported one year or less would be required to implement the changes. State estimates of the amount of time to train workers and managers to utilize the system ranged even more widely, with an average training calendar of approximately six months.

Information also indicates that while mainframe computers are being used in many States for the maintenance of the "corporate" databases, most States are doing their daily processing on personal computers (PC) with file transfer capabilities. We have, therefore, designed our proposed approach for the collection of national data on foster care and adoption to capitalize on the PC hardware functioning mode. We feel that computer tape as a transfer medium is outdated since most systems now process data using random access devices instead of sequential ones.

We chose the more prevalent DOS environment because we believe that it is a general standard and it, or OS2, or any other operating system implemented in the future will be capable of producing DOS readable files. We propose the three most common diskette drive capacities currently available, but encourage discussion of alternate recommendations.

The proposed rule also permits a telephonic transfer method via modem. appendix E provides detailed specifications for how the data are to be configured to use this method. We are setting a record limit of 5,000 cases to limit the transmission time and the possibility of erroneous data. Either the diskette or modem method is acceptable and a State may opt for one or the other in any given quarter. Whatever method is chosen, there must also be indication that the data submitted have been sent with official approval.

Our deliberations also included discussion on how to deal with new and improved technology that becomes available in the future, such as large capacity laser disks. We concluded that, as these methods mature and their reliability is documented, we will issue a prior notification to all States of a beginning date on which data may be transmitted on a new medium.

These new methods will be in addition to previously accepted methods. If some technology becomes so obsolete as to not warrant continued support, we will issue a formal notice of proposed rulemaking, permit public comment, and provide sufficient lead time so that the transition to a new method can be accomplished smoothly.

2. Format of Data

Paragraph (b)(1) of § 1355.40 also proposes, by reference to appendix E, a format for the electronic transmittal of the report of foster care and adoption data. The proposed record layouts are described in appendix F. For foster care, these data will contain the status of all children who were or are still in foster care during the quarter. If counties are the unit of data collection in the State, then the counties should submit their data to the State for transmission to the Department.

For the foster care part (appendix A), there will be data on new entrants as well as children still in care and children who exited during the quarter. The records should show the status of all these children as of the day the data "dump" was conducted. Using this data "dump" methodology means that each quarter's data submission represents the status of children in foster care in the country and that, by adding the "exits" from the first three quarters of the Federal fiscal year to the fourth quarter data, we can develop the annual data base on children in foster care.

For the adoption part (appendices B and C), the data will contain reports on the children adopted that quarter as well as any adopted child whose adoption assistance ceased that quarter. Paragraph (b)(4) of § 1355.40 proposes that, for any quarter in which no adoption activity required to be reported takes place, a report must be filed indicating that there are no data to be reported.

There have been discussions about establishing a longitudinal sample to support the study of the flow of children in the foster care system. We have not proposed such a sample because we believe the entire data base to be longitudinal. We believe that the proposed procedure for reporting data permits the study of the changing characteristics of the foster care population in ways that are meaningful to policy development and planning.

We believe that the "dump" method is efficient and that 100 percent collection of data is more economical for reporting and processing than sampling would be, given current technology. Comments are requested, especially from large States, on this proposed requirement for 100 percent data collection rather than sampling.

3. Reporting frequency

The proposed rule requires quarterly reporting, based on the calendar year. The proposal in the Secretary's report to the Congress indicated "* * * at least annually, and no more frequently than each quarter * * *" as the timeframe for required submittal. We considered and rejected annual reporting, as is done in VCIS, for a number of reasons. First, with annual reports the information has not been current and will not be current. If the proposed reporting system were to operate on an annual basis, information up to 15 months old would have to be used for policy purposes before the next

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year's data would be available. With quarterly reporting, useable information would be no more than three months old.

Secondly, with quarterly reports, detailed information would be obtained on the number of times the child was placed in or removed from a foster care setting (placement episode) without requiring additional data elements. Also, with quarterly reports, detailed information would be lacking only on placement episodes and settings which occurred during the approximately 90 days between reports, although the fact that they occurred would be reported.

However, with annual reporting, detailed information would be missing on placement episodes and settings which occurred during the entire 12 month period between reports unless several extra data elements were added to the report. Accordingly, quarterly reporting provides more detailed information utilizing fewer data elements than in annual reporting.

Finally, there are three major uses of the term "year" that are used for reporting purposes: The Federal fiscal year (October through September), the calendar year (January through December), and the State fiscal year (July through June). Attempting to describe a "year's" data when they are reported for three different time periods presents serious analytic problems. Therefore, we are proposing to require quarterly reporting based on the calendar year and, thus, will have the ability to create a year's data on any or all of the three most commonly used schedules.

We believe that quarterly reporting will generate only minimum burden for States because we are requiring only that they "dump" the data which is already in their system. Public comments are requested specifically on this requirement for quarterly reporting.

The NPRM proposes in paragraph (b)(1) of § 1355.40 that the States transmit the completed report, which includes both foster care and adoption data, to the Department within 45 days after the end of the quarter on which it is reporting. Failure by a State to comply with the requirements for the data collection system for foster care and adoption shall be considered a substantial failure in complying with the title IV–E State plan. A period of 45 days is being proposed because we believe it to be a reasonable period of time for States to prepare and transmit the data reports to the Department. Under this 45 day period, States that submit their data reports early (within 15 days of the end of the quarter) have the opportunity of making corrections based on preliminary Departmental analyses and resubmitting corrected data before the end of the 45 day period. Early submission of data reports minimizes the likelihood of a finding of substantial non-compliance, thereby offering States the possibility of avoiding penalties for defective reports as described in the NPRM at § 1355.40(e).

Paragraph (b)(2) proposes that the data be "dumped" on one of the first five days after the end of the quarter on which the State is reporting. We believe this range of five days is broad enough to accommodate processing considerations at the State level while providing sufficient standardization for the data across States.

4. Data Processing

As proposed in paragraph (b)(3) of § 1355.40 and appendix G, four types of assessments will be conducted on the data submitted. They are:

- Comparisons of the detailed data to summary data;
- Internal consistency checks of the detailed data;
- An assessment of the status of missing data; and
- Timeliness, i.e., an assessment of how current the submitted data are.

We intend to perform the preliminary data checks as promptly as possible and will notify States of any problems encountered with their data in a timely fashion. If the data are reported within 15 days of the end of the quarter, States are assured of feedback in time to correct and resubmit the data within the required 45 days. Although no such assurances can be given for data reported after the first 15 days, the earlier in the 45 day reporting period that the data are submitted, the greater the opportunity the State has to resubmit corrected data and meet the requirement for substantial compliance with title IV–E.

Paragraph (b)(4) of § 1355.40 requires that even when no adoption activity specified in Appendices B and C has taken place, negative reports must be submitted for that quarter.

Departmental processing of the data will be done on a PC. We intend to produce some standard descriptive reports that are routinely processed. The data will also be available to provide reports back to the States and to support special analyses.

Initial processing of the data will verify that the data that are sent match the data received and will also determine the internal consistency, currency and completeness of the data.

For example, proposed Appendix G requires a summary data record that asks for some specific count totals derived from the detailed data, e.g., the number of children by age. An initial computer run will duplicate the numbers from the detailed data and match the output with the numbers in the summary data supplied by the State. If all of these numbers match, we will assume we have correctly received what the State sent.

Another review includes an assessment of the internal consistency of the data. The specific logic edits to be used are outlined in Appendix G. Inconsistencies will result in the data being converted to missing values as described in proposed paragraph (c) of § 1355.40 of the NPRM.

In general, as long as 95 percent of the records contain data on each element, including data initially missing and data converted to missing because they failed internal consistency tests, no compliance action will be taken. We believe that a zero error rate would be unreasonable expectation for a new program and are therefore proposing a five percent error rate. We have set this level of acceptable error rate based on our experience with the data reported under the Voluntary Cooperative Information System (VCIS).

On a national basis, reported VCIS data indicates that when States collect a particular data element, missing data is very rare, usually under three percent. However, missing data in VCIS do not include data which are converted to missing due to inconsistency. Therefore, a level of five percent maximum missing data would be large enough to include both initially missing data and inconsistent data later converted to missing. This standard is both realistic and does not seriously compromise the integrity of the data set.

Some data items, however, such as State designation or Child's Reporting Number, are essential to the data report and must be present in every record or the data will be rejected in total. The reason for this is that records from different States will not be distinguishable, nor would records of different children be distinguishable from each if these elements are not completed.

Paragraph (d) in § 1355.40 of the NPRM proposes a standard of timeliness for data input in relation only to foster care data. A minimum of 60 percent of the children reported as new entrants in foster care for the quarter must have actually entered foster care during that quarter and 60 percent of the children reported as exiting foster care in the quarter must have actually left foster care during the quarter. Using this standard, States are permitted to be approximately one month behind in data entry while at the same time assuring that most of the data are for the quarter for which the data are reported.

We further propose the failure to achieve this standard for foster care data will result in a penalty of five percent in Year Three and ten percent in Year Four and thereafter. (Proposed penalties are described in § 1355.40(e).)

D. State Plan Requirements

Under sections 471(a)(6) and (b) and 476(b) of the Act, the Secretary has the authority to require reports with respect to children for whom payments are made under title IV–E. In addition, section 422(b)(8) of title IV–B states that States must furnish information and reports and participcate in evaluations as the Secretary may require. Therefore, in order to make clear the Federal authority that permits the Department to require mandatory reporting on all children in foster care and those adopted who come under the care and responsibility of the State IV–B/IV–E agency, we have proposed changes in § 1355.30, § 1356.20 and § 1357.15.

We are proposing at § 1355.30(e) that at any compliance hearing convened under this part, the only issues to be heard are the timeliness of the data submittals, the number of errors in the data and whether there are any circumstances beyond the control of the States that affected negatively the State's ability to provide the required data. Since this proposed rule sets forth (as will the final rule) the standards for transmission, timeliness and accuracy below which no State may fall and still be in substantial compliance with the title IV–E State plan, we believe that there is adequate and complete notice to States of expectations for compliance. The only matter for discussion is whether an Act of God or some other event beyond the control of the State or any subdivision of the State prevented the State from meeting the required standards. Only evidence, including testimony, relating to these issues may be admitted at the compliance hearing.

We are proposing at § 1356.20 that failure by a State to report the required information in a complete and timely manner as prescribed at § 1355.40 will be considered a substantial failure in complying with the State's title IV–E plan and, therefore, subject to compliance action. Since we are defining in regulation what substantial compliance is in relation to the data collection system and the level of error that will be tolerated before a determination is made by the Department that the State has failed to comply substantially with the title IV–E State plan, we believe that it is reasonable to limit evidence for consideration in a compliance hearing to matters relevant to the standards set forth in the regulation. Fixed penalties for substantial noncompliance, as described in the regulation, will be assessed from the relevant portion of the title IV–E administrative funds claimed by the State.

In addition, a change is also being proposed in § 1357.15(h) which will require States receiving title IV–B grants to agree to incorporate in their title IV–B plan the requirements of the data collection system for foster care and adoption as described in § 1355.40 and to report the required data in the form and manner prescribed in that rule.

E. Penalties

In the development of the NPRM, Department personnel discussed what might be the best way to encourage the accurate and timely submittal of information so that current data would be available, especially on children in foster care. Inasmuch as there is no legislative authority to provide financial incentives, the one alternative available is to impose financial assessments for failures to comply with the State plan provision on data collection. The matter of penalties was thoroughly discussed, particularly the fact that once a State failed to substantially comply with the requirements for data collection, the penalties imposed could affect a minimum of two quarters and most likely several quarters of a portion of a State's title IV–E administrative expenditures. Once it is determined that a State is failing to substantially comply with the State title IV–E plan, the funds at risk are those for the quarter for which the State substantially failed to comply and ensuing quarters until such time that the Department makes the determination that not only is the State in compliance, but that corrective action has taken place so that it is reasonable to conclude that the noncompliance will not recur.

We are proposing that there be no compliance finding for not adhering to the standards as prescribed in the regulation and that no penalties be assessed in Years One (FFY 1992) and Two (FFY 1993) in order to permit States to resolve any start-up problems in their data collection systems. However, full adherence to the standards set forth in this proposed rule will be expected in Year Three (FFY 1994). Penalties imposed during Year Three will be less than penalties imposed for Year Four (FFY 1995) and thereafter. Stiffer penalties are imposed for Year Four and thereafter based on the assumption that the State agency has had time to purge the system of start-up problems and has staff trained and knowledgeable about the data collection system.

The proposed penalties are fixed and are set at amounts we believe to be large enough to encourage a State to provide the data fully and in a timely way in order to avoid a finding of substantial noncompliance and the ensuing penalties. It is not our intention to make the penalties so great as to significantly interfere with State efforts to provide services to families and children; however, we do want to encourage full reporting. As stated earlier, the method for calculating the penalties is based on the standards for completeness and timeliness of a State's data reports.

In the matter of assessing penalties, we concluded that claims for title IV–E administrative expenditures would be the most appropriate focus for penalties. By amending § 1356.20, we propose to treat a failure by a State to comply with the requirements for the data collection system set forth in the proposed § 1355.40 as a substantial failure in complying with the title IV–E State plan.

We believe that the penalty for not providing data as required by § 1355.40 should be substantial, but not overwhelming. For this reason, we are proposing in § 1355.40(e)(1) that only a portion of a State's title IV–E administrative expenditures be in jeopardy: The penalties for noncompliance are fixed and are assessed against part of the State's title IV–E administrative costs for the quarter in which the defects occurred. The amount of the title IV–E administrative costs against which the fixed penalties are assessed in any quarter of the fiscal year is equal to one quarter's (25%) worth of the amount of the title IV–B incentive funds (under section 427) available to the State for that year or, in the case of States ineligible for title IV–B incentive funds, the amount of such funds that the State would receive if it were eligible to receive them. The actual amount to be deducted as a penalty is cumulative up to a maximum of 10 percent in Year Three and 20 percent in Year Four.

The incentive funds used in the calculations do not include any transfer funds or reimbursement for voluntary placements to which a State may be entitled. The dollar amounts available under the basic grant and the incentive funding beyond the basic grant are published each year by the Commissioner, ACYF, in the table of allotments under title IV–B.

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The following example is provided to help clarify the proposed penalties: State Q receives title IV–B incentive funds (over its share of the base amount of $141,000,000) in fiscal year 1995 of $4,000,000. The State's share for any quarter in fiscal year 1995 is 25%×$4,000,000 or $1,000,000. Therefore, the maximum amount of penalty that can be imposed in any quarter on State Q in 1995 (Year Four) is 20%×$1,000,000 or $200,000, which will be deducted from the FFP for its title IV–E administrative costs for that quarter.

In reaching the decision to use the section 427 incentive funds available under title IV–B as the base for calculating the amount of penalty to be assessed against a State's claims for administrative expenditures under title IV–E, consideration was given to several factors. We sought a method for calculating penalties that (1) permitted the dollar amount of the maximum penalty for substantial noncompliance to be known to the States prior to the time the data are submitted, (2) provided an upper limit on the amounts of money that could be in jeopardy, and (3) could be consistently applied to all States. We concluded that by utilizing section 427 incentive funds available under title IV–B to the State agency (which by statute must administer both title IV–B and title IV–E), all these of our objectives were met. As the title IV–B incentive funds represent a fixed number of dollars allocated to the States on a formula basis prior to each fiscal year, the States will know the maximum amount of dollars at risk of penalty prior to their submission of the data; there is a limitation on the amount of dollars at risk; and the amount of penalty can be calculated on a consistent basis across States.

In paragraph (e)(2) of § 1355.40 we have proposed that the penalties be deducted quarterly against a State's claims for title IV–E administrative expenditures for the quarter in which the noncompliance occurred and for any subsequent quarters of noncompliance. This also includes any subsequent quarters when the penalty is applied because the Secretary is not yet satisfied that the noncompliance has been corrected and will not recur. Following a decision sustaining the noncompliance finding, funds will be recovered for all quarters in which the penalties apply.

Paragraph (e)(3) proposes to limit the maximum penalty for any quarter in Year Three (FFY 1994) to 10 percent and in Year Four (FFY 1995) and thereafter to 20 percent quarterly of the relevant portion of a State's title IV–E administrative expenditures.

The collection of complete accurate data is the goal of the information system for adoption and foster care. The level of missing, inconsistent and untimely data should not be so great as to raise concerns about the quality of the State's data submission. However, we recognize that there will be some errors in the data. As long as each element has no more than five percent missing data, including data initially missing and data converted to missing because they failed internal consistency tests, and the data report meets the standard for timeliness, no compliance action will be taken.

Paragraph (e)(4) outlines the circumstances under which a State will incur the maximum penalty. We propose to apply the maximum penalty when a State fails to submit both the foster care part and the adoption parts of the data report within 45 days; or submits each part within the timeframe, but in each part there is one element which exceeds the level of tolerance for missing data as described in Appendix G; or fails to submit one part on time and in the data that are submitted, one element or more exceeds the level of tolerance for missing data.

Paragraph (e)(5) proposes that each part of the completed report (i.e., the foster care and adoption parts) be treated separately for purposes of applying the penalties. In other words, the parts of the report will not be added together. Each part will be reviewed separately for the purposes of applying penalties. For example, if a State submits adoption data and foster care data on time, but the foster care data exceeds the level of tolerance for missing data, then the penalty imposed in Year Three is 5 percent and 10 percent in Year Four and thereafter. The following chart illustrates the application of the penalties.

ASSESSMENT OF PENALTIES ADOPTION AND FOSTER CARE DATA COLLECTION SYSTEM

Six Percentages of Title IV-E Administrative Cost Claims Capped at Incentive Amounts Available Under Section 427 of Title IV-B1

	Adoption Data			
	Absence of errors*	40% not in quarter**	Missing data	No submittal
Year 3 (Oct. 1, 1993–Sept. 30, 1994)				
Foster:				
Absence of Errors*	0	0	5	5
40% not in Quarter**	5	5	10	10
Care: Missing Data	5	5	10	10
Data: No Submittal	5	5	10	10
Year 4 (Oct. 1, 1994–September 30, 1995) and Beyond				
Foster:				
Absence of Errors*	0	0	10	10
40% not in Quarter**	10	10	20	20
Care: Missing Data	10	10	20	20
Data: No Submittal	10	10	20	20

*Data must be standards described in Appendix G.
**Standard applicable only to Foster Care Data. (See appendix G)

In any given quarter, it is very important that foster care data reflect the number of the children who enter and exit foster care in that quarter. Given the proposed standard for timeliness in paragraph (d) of § 1355.40 discussed earlier, paragraph (e)(6) proposes that States which fail to meet the timeliness standard be penalized. For Year Three, the penalty is five percent and for Year Four and thereafter, the penalty is 10 percent.

While a penalty is proposed in paragraph (e)(6) on foster care submissions if at least 60 percent of the submitted entrant and exit dates in a given report did not occur during the reporting quarter, this standard is not applicable to adoption reports. We believe that the necessity to have the adoption data, even if they are late, outweighs the need to have them on time. We do not wish to discourage the submission of adoption data.

The reason for the distinction between the foster care data and the adoption data is that each quarterly foster care report is one of a continuing series of submissions which builds on previous quarterly submissions. When a new quarterly report is submitted, it builds on previous reports, reflecting the updated status of information, and replaces the previous quarterly submissions in all aspects (items) except exits.

Accordingly, if a foster care report is not submitted in a timely manner, within 45 days, it becomes virtually useless because the data are supplemented with more current information in less than 90 days. Therefore, a late submittal in foster care (after 45 days) is considered the same as no submittal and invokes a penalty.

Adoption data must be reported independently from foster care data. Information in each adoption report is new and, except for the elements "cessation of subsidy" and "reason for cessation," supplements nothing that was reported previously. If the adoption data are not submitted, the totality of the information is lost forever. While it is important that adoption information be submitted on time, it is even more crucial that the data not be lost.

Adoption reports, even if they are late, are extremely important in the collection of the adoption data. States which do not report adoption data in a timely way, i.e., within 45 days after the end of the reporting quarter, are subject to a penalty of five percent in Year Three and 10 percent in Year Four and thereafter. Furthermore, § 1355.40(e)(7) proposes that the penalty will continue to be assessed each subsequent quarter until the missing adoption data are transmitted and the Secretary is reasonably satisfied that the noncompliance will not recur.

F. Financing the Data Collection System

We propose to amend paragraph (c)(2) of § 1356.60 by adding subparagraph (x) to include data collection as an allowable administrative cost of title IV–E.

We propose to add a new paragraph (d) to § 1356.60 to address the matter of Federal financial participation (FFP) for the costs of data collection. Paragraphs (d) (1), (2), (3) and (4) of § 1356.60 state that, in the absence of any legislative changes, the costs for the initiation, implementation and operation of the data collection system must be borne by the States with Federal matching funds being available only for those children included in the reporting system who are eligible for title IV–E foster care maintenance payments or adoption assistance payments or services. The proposed rules specify that only a proportionate share of the costs of beginning the system, operating it and collecting the data can be charged to title IV–E foster care administrative expenditures at a Federal matching rate of 50 percent. The charges for the title IV–E foster care portion of the system must be allocated to title IV–E foster care based on the percentage of title IV–E eligible children in foster care actually being counted in the system. For all other children counted in the system, the State may use title IV–B or other appropriate funds.

Paragraph (d)(5) states that the costs borne by title IV–E for information systems used for purposes other than those specified by section 479 of the Act must bear the same ratio as the title IV–E population bears to the total population contained in the information system. This ratio shall be verified by the reports of all other (non-title IV–E) programs.

III. Impact Analysis

Executive Order 12606: The Family

Executive Order 12606 requires Federal agencies, in formulating and implementing policies and regulations, to assess the impact on family formation, maintenance and general well being. We believe these proposed regulations will serve to strengthen and preserve family life insofar as the demographic information provided on children in foster care will aid in permanency planning for these children and their families. And, in the case of adoption, information on children will assist in the placement of children for adoption as well as aid in the development of policies and practices that will encourage and support families who care for children in foster care and those who adopt children.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or certain other specified effects. Nothing in the proposed rule is likely to create substantial costs. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch. 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Regulatory Flexibility Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For this reason, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions, Grant programs—Social programs.

45 CFR Part 1356

Adoption and foster care, Administrative costs, Child welfare, Fiscal requirements (title IV–E), Grant programs—Social programs, Statewide Information System.

45 CFR Part 1357

Adoption and foster care, Child welfare, Child welfare services state plan, Indians, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Nos. 13.658, Foster Care Maintenance, 13.659, Adoption Assistance and 13.645, Child Welfare Services—State Grants)

Dated: February 7, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Approved: April 3, 1990.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, we are proposing to amend 45 CFR parts 1355, 1356 and 1357 as follows:

PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

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Authority: 42 U.S.C. 620 *et seq.*; 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

2. Section 1355.20(a) is amended by adding definitions for the terms "adoption" and "foster care" as follows:

§ 1355.20 Definitions.

* * * * *

Adoption means the method provided by law which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed "adoption" after the legal process is complete.

* * * * *

Foster care means 24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, family foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made.

* * * * *

3. Section 1355.30 is amended by revising paragraph (e) as follows:

§ 1355.30 Other applicable regulations.

* * * * *

(e) Section 201.6, Withholding/ Reduction of FFP. Pursuant to the requirements under § 1355.40 of this part for data collection, the only evidence relevant at hearings under § 201.6 are those matters related to the standards set forth in § 1355.40 and whether there were circumstances beyond the control of the State or political subdivisions that should be considered by the Secretary.

* * * * *

4. A new § 1355.40 is added to read as follows:

§ 1355.40 Foster care and adoption data collection.

(a) *Scope of the data collection system.* (1) Each State which administers or supervises the administration of titles IV–B and IV–E must have a data collection system operational by October 1, 1991 that meets the requirements of § 1355.40(b) and electronically reports certain data regarding children in foster care and adoption. The foster care data elements are listed and defined in appendix A to this part and the adoption data elements are listed and defined in appendices B and C to this part.

(2) For purposes of foster care, each State's data report must include all children in foster care for whom the State title IV–B/IV–E agency has responsibility for placement, care, or supervision.

(3) For the purposes of adoption data collection, data are required to be reported by the State on all adopted children who were placed by the State title IV–B/IV–E agency, and all adopted children for whom the State agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care of services directly or by contract or agreement with other private or public agencies.

(4) By the end of the first quarter of Year Two, States must have provided all the information specified in Appendix B to this part for all adopted children for whom a title IV–E adoption assistance agreement is in effect.

(b) *Foster care and adoption data collection requirements.* (1) The State agency shall submit quarterly, within 45 days of the end of the quarter, information on each child in foster care and each child adopted during the quarter. The information to be reported consists of the data elements found in appendices A, B and C to this part. The data must be submitted in electronic form as described in appendix E to this part and in record layouts as delineated in appendix F to this part.

(2) The child-specific data to be reported must reflect the status of the child as of the day the data are run, which must be within the first five calendar days after the end of each quarter. In addition to the child-specific data, a record layout for each file must accompany the submission. These record layouts must spell out each field and its size for current submittal. A summary file of the quarter's data must also be submitted and will be used to verify the completeness of the State's detailed quarterly submission.

(3) A variety of internal data verification checks will be used to judge the internal consistency of the quarterly detailed data submission. These are specified in appendix G to this part.

(4) Negative reports for the adoption section of the report must be submitted for any quarter in which no adoption activity specified in appendices B and C to this part has taken place.

(c) *Missing data standards.* (1) The term "missing data" refers to the number of records with the code indicating that the data are "unknown." In addition, other data, which under certain conditions will be converted to missing, are specified in Appendix G to this part.

(2) The penalties for missing data are specified in paragraph (e) of this section.

(d) *Timeliness of foster care data reports.* (1) A minimum of 60 percent of the children reported entering foster care in the report for a given quarter must have entered during that quarter. A minimum of 60 percent of the foster care exits reported for that quarter must have exited during that quarter.

(2) Penalties shall be invoked as provided in paragraph (e) of this section.

(e) *Penalties.* (1) Failure by a State to meet any of the standards described in paragraphs (a) through (d) of this section is considered a substantial failure to meet the requirements of the title IV–E State plan. Penalties for substantial noncompliance will be assessed quarterly against that portion of a State's title IV–E administrative expenditures that is equal to 25 percent of the State's annual share of title IV–B funds above the base appropriation of $141 million (incentive funds available under section 427 of the Act). In the case of States ineligible to receive title IV–B incentive funds, the penalty shall be equal to 25 percent of the amount of title IV–B incentive funds that a State would receive if it were eligible to receive them.

(2) Penalties will be assessed quarterly against a State's claims for title IV–E administrative expenditures for the quarter in which the noncompliance occurred and any subsequent quarter of noncompliance. This also includes any subsequent quarters when the penalty is applied because the Secretary is not yet satisfied that the noncompliance will not recur. Following a decision sustaining ACYF's proposed action, funds will be recovered for all quarters in which the penalties apply.

(3) The maximum penalty for any quarter in Year Three (Federal Fiscal Year (FFY) 1994) is 10 percent of the State's claim for title IV–E administrative expenditures as described in paragraph (e)(1) of this section and 20 percent quarterly for Year Four (FFY 1995) and thereafter of the relevant title IV–E administrative expenditures.

(4) The maximum penalty will be applied when a State:

(i) Fails to submit both the foster care data and the adoption data reports within 45 days of the due date as specified in paragraph (b)(1) of this section; or

(ii) Submits foster care data and adoption data on time, but there is one or more element in each part which exceeds the level of tolerance for missing data as defined in appendix G to this part; or

(iii) Fails to submit one part on time, and in the data that are submitted on time, one element or more exceeds the level of tolerance as defined in appendix G to this part.

(5) For purposes of applying a penalty, each part of the quarterly report, i.e., the foster care data and the adoption data, will be analyzed separately, and the level of tolerance described in appendix G to this part will be applied to each part.

(6) States will be assessed a fixed penalty of five percent in Year Three and 10 percent in Year Four and thereafter for foster care data reports which fail to achieve the standard for timeliness described § 1355.40(d) and appendix G to this part.

(7) States which do not submit adoption data will be penalized a fixed penalty of 10 percent each quarter until all previously unsubmitted adoption data are transmitted to the Department and the Secretary is satisfied that substantial noncompliance will not recur.

4a. Note: Appendices A through G to part 1355 are added in amendatory instruction paragraph 10 in this proposed rule.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

5. The authority citation for part 1356 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

6. Section 1356.20 is amended by designating existing paragraphs (b) through (d) as (c) through (e) and adding a new paragraph (b) as follows:

§ 1356.20 State plan document and submission requirements.

* * * * *

(b) Failure by a State to comply with the requirements and standards for the data collection system for foster care and adoption (§ 1355.40) shall be considered a substantial failure by the State in complying with the State plan for title IV–E. Penalties as described in § 1355.40(e) shall apply.

* * * * *

7. Section 1356.60 is amended by adding a new paragraph (c)(2)(x), and new paragraph (d), and republishing the introductory text in paragraph (c)(2) to read as follows:

§ 1356.60 Fiscal requirements (title IV–E).

* * * * *

(c) * * *

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

* * * * *

(x) A proportionate share of costs related to data collection.

* * * * *

(d) *Allocation of costs of data collection system.* (1) A proportionate share of the costs of the system initiation, implementation and operation may be allocated as an administrative cost of title IV–E subject to the restrictions in paragraphs (d) (2) and (3) of this section.

(2) For children in foster care who are eligible for title IV–E foster care payments, the proportionate share of the costs of the initiation of the system, its operation and collection of the data may be charged to title IV–E foster care administrative costs. The charges for the title IV–E foster care portion of the system may be allocated to title IV–E foster care each quarter based on the percentage of eligible children actually reported for that quarter.

(3) For children who are receiving title IV–E adoption subsidies, either for nonrecurring expenses of adoption or ongoing payments or services, the proportionate share of the costs of the development of the system, its operation, and collection of data may be charged to title IV–E adoption assistance as an administrative cost. The charges for the title IV–E adoption assistance portion of the system may be allocated to title IV–E adoption assistance each quarter based on the percentage of eligible children actually reported for that quarter.

(4) Costs of the data collection system for children under the supervision, responsibility or care of the title IV–B/IV–E agency not eligible for title IV–E foster care or adoption assistance payments shall be borne by the State and may be paid from title IV–B or other funds.

(5) For information systems used for purposes other than those specified by section 479 of the Act, the title IV–E allocation must bear the same ratio as the title IV–E population bears to the total population contained in the information system as verified by the reports of all other (non-title IV–E) programs.

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

8. The authority citation continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

9. Section 1357.15 is amended by adding a new paragraph (h) as follows:

§ 1357.15 Child welfare services State plan requirements and submittal.

* * * * *

(h) In meeting the requirements of section 422(b)(8), each State must provide assurance that it will meet the requirements for data collection for foster care and adoption as described in 45 CFR 1356.40 and report the required data in the form and manner prescribed by that section.

PART 1356—GENERAL

10. Part 1355 is further amended by adding Appendices A through G to read as follows:

Appendix A—Foster Care Data Elements

A. Identification Information

1. State		
2. Local Agency (City, County or District) Name		
3. Child's Reporting Number		
4. Reporting Date		

B. Child's Demographic Information

1. Date of Birth		
	mo	da yr
2. Sex:		
Male		
Female		
3. Race/Ethnicity:		
a. White (not Hispanic)		
b. Black (not Hispanic)		

c. Hispanic
d. American Indian/Alaskan Native
e. Asian/Pacific Islander
f. Missing Data

4. Child is Disabled:
Yes
No

5. Type of Disability: (Check all that apply)
a. Mental Retardation
b. Blind or Visually Impaired
c. Deaf and Hard of Hearing
d. Physically Disabled
e. Emotionally Disturbed
f. Learning Disability
g. Medical Condition
h. AIDS
i. Other

C. School Status

1. Child is Enrolled in School:
Yes
No
2. Last Grade Completed

D. Removal/Placement Indicators

1. Date of Latest Removal from Home — mo da yr
2. Date of Placement in Current Substitute Care Setting — mo da yr
3. Number of Placements Since Latest Removal
4. Number of Previous Removals from Home
5. Date Child was Discharged from Last Substitute Care Setting Under Previous Removal — mo da yr
6. Child Entered Care by:
a. Voluntary Placement Agreement
b. Judicial Determination
c. Voluntary—followed by a judicial determination

E. Circumstances of Removal

1. PRIMARY Condition Leading to Child's Removal: (Check primary condition that applies):
a. Physical Abuse
b. Sexual Abuse
c. Neglect
d. Substance Abuse (Parent)
e. Substance Abuse (Child)
f. Child's Disability
g. Child's Behavior Problem
h. Death of Parents
i. Incarceration of Parents
j. Caretaker's Inability to Cope
k. Caretaker's Illness/Incapacity
l. Parental Abandonment
m. Other (Specify)

2. OTHER Conditions Leading to Child's Removal: (Check all that apply):
a. Physical Abuse
b. Sexual Abuse
c. Neglect
d. Substance Abuse (Parent)
e. Substance Abuse (Child)
f. Child's Disability
g. Child's Behavior Problem
h. Death of Parents
i. Incarceration of Parents
j. Caretaker's Inability to Cope
k. Caretaker's Illness/Incapacity
l. Parental Abandonment
m. Other (Specify)

F. Current Living Arrangement

1. Adoptive Home (not legalized)
2. Family Foster Home—Relative Home
3. Family Foster Home—Non-Relative Home
4. Group Foster Home
5. Emergency Shelter
6. Public Institution
7. Private Non-Profit Institution
8. Private For-Profit Institution
9. Independent Living

10. Other

G. Parental Rights Termination

	Mother	Father
	mo da yr	mo da yr
1. Voluntary (Relinquishment/Surrender)	a.	b.
2. Non-Voluntary (Court Ordered)	a.	b.

H. Current Permanent Placement Plan

1. Reunify with Parents or Relative
2. Adoption
3. Long Term Foster Care
4. Long Term Institutional Care
5. Independent Living
6. Guardianship
7. Other

I. Family Foster Home—Parents Data

1. Foster Parents of Child:
a. Married Couple
b. Single
c. Other

Data on Foster Parents	Mother	Father
2. Date of Birth	a. mo da yr	b. mo da yr
3. Race/Ethnicity:		
a. White (not Hispanic)	i.	ii.
b. Black (not Hispanic)	i.	ii.
c. Hispanic	i.	ii.
d. American Indian/Alaskan Native	i.	ii.
e. Asian/Pacific Islander	i.	ii.
f. Missing Data	i.	ii.

J. Outcome Information

1. Date of Discharge from Substitute Care — mo da yr
2. Reason for Exit:
a. Family Reunification
b. Adoptive Placement
c. Adoption Legalized
d. Emancipation
e. Guardianship
f. Transfer to Another Agency
g. Runaway
h. Death of Child
i. Other

K. Principal Caretakers Information

1. Principal Caretakers at Time of Child's Removal from Home: (Check no more than two)
a. Mother (Birth or Adoptive)
b. Father (Birth or Adoptive)
c. Stepmother
d. Stepfather
e. Grandparent(s)
f. Aunt and/or Uncle
g. Sibling
h. Other
i. Unable to Identify

	Female	Male
2. Date of Birth	a. mo da yr	b. mo da yr
3. Race/Ethnicity:		
a. White (not Hispanic)	i.	ii.
b. Black (not Hispanic)	i.	ii.
c. Hispanic	i.	ii.
d. American Indian/Alaskan Native	i.	ii.
e. Asian/Pacific Islander	i.	ii.
f. Missing Data	i.	ii.
4. Marital Status of Principal Caretakers:		
a. Married, Spouse Present		
b. Married, Separated		
c. Never Married		
d. Divorced		
e. Widowed		
f. Other or Cannot Determine		

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5. Household Composition at Time of Current Removal:
   a. Number of Siblings (excluding this child) _____ _____
   b. Number of Other Relatives (excluding principal caretakers) _____ _____
   c. Number of Other Non-Relatives _____ _____

L. Source of Financial Support (Check all that apply)

1. Title IV–E (Foster Care) _____ _____
2. Title IV–E (Adoption Assistance) _____ _____
3. Title IV–D (Child Support) _____ _____
4. Title XIX/XX (Medicaid/SSBG) _____ _____
5. SSI or Other Social Security Act Benefits _____ _____
6. Child's Own Resources _____ _____
7. State Only _____ _____
8. Parents _____ _____
9. Other _____ _____
10. None _____ _____

Definitions of Foster Care Data Elements

Reporting population

The population to be included in this reporting system includes all children in foster care under the responsibility of the State agency administering or supervising the administration of the title IV–B child welfare State plan and the title IV–E State plan, this is, all children who are required to be provided the protections of section 427 of the Social Security Act (SSA).

This population includes all children supervised by or under the responsibility of another public agency with which the title IV–B/IV–E State agency has an agreement under title IV–E and on whose behalf the State makes title IV–E foster care maintenance payments.

Foster care is defined as a 24 hour substitute care for children outside their own homes, regardless of whether payments are being made or not or whether the home or facility is licensed or not. This includes, but is not limited to:

—family foster homes
—relative foster homes
—group homes
—emergency shelters
—residential facilities
—child care institutions
—pre-adoptive homes

Foster care *does not* include children who are in *their own homes* under the responsibility of the State agency—whether on a trial basis or not.

A. Identification Information

1. *State* — U.S. Postal Service two letter abbreviation for State submitting the report.
2. *Local Agency Name* — Identity of the sub-State county, district, region, or other unit used by the State to identify regional subdivisions.
3. *Child's Reporting Number* — This number, which must be unique to each child in the State and which the State used to transmit data to the Federal Department of Health and Human Services (DHHS), must remain with the child throughout every reporting quarter and must be used whenever the child re-enters the foster care system. It must allow analysts to track a record over a period of time. The reporting number cannot be linked to the child's case I.D. number except at the State of local level.
4. *Reporting Date* — The month and year that the record was electronically produced and sent to DHHS.

B. Child's Demographic Information

1. *Date of Birth* — Month, day and year of the child's birth.
2. *Sex* — Indicate as appropriate.
3. *Race/Ethnicity:*
   a. White (not Hispanic) — A person of European, North African, or Middle Eastern origin, and not Hispanic.
   b. Black (not Hispanic) — A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
   c. Hispanic — A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
   d. American Indian/Alaskan Native. — A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
   e. Asian-Pacific Islander — A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
   f. Missing Data — The specific race/ethnicity category is unknown or has not been determined.
4. *Child is Disabled* — Indicate whether the child has one of the disabling conditions listed in B.5. below.
5. *Type of Disability:* — The disability may be identified either by documentation from specialist or by the caseworker working with the child:
   a. Mental Retardation — Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.
   b. Blind or Visually Impaired — Having visual impairment that may significantly affect educational performance or development.
   c. Deaf or Hard of Hearing — A hearing impairment, whether permanent or fluctuating, that adversely affects educational performance; a communication disorder, such as stuttering, impaired articulator; a language impairment or voice impairment that adversely affects educational performance.
   d. Physically Disabled — A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebal palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

   e. Emotionally Disturbed — A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: an inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed.
   f. Learning Disability — A disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to use mathematical calculations. The term includes such conditions as perceptual disability, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, or environmental, cultural or economic disadvantage.
   g. Medical Condition — Clinically diagnosed disabling conditions other than those listed above.
   h. AIDS — (Acquired Immunodeficiency Syndrome)—A disease caused by a retrovirus known as Human Immunodeficiency Virus (HIV) which attacks primarily the immune system and ultimately destroys the ability to ward off disease. HIV was previously termed HTLV III, Lav or ARV.
   i. Other — Apparently disabling conditions other than those noted above.

C. School Status

1. *Child is Enrolled in School* — Child is enrolled full or part-time in elementary, intermediate or high school or in a trade or vocational school.
2. *Last Grade Completed* — Last grade, K thru 12, completed by the child.

D. Removal Placement Indicators

1. *Date of Latest Removal from Home* — Date the child was last removed from his home (emergency, judicial or voluntary removal or abandonment) prior to being placed in foster care.
2. *Date of Placement in Current Substitute Care Setting.* — Date the child moved into the current foster home, facility, residence, shelter, institution, etc. for purposes of continued foster care.
3. *Number of Placements Since Latest Removal.* — Include only placements intended to be continued foster care. Do not include 1–72 hour placements in emergency shelters.
4. *Number of Previous Removals from Home.* — The number of times the child was removed from home (emergency, judicial or voluntary) prior to the latest removal indicated in D.1.
5. *Date Child was Discharged from Last Substitute Care Setting.* — Date, prior to D.1. above, that child was last discharged from foster care. If current placement is the first and only placement, leave blank.
6. *Child Entered Care by:* — Child came into care on date in D.1. on the basis of:
   a. Voluntary Placement Agreement. — A voluntary placement agreement which has not been followed by a judicial determination.
   b. Judicial Determination — A judicial determination (court order) removing the child from home, or
   c. Voluntary—Followed by a Judicial Determination. — A voluntary placement agreement which was subsequently followed by a judicial determination.

E. Circumstances of Removal

1. *Primary Condition Leading to Child's Removal:* — In situations where many factors contributed to the reasons for removal, check the major factor or, if that is not easily determined, the factor that finally precipitated the removal from home:
   a. Physical Abuse — Physical abuse, injury or maltreatement of the child by a person responsible for the child's welfare.
   b. Sexual Abuse — Sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.
   c. Neglect — Negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.
   d. Substance Abuse (Parent) — Principal caretaker's compulsive use of alcohol or narcotics that is not of a temporary nature.
   e. Substance Abuse (Child) — Child's compulsive use of or need for alcohol or narcotics. This element should include infants addicted at birth.
   f. Child's Disability — Clinical diagnosis of one of more of the following: mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed disability.
   g. Child's Behavior Problem — Behavior in the school and community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicated child behavior problems.
   h. Death of Parents — Family stress or inability to care for child due to death of a parent or caretaker.
   i. Incarceration of Parents — Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.
   j. Caretakers' Inability to Cope — Problems of child or caretaker that adversely affect caretakers' ability to care for the child.
   k. Caretakers' Illness or Incapacity. — Physical or emotional illness or disabling condition adversely affecting caretakers' ability to care for child.
   l. Parental Abandonment — Child left alone or with others; caretakers did not return or make whereabouts known.
   m. Other (Specify) — The child was removed from his/her own home for a reason other then those listed above.
2. *Other Conditions Leading to Child's Removal:* — Check all of the factors that contributed to the reasons for removal.
   a. Physical Abuse — Physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.
   b. Sexual Abuse — Sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.
   c. Neglect — Negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.
   d. Substance Abuse (Parent) — Principal caretaker's compulsive use of alcohol or narcotics that is not of a temporary nature.

e. Substance Abuse (Child)	Child's compulsive use of or need for alcohol or narcotics. This element should include infants addicted at birth.
f. Child's Disability	Clinical diagnosis of one of more of the following: mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed disability.
g. Child's Behavior Problem	Behavior in the school and community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicate child behavior problems.
h. Death of Parents	Family stress or inability to care for child due to death of a parent or caretaker.
i. Incarceration of Parents	Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.
j. Caretakers' Inability to Cope	Problems of child or caretaker that adversely affect caretaker's ability to care for the child.
k. Caretakers' Illness or Incapacity.	Physical or emotional illness or disability condition adversely affecting caretaker's ability to care for child.
l. Parental Abandonment	Child left alone or with others; caretaker did not return or make whereabouts known.
m. Other (Specify)	The child was removed from his/her own home for a reason other than those listed above.

F. Current Living Arrangement

1. *Adoptive Home (not legalized)*	A foster home in which the family intends to adopt the child. The family may or may not be receiving a foster care payment or an adoption subsidy on behalf of the child.
2. *Family Foster Home Relative Home*	A licensed or unlicensed home of the child's relatives regarded by the State as a substitute care living arrangement for the child.
3. *Family Foster Home Non-relative Home.*	A family foster home regarded by the State as a substitute care living arrangement.
4. *Group Foster Home*	A home providing 24-hour care for children in a small group setting that generally has from seven to twelve children.
5. *Emergency Shelter*	A facility providing emergency temporary care (includes any substitute care arrangement designated by the agency for emergency purposes).
6. *Public Institution*	A child care facility operated by a public agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: —child care institutions; —residential treatment facilities; —maternity homes; etc.
7. *Private Non-Profit Institution*	Same as G.6. above, but operated by a private concern as a non-profit institution.
8. *Private For-Profit Institution*	Same as G.7. above, but operated on a for-profit basis.
9. *Independent Living*	An alternative transitional living arrangement in which the child is provided the opportunity for increased responsibility for self care and is receiving financial support from the child welfare agency.
10. *Other*	Substitute care living arrangements other than the ones specified above.

G. Parental Rights Termination

Respond to the question for both the mother and the father. If the exact date cannot be determined, indicate at least the month and year.

1. *Voluntary (Relinquishment/Surrender).*	The parent voluntarily terminates full parental rights and responsibilities—either to an agency or an individual, depending on State law.
2. *Non-Voluntary (Court Ordered)*	Full parental rights and responsibilities are terminated by court order.

H. Current Permanent Placement Plan

Indicate the most recent placement plan for the child based on the latest review of the child's case plan—whether a court review or an administrative review.

1. *Reunify with Parents or Relative*	The goal is to keep the child in substitute care for a limited time to enable the agency to work with the family with whom the child had been living prior to entering substitute care in order to reestablish a stable family environment.
2. *Adoption*	The goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals.
3. *Long Term Foster Care*	Because of specific factors or conditions, it is not appropriate or possible to return the child home or place him or her for adoption, and the goal is to maintain the child in a long term foster care placement with a family.
4. *Long Term Institutional Care*	Mental, physical or behavioral problems of the child require that he or she be placed in long term institutional care.
5. *Independent Living*	The goal is to enable the child, upon reaching majority or emancipation, to assume responsibility for living in the community.
6. *Guardianship*	The goal is to facilitate the child's placement with an agency or unrelated caretaker, with whom he or she was not living prior to entering substitute care, and who a court of competent jurisdiction has designated as legal guardian.
7. *Other*	No case plan goal has been established other than the care and protection of the child.

I. Family Foster Home—Parents Data

Respond to these elements only if the child's current placement is in a foster *family* home. If the child is in a group home or other type of facility, go directly to section J.

1. *Foster Parents of Child:* a. Married Couple b. Single c. Other	Indicate marital status of foster parent.
Data on Foster Parents	Respond to elements with best data available for each parent.
2. *Date of Birth*	If exact dates are not available, use the first of the month; if the month is not available, use January 1.

3. *Race/Ethnicity:*	
a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native.	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing Data	The specific race/ethnicity category is unknown or has not been determined.

J. Outcome Information

This information is completed only when the child is no longer in foster care under the responsibility of the State agency, and thus no longer under the section 427 requirements.

1. *Date of Discharge from Substitute Care*	Date the child left foster care for one of the reasons indicated in J.2. below.
2. *Reason for exit:*	
a. Family Reunification	The child was returned to his or her own home.
b. Adoptive Placement	The process of placing a child with a family with the expectation of adoption.
c. Adoption Legalized	The final decree of adoption was issued by the court. Note, when a child is placed in a pre-adoptive home, it is still in foster care until the adoption is legalized.
d. Emancipation	The child reached majority according to State law by virtue of age, marriage, etc.
e. Guardianship	Permanent custody of the child was awarded to an individual.
f. Transfer to Another Agency	Responsibility for the placement and care of the child was awarded to another agency—either in or out of the State.
g. Runaway	The child ran away from the substitute care placement.
h. Death of Child	The child died while in substitute care.
i. Other	An outcome not listed above.

K. Principle Caretakers Information

1. *Principal Caretakers at Time of Child's Removal from Home:* a. Mother (Birth or Adoptive) b. Father (Birth or Adoptive) c. Stepmother d. Stepfather e. Grandparent f. Aunt and/or Uncle g. Sibling h. Other i. Unable to identify	Indicate the one or two individuals who were primarily responsible for the care of the child at the time of removal from the home.
Respond to elements with best data available for each parent.	
2. *Date of Birth*	If exact dates are not available, use the first of the month; if the month is not available, use January 1.
3. *Race/Ethnicity:*	
a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native.	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing data	The specific race/ethnicity category is unknown or has not been determined.
4. *Marital Status of Principal Caretakers.* a. Married, Spouse Present b. Married, Separated c. Never Married d. Divorced e. Widowed f. Other or Cannot Determine	Indicare marital status of the principal caretakers at the time the child was removed from the home.
5. *Household Composition at Time of Current Removal:*	
a. Number of Siblings (excluding this child).	Include half-brothers and half-sisters of the child.
b. Number of Other Relatives (excluding principal caretakers).	Include relatives of the child by both blood and marriage.
c. Number of Other Non-Relatives	Include all other individuals living in the household.

L. Source of Financial Support (Check all that apply)

1. *Title IV–E (Foster Care)*	Title IV–E foster care maintenance payments are being paid on behalf of the child. When this is checked, it is understood that the State pays a matching amount; do not also check L.7.

2. *Title IV-E (Adoption Subsidy)*	Title IV-E adoption subsidy is being paid on behalf of the child who is in an adoptive home, but the adoption has not been legalized. See F.1. When this is checked, it is understood that the State pays a matching amount; do not also check L.7.
3. *Title IV-D (Child Support)*	Child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent.
4. *Title XIX/XX (Medicaid/SSBG)*	Child is eligible for and may be receiving assistance under titles XIX or XX.
5. *SSI or Other Social Security Act Benefits.*	Child is receiving support under title XVI or other Social Security Act titles not included in section L.
6. *Child's Own Resources*	Child is supported by funds available from his or her own resources.
7. *State Only*	Child is supported by a "State only" foster care maintenance payment (no Federal subsidy).
8. *Parents*	Biological or adoptive parents are contributing to the support of the child in foster care, either voluntarily or by court order.
9. *Other*	Source of support is other than those listed above.
10. *None*	Child is in family foster care with no Federal or State foster care maintenance payment being made, e.g. with a relative.

Appendix B.—Adoption Data Elements; State Agency Form

A. Identification Information

1. State _____
2. Local Agency (City, County or District) Name _____
3. Child's Reporting Number _____

B. Child's Demographic Information

1. Date of Birth: mo____/da____/yr____
2. Sex: Male/Female _____
3. Race/Ethnicity
   a. White (not Hispanic) _____
   b. Black (not Hispanic) _____
   c. Hispanic _____
   d. American Indian/Alaskan Native _____
   e. Asian/Pacific Islander _____
   f. Missing Data _____

C. Special Needs Status

1. Child is Special Needs (State Definition):
   Yes _____ _____
   No _____ _____
2. Basis for Special Needs: (Check primary basis):
   a. Racial/Ethnic Background _____
   b. Age _____
   c. Membership in Sibling Group _____
   d. Medical Conditions or Mental, Physical or Emotional Disabilities; (see below _____
   e. Other _____
3. Type of Disability: (Check all that apply):
   a. Mental Retardation _____
   b. Blind or Visually Impaired _____
   c. Deaf or Hard of Hearing _____
   d. Physically Disabled _____
   e. Emotionally Disturbed _____
   f. Learning Disability _____
   g. Medical Condition _____
   h. Other _____

D. Birth Parents

	Mother	Father
	mo da yr	mo da yr
1. Date of Birth	a. _____	b. _____
2. Race/Ethnicity		
a. White (not Hispanic)	i. _____	ii. _____
b. Black (not Hispanic)	i. _____	ii. _____
c. Hispanic	i. _____	ii. _____
d. American Indian/Alaskan Native	i. _____	ii. _____
e. Asian/Pacific Islander	i. _____	ii. _____
f. Missing Data	i. _____	ii. _____
3. Marital Status of Mother (At time of child's birth):		
a. Married	_____	_____
b. Single	_____	_____
c. Divorced	_____	_____
d. Widowed	_____	_____
e. Unknown	_____	_____

E. Parental Rights Termination

	Mother	Father
	mo da yr	mo da yr
1. Date of Termination	a. _____	b. _____

2. Voluntary (Relinquishment/Surrender)	a. _____	b. _____
3. Non-Voluntary (Court Ordered)	a. _____	b. _____

F. ADOPTIVE PARENTS

	Mother	Father
	mo da yr	mo da yr
1. Date of Birth	a. _____	b. _____
2. Race/Ethnicity		
a. White (not Hispanic)	i. _____	ii. _____
b. Black (not Hispanic)	i. _____	ii. _____
c. Hispanic	i. _____	ii. _____
d. American Indian/Alaskan Native	i. _____	ii. _____
e. Asian/Pacific Islander	i. _____	ii. _____
f. Missing Data	i. _____	ii. _____
3. Marital Status (At time adoption legalized)		
a. Married	_____	_____
b. Single	_____	_____
c. Divorced	_____	_____
d. Widowed	_____	_____
e. Unknown	_____	_____
4. Child Adopted by		
a. Stepparent	_____	_____
b. Relative of Child	_____	_____
c. Foster Parent of Child	_____	_____
d. None	_____	_____

G. PLACEMENT INFORMATION

1. Previous Adoptive Placements:		
Yes	_____	_____
No	_____	_____
2. Siblings		
a. Were there siblings in substitute care?		
Yes	_____	_____
No	_____	_____
b. Was this child placed with own siblings?		
Yes	_____	_____
No	_____	_____

3. Case Flow Data
   a. Date of Adoptive Placement: mo____/da____/yr____
   b. Date Adoption Legalized: mo____/da____/yr____

H. PLACEMENT STATUS

1. The Child was Placed from:		
a. Within State	_____	_____
b. Another State	_____	_____
c. Specify	_____	_____
d. Another Country	_____	_____
e. Specify	_____	_____
2. The Child was Placed by:		
a. Public Agency	_____	_____
b. Private Agency	_____	_____
c. Tribal Agency	_____	_____
d. Independent Person	_____	_____
e. Other	_____	_____

I. STATE/FEDERAL ADOPTION SUPPORT

1. Is this child receiving any type of Federal or State subsidy or service as a condition of adoption?		
Yes	_____	_____
No	_____	_____
2. Is this a non-recurring cost subsidy only? (If "YES" go to "Source of Financial Support", P.L. 99-514 and Section 473 of the Social Security Act)		
Yes	_____	_____
No	_____	_____

3. Date Subsidy Began: mo____/da____/yr____
4. Date Subsidy will Cease: mo____/da____/yr____
5. Date Subsidy has Ceased: mo____/da____/yr____

6. Reason for Cessation (if subsidy ceased)		
a. Child is 18 Years Old	_____	_____
b. Adoptive Parents no Longer Responsible for or Supporting Child	_____	_____
c. Services Completed	_____	_____
d. Dissolution	_____	_____
e. Death of Child	_____	_____
f. Death of Parents	_____	_____
g. Other	_____	_____

J. SOURCE OF FINANCIAL SUPPORT (Check all that apply)

1. Title IV-E (Monthly Payment)	_____	_____

2. Title IV-E (Non-Recurring Costs)		
3. Title XVI (SSI)		
4. Titles XIX/XX with no Assistance Payment		
5. State Only		
6. Other		
7. None of the Above—Parents Only		

Definitions of Adoption Assistance Data Elements

State Agency Form

Reporting population

The State Agency Form is to be used by the State agency for *all* adoptions in which it has *any* involvement. This includes:

(a) all children who had been in foster care under the responsibility and care of the State agency and were subsequently adopted whether special needs or not and whether subsidies are provided or not;

(b) all special needs children, whether within the responsibility of the State agency or not, for whom non-recurring expenses are reimbursed; and

(c) all adoptive children for whom adoption assistance (payment or service) is being provided based on arrangements made by or through the State agency.

A. Identification Information

1. *State:* U.S. Postal Service two letter abbreviation for State submitting the report.

2. *Local Agency Name:* Identify the sub-State county, district, region, or other unit used by the State to identify regional subdivisions.

3. *Child's Reporting Number:* The number, which must be unique to each child in the State and which the State uses to transmit data to the Federal Department of Health and Human Services (DHHS), must remain with the child throughout every reporting quarter and must be used whenever the child re-enters the adoption/foster care system. The reporting number cannot be linked to the child's case I.D. number except at the State or local level.

B. Child's demographic Information

1. *Date of Birth:* Month, day and year of the child's birth.

2. *Sex:* Indicate as appropriate.

3. *Race/Ethnicity*

a. White (not Hispanic): A person of European, North African, or Middle Eastern origin, and not Hispanic.

b. Black (not Hispanic): A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.

c. Hispanic: A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.

d. American Indian/Alaskan Native: A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

e. Asian/Pacific Islander: A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

f. Missing Data: The specific race/ethnicity category is unknown or has not been determined.

C. Special Needs Status

1. *Child is Special Needs* (State Definition): The State definition of special needs as it pertains to a child eligible for an adoption subsidy under title IV-E.

2. *Basis for Special Needs:* Check only the primary basis and only as it is a factor or a condition in the State's definition and only as it is defined by the State.

a. Racial/Ethnic Background
b. Age
c. Membership in Sibling Group
d. Medical Conditions or Mental, Physical or Emotional Disabilities; (see below)
e. Other

3. *Type of Disability:* The disability may be identified either by documentation from specialists or by the caseworker working with the child.

a. Mental Retardation: Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

b. Blind or Visually Impaired: Having visual impairment that may significantly affect educational performance or development.

c. Deaf or Hard of Hearing: A hearing impairment, whether permanent or fluctuating, that adversely affects educational performance; a communication disorder, such as stuttering, impaired articulator; a language impairment or voice impairment that adversely affects educational performance.

d. Physically Disabled: A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

e. Emotionally Disturbed: A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: an inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed.

f. Learning Disability: A disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to use mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, or environmental, cultural or economic disadvantage.

g. Medical Condition: Clinically diagnosed disabling conditions other than those listed above.

h. Other: Apparently disabling conditions other than those noted above.

D. Birth Parents

1. *Date of Birth:* If exact dates are not available, use the first of the month; if the month is not available, use January 1.

2. *Race/Ethnicity*

a. White (not Hispanic): A person of European, North African, or Middle Eastern origin, and not Hispanic.

b. Black (not Hispanic): A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.

c. Hispanic: A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.

d. American Indian/Alaskan Native: A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

e. Asian/Pacific Islander: A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

f. Missing Data: The specific race/ethnicity category is unknown or has not been determined.

3. *Marital Status* (At time of child's birth): Indicate marital status of the birth mother at the time of the child's birth.

a. Married
b. Single
c. Divorced
d. Widowed
e. Unknown

E. Parental Rights Termination

1. *Date of Termination:* Respond to the question for both the mother and the father. If the exact date cannot be determined, use the first day of the month.

2. *Voluntary (Relinquishment/Surrender):* The parent voluntarily terminates full parental rights and responsibilities—either to an agency or an individual, depending on State law.

3. *Non-Voluntary (Court Ordered):* Full parental rights and responsibilities were terminated by court order.

F. Adoptive Parents

1. *Date of Birth:* Indicate date of birth of adoptive parent(s).

2. *Race/Ethnicity*

a. White (not Hispanic): A person of European, North African, or Middle Eastern origin, and not Hispanic.

b. Black (not Hispanic): A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.

c. Hispanic: A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.

d. American Indian/Alaskan Native: A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

e. Asian/Pacific Islander: A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

f. Missing Data: The specific race/ethnicity category is unknown or has not been determined.

3. *Marital Status:* Indicate marital status of the adoptive parent at the time the adoption was legalized.

a. Married
b. Single
c. Divorced
d. Widowed
e. Unknown

4. *Child Adopted by:* Indicate what previous relationship the child had with an adoptive parent.

a. Stepparent: Spouse of the child's birth mother or birth father.

b. Relative of Child: A relative through the birth parents by blood or marriage.

c. Foster Parent of Child: Child was placed in a non-relative foster family home with a family which later adopted him or her.

d. None: Adoptive parent fits into none of the categories above.

G. Placement Information

1. *Previous Adoptive Placements:* Indicate whether the child had previously been placed in an adoptive (pre-adoptive) home which placement later disrupted, or the child had legally been adopted and the adoption subsequently dissolved.

2. *Siblings:* If the adopted child had been in substitute care, were any brothers/sisters or half brothers/half sisters in substitute care at the same time—but not necessarily in the same home or facility. Answer NOT APPLICABLE if the child had not been in substitute care prior to adoption.

a. Were there siblings in substitute care?

b. Was this child placed with own siblings?

3. *Case Flow Data*

a. Date of Adoptive Placement: Date child was placed in adoptive (pre-adoptive) home of family who intended to adopt him or her.

b. Date Adoption Legalized: Date court order was issued making the adoption legal.

H. Placement Status

1. *The Child was Placed from:* Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.

a. Within State: Responsibility for the child resided with an individual or agency within the State filing the report.

b. Another State: Responsibility for the child resided with an individual or agency in another State or territory of the U.S.

c. Specify: Use the U.S. Postal Service two letter abbreviation for the State or territory.

d. Another Country: Responsibility for the child resided with an individual or agency in another country.

e. Specify: Indicate the name of the country from which the child came.

2. *The Child was Placed by:* The adoption activity was accomplished with the assistance of or through the intervention of which of the following?

a. Public Agency: A unit of State or local government.

b. Private Agency: A *for-profit or non-profit* agency or institution.

c. Tribal Agency: A unit within one of the Federally recognized Indian tribes or Indian Tribal Organizations.

d. Independent Person: A doctor, a lawyer or some other individual.

e. Other: Some organization other than those listed above.

I. State/Federal Adoption Support

1. *Is this child receiving any type of Federal or State subsidy or service as a condition of adoption?*

Has this child been adopted with an adoption assistance agreement under which

1—regular subsidies (Federal or State) are paid, or

2—the child is eligible for services under titles XIX or XX, or

3—Federal or State funds are made available for other types of assistance or services (including the non-recurring costs of adoption)?

2. *Is this a non-recurring cost subsidy only?*

The *only* assistance or subsidy being paid or offered by the Federal, State or local governments are for the non-recurring costs of adoption. If the answer to this question is YES, go to "Source of Financial Support," Section J.

3. *Date Subsidy Began:* The date that the child was first covered by the conditions in the adoption assistance agreement. This can only be after the adoption assistance agreement has been signed and the child has been moved into the adoptive (per-adoptive) home.

4. *Date Subsidy will Cease:* The State projects the date for the cessation of a subsidy. Subsidy or assistance usually ceases on the child's 18th birthday unless State law allows and agreement specifies an earlier or later date, but not later than the 21st birthday for Federally assisted subsidy payments. Subsidy can also cease for any of the other reasons listed in I.6. below.

5. *Date Subsidy has Ceased:* Date subsidy actually ceased.

6. *Reason for Cessation* (if subsidy ceased): If subsidy continues, respond with a NOT APPLICABLE; if subsidy has ceased, indicate the appropriate reason.

a. Child is 18 Years Old: Unless otherwise determined, see I.4. above, the subsidy ceases at the child's 18th birthday.

b. Adoptive Parents no Longer Responsible for or Supporting Child: By virtue of some action of the child (e.g., marriage) or parents (e.g., they threw the child out), the child is no longer under the responsibility of the parents or is no longer being supported by them.

c. Services Completed: All the terms, conditions (other than reaching age 18) and services required under the agreement have been completed.

d. Dissolution: The parental rights of the adoptive parents have been terminated.

e. Death of Child: The child died prior to the expiration date of the adoption assistance agreement.

f. Death of Parents: Adoptive parents have died prior to the expiration date of the subsidy. Federal (title IV-E) subsidy cannot be paid to any guardians or other individuals once the adoptive parents have died.

g. Other: Subsidy or assistance ceased for reasons other than those listed above.

J. Source of Financial Support

(Check all that apply)

1. *Title IV-E (Monthly Payment):* Title IV-E *adoption subsidy payments* are being paid on behalf of the adopted special needs child. When this is checked, it is understood that the State pays a matching amount; do *not* also check J.5.

2. *Title IV-E (Non-Recurring Costs):* Title IV-E *non-recurring costs* are being paid on behalf of the adopted special needs child. When this is checked, it is understood that the State pays a matching amount; do *not* also check J.5.

3. *Title XVI (SSI):* Child is receiving support under title XVI of the Social Security Act.

4. *Titles XIX/XX with no Assistance Payment:* According to the terms of the adoption assistance agreement, the child is eligible for services and medical treatment under Medicaid (XIX) and the Social Service Block Grant (XX). *No* State or Federal subsidy payment is being made on his/her behalf.

5. *State Only:* Child is supported by a "State only" adoption subsidy payment (no Federal subsidy).

6. *Other:* Source of additional support, services or assistance is other than those listed above, but does not include the adoptive parents.

7. *None of the Above Adoptive Parents Only:* The child is not special needs and thus has been placed without an adoption assistance agreement and without any subsidy, services or other assistance as a condition of adoption.

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Appendix C.—Adoption Data Elements Subsidy Cessation-State Agency Form

A. Identification Information

1. State _____
2. Local agency (city, county or district) name _____
3. Child's reporting number _____

B. Child's Demographic Information

1. Date of birth _____ ___/___/___ (mo da yr)
2. Sex: Male/Female _____
3. Race/Ethnicity:
   a. White (not Hispanic) _____
   b. Black (not Hispanic) _____
   c. Hispanic _____
   d. American Indian/Alaskan Native _____
   e. Asian/Pacific Islander _____
   f. Missing data _____
4. Date adoption legalized _____ ___/___/___ (mo da yr)

C. STATE/FEDERAL ADOPTION SUPPORT

1. Date subsidy began _____ ___/___/___ (mo da yr)
2. Date subsidy has ceased _____ ___/___/___ (mo da yr)
3. Reason for cessation (if subsidy ceased)
   a. Child is 18 years old _____
   b. Adoptive parents no longer responsible for or supporting child _____
   c. Services completed _____
   d. Dissolution _____
   e. Death of child _____
   f. Death of parents _____
   g. Other _____

Definition of Adoption Data Elements—Subsidy Cessation—State Agency Form

Reporting population

The State Agency Form is to be used by the State agency for *all* adoptions in which a recurring subsidy has been paid, whether it is a State subsidy or a Federal subsidy.

A. Identification Information

1. State — U.S. Postal Service two letter abbreviation for State submitting the report.
2. Local agency name — Identify the sub-State county, district, region, or other unit used by the State to identify regional subdivisions.
3. Child's reporting number — The number, which must be unique to each child in the State and which the State uses to transmit data to the Federal Department of Health and Human Services (DHHS), must remain with the child throughout every reporting quarter and must be used whenever the child re-enters the adoption/foster care system. The reporting number cannot be linked to the child's case I.D. number except at the State or local level.

B. Child's Demographic Information

1. Date of birth — Month, day and year of the child's birth.
2. Sex — Indicate as appropriate.
3. Race/Ethnicity:
   a. White (not Hispanic) — A person of European, North African, or Middle Eastern origin, and not Hispanic.
   b. Black (not Hispanic) — A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
   c. Hispanic — A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
   d. American Indian/Alaskan Native — A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
   e. Asian/Pacific Islander — A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
   f. Missing Data — The specific race/ethnicity category is unknown or has not been determined.
4. Date adoption legalized — Date court order was issued making the adoption legal.

C. State/Federal Adoption Support

1. Date subsidy began — The date that the child was first covered by the conditions in the adoption assistance agreement. This can only be after the adoption assistance agreement has been signed and the child has been moved into the adoptive (pre-adoptive) home.
2. Date subsidy has ceased — Date subsidy actually ceased.
3. Reason for cessation — When the subsidy has ceased, indicate the appropriate reason.
   a. Child is 18 years old — Unless otherwise determined, the subsidy ceases at the child's 18th birthday.
   b. Adoptive parents no longer responsible for or supporting child. — By virtue of some action of the child (e.g., marriage) or parents (e.g., they threw the child out), the child is no longer under the responsibility of the parents or is no longer being supported by them.
   c. Services completed — All the terms, conditions (other than reaching age 18) and services required under the agreement have been completed.
   d. Dissolution — The parental rights of the adoptive parents have been terminated.
   e. Death of child — The child died prior to the expiration date of the adoption assistance agreement.
   f. Death of parents — Adoptive parents have died prior to the expiration date of the subsidy. Federal (title IV–E) subsidy cannot be paid to any guardians or other individuals once the adoptive parents have died.
   g. Other — Subsidy or assistance ceased for reasons other than those listed above.

Appendix D.—Adoption Data Elements General Adoption Form (Use is Optional)

A. IDENTIFICATION INFORMATION

1. State _____
2. Local agency (city, county or district) name _____
3. Child's reporting number _____

B. CHILD'S DEMOGRAPHIC INFORMATION

1. Date of birth: _____ Mo.___ da.___ yr.___
2. Sex:
   Male _____
   Female _____
3. Race/Ethnicity:
   a. White (not Hispanic) _____
   b. Black (not Hispanic) _____
   c. Hispanic _____
   d. American Indian/Alaskan Native _____
   e. Asian/Pacific Islander _____
   f. Missing Data _____

C. BIRTH PARENTS

	Mother	Father
	mo da yr	mo da yr
1. Date of birth	a. _____	b. _____
	mo da yr	mo da yr
2. Race/Ethnicity		
a. White (not Hispanic)	i. _____	ii. _____
b. Black (not Hispanic)	i. _____	ii. _____
c. Hispanic	i. _____	ii. _____
d. American Indian/Alaskan Native	i. _____	ii. _____
e. Asian/Pacific Islander	i. _____	ii. _____
f. Missing Data	i. _____	ii. _____

D. PARENTAL RIGHTS TERMINATION

	Mother	Father
	mo da yr	mo da yr
1. Date of termination	a. _____	b. _____
2. Voluntary (relinquishment/surrender)	a. _____	b. _____
3. Non-Voluntary (Court Ordered)	a. _____	b. _____

ADOPTIVE PARENTS

	Mother	Father
	mo da yr	mo da yr
1. Date of birth	a. _____	b. _____
2. Race-Ethnicity:		
a. White (not Hispanic)	i. _____	ii. _____
b. Black (not Hispanic)	i. _____	ii. _____
c. Hispanic	i. _____	ii. _____
d. American Indian/Alaskan Native	i. _____	ii. _____
e. Asian/Pacific Islander	i. _____	ii. _____
f. Missing Data	i. _____	ii. _____
3. Marital status (at time adoption legalized)		
a. Married	_____	_____
b. Single	_____	_____
c. Divorced	_____	_____
d. Widowed	_____	_____
e. Unknown	_____	_____
4. Child Adopted by:		
a. Stepparent	_____	_____
b. Relative of child	_____	_____
c. Foster parent of child	_____	_____
d. None	_____	_____

F. PLACEMENT INFORMATION

1. Previous adoptive placements		
Yes	_____	_____
No	_____	_____
2. Was child placed with own siblings?		
Yes	_____	_____
No	_____	_____

3. Date adoption legalized:

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G. PLACEMENT STATUS

1. The child was placed from:

a. Within State		
b. Another State		
c. (Specify)		
d. Another county		
e. (Specify)		
2. The child was placed by:		
a. Public agency		
b. Private Agency		
c. Tribal Agency		
d. Independent Person		
e. Other		

DEFINITION OF ADOPTION ASSISTANCE DATA ELEMENTS (GENERAL ADOPTION FORM) (USE IS OPTIONAL)

Reporting population

These data elements may to be used by the State to collect information on all children legally adopted in the State, including stepparent adoptions. What agency will be designated to collect this information is a State decision, but the Vital Statistics unit is assumed to be the most logical.

A. Identification Information

1. State	U.S. Postal Service two letter abbreviation for State submitting the report.
2. Local agency name	Identify the sub-State county, district, region, or other unit used by the State to identify regional subdivisions.
3. Child's reporting number	The number which must be unique to each child in the State and which the State uses to transmit data to DHHS. The reporting number cannot be linked to the child's case I.D. number except at the State or local level.

B. Child's Demographic Information

1. Date of birth	Month, day and year of the child's birth.
2. Sex	Indicate as appropriate.
3. Race/Ethnicity	
a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing data	The specific race/ethnicity category is unknown or has not been determined.

C. Birth Parents

1. Date of birth	If exact dates are not available, use the first of the month; if the month is not available, use January 1.
2. Race/Ethnicity	
a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing data	The specific race/ethnicity category is unknown or has not been determined.

D. Parental Rights Termination

1. Date of termination	Respond to the question for both the mother and the father. If the exact date cannot be determined, use the first day of the month.
2. Voluntary (relinquishment/surrender)	The parent voluntarily terminates full parental rights and responsibilities—either to an agency or an individual, depending on State law.
3. Non-voluntary (court ordered)	Full parental rights and responsibilities are terminated by court order.

E. Adoptive Parents

1. Date of birth	Indicate date of birth of adoptive parent(s).
2. Race/Ethnicity	
a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing data	The specific race/ethnicity category is unknown or has not been determined.
3. Marital status	Indicate marital status of the adoptive parent at the time the adoption was legalized.

DEFINITION OF ADOPTION ASSISTANCE DATA ELEMENTS (GENERAL ADOPTION FORM) (USE IS OPTIONAL)—Continued

a. Married	
b. Single	
c. Divorced	
d. Widowed	
e. Unknown	
4. Child adopted by	Indicate what previous relationship the child had with the adoptive parent.
a. Stepparent	Spouse of the child's birth mother or father.
b. Relative of child	A relative through the birth parents by blood or marriage.
c. Foster parent of child	Child was placed in a non-relative foster family home with a family which later adopted him or her.
d. None	Adoptive parent fits into none of the categories above.
F. Placement Information	
1. Previous adoptive placements	Indicate whether the child had previously been placed in an adoptive (pre-adoptive) home which placement later was disrupted, or the child had legally been adopted and the adoption subsequently dissolved.
2. Was child placed with own siblings	Was the child placed with any of his or her own brothers or sisters or half-brothers or half-sisters.
3. Date adoption legalized	Date court order was issued making the adoption legal.
G. Placement Status	
1. The child was placed from	Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.
a. Within State	Responsibility for the child resided with an individual or agency within the State filing the report.
b. Another State	Responsibility for the child resided with an individual or agency in another State or territory of the U.S.
c. Specify	Use the U.S. Postal Service two letter abbreviation for the State or territory.
d. Another Country	Responsibility for the child resided with an individual or agency in another country.
e. Specify	Indicate the name of the country from which the child came.
2. The child was placed by	The adoption was accomplished with the assistance of or through the intervention of which of the following?
a. Public Agency	A unit of State or Local Government.
b. Private Agency	A *for-profit or non-profit* agency or institution.
c. Tribal Agency	A unit within one of the Federally recognized Indian tribes or Indian Tribal Organizations.
d. Independent Person	A doctor, a lawyer or some other individual.
e. Other	Some organization other than those listed above.

Appendix E—Electronic Data Transmission Format

1. The foster care and adoption data to be sent from State Agencies/Indian Tribes are to be in an electronic form.

2. Records should be written in ASCII standard characters.

3. A field is comprised of the Alphanumeric or Numeric response as called for in Appendix F. Field length specifications in Appendix F refer to the maximum number of characters or numbers allowed in that field, for example.

6A=Alphanumeric data with maximum length of 6 characters
8I=Integer (numeric) data with a maximum length of 8 characters

4. There are two alternatives for transmission of these data—either data diskettes or via modem.

a. Diskette Specifications

(1) 360K double sided, 1.44 Meg or 1.2 Meg DOS compatible diskettes are acceptable.

(2) All data fields must be filled up to the maximum field length as specified in Appendix F. If the data value does not require all of the digits then the remaining characters must be filled with either ASCII blanks, right justified, for alphanumeric fields or zeros, left justified, for numeric fields.

(3) No record should be split across a diskette if more than one diskette is provided.

b. Modem Specifications

(1) Data submitted via modem must be transmitted at 1200 or 2400 baud, using the Xmodem (or equivalent) error checking protocol and should be limited to less than 5000 cases (records) per submission.

(2) The first character of each record should be an ASCII pound (#) sign.

(3) Each of the data fields must be represented and must be separated by a comma. The entire field length, however, does not have to, but may be, filled and transmitted. That is, for fields of length I8, if the answer (value) is 50, either . . . , 00000050, . . . or . . . , 50, . . . is acceptable, though the shorter version is preferable:

field1,50,00000050,field4,etc.

(4) Data should be transmitted in lines of no more than 80 characters. Should the line end in the middle of a field, continue the field on the next line with the comma at the end of the field as normal.

(5) At the end of the entire transmission, enter an ASCII asterisk (*) to signal that the last record has been transmitted.

Appendix F—Foster Care and Adoption Record Layouts

A. Foster Care

1. Individual foster care child record

a. The record will consist of 72 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) Enter the appropriate value in each field.

(2) For all elements where no data exist (missing), enter a 9.

(3) All date fields will be in year, month and day order (yymmdd), two digits each, e.g., 880110 for January 10, 1988.

(4) Elements 9–17, 27–39 and 63–72, the "select all that apply" elements:

- Enter a 1 to indicate a positive response (indicating that this option applies to this child), or
- enter a 2 to indicate that this option does not apply to this child.

c. Individual Child Foster Care Data Elements Record Layout

Element No.		Characters
	A. Identification Information	
01	1. State	2A
02	4. End of quarter of submission (yymm)	4I
03	2. Local agency (city, county or district) name	20A
04	3. Child's Reporting Number	10I
	B. Child's Demographic Information	
05	1. Date of Birth (yymmdd)	6I

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Element No.		Characters
06	2. Sex	1I
07	3. Race/ethnicity	1I
08	4. Child is disabled	1I
	5 Type of disability:	
09	a. Mental retardation	1I
10	b. Blind or visually impaired	1I
11	c. Deaf or hard of hearing	1I
12	d. Physically disabled	1I
13	e. Emotionally disturbed	1I
14	f. Learning disability	1I
15	g. Medical condition	1I
16	h. AIDS	1I
17	i. Other	1I
	C. School Status	
18	1. Child is Enrolled in School	1I
19	2. Last Grade Completed	2I
	D. Removal/Placement Indicators	
20	1. Date of latest removal from home	6I
21	2. Date of placement in current substitute care setting	6I
22	3. Number of placements since latest removal	2I
23	4. Number of previous removals from home	2I
24	5. Date child was discharged from last substitute care setting under previous removal	6I
25	6. Child Entered Care by:	
	E. Circumstances of Removal	
26	1. Primary condition leading to child's removal	1I
	2. Other Conditions Leading to Child's Removal	
27	a. Physical abuse	1I
28	b. Sexual abuse	1I
29	c. Neglect	1I
30	d. Substance abuse (parent)	1I
31	e. Substance abuse (child)	1I
32	f. Child's disability	1I
33	g. Child's behavior problem	1I
34	h. Death of parents	1I
35	i. Incarceration of parents	1I
36	j. Caretaker's inability to cope	1I
37	k. Caretaker's illness incapacity	1I
38	l. Parental abandonment	1I
39	m. Other	1I
40	F. Current Living Arrangement	1I
	G. Parental Rights Termination	
	1. Mother	
41	a. Date (yymmdd)	6I
42	b. Type	1I
	2. Father	
43	a. Date (yymmdd)	6I
44	b. Type	1I
45	H. Current Permanent Placement Plan	1I
	I. Family Foster Home—Parents Data	
46	1. Marital Status	1I
47	2. Date of Birth-Mother (yymmdd)	6I
48	3. Race/Ethnicity-Mother	1I
49	4. Date of Birth-Father (yymmdd)	6I
50	5. Race/Ethnicity-Father	1I
	J. Outcome Information	
51	1. Date of Discharge from Substitute Care	6I
52	2. Reason for Exit	1I
	K. Principal Caretakers Information	
	1. Principal Caretakers at Time of	
53	Child's Removal from Home Number 1	1I
54	Number 2	1I
55	2. Date of birth-female (yymmdd)	6I
56	3. Date of birth-male (yymmdd)	6I
57	4. Race/ethnicity-female	1I
58	5. Race/ethnicity-male	1I
59	6. Marital status of principal caretakers	1I
60	7. Number of siblings (excluding this child)	2I
61	8. Number of other relatives (excluding principal caretakers)	2I
62	9. Number of other non-relatives	2I
	L. Source of Financial Support	
63	1. Title IV-E (Foster Care)	1I
64	2. Title IV-E (Adoption Assistance)	1I
65	3. Title IV-D (Child Support)	1I
66	4. Title XIX/XX (Medicaid/SSBG)	1I
67	5. SSI or Other Social Security Act Benefits	1I
68	6. Child's Own Resources	1I
69	7. State Only	1I
70	8. Parents	1I
71	9. Other	1I
72	10. None	1I

Element No.		Characters
	Total characters 179	

[1] A = Alphabetic Characters.
I = Integer Characters.

2. Foster Care Quarterly Summary Data File Record

a. The record will consist of 25 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) Enter the appropriate value in each field.

(2) For all elements where the total is zero, enter a 0.

(3) The date field will be in year, month order (yymm), two digits each, e.g. 9112 for December 1991

c. Foster Care Quarterly Summary Data File Record Layout

Element No.	Summary data file	Characters
01	Number of Records	8I
02	End of submission (yymm)	4I
03	Children in care under 1 year	6I
04	Children in care 1 year old	6I
05	Children in care 2 years old	6I
06	Children in care 3 years old	6I
07	Children in care 4 years old	6I
08	Children in care 5 years old	6I
09	Children in care 6 years old	6I
10	Children in care 7 years old	6I
11	Children in care 8 years old	6I
12	Children in care 9 years old	6I
13	Children in care 10 years old	6I
14	Children in care 11 years old	6I
15	Children in care 12 years old	6I
16	Children in care 13 years old	6I
17	Children in care 14 years old	6I
18	Children in care 15 years old	6I
19	Children in care 16 years old	6I
20	Children in care 17 years old	6I
21	Children in care 18 years old	6I
22	Children in care over 18 years old.	6I
23	Number of new entrants this quarter.	6I
24	Number who left care this quarter.	6I
25	Number remaining in care this quarter.	6I
	Record Length 196	

B. Adoptions

1. Individual adoption child record.

a. The record will consist of 57 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) Enter the appropriate value in each field.

(2) For all elements where no data exist (missing), enter a 9.

(3) All date fields will be in year, month and day order (yymmdd), two digits each, e.g. 880110 for January 10, 1988.

(4) Elements 9–16, 51–57 the "select all that apply" elements:

• Enter a 1 to indicate a positive response (indicating that this option applies to this child), or

• Enter a 2 to indicate that this option does not apply to this child.

c. Individual child adoption record layout.

Element No.		Characters
	A. Identification Information	
01	1. State	2A
02	2. Local agency (city, county or district) name	20A
03	3. Child's reporting number	10I
	B. Child's Demographic Information	
04	1. Date of birth (yymmdd)	6I
05	2. Sex	1I
06	3. Race/ethnicity	1I
	C. Special Needs Status	
07	1. Child is special needs	1I
08	2. Basis for special needs (primary)	1I
	3. Type of Disability:	
09	a. Mental retardation	1I
10	b. Blind or visually impaired	1I
11	c. Deaf or hard of hearing	1I
12	d. Physically disabled	1I
13	e. Emotionally disturbed	1I
14	f. Learning disability	1I
15	g. Medical condition	1I
16	h. Other	1I
	D. Birth Parents	
17	1. Mother date of birth (yymmdd)	6I
18	2. Father date of birth (yymmdd)	6I
19	3. Mother race/ethnicity	1I
20	4. Father race/ethnicity	1I
21	5. Marital status of mother (at time of child's birth)	1I
	E. Parental Rights Termination	
22	1. Mother—date of termination (yymmdd)	6I
23	2. Mother—voluntary (relinquishment/surrender)	1I
24	3. Mother—non-voluntary (court ordered)	1I
25	4. Father—date of termination (yymmdd)	6I
26	5. Father—voluntary (relinquishment/surrender)	1I
27	6. Father—non-voluntary (court ordered)	1I
	F. Adoptive Parents	
28	1. Mother date of birth (yymmdd)	6I
29	2. Father date of birth (yymmdd)	6I
30	3. Mother race/ethnicity	1I
31	4. Father race/ethnicity	1I
32	5. Marital Status (at time adoption legalized)	1I
33	6. Child adopted by:	1I
	G. Placement Information	
34	1. Previous adoptive placements	1I
	2. Siblings	
35	a. Were there siblings in substitute care?	1I
36	b. Was this child placed with own siblings?	1I
	3. Case Flow Data	
37	a. Date of adoptive placement (yymmdd)	6I
38	b. Date adoption legalized (yymmdd)	6I
	H. Placement Status	
	1. The child was placed from—	
39	a. Within state	1I
40	b. Another state	1I
41	c. Specify	2A
42	d. Another country	1I
43	e. Specify	20A
44	2. The child was placed by:	1I
	I. State/Federal Adoption Support	
45	1. Is this child receiving any type of Federal or State subsidy or service as a condition of adoption?	1I
46	2. Is this a non-recurring cost subsidy only?	1I
47	3. Date subsidy began (yymmdd)	6I
48	4. Date subsidy will cease (yymmdd)	6I
49	5. Date subsidy ceased (yymmdd)	6I
50	6. Reason for cessation (if subsidy ceased)	1I
	J. Source of Financial Support	
51	1. Title IV-E (monthly payments)	1I
52	2. Title IV-E (non-recurring costs)	1I
53	3. Title XVI (SSI)	1I
54	4. Title XIX/XX with no assistance payment	1I
55	5. State only	1I
56	6. Other	1I
57	7. None of the above—parents only	1I
	Total Characters 160	

2. Data on children whose subsidy ends.

a. The record will consist of 10 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) Enter the appropriate value in each field

(2) For all elements where no data exist (missing), enter a 9.

(3) All date fields will be in year, month and day order (yymmdd), two digits each, e.g. 880110 for January 10, 1988.

c. Subsidy cessation data record layout.

Element No.		Characters
	A. Identification Information	
01	1. State	2A
02	2. Local agency (city, county or district) name	20A
03	3. Child's reporting number	10I
	B. Child's Demographic Information	
04	1. Date of birth (yymmdd)	6I
05	2. Sex	1I
06	3. Race/ethnicity	1I
07	4. Date adoption legalized (yymmdd)	6I
	I. State/Federal Adoption Support	
08	3. Date subsidy began (yymmdd)	6I
09	5. Date subsidy ceased (yymmdd)	6I
10	6. Reason for cessation	1I
	Total characters 59	

3. Summary data on adopted children.

a. The record will consist of 24 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) For all elements where the total is zero, enter a 0.

(2) The date field will be in year, month order (yymmdd), two digits each, e.g., 9112 for December 1991

c. Adoption Summary data record layout.

Element No.	Summary data file	Characters
01	Number of Records	6I
02	End of Submission (yymm)	4I
03	Children Adopted Under 1 year.	5I
04	Children Adopted 1 year old.	5I
05	Children Adopted 2 years old.	5I
06	Children Adopted 3 years old.	5I
07	Children Adopted 4 years old.	5I
08	Children Adopted 5 years old.	5I
09	Children Adopted 6 years old.	5I
10	Children Adopted 7 years old.	5I
11	Children Adopted 8 years old.	5I
12	Children Adopted 9 years old.	5I
13	Children Adopted 10 years old.	5I
14	Children Adopted 11 years old.	5I
15	Children Adopted 12 years old.	5I
16	Children Adopted 13 years old.	5I
17	Children Adopted 14 years old.	5I
18	Children Adopted 15 years old.	5I
19	Children Adopted 16 years old.	5I
20	Children Adopted 17 years old.	5I
21	Children Adopted 18 years old.	5I
22	Children Adopted over 18 years old.	5I
23	Number of children adopted with subsidy.	5I
24	Number of children whose subsidy ended.	5I
	Record Length 196	

Appendix G—Data Standards

Four types of assessments will be conducted on the data submitted:

- Comparisons of the detailed data to summary data;
- Internal consistency checks of the detailed data;
- An assessment of the status of missing data; and
- Timeliness, an assessment of how current the submitted data are.

A. Foster Care

1. Submission Summary—A summary file must accompany the detailed data submission. This summary will be used to verify basic counts of records on the detailed data received.

a. The contents of this file are:

- The total number of records sent,
- The date of the end of the submission,
- A distribution of the children in care by age of child,
- The total new entrants,
- The number of children who left foster care during the quarter,
- The number of children who remain in care at the end of the quarter,

b. The equivalent totals will be generated from the quarterly detailed data and compared. If any of these initial comparisons do not match, the State will be notified immediately by phone and within five working days in writing. A log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

c. The summary file should be separate from the quarterly detailed data. The record layout for the summary file is included in appendix F, section A.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

2. Internal Consistency Data Checking—A number of internal consistency validations will be computed to help assure the reliability of the quarterly detailed data:

a. The number of children entering care in a quarter minus the number of children that left care plus the number "in care" at the conclusion of the previous quarter should equal the number "in care" in the current reporting quarter (+ or − 2%).

b. If a child is marked as disabled (element 8) then at least one Type of Disability Condition (elements 9–17) must be checked.

c. The Date of Latest Removal from Home (element 20) cannot be later than the Date of Placement in Current Substitute Care (element 21).

d. One element between 27 and 39 must be answered positively.

e. At least one element between number 63 and 72 must be answered positively.

f. If Number of Previous Removals from Home (element 23) is zero, then Date Child was Discharged from Last Substitute Care Setting (element 24) must be zero.

g. If Date Child was Discharged from Last Substitute Care Setting (element 24) is present, it must be less than Date of Latest Removal from Home (element 20).

h. If Current Living Arrangement (element 40) is a value that indicates that the child is not in a foster family or adoptive home, then elements 46–50, data about the Foster Family, must be blank.

i. If either element 63 or element 64, title IV–E, Source of Financial Support, is indicated, element 69, State Only, should not be indicated.

3. Missing Data Standards—The term "missing data" refers to records with the code indicating that the data are "unknown" for the element. This results from the fact that the data were uncollected.

a. In addition, the following will be converted to missing:

(1) Out-of-range data (e.g. for "sex" only 1 and 2 and 9 are acceptable entries. If a 3 or any other character is in that field, it will be converted to 9).

(2) Data fields which fail logical consistency tests 2b through 2i in the previous paragraph.

b. The *maximum* amount of missing data for each field permitted without penalty will be 5 percent *except* as follows:

Maximum amount of missing data	Element
No missing data allowed	01 State.
	02 End of quarter submission.
	04 Child's reporting number.
	09–17 Type of disability.
	19 Last grade completed.
	52 Reason for exit.
5 percent of those for whom response is applicable.	

Maximum amount of missing data	Element
No maximum established	51 Date of discharge from substitute care.
	27–39 Other conditions leading to child's removal.

4. Timeliness of Foster Care Data Reports. A minimum of 60 percent of the children *reported* entering foster care in the report for a given quarter must have entered during that quarter. A minimum of 60 percent of the foster care exits reported for that quarter must have exited during that quarter.

B. Adoption

1. Submission Summary Standards—A summary file must accompany the detailed data submission. This summary will be used to verify basic counts of records on the detailed data received.

a. The contents of this file are:

- The total number of records sent,
- The date of the end of the submission,
- A distribution of the children adopted by age of child,
- The number of children adopted with a subsidy, and
- The number of children whose subsidy ended.

b. The equivalent totals will be generated from the quarterly detailed data (including the Subsidy Cessation File) and compared. If any of these initial comparisons do not match, the State will be notified immediately by phone and within five working days in writing. A log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

c. The summary file should be separate from the quarterly detailed data. The record layout for the summary file is included in appendix F, section B.3.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

2. Internal Consistency Data Checking Standards—A number of internal consistency validations will be computed to help assure the reliability of the quarterly detailed data.

a. The Date of Child's Birth (element 4) must be after both the Mother's and Father's Date of Birth, (elements 17 and 18) unless one of these is missing.

b. If Basis of Special Needs (element 8) is marked as disabled, then at least one element between elements 9–16, Type of Disability, must be completed.

c. Dates of Parental Rights Termination (elements 22 and 25) must be completed.

d. If Child Receiving Subsidy (element 45) is answered negatively, then elements 46–56 should be answered negatively and Parents Support (element 57) must be answered positively.

e. If Non-Recurring Subsidy Only (element 46) is positive, then elements 47–50 must be blank and Title IV–E, Non-Recurring Cost (element 52) must be positive.

f. If Child Receiving Subsidy (element 45) is positive and Non-Recurring Subsidy (element 46) is negative, then Date Subsidy Will Cease (element 48) must be greater than Data Subsidy Began (element 47).

g. In the Subsidy Cessation File, the Child's Reporting Number (element 3) must match the reporting number of a child receiving a subsidy in a prior submission.

h. Date Subsidy Ceased (element 9) must be greater than Date Subsidy Began (element 8).

3. Missing Data Standards—The term "missing data" refers to records with the code indicating that the data are "unknown" for the element. This results from the fact that the data were uncollected.

a. In addtion, the following will be converted to missing:

(1) Out-of-Range data (e.g., for "sex" only 1 and 2 and 9 are acceptable entries. If a 3 or any other character is in that field, it will be converted to 9);

(2) Data fields which fail logical consistency tests 2b through 2h in the previous paragraph;

b. The *maximum* amount of missing data for each field permitted without penalty will be 5% *except* as follows:

Maximum amount of missing data	Element
1No missing data allowed:	01 State.
	03 Child's reporting number.
	08 Basis for special needs.
	09–16 Type of disability.
	17–18 Birth parents-date of birth.
	19–20 Birth parents-race/ethnicity.
	41 Specific state child was placed from.
	43 Specific country child was placed from.
	50 Reason for cessation of subsidy.
5 percent of those for whom response is applicable:	51–57 Source of financial support.

4. Timeliness of Adoption Data Reports. No specific timeliness standards apply. Data on adoptions should be submitted as promptly after finalization as possible.

[FR Doc. 90–22686 Filed 9–26–90; 8:45 am]

BILLING CODE 4130–01 M

VOL
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ISS
188
SE
27
1990
UMI

federal register

Thursday
September 27, 1990

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 510

Implementation of the Minimum Wage Provisions of the Fair Labor Standards Amendments of 1989 in Puerto Rico; Interim Final Rule

VOL
55
ISS
188
SE
27
1990
UMI

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

29 CFR Part 510

Implementation of the Minimum Wage Provisions of the Fair Labor Standards Amendments of 1989 in Puerto Rico

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Amendment to interim final rule.

SUMMARY: On March 30, an interim final rule was published in the Federal Register implementing the minimum wage provisions of the 1989 Amendments to the Fair Labor Standards Act (FLSA) in the Commonwealth of Puerto Rico and amending wage order procedures for American Samoa. This interim final rule contained, among other things, listings of industries in Puerto Rico according to appropriate Standard Industrial Classification Manual codes with applicable minimum wage or tier designations. However, applicable tiers for certain industries were not published in accordance with the standard practices of the U.S. Bureau of Labor Statistics and the Commonwealth of Puerto Rico in order to protect the confidentiality of data in those industries with fewer than three reporting employers. This supplement lists those industries in which all reporting employers have provided waivers of confidentiality. The Department of Labor has elected to publish applicable tiers for these industries as an amendment to the interim final rule rather than wait for publication of the final rule in order to make the relief provided for employers in Puerto Rico as a part of the 1989 FLSA Amendments available as soon as possible. This document also notes those categories where one or more employers has refused to provide such a waiver. Language has also been added to each appendix to make it clear that certain categories of employees are, by statutory language, subject to the wage rates specified under Tier 1 that are equal to the minimum wage rates required on the mainland. Also, the tier designation for SIC code Major Group 58, Eating and drinking places, has been changed to Tier 1 to reflect this fact.

EFFECTIVE DATE: This amendment is effective on September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, interim final regulations were published in the Federal Register implementing the minimum wage provisions of the Fair Labor Standards Act (FLSA) in Puerto Rico, and amending wage order procedures applicable to American Samoa. This document included, among other things, a listing of industries in Puerto Rico classified according to categories established by the Standard Industrial Classification Manual (SIC), 1987, indicating the applicable minimum wage level, or tier, for each industry listed. In preparing the notice, the Department withheld tier designation for those industry classifications in which there were fewer than three establishments responding to the survey (non-manufacturing) or census (manufacturing) that was used to establish the appropriate minimum wage rate. Tier designations were also withheld, in the case of non-manufacturing, where one responding employer had more than 80 percent of the employment in the category. This was for the purpose of protecting the confidentiality of wage data.

In order to afford the full measure of relief intended by the Congress, the Commonwealth and the Department decided that applicable tiers should be published wherever possible. The Commonwealth therefore is seeking to secure a waiver of the confidentiality ordinarily afforded to each of the employers participating in the survey or census that are in industries with less than three respondents.

This document revises appendices A and B of the interim final rule to set forth the applicable tier for those industries with less than three respondents in which all respondents have provided waivers. In some cases, the resulting tier is lower than set forth in the interim final rule, and in other cases it is higher. In all cases, the designation and rates required by the interim final rule remain in effect until publication of this document, which takes effect today. Information in these documents, together with that provided in the interim final rule published on March 30, will provide employers in Puerto Rico with information as to the appropriate minimum wage rate applicable to the various SIC categories. Those categories in which any employer has refused to provide a waiver will be noted with a "b".

In preparing appendix B for nonmanufacturing, the Department originally included the designation of Tier 2 for SIC code 58, Eating and drinking places. Although this designation reflected the average hourly wage rate for that category, the designation should have been Tier 1. As noted elsewhere in the regulations, the 1989 Amendments require the application of Tier 1 to restaurants and "[a]ny other retail or service establishment that employs such employees in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of clubs * * *."

II. Procedural Matters

The application of the Paperwork Reduction Act, Executive Order 12291, Regulatory Flexibility Act and Administrative Procedure Act to this rule are discussed in the Preamble to the interim final rule published on March 30, 1990.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 510

Employment, Investigations, Labor, Law enforcement, Puerto Rico, Incorporation by reference.

Accordingly, title 29, chapter V, subchapter A, of the Code of Federal Regulations, is amended as set forth below.

Signed at Washington, DC, on this 20th day of September, 1990.

Elizabeth Dole,
Secretary of Labor.

William C. Brooks,
Assistant Secretary for Employment Standards.

Samuel D. Walker,
Acting Administrator Wage and Hour Division.

PART 510—IMPLEMENTATION OF THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1989 IN PUERTO RICO

1. The authority citation for part 510 continues to read as follows:

Authority: Sec. 4, Pub. L. 101-157, 103 Stat. 938; 29 U.S.C. 201 *et seq.*

2. Appendix A is amended by adding a new paragraph at the end of the fifth paragraph and revising the tier designation "a" for the industries listed in the Federal Register of March 30, 1990 to the designation noted below.

Appendix A—Manufacturing Industries Eligible for Minimum Wage Phase-In

* * * * *

Important: In referring to this appendix to determine appropriate tier designations, please note that certain categories of employees are subject to treatment under Tier 1 regardless of the average hourly wage rate for the industry and the tier designation contained herein. These employees, as listed in the 1989 Amendments, are those employed by:

(a) The United States

(b) An establishment that is a hotel, motel, or restaurant, or

(c) any other retail or service establishment that employs such employee in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of clubs.

Please note that these named categories may not correspond exactly to categories established by the SIC manual.

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MANUFACTURING INDUSTRIES

Major group	Industry group	Industry No.	Tier	Industry
		2015	2	Poultry slaughtering and processing.
		2046	1	Wet corn milling.
		2082	1	Malt beverages.
		2084	3	Wines, brandy, and brandy spirits.
	221		1	Broadwoven fabric mills, cotton.
		2211	1	Broadwoven fabric mills, cotton.
		2254	3	Knit underwear and nightwear mills.
	226		1	Dyeing and finishing textiles, except wool fabrics and knit goods.
		2261	3	Finishers of broadwoven fabrics of cotton.
		2262	1	Finishers of broadwoven fabrics of manmade fiber and silk.
	227		1	Carpets and rugs.
		2273	1	Carpets and rugs.
	228		3	Yarn and thread mills.
		2281	3	Yarn spinning mills.
		2323	2	Men's and boys' neckwear.
		2385	3	Waterproof outerwear.
		2399	3	Fabricated textile products, not elsewhere classified.
	242		3	Sawmills and planing mills.
		2421	3	Sawmills and planing mills, general.
	245		3	Wood buildings and mobile homes.
		2451	3	Mobile homes.
	262		2	Paper mills.
		2621	2	Paper mills.
		2655	1	Fiber cans, tubes, drums, and similar products.
		2671	2	Packaging paper and plastics film, coated and laminated.
		2676	1	Sanitary paper products.
		2677	1	Envelopes.
		2678	3	Stationery, tablets, and related products.
		2732	3	Book printing.
		2754	1	Commercial printing, gravure.
		2822	2	Synthetic rubber (vulcanizable elastomers).
		2836	1	Biological products, except diagnostic substances.
		2865	1	Cyclic organic crudes and intermediates, and organic dyes and pigments.
		3062	3	Unsupported plastics profile shapes.
		3087	3	Custom compounding of purchased plastics resin.
		3142	b	House slippers.
	315		3	Leather gloves and mittens.
		3151	3	Leather gloves and mittens.
	316		3	Luggage.
		3161	3	Luggage.
		3171	3	Women's handbags and purses.
	321		2	Flat glass.
		3211	2	Flat glass.
	322		1	Glass and glassware, pressed or blown.
		3221	1	Glass containers.
		3251	3	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories.
		3274	1	Lime.

MANUFACTURING INDUSTRIES—Continued

Major group	Industry group	Industry No.	Tier	Industry
		3296	1	Mineral wool.
		3317	1	Steel pipe and tubes.
		3351	1	Rolling, drawing, and extruding of copper.
		3399	1	Primary metal products, not elsewhere classified.
		3412	1	Metal shipping barrels, drums, kegs, and pails.
		3421	3	Cutlery.
		3494	1	Valves and pipe fittings, not elsewhere classified.
		3495	2	Wire springs.
		3563	1	Air and gas compressors.
		3568	1	Mechanical power transmission equipment, not elsewhere classified.
		3579	1	Office machines, not elsewhere classified.
		3589	b	Service industry machinery, not elsewhere classified.
		3592	2	Carburetors, pistons, piston rings, and valves.
		3621	1	Motors and generators.
		3648	2	Lighting equipment, not elsewhere classified.
		3692	1	Primary batteries, dry and wet.
		3732	2	Boat building and repairing.
	381		1	Search, detection, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment.
		3812	1	Search, detection, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment.
		3821	1	Laboratory apparatus and analytical, optical, measuring, and controlling instruments.
	387		1	Watches, clocks, clockwork operated devices, and parts.
		3873	1	Watches, clocks, clockwork operated devices, and parts.
		3942	2	Dolls and stuffed toys.
		3951	3	Pens, mechanical pencils, and parts.
		3953	1	Marking devices.

3. "Appendix B—Non-manufacturing industries eligible for minimum wage phase-in" is amended by adding a new paragraph at the end of the sixth paragraph and by revising the tier designation "b" published in the **Federal Register** on March 30 to the designation noted below.

Appendix B—Non-manufacturing industries eligible for minimum wage phase-in

* * * * *

Important: In referring to this appendix to determine appropriate tier designations, please note that certain categories of employees are subject to treatment under Tier 1 regardless of the average hourly wage rate for the industry and the tier designation contained herein. These employees, as listed in the 1989 Amendments, are those employed by:

(a) the United States,

(b) an establishment that is a hotel, motel, or restaurant, or

(c) any other retail or service establishment that employs such employee in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of clubs.

Please note that these named categories may not correspond exactly to categories established by the SIC manual.

NON-MANUFACTURING INDUSTRIES

Major group	Industry group number	Industry number	Tier	Industry
		1429	1	Crushed and broken stone, not elsewhere classified.
		1742	1	Plastering, drywall, acoustical, and insulation work.

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NON-MANUFACTURING INDUSTRIES—Continued

Major group	Industry group number	Industry number	Tier	Industry
		1743	1	Terrazzo, tile, marble, and mosaic work.
		1793	2	Glass and glazing work.
		4226	1	Special warehousing and storage, not elsewhere classified.
	492		1	Gas production and distribution.
		4925	1	Mixed, manufactured, or liquefied petroleum gas production and/or distribution.
	495		1	Sanitary services.
		4953	1	Refuse systems.
		5136	1	Men's and boys' clothing and furnishings.
		5139	2	Footwear.
		5171	1	Petroleum bulk stations and terminals.
	58		1	Eating and drinking places.
		[1] 581	1	Eating and drinking places.
	593		3	Used merchandise stores.
		5932	3	Used merchandise stores.
		6036	1	Savings institutions, not Federally chartered.
	609		2	Functions related to depository banking.
		6099	2	Functions related to depository banking, not elsewhere classified.
		7993	2	Coin-operated amusement devices.
		8063	1	Psychiatric hospitals.
	869		2	Membership organizations, not elsewhere classified.
		8699	2	Membership organizations, not elsewhere classified.

[1] Survey data reported on the basis of SIC code 5810. Data were not broken down by SIC 5812, Eating places, and 5813 Drinking places (Alcoholic beverages).

[FR Doc. 90-22748 Filed 9-26-90; 8:45 am]
BILLING CODE 4410-27-M

federal register

Thursday
September 27, 1990

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 722 et al.

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Service of Documents; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 722, 723, 724, 843, 845, and 846

RIN 1029-AB41

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Service of Documents

AGENCY: The Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to revise its Initial and Permanent Regulatory Program rules governing enforcement actions and service of process to provide for greater consistency of phraseology and uniformity of service within these rules.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on November 27, 1990.

Public Hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC, at 9:30 a.m. local time on November 13, 1990. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates to be announced prior to any requested hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on October 29, 1990. Individuals wishing to attend, but not testify at any hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT"** by the time specified under **"DATES."**

FOR FURTHER INFORMATION CONTACT: John A. Trelease, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208–2550 (Commercial) or 268–2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above, may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates, and addresses scheduled for the hearings are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates, and addresses for hearings in other locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Trelease (see **"FOR FURTHER INFORMATION CONTACT"**), either orally or in writing, of the desired hearing location by 5 p.m. Eastern time on October 29, 1990. If no one has contacted Mr. Trelease to express an interest in testifying in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, and the results will be included in the Administrative Record.

If a hearing is held, it will continue until all persons in attendance wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that the persons transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advanced copy of their testimony.

II. Discussion of the Proposed Rule

Background

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act) provides authority to the Secretary of the Interior and his authorized representatives to impose penalties for violations of the Act. The regulations governing the assessment of civil penalties are found at 30 CFR parts 723 and 845. Part 723 contains the Initial Program regulations for the issuance of civil penalties which were first promulgated on December 13, 1977 (42 FR 62702), and subsequently revised on September 4, 1980 (45 FR 58780). Part 845 contains the Permanent Program regulations for the assessment of civil penalties first promulgated on March 13, 1979 (44 FR 15461), and subsequently revised on August 16, 1982 (47 FR 35640). The regulations governing the assessment of individual civil penalties are found at 30 CFR parts 724 and 846. Parts 724 and 846 contain the Initial Program and Permanent Program regulations respectively which were promulgated on February 8, 1988 (53 FR 3664).

Section 521 of the Act provides authority to the Secretary of the Interior and his authorized representatives to issue enforcement actions for violations of the Act. The regulations governing the service of process for notices and orders are found at 30 CFR parts 722 and 843. Part 722 contains the Initial Program regulations which were promulgated on December 13, 1977 (42 FR 62639). Part 843 contains the Permanent Program regulations which were first promulgated on March 13, 1979 (44 FR 15460), and subsequently revised on August 16, 1982 (47 FR 35631).

Purpose of the Proposed Rule

1. Consistent Phraseology

On September 4, 1980, OSM revised the Initial Program civil penalty regulations at 30 CFR part 723. (45 FR 58788). Much of this revision involved merely changes in phraseology. The term "permittee" was changed in all but two cases to "person to whom the notice or order was issued." These changes were made to conform part 723 to its

CFR Part 845 previously promulgated on March 13, 1979 (44 FR 14902).

A subsequent review of the of 30 CFR parts 723 and 845 indicated that other similar changes could be made to further reduce inconsistent phraseology within these rules. Specifically, paragraphs 723.13(b)(3) and 845.13(b)(3) attribute negligence points to the "person to whom the notice or order was issued" in causing or failing to correct a violation, whereas sub-paragraphs 723.13(b)(3)(ii)(B) and 845.13(b)(3)(ii)(B) define "negligence" as a failure of a "permittee" to prevent or abate a violation.

Similarly, §§ 723.15 and 845.15 consistently use the phrase the "person to whom the notice or order was issued" except at paragraphs (b)(2) which speak of the "permittee" not abating the violation within 30 days.

One of the principal effects of both the revised Interim and Permanent Programs' use of the term "person to whom the notice or order was issued" rather than that of "permittee" was to allow regulatory authorities to assess civil penalties against both permittees and non-permittee operators named in a notice or order. Because operators are the parties most often attributed with actual on-site capacity to prevent or abate violations, and to make more consistent the phraseology used by the civil penalty rules, OSM proposes to revise §§ 723.13(b)(ii)(B), 723.15(b)(2), 845.13(b)(ii)(B) and 845.15(b)(2) by substituting the phrase "person to whom the notice or order was issued" for the more restrictive term "permittee."

OSM also proposes to revise the phraseology of 30 CFR 843.14(a)(2) which provides for alternative methods of service on the "permittee" or his designated agent for notice of violations, cessation orders and show cause orders. This rule was included in OSM's review of its service of process procedures which are also the subject of this rulemaking. The provisions of paragraph (a)(2) which provide for alternative methods of service on the "permittee" are inconsistent with those of subsection (a) which provide that service shall be made on the "person" to whom the notice or order was issued or his or her designated agent.

As originally promulgated on March 13, 1979, 30 CFR 843.14 (a) and (a)(2) were consistent in providing for alternative methods of service on the "person" to whom the notice or order was issued or his designated agent. (44 FR 15312.) The corresponding Interim program rules at 30 CFR 722.14(a)(2) were revised on January 11, 1980 to provide for alternative methods of service on the "person" to whom the notice or order was issued or his designated agent. (45 FR 3326.) On August 16, 1982, subsection 843.14(a)(2) was revised without explanation to provide for alternative service on the "permittee" or his or her designated agent. (47 FR 35620.) OSM now proposes to return paragraph (a)(2) to its original 1979 language by substituting the phrase "person to whom the notice or order was issued or his or her designated agent" for the more restrictive phrase "permittee or his or her designated agent." This change would provide more consistent phraseology both within the rule and with its Interim Program counterpart at 30 CFR 722.14(a)(2).

2. Service of Process

A further purpose of this proposed rulemaking is to provide for increased flexibility and uniformity in the methods of service of process for notice of violations, cessation and show cause orders, and proposed civil penalty and individual civil penalty assessments. 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/846.17 all vary in the methods by which their service of process is performed.

On December 13, 1977, OSM codified its Interim Program procedures for service of notices of violations, cessation orders, and orders to show cause at 30 CFR 722.14. (42 FR 62639.) On August 16, 1982, OSM codified its Permanent Program procedures at 30 CFR 843.14. (47 FR 35631.) Under both regulations, the prescribed methods for service of process are by personal delivery or by certified mail.

On December 13, 1977, OSM established its Initial Program procedures for service of civil penalty assessments at 30 CFR 723.17. (42 FR 62702.) On March 13, 1979, OSM established its Permanent Program procedures at 30 CFR 845.17. (44 FR 15461.) Both regulations provide for service of such assessments only by certified mail.

On February 8, 1988, OSM promulgated Initial and Permanent Program procedures for service individual civil penalty assessments at 30 CFR 724.17 and 846.17. (53 FR 3664.) Both these regulations provide that service of such assessments shall be sufficient if it satisfies Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint. Rule 4 provides generally that service of process may be made to an individual or business entity through personal delivery or by regular mail, and if service is to be on an individual, also by leaving copies of the service document at the individual's dwelling or usual place of abode with some person of suitable age and discretion.

Subsequent OSM field experience with the various methods of service authorized by these regulations indicate that each method may, depending upon the unique circumstances of the individual enforcement action, provide specific advantages and/or disadvantages for accomplishing effective service of process. Therefore, to provide increased flexibility within each rule and uniformity among the rules, OSM proposes to revise 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/846.17 to allow service by either personal delivery, certified mail, or any other alternative means consistent with Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint. These revisions are not intended to alter either the means of enforcement or the sanctions prescribed under each rule.

Effect of the Rule in Federal Program States and on Indian Lands

The proposed revisions, if adopted, will apply through cross-referencing in the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed rule, if adopted, will also apply through cross-referencing to Indian lands as provided in 30 CFR part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

Effect of the Rule in States With Primacy

Section 518(i) of the Act and 30 CFR 840.13(c) of the regulations require approved State programs to contain procedures the same or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR parts 843, 845, and 846. To the extent that OSM is clarifying the rules proposed to include operators, States will need to demonstrate that their rules are as inclusive as the proposed Federal regulations, or amend their programs. Also, States which desire more flexibility in their method of service of documents may desire to amend their programs but are not bound to do so

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because of the minor nature of the proposed changes.

III. Procedural Matters

Federal Paperwork Reduction Act

There are no information collection requirements in the proposed rule which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The Department of the Interior has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule merely clarifies terminology for those issued notices, orders, and assessments, and allows for greater flexibility of service of documents.

National Environmental Policy Act

This proposed rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Author

The author of this proposed rule is John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208–2550 (Commercial) or 268–2550 (FTS).

List of Subjects

30 CFR Part 722

Law enforcement, Public health, Safety, Surface mining, Underground mining.

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 722, 723, 724, 843, 845, and 846 as set forth below:

Dated: August 10, 1990.

David O'Neal,

Assistant Secretary, Land and Minerals Management.

SUBCHAPTER B—INITIAL PROGRAM REGULATIONS

PART 722—ENFORCEMENT PROCEDURES

1. The authority citation for part 722 continues to read as follows:

Authority: Secs. 201, 501, and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201).

2. Section 722.14 is amended by revising paragraph (a)(2) to read as follows:

§ 722.14 Service of notices of violation, cessation orders, and orders to show cause.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

* * * * *

PART 723—CIVIL PENALTIES

3. The authority citation for part 723 continues to read as follows:

Authority: Surface Mining Control and Reclamation Act of 1977, Sections 201, 501, 518 (30 U.S.C. 1211, 1251, 1268) and Pub. L. 100–34.

4. Section 723.13 is amended by revising paragraph (b)(3)(ii)(B) to read as follows:

§ 723.13 Point system for penalties.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(B) *Negligence* means the failure of a person to whom the notice or order was issued to prevent the occurrence of any violation of the permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

* * * * *

5. Section 723.15 is amended by revising paragraph (b)(2) to read as follows:

§ 723.15 Assessment of separate violations for each day.

* * * * *

(b) * * *

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the person to whom the notice or order was issued has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to section 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

6. Section 723.17 is amended by revising paragraph (b) to read as follows:

§ 723.17 Procedures for assessment of civil penalties.

* * * * *

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order.

* * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

7. The authority citation for part 724 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); and Pub. L. 100–34.

8. Section 724.17 is amended by revising paragraph (c) to read as follows:

§ 724.17 Procedure for assessment of individual civil penalty.

* * * * *

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. If the mail is tendered at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein and that person refuses to accept delivery, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

SUBCHAPTER L—PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

PART 843—FEDERAL ENFORCEMENT

9. The authority citation for part 843 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

10. Section 843.14 is amended by revising paragraph (a)(2) to read as follows:

§ 843.14 Service of notices of violation, cessation orders, and show cause orders.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it was issued or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

* * * * *

PART 845—CIVIL PENALTIES

11. The authority citation for part 845 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34; Pub. L. 100–202, and Pub. L. 100–446.

12. Section 845.13 is amended by revising paragraph (b)(3)(ii)(B) to read as follows:

§ 845.13 Point system for penalties.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(B) *Negligence* means the failure of a person to whom the notice or order was issued to prevent the occurrence of any violation of the permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack or reasonable care.

* * * * *

13. Section 845.15 is amended by revising paragraph (b)(2) to read as follows:

§ 845.15 Assessment of separate violations for each day.

* * * * *

(b) * * *

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the person to whom the notice or order was issued has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to section 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

14. Section 845.17 is amended by revising paragraph (b) to read as follows:

§ 845.17 Procedures for assessment of civil penalties.

* * * * *

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order.

* * * * *

PART 846—INDIVIDUAL CIVIL PENALTIES

15. The authority citation for part 846 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); Pub. L. 100–34.

16. Section 846.17 is amended by revising paragraph (c) to read as follows:

§ 846.17 Procedure for assessment of individual civil penalty.

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. If the mail is tendered at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein and that person refuses to accept delivery, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

[FR Doc. 90–22675 Filed 9–26–90; 8:45 am]
BILLING CODE 4310–05–M

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Thursday
September 27, 1990

Part V

Environmental Protection Agency

40 CFR Part 710
Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Technical Amendment; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPTS-62061A; FRL-3770-4]

Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This notice announces a 60-day waiver of the 1990 reporting period, discusses the reporting exemption for small quantities for research and development, and amends the rule to update the reporting address and other information in the June 12, 1986 notice, to remove the reporting form from the rule, and to increase the types of magnetic media through which reporting may be accomplished.

DATES: This document is effective September 27, 1990. The 1990 reporting period is from August 25, 1990 to February 21, 1991.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 12, 1986 (51 FR 21438), EPA promulgated a rule (40 CFR part 710, subpart B) under the authority of section 8(a) of the Toxic Substances Control Act (TSCA) requiring manufacturers and importers of certain chemical substances included on the TSCA Chemical Substance Inventory to report current data on the production volume, plant site, and site-limited status of the substances. After initial reporting during 1986, recurring reporting is required every 4 years. On June 20, 1986 (51 FR 22521), EPA issued a notice correcting an error which appeared in the June 12 notice concerning the reporting period.

II. Waiver of 1990 Reporting Period

The initial reporting period was August 25, 1986 to December 23, 1986. Reporting periods recur every 4 years from August 25 to December 23, so that the next reporting period would normally be August 25, 1990 to December 23, 1990.

EPA is waiving the 1990 reporting period deadline until February 21, 1991. This waiver applies to the 1990 reporting period only; the 1994 and future reporting periods will terminate on December 23. EPA had anticipated the publication of this technical amendment and availability of a computer tape version of the 1990 supplement to the TSCA Chemical Substance Inventory, to be distributed by the National Technical Information Service, in June of 1990. Because availability of the reporting materials has been delayed, the 1990 reporting period is waived for 60 days.

III. Update of 1986 Information

A. The TSCA Chemical Substance Inventory

As an aid to submitters reporting during 1986, EPA published a 1985 edition of the TSCA Chemical Substance Inventory. This publication, available from the Government Printing Office (GPO), supersedes the 1979 edition and supplements prior to 1985. To aid reporters during 1990, EPA is issuing a 1990 supplement to the 1985 edition, which covers approximately 5,000 substances which have been added to the Inventory since the 1985 Edition. Together, the 1985 Edition and the 1990 Supplement constitute a revised Inventory representing a total of 68,000 chemical substances. Copies of both the "TSCA Chemical Substance Inventory: 1985 Edition" and the "TSCA Chemical Substance Inventory: 1990 Supplement" may be obtained by writing or calling: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238. The 1990 Supplement costs $15.00 in the U.S., $18.75 outside the U.S., and should be ordered by its Document Control Code, S/N 055-000-00361-1. The 1985 Edition costs $161.00 ($201.00 outside the U.S.), and its Document Control Code is S/N 055-000-00254-1.

Chemical substances added to EPA's Master Inventory file after February 1, 1990, are not included in the 1990 Supplement. In addition, substances whose identities are confidential are not included in the 1990 Supplement. Those who need to ascertain the Inventory status of such substances or of substances whose identity may be maintained as confidential must follow the procedures set forth in the instructional materials discussed below.

B. Reporting Address and Instructions

Section 710.39 of the rule is being amended to reflect current addresses and telephone numbers. In addition, a revised edition of "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base" is available from the address listed in § 710.39(b).

IV. Reporting Form

Section 710.39 requires submitters to report using EPA's Form U, published in the June 12, 1986 notice. EPA is removing the form from the rule and making changes in the form to assist submitters in completing it and to facilitate processing of the form; none of the changes result in substantive revisions to the reporting requirements of the rule. The 1986 form is not acceptable for 1990 reporting.

A. Removal of the Form from the Rule; Optical Character Recognition

The Agency is amending the rule to remove Form U from the rule, substituting a notice of availability of the most current form and reporting instructions plus generic language that describes the form's reporting requirements. EPA is making this amendment for two basic reasons. First, as codified, the form must be printed every year in the CFR. Removing the form from the CFR will result in a significant cost savings for the Agency over time. Not printing the full text of final forms in the CFR has become a standard Agency practice. EPA has determined that, pursuant to the Administrative Procedures Act (APA), 5 U.S.C. 552(a)(1)(C), the Agency is obligated only to describe forms and give a source of availability, not to publish them in full text.

The second reason for removing the form from the CFR has to do with both the usefulness of a CFR copy of the form and the ability to provide submitters with the most current version. The form has been revised to make it readable by optical character recognition (OCR) technology, which involves printing in a special color transparent to OCR equipment. The form that appears in the CFR is of necessity both photoreduced and the incorrect color. Also, removing the form from the rule will provide the Agency with the flexibility to make necessary non-substantive editorial changes without having to amend the rule.

B. 1986 Reporting Errors

Several types of reporting errors occurred frequently enough during 1986 to merit discussion. The most frequent type of error was in the Dun & Bradstreet number. Numerous submitters reported numbers with extra or missing digits, numbers which belonged to their parent companies (rather than the Dun & Bradstreet number assigned to the plant site for which the submitter was reporting), or no number at all. This problem forced EPA to send a large number of requests for correction of submitter errors. To avoid such errors in 1990 reporting, all submitters should verify the accuracy of the Dun & Bradstreet number they are reporting; those plant sites which do not have Dun & Bradstreet numbers may get them free of charge by calling their local Dun & Bradstreet office.

Another significant source of errors was the manner in which chemical identifying numbers were elicited. Several types of identifying numbers are allowed (e.g., Chemical Abstracts Service Registry Numbers and Premanufacture Notification Numbers), and the format of the reporting form contributed to confusion concerning how to properly report and designate a number. The new form invites fewer improper codes and numbers.

A large number of errors were made in plant site and technical contact information. The revised form now makes clear exactly what information is needed.

C. Confidentiality Claims

The previous form required chemical substances with confidential identities to be reported on separate forms from substances whose identities are nonconfidential. The 1990 form allows submitters to report both confidential and nonconfidential substances on the same form, and to indicate which substances on a form have confidential identities.

D. Other Changes

The form has also been modified to include a burden box pursuant to the Paperwork Reduction Reauthorization Act of 1986.

V. Electronic Reporting

Section 710.32 of the 1986 rule allowed submitters to report by paper or computer tape. Because of the ready availability of microcomputers, EPA is modifying this section to allow reporting using additional magnetic media, such as floppy diskettes. EPA's specifications for the format for electronic reporting are obtainable from the Agency by contacting the address set forth in § 710.39(b). EPA is investigating a format using the ANSI X12 standard. Electronic submissions not meeting EPA's format will not be in compliance with the rule. Detailed instructions may be obtained from the address listed in § 710.39(b). Because of security considerations, reporting via telecommunications lines will not be accepted.

The 1986 rule required that chemical substances whose identities are confidential to be reported by hard copy means only. This is being amended to allow reporting of such substances via magnetic media.

VI. Research and Development Exemption

Section 710.30(a) exempts a person who manufactures or imports a substance solely in small quantities for research and development from reporting on that substance. However, because § 710.32 requires reporting only for plant sites with annual production volumes of 10,000 pounds or greater, there is in effect a small quantity exemption apart from that for research and development. In the context of preliminary screening of existing chemicals, which this rule is intended to support, EPA considers data about any production of 10,000 pounds or more, as significant, whether or not for research and development purposes. The Agency is therefore contemplating a proposal to eliminate the § 710.30(a) exemption beginning with the 1994 round of reporting (no change will be made for 1990 reporting), in effect defining small quantities for research and development as under 10,000 pounds per year. EPA requests comment concerning research and development chemical substances with annual production volumes of 10,000 pounds or more, including a discussion of why quantities in excess of 10,000 pounds are needed for research and development.

List of Subjects in 40 CFR Part 710

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 20, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 710 is amended as follows:

PART 710—[AMENDED]

1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Section 710.32 is revised to read as follows:

§ 710.32 Reporting information to EPA.

Any person who must report under this subpart must submit the information prescribed in this section for each chemical substance described in § 710.25 that the person manufactured for commercial purposes in an amount of 10,000 pounds (4,540 kilograms) or more at a single site during a corporate fiscal year described in § 710.28. (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.). A respondent to this subpart must report information in writing or by magnetic media as prescribed in this section, to the extent that such information is known to or reasonably ascertainable by that person. A respondent to this subpart must report information that applies to the specific corporate fiscal year for which the person is required to report.

(a) *Reporting in writing.* Any person who chooses to report information to EPA in writing must do so by completing the reporting form available from EPA at the address set forth in § 710.39(b). The form must include all information prescribed in paragraph (c) of this section. Persons reporting in writing must submit a separate form for each site for which the person is required to report.

(b) *Reporting by magnetic media.* Any person who chooses to report information to EPA by means of magnetic media must submit the information prescribed in paragraph (c) of this section. Magnetic media submitted in response to this subpart must meet EPA specifications, as described in the instruction booklet available from EPA at the address set forth in § 710.39(b).

(c) *Information to be reported.* Persons reporting information under this subpart must report the following:

(1) The name, company, address, city, State, Zip code, and telephone number of a person who will serve as technical contact for the respondent company, and will be able to answer questions about the information submitted by the company to EPA. Persons reporting by means of magnetic media must submit this information on the reporting form available from EPA at the address set forth in § 710.39.

(2) A certification statement signed and dated by an authorized official of the respondent company. Persons reporting by means of magnetic media must submit this information on the reporting form available from EPA at the address set forth in § 710.39.

(3) The specific chemical name and Chemical Abstracts Service (CAS) Registry Number of each chemical substance for which reporting is required under this subpart. A

respondent to this subpart may use other chemical identification numbers in lieu of CAS Registry Numbers when a CAS Registry Number is not known to the respondent as provided in the instruction booklet identified in § 710.39(b), including EPA-designated Accession Numbers for confidential substances, EPA-assigned numbers for *bona fide* or Premanufacture Notification submissions, or Test Market Exemption Applications, or original Inventory form numbers.

(4) The name, street address, city, State, and Zip code of each site at which 10,000 pounds (4,540 kilograms) or more of a chemical substance for which reporting is required under this subpart is manufactured or imported. (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.) A respondent to this subpart must include the appropriate Dun and Bradstreet Number for each plant site reported.

(5) A statement for each substance for which information is being submitted indicating whether the substance is manufactured in the United States or imported into the United States.

(6) A statement for each substance for which information is being submitted indicating whether the substance is site-limited.

(7) The total volume (in pounds) of each subject chemical substance manufactured or imported at each site. This amount must be reported to two significant figures of accuracy provided that the reported figures are within ±10 percent of the actual volume.

§ 710.38 [Amended]

3. Section 710.38 is amended by removing paragraph (c)(1) and redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2), respectively.

4. Section 710.39 is revised to read as follows:

§ 710.39 Instructions for submitting information.

(a) All persons submitting written information in response to the requirements of this subpart must use original copies of Form U available from EPA at the address set forth in paragraph (b) of this section.

(b) Complete instructions for completing the reporting form and preparing a magnetic media report are given in the EPA publication entitled "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base." Reporting forms and instruction booklets may be obtained by writing or calling the following office: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room E-105, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule, (703) 534-1050.

(c) Completed reporting forms and magnetic media submissions must be submitted to the following address: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room E-105, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule.

[FR Doc. 90-22909 Filed 7-26-90; 8:45 am]
BILLING CODE 6560-50-F

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H.R. 94/Pub. L. 101-391

Hotel and Motel Fire Safety Act of 1990. (Sept. 25, 1990; 104 Stat. 747; 6 pages)
Price: $1.00

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9-28-90
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federal register

Friday
September 28, 1990

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9-28-90
Vol. 55 No. 189
Pages 39589-39910

federal register

Friday
September 28, 1990

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2600

Organization and Functions of the Office of Government Ethics

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: This rule describes the basic organization and functions of the Office of Government Ethics (OGE). It is necessitated because OGE, which was formerly a part of the Office of Personnel Management (OPM), became a separate executive branch agency on October 1, 1989. The purpose of this rule is to make information related to the fundamental organization and functions of OGE readily available to the public and to other Federal agencies.

EFFECTIVE DATE: September 28, 1990.

ADDRESSES: Any comments on this document may be sent to: the Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Ms. Powell.

FOR FURTHER INFORMATION CONTACT: Laurie A. Powell, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

On October 1, 1989, in accordance with sections 3 and 10(b) of its 1988 reauthorization legislation (Pub. L. 100–598, 102 Stat. 3031, 3035), the Office of Government Ethics became a separate agency in the executive branch of the United States Government. See 5 U.S.C. appendix IV, section 401. OGE was formerly part of the Office of Personnel Management. In December 1989, OGE established its own chapter XVI of title 5 of the Code of Federal Regulations, as assigned by the Office of the Federal Register, for OGE's rules, regulations and general statements of policy. See 54 FR 50229–50231 (Dec. 5, 1989).

In this document, the Office of Government Ethics is issuing a short rule describing its basic organization and functions as a separate executive agency. The rule consists of three sections. Section 2600.101 briefly describes the origin and purpose of OGE in the 1978 Ethics in Government Act and its recent separate agency status. In section 2600.102, the current Washington, DC office address of OGE is given, and the fact that OGE does not have any regional offices is stated. The last section, § 2600.103 of this rule, describes the functions of the five OGE offices—the Office of the Director, the Office of the General Counsel, the Office of Monitoring and Compliance, the Office of Education, and the Office of Administration.

B. Procedural Matters

Administrative Procedure Act

As Director of the Office of Government Ethics, I have determined that this regulation solely concerns matters of Federal agency organization and procedure. Thus, it is exempt from the notice and opportunity for public comment and delayed effective date requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Thus, no Regulatory Flexibility Act (5 U.S.C. chapter 6) analysis is required.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply since this regulation does not impose any information collection requirements requiring Office of Management and Budget approval thereunder.

List of Subjects in 5 CFR Part 2600

Conflict of interests, Government employees, Organization and functions (Government agencies).

Approved: September 24, 1990.

Stephen D. Potts,
Director, Office of Government Ethics.

Accordingly, pursuant to its authority under the Ethics in Government Act, the Office of Government Ethics is adding the text of and an authority citation for 5 CFR part 2600, previously reserved, and is revising the title thereof to read as follows:

PART 2600—ORGANIZATION AND FUNCTIONS OF THE OFFICE OF GOVERNMENT ETHICS

Sec.
2600.101 Statement of the history and purpose of the Office of Government Ethics.
2600.102 Office of Government Ethics address.
2600.103 Office of Government Ethics divisions; functions.

Authority: 5 U.S.C. appendixes III, IV; E.O. 12674.

§ 2600.101 Statement of the history and purpose of the Office of Government Ethics.

The U.S. Office of Government Ethics (OGE) is an executive branch agency which is responsible for overseeing and providing guidance on Government ethics for the executive branch, including the ethics programs of executive departments and agencies. OGE was created by the Ethics in Government Act ("the Act") of 1978, Public Law No. 95–521, as amended. OGE was originally part of the Office of Personnel Management (OPM). Public Law No. 100–598 of November 3, 1988, provided for OGE's separate agency status, effective October 1, 1989. The Act created OGE to provide overall direction for executive branch policies designed to prevent conflicts of interest and to help insure high ethical standards on the part of agency officers and employees. Pursuant to the Ethics Reform Act of 1989 (Public Law No. 101–194), as revised by the technical amendments of May 4, 1990 (Public Law No. 101–280), OGE is the "supervising ethics office" for the executive branch for various purposes, including public and confidential financial disclosure reporting by executive agency officials. OGE also has various Government ethics guidance responsibilities under Executive Order 12674 of April 12, 1989, "Principles of Ethical Conduct for Government Officers and Employees" (3 CFR 1989 Compilation, pp. 215–218).

§ 2600.102 Office of Government Ethics address.

The Office of Government Ethics is located at suite 500, 1201 New York

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Avenue NW., Washington, DC 20005–3917. OGE has no regional offices.

§ 2000.102 Office of Government Ethics divisions; functions.

(a) The Office of Government Ethics is divided into the following offices:

(1) The Office of the Director;

(2) The Office of the General Counsel;

(3) The Office of Monitoring and Compliance;

(4) The Office of Education; and

(5) The Office of Administration.

(b) *The Office of the Director.* The Director of the Office of Government Ethics is appointed by the President and confirmed by the Senate. The responsibilities of the OGE Director include: Advising the White House and executive branch Presidential appointees on Government ethics matters; maintaining ethics liaison with and providing guidance on ethics to executive branch departments and agencies; providing ethics liaison to the Congress; responding to public and press inquiries on ethics; and overseeing and coordinating all OGE rules, regulations, formal advisory opinions and major policy decisions. The OGE Deputy Director is also attached to this office and assists the Director in carrying out OGE's responsibilities, including serving as Acting Director in the absence of the Director.

(c) *The Office of the General Counsel.* The responsibilities of the OGE Office of the General Counsel include: Developing regulations and approving executive agency implementation under conflict of interest laws, administrative standards of conduct, post-Government employment restrictions, and public and confidential financial disclosure reporting; initiating executive branch administrative ethics corrective actions; reviewing public financial disclosure statements of advice-and-consent Presidential executive branch nominees, to identify and resolve conflicts; advising the OGE Director whether to approve and reviewing the ongoing administration of executive branch Ethics in Government Act qualified trusts; issuing certificates of divestiture; providing informal ethics advisory opinions/advice; participating in training and public forums on ethics; monitoring and providing technical assistance on legislative Government ethics initiatives; making Freedom of Information Act and Privacy Act determinations for OGE; facilitating executive agency referrals of criminal conflict of interest violations to the Department of Justice; and advising on executive agency exemptions and designations under 18 U.S.C. 207 and 208.

(d) *The Office of Monitoring and Compliance.* The responsibilities of the OGE Office of Monitoring and Compliance include: auditing the ethics programs in executive branch departments and agencies, regional offices and military bases to insure compliance with ethics regulations and requirements; monitoring compliance with ethics agreements made by Presidential executive branch appointees requiring Senate advice and consent, and reviewing their annual and termination SF 278 financial disclosure reports, as well as assisting in the review of their nominee reports; reviewing executive agency designations pursuant to 18 U.S.C. 207; participating in training and public forums on ethics; and providing advice, review and liaison to the executive agencies on all ethics administrative matters pursuant to a desk officer system which the office operates.

(e) *The Office of Education.* The responsibilities of the OGE Office of Education include: providing information on and promoting understanding of ethical standards through training courses for executive agency ethics practitioners and development of instructional materials, such as the *Government Ethics Newsgram*, handbooks and videotapes; carrying out the mandate of Executive Order 12674 to develop and disseminate an ethics reference manual for executive branch employees; coordinating on required annual executive agency ethics training plans and annual agency ethics program reports, including a yearly ethics survey; and providing liaison with the public and outside groups such as non-profit and educational organizations, as well as officials of state, local and foreign governments to promote understanding of Government ethics.

(f) *The Office of Administration.* The Office of Administration is responsible for providing and coordinating essential administrative support services to all OGE operating programs and divisions. These intra-agency functions include: Personnel; payroll; fiscal resource management; facilities management; procurement, records and property management; publishing and distribution; printing; management information systems support; library; personnel security; and funding mandatory overhead expenses necessary for the operation of OGE.

[FR Doc. 90-22973 Filed 9-27-90; 8:45 am]

BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Administration and from the Assistant Secretary for Administration to the Director, Office of Operations, to facilitate reporting information to the Internal Revenue Service in accordance with section 6050M of the Internal Revenue Code of 1986.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, Procurement Analyst, Procurement Division, Office of Operations, United States Department of Agriculture, Washington, DC 20250, 202-447-5729.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to facilitate reporting information to the Internal Revenue Service in accordance with 26 U.S.C. 6050M and 26 CFR 1.6050M-1.

Section 6050M of the Internal Revenue Code of 1986 (26 U.S.C. 6050M) requires the head of every Federal executive agency to file an information return with the Department of the Treasury reporting the name, address, and Taxpayer Identification Number (TIN) of each person with whom the executive agency enters into a contract, together with any other information required by the Secretary of the Treasury. This return shall be made at such time and in such a manner as the Secretary of the Treasury may by regulation prescribe. By final rule dated December 6, 1989, the Internal Revenue Service prescribed reporting requirements governing the submission of such information returns. The regulations provide that the authority to submit the return and to execute the written verification ("jurat") which accompanies the return may be delegated by the agency head. 26 CFR 1.6050M-1(a); 26 CFR 1.6050M-1(d)(5).

Federal executive agencies may elect to have the Director of the Federal Procurement Data Center (FPDC) make information returns to the Internal Revenue Service on their behalf. The regulations allow this alternate method of filing if the agency reports all the information required for the information return as part of its regular quarterly submission to FPDC. In such cases, the quarterly reports must be accompanied by agency authorization to the Director of the FPDC to make the return and the signed verification statement prescribed by 26 CFR 1.6050M-1(d)(5).

The Director, Office of Operations, is responsible for the submission of quarterly contract action reports to the FPDC. Delegation of the authority to submit the information return required by 26 U.S.C. 6050M to the Director, Office of Operations, would facilitate submitting the data required for this return as part of the regular quarterly submissions to FPDC. Such delegation would also facilitate prompt submission of the FPDC report and of the information return.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

For the reasons set out in the Preamble, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by adding paragraph (c)(3)(ix) as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(c) * * *

(3) * * *

(ix) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M-1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M-1, and making the election by 26 CFR 1.6050M-1(d)(5)(i).

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.76 is amended by adding paragraph (a)(3)(ix) as follows:

§ 2.76 Director, Office of Operations.

(a) *Delegations.* * * *

(3) * * *

(ix) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M-1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M-1, and making the election allowed by 26 CFR 1.6050M-1(d)(5)(i).

* * * * *

Dated: September 20, 1990.

For subpart C:

Jack C. Parnell,

Acting Secretary.

Dated: September 20, 1990.

For subpart J:

Ada M. Vila,

Assistant Secretary for Administration.

[FR Doc. 90-23008 Filed 9-27-90; 8:45 am]

BILLING CODE 3410-90-M

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-90-190FR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; 1990-91 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for the 1990-91 fiscal period (August 1-July 31) for the Texas Valley Citrus Committee (TVCC), established under Marketing Order No. 906. This action is needed by the TVCC to pay anticipated marketing order expenses. This action will enable the TVCC to continue to perform its duties and the order to operate.

EFFECTIVE DATES: August 2, 1990, through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-475-3918.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 125 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing order for Texas oranges and grapefruit, administered by the U.S. Department of Agriculture (Department), requires that an annual budget of expenses be prepared by the

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TVCC and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The TVCC met on August 1, 1990, and unanimously recommended a 1990–91 budget with expenditures of $107,810. Of this total, $49,260 is for administration of the marketing order and $58,550 is for administration of TexaSweet Citrus Advertising, Inc. (TCAI). TCAI has carried out the TVCC's advertising and promotion program for the past several seasons and plans limited public relations activities for 1990–91.

The TVCC's 1990–91 expenditures are substantially lower than the amounts expended during each of the past several seasons and are at a level needed to keep the marketing order functioning until commercial citrus production is reestablished in Texas. In comparison, 1989–90 budgeted expenditures were $1,496,634. The TVCC reports that it does not expect any commercial citrus shipments to be made from Texas this season due to severe freeze damage to the citrus trees in December of 1989. Since no crop production is expected, the TVCC recommended that no assessment rate be established for 1990–91.

The TVCC plans to draw funds from its reserve and use about $34,000 in interest income to finance its 1990–91 expenditures. Sufficient funds are in the TVCC's reserve, which amounted to about $440,000 on July 31, 1990, to cover the anticipated deficit.

The TVCC further unanimously recommended that any unexpected funds from the 1989–90 fiscal period be placed in its reserve fund.

A proposed rule concerning this action was published in the Federal Register on August 29, 1990, with a 10-day comment period ending September 10, 1990. No comments were received.

Based on the foregoing, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule adds § 906.230 under this marketing order, based on the TVCC's recommendations and other information.

After consideration of all relevant matter presented, the information and recommendations submitted by the TVCC, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because approval of the expenses rate must be expedited. This marketing order's fiscal period began on August 1, 1990, and the TVCC needs appoval to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 906.230 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 906.230 Expenses.

Expenses of $107,810 by the Texas Valley Citrus Committee are authorized for the fiscal period ending on July 31, 1991. Any unexpended funds from the 1989–90 fiscal period may be carried over as a reserve.

Dated: September 25, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-23010 Filed 9-27-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 737]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from September 30 through October 6, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 737 (7 CFR part 910) is effective for the period from September 30 through October 6, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatability.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's most recent estimate (September 12) of 1990–91 production is 42,100 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,861 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,600 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24, 292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,800 cars compared to the 9,436 cars produced last year. On October 11, 1990, the National Agricultural Statistics Service will publish an estimate of the 1990–91 lemon crop.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its earlier crop estimate of 40,834 cars, the Committee estimates that about 44 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 18,000 cars, about 44 percent of the total production of 37,861 cars in 1989–90. Fresh exports are projected at 22 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 34 percent compared with 34 percent of the 1989–90 crop. Based on the September 12 revised crop estimate, the Committee is expected to revise its utilization schedule in the near future.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on September 25, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 325,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 15,000 cartons above the estimated projections in the Committee's current shipping schedule.

During the week ending on September 22, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 296,000 cartons compared with 286,000 cartons shipped during the week ending on September 23, 1989. Export shipments totaled 96,000 cartons compared with 136,000 cartons shipped during the week ending on September 23, 1989. Processing and other uses accounted for 171,000 cartons compared with 143,000 cartons shipped during the week ending on September 23, 1989.

Fresh domestic shipments to date for the 1990–91 season total 2,427,000 cartons compared with 2,335,000 cartons shipped by this time during the 1989–90 season. Export shipments total 995,000 cartons compared with 1,097,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 1,798,000 cartons compared with 949,000 cartons shipped by this time during 1989–90.

For the week ending on September 22, 1990, regulated shipments of lemons to the fresh domestic market were 296,000 cartons on an adjusted allotment of 348,000 cartons which resulted in net undershipments of 52,000 cartons. Regulated shipments for the current week (September 23 through September 29, 1990) are estimated at 310,000 cartons on an adjusted allotment of 356,000 cartons. Thus, undershipments of 46,000 cartons could be carried over into the week ending October 6, 1990.

The average f.o.b. shipping point price for the week ending on September 22, 1990, was $14.42 per carton based on a reported sales volume of 307,000 cartons compared with last week's average of $12.77 per carton on a reported sales volume of 305,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.89 per carton. The average f.o.b. shipping point price for the week ending on September 23, 1989, was $15.35 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.55 per carton.

The Department's Market News Service reported that, as of September 25, the market is "steady". Demand is very good for first grade California-Arizona lemons ranging in size from 75 through 140, and demand is moderate for choice fruit sized 235. At the meeting a Committee member commented that demand for lemons is good. It also was noted that harvesting activities in District 3 should begin to increase with the break in weather patterns. Committee members discussed the movement of fruit in storage, anticipated pick activity, and the desire to maintain regulation. The Committee unanimously recommended volume regulation for the period from September 30 through October 6, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $9.54 per carton, 116 percent of the projected season average fresh on-tree parity equivalent

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price of $8.20 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $8.53, 114 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from September 30 through October 6, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until September 25, 1990, and this action needs to be effective for the regulatory week which begins on September 30, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Section 910.1037 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.1037 Lemon Regulation 737.

The quantity of lemons grown in California and Arizona which may be handled during the period from September 30 through October 6, 1990, is established at 325,000 cartons.

Dated: September 26, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-23166 Filed 9-27-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 920

[Docket No. FV-90-194]

Kiwifruit Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 920 for the 1990–91 fiscal period. Authorization of this budget enables the Kiwifruit Administrative Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program will be derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1990–July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 920 (7 CFR part 920) regulating the handling of kiwifruit grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of California kiwifruit under Marketing Order No. 920, and approximately 1,220 kiwifruit producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1990–91 fiscal year was prepared by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are producers of California kiwifruit. They are familiar with the committee's needs and with the cost of goods, services, and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on July 12, 1990, and unanimously recommended a 1990–91 budget of $191,446. This compares with $136,293 last year. Decreases include $2,800 for maturity test kits and $1,300 for field staff travel. Major increases this year include $7,690 for salaries, $4,235 for benefits, and $7,500 for a new staff vehicle. Included also is $30,097 for a dry weight maturity testing program which covers salary costs for 13 field people and equipment such as microwaves, scales, and supplies.

The committee is implementing dry weight testing to collect data throughout California and evaluate the use of this method during inspection. Dry weight testing measures total solids which may be more accurate than the present method used in determining when to harvest, as it may indicate the ability of the fruit to continue ripening once harvested.

Presently the Brix method is used to measure the soluble solids (or sugar) content of kiwifruit in order to determine when it is to be harvested. Kiwifruit with a soluble solids content of 6.5 percent are considered mature enough to harvest. While this is a good indicator of palatability, it does not guarantee that the fruit is mature enough to continue ripening after harvest.

The committee also recommended an assessment rate of $0.01 per 7½ pound tray or equivalent, up from $0.0075 last year. This rate, when applied to anticipated shipments of 10.5 million trays, would yield $105,000 in assessment income. This, when combined with $86,446 from interest income and the reserve, would provide adequate funds for budgeted expenses. Operating reserve funds, currently at $124,202, would be reduced to less than one fiscal period's expenses.

While this final action imposes some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on August 22, 1990 (55 FR 34284). That document contained a proposal to add § 920.206 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through September 4, 1990. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990–91 fiscal period for the program began on August 1, 1990, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable kiwifruit handled during the fiscal periods. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 920

Kiwifruit, marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 920.206 is added to read as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 920.206 Expenses and assessment rate.

Expenses of $191,446 by the Kiwifruit Administrative Committee are authorized, and an assessment rate of $0.01 per 7½ pound tray or equivalent of kiwifruit is established for the fiscal period ending July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: September 25, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-23009 Filed 9-27-90; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Parts 1700, 1701, 1702

Agency Organization and Functions, Public Information and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR chapter XVII of the Code of Federal Regulations by revising part 1700 to include information formerly located in parts 1700, 1701, and 1702. Parts 1701 and 1702 are removed. In accordance with REA's plans to simplify and clarify Agency regulations; the information in these three regulations is being updated and combined into a single rule. Pursuant to 7 CFR part 1610, the provisions of this regulation applicable to the REA Rural Telephone program also apply to the Rural Telephone Bank (RTB or the Bank) unless otherwise stated.

These provisions are being published simply to inform the public of internal Agency functions. Therefore, no period of public comment is necessary.

EFFECTIVE DATE: This final rule is effective September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4064 South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 382–9552.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act.

REA has concluded that the promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

The programs covered in this rule are listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees; 10.852, Rural Telephone Bank Loans, and 10.853, Rural Economic Development Loans and Grants.

For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V (50 FR 47034), rural electrification, rural telephone and rural telephone bank loans and loan guarantees are excluded from the scope of Executive Order 12372 regarding intergovernmental consultation with State and local officials, except for loans made to Government entities. Rural economic development loans and grants, except those for feasibility studies, are subject to the Executive Order.

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This rule contains no reporting or recordkeeping provisions requiring Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C 3501 et seq.)

Background

A general statement of the procedures followed by REA in fulfilling the mission prescribed for it by the Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901—950b), as amended, was formerly located in 7 CFR part 1700; a description of public information provided by the Agency under the Freedom of Information Act (FOI Act) (5 U.S.C. 552) was in 7 CFR part 1701, and the organization and functions of REA were in 7 CFR part 1702. As part of a project to clarify and simplify Agency regulations, REA is updating the information from these Parts and publishing it in a single regulation. Parts 1701 and 1702 are being removed by this action.

Final rule amendments to 7 CFR part 1610.8, published May 16, 1989, at 54 FR 21047, and October 25, 1989, at 54 FR 43415, provide that the RTB shall utilize REA's regulations, including 7 CFR parts 1700—1702, as they apply to the Bank.

This amendment describes internal administrative procedures of the Agency and, therefore, according to the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.), requires no public comment period. Appendix A to part 1701, Material Approved for Incorporation by Reference, is hereby removed.

List of Subjects

7 CFR Part 1700

Electric power, Freedom of information, Loan programs—energy, Loan programs—communications, Organization and functions (Government agencies), Rural areas, Telephone.

7 CFR Part 1701

Freedom of information, Incorporation by reference, Reporting and recordkeeping requirements.

7 CFR Part 1702

Organization and functions (Government agencies).

Therefore, REA revises part 1700 and removes parts 1701 and 1702 of 7 CFR chapter XVII as follows:

1. Part 1700 is revised to read as follows:

PART 1700—GENERAL INFORMATION

Subpart A—Organization and Functions

1700.1 General.
1700.2 Office of the Administrator.
1700.3 Office of the Deputy Administrator—Program Operations.
1700.4 Rural electric program.
1700.5 Rural telephone program.
1700.6 Rural development program.
1700.7 Borrower Accounting Division.
1700.8 Office of the Deputy Administrator—Management and Policy Support.
1700.9 Office of Assistant Administrator—Management.
1700.10 Information, Legislation, Policy and Program Support.
1700.11–1700.19 [Reserved].

Subpart B—Programs

1700.20 Insured electric loans pursuant to section 305 of the Rural Electrification Act, as amended.
1700.21 Insured telephone loans pursuant to section 305 of the Rural Electrification Act, as amended.
1700.22 Rural Telephone Bank loans pursuant to section 408 of the Rural Electrification Act, as amended.
1700.23 Guaranteed loans pursuant to section 306 of the Rural Electrification Act, as amended.
1700.24 Loans and grants pursuant to section 313 of the Rural Electrification Act, as amended.
1700.25 Other loan authorities.
1700.26 Studies, investigations, and reports.
1700.27 Loan security activities.
1700.28 Issuances implementing procedure.
1700.29 [Reserved.]

Subpart C—Public Information

1700.30 Public inspection and copying.
1700.31 Indexes.
1700.32 Requests for records.
1700.33 Appeals.

Authority: 7 U.S.C. 901–950(b); Title I, Subtitle D, Section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72; 7 U.S.C. 1921 et seq., and 44 FR 30313, May 25, 1779; 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

Subpart A—Organization and Functions

§ 1700.1 General.

(a) The Rural Electrification Administration (REA) was established by Executive Order No. 7037, signed by the President on May 11, 1935. Statutory authority was provided by the Rural Electrification Act of 1936 (RE Act) (49 Stat. 1363; 7 U.S.C. 901). The Act established REA as a lending agency with responsibility for developing a program for rural electrification.

(b) An October 28, 1949, amendment to the RE Act authorized REA to make loans to improve and extend telephone service in rural areas. The Rural Telephone Bank (RTB or the Bank), an Agency of the United States, was established by another amendment to the RE Act, approved May 7, 1971. The Administrator of REA serves as the Bank's chief executive with the title of Governor. On May 11, 1973, the RE Act was further amended to establish a revolving fund and to provide authority for REA to guarantee loans made by other lenders. The RE Act was amended further on December 21, 1987 to establish a Rural Economic Development Subaccount, and to authorize funds from this subaccount to provide zero-interest loans and grants to REA borrowers to promote rural economic development and job creation.

(c) The offices of REA are located in the South Building of the United States Department of Agriculture at 14th and Independence Avenue, SW., Washington, DC 20250–1500.

(d) Programs are administered by four area offices which are composed of the following states and territories:

(1) *Northeast* Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin;

(2) *Northwest* Alaska, Idaho, Iowa, Minnesota, Montana, North Dakota, Oregon, South Dakota, Washington, and Wyoming;

(3) *Southeast* Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands;

(4) *Southwest* Arizona, California, Colorado, Hawaii, Kansas, Nebraska, Nevada, New Mexico, Oklahoma, Texas, Utah, and present and former Pacific Trust territories, except that the Pacific territories and Hawaii are included in the Northwest area in the electric program.

§ 1700.2 Office of the Administrator.

(a) The Administrator (who also serves as Governor of the RTB) is appointed by the President, with the advice and consent of the Senate, for a term of 10 years. The Administrator functions as the chief executive of the Agency under the general supervision and direction of the Under Secretary for Small Community and Rural Development. The Administrator is aided directly by two Deputy Administrators and by Assistant Administrators for the Electric Program, the Telephone Program, and Management. The Special Projects Staff and the Equal Opportunity and Civil Rights Staff also report directly to the Administrator. The work of the Agency is carried on through the offices and divisions described in this part.

(b) The Special Projects Staff is responsible for monitoring, analyzing and negotiating with selected borrowers that are in default or expected to be default on loan payments, in order to ensure repayment of the Government's loans.

(c) The Equal Opportunity and Civil Rights Staff administers the program for equal opportunity in the delivery of services and benefits by REA borrowers and in the employment practices in the Agency. The staff:

(1) Formulates and coordinates plans, policies and procedures for a nationwide program of nondiscrimination on the part of REA borrowers in carrying out borrower programs subject to the provisions of Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1974, as amended; the Americans with Disabilities Act of 1990; and Executive Order 11246, as amended by Executive Order 11375.

(2) Develops and monitors plans, policies and programs designed to promote equal employment opportunity for REA personnel under Title VIII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Equal Employment Opportunity Act of 1972; Section 501 of the Rehabilitation Act of 1973; pertinent provisions of the Civil Service Reform Act of 1978; and related rules, regulations and other equal employment, nondiscrimination statutes.

§ 1700.3 Office of the Deputy Administrator—Program Operations.

The Deputy Administrator—Program Operations directs and coordinates the electric, telephone and rural development programs and borrower accounting activities; reviews Agency policies in these areas and, as necessary, implements changes; and participates with the Administrator and other officials in planning and formulating the programs and activities of the Agency.

§ 1700.4 Rural electric program.

(a) The Assistant Administrator—Electric directs and coordinates the rural electrification program of the Agency, participating with the Administrator and Deputy Administrator—Program Operations and others in planning and formulating the electric programs and activities of the Agency.

(b) Area Offices—The four area offices are the primary points of contact between REA and all electric system borrowers. Each office administers the rural electric program for an assigned geographical area with assistance of field representatives located in areas assigned to them. The area offices have the following responsibilities with respect to loan feasibility and security and accomplishment of the purposes of the RE Act:

(1) Provide guidance to borrowers on Agency's loan policies and procedures, and make recommendations to the Administrator on applications for REA loans or loan guarantees and rural development loans and grants. If delegated the authority by the Administrator, Area Directors may approve certain loans, lien accommodations and other actions.

(2) Review proposed retail schedules with respect to their effects on repayment of REA loans and achievement of RE Act purposes; review and approve proposed wholesale rate schedules of power supply borrowers.

(3) Assure that power plant, distribution, and transmission systems and facilities are designed and constructed in accordance with the terms of the loan and the Agency's regulations. Review and approve borrowers' engineering plans and specifications; engineering, equipment and construction contracts; construction; and payments to engineers and contractors. Area offices also work with borrowers to assure that completed construction meets REA standards for quality of construction and loan security.

(4) Review borrowers' power supply and construction plans; technical power planning documents and annual cost studies; and borrower contracts and agreements relating to the sale or procurement of power.

(5) Provide information to borrowers on supplemental power resources and load and energy management.

(6) Advise borrowers on REA requirements regarding the environmental aspects of the design, construction and operation of power plants; and transmission and distribution systems. Review borrowers' environmental analyses and prepare environmental findings for the Administrator.

(7) Provide information to borrowers regarding management, financial, and technical operations and practices with respect to the feasibility and security of the Government's loans and achievement of RE Act purposes.

(c) Electric Staff Division—This division administers certain engineering, financial and operating activities relating to the rural electric program. The division:

(1) Is responsible for engineering aspects of REA's standards, specifications and other requirements with respect to design, construction, and technical operation and maintenance of power plant, distribution, and transmission systems and facilities, including load management, energy conservation and communications.

(2) Develops engineering practices, policies and guidelines for the Agency relating to electric borrowers' systems; conducts analysis and provides guidance on matters relating to fuels for electric generating stations; analyzes the effects of environmental laws and regulations on REA-financed electric systems; and develops related policies and procedures for the Agency.

(3) Develops criteria, procedures and analyses for improvement of the operating performance and financial condition of electric borrowers.

(4) Develops techniques for evaluating the financial and operating performance of electric borrowers; develops procedures, criteria and techniques for forecasting borrowers' power requirements; develops and maintains financial expertise on the distribution and power supply loan program; and develops and maintains expertise in matters relating to retail and wholesale rates.

(5) Provides assistance to the area offices and, as appropriate, to borrowers.

(6) Maintains liaison with other Government agencies, utilities, industry officials and professional organizations on the above matters.

§ 1700.5 Rural telephone program.

(a) The Assistant Administrator—Telephone directs and coordinates the rural telephone program of the Agency, participating with the Administrator and Deputy Administrator—Program Operations and other officials in planning and formulating the programs and activities of the Agency.

(b) Area Offices—The four area offices are the primary points of contact between REA and all telephone system borrowers. Each office administers the rural telephone program for an assigned geographical area with assistance of field representatives located in areas assigned to them. The area offices have the following responsibilities with respect to loan feasibility and security and accomplishment of the purposes of the RE Act:

(1) Provide guidance to applicants and borrowers on Agency and Rural Telephone Bank loan policies and

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procedures, and make recommendations to the Administrator on applications for loans or guarantees. If delegated the authority by the Administrator, Area Directors may approve certain loans, lien accommodations and other actions.

(2) Review and analyze borrowers' toll revenue settlements and local service rates for adequacy to meet loan service payments and other expenses.

(3) Assure that telephone systems and facilities are designed and constructed in accordance with the terms of the loan and the Agency's regulations. They review, analyze and approve borrowers' engineering plans and specifications; engineering, equipment and construction contracts; and borrowers' payments to engineers and contractors. They work with the borrowers to assure that completed construction meets REA standards for quality of service and loan security.

(4) Provide information to borrowers regarding management and technical operations and practices with respect to the feasibility and security of the government's loans and achievement of RE Act purposes.

(c) Telecommunications Staff Division—This division administers engineering staff activities related to the design, construction, and technical operation and maintenance of rural telephone systems and facilities. The division:

(1) Develops Agency engineering practices, policies, guidelines and technical data relating to telephone borrowers' systems.

(2) Evaluates the application of new communications network technology to rural telephone systems.

(3) Provides expertise and analysis related to the operational, financial and borrower-management activities of the rural telephone program. It develops standards, policies and procedures for telephone loan requirements and processing.

(4) Develops techniques and criteria for evaluating the financial and operating performance of rural telephone borrowers; develops proposed management, organizational and operating practices for use by borrowers; and develops operating practices and procedures with respect to rates and the valuation of telephone systems and facilities.

(5) Provides assistance to the area offices and, as appropriate, to borrowers.

(6) Maintains liaison with other Government agencies, utilities, industry officials, and professional organizations on the above matters.

§ 1700.6 Rural development program.

(a) Under this program, zero interest loans and grants are made to REA electric and telephone borrowers to promote rural economic development and job creation. Loan and grant processing and servicing is administered by the electric and telephone area offices pursuant to policies and procedures set forth in 7 CFR part 1703.

(b) *Rural Development Staff.* The Rural Development Staff performs the following functions:

(1) Coordinates Agency efforts to promote rural economic development and job creation projects in rural areas.

(2) Develops regulations and procedures regarding rural economic development activities.

(3) Provides economic and community development technical assistance to borrowers.

(4) Advises Agency personnel on rural economic development matters.

§ 1700.7 Borrower Accounting Division.

(a) The division ensures that accounting policies, systems and procedures with respect to borrowers' accounting operations meet regulatory, Departmental, General Accounting Office, Office of Management and Budget and Treasury Department requirements. The division:

(1) Assists in solving, or recommending solutions to special program and administrative problems involving accounting interpretations and analysis, including the development and presentation of data to agency staff, regulatory bodies, and other agencies.

(2) Examines borrowers' records and operations and reviews expenditures of loan and other funds deposited in the REA Construction Fund Account to determine that funds are expended in conformity with the RE Act.

(3) Approves CPA's to perform audits for borrowers. Reviews reports prepared by CPA's to determine conformance with acceptable accounting practices, procedures and standards. Reviews and approves plant accounting documentation of audits performed by CPA firms, and incorporates the results of this review into the overall Loan Fund Audit.

(4) Develops proposed standards and procedures for Agency examination programs and evalutes adequacy and effectiveness of the review procedures.

(5) Evaluates borrowers' accounting systems and procedures and recommends changes, as necessary, to provide for more complete and accurate reporting of borrowers' operations. Provides advice and assistance to borrowers concerning the installation and operation of accounting systems.

(b) *Area Offices.* The division is organized into four geographic area offices each of which has several field accountants located throughout the area.

§ 1700.8 Office of the Deputy Administrator—Management and Policy Support.

The Deputy Administrator—Management and Policy Support directs and coordinates the legislative, public information, administrative and budget activities of the Agency and participates with the Administrator and other officials in planning and formulating the programs, policies and other functions of the Agency. Activities are carried out by an Assistant Administrator—Management and others who report directly to the Deputy Administrator.

§ 1700.9 Office of Assistant Administrator—Management.

The Assistant Administrator—Management directs and coordinates the general administrative activities of the agency, participates with the Administrator and Deputy Administrators and other officials in planning and formulating the programs and activities of the agency and administers the provisions of the Freedom of Information Act. The Office of Budget and four other divisions are directed and coordinated by the Assistant Administrator—Management.

(a) The Office of Budget administers the budgetary and financial management program of the Agency. The office:

(1) Determines the annual funding needs for current and multi-year forecasts, participating with the Administrator in presenting and supporting the Agency's budget and program plans.

(2) Administers budget execution, apportionment, allotment and use and control of all Agency funds.

(b) The Personnel Management Division administers the personnel program of the Agency, covering both headquarters and field personnel throughout the Nation. The division:

(1) Administers the provisions of the Classification Act, to achieve uniform application of position classification principles and standards to all REA positions; conducts organization studies and develops recommendations for changes; develops and administers the Agency's personnel management evaluation activities.

(2) Administers the employment program for the Agency, including staffing, recruitment, placement and separation; administers the Agency's merit promotion program; maintains liaison with the National Finance Center on personnel data processing activities including payroll.

(3) Administers Agency responsibilities for employee relations including: grievances and appeals, performance appraisals, performance recognition system, conflict of interest, awards, benefits, and leave.

(4) Directs, coordinates, and evaluates a program of employee training to achieve the maximum utilization of skills and abilities of personnel; conducts training sessions; plans and directs conferences; prepares training budget; approves training requests; and coordinates an information program for foreign visitors.

(5) Provides advice and assistance to Agency officials and employees to ensure sound and effective administration of the Agency's personnel program.

(6) Maintains working relations and liaison on personnel management matters with the staff and other agencies of the Department and other government agencies.

(7) Participates fully with the Administrator in the implementation and enforcement of USDA equal employment opportunity programs (see § 1700.2(c) (2)); coordinates equal employment opportunity complaint system with the Department; develops and administers the Agency's Federal Equal Opportunity Recruitment Program.

(c) The Administrative Services Division administers the Agency's management improvement program, including cost reduction and operations improvement, work and productivity measurement, the Agency issuance system and the forms and report program. The division:

(1) Administers general services involving contracting and procurement, space management, property and supplies management, records management and communications.

(2) Administers the Agency's rulemaking and regulatory review activities, coordinating with the Office of the Federal Register, the Office of the General Counsel, and the Office of Management and Budget.

(d) The Automated Information Systems Division analyzes the application of data processing to REA program activities, including feasibility studies on the cost and benefits of automated data processing. The division:

(1) Establishes standards and procedures for developing, maintaining and using the Agency's major automated systems covering borrower information, loan accounting and special management programs; perform systems analyses, development, and programming, and ensures data security.

(2) Operates the data processing equipment of the Agency, including the conversion of data from source documents and the preparation of statements, reports, analyses, and other information; provides training and assistance to users.

(3) Collects and analyzes financial, operating, and other statistical data obtained from borrowers and other sources, and prepares reports on the progress and status of the programs of REA and the RTB.

(e) The Fiscal Accounting Division administers the fiscal accounting program of the agency and the RTB. The division:

(1) Develops, recommends and implements accounting policies, systems, and procedures regarding the Agency's and Bank's operations.

(2) Maintains accounts to provide control over and accountability for all funds, assets, liabilities, income and expenses of the Agency and the Bank; and prepares reports required by REA, RTB, the Department, and other government agencies.

(3) Examines and certifies for payment, vouchers and invoices covering administrative expenses and loan fund advances of the Agency and the Bank.

(4) Reviews, examines and processes monthly billings and debt service payments for REA and RTB loans.

(5) Reviews, examines and processes loan fund advances, billings, debt service payments and all other accounting related activities connected with Federal Financing Bank loans to REA borrowers.

(6) Maintains custody of the original copies of notes and mortgages and certain loan collateral.

§ 1700.10 Information, legislation, policy and program support.

The Deputy Administrator—Management and Policy Support, directs two separate staffs of the Agency dealing with public information, legislation, and policy analysis.

(a) The Legislative and Public Affairs staff performs the following functions:

(1) Analyzes the policy, programs and procedural implications of Federal and State legislation affecting REA programs, prepares special reports for the Administrator on legislative affairs and responds to inquiries from Congress and others concerning REA programs.

(2) Maintains liaison with the Department's legislative staff and with congressional offices.

(3) Manages the information activities of the Agency to provide borrowers and the public with timely information concerning the operations, status, programs and accomplishments of the rural electrification, rural telephone and rural development programs.

(4) Evaluates the public information activities of the Agency and advises on actions that will improve public understanding and acceptance of Agency functions.

(5) Administers the provisions of the Public Information section of 5 U.S.C. 552.

(b) The Policy Analysis staff develops long-range programs and policies, analyzes and evaluates economic and statistical data, prepares studies and reports on matters relating to program planning and evaluation and on new developments that have an impact on the REA program.

§§ 1700.11–1700.1900.19 [Reserved]

Subpart B—Programs

§ 1700.20 Insured electric loans pursuant to section 305 of the Rural Electrification Act, as amended.

(a) *General.* These loans are made from the Rural Electrification and Telephone Revolving Fund for purposes authorized by section 4 of the RE Act. The standard interest rate on these loans is 5 percent, but a rate as low as 2 percent is authorized by section 305(b) of the RE Act if a borrower:

(1) Has experienced extreme financial hardship; or

(2) Cannot, in accordance with generally accepted management and accounting principles and without charging rates to its customers or subscribers so high as to create a substantial disparity between such rates and the rates charged for similar service in the same or nearby areas by other suppliers, provide service consistent with the objectives of the RE Act.

(b) These loans are made to finance the construction and operation of electric facilities and systems to provide initial and continued adequate electric service to persons in rural areas not receiving central station service at the time of the initial REA loan. The loans, approval of which rests solely within the discretion of the Administrator, must be self-liquidating within a period not to exceed 35 years, and must be reasonably secured in the judgment of the Administrator. Under the RE Act, they may be made to persons, corporations, public bodies, and cooperative, non-profit, or limited dividend associations. Preference is given to public bodies and cooperative,

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non-profit, or limited dividend associations.

(c) *Loan applications.* Applications for these loans are made on forms prescribed by REA and supported by a resolution of the applicant's board of directors. Copies of these standard forms are made available by REA on request. Loan applicants are assisted, as necessary, in preparing the loan application and supporting data. If an application is acceptable after legal, engineering, economic, and financial studies, funds are obligated by a loan contract and the borrower gives a note, mortgage and, in some cases, other security.

(d) *Construction.* Under the loan agreements, REA reserves the right to approve the design and construction of the facilities, and to require progress reports on construction and audits of the borrower's records relating to construction.

(e) *Advance of loan funds.* Loan funds are advanced on the basis of requisitions submitted by borrowers in accordance with the loan contract and REA regulations.

§ 1700.21 Insured telephone loans pursuant to section 305 of the Rural Electrification Act, as amended.

(a) *General.* (1) These loans are made from the Rural Electrification and Telephone Revolving Fund for purposes authorized by section 201 of the RE Act. The standard interest rate on these loans is 5 percent, but a rate as low as 2 percent is authorized by section 305(b) of the RE Act under the same conditions as specified in § 1700.20(a) of this part.

(2) These loans are made for the purpose of improvement, expansion, construction, acquisition and operation of telephone lines, facilities, or systems to furnish or improve telephone service in rural areas. Borrowers may be required to provide a portion of the investment themselves. The loans, approval of which rests solely within the discretion of the Administrator, must be repaid within a period, not to exceed 35 years, that approximates the expected useful life of the facilities financed and must be reasonably secured in the judgment of the Administrator. The loans may be made to any type of commercial or nonprofit corporation now providing or who may hereafter provide telephone service in rural areas. Preference is given to persons already providing telephone service in rural areas and to cooperative, nonprofit, limited dividend or mutual associations.

(b) *Loan applications.* Applications for these loans are made on forms prescribed by REA, copies of which are available from REA on request. Loan applicants are assisted, as necessary, in conducting area coverage surveys and in preparing loan applications. If an application is acceptable after legal, engineering, economic and financial studies, funds are obligated by a loan contract and the borrower gives a note, mortgage and, in some cases, other security.

(c) *Construction.* Under the loan agreements, REA reserves the right to approve the design and construction of facilities and to require progress reports on construction and audits of the borrower's records relating to construction.

(d) *Advance of loan funds.* Loan funds are advanced on the basis of requisitions submitted by borrowers in accordance with the loan contract and 7 CFR part 1744.

§ 1700.22 Rural Telephone Bank loans pursuant to section 408 of the Rural Electrification Act, as amended.

These loans are made for the purposes authorized by section 201 of the Act. The loans, approval of which rests solely within the discretion of the Governor, bear interest at a rate equal to the cost of funds to the Bank; must be repaid within a period, up to a maximum of 35 years, that approximates the expected useful life of the facilities financed; and must be reasonably secured in the judgement of the Administrator. These loans are administered by REA staff as part of the rural telephone program pursuant to the policies and procedures set forth in 7 CFR part 1610.

§ 1700.23 Guaranteed loans pursuant to section 306 of the Rural Electrification Act, as amended.

These loans are made by any legally organized lending agency and guaranteed in the full amount thereof by the Administrator for purposes provided in the RE Act. The loans guaranteed under this section are serviced by the lender except that loans made by the Federal Financing Bank are serviced by REA. The interest rate on these loans is as agreed upon by the borrower and the lender.

§ 1700.24 Loans and grants pursuant to section 313 of the Rural Electrification Act, as amended.

These zero-interest loans and grants are made to borrowers under the RE Act for the purpose of promoting rural economic development and rural job creation projects. Selection and approval of applications for zero-interest loans and grants rests solely within the discretion of the Administrator, and preference is given to providing borrowers with zero-interest loans rather than grants under this program. (See 7 CFR part 1703.)

§ 1700.25 Other loan authorities.

The Administrator has authority under section 5 of the RE Act to make loans to electric borrowers for the purpose of financing the wiring of the premises of persons in rural areas and for the purchase and installation of electrical and plumbing appliances and equipment, including machinery. The Administrator also has authority under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) to finance community antenna television (CATV) services and facilities. Funds have not been appropriated for these purposes since 1969 in the case of section 5 loans and not since 1981 in the case of CATV loans.

§ 1700.26 Studies, investigations, and reports.

Pursuant to section 2 of the RE Act, the Agency may make, or cause to be made, studies, investigations, and reports concerning the condition and progress of electrification and telephony in rural areas in the several States and territories and may publish and disseminate information with respect thereto.

§ 1700.27 Loan security activities.

In carrying out its program, and in the interest of loan security, the Agency requires periodic reports of borrowers on operations, annual audits, etc., and provides specialized and technical accounting, engineering, and other managerial assistance to borrowers with respect to the construction and operation of their facilities, to help them establish efficient and economical service in rural areas.

§ 1700.28 Issuances implementing procedure.

There are available from REA, upon request:

(a) Basic forms of loan agreements; and

(b) Rules and bulletins issued from time to time which implement the loan agreements and the Agency's policies and procedures.

§ 1700.29 [Reserved]

Subpart C—Public Information

§ 1700.30 Public inspection and copying.

(a) 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying.

(b) The Rural Electrification Administration issues from time to time REA Bulletins which implement the procedures set forth in part 1700 and the loan and security instruments which provide for and secure REA loans. REA also issues REA Bulletins which furnish technical information to assist in the design, construction, operation, and maintenance of borrowers' systems. As REA Bulletins are issued, copies are mailed to all borrowers concerned, and to others participating in the REA program who may be affected. REA will make all REA Bulletins available for public inspection and copying. Forms related to REA Bulletins, including forms of basic loan and security agreements, will also be made available for public inspection and copying.

(c) REA will make available for public inspection and copying its administrative staff manuals and instructions to the staff affecting any member of the public except those exempt from disclosure pursuant to the provisions of 5 U.S.C. 552(b).

(d) Members of the public may request access to such materials maintained by REA at the Office of the Director, Administrative Services Division, Room 0168—South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, between the hours of 8:30 a.m. and 4:30 p.m. Copies of such materials may be obtained in person or by mail.

§ 1700.31 Indexes.

5 U.S.C. 552(a)(2) requires that each agency publish or otherwise make available a current index of all materials required to be made available for public inspection and copying. REA will maintain and publish current indexes and quarterly supplements thereto, providing identifying information for all REA Bulletins and for staff manuals and instructions made available pursuant to § 1700.30. Requests for copies should be addressed, in person or by mail, to the Office of the Director, Administrative Services Division, Room 0168—South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

§ 1700.32 Requests for records.

Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to Office of the Director, Legislative and Public Affairs Staff, Rural Electrification Administration, Room 4043, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. A request shall describe the records sought as set forth in 7 CFR 1.3(b). A charge may be made to cover the costs of fulfilling the request. Requests may be submitted in person or by mail.

§ 1700.33 Appeals.

Any person whose request under § 1700.32 is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Rural Electrification Administration, Room 4061, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

PART 1701—[REMOVED]

Appendix A to Part 1701—[Removed]

PART 1702—[REMOVED]

2. Part 1701 and Appendix A to part 1701, and part 1702 are hereby removed.

Dated: September 25, 1990.

Gary C. Byrne,

Administrator.

[FR Doc. 90-23024 Filed 9-27-90; 8:45 am]

BILLING CODE 3410-15-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89-216]

Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations by adding health certification requirements and requirements concerning quarantine upon arrival in the United States for llamas and alpacas from Chile, and from certain other countries declared free of rinderpest and foot-and-mouth disease. This action is necessary to strengthen the protection against the introduction into the United States of communicable livestock diseases.

EFFECTIVE DATE: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Whiting, Chief Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8590.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR subchapter D (referred to below as the regulations), among other things, regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various livestock diseases.

On September 28, 1989, we published a document in the **Federal Register** (54 FR 39759–39765, Docket Number 89–116) in which we proposed amending the animal import regulations by adding health certification requirements and requirements concerning quarantine upon arrival in the United States for llamas and alpacas from Chile. We proposed this action to strengthen the protection against the introduction into the United States of communicable livestock diseases in the event Chile was declared free of rinderpest and foot-and-mouth disease (FMD). In this issue of the **Federal Register** we are publishing a companion rule ("Change in Disease Status of Chile Because of Foot-and-Mouth Disease," Docket Number 89–209) that adds Chile to the list of countries declared to be free of rinderpest and FMD.

We solicited comments concerning our proposal for a 60-day period ending November 27, 1989. We received approximately 250 comments, 2 of which favored the proposed health certification and quarantine requirements. The remainder opposed these requirements. The majority of those commenters who opposed the requirements asserted that the requirements would not be adequate to prevent the introduction of communicable livestock diseases into the United States. Many of these commenters stated that a 90-day quarantine at the Harry S Truman Animal Import Center (HSTAIC), along with the use of sentinel animals and appropriate testing, would be the only adequate defenses for ensuring that llamas and alpacas from Chile are not carriers of FMD or other infectious diseases. Among those who submitted comments were State departments of agriculture; llama/alpaca breeders and importers; llama/alpaca and other livestock associations; veterinary hospitals and clinics; members of Congress and State legislators; and other interested organizations and individuals, including veterinarians and animal scientists.

We have carefully considered the comments received in response to the proposal. In this document we discuss those comments that relate to our proposal to amend the animal import regulations by adding health certification and quarantine upon arrival requirements. Those comments that raise issues associated with our proposal to declare Chile free of FMD

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are discussed in the final rule (Docket Number 89-208) mentioned above.

A large number of commenters stated that uncertainty exists concerning the reliability of standard tests for FMD and other diseases, including tuberculosis (TB), bluetongue, and brucellosis in llamas and alpacas; that some llamas and alpacas may be silent carriers of FMD and pass undetected through a 30-day quarantine in the United States; that our proposed requirements should include a 90-day quarantine in Chile followed by a 90-day quarantine in the United States to provide adequate time for the FMD virus to manifest itself in diseased animals; that sentinel animals are needed as a safeguard during quarantine since FMD and other diseases are more easily detected in them than in llamas and alpacas; that standard quarantine facilities will be inadequate for importing llamas and alpacas from Chile because these facilities are not designed to contain outbreaks of virulent exotic diseases such as FMD; that using more than one facility increases the risk of multiple-site outbreaks of FMD in the United States; and that there is no mention in the proposed rule as to what procedure will be followed if a llama or alpaca should test positive for FMD while in quarantine in the United States. Many commenters stated that HSTAIC is the only facility that should be used to import llamas and alpacas from Chile because it is designed and equipped to handle exotic disease outbreak and clean-up situations, because it uses sentinel animals, and because it is geographically isolated from the mainland of the United States.

There is substantial database on FMD research and field studies. The existence of a "silent carrier" state or emergence of an animal that is truly infected with FMD virus yet fails to seroconvert is scientifically unsubstantiated. Yet, several anecdotal incidents linger and tend to neutralize many years of research of the subject. Most research on FMD has not been conducted on llamas and alpacas. This leaves open the possibility, as suggested by a number of commenters, that these ruminants may be a different type of host and FMD research work conducted on other ruminants may be neither applicable nor valid in these species. We do not have sufficient information available to us to accept or reject these premises.

In analyzing risks, we classify FMD as one of the most serious animal diseases existing today. Although Chile has been proven to be free of detectable signs of FMD, a risk analysis associate that additional research is needed on llamas and alpacas to determine whether these animals harbor a scientifically verifiable predisposition for being silent carriers.

This research cannot be conducted in a timely manner at the Plum Island Animal Disease Laboratory. Therefore, in the interests of expediency, we are exploring the possibility of conducting the research in a country in which FMD is endemic. Gathering the information necessary to evaluate the feasibility of this approach is expected to take 18 months.

Accordingly, based on the information currently available, and until a definitive judgment can be made concerning the silent carrier potential of llamas and alpacas, we deem it prudent at this time to include additional precautions with respect to the importation into the United States of llamas and alpacas from certain parts of the world.

The health certification and quarantine upon arrival requirements contained in this document will apply not only to llamas and alpacas imported into the United States from Chile, but also to llamas and alpacas imported into the United States from any country in which rinderpest or FMD has been known to exist and that is added—after the effective date of this rule—to the list of countries declared to be free of rinderpest and FMD. (Countries falling into this category will be referred to below as "certain other countries.")

Countries currently listed in § 94.1(a)(2) of the regulations as free of rinderpest or FMD will not be affected by these requirements. All of the countries appearing on this list are countries in which rinderpest or FMD has never been known to exist, or countries that have been free of these diseases for at least 5 years. The Department has determined that any llamas or alpacas that may be imported into the United States from these countries would not pose a significant risk of introducing communicable livestock diseases into the United States.

Whether the health certification and quarantine upon arrival requirements will remain in effect indefinitely, or eventually be modified or terminated, will depend on the outcome of the silent carrier research we are initiating.

We are implementing the recommendation that HSTAIC be the only facility through which llamas and alpacas from Chile and certain other countries can be imported into the United States, and that sentinel animals be used during the quarantine.[2]

We believe that requiring the use of this facility, along with the employment of sentinel animals, will further strengthen the line of defense we are creating to protect the United States against the introduction of communicable livestock diseases. We believe these additional precautions are warranted in light of commenter statements concerning the silent carrier potential of llamas and alpacas.

We define a silent carrier as an animal that appears healthy, but harbors a certain disease and can spread the disease to other animals. It should be emphasized that we regard a silent carrier situation in llamas and alpacas as a possibility, but a remote one. Very few cases of FMD in llamas and alpacas have ever been documented in South America, and Chile's last two FMD outbreaks were caused by infected cattle, not by llamas or alpacas. In addition, our research indicates that llamas show symptoms of FMD once they have been exposed to the disease.[3]

Despite these facts, we believe that our responsibility to protect the United States against the introduction of communicable livestock diseases compels us to consider the consequences of FMD and implement safeguards in addition to those described in the proposed rule. Extraordinary diseases such as FMD deserve extraordinary precautions. The analysis of risk is a function of the probability of an adverse event occurring and the consequences of that event. While the probability of FMD virus entering the United States and causing a disease outbreak is extremely minuscule, the devastation of such an event to the economic stability of our food animal populations cannot be denied. Thus, llamas and alpacas from Chile and certain other countries will be quarantined at HSTAIC, placed with sentinels, and tested for FMD. These procedures will be adopted until a further clarification of the potential FMD carrier status of llamas and alpacas is completed. While the Department considers the possibility of an FMD virus entering the United States from an FMD-free country as remote, we nevertheless choose to adopt these extraordinary safeguards until our research on FMD in llamas and alpacas is completed.

[1] Recently published provisions in 9 CFR part 98 (55 FR 9258-9260, Docket Number 89-168, published February 28, 1990) allow llamas and alpacas from FMD-free countries to be quarantined at HSTAIC.

[2] "Foot-and-Mouth Disease Studies in the Llama." A copy of this research can be obtained by writing to the Administrator, c/o Dr. Robert Whiting, Chief Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

In response to commenters' recommendations that all appropriate testing be conducted during quarantine, we are adding an FMD virus isolation test to the complement of tests already described in the proposed rule. The FMD tests described in the proposed rule are designed to detect antibodies produced by an animal's immune system in response to FMD viral infection. In comparison, the FMD virus isolation test we are adding to the requirements is designed not to detect antibodies, but to detect the FMD virus itself.

In addition, sentinel animals, both pigs and calves, will be quarantined with the llamas and alpacas in HSTAIC at a ratio of one pig and one calf per eight imported llamas and alpacas. The sentinels will undergo all serological tests for FMD required for the llamas and alpacas.

As sentinels, calves and especially pigs have scientifically proven to be susceptible to infections with the FMD virus. Studies have shown that they rapidly contract the disease, exhibit clinical signs such as fever, vesicles, and seroconversion, and may therefore play an important role in disclosing a "silent carrier" in animals. The use of sentinels is a normal component of our protocols in importing animals from countries in which FMD exists. The use of sentinels here is viewed as a safety net testing strategy should the "silent carrier" theory have credence. We are choosing to include sentinels in this protocol until the silent carrier state issue is completely resolved.

The time involved in collecting these additional test samples, sending them to the Foreign Animal Disease Diagnostic Laboratory on Plum Island for testing, and awaiting test result information, will require us to extend the quarantine time from 30 days to a minimum of 40 days. It should be noted that the quarantine time could extend beyond 40 days should unforeseen delays occur during the sample collection and testing process.

We are making no changes based on comments that questioned the adequacy of a quarantine period that is less than 90 days, or comments that questioned the reliability of standard tests for FMD and other diseases. The tests that will be used on llamas and alpacas from Chile and certain other countries have proven effective and reliable when used on a variety of other exotic ruminants—such as vicunas, wildebeests, and various kinds of antelope—that are routinely imported into the United States. In addition, we believe that a 40-day quarantine and the use of sentinel animals will provide an adequate time and an environment conducive for a disease to manifest itself. An animal will usually begin showing signs of FMD 3 to 7 days after being infected.

The proven reliability of FMD tests and other tests in ruminants, the lack of FMD-susceptibility historically demonstrated by llamas and alpacas, the fact that llamas have exhibited symptoms of FMD when exposed to this disease under research conditions, the fact that sentinel animals will be used during the quarantine process, the fact that a FMD virus isolation test is being added to the quarantine upon arrival requirements, and the fact that Chile has met the criteria for being declared free of FMD, convince us that the quarantine periods specified in the proposed rule are sufficient.

A number of commenters stated that there are no approved tests for brucellosis, TB, or anaplasmosis in llamas or alpacas; that Ivermectin is not approved for use in llamas and alpacas; that several viral strains of FMD occur in Chile which require separate vaccines and testing; and that llamas and alpacas from Chile may carry other infectious diseases that have, until recently, been unidentified in these animals—such as eperythrozoonosis and dermatological problems. Some commenters stated that eperythrozoonosis may have been introduced into the United States during the 1987 importation of Bolivian llamas through HSTAIC.

We are making no changes based on these comments. We have determined that Ivermectin is an effective product for treating parasites in llamas and alpacas.

The tests and procedures we are implementing are designed to protect the United States from communicable livestock diseases. Further, we cannot be expected to implement testing procedures for diseases about which we are unaware. Concerning the issue of eperythrozoonosis, we are aware of no conclusive link between the importation of Bolivian llamas in 1987 and the reported appearance of eperythrozoonosis and other diseases in llama and alpaca herds in the United States. Eperythrozoonosis is not an exotic disease; it has been present in various animal species in the United States for more than 50 years.

Several commenters stated that more than one blood test for FMD is needed during quarantine in the United States.

We agree. Conducting the FMD blood tests more than once, we believe, would strengthen the protection against the introduction of this disease into the United States. We are therefore requiring that llamas and alpacas from Chile and certain other countries shall test negative to the virus neutralization and virus infection associated antigen (VIAA) serological tests for FMD twice in our quarantine upon arrival requirements.

A number of commenters asserted that the preembarkation procedures described in the proposed rule are not adequate to ensure that llamas and alpacas exported from Chile to the United States are free of disease, and that the inadequacy of these procedures is demonstrated by the fact that Chile will not certify that these animals are FMD-free. Certain commenters stated that llamas and alpacas should be tested for FMD in Chile, before being exported to the United States. Other commenters stated that the accuracy of the information contained in the Chilean health certificates will be questionable, since it will not be possible for Chilean veterinarians to be familiar—through first-hand observation—with the individual history of every llama or alpaca offered for export to the United States.

We are making no changes based on these comments. We believe that the preembarkation procedures described in the proposed rule will significantly reduce the risk of a diseased animal being exported from Chile, and certain other countries, to the United States. Each shipment of llamas and alpacas exported from Chile, and certain other countries, will be accompanied by a certification from the exporting country's national government that the country is free of FMD. This certification is the national government's official statement that the animals it offers for export are free of this disease. Since Chile is certifying that it is free of FMD, and since we are declaring Chile free of the disease (see Docket Number 89-209, "Change in Disease Status of Chile Because of Foot-and-Mouth Disease," which appears in this issue of the Federal Register), no preembarkation tests for FMD in that country will be required. Further, the health certification system described in our proposed rule has been used in comparable animal importation situations in other countries, and has consistently proven effective.

Many commenters made a number of assertions concerning USDA's 1987 study of FMD in llamas and alpacas, conducted in the Plum Island research facilities by Drs. Juan Lubroth and Ronald J. Yedloutschnig. Certain commenters stated that the study is invalid because it was conducted improperly. Other commenters stated that the study is inconclusive, or that it

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proven that llamas can be silent carriers of FMD.

We disagree with these assertions. The 1987 Plum Island study was an attempt to gather information concerning FMD in llamas. As do all studies, it represents one step in a series of steps to understand more about a given subject. No study should be regarded as a "final word" product, but as a building block and a guideline to be used until further studies can be conducted. The 1987 Plum Island study was only one factor among a number of factors taken into consideration when formulating the direction of this rulemaking process. We believe the study was conducted in a scientifically valid manner, and we concur with the conclusions drawn by the Plum Island researchers. Those conclusions are that llamas are susceptible to FMD, that the virus isolation technique used in the study was adequate to detect FMD, and that llamas do not appear to be long-term carriers of FMD. A large number of commenters took exception to this last conclusion, asserting that two of the six llamas described in the study never showed clinical signs of FMD and never developed antibodies to the disease, even though the FMD virus was transiently found in the throats of both animals. It is critical to note, however, that the FMD virus could no longer be detected in the throats of these animals when they were examined 14 days following exposure to the disease. Even humans may be transient carriers of FMD virus after breathing virus particles. This is not a true infection and the virus survives only briefly. We believe this observation supports the conclusion that llamas do not appear to be long-term carriers of the FMD virus.

Many commenters stated that APHIS is abdicating its responsibilities by proposing preembarkation requirements that place major health certification responsibilities upon a foreign government.

We disagree. The preembarkation requirements described in the proposed rule are by no means unique; they are standard procedures used routinely by the Department in conducting importations from other countries. The success of our preembarkation requirements in other countries convinces us that their use in Chile, as well as in certain other countries, will provide an effective line of defense against the introduction of FMD and other diseases into the United States.

Some commenters stated that other ruminants imported from Chile should be subject to the same health certification and quarantine requirements as llamas and alpacas.

We are making no changes based on these comments. The volume of data on FMD infections in food animals, e.g., cattle, sheep, and goats, clarify the infectious status, testing procedures and pathogenesis of FMD in these species. Preembarkation and postembarkation testing requirements have proven adequate in preventing the introduction of disease into the United States from FMD-free countries.

A large number of commenters asserted that Executive Order 12372 was ignored during this rulemaking process.

We disagree. Executive Order 12372 is intended to apply to Federal financial assistance and direct Federal development programs and activities of the Department of Agriculture. This rule does not involve matters of this nature. In this document we have therefore omitted the reference to Executive Order 12372. However, it should be noted that APHIS regularly cooperates with State and local officials in carrying out its Federal regulatory program.

A small number of commenters stated that we have violated the Administrative Procedure Act by failing to effect meaningful participation by the public during this rulemaking process. Specifically, these commenters asserted that APHIS failed to respond to certain Freedom of Information Act requests in a timely manner, thereby impeding the public's ability to provide meaningful comments on the proposed rule. One commenter asserted that we further discouraged public participation in the rulemaking process by denying a request to extend the comment period on the proposed rule.

We do not believe the public was impeded from commenting on the proposed rule. The Department has made a good faith effort to provide information to all those who requested it, and to provide this information in as timely a manner as circumstances would allow. The decision not to extend the comment period on the proposed rule was based on our determination that the 60-day comment period afforded the public adequate time to formulate and submit comments.

A small number of commenters opposed the proposed rule, not because they felt the health certification and quarantine upon arrival requirements were not sufficiently stringent, but because they felt there should be no special requirements at all. Some of these commenters stated that any special conditions imposed on the importation of llamas and alpacas from Chile would be discriminatory.

We disagree. Although we are recognizing Chile as free of FMD, we have determined that the additional safeguards explained above are necessary to strengthen the protection against the introduction into the United States of communicable livestock diseases.

One commenter recommended that we build additional high security quarantine import centers through which to import llamas and alpacas, and that importers be required to pay for the operation of these centers. Another commenter petitioned us to insert language in this rule that would cause importers to be held financially liable for losses to the United States agricultural community caused by FMD or other exotic diseases. Another commenter stated that our importation protocols should require that research be conducted on llamas and alpacas while they are in quarantine, and that importers be required to pay for the cost of this research.

We are making no changes based on these comments. A careful review of the comments has led us to the conclusion that the recommendations contained in them fall outside the scope of our proposed rule.

Several commenters stated that Chile's eartagging program will not be effective because it will be subject to tampering, such as false tagging.

We are making no changes based on these comments. It cannot be argued that Chile's eartagging program will be completely tamper-proof. No animal identification system is. This is why we have created a llama/alpaca importation system containing multiple lines of defense against FMD introduction into the United States.

A number of commenters asserted that officials carrying out our health certification procedures in Chile will be bribed into allowing diseased or potentially diseased animals to become candidates for exportation to the United States.

We are making no changes based on these comments. The commenters provided no evidence to support these assertions, and the Department is aware of no information that is available to support or disprove these assertions.

Reorganization

Since the publication of our proposed rule in September 1989, part 92 has been reorganized. A final rule was published in the Federal Register on August 2, 1990 (55 FR 31484–31562, Docket Number 90–023). Below is a redesignation table.

Old Section	New Section
§ 92.5(a)(1)	§ 92.435(a)
§ 92.11(b)(1)	§ 92.411(b)(1)
§ 92.11(b)(2)	§ 92.411(b)(2)

Miscellaneous

Commenters' recommendations we are implementing in this final rule have required us to revise our analysis concerning the economic impact of this rule on small entities. This analysis appears under the heading, "Executive Order 12291 and Regulatory Flexibility Act." In addition, paragraph (b) of new § 92.435 now contains, as a result of commenters' recommendations, revised costs for which importers will be responsible.

Clarification of Intent

In addition to the changes noted above, we are making two other changes to the provisions set forth in the proposed rule in order to clarify our intent regarding certain testing and treatment for llamas and alpacas. In paragraph (a)(9)(ii) of new § 92.435, we are changing the words "at a serum dilution of 1:25 or its equivalent in international units (1:30)" to read "at a serum dilution of 1:25, or less than 30 international units per milliliter." This change corrects an editing error and does not alter the intent of the test requirement. We are also correcting an editing error that occurred in paragraph (a)(12) of that section. In this paragraph we are changing the number "20" to "25" because 20 milligrams of dihydrostreptomycin per kilogram of body weight would have been an insufficient dosage. Twenty-five milligrams is the correct dosage.

We have also made minor nonsubstantive changes for clarity.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed above.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less that $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Prior to the adoption of this rule and its companion rule declaring Chile free of FMD (see Docket Number 89–208, "Change in Disease Status of Chile Because of Foot-and-Mouth Disease," which appears in this issue of the Federal Register), llamas and alpacas imported into the United States from Chile were required—during those periods when Chile was not recognized as being free of FMD—to undergo embarkation quarantine in Chile, under APHIS supervision, as well as a 90-day quarantine at the Harry S Truman Animal Import Center upon arrival in the United States. The cost of Chilean veterinary supervision of the embarkation quarantine has been approximately $350 per head. The cost of APHIS supervision of the embarkation quarantine and the costs associated with a 90-day quarantine at HSTAIC have ranged from $5,500 per head for 50 animals to $2,000 per head for 480 animals.

We are implementing new health certification requirements and requirements concerning quarantine upon arrival for llamas and alpacas imported into the United States from Chile. Small importers involved in llama/alpaca importations may benefit economically from this action, since they may be able to import and sell more llamas and alpacas than they have in the past. Other factors, however, could substantially limit the number of llamas and alpacas entering the United States, thereby limiting the economic benefits experienced by importers.

The primary factor that may limit these potential benefits is that llamas and alpacas from Chile will be required to undergo quarantine at HSTAIC, as discussed earlier in this docket. We estimate that the quarantine space available at HSTAIC will allow a maximum of 1,200 llamas and alpacas to be processed through this facility during any one year. It is unlikely, however, that this many llamas and alpacas will be processed through HSTAIC due to the competition for quarantine space there.

In addition, the demand for llamas and alpacas has increased in other countries as well as the United States. The intense international competition that has developed for these animals will, we believe, limit the number of llamas and alpacas available for importation into the United States.

Therefore, even though HSTAIC is capable of processing 1,200 llamas and alpacas per year, the factors discussed above lead us to believe that this figure may not be a realistic projection of yearly llama and alpaca importations from Chile. Actual import levels could be as low as 300 to 600 animals per year.

We estimate that the cost per head of complying with the requirements of this rule will be approximately $875 in Chile and approximately $1,050 to $4,000 in the United States. The cost of meeting the requirements in the United States will depend, in part, on the number of llamas and alpacas that are processed through HSTAIC at any one time. The requirements as presented in this rule, along with their associated costs, should not have a significant economic impact upon importers. These entities will already be realizing an overall reduction in importation costs because they will not longer be required to pay the cost of USDA supervision services in Chile, and because the quarantine period in the United States is being shortened.

At this time it is not possible for us to estimate how many small entities are engaged in the llamas/alpacas importing business, or how many will eventually choose to enter this field. However, we believe this number will be small when compared to the total number of animal importers operating in the United States.

The economic impact of this rule upon small llamas/alpacas breeders in the United States will be influenced entirely by the reaction of consumers to an increased supply of llamas and alpacas. We cannot, with certainty, predict how consumers will react to this situation.

As the supply of llamas and alpacas increases, prices for these animals may drop, and breeders may face economic losses. However, the extent of their losses would depend on the extent of the price decline. If consumers in the United States respond to the increased supply by paying considerably less for these animals, then breeders would face greater economic losses. If consumers respond by paying only slightly less, then breeders' losses would be minimized. Consumers may not respond to the increased supply at all. In this event, prices would remain constant and breeders would suffer no losses.

If breeders and importers are two mutually exclusive groups, the economic impact of this rule on breeders could be negative, as discussed above. Some breeders, however, may opt to expand their breeding stock by importing Chilean llamas and alpacas for substantially less than they could purchase comparable, domestically-produced llamas and alpacas. In this way, a portion of their losses as breeders may be offset by their gain as importers. However, we do not know to what extent, if any, breeders and importers are mutually exclusive groups.

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Based on the information available to us, we believe that an increase in the supply of llamas and alpacas in the United States may eventually produce a price decline for these animals. We do not believe the price decline would be drastic. We estimate that the llamas and alpacas population in the United States is between 20,000 and 45,000, and is growing at the rate of approximately 7,000 per year. The importation of 1,200 llamas and alpacas from Chile in a single year represents approximately 17 percent of domestic production figures. Importation levels of 300 to 600 animals per year represent approximately 8 percent of domestic production figures. We do not believe that an 8 to 17 percent annual increase over domestic production levels is likely to produce a flooded llamas/alpacas market in the United States.

In summary, a growing domestic production rate combined with increased llamas/alpaca importations may eventually produce a price decline for llamas and alpacas in the United States, but the decline would likely be moderate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this rule have been submitted for approval to the Office of Management and Budget. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.405 [Amended]

2. In paragraph (a) of § 92.405, "and 92.433" is changed to "92.433, and 92.435 of this part".

§ 92.411 [Amended]

3. In the first sentence of paragraph (b)(1) of § 92.411, "other than llamas and alpacas from countries listed in § 94.1(d) of this chapter" is inserted immediately after "Ruminants".

4. In paragraph (b)(2) of § 92.411, the following sentence is added at the end of the paragraph:

§ 92.411 Quarantine requirements.

* * * * *

(b) * * *

(2) * * * Llamas and alpacas imported from any country listed in § 94.1(d)(1) of this chapter shall be subject to § 92.435 of this part.

* * * * *

5. A new § 92.435 is added to read as follows:

§ 92.435 Llamas and alpacas.

No llama or alpaca shall be imported or entered into the United States from any country listed in § 94.1(d)(1) of this chapter unless in accordance with paragraphs (a) and (b) of this section.

(a) *Health certification requirements.* No llama or alpaca shall be imported into the United States from any country listed in § 94.1(d)(1) of this chapter unless accompanied by a health certificate either signed by a salaried veterinarian of the exporting country's national veterinary services, or signed by a veterinarian authorized by the exporting country's national veterinary services and endorsed by a salaried veterinarian of the exporting country's national veterinary services (the endorsement representing that the veterinarian signing the health certificate was authorized to sign the health certificate and that, as far as can be determined, the statements on the health certificate are accurate), certifying that:

(1) The exporting country is free from rinderpest, foot-and-mouth disease, contagious pleuropneumonia, and surra.

(2) The llama or alpaca and its sire and dam were born in the exporting country and have never been outside of the exporting country.

(3) The llama or alpaca was inspected on the premises of origin by the certifying veterinarian and found free of evidence or communicable disease.

(4) The llama or alpaca came from the premises of origin that, as far as can be determined by the certifying veterinarian, based on information available from the owner of the premises of origin and other sources, had been free of outbreaks of communicable disease for the 6-month period immediately preceding the date of movement of the llama or alpaca from the premises of origin.

(5) The llama or alpaca was individually identified using an eartag, tattoo, or brand prior to moving the llama or alpaca from the premises of origin to the preembarkation quarantine facility.

(6) The llama or alpaca was moved from the premises or origin to a preembarkation quarantine facility in a means of conveyance which, immediately prior to loading the llama or alpaca, was cleaned and disinfected with a disinfectant specified in § 71.10 of this chapter, under the supervision of, and in the presence of, a full-time salaried employee of the exporting country's national veterinary services.

(7) The llama or alpaca was kept in isolation from other animals (except llamas and alpacas scheduled for the same shipment) in the preembarkation quarantine facility for a period of at least 60 days immediately prior to export, under the supervision of, and in the presence of, a full-time salaried veterinarian of the exporting country's national veterinary services, and has remained free from evidence of communicable diseases and exposure to communicable diseases during the 60-day period immediately prior to export. (For the purposes of this section, "isolation" means that the llama or alpaca was kept in an area in which llamas and alpacas intended for export are held and have no physical contact with other animals, except llamas and alpacas scheduled for the same shipment.) All windows and other openings in the preembarkation facility were covered with screen, 16 mesh or finer.

(8) All llamas and alpacas which entered the preembarkation quarantine facility were handled on an "all-in, all-out" basis, except for llamas and alpacas removed from the preembarkation quarantine facility in accordance with this section. Any llama or alpaca in the preembarkation quarantine facility with any llama or alpaca that tested positive for a communicable disease and was removed from the preembarkation quarantine facility in accordance with this section were considered exposed to that communicable disease.

(9) *Testing.* Samples from all llamas and alpacas in the preembarkation quarantine facility were taken by a full-time salaried employee of the exporting country's national veterinary services; all samples were tested at a laboratory approved by the exporting country's national veterinary services; and testing in the preembarkation quarantine facility was performed as follows:

(i) *Tuberculosis testing:* All llamas and alpacas in the preembarkation quarantine facility tested negative to an intradermal tuberculin test utilizing mammalian Purified Protein Derivative tuberculin administered by full-time salaried veterinarian of the exporting country's national veterinary services; *Provided, however,* if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, slaughtered, examined, and found to have no tubercular lesions, and after no less than 60 days, the remainder of the llamas and alpacas in the preembarkation quarantine facility were retested with the intradermal tuberculin test utilizing mammalian Purified Protein Derivative tuberculin administered by a full-time salaried veterinarian of the exporting country's national veterinary services, and found negative to this test. Negative test results mean that the veterinarian administering the test detected no response using both visual examination and manual palpation techniques at the site of the injection 72 hours after the injection.

(ii) *Brucellosis:* All llamas and alpacas in the preembarkation quarantine facility were subjected to the brucellosis tube agglutination test and received negative test results at a serum dilution of 1:25, or less than 30 international units per milliliter, within 30 days prior to export; *Provided, however,* if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, and after no less than 30 days, the remainder of the llamas or alpacas in the preembarkation quarantine facility were retested with the brucellosis tube agglutination test and received negative test results at a serum dilution of 1:25, or less than 30 international units per milliliter.[22]

(iii) *Bluetongue:* All llamas and alpacas in the preembarkation quarantine facility tested negative to the agar gel immunodiffusion serological test for bluetongue; *Provided, however,* if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, and after no less than 30 days, the remainder of the llamas and alpacas in the preembarkation quarantine facility were retested with the agar gel immunodiffusion serological test for bluetongue and found negative to this test.[22]

(iv) *Vesicular stomatitis:* All llamas and alpacas in the preembarkation quarantine facility tested negative for vesicular stomatitis at a 1:8 dilution utilizing the serum virus neutralization test with both New Jersey and Indiana antigens, and at a 1:10 dilution utilizing the complement fixation test with Cocal, Alagoas, and Piry antigens; *Provided, however,* if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, and after no less than 30 days, the remainder of the llamas and alpacas in the preembarkation quarantine facility were retested for vesicular stomatitis at a 1:8 dilution utilizing the serum virus neutralization test with both New Jersey and Indiana antigens, and at a 1:10 dilution utilizing the complement fixation test with Cocal, Alagoas, and Piry antigens, and found negative to these tests.[22]

(v) *Trypanosomiasis:* All llamas and alpacas in the preembarkation quarantine facility tested negative to the indirect fluorescent antibody test for *Trypanosoma vivax; Provided, however,* if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, and after no less than 30 days, the remainder of the llamas and alpacas in the preembarkation quarantine facility were retested with the indirect fluorescent antibody test for *Trypanosoma vivax* and found negative to this test.[22]

(10) All llamas and alpacas in the preembarkation quarantine facility were examined daily by a full-time salaried veterinarian of the exporting country's national veterinary services for clinical signs of communicable disease.

(11) The rectal temperatures of a randomly selected sample of at least 25 percent of the llamas and alpacas in the preembarkation quarantine facility were taken each day by a full-time salaried employee of the exporting country's national veterinary services, with any abnormal temperature readings being reported to the full-time salaried veterinarian of the exporting country's national veterinary services; and the temperature of each llama and each alpaca in the preembarkation quarantine facility was taken at least 2 times per week by a full-time salaried employee of the exporting country's national veterinary services, with any abnormal temperature readings being reported to the full-time salaried veterinarian of the exporting country's national veterinary services.

(12) *Leptospirosis.* All llamas and alpacas in the preembarkation quarantine facility were injected twice, by a full-time salaried employee of the exporting country's national veterinary services, with 25 milligrams of dihydrostreptomycin per kilogram of body weight, with an interval of 14 days between injections.

(13) *Endoparasites.* All llamas and alpacas in the preembarkation quarantine facility were treated twice, by a full-time salaried employee of the exporting country's national veterinary services, with Ivermectin at a dosage of 200 micrograms per kilogram of body weight, with a 14- to 21-day interval between treatments.

(14) *Ectoparasites.* (i) All llamas and alpacas in the preembarkation quarantine facility were treated twice, by a full-time salaried employee of the exporting country's national veterinary services, with a pesticide with a 10-day interval between treatments (the pesticide and the concentration used must have been approved by the Administrator as adequate to kill ticks, mites, and lice);

(ii) The llamas and alpacas were treated, by a full-time salaried employee of the exporting country's national veterinary services, by being thoroughly wetted with a pesticide using either a sprayer with a hand-held nozzle, a spray-dip machine, or a swim vat;

(iii) The health certificate contains the name of the pesticide, the concentration used to treat the llamas and alpacas and the dates of treatment; and

(iv) The llamas and alpacas were inspected by the veterinarian signing the health certificate and found free of any ectoparasites within 72 hours prior to being loaded on the means of conveyance which transported the llamas and alpacas to the United States.

(15) No llama or alpaca in the preembarkation quarantine facility was vaccinated with a live or attenuated or inactivated vaccine during the 14 days preceding export to the United States.

[22] The importation of llamas or alpacas which have been exposed to disease within 60 days before their exportation is prohibited by 21 U.S.C. 104.

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(16) *Movement from the preembarkation quarantine facility to the port of embarkation.* The llamas and alpacas were moved from the preembarkation quarantine facility to the port of embarkation in a means of conveyance which, immediately prior to loading the llamas and alpacas, was cleaned and disinfected under the supervision of, and in the presence of, a full-time salaried employee of the exporting country's national veterinary services with a disinfectant specified in § 71.10 of this chapter. The movement from the preembarkation quarantine facility to the port of embarkation was by the most expeditious route to prevent possible exposure to disease in transit. From the time of cleaning and disinfecting the means of conveyance through the unloading of the llamas and alpacas for export to the United States, there were no other animals aboard the means of conveyance.

(b) *Quarantine upon arrival.* (1) As a condition of entry into the United States, llamas and alpacas from any country listed in § 94.1(d) of this chapter shall be quarantined at the Harry S Truman Animal Import Center for not less than 40 days, counting from the date of arrival at the Harry S Truman animal Import Center.

(2) All llamas and alpacas from any country listed in § 94.1(d) of this chapter shall test negative to the virus neutralization and virus infection associated antigen serological tests for foot-and-mouth disease twice, at an interval of no less than 21 days, during quarantine at the Harry S Truman Animal Import Center.

(3) All llamas and alpacas from any country listed in § 94.1(d) of this chapter shall test negative to a virus isolation procedure using oesophageal-pharyngeal tissue samples. The tissue samples shall be collected from the esophageal-pharyngeal area, using the probang procedure, within 7 days following arrival of the llamas and alpacas at the Harry S Truman Animal Import Center.

(4) In order to qualify for release from quarantine, llamas and alpacas from any country listed in § 94.1(d) of this chapter shall also test negative to any test duplicative of the tests required under paragraph (a) of this section and any other tests as may be determined necessary by the Administrator to determine their freedom from communicable diseases.

(5) Llamas and alpacas from any country listed in § 94.1(d) of this chapter shall be quarantined with sentinel animals during the entire time the llamas and alpacas remain at the Harry S Truman animal Import Center. The ratio of sentinel animals to imported llamas and alpacas shall be one pig and one calf per eight imported llamas and alpacas. The sentinel animals shall be observed for a minimum of 40 days for clinical signs of communicable disease and shall test negative to the virus neutralization and virus infection associated antigen serological tests for foot-and-mouth disease twice, at an interval of no less than 21 days, during quarantine at the Harry S Truman Animal Import Center. The sentinels shall also undergo any other tests that may be deemed necessary by the Administrator. The last serological test for foot-and-mouth disease will be performed a minimum of 21 days following initial exposure to the imported llamas and alpacas.

(6) The importer shall reimburse the United States Department of Agriculture for all costs, excluding capital expenditures at the Harry S Truman Animal Import Center, associated with the importation and entry into the United States of llamas and alpacas from any country listed in § 94.1(d) of this chapter.

(c) *Llamas and alpacas refused entry.* a llama or alpaca imported or offered for entry into the United States that is not accompanied by a health certificate as required by paragraph (a) of this section or that is found upon inspection at the Harry S Truman Animal Import Center to be affected with a communicable disease or to have been exposed to a communicable disease, shall be refused entry and shall be handled thereafter in accordance with 21 U.S.C. 103 or quarantined, or otherwise disposed of as the Administrator may direct.

Done in Washington, DC, this 25th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22998 Filed 9-27-90; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 89-209]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations by adding Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease. No outbreaks of rinderpest have ever occurred in Chile, and we have determined that foot-and-mouth disease has been eradicated there. We are also adding Chile to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of meat and other animal products from ruminants or swine into the United States. This revision relieves certain prohibitions and restrictions on the importation, from Chile into the United States, of ruminants and swine, and of fresh, chilled, and frozen meats of these animals.

However, Chile is not included in the lists of countries declared to be free of hog cholera and swine vesicular disease. Therefore, the restrictions imposed on the importation of swine and swine products because of these diseases remain in effect for Chile.

A companion rule appearing in this issue of the **Federal Register** ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89-216) adds certain health certification and quarantine upon arrival requirements for llamas and alpacas imported from Chile, as well as from any other country in which rinderpest or foot-and-mouth disease has been known to exist and that is added to the list of countries declared free of rinderpest and foot-and-mouth disease following the effective date of this document.

EFFECTIVE DATE: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Acting Chief Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations), among other things, regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest and foot-and-mouth disease (FMD). Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those countries listed in § 94.1(a)(2).

On August 17, 1989, we published in the **Federal Register** (54 FR 33918-33920, Docket Number 88-216), a document proposing to (1) amend § 94.1 of the regulations by adding Chile to the list of countries declared to be free of rinderpest and FMD, and (2) amend § 94.11 of the regulations by adding Chile to the list of countries free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products from ruminants and swine into the United States. We solicited comments concerning the proposal for a 60-day period ending October 16, 1989.

To give interested persons additional time to prepare comments, we extended the comment period 30 days, to November 15, 1989, in a docket published in the **Federal Register** on October 12, 1989 (54 FR 41845-41846, Docket Number 89-183).

Based on the rationale set forth in the proposal and in this document, we are declaring Chile free of rinderpest and FMD. However, as explained in the companion rule that appears in this issue of the **Federal Register** ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89-216) we are adding health certification and quarantine upon arrival requirements for llamas and alpacas imported from Chile, as well as from any other country in which rinderpest or foot-and-mouth disease has been known to exist and that is added to the list of countries declared free of rinderpest and foot-and-mouth disease following the effective date of this document. Countries subject to these requirements will be listed in a new paragraph (d) in § 94.1.

Because Chile is not recognized as being free of hog cholera and swine vesicular disease, swine and pork or pork products offered for importation into the United States from Chile will continue to be subject to the prohibitions and restrictions imposed in part 94 because of those diseases.

We have carefully considered the comments received in response to our proposal. In this document we discuss those comments that relate to our proposal to declare Chile free of FMD. Those comments that raise issues associated with another proposed rule, "Llamas and Alpacas Imported from Chile" (54 FR 39759-39765, Docket Number 89-118), are addressed in the final rule ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89-216) that appears in this issue of the **Federal Register**. That document deals specifically with health certification and quarantine upon arrival requirements for llamas and alpacas from Chile, as well as from any other country in which rinderpest or foot-and-mouth disease has been known to exist and that is added to the list of countries declared free of rinderpest and foot-and-mouth disease following the effective date of this document.

Comments

We received approximately 750 comments. Among those who submitted comments were State departments of agriculture; llama/alpaca breeders and importers; llama/alpaca and other livestock associations; livestock producers; veterinary hospitals and clinics; State and Federal officials, including State veterinarians; members of Congress; State legislators; universities; game preserves; zoos; farm bureau organizations; and other interested organizations and individuals, including veterinarians and animal scientists.

A majority of the comments, approximately 90 percent of the total received, either opposed FMD-free status for Chile or stated that Chile should not be declared free of FMD unless llamas and alpacas exported from that country undergo a high security quarantine before entering the United States. Many of the commenters specifically recommended a 90-day quarantine, with sentinel animals and appropriate testing, at the Harry S. Truman Animal Import Center (HSTAIC). This center is a maximum security quarantine facility located in Key West, Florida. It was established for the importation of animals, including those not otherwise eligible to be imported into the United States because they are from countries in which exotic diseases, such as FMD, exist. As previously mentioned, matters concerning the use of HSTAIC, length of quarantine, and other requirements for llamas and alpacas from Chile are not addressed in this document, but in the companion rule ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89-216) that appears in this issue of the **Federal Register**.

The remainder of the comments, approximately 10 percent of the total received, either favored the proposed rule, requested an extension of the comment period, or requested additional information.

Commenters who opposed the proposed rule or called for the implementation of high security quarantine requirements shared the belief that the importation of llamas and alpacas from Chile would pose an unacceptable risk of introducing FMD into the United States. The issues raised by these commenters are discussed below.

Many commenters stated that Chile should not be declared free of FMD because that country has a history of repeated outbreaks of this disease. They asserted that these outbreaks are proof that Chile will be incapable of consistently maintaining FMD-free status. Other commenters stated that Chile will be unable to remain free of FMD because a silent, undetectable reservoir of FMD exists in its cattle and camelid populations. A large number of commenters stated that Chile's ability to remain free of FMD is compromised by the common borders it shares with Peru, Bolivia, and Argentina, countries in which FMD exists; that these borders are poorly patrolled and that there is routine smuggling of potentially FMD-infected animals across these borders into Chile; that FMD could also cross these borders into Chile via air transmission or via contaminated objects such as clothing or vehicles; and that llamas and alpacas smuggled into Chile from countries in which FMD exists could be selected for export to the United States or might commingle with llamas and alpacas destined for export to the United States. Some commenters stated that Chile does not have reliable method of monitoring and reporting FMD; that an FMD outbreak in Chile is imminent because Chile imports live ruminants and swine from countries in which FMD exists under conditions less restrictive than would be required for importation into the United States, and also because Chile imports meat and meat products from countries in which FMD exists. Other commenters stated that Chile and other countries that share common borders with countries in which FMD exists should be required to remain free of FMD for 3, 4, or 5 years—instead of the current 1-year period—before the Animal and Plant Health Inspection Service (APHIS) considers declaring them FMD-free.

We are making no changes, based on these comments, to our proposal to declare Chile free of rinderpest and FMD.

We disagree that Chile's past FMD-outbreaks are a sure indication that the country's current FMD-prevention efforts will prove unsuccessful. Chile suffered two FMD outbreaks during the last decade, in 1984 and 1987. In both cases, all infected and exposed animals were destroyed and eradication measures successfully completed. Information and documents submitted by the Government of Chile establish that laws and regulations are in effect in Chile and are administered in such a manner as to protect Chile against the introduction of rinderpest or FMD

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through the importation of animals, meat, and other animal products from countries where FMD or rinderpest exists.

Since the country's last FMD outbreak in 1987, Chile has strengthened its disease-prevention efforts. The country instituted a program to identify all of the country's llamas and alpacas with official eartags. Annual inspections will keep this identification system up-to-date. Chile has also increased the number of FMD inspections conducted on its livestock population, including camelids; established an animal depopulation zone between itself and Argentina, and reduced the number of Chilean livestock entering the summer pasture areas near the Chile-Argentine border. Chilean livestock are identified, inspected, and tested for FMD upon entering and leaving these pasture areas.

Commenters' assertions that a silent, undetectable reservoir of FMD exists in the Chilean cattle and camelid populations appear to be unsubstantiated. Chile's domestic animal population was not the source of the two FMD outbreaks that occurred in Chile during the 1980's. In both instances, the disease was introduced into the country from outside sources.

Further, while no country's borders are completely impenetrable, it is our view that Chile has an effective program for controlling its borders with Argentina, Peru, and Bolivia to prevent the introduction of FMD via the smuggling of livestock and camelids into Chile. Surveillance along Chile's borders is a cooperative effort between Chile's Federal veterinary service, the Federal police, customs officials, and international police. In addition to its border control system, Chile also maintains a series of internal checkpoints along its roadways and highways. We have also determined that Chile has a reliable animal disease surveillance and reporting system, as evidenced by the swiftness with which Chile's 1987 FMD outbreak was reported to the United States and to the rest of the world.

We are aware that Chile imports live ruminants, swine, meat, and meat products from countries in which FMD exists. This is why we are adding Chile to the list in § 94.11(a) of countries free of rinderpest and FMD that are subject to special restrictions on the importation of meat and other animal products form ruminants and swine into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they (1) supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries in which rinderpest or FMD exists; (2) have a common land border with countries in which rinderpest or FMD exists; or (3) import ruminants or swine from countries in which rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

We disagree with commenter statements concerning the length of time that Chile should be required to remain free of FMD before being designated by APHIS as an FMD-free country. Based on Departmental experience, it has been determined that a 1-year period of no FMD cases is sufficient to ensure that the disease has been completely eradicated, since the disease would manifest itself within that period of time if it had not been successfully eradicated. Chile's last FMD outbreak occurred more than 3 years ago.

Several commenters stated that determining the FMD status of South American countries should be done on a regional basis; that is, Chile should not be given FMD-free status until all countries in South America, or at least the llama and alpaca-producing countries in South America, are free of FMD.

It is not the purpose of this rule to review the Department's criteria for determining the disease status of countries. We are therefore making no changes based on these comments. We have determined that Chile has met the Department's criteria for being declared free of FMD.

Several commenters stated that APHIS should not consider granting FMD-free status to Chile until more research has been conducted on FMD in llamas and alpacas. Other commenters stated that we should not declare Chile free of FMD because we have not examined the risks associated with this action.

We are making no changes, based on these comments, to our proposal to declare Chile free of rinderpest and FMD. We have examined the risks associated with declaring Chile free of FMD and have determined that this action will not result in a significant risk of introducing animal diseases exotic to the United States. We based this determination on information supplied to us by Chilean veterinary officials, on first-hand observation of Chile's disease prevention programs, on the restrictions we are implementing concerning meat and other animal products of ruminants and swine imported from Chile, and on the requirements in the final rule ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89-216) which is published in this issue of the Federal Register and which imposes restrictions upon the importation of llamas and alpacas into the United States from Chile.

We disagree with the conclusions drawn in a preliminary probabilistic risk assessment submitted to us by one commenter. The assessment's conclusion that an FMD-infected animal would pass undetected through U.S. quarantine once every 2 years appears to be unrealistic, given the fact that this FMD introduction rate exceeds the FMD introduction rate experienced by Chile in recent years. We believe the assessment contains numerous factual errors, methodological errors, and questionable assumptions, and, therefore, overestimates the risk associated with the importation into the United States of llamas and alpacas from Chile.[1]

Several commenters stated that Chile should not be declared free of FMD because the importation of llamas and alpacas from Chile would flood the United States market, hurting or destroying the llama/alpaca industry in this country. Other commenters stated that llamas and alpacas from Chile are genetically inferior to domestic llamas and alpacas, and that the breeding of these inferior animals with domestic animals would reduce the quality of the llama/alpaca population in the United States, causing a price decline that would hurt domestic breeders.

We are making no changes based on these comments. These reasons do not appear to be adequate for refusing to declare Chile free of FMD. The regulations in 9 CFR part 94 are established pursuant to animal quarantine and related laws that generally provide authority to take action to prevent the introduction or dissemination of certain diseases. These statutory provisions do not provide authority to establish regulations based merely on factors relating to economic competition or genetics. Although we consider the economic impact of our regulations in accordance with Executive Order 12291 and the Regulatory Flexibility Act, we do not have authority to prohibit or restrict the importation of llamas and alpacas to protect domestic breeders from competition or to ensure that the genetic base of the llamas and alpaca

[1] A copy of our analysis of the preliminary probabilistic risk assessment referred to above can be obtained by writing to the Administrator, c/o Dr. Gary P. Combs, Chief, Program Evaluation and Planning, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

population in the United States is not changed.

A large number of commenters stated that Executive Order 12372 was ignored during this rulemaking process.

We disagree. Executive Order 12372 is intended to apply to Federal financial assistance and direct Federal development programs and activities of the Department of Agriculture. This rule does not involve matters of this nature. In this document we have therefore omitted the reference to Executive Order 12372. However, it should be noted that APHIS regularly cooperates with State and local officials in carrying out its Federal regulatory program.

Some commenters stated that this rulemaking process is subject to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and that we have failed to meet the requirements of this act concerning the preparation of various environmental documents. One commenter stated that the National Environmental Policy Act is triggered by this rulemaking process, in part, because an outbreak of FMD in the United States could affect wild animal populations, thereby necessitating disease control measures that could have a significant impact upon the environment.

We disagree with the commenters' assertions concerning the National Environmental Policy Act. We have prepared a special environmental assessment to evaluate the environmental implications of this action. Our special environmental assessment concludes that this action will have no environmental impact, and that an environmental impact statement need not be prepared. This assessment supports our initial determination that the environment is not affected by the regulatory change we are making.[2]

A small number of commenters stated that we violated the Administrative Procedure Act by failing to effect meaningful participation by the public during this rulemaking process. Specifically, these commenters asserted that APHIS failed to respond to certain Freedom of Information Act requests in a timely manner, thereby impeding the public's ability to provide meaningful comments on the proposed rule.

We do not believe the public was impeded from commenting on the proposed rule. The Department has made a good faith effort to provide information to all those who requested it, and to provide this information in as timely a manner as circumstances would allow.

One commenter stated that we should redefine the parameters by which animals are permitted into the United States; another commenter stated that we should strengthen the risk assessment criteria we use in determining the impact of importing plants, animals, and plant/animal products from areas with exotic pest infestations; and several commenters stated that we must create more disease status levels or categories—as opposed to the current "disease free" or "not free" system—in order to make our regulations more flexible.

We are making no changes based on these comments. During this rulemaking proceeding we have focused exclusively on those issues relating to the rinderpest and FMD status of a particular country. It is not the purpose of this rule, nor would it be feasible as a part of this rulemaking proceeding, to undertake a revision of the Department's animal import regulations in their entirety. Nor is it the purpose of this rule to undertake a review of the criteria used by the Department in its risk analysis process, or to amend the Department's regulations concerning disease status categories. It should be noted, however, that the Department's policies and regulations undergo a continuous process of review and revision. Although the above comments fall outside the scope of this particular rulemaking proceeding, we will give them careful consideration when reviewing those Departmental policies and regulations to which they more closely relate.

Several commenters asserted that certain Chilean officials may have a financial interest in llama and alpaca exportations, and may therefore not report an FMD outbreak should one occur. Other commenters asserted that APHIS officials are being bribed to obtain FMD-free status for Chile.

We are making no changes based on these comments. The commenters provided no evidence to support these assertions, and the Department is aware of no information that is available to support or disprove these assertions.

Several commenters asserted that the decision to declare Chile free of FMD was based on political considerations.

We disagree. The decision to declare Chile free of FMD was based on our determination that Chile has met the requirements for FMD-free status.

A number of commenters questioned various aspects of the economic analysis that appeared in our proposed rule under the heading, "Executive Order 12291 and Regulatory Flexibility Act." However, changing circumstances have required us to make substantial revisions in that analysis. Following is a discussion of those comments that raised issues dealing specifically with our economic analysis as it appeared in our proposed rule (54 FR 33918-33920, Docket Number 88-216).

Many commenters stated that our analysis was incomplete in that it failed to examine the proposal's potential economic impact upon llama and alpaca breeders.

We agree that the analysis appearing in our proposed rule to declare Chile free of FMD (54 FR 33918-33920, Docket Number 88-216) did not discuss the potential economic effect of our proposed action on breeders of llamas and alpacas in the United States. Although our original analysis contains this information, it was inadvertently omitted from our published proposal.[3] The information is no longer relevant with respect to this rulemaking proceeding, however, and has therefore been excluded from the economic analysis contained in this document.

Other commenters questioned our statements that 228 importers may be interested in importing llamas and alpacas from Chile; that we expected most llamas and alpacas imported during the first several years to be kept by importers for breeding purposes and not sold for immediate financial gain; and that Chile would continue to limit the number of llamas and alpacas it quarantines at any one time, which would in turn limit the number of llamas and alpacas available for export to the United States in any one year.

Upon further consideration, we agree that these statements may not have been an accurate forecast of impending developments. They are no longer included in our analysis.

A number of commenters questioned our conclusions that other countries would absorb some of the llama/alpaca importations from Chile, thereby

[2] A copy of the special environmental assessment prepared in connection with the proposed rule entitled, "Change in Disease Status of Chile Because of Foot-and-Mouth Disease" (54 FR 33915-33920, Docket Number 88-216) and of the administrative determination prepared in connection with the proposed rule entitled, "Llamas and Alpacas Imported From Chile" (54 FR 30750-30765, Docket Number 88-116) can be obtained by writing to the Administrator, c/o Michael T. Warner, Deputy Director, Environmental Documentation; Biotechnology, Biologics, and Environmental Documentation; APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[3] A copy of the economic analysis prepared in connection with our proposed rule to declare Chile free of FMD (54 FR 33915-33920, Docket Number 88-216) can be obtained by writing to the Administrator, c/o Kevin Shea, Chief, Policy Analysis and Development, APHIS, USDA, room 855, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

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reducing the number that would be imported to the United States in any one year.

We disagree. Llamas and alpacas have gained popularity not only in the United States, but in other countries as well. Competition for these animals is intense, and a number of countries are working on regulations to import them. We therefore believe that only a portion of Chile's llama/alpaca exports would be available to the United States market.

Other commenters stated that our analysis was based on assumptions and provided no evidence to support its conclusion that increased llama and alpaca importations would not have a significant economic impact upon a substantial number of small entities.

We disagree. We based our analysis on information available to the Department. This information is included in the rulemaking record.

Several commenters stated that our analysis failed to consider the economic impact of the proposed rule on the entire U.S. livestock industry in the event an FMD-infected animal were to be imported into the United States from Chile.

We based our analysis on what we believed would be the direct consequences of our proposed rule on small entities. We anticipated, at the time the analysis was produced, that importers and breeders of llamas and alpacas in the United States would be the only entities directly affected by our proposed rule.

Several commenters stated that we used insufficient economic data in arriving at our determination that the proposal is not a major rule, and that we produced no analysis to support our determination. These commenters stated that the proposal should be rewritten as a major rule, since an FMD outbreak in the United States could have an impact on the economy of over $100 million. Commenters argued that the damage to the United States llama/alpaca industry and other livestock industries, the cost of eradication, the negative effect on the exporting capacity of the United States, and other factors would combine to produce an economic impact of billions of dollars.

We are making no changes based on these comments, since they appear to be based on the assumption that an FMD outbreak will occur in the United States as a result of the adoption of our proposed rule. We did not use this assumption when making our determination that this action is not a major rule. Our determination that this action is not a major rule is based exclusively on what we believe will be the effects of declaring Chile free of FMD.

Miscellaneous

Commenters' recommendations we are implementing in the companion rule (Docket Number 89-216, "Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and FMD," which appears in this issue of the Federal Register) have required us to revise our analysis concerning the economic impact of this rule on small entities. This analysis appears below under the heading, "Executive Order 12291 and Regulatory Flexibility Act."

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect that the amount of cattle, sheep and other ruminants imported from Chile as a result of this rule will be negligible. We also expect that the amount of fresh, chilled, or frozen meats of ruminants imported from Chile as a result of this rule will be negligible.

During the previous periods when Chile was recognized as being free of FMD, no cattle, sheep, or goats, or fresh, chilled, or frozen meats obtained from these animals were imported from Chile. Further, there is little or no demand in the United States for these animals or products from Chile. This rule will therefore have little or no impact on the small entities in the United States that deal with these products.

There is a demand in the United States for llamas and alpacas. These animals have attained a great deal of popularity during the last several years. Two groups of entities would face potential economic impacts in the event more llamas and alpacas were to be imported from Chile into the United States: Those entities in the United States who import llamas or alpacas for financial gain, and those entities in the United States who breed llamas or alpacas for financial gain.

Prior to the adoption of this rule and its companion rule adding health certification and quarantine upon arrival requirements for llamas and alpacas from any country in which rinderpest or FMD has been known to exist and that is added to the list of countries declared free of rinderpest the FMD following the effective date of this rule (see Docket Number 89-216, "Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and FM," which appears in this issue of the Federal Register), llamas and alpacas imported into the United States from Chile were required—during those periods when Chile was not recognized as being free of FMD—to undergo embarkation quarantine in Chile, under APHIS supervision, as well as a 90-day quarantine at the Harry S Truman Animal Import Center upon arrival in the United States. The cost of Chilean veterinary supervision of the embarkation quarantine has been approximately $350 per head. The cost of APHIS supervision of the embarkation quarantine and the costs associated with a 90-day quarantine at HSTAIC have ranged from $5,500 per head for 50 animals to $2,000 per head for 480 animals.

We are adding Chile to the list of countries declared free of rinderpest and FMD. Small importers involved in llama and alpaca importations may benefit economically from this action, since they may be able to import and sell more llamas and alpacas than they have in the past. Other factors, however, could substantially limit the number of llamas and alpacas entering the United States, thereby limiting the economic benefits experienced by importers.

The primary factor that may limit these potential benefits is that llamas and alpacas from Chile will be required to undergo quarantine at HSTAIC, as discussed earlier in this docket. We estimate that the quarantine space available at HSTAIC will allow a maximum of 1,200 llamas and alpacas to be processed through this facility during any one year. It is unlikely, however, that this many llamas and alpacas will be processed through HSTAIC due to the competition for quarantine space there.

In addition, the demand for llamas and alpacas has increased in other countries as well as the United States. The intense international competition that has developed for these animals will, we believe, limit the number of llamas and alpacas available for importation into the United States.

Therefore, even though HSTAIC is capable of processing 1,200 llamas and alpacas per year, the factors discussed above lead us to believe that this figure may not be a realistic projection of yearly llama and alpaca importations from Chile. Actual import levels could be as low as 300 to 600 animals per year.

We estimate that the cost of complying with the health certification requirements in Chile will be approximately $375 per head, while the quarantine upon arrival requirements are expected to cost approximately $1,000 to $4,000 per head in the United States. The cost of meeting the requirements in the United States will depend, in part, on the number of llamas and alpacas that are processed through HSTAIC at any one time. The requirements as presented in the companion rule (Docket Number 89-216, "Llamas and Alpacas Imported from Chile and Certain Other Countries Declared Free of Rinderpest and FMD," appearing in this issue of the Federal Register) along with their associated costs, should not have a significant economic impact upon importers. These entities will already be realizing an overall reduction in importation costs because they will no longer be required to pay the cost of USDA supervision services in Chile, and because the quarantine period in the United States is being shortened.

At this time it is not possible for us to estimate how many small entities are engaged in the llama/alpaca importing business, or how many will eventually choose to enter this field. However, we believe this number will be small when compared to the total number of animal importers operating in the United States.

The economic impact of this rule upon small llama/alpaca breeders in the United States will be influenced entirely by the reaction of consumers to an increased supply of llamas and alpacas. We cannot, with certainty, predict how consumers will react to this situation.

As the supply of llamas and alpacas increases, prices for these animals may drop, and breeders may face economic losses. However, the extent of their losses would depend on the extent of the price decline. If consumers in the United States respond to the increased supply by paying considerably less for these animals, then breeders would face greater economic losses. If consumers respond by paying only slightly less, then breeders' losses would be minimized. Consumers may not respond to the increased supply at all. In this event, prices would remain constant and breeders would suffer no losses.

If breeders and importers are two mutually exclusive groups, the economic impact of this rule on breeders could be negative, as discussed above. Some breeders, however, may opt to expand their breeding stock by importing Chilean llamas and alpacas for substantially less than they could purchase comparable, domestically-produced llamas and alpacas. In this way, a portion of their losses as breeders may be offset by their gain as importers. However, we do not know to what extent, if any, breeders and importers are mutually exclusive groups.

Based on the information available to us, we believe that an increase in the supply of llamas and alpacas in the United States may eventually produce a price decline for these animals. We do not believe the price decline would be drastic. We estimate that the llama and alpaca population in the United States is between 20,000 and 45,000, and is growing at the rate of approximately 7,000 per year. The importation of 1,200 llamas and alpacas from Chile in a single year represents approximately 17 percent of domestic production figures. Importation levels of 300 to 600 animals per year represent approximately 8 percent of domestic production figures. We do not believe that an 8 to 17 percent annual increase over domestic production levels is likely to produce a flooded llama/alpaca market in the United States.

In summary, a growing domestic production rate combined with increased llama/alpaca importations may eventually produce a price decline for llamas and alpacas in the United States, but the decline would likely be moderate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA; PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 6301; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding "Chile," immediately after "Channel Islands,".

3. In § 94.1, a new paragraph (d) is added to read as follows:

§ 94.1 Countries where rinderpest or foot-and-mouth disease exists; importations prohibited.

* * * * *

(d)(1) The following countries are countries in which rinderpest or foot-and-mouth disease has been known to exist and that are declared free of rinderpest and foot-and-mouth disease on or after September 28, 1990: Chile.

(2) No llama or alpaca shall be imported or entered into the United States from any country listed in paragraph (d)(1) of this section, unless in accordance with § 92.435 of this chapter.

§ 94.11 [Amended]

4. In § 94.11, paragraph (a) is amended by adding "Chile," immediately after "Channel Islands,".

Done in Washington, DC, this 25th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22899 Filed 9-27-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 88F-0558]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Gellan Gum

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of gellan gum as a stabilizer

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and thickener in frostings, glazes, icings, jams, and jellies. This action is in response to petitions filed by Kelco, a Division of Merck & Co., Inc.

DATES: Effective September 28, 1990; written objections and requests for a hearing by October 29, 1990.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 7, 1986 (51 FR 667), FDA announced that a food additive petition (FAP 6A3903) had been filed by Kelco, a Division of Merck & Co., Inc., P.O. Box 23176, San Diego, CA 92123, proposing that 21 CFR part 172 be amended to provide for the safe use of gellan gum as a stabilizer and thickener in confections and frostings. Upon further review of that petition, FDA determined that the petition was seeking approval for use of gellan gum in frostings, glazes, and icings, and not for use in confections generally (including candies). In the Federal Register of December 2, 1987 (52 FR 45867), FDA announced that Kelco had filed a second food additive petition (FAP 7A4022) for the use of gellan gum in all foods. The agency did not receive comments on either notice. The latter petition is currently under scientific review. Subsequent to the filing of the second petition, the company amended their first petition (FAP 6A3903) to include jams and jellies.

FDA has evaluated data in the petition (FAP 6A3903) and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended by adding new 21 CFR 172.665 to Subpart G as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 29, 1990 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. New § 172.665 is added to subpart G to read as follows:

§ 172.665 Gellan gum.

The food additive gellan gum may be safely used in food in accordance with the following prescribed conditions:

(a) The additive is a high molecular weight polysaccharide gum produced from *Pseudomonas elodea* by a pure culture fermentation process and purified by recovery with isopropyl alcohol. It is composed of tetrasaccharide repeat units, each containing one molecule of rhamnose and glucuronic acid, and two molecules of glucose. The glucuronic acid is neutralized to a mixed potassium, sodium, calcium, and magnesium salt. The polysaccharide may contain up to 5 percent of acyl (glyceryl and acetyl) groups as the O-glycosidically linked esters.

(b) The strain of *P. elodea* is nonpathogenic and nontoxic in man and animals.

(c) The additive is produced by a process that renders it free of viable cells of *P. elodea*.

(d) The additive meets the following specifications:

(1) Positive for gellan gum when subjected to the following identification tests:

(i) A 1-percent solution is made by hydrating 1 gram of gellan gum in 99 milliliters of distilled water. The mixture is stirred for about 2 hours, using a motorized stirrer and a propeller-type stirring blade. A small amount of the above solution is drawn into a wide bore pipet and transferred into a solution of 10-percent calcium chloride. A tough worm-like gel will form instantly.

(ii) To the 1-percent distilled water solution prepared for identification test (i), 0.50 gram of sodium chloride is added. The solution is heated to 80 °C with stirring, held at 80 °C for 1 minute, and allowed to cool to room temperature without stirring. A firm gel will form.

(2) Residual isopropyl alcohol (IPA) not to exceed 0.075 percent as determined by the procedure described in the Xanthan Gum monograph, the "Food Chemicals Codex," 3d Ed. (1981), p. 347, which reads:

IPA Standard Solution. Transfer 500.0 milligrams (mg) chromatographic quality isopropyl alcohol into a 50-milliliter (ml) volumetric flask, dilute to volume with water, and mix. Pipet 10 ml of this solution into a 100-ml volumetric flask, dilute to volume with water, and mix.

Tert-Butyl Alcohol (TBA) Standard Solution. Transfer 500.0 mg of chromatographic quality *tert*-butyl alcohol into a 50-ml volumetric flask, dilute to volume with water, and mix. Pipet 10 ml of this solution into a 100-ml volumetric flask, dilute to volume with water, and mix.

Mixed Standard Solution. Pipet 4 ml each of the *IPA Standard Solution* and of the *TBA Standard Solution* into a 125-ml graduated Erlenmeyer flask, dilute to about 100 ml with water, and mix. This solution contains approximately 40 micrograms (μg) each of isopropyl alcohol and *tert*-butyl alcohol per ml.

Sample Preparation. Disperse 1 ml of a suitable antifoam emulsion, such as Dow-Corning G–10 or equivalent, in 200 ml of water contained in a 1000-ml 24/40 round-bottom distilling flask. Add about 5 grams (g) of the sample, accurately weighed, and shake for 1 hour on a wrist-action mechanical shaker. Connect the flask to a fractionating column and distill about 100 ml, adjusting the heat so that foam does not enter the column. Add 4.0 ml of *TBA Standard Solution* to the distillate to obtain the *Sample Preparation*.

Procedure. Inject about 5 microliters (μl) of the *Mixed Standard Solution* into a suitable gas chromatograph equipped with a flame-ionization detector and a 1.8 meters (m)×3.2 millimeters (mm) stainless steel column packed with 80/100-mesh Porapak QS or equivalent. The carrier is helium flowing at 80 ml per minute (min). The injection port temperature is 200 °C, the column temperature is 165 °C, and the detector temperature is 200 °C. The retention time of isopropyl alcohol is about 2 min, and that of *tert*-butyl alcohol about 3 min.

Determine the areas of IPA and TBA peaks, and calculate the response factor, f, by the formula A_{IPA}/A_{TBA}, in which A_{IPA} is the area of the isopropyl alcohol peak, and A_{TBA} is the area of the *tert*-butyl alcohol peak.

Similarly, inject about 5 μl of the *Sample Preparation*, and determine the peak areas, recording the area of the isopropyl alcohol peak as a a_{IPA}, and that of the *tert*-butyl alcohol peak as a_{TBA}. Calculate the isopropyl alcohol content, in parts per million (ppm), in the sample taken by the formula $(a_{IPA}\times 4000)/(f\times a_{TBA}\times W)$, in which W is the weight of the sample taken in grams.

(e) The additive is used or intended for use in accordance with current good manufacturing practice as a stabilizer and thickener as defined in § 170.3(o)(28) of this chapter. The additive may be used in the following foods when standards of identity established under section 401 of the Federal Food, Drug, and Cosmetic Act do not preclude such use:

(1) Glazes, icings, and frostings and

(2) Jams and jellies.

(f) To assure safe use of the additive:

(1) The label of its container shall bear, in addition to other information required by the Federal Food, Drug, and Cosmetic Act, the name of the additive and the designation "food grade".

(2) The label or labeling of the food additive container shall bear adequate directions for use.

Dated: September 19, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–22956 Filed 9–27–90; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin, Tylosin/Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of three new animal drug applications (NADA's), one held by Simonsen Mill-Rendering Plant, Inc., which provides for the use of a tylosin Type A medicated article, and the other two NADA's held by Arkansas Micro Specialties, Inc., one of which provides for the use of a tylosin Type A medicated article and the other of which provides for the use of a tylosin/sulfamethazine Type A medicated article. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of Simonsen's NADA 96–776, which provides for the use of a tylosin Type A medicated article to make a Type C swine feed, and Arkansas Micro Specialties' NADA 139–600, which provides for the use of a tylosin Type A medicated article to make a Type C medicated swine, beef cattle, or chicken feed, and NADA 139–601, which provides for the use of a tylosin/sulfamethazine Type A medicated article to make a Type C medicated swine feed. Since Simonsen Mill-Rendering Plant, Inc., is no longer the sponsor of any approved NADA's, 21 CFR 510.600(c) is amended by removing the entries for the firm. This document also amends 21 CFR 558.625 (b)(20) and (b)(66), and 558.630(b)(10) to reflect withdrawal of approval of the NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry "Simonsen Mill-Rendering Plant, Inc.," and in the table in paragraph (c)(2) by removing the entry "034418".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.625 [Amended]

4. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(20) and (b)(66).

§ 558.630 [Amended]

5. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing "047863,".

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–23098 Filed 9–27–90; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin, Tylosin/Sulfamethazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's), one held by Countrymark, Inc., for a tylosin Type A medicated article, and the other held by Nutri-Basics Co. for a tylosin/sulfamethazine Type A medicated article. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 137-051 held by Countrymark, Inc. (formerly The Ohio Farmers Grain and Supply Association), and NADA 138-453 held by Nutri-Basics Co. (formerly Southern Micro-Blenders). NADA 137-051 provides for the use of a tylosin Type A medicated article to make Type C medicated swine, beef cattle, and chicken feeds. NADA 138-453 provides for the use of a tylosin/sulfamethazine Type A medicated article to make a Type C medicated swine feed. In this final rule FDA is amending 21 CFR 558.625(b)(82) and 558.630(b)(10) to reflect the withdrawal of these approvals.

Although the sponsor of NADA 137-051 was changed from The Ohio Farmers Grain and Supply Association to Countrymark, Inc., the regulations had not been changed accordingly. Since The Ohio Farmers Grain and Supply Association is no longer the sponsor of any approved NADA, 21 CFR 510.600(c)(1) and (c)(2) are amended to remove the entries for The Ohio Farmers Grain and Supply Association.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended to read as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Sections 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications is amended in the table in paragraph (c)(1) by removing the entry "The Ohio Farmers Grain and Supply Association" and in the table in paragraph (c)(2) by removing the entry "026439".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Sections 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.625 [Amended]

4. Section 558.625 Tylosin is amended by removing and reserving paragraph (b)(82).

§ 558.630 [Amended]

5. Section 558.630 Tylosin and sulfamethazine is amended in paragraph (b)(10) by removing "049685".

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-23034 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Dichlorophene and Toluene Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Fort Dodge Laboratories. The NADA provides for use of a dichlorophene/toluene capsule in dogs and cats as an anthelmintic. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 101-715, held by Fort Dodge Laboratories. The NADA provides for the use of a dichlorophene/toluene capsule for the removal of ascarids and hookworms and as an aid in removing tapeworms from dogs and cats. By letter dated February 5, 1990, the sponsor requested the agency to withdraw approval because the product is no longer being manufactured or marketed. This document amends 21 CFR 520.580(b)(1) to reflect the withdrawal of approval.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.580 [Amended]

2. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing "000856,".

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-23036 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 90-168]

Special Local Regulations; Challenge of the Hudson, Peekskill, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Challenge of the Hudson, a rowing regatta to be held along the eastern shore of the Hudson River at Peekskill, New York. This event will be held from 8:00 a.m. to 6:00 p.m. on October 6, 1990. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This temporary regulation becomes effective on October 6, 1990 from 8 a.m. to 7 p.m.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, U.S. Coast Guard, (617) 223-6310.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received by this office until September 7, 1990 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Ensign L.J. Penney, U.S. Coast Guard, Project Officer, Boating Safety Office and Lieutenant R.E. Korroch, U.S. Coast Guard, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The Challenge of the Hudson is a rowing regatta which will be held along the eastern shore of the Hudson River at Peekskill, NY. The regulated area will be the race course. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard Patrol Commander shall enter the regulated area. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary and sponsor provided patrols.

Economic Assessment and Certification

The regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. The effective period of regulation is short and the only adverse impact to uninterested and commercial vessels is that navigation in the regulated areas will be reduced to no wake speed. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water)

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-01-03T is added to read as follows:

§ 100.35-01-03T Challenge of the Hudson, Peekskill, NY

(a) *Regulated area:* The race course is along the east shore at Peekskill, NY within a roughly rectangular area described by the following points:

Commencing at Green's Cove in the Hamlet of Verplank	
Latitude 41 18.1 North	Longitude 073 56.0 West then North to
Latitude 41 17.5 North	Longitude 073 56.3 West then North to
Latitude 41 17.5 North	Longitude 073 56.3 West then South to
Latitude 41 18.1 North	Longitude 073 56.2 West

(b) *Special local regulations:* The following requirements will be placed on vessels operating within the regulated area during the effective period of regulation:

(1) Vessels, including tows, greater than 20 meters in length shall not transit the regulated area at any time during the effective period unless authorized by the Coast Guard Patrol Commander. The Coast Guard Patrol Commander will attempt to minimize any delays for commercial vessels transiting the area.

(2) Vessels less than 20 meters in length may transit the regulated area if escorted by official regatta patrol vessels specified in paragraph (b)(4) of this section.

(3) Unless otherwise directed by the Coast Guard Patrol Commander transiting vessels shall: proceed at no wake speeds; remain clear of the race course as marked by the sponsor provided buoys; not interfere with races or any shells in the area; make no stops and keep to the western edge of the Hudson River.

(4) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels and other vessels so designated by the regatta sponsor of Coast Guard patrol personnel.

(5) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event or authorized to be there by the sponsor of Coast Guard patrol personnel.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) In the event of an emergency or as directed by the Coast Guard Patrol Commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel. At the discretion of the Patrol Commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate this event.

(c) *Effective dates:* This regulation will be effective from 7 a.m. to 7 p.m. on October 6, 1990.

Dated: September 20, 1990.

P.L. Colleen,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 90-23001 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11-90-06]

Special Local Regulations; Navy Fleetweek Parade of Ships and Blue Angels Demonstration; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation and temporary rule.

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SUMMARY: This document implements 33 CFR 100.1105 for the Navy Fleetwork Parade of Ships and Blue Angels Demonstration, San Francisco Bay, California and temporarily amends the regulated area for the Blue Angels activities. The regulations in 33 CFR 100.1105 are needed to restrict vessel traffic in the regulated areas during Fleetweek 1990 to ensure the safety of participants and spectators. The amendment to the regulated area represents a four degree (4°) clockwise rotation in the orientation of area "Bravo" over previously published coordinates. This amendment is necessary in order to accommodate a corresponding shift in the orientation of the flight line to be used by the Blue Angels in their demonstrations.

EFFECTIVE DATE: The regulations in 33 CFR 100.1105, as amended by this temporary rule, become effective on Friday, October 5, 1990, and Saturday, October 6, 1990, terminating on each of those days at the end of the scheduled activity as follows:

Regulated area "Alpha" for the Navy Parade of Ships becomes effective at 11:30 a.m. PDT, October 6, 1990, or when the lead U.S. Naval vessel in the column transits under the Golden Gate Bridge, whichever time is earlier, and terminates at 12:30 p.m. PDT, October 6, 1990, or when the last U.S. Naval vessel in the column is moored, whichever time is later, unless terminated earlier by Commander, Coast Guard Group San Francisco.

Regulated area "Bravo" for the Blue Angels practice flight becomes effective at 11:30 a.m. PDT, October 5, 1990, and terminates at 4 p.m. PDT, October 5, 1990, unless sooner terminated by Commander, Coast Guard Group San Francisco. Regulated Area "Bravo" for the Blue Angels and other airshow activities becomes effective again at 11:30 a.m. PDT, October 6, 1990, and terminates at 4 p.m. PDT, October 6, 1990, unless sooner terminated by Commander, Coast Guard Group San Francisco.

FOR FURTHER INFORMATION CONTACT: Lieutenant P.L. Newman, Operations Officer, Coast Guard Group San Francisco, California. Telephone (415) 399-3445.

Drafting Information

The drafters of this notice are Lieutenant P.L. Newman, project officer, Coast Guard Group San Francisco, and Lieutenant Allen Lotz, project attorney, Eleventh Coast Guard District Legal Office.

SUPPLEMENTARY INFORMATION

The U.S. Navy/City of San Francisco "Fleetweek" Navy Parade of Ships and the Navy Blue Angels Aerial Show will be held on Saturday, October 6, 1990. Regulated area "Alpha" will ensure unobstructed waters for safe navigation for the Parade of Navy Ships proceeding inbound via the Eastbound San Francisco Bay Traffic Lane. Following the ship parade, regulated area "Bravo," established for the aerial demonstration by the U.S. Navy Blue Angels and other participating aircraft, will ensure the safety of the aircraft, vessels, and persons onboard. In preparation for this demonstration, the Blue Angels will conduct a practice flight at approximately 12:30 p.m. on Friday, October 5, 1990. The regulated area for the performance by the Blue Angels and other aircraft may restrict vessel access to some marinas and commercial docks. The short duration and minimal size of the regulated area will minimize inconveniences.

Persons and vessels shall not enter or remain within the stated distances from the naval parade vessels in regulated area "Alpha", or enter or remain within regulated area "Bravo", unless authorized by the Coast Guard Patrol Commander. Fleetweek activities have traditionally attracted a sizeable fleet of vessels, and large vessel operators needing to transit near Fleetweek activities are encouraged to make such transits well before or after the regulated areas are in effect.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In § 100.1105, the latitude and longitude coordinates in paragraph (b)(2) are temporarily revised to read as follows:

§ 100.1105 San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration.

* * * * *

(b) * * *

(2) * * *

Latitude	*Longitude*
37°49'21"N.	122°24'15"N.
37°48'12"N.	122°27'44"N.
37°48'39"N.	122°27'40"N.
37°48'51"N.	122°24'10"N.

* * * * *

Dated: September 2, 1990.

J.G. Schmittman,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 90-23002 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-90-47]

Drawbridge Operation Regulations; Atlantic Intercoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: At the request of Brevard County, the Coast Guard is revising the regulations governing the SR 402 bridge at Titusville by permitting the number of openings to be limited during certain periods. This change is being made because the vehicular traffic pattern has changed. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: On June 27, 1990, the Coast Guard published proposed rule (55 FR 26220) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated July 13, 1990. In each notice interested persons were given until August 13, 1990, to submit comments.

Drafting Information

The drafters of these regulations are Walter J. Paskowsky, project officer, and Lt. Genelle Tanos, project attorney.

Discussion of Comments

Two comments were received. One suggested the rule be changed to say, "the draw will not open" instead of "the draw need not open." Drawbridge regulations require drawbridge owners and tenders to open the draws upon request from a vessel unless specifically authorized not to open for the passage of vessels during certain periods. This does not preclude the bridge owner from directing drawbridges to open during these periods. The Florida Inland Navigation District opposed the lengthening of the closed periods citing safety hazards for waiting vessels. The proposed rule shifts the closed periods to an earlier time, but does not lengthen them. There is no increase in waiting time or increased danger for waiting vessels. The Coast Guard has carefully considered the comments and has determined that no new information has been presented which justifies changing the proposed regulation. The final rule is therefore, unchanged from the proposed rule published on June 27, 1990.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures. (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-01(g).

2. Section 117.261(k) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo

* * * * *

(k) *SR 402 bridge, mile 878.9 at Titusville.* The draw shall open on signal; except that, from 6:15 a.m. to 7:15 a.m. and 3 p.m. to 4:30 p.m. Monday through Friday, except federal holidays, the draw need not open.

* * * * *

Dated: September 17, 1990.

J.L. Linnon,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 90-23000 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Francisco Bay Reg. SF-90-13]

Security Zone Regulations; Oakland Outer Harbor, Oakland, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone for waterside approaches to Oakland Outer Harbor. The zone is needed to safeguard vessels and waterfront facilities against destruction from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on September 15, 1990. It terminates on December 31, 1990 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION: Contact LCDR R.E. Tinker at 415-437-3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction to vessels, equipment and dock areas.

Drafting Information

The drafters of this regulation are LCDR R.E. Tinker, project officer for the Captain of the Port, and LCDR J.J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The incidents requiring this regulation are to protect vessels undergoing loading operations in support of Operation Desert Shield from clandestine acts perpetrated by persons not supporting U.S. actions. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 165.5.

2. The new 165.T1178 is added to read as follows:

§ 165.T1178 Security Zone: Oakland Outer Harbor, Oakland, CA.

(a) *Location:* A Security Zone will be established in the waters of San Francisco Bay in the vicinity of the Oakland Outer Harbor, Oakland, CA. The Security Zone will include waters within a boundary starting on shore at Matson Dock (37 48.6N, 122 19.9W) and extending 345 T approximately 400 yards to Buoy #3 (FL G 4s) then following Range A from Buoy #3 to shore bearing 060T approximately 1600 yards and ending on shore in the vicinity of the Oakland Army Base at a point (37 48.9N, 122 19.2W).

(b) *Effective Date:* This regulation becomes effective on September 15, 1990. It terminates on December 31, 1990 unless sooner terminated by the Captain of the port.

(c) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: September 15, 1990.

T.H. Gilmour,

Captain, U.S. Coast Guard, Alternate Captain of the Port, San Francisco.

[FR Doc. 90-23005 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Francisco Bay Reg. SF-90-09]

Security Zone Regulation; San Francisco Bay, CA

AGENCY: U.S. Coast Guard, Department of Transportation (DOT).

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone on the waters of San Francisco Bay extending one hundred yards around the naval vessel USS PELELIU on Saturday, October 6, 1990 during Fleetweek '90 activities. The USS PELELIU will anchor west of Alcatraz Island on Friday, October 5, 1990 and depart anchorage

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after Fleetweek '90 activities at approximately 3:30 p.m. PDT on Saturday, October 6, 1990. The zone is needed to safeguard the USS PELELIU against destruction, loss, and injury from sabotage or other subversive acts, accidents, or other causes of similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on October 6, 1990 at 10 a.m. PDT, and terminates on October 6, 1990 when the USS PELELIU is moored at Pier 30/32 San Francisco, CA. at approximately 4 p.m. PDT unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Ensign Curtis Farrell, U.S. Coast Guard Marine Safety Office San Francisco Bay, CA. 415–437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for it being effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss, or damage to the USS PELELIU.

Drafting Information

The drafters of this regulation are Ensign Curtis Farrell, Project Officer, MSO San Francisco Bay and Lieutenant Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin on October 6, 1990 at 10 a.m. PDT. It is expected Fleetweek '90 will attract significant public and media attention. The prominence and controversial nature of the event cause potential for strife or acts of violence. A Security Zone will provide the Captain of the Port San Francisco Bay with the authority necessary to help prevent situations where strategic naval assets of the United States may come to harm. The security of these assets is in the national interest and a Security Zone is justified to help protect these assets and spectators both onboard and near these assets. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231, 50 U.S.C. 191, 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.2.

2. A new section 165.T1174 is added to read as follows:

§ 165.T1174 Security Zone: San Francisco Bay

(a) *Location.* The following area is a Security Zone: The waters of San Francisco Bay extending 100 yards around the naval vessel USS PELELIU while anchored at 37–49–29 N, 122–26–30 W, and while the vessel transits from the above anchoring point until it moors at Pier 30/32 in San Francisco.

(b) *Effective dates.* This regulation becomes effective at 10 a.m. PDT on October 6, 1990. It terminates on October 6, 1990 when the USS PELELIU moors at Pier 30/32 in San Francisco at approximately 4 p.m. PDT, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port San Francisco Bay, CA. Section 165.33 also contains other general requirements. [33 U.S.C. 1225 and 1231; 49 CFR 1.46; and 33 CFR 160.5.)

Dated: September 19, 1990.

T.H. Gilmour,

Commander, U.S. Coast Guard, Alternate Captain of the Port.

[FR Doc. 90-23007 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Francisco Bay Reg. 90-00-10]

Safety Zone Regulation; San Francisco Bay, CA

AGENCY: U.S. Coast Guard, Department of Transportation (DOT).

ACTION: Emergency rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring a parade of ships sailing into the Bay and low level air shows along the San Francisco Waterfront. To ensure the safety of Fleetweek participants and spectators, the Captain of the Port is establishing a moving Safety Zone around the Red & White Fleet ferry boat as it transports dignitaries from pier 1 to the USS PELELIU on October 6, 1990 prior to the beginning of the parade of ships. Entry into this safety zone is prohibited without the permission of the Captain of the Port, San Francisco Bay, CA.

EFFECTIVE DATES: This regulation becomes effective on October 6, 1990 at 10 a.m. PDT and terminates on October 6, 1990 at 4 p.m. PDT.

FOR FURTHER INFORMATION CONTACT: Ensign Curtis J. Farrell, Coast Guard Marine Safety Office, San Francisco Bay, CA 415–437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent danger to persons and property involved.

Drafting Information

The drafters of this regulation are Ensign Curtis J. Farrell, Project Officer, MSO San Francisco Bay and Lieutenant Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at approximately 10 a.m. PDT on October 6, 1990 with the Red & White Fleet ferry boat transporting several dignitaries from pier 1 to the USS PELELIU. A moving Safety Zone will allow the ferry to make a safe transit through the heavy boating traffic expected that day. Once the dignitaries are aboard the USS PELELIU, the parade of ships and other "Fleetweek" activities can begin. Vessels will not be authorized to enter the established Safety Zone area unless authorized by the Captain of the Port. "Fleetweek" activities are expected to attract a sizable fleet of vessels, and large vessel operators with transits near Fleetweek '90 activities are encouraged to plan such transits well before or after the Safety Zone is in effect. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 USC 1225 and 1231, 50 USC 191, 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.07–6, and 160.5.

2. A new section 165.T1175 is added to read as follows:

§ 165.T1175 Safety Zone, San Francisco Bay Fleetweek Activities.

(a) Location and Effective Dates: The following area is a Safety Zone: The waters surrounding the Red & White Fleet ferry as it leaves pier 1 at approximately 10 a.m. PDT on Saturday October 6, 1990 until it moors to the USS PELELIU anchored in approximate position 37°49'28" N, 122°26'30" W. The Moving Safety Zone Extends 100 yards ahead, 50 yards astern, and 50 yards abeam both sides of the Red & White Fleet ferry boat.

(b) Regulations: In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, San Francisco Bay, CA.

Dated: September 19, 1990.

T. H. Gilmour,

Commander, U.S. Coast Guard, Alternate Captain of the Port.

[FR Doc. 90-23008 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1510 and 1552

[FRL-3835-4]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the EPA Acquisition Regulation (EPAAR) coverage on the submission of contractor information required in monthly progress reports and invoices. This rule affects the preparation of contractor monthly progress reports and invoices. Under this rule, EPA contractors will be required to include cumulative information in monthly progress reports showing total amounts obligated, total costs claimed and remaining available funds for a contract; to identify separately major cost elements on invoices without grouping separate cost elements together; and to differentiate between prime and subcontractor costs on invoices. The intended effect of this action is to enable EPA and its contractors to perform financial monitoring of contractor performance more effectively.

EFFECTIVE DATE: This regulation is effective September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 382–5032 (FTS–382–5032).

SUPPLEMENTARY INFORMATION:

A. Background

Many contractors with cost-reimbursement term form contracts that authorize work by individual work assignments, or with indefinite delivery/indefinite quantity contracts that authorize work by individual delivery orders, report and invoice for costs only at the delivery order or work assignment level. By requiring contractors to include summary information on total obligated amounts, total costs claimed, and available funding remaining under a contract, the EPA and its contractors will perform financial monitoring of contracts more effectively.

This rule requires contractors to identify clearly on invoices separate charges for major cost elements such as travel, equipment, subcontractors, and consultants. Some contractors presently group cost elements such as these together as "other direct costs". It is difficult in these cases for EPA to identify and monitor major cost elements, which may have ceiling amounts in their contracts.

This rule requires contractors to differentiate between prime and subcontractor costs on invoices. Some contractors presently do not distinguish prime and subcontractor costs for certain cost elements, making financial monitoring of contract preformance difficult.

The information requested under this rule represents only the minimal information necessary for monthly progress reports and invoices, and does not preclude additional reporting requirements in Superfund contracts as specified and negotiated under individual solicitations and contracts to assist in cost recovery.

B. Executive Order 12291

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for the Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 1030.

Public reporting burden for this collection of information is estimated to vary from one (1) to three (3) hours per response, with an average of one and one-half (1.5) hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

No comments were received on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The information requested for submission to the Government is readily available and will require a minimal effort for contractors to comply. The rule has three purposes: to include cumulative information on monthly progress reports showing total amounts obligated, total costs claimed, and remaining available funds for a contract; to identify separately major cost elements on invoices without grouping separate cost elements together; and to differentiate among prime and subcontractor costs on contractor invoices. Most small entities should presently be compiling this information in their accounting systems in order to monitor financial progress under a contract. Any adjustments to existing accounting systems should require only minimal cost and effort. The EPA certifies that this rule will not exert a significant impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been proposed.

No comments on the rationale for this certification were received.

E. Public Comments

The rule was published as a proposed rule in the **Federal Register** on June 15, 1990 with public comments due by August 14, 1990. No public comments were received.

BEST COPY AVAILABLE

List of Subjects in 48 CFR Parts 1510 and 1552

Government Procurement, Specifications, Standards, and other Purchase Descriptions, Solicitation Provisions, and Contract Clauses.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is amended as set forth below:

PARTS 1510 AND 1552—[AMENDED]

1. The authority citation for parts 1510 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1510.011–73 is revised to read as follows:

§ 1510.011–73 Monthly progress report—time and materials or labor hour contract.

Contracting Officers shall insert the clause at § 1552.210–73 in all time and materials or labor hour contracts for services with a period of performance of six months or longer. The clause may also be used in these contract types when the period of performance is less than six months.

3. Sections 1510.011–74 through 1510.011–77 are redesignated as §§ 1510.011.75 through 1510.011–78 respectively, and a new § 1510.011–74 is added to read as follows:

§ 1510.011–74 Monthly progress report—indefinite delivery/indefinite quantity fixed-rate services contract.

Contracting Officers shall insert the clause at § 1552.210–74 in all indefinite delivery/indefinite quantity contracts for services with a period of performance of six months or longer. The clause may also be used in this contract type when the performance period is less than six months.

4. In § 1552.210–72, the introductory paragraph is revised, the clause is amended by redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(2) through (a)(5), adding a new paragraph (a)(1) and revising the first sentence of (a)(2) to read as follows:

§ 1552.210–72 Monthly Progress Report—Cost Type Contract.

As prescribed in § 1510.011–72, insert the following clause:

Monthly Progress Report—Cost Type Contract (Sep 1990)

* * * * *

(a) * * *

(1) Cumulative totals for the contract amounts obligated, amounts claimed, and remaining available funds. Available funds are defined as the total obligated amount less total amounts claimed.

(2) Cumulative labor hours and dollars, broken out by prime and subcontractor labor category, expended from the effective date of the contract through the last day of the current reporting month. * * *

* * * * *

5. Section 1552.210–73, is revised to read as follows:

§ 1552.210–73 Monthly Progress Report—Time and Materials or Labor Hour Contract.

As prescribed in § 1510.011–73, insert the following clause:

Monthly Progress Report—Time and Materials or Labor Hour Contract (Sep 1990)

(a) The contractor shall furnish . . . copies of a combined monthly technical and financial progress report briefly stating the progress made, including the number of hours expended during the reporting period and cumulatively, and the percentage of the project work remaining. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period.

(b) The report shall include the following financial information:

(1) Cumulative totals for the contract amounts obligated, amounts claimed, and remaining available funds. Available funds are defined as the total obligated amount less total amount claimed;

(2) Cumulative labor hours and dollars, broken out by prime and subcontractor labor category, expended from the effective date of the contract through the last day of the current reporting period;

(3) Actual costs and labor hours expended during the current month;

(4) Estimated costs and labor hours to be expended during the next reporting period.

(c) The reports shall be submitted to the following addresses on or before the ____ of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addressee
.....	Project Officer.
.....	Contracting Officer.

(End of Clause)

6. Sections 1552.210–74 through 1552.210–77 are redesignated as §§ 1552.210–75 through 1552.210–78 respectively, and a new § 1552.210–74 is added to read as follows:

§ 1552.210–74 Monthly Progress Report—Indefinite Delivery/Indefinite Quantity Fixed-Rate Services Contract.

As prescribed in § 1510.011–74, insert the following clause:

Monthly Progress Report—Indefinite Delivery/Indefinite Quantity Fixed-Rate Services Contract (SEP 1990)

(a) The contractor shall furnish . . . copies of a combined monthly technical and financial progress report briefly stating the progress made, including the percentage of the work ordered and completed during the reporting period. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period.

(b) The report shall include the following financial information for each delivery order:

(1) Delivery order number, date and title;

(2) EPA client organization;

(3) Period of performance, including explanations for any extensions that may be needed;

(4) Number of hours, loaded rate applied, and corresponding total dollar amount expended for each employee (by name) within all labor categories employed during the reporting period;

(5) Cumulative number of hours and corresponding dollar amounts expended to date by labor category;

(6) Cumulative listing of all invoices submitted including invoice number, date submitted, period of invoice, total amount of invoice, and amount paid;

(7) Any accumulated charges that have not been invoiced and reasons why they have not been billed;

(8) Estimated costs and labor hours to be expended during the next reporting period.

(c) The reports shall be submitted to the following addresses on or before the ____ of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addressee
.....	Project Officer.
.....	Contracting Officer.

(End of Clause)

7. In § 1552.232–70 the clause is amended by redesignating paragraph (b) as (b)(1), adding new paragraph (b)(2), redesignating paragraph (c) as (c)(1), adding new paragraph (c)(2), and adding to the end of the third sentence of paragraph (d) and to the end of Alternatives I, paragraph (d) and II, paragraph (d) to read as follows:

§ 1552.232–70 Submission of invoices.

* * * * *

(b) * * *

(2) The invoice for a cost-reimbursement contract shall include current and cumulative charges by major cost element such as direct labor, overhead, travel, equipment, and other direct costs. The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(c) * * *

(2) The invoice for an indefinite delivery/indefinite quantity contract shall indicate charges by major categories such as labor, travel, equipment, subcontracts, and consultants. The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(d) * * * (separate invoices shall be submitted for each delivery order). * * *

* * * * *

Alternate I (SEP 1990) * * *

(d) * * * (separate invoices shall be submitted for each delivery order). * * *

Alternate II (SEP 1990) * * *

(d) * * * (separate invoices shall be submitted for each delivery order).

Dated: September 13, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90–22775 Filed 9–27–90; 8:45 am]

BILLING CODE 6560–50–M

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Proposed Rules

Federal Register
Vol. 55, No. 189
Friday, September 28, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-90-201]

Energy Conservation Program for Consumer Products; Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for 9 Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), the National Appliance Energy Conservation Act (NAECA), and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. Among other things, EPCA, as amended, requires DOE to consider amending the aforesaid energy conservation standards for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, clothes washers, and fluorescent lamp ballasts; and to consider establishing energy conservation standards for television sets. By means of the instant rulemaking proceeding, DOE intends to discharge the aforesaid statutory responsibilities.

The purposes of this Advance Notice of Proposed Rulemaking (ANOPR) are to: (1) Present for comment the product classes that DOE is planning to analyze; (2) present a detailed discussion of the analytical methodology and analytical models that DOE expects to use in performing analyses in connection with the proposed rule; and (3) facilitate the gathering of information and comments prior to publishing a subsequent notice of proposed rulemaking.

One of the products to be considered herein, namely clothes washers, was the subject of a previously published notice of proposed rulemaking concerning energy conservation standards. (54 FR 32744, Aug. 9, 1989). However, subsequent to the October 10, 1989, close of the comment period in that proceeding, DOE became aware of a clothes washer design option currently in use in Europe which was not included in the notice published by DOE and upon which no comment was received. This design option (horizontal wash tub axis in top-loading washers) appears to have the potential for saving significant amounts of energy and water. Accordingly, DOE has determined to include it in this rulemaking proceeding in order to obtain information as to whether it is economically justifiable. Due to the absence of any comment, the horizontal axis design option will not be addressed in the final rule to be published later this year in the previously commenced rulemaking involving clothes washers and two other types of consumer products.

DATES: Written comments in response to this ANOPR must be received by DOE by December 12, 1990.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, Energy Efficiency Standards for Consumer Products, Docket No. CE-RM-90-201, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

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I. Introduction

a. Authority

Part B of title III of EPCA, Public Law 94-163, as amended by NECPA, Public Law 95-619, NAECA, Public Law 100-12, and NAECA 1988, Public Law 100-357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The consumer products subject to the Program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer product classified by the Secretary of Energy (Secretary) (section 322). To date, the Secretary has not so classified any additional products.

[1] Part B of title III of EPCA, as amended by NECPA, NAECA, and NAECA 1988, is referred to in this ANOPR as the "Act." Part B of title III is codified at 42 U.S.C. 6291 *et seq.* Part B of title III of EPCA, as amended by NECPA only, is referred to as NECPA.

Under the Act, the Program consists essentially of three parts: Testing, labeling, and mandatory energy conservation standards. DOE, in consultation with the National Institute of Standards and Technology (NIST), is required to amend or establish new test procedures as appropriate for each of the covered products (section 323). The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products (section 323(b)(3)).

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE (section 324(a)). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product class (section 324(c)(1)). At the present time there are FTC rules requiring labels for the following products: Room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, central air conditioners and central air conditioning heat pumps and fluorescent lamp ballasts. 44 FR 66475, November 19, 1979; 52 FR 46888, December 10, 1987; and 54 FR 28031, July 5, 1989.

For each of 12 of the covered products, the Act prescribes an initial Federal energy conservation standard (section 325(b)–(h)). The Act establishes effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by DOE within 3 to 10 years, also depending on the product (*Ibid.*). After the specified 3- to 10-year period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard that increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product (section 325(l)(1)).

With regard to television sets, the Act allows DOE to prescribe an applicable standard; however, such standard may not become effective before January 1, 1992 (section 325(i)(3)).

Nine products (room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, television sets, pool heaters, clothes washers, and fluorescent lamp ballasts) are the subject of this rulemaking proceeding. For each of the products, except television sets, clothes washers, and mobile home furnaces, the Act directs DOE to review each legislated standard for possible amendment and to issue final rules no later than January 1, 1992, for units manufactured after January 1, 1993.

For clothes washers, DOE is to issue a final rule no later than five years after the date of publication of the previous final rule. As previously noted, on August 9, 1989, DOE published a proposed rule concerning standards for three types of consumer products, including clothes washers. (54 FR 32744). A final rule for clothes washers is expected to be published early next year. However, subsequent to the October 10, 1989, close of the comment period on that proposed rule, DOE became aware of a clothes washer design option that has the potential of saving significant amounts of energy and water. Because this design option (horizontal wash tub axis in top-loading clothes washers) was not subject to notice and comment in that rulemaking proceeding, it cannot be considered in the final rule. This rulemaking will determine if it is economically justified.

For mobile home furnaces, DOE is to issue a final rule no later than January 1, 1992, for units manufactured after January 1, 1994.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (section 325(l)(2)(A)).

Section 325(l)(2)(B)(i) provides that before DOE determines whether an energy conservation standard is economically justified, it must first solicit comments on the proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared any increase in the price of, or in the initial charges for, or maintenance expenses of the covered products which are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act (section 327(a)–(c)). Exceptions to this general rule include the following: (1) State standards prescribed or enacted before January 9, 1987, and applicable to appliances produced before January 3, 1988, may remain in effect until the applicable energy conservation standard begins (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (section 327 (b)(2) and (e)) and certain building code requirements for new construction, if certain criteria are met, are exempt from Federal preemption (sections 327 (b)(3) and (f)(1)–f(4)); (3) State regulations banning constant burning pilot lights in pool heaters; and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such products (sections 327 (b)(6) and (c)).

The Act directs DOE to publish an advance notice of proposed rulemaking in advance of DOE consideration of prescribing a new or amended standard.

b. Background

On December 7, 1987, DOE published such a notice with respect to consideration of energy conservation standards for television sets (52 FR 46363). (Hereafter referred to as the December 1987 Notice).

On December 2, 1988, DOE published a notice of proposed rulemaking to determine that an energy conservation standard for television sets would not be economically justified.

On November 17, 1989, DOE published a final rule which, *inter alia*, established an energy conservation standard of 78 percent AFUE for small gas furnaces and amended the standards for refrigerators, refrigerator-freezers, and

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freezers. (Hereafter referred to as the November 1989 Final Rule). At the same time, DOE postponed action on a final rule for television sets for a future rulemaking (54 FR 47916). The proposed rulemaking will determine whether conservation standards for television sets are warranted.

This ANOPR is an advance notice for a proposed final rule, which the Act requires be published in the Federal Register by January 1, 1992, for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters and fluorescent lamp ballasts. The purpose of the rulemaking proceeding is to review, for possible amendment, the energy conservation standards for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, and fluorescent lamp ballasts that have been established by the Act; to consider amending the energy conservation standards for clothes washers; and to consider energy conservation standards for television sets.

II. Methodology

This section provides a brief description of the analysis of the impact of the standards. It offers an overview of the analytic methodology, and discusses the major components of the analysis: the Engineering Analysis, the Manufacturer Analysis, and the Impact Analysis, which includes the Consumer Analysis. The section also discusses the interrelationships among the components which ensure consistency throughout the analysis.

A later discussion, Models, Data and Assumption, describes the computer models used in the analysis. The models predict the anticipated response of consumers, manufacturers, and utilities to future changes in the economy, including the imposition of energy conservation standards. Quantitative estimates of the impacts of standards will be calculated from the outputs from the models. The models that will be utilized in the analysis are:

- Engineering Performance Models
- Consumer Impact Models
- Manufacturer Impact Models
- Utility Impact Model

The function, data sources, assumptions and validity of the results for each model are discussed below.

The impact of appliance conservation standards will be determined by comparing projections under the base case[2] with the projections under the proposed standards. These projections will first be made for the base case by use of the analytic models described below. The calculations will then be repeated imposing the proposed standard levels.

The differences between the projections of the energy consumption and economic variables in the base and standards cases, respectively, provide quantitative estimates of the impacts of the standards. To evaluate the significance of the differences, a sensitivity analysis will be performed on the key parameters and assumptions.

The economic analysis will be performed in the following areas:

- An Engineering Analysis, which establishes the technical feasibility and product attributes, including costs of design options to improve appliance efficiency. Included in the analysis will be tolerances for engineering assumptions which must be made. These tolerances may be used in establishing standard levels by setting the efficiency at the lower end of the range indicated when the tolerances are considered.
- A Manufacturer Analysis, which provides an estimate of manufacturers' response(s) to the proposed standards. Their responses are quantified by change in several financial performance measures.
- A Consumer Analysis, which forecasts appliance sales, efficiencies, energy use, consumer expenditures, and the national net benefits and costs.
- A separate Life-Cycle Cost Analysis to evaluate the savings in operating expenses relative to increases in purchase price.
- A Utility Analysis that measures the projected impacts of the altered energy-consumption patterns on electric utilities.

Each analysis area will be performed for each of the nine products under consideration. The results of the Engineering Analysis will be reviewed by DOE to determine whether standards for each product could yield measurable energy savings. If standards would not yield energy savings—for example, if there is no combination of design options that would result in improved product efficiency—the analysis will be terminated. If energy savings are possible, then a detailed analysis is performed.

There is interaction among the Engineering, Consumer, Utility and Manufacturer Analyses. The Engineering Analysis examines appliance designs and related attributes such as efficiency and costs. Based on the relationships between the prices and efficiencies of design options, the Consumer Analysis forecasts sales, efficiencies of design options, and efficiencies of new and replacement appliances. These data are used as inputs to the Manufacturer Analysis, which uses them to determine the financial impacts on prototypical firms within the industry. The Consumer Analysis forecasts energy savings and consumer expenditures on the purchase and operation of the appliances. Consumer expenditures (both purchase and operation) are employed in the Life-Cycle Cost Analysis to determine consumer impacts. Changes in sales, revenues, investments, and marginal costs of utilities are calculated from the energy savings in the Utility Analysis.

Two periods of time are considered by the analysis. First, the Consumer Analysis extends over a time period that is generally consistent with the lifetimes of each of the products. Second, the Manufacturer Analysis is performed for a typical year after the standards are assumed to have been imposed. The typical year selected is the fifth, by which time all major impacts of a standard would have occurred. The Engineering Analysis, however, examines the technical feasibility of improving the efficiency of the covered products by analyzing design options available today to improve product efficiency, whether they are commercially available or prototypes.

III. Models, Data and Assumptions

a. Engineering Performance Models and Costing Analysis

The Engineering Analysis addresses two statutory requirements. The first requirement is DOE's evaluation of the maximum improvements in energy efficiency that are technologically feasible. The second relates to the lessening of utility to the consumer of any of the covered products due to the imposition of standards. In addition, the Engineering Analysis provides information on efficiencies, manufacturing costs, and appliance prices to other components of the overall analysis.

The features of appliances that provide utility to the consumer are incorporated into the analysis through the creation of appliance classes. Classes are a subset of appliance types. For example, kitchen ranges and ovens comprise an appliance type, while self-cleaning gas ovens comprise an appliance class. The Engineering Analysis develops cost and efficiency data for a set of design options within each appliance class. These data are the output of the engineering performance models and costing analysis discussed in subsection 3–9, below.

[2] The base case assumes implementation of the conservation standards that were set by the Act as to all covered products under consideration but clothes washers, and by DOE rulemaking in the case of clothes washers.

1. Appliance classes

The first step in the Engineering Analysis is to segregate product types into separate classes to which different energy conservation standards apply. Classes are differentiated by the type of energy use (oil, natural gas or electricity), or capacity or performance-related features that provide utility to the consumer and affect efficiency. Classes are differentiated in order to ensure that consumer products having different capacities or other performance-related features affecting efficiency and utility remain available to consumers.

For each of the nine appliances, the following are the classes that DOE proposes to consider. DOE welcomes comments, in response to this ANOPR, on whether additional classes are needed.

(i) Room Air Conditioners.

Without reverse cycle and with louvered sides:

Less than 6,000 Btu
6,000 to 7,999 Btu
8,000 to 13,999 Btu
14,000 to 19,999 Btu
20,000 and more Btu

Without reverse cycle and without louvered sides

less than 6,000 Btu
6,000 to 7,999 Btu
8,000 to 13,999 Btu
14,000 to 19,999 Btu
20,000 and more Btu

With reverse cycle and with louvered sides
With reverse cycle, without louvered sides

(ii) Water Heaters

Gas-fired (incl. propane) storage type water heater
Electric resistance storage type water heaters
Oil-fired storage type water heaters
Electric heat pump water heaters
Gas instantaneous water heaters
Electric instantaneous water heaters

(iii) Direct Heating Equipment (Electric, Gas and Oil Powered)

Wall

Fan Type

Up to 42,000 Btu/hour
Over 42,000 Btu/hour

Gravity type

Up to 10,000 Btu/hour
Over 10,000 Btu/hour up to 12,000 Btu/hour
Over 12,000 Btu/hour up to 15,000 Btu/hour
Over 15,000 Btu/hour up to 19,000 Btu/hour
Over 19,000 Btu/hour up to 27,000 Btu/hour
Over 27,000 Btu/hour up to 46,000 Btu/hour
Over 46,000 Btu/hour

Floor

Up to 37,000 Btu/hour
Over 37,000 Btu/hour

Room

Up to 18,000 Btu/hour
Over 18,000 Btu/hour up to 20,000 Btu/hour
Over 20,000 Btu/hour up to 27,000 Btu/hour
Over 27,000 Btu/hour up to 46,000 Btu/hour
Over 46,000 Btu/hour

(iv) Mobile Home Furnaces

Mobile Home Furnaces

(v) Television Sets

Color
Black and White

These classes are distinguished by their ability or inability to reproduce images in color, a performance-related feature that affects utility and efficiency. These classes are the same as proposed in the December 1987 Notice. In the November 1989 Final Rule, DOE postponed action for television sets. The information presented to DOE did not substantiate any specific change to the proposed classes. Absent further information, DOE intends to consider those classes proposed in the December 1987 Notice.

Because of the use of multiple electron guns, color television sets usually consume more energy than comparable monochrome television sets, which use only one electron gun. For this reason, energy efficiency levels achieved by monochrome television sets are not achievable for color television sets. Since color television sets and monochrome television sets offer distinct differences in utility to the consumer, DOE is specifying separate classes for color and monochrome television sets.

(vi) Kitchen Ranges and Ovens

Microwave Oven Products Classes

Single Cavity—Microwave Only
Countertop, Built-in and Wall Ovens
Single Cavity—Microwave and Thermal without Forced Air Movement

Countertop Ovens With Electric Thermal
Built-in and Wall Ovens With Electric Thermal and Without Self-Clean
Built-in and Wall Ovens With Electric Thermal and With Self-Clean
Built-in and Wall Ovens With Gas Thermal and Without Self-Clean
Built-in and Wall Ovens With Gas Thermal and With Self-Clean Free Standing, Drop-in and Slide-in Ranges (with surface units) With Electric Thermal and Without Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Electric Thermal and With Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Gas Thermal and Without Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Gas Thermal and With Self-Clean

Single Cavity—Microwave and Thermal With Forced Air Movement

Countertop Ovens With Electric Thermal
Built-in and Wall Ovens With Electric Thermal and Without Self-Clean
Built-in and Wall Ovens With Electric Thermal and With Self-Clean
Built-in and Wall Ovens With Gas Thermal and Without Self-Clean
Built-in and Wall Ovens With Gas Thermal and With Self-Clean Free Standing, Drop-in and Slide-in Ranges (with surface units) With Electric Thermal and Without Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Electric Thermal and With Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Gas Thermal and Without Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Gas Thermal and With Self-Clean

Range Product Classes
Electrical Top Section Using

Low or High Wattage Open Elements
Solid Disk Elements
Radiant Elements/Under Glass
Induction Elements
Halogen Elements/Under Glass
Grill-With Down Draft Feature
Griddle-With Down Draft Feature

Electric Ovens

Standard Electric Oven With or Without a Catalytic Line Electric Oven—Self-Clean
Forced Convection Oven for Cooking
Forced Convection Oven for Cleaning
Halogen Lamp Oven
Steam Cooking With and Without Pressure Gas Cooking Tops
Conventional Burner With Electrical Cord
Conventional Burner Without Electrical Cord
Sealed Burners
Radiant Burners

Gas Ovens

Standard Gas Oven With Cord (standard or catalytic finish)
Standard Gas Oven Without Cord (standard or catalytic finish)
Gas Self-Clean Oven
Radiant Burner Gas Oven
Gas Convection Standard Oven
Gas Convection Pyrolytic Oven

(vii) Pool Heaters

Pool Heaters

(viii) Fluorescent Lamp Ballasts

Ballasts designed to operate with:

One F40T12 lamp 120 volt
One F40T12 lamp 277 volt
Two F40T12 lamps 120 volt
Two F40T12 lamps 277 volt
Two F9T12 lamps 120 volt
Two F9T12 lamps 277 volt
Two F96T12HO lamps 120 volt
Two F96T12HO lamps 277 volt

(ix) Clothes Washers

Compact (less than 1.6 ft ^{3})
Standard (1.6 ft ^{3} and greater)

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Semi-Automatic
Suds Saver

2. Baseline Units

For the purposes of generating a cost/efficiency relationship, the Engineering Analysis needs to define a starting point or baseline. The Engineering Analysis uses information gathered from trade organizations, manufacturers, and consultants with expertise in specific product types to determine a baseline unit. A baseline unit represents a typical model within an appliance class sold during the initial year of the analysis, e.g., a unit that marginally complies with the existing standard. Once identified, each baseline unit is characterized by its efficiency-related design options. DOE requests data on specific units and combinations of design options to be considered as a baseline unit. In addition, DOE requests comments on any other factors to be considered in selecting baseline units.

3. Design Options

The Engineering analysis will identify an individual design option or combinations of design options with a potential for improving energy efficiency. Design options that are currently on the market, that are being developed or that may be on the market by the time standards are effective on January 1, 1995 (for mobile home furnaces, January 1, 1994), will be considered. Furthermore, DOE requests comments on whether the existing test procedures are appropriate for measuring product energy use and efficiency and whether the test procedure can evaluate a particular design option's contribution to the product's energy consumption. For example, the current room air conditioner test procedure, which evaluates energy efficiency on a steady state basis, would not provide credit for design options such as variable speed compressors or electronic expansion valves since both of these designs improve the unit's cyclical performance. Similarly, DOE's microwave oven test procedures are based on International Electrotechnical Commission (IEC) Standard 705 (1975). It is DOE's understanding that this standard was amended by industry in 1988 because manufacturers were experiencing a number of problems conducting the test. To date, DOE has not adopted the new standard and invites comments as to whether it should.

DOE requests comments on both the DOE design options listed below and the applicability of the extant test procedure. The following is a list of design options that will be examined:

(i) Room Air Conditioners

(A) Increased Heat Transfer Surface Area
(B) Improved Fan and Fan Motor Efficiency
(C) Improved Compressor Efficiency
(D) Variable Speed Compressors
(E) Alternative Refrigerants
(F) Electronic Expansion Valves
(G) Thermostatic Cyclic Controls

(ii) Water Heaters

(A) Jacket Insulation
(B) Heat Traps
(C) Reduced Heat Leaks From Fittings
(D) Reduced Pilot Light Input Rate
(E) Automatic Ignition with a Flue Damper
(F) Elimination of Central Flue and Indirect Heating of Water
(G) Increased Flue Baffling with Forced Draft
(H) Multiple Flues
(I) Submerged Combustion Chamber
(J) Use of Pulsed Combustion
(K) Condensation of Flue Gases

For Heat Pump Water Heaters with a Tank

(L) Increased Heat Exchanger Effectiveness
(M) Improved Compressor and Compressor Motor Efficiencies
(N) Improved Fan and Fan Motor Efficiencies

For Heat Pump Water Heaters without a Tank

(O) Increased Heat Exchanger Effectiveness for Evaporator and Condenser
(P) Improved Compressor and Compressor Motor Efficiencies
(Q) Improved Fan and Fan Motor Efficiencies
(R) Improved Water Circulating Pump and Pump Motor Efficiencies
(S) Improved Heat Exchanger Insulation
(T) Improved Connection Hose Insulation

For Instantaneous Water Heaters

(U) Reduced Water in Heater After Each Draw
(V) Reduced Pilot Light Input Rate
(W) Increased Flue Baffling with Forced Draft
(X) Multiple Flues
(Y) Use of Pulsed Combustion and Condensation

(iii) Direct Heating Equipment

(A) Increased Heat Exchanger Surface Area
(B) Intermittent Ignition Device and Vent Damper
(C) Two-stage or Modulating Burner
(D) Improved Blower Motor Efficiency
(E) Power Burner or Induced Draft
(F) Increased Insulation
(G) Condensation of Flue Gases
(H) Pulsed Combustion

(iv) Mobile Home Furnaces

(A) Increased Heat Exchanger Surface Area
(B) Intermittent Ignition Device and Vent Damper
(C) Two-stage or Modulating Burner
(D) Improved Blower Motor Efficiency
(E) Power Burner or Induced Draft
(F) Increased Insulation
(G) Condensation of Flue Gases
(H) Pulsed Combustion

(v) Television Sets

(A) Remote Control
(B) Electronic Tuning
(C) Automatic Color Control
(D) Vertical Interval Reference
(E) Brightness Sensor
(F) Voltage Regulating Power Source
(G) Display Device
(H) One-Gun Tube

(vi) Kitchen Ranges and Ovens

For Gas Cooktops

(A) Thermostatically Controlled Gas Burners
(B) Insulation/Reflective Surface

For Electric Cooktops

(C) Improved Contact Conductance
(D) Insulation/Reflective Surface

For Ovens (Gas, Electric and Microwave)

(E) Improved Insulation of the Cabinet Envelope
(F) Reduced Vent Size
(G) Reduced Conduction Losses
(H) Insulation with Lower Conductivities
(I) Use of Reflective Surfaces
(J) Reduction of Thermal Mass
(K) Forced Convection During Cleaning
(L) Oven Separator (allowing the user to reduce oven volume when possible)
(M) Improved Magnetrons

(vii) Pool Heaters

(A) Reduced Pilot Light Input Rate
(B) Automatic Ignition with a Flue Damper
(C) Elimination of Central Flue and Indirect Heating of Water
(D) Increased Flue Baffling with Forced Draft
(E) Multiple Flues
(F) Submerged Combustion Chamber
(G) Use of Pulsed Combustion
(H) Condensation of Flue Gases

(viii) Fluorescent Lamp Ballasts

(A) Use of Copper Wire in Coils
(B) Steel Core
(C) High Frequency Operation (electronic ballasts)

(ix) Clothes Washers

(A) Thermostatically Controlled Mixing Valves
(B) Plastic Tubs
(C) Horizontal Axis of Wash Tub

4. Maximum Technologically Feasible Designs

The Act requires that, in considering any new or amended standards, DOE must consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." [section 325 (1)(2)(A)]. Accordingly, for each class of product that is under consideration in this rulemaking, a maximum technologically feasible level will be identified. The maximum technologically feasible level is one that can be carried out by the addition of design options, both commercially feasible and prototypical, to the baseline units without affecting the product's utility. DOE believes that the maximum technologically feasible level must be capable of being assembled, but not necessarily manufactured, by the effective date of a standard. In other words, a design must exist in at least a prototype form to be considered maximum technologically feasible.

5. Performance models

In the engineering analysis, DOE's estimate of the efficiency of various design options, and combination of design options, will be based on either computer simulation models or experimental data based on the DOE test procedures. DOE requests test data on the efficiency of the various design options and information on possible simulation models for use in this rulemaking. When test data or simulation models are not available, DOE may attempt to characterize the energy use differences of design options from existing appliances such as by measuring the wattage of televisions sets available at retail outlets with different features.

6. Costing analysis

Manufacturer cost data for baseline units and incremental costs for design improvements are requested. The cost data requested include, for each design option, incremental cost data disaggregated into labor, purchased parts, materials, shipping/packaging and tooling.

7. Price-efficiency relationships

The results of the Engineering Analysis are summarized in the cost-efficiency relationships that show the efficiency, unit energy consumption, and manufacturer cost of each design option and combination of design options, for each appliance class. Manufacturer and dealer markups are applied to the manufacturing costs to determine the purchase price of the appliance. The price-efficiency relationships are a fundamental input to the Consumer Analysis.

8. Data sources

Shipments data, costs of purchased materials and parts and engineering and labor cost data will be based on available information, including information received in comments on this ANOPR and from that collected from industry sources.

9. Outputs from the Engineering Analysis

For each combination of design options considered, the models and data provide:

- Energy efficiency (expressed as the DOE energy factor) [3];
- Annual energy consumption per unit (based on DOE test procedures);
- Increased material, purchased parts, labor, and investment costs for small [4] and large manufacturers by product class;
- The relationship between price and efficiency level by product class; and
- Other information on product characteristics, such as maintenance costs.

b. LBL Residential Energy Model (LBL–REM)

Early energy demand modeling focused on engineering estimates or on the relationship between energy consumption and economic growth. In the 1970's, Oak Ridge National Laboratory (ORNL) developed the first model to integrate these two important aspects, the Engineering-Economic Model of Residential Energy Use (ORNL Model). That model was brought to Lawrence Berkeley Laboratory (LBL) in 1979 and adapted to the analysis of Federal appliance efficiency standards. The ORNL Model has been updated by LBL, resulting in the LBL Residential Energy Model (LBL–REM) which is summarized below.

The LBL–REM forecasts the appliance purchase choices that households make, as well as their subsequent appliance usage behavior and energy consumption. The model uses engineering estimates of the characteristics of particular designs of appliances, and calculates the national impacts of a technology-specific policy on the populations of appliances used in the households. The engineering data provide alternative designs, characterized by purchase price and efficiency, that are available for purchase. The output from LBL–REM provides estimates of energy savings and consumer economic impacts (operating expenses and life-cycle costs).

Engineering, economic, and demographic data are used in the LBL–REM. The engineering data for appliances include the price-efficiency relationships described above. Additional data include information regarding alternative building shell construction measures and costs, unit energy consumption and efficiency of existing appliances, age distribution of existing appliance stock, and retirement functions. Economic data includes projected energy prices [5] and household income, and models of energy investment, appliance purchase and usage behavior, including fuel and technology choice for each end-use. Demographic data includes number of households by type, projected housing starts and demolitions, and initial appliance holdings.

1. Structure of the Model

The LBL–REM segments annual energy consumption into house types, end-uses, and fuel types. The house types are single family, multifamily, and mobile homes. Calculations are performed separately for existing and new housing construction each year over the period, 1990–2015. The end-uses are space heating (including room and central), air conditioning (room, central conventional, and heat pump), water heating, refrigeration, cooking, clothes drying, lighting, clothes washing, dishwashing, and miscellaneous. Up to four fuels are considered, as appropriate to each end use: electricity, natural gas, heating oil, and LPG. The models exists in two versions: national (one region), and regional (10 Federal regions). For those appliances whose usage is not likely to differ by geographic location, i.e., clothes washers, kitchen ranges and ovens, fluorescent lamp ballasts and television sets, the national version will be utilized in this analysis. For room air conditioners, water heaters, pool heaters, mobile home furnaces, and direct heating equipment, DOE will use the regional model (as data allow). DOE requests comments on regional usage on each of the appliances considered in this ANOPR.

The model projects five types of activities: technology/fuel choice; building shell thermal integrity choice; appliance efficiency choice; usage behavior; and turnover of buildings and appliances.

2. Housing Stock Submodel

This submodel prepares data about housing stock projections for the LBL–REM. The number of occupied households, by type, is taken from the 1980 Censuses of Population and Housing. An exogenous projection for housing starts is obtained and estimates

[3] The energy factor is a measurement of energy efficiency derived from the DOE test procedure for that product.

[4] As was the case with previous analyses, small manufacturers will not be analyzed separately. No general manufacturing approach could be identified for these firms because of the wide variability in their approach to manufacturing. Therefore, small manufacturers costs have been assumed to equal those of medium manufacturers. DOE encourages small manufacturers to submit data.

[5] The projections of energy prices will be taken from the most recent *Annual Energy Outlook*, a publication of DOE's Energy Information Administration.

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of projected demolition rates by house type are calculated, assuming an exponential function. The housing submodel determines the projected housing stock each year, 1981–2020, by subtracting demolitions from existing stock, then adding starts. The annual demolition rates by house type will be calculated for single family, multifamily, and mobile homes, respectively.

3. Efficiency Choice Algorithm

Historical efficiency data are available for selected years for each class of appliance through at least 1987. The Federal energy conservation standards for new units of these appliances are expected to be met by the effective date of the standard. After that date, future efficiency improvements are assumed to be a function of designs available (according to the engineering analysis) and of relevant energy prices. DOE believes the forecasting algorithm is designed to allow annual average efficiency or shipment-weighted efficiency factors (SWEFs) to increase if either more efficient designs become available at lower prices, or energy prices increase. Conversely, if energy prices decrease, the SWEF may decline, but would have a lower bound at the 1990 Federal standard level.

4. Thermal Integrity

The projection of the level of investment in thermal integrity measures in new houses is based on a life-cycle cost calculation, analogous to that done for equipment efficiencies.[6] Estimates of the incremental costs of thermal integrity measures are used in conjunction with current fuel prices and a discount rate. Estimates of investments in thermal integrity retrofits of existing houses are projected as a function of income and household energy expenditures.[7]

5. Modeling Efficiency Standards

The LBL–REM projects the average efficiency of new products—for example, water heaters—purchased each year, in the absence of additional Federal regulations. A distribution of efficiencies is constructed around the average, based on efficiency distributions observed in the marketplace. This information includes information from industry sources and published data from the industry trade associations. A new Federal standard level eliminates part of the distribution; therefore, a new distribution is constructed. The new shipment-weighted average efficiency then characterizes the efficiency of new units in that year. The same process is applied to all years after implementation of the standard. The model is then run again for the standards case, with the adjusted average efficiencies, to calculate any changes in market shares, usage behavior, or investment in building shell thermal improvements that may occur as a result of standards, and to calculate the net energy savings.

6. Turnover of Appliance Stocks

The initial age distribution of appliances in stock is characterized based on industry data about historical annual shipments. The fraction of each product that retires each year is based on the number of years since purchase of the product. For each year's purchase the model associates an average efficiency, so that when older appliances are retired, they are also recognized as less efficient.[8]

The number of potential purchasers of an appliance in new homes is equal to the number of new homes constructed each year. The number of potential purchasers of appliances in existing houses is equal to the number of retiring appliances, plus a fraction of those households that did not previously own the product.

7. Calculation of Market Shares

Potential purchasers may purchase any competing technology within an end-use, or none. For each end-use, long-term market share elasticities are estimated with respect to equipment price, operating expense, and income, respectively. The effect of standards is expected to be lower operating expense and increased equipment price. The percentage changes in these quantities are used, together with market share elasticities, to determine changes in market share resulting from standards. The model assumes that higher equipment prices will decrease sales volumes, while lower operating expenses will increase them. The net result (predicted market share) depends on the standard level selected, with its associated equipment prices and operating expenses.

8. Usage Behavior

For some products, i.e., room air conditioners, water heaters, direct heating equipment, mobile home furnaces, and pool heaters, changing the operating expense results in changes in usage behavior. These changes are modeled based on usage elasticities in operating expense and income. For kitchen ranges and ovens, clothes washers, fluorescent lamp ballasts, and television sets, these elasticities are expected to be at or near zero; usage behavior is not influenced by the expense of operating the appliance. DOE will appreciate any comments on this assumption.

9. Energy Consumption Calculations

The total energy consumption per house for each end-use and fuel by house type and vintage (existing or new) is the product of the unit energy consumption (accounting for efficiency and capacity changes), and usage factor, e.g., relative hours of operation for room air conditioning. The corresponding annual energy consumption for all households is the annual consumption per household times the number of households of that type and vintage, times the fraction of those households owning that appliance.

Aggregate energy consumption is obtained by summing intermediate results. For example, national electricity consumption for room air conditioners in a particular year is the sum across house types and house vintages of electricity used by room air conditioners. National residential electricity consumption in that year is the sum of all end-uses of electricity consumption in the residential sector.

10. Model Outputs

The principal outputs from the LBL–REM for each year are:

- Energy consumption by end-use and fuel.
- Total residential energy consumption by fuel.
- Per unit equipment price and operating expense by product.
- Projected annual shipments of residential appliances.
- Differences in these quantities between a base and a standards case.

These outputs are provided annually (or for selected years) and cumulatively over a period of time, e.g., 1995–2020. Energy savings are provided annually from implementation of standards to the end of the period. Net present value of standards is evaluated for each regulated product, and for the end-use(s) comprising the regulated and competing products.

[6] The equipment efficiency and thermal integrity decisions are not solved simultaneously, but recursively. For each year analyzed, equipment efficiency is projected and then these results are used to calculate investments in thermal integrity.

[7] Based on E. Hirst, R. Goeltz, and H. Manning, Analysis of Household Retrofit Expenditures, *Energy Systems and Policy*, Vol. 7, No. 4, pages 303–322 (1983).

[8] See Consumer Products Efficiency Standards Economic Analysis Document, DOE/CE–0029, March 1982, pp. 412–13.

Energy savings are calculated as the difference in energy consumption between the base case and standards case. Energy consumption in both the base case and standards case includes building shell improvements, changes in fuel choice, or changes in usage behavior. Therefore, the energy savings capture the net energy savings due to regulation, including the effects induced by shifts in market share or changes in usage behavior.

Net present value, on the other hand, excludes these types of effects.[9] Net present value is calculated from per unit changes in equipment and operating expenses, multiplied by standards case shipments. If the net present value were calculated without normalizing with regard to shipments erroneous results would be obtained: if standards caused decreased purchases of a product, this would appear as an economic benefit, namely, less money spent on purchasing and using appliances;[10] and if standards resulted in increased purchases, this would be incorrectly counted as a cost, when it reflects consumers' preference of the post-standards product.

Base case usage is assumed in calculating the net present value, since any "rebound effect"[11] reflects the consumer's judgment that increased usage is worth more than the direct energy savings associated with keeping usage constant. Therefore, deduction of any foregone energy savings resulting from a possible "rebound effect," prior to calculating the net present value, would result in an underestimate of the true net present value associated with a given efficiency improvement.

[9] Present value is the discounted total value of energy consumption during the appliances' lifetime, plus the discounted equipment costs for those appliances that are purchased during those periods, at alternative standards levels. The difference between each of the two cases is the net present value (NPV) attributable to standards (or amended standards). A positive NPV for an appliance at a given standard level indicates that, if that standard were adopted, consumers of that appliance as a whole would save that much more money in fuel costs, discounted to the present, than they would pay in increased initial price for a more efficient appliance, discounted to the present, compared to the base case.

[10] Without normalization, the greatest economic benefit would be obtained by a standard level that resulted in no future purchases of the product. Then no money would be spent on purchasing the product, or on operating expenses, and the value of the savings would equal the amount of money that would have been spent without the standard. This would clearly be a misrepresentation of the net present value of standards.

[11] The "rebound effect" is the projected energy savings, depending on the appliance, (from an efficiency improvement) that does not occur. This results when purchasers of more energy efficient appliances use them more intensively, thereby saving less energy than the engineering estimates would have indicated. In some instances, the rebound is zero.

11. Other Consumer Impacts

One measure of the effect of standards on consumers is the change in operating expense as compared to the change in purchase price. This is quantified by the difference in life-cycle cost (LCC) between the base and standards case for the appliance classes analyzed. The LCC is the sum of the purchase price and the operating expense discounted over the lifetime of the appliance. It will be calculated at the average efficiency for each class, in the year standards are imposed, with consumer discount rates of 2, 7, and 15 percent. This reflects the range of discount rates that purchasers of appliances experience, depending upon the manner in which they choose to finance the purchase. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. The operating expense is calculated from the unit energy consumption derived in the Engineering Analysis adjusted for differences in usage, i.e., operating load hours, between the test procedure and the LBL–REM. Projected energy efficiencies and usages are taken from the results of LBL–REM.

The analysis will use seven percent both for the calculation of LCC and in the LBL–REM for calculating energy use and NPV. The use of the discount rate in the project of energy use is significant because the LBL–REM projects marketplace demand for more efficient appliances based on the LCC. The LBL–REM assumes that as the price of energy increases, the LCC will increase. This results because the value of the energy consumed is greater which, in turn, causes the marketplace to demand more efficient appliances.

In the November 1989 Final Rule for refrigerators, refrigerator-freezers, freezers, and small gas furnaces (54 FR 47916, 47921, November 17, 1989), DOE selected a seven percent discount rate based on a methodology derived from the Court of Appeals decision, *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir 1985). As DOE discussed in the November 1989 Final Rule, the applicability of the court decision has changed somewhat with the passage of the Tax Reform Act of 1986 (Pub. L. 99–514). The Tax Reform Act will have phased out the deductibility of interest paid on consumer loans by the time amended standards would be applicable. Based on the revised methodology, DOE calculated a range of discount rates that consumers incur; this range is from less than 1 percent to slightly more than 15 percent. As explained in the November 1989 Final Rule, DOE selected seven percent for the analysis for purposes of that rulemaking proceeding because it was near the mid-point of the potential consumer discount rates. In addition, DOE found that that approach had a reasoned theoretical basis, in that it was related to the opportunity cost of money for purchasing consumer durables. As such, it was justified in terms of alternate consumer investment opportunities that are foregone in order to finance the purchase of appliances.

In this ANOPR DOE is not suggesting a lower consumer rate, based on real after tax rates associated with consumer purchases of appliances, inasmuch as it does not have at this juncture any empirical basis for the recommendation of a rate below seven percent. Therefore, unless and until any broad-based and reliable empirical data can be developed on the methods consumers use to finance purchases of appliances, DOE will continue to use seven percent, for the reason mentioned above. Nevertheless, because the range of real after-tax rates of finance is so broad, DOE has expanded its sensitivity analysis from using 5 and 10 percent rates to using 2 and 15 percent rates. It is believed that this broader range of sensitivities will better reflect the wide variation in actual consumer financing rates, and therefore, better capture the significance of any differences resulting from the range of rates.

Two other measures of economic impact are useful in evaluating the impacts on consumers. The payback period measures the amount of time it takes to recover, through lower operating expenses, the additional expenditure on increased efficiency. Numerically, it is the ratio of the increase in purchase price between the base and standards cases to the decrease in annual operating expenditures. Both the numerator and denominator of this expression are evaluated at the average efficiency in the year standards come into effect and at the energy prices in that year. The cost of conserved energy is the increase in first cost amortized over the lifetime of the appliance at the consumer discount rate divided by the annual energy savings. The consumer will benefit whenever the cost of conserved energy is less than the price of energy for that end use.

c. Commercial Energy Model

For the analysis of fluorescent lamp ballasts, an end-use model of energy consumption in the commercial sector will be used, based on the work performed at Battelle Pacific Northwest

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Laboratory for DOE. The model will include a projection of commercial floorspace by building type, and projection of energy consumption by end-use and fuel type. The important interaction between other building characteristics, especially air conditioning energy consumption and lighting energy consumption, will be considered in estimating the energy savings from more efficient fluorescent lamp ballasts.

d. Manufacturer Impact Models

1. Conceptual Approach

The manufacturer impact analysis estimates the overall impact of new or amended standards on an industry's profitability and scale of operation.

2. Measures of Impact

The analysis examines three types of long-run impact: profitability; growth; and competitiveness. Consequently, five measures of impact are reported. They are: Shipments; price; revenues; net income; and return-on-equity (ROE).

ROE is the primary measure of profitability, although gross margin and return-on-assets (ROA) are also reported. Assets and income provide the primary measures of growth, and the impact on competitiveness is analyzed by looking at the relative changes in growth and profitability.

Two short-run impacts are also analyzed. First, the ability for the industry as a whole and for specific segments of the industry to provide the one-time investments required to meet the new standard is examined. Second, if standards result in decreased sales for the particular industry being analyzed, the analysis examines the possibility of price-cutting while the industry is adjusting to a lower sales volume.

3. LBL Manufacturer Impact Model (LBL–MIM)

In order to estimate the impacts of energy efficiency standards, a computer spreadsheet model, the Lawrence Berkeley Laboratory Manufacturer Impact Model (LBL–MIM), was developed.

The LBL–MIM models a "typical year" for the industry, both in the base case and in the new standards case. The year chosen for the model is the fifth year after the imposition of standards. A five-year period is long enough to capture any major impacts from the standard, such as profitability changes or firm entry into, or exit from, the industry.

Ideally, a manufacturer analysis should look at the impact of a proposed regulation on every firm that does business in the industry under question. However, because the industries being analyzed have many manufacturers making a particular product, a firm-by-firm analysis would be a very expensive and not necessarily cost-effective undertaking. In addition, the engineering and financial data for most manufacturing firms are proprietary and are not routinely available for public analysis. Because of these limitations on data and resources, LBL–MIM models a prototypical firm. In many cases this firm represents a division of a larger firm. Therefore, a prototypical firm is a hypothetical firm representative of a portion of the industry. Prototypical firms are defined by parameters that are important for determining the impacts of standards and are consistent with data for the portion of the industry they represent. Important parameters used in the model include the cost structure of the firms, profitability ratios, relative costs of complying with the new standard, and marketing strategies.

A change in standard level affects the analysis in three distinct ways. Increased levels of standards will require additional investment, will raise production costs, and will affect revenue both through price and demand.

The most obvious investment induced by standards is the purchase of new plant and equipment. This cost first is evaluated from engineering data, and then averaged by taking into account the life of the investment, the date on which it is made, tax laws, and the appropriate costs of funds. An additional, and sometimes larger, investment takes place as the old inventory is replaced with more expensive new units. The model assumes previous inventory ratios are maintained. A third form of investment tracked by the model is the change in the transactions demand for cash that accompanies a change in revenues.

Increased costs of production are modeled by coupling engineering data on changes in unit costs caused by standards with data from LBL–REM on the marketplace demand of the product.

Revenue is affected by both price and shipments. Price is determined by computing the markup over long-term marginal costs and then using the markup to determine an optimal price. Demand is determined by price and operating expense elasticities, coupled with the changes in price and operating expenses resulting from the standards.

The LBL–MIM produces several outputs used in analyzing the impact of standards on manufacturers. A simplified pro forma income statement is prepared for each prototypical firm. In addition to the income statement, five main variables—shipments, price, revenue, net income, and ROE—are reported. The results are presented for the without-standards (or without amended standards) case and the with-standards (or with amended standards) case, and the relative difference between the two is also given.

4. Data Sources

The LBL–MIM needs data that characterize both a particular industry and prototypical firms within that industry. Estimates of data are based on information from five general sources: LBL business consultation groups; the Engineering Analysis; the Consumer Analysis, public financial data; and industry profiles.

e. Utility Impact Model

The utility analysis serves several purposes within the overall assessment of the impact of the proposed standards. It contributes to quantifying the energy savings by determining the reduction in fossil fuels used for electricity generation. The reduction in fossil fuel consumption is also an input to the Environmental Assessment. By calculating utility avoided costs, this area of the analysis provides marginal electricity costs. Finally, it examines the impacts on the electric utility industry in terms of changes in investment, revenue requirements, the need for new generating capacity, and residential load factors.

The utility analysis adopts the standard convention that the value of electricity savings can be broken down into energy (or marginal cost) savings and capacity (or reliability) savings. The energy impact measures the production costs avoided by reduced electrical demands, valued at the marginal energy costs of the utility. The capacity impact measures the reliability value of reduced loads during system peak periods, which is, by convention, valued at the cost of a combustion turbine that would have been needed to meet the load. The analysis characterizes these avoided costs per kWh of heating, cooling, and baseload energy saved.[18] These values are used to calculate societal benefits from reduced electricity consumption.

The Utility Impact Model calculates avoided energy costs based on a disaggregation of the generation fuel mix to the National Electric Reliability Council (NERC) regions and a simplified load duration curve for each region.

[18] For the purposes of calculating utility avoided costs, electric heating appliances are defined as electric heat pumps and electric resistance heat, cooling appliances are defined as room and central air conditioners plus heat pumps, and baseload appliances are defined as all other appliances.

First, the model allocates national electricity savings that are forecasted by the LBL–REM to NERC regions in proportion to their current consumption of heating, cooling, and baseload energy. The regional proportions are derived from data on regional appliance saturations, efficiencies, and hours of use. The fraction of the electricity that would have to be generated at the margin from oil and gas is calculated from the total regional oil and gas fraction and the simplified load duration curve. Projected utility natural gas and coal prices, weighted by the oil and gas fraction and the non-oil and gas fraction respectively, are used to calculate utility marginal costs over the forecast period. The marginal costs are adjusted to account for seasonal differences.

The avoided capacity cost calculation in the model is based on conservation load factors (CLFs) for the energy savings attributable to the standards, as well as the capacity value of a combustion turbine. A CLF is defined as the average hourly energy savings of a conservation measure divided by its peak load savings. The CLFs are a way of characterizing the peak demand savings of a conservation measure. They are used to convert the capacity value of the standards into the per kWh values described above. The NERC forecasts of capacity requirements for each region are used to account for regional variations in reserve margin. If NERC forecasts an adequate reserve margin in a region for a given year, no reliability value is given to the capacity savings in the region.

The inputs needed for the Utility Impact Model are CLFs, state-level utility fuel prices, appliance saturations, efficiencies, and hours of use, as well as electricity generation by fuel type and capacity need by NERC region. The outputs of the analysis are the fuel savings, the reduction in the need for new generating capacity, and the avoided energy and capacity costs for heating, cooling, and baseload appliances per million Btu of resource energy.

f. Sensitivity Analyses

Sensitivity studies are performed to determine how changes in technical and operational parameters affect key engineering and economic indicators used in evaluation of appliance standards. This makes it possible to place limits on the overall results of the analysis and to gain an understanding of which variables are most important in producing these results. Sensitivity analyses are developed in a series of distinct steps. For each component analysis in the overall analysis, critical input parameters are identified and reasonable ranges of variation determined. The sensitivity of the model to changes in the value of each important parameter is then estimated by running the model for both the base case and the standards cases. The results of the sensitivity analyses are examined to determine the sensitivity of the forecasts to exogenous variables and assumptions and the sensitivity of the differences between the base and standards cases (impacts of alternative standards).

IV. Comments

a. Questions for Public Comment

DOE is interested in receiving comments and data concerning the accuracy and workability of this methodology. Also, DOE welcomes discussion on improvements or alternatives to this approach. In particular, DOE is interested in gathering data on the following:

- Descriptive and performance characteristics for baseline models of each product class that are the subject of this rulemaking. These models should be those satisfying the appropriate standards;
- Proposed product classes for kitchen ranges and ovens, pool heaters, mobile home furnaces, fluorescent lamp ballasts and any other products in this rulemaking;
- Costs of baseline units and incremental costs of designs improving the energy efficiency of the products that are the subject of this rulemaking;
- Appropriateness of existing test procedures to the proposed design options;
- Data on consumer financing of appliances useful for obtaining a weighted average discount rate;
- Estimates of performance and cost of horizontally rotating top loading clothes washers;
- Appropriate method to incorporate pool heaters into the LBL–REM;
- Usage patterns in commercial applications of fluorescent lamp ballasts, since, to date, the LBL–REM has been limited to residential applications;
- Appropriate methodologies for analyzing standards for room air conditioners, including comments and data on alternatives to CFC–22 (a refrigerant allowed by the Montreal Protocol but included in proposed Congressional legislation to ban additional CFC products);
- Appropriate modifications to the LBL–REM to accommodate adding heat pump water heaters and gas-fired instantaneous water heaters as a new class;
- Impact on efficiency and cost of fluorescent lamp ballasts of limiting harmonic content; and
- Heating efficiency of various types of range and oven elements including open, solid, radiant, induction, halogen, and burners including conventional, sealed, and radiant.

DOE has been unable to identify any small manufacturers. Nevertheless, for purposes of this analysis, small manufacturers' costs are assumed to equal those of medium manufacturers. DOE is especially interested in learning of the existence of such manufacturers, and in obtaining cost data from small manufacturers of the products under consideration.

For the LBL–REM, DOE requests interested parties to provide historical data on shipments and average efficiencies by class for the products subject to the proposed rulemaking. Data on consumer prices and on the installation and maintenance expenses of these appliances are also requested.

The manufacturer analysis needs the financial data from the product division level. All of these data are available at the firm level, but since firms are typically much larger than the relevant division, the firm data may give a misleading indication of the division's finances.

An income statement and balance sheet at the division level would be most helpful. If this is not available, then data on the following variables are considered most essential: net income, revenue, selling and general and administrative costs, engineering costs, costs of goods sold, interest, taxes, debt-to-equity ratio, net depreciable assets, net assets, capital investment, and long-term debt.

DOE also welcomes current data on unit sales and revenues for the industries as a whole.

b. Comment Procedure

Interested persons are invited to submit written comments to the address indicated in the beginning of this notice in the **ADDRESSES** section. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation CE–RM–90–201. Eight copies are to be submitted. All comments received by the date specified at the beginning of this ANOPR and all other relevant information will be considered by DOE before it continues this rulemaking proceeding. Pursuant to 10 CFR 1004.11, any person submitting information which he or she believes to be

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confidential and exempt by law from public disclosure should submit one complete copy of the document and seven copies from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

Issued in Washington, DC, on September 19, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 90-23023 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1410

Premiums

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) is proposing regulations concerning the computation and payment of premiums. The Corporation was established on January 6, 1988, the date of enactment of the Agricultural Credit Act of 1987 which amended the Farm Credit Act of 1971 (Act). The Corporation is empowered to prescribe such rules and regulations as it considers necessary to carry out its responsibilities. In the proposed regulations the Corporation interprets the premium calculation formulas included in the Act, clarifies the methodology to be used in calculating premiums to be paid to the Corporation by insured Farm Credit System banks, defines certain terminology, prescribes the form and content of certified statements, and establishes the date and place for filing certified statements and for payment of premiums.

DATES: Comments must be submitted on or before October 29, 1990.

ADDRESSES: Written comments may be mailed (in triplicate) to the Board of Directors, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, VA 22102-0628. Copies of all communications received will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, VA.

FOR FURTHER INFORMATION CONTACT:

Bobbie Jean Norris, Project Analyst, Farm Credit System Insurance Corporation, McLean, VA 22102-0628, (703) 883-4367, TDD (703) 883-4444

or

James M. Morris, Attorney, Farm Credit System Insurance Corporation, McLean, VA 22102-0628, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987, Public Law 100-233, amended the Farm Credit Act of 1971 (Act) by adding provisions concerning the Farm Credit System Insurance Corporation (Corporation). One of the purposes for which the Corporation was established is to insure the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Act on behalf of one or more Farm Credit System banks (System banks). Effective January 6, 1988, each System bank participating in such obligations became an insured System bank.

In order to provide the Corporation with funds to meet its obligations, the Act provided for the transfer, as of January 6, 1988, of all amounts in the revolving fund established by section 4.0 of the Act into the Farm Credit Insurance Fund (Insurance Fund), which served as the initial capital of the Corporation. The Act provides for further funding of the Corporation to come from premium payments by System banks. The Corporation will deposit in the Insurance Fund all premium payments received from System banks.

Premiums are to be paid beginning as soon as practicable after January 1, 1990, and no less frequently than annually thereafter. Except for the premium payment which covers calendar year 1988, section 5.55 of the Act requires that the annual premium due from each System bank for each calendar year be equal to the sum of (1) the annual average principal outstanding for such year on its loans that are in accrual status, excluding the guaranteed portions of certain government-guaranteed loans, multiplied by 0.0015, (2) the annual average principal outstanding for such year on its loans that are in nonaccrual status, multiplied by 0.0025, (3) the annual average principal outstanding for such year on the guaranteed portions of its Federal government-guaranteed loans that are in accrual states, multiplied by 0.00015, and (4) the annual average principal outstanding for such year on the guaranteed portions of its State government-guaranteed loans made by the bank that are in accrual status, multiplied by 0.0003. The premium payment for calendar year 1989 is to be based on the annual average principal outstanding on only the accruing loan volume.

Section 5.55(d) of the Act provides that the principal outstanding on all loans made by a System bank shall be determined based on all loans of any production credit association or other association making direct loans under authority provided under section 7.6 of the Act (direct lending associations), and loans of any bank, company, institution, corporation, union, or association described in section 1.7(b)(1)(B) of the Act (other financing institution) that are able to be made because the direct lending association, or other financing institution is receiving, or has received, funds provided through a System bank, as well as loans of each System bank other than loans made to direct lending associations, and other financing institutions.

Premiums shall continue to be paid according to this formula until such time as the Insurance Fund exceeds the secure base amount. The secure base amount is defined in section 5.55(c) as two percent of the aggregate outstanding insured obligations of all insured System banks at any point in time (adjusted downward by a percentage of the guaranteed portions of the principal outstanding on State and Federal government-guaranteed loans in accrual status), or such other amount as the Corporation, in its sole discretion, determines to be actuarially sound. If the amount in the Insurance Fund exceeds the secure base amount, the Corporation shall reduce the annual premium due from each System bank for the following calendar year by a percentage determined by the Corporation so that the aggregate of the premiums payable by all of the System banks is sufficient to ensure that the Insurance Fund balance is maintained at no less than the secure base amount.

Definition of Loans

The term "loans" is used, but not defined, in title V, part E, and in section 1.12(b) of the Act. The Corporation is proposing to adopt a definition of loan substantially similar to that used by Farm Credit Administration (FCA) financial reporting regulations (12 CFR Part 621). Adoption of this definition will ensure consistency with FCA financial reporting regulations. 12 CFR 621.2(a)(13) states:

> "Loan" means any extension of credit or lease resulting from direct negotiations between a lender and a borrowing entity that is recorded as an asset of a reporting institution. The term "loan" includes loans, contracts of sale, notes receivable, and other similar obligations and lease financings. The term "loan" includes loans originated through direct negotiations between the reporting institution and a borrowing entity and loans or interests in loans purchased from another lender.

Since these items are considered "loans made under this Act," for purposes of serving as collateral for the insurance of insured obligations under sections 4.2 and 4.3 of the Act, it is appropriate for them to be subject to premiums for insurance of payment of principal and interest on those obligations.

In addition, the Corporation's proposed definition of "loans" would add a category of loans. Some Farm Credit institutions sell loans subject to full or partial recourse, thereby retaining all or a portion of the risk. The Corporation proposes that, for calculation of premiums, such loans should be considered loans of the selling entity to the extent that the seller bears the risk. For example, if the sale is subject to recourse for 50 percent of any loss, 50 percent of the loan shall be considered a loan of the seller. Thus, premiums on these loans will be calculated and paid by the entity bearing the risk. The insurance plan established by the Act partially relates the payment of premiums on the use of the proceeds of insured obligations to the risk posed by such use. Congress initially established different premium rates for accrual and nonaccrual loans, and subsequently amended the Act to provide lower factors for the perceived lower risk of government-guaranteed loans. The goal of relating premiums to the risks inherent in the use of proceeds of insured obligations would be served by requiring that the bank bearing the risk of a loan pay premiums on that loan to the extent of its risk.

The Corporation also proposes adopting a definition of nonaccrual loans parallel to that of the FCA contained in 12 CFR 621.2(a)(15), as well as a rule of aggregation similar to that contained in 12 CFR 621.2(b)(2). Adoption of these criteria will ensure consistency with the FCA's financial reporting requirements.

Computation of Average Principal Outstanding

Section 5.55 of the Act requires that the premiums be based on the annual average principal outstanding on certain categories of loans. The Act does not prescribe the method of determining the average principal outstanding. The proposed regulation would require that the average principal outstanding be calculated using daily balances. The Corporation believes the use of average daily balances will result in the most accurate computation. Additionally, using average daily balances is consistent with requirements of the FCA in its capital regulations (12 CFR 615.5200, *et seq.*).

The Corporation recognizes, however, that not all Farm Credit banks will be able to retroactively calculate average daily balances for calendar year 1989. Therefore, the Corporation is proposing a calculation based on monthend balances for calendar year 1989.

Determination of Principal Outstanding

Section 5.55 of the Act requires that the principal outstanding of System banks be determined based on all loans made by the "production credit associations and any other association making direct loans * * *" in the respective districts and by any other financing institution that is making such loans as a result of "receiving * * * funds provided through the Farm Credit Bank" and by the System bank. More specifically, the premiums are based on the average principal outstanding at the direct lender level.

The annual average principal outstanding for calendar years 1989 and 1990 will be reported as part of the certified statements. For calendar year 1991 and subsequent years, the necessary data to compute premiums will be submitted quarterly to the Corporation, if not available through reports of condition and performance filed by Farm Credit System institutions with the FCA pursuant to 12 CFR part 621.

Certifications of Premiums and Frequency of Payments

Section 5.56 of the Act states that premium payments shall be made "not less frequently" than annually and that the amount of the premium must be established not later than 30 days after filing the certified statement setting forth the amount of the premium. The Corporation proposes that certified statements and the requisite premium payments due to the Corporation for calendar years 1989 and 1990 would have to be received by the Corporation no later than 60 days after the effective date of this regulation or January 31, 1991, whichever is later. Subsequent premiums would be paid annually at the time of submission of the certified statements, but no later than January 31 following the end of the calendar year for which premiums are being paid.

Certified Statements

Section 5.56 of the Act requires each insured institution to file with the Corporation a certified statement in such form and setting forth such supporting information as the Corporation prescribes.

The forms for certified statements, with instructions, referred to in the regulations will be available from the Corporation. The Corporation anticipates two forms of certified statement: (1) Form FCSIC90-001: First Certified Statement, to be used for calendar years 1989 and 1990; and, (2) Form FCSIC 90-002: Certified Statement, to be used for each year beginning with calendar year 1991.

Each Farm Credit bank will be required to maintain adequate documentation supporting the certified statement. Such documentation will be reviewed periodically by the Corporation.

Delinquent Premium Payments and Premium Overpayments

The Corporation proposes to impose an interest charge on delinquent premium payments owed to the Corporation. This will permit the Corporation to obtain interest on delinquent payments so that it does not incur a loss during the delinquency period because the funds are unavailable to it for investment purposes. Interest would be charged on unpaid amounts in situations in which a bank has computed its premium payments correctly and failed to pay the full amount when due as well as situations in which a bank has incorrectly computed its premium payments and either the bank or the

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Corporation later determined that the bank has underpaid.

The proposed interest rate would be based on the United States Treasury Department's rate for delinquent payments. This rate, the "Treasury Current Value of Funds Rate" (TFRM rate), is published quarterly in the Federal Register. The Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed Government entities. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by two percentum. The TFRM rate is the governmentwide standard used for delinquent payments to Federal entities.

Under section 5.65(c) of the Act, the Corporation is authorized to levy a penalty of up to $100 per day against any bank which "willfully fails or refuses" to file any certified statement or pay any premiums as required. Additionally, under section 5.57(c) of the Act, all rights, privileges, and franchises of an insured bank granted to it under the Act shall be forfeited if any insured bank fails to file any required certified statement or fails to pay any required premium, if the bank does not correct such failure within 30 days after the Corporation gives written notice to an officer of the bank. This penalty provision and the provision for loss of rights, privileges, and franchises would continue to be options available to the Corporation in appropriate cases in addition to the interest charge and any other rights or remedies available to the Corporation.

The Corporation is also proposing that any overpayments be credited to subsequent premium payments or refunded to the bank that overpaid upon its written request.

Request for Comments

The Corporation proposes these regulations for comment. All comments received will be considered in drafting the final regulations.

List of Subjects in 12 CFR Part 1410

Certified statements, Premiums.

For the reasons set out in the preamble, part 1410 of chapter XIV, title 12 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 1410—PREMIUMS

Sec.
1410.1 Purpose and scope.
1410.2 Definitions.
1410.3 Calculation and reporting of premiums due.
1410.4 Payment of premiums.
1410.5 Delinquent premium payments and premium overpayments.
1410.6 Certified statements.
1410.7 Documentation.

Authority: 12 U.S.C. 2277a–5; 12 U.S.C. 2277a–7.

§ 1410.1 Purpose and scope.

This part sets forth the rules for:
(a) The calculation of premiums;
(b) The time for payment of the premium required by sections 5.55 and 5.56 of the Farm Credit Act of 1971, as amended;
(c) Interest charges on delinquent payments;
(d) The form and content of certified statements; and,
(e) Documentation supporting certified statements.

§ 1410.2 Definitions.

(a) Act means the Farm Credit Act of 1971, as amended.

(b) Average principal outstanding means:

(1) For calendar year 1989, the average annual principal outstanding using balances as of monthend for each of the 13 months beginning with December 1988 and ending with December 1989;

(2) For calendar year 1990 and thereafter, the average annual principal outstanding on a daily basis using balances as of the close of each day. In computing the average annual principal outstanding in this manner, the closing balance of the most recent past business day shall be the closing balance for days when an institution is closed.

(c) *Direct lending association* means any production credit association or any other association making direct loans under authority provided under section 7.6 of the Act, including, without limitation, agricultural credit associations and Federal land credit associations.

(d) *Government-guaranteed loans* means loans or credits, or portions of loans or credits, that are guaranteed:

(1) By the full faith and credit of the United States Government or any State government; or,

(2) By an agency or other entity of the United States Government whose obligations are explicitly guaranteed by the United States Government; or,

(3) By an agency or other entity of a State government whose obligations are explicitly guaranteed by such State government.

(e) *Insured bank* means any Farm Credit bank whose participation in notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Act is insured under part E of title V of the Act, including, without limitation, the Federal Intermediate Credit Bank of Jackson and banks that are in or are placed in receivership or conservatorship to the extent that those banks' participation in such obligations is insured.

(f) *Loan* means any extension of credit or lease resulting from direct negotiations between a lender and a borrowing entity that is recorded as an asset of an insured bank, a direct lending association, or an other financing institution. The term *loan* includes loans, contracts of sale, notes receivable, and other similar obligations and lease financings. The term *loan* includes loans originated through direct negotiations between the insured bank, direct lending association, or other financing institution and a borrowing entity and loans or interests in loans purchased from another lender. Loans purchased subject to recourse shall be considered loans of the seller to the extent of the recourse.

(g) (1) *Nonaccrual loan* means any loan where—

(i) Any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, are determined to be uncollectible for any reason; or,

(ii) It has been classified "loss" as a result of a periodic credit evaluation and has not been charged off; or,

(iii) The loan is severely past due and is not adequately secured, in process of collection, and fully collectible with respect to all principal and interest.

(2) For the purposes of determining whether a loan is considered as accrual or nonaccrual under this part, all loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

(h) *Other financing institution* means any bank, company, institution, corporation, union, or association described in section 1.7(b)(1)(B) of the Act.

§ 1410.3 Calculation and reporting of premiums due.

(a) *Premium base.* For purposes of computing the annual premium, each insured bank shall:

(1) Report its premium base for each category of loan described in paragraph (a)(2) of this section based on the total of the average annual principal balances of:

(i) Loans of each direct lending association that were able to be made because the direct lending association is receiving, or has received, funds provided through the insured bank;

(ii) Loans of each other financing institution that were able to be made because the other financing institution is receiving, or has received, funds provided through the insured bank; and,

(iii) The bank's loans, other than loans made to direct lending associations and other financing institutions.

(2) Segregate the loans of each entity described in paragraph (a) of this section into:

(i) Loans in accrual status, excluding the guaranteed portions of State and Federal government-guaranteed loans;

(ii) The guaranteed portions of State government-guaranteed loans that are in accrual status;

(iii) The guaranteed portions of Federal government-guaranteed loans that are in accrual status; and,

(iv) Nonaccrual loans.

(b) *Calculating the 1989 premium payment.* The 1989 premium payment shall be equal to the sum of:

(1) The total annual average principal outstanding for calendar year 1989 on the loans in accrual status as described in paragraph (a)(2)(i) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0015;

(2) The total annual average principal outstanding for calendar year 1989 on loans in accrual status as described in paragraph (a)(2)(ii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0003; and,

(3) The total annual average principal outstanding for calendar year 1989 on loans in accrual status as described in paragraph (a)(2)(iii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.00015.

(c) *Calculating the premium payment for 1990 and subsequent years.* Except as provided in paragraph (d) of this section, the annual premium payment for 1990 and for each subsequent year shall be equal to the sum of:

(1) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(i) of this section of each entity described in paragraph (a) of this section multiplied by 0.0015;

(2) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(ii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0003;

(3) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(iii) of this section of each entity as described in paragraph (a)(1) of this section multiplied by 0.00015; and,

(4) The total annual average principal outstanding for each calendar year on the nonaccrual loans as described in paragraph (a)(2)(iv) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0025.

(d) *Secure base amount.* Upon reaching the secure base amount determined by the Corporation in accordance with section 5.55 of the Act, the annual premium to be paid by each insured bank, computed in accordance with paragraph (c) of this section, shall be reduced by a percentage determined by the Corporation so that the aggregate of the premiums payable by all of the Farm Credit banks for the following calendar year is sufficient to ensure that the Insurance Fund balance is maintained at not less than the secure base amount. The Corporation shall announce any such percentage no later than December 31 of the year prior to the January in which such premiums are to be paid.

§ 1410.4 Payment of premiums.

(a) *Calendar years 1989 and 1990.* Each insured bank shall pay to the Corporation the amount of the premium due to the Corporation computed in accordance with § 1410.3 of this part, and shown on its certified statement, at the time its certified statement is filed. The certified statement for calendar years 1989 and 1990 must be filed with the Corporation and the premium must be received by the Corporation on or before 60 days after the effective date of this regulation or January 31, 1991, whichever is later.

(b) *Calendar year 1991 and subsequent years.* Each insured bank shall pay to the Corporation the amount of the premium due to the Corporation computed in accordance with § 1410.3 of this part, and shown on its certified statement, at the time the statement is filed. Certified statements shall be considered to have been filed and payments made in a timely manner if they are received on or before January 31 following the end of the calendar year on which the certified statement is based.

(c) *Premiums as obligations of insured banks.* Premiums required to be paid by § 1410.3 are obligations of the insured banks, and are to be paid at the times required by this section, regardless of whether the insured bank has assessed and collected any assessments under section 1.12 of the Act.

§ 1410.5 Delinquent premium payments and premium overpayments.

(a) *Delinquent payments.* Each insured bank shall pay to the Corporation interest on delinquent premium payments. All premiums will be considered delinquent if they are received after the time for payment specified in § 1410.4 of this part, including late payments caused by bank errors in the certified statement. The interest rate will be the United States Treasury Department's current value of funds rate, which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published quarterly in the Federal Register. The interest rate will be determined as follows:

(1) *Current year.* (i) For delinquent days occuring on or prior to March 31, the rate will be the TFRM rate that is published in the preceding December.

(ii) For delinquent days occuring from April 1 to June 30, the rate will be the TFRM rate that is published in March for the second quarter of the year.

(iii) For delinquent days occurring from July 1 to September 30, the rate will be the TFRM rate that is published in June for the third quarter.

(iv) For delinquent days occuring from October 1 to December 31, the rate will be the TFRM rate that is published in September for the fourth quarter.

(2) *Prior years.* The interest will be calculated quarterly and compounded annually at the rates applicable for each quarter as issued under the TFRM. For the initial year, the rate will be applied to the gross amount of the delinquent payment. For each additional year or portion thereof the rate will be applied to the net amount of the delinquent payment after it has been reduced by any premium credit under paragraph (c) of this section.

(b) *Other rights and remedies.* Payment of the interest specified in paragraph (a) of this section does not affect any other rights and remedies available to the Corporation.

(c) *Overpayments.* To the extent that any payment by a bank exceeds the required amount:

(1) The excess shall be credited against future premium payments by the bank which overpaid; or,

(2) Upon written request to the Corporation by the bank which

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overpaid, the excess shall be refunded to the bank.

§ 1410.6 Certified statements.

(a) *Forms.* The certified statements required to be filed by insured banks under the provisions of section 5.56 of the Act shall be filed with the Corporation. The certified statement forms will be furnished to all insured banks by, or may be obtained from, the Corporation. The following forms are available from the Corporation:

(1) *Form FCSIC 90-001: First Certified Statement.* The form shows the premium base for calendar years 1989 and 1990. The premium payment period is from January 1 of each year to December 31 of each year. The form must show the computation of the premium base and the bank's calculation of the premium due the Corporation.

(2) *Form FCSIC 90-002: Certified Statement.* The form shows the total of the premium base reported in the four quarterly periods in the annual premium payment period. The premium payment period is from January 1 of each year to December 31 of each year. The form must show the computation of the premium base and the bank's calculation of the amount of the premium due the Corporation.

(b) *Amendments to certified statements.* In the event of an amendment or correction of a previously submitted certified statement, the amending insured bank shall resubmit to the Corporation the appropriate certified statement along with the letter of explanation regarding the amendment or correction.

§ 1410.7 Documentation.

Each insured bank shall:

(a) Prepare and maintain accurate and complete records as necessary to prepare certified statements, including, but not limited to, records relating to the loans of each direct lending association and other financing institution that are able to make such loans because they are receiving, or have received, funding from the insured bank.

(b) Prepare and maintain its books and records in such a manner as to facilitate reconciliation with reports prepared from them.

(c) Maintain in its books and records documentation supporting its certified statement for a period no less than 5 years following the date of each certified statement.

(d) Make all records and any supporting documentation available, without limitation, to Corporation officials upon request.

Dated: September 24, 1990.

James M. Morris,

Acting Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 90-22941 Filed 9-27-90; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

46 CFR Parts 50, 52, 56, 58, 61, and 111

[CGD 83-043]

RIN 2115-AB41

Incorporation of Amendments to the International Convention for Safety of Life at Sea, 1974

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend 33 CFR Part 164 (Navigation Safety) and 46 CFR subchapter F (Marine Engineering) to incorporate amendments to the International Convention for the Safety of Life at Sea, 1974. This rulemaking is necessary because changes have been made to the 1974 SOLAS Convention and new technology has become available. These amendments will enhance personnel and vessel safety, protect the natural environment, and make the domestic merchant fleet more competitive with the international one.

DATES: Comments must be submitted on or before December 27, 1990.

ADDRESSES: Comments should be mailed to Commandant (G-LRA-2/3314) (CGD 83-043), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. Comments may also be delivered to, and will be available for inspection and copying at, the Marine Safety Council, Room 3406, at the address above, from 8:00 a.m. to 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Roger M. Dent, Engineering Branch, Office of Marine Safety, Security and Environmental Protection, 202-267-2206.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments, including data, views, and arguments. Each comment should bear the name and address of the person submitting it, identify this notice (CGD 83-043) and the specific section of the proposal to which it applies, and state the reasons for it. If you wish acknowledgement of receipt of comments, enclose a stamped, self-addressed postcard or envelope. No public hearing is anticipated, but one may be held if written requests for a hearing are received and if the opportunity to make oral presentations seems beneficial to the rulemaking. The Coast Guard will consider all comments before it proceeds with the rulemaking.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander Peter A. Richardson, Project Manager, and Mr. Patrick J. Murray, Project Counsel, Office of the Chief Counsel.

Background and Purpose

On November 1, 1974, the Assembly of the Inter-Governmental Maritime Consultative Organization (IMCO) adopted the International Convention for the Safety of Life at Sea 1974 (SOLAS 74). In May 1982, IMCO was renamed the International Maritime Organization (IMO). Invoking Article VIII of SOLAS 74, which contained procedures for amending the Convention, it adopted further resolutions; these recommended areas of the Convention in need of improvement. The United States was instrumental in the development of this Convention and its subsequent changes. To date, three sets of amendments have been adopted. The first set of amendments was approved by the Maritime Safety Committee (MSC) of IMO on November 20, 1981, and became effective on September 1, 1984, upon adoption by the IMO Assembly. These amendments deal primarily with subdivision and stability, machinery and electrical installations, periodically unattended machinery spaces, and measures for fire safety. The second set of amendments was approved by the MSC on June 17, 1983, and became effective on July 1, 1986. These amendments deal primarily with appliances and arrangements for lifesaving and with the carriage of dangerous goods. The MSC adopted Resolution MSC.13(57), "Adoption of Amendments to the International Convention for the Safety of Live at Sea, 1974," on April 11, 1989, which becomes effective on February 1, 1992. This Resolution addresses amendments to SOLAS 74, which could not be included in the 1983 SOLAS amendments, and recommends that Contracting Governments to the Convention embody, as interim measures, these proposed amendments in national regulations. Included in this Resolution

are changes to requirements of the bilge system and fuel system for machinery. This rulemaking incorporates the above amendments to chapters II-1, II-2, and V of SOLAS 74.

Since the U.S. is signatory to this international treaty, periodic upgrades of domestic regulations for the safety of vessels inspected by the Coast Guard are necessary to align our law with SOLAS 74, as amended. Through such upgrades, these regulations will come to comprise the international standards for the safety of vessels at large. Generally, the amendments to SOLAS 74 impose higher standards than our current law, and these requirements should lead to fewer vessels suffering casualties. Therefore, the Coast Guard proposes that the amendments to SOLAS 74 apply to all newly inspected vessels subject to subchapter F, regardless of size or type of voyage, except as otherwise specified in this rulemaking.

This proposed rulemaking incorporates requirements from Chapters II-1, II-2, and V of SOLAS 74 contained in the first set of amendments (1981). The second set of amendments (1983) does not contain requirements affecting this rulemaking. When discussing SOLAS 74, as amended, this rulemaking will cite the applicable numbers of paragraph and regulation. For example, SOLAS II-1/29.6 is the reference for Paragraph 6 of Regulation 29 of SOLAS Chapter II-1.

The Coast Guard compared that first set of amendments and Resolution MSC.13(57) with 46 CFR subchapter F, "Marine Engineering", and evaluated the latter against the former. The results appear in the following table. An asterisk (*) in the table means that SOLAS 74, as amended, is not now covered by Subchapter F and is addressed in this rulemaking. Since certain requirements of SOLAS 74, as amended, tabulated below have already been incorporated into 46 CFR Part 62—VITAL SYSTEM AUTOMATION, they do not figure in this rulemaking.

1981 SOLAS Amendments	Corresponding U.S. Regulation (1)
Chapter II-1:	
3	§§ 58.25* 8.230-5
20.2	§ 58.50-65*
21	§§ 58.50-30, 58.50-55, 62.30-5
26.1	§§ 52, 54, 56, 59.01-30, 58.05-1, 62.35-30
28.2	§§ 59.01-35, 62.25-1, 62.30-5
28.3	§§ 52.01-10, 56.50-30, 56.50-35, 56.50-45, 58.50-65, 59.50-60, 59.05-1, 59.01-35, 62.25-1, 62.30-5, 111.30-3, 111.1-10-5, 111.35-1, 113.05-1
29.1	§§ 56.01-45, 62.30-5, 111.10-75, 62.35-1, 62.35-15, 111.12-1
29.5	§§ 52.01-120, 54.15, 56.07-10, 56.05-1
27.3	§ 56.05-1
27.4	§ 58.05-1
27.5	§§ 56.50-20, 56.05-1, 56.85-10*, 58.10-15, 62.25-1, 62.25-15, 62.30-5, 62.35-5, 111.12-1
28.1	§ 56.60-5
26.3-26.4	§§ 30 CFR 184.26 & §§ 56.50-40, 76.21, 97.19
29 & 30	§ 58.25,*, 33 CFR 184.11*, 33 CFR 184.20*
31	§§ 61.40-1, 62.01-1, 62.01-3, 62.01-5, 62.20-1, 62.20-5, 62.25-1, 62.25-5, 62.25-10, 62.25-20, 62.30-5, 62.30-15, 62.35-5, 62.35-10, 62.50-1, 62.50-20
32.1	§ 52.01-120
32.2	§§ 62.35-1, 62.35-20
32.3	§ 52.01-110*
32.4	§ 56.50-30
32.5	§§ 52.01-115, 56.50-30
32.6	§ 52.01-110
33.1	§ 56.07-10
33.2	§ 56.50-15*
33.3	§§ 56.07-10, 56.50-10, 56.50-15
34.1	§ 56.30-5
34.2	§§ 56.05-1, 56.30-5
34.3	§ 56.05-1
34.4	§ 56.85-5*
36	§ 56.01-45*
39	§ 52.01-30*
37	§§ 62.35-5, 112.50-5, 113.35-3
38	§ 113.37-1
39	§ 56.50-35
40-54	§§ 61.40-1, 62.01-1, 62.01-3, 62.20-1, 62.20-3, 62.25-1, 62.25-15, 62.25-20, 62.30-1, 62.30-5, 62.30-15, 62.35-5, 62.35-10, 62.50-1, 62.50-20, 62.50-30
Chapter II-2:	
13.1	§§ 58.01-40*, 58.01-15*, 112.50-1
13.2	§§ 56.10, 56.15, 56.25, 56.35, 556.30, 56.50-60*, 56.50-65, 56.50-70, 56.50-75, 56.50-85*, 56.50-90*, 59.01-55*
13.3	§§ 56.50-60*, 56.50-90*, 58.01-55*
13.4	§ 56.50-60*
13.5	§§ 62.35-40, 62.50.30
15.6	33 CFR 184.470
18.2 & 18.2	§§ 56.50-1, 56.50-5, 56.50-65
51	§ 58.10
64.2.5	§ 56.50-90*
58.1.8	§ 56.50-65*
Chapter V:	
19	§ 58.25-65*

Future amendments	Corresponding U.S. Regulation (1)
Chapter II-1	
21.1.5	§ 56.50-50*
21.2.9	§ 56.50-50*
Chapter II-2:	
15.2.5	§§ 56.50-60*, 56.50-90*
15-3	§§ 56.50-60*, 58.50-90*
Chapter V:	
12	33 CFR 184.35*

(1) Cites to 46 FR, unless otherwise specified.

A recent Final Rule entitled Intervals for Drydocking and Tailshaft Examination on Inspected Vessels (CGD 84-024) went into effect on September 23, 1988. It changed the interval for drydocking vessels from one inspection every two years to inspections in multiples of thirty months (i.e., two inspections within any five-year period, except that no more than three years may elapse between any two inspections). But it left the interval for inspecting major machinery at two years. Because of this continued misalignment of inspection intervals for drydockings and major machinery, that Final Rule causes a hardship for owners of some vessels. The most opportune time for inspecting major machinery—boilers and pressure vessels—is during drydocking, when the machinery is secured. This rulemaking proposes realignment of intervals for inspecting major machinery to coincide with those for drydocking. It will not compromise vessels' safety since it increases the interval by just six months. Machinery whose inspection does not rely upon vessels' being drydocked for inspection will continue to be inspected at previous intervals.

There have been continuing proposals by ship designers, shipyards, and shipowners for the use of nonmetallic piping in concealed spaces on board ship. Coast Guard regulations prohibit this use of nonmetallic piping unless the piping is within trunks completely surrounded by "A" class divisions. SOLAS 74, as amended, does not preclude this use of nonmetallic piping, while classification societies, as well as the International Association of Classification Societies, permit it. Therefore, the Coast Guard proposes to provide alternative requirements for piping in concealed spaces and to permit the installation of nonmetallic piping under certain restrictions. Such a change would reduce the costs of constructing ships and would provide alternatives to domestic regulations that currently exceed those of other maritime nations.

For many years domestic regulations have required individual bilge suctions to be led from manifolds located within the same space as the bilge pump. In the early 1970s, the Coast Guard developed regulations permitting common-rail bilge and ballast systems for cargo spaces on combined ore or oil bulk carrier plying the Great Lakes. Since that time, several ship designers have asked to install common-rail bilge systems on cargo and passenger vessels. The Coast Guard has, as policy, accepted these installations provided they satisfied certain other design restrictions. The main concern with accepting common-rail bilge systems is the risk of losing suction for the entire system if the common line fails or leaks. The additional criteria reduce that risk and make the common-rail bilge system equivalent to the

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conventional manifold bilge system. Such a common-rail bilge arrangement would be acceptable under SOLAS 74, as amended. The Coast Guard proposes new regulations to permit common-rail bilge systems on all vessels as an equivalent alternative to the existing requirements for a manifold bilge system.

Coast Guard regulations require, for all vessels subject to 46 CFR subchapter F and not fitted with an auxiliary means of steering, dual-power hydraulic steering apparatus having two independent pumps and connections. Each independent steering gear power unit must be capable of meeting the rudder movement standard of 35° on one side to 30° on the other side in not more than 28 seconds. These regulations are not consistent with the 1981 amendments to SOLAS 74. For passenger vessels without auxiliary steering systems, SOLAS 74, as amended, requires that main steering gear, consisting of two or more identical power units, be capable of meeting the same rudder movement standard with any one unit out of service. For cargo vessels without auxiliary steering systems, SOLAS 74, as amended, requires that main steering gear be capable of meeting the same rudder movement standard with all power units in service. The Coast Guard does not consider the 1981 amendments to SOLAS 74 to compromise the safety of the vessel, and proposes to modify its current requirements for dual-power hydraulic steering apparatus to coincide with these amendments.

Discussion of Proposed Rules

33 CFR Part 164—Navigation Safety Regulations

1. Section 164.11. To incorporate SOLAS II–1/29.6 and II–1/29.15, a revised paragraph (t) would require that, while a vessel is under way in the navigable waters of the U.S., except the St. Lawrence Seaway, enough power units must be in operation to maintain the minimum standard for rudder movement. The existing provision, in practice, applies only to foreign vessels fitted with more than two power units. A combination of these power units must be operated simultaneously to meet the standard for moving the rudder from 35° on one side to 30° on the other side in not more than 28 seconds. Under existing regulations, U.S. domestic vessels do not have to meet this requirement since these vessels are required to have two power units, each able to meet the standard for rudder movement. The proposed provision applies to domestic vessels as well and, consistent with SOLAS 74, as amended, it imposes a standard of performance instead of a specification (and leaves the number of power units to the owner of the vessel).

2. Section 164.35. To incorporate SOLAS V/12(f) and clarify that information must be available at steering stations other than the pilothouse, a new paragraph (o) would require that all vessels have a telephone or other means of communication to provide heading information to the emergency steering station. Also, each vessel of 500 gross tons and over and constructed on or after February 1, 1992, must be provided with arrangements for supplying visual compass readings to the emergency steering station.

3. Section 164.39. The existing section addresses steering gear requirements for both domestic and foreign tank vessels of 10,000 gross tons or more. New paragraph (a) moves steering requirements for domestic tank vessels into 46 CFR subpart 58.25; this places all steering requirements for domestic vessels in one section and leaves this new section applicable only to foreign tankers of 10,000 gross tons or more. New paragraph (b) interprets and clarifies definitions used in SOLAS II–1/29. "Speedily regained", the most contentious of these definitions, describes the acceptable response by the crew, without the use of tools, to correct a steering gear failure. This is a vague term in SOLAS 74, as amended. The Coast Guard has maintained at IMO that 10 minutes is the maximum allowable recovery time; this will preclude the use of tools and multiturn valves. New paragraph (c) specifies requirements for all tankers constructed on or after September 1, 1984, and of 10,000 gross tons or more, and incorporates by reference SOLAS II–1/29 and II–1/30. New paragraph (d) specifies general steering gear requirements for all tankers constructed before September 1, 1984, and of 10,000 gross tons or more, and incorporates by reference SOLAS II–1/29.19. New paragraph (e) specifies alternative steering gear requirements for all tankers constructed before September 1, 1984, and of 40,000 gross tons or more that do not meet the single-failure criterion of SOLAS II–1/29.16, and incorporates by reference SOLAS II–1/29.20. The inclusion of SOLAS II–1/29.20 is to ensure that tankers built before September 1, 1984, meet, as a minimum, the single-failure criterion that rose from the wreck of the AMOCO CADIZ. New paragraph (f) specifies requirements for existing vessels built before September 1, 1984, and incorporates by reference SOLAS II–1/29.15.

46 CFR Subchapter F—Marine Engineering

4. Section 50.10–35. To incorporate SOLAS II–1/1.2 and II–1/1.3, the proposed section defines for the subchapter the term "constructed".

5. Section 52.01–110. To incorporate SOLAS II–1/32.3, proposed paragraph (h) requires high-water-level alarms for watertube boilers in main propulsion. No new steam-powered vessels are being built, and the Coast Guard is not aware of any planned, so paragraph (h) should have a minimal impact on industry.

6. Section 56.50–15. To incorporate SOLAS II–1/33.2, proposed paragraph (k) requires drains in steam piping. Safe practice independently requires that steam piping be designed to minimize the effect of water hammer, and drains are the most economical way to minimize it. Such drains are typically installed in steam piping today. Since this proposal requires the most economical approach to safe practice, and since most steam piping already takes this approach, paragraph (k) will not burden the industry.

7. Section 56.50–50. To incorporate SOLAS II–2/54.2.5, proposed paragraph (a)(4) requires that bilge systems, when they serve enclosed cargo spaces carrying flammable or toxic liquids, be designed to prevent the inadvertent pumping of flammable or toxic liquids through machinery space piping or pumps. To incorporate a future amendment to SOLAS II–1/21.1.6, proposed paragraph (a)(5) requires improved arrangements for drainage of bilges for both passenger and cargo vessels. To incorporate the Coast Guard policy that already allows such a system, new paragraph (c)(4) allows a common-rail bilge system as an alternative to the conventional manifold bilge system required by § 56.50–50(c)(1). This new paragraph specifies the additional criteria that a common-rail system must satisfy to be considered equivalent to a conventional manifold bilge system. The requirement allowing a common line serving the bilge and ballast system for cargo spaces on Great Lakes cargo vessels has been moved from paragraph (h) of this section to locate all common-rail issues together. This new paragraph also requires separation of such a system from a common-rail bilge system serving other spaces; the Coast Guard proposes that the two systems be led separately from a valved manifold located at the common pump. Paragraph (d) incorporates a new definition for "molded depth" consistent with a future amendment to SOLAS II–1/21.2.9 and is applicable to new passenger vessels on an international voyage. Proposed paragraph (h) is revised to reflect our moving to paragraph (c)(4) of the requirement allowing a common-rail pipe to serve the bilge and ballast spaces on a Great Lakes vessel.

8. Section 56.50–60. To incorporate SOLAS II–2/15.2.1, paragraph (b) is amended by requiring that piping and components of oil systems containing heated oil under pressure be located and illuminated so leaks can be readily observed and that they be designed to prohibit the possibility of heating an oil not requiring heating. The last sentence in § 58.01–15 is being added to revised paragraph (b), to place requirements for the heating of oil in one section. The Coast Guard feels that the hazard involved in undetected leakage of oil and the slight added construction cost justifies applying this requirement to all new vessels covered by subchapter F. This will have a minimal monetary impact on vessel construction since, before construction, the systems can be economically designed to accommodate these requirements. Also, to incorporate part of SOLAS II–2/15.2.5, proposed new paragraph (d)(1)(i) provides for alternative arrangements for remote control of positive shut-off valves for oil tanks when located in a shaft alley, tunnel, or similar space. This should not impose an economic burden on industry, because it provides alternatives to present requirements. To incorporate SOLAS II–2/15.3, new paragraph (m) proposes to apply certain requirements applicable to fuel oil systems to pressurized lubrication systems. Also, to incorporate SOLAS II–2/15.4, new paragraph (n) proposes to apply certain requirements applicable to fuel oil systems to other flammable oils, such as hydraulic fluids and heat-transfer fluids.

9. Sections 56.50–65 and 56.50–70. These sections are amended to make editorial corrections so the reference to "§ 58.01–25(a)" now reads § 58.01–25."

10. Section 56.50–80. To incorporate the future amendment to SOLAS II–2/15.3.1, proposed paragraph (h) requires that sight-flow glasses used in lube oil systems be fire-resistant. Proposed paragraph (h) replaces existing paragraph (h) since the requirement for a shut-off valve on the lube oil tank is now part of § 56.50–60(d).

11. Section 56.50–85. To incorporate part of SOLAS II–1/20.2, proposed paragraph (a)(7) provides efficient, expeditious means of closing tank vents on deck weathertight. The Coast Guard proposes to define what is an acceptable "efficient, expeditious" means of closing a tank vent on deck weathertight. The Coast Guard interprets "efficient, expeditious closure" as a device that, under all conditions, closes automatically when water reaches it, such as a ball check valve or a hinged closure that closes automatically. This reflects current practice of industry and the American Bureau of Shipping (ABS). To incorporate SOLAS II–2/59.1.6 and II–2/15.2.7, the proposed revision to paragraph (a)(11) requires that all tanks be equipped to protect against overpressurization by liquids. Pressurizing a tank above its design pressure may result in a catastrophic failure, so good design practice requires proper venting to prevent overpressurization.

12. Section 56.50–90. To incorporate parts of the amendments to SOLAS II–2/15.2.6 and II–2/15.3 that come into effect on February 1, 1992, proposed paragraph (a) and two new paragraphs (c) and (d) require all cargo tanks and fuel oil tanks to be equipped with devices to indicate liquid level. These devices are intended to reduce the risk of the inadvertent spill of, and then ignition of, the flammable liquid during the sounding of the tank.

13. Section 56.50–105. This section is amended to make an editorial correction so the reference to "Table 56.95–10" now reads "§ 56.95–10."

14. Section 56.60–25. To incorporate current Coast Guard policy, proposed paragraph (a) allows the use of nonmetallic pipe for nonvital fresh water and saltwater service to run in concealed spaces. The Coast Guard has allowed such service, considering further design criteria, such as the fire integrity of bulkheads, the proper maintenance of decks and draft stops, or the installation in the concealed space or an approved smoke detection system. Existing regulations require this piping to be of metallic construction or nonmetallic piping surrounded by "A" class divisions. SOLAS 74, as amended, does not preclude the use of nonmetallic materials for this application.

15. Sections 58.01–10 and 58.01–15. To incorporate SOLAS II–2/15.1, proposed § 58.01–10 outlines under what conditions fuels with flashpoints between 110° F and 140° F may be used. It also gives guidance on acceptance of fuels having flashpoints below 110° F. The requirements governing fuel oil for internal-combustion engines and boilers would all go into one section; therefore, § 58.01–15 is being subsumed by § 58.01–10.

16. Section 58.01–25. This section is amended to make an editorial correction so the reference to "§ 11.50–5(a)" now reads "§ 111.103".

17. Section 58.01–40. To incorporate SOLAS II–1/26.8, proposed new § 58.01–40 requires that propulsion machinery and essential auxiliary machinery be designed to operate within certain angles of inclination. Since classification societies now require as much, the Coast Guard is proposing this for all new vessels subject to subchapter F.

18. Section 58.01–45. To incorporate SOLAS II–1/35, proposed § 58.01–45 requires that machinery spaces be adequately ventilated by systems properly designed to ensure both the safety of the crew and the operation of the machinery. The requirement is intended to prevent machinery failure due to overheating, and to prevent the accumulation of hazardous vapors in machinery spaces. Such a regulation should not affect industry as it just codifies present design practice.

19. Section 58.01–50. To incorporate SOLAS II–1/36, proposed § 58.01–50 requires measures to reduce noise levels to acceptable levels within machinery spaces. On June 2, 1982, the Coast Guard published, in the form of Navigation and Vessel Inspection Circular 12–82 (NVIC 12–82), "Recommendations on Control of Excessive Noise", guidelines for acceptable noise levels. These guidelines implement the IMO Assembly Resolution A.468(XII), "Code of Noise Levels on Board Ships". The Coast Guard will use this NVIC as a guideline in the implementation of this new proposed regulation. The acceptable noise levels proposed for machinery spaces are based on this IMO resolution and are determined by sound-level meters that employ "A-weighting" filters (dB(A)). Since the health hazards associated with excessive noise in the workplace are well documented, these requirements apply to all new vessels. If a vessel cannot be designed to limit the noise levels, the operator must provide hearing protection. The cost of hearing protectors is about $250.00 a vessel.

20. Section 58.01–55. To incorporate paragraphs 2.3 and 2.4 of SOLAS II–2/15, proposed § 58.01–55 specifies fuel tank arrangements to prevent spilled fuel from coming in contact with heated surfaces. This regulation should not impose any burden on industry since the requirements can be incorporated into the initial design of the system.

21. Subpart 58.03. In accordance with present regulatory procedures, this subpart identifies two new standards that will be incorporated by reference into 46 CFR part 58.

22. Section 58.05–1. To clarify the extent of adoption of requirements of

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ABS for internal combustion propulsion engines installed aboard vessels inspected by the Coast Guard, proposed paragraph (e) accomplishes an editorial change. The change includes consideration of the arrangement of main propulsion machinery, as well as requires that all auxiliary systems connected to the main propulsion machinery meet or exceed the standards of ABS.

23. Section 58.05-10. To incorporate SOLAS II-1/27.5, paragraph (a) requires automatic shutdown of main propulsion engines upon the loss of lubricating oil. Most engines are already equipped with these shutdowns because of the potential for extensive damage to the engine upon loss of lubricating oil. Similar shutdown requirements are included in 46 CFR subchapter J and 46 CFR part 62 and apply to prime movers for generators, gas turbines, and main propulsion machinery.

24. Subpart 58.25. To incorporate applicable sections of SOLAS II-1/3, II-1/29, and II-1/30, subpart 58.25 is completely rewritten. This subpart was last revised in 1970. Since then, the maritime community has gained substantial domestic and international experience with design and failure of steering gear. By deleting all of the text of existing subpart 58.25 and shifting into new subpart 58.25 both the provisions of existing subpart 111.83, Electric Steering Systems, and those of 33 CFR 164.39, applicable to U.S. vessels on international voyages, this proposed rule collects into one subpart requirements for steering gear applicable to domestic vessels (and, in turn, permits their removal from Subchapter J, Electrical Engineering). A detailed description of each proposed change to subpart 58.25 follows.

25. Section 58.25-1. This proposed section defines the applicability of this revised subpart. Paragraph (a) applies this subpart to all vessels that are contracted for after the effective date of this rulemaking and to existing vessels engaged on international voyages whose steering gear was contracted for between September 1, 1984, and the effective date of this rulemaking. The latter category consists of vessels subject to SOLAS 74, as amended, that already comply with the requirements of SOLAS II-1/29 and II-1/30 for the issuance of a SOLAS certificate. Paragraph (b) permits vessels that are not subject to SOLAS 74, as amended, and that are contracted for before the effective date of this rulemaking, or vessels subject to SOLAS 74, as amended, and contracted for before September 1, 1984, to meet either the requirements of this revised subpart or the requirements in effect at the time their steering gear was installed.

26. Section 58.25-5. Proposed paragraph (a) consolidates some of the definitions concerning steering systems from SOLAS II-1/3 and from existing § 111.83-3. It also clarifies terms used in this subpart that are not adequately defined elsewhere. Proposed paragraph (b) consolidates general requirements from SOLAS II-1/29.1 and from parts of existing §§ 58.25- and 58.25-70 to provide all vessels with main and auxiliary steering systems. Proposed paragraph (c) repeats existing 58.25-1(b), which covers replacement of steering gear on existing vessels. proposed paragraph (d) incorporates part of SOLAS II-1/29.2.1, which requires that all steering gear components and the rudder stock be of sound and reliable construction; it also applies to non-pressure-containing steering gear components and requires that such components be designed at least in accordance with standards of classification societies, such as ABS. Proposed paragraph (e) parallels part of SOLAS II-1/29.2.1 and clarifies the application of the single-failure criterion. Each control system must be functionally independent, as must be the main and auxiliary steering gear. The connections of the control system to the power unit, e.g., control valves and differentials, have been the cause of many casualties, and applying the single-failure criterion to shared components should eliminate failures from common causes. Proposed paragraph (f) is consistent with current Coast Guard policy and aims at preventing the degradation of the safety and reliability of the steering gear by other systems. Proposed paragraph (g) incorporates current policy of the Coast Guard, of not allowing thrusters for the required steering capabilities, and clearly defines the intent of existing regulations. Proposed paragraph (h) restates existing § 58.25-30, requiring means of steadying the rudder in emergencies. Paragraph (i) restates existing § 58.25-15, requiring the submittal of plans for steering arrangements in accordance with subpart 50.20.

These revisions should have little economic impact on the marine industry since they only restate requirements of SOLAS 74, as amended, of existing regulations, and of current policies of the Coast Guard.

27. Section 58.25-10 Paragraph (a) proposes to incorporate the requirements for two separate and independent steering systems outlined in SOLAS II-1/29.1 and II-1/29.9 and in existing §§ 111.93-5, 111.93-7, and 111.93-9(d). Paragraph (b) proposes requirements for the design of rudder stocks from SOLAS II-1/29.3 and resembles existing §§ 58.25-1(a), 58.25-5(b), and 58.25-20(a). Paragraph (c) proposes to incorporate SOLAS II-1/29.4 on sizing of the rudder stock and on rudder performance for auxiliary steering gear and to replace existing §§ 58.25-5(c), 58.25-10(b), and 58.25-20(b). Paragraph (d) proposes to incorporate existing § 58.25-25(c) and to exempt double-ended ferries outfitted with two independent steering gear from the requirements for auxiliary steering gear. Paragraph (e) proposes to incorporate SOLAS II-1/29.6.1, which does not require auxiliary steering gear where there are two or more identical power units. This proposed regulation allows the same alternative steering arrangements that SOLAS 74, as amended, allows, through existing § 58.25-25(a) requires that each of two independent power units must be able to meet the criteria for rudder movement. Paragraph (e) incorporates SOLAS II-1/29.6.1.3 which sets out single-failure criteria for components of piping in steering systems and their power units. However, like SOLAS II-1/29.6.2, paragraph (e)(4) permits the continued use, on vessels with steering gear installed before September 1, 1990, and engaged on international voyages, of steering gear not meeting the single-failure criterion but having a proven record of reliability. Paragraph (f) proposes to incorporate part of SOLAS II-1/29.15, which requires all vessels of over 70,000 gross tons to have steering gear comprised of two or more identical power units.

28. Section 58.25-15. To incorporate SOLAS II-1/29.10 and the intent of existing § 58.25-50(b), proposed § 58.25-15 requires a means of communication between the pilothouse and the steering gear compartment. To meet this requirement, the Coast Guard proposes, as an acceptable means of communication, a sound-powered telephone meeting the requirements of subpart 113.30, which reflects industry practice.

29. Section 58.25-20 proposed paragraph (a) replaces existing § 58.25-70(c) on the design of piping. Proposed paragraph (b), based on SOLAS II-1/29.2.3 and clarifying existing § 58.25-70(b), specifies requirement for relief valves in hydraulic piping of steering systems. Proposed paragraph (c) incorporates SOLAS II-1/29.12.1 and II-1/29.12.3 on storage tanks for hydraulic fluid and on backup of the system. The Coast Guard proposes to exempt vessels in service on lakes, bays, and sounds from the requirement for a makeup storage tank because of the vessels' proximity to assistance, the delays involved with using the tank, and the overall requirements on steering gear for these vessels contained in this rulemaking. Paragraph (d) proposes to ban the use of split flanges and flareless fittings of the grip or bite type in hydraulic piping of steering system because of (1) the results of a study of failures with split flanges sponsored by the Coast Guard and (2) information on casualties.

30. Section 58.25-25. To incorporate SOLAS II-1/29.11 and the intent of existing §§ 58.25-5(d), 58.25-50(a), and 113.40-5, proposed paragraph (a) requires indication of rudder angle at the steering station in the pilothouse and in the steering gear compartment. Referring to existing §§ 113.40-10(c) and 112.15-5(h), proposed paragraph (b) specifies requirements on the design, performance, and source of power in an emergency for rudder angle indicators. Referring to existing §§ 113.43-3 and 113.43-5, proposed paragraph (c) requires installation, in the pilothouse, of an alarm showing when the angle of the rudder differs more than 5 degrees from the setting of the followup control. To incorporate SOLAS II-1/29.5.2 and II-1/29.8.4 and existing § 111.93-13(b), proposed paragraph (d) requires installation, in the pilothouse, of an alarm showing failure of the power to the main and auxiliary means of steering and their control systems. Also, to incorporate one part of SOLAS II-1/29.12.2, paragraph (d) requires that a low level of hydraulic oil in the reservoir for power-operated steering systems be indicated by alarm in the pilothouse. To incorporate part of SOLAS II-1/30.3 and existing § 111.93-13(c), proposed paragraph (e) requires installation, in the machinery space, of alarms showing failure of the power to electric and electro-hydraulic means of steering. Also, to incorporate another part of SOLAS II-1/29.12.2, paragraph (e) requires that a low level of hydraulic oil in the reservoir for power-operated steering systems be indicated by alarm in the compartment containing main machinery. To incorporate SOLAS II-1/30.1 and existing § 111.93-13(d), paragraph (f) requires installation, in the pilothouse and at the control station for main machinery, of a pilot light—one for each motor serving the main and auxiliary means of steering—showing which steering motor is running.

31. Section 58.25-30. To incorporate SOLAS II-1/29.5.1 and part of existing § 111.70-3(f), this proposed section requires automatic restart of motors for steering gear after a power failure.

32. Section 58.25-35. This proposed section (1) restates from existing §§ 58.25-60 and 58.25-65(b) requirements for arrangement of the steering helm and (2) sets forth human factors that must be considered in the design of the pilothouse.

33. Section 58.25-40. This proposed section incorporates SOLAS II-1/29.13 for handrails and for gratings or other non-slip surfaces in steering gear compartments and incorporates the footnote to existing §111.93-13 for location of the equipment for steering gear in its compartment. Based on experience from casualties, the requirements are necessary for personnel safety; but they will have only minor economic impact on vessels not in international service since they reflect existing practice.

34. Section 58.25-45. To limit shock and meet the intent of SOLAS II-1/29.8.3, this proposed section restates requirements from existing § 58.25-40(a) for buffers to be installed in steering gear other than the hydraulic type. It applies only to vessels in service on oceans, coastwise, or on the Great Lakes and, as it just restates existing requirements, it will not affect industry.

35. Section 58.25-50. This proposed section restates requirements from existing § 58.25-35 for rudder stops and clarifies acceptable arrangements for cutting power to the steering gear before the rudder reaches the stops.

36. Section 58.25-55. This proposed section, addressing protection of the steering systems from overcurrent, only relocates existing requirements and will not burden industry. Paragraphs (a) and (b), drawn from existing §§ 111.93-11 (a) and (b), which reflect interpretation by the Coast Guard of parts of SOLAS II-1/30.2 and SOLAS II-1/30.3, restate them and require protection from overcurrent in feeder circuits of steering gear. Paragraph (c), drawn from existing §111.93-11(c), which reflects interpretation by the Coast Guard of part of SOLAS II-1/30.3, restates it and addresses protection from overload for all motors in steering gear and their control systems. Paragraphs (d) and (e), drawn from existing §§ 111.93-11(d) and 111.93-11(e), which reflects interpretation by the Coast Guard of SOLAS II-1/29.8.5, restate them and require protection from short circuit in circuits serving controllers for motors in steering gear. Paragraph (f), drawn from SOLAS II-1/30.4, permits, for vessels of less than 1,600 gross tons, the installation of one circuit for the main steering gear when a power-driven auxiliary steering gear either is not driven by electric power or is driven by an electric motor primarily intended for other services.

37. Section 58.25-60. To incorporate the intent of SOLAS II-1/29.17, this section proposes acceptance of non-duplicated rudder actuators for certain vessels. SOLAS 74, as amended, specifies design guidelines for non-duplicated rudder actuators installed on tank vessels that are of 10,000 gross tons and over but of less than 100,000 deadweight tons and that are engaged on international voyages. However, SOLAS 74, as amended, does not preclude the installation of these actuators on tankers not within the prescribed limits, nor does it preclude the installation of these actuators on passenger vessels or cargo vessels. Considering the greater impact on the environment and property if a steering system with a non-duplicated rudder actuator failed on a vessel of over 100,000 deadweight tons, the Coast Guard determined to keep such tonnage as the upper limit for these actuators. Acceptance of these actuators, such as rotary-vane actuators, depends primarily on their meeting IMO Assembly Resolution A.467 (XII), entitled "Guidelines for Acceptance of Non-Duplicated Rudder Actuators for Tankers, Chemical Tankers, and Gas Carriers of 10,000 Tons Gross Tonnage and Above But Less Than 100,000 Tons Deadweight". This rulemaking proposes this Resolution for incorporation by reference. This requirement is already in effect for certain vessels subject to SOLAS 74, as amended, and provides an alternative to conventional rudder actuators on other vessels; therefore, this requirement will not have an economic impact on industry.

38. Section 58.25-65. Proposed paragraphs (a) through (d) restate requirements from existing § 111.93-7 that cover feeder circuits serving electric-driven steering power units. This section reflects interpretations by the Coast Guard of applicable requirements in SOLAS II-1/29.14 and II-1/30.2. These proposed requirements do not deviate from existing regulations and so will not increase the burden on industry.

39. Section 58.25-70. This proposed section specifies requirements for steering control systems. Proposed paragraphs (a) through (g) generally derive from existing parts of §§ 58.25-45(a) and 111.93-9 as modified through interpretations by the Coast Guard of applicable parts of SOLAS II-1/29.5.2, II-1/29.8.2., and II-1/29.8.3. Proposed

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paragraph (h), derived from parts of existing §§ 58.25–45(a) and 58.25–50(a) and from SOLAS II–1/29.7.1 and II–1/29.7.2, requires two control systems in the pilothouse when there are two or more main steering power units; each controls must be independent of each other and be arranged for full followup. Proposed paragraph (i), combining parts of existing § 58.25–45(a), and of § 58.25–55 (a) and (c), with part of SOLAS II–1/29.7.1, requires that there be two independent steering control systems in the pilothouse when only the main steering gear is power-operated. Proposed paragraph (j) incorporates part of SOLAS II–1/29.7.2, which requires independent control from the pilothouse of power-driven auxiliary steering gear. While this paragraph represents an increase in requirements for vessels not in international service, its economic impact should be nil, since common practice already favors fast recovery from failures of main steering gear. Proposed paragraph (k), based in part on SOLAS II–1/29.7.1 and in part on SOLAS II–1/29.7.2, requires that control of the main and auxiliary steering gear be available in the steering gear compartment. This reflects a change from existing § 58.25–50(a) regarding the alternative steering station. The Coast Guard now proposes that this station be located in the steering gear compartment instead of on the aft weather deck. This arrangement is consistent with SOLAS 74, as amended, and modern designs. Paragraph (k), also based in part on existing § 58.25–50(c), also requires that steering control systems between the pilothouse and steering gear compartment be independent. The other paragraphs pick up existing requirements, and this economic impact likewise should be nil.

40. Section 58.25–75. This proposed section, based on policy of the Coast Guard and on data from casualties, clarifies requirements concerning the acceptable materials for components in steering systems.

41. Section 58.25–80. This proposed section, to incorporate the intent of SOLAS V/19, requires equipment necessary to maintain the integrity of the steering gear when an automatic pilot is used. It is consistent with current policy of the Coast Guard and with various operational requirements, such as those in § 67.18–1(c). It should have no economic impact.

42. Section 58.25–85. This proposed section sets forth special requirements for steering gear and applies only to tank vessels under U.S. flag. Current requirements for such vessels appear in 33 CFR subpart 164.39, "Steering gear: Tankers." To bring all requirements for steering covering domestic vessels into one place, the Coast Guard would move the requirements for domestic vessels from 33 CFR subpart 164.39 into 46 CFR subpart 58.25. Proposed paragraph (a) requires that all tank vessels, regardless of their sizes or their dates of construction, meet the applicable steering gear requirements of §§ 58.25–1 through 58.25–80. To incorporate the intent of SOLAS II–1/29.15, proposed paragraph (b) requires that the main steering gear comprise two or more power-driven steering units for all tank vessels of 10,000 gross tons and over. To incorporate SOLAS II–1/29.16, proposed paragraph (c) specifies requirements for steering gear that apply to all tank vessels of 10,000 gross tons and over and constructed on or after September 1, 1984. To incorporate SOLAS II–1/29.17, proposed paragraph (d) permits, for those tank vessels of over 10,000 gross tons but less than 100,000 deadweight tons, the use of non-duplicated rudder actuators. To incorporate SOLAS II–1/29.18, proposed paragraph (e) permits the continued use, on tank vessels of less than 70,000 deadweight tons and engaged on international voyages and having steering gear installed before September 1, 1986, of steering gear not meeting the single-failure criterion but having a proven record of reliability. To incorporate the intent of SOLAS II–1/29.19, proposed paragraph (f) specifies requirements for steering gear that apply to tank vessels of 10,000 gross tons and over and constructed before September 1, 1984. To incorporate the intent of SOLAS II–1/29.20, proposed paragraph (g) specifies acceptable means of speedily regaining steering capability in case of a single failure in the piping or the power unit. This paragraph applies to tank vessels of over 40,000 gross tons and constructed before September 1, 1986, but not meeting the single-failure criterion of SOLAS II–1/29.16.

43. Section 58.30–5. To incorporate SOLAS II–1/34.4, proposed paragraph (d) requires arrangements to drain liquids from, and minimize contamination by oil of, pneumatic systems. Pneumatic systems must stay dry and free of oil to avoid failure. Most are already designed with drains and oil separators. Thus, this requirement should not burden industry.

44. Part 61. The Coast Guard proposes changes for Table 61.05–10 and §§ 61.05–10, 61.05–15, 61.05–20, 61.10–5, and 61.15–5 to align intervals for inspections and tests of major machinery with new intervals for drydockings of vessels. Generally, existing regulations require inspections of major machinery, such as pressure vessels and boilers, in two-year multiples, to coincide with a vessel's regular inspection for certification. Numerous owners and operators have suggested that such scheduling creates an economic hardship since an inspection for certification is not always the appropriate time for an inspection of a boiler or a pressure vessel. Rather, these owners and operators suggest, the intervals for drydockings are more appropriate for such inspections and tests of major machinery. The Coast Guard agrees and proposes that inspections of major machinery occur at a rate of two inspections in any five-year period, with no more than three years between any two inspections. This interval will coincide with the new one for drydockings. Also, a new Table 61.05–10 collects into a single table the intervals for all inspections and tests of boilers, except of automation controls. Since this should decrease a vessel's time out of service, the owners and operators should recognize economic savings.

Regulatory Evaluation

These proposed regulations are not major under Executive Order 12291 and not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The economic burden on the public as a result of this proposal is so minimal that further evaluation is unnecessary. The net benefits due to savings from these proposed changes should outweigh the burden.

As discussed in *Background and Purpose*, above, the main purpose of this rulemaking is to incorporate SOLAS amendments addressing issues on marine engineering into existing Coast Guard regulations. U.S.-flag cargo and tank vessels of 500 gross tons and more, and passenger vessels carrying more than twelve passengers and engaged on international voyages, already must comply with SOLAS 74, as amended. Thus, this rulemaking will have no economic impact on these vessels. This rulemaking does, however, affect non-SOLAS vessels since the Coast Guard, in general, proposes to apply regulations of SOLAS 74, as amended, to all new U.S. vessels subject to subchapter F.

Although some of the proposed changes will result in minor cost increases, others will result in savings that more than offset these costs. Many of the proposed changes reflect current industry practice or can be incorporated readily into the design of the vessel before construction and will have no direct burden on the marine industry.

The changes that would have the greatest economic burden upon the industry affect steering gear. However, the increase in cost associated with meeting the proposed changes represents a small fraction of the total cost for a steering system and should be offset by the savings anticipated from the reduction in number of and cost of casualties.

The remaining part of this rulemaking addresses non-SOLAS changes, i.e., proposals that allow greater application of common-rail bilge systems, an increase in the inspection interval for major machinery, and greater application of plastic pipe in concealed spaces. These changes will bring only savings to the marine industry. The proposals on the bilge system and on plastic pipe permit, without reducing safety, attractive alternatives to the expensive means required by the existing regulations. Also, the proposal on increasing the inspection interval of major machinery to coincide with the vessel's drydocking would reduce the number of inspections over a vessel's life and reduce the vessel's time out of service, all resulting in long-term savings to the owner.

Regulatory Flexibility Act

These proposed regulations would apply to owners and operators of commercial vessels registered in the U.S. Few of these, if any, qualify as small entities. Again, the economic impact of these proposed rules on individual owners and operators should be minimal. Therefore, the Coast Guard certifies that these rules, if adopted, will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rulemaking imposes on the public no new or added requirements for collecting information or recordkeeping. In particular, it does not change any such requirements in 33 CFR part 164 or CFR parts 52, 56, 58, 61, or 111.

Environmental Assessment

The Coast Guard has considered the environmental impact of the proposed regulations and concluded that, under section 2.B.2.c of Commandant Instruction M16475.1B, these proposals are categorically excluded from further treatment in environmental documents.

Federalism

The Coast Guard has analyzed the proposed regulations in accordance with the principles and criteria of Executive Order 12612 and has determined that this rulemaking does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 164

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 52

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 58

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 111

Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 33, part 164, and title 46, parts 50, 52, 56, 58, 61, and 111, of the Code of Federal Regulations as follows:

Title 33—[Amended]

PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1223, 46 U.S.C. 3703. Sec. 164.61 also issued under 46 U.S.C. 6101; 49 CFR 1.46(n).

2. Section 164.03 is amended by revising paragraph (b) to read as follows:

§ 164.03 Incorporation by reference.

* * * * *

(b) The materials approved for incorporation by reference in this part, and the sections affected, are:

International Maritime Organization, 4 Albert Embankment, London SE1 7SR England
- International Convention for the Safety of Life at Sea (SOLAS), Consolidated Text of the 1974 SOLAS Convention, the 1978 SOLAS Protocol, and the 1981 and 1983 SOLAS Amendments, 1988—164.39

Radio Technical Commission for Marine Services, P.O. Box 19087, Washington, DC 20036
- Paper 12/78/DO–100 Minimum Performance Standards, Loran C. Receiving Equipment, 1977.—164.41

3. Section 164.11 is amended by revising paragraph (t) to read as follows:

§ 164.11 Navigation underway: General.

* * * * *

(t) The necessary number of steering gear power units required to move a rudder from 35 degrees on either side to 30 degrees on the other in not more than 28 seconds, must be in simultaneous operation, except when the vessel is operating on the Great Lakes and their connecting tributary waters.

4. Section 164.35 is amended by adding a new paragraph (c) to read as follows:

§ 164.35 Equipment: All vessels.

* * * * *

(c) A telephone or other means of communication for relaying heading information to the emergency steering station. Also, each vessel of 500 gross tons and over and constructed on or after February 1, 1992, must be provided with arrangements for supplying visual compass readings to the emergency steering station.

5. Section 164.39 is revised to read as follows:

§ 164.39 Steering gear: Foreign tankers.

(a) This section applies to each foreign tanker of 10,000 gross tons or more, except a public vessel, that—

(1) Transfers oil at a port or place subject to the jurisdiction of the United States; or

(2) Otherwise enters or operates in the navigable waters of the United States, except vessels described in § 164.02 of this part.

(b) *Definitions.* The terms used in this section and in regulations of SOLAS 74, as amended, referred to are as follows:

(1) *Tanker* means a self-propelled vessel defined as a tanker by 46 U.S.C. 2101(38) or as tank vessel by 46 U.S.C. 2101(39).

(2) *SOLAS* refers to the International Convention for the Safety of Life at Sea, 1974, as modified by the 1981 and 1983 Amendments.

(3) *Constructed* has the same meaning as provided in Chapter II–1, Regulations 1.1.2. and 1.1.3.1, of SOLAS.

(4) *Public vessel, oil, hazardous materials,* and *foreign vessel* have the same meanings as provided for these terms in Section 5 of the Port and Tanker Safety Act of 1978 as amended and codified (46 U.S.C. 2101).

(5) *Speedily regained,* refers to the time it takes one qualified crewmember, after arriving in the steering gear compartment and without the use of tools, to respond to a steering gear failure and take the necessary corrective action. This time must not exceed 10 minutes.

(6) *Steering capability* means steering equivalent to that required of the auxiliary steering gear by Chapter II–1, Regulation 29.4.2, of SOLAS.

(7) *Steering gear control system, main steering gear, steering gear power unit, auxiliary steering gear, power actuating system,* and *maximum ahead service speed* have the same meanings as provided in Chapter II–1, Regulation 3, of SOLAS.

(8) *Existing tanker* means a tanker—

(i) For which the building contract is placed after June 1, 1979;

(ii) In the absence of a building contract, the keel of which is laid or which is at a similar stage of construction after January 1, 1980;

(iii) The delivery of which is after June 1, 1982; or

(iv) Which has undergone a major conversion contracted for after June 1, 1979; or construction of which was begun after January 1, 1980, or completed after June 1, 1982.

(c) Each tanker constructed on or after September 1, 1984, must meet the applicable requirements of Chapter II–1, Regulations 29 and 30, of SOLAS.

(d) Each tanker constructed before September 1, 1984, must meet the requirements of Chapter II–1, Regulation 29.19, of SOLAS, including the requirements referred to therein.

(e) Each tanker of 40,000 gross tons or more and constructed before September 1, 1984, that does not meet the single-failure criterion of Chapter II–1, Regulation 29.16, of SOLAS must meet the requirements of Chapter II–1, Regulations 29.20, of SOLAS.

(f) Each existing tanker constructed before September 1, 1984, must meet the applicable requirements of Chapter II–1 Regulations 29.14 and 29.15, of SOLAS.

Title 46—[Amended]

PART 50—GENERAL PROVISIONS

6. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

7. Subpart 50.10 is amended by adding new § 50.10–35 to read as follows:

§ 50.10–35 Constructed.

The term "constructed" means keel laid or, for vessels with no keel, assembly of at least 50 tons or 1% of the estimated mass of all structural material, whichever is less, has been completed.

PART 52—POWER BOILERS

8. The authority citation for part 52 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

9. Section 52.01–110 is amended by adding a new paragraph (h) to read as follows:

§ 52.01–110 Water level indicators, water columns, gage glass connections, gage cocks, and pressure gages (modifies PG–60).

* * * * *

(h) *High-water-level alarm.* Each water tube boiler for propulsion must have an audible and visual high-water-level alarm. The alarm indicators must be located where the boilers are controlled.

PART 56—PIPING SYSTEMS AND APPURTENANCES

10. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5515; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

11. Section 56.30–25 is amended by adding a note after paragraph (f)(2) to read as follows:

§ 56.30–25 Flared, flareless, and compression joints.

* * * * *

Note.—See § 58.25–20(d) of this subchapter for limitations on the use of compression fittings in hydraulic systems for steering gear.

12. Section 56.50–15 is amended by adding a new paragraph (k) to read as follows:

§ 56.50–15 Steam and exhaust piping.

* * * * *

(k) Steam piping must be provided with suitable drains to prevent water hammer.

13. Section 56.50–50 is amended by adding a new paragraphs (a)(4), (a)(5), and (c)(4), revising paragraph (c)(1) and the definition for "D" in paragraph (d)(2), and revising the last sentence of paragraph (h) to read as follows:

§ 56.50–50 Bilge and ballast piping.

(a) * * *

(4) Where the vessel is to carry Class 3 flammable liquids or Class 6, Division 6.1, poisonous liquids as defined in 49 CFR part 173 in enclosed cargo spaces, the bilge pumping system must be designed to ensure against inadvertent pumping of such liquids through machinery space piping or pumps.

(5) For each vessel constructed on or after February 1, 1992, and on an international voyage, arrangements must be made to drain enclosed cargo spaces situated on the bulkhead deck of a passenger vessel and on the freeboard deck of a cargo vessel.

(i) Where the deck edge, located at the bulkhead deck for passenger vessels or the freeboard deck for cargo vessels, is immersed when the ship heels more than 5°, the drainage of the enclosed cargo spaces must be by means of a sufficient number of scuppers discharging overboard. The installation of scuppers must comply with the requirements of § 42.15–60 of this chapter.

(ii) Where the deck edge, located at the bulkhead deck for passenger vessels or the freeboard deck for cargo vessels, is immersed when the ship heels 5° or less, the drainage of the enclosed cargo spaces must discharge to a space, or spaces, of adequate capacity, each of which has a high-water-level alarm and a means to discharge overboard. The number, size, and arrangement of the scuppers must prevent unreasonable accumulation of water. The pumping arrangements must take into account the requirements for any fixed manual or automatic sprinkling system. In enclosed cargo spaces fitted with carbon dioxide extinguishing systems, the deck scuppers must have traps or other means to prevent escape of the smothering gas. The enclosed cargo spaces must not drain to machinery spaces or other spaces where sources of ignition may be present if water may be contaminated with Class 3 flammable liquids or Class 6, Division 6.1, poisonous liquids.

* * * * *

(c)(1) Bilge suctions must lead from manifolds except as otherwise approved by the Commanding Officer, Marine Safety Center. As far as practicable, manifolds must be in, or be capable of remote operation from, the same space as the bilge pump that normally takes suction on the manifold. In either case, the manifolds must be capable of being locally controlled from above the floorplates and must be easily accessible at all times. As far as practicable, overboard-discharge valves for bilge systems must comply with the requirements governing location and accessibility for suction manifolds. Except as otherwise permitted by paragraph (c)(4) of this section for a vessel employing a common-rail bilge system, bilge-manifold valves controlling bilge suctions from various compartments must be of the stop-check type.

* * * * *

(4) A common-rail bilge system may be installed as an acceptable alternative to the requirements in paragraph (c)(1) of this section, provided it satisfies all of the following criteria:

(i) The common-rail main runs inboard at least one-fifth the maximum beam of the vessel;

(ii) A stop-check valve or both a stop valve and a check valve are provided in each branch line and located inboard at least one-fifth the maximum beam of the vessel;

(iii) The stop valve or the stop-check valve is power-driven, is capable of remote operation from the space where the pump is, and, regardless of the status of the power system, is capable of manual operation to both open and close the valve;

(iv) The stop valve or the stock-check valve is accessible for both manual operation and repair under all operating conditions, and the space used for access does not contain expansion joints or flexible couplings that, upon failure, would cause flooding and prevent access to the valve;

(v) Port and starboard suctions serve each space protected unless, under the worst conditions of list and trim and with liquid remaining after pumping, the vessel's stability remains acceptable, in accordance with subchapter of this chapter;

(vi) For combination ore and bulk oil carriers, the bilge pumps and piping are not located in machinery spaces other than cargo pump rooms, and liquid and other cargoes are not carried simultaneously; and

(vii) For cargo vessels in Great Lakes service, a common-rail pipe for the bilge and ballast system serving cargo spaces, if installed and if connected to a dedicated common-rail bilge system, must be led separately from a valved manifold located at the pump.

* * * * *

(d) * * *

D = Molded depth (in feet) to the bulkhead deck. (6)

* * * * *

Note 6.—For a passenger vessel constructed on or after February 1, 1992, and on an international voyage and having an enclosed cargo space on the bulkhead deck that is internally drained in accordance with paragraph (a)(4) of this section and that extends the full length of the vessel, D must be measured to the next deck above the bulkhead deck. Where the enclosed cargo space extends a lesser length, D must be taken as the sum of the molded depth (in feet) to the bulkhead deck plus lh/L where l and h are the aggregate length and height (in feet), respectively, of the enclosed cargo space.

* * * * *

(h) Except as allowed by paragraph (c)(4)(vii) of this section, pipes for draining cargo holds or machinery spaces must be separate from pipes used for filling or emptying tanks where water or oil is carried. Bilge and ballast piping systems must be so arranged as to prevent oil or water from the sea or ballast spaces from passing into cargo holds or machinery spaces, or from passing from one compartment to another, regardless of the source, by the appropriate installation of stop and non-return valves. The bilge and ballast mains must be fitted with separate control valves at the pumps.

* * * * *

14. Section 56.50–60 is amended by revising paragraph (b) and by adding new paragraphs (d)(1)(i), (m), and (n) to read as follows:

§ 56.50–60 Systems containing oil.

* * * * *

(b)(1) When oil needs to be heated to facilitate its transfer, heating coils must be properly installed in the tanks. The drains from the heating coils as well as the drains from oil heaters in the service system must be run to an open inspection tank or other suitable oil detector before being returned to the feed system.

(2) As far as practicable, parts of the fuel oil system containing heated oil under pressure exceeding 26 psi must not be so placed in a concealed position that defects and leakage cannot be readily observed. The machinery spaces in way of such parts must be adequately illuminated.

(3) Piping for fuel oil transfer or service systems conveying oil that does not need to be heated for service must not have fuel oil heaters installed and must not be so interconnected that the oil can be heated in other fuel systems.

* * * * *

(d) * * *

(1) * * *

(i) In the special case of a deep tank situated in any shaft or pipe tunnel or similar space, valves must be fitted on the tank, but control in the event of fire may be effected by means of an additional valve on the pipe or pipes outside the space. If an additional control valve is located in the machinery space, it must be capable of being operated from a position outside this space.

* * * * *

(m) The arrangements for the storage, distribution, and utilization of oil used in pressure lubrication systems must—

(1) In addition to the requirements of § 56.50–60 of this part, be such as to ensure the safety of the ship and persons on board; and

(2) In machinery spaces, comply with the applicable requirements of § 56.50–60 (b)(2) and (d), § 56.50–65(a)(11), § 56.50–90 (c) and (d), and § 58.01–55(f) of this subchapter. The arrangements need not meet the requirements of § 56.50–90 (c)(1) and (c)(3) of this subchapter if the sounding pipe is fitted with an effective means of closure, such as a threaded pipe cap or plug or other means acceptable to the Officer in Charge, Marine Inspection. The use of flexible pipe or hose is permitted in accordance with the applicable requirements in § 56.35–10, § 56.35–15, and § 56.60–25(c) of this part.

(n) The arrangements for the storage, distribution, and utilization of other flammable oils employed under pressure in power transmission systems, control and activating systems, and heating systems must be such as to ensure the safety of the ship and persons on board by—

(1) Meeting the requirements of subpart 56.30 of this subchapter, and

(2) In locations where means of ignition are present, complying with the applicable requirements of § 56.50–65(a)(11), § 56.50–90 (c) and (d), and § 58.01–55(f) of this subchapter. Pipes and their valves and fittings must be of steel or other approved material, except that the use of flexible pipe or hose is permitted in accordance with the applicable requirements in § 56.35–10, § 56.35–15, and § 56.60–25(c) of this part.

15. Section 56.50–65 is amended by revising the reference "§ 58.01–25(a)" to "§ 58.01–25" in paragraph (h), to read as follows:

§ 56.50–65 Burner fuel oil service systems.

* * * * *

(h) Fuel oil service pumps must be equipped with controls to comply with § 58.01–25 of this subchapter.

16. Section 56.50–70 is amended by revising the reference "§ 58.01–25(a)" to "§ 58.01–25" in paragraph (j), to read as follows:

§ 56.50–70 Gasoline fuel systems.

* * * * *

(j) *Fuel pumps.* Fuel pumps must be equipped with controls to comply with § 58.01–25 of this subchapter.

17. Section 56.50–80 is amended by revising paragraph (h) to read as follows:

§ 56.50–80 Lubricating oil system.

* * * * *

(h) Sight-flow glasses may be used in lubricating oil systems provided it has been demonstrated, to the satisfaction of the Commanding Officer, Marine Safety Center, that they can withstand exposure to a flame at a temperature of

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1700 degrees F. for a period of one hour, without failure or appreciable leakage.

18. Section 56.50–85 is amended by removing paragraphs (a)(7)(iii) and (a)(7)(iv), by redesignating paragraph (a)(7)(v) as (a)(7)(iii), and by revising paragraph (a)(7)(ii), newly redesignated paragraph (a)(7)(iii), and paragraph (a)(11) to read as follows:

§ 56.50–85 Tank vent piping.

(a) * * *

(7) * * *

(ii) A hinged closure normally open on the outlet of the return bend, which must close automatically by the force of a submerging wave; or

(iii) Other suitable devices acceptable to the Commanding Officer, Marine Safety Center.

* * * * *

(11)(i) Where a tank may be filled by a pressure head exceeding that for which the tank is designed, the aggregate area of the vents in each tank must be at least equal to the area of the filling line unless the tank is protected by overflows, in which case the aggregate area of the overflows must not be less than that of the filling line.

(ii) Provision must be made to guard against liquid's rising in the venting system to a height which would exceed the design head of a cargo or fuel oil tank. It may be made by high-level alarms or overflow control systems or other equivalent means, together with gauging devices and procedures for filling cargo tanks.

* * * * *

19. Section 56.50–90 is amended by revising paragraph (a), redesignating existing paragraphs (c) and (d) as paragraph (e) and (f), and adding new paragraphs (c) and (d) to read as follows:

§ 56.50–90 Sounding devices.

(a) All tanks must be provided with a suitable means of determining liquid level. Except for main cargo tanks on tank vessels, all integral hull tanks and compartments, unless at all times accessible under service conditions, must be fitted with sounding pipes.

* * * * *

(c) Except as allowed in this paragraph, on each vessel constructed on or after February 1, 1992, where sounding pipes are used in fuel oil tanks, the sounding pipes must not terminate in any space where the risk of ignition of spillage from the sounding pipe might arise. They must not terminate in passenger or crew spaces. Where practicable, they must not terminate in machinery spaces. Where the Commanding Officer, Marine Safety Center, determines it impracticable to avoid terminating sounding pipes in machinery spaces, they may be terminated in these spaces if all the following requirements are met:

(1) In addition to the sounding pipe, there is provided an oil-level gauge meeting the requirements of paragraph (d) of this section;

(2) The sounding pipe terminates in a location remote from ignition hazards unless precautions are taken such as fitting of an effective screen (shield) to prevent the fuel oil, in the case of spillage through the termination of the sounding pipe, from coming into contact with a source of ignition; and

(3) The termination of the sounding pipe is fitted with a self-closing blanking device and a small-diameter self-closing control cock located below the blanking device for the propose of ascertaining before the blanking device is opened that fuel oil is not present. Provision must be made to ensure that any spillage of fuel oil through the control cock involves no ignition hazard.

(d) On each vessel constructed on or after February 1, 1992, other oil-level gauges may be used in place of sounding pipes. Such gauges are subject to the following conditions:

(1) In passenger ships, such gauges must not require penetration below the top of the tank, and neither their failure nor an overfilling of the tank may permit release of fuel; and

(2) In cargo ships, neither the failure of such gauges nor an overfilling of the tank may permit release of fuel. The use of cylindrical gauge glasses is prohibited. The use of oil-level gauges with flat glasses and self-closing valves between the gauges and fuel tanks is acceptable.

* * * * *

20. Section 56.50–105 is amended by revising the reference cite "Table 56.95–10" to "§ 56.95–10" in paragraphs (a)(5) and (b)(5), to read as follows:

§ 56.50–105 Low temperature piping.

(a) * * *

(5) *Other requirements.* All other requirements contained in this part for Class I piping apply to Class I–L piping. Pressure testing must comply with subpart 56.97 of this part, and nondestructive testing of circumferentially welded joints must comply with § 56.95–10 of this part. Seamless grade tubular products must be used except that, when the service pressure does not exceed 250 p.s.i., the Commanding Officer, Marine Safety Center, may give special consideration to appropriate grades of pipe and tubing that are welded without the addition of filler metal in the root pass. Production procedures and quality-control programs for welded products must be acceptable to the Officer in Charge, Marine Inspection.

(b) * * *

(5) Pressure testing must comply with Subpart 56.97 of this part, and nondestructive testing of welded joints just comply with § 56.95–10 of this part.

* * * * *

21. Section 56.60–25 is amended by revising paragraph (a)(3) and by adding new paragraph (a)(11) to read as follows:

§ 56.60–25 Nonmetallic materials.

(a) * * *

(3) The use of plastic pipe within a concealed space in an accommodation or service area is not permitted unless:

(i) Such pipe is within ducts or trunks completely surrounded by "A" class divisions; or

(ii) An approved smoke detection system is fitted in the concealed space, and all penetrations of bulkheads and decks, and the installation of draft stops, are made in accordance with paragraph (a)(2) of this section to maintain the integrity of fire divisions.

* * * * *

(11) Plastic pipe intended for an accommodation area, a service area, or a control station must exhibit minimum flame spread and smoke properties specifically acceptable to the Commandant (G–MTH).

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

(22) The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980, Comp., p. 277; 49 CFR 1.46.

23. Section 58.01–10 is revised to read as follows:

§ 58.01–10 Fuel oil.

(a) The following limitations apply to the use of oil as fuel:

(1) Except as otherwise permitted by this section, no fuel oil with a flashpoint of less than 140°F (60°C) may be used;

(2) Fuel oil with a flashpoint of not less than 110°F (43°C) may be used in emergency generators, except as otherwise prohibited by § 56.50–1(b) of this part;

(3) Subject to such additional precautions as are considered necessary by the Commanding Officer, Marine Safety Center, and on condition that the ambient temperature of the space in which such fuel oil is stored or used not rise to within 18°F (10°C) below the flashpoint of the fuel oil, the general use of fuel oil having a flashpoint of less than 140°F (60°C) but not less than 110°F (43°C) is permitted; and

(4) In cargo ships, the use of fuel having a lower flashpoint than otherwise specified in this section, for example crude oil, may be permitted provided such fuel is not stored in any machinery space and subject to the approval by the Commanding Officer, Marine Safety Center, of the complete installation.

(b) The flashpoint of oil must be determined by the Pensky-Martens Closed Cup Method, ASTM–D93.

§ 58.01–15 [Removed]

24. Section 58.01–15 is removed.

25. Section 58.01–25 is revised to read as follows:

§ 58.01–25 Means of stopping machinery.

Machinery driving forced and induced draft fans, fuel oil transfer pumps, fuel oil unit and service pumps, and similar fuel oil pumps, must be fitted with remote controls from a readily accessible position outside of the space concerned so that the machinery or pumps may be stopped in the event of fire in the compartment in which they are located. The controls must be suitably protected against accidental operation and against tampering and must be suitably marked. Refer to Subpart 111.103 of this chapter for electric motors driving such fans and pumps.

26. New § 58.01–40, 58.01–45, 58.01–50, and 58.01–55 are added to read as follows:

§ 58.01–40 Machinery, angles of inclination.

(a) Propulsion machinery and all auxiliary machinery essential to the propulsion and safety of the vessel must be designed to operate when the vessel is upright, when the vessel is inclined under static conditions at any angle of list up to and including 15°, and when the vessel is inclined under dynamic conditions (rolling) at any angle of list up to and including 22.5° and, simultaneously, at any angle of trim (pitching) up to and including 7.5° by bow or stern.

(b) Deviations from these angles of inclination may be permitted by the Commanding Officer, Marine Safety Center, considering the type, size, and service of the vessel.

§ 58.01–45 Machinery space ventilation.

Each machinery space must be ventilated to ensure that, when machinery or boilers are operating at full power in all weather including heavy weather, an adequate supply of air is maintained for the operation of the machinery and for the safety and comfort of the crew.

§ 58.01–50 Machinery space, noise levels.

(a) Each machinery space must be designed to minimize the noise to which personnel are exposed. A crewmember must not encounter a 24-hour effective exposure level greater than 82 dB(A) when noise is measured using a sound level meter and an A-weighting filter.

(b) No machinery space may exceed the following noise levels except as allowed by paragraph (c) of this section:

(1) Machinery control room	75 dB(A)
(2) Manned machinery space	90 dB(A)
(3) Unmanned machinery space	110 dB(A)
(4) Periodically unattended machinery space	110 dB(A)
(5) Workshop	85 dB(A)
(6) Any other machinery work space	90 dB(A)

(c) If inclusion of a noise source would cause a machinery space to exceed the permissible level, the source of excessive noise must be suitably insulated or isolated or, if the space is required to be manned, a refuge from noise must be provided.

(d) Ear protection must be provided for any personnel required to enter any space where the noise level exceeds 85 dB(A).

(e) Each entrance to a machinery space with a noise level greater than 85 dB(A) must have a warning sign stating that ear protection must be used by personnel entering the space.

§ 58.01–55 Tanks for flammable and combustible oil.

(a) For the purposes of this section, a machinery space of category A is a space that contains any of the following:

(1) Internal-combustion machinery used for main propulsion;

(2) Internal-combustion machinery used for other than main propulsion and whose power output is greater than or equal to 500 HP (375 kw);

(3) Any oil fired boiler; or

(4) Any equipment used for the preparation of fuel oil for delivery to an oil fired boiler, or equipment used for the preparation for delivery of heated oil to an internal-combustion engine, including any oil pressure pumps, filters, and heaters dealing with oil pressures above 28 psi.

(b) As far as practicable, each fuel oil tank must be part of the ship's structure and be located outside a machinery space of category A.

(c) Where a fuel oil tank, other than a double bottom tank, is necessarily located adjacent to or within a machinery space of category A—

(1) At least one of its vertical sides must be contiguous to the machinery space boundary;

(2) The tank must have a common boundary with the double bottom tanks; and

(3) The area of the tank boundary common with the machinery spaces must be kept to a minimum.

(d) Where a fuel oil tank is situated within the boundaries of a machinery space of category A, it must not contain fuel oil with a flashpoint of less than 140°F (60°C).

(e) In general, the use of a free-standing fuel oil tank must be avoided. Where permitted by the Commanding Officer, Marine Safety Center, in addition to meeting the requirements in Subpart 58.50, the tank must be placed in an oil-tight spill tray of ample size having a suitable drain pipe leading to a suitably sized spill oil tank. When such free-standing tanks are employed, their use is prohibited in a machinery space of category A on passenger ships.

(f) No fuel oil tank must be situated where spillage or leakage from it can constitute a hazard by falling on heated surfaces. Precautions must be taken to prevent any oil that may escape under pressure from any pump, filter, or heater from coming into contact with heated surfaces.

27. Subpart 58.03 is amended by revising its heading to read as follows:

Subpart 58.03—Incorporation by reference

27.1 A new § 58.03–40 is added to read as follows:

§ 58.03–40 International Maritime Organization (IMO).

The materials approved for incorporation by reference in this part, and the sections affected, are:

International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England:

A.467(XII), Guidelines for Acceptance of Non-Duplicated Rudder Actuators for Tankers, Chemical Tankers and Gas Carriers of 10,000 Tons Gross Tonnage and Above But Less Than 100,000 Tonnes Deadweight	56.25–60
A.468(XII), Code on Noise Levels on Board Ships	58.01–50

28. Subpart 58.05 is amended by revising paragraph (a) of section 58.05–1 and adding new § 58.05–10 to read as follows:

Subpart 58.05—Main Propulsion Machinery

§ 58.05-1 Material, design, and construction.

(a) The material, design, construction, workmanship, and arrangement of main propulsion machinery and of each auxiliary, directly connected to the engine and supplied as such, must be at least equivalent to the standards established by the American Bureau of Shipping or other recognized classification society, except as provided otherwise by this subchapter.

* * * * *

§ 58.05-10 Automatic shut-off

Main propulsion machinery must be provided with automatic shut-off arrangements that satisfy Part 62 of this subchapter. These controls must shut down main propulsion machinery in the case of a failure, such as failure of the lubricating oil supply, which could lead rapidly to complete breakdown, serious damage, or explosion.

29. Section 58.10-15 is amended by removing paragraph (e) and by redesignating paragraphs (f), (g), (h), (i), and (j), respectively, as (e), (f), (g), (h), and (i).

29.1 Subpart 58.25 is amended by revising its table of contents to read as follows:

Subpart 58.25—Steering Apparatus

58.25-1 Applicability.
58.25-5 General.
58.25-10 Main and auxiliary steering gear.
58.25-15 Voice communications.
58.25-20 Piping for steering gear.
58.25-25 Indicating and alarm systems.
58.25-30 Automatic restart.
58.25-35 Helm arrangements.
58.25-40 Arrangement of the steering gear compartment.
58.25-45 Buffers.
58.25-50 Rudder stops.
58.25-55 Overcurrent protection for steering systems.
58.25-60 Non-duplicated hydraulic rudder actuators.
58.25-65 Feeder circuits.
58.25-70 Steering control systems.
58.25-75 Materials.
58.25-80 Automatic pilots and ancillary steering equipment.
58.25-85 Special requirements for tank vessels.

30. Subpart 58.25 is revised to read as follows:

Subpart 58.25—Steering Apparatus

§ 58.25-1 Applicability.

(a) Except as specified otherwise, this subpart applies to:

(1) Each vessel or installation of steering gear contracted for on or after *[Insert the effective date of this rulemaking]; and*

(2) Each vessel on an international voyage with an installation of steering gear contracted for on or after September 1, 1984.

(b) Each vessel not on an international voyage with an installation of steering gear contracted for before *[Insert the effective date of this rulemaking]*, and each vessel on an international voyage with an installation contracted for before September 1, 1984, may meet either the requirements of this subpart or those in effect on the date of the installation.

§ 58.25-5 General.

(a) *Definitions.—(1) Control system* means the equipment by which orders for rudder movement are transmitted from the pilothouse to the steering gear power units. Control systems for steering gear include, but are not limited to:

(i) Transmitters;

(ii) Receivers;

(iii) Feedback devices;

(iv) Hydraulic servo-control pumps, with associated motors and motor controllers;

(v) Differential units, hunting gear, and similar devices;

(vi) All gearing, piping, shafting, cables, circuitry, and ancillary devices for controlling power unit output; and

(vii) Means of bringing steering gear power units into operation.

(2) *Steering gear power unit means:*

(i) In the case of electric steering gear, an electric motor and its associated electrical equipment, including motor controller, disconnect switch, and feeder circuit;

(ii) In the case of an electro-hydraulic steering gear, an electric motor, connected pump, and associated electrical equipment such as the motor controller, disconnect switch, and feeder circuit; and

(iii) In the case of hydraulic steering gear, the pump and its prime mover.

(3) *Followup control* means closed-loop (feedback) control that relates the position of the helm to a specific rudder angle by transmitting the helm angle order to the power actuating system and, by means of a feedback arrangement, automatically stopping the rudder when the angle selected by the helm is reached.

(4) *Steering gear* means the machinery, including power actuating systems, control systems, and ancillary equipment, necessary for moving the rudder to steer the vessel.

(5) *Main steering gear* means the machinery, including power actuating systems, and the means of applying torque to the rudder stock, such as a tiller or quadrant, necessary for moving the rudder to steer the vessel in normal service.

(6) *Auxiliary steering gear* means the equipment, other than any part of the main steering gear, necessary to steer the vessel in case of failure of the main steering gear, not including a tiller, quadrant, or other component serving the same purpose.

(7) *Ancillary steering equipment* means steering equipment, other than the required control systems and power actuating systems, that either is not required, such as automatic pilot or non-followup control from the pilothouse, or is necessary to perform a specific required function, such as he automatic detection and isolation of a defective section of a tanker's hydraulic steering system.

(8) *Maximum ahead service speed* means the greatest speed that a vessel is designed to maintain in service at sea at the deepest loadline draft.

(9) *Maximum astern speed* means the speed which it is estimated the vessel can attain at the designed maximum power astern at the deepest loadline draft.

(10) *Power actuating system* means the hydraulic equipment for applying torque to the rudder stock. It includes, but is not limited to:

(i) Rudder actuator;

(ii) Steering gear power units; and

(iii) Pipes, valves, fittings, linkages, and cables for transmitting power from the power units to the rudder actuator or actuators.

(11) *Steering capability* means steering equivalent to that required of auxiliary steering gear by § 58.25-10(c)(2) of this subpart.

(12) *Tank vessel*, as used in this subpart, means a self-propelled vessel, including a chemical tanker and a gas carrier, defined a tanker by 46 U.S.C. 2101(38) or defined as a tank vessel by 46 U.S.C. 2101(30).

(13) *Speedily regained*, as used in this subpart, refers to the time it takes one qualified crewmember, after arriving in the steering gear compartment, and without the use of tools, to respond to a steering gear failure and take the necessary corrective action. This time must not exceed ten minutes.

(14) *Fast-acting valve*, as used in this subpart, means a ball, plug, spool, or similar valve with a handle connected for quick manual operation.

(b) Unless it otherwise satisfies this subpart, each self-propelled vessel must be provided with a main steering gear and an auxiliary steering gear. These gear must be so arranged that:

(1) The failure of one of them will not render the other one inoperative; and

(2) Transfer from the main to the auxiliary can be effected quickly.

(c) Substantial replacements of steering apparatus on an existing vessel must comply with the requirements of this subpart for new installations to the satisfaction of the cognizant Officer in Charge, Marine Inspection.

(d) Each non-pressure-containing steering gear component and rudder stock must be of sound and reliable construction, meet the minimum material requirements of § 58.25-75 of this subpart, and be designed to standards at least equal to those established by the American Bureau of Shipping or other recognized classification society.

(e) The suitability of any essential component not duplicated must be specifically approved by the Commanding Officer, Marine Safety Center. Where a steering gear component is shared by—

(1) A control system (e.g., a control system transfer switch located in the steering gear compartment);

(2) The main and auxiliary steering gear (e.g., isolation valves); or

(3) A power actuating system and its control system (e.g., directional control valves)—the requirements for both systems will apply, to provide the safest and most reliable arrangement.

(f) Steering gear must be separate and independent of all other shipboard systems, except—

(1) Electrical switchboards from which they are powered;

(2) Automatic pilots and similar navigational equipment; and

(3) Propulsion machinery for an integrated system of propulsion and steering.

(g) Except on a vessel with an integrated system of propulsion and steering, a thruster must not be considered in the evaluation of a vessel's required steering capability.

(h) Except for a tank vessel subject to § 58.25-85(e) of this subpart, each oceangoing vessel requiring power-operated steering gear must be provided with arrangements for steadying the rudder both in an emergency and during a shift from one steering gear to another. On hydraulic-type steering gear, a suitable arrangement of stop valves in the main piping is an acceptable means of steadying the rudder.

(i) General arrangement plans for the main and auxiliary steering gear and piping systems must be submitted for approval in accordance with subpart 50.20 of this subchapter.

§ 58.25-10 Main and auxiliary steering gear.

(a) Power-operated main and auxiliary steering gear must be two separate systems. The two systems must be separate and independent, as by being separated port and starboard, throughout their length. Other steering gear systems and arrangements may be acceptable to the Commanding Officer, Marine Safety Center, if they meet or exceed the requirements of this subpart.

(b) The main steering gear and rudder stock must be:

(1) Of adequate strength for and capable of steering the vessel at maximum ahead service speed, which must be demonstrated to the satisfaction of the cognizant Officer in Charge, Marine Inspection;

(2) Capable of moving the rudder from 35 degrees on either side to 35 degrees on the other with the vessel at its deepest loadline draft and running at maximum ahead service speed, and from 35 degrees on either side to 30 degrees on the other in not more than 28 seconds under the same conditions;

(3) Operated by power where necessary to meet the requirements of paragraph (b)(2) of this section or when the diameter of the rudder stock is over 120 mm (4.7 inches) in way of the tiller, excluding strengthening for navigation in ice; and

(4) So designed that they will not be damaged at maximum astern speed; however, this requirement need not be proven by trials at maximum astern speed and maximum rudder angle.

(c) The auxiliary steering gear must be—

(1) Of adequate strength for and capable of steering the vessel at navigable speed and of being brought speedily into action in an emergency;

(2) Capable of moving the rudder from 15 degrees on either side to 15 degrees on the other in not more than 60 seconds with the vessel at its deepest loadline draft and running at one-half maximum ahead service speed or 7 knots, whichever is greater; and

(3) Operated by power where necessary to meet the requirements of paragraph (c)(2) of this section or when the diameter of the rudder stock is over 230 mm (9 inches) in way of the tiller, excluding strengthening for navigation in ice.

(d) An auxiliary means of steering is not required on a double-ended ferryboat with independent main steering gear fitted at each end of the vessel.

(e) Where the main steering gear includes two or more identical power units, an auxiliary steering gear need not be fitted, if—

(1) In a passenger vessel, the main steering gear is capable of moving the rudder as required by paragraph (b)(2) of this section while any one of the power units is not operating;

(2) In a cargo vessel, the main steering gear is capable of moving the rudder as required by paragraph (b)(2) of this section while all the power units are operating; and either—

(3) In a vessel with an installation completed after September 1, 1984, and on an international voyage, and in any other vessel with an installation completed after *[Insert the effective date of this rulemaking]*, the main steering gear is so arranged that, after a single failure in its piping system, if hydraulic, or in one of the power units, the defect can be isolated so that steering capability can be maintained or speedily regained; or

(4) In a vessel with an installation completed before September 1, 1986, and on an international voyage, with steering gear not meeting the requirements of paragraph (e)(3) of this section, the installed steering gear has a proven record of reliability and is in good repair.

Note.—Connection of isolation valves to the piping system, as by a flange, constitutes a single-failure point. The valve itself need not constitute a single-failure point if it has a double seal to prevent substantial loss of fluid under pressure. Means to purge air that enters the system as a result of the piping failure must be provided, if necessary, so that steering capability can be maintained or speedily regained.

(f) In each vessel of 70,000 gross tons and over the main steering gear must have two or more identical power units complying with paragraph (e) of this section.

§ 58.25-15 Voice communications.

Each vessel must be provided with a sound-powered telephone system, meeting the requirements of subpart 113.30 of this chapter, to communicate between the pilothouse and the steering gear compartment, unless an alternative means of communication between them has been approved by the Commanding Officer, Marine Safety Center.

§ 58.25-20 Piping for steering gear.

(a) Pressure piping must meet the requirements of Subpart 56.30 of this part.

(b) Relief valves must be fitted in any part of a hydraulic system which can be isolated and in which pressure can be generated from the power units or from external forces such as wave action. The valves must be of adequate size and set to limit the maximum pressure to which

the system may be exposed in accordance with § 56.07–10(b) of this subchapter.

(c) Each hydraulic system must be provided with—

(1) Arrangements to maintain the cleanliness of the hydraulic fluid, appropriate to the type and design of the hydraulic system; and

(2) For a vessel on an ocean, coastwise, or Great Lakes voyage, a fixed storage tank having sufficient capacity to recharge at least one power actuating system including the reservoir. The storage tank must be permanently connected by piping so that the hydraulic system can be readily recharged from within the steering gear compartment and must be fitted with a device to indicate liquid level that meets the requirements of § 56.50–90 of this subchapter.

(d) Split flanges and flareless fittings of the grip or bite type addressed by § 56.30–25 of this subchapter must not be used in hydraulic piping for steering gear.

§ 58.25–25 Indicating and alarm systems.

(a) Indication of the rudder angle must be provided both at the main steering station in the pilothouse and in the steering gear compartment. The rudder angle indicator must be independent of control systems for steering gear.

(b) Each electric-type rudder angle indicator must meet § 113.40–10 of this chapter and, as required by § 112.15–5(h) of this chapter, draw its power from the source of emergency power.

(c) On each vessel of 1,600 gross tons and over, a steering failure alarm system must be provided in the pilothouse in accordance with §§ 113.43–3 and 113.43–5 of this chapter.

(d) Visual and audible alarms must activate in the pilothouse upon failure of the electric power supply to the control system of any steering gear, upon failure of the power supply to the power unit of any steering gear, and upon a low oil level in each oil reservoir of a hydraulic power-operated steering system.

(e) Visual and audible alarms must activate in the machinery space upon failure of any phase of a three-phase power supply, upon overload of any motor described in § 58.25–55(c) of this subpart, and upon a low oil level in each oil reservoir of a hydraulic power-operated steering system.

Note: See § 62.50–30(f) of this subchapter regarding extension of alarms to the navigating bridge on vessels with periodically unattended machinery spaces.

(f) Each power motor for the main and auxiliary steering gear that controls the rudder must have a pilot light that activates in the pilothouse and in the machinery space when the motor is energized.

§ 58.25–30 Automatic restart.

Each control system for main and auxiliary steering gear and each power actuating system must re-start automatically when electrical power is restored after it has failed.

§ 58.25–35 Helm arrangements.

(a) The arrangement of each steering station, other than in the steering gear room, must be such that the helmsman is abaft the wheel. The rim of the wheel must be plainly marked with arrows and lettering for right and left rudder, or a suitable notice indicating these directions must be posted directly in the helmsman's line of sight.

(b) Each steering wheel must turn clockwise for "right rudder" and counterclockwise for "left rudder." When the vessel is running ahead, the vessel's heading must change to the right, following clockwise movement of the wheel.

(c) When a lever-type control is provided, it must be installed and marked so its movement clearly indicates both the direction of the rudder's movement and, in the case of followup control, the amount of the rudder's movement.

(d) Markings in the pilothouse must be clearly visible at night, but must not interfere with the helmsman's vision.

Note: See § 113.40–10 of this chapter for the arrangement of rudder angle indicators at steering stations.

§ 58.25–40 Arrangement of the steering gear compartment.

(a) The steering gear compartment must—

(1) Be readily accessible and, as far as practicable, separated from any machinery space; and

(2) Ensure working access to machinery and controls in the steering gear compartment. It must include handrails and either gratings or other non-slip surfaces to ensure a safe working environment in the event of hydraulic fluid leakage.

Note: Where size of configuration of the vessel will not allow all of the steering gear equipment to be located in the steering gear compartment, the remaining equipment may be located in an adjacent space.

§ 58.25–45 Buffers.

For each vessel on an ocean, coastwise, or Great Lakes voyage, steering gear other than the hydraulic type must be designed with suitable buffer arrangements to relieve the gear from shocks to the rudder.

§ 58.25–50 Rudder stops.

(a) Power-operated steering gear must have arrangements for stopping power to the gear before the rudder reaches the stops. These arrangements must be synchronized with the rudder stock or the position of the gear itself rather than be within the steering gear control system, and must work by limit switches that interrupt control system output or by other means acceptable to the Commanding Officer, Marine Safety Center.

(b) Strong and effective rudder stops must be fitted except that, where adequate positive stops are provided within the steering gear, structural stops need not be fitted.

§ 58.25–55 Overcurrent protection for steering systems.

(a) Each feeder circuit for steering must be protected by a circuit breaker on the switchboard that supplies it and must have an instantaneous trip set at a current of at least—

(1) 300 percent and not more than 375 percent of the rated full-load current of one steering gear motor for a direct-current steering gear motor; or

(2) 175 percent and not more than 200 percent of the locked-rotor current of one steering gear main motor for an alternating-current steering gear motor.

(b) No feeder circuit for steering may have any overcurrent protection, except that required by paragraph (a) of this section.

(c) Neither a main or an auxiliary steering gear motor, nor a motor for a steering control system, may be protected by an overload protective device. The motor must have a device that activates an audible and visual alarm at the main machinery control station if there is an overload that would cause overheating of the motor.

(d) No control circuit of a motor controller, steering control system, or indicating or alarm system may have overcurrent protection except short-circuit protection that is instantaneous and rated at 400 to 500 percent of:

(1) The current-carrying capacity of the conductor; or

(2) The normal load of the system.

(e) The short-circuit protective device for each steering control system must be in the steering gear compartment and in the control circuit immediately following the disconnect switch for the system.

(f) When in a vessel of less than 1,600 gross tons, an auxiliary steering gear, which is required by § 58.25–10(c)(3) of this subpart to be operated by power, is not operated by electric power or is operated by an electric motor primarily intended for other service, the main steering gear may be fed by one circuit from the main switchboard. When such an electric motor is arranged to operate an auxiliary steering gear, the requirements of paragraphs (a) through (c) of this section and § 58.25–25(e) of this subpart need not be met if both the overcurrent protection arrangement and compliance with the requirements of §§ 58.25–25(d), 58.25–30, and 58.25–70 (j) and (k) of this subpart satisfy the Commanding Officer, Marine Safety Center.

§ 58.25–60 Non-duplicated hydraulic rudder actuators.

(a) Non-duplicated hydraulic rudder actuators may be installed in the steering systems of each vessel of less than 100,000 deadweight tons. These actuators must meet IMO Assembly Resolution A.467(XII), "Guidelines for Acceptance of Non-Duplicated Rudder Actuators for Tankers, Chemical Tankers, and Gas Carriers of 10,000 Tons Gross Tonnage and Above But Less Than 100,000 Tons Deadweight", and be acceptable to the Commanding Officer, Marine Safety Center. Also, the piping for the main gear must meet the single-failure criterion in § 58.25–10(e)(3) of this subpart.

§ 58.25–65 Feeder circuits.

(a) Each vessel with one or more electric-driven steering power units must have at least two feeder circuits, which must be separated as widely as practicable. One or more of these circuits must be supplied from the ship's service switchboard. On a vessel where the rudder stock is over 230 millimeters (9 inches) in diameter in way of the tiller, excluding strengthening for navigation in ice, and where a final source of emergency power is required by § 112.05–5(a) of this chapter, one or more of these circuits must be supplied from the emergency switchboard, or from an alternative source of power that—

(1) Is available automatically within 45 seconds of loss of power from the ship's service switchboard;

(2) Is from an independent source of power in the steering gear compartment;

(3) Is used for no other purpose; and

(4) Has a capacity for one-half hour of continuous operation, to move the rudder from 15 degrees on either side to 15 degrees on the other in not more than 60 seconds with the vessel at its deepest loadline draft and running at one-half maximum ahead service speed or 7 knots, whichever is greater.

(b) Each vessel that has a steering gear with multiple electric-driven power units must be arranged to operate with the power unit is supplied by a separate feeder.

(c) Each feeder circuit must have a disconnect switch in the steering gear compartment.

(d) Each feeder circuit must have a current-carrying capacity of:

(1) 125 percent of the full-load current rating of the electric steering gear motor or power unit; and

(2) 100 percent of the normal current of one steering control system including all associated motors.

§ 58.25–70 Steering control systems.

(a) Each power-driven steering system must be provided with at least one steering control system.

(b) The main steering gear must be operable by controls from the pilothouse by mechanical, hydraulic, electrical, or other means acceptable to the Commanding Officer, Marine Safety Center. This gear and its components must provide full followup control of the rudder. Supplementary steering control not employing full followup may also be provided from the pilothouse.

(c) Each steering control system must have in the pilothouse a switch arranged so that one action of the switch's lever automatically supplies power to a complete steering control system and its associated power unit or units. This switch must be—

(1) Operated by one lever;

(2) Arrange so that not more than one steering control system and its associated power unit or units can be energized from the pilothouse at any one time;

(3) Arranged so that the lever passes through an "off" position when transferring control from one steering control system to another; and

(4) Arranged so that the switches for each system are in separate enclosures or are separated by fire-resistant barriers.

(d) Each steering control system must receive its power from—

(1) The feeder circuit supplying power to its steering power unit or units in the steering gear compartment; or

(2) A direct connection to the bushbars supplying the circuit for its steering gear power unit or units from a point on the switchboard adjacent to that supply.

(e) Each steering control system must have a switch that—

(1) Is in the steering gear compartment; and

(2) Disconnects the steering control system from its power source and from the steering gear that the system serves.

(f) Each motor controller for a steering gear must be in the steering gear

(g) A means of starting and stopping each motor for a steering gear must be in the steering gear compartment.

(h) Where the main steering gear is arranged in accordance with § 58.25–10(e) of this subpart, two separate and independent followup control systems must be provided in the pilothouse; except that—

(1) The steering wheel or lever need not be duplicated; and

(2) Where the control system consists of a hydraulic telemotor, a second separate and independent system need not be provided, except on tank vessels subject to § 58.25–85 of this subpart.

(i) Where only the main steering gear is power-driven, two separate and independent followup control systems must be provided in the pilothouse, except that the steering wheel or lever need not be duplicated.

(j) Where the auxiliary steering gear is power-driven, a steering control system must be provided in the pilothouse that is separate and independent from the main steering gear control systems, except that the steering wheel or lever need not be duplicated.

(k) On a vessel of 500 gross tons and above, each main steering gear and auxiliary steering gear must be arranged so that its power unit or units are operable by controls from the steering gear compartment. These controls must not be rendered inoperable by failure of the controls in the pilothouse.

§ 58.25–75 Materials.

(a) Materials used for the mechanical or hydraulic transmission of power to the rudder stock must have an elongation of at least 15% in 2 inches; otherwise, components used for this purpose must be shock-tested in accordance with subpart 58.30 of this part.

(b) Materials, including aluminum and non-metallic seals, with low melting-points must not be used in steering gear control systems or power actuating systems unless—

(1) The materials are within a compartment having little or no risk of fire;

(2) Because of redundancy in the system, damage by fire to any component would not prevent immediate restoration of steering capability; or

(3) The materials are within a steering gear power actuating system.

§ 58.25–80 Automatic pilots and ancillary steering equipment.

(a) Automatic pilots and similar navigational equipment must be

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of manual operation of steering gear controls required in the pilothouse. A switch must be provided, at the primary steering position in the pilothouse, to completely disconnect the automatic equipment from the steering control systems.

(b) Automatic pilots and ancillary steering equipment must be arranged so that no single failure affects proper operation and independence of the main and auxiliary steering gears, required controls, rudder angle indicators, or steering failure alarm.

§ 58.25-65 Special requirements for tank vessels.

(a) Each tank vessel must meet the applicable requirements of §§ 58.25-1 through 58.25-80 of this subpart.

(b) On each tank vessel of 10,000 gross tons and over, the main steering gear must comprise two or more identical power units that meet the requirements of § 58.25-10(e)(2) of this subpart.

(c) Each tank vessel of 10,000 gross tons and over constructed on or after September 1, 1984, must comply with the following:

(1) The main steering gear must be arranged so that, in the event of loss of steering capability due to a single failure in any part of the power actuating system of the main steering gear, excluding seizure of a rudder actuator or failure of the tiller, quadrant or components serving the same purpose, steering capability can be regained not more than 45 seconds after the loss of one power actuating system;

(2) The main steering gear must include either:

(i) Two independent and separate power actuating systems, each meeting the requirements of § 58.25-10(b)(2) of this subpart, or

(ii) At least two identical power actuating systems which, acting simultaneously in normal operation, must meet the requirements of § 58.25-10(b)(2) of this subpart. Where necessary to comply with this requirement, interconnection of hydraulic power actuating systems must be provided. Loss of hydraulic fluid from one system must be capable of being detected, and the defective system automatically isolated, so the other actuating system or systems remain fully operational;

(3) Steering gear, other than the hydraulic type, must achieve equivalent standards to the satisfaction of the Commanding Officer, Marine Safety Center.

(d) On each tank vessel of 10,000 gross tons and over, but less than 100,000 deadweight tons, the main steering gear need not meet the single-failure criterion in paragraph (c) of this section if the rudder actuator or actuators installed are non-duplicated hydraulic and if—

(1) The actuators meet the requirements of § 58.25-60 of this part; and

(2) In the event of loss of steering capability due to a single failure either of any part of the piping systems or in one of the power units, steering capability can be regained in not more than 45 seconds.

(e) On each tank vessel of less than 70,000 deadweight tons and constructed before, and with a steering gear installation before, September 1, 1986, and on an international voyage, the steering gear not meeting the requirements of paragraph (c) (1), (2), or (3) of this section, as applicable, may continue in service if the steering gear has a proven record of reliability and is in good repair.

(f) Each tank vessel of 10,000 gross tons and over, constructed before, and with a steering gear installation before, September 1, 1984, must—

(1) Meet the applicable requirements in § 58.25-15, § 58.25-20(c), § 58.25-25 (a), (d), and (e), and § 58.25-70 (e), (h), (i), and (j) of this part;

(2) Ensure working access to machinery and controls in the steering gear compartment. It must include handrails and either gratings or other non-slip surfaces to ensure a safe working environment in the event of hydraulic fluid leakage;

(3) Have two independent steering gear control systems, each of which can be operated from the pilothouse, except that it need not have separate steering wheels or steering levers;

(4) Arrange each remote steering gear control system required by paragraph (f)(3) of this section so that, if the system in operation fails, the other system can be brought into immediate operation from the pilothouse; and

(5) Supply each remote steering gear control system required by paragraph (f)(3) of this section, if electric, with power by a circuit that is—

(i) Used for no other purpose; and either—

(ii) Connected in the steering gear compartment to the circuit supplying power to the power unit or units operated by that control system; or

(iii) Connected directly to the busbars supplying the circuit for its steering gear power unit at a point on the switchboard adjacent to that supply.

(g) Each tank vessel of 40,000 gross tons and over, constructed before, and with a steering gear installation before, September 1, 1984, and on an international voyage, must have the steering gear arranged so that, in the event of a single failure of the piping or of one of the power units, either steering capability, equivalent to that required of the auxiliary steering gear by § 58.25-10(c)(2) of this subpart, can be maintained or the rudder's movement can be limited so that steering capability can be speedily regained. This arrangement must be achieved by one of the following:

(1) An independent means of restraining the rudder;

(2) Fast-acting valves that may be manually operated to isolate the actuator or actuators from the external hydraulic piping, together with a means of directly refilling the actuators by a fixed independent power-operated pump and piping; or

(3) An arrangement such that, where hydraulic power systems are interconnected, loss of hydraulic fluid from one system must be detected and the defective system isolated either automatically or from within the pilothouse so that the other system remains fully operational.

Note.—The term "piping or * * * one of the power units" in paragraph (g) of this section refers to the pressure-containing components in hydraulic or electro-hydraulic steering gear. It does not include rudder actuators or hydraulic control servo piping and pumps used to stroke the power unit pump or valves, unless their failure would result in failure of the power unit or piping to the rudder actuator.

31. Section 58.30-5 is amended by adding a new paragraph (d) to read as follows:

§ 58.30-5 Design requirements.

* * * * *

(d) Each pneumatic system must minimize the entry of oil into the system and must drain the system of liquids.

PART 61—PERIODIC TESTS AND INSPECTIONS

32. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

33. Section 61.05-10 is amended by revising paragraphs (a) and (b), removing existing Table 61.05-10, and adding a new Table 61.05-10 after existing paragraph (g) to read as follows:

§ 61.05-10 Boilers in service.

(a) Each boiler, including superheater, reheater, economizer, auxiliary boiler, low-pressure heating boiler, and unfired steam boiler, must be examined by the marine inspector at intervals specified in Table 61.05-10, and more often if necessary, to determine that the complete unit is in a safe and satisfactory condition. Where a hydrostatic test is required, the marine inspector shall examine all accessible parts of the boiler while it is under pressure.

(b) The owner, master, or person in charge of the vessel shall give advance notice to the cognizant Officer in Charge, Marine Inspection, so that a marine inspector may be scheduled to witness the tests and to make the required inspections.

* * * * *

(g) * * *

TABLE 61.05-10.—INSPECTION INTERVALS FOR BOILERS [1,2,3]

	Firetube boiler >150 p.s.i.	Watertube boiler	Any firetube boiler for propulsion	Firetube boiler <150 p.s.i.
Hydro Test:				
Passenger Vessel	2.5	2.5	1	2.5
Other Vessel	2.5	5	1	5
Fireside Inspection	1	2.5	1	2.5
Waterside Inspection	1	2.5	1	2.5
Boiler Safety Valve Test	1	COI	1	1
Valves Inspection	5	5	5	5
Studs & Bolts Inspection	10	10	10	10
Mountings Inspection	10	10	10	10
Steam Gage Test	COI	COI	COI	COI
Fusible Plug Inspection	2.5	—	COI	2.5

Notes:
[1] All intervals are in years and, where COI is used, the intervals coincide with the applicable vessel's inspection for certification.
[2] Where the 2.5-year interval is indicated, two tests or inspections must occur within any five-year period, and no more than three years may elapse between any two tests or inspections.
[3] Intervals for hybrid boilers are the same as for firetube boilers.

34. Section 61.05-15 is amended by revising paragraphs (a), (b), (c)(1), (f), and (g) to read as follows:

§ 61.05-15 Boiler mountings and attachments.

(a) Each valve must be opened and examined by the marine inspector at intervals specified in Table 61.05-10.

(b) Each stud or bolt for each boiler mounting must be examined by the marine inspector at intervals specified in Table 61.05-10. Each must be removed for examination from each mounting that is required to be removed by paragraph (c) of this section.

(c)(1) Each boiler mounting must be removed from the boiler and be examined by the marine inspector at intervals specified in Table 61.05-10 where any of the following conditions exist:

* * * * *

(f) Each steam gage for a boiler or a main steam line must be examined and checked for accuracy by the marine inspector at intervals specified in Table 61.05-10.

(g) Each fusible plug must be examined by the marine inspector at intervals specified in Table 61.05-10.

35. Section 61.05-20 is revised to read as follows:

§ 61.05-20 Boiler safety valves.

Each safety valve for a boiler drum, superheater, or reheater must be tested and resealed in the presence of the marine inspector at intervals specified in Table 61.05-10.

36. Section 61.10-5 is amended by revising the heading and paragraphs (a), (b), (d), and (g) to read as follows:

§ 61.10-5 Pressure vessels in service.

(a) *Basic requirement.* The marine inspector shall test or examine each pressure vessel twice within any five-year period, except that no more than three years may elapse between any two tests or inspections. The extent of the test or examination must be that necessary to determine that the pressure vessel's condition is satisfactory and that the pressure vessel is fit for the service intended.

(b) *Internal and external tests and inspections.* Each pressure vessel stamped with the Coast Guard symbol, and each pressure vessel in a system regulated under subpart 58.60 of this subchapter that is fitted with a manhole or other inspection opening so it can be satisfactorily examined internally, must be opened twice within any five-year period, except that no more than three years may elapse between any two inspections. Each pressure vessel must be thoroughly examined internally and externally. Each pressure vessel is not required to be hydrostatically tested unless defects are found that, in the marine inspector's opinion, may impair its safety; but, where such defects are found, the pressure vessel must be hydrostatically tested at a pressure of 1¼ times the maximum allowable working pressure.

* * * * *

(d) *Hydrostatic pressure tests.* Each pressure vessel, other than one exempted by the provisions of this section, must be subjected to a hydrostatic test pressure of 1¼ times the maximum allowable working pressure twice within any five-year period, except that no more than three years may elapse between any two tests.

* * * * *

(g) *Bulk storage tanks.* Each bulk storage tank containing refrigerated liquefied CO_2 gas for use on board a vessel as a fire-extinguishing agent must be subjected to a hydrostatic test of 1¼ times the maximum allowable working pressure on the tenth year of the installation and at ten-year intervals thereafter. After the test, the tank must be drained and an internal examination made. Parts of the jacket and lagging on the underside of the tank designated by the marine inspector must be removed at the time of the test so the marine inspector may determine the external condition of the tank.

* * * * *

37. Section 61.15-5 is amended by revising paragraph (b) to read as follows:

§ 61.15-5 Steam piping.

* * * * *

(b) All steam piping subject to main boiler pressure must be subjected to a hydrostatic test at a pressure of 1¼ times the maximum allowable working pressure of the boiler after each five

years of service except as otherwise provided for in paragraph (a) of this section. If the covering of the piping is not removed, the test pressure must be maintained on the piping for ten minutes. If any evidence of moisture or leakage is detected, the covering must be removed and the piping thoroughly examined. No piping with a nominal size of 2 inches or less need by hydrostatically tested.

* * * * *

PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

38. The authority citation for part 111 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46.

Subpart 111.93—[Removed]

39. Subpart 111.93, consisting of §§ 111.93–1—111.93–13, is removed.

Dated: September 4, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–22536 Filed 9–27–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3836–9]

Connecticut; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Connecticut for final authorization, public hearing and public comment period.

SUMMARY: The State of Connecticut has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (EPA or Agency) has reviewed Connecticut's initial and revised applications and has made the tentative decision that Connecticut's hazardous waste program presently does not satisfy all of the requirements necessary to qualify for final RCRA authorization. However, EPA may revise its tentative decision if Connecticut can meet a set of conditions by November 15, 1990 requiring the State to make substantial improvements in its permits and enforcement programs, and fill staff and management vacancies, thereby establishing a quality program. If the State remedies the deficiencies identified below, and if no significant new issues are raised during the public comment period, EPA intends to grant the State final authorization without publishing another tentative decision in the **Federal Register**. EPA will publish the final decision in the **Federal Register** in December, 1990.

Connecticut's application for final authorization is available for public review and comment, and a public hearing will be scheduled to solicit comments on the application. EPA documents, such as State program reviews, that are referenced in this **Federal Register** Notice can be found in the Administrative Record.

DATES: A public hearing will be held if sufficient interest is expressed. It is tentatively scheduled for Thursday, November 1, 1990 at 10:30 a.m. in Hartford, CT. EPA reserves the right to cancel the public hearing if sufficient public interest in holding a hearing is not communicated to EPA by telephone or in writing by 5 p.m. on October 24, 1990 to the address listed in the CONTACTS section below. The State will participate in the public hearing held by EPA on this subject. All comments on this tentative determination and the Connecticut final authorization application must be received by the close of business on Wednesday, October 31, 1990 unless a public hearing is held. If a hearing is held, the public comment period will be extended until close of business on Thursday, November 1, 1990. For information on whether or not EPA will hold a public hearing on the Connecticut application, write or telephone the contact person listed below after October 24, 1990.

ADDRESSES: Copies of the Connecticut final authorization application are available during normal business hours at the following addresses for inspection and copying: Connecticut Department of Environmental Protection, Waste Engineering and Enforcement Division, 20 Trinity Street, 2nd Floor, Hartford, CT 06106, Phone: (203) 566–8843; U.S. EPA Headquarters, Library, Rm 211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382–5926; U.S. EPA Region I, Library, One Congress Street, 11th Floor, Boston, MA 02203, Phone: (617) 565–3300. Written comments should be sent to Stephen Yee, CT Waste Regulation Section (Mail Code: HEE–CAN6), Waste Management Division, U.S. EPA, Region I, J.F.K. Federal Building, Boston, MA 02203–2211, Phone: (617) 573–9644. If there is sufficient interest, EPA will hold the public hearing on Thursday, November 1, 1990, 10:30 a.m. at the Hartford Holiday Inn, 50 Morgan Street, Hartford, CT. For information on whether or not EPA will hold a public hearing on the Connecticut application, write or telephone the contact person listed below after October 24, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen Yee, CT Waste Regulation Section (Mail Code: HEE–CAN6), Waste Management Division, U.S. EPA, Region I, J.F.K. Federal Building, Boston, MA 02203–2211, Phone: (617) 573–9644.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616) (HSWA). The State's application and this background discussion are directed towards the pre-HSWA program requirements.

Two types of authorization have been established. The first type, known as "interim authorization," was a temporary authorization which was granted prior to January, 1986 if EPA determined that the State program was "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(c)). EPA's implementing regulations at 40 CFR 271.121 through 271.137 established a phased approach to interim authorization: Phase I covered EPA regulations in 40 CFR parts 260 through 263 and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities), and Phase II covered EPA regulations in 40 CFR parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, had three components. Phase IIA covered general permitting procedures and technical standards for containers and tanks, Phase IIB covered permitting of incinerator facilities, and Phase IIC addressed the permitting of landfills, surface impoundments, waste piles, and land treatment facilities. By statute, interim authorization expired on January 31, 1986. Responsibility for the hazardous waste program reverted to EPA if a State with interim authorization had not received final authorization by that date, as described below.

The second type of authorization is "final" authorization. It is granted by EPA when the Agency determines that the State program (1) is "equivalent" to and no less "stringent" than the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement of compliance with RCRA requirements (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for interim and final State authorization appear at 40 CFR part 271.

B. Connecticut

1. Consistency with the Federal Program

Section 22a–454(b) of the Connecticut General Statutes currently prohibits the land disposal of hazardous wastes other than metal hydroxide sludges, residue from recycling operations, residue from waste-to-energy facilities, hazardous waste spills, fly ash, and municipal wastewater treatment sludges. The statute acts as a partial ban on the land disposal of hazardous waste. Therefore, EPA requested a demonstration from Connecticut, pursuant to 40 CFR 271.4, that this partial ban was not inconsistent with the federal hazardous waste program.

On May 2, 1990, Connecticut submitted a demonstration to EPA justifying the partial land disposal ban. EPA reviewed the demonstration and provided the state with comments, to which the state satisfactorily responded on August 29, 1990. In EPA's view, the partial land disposal ban does not render the Connecticut hazardous waste program inconsistent with RCRA requirements. However, EPA solicits comment on the overall concept of the partial ban.

2. History of State Program Application

Connecticut was granted Phase I interim authorization on April 21, 1982 (47 FR 17055) and Phase II interim authorization (Components A, B, and C) on June 29, 1983 (48 FR 29864). Connecticut submitted an official application for final authorization on July 31, 1985. Prior to submission of the final application, Connecticut solicited public comment on the draft application. The State held a public hearing and did not receive oral or written comments. However, EPA had comments on the application and had concerns about the capability of the State to implement the RCRA program. As a result, the State did not obtain final authorization by the statutory deadline of January 31, 1986.

On January 31, 1986, a **Federal Register** notice (51 FR 4128) was published, announcing the expiration of interim authorization as required by law and identifying Connecticut as being a State in which the authority to implement RCRA had reverted to EPA. There were substantive problems with the Connecticut program at the time of program reversion. The three major programmatic issues were: inadequate enforcement; improper closure of regulated hazardous waste units; and improper implementation of the ground water monitoring program.

During the program reversion period and while Connecticut's application has been pending, from January 1986 to the present, the State has continued to implement and enforce its own regulations and to perform inspections and other agreed-upon tasks under a Cooperative Agreement between the State and EPA.

On April 17, 1989, Connecticut submitted a revised application for review by EPA. EPA reviewed the application and found deficiencies which the State was required to correct. The deficiencies were in components of the State's application including the Program Description, Attorney General's Statement, Memorandum of Agreement, Connecticut Regulations, Showing of Public Participation, and the adoption of the requirements of non-HSWA Clusters I, II, and III. (A regulatory "cluster" consists of all changes made to existing regulations and all new regulations promulgated under applicable provisions of the RCRA statute in a given year.) Non-HSWA Clusters I, II, and III consists of all changes and/or regulations adopted under applicable provisions of the RCRA statute not promulgated under HSWA amendments from July 1, 1984–June 30, 1985, July 1, 1985–June 30, 1986, and July 1, 1986–June 30, 1987, respectively.

As a result of these deficiencies and the expanded requirements of RCRA, Connecticut decided to further revise the application with the inclusion of non-HSWA Clusters IV and V, portions of HSWA CLusters I and II, and the incorporation of the federal regulations by reference (except in specific areas where the State program is broader-in-scope or more stringent than the Federal program).

On February 6, 1990, Connecticut issued a public notice of its intent to revise and update its hazardous waste management regulations. A public hearing was held on the proposed regulations on March 12, 1990. The State received written and oral comments. A summary of the comments and the State's response, along with copies of the written comments, can be found in the "Showing of Public Participation" section of the final application.

On May 29, 1990, Connecticut submitted a revision to the original draft final application to EPA. The revised application provided for further public comment in accordance with 40 CFR 271.20(b). As part of its application submission, Connecticut is seeking authorization for program revisions enacted since November, 1984 in accordance with 40 CFR 271.21(e).

On August 1, 1990, Connecticut submitted an official application for final authorization to EPA. Prior to submitting its official application, Connecticut held a public hearing on June 29, 1990 to solicit public comment on its draft application. Connecticut is seeking final authorization for the base RCRA program, non-HSWA Clusters I through V, and portions of HSWA Clusters I and II. These statutory and regulatory provisions, with the analogous federal authority, are set forth below.

The State will be given a compliance schedule to meet the remaining requirements of HSWA Cluster I. This approach is used to require states to adopt regulations. The compliance schedule requiring that an application be submitted to EPA by December 30, 1990 will be a condition of the State RCRA program grant. EPA is concerned that the State may not be able to meet this deadline and is seeking public comment on this issue.

Federal requirement	State authority
I. Base RCRA Requirements	
● 40 CFR Part 260—Hazardous Waste Management System	CT. Gen. Stat. § 22a–449(c); RCSA: 22a–449(c)–100(b)(1).
40 CFR 260.1(a)	RCSA: 22a–449(c)–100(b)(2)(A).
40 CFR 260.10	RCSA: 22a–449(c)–100(b)(1)(A); RCSA: 22a–449(c)–100(b)(1)(B); RCSA: 22a–449(c)–100(c).
40 CFR 260.40	RCSA: 22a–449(c)–101(c)(5).
40 CFR 260.41	RCSA: 22a–449(c)–101(c)(5).
● 40 CFR Part 261—Identification and Listing of Hazardous Waste	CT. Gen. Stat. § 22a–449(c); RCSA: 22a–449(c)–101(a)(1).

Federal requirement	State authority
40 CFR 261.1(a)	RCSA: 22a-449(c)-101(a)(2)(A).
40 CFR 261.2(c) Table 1	RCSA: 22a-449(c)-101(a)(2)(B).
40 CFR 261.3(c)(2)(i)	RCSA: 22a-449(c)-101(a)(2)(C).
40 CFR 261.5(a)	RCSA: 22a-449(c)-101(a)(2)(D); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(e)(2)	RCSA: 22a-449(c)-101(a)(2)(E); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(f)(3)(iv)	RCSA: 22a-449(c)-101(a)(2)(F); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(g)(3)(iv)	RCSA: 22a-449(c)-101(a)(2)(G); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(h)	RCSA: 22a-449(c)-101(a)(2)(H); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(i)	RCSA: 22a-449(c)-101(a)(2)(I); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.6(a)(3)(iv)	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(2)(J); RCSA: 22a-449(c)-101(c).
● 40 CFR Part 262—Standards Applicable to Generators of Hazardous Waste.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-102(a)(1).
40 CFR 262.10(e)	RCSA: 22a-449(c)-102(a)(2)(A).
40 CFR 262.22	RCSA: 22a-449(c)-102(b)(3).
40 CFR 262.23	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(b)(3).
40 CFR 262.34(a)(1)	RCSA: 22a-449(c)-102(a)(2)(B).
40 CFR 262.34(a)(3)	RCSA: 22a-449(c)-102(a)(2)(C).
40 CFR 262.34(a)(4)	RCSA: 22a-449(c)-102(a)(2)(D).
40 CFR 262.34(c)(1)(ii)	RCSA: 22a-449(c)-102(a)(2)(E).
40 CFR 262.34(d)(1)	RCSA: 22a-449(c)-102(a)(2)(F).
40 CFR 262.34(f)	RCSA: 22a-449(c)-102(a)(2)(G).
40 CFR 262.41(a)	RCSA: 22a-449(c)-102(a)(2)(H).
40 CFR 262.44	RCSA: 22a-449(c)-102(a)(2)(I).
40 CFR 262.70	RCSA: 22a-449(c)-102(a)(2)(J).
40 CFR 262 Appendix—Form 8700-22	RCSA: 22a-449(c)-102(a)(2)(K).
40 CFR 262 Appendix—Form 8700-22, Instructions, Item 20	RCSA: 22a-449(c)-102(a)(2)(L).
● 40 CFR Part 263—Standards Applicable to Transporters of Hazardous Waste.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-103(a).
40 CFR 263.20(g)(4)	RCSA: 22a-449(c)-103(a)(2)(A).
40 CFR 263.30(b)	RCSA: 22a-449(c)-103(a)(2)(B).
40 CFR 263.30(c)(1)	RCSA: 22a-449(c)-103(a)(2)(C).
40 CFR 263.31	RCSA: 22a-449(c)-103(a)(2)(D).
● 40 CFR Part 264—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-104(a)(1).
40 CFR 264.13(a)(4)	RCSA: 22a-449(c)-104(a)(2)(A).
40 CFR 264.71(a)(4)	RCSA: 22a-449(c)-104(a)(2)(B).
40 CFR 264.71(b)(4)	RCSA: 22a-449(c)-104(a)(2)(C).
40 CFR 264.75	RCSA: 22a-449(c)-104(a)(2)(D).
40 CFR 264.142	RCSA: 22a-449(c)-104(b).
40 CFR 264.144	RCSA: 22a-449(c)-104(b).
40 CFR 264.192(d)	RCSA: 22-449(c)-104(a)(2)(E).
40 CFR 264.193(c)	RCSA: 22a-449(c)-104(a)(2)(F).
40 CFR 264.195(b)(1)	RCSA: 22a-449(c)-104(a)(2)(G).
40 CFR 264.196(d)(1)	RCSA: 22a-449(c)-104(a)(2)(H).
40 CFR 264.272(a)	RCSA: 22a-449(c)-104(a)(2)(I).
40 CFR 264.272(c)(3)	RCSA: 22a-449(c)-104(a)(2)(J).
● 40 CFR Part 265—Interim Status Standards for Owner and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-105(a)(1).
40 CFR 265.13(a)(4)	RCSA: 22a-449(c)-105(a)(2)(A).
40 CFR 265.71(a)(4)	RCSA: 22a-449(c)-105(a)(2)(B).
40 CFR 265.71(b)(4)	RCSA: 22a-449(c)-105(a)(2)(C).
40 CFR 265.75	RCSA: 22a-449(c)-105(a)(2)(D).
40 CFR 265.192(d)	RCSA: 22a-449(c)-105(a)(2)(E).
40 CFR 265.193(c)	RCSA: 22a-449(c)-105(a)(2)(F).
40 CFR 265.195(b)(1)	RCSA: 22a-449(c)-105(a)(2)(G).
40 CFR 265.196(d)(1)	RCSA: 22a-449(c)-105(a)(2)(H).
40 CFR 265.201(a)	RCSA: 22a-449(c)-105(a)(2)(I).
40 CFR 265.222(b)	RCSA: 22a-449(c)-105(a)(2)(J).
40 CFR 265.229(b)(2)	RCSA: 22a-449(c)-105(a)(2)(K).
40 CFR 265.229(b)(3)	RCSA: 22a-449(c)-105(a)(2)(L).
40 CFR 265.272(a)	RCSA: 22a-449(c)-105(a)(2)(M).
40 CFR 265.275(c)	RCSA: 22a-449(c)-105(a)(2)(N).
● 40 CFR Part 266—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-106(a).
40 CFR 266.43	RCSA: 22a-449(c)-106(b).
40 CFR 266.80(a)	RCSA: 22a-449(c)-106(a)(1).
● 40 CFR Part 268—Land Disposal Restrictions	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-108(a)(1).
● 40 CFR Part 270—EPA Administered Permits Program: The Hazardous Waste Permit Program.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-110(a).
● 40 CFR Part 124—Procedures for Decisionmaking	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-110(a).
II. Non-HSWA Requirements prior to non-HSWS Cluster I	CT. Gen. Stat. § 22a-449(c).
● Biennial Report, 48 FR 3977, January 29, 1983	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(c)(5); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(D); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(D); RCSA: 22a-449(c)-110(a).
● Permit Rules: Settlement Agreement, 48 FR 39611, September 1, 1983	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
● Interim Status Standards—Applicability, 48 FR 52718, November 22, 1983	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1).

Federal requirement	State authority
● Chlorinated Aliphatic Hydrocarbon Listing (F024), 49 FR 5308, February 10, 1984.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● National Uniform Manifest, 49 FR 10490, March 20, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(A); RCSA: 22a-449(c)-102(a)(2)(K); RCSA: 22a-449(c)-102(a)(2)(L).
● Permit Rules: Settlement Agreement, 49 FR 17716, April 24, 1984	RCSA: 22a-449(c)-110(a).
● Warfarin & Zinc Phosphide Listing, 49 FR 19922, May 10, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Lime Stabilized Pickle Liquor Sludge, 49 FR 23284, June 5, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
III. Non-HSWA Cluster I	CT Gen. Stat. §§ 1-19(b); 1-21(i); Public Act 90-307.
● § 3006(f), State Availability of Information, 40 CFR Part 2, Subpart A, 5 U.S.C. 552, November 8, 1984.	Attorney General's Statement dated July 27, 1990, Memorandum of Agreement dated July 30, 1990, CT Public Act 90-307 dated June 12, 1990.
● Household Waste, 49 FR 44978, November 13, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Interim Status Standards—Applicability, 49 FR 46094, November 21, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1).
● Corrections to Test Methods Manual, 49 FR 47390, December 20, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(b)(2).
● Satellite Accumulation, 49 FR 49568, December 20, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(E).
● Definition of Solid Waste, 50 FR 614, January 4, 1985 [Definition of Solid Waste; Correction, 50 FR 14216, April 11, 1985, Definition of Solid Waste; Correction, 50 FR 33541, August 20, 1985].	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-100(a)(2); RCSA: 22a-449(c)-101(c)(5); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(1).
● Interim Status Standards for Treatment, Storage, and Disposal Facilities, 50 FR 16044, April 23, 1985.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(J); RCSA: 22a-449(c)-105(a)(2)(K); RCSA: 22a-449(c)-105(a)(2)(L); RCSA: 22a-449(c)-105(a)(2)(M).
IV. Non-HSWA Cluster II	CT. Gen. Stat. § 22a-449(c).
● Financial Responsibility: Settlement Agreement, 51 FR 16422, May 2, 1986	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a).
● Listing of Spent Pickle Liquor (K062), 51 FR 19320, May 28, 1986	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a).
V. Non-HSWA Cluster III	CT. Gen. Stat. § 22a-449(c).
● Radioactive Mixed Waste 51 FR 24504, 51 FR 24504, July 3, 1986	CT. Gen. Stat. § 22a-449(c).
● Liability Coverage-Corporate Guarantee, 51 FR 25350, July 11, 1986	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1).
● Standards for Hazardous Waste Storage and Treatment Tank Systems [Certain sections superseded by 53 FR 34079], 51 FR 25422, July 14, 1986.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(E); RCSA: 22a-449(c)-104(a)(2)(F); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(E); RCSA: 22a-449(c)-105(a)(2)(F); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-110(a).
● Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents [Superseded by 53 FR 13382], 51 FR 28296, August 6, 1986.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● [Standards for Hazardous Waste Storage and Treatment Tank Systems; Correction], 51 FR 29430, August 15, 1986.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-102(a)(1) RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(E); RCSA: 22a-449(c)-104(a)(2)(F); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(E); RCSA: 22a-449(c)-105(a)(2)(F); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-110(a).
● [Listing of Spent Pickle Liquor; Correction], 51 FR 33612, September 22, 1986.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Revised Manual SW-846; Amended Incorporation by Reference, 52 FR 8072, March 16, 1987.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c).
● Closure/Post-closure Care for Interim Status Surface Impoundments, 52 FR 8704, March 19, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1).
● Definition of Solid Waste; Technical Correction, 52 FR 21306, June 5, 1987	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-108(a)(1).
● Amendments to Part B Information Requirements for Land Disposal Facilities, 52 FR 23447, June 22, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
● Technical Correction; Identification and Listing of Hazardous Waste [Supersedes 51 FR 28296, August 6, 1986], 53 FR 13382, April 22, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
VI. Non-HSWA Cluster	CT. Gen. Stat. § 22a-449(c).
● List (Phase I) of Hazardous Constituents for Ground-Water Monitoring, 52 FR 25942, July 9, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(a)(1).
● Identification and Listing of Hazardous Waste, 52 FR 25942, July 10, 1987	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(a)(1).
● [Listing of Spent Pickle Liquor; Clarification], 52 FR 26697, August 3, 1987	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(a)(1).
● [Development of Corrective Action Programs After Permitting Hazardous Waste Land Disposal Facilities; Corrections], 52 FR 33936, September 9, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(a).
● Liability Requirements for Hazardous Waste Facilities; Corporate Guarantees, 52 FR 44314, November 18, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1).
● Hazardous Waste Miscellaneous Units, 52 FR 46946, December 10, 1987	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-110(a).
● [Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements], 53 FR 7740, March 10, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a).
● [Technical Correction; Identification and Listing of Hazardous Waste], 53 FR 13382, April 22, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators [correction to 52 FR 46946], 54 FR 615, January 9, 1989.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
VII. Non-HSWA Cluster V	CT. Gen. Stat. § 22a-449(c).
● Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, 53 FR 27290, July 19, 1988.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).

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Federal requirement	State authority
● Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079, September 2, 1988.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-105(a)(2)(H).
● Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification, 53 FR 35412, September 13, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Permit Modifications for Hazardous Waste Management Facilities, 53 FR 37912, September 28, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a).
● Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, 53 FR 39720, October 11, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1).
● Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes, 53 FR 43878, October 31, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Identification and Listing of Hazardous Waste; Removal of Strontium from the List of Hazardous Wastes, 53 FR 43881, October 31, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286, January 30, 1989.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
● Changes to Interim Status Facilities For Hazardous Waste Management Permits; Modifications of Hazardous Wastes Management Permits; Procedures for Post-Closure Permitting, 54 FR 9596, March 7, 1989.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
VIII. HSWA Cluster I—52 FR 28702, July 15, 1985	
● Delisting, 54 FR 27114, November 8, 1984	CT. Gen. Stat. § 22a-449(c).
● Household Waste Exclusion	RCSA: 22a-449(c)-100(c).
● Waste Minimization	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Liquids in Landfills	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(K); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-110(a).
● Double Liners	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a).
● Ground-Water Monitoring	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1).
● Pre-Construction Ban	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1).
● Interim Status	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
● Research and Development Permits	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
● Exposure Information	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
● Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, 50 FR 49164, November 29, 1985, amended by 51 FR 41900, November 19, 1986 and by 52 FR 11819, April 13, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-108(a)(1).
● Generators of 100 to 1,000 kg Hazardous Waste; Technical correction, 53 FR 27162, July 19, 1988.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-101(a)(2)(A); RCSA: 22a-449(c)-101(a)(2)(D); RCSA: 22a-449(c)-101(a)(2)(E); RCSA: 22a-449(c)-101(a)(2)(F); RCSA: 22a-449(c)-101(a)(2)(G); RCSA: 22a-449(c)-101(a)(2)(H); RCSA: 22a-449(c)-101(a)(2)(I); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-102(a)(2)(C); RCSA: 22a-449(c)-102(a)(2)(D); RCSA: 22a-449(c)-102(a)(2)(F); RCSA: 22a-449(c)-102(a)(2)(G).
● Identification and Listing of Hazardous Waste; Technical Correction, 53 FR 27162, July 19, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(2)(E); RCSA: 22a-449(c)-101(a)(2)(F).
● Standards for Hazardous Wastes Storage and Tank Systems, 51 FR 25422, July 14, 1986, amended by 53 FR 34079, September 2, 1988.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(E); RCSA: 22a-449(c)-104(a)(2)(F); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(E); RCSA: 22a-449(c)-105(a)(2)(F); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-110(a)(1).
IX. HSWA Cluster II	CT. Gen. Stat. § 22a-449(c).
● Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, September 23, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(I).
● Post-Closure Permits, HSWA Codification Rule, 52 FR 45788, December 1, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
● Hazardous Waste Management; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-105(a)(2)(H).

On August 22, 1990, EPA transmitted comments on the official supplemental application to the State. On August 31, 1990 the State satisfactorily responded to the comments and now has submitted a complete application.

3. State Program Capability

EPA requires that an assessment of State capability to manage its hazardous waste program be completed prior to making a tentative determination. For several years, EPA Region I has reviewed and evaluated the Connecticut Department of Environmental Protection's (CTDEP) program to determine the State's capability to implement a quality hazardous waste management program. These reviews placed particular emphasis on the evaluation of the State's compliance and enforcement program and the closure and permit programs because these are the program elements that past reviews indicated needed improvement. This assessment is a necessary component of the final authorization decision process and is based on the State's performance as noted during the FY'88, FY'89, and FY'90 program reviews. EPA believes that an evaluation over this time period will give a representative assessment of the State's program quality. Reports of these reviews are included as part of the administrative record. Also included as part of this assessment and the administrative record is the State capability checklist.

EPA reviews of the Connecticut RCRA program found that the program was severely understaffed which negatively impacted the State's ability to implement the permitting, closure, and compliance programs at levels acceptable to EPA. The State's enforcement program was also found to be inadequate. An unacceptable percentage of State enforcement actions was found to be inconsistent with the State's Enforcement Response Policy (ERP) regarding timely and appropriate enforcement actions. As a result, in January 1990, EPA Region I and Connecticut agreed in an Authorization Action Plan (AAP) that Connecticut would take remedial measures and demonstrate its capability to administer a quality program by: (1) Fulfilling the FY'90 RCRA program grant commitments (for permits, closure plans, and inspections); (2) incorporating by reference the Base RCRA regulations and non-HSWA Clusters I–IV (with the State retaining the right to develop regulations that are broader in scope and/or more stringent than the federal regulations); (3) submitting an updated draft application to EPA for review by May 1, 1990; and, (4) developing a management plan for the permits program by January 15, 1990. The AAP also specified that all other program elements could not fall below their then current level. The AAP is included in the administrative record.

EPA Region I conducted an evaluation of the State's compliance with the Authorization Action Plan in May, 1990 and found the following. The FY'90 grant work plan commitments for permits, closure plan approvals, and inspections were not being completed on schedule and likely would not be achieved by September 30, 1990, the last day of FY'90. Only forty-seven of seventy inspections had been completed. Closure plan reviews and approvals were below targeted outputs, with the State anticipating that two out of five approvals would be completed by the end of the fiscal year. Permit targets were also behind, with no permits being issued by the date of the EPA evaluation. The same EPA review revealed that Connecticut was not bringing all enforcement actions in a timely and/or appropriate manner, consistent with the requirements of the Connecticut Enforcement Response Policy. The State was proceeding to incorporate by reference the Base RCRA regulations and non-HSWA Clusters I–IV and the revised regulations would be effective and enforceable in August, 1990. Based upon the progress made in upgrading the program and the incorporation of federal regulations, EPA decided to proceed with the authorization decision process. EPA received the State's draft appliction on May 29, 1990, and the State submitted the management plan for the permits program on January 15, 1990.

EPA has continued to assess the capability of the State program and believes that the State is currently not capable of administering a quality RCRA program. The State program continues to be significantly understaffed. As of July 1, 1990, the vacancy rate was 25% for federally funded RCRA positions. The understaffing results in a continuing inability of the State to issue quality permits, process closure plans, and implement a quality compliance program at levels acceptable to EPA.

Despite these continuing problems, this year the State has evidenced a firm resolve to trying to obtain RCRA authorization by making necessary changes to its program. The State has begun devoting priority management attention to the program and has committed resources to addressing the existing impediments to a positive capability assessment. In addition, EPA has determined that the State staff has the technical and regulatory expertise to run a quality program if given training and resource support. Based upon a series of meetings and other communications since the middle of this year, EPA has become convinced of Connecticut's resolve to run a quality RCRA program.

Therefore, EPA has imposed a set of specific conditions, described below, that addresses the underlying problem of staffing levels as well as requiring output commitments to demonstrate technical capability. EPA is also requiring that the State follow its Enforcement Response Policy for all enforcement actions. In order for EPA to reverse its decision to deny final authorization to Connecticut, the State must implement and maintain these conditions.

4. Conditions

In recent years, the performance of Connecticut's RCRA program has not satisfied the requirements for capability to administer the federal program. EPA believes that the deficiencies in program implementation have resulted in large measure from two causes: (1) Chronic understaffing; and, (2) the State's philosophical approach regarding some elements of the RCRA program. High turn-over and vacancy rates have resulted in the inability of the State to maintain adequate permit, closure, and inspection outputs. Understaffing has also contributed to the State's inability to provide adequate enforcement support to the RCRA program. Current on-board staff, however, has demonstrated adequate technical abilities.

Specific program elements in which the State's approach has resulted in program implementation deficiencies included the closure program, the groundwater monitoring program, and the enforcement program. Historically, for example, the State has not pursued an enforcement program which relied on assessment of penalties against violators to the same extent as federal policy. The State has adopted its own enforcement response policy, which is consistent with the federal policy, and has committed to implement it. In the closure and groundwater areas, the State has changed its approach and is now implementing a program consistent with federal requirements.

To allow Connecticut the opportunity to resolve the above concerns and to demonstrate its capability through actual program performance, EPA decided to develop a list of conditions for authorization which, if fully satisfied, will indicate the State's ability to administer a quality RCRA program. In preparing this list of conditions for the State, EPA considered the full list of deficiencies in recent performance and drafted conditions to address each problem area. For instance, based upon the overriding problem of inadequate staffing, the conditions set explicit commitments for filling both management and staff positions. Similarly, EPA has drafted specific conditions for Connecticut to meet to demonstrate its capability in making permitting and closure decisions. In the enforcement area, the conditions require a specified number of inspections and require all state enforcement actions to be consistent with the appropriateness criteria in the State's Enforcement Response Policy.

EPA included the conditions in correspondence dated August 10, 1990 to the Commissioner of CTDEP. In the letter, EPA explained to the State that if all the conditions are met and the State maintains a capable program, then EPA will change the negative tentative determination that is discussed in this **Federal Register** Notice to a positive final determination for the authorization of the Base RCRA program without a reproposal in the **Federal Register**.

The full text of the conditions in the August 10 letter is as follows:

I. General Conditions

1. All of the specific conditions must be met, as specified, to attain a positive final determination.

2. The specific conditions will not be subject to change or modification.

II. Specific Conditions

1. The two (2) vacant RCRA management positions, which represent all vacancies and departures through July 1, 1990, must be filled on a

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permanent basis on or before November 15, 1990.

2. Bona fide offers to fill nine (9) vacant RCRA staff positions that have been authorized per the FY'90 RCRA Subtitle C Grant which represent all vacancies and departures through July 1, 1990, must be made. In addition, eight (8) of the nine (9) above-mentioned positions must be filled on a permanent basis by November 15, 1990. The overall staff levels must be maintained at a 90% level.

3. The following closure commitments will be accomplished by Septembert 30, 1990: One (1) Land Disposal Facility approval, two (2) Land Disposal Facility Notices of Deficiency, and one (1) Incinerator approval. The facilities that these activities may be credited against are identified in the FY'90 RCRA program grant as amended.

4. The following permit commitments will be accomplished by September 30, 1990: Two (2) final permit decisions, two (2) draft permit decisions, and the initiation of closure for MacDermott—Freight Street, the facility that had withdrawn its application. The facilities that these activities may be credited against are identified in the FY'90 RCRA program grant as amended.

5. The permits and closure decisions must be technically sound and enforceable. The decisions will be subject to an analysis by EPA which will be based upon the review of NODs or related correspondence, draft decisions, and fulfillment of regulatory requirements. Additional criteria will include: actions are timely, documents are technically sound, permits are enforceable, and public participation requirements are met.

6. To meet the inspectin grant commitments for FY'90, CTDEP will conclude by September 30, 1990, one hundred sixty-eight (168) inspections, conducted by qualified inspectors. A qualified inspector shall be defined as a person who has sufficient training and/or experience to conduct a RCRA inspection to the satisfaction of EPA. Based upon the correspondence of July 23, 1990, from Pat Bowe of CTDEP to Stephen Yee of EPA, a copy of which can be found in the Administrative Record, personnel who have not conducted independent RCRA inspections within the past six (6) months must be provided with training as specified in the correspondence. In addition, the personnel shall be given training on the classification of violations in the State's Enforcement Response Policy (ERP). The RCRA Inspection Manual (OSWER Directive 9938-2A, March, 1988, as amended May, 1989) should be used as a training reference.

EPA will conduct twelve (12) inspections which will result in a total of one hunderd eighty (180) inspections.

7. All State enforcement actions initiated since June 1, 1990 must be consistent with the appropriateness criteria established by the State's Enforcement Response Policy.

Since EPA fashioned these conditions, EPA staff has been closely monitoring Connecticut's progress in meeting the conditions. EPA will present its assessment of the State's response to these conditions in the final rulemaking.

By requiring the State to fill vacancies and maintain, at a minimum, a 90% staffing level, EPA believes that CTDEP can implement a capable program as demonstrated by the ability of the current staff to meet the outputs in the above conditions. Further to assure long-term compliance with the staffing condition, EPA will include conditions in the State RCRA program grant indicating that if staffing levels are not maintained, EPA will invoke grant sanctions reducing federal grant monies to the State. This combination of the State's priority management attention to administering a capable program, demonstrated performance to satisfy conditions designed to address specific program deficiencies, and continued EPA oversight of the State will provide EPA with evidence adequate to change today's tentative negative determination to a positive determination.

5. Summary

EPA has reviewed Connecticut's application and tentatively determined that the State's program does not meet all of the requirements necessary to qualify for final authorization. If the State remedies the deficiencies identified above, and if no significant new issues are raised during the public comment period, EPA intends to grant the State final authorization without publishing another tentative determination in the **Federal Register**. If the State does not implement a program that fully satisfies the conditions noted above, EPA intends to deny the State's application for final authorization. If final authorization is not granted, the State will continue to implement and enforce its own regulations and is expected to perform inspections and other agreed-upon tasks under a Cooperative Agreement between the State and EPA as amended by the RCRA program grant. The final rulemaking will be published in the **Federal Register** in December, 1990.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d)(1), the Agency may hold a public hearing on its tentative decision on Thursday, November 1, 1990 at 10:30 a.m. at the Hartford Holiday Inn, 50 Morgan Street, Hartford, CT. The public may also submit written comments on this determination up to the close of business on Wednesday, October 31, 1990 unless a public hearing is held. If a hearing is held, the public comment period will remain open until close of business Thursday, November 1, 1990. For information on whether or not EPA will hold a public hearing on the Connecticut application, write or telephone the contact person listed above after October 24, 1990. Copies of Connecticut's application are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

In making its final determination, EPA will consider the measures the State has taken to correct the problems discussed above and all public comments on the tentative determination. EPA will give notice of its final decision on whether or not to approve Connecticut's program in the **Federal Register** in December, 1990.

C. Effect of HSWA on Connecticut's Authorization if Final Authorization is Granted

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with Final Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in an authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6928(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Connecticut if final RCRA authorization is granted. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce these portions of the HSWA in Connecticut until the State receives authorization to do so. Among other things, EPA will issue Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

The final determination will include authorization for some of the HSWA requirements which have been identified above. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702-28755 (July 15, 1985).

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The denial of authorization effectively continues the applicability of certain Federal regulations in Connecticut. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 217

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 12, 1990.

Julie Belaga,

Regional Administrator.

[FR Doc. 90- 22979 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 90-413; FCC 90-307]

Authorization of Central Processing Units Used in Digital Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposal responds to petitions for reconsideration of the First Report and Order in GEN Docket No. 87-389, 54 FR 17710, April 25, 1989, filed by the International Business Machines Corporation and the Computer and Business Equipment Manufacturers Association, requesting the Commission to require circuit boards containing the central processing unit (CPU) used in personal computers and other digital devices to comply with the Commission's standards and equipment authorization procedures. This action will facilitate the marketing of computers that are capable of being used with different CPU boards.

DATES: Comments must be submitted on or before December 13, 1990 and reply comments on or before January 14, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 653-7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN Docket No. 90-413, FCC 90-307, adopted September 4, 1990 and released September 24, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. In the Notice of Proposed Rule Making in this proceeding, the Commission proposes to amend part 15 of its rules to require the authorization of central processing unit (CPU) boards designed to be used in personal computers and other digital devices. These proposed changes will allow manufacturers and system integrators to vary the CPU boards used in personal computers without obtaining an FCC authorization for each specific combination of computer and CPU board marketed.

2. Part 15 governs the operation and regulation of non-licensed radio frequency (RF) devices. Digital devices, including computers and peripheral devices, generate and use RF energy and are subject to the standards and other provisions in part 15 for unintentional radiators. Under the current rules, computers must comply with the standards and authorization procedures, and each specific configuration of the basic computer must be individually tested and authorized. However, a CPU board, currently defined as a subassembly, may be used in several different computers, and a computer may be marketed with several different CPU boards. The requirement to test and authorize every possible combination that may be marketed is expensive and time consuming and may limit equipment design flexibility by discouraging manufacturers from introducing new products.

3. The International Business Machines Corporation (IBM) and the Computer and Business Equipment Manufacturers Association (CBEMA) petitioned the Commission to amend its rules, placing CPU boards under the standards and equipment authorization requirements in part 15. CBEMA also petitioned the Commission to modify the definition of a peripheral device by removing the reference to control cards. While the petitions from IBM and CBEMA were filed as reconsiderations of the First Report and Order in GEN Docket No. 87-389, 54 FR 17710, April 25, 1989, the issues raised by IBM and CBEMA were not addressed in that proceeding. Thus, these changes cannot be implemented through reconsideration and must be addressed in a rule making proposal.

4. We are proposing to implement the changes sought by IBM and CBEMA by including CPU boards under the definition of a peripheral device, thereby making CPU boards subject to the same testing, authorization, labelling and other requirements applicable to part 15 digital devices. By treating a CPU boards as peripheral devices, we would allow anyone to install or replace the CPU board in a certified computer

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system, provided the board is replaced with a CPU board that has been certified and labelled as a peripheral device. The modified computers would not be subject to further testing, certification or labelling requirements. Separate authorization of the CPU board would be required only if the CPU board is to be marketed as a stand-alone device. Further, as with other part 15 devices, the sale or lease of a CPU board to a second party for further manufacture would not be subject to our marketing rules or authorization requirements. This proposal is expected to provide substantial benefits to manufacturers, system integrators and consumers by providing them the flexibility to configure a computer system to the user's needs without unnecessary and burdensome testing, certification and labelling requirements.

5. We recognize that the ability of a computer to comply with our limits is dependent upon a complex interaction between both the CPU board and the basic computer in which it is installed. Accordingly, we request comments on whether the treatment of a CPU board as a peripheral device is likely to result in an increased risk of non-compliance by personal computers and/or an increase in the interference potential of these systems. Parties that believe more stringent regulation is needed should provide supporting information and suggest alternatives. We may adopt different approaches to the testing and authorization of CPU boards if the record indicates that our proposal is not workable.

6. Several manufacturers already have expressed an interest in introducing modular computer systems. Further, users are replacing CPU boards in existing computers that may cause the system to interfere with other radio frequency operations. Thus, we believe that any changes to the rules resulting from this proposal need to be implemented as soon as possible. We propose to require all digital devices manufactured, imported or marketed on or after six months from the date final regulations are published in the Federal Register to comply with the new rules. Comments are due on or before December 13, 1990, and reply comments are due on or before January 14, 1990.

List of Subjects in 47 CFR Part 15

Communications equipment, Computer technology.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22032 Filed 9-27-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AB52

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for 26 Plants From the Waianae Mountains, Island of Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 26 plants: *Abutilon sandwicense* (no common name (NCN)), *Alsinidendron obovatum* (NCN), *Alsinidendron trinerve* (NCN), *Centaurium sebaeoides* ('awiwi), *Chamaesyce celastroides* var. *kaenana* ('akoko), *Chamaesyce kuwaleana* ('akoko), *Cyanea pinnatifida* (haha), *Diellia falcata, Dubautia herbstobatae* (na' ena' e), *Gouania meyenii* (NCN), *Hedyotis dengeneri* (NCN), *Hedyotis parvula* (NCN), *Hesperomannia arbuscula* (NCN), *Lipochaeta lobata* var. *leptophylla* (nehe), *Lipochaeta tenuifolia* (nehe), *Lobelia niihauensis* (NCN), *Neraudia angulata* (NCN), *Nototrichiunı humile* (kulu'i), *Phyllostegia mollis* (NCN), *Sanicula mariversa* (NCN), *Schiedea kaalae* (NCN), *Silene perlmanii* (NCN), *Tetramolopium filiforme* (NCN), *Tetramolopium lepidotum* ssp. *lepidotum* (NCN), *Urera kaalae* (opuhe), and *Viola chamissoniana* ssp. *chamissoniana* (pamakani). These species are known primarily from the Waianae Mountain Range, located on the island of Ohau, Hawaii. Eight of these species have been collected from one or more sites on the islands of Kauai, Molokai, West Maui, Niihau, East Maui, Moku Mano, or the Koolau Mountains on Oahu. The 26 plant species and their habitats have been adversely threatened in various degrees by one or more of the following: Trampling and predation by feral animals (pigs, cattle, goats); habitat degradation and competition for space, light, water, and nutrients by naturalized, alien vegetation; and habitat loss from fires. A few of these species may have been subjected to overcollection, primarily for scientific purposes, and are subject to trampling by human beings along trails. Because of the depauperate number of extant individuals and severely restricted distributions, populations of these species are subject to an increased likelihood of extinction from stochastic events. A determination that these 26 species are endangered would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by November 27, 1990. Public hearing requests must be received by November 13, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to Ernest F. Kosaka, Field Office Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Abutilon sandwicense, Alsinidendron obovatum, Alsinidendron trinerve, Chamaesyce celastroides var. *kaenana, Chamaesyce kuwaleana, Cyanea pinnatifida, Diellia falcata, Dubautia herbstobatae, Gouania meyenii, Hedyotis degeneri, Hedyotis parvula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Neraudia angulata, Phyllostegia mollis, Sanicula mariversa, Schiedea kaalae, Silene perlmanii, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Urera kaalae,* and *Viola chamissoniana* ssp. *chamissoniana* are either endemic to, or have their largest or best known populations in, the Waianae Mountain Range on the western side of the island of Oahu, Hawaii. *Centaurium sebaeoides* is also known from the islands of Kauai, Molokai, and West Maui, and from the Koolau Mountains on Oahu; *Hesperomannia arbuscula* is known from West Maui; *Lobelia niihauensis* is known from Niihau and Kauai; *Nototrichium humile* is known from East Maui; *Chamaesyce kuwaleana* is also known from Moku Mano Island off the coast of Oahu; *Diellia falcata* is known from both the Waianae and Koolau Mountain ranges; *Phyllostegia mollis* is known from Molokai and East Maui as well as the Koolau Mountains of Oahu; and *Tetramolopium lepidotum* ssp. *lepidotum* has been collected on the island of Lanai in the past.

The island of Oahu is formed from the remnants of two large shield volcanoes, the older Waianae volcano on the west and the younger Koolau volcano on the east. Their original shield volcano shape has been lost as a result of extensive erosion, and today these volcanoes are called "mountains" or "ranges," and consist of long, narrow ridges. The Waianae Mountains were built by eruptions that took place primarily along three rift zones. The two principal rift zones run in a northwestward and south-southeastward direction from the summit, and a lesser one runs to the northeast. The range is approximately 40 miles (mi) (64 kilometers (km)) long. The caldera lies between the north side of Makaha Valley and the head of Nanakuli Valley (MacDonald *et al.* 1983). The Waianae Mountains are in the rain shadow of the parallel Koolau Mountains and except for Mt. Kaala, the highest point on Oahu (4,020 feet (ft) (1,225 meters (m))), receive much less rainfall (Wagner *et al.* 1990). The median annual rainfall for the Waianae Mountains varies from 20 to 75 inches (in) (51 to 191 centimeters (cm)), with only the small summit area of Mt. Kaala receiving the highest amount.

Two of the species, *Chamaesyce celastroides* var. *kaenana* and *Centaurium sebaeoides*, are members of the 'Ilima Shrubland Community of the Coastal Dry Shrublands Vegetation type which occurs on sand dunes and poorly consolidated volcanic soils near shore environments with high exposure to salt-laden winds. Coastal Dry Shrublands occur on all of the islands of the Northwestern Hawaiian Islands and along the coastlines of all of the main islands, extending up to about 1,000 ft (300 m) in elevation. Because of the effects of rain shadows, these communities are most extensively developed on the leeward sides of the higher islands. Annual rainfall is less than 45 in (120 cm), and occurs primarily during the winter months of October to April; much of the vegetation dies back during a prolonged drought that lasts most of the rest of the year (Gagne and Cuddihy 1990).

Lowland Dry Vegetation includes several plant communities and occurs on the leeward sides of all the main Hawaiian islands at an elevation of 15 to 2,000 ft (5 to 610 m). The climate of this vegetation type is distinctly seasonal with hot, dry summers and winter rainfall, usually less than 40 in (100 cm), but ranging up to 80 in (200 cm) annually. The soils range from weathered silty loams to stony clay, and rocky ledges with very shallow soil and recent, little-weathered lava are present (Cuddihy and Stone 1990, Gagne and Cuddihy 1990). The following species proposed herein are members of several communities of this vegetation type: *Dubautia herbstobatae, Lipochaeta lobata* var. *leptophylla, Sanicula mariversa, Tetramolopium filiforme, Chamaesyce kuwaleana, Hedyotis parvula,* and *Lobelia niihauensis.*

The remaining 17 species included in this proposed rule are members of the Diverse Mesic Forest Community, one of the lowland Mesic Forest Vegetation community types. These communities occur on most of the main islands between 100 and 5,300 ft (30 to 1,600 m) in elevation. The annual rainfall is 45 to 150 in (120 to 380 cm), falling mostly during the winter months. This community grows on diverse, well-weathered, and well-drained substrates ranging from rocky, shallow, organic muck soils to steep, rocky talus slopes, shallow soil over weathered rock in steep gulches, or deep soil over soft weathered rock and gravelly alluvium. In the Waianae Mountains, this vegetation community is found in sheltered areas and comprises a rich diversity of native plants with no clearly dominant species (Cuddihy and Stone 1990, Gagne and Cuddihy 1990). Four of the 17 taxa that are components of the Diverse Mesic Forest Community grow primarily in the wetter parts of this vegetation type or may cross into a wet forest community: these are *Alsinidendron trinverve, Hesperomannia arbuscula, Phyllostegia mollis,* and *Schiedea kaalae.*

The land that supports these 26 plant species is owned by the State of Hawaii (including land classified as Department of Hawaiian Homelands, Natural Area Reserve System, Forest Reserve, and City and County of Honolulu land), Federal government, and private parties. Plants on Federal land are located on portions of Schofield Barracks and Makua Military Reservation, both under the jurisdiction of the U.S. Army.

Discussion of the 26 Taxa Proposed for Listing

In 1932, Otto Degener (1932a, 1932b) discovered and described what is now called *Abutilon sandwicense*, naming it *Arbortopetalum sandwicense* for the Sandwich Islands, an earlier name for the Hawaiian Islands. Degener's new genus, *Abortopetalum*, was based primarily on its spatula-shaped, "abortive" petals. Erling Christophersen (1934) transferred the species to the genus *Abutilon* because none of the characters of the genus *Abortopetalum* made it distinctive from the generally accepted definition of *Abutilon*. In the same publication, Christophersen (1934) described variety *welchii* from Lualualei Valley, but the most recent treatment of the genus (Bates 1990) considers the differences cited by Christophersen to be within the normal range of variation of the species.

Abutilon sandwicense, of the mallow family (Malvaceae), is a shrub that grows to 10 ft (3 m) tall and is covered with short glandular hairs. Leaves are light green, heart-shaped, and 3 to 9 in (8 to 22 cm) long. A single pendulous flower grows from the leaf axil (the point between the leaf and the stem). The flowers have pale, greenish-yellow, hairy, glandular sepals and bright green, often reddish-brown tipped petals up to 2 in (5 cm) long. A greenish-yellow staminal column with about 350 stamens near its tip protrudes from the flower. The fruit is a capsule up to 1 in (2.5 cm) long, which breaks into 8 to 10 parts, each enclosing 3 or more seeds. Seeds are brown, up to 0.1 in (3 millimeters (mm)) long, and slightly hairy. This species is distinguished from others in the genus by the green or reddish-brown tipped petals which extend beyond the sepals (Bates 1990, Degener 1932b, St. John 1981b).

Historically, *Abutilon sandwicense* was known from nearly the entire length of the Waianae Mountains, from Makaleha Valley to Nanakuli Valley (Bates 1990). This species is now known from Kaawa Gulch, Kaimuhole Gulch, Makaha Valley, Makaha-Waianae Kai Ridge, Makaleha Valley, Manuwai Gulch, and Nanakuli Valley on State-owned land (Hawaii Heritage Program (HHP) 1990a1 to 1990a7). The 7 known populations, which extend over a distance of about 5 by 2.5 mi (8 by 4 km), contain an estimated 300 to 400 individuals (HHP 1990a1 to 1990a7). *Abutilon sandwicense* typically grows on steep slopes or gulches in dry to mesic lowland forest at an elevation of 1,000 to 2,000 ft (300 to 600 m) (Bates 1990, HHP 1990a8). Associated species include *Aleurites moluccana* (kukui), *Coesalpinia kavaiensis* (uhiuhi), *Diospyros* (lama), *Sapindus oahuensis* (aulu), and *Schinus terebinthifolius* (Christmasberry) (HHP 1990a1, 1990a3). The major threats to *Abutilon sandwicense* are competition from alien plant species (Christmasberry, *Clidemia hirta* (Koster's curse), *Melinus minutiflora* (molasses grass), and *Passiflora suberosa* (huehue haole)), fire, and trampling by feral cattle.

Earl Edward Sherff (1951b) first described *Alsinidendron obovatum* based on specimens collected by Charles Noyes Forbes in 1911, choosing a specific epithet describing the shape of the leaves. In the same publication (Sherff 1951b), Degener and Sherff described var. *parvifolium* based on its small leaves. The most recent treatment

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of the genus (Wagner *et al.* 1990) does not recognize any varieties in this taxon.

Alsinidendron obovatum, a member of the pink family (Caryophyllaceae), is a branching subshrub growing to 3 ft (1 m) tall. The leaves are thick, somewhat fleshy, elliptic shaped, 1.6 to 4.3 in (4 to 11 cm) long, and up to 2.4 in (6 cm) wide, with 3 or 5 large veins. The inflorescence comprises 7 to 12 flowers arranged in a congested cluster. The flowers lack petals, but usually have 5 sepals which are white inside and green or green-veined on the outside (Wagner *et al.* 1990). In fruit, the sepals become fleshy and purple and enclose the capsule, forming a structure similar to a berry in appearance and perhaps attractive to birds, which would aid in dispersal (Carlquist 1980). Seeds are black and about 0.06 in (1 mm) long. This and the following species can be distinguished from other members of the genus by their shrubby habit and fleshy purple sepals surrounding the capsule (Wagner *et al.* 1990).

Historically, *Alsinidendron obovatum* was known from the northern and southern end of the Waianae range (Wagner *et al.* 1990). This species remains in Kapuna and Puhalo gulches on State-owned land (HHP 1990b1, 1990b2). The 2 known populations, which are about 0.5 mi (0.8 km) apart, contain about 100 individuals (HHP 1990b1, 1990b2). *Alsinidendron obovatum* typically grows on ridges and slopes in lowland diverse mesic forest dominated by *Acacia koa* (koa) and *Metrosideros polymorpha* ('ohi'a) at an elevation of 1,850 to 2,300 ft (560 to 700 m) (HHP 1990b3, Hawaii Plant Conservation Center [HPCC] 1990a, Wagner *et al.* 1990). Associated species include *Bidens* (ko'oko'olau) and *Syzygium cumini* (java plum) (HHP 1990b1, 1990b2). The major threats to *Alsinidendron obovatum* are competition from the aggressive alien plant species, molasses grass; habitat degradation by feral pigs; collection or trampling by humans; and the small number of populations.

Alsinidendron trinerve was first collected by Louis Charles Adelbert von Chamisso in 1818 or 1829 (Kimura and Nagata 1980). Horace Mann, Jr. (1868) described the genus *Alsinidendron* based on a specimen he collected with William Tufts Brigham. As it is a shrub related to and resembling chickweed, he named it after the Greek for chickweed (*alsine*) and tree (*dendron*). The specific epithet refers to the three-veined leaves. Wilhelm Hillebrand (1888) amended the description of the genus to include information about the floral structures he called "staminodia," although they currently are believed to more likely represent nectaries or vestigial petals (Wagner *et al.* 1990). Ferdinand Pax and K. Hoffman (1934) transferred the species to *Schiedea*, a course not followed by other botanists who have studied the taxon.

Alsinidendron trinerve is very similar in appearance to *A. obovatum* but differs in that it has a more open inflorescence with peduncles more than 0.8 in (2 cm) long, sepals with an acute tip, and usually is found in wet forests above 3,000 ft (900 m) in elevation. *Alsinidendron obovatum* has a congested inflorescence with peduncles less than 0.8 in (2 cm) long, sepals with a rounded tip, and usually grows in mesic forests 1,800 to 2,600 ft (550 to 800 m) in elevation (Degener 1937a, Wagner *et al.* 1990).

Historically, *Alsinidendron trinerve* was known from the north-central and southern Waianae Mountains. This species is known to be extant on Mt. Kaala and Mt. Kalena on Federally-owned land (HHP 1990c1, 1990c2). The 2 known populations, which are about 1 mi (2 km) apart, contain about 13 individuals (HHP 1990c1, 1990c2). *Alsinidendron trinerve* typically grows on slopes in wet forest or the wetter portions of diverse mesic forest dominated by 'ohi'a and *Ilex anomala* (kawa'u) at an elevation of 3,000 to 4,600 ft (900 to 1,200 m) (HHP 1990c2, Wagner *et al.* 1990). Associated species include *Coprosma ochracea* (pilo), *Gunnera* ('ape'ape), and *Melicope sandwicensis* (alani) (HHP 1990c1). The major threats to *Alsinidendron trinerve* are competition from the aggressive alien plant species, *Rubus argutus* (blackberry); habitat degradation by feral pigs; trampling or collection by humans along trails; and the small number of extant individuals.

On the basis of a collection of specimens by Berthold Carl Seeman of what is now called *Centaurium sebaeoides*, August Grisebach (1853) named a new genus of plants, *Schenkia*, and gave it the specific epithet of *sebaeoides*, indicating its resemblance to a species of *Sebaea*, a genus in the gentian family. The taxon was transferred to the genus *Erythraea* in 1862 by Asa Gray (1862), and later by G. Claridge Druce to the genus *Centaurium* (Druce 1917).

Centaurium sebaeoides is the only species of the gentian family (Gentianaceae) native to the Hawaiian Islands. It is an annual herb about 2.4 to 8 in (6 to 20 cm) tall. Leaves are rather fleshy, inversely ovate or elliptic, and 0.3 to 1.3 in (0.7 to 3.2 cm) long by less than 1 in (2 cm) wide. Flowers are stalkless and are arranged along the stems near their ends. The fused sepals are 0.2 in (5 mm) long and are divided into uneven lobes. The white or pale pink petals are fused into a tube up to 0.4 in (10 mm) long, with lobes up to 0.2 in (4.5 mm) long. The cylindrical capsules are up to 0.4 in (9.5 mm) long and contain numerous tiny brown seeds. This species is distinguished from *C. erythraea*, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Degener 1934, Degener and Degener 1960, Wagner *et al.* 1990).

Historically, *Centaurium sebaeoides* was known from scattered localities on the islands of Kauai, Oahu, Molokai, and Maui (Wagner *et al.* 1990). This species remains in the Awaawapuhi Valley on Kauai, at Kaena on Oahu, near Hoolehua on Molokai, and on West Maui, all on State-owned land (HHP 1990d1, 1990d2, 1990d4, 1990d5). Two known populations, about 4 mi (6 km) apart, remain on Kauai; and one population each exists on the other three islands. These 5 populations contain fewer than an estimated 1,000 individuals (HHP 1990d1, 1990d2, 1990d4, 1990d5; HPCC 1990b). *Centaurium sebaeoides* typically grows in volcanic or clay soils or on cliffs in arid coastal areas below 400 ft (120 m) elevation (HHP 1990d2, Wagner *et al.* 1990). Associated species include ko'oko'olau and *Lipochaeta* (nehe) (HHP 1990d2, 1990d5). The major threats to *Centaurium sebaeoides* are habitat degradation by feral goats and cattle; competition from the alien plant species, *Leucaena leucocephala* (koa haole); trampling by humans on or near trails; and fire. The threats are believed to be similar on Kauai, Oahu, Molokai, and West Maui.

Sherff (1936) described *Euphorbia celastroides* var. *kaenana* based upon a 1911 collection by Forbes, and named it after the geographical area in which Forbes had collected the specimen. He previously had described *E. celastroides* var *niuensis* based upon a Hillebrand specimen collected in the Niu area of Oahu in the late 1800s (Sherff 1936). The Degeners (Degener and Degener 1968a) and Leon Croizat accepted the elevation of the section *Chamaesyce* to the generic level and published the necessary combinations for the Hawaiian taxa (Croizat 1943; Degener and Croizat 1936a, 1936b, 1937). Further research (Herbst 1971, Pearcy and Troughton 1975, Perry 1943, Robichaux and Pearcy 1980) has supported retaining this separation. Daryl L. Koutnik (Koutnik 1987, Koutnik and Huft 1990), the most recent monographer of

the genus in Hawaii, placed variety *niuensis*, which has not been collected since Hillebrand's time, in synonymy under variety *kaenana*.

Chamaesyce celastroides var. *kaenana*, a member of the spurge family (Euphorbiaceae), is a low-growing or upright shrub to 5 ft (1.5 m) tall with milky sap. The leaves, which fall off during the dry season, are mostly hairless and are arranged in two opposite rows along the stem; they are 0.8 to 2.6 in (20 to 65 mm) long and 0.3 to 0.8 in (8 to 20 mm) wide, being widest at the tip. Flower clusters (cyathia) are crowded on small side branches and each produce a small, erect capsule. Seeds are small, spherical, and gray or White. this species is distinguished from other members of the genus in the area in which it grows in that it is a woody shrub; the other members of the genus in the area are herbs or small subshrubs (Degener and Degener 1959a, 1959b; Kimura and Nagata 1960; Koutnik 1987; Koutnik and Huft 1990; Sherff 1936).

Historically, *Chamaesyce celastroides* var. *kaenana* was known from the northwestern end of the Waianae Mountains as well as from one collection from the southeastern end of the Koolau Mountains (HHP 1990e4; Koutnik 1987; Koutnik and Huft 1990). This taxon remains only in the vicinity of Kaena Point on State and Federal land (HHP 1990e1 to 1990e3, 1990e5, 1990e6). The 5 known populations, which extend over a distance of about 3 by 1 mi (5 by 1.6 km), contain fewer than 300 individuals (HHP 1990e1 to 1990e3, 1990e5, 1990e6; Joel Lau, Botanist, HHP, Honolulu, pers. comm., 1990). *Chamaesyce celastroides* var. *kaenana* typically grows in coastal dry shrubland on windward talus slopes at an elevation of 30 to 700 ft (9 to 640 m) (HHP 1990e1, 1990e6, 1990e7; Koutnik and Huft 1990). Associated taxa include *Gossypium tomentosum* (ma'o), *Jacquemontia ovalifolia* ssp. *sandwicensis* (pa'uohi'laka), *Santalum freycinetianum* (sandalwood), and *Sida fallax* ('ilima) (HHP 1990e1 to 1990e3, 1990e5). The major threats to *Chamaesyce celastroides* var. *kaenana* are competition from the alien plant species, koa haole; fire; and effects of recreational activities.

Based on a collection by Degener from Mauna Kuwale, Sherff and Degener (Sherff 1949) described *Euphorbia kuwaleana* as a new species. Otto and Isa Degener (1959a) subsequently transferred the species to the genus *Chamaesyce*.

Chamaesyce kuwaleana, a member of the spurge family, is an erect shrub 6 to 36 in (20 to 90 cm) tall. The leaves, arranged in two rows along the stem, are 0.4 to 1 in (11 to 25 mm) long and 0.3 to 0.6 in (8 to 15 mm) wide; they are oval to occasionally circular in outline, and have a whitish waxy coating on the upper surface. Flower clusters (cyathia) are situated singly in the leaf axils, or sometimes at the branch tips. Only immature capsules have been found. This species is distinguished from other species of the genus in its habitat by its stalked, oval to rounded leaves with untoothed margins, and the bent stalk supporting the small capsule (Koutnik 1987, Koutnik and Huft 1990, Sherff 1949).

Historically, *Chamaesyce kuwaleana* was known from the central Waianae Mountains and Moku Manu Island off the eastern coast of Oahu (HHP 1990f1 to 1990f3, Koutnik and Huft 1990). This species is currently known only from Kauaopuu Peak in the Waianae Mountains, primarily on Federal owned land but with some plants extending onto State land (HHP 1990f3, HPCC 1990c). The one known population contains several hundred individuals (HHP 1990f3, 1990f4; HPCC 1990c). *Chamaesyce kuwaleana* typically grows on arid, exposed volcanic cliffs at an elevation of 1,050 ft (320 m) (HHP 1990f3, 1990f4; HPCC 1990c; Koutnik and Huft 1990) Associated species include 'ilima and *Dodonaea viscosa* ('a'ali'i) (HPCC 1990c). The major threats to *Chamaesyce kuwaleana* are competition from the alien plant species, koa haole; fire; and the small number of populations.

Cyanea pinnatifida was first collected by Chamisso in 1817 and later named *Lobelia pinnatifida* by him (Chamisso 1833), the specific epithet referring to the lobed leaves. George Don (1834) transferred the species to the genus *Rollandia*, and only two years later Karel Borowag Presl (1836) transferred the species to the genera *Delissea*. In 1843, Franz Elfried Wimmer transferred this species to the genus *Cyanea* (Wimmer 1943). The taxon Degener (1932c) described as *C selachicauda* is considered conspecific with this species.

Cyanea pinnatifida, a member of the bellflower family (Campanulaceae), is a shrub, usually unbranched, growing from 2.6 to 10 ft (0.8 to 3 m) tall. Leaves are 10 to 24 in (25 to 60 cm) long by 6 to 20 in (16 to 50 cm) wide and are deeply cut into 2 to 6 lobes per side. Clusters of 8 to 15 stalked flowers arise from the leaf axils. Sepals are fused to form a tube 0.4 to 0.5 in (10 to 12 mm) long with small triangular lobes at the tips. The petals are greenish-white with purple stripes, and are about 2 in (5 cm) long and 0.2 in (4 to 5 mm) wide. Fruits have not been seen. This species differs from other members of the genus on Oahu by its leaves, which are deeply cut into two to six lobes per side. The only other member of the genus on Oahu with lobed leaves has 9 to 12 lobes per side (Degener and Greenwell 1952a, Lammers 1990).

Historically, *Cyanea pinnatifida* was known from the central Waianae Mountains (HHP 1990g1, 1990g2; Lammers 1990). This species remains in Kaluaa Gulch on privately-owned land (HHP 1990g1). The one known population contains three individuals (HHP 1990g1). *Cyanea pinnatifida* typically grows on steep, wet, rocky slopes in diverse mesic forest at an elevation of 1,600 to 1,700 ft (490 to 520 m) (HHP 1990g3, Lammers 1990). Associated plants include *Pipturus albidus* (mamaki) and ferns (HHP 1990g3). The major threats to *Cyanea pinnatifida* are competition from the alien plant species, Koster's curse; habitat degradation by feral pigs; collection or trampling by humans on or near trails; and the small number of extant individuals.

William Dunlop Brackenridge discovered *Diellia falcata* during the Wilkes Expedition of 1838 to 1842 and in 1845 described three Hawaiian species, noting that they were similar to members of the genus *Schizoloma* but differed in their interrupted sori or groups of spore producing bodies (Degener and Greenwell 1950a). In 1857 Thomas Moore included *Diellia* in the genus *Schizoloma* (Wagner 1952) and in 1861 transferred *D. falcata* to *Schizoloma* (Moore 1861). William Jackson Hooker and John Gilbert Baker (1883) transferred the species to *Lindsaea*, giving rise to the name *Lindsaya* [sic] *(Diellia) falcata*. Degener and Amy B. H. Greenwell (1950a) treated the simple pinnate members of the species as varieties of *Diellia erecta*, resulting in the name *Diellia erecta* var. *falcata*. The most recent interpretations (Lamoureux 1988; Wagner 1952, 1987) again accept the taxon at the specific level.

Diellia falcata, in the fern family Polypodiaceae, grown from a rhizome (underground stem), 0.4 to 2 in (1 to 5 cm) long and 0.2 to 0.8 in (0.5 to 2 cm) in diameter, which is covered with small black or maroon scales. Stalks of the fronds are dark brown to pale tan, usually have a dull surface, and are 0.4 to 2.8 in (1 to 7 cm) long. The fronds are long and oval or straight in outline and 8 to 40 in (20 to 100 cm) tall by 1.0 to 3.5 in (2.5 to 9 cm) wide, with 12 to 45 divisions (pinnae) per side. The lower pinnae are small and rounded while pinnae farther up the frond are larger, undivided, and shaped like a sickle or a

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long triangle with veins forming a netted textured surface pattern. The sori (groups of the spore-producing bodies) are shaped like short lines 0.06 to 0.1 in (1 to 3 mm) long and are on low projections of the pinna margin. This species is distinguished from others in the genus by the color and texture of its leaf stalk, the venation pattern of its fronds, the color of its scales, its rounded and reduced lower pinnae, and its separate sori arranged on marginal projections (Degener and Greenwell 1950c; Wagner 1952, 1987).

Historically, *Diellia falcata* was known from almost the entire length of the Waianae Mountains, from Manini Gulch to Palehua Iki, as well as from the Koolau Mountains of Oahu, from Kaipapau Valley to Aiea Gulch (HHP 1990h2, 1990h7, 1990h8, 1990h10). This species remains in the Waianae Mountains, from Ekahanui Gulch to Manini Gulch on State and private land (HHP 1990h1, 1990h3, 1990h4, 1990h5 to 1990h8). The 7 known populations, which extend over a distance of about 11 by 2 mi (18 by 3 km), contain an estimated 3,000 individuals (HHP 1990h1, 1990h3 to 1990h8). *Diellia falcata* is a terrestrial fern which typically grows in deep shade or open understory in dryland forest at an elevation of 1,280 to 2,700 ft (390 to 820 m) (HHP 1990h3, 1990h4, 1990h11). Associated species include aulu, *Diospyros sandwicensis* (lama), and *Pouteria sandwicensis* ('ala'a) (HHP 1990h1, 1990h3, 1990h5). The major threats to *Diellia falcata* are habitat degradation by feral goats, pigs, and cattle; competition from alien plant species (Christmasberry, haoleua haole, molasses grass, and *Psidium cattleianum* (Strawberry guava)); and fire.

Derral R. Herbst and John K. Obata in 1971 made the first collection of *Dubautia herbstobatae*, which was later described and named to honor its discoverers (Carr 1979). In 1830, Charles Gaudichaud-Beaupre described two closely related Hawaiian genera in the aster family; *Railliardia* has united bracts under the flower head, and *Dubautia* has bracts which are distinct (Gaudichaud-Beaupre 1830). Today, most botanists consider *Railliardia* and *Dubautia* as sections of the genus *Dubautia* (Carr 1980). However, Harold St. John, believing that the separation should be maintained, transferred the species into *Railliardia* (St. John 1981a), a course few botanists follow. The current taxonomic treatment (Carr 1980) recognizes only the genus *Dubautia*.

Dubautia herbstobatae, a member of the aster family (Asteraceae), is a small, spreading shrub to 20 in. (50 cm) tall. The shiny, leathery leaves are oppositely arranged, narrowly elliptic in outline, and 0.8 to 2.2 in. (2 to 5.5 cm) long by 0.1 to 0.4 in. (3 to 11 mm) wide. They usually have one main vein and smooth or nearly smooth margins. There are 5 to 15 heads in an inflorescence, each composed of 4 to 20 yellowish-orange, tubular florets, 0.1 to 0.2 in. (3 to 5 mm) long. The fruit is comprised of a seed with a dry, unopening fruit wall (an achene) covered with silky gray hair. Only 2 species of the genus on Oahu have the outer bracts of the flower heads fused, forming a cup surrounding the florets; of those 2 species, *D. herbstobatae* has 1 large vein showing in each leaf, and the other species has 5 to 11 veins (Carr 1985, 1990).

Dubautia herbstobatae is known to be extant in the northern Waianae Mountains, on Ohikilolo and Kamaileunu ridges on State and private land (HHP 1990i1 to 1990i6). No other locations are known for this recently discovered species (Carr 1979, 1982). The 8 known populations, which extend over a distance of about 3 by 0.5 mi (5 by 0.8 km), contain less than 100 individuals (HHP 1990i7). *Dubautia herbstobatae* typically grows on rock outcrops on north-facing ridges in dry shrubland at an elevation of 1,900 to 3,000 ft (580 to 910 m) (Carr 1982, 1990; HHP 1990i1, 1990i6, 1990i7). Associated species include 'ohi'a and *Eragrostis variabilis* (kawelu). The major threats to *Dubautia herbstobatae* are habitat degradation by feral goats and pigs, competition from alien plant species (Christmasberry, koa haole, and molasses grass), fire, visitation and possible trampling by humans, and the small number of individuals.

Gouania meyenii was collected by Franz Julius Ferdinand Meyen in 1831 and named *Gouania integrifolia* (Meyen 1834), a name previously used by Jean Baptiste Lamarck in 1788 for another plant (St. John 1966f). Ernesto Theoph Steudel (1840) renamed the plant *Gouania meyenii*, the species epithet honoring Meyen. Gerhard Walpers (1843), realizing that Meyen had erred in the use of the specific epithet *integrifolia*, but unaware of Steudel's publication, named the taxon *Gouania orbicularis*, the spelling of the genus name being a printer's error. St. John later described two additional species, *Gouania olivari* (St. John 1966f) and *Gouania gagnei* (St. John 1973), which are currently considered synonyms of *Gouania meyenii* (Wagner *et al.* 1990).

Gouania meyenii, a member of the buckthorn family (Rhamnaceae), is a shrub up to 7 ft (2.2 m) tall. Leaves are papery in texture, smooth on the upper surface, and with no teeth on the margins. The leaves are oval or broader in outline and 1.2 to 2.8 in. (3 to 7 cm) long by 0.6 to 1.8 in. (1.6 to 4.5 cm) wide. Flowers are possibly functionally unisexual, with male flowers and female flowers on the same plant. They are arranged in clusters originating in the leaf axils. Sepals are 0.06 to 0.1 in. (1.5 to 3 mm) long and white; petals are 0.05 to 0.07 in. (1.2 to 1.8 mm) long and also white. The 2- or 3-winged fruit are 0.4 to 0.6 in. (9 to 16 mm) long. Seeds are brown and 0.2 to 0.3 in. (5 to 7 mm) long. This species is distinguished from the two other Hawaiian species of *Gouania* by its lack of tendrils on the flowering branches, the absence of teeth on the leaves, and the lack or small amount of hair on the fruit (Wagner *et al.* 1990).

Historically, *Gouania meyenii* was known from central and southern areas of the Waianae Mountains, from Kamaileunu Ridge to Honouliuli (HHP 1990j1, 1990j3; Wagner *et al.* 1990). This species now found on Kamaileunu Ridge and Makaha-Waianae Kai Ridge on State land (HHP 1990j1, 1990j2, 1990j4, 1990j5). The 4 known populations, which are distributed over about a 1 square mi (2.6 square km) area, contain an estimated 75 individuals (HHP 1990j1, 1990j2, 1990j4, 1990j5). *Gouania meyenii* typically grows on rocky ledges, cliff faces, and ridge tops in dry shrubland at an elevation of 1,900 to 2,700 ft (580 to 820 m) (HHP 1990j1, 1990j6; Wagner *et al.* 1990). Associated species include 'a'ali'i, lama, *Lysimachia hillebrandii* (kolokolo kuahiwi), and *Senna gaudichaudii* (kolomona) (HHP 1990j1, 1990j2, 1990j5; HPCC 1990d). The major threats to *Gouania meyenii* are competition from alien plant species (Christmasberry, molasses grass, and strawberry guava), fire, and the small number of extant populations.

Francis Raymond Fosberg (1943) published *Hedyotis degeneri* based on a specimen collected by Otto Degener, and named it in his honor. Two varieties were recognized, the typical var. *degeneri* and one with narrower leaves (resembling leaves of *Coprosma*), var. *coprosmifolia* (Fosberg 1943). Hillebrand (1888) had included var. *coprosmifolia* as a questionable variety of *Kadua foliosa* when he published that name, noting that it might be a distinct species. Today both varieties are recognized (Wagner *et al.* 1990).

Hedyotis degeneri, a member of the coffee family (Rubiaceae), is a prostrate shrub with 4-sided stems and peeling, corky bark. Leaves are quite variable and range from long and thin to heart-shaped, from 0.4 to 1.2 in. (1 to 3 cm) in length and 0.1 to 0.8 in. (0.3 to 2 cm) in width. Flowers are arranged in groups of 1 to 10 in. clusters at the ends of the stems. Sepals are fused into a tube and flare into 4 or 5 leaflike lobes up to 0.3 in. (8 mm) long. Petals are fused into a trumpet-shaped tube 0.2 to 0.3 in. (6 to 7 mm) long with 4 or 5 lobes up to 0.2 in. (4 mm) long. Capsules are nearly globe-shaped and about 0.2 in. (4 to 5 mm) in diameter. Seeds are angled and almost black. This species can be distinguished from others in the genus on Oahu by its low-growing habit, the peeling corky layers on older stems, and the short, crowded, leafy shoots growing in the leaf axils (Wagner *et al.* 1990).

Historically, *Hedyotis degeneri* was known from Mt. Kaala in the northern Waianae Mountains (Wager *et al.* 1990). This species remains only on Kamaileunu Ridge on State-owned land (HHP 1990k1). The only known population contains about six individuals (Derral Herbst, Botanist, U.S. Fish and Wildlife Service, Honolulu, pers. comm., 1990). *Hedyotis degeneri* typically grows in diverse mesic forest at an elevation of 2,700 ft (820 m) (HHP 1990k1). Associated species include 'phi'a and *Hedyotis terminalis* (manono) (D. Herbst, pers. comm., 1990). The major threats to *Hedyotis degeneri* are habitat destruction by feral pigs, competition from alien plant species (Christmasberry, molasses grass, and strawberry guava), and the small number of extant individuals.

The first specimen of *Hedyotis parvula* was collected by Heinrich Wawra; Gray (1859) later named the plant *Kadua parvula*, the specific epithet referring to its small size. In 1943, Fosberg transferred the species to the genus *Hedyotis*. He also named a form, f. *sessilis*, which is no longer recognized (Wagner *et al.* 1990).

Hedyotis parvula, a member of the coffee family, is a small, many-branched shrub, either upright or sprawling, with stems usually no more than 1 ft (30 cm) in length. Leaves are leathery in texture, overlapping, 0.4 to 1.6 in (1 to 4 cm) long by 0.3 to 0.9 in (7 to 23 mm) wide, and are uniform in size along the stem. Flowers are grouped in small clusters, and when combined with clusters on adjacent stems, give the appearance of a large inflorescence. Sepals are fused into a tube and flare into 4 or 5 lobes 0.04 to 0.16 in (1 to 4 mm) long by 0.04 to 0.08 (1 to 2 mm) wide, often with different sizes on the same plant. The lobes enlarge up to 0.2 in (5.5 mm) long as the fruit matures. The white petals are fused into a funnel-shaped tube 0.3 to 0.4 in (8 to 11 mm) long with 4 or 5 purplish pink-tipped lobes, each about 0.2 in (5 to 6 mm) long. The capsule is almost globe-shaped and about 0.2 in (4 mm) in diameter. Seeds are angled and brown. Its closely spaced overlapping leaves which are uniform in size along the stem separate this species from other members of the genus on Oahu (Degener 1938a, Wagner *et al.* 1990).

Historically, *Hedyotis parvula* was known from the central and southern Waianae Mountains, from Makaleha Valley to Nanakuli Valley (Wagner *et al.* 1990). This species was found on Makaleha Ridge in 1986 and on Makua-Keaau Ridge in 1976, both on State-owned land (HHP 1990L1, 1990L2). *Hedyotis parvula* has not been seen for several years (John Obata, Assistant to Plant Collector, HPCC, pers. comm., 1990). However, because this species inhabits inaccessible cliffs, the chances that it is still extant are very good (D. Herbst, pers. comm., 1990). *Hedyotis parvula* is included here to extend to it the protection of the Act if and when it is rediscovered. *Hedyotis parvula* typically grows on and at the base of cliff faces, rock outcrops, and ledges in dry habitat at an elevation of 2,350 to 2,730 ft (720 to 830 m) (HHP 1990L1, 1990L2; Wagner *et al.* 1990). Associated species include 'a'ali'i, *Canthium odoratum* (alahe'e), and *Plectranthus parviflorus* ('ala'ala wai nui) (HHP 1990L1). The major threats to *Hedyotis parvula* are habitat degradation by feral goats, competiton from alien plant species (Christmasberry and molasses grass), and the small population size.

Hillebrand (1888) described *Hesperomannia arbuscula* based on a specimen collected by E. Bishop on Maui, the specific epithet referring to the smaller stature of the plant as compared to the previously described species of the genus, *H. arborescens*. At the same time, Hillebrand also described *H. arborescens* var. *oahuensis*, a taller tree from Oahu, which was later raised to specific status, *H. oahuensis*, by Degener (1938b). Sherwin Carlquist (1957) examined fresh material of both the Maui and Oahu plants and decided a new combination, *H. arbuscula* ssp. *oahuensis*, was in order for Oahu plants, as compared to those on Maui, which he called ssp. *arbuscula*. However, examination of additional specimens showed that there were no valid differences between the taxa (Wagner *et al.* 1990). St. John later published *H. arbuscula* var. *pearsallii* (1978) and *H. mauiensis* (1983), neither of which is now recognized as a valid taxon (Wagner *et al.* 1990).

Hesperomannia arbuscula, a member of the aster family (Asteraceae), is a small shrubby tree, 7 to 11 ft (2 to 3.3 m) tall. Leaves are elliptic, generally 4 to 7 in (10 to 18 cm) long and 2.2 to 4.5 in (5.5 to 11.5 cm) wide, although young leaves can sometimes be larger. Flower heads are erect and arranged in clusters of four or five heads. Each head comprises many yellow to yellowish-brown florets, with a tube of fused petals 0.9 to 1.2 in (2.5 to 3 cm) long and a threadlike style extending beyond them. The fruit is a 0.3 to 0.4 in (0.8 to 1 cm) long achene, crowned by a ring of bristles nearly the same length as the petals. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Degener 1932d, Wagner *et al.* 1990).

Historically, *Hesperomannia arbuscula* was known from the central and southern Waianae Mountains, from Makaleha to Puu Kanehoe, and from West Maui (HHP 1990m1, 1990m2, 1990m4, 1990m6, 1990m7). This species is currently known to be extant on the Makaha-Waianae Kai Ridge on Oahu and in Iao Valley on West Maui, both on State land (HHP 1990m3, 1990m5, 1990m7). The 2 known populations on Oahu are about 0.6 mi (1 km) apart; and including the third population from West Maui, this species numbers about 50 individuals (HHP 1990m3, 1990m5, 1990m7; HPCC 1990e; J. Lau, pers. comm., 1990). *Hesperomannia arbuscula* typically grows on slopes and ridges in mesic to wet forest dominated by koa and 'ohi'a at an elevation of 1,200 to 3,000 ft (350 to 900 m) (Wagner *et al.* 1990). Associated species include ko'oko'olau, *alyxia oliviformis* (maile), and *Psychotria* (kopiko) (HHP 1990m2, 1990m5). The major threats to *Hesperomannia arbuscula* are habitat degradation by feral pigs, competiton from alien plant species (blackberry, Christmasberry, Koster's curse, and strawberry guava), trampling or collection by humans, and the small number of populations.

The earliest collection of *Lipochaeta lobata* var. *leptophylla* was made by Forbes in 1915, from which Degener and Sherff (Sherff 1933) described the taxon, giving it a varietal name that refers to its slender leaves.

Lipochaeta lobata var. *leptophylla*, a member of the aster family (Asteraceae), is a low and somewhat woody perennial herb with arched or nearly prostrate stems which may be up to 59 in (150 cm) long. Leaves of this variety are lance-shaped and closely spaced along the stem. Flower heads grow singly or in clusters of 2 or 3, each consisting of bracts (the involucre)

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usually 0.2 to 0.3 in (5 to 8 mm) long beneath 6 to 15 yellow ray florets which surround 20 to 65 yellow disk florets. Fruits are achenes which measure 0.1 in (2.5 to 2.7 mm) long by 0.04 to 0.06 in (1.0 to 1.5 mm) wide. They have small wings about 0.2 in (0.4 to 0.5 mm) long. This species is the only one of its genus on Oahu with four-parted disk florets except for a very rare coastal plant. This variety has narrower leaves spaced more closely along the stem than those of *L. lobata* var. *lobata*, the only other variety of this species (Degener and Degener 1957, Gardner 1979, Wagner *et al.* 1990).

Historically, *Lipochaeta lobata* var. *leptophylla* was known from the southern Waianae Mountains, from Kolekole Pass to Lualualei (Wagner *et al.* 1990). This taxon remains on Lualualei-Nanakuli Ridge and at Kolekole Pass on Federal and State land (HHP 1990n1, 1990n3). The 2 known populations, which are about 4.2 mi (6.7 km) apart, contain about 25 to 50 individuals (HHP 1990n1. 1990n3, 1990n5). *Lipochaeta lobata* var. *leptophylla* typically grows in dry shrubland at an elevation of 1,500 to 2,500 ft (460 to 760 m) (HHP 1990n1. 1990n2, 1990n4). Associated species include 'a'ali'i, 'ala'ala' wai nui, koa haole, and ko'oko'olau (HHP 1990n1). The major threats to *Lipochaeta lobata* var. *leptophylla* are competition from alien plant species (Christmasberry, koa haole, and molasses grass), fire, and the small number of extant individuals.

Gray (1861) described *Lipochaeta tenuifolia* from specimens collected during the U.S. Exploring Expedition in 1840. The species epithet refers to the narrow leaflets of the three-parted, palmately compound leaves.

Lipochaeta tenuifolia, a member of the aster family (Asteraceae), is a low growing, somewhat woody perennial herb with short, more or less erect branches. The branches are 10 ft (3 m) long or longer and root along the lower surface. The oppositely arranged leaves are divided into three lobes so deeply that they appear to be six leaves; each lobe is divided to the midrib into fine segments. Flower heads are single or in clusters of two. The involucral bracts are 0.2 to 0.3 in (5 to 7.5 mm) long. Ray florets, on the outer portion of the flower head, are yellow, number 8 to 10 per head, and measure 0.3 to 0.5 in (8 to 11.5 mm) long. Disk florets, in the center of the flower head, are also yellow, number 20 to 30 per head, are 5-parted, and measure about 0.1 in (2.7 to 3 mm) long. The fruits are bumpy achenes with tiny wings, and measure 0.07 to 0.09 in (1.8 to 2.4 mm) long by 0.04 to 0.06 in (1.1 to 1.5 mm) wide. Its five-parted disk florets and its deeply cut, stalkless leaves separate this species from other members of the genus. (Degener and Greenwall 1959b, Gardner 1979, Wagner *et al.* 1990).

Lipochaeta tenuifolia occurs in the northern half of the Waianae Mountains, from Kaluakauila Gulch to Kamaileunu Ridge and east to Mt. Kaala on State-owned land (HHP 1990o1 to 1990o7). It has not been found anywhere else (HHP 1990o8). The 7 known populations, which extend over a distance of about 6 by 5 mi (10 by 8 km), contain an estimated 400 to 600 individuals (HHP 1990o1 to 1990o8; HPCC 1990f). *Lipochaeta tenuifolia* typically grows on ridgetops and bluffs in open areas and protected pockets of diverse mesic forest dominated by Christmasberry and 'ohi'a at an elevation of 1,200 to 3,000 ft (370 to 900 m) (HHP 1990o1, 1990o3 to 1990o7; Wagner *et al.* 1990). Associated species include ko'oko'olau, molasses grass, and *Ageratina riparia* (Hamakua pamakani), (HHP 1990o1, 1990o2, 1990o4 to 1990o6; HPCC 1990f). The major threats to *Lipochaeta tenuifolia* are habitat degradation by feral goats and pigs, competition for light and space from alien plant species (Christmasberry, koa haole, molasses grass, and strawberry guava), and fire.

Lobelia niihauensis was described by St. John in 1931, based on a specimen he had collected on the island of Niihau (St. John 1931). Thomas G. Lammers (1990), in his revision of the genus, believed *L. niihauensis* to be conspecific with a Kauai plant previously published by Amos Arthur Heller and named *L. tortuosa* (Heller 1897). When Lammers combined the taxa he was required to use the name *Niihauensis*. Although *tortuosa* is an older name, it had been given to another member of the genus by Carl Ernst Kuntze six years prior to Heller's publication. Other published names which refer to this taxon are: *L. niihauensis* var. *forbesii* (St. John 1939), *L. niihauensis* var. *meridiana* (St. John 1939), *L. tortuosa* f. *glabrata* (Skottsberg 1926), *L. tortuosa* var. *haupuensis* (St. John 1987b), and *L. tortuosa* var. *intermedia* (St. John 1939). In 1965, Otto and Isa Degener proposed a new genus to honor F.E. Wimmer, a distinguished student of the lobelia family. They later transferred 19 taxa to the new genus (Degener and Degener 1965). This genus has not been accepted by any other botanical authority. The synonyms resulting from this transfer which can be applied to *L. niihauensis Neowimmeria niihauensis* and *N. tortuosa* (Degener and Degener 1965), as well as *N. intermedia*, *N. meridiana*, *N. niihauensis* var. *forbesii*, and *N. tortuosa* var. *glabrata* (Degener and Degener 1974).

Lobelia niihauensis, a member of the bellflower family (Campanulaceae), is a low, branched shrub. Each branch ends in a rosette of leaves, which are 2.8 to 5.9 in (7 to 15 cm) long and 0.3 to 0.7 in (0.7 to 1.8 cm) wide. Magenta flowers are clustered at the ends of branches and produced an egg-shaped capsule 0.2 to 0.3 in (6 to 8 mm) long with many small brownish seeds. This species is distinguished from others in the genus by its leaves lacking or nearly lacking leaf stalks, the magenta-colored flowers, the width of the leaf, and length of the flower (Lammers 1990, Rock 1919).

Historically, *Lobelia niihauensis* was known from the Waianae Mountains of Oahu, from Uluhulu Gulch to Nanakuli Valley; from western Kauai, from Limahuli Valley to near the Hanapepe River as well as in the east at Nounou Mountain; and from the island of Niihau (HHP 1990p1, 1990p7, 1990p10, 1990p12, 1990p13, 1990p19). It is now known to be extant only on Kauai and Oahu. On Oahu, this species remains on Kamaileunu Ridge, Makaha-Waianae Kai Ridge, Makua-Keaau Ridge, and in Nanakuli Valley, on State and private land (HHP 1990p2 to 1990p8). On Kauai, this species is found in Waimea Canyon, on Polihale Ridge, and along the Na Pali Coast, on State and private land (HHP 1990p9, 1990p11, 1990p14 to 1990p22). The 19 known populations, which extend over a distance of about 10 by 5 mi (16 by 8 km) on Oahu and 10 by 8 mi (16 by 13 km) on Kauai, contain an estimated 400 to 1,300 individuals (HHP 1990p2 to 1990p9, 1990p11, 1990p14 to 1990p22; J. Lau, pers. comm., 1990; Tim Flynn, Botanist, National Tropical Botanical Garden, Lawai, Kauai, pers. comm., 1990; Steven Perlman, Plant Collector, HPCC, Lawai, Kauai, pers. comm., 1990). *Lobelia niihauensis* typically grows on exposed mesic to dry cliffs at an elevation of 410 to 2,720 ft (125 to 830 m) (HHP 1990p14, Lammers 1990). Associated species include daisy fleabane, kawelu, nehe, and *Artemisia* ('ahinahina) (HHP 1990p3, 1990p16, 1990p22). On Oahu, the major threats to *Lobelia niihauensis* are trampling by feral pigs, habitat degradation and predation by feral goats, fire, competition from alien plant species (Christmasberry, koa haole, and molasses grass), and trampling by humans on or along trails. On Kauai, the major threats are habitat degradation and predation by goats and competition from alien plant species.

On the basis of a 1912 collection by Forbes, Richard S. Cowan (1949) described *Neraudia angulata*, choosing the specific epithet in reference to the angled character of the mature calyx of the female flower. He and Degener (Cowan 1949) described var. *dentata*, which is closely sympatric with the nominative variety but is currently recognized as a distinct taxon (Wagner *et al.* 1990).

Neraudia angulata, a member of the nettle family (Urticaceae), is an erect shrub to 10 ft (3 m) tall. Leaves are thin and elliptic to oval in outline. They are 2.8 to 5.9 in (7 to 15 cm) long and 1.2 to 2.2 in (3 to 5.5 cm) wide. The upper leaf surface has a few silky hairs, and the lower surface is moderately hairy. Flowers are male or female and grow on different plants. The female flowers produce a dry-walled fruit which is surrounded by fleshy, fused sepals. This species is distinguished from other species in its genus by the conspicuously angled, ridged, fleshy calyx in the female flower (Degener and Greenwell 1950c, 1950d; Wagner *et al.* 1990).

Historically, *Neraudia angulata* was known from almost the entire length of the Waianae Mountains, from Kaluakauila Gulch nearly to Puu Manawahua (HHP 1990q1, 1990q3, 1990q5; Wagner *et al.* 1990). This species remains in Kahanahaiki-Makua Ridge, Kaluakauila Gulch, Makaha-Waianae Kai Ridge, Puu Kanehoa, and Puu Kumakalii (HHP 1990q1, 1990q2, 1990q6 to 1990q8) on Federal, State, and private land (HHP 1990q1, 1990q2, 1990q6 to 1990q8). The 5 known populations, which extend over a distance of about 11 by 1 mi (18 by 1.6 km), are estimated to contain fewer than 15 individuals (HHP 1990q1, 1990q2, 1990q4, 1990q6 to 1990q8, 1990q10). *Neraudia angulata* typically grows on slopes, ledges, or gulches in diverse mesic forest dominated by lama, at an elevation of 1,200 to 2,700 ft (370 to 820 m) (HHP 1990q1, 1990q6 to 1990q10; Wagner *et al.* 1990). Associated species include aulu, Christmasberry, and *Nestegis sandwicensis* (olopua) (HHP 1990q3, 1990q6 to 1990q9). The major threats to *Neraudia angulata* are habitat degradation by feral goats and pigs, competition from alien plant species (Christmasberry, molasses grass, and strawberry guava), fire, and the small number of extant individuals.

Hillebrand (1888) discovered *Nototrichium humile* and named the genus for its "remarkable (Latin, *nota*) hairs (Greek, *tricho*)," that is, its extreme hairiness. The species epithet refers to the plant's low-growing habit. The species for a time was transferred to the genus *Psilotrichum* (Drake del Castillo 1892). Sherff (1950) recognized three varieties of this species based on leaf shape and size: var. *humile*, var. *parvifolium*, and var. *subrhomboideum*. These varieties were not accepted in the most recent treatment of the genus (Wagner *et al.* 1990).

Notorichium humile, a member of the amaranth family (Amaranthaceae), is an upright to trailing shrub with branched stems to 5 ft (1.5 m) long. Stems and young leaves are covered with short hairs. Leaves are oppositely arranged, oval to oblong in outline, 1.2 to 3.5 in (3 to 9 cm) long, and 0.8 to 2.0 in (2 to 5 cm) wide. Stalkless flowers are arranged in a spike 1.2 to 5.5 in (3 to 14 cm) long and are at the ends of the stem. Membranous bracts grow below each flower. Two of the bracts and the sepals fall off with the mature fruit, which is 0.08 in (2 mm) long. This species is distinguished from the only other species in the genus by its inflorescence, a slender spike 0.2 in (4 mm) in diameter, or less, which is covered with short hair (Degener and Greenwell 1952a, 1956a; Sherff 1951a; Wagner *et al.* 1990).

Historically, *Nototrichium humile* was known from the entire length of the Waianae Mountains, from near Kaena Point to Nanakuli Valley, and from Lualailua Hills on East Maui (HHP 1990r3, 1990r6, 1990r9, Wagner *et al.* 1990). This species is extant on Oahu in Kahanahaiki Valley, Kealia, Makaha-Waianae Kai Ridge, Makua Valley, Nanakuli Valley, Pahole Gulch, and Waianae Kai on State and private land (HHP 1990r1, 1990r2, 1990r4, 1990r5, 1990r7 to 1990r12). It is also extant in Maui's Lualailua Hills on State land (HHP 1990r3). Ten of the 11 known populations extend over a distance of about 13 by 2 mi (22 by 3 km) in the Waianae Mountains, and, together with the Maui population, total an estimated 1,500 to 3,000 individuals (HHP 1990r1 to 1990r5, 1990r7 to 1990r12; J. Lau, pers. comm, 1990). *Nototrichium humile* typically grows at an elevation of 200 to 2,300 ft (60 to 700 m), on cliff faces, gulches, or steep slopes in remnants of open dry forests often dominated by aulu or lama (HHP 1990r2, 1990r5, 1990r7 to 1990r9, 1990r11, 1990r12; Wagner *et al.* 1990). Associated species include Christmasberry, kukui, and olopua (HHP 1990r1, 1990r2, 1990r7 to 1990r9, 1990r11, 1990r13). On both Oahu and East Maui, the major threats to *Nototrichium humile* are habitat degradation by feral goats, pigs, and cattle; competition from alien plant species (Christmasberry, koa haole, molasses grass, and strawberry guava); and fire.

Soon after erecting the genus *Phyllostegia*, George Bentham (1831) described *Phyllostegia mollis* in reference to its soft pubescence. Other published names referring to this taxon are *P. parviflora* var. *mollis* (Gray 1861), *P. haliakalae* (Wawra 1872), *P. honolulensis* (Wawra 1872), and *P. parviflora* var. *honolulensis* (Sherff 1934c). Sherff's concept of *P. mollis* was broader than that accepted in the most recent treatment of the genus (Wagner *et al.* 1990), and many varieties he described are now referred to other species: var. *skottsbergii* (Sherff 1939), var. *fagerlindii* (Sherff 1949), and var. *hochreutineri* (Sherff 1953) are now included in *P. electra* (Forbes 1916); var. *glabrescens* (Sherff 1952) in *P. stachyoides* (Gray 1861); var. *micrantha* (Sherff 1934a) in *P. imminuta* (St. John 1976); and var. *lydgatei* (Sherff 1934a) in *P. parviflora* (Bentham 1831). Fosberg (1942) described *P. mollis* var. *resinosa* based on a specimen of *P. electra*. Most recently, St. John (1987a) published many species, varieties, and combinations in *Phyllostegia*, however, most botanists do not recognize this treatment (Wagner *et al.* 1990).

Phyllostegia mollis, a member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Leaves are oval in outline with rounded teeth and usually are 3.9 to 9.4 in (10 to 24 cm) long and 1.3 to 2.8 in (3.3 to 7 cm) wide. Flowers, usually in groups of 6, are spaced along a stem 3.1 to 6.7 in (8 to 17 cm) long; there are 2 shorter flowering stems directly below the main stem. The flowers have fused sepals which are 0.1 to 0.2 in (3 to 4 mm) long and white petals 0.3 to 0.5 in (8.5 to 12 mm) long fused into a tube and flaring into a smaller upper and a larger lower lip. Fruits are fleshy, dark green to black nutlets about 0.1 in (2 to 3 mm) long. A suite of technical characters concerning the kind and amount of hair, the number of flowers in a cluster, and details of the various plant parts separate this species from other members of the genus (Degener 1935, Sherff 1935b, Wagner *et al.* 1990).

Historically, *Phyllostegia mollis* was known from the central and southern Waianae Mountains, from Mt. Kaala to Honouliuli, and from Makiki in the Koolau Mountains of Oahu (HHP 1990s3 to 1990s5, Wagner *et al.* 1990). It also was known from Molokai and East Maui (HHP 1990s6, 1990s7; Wagner *et al.* 1990). This species remains only in Kaluaa Gulch and on Puu Kaua in the Waianae Mountains on Federal and private land (HHP 1990s1; J. Lau, pers. comm., 1990). The 2 known populations,

which are 1.3 mi (2 km) apart, are estimated to contain less than 50 individuals (HHP 1990s1; J. Lau, pers. comm., 1990). *Phyllostegia mollis* typically grows on steep slopes and in gulches in diverse mesic to wet forest at an elevation of 1,500 to 2,800 ft (450 to 860 m) (Wagner *et al* 1990). Associated plants include ferns, kopiko, *Pisonia* (papala kepau), and *Rubus* (raspberry) (HHP 1990s1, 1990s2, 1990s5). The major threats to *Phyllostegia mollis* are competition from the alien plant species, Christmasberry, and the small number of extant populations.

Sanicula mariversa was discovered by Kenneth M. Nagata in 1961, who later described the species in a publication with Samuel M. Gon, III (Nagata and Gon 1987). The specific epithet refers to the plant's habitat which is on a ridge overlooking the sea.

Sanicula mariversa, a member of the parsley family (Apiaceae), is an upright herb, 16 to 28 in (40 to 70 cm) tall which produces a single branched stem from a sturdy base (caudex) growing just beneath the surface of the soil. There are many heart- to kidney-shaped, leathery, 3- to 5-lobed leaves, 5 to 9 in (13 to 23 cm) wide, growing from the base of the plant. Leaves on the stem become smaller and more deeply lobed the closer they are to the tip of the stem. Flowers are arranged in 1 to 4 more or less flat-topped clusters; each cluster comprises 10 to 20 flowers and is located at the end of the stem or in the leaf axils. Each flower cluster has 8 to 12 bracts beneath it and comprises both male and hermaphroditic flowers. There are 5 nearly circular, fused, toothed, yellow petals, each 0.04 in (1 mm) wide. The egg-shapped fruit is about 0.2 in (4 to 6 mm) long by about 0.1 in (3 to 4 mm) wide, covered with hooked prickles, and separates into 2 single-seeded parts. The larger size of the plant and basal leaves, the color of the flower petals, and the hooked prickles on the fruit separate this species from others of the genus in Hawaii (Constance and Affolter 1990, Nagata and Gon 1987).

Historically, *Sanicula mariversa* was known from the central Waianae Mountains, from Makau-Keaau Ridge to Kaluaa-Lualualei Summit Ridge (HHP 1990t1 to 1990t3). This species is now extant only at Makau-Keaau Ridge on State-owned land (HHP 1990t1, 1990t3). The 2 known populations, which are about 0.4 mi (0.6 km) apart, contain fewer than 100 individuals (HHP 1990t1, 1990t3; J. Lau, pers. comm., 1990). *Sanicula mariversa* typically grows on well-drained, dry slopes at an elevation of 2,500 to 2,800 ft (750 to 850 m) (HHP 1990t4, Wagner *et al.* 1990). Associated species include Hamakua pamakani, kawelu, and 'ohi'a (HHP 1990t1, 1990t4; HPCC 1990g). The major threats to *Sanicula mariversa* are habitat degradation by feral goats, fire, competition from alien plant species (Christmasberry and molasses grass), trampling by humans on or near trails, and the small number of populations.

In 1873 Wawra described *Schiedea kaalae* based upon a specimen he had collected three years earlier. The specific epithet refers to the geographical range of the plant, which is on the slopes of Mt. Kaala on Oahu. Sherff (1943) later recognized an additional variety, var. *acutifolia*, based upon a minor difference in the leaf. This variety is no longer accepted (Wagner *et al.* 1990).

Schiedea kaalae, a member of the pink family (Caryophyllaceae), has a short woody caudex less than 8 in (20 cm) long. The thick, single-veined leaves are bunched at the top of the stem; they are long and elliptic or broader toward the tip and can reach a length of 9.4 in (24 cm) and a width of 2.4 in (6 cm). Flowers are in an open, much branched inflorescence (panicle) usually 8 to 16 in (20 to 40 cm) long. The flowers lack petals, but have purple bracts and sepals, which are 0.1 to 0.2 in (3 to 4 mm) long. Stamens and nectaries each number 5 and are about 0.2 in (4 to 5 mm) long. Capsules are about 0.2 in (4 mm) long, and seeds are dark grayish brown and about 0.04 in (1 mm) long. This species can be distinguished from other members of its genus by its very short stems and its thick leaves with one conspicuous vein (Degener 1936c, Degener and Degener 1956, Sherff 1945, Wagner *et al.* 1990).

Historically, *Schiedea kaalae* was known from the north-central and south-central Waianae Mountains and the northern Koolau Mountains of Oahu (HHP 1990u2, 1990u4, 1990u5, 1990u7). This species remains at Huliwai, Makaleha, Mokuleia, Pahole Gulch, and Puu Hapapa in the Waianae Mountains and at Kaipapau and Punaluu in the Koolau Mountains (HHP 1990u1 to 1990u7, Wagner *et al.* 1990). The 5 known populations in the Waianae Mountains, which are distributed over a distance of about 10 by 1 mi (16 by 1.6 km), and the 2 known populations in the Koolau Mountains, which are about 3 mi (5 km) apart, contain fewer than 100 individuals (HHP 1990u1 to 1990u7; J. Lau, pers. comm., 1990). *Schiedea kaalae* typically grows on steep slopes and shaded sites in diverse mesic forest at an elevation of 700 to 2,600 ft (210 to 790 m) (HHP 1990u6, 1990u7). Associated species include kukui, *Athyrium sandwicensis*, *Delissea subcordata*, and *Pisonia umbellifera* (papala kepau) (HHP 1990u2 to 1990u5, 1990u7; HPCC 1990h). The major threats to *Schiedea kaalae* are habitat degradation by feral pigs and goats, competition from alien plant species (Christmasberry, huehue haole, Koster's curse, molasses grass, and *Myrica faya* (firetree)), fire, and the small number of extant individuals.

Steven Perlman and John Obata discovered *Silene perlmanii* in 1987. It was described by Warren L. Wagner, D.R. Herbst, and S.H. Sohmer (1989), and named in honor of one of its discoverers.

Silene perlmanii, a member of the pink family (Caryophyllaceae), is a perennial plant with stems that are woody at the base. It usually is much branched from the base and often forms clumps. Stems are 12 to 20 in (30 to 50 cm) long, and leaves are in the shape of narrow ellipses 2 to 4 in (5 to 10.5 cm) long and 0.3 to 0.6 in (7 to 16 mm) wide. A few flowers are arranged in clusters at the ends of stems. Each flower has fused sepals 0.9 to 1.2 in (22 to 30 mm) long with 5 lobes and white, deeply notched petals 0.3 to 0.4 in (8 to 10 mm) long. Mature capsules have not been seen. It is the only species of the genus on Oahu and can be distinguished from other *Silene* species by its white petals and a calyx which is more than 0.7 in (19 mm) long and densely covered with short hairs (Wagner *et al.* 1990).

Silene perlmanii isa known from the southern Waianae Mountains, between Palikea and Pohakea Pass on privately owned land (HHP 1990v1; Wagner *et al.* 1990). No other localities are known for this recently discovered species (HHP 1990v2). The 1 known population contains 10 to 20 individuals (J. Lau, pers. comm., 1990). *Silene perlmanii* typically grows on cliff faces in diverse mesic forest at an elevation of 2,600 ft (790 m) (Wagner *et al.* 1990). Associated species include *Plantago princeps* (laukahi kuahiwi) (HHP 1990v1). The major threats to *Silene perlmanii* are competition from alien plant species (Christmasberry, firetree, and molasses grass), and the small number of extant individuals.

Tetramolopium filiforme was collected by Hillebrand in 1869 and described by Sherff (1934b) in his monograph of the genus. Sherff named the species *filiforme* because of its very narrow leaves. In the same monograph, Sherff (1934b) described *Tetramolopium polyphyllum* based upon a plant collected by Wawra in 1870 during the Austrian East Asian Exploring Expedition. In a recent revision of the genus, Timothy K. Lowrey (1986, 1990) recognized *T. polyphyllum* as a variety of *T. filiforme*.

Tetramolopium filiforme, a member of the aster family (Asteraceae), is a dwarf shrub from 2 to 6 in (5 to 15 cm) tall with complexly branched stems. Leaves are much longer than wide, from 0.4 to 0.8 in (1 to 2 cm) long and 0.02 to 0.05 in (0.4 to 1.2 mm) wide. Flower heads are single or grouped in clusters of 2 to 4, each having a bell-shaped involucre 0.2 in (4 to 5 mm) high and 0.3 to 0.4 in (7 to 10 mm) in diameter. There are 35 to 52 white or pale lavender petals (ray florets) in a single circle at the edge of the head, each 0.1 to 0.2 in (3 to 4 mm) long. There are 18 to 30 maroon (rarely yellow) disk florets in the center of each head. The ray florets are female, while the disk florets function as male flowers. Fruits are achenes, less than 0.1 in (3 mm) long and up to 0.04 in (1 mm) wide. This species is distinguished from the other extant species on Oahu by its separate male and female flowers both on the same plant, and its inflorescence of one to four heads (Lowrey 1986, Sherff 1935a).

Historically, *Tetramolopium filiforme* was known from the northern Waianae Mountains, from Ohikilolo Ridge, Keaau Valley, and Makaha Valley (HHP 1990w5 to 1990w7, Lowrey 1990). This species remains on in Keaau Valley and on Ohikilolo Ridge on State land (HHP 1990w1 to 1990w4, 1990w7; Lowrey 1990). The 5 known populations, which are distributed over a distance of about 1.4 by 0.5 mi (2.3 by 0.8 km), are estimated to contain fewer than 500 individuals (HHP 1990w1 to 1990w4, 1990w6). *Tetramolopium filiforme* typically grows on dry cliff faces and ridges at an elevation of 1,100 to 3,000 ft (340 to 900 m) (HHP 1990w2, 1990w7). Associated species include 'a'ali'i, *Artemisia australis* ('ahinahina), and *Schiedea mannii* (HHP 1990w2, 1990w4, 1990w7). The major threats to *Tetramolopium filiforme* are habitat degradation by feral goats, competition from alien plant species (Christmasberry, koa haole, molasses grass, and *Erigeron karvinskianus* (daisy fleabane)), fire, and trampling or collection by humans on or near trails.

Tetramolopium lepidotum ssp. *lepidotum* was described by Sherff (1934b) in his monograph of the genus. Other names which have been applied to this taxon are *Erigeron lepidotus* (Lessing 1831), *E. pauciflorus* (Hooker and Arnott 1830–1841), *E. tennerrimus* var. *lepidotus* (Drake del Castillo 1888), *T. chamissonis* var. *luxurians* (Hillebrand 1888), *T. lepidotum* var. *luxurians* (Sherff 1934b), and *Vittadinia chamissonis* (Gray 1861).

Tetramolopium lepidotum ssp. *lepidotum*, a member of the aster family (Asteraceae), is an erect shrub 4.7 to 14 in (12 to 36 cm) tall, branching near the ends of the stems. Leaves of this taxon are lance-shaped, wider at the leaf tip, and measure 1.0 to 1.8 in (25 to 45 mm) long and 0.04 to 0.3 in (1 to 7 mm) wide. Flower heads are arranged in groups of 6 to 12. The involucre is bell-shaped and less than 0.2 in (4 mm) high. Florets are either female or bisexual, with both occurring on the same plant. There are 21 to 40 white to pinkish-lavender ray florets 0.04 to 0.08 in (1 to 2 mm) long on the periphery of each head. In the center of each head there are 4 to 11 maroon to pale salmon disk florets. The fruits are achenes, 0.06 to 0.1 in (1.6 to 2.5 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. This species can be distinguished from the other extant species on Oahu by its hermaphroditic disk flowers and its inflorescence of 6 to 12 heads (Degener 1937b; Lowrey 1986, 1990; Sherff 1935a).

Historically, *Tetramolopium lepidotum* ssp. *lepidotum* was known from nearly the entire length of the Waianae Mountains, from Makua Valley to Kaaikukae Ridge, as well as from the island of Lanai (HHP 1990x1, 1990x3, 1990x5; Lowrey 1990). This taxon remains in the Waianae Mountains on Mauna Kapu and Puu Kaua on Federal and private land (HHP 1990x1 to 1990x3). The 3 known populations, which extend over a distance of about 2.5 mi (4 km), are estimated to contain fewer than 100 individuals (HHP 1990x1 to 1990x3, 1990x6). *Tetramolopium lepidotum* ssp. *lepidotum* typically grows on grassy ridgetops, slopes, or west-facing cliffs in mesic forest at an elevation of 1,200 to 3,100 ft (370 to 940 m) (HHP 1990x2, 1990x4; Lowrey 1990). Associated species include daisy fleabane, firetree, ko'oko'olau, and 'ohi'a (HHP 1990x1, 1990x2; HPCC 1990l). The major threats to *Tetramolopium lepidotum* ssp. *lepidotum* are competition from alien plant species (Christmasberry, daisy fleabane, firetree, and molasses grass), trampling or collection by humans on or along trails, and the small number of populations.

Urera kaalae was first collected by Chamisso in the early 1800s, and later rediscovered and described by Wawra (1874). The specific epithet refers to the geographical range of the species.

Urera kaalae, a member of the nettle family (Urticaceae), is a small tree or shrub 10 to 23 ft (3 to 7 m) tall. The sap of the plant becomes greenish black when exposed to air. Leaves are pale green, thin and membranous, heart-shaped, 4 to 11 in (10 to 27 cm) long by 2 to 5 in (5 to 13 cm) wide, with 3 main veins and toothed margins. Flowers are either male or female and may grow on the same or different plants. They are arranged in three-branched inflorescences. Sepals of male flowers are fused into rather globe-shaped structures about 0.06 in (1.5 mm) long. Sepals of female flowers are less than 0.04 in (1 mm) long, and the inner pair becomes slightly fleshy to enclose the achene along about half of its 0.04 in (1 mm) length (Degener 1936, Wagner *et al.* 1990). This species can be distinguished from the other Hawaiian species of the genus by its heart-shaped leaves.

Historically, *Urera kaalae* was known from the central to southern windward Waianae Mountains, from Waianae Uka to Kupehau Gulch (HHP 1990y3, 1990y4; Wagner *et al.* 1990). This species now occurs only in Ekahanui and Kaluaa gulches on privately owned land (HHP 1990y1, 1990y2, 1990y6). The 3 known populations, which are sparsely distributed over a distance of about 2 by 0.1 mi (3 by 0.2 km), contain no more than 19 individuals (HHP 1990y6; HPCC 1990j; S. Perlman, pers. comm., 1990). *Urera kaalae* typically grows on slopes and in gulches in diverse mesic forest dominated by papala kepau at an elevation of 980 to 2,700 ft (300 to 820 m) (HHP 1990y5; Wagner *et al.* 1990). Associated species include huehue haole, mamaki, and *Psidium guajava* (guava) (HHP 1990y6; HPCC 1990j). The major threats to *Urera kaalae* are habitat degradation by feral pigs, competition from alien plant species (Christmasberry, daisy fleabane, firetree, huehue haole, molasses grass, and strawberry guava), fire, and the small number of extant individuals.

First collected in 1817 by Johann Friedrick Eschscholz, surgeon on a Russian world exploring expedition, *Viola chamissoniana* was named by Gingins (1828) in honor of Chamisso, the botanist on the expedition. the name *V. chamissoniana* as used by Hillebrand (1888) included the taxon presently known as *v. chamissoniana* ssp. *tracheliifolia*; his *V. helioscopia* is now referred to as ssp. *chamissoniana* (Wagner *et al.* 1990.)

Viola chamissioniana ssp. *chamissoniana*, a member of the violet family (Violaceae), is a branched shrub up to 3 ft (90 cm) tall. The toothed leaves, usually clustered at branch tips, are triangular-oval to heart-shaped in outline and measure about 0.8 to 1.8 in (2 to 4 cm) long. Each flowering stalk produces 1 or 2 flowers with 5 sepals which are 0.2 to 0.4 in (5 to 9 mm) long and 5 white, purple-tinged petals which

are 0.4 to 0.9 in (10 to 23 mm) long. Capsules are usually 0.5 to 0.7 in (12 to 17 mm) long and contain dark brown to almost black seeds which are about 0.1 in (1.8 to 2.3 mm) long. This subspecies can be distinguished from the other members of the genus in the Waianae Mountains by the small size of its leaves (Degener and Greenwell 1952c, 1966b; St. John 1988; Wagner *et al.* 1990).

Historically, *Viola chamissoniana* ssp. *chamissoniana* was known from the center and southern Waianae Mountains, from Makaleha Valley to Kaaikukat (HHP 1990r1, 1990r5). This taxon now occurs on Kamalleune Ridge, Puu Hapapa, and Puu Kumakalii on Federal and State land (HHP 1990r2 to 1990r4). the 3 known populations, which extend over a distance of about 4.4 by 0.2 mi (7.0 by 0.3 km), contain about 16 individuals (HHP 1990r2 to 1990r4). *Viola chamissoniana* ssp. *chamissoniana* typically grows on dry cliffs in mesic shrubland at an elevation of 2,300 to 3,040 ft (700 to 1,000 m) (HHP 1990r1, 1990r2). Associated species include 'ahinahina, ko'oko'olau, and 'ohi'a (HHP 1990r1 to 1990r4). The major threats to *Viola chamissioniana* ssp. *chamissoniana* are habitat degradation by feral goats; competition from the alien plant species, Christmasberry and molasses grass; and the small number of extant individuals.

Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Abutilon sandwicense* (as *Abutilon sandwicense* var. *sandwicense*), *Alsinidendron obovatum*, *Alsinindendron trinerve*, *Chamaesyce celastroides* var. *kaenana* (as *Euphorbia celastroides* var. *kaenana*), *Cyanea pinnatifida* (as *Rollandia pinnatifida*), *Diellia falcata*, *Hedoytis degeneria*, *Hedyotis parvula*, *Hesperomannia arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lobilia niihauensis*, *Neraudia angulata*, *Nototrichium humile*, *Phyllostegia mollis*, *Schiedea kealae*, *Tetramolopium lepidotum* (as *Tetramolopium lepidotum* var. *lepidotum*), *Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana* (as *Viola chamissoniana*) were considered to be endangered, *Lipochaeta tenuifolia* was considered to be threatened, and *Gouania meyenii* as well as *Tetramolopium filiforme* were considered to be extinct. Only July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now) section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant species, including all of the above 18 taxa considered to be endangered, plus *Gouania meyenii* and *Tetramolopium filiforme* (both thought to be extinct). *Lipochaeta tenuifolia* was not included in the proposed rule. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February, 1990 (55 FR 6183). In these notices, 19 of the taxa that had been in the proposed rule were treated as Category 1 Candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the 1980 and 1985 notices, *Gouania meyenii* was included in Category 3A, meaning that the Service believed that the species was extinct. *Gouania meyenii* was included in Category 1 in the 1990 notice after a taxonomic revision combined *G. meyenii* with two other Category 1 species (*G. gognei* and *G. oliveri*). *Dubautia herbstobatae* was included on the 1980 and subsequent notices as a Category 1 species after it was described by Carr in 1979. The 1990 notice also included *Centaurium sebaeoides*, *Chamaesyce kuwaleana* *Sanicula mariversa*, and *Silene perlmanii* as Category 1 species.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. Publication of the present proposal constitutes the final 1-year finding for these species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 28 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Feral animal activity			Alien plants	Fire	Human impacts	Limited numbers [1]
	Pigs	Cattle	Goats				
Abutilon sandwicense		X		X	X		
Alsinidendron obovatum	X			X		X	X
Alsinidendron trinerve	X			X		X	X
Centaurium sebaeoides		X	X	X	X	X	
Chamaesyce celastroides var. *kaenana*				X	X	X	

[1] No more than 100 individuals and/or fewer than 5 populations.

TABLE 1.—SUMMARY OF THREATS—Continued

Species	Feral animal activity			Alien plants	Fire	Human impacts	Limited numbers [1]
	Pigs	Cattle	Goats				
Chamaesyce kuwaleana				X	X		X
Cyanea pinnatifida	X			X		X	X
Diellia falcata	X	X	X	X	X		
Dubautia herbstobatae	X		X	X	X	X	X
Gouania meyenii				X	X		X
Hedyotis degeneri	X			X			X
Hedyotis parvula			X	X			X
Hesperomannia arbuscula	X			X		X	X
Lipochaeta lobata var. *leptophylla*				X	X		X
Lipochaeta tenuifolia	X		X	X	X		
Lobelia niihauensis	X		X	X	X	X	
Neraudia angulata	X		X	X	X		X
Nototrichium humile	X	X	X	X	X		
Phyllostegia mollis				X			X
Sanicula mariversa			X	X	X	X	X
Schiedea kealae	X		X	X	X		X
Silene perlmanii				X			X
Tetramolopium filiforme			X	X	X	X	
Tetramolopium lepidotum ssp. *lepidotum*				X		X	X
Urera kaalae	X			X	X		X
Viola chamissoniana ssp. *chamissoniana*			X	X			X

[1] No more than 100 individuals and/or fewer than 5 populations.

These factors and their application to *Abutilon sandwicense* (Degener) Christoph. (NCN), *Alsinidendron obovatum* Sherff (NCN), *Alsinidendron trinerve* H. Mann (NCN), *Centaurium sebaeoides* (Griseb.) Druce ('awiwi), *Chamaesyce celastroides* (Boiss.) Criozat var. *kaenana* (Sherff) Degener and I. Degener ('akoko), *Chamaesyce kuwaleana* (Degener and Sherff) Degener and I. Degener (NCN), *Cyanea pinnatifida* (Cham.) F. Wimmer (haha), *Diellia falcata* Brack. (NCN), Dubautia herbstobatae G. Carr (na'ena'e), *Gouania meyenii* Steud. (NCN), *Hedyotis degeneri* Fosb. (NCN), *Hedyotis parvula* (A. Gray) Fosb. (NCN), *Hesperomannia arbuscula* Hilleb. (NCN), *Lipochaeta lobata* (Gaud.) DC var. *leptophylla* Degener and Sherff (nehe), *Lipochaeta tenuifolia* A. Gray (nehe), *Lobelia niihauensis* St. John (NCN), *Neraudia angulata* R. Cowan (NCN), *Nototrichium humile* Hilleb. (kulu'i), *Phyllostegia mollis* Benth. (NCN), *Sanicula mariversa* Nagata and Gon (NCN), *Schiedea kaalae* Wawra (NCN), *Silene perlmanii* W.L. Wagner, Herbst, and Sohmer (NCN), *Tetramolopium filiforme* Sherff (NCN), *Tetramolopium lepidotum* (Less.) Sherff ssp. *lepidotum* (A. Gray) Lowrey (NCN), *Urera kaalae* Wawra (opuhe), and *Viola chamissoniana* Ging. ssp. *chamissoniana* (pamakani) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The native vegetation of the Waianae Mountains and adjacent areas has undergone extreme alterations because of past and present land management practices, including deliberate alien plant and animal introductions, agricultural development, and military use (Frierson 1973, Wagner *et al.* 1985). Degradation of habitat by feral animals and competition with alien plants are considered the greatest present threats to the 28 species being proposed.

Feral pigs (*Sus scrofa*) have been in the Waianae Mountains for about 150 years and are known to be one of the major current modifiers of forest habitats (Stone 1985). Pigs damage the native vegetation by rooting and trampling the forest floor and encourage the expansion of alien plants that are better able to exploit the newly tilled soils than are native species (Stone 1985). Pigs also disseminate alien species through their feces and on their bodies, accelerating the spread of alien plant species within the native forest. Present throughout the Waianae Mountains in low numbers, feral pigs pose a significant threat to the native flora (HHP 1987a, 1987b; J. Lau, pers. comm., 1990). For example, digging was noted in the wet summit forests within honouliuli in the southern Waianae Mountains where two of the proposed plant species (*Cyanea pinnatifida* and *Urera kaalae*) are restricted (HHP 1987a). In Pahole Gulch in the northwestern Waianae Mountains, a population of pigs, which are thriving as the result of insufficient hunting pressure, threatens at least two of the proposed plant species, *Alsinidendron trinerve* and *Schiedea kaalae* (Nagata 1980). Of the 28 plant species, 13 are threatened or already have sustained loss of individual plants or habitat as the result of feral pig activity (see Table 1) (HHP 1990b3, 1990l7, 1990p23, 1990u2; HPCC 1990e, 1990j; Nagata 1980; J. Lau and S. Perlman, pers. comms., 1990).

Although feral cattle (*Bos taurus*) were eliminated from Oahu by the mid-1900s (Stone 1985), the effects of cattle ranching have left an indelible scar on the native low to mid-elevation forests of the Waianae Mountains. Much of the forest between 700 and 1,800 ft (210 and 550 m) in elevation has been destroyed by cattle and feral goats (*Capra hircus*) (Cuddihy and Stone 1990), effectively restricting the native vegetation to higher elevations (Nagata 1980). Cattle ranching still continues in the Mokuleia area on the west side of the Waianae Mountains. Taking advantage of the natural barrier of its slopes, ranchers have not installed adequate fences to contain the cattle. Some cattle escape into the upland forest (J. Lau, pers. comm., 1990) where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Scott *et al.* 1986). Species such as *Abutilon sandwicense*, *Diellia falcata*, and *Nototrichium humile* have been detrimentally affected by the activities of cattle (J. Lau, pers. comm., 1990). Cattle grazing also is considered a threat to the population of *Centaurium sebaeoides* on Maui (HHP 1990d5).

Goats have been on Oahu for the past 170 years. Because of their commercial value in the 1820's, goats were allowed to proliferate throughout the Waianae Mountains without the confines of fences (Cullinay 1988). As the result of their agility, goats were able to reach more remote areas than pigs or cattle.

Goats (and cattle) are responsible for the destruction of most of the lower elevation dryland forests of Oahu (Stone 1985). The impact of feral goats on the native vegetation is similar to that described above for cattle (Scott *et al.* 1986). Successful control efforts decreased the goat population significantly by 1905 (Gill *et al.* 1989). Although their estimated current numbers are low, there continues to be a problem of trampling and grazing by goats in areas where 12 of the 26 plant taxa now occur (Culliney 1988). Erosion is a serious direct effect of grazing and trampling by feral goats. Through their activities, goats remove the ground cover, exposing the soil to erosional actions, thereby further degrading the habitat (J. Lau, pers. comm., 1990). Encroaching urbanization and hunting pressure tend to restrict goats to the drier upper slopes of the Waianae Mountains (Tomich 1986). The dry to mesic habitat of *Diellia falcata, Dubautia herbstobatae, Hedyotis parvula, Lipochaeta tenuifolia, Lobelia niihauensis, Neraudia angulata, Nototrichium humile, Sanicula mariversa, Schiedea kaalae, Tetramolopium filiforme,* and *Viola chamissoniana* ssp. *chamissoniana* in the Waianae Mountains is being heavily degraded by these animals (HHP 1990f1, 1990o1, 1990p4, 1990q4, 1990r2, 1990u2, 1990w1, 1990z8; J. Lau, pers. comm., 1990). A population of *Centaurium sebaeoides* in similar habitat on West Maui was recently destroyed by goats (HHP 1990d3).

Habitat degradation by goats, cattle, or pigs is a likely threat to the populations of these plant taxa whose distributions extend beyond the Waianae Mountains to elsewhere on Oahu, Kauai, Molokai, or Maui (*Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce kuwaleana, Hesperomannia arbuscula, Lobelia niihauensis, Nototrichium humile,* and *Schiedea kaalae*). The adverse impacts of these animals on these seven proposed plant taxa is similar to the effects observed in the Waianae Mountains.

All of the 26 Waianae plant species being proposed for listing are threatened by competition from one or more alien plant species. *Schinus terebinthifolius* (Christmasberry), an aggressive tree introduced to Hawaii before 1911 as an ornamental, has had particularly detrimental impacts (Cuddihy and Stone 1990). This fast-growing alien plant is able to form dense thickets, displacing other plants; it also may release a chemical that inhibits the growth of other species (Smith 1985). As early as the 1940s, Christmasberry had invaded the dry slopes of Oahu; it is now replacing the native vegetation of much of the southern Waianae Mountains (Cuddihy and Stone 1990). Christmasberry is gradually invading other areas of the Waianae Mountains as well, and now is found on nearly all the other Hawaiian Islands; it now threatens to occupy the habitat of 20 of the 26 plant species being proposed (HHP 1990a1, 1990o5, 1990q2, 1990r14, 1990t4, 1990z6; HPCC 1990d; J. Lau, pers. comm., 1990).

The native vegetation of the leeward ridges of the Waianae Mountains, especially Ohikilolo, Kamaileunu, and Kumaipo ridges, is being replaced by *Melinus minutiflora* (molasses grass), another aggressive alient plant species. This species and Christmasberry are considered the two most serious alient plant problems in these areas (J. Lau, pers. com., 1990). Molasses grass ranges from the dry lowlands to the lower wet forests, especially in open areas with sparse vegetation and is distributed on the other islands as well. This fire-adapted grass produces a dense mat capable of smothering plants, provides fuel for fires, and carries fires into areas with native woody plants (Cuddihy and Stone 1990). Because most native forest species are not fire-adapted, molasses grass is able to exploit freshly burned areas (J. Lau, pers. comm., 1990). Populations of 19 of the 26 proposed taxa located on leeward slopes and ridges are most vulnerable to molasses grass (J. Lau, pers. comm., 1990).

Myrica faya (firetree), a species that was introduced before 1900 as an ornamental or for firewood, inhabits dry to mesic habitats on most of the Hawaiian Islands (Cuddihy and Stone 1990). The Territory of Hawaii planted firetree in the Waianae Mountains in the 1920s for reforestation. It now forms a dense stand near Palikea in the Honouliuli Forest Reserve and has spread approximately two mi (three km) to the north (Whiteaker and Gardner 1985) where it poses a threat to the habitat of *Schiedea kaalae, Silene perlmanii, Tetramolopium lepidotum* ssp. *lepidotum,* and *Urera kaalae*. The impact of this noxious tree is serious because, given suitable habitat, firetree can form a dense closed canopy to the exclusion or detriment of other plants. This plant also produces nitrogen, making it adaptable to habitats with low nitrogen soils and an excellent competitor with native plants that have evolved in low nitrogen conditions (Cuddihy and Stone 1990).

Psidium cattleianum (strawberry guava), a pervasive alien tree in the southern Waianae Mountains, is distributed mainly by feral pigs and fruit-eating birds (Smith 1985). It also is found on the other Hawaiian Islands. Like Christmasberry and firetree, strawberry guava is capable of forming dense stands to the exclusion of other plant species (Cuddihy and Stone 1990). Populations of *Diellia falcata, Gouania meyenii, Hedyotis degeneri, Hesperomannia arbuscula, Lipochaeta tenuifolia, Neraudia angulata, Nototrichium humile,* and *Urera kaalae* are immediately threatened by competition with this alien plant (HPCC 1990c; Obata 1986; J. Lau, pers. comm., 1990).

Leucaena leucocephala (koa haole) is an alien tree usually seen in disturbed lowland areas on the Hawaiian Islands. Originally introduced as fodder (Smith 1989), it is now widely distributed in dry and mesic forests that are the habitat for *Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce kuwaleana, Dubautia herbstobatae, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia niihauensis, Nototrichium humile,* and *Tetramolopium filiforme* (J. Lau, pers. comm., 1990). Like firetree, koa haole is an aggressive competitor that produces its own nitrogen.

Clidemia hirta (Koster's curse), a noxious shrub first cultivated in Wahiawa on Oahu, spread to the Koolau Mountains in the early 1960s, where it is now rapidly displacing native vegetation. Koster's curse spread to the Waianae Mountains around 1970 and is now widespread throughout Honouliuli (Cuddihy and Stone 1990, Culliney 1988). It has recently spread to other Hawaiian Islands (Cuddihy and Stone 1990). This species forms a dense understory, shading other plants and hindering plant regeneration (HHP 1987a). At present, Koster's curse threatens to replace four of the proposed plant species (*Abutilon sandwicense, Cyanea pinnatifida,* and *Hesperomannia arbuscula*) in the Waianae Mountains, and *Schiedea kaalae* in the Koolau Mountains (HHP 1990e1; J. Lau and S. Perlman, pers. comms., 1990).

Rubus argutus (blackberry), recognized as a noxious weed by the Hawaii State Department of Agriculture (Cuddihy and Stone 1990), poses a serious threat to *Alsinidendron trinerve* and *Hesperomannia arbuscula* (HHP 1990c1; HPCC 1990e; Paul Higashino, Maui Preserves Naturalist, The Nature Conservancy of Hawaii, pers. comm., 1990). Blackberry occurs in the Waianae Mountains between 3,300 and 7,500 ft (1,000 and 2,300 m) in elevation, where it forms impenetrable thickets in disturbed areas (Smith 1985). Its distribution includes the other Hawaiian Islands.

Passiflora seberosa (huehue haole), a vine that smothers small plants in the subcanopy of dryland habitats (Smith 1985) on Oahu, Maui, and Hawaii, poses an immediate threat to several of the proposed plant species. There are major infestations in the Waianae Mountains and it is a probable threat to all extant populations of *Urera kaalae* and to some populations of *Abutilon sandwicense* and *Diellia falcata* (HPCC 1990j; J. Lau, pers. comm., 1990).

Erigeron karvinskianus (daisy fleabane) is another low-growing alien species that smothers native plants, particularly on cliffs and is fund on most of the Hawaiian Islands. This species threatens *Cyanea pinnatifida, Lobelia niihauensis, Tetramolopium filiforme,* and *Tetramolopium lepidotum* ssp. *lepidotum* (S. Perlman, pers. comm., 1990).

Fire threatens 16 of the 26 proposed species, particularly those located upslope from makua Military Reservation and Schofield Barracks, where current firing exercises could unintentionally ignite fires. Within a 14-month period in 1989 and 1990, for example, a total of 10 fires resulted from firing activities in the Makua Military Reservation. Of these, eight occurred outside of the firebreak installed by the Army (Colonel William Chastain, Commanding Officer, U.S. Army Support Command, Fort Shafter, Hawaii, *in litt.*, 1989a, 1989b, 1990a, 1990b). A 300 acre (120 hectare) fire in July 1989 may have consumed a population of *Neraudia angulata,* and came within 0.25 mi (0.4 km) of a population of *Nototrichium humile*. Although most fires have been contained within 0.02 acres (0.01 hectares), the July 1989 fire is evidence of the potential for escape into the fire-prone habitat of 16 of the proposed species (*Abutilon sandwicense, Cantaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaecyse kuwaleana, Diellia falcata, Dubautia herbstobatae, Gouania meyenii, Lipochaete lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia niihauensis, Neraudia angulata, Nototrichium humile, Sanicula mariversa, Schiedea kaalae, Tetramolopium filiforme,* and *Urera kaalae*) (Carr 1982; HHP 1990d3, 1990f4, 1990o6, 1990p23, 1990q4, 1990r14, 1990u2, 1990w3, 1990w8; HPCC 1990d; St. John 1981b; Sam Gon, Ecologist, HHP, Honolulu, pers. comm., 1990; J. Lau, pers. comm., 1990).

B. Overutilization for commercial, recreational, scientific, or educational purposes. Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously impact several of these species. *Alsinidendron obovatum, Alsinidendron trinerve, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Cyanea pinnatifida, Dubautia herbstobatae, Hesperomannia arbuscula, Lobelia niihauensis, Sanicula mariversa, Tetramolopium filiforme,* and *Tetramolopium lepidotum* ssp. *lepidotum* are located on or near trails or roads and have the potential of being collected or trampled (HHP 1990b3, 1990x8; Nagata 1980; D. Herbst, J. Lau, and S. Perlman, pers. comms., 1990). For these seven species, disturbance from trampling during recreational use (hiking, for example) could promote erosion and greater ingress by competing alien species.

C. Disease or predation. Xylosandrus compactus (black twig borer) has been cited as a possible threat to the extant populations of *Urera kaalae* (St. John 1981b). The black twig borer burrows into the branches and introduces a pathogenic fungus, pruning the host severely, often killing branches or whole plants (Hara and Beardsley 1979, Howarth 1985). No other evidence of disease is known for any of the species to be proposed.

Predation of *Lobelia niihauensis* by goats has been observed in the Makua area of the Waianae Mountains (HHP 1990p4). While there is no direct evidence of predation on the other 25 proposed species, none of them are known to be unpalatable to goats or cattle. Predation is therefore a probable threat at sites where those animals have been reported, potentially affecting 11 of the proposed species (*Centaurium sebaeoides, Diellia falcata, Dubautia herbstobatae, Hedyotis parvula, Lipodhaeta tenuifolia, Neraudia angulata, Nototrichium humile, Sanicula mariversa, Schiedea kaalae, Tetramolopium filiforme,* and *Viola chamissoniana* ssp. *chamissoniana*) (HHP 1990d3, 1990q2, 1990r1, 1990r2, 1990u2; St. John 1981b; J. Lau, pers. comm., 1990). The restriction of most of the populations of *Lobelia niihauensis* on both Oahu and Kauai to virtually inaccessible cliffs suggests that goat predation may have eliminated that species from more accessible locations, as is the case for other rare plants of Kauai's Na Pali Coast (Corn *et al.* 1979). Similar restriction of populations of other proposed species to inaccessible cliffs in the Waianae Mountains suggests that goats have played a parallel role in limiting the distribution of those species (J. Lau, pers. comm., 1990).

Although predation of fruits and seeds by rodents has been cited as a probable threat to *Abutilon sandwicense* and *Schiedea kaalae* (Center for Plant Conservation 1990; Wagner *et al.* 1985), those reports have not been confirmed.

D. The inadequacy of existing regulatory mechanisms. Of the 26 proposed species, a total of 12 have populations located on private land, 17 on State (including City and County) land, and 6 on Federal land. While 13 of the species occur in more than 1 of those 3 ownership categories, the other 13 species are restricted to a single category: 5 species are found only on private land, 7 species only on State land, and 1 species only Federal land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these species on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits raking and encourages conservation by State government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter. * * *" Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these 26 plant taxa would therefore reinforce and supplement the protection available to the species under State law. The Federal Act also would offer additional protection to these 26 species because if they were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other natural or manmade factors affecting its continued existence. The small number of populations and of

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individual plants of all of these species increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals (or the only known extant population) of these species. For example, 4 of the species are known from a single population: *Cyanea pinnatifida* (totalling 3 known plants), *Hedyotis degeneri* (6 plants), *Silene perlmanii* (10 to 20 plants), and *Chamaesyce kuwaleana* (several hundred plants) (HHP 1990f3, 1990g1, 1990k1, 1990v2). Fifteen of the 26 proposed species are known from fewer than 5 populations. And 17 of the proposed species are estimated to number no more than 100 known individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list these 26 plant species as endangered. Eighteen of these species either number no more than about 100 individuals or are known from fewer than 5 populations. The 26 species are threatened by one or more of the following: habitat degradation by feral pigs, cattle, and goats; competition from alien plants; fire; overcollection, mainly for scientific purposes; and trampling by humans along trails. Small population size makes these species particularly vulnerable to extinction from stochastic events. Given these circumstances, the determination of endangered status for these 26 species seems warranted. Critical habitat is not being proposed for these species for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to the species. The publication of descriptions and maps required in a proposal for critical habitat would increase the degree of threat to these plants from possible take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the location and importance of protecting the habitat of these species. Protection of the species' habitat will be addressed through the recovery process and through the section 7 consultation process. The only known Federal activity within the currently known habitat of these plants involves the use of portions of the Makua Military Reservation and Schofield Barracks as military buffer zones adjacent to impact areas used as ordnance training sites by the Army. Firebreaks have been constructed between the impact area and the buffer zone on the Makua Military Reservation to minimize potential impacts from any fires that may be generated during the ordnance training exercises (Herve Messier, Environmental Protection Specialist, U.S. Army Support Command, Ft. Shafter, Hawaii, pers. comm., 1990). As there is no direct use of the area by the military and the zoning prevents human entry onto military land, it is unlikely that such continued classification of the area would threaten the existence of these plants. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Some of these plant taxa are located on the Makua Military Reservation and Schofield Barracks, both under the jurisdiction of the U.S. Army. The military uses portions of both these areas for ordnance training of its troops and provides a buffer zone adjacent to the impact areas. Entry into the buffer area is forbidden to prevent injury from stray or unexploded shells or other devices (H. Messier, pers. comm., 1990). Virtually all of the proposed plants that occur on Army land are present only in the buffer zones and, therefore, are not directly affected by military activities. The Army has constructed firebreaks on the Makua Military Reservation to minimize damage from unintentional fires that occasionally result from stray bullets (H. Messier, pers. comm., 1990). There are no other known Federal activities that occur within the present known habitat of these 26 plant species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to the 26 plant species from the Waianae Mountains, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal with respect to any endangered plant, for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; maliciously damage or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2104); FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 5 of this Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see ADDRESSES section).

National Environmental Policy Act

The fish and wildlife Service has determined that an Environmental Assessment of Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Honolulu Field Office (See ADDRESSES above).

Author

The primary authors of this proposed rule are Z.E. Ellshoff, Joan M. Yoshioka, Joan E. Canfield, Derral R. Herbst, and Patricia C. Welton, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749). Substantial data were also generously contributed by Joel Q.C. Lau of the Hawaii Heritage Program.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Amaranthaceae—Amaranth family:						
Nototrichium humile	kului	U.S.A. (HI)	E		NA	NA
Apiaceae—Parsley family:						
Sanicula mariversa	None	U.S.A. (HI)	E		NA	NA
Aspleniaceae—Spleenwort family:						
Diellia falcata	None	U.S.A. (HI)	E		NA	NA
Asteraceae—Aster family:						
Dubautia herbstobatae	na'ena'e	U.S.A. (HI)	E		NA	NA
Hesperomannia arbuscula	None	U.S.A. (HI)	E		NA	NA
Lipochaeta lobata var. *leptophylla*	nehe	U.S.A. (HI)	E		NA	NA
Lipochaeta tenuifolia	nehe	U.S.A. (HI)	E		NA	NA

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Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Tetramolopium filiforme	None	U.S.A. (HI)	E		NA	NA
Tetramolopium lepidotum var. *lepidotum.*	None	U.S.A. (HI)	E		NA	NA
Campanulaceae—Bellflower family:						
Cyanea pinnatifida	haha	U.S.A. (HI)	E		NA	NA
Labelia niihauensis	None	U.S.A. (HI)	E		NA	NA
Caryophyllaceae—Pink family:						
Alsinidendron obovatum	None	U.S.A. (HI)	E		NA	NA
Alsinidendron trinerve	None	U.S.A. (HI)	E		NA	NA
Schiedea kealiae	None	U.S.A. (HI)	E		NA	NA
Silene perlmanii	None	U.S.A. (HI)	E		NA	NA
Euphorbiaceae—Spurge family:						
Chamaesyce celastroides var. *kaenana.*	'akoko	U.S.A. (HI)	E		NA	NA
Chamaesyce kuwaleana	'akoko	U.S.A. (HI)	E		NA	NA
Gentianaceae—Gentian family:						
Centaurium sebaeoides	'awiwi	U.S.A. (HI)	E		NA	NA
Lamiaceae—Mint family:						
Phyllostegia mollis	None	U.S.A. (HI)	E		NA	NA
Malvaceae—Mallow family:						
Abutilon sandwicense	None	U.S.A. (HI)	E		NA	NA
Rhamnaceae—Buckthorn family:						
Gouania meyenii	None	U.S.A. (HI)	E		NA	NA
Rubiaceae—Coffee family:						
Hedyotis degeneri	None	U.S.A. (HI)	E		NA	NA
Hedyotis parvula	None	U.S.A. (HI)	E		NA	NA
Urticaceae—Nettle family:						
Neraudia angulata	None	U.S.A. (HI)	E		NA	NA
Urera kaalae	opuhe	U.S.A. (HI)	E		NA	NA
Violaceae—Violet family:						
Viola chamissoniana ssp. *chamissoniana.*	pamakani	U.S.A. (HI)	E		NA	NA

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-22936 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 189
Friday, September 28, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Cooperative Forestry Research Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1987, (Pub. L. 92-463, 86 Stat. 770-776) U.S. Department of Agriculture announces the following meeting:

Name: Cooperative Forestry Research Advisory Council

Date: November 15-16, 1990

Time: 8 a.m.—5 p.m.

Place: College of Forestry, Oregon State University, Corvallis, Oregon

TYPE OF MEETING: Open to public. Persons may participate in the meeting if time and space permit.

COMMENTS: The public may file written comments before or after the meeting by contacting the person below.

PURPOSE: The council will be deliberating the McIntire-Stennis Forestry Research program with particular emphasis on 1991 and 1992 appropriations, the annual distribution of funds, the review process for cooperating research institutions, and the National Research Initiative.

CONTACT PERSON FOR AGENDA AND MORE INFORMATION: Peter A. Muscato, Cooperative State Research Service, Room 329, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250-2200; telephone (202) 401-4515.

Dated: 21st day of September, 1990.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 90-22911 Filed 9-27-90; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Partin Limestone Products, Inc., Mine Operating Plan; Revision of Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Register of July 1, 1988 published a Notice of Intent to prepare an Environmental Impact Statement for a proposed mining plan of operations for the development of the Partin Limestone Mine on the Big Bear Ranger District, San Bernardino National Forest, San Bernardino County, California. This notice revises that notice to recognize the additional involvement of the Bureau of Land Management (BLM) and the County of San Bernardino (County). The document to be prepared will be a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) meeting the requirements of both the National Environmental Policy Act and the California Environmental Quality Act.

The mining plan of operations proposes to expand the existing 195 acre operation by an additional 88 acres: 77 acres on National Forest System lands and 11 acres on Public Domain lands within the Bighorn Mountains Wilderness Study Area (WSA: CDCA #217). The involvement of Public Domain lands was not proposed at the time of the previous notice.

The Forest Service will serve as the lead federal agency, the BLM as a cooperating federal agency, and the County as the lead state agency in the preparation of the EIS/EIR.

SUPPLEMENTARY INFORMATION: The General Mining Law of 1872 (May 10, 1872) as amended, authorizes the location and extraction of minerals, including limestone, subject to regulations prescribed by law.

Mining regulations for the Forest Service are found in 36 CFR part 228, subpart A, first issued on August 28, 1974. Mining activity within BLM WSAs are regulated under 43 CFR subpart 3802, first issued on April 2, 1980. The County is responsible for the implementation of the California Surface Mining and Reclamation Act of 1975, California Public Resources Code, Division 2, Chapter 9.

Public Domain lands under wilderness review are managed under the "Interim Management Policy and Guidelines for Lands Under Wilderness Review (IMP). BLM Manual H-6550-1. To be approved, the proposed action on Public Domain lands must qualify under the "grandfathered" rights provision of the IMP. The existence or absence of grandfathered rights will be determined during the preparation of the EIS/EIR.

Partin Limestone and three other limestone mining companies have extracted ore rock from within the San Bernardino National Forest for many years under several plans of operations and amendments. For a variety of reasons, most of the plans and amendments have become obsolete, incomplete, or for some other reason are no longer adequate. Approximately 32 acres of surface disturbance occurred on Public Domain lands without authorization and prior to the enactment of the Federal Land Policy and Management Act of 1976.

Since 1987, the Forest Service has been working to update the mining plans of operations of four limestone operations on the Forest. Two public meetings were held by the Forest Service to inform and gather information. Public concerns were noted and were addressed in an environmental assessment. During the environmental analysis process, it was determined that a large area of sensitive plants and their habitat exist within the Partin Limestone area, and would be impacted by any development alternative. Partin also proposed to increase their level of activity on the BLM WSA lands. For these reasons, it was determined that the proposal could have significant effects on the environment, and an EIS was required.

In July of 1988, the San Bernardino National Forest issued news releases and mailed scoping letters to interested parties requesting comments and concerns. Issues identified in the scoping include dust, noise, financial impacts, archeological values, land uses, impacts to recreation, sensitive plant species, and habitat loss.

The purpose of amending the previous notice is to recognize that the Bureau of Land Management (BLM) and the County of San Bernardino are now involved in the process, and to provide the public the opportunity to identify

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additional issues and to provide other comments.

The draft EIS/EIR is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 1990. At that time, EPA will publish a notice of availability of the draft EIS/EIR in the Federal Register. The comment period on the draft EIS/EIR will be 45 days from the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the north slope of the San Bernardino Mountains participate at that time. To be most helpful, comments on the draft EIS/EIR should be as specific as possible and may address the adequacy of the document or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement, *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service, Bureau of Land Management, and the County of San Bernardino at a time when they can meaningfully consider them and respond to them in the final document.

After the comment period ends on the draft EIS/EIR, the comments will be analyzed and considered by the Forest Service in preparing the final EIS/EIR.

In the final EIS/EIR, the Forest Service, Bureau of Land Management, and County of San Bernardino are required to respond to the comments, responses, and environmental consequences discussed in the EIS/EIR, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under the provisions of 36 CFR part 217.

DATES: Comments are requested on this notice concerning the scope of the analysis of the draft EIS/EIR. Comments must be received within 30 days of the publication date of this notice.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Charles H. Irby, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408-3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the preparation of the EIS/EIR to George Kenline, Lands and Minerals Officer, Big Bear Ranger District, P.O. Box 290, Fawnskin, CA 92333, phone (714) 866-3437.

Dated: September 20, 1990.

Charles H. Irby,

Forest Supervisor.

[FR Doc. 90-22923 Filed 9-27-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Under Secretary for Technology

Industrial Technology Advisory Board; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Industrial Technology Advisory Board is in the public interest in connection with the performance of duties imposed on the Department by law.

The Board will advise the Secretary, through the Under Secretary for Technology, on matters relating to the development and commercialization of industrial technologies needed to increase U.S. economic growth and international competitiveness.

The Board will consist of not more than twenty members to be appointed by the Secretary to assure a balance with regard to (a) The diversity of U.S. technology interests such as biotechnology, materials, electronics, automation, information technology, etc. (b) company size, (c) representation from the financial community (e.g. venture capitalists), and (d) organizations, including academia and other relevant institutions.

The Board will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, fifteen days from the date of publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this Board to Dr. Robert M. White, Under Secretary for Technology, U.S. Department of Commerce, Room 4824, Herbert C. Hoover Building, Washington, DC 20230. Telephone: 202-377-1575.

Dated: September 20, 1990.

Robert M. White,

Under Secretary for Technology.

[FR Doc. 90-22953 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-BP-M

International Trade Administration

[A-122-601]

Brass Sheet and Strip From Canada; Termination in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration Department of Commerce.

ACTION: Notice of termination in part of antidumping duty administrative review.

SUMMARY: On February 28, 1990, the Department of Commerce initiated an administrative review of the antidumping duty order on brass sheet and strip from Canada. The Department is now terminating its review of Arrowhead Metals Limited.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/ 3601.

SUPPLEMENTARY INFORMATION: On February 28, 1990, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on brass sheet and strip from Canada (55 FR 7015). That notice stated that the Department would review two manufacturers/exporters, Ratcliffs (Canada) Limited and Arrowhead Metals Limited ("Arrowhead"), for the period January 1, 1989 through December 31, 1989. On June 29, 1990 Arrowhead withdrew its request for review. No other interested party had requested a review of Arrowhead. The petitioners object to Arrowhead's withdrawal on the grounds that it was untimely.

Section 353.22(a)(5) of the Department's regulations provides that the Department may permit a party that requests a review to withdraw its request not later than 90 days after the date of publication of the notice of initiation. It further provides that the Department may extend this time limit if it decides that it is reasonable to do so.

In this case, Arrowhead requested that it be reviewed; however, since requesting the review, Arrowhead has gone out of business and, therefore, did not answer the questionnaire in this review. Because of these facts, the Department has concluded that it is reasonable in this case to extend the period for withdrawal of review requests, and has determined to terminate in part this review.

This notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: September 21, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-22950 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-247-003]

Portland Cement, Other Than White, Nonstaining Portland Cement, From The Dominican Republic, Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On May 3, 1990, the Department of Commerce ("the Department") published in the Federal Register (55 FR 18652) its intent to revoke the antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic (28 FR 4507, May 4, 1963).

The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest to interested parties. We had not received a request for an administrative review of the finding for the last four consecutive annual anniversary months and, therefore, published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4) (1990)).

On May 31, 1990, Southdown, Inc., Texas Industries, Inc., and Florida Crushed Stone, U.S. producers of Portland cement, objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: September 20, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-22948 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-008]

Titanium Sponge From The U.S.S.R. Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on titanium sponge from the U.S.S.R.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On August 2, 1990, the Department of Commerce (the Department) published in the Federal Register (55 FR 31420) its intent to revoke the antidumping finding on titanium sponge from the U.S.S.R. (33 FR 12138, August 28, 1968).

The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest to interested parties. We had not received a request for an administrative review of the findings for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke prusuant to 19 CFR 353.25(D)(4) (1990).

On August 27, 1990, RMI Titanium Company, petitioner in the antidumping investigation, objected to our intent to revoke the finding. On August 31, 1990, Titanium Metals Corporation, an interested party, also objected to the proposed revocation. Therefore, we no longer intend to revoke the finding.

Dated: September 21, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-22949 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a public meeting on October 10-11, 1990, at the Town and Country Inn; 2008 Savannah Highway; Charleston, SC. The meeting will begin at 1 p.m. on October 10, and will adjourn at 5 p.m. on October 11.

The SSC will review the snapper/ grouper stock assessment for use in Amendment #4 to the Snapper/Grouper Fishery Management Plan (FMP), limited entry options for the wreckfish fishery (Amendment #5), overfishing definitions for billfish, sea scallops and spiny lobster, as well as other SSC business.

FOR MORE INFORMATION CONTACT: Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: September 25, 1990.

Joe P. Clem,

Acting Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-22966 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-22-M

Steller Sea Lion Listing—Public Hearings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Public hearings on the proposed rule to list the Steller sea lion as threatened is scheduled as follows:

DATES:

Tuesday, October 16, 1990 (7 to 9 p.m.)—Anchorage

Thursday, October 18, 1990 (7 to 9 p.m.)—Cordova

Thursday, October 18, 1990 (7 to 9 p.m.)—Kodiak

ADDRESSES:

Anchorage—Anchorage Sheraton, Third Floor Boardroom, 401 E 6th Avenue, Anchorage, AK.

Cordova—Cordova District Fishermen's United, Main Street, Cordova, AK.

Kodiak—Fishermen's Hall, 201 Marine Way, Kodiak, AK.

FOR FURTHER INFORMATION CONTACT: Steve Zimmerman, 907–586–7233.

SUPPLEMENTARY INFORMATION: At the request of representatives of the Seward Trade and Commerce Advisory Board and the State of Alaska Department of Fish and Game, the National Marine Fisheries Service is holding three public meetings to discuss the proposed listing of Steller sea lions as threatened under the Endangered Species Act. Citizens residing in the Seward area who are interested in commenting upon the proposal may attend the meeting held in Anchorage.

Dated: September 24, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-22937 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

September 24, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 and its sublevel 338–S/339–S are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 52047, published on December 20, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

September 24, 1990

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel the directive of December 14, 1989, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period January 1, 1990 through December 31, 1990.

Effective on September 24, 1990 you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
338/339	2,245,216 dozen of which not more than 1,668,609 dozen shall be in Categories 338-S/339-S [2]

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 338-S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339-S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-22951 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Macau

September 24, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 1, 1990.

FOR FUTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements has decided to control imports of cotton textile products in Category 349 in Group I.

A description of the textile and Apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 52437, published on December 21, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

September 24, 1990

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 15, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on October 1, 1990, the directive of December 15, 1989 is amended to establish a limit of 145,833 dozen [1] for cotton textile products in Category 349. Category 349 shall remain subject to the Group I limit.

Imports already charged to Group I for Category 349 shall be applied to the limit established in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-22952 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1989.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990 additions

AGENCY: Committee for Purchase from the Blind and other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities and military resale commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 3 and 10, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 31820, 31621 and 32882) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (43 46540). After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities, military resale commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities, military resale commodities and services lised below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.8.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities, military resale commodities and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodities and services are hereby added to Procurement List 1990:

Commodities

Strap Set, Webbing,
4935–00–805–3522,
(Remaining Government Requirement).

Binder, Looseleaf,
7510–00–782–2684.

Folder, File
7530–00–285–1732
7530–00–291–0086
7530–00–281–5868
7530–00–222–3443
7530–00–222–3444
7530–00–926–8975
7530–00–985–7012
7530–00–863–0031
(Requirements for Fort Worth, Texas, Belle Meade, New Jersey, Franconia, Virginia and Palmetto, Georgia Supply Facilities only)

Folder Set, File
7530–00–281–5859
7530–00–281–5941
7530–00–281–5945
7530–00–281–5942
7530–00–281–5960
7530–00–282–2507
7530–00–282–2508

Military Resale Item No. and Name

757 Pillow, Bed, Standard Size
758 Pillow, Bed, Queen Size
759 Pillow, Bed, King Size

Services

Janitorial/Custodial (SH) at the following Denver, Colorado locations:
Colonnade Center, 1244 Speer Boulevard
Colonnade Center Parking Facility, 1300 Fox Street

Janitorial/Custodial, DLA, Defense National Stockpile Zone, HMW–New Haven Depot, State Route 14, 3 Miles East of New Haven, New Haven, Indiana

Janitorial/Custodial, Little White House Child Care Center, 100 North Washington Avenue, Battle Creek, Michigan

Janitorial/Custodial, Social Security Administration Building, 122 West Third Street, Greensburg, Pennsylvania

Janitorial/Custodial, Federal Building, 115 4th Avenue SE., Aberdeen, South Dakota

This action does not affect contracts awarded prior to the effective date of this addition or optons exercised under those contracts.

Beverly L. Milkman,

Executve Director.

[FR Doc. 90-23029 Filed 9-27-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 29, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.8. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement Listg 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Pouch, Mechanic's Tool
5140–00–329–4306

VOL 55 ISS 189 SEP 28 1990 UMI

Key Blank, Standard, USPS
5340-00-NIB-0002

Service

Supply Room/Motor Vehicle Service, Federal Aviation Administration, Great Lakes Region, Des Plaines, Illinois

Beverly L. Milkman,
Executive Director.
[FR Doc. 90-23090 Filed 9-27-90; 8:45 am]
BILLING CODE 6820-23-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of Change 2 to DoD 5025.1-I, "DoD Directives System Annual Index"

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This document is to inform the public and Government Agencies of the availability of Change 2 to DoD 5025.1-I. It is available from National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487-4650. The NTIS accession number for Change 2 is PB 90 959512.

FOR FURTHER INFORMATION CONTACT: Ms. L. Bynum, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155, telephone (202) 697-4111.

Dated: September 24, 1990.

L.M. Bynum,
Alternate OSD Federal Register, Liaison Officer, Department of Defense.
[FR Doc. 90-23025 Filed 9-27-90; 8:45 am]
BILLING CODE 3810-01-M

Department of the Air Force

Notice of Intent To Prepare Environmental Impact Statement for Disposal/Reuse of George AFB, CA

The United States Air Force will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of disposal and reuse of the property that is now George Air Force Base (AFB) near Victorville, California. On 20 June 1990, the Air Force signed a Record of Decision (ROD) for closure of George AFB.

The disposal/reuse EIS will address disposal of the property to public or private entities and the potential impacts of reuse alternatives. All available property will be disposed of in accordance with provisions of the Base Closure and Realignment Act, Public Law 100-526, and applicable federal property disposal regulations.

The Air Force is planning to conduct a scoping and screening meeting on October 29, 1990 at 7 p.m. in conference room "C", Holiday Inn, Victorville, CA (I-15 & Palmdale Road). The purpose of the meeting is to determine the environmental issues and concerns to be analyzed, to solicit comments on the proposed action and to solicit proposed disposal/alternatives that should be addressed in the EIS. In soliciting disposal/reuse inputs, the Air Force intends to consider all reasonable alternatives to the proposed action offered by any Federal, State, and local government agency and any Federally-sponsored or private entity or individual with an interest in acquiring available property at George AFB. These alternatives will be analyzed in the EIS. The resulting environmental impacts will be considered in making disposal decisions to be documented in the Air Force's Final Disposal Plan for George AFB.

To ensure the Air Force will have sufficient time to consider public inputs on issues to be included in the disposal/reuse EIS and disposal alternatives to be included in the Final Disposal Plan, comments and reuse proposals should be forwarded to the address listed below by November 30, 1990. However, the Air Force will accept comments at the address below at any time during the environmental impact analysis process.

For further information concerning the study of George AFB disposal/reuse and EIS activities, contract: Lt. Col. Tom Bartol, AFRCE-BMS/DEV, Norton AFB, CA 92409-6448, (714) 382-4891.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 90-23100 Filed 9-27-90; 8:45 am]
BILLING CODE 3910-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The purpose of the match is to identify individuals who are improperly receiving military retired pay and (1) credit for military service in their civil service annuities, or (2) annuities based on the "guaranteed minimum" disability formula. This match will identify and/or prevent erroneous payments under the Civil Service Retirement System Act (CSRA), Federal Employees' Retirement Act (FERSA) and the Joint Uniform Military Retired Pay System.

DATES: This proposed action will become effective October 29, 1990, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (202) 694-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and OPM has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify individuals improperly receiving military retired pay and (1) credit for military service in their civil service annuities, or (2) annuities based on the "guaranteed minimum" disability formula.

It is OPM and DoD's responsibility to assure the civil service annuitants, who are also military retirees and who have not waived their military retired pay, are not erroneously receiving credit for military service in the computation of civil service benefits or improperly receiving "guaranteed minimum" disability benefits. (Under Pub. L. 96-499, effective December 5, 1980, certain military retirees who receive military retired pay or retainer pay or Veterans Administration compensation (in lieu of retired or retainer pay) may not have their annuities computed under the "guaranteed minimum" disability formula.)

By comparing the data received through this matching program on a recurring basis, OPM and DoD will be able to make timely and accurate adjustments in benefits. The matching program will prevent or correct overpayment, fraud and abuse, thus assuring proper benefit payments.

Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Chief, Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management, Washington, DC 20415.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the Federal Register at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on September 18, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 24, 1990.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense

Computer Matching Program Between the Office of Personnel Management and the Department of Defense for Military Retired Pay

A. *Participating agencies:* Participants in this computer matching program are the Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management (OPM) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the matching agreement is to identify individuals who are improperly receiving military retired pay and (1) credit for military service in their civil service annuities, or (2) annuities based on the "guaranteed minimum" disability formula. This match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA), Federal Employees' Retirement System Act (FERSA) and the Joint Uniform Military Retired Pay System.

It is OPM and DoD's responsibility to assure that civil service annuitants, who are also military retirees and who have not waived their military retired pay, are not erroneously receiving credit for a military service in the computation of civil service benefits or improperly receiving "guaranteed minimum" disability benefits. (Under Pub. L. 96-499, effective December 5, 1980, certain military retirees who receive military retired pay or retainer pay or Veterans Administration compensation (in lieu of retired or retainer pay) may not have their annuities computed under the "guaranteed minimum" disability formula.)

By comparing the data received through this matching program on a recurring basis, OPM and DoD will be able to make timely and accurate adjustments in benefits. The matching program will prevent or correct overpayment, fraud and abuse, thus assuring proper benefit payments.

Periodic matches conducted since 1985 have resulted in the identification of numerous improper payments and recovery of millions of dollars. Without a matching program, both agencies would have to rely on voluntary reporting by their beneficiaries. This would be an inadequate means of keeping records accurately updated to prevent overpayments.

The computer matching program is an efficient and least obtrusive method of determining if individuals are receiving prohibited or erroneous benefits from both DoD and/or OPM.

A cost benefit analysis, based on data collected from prior matches, shows that OPM will save approximately $1,500,000 over a 12-month period by performing this matching program. DoD expects to save $600,000 for the same period.

C. *Authority for conducting the match:* It is OPM's responsibility to monitor retirement and survivor benefits paid under Title 5 U.S.C. Section 8331 (CSRA) and Title 5 U.S.C. Section 8401 (FERSA), et. seq. Title 5 U.S.C. Section 8332 is the legal authority for CSRA and Title 5 U.S.C. Section 8411 is the legal authority for FERSA for determining creditibly of military service for civil service retirement purposes. DoD's legal authority for monitoring retired pay is Title 10 U.S.C. Section 1401.

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows: OPM will use records from the OPM system of records published as OPM Central-1, Civil Service Retirement and Insurance Records, 55 FR 3610, February 5, 1990; and the DoD system of records published as Defense Manpower Data Center Data Base, S322.10 DLA-LZ, 53 FR 44937, November 7, 1988. Appropriate routine uses have been published by both agencies to permit disclosures needed to conduct this match. OPM's routine use for this match is published in paragraph ff of the Federal Register notice, dated February 5, 1990, cited above.

The tape extract provided by OPM will contain the names, addresses, Social Security Numbers, provision retired codes and payment and service data of individuals currently receiving benefits from OPM. Matched DoD data will contain names, Social Security Numbers, branches of service and dates of retirement.

The OPM file will contain the information for approximately 1.5 million CSRA and FERSA retirees. DoD retired files contain approximately 1.6 million records.

E. *Description of computer matching program:* DMDC will match OPM's payment data with DoD's military retired pay data for the same dates to make an initial determination [i.e., that benefits were being paid in apparent violation of the law]. DMDC will provide OPM with the match results on magnetic tape.

OPM will screen the initial data to rule out matched individuals which are not valid according to information available to OPM at that time. OPM will provide DMDC with information on number of valid cases and potential amount of overpaid benefits.

OPM will send lists of screened individuals to DMDC. DMDC will obtain from the appropriate military retired pay centers the information necessary to verify retired pay status. The military retired pay centers will review retired pay information on each of the remaining matched individuals and will

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determine if matched individuals are receiving (1) reserve retired pay under provisions of chapter 67, title 10, or (2) military retired pay as a result of a service-connected disability, caused by combat with an enemy of the U.S. or by an instrumentality of war and incurred in the line of duty during a period of war. The military retired pay centers will provide this information to OPM through DMDC.

Each individual identified as receiving prohibited dual benefits or improper "guaranteed minimum" disability benefits will be notifed of the match findings and be notified of their options concerning their benefits. At the same time the individual will be given the opportunity to contest the findings and any actions that may ensue as a result of the match.

For each applicable match record, OPM or DoD will adjust the monthly annuity/retired pay and collect any overpayment if debt collection is required after providing the individual with an opportunity to contest the findings of the match and other due process rights as required by law and regulation.

Each individual identified in a match as receiving prohibited benefits or owing debts to DoD will be notified of the match findings.

Individuals identified as receiving prohibited benefits or owing debts to DoD will be given an opportunity to: (1) Contest the findings; (2) provide documentation refuting the findings; and (3) contest any proposed actions before benefits are adjusted or overpayment collections are initiated as required by the Debt Collection Act of 1982 (Pub. L. 97-365).

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, normally in January. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (202) 694-3027.

[FR Doc. 90-23026 Filed 9-27-90; 8:45 am]

BILLING CODE 3810-01

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The record subjects are civil service annuitants who are reemployed in the Federal government. By comparing the data received through this computer matching program on a recurring basis, OPM and DoD will be able to make timely and accurate adjustments in salary and benefits. This program will prevent or correct overpayment, fraud and abuse, thus insuring proper benefit payments.

DATES: This proposed action will become effective October 29, 1990, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (202) 694-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and OPM has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to identify civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD. This match will insure that (1) annuities of DoD reemployed annuitants are terminated where applicable, and (2) salaries are correctly offset where applicable. A cost benefit analysis, based on data collected from prior matches, shows that OPM will save between $175,000 and $700,000 over a 12-month period by performing this match. DoD does not expect to realize any monetary savings from this matching program, but does benefit by having a mechanism to assist in correcting its civilian personnel data bases. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personnel privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Chief, Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management, Washington, DC 20415.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on September 18, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 24, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Office of Personnel Management and the Department of Defense on Reemployed Annuitants

A. *Participating agencies:* Participants in this computer matching program are the Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management (OPM), Washington, DC 20415 and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of this computer matching program is to identify civil service annuitants (including disability annuitants under age 60) who are employed by DoD. This match will help insure that (1) annuities of DoD reemployed annuitants are terminated where applicable, and (2) salaries are correctly offset where applicable.

C. *Authority for conducting the match:* Both OPM and DoD have responsibilities to monitor and adjust retirement benefits under Title 5, U.S.C. Section 8331 (CSRA), (especially 5 U.S.C. Section 8344) and Title 5 U.S.C. Section 8401 (FERSA) et seq. (especially 5 U.S.C. Section 8468).

D. *Records to be matched:* The system of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows: OPM will use records from the system of records published as OPM Central-1, Civil Service Retirement and Insurance Records, 55 FR 3816, February 5, 1990 and the DoD system of records published as Defense Manpower Data Center Data Base, S322.10 DLA-LZ, 53 FR 44937, November 7, 1988. Appropriate routine uses have been published by both agencies to permit disclosures needed to conduct this match. OPM's routine use for this match is published in paragraph ff of the **Federal Register** notice dated February 5, 1990, cited above. These routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. *Description of computer matching program:* OPM, as the source, will provide DMDC with a magnetic tape extract of individuals. The tape extract provided by OPM will contain the name, address, Social Security Number, date of birth, retirement claim number, payment and service data of the individual receiving benefits from OPM. The OPM file will contain the information on approximately 1.5 million CSRA and FERSA retirees. The DoD file contains approximately 1 million records. DMDC will match OPM data with DoD employee data for the same dates to make an initial determination. DMDC will share the matched information with appropriate DoD offices. DoD will screen the initial data appropriate to rule out matched individuals who are not valid matches according to information available to them at the time. DoD will take appropriate adjustment action for each matched individual. Each individual identified as receiving prohibited or improper salary or retirement benefits will be notified of the match findings and will be afforded due process and given the opportunity to contest the findings and any actions that may ensue as a result of the match.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on a semi-annual basis, normally in January and July. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (202) 694-3027.

[FR Doc. 90-23027 Filed 9-27-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Indian Nations at Risk Task Force; Issue Sessions and Meeting

AGENCY: Indian Nations At Risk Task Force, ED.

ACTION: Notice of Issue Sessions and Task Force Meeting.

SUMMARY: This notice invites the public to participate in, and sets forth the schedule of forthcoming issue sessions at the annual conference of the National Indian Education Association in San Diego, California, on October 15-16, 1990. These issue sessions are being jointly sponsored by the Indian Nations At Risk Task Force and the National Advisory Council on Indian Education. This notice also announces a business meeting of the Indian Nations At Risk Task Force to be held on October 17, 1990, which will be open to the public. The subject of the meeting will be the outline and content of the final report, and other topics to be determined at the discretion of the Task Force Chairpersons. This notice also describes the functions of the Task Force. Notice of these sessions and business meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES, TIMES AND LOCATIONS:

October 15, 1990, 9 a.m. to 4:30 p.m., Town and Country Hotel, 500 Hotel Circle North, San Diego, California 92108, (619) 291-7131, (For specific rooms, see below).

October 16, 1990, 9 a.m. to 6 p.m., Town and Country Hotel, 500 Hotel Circle North, San Diego, California 92108, (619) 291-7131, (For specific rooms, see below).

October 17, 1990, 9 a.m. to 5 p.m., Town and Country Hotel, 500 Hotel Circle North, San Diego, California 92108, (619) 291-7131, Town and Country Room.

SUPPLEMENTARY INFORMATION: The Indian Nations At Risk Task Force, in conjunction with the National Advisory Council on Indian Education (NACIE) is planning to conduct special issues sessions at the San Diego, CA, National Indian Education Association Conference on October 15th and 16th, 1990. Each of the two days of sessions will be attended by at least one Task Force member and one NACIE board member. Most of the sessions will be repeated to allow more opportunity for the public and American Indian/Alaska Native educators to present comments in small groups on a variety of issues.

During these issues sessions, the audience is invited to address the specific issue that is the subject of the

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session in a discussion format moderated by the chair of the session. Discussion should be limited to the subject issue for the session. The discussion format will allow the presentation and development of ideas with comments from a number of individuals as in a committee or council meeting. This format is expected to allow many people from all areas of the country to participate in an organized discussion of important issues.

Individuals interested in participating in the issues sessions will be asked to complete a brief identification card as they enter the session. The card will be used by participants to indicate to the session chair a desire to speak to the issue through a microphone. The chair will moderate the discussion by recognizing speakers and limiting the time of each speaker as necessary to ensure broad participation in the discussion. The comments of the chair will be limited to a very brief introduction of the session. The intent is to allow maximum opportunity for the audience to address the issues and for the Task Force and NACIE members to listen.

All discussion will be recorded for the public record and for use by the Task Force and NACIE in preparing reports and recommendations. The participants are not expected to have written comments. However, the Task Force encourages submission of written testimony or papers from the public at all sessions.

Issues Sessions

Times and session topics are tentative and subject to change pending finalization of the NIEA Schedule. (Approximately 2 hours 30 minutes are planned per topic)

October 15, 1990—Theme: Successes in American Indian/Alaska Native Education

The Indian Nations At Risk Task Force and NACIE invite presentation and discussion of specific programmatic innovations and methods that have produced significant achievements in critical areas of Native education.

Room and Subject

9 a.m.–10:15 a.m.
De Anza—Academic performance.
Mesa—Native culture and languages.
Adobe—Health, wellness, substance abuse prevention.
El Camino—Teacher and administrator training, recruitment and retention.

10:45 a.m.–Noon.
De Anza—Academic performance.
Mesa—Native culture and languages.
Adobe—Health, wellness, substance abuse prevention.
El Camino—Teacher and administrator training, recruitment and retention.

1:30 p.m.–2:45 p.m.
De Anza—Dropout prevention.
Mesa—Instructional technology.
Adobe—Educaton of exceptional children.
El Camino—Partnerships of schools, tribes, communities, parents and business.

3:15 p.m.–4:30 p.m.
De Anza—Dropout prevention.
Mesa—Instructional technology.
Adobe—Education of exceptional children.
El Camino—Partnership of schools, tribes, communities, parents and business.

October 16, 1990—Theme: Effective Strategies for Improvements in American Indian/Alaska Native Education

NACIE and the Indian Nations At Risk Task Force invite presentation and discussion of strategies and ideas to improve the educational achievement of Native students in specific levels of education and through involvement of parents and Elders.

Room and Subject

9 a.m.–10:15 a.m.
De Anza—Early childhood education.
Mesa—Elementary school.
Adobe—Middle/high school.
El Camino—Parental involvement.

10:45 a.m.–Noon.
De Anza—Early childhood education.
Mesa—Elementary school.
Adobe—Middle/high school.
El Camino—Parental involvement.

1:30 p.m.–2:45 p.m.
De Anza—Adult and vocational/technical education.
Mesa—Postsecondary education.
Adobe—Special session for Elders to address the Task Force and NACIE.
El Camino—Open discussion with NACIE and Task Force members.

3:15 p.m.–4:30 p.m.
De Anza—Adult and vocational/technical education.
Mesa—Postsecondary education.
Adobe—Special session for students to address the Task Force and NACIE.
El Camino—Open discussion with NACIE and Task Force members.

5 p.m.–6 p.m.
De Anza—Wrap-up discussion with Task Force and NACIE members.

On October 17, 1990, the full Indian Nations At Risk Task Force will hold a business meeting from 9 a.m. to 5 p.m. in the Town and Country Room of the Town and Country Hotel. This meeting will be open to the public. The main topic of this meeting will be the outline and content of the final report of the Task Force. Other issues may be addressed during the business meeting at the discretion of the Task Force Chairpersons.

The Indian Nations At Risk Task Force was established by the Secretary of Education on March 6, 1990. Its purpose is to advise and make recommendations to the Secretary of Education on the condition of education of American Indians/Alaska Natives in the United States. Public notice will be given of all future meetings. Records are kept of the proceedings of the Task Force and are available for public inspection at the staff offices of the Task Force, from 9 a.m. to 4:30 p.m., on weekdays, excluding Federal holidays, room 4010, FOB–6, 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Alan Ginsburg, Executive Director, Indian Nations At Risk Task Force, room 3127, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–4244, Telephone: (202) 401–0039 or 401–3132.

George Pieler,
Acting Deputy Under Secretary for Planning, Budget and Evaluation.

[FR Doc. 90–23113 Filed 9–27–90; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

American Indian Graduate Center; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE); San Francisco Operations Office (SAN).

ACTION: Notice of Intent to Award a Grant on the Basis of Noncompetitive Financial Assistance.

SUMMARY: The Department of Energy, San Francisco Operations office intends to enter into a two year grant with the American Indian Graduate Center, Albuquerque, New Mexico. The purpose of this program is to develop an American Indian College Student Tracking System which will enable DOE to identify American Indian students at the undergraduate and graduate college level which will enable DOE to encourage American Indian students to pursue energy-related careers (e.g., math, science, engineering, and environmental science). Features of the program will include the development of computer data on American Indian students by college, grade, field, status,

and other pertinent information. The DOE desires to enhance the public benefits to be derived by providing financial assistance and knows of no other entity which is conducting or is planning to conduct this activity. The project is expected to have a two (two) year life including two (2) separately funded one (1) year budget periods. Total estimated cost for the project is $55,000 in 1990 and $60,000 in 1991. The period of performance is expected to start September 30, 1990 and expire two years thereafter.

Grant No. DE–FG03–90SF18797.

FOR FURTHER INFORMATION CONTACT: Olga R. Perez, Contracting Officer, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, CM Division, Oakland, CA 94612.

Issued in Oakland, CA, September 18, 1990.

Kathleen M. Day,
Director, Contracts Management Division.

[FR Doc. 90–23019 Filed 9–27–90; 8:45 am]
BILLING CODE 6450–01–M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the supply of the following materials:

Contract Number DE–SC05–90NSO 7190, for supply of 10 kilograms of natural uranium to British Nuclear Fuels plc. in England.

Contract Number DE–SC05–90NSO 7194, for supply of 10 kilograms of natural uranium to Advanced Nuclear Fuels in the Federal Republic of Germany.

Contract Number DE–SC05–90NSO 7195, for supply of 10 kilograms of natural uranium to Seimens AG in the Federal Republic of Germany.

Contract Number DE–SC05–90NSO 7196, for supply of 10 kilograms of natural uranium to Franco-Belgium Fuel Company, in Belgium.

Contract Number DE–SC05–90NSO 7193, for supply of 10 kilograms of natural uranium to Japan Nuclear Fuel Company, Ltd. in Japan.

Contract Number DE–SC05–90NSO 7192, for supply of 10 kilograms of natural uranium to Mitsubishi Nuclear Fuel Company, Ltd. in Japan.

Contract Number DE–SC05–90NSO 7191, for supply of 10 kilograms of natural uranium to the Japan Nuclear Fuel Conversion Company in Japan.

All of the above-mentioned materials are to be used to determine the feasibility for UO3 in the manufacture of sinterable UO2 for use in the manufacture of nuclear fuel.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on September 24, 1990.

Richard H. Williamson,
Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90–23018 Filed 9–27–90; 8:45 am]
BILLING CODE 6450–01–M

Bonneville Power Administration

Opportunities for Public Review and Comment on the Variable Industrial Power Rate and Termination Provision Proposals

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of opportunities for review and comment. *BPA File No:* VI–C–91. BPA requests that all comments regarding the Variable Industrial Power (VI) rate and contract termination provision proposal contain the file designation VI–C–91. *BPA File No:* VI–91. BPA requests that all comments and documents intended to become part of the official record for the VI rate proposal contain the file designation VI–91.

SUMMARY: BPA is proposing not to terminate the current VI–87 rate and VI rate contracts effective July 1, 1991, and will consider all public comments on the proposal. BPA also is proposing to adopt a successor VI rate for the period July 1, 1993, through June 30, 1996.

The VI rate varies with the market price of aluminum, lagged 3 months. The VI rate was designed in the mid-1980s to be in effect for 10 years, and BPA and its direct service industry (DSI) customers involved in primary aluminum production (aluminum smelters) entered into 10-year contracts to implement the proposed VI rate in 1986. The VI rate and contract provide BPA with a unilateral option to terminate the rate and contract after 5 years, effective July 1, 1991. The Federal Energy Regulatory Commission (FERC) approved the VI rate for 7 years, August 1986 through July 1993. Since its implemention in 1986, the VI rate has been successful in its goals of discouraging plant closures in the short run, encouraging high operation rates, and enhancing BPA revenues. The VI rate has added to overall rate stability for all BPA customers.

Responsible Official: Mr. Sydney D. Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's wholesale power and transmission rates.

DATES: *BPA File No. VI–C–91:* Written comments on the proposal not to terminate the VI rate and contract will be accepted through October 30, 1990. Written replies to comments will be accepted thereafter through November 19, 1990. All comments received will be available for review in BPA's Public Information Center. *BPA File No. VI–91:* Persons wishing to become a party to the rate hearing must notify BPA in writing of their intention to do so in accordance with requirements stated later in this notice. Petitions to intervene must be received at or before the prehearing conference on October 11, 1990, and should be addressed as follows: The Honorable Dean F. Ratzman, Hearing Officer, c/o John Ciminello—APR, Hearing Clerk, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention must be served on BPA's Office of General Counsel—APR, P.O. Box 3621, Portland, Oregon 97208.

BPA will prefile the testimony of its witnesses on October 2, 1990. Copies will be available in BPA's Public Information center. BPA will mail copies to requesting parties.

A prehearing conference will be held before the Hearing Officer at 9:30 a.m. on October 11, 1990, in the BPA Hearing Room, room 223, 911 NE. 11th, Portland, Oregon. Registration for the prehearing conference will begin at 9 a.m. At the prehearing conference, the Hearing Officer will rule on all intervention petitions and oppositions to intervention petitions, establish additional procedures, establish a service list, establish a procedural schedule, and

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consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and expediting cross-examination. A notice of the dates and times of the hearings will be mailed to all parties of record. Objections to orders issued by the Hearing Officer at the prehearing conference must be made at the prehearing conference in person or through a representative.

A final schedule will be established by the Hearing Officer at the prehearing conference. The following proposed schedule is provided for informational purposes:

October 2, 1990	BPA direct case filed. Available at BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.
October 11, 1990	Deadline for petitions to intervene. Prehearing conference to set schedule and act on petitions to intervene.
October 30, 1990	Parties' direct cases and litigants' rebuttal testimony.
November 29, 1990.	Cross-examination.
January 24, 1991	Final Record of Decision.

If no party files a direct case or rebuttal testimony, BPA proposes to issue a draft Record of Decision (ROD) on December 11, 1990, and a final ROD on January 10, 1991.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager—A.L.P., Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement Office, at the address listed above or at 503-230-3478. BPA has toll-free numbers available: Oregon callers may use 800-452-4629; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnut, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.
Mr. Robert N. Laffel, Eugene District Manager, Room 208, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.
Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-353-2518.
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.
Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377.
Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109-1030, 206-442-4130.
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6225.
Mr. Richard J. Rami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.
Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

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I. Background

A. History of the VI Rate and Contract

In the first half of the 1980's, the amount of electric power demanded by BPA's aluminum smelter customers had become unstable and unpredictable due to fluctuating aluminum market conditions. Many of the region's smelters were operated at reduced levels or shut down during that period, and the resulting changes in demand for power introduced uncertainty about BPA's resource planning, financial strength, and rate stability.

During the development of BPA's 1985 wholesale power rates, the issue of the DSIs' long-term viability was raised. The DSIs indicated that they need predictable and stable rates to help them make long-term investment decisions. The DSI Options Study was undertaken to examine mid- to long-term DSI policy, service, and rate options. Based on the results of the study and public comment, BPA decided to pursue the development of a power rate linked to the price of aluminum.

In 1985 and 1986, a formal rate hearing was conducted to develop the VI rate. The VI rate was first implemented in August 1986. The VI rate was designed to be in effect for 10 years through June 1996. All aluminum smelters elected to take service under this rate schedule and entered into the 10-year contracts with BPA to implement the rate. The rate schedule and contract provide BPA with a unilateral option to terminate the rate after 5 years, effective July 1, 1991. FERC approved the rate for 7 years, through July 31, 1993.

The VI rate varies monthly with the market price of aluminum, lagged 3 months. When the market price of aluminum drops below a defined point, the VI rate decreases, helping the smelters remain competitive and maintain stable loads on BPA. Likewise, when the market price rises above a defined point, the VI rate increases, enhancing BPA's revenue from sales to DSIs.

The key variables of the VI rate are the plateau, the upper and lower pivot prices, and the upper and lower rate limits. The VI rate is constant over the range of aluminum prices between the upper and lower pivot prices. This range is the plateau, which is set equal to the Industrial Firm Power (IP) rate. When the price of aluminum is above the upper pivot price, the energy rate increases by 0.75 mills/kilowatthour (kWh) for every 1 cent/pound (lb) increase in aluminum prices, up to the upper rate limit. The upper rate limit is the point above which an increase in aluminum prices does not result in additional changes in the rate. When aluminum prices are below the lower pivot price, the energy rate decreases by 1 mill/kWh for every 1 cent/lb decrease in aluminum prices, down to the lower rate limit. The lower rate limit is the floor: decreases in aluminum prices below the lower rate limit do not result in additional changes to the rate.

The VI rate is adjusted every rate case based on the change in the overall IP rate level. Thus, the VI rate reflects BPA cost increases. In addition, the upper and lower pivot prices are adjusted every year on July 1 to reflect changes in aluminum production costs. The lower rate limit is increased by 1 mill/kWh every 2 years on July 1.

The VI rate has resulted in several benefits for BPA and its DSI customers. The rate has contributed to the overall improved health of the aluminum smelters by encouraging a high operating rate and making the smelters more competitive. The VI rate has increased BPA's revenues above what would have been possible under the IP rate. The resulting load stability has contributed to BPA's rate stability and aided its resource planning.

B. Proceedings Before BPA and FERC

On December 16, 1985, BPA published a notice in the **Federal Register**, 50 FR 51577, describing the proposed VI rate and commencing a rate proceeding pursuant to section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. section 839e(i). A hearing officer conducted the rate proceeding, providing parties an opportunity to present direct cases, rebuttal, cross-examination, and submission of briefs. BPA issued a ROD in June 1986, based upon the record compiled by the hearing officer. That record was included in BPA's 1985 wholesale power and transmission rate filing submitted to FERC for confirmation and approval. FERC granted interim approval of the VI rate effective July 31, 1986, *U.S. Dept. of Energy—Bonneville Power Admin.*, 36 F.E.R.C. ¶ 61,142 (1986), and granted final approval of the VI rate in April 1987, *U.S. Dep't. of Energy—Bonneville Power Admin.*, 39 F.E.R.C. ¶ 61,078 (1987).

II. Proposal Regarding VI-87 Rate and Contract Termination Provisions

Pursuant to the VI-87 rate schedule and the 10-year VI rate contracts, BPA is required to determine at the 5-year point whether to terminate the rate and the contract effective July 1, 1991. The termination provision of the VI-87 rate schedule reads as follows:

> VI.E. The Administrator may terminate the Variable Industrial Power rate effective midnight June 30, 1991, upon a determination that significant changes in the conditions and expectations under which this rate was offered render the continuation of the Variable Industrial rate inconsistent with BPA's stated goals and objectives. BPA shall provide notification of such a determination pursuant to the provisions of the Variable Rate Contract. As part of the notification procedures, BPA shall provide a reasonable opportunity for interested parties to comment on BPA's determination, as well as to examine the comments submitted by other parties, prior to BPA taking final action to cancel the rate. If BPA determines that the Variable Industrial rate will remain in place until midnight June 30, 1993, BPA shall provide notice that so states and no additional action by BPA will be required.

The termination provision of the VI rate contracts provides as follows:

> 1.b. *Termination Date.*
> This Agreement shall terminate on the earliest of:
> (1) June 30, 1996,
> (2) June 30, 1991, in the event that the VI rate is terminated in a manner consistent with the provisions of subsection c, below, or
> (3) the date of termination of the Purchaser's Power Sales Contract.
> c. *Five Year Termination.*
> On or before April 1, 1991, [BPA] shall determine whether to extend the VI rate through June 30, 1996, or terminate both the VI rate and this Agreement effective June 30, 1991, at 2400 hours. Although [BPA] may choose to terminate the VI rate and this Agreement at that time, [BPA] may also elect to redesign the VI rate and offer that redesigned rate to eligible Industries.
> * * * * *
> On or before October 1, 1990, [BPA] will publish an initial proposal regarding its proposed actions with respect to the VI rate. Following publication of this proposal, [BPA] will conduct a public process on the issue, taking and evaluating public comment on [BPA's] proposal.

BPA proposes not to terminate the VI-87 rate or the VI rate contracts for service of electric power to BPA's DSI aluminum smelter customers. The continuation of the VI-87 rate and the VI rate contracts has several benefits. The rate and contracts meet BPA's primary objectives of enhancing BPA's revenue stability, resource planning certainty, and ability to meet planned Treasury payments, by reducing the rate uncertainty perceived by the DSIs.

BPA's proposal not to terminate the VI rate contracts on June 30, 1991, means that BPA intends to continue the contract until it terminates at the earlier of June 30, 1996, or the date of termination of the DSIs' underlying power sales contracts with BPA. The proposal not to terminate the VI-87 rate on June 30, 1991, means that BPA intends to permit the rate to continue until the FERC approval period expires. In order to fulfill the full term of the VI rate contact, BPA also proposes to adopt a rate, virtually the same as VI-87, for the remaining contract term provided that FERC approves and confirms the rate through June 30, 1996. This proposal is contained in the rate proposal portion of this notice, designated BPA File No. VI-91. *See* section III. below. Public comment on the prosal not to terminate the VI-87 rate and contracts as provided for in the respective termination provisions should be designated as BPA File No. VI-C-91.

III. Proposed VI-91 Rate Schedule and General Rate Schedule Provisions

The VI-87 rate is effective through June 30, 1993. BPA is proposing the following VI-91 rate schedule and associated General Rate Schedule Provisions (GRSPs) to be effective July 1, 1993, through June 30, 1996, the date that the VI rate contract expires. The VI-87 rate and associated 1989 GRSPs are used as the basis for the current rate proposal. The rate charges and parameters in the proposed rate schedule are those in effect on July 1, 1990, under the VI-87 rate, and shall be escalated according to the provisions in the rate schedule and GRSPs.

Proposed Variable Industrial Power Rate (VI-91)

Section I. Availability

This schedule is available to DSI customers for purchases under the Power Sales Contract implementing the VI Rate Schedule (Variable Rate Contract) of: (1) Industrial Firm Power; and (2) Auxiliary Power if requested by the DSI customer and made available by BPA. This schedule is available only for that portion of a DSI's load used in primary aluminum reduction including associated administrative facilities, if any. By virtue of incorporation of this rate schedule and associated GRSPs in the Variable Rate Contract, DSIs electing to purchase power under this rate schedule contractually agree to the terms and conditions of this rate schedule. A DSI further agrees to waive, for that portion of their load designated to purchase power at the VI rate, all rights they might otherwise have to purchase power at the Industrial Firm Power Rate Schedule for the duration of the Variable Rate Contract. Sales under this schedule are made subject to BPA's GRSPs effective October 1, 1990, and as revised in subsequent wholesale rate filings.

Section II. Term of the Rate

This rate schedule shall take effect on July 1, 1993, and shall terminate on midnight June 30, 1996.

Section III. Rate

A. *Base rate charges subject to rate case adjustments.*—The following base rates shall be adjusted on Rate Adjustment Dates beginning October 1, 1991, following the procedures set forth in section VI.C. of this rate schedule, unless the Cost Recovery Adjustment Clause triggers, at which point the rates shall be adjusted following the procedures set forth in section VI.I of this rate schedule. In addition, the Lower Rate Limit also will be subject to a biennial adjustment pursuant to section VI.B. of this rate schedule. The formula to be used in the calculation of the monthy power bill is contained in section IV. A separate billing adjustment for the value of the reserves provided by purchasers of Industrial Firm Power is not contained in this rate schedule; the value of reserves credit has been included in the determination of the Plateau Energy Charge. On July 1, 1993, the base rates, as adjusted, shall be applied to purchases by DSI customers under the Variable Rate Contract. These rates shall continue to be adjusted, as described, through June 30, 1996.

1. *Base variable industrial rate—a.* Demand charge. $5.33 per kilowatt of billing demand occurring during the Peak Period. No demand charge is applied during Offpeak Period hours.

b. *Plateau energy charge.* 16.1 mills per kilowatthour of billing energy.

2. *First quartile service discount.* 0.5 mills per kilowatthour of billing energy.

3. *Lower rate limit.* 10.3 mills per kilowatthour of billing energy.

4. *Upper rate limit.* 21.9 mills per kilowatthour of billing energy.

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B. *Base rate parameters subject to annual adjustments.* The following base rate parameters will be adjusted annually starting on July 1, 1991, and every July 1 thereafter, in accordance with the procedures contained in section VII.B of the GRSPs. On July 1, 1993, the base rate parameters, as adjusted, shall be used in determining power bills for DSI customers purchasing power under the Variable Rate Contracts. These parameters shall continue to be adjusted as described through June 30, 1996.

1. *Lower pivot aluminum price.* 66.5 cents per pound.

2. *Upper pivot aluminum price.* 79.6 cents per pound.

Section IV. Formula

The Variable Industrial Power rate is a formula rate tied to the U.S. market price of aluminum. Under this rate schedule, the monthly energy charge varies in response to changes in the average price of aluminum in U.S. markets.

A. *Demand charge.* The Demand Charge, as stated in section III.A.1.a. of this rate schedule, remains constant over all aluminum prices. The demand charge is applied to billing demand occurring during all Peak Period hours for all billing months.

2. No demand charge during Offpeak Period hours.

B. *Energy charge*—1. *Plateau energy charge.* When the monthly billing aluminum price (described in section VII.A. of the GRSPs) is between the Lower Pivot Aluminum Price and the Upper Pivot Aluminum Price inclusive (as stated in sections III.B.1. and III.B.2. of this rate schedule), the monthly energy charge shall be the Plateau Energy Charge as stated in section III.A.1.b. of this rate schedule.

2. *Reductions to Plateau Energy Charge.* When the monthly billing aluminum price is less than the Lower Pivot Aluminum Price, the monthly energy charge shall be the greater of:

a. The Plateau Energy Charge—(LP–MAP)* (LS)

where:

LP=the Lower Pivot Aluminum Price as stated in section III.B.1. of this rate schedule.

MAP=the monthly billing aluminum price in cents per pound determined pursuant to section VII.A. of the GRSPs.

LS=lower slope=

$$\frac{\text{1 mill per kilowatthour}}{\text{1 cent per pound}}$$

or

b. The Lower Rate Limit as stated in section III.A.3. of this rate schedule.

3. *Increases to plateau energy charge.* When the monthly billing aluminum price is greater than the Upper Pivot Aluminum Price, the monthly energy charge shall be the lesser of:

a. The Plateau Energy Charge + (MAP–UP)* (US)

where:

MAP=the monthly billing aluminum price in cents per pound, as determined according to section VII.A. of the GRSPs.

UP=the Upper Pivot Aluminum Price as stated in section III.B.2. of this rate schedule.

US=upper slope=

$$\frac{\text{0.75 mills per kilowatthour}}{\text{1 cent per pound}}$$

or

b. The Upper Rate Limit, as stated in section III.A.4. of this rate schedule.

Section V. Billing Factors

A. *Billing demand*—1. *Billing demand for customers whose entire BPA load is served at the VI rate.* The billing demand for power purchased shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the BPA Operating Levels during the Peak Period for the billing month. The BPA Operating Level is defined in section III.A10. of the GRSPs.

2. *Billing demand for customers when only a portion of their total BPA load is served at the VI rate.* The Billing Demand shall be the portion of the BPA Operating Level attributable to the VI rate as determined by the method specified in the Variable Rate Contract.

3. *Billing demand during periods of transitional service.* If BPA has agreed, pursuant to section 4 of the DSI power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service) sections V.A.1. and V.A.2. of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C. of the GRSPs.

B. *Billing energy.* The billing energy for power purchased shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

Section VI. Other Adjustments and Special Provisions

A. *Lower and upper pivot aluminum prices.* Effective July 1, 1991, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices set forth in section III.B. of the rate schedule shall be adjusted following the procedures set forth in section VII.B. of the GRSPs. The adjusted Lower and Upper Pivot Aluminum Prices shall supersede the Lower and Upper Pivot Aluminum Prices contained in section III.B. of the rate schedule. The revised Lower and Upper Pivot Aluminum Prices shall be used for billing purposes and subsequent adjustments to the Lower and Upper Pivot Aluminum Prices.

B. *Lower rate limit.* On July 1, 1992, and July 1, 1994, the Lower Rate Limit as stated in section III.A.3. shall be increased by 1 mill per kilowatthour. The revised Lower Rate Limit shall supersede the Lower Rate Limit as stated in section III.A.3. of the rate schedule. This increase is in addition to rate adjustment increases in the Lower Rate Limit described in section VI.C. of this rate schedule. In the event that a rate adjustment date and the annual adjustment date occur simultaneously, the Lower Rate Limit shall be adjusted first for changes in the Plateau Energy Charge pursuant to section VI.C. of this rate schedule, and then increased by 1 mill per kilowatthour. The revised Lower Rate Limit shall be used for billing purposes and subsequent rate adjustments.

C. *Rate adjustments.* The Overall rate level of this rate shall be subject to adjustment in BPA's general wholesale power rate case following the procedures and directives of the Northwest Power Act. The overall rate level consists of the Demand Charge, Plateau Energy Charge, and First Quartile Service Adjustment contained in sections III.A.1. and III.A.2.; these shall be adjusted by a uniform percentage based on the percentage change in the overall rate level. The Lower and Upper Rate Limits as stated in sections III.A.3. and III.A.4. of this rate schedule shall be adjusted by an amount equal to the change, in mills per kilowatthour, in the Plauteau Energy Charge. The Lower and Upper Pivot Aluminum Prices shall not be adjusted in the rate case; rather, they shall be adjusted pursuant to the procedures described in section VII.B. of the GRSPs. The lower and upper slopes shall not be adjusted. The rate for unauthorized increase shall be separately determined in each rate case.

D. *Discount for quality of first quartile service.* If a purchaser requests First Quartile service with other than Surplus Firm Energy Load Carrying Capability, a discount contained in section III.A.2. of this rate schedule shall be granted. This billing credit shall be applied to the monthly billing energy under section V.B. for all power purchased under this rate schedule. No credit shall be applied to those purchases subject to unauthorized increase charges or section VI.F. of this rate schedule. To qualify for the First Quartile Discount, the purchaser must request discounted rate service in writing by April 2 of each calendar year. By virtue of making such request, the Purchaser is agreeing to accept the level and quality of First Quartile service described in section 6 of the Variable Rate Contract. Such acceptance includes the waiver of contract rights provided in § 6.a(2)(a) of said contract.

E. *Curtailments.* BPA shall charge the customer for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract and the provisions contained in the Variable Rate Contract.

F. *Unauthorized Increase*—1. Rate for unauthorized increase. 67.3 mills per kilowatthour. 2. Application of the charge. During any billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offspeak Period.

G. *Power factor adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1. of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the BPA Operating Level by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

H. *Outage credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any DSI to whom BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2. of the GRSPs.

I. *Cost recovery adjustment clause.* The Cost Recovery Adjustment Clause described in the GRSPs in effect July 1, 1993, to June 30, 1996, shall be applied to all power purchases under this rate schedule consistent with the procedures to adjust the VI rate and the provisions of the Variable Rate Contract.

Section VII. Resource cost contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the VI–91 rate is 99.3 percent Exchange and 0.7 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Proposed GRSPs Associated with the VI Rate Schedule

Section VII. Variable Industrial Rate Parameters and Adjustments

A. *Monthly average aluminum price determination*—1. *Calculation of the monthly billing aluminum price.* The monthly billing aluminum price shall be determined by BPA for each billing month. For purposes of this rate schedule, the monthly billing aluminum price shall be based on the average price of aluminum in U.S. markets during the third calendar month prior to the billing month. The average price of aluminum in U.S. markets shall be defined as the average U.S. Transaction Price reported for the month by "Metals Week," in cents per pound, rounded to the nearest tenth of a cent.

2. *Notification of the monthly average aluminum price.* BPA shall provide, 45 days prior to the billing month, written notification to purchasers under this rate schedule of the monthly billing aluminum price to be used for billing purposes. Upon written request supporting documentation shall be provided.

3. *Changes in aluminum price indicators.* In the event that BPA determines that factors outside its control render the monthly average U.S. Transaction Price unusable as an approximation of U.S. market prices, BPA may develop and substitute another indicator for prices in U.S. markets. BPA shall notify interested parties of its intent to do so at least 120 days prior to the billing month in which the change would become effective. In this notification, BPA shall explain the reason for the substitution and specify the replacement indicator it intends to use. BPA also shall describe the methodology to determine the monthly billing aluminum price to be used for billing purposes under this rate schedule and shall provide the necessary data to be used in the calculation. Interested persons will have until close of business 3 weeks from the date of the notification to provide comments. Consideration of comments and more current information may cause the final methodology and the substitute aluminum price index to differ from those proposed. BPA shall notify all affected parties, and those parties that submitted comments, of its final determination 90 days prior to the billing month the new indicator shall be effective.

B. *Annual adjustments to the lower and upper pivot aluminum prices.* On July 1, 1991, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices, as stated in section III.B of the rate schedule, shall be subject to change for billing purposes as herein described. The term "annual adjustment date" shall refer to July 1 of each year.

1. *Implementation Procedures.* Beginning in 1991 and every year thereafter, prior to April 1 of that year, BPA shall provide the purchasers under this rate schedule preliminary written estimates of proposed adjustments to the Lower and Upper Pivot Aluminum Prices. By the last working day of the month of April, BPA shall notify interested parties in writing of BPA's revised determination concerning changes to the Lower and Upper Pivot Aluminum Prices. BPA shall describe how the adjustments were determined and provide the data used in the calculations. In addition to written notification, BPA may, but is not obligated to, hold a public comment forum to clarify its determination and solicit comments. Interested persons may submit comments on the determination to BPA and other parties. Comments will be accepted until close of business on the last working Friday in May. Consideration of comments and more current information may result in the final adjustment differing from the proposed adjustment. By June 30 of each year, BPA shall notify all VI purchasers, those parties that submitted comments, and parties that requested notification, of the final determination.

2. *Annual adjustment procedures—a. Annual adjustment of the lower pivot aluminum price.* Beginning with the July 1, 1991, annual adjustment date, for each year that the VI rate is in effect, the Lower Pivot Aluminum Price, as stated in section III.B.1. of the rate schedule

shall be adjusted on the July 1 annual adjustment date. The Lower Pivot Aluminum Price shall be revised by multiplying 59 cents per pound by the Cost Escalation Index described in section VII.B.3.b of these GRSPs and rounded to the nearest tenth of a cent. The revised Lower Pivot Aluminum Price shall replace the Lower Pivot Aluminum Price as stated in section III.B.1 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 billing months.

b. *Annual adjustment of the upper pivot aluminum price.* For each year that the Variable Industrial rate is in effect, the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule shall be adjusted on the July 1 annual adjustment date. The Upper Pivot Aluminum Price will be adjusted such that the Average Historical Aluminum Price described in section VII.B.4 of these GRSPs is the midpoint between the adjusted Upper Pivot Aluminum Price and the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 below, except as limited to the greater of 65 cents per pound or the adjusted Lower Pivot Point for the year.

The Upper Pivot Aluminum Price shall equal the greater of:

(1) (2)*(AAP)—ALP:
where

AAP=the average Historical Aluminum Price described in section VII.B.4 of these GRSPs.

ALP=the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 of these GRSPs.

(2) 85.0 cents per pound escalated to current dollars using the Cost Escalator from the Upper Pivot Aluminum Price described in section VII.B.3.c of these GRSPs.

or

(3) The adjusted Lower Pivot Aluminum Price for the year.

The revised Upper Pivot Aluminum Price shall supersede the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 months.

3. *Cost escalators.* a. The cost indices described below shall be used in calculating the appropriate cost escalators. Each index shall be rounded to the nearest one-tenth of a percent, or three significant places.

(1) *Electricity Cost Index.* The average VI rate in mills per kilowatthour based on the Plateau Energy Charge and the Discount for Quality of First Quartile Service in effect on the April 1 preceding the annual adjustment date and a load factor of 98.5 percent; divided by 22.8 mills per kilowatthour (the average VI–86 rate assuming the plateau energy charge and the Discount for Quality of First Quartile Service in 1986).

(2) *Labor cost index.* The annual average hourly earnings for the U.S. primary aluminum industry (SIC 3334) over the previous complete calendar year, from the Employment and Earnings, published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS), divided by $14.20 per hour (the value of SIC 3334 earnings reported for 1985).

(3) *Alumina cost index.* The annual average of the monthly billing aluminum prices described in section VII.A of the GRSPs for the previous 1-year period beginning July 1 through June 30 divided by 50.8 cents per pound (the average U.S. Transaction price over the period April 1985 through March 1986).

(4) *Other costs index.* The annual average GNP Implicit Price Deflator for the previous complete calendar year, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, divided by 1.109 (the value of the GNP Implicit Price Deflator for 1985 with 1982=1.000).

In the event the indices delineated above are discontinued or revised in a manner that BPA determines renders them unusable for calculating a consistent cost index, BPA will adjust or substitute another similar price index, following advance notification and opportunity for public comment as described in section VII.B.1 of these GRSPs.

b. The Cost Escalator for the Lower Pivot Aluminum Price shall be a weighted average of the four indices contained in section VII.B.3.a above. The following weights shall be assigned each index:

Electricity Cost Index	.30
Labor Cost Index	.20
Alumina Cost Index	.20
Other Costs Index	.30

c. The Cost escalator for the Upper Pivot Aluminum Price shall be a weighted average of the Electricity Cost and Other Cost Escalators as stated in sections VII.B.3.a(1) and VII.B.3.a(4) above. The following weights shall be assigned each index:

Electricity Cost Index	.25
Other Costs Index	.75

4. *Average historical aluminum price.* Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, an average historical aluminum price shall be calculated for the period the VI rate has been in effect beginning August 1986. The average historical aluminum price shall be determined following the procedures set forth below:

a. Each monthly billing aluminum price determined pursuant to section VII.A of these GRSPs for the period August 1, 1986, through June 30 immediately preceding the annual adjustment date, shall be escalated to the current year dollars using the Price Deflator procedures described in section VII.B.6 below.

b. The sum of the escalated monthly billing aluminum prices shall be divided by the number of months in the period and rounded to the nearest tenth of a cent to obtain the Average Historical Aluminum Price.

5. *Average historical lower pivot aluminum price.* Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, the average of the Lower Pivot Aluminum Prices for the period the VI rate has been in effect beginning August 1986 shall be calculated following the procedures set forth below:

a. The Lower Pivot Aluminum Price in each month for the period August 1, 1986, through June 30 of the calendar year preceding the annual adjustment date, shall be escalated to the current year's dollars using the Price Deflator procedures described in section VII.B.6 below.

b. The sum of the escalated monthly Lower Pivot Aluminum Prices shall be divided by the number of months in the period, and rounded to the nearest tenth of a cent to obtain an Average Historical Lower Pivot Aluminum Price.

6. *Price deflator procedures.* For purposes of converting nominal dollars to real dollars in the calculation of the Average Historical Aluminum Price and the Average Historical Lower Pivot Aluminum Price, the following Price Deflator procedures shall be used:

a. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months July through December shall be inflated by multiplying the price by the ratio of the GNP Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year in which the price occurred.

b. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months January through June shall be inflated by multiplying the price by the ratio of the Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year prior to the year in which the price occurred.

Each price shall be rounded to the nearest tenth of a cent.

IV. Relevant Statutory Provisions

Northwest Power Act, section 7, 16 U.S.C. 839e, directs the Administrator to establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. The rates are to be set so that BPA recovers, over a reasonable period of years, and in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River System. Other rate directives within section 7 describe how the rates for individual customer groups are derived.

Rates for the DSIs are to be set according to provisions contained in section 7(c) of the Northwest Power Act. 16 U.S.C. section 839e(c). Section 7(c)(2) of the Northwest Power Act provides that, beginning July 1, 1985, rates that apply to DSI customers

> shall be based upon the Administrator's applicable wholesale rates to * * * public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail rates * * *.

Section 7(c)(2) further provides that the rate determination must take into account

> (a) the comparative size and character of the loads served; (b) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions; and (c) direct and indirect overhead costs, all as related to the delivery of power to industrial customers * * *.

Section 7(c)(2) also provides that DSI rates

> shall in no event be less than the rate in effect for the contract year ending on June 30, 1985.

Section 7(c)(3) provides that DSI rates must be adjusted

> to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.

V. Procedures Governing Rate Adjustments

A. Rate Procedures

Section 7(i) of the Northwest Power Act, 16 U.S.C. section 839e(i), requires that rates be set according to certain procedures. These procedures include: issuance of a Federal Register notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be conducted according to the rule for general rate proceedings, section 1010.9 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986) (BPA Procedures) which implement, and in most instances expand, the statutory requirements. BPA's procedures provide for publication of a notice of proposed rates, a prehearing conference, a hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to FERC.

B. Distinguishing Between "Participants" and "Parties"

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted on or before November 30, 1990. Participants' written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement office.

The section category of interest is that of a "party" as defined in § § 1010.2 and 1010.4 of the BPA Procedures. Parties may participate in any aspect of the hearing process.

C. Petitions for Intervention

Persons wishing to become a party of BPA's rate proceeding must notify BPA in writing of their request. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status and the person's interest in the hearing. Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to § 1010.1(d) of BPA's Procedures, BPA waives the requirement in § 1010.4(d) that opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any proposed intervenor, and BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and received by BPA within 2 days after service of the petition. Intervention petitions will be available for inspection in BPA's Public Information Center, 1st floor, 905 NE. 11th, Portland, Oregon.

Persons seeking to become parties may wish to obtain copies of BPA's testimony prior to the prehearing conference. The testimony will be available October 2, 1990.

To request the testimony by telephone, call BPA's toll-free document request line: 800–841–5867 for Oregon outside of Portland; 800–624–0496 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. You will reach a recorded message where you can leave your request for the testimony. Other callers should use 503–230–3478.

D. Developing the Record

Cross-examination will be scheduled by the Hearing Officer as necessary, following completion of the filing of all parties' and BPA's direct cases, rebuttal testimony, and discovery. Parties will have the opportunity to file initial briefs at the close of cross-examination.

After the close of the hearings, and following submission of initial briefs, BPA will file a draft ROD, which will identify the issues BPA will resolve in the hearing, summarize the factual, legal, and policy arguments presented by BPA and the parties on each issue, and state the Administrator's tentative decision. Parties may file briefs on exceptions and may request oral argument. When oral argument has been scheduled, the argument will be transcribed and made part of the record.

The record will include, among other things, the transcripts of any hearings, written material submitted by the participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

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The basis for the final rate will be expressed in the Administrator's ROD. The Administrator will serve copies of the ROD on all parties and will file the final proposed rate, together with the record, with FERC for confirmation and approval.

VI. Scope

BPA file no. VI-C-01: This comment process will address only BPA's proposal not to terminate the VI rate and contract.

BPA file no. VI-01: This rate hearing will address BPA's VI-01 rate proposal and any alternative rate proposals.

Issues relating to other BPA processes, such as Surplus Power Marketing and System Operations Review, are beyond the scope of these proceedings.

Issued in Portland, Oregon, on September 13, 1990.

Jack Robertson,

Deputy Administrator, Bonneville Power Administration, Department of Energy.

[FR Doc. 90-23022 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Salomon Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Salomon Inc. (formerly Phibro Corporation), including five affiliated companies (collectively herein Salomon). The agreement proposes to resolve matters relating to Salomon's compliance with the federal petroleum price and allocation regulations in resales of crude oil for the period January 1, 1978, through January 27, 1981. If this Consent Order is approved, Salomon shall pay to the DOE eighty three million seven hundred fifty thousand dollars ($83,750,000) within thirty (30) days of the effective date of the Consent Order. The DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199j, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the Federal Register, along with an analysis of the response to the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1699.

SUPPLEMENTARY INFORMATION:

I. Resolution of Regulatory Issues
II. Determination of Reasonable Settlement Amount
III. Terms and Conditions of the Consent Order

I. Resolution of Regulatory Issues

Salomon is a crude oil reseller subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period when federal price and allocation controls were in effect, August 19, 1973 through January 27, 1981, Salomon engaged in, among other things, the purchase and resale of crude oil.

ERA conducted an audit of Salomon's crude oil transactions during the price and allocation control period. As a result of this audit, disputes arose between ERA and Salomon concerning Salomon's compliance with the federal petroleum price and allocation regulations applicable to the resale of crude oil. Disputes between the parties concerning crude oil resale transactions which occurred prior to January 1, 1978 were settled for $16.25 million by a Consent Order which was made final on March 24, 1988. 53 FR 9680. Disputes concerning crude oil resales which occurred between January 1, 1978 and January 27, 1981 are the subject of the present proposed Consent Order.

On September 23, 1988, ERA issued a Proposed Remedial Order (PRO) to Salomon and its affiliated entities Philipp Brothers Inc., Derby & Co., Inc., Derby Distributors, Inc., Philipp Brothers Latin American Corporation, and Philipp Brothers Pan American Corporation. The PRO alleged that, in 400 in-line, in-tank, and in-vessel crude oil resales between January 1978 and December 1980, Salomon violated 10 CFR 212.186, 210.62(c) and 205.202 by engaging in "layering," *i.e.*, by selling the crude oil at prices in excess of its acquisition costs without performing any service or other function traditionally and historically associated with the resale of crude oil. The amount of the layering violations alleged in the PRO is $83,360,132, plus interest which currently would amount to approximately $208 million.

In addition, the PRO also alleges that, in an additional 2722 crude oil resales during the period covered by the proposed Consent Order, Salomon violated 10 CFR 212.183 by selling crude oil in some months at average mark-ups over acquisition costs which exceeded the "permissible average mark-up" (PAM), as defined in the regulations. The PRO calculated these PAM violations as $24,593,683 (plus interest), based upon treating each of Salomon's five affiliated entities as a separate "firm" (10 CFR 212.31) and utilizing an ERA-determined May 1973 PAM of $.06 per barrel for Derby & Co., Inc., and $.20/bbl. PAMs for the remaining Salomon subsidiaries (which did not begin reselling crude oil until after December 1977).

During the course of the litigation on the PRO's charges, OHA issued an interlocutory Order on March 15, 1990, which, *inter alia*, granted Salomon's request for single "firm" treatment of Salomon and its five affiliated companies, and accepted one of Salomon's alternative arguments that Derby & Co., Inc.'s May 1973 PAM was $.2261/bbl. Accordingly, OHA directed ERA to recalculate the PRO's alleged PAM violations reflecting single-"firm" treatment and utilizing the May 1973 PAM of $.2261bbl. for the entire Salomon "firm." *Salomon Inc*, 20 DOE ¶ 84,002 (1990). ERA recalculated the alleged PAM violations as $9,250,738, plus interest of approximately $15 million. The layering and PAM violations currently at issue in the PRO proceeding thus total $99.6 million before interest.

In the alternative to the foregoing layering *and* PAM charges, the PRO also alleges that in the event the layering charges are not sustained, Salomon in the subject resales violated the PAM rule. Under this alternative theory, the total amount of the all-PAM violations as originally alleged in the PRO was $47,974,789, plus interest. As revised in light of OHA's single "firm" and $.2261/bbl. PAM rulings, that alleged violation amount would be $16,807,036, plus interest of approximately $39 million, for a current total of nearly $56 million.

In summary, the PRO as originally issued alleged violations ranging from $48 million (plus interest) to $108 million (plus interest). During the course of the PRO litigation to date, Salomon's potential alleged liability has been reduced from a maximum of $99.6 million, plus interest to $16.8 million, plus interest, in the alternative.

II. Determination of Reasonable Settlement Amount

The proposed settlement calls for Salomon to pay $83,750,000 to discharge in full its obligations under the price and allocation regulations relating to crude oil resales during the period January 1978 through January 27, 1981. ERA has preliminarily agreed to the proposed settlement amount after considering the number and complexity of the factual and legal issues currently in dispute in the litigation, assessing the litigation risks associated with establishing the alleged overcharges, and considering the benefit to the public from a significant settlement of issues which would take years of additional litigation to resolve.

While it would be necessary for the government to prevail in litigation on all of the disputed issues in order to achieve the maximum overcharge recovery currently alleged against Salomon, the inherent risks of litigation make such an outcome problematic. Of particular significance in this regard are issues relating to the manner in which the amount of any layering violations which may be adjudicated should be calculated. Even assuming that ERA succeeds in proving that the instances of layering alleged in the PRO occurred, the amount of the resulting overcharges is uncertain.

Since Salomon did not, contemporaneously with the subject transactions, track each crude oil purchase to the corresponding resale, the method ERA used to arrive at the $83.4 million layering violation amount alleged in the PRO is based on the only accounting system of matching of crude oil costs and revenues reflected in Salomon's records: Salomon assigned a transaction number (referred to as a "trumber") to a given purchase and sale or (more typically) a group of purchases and sales, and computed a profit or loss for that sale or group of sales. The $83.4 million figure is the sum of the profits resulting under Salomon's trumber system for sales alleged by ERA to be layered. By contrast, Salomon argues that restitution for any layering violations should be limited to its gross profits from the subject transactions, which Salomon computes as $22 million (or less, depending on the data included in the computation).[1] Adding interest to this amount yields a current maximum potential liability of approximately $76 million.

In its March 15 Order, OHA found ERA's reliance on Salomon's trumber system reasonable, but nevertheless determined to accept an alternative overcharge computation methodology based on groupings of Salomon's purchases and sales of each type and grade of crude oil traded in a given pipeline in a given month.[2] Pursuant to OHA's invitation, Salomon proffered its calculations of alleged layering overcharges under OHA's pipeline tracing methodology for five sample months of the audit period. Those calculations totaled $20.6 million, exclusive of interest. More recently, Salomon has computed layering overcharges under the pipeline tracing alternative for the entire 36-month audit period as $57.6 million (exclusive of interest). ERA believes that the correct application of the pipeline tracing methodology yields approximately $71 million, exclusive of interest.

It is uncertain which, if any, of the parties' pipeline tracing alternative violation amounts OHA might adopt, in the event of a determination that Salomon layered in some or all of the 400 subject resales. It is also at least possible, given the dispute between Salomon and ERA regarding the proper method of calculating layering overcharges in the circumstances of this case, that any such overcharges might ultimately be computed on a gross profits basis. Furthermore, whatever overcharge methodology OHA might employ would be subject to further administrative appeal and judicial review.

In addition to substantial uncertainty in the overcharge amount assuming that all of the layering allegations are proven, it is also certain that ERA will succeed in proving each and every instance of layering alleged in the PRO. For example, a very large number (400) of crude oil resales are at issue, as to which Salomon has asserted numerous transaction-specific defenses. Another factor is the complexity of Salomon's transactions, in which multiple dispositions and receipts of crude oil volumes frequently intervened between a purchase of crude oil by Salomon and a sale by Salomon which was allegedly layered. The complexity of the transctions has presented Salomon with an opportunity to raise an unusually large number of defenses with respect to each volume sold in an allegedly layered transaction. Salomon has also asserted numerous legal defenses to the PRO, including, for example, the validity and application of the anti-layering rule to Salomon's business activities, and DOE jurisdiction over Salomon's foreign crude oil resales. Each instance in which layering charges were not sustained would result in some reduction of the violation amount. If none of the layering charges were sustained, leaving only PAM violations, the maximum overcharge liability, including interest, would total nearly $56 million.

Based on all of the foregoing considerations, ERA has tentatively concluded that the resolution of these matters for a total of $83.75 million is an appropriate settlement and in the public interest.

III. Terms and Conditions of the Consent Order

If the settlement is made final, Salomon will pay DOE $83,750,000 within thirty (30) days of the effective date of the Consent Order. In addition, Salomon will waive its rights to make claims for refunds in any proceedings conducted pursuant to 10 CFR part 205, subpart V.

To distribute the monies received by DOE under the settlement with Salomon, ERA will petition OHA to implement Special Refund Procedures under the provisions of subpart V. To ensure that OHA has sufficient information to evaluate refund claims, the proposed Consent Order requires that Salomon maintain customer identification and purchase volume information, and provide such information to OHA if needed.

[1] ERA calculated Salomon's gross profits from the allegedly layered transactions as approximately $27 million.

[2] OHA adopted this alternative pipeline tracing methodology in order to address a number of Salomon's objections to ERA's trumber-based methodology. In OHA's view, the alternative method: (1) Would provide a pipeline-specific methodology; (2) would not reflect separate "firm" treatment of Salomon's subsidiaries; and (3) would recognize the performance of any traditional reseller services performed by Salomon that were pipeline-specific but that could not be related to any particular sale.

OHA explained its alternative pipeline tracing methodology, which follows the physical flow of the crude oil, as follows. A given group of purchases and sales would include all Salomon purchases and sales, regardless of which Salomon subsidiary made the sale(s). In order to determine if Salomon made profits with respect to a given group, the per barrel acquisition cost for that group would be subtracted from the per barrel selling price for that group. The resulting number would be multiplied by the number of barrels sold from that group. Salomon would then have a profit or loss for each type and grade of crude oil sold in a given pipeline in a given month. If OHA then determined that Salomon had performed a traditional and historical reseller service in connection with a profitable group of sales, OHA would make an appropriate reduction in the alleged violation amount.

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Salomon and DOE mutually release each other from the claims arising under the subject matters covered by the proposed Consent Order. The proposed Order does not affect the rights of any other party to take action against Salomon, or Salomon or the DOE to take action against any other party.

If the settlement is not made final by the one hundred twentieth (120th) day following execution, Salomon may withdraw from the proposed agreement.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Salomon Consent Order Comments, RG-30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this Notice in the Federal Register will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the Federal Register.

Issued in Washington, DC, on September 20, 1990.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

Consent Order.

[Insert Text of Consent Order]

I. Introduction

101. This Consent Order is entered into between Salomon Inc ("Salomon") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Salomon, as hereinafter defined, relating to Salomon's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, in its crude oil resale transactions during the period January 1, 1976, through January 28, 1981 (hereinafter "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204-4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA.

203. The following definitions apply for purposes of this Consent Order:

a. "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, all applicable DOE regulations codified in 6 CFR parts 130 and 150 and 10 CFR parts 205, 210, 211 and 212, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, and forms relating to the pricing and allocation of crude oil. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith.

b. "DOE" includes not only the Department of Energy, but also the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Economic Regulatory Administration and all successor agencies.

c. "Salomon" includes Salomon Inc (formerly known as Engelhard Minerals & Chemicals Corporation, Phibro Corporation, and Phibro-Salomon Inc), its successors, subsidiaries and affiliates (including but not limited to Philipp Brothers Inc., Derby & Co., Inc., Derby Distributors, Inc., Philipp Brothers Latin American Corporation, and Philipp Brothers Pan American Corporation) and its officers, directors and employees.

d. "PRO" means the Proposed Remedial Order issued to Salomon by the DOE on September 23, 1986 in Case No. 6COX00249.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Salomon engaged in, among other things, the resale of "crude oil", as that term is defined in the federal petroleum price and allocation regulations, and as a United States corporation is subject to the audit jurisdiction of the DOE.

302. The DOE conducted an audit to determine Salomon's compliance with the federal petroleum price and allocation regulations during the period covered by this Consent Order.

303. On September 23, 1986, the DOE issued a PRO to Salomon alleging that Salomon violated certain federal petroleum price regulations with respect to the matters covered by this Consent Order. Salomon formally objected to the issuance of the PRO to the Office of Hearings and Appeals ("OHA") of the DOE, which commenced an administrative enforcement proceeding with respect to the PRO in Case No. KRO-0720. The PRO proceeding before the OHA remains pending.

304. During the course of the DOE's audit, the PRO proceeding before the OHA, and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to the application of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order.

305. With respect to the issues raised by DOE, each party believes that its respective positions are meritorious. In particular, DOE and Salomon disagree as to the validity and application of various provisions of 10 CFR part 212 subpart L pertaining to crude oil resales during the period covered by the Consent Order, and whether the DOE's jurisdiction under the federal petroleum price and allocation regulations extended to certain of Salomon's transactions. However, in order to avoid the expense of protracted and complex litigation and the disruption of orderly business functions, Salomon has agreed to enter into this Consent Order. The DOE believes that this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or, might have been sought by the DOE against Salomon for such matters, under 10 CFR 205.199I or otherwise, Salomon shall pay a total of $83,750,000 inclusive of interest, to DOE within 30 days of the effective date of this Consent Order. Payment shall be by wire transfer before 2 p.m. Eastern time, pursuant to written directions provided to Salomon by DOE.

402. Payment made pursuant to this Consent Order shall be distributed by the DOE pursuant to the Special Refund Procedures prescribed by 10 CFR part 205 subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Salomon regarding Salomon's compliance with and obligations under the federal petroleum price and allocation regulations, with respect to the matters covered by this Consent Order, whether or not heretofore raised by an issue letter, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Salomon by this Consent Order.

502. (a) Except as otherwise provided herein, compliance by Salomon with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Salomon, the DOE hereby releases Salomon completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Salomon before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Salomon or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Salomon or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Salomon has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Salomon in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence currently in its possession with respect to the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from: (1) Seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence currently known to the DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal or civil action brought by an agency of the United States other than the DOE under: (i) Section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price allocation regulations. Finally, this Consent Order does not prejudice or expand the rights, if any, of any third party against Salomon.

(c) Salmon releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Salomon has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Salomon from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Further, Salomon waives all claims that it may assert in proceedings before the Office of Hearings and Appeals pursuant to 10 CFR part 205 subpart V. Nor does it preclude Salomon from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

(d) Salomon also agrees that, upon the effective date of this Consent Order, it shall withdraw in writing Request No. 89021703R and paragraphs 4 and 5 and subparagraph 7(iii) of Request No. 87063001R made under the Freedom of Information Act 5 U.S.C. 552, *et seq.* Salomon will not initiate or prosecute any new requests under the Freedom of Information Act with respect to the matters covered by this Consent Order.

503. (a) Within ten (10) days after the effective date of this Consent Order, Salomon and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings covered by this Consent Order then pending or subsequently filed before the DOE's Office of Hearings and Appeals or the Federal Energy Regulatory Commission, including the OHA proceeding in Case No. KRO-0720, and to dismiss with prejudice any court proceeding then pending or subsequently filed involving an appeal from or seeking review of a decision by the Office of Hearings and Appeals or the Federal Energy Regulatory Commission in any such proceeding.

(b) Within two (2) days after the execution of this Consent Order by both parties, the DOE agrees to join with Salomon in written notification to the DOE's Office of Hearings and Appeals and any appropriate court of the fact of such execution, which notice shall request that said administrative or judicial tribunal stay all further action in the proceeding covered by this Consent Order, including the OHA proceeding in Case No. KRO-0720, until such time as the DOE provides notice to said tribunals that the Consent Order has become effective or has been withdrawn pursuant to Article IX of this Consent Order.

504. Execution of this Consent Order constitutes neither an admission by Salomon nor a finding by the DOE of any violation by Salomon of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Salomon pursuant to this Consent Order is to be considered for any purposes as a penalty, fine, or forfeiture or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, with respect to the

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matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Salomon, but only if Salomon has concealed facts relating to such violation. The DOE and Salomon reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit, the OHA proceeding, or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Salomon shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 401, Salomon shall also maintain sales volume data and customers' names and addresses regarding its sales of crude oil for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401. The DOE in the first instance will attempt to obtain this information from the documents already provided to the DOE by Salomon in the course of the DOE's audit and the OHA proceeding. Thereafter, if requested, Salomon shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 401 of this Consent Order, Salomon is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters covered by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Salomon will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Salomon's compliance with the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Salomon pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Salomon or during the OHA proceeding and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Salomon with ten (10) days' actual notice of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Salomon's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information, the DOE will make such information available to the Department of Justice ("DOJ") should there be a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If required by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Salomon may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Salomon and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Salomon (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Salomon agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Salomon hereby waives its right to administrative or judicial review of this Order, but Salomon reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Salomon, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Salomon, Salomon may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

Dated: September 12, 1990.

I, the undersigned, a duly authorized representative of Salomon, hereby agree to and accept on behalf of Salomon the foregoing Consent Order.

Arnold S. Olshin,

Secretary, Salomon Inc.

Dated: September 12, 1990.

I, the undersigned, a duly authorized representative of the DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Chandler L. van Orman,

Administrator, Economic Regulatory Administration, Department of Energy.

[FR Doc. 90-23159 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES90-52-000, et al.]

UtiliCorp United Inc. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 21, 1990.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES90-52-000]

Take notice that on September 17, 1990, UtiliCorp United Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $250 million of Medium Term Notes on or before December 31, 1992.

Comment date: October 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Oklahoma Gas and Electric Co.

[Docket No. ES90-53-000]

Take notice that on September 17, 1990, Oklahoma Gas and Electric Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $300 million of short-term debt on or before December 31, 1992, with a final maturity date no later than December 31, 1993.

Comment date: October 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23233 Filed 9-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2244-000 et al.]

Superior Offshore Pipeline Co. et al.; Natural Gas Certificate Filings

September 21, 1990.

Take notice that the following filings have been made with the Commission:

1. Superior Offshore Pipeline Co.

[Docket No. CP90-2244-000]

Take notice that on September 18, 1990, Superior Offshore Pipeline Company (SOPCO), 12450 Greenspoint Drive, Houston, Texas 77060-1991, filed a request with the Commission in Docket No. CP90-2244-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of Energy Development Corporation (EDC) under SOPCO's blanket certificate issued in Docket No. CP86-367-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

SOPCO proposes an interruptible natural gas transportation service of 600 MMBtu on peak and average days and 72,000 MMBtu annually for EDC. SOPCO states that it would use existing facilities for the transportation service. SOPCO also states that it would receive and deliver natural gas volumes for EDC's account in Cameron Parish, Louisiana. SOPCO would perform the service under its FERC Rate Schedule T-2. SOPCO commenced transporting gas for EDC on July 2, 1990, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-4013.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gulf Transmission Co.

[Docket No. CP90-2212-000]

Take notice that on September 19, 1990,[1] Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP90-2212-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a new delivery point to its authorized transportation service for Columbia Gas Transmission Corporation, under Columbia Gulf's blanket certificate issued in Docket No. CP83-488-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to add the existing interconnection between the facilities of Columbia Gulf and Piedmont Natural Gas Company (Piedmont) located in Davidson County, Tennessee as a new delivery point to Columbia Gas under Columbia Gulf's Rate Schedule T-1. It is indicated that the proposed poing of delivery was constructed by Columbia Gulf to render transportation service for Piedmont under section 311 of the Natural Gas Policy Act of 1978. It is also stated that Columbia Gulf would provide transportation service for Columbia Gas of the quantities to be purchased from Columbia Gas by Piedmont. Columbia Gulf states that Columbia Gas has requested authorization in Docket No. CP90-679-000 to provide sales service to Piedmont of 5,000 dt equivalent of natural gas per day of contract demand under Columbia Gas' CDS Rate Schedule with an annual entitlement nomination level of 1,472,826 dt equivalent of natural gas and a maximum daily quantity of 10,000 dt equivalent of natural gas per day of winter service under Columbia Gas' WS Rate Schedule with a winter contract quantity of 600,000 dt equivalent of natural gas.

Columbia Gulf states that the total volumes to be delivered to Columbia Gas do not exceed the total volumes authorized at Docket No. G-15524. It is also indicated that Columbia Gulf is not prohibited by an existing tariff to add the new point. It is also stated that Columbia Gulf has sufficient capacity to accomplish the delivery specified without detriment or disadvantage to Columbia Gulf's other customers.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] the request was tendered for filing on September 14, 1990; however, the fee required by § 381.208 of the Commission's Rules (18 CFR 381.207) was not paid until September 19, 1990. Section 381.108 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

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3. Florida Gas Transmission Co.; Florida Gas Transmission Co.; Florida Gas Transmission Co.; Colorado Interstate Gas Co.; High Island Offshore System; High Island Offshore System; High Island Offshore System;

[Docket Nos. CP90-2205-000, CP90-2206-000, CP90-2207-000, CP90-2208-000, CP90-2209-000, CP90-2210-000, and CP90-2211-000]

Take notice that on September 14, 1990, the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commisson and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day tranactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No.	Applicant	Shipper name	Peak day[1] average annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related[3] dockets
CP90-2205-000	Florida Gas Transmission Company, 1400 Smith Street, Houston, Texas 77002.	Enron Gas Marketing, Inc.	20,000 15,000 7,300,000	Off TX	TX	8-1-90 FTS-1	CP90-555-000 ST90-4445-000
CP90-2206-000	Florida Gas Transmission Company, 1400 Smith Street, Houston, Texas 77002.	Citrus Trading Corp.	400,000 300,000 146,000,000	TX, LA, MS, AL, FL, Off Fed. Domain.	TX, LA, MS, AL, FL.	8-1-90 ITS-1	CP90-555-000 ST90-4440-000
CP90-2207-000	Florida Gas Transmission Company, 1400 Smith Street, Houston, Texas 77002.	Acacia Gas Corp	50,000 37,500 18,250,000	TX, LA, MS, AL, FL, Off Fed. Domain.	TX, LA, MS, AL, FL.	8-1-90 ITS-1	CP90-555-000 ST90-4432-000
CP90-2208-000	Colorado Interstate Gas Company, Post Office Box 1087, Colorado Springs, Colorado 80944.	Golden Gas Energies, Inc.	10,000[2] 5,000 1,800,000	OK	KS	6-1-90 TI-1	CP90-589-000 ST90-3512-000
CP90-2209-000	High Island Offshore System, 500 Renaissance Center, Detroit Michigan 48243.	Tejas Power Corp	215,000[2] 215,000 79,475,000	Off TX, Off LA	Off TX, Off LA	7-19-90 IT	RP89-82-000 ST90-4105-000
CP90-2210-000	High Island Offshore System, 500 Renaissance Center, Detroit Michigan 48243.	NML Development Corp.	115,000[2] 115,000 41,975,000	Off TX, Off LA	Off TX, Off LA	7-27-90 IT	RP89-82-000 ST90-4161-000
CP90-2211-000	High Island Offshore System, 500 Renaissance Center, Detroit Michigan 48243.	American Central Gas Marketing Company.	330,000[2] 330,000 120,450,000	Off TX, Off LA	Off TX, Off LA	7-17-90 IT	RP89-82-000 ST90-4104-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] Volumes in Mcf.

4. Trunkline Gas Co.

[Docket No. CP90-2231-000, CP90-2232-000, CP90-2233-000]

Take notice that Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certification issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day, average day, annual Mcf	Receipt points[1]	Delivery points	Contract date rate schedule service type	Related docket start up date
CP90-2231-000 (9-18-90)	Williams Gas Marketing Company.	100,000 100,000 36,500,000	IL, LA, TN, TX	LA	FT Interruptible	ST90-4378-000, 8-1-90
CP90-2232-000 (9-18-90)	Shell Gas Trading	75,000 50,000 27,375,000	IL, LA, TN, TX	LA	FT Interruptible	ST90-4304-000, 8-1-90
CP90-2233-000 (9-18-90)	Panhandle Trading Company.	75,000 20,000 7,300,000	IL, LA, TN, TX	LA	PT Interruptible	ST90-4383-000, 8-1-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

5. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90-687-001]

Take notice that on September 6, 1990, Transcontinental Gas Pipe Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-687-001 an amendment to its pending application in Docket No. CP90-687-000 for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate certain natural gas facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Transco states the purpose of this Amendment is to seek Commission authorization: (1) To reallocate available firm capacity to more accurately reflect shippers' requirements as demonstrated since the filing of Transco's original application, and (2) to construct the proposed facilities in two phases to correspond to the revised timing and availability of upstream transportation capacity on CNG Transmission Corporation (CNG) for use by Transco as proposed herein.

In order to effectuate deliveries of up to 167,375 dt per day on a firm basis, commencing on November 1, 1991, Transco in Phase I, is proposing to construct the following pipeline looping, compression facilities and market area facilities:

- Modifications to Leidy Odorization System, Leidy Lateral M.P. 194.06
- 12,600 horsepower of additional compression at Station 520, Leidy Lateral M.P. 157.63
- A new 23,500 horsepower compressor Station 517, Leidy Lateral M.P. 115.14
- 4.93 miles of 36-inch Leidy Lateral Loop from M.P. 37.65 to M.P. 42.78
- 12.37 miles of 10-inch Pottstown Lateral Loop from M.P. 0.00 to M.P. 12.37
- 3.66 miles of 42-inch Mainline "A" Loop from M.P. 1794.99 to M.P. 1798.65
- New M&R Station at Catham, New Jersey M.P. 1812.36
- M&R Station Expansion at Piles Creek M.P. 1.30 on the Long Island Extension
- 600 horsepower Upgrade at South Hill Compressor Station, Virginia

In order to effectuate deliveries of up to an additional 113,980 dt per day on a firm basis, commencing on November 1, 1992, for a total expansion project of 281,355 dt of capacity, Transco is proposing in Phase II to construct and install the following pipeline looping and market area facilities:

- 6.67 miles of 36-inch Leidy Lateral Loop from M.P. 157.64 to M.P. 164.34
- 4.06 miles of 42-inch Mainline "A" from M.P. 1798.65 M.P. 1802.73
- 4.40 miles of 24-inch Trenton-Woodbury lateral Loop from M.P. 26.06 to M.P. 30.46
- M&R Station Expansion at Central Manhattan Lateral M.P. 184
- 0.95 mile of 36-inch D Loop from M.P. 1826.39 to M.P. 1827.34

All of the facilities set forth above were proposed in Transco's original Application with the following exceptions:

(1) The proposed 23,500 horsepower compressor station to be constructed in Phase I originally was proposed as a 16,500 horsepower compressor station. Subsequent to the filing of Transco's application, Transco was advised by equipment manufacturers that it would be extremely inefficient to construct the compressor to meet the original specifications. Furthermore, it appeared that Transco would be unable to obtain such a compressor without a substantial delay. In order to avoid such delays and operating inefficiencies, Transco is requesting authorization to redesign the compressor station as proposed herein.

(2) An expansion of the M&R station at Piles Creek, which is proposed in Phase I, is necessary in view of the increased volumes allocated to customers downstream of the station.

(3) The 6.67 miles of 36-inch diameter mainline loop to be constructed as part of Phase II originally was to be 7.76 miles in length. The extra compression to be installed at Station 517 in Phase I has enabled Transco to shorten the length of this mainline loop.

(4) The 0.95 mile of 36-inch diameter loop near Carlstadt, New Jersey (M.P. 1826.39 to M.P. 1827.34) to be constructed in Phase II was not proposed in Transco's original Application. The addition of this loop is necessary as a result of an increase in capacity allocated to New York customers due to the reallocation proposed hrein.

(5) There is no need for a new metering and regulating station at Carlstadt, New Jersey as proposed in Transco's original application due to the reallocation of capacity proposed herein.

(6) The proposal in Transco's original application to construct 7.74 miles of 42-inch diameter Mainline "A" Loop from M.P. 1794.99 to M.P. 1802.73 has not changed. However, Transco is proposing herein to phase the construction of this loop by constructing 3.66 miles during Phase I and 4.06 miles during Phase II.

Transco estimates the Phase I facilities to cost $64,896,000 and the Phase II facilities proposed are estimated to cost $38,215,000, for a total estimated project cost of $103,113,000.

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These costs will be financed initially through short-term loans and funds on hand, with permanent financing to be arranged as part of Transco's overall long-term financing program.

Comment date: October 12, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22934 Filed 9-27-90; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. CP90-2158-000]

Northwest Pipeline Corp.; Application

September 24, 1990.

Take notice that on September 7, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-2158-000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order granting:

(1) Permission and approval for a limited-term, partial abandonment of Northwest's existing authorized Rate Schedule SGS-1 storage service for The Washington Water Power Company (Water Power), corresponding to a limited-term release of storage capacity by the Water Power to Cascade Natural Gas Corporation (Cascade); and

(2) A limited-term certificate for public convenience and necessity, with pre-granted abandonment, authorizing Northwest to provide additional Rate Schedule SGS-1 storage service for Cascade in place of the abandoned SGS-1 service for Water Power; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is said that Water Power and Cascade have executed an agreement dated July 23, 1990 for the release of Jackson Prairie storage capacity (Release Agreement) for a primary term extending until April 30, 1995. The Release Agreement calls for the release to Cascade of 4,800,000 therms of seasonal capacity, 150,000 therms per day of firm deliverability and 55,328 therms per day of best-efforts deliverability. On July 31, 1990, Water Power filed in Docket No. CP90-1849-000 its application for authorization to release storage capacity to Cascade in accordance with the Release Agreement.

Further it is said that to accommodate Water Power's relase of storage capacity to Cascade, Northwest has entered into the following new Rate Schedule SGS-1 service agreements with Water Power and Cascade:

(1) An SGS-1 service agreement, dated July 18, 1990, with Cascade for the capacity released by Water Power. Consistent with the Release Agreement, this new service agreement will be effective for a term expiring April 30, 1995.

(2) A new SGS-1 service agreement, dated July 18, 1990, with Water Power reflecting reductions in existing SGS-1 service quantities equivalent to the capacity released by Water Power to Cascade. This new service agreement will supercede Water Power's existing SGS-1 service agreement and will be effective until superceded by the July 20, 1990 agreement discussed below.

(3) An SGS-1 service agreement, dated July 20, 1990, with Water Power which also reflects reductions in service quantities equivalent to the capacity released by Water Power to Cascade. This new service agreement replaces the May 25, 1989 SGS-1 service agreement currently pending approval in Docket No. CP89-1525-000 and would supercede the above-described July 18, 1990 service agreement upon approval of the expanded Jackson Prairie services pending in Docket No. CP89-1525. This new agreement expires April 30, 1995, contemporaneous with the expiration of Water Power's release to Cascade.

(4) An SGS-1 service agreement, dated July 23, 1990, with Water Power which will supercede the above-described July 20, 1990 service agreement effective May 1, 1995 and continue in effect until October 31, 1995. This agreement reflects the reversion to Water Power of the capacity which is assigned to Cascade only for the limited-term expiring April 30, 1995.

Northwest requests permission and approval to abandon, for a limited-term expiring April 30, 1995, that portion of its presently authorized Rate Schedule SGS-1 storage service for Water Power which corresponds to the Jackson Prairie capacity that Water Power has agreed to release to Cascade. The resulting changes in SGS-1 service levels for Water Power would be as follows:

		Existing	Proposed pre May 1995	Proposed post April 1995
Firm storage capacity (Therms)	15,048,000	10,248,000	24,992,000	29,992,855
Firm deliverability (Therm/d)	680,000	530,000	762,800	812,000

		Existing	Proposed pre May 1995	Proposed post April 1995
Best-efforts deliverability (Th/d)	250,822	195,494	190,713	246,041

Northwest also requests issuance of a limited-term certificate of public convenience and necessity, with pre-granted abandonment, authorizing Rate Schedule SGS-1 storage service for Cascade, in the quantities released by Water Power, for a term expiring April 30, 1995.

It is stated that for the proposed new SGS-1 service, Cascade would pay the demand charge, capacity demand charge and commodity charge applicable to SGS-1 service (section 10 option), as set forth in Northwest's FERC Gas Tariff, Volume No. 1. However, Northwest explains that since the subject service would be provided from Water Power's ownership share of the Jackson Prairie storage capacity, Northwest proposes to give a demand charge credit and a capacity demand charge credit to Cascade. Northwest further explains the SGS-1 Rate Schedule currently provides such a crediting mechanism for SGS-1 services to the owners of Jackson Prairie. Northwest is proposing herein certain minor changes to its SGS-1 Rate Schedule and Form of Service Agreement to specify that such credits also are due customers which acquire an assigned interest in Jackson Prairie storage from one of the owners.

Northwest avers that approval of the requested reduction in storage service to Water Power and provision of equivalent additional storage service to Cascade will benefit both Water Power and Cascade. Temporarily (for five years), the proposed storage service changes would relieve Water Power of the expense of storage capacity which it has determined to be currently excess to its seasonal requirements within its market area and would provide Cascade with the additional storage availability which it needs to help it serve the heating season requirements of its core market.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22935 Filed 9-27-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Renewable Energy and Energy Efficiency Technology Joint Ventures; Solicitation of Expressions of Interest

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Notice of Solicitation of Expressions of Interest and Request for Public Comment.

SUMMARY: The Department of Energy (DOE) today gives notice of its preliminary thinking regarding the policies, terms and conditions applicable to joint ventures authorized by the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Act), 42 U.S.C. 12001, et seq. DOE hereby solicits expressions of interest and public comment in response to this notice. After the close of the comment period, DOE will seek the recommendations of an Advisory Committee, established pursuant to the Act, regarding the structure and selection criteria for a draft solicitation of proposals to be published for public comment. Following receipt of public comment on the draft solicitation of proposals, and contingent on the availability of appropriations, DOE will publish a final solicitation of proposals.

DATES: Public comments and expressions of interest from those who may desire to participate in a joint venture should be sent to the address indicated below by October 31, 1990.

ADDRESS: Steve Morrell, Procurement & Contracts Division, AD-42, P.O. Box 2001, Oak Ridge, Tennessee 37831-8757.

FOR FURTHER INFORMATION CONTACT: Steve Morrell, (615) 576-0799.

SUPPLEMENTARY INFORMATION: DOE is announcing the establishment of a program to enter into joint ventures, as authorized by the Act, and is soliciting both expressions of interest in the program and comments on the policies, terms and conditions which should be applicable to the creation of joint ventures under the Act.

Purpose

Productive and focused cooperation between the public and private sectors is essential to the success of a national program of research, development and demonstration of renewable energy and energy efficiency technologies. In turn, this approach will contribute to a more stable and secure future energy supply by:

(1) Achieving as soon as practicable cost competitive use of those technologies without need of Federal financial incentives; and,

(2) Assisting the private sector to commercialize renewable energy and energy efficiency technologies in the near term by fostering collaborative research and development efforts through the creation of joint ventures.

DOE recognizes a need to encourage the commercialization of its research products. Greater private sector participation in DOE's research program, both in cost sharing and program direction, can ensure that

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project designs recognize and reflect the needs of the marketplace.

In its effort to bridge the distance between research and development and commercialization, DOE will, in consultation with an Advisory Committee established under the Act, endeavor to develop joint venture criteria that balance the dual objectives of maximizing private-sector participation in joint ventures and targeting the best use of Federal resources. To accomplish these twin objectives, it will be necessary to fashion flexible and streamlined policies and procedures governing the cooperative arrangements envisioned by the Act. Proposed policies, terms, conditions, and procedural provisions governing joint ventures established pursuant to the Act will be incorporated into a future draft solicitation of proposals and a period of public comment will be provided prior to any issuance of a final solicitation of proposals.

An Overview

The Act directs the Secretary of Energy (Secretary) to make use of joint ventures to expedite commercialization of renewable energy and energy efficiency technologies. The term *joint venture* is defined by the Act as "any agreement entered into under this Act by the Secretary with more than one or a consortium of non-Federal persons (including a joint venture under the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.)) for cost-shared research, development or demonstration of technologies, but does not include procurement contracts, grant agreements, or cooperative agreements as those terms are used in sections 6303, 6304 and 6305 of title 31, United States Code." (42 U.S.C. 12002(2)).

As defined by the Act, the term *non-Federal person* "means an entity located in the United States, the controlling interest (as defined by the Secretary) of which is held by persons of the United States, including—

(A) A for-profit business;
(B) A private foundation;
(C) A nonprofit organization such as a university;
(D) A trade or professional society; and,
(E) A unit of State or local government."

The Act requires joint venture research and development activities to be performed in the United States, but leaves to DOE discretion whether demonstration activities (perhaps to develop an export market) might be performed outside of the United States. The Act also requires that the manufacture and reproduction of any invention resulting from a joint venture occur substantially within the United States, but leaves to DOE discretion whether a similar requirement should apply to a joint venture limited to testing of an existing invention produced without Federal funds. DOE believes that a purpose of these requirements is to enhance the ability of domestic firms to compete with foreign enterprises in the sales of renewable and energy efficiency technologies. DOE intends to develop policies in discretionary areas regarding foreign entities and locations consistent with that purpose. (42 U.S.C. 12005).

Joint ventures established pursuant to the Act must include at least one for-profit business. At least 50 percent of the costs "directly and specifically related to any joint venture" are to be provided from non-Federal sources. Upon application, the Secretary may reduce the required cost share if the joint venture is to be composed exclusively of small businesses or of small businesses and nonprofit entities and the reduction is appropriate and necessary for the successful operation of the proposed joint venture (42 U.S.C. 12005).

DOE believes that substantial cost sharing is the best single predictor of successful technology transfer. The minimum 50 percent non-Federal cost share requirement was established to ensure that the projects chosen would have a strong commitment on the part of the non-Federal participants to achievement of the commercialization goal.

As indicated above, a joint venture agreement is specifically described by the Act as other than a procurement contract, cooperative agreement or grant agreement. The legislative history of the Act indicates concern with aspects of Federal procurement and financial assistance which might inhibit private sector interest in joint ventures, but is not specific with respect to which regulations, procedures and form clauses are especially unsuitable for joint ventures between the Federal and non-Federal public and private sectors. DOE intends to investigate the applicability of innovative options to existing forms of procurement and financial assistance, including cooperative research and development agreements developed pursuant to section 12 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a). DOE encourages public comment concerning barriers to Federal joint ventures and ways to streamline Federal regulations, procedures and forms.

Advisory Committee

The Secretary will establish an Advisory Committee on Renewable Energy and Energy Efficiency Joint Ventures (Advisory Committee). The Advisory Committee will advise the Secretary on the development of the solicitation and evaluation criteria for joint ventures. Membership on the Committee will include representatives from DOE's national laboratories, the Solar Energy Research Institute, the Electric Power Research Institute, the Gas Research Institute, associations of firms in the major renewable energy and energy efficiency industries, as well as individuals from the financial and investment sectors and State government.

Within 120 days of its establishment, the Advisory Committee will provide the Secretary with recommendations regarding the structure and selection criteria for a solicitation of joint ventures. In its advisory capacity, the Advisory Committee will provide the Secretary with recommendations concerning: the feasibility of undertaking joint ventures in the five technology areas required by the Act; additional joint ventures in the renewable energy and energy efficiency areas as prescribed in the Act (42 U.S.C. 12005(6) (d) and (e)); the preparation of program plans and development of a comprehensive commercialization strategy as required by section 9 of the Act (42 U.S.C. 12006); and the terms and conditions of proposed joint venture agreements. The Advisory Committee will neither evaluate nor select the specific joint ventures supported by the program.

Comments received in response to this notice will be provided to the Advisory Committee for consideration. Recommendations of the Advisory Committee will be made available to the public. Following receipt of the Advisory Committee's input, DOE will issue a draft solicitation of joint venture proposals for public comment.

Types of Joint Venture Projects

In keeping with the intent of the law, DOE has chosen not to limit proposed joint venture projects beyond the specific technological and financial requirements contained in the Act. The report of the Senate Committee on Energy and Natural Resources states: "* * * The Committee does not intend and the bill does not authorize that conventional cooperative agreements between the Secretary and one company should qualify as a joint venture under the Act. Past arrangements of this type have not significantly furthered the commercialization of these technologies by the private sector. The Committee intends that the Department use the joint ventures * * * to explore more action-forcing approaches to commercialization." (Senate Report 101-107, p. 7).

Projects which take advantage of multiple institutional resources, encourage industry-wide innovation, and improve the competitive advantage of U.S. manufacturers of renewable energy and energy efficiency technologies and products are encouraged. Examples of the types of projects contemplated by the Act are: (1) Joint ventures which provide needed information for investors, e.g. testing of a new invention or application or the development and dissemination of marketing information; (2) improvements in the manufacturing process; and (3) integrated resource planning programs which could provide expanded market opportunities.

In proposing projects in the future or in providing comments on this draft solicitation, the public is encouraged to base its recommendations upon the Act's intention to provide generic authority for " * * multiparty agreements that bring together institutional, capital, business, and technical capabilities that can facilitate industrial deployment of [renewable energy and energy efficiency] technology * * *." (Senate Report 100-107, p. 6). Such arrangements can enhance the value of previous Federal investments and accelerate the commercial application of renewable energy and energy efficiency technologies.

Technology Areas

Contingent upon available appropriations, DOE will solicit joint venture proposals for the demonstration of renewable energy and energy efficiency technologies in the following five areas:

(1) Photovoltaic Technology

Joint ventures will be sought to design, test and demonstrate an enabling technology for photovoltaic conversion of solar technology, to improve the reliability and conversion efficiency of, and to lower the cost of photovoltaic conversion, with emphasis on advancing the performance, stability and durability of photvoltaic materials.

The photovoltaic technology goals under the Act are: (1) To improve the operational reliability of photovoltaic modules to thirty years; (2) to increase photovoltaic conversion efficiencies by 20 percent by 1995; (3) to decrease photovoltaic module direct manufacturing costs to $650 per kilowatt by 1995; and (4) to increase the cost efficiency of photovoltaic power production to 10 cents per kilowatt hour by 1995. (42 U.S.C. 12003(a)(2)).

(2) Wind Energy Technology

Joint ventures will be sought to design, test, and demonstrate improved design methodologies and more reliable and efficient wind turbines so as to increase the cost competitiveness of wind energy. Efforts may emphasize: (i) Activities that address near-term technical problems and assist private sector exploitation of market opportunities of the wind energy industry; (ii) developing technologies such as advanced airfoils and variable speed generators to increase wind turbine output and reduce maintenance costs by decreasing structural stress and fatigue; (iii) increasing the basic knowledge of aerodynamics, structural dynamics, fatigue, and electrical systems interactions as applied to wind energy technology; and (iv) improving the compatibility of electricity produced from wind farms with conventional utility needs.

The wind energy technology goals under the Act are to: (1) Reduce average wind energy costs to 3 to 5 cents per kilowatt hour by 1995; (2) reduce capital costs of new wind energy systems to $500 to $750 per kilowatt of installed capacity by 1995; (3) reduce operation and maintenance costs for wind energy systems to less than one cent per kilowatt hour by 1995; and (4) increase capacity factors for new wind energy systems to 25 to 35 percent by 1995. [42 U.S.C. 12003(a)(1)].

(3) Solar Thermal Technology

The general solar thermal technology goal under the Act is to advance research and development so that solar thermal technology is cost-competitive with conventional energy sources, and to promote the integration of this technology into the production of industrial process heat and the conventional utility network. Proposals might emphasize development of a thermal storage technology to provide capacity for shifting power to periods of demand when full isolation is not available, improvement in receivers, energy conversion devices, and innovative concentrators using stretch membranes, lenses, and other materials; and exploration of advanced manufacturing techniques.

The specific solar thermal technology goals under the Act are to: (1) Reduce solar thermal costs for industrial process heat to $0.00 per million Btu by 1995; and (2) reduce average solar thermal costs for electricity to 4 to 5 cents per kilowatt hour by 1995. (42 U.S.C. 12003(a)(3)).

(4) Factory-Made Housing

DOE will solicit proposals for at least one joint venture to establish regional projects which develop or demonstrate techniques to improve the energy performance of factory-made housing offered by United States firms. In locating projects, the Act instructs the Secretary to consider regional differences in housing needs, housing design, construction technique, marketing practices and construction materials.

Projects supported pursuant to this program shall be designed to demonstrate state-of-the-art product quality, energy efficiency, and adaptability to renewable forms of energy of factory-made housing offered for sale in the United States.

(5) Advanced District Cooling Technology

DOE will solicit proposals for at least one joint venture for the demonstration of advanced district cooling technologies that are applicable in cities with high cooling loads. The purpose of any joint venture supported under this program shall be to develop technical strategies for decreasing the capital cost and increasing the energy efficiency of major district heating and cooling system components and to assist in making district cooling available to local governments. The Act requires the Secretary to select a city or cities for the application of advanced district cooling technologies developed by the joint venture(s). The activities to be carried out in such application shall include district cooling assessment, feasibility and engineering design studies. (42 U.S.C. 12005(c)(5)).

Proprietary Rights

DOE is aware that the success of a joint venture will depend on providing an environment attractive to industrial participation in cost-shared research with the potential for commercial returns. In an effort to provide an environment conducive to the creation of joint ventures, the Act (42 U.S.C. 12005, 6(b)(5)) makes inventions developed pursuant to the joint ventures program subject to section 5 of the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988, (Steel and Aluminum Act), (15 U.S.C. 5104).

In turn, Section 5 of the Steel and Aluminum Act cross-references section 9 of the Federal Non Nuclear Energy

Research and Development Act of 1974, as amended, (42 U.S.C. 5918), and a DOE Steel Initiative Management Plan issued on April 1, 1987. Under the Management Plan, an entity or holding company would be created or designated by each project's participants for the purpose of holding patents and licensing technology.

DOE is interested in receiving comments concerning the suitability of the approach taken in the Management Plan for protection of proprietary rights under joint ventures as provided by the Act. DOE also encourages additional comments on other issues which would be of concern to the private sector regarding the need to safeguard proprietary and other commercially sensitive data or information contained in proposals and commercially sensitive data or information generated in the course of joint venture operation.

Administrative Requirements

Nonwithstanding DOE's interest in streamlining administrative procedures and requirements regarding joint ventures, prudent administration and management of the joint venture projects will be required. In consultation with the Advisory Committee, DOE will develop administrative requirements governing the operation of joint ventures. These requirements may cover subjects such as audit and oversight, tort liability, insurance, performance bonds, and other matters pertaining to prudent business practices.

Joint ventures established pursuant to the Act will be subject to antitrust laws. However, it should be noted that joint ventures meeting the requirements of the National Cooperative Reserach Act of 1984 (15 U.S.C. 4301 et seq.) may qualify for limited antitrust immunity.

DOE encourages comment concerning these matters. Comments will be considered by the Advisory Committee and by DOE in connection with preparation of the final solicitation.

Ultimate Proposal Solicitation

Subject to public comment and contingent upon availability of appropriations, DOE will solicit proposals for the demonstration of the five renewable energy and energy efficiency technologies described above. DOE may enter at least one joint venture in each technology, unless no qualified proposal is received in a specific technology area. When proposals are sought, DOE anticipates that it will request, at a minimum, the following information:

- a Management Plan describing the structure, organization and participants in the joint venture;
- a Technical Proposal defining the technology which the joint venture proposes to commercialize;
- the contribution and nature of the contribution, e.g. cash and in-kind, of each participant in the joint venture;
- the extent to which the joint venture will exist apart from the parent participating organization;
- a detailed description of the proposed project and its duration; and
- an explanation of how the joint venture will create new technical and/or economic capabilities previously unavailable, such as:

—new production capacity;
—new technology or product;
—entry into a new market; or
—enhanced competition in the international market.

DOE will receive non-proprietary comments on the proposed program and expresssions of interest from those desiring to participate in the joint venture until close of business on October 31, 1990. Such communication should be addressed to:

Steve Morrell, U.S. Department of Energy, Procurement and Contracts Division, AD–42, P.O. Box 2001, Oak Ridge, Tennessee 37831–8757.

Issued in Washington, DC, September 26, 1990.

B. Raid Detchon,

Principal Deputy Assistant Secretary for Conservation and Renewable Energy.

[FR Doc. 90–23165 Filed 9–27–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–23–NG]

Granite State Gas Transmission, Inc.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Long-term Authority to Import Canadian Natural Gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 4, 1990, of an application filed by Granite State Gas Transmission, Inc. (Granite State) for authorization to import from Shell Canada Limited (Shell) up to 35,000 MMBtu of Canadian natural gas a day on a firm basis, plus an additional 14,000 MMBtu a day on an interruptible basis, beginning on or about November 1, 1991, and ending November 1, 2006. The gas would be delivered by Shell at the international border near Iroquois, Ontario, where the facilities of TransCanada PipeLines Limited (TransCanada) would interconnect with the proposed Iroquois Gas Transmission System (Iroquois). Granite State proposes to use the gas to meet the market requirements in its service area which are projected to exceed current supply in the near future.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comment are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comment are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 29, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1789.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Granite State, a New Hampshire corporation with its principal place of business in Canton, Massachusetts, is an interstate pipeline and a wholly owned subsidiary of Northern Utilities, Inc. (Northern Utilities), which is a wholly owned subsidiary of Bay State Gas Company (Bay State). Bay State and Northern Utilities are natural gas distributors and Granite State's only wholesale customers. Bay State provides retail gas service through three divisions in southeastern, western, and northeastern Massachusetts, and serves approximately 230,000 customers. Northern Utilities distributes natural gas to residential, commercial, and industrial customers in New Hampshire and Maine, and currently serves approximately 25,000 customers.

On December 1, 1989, Granite State and Shell executed a gas purchase agreement for the purchase of up to 35,000 MMBtu a day on a firm basis, and additional "peaking" gas on an interruptible basis. The gas purchase agreement provides for a two-part, demand/commodity rate (U.S.) for firm gas supplies delivered at the border. The demand charge is composed of the aggregate of the monthly fixed costs incurred by Shell for the transportation of the gas from the production area in the Province of Alberta to the border delivery point at the proposed interconnection between the TransCanada and Iroquois pipeline systems.

The commodity charge consists of two components less the demand charge: A constantly adjusting base price at the border plus an incremental transportation charge. The border price is derived monthly based on sales by Boundary Gas, Inc. to its repurchasers and is indexed to the weighted average price of domestic natural gas, No. 2 and No. 6 fuel oil available in New York. This component of the commodity charge is designed to make the price of the gas at the border continually responsive to competitive fuel alternatives in Granite State's markets over the life of the contract. Granite State estimates that if the agreement had been effective during the 12 months ending December 31, 1989, the average monthly border price for the Shell gas would have been $2.5761 (U.S.) per MMBtu at a 100 percent load factor.

The second component in the commodity charge is the incremental additional transportation charge on the TransCanada system, currently estimated at 3 cents per MMBtu, for transporting the Shell gas from the Niagara, New York, border point (the Boundary Gas delivery point) to the point downstream where TransCanada will interconnect with the Iroquois pipeline system.

The price of interruptible gas supplies under the contract price will be the commodity charge plus the cost of interruptible transportation.

The gas purchase agreement provides for a monthly minimum bill equal to the demand charge. There is no minimum purchase requirement under the agreement. Also, either party can request renegotiation of the price terms annually, although not the use of a two-part rate, and, if renegotiation does not result in agreement, then the contract provides for arbitration.

Granite State has executed precedent transportation agreements with Iroquois, Tennessee Gas Pipeline Company and Algonquin Gas Transmission Company for the receipt, transportation and delivery of the gas that Granite State will purchase from Shell under the December 1, 1989, gas purchase agreement. Construction and operation of the new and expanded pipeline facilities associated with these transportation arrangements are pending certification by the Federal Energy Regulatory Commission (FERC). Granite State expects the certificates will be issued in sufficient time to permit completion of the construction of the joint project facilities for deliveries to commence on or about November 1, 1991.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Granite State asserts that this import arrangement is in the public interest because the volumes are needed for its system supply, the price of the gas is competitive, and its Canadian supplier is reliable. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. On June 1, 1990, FERC issued a Final Environmental Impact Statement, FERC EIS–0054, on the impacts of constructing and operating proposed pipeline facilities necessary for Granite State to import a portion of the volumes for which it requests authority. In addition, FERC currently is assessing the impacts of additional new facilities associated with the balance of Granite States' import volumes (Docket No. CP89–601–000). DOE is a cooperating agency with FERC and any natural gas import authorization issued to Granite State would be conditioned upon completion of the environmental process. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be take on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Granite State's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above

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address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.d.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 25, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23020 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-60-NG]

Washington Natural Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 31, 1990, of an application filed by Washington Natural Gas Company (Washington Natural) to import from Canada up to 10,000 MMBtu per day (9635 Mcf/d) of natural gas during the period November 1, 1990, to October 31, 1992, and 15,000 MMBtu per day (14,452 Mcf/d) commencing November 1, 1992, to October 31, 2003, on a firm basis. The proposed imports would be purchased from Canada at a point on the U.S.-Canadian border near Sumas, Washington, pursuant to a gas purchase agreement between Washington Natural and Mobil Oil Canada, Ltd. (Mobil Canada). Existing facilities would be used for the importation and transportation of the proposed imports.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 29, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7249.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Washington Natural is a corporation organized and existing under the laws of the State of Washington and its principal place of business is located in Seattle, Washington.

Washington Natural is a natural gas distribution company serving 61 cities and towns and adjacent unincorporated areas within its five-county service area in the State of Washington. Washington Natural provides service to approximately 330,000 customers in its service area.

The gas that Washington Natural will purchase from Mobil Canada will be supplied from Mobil Canada's Sierra Gas Field in the Province of British Columbia, Canada. Mobil Canada will be responsible for arranging the delivery of the gas on a firm basis through the facilities of Westcoast Energy Inc. (WEI) to the point of delivery under the contract at the international border near Sumas, Washington/Huntingdon, B.C. Washington Natural will be responsible for arranging the transportation of the gas from the delivery point near Sumas, Washington, through the facilities of Northwest Pipeline Corporation (Northwest) to Washington Natural's distribution system. Northwest will provide firm transportation for Washington Natural under Northwest's Rate Schedule TF-1.

Mobil Canada has filed for approval from the provincial authority in British Columbia for removal of the gas committed under the contract and to the National Energy Board of Canada (NEB) for approval to export the gas.

The primary term of the sale extends from November 1, 1990, to October 31, 2003. The contract provides for a firm daily volume of up to 10,000 MMBtu per day (9,635 Mcf/d) for the period November 1, 1990, to October 31, 1992, and up to 15,000 MMBtu per day (14,452 Mcf/d) beginning November 1, 1992. Washington Natural is not committed under the Mobil Canada contract to purchase any minimum quantities.

The contract price will be the sum of three components: a demand charge, a commodity charge, and a reservation fee. The monthly demand component for the transportation of the gas from Mobil Canada's Sierra Gas Field to the delivery point near Sumas, Washington, is the aggregate of the WEI firm service gathering, processing, and transportation demand charges as approved by the Canadian regulatory authorities. The commodity component is subject to renegotiation annually; the monthly commodity charge for the initial year of the agreement is comprised of the weighted sum of the following four elements: (i) 25% of the B.C. Gas, Inc. residential gas price at the wellhead for the prior month; (ii) 25% of the average of the weekly average of high and low price of quotations of No. 6 fuel oil in Seattle for the delivery month; (iii) 25% of the spot-market price or gas delivered into Northwest at Sumas for the prior month, subject to an adjustment during the summer season; and (iv) 25% of the spot-market price for domestic gas delivered into Northwest from U.S. supply sources. Finally, in consideration for holding the dedicated reserves available for Washington Natural, Mobil Canada will charge a reservation fee equal to the greater of (1) the product of 18 percent of the commodity price for that month times the sum of the daily contract quantity (DCQ) not taken during all days of that month, or (2) the product of nine percent of the commodity price for the month times the DCQ times the number of days in the month. The agreement includes a provision allowing Washington Natural to elect once during each of the initial two contract years not to take gas in the summer season in exchange for a 50% reduction in the reservation fee for up to three consecutive months.

The company maintains that it is purchasing the Mobil Canada gas supply primarily to supplement its system supply to meet high priority firm requirements and that the pricing terms will have a significant impact in reducing Washington Natural's average cost of gas, the benefits of which will be passed onto its customers. Washington Natural also asserts that it requires a substantial volume of new firm natural gas supplies, on a long-term basis, to replace the significant volumes of gas previously purchased from Northwest.

The decision on the application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this requested arrangement would be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Washington Natural's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on September 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23021 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3536-4]

Environment Impact Statements; of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Envionmental Impact Statements Filed September 17, 1990 Through September 21, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900352, Draft Supplement, COE, IA, Coralville Lake Flood Control, Downstream Area of Influence to Columbus Junction, Operation and Maintenance Changes, Johnson, Iowa, Louisa and Washington Counties, IA, Due: November 12, 1990, Contact: Roger Less (309) 788-6361.

EIS No. 900353, Final EIS, FHW, VA, VA-17 Bypass Extension, VA-17/29 Business to VA-17 nortwest of Warrenton, Construction, Funding, COE General Permit, Town of Warrenton, Fauquier County, VA, Due: October 29, 1990, Contact: James M. Tumlin (804) 771-2371.

EIS No. 900354, Final EIS, EPA, NC, Durham-Eno River Wastewater Treatment Facility Expansion, Durham and Orange Counties, NC, Due: October 29, 1990, Contact: Heinz J. Mueller (404) 347-3776.

EIS No. 900355, Final EIS, AFS, OR, Umpqua National Forest, Land and Resource Management Plan, Implementation, Lane, Douglas and Jackson Counties, OR, Due: October 29, 1990, Contact: Doyle V. Ward (503) 673-6601.

EIS No. 900356, Draft EIS, FHW, CA, San Joaquin Hills Transportation Corridor Improvements, CA-73 Extension between I-5 in San Juan Capistrano City to Jamboree Road in Newport Beach City, Funding and section 404 Permit, Orange County, CA, Due: November 15, 1990, Contact: James J. Bednar (916) 551-1310.

EIS No. 900357, Final EIS, HUD, TX, Harris Branch Development Project, Mortgage Insurance, section 404 Permit, City of Austin, Travis County, TX, Due: October 29, 1990, Contact: I. J. Ramsbottom (817) 885-5482.

EIS No. 900358, Final EIS, AFS, CA, Plumas National Forest Prototype Project, Augmenting Snow Pack by Cloud Seeding Using Ground Based Dispensers, Implementation, Plumas and Sierra Counties, CA, Due: October 29, 1990, Contact: R.C. Bennett (916) 283-1387.

EIS No. 900359, Final EIS, BLM, NM, Fence Lake Federal Coal Project, Lease Approval, Catron and Cibola Counties, NM, Due: October 29, 1990, Contact: Charles Hodgin (505) 525-8228.

EIS No. 900360, Draft EIS, AFS, CA, Suger Bowl Ski Resort Master Plan, Development and Expansion, Tahoe National Forest, Special Use Permit and section 404 Permit, Placer and Nevada Counties, CA, Due: November 12, 1990, Contact: Joanne Roubique (916) 587-3558.

EIS No. 900361, Final EIS, DOE, MA, NH, RI, CT, NY, TN, ADOPTION-Iroquois and Tennessee Gas Transmission Pipelines Project, Construction and Operation, MA, CT, NH, NY, RI and TN, Contact: Clifford Tomaszewak (202) 586-9460.

The US Department of Energy has ADOPTED the US Department of Energy, Federal Energy Regulatory Commission's final EIS filed with the Environmental Protection Agency 6-1-90.

EIS No. 900362, Second Final EIS (T, BLM, WY, Great Divide Resource Areas, (Formerly Medicine Bow) Land and Mineral Management Plan, Implementation, Bennett Mountain, Encampment River Canyon and Prospect Mountain WSA's Wilderness Recommendations, Designation or Nondesignation, Larmie, Carbon, Albany and Sweetwater Counties, WY, Due: October 29, 1990, Contact: Bob Tigner (307) 324-7171.

EIS No. 900262, Final EIS, DOE, NY, MA, MI, WI, MN, RI, ADOPTION-Niagara Import Point Project, Natural Gas Pipeline Facilities, Construction and Operation, Licenses, section 10 and 404 Permits, NY, WI, MA, MN, MI and RI, Contact: Clifford Tomaszewski (202) 586-9480.

The US Department of Energy has ADOPTED the US Department of Energy, Federal Energy Regulatory Commission's final EIS filed with the Environmental Protection Agency 6-15-90.

Amended Notices

EIS No. 900285, Draft EIS, AFS, OR, Shasta Costa Timber Sale and Integrated Resource Projects, Implementation, Siskiyou National Forest, Gold Beach and Galice Ranger Districts, Curry County, OR, Due: October 10, 1990, Contract: Kurt Wiedenmann (503) 247-6651. Published FR 7-27-90—Review period extended.

EIS No. 900343, Draft EIS AFS, CA, Merced and South Fork Merced Wild and Scenic Rivers Management Plan, Implementation, Sierra and Stanislaus National Forests and Yosemite National Park, Mariposa and Madara Counties, CA, Due: November 30, 1990, Contact: James L. Boynton (209) 487-5155. Published FR 9-21-90—Review period extended.

Dated: September 25, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-23081 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3636-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 10, 1990 Through September 14, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-AFS-L65139-ID Rating, EC2, West Moyie Decision Area Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forest, Bonners Ferry Ranger District, Boundary County, ID.

Summary. EPA has environmental concerns based on potential adverse effects to water quality and fisheries and requests additional information on the proposed monitoring plan.

ERP No. D-UAF-G11017-TX, Rating EC2, Bergstrom Air Force Base Closure, 67th Tactical Reconnaissance Wing Inactivation and 36 RF-4C Aircraft Retirement, Relocation of the 712th Air Support Operations, Center Squadron to Fort Hood, Implementation, City of Austin, Travis County, TX.

Summary. EPA has environmental concerns about possible contamination of media and ask for additional RCRA information on the proposed closure of Bergstrom Air Force Base.

ERP No. D-UAF-G11018-AR, Rating LO, Eaker Air Force Base Closure, 97th Bombardment Wing Inactivation, Implementation, Mississippi County, AR.

Summary. EPA has no objection to the proposed closure of Eaker Air Force Base with proper implementation of the mitigation measures as described. The measures are appropriate and reasonable and should be incorporated into the Record of Decision following completion of the final statement.

ERP No. DS-FHW-L40167-AK, Rating EC2, University Avenue Rehabilitation and Widening, College Road to Mitchell Expressway, Original Design Revisions and Hazardous Waste Evaluation, Funding and Right-of-Way Acquisition, North Star Borough, AK.

Summary. EPA has environmental concerns with the proposed action. EPA's concerns were based on the hazardous waste evaluation presented in the supplemental draft EIS and the unresolved wetland concerns expressed in comments on the draft EIS.

Final EISs

ERP No. F-AFS-J03010-UT, Skyline Mine Main Line No. 41 Gas Transmission Pipeline Relocation, Manti-La-Sal National Forest, Special Use Permit and COE Section 404 Permit, Emery, Sanpete and Carbon Counties, UT.

Summary. EPA feels the Forest Service responded to the concerns on the selection of best management practices and selected the environmentally preferred alternative in the Record of Decision.

ERP No. F-AFS-J65156-MT, Mill/Emigrant Timber Sale, Implementation, Gallatin National Forest, Livingston Ranger District, Park County, MT.

Summary. EPA believes the selection of Alternative 9 in the Record of Decision for the Mill/Emigrant Timber Sale has a high potential for significant water quality impacts. Detailed project specific monitoring and response plans and a commitment to ensure adequate funding for monitoring prior to initiation of harvest activities are needed to ensure the effectiveness of Best Management Practices.

ERP No. F-BOP-E81029-FL, Miami Metropolitan Detention Center, Construction and Operation, Dade County, FL.

Summary. EPA believes while there is potential for adverse impacts to historical resources, the impacts of the proposed project to the natural environment are within acceptable limits.

ERP No. F-FHW-B40068-ME, Topsham-Brunswick Bypass Construction, I-95/198 Interchange to Rt-1, Funding, 404 Permit and section 9 Permit, Sagadahoc and Cumberland Counties, ME.

Summary. EPA has environmental concerns with the proposed project since the least environmentally damaging alternative was not identified and selected and since the final EIS did not adequately demonstrate compliance with section 404 of the Clean Water Act.

ERP No. F-SFW-B32009-00, Lake Champlain Sea Lamprey Control Temporary Program, Use of Lampricides and an Assessment of Effects on Certain Fish Populations and Sport Fisheries, Implementation, Clinton, Essex and Washington Counties, NY and Addison and Chittenden Counties, VT.

Summary. EPA has environmental concerns with the proposed project based on the belief that managing the lake for its indigenous species would be preferable. Additionally, since EPA has not established tolerance levels for the pesticides to be applied, alternative drinking water supplies should be provided to the public as long as any pesticides residue is detected at drinking water intakers and nearby wells.

ERP No. FS-COE-C32008-NJ, Great Egg Harbor Inlet and Peck Beach, Erosion Control and Flood Protection, Implementation, Ocean City, Cape May County, NJ.

Summary. EPA's concerns regarding the potential for the borrow material to be contaminated has been addressed. Accordingly, EPA has no objection to the implementation of the project as proposed.

Dated: September 25, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-23082 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3636-7]

Design and Construction of Wastewater Treatment and Disposal Facilities, Wellfleet and Truro, MA; Intent To Discontinue Preparation of a Draft Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency, Region I.

ACTION: Notice of intent to discontinue preparation of a draft Environmental Impact Statement (EIS).

PURPOSE: In 1985, EPA identified a need to prepare an EIS and published a Notice of Intent pursuant to 40 CFR 1501.7 in the Federal Register on December 18, 1985. Since that time, circumstances have eliminated the need for an EIS and therefore, EPA has decided that the preparation of the EIS should be discontinued.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Coin, Marine & Estuarine Protection Section, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203 (617) 565-4435.

SUMMARY: EPA Region I had published a Notice of Intent to prepare an Environmental Impact Statement for the construction of regional wastewater treatment and disposal facilities to serve the Towns of Wellfleet and Truro, Massachusetts.

Under the National Environmental Policy Act (NEPA), preparation of an EIS was required prior to approval of the Towns' Facilities Plan for design and construction of the treatment facilities and prior to issuance of any federal grant monies pursuant to section 201 of the Clean Water Act. Federal concern over potential use of Cape Cod National Seashore (CCNS) lands for construction of the treatment facilities also was a factor in the decision to prepare an EIS. The draft EIS was originally projected to be issued in December 1987.

Due to delays in completing facilities planning for this project, eligibility for federal construction grants expired and funding will now occur under title VI (State Water Pollution Control Revolving Funds) of the Clean Water Act. Environmental review procedures for projects funded in accordance with title VI require that a "NEPA-like" process, based upon state laws and regulations, be implemented. Accordingly, an Environmental Impact Report (EIR) is being prepared pursuant to the Massachusetts Environmental Policy Act (MEPA) and EPA will be reviewing the EIR and the "NEPA-like" review conducted by the Commonwealth of Massachusetts under delegation of the title VI program to ensure that it satisfies the title VI requirements.

Because the federal construction grants program has expired and facilities planning efforts have led to a preliminary decision by the Towns to locate the facilities at a site outside of the CCNS, there is no longer expected to be any major federal action significantly affecting the environment. Given these circumstances, EPA Region I has concluded that a separate EIS is no longer warranted. The State EIR is expected to contain all applicable information and analyses needed for the environmental review required under title VI, and therefore, the need for a federal Environmental Impact Statement has been eliminated.

RESPONSIBLE OFFICIAL: Julie Belaga, Regional Administrator.

Dated: September 25, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90-23083 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-66294; FRL-3804-3]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Registration and Classification will meet on Tuesday, October 2, 1990, from 8:30 a.m. to 5 p.m. and on Wednesday, October 3, 1990, beginning at 8:30 a.m. and adjourning at approximately 12 p.m. The SFIREG Working Committee on Enforcement and Certification will meet on Thursday, October 4, 1990, from 8:30 a.m. to 5 p.m. and on Friday, October 5, 1990, beginning at 8:30 a.m. and adjourning at approximately 12 p.m.

ADDRESSES: The meetings will be held at: Days Inn Scottsdale, 4710 North Scottsdale Road, Scottsdale, AZ, Telephone: (602) 947-5411.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1101, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: (703) 557-7372.

SUPPLEMENTARY INFORMATION: The agenda of the Working Committee on Registration and Classification includes the following topics:

1. Status of synthetic pyrethroid registrations.
2. Update on State Labeling Issues Committee.
3. Section 18 use as a tool in resistance management.
4. Discussion of Reregistration Workshop held on September 24 and 25, 1990.
5. Update on ground water decision criteria.
6. Status and progress on Endangered Species Protection Program.
7. Update on Diazinon registration standard.
8. Special Review status.
9. Other items as appropriate.

The agenda of the Enforcement and Certification Working Committee includes the following topics:

1. Status of certification and training regulations.
2. Status of 12(a)(2)(F) regulations.
3. Discussion of training materials and efforts.
4. Bee protection and drift labeling.
5. Discussion of enclosed cab compliance policy.
6. "Safer" pesticides.
7. Cooperative agreement guidance.
8. QA/QC compliance plan proposal.
9. Other topics as appropriate.

Dated: September 24, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-22976 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-240089; FRL-3795-6]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 36 States and the District of Columbia. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATES: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Edith Minor, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number, Rm. 254, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-8978.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in April through June of 1990. Receipts of State registrations will be published periodically. Twenty-five of the following registrations involved a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 90 0006. Rohm and Haas. Registration is for Mancozeb to be used in-furrow on cotton seed to control fungus (*Rhizoctonia solani*). May 24, 1990.

EPA SLN No. AL 90 0007. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone worms, seed bugs and seed worms. May 24, 1990.

EPA SLN No. AL 90 0008. FMC Corp. Registration is for Carbofuran to be used on pines to control tip moth. May 30, 1990.

EPA SLN No. AL 90 0009. Vigoro Industries. Registration is for Bayleton to be used on pine seedlings to control fusiform rust. May 30, 1990.

EPA SLN No. AL 90 0010. Vigoro Industries. Registration is for Bayleton to be used on pine seedlings to control fusiform rust. May 30, 1990.

Arizona

EPA SLN No. AZ 90 0001. Gowan Co. Registration is for Gowan Diazinon 50WP to be used on Chinese cabbage to control aphids. April 16, 1990.

EPA SLN No. AZ 90 0003. Great Lakes Chem. Registration is for Brom-O-Gas 2% to be used on turf/golf courses to control soil diseases. April 16, 1990.

EPA SLN No. AZ 90 0004. Arizona Grape Grower Association. Registration is for Fruit Doctor to be used on grapes to control grey mold. April 18, 1990.

EPA SLN No. AZ 90 0005. Arizona Apple Growers Association. Registration is for Elgetol (DNOC) to be used on apples as a thinning agent. June 9, 1990.

EPA SLN No. AZ 90 0006. Dowelanco. Registration is for chlorpyrifos to be used on asparagus to control armyworms and grasshoppers. June 6, 1990.

EPA SLN No. AZ 90 0009. Arizona Farm Bureau. Registration is for Mancozeb to be used on cotton to control cotton rust. May 30, 1990.

Arkansas

EPA SLN No. AR 90 0003. FMC Corp. Registration is for Thiodan 3EC to be used on rapeseed to control various pests. April 17, 1990.

EPA SLN No. AR 90 0004. Griffin Corp. Registration is for Mancozeb to be used on cotton to control seedling blight. May 1, 1990.

EPA SLN No. AR 90 0005. Ciba-Geigy Corp. Registration is for Metalaxyl to be used on spinach to control pythium seedling disease and rust. June 11, 1990.

EPA SLN No. AR 90 0006. FMC Corp. Registration is for Bifenthrin to be used in conifer seed orchards to control cone seed worms and seed bugs. June 11, 1990.

EPA SLN No. AR 90 0007. ICI Americas, Inc. Registration is for Gramoxone to be used on soybeans to control grasses and broadleaf weeds. June 11, 1990.

California

EPA SLN No. CA 90 0004. ICI Americas, Inc. Registration is for Gramoxone to be used on broccoli to control weeds. June 7, 1990.

EPA SLN No. CA 90 0010. Valent U.S.A. Registration is for Volck Supreme Spray to be used on kiwifruit to control scales. April 3, 1990.

EPA SLN No. CA 90 0011. Valent U.S.A. Corp. Registration is for Slug-Geta Snails to be used on citrus/avocados to control snails. April 19, 1990.

EPA SLN No. CA 90 0012. H.A. Kaprielian Farmers. Registration is for Guthion to be used on ornamental stock (matthiola) to control annual grasses and broadleaf weeds. June 18, 1990.

EPA SLN No. CA 90 0016. City of Modesto. Registration is for Ethephon to be used on pear trees (*Pyrus calleryana*) to control fruit formation. May 23, 1990.

EPA SLN No. CA 90 0017. California Grape Tree. Registration is for Gibberellic Acid to be used on red globe and calmeria grapes to control bunch rot. May 23, 1990.

EPA SLN No. CA 90 0020. Rohm and Haas Co. Registration is for myclobutanil to be used on strawberries (nursery) to control powdery mildew. May 30, 1990.

EPA SLN No. CA 90 0026. Glenn Co. Dept. of Ag. Registration is for Endosulfan to be used on clover (grown for seed only) to control aphids. July 6, 1990.

Connecticut

EPA SLN No. CT 90 0001. ICI Americas, Inc. Registration is for Paraquat Dichloride to be used on tomatoes/peppers to control weeds. April 23, 1990.

EPA SLN No. CT 90 0002. Archem Corp. Registration is for Cholorophacinone to be used on orchards to control voles. This represents a changed use pattern (CUP). May 15, 1990.

Delaware

EPA SLN No. DE 90 0002. FMC Corp. Registration is for Command 4EC to be used on pumpkins to control selected weeds. February 16, 1990.

District of Columbia

EPA SLN No. DC 90 0001. Platte Chemical Co. Registration is for sprout nip EC to be used on ginko trees to control coconut/fruiting. April 16, 1990.

Georgia

EPA SLN No. GA 90 0003. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone seed worms and seed bugs. June 5, 1990.

Hawaii

EPA SLN No. HI 90 0001. Larry G. Jefts Farms. Registration is for Paraquat Dichloride to be used on bell peppers to control spiny amaranth. April 27, 1990.

EPA SLN No. HI 90 0002. Sandoz Corp. Registration is for Fluvalinate to be used on coffee to control green scale (*Coccus viridis*). This represents a changed use pattern (CUP). June 22, 1990.

EPA SLN No. HI 90 0003. Alcide Corp. Registration is for Sodium Chlorite, Chlorine Dioxide to be used as a disinfectant on cutting tools. This represents a changed use pattern. (CUP) June 11, 1990.

EPA SLN No. HI 90 0004. Hawaii Assoc. Registration is for Sodium Hypochlorite to be used on laundry (garments) as a disinfectant. This represents a changed use pattern. (CUP) June 26, 1990.

Indiana

EPA SLN No. IN 90 0001. Ciba-Geigy Corp. Registration is for Metalaxyl to be used on cucurbit vegetables to control pythium. May 29, 1990.

Louisiana

EPA SLN No. LA 90 0008. Fermenta ASC Corp. Registration is for Chlorothanonil to be used on peaches to control peach scab. May 7, 1990.

EPA SLN No. LA 90 0009. Griffin Corp. Registration is for Mancozeb to be used as in-furrow soil treatment to control cotton damping off. June 6, 1990.

EPA SLN No. LA 90 0010. FMC Corp. Registration is for Bifentrhin to be used on conifer seed orchards to control cone worms, seed bugs and seed worms. June 6, 1990.

Maine

EPA SLN No. ME 90 0001. Valent U.S.A. Corp. Registration is for Diquat Dibromide to be used on potatoes (Russet Burbank) to control potato vines. June 27, 1990.

EPA SLN No. ME 90 0002. Valent U.S.A. Corp. Registration is for Diquat Dibromide to be used on pototoes to control potato foilage. June 27, 1990.

Massachusetts

EPA SLN No. MA 90 0001. Dr. Frank L. Caruso. Registration is for Chlorothalonil to be used on cranberries to control berry rot. This represents a changed use pattern (CUP). June 4, 1990.

Michigan

EPA SLN No. MI 90 0001. Ciba-Geigy. Registration is for Ridomil 5G (Metalaxyl) Granular to be used on cucurbits to control pythium diseases. May 10, 1990.

EPA SLN No. MI 90 0002. FMC Corp. Registration is for Bifentrhin to be used on outdoor ornamentals to control insects and mites. May 15, 1990.

EPA SLN No. MI 90 0003. Mobay Corp. Registration is for Dyrene to be used on cucumbers to control a variety of diseases. June 19, 1990.

EPA SLN No. MI 90 0004. Mobay Corp. Registration is for Bayleton to be used on Christmas trees to control gall rust. June 16, 1990.

EPA SLN No. MI 90 0032. Fermenta ASC Corp. Registration is for MSMA to be used on cotton to control weeds. June 21, 1990.

Minnesota

EPA SLN No. MN 90 0001. Dept. of Natural Res. Registration is for Dimethoate to be used on spruce to control cone and seed insects (coneworms). May 23, 1990.

EPA SLN No. MN 90 0002 Rohm and Haas Co. Registration is for Propanil/MCPA to be used on oats to control weeds. June 18, 1990.

EPA SLN No. MN 90 0003. ICI Americas, Inc. Registration is for Fluazifop-P-Butyl to be used on fine fescue (grown for seed) to control quackgrass (*Agropyron repens*). June 26, 1990.

EPA SLN No. MN 90 0004. ICI Americas, Inc. Registration is for Gramoxone to be used on grass seed production fields to control quackgrass. June 26, 1990.

Mississippi

EPA SLN No. MS 90 0005. Setre Chemical Co. Registration is for Weed Rhap A-4D to be used on rice to control weeds. April 18, 1990.

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EPA SLN No. MS 90 0006. FMC Corp. Registration is for Capture 2EC to be used on conifers/orchards to control seed worms/bugs. April 18, 1990.

EPA SLN No. MS 90 0007. Riverside/Terra Corp. Registration is for Dimethylamine Salt of MCPA to be used on rice to control weeds. This represents a changed use pattern (CUP). May 2, 1990.

EPA SLN No. MS 90 0008. Riverside/Terra Corp. Registration is for Dimethyl Amine of Salt 2,4-D to be used on rice to control weeds. This represents a changed use pattern (CUP). May 2, 1990.

EPA SLN No. MS 90 0009. Agrolinz, Inc. Registration is for DMA Salt of MCPA to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0010. Agrolinz, Inc. Registration is for DMA Salt of 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0011. Agrolinz, Inc. Registration is for N-Alkylamine Salt of 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0012. Platte Chemical Co. Registration is for Dimethylamine Salt of 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0013. Griffin Corp. Registration is for Mancozeb to be used on cotton to control damping off and seedling blight. May 2, 1990.

EPA SLN No. MS 90 0014. Fermanta ASC Corp. Registration is for 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0015. Rhone Poulenc AG Co. Registration is for MCPA to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0016. Rhone Poulenc. Registration is for 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0017. Rhone Poulenc Ag Co. Registration is for 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0018. Rhone Poulenc Ag Co. Registration is for 2,4-D to be used on rice to control weeds. February 5, 1990.

EPA SLN No. MS 90 0019. Universal Corp. Registration is for 2,4-D Amine Weed Killer to be used on rice to control weeds. May 8, 1990.

EPA SLN No. MS 90 0020. Red Panther Chem. Co. Registration is for 2,4-D Amine 4 to be used on rice to control weeds. May 8, 1990.

EPA SLN No. MS 90 0021. Red Panther Chem. Co. Registration is for 2,4-D Amine 4 to be used on rice to control weeds. May 8, 1990.

EPA SLN No. MS 90 0022. FMC Corp. Registration is for Cypermethrin to be used on soils to control termites. May 10, 1990.

EPA SLN No. MS 90 0023. Voluntary Purchasing. Registration is for 2,4-D Amine to be used on rice to control weeds. May 10, 1990.

EPA SLN No. MS 90 0024. Fermenta Plant. Registration is for DSMA Liquid to be used on cotton to control weeds. This represents a changed use pattern (CUP). May 18, 1990.

EPA SLN No. MS 90 0025. Fermenta Plant Prot. Registration is for Bueno to be used on cotton to control weeds. This represents a changed use pattern (CUP). May 18 1990.

EPA SLN No. MS 90 0026. Fermenta Plant. Registration is for Arsonate Liquid to be used on cotton to control weeds. This represents a changed use pattern (CUP). May 18, 1990.

EPA SLN No. MS 90 0027. Griffin Corp. Registration is for Fluometuron to be used on cotton to control broadleaf weeds (pigweed, ragweed). June 7, 1990.

EPA SLN No. MS 90 0028. Griffin Corp. Registration is for Fluometuron to be used on cotton to control broadleaf weeds (pigweed, ragweed). June 7, 1990.

EPA SLN No. MS 90 0029. Riverside/Terra Corp. Registration is for MSMA 912 Herbicide to be used on cotton to control weeds. This represents a changed use pattern (CUP). June 4, 1990.

EPA SLN No. MS 90 0030. Riverside/Terra. Registration is for MSMA 120 Herbicide to be used on cotton to control weeds. This represents a changed use pattern (CUP). June 4, 1990.

EPA SLN No. MS 90 0031. Riverside/Terra Corp. Registration is for DSMA to be used on cotton to control weeds. This represents a changed use pattern (CUP). April 30, 1990.

EPA SLN No. MS 90 0032. Fermenta ASC Corp. Registration is for MSMA to be used on cotton to control weeds. This represent a changed use pattern (CUP) June 21, 1990.

EPA SLN No. MS 90 0033. Guth Corp. Registration is for Lithate 2,4-D to be used on rice to control weeds. This represents a changed use pattern (CUP). June 25, 1990.

Missouri

EPA SLN No. MO 90 0002. Rohm and Haas Co. Registration is for Mancozeb to be used on cotton seed to control fungal diseases (phythium, etc.) May 22, 1990.

Montana

EPA SLN No. MT 90 0001. Uniroyal Chem. Co. Registration is for Comite-Mint to be used on mint to control spider mite. April 13, 1990.

EPA SLN No. MT 90 0002. American Cyanamid. Registration is for Prowl Herbicide to be used on alfalfa seed to control dodder. April 19, 1990.

EPA SLN No. MT 90 0003. FMC Corp. Registration is for Capture 2EC to be used on alfalfa seed to control lygus bugs. April 12, 1990.

EPA SLN No. MT 90 0004. American Cyanamid Co. Registration is for Imazethapyr to be used on alfalfa to control weeds. May 7, 1990.

Nebraska

EPA SLN No. NE 90 0002. Platte Chemical Co. Registration is for Diazinon to be used on cranberries to control cranberry girdler. This represents a changed use pattern (CUP). June 7, 1990.

Nevada

EPA SLN No. NV 90 0002. ICI Americas, Inc. Registration is for Fusilade 2000 Herbicide to be used on alfalfa/seed to control quackgrass. April 18, 1990.

EPA SLN No. NV 90 0003. Lipha Tech., Inc. Registration is for Chlorophacinone to be used on various sites to control ground squirrels. April 23, 1990.

EPA SLN No. NV 90 0004. American Cyanamid Co. Registration is for Imazethapyr to be used on alfalfa to control weeds. May 2, 1990.

EPA SLN No. NV 90 0005. Wilbur-Ellis Co. Registration is for Dimethoate to be used on (trees) ornamental shade, nursery to control aphids, elm leaf beetle. June 6, 1990.

New Jersey

EPA SLN No. NJ 90 0003. Fairfield American Corp. Registration is for Permethrin to control mosquitoes. April 27, 1990.

EPA SLN No. NJ 90 0004. Ciba-Geigy Corp. Registration is for D-Z-N Diazinon 14G to be used on cranberries to control cranberry girdler. This represents a changed use pattern (CUP). May 2, 1990.

EPA SLN No. NJ 90 0006. ICI Americas, Inc. Registration is for Gramoxone to be used on Alfalfa (new seeding) to control (weeds) chickweed. June 5, 1990.

New Mexico

EPA SLN No. NM 90 0002. Dowelanco. Registration is for Trifluralin (Treflan EC) to be used on chili peppers to control weeds. June 19, 1990.

EPA SLN No. NM 90 0003. Dowelanco. Registration is for Trifluralin (Treflan M.T.F.) to be used on chili peppers to control weeds. June 19, 1990.

EPA SLN No. NM 90 0004. Dowelanco. Registration is for Trifluralin (Treflan 5) to be used on chili peppers to control weeds. June 19, 1990.

EPA SLN No. NM 90 0020. Dowelanco. Registration is for Trifluralin to be used on Chili peppers to control weeds. June 19, 1990.

New York

EPA SLN No. NY 90 0001. New York Vegetable Growers. Registration is for Metolachlor to be used on transplanted cabbage to control *Galinsoga spp.* and yellow nutsedge. April 25, 1990.

EPA SLN No. NY 90 0002. Bureau of Fisheries. Registration is for Bayluscide 5% Granular to be used in lakes to control sea lamprey larvae. This represents a changed use pattern (CUP). June 18, 1990.

North Carolina

EPA SLN No. NC 90 0002. Mobay Corp. Registration is for Bayleton 25 to be used on hemlock to control hemlock rust. May 24, 1990.

EPA SLN No. NC 90 0003. Ciba-Geigy Corp. Registration is for Diazinon 50W to be used on blueberry fields to control fire ants. May 22, 1990.

EPA SLN No. NC 90 0004. Ciba-Geigy Corp. Registration is for Metalaxyl Subdue Granular Fugnicide to be used on conifer plantations to control phytopthora root rot. May 24, 1990.

EPA SLN No. NC 90 0005. Ciba-Geigy Corp. Registration is for Metalaxyl Subdue 2E to be used on conifer plantations to control phytopthora root rot. May 24, 1990.

EPA SLN No. NC 90 0006. Ciba-Geigy. Registration is for Diazinon AG500 to be used on blueberry fields to control fire ants. June 5, 1990.

North Dakota

EPA SLN No. ND 90 0004. Rohm and Haas Co. Registration is for Propanil / MCPA to be used on oats to control foxtails and broadleaf weeds. May 1, 1990.

EPA SLN No. ND 90 0005. Uniroyal Chem. Co. Registration is for Carboxin and Thiram to be used on safflower seedlings to control seed-borne rust. June 24, 1990.

EPA SLN No. ND 90 0006. Atochem North America. Registration is for Maneb to be used on dry beans to control rust, mildew, and anthracnose. June 20, 1990.

EPA SLN No. ND 90 0007. Atochem No. America. Registration is for Mancozeb to be used on barley to control helmintosporium leaf blight. June 20, 1990.

EPA SLN No. ND 90 0008. FMC Corp. Registration is for Carbofuran to be used on small grains (wheat, oats, barley) to control grasshoppers. June 25, 1990.

Ohio

EPA SLN No. OH 90 0005. Mobay Corp. Registration is for Dyrene for use on cucumbers to control alternaria cercospora . June 18, 1990.

Oklahoma

EPA SLN No. OK 90 0002. Avitrol Corp. Registration is for Avitrol Powder Mix to be used on pecans to control crows. April 18, 1990.

EPA SLN No. OK 90 0003. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone and seed worms and seed bugs. June 11, 1990.

Oregon

EPA SLN No. OR 90 0002. Gustafson, Inc. Registration is for Thiabendazole to be used on crimson clover for seed to control *Kabatiella caulivora*. June 26, 1990.

EPA SLN No. OR 90 0005. Ciba-Geigy Corp. Registration is for Diazinon to be used on nursery stock to control apple maggots and cherry fruit flies. February 8, 1990.

EPA SLN No. OR 90 0008. FMC Corp. Registration is for Capture 2EC to be used on alfalfa seed to control various insects. April 16, 1990.

EPA SLN No. OR 90 0009. FMC Corp. Registration is for Capture 2EC to be used on carrot seed to control various insects. April 16, 1990.

EPA SLN No. OR 90 0012. Sandoz Crop. Registration is for Fluvalinate to be used on seed alfalfa to control lygus bugs and aphids. May 10, 1990.

EPA SLN No. OR 90 0013. Sandoz Crop. Registration is for Banvel Herbicide (Dicamba) to be used on wheat as a preharvest application to control weeds. May 9, 1990.

EPA SLN No. OR 90 0015. Rohm and Haas Co. Registration is for Dicofol to be used on black berries and raspberries to control mites. June 19, 1990.

EPA SLN No. OR 90 0016. Rohm and Haas Co. Registration is for Oxyfluorfen to be used on blackberry plants to control primocane suppression. June 19, 1990.

EPA SLN No. OR 90 0017. Gowan Co. Registration is for Diazinon to be used on cranberries to control "cranberry girdler." This represents a changed use pattern (CUP). June 20, 1990.

EPA SLN No. OR 90 0018. ICI Americas, Inc. Registration is for Fluazifop-p-Butyl to be used on alfalfa grown for seed to control quackgrass. July 3, 1990.

South Carolina

EPA SLN No. SC 90 0002. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone worms and seed bugs. May 9, 1990.

EPA SLN No. SC 90 0003. Hoechst-Roussel. Registration is for Diclofop-Methyl to be used on wheat, barley, lentils, dry peas to control goosegrass (*Eleusine Indica*). This represents a changed use pattern (CUP). June 16, 1990.

EPA SLN No. SC 90 0004. ICI Americas, Inc. Registration is for Reflex to be used on soybeans to control weeds (witchweed). July 3, 1990.

South Dakota

EPA SLN No. SD 90 0001. Agrolinz, Inc. Registration is for Isooctyl Ester, 2,4D to be used on small grains and barley to control weeds. March 27, 1990.

EPA SLN No. SD 90 0002. Agrolinz, Inc. Registration is for 2,4-D1-3Gal/Spray/A to be used on small grains and barley to control weeds. March 27, 1990.

EPA SLN No. SD 90 0003. Sandoz Crop. Registration is for Dicamba to be used on wheat to control weeds (kochia, pigweed spp.) May 31, 1990.

EPA SLN No. SD 90 0004. E.I. DuPont. Registration is for Metsulfuron to be used on grain to control weeds. June 26, 1990.

Tennessee

EPA SLN No. TN 90 0003. Rohm & Haas Co. Registration is for Mancozeb to be used on cotton seed to control *Rhizoctonia solani*. April 27, 1990.

EPA SLN No. TN 90 0004. Valent USA Corp. Registration is for Acephate to be used on cotton in-furrow to control aphid thrips. April 27, 1990.

EPA SLN No. TN 90 0005. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone and seed worms and seed bugs. May 9, 1990

Texas

EPA SLN No. TX 90 0006. Dowelanco. Registration is for chlorpyrifos to be used on sugar beets to control soil insects such as cutworms. April 30, 1990.

EPA SLN No. TX 90 0007. Agricultural Div. Registration is for propiconazole to be used on Texas Live Oaks to control oak wilt. May 3, 1990.

EPA SLN No. TX 90 0008. E.I. DuPont. Registration is for esfenvalerate to be used on collards, aerial application, to control cutworm, grasshopper, (insects). This represents a changed use pattern (CUP). May 10, 1990.

Utah

EPA SLN No. UT 90 0001. Dowelanco. Registration is for Treflan TR 10 to be used on alfalfa seec to control dodder. April 19, 1990.

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EPA SLN No. UT 90 0002. Sandoz Crop Corp. Registration is for Banvel/Pre Harvest to be used on wheat to control annual weeds. April 19, 1990.

EPA SLN No. UT 90 0003. FMC Corp. Registration is for Capture 2EC to be used on alfalfa seed to control various weeds. April 24, 1990.

EPA SLN No. UT 90 0004. Wilbur-Ellis Co. Registration is for dimethoate to be used on trees (ornamental shade, nursery) to control aphids, elm leaf beetle. May 3, 1990.

EPA SLN No. UT 90 0005. Fairfield American. Registration is for Permethrin to be used at resting places to control flying insects (wasps, gnats). This represents a changed use pattern (CUP). June 6, 1990.

Virginia

EPA SLN No. VA 90 0002. FMC Corp. Registration is for Clomazone to be used on pumpkins to control grasses and broadleaf weeds. May 15, 1990.

Washington

EPA SLN No. WA 90 0010. E.I. Du Pont. Registration is for Harmony Extra Herb. to be used on winter wheat to control wild oats. April 16, 1990.

EPA SLN No. WA 90 0011. American Cyanamid. Registration is for Prowl Herbicide to be used on carrots for seed to control weeds. April 4, 1990.

EPA SLN No. WA 90 0012. BASF Corp. Registration is for Basagran to be used on alfalfa seed to control various weeds. April 18, 1990.

EPA SLN No. WA 90 0013. Rhone-Poulenc. Registration is for Sevin 80S to be used in oyster beds to control ghost/mud/shrimp. April 20, 1990.

EPA SLN No. WA 90 0014. Sandox Crop Corp. Registration is for Banvel to be used on seeded barley to control weeds. April 20, 1990.

EPA SLN No. WA 90 0015. Gowan Co. Registration is for Phosphamidon to be used on apples to control green apple aphids. April 30, 1990.

EPA SLN No. WA 90 0016. Dowelanco. Registration is for Trifluralin to be used on alfalfa to control dodder. This represents a changed use pattern (CUP). May 4, 1990.

EPA SLN No. WA 90 0017. E. I. DuPont. Registration is for Linuron to be used to reduce crop rotation limit. May 2, 1990.

EPA SLN No. WA 90 0018. E.I. Du Pont. Registration is for Linuron to be used on crop rotation rye, oats for crop rotation (weed control). May 2, 1990.

EPA SLN No. WA 90 0019. Platte Chemical Co. Registration is for Phorate to be used on radishes grown for seed to control aphids and lygus. May 17, 1990.

EPA SLN No. WA 90 0020. Rohm and Haas. Registration is for Myclobutanil to be used on apples to control apple scab, rust, powdery mildew. May 17, 1990.

EPA SLN No. WA 90 0021. Platte Chemical Co. Registration is for phosphamidon to be used on apples (post bloom) to control aphids and leafhoppers. This represents a changed use pattern (CUP). May 24, 1990.

EPA SLN No. WA 90 0022. Rohm and Haas. Registration is for Dicofol to be used on raspberries and blackberries to control mites. May 23, 1990.

EPA SLN No. WA 90 0023. FMC Corp. Registration is for endosulfan to be used on potatoes to control army worms and aphids. June 25, 1990.

Wisconsin

EPA SLN No. WI 90 0001. Platte Chemical Co. Registration is for Diazinon to be used on cranberries to control cranberry girdler. This represents a changed use pattern (CUP). June 7, 1990.

EPA SLN No. WI 90 0002. Baker Performance. Registration is for Acrolein to be used in irrigation canals to reduce holding time and to control floating weeds and algae. May 11, 1990.

EPA SLN No. WI 90 0003. Riverside/Terra Corp. Registration is for Phorate 20G to be used on potatoes to control aphids, leafhoppers, and wireworms. April 27, 1990.

Wyoming

EPA SLN No. WY 90 0002. American Cyanamid Co. Registration is for Imazethapyr to be used on alfalfa grown for seed to control weeds. May 8, 1990.

Authority: Section 24, as amended, 92 Stat. 835 (7 U.S.C. 136).

Dated: September 25, 1990.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-23147 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for four new FM stations:

Applicant, City and State	File No.	MM Docket No.
I		
A. Pensacola Radio Partners; Pensacola, FL.	BPH-880328MJ	90-406
B. Gulf Coast FM General Partnership; Pensacola, FL.	BPH-880324MB	
C. Pensy Radio, Inc.; Pensacola, FL.	BPH-880324MC	
D. Bill Henry Broadcasting, Inc.; Pensacola, FL.	BPH-880324MD	
E. Vernon C. Floyd; Pensacola, FL.	BPH-880324MK	
F. Pensacola Minority Broadcast Associates; Pensacola, FL.	BPH-880324MS	
G. Gaynell L. Fordham; Pensacola, FL.	BPH-880324MY	
H. Media Transetters for Women; Pensacola, FL.	BPH-880324NB	
I. Robert G. Kerrigan; Pensacola, FL.	BPH-880324NC	
J. George S. Flinn, Jr.; Pensacola, FL.	BPH-880324NO	
K. Kelly A. Allen and Mary Johnson General Partners in Allen/Johnson Pensacola, Ltd.; Pensacola, FL.	BPH-880324NP	
L. Chicago Broadcasting, Incorporated; Pensacola, FL.	BPH-880324NS	
M. Miracle Radio, Inc.; Pensacola, FL.	BPH-880324NU	
N. PNS Limited Partners; Pensacola, FL.	BPH-880324NW	
O. The Boyd Partnership; Pensacola, FL.	BPH-880324NZ	
P. David Earl Hoxeng d/b/a AOX Communications of Pensacola; Pensacola, FL.	BPH-880324OJ	
Q. White Sands Broadcasting Company; Pensacola, FL.	BPH-880324OK	
Issue heading and applicants 1. Air Hazard, D,F,J,LO,P 2. Comparative, A-Q 3. Ultimate, A-Q		
II		
A. Anna Slagle d/b/a/ Spectrum Broadcast Systems, Kingwood, WV.	BPH-881206MJ	90-399
B. WFSP, Inc., Kingwood, WV.	BPH-881206MK	
Issue heading and applicant 1. Comparative, A,B 2. Ultimate, A,B		
III		
A. Peter J. Finald; Natchez, MS.	BPH-880808NA	90-401
B. Luther Jackson Lazarus; Natchez, MS.	BPH-880812MT	
C. James Washington d/b/a/ Washington Broadcasting; Natchez, MS.	BPH-880816NG	
D. Cloud Nine, Inc.; Natchez, MS.	BPH-880816OV	
Issue heading and applicant 1. Environmental, A 2. Comparative, All applicants 3. Ultimate, All applicants		
IV		
A. Helen Broadcasters, Inc. Helen, GA.	BPH-890426MI	90-402
B. Shull Broadcasting Company, Inc.; Helen, GA.	BPH-890427MC	
C. Joseph A. Vandergriff; Helen, GA.	BPH-890427MD	
D. Anthony Lamar Canup and George M. Pass, d/b/a/ White County Broadcasting; Helen, GA.	BPH-890427ME	
Issue heading and applicants 1. Air Hazard, A,C,D 2. Comparative, A-D 3. Ultimate, A-D		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is a non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division.

[FR Doc. 90-23090 Filed 9-27-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Maritz Inc. and Maritz, Travel Company, 1375 North Highway Drive, Fenton, St. Louis Co., MO 63099.

Vessel: *VIKING SERENADE.*

Dated: September 24, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22961 Filed 9-27-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Docket No. 6486]

Goodyear Tire & Rubber Co., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1961 consent order with Goodyear Tire & Rubber Co., (58 FTC 369), which prohibited the company from entering into sales commission agreements with any oil marketing company for the marketing of tires, batteries, and accessories. The Commission concluded that changes of law warranted reopening the proceeding, and that because there is little prospect that the activities prohibited by the 1961 order could now diminish competition, there was no need to maintain the order, and it should be set aside.

DATES: Order issued March 9, 1961. Set Aside Order issued August 21, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth Davidson, FTC/S-2122, Washington, DC 20580. (202) 326-2963.

SUPPLEMENTARY INFORMATION: In the Matter of Goodyear Tire & Rubber Company, *et al.* The prohibited trade practices and/or corrective actions, as set forth at 26 FR 4998, are removed.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Deborah K. Owen.

Order Reopening and Setting Aside Final Order Issued on March 9, 1961

In the matter of Goodyear Tire & Rubber Co. a corporation, and Atlantic Refining Co. a corporation.

On April 23, 1990, the Goodyear Tire & Rubber Company ("Goodyear") filed a request to reopen and set aside the Final Order that was entered in this proceeding on March 9, 1961. Goodyear's Request was on the public record for thirty days. No comments were received. The Request was filed pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Federal Trade Commission Procedures and Rules of Practice, 16 CFR 2.51.

The order Goodyear seeks to have set aside, Docket No. 6486, was based on a finding by the Commission that an agreement between the Atlantic Refining Company ("Atlantic") and the Goodyear Tire and Rubber Company ("Goodyear") constituted an unfair method of competition in violation of section 5 of the Federal Trade Commission Act. Under the agreement, Atlantic received commissions on the sale of Goodyear products to designated Atlantic franchisees. The order prohibited Atlantic from continuing the sales commission agreement and related business practices with Goodyear or other Atlantic suppliers. The order also prohibited Goodyear from maintaining such agreements with Atlantic or any other marketing oil company.

Docket No. 6486 was full litigated. The Commission's decision and order were affirmed and enforced by the Seventh Circuit Court of Appeals on April 24, 1964, and affirmed by the United States Supreme Court on June 1, 1965. Goodyear asserts that, since the adjudication of the Commission's order, there have been changes of law that warrant reopening the order and setting it aside.

The Atlantic Richfield Company ("Arco") was formed as a result of the merger of Atlantic with other oil companies. Arco became the successor to Atlantic and was thereby bound by the terms of the order in Docket No. 6486. On February 2, 1990, Arco filed a request to reopen and set aside that Order. On June 2, 1990, the Commission granted that request as to Arco. Order Reopening and Setting Aside Final Order Issued on March 9, 1961 ("Order Setting Aside").

The Commission has considered Goodyear's request and has concluded

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that Goodyear has made a showing that warrants setting aside the entire order in Docket No. 6486. Significant changes of law since the entry of the order in this matter warrant setting aside the order.

Background

The Commission issued the complaint that initiated the adjudication of this matter on January 11, 1956. The initial decision of the hearing examiner was issued on October 23, 1959. The Commission's opinion, issued on March 9, 1961, held that the sales commission agreement concerning tires, batteries, and other automotive accessories ("TBA") between Atlantic and Goodyear and another between Atlantic and the Firestone Tire and Rubber Company ("Firestone") constituted unfair methods of competition and violated section 5 of the Federal Trade Commission Act. 58 F.T.C. 309. The Court of Appeals and the United States Supreme Court upheld the Commission's decision and order. 331 F.2d 394 (7th Cir. 1964), 381 U.S. 357 (1965).

The Decision

The factual basis for the finding that the sales commission agreement violated the Federal Trade Commission Act was explicitly set out in the Commission's decision. Prior to 1951, Atlantic had acquired TBA products and resold them to its petroleum franchisees. In 1951, it switched to a system under which Atlantic selected manufacturers of TBA to supply its franchisees. Atlantic entered into "best efforts" contracts with Goodyear and Firestone. Under these contracts Atlantic agreed that it would exert its best efforts to promote Goodyear products to all of its franchisees within a designated geographic area and Firestone products within another area. In return those companies agreed to limit TBA sales to Atlantic franchisees within the designated areas and to pay Atlantic a commission on all their sales to the franchisees. Under the sales commission plan, designated Goodyear and Firestone wholesalers were allocated geographical regions. In each region, one wholesaler was to be the sole source of TBA to each Atlantic franchisee.

The Commission's decision stated this arrangement was unlawful because it "presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." 58 F.T.C. at 367. The Commission found that Atlantic had "sufficient economic power" to reduce competition that would have existed from suppliers of other TBA products. *Id.* at 384.

Atlantic was found to have successfully implemented its sales commission program through the use of threats and coercion *Id.* at 347. The record contains lengthy references both to complaints by franchisees that they would have purchased other TBA products absent pressure from Atlantic and to instructions by Atlantic that its pressure must be implemented in a covert manner. *Id.* at 328, 355, 357.

The decision stated that Atlantic threatened, explicitly and implicitly, to cancel franchises of gas stations that did not buy the TBA products that Atlantic recommended. *Id.* At 343–47. The gas station franchise agreements were subject to annual review and could be cancelled by Atlantic on a number of subjective grounds. *Id.* at 356.

The Commission found: "Goodyear thus appeared confident that the presence of an Atlantic salesman together with the Goodyear representative would render unnecessary any higgling or haggling over price before an initial order for TBA from Atlantic dealers." *Id.* at 355. The record before the Commission also contained evidence that, "Goodyear has sales commission contracts with a number of other marketing oil companies, and these agreements are in all material respects identical with the Goodyear-Atlantic contract * * * * The evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA." *Id.* at 352.

The Hearing Examiner found that sales of TBA were vital to service station owners. TBA provided both the products for the full services expected by customers and additional revenues that made the stations profitable. 58 F.T.C. at 313.

The Commission's decision concerning the Atlantic sales commission plan was one of three such plans that the Commission found unlawful. In the other two actions, involving Shell Oil and Texaco, the Commission decisions were also upheld on review. *See, Firestone Tire & Rubber Co.*, 58 F.T.C. 383 *aff'd sub nom. Shell Oil Co.* v. *FTC*, 360 F.2d 470 (5th Cir. 1966), *cert. denied*, 385 U.S. 1002 (1967), and *B.F. Goodrich Tire & Rubber Co.*, 69 F.T.C. 22 (1966), *rev'd sub nom. Texaco, Inc.* v. *FTC*, 383 F.2d 942 (D.C. Cir. 1967) *Rev'd sub nom. FTC* v. *Texaco, Inc.*, 393 U.S. 223 (1968). The Commission also had evidence before it concerning the use of sales commission plans for marketing TBA products to the franchisees of seven other oil companies. 58 F.T.C. at 359.

Atlantic and Goodyear denied that their sales commission agreement harmed competition and asserted it was "a legitimate and competitive method of distributing TBA which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public." 58 F.T.C. at 324. The Supreme Court, however, rejected the parties' claim that the Commission erred when it refused "to consider evidence of economic justification for the program." 381 U.S. 357 at 371. It also rejected the contention "that the Commission should have made a far more extensive economic analysis of the competitive effect of the sales-commission plan, examining the entire market in tires, batteries and accessories." *Ibid.* It rejected the necessity of these inquiries on the ground that "the effect of this plan is similar to that of a tie-in." *Ibid.*

In these cases, it appears the Commission was concerned about the cumulative effect of foreclosure of competition in TBA products as a result of all the agreements. While Atlantic's share of the retail gasoline market in the area served by its franchises was 6.8%, the Commission noted that gas stations as a group accounted for 37% of the sales of tires and tubes, 44% of the sales of batteries and 20% of the sales of automotive accessories. *Id.* at 325–6. In the *Shell* case, between 1948 and 1958, the market share of gas stations for TBA products had increased from 31 to 45 percent of all sales. 58 F.T.C. 371 (1961). The Commission alleged that gas stations were likely to become even more important in the sale of TBA. 58 F.T.C. at 328.

The Order

The Commission entered an order that forbade Atlantic from promoting or coordinating the sale of TBA products from any TBA vendor other than itself to Atlantic franchisees. It also forbade Goodyear from:

1. Entering into or continuing agreements with Atlantic or other marketing oil companies in connection with sales of Goodyear TBA products by distributors of any such oil company.

2. Paying or offering to pay anything of value to any marketing oil company for promoting the sale of any Goodyear TBA products by distributors of any such oil company.

3. Participating in monitoring the sales of TBA products to distributors of any marketing oil company for such oil company.

Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.[1] A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986) at 4. *See*, S. Rep. No. 96–500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *see Phillips Petroleum Co.*, Docket No. C–1088, 78 F.T.C. 1573, 1575 (1971) (modification not required for changes reasonably foreseeable at time of consent negotiations); *Pay Less Drugstores Northwest, Inc.*, Docket No. C–3039, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy) (unpublished); *see also United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932) ("clear showing of changes that have eliminated reasons for order or such that the order causes unanticipated hardship).

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in requests to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 24, 1983), at 2 (hereafter "Damon Letter") (unpublished). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C–2916, 101 F.T.C. 699, 702 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2; *see, e.g., Chevron Corp.*, Docket No. C–3147, 3 Trade Reg. Rep. (CCH) 22,239 (March 13, 1985) (public interest warrants modification where potential harm to respondent's ability to compete outweighs any further need for order). The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The language of Section 5(b) plainly anticipates that the burden is on the requester to make "a satisfactory showing" of changed conditions to obtain reopening of the order. *See also Gautreaux* v. *Pierce*, 535 F. Supp. 423, 426 (N.D. Ill. 1982) (requester must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). The legislative history also makes clear that the requester has the burden of showing, by means other than conclusory statements, why an order should be modified.[2] If the Commission determines that the requester has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the requester fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The requester's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974) ("sound basis for * * * [not reopening] except in the most extraordinary circumstances"); *RSR Corp.* v. *FTC*, 656 F.2d 718, 721–22 (D.C. Cir. 1981) (applying *Bowman Transportation* standard to FTC order).

Goodyear asserts that there have been changes of law that require the Commission to reopen and set aside the order.

Changes of Law Warrant Reopening the Order

Goodyear urges that, since the order was entered, court and Commission decisions have significantly changed the antitrust law that applies to tying and other non-price vertical restraints. Specifically it cites two lines of cases that would require the Commission to consider issues that the Commission did not address when it found the Goodyear-Atlantic sales commission plan was an unfair method of competition. The issues are:

A requirement, pursuant to *United States Steel Corp.* v. *Fortner*, 429 U.S. 610 (1977), that "economic power" concerning the tying product be demonstrated in terms of market power, and

A requirement, pursuant to *Continental T.V. Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977), to consider efficiencies resulting from the vertical restraints that might enhance interbrand competition.

Request at 34 *et seq.*

These arguments track the Commission's decision in setting aside this Order as to Arco. The Commission concluded these changes of law were relevant to its original decision:

[f]or purposes of reopening the order, the important point is that the Commission made no inquiry concerning the market power of Atlantic and that today such an inquiry would be mandatory * * *. *Fortner* and subsequent cases established criteria that changed the law of tying in ways that are central to the determination of this case. Accordingly, there has been a change of law that warrants reopening this order.

Order Setting Aside at pp. 6–7. It further concluded that:

If the Commission's finding was not that the sales commission plan was an unlawful tie, the plan was, nevertheless, held to be a *per se* unlawful vertical restraint of some other type. Since the Supreme Court's decision in *Continental T.V. Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977), it has been clear that non-price vertical restraints generally are to be evaluated under a rule of reason standard. That standard requires consideration of whether interbrand competition may be enhanced by efficiencies resulting from vertical restraints. But as the Supreme Court noted in affirming the order in this case, the Commission refused to consider "evidence of economic justification" or to analyze "the competitive effect of the sales commission

[1] Section 5(b) provides, in part:

[T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part.

The 1980 amendment to section 5(b) did not change the standard for order reopening and modification, but "codifie[d] existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made." S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

[2] The legislative history of amended section 5(b), S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), states:

Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient * * *. The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order.

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plan, examining the entire market in tires, batteries and accessories." 381 U.S. 357 at 371 (1966). Thus, to the extent the Commission's decision rests on an analysis of vertical restraints, it appears that this change of law also requires reopening the order.

Id. at 7.

The same conclusion applies to Goodyear. There have been no subsequent developments in the antitrust law that would warrant a different outcome, therefore the Order is reopened as to Goodyear also.

The Order Will Be Set Aside

Having concluded that changes of law warrant reopening the Order, the question remains whether modification of the Order is appropriate. An order is not set aside automatically on the grounds that the law has changed, even if, as here, the Commission refused to consider issues that later become mandatory. Having satisfied itself on a record of adequate proof under then prevailing standards, the Commission does not have to reprove its case to maintain a final order. The Order remains in force unless the requester can show either that there is no basis in current law on which such a case could be brought and no need for the Order or that the current effect of the Order is detrimental to competition. *See, Louisiana Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986).

In the context of this request, Goodyear has made no showing of harm to competition resulting from the restraints the Order imposes on it. It must, therefore, persuade the Commission that there is no need for the Order. Goodyear urges that the Commission's decision setting aside the Order as to Arco made the findings necessary when it determined that "gas stations as a group, and Arco in particular, probably have too small a market share to produce substantial competitive effects on TBA distribution." Order Setting Aside at pp. 7–8. The Commission's decision noted that the market share of gas stations had declined from 37 percent in 1961 to sales of "8 percent of replacement tires in 1987." Order Setting Aside at n. 3.

Goodyear's request may appear to deserve a closer look at possible competitive effects, because it has a much larger share of the TBA market than Arco, or all gas stations, and Goodyear could augment that share through agreements with marketing oil companies. Goodyear concedes that it produces a substantial share of replacement tires in the American market, including tires sold by gas stations. (Goodyear's share of the battery and accessories market is negligible. Request at n. 10.)

However, even if Goodyear were to capture all tire sales to gas stations that would not satisfy the standard for unlawful tying set out in *Fortner, supra.* An unlawful tie requires the existence of a tying product that has market power and use of that market power to tie the sale of the tied product. *See also Jefferson Parish Hospital District No. 2 v. Hyde*, 446 U.S. 2 (1984). In this Order, the gas station franchise is the tying product, not tires.

In any case, gas station franchises do not appear at this time to have the potential to create market power in the sale of tires. Their once substantial share has been lost to mass marketers and specialty automotive stores. *See* Arco Request, Tables 1 and 2. As a result, if Goodyear were to engage in the activities currently prohibited by the Order, it appears that there is little prospect that such activities could diminish competition. There is, therefore, no need to maintain the Order.

Accordingly, *it is ordered* that this matter be reopened and that the Commission's order in Docket No. 6486 issued on March 9, 1961, be set aside as to Goodyear as of the date of this Order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-22977 Filed 9-27-90; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9040]

The Kroger Co.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the 1977 consent order (90 FTC 459) which, with certain limitations, required respondent to keep advertised sale items on hand and to sell them at no more than the advertised price. Respondent's petition was based on the 1989 amendment to the Commission's Retail Food Store Advertising & Marketing Practices Rule (the "Unavailability Rule"). The Commission concluded that its action in amending the Unavailability Rule constituted a changed condition of law and fact, requiring that the proceeding be reopened and the order modified.

DATES: Consent Order issued November 11, 1977. Modifying Order issued August 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jerry McDonald, FTC/S-4631, Washington, DC 20580. (202) 326-2971.

SUPPLEMENTARY INFORMATION: In the Matter of The Kroger Co. The prohibited trade practices and/or corrective actions, as set forth at 42 FR 62912, are changed.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Deborah K. Owen.

Order Reopening the Proceeding and Modifying Cease and Desist Order

In the matter of The Kroger Co., a corporation.

On April 23, 1990, The Kroger Co., a corporation, filed a request to reopen the proceeding and modify the consent order entered against it by the Commission on November 11, 1977, in Docket No. 9040 (90 FTC 459).

The request to reopen the proceeding and modify the consent order was placed on the public record on April 23, 1990, and a press release regarding the request was issued on May 10, 1990. The public comment period ended on June 11, 1990, and no comments were filed. On July 31, 1990, Petitioner withdrew its request that part III.A.(1) of the consent order be deleted. The deadline to rule on Petitioner's request was August 21, 1990.

Petitioner is one of the nation's largest food retailers. The order prohibits it from failing to have advertised items readily available for sale, from failing to mark each item with a price no higher than the advertised price, and from failing to sell each item at a price no higher than the advertised price. Petitioner may, however, avoid liability for its failure to comply with these proscriptions if it discloses in its sale advertisements specific exceptions, limitations or restrictions with respect to store, item and price. Petitioner must also maintain a continuing surveillance program which entails surveys of its stores to ascertain the rates of unavailability, over price marking and overcharging. Defenses and presumptions applicable to those defenses are based on tolerance levels of unavailability, over price marking and overcharging.

The order also requires Petitioner to post in each of its stores a copy of its advertisement and a statement that all items advertised are required to be available for sale at or below the advertised price, except as specifically noted in the advertisement. The statement must also advise consumers that a raincheck may be obtained if an item is unavailable. Additionally, Petitioner's advertisements for sale items must disclose that each item is required to be available, except as specifically noted in the advertisement. Petitioner is further required by the order to deliver a copy of the order to specified supervisory employees.

Petitioner's Request

Petitioner requests that the Commission reopen and modify the order so that it is not inconsistent with the Commission's Retail Food Store Advertising and Marketing Practices Rule ("the Rule"), as amended on August 28, 1989. Petitioner states that changes in law, fact and public interest considerations warrant the requested relief.

Petitioner state that the Commission's action in amending the Rule constitutes a change of law and fact requiring that the order be reopened and modified so that it is not inconsistent with the amended Rule. Both the order and the original Rule required the Petitioner to have advertised items readily available, at or below the advertised prices, and both permitted similar defenses. The amendments permit new defenses to unavailability that were not permitted under the original Rule or the order.

Petitioner relates that it filed a request to reopen the proceeding and vacate the order on July 1, 1988, which was based on similar alleged changes and public interest considerations as in the instant request. It states that the Commission denied its request on August 18, 1989, because the amendments to the Rule did not constitute changes in law or fact requiring that the order be vacated. The Commission did indicate, however, that changes in the Rule "may require that the order be modified so that it is not inconsistent with the amended Rule." Petitioner quotes from the Commission's letter advising it of its denial of the request:

> It may be in the public interest, however, to reopen and modify the order to enable Petitioner, and ultimately the consumer, to benefit from the Rule's amendments."

Under the amended Rule, Petitioner says, rainchecks, items of comparable value, other compensation of equivalent value and general disclaimers of limited availability of advertised items will provide an "absolute defense" to its competitors, while Petitioner will be subject to higher costs. When it consented to the order, Petitioner states, it could not have forseen that its competitors "would be relieved of any realistic concern about potential penalties and would consequently be spared from the excessive costs of ensuring compliance."

Pointing out the inconsistencies between the order and the amended Rule, Petitioner states that, if the order is not modified, it will be left in the position or violating the order by complying with the amended Rule of violating the amended Rule by complying with the order. As an illustration, Petitioner says that parts I and III of the order would not permit it to follow the amended Rule's standards regarding advertising items in limited supply. Conversely, it says that it would violate the amended Rule if it refused to offer substitutes for out-of-stock items even though such refusal would be in compliance with the order if it was within the tolerance levels permitted by the order.

Petitioner is also asking that specified provisions of the order that were never part of the Rule be stricken from the order. It argues that the advertising disclosure and store notices relating to availability, which are required by the order, are inconsistent with the amended Rule since they do not reflect the defenses to unavailability provided by the amendments.

Petitioner states that the provisions of the order requiring a surveillance program, entailing surveys of its stores to determine levels of unavailability, will not be needed if the order is modified so that it is not inconsistent with the amended Rule. Under the amended Rule, Petitioner maintains, compliance may be achieved through advertising disclosures of limited availability, or by offering rainchecks, comparable items or other compensation for unavailable items.

Petitioner argues that surveillance and surveys of pricing impose heavy burdens that are inconsistent with the "fundamental functions" of the amended Rule to eliminate costs. Because of the widespread use of scanners, Petitioner says, it "would necessitate examination, correlation and recordation of every 'identification code' and associated 'display' prices for many, if not most advertised items." "In addition", Petitioner continues, "audits would be needed to calculate and document the 'ultimate price' in transactions involving total dollar purchase, couponing or other promotional items."

Arguing that it is in the public interest to reopen and modify the order as requested, Petitioner notes that it estimated in its prior request that the order be vacated that compliance with the original Rule and the order costs it approximately $7 million per year and that, if it were required to comply only with the amended Rule, these costs could be reduced by $3 to $4 million. If it is compelled to endure these "costly compliance measures while other food retailers are free of them", Petitioner states, "its competitive effectiveness will be impaired." The consequences, it says, will be detrimental to consumers served by its 11,400 supermarkets throughout the United States.

The Commission's Decision

Under section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), the Commission must reopen an order to consider whether it should be altered, modified or set aside if a respondent files a request that makes a satisfactory showing that changed conditions of law or fact require the order to be altered, modified or set aside in whole or in part. This provision also permits the Commission to reopen an order for the purpose of altering, modifying or setting aside some or all of its terms whenever it believes that such an action would be required in the public interest. Rule 2.51(b) of the Commission's Rules of Practice implements this provision of law and states that to be satisfactory, a request may not be "merely conclusory" but must "set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modifications."

The Commission has concluded that its action in amending the Retail Food Store Advertising and Marketing Practices Rule constitutes a changed condition of law and fact, requiring that the order be reopened and modified. When Petitioner entered into the consent order, the original Rule was in effect and it and its competitors were subject to civil penalty liability for failing to have advertised specials available at or below the advertised prices. Similar defenses were provided for Petitioner under the order and for its competitors under the Rule. With the amendments to the Rule, which it could not have foreseen when it entered into the consent order, Petitioner is no longer in the same position as its competitors because it may not avail itself of the same defenses that they may invoke. In addition, the amendments to the Rule have brought the terms of the order into conflict with that Rule.

On August 28, 1989, the Commission amended the Rule in order to reduce costs on the retail food store industry that are passed along to consumers. The Commission concluded that the amended Rule would not significantly reduce consumer protection because instances of unavailability would be mitigated by the amended Rule's

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requirement that consumers be offered rainchecks or comparable substitute items. The Commission believes that it is in the public interest that Petitioner, and ultimately its customers, should be entitled to the cost savings that the amended Rule will provide.

A separate prohibition in the original Rule against failing to have advertised specials available at or below the advertised prices was omitted from the amended Rule. However, over pricing continues to be prohibited by the amended Rule since it is implicit in the requirement that products offered for sale at a stated price be available. This will be true even if the pricing provisions of the order are eliminated to coincide with the amended Rule. The order also has pricing proscriptions. The order also requires Petitioner to maintain a program of surveillance, including surveys to its individual stores, with tolerance levels for over price marking and overcharging. The Commission believes that such costly procedures are inconsistent with the amended Rule's stated purpose of reducing compliance costs.

The Commission is persuaded by the Petitioner's argument that the order's costly compliance procedures to protect against unacceptable levels of unavailability will not be needed when the order is modified so that it is not inconsistent with the amended Rule. The amendments will enable Petitioner to comply with the order by disclosing limited availability in its advertising or by offering "rainchecks", comparable items or other compensation in unexpected instances of unavailability. Petitioner has shown that provisions of the order requiring disclosures in advertisements and the posting of statements in Petitioner's stores concerning unavailability and pricing are inconsistent with the amended Rule and should be stricken from the order.

Conclusion

Petitioner has demonstrated that changed conditions of law and fact, and public interest considerations require that the proceeding be reopened and the order modified as requested.

It is therefore ordered that the proceeding is hereby reopened and the Decision and Order issued on November 11, 1977, is hereby modified to read as follows:

Order

Definitions: For purposes of this order, "respondent" means The Kroger Co., a corporation, its successors or assigns, its officers, agents, representatives and employees.

For purposes of this order, "retail food store" shall mean all of respondent's food stores, but shall not include convenience stores (stores less than 4,000 square feet in total area) and drug stores.

I. Prohibited Activities

It is ordered that respondent, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of food or grocery products or other merchandise, hereafter sometimes referred to as items, offered or sold in its retail food stores, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

Offering any such products for sale at a stated price, by means of an advertisement disseminated in an area served by any stores which are covered by the advertisement, if these stores do not have the advertised products in stock and readily available to customers during the effective period of the advertisement, unless the advertisement clearly and adequately discloses that supplies of the advertised products are limited or the advertised products are available only at some outlets;

Provided, however, that no violation of this modified order shall be found if respondent

(a) Ordered the advertised products in adequate time for delivery in quantities sufficient to meet reasonably anticipated demand;

(b) Offers a "raincheck" for the advertised product;

(3) Offers at the advertised price or at a comparable price reduction a similar product that is at least comparable in value to the advertised product; or

(d) Offers other compensation at least equal to the advertised value.

II. Additional Obligations of Respondent

It is further ordered:

A. That throughout each advertised sale period in each of its retail food stores covered by an advertisement, respondent shall post a copy of the advertisement conspicuously (1) At or near each doorway affording entrance to the public, and (2) at or near the place where customers pay for merchandise.

B. Respondent shall forthwith deliver a copy of this order to each of its operating divisions and to each of its present and future officers and other personnel in its organization down to the level of and including assistant store managers who, directly or indirectly, have any supervisory responsibilities relating to (a) Availability or price marking of advertised items in respondent's retail food stores, and (b) check stand operations, or who are engaged in any aspect of preparation, creation, or placing of advertising, and respondent shall secure a signed statement acknowledging receipt of said order from each such person.

C. Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondent which may affect compliance obligations arising out of this order.

D. At such times as the Commission may require, respondent shall file a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-22978 Filed 9-27-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the package submitted to OMB since the last publication on August 10, 1990.

(For a copy of a package, call the FSA, Report Clearance Officer 202-252-2604).

Worksheet for Integrated AFDC, Adult, Food Stamps and Medicaid Quality Control Reviews—FSA-4340—0970-0072—The integrated worksheet serves to document the findings of state quality control reviewers who review the correctness of a sample of eligibility decisions made by the states for the AFDC, Food Stamp and Medicaid programs. The findings are used to identify areas where corrective action is needed. Respondents: State or local governments; Number of Respondents: 63,000; Frequency of Response: 1; Average Burden per Response: 11.0236 hours; Estimated Annual Burden: 694,487 hours.

OMB Desk Clearance Officer: Shannah Koss McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: September 19, 1990.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems.

[FR Doc. 90-22980 Filed 9-27-90; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Arkansas Micro Specialties; Simonsen Mill-Rendering Plant, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's), one held by Simonsen Mill-Rendering Plant, Inc., for the use of a tylosin Type A medicated article, and two held by Arkansas Micro Specialties, one for the use of a tylosin Type A medicated article and the second for the use of a tylosin/sulfamethazine Type A medicated article. The firms requested withdrawal of approval of the NADA's. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending its animal drug regulations to remove those portions reflecting approval of the applications.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Simonsen Mill-Rendering Plant, Inc., Box 157, Quimby, IA 51049, is the sponsor of NADA 96-776 which provides for the use of a tylosin Type A medicated article to make a Type C medicated swine feed. By letters of October 23, 1989, and July 23, 1990, FDA was informed that the firm no longer manufactures the product and wishes to withdraw approval of the NADA.

Arkansas Micro Specialties, Inc., Highway 71 North, P.O. Box 308, Lowell, AR 72745, is the sponsor of NADA 139-609 which provides for the use of a tylosin Type A medicated article to make a Type C medicated swine, beef cattle, and chicken feed, and NADA 139-601 which provides for the use of a tylosin/sulfamethazine Type A medicated article to make a Type C medicated swine feed. In its reports of January 3, 1990, the firm requested withdrawal of approval of the NADA's.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 96-776, 139-600, and 139-601 and all supplements and amendments thereto is hereby withdrawn, effective October 9, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is amending 21 CFR 510.600 (c)(1) and (c)(2), 556.625 (b)(26) and (b)(86), and 558.630(b)(10) to reflect the withdrawal of approval of the NADA's.

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-23039 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

Countrymark, Inc.; Nutri-Basics, Co.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's), one held by Countrymark, Inc., for the use of a tylosin Type A medicated article, and another held by Nutri-Basics Co. for the use of a tylosin/sulfamethazine Type A medicated article. The firms requested withdrawal of approval of the NADA's. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending its regulations to reflect the withdrawal of these approvals.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammed I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Countrymark, Inc., 4585 Columbus Pike, P.O. Box 1208, Delaware, OH 43015-1208, formerly The Ohio Farmers Grain and Supply Association, 455 West 48th St., P.O. Box M, Fostoria, OH 44830, is the sponsor of NADA 137-051, which provides for the use of a tylosin Type A medicated article to make Type C medicated swine, beef cattle, and chicken feeds. By letter dated June 2, 1988 (received October 20, 1989), the firm requested withdrawal of approval of the NADA.

Nutri-Basics Co., P.O. Box 5406, 3801 North Hawthorne, Chattanooga, TN 37406, formerly Southern Micro-Blenders, Inc., is the sponsor of NADA 138-453, which provides for the use of a tylosin/sulfamethazine Type A medicated article to make a Type C medicated swine feed. By letter dated March 19, 1990, the firm requested withdrawal of approval of the NADA.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA's 137-051 and 138-453 and all supplements and amendments thereto is hereby withdrawn, effective October 9, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is amending 21 CFR 510.600 (c)(1) and (c)(2), 558.625(b)(82), and 558.630(b)(10) of the regulations to reflect the withdrawal of these approvals.

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-23035 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

Fort Dodge Laboratories; Withdrawal of Approval of a New Animal Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Fort Dodge Laboratories. The NADA provides for the use of a dichlorophene/toluene capsule in dogs and cats as an anthelmintic. The firm requested withdrawal of approval. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending the animal drug regulations by removing the regulation reflecting the approval.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for

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Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Fort Dodge, IA 50501, is the sponsor of NADA 101-715, which provides for the use of Trivex (dichlorophene/toulene) Worm Capsule. The product is indicated for the removal of ascarids and hookworms and as an aid in removing tapeworms from dogs and cats. The NADA was approved on April 2, 1976.

By letter dated February 5, 1990, the sponsor requested the agency to withdraw the approval because the product is no longer being manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 101-715 and all supplements thereto is hereby withdrawn, effective October 9, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is amending 21 CFR 520.580(b)(1) to reflect the withdrawal of approval of the NADA.

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-23037 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

Decoquinate for Use in Sheep; Availability of Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of limited human safety and environmental data to be used as partial support of a new animal drug application (NADA) or supplemental NADA for the use of decoquinate in Type C medicated sheep feed. The data, contained in Public Master File (PMF) 5258, were compiled under Interregional Research Project No. 4 (IR-4), a national agriculture program for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESSES: Submit NADA's to the Document Control Section (HFV-199), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Decoquinate, when used in sheep feed, is a new animal drug under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, decoquinate is subject to section 512 of the act (21 U.S.C. 360b). Therefore, its uses in sheep must be covered by an approved NADA or supplemental NADA. The IR-4 Project, Northeastern Region, New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853-6401, has filed data gathered from metabolism studies involving the use of decoquinate in chickens, quail, heifers, and sheep. The purpose of the studies is to furnish limited human food safety data to provide partial support for agency approval of the use of decoquinate in finished feed for the prevention of coccidiosis in sheep. (As noted below, effectiveness and other data for this use are required to obtain NADA or supplemental NADA approval.) The human food safety studies provided for this PMF were funded by FDA's Center for Veterinary Medicine.

IR-4 also provided an environmental assessment of possible impacts at the site of use of the animal drug product.

The data and information submitted by IR-4 are contained in PMF 5258. Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF to support approval. An NADA or supplemental NADA must include, in addition to a reference to the PMF (and, if necessary, authorized reference to data in previously approved NADA's), drug labeling, and other information needed for approval, such as data concerning target animal safety and effectiveness, human food safety, manufacturing methods, facilities and controls, and an abbreviated environmental assessment addressing the potential environmental impacts of the manufacturing process. More information concerning the PMF or requirements for approval of an NADA may be obtained from the contact person (address above).

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of the human food safety data submitted to this PMF may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-22966 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0255]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Texas Supermarkets Dairy Production, Inc., to test market a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 27, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, Dc 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Texas Supermarkets Dairy Production, Inc., 10010 Clay Rd., Houston, TX 77080.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1.5 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer consumers a product that is nutritionally equivalent but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ fewer calories" and "75% less fat than regular eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 18,000 ½-gallons (1,500 cases) and 24,000 quarts (1,000 cases) of the test product. The test product is to be manufactured at Texas Supermarkets Dairy Production, Inc., 10010 Clay Rd., Houston TX 77080, and will be distributed in south central and east Texas.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 27, 1990.

Dated: September 18, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-22967 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Veterinary Medicine Advisory Committee

Date, time, and place. October 31, 1990, 8:30 a.m., and November 1, 1990, 8 a.m., Versailles I, Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, October 31, 1990, 8:30 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4:30 p.m.; open committee discussion, November 1, 1990, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 11:30 a.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV-244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0830.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should communicate with the contact person.

Open committee discussion. The committee will discuss animal drug screening methods, the role of the Veterinary Medicine Advisory Committee, and limiting salmonella exposure of food animals.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in wirting, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 20, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22954 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

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Health Care Financing Administration

[BPO-092-GNC]

Criteria and Standards for Evaluating Intermediary and Carrier Performance

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program beginning October 1, 1990. The results of these evaluations are considered whenever HCFA enters into, renews, or terminates an intermediary agreement or carrier contract or takes other contract actions; assigns or reassigns providers of services to an intermediary; or designates regional or national intermediaries.

This notice is published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act, which requires us to publish for public comment in the **Federal Register** those criteria and standards against which we evaluate intermediaries and carriers.

DATES: *Effective Date:* The criteria and standards are effective October 1, 1990. We will consider revising the criteria and standards based on public comments. Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. (EDT) on October 29, 1990.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-092-GNC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPO-092-GNC. Comments will be available for public inspection as they are received, generally beginning approximately three weeks after publication, in Room 309-G of the Department's office at 200 Independence Avenue, SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Lawrence R. Pratt, (301) 966-7403.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 1816 of the Social Security Act, public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations, known as fiscal intermediaries, perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of the beneficiaries.

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the payable amount (usually on the basis of reasonable charges) for the services or supplies and then make payment to the appropriate party.

Under section 1816(f) of the Act, we are required to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement with us. We evaluate intermediary performance through the Contractor Performance Evaluation Program (CPEP). Our regulations at 42 CFR 421.120 and 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards prior to implementation.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract with us. Since 1981, we have evaluated carrier performance under CPEP using criteria and standards similar to those used for intermediaries. Under section 1842(a) of the Act, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1816 are in effect, to perform some or all of the Medicare Part B functions.

As a result of section 2326(c) of Public Law 98-369, the Deficit Reduction Act of 1984 (DEFRA), we publish in the **Federal Register** the criteria and standards used to evaluate both intermediaries and carriers in order to allow the public an opportunity to comment before implementing the criteria and standards. This notice announces the criteria and standards to be used to measure the effectiveness and efficiency of both intermediaries and carriers, beginning October 1, 1990. The criteria and standards applicable until October 1, 1990 were published in the **Federal Register** May 2, 1990, (55 FR 18391).

B. Incentive Payments to Carriers

This notice also describes the methodology that will be used to award incentive payments to carriers that successfully increase the proportion of physicians in the carrier's service area who are participating physicians, or the proportion of payments to participating physicians. This information is published in accordance with the Omnibus Budget Reconciliation Act of 1987 (OBRA 87, Pub. L. 100-203) which requires us to publish a description of our system for providing payment of a bonus to carriers based on their performance in increasing the proportion of physicians in the carrier's service area who are participating physicians or the proportion of payments for participating physicians' services in their service area.

We intend to issue carrier incentive payments by the September 30 following each annual enrollment period. The amount of these payments will be included in line 10 of the Notice of Budget Approval Form HCFA-1524. In this way, the amount of incentive payments are excluded from all claims processing unit cost calculations since unit costs are one of the measured used under the CPEP to evaluate carriers' acceptable performance in claims processing.

Section 2306 of DEFRA established the Medicare participating physician program. Participating means accepting assignment on all Medicare claims. Accepting assignment means physicians accept Medicare's approved charge as full payment. The main goal of the program is to reduce the impact of medical costs upon beneficiaries by establishing incentives for physicians to accept assignment on all Medicare claims. The provisions give all physicians an opportunity annually to enroll or disenroll as a Medicare participating physician.

Section 9332(a) of Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), and section 4085(i)(21)(B) of OBRA 87 require Medicare carriers to implement programs to recruit and retain physicians as participating physicians. These programs include educational and outreach activities and the use of profressioal relating to payment of claims of participating physicians; and programs to familiarize beneficiaries with the participating physicians; and programs to familiarize beneficiaries with the participating physician program and to assist the beneficiaries inlocating participating physicians.

We intend to pay incentive bonuses to any carrier that achieved an increase of at least one-tenth of one percent in the participating physicians rate or proportion of total payments for participating physicians' services in the carrier's total service area. As required by section 9332(a) of OBRA 86 and section 4085 of OBRA 87, the amount of the total incentive payable to carriers is one percent of their total claims processing costs for the fiscal year. The total incentive pool is calculated by summing the total claims processing costs reported by each carrier in the fiscal year and multiplying the total by one percent.

For the purpose of determining each carrier's eligiblity for an incentive payment, we make two comparisons. We compare the carrier's physician participation rate after the latest enrollment period with its physician participation rate after the prior enrollment date. We make a similar comparison of the proportion of covered charges for services by participating physicians during the quarter following the enrollment period with those of the quarter following the prior enrollment period. We intend to use whichever difference yields the higher percentage increase to determine eligibility for award of the incentive payment.

C. Criteria and Standards—General

We have retained the FY 1990 design of CPEP (Dec 55 FR 18391) and have made changes only where necessary to improve the standards already existing, or to comply with recent legislative mandates. In maintaining the basic design of CPEP, we have retained the same functional criteria for both intermediaries and carriers. For intermediaries, there are 11 separate functional criteria, and for carriers, there are 10. Within each functional criterion we have identified the performance standards which, when measured, will evidence how well each contractor is performing. Each of these standards will fall into one of the three basic key indicators or categories (cost, quality (accuracy of contractor's decisions, correspondence, reports, and documentation) or timeliness).

To the extent possible, we make every effort to publish the criteria and standards prior to the beginning of the Federal fiscal year; *i.e.*, October 1st, in which case the evaluation period which the criteria and standards measure is the Federal fiscal year. If we do not publish a **Federal Register** notice before the new fiscal year begins, readers may presume that until and unless notified otherwise, the criteria and standards which were in effect for the previous fiscal year remain in effect.

In those instances where we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the fiscal year, we reserve the right to publish the criteria and standards notice at any subsequent time during the year. If we choose to publish a notice in this manner, the evaluation period for any such standards and criteria which are the subject of the notice will be revised to be effective no earlier than the first day of the first month following publication. Hence, any revised standards and criteria will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

Also, it is not our intention to revise either the evaluation period or the standards and criteria which will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of Administrative mandate or Congressional action, there may be a need for changes which have direct impact upon the criteria and standards previously published, or which require the addition of new criteria and standards, or which cause the deletion of previously published standards and criteria. Should such changes be necessitated, we will issue a **Federal Register** notice prior to implementation of the changes. The evaluation period for any new standards and criteria or for any standards and criteria which have been changed will not be effective any earlier than the first day of the first month following publication.

In all instances, necessary manual issuances will be published each year to ensure that the criteria and standards are implemented uniformly and accurately. Also, as in previous years due to the time constraints, the **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the standards and criteria.

Action Based on Performance Evaluations

We may initiate administrative actions as a result of the evaluation of intermediary and carrier performance based on these performance criteria and standards. Under sections 1816 and 1842 of the Social Security Act, we consider the results of the evaluation in our determinations on:

1. Entering into, renewing, or terminating agreements or contracts with contractors; and

2. Decisions concerning other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:

a. Relative overall performance compared to other contractors;

b. Number of standards in which superior, average, or deficient performance occurs;

c. Extent of each deficiency; and

d. Relative significance of the standards for which superior or deficient performance occurs within the overall CPEP.

In addition, we consider the results of the intermediary evaluation in determinations we make concerning assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers. We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare Program.

D. Scoring System

For both intermediaries and carriers, the maximum score attainable is 1000 points. Each of the CPEP's functional criteria is assigned a given portion of the 1000 available points. One of the requirements for passing CPEP is that 70 percent of the available points *for each criterion* must be attained.

In addition, within a functional criterion is one or more standards categorized as either a cost, quality, or timeliness measure. Each of the standards is assigned a portion of the total points for that functional criterion. Each standard has a method of evaluation that is used to calculate a rating based on a contractor's performance in that standard. The second requirement for passing CPEP is

that 70 percent of the total points assigned to the cost standards, quality/accuracy standards, and timeliness standards must also be attained.

A contractor's performance is evaluated against each applicable standard. In general, if a contractor exactly meets the passing level established for a standard, it achieves 70 percent of the points (or in a few instances, more than 70 percent of the points) allocated to that standard, to which we refer as the threshold score (the passing level). Any rating below that threshold constitutes a deficiency. The contractor may be required to develop and implement a corrective action plan when performance problems are identified. The contractor will be monitored to assure effective and efficient compliance with the corrective action plan and improved performance where criteria and/or standards are not met.

E. Criteria and Standards for Intermediaries

As stated previously, we will use 11 criteria to evaluate the overall performance of an intermediary. They are: (1) Unit Cost; (2) Process Claims; (3) Audit; (4) Medical Review; (5) Medicare Secondary Payer; (6) Financial Management; (7) Beneficiary and Provider Services; (8) Reporting; (9) Fraud and Abuse; (10) Reimbursement; and (11) Management of Change.

The 11 criteria contain a total of 64 standards. There are 2 for Unit Cost, 6 for Process Claims, 4 for Audit, 5 for Medical Review, 3 for Medicare Secondary Payer, 6 for Financial Management, 5 for Beneficiary and Provider Services, 20 for Reporting, 3 for Fraud and Abuse, 5 for Reimbursement, and 5 for Management of Change.

1. Unit Cost Criterion (Total Points = 95)
An intermediary must process all bills at an acceptable unit cost. We will use the standards below to evaluate the criterion.

Standard 1=75 points. Process bills at an acceptable unit cost. (Cost)

Passing Level and Points

Group 1: Contractors at or below National Average Unit Cost
Actual unit cost is at or below 100% of the FY 1991 NOBA.....75.0

Group 2: Contractors above National Average Unit Cost
Actual unit cost 98.1%–100.0% of the FY 1991 NOBA.....67.5

Standard 2=20 points. Process appeals at an acceptable unit cost. (Cost)

Passing Level and Points

Actual unit costs 100.1%–101% of NOBA.....14.0

2. Process Claims Criterion (Total Points=135)
An intermediary must properly control and process bills from providers. We will use the standards below to evaluate the criterion.

Standard 1=40 points. Pay clean non-periodic interim payment (PIP) bills within mandated timeframes. (Timeliness)

Passing Level and Points

95.0%–97.4% paid within mandated timeframe.....28.0

Standard 2=18 points. Process all bills within 60 days. (Timeliness)

Passing Level and Points

95.0%–95.9% processed within 60 days after the date of receipt.....12.6

Standard 3=18 points. Process all bills within 90 days. (Timeliness)

Passing Level and Points

99.0%–99.3% processed within 90 days after the date of receipt.....12.6

Standard 4=12 points. Control payment of interest on clean bills. (Cost)

Passing Level and Points

Interest maintained at .004%–.007% of benefit payments.....8.4

Standard 5=7 points. Process adjustment records timely and return the adjusted records to the Peer Review Organization (PRO). (Timeliness)

Passing Level and Points

95.0%–97.4% of the adjustments processed and returned to the PRO within 60 days.....4.9

Standard 6=40 points. Process bills accurately. (Quality)

Passing Level and Points

95.0%–96.9% of test claims are accurate.....28.0

3. Audit Criterion (Total Points=100)
An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=20 points. Administer a cost-effective provider audit program. (Cost)

Passing Level and Points

6.00/1–6.99/1 audit return ratio.....14.0

Standard 2=40 points. Perform properly when reviewing, auditing, adjusting, settling, and completing cost reports/statements. (Quality)

Passing Level and Points

85.0%–89.5% of work performed properly.....28.0

Standard 3=24 points. Settle cost reports timely. (Timeliness)

Passing Level (3-part standard) and Points

90.0%–94.9% of hospital cost reports settled timely.	70% of points allocated.
80.0%–89.9% of freestanding HHA cost reports settled timely.	70% of points allocated.
86.9%–92.9% of freestanding SNF cost reports settled timely.	70% of points allocated.

Note: Points are allocated based upon contractor level of effort by provider types.

Standard 4=16 points. Complete work requirements in accordance with budget authority. (Cost)

Passing Level (2-part standard) and Points

90.0%–94.9% of desk reviews completed as budgeted.....5.6

90.0%–94.9% of field audits completed as budgeted.....5.8

4. Medical Review Criterion (Total Points=100)
An intermediary must perform necessary Medical Review (MR) activities as required by HCFA instructions in a timely, accurate, and cost effective manner. We will use the standards below to evaluate the criterion.

Standard 1=40 points. Make accurate coverage determinations. (Quality)

Passing Level and Points

93.7%–97.5% of cases reviewed are accurate.....28.0

Standard 2=10 points. Assure the review of the HCFA mandated level of skilled nursing facility (SNF) demand bills. (Quality)

Passing Level and Points

Intermediary in compliance with all requirements with minor modifications recommended.....7.0

Standard 3=15 points. Apply and update HCFA MR instructions. (Quality)

Passing Level and Points

Minor problems have been identified in the intermediary's compliance with HCFA instructions.....10.5

Standard 4=15 points. Perform budgeted reviews. (Cost)

Passing Level and Points

97.5%–98.9% of overall budgeted reviews and 96% of budgeted reviews for each bill type are performed.....10.5

Standard 5=20 points. Establish and implement appropriate Focused Review Program. (Quality)

Passing Level and Points

In areas where the intermediary has flexibility to select claims for medical review, the intermediary used selection criteria which were based on the collection and analysis of data sufficient to reflect unusual or questionable patterns or trends in the provision of Medicare services. In 80% of all cases the selection criteria were determined to be effective or were modified.....14.0

5. Medicare Secondary Payer Criterion (Total Points=120)
An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=30 points. Achieve Medicare Secondary Payer (MSP) savings goal. (Cost)

Passing Level and Points

If 80% or more of each subgoal is achieved:
Achieved 95.0%–98.8% of targeted MSP goal.....21.0

If less than 80% of any subgoal is achieved:
Achieved 100.0%–105.0% of targeted MSP goal.....21.0

Standard 2=35 points. Maintain and exchange accurate MSP data with the Common Working File (CWF). (Quality)

Passing Level and Points

Contractor has complied with all provisions of part 2, section 2695, of the intermediary manual and has an acceptable level of effort at identification of possible MSP sources.....24.5

Standard 3=35 points. Take actions to prevent inappropriate billings to the Medicare program. (Quality)

Passing Level and Points

Contractor has fully met all manual requirements for preventing inappropriate billings to the Medicare program.....24.5

6. Financial Management Criterion (Total Points=95)
An intermediary must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations (48 CFR chapter 1), the HHS Acquisition Regulations (48 CFR chapter 3), and HCFA instructions. We will use the standards below to evaluate the criterion.

Standard 1=10 points. Ensure that costs are allowable, allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationship. (Quality)

Passing Level and Points

The contractor has implemented or scheduled corrective action for only *minor* changes in its cost accounting system in the agreed upon timeframe.....7.0

Standard 2=15 points. Ensure administrative funds drawn are in line with monthly expenditures. (Quality)

Passing Level and Points

The contractor has made a decrease adjustment on the next administrative draw, within 30 calendar days, following the submission of a monthly Interim Expenditure Report (IER) or a Final Administrative Cost Proposal (FACP), where applicable.....15.0

Standard 3=30 points. Control actual expenditures on lines 1–12 of the HCFA 1523 to the latest approved budget. (Cost)

Passing Level and Points

Total cost Lines 1–12 is less than or equal to 100% of NOBA and the contractor has shifted no more than 5% into or out of any line.....20.0

Standard 4=5 points. Manage the benefit and time accounts properly and in accordance with the Medicare bank agreement. (Quality)

Passing Level and Points

Contractor responds to the Regional Office (RO) request to initiate corrective action.....3.5

Standard 5=10 points. Ensure proper expenditure of Payment Safeguard Funds. (Cost)

Passing Level and Points

Expended at least 96.0% of funds in *each* payment safeguard category.....7.0

Standard 6=5 points. Deposit overpayment refund checks timely. (Timeliness)

Passing Level and Points

Contractor deposited all overpayment refund checks in a timely manner.....5.0

7. Beneficiary and Provider Services Criterion (Total Points=100)
An intermediary must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering such areas as responding to correspondence and processing reconsiderations timely and accurately. We will use the standards below to evaluate the criterion.

Standard 1=35 points. Process reconsiderations accurately. (Quality)

Passing Level and Points

93.8%–95.0% of reconsiderations processed accurately.....24.5

Standard 2=20 points. Process reconsiderations timely. (Timeliness)

Passing Level 3=part standard and Points

75.0%–84.9% of reconsiderations processed in 60 days.....5.6

90.0%–94.9% of reconsiderations processed in 90 days.....4.9

95.0%–98.9% of reconsiderations processed in 120 days.....3.5

Standard 3=25 points. Process correspondence accurately. (Quality)

Passing Level and Points

93.7%–97.5% of correspondence processed accurately.....17.5

Standard 4=15 points. Process correspondence timely. (Timeliness)

Passing Level and Points

93.8%–95.0% of correspondence answered within 30 calendar days.....10.5

Standard 5=5 points. Assure reversal rate on appeals is appropriate. (Quality)

Passing Level and Points

93.8%–95.0% of cases are not in error.....3.5

8. Reporting Criterion (Total Points=85)
An intermediary must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with HHS and HCFA. We will use the standards below to evaluate the criterion.

Standard 1=3 points. Submit accurate Plan of Expenditure (POEs) reports. (Quality)

Passing Level and Points

Two reports containing errors.....2.1

Standard 2=3 points. Submit timely Plan of Expenditure (POEs) reports. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 3 to 4 calendar days late.....2.1

Standard 3=6 points. Submit accurate Interim Expenditure Reports (IERs) and variance analyses. (Quality)

Passing Level and Points

Two reports containing errors.....4.2

Standard 4=6 points. Submit timely Interim Expenditure Reports (IERs) and variance analyses. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 4 to 6 calendar days late.....4.2

Standard 5=2 points. Submit the Final Administrative Cost Proposal (FACP) accurately. (Quality)

Passing Level and Points

Report substantially in compliance with HCFA instructions.....2.0

Standard 6=2 points. Submit the Final Administrative Cost Proposal (FACP) timely. (Timeliness)

Passing Level and Points

Report submitted on or before due date.....2.0

Standard 7=3 points. Submit an accurate budget request. (Quality)

Passing Level and Points

Budget submitted substantially in compliance with budget guidelines.....3.0

Standard 8=3 points. Submit the budget request timely. (Timeliness)

Passing Level and Points

All reports submitted on or before due date.....3.0

Standard 9=3 points. Submit Payment Voucher on Letter of Credit Transmittals (HCFA–1521) and Monthly Contractor Financial Reports (HCFA–1522) accurately. (Quality)

Passing Level and Points

90.0%–94.9% of reports submitted accurately.....2.1

Standard 10=3 points. Submit Payment Voucher on Letter of Credit Transmittals (HCFA–1521) and Monthly Contractor Financial Reports (HCFA–1522) timely. (Timeliness)

Passing Level and Points

6–9 reports submitted after due date.....2.1

Standard 11=1 point. Submit Intermediary Benefit Payment Reports (HCFA–456) accurately. (Quality)

Passing Level and Points

One report containing errors.....0.7

Standard 12=1 point. Submit Intermediary Benefit Payment Reports (HCFA–456) timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 1 to 3 calendar days late.....0.7

Standard 13=6 points. Submit the Contractor Audit and Settlement Report (CASR) timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 1 to 3 calendar days late.....4.2

Standard 14=5 points. Submit an accurate Provider Overpayment Report (POR). (Quality)

Passing Level and Points

93.0%—95.7% of entries accurate.....3.5

Standard 15=6 points. Submit the Provider Overpayment Report (POR) timely. (Timeliness)

Passing Level and Points

93.0%—95.7% of entries submitted timely.....3.5

Standard 16=7 points. Submit Intermediary Workload Report (HCFA–1566) and Quarterly Supplement (HCFA–1566A) timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 4 to 6 calendar days late.....4.9

Standard 17=2 points. Submit accurate Reports of Benefit Savings (Quality)

Passing Level and Points

One report submitted with material error(s).....1.4

Standard 18=1 point. Submit Reports of Benefit Savings timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 1 to 3 days late.....0.7

Standard 19=4 points. Enter reconsideration data timely. (Timeliness)

Passing Level and Points

90.1%—96.5% of data entered into Reconsideration Information Management System (RIMS) timely.....3.0

Standard 20=2 points. Submit provider specific payment data timely. (Timeliness)

Passing Level and Points

Required file is submitted within 15 calendar days of the end of the reporting period and corrections submitted within 10 calendar days of notification.....1.4

9. Fraud and Abuse Criterion (Total Points=70)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=35 points. Detect fraud and abuse situations. (Quality)

Passing Level and Points

Demonstrates basic compliance with minor improvements needed.....24.5

Standard 2=25 points. Develop potential fraud and abuse cases. (Quality)

Passing Level and Points

18–20 sample cases reviewed, 6–7 in error.....17.5

14–17 sample cases reviewed, 4–5 in error.....17.5

8–13 sample cases reviewed, 2–3 in error.....17.5

4–7 sample cases reviewed, 1 in error.....17.5

1–3 sample cases reviewed, 0 in error.....25.0

Standard 3=10 points. Ensure that no payments are made to excluded providers and physicians. (Quality)

Passing Level and Points

Contractor's procedures require minor modifications and corrective action is being, or is scheduled to be, taken.....7.0

10. Reimbursement Criterion (Total Points=80)

An intermediary must administer the program in a manner that achieves maximum savings and costs avoidance for the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=50 points. Establish interim payments to approximate reimbursable costs. (Quality)

Passing Level (3-part standard) and Points

(96.0%)96.9% or (101.3%–101.8%) of Medicare reimbursable costs for hospitals.	70% of points allocated.
(86.0%–88.4%) or (103.1%–104.0%) of Medicare reimbursable costs for freestanding SNFs.	70% of points allocated.
(94.0%–95.4%) or (101.9%–102.5%) of Medicare reimbursable costs for freestanding HHAs.	70% of points allocated.

Note: Points are allocated based upon contractor level of effort by provider type.

Standard 2=15 points. Collect provider overpayments timely. (Timeliness)

Passing Level and Points

30—32 Days.....10.5

Standard 3=5 points. Submit timely cost report data for the Hospital Cost Report Information System (HCRIS). (Timeliness)

Passing Level and Points

93.0%—97.0% of cost reports received timely.....3.5

Standard 4=5 points. Submit accurate cost report data for the Hospital Cost Report Information System (HCRIS). (Quality)

Passing Level and Points

94.0%–97.9% of cost reports submitted accurately.....3.5

Standard 5=5 points. Collect provider overpayments from interim rate adjustments timely. (Timeliness)

Passing Level and Points

22.4–25.0 Days.....3.5

11. Management of Change Criterion (Total Points=87)

An intermediary must take measures to protect the Medicare program and the public interest. It must effectively manage Federal funds for both benefit payments and cost of administration in accordance with HCFA instructions. We will use the standards below to evaluate the criterion.

Standard 1=25 points. Implement Priority I critical tasks accurately. (Quality)

Passing Level and Points

All tasks implemented with only 1 task requiring major changes corrected within the date negotiated with the RO and/or all tasks implemented accurately with no more than 7 tasks requiring minor RO-initiated changes.....17.5

Standard 2=27 points. Implement Priority I critical tasks timely. (Timeliness)

Passing Level and Points

Cumulative late days do not exceed 30.....18.9

Standard 3=10 points. Implement "other tasks" from the HCFA Contractor Task Management Plan accurately. (Quality)

Passing Level and Points

7–10 tasks reviewed, 3 with minor errors.....7.0

2–6 tasks reviewed, 1 with minor errors.....7.0

1 task reviewed, 0 errors.....10.0

Standard 4=10 points. Implement "other tasks" from the HCFA Contractor Task Management Plan timely. (Timeliness)

Passing Level and Points

7–10 tasks reviewed, 3 implemented after due date.....7.0

2–6 tasks reviewed, 1 implemented after due date.....7.0

1 task reviewed, implemented on or before due date.....10.0

Standard 5=15 points. Comply with RO requests and instructions timely. (Timeliness)

Passing Level and Points

Two or more directives not implemented timely but the length of delay(s) did not adversely affect the program initiative(s).....10.5

F. Criteria and Standards for Carriers

We will use 10 criteria to evaluate overall carrier performance. They are: (1) Unit Cost; (2) Process Claims; (3) Medical Review; (4) Medicare Secondary Payer; (5) Pricing and Coding; (6) Financial Management; (7) Beneficiary and Provider Services; (8) Reporting; (9) Fraud and Abuse; and (10) Management of Change. The 10 criteria contain a total of 79 standards. There are 3 for Unit Cost, 12 for Process Claims, 6 for Medical Review, 3 for Medicare Secondary Payer, 8 for Pricing and Coding, 6 for Financial Management, 14 for Beneficiary and Provider Services, 17 for Reporting, 5 for Fraud and Abuse, and 5 for Management of Change.

1. Unit Cost Criterion (Total Points=95)

A carrier must process all claims at an acceptable unit cost. We will use the standards below to evaluate the criterion.

Standard 1=75 points. Process claims at an acceptable unit cost. (Cost)

Passing Level and Points

Group 1: Contractors at or below National Average Unit Cost

Actual unit cost is at or below 100% of the FY 1991 NOBA.....75.0

Group 2: Contractors above National Average Unit Cost

Actual unit cost 98.1%–100.0% of the FY 1991 NOBA.....67.0

Standard 2=10 points. Process appeals at an acceptable unit cost. (Cost)

Passing Level and Points

Actual unit cost 100.1%–101% of NOBA.....7.0

Standard 3=10 points. Process inquiries at an acceptable unit cost. (Cost)

Passing Level and Points

Actual unit cost 100.1%–101% of NOBA.....7.0

2. Process Claims Criterion (Total Points = 156)

A carrier must process Part B Medicare claims to determine allowance or disallowance in accordance with general instructions. We will use the standards below to evaluate the criterion.

Standard 1=20 points. Process clean participating physician claims within mandated timeframes. (Timeliness)

Passing Level and Points

95.0%–97.4% processed within mandated timeframe.....14.0

Standard 2=25 points. Process other clean claims within mandated timeframes. (Timeliness)

Passing Level and Points

95.0%–97.4% processed within mandated timeframe.....17.5

Standard 3=15 points. Process all claims within 60 days. (Timeliness)

Passing Level and Points

95.0%–95.9% processed within 60 days after the date of receipt.....10.5

Standard 4=10 points. Process all claims within 90 days. (Timeliness)

Passing Level and Points

98.5%–98.9% processed within 90 days after the date of receipt.....7.0

Standard 5=10 points. Control payment of interest on clean claims. (Cost)

Passing Level and Points

Interest maintained at .022%–.035% of benefit payments.....7.0

Standard 6=25 points. Maintain satisfactory underpayment deductible error rate. (Quality)

Passing Level and Points

Error rate of .51–.70.....17.5

Standard 7=25 points. Maintain satisfactory overpayment deductible error rate. (Quality)

Passing Level and Points

Error rate of .71–1.00.....17.5

Standard 8=4 points. Update and maintain physician identification system accurately. (Quality)

Passing Level and Points

85.1%–90.0% of physicians accurately identified.....2.8

Standard 9=4 points. Conduct annual survey of group practices. (Quality)

Passing Level and Points

Carrier has conducted an annual survey in compliance with Part 4, section 1005.1 of the Carrier Manual.....4.0

Standard 10=9 points. Update Unique Physician Identification Number (UPIN) Registry accurately. (Quality)

Passing Level and Points

95.0%–97.4% of records accepted.....6.3

Standard 11=4 points. Resolve exceptions from the UPIN Registry timely. (Timeliness)

Passing Level (2-part standard) and Points

Percent of exceptions resolved:

90.0%–94.9% exceptions resolved within 15 days.....2.8

Percent of exceptions pending:

5.1%–10.0% exceptions pending 30 days or more.....2.8

The point totals for each part of this standard are averaged to arrive at the standard's total points.

Standard 12=5 points. Generate Explanations of Medicare Benefits (EOMBs) properly. (Quality)

Passing Level and Points

Error rate of 0.4–2.0.....3.5

3. Medical Review Criterion (Total Points = 125)

A carrier must perform necessary Medical Review (MR) activities in accordance with HCFA instructions accurately, timely, and in a cost-effective manner. We will use the standards below to evaluate the criterion.

Standard 1=30 points. Make accurate coverage decisions based on carrier's guidelines. (Quality)

Passing Level and Points

93.7%–97.5% of cases reviewed are accurate.....21.0

Standard 2=12 points. Administer a cost effective Medical Review (MR) program. (Cost)

Passing Level and Points

$5.00/1–$6.00/1 Medical Review return ratio.....8.4

Standard 3=30 points. Conduct an effective postpayment program. (Quality)

Passing Level and Points

Carrier in compliance with all requirements.....21.0

Standard 4=15 points. Apply appropriate HCFA MR policies. (Quality)

Passing Level and Points

Carrier in compliance with all but one significant requirement.....10.5

Standard 5=30 points. Develop effective medical coverage guidelines. (Quality)

Passing Level and Points

Carrier in compliance with all requirements.....21.0

Standard 6=8 points. Issue physician profile notices. (Quality)

Passing Level and Points

Carrier in compliance with all but one significant requirement.....5.6

4. Medicare Secondary Payer Criterion (Total Points=80)

A carrier must administer the Medicare program in a manner that achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=30 points. Achieve Medicare Secondary Payer (MSP) savings goal. (Cost)

Passing Level and Points

Achieved 95.0%—95.9% of targeted MSP goal.....21.0

Standard 2=30 points. Maintain and exchange accurate MSP data with the Common Working File (CWF). (Quality)

Passing Level and Points

Contractor has complied with all provisions of Part 3, section 4307 of the Carrier Manual, and has an acceptable level of effort for identification of possible MSP sources.....21.0

Standard 3=20 points. Take actions to prevent inappropriate claims to the Medicare program. (Quality)

Passing Level and Points

Contractor has fully met all manual requirements for preventing inappropriate payments to the

Medicare program.....14.0

5. Pricing and Coding Criterion (Total Points=100)

A carrier must accurately determine the amount of program payments allowed for covered services. We will use the standards below to evaluate the criterion.

Standard 1=30 points. Install and implement appropriate pricing accurately for Medicare covered new and cross-refereaced HCFA Common Procedure Coding System (HCPCS) codes. (Quality)

Passing Level and Points

93.7%–97.5% of the codes correct.....14.0

Standard 2=10 points. Install HCPCS annual update timely. (Timeliness)

Passing Level and Points

Update installed on or before the due date.....10.0

Standard =25 points. Perform reasonable charge determinations accurately. (Quality)

Passing Level and Points

Complied with all but 2 requirements.....17.5

Standard 4=5 points. Properly calculate physician fee schedules. (Quality)

Passing Level and Points

Fee schedules calculated correctly.....5.0

Standard 5=10 points. Properly calculate fee schedule for non-physician services. (Quality)

Passing Level and Points

Complied with all requirements.....10.0

Standard 6=5 points. Properly calculate special limits. (Quality)

Passing Level and Points

Complied with all requirements.....5.0

Standard 7=15 points. Update reasonable charges and install by due date. (Timeliness)

Passing Level and Points

Reasonable charge screens updated after the due date but before any claims with dates of service on or after the due date are paid.....10.5

Standard 8=10 points. Install correction of reasonable charge screens by RO due date. (Timeliness)

Passing Level and Points

No errors to correct or errors corrected on or before the RO due date.....10.0

6. Financial Management Criterion (Total Points=65)

A carrier must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both benefit payments and the cost of administration in accordance with its contract with the Secretary, the Federal Acquisition Regulations (48 CFR Chapter 1), the HHS Acquisition Regulations (48 CFR Chapter 3), and HCFA instructions. We will use the standards below to evaluate the criterion.

Standard 1=10 points. Ensure that costs are allowable, allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationship. (Quality)

Passing Level and Points

The contractor has implemented or scheduled corrective action for only *minor* changes in its cost accounting system in the agreed upon timeframe.....7.0

Standard 2=15 points. Ensure administrative funds drawn are in line with monthly expenditures. (Quality)

Passing Level and Points

The contractor has made a decrease adjustment on the next administrative draw, within 30 calendar days, following the submission of a monthly Interim Expenditure Report (IER) or a Final Administrative Cost Proposal (FACP), where applicable.....15.0

Standard 3=20 points. Control actual expenditures on lines 1–11 of HCFA 1523 to the latest approved budget. (Cost)

Passing Level and Points

Total cost lines 1–11 is less than or equal to 100% of NOBA and the contractor has shifted no more than 5% into or out of any line.....20.0

Standard 4=5 points. Manage the benefit and time accounts properly and in accordance with the Medicare bank agreement. (Quality)

Passing Level and Points

Contractor responds to RO request to initiate corrective action.....3.5

Standard 5=10 points. Ensure proper expenditure of Payment Safeguard Funds. (Cost)

Passing Level and Points

Expended at least 95.0% of funds in *each* payment safeguard category.....7.0

Standard 6=5 points. Deposit overpayment refund checks timely. (Timeliness)

Passing Level and Points

Contractor deposited all overpayment refund checks in a timely manner.....5.0

7. Beneficiary and Provider Services Criterion (Total Points=150)

A carrier must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering areas such as responding to correspondence, issuing notices of determinations, and providing impartial reviews. We will use the standards below to evaluate the criterion.

Standards 1=15 points. Maintain proper level of telephone service. (Timeliness)

Passing Level and Points

17 reports received with all trunks busy (ATB) level at or below 20%.....10.5

Standard 2=10 points. Respond timely to telephone inquiries. (Timeliness)

Passing Level and Points

95.0%–97.4% answered within 120 seconds.....7.0

Standard 3=25 points. Complete reviews accurately. (Quality)

Passing Level and Points

89.8%–95.0% of reviews completed accurately.....17.5

Standard 4=10 points. Furnish readable notice to beneficiary of review determinations. (Quality)

Passing Level and Points

89.8%–95.0% of notices with FOG index below 8th grade level.....7.0

Standard 5=20 points. Complete review timely. (Timeliness)

Passing Level and Points

95.0%–97.0% of reviews completed within 45 calendar days.....14.0

Standard 6=20 points. Respond accurately to correspondence. (Quality)

Passing Level and Points

93.7%–97.5% of correspondence answered accurately.....14.0

Standard 7=10 points. Furnish readable response to beneficiary correspondence. (Quality)

Passing Level and Points

89.8%–95.0% of responses with FOG index below 8th grade level.....7.0

Standard 8=10 points. Respond timely to all correspondence. (Timeliness)

Passing Level and Points

89.8%–95.0% of correspondence answered within 30 calendar days.....7.0

Standard 9=5 points. Send out participation letters and reasonable charge/Maximum Allowable Actual Charge (MAAC) disclosure information timely to physicians and suppliers. (Timeliness)

Passing Level and Points

Letters and disclosure information sent within 5 days of due date.....3.5

Standard 10=5 points. Prepare the Medicare Participating Physician/Supplier Director (MEDPARD) timely. (Timeliness)

Passing Level and Points

MEDPARD prepared within 5 days of due date.....3.5

Standard 11=5 points. Determine liability and properly dispose of beneficiary overpayment cases. (Quality)

Passing Level and Points

85.1%–90.0% of cases properly handled.....3.5

Standard 12=5 points. Determine liability and properly dispose of physician/supplier overpayment cases. (Quality)

Passing Level and Points

85.1%–90.0% of cases properly handled.....3.5

Standard 13=5 points. Complete carrier hearings timely. (Timeliness)

Passing Level and Points

90.0%–95.0% of hearings completed within 120 calendar days.....3.5

Standard 14=5 points. Furnish a complete hearing decision letter. (Quality)

Passing Level and Points

1–7 sample cases reviewed, 0 in error.....5.0

8–16 sample cases reviewed, 1 in error.....3.5

17–32 sample cases reviewed, 2–3 in error.....3.5

33–48 sample cases reviewed, 4–5 in error.....3.5

49–60 sample cases reviewed, 6–8 in error.....3.5

8. Reporting Criterion (Total Points=64)

A carrier must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with HHS and HCFA. We will use the standards below to evaluate the criterion.

Standard 1=3 points. Submit accurate Plan of Expenditure Reports (POEs). (Quality)

Passing Level and Points

Two reports containing errors.....2.1

Standard 2=3 points. Submit timely Plan of Expenditure Reports (POEs). (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 3 to 4 calendar days late.....2.1

Standard 3=9 points. Submit accurate Interim Expenditure Reports (IERs) and variance analyses. (Quality)

Passing Level and Points

Two reports containing errors.....4.2

Standard 4=6 points. Submit timely Interim Expenditure Reports (IERs) and variance analyses. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative tool of 4 to 6 calendar days late.....4.2

Standard 5=2 points. Submit the Final Administrative Cost Proposal (FACP) accurately. (Quality)

Passing Level and Points

Reports substantially in compliance with HCFA instructions.....2.0

Standard 6=2 points. Submit the Final Administrative Cost Proposal (FACP) timely. (Timeliness)

Passing Level and Points

Report submitted on or before due date.....2.0

Standard 7=3 points. Submit an accruate budget request. (Quality)

Passing Level and Points

Budget submitted substantially in compliance with budget guidelines.....3.0

Standard 8=2 points. Submit the budget request timely. (Timeliness)

Passing Level and Points

All reports submitted on or before due date.....3.0

Standard 9=4 points. Submit Payment Voucher on Letter of Credit Transmittals (HCFA–1521) and Monthly Contractor Financial Reports (HCFA–1522) accurately. (Quality)

Passing Level and Points

90.0%–94.9% of reports submitted accurately.....2.8

Standard 10=4 points. Submit Payment Voucher on Letter of Credit Transmittals (HCFA–1521) and Monthly Contractor Financial Reports (HCFA–1522) timely. (Timeliness)

Passing Level and Points

6–9 reports submitted after due date.....2.8

Standard 11=7 points. Submit Carrier Performance Report (HCFA–1565) and Quarterly Supplements (HCFA–1565A and HCFA 1565C) timely (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 4 to 6 calendar days late.....4.9

Standard 12=2 points. Submit accurate Quarterly Medical Review Reports. (Quality)

Passing Level and Points

Report submitted with one statistical error.....1.4

Standard 13=1 point. Submit Quarterly Medical Review Reports timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 1 to 3 calendar days late.....0.7

Standard 14=3 points. Accurately enter data on physician/supplier overpayments into the Physician/Supplier Overpayment Report (PSOR). (Quality)

Passing Level and Points

93.7%–97.5% of overpayment data accurately entered into PSOR.....2.1

Standard 15=3 points. Submit timely physician/supplier overpayment data. (Timeliness)

Passing Level and Points

93.7%–97.5% of overpayments entered into the Physician/Supplier Overpayment Report system within 10 calendar days of the date of determination.....2.1

Standard 16=6 points. Submit Part B Medicare (BMAD) files timely. (Timeliness)

Passing Level and Points

All BMAD files submitted on or before the required due dates with one requiring resubmittal *and* the resubmittal returned within 21 calendar days and accepted.....5.6

Standard 17=4 points. Submit Carrier Appeals Report (HCFA–2390) timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 4 to 6 calendar days late.....2.8

9. Fraud and Abuse Criterion (Total Points=70)

A carrier must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=25 points. Detect fraud and abuse situations. (Quality)

Passing Level and Points

Demonstrates basic compliance with minor improvements needed.....17.5

Standard 2=25 points. Develop potential fraud and abuse cases. (Quality)

Passing Level and Points

18–20 sample cases reviewed, 6–7 in error.....17.5

14–17 sample cases reviewed, 4–6 in error.....17.5

8–13 sample cases reviewed, 3–5 in error.....17.5

4–7 sample cases reviewed, 1 in error.....17.5

1–3 sample cases reviewed, 0 in error.....25.0

Standard 3=10 points. Ensure that no payments are made to excluded physicians/suppliers. (Quality)

Passing Level and Points

Contractor has made payment to two excluded physicians/suppliers.....7.0

Standard 4=5 points. Monitor claims submission requirements. (Quality)

Passing Level and Points

Complied with each requirement.....5.0

Standard 5=5 points. Monitor nonparticipating physicians' charge limits violations. (Quality)

Passing Level and Points

89.8%–95.0% of violations processed accurately.....3.5

10. Management of Change Criterion (Total Points=95)

A carrier must take measures to protect the Medicare program and the public interest. It must effectively manage Federal funds for both program payments and cost of administration in accordance with HCFA instructions. We will use the standards below to evaluate the criterion.

Standard 1=25 points. Implement Priority I critical tasks accurately. (Quality)

Passing Level and Points

All tasks implemented with only 1 task requiring major changes corrected within the date negotiated with the RO and/or all tasks implemented accurately with no more than 7 tasks requiring minor RO-initiated changes.....17.5

Standard 2=35 points. Implement Priority I critical tasks timely. (Timeliness)

Passing Level and Points

Cumulative late days do not exceed 30.....24.5

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Standard 3—10 points. Implement "other tasks" from the HCFA Contractor Task Management Plan accurately. (Quality)

Passing Level and Points

7–10 tasks reviewed, 3 with minor errors.....7.0
3–6 tasks reviewed, 1 with minor errors.....7.0
1 task reviewed, 0 errors.....10.0

Standard 4—10 points. Implement "other tasks" from the HCFA Contractor Task Management Plan timely. (Timeliness)

Passing Level and Points

7–10 tasks reviewed, 3 implemented after due date.....7.0
2–6 tasks reviewed, 1 implemented after due date.....7.0
1 task reviewed, implemented on or before due date.....10.0

Standard 5—15 points. Comply with regional office (RO) requests and instructions timely. (Timeliness)

Passing Level and Points

Two or more directives not implemented timely but the length of delay(s) did not adversely affect the program initiative(s).....10.5

G. Contractor Replacement Methodology

The Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101–239, extended through FY 1993 the authority of section 2326(a) of the Deficit Reduction Act of 1984 (DEFRA), Public Law 98–369, whereby each year up to two intermediaries and up to two carriers, which over a period of time have been in the lowest 20th percentile of contractors, may be replaced. OBRA 89 also redefined "over a period of time" to be "over a 2-year period of time." Consequently, the methodology for separately identifying Part A and Part B contractors for potential replacement under Section 2326(a) of DEFRA, as amended, will be as follows:

- Performance, as measured by the Secretary's criteria and standards, will be considered for the most recent 2 evaluation periods.
- Each evaluation period's overall performance will be captured in the form of an unweighted efficiency rating—points earned as a percentage of points available, as determined by the performance criteria and standards used during some or all of the fiscal year. For example, FY 1991 efficiency ratings will be calculated based upon the criteria and standards used for the October 1990—September 1991 review period. In addition, efficiency ratings for the FY 1990 review period (June 1990—September 1990) will be used.
- Each period's efficiency rating will be weighted to provide extra emphasis for the most recent performance. The weights, to be multiplied by each period's efficiency rating, are:

Weight

Most Recent Period.....3
Prior Period.....2

- For each contractor, the weighted efficiency rating for each of the two periods will be summed and the contractors will be ranked (Part A and Part B separately) from highest points to lowest points.
- Careful study of the bottom 20th percentile of contractors will be undertaken to fully assess considerations such as performance that is improving/deteriorating, factors beyond the contractor's control, and other factors pertinent to a particular territory.

H. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed notice, we are unable to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATE" section of this preamble and if we proceed with a final notice, we will respond to the comments in the preamble of that notice.

I. Regulatory Impact Statement

1. Executive Order 12291

Executive order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any general notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Preliminary analyses reveal that the FY 1991 CPEP may reduce the Federal resources required to administer these criteria and standards as more efficient evaluation methodologies are being used. We expect minimal effects on the contractor costs due to this notice since the criteria and standards measure functional responsibilities that the contractor must be performing as a Medicare contractor. This general notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this general notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

2. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, intermediaries and carriers are not small entities. We treat all providers and suppliers as small entities. In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

This notice sets forth the criteria and standards to be used for evaluation of Medicare intermediaries and carriers which are not considered small entities. This notice does not require specific performance of the operations being evaluated. It may have an effect on contractor operations such as bill processing, beneficiary services and provider services which could indirectly affect a substantial number of providers and suppliers.

The most important indirect effect on providers and suppliers as a result of this notice will be to ensure that they are paid timely and accurately. We, therefore, do not believe these criteria and standards will have any negative effects on providers and suppliers.

As stated above, this notice primarily affects intermediaries and carriers, which are not considered small entities for purposes of the RFA. For these reasons, we have determined, and the Secretary certifies, that this general notice will not have a significant economic impact on a substantial number of rural hospitals. Therefore, we have not prepared analyses for either the RFA or small rural hospitals.

Authority: (Sec. 1102, 1816, 1842, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395h, 1395u, and 1395hh)).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance and Program No. 13.774, Medicare Supplementary Medical Insurance.)

Dated: June 18, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-23117 Filed 9-27-90; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on September 14, 1990 (55 FR 37960).

(Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. Report of New Information in Disability Cases—0960-0071—The information collected on the form SSA-612 is used by the Social Security Administration to determine whether an individual's entitlement to disability benefits should be continued based on a change he or she has reported. The respondents are disability beneficiaries who report changes in their medical or living conditions.

Number of respondents: 200,000
Frequency of response: 1
Average burden per response: 5 minutes
Estimated annual burden: 16,667 hours
OMB desk officer: Allison Herron

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 21, 1990.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 90-22919 Filed 9-27-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-90-3153]

Privacy Act of 1974; New System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of new system of records.

SUMMARY: The Department is giving notice of a system of records it intends to maintain which is subject to the Privacy Act of 1974.

EFFECTIVE DATE: This proposal shall become effective without further notice in 30 calendar days (October 28, 1990) unless comments are received during or before that date which would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer *total* pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will *not* be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: For Privacy Act: Donna L. Eden, Departmental Privacy Act Officer, Telephone Number (202) 708-0050. (This is not a toll-free number.) For Program: Gwen M. Wells, Office of Ethics, Telephone Number (202) 708-3815. (This is not toll-free number.)

SUPPLEMENTARY INFORMATION: The system is the Ethics Filings, HUD/DEPT-81. It will contain information on the activities of lobbyists and consultants who may be engaged in influencing the outcome of decisions made by the Department. This information is collected pursuant to section 112 of the HUD Reform Act of 1989, 42 U.S.C. 3531, and the Byrd Amendment (section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, Pub. L. 101-121), 31 U.S.C. 1352; and the Housing and Community Development Act of 1987, 42 U.S.C. 3543.

Under section 112, each person who makes or agrees to make an expenditure to influence the decision of any officer or employee of the Department is required to disclose: (1) The total expenditures made by or on behalf of such person during the year, (2) the name and address of every person to whom any such expenditure is made, and (3) the date of the expenditure. Each person who is retained for the purpose of influencing the decision of any officer or employee of the Department is required to disclose: (1) His/her name and business address, (2) the name and address of his/her employer and of any person or entity in whose interest he/she appear or work, and (3) a statement of whether he/she has been employed by the Federal Government during the 2-year period ending on the date of the registration, and in what capacity.

Under the Byrd Amendment, a recipient of, or applicant for, a Federal contract, loan, grant, loan insurance or cooperative agreement who makes an expenditure to influence the decision of any officer or employee of the Department is required to disclose the name and address of each person paid, to be paid, or reasonably expected to be paid; the name and address of each individual performing the services for which such payment is made, to be made, or reasonably expected to be made; the amount paid, to be paid, or reasonably expected to be paid; how the person was paid, is to be paid, or is reasonably expected to be paid; and the activity for which the person was paid, is to be paid, or is reasonably expected to be paid.

The system will improve HUD's ability to assure that the award of financial assistance is conducted in a manner that is fair and open, and free from improper influence. Information concerning applicants for HUD programs, including organizations, such as a corporation or partnership—to include developers, contractors, and other principal parties—also will be included. The system will assist management in complying with legislative requirements which are aimed at ensuring greater accountability and integrity in HUD's grant and loan processes.

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A report of the Department's intention to establish the system has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Issued at Washington, DC September 14, 1990.

Michael F. Hill,

Acting Assistant Secretary for Administration.

HUD/DEPT–81

SYSTEM NAME:

Ethics Filings.

SECURITY CLASSIFICATION:

Sensitivity—S2. Disclosure or alteration of data rated S2 represents a small but unimportant risk to the orgainzation and its mission.

Criticality—C2. Since systems rated C2 will be needed eventually, security officers should write a contingency plan. Management should attempt recovery only after restoring the more critical systems.

SYSTEM LOCATION:

Headquarters, Office of Ethics.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Section 112:

A. Any person who makes or agrees to make an expenditure to influence the decision of any officer or employee of the Department, through communications with such officer or employee, with respect to: (1) The award of any financial assistance within the jurisdiction of the Department, or (2) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person; and,

B. Any person who receives payment or is retained for the purposes described in A. above.

Byrd Amendment: Any person who requests or receives a Federal contract, grant, loan, cooperative agreement or loan insurance commitment from HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files consist of applicant information and information regarding lobbyist/consultant activity. The documents may include reporting individuals/entities' or lobbyists' names, addresses, payments made, types of payment, compensation received, and services performed; officers, employees or Members of Congress contacted; previous Government employment; Social Security Numbers (SSNs) or Employer Identification Numbers (EINs); and Federal Action Numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 112 of the HUD Reform Act of 1989, 42 U.S.C. 3531; the Byrd Amendment (section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990, Pub. L. 101–121), 31 U.S.C. 1352; and the Housing and Community Development Act of 1987, 42 U.S.C. 3543.

PURPOSE(S):

The information collected under section 112 of the HUD Reform Act and the Byrd Amendment will identify those lobbyists and consultants who may be engaged in influencing the outcome of decisions made by the Department. This information will improve HUD's ability to assure that the award of financial assistance is conducted in a manner that is fair and open, and free from improper influence.

The system will assist management in complying with legislative requirements, and will ensure greater accountability and integrity in HUD's grant and loan processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Section 112 information will be compiled in a report to be published in the **Federal Register**, shall constitute part of the public records of the Department, and shall be open to public inspection. This information will enable the Secretary to meet statutory requirements.

The Byrd Amendment information will be compiled in a report for submission to the Secretary of the Senate and the Clerk of the House of Representatives on a semi-annual basis. This information will also enable the Secretary to meet statutory requirements. The report, including the compilation, shall be available for public inspection 30 days after the receipt of the report by the Secretary and the Clerk.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders; in computers with limited access.

RETRIEVABILITY:

Name of reporting individual/entity; SSN; EIN, any project number or grant or loan number, name of person or entity in whose interest the registrant appears or works, federal action number, and registration number.

SAFEGUARDS:

File folders and computers kept in a secured area; access restricted to authorized individuals.

RETENTION AND DISPOSAL:

Records will be retained for two years in accordance with section 13, 42 U.S.C. 3537b. Records will be destroyed in accordance with HUD Handbook 2225.6, Records Disposition Management: HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Officer of Ethics, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contract the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the Headquarters location. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Department Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

[FR Doc. 90–23017 Filed 9–27–90; 8:45 am]

BILLING CODE 4210–36–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–90–1917; FR–2606–N–01]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATES: September 28, 1990.

ADDRESSES: For further information, contact James Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

Ther Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested providers an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; Room 1E671 Pentagon, Washington, DC 20360–2600; (202) 693–4583; Corps of Engineers: Bob Swiseonek, HQ–US Army Corps of Engineers, Attn: CERE–MN, 20 Massachusetts Avenue NW, Washington, DC 20415–1000; (202) 272–1750; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Street NW, Washington, DC 20405; (202) 501–0067. (These are not toll-free numbers.)

Dated: September 20, 1990.

Audrey E. Scott,

Deputy Assistant Secretary for Progam Development.

Suitable Land (by State)

Massachusetts

Por. of Former Navy Ammo. Plt.
Fort Hill Street
Hingham, MA, *Co:* Plymouth
Location: Across from Bus Company Parking Garage.
Landholding Agency: GSA
Property Number: 549030017
Status: Excess
Comment: 1.129 acres; gravel pavement; most recent use—parking lot.
GSA No. 2–GR–MA–501B

Maine

Bucks Harbor GATR Site
GATR Road
Machias Port, ME, *Co:* Washington
Location: 8 miles southeast of Machias off Highway 92
Landholding Agency: GSA
Property Number: 549030015
Status: Surplus
Comment: 5.5 acres; with 2,900 sq. ft. concrete block building; potential utilities; secured area with alternate access.
GSA No. 2–U–ME–511B

Suitable Buildings (by State)

Hawaii

T–1124
Schofield Barracks
Beaver Road
Wahiawa, HI, *Co:* Wahiawa
Landholding Agency: Army
Property Number: 219030372
Status: Unutilized
Comment: 4000 sq. ft.; 1 story; steel-three sided building; restricted entry; next to firing range; most recent use—motor pool maintenance.

Louisiana

Federal Building—Post Office
Polk and Third Streets
Jonesboro, LA, *Co:* Jackson Parish
Landholding Agency: GSA
Property number: 549030018
Status: Excess
Comment: 15107 sq. ft.; 2 story with basement; 35% of space is occupied by Post Office and GSA.
GSA No. 7–G–LA–540

New York

Bldg. P–232
Dry Hill Family Housing
Route 3, Box 232
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 219030015
Status: Unutilized

BEST COPY AVAILABLE

Base Closure
Comment: 1022 sq. ft.; 1 story wood frame residence.
Bldg. P–233,
Dry Hill Family Housing,
Route 3, Box 233
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030016
Status: Unutilized
Base Closure
Comment: 816 sq. ft.; 1 story wood frame residence.
Bldg. P–234
Dry Hill Family Housing
Route 3, Box 234
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030017
Status: Unutilized
Base Closure
Comment: 1022 sq. ft.; 1 story wood frame residence.
Bldg. P–235
Dry Hill Family Housing
Route 3, Box 235
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030018
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–236
Dry Hill Family Housing
Route 3, Box 236
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030019
Status: Unutilized
Base Closure
Comment: 1236 sq. ft.; 1 story wood frame residence.
Bldg. P–237
Dry Hill Family Housing
Route 3, Box 237
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030020
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–238
Dry Hill Family Housing
Route 3, Box 238
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030021
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–239
Dry Hill Family Housing
Route 3, Box 239
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030022
Status: Unutilized
Base Closure
Comment: 1300 sq. ft.; 1 story wood frame residence.
Bldg. P–240
Dry Hill Family Housing
Route 3, Box 240
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030023
Status: Unutilized
Base Closure
Comment: 1300 sq. ft.; 1 story wood frame residence.
Bldg. P–241
Dry Hill Family Housing
Route 3, Box 241
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030024
Status: Unutilized
Base Closure
Comment: 1300 sq. ft.; 1 story wood frame residence.
Bldg. P–242
Dry Hill Family Housing
Route 3, Box 242
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030025
Status: Unutilized
Base Closure
Comment: 1225 sq. ft.; 1 story wood frame residence.
Bldg. P–243
Dry Hill Family Housing
Route 3, Box 243
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030026
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–244
Dry Hill Family Housing
Route 3, Box 244
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030027
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–245
Dry Hill Family Housing
Route 3, Box 245
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030028
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–246
Dry Hill Family Housing
Route 3, Box 246
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030029
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–247
Dry Hill Family Housing
Route 3, Box 247
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030030
Status: Unutilized
Base Closure
Comment: 1500 sq. ft.; 1 story wood frame residence.
Bldg. P–248
Dry Hill Family Housing
Route 3, Box 248
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030031
Status: Unutilized
Base Closure
Comment: 1300 sq. ft.; 1 story wood frame residence.
Bldg. P–249
Dry Hill Family Housing
Route 3, Box 249
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030032
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–250
Dry Hill Family Housing
Route 3, Box 250
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030033
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–251
Dry Hill Family Housing
Route 3, Box 251
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030034
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–252
Dry Hill Family Housing
Route 3, Box 252
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030035
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–253
Dry Hill Family Housing
Route 3, Box 253
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030036
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.
Bldg. P–254
Dry Hill Family Housing
Route 3, Box 254
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030037
Status: Unutilized
Base Closure
Comment: 600 sq. ft.; 1 story wood frame residence.

Bldg. P–255
Dry Hill Family Housing
Route 3, Box 255
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030038
Status: Unutilized
Base Closure
Comment: 816 sq. ft.; 1 story wood frame residence.
Bldg. P–256
Dry Hill Family Housing
Route 3, Box 256
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030039
Status: Unutilized
Base Closure
Comment: 1022 sq. ft.; 1 story wood frame residence.
Bldg. P–257
Dry Hill Family Housing
Route 3, Box 257
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030040
Status: Unutilized
Base Closure
Comment: 1022 sq. ft.; 1 story wood frame residence.
Bldg. P–258
Dry Hill Family Housing
Route 3, Box 258
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030041
Status: Unutilized
Base Closure
Comment: 816 sq. ft.; 1 story wood frame residence.
(NIKE 99)
Spring Valley Housing
1 Grandview Avenue
Ramapo, NY, *Co:* Rockland
Landholding agency: COE
Property number: 319030063
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
2 Grandview Avenue
Ramapo, NY, *Co:* Rockland
Landholding agency: COE
Property number: 319030064
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
3 Grandview Avenue
Ramapo, NY, *Co:* Rockland
Landholding agency: COE
Property number: 319030065
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
4 Grandview Avenue
Ramapo, NY, *Co:* Rockland
Landholding agency: COE
Property number: 319030066
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
5 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030067
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
6 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030068
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
7 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030069
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
8 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030070
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
9 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030071
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
10 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030072
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
11 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030073
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.
(NIKE 99)
Spring Valley Housing
12 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030074
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

Pennsylvania

S–29–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA Co: Allegheny
Landholding agency: COE
Property number: 319030051
Status: Unutilized
Base Closure
Comment: 1,307 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S–30–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA Co: Allegheny
Landholding agency: COE
Property number: 319030052
Status: Unutilized
Base Closure
Comment: 1,121 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S–31–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA Co: Allegheny
Landholding agency: COE
Property number: 319030053
Status: Unutilized
Base Closure
Comment: 1,121 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S–32–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA Co: Allegheny
Landholding agency: COE
Property number: 319030054
Status: Unutilized
Base Closure
Comment: 1,121 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S–33–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 319030055
Status: Unutilized
Base Closure
Comment: 1013 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S–34–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 319030056
Status: Unutilized

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Base Closure
Comment: 1013 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S-35-Q
Monroeville Area Site 35
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 219030057
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S-36-Q
Monroeville Area Site 35
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 219030058
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S-37-Q
Monroeville Area Site 35
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 219030059
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S-38-Q
Monroeville Area Site 35
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 219030060
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S-39-Q
Monroeville Area Site 35
C.E. Kelly Support Fac.; Lindsey Lane R.D. #1
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 219030061
Status: Unutilized
Base Closure
Comment: 117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.
S-40-Q
Monroeville Area Site 35
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding Agency: COE
Property number: 219030062
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

Texas

Marine Safety Detachment
Brownsville Ship Channel
Brownsville, TX, *Co:* Cameron
Landholding agency: GSA
Property number: 549030036
Status: Excess
Comment: 2000 sq. ft. and 900 sq. ft.; 2—1 story cinder block buildings; off-site use only. Property previously reported under HUD #879010005.
GSA NO. 7-U-TX-1005

Virginia

Family Housing Quarters No. 1
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 219030042
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.
Family Housing Quarters No. 2
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 219030043
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.
Family Housing Quarters No. 3
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 219030044
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.
Family Housing Quarters No. 4
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 219030045
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.
Family Housing Quarters No. 5
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 219030046
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.
Family Housing Quarters No. 6
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 219030047
Status: Unutilized
Base Closure
Comment: 844 sq. ft.; 1 story 2-bedroom residence; scheduled to be vacated 8/91.
Family Housing Quarters No. 7
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 219030048
Status: Unutilized
Base Closure
Comment: 844 sq. ft.; 1 story 2-bedroom residence; scheduled to be vacated 8/91.
Family Housing Quarters No. 8
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 219030049
Status: Unutilized
Base Closure
Comment: 844 sq. ft.; 1 story 2-bedroom residence; scheduled to be vacated 8/91.
Family Housing Quarters No. 9
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 219030050
Status: Unutilized
Base Closure
Comment: 844 sq. ft.; 1 story 2-bedroom residence; scheduled to be vacated 8/91.

Universe of Properties:

Total	67
Suitable	65
Suitable Buildings	63
Suitable Land	2
Unsuitable	2
Unsuitable Buildings	1
Unsuitable Land	1
Number of Resubmissions	1

[FR Doc. 90-22828 Filed 9-27-90; 8:45 a.m.]
BILLING CODE 4310-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-00-5101-09-XBHA; CACA 24329]

Intent To Prepare an EIS Proposed Specified Hazardous Waste Facility

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) in coordination with the County of San Bernardino will prepare an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the proposed Specified Hazardous Waste Facility in the Cady Mountains approximately 40 miles east of Barstow, California.

The applicant, Hidden Valley Resources, Inc. (HVR), has applied to the County for a Conditional Use Permit and a General Plan Amendment to develop a specified hazardous waste facility on land owned by HVR for the permanent storage of treated hazardous wastes. HVR has applied to BLM for a right-of-way for access road and a railroad spur from Hector and Interstate 40 into Hidden Valley of the Cady Mountains and for access across public lands to lands owned by HVR within the project boundary. The off-site access is for a proposed 80 foot wide right-of-way for road only and 300 foot wide right-of-way for road and rail spur combined. The off-site right-of-way would be approximately 10 miles in length across public lands, of which about 8 miles are across lands within the Cady Mountains Wilderness Study Area.

SUPPLEMENTARY INFORMATION: Development of the hazardous waste facility is proposed in two phases on private lands involving a total of approximately 1,300 acres with an estimated storage capacity of 120 years. A range of alternatives to be analyzed include, alternative access routes, facility designs, disposal methods, and site locations, as well as the no action alternative.

Initially, HVR proposed to acquire public land from BLM for an enlarged facility site totaling 11,500 acres. The acquisition of public lands was determined to be in nonconformance with BLM land use plans and is rejected from further analysis.

Public Participation

Pre- and post-application public meetings were held by the County in Newberry Springs, California. Comments presented during these meetings will serve to define the scope of the EIR/EIS. Issues identified at the scoping meetings included the need for interagency/regional planning, the relationship to adjacent land uses, impacts to wilderness qualities, water, air, and threatened and endangered species, risk assessment, health and safety, geology and faults in the area, means of transportation, flooding problems, and construction of storage containers.

A Local Assessment Committee (LAC) was established which meets on the first and third Tuesdays of each month in Newberry Springs, 20 miles east of Barstow, to discuss with the proponent details of the project. The LAC reports to the County Board of Supervisors and represents generally, the interests of the residents of the County and adjacent communities. The LAC meetings are open to the public and provide for continual public involvement in the scoping and analysis process of this proposal.

Public meetings on this proposal will be held upon release of the draft EIR/EIS and will be announced in a Notice of Availability in the Federal Register.

Formal comments on this Notice will be accepted by BLM for 30 days after date of publication. Comments are specifically requested on issues, concerns, and alternatives, which will be considered in the EIR/EIS.

ADDRESSES: Send comments to BLM, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, Attn: Sharon Paris. Further information on this proposal, on the LAC meetings, or to be placed on the mailing list for the EIR/EIS may also be requested through this address or by telephone at (619) 256-3591.

Dated: September 20, 1990.

Donald Sasseville,

Acting Area Manager.

[FR Doc. 90-22922 Filed 9-27-90; 8:45 am]
BILLING CODE 4310-40-M

[CO-030-00-4320-10-1784]

Montrose District Grazing Advisory Board Meeting

September 19, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR subpart 1784, that a meeting of the Montrose District Grazing Advisory Board will be held on October 17, 1990, in Montrose, Colorado.

DATES: A meeting is scheduled October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Bill Hensley, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, telephone (303) 249-7791.

SUPPLEMENTARY INFORMATION: The Board will convene at 9:30 a.m. on October 17, 1990, in the conference room of the Montrose District BLM Office in Montrose, Colorado. Agenda items will include: minutes of the previous meeting, public presentations and requests, range improvement project review, new Board project proposals, updates on current issues, and arrangements for the next meeting. The meeting will adjourn at 5 p.m.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the above address prior to the meeting date. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction [during regular business hours] within thirty [30] days following the meeting.

Dated: September 18, 1990.

Kenneth D. Stevens,

Acting District Manager.

[FR Doc. 90-22928 Filed 9-27-90; 8:45 am]
BILLING CODE 4310-40-M

[NV-930-00-4212-11; N-52971]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E.,
Sec. 19, N½NW¼NE¼SW¼.

Aggregating 5 acres (gross).

This parcel of land contains approximately 5 acres. Clark County intends to use the land for Las Vegas Metropolitan Police Department Substation. The lease and/or patent, when issued will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

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2. Those rights for transmission line purposes which have been granted to Nevada Power Company by Permit No. CC-018425 under the Act of December 21, 1928.

3. Those rights for road and sewerline purposes which have been granted to Clark County by Permit No. N-35306 under the Act of October 21, 1976.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Dated: September 17, 1990.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 90-22924 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-51400 and N-51624]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., sec. 22: W½W½NE¼NW¼ SE¼.

T. 20 S., R. 60 E., sec. 22: E½NE¼NW¼SE¼, E½W½NE¼NW¼SE¼.

Aggregating 10 acres (gross).

This parcel of land contains approximately 10 acres. The City of Las Vegas plans to construct a Metropolitan Police station with associated buildings, parking areas, etc. on 7.5 acres of land. Also, the Frontier Girl Scouts propose to use 2.5 acres of the land to construct a one-story facility for staff and volunteers to manage the area's Girl Scouting Program. The scouts will also use the area as an interpretive center and outdoor recreation/training area. The leases and/or patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way there on for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.

2. The lease to the City of Las Vegas would be subject to those rights for highway purposes which have been granted to Nevada Department of Transportation (NEV-062275) under the Act of August 27, 1958.

The land is not required for any federal purpose. The leases/purchases are consistent with the Bureau's planning for this area.

Detailed information concerning these actions is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days for the date of publication in the Federal Register.

Dated: September 17, 1990.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 90-22925 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-51437]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 15, W½W½SW¼SW¼, NE¼NW¼ SW¼SW¼, W½SE¼NW¼SW¼SW¼, W½E½SW¼SW¼SW¼.

Aggregating 16.25 acres (gross).

This parcel of land contains approximately 16.25 acres. Clark County intends to use the land for a multi-use civic facility.

Total development encompasses 43.75 acres. The additional 27.50 acres was previously classified for public purposes under a Clark County School District application. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

2. Those rights for water pipeline purposes which have been granted to Las Vegas Valley Water District by Permit No. N-24650 under the Act of October 21, 1976.

3. Those rights for power distribution and telephone line purposes which have been granted to Nevada Power Company/Centel by Permit No. N-24663 under the Act of October 21, 1976.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Dated: September 17, 1990.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 90-22923 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-51617]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 22, SE SW SE.

Aggregating 10 acres (gross).

This parcel of land contains approximately 10 acres. The City of Las Vegas intends to use the land for a park site. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.

2. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. N-28148 under the Act of October 21, 1976.

3. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. N-51888 under the Act of October 21, 1976.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Dated: September 17, 1990.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 90-22927 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31736]

Exemption; K. Earl Durden, Control Exemption

K. Earl Durden has filed a notice of exemption to acquire control of Wilmington Terminal Railroad, Inc. [WTR], operating in North Carolina and Georgia. Mr. Durden already controls a non-connecting Class III rail carrier, Galveston Railway, Inc. [GRI], operating in Texas. Mr. Durden owned all of the voting stock of WTR when he acquired GRI. In order to consummate the GRI acquisition without violating 49 U.S.C. 11343, he placed his WTR stock into a voting trust. Mr. Durden now seeks to dissolve the voting trust and assume direct control of WTR.

After the transaction is consummated, Mr. Durden will control two carriers, WTR and GRI. Mr. Durden indicates that: (1) The properties operated by WTR and GRI will not connect with each other; (2) the acquisition of WTR is not part of a series of anticipated transactions that would connect the rail carriers with each other or with any other railroad he might own; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the control of nonconnecting carriers and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Donald G. Avery, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

Decided: September 14, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-22889 Filed 9-27-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m., Sunday, October 28, 1990.

Place: J.W. Marriott Houston Galleria, 5150 Westheimer, Houston, Texas.

Status: Open.

Matters to be Considered: An update on the BJA/NIC Drug Task Force, a report from the Interdivisional Team on Intermediate Sanctions, an update on technical assistance requests from foreign countries, a report on the

nutrition for inmates survey, a discussion of collaborative programs/training for juvenile corrections practitioners between OJJDP and NIC, election of Advisory Board officers, and the impact of sequestration on NIC programs and operations.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 307-3106.

M. Wayne Huggins,

Director.

[FR Doc. 22947 Filed 9-27-90; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration

Abbott Laboratories; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 6, 1990, and published in the **Federal Register** on August 14, 1990, (55 FR 33183), Abbott Laboratories, ATTN: D-209, Abbott Park, Abbott Park, Illinois 60064-3500, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of benzoylecgonine (9187), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-22967 Filed 9-27-90; 8:45 am]

BILLING CODE 4410-09-M

Johnson Matthey; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 6, 1990, and published in the **Federal Register** on August 14, 1990, (55 FR 33183), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Fentanyl (9801)	II
Sufentanil (9740)	II
Thebaine (9333)	II
Methylphenidate (1724)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-22968 Filed 9-27-90; 8:45 am]

BILLING CODE 4410-09-M

Mallinckrodt Specialty Chemicals Co.; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 23, 1990, and published in the **Federal Register** on March 5, 1990 (55 FR 7783), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059).	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-di-methylamino-4, 4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-22969 Filed 9-27-90; 8:45 am]

BILLING CODE 4410-09-M

Sigma Chemical Co.; Importer of Controlled Substances; Notice of Registration

By Notice Dated June 14, 1990, and published in the **Federal Register** on July 3, 1990, (55 FR 27519), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315).	I
Marijuana (7360)	I
Tetrahydrocannabinols (7370).	I
Mescaline (7381)	I
4-bromo-2,5-Dimethoxyamphetamine (7391).	I
4-methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-dimethoxyamphetamine (DMA) (7396).	I
3,4-methylenedioxyamphetamine.	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
4-methoxyamphetamine (7411).	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethylamine analog of phencyclidine (7455).	I
Pyrrolidine analog of phencyclidine (7458).	I
Thiophene analog of phencyclidine (7470).	I
Etorphine (except HCL) (9056).	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-Oxide (9307)	I
Normorphine (9313)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP) (9661).	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Fenethylline (1503)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603).	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Methadone (9250)	II
Dextropropoxphene, bulk (9273).	II
Morphine (9300)	II
Morphine-3-Glucuronide (9329).	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to Section 1008 (a) of the Controlled Substance Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: September 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 90-22970 Filed 9-27-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its reponsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 [Telephone (202) 395-6880].

Any member of the public who wants to comment on a recordkeeping/reporting -requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

NEW

Pension and Welfare Benefits Administration Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins Recordkeeping; Other (one-time disclosure) Individuals or households; Businesses or other for-profit 2,000,000 responses; 66,678 burden hours. This proposed class exemption provides relief from certain taxes imposed by the Internal Revenue Code on broker-dealers who are disqualified persons under the Code with respect to certain individual retirement accounts, regarding transactions involving American Eagle Coins.

Extension

Employment and Training Administration, Unemployment Compensation for Ex-servicemembers (UCX) Handbook 1205-0176; ETA 841, 842 and 843.

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 841	State or local governments	121,614	One-time	2 minutes.
ETA 843	State or local governments	6,081	One-time	1 minute.
ETA 842	None	0	None	0

3,174 total hours.

Federal law (5 U.S.C. 8521 et seq.) provides unemployment insurance protection, to former members of the Armed Forces (ex-servicemembers) and is referred to in abbreviated form as "UCX." The forms in Chapter V through VIII of the UCX *Handbook* are used in connection with the provisions of this benefit assistance.

Signed at Washington, DC this 25th day of September, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-22991 Filed 9-27-90; 8:45 am]

BILLING CODES 4510-29; 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

West Virginia
WV90-2 (Jan. 5, 1990)..... p. 1391, pp. 1395, 1401.
WV90-3 (Jan. 5, 1990)..... 1415, p. 1418.

Volume II:

Iowa
IA90-4 (Jan. 5, 1990)..... p. 38, p. 34.
Michigan
MI90-2 (Jan. 5, 1990)..... p.441, pp. 442-452.
Minnesota
MN90-5 (Jan. 5, 1990)..... p. 553, pp. 554, 556, 559.
MN90-7 (Jan. 5, 1990)..... p. 563, pp. 564-566, pp. 571-572.
MN90-8 (Jan. 5, 1990)..... p. 583, pp.584-587, 593.
MN90-12 (Jan. 5, 1990)..... p. 606, pp. 606-607.
MN90-15 (Jan. 5, 1990)..... p. 613, pp. 614-617.
Missouri
MO90-1 (Jan. 5, 1990)..... p. 627, pp. 629, 632.
Ohio
OH90-2 (Jan. 5, 1990)..... p. 781; pp. 783, 786.
OH90-29 (Jan. 5, 1990)..... p. 873, pp. 877, 881.
OH90-35 (Jan. 5, 1990)..... p. 918c, p. 918d.
Texas
TX90-3 (Jan. 5, 1990)..... p. 987, p. 988.

Volume III:

California
CA90-4 (Jan. 5, 1990)..... p. 71, pp. 75-76, 80, pp. 83-84, 87, 89.
Colorado
CO90-1 (Jan. 5, 1990)..... p. 107, pp. 108-110.
CO90-2 (Jan. 5, 1990)..... p. 117, p. 118.
Idaho
ID90-1 (Jan. 5, 1990)..... p. 147, pp. 148, 150-152, pp. 157-158.
Oregon
OR90-1 (Jan. 5, 1990)..... p. 309, pp. 312-314, pp. 324-326.
Washington
WA90-1 (Jan. 5, 1990)..... p. 369, pp. 372-374, 378.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402
(202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 21st day of September 1990.
Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 90-22831 Filed 9-28-90; 8:45 am]
BILLING CODE 4510-27-M

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

[Note: This notice was intended for publication on September 21, 1990. It was apparently lost in transit from the Department of Labor to the Federal Register and, as a result, not published. The wage determination changes listed were in fact published in General Wage Determinations Issued Under the Davis-Bacon and Related Acts on September 21, 1990, and should be considered effective on that date.]

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes or laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 50 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determinations; Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s.)

Volume III
Utah:
UT90-6..... p. 368e
p. 368f
UT90-7..... p. 368g
pp. 368h-368j

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:
Connecticut: CT90-1 (Jan. 5, 1990)..... p. 65, pp. 94-95
Florida: FL90-17 (Jan. 5, 1990)..... p. 143, pp. 144-145
Massachusetts: MA90-1 (Jan. 5, 1990)..... p. 399, pp. 401, 408
Pennsylvania:
PA90-1 (Jan. 5, 1990)..... p. 909, pp. 910-913, pp. 916-917
PA90-2 (Jan. 5, 1990)..... p. 921, p. 922

Volume II:
Arkansas: AR90-1 (Jan. 5, 1990)..... p. 3 p. 4
Illinois:
IL90-12 (Jan. 5, 1990)..... p. 101 p. 182
IL90-14 (Jan. 5, 1990)..... p. 185 p. 186
Indiana:
IN90-2 (Jan. 5, 1990)..... p. 249, pp. 250, 253-254
IN90-4 (Jan. 5, 1990)..... p. 279, pp. 280, 282-283

Volume III:
Colorado:
CO90-4 (Jan. 5, 1990)..... p. 125, p. 128
CO90-6 (Jan. 5, 1990)..... p. 132e, p. 132f
North Dakota: ND90-2 (Jan. 5, 1990)..... p. 229, p. 231
Utah: UT90-1 (Jan. 5, 1990).. P. 343, pp. 347, 351-352

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about

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January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington DC This 14th Day of September 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-23065 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-90-135-C]

Bee Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bee Coal Company, 3915 5th Street Road, Corbin, Kentucky 40701-9597 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-16669) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition.

3. In support of this request, petitioner states that:

(a) No methane has been detected in the mine;

(b) Each three-wheel tractor would be equipped with a handheld continuous methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 20, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22985 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-136-C]

Bridger Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bridger Coal Company, P.O. Box 2068, Rock Springs, Wyoming 82902, has filed a petition to modify the application of 30 CFR 77.1304 (blasting agents; special provisions) to its Jim Bridger Mine (I.D. No. 48-00677) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that sensitized ammonium nitrate blasting agents, and the components thereof prior to mixing, shall be mixed and stored in accordance with the recommendations in Bureau of Mines Information Circular 8179, "Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents," or subsequent revisions.

2. As an alternate method, the petitioner proposes to blend recycled oil with fuel oil to create a blasting agent. In support of its request, the petitioner states:

(a) The system has been extensively and successfully field tested and evaluated;

(b) The used oil was evaluated to assure that it met EPA recycling requirements and is not a hazardous waste fuel; and

(c) Precautions are taken against harmful exposure to fuel oil or fumes.

3. The proposed alternate method would at all times guarantee no less than the same measure of protection as that afforded by the standard

4. For these reasons, the petitioner request a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 20, 1990.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 90-22986 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-16-M]

Homestake Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754, has filed a petition to modify the application of 30 CFR 57.6076 (hosting in adjacent shafts) to its Homestake Mine Lead (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that hoisting in adjacent shaft compartments be stopped when explosives are being handled.

2. As an alternate method, the petitioner requests that the lowering of explosives be allowed during one shift each week in shafts that are totally partitioned from the ore hoisting compartment.

3. The proposed method will not result in a diminution of safety for the workers.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 20, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22987 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-137-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Sinclair Underground Mine (I.D. No. 15-17168) located in Muhlenburg County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Due to a roof fall, the seals in the 1st southeast or sub-main section of the mine at the No. 1 seal cannot be examined. To require weekly examination of the seals would expose examiners to unnecessary risks.

3. As an alternate method, petitioner proposes that—

(a) Methane and oxygen would be monitored weekly by a certified person in a crosscut 100 feet from the seal in front of the fall;

(b) The operator would maintain a continuous monitoring system with an audible warning device set to activate when methane is detected at 1 percent and low oxygen at 18 percent; and,

(c) The operator would maintain an air current passing through the crosscut and going to the main return air shaft.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 20, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22987 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-138-C]

Pinckneyville Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pinckneyville Mining Company, P.O. Box 286, Pinckneyville, Illinois 62274-0286, has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 1 Mine (I.D. No. 11-02866) located in Perry County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary to the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations be housed in fire proof structures or areas, and that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, the petitioner proposes to use a fire-proof room with an automatic fire suppression system to isolate its belt transformers in longwall panels. In addition to other precautions specified in the petition, a monitoring system and thermal protection devices would be installed.

3. The proposed method would not result in a diminution of safety for the miners.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 24, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22988 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-15-M]

Riverside Cement Co.; Petition for Modification of Application of Mandatory Safety Standard

Riverside Cement Company, P.O. Box 832, Riverside, California 92502 has filed a petition to modify the application of 30 CFR 56.14107 (moving machine parts) to its Crestmore Plant (I.D. No. 04-00016) located in Riverside County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that moving machine parts be guarded to protect persons from gears, sprockets, shafts and similar moving parts that can cause injury.

2. As an alternate method, the two palletizers are equipped with a permanent safety system surrounding all moving parts. The guards surrounding the machine are monitored by safety switch interlocks and electric eyes. The electric eyes are set up with transmitters such that if they are damaged or fail in any way, the machines will shut down.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 24, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22989 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-67; Exemption Application No. D-7776 et al.]

Grant of Individual Exemptions; Mutual Life Insurance Co. of New York (MONY), et al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and respresentations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Mutual Life Insurance Co. of New York (MONY) Located in New York, NY

[Prohibited Transaction Exemption 90-67; Application No. D-7776]

Exemption

The restrictions of section 406(a), (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by Pooled Account No. 7 (PA-7), a polled equity real estate account maintained by MONY for pension plan investors, of its interest in a parcel of commerical real estate to MONY; provided that the terms of conditions of the Sale are at least as favorable to PA-7 as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published at 55 FR 31250.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523-8881. (This is not a toll-free number).

Ausherman Construction Co. Employees' Profit Sharing Plan (the Plan) Located in Frederick, MD

[Prohibited Transaction Exemption 90-68; Application No. D-8114]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease by the Plan to Ausherman Construction Company, the Plan sponsor and, as such, a party in interest with respect to the Plan, of certain improved real property located in Walkersville, Maryland; provided that the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable in an arm's-length transaction between unrelated parties.

EFFECTIVE DATE: This exemption will be effective June 22, 1990.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 5, 1990 at 55 FR 7792.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

IDS International, Inc. Located in Minneapolis, MN

[Prohibited Transaction Exemption 90-69; Exemption Application No. D-8379]

Exemption

IDS International, Inc. (IDSII) shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84-14 (PTE 84-14, 49 FR 9494, March 13, 1984) solely because of IDSII's failure to satisfy Section I(g) of PTE 84-14 as a result of its affiliation with E. F. Hutton & Company, Inc. (Hutton) and Shearson Lehman Hutton, Inc. (Shearson).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 5, 1990 at 55 FR 27709.

EFFECTIVE DATE: This exemption is effective as of the date on which IDSII became an affiliate of Hutton and Shearson.

WRITTEN COMMENTS: The Department received one comment and no requests for a hearing. The comment was submitted jointly by American Express Company, IDS Financial Services, Inc. and IDSII (the Commentors). The Commentors request that the Summary of Facts and Representatives (the Summary) in the Notice of Proposed Exemption be clarified and supplemented as follows:

1. The Commentors note that as of August 9, 1990 Shearson Holdings is wholly owned by American Express Company. Accordingly, the Commentors represent that the reference in Section 1 of the Summary, to Shearson Holdings as a publicly-owned company whose stock is traded on the New York Stock Exchange, is no longer accurate.

2. The Commentors request that Section 6 of the Summary be clarified to state that Shearson has never been found guilty of any criminal activity.

3. The Commentors wish to add the representation that IDSII is an extremely remote affiliate of Hutton. The Commentors state that the Chief Executive Officer of IDSII has recently been named Vice Chairman of American Express Company. The Commentors represent that while there may be further management changes within the American Express controlled group, they do not anticipate that any such changes will result in Shearson personnel exercising management authority or control over IDSII.

After consideration of the entire record, the Department has determined to grant the exemption as supplemented.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transition is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 25th day of September, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-22933 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-8294 et al.]

Proposed Exemptions; Norman B. Pester CPA, P.C. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Norman B. Pester CPA, P.C. Profit Sharing Plan (the Plan) Located in Denver, CO.

[Application No. D-8294]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedure set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by the account of Mr. Norman Pester (the Account) in the Plan of an interest in two parcels of real estate (the Interests) to Mr. Pester, a participant and trustee of the Plan, for a sales price equal to the fair market value of the Interests.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan with two participants and approximately $477,247.00 in assets as of July 31, 1989. Mr. Pester is the Plan sponsor and is a participant in the Plan. He also serves as Plan Trustee.

2. The property consists of two contiguous parcels of undeveloped real estate (Parcel A and Parcel B) which comprise 3.2 acres. The Account owns a 17.004% interest in Parcel A, which consists of 77,821 square feet, and a 14.4818% interest in Parcel B, which consists of 81,949 square feet. The Interests were originally held in a defined benefit plan in which Mr. Pester was the only participant. Upon termination of the defined benefit plan, the Interests were rolled over to the current profit-sharing plan where they are maintained in a separate rollover Account.

The property was purchased from Columbine Coastal Corporation (the Seller), an unrelated party, on September 23, 1981. The property was purchased by Clinton Court Company, a general partnership, in which the Account is one of three partners in relation to Parcel A and one of four partners in relation to Parcel B. The Plan is unrelated to each partner in the partnership. The aggregate purchase price for the property was $1,140,000.00, which was paid by a purchase money mortgage of $684,000.00 payable to the Seller, with the balance of $456,000.00 paid in cash. The $684,000.00 mortgage was paid off in 24 months, on September 23, 1983.

The property was purchased for investment purposes. It is represented that current economic conditions for the real estate market in the area make development of the property as retail, office or industrial space infeasible.

3. An appraisal of the property was performed by John V. Winslow, President of Dresco Consulting Group in Denver, Colorado, at $3.00 a square foot Mr. Winslow has worked as a commercial real estate broker specializing in land and investment properties in the specific area in which the property is located, and has provided comparable sales search services to clients in the Denver metropolitan area for ten years. The applicant represents that Mr. Winslow is independent of and is in no way related to Mr. Pester. On December 6, 1989, the property was subject to a property tax valuation arbitration proceeding by the Board of County Commissioners of Arapahoe County, Colorado, which resulted in an appraised value of the property at $3.50 a square foot, for a total value of the Interests of $87,851.00.

4. Mr. Pester proposes to purchase the Interests at their appraised fair market value of $87,851.00. It is represented that there will be no expenses or commissions associated with the transfer of the Interests. Mr. Pester maintains that the sale will benefit the Account because it will be selling an unproductive assets for cash, which can be invested in productive assets earning current income.

In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale of the Interests by the Account to Mr. Pester is a one time transaction for cash;

(b) The Account will receive an amount equal to not less than the current fair market value of the Interests;

(c) The Account will incur no expenses or commissions as a result of the sale;

(d) The Account will be able to divest itself of assets which produce no income and invest the proceeds in income-producing assets; and

(e) The sale will affect the Account only, and Mr. Pester desires to consummate the transaction.

Notice to Interested Persons: Because Mr. Pester is the sole participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

City Wide Management Co. Pension Plan and Trust (the Plan) Located in Baltimore, MD

[Application No. D-8391]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a sale for cash of certain ground rent leases (the Property) to the Plan by City Wide management Company (City Wide) and certain related entities, parties in interest with respect to the Plan, provided that the Plan pays no more than fair market value for the Property and that the transaction accounts for no more than 25 percent of the assets of the Plan at the time of sale.

Summary of Facts and Representations

1. City Wide is a real estate firm which is owned and operated by the Myerberg family. The Myerberg family has created separate entities for various real estate projects, although none of the entities other than City Wide currently has employees. City Wide and the various entities are collectively referred to as the Employer. The Plan is a defined benefit pension plan that has been adopted by certain of the entities. The trustees of the Plan are Alvin J. Myerberg and Wendy M. Jachman, both members of the Myerberg family. As of June 30, 1990, the Plan had 136 participants and total assets of approximately $1,972,000.

2. The Employer previously purchased and developed large parcels of land and subsequently created 178 ground rent leases for various residential properties located in the Baltimore area. As completed houses on the parcels of land were sold, the homeowners purchased title to the dwellings but not to the underlying land. The Employer kept the fee simple title to the land and entered into a ground rent lease arrangement with each tenant, who is usually the homeowner. The tenants are responsible for paying a semi-annual ground rent for the use of the land plus all property taxes and other assesments. The amount of the annual ground rent remains constant for the entire lease duration, i.e., 99 years and renewable. However, the lessee can terminate the ground lease after the lease is five years old by making a lump sum payment equal to the annual rent capitalized at six percent. Under the lease arrangement, the Employer has certain remedies in the event of a default in payment of rent. For example, if the rental payment is six months or more in arrears, the Employer could bring an action to take possession of the land and the corresponding dwelling. The applicant represents that ground rent leases of this kind are usually readily marketable assuming that they are competitively priced.

3. The Employer proposes to sell the Property, which consists of 178 ground rent leases, to the Plan in a one-time transaction for cash. The Plan will pay no more than fair market value for the Property at the time of sale, based on an updated appraisal to be made by an independent fiduciary of the Plan, as discussed below. The Employer will incur all the costs involved in transfering the Property to the Plan. In addition, the Employer will be responsible for collecting the semi-annual payments required under the terms of the ground rent leases. The applicant represents that the tenants on the ground rent leases are all unrelated to the Plan and the Employer. The transaction will account for well under 25 percent of the assets of the Plan at the time of sale. The applicant estimates that the Property will provide a rate of return of approximately 12 percent per year to the Plan.

4. M. Ronald Lipman (Lipman) of the real estate consulting firm of Lipman, Frizzell and Mitchell of Baltimore will serve as the independent fiduciary in regard to the proposed transaction. The applicant represents that Lipman is unrelated to the Employer and the Plan. Lipman states that he understands the duties of a fiduciary under the Act and that he will accept the fiduciary responsibility related to the proposed transaction. Lipman will insure that the Property is sold to the Plan at current fair market value and that the Plan receives clear title to the Property. Lipman further states that, based on his professional experience, he understands the nature of the ground rent market. Lipman has reviewed the facts surrounding the proposed transaction and has made an analysis of the subject ground rents. He also has considered alternative investment vehicles available to the Plan. Accordingly, he believes that acquisition of the Property by the Plan represents an excellent investment opportunity for the Plan.

Lipman states that, because of the senior position of the ground rents (over any mortgages placed on the properties, including first and second mortgages and home equity lines of credit) and because of the relatively substantial value of the improvements on the ground rent lots, the income stream from these capital assets is extremely secure. Also, there exists an organized market for disposition of the ground rents, generally through an auction held by one of a small group of actioneers who specialize in such transactions.

5. Lipman has examined the results of five auctions of ground rent leases during the past three years in which over 200 ground rents were sold. Of that total, approximately 100 ground rents were considered to be comparable to the subject rents as to location, leasehold improvements and marketability.

Lipman capitalized the annual rental amounts (which range between $90 and $240 per year) on the 178 ground leases comprising the Property by rates which reflect the market's response to that rent in terms of appropriate yield. Utilizing this approach to value and considering the results of the above mentioned ground rent auctions, Lipman concludes that the Property had a market value of approximately $235,000 as of June 22, 1990.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The Plan will pay no more than fair market value for the Property at the time of sale; (2) the fair market value will be established by an appraisal to be made by an independent fiduciary who is experienced in real estate matters involving ground rent leases; (3) the independent fiduciary has determined that the transaction is an excellent investment opportunity for the Plan; (4) the sale will be a one-time transaction for cash; and (5) the transaction will account for well under 25 percent of the assets of the Plan.

For further information contact: Paul Kelty of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Dean Witter Reynolds Inc. (Dean Witter) Located in New York, NY

[Application No. D-8473]

Proposed Exemption

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interest therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisiton or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) An obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b), and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

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binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[8]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificates price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which Dean Witter or any of its affiliates is either (i) The sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreements, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Dean Witter;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Dean Witter; or

(3) Any member of an underwriting syndicate or selling group of which Dean Witter or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded plans* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)-(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. *Qualified administrative fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified equipment note secured by a lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the

[8] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

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equipment note were secured only by the equipment and not the lease.

U. *Qualified motor vehicle lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and servicing agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption, if granted, will be effective for transactions occurring on or after November 1, 1985.

Summary of Facts and Representations

1. Dean Witter, an indirect wholly owned subsidiary of Sears, Roebuck and Company, is an international financial services company involved in securities brokerage, asset management, investment banking, research and market-making. Dean Witter is one of the largest broker-dealers in the securities industry. The firm maintains offices throughout the United States and it also has an active presence overseas through offices located in Europe, Canada and the Far East. Dean Witter has extensive experience in underwriting and trading mortgage-backed and asset-backed securities such as the certificates.

Trust Assets

2. Dean Witter seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [4] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificates investment trusts.[5]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[6]

Trust Structure

4. Each trust is established under a pooling and servicing agreement among a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Dean Witter, along or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. The majority of the public offerings of certificates made to date have been underwriting on a firm commitment basis. In addition, Dean Witter has privately placed certificates on both a firm commitment and an agency basis. Dean Witter may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Dean Witter requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[7]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In the case of classes of securities having different stated maturities, interest and/or principal payments received on the underlying receivables are generally distributed first to the class of certificates having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only differences this multi-class pass-through arrangement and a single-class pass-through arrangement are the order in which distributions are made to certificateholders and the payment schedules of the classes of certificates. Regardless of whether a multi-class or single-class pass-through arrangement is utilized, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[8]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a limited time after the issuance of trust certificates. Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trust will be entities that originate receivables in the ordinary course of their business, including finance companies, for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (ii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Dean Witter, the trust sponsor or the servicer. Dean Witter represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which generally will be paid by the sponsor or servicer. In some transactions, however, the trustee's fee is not paid by the sponsor or servicer, but rather is paid out of trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records or payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Dean Witter. In some cases, however, affiliates of Dean Witter may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives

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[4] The Department notes that Prohibited Transaction Exemption (PTE) 83-1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. Dean Witter requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Dean Witter has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

[5] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts are plan assets.

[6] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90-32, involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990) at 23150.

[7] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[8] If a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

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certificates from the trust, the sponsor sells these certificates for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for the receivables sold to the trust. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[9] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon rate, together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. Dean Witter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, which is usually done in a public offering, this fee would consist of the difference between what Dean Witter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In some public offerings, however, Dean Witter may sell certificates on an agency basis, in a best efforts underwriting. In those cases, Dean Witter would receive an agency commission paid by the sponsor. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance. The terms of such repurchase are specified in the pooling and servicing agreement.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be either: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1), or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) Out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on affected assets.

If the master servicer fails to advance funds, when it is obligated to advance such funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to gaurd against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (usually monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee, annually, a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, where the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the certificates by a typical investor;

(i) A description of the underwriters' plan for distributing the certificates to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount

[9] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is Dean Witter's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is Dean Witter's intention to attempt to make a market for any certificates for which Dean Witter is lead or co-managing underwriter.

Retroactive Relief

25. Dean Witter represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, since November 1, 1985, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Dean Witter seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Dean Witter has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party in interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[10]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Dean Witter represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[11] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of propety under section 406(a)(1)(A) of the Act.[12] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Dean Witter represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Dean Witter, represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Dean Witter represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited section 406(a) and 407(a) relief as specified in the proposed exemption.

For further information contact: Ms. Jan. D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 406(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things requires a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of September, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-22394 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-29-M

[10] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[11] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Dean Witter or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[12] Dean Witter represents that where a trust sponsor is a Dean Witter affiliate, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates). If Dean Witter is not a fiduciary with respect to plan assets to be invested in certificates.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

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DATES: Comments on this information collection must be submitted on or before October 29, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202–786–0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are reinstatements of a previously approved collection for which approval has expired. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Participants, Summer Seminars for School Teachers Program.

Form Number: 3136–0097.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: School Teachers and other school personnel.

Use: The guidelines and application instructions provide direction for preparing applications for grant funds and request additional information regarding grants recently received by applicants.

Estimated Number of Respondents: 8,630.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 3 per respondent.

Estimated Total Annual Reporting and Recording Burden: 26,350 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 90–22808 Filed 9–27–90; 8:45 am]

BILLING CODE 7536–01–M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before October 29, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room, 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202–786–0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are reinstatements of a previously approved collection for which approval has expired. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Directors, Summer Seminars for School Teachers Program.

Form Number: 3136–0095.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: University and college faculty.

Use: The guidelines and application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds and request additional information regarding grants recently received by applicants.

Estimated Number of Respondents: 625.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 5 per respondent.

Estimated Total Annual Reporting and Recording Burden: 3152.5 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 90–22807 Filed 9–27–90; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Literary Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing: Poetry Fellowships Section) to the National Council on the Arts will be held on October 17–18, 1990 from 9 a.m.–6:30 p.m. and October 19 from 9 a.m.–4 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 19 from 1 p.m.–4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on October 17–18 from 9 a.m.–6:30 p.m. and October 19 from 9 a.m.–1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which ar open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven [7] days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: September 20, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–22983 Filed 9–27–90; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Pursuant to the Nuclear Waste Technical Review Board's (NWTRB) authority under section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendment Act (NWPAA) of 1987, the NWTRB Transportation & Systems Panel will hold a panel meeting from 9 a.m.–4 p.m. on October 22, 1990, at the Holiday Inn Capitol, Columbia South Room, 550 C Street, SW., Washington, DC 20024; (202) 479–4000. The focus will be on transportation issues pertinent to the Department of Energy's (DOE) program for the disposal of spent nuclear fuel and defense high-level waste.

Topics of discussion with the DOE will include (1) DOE response to prior NWTRB transportation recommendations; (2) spent fuel transportation protection and safeguards; (3) transportation operational planning; and (4) minimizing waste handling within the waste management system.

The public is welcome to participate as observers. Those who wish to attend should contact the NWTRB office (703–235–4473) on or before October 15, 1990. The meeting will be transcribed, and transcripts will be available beginning November 16, 1990, through the NWTRB library on a two-week loan basis. Those interested should contact Ms. Victoria Reich, NWTRB librarian, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209 (703) 235–4473.

The NWTRB was established by the Nuclear Waste Policy Amendments Act (NWPAA) of 1987 (Pub. L. 100–203) to evaluate the scientific and technical validity of activities undertaken by the DOE in its civilian nuclear waste disposal program. The board is also charged with evaluating activities relating to the packaging or transportation of high-level waste or spent fuel. In the same law, the U.S. Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for a possible location of a permanent underground repository for spent nuclear fuel and defense high-level waste.

For further information please contact the NWTRB office at 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209, (703) 235–4473.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90–23016 Filed 9–27–90; 8:45 am]

BILLING CODE 6820–AM–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to the definition of Primary Containment Integrity-Shutdown to provide limited flexibility during performance of 10 CFR part 50 appendix J Type C leak rate testing of containment isolation valves to allow up to six (6) ¾-inch vent and drain lines to be open on those penetrations that would otherwise not be testable when this specification is applicable.

The proposed action is in accordance with the licensees' application for amendment dated March 16, 1990.

The Need for the Proposed Action

The proposed change to the TS is needed in order to allow the licensees the flexibility to perform Type C local leak rate tests, as required by 10 CFR part 50, appendix J, which would otherwise not be able to be performed when Primary Containment Integrity-Shutdown is required. Performance of local leak rate testing activities when this specification is applicable has the potential to reduce outage durations by increasing the time available to perform this potential critical path testing activity and to permit additional time for isolation valve repair and retesting, if required, subsequent to initial testing and surveillance.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and concludes that the calculated offsite doses, assuming a postulated fuel handling accident while the six lines are open and using a 7-day delay time (minimum time between start of the refueling outage and conduct of Type C local leak rate testing) are well within the dose reference values of 10 CFR part 100 and are within the acceptance criteria given in Standard Review Plan § 15.7.4. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Considerations of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on April 5, 1990 (55 FR 12756). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS involves a change to surveillance and testing requirements, specifically with regard to maintaining containment integrity while moving fuel. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental affects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This

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would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to Operation of Perry Nuclear Power Plant, Units 1 and 2, dated August 1987.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 16, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 20th day of September 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-22971 Filed 9-27-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

The Union Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 57 to Facility Operating License No. NPF-30, issued to the Union Electric Company (the licensee), which revised the Technical Specifications for operation of the Callaway Plant Unit 1 located in Callaway County, Missouri. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specification Tables 2.2-1, 3.3-4, and 4.3-1 and associated Bases to accommodate the replacement of the current Resistance Temperature Detector (RTD) bypass system with an RTD/thermowell system mounted directly into the hot and cold legs of the reactor coolant system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opprotunity for Prior Hearing in connection with this action was published in the **Federal Register** on June 14, 1990 (55 FR 24172). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and had determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) The application for amendment dated April 12, 1990, and supplemented by letter dated July 7, 1990, (2) Amendment No. 57 to License No. NPF-30, (3) the Commission's related Safety Evaluation dated September 20, 1990, and (4) the Environmental Assessment dated September 5, 1990. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building 2120 L Street NW., Washington, DC and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 20th day of September 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-22971 Filed 9-27-90; 8:45 am]

BILLING CODE 7590-01-M

Potassium Iodide

AGENCY: Nuclear Regulatory Commission.

SUMMARY: The purpose of this notice is to inform the public that, because of new information, the analysis supporting the current federal policy regarding the distribution and use of Potassium Iodide (KI) as a thyroidal blocking agent during accidents at nuclear power plants in being revised. Preliminary analysis of this new information indicates that the cost-benefit ratio associated with stockpiling KI may have narrowed. As a result of this new information and a request by the American Thyroid Association to establish a national stockpile of KI, the current federal policy regarding the stockpiling and use of KI is undergoing a reexamination.

FOR FURTHER INFORMATION CONTACT: Leonard Soffer, Severe Accident Issues Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-492-3916).

BACKGROUND: On July 24, 1985 the present federal policy (50 FR 30258) on distribution of Potassium Iodide (KI) around nuclear power sites for use as a thyroidal blocking agent was issued. In summary, the federal policy recommends the stockpiling of KI and its distribution for emergency workers and institutionalized persons, but does not recommend requiring predistribution or stockpiling for the general public. The basis for this policy is that, in the event of an accident, protective actions are planned and would be taken for the general public that are capable of reducing doses to all body organs, and not merely the thyroid gland. This policy is advisory for state and local governments which can, within the limits of their authority, take measures beyond those recommended or required nationally. In this regard, two states (Alabama and Tennessee) have decided to stockpile or predistribute KI tablets for use by the public in the event of a serious reactor accident.

Since issuance of this policy, new information regarding KI has become available. Information is now becoming available on the experience during the Chernobyl accident in the Soviet Union in April 1986 where significant quantities of KI were administered by Polish and Soviet authorities. Additionally, since completion of the original analysis in 1980 supporting the federal policy (NUREG/CR-1433), information has become available indicating a reduction in iodine releases associated with a severe reactor accident and a reduced cost and increased shelf-life of KI. Preliminary analysis of this information indicates that the cost-benefit ratio which supports the current federal policy may have narrowed from the 1980 analysis. Further, in September 1989, representatives of the American Thyroid Association (ATA) requested that a national stockpile of KI be established. In view of this request and the availability of new information which affects the underlying analysis, an effort to reexamine the federal policy on KI has been undertaken.

ACTIVITIES UNDERWAY: The Nuclear Regulatory Commission (NRC) is presently preparing an update of the original 1980 analysis (NUREG/CR-1433). The updated report will consider the latest available research on estimated iodine releases from severe reactor accidents, will incorporate the most recent estimates on risk to the thyroid from internal radioiodine exposure, and will factor in revised values for cost and shelf-life of KI. This report is expected to be issued by July 1991 to state and local authorities and to the public.

In parallel, as a result of the request by the ATA to establish a national stockpile of KI, the Federal Radiological Preparedness Coordinating Committee (FRPCC) has requested that the Department of Health and Human Services, through the Centers for Disease Control (CDC), convene an *ad hoc* meeting of experts in this field to solicit and review relevant scientific information on this issue, and to provide its recommendations to the FRPCC. Accordingly, a workshop on the scientific and medical aspects of KI was held in Atlanta on July 24, 1990. The review by CDC will consider the available new information noted above. The CDC is expected to provide its recommendations to the FRPCC on whether the current federal policy should be reassessed by November 1990. Should the FRPCC determine that the federal policy warrants reassessment by all involved federal agencies, an associated schedule for accomplishing this would be established.

Dated at Rockville, Maryland, this 21st day of October 1990.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 90-22974 Filed 9-27-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended September 21, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47163.
Date filed: September 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Composite Resolutions R-1 to R-21.
Proposed Effective Date: April 1, 1991.
Docket Number: 47184.
Date filed: September 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 428—Fares from Ecuador to Central America.
Proposed Effective Date: October 1, 1990.
Docket Number: 47185.
Date filed: September 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 429—PEX fares from Japan to Southeast Asia.
Proposed Effective Date: October 26, 1990.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-22919 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Neecessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 21, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47178.
Date filed: September 17, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 5, 1990.
Description: Application of Robiton Aereo, C. Por A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing the carriage of property and mail on a scheduled basis between a point or points in the Dominican Republic and Miami, Florida and San Juan, Puerto Rico. Robiton also requests that it be granted authority to operate cargo charters subject to the Department's rules and regulations.
Docket Number: 47180.
Date filed: September 19, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 3, 1990.
Description: Conforming Application of America West Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests a new or amended certificate of public convenience and necessity authorizing it to provide service between Phoenix, Arizona, Las Vegas, Nevada and Los Angeles, California, on the one hand, and Mexico City, Mexico, on the other.
Docket Number: 47181.
Date filed: September 19, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 3, 1990.
Description: Conforming Application of United Air Lines, Inc., pursuant to section 401 and subpart Q of the Regulations, requests a certificate of public convenience and necessity to authorize service between Los Angeles, California, and Mexico City, Mexico.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-22920 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 47090]

United States-United Kingdom Regional Airport Case; Notice of Hearing

Notice is hereby given that the hearing in the above entitled matter will begin at 10 a.m. on October 9, 1990 and run for the necessary consecutive weekdays. The hearing site is in room 5332, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Questions concerning this proceeding that require a telephonic discussion should be telephoned to (202) 366-2144.

Notice is also given that in the event that funding for the Department of Transportation for Fiscal Year 1991 has not been effected by the Congress by October 4, 1990, thereby (1) precluding the timely procurement of a court reporter for the transcription of the hearing and/or (2) requiring the furloughing of Department employees

who are participating in this proceeding, a further notice postponing the hearing will then issue as will a subsequent notice extending the target date for issuance of the judge's recommended decision.

Burton S. Kolko,
Administrative Law Judge.

Attachment: *Revised* Service List

Service List

Carl B. Nelson, Jr., American Airlines, Inc., 1101 17th Street NW., suite 600, Washington, DC 20036
Robert P. Silverberg, Esq., Timothy J. Lynes, Esq., Condon & Forsyth, 1180 Fifteenth Street NW., Washington, DC 20005
Richard B. Jamison, Director of Airports, Detroit Metropolitan Wayne County Airport, L.C. Smith Terminal, Detroit, MI 48242
James R. Weiss, Preston, Gates Ellis & Rouvelas Meeds, 1735 New York Avenue NW., suite 500, Washington, DC 20590
Susan E. Neugent, Director, Regional Development Department, Atlanta Chamber of Commerce, P.O. Box 1740, Atlanta, GA 30301
Bill Alberger, Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., 8th floor, Washington, DC 20005-3502
Stephen L. Gelband, Hewes, Morella, Gelband & Lamberton, 1000 Potomac Street NW., Washington, DC 20007
David T. Beddow, Nancy E. McFadden, O'Melveny & Myers, 555 13th Street NW., Washington, DC 20004
Ronald D. Eastman, Esq., Cadwalader, Wickersham & Taft, Northwest Airlines, Inc., 1333 New Hampshire Avenue NW., suite 700, Washington, DC 20036
William L. Wagner, Office of Aviation Enforcement & Proceedings, room 4116, C-70, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Pittsburth Parties, B. Waring Partridge, III, Esq., The Partridge Group Chartered, 131 C Street SE., Washington, DC 20003
Robert E. Cohn, Counsel for Delta Air Lines, Inc., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037
Hugh H. Welsh, Assistant General Counsel, 67E One World Trade Center, New York, NY 10048
James P. Pitz, Director, Michigan Department of Transportation, Transportation Building, 425 W. Ottawa, Lansing, MI 48909
George N. Kenyon Jr., Trans World Airlines, Inc., 100 South Bedford Road, Mt. Kisco, NY 10549
Joel Stephen Burton, Esq., Ginsburg, Feldman & Bress, Chartered, United Air Lines, Inc., 1250 Connecticut Avenue NW., suite 800, Washington, DC 20036
Judith Richards Hope, Paul Hastings Janofsky & Walker, 1050 Connecticut Avenue NW., 12th floor, Washington, DC 20036
Ambassador, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20008
Charles Angevine, Department of State, Office of Aviation, 2201 C Street NW., Washington, DC 20520
Robert S. Goldner, Esq., room 9216, P-7, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Dockets, Department of Transportation, room 4107, 400 Seventh Street SW., Washington, DC 20590
The Honorable Burton S. Kolko, Administrative Law Judge, Office of Hearings, room 9228, M-50, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

[FR Doc. 90-22992 Filed 9-27-90; 8:45 am]
BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Anthony Van Dyck: Paintings in the Grand Manner" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about November 11, 1990, to on or about February 24, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: September 24, 1990.

Alberto J. Mora,
General Counsel.

[FR Doc. 90-22962 Filed 9-27-90; 8:45 am]
BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: September 21, 1990.

By direction of the Secretary.

Frank E. Lalley,
Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration
2. Titles of the Information Collection
   a. Equal Opportunity Compliance Review Report
   b. Supplement to Equal Opportunity Compliance Review Report
3. Department Form Numbers
   a. VA Form 27-8734
   b. VA Form 27-8734a
4. VA Forms 27-8734 and 27-8734a are used to gather information from post-secondary proprietary schools below college level and their students and instructors to verify compliance by recipients of VA Federal financial assistance. The information is used to assure that VA Federally-funded programs are operated and participants are assured equal access and equal treatment in compliance with equal opportunity laws.
5. On occasion
6. Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
7. Estimated Number of Responses
   a. 82-VA Form 27-8734
   b. 246 (164 students and 82 instructors)—VA Form 27-8734a
8. Hours Per Response
   a. 1 hour—VA Form 27-8734
   b. ½ hour—VA Form 27-8734a
9. Not applicable.

[FR Doc. 90-22944 Filed 9-27-90; 8:45 am]
BILLING CODE 8320-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619-5979, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: September 21, 1990.

By direction of the Secretary.

Frank E. Lalley,
Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration
2. Application for Amounts on Deposit for Deceased Veterans
3. VA Form 21-8868
4. The form is used to gather the necessary information to determine who is the proper payee of gratuitous benefits deposited by VA in the Personal Funds of Patients for a veteran during hospitalization and due the veteran at the date of his or her death.
5. On occasion
6. Individuals or households
7. 700 responses
8. ¼ hour
9. Not applicable

[FR Doc. 90-22945 Filed 9-27-90; 8:45 am]
BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: September 21, 1990.

By direction of the Secretary.

Frank E. Lalley,
Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration
2. Monthly Certification of Flight Training
3. VA Form 22-6553c
4. The form is used by students (veterans, service members and reservists) and flight schools to report the hours and cost of flight training received and the termination of training. The information is used to determine the amount of benefits payable to the student who is pursuing flight training.
5. On occasion; Monthly
6. Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
7. 19,200 responses
8. ½ hour
9. Not applicable

[FR Doc. 90-22946 Filed 9-27-90; 8:45 am]
BILLING CODE 8320-01-M

Advisory Committee on Cemeteries and Memorials; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at Arlington National Cemetery, Superintendent's Conference Room, Arlington, Virginia, on October 24-25, 1990.

Both sessions will begin at 9:00 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mr. Sydney Farrar, Staff Assistant, National Cemetery System, (phone 202-233-7980) no later than 12 noon, EST October 18, 1990.

Agenda items will include: (1) Discussion of the overall operation of the National Cemetery System; (2) Volunteer initiatives; (3) Educational

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programs; (4) World War II 50th Anniversary celebrations.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20402. In any such letters, the writers must fully identify themselves and state the organization, association or person they represent. To the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver them to the Director, National Cemetery System. Letters and written statements as discussed must be mailed or delivered in time to reach the Director, National Cemetery System by 12 noon EST October 16, 1990. Oral statements will be heard only between 1:30 p.m. and 2 p.m.

DATED: September 21, 1990.

By direction of the Secretary:

Sylvia Chavez-Long,

Committee Management Officer.

[FR Doc. 90-22942 Filed 9-27-90; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee for Health Research Policy; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92-463 as amended by Pub. L. 94-409), VA (Department of Veterans Affairs) gives notice that a meeting of the Advisory Committee for Health Research Policy will be held at the Holiday Inn-University Center, 100 Lytton Avenue, Pittsburgh, Pennsylvania 15213 on November 16 and 17, 1990, beginning at 8 a.m. each day. The purpose of this meeting is to complete the set of recommendations to the Secretary of Veterans Affairs for strengthening the VA medical and prosthetic research program. The Committee's original charge was published in 55 FR 2478 (1/24/90).

The meeting will be open to the public and a brief period is set aside at the end of the meeting for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the VA official named below at least 3 days before the meeting.

Persons wishing additional information regarding the meeting or who wish to submit written statements may contact Dr. Prakash Grover, Chief, HSR&D Special Projects Office (641/152), VA Medical Center, Perry Point, MD; Telephone (301) 642-2411, ext. 5448.

Dated: September 21, 1990.

By direction of the Secretary:

Sylvia Chavez-Long,

Committee Management Officer.

[FR Doc. 90-22943-Filed 9-27-90; 8:45 a.m.]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 189
Friday, September 28, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, October 4, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streetr, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23161 Filed 9-26-90; 1:40 pm]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:14 p.m. on Tuesday, September 25, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) The resolution of failed thrift institutions; and (2) terminating assistance agreements between FDIC/FRF and thrifts placed into conservatorship and/or receivership.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), and concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550-17th Street, NW., Washington, DC.

Dated: September 26, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-23155 Filed 9-26-90; 12:54 pm]

BILLING CODE 6714-01-M

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Corrections

Federal Register
Vol. 55, No. 188
day, September 28, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-506748; FRL 3743-6]

Certain Chemical Substances; Significant New Use Rule and Addition to Health and Safety Data Reporting Rule

Correction

In rule document 90-20602 beginning on page 35628 in the issue of Friday, August 31, 1990, make the following correction:

The table appearing in § 716.120 on pages 35631 and 35632 should have read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special Exemptions	Effective Date	Sunset Date
. . . . .				
75-88-7	Ethane, 2-chloro-1,1,1-trifluoro-		10/15/90	10/15/00
306-83-2	Ethane, 2,2-dichloro-1,1,1-trifluoro-		10/15/90	10/15/00
354-33-6	Ethane, pentafluoro-		10/15/90	10/15/00
811-97-2	Ethane, 1,1,1,2-tetrafluoro-		10/15/90	10/15/00
1649-08-7	Ethane, 1,2-dichloro-1,1-difluoro-		10/15/90	10/15/00
1717-00-6	Ethane, 1,1-dichloro-1-fluoro-		10/15/90	10/15/00
2573-69-0	Ethane, 2-chloro-1,1,1,2-tetrafluoro-		10/15/90	10/15/00

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3757-8]

Approval and Promulgation of Implementation Plans; Illinois

Correction

In the correction to rule document 90-13929 [55 FR 28614; June 29, 1990] beginning on page 31981 in the issue of Monday, August 6, 1990, items 5, 11, 18, 19, and 21 were incorrectly set forth and should be replaced by the following:

5. In § 52.741(a)(8)(ii), on page 26867, at the top of the second column the formula should have appeared as follows:

$$P_{vol} = \sum_{i=1}^{n} P_i X_i$$

11. On page 26874, in the second column, in § 52.741(h)(1)(ii)(A), the equation at the bottom of the page should have appeared as follows:

$$VOM_{(X)} = \frac{\sum_{i=1}^{n} C_i L_i (V_{ai} + V_{vomi})}{\sum_{i=1}^{n} L_i (V_{ai} + V_{vomi})}$$

18. On page 26869, at the top of the third column, in appendix B, section 7.1, the equation should have appeared as follows:

$$G = \sum_{j=1}^{n} (C_{aj} - C_{ai}) Q_{aj} T_c K_i \qquad \text{Eq. 1}$$

19. On page 26869, in the third column, under section 7.4, the equation should appear as follows:

$$C_{ai} = \frac{\sum_{i=1}^{n} C_{ai} A_i}{n A_{ai}} \qquad \text{Eq. 4}$$

21. On page 26891, in the third column, the equation in section 7.2 should appear as follows:

$$C_{ai} = DF(C_{i+} - C_{bi}) \frac{C_{ai}}{C_{oa} - C_{bi}} \qquad \text{Eq. 2}$$

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPO-673-F]

RIN 0938-AE56

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1991 Rates

Correction

In rule document 90-20667 beginning on page 35990 in the issue of Tuesday, September 4, 1990, make the following corrections:

1. On page 36020, in the first column, in the first full paragraph, in the 13th line "years" should read "days".

2. On page 36022, in the third column, in the first full paragraph, in the 26th line "with" should read "will".

3. On page 36023, in the third column, in the second full paragraph, in the 11th line "imputed" was misspelled.

4. On page 36024, in the third column, under item 5, in the second paragraph, in the ninth line "of" should read "or".

PART 412—[AMENDED]

5. On page 36068, in the second column, in the authority citation for part 412, on the third line "1394hh, and 1394ww" should read "1395hh, and 1395ww".

§ 412.75 [Corrected]

6. On page 36069, in the third column, in § 412.75(h)(2)(iii), in the fourth line "§ 45.1875" should read "§ 405.1875".

7. On the same page, in the same column, in § 412.75(h)(3), in the second line "paragraph" should be made plural.

§ 412.116 [Corrected]

8. On page 36070, in the third column, in § 412.116(f)(3), in the third line "regardless" was misspelled.

PART 413—[AMENDED]

9. On page 36071, in the third column, in the first line of item B "(i)(3),(viii)" should read "(i)(3)(viii)".

10. On page 36135, in the third column, in Table 6g, in the description to procedure code 11.69 "corneal" was misspelled.

11. On page 36136, in the first column, in the same table , in the description to procedure code 12.92 "interior" should read "anterior".

12. On the same page, in the second column, in the same table, in the description to procedure code 15.29 "extraocular, muscle" should read "extraocular muscle".

13. On page 36139, in the third column, in Table 6k, in the descriptions to both diagnosis codes 202.81 and 202.91 delete the period and insert ", NOS." after "neck".

14. On page 36167, in the second column, in entry 2, in the seventh full paragraph in the seventh line "solely" should read "sole".

15. On page 36169, in Table III, in the first column, in the sixth entry, "Puerto Rico" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36175; FRL 3775-9]

Reevaluation and Update of Pesticide Assessment Guidelines, Subdivision F, Hazard Evaluation: Human and Domestic Animals

Correction

In notice document 90-21891 beginning on page 38578 in the issue of Wednesday, September 19, 1990, make the following correction:

On page 38578, after the table, in the second line of the third column, "January 17, 1990" should read "January 17, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A583-606]

Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan

Correction

In notice document 90-22720 beginning on page 39033 in the issue of Monday, September 24, 1990, make the following correction:

In the third column, the second complete sentence (reading "This includes sweaters 23 percent or more by weight of wool.") should read "This excludes sweaters 23 percent or more by weight of wool."

BILLING CODE 1505-01-D

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federal register

Friday,
September 28, 1990

Part II

Department of Education

Office of Postsecondary Education

Patricia Roberts Harris Fellowship Program—Graduate and Professional Study Fellowships; Notice of Proposed Priority

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships; Notice of Proposed Priority

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary of Education proposes to establish a competitive preference priority for the fiscal year 1991 grant competition under the Patricia Roberts Harris Fellowships Program for Graduate and Professional Study Fellowships authorized under Title IX, Part B of the Higher Education Act of 1965, as amended. Under this competitive priority, the Secretary would award five points, in addition to the points awarded under the program selection criteria, to those applications for the Patricia Roberts Harris Fellowships Program for Graduate and Professional Study Fellowships proposing to award fellowships only to students pursuing a program of studies leading to a Ph.D. degree. This priority would increase the number of fellowships to students pursuing a Ph.D. degree and respond to the need for faculty and researchers in postsecondary institutions over the next decade.

DATES: Comments must be received on or before October 29, 1990.

ADDRESSES: All comments concerning this proposed priority should be addressed to Dr. Charles H. Miller, Office of Postsecondary Education, Division of Higher Education Incentive Programs, U.S. Department of Education (Room 3022, ROB-3), 400 Maryland Avenue, SW., Washington, DC 20202-5251.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Miller, (202) 708-8395.

SUPPLEMENTARY INFORMATION: Under the Patricia Roberts Harris Fellowship Program, the Secretary is authorized to provide grants to institutions of higher education to support fellowships for graduate and professional studies to students who demonstrate financial need and are from groups which are traditionally underrepresented in graduate and professional study areas of high national priority.

Over the past decade, the number of United States citizens and permanent residents pursuing a Ph.D. degree has declined. This decline has been particularly acute among members of groups traditionally underrepresented in postbaccalaureate programs—minorities and women. Additionally, those students earning this degree are selecting employment outside of the academic sector. These factors are contributing to a shrinking pool of United States citizens and permanent residents, particularly among minorities and women, qualified for faculty and research positions in postsecondary institutions.

Recent studies conducted by leading educators, national associations and a Congressional committee point out the need to address the Ph.D. shortage now. The 1990 Association of American Universities (AAU) policy statement, "The Ph.D. Shortage: The Federal Role," details the effects of the continued decline of Ph.D.s on America's major research universities and institutes and the need for federal assistance in expanding the pool of U.S. citizens eligible for the Ph.D. degree. AAU notes that the failure to begin increasing Ph.D.s today will contribute to the severity of the Ph.D. shortage projected over the next twenty-five years, resulting in a demand for Ph.D.s among universities that will far surpass the supply. To address this impending Ph.D. shortage and to blunt its impact on the nation, AAU urges the federal government to make doctoral studies a priority, particularly in those programs focused on minorities and women.

In 1987, a majority of American citizens who received a Ph.D. and who had an employment commitment at graduation accepted an appointment at a 2- or 4-year college, a university, or a medical school. The Secretary believes that this proposed priority will result in an increase of Ph.D.s holding faculty positions at postsecondary institutions across the country.

In consideration of the foregoing and under the procedures in the Education Department General Administrative Regulations at 34 CFR 75.105(c)(2)(i), the Secretary proposes to establish the following priority for the fiscal year 1991 Patricia Roberts Harris Fellowships Program grant competition for Graduate and Professional Study Fellowships.

Awards are contingent upon the availability of appropriations for FY 1991. No funds have been appropriated at this time.

Proposed priority: The Secretary proposes to give a five point competitive preference to applications that meet the following priority:

Applications under the Patricia Roberts Harris Fellowships Program for Graduate and Professional Study proposing to award fellowships only to students currently enrolled or about to enroll in a Ph.D. program.

These points are in addition to any points the application earns under the selection criteria for the program. The Secretary does not intend or anticipate that the application of this priority will result in the elimination of institutions of higher education not awarding Ph.D. degrees from receiving grants under this competition.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this priority will be available for public inspection, during and after the comment period, in Room 3022 Regional Office Building Number 3 (7th and D Street, SW), Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except on Federal Holidays.

Authority: 20 U.S.C. 1134d-1134f.

Dated: September 24, 1990.

Catalog of Federal Domestic Assistance Numbers 84.004B—Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-22939 Filed 9-27-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
September 28, 1990

Part III

Environmental Protection Agency

40 CFR Parts 712 and 716

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Final Rule

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40 CFR Parts 712 and 716

[OPTS-82036; FRL-3773-3]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its Twenty-sixth Report to EPA recommended that EPA give priority consideration to one chemical substance and three categories of chemical substances in proposing test rules to assist EPA in determining which, if any, tests are needed for the substance and categories. EPA is adding the substance and categories to two model information-gathering rules: The Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule. These model rules will require manufacturers, importers, and processors of the specific substances and members of the categories to report production, use, exposure-related, and unpublished health and safety data to EPA.

This rule adds one substance and three categories of substances (with 76 individual substances identified) to the PAIR and the same substance and categories (with 64 individual substances identified) to the 8(d) Health and Safety Data Reporting Rule. Several of the substances in the categories recommended by the ITC are already listed on either the PAIR, the section 8(d) Health and Safety Data Reporting Rule, or the Comprehensive Assessment Information Rule (CAIR), and have not been included in this rule.

EFFECTIVE DATE: This rule will become effective on October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. E-543, Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This rule adds one substance and three categories of substances to the PAIR and the section 8(d) Health and Safety Data Reporting Rule and adds a new section § 716.120(d) for listing category members. Manufacturers, processors, and importers of these chemicals will be required to report unpublished health and safety data and/or end use, exposure, and production volume data to EPA.

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures (chemicals) to be given priority consideration in proposing test rules under section 4. For some of these chemicals, the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical or publish in the Federal Register its reasons for not doing so.

On May 8, 1990, EPA announced the receipt of the Twenty-sixth Report of the ITC (55 FR 23050). The Twenty-sixth Report revises and updates the Committee's priority list of chemicals and adds 1 chemical substance and 3 categories containing 79 substances to the section 4(e) priority list. This rule adds the chemical substance and the three categories of substances to the PAIR and to the section 8(d) Health and Safety Data Reporting Rule. These two rules are model information gathering rules which assist EPA in responding to the ITC recommendations.

EPA issued the PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. This model section 8(a) rule establishes standard reporting requirements for manufacturers and importers of the chemicals listed in the rule at 40 CFR 712.30. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA uses this model section 8(a) rule to gather current information on chemicals of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemicals to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

These model rules provide for the automatic addition of ITC priority list chemicals. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without further notice and comment, amend the two model information-gathering rules by adding the recommended chemicals. The amendment adding these chemicals to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication.

II. Chemicals To Be Added

In its Twenty-sixth Report to EPA, the ITC recommended for priority consideration one substance and three categories of substances with a total of 79 substances identified in the three categories.

The substances listed by the ITC designation follow in ascending Chemical Abstract Service (CAS) Registry Number order:

A. Designated for response within 12 months:

None.

B. Recommended With Intent-to-Designate

CAS No.	Chemical Substance
143-33-9	Sodium cyanide
Isocyanates:	
91-08-7	2,6-Toluene diisocyanate
91-97-4	4,4'-Diisocyanato-3,3'-dimethylbiphenyl
100-28-7	p-Nitrophenyl isocyanate
101-68-8	4,4'-Diphenylmethane diisocyanate
102-36-3	3,4-Dichlorophenyl isocyanate
103-71-9	Phenyl isocyanate
104-12-1	p-Chlorophenyl isocyanate
104-49-4	p-Phenylene diisocyanate
109-90-0	Ethyl isocyanate
110-78-1	n-Propyl isocyanate
111-36-4	n-Butyl isocyanate
112-96-9	Octadecyl isocyanate
123-61-5	1,3-Diisocyanatobenzene
329-01-1	(alpha,alpha,alpha-Trifluoro-m-tolyl)isocyanate
584-84-9	2,4-Toluene diisocyanate
614-68-6	1-Isocyanato-2-methylbenzene
622-58-2	1-Isocyanato-4-methylbenzene
624-83-9	Methyl isocyanate
1476-23-9	3-Isocyanato-1-propene
2422-91-5	1,1',1''-Methylidynetris(4-isocyanatobenzene)
2493-02-9	1-Bromo-4-isocyanatobenzene
2909-38-8	1-Chloro-3-isocyanatobenzene
2949-22-6	Ethyl isocyanatoacetate
2973-53-3	Cyclohexyl isocyanate
4035-89-6	Tris(isocyanatohexyl)biuret
4098-71-9	Isophorone diisocyanate
4151-51-3	Tris(4-isocyanatophenyl) thiophosphate
5124-30-1	1,1'-Methylenebis(4-isocyanatocyclohexane)
5873-54-1	1-Isocyanato-2-((4-isocyanatophenyl)methyl)benzene
10031-75-1	Diphenylmethylene diisocyanate
15646-96-5	1,6-Diisocyanato-2,4,4-trimethylhexaney
16938-22-0	1,6-Diisocyanato-2,2,4-trimethylhexane
22964-16-4	Bis(isocyanatomethyl)benzene
26447-40-5	1,1'-Methylenebis-(isocyanatobenzene)
26471-62-5	Toluene diisocyanate
29088-73-7	1,3,5-Tris(3-isocyanatomethyl-phenyl)1,3,5-triazine-2,4,6(1H,3H,5H)-trione

B. Recommended With Intent-to-Designate—Continued

CAS No.	Chemical Substance
26747-00-0	Toluene diisocyanate dimer
28178-42-9	2,6-Diisopropylphenyl isocyanate
28556-81-2	2-Isocyanato-1,3-dimethylbenzene
30674-80-7	2-Isocyanatoethyl methacrylate
34893-92-0	3,5-Dichlorophenyl isocyanate
68239-06-5	2-Heptyl-3,4-bis(9-isocyanatononyl)-1-pentylcyclohexane
73987-25-9	Isophorone diisocyanate, hydroxyethylmethacrylate adduct

C. Recommended Without Being Designated for Response Within 12 Months

CAS No.	Chemical Substance
Brominated flame retardants:	
74-97-5	Bromochloromethane
87-10-5	3,4',5-Tribromosalicylanilide
87-83-2	2,3,4,5,6-Pentabromotoluene
87-84-3	1,2,3,4,5-Pentabromo-6-chlorocyclohexane
96-13-9	2,3-Dibromopropanol
593-60-2	Vinylbromide
615-58-7	2,4-Dibromophenol
4162-45-2	Ethoxylated tetrabromobisphenol A
25327-89-3	Tetrabromobisphenol A, bis(allyl ether)
30554-72-4	Tetrabromodichlorocyclohexane
30554-73-5	Tribromotrichlorocyclohexane
36483-57-5	Tribromoneopentyl alcohol
55205-38-7	Tetrabromobisphenol A diacrylate
68955-41-9	Alkanes, C10-16, bromo chloro
69882-11-7	2,4-(or 2,6)-Dibromophenol, homopolymer
85497-56-7	Benzene, ethenyl-, homopolymer, brominated
Alkyl phosphates:	
78-40-0	Triethyl phosphate
78-42-2	Tris(2-ethylhexyl)phosphate
78-51-3	Tris(2-butoxyethyl)phosphate
107-66-4	Dibutyl phosphate
126-71-6	Triisobutyl phosphate
126-73-8	Tributyl phosphate
298-07-7	Di(2-ethylhexyl)phosphate
812-00-0	Monomethyl phosphate
1070-03-7	Mono(2-ethylhexyl)phosphate 70
1498-51-7	Ethyl dichlorophosphate
1623-15-0	Monobutyl phosphate
1623-24-1	Mono(isopropyl) phosphate
2958-09-0	Monooctadecyl phosphate
2930-04-7	Monohexyl phosphate
2991-73-9	Monooctyl phosphate
7057-02-9	Didodecyl phosphate
7332-46-9	2-(2-Butoxyethoxy)ethanol phosphate (2:1)
12645-31-7	2-Ethylhexyl phosphate
12751-23-4	Dodecyl phosphate
27215-10-7	Dioctadecyl phosphate

Several of the chemical substances in the categories recommended by the ITC are already listed in the PAIR, the section 8(d) Health and Safety Data Reporting Rule, or the CAIR. As discussed below, these substances are excluded from the amendments to the PAIR and section 8(d) rules being promulgated today. (Note that the chemical names on the ITC Priority List are the common names while the names used in this rule are from the TSCA Chemical Substance Inventory.)

Fifteen of the substances are already listed in the section 8(d) Health and Safety Data Reporting Rule: Phosphoric acid, tributyl ester (CAS No. 126-73-8) was added on May 19, 1988 (51 FR 18323), and the remaining 14 were added on May 1, 1987 (52 FR 16022). The Agency will not add these substances to the section 8(d) Health and Safety Data Rule at this time, because these substances are already listed and subject to a 10-year reporting period.

In addition, three chemical substances from the isocyanates group were added to CAIR on December 22, 1988 (53 FR 246): 2,6-toluene diisocyanate (CAS No. 91-08-7), 2,4-toluene diisocyanate (CAS No. 584-84-9) and toluene diisocyanate (CAS No. 26471-62-5). Since the CAIR asks questions which are similar to some of the PAIR questions, EPA has decided not to require PAIR reporting for these three substances. However, if the information received under the CAIR is not sufficient, the Agency reserves the right to require the PAIR reporting at a later time. (Note that these 3 substances are also 3 of the 15 substances not being added to the section 8(d) Health and Safety Data list as noted above.)

Phenyl isocyanate (CAS No. 103-71-9), ethene bromo- (CAS No. 593-60-2) and phosphoric acid, and tributyl ester (CAS No. 126-73-8) were each previously placed on the 8(a) PAIR list (Phenyl isocyanate and ethene bromo- in 1982 (47 FR 26992) and phosphoric acid in 1986 (51 FR 18323)). However, EPA needs updated information on these substances, and therefore has included these substances in today's rule.

III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the chemical substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each manufacturing or importing site at which they manufactured or imported a named chemical substance. A separate form must be completed for each chemical substance and submitted to the Agency no later than December 27, 1990. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA may be able to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the reporting requirements, the basis for exemptions, and a facsimile of the reporting form, are provided in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT.

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA: A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete--regardless of completion date

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

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c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and is being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete--regardless of the completion date.

The bulk of reporting is required at the time the substance is listed. Persons described in categories 1 and 2 do all or most of their health and safety data reporting at the start of the reporting period. The remaining reporting requirements, specifically categories 2(d), 2(e), and 3, continue prospectively.

Detailed guidance for reporting unpublished health and safety data is provided in the Federal Register of September 15, 1986 (51 FR 32720). Also found there are the reporting exemptions.

C. Submission of PAIR Reports and Section 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: (insert either PAIR or 8(d) Reporting).

D. Removal of Chemicals from the Rules

Any person who believes that section 8(a) or 8(d) reporting required by this rule is unwarranted, should promptly submit to EPA in detail the reasons for that belief. EPA, in its discretion, may remove the substance from this rule for good cause (40 CFR 712.30 and 716.105). When withdrawing a substance from the rule, EPA will issue a rule amendment for publication in the Federal Register.

IV. Release of Aggregate Data

EPA will follow procedures for the release of aggregate statistics as prescribed in the Federal Register notice of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than December 27, 1990.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $178,898. To calculate this figure, EPA used information from the 1986 TSCA Inventory Update and SRI Directory of Chemical Producers to generate a list of manufacturers and importers of this one substance and three categories listing 76 substances. None of the companies identified qualify as a small business as defined in 40 CFR 712.25(c), thus, EPA expects 83 firms to generate a total of 143 reports.

Reporting costs (dollars)	
(a) 143 reports estimated at $843 per report	$120,549
(b) 83 familiarization cases at $703 per case	58,349
Total Cost	$179,898
Average cost per site	$8,191
Average cost per firm	$2,061
Reporting burden (hours)	
(a) Rule familiarization: 19 hours/site × 83 sites	1,494
(b) Reporting: 16 hours/report × 143 reports	2,288
EPA costs (dollars)	
Processing cost = 143 reports × $96/report	$13,585

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for one substance and three categories listing 64 substances to be $210,922. This cost estimate is high because EPA is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the information is based upon the 1986 TSCA Inventory Update and secondary information from industry sources. Therefore, EPA tends to overestimate rather than underestimate reporting burden.

Nevertheless, the cost of this final rule is low in comparison with the potential public health and environmental problems posed by these chemicals. Therefore, EPA is justified in obtaining data to determine better whether further regulatory action would be necessary.

The estimated reporting costs are broken down as follows:

Initial corporate review	$18,865
Site identification	30,369
File searches at site	62,483
Photocopying existing studies	10,259
Title listing	3,167
Managerial review for CBI	59,531
Reporting on newly-initiated studies	1,310
Submissions after initial reporting period	24,921
Total Cost	$210,922

Reporting Burden (Hours)

(a) Initial review: 2 hours/firm × 203 firms	406 hours
(b) Reporting: 25.4 hours/firm × 203 firms	5,156 hours
Total reporting burden hours	5,562
Total PAIR and section 8(d) reporting costs	$369,820
Total PAIR and section 8(d) burden hours	9,344 hours

VI. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPTS-82035). All of these documents are available to the public in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC.

1. This final rule.
2. The economic analysis for this rule.
3. The Twenty-sixth Report of the ITC.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of substances recommended by the ITC is provided for in 40 CFR 712.30(c) and 716.18(b).

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control numbers 2070-0054 for PAIR reporting and 2070-0004 for TSCA section 8(d) reporting.

Public reporting burden for this collection of information is estimated to average 27.4 hours for section 8(d) and 34 hours for PAIR per response; including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: September 21, 1990.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

PART 712--[AMENDED]

1. In part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30 is amended by adding one substance to the list in paragraph (w) and adding a new paragraph (x) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * * * *

(w) * * *

CAS No.	Substance	Effective Date	Reporting Date
143-33-9	Sodium cyanide	10/29/90	12/27/90

(x) Manufacturers and importers of the substances listed below by category must submit a Preliminary Assessment Information Manufacturers Report for each site at which they manufacture or import each substance by the reporting date shown in the table below. The categories are listed in alphabetic order with the chemical substances within each category listed by ascending numerical CAS number.

CAS No.	Substance	Effective date	Reporting date
Alkyl phosphates:			
78-40-0	Phosphoric acid, triethyl ester	10/29/90	12/27/90
78-42-2	Phosphoric acid, tris(2-ethylhexyl)ester	10/29/90	12/27/90
78-51-3	Ethanol, 2-butoxy-, phosphate (3:1)	10/29/90	12/27/90
107-66-4	Phosphoric acid, dibutyl ester	10/29/90	12/27/90
126-71-6	Phosphoric acid, tris(2-methylpropyl) ester	10/29/90	12/27/90
126-73-8	Phosphoric acid tributyl ester	10/29/90	12/27/90
298-07-7	Phosphoric acid, bis(2-ethylhexyl)ester	10/29/90	12/27/90
812-00-0	Phosphoric acid, monomethyl ester	10/29/90	12/27/90
1070-03-7	Phosphoric acid, mono(2-ethylhexyl)ester	10/29/90	12/27/90
1498-51-7	Phosphorodichloridic acid, ethylester	10/29/90	12/27/90
1623-15-0	Phosphoric acid, monobutyl ester	10/29/90	12/27/90
1623-24-1	Phosphoric acid, mono(1-methylethyl)ester	10/29/90	12/27/90
2958-09-0	Phosphoric acid, monooctadecyl ester	10/29/90	12/27/90
3900-04-7	Phosphoric acid, monohexyl ester	10/29/90	12/27/90
3991-73-9	Phosphoric acid, monooctyl ester	10/29/90	12/27/90
7057-93-3	Phosphoric acid, didodecyl ester	10/29/90	12/27/90
7332-46-9	Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)	10/29/90	12/27/90
12645-31-7	Phosphoric acid, 2-ethylhexyl ester	10/29/90	12/27/90
12751-23-4	Phosphoric acid, dodecyl ester	10/29/90	12/27/90
27215-10-7	Phosphoric acid, dieicosty ester	10/29/90	12/27/90
Brominated flame retardants:			
74-97-5	Methane, bromochloro-	10/29/90	12/27/90
87-10-5	Benzamide, 3,5-dibromo-N-(4-bromophenyl)-2-hydroxy-	10/29/90	12/27/90
87-83-2	Benzene, pentabromomethyl-	10/29/90	12/27/90
87-84-3	Cyclohexane,1,2,3,4,5-pentabromo-6-chloro-	10/29/90	12/27/90
96-13-9	1-Propanol, 2,3-dibromo-	10/29/90	12/27/90
593-60-2	Ethene, bromo-	10/29/90	12/27/90
615-58-7	Phenol, 2,4-dibromo-	10/29/90	12/27/90
4162-45-2	Ethanol,2,2'-[(1-methylethylidene)bis((2,6-dibromo-4,1-phenylene)oxy)]bis-	10/29/90	12/27/90

CAS No.	Substance	Effective date	Reporting date
25327-89-9	Benzene, 1,1'-(1-methylethylidene)bis(3,5-dibromo-4-(2-propenyloxy)-	10/29/90	12/27/90
30554-72-4	Cyclohexane, tetrabromodichloro-	10/29/90	12/27/90
30554-73-5	Cyclohexane, tribromotrichloro-	10/29/90	12/27/90
36483-57-5	1-Propenol, 2,2-dimethyl-, tribromo deriv.	10/29/90	12/27/90
55205-38-7	2-Propenoic acid, (1-methylethylidene)bis (2,6-dibromo-4,1-phenylene) ester.	10/29/90	12/27/90
68955-41-9	Alkanes, C10-16, bromochloro-	10/29/90	12/27/90
69882-11-7	Phenol, 2,4(or 2,6)-dibromo-, homopolymer	10/29/90	12/27/90
86487-58-7	Benzene, ethenyl-, homopolymer, brominated	10/29/90	12/27/90
Isocyanates:			
91-97-4	1,1'-Biphenyl, 4,4'-diisocyanato-3,3'-dimethyl-	10/29/90	12/27/90
100-28-7	Benzene, 1-isocyanato-4-nitro-	10/29/90	12/27/90
101-68-8	Benzene, 1,1'-methylenebis(4-isocyanato-	10/29/90	12/27/90
102-36-3	Benzene, 1,2-dichloro-4-isocyanato-	10/29/90	12/27/90
103-71-9	Benzene, isocyanato-	10/29/90	12/27/90
104-12-1	Benzene, 1-chloro-4-isocyanato-	10/29/90	12/27/90
104-49-4	Benzene, 1,4-diisocyanato-	10/29/90	12/27/90
109-90-0	Ethene, isocyanato-	10/29/90	12/27/90
110-78-1	Propane, 1-isocyanato-	10/29/90	12/27/90
111-36-4	Butane, 1-isocyanato-	10/29/90	12/27/90
112-96-9	Octadecane, 1-isocyanato-	10/29/90	12/27/90
123-61-5	Benzene, 1,3-diisocyanato-	10/29/90	12/27/90
329-01-1	Benzene, 1-isocyanato-3-(trifluoromethyl)-	10/29/90	12/27/90
614-68-6	Benzene, 1-isocyanato-2-methyl-	10/29/90	12/27/90
622-58-2	Benzene, 1-isocyanato-4-methyl-	10/29/90	12/27/90
624-83-9	Methane, isocyanato-	10/29/90	12/27/90
1476-23-9	1-Propene, 3-isocyanato-	10/29/90	12/27/90
2422-91-5	Benzene, 1,1',1"-methylidynetris(4-isocyanato-	10/29/90	12/27/90
2493-02-9	Benzene, 1-bromo-4-isocyanato-	10/29/90	12/27/90
2909-38-8	Benzene, 1-chloro-3-isocyanato-	10/29/90	12/27/90
2949-22-6	Acetic acid, isocyanato-, ethyl ester	10/29/90	12/27/90
3173-53-3	Cyclohexane, isocyanato-	10/29/90	12/27/90
4035-89-6	Imidodicarbonic diamide,N,N',2-tris(6-isocyanatohexyl)-	10/29/90	12/27/90
4098-71-9	Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-	10/29/90	12/27/90
4151-51-3	Phenol, 4-isocyanato-, phosphorothioate (3:1) (ester)	10/29/90	12/27/90
5124-30-1	Cyclohexane, 1,1'-methylenebis(4-isocyanato-	10/29/90	12/27/90
5873-54-1	Benzene, 1-isocyanato-3-((4-isocyanatophenyl)methyl)-	10/29/90	12/27/90
10031-75-1	Benzene, 1,1'-(diisocyanatomethylene)bis-	10/29/90	12/27/90
15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-	10/29/90	12/27/90
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-	10/29/90	12/27/90
25854-16-4	Benzene, bis(isocyanatomethyl)-	10/29/90	12/27/90
25447-40-5	Benzene, 1,1'-methylenebis(isocyanato-	10/29/90	12/27/90
26603-40-7	1,3,5,-Triazine-2,4,6(1H,3H,5H-trione, 1,3,5-tris(3-isocyanatomethyl-phenyl)-.	10/29/90	12/27/90
26747-90-0	1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanatomethylphenyl)-	10/29/90	12/27/90
28178-42-9	Benzene, 2-isocyanato-1,3-bis(1-methylethyl)-	10/29/90	12/27/90
28556-81-2	Benzene, 2-isocyanato-1,3-dimethyl-	10/29/90	12/27/90
30674-80-7	2-Propenoic acid, 2-methyl-,2-isocyanatoethyl ester	10/29/90	12/27/90
34893-92-0	Benzene, 1,3-dichloro-5-isocyanato-	10/29/90	12/27/90
66232-06-5	Cyclohexane, 2-heptyl-3,4-bis(9-isocyanatononyl)-1-pentyl-	10/29/90	12/27/90
73597-36-8	2-Propenoic acid, 2-methyl-, 2-(((((5-isocyanato-1,3,3-trimethylcyclohexyl) methyl)amino)carbonyl)oxy)ethyl ester.	10/29/90	12/27/90

PART 716—[AMENDED]

2. In part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. Section 716.120 is amended by adding one substance to the list in paragraph (a) and adding a new paragraph (d) to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * * * *

(a) * * *

CAS Number	Substance	Special Exemptions	Effective Date	Sunset Date
* * * * * * * *				
143-33-9	Sodium Cyanide		10/29/90	10/29/00
* * * * * * * *				

* * * * * * *

(d) *Listed members of categories.* The following categories are listed in alphabetical order with the chemical substances identified in each category also listed alphabetically. Only those chemical substances specifically listed within a category are subject to all provisions of part 716 for the time period from the effective date of the rule until the sunset date.

Category	CAS No. (exemptions for category)	Special Exemptions	Effective Date	Sunset Date
Alkyl Phosphates:				
Ethanol, 2-butoxy-, phosphate (3:1)	78-51-3		10/29/90	10/29/00
Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)	7332-48-9		10/29/90	10/29/00
Phosphoric acid, bis(2-ethylhexyl) ester	298-07-7		10/29/90	10/29/00
Phosphoric acid, dibutyl ester	07-66-4		10/29/90	10/29/00
Phosphoric acid, didodecyl ester	7057-92-9		10/29/90	10/29/00
Phosphoric acid, dioctyl ester	27215-10-7		10/29/90	10/29/00
Phosphoric acid, dodecyl ester	12751-23-4		10/29/90	10/29/00
Phosphoric acid, 2-ethylhexyl ester	12645-31-7		10/29/90	10/29/00
Phosphoric acid, monobutyl ester	1623-15-0		10/29/90	10/29/00
Phosphoric acid, mono(2-ethylhexyl)ester	1070-03-7		10/29/90	10/29/00
Phosphoric acid, monohexyl ester	3900-04-7		10/29/90	10/29/00
Phosphoric acid, monomethyl ester	812-00-0		10/29/90	10/29/00
Phosphoric acid, mono(1-methylethyl)ester	1623-24-1		10/29/90	10/29/00
Phosphoric acid, monooctyl ester	2991-73-9		10/29/90	10/29/00
Phosphoric acid, monooctadecyl ester	2958-09-0		10/29/90	10/29/00
Phosphoric acid, triethyl ester	78-40-0		10/29/90	10/29/00
Phosphoric acid, tris(2-ethylhexyl) ester	78-42-2		10/29/90	10/29/00
Phosphoric acid, tris(2-methylpropyl) ester	126-71-6		10/29/90	10/29/00
Phosphorodichloridic acid, ethyl ester	1498-51-7		10/29/90	10/29/00
Brominated flame retardants:				
Alkanes, C10-16, bromochloro-	68955-41-9		10/29/90	10/29/00
Benzamide, 3,5-dibromo-N-(4-bromophenyl)-2-hydroxy-	87-10-5		10/29/90	10/29/00
Benzene, ethenyl-, homopolymer, brominated	86487-58-7		10/29/90	10/29/00
Benzene, 1,1'-(1-methylethylidene)bis (3,5-dibromo-4-(2-propenyloxy)-.	25327-89-3		10/29/90	10/29/00
Benzene, pentabromomethyl-	87-83-2		10/29/90	10/29/00
Cyclohexane, 1,2,3,4,5-pentabromo-6-chloro-	87-84-3		10/29/90	10/29/00
Cyclohexane, tetrabromodichloro-	30554-72-4		10/29/90	10/29/00
Cyclohexane, tribromotrichloro-	30554-73-5		10/29/90	10/29/00
Ethanol, 2,2'-((1-methylethylidene)bis ((2,6-dibromo-4,1-phenylene)oxy)) bis-.	4162-45-2		10/29/90	10/29/00
Ethene, bromo-	593-60-2		10/29/90	10/29/00
Phenol, 2,4-dibromo-	615-58-7		10/29/90	10/29/00
Phenol, 2,4(or 2,6)-dibromo-, homopolymer	69882-11-7		10/29/90	10/29/00
1-Propenol, 2,3-dibromo-	96-13-9		10/29/90	10/29/00
1-Propenol, 2,2-dimethyl-, tribromo deriv.	36483-57-5		10/29/90	10/29/00
2-Propenoic acid,(1-methylethylidene)bis (2,6-dibromo-4,1-phenylene) ester.	55205-38-7		10/29/90	10/29/00
Isocyanates:				
Acetic acid, isocyanato-, ethyl ester	2949-22-6		10/29/90	10/29/00
Benzene, bis(isocyanatomethyl)-	25854-16-4		10/29/90	10/29/00
Benzene, 1-bromo-4-isocyanato-	2493-02-9		10/29/90	10/29/00
Benzene, 1-chloro-3-isocyanato-	2909-38-8		10/29/90	10/29/00
Benzene, 1-chloro-4-isocyanato-	104-12-1		10/29/90	10/29/00
Benzene, 1,2-dichloro-4-isocyanato-	102-36-3		10/29/90	10/29/00
Benzene, 1,3-dichloro-5-isocyanato-	34893-92-0		10/29/90	10/29/00
Benzene, 1,1'-(diisocyanatomethylene)bis-	10031-75-1		10/29/90	10/29/00
Benzene, isocyanato-	103-71-9		10/29/90	10/29/00
Benzene, 2-isocyanato-1,3-bis(1-methylethyl)-	28178-42-9		10/29/90	10/29/00
Benzene, 2-isocyanato-1,3-dimethyl-, ester	28556-81-2		10/29/90	10/29/00
Benzene, 1-isocyanato-2-methyl-	614-68-6		10/29/90	10/29/00
Benzene, 1-isocyanato-4-methyl-	622-58-2		10/29/90	10/29/00
Benzene, 1-isocyanato-4-nitro-	100-28-7		10/29/90	10/29/00
Benzene, 1-isocyanato-3-(trifluoromethyl)-	329-01-1		10/29/90	10/29/00
Benzene, 1,1',1"-methylidynetris(4-isocyanato-	2422-91-5		10/29/90	10/29/00
Butane, 1-isocyanato-	111-36-4		10/29/90	10/29/00
Cyclohexane, 2-heptyl-3,4-bis (9-isocyanatononyl)-1-pentyl-	66232-06-5		10/29/90	10/29/00
Cyclohexane, isocyanato-	3173-53-3		10/29/90	10/29/00
1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanato methylphenyl)-	26747-90-0		10/29/90	10/29/00
Ethane, isocyanato-	109-90-0		10/29/90	10/29/00
Imidodicarbonic diamide, N,N'-2-tris(6-isocyanatohexyl)-	4035-89-6		10/29/90	10/29/00
Methane, isocyanato-	624-83-9		10/29/90	10/29/00
Octadecane, 1-isocyanato-	112-96-9		10/29/90	10/29/00
Phenol, 4-isocyanato-, phosphorothioate (3:1) (ester)	4151-51-3		10/29/90	10/29/00
Propane, 1-isocyanato-	110-78-1		10/29/90	10/29/00
1-Propene, 3-isocyanato-	1476-23-9		10/29/90	10/29/00
2-Propenoic acid, 2-methyl-, 2-isocyanatoethyl ester	30674-80-7		10/29/90	10/29/00
2-Propenoic acid, 2-methyl-,2-(((((5-isocyanato-1,3,3-trimethylcyclohexyl)methyl)amino) carbonyl)oxy)ethyl ester.	73597-36-8		10/29/90	10/29/00
1,3,5,-Triazine-2,4,6(1H,3H,5H-trione, 1,3,5-tris(3-isocyanatomethyl-phenyl)-.	26603-40-7		10/29/90	10/29/00

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federal register

Friday
September 28, 1990

Part IV

Department of Defense

48 CFR Part 201 et al.
Department of Defense Acquisition Regulations; Miscellaneous Amendments; Proposed Rule

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DEPARTMENT OF DEFENSE

48 CFR Parts 201, 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, 252, 253, and Appendix I

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Defense Federal Acquisition Regulation Supplement (DFARS) is being rewritten in its entirety as a result of a Defense Management Review initiative. The rewrite is designed to eliminate text and clauses that are unnecessary (e.g., duplicate FAR or other directives, add no value, etc.); eliminate or modify, where possible, thresholds, certifications, approval levels, and other regulatory burdens on contracting officers and contractors; and rephrase remaining text and clauses in plain English. The rewrite is being published for public comment in four increments. This is the second increment. The first increment was published on August 14, 1990 (55 FR 33218).

DATES: Comments must be submitted on or before November 27, 1990.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Ms. Lucile Hughes, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(M&RS), Room 3D139, Pentagon, Washington, DC 20301–3062. Please cite DAR Case 90–741 in all correspondence concerning this proposed rule.

FOR FURTHER INFORMATION CONTACT: 202–697–7266. Barbara Young, for parts 205, 206, 209, 210, 212, 214, 234; Valorie Lee, for parts 201, 213 and 246; Alyce Sullivan, for parts 228 and 230; and Charles Lloyd, for Appendix I.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense's July 1989 Defense Management Report to the President concluded that much of the stifling burden of DoD regulatory guidance, including the Defense Federal Acquisition Regulation Supplement (DFARS), is self-imposed. To correct this situation, the DoD formed a Regulatory Relief Task Force to review DFARS and lower level supplements and to recommend revisions. As a result, the Defense Acquisition Regulatory System, under the direction of the Deputy Assistant Secretary of Defense for Procurement, has undertaken the complete rewrite of DFARS. The rewrite is designed to: Eliminate text and clauses that are unnecessary (e.g., duplicate FAR or other directives, add no value, etc.); eliminate or modify, where possible, thresholds, certifications, approval levels, and other regulatory burdens on contracting officers and contractors; and rephrase remaining text and clauses in plain English.

The rewritten DFARS is being published for public comment in four monthly increments. This publication of DFARS parts 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, their attendant clauses in 252, and their attendant forms instructions in 253 is the second increment. This increment also includes that section of part 201 which explains DFARS numbering. Part 201 is scheduled for publication in a subsequent increment. All public comments received in response to this notice will be considered in developing the final rule, which is planned for publication in February 1991. Parties responding to this notice are requested to separate their comments by DFARS part.

The rewritten DFARS is addressed to the contracting officer. Every attempt has been made to remove extraneous material which, though informative, was guidance addressed to others in the acquisition process, e.g., program managers, requirements personnel, small business specialists, etc. Text which was unnecessary or redundant has been removed. Some text has been moved to the FAR and some additional text in this proposed rule may be moved to the FAR before the rule is finalized. Text has been rearranged, and in some instances, moved to other parts, to more closely align the DFARS text with the FAR text it implements or supplements. The rewritten DFARS includes some policy and procedural changes. These are identified in the following discussion of revisions by part. Unless specifically identified as a change, the rewritten version of the part is not intended as a change in current policy or procedure.

Part 205, Publicizing Contract Actions. The level of approval in 205.502 for placing newspaper advertisements has been lowered. The requirement in 205.302 for inclusion of the size status of the contractor in the synopsis of contract award has been deleted. The requirement in 205.404–2 to announce the availability of long-range acquisition estimates in the Commerce Business Daily has been deleted, thus leaving this to the discretion of the contracting officer.

Part 206, Competition Requirements. The prescription for use of the provision entitled "Domestic Source Restriction" has been moved from part 214 to part 206. The provision has been moved from 252.214–7001 to 252.206–7000.

Part 209, Contractor Qualifications. The coverage in 209.473 on debarment in overseas areas has been substantially revised to adopt use of FAR Subpart 9.4 procedures. The requirement in 209.473 for overseas commanders to maintain a consolidated list of debarred and suspended offshore contractors has been replaced by a requirement to list such contractors on the GSA maintained list. The certification requirement in the provision at 252.209–7000, Certification or Disclosure of Ownership or Control by a Foreign Government That Supports Terrorism, has been eliminated, but the disclosure requirement remains. Guidance on use of the SF 1403, Preaward Survey of Prospective Contractor, has been moved to part 253.

Part 210, Specifications, Standards, and Other Purchase Descriptions. A new provision has been added as 252.210–7004 to provide for consideration of alternate offers based on use of commercial preservation, packaging, and packing.

Part 212, Contract Delivery or Performance. The clause at 252.212–7000, Exclusion of Periods in Computing Completion Schedules, has been deleted as unnecessary.

Part 213, Small Purchase and Other Simplified Purchase Procedures. Instructions for completion of forms prescribed by part 213 have been moved to part 253.

Part 214, Sealed Bidding. The clause at 252.214–7001, Domestic Source Restriction, has been moved to 252.206–7000.

Part 228, Bonds and Insurance. The clause at 252.228–7007, Bid Bond, has been deleted. The requirement in 228.102–1(a) for approval of the chief of the contracting office before requiring performance and payment bonds in cost-reimbursement construction contracts has been deleted. The requirement in 228.103–2 for sending copies of class determinations on use of performance bonds to the Office of the Assistant Secretary of Defense (Production and Logistics) has been deleted.

Part 230, Cost Accounting Standards. No changes in policy or procedure.

Part 234, Major System Acquisition. The provision at 252.234–7000, Notice of Cost/Schedule Control Systems, has been combined with the clause at 252.234–7001, Cost/Schedule Control Systems.

Part 246, Quality Assurance. The definition in section 246.770 of "essential performance requirements" has been revised to lower the level for determining such characteristics for weapon systems from the Secretary of Defense to the agency head. A new clause has been added at 252.246–7001, Manufacturing Process Controls and In-Process Inspections, to supplement the inspection system requirements of MIL–I–45208 when controls and inspections need to be strengthened to ensure the integrity of the product.

Part 252, Solicitation Provisions and Contract Clauses. Revisions in provisions/clauses are identified in the discussion of the part which prescribes use of the provision or clause.

Part 253, Forms. Revisions in this part are identified in the discussion of the part which prescribes use of the form.

Appendix I, Material Inspection and Receiving Report. No changes in policy or procedure.

B. Regulatory Flexibility Act

Parts 201, 205, 206, 209, 212, 213, 214, 228, 230, 234, 246, the provisions/clauses in part 252 prescribed by these parts, the instructions in part 253 on forms prescribed by these parts, and Appendix I. These proposed rules do not constitute significant revisions within the meaning of Public Law 96–577; therefore, the Regulatory Flexibility Act does not apply.

Part 210 and the provisions/clauses in part 252 prescribed by this part. This proposed rule is not expected to have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged and with few exceptions, the procedural changes are internal agency operating procedures. An Initial Regulatory Flexibility Analysis has not been performed. Comments are solicited from small business and other interested parties and will be considered in development of the final rule.

C. Paperwork Reduction Act

Parts 201, 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, the provisions/clauses in part 252 prescribed by these parts, the instructions in part 253 on forms prescribed by these parts, and Appendix I. These proposed rules do not change or impose any record keeping or information collection requirements beyond that for which OMB approval has previously been obtained.

List of Subjects in 48 CFR Parts 201, 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, 252, and 253

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulatory System.

Adoption of Amendments

Therefore, it is proposed that 48 CFR parts 201, 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, 252, 253, and Appendix I be amended as follows:

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.–2. Section 201.303 is added to read as follows:

201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in Title 48, Code of Federal Regulations. DFARS text is numbered to parallel and correspond with its FAR part, subpart, section, subsection, paragraph, and lower division counterpart, except—

(A) The FAR counterpart in DFARS is preceded by a 2, e.g., FAR part 19 is DFARS part 219.

(B) Implemental text is numbered exactly the same as its FAR counterpart, preceded by a 2, except when the implemental text exceeds one paragraph, the subdivisions are numbered by skipping a unit in the FAR 1.104–2(b)(2) prescribed numbering sequence. For example, three paragraphs implementing FAR 19.501 would be numbered 219.501(1), (2), and (3) rather than (a), (b), and (c). Further subdivision of these implemental paragraphs would follow the prescribed numbering sequence, e.g., 219.501(1)(i)(A).

(C) Supplemental text is numbered the same as its FAR counterpart, preceded by a 2, with the addition of a number of 70 and up or (S–70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S–70) and up. When supplemental text exceeds one paragraph, the subdivisions are numbered using the FAR 1.104–2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501–70.

Its subdivisions would be numbered 219.501–70(a), (b), and (c).

As an example of DFARS numbering—

FAR	Is Implemented As	Is Supplemented As
19	219	219.70.
19.5	219.5	219.570.
19.501	219.501	219.501–70.
19.501–1	219.501–1	219.501–1–70.
19.501–1(a)	219.501–1(a)	219.501–1(a)(S–70).
19.501–1(a)(1)	219.501–1(a)(1)	219.501–1(a)(1)(S–70).

(ii) Department/agency and component supplements must parallel the FAR and DFARS numbering for implemental text. Department/agency supplemental text will use subsection numbering of 90 and up.

3. Part 205 is revised to read as follows:

PART 205—PUBLICIZING CONTRACT ACTIONS

Subpart 205.2—Synopses of Proposed Contract Actions

Sec.
205.202 Publicizing and response time.
205.207 Preparation and transmittal of synopses.

Subpart 205.3—Synopses of Contract Awards

205.303 Announcement of contract awards.

Subpart 205.4—Release of Information

205.470 Contractor information to be provided Cooperative Agreement Holders.
205.470–1 Statutory requirement.
205.470–2 Contract clause.

Subpart 205.5—Paid Advertisements

205.502 Authority.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 205.2—Synopses of Proposed Contract Actions

205.202 Publicizing and response time.

(b) Allow at least 45 days response time—

(i) When requested by a qualifying or designated country source (as these terms are used in part 225); and

(ii) When consistent with the Government's requirement.

205.207 Preparation and transmittal of synopses.

(d)(i) For small disadvantaged business set-asides under 219.502–270, use CBD Numbered Note 4.

(ii) For acquisitions being considered for small disadvantaged business set-aside, use CBD Numbered Note 6.

(iii) For historically black college and university and minority institution set-asides under 226.7003, use CBD Numbered Note 5.

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(iv) For acquisitions being considered for historically black college and university and minority institution set-aside, state:

This proposed contract is being considered as a 100 percent set-aside for historically black colleges and universities (HBCUs) and minority institutions (MIs), as defined by the clause at 252.226-7000 of the Defense Federal Acquisition Regulation Supplement. Interested HBCUs and MIs should provide the contracting office as early as possible, but not later than 15 days after this notice, evidence of their capability to perform the contract, and a positive statement of their eligibility as an HBCU or MI. If adequate response is not received from HBCUs and MIs, the solicitation will instead be issued, without further notice, as: _____(indicate if unrestricted, or restricted for small business or small disadvantaged business, etc.). Therefore, replies to this notice are also requested from _____(enter the types of firms to be solicited in the event an HBCU or MI set-aside is not made).

(v) For Broad Agency Announcement (BAA) (see 235.016) notices, indicate which, if any, portion of the BAA will be set-aside for historically black colleges and universities and minority institutions.

(e) For acquisitions restricted to domestic sources under the authority of FAR 6.302-3, use CBD Numbered Note 13.

Subpart 205.3—Synopses of Contract Awards

205.303 Announcement of contract awards.

(a) *Public Announcement.* (i) The threshold for DoD awards is $5 million and generally is based on the obligated amount of the action. For example—

(A) Announce delivery orders or modifications which individually obligate $5 million.

(B) Do not announce requirements contracts, regardless of their estimated value, since the contract does not obligate funds.

(C) Announce indefinite quantity contracts estimated to exceed $5 million, even though less than $5 million may be obligated at time of award.

(ii) Departments and agencies submit the information—

(A) To the Office of the Assistant Secretary of Defense (Public Affairs);

(B) By the close of business the day before the date of the proposed award;

(C) Using report control symbol DD-LA-(AR) 1278;

(D) Including, as a minimum, the following—

(1) Contract data. Contract number, modification number, or delivery order number, amount to be obligated, total cumulative amount of the contract, item description, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

(2) Competition information. Number of solicitations mailed and number of offers received;

(3) Contractor data. Name, address, place of performance (if different), and socioeconomic status (e.g., small business, small disadvantaged business, labor surplus area);

(4) Funding data. Type of appropriation and fiscal year of the funds, and whether the contract is multiyear (see FAR subpart 17.1); and

(5) Miscellaneous data. Identification of the contracting office, the contracting office point of contact, known congressional interest, and the information release date.

(iii) Departments and agencies, in accordance with department/agency procedures and concurrent with the public announcement, provide information similar to that required by paragraph (a)(ii) of this section to members of Congress in whose state or district the contractor is located and the work is to be performed.

Subpart 205.4—Release of Information

205.470 Contractor information to be provided Cooperative Agreement Holders.

205.470-1 Statutory requirement.

(a) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into Cooperative Agreements—

(1) With—

(i) State and local governments;

(ii) Non-profit organizations;

(iii) Indian tribal organizations; and

(iv) Indian-owned economic enterprises

(2) For the provision of technical assistance to business entities. (b) Contractors receiving Defense contracts valued at more than $500,000 must provide Cooperative Agreement Holders, at their request, the information specified in the clause at 252.205-7000, Provision of Information to Cooperative Agreement Holders.

205.470-2 Contract clause.

Use the clause at 252.205-7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts expected to exceed $500,000.

Subpart 205.5—Paid Advertisements

205.502 Authority.

For paid advertisements to recruit civilian personnel, see section 332-1-9 of the Federal Personnel Manual.

(a) *Newspapers.* (i) Heads of contracting activities are delegated authority to approve the publication of paid advertisements in newspapers. They may redelegate this authority in accordance with agency procedures.

(ii) Submit DD Form 1535, Request/Approval for Authority to Advertise, to the approval authority to obtain special or general authority.

(A) Special authority permits the publication of a given advertisement for a specified number of times in designated newspapers.

(B) General authority permits the publication of such advertisements as may be required during a designated fiscal year.

4. Part 206 is revised to read as follows:

PART 206—COMPETITION REQUIREMENTS

Sec.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.
206.203 Set-asides for small business and labor surplus area concerns.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.
206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
206.302-2 Unusual and compelling urgency.
206.302-3 Industrial mobilization; or engineering, development, or research capability.
206.302-3-70 Solicitation provision.
206.302-5 Authorized or required by statute.
206.303 Justifications.
206.303-1 Requirements.
206.303-2 Content.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F must identify the source to be excluded from the contract action.

(i) Include the following information, as applicable, and any other information that may be pertinent, in the supporting documentation:

(A) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(B) The circumstances which make it necessary to exclude the particular source from the contract action, including—

(1) The reasons for the lack of or potential loss of alternative sources; e.g., the technical complexity and criticality of the items or services; and

(2) The current annual requirement and projected needs for the supplies or services;

(C) Whether the source must be totally excluded from the contract action or whether a partial exclusion is sufficient;

(D) The potential effect of exclusion on the excluded source in terms of loss of capability to furnish the supplies or services in the future;

(E) When FAR 6.202(a)(1) is the authority, the basis for—

(1) The determination of future competition; and

(2) The determination of reduced overall costs. Include, as a minimum, a discussion of start-up costs, facility costs, duplicative administration costs, economic order quantities, and life cycle cost considerations; and

(F) When FAR 6.202(a)(2) is the authority—

(1) The current annual and mobilization requirements for the items or services, citing the source of, or the basis for, the data;

(2) A comparison of current production capacity with that necessary to meet mobilization requirements;

(3) An analysis of the risks of relying on the present source; and

(4) A projection of the time required for a new source to acquire the necessary facilities and achieve the production capacity necessary to meet mobilization requirements.

(ii) A sample format for Determination and Findings citing the authority of FAR 6.202(a) follows—

Determination and Findings

Authority to Exclude a Source

In accordance with 10 U.S.C. 2304(b)(1), it is my determination that the following contract action may be awarded using full and open competition after exclusion of _____*:

(Describe requirement.)

Findings

The exclusion of _____* *Alternate 1:* will increase or maintain competition for this requirement and is expected to result in a reduction of $_____ in overall costs for the acquisition of these supplies or services. (Describe how estimate was derived.)

Alternate 2: is in the interest of national defense because it will result in having a supplier available for furnishing these supplies or services in case of a national emergency or industrial mobilization. Explain circumstances requiring exclusion of source.)

Alternate 3: is in the interest of national defense because it will result in establishment or maintenance of an essential engineering, research or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. (Explain circumstances requiring exclusion of source.)

*Identify source being excluded.

206.203 Set-asides for small business and labor surplus area concerns.

(b) Also no separate justification or determination and findings is required for contract actions processed as small disadvantaged business set-asides (219.502270) or as historically black college and university and minority institution set-asides (226.7003).

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (2)(i) Departments and agencies shall not enter into a contract for studies, analyses, or consulting services (see FAR subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

(1) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

(i) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(ii) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

(iii) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

(2) A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to be in the interest of national defense; or

(3) The contract is related to improvement of equipment that is in development or production.

(b) *Application.* This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

(4) Do not use this authority unless the equipment or parts have been adopted as standard items of supply in accordance with DoDD 4120.3, Defense Standardization and Specification Program.

206.302-2 Unusual and compelling urgency.

(b) *Application.* The circumstances under which use of this authority may be appropriate include, but are not limited to, the following:

(i) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

(ii) Essential equipment or repair needed at once to—

(A) Comply with orders for a ship;

(B) Perform the operational mission of an aircraft; or

(C) Preclude impairment of launch capabilities or mission performance of missiles or missile support equipment.

(iii) Construction needed at once to preserve a structure or its contents from damage;

(iv) Purchase requests citing an issue priority designator under DoDD 4410.6, Uniform Material Movement and Issue Priority System, of 4 or higher, or citing "Electronic Warfare QRC Priority."

206.302-3 Industrial mobilization; or engineering, development, or research capability.

206.302-3-70 Solicitation provision.

Use the provision at 252.206-7000, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

206.302-5 Authorized or required by statute.

(c) *Limitations.* (i) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(1) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(2) Identifies the particular college or university involved, and

(3) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Deputy Assistant Secretary of Defense (Procurement).

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

209.303 Justifications.

209.303-1 Requirements.

(b) Technical and requirements personnel must obtain any review and approval required by department or agency procedures before submission of a recommendation for other than full and open competition to the contracting officer.

209.303-2 Content.

(a) Include sufficient information in the justification to permit its approval as a stand-alone document, even though agency procedures may require supplementary documentation.

5. Part 209 is revised to read as follows:

PART 209—CONTRACTOR QUALIFICATIONS

Subpart 209.1—Responsible Prospective Contractors

Sec.
209.103 Policy.
209.103-70 Contract clause.
209.104 Standards.
209.104-1 General standards.
209.104-3 Application of standards.
209.104-4 Subcontractor responsibility.
209.104-70 Solicitation provision.
209.106 Preaward surveys.
209.106-1 Conditions for preaward surveys.
209.106-2 Requests for preaward surveys.

Subpart 209.2—Qualifications Requirements

209.202 Policy.

Subpart 209.3—First Article Testing and Approval

209.305 Risk.
209.306 Solicitation requirements.
209.308 Contract clauses.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.403 Definitions.
209.405 Effect of listing.
209.406 Debarment.
209.406-1 General.
209.406-3 Procedures.
209.406-4 Period of debarment.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 209.1—Responsible Prospective Contractors

209.103 Policy.

(a)(i) Do not deny award to contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty due to the actual or potential presence of Soviet inspectors at the contractor's facility unless—

(A) Necessary for reasons of national security;

(B) The decision is based on full information, including comment from the potential contractor or subcontractor on the security issues involved; and

(C) The department or agency acquisition executive reviews the decision and the Under Secretary of Defense (Acquisition) approves the decision.

(ii) Make any decision to deny consideration for award under paragraph (a)(i) of this section as early as possible in the acquisition process. Notify the firm in writing of any decision not to consider the firm for award of a contract or subcontract.

209.103-70 Contract clause.

Use the clause at 252.209-7000, Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty, in all solicitations and contracts in excess of the small purchase limitation in FAR 13.000, except solicitations and contracts for commercial or commercial-type products (see FAR 11.001).

209.104 Standards.

209.104-1 General standards.

(e) Also, have the necessary safety programs on contractor or subcontractor materials or services.

(g)(i) A contracting officer shall not award a contract to a firm or to a subsidiary of a firm when a foreign government—

(A) Either directly or indirectly—

(*1*) Has a significant interest in the firm; or

(*2*) Has a significant interest in the subsidiary, and

(B) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.

(ii) The Secretary of Defense may waive the prohibition in paragraph (g)(i) of this subsection in accordance with 10 U.S.C. 2327(e). This waiver authority may not be delegated.

209.104-3 Application of standards.

(c) *Satisfactory Performance Record.* Quality is a significant consideration in determining satisfactory performance. Quality defects of a critical or repetitive nature without adequate and timely corrective action, including repair or replacement of items, creates a presumption of an unsatisfactory performance record.

209.104-4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information is necessary to make the responsibility determination.

209.104-70 Solicitation provision.

Use the provision at 252.209-7000, Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism, in solicitations expected to result in contracts of $100,000 or more.

209.106 Preaward surveys.

209.106-1 Conditions for preaward surveys.

(a) If the contracting officer is unable to make a determination of responsibility for an acquisition of $25,000 or less because of inconclusive information, contact the surveying activity for additional information. If a preaward survey is indicated, include the rationale in Block 23 of the SF 1403, Preaward Survey of Prospective Contractor (General).

209.106-2 Requests for preaward surveys.

(1) The surveying activity is the cognizant contract administration office as listed in DoD 4105.59-H, DoD Directory of Contract Administration Services Components. When information is required as part of the survey on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, the surveying activity will obtain the information from the auditor.

(2) Limited information may be requested by telephone. For a formal survey, send an original and three copies of SF 1403. The contracting officer may request the survey by telephone but must confirm immediately with the SF 1403.

(a) List additional factors in item H, Section III of the SF 1403 and explain them in Block 23. For example—

(i) Information needed to determine a prospective contractor's eligibility under the Walsh-Healey Public Contracts Act. (Note that the Walsh-Healey Public Contracts Act block of Section I is for information purposes only).

(ii) Evaluation of a contractor as a planned producer when the offered item is or may appear on the Industrial Preparedness Planning List (IPPL). When the preaward survey results in a recommendation for award, ask the office responsible for industrial preparedness planning to consider designating the prospective contractor as a planned producer. If the item is already on the IPPL or the prospective contractor is already a planned producer, note the information in Block 23.

(b) Include necessary drawings and specifications.

(c) On base level preaward surveys, technical personnel from the requiring installation should participate when there is concern about the ability of a prospective contractor to perform a base level service or construction contract.

(d) Allow more time for—

(i) Complex items;

(ii) New or inexperienced DoD contractors; and

(iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

(e) Only request those factors essential to the determination of responsibility. See 253.209-1(a) for an explanation of the factors in Section III, Blocks 19 and 20 of the SF 1403.

Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products which are to be included on a Qualified Products List requires approval of the following—

Army—Headquarters, U.S. Army Materiel Command, AMCPD-SE
Navy—Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition) (Acquisition Policy, Integrity, and Accountability)
Air Force—Departmental Standardization Office, SAF/AQXL
Defense Logistics Agency—Executive Director, Technical and Logistics Services
National Security Agency—Director of Procurement
Defense Communications Agency—The Director
Defense Nuclear Agency—Director, Acquisition Management
Defense Mapping Agency—The Director of Acquisition

Subpart 209.3—First Article Testing and Approval

209.305 Risk.

The contracting officer may give this authorization to a contractor only after approval by a level higher than the contracting officer.

209.306 Solicitation requirements.

(a)(1) To be sure that the contractor and the Government clearly understand and interpret contract terms and conditions in the same manner, avoid describing first article requirements exclusively in general terms such as "visual," "dimensional," "workmanship," or "specification compliance."

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209-3, First Article Approval—Contractor Testing, or 52.209-4, First Article Approval—Government Testing, as appropriate, may be used when—

(1) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(2) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(3) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.403 Definitions.

Debarring official.

(1) For DoD, the designees are—

Army—Commander, U.S. Army Legal Services Agency
Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition)
Air Force—The Deputy Assistant Secretary (Contracting)
Defense Logistics Agency—The Special Assistant for Contracting Integrity
National Security Agency—The Director
Defense Communications Agency—The General Counsel
Defense Nuclear Agency—The Director
Defense Mapping Agency—The General Counsel
Overseas installations—as designated by the agency head

(2) Overseas debarring officials—

(i) Are authorized to debar or suspend contractors located within the official's geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406-2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

209.405 Effect of listing.

(1) After the opening of bids or receipt of proposals, the contracting officer shall review the list of Parties Excluded from Procurement Programs. Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the acquiring agency head determines in writing that there is a compelling reason to consider the bid. Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the acquiring agency head determines, in writing, that there is a compelling reason to do so.

(2) When a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is on the list of parties excluded from procurement programs, it shall provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(i) Only a listed contractor can provide the supplies or services;

(ii) Urgency requires contracting with a listed contractor;

(iii) The contractor and a department or agency have an agreement covering the same events which resulted in the listing and the agreement includes the department/agency decision not to debar or suspend the contractor; or

(iv) The national defense requires continued business dealings with the listed contractor.

209.406 Debarment.

209.406-1 General.

(a)(i) If a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary. Before arriving at any debarment decision, the debarring official should consider the following mitigating factors, as applicable—

(A) Whether the contractor had standards of conduct and internal control systems in place at the time of the activity which constitutes cause for

debarment or had adopted such procedures prior to any Government investigation of alleged wrongdoing;

(B) Whether the contractor brought the wrongdoing to the attention of the appropriate Government agency;

(C) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and if so, made the result of the investigation available to the debarring official;

(D) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action;

(E) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution;

(F) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;

(G) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government;

(H) Whether the contractor has agreed to institute new or revised review and control procedures and ethics training programs;

(I) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment; and

(J) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(ii) When debarment consideration involves a felony conviction and the debarring official decides that debarment is not necessary, the official shall require the contractor to enter into a written agreement which includes—

(A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by subpart 203.70; and

(B) Other requirements the debarring official considers appropriate.

209.406-3 Procedures.

(a) *Investigation and Referral.* (i) The contracting officer shall prepare a report containing the information required by paragraph (a)(ii) of this subsection when—

(A) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 and 9.407-2;

(B) FAR 49.108 requires a report;

(C) Part 203 requires a report;

(D) The Government suspects a contractor of violating the Buy American Act (see FAR 25.204);

(E) The Government suspects a contractor of attempting to evade the prohibitions of debarment or suspension by changes of address, multiple addresses, formation of new companies, or by other devices.

(ii) Include the following information, when available, in the report required by paragraph (a)(i) of this subsection)—

(A) Name, address, and telephone number of the point of contact for the activity making the report;

(B) Name and address of the contractor;

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers;

(D) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship;

(E) For each contract affected by the conduct being reported—

(*1*) The contract number;

(*2*) All office identifying numbers or symbols;

(*3*) Description of supplies or services;

(*4*) The amount;

(*5*) The percentage of completion;

(*6*) The amount paid the contractor;

(*7*) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(*8*) The amount due the contractor;

(F) For any other contracts outstanding with the contractor or any of its affiliates—

(*1*) The contract number;

(*2*) The amount;

(*3*) The amounts paid the contractor; and

(*4*) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom;

(*5*) The amount due the contractor;

(G) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor;

(H) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated);

(I) The comments and recommendations of the contracting officer and of each higher level contracting review authority regarding;

(*1*) Whether to suspend or debar the contractor;

(*2*) Whether to apply limitations to the suspension or debarment; and

(*3*) The period of any recommended debarment;

(*4*) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contracts is not included);

(J) When appropriate, as an enclosure to the report—

(*1*) A copy or extracts of each pertinent contract;

(*2*) Witness statements or affidavits;

(*3*) Copies of investigative reports;

(*4*) Certified copies of indictments, judgments, and sentencing actions; and

(*5*) D Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the debarring official in 209.403.

209.406-4 Period of debarment.

(a) If a decision is based on a felony conviction, the period generally should be for more than one year. When the debarring official decides not to debar or to debar for one year or less, both that decision and the agreement required by 209.406-1(a)(ii) require the written approval of the Secretary concerned or, in the case of the defense agencies, the Assistant Secretary of Defense (Production and Logistics), unless the debarring official determines that all of the mitigating factors in 209.406-1(a)(i) (A) through (J) are applicable and affirmative.

6. Part 210 is revised to read as follows:

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

210.001 Definitions.
210.002 Policy.
210.002-70 Preference for nondevelopmental items.
210.004 Selecting specifications or descriptions for use.
210.008 Identification and availability of specifications.
210.011 Solicitation provisions and contract clauses.
210.011-70 Solicitation provisions and contract clauses.
210.070 Acquiring bills of materials.

Authority: 5 U.S.C. 301,10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

210.001 Definitions.

Bill of materials means a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind.

Nondevelopmental item means—

(1) Any item of supply that is available in the commercial marketplace;

(2) Any previously-developed item of supply that is in use by a department or agency of the U.S., a state or local Government, or a foreign Government with which the U.S. has a mutual Defense cooperation agreement;

(3) Any item of supply described in paragraphs (1) or (2) of this definition that requires only minor modification in order to meet the requirements of the contracting agency; or

(4) Any item of supply that is currently being produced that does not meet the requirements of paragraphs (1), (2), or (3) of this definition solely because the item is not yet in use or is not yet available in the commercial marketplace.

Systems means a combination of elements that will function together to produce the capabilities required to fulfill a mission need.

Systems acquisition means the design, development, and production of new systems.

It also includes modifications to existing systems that involve redesign of the system or subsystems.

210.002 Policy.

(c) All systems acquisition programs in the DoD are subject to the acquisition streamlining policies and procedures in DoDD 5000.43, Acquisition Streamlining, and MIL-HDBK-248. Statements of work for acquisition streamlining programs, in citing specifications, standards, and related documents, shall—

(i) Specify results desired, rather than how-to design or how-to manage;

(ii) Be tailored to the unique circumstances of the acquisition; and

(iii) State for each specification, standard, and related document whether it is included for guidance or mandatory compliance.

(A) Include specifications, standards, and related documents for guidance for acquisition programs prior to entering full-scale development, except as provided in paragraph (c)(iii)(B)(*2*) of this section. Require in the statement of work that the contractor evaluate the specifications, standards, and related documents and recommend a tailored application for any subsequent phase of the acquisition.

(B) Include specifications, standards, and related documents for mandatory compliance—

(*1*) At the first tier document level, for acquisition programs in fullscale development. Include documents below first tier for guidance.

(*2*) At all document tiers, if they—

(*i*) Define the product baseline for acquisition programs in the production phase;

(*ii*) Call for nondevelopmental items, such as standard parts or off-the-shelf items; or

(*iii*) Cover design constraints which have been directed and have been tailored to the maximum extent practical.

210.002-70 Preference for nondevelopmental items.

DoD policy is to fulfill requirements for supplies through acquisition of nondevelopmental items to the maximum extent practical (10 U.S.C. 2325).

210.004 Selecting specifications or descriptions for use.

(b)(3) When a "brand name or equal" purchase description is used—

(i) The purchase description—

(A) Should include a complete common generic identification of the item.

(B) Should reference all known acceptable brand name products, to include—

(*1*) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known); and

(*2*) Model, make, or catalog number for each, and identity of the commercial catalog in which it appears.

(C) May, if necessary to adequately describe an item, use a commercial catalog description or an extract from the catalog. Ensure that a copy of each catalog referenced (except parts catalogs) is available at the contracting office for review by offerors.

(D) Should give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially the same manner as the brand name product.

(E) Must identify those salient physical, functional, or other characteristics which are essential to the needs of the Government.

(ii) The solicitation—

(A) May require bid samples for "or equal" offers, but not for "brand name" offers.

(B) Must provide for full consideration and evaluation of "or equal" offers against the salient characteristic specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(iii) The contract shall identify, or incorporate by reference an identification of the specific products the contractor is to furnish. Include any brand name, make or model number, descriptive material, and any modifications of brand name products specified in the offer.

210.008 Identification and availability of specifications.

(a) The DoD index of data item descriptions is DoD 5010.12-L, Acquisition Management Systems and Data Requirements Control List.

(d) Also, furnish data item descriptions which are not listed in the Acquisition Management Systems and Data Requirements Control List (AMSDL), except when it is not feasible, e.g., documents are bulky or only a limited number of copies are available at the contracting activity.

(g) Contracting activities can obtain copies of the DODISS, the AMSDL, all unclassified specifications and standards listed in the DODISS, and data item descriptions listed in the AMSDL by sending a DD Form 1425, Specifications and Standards Requisition, to the DoD single stock point: Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094. Include with the DD Form 1425—

(i) The requestor's customer number; and

(ii) Complete return mailing address, including any "mark for" instructions.

210.011 Solicitation provisions and contract clauses.

(b) When contract performance requires use of specifications and standards which are not listed in the DODISS and data item descriptions which are not listed in the AMSDL, use provisions, as appropriate, substantially the same as those at 252.210-7001, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents, and 252.210-7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

210.011-70 Solicitation provisions and contract clauses.

(a)(i) When a brand name or equal purchase description is to be included in a solicitation, use the provision at 252.210-7000, Brand Name or Equal. Also, immediately following each item covered by a brand name or equal purchase description, insert the following:

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Offeror
Manufacturer's Name
Brand
No.

(ii) When component parts of an end item are described by brand name or equal purchase descriptions and application of the provision at 252.210-7000 to some or all of the components would be impracticable, either do not use the provision or limit its application to specific components.

(b) Use the clause at 252.210-7003, Acquisition Streamlining, in all solicitations and contracts for systems acquisition programs.

(c) Use the provision at 252.210-7004, Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications; and it is both desirable and feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

(d) Use the clause at 252.210-7005, Bill of Materials, in solicitations and contracts which require delivery of bill(s) of materials.

210.070 Acquiring bills of materials.

(a) DoDI 4210.8, Department of Defense Bills of Materials, requires acquisition of bills of materials for certain items, when necessary—

(1) To develop materials or components requirements for production and maintenance programs;

(2) For industrial mobilization purposes; or

(3) For other specified purposes.

(b) When a bill of materials is required, include the following in the contract—

(1) An identification of the supplies or parts to be covered by the bill of materials;

(2) The type of bill or bills of materials (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with instructions, including a requirement for submission, on DD Form 346, Raw (Basic Processed) and Semi-Fabricated Stock Form, and DD Form 347, Bill of Materials for Subcontracted Parts, Purchased Parts, Government Furnished Property;

(3) The price to be paid the contractor for the bill of materials and any revisions, or a statement that the bill of materials is not separately priced;

(4) The number of copies of each bill of materials to be furnished; and

(5) The delivery dates.

7. Part 212 is revised to read as follows:

PART 212—CONTRACT DELIVERY OR PERFORMANCE

Subpart 212.1—Delivery or Performance Schedules

Sec.
212.104 Contract clauses.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

Subpart 212.3—Priorities and Allocations

212.302 General.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 212.1—Delivery or Performance Schedules

212.104 Contract clauses.

(a) The clauses at FAR 52.212-1, Time of Delivery, and 52.212-2, Desired and Required Time of Delivery, may also be used in contracts for research, development, or facilities, or in time and material and labor hours contracts.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

(b) Use the clause at FAR 52.212-5, Liquidated Damages—Construction, in all construction contracts exceeding $500,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of less than $500,000 is optional.

Subpart 212.3—Priorities and Allocations

212.302 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDI 4400.1, Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals.

8. Part 213 is revised to read as follows:

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 213.1—General

Sec.
213.106 Competition and price reasonableness.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.
213.203-1 General.
213.204 Purchase under Blanket Purchase Agreements.

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

Subpart 213.4—Imprest Fund

213.403 Agency responsibilities.
213.404 Conditions for use.

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.
213.506 Termination or cancellation of purchase orders.
213.505 Purchase order and related forms.
213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
215.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.
213.507 Clauses.

Authority: 5 U.S.C. 301,10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 213.1—General

213.106 Competition and price reasonableness.

The contracting officer need not solicit foreign firms located in qualifying countries (as defined in 225.001), unless it is in the best interest of the Government to do so.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.

213.203-1 General.

(i) Prepare and issue blanket purchase agreements (BPAs) on DD Form 1155, Order for Supplies or Services.

213.204 Purchase under Blanket Purchase Agreements.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer shall satisfy the competition requirements of FAR part 6 for any action above the dollar threshold at FAR 13.000.

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

(a) Individual orders may exceed $25,000 for—

(i) Brand name commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

Subpart 213.4—Imprest Fund

213.403 Agency responsibilities.

(c) Installation commanders and commanders of other activities with contracting authority are authorized to approve the establishment of imprest funds. See Chapter 32 of the DoD Accounting Manual, DoD 7220.9-M, and DoDD 7360.10, Disbursing Policies.

213.404 Conditions for use.

(a) Overseas transactions in support of contingencies declared by the Secretary of Defense may use imprest funds up to $2,500.

(c)(i) Additional conditions for use include—

(A) Availability for delivery within 60 days; and

(B) No requirement for detailed technical specifications or technical inspections

(ii) When imprest funds are used for small purchases, the funds may also be used to pay—

(A) Charges for local delivery, parcel post (including c.o.d. postal charges), and line haul or inter-city transportation charges when the supplier is to arrange for delivery, provided—

(*1*) The charges are reasonable; and

(*2*) Acceptance is in the best interest of the Government.

(B) C.o.d. charges.

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.

(a) Require written acceptance of purchase orders for classified acquisitions.

(b) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to modify purchase orders.

(d)(i) Unilateral modifications may be used for—

(A) Administrative changes such as correction of typographical errors, changes in paying office, changes in accounting and appropriation data, etc.

(B) No cost amended shipping instructions (ASI) ii—

(*1*) The ASI modifies a unilateral purchase order, and

(*2*) The contractor agrees verbally or in writing.

(C) Any change made before work begins if—

(*1*) The change is within the scope of the original order;

(*2*) The contractor agrees;

(*3*) The modification references the contractor's verbal or written agreement; and

(*4*) Block 13D of the Standard Form 30 is annotated to reflect issuance of the modification.

213.504 Termination or cancellation of purchase orders.

(a) Use Standard Form 30 to cancel a unilateral purchase order.

213.505 Purchase order and related forms.

213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Departments and agencies shall not use Optional Forms 347, Order for Supplies or Services, and 348, Order for Supplies or Services-Schedule Continuation.

(b)(i) Use DD Form 1155, Orders for Supplies or Services, (see 253.213(e)), for purchases made using the small purchase procedures of FAR part 13. The DD Form 1155 serves as—

(A) A purchase order, when used with the clauses prescribed at 213.507(a);

(B) A blanket purchase agreement, when used with the clauses prescribed at 213.507 for purchase orders;

(C) A delivery order under a Government contract or from Government agencies outside the DoD;

(D) A receiving and inspection report;

(E) A property voucher,

(F) A public voucher—

(*1*) For not more than $25,000, when the form is used as a purchase order;

(*2*) Without monetary limitation, when the form is used—

(*i*) As a delivery order; or

(*ii*) As the basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm price has been established;

(G) A document for acceptance by the supplier.

(ii) The DD Form 1155 is also authorized for use for—

(A) Classified acquisitions when the purchase is made within the United States, its possessions, and Puerto Rico. (Ensure incorporation in the purchase order of DD Form 254, Contract Security Classification Specification.)

(B) Orders under departmental contracts or from Government agencies outside the DoD (see FAR subparts 8.4, 8.6, 8.7, and 16.5).

213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(b)(1) The $2,500 limitation applies to all purchases except—

(A) Aviation fuel and oil purchases up to the small purchase threshold at FAR 13.000;

(B) Overseas transactions by contracting officers up to the small purchase threshold at FAR 13.000 in support of contingencies declared by the Secretary of Defense.

213.507 Clauses.

(a) Use the clauses in paragraph (a)(i) through (iii) of this section, as applicable, in all purchase orders. Incorporate the clauses either by reference, if permitted by FAR 52.103-1, or in full text, if required by FAR 52.103-2.

(i) Unilateral purchase orders—

(A) 52.252-2, Clauses Incorporated by Reference (required only if other clauses are incorporated by reference);

(B) 52.203-1, Officials Not to Benefit;

(C) 52.203-3, Gratuities;

(D) 52.203-5, Covenant Against Contingent Fees;

(E) 52.203-7, Anti-Kickback Procedures;

(F) 52.213-9, Variation in Quantity;

(G) 52.222-3, Convict Labor (unless the order will be subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6));

(H) 52.222-26, Equal Opportunity (unless exempt under FAR 22.009);

(I) 52.225-3, Buy American Act-Supplies;

(J) 52.232-1, Payments;

(K) 52.232-25, Prompt Payment;

(L) 52.232-28, Electronic Funds Transfer Payment Methods;

(M) 52.233-1, Disputes;

(N) 52.246-1, Contractor Inspection Requirements (except when an alternate level of inspection of quality assurance is necessary (see FAR 46.203 and 204)); and

(O) 52.248-16, Responsibility for Supplies.

(ii) Bilateral purchase orders—

(A) The clauses in paragraph (a)(i) of this section;

(B) 52.204-2, Security Requirements (if the acquisition is classified);

(C) 52.243-1, Changes—Fixed Price (with appropriate alternate as necessary);

(D) 252.243-7001, Pricing of Contract Modifications;

(E) 52.249-1,52.249-4, or 52.249-5, Termination for Convenience of the Government; and

(F) 52.249-8, 52.249-9, or 52.249-10, Default.

(iii) Any other clauses required by the prescription for their use.

9. Part 214 is revised to read as follows:

PART 214—SEALED BIDDING

Subpart 214.2—Solicitation of Bids

Sec.
214.202 General rules for solicitation of bids.
214.202-5 Descriptive literature.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.
214.404-1 Cancellation of invitations after opening.
214.406 Mistakes in bids.
214.406-3 Other mistakes disclosed before award.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.
214.503-1 Step One.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 214.3—Solicitation of Bids

214.202 General rules for solicitation of bids.

214.202-6 Descriptive literature.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, use of the provision at 252.210-7000, Brand Name or Equal, satisfies this requirement.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404-1 Cancellation of invitations after opening.

The contracting officer shall make the written determinations required by FAR 14.404-1 (c) and (e).

214.406 Mistakes in bids.

214.406-3 Other mistakes disclosed before award.

(c) Process cases involving evidence that is less than clear and convincing under paragraph (e) of this subsection.

(e) Departments and agencies may delegate authority for making a determination under FAR 14.406-3 (a), (b), and (d), without power of redelegation, as follows:

(i) Department of the Army:

(A) Deputy Assistant Secretary (Procurement), Office of the Assistant Secretary of the Army (Research, Development, and Acquisition);

(B) General Counsel, U.S. Army Materiel Command;

(C) General Counsel, Office of the Chief of Engineers; and

(D) Chief, Contract Law Division, Office of The Judge Advocate General, Headquarters, Department of the Army.

(ii) Department of the Navy:

(A) Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; and

(B) Deputy Commander for Purchasing, Naval Supply Systems Command Headquarters.

(iii) Department of the Air Force:

The Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(iv) Defense Logistics Agency:

(A) General Counsel, DLA; and

(B) Associate General Counsel, DLA.

(v) National Security Agency:

Director of Procurement, NSA.

(vi) Defense Communications Agency:

General Counsel, DCA.

(vii) Defense Nuclear Agency:

General Counsel, DNA.

(viii) Defense Mapping Agency:

General Counsel, DMA.

(h) Send a signed copy of the document authorizing correction of the bid to the appropriate finance center with its copy of the contract.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.

214.503-1 Step One.

(a) Requests for technical proposals may be in the form of a letter.

10. Part 228 is revised to read as follows:

PART 228—BONDS AND INSURANCE

Sec.

228.001 Definitions

Subpart 228.1—Bonds

228.101 Bid guarantees.
228.101-1 Policy on use.
228.102 Performance and payment bonds for construction contracts.
228.102-1 General.
228.105 Other types of bonds.
228.170 Solicitation provision.

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.
228.305 Overseas workers' compensation and war-hazard insurance.
228.307 Insurance under cost-reimbursement contracts.
228.307-1 Group insurance plans.
228.370 Contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

228.001 Definitions.

Self-insurance as defined at FAR 31.001, applies to contracts—

(1) Subject to Cost Accounting Standard (CAS) 416; or

(2) If not subject to CAS 416, when the contractor elects to establish a program of self-insurance.

Subpart 228.1—Bonds

228.101 Bid guarantees.

228.101-1 Policy on use.

(b) For construction contracts, only separate bid bonds, U.S. bonds, Treasury notes, or other public debt obligations of the U.S. are acceptable.

228.102 Performance and payment bonds for construction contracts.

228.102-1 General.

(a) The requirement for performance and payment bonds is waived for cost reimbursement contracts. However, for cost type contracts with fixed-price construction subcontracts over $25,000, require the prime contractor to obtain from each of its construction subcontractors—

(i) A payment bond in favor of the prime contractor sufficient to pay labor and material costs; and

(ii) A performance bond in an equal amount if available at no additional cost.

228.105 Other types of bonds.

Fidelity and forgery bonds may be used when—

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

228.170 Solicitation provision.

When a requirement for a performance bond or other security is included in a solicitation for dismantling, demolition, or removal of improvements (see FAR 37.300), use the provision at 252.228-7004, Bonds or Other Security.

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The DoD has established the National Defense Projects Rating Plan, also known as the Special Casualty Insurance Rating Plan, as a risk-pooling arrangement to minimize the cost to the Government of purchasing the liability insurance listed in FAR 28.307-2. Use the plan in accordance with the following guidelines when it provides the necessary coverage more advantageously than commercially available coverage.

(1) The plan—

(i) Is implemented by attaching an endorsement to standard insurance policy forms for worker's compensation, employer's liability, comprehensive general, and automobile liability. The endorsement states that the instant policy is subject to the National Defense Projects Rating Plan.

(ii) Applies to eligible Defense projects of one or more departments/agencies. For purposes of this section, a Defense project is any eligible contract or group of contracts with the same contractor.

(A) A Defense project is eligible when—

(*1*) Eligible contracts represent, at the inception of the plan, at least 90 percent of the payroll for the total operations at project locations, and

(*2*) The annual insurance premium is estimated to be at least $10,000.

(B) A contract is eligible when it is—

(*1*) Either domestic or foreign;

(*2*) Cost-reimbursement type; or

(*3*) Fixed price with redetermination provisions.

(2) Under construction contracts, include construction subcontractors in the prime contractor's plan when—

(i) Subcontractor operations are at the project site, and the subcontract provides that the prime contractor will furnish insurance; or

(ii) Subcontractor operations are away from the project site.

(3) Use the following agreement when the Government assumes contractor premium payments upon contract termination or completion.

Special Casualty Insurance Rating Plan

Assignment-Assumption of Premium Obligations

It is agreed that 100 percent* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy _____ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent* of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America, and the Company shall be effective from _____

Accepted _____

(Date) _____

(Name of Insurance Company)

By _____

(Title of Official Signing)

Accepted _____

(Date) _____

United States of America

By _____

Authorized Representative)

Accepted _____

(Date) _____

(Prime Contractor)

By _____

(Authorized Representative)

*In the event the Government has less than a 100 percent interest in premium funds or dividends, modify the assignment to reflect the percentage of interest and extent of the Government's assumption of additional premium obligation.

(4) The Federal Tort Claims Act provides protection for Government employees while driving Government-owned vehicles in the performance of their assigned duties. Include the following endorsement in automobile liability insurance policies provided under the National Defense Projects Rating Plan:

It is agreed that insurance provided by the policy with respect to the ownership, maintenance, or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United States of America, any of its agencies, or any of its officers or employees.

228.305 Overseas workers' compensation and war-hazard insurance.

(d) Submit requests for waiver through department/agency channels. Include the following—

(i) Name and address of contractor;

(ii) Contract number;

(iii) Date of award;

(iv) Place of performance;

(v) Name of insurance company providing Defense Base Act coverage;

(vi) Nationality of employees to whom waiver is to apply; and

(vii) Reason for waiver.

228.307 Insurance under cost-reimbursement contracts.

228.307-1 Group insurance plans.

The Defense Department Group Term Insurance Plan is available for contractor use under cost-reimbursement type contracts when approved as provided in department or agency regulations. A contractor is eligible if—

(a) The number of covered employees is 500 or more; and

(b) The contractor has all cost-reimbursement contracts; or

(c) At least 90 percent of the payroll for contractor operations to be covered by the Plan is under cost-reimbursement contracts.

228.370 Contract clauses.

(a) Use the clause at 252.228-7000, Reimbursement for War-Hazard Losses, when—

(1) The clause at FAR 52.228-4, Worker's Compensation and War-Hazard Insurance Overseas, is used; and

(2) The head of the contracting activity decides not to allow the contractor to buy insurance for war-hazard losses.

(b)(1) Use the clause at 252.228-7001, Ground and Flight Risk, in negotiated fixed-price contracts for aircraft production, modification, maintenance, repair, or overhaul, unless—

(i) The aircraft is being acquired for a foreign military sale and the foreign government has not agreed to assume the risk; or

(ii) The cost of insurance for damage, loss, or destruction of aircraft does not exceed $500, and the contracting officer agrees to recognize the insurance costs.

(2) If appropriate, revise the clause at 252.228-7001, Ground and Flight Risk, as follows—

(i) Include a modified definition of "aircraft" if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify "in the open" to include "hush houses," test hangars and comparable structures, and other designated areas.

(iii) Expressly define the "contractor's premises" where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned, leased, or premises where the contractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (d)(iii) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(c)(1) Use the clause at 252.228-7002, Aircraft Flight Risk, in cost reimbursement contracts—

(i) For the development, production, modification, maintenance, repair, or overhaul of aircraft; or

(ii) Otherwise involving the furnishing of aircraft to the contractor by the Government.

(iii) With the definition of "aircraft" modified, if appropriate, to include helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft.

(2) Use the clause at 252.228-7002, Aircraft Flight Risks, appropriately modified, in fixed price contracts when—

(i) The clause at 252.228-7001, Ground and Flight Risk, is not used; and

(ii) Contract performance involves the flight of Government furnished aircraft.

(d) The clause at 252.228-7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War-Hazard Compensation Act (42 U.S.C. 1701 et seq.).

(e) The clause at 252.228-7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, may be used in solicitations and contracts which involve the manufacture, modification, overhaul, or repair of these items.

11. Part 230 is revised to read as follows:

PART 230—COST ACCOUNTING STANDARDS

Subpart 230.70—Facilities Capital Employed for Facilities in Use

Sec.
230.7000 Contract facilities capital estimates.
230.7001 Use of DD Form 1861.
230.7001-1 Purpose.
230.7001-2 Completion instructions.
230.7002 Preward facilities capital applications.
230.7003 Postaward facilities capital applications.
230.7003-1 Interim billings based on costs incurred.
230.7003-2 Final settlement.
230.7004 Administrative procedures.
230.7004-1 Forms CASB-CMF.
230.7004-2 DD Form 1861.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.
230.7101 Calculations.
230.7101-1 Cost of money.
230.7101-2 Representative investment.
230.7102 Determining imputed cost of money.
230.7103 Preward capital employed application.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7000 Contract facilities capital estimates.

(a) The contracting officer will estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB-CMF and cost of money factors; and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

230.7001 Use of DD Form 1861.

230.7001-1 Purpose.

The DD Form 1861 provides a means of linking the Form CASB-CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(a) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

230.7001-2 Completion instructions.

Complete a DD Form 1861 only after evaluating the contractor's cost proposal establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(a) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(d) Total contract facilities cost of money is the sum of the yearly amounts.

(e) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

230.7002 Preward facilities capital applications.

To establish cost and price objectives, apply the facilities capital cost of money and capital employed, as determined under 230.7000, as follows:

(a) *Cost of Money*—(1) *Cost Objective.* Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(2) *Profit Objective.* When measuring the contractor's effort for the purpose of establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(b) *Facilities Capital Employed.* Assess and weight the profit objective for risk associated with facilities capital employed in accordance with the profit guidelines at 215.970-1(c).

230.7003 Postaward facilities capital applications.

230.7003-1 Interim billings based on costs incurred.

(a) The contractor may include contract facilities capital cost of money in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These cost of money calculations are interim estimates subject to adjustment

(b) As actual cost of money factors under CAS 414 and FAR 31.205-10 are finalized, use the new factors to calculate contract facilities cost of money for the next accounting period.

230.7003-2 Final settlement.

(a) Contract facilities capital cost of money for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB-CMF.

(b) Separately compute contract facilities cost of money in a manner similar to yearly final overhead rates. Also like overhead costs, include in the final settlement an adjustment from interim to final contract cost of money. Do not, however, adjust estimated or target cost.

230.7004 Administrative procedures.

230.7004-1 Forms CASB-CMF.

(a) Forms CASB-CMF are normally initiated by the contractor under the same circumstances as Forward Pricing Rate Agreements (see FAR 15.809) and evaluated as complementary documents and procedures.

(b) Separate forms are required for each prospective cost accounting period of contract performance.

(c) The contractor may submit annually or with individual contract price proposals, as agreed with the administrative contracting officer (ACO).

(d) The contractor must submit a final form under CAS 414 as soon as possible after the end of each accounting period, together with a proposal for actual overhead costs and rates.

230.7004-2 DD Form 1861.

(a) The contracting officer may ask the ACO to complete the forms as part of field pricing support.

(b) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires information not included on the Form CASB-CMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this information, for example—

(1) Contract administration offices could obtain the information through the process used to establish factors for facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports;

(2) The corporate ACO could obtain distribution percentages; or

(3) The contracting officer could request the information through a solicitation provision.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.

(a) *Intangible capital asset* is an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset* is an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92-41 (85 Stat. 97); or

(2) The time-weighted average of the interest rate for each cost accounting period during which the asset is being constructed, fabricated, or developed.

(d) *Representative investment* is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the asset.

230.7101 Calculations.

230.7101-1 Cost of money.

(a) The interest rate in 230.7100(c)(1) is established semi-annually and is published in the Federal Register during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate—

(1) Multiply the various rates in effect during the months of construction by the number of months each rate was in effect; and

(2) Divide the sum of the products by the total number of months in which the rates were experienced.

230.7101-2 Representative investment.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If a majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either—

(1) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may—

(1) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

230.7102 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 230.7101-1) to the representative investment amount (see 230.7101-2).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7101-2(b)(1) or 230.7101-2(c)(1), the cost of money will be the time-weighted average rate.

(2) When a monthly representative investment amount is used in accordance with 230.7101-2(b)(2) or 230.7101-2(c) (2), the cost of money will be the interest rate in effect each month. (Under this method, the cost of money is determined monthly and the total for the cost accounting period is the sum of the monthly amounts.)

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the period or at the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7103 Preward capital employed application.

An offset to the profit objectives as set forth in FAR subpart 15.9 is not required for CAS 417 cost of money.

12. Part 234 is revised to read as follows:

PART 234—MAJOR SYSTEM ACQUISITION

Sec.
234.003 Responsibilities.
234.005 General requirements.
234.005-70 Contract clause.

Authority: 5 U.S.C. 301,10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

234.003 Responsibilities.

DoDD 5000.1, Major and Non-Major Defense Acquisition Programs, and DoDI 5000.2, Defense Acquisition Program Procedures, contain the DoD implementation of OMB Circular A-109.

234.005 General requirements.

234.005-70 Contract clause.

Use the clause at 252.234-7000, Cost/Schedule Control Systems, in solicitations and contracts when contractor compliance with the cost/schedule control system criteria of DoDI 7000.2, Performance Measurement for Selected Acquisitions, is required.

13. Part 246 is revised to read as follows:

PART 246—QUALITY ASSURANCE

Subpart 246.1—General

Sec.
246.102 Policy.
246.103 Contracting office responsibilities.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.
246.202-3 Higher-level contract quality requirements.
246.203 Criteria for use of contract quality requirements.
246.204 Application of criteria.
246.370 Material inspection and receiving report.

Subpart 246.4—Government Contract Quality Assurance

246.406 Foreign governments.
246.407 Nonconforming supplies or services.
246.408 Single-agency assignments of Government contract quality assurance.
246.408-70 Subsistence.
246.408-71 Aircraft.
246.408-72 Construction projects.
246.470 Government contract quality assurance actions.
246.470-1 Planning.
246.470-2 Evidence of conformance.
246.470-3 Assessment of additional costs.
246.470-4 Maintenance of Government records.
246.470-5 Quality evaluation data.
246.471 Authorizing shipment of supplies.
246.472 Inspection stamping.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.
246.671 Procedures.

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Subpart 246.7—Warranties

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 246.1—General

246.102 Policy.

Departments and agencies shall also—

(1) Develop and manage a cost effective quality program to ensure that contract performance conforms to specified requirements. Apply the quality program to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

(2) Conduct quality audits to ensure the quality of products and services.

(3) Base the type and extent of Government contract quality assurance actions on the particular acquisition.

(4) Provide contractors the maximum flexibility in establishing efficient and effective quality programs to meet contractual requirements.

246.103 Contracting office responsibilities.

The contracting office may conduct product-oriented surveys and evaluations to determine the adequacy of the technical requirements relating to quality, and product conformance to design intent. Consider conducting the surveys and evaluations in conjunction with the activity responsible for technical requirements.

(a) Contracting offices are also responsible for—

(i) Assisting the technical activity in improving the quality requirements for contracts when first identified for competitive acquisition; and

(ii) Assisting in determining the cause of problems noted in user experience reports.

(b) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(c) If defective material—

(i) Is discovered after acceptance;

(ii) The defect appears to be the fault of the contractor;

(iii) Any warranty has expired; and

(iv) There are no other available contractual remedies.

The contracting officer shall—

(A) Notify the contractor in writing of the defective material;

(B) Request that the contractor repair or replace the material at no cost to the Government; and

(C) Not request a voluntary refund. However, if consideration is offered, it may be accepted.

(d) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements.

(i) In preparing the instructions, the technical activity shall consider, as applicable—

(A) The past quality history of the contractor;

(B) The criticality of the material procured in relation to its intended use, considering such factors as—

(*1*) Reliability;

(*2*) Safety; and

(*3*) Interchangeability;

(C) Problems encountered in the development of the material;

(D) Problems encountered in other procurements of the same or similar material;

(E) Available feed-back data from receiving, testing, or using activities; and

(F) The experience of other contractors in overcoming manufacturing problems.

(ii) The instructions shall—

(A) Be kept to a minimum;

(B) Comply with 246.470–2; and

(C) Be prepared on a contract-by-contract basis.

(iii) The instructions shall not—

(A) Serve as a substitute for incomplete contract quality requirements;

(B) Impose greater inspection requirements than are in the contract;

(C) Use broad or general designations such as—

(*1*) All requirements;

(*2*) All characteristics; or

(*3*) All characteristics in the classification of defects;

(D) Be used for routine administrative procedures; or

(E) Specify continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(iv) After issuing the instructions, the technical activity—

(A) Must periodically analyze the need to continue, change, or discontinue the instructions;

(B) Must provide the contract administration office available information regarding those factors which resulted in the requirement for Government inspection; and

(C) Should advise the contract administration office of the results of the periodic analyses.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202-3 Higher-level contract quality requirements.

(b)(i) *Inspection System Requirements.* MIL–I–45208 requires that the contractor establish and maintain an inspection system. MIL–I–45208 is used in contracts—

(A) In addition to a standard inspection requirement; and

(B) When technical requirements require control of quality by both in-process and final end-item inspection, including such elements of the manufacturing process as—

(*1*) Measuring and testing equipment;

(*2*) Drawings and changes;

(*3*) Inspection; and

(*4*) Documentation and records.

(ii) *Quality Program Requirements.* MIL–Q–9858 requires that the contractor establish and maintain a quality program in accordance with a Government specification. MIL–Q–9858 is used in contracts—

(A) In addition to a standard inspection requirement; and

(B) When the technical requirements of the contract require—

(*1*) Control of work operations;

(*2*) In-process controls and inspection; and

(*3*) Attention to other factors such as—

(*i*) Organizations;

(*ii*) Planning;

(*iii*) Work instructions;

(*iv*) Documentation control; and

(*v*) Advanced metrology.

246.203 Criteria for use of contract quality requirements.

(c) *Criticality.* Acquisitions of critical items, whether peculiar or common, shall have contract quality requirements.

246.204 Application of criteria.

(1) Use the following table for the higher-level quality requirements of the table in FAR 46.204:

CONTRACT QUALITY REQUIREMENTS GUIDE

Item		Type of contract	
Technical description	Complexity	Application	Quality requirement
Commercial	Complex	Critical	MIL–I–45208
Military-Federal	noncomplex	Critical	MIL–I–45208
Military-Federal	Complex	noncritical	MIL–I–45208
		Peculiar	
Military-Federal	Complex	Critical	MIL–Q–9858

(2) When purchasing a commercial item, the technical, quality assurance, and contracting activities must work together to tailor contract quality requirements to—

(i) Eliminate or minimize special Government testing, quality control, and inspection requirements. Consider—

(A) The item's application;

(B) The cost objectives of the acquisition; and

(C) The item's reliability as established in the commercial market.

(ii) Maximize use of the certificate of conformance;

(iii) Provide for examination and acceptance at the most economical point (source or destination); and

(iv) Facilitate the exercise of any warranty rights.

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

(a) Use the clause at 252.246–7000, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct deliverables.

(b) Use the clause even if the deliverables are not separately priced.

(c) When contract administration is retained by the contracting office, the clause is not required for—

(1) Contracts awarded using small and other simplified purchase procedures (FAR part 13);

(2) Negotiated subsistence contracts;

(3) Contracts for fresh milk and related fresh dairy products;

(4) Contracts for which the deliverable is a scientific or technical report;

(5) Research and development contracts not requiring the delivery of separately priced end items;

(6) Base, post, camp, or station contracts;

(7) Contracts in overseas areas when the preparation and distribution of the DD Form 250, Material Inspection and Receiving Report, by the contractor would not be practicable. In these cases, arrange for the contractor to provide the information necessary for the contracting office to prepare the DD Form 250;

(8) Contracts for services when hardware is not acquired as an item in the contract; and

(9) Indefinite delivery type contracts placed by central contracting offices which authorize only base, post, camp, or station activities to issue orders.

Subpart 246.4—Government Contract Quality Assurance

246.406 Foreign governments.

(1) *Quality assurance among North Atlantic Treaty Organization (NATO) countries*—(i) *NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance.* (A) STANAG 4107—

(*1*) Contains procedures, terms, and conditions under which one NATO country will perform quality assurance for another NATO country, or for a NATO organization.

(*2*) With certain reservations, has been ratified by the U.S. and other nations in NATO.

(B) Departments and agencies—

(*1*) May ask NATO countries to perform quality assurance;

(*2*) Shall perform quality assurance when requested by a NATO country.

(C) The U.S. Government reserves the right to require reimbursement for work it performs for other NATO countries and organizations.

(ii) *NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications*—(A) STANAG 4108 provides for the application of Allied Quality Assurance Publications (AQAPs).

(B) Its annexes list AQAPs and the criteria for applying those AQAPs which are required in contracts between NATO countries.

(2) *International military sales (non-NATO).* Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Ensure conformance to the technical and quality requirements of international military sales contracts;

(iii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications;

(iv) Specify appropriate quality requirements in contracts awarded to other countries; and

(v) Delegate quality assurance to the host government when satisfactory services are available.

(3) *Reciprocal quality assurance agreements.* A Memorandum of Understanding (MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurance services. MOUs should be checked to determine whether such an annex exists for the country where a defense contract will be performed. (See subpart 225.74 for more information about MOUs.)

246.407 Nonconforming supplies or services.

Contracting officers shall ensure that—

(1) Nonconformances are identified; and

(2) The significance of a nonconformance is established when considering the acceptability of supplies or services which do not meet contract requirements.

(3) Definitions.

Critical nonconformance is a nonconformance that judgment and experience indicate—

(i) Would result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; and

(ii) Is likely to prevent performance of the tactical function of a major end item such as a ship, aircraft, tank, missile, or space vehicle.

Major nonconformance is a nonconformance, other than critical, that is likely to result in failure, or to materially reduce the useability of the supplies or services for their intended purpose.

Minor nonconformance is a nonconformance that is not likely to materially reduce the useability of the supplies or services for their intended purpose, or is a departure from established standards having little

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bearing on the effective use or operation.

(c)(1) The nonconformances described in FAR 46.407(c)(1) are either critical or major. The risk associated with accepting supplies or services with critical nonconformances is greater than the risk associated with major nonconformances. The contracting officer—

(A) Shall consider this additional risk in determining acceptability and contract adjustment incident to acceptance of nonconforming supplies and services; and

(B) Shall not accept items having critical nonconformances without determining the impact on the tactical function of the major end item or the consequences of hazardous or unsafe conditions for use.

(f) Contracting officers should consider it in the best interests of the Government to request an equitable price reduction or other consideration for accepting minor nonconformances.

246.408 Single-agency assignments of Government contract quality assurance.

246.408-70 Subsistence.

(a) The Surgeons General of the military departments are responsible for—

(1) Acceptance criteria;

(2) Technical requirements; and

(3) Inspection procedures needed to assure wholesomeness of foods.

(b) The contracting office may designate any Federal activity, capable of assuring wholesomeness and quality in food, to perform quality assurance for subsistence contract items. The designation may—

(1) Include medical service personnel of the military departments; and

(2) Be on a reimbursable basis.

246.408-71 Aircraft.

(a) The Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with some commercial aircraft and of aircraft equipment and accessories (Public Law 85-726 (72 Stat 778, 49 U.S.C. 1423)). This includes the issuance of various certificates applicable to design, manufacture, and airworthiness.

(b) FAA evaluations are not a substitute for normal DoD evaluations of the contractor's quality assurance measures. Actual records of FAA evaluations may be of use to the contract administration office (CAO) and should be used to their maximum advantage.

(c) The CAO shall ensure that—

(1) The supplies and services conform to the terms of the contract; and

(2) The contractor possesses any required FAA certificates and approvals prior to acceptance.

246.408-72 Construction projects.

(a) The department or agency responsible for the construction of a building or other structure is normally responsible for on-site inspection.

(b) The contract administration office performs quality assurance for construction materials and supplies acquired for military and civil works projects.

(c) The offices responsible for on-site inspection and for quality assurance of materials and supplies must coordinate their efforts to ensure the compatibility of buildings and structures and installed equipment.

246.470 Government contract quality assurance actions.

246.470-1 Planning.

In systematically planning Government contract quality assurance actions used to determine a contractor's compliance with contract quality requirements, consider—

(a) The relative importance of the product; and

(b) The variety of tasks required of the available resources.

246.470-2 Evidence of conformance.

Use objective evidence of quality to determine conformance to contract quality requirements.

246.470-3 Assessment of additional costs.

(a) Under the clause at FAR 52.246-2, Inspection of Supplies—Fixed-Price, the Government may charge the contractor for additional costs incurred by the Government due to delays in tests or inspections caused by the contractor, or due to the necessity for reinspection or retest. This action may be necessary when—

(1) Supplies are not ready at the time such inspection and test are requested by the contractor; or

(2) Reinspection or retest is necessitated by prior rejection.

(b) After considering the factors in paragraph (d) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the standard DoD reimbursable rate in effect at the time of the delay, reinspection, or retest.

(c) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246-2, Inspection of Supplies—Fixed Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR subpart 32.6.

(d) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

246.470-4 Maintenance of Government records.

The contract administration office shall maintain suitable records of the quality assurance performance of contractors.

246.470-5 Quality evaluation data.

The contract administration office shall establish a system that provides, as a minimum, for the collection, evaluation, and use of—

(a) Quality data developed by the contractor during performance;

(b) Data developed by the Government through contract quality assurance actions; and

(c) Reports by users and customers.

246.471 Authorizing shipment of supplies.

(a) *General.* (1) Ordinarily, a representative of the contract administration office signs or stamps the shipping papers that accompany Government source-inspected supplies to release them for shipment. This is done for both prime and subcontracts.

(2) An alternative procedure (see paragraph (b) of this section) permits the contractor to assume the responsibility for releasing the supplies for shipment.

(3) The alternative procedure may include prime contractor release of supplies inspected at a subcontractor's facility.

(4) The use of the alternative procedure releases DoD manpower to perform technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative Procedures—Contract Release for Shipment.* (1) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when—

(i) The stamping or signing of the shipping papers by a representative of the contract administration office interferes with the operation of the Government contract quality assurance program or takes too much of the Government representative's time;

(ii) There is sufficient continuity of production to permit the Government to establish a systematic and continuing evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

(2) The contract administration office shall withdraw, in writing, the authorization when there is an indication that the conditions in paragraph (b)(1) of this subsection no longer exist.

(3) When the alternative procedure is used, require the contractor to—

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s), or on an attachment—

The supplies in this shipment—

1. Have been subjected to and have passed all examinations and tests required by the contract;

2. Were shipped in accordance with authorized shipping instructions;

3. Conform to the quality, identity, and condition called for by the contract; and

4. Are of the quantity shown on this document.

This shipment was—

1. Released in accordance with section 246.471 of the Defense FAR Supplement; and

2. Authorized by (name and title of the authorized representative of the contract administration office) in a letter dated (date of authorizing letter). (Signature and title of contractor's designated official.)

(ii) Release and process, in accordance with established instructions, the DD Form 250, Material Inspection and Receiving Report, or other authorized receiving report.

246.472 Inspection stamping.

(a) There are two DoD quality inspection approval marking designs (stamps). Both stamps are used—

(1) Only by, or under the direct supervision of, the Government representative; and

(2) For both prime and subcontracts.

(b) The designs of the two stamps and the differences in their uses are—

(1) *Partial (Circle) Inspection Approval Stamp.* (i) This circular stamp is used to identify material inspected for conformance to only a portion of the contract quality requirements.

(ii) Further inspection is to be performed at another time and/or place.

(iii) Material not inspected is so listed on the associated DD Form 250 (Material Inspection and Receiving Report), packing list, or comparable document.

(2) *Complete (Square) Inspection Approval Stamp.* (i) This square stamp is used to identify material completely inspected for all contract quality requirements at source.

(ii) The material satisfies all contract quality requirements and is in complete conformance with all contract quality requirements applicable at the time and place of inspection.

(iii) Complete inspection approval establishes that material which once was partially approved has subsequently been completely approved.

(iv) One imprint of the square stamp voids multiple imprints of the circle stamp.

(c) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or routing tickets serves to adequately indicate the status of the material and to control or facilitate its movement.

(d) Stamping material does not mean that it has been accepted by the Government. Evidence of acceptance is ordinarily a signed acceptance certificate on the DD Form 250, Material Inspection and Receiving Report.

(e) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document—

(1) Contract quality assurance;

(2) Acceptance of supplies and services; and

(3) Shipments.

(b) MIRRs are used by activities responsible for—

(1) Receiving;

(2) Status control;

(3) Technical requirements;

(4) Contracting;

(5) Inventory control;

(6) Requisitioning; and

(7) Payment.

246.671 Procedures.

See Appendix I, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

(a) The Material Inspection and Receiving Report (DD Form 250 series) and;

(b) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

Subpart 246.7—Warranties

246.701 Definitions.

Acceptance, as defined in FAR 46.701 and as used in this subpart and in the warranty clauses at FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246-18, Warranty of Supplies of a Complex Nature; FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246-20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect, as used in this subpart, means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Weapon system, as used in this subpart, means a system or major subsystem used directly by the Armed Forces to carry out combat missions.

(1) The term includes, but is not limited to, the following (if intended for use in carrying out combat missions)—

(i) Tracked and wheeled combat vehicles;

(ii) Self-propelled, towed and fixed guns, howitzers and mortars;

(iii) Helicopters;

(iv) Naval vessels;

(v) Bomber, fighter, reconnaissance and electronic warfare aircraft;

(vi) Strategic and tactical missiles including launching systems;

(vii) Guided munitions;

(viii) Military surveillance, command, control, and communication systems;

(ix) Military cargo vehicles and aircraft;

(x) Mines;

(xi) Torpedoes;

(xii) Fire control systems;

(xiii) Propulsion systems;

(xiv) Electronic warfare systems; and

(xv) Safety and survival systems.

(2) The term does not include—

(i) Related support equipment, such as—

(A) Ground-handling equipment;

(B) Training devices and accessories; or

(C) Ammunition, unless an effective warranty for the weapon system would require inclusion of such items, or

(ii) Commercial items sold in substantial quantities to the general public (see FAR 15.804–3(c)).

246.703 Criteria for use of warranties.

The use of warranties in the acquisition of weapon systems is mandatory (10 U.S.C. 2403) unless a waiver is authorized (see 246.770–6).

(b) *Cost.* Agencies shall establish procedures to track and accumulate data on warranty costs.

246.704 Authority for use of warranties.

The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(1) Weapon systems (see 246.770);

(2) Commercial supplies or services (see FAR 46.709);

(3) Technical data, unless the warranty provides for extended liability (see 246.708);

(4) Supplies and services in fixed price type contracts containing quality assurance provisions that reference MIL–I–45208 or MIL–Q–9858; or

(5) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

246.705 Limitations.

(a) Warranties in the clause at 252.246–7003, Warranty of Data, are also an exception to the prohibition on use of warranties in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* Use MIL Standard 129, Marking for Shipments and Storage, and MIL Standard 130, Identification Marking of U.S. Military Property, when marking warranty items.

(6) *Consistency.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

Use a clause substantially the same as the clause at 252.246–7001, Warranty of Data, in solicitations and contracts that include data requirements, and there is a need for greater protection or period of liability than provided by other contract clauses, such as the clauses at FAR 52.246–3, Inspection of Supplies—Cost-Reimbursement; FAR 52.246–6, Inspection—Time-and-Material and Labor-Hour; FAR 52.246–8, Inspection of Research and Development—Cost-Reimbursement; and FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(1) Use the clause at 252.246–7003 with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

(2) Use the clause at 252.246–7003 with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.

246.770 Warranties in weapon system acquisitions.

This section sets forth policies and procedures for use of warranties in contracts for weapon system production.

246.770–1 Definitions.

As used in this section—

At no additional cost to the Government means—

(1) At no increase in price for firm fixed price contracts;

(2) At no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707); or

(3) At no increase in estimated cost or fee for cost-reimbursement contracts.

Design and manufacturing requirements means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

Essential performance requirements means the operating capabilities and maintenance and reliability characteristics of a weapon system that the agency head determines to be necessary to fulfill the military requirement.

Initial production quantity means the number of units of a weapon system contracted for in the first program year of full-scale production.

Mature full-scale production means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

246.770–2 Policy.

(a) Under 10 U.S.C. 2403, departments and agencies may not contract for the production of a weapon system with a unit weapon system cost of more than $100,000 or an estimated total procurement cost in excess of $10,000,000, unless—

(1) Each contractor for the weapon system provides the Government written warranties that—

(i) The weapon system conforms to the design and manufacturing requirements in the contract (or any modifications to that contract),

(ii) The weapon system is free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and

(iii) The weapon system, if manufactured in mature full-scale production, conforms to the essential performance requirements of the contract (or any modification to that contract); and

(2) The contract terms provide that, in the event the weapon system fails to meet the terms of the above warranties, the contracting officer may—

(i) Require the contractor to promptly take necessary corrective action (e.g., repair, replace, and/or redesign) at no additional cost to the Government;

(ii) Require the contractor to pay costs reasonably incurred by the Government in taking necessary corrective action, or

(iii) Equitably reduce the contract price; or

(3) A waiver is granted under 246.770–6.

(b) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection, such as including an essential performance requirement warranty in other than a mature full-scale production contract.

(c) When the contract includes an essential performance requirement warranty, the warranty must identify redesign as a remedy available to the Government.

(1) The period during which redesign must be available as a remedy shall not end before operational use, operational testing, or a combination of operational use and operational testing has demonstrated that the warranted item's design has satisfied the essential performance requirements.

(2) When essential performance requirements are warranted in contracts with alternate source contractors, do not include redesign as a remedy available to the Government under those contracts until the alternate source has manufactured the first ten percent of the eventual total production quantity anticipated to be acquired from that contractor (see 246.770–5).

246.770–3 Tailoring warranty terms and conditions.

(a) Since the objectives and circumstances vary considerably among weapon system acquisition programs, contracting officers must tailor the required warranties on a case-by-case basis. The purpose of tailoring is to get a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(1) Include, at a minimum, remedies, exclusions, limitations, and duration consistent with the requirements of this section (see also FAR 46.706).

(2) Clearly relate the duration of any warranty to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance.

(3) Tailor the terms of the warranty, if appropriate, to exclude certain defects for specified supplies (exclusions) or to limit the contractor's liability under the terms of the warranty (limitations).

(4) Structure broader and more comprehensive warranties when advantageous or narrow the scope when appropriate. For example, it may be inappropriate to require warranty of all essential performance requirements for a contractor that did not design the system.

(b) DoD policy is to exclude any terms that cover contractor liability for loss, damage, or injury to third parties from warranty clauses.

(c) Ensure acquisition of subsystems and components in a manner which does not affect the validity of the weapon system warranty.

246.770–4 Warranties on Government-furnished property.

Contracting officers shall not require contractors to provide the warranties specified in 246.770–2 on any property furnished the contractor by the Government, except for—

(a) Defects in installation;

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property; or

(c) Modifications made to the property by the contractor.

246.770–5 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770–2(a)(1)(iii) until that contractor manufactures the first ten percent of its anticipated total production quantity.

246.770–6 Applicability to foreign military sales (FMS).

(a) The warranty requirements of 246.770–2 are not mandatory for FMS production contracts. DoD policy is to obtain the same warranties on conformance to design and manufacturing requirements and against defects in material and workmanship as it gets for U.S. supplies.

(b) DoD normally will not obtain essential performance warranties for FMS purchasers. However, where contracting officer cannot separately identify the cost for the warranty of essential performance requirements, the foreign purchaser shall be given the same warranty that the United States gets.

(c) If an FMS purchaser expressly requests a performance warranty in the letter of acceptance, the Government will exert its best efforts to obtain the same warranty obtained for U.S. equipment. Or, if specifically requested by the FMS purchaser, obtain a unique warranty.

(d) The costs for warranties for FMS purchasers may be different from the costs for such warranties for the Government due to factors such as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser.

(e) Ensure that FMS purchasers bear all of the acquisition and administrative costs of any warranties.

246.770–7 Cost-benefit analysis.

(a) In assessing the cost effectiveness of a proposed warranty, perform an analysis which considers both the quantitative and qualitative costs and benefits of the warranty. Consider—

(1) Costs of warranty acquisition, administration, enforcement, and user costs, and any costs resulting from limitations imposed by the warranty provisions;

(2) Costs incurred during development specifically for the purpose of reducing production warranty risks;

(3) Logistical and operational benefits as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty.

(b) Where possible, make a comparison with the costs of obtaining and enforcing similar warranties on similar systems.

(c) Document the analysis in the contract file. If the contracting officer considers that a specific warranty is not cost effective, initiate a waiver request under 246.770–8.

246.770–8 Waiver and notification procedures.

(a) The Secretary of Defense, with authority to delegate (10 U.S.C. 2404), no lower than an Assistant Secretary of Defense or Assistant Secretary of a military department, may waive one or more of the weapon system warranties required by 246.770–2 if—

(1) The waiver is in the interests of national defense; or

(2) The warranty would not be cost effective.

(b) Waiving authorities must make the following notifications or reports to the Senate and House Committees on Armed Services and Appropriations for all waivers—

(1) *Major Weapon Systems.* For a weapon system that is a major Defense acquisition program for the purpose of 10 U.S.C. 2432, the waiving official must notify the Committees in writing of an intention to waive one or more of the required warranties. Include an explanation of the reasons for the waiver in the notice. Ordinarily provide the notice 30 days before granting a waiver.

(2) *Other Weapon Systems.* For weapon systems that are not major Defense acquisition programs for the purpose of 10 U.S.C. 2432, waiving officials must submit an annual report not later than February 1 of each year. List the waivers granted in the preceding calendar year in the report and include an explanation of the reasons for granting each waiver.

(3) *Weapon Systems Not in Mature Full-Scale Production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not include a warranty on essential performance requirements, the waiving officials must comply with the notice requirements for major weapon systems.

(c) Departments and agencies shall issue procedures for processing waivers, notifications, and reports to Congress.

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(ii) Identification of the specific warranty or warranties required by 246.770–2(a)(1) for which the waiver is requested;

(iii) The duration of the waiver if it is to go beyond the contract;

(iv) The rationale for the waiver;

(v) A description of the warranties or other techniques used to ensure acceptable field performance of the

weapon system, e.g., warranties, commercial or other guarantees obtained on individual components;

(vi) Action taken to preclude waivers on future contracts; and

(vii) Exercise date of the warranty option, if applicable.

(2) Notifications and reports shall include—

(i) A brief description of the weapon system and its stage of production; and

(ii) Rationale for not obtaining a warranty.

(3) Keep a written record of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority for 48 CFR part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

15. Section 252.205-7000 is revised to read as follows:

252.205-7000 Provision of Information to Cooperative Agreement Holders.

As prescribed in 205.470-2, use the following clause:

Provision of Information to Cooperative Agreement Holders (FEB 1991)

(a) Definition.

"Cooperative Agreement Holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide Cooperative Agreement Holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under Defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular Cooperative Agreement Holder more frequently than once a year.

(End of clause)

252.214-700 [Redesignated as 25.208-7000]

16. Section 252.214-7001 is redesignated as section 252.208-7000 and revised to read as follows:

252.208-7000 Domestic Source Restriction.

As prescribed at 208.302-3-70, use the following provision:

Domestic Source Restriction (FEB 1991)

This solicitation is restricted to domestic sources under the authority of 10 U.S.C. 2304(c)(3). Foreign sources, except Canadian sources, are not eligible for award.

(End of provision)

17. Sections 252.209-7000 and 252.209-7001 are revised to read as follows:

252.209-7000 Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed in 209.103-70, use the following clause:

Acquisition From Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (FEB 1991)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts over the dollar limitation in section 13.000 of the Federal Acquisition Regulation, except those for commercial or commercial-type products.

(End of clause)

252.209-7001 Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism.

As prescribed in 209.104-70, use the following provision:

Disclosure of Ownership or Control by a Foreign Government That Supports Terrorism (FEB 1991)

(a) *Definitions.* (1) "Significant interest" as used in this provision means—

(i) Ownership of or beneficial interest in five percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding five percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 50 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(2) "Foreign government" as used in this provision includes any agent or instrumentality of that foreign government.

(b) *Disclosure.* The Offeror shall disclose any significant interest the government of each of the following countries has in the Offeror or a subsidiary of the Offeror. If the Offeror is a subsidiary, it shall also disclose any significant interest each government has in any firm that owns or controls the subsidiary. If none, insert "none" after each country.

Country and Significant Interest

(1) Cuba _____

(2) Iran _____

(3) Libya _____

(4) Syria _____

(5) South Yemen _____

(End of provision)

18. Section 252.210-7000 is revised to read as follows:

252.210-7000 Brand Name or Equal.

As prescribed in 210.011-70(a), use the following provision:

Brand Name or Equal (FEB 1991)

(a) If items in this solicitation are identified as "brand name or equal," the term is intended to be descriptive not restrictive. The "brand name or equal" description is used to portray the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, and other characteristics which "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including products (other than the "brand name" item) of the brand name manufacturer, must—

(1) Meet the salient physical, functional, and other characteristics specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the contracting activity; and

(4) Clearly describe any modifications the Offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information furnished with the offer or reasonably available at the contracting activity. The contracting activity is not responsible for locating or securing information not identified in the offer or not reasonably available.

(d) The Contracting Officer will not consider modifications, submitted after the date set for receipt of offers, of an "equal" product to make it conform to the requirements of the solicitation.

(End of provision)

252.210-7002 [Redesignated as 252.210-7001]

19. Section 252.210-7002 is redesignated as section 252.210-7001 and revised to read as follows:

252.210-7001 Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents.

As prescribed in 210-011(b), use the following provision:

Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DOD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents (FEB 1991)

Offerors may obtain the specifications, standards, plans, drawings, descriptions, and other pertinent documents cited in this solicitation by submitting a request to:

(Activity) _____

(Complete Address) _____

Include the number of the solicitation and the title and number of the specification, standard, plan, drawing, or other pertinent document.

(End of provision)

252.210-7003 [Redesignated as 252.210-7002]

20. Section 252.210-7003 is redesignated as section 252.210-7002 and revised to read as follows:

252.210-7002 Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

As prescribed in 210.011(b), use the following provision:

Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and other Pertinent Documents (FEB 1991)

The specifications, standards, plans, drawings, descriptions, and other pertinent documents cited in this solicitation are not available for distribution but may be examined at the following location:

_____

(Insert complete address)

(End of provision)

252.210-7005 [Redesignated as 252.210-7003]

21. Section 252.210-7005 is redesignated as section 252.210-7003 and revised to read as follows:

252.210-7003 Acquisition Streamlining.

As prescribed in 210.011-70(b), use the following clause.

Acquisition Streamlining (FEB 1991)

(a) The Government's objectives under acquisition streamlining are to—

(1) Acquire systems that meet stated performance requirements;

(2) Avoid over-specification; and

(3) Ensure that cost effective requirements are included in future acquisitions.

(b) The Contractor shall—

(1) Prepare and submit acquisition streamlining recommendations in accordance with the statement of work of this contract; and

(2) Format and submit the recommendations as prescribed by data requirements on the contract data requirements list of this contract.

(c) The Government has the right to accept, modify, or reject the Contractor's recommendations.

(d) The Contractor shall insert this clause, including this paragraph (d), in all subcontracts over $1 million, awarded in the performance of this contract.

(End of clause)

252.210-7004 [Redesignated as 252.210-7005]

22. Section 252.210-7004 is redesignated as section 252.210-7005 and revised and a new section 252.210-7004 is added to read as follows:

252.210.7004 Alternate Preservation, Packaging, and Packing.

As prescribed in 210.011-70(c), use the following provision:

Alternate Preservation, Packaging, and Packing (FEB 1991)

(a) The Offeror may submit two unit prices for each item—one based on use of the military preservation, packaging, or packing requirements of the solicitation; and an alternate based on use of commercial or industrial preservation, packaging, or packing of equal or better protection than the military.

(b) If the Offeror submits two unit prices, the following information, as a minimum, shall be submitted with the offer to allow evaluation of the alternate—

(1) The per unit/item cost of commercial or industrial preservation, packaging, and packing;

(2) The per unit/item cost of military preservation, packaging, and packing;

(3) The description of commercial or industrial preservation, packaging, and packing procedures, including material specifications, when applicable, to include—

(i) Method of preservation;

(ii) Quantity per unit package;

(iii) Cleaning/drying treatment;

(iv) Preservation treatment;

(v) Wrapping materials;

(vi) Cushioning/dunnage material;

(vii) Thickness of cushioning;

(viii) Unit container;

(ix) Unit package gross weight and dimensions.

(4) Item characteristics, to include—

(i) Material and finish;

(ii) Net weight;

(iii) Net dimensions;

(iv) Fragility.

(c) If the Contracting Officer does not evaluate or accept the Offeror's proposed alternate commercial or industrial preservation, packaging, or packing, the Offeror agrees to preserve, package, or pack in accordance with the specified military requirements.

(End of provision)

252.210-7006 Bill of Materials.

As prescribed in 210.011-70(d), use the following clause:

Bill of Materials (FEB 1991)

(a) The Contractor shall furnish a Bill of Materials for the supplies designated in the schedule of this contract—

(1) In the required number of copies;

(2) On DD Forms 346, Raw (Basic Processed) and Semi-Fabricated Stock Form, and 347, Bill of Materials for Subcontracted Parts, Purchased Parts, Government Furnished Property, if applicable; and

(3) In accordance with the instructions in the schedule.

(b) The Contractor shall furnish revised pages of the Bill of Materials—

(1) At intervals designated in the schedule; and

(2) Incorporating the effect of any changes under the "Changes" clause.

(c) The Contractor shall furnish a final revision of the Bill of Materials, or statement that no revision is necessary, at contract completion.

(d) The Bill of Materials and all revisions or statements are subject to inspection and acceptance by the Government.

(End of clause)

252.212-7000 [Removed]

23. Section 252.212-7000 is removed.

252.214-7000 [Removed]

24. Section 252.214-7000 is removed.

25. Section 252.228-7000 is revised to read as follows:

252.228-7000 Reimbursement for War-Hazard Losses.

As prescribed in 228.370(a), use the following clause:

Reimbursement for War-Hazard Losses (FEB 1991)

(a) Costs for providing employee war-hazard benefits in accordance with paragraph (b) of the Workers' Compensation and War-Hazard Insurance clause of this contract are allowable if the Contractor—

(1) Submits proof of loss files to support payment or denial of each claim;

(2) Subject to Contracting Officer approval, makes lump sum final settlement of any open claims and obtains necessary release documents within 1 year of the expiration or termination of this contract, unless otherwise extended by the Contracting Officer; and

(3) Provides the Contracting Officer at the time of final settlement of this contract—

(i) An investigation report and evaluation of any potential claim; and

(ii) An estimate of the dollar amount involved should the potential claim mature.

(b) The cost of insurance for liabilities reimbursable under this is not allowable.

(c) The Contracting Officer may require the Contractor to assign to the Government all right, title, and interest to any refund, rebate, or recapture arising out of any claim settlements.

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(d) The Contractor agrees to—

(1) Investigate and promptly notify the Contracting Officer in writing of any occurrence which may give rise to a claim or potential claim, including the estimated amount of the claim;

(2) Give the Contracting Officer immediate written notice of any suit or action filed which may result in a payment under this clause; and

(3) Provide assistance to the Government in connection with any third party suit or claim relating to this clause which the Government elects to prosecute or defend in its own behalf.

(End of clause)

26. Section 252.208-7001 is revised to read as follows:

252.228-7001 Ground and Flight Risk.

As prescribed in 228.370(b), use the following clause:

Ground and Flight Risk (FEB 1991)

(a) Definitions.

As used in this clause—

(1) "Aircraft," unless otherwise provided in the Schedule, means—

(i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft; and

(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) "Contractor's premises" means those premises designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

(3) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land based aircraft, "flight" begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises;

(ii) For seaplanes, "flight" begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises;

(iii) For helicopters, "flight" begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and

(iv) For vertical take-off aircraft, "flight" begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises;

(v) All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(4) "Flight crew member" means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. If required, a defense systems operator may also be assigned as a flight crew member.

(5) "In the open" means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being "in the open." Government furnished aircraft shall be considered to be located "in the open" at all times while in the Contractor's possession, care, custody, or control.

(6) "Operation" means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) Except as may be specifically provided in the Schedule as an exception to this clause, the Government assumes the risk of damage to, or loss or destruction of aircraft "in the open," during "operation," and in "flight." The Contractor shall not be liable to the Government for such damage, loss, or destruction.

(c) The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.

(1) The Contracting Officer, when finding aircraft in the open under unreasonable conditions, shall notify the Contractor in writing of the unreasonable conditions and require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable. If the Contracting Officer later determines that the cited conditions were not reasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions. Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 am on the fifteenth day following the day the written notice is received by the Contractor. If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk. Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk, the risk of loss for Government-furnished property shall be determined in accordance with the Government Property clause of this contract.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected. If the Government elects to again assume the risk of loss and relieve the Contractor of liabilities, the Contracting Officer will notify the Contractor. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Contractor notice of correction until the Contractor is notified that the Government will assume the risk of loss. If the Government does not again assume the risk of loss and conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day.

(d) The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice. The term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who supervise or direct all or substantially all of the Contractor's business; or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed; or a separate and complete major industrial operation in connection with the performance of this contract;

(2) Is sustained during flight if the flight crew members have not been approved in writing by the Contracting Officer;

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice in the property.); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.

(e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first $1,000 of loss or damage to aircraft in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage, loss, or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from such liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability, and damage, loss, or destruction occurs, the Contractor shall enforce liability against the subcontractor for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, even if the assumption may be terminated for aircraft in the open.

(h) In the event the damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, to put all aircraft in the best possible order and further, except in cases covered by paragraph (e) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(1) The damaged, lost, or destroyed aircraft;

(2) The time and origin of the damage, loss, or destruction;

(3) All known interests in commingled property of which aircraft are a part; and

(4) The insurance, if any, covering the interest in commingled property. Except in cases covered by paragraph (e) of this clause, the Contracting Officer will make an equitable adjustment in the contract price for expenditures made by the Contractor in performing the obligations under this paragraph.

(i) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage; or

(2) Terminate this contract with respect to the aircraft. In the event the Government requires that the aircraft be replaced or restored, the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance. If this contract is terminated with respect to the aircraft and the Government has assumed the risk of damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(i) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(ii) Would be the value of the damaged aircraft or any salvage retained by the Contractor.

The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause.

(j) In the event the Contractor is reimbursed or compensated by a third person for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment of subrogation) in obtaining recovery.

(k) The Contractor agrees to be bound by the operating procedures contained in the combined regulation: "Contractor Flight Operation" in effect on the date of contract award (Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1; and Defense Logistics Agency Regulation 8210.1).

(End of clause)

27. Section 252.228-7002 is revised to read as follows:

252.228-7002 Aircraft Flight Risks.

As prescribed in 228.370(c), use the following clause:

Aircraft Flight Risk (FEB 1991)

(a) Definitions.

As used in this clause—

(1) "Aircraft," unless otherwise provided in the Schedule, means—

(i) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or

(ii) Aircraft furnished by the Government to the Contractor, including all Government property placed on, installed or attached to the aircraft; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land-based aircraft, "flight" begins with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) For seaplanes, "flight" begins with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) For helicopters, "flight" begins upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) For vertical take-off aircraft, "flight" begins upon disengagement from any launching platform or device and continues until the aircraft has been reengaged to any launching platform or device.

(3) "Flight crew members" means the pilot, co-pilot, and unless otherwise provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator as required, when assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(b) This clause takes precedence over any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause).

(c) Unless the flight crew members previously have been approved in writing by the Contracting Officer, the Contractor shall not be—

(1) Relieved of liability for damage, loss, or destruction of aircraft sustained during flight; or

(2) Reimbursed for liabilities to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight.

(d)(1) The loss, damage, or destruction of aircraft during flight in an amount exceeding $100,000 or 20 percent of the estimated cost of this contract, whichever is less, is subject to an equitable adjustment when the Contractor is not liable under—

(i) The Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause, and

(ii) Paragraph (c) of this clause.

(2) The equitable adjustment under this contract for the repair, restoration, or replacement of aircraft shall be made—

(i) In the estimated cost, the delivery schedule, or both; and

(ii) In the amount of any fee to be paid to the Contractor.

(3) In determining the amount of equitable adjustment in the fee, the Contracting Officer will consider any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction.

(e) The Contractor agrees to be bound by the operating procedures contained in the combined regulation: "Contractor Flight Operations" in effect on the date of contract award (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1; and Defense Logistics Agency Regulation 8210.1).

(End of clause)

28. Section 252.228–7003 is revised to read as follows:

252.228–7003 Capture and Detention.

As prescribed in 228.370(d), use the following clause:

Capture and Detention (Feb 1991)

(a) As used in this clause—

(1) "Captured person" means any employee of the Contractor who is—

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of capture; provided, that at the time of capture or detention, the person was either—

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only in order to perform this contract.

(2) A "period of detention" begins with the day of capture and continues until the captured person is returned to the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) "United States" comprises geographically the 50 states and the District of Columbia.

(4) "War Risk Hazards Compensation Act" refers to the statute compiled in Chapter 12 of Title 42, U.S. Code (sections 1701–1717), as amended.

(b) If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of—

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Risk Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for capture and detention under the War Risk Hazards Compensation Act, as amended.

(End of clause)

29. Section 252.228–7004 is revised to read as follows:

252.228–7004 Bonds or Other Security.

As prescribed in 228.170, use the following provision:

Bonds or Other Security (FEB 1991)

(a) Offerors shall furnish a bid guarantee in the amount of $_____ with their bids. The offeror to whom award is made shall furnish—

(1) A performance bond in the penal amount of $_____; and

(2) Payment in full of any sum due the Government.

(b) Bonds supported by sureties whose names appear on the list contained in Treasury Department Circular 570 are acceptable. Performance bonds from individual sureties are acceptable if each person acting as a surety provides a SF 28, Affidavit of Individual Surety, and a pledge of assets acceptable to the Contracting Officer.

(c) The contract and notice to proceed will not be issued until the Contracting Officer receives an acceptable performance bond and payment of any sum due the Government.

(End of provision)

252.228–7006 [Redesignated as 252.228–7005]

30. Section 252.228–7006 is redesignated as 252.228–7005 and revised to read as follows:

252.228–7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.

As prescribed in 228.370(e), use the following clause:

Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (FEB 1991)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the accident, the Contractor will cooperate and assist the Government's personnel until the investigation is complete.

(c) The Contractor will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.

(End of clause)

252.228–7007 [Removed]

31. Section 252.228–7007 is removed.

252.234–7000 [Removed]

32. Section 252.234–7000 is removed.

252.234.7001 [Redesignated as 252.234–7000]

33. Section 252.234–7001 is redesignated as 252.234–7000 and revised to read as follows:

252.234–7000 Cost/Schedule Control Systems.

As prescribed by 234.005–70, use the following clause:

Cost/Schedule Control Systems (FEB 1991)

(a) The Offeror, as part of its offer, shall submit a comprehensive plan for compliance with the cost/schedule control systems criteria of DoDI 7000.2, Performance Measurement for Selected Acquisitions. The plan shall—

(1) Describe the cost/schedule control systems (C/SCS) the Offeror intends to use in performance of the contract.

(2) Distinguish between the Offeror's existing management systems and modifications proposed to meet the criteria of DoDI 7000.2.

(3) Describe the management systems and their application in all major functional cost areas in terms of:

(i) The work breakdown structure,

(ii) Planning,

(iii) Budgeting,

(iv) Scheduling,

(v) Work authorization,

(vi) Cost accumulation,

(vii) Measurement and reporting of cost and schedule performance,

(viii) Variance analysis, and

(ix) Baseline control.

(4) Describe compliance with each of the DoDI 7000.2 criteria. (Preferably, cross-reference appropriate elements in the description of systems with the items in the checklist for the C/SCS criteria in AFCCP 173–5, AMC–P 715–5, NAVSO P3627, DLAH 8400.2, DCAA P7641.47, Cost/Schedule Control Systems Criteria Joint Implementation Guide.)

(5) Identify the major subcontractors to which the criteria will be applied. (If major subcontractors have not been selected, identify the major subcontracted effort.)

(6) Describe the proposed procedure for administration of the criteria at the subcontract level.

(b) If the Offeror is using C/SCS which previously have been accepted by the Government, or is operating C/SCS under a current Memorandum of Understanding (as described in DoDI 7000.2), the Offeror may submit evidence of either instead of the comprehensive plan.

(c) The Government will evaluate the Offeror's plan for C/SCS as an integral part of the source selection evaluation. When systems existing at time of award do not comply with the C/SCS criteria of DoDI 7000.2, the Contractor will make adjustments as necessary to ensure compliance at no change in contract price or fee.

(d) Within 90 calendar days after contract award, or a longer period if the Contracting Officer agrees, the Contractor shall—

(1) Provide a description of the C/SCS to be used in the performance of the contract. The description shall—

(i) Be in the form and detail prescribed by the Cost/Schedule Control Systems Criteria Joint Implementation Guide; or

(ii) Be in the form and detail required by the Contracting Officer; and

(iii) Upon approval by the Contracting Officer, be incorporated by reference in the contract.

(2) Demonstrate the operation of its C/SCS to the Government for compliance with the C/SCS criteria of DoDI 7000.2.

(e) The Offeror/Contractor agrees to provide access to all records and data requested by the Contracting Officer for purposes of—

(1) Evaluating the Offeror's plan for C/SCS;

(2) Assessing the Contractor's description and demonstration of the C/SCS to be used in performance of the contract; and

(3) Conducting Government surveillance during contract performance to ensure continuing application of approved C/SCS.

(f) The Contractor shall require each subcontractor selected for application of C/SCS criteria to adopt C/SCS that meet the criteria of DoDI 7000.2. The Government, if requested by the Contractor, will perform the evaluation, assessment, and surveillance of subcontractor C/SCS.

(End of clause)

34. Section 252.246–7000 is revised to read as follows:

252.246–7000 Material Inspection and Receiving Report.

As prescribed in 246.370, use the following clause:

Material Inspection and Receiving Report (FEB 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix I, Material Inspection and Receiving Report, of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

35. Section 252.246–7001 is revised to read as follows:

§ 252.246–7001 Warranty of Data.

As prescribed in 246.710, use the following clause:

Warranty of Data (FEB 1991)

(a) *Definition.* "Technical data" has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for 3 years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(f) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate I (FEB 1991)

As prescribed in 246.710, substitute the following for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d) (1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirement under Category E or I of Mil.–D–1000, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

Alternate II (FEB 1991)

As prescribed at 246.710, substitute the following paragraph for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d) (1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 10 percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirement under Category E or I of MIL–D–1000, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

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PART 253—FORMS

36. The authority for 48 CFR part 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 253.2—Prescription of Forms

37. Sections 253.209 and 253.209–1 are added to read as follows:

§ 253.209 Contractor qualifications.

§ 253.209–1 Responsible prospective contractors.

(a) *SF 1403(10/83), Preaward Survey of Prospective Contractor (General).* (i) The factors in Section III, Block 19, generally mean—

(A) *Technical Capability.* An assessment of the prospective contractor's key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.

(B) *Production Capability.* An evaluation of the prospective contractor's ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes—

(*1*) An assessment of the prospective contractor's possession of, or the ability to acquire, the necessary facilities, material, equipment, and labor; and

(*2*) A determination that the prospective contractor's system provides for timely placement of orders and for vendor follow-up and control.

(C) *Quality Assurance Capability.* An assessment of the prospective contractor's capability to meet the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor's quality assurance system, personnel, facilities, and equipment.

(D) *Financial Capability.* A determination that the prospective contractor has or can get adequate financial resources to obtain needed facilities, equipment, materials, etc.

(E) *Accounting System.* An assessment by the Defense Contract Audit Agency (DCAA) of the adequacy of the prospective contractor's accounting system. Normally, a contracting officer will request an accounting system review when soliciting contracts with progress payments or cost or incentive type contracts.

(ii) The factors in Section III, Block 20, generally mean—

(A) *Government Property Control.* An assessment of the prospective contractor's capability to manage and control Government property.

(B) *Transportation.* An assessment of the prospective contractor's capability to follow the laws and regulations applicable to the movement of Government material, or overweight, oversized, hazardous cargo, etc.

(C) *Packaging.* An assessment of the prospective contractor's ability to meet all contractual packaging requirements including preservation, unit pack, packing, marking, and unitizing for shipment.

(D) *Security Clearance.* A determination that the prospective contractor's facility security clearance is adequate and current. (When checked, the surveying activity will refer this factor to the Defense Investigative Service (DIS)).

(E) *Plant Safety.* An assessment of the prospective contractor's ability to meet the safety requirements in the solicitation.

(F) *Environmental/Energy Consideration.* An evaluation of the prospective contractor's ability to meet specific environmental and energy requirements in the solicitation.

(G) *Flight Operations and Flight Safety.* An evaluation of the prospective contractor's ability to meet flight operation and flight safety requirements on solicitations involving the overhaul and repair of aircraft.

(H) *Other.* If the contracting officer wants an assessment of other than major factors A–E and other factors A–G, check this factor. Explain the desired information in the Remarks sections.

38. Section 253.213 is added to read as follows:

253.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

(e) *OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services-Schedule Continuation.* DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347. DoD uses Optional Form 336, Continuation Sheet, instead of OF 348.

(i) Use the DD Form 1155 as prescribed in 213.505–2(b) and in accordance with the instructions at 253.213–70.

(ii) Use the OF 336, or a sheet of paper, as a continuation sheet for the DD Form 1155. Continuation sheets may be printed on the reverse of the DD Form 1155.

(iii) DD Form 1155c–1, Order for Supplies or Services (Commissary Continuation Sheet) may be used for commissary acquisitions.

253.213–70 Instructions for Completion of DD Form 1155.

(a) These instructions are mandatory if—

(1) Contract administration has been assigned to—

(i) The Defense Contract Management Command (DCMC); or

(ii) A non-DCMC office listed in DoD 4105.59–H, DoD Directory of Contract Administration Services Components; and

(2) The contractor is located in the continental United States or Canada.

(b) The organizational entity codes (address codes) referenced in this subsection are codes published in—

(1) *DoD Activity Address Directory (DoDAAD), DoD 4000.25–6–M.* Use the DoDAAD codes for—

(i) Government entities in Blocks 6, 7, 9, 14, 15, and 19.

(ii) Non-Government entities in Blocks 14 and 19 (elements (8) and (10)). Shipments to non-Government entities to satisfy MILSTRIP requisitions, use a DoDAAD code for non-Government entities in Block 14 ("Ship To") and Blocks 19 (8) and (10) ("Ship To"/"Mark For").

(2) *Military Assistance Program Address Directory System (MAPAD), DoD 4000.25–6–M.* Use a MAPAD code in Block 14 for foreign military sales.

(3) *Commercial and Government Entity (CAGE) Handbook H4/H8.* Except as provided in paragraphs (b) (1) and (2) of this subsection, use the CAGE codes for non-Government entities in Blocks 9, 14, and 19.

(c) For orders requiring payment in Canadian currency—

(1) State the contract price in terms of Canadian dollars, followed by the initials CN; e.g., $1,647.23CN.

(2) Indicate on the face of the order—

(i) The U.S./Canadian conversion rate in effect at the time of the award; and

(ii) The U.S. dollar equivalent of the Canadian dollar amount.

(d) Instructions for DD Form 1155 entries. (Instructions apply to both purchase orders and delivery orders, except Block 2, which applies only to delivery orders, and Block 12, which applies only to purchase orders.

Block

1 *CONTRACT/PURCH ORDER NO.*—
Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in subpart 204.70.

2 *DELIVERY ORDER NO.*—
Enter PII number for delivery orders as prescribed in subpart 204.70.

3 *DATE OF ORDER*—
Enter the two position numeric year, three position alpha month, and two position numeric day.

4 *REQUISITION/PURCH REQUEST NO.*—
Enter the number authorizing the purchase. When the number differs by line item, list it in the schedule and annotate this block, "see schedule."

5 *CERTIFIED FOR NATIONAL DEFENSE UNDER DMS REG 1*—
Enter the claimant program number from Volume I, Section III of DoD 4105.61–M, Procurement Coding Manual.

6 *ISSUED BY*—
Enter the name and address of the issuing office. In the code block, enter the DoDAAD code for the issuing office. Directly below the address, enter: Buyer/Symbol: followed by the buyer's name and routing symbol. Directly below the buyer/symbol, enter: Phone: followed by the buyer's phone number and extension.

7 *ADMINISTERED BY*—
Enter the name and address of the DCMC or military activity responsible for contract administration. On purchase orders retained by purchasing offices for administration, mark this block, "see Block 6." Enter in the code block the organizational entity code of the contract administration activity. In the lower right or left-hand corner, enter the criticality designator code from FAR 42.1105.

8 *DELIVERY FOB*—
Check the applicable box.

9 *CONTRACTOR*—
(i) Enter the full business name and address of the contractor. Enter in the first code block, the organizational entity code of the contractor.

(ii) If it is known that all the work covered by the order is to be performed at an address different from the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the organizational entity code for that facility, i.e., H8–1/H8–2 code for a non-Government entity or DoDAAD code for a Government entity. (Use DoDAAD codes only to indicate "performed at" locations for orders specifying services at a Government location.) If it is known that multiple facilities are involved, enter the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Optional Form 336 Continuation Sheet and mark the facility code block with "see schedule."

10 *DELIVER TO FOB POINT BY (Date)*—
If a single date of delivery applies to the entire order, enter date in this block. List multiple delivery dates in the schedule and mark this block "see schedule."

11 *MARK IF BUSINESS*—
Check all applicable blocks.

12 *DISCOUNT TERMS*—
Enter the discount for prompt payment in terms of percentages and corresponding days. Express the percentages in whole numbers and decimals, e.g., 2.25%—10 days; 0.50%—20 days.

13 *MAIL INVOICES TO*—
Enter a reference to the block number containing the address to which invoices are to be mailed. When not in Blocks 6, 7, 14, or 15, insert in Block 13, "see schedule."

14 *SHIP TO*—
If a single ship-to point applies to the entire order, enter the name and address of that point in this block. Enter multiple ship-to points in the schedule and annotate this block, "see schedule."

15 *PAYMENT WILL BE MADE BY*—
Enter the name and address of the activity making payment. Enter in the code block, the organizational entity code of the paying activity.

16 *TYPE OF ORDER*—
Check the appropriate box. If a purchase order:

(i) Identify the type of quotation, i.e., oral, letter or TWX, on which the order is based.

(ii) Check the box when acceptance of the purchase order is required and enter the number of copies of the order to be returned to the issuing office.

17 *ACCOUNTING AND APPROPRIATION DATA/LOCAL USE*—
Enter the accounting classification and the accounting classification reference number(s) in accordance with 204.7108.

18 *ITEM NO.*—
Enter an item number for each item of supply or service in accordance with subpart 204.71.

19 *SCHEDULE OF SUPPLIES/SERVICES*—
The schedule contains several elements of data. The order and arrangement of data in the schedule is mandatory for purchase and delivery orders assigned to DCMC or the military departments for administration and is encouraged for all orders.

(1) *National Stock Number (NSN)*—
Total item quantity for the line or subline item number followed by the appropriate national stock number or the word "none" if an NSN has not be assigned. On the same line and adjacent to NSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue, unit price, and dollar amount of the stock number or item cited (see entries for Blocks 20, 21, 22, and 23).

(2) *Item Identification*—
Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR part 10. If multiple accounting classifications apply to the contract, enter the accounting classification reference number.

(3) *Quantity Variance*—
Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.

(4) *Inspection/Acceptance*—
Enter the point at which inspection/acceptance will take place.

(5) *Preservation and Packaging*—
Enter the preservation and packaging requirements for the item described. These requirements may be expressed in terms of MIL–STD–728 codes or reference to applicable specifications. 1st Example: MIL–STD–728 PRES/PACK:B/10/1/00/2/10/c/00/21/3/22/4/3/2/00. 2nd Example: Preservation and packaging shall be in accordance with instructions below. DGSP P–84 in lieu of level "c" requirement.

(6) *Packing*—
When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements. 1st Example: Packing. Preserved and packaged items shall be packed Level (A, B, or C depending on destination) in accordance with MIL–STD–794. 2nd Example: Packing. Preserved and packaged items shall be packed Level (A, B, or C) in accordance with DESC Manual 4100.1.

(7) *Unitization*—
When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds. 1st Example: Items packed for shipment shall be unitized in accordance with MIL–STD–147. 2nd Example: Nonperishable subsistence, packed as specified shall be unitized in accordance with MIL–L–35078C Type (I or II) Class (A through F for Type I, A through D for Type II). Supplemental waterproofing requirements of Appendix II (are/are not) applicable.

(8) *Ship To*—
Enter the organizational entity code of the ship-to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the accounting classification reference number. When several items are to be shipped to the same point, the code will be listed; but it will not be necessary to repeat the address.

(9) *Delivery Date*—
When multiple delivery dates apply, enter the required date of delivery on the same line with ship-to code.

(10) *Mark For*—
Enter the organizational entity code on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.

20 *QUANTITY ORDERED/ACCEPTED*—
Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship-to point within the line item.

21 *UNIT*—
Enter the unit of measure applicable to the line item.

22 *UNIT PRICE*—
Enter the unit price applicable to the line item.

23 *AMOUNT*—
Enter the extended dollar amount (quantity × unit price) for each line item.

24 *CONTRACTING/ORDERING OFFICER*—
Enter the contracting/ordering officer's signature.

25 *TOTAL AMOUNT*—
Enter the total dollar amount for all line items on the order.

26 thru 42 These blocks are used in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.

39. Appendix I to Chapter 2 is revised to read as follows.

APPENDIX I TO CHAPTER 2—MATERIAL INSPECTION AND RECEIVING REPORT

Part 1—Introduction

Sec.
I-101 General.
I-102 Applicability.
I-103 Use.
I-104 Application.
I-105 Forms.

Part 2—Contract Quality Assurance (CQA) on Shipments Between Contractors

I-201 Instructions.

Part 3—Preparation of the DD Form 250 and DD Form 250c

I-301 Preparation instructions.
I-302 Mode/method of shipment codes.
I-303 Consolidated shipments.
I-304 Multiple consignee instructions.
I-305 Correction instructions.
I-306 Invoice instructions.
I-307 Packing list instructions.
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Part 4—Distribution of DD Form 250 and DD Form 250c

I-401 Distribution.

Part 5—Preparation of the DD Form 250–1 (Loading Report)

I-501 Instructions.

Part 6—Preparation of the DD Form 250–1 (Discharge Report)

I-601 Instructions.

Part 7—Distribution of the DD Form 250–1

I -701 Distribution.
I -702 Corrected DD Form 250–1.

Part 1—Introduction

I-101 General.

This appendix contains procedures and instructions for the use, preparation, and distribution of the material inspection and receiving report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to document Government contract quality assurance.

I-102 Applicability.

(a) The provisions of this appendix apply to supplies or services acquired by DoD when the clause at 252.246–7000, Material Inspection and Receiving Report, is included in the contract. If the contract contains the clause at FAR 52.213–1, Fast Payment Procedure, the contractor may elect not to prepare a DD Form 250.

(b) When DoD provides quality assurance or acceptance services for non-DoD activities, prepare a MIRR using the instructions in this appendix, unless otherwise specified in the contract.

I-103 Use.

(a) The DD Form 250 is a multipurpose report used—

(1) To provide evidence of Government contract quality assurance at origin or destination;

(2) To provide evidence of acceptance at origin or destination;

(3) For packing lists;

(4) For receiving;

(5) For shipping;

(6) As a contractor invoice; and

(7) As commercial invoice support.

(b) Do not use the DD Form 250 for shipments—

(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or

(2) Of contract inventory.

(c) The contractor prepares the MIRR, except for entries that an authorized Government representative is required to complete.

(d) Use the DD Form 250–1—

(1) For bulk movements of petroleum products by tanker or barge to cover—

(i) Origin or destination acceptance of cargo; or

(ii) Shipment or receipt of Government owned products.

(2) To send quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. Annotate the forms with the words "INSPECTED FOR QUALITY ONLY."

I-104 Application.

(a) DD Form 250.

(1) Use the DD Form 250 for delivery of contract line, subline, exhibit line, or exhibit subline items. Do not use the DD Form 250 for those exhibit line or exhibit subline items on a DD Form 1423, Contract Data Requirements List, that indicate no DD Form 250 is required.

(2) If the shipped to, marked for, shipped from, mode of shipment, contract quality assurance and acceptance data are the same for more than one shipment made on the same day under the same contract, contractors may prepare one MIRR to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck, or other vehicle, prepare a separate MIRR for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one federal supply class (FSC) or material management code (MMC), prepare a separate DD Form 250 for items of each of the FSCs or MMCs in the shipment. However, the cognizant Government representative may authorize a single DD Form 250, listing each of the FSCs or MMCs included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the national stock number applicable to the item.

(5) Consolidation of Petroleum Shipments on a Single MIRR.

(i) *Continental United States.*

Contractors may consolidate multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, on one MIRR. To permit verification of motor deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Include a shipping document (commercial or government) with each individual load showing as a minimum—

(A) The shipper;

(B) Shipping point;

(C) Consignee;

(D) Contract and line item number;

(E) Product identification;

(F) Gross gallons (bulk only);

(G) Loading temperature (bulk only);

(H) American Petroleum Institute gravity (bulk only);

(I) Identification of carrier's equipment;

(J) Serial number of all seals applied; and

(K) Signature of supplier's representative.

When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (reference I-401, Table 1) before signing Block 21B.

(ii) *Overseas.*

The same criteria as for continental United States applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor's facility. In addition, the contractor may include more than one contract line item in each DD Form 250 if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(6) Consolidation of Coal Shipments on a Single MIRR.

Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one MIRR. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(i) The shipper;

(ii) The name or names;

(iii) Location and shipping point of the mine or mines from which the coal originates;

(iv) The contract number;

(v) The exact size of the coal shipped; and

(vi) A certified weighmaster's certification of weight for the truckload. Include a waybill with each rail shipment showing the identical information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250.

(b) DD Form 250–1.

(1) Use a separate form for each tanker or barge cargo loaded.

(2) The contractor may report more than one barge in the same tow on a single form if on the same contract and consigned to the same destination.

(3) When liftings involve more than one contract, prepare separate forms to cover the portion of cargo loaded on each contract.

(4) Prepare a separate form for each product or grade of product loaded.

(5) Use a separate document for each tanker or barge cargo and each grade of product discharged.

(6) For discharge, the contractor may report more than one barge in the same tow on a single form if from the same loading source.

I-105 Forms.

(a) Contractors may get MIRR forms from the contract administration office at no cost.

(b) Contractors may print forms provided that the format and dimensions (DD Forms 250 and 250c: 8½ inches x 11 inches, DD Form 250–1: 8½ inches x 14 inches) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 81 lines vertically border to border for the DD Form 250c.

Part 2—Contract Quality Assurance (CQA) On Shipments Between Contractors

I-201 Instructions.

(a) Use the supplier's commercial shipping document/packing list to enter performance of required CQA actions at subcontract level. Make the following entries on the supplier's commercial shipping document/packing list:

Required CQA of listed items has been performed.

(Signature of Authorized Government Representative or DoD Stamp)

[Date]

(Typed Name and Office)

(b) Distribution for Government purposes shall be—

(1) One copy with shipment;

(2) One copy for the Government representative at consignee (via mail); and

(3) One copy for the Government representative at consignor.

Part 3—Preparation of the DD Form 250 and DD Form 250c

I-301 Preparation instructions.

(a) General.

(1) Dates shall use seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 90AUG07, 90SEP24.

(2) Addresses shall consist of the name, street address/P.O. box, city, state, and ZIP code.

(3) Enter to the right of and on the same line as the word "Code" in Blocks 9 through 12 and in Block 14—

(i) The Handbook of Non-Government Organizations for MILSCAP (H8–1/H8–2) code,

(ii) DoD Activity Address Directory (DODAAD) code, or

(iii) The Military Assistance Program Address Directory (MAPAD) code.

(4) Enter the DODAAD code or MILSCAP (118–1/118–2) code in Block 13.

(5) The data entered in the blocks at the top of the DD Form 250c must be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(6) Enter overflow data from the DD Form 250 in Block 16 or in the body of the DD Form 250c with an appropriate cross reference. Do not number or distribute additional DD Form 250c sheets, solely for continuation of Block 23 data as part of the MIRR.

(7) Do not include classified information in the MIRR. MIRRs shall not be classified.

(b) Completion instructions.

(1) Block 1—PROC INSTRUMENT IDEN (CONTRACT).

(i) Enter the 13 position alpha-numeric basic Procurement Instrument Identification Number (PIIN) of the contract. When applicable, enter the four alpha-numeric call/order serial number which is supplementary to the 13 position basic PIIN. This number is also referred to as the Supplementary Procurement Instrument Identification Number (SPIIN). Some examples of SPIINs are—

(A) Delivery orders under indefinite delivery type contracts;

(B) Orders under basic ordering agreements; and

(C) Calls under blanket purchase agreements.

(ii) Except as indicated in paragraph (iii), do not enter supplementary numbers used in conjunction with basic PIINs to identify—

(A) Modifications of contracts and agreements;

(B) Modifications to calls/orders; or

(C) Document numbers representing contracts written between contractors.

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DAAD01–90–C–0001

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DADD01–90–A–0001–0001

(iii) When shipping instructions are furnished by telephone or TWX message and shipment is made before receipt of the confirming contract modification (SF 30, Amendment of Solicitation/Modification of Contract), enter the contract modification six digit number or the two digit call or order number immediately following the PIIN or call/order four digit SPIIN.

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DAAD01–90–C–0001–PV0001

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DAAD01–90–A–0001–0001AA

(iv) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number immediately below the PII number.

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DSA400–90–F–1554
GS–00S–81917

(v) When a contract number other than PII number is used, enter that contract number.

(2) Block 2—SHIPMENT NO.

(i) The shipment number has a three alpha character prefix and a four numeric or alpha-numeric serial number.

(A) The prime contractor shall control and assign the shipment number prefix. The shipment number shall consist of three alphabetic characters for each "Shipped From" address (Block 1). The shipment number prefix shall be different for each "Shipped From" address and shall remain constant throughout the life of the contract. The prime contractor may assign separate prefixes when shipments are made from different locations within a facility identified by one "Shipped From" address.

(B) Number the first shipment 0001 for shipments made under the contract or contract and order number shown in Block 1 from each "Shipped From" address, or shipping location within the "Shipped From" address. Consecutively number all subsequent shipments with the identical shipment number prefix.

(1) Use alpha-numeric serial numbers when more than 9,999 numbers are required. Serially assign alpha-numeric numbers with the alpha in the first position (the letters I and O shall not be used) followed by the three position numeric serial number. Use the following alpha-numeric sequence:
A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

(2) When this series is completely used, start over with 0001.

(ii) Reassign the shipment number of the initial shipment where a "Replacement Shipment" is involved (Block 16(d)(6)).

(iii) The prime contractor shall control deliveries and on the final shipment of the contract shall end the shipment number with a "Z." Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to:

(A) Direct the subcontractor making the final shipment to end that shipment number with a "Z"; or

(B) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see I-305) covering the final shipment made from the prime contractor's plant by addition of a "Z" to that shipment number.

(iv) Contractors follow the procedures in I-306 to use commercial invoices.

(3) Block 3—DATE SHIPPED.

Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Do not delay distribution of the MIRR for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(4) Block 4—B/L TCN.

When applicable, enter—

(i) The commercial or Government bill of lading number after "B/L."

(ii) The transportation control number after "TCN" (when a TCN is assigned for each line item on the DD Form 250 under Block 16 instructions, insert "See Block 16"); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see I–302).

(5) Block 5—DISCOUNT TERMS.

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(i) The contractor may enter the discount in terms of percentages on all copies of the MIRR.

(ii) Use the procedures in I-308 when the MIRR is used as an invoice.

(8) Block 8—INVOICE NO./DATE.

(i) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an "E" after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(ii) Use the procedures in I-308 when the MIRR is used as an invoice.

(7) Block 7—PAGE/OF.

Consecutively number the pages of the MIRR. On each page enter the total number of pages of the MIRR.

(8) Block 8—ACCEPTANCE POINT.

Enter an "S" for Origin or "D" for destination.

(9) Block 9—PRIME CONTRACTOR/CODE.

Enter the code and address.

(10) Block 10—ADMINISTERED BY/CODE.

Enter the code and address of the contract administration office (CAO) cited in the contract.

(11) Block 11—SHIPPED FROM/CODE/FOB.

(i) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(iii) Enter on the same line and to the right of "FOB" an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

(iv) For destination or origin acceptance shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate other information in these blocks.

(12) Block 12—PAYMENT WILL BE MADE BY/CODE.

Enter the code and address of the payment office cited in the contract.

(13) Block 13—SHIPPED TO/CODE.

Enter the code and address from the contract or shipping instructions.

(14) Block 14—MARKED FOR/CODE.

Enter the code and address from the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the code block.

(15) Block 15—ITEM NO.

Enter the item number used in the contract.

(i) Use item numbers under the Uniform Contract Line Item Numbering System (see 204.71).

(ii) Position the item numbers as follows—

(A) For item numbers with four or less digits, enter the number immediately to the left of the vertical dashed line and prefix them with zeros, to achieve four digits.

(B) For item numbers with six digits, with alpha digits in the final two positions, enter the last two digits to the right of the vertical dashed line.

(C) For item numbers with six digits, with numbers in the final two positions, enter the first four digits immediately to the left of the vertical dashed line. Do not use the last two digits.

(iii) Line item numbers not in accordance with the Uniform Contract Line Item Numbering System may be entered without regard to positioning.

(16) Block 16—STOCK/PART NO./DESCRIPTION.

(i) Use single or double spacing between line items when there are less than four line items. Use double spacing when there are four or more line items. Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. Where applicable, include a prefix or suffix. If a number is not provided, or it is necessary to supplement the number, include other identification such as the manufacturer's name or federal supply code (as published in Cataloging Handbook H4-1), and the part number. Show additional part numbers in parentheses or slashes. Show the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The contractor may use the following technique in the case of equal kind supply items. The first entry shall be the description without regard to kind. For example, "Shoe-Low Quarter-Black," "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(B) On the next printing line, if required by the contract for control purposes, enter: the make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) On the next printing lines enter—

(1) The MIPR number prefixed by "MIPR:" or the MILSTRIP requisition number(s) when provided in the contract; or

(2) Shipping instructions followed on the same line (when more than one requisition is entered) by the unit for payment and the quantity shipped against each requisition.

Example:
V06666- 185-750XY18050A—EA 5
N0018801776038XY3211SA—EA 200
AT650003050051AAT6301—EA 1000

(D) When a TCN is assigned for each line item, enter on the next line the transportation control number prefixed by "TCN."

(ii) For service line items, enter the word "SERVICE" followed by as short a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4,13, and 14 when there is no shipment of material.

(iii) For all contracts administered by Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:
Gross Shipping Wt. _____ _____
State weight in pounds only.

(iv) Starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries apply to more than one line item in the MIRR, enter them only once after the last line item entry. Reference applicable line item numbers.

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (e.g., 17X4911-14003-104).

(C) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T."

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(F) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See I-301, Block 17, for replacement indicators).

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, e.g., "AERNO 60-6354."

(H) For items shipped with missing components, enter and complete the following:
"Item(s) shipped short of the following component(s):
NSN or comparable identification _____,
Quantity _____, Estimated Value _____,
Authority _____."

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:
"These components were listed as shortages on shipment number _____, date shipped _____."

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:
"Return to _____, Quantity _____Item _____, Ownership (Government/contractor)."

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, the applicable FMS country and case identifier from the contract. Also enter the special markings.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

"Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results."

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(O) For clothing and textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(P) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:
This is the initial unit delivered which incorporates VECP
No. _____, Contract Modification
No. _____, dated

(17) Block 17—QUANTITY SHIPPED/RECEIVED.

(i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to enter a "Z" below the quantity; or

(B) Upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see I-305) coving the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. Do not use the "Z" on deliveries which equal or exceed the contract line item quantity.

(iii) For replacement shipments, enter "A" below the last digit of the quantity, to designate first replacement, "B" for second replacement, etc. Do not use the final shipment indicator "Z" on underrun deliveries when a final line item shipment is replaced.

17. QUANTITY
SHIP/RECD
1000
(10)
Z

(iv) If the quantity received is the same quantity shipped and all items are in apparent good condition, enter by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and circle. The receiving activity will annotate the DD Form 250 stating the reason for the difference.

(18) Block 18—UNIT.

Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD- 129, Marking for Shipping and Storage. For example, LB for pound, SH for sheet.

18—UNIT
LB
(SH)

(19) Block 19—UNIT PRICE.

The contractor may, at its option, enter unit prices on all MIRR copies, except as a minimum:

(i) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

(ii) Use the procedures in I-308 when the MIRR is used as an invoice.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(iv) Price all copies of DD Forms 250 for FMS shipments with actual prices, if available. If actual price are not available, use estimated prices. When the price is estimated, enter an "E" after the price.

(20) Block 20—AMOUNT.

Enter the extended amount when the unit price is entered in Block 19.

(21) Block 21—CONTRACT QUALITY ASSURANCE (CQA).

(i) The words "conform to contract" contained in the printed statements in Blocks A and B relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 15 or on attached supporting documents with an appropriate block cross reference.

(ii) When a shipment is authorized under alternative release procedure, attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Command (DCMC).

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter "Certificate of Conformance" in Block 21A on the next line following the CQA and acceptance statements. Attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by DCMC. In addition, attach a copy of the signed certificate to, or enter on, copies of the MIRR sent with shipment.

(iv) ORIGIN.

(A) The authorized Government representative shall—

(1) Place an "X" in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, enter an asterisk at the end of the statement and an explanatory note in Block 18;

(2) Sign and date;

(3) Enter the typed, stamped, or printed name and office DODAAD code.

(B) When alternative release procedures apply—

(1) The contractor or subcontractor shall complete the entries required under paragraph (A) and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed CQA/acceptance statemen.

(2) When acceptance is at origin and contract administration is performed by an office other than DCMC, the contractor shall furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy and forwarding of all copies to the payment office.

(3) When acceptance is at origin and contract administration is performed by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see I-401, Table 1).

(C) When fast pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed CQA/acceptance statement. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (A).

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall make entries required by paragraph (iv) (A).

(1) For contracts administered by an office other than DCMC, furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy, and forwarding of all copies to the payment office.

(2) For contracts administered by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see I-401, Table 1).

(J) When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

(v) Destination

(A) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative shall—

(1) Place an "X" in the appropriate box(es);

(2) Sign and date; and

(3) Enter typed, stamped, or printed name and title.

(C)When "ALTERNATIVE RELEASE PROCEDURE" is entered in Block 21A and acceptance is at destination, the authorized Government representative shall complete the entries required by paragraph (B).

(D) Forward the executed payment copy or MILSCAP format identifier PKN or PKP to the payment office cited in Block 12 within 4 work days (5 days when MILSCAP Format is used) after delivery and acceptance of the shipment by the receiving activity. Forward one executed copy of the final DD Form 250 to the contract administration office cited in Block 10 for implementing contract closeout procedures, except where a Defense Contract Management Region or the DLA Finance Center is cited as the payment office in Block 12.

(E) When "FAST PAY" is entered in Block 21A, make no entries in this block.

(22)Block 22—RECEIVER'S USE.

The receiving activity (Government or contractor) shall use this block to show receipt, quantity, and condition. The receiving activity shall enter the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(23) Block 23—CONTRACTOR USE ONLY. Self explanatory.

I-302 Mode/method of shipment codes.

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Military Airlift Command (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
J	Air, small package carrier.
K	Rail, carload [1].
L	Rail, less than carload.
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service, provided by major airlines; charters and air taxis).
R	European Distribution System or Pacific Distribution System.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of material).
Y	Military Intra/Theater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll-on Roll-off (RORO) service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by Government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes trailer/container-on-flat-car (excluding SEAVAN).

I-303 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the DD Forms 250 at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

I-304 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical line item(s) of a contract are to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this appendix with the following changes—

(a) Blocks 2,4,13, and, if applicable, 14–Enter "See Attached Distribution List."

(b) Block 15–The contractor may group item numbers for identical stock/part number and description.

(c) Block 17–Enter the "total" quantity shipped by line item or, if applicable, grouped identical line items.

(d) Use the DD Form 250c to list each individual "Shipped To" and "Marked For" with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Line item number(s);

(3) Quantity;

(4) MIPR number(s), preceded by "MIPR," or the MILSTRIP requisition number, and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number, TCN, and mode of shipment code.

(e) The contractor may omit those distribution list pages of the DD Form 250c that are not applicable to the consignee. Provide a complete MIRR for all other distribution.

I-305 Correction instructions.

Make a new revised MIRR or correct the original when, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made. Use identical data of the original MIRR. Do not correct MIRRs for Blocks 19 and 20 entries. Make the corrections as follows—

(a) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block.

2. SHIPMENT NO.
(AAA0001)
See Block 16

16. STOCK/PART NO. DESCRIPTION

17. QUANTITY SHIP/REC'D
19
(17)

CORRECTIONS:
Refer Block 2: Change shipment No. AAA001 to AAA0010 on all pages of the MIRR.

Refer Blocks 15, 16, 17, and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(b) When corrections have been made to entries for line items (Block 15) or quantity (Block 17) enter the words "CORRECTIONS HAVE BEEN VERIFIED" on page 1. The authorized Government representative will date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) Clearly mark the pages of the MIRR requiring correction with the words "CORRECTED COPY." Avoid obliterating any other entries. Where corrections are made only on continuation sheets, also mark page number 1 with the words "CORRECTED COPY."

(d) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

I-306 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare and forward four copies to the payment office as follows—

(a) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(b) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE;" three copies "INVOICE COPY."

(c) Forward the four copies to the payment office (Block 12 address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(d) Be sure to separate the four copies of the MIRR used as an invoice from the copies the MIRR used as a receiving report.

I-307 Packing list instructions.

Contractors may use copies of the MIRR as a packing list. The packing list copies are in addition to the copies of the MIRR required for standard distribution (see I-401). Mark them "PACKING LIST."

I-308 Receiving instructions.

When the MIRR is used for receiving purposes, local directives shall prescribe procedures. If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

Part 4—Distribution of DD Form 250 and DD Form 250c

I-401 Distribution.

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage.

(b) Contractors shall distribute MIRRs using the instructions in Tables 1 and 2.

(c) Contractors shall distribute MIRRs on non-DoD contracts using this appendix as amended by the contract.

(d) Contractors shall make distribution promptly, but no later than the close of business of the work day following—

(1) Signing of the DD Form 250 (Block 21A) by the authorized Government representative; or

(2) Shipment when authorized under terms of alternative release, certificate of conformance, or fast pay procedures; or

(3) Shipment when CQA and acceptance are to be performed at destination.

(e) Do not send the consignee copies (via mail) on overseas shipments to port of embarkation (POE). Send them to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

MATERIAL INSPECTION AND RECEIVING REPORT TABLE 1

STANDARD DISTRIBUTION

With Shipment*	4
Consignee (via mail) (For Navy procurement, include unit price) (For foreign military sales, consignee copies are not required)	5
Contract Administration Office (Forward direct to address in Block 10 except when addressee is a DCMR, DCMAO, or a DPRO and a certificate of conformance or the alternate release procedures (see I-301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)	1
Purchasing Office	1
Payment Office**	4

(Forward direct to address in Block 12 except—

(i) When address in Block 10 is a DCMR or DCMAO and payment office in Block 12 is a DCMR or the DLA Finance Center, do not make distribution to the Block 12 addressee;

(ii) When address in Block 12 is Defense Contract Management Operations Office (DCMOO), Kirtland AFB, NM, attach only one copy to the required number of copies of the contractor's invoice;

(iii)When acceptance is at destination and a Navy finance office will make payment, forward to destination; and

(iv) When a certificate of conformance or the alternative release procedures (see I-301, Block 21) are involved and acceptance is at origin, forward the copies through the authorized Government representative.

ADP Point for CAO (applicable to Air Force only) (When DCMOO is the payment office in Block 12, send one copy to DCMOO immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DCMOO.)	1
CAO of Contractor Receiving GFP (For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59-H).)	1

*Attach as follows:

Type of Shipment	Location
Carload or truckload.	Affix to the shipment where it will be readily visible and available upon receipt.
Less than carload or truckload.	Affix to container number one or container bearing lowest number.
Mail, including parcel post.	Attach to outside or inside to the package. Include a copy in each additional package of multi-package shipments.
Pipeline, tank car, or railroad cars for coal movements.	Forward with consignee copies

**Payment by DCMRs or the DLA Finance Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office, except when distribution will be made to DCMR or DLA Finance Center payment offices.

MATERIAL INSPECTION AND RECEIVING REPORT—TABLE 2

SPECIAL DISTRIBUTION

As Required	Address	Number of Copies
Each: Navy Status Control Activity, Army, Air Force, DLA Inventory Control Manager.	Address specified in contract	1 Each addressee
Quality Assurance Representative	Address specified by the assigned quality assurance representative	1
Transportation Office issuing GBL (attach to GBL memorandum copy)	CAO address unless otherwise specified in the contract	1
Purchasing Office other than office issuing contract	Address specified in the contract	1
Foreign Military Sales Representative	Address specified in the contract	6
Military Assistance Advisory Group (Grant Aid shipments)	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1
Army—Foreign Military Sales	Commander, US Army Security Asst. Center ATTN: (See * below) 3rd Street and "M" Avenue, New Cumberland Army Depot, New Cumberland, PA 17070-5099.	1
*Director, AMSAC-OE for these country codes	AG, AU, AZ, AID, BC, BE, BY, CD CI, CM, CN, CV, CX, DA, DE, DK, EG, EI, FI, FR, GA, GB, GH, GR, GV, GY, IB, IT, IV, KE, LI LX, MI, MO, MR, NE, NI, NK, NO, NATO, PT, PU, RM, RW, SK, SL, SO, SP, SU, SW, SZ, SECPO, TK, TO, TU, UG, UK, UV.	
*Director, AMSAC-OX for these country codes	AC, AR, AT, A1, BA, BB, BO, BF, BG, BH, BL, BM, BR, BX, CB, CE, CH, CO, CS, DO, DR, EC, ES, FJ, GJ, GT, GU, HA, HO, ID, IN, IR, JA, JM, JO, KB, KU, LE, MF, MU, MX, NP, NU, NS, NZ, PA, PE, PI, PK, PN, PP, QA, SC, SI, SN, SR, ST, TC, TD, TH, TW, UY, VC, VE, YE.	
Air Force—On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones. When above items are delivered to aircraft modification centers.	Air Force Logistics Command, Aerospace Vehicle Distribution Office (MCNAPV), Wright-Patterson AFB, OH 45433.	1
	DPRO	1

BEST COPY AVAILABLE

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MATERIAL INSPECTION AND RECEIVING REPORT—TABLE 2—Continued

SPECIAL DISTRIBUTION

As Required	Address	Number of Copies
Foreign Military Sales/Military Assistance Program (Grant Aid) shipments to Canada	National Defense Headquarters, Ottawa, Ontario, Canada, K1A OK4, ATTN: DPSUPS3.	1
Other than Canada	Address in the contract	1
When consignee is an Air National Guard Activity	Consignee address (Block 13) ATTN: Property Officer	3
Navy		
Navy Foreign Military Sales	U.S. Navy International Logistics Control Office (NAVILCO), 700 Robbins Avenue, Philadelphia, PA 19111-5095.	2
When typed code (TC) 2T or 7T is shown in Block 16, or when shipment is consigned to another contractor's plant for a Government representative or when Block 16 indicates shipment includes GFP.	Aviation Supply Office (ASO) (Code 0142) for aviation type material 700 Robbins Avenue, Philadelphia, PA 19111-5098 and Ships Parts Control Center (SPCC) (Code 0143) for all other material 5450 Carlisle Pike, PO Box 2020, Mechanicsburg, PA 17055-0788.	2 2
Marine Corps		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	Commandant of the Marine Corps Headquarters, USMC Washington, DC 20360-0001.	1
	Commanding General, Marine Corps Logistics Base, Albany, GA 31704-5000.	3
Bulk Petroleum Shipments	Cognizant Defense Fuel Region (see Table 4)	1

Part 5—Preparation of the DD Form 250-1 (Loading Report)

I-501 Instructions.

Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge cargo lifting. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—TANKER/BARGE.

Line out "TANKER" or "BARGE" as appropriate and place an "X" to indicate loading report.

(b) Block 2—INSPECTION OFFICE.

Enter the name and location of the Government office conducting the inspection.

(c) Block 3—REPORT NO.

Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. If shipment is made from more than one location against the same contract, use this numbering system at each location.

(d) Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (LOADING).

Enter the applicable Government activity.

(e) Block 5—DEPARTMENT.

Enter military department owning product being shipped.

(f) Block 6—PRIME CONTRACT OR P.O. NO.

Enter the contract or purchase order number.

(g) Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (LOADING).

Enter the name and address of the contractor as shown in the contract.

(h) Block 8—STORAGE CONTRACT.

Enter storage contract number if applicable.

(i) Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS.

Enter the name and location of the contractor facility from which shipment is made. Also enter delivery point in this space as either "FOB Origin" or "FOB Destination."

(j) Block 10—ORDER NO. ON SUPPLIER.

Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

(k) Block 11—SHIPPED TO: (RECEIVING ACTIVITY, CITY, STATE AND/OR LOCAL ADDRESS.

Enter the name and geographical address of the consignee as shown on the shipping order.

(l) Block 12—B/L NUMBER.

If applicable, enter the initials and number of the bill of lading. If a commercial bill of lading is later authorized to be converted to a Government bill of lading, show "Com. B/L to GB/L."

(m) Block 13—REQN. OR REQUEST NO.

Enter number and date from the shipping instructions.

(n) Block 14—CARGO NO.

Enter the cargo number furnished by the ordering office.

(o) Block 15—VESSEL.

Enter the name of tanker or barge.

(p) Block 16—DRAFT ARRIVAL.

Enter the vessel's draft on arrival.

(q) Block 17—DRAFT SAILING.

Enter the vessel's draft on completion of loading.

(r) Block 18—PREVIOUS TWO CARGOES.

Enter the type of product constituting previous two cargoes.

(s) Block 19—PRIOR INSPECTION.

Leave blank.

(t) Block 20—CONDITION OF SHORE PIPELINE.

Enter condition of line (full or empty) before and after loading.

(u) Block 21—APPROPRIATION (LOADING).

Enter the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show "Army, Navy, or Air Force (as appropriate) owned stock.

(v) Block 22—CONTRACT ITEM NO.

Enter the contract item number applicable to the shipment.

(w) Block 23—PRODUCT.

Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

(x) Block 24—SPECIFICATIONS.

Enter the specification and amendment number shown in the contract.

(y) Block 25—STATEMENT OF QUANTITY.

Enter in the "LOADED" column, the net barrels, net gallons, and long tons for the cargo loaded. NOTE: If more than 1/2 of 1 percent difference exists between the ship and shore quantity figures, the contractor shall immediately investigate to determine the cause of the difference. If necessary, prepare corrected documents; otherwise, put a statement in Block 28 as to the probable or actual cause of the difference.

(z) Block 26—STATEMENT OF QUALITY.

(1) Under the heading "TESTS" list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(2) Under the heading "SPECIFICATION LIMITS" list the limits or requirements as stated in the specification or contract directly opposite each entry in the "TESTS" column. List waivers to technical requirements.

(3) Under the heading "TEST RESULTS" list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount and type of corrosion inhibitor, etc.

(aa) Block 27—TIME STATEMENT.

Line out "DISCHARGE" and "DISCHARGING." Complete all applicable entries of the time statement using local time. Take these dates and times from either the vessel or shore facility log. The Government representative shall ensure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 87). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

(bb) Block 28—REMARKS.

Use this space for reporting—

(1) All delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(2) Details of loading abnormalities such as product losses due to overflow, leaks, delivery of product from low level in shore tanks, etc.

(3) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(4) When product title is vested in the U.S. Government, insert in capital letters "U.S. GOVERNMENT OWNED CARGO." If title to the product remains with the contractor and inspection is performed at source with acceptance at destination, insert in capital letters "CONTRACTOR OWNED CARGO."

(5) Seal numbers and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

(cc) Block 29—COMPANY OR RECEIVING TERMINAL.

Line out "OR RECEIVING TERMINAL" and get the signature of the supplier's representative.

(dd) Block 30—CERTIFICATION BY GOVERNMENT REPRESENTATIVE.

Line out "DISCHARGED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—CERTIFICATION BY MASTER OR AGENT.

Obtain the signature of the master of the vessel or its agent.

Part 6—Preparation of the DD Form 250-1 (Discharge Report)

I-601 Instructions.

Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge discharge. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—TANKER/BARGE.

Line out "TANKER" or "BARGE" as applicable and place an "X" to enter discharge report.

(b) Block 2—INSPECTION OFFICE.

Enter Government activity performing inspection on the cargo received.

(c) Block 3—REPORT NO.

Leave blank.

(d) Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (LOADING).

Enter Government agency shown on loading report.

(e) Block 5—DEPARTMENT.

Enter Department owning product being received.

(f) Block 6—PRIME CONTRACT OR P.O. NO.

Enter the contract or purchase order number shown on the loading report.

(g) Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (LOADING).

Enter the name and location of contractor who loaded the cargo.

(h) Block 8—STORAGE CONTRACT.

Enter the number of the contract under which material is placed in commercial storage where applicable.

(i) Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS.

Enter source of cargo.

(j) Block 10—ORDER NO. ON SUPPLIER.

Make same entry appearing on loading report.

(k) Block 11—SHIPPED TO: (RECEIVING ACTIVITY, CITY, STATE AND/OR LOCAL ADDRESS).

Enter receiving activity's name and location.

(l) Block 12—B/L NUMBER.

Enter as appears on loading report.

(m) Block 13—REQN. OR REQUEST NO.

Leave blank.

(n) Block 14—CARGO NO.

Enter cargo number shown on loading report.

(o) Block 15—VESSEL.

Enter name of tanker or barge discharging cargo.

(p) Block 16—DRAFT ARRIVAL.

Enter draft of vessel upon arrival at dock.

(q) Block 17—DRAFT SAILING.

Enter draft of vessel after discharging.

(r) Block 18—PREVIOUS TWO CARGOES.

Leave blank.

(s) Block 19—PRIOR INSPECTION.

Enter the name and location of the Government office which inspected the cargo loading.

(t) Block 20—CONDITION OF SHORE PIPELINE.

Enter condition of line (full or empty) before and after discharging.

(u) Block 21—APPROPRIATION (LOADING).

Leave blank.

(v) Block 22—CONTRACT ITEM NO.

Enter the item number shown on the loading report.

(w) Block 23—PRODUCT.

Enter information appearing in Block 23 of the loading report.

(x) Block 24—SPECIFICATIONS.

Enter information appearing in Block 24 of the loading report.

(y) Block 25—STATEMENT OF QUANTITY.

Enter applicable data in proper columns.

(1) Take "LOADED" figures from the loading report.

(2) Determine quantities discharged from shore tank gauges at destination.

(3) If a grade of product is discharged at more than one point, calculate the loss or gain for that product by the final discharge point. Report amounts previously discharged on discharge reports prepared by the previous discharge points. Transmit volume figures by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(4) The loss or gain percentage shall be entered in the "PERCENT" column followed by "LOSS" or "GAIN," as applicable.

(5) On destination acceptance shipments, accomplish the "DISCHARGED" column only, unless instructed to the contrary.

(z) Block 26—STATEMENT OF QUALITY.

(1) Under the heading "TESTS" enter the verification tests performed on the cargo preparatory to discharge.

(2) Under "SPECIFICATION LIMITS" enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(3) Enter the results of tests performed under the heading "TEST RESULTS."

(aa) Block 27—TIME STATEMENT.

Line out "LOAD" and "LOADING." Complete all applicable entries of the time statement using local time. Take the dates and times from either the vessel or shore facility log. The Government representative shall ensure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 87).

(bb) Block 28—REMARKS.

Use this space for reporting important facts such as—

(1) Delays, their cause, and responsible party (vessel, shore facility, Government representative, or others).

(2) Abnormal individual losses contributing to the total loss. Enter the cause of such losses as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (enter tanks in which contained), spillages, line breaks, etc. Note where gravity group change of receiving tank contents results in a fictitious loss or gain. Note irregularities observed on comparing vessel ullages obtained at loading point with those at the discharge point if they indicate an abnormal transportation loss or contamination.

(cc) Block 29.—COMPANY OR RECEIVING TERMINAL.

Line out "COMPANY OR." Secure the signature of a representative of the receiving terminal.

(dd) Block 30—CERTIFICATION BY GOVERNMENT REPRESENTATIVE.

Line out "LOADED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—CERTIFICATION BY MASTER OR AGENT.

Obtain the signature of the master of the vessel or the vessel's agent.

Part 7—Distribution of the DD Form 250-1

I-701 Distribution.

(a) The Government representative shall distribute the completed DD Form 250-1 using Table 3 of this appendix as amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible, but not later than 24 hours following completion of the form. (See Table 3 on following pages)

I-702 Corrected DD Form 250-1.

When errors are made in entries on the form which would affect payment or accountability, make corrected copies. Circle the corrected entries on all copies and mark the form "CORRECTED COPY." Enter the statement, "Corrections Have Been Verified," in Block 20 with the authorized Government representative's dated signature directly below. Make distribution of the certified corrected copy to all recipients of the original distribution.

TABLE 3

Column Headings
1. TYPE OF SHIPMENT
2. RECIPIENT OF DD FORM 250-1
3. NUMBER OF COPIES
A. LOADING—PREPARED BY SHIPPER/GOVT. REPRESENTATIVE
(1) TANKER
(2) BARGE
B. DISCHARGE—PREPARED BY RECEIVING ACTIVITY
(1) TANKER
(2) BARGE

1.	2.	3. A(1)	3. A.(2)	3. B.(1)	3. B.(2)
On all overseas shipments provide for a minimum of 4 consignees.	Each Consignee By mail (CONUS shipments only)	2	1	(*)	(*)
Place 1 copy (attached to ullage report) in each of 4 envelopes & mark envelopes "Consignee-First Destination," "Consignee-Second Destination," etc., for delivery via the tanker.	With shipment	1	1	(*)	(*)
	Master of Vessel	1	1	1	1
	Tanker or Barge Agent	2	2	2	2
	Contractor	(*)	(*)	(*)	(*)
	Cognizant Inspection Office Government Representative at each Destination responsible for Quality.	1	1	1	1
	Government Representative at Cargo Loading Point	1	1	(*)	(*)
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command, Code N322, Washington, DC 20398-51000.	2	2	2	2
See contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment Office: If this is DASC-F, send copies to Defense Fuel Supply Center, ATTN: DFSC-CDX, Cameron Station, Bldg 5, Alexandria, VA 22314 (Do not send copies to DASC-F).	2	2	2	2
For shipments and receipts of DFSC financed cargoes for which DASC-F is not the paying office.	Defense Fuels Supply Center, ATTN: DFSC-RF, Room 6D490, Cameron Station, Alexandria, VA 22304-6160.	1	1	1	1
For shipments on all USNS tankers, MSC chartered tankers & barges, & FOB destination tankers with copy of ullage report.	Defense Fuels Supply Center, ATTN: DFSC-OI, Alexandria, VA 22304-6160.	1	1	[2]1	1
On Army ILP shipments	U.S. Army International Logistics Center, New Cumberland Army Depot, New Cumberland, PA 17070.	2	2	2	2
NAVY—On all shipments to Navy-Operated Terminals	Navy Fuel Petroleum Office, Cameron Station, Alexandria, VA 22304-6160.	2	1	2	1
On all shipments to AF bases	Directorate of Energy Mgmt, SA ALC (SFT), Kelly AFB, TX 78241-5000.	1	1	1	1
On all CONUS loadings	DFSC Fuel Region(s) cognizant of Shipping Point	1	1	1	1
On all shipments to CONUS Destinations	DFSC Fuel Region(s) cognizant of Shipping and Receiving Point.[4]	1	1	0	0
For all discharges of cargoes originating at DFSPs & discharging at activities not a Defense Fuel Support Point.	Defense Fuels Supply Center, ATTN: DFSC-RF, Cameron Station, Alexandria, VA 22304-6160.			[3]1	[3]1

[1] With copy of ullage report.
[2] Dry tank certificate to accompany DD Form 250-1 and ullage report.
[3] The copies of DD Form 250-1, forwarded by bases, will include the following in Block 11: Shipped to: Supplementary Address, if applicable; Signal Code; and Fund Code.
[4] See Table 4.
* As required.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY

a. DFR Northeast	Defense Fuel Region Northeast, Building 2404, McGuire AFB, NJ 08641-5000.
Area of Responsibility	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY—Continued

b. DFR Central	Defense Fuel Region, Central, 8900 S. Broadway, Building 2, St. Louis, MO 63125-1513.
Area of Responsibility	Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Wyoming.
c. DFR South	Defense Fuel Region, South, Federal Office Building, 2320 La Branch, Room 1213, Houston, TX 77004-1091.
Area of Responsibility	Alabama, Arizona, Arkansas, Caribbean Area, Florida, Georgia, Louisiana, Mexico, Mississippi, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, West Indies, Central America, and South America.
d. DFR West	Defense Fuel Region, West, 3171 N. Gaffney Street, San Pedro, CA 90731-1098.
Area of Responsibility	California, Idaho, Montana, Nevada, Oregon, Utah, and Washington.
e. DFR Alaska	Defense Fuel Region, Alaska, Elmendorf AFB, Alaska 99506-5000.
Area of Responsibility	Alaska and Aleutians.
f. DFR Europe	Defense Fuel Region, Europe, Building 2304, APO New York 09126-4105.
Area of Responsibility	Continental Europe, United Kingdom, Mediterranean Area, Turkey, and Africa (less Djibouti, Egypt, Ethiopia, Kenya, Somalia).
g. DFR Mideast	Defense Fuels Region, Middle East, P.O. Box 366, Awali, Bahrain, APO New York 09526-2990.
Area of Responsibility	Afghanistan, Bahrain, Djibouti, Egypt, Ethiopia, Iran, Iraq, Jordan, Kenya, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, United Arab Emirates, and Yemen.
h. DFR Pacific	Defense Fuel Region, Pacific, Camp H. M. Smith, Honolulu, HI 96861-5000.
Area of Responsibility	Australia, Burma, East Indies, Hawaii, Indian Ocean, Japan, Korea, Malaya, Marianas, New Zealand, Philippines, Ryukyu Islands, South Pacific Islands, Sri Lanka, Taiwan, and Thailand.

[FR Doc. 90-22717 Filed 9-27-90; 8:45 am]
BILLING CODE 3810-01-M

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federal register

Friday
September 28, 1990

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA34

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons and additional early-seasons on which States deferred selection. Taking of migratory birds is prohibited unless specifically provided. These rules will permit taking of the designated species during the 1990–91 season.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1990

On March 14, 1990, the Service published for public comment in the Federal Register (55 FR 9618) a proposal to amend 50 CFR Part 20, with comment periods ending July 20, 1990, for early-season proposals; and August 27, 1990, for the late-season proposals. The March 14 document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of subpart K. On June 6, 1990, the Service published in the Federal Register (55 FR 23178) a second document consisting of a supplemental proposed rulemaking dealing with both the early-and late-season frameworks. On June 21, 1990, a public hearing was held in Washington, DC, as announced in the Federal Register of March 14 (55 FR 9618), June 6 (55 FR 23178), and June 8 (55 FR 23467), 1990, to review the status of migratory shore and upland game birds. Proposals hunting regulations were discussed for these species and for other early seasons. On July 10, 1990, the Service published in the Federal Register (55 FR 28352) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 2, 1990, a public hearing was held in Washington, DC, as announced in the Federal Register of March 14 (55 FR 9618), June 6 (55 FR 23178), and July 10 (55 FR 28352), 1990, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 14, 1990, the Service published a fourth document (55 FR 33284) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1990–91. The fifth document in the series, published August 17, 1990, in the Federal Register (55 FR 33842), deals specifically with proposed frameworks for the 1990–91 late-season migratory bird hunting regulations. On August 28, 1990, the Service published in the Federal Register (55 FR 35208) a sixth document consisting of a final rule amending subpart K of Title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early-seasons. On September 21, 1990, the Service published in the Federal Register a seventh document (55 FR 38866) consisting of a final rulemaking for the late-season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1990–91.

The final rule described here is the eighth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late hunting regulations.

Nontoxic Shot Regulations

In the August 16, 1990, Federal Register (55 FR 33639), the Service published a final rule describing zones in which lead shot is prohibited for hunting waterfowl, coots, and certain other species in the 1990–91 season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Bird (FSES 88–14)", filed with EPA on June 9, 1988. Notice of Availability was published in the Federal Register on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options were considered in the Environmental Assessment, *Waterfowl Hunting Regulations for 1990*. Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Consideration

On July 12, 1990, the Division of Habitat Conservation concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. On July 23, 1990, the Office of Migratory Bird Management requested reinitiation to further consider the effects of the increasing population of Aleutian Canada geese and the variable nature of incidental take of this species. On August 2, 1990, the Division of Habitat Conservation issued another biological opinion that addressed this issue. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the Federal Register dated March 14, 1990 (55 FR 9618), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis. In the August 14, 1990, Federal Register (55 FR 33284), the Service published a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, Department of the Interior, Washington, DC 20240. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the Federal Register dated August 14, 1990 (55 FR 33284).

Authorship

The primary author of this proposed rule is Robert J. Blohm, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

Regulations Promulgation

After analysis of the migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the late-season proposals, the Service published in the Federal Register on September 21, 1990 (55 FR 38866) final late-season frameworks. Copies of the proposed and final frameworks were sent to the officials of the State conservation agencies who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas, and limits specified in the final frameworks. The Service has long recognized, consistent with 16 U.S.C. 708, that States need not select maximum bag limits and season length delineated in annual Federal frameworks. Local resource needs and the health of portions of a population using a particular area may require stricter local controls than prevail elsewhere in a flyway.

The taking of migratory birds is prohibited unless specifically provided. The following amendments will permit taking of the designated species within specified time periods and will benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting, must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 14, June 6, and August 17, 1990, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby corrected and amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K is amended as follows:

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; U.S.C. 701–711), and the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712).

2. Section 20.107 is revised to read as follows:

§ 20.107 Seasons, limits, and shooting hours for tundra swans.

This section provides for the annual hunting of tundra swans in designated portions of the 48 contiguous United States.

BILLING CODE 4310-55-M

Note - The following annual hunting regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

3. Section 20.104 is amended as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

NOTE: The following seasons are in addition to other seasons published previously in the August 28, 1990, Federal Register (55 FR 35266).

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	See footnote (2).	5 (3)	8
Possession limit	25 (1)	See footnote (2).	10 (3)	16

Shooting and Hawking Hours: One-half hour before sunrise until sunset daily on all species, unless otherwise restricted.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

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Seasons in the Mississippi Flyway:

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Kentucky	Nov. 22-Jan. 20	Closed	Oct. 1-Dec. 4	Oct. 1-Dec. 4

• • • • •

Tennessee	Dec. 8-Jan. 6	Closed	Oct. 20-Nov. 25 & Feb. 1-Feb. 28	Nov. 14-Feb. 28
Wisconsin:				
North Zone	Oct. 6-Nov. 4	Closed	Sept. 15-Nov. 18	Oct. 6-Nov. 4
South Zone	Oct. 6-Oct. 9 & Oct. 17-Nov. 11	Closed	Sept. 15-Nov. 18	Oct. 6-Oct. 9 & Oct. 17-Nov. 11

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Seasons in the Central Flyway:

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New Mexico (6)(11):				
North Zone	Oct. 22-Nov. 11 & Dec. 8-Jan. 6	Closed	Closed	Oct. 22-Nov. 11 & Dec. 8-Jan. 6
South Zone	Nov. 17-Jan. 6	Closed	Closed	Nov. 17-Jan. 6

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Texas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 24-Jan. 27	Oct. 27-Feb. 10

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Seasons in the Pacific Flyway:

Arizona (12)	Closed	Closed	Closed	Oct. 12-Nov. 16 & Dec. 15-Jan. 6
California	Closed	Closed	Closed	Pending

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Idaho (4)				
Zone 1	Closed	Closed	Closed	Oct. 20-Dec. 17
Zone 2	Closed	Closed	Closed	Sept. 22-Jan. 6

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Nevada:				
Clark County	Closed	Closed	Closed	Nov. 10-Jan. 6
Remainder of State	Closed	Closed	Closed	Oct. 20-Dec. 17
New Mexico(6)(11)	Oct. 6-Oct. 21 & Nov. 24-Jan. 5	Closed	Closed	Oct. 6-Oct. 21 & Nov. 24-Jan. 5
Oregon	Closed	Closed	Closed	Oct. 20-Jan 20
Utah	Closed	Closed	Closed	Oct. 6-Dec. 3

Washington:				
Eastern Washington (4)	Closed	Closed	Closed	Oct. 13-Oct. 21 & Nov. 4-Dec. 30
Western Washington (4)	Closed	Closed	Closed	Oct. 13-Oct. 21 & Nov. 11-Dec. 30

. . . . .

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) For description of zones or management units within a State, see State regulations.

. . . . .

(6) The Central Flyway portion consists of: Colorado and Wyoming -- the area lying east of the Continental Divide; Montana -- the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; New Mexico -- the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

. . . . .

(11) In New Mexico, the rail limits are 10 daily and 10 in possession.

(12) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

4. Section 20.105 is revised to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

ATLANTIC FLYWAY

Definitions

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

White geese include lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark geese include Canada geese, white-fronted geese, and brant.

Flyway-wide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted--Check State regulations. States that further restrict shooting hours (in specified seasons, dates, or locations) include, but are not limited to: Connecticut, South Carolina, Vermont, and West Virginia.

Duck Limits: The daily bag limit may include no more than 1 female mallard, 1 pintail, 1 black duck, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

Gallinule Limits: The daily bag and possession limit for purple gallinules and common moorhens is singly or in the aggregate of the two species.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits: Bag	Limits: Possession
Connecticut			
Ducks:			
North Zone	Oct. 20-Oct. 27 &	3	6
	Nov. 21-Dec. 12	3	6
South Zone	Oct. 20 only &	3	6
	Dec. 8-Jan. 5	3	6

	Season Dates	Limits	
		Bag	Possession
Connecticut (cont.)			
Sea ducks (1)(2)	Oct. 1-Jan. 15	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 20-Jan. 17	3	6
South Zone	Oct. 20-Oct. 27 &	3	6
	Nov. 16-Jan. 14	3	6
(special season)	Jan. 15-Feb. 5	5	10
White Geese:			
North Zone	Oct. 20-Feb. 2	5	10
South Zone	Oct. 20-Feb. 2	5	10
Brant:			
North Zone	Oct. 20-Oct. 27 &	2	4
	Nov 21-Jan. 1	2	4
South Zone	Oct. 20-Oct. 27 &	2	4
	Dec. 8-Jan. 18	2	4
Delaware			
Ducks	Nov. 1-Nov 7 &	3	6
	Nov 20-Nov 24 &	3	6
	Dec. 19-Jan. 5	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 1-Nov. 7 &	1	2
	Dec. 12-Jan. 12	1	2
White Geese:			
Bombay Hook NWR Only	Nov. 8-Nov. 18	5	10
Statewide	Oct. 12-Nov. 7 &	5	10
	Nov. 19-Nov. 24 &	5	10
	Dec. 10-Feb. 9	5	10
Brant	Nov. 20-Nov. 24 &	2	4
	Dec. 6-Jan. 19	2	4
Florida			
Ducks	Nov 21-Nov. 25 &	3	6
	Dec. 13-Jan. 6	3	6
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Geese	Closed		
Georgia			
Ducks	Nov 22-Nov. 25 &	3	6
	Dec. 12-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (Special Area)	Jan. 10-Jan. 13 &	State Permit Only	
	Jan. 17-Jan. 20	State Permit Only	
Brant	Closed		

	Season Dates	Limits	
		Bag	Possession
Maine			
Ducks:			
North Zone	Oct. 8-Oct. 27 &	3	6
	Nov. 8-Nov. 17	3	6
South Zone	Oct. 8-Oct. 20 &	3	6
	Nov. 22-Dec. 8	3	6
Sea ducks (1)(2)	Oct. 8-Jan. 19	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 1-Dec. 8	3	6
White Geese	Oct. 1-Jan. 15	5	10
Brant	Oct. 1-Nov. 19	2	4
Maryland			
Ducks (3)	Oct. 19-Oct. 20 &	3	6
	Nov. 22-Nov. 23 &	3	6
	Dec. 11-Jan. 5	3	6
Sea Ducks (1)(2)	Oct. 12-Jan. 19	5	10
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 14-Nov. 23 &	1	2
	Dec. 3-Dec. 8 &	1	2
	Dec. 9-Jan. 12	2	4
White Geese	Oct. 17-Nov. 23 &	4	8
	Dec. 3-Feb. 9	4	8
Brant	Nov. 14-Nov. 23 &	2	4
	Dec. 11-Jan. 19	2	4
Massachusetts:			
Ducks:			
Berkshire Zone	Oct. 12-Nov. 10	3	6
Central Zone	Oct. 16-Oct. 27 &	3	6
	Nov. 21-Dec. 8	3	6
Coastal Zone	Oct. 18-Oct. 27 &	3	6
	Dec. 13-Jan. 1	3	6
Sea ducks (1)(2)	Oct. 5-Jan. 19	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Berkshire Zone	Oct. 12-Nov. 24 &	3	6
	Dec. 7-Jan. 1	3	6
Central Zone	Oct. 16-Oct. 27 &	3	6
	Nov. 21-Jan. 17	3	6
Coastal Zone	Oct. 18-Nov. 17 &	3	6
	Dec. 13-Jan. 19	3	6
(special season)	Jan. 21-Feb. 5	5	10
White Geese:			
Berkshire Zone	Oct. 12-Nov. 24 &	5	10
	Dec. 7-Jan. 1	5	10
Central Zone	Oct. 16-Oct. 27 &	5	10
	Nov. 21-Jan. 17	5	10

	Season Dates	Limits Bag	Limits Possession
Massachusetts (cont.)			
Coastal Zone	Oct. 18-Nov. 17 &	5	10
	Dec. 13-Jan. 19	5	10
Brant:			
Berkshire & Central Zone	Closed	-	-
Coastal Zone	Nov. 6-Nov. 17 &	2	4
	Dec. 13-Jan. 19	2	4
New Hampshire			
Ducks:			
Inland Zone	Oct. 10-Oct. 28 &	3	6
	Nov. 21-Dec. 1	3	6
Coastal Zone	Oct. 11-Oct. 14 &	3	6
	Nov. 21-Dec. 16	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Inland Zone	Oct. 10-Dec. 18	3	6
Coastal Zone	Oct. 21-Dec. 29	3	6
White Geese:			
Inland Zone	Oct. 10-Dec. 18	5	10
Coastal Zone	Oct. 21-Dec. 29	5	10
Brant:			
Inland Zone	Oct. 10-Nov. 28	2	4
Coastal Zone	Oct. 21-Dec. 9	2	4
New Jersey			
Ducks:			
North Zone	Oct. 16-Oct. 27 &	3	6
	Nov. 21-Dec. 8	3	6
South Zone	Oct. 20-Oct. 27 &	3	6
	Nov. 22-Dec. 13	3	6
Coastal Zone	Nov. 3-Nov. 10 &	3	6
	Dec. 15-Jan. 5	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 16-Nov. 10 &	3	6
	Nov. 21-Jan. 23	3	6
South Zone	Oct. 20-Nov. 7 &	3	6
	Nov. 22-Jan. 31	3	6
Coastal Zone	Oct. 16-Dec. 8 &	3	6
	Dec. 15-Jan. 19	3	6
White Geese:			
North Zone	Oct. 16-Jan. 30	5	10
South Zone	Oct. 20-Nov. 17 &	5	10
	Nov. 22-Feb. 7	5	10
Coastal Zone	Oct. 16-Jan. 30	5	10
Brant:			
North Zone	Oct. 16-Nov. 10 &	2	4
	Nov. 21-Dec. 14	2	4

	Season Dates	Limits Bag	Limits Possession
New Jersey (cont.)			
South Zone	Oct. 20-Nov. 10 &	2	4
	Nov. 22-Dec. 19	2	4
Coastal Zone	Nov. 3-Nov. 30 &	2	4
	Dec. 15-Jan. 5	2	4
New York			
Ducks:			
Long Island Zone	Nov. 16-Nov. 25 &	3	6
	Dec. 18-Jan. 6	3	6
Lake Champlain Zone	Oct. 10-Oct. 21 &	3	6
	Nov. 15-Dec. 2	3	6
Northeastern Zone	Oct. 6-Oct. 13 &	3	6
	Oct. 27-Nov. 17	3	6
Southeastern Zone	Oct. 6-Oct. 14 &	3	6
	Nov. 20-Dec. 10	3	6
Western Zone	Oct. 6-Oct. 13 &	3	6
	Oct. 27-Nov. 17	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Long Island Zone	Nov. 3-Jan. 31	3	6
Lake Champlain Zone	Oct. 10-Dec. 18	3	6
Northeastern Zone	Oct. 6-Oct. 15 &	1	2
	Oct. 16-Jan. 3	3	6
Southeastern Zone	Oct. 6-Oct. 15 &	1	2
	Oct. 16-Jan. 3	3	6
Western Zone	Oct. 16-Jan. 13	3	6
White Geese:			
Long Island Zone	Nov. 3-Jan. 31	5	10
Lake Champlain Zone	Oct. 10-Dec. 18	5	10
Northeastern Zone	Oct. 6-Jan. 3	5	10
Southeastern Zone	Oct. 6-Jan. 3	5	10
Western Zone	Oct. 16-Jan. 13	5	10
Brant:			
Long Island Zone	Nov. 16-Nov. 25 &	2	4
	Nov. 28-Jan. 6	2	4
Lake Champlain Zone	Oct. 10-Nov. 25	2	4
Northeastern Zone	Oct. 6-Nov. 24	2	4
Southeastern Zone	Oct. 6-Nov. 24	2	4
Western Zone	Oct. 16-Dec. 4	2	4
North Carolina			
Ducks	Oct. 11-Oct. 13 &	3	6
	Nov. 22-Nov. 24 &	3	6
	Dec. 13-Jan. 5	3	6
Sea ducks (1)	Oct. 1-Jan. 15	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
East of I-95	Jan. 21-Jan. 31	1	2
West of I-95	Closed	-	-

	Season Dates	Limits: Bag	Limits: Possession
North Carolina (cont.)			
White Geese	Nov. 3-Jan. 31	5	10
Brant	Oct. 11-Oct. 13 & Nov. 22-Nov. 26 & Dec. 13-Jan. 19	2	4
		2	4
Pennsylvania			
Ducks (4):			
North Zone	Oct. 17-Nov. 15	3	6
South Zone	Oct. 22-Oct. 27 & Nov. 19-Dec. 12	3	6
Northwest Zone	Oct. 15-Oct. 20 & Nov. 12-Dec. 5	3	6
Lake Erie Zone	Nov. 5-Nov. 24 & Dec. 13-Dec. 22	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 8-Dec. 15	3	6
South Zone (5)	Oct. 16-Dec. 24	3	6
Northwest Zone (5)	Oct. 8-Dec. 15	3	6
Lake Erie Zone (5)	Oct. 8-Nov. 26	2	4
Southeast Zone	Oct. 16-Jan. 12	3	6
White Geese:			
North Zone	Oct. 8-Dec. 15	3	6
South Zone	Oct. 16-Dec. 24	3	6
Northwest Zone	Oct. 8-Dec. 15	3	6
Lake Erie Zone	Oct. 8-Nov. 26	3	6
Southeast Zone	Oct. 16-Jan. 12	3	6
Brant	Oct. 16-Dec. 4	2	4
Rhode Island			
Ducks	Oct. 12-Oct. 14 & Nov. 21-Nov. 25 & Dec. 15-Jan. 5	3	6
		3	6
		3	6
Sea ducks (1)(2)	Oct. 12-Jan. 19	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 12-Oct. 14 & Nov. 6-Jan. 31	3	6
		3	6
White Geese	Oct. 12-Oct. 14 & Nov. 6-Jan. 31	5	10
		5	10
Brant	Dec. 1-Jan. 19	2	4
South Carolina (6)			
Ducks (7)	Nov. 21-Nov. 24 & Dec. 11-Jan. 5	3	6
		3	6
Sea ducks (1)	Oct. 6-Jan. 20	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:	Closed	-	-

	Season Dates	Limits: Bag	Limits: Possession
South Carolina (cont.)			
White Geese	Nov. 21-Nov. 24 & Dec. 11-Jan. 5	5	10
		5	10
Brant	Nov. 21-Nov. 24 & Dec. 11-Jan. 5	2	4
		2	4
Vermont			
Ducks:			
Lake Champlain Zone	Oct. 10-Oct. 21 & Nov. 15-Dec. 2	3	6
		3	6
Interior Vermont Zone	Oct. 10-Nov. 4 & Nov. 22-Nov. 25	3	6
		3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 10-Dec. 18	3	6
White Geese	Oct. 10-Dec. 18	5	10
Brant	Oct. 10-Nov. 28	2	4
Virginia			
Ducks	Oct. 10-Oct. 13 & Nov. 22-Nov. 24 & Dec. 14-Jan. 5	3	6
		3	6
		3	6
Sea ducks (1)(2)	Oct. 5-Jan. 19	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Same as for ducks	15	30
Canada Geese:			
Back Bay Area	Closed	-	-
Remainder of State	Nov. 19-Nov. 24 & Nov. 26-Dec. 1 & Dec. 3-Jan. 19	2	4
		2	4
		2	4
White Geese	Oct. 24-Oct. 27 & Oct. 29-Nov. 3 & Nov. 5-Feb. 9	5	10
		5	10
		5	10
Brant	Nov. 29-Dec. 22 & Dec. 24-Dec. 29 & Dec. 31-Jan. 19	2	4
		2	4
		2	4
West Virginia			
Ducks:			
Zone 1	Oct. 6-Oct. 13 & Dec. 15-Jan. 5	3	6
		3	6
Zone 2	Oct. 6-Oct. 13 & Oct. 27-Nov. 17	3	6
		3	6
Gallinules/Moorhens	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Zone 1	Oct. 1-Oct. 13 & Nov. 22-Jan. 17	3	6
		3	6
Zone 2	Oct. 1-Nov. 17 & Dec. 27-Jan. 17	3	6
		3	6

	Season Dates	Limits Bag	Possession
West Virginia (cont.)			
White Geese:			
Zone 1	Oct. 1-Oct. 13 &	5	10
	Nov. 22-Jan. 17	5	10
Zone 2	Oct. 1-Nov. 17 &	5	10
	Dec. 27-Jan. 17	5	10
Brant	Nov. 29-Jan. 17	2	4

(1) Special sea duck hunting areas are limited to coastal waters and waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; to waters of the Atlantic Ocean and, in addition, to tidal waters of any bay which are separated by at least one mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and to waters of the Atlantic Ocean and/or tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits. Within the special sea duck areas, the daily bag limit is 7 and possession limit is 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate. These limits may be in addition to the regular duck bag limits during the regular duck season in the special sea duck hunting areas.

(2) Notwithstanding the provisions of this Part 20 the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as being open to sea duck hunting.

(3) In Maryland, the daily bag limit may include no more than 1 redhead; and the black duck season is closed Oct. 19-Oct. 20.

(4) In Pennsylvania, the black duck season is closed Oct. 17-Oct. 31 in the North Zone; Oct. 22-Oct. 27 in the South Zone; Oct. 15-Oct. 20 in the Northwest Zone; and Dec. 13-Dec. 22 in the Lake Erie Zone.

(5) In Pennsylvania, in Mercer and Butler Counties in the South Zone, the goose season is Oct. 16-Dec. 4 with a daily bag limit of 2 and a possession limit of 4. In Crawford, Erie, Mercer, and Butler Counties, in the Lake Erie and Northwest Zones, the goose season is Oct. 8-Nov. 26 with a daily bag limit of 2 and the possession limit of 4. In Crawford County, on the controlled hunting areas of the Pymatuning Wildlife Management Area, the goose season is Oct. 8-Dec. 8 with a 1 goose daily bag limit.

(6) In South Carolina, except on December 30, there will be no Sunday hunting in Georgetown County or Charleston County from the Georgetown County line (South Santee River) to the Wando River, East of US Highway 17. The shooting hours in this area will be one-half hour before sunrise to 12:00 noon daily except on November 24 and on January 5 when shooting hours will be one-half hour before sunrise to sunset. During the period December 12 to January 6, shooting hours are one-half hour before sunrise to 12:00 noon daily on all lands and waters of that portion of Lake Marion and Santee Swamp west of the Interstate 95 Bridge upstream to the confluence of the Wateree and Congaree Rivers. The affected area being further described as all lands west of I-95 within or adjacent to Lake Marion which is owned by Santee Cooper or the State of South Carolina in the counties of Clarendon, Sumter, Orangeburg, and Calhoun. This regulation shall apply to all land in the area described above whether such land shall be exposed or inundated. During the November season and on January 6, shooting hours in the area will be one-half hour before sunrise to sunset. NOTE: These regulations shall apply to land owned by Santee Cooper or the State of South Carolina ONLY. In Hampton, Colleton, Dorchester, Jasper, Beaufort and Charleston Counties the shooting hours will be one-half hour before sunrise to 12:00 noon daily except on November 24 and January 5 when shooting hours will be one-half hour before sunrise to sunset.

(7) In South Carolina, the bag limit of 3 may include no more than 1 female mallard or 1 black duck or 1 mottled duck.

MISSISSIPPI FLYWAY

Definitions

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Light geese include lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark geese include Canada geese, white-fronted geese, and brant.

Flyway-wide Restrictions

Shooting hours: One-half hour before sunrise to sunset daily except as otherwise noted--Check State regulations for further restrictions. States that further restrict shooting hours (in specified seasons, dates, or locations) include, but are not limited to: Arkansas, Illinois, Kentucky, Minnesota, and Wisconsin.

Duck Limits: The daily bag limit may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: The merganser limit includes no more than 1 hooded merganser daily and 2 in possession.

Gallinule Limits: The daily bag and possession limit for purple gallinules and common moorhens is singly or in the aggregate of the two species.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits Bag	Possession
Alabama			
Ducks:			
North Zone	Dec. 8-Jan. 6	3	6
South Zone	Nov. 15-Nov. 18 &	3	6
	Dec. 12-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		5	5
Canada or white-fronted:			
North Zone	Dec. 8-Jan. 26	2	4
South Zone	Nov. 15-Nov. 18 &	2	4
	Dec. 12-Jan. 26	2	4
Light Geese and Brant	Same as for Canada geese	5	5

	Season Dates	Limits: Bag	Limits: Possession
Arkansas			
Ducks	Nov. 23-Dec. 10 &	3	6
	Dec. 26-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (limited area)	Jan. 5-Jan. 27	1	2
White-fronted	Nov. 23-Jan. 31	2	4
Brant	Nov. 23-Jan. 31	7	14
Light Geese	Nov. 23-Feb. 10	7	14
Illinois			
Ducks:			
North Zone	Oct. 20-Nov. 18	3	6
Central Zone	Oct. 27-Nov. 25	3	6
South Zone	Nov. 10-Dec. 9	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese (1):		5	10
Canada (2):			
North Zone	Sept. 29-Oct. 8 &	3	10
	Oct. 20-Dec. 18	3	10
Central Zone:			
Tri-County Zone	Oct. 27-Dec. 15	2	10
Remainder of Central Zone	Sept. 29-Oct. 8 &	3	10
	Oct. 27-Dec. 25	3	10
South Zone:			
Southern Illinois Quota Zone (2)	Nov. 10-Nov. 12 &	3	10
	Nov. 19-Jan. 24	3	10
Rend Lake Quota Zone (2)	Nov. 10-Jan. 18	3	10
Remainder of South Zone	Nov. 10-Jan. 18	3	10
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	5	10
Indiana			
Ducks:			
North Zone	Oct. 20-Oct. 23 &	3	6
	Nov. 7-Dec. 2	3	6
South Zone	Oct. 27-Oct. 30 &	3	6
	Dec. 1-Dec. 26	3	6
Ohio River Zone	Nov. 22-Nov. 25 &	3	6
	Dec. 8-Jan. 3	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (2):			
North Zone	Oct. 20-Oct. 28 &	2	4
	Nov. 7-Jan. 6	2	4
South Zone:			
Posey County (2)	Nov. 22-Jan. 30	3	6

	Season Dates	Limits: Bag	Limits: Possession
Indiana (cont.)			
Remainder of South Zone	Oct. 27-Nov. 4 &	2	4
	Nov. 21-Jan. 20	2	4
Ohio River Zone:			
Posey County (2)	Nov. 22-Jan. 30	3	6
Remainder of Ohio River Zone	Nov. 12-Jan. 20	2	4
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	7	14
Iowa			
Ducks:			
North Zone	Oct. 6-Oct. 7 &	3	6
	Oct. 20-Nov. 16	3	6
South Zone	Oct. 20-Oct. 26 &	3	6
	Nov. 3-Nov. 25	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada:			
Southwest Zone	Oct. 13-Dec. 21	2	4
Remainder of State	Sept. 29-Dec. 7	2	4
White-fronted:			
Southwest Zone	Oct. 13-Dec. 21	2	4
Remainder of State	Sept. 29-Dec. 7	2	4
Brant	Same as for white-fronted geese	7	14
Light Geese:			
Southwest Zone	Oct. 13-Dec. 31	7	14
Remainder of State	Sept. 29-Dec. 17	7	14
Kentucky			
Ducks (3)	Nov. 22-Nov. 25 &	3	6
	Dec. 12-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Nov. 22-Jan. 20	15	30
Geese (1):		7	14
Canada:			
Western Zone (2):			
Fulton County	Nov. 22-Nov. 25 &	3	6
	Dec. 1-Feb. 4	3	6
Remainder of Western Zone	Nov. 22-Nov. 25 &	3	6
	Dec. 1-Jan. 31	3	6
Remainder of State	Nov. 22-Nov. 25 &	1	2
	Dec. 1-Jan. 31	1	2
White-fronted	Nov. 22-Nov. 25 &	2	4
	Dec. 1-Jan. 31	2	4
Light Geese and Brant	Nov. 22-Nov. 25 &	7	14
	Dec. 1-Jan. 31	7	14

	Season Dates	Limits: Bag	Limits: Possession
Louisiana			
Ducks:			
East Zone	Nov. 17-Nov. 25 &	3	6
	Dec. 17-Jan. 6	3	6
West Zone	Nov. 17-Dec. 5 &	3	6
	Dec. 27-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (Southwest Zone Only)	Jan. 25-Jan. 31	1	2
White-fronted (4)	Nov. 17-Dec. 8 &	2	4
	Dec. 15-Jan. 31	2	4
Brant	Nov. 17-Dec. 8 &	7	14
	Dec. 15-Jan. 31	7	14
Light Geese	Nov. 17-Dec. 8 &	7	14
	Dec. 15-Feb. 10	7	14
Michigan			
Ducks:			
North Zone	Oct. 6-Nov. 4	3	6
Middle Zone	Oct. 6-Nov. 4	3	6
South Zone	Oct. 13-Nov. 8 &	3	6
	Nov. 23-Nov. 25	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Same as for ducks	15	30
Geese:		7	14
Canada (2):			
North Zone:			
Superior Counties Goose Management Unit (2)	Sept. 22-Nov. 30	3	6
Remainder of North Zone:			
West of Forest Highway 13	Sept. 22-Nov. 30	3	6
East of Forest Highway 13	Sept. 26-Nov. 14	2	4
Middle Zone	Oct. 6-Nov. 24	2	4
South Zone:			
Allegan County Goose Management Unit (2)	Oct. 13-Dec. 6	1	2
Muskegon Wastewater Goose Management Unit (2)	Oct. 13-Nov. 14 &	2	4
	Dec. 1-Dec. 17	2	4
Saginaw County Goose Management Unit (2)	Sept. 29-Nov. 14 &	1	2
	Nov. 23-Nov. 25	1	2
Fish Point Goose Management Unit (2)	Sept. 29-Nov. 14 &	1	2
	Nov. 23-Nov. 25	1	2
Michigan (cont.)			
Southern Michigan Goose Management Unit:			
East of U.S. 27/127	Oct. 13-Nov. 11 &	1	2
	Nov. 23-Dec. 2	1	2
(special season)	Jan. 5-Feb. 3	2	4
West of U.S. 27/127	Oct. 13-Nov. 14 &	2	4
	Nov. 23-Dec. 9	2	4
(special season)	Jan. 5-Feb. 3	2	4
Remainder of South Zone:			
East of U.S. 27/127	Oct. 13-Nov. 11 &	1	2
	Nov. 23-Dec. 2	1	2
West of U.S. 27/127	Oct. 13-Nov. 14 &	2	4
	Nov. 23-Dec. 9	2	4
White-fronted	See Footnote 5	2	4
Light Geese and Brant	See Footnote 5	7	14
Minnesota			
Ducks	Oct. 6-Nov. 4	3	6
Mergansers	Same as for ducks	5	10
Coots, Gallinules/Moorhens (singly or in the aggregate)	Same as for ducks	15	30
		7	14
Geese:			
Canada:			
West Central Zone:			
Lac qui Parle Zone (2)	Sept. 29-Nov. 7	1	2
Remainder of West Central Zone	Sept. 29-Nov. 7	1	2
Southeast Zone:			
Twin Cities Metro Goose Zone and Olmsted County	Sept. 29-Dec. 7 &	2	4
	Dec. 15-Dec. 24	2	4
Remainder of Southeast Zone	Sept. 29-Dec. 7	2	4
Remainder of State	Sept. 29-Nov. 17	2	4
White-fronted:			
West Central Zone	Sept. 29-Nov. 7	2	4
Southeast Zone	Sept. 29-Dec. 7	2	4
Remainder of State	Sept. 29-Nov. 17	2	4
Brant	Same as for white-fronted geese	7	14
Light Geese	Sept. 29-Dec. 17	7	14
Mississippi			
Ducks	Dec. 8-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada	Dec. 8-Jan. 31	2	4
White-fronted	Nov. 23-Jan 31	2	4
Brant	Nov. 23-Jan. 31	7	14
Light Geese	Nov. 13-Jan. 31	7	14

	Season Dates	Limits: Bag	Limits: Possession
Missouri (6)			
Ducks and Mergansers:			
North Zone	Nov. 3-Dec. 2	3	6
South Zone	Nov. 17-Dec 4 &	3	6
	Dec. 26-Jan. 6	3	6
Coots	Same as for ducks	15	30
Geese (1):		7	14
Canada:			
North Goose Zone:			
Swan Lake Zone (2)	Nov. 3-Nov. 11 &	2	4
	Nov. 21-Dec. 31	2	4
Remainder of North Goose Zone	Nov. 3-Nov. 11 &	2	4
	Nov. 21-Dec. 31	2	4
Southeast Goose Zone	Dec. 1-Jan. 19	2	4
South Goose Zone	Nov. 17-Dec. 11 &	2	4
	Dec. 26-Jan. 19	2	4
White-fronted	Nov. 3-Jan. 11	2	4
Brant	Nov. 3-Jan. 11	7	14
Light Geese	Nov. 3-Jan. 19	7	14
Ohio			
Pymatuning Area:			
Ducks (7)	Oct. 15-Oct. 20 &	3	6
	Nov. 12-Dec. 5	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Sept. 1-Nov. 3	15	30
Canada Geese	Oct. 8-Nov. 26	3	6
Light Geese	Oct. 8-Nov. 26	3	6
Brant	Oct. 16-Dec. 4	2	4
Remainder of State:			
Ducks:			
North Zone	Oct. 18-Oct. 28 &	3	6
	Nov. 6-Nov. 24	3	6
South Zone	Oct. 18-Oct. 28 &	3	6
	Dec. 19-Jan. 6	3	6
Ohio River Zone	Oct. 18-Oct. 28 &	3	6
	Dec. 19-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (8)	Oct. 18-Nov. 24 &	2	4
	Dec. 6-Jan. 6	2	4
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	7	14
Tennessee			
Ducks	Dec. 18-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Same as for ducks	15	30
Tennessee (cont.)			
Geese:		7	14
Canada:			
Northwest Zone (2)	Dec. 8-Feb. 15	3	6
Southwest Zone	Dec. 8-Jan. 6	2	4
Kentucky/Barkley Lake Zone	Dec. 13-Jan. 31	2	4
Remainder of State (9)	Dec 8-Jan. 31	2	4
White-fronted	Nov. 23-Jan. 31	2	4
Light Geese and Brant	Nov. 23-Jan. 31	7	14
Wisconsin			
Ducks:			
North Duck Zone	Oct. 6-Nov. 4	3	6
South Duck Zone	Oct. 6-Oct. 9 &	3	6
	Oct. 17-Nov. 11	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	5	10
Gallinules/Moorhens	Same as for ducks	5	10
Geese:		7	14
Canada (2):			
Horicon Zone	Sept. 22-Nov. 16 &	Tag System--See	
	Nov. 26-Dec. 16	State Regulations	
Pine Island Zone	Sept. 22-Nov. 30	Tag System	
Collins Zone	Sept. 22-Nov. 16 &		
	Nov. 26-Nov. 30	Tag System	
Theresa Zone	Sept. 22-Nov. 16 &		
	Nov. 26-Nov. 30	Tag System	
Exterior Zone:			
Mississippi River Subzone:			
North Duck Zone	Oct 6-Nov. 4	1	2
	Nov. 5-Nov. 12 &	2	4
	Nov. 20-Dec. 21	2	4
South Duck Zone	Oct. 6-Oct. 9 &	1	2
	Oct. 17-Nov. 11	1	2
	Nov. 12-Dec. 21	2	4
Rock Prairie Subzone	Sept. 22-Oct. 5	1	2
	Oct. 6-Nov. 4	2	4
(special season)	Nov. 5-Dec. 9	1	2
Brown County Subzone	Sept. 22-Oct. 5	1	2
	Oct. 6-Nov. 30	2	4
(special season)	Dec. 1-Dec. 31	3	6
Remainder of Exterior Zone:			
North Duck Zone	Sept. 22-Oct. 5 &	1	2
	Oct. 6-Nov. 30	2	4
South Duck Zone	Sept. 22-Oct. 5 &	1	2
	Oct. 6-Nov. 30	2	4
White-fronted	See Footnote 10	2	4
Light Geese and Brant	See Footnote 10	7	14

(1) Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided

that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

(2) Harvests of Canada geese will be limited as follows:

Illinois:
Southern Illinois Quota Zone - 71,100
Rend Lake Quota Zone - 21,300
Remainder of State - 49,800
Indiana:
Posey County - 15,900
Remainder of State - 38,650
Kentucky:
Western Zone:
Ballard Reporting Area - 28,000
Henderson/Union Reporting Area - 8,200
Remainder of Western Zone - 7,000
Michigan:
Superior Counties Goose Management Area - 25,000
Allegan County Goose Management Area - 5,500
Muskegon Wastewater Goose Management Area - 700
Saginaw County Goose Management Area - 4,500
Fish Point Goose Management Area - 2,500
Remainder of State - 101,800
Minnesota: Lac qui Parle Zone - 6,000
Missouri: Swan Lake Zone - 10,000
Tennessee:
Northwest Zone:
Reelfoot Subzone - 11,500
Remainder of Northwest Zone - 5,000
Southwest Zone - 1,500
Wisconsin:
Horicon Zone - 148,800
Theresa Zone - 6,500
Pine Island Zone - 1,000
Collins Zone - 3,700
Exterior Zone - 40,000

When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Lac qui Parle Zone in Minnesota, the Ballard and Henderson/Union Reporting Areas in Kentucky, the Reelfoot Subzone in Tennessee, and the Superior Counties, Allegan County, Muskegon Wastewater, Fish Point, and Saginaw County Goose Management Areas in Michigan, will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(3) In Kentucky, the daily bag limit may include no more than 1 hen mallard or 1 black duck.

(4) In Louisiana, in the Southwest Zone during the experimental Canada goose season, the daily bag limit is 2 Canada and white-fronted geese in the aggregate, no more than 1 of which may be a Canada goose. The possession limit is twice the daily bag limit. A special permit is required by the State.

(5) In Michigan, the seasons for white-fronted geese, light geese, and brant are concurrent with the seasons for Canada geese, except in the Southern Michigan Goose Management Unit, where the January 5-February 3 special season is for Canada geese only.

(6) In the Lower St. Francis River Area of Arkansas and Missouri, the Arkansas regulations apply.

(7) In the Pymatuning Area of Ohio, the black duck season is closed October 15-October 20 and the restrictions of the duck bag limit for the Atlantic Flyway apply.

(8) In Ohio, in the Counties of Ashtabula, Trumbull, Ottawa, Sandusky, and that portion of Lucas County east of the Maumee River, the Canada goose limits are 1 daily and 2 in possession.

(9) In Tennessee, the Canada goose season will be November 23-January 31 on portions of Old Hickory and Percy Priest Wildlife Management Areas and on the Tims Ford Unit, except that no goose hunting is permitted on Tims Ford Reservoir upstream from the Red Mill Bridge on Boiling Fork Creek. See State regulations for details.

(10) In Wisconsin, The seasons for white-fronted geese, light geese, and brant are concurrent with seasons for ducks or Canada geese, in each zone and subzone, except as follows: Seasons in the Brown County and Rock Prairie Subzones end November 30, and seasons in the Horicon Zone for white-fronted geese and brant end December 9.

CENTRAL FLYWAY

Definitions

The Central Flyway consists of Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Geese include all species of geese and brant.

Dark Geese include Canada geese, white-fronted geese, and brant.

Light Geese include lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Frameable Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted--Check State regulations. States that further restrict shooting hours (in specified seasons, dates, or locations) include, but are not limited to: Colorado, North Dakota, and Wyoming.

Duck Limits: The daily bag limit may include no more than 2 mallards (no more than 1 of which may be a female), 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Mergansers: The merganser limit includes no more than 1 hooded merganser daily and 2 in possession.

Point System--Ducks and Mergansers: The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days.

The point values assigned to the species and sexes are as follows:

100 points	50 points	35 points
Female mallard Mottled duck Pintail Redhead Hooded merganser	Male mallard Wood duck	All other permitted species of ducks and mergansers

The Central Flyway States selecting the point system bag limits on designated species are listed in the table below.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits: Bag	Limits: Possession
Colorado			
Ducks	Oct. 6-Oct. 14 & Nov. 3-Nov. 25 & Dec. 15-Jan. 2	Point system	
Coots	Same as for ducks	15	30
Geese (1):		5	10
North-Central Unit:			
West of I-25	Sept. 29-Oct. 7 & Oct. 22-Jan. 6	5	10
Remainder of North-Central Unit	Oct. 22-Jan. 20	5	10
South Park Unit	Sept. 29-Oct. 7 & Oct. 27-Jan. 1	2	4
San Luis Valley Unit	Oct. 27-Jan. 1	2	4
North Park Unit	Sept. 29-Oct. 7	2	4
Arkansas Valley Unit	Nov. 14-Jan. 20	5	10
Remainder of State in Central Flyway	Oct. 27-Jan. 20	5	10
Kansas			
Ducks:		Point system	
High Plains Area	Oct. 6-Oct. 28 & Nov. 10-Nov. 25 & Dec. 22-Jan. 2		
Low Plains Area	Oct. 20-Oct. 28 & Nov. 14-Dec. 4 & Dec. 22-Dec. 30		
Coots	Same as for ducks	15	30
Dark Geese (2):		2	4
Canada	Nov. 10-Nov. 25 & Nov. 26-Jan. 20	2	4
White-fronted	Nov. 10-Jan. 20	1	2
Light Geese:		1	2
Unit 1	Nov. 10-Feb. 17	5	10
Unit 2	Oct. 27-Feb. 3	5	10
Montana			
Ducks:		Point system	
Zone 1	Oct. 6-Nov. 13 & Dec. 8-Dec. 19		
Zone 2	Oct. 6-Oct. 14 & Nov. 8-Dec. 19		
Coots	Same as for ducks	15	30
Montana (cont.)			
Geese:			
Sheridan County:			
Dark Geese	Sept. 29-Jan. 6	2	4
Light Geese	Sept. 29-Jan. 6	4	8
Remainder of State in Central Flyway:			
Dark Geese	Sept. 29-Jan. 6	4	8
Light Geese	Sept. 29-Jan. 6	4	8
Nebraska			
Ducks:		Point system	
High Plains Area	Oct. 13-Nov. 20 & Dec. 22-Jan. 2		
Low Plains Area:			
Zones 1 and 2	Oct. 27-Oct. 28 & Nov. 3-Dec. 9		
Zones 3 and 4	Oct. 6-Oct. 21 & Nov. 3-Nov. 25		
Coots	Same as for ducks	15	30
Dark Geese:			
North Unit		2	4
Canada	Nov. 3-Nov. 16 & Nov. 17-Jan. 20	1	2
		2	4
White-fronted	Nov. 3-Jan. 20	1	2
East Unit		2	4
Canada	Oct. 13-Nov. 18 & Nov. 19-Dec. 23	1	2
White-fronted	Oct. 13-Dec. 23	1	2
West Unit		2	4
Canada	Nov. 3-Nov. 18 & Nov. 19-Jan. 13	1	2
White-fronted	Nov. 3-Jan. 13	1	2
Light Geese	Sept. 29-Dec. 23	7	14
New Mexico			
Ducks:		Point system	
Zone 1	Oct. 22-Nov. 11 & Dec. 8-Jan. 6		
Zone 2	Nov. 17-Jan. 6		
Coots	Same as for ducks	15	30
Common Moorhens	Same as for ducks	2	4
Dark Geese	Oct. 20-Jan. 20	2	4
Light Geese:			
Rio Grande Valley Unit	Nov. 1-Feb. 15	5	10
Remainder of State in Central Flyway	Nov. 1-Feb. 8	5	10
North Dakota			
Ducks:			
Statewide	Oct. 6-Nov. 11 & Nov. 17-Nov. 18	3	6

	Season Dates	Limits: Bag	Limits: Possession
North Dakota (cont.)			
High Plains Area Only (mole mallards)	Dec. 8-Dec. 19	2	4
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Dark Geese:		2	4
Statewide:			
Canada	Sept. 29-Oct. 26 &	1	2
	Oct. 27-Nov. 11	2	4
White-fronted	Sept. 29-Nov. 11	2	4
Missouri River Zone only	Nov. 12-Nov. 25	1	2
Light Geese	Sept. 29-Nov. 25	7	14
Oklahoma			
Ducks:			
High Plains Area	Oct. 20-Nov. 27 &	3	6
	Dec. 15-Dec. 26	3	6
Low Plains:			
Zone 1	Oct. 27-Nov. 18 &	3	6
	Dec. 15-Dec. 30	3	6
Zone 2	Nov. 10-Nov. 25 &	3	6
	Dec. 15-Jan. 6	3	6
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Dark Geese:		2	4
Canada	Nov. 10-Jan. 20	2	4
White-fronted	Nov. 10-Jan. 20	1	2
Light Geese	Nov. 10-Feb. 17	5	10
South Dakota			
Ducks and Mergansers:			
High Plains Area	Oct. 6-Nov. 13 &	3	6
	Dec. 8-Dec. 19	3	6
Low Plains Area:			
North Zone	Oct. 6-Nov. 13	3	6
South Zone	Oct. 27-Dec. 4	3	6
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Missouri River Unit:			
Canada	Oct. 6-Nov. 16 &	1	2
	Nov. 17-Dec. 23	2	4
White-fronted	Oct. 6-Dec. 21	1	2
Remainder of State:			
Canada	Oct. 6-Dec. 16	1	2
White-fronted	Oct. 6-Dec. 16	1	2
Light Geese	Oct. 6-Dec. 30	7	14
Texas			
Ducks:			
High Plains Area	Nov. 17-Jan. 6	3	6
Remainder of State	Nov. 17-Nov. 25 &	3	6
	Dec. 8-Jan. 6	3	6
Texas (cont.)			
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Geese:			
East of U.S. Highway 81:			
Dark Geese:			
Canada	Nov. 10-Jan. 20	1	2
White-fronted	Nov. 10-Jan. 20	1	2
Light Geese	Nov. 10-Feb. 17	5	10
West of U.S. Highway 81:		5	10
Dark Geese	Oct. 13-Jan. 20	3	6
Light Geese	Oct. 13-Jan. 20	5	10
Wyoming			
Ducks and Mergansers	Oct. 6-Oct. 22 &	3	6
	Nov. 10-Nov. 26 &	3	6
	Dec. 15-Dec. 31	3	6
Coots	Same as for ducks	15	30
Geese:		2	4
Canada and Light Geese:			
In the Counties of Campbell, Sheridan, Johnson, Niobrara, Crook, Weston, Platte, Laramie, Albany and Carbon east of the Continental Divide	Oct. 6-Dec. 30	2	4
In the Counties of Natrona and Converse	Oct. 27-Dec. 30	2	4
In the Counties of Bighorn, Park, Washakie, Hot Springs, and Fremont	Nov. 1-Dec. 31	2	4
In Goshen County	Nov. 17-Nov. 30 &	2	4
	Dec. 1-Dec. 31 &	3	6
	Jan. 1-Jan. 13	2	4
Canada Geese only:			
In the Counties of Bighorn, Park, Washakie, Hot Springs, and Fremont	Oct. 6-Oct. 31	2	4

(1) In Colorado, the bag and possession limits for geese may include no more than 3 and 6 dark geese, respectively.

(2) In Kansas, exceptions to the dark goose season are as follows: (a) Marais des Cygne Valley Unit and South Flint Hills Unit - Season dates: December 22, 1990 through January 13, 1991 - Dark goose permits issued by the Kansas Department of Wildlife and Parks required. Leg tagging of geese required in these areas; and (b) Central Flint Hills Unit and Strip Pits Unit - Dark geese may not be hunted.

PACIFIC FLYWAY

Definitions

The Pacific Flyway includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

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White geese include lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark geese include Canada geese, white-fronted geese, emperor geese, and brant.

Flyaway-wide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily, except as otherwise noted--Check State regulations for further restrictions. States that further restrict shooting hours (in specified seasons, dates, or locations) include, but are not limited to: Nevada, Oregon, Idaho, Utah, and Washington.

Duck and Merganser Limits: Daily bag limits for ducks (including mergansers) may include no more than 3 mallards but only 1 female (hen) mallard, 1 pintail, and either 2 redheads or 2 canvasbacks, or 1 of each. The possession limit is twice the daily limit.

Goose Limits:

Aleutian Canada Geese: The season is closed on Aleutian Canada geese throughout the Flyway.

Cackling Canada Geese: The season is closed in California, Oregon, and Washington.

White Geese and Dark Geese: Unless otherwise noted, seasons and limits for white geese are either singly or in the aggregate; and seasons and limits for dark geese are either singly or in the aggregate, except in Washington, Oregon, and California where there are separate seasons and limits on brant.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATION OF GEOGRAPHICAL AREAS OR ZONES WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits: Bag	Limits: Possession
Arizona			
Ducks (1)	Oct. 12-Nov. 16 &	4	8
	Dec. 15-Jan. 6	4	8
Coots and common moorhens (singly or in the aggregate)	Same as for ducks	25	25
Geese:		5	5
White-fronted	Closed	-	-
Canada:			
GMU 22 & 23	Nov. 15-Jan. 20	2	2
Remainder of State	Oct. 25-Jan. 20	2	2
White:			
GMU 22 & 23	Nov. 15-Jan. 20	3	3
Remainder of State	Oct. 25-Jan. 20	3	3
California	Season selections are pending		
Colorado			
Ducks	Oct. 6-Oct. 13 &	4	8
	Nov. 17-Jan. 6	4	8
Coots	Same as for ducks	25	25
Geese:			
Brown's Park, Moffat County	Oct. 27-Dec. 9	1	2
Delta and Montrose Counties	Nov. 10-Jan. 13	2	4
Gunnison County, and Saguache County west of the Continental Divide	Oct. 27-Jan. 13	State permit only	
Dolores, LaPlata and Montezuma Counties	Closed	-	-
Remainder of State in Pacific Flyway	Sept. 29-Oct. 12 &	2	4
	Oct. 27-Jan. 13	2	4
Idaho			
Ducks:			
Zone 1	Oct. 20-Dec. 17	4	8
Zone 2	Oct. 20-Nov. 25 &	4	8
	Dec. 15-Jan. 5	4	8
Coots	Same as for ducks	25	25
Geese:		3	6
Area 1	Oct. 6-Jan. 6	3	6
Area 2 (2)			
Dark	Oct. 6-Jan. 6	2	4
White	Oct. 6-Jan. 6	3	6
Area 3			
Dark	Oct. 6-Nov. 11 &	1	1
	Nov. 12-Dec. 16 &	2	4
	Dec. 17-Jan. 6	1	1
White	Oct. 6-Jan. 6	3	6
Area 4			
Dark	Oct. 6-Nov. 11 &	1	1
	Nov. 12-Jan. 6	2	4
White	Oct. 6-Jan. 6	3	6
Area 5			
Dark	Oct. 13-Jan. 13	2	4
White	Oct. 13-Jan. 13	3	6
Montana			
Ducks	Oct. 6-Nov. 17 &	4	8
	Dec. 15-Dec. 30	4	8
Coots	Same as for ducks	25	25
Geese: (3)			
East of the Continental Divide		6	6
Dark	Sept. 29-Dec. 30	3	6
White	Sept. 29-Dec. 30	3	6
		5	6
West of the Continental Divide			
Dark	Sept. 29-Dec. 30	2	4
White	Sept. 29-Dec. 30	3	6

	Season Dates	Limits: Bag	Limits: Possession
Nevada			
Ducks:			
Clark County	Nov. 10-Jan. 6	4	8
Remainder of State	Oct. 20-Dec. 17	4	8
Coots and common moorhens (singly or in the aggregate)	Same as for ducks	25	25
Dark geese:			
Clark County	Nov. 24-Jan. 20	2	2
Remainder of State	Oct. 20-Jan. 20	2	4
White geese:			
Clark County	Nov. 24-Jan. 20	3	3
Remainder of State (4)	Oct. 20-Jan. 20	3	3
New Mexico			
Ducks	Oct. 6-Oct. 21 &	4	8
	Nov. 24-Jan. 5	4	8
Coots	Same as for ducks	15	30
Common Moorhens	Same as for ducks	2	4
Geese:			
North of Interstate 40			
Dark	Jan. 5-Jan. 20	2	4
White	Jan. 5-Jan. 20	1	2
South of Interstate 40			
Dark	Oct. 20-Jan. 13	2	4
White	Oct. 20-Jan. 13	1	2
Oregon			
Ducks:			
Columbia Basin	Oct. 20-Nov. 8 &	4	8
	Nov. 22-Jan. 6	4	8
Remainder of State	Oct. 20-Nov. 8 &	4	8
	Nov. 22-Dec. 30	4	8
Coots	Same as for ducks	25	25
Geese (5)		6	6
Western Oregon (6)	Oct. 20-Jan. 20	2	4
Eastern Oregon:			
Columbia Basin:			
Dark Geese	Oct. 20-Jan. 20	3	6
White Geese	Oct. 20-Jan. 20	3	6
Lake and Klamath (7):			
Dark Geese	Oct. 20-Jan. 20	3	6
White Geese	Oct. 20-Jan. 20	3	6
Baker and Malheur	Oct. 20-Jan. 6	2	4
Remainder of Eastern Oregon:			
Dark Geese	Oct. 20-Jan. 20	3	6
White Geese	Oct. 20-Jan. 20	3	6
Brant	Jan. 5-Jan. 20	State permit only	
Utah			
Ducks	Oct. 6-Dec. 3	4	8
Coots	Same as for ducks	25	25
Geese:		5	6
White	Oct. 6-Jan. 6	3	6
Dark:			
Washington County (8)	Oct. 13-Jan. 13	2	2
Cache County	Oct. 6-Jan. 2	2	4
Remainder of the State (9)	Oct. 6-Jan. 6	2	4
Washington			
Ducks:			
Eastern Washington	Oct. 13-Oct. 21 &	4	8
	Nov. 4-Dec. 30	4	8
Western Washington	Oct. 13-Oct. 21 &	4	8
	Nov. 11-Dec. 30	4	8
Coots	Same as for ducks	25	25
Geese (5):			
Eastern Washington:			
Columbia Basin (10)	Oct. 13-Jan. 13	3	6
Remainder of Eastern Washington	Oct. 13-Jan. 13	3	6
Western Washington:			
Lower Columbia River Zone (11)	Nov. 24-Jan. 12	3	6
Skagit Zone	Oct. 13-Dec. 30	3	6
Remainder of Western Washington	Oct. 13-Jan. 13	3	6
Brant (12)	Dec. 8-Dec. 23	2	4
Wyoming			
Ducks	Oct. 6-Dec. 3	4	8
Coots	Same as for ducks	25	25
Canada Geese	Sept. 29-Dec. 27	3	6

(1) In Arizona, the daily limit may include no more than 1 canvasback and no more than either 1 female (hen) mallard or 1 Mexican-like duck, but not both; and not more than 2 female (hen) mallards, 2 Mexican-like ducks, or 1 of each, may be in possession.
(2) In Idaho, the season on white geese is closed in Fremont and Teton Counties.
(3) In Montana, check State regulations for special seasons/exceptions in Freemont Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
(4) In Nevada, there is no open season on white geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.
(5) In Oregon and Washington, the season is closed on cackling and Aleutian Canada geese.
(6) In Oregon, the Northwest Area is closed to all goose hunting, except for the special permit goose season on designated portions of the special permit goose area from November 17 to January 20. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(7) In Oregon, in Klamath and Lake Counties, the white-fronted goose season does not open until November 1.
(8) In Utah, the Washington County season is for Canada geese only.
(9) In Utah, in Daggett County east of U.S. Highway 191 the October 27-December 9 season is only for Canada geese, with bag and possession limits of 1 and 2, respectively. At Desert Lake WMA the October 27-January 6 season is for all geese, with bag and possession limits the same as for the balance of the State.

(10) In Washington, geese may be hunted only on Saturdays, Sundays, Wednesdays, and November 12, 22, 23, and December 25, 1990, and January 1, 1991, in the Columbia Basin Goose Area. Geese may be hunted every day during January 15-21 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima Counties.
(11) In Washington, bag limits are 3 geese per day and 6 in possession, including no more than 1 dusky Canada goose per season. See State regulations for specific conditions of permit hunts and closures for Canada geese. In designated Canada goose areas the season is open on Saturdays in Pacific County and on November 25, and December 1, 9, 15, 23, and 29, 1990, and January 5 and 12, 1991, in Clark, Cowlitz, and Wahkiakum counties.
(12) In Washington, brant may be hunted in Skagit, Pacific, and Whatcom Counties only; and only on December 8, 9, 11, 12, 13, 15, 16, 19, 20, 22 and 23.

5. Section 20.106 is amended as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

The following seasons are in addition to the seasons published previously in the August 28, 1990, Federal Register.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes (unless otherwise noted), and with shooting hours from one-half hour before sunrise until sunset (unless otherwise noted) in the following areas for the dates indicated:

* * * * *

(c) In Oklahoma (that portion west of I-35) the inclusive dates are October 20, 1990 through January 20, 1991.

(d) In Texas in Zone A the inclusive dates are November 10, 1990, through February 10, 1991. In Zone B the inclusive dates are December 1, 1990, through February 10, 1991. In Zone C the inclusive dates are January 5, 1991, through February 10, 1991. In the remainder of the State the season is closed. See State regulations for description of zones.

* * * * *

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

Pacific Flyway

(a) In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season dates are November 2 through November 4, November 6 through November 8, and November 10 through November 12, 1990. Season limits are 2 sandhill cranes per season.

* * * * *

6. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for tundra (whistling) swans.

Tundra swans may be taken only by State-issued permit. Permittees may take only one tundra swan per season. Successful permittees must immediately validate their harvest by that method required in State regulations. Shooting hours are from one-half hour before sunrise to sunset daily except as otherwise restricted--Check State hunting regulations. Seasons are:

Atlantic Flyway: (a) In North Carolina, tundra swans may be hunted from November 3, 1990, through January 31, 1991; and (b) in Virginia, tundra swans may be hunted from November 3, 1990, through January 31, 1991.

Central Flyway: (a) In Montana, tundra swans may be hunted from September 29 through December 30, 1990; and (b) in North Dakota, tundra swans may be hunted from October 6 through November 18, 1990.

Pacific Flyway: (a) In Montana, tundra swans may be hunted only in Cascade, Hill, Liberty, Pondera, Toole and Teton Counties from September 29 through December 30, 1990; (b) In Nevada, tundra swans may be hunted only in Churchill, Lyon and Pershing Counties from October 20, 1990, through January 20, 1991; (c) In Utah, tundra swans may be hunted from October 6, 1990, through January 6, 1991.

7. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate.
Possession limit	6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons--unless further restricted by State Regulations. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Hawking hours: One-half hour before sunrise until sunset daily--unless otherwise restricted.

Only extended falconry seasons are shown below. Most States also permit falconry during the gun seasons. Please consult State regulations for details.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS.

Atlantic Flyway	
Florida:	
Mourning doves and white-winged doves	Oct. 29-Nov. 9 & Nov. 26-Dec. 7 & Jan. 7-Jan. 20
Common moorhens and rails	Nov. 10-Dec. 16

Woodcock	Nov. 24-Dec. 7 & Jan. 22-Mar. 10
Ducks and coots	Nov. 1-Nov. 19 & Dec. 1-Dec. 12 & Jan. 19-Feb. 28
Georgia:	
Sea ducks	Nov. 14-Nov. 21 & Jan. 7-Feb. 28
Ducks, mergansers, gallinules, and coots	Nov. 14-Nov. 21 & Nov. 26-Dec. 11 & Jan. 7-Feb. 28
Maine	
Ducks, mergansers, and coots:	
North Zone	Oct. 5-Oct. 6 & Oct. 29-Nov. 7 & Nov. 19-Jan. 15
South Zone	Oct. 5-Oct. 6 & Oct. 22-Nov. 21 & Dec. 10-Jan. 15
Maryland:	
Mourning doves	Oct. 21 only & Nov. 4-Nov. 16 & Nov. 24-Dec. 16
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 5-Oct. 18 & Nov. 24-Dec. 2 & Dec. 12-Jan. 19
Ducks	Nov. 29-Dec. 9 & Jan. 6-Mar. 10
Canada geese	Jan. 15-Mar. 10
Brant	Jan. 20-Mar. 10
Massachusetts	
Ducks and coots:	
Berkshire Zone	Oct. 5-Oct. 11 & Nov. 11-Jan. 19
Central Zone	Oct. 5-Oct. 15 & Oct. 28-Nov. 20 & Dec. 9-Jan. 19
Coastal Zone	Oct. 5-Oct. 17 & Oct. 28-Dec. 12 & Jan. 2-Jan. 19
New Hampshire	
Ducks, mergansers, and coots:	
Inland Zone	Oct. 29-Nov. 20 & Dec. 3-Jan. 24
Coastal Zone	Oct. 15-Nov. 20 & Dec. 17-Jan. 25
New Jersey	
Woodcock:	
North Zone	Oct. 1-Oct. 12 & Nov. 17-Jan. 5 & Mar. 1-Mar. 9
South Zone	Oct. 1-Nov. 9 & Dec. 2-Dec. 14 & Dec. 28-Jan. 5 & Mar. 1-Mar. 9
Ducks:	
North Zone	Oct. 1-Oct. 15 & Oct. 28-Nov. 20 & Dec. 9-Jan. 5 & Mar. 1-Mar. 9
South Zone	Oct. 1-Oct. 19 & Oct. 28-Nov. 21 & Dec. 14-Jan. 5 & Mar. 1-Mar. 9
Coastal Zone	Oct. 1-Nov. 2 & Nov. 11-Dec. 14 & Mar. 1-Mar. 9
New York	
Ducks and coots:	
Long Island Zone	Nov. 2-Nov. 5
Northeastern Zone	Oct. 1-Oct. 5 & Oct. 14-Oct. 22
Southeastern Zone	Oct. 1-Oct. 5 & Oct. 15-Oct. 23
Western Zone	Oct. 1-Oct. 5 & Oct. 14-Oct. 22

Geese:

Long Island Zone (1)	Nov. 2 only
Northeastern Zone	Oct. 1-Oct. 5
Southeastern Zone	Oct. 1-Oct. 5
Western Zone	Oct. 1-Oct. 5 & Oct. 14-Oct. 15

Pennsylvania:

Mourning doves	Oct. 14-Oct. 26 & Nov. 18-Dec. 15

Ducks:

North Zone	Oct. 8-Oct. 16 & Nov. 16-Jan. 19
South Zone	Oct. 8-Oct. 21 & Oct. 28-Nov. 18 & Dec. 13-Jan. 19
Northwest Zone	Oct. 8-Oct. 14 & Oct. 21-Nov. 11 & Dec. 6-Jan. 19
Lake Erie Zone	Oct. 8-Nov. 4 & Nov. 25-Dec. 12 & Dec. 23-Jan. 19

Canada and white geese:

North Zone	Dec. 16-Jan. 19
South Zone	Oct. 8-Oct. 15 & Dec. 25-Jan. 19
Northwest Zone	Dec. 16-Jan. 19
Lake Erie Zone	Nov. 27-Jan. 19
Southeast Zone	Oct. 8-Oct. 15 & Jan. 13-Jan. 19
Brant	Oct. 8-Oct. 15 & Dec. 5-Jan. 19

South Carolina

Duck, mergansers, and coots	Oct. 6-Nov. 20 & Nov. 25-Dec. 10

Virginia:

Doves	Nov. 4-Nov. 30 & Dec. 22-Dec. 23 & Dec. 30-Jan. 6
Rails	Nov. 10-Nov. 30 & Dec. 22-Jan. 6
Woodcock	Oct. 17-Nov. 4 & Dec. 2-Dec. 18 & Jan. 6-Jan. 31
Ducks, mergansers, coots, moorhens and gallinules	Oct. 6-Oct. 9 & Nov. 20-Nov. 21 & Nov. 24-Dec. 1 & Jan. 6-Mar. 9

Mississippi Flyway

Illinois:

Mourning doves	Oct. 31-Dec. 16
Rails	Nov. 10-Dec. 16
Woodcock	Sept. 1-Sept. 30 & Dec. 5-Dec. 16

Ducks, mergansers, and coots:

North Zone	Oct. 1-Oct. 19 & Nov. 19-Dec. 16 & Feb. 9-Mar. 10
Central Zone	Sept. 1-Oct. 9 & Feb. 1-Mar. 10
South Zone	Sept. 15-Oct. 23 & Feb. 1-Mar. 10

Indiana:

Mourning doves	Oct. 17-Nov. 8 & Jan. 1-Jan. 24
Woodcock	Sept. 1-Sept. 14 & Sept. 22-Sept. 28

Ducks, mergansers, and coots:

North Zone	Sept. 22-Oct. 19 & Oct. 24-Nov. 6 & Dec. 3-Jan. 6

South Zone	Sept. 22-Oct. 26 & Oct. 31-Nov. 30 & Dec. 27-Jan. 6
Ohio River Zone	Sept. 22-Nov. 21 & Nov. 26-Dec. 7 & Jan. 3-Jan. 6

Iowa:

Ducks:

North Zone	Sept. 1-Oct. 5 & Oct. 8-Oct. 19 & Nov. 17-Dec. 16
South Zone	Sept. 1-Oct. 19 & Oct. 27-Nov. 2 Nov. 26-Dec. 16

Dark geese:

Southwest Zone	Sept. 16-Oct. 12 & Dec. 22-Dec. 31
Remainder of State	Sept. 2-Sept. 28 & Dec. 8-Dec. 16

Light geese:

Southwest Zone	Sept. 16-Oct. 12
Remainder of State	Sept. 2-Sept. 28

Kentucky:

Ducks, mergansers, and coots	Oct. 22-Nov. 21 & Nov. 26-Dec. 11 & Jan. 7-Jan. 31
Geese (2)	Oct. 22-Nov. 21 & Nov. 26-Nov. 30

Michigan:

Snipe, rails, and woodcock	Sept. 7-Sept. 14 & Nov. 15-Dec. 22

Ducks, coots, and moorhens:

North and Middle Zones	Sept. 7-Oct. 5 & Nov. 5-Dec. 22
South Zone	Sept. 7-Oct. 12 & Nov. 8-Nov. 22 & Nov. 26-Dec. 22

Minnesota:

Ducks, coots, and moorhens	Sept. 1-Oct. 5 & Nov. 5-Dec. 16
Rails, woodcock, and snipe	Nov. 5-Dec. 16

Canada and white-fronted geese:

West-Central Zone	Nov. 8-Dec. 16
Southeast Zone (3)	Dec. 8-Dec. 16
Remainder of State	Nov. 18-Dec. 16

Mississippi:

Mourning doves	Nov. 15-Nov. 30 & Feb. 1-Mar. 3
Ducks, mergansers, and coots	Nov. 1-Nov. 30 & Jan. 23-Mar. 10

Missouri (4):

Mourning doves	Nov. 10-Dec. 16

Ducks, mergansers, and coots:

North Zone	Sept. 29-Nov. 2 & Dec. 3-Jan. 13
South Zone	Sept. 29-Nov. 16 & Dec. 5-Dec. 25 & Jan. 7-Jan. 13

Ohio

Ducks, mergansers, and coots:

North Zone	Oct. 29-Nov. 5 & Nov. 25-Jan. 31
South Zone and Ohio River Zone	Oct. 29-Dec. 18 & Jan. 7-Jan. 31

Wisconsin:

Woodcock	Sept. 1-Sept. 14 & Nov. 19-Dec. 16

Rails, snipe, moorhens, and gallinules:

North Zone	Sept. 1-Oct. 5 & Nov. 5-Dec. 16

South Zone	Sept. 1-Oct. 5 & Oct. 10-Oct. 16 & Nov. 12-Dec. 16
Ducks, mergansers, and coots:	
North Zone	Nov. 5-Jan. 20
South Zone	Oct. 10-Oct. 16 & Nov. 12-Jan. 20
Central Flyway	
Colorado:	
Ducks, mergansers and coots	Sept. 1-Oct. 5 & Oct. 15-Nov. 2
Montana: (5)	
Ducks and coots:	
Zone 1	Sept. 15-Oct. 5 & Nov. 14-Dec. 7 & Dec. 20-Dec. 30
Zone 2	Sept. 15-Oct. 5 & Oct. 15-Nov. 7 & Dec. 20-Dec. 30
Geese	Sept. 22-Sept. 28
New Mexico:	
Doves	Oct. 1-Nov. 4 & Nov. 21-Nov. 30 & Dec. 31-Jan. 1
Band-tailed pigeons	Sept. 21-Sept. 30 & Oct. 21-Dec. 16
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties	Oct. 14-Oct. 19 & Jan. 21-Jan. 28
Ducks, coots, moorhens and snipe:	
North Zone	Sept. 22-Oct. 21 & Nov. 12-Dec. 7
South Zone	Oct. 20-Nov. 16 & Jan. 7-Feb. 3
Dark geese	Jan. 21-Feb. 3
North Dakota:	
Cranes	Sept. 1-Sept. 7
Ducks, geese, mergansers, coots, and snipe	Sept. 1-Sept. 29
Oklahoma	
Ducks, mergansers, and coots:	
High Plains	Oct. 6-Oct. 19 & Nov. 28-Dec. 14 & Dec. 27-Jan. 20
Low Plains:	
Zone 1	Oct. 6-Oct. 26 & Nov. 19-Dec. 14 & Dec. 31-Jan. 20
Zone 2	Oct. 6-Nov. 9 & Nov. 26-Dec. 14 & Jan. 7-Jan. 20
South Dakota	
Ducks, mergansers, and coots:	
High Plains	Sept. 4-Oct. 5 & Nov. 14-Dec. 7
Low Plains:	
North	Sept. 4-Oct. 5 & Nov. 14-Dec. 19
South	Sept. 4-Oct. 26 & Dec. 5-Dec. 19
Texas:	
Rails and gallinules	Nov. 10-Nov. 20 & Jan. 1-Jan. 26
Mourning and white-winged doves	
North Zone	Nov. 10-Nov. 20 & Jan. 1-Jan. 26
Central Zone	Oct. 25-Nov. 20 & Jan. 1-Jan. 4 & Jan. 21-Jan. 26

South Zone (excluding the Special White-winged Dove Area)	Sept. 1-Sept. 19 & Nov. 13-Nov. 20 & Jan. 1-Jan. 4 & Jan. 21-Jan. 26
Special White-winged Dove Area	Sept. 3-Sept.19 & Nov. 11-Nov. 20 & Jan. 1-Jan. 4 & Jan. 21-Jan. 26
Ducks, mergansers, and coots:	
High Plains	Oct. 27-Nov. 16 & Jan. 7-Feb. 10
Remainder	Oct. 27-Nov. 16 & Nov. 26-Dec. 7 & Jan. 7-Feb. 10
Geese:	
East of U.S. 81:	
Dark	Jan. 21-Feb. 24
Light	Feb. 18-Feb. 24
West of U.S. 81	Jan. 21-Jan. 27
Sandhill cranes:	
Zone A	Oct. 27-Nov. 9
Zone B	Oct. 27-Nov. 30
Zone C	Oct. 27-Jan. 4
Woodcock	Oct. 27-Nov. 23 & Jan. 28-Feb. 10
Wyoming:	
Rails (5)	Sept. 1-Sept. 14
Ducks, mergansers, and coots (6)	Sept. 1-Oct. 5 & Oct. 23-Nov. 9
Pacific Flyway	
Colorado:	
Ducks, mergansers, and coots	Sept. 22-Oct. 5 & Oct. 14-Nov. 16
Idaho:	
Mourning Doves	Oct. 1-Dec. 3 & Feb. 26-Mar. 10
Geese	Sept. 1-Sept. 14
Ducks, coots, and mergansers	Sept. 1-Oct. 5 & Feb. 26-Mar. 10
Montana: (5)	
Ducks and coots	Sept. 15-Oct. 5 & Nov. 18-Dec. 14
Geese	Sept. 22-Sept. 28
Nevada: (7)	
Ducks, mergansers, coots, moorhens, and snipe	Jan. 12-Feb. 28
New Mexico:	
Doves	Oct. 1-Nov. 4 & Nov. 21-Nov. 30 & Dec. 31-Jan. 1
Band-tailed pigeons	Sept. 21-Sept. 30 & Oct. 21-Dec. 16
Ducks, coots, moorhens and snipe:	
North Zone	Sept. 22-Oct. 5 & Oct. 22-Nov. 23 & Jan. 6 only
South Zone	Oct. 22-Nov. 23 & Jan. 6-Jan. 20
Geese:	
North Zone	Oct. 20-Jan. 4 & Jan. 21-Feb. 3
South Zone	Jan. 14-Feb. 3
Oregon: (8)	
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Mourning doves	Oct. 1-Dec. 16

Ducks and coots:	
Columbia Basin	Oct. 1-Oct. 19 & Nov. 9-Nov. 21 & Jan. 7-Jan. 15
Remainder	Oct. 1-Oct. 19 & Nov. 9-Nov. 21 & Dec. 31-Jan. 15
Snipe	Oct. 6-Oct. 19
Utah:	
Doves and pigeons	Oct. 1-Dec. 16
Ducks, mergansers, and coots	Dec. 4-Jan. 20
White geese	Jan. 7-Jan. 20
Dark geese:	
Washington County	Oct. 6-Oct. 12 & Jan. 14-Jan. 20
Cache County	Jan. 3-Jan. 16
Remainder	Jan. 7-Jan. 20
Washington:	
Ducks, mergansers, coots, and snipe	Jan. 29-Mar. 10
Geese	Jan. 21-Jan. 27
Wyoming:	
Ducks, mergansers, and coots (6)	Sept. 1-Oct. 5
Rails and snipe (6)	Sept. 1-Sept. 14

(1) In New York, in the Long Island Zone, the extended falconry season for brant is November 2-November 5, 1990.
(2) In Kentucky, the extended falconry season for Canada geese in the Fulton County Zone does not begin until October 26, 1990.
(3) In Minnesota, in the Twin Cities Metro Goose Zone and Olmsted County, the extended falconry season for Canada geese is December 8-December 14, 1990.
(4) In Missouri, in the Lower St. Francis River Area, the Arkansas regulations apply.
(5) In Montana, the bag limit is 2 and the possession limit is 6.
(6) In Wyoming, the daily bag and possession limit may include no more than 2 of the following species: rails, snipe, ducks, mergansers, and coots.
(7) In Nevada, the bag limit is 2 and the possession limit is 4.
(8) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 90-22917 Filed 9-27-90; 8:45 am]
BILLING CODE 4310-55-C

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Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 552

Control, Custody, Care, Treatment and Instruction of Inmates; Hostage Situations; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

Control, Custody, Care, Treatment and Instruction of Inmates; Hostage Situations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is revising its regulations on hostage situations. This action is being taken upon consideration of the Bureau's experiences from the 1987 Atlanta/Oakdale disturbances. This revision makes three major changes to the existing regulations. It provides for the assumption of command by the Regional Director in large scale hostage situations where the coordination of resources from other Bureau facilities and law enforcement agencies is involved; it provides for the use of a team of individuals trained in hostage negotiation techniques; and it specifies services to be provided to the families of hostages. This action is intended to protect the life and safety of both staff and inmates.

EFFECTIVE DATE: September 28, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 741, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its regulations on hostage situations. A final rule on this subject was published in the Federal Register on May 20, 1980 (45 FR 33941). The Bureau is making this revision upon consideration of the 1987 Atlanta/Oakdale disturbances. A discussion of the specific changes in this revision follows.

In § 552.30, the sentence providing the Warden authority to resolve hostage situations is removed. This authority is now covered in new § 552.31. Old § 552.31 is revised as new § 552.32. New § 552.31, entitled "Command," provides that ordinarily the Warden of each institution has authority to resolve a hostage situation; however, in large scale hostage situations where the coordination of resources from other Bureau facilities and law enforcement agencies is involved, this authority will be assumed by the appropriate Regional Director. New § 552.32 is entitled "Negotiations." The introductory text of new § 552.32 provides that the Warden is ordinarily not involved directly in the negotiation process; instead this responsibility is ordinarily assigned to a team of individuals who are specifically trained in hostage negotiation techniques. Paragraph (a) of old § 552.31 had specified that the negotiation responsibility was generally assigned by the Warden to another individual. Paragraph (b) of old § 552.31 is revised as paragraph (a) of new § 552.32 with minor change in wording; the intent, however, is unchanged. Paragraph (c) of old § 552.31 is removed. This provision for the negotiator to keep communications open at all times with the captors remains part of the internal implementing guidelines. Consequently, there is no change in the Bureau's policy on this point. Paragraph (b) of new § 552.32 provides that the following items are non-negotiable: Release of captors from custody, providing of weapons, exchange of hostages, and immunity from prosecution. Two of these items, release of captors from custody and immunity from prosecution, had been specified as being non-negotiable in old § 552.33. Old § 552.32 is redesignated as new § 552.33 and the section heading is revised to read "Hostages." Old § 552.33 is incorporated into new § 552.32(b). Paragraph (a) of old § 552.34 is redesignated as new § 552.35, "Media." The heading of new § 552.34 is revised to read "Hostage Family Services." Paragraph (b) of old § 552.34 is redesignated and revised as paragraph (a) of new § 552.34, and now provides for either the Warden or Regional Director to arrange for the notification of family members of hostages. Paragraph (b) of new § 552.34 provides for the establishment of a Family Services Center in a prolonged situation; paragraph (c) of new § 552.34 specifies the mission of the Family Services Center.

Because these regulations provide for the life and safety of staff and inmates, and pose no additional burden on the public, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 552

Prisoners.

J. Michael Quinlan,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter C of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTION MANAGEMENT

PART 552—CUSTODY

1. The authority citation for part 552 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In 28 CFR part 552, subpart D, consisting of §§ 552.30 through 552.34, is revised to consist of §§ 552.30 through 552.35 as follows:

Subpart D—Hostage Situations

Sec.
552.30 Purpose and scope.
552.31 Command.
552.32 Negotiations.
552.33 Hostages.
552.34 Hostage family services.
552.35 Media.

Subpart D—Hostage Situations

§ 552.30 Purpose and scope.

The Bureau of Prison's primary objectives in all hostage situations are to safely free the hostage(s) and to regain control of the institution.

§ 552.31 Command.

Ordinarily, the Warden of each institution has the authority to resolve a hostage situation. However, in large scale hostage situations where the coordination of resources from other Bureau facilities and law enforcement agencies is involved, this authority will be assumed by the appropriate Regional Director.

§ 552.32 Negotiations.

The Warden is not ordinarily involved directly in the negotiation process. Instead, this responsibility is ordinarily assigned to a team of individuals specifically trained in hostage negotiation techniques.

(a) Negotiators have no decision-making authority in hostage situations, but rather serve as intermediaries between hostage takers and command center staff.

(b) During the negotiation process, the following items are non-negotiable: release of captors from custody, providing of weapons, exchange of hostages, and immunity from prosecution.

§ 552.33 Hostages.

Captive staff have no authority and their directives shall be disregarded.

§ 552.34 Hostage family services.

(a) The Warden or Regional Director shall arrange to have the family members of the hostages notified as soon as practical after the incident occurs.

(b) In a prolonged situation, the Warden or Regional Director will call the Assistant Director, Correctional Programs, to arrange for trained Victims' Assistance Team members to establish a Family Services Center.

(c) The Center will provide opportunities for family members to gather together, to gain emotional support, to receive accurate information, to receive professional advice and support, and to avoid unwanted media contact.

§ 552.35 Media.

The Warden shall assign staff to handle all news releases and news media inquiries in accordance with the rule on Contact with News Media (see 28 CFR 540.65).

[FR Doc. 90-22980 Filed 9-27-90; 8:45 am]
BILLING CODE 4410-05-M

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Part VII

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 25

Federal Acquisition Regulation (FAR); Solicitation Provision and Contract Clause, Buy American Act; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

RIN 9000-AE16

Federal Acquisition Regulation (FAR); Solicitation Provision and Contract Clause, Buy American Act

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 25.109 (a) and (d) to eliminate the unnecessary use of the provision at FAR 52.225-1, Buy American Certificate, and the clause at 52.225-3, Buy American Act—Supplies. These proposed changes are intended to streamline the FAR by requiring the use of the Buy American Certificate and the clause at 52.225-3, Buy American Act-Supplies, only under applicable circumstances.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 27, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 90-45 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (202) 501-4082. Please cite FAR Case 90-45.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the proposed revisions merely implement in the FAR the procedures currently being followed by individual agencies. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90-610 (FAR Case 90-45) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: September 20, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 25 be amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.109 is amended by revising paragraphs (a) and (d) to read as follows:

25.109 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 52.225-1, Buy American Certification, in solicitations where the clause at 52.225-3 is used.

* * * * *

(d) The contracting officer shall insert the clause at 52.225-3, Buy American Act—Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States, unless—

(1) The solicitation applies to items restricted to domestic end products under the authority of 6.302-3; or

(2) The acquisition is made under the Trade Agreements Act (see subpart 25.4); or

(3) Another exception applies (e.g., nonavailability, public interest exception to competition).

[FR Doc. 90-22859 Filed 9-27-90; 8:45 am]

BILLING CODE 6820-34-M

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Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Six Foreign Birds, Barneby Ridge-cress, Lyrate Bladder-pod, and Inflated Heelsplitter Mussel; Final Rules

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Endangered Status for Six Foreign Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for six foreign birds: the northern bald ibis, white-winged guan, cheer pheasant, red-tailed parrot, Norfolk Island parakeet, and Madagascar red owl. All occupy restricted ranges and are adversely affected by human habitat disruption and/or direct killing. This rule will implement the protection of the Endangered Species Act of 1973 for these six birds.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, Mail Stop: Arlington Square, Room 725, U.S. Fish and Wildlife Service, Washington, DC 20240. (703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION:

Background

In a petition of November 24, 1980, the International Council for Bird Preservation requested the addition of 79 kinds of birds to the U.S. List of Endangered and Threatened Wildlife. Two of these birds actually were already on the List, and so the petition technically applied to 77 species. In the Federal Register of May 12, 1981 (46 FR 26464–26469), the Service announced its finding that the petition had presented substantial information in support of listing, and also announced a status review of the 77 species. Of these species, 19 were native to the United States or its territories. Of these 19, 4 subsequently were added to the List, and the rest were placed in various categories in the Service's Animal Notice of Review in the Federal Register of January 6, 1989 (54 FR 554–579). Of the 58 foreign kinds of birds covered by the petition, the 6 named and described below were already on appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

The northern bald ibis, also known as the hermit ibis or waldrapp (*Geronticus eremita*), measures about 30 inches (75 centimeters) from tip of beak to tail. The head is completely naked, the legs and curved beak are red, and the plumage is generally dark. The species originally occurred across much of southern Europe, southwestern Asia, and northern Africa.

The white-winged guan (*Penelope albipennis*) is a member of the curassow family (Crucidae). It is about 28 inches (70 centimeters) long and is generally brown in color, but is distinguished by having the eight outer primary feathers white. It is endemic to a small part of northwestern Peru.

The cheer pheasant (*Catreus wallichii*) has about the same size and proportions as the common ring-necked pheasant, but lacks the pronounced markings of the latter. It is generally light brown in color and has a large crest of feathers on the back of the head. It originally was found in the Himalayan foothills of Pakistan, India, and Nepal.

The red-tailed parrot (*Amazona brasiliensis*) is about 15 inches (37 centimeters) long. The plumage is mainly green, the top of the head is red, the throat and upper breast are blue, and the lateral tail feathers are yellow. The species occurs only in the forests of southeastern Brazil.

The Norfolk Island parakeet (*Cyanoramphus novaezelandiae cookii*) is about 11 inches (28 centimeters) long. The plumage is mainly green, the top and sides of the head are red, and the outer webs of the tail feathers are violet-blue. It is endemic to Norfolk Island, an Australian possession between New Zealand and New Caledonia in the southwestern Pacific.

The Madagascar red owl (*Tyto soumagnei*) is related to the barn owl of North America, but is much smaller, measuring only 9 inches (23 centimeters) long. It is mostly reddish in color. It is found in the eastern forests of Madagascar.

Partly in conjunction with an effort to establish closer alignment between the Convention appendices and the U.S. Lists of Endangered and Threatened Wildlife and Plants, the Service proposed to determine endangered status for these six birds in the Federal Register of January 16, 1990 (55 FR 1488–1491). In the proposal and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Ten responses were received, all supportive, and pertinent information has been added to the following discussion.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the six birds named above should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the six birds named above are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The northern bald ibis now breeds in only tiny fragments of its once vast range that stretched from France and Spain to Iraq, Ethiopia, and Mauritania. Its decline has been caused by a variety of problems, including natural dessication of its range in Egypt, climatic cooling in Europe, human disturbance of its nesting sites on cliffs, agricultural development of other habitat, drainage of marshes where it searched for food, and the widespread application of toxic pesticides throughout its range. Breeding ceased in Europe in the 17th century. There still were thousands of birds in Turkey and Syria in the early 1900's, but now only a single breeding colony remains in Asia—at Birecek, Turkey—and it has been reported to consist of only about 30 birds. There were about a thousand pairs in Morocco in the 1930's, but only 93 in 1982, which occupied about 12 declining colonies. The only other possible remaining breeding site is in Algeria (Collar and Andrew 1988; Collar and Stuart 1985; King 1981). In its response to the proposal, the government of Turkey expressed concern that the Birecek colony may now have disappeared completely. In another response, the deputy director of Morocco's National Zoo, who has studied the bald ibis for 10 years, stated that the species is decreasing dramatically and that only about 180 individuals remain in the wild.

In contrast to the great original distribution of the ibis, the white-winged guan has always been known only from extreme northwestern Peru, where it occupied a variety of forest habitat. Unfortunately, this habitat is rapidly being destroyed through burning of the forests to produce charcoal. The guan was said to be locally common in the mid-19th century, but its numbers fell to several hundred by the 1970's (Collar and Andrew 1988; King 1981). In his response to the proposal, Enrique G. Ortiz of Princeton University, an authority on the guan, estimated current numbers at about 500 individuals.

The cheer pheasant still occurs across its original range in the western Himalayas, but only in small, fragmented populations. Its decline has resulted in part from agricultural activity and other human modifications of the forests and meadows on which it depends (Collar and Andrew 1988; King 1981). In its response to the proposal, the Wildlife Institute of India noted that most populations appear dangerously small (fewer than 10 pairs in any one population).

The red-tailed parrot is restricted to the primary coastal forests of southeastern Brazil, which have been largely destroyed in recent decades by human development. Its total population is now no more than 4,000 individuals (Collar and Andrew 1988; King 1981).

The Norfolk Island parakeet once was very common on the 14 square mile (35 square kilometer) island, to which it is confined. It now is among the world's most critically endangered birds. Its decline was brought about by a number of factors, including human destruction of its forest habitat, competition with introduced bird species, and persecution as an agricultural pest (King 1981; Moors 1985). In its response to the proposed rule, the Australian National Parks and Wildlife Service reported that there are only 30 individuals in the wild and 10 in captivity.

The Madagascar red owl inhabits the humid rainforest of eastern Madagascar. This area is being cleared for agriculture and is subject to other human disturbance. Only a few specimens have been collected, the most recent in 1934. An individual also was reported in 1973 (Collar and Stuart 1985).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Most of the birds covered by this rule have been subject to excessive taking by people. Hunting for use as food has been a major factor in the decline of the northern bald ibis in Africa and Asia. The white-winged guan also is threatened for this reason. The cheer pheasant has been relentlessly persecuted by hunters, and its sedentary habits make it especially vulnerable to such pressure. Specimen and egg collectors are considered a serious problem to remaining colonies of the northern bald ibis. The red-tailed parrot is threatened by the pet trade (Collar and Andrew 1988; Collar and Stuart 1985; King 1981).

C. *Disease or predation.* The northern bald ibis suffers from nest predation by ravens. Disease and breeding failure may have contributed to the decline of the cheer pheasant. The status of the Norfolk Island parakeet has deteriorated in part because of avian disease and predation by introduced cats and rats (Collar and Andrew 1988; Collar and Stuart 1985; Moors 1985).

D. *The inadequacy of existing regulatory mechanisms.* The northern bald ibis is legally protected in those places where it is still known to breed, but this factor has not prevented severe declines and is not controlling disturbance, poaching, and other immediate problems. The remote habitat of the white-winged guan would make enforcement of hunting laws difficult. The cheer pheasant is legally protected, but poaching is a major problem. The red-tailed parrot and Norfolk Island parakeet also are legally protected. The Madagascar red owl receives no domestic legal protection (Collar and Andrew 1988; Collar and Stuart 1985; King 1981; Moors 1985). Although these six species are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the provisions of the Convention do not prevent loss of habitat, which is the main problem.

E. *Other natural or manmade factors affecting its continued existence.* The northern bald ibis is extremely susceptible to pesticides. This factor is known to be responsible for a drastic reduction in the Asian population, and is considered the single greatest threat to the species throughout its remaining range (Collar and Stuart 1985). The Norfolk Island parakeet has declined in part through displacement by an introduced relative, the crimson rosella (*Platycercus elegans*), with which it competes for nest sites (Moors 1985).

The decision to determine endangered status for the northern bald ibis, white-winged guan, cheer pheasant, red-tailed parrot, Norfolk Island parakeet, and Madagascar red owl was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. All six of these birds have experienced significant declines in population numbers and/or suitable habitat in recent years, and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines are likely to occur, increasing the danger of extinction for these avian species. Critical habitat is not being determined, as such designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). On August 10, 1990, the Eighth Circuit Court of Appeals ruled that the section 7 consultation requirement applies to Federal agency actions in foreign countries. The United States Government petitioned for a rehearing of that ruling on September 24, 1990. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this proposal.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign

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commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. All such permits must also be consistent with the purposes and policy of the Act, as required by section 10(d), thereof.

International trade in these six species is expected to be minimal. The Service will review these species to determine whether any of them should be placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether they should be considered for other appropriate international agreements.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register of October 25, 1983 (48 FR 49244).

Literature Cited

Collar, N.J., and P. Andrew. 1988. Birds to watch. The ICBP world checklist of threatened birds. International Council for Bird Preservation Tech. Publ., No. 8. xvi + 308 pp.

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King, W.B. 1981. Endangered birds of the world. The ICBP bird red data book. Smithsonian Institution Press, Washington, DC.

Moors, P.J. 1985. Conservation of island birds. International Council for Bird Preservation Tech. Publ., No. 3. × +271 pp.

Author

The primary author of this rule is Dr. Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Birds							
Guan, white-winged	*Penelopina albipennis*	Peru	Entire	E	401	NA	NA
Ibis, northern bald	*Geronticus eremita*	Southern Europe, southwestern Asia, northern Africa.	Entire	E	401	NA	NA
Owl, Madagascar red	*Tyto soumagnei*	Madagascar	Entire	E	401	NA	NA
Parakeet, Norfolk Island	*Cyanoramphus novaezelandiae cookl.*	Australia (Norfolk Island)	Entire	E	401	NA	NA
Parrot, red-tailed	*Amazona brasiliensis*	Brazil	Entire	E	401	NA	NA
Pheasant, cheer	*Catreus wallichi*	India, Nepal, Pakistan	Entire	E	401	NA	NA

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-23001 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Lepidium barnebyanum (Barneby Ridge-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a plant, *Lepidium barnebyanum* (Barneby ridge-cress), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This species is known from one small limited population in Duchesne County, Utah. Continued uncontrolled off-road vehicle use and development of oil and gas resources in the habitat of *L. barnebyanum* have the potential to cause the species to become extinct if adequate protective measures are not taken. This rule implements Federal protection provided by the Act for *Lepidium barnebyanum*.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Salt Lake City Field Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England, botanist, at the above address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

In June 1947, a unique mustard was discovered by Rupert Barneby in the lower portions of Indian Creek Canyon in Utah's Uinta Basin. This plant was described first in the scientific literature as *Lepidium montanum* ssp. *demissum* (Hitchcock 1950). James Reveal reviewed the type specimen of *L. m. demissum* and obtained additional specimens of that taxon from the type locality. As a consequence of his evaluation of this taxon, Reveal described the mustard as *Lepidium barnebyanum* (Reveal 1967).

The common name used for *L. barnebyanum* in the Review of Plant Taxa for Listing as Endangered or Threatened Species published in the Federal Register on September 27, 1985 (50 FR 39526), was "Barneby pepper cress." Stanley Welsh gave this species the common name of "ridgecress" in *A Utah Flora* (Welsh et al. 1987). The Service has adopted Welsh's common name because it is a cress (mustard) endemic to ridges and has retained the specific epithet to honor the species' discoverer, thus the common name "Barneby ridge-cress." This common name was used in the Review of Plant Taxa for Listing as Endangered or Threatened Species published in the Federal Register on February 21, 1990 (55 FR 6184).

Lepidium barnebyanum is a perennial, herbaceous plant in the mustard family (Brassicaceae). It is approximately 5 to 15 centimeters (cm) (2 to 6 in.) tall and usually forms raised clumps or cushions (pulvinate growth form) up to 20 cm (8 in.) wide. The species arises from a deep woody taproot; its stems are smooth and hairless with narrow leaves clustering at the base of the plant. The species' cream-colored flowers are about 5 to 7 millimeters (mm) (0.25 in.) across and alternate along a stem rising 2.5 to 6 cm (1 to 2.5 in.) above the base of the plant. The flowers begin to bloom in early May. *L. barnebyanum* seeds are quite small, about 1 mm (0.04 in.) across, and are borne in elliptical seed pods called silicles, which are about 4 to 5 mm (0.2 in.) long. The seeds are shed beginning in June and continuing into July.

The habitat of *L. barnebyanum* is a discontinuous series of marly shale barrens on three ridgelines on either side of Indian Creek on the northeast margin of Indian Creek Canyon about 5 kilometers (km) (3 miles) south of Starvation Reservoir and the town of Duchesne, Utah. The species' habitat occurs at an elevation of 1,800 to 1,980 meters (6,200 to 6,500 feet) on poorly developed soils derived from marly shales in a zone of interbedding geologic strata from the Uinta and Green River Formations (Reveal 1967, Welsh and Reveal 1977, Welsh 1978, Welsh et al. 1987, U.S. Fish and Wildlife Service 1989).

The vegetation of the shale barrens, on which *L. barnebyanum* occurs, is dominated by plant species with pulvinate growth forms, including: *Hymenoxys acaulis, Arenaria hookeri, Townsendia mensana, Parthenium ligulatum,* and *L. barnebyanum* itself. Other associated plant species include: *Eriogonum batemanii, Astragalus spatulatus,* and *Castilleja scabrida*. The shale barren pulvinate plant community of *L. barnebyanum* is a small inclusion within the broader pinyon-juniper woodland community, dominated by pinyon pine (*Pinus edulis*) and Utah juniper (*Juniperous osteosperma*), which characterize the general area (Welsh 1978, U.S. Fish and Wildlife Service 1989).

Lepidium barnebyanum is known from one population with four distinct stands with a total range that is about 8 km (5 miles) across on the Uintah and Ouray Reservation of the Ute Indian Tribe. The total population of *L. barnebyanum* is estimated to be about 5,000 individuals with an occupied habitat of less than 200 hectares (500 acres) Kung 1989, U.S. Fish and Wildlife Service 1989). The entire population of *L. barnebyanum* is experiencing or is vulnerable to off-road vehicle damage and is within a recently established oil and gas field. Continued unrestricted off-road vehicle use and future development of oil and gas wells and ancillary facilities is likely to endanger the continued existence of this species unless specific measures are taken to protect the occupied habitat of *L. barnebyanum*.

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition to list those taxa named therein under section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and its intention to review the status of those plants. *L. barnebyanum* was included in the July 1, 1975, notice on list "A" as endangered.

Lepidium barnebyanum was proposed by the Service for listing as endangered along with approximately 1,700 other vascular plant taxa on June 16, 1976 (41 FR 24523). General comments received on the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). The 1978 amendments to the Act required that all proposals more than 2 years old be withdrawn, though proposals published before the date of enactment of the 1978 amendments could not be withdrawn before the end of a 1-year grace period beginning on the date of enactment. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final (44 FR 70796), including *L. barnebyanum*.

The July 1975 notice was updated by notices in the Federal Register on December 15, 1980 (45 FR 82480), and again on September 27, 1985 (50 FR 39526). Both of the later notices included *L. barnebyanum* as a category 1 species. Category 1 comprises taxa for which the Service presently has significant biological information to support their being proposed to be listed as endangered or threatened species.

Section 4(b)(3)(B) of the 1982 amendments to the Act requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending as of October 13, 1982, be treated as having

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been newly submitted on that date. Since the 1975 Smithsonian report was accepted as a petition, all the taxa contained in this notice, including *L. barnebyanum*, were treated as being newly petitioned on October 13, 1982. The deadline for a finding on such petitions, including that for *L. barnebyanum*, was October 13, 1983. Beginning on October 13, 1983, the Service has made successive 1-year findings that the petition to list *L. barnebyanum* was warranted, but precluded by other listing actions of higher priority. On November 27, 1989, the Service published in the Federal Register (54 FR 48781) a proposed rule to list *L. barnebyanum* as an endangered species. Publication of the aforementioned proposed rule constituted the final finding for this species.

Summary of Comments and Recommendations

In the November 27, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Uintah Basin Standard* on December 27, 1989, and in the *Deseret News* and *The Salt Lake Tribune* on December 25, 1989, which invited general public comment.

Eleven commenters responded. Six commenters supported listing, while five were neutral. Three commenters provided additional or clarifying information that has been incorporated into this final rulemaking. Three commenters explicitly confirmed that the plant was rare or in danger of extinction. One commenter agreed that oil and gas drilling and off-road vehicle use was a threat. Commenters raising issues were as follows:

The Ute Indian Tribe was concerned about possible restrictions to oil and gas development in the habitat of *L. barnebyanum*, which could affect the future economic well-being of the Tribe. However, their letter also noted that "in the interest of protecting a rare plant species which is a natural feature of the land, the Ute Tribe is not opposed to proposed listing as endangered." The Tribe also stated that uncontrolled off-road vehicle use is prohibited on the Reservation, and that it is the policy of the Tribe to remove violators if apprehended.

In response to the Ute Indian Tribe's concern about economic impacts from oil and gas development restrictions, Section 7 consultation will serve as the mechanism for identifying and resolving any conflicts which may arise between the conservation of *L. barnebyanum* and the development of oil and gas resources. The Service will work with the Ute Tribe, affected Federal and State agencies, and private energy developers to deal with such conflicts.

With regard to threats from off-road vehicles, Section 9 of the Act prohibits malicious damage or destruction of endangered plants on areas under Federal jurisdiction, and damage or destruction on any other area in knowing violation of State law or regulation, including State criminal trespass law. This statutory authority could be used by the Tribe to prevent and reduce off-road vehicle trespass on Reservation lands.

The State of Utah, though noting that the plant was "very scarce," also urged the Service to consider the economic impacts of the listing before making a decision on the status of *L. barneybyanum*. Under the Act, the Service is required to base listing decisions upon biological factors only. As noted above, the Service will work with affected parties if there is a conflict between species conservation and oil and gas development.

The Bureau of Land Management clarified their responsibility in regard to leasing oil and gas reserves and reviewing and authorizing oil and gas development on Indian lands. The Service has modified this rulemaking to reflect the Bureau of Land Management's actual responsibilities.

Two commenters supported restrictions on off-road vehicle use. As noted earlier, the Tribe already prohibits uncontrolled off-road vehicle use, and the listing of this species as endangered will provide statutory protection. Following listing, a recovery plan will be developed that will recommend appropriate means to deal with threats from off-road vehicles.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Lepidium barneybyanum* should be classified as an endangered species. Procedures found at section 4(a) (1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lepidium barnebyanum* Reveal (Barneby ridge-cress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The total population of *L. barneybyanum* is estimated to be about 5,000 individuals on marly shale barrens on three ridgelines in the northeast portion of Indian Creek Canyon in Duchesne County, Utah (U.S. Fish and Wildlife Service 1989). The past distribution of *L. barneybyanum* is unknown (Welsh 1978). The species is evidently a narrow soil endemic, restricted to a white marly shale lens near the contact of Green River and Uinta geologic formations (Reveal 1987, Welsh and Reveal 1977, Welsh 1978, Welsh et al. 1987, U.S. Fish and Wildlife Service 1989). Similar shale barren habitat, occupied by many of the same species sympatric with *L. barneybyanum* (see "Background" section above), has been searched for additional populations of *L. barneybyanum* in the Uinta Basin of northeast Utah and adjacent Colorado. No other populations of the plant are known except for the one noted above (Reveal 1987, Welsh 1978, Kung 1989, U.S. Fish and Wildlife Service 1989).

The occupied habitat of *L. barneyanum* is being impacted by trampling from off-road vehicles. Motorcycles and four-wheeled all-terrain vehicles concentrate on the sparsely vegetated ridgelines which are *L. barneybyanum*'s only habitat (U.S. Fish and Wildlife Service 1989). In addition, the habitat of *L. barnebyanum* is within a proposed oil and gas field with several wells projected for development within or adjacent to the species' occupied habitat. The location of *L. barneybyanum* habitat on the top of relatively level ridgelines in an area of very steep general topographic relief exposes populations to an increased likelihood of habitat destruction from off-road vehicle trail riding and road and well site construction in connection with oil and gas development (Welsh 1978, Kung 1989, U.S. Fish and Wildlife Service 1989). With such a small total population and limited occupied habitat, any destruction, modification, or curtailment of habitat would have a highly detrimental effect on the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threats to *L. barnebyanum* from overutilization for commercial, recreational, scientific, or educational purposes are currently known.

C. *Disease or predation.* No significant threats to *L. barneybyanum* from disease or predation are currently known.

D. *The inadequacy of existing regulatory mechanisms.* Prior to this rule, no Federal or State law or regulation protected *L. barnebyanum*. The Bureau of Indian Affairs and the Bureau of Land Management were aware of the precarious status of this species and as a matter of policy attempted to direct activities that may threaten the species away from its habitat on the Uintah and Ouray Reservation of the Ute Indian Tribe. This rule listing *L. barnebyanum* will significantly assist these Federal agencies by providing statutory authority for the protection of this species and its habitat and will encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* Compared to closely related taxa in the same genus, recent studies have shown *L. barnebyanum* to have a reduced seed/ovule ratio (i.e., a smaller percentage of embryonic seeds becoming mature seeds) (C. Davern, University of Utah, pers. comm., 1988). This would tend to lower reproductive success and reduce population viability. In addition, the restricted range and population of *L. barnebyanum* increases the possibility that inadvertent disturbance, either natural or human caused, could destroy a significant portion of the species' population and habitat. Finally, concern was expressed that sheep trailing or bedding along these ridgelines could negatively affect *L. barnebyanum*, though such negative effects have not been documented.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lepidium barnebyanum* as endangered. The species is threatened by surface disturbance from off-road vehicles that will probably intensify in the near future and by future energy development within its habitat. These factors could cause the species to become extinct within the foreseeable future throughout all or a significant portion of its range. Given the species' highly restricted distribution and the likelihood of future habitat destruction, the designation of endangered is considered by the Service to be a more appropriate designation than threatened for *L. barnebyanum*. For the reasons given below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *L. barnebyanum* because possible adverse consequences from vandalism would likely outweigh the minimal benefits accruing from critical habitat designation.

As noted under Factor "A," *L. barnebyanum* occupies limited habitat on the top of three relatively level ridgelines. Designation of critical habitat would entail publication of a detailed description and map of this habitat in the Federal Register, exposing the species to the threat of vandalism. Lacking mobility, plants are more vulnerable to vandalism than animals. One person could easily vandalize the entire *L. barnebyanum* population with an off-road vehicle.

Moreover, few additional benefits would be provided to the species by the critical habitat designation that would not already be provided by listing the species as endangered. Any Federal action (such as approving oil and gas leases or actions) that would impact the plant's habitat would affect the plants as rooted organisms and, consequently, would be addressed through section 7 consultation. In addition, section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any endangered species of plant from areas under Federal jurisdiction or to maliciously damage or destroy such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of State criminal trespass law. The Ute Tribe, Bureau of Indian Affairs, and the Bureau of Land Management are all aware of the occurrence of *L. barnebyanum* on Tribal lands and of their obligations under the Act. In addition, the Ute Tribe has expressed a desire to eliminate unauthorized trespass in the habitat of *L. barnebyanum*. Protection of species' habitat also will be accomplished through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, Indian, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The entire known population of *L. barnebyanum* is on the Uintah and Ouray Reservation of the Ute Indian Tribe. The Bureau of Indian Affairs is responsible for assisting the Tribe in the resource management of Reservation lands, including the leasing of oil and gas resources, and as such would be responsible for the conservation of the plant on Tribal lands under authority of the Act. The Bureau of Land Management is responsible for reviewing and authorizing proposed operations on a leasehold within the Reservation, regardless of whether the lease is Indian or Federal. Both of these Federal agencies would be responsible for insuring that land actions in general, and those associated with mineral leasing and development specifically, are not likely to jeopardize the continued existence of *L. barnebyanum*.

The Service is willing to work with the Tribe to evaluate whether there are feasible means to reduce the threat posed by off-road vehicles.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These statutory and regulatory prohibitions, in part, make it illegal for

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any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued for *L. barnebyanum* since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358-2093, FTS 921-2093).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Hitchcock, C.L. 1950. On the subspecies of *Lepidium montanum*. Madrono 10:155-159.

Kung, P.E. 1989. Threatened and endangered species survey of three proposed well sites. Unpublished report prepared for Coors Energy Company, Golden, Colorado. 6 pp.

Reveal, J.L. 1987. A new name for a Utah *Lepidium*. Great Basin Naturalist 27(3):176-181.

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Welsh, S.L. 1978, Status report: *Lepidium barnebyanum*. Brigham Young University Herbarium, Provo, Utah. 4 pp.

Welsh, S.L., N.D. Atwood, S. Goodrich, L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs, Number 9. 894 pp.

Welsh, S.L., and J.L. Reveal. 1977. Utah flora: Brassicaceae (Cruciferae). Great Basin Naturalist 37(3):279-365.

Author

The primary author of this final rule is John L. England, botanist (see FOR FURTHER INFORMATION CONTACT).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species								
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*	*	*
Brassicaceae—Mustard family:								
*	*	*	*	*	*	*	*	*
Lepidium barnebyanum	Barneby ridge-cress (= pepper cress).	U.S.A. (UT)	E		402	NA	NA
*	*	*	*	*	*	*	*	*

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-23042 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Threatened Status for Lesquerella lyrata (Lyrate bladder-pod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Lesquerella lyrata* (lyrate bladder-pod), to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. This species is currently known from only two populations in cedar glade areas of northwest Alabama (Colbert and Franklin Counties). It is extremely vulnerable due to its limited range, the loss of much suitable habitat from urbanization and agricultural practices and the apparent need for active management to sustain current populations. This action will extend the Act's protection to *Lesquerella lyrata*.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Cary Norquist, at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella lyrata, a member of the mustard family (Brassicaceae), is an annual that ranges from 1 to 3 decimeters (4 to 12 inches) in height. Plants are shortly pubescent and usually branched near the base. The stem leaves are alternate, ovate to elliptic in shape, smooth or toothed on the margins, with prominent ear-like projections at the bases. The flowers are ascending, on stalks 10 to 15 millimeters (mm) (0.4 to 0.6 inches) long, with yellow petals 5 to 7 mm (0.2 to 0.3 inch) in length. The fruits are silques, globose in shape, 2.5 to 3.5 mm (0.1 inch) long and 3 to 4 mm wide (0.1 to 0.2 inch) (Rollins and Shaw 1973, McDaniel 1987). This species is dormant in the summer, surviving as seeds; germinates in the fall; and overwinters as a rosette (J. Baskin, University of Kentucky, pers. comm. 1989). Plants flower from March to April, fruit and disperse seeds in late April and May.

Lesquerella lyrata is most closely related to *L. densipila*, which occurs disjunctly in Alabama (Rollins 1955). The morphologically similar *L. densipila* has fruits and styles which are pubescent as opposed to those of *L. lyrata* which are glabrous (Rollins 1955, Rollins and Shaw 1973, McDaniel 1987). Although no one questions the distinctiveness of *L. lyrata*, some suggest that a more appropriate separation of these two taxa would be at the varietal level (McDaniel 1987).

Lesquerella lyrata was discovered and described by R.C. Rollins (1955) from specimens he collected at three sites in Franklin County, Alabama. This species was thought to be extinct until it was rediscovered near the type locality in 1984 (Webb and Kral 1986). Extensive field surveys have been conducted for this species repeatedly (Webb pers. comm. 1989, Webb and Kral 1986, McDaniel 1987). However, only one additional population has been located, which is in Colbert County, Alabama (Webb and Kral 1986). In addition, no plants have been located at two of the original localities in Franklin County cited by Rollins (1955), despite repeated attempts (Webb and Kral 1986, McDaniel 1987). Currently, only two populations of *L. lyrata* are known to exist, with one each in Franklin and Colbert Counties, Alabama.

Lesquerella lyrata is a component of glade flora and occurs in association with limestone outcroppings. The terms "glade" and "cedar glade" refer to these shallow-soiled, open areas that are sometimes surrounded by cedar (*Juniperus virginiana*) woods. *Lesquerella lyrata* often occurs essentially without associates; however, at times it may occur with *Leavenworthia alabamica, Arenaria patula, Sedum puchellum* and weedy species such as *Ceratium glomeratum* and *Krigia oppositifolia*. Most of the cedar glade endemics exhibit such weedy tendencies; however, none appear to spread far from their original glade habitat (Baskin and Baskin 1986, Webb and Kral 1986). Current populations are located primarily on glade-like areas that exhibit various degrees of disturbance, including unimproved pastures, cultivated/plowed fields and roadside rights-of-way. Each population consists of several sites located within a 0.4 to 0.8 kilometer (0.25 to 0.5 mile) radius of one another. Population size varies, as with all annuals; however, at times, sites are reported to support hundreds to thousands of individuals (Webb and Kral 1986, McDaniel 1987).

Both populations are located on privately-owned lands. No sites are protected and current populations have been declining over the last few years due to succession from the lack of regular management that is needed to maintain populations of this species (Webb pers. comm. 1989, McDaniel 1987).

Federal actions involving *Lesquerella lyrata* began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2), now section 4(b)(3)(a), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Lesquerella lyrata* was included in the Smithsonian petition and the 1976 proposal. General comments recieved in relation to the 1976 proposal were summarized in an April 26, 1978 publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In December 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal (44 FR 70796), along with four other proposals that had expired. *Lesquerella lyrata* was included as a category 1° species in a revised list of plants under review for threatened or endangered classification published December 15, 1980 (45 FR 82480). Category 1° comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species, but they may have already become extinct. On November 28, 1983, the Service published a supplement to the Notice of Review for Native Plants (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Lesquerella lyrata* was included as a category 2 species in the 1983 supplement and the 1985 revised notice. Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. Data obtained over the last few years supported the plant's reelevation to category 1 and listing as threatened. The data demonstrate a limited distribution and continuing threats to the species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982 be treated as having been newly submitted on that date. This was the case for *Lesquerella lyrata* because of the acceptance of the 1975 Smithsonian report as a petition. In October of 1983, and each succeeding year, the Service found that the petitioned listing of *Lesquerella lyrata* was warranted, but that listing this species was precluded due to other higher priority listing actions and that additional data were being gathered. On April 25, 1990, the Service published a proposal (55 FR 17552) to list *Lesquerella lyrata* as a threatened species, constituting the final petition finding required by the Act.

Summary of Comments and Recommendations

In the April 25, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Colbert County Times*, Tuscumbia, Alabama, on May 10, 1990, and the *Franklin County Times*, Russellville, Alabama, on May 13, 1990.

One comment was received from a private conservation organization. The commentor was supportive of the listing but recommended this *Lesquerella* be listed as endangered rather than

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threatened. The Service's rationale for threatened status is addressed in the following section (see last paragraph).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Lesquerella lyrata* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella lyrata* Rollins (lyrate bladder-pod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Lesquerella lyrata* is endemic to cedar glade areas in northwestern Alabama. It is thought that this species evolved in glade systems that are now highly disturbed and exist as isolated pockets surrounded by agricultural lands (Webb and Kral 1986). Some cedar glade systems continue to be adversely modified as they are utilized for agricultural purposes, while others have been destroyed by housing development or garbage dumping (Kral 1983). Baskin and Baskin (1985) state that few glades in the Southeast have been left completely undisturbed.

As noted previously in this document, *L. Lyrata* now occurs primarily in disturbed glade areas including cultivated fields and unimproved pastures. Thus, agricultural use and the survival of this species are not necessarily incompatible (Webb and Kral 1986). Periodic disturbance, such as by plowing in row crop farming, is needed to arrest succession and maintain populations of *Lesquerella lyrata* in this type of habitat. While the plant may survive under these conditions, populations may be impacted if plowing or herbicide treatment occurs in the spring prior to seed set and dispersal (mid-May). Populations located in pastures are enhanced by disturbance created from light grazing; however, if sites are heavily grazed, this could negatively impact plants by excessive soil compaction. Improvement of pastures with the introduction of forage grasses would eventually decimate populations due to competition (Kral 1983). Mowing along the roadside rights-of-way aids the species in seed dispersal; however, mowing and herbicide application prior to seed set pose a threat (Webb and Lyons 1984).

No site where *Lesquerella lyrata* occurs is protected. Thus, individual sites could be destroyed for developmental purposes as has been the case with other glade areas.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This species is collected for scientific purposes; however, such does not pose a significant threat to this species at this time.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms. Lesquerella lyrata* is unofficially considered endangered in the State of Alabama, although such designation does not afford this species any legal protection.

E. *Other natural or manmade factors affecting its continued existence.* The greatest threat to this species is its extreme vulnerability due to its limited range and small number of populations. Disturbance (natural or artificial) appears to be a key factor in the maintenance of *L. lyrata* (McDaniel 1987). Active management of sites will be required to perpetuate this species. Under natural conditions, *Lesquerella lyrata* is an early successional species that colonizes shallow cedar glade soils and then slowly disappears as the soil layer becomes further developed (E. Lyons, Amherst College, pers. comm. 1988). This species is a poor competitor and is eliminated by shade and competition from the invading perennials (Kral 1983, McDaniel 1987). Due to the continuing loss of cedar glades, presently available habitat for *L. lyrata* is limited primarily to areas modified by human activity. Current populations have declined in recent years due to succession from a lack of management/disturbance (Webb, pers. comm. 1988, McDaniel 1987). Periodic disturbance of habitat arrests succession and brings seeds to the surface which facilitates germination (Baskin, pers. comm. 1988, Webb and Lyons 1984). As with all annuals, this species' long-term survival is dependent upon its ability to reproduce and reseed an area every year. Thus, populations decline and move toward extinction if conditions remain unsuitable for reproduction for many years.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lesquerella lyrata* as a threatened species. This species is not in imminent danger of extinction as current land use practices at the sites have perpetuated populations and no proposed activities are known which would suddenly change this situation. However, this species is extremely vulnerable due to its restricted range and protective measures are needed to assure this species' continued existence. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Publication of critical habitat maps will increase public interest and possibly lead to additional threats for this species from collecting and vandalism. This species occurs at a limited number of sites and all are easily accessible. Publication of critical habitat descriptions and maps would make *Lesquerella lyrata* more vulnerable and increase enforcement problems. All involved State agencies and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Lesquerella lyrata.*

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All known populations are under private ownership. The Environmental Protection Agency will consider this species relative to pesticide use.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection will apply to *Lesquerella lyrata* once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, VA 22201 (703/358-2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Cary Norquist (see **ADDRESSES** Section) 601/965-4900 or FTS 490-4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C 1531-1544; 16 U.S.C 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family:						
Lesquerella lyrata	Lyrate bladder-pod	U.S.A. (AL)	T	403	NA	NA

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Dated: September 14, 1990.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 90-23043 Filed 9-27-90; 8:45 am]
BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Inflated Heelsplitter, *Potamilus inflatus*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the inflated heelsplitter mussel (*Potamilus inflatus*), to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This freshwater mussel is currently known from only the Amite River, Louisiana, and the Tombigbee and Black Warrior Rivers, Alabama. Habitat modification by gravel dredging and for flood control and navigation represent major threats to this species. This rule will implement the protection of the Endangered Species Act of 1973 for the inflated heelsplitter.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: James H. Stewart at the above address, (telephone 601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The inflated heelsplitter was first described as *Symphynota inflata* by Lea in 1831. While the taxonomic status of this species has not been questioned in the literature, there has been considerable discussion of the genus. It has been placed in *Unio*, *Lampsilis*, *Metaptera*, *Margarita*, *Margaron*, and *Proptera*, in addition to the other names discussed here (Simpson 1914, Clarke 1986, Hartfield 1988). *Potamilus* is accepted as the correct generic name by numerous authors (Morrison 1969, Valentine and Stansbery 1971, Clarke 1986, Turgeon *et al.* 1988). The common name in general usage for this species has been the Alabama heelsplitter. This rule follows the common names as used in Turgeon *et al.* (1988) in support of the effort to standardize nomenclature of mussels.

The inflated heelsplitter was known historically from the Amite and Tangipahoa Rivers, Louisiana; the Pearl River, Mississippi; and the Tombigbee, Black Warrior, Alabama, and Coosa Rivers, Alabama (Hurd 1974, Stern 1976, Hartfield 1988). The presently known distribution is limited to the Amite River, Louisiana, and the Tombigbee and Black Warrior Rivers, Alabama (Stern 1976, Hartfield 1988). The collection of this species from the Pearl River by Hinckley was reported by Frierson (1911) and a single valve collected by Parker is curated in the U.S. National Museum (Dr. James Williams, U.S. Fish and Wildlife Service, pers. comm. 1988). There are no other reported collections from the Pearl River (Hartfield 1988). A single specimen was collected from the Tangipahoa River, Louisiana, in 1984 by Stein and Stansbery (Dr. David Stansbery, Ohio State University, pers. comm. 1985). Hartfield (1988) did not find the species in the Tangipahoa River during his survey. Hurd (1974) doubted the occurrence of this species in the Coosa River based upon the single lot available in museums. The species has not been reported from the Coosa or Alabama Rivers in over 20 years (Hurd 1974, Hartfield 1988).

The inflated heelsplitter has an oval, compressed to moderately inflated, thin shell. The valves may gape anteriorly, the umbos are low, and there is a prominent posterior wing that may extend anterior to the beaks in young individuals. The shell is brown to black and may have green rays in young individuals. The umbonal cavity is very shallow and the nacre is pink to purple. Shell length reaches 140 millimeters (5½ inches) in adults (Stern 1976). It is most similar to the pink papershell (*Potamilus ohiensis*), yet is easily distinguished by shell morphology (Hartfield 1988). The shell end teeth of the inflated heelsplitter are more delicate, and the shell is darker and has a pointed posterior, whereas the pink papershell has a rounded posterior. The inflated heelsplitter appears more inflated due to a more developed and rounded posterior ridge. The posterior wing of the inflated heelsplitter is more pronounced and abruptly rounded over the dorsum. The pink papershell may lack much of a wing, and when pronounced, it may be only slightly rounded and extend scarcely above the dorsum (Hartfield 1988). Lending further taxonomic strength to this species' distinction is the occurrence of the pink papershell in lakes and sloughs, while the inflated heelsplitter has not been found in this habitat.

The preferred habitat of this species is soft, stable substrates in slow to moderate currents (Stern 1976). It has been found in sand, mud, silt and sandy-gravel, but not in large gravel or armored gravel (Hartfield 1988). It is usually collected on the protected side of bars and may occur in depths over 20 feet. The occurrence of this species in silt may not indicate that the life cycle can be successful in that substrate (Hartfield 1988). Adult mussels may survive limited amounts of silt where juveniles would suffocate. The occurrence of this species in silt may be because it was established prior to deposition of the silt.

The inflated heelsplitter was listed as a category 2 candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate) in the notice of review published in the Federal Register on May 22, 1984 (49 FR 21664) and January 6, 1989 (54 FR 554). The proposal to list this species was published on October 27, 1989 (54 FR 43835), and a public hearing (held on March 14, 1989) and reopening of the comment period were announced on February 21, 1990 (55 FR 6020).

Summary of Comments and Recommendations

In the October 27, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period was reopened and extended until March 25, 1990, to accommodate the public hearing. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Montgomery Advertiser*, Montgomery, Alabama, on November 24, 1989; the *Baton Rouge Advocate*, Baton Rouge, Louisiana; the *Tuscaloosa News*, Tuscaloosa, Alabama; the *Mobile Press Register*, Mobile, Alabama; and the *Birmingham News*, Birmingham, Alabama, on November 25, 1989. The newspaper notice of the public hearing and reopening of the comment period was published in the *Baton Rouge Advocate*, *Mobile Press Register*, and the *Times Picayune*, New Orleans, Louisiana, on February 24, 1990, and in the *Tuscaloosa News* on February 25, 1990. Five comments were received and are discussed below. A public hearing was requested by the Warrior-Tombigbee Development Association. The hearing was held at the Mississippi Natural Science Museum, Jackson, Mississippi, on March 14, 1990, with seven people attending. Comments were received from three individuals following a statement by the Service.

The Louisiana Department of Wildlife and Fisheries provided a letter in support of the proposal. One Federal agency provided information on hydropower plants without expressing a position on the proposal. A private company commented without stating a position. Two U.S. Army Corps of Engineers' offices commented by copy of memoranda sent to their Washington office. The Mobile District Corps of Engineers' office expressed support for protection of the species, while raising some concerns that are discussed below. The Lower Mississippi Valley Division, Corps of Engineers, did not express a position on the proposal while acknowledging that projects on the Amite River, Louisiana, will require coordination with the Service.

Written comments and oral statements presented at the public hearing and received during the comment periods are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: Is the data adequate to support the listing and should listing be deferred while more data is acquired?

Response: The listing is based upon literature records, a Service contracted survey, and surveys by Service biologists of mussels in all the major river systems of Alabama, Louisiana, and Mississippi. The Service does not believe that additional populations will be found outside the river systems from which the species is currently known. To defer the listing will only defer protection of the species.

Issue 2: One commenter questioned if the data supported the Service's contention that habitat modification is a result of gravel dredging, flood control and major navigation projects and that these factors represent major threats to the existence of the inflated heelsplitter.

Response: The removal of substrate by gravel dredging, flood control and maintenance for navigation permanently alters the habitat and frequently renders it unsuitable for mussels. Numerous studies have demonstrated that riverine mussels cannot survive in impoundments, many of which are for flood control and navigation. The deposition of spoil from channel maintenance for navigation will suffocate mussels (U.S. Army Corps of Engineers 1987). The entire Amite River is subject to gravel dredging and impacts from flood control projects (Hartfield 1989). The lower Tombigbee River is almost continually dredged for channel maintenance with much of the spoil disposal occurring within the river banks. This results in mussels being covered with sediment and suffocated (U.S. Army Corps of Engineers 1987). The construction of numerous impoundments on the Alabama, Tombigbee, Black Warrior, and Coosa Rivers has resulted in a decline in many species of riverine mussels as evidenced by numerous surveys.

Issue 3: The Service should sample to determine if effluents below Tombigbee River Mile 74 are the reason mussels are not present.

Response: The proposed and final rules state that mussels were not found downstream of this site and this was possibly due to effluent discharge. The absence of mussels is supported by field survey results. The cause for this lack of mussels is presented as an observation and possibility rather than a fact supported by data. The Service agrees that sampling to determine why mussels no longer occur in that area would be desirable.

Issue 4: The Service should defer listing while additional information is gathered or consider some reasonable and prudent alternatives to listing.

Response: The Service has reviewed available scientific and commercial data relevant to this species and considers it sufficient to make a determination. The Service could not find an alternative to listing that would protect this species, nor has anyone else proposed such an alternative.

Issue 5: Has the proposed rule been reviewed by individuals outside the Service to ensure the determination will be unbiased?

Response: A notice of intent to propose this species for listing, dated June 6, 1989, was provided to Federal and State agencies that could have projects that may affect this species. After publication, the Service provided a copy of the proposed rule to more than 100 agencies, organizations, and individuals and published a legal notice in several local newspapers to notify the public. All resulting comments were fully considered.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the inflated heelsplitter should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the inflated heelsplitter are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The inflated heelsplitter historically occurred in the Amite and Tangipahoa Rivers, Louisiana; the Pearl River, Mississippi; and the Tombigbee, Black Warrior, Alabama, and Coosa Rivers, Alabama (Hurd 1974, Stern 1976, Hartfield 1988, 1989). It is currently known from only the Amite, Tombigbee and Black Warrior Rivers. Only one specimen has been collected from the Tangipahoa River, and in a recent survey by Hartfield (1988) no additional specimens were found. Hartfield found the upper Tangipahoa River to be much smaller than areas where this species occurs in other rivers. The stretch of the Tangipahoa River where the one specimen was collected has been severely eroded in recent years, presumably by gravel mining (Hartfield 1988).

The inflated heelsplitter has been reported from two areas on the Pearl River, Mississippi. One site was in the lower Pearl downstream of Bogalusa, Louisiana (Williams, pers. comm. 1988) and the other site was near Jackson, Mississippi (Frierson 1911). The exact collecting site is unkown for both of these records. The Pearl River near Jackson has been impacted by pollution, channelization, flood control levees, and by an impoundment for recreation and a municipal water supply. The lower Pearl River near Bogalusa has been impacted by channel erosion, habitat modification for navigation, and industrial and urban pollution (Hartfield 1988). Based upon the scarcity of records from the Coosa River, Hurd (1974) doubted the historic occurrence of this species in that system. It has not been reported from that system since the construction of impoundments for flood control and hydropower.

The type specimen was reported from the Alabama River by Lea (1831) and the species has been reported from this same river by others (Conrad 1834, Simpson 1914). However, it has not been collected from the Alabama River in many years, presumably due to the impoundment of that system for navigation, flood control, and hydropower (Hartfield 1988).

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The only known site for this species in the Black Warrior River is below Selden (=Warrior) Dam near Eutaw, Alabama. A single sepcimen was collected by Grace in the mid-1970's (Williams, pers. comm. 1988). A survey by Service divers in 1989 found two fresh dead shells but no live individuals. The species undoubtedly continues to survive in the Black Warrior River below Selden Dam. The remainder of the Black Warrior River has been impacted by impoundment for navigation and sedimentation from surface mining.

The species continues to survive in the Tombigbee River in at least two localities, Gainesville Bendway and downstream of Coffeeville (=Jackson) Dam. Most of the Tombigbee River was modified by construction of the Tennessee-Tombigbee Waterway. This resulted in the loss of riverine habitat by impoundment, channelization, and flow diversion. Habitat that was originally believed would continue to support mussel populations has been destroyed by heavy accumulations of sediment. The only known population of the inflated heelsplitter in the Waterway is below Gainesville Spillway where the normal river flow, with the exception of navigation lockages, is released from this impoundment (Paul Hartfield, Mississippi Department of Wildlife Conservation, pers. comm. 1989). This has maintained a relatively clean and stable habitat suitable to this species.

The only other known population in the Tombigbee River occurs downstream of Coffeeville Dam. In this stretch, the species has been collected by Service and Mississippi Department of Wildlife Conservation biologists at four sites over a 12 river mile area. Below the lowermost of these collecting sites, no mussels were found by surveys in 1985 and 1986 by Service and Department biologists, possibly due to impacts from industrial effluents. The entire Tombigbee River has been modified for navigation by impoundment and channelization, and frequent dredging is required to maintain the navigation channel. Navigation dredging threatens this population by the deposition of spoil on bars along the sides of the river channel (Hartfield 1988). This material washes onto mussel habitat below the bars and may suffocate mussels and make conditions unfavorable for recruitment.

The inflated heelsplitter continues to exist in the Amite River with major threats being gravel mining and proposed channel modification for flood control. Hartfied (1989) concluded that 30 percent of the range of this species in the Amite River had been lost since 1976, primarily due to gravel mining. Without protection, this loss is expected to continue with the intensive gravel mining and resulting headcutting that is ongoing. The Corps of Engineers and Louisiana Department of Transportation and Development are studying methods of flood control on the Amite River. The proposed Darlington Reservoir would be constructed upstream of existing inflated heelsplitter habitat and the actual impoundment of the stream may not impact this population of the species. The impact of this reservoir will likely be determined by the type and method of water releases. A deep water release would result in colder water temperatures, which may interrupt the life cycle of this mussel. The control of water flows, especially during low water levels, could strand mussels on dry bars and may reduce the capacity of the river to flush sediments from mussel habitat. An alternative flood control measure under consideration is the widening and channelization of the Amite River. This potential action would likely eliminate the inflated heelsplitter from the Amite River, leaving the only population in the Tombigbee and Black Warrior system.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The species is not of commercial value at this time and any collecting is likely to be for scientific purposes. Over collection is not considered a threat

C. *Disease or predation.* Diseases are not known for mussels, although unexplained dieoffs, have occurred. Predation may exist to a limited extent when muskrats and raccoons prey on mussels. This would have a minimal effect since this species seems to prefer deeper water.

D. *The inadequacy of existing regulatory mechanisms.* Existing laws are inadequate to protect this species. It is not recognized by Alabama or Louisiana as needing any special protection. Both States have regulations that protect mussels that are federally listed. The species is not given any special consideration under other environmental laws when project impacts are reviewed.

E. *Other natural or manmade factors affecting its continued existence.* The known populations are isolated from each other and apparently are limited in extent. This could result in low genetic variation and make these populations more susceptible to environmental disturbance due to loss of adaptability.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the inflated heelsplitter as threatened. Threatened status was chosen because the species still exists in three rivers, and the range within two of these rivers consists of reproducing populations that are widely distributed.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time due to the lack of benefit from such designation. All Federal and State agencies likely to be involved have been notified of the location and importance of protecting this species' habitat. No additional benefits would accrue from a critical habitat designation that would not accrue from the listing. Precise locality data are available to appropriate agencies through the Service office described in the **ADDRESSES** section. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it is not prudent to declare critical habitat for the inflated heelsplitter.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include the Environmental Protection Agency in consideration of the Clean Water Act's provisions for pesticide registration, and waste management actions. The Corps of Engineers will include this species in project planning and operation and during the permit review process. The Federal Highway Administration will consider impacts of bridge and road construction at points where known habitat is crossed. Continuing urban development within the drainage basins may involve the Farmers Home Administration and their loan programs.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this rule is James H. Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Class							
Hustapiller, Infated	*Potamilus inflatus*	U.S.A. (AL, LA, MS)	NA	T	404	NA	NA

Dated: September 24, 1990.
Bruce Blanchard,
Acting Director, Fish and Wildlife Service.
[FR Doc. 90-22044 Filed 9-27-90; 8:45 am]
BILLING CODE 4310-55-M

federal register

Friday
September 28, 1990

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-90-2069; FR-2687-N-04]

Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On April 18, 1990, the Department published in the **Federal Register** (55 FR 14556) "Lead Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing" (Interim Guidelines), providing information regarding the identification and abatement of lead-based paint in the Public and Indian Housing programs of the Department of Housing and Urban Development. Today's Notice publishes a revised chapter 8, "Worker Protection", intended to replace chapter 8 of the Interim Guidelines.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Project Management Division, Office of Public and Indian Housing, room 4136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (202) 708-1800. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: A history of recent departmental regulatory actions and publications associated with Lead-Based Paint Poisoning Prevention was included in the initial issuance of the Interim Guidelines, published on April 18, 1990 (15 FR 14556).

Today's document is limited to publication of a revised chapter 8 of the Interim Guidelines, together with information concerning the Department's plans to distribute copies of the revised Interim Guidelines to all Public Housing Agencies and Indian Housing Authorities, and to HUD Regional and Field Offices.

In the Interim Guidelines, the original chapter 8 prescribed two standards for the monitoring of worker blood lead levels and for the medical removal of workers:

	OSHA standard	HUD working group standard
8.3.3 Monitoring Worker Blood Lead Levels.	*40 µg/dl	25 µg/dl
8.3.4 Medical Removal of Workers.	50 µg/dl	30 µg/dl

*µg/dl—micrograms of lead per deciliter of whole blood.

The original publication of the Interim Guidelines erroneously attributed the above-noted "HUD Working Group" standards to the National Institute of Occupational Safety and Health (NIOSH) rather than to the working group in the field of lead based paint and lead poisoning that was actually responsible for the standard.

Provision of alternative standards, however, creates an ambiguity in the Interim Guidelines where explicit direction would better serve the purpose of the document. Following extensive discussions between representatives of the original HUD Working Group and the Occupational Safety and Health Administration (OSHA), it was agreed that revisions to chapter 8, setting out a single standard and new guidance concerning the use of full worker protection, including respirators, were appropriate.

In addition to the republications, with changes, of chapter 8 as described above, the Department has made minor technical and typographical changes to the Interim Guidelines and plans to distribute the document to all Public Housing Agencies, Indian Housing Authorities, and HUD Regional and Field Offices during October, 1990.

After October 31, 1990, other members of the public may obtain a copy of the revised Interim Guidelines by writing to: HUD USER, P.O. Box 6091, Rockville, MD 20850. or by telephoning (301) 251-5154, or the toll-free number, 1-800-245-2691.

A supplement to the Finding of No Significant Impact with respect to the environment related to the Interim Guidelines has been made following an environmental assessment in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. This supplement and the original Finding of No Significant Impact is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Dated: September 25, 1990.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

Chapter 8: Worker Protection

8.0 Introduction

The potential for exposure to lead exists during all lead-based paint abatement projects. Employees can also be exposed to potential hazards from many other chemicals and physical agents. This chapter focuses on providing recommendations that will assist the contractor in establishing programs to protect employees from the hazards of lead. The guidelines in this chapter are intended to provide, at a minimum, the level of protection afforded by the Occupational Safety and Health Administration's (OSHA) general industry lead standards, 29 CFR 1910.1025, although this standard does not apply to construction (abatement) workers. This does not restrict employers from implementing additional controls or measures that would provide increased protection for their employees. Because of the unique circumstances of the abatement industry, the recommendations which follow differ somewhat from the lead standard. Most importantly, these Guidelines recommend that workers potentially exposed to lead must use respiratory protection and follow safe work practices. Employees are always potentially exposed whenever they are engaged in lead abatement work including operations associated with the clean-up, removal or disposal of lead dust. (See § 8.3.2 for additional guidance)

The most effective way to protect workers is to minimize exposure through the use of engineering controls and good work practices. Respirators should not be relied upon as the sole method of protection. Airborne lead exposure levels during lead-based paint removal operations have not been well documented in scientific literature. Lead poisoning in workers performing lead-based paint abatement procedures has been well documented. Most cases are the result of improper abatement methods and poor work practices.

The employer of abatement workers is responsible for the development and implementation of worker protection programs. These programs are essential in minimizing worker risk of lead exposure. Lead-based abatement projects vary in their scope and potential for exposing workers to lead and other hazards. Many projects may involve limited abatement, such as the removal of a few interior doors. Others may involve the removal, or stripping off, of substantial quantities of lead-based paints in large housing developments. The PHA should consult a qualified consultant to develop and implement an appropriate worker protection program.

At least two States, Maryland and Massachusetts, have modified OSHA's general industry lead standard specifically for workers in the construction trades. Employers will need to ensure that their programs meet the requirements for those States having specific standards covering lead in the construction industry.

In general, the following elements should be included in the employer's written employee protection plan. These elements can be found, as *major provisions*, in the OSHA general industry lead standard.

Note: Employers can refer directly to the OSHA lead standard, 29 CFR 1910.1025 for complete requirements.

- Engineering controls and good work practices;
- Medical surveillance and provisions for medical removal;
- Protective clothing and equipment;
- Respiratory protection program;
- Exposure monitoring;
- Recordkeeping;
- Hygiene facilities and practices; and
- Training (See section 8.7)

8.1 Engineering and Work Practice Controls

Engineering controls, where feasible, and good work practices must be used to minimize employee exposure to lead. Engineering controls and good work practices help protect the environment and occupants of adjacent units, and they make cleanup an easier task. (See chapter 10)

Some examples of good engineering and work practice controls are:

- Following the personal hygiene practices described in section 8.7.2;
- Prohibiting unacceptable methods of abatement such as open flame burning and machine sanding without attached HEPA filtration;
- Providing on-site washing facilities and segregated areas free from active abatement of lead for changing clothes;
- Shutting down of forced-air systems and sealing of all intake and exhaust points in the work area and providing alternate sources of heat, if necessary;
- Daily cleanup procedures; and
- Spray misting of dry debris before cleanup and prohibition of dry sweeping.

8.2 Respiratory Program Requirements

Respirators must be worn by all workers potentially exposed to lead. (Any worker present on an abatement site at any time prior to completion of post-abatement cleanup is potentially exposed to lead.) This practice should supplement the continued use of engineering controls and good work practices. Employers must assure that the respirator issued to the employee exhibits minimum face piece leakage and that the respirator is fitted properly. Respirators must be supplied by the employer at no cost to employees. Employers must perform qualitative or quantitative face fit tests at the time of the initial fitting and at least semiannually thereafter for employees wearing negative pressure respirators.

8.2.1 Respirator Program Requirements

The OSHA respiratory protection standard 29 CFR 1910.134 outlines the requirements for a minimally acceptable program of respiratory protection. When respirators are provided, the employer must establish a respiratory protection program in accordance with the OSHA standard 29 CFR 1910.134 (b), (d), (e) and (f) and the OSHA lead standard 29 CFR 1910.1025.

OSHA's respiratory protection standard requires a minimally acceptable respiratory protection program to include the following elements:

- Written standard operating procedures governing the selection and use of respirators must be established;
- Respirators must be selected on the basis of hazards to which the worker is exposed;
- The user must be instructed and trained in the proper use of respirators and their limitations including fit testing;
- Respirators must be regularly cleaned and disinfected;
- Respirators used routinely must be stored in a convenient, clean, and sanitary location;
- Respirators used routinely must be inpected during cleaning for worn and deteriorated parts;
- Respirators should be assigned to workers for their exclusive use;
- Appropriate surveillance of work area conditions and degree of worker exposure or stress must be maintained;
- There must be regular inspection and evaluation to determine the continued effectiveness of the program;
- Employees should not be assigned tasks requiring the use of respirators unless it has been determined that they are physically able to perform the work and use the equipment. A physician must determine through a medical examination the respirator user's medical status and review it annually.
- NIOSH/MSHA approved respirators must be used when they are available. The respirator furnished must provide adequate respiratory protection against lead or other hazards for which it is designed.

8.2.2 Respiratory Selection

In the absence of hazardous contaminants other than lead, the half-mask, air-purifying respirator with HEPA filters should be adequate for most abatement situations to maintain low blood lead levels. (A HEPA filter is one that is at least 99.97% efficient against monodispersed particles that are 0.3 micron in diameter or larger.) There may be certain operations or conditions, however, where air monitoring results indicate that a more protective respirator is needed. Employers should refer to Table II of the general industry lead standard for the proper selection of respirators. Powered air-purifying respirators can be substituted if the employee chooses to use this type of respirator.

In addition, if exposure monitoring indicates airborne exposure to other contaminants, such as solvents, re-evaluation of the respirator type is warranted. Re-evaluation of the respirator program and type is also indicated when a worker demonstrates a continued increase in blood lead levels.

The employer must permit each employee who uses a filter respirator to change the filter element whenever an increase in breathing resistance is detected and must maintain an adequate supply of filter elements. Employers must also permit every employee who wears a respirator to wash their face and respirator face piece whenever necessary to prevent skin irritation associated with respirator use.

If for any reason, a worker's breathing becomes difficult while wearing a respirator, that employee should leave the work site to change respirator cartridge(s). Respirator cartridge(s) should be changed whenever the wearer has difficulty breathing or when there is chemical vapor breakthrough.

8.3 Protective Clothing and Equipment

Good industrial hygiene practice requires the employer to provide and assure that employees use protective clothing and equipment. Use of protective clothing and equipment helps to reduce employee exposure to lead dust and prevents the transfer of such dust from the abatement work area to

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other work areas or environments (e.g., homes and vehicles).

Protective clothing and equipment must be used whenever the potential for lead exposure occurs. The pilot abatement program will determine whether or not additional specialized protective items will be required during the remainder of the abatement process to protect against lead poisoning. Protection against the adverse effects of solvents and caustics may also be required. The employer is responsible for:

- Providing and assuring use of appropriate protective clothing and equipment;
- Providing a clean changing area (this is an area segregated from the work area by a physical barrier and which prevents additional employee lead exposure);
- Providing water for washing hands and face and providing shower facilities if possible;
- Enforcing the removal of protective clothing at the end of each work day and before eating, drinking, or smoking;
- Provide for the cleaning, laundering or disposal of protective clothing and equipment; and
- Informing the worker about proper use and maintenance of clothing and equipment.

8.3.1 Types of Protective Clothing and Equipment

The following protective work clothing and equipment may be required during abatement, cleanup, and disposal:

- Protective coveralls;
- Disposable shoe covers;
- Gloves;
- Vented goggles and face shields;
- Respirators and cartridges;
- Hats or other hair protection.

Protective coverall and shoe covers constitute basic worker protection gear and should be worn at all times. Disposable coveralls and separate shoe covers are preferred to avoid the need for laundering. Separate shoe covers allow the worker to leave and re-enter a work area and merely replace his/her shoe covers rather than the coveralls as well. These coveralls need to be replaced daily rather than each time the worker leaves and re-enters a work area.

Disposable items can be either breathable or non-breathable. Non-breathable coveralls should not be used when the possibility of heat stress exists. The possibility of heat stress and its signs and symptoms should be discussed with all workers.

Glove material should be appropriate for the specific chemical exposure (e.g., solvents and caustics). Cotton gloves provide some protection against the contamination of hands and cuticles with lead dust. Paper suits and shoe covers are not appropriate for wet abatement processes.

8.3.2 How to Use Protective Clothing and Equipment

Workers should follow these procedures before work begins:

- Change into work clothing and shoe covers in the clean section of the designated changing areas;
- Use work garments of appropriate size, and use duct tape to reinforce their seams (e.g., underarm, crotch, and back);
- Select and wear appropriate protective gear, including respirators and hard hats, before entering the work area;
- Store any clothing not worn under protective clothing in the designated changing area; and
- Wear clothing that is appropriate for existing weather and temperature conditions under the protective clothing.

Workers should follow these procedures upon leaving the work area:

- HEPA vacuum heavily contaminated protective work clothing while it is still being worn;
- Remove shoe covers and leave them in the work area;
- Remove protective clothing and gear in the dirty area of the designated changing area. Remove protective coveralls by carefully rolling down the garment to reduce exposure to dust;
- Remove respirators last; and
- Wash hands and face.

Workers should follow these procedures upon finishing work for the day (in addition to procedures described above):

- Place disposable coveralls and shoe covers with the abatement waste;
- Place clothes for laundering in a closed container;
- Clean protective gear, including respirators, according to standard procedures;
- Wash hands and face again;
- If showers are available, take a shower and wash hair; and
- If shower facilities are not available at the work site, shower immediately at home and wash hair.

8.4 Hygiene Facilities and Practices

For employees who work in areas where their skin or clothing comes into contact with fume, dust, mist or liquids containing lead, the precautions below must be rigidly followed.

- The employer must provide clean change areas with separate storage facilities for protective work clothing and equipment and for street clothes. If possible, employers should ensure that all employees shower at the end of each shift and do not wear work clothing away from the workplace.
- The employer must ensure that employees who work with lead remove their protective clothing and wash their hands and face prior to eating, drinking, smoking or applying cosmetics and that these personal practices are never permitted while in the work area.
- The employer must ensure that contaminated protective work clothing or equipment is cleaned of surface dust by HEPA vacuuming, down draft booth, or other cleaning method before employees leave the work area.

8.5 Medical Surveillance

- Medical surveillance, which consists of biological monitoring of worker blood lead levels and medical examinations, must be implemented for all employees who are potentially exposed to lead. One purpose of biological monitoring is to establish baseline blood lead levels in workers and to detect early increases in worker blood lead levels. Medical examinations, including collection of blood samples, must be performed by, or under the supervision of, a licensed physician. The specific content of the exam must be determined by the examining physican.

The employer must notify employees in writing of their blood lead levels. If the employees' blood lead levels exceed the numerical criterion for medical removal, they are qualified for temporary medical removal with protection benefits.

Medical surveillance must be provided to employees at no cost and at a reasonable time and place. The following subsections describe the current practices for medical surveillance for lead.

8.5.1 Preplacement Medical Examination

Before abatement work and before respirator fit testing, workers must be referred to a physician for a medical examination.

8.5.2 Periodic Medical Examination

A periodic medical examination must be provided at least annually to all employees for whom a blood sampling test conducted any time during the preceding 12 months indicated a blood lead level at or above 40 μg of lead per deciliter of whole blood (often referred to as 40 μg/dl). The following conditions necessitate more frequent medical examinations:

- As soon as possible after a worker notifies the employer that he or she has signs or symptoms associated with lead toxicity;
- Whenever the worker desires medical advice concerning the effects of current or past exposure to lead;
- Whenever workers seek medical advice concerning the effects lead exposure can have on the ability to procreate a healthy child;
- Whenever workers show difficulty in breathing during a respirator fit test or during respirator use;
- As medically appropriate for workers who were removed due to lead exposure; and
- Immediately upon notification that a worker is pregnant.

8.5.2.1 Other Blood Lead Trigger Levels

The 40 μg/dl medical removal level contained in these Guidelines was taken from the OSHA's general industry standard for lead, which was promulgated in 1978. Although not recommended by these Guidelines, some authorities believe that medical removal should take place at lower levels. The City of Baltimore requires the removal of workers whenever three blood sampling tests average more than 25 μg/dl or a single test exceeds 30 μg/dl. The National Institute of Building Sciences project task force on lead paint abatement recommended adoption of the Baltimore medical removal standards. In a related development, the Association of State and Territorial Epidemiologists has recently recommended that occupational lead levels above 25 μg/dl be considered a reportable disease. PHAs therefore should be aware that recommendations regarding medical removal may change in the future.

8.5.3 Physical Examinations

Medical examinations must include the following:

- A detailed work and medical history that pays particular attention to past lead exposure and past gastrointestinal, hematologic, renal, cardiovascular, reproductive, and neurological problems as well as personal habits such as smoking and hygiene;
- A thorough physical examination that pays particular attention to teeth, gums, and hematologic, gastrointestinal, renal, cardiovascular, and neurological systems;
- Evaluation of pulmonary status to determine whether the worker is capable of wearing a respirator;
- A blood pressure measurement;
- A blood sample and analysis that determines blood lead levels, hemoglobin and hematocrit, red cell indices, peripheral smear morphology, blood urea nitrogen, serum creatinine, and zinc protoporphyrin;
- A routine urinalysis with microscopic examination;
- Pregnancy testing, or labortory evaluation of male fertility, if requested by a worker.
- Any laboratory or other test which is recommended by the examining physician.

8.5.4 Special Provisions for Blood Lead Monitoring

Blood lead and zinc protoporphyrin must be monitored when the following conditions occur:

- At least every 2 months during the first 6 months, and every 6 months thereafter;
- At least every 2 months for each worker whose last blood sampling and analysis indicated a lead level at or greater than 40 μg/dl. Continue testing at least every 2 months until two consecutive tests indicate blood lead levels less than 40 μg/dl.
- At least monthly when the worker has been medically removed.

When the results of the above sampling indicate that the employee's blood lead level exceeds the criterion for medical removal, a second follow-up blood sampling test must be administered within 2 weeks after the employer receives the results of the first test.

Analysis of blood samples must be conducted by a laboratory approved by OSHA. Employers should contact their local OSHA area office for a current list of approved labs.

8.5.5 Written Medical Opinion

Employees must receive a copy of a written medical opinion from each physician consulted containing the following information:

- Whether the employee has any detected medical condition which would place his/her health at increased risk from lead exposure;
- Any special protective measures or limitations on worker's exposure to lead;
- Any limitation on respirator use, including whether a powered air purifying respirator can be worn if a physician determined that a negative respirator could not be worn; and
- Results of blood lead determinations. The employer must implement and act consistent with these recommendations.

Findings of lab results or diagnoses unrelated to the workers exposure to lead should not be communicated to employers or included in a written opinion.

Employees should be advised by each physician of any medical condition, occupational or non-occupational, which necessitates further medical exam or treatment.

8.5.6 Information Provided to Examining Physician

The following information must be provided to the examining physician:

- Copy of the standard (29 CFR 1910.1025) and appendices;
- Description of worker's duties as it relates to his/her exposure;
- Exposure level or anticipated exposure level to lead;
- Personal protective equipment used or expected to be used;
- Prior blood lead determinations; and
- Any written medical opinions that the employer has or is in his control concerning a worker.

8.5.7 Chelation

No employees must be subjected to prophylactic chelation at any time. If therapeutic or diagnostic chelation is to be performed, the employer must assure that it be done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring and that each employer is notified in writing prior to its occurrence.

8.6 Medical Removal Protection

Medical removal is designed to give employees time to reduce blood lead levels. With good engineering, work practices, personal hygiene, and respiratory protection practices in place, very few employees should reach removal trigger levels. There are different types of removals. While employees are removed, they must be placed in jobs that will not result in additional exposure to lead. Removal from lead exposed occupations is triggered by results of employee blood testing or a physician's orders (see sections 8.6.3 through 8.6.5).

The PHA should refer to OSHA's general industry standard for lead, reference 29 CFR 1910.1025(k), for complete guidance on this subject.

8.7 Exposure Monitoring

Lead presents an insidious exposure hazard to workers. Airborne levels capable of causing permanent harm may not be visible to the eye. An initial determination must be made by the employer. The initial determination is an evaluation to determine whether employees are potentially exposed to lead. The goal is to establish the level of exposure expected. PHA's may rely on information collected during "Pilot

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Abatement Projects" described in section 6.3.2. Indications of possible overexposure to lead, such as employee health complaints, prior abatement experience, and prolonged or intense lead-based paint removal, should lead to an initial monitoring of the workplace. If exposure monitoring is conducted as part of the initial determination, it may be limited to a representative sample of exposed employees who the employer reasonably believes are exposed to the greatest airborne concentrations of lead in the workplace. Written records of these monitoring results should include exposure levels, sampling data, location within the worksite, and the name and social security number of each employee monitored.

If the initial monitoring reveals employee exposure to be at or below 30 μg of lead per cubic meter of air, the measurements need not be repeated unless a production, process, control or work practice change occurs. But if the initial determination or subsequent monitoring reveals employee exposure at or above 30 μg but below 50 μg of lead per cubic meter of air, the employer must repeat monitoring at least every six months. On the other hand, if this initial monitoring indicates lead levels above the 50 $\mu g/m^3$ level, this monitoring should be repeated quarterly.

Exposure monitoring results are to be used by employers for selecting the appropriate respiratory device and in determining the need for engineering controls. Exposure monitoring can also assist employers in identifying sources of exposure and the need for modifying abatement practices, including the need for additional engineering controls to reduce exposure. Since respirator protection is necessary for all workers potentially exposed to lead, an increase in blood lead levels could indicate improper use or selection of respirators or poor work practices (e.g., ingestion and/or inhalation of lead from contaminated clothes or hands).

Qualified safety and health consultants should review the exposure monitoring results and recommend an appropriate course of action. Within five working days after the receipt of monitoring results, the employer must notify each employee, in writing, of the results which represent that employee's exposure and a description of any corrective actions to be implemented.

Exposure to lead in the air can be monitored by measuring the concentration of lead in the breathing zones of workers (this is known as personal sampling). Full shift (for at least 7 continuous hours) personal samples should be taken.

Technical Note: The employer must use a method of monitoring and analysis which has an accuracy (to a confidence level of 95%) of not less than plus or minus 20% for airborne concentrations of lead equal to or greater than 30 μg per cubic meter of air.

8.8. Employee Information and Training

The employer of abatement workers must institute a training program for and assure participation of the workers who are subject to exposure to lead or for whom the possibility of skin or eye irritation exists.

The employer must assure that each employee is informed of the following:

- The content of the OSHA lead standard 29 CFR 1910.1025 and its appendices.
- The purpose, proper selection, fitting, use, and limitations of respirators.
- The purpose and a description of the medical removal protection program, including information concerning the adverse health effects associated with excessive exposure to lead with particular attention to the adverse reproductive effects on both males and females.
- The hazards to the fetus and additional precautions for employees who are pregnant.
- Engineering controls and work practices associated with the employee's job assignment.
- The content of any compliance plan in effect.
- Instructions to employees that chelating agents should not routinely be used to remove lead from their bodies, and should not be used at all except under the direction of a licensed physician.

8.9 Recordkeeping

The purpose of recordkeeping is to comply with any applicable local, State, and Federal regulations, and to document ongoing exposure and medical monitoring of workers. The abatement contractor or PHA, if force account labor is used, is responsible for maintaining written records of exposure monitoring, medical surveillance, and medical removal.

8.9.1 Exposure Monitoring

Exposure monitoring records should contain the following information:

- Dates, number, duration, location, and results of each sample taken;
- A description of the sampling procedures used to determine representative employee exposures;
- A description of the sampling and analytical methods used and evidence of their accuracy;
- The type of respirator worn;
- The worker's name, social security number, and job classification of employee monitored, and of all other employees whose exposure the measurement is intended to represent; and
- Environmental variables that could affect measurement of the worker's exposure (e.g., temperature and humidity).

Exposure monitoring records should be maintained by the employer for 40 years or for the duration of employment plus 20 years, whichever is longer.

8.9.2 Medical Surveillance Records

Medical surveillance records must include:

- The worker's name, social security number, and a description of duties;
- A copy of the physician's written opinions;
- Results of any airborne exposure monitoring done for that worker and the representative exposure concentrations supplied to the physician;
- Medical complaints related to lead exposure;
- A copy of the medical exam results, including medical and work history and a description of laboratory procedures;
- A copy of standards or guidelines used to interpret the test results; and
- A copy of the results of any biological monitoring.

Medical surveillance records should be maintained for 40 years or for the duration of employment plus 20 years, whichever is longer.

8.9.3 Medical Removal Records

Medical removal records should include the following information:

- The name and social security number of the worker;
- The date of each occasion that the worker was removed from current exposure to lead;
- The date on which the worker was returned to his or her former job status;
- A brief explanation of how each removal was or is being accomplished; and
- A statement indicating whether or not the reason for the removal was an elevated blood lead level.

These records should be maintained for at least the duration of any worker's employment.

8.9.4 Availability

All records must be made available upon request to the Assistant Secretary of Labor for OSHA and the Director of NIOSH for examination and copying.

Additionally the employer must do the following upon request:

- Make environmental monitoring, biological monitoring, and medical removal records available to affected employees, former employees, or authorized employees for examination and copying; and
- Making employee's medical records available to affected employee or authorized employee or to a physician or other person designated by such affected employee or authorized employee for examination and copying.

8.9.5 Transfer of Records

Whenever the employer ceases to do business, the successor employer must receive and retain all records required to be maintained. When the employer ceases to do business and there is no successor employer to receive and retain the records, these records must be transmitted to the Director of NIOSH.

At the expiration of the retention period for the records required to be maintained, the employer must notify the Director of NIOSH at least 3 months prior to the disposal of such records and must transmit those records to the Director of NIOSH if requested within the period.

Other Employer Requirements

In addition to the lead standard, there are many standards that abatement employers must comply with. These standards are enforced by OSHA. They are:

- 29 CFR 1926.20—General safety and health provisions;
- 29 CFR 1926.21—Safety training and education;
- 29 CFR 1926.25—Housekeeping;
- 29 CFR 1926.28—Personal Protective Equipment
- 29 CFR 1926.51(f)—Washing facilities;
- 29 CFR 1926.55—Gases, vapors, fumes, dusts, and mists;
- 29 CFR 1926.57—Ventilation;
- 29 CFR 1926.59—Hazardous Communication Standard;
- 29 CFR 1926.103—Respiratory protection; and
- 29 CFR 1926.353(c)—Ventilation: Welding, cutting, or heating of metals of toxic significance.

Copies of these standards are available from OSHA.

One very important standard that all employers are required to meet is OSHA's Hazard Communication Standard, 29 CFR 1926.59. The standard states that workers have the right to know what hazards they will be exposed to, what precautions to take, and what sources of information are available to them. The standard also requires employers to have a written hazard communication program for their workplaces. An example of a PHA hazard communication program is provided in appendix 10.

All worker education programs must discuss and make available the Hazard Communication Standard. It is also recommended that workers be provided with a copy of chapter 8 of these Guidelines (Worker Protection). Employers should also check local requirements, as some States have adopted their own right-to-know regulations.

OSHA standard, 29 CFR 1910.20, Access to Employee Exposure and Medical Records, requires that workers be given access to their medical and exposure records and to results from any studies conducted by the employer. The worker can also request an explantion of what his or her medical records mean. In addition, the standard gives workers the right to examine industrial hygiene sampling information, results of biological monitoring, exposure records, and material safety data sheets.

[FR Doc. 90-23110 Filed 9-27-90; 8:45 am]
BILLING CODE 4210-23-M

VOL
55

ISS
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SE
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1990

UMI

federal register

Friday
September 28, 1990

Part X

Environmental Protection Agency

40 CFR Part 721
Proposed Significant New Uses of Certain Chemical Substances

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50584; FRL-3768-9]
RIN 2070-AB27

Proposed Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and are subject to TSCA section 5(e) consent orders issued by EPA. This proposal would require certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be submitted to EPA by October 29, 1990.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room E-105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for each of the new chemical substances covered in this SNUR is OPTS-50584, followed by the last four digits of the number of the proposed CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit VIII. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(d)(1) and 5(b), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

III. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substances under § 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), the effective date of the 5(e) order, toxicity of concern, any recommended tests identified in the section 5(e) order, and the CFR citation assigned in the regulatory text section of this rule. In addition, the basis for each section 5(e) order is a finding under section 5(e)(1)(A)(i) and (ii)(I) of TSCA that these substances may present an unreasonable risk of injury to human health and the environment. To determine what would constitute significant new uses of these substances, EPA considered relevant information about the toxicity of the substances, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA.

The specific uses which are proposed to be designated as significant new uses are cited in the regulatory text section of this rule. The requirements specified by these citations will be found in 40 CFR 721.50 through 91, subpart B of part 721. Subpart B was published in the Federal Register of July 27, 1989 (54 FR 31298).

EPA previously proposed a SNUR for the chemical substance submitted as P-83-237 (49 FR 4390 on February 6, 1984) but is reproposing here because EPA and the submitter of the PMN have modified the terms of the consent order. EPA and the submitter of P-83-1162, P-83-1163, P-84-1219, P-85-36, P-85-236, P-85-706, P-85-1184, and P-86-838, have also modified the terms of the respective consent orders. Comments regarding the proposed SNURs or in the case of P-83-237, a reproposed SNUR, should reflect the modified terms of the consent orders.

PMN Number P-83-237

Chemical Name: (generic) Halogenated alkyl pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: April 4, 1984.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would also characterize possible central nervous system effects. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1858.

PMN Number P-83-1162

Chemical Name: (generic) Halogenated alkyl pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: August 7, 1984.
Toxicity concern: Similar substances have been shown to cause cancer and liver effects in test animals and toxicity to aquatic organisms.
Recommended testing: A 2-year rodent oncogenicity study as described in 40 CFR 798.3300 to characterize possible carcinogenicity. A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver effects. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1858.

PMN Number P-83-1163

Chemical Name: (generic) Halogenated pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: August 7, 1984.
Toxicity concern: Similar substances have been shown to cause liver toxicity and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver toxicity. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1835.

PMN Number P-84-1219

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: April 19, 1986.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity testing on the PMN substance has shown it to cause toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would also characterize possible central nervous system effects. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-85-36

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: January 24, 1986.
Toxicity concern: Similar substances have been shown to cause cancer, liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 2-year rodent oncogenicity study as described in 40 CFR 798.3300 to characterize possible carcinogenicity. A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-85-216

Chemical Name: (generic) Halogenated pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: The PMN substance and similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1835.

PMN Number P-85-236

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: The PMN substance and similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-85-536

Chemical Name: (generic) Halogenated pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1835.

PMN Number P-85-536

Chemical Name: (generic) Halogenated pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.

Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1835.

PMN Number P-85-706

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: January 24, 1986.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-85-1184

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: October 16, 1986.
Toxicity concern: Similar substances have been shown to cause cancer, liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 2-year rodent oncogenicity study as described in 40 CFR 798.3300 to characterize possible carcinogenicity. A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. To evaluate the environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-86-836

Chemical Name: (generic) Halogenated substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: January 4, 1987.
Toxicity concern: Similar substances have been shown to cause cancer, liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 2-year rodent oncogenicity study as described in 40 CFR 798.3300 to characterize possible carcinogenicity. A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. To evaluate the environmental risk, a chronic toxicity data set as described in 40 CFR 797.1050, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1840.

PMN Number P-86-1271

Chemical Name: (generic) Substituted halogenated pyridinol, alkali salt.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-86-1272

Chemical Name: (generic) Substituted halogenated pyridinol, alkali salt.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1855.

PMN Number P-86-1273

Chemical Name: (generic) Substituted halogenated pyridinol.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1855.

PMN Number P-83-1274

Chemical Name: (generic) Disubstituted halogenated pyridinol.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects. The potential for liver and kidney effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1400 and 797.1600.
CFR Citation: 40 CFR 721.1880.

IV. Objectives and Rationale of the Proposed Rule

During review of the PMNs submitted for the chemical substances that would be subject to this proposed SNUR, EPA concluded that for certain of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, a section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter, and the SNUR proposed for such substance is consistent with the provisions of the section 5(e) order.

EPA is proposing this SNUR for 16 specific chemical substances which have undergone premanufacture review to ensure the following objectives: (1) EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; (2) EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; (3) when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and (4) all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

EPA is reproposing the SNUR for one substances, P-83-237, in order to group it together with similarly regulated chemicals. Public comments were received concerning the previously proposed SNUR. However, since the time of the initial proposals, regulatory requirements in section 5(e) orders and SNURs have significantly changed. EPA has concluded that reproposing of and addressing new public comments, if any, for SNURs for this substance is the best method of public notification and comment.

V. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require persons to develop any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a 5(e) order recommends certain testing, Unit III. of this preamble lists those recommended tests. The studies specified in the section 5(e) order may not be the only means of addressing the potential risks of the substance. SNUR notice submitters should be aware that the Agency will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VI. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

For a use to be a significant "new" use, EPA must determine that the use is not ongoing. When the PMN submitter begins manufacture or import of the substances, the submitter must send EPA a Notice of Commencement of Manufacture/Import and the substances will be added to the Inventory. In those cases where a section 5(e) order has been issued, the notice submitters are prohibited by the section 5(e) orders from undertaking activities which the Agency is designating as a significant new use. In addition, because most of these substances have CBI chemical identities and only a very few *bona fide* inquiries have been received for substances that have undergone PMN review, there is little chance that others are undertaking activities which the Agency is designating as a significant new use. Therefore, at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the promulgation of the SNUR, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rules. If uses which had commenced between the date of proposal and the effective date were considered ongoing, rather than new, any person could defeat the SNURs by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use

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notice requirements for potential manufacturers, importers, and processors of the chemical substances contained in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPTS–50584).

VIII. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50584). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A publicversion of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice.

EPA believes that, because of the nature of the rule and the substances involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 25, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721 - [AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607

2. By adding new § 721.1835 to subpart E to read as follows:

§ 721.1835 Halogenated pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated pyridine (PMN P–83–1163) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(b) [Reserved].

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

3. By adding new § 721.1840 to subpart E to read as follows:

§ 721.1840 Halogenated substituted pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated substituted pyridine (PMN P–88–838) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 1 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

4. By adding new § 721.1845 to subpart E to read as follows:

§ 721.1845 Substituted pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted pyridine (PMN P–86–1219) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts ofthe chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 10 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day

per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(2) The chemical substances identified generically as substituted pyridines (PMNs P–85–236 and P–85–706) are subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) The chemical substance identified generically as substituted pyridine (PMN P–85–36) is subject to reporting under this section for the significant new uses described in paragraph (a)(3)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 1.3 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(b) [Reserved].

[Approved by the Office of Management and Budget under OMB control number 2070–0012]

5. By adding new § 721.1858 to subpart E to read as follows:

§ 721.1858 Halogenated alkyl pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkyl pyridine (PMN P–83–237) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 10 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(2) The chemical substance identified generically as halogenated alkyl pyridine (PMN P–83–1162) is subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 10 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(b) [Reserved]

[Approved by the Office of Management and Budget under OMB control number 2070–0012]

6. By adding new § 721.1880 to subpart E to read as follows:

§ 721.1880 Disubstituted halogenated pyridinol (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted halogenated pyridinol (PMN P–88–1274) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(b) [Reserved]

[Approved by the Office of Management and Budget under OMB control number 2070–0012]

7. By adding new § 721.1883 to subpart E to read as follows:

§ 721.1883 Substituted halogenated pyridinol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted

for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 44 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[Approved by the Office of Management and Budget under OMB control number 2070–0012]

7. By adding new § 721.1883 to subpart E to read as follows:

§ 721.1883 Substituted halogenated pyridinol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted

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halogenated pyridine (PMN P-88-1273) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 44 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

8. By adding new § 721.1886 to subpart E to read as follows:

§ 721.1886 Substituted halogenated pyridinol, alkali salt.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted halogenated pyridinols, alkali salts (PMNs P-88-1271 and P-88-1272) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 44 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

[FR Doc. 90-22149 Filed 9-27-90; 8:45 am]
BILLING CODE 6560-50-F

federal register

Friday
September 28, 1990

Part XI

Environmental Protection Agency

40 CFR Part 721
Significant New Uses of Chemical Substances; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-59988; FRL-3771-6]
RIN 2070-AB27

Significant New Uses of Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and are subject to TSCA section 5(e) consent orders issued by EPA. This action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this rule as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this rule using direct final procedures.

DATES: This rule is effective November 27, 1990. If EPA receives notice before October 29, 1990, that someone wishes to submit adverse or critical comments on EPA's action in establishing SNUR requirements for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR requirements for the chemical for which the notice of intent to comment is received, and will issue in the Federal Register a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS-59988 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-105, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. The Supplementary Information section of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs published in the Federal Register of April 24, 1990, at 55 FR 17376. Consult that preamble for further information on the objectives, rationale, and procedures for the rule and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the importation certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if applicable), basis for the action taken by EPA in the section 5(e) consent order for the substance (including the statutory citation and specific finding), and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

The rule covers certain PMN substances (P-89-708, P-89-844 and P-89-1062) which are subject to a section 5(e) order based solely on a finding under TSCA section 5(e)(1)(A)(ii)(II) of substantial production volume and

significant or substantial human exposure. In each of these cases, there was limited or no toxicity data available for the PMN substance, potentially substantial production volume, and potentially significant or substantial human exposure. In such cases, EPA regulates new chemical substances under section 5(e) by requiring certain toxicity tests. Substances with potentially substantial human exposures would be subject to health effects testing such as mutagenicity, acute effects, and subchronic effects.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into a SNUR. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders or the provision for dermal protection in § 721.63(a)(1) and (a)(3) is worded differently from dermal protection provisions in some earlier orders. In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. Moreover, the companies which entered into the more limited hazard communication provisions of the earlier section 5(e) orders, as well as those companies covered by the SNUR, are generally subject to the requirements of the Occupational Safety and Health Administration's hazard communication standard at 29 CFR 1910.1200. Therefore, EPA believes it equitable and minimally burdensome to include in the SNUR those requirements of the hazard communication standard that are generally considered to be acceptable in informing workers of potential chemical hazards.

In some instances, however, a particular requirement may be so differently worded from the corresponding SNUR provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

As presented in the regulatory text that follows, all 28 of these substances except P-89-708, P-89-844, and P-89-1062 are exempt from § 721.63 and/or § 721.72 provisions if present at low levels and are not expected to be reconcentrated in mixtures. The exemptions are provided in § 721.63(b) and § 721.72(e) and their application will make the requirements for the substances consistent with SNURs based on more recent section 5(e) consent orders. If a substance was determined to pose a cancer concern by structural-activity analysis or actual data (as described in the preamble that follows), it is exempt only if the level is 0.1 percent or less. All other substances must not exceed a 1.0 percent level in a mixture to qualify for the exemption. EPA's decision to allow exemptions at these levels was based on the Occupational Safety and Health Administration's hazard communication standard exemption of MSDS requirements in § 1910.1200(g)(2)(i)(C)(1) and (2) when substances are present at such low levels in mixtures.

Each of the substances discussed below involves information which has been claimed as CBI. When a generic chemical name appears in this unit, the specific name is claimed as CBI. In addition, some of the substances identified in this unit involve a production limit as a significant new use. Because the production volume limit is contained in the section 5(e) order and has been claimed as CBI, the regulatory text incorporates the production volume by reference to the section 5(e) order. The procedures for determining whether a specific substance and/or a specific significant new use which are CBI are covered by the SNUR are described in Unit VII.

PMN Number: P-84-358

Chemical name: (generic) Unsaturated organic compound.
CAS number: Not available.
Effective date of section 5(e) consent order: January 11, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic.
Recommended testing: Data from a 2-year rodent bioassay could provide information that would lead to a reasoned evaluation of the suspected carcinogenic and neurotoxic effects of this substance.
CFR citation: 40 CFR 721.1641.

PMN Number: P-84-1167

Chemical name: (generic) Epoxy resin.
CAS number: Not available.
Effective date of section 5(e) consent order: February 15, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on test data from bioassays of structurally similar substances, this substance may cause carcinogenic effects.
Recommended testing: Data from a 2-year bioassay in rodents would be necessary further evaluate the potential carcinogenic risk of this substance.
CFR citation: 40 CFR 721.1587.

PMN Number: P-85-118

Chemical name: (generic) Polyurethane.
CAS number: Not available.
Effective date of section 5(e) consent order: March 20, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Data on structurally similar substances show that this substance may be carcinogenic.
Recommended testing: A 2-year bioassay in rodents would be necessary further evaluate the potential carcinogenic risk of this substance.
CFR citation: 40 CFR 721.1790.

PMN Number: P-85-415

Chemical name: (generic) Monoacrylate.
CAS number: Not available.
Effective date of section 5(e) consent order: July 11, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on test results from another structural analogue, this substance also may cause neurotoxicity.
Recommended testing: Data to evaluate these potential risks could be developed from a 2-year rodent bioassay for carcinogenicity, and acute and subchronic assays using both a functional observational battery and neuropathology for neurotoxicity.
CFR citation: 40 CFR 721.1454.

PMN Number: P-85-537

Chemical name: (generic) Vinyl epoxy ester.
CAS number: Not available.
Effective date of section 5(e) consent order: August 8, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on subchronic test data, a potential metabolite of this substance may cause neurotoxicity.
Recommended testing: Data to evaluate these potential risks could be developed from a 2-year rodent bioassay for carcinogenicity, and acute and subchronic assays using both a functional observational battery and neuropathology for neurotoxicity.
CFR citation: 40 CFR 721.1006.

PMN Number: P-85-544

Chemical name: 2-Propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,14-dioxo-5,12-diazahexadecane, 1,16-diyl ester.
CAS number: Not available.
Effective date of section 5(e) consent order: May 22, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Structural analogues have been shown to cause carcinogenicity in test animals. This substance also may cause cancer.
Recommended testing: Data to evaluate this potential risk could be developed from a 2-year rodent bioassay for carcinogenicity.
CFR citation: 40 CFR 721.1828.

PMN Number: P-85-545

Chemical name: 2-Propenoic acid, 3-(dimethylamino)-2,2-dimethylpropyl ester.
CAS number: Not available.
Effective date of section 5(e) consent order: May 22, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data, an analogue and actual hydrolysis product of this substance may cause neurotoxicity.
Recommended testing: Data to evaluate this potential risk could be developed from a 2-year rodent bioassay for carcinogenicity. The potential risk of neurotoxicity from exposure to this substance can be developed in a repeated oral exposure study with a functional observational battery and neuropathology.
CFR citation: 40 CFR 721.1805.

PMN Number: P-85-546

Chemical name: 2-Propenoic acid, 2-methyl-, 3,3,5-trimethyl cyclohexyl ester.
CAS number: Not available.
Effective date of section 5(e) consent order: May 22, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Structural analogues have been shown to cause carcinogenicity in test animals. This substance also may cause cancer.
Recommended testing: Data to evaluate this potential risk could be developed from a 2-year rodent bioassay for carcinogenicity.
CFR citation: 40 CFR 721.1824.

PMN Number: P-85-547

Chemical name: 2-Propenoic acid, 3,3,5-trimethylcyclohexyl ester.
CAS number: Not available.
Effective date of section 5(e) consent order: May 22, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Structural analogues have been shown to cause carcinogenicity in test animals. This substance also may cause cancer.
Recommended testing: Data to evaluate this potential risk could be developed from a 2-year rodent bioassay for carcinogenicity.
CFR citation: 40 CFR 721.1818.

PMN Number: P-85-1034

Chemical name: (generic) Nickel acrylate complex.
CAS number: Not available.
Effective date of section 5(e) consent order: February 13, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on positive results of animal bioassays of analogue substances, it was determined that this substance may cause both carcinogenicity and testicular damage.
Recommended testing: A 2-year dermal rodent bioassay to evaluate the potential carcinogenic effects and a 90-day dermal subchronic study for testicular effects would provide data necessary to further evaluate these potential risks.
CFR citation: 40 CFR 721.1470.

PMN Number: P-86-164

Chemical name: (generic) Polymer.
CAS number: Not available.
Effective date of section 5(e) consent order: March 25, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data on an analogue, this substance also may be neurotoxic.
Recommended testing: Data to evaluate this potential risk could be developed from a 2-year rodent bioassay for carcinogenicity. The potential risk of neurotoxicity from exposure to this substance can be developed in a repeated oral exposure study with a functional observational battery and neuropathology.
CFR citation: 40 CFR 721.1822.

PMN Number: P-86-334

Chemical name: (generic) Aromatic amine compound.
CAS number: Not available.
Effective date of section 5(e) consent order: December 10, 1986.

Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based data from bioassays of structurally analogous substances, this substance may be carcinogenic. Based on results of subchronic tests of the same analogues, this substance also may be cause chronic liver toxicity.
Recommended testing: Data to evaluate this potential risk of carcinogenicity could be developed from a 2-year rodent bioassay. The potential risk of chronic liver toxicity could be further evaluated with data from a 90-day oral subchronic test.
CFR citation: 40 CFR 721.435.

PMN Number: P-86-335

Chemical name: (generic) Aromatic nitro compound.
CAS number: Not available.
Effective date of section 5(e) consent order: December 10, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based data from bioassays of structurally analogous substances, this substance may be carcinogenic. Based on results of subchronic tests of the same analogues, this substance also may be cause chronic liver toxicity.
Recommended testing: Data to evaluate this potential risk of carcinogenicity could be developed from a 2-year rodent bioassay. The potential risk of chronic liver toxicity could be further evaluated with data from a 90-day oral subchronic test.
CFR citation: 40 CFR 721.440.

PMN Number: P-86-650

Chemical name: (generic) Methacrylic ester.
CAS number: Not available.
Effective date of section 5(e) consent order: September 26, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data on an analogue, this substance also may be neurotoxic.
Recommended testing: Data to evaluate carcinogenic effects could be developed from a 2-year rodent bioassay. Data on neurotoxic effects could be developed from a repeated oral exposure study with a functional observational battery and neuropathology.
CFR citation: 40 CFR 721.980.

PMN Number: P-86-1730

Chemical name: (generic) Substituted benzenedicarboxylic acid, poly(alkyl acrylate) derivative.
CAS number: Not available.
Effective date of section 5(e) consent order: April 15, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on results from animal bioassays of several structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data on chemical analogues, this substance also may be neurotoxic.
Recommended testing: Data to evaluate carcinogenic effects could be developed from a 2-year rodent bioassay. Data on neurotoxic effects could be developed from a 90-day dermal assay.
CFR citation: 40 CFR 721.564.

PMN Number: P-87-147

Chemical name: 2-(2-Hydroxy-3-*tert*-butyl-5-methylbenzyl)-4-methyl-6-*tert*-butylphenyl methacrylate.
CAS number: Not available.
Effective date of section 5(e) consent order: April 15, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health. In addition, the Order was based on section 5(e)(1)(A)(ii)(II) finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Toxicity concern: Based on results from animal bioassays of several structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data on chemical analogues, this substance also may be neurotoxic.
Recommended testing: Data to evaluate carcinogenic effects could be developed from a 2-year rodent bioassay. Data on neurotoxic effects could be developed in a 90-day dermal assay including a functional observational battery and neuropathology.
CFR citation: 40 CFR 721.1257.

PMN Number: P-87-739

Chemical name: (generic) Polymer of styrene, substituted alkyl methacrylates, 2-ethylhexyl acrylate, methacrylic acid and substituted bisbenzene.
CAS number: Not available.
Effective date of section 5(e) consent order: September 23, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health. In addition, the Order was based on section 5(e)(1)(A)(ii)(II) finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: A 2-year oral bioassay could provide the data necessary to evaluate the potential carcinogenic effects of the substance.
CFR citation: 40 CFR 721.1048.

PMN Number: P-88-1886

Chemical name: 7-Oxabicyclo[4.1.0]heptane, 3-ethenyl, homopolymer, ether with 2-ethyl-2-[hydroxymethyl]-1,3-propanediol [3:1], epoxidized.
CAS number: Not available.
Effective date of section 5(e) consent order: March 14, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Similar chemicals have been shown to cause cancer, mutagenic effects, and male reproductive effects in test animals, as well as toxicity to aquatic organisms.
Recommended testing: A 90-day oral subchronic study with special attention given to pathology of the reproductive organs (40 CFR 798.2650) to help characterize possible effects to the reproductive system and a 2-year, two-species rodent bioassay (40 CFR 798.3300) to help characterize possible carcinogenic effects are required in the section 5(e) Consent Order before the submitter can exceed a certain production volume. Further testing of an acute algae toxicity test (40 CFR 797.1050) a 48-hour EC50 test in daphnia (40 CFR 797.1300) and a 96-hour LC50 test in fish (40 CFR 797.1400) would be required if the company wishes to address the disposal restrictions. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous

substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
CFR citation: 40 CFR 721.1490.

PMN Number: P-89-851

Chemical name: Phenol, 4,4'-(oxybis(2,1-ethanediylthio)bis-.
CAS number: 90884-29-0.
Effective date of section 5(e) consent order: March 6, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Because substances belonging to the same class of chemical substances cause developmental effects, neurotoxic effects and adverse effects on internal organs, this chemical substance may cause these same effects.
Recommended testing: A 90-day subchronic study via the oral route in rats (40 CFR 798.2650); a standard developmental toxicity test in two species (the rat and a second nonrodent species) (40 CFR 798.4900); a developmental neurotoxicity test battery (40 CFR 795.250).
CFR citation: 40 CFR 721.1538.

PMN Number: P-89-708

Chemical name: (generic) Sulfurized alkylphenols.
CAS number: Not available.
Effective date of section 5(e) consent order: January 23, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: A 28-day oral assay (OECD Guideline No. 407) including neurotoxicity battery (40 CFR 798.6050) and for highest dose group extending histopathological examination to include testes, ovaries and lungs, plus neuropathology (40 CFR 798.6400); an acute oral test according to 40 CFR 798.1175; an Ames assay (40 CFR 798.5265); and a mouse micronucleus test with substance administered intraperitoneally (40 CFR 798.5395). The PMN submitter has agreed not to exceed the production limit without completing these studies.
CFR citation: 40 CFR 721.1541.

PMN Number: P-89-726

Chemical name: (generic) Polymer of adipic acid, alkanepolyol, alkyldiiso cyanatocarbomonocycle, hydroxyalkyl acrylate ester.
CAS number: Not available.
Effective date of section 5(e) consent order: January 29, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Because similar substances have been shown to cause cancer in laboratory animals, this substance also may cause cancer.
Recommended testing: A 2-year, two-species rodent bioassay performed as prescribed in 40 CFR 798.3300 could provide the data necessary to evaluate whether this substance may cause cancer.
CFR citation: 40 CFR 721.1624.

PMN Number: P-89-769

Chemical name: (generic) Resorcinol, formaldehyde, substituted carbomonocycle resin.
CAS number: Not available.
Effective date of section 5(e) consent order: April 12, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar chemicals have been shown to be irritating to the eyes, skin, gastrointestinal tract, and lungs. Chemicals similar to the PMN substance have also been shown to cause developmental toxicity, systemic toxicity, neurotoxicity, and blood effects in laboratory animals. Structurally similar chemicals have also shown to cause toxicity to aquatic organisms.
Recommended testing: A developmental toxicity test (40 CFR 798.4900) to characterize possible developmental toxicity and a 90-day subchronic study with special attention to blood (40 CFR 798.2650) to include the functional observational battery (40 CFR 798.6050), the test of motor activity (40 CFR 798.6200) and peripheral and central nervous system morphology (40 CFR 798.6400) to characterize possible systemic, neurotoxic, and adverse blood effects.
CFR citation: 40 CFR 721.1689.

PMN Number: P-89-844

Chemical name: 1,3,5-Triazine-2,4,6-triamine, hydrobromide.
CAS number: 29305-12-2.
Effective date of section 5(e) consent order: March 16, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: An oral developmental toxicity test with one species (rat) (gavage) described in 40 CFR 798.4900 would help characterize possible effects of the substance. The submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.2188.

PMN Number: P-89-1038

Chemical name: (generic) Aliphatic polyglycidyl ether.
CAS number: Not available.
Effective date of section 5(e) consent order: April 17, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Similar epoxides have been shown to cause cancer and reproductive effects in test animals, and toxicity to aquatic organisms.
Recommended testing: 90-day subchronic oral test according to 40 CFR 798.2650; algal acute toxicity test according to 40 CFR 797.1050; 48-hour EC50 test in daphnia according to 40 CFR 797.1300; and 96-hour LC50 test in fish according to 40 CFR 797.1400.
CFR citation: 40 CFR 721.1027.

PMN Number: P-89-1062

Chemical name: (generic) Amide of polyamine and organic acid.
CAS number: Not available.
Effective date of section 5(e) consent order: April 17, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of fish bioconcentration (40 CFR 797.1520), 28-day oral (OECD Guideline No. 407), acute oral (40 CFR 798.1175), Ames assay (40 CFR 798.5265), and mouse micronucleus (40 CFR 798.5395) studies would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.293.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this proposed SNUR, EPA concluded that for certain of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, a section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter, and the SNUR provisions for such substances are consistent with the provisions of the section 5(e) orders.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Direct Final Procedure

EPA is issuing this rule as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), these SNURs will be effective November 27, 1990, unless EPA receives a written notice by October 29, 1990 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period.

This action establishes SNUR requirements for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the section 5(e) orders for several of the substances regulated under this rule, in view of the lack of data on the potential health risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 16 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. A listing of the tests specified in the section 5(e) orders is included in Unit III. of this preamble. The SNUR for each contains the same production limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests before reaching the production limit.

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance under the procedure described in § 721.11 would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the

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same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. A section 5(e) order has been issued in all these cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes that, in cases when chemical substances identified in these SNURs are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 19 of these 28 substances have CBI chemical identities, and since EPA has received no corresponding post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.

As discussed at 55 FR 17376, EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with these SNURs before the effective date. If persons were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), those persons will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS–50585).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50585). The record includes information considered by EPA in developing this rule. A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 25, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.293 to subpart E to read as follows:

§ 721.293 Amide of polyamine and organic acid.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance amide of polyamine and organic acid (PMN P–89–1062) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (h) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

3. By adding new § 721.433 to subpart E to read as follows:

§ 721.433 Aromatic amine compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance aromatic amine compound (PMN P–88–334) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), and (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e) and (f).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

4. By adding new § 721.440 to subpart E to read as follows:

§ 721.440 Aromatic nitro compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance aromatic nitro compound (PMN P–88–335) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv) through (a)(5)(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), and (g)(2)(i) through (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), and (f).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

5. By adding new § 721.564 to subpart E to read as follows:

§ 721.564 Substituted benzenedicarboxylic acid, poly(alkyl acrylate) derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance substituted benzenedicarboxylic acid, poly(alkyl acrylate) derivative (PMN P–88–1739) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), (g)(2)(v), and

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(g)(4)(i). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.990 to subpart E to read as follows:

§ 721.990 Methacrylic ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance methacrylic ester (PMN P-88-650) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), (g)(2)(v), and (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

7. By adding new § 721.1005 to subpart E to read as follows:

§ 721.1005 Vinyl epoxy ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance vinyl epoxy ester (PMN P-85-527) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), (g)(2)(v), (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (as an injection molding coating), and (y).

(iv) *Disposal.* Requirements as specified in 721.85(a)(2), (b)(2), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

8. By adding new § 721.1027 to subpart E to read as follows:

§ 721.1027 Aliphatic polyglycidyl ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance aliphatic polyglycidyl ether (PMN P-89-1038) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv) through (a)(5)(vii), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i),(g)(2)(ii), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

9. By adding new § 721.1287 to subpart E to read as follows:

§ 721.1287 2-(3-hydroxy-3-tert-butyl-5-methylbenzyl)-4-methyl-6-tert-butylphenyl methacrylate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-(2-hydroxy-3-tert-butyl-5-methylbenzyl)-4-methyl-6-tert-butylphenyl methacrylate (PMN P-87-147) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv) through (a)(5)(vi), (a)(6)(i) through (a)(6)(iii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), and (g)(4)(i). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS in not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (e) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

10. By adding new § 721.1454 to subpart E to read as follows:

§ 721.1454 Monoacrylate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance acrylic ester (PMN P-85-415) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(6)(viii) through (a)(6)(xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), and (g)(4)(i). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (i) and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

11. By adding new § 721.1470 to subpart E to read as follows:

§ 721.1470 Nickel acrylate complex.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance nickel acrylate complex (PMN P-85-1034) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), (g)(2)(v), (g)(4)(i) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as

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specified in § 721.80(k) (as component in industrial coatings) and (y)(1).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (b)(1), and (c)(1) or (recycled to a permit holding commercial solvent recovery operation).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), and (h).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

13. By adding new § 721.1490 to subpart E to read as follows:

§ 721.1490 7-Oxabicyclo[4.1.0]heptane, 3-ethenyl, homopolymer, ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), epoxidized.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 7-oxabicyclo[4.1.0] heptane, 3-ethenyl, homopolymer, ether with 2-ethyl-2(hydroxymethyl)-1,3-propanediol (3:1), epoxidized (PMN P-88-1696) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(viii), (a)(5)(ix), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(i) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

14. By adding new § 721.1538 to subpart E to read as follows:

§ 721.1538 Phenol, 4,4'-(oxybis(2,1-ethanediylthio)bis-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance phenol, 4,4'-(oxybis(2,1-ethanediylthio)bis- (PMN P-89-651) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(ix), (g)(2)(iv), and (g)(2)(v).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(r) (62,000 kg; 141,000 kg; and 272,000 kg with testing required at each interval).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

15. By adding new § 721.1541 to subpart E to read as follows:

§ 721.1541 Sulfurized alkylphenols.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance sulfurized alkylphenols (PMN P-89-706) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

16. By adding new § 721.1622 to subpart E to read as follows:

§ 721.1622 Polymer.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance polymer of adipic acid, alkanespolyol, alkyldiisocyanatocarbomonocycle, hydroxyalkyl acrylate ester (PMN P-89-726) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) [concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(iv) (when dust, mist or smoke from spray is likely), (g)(2)(v) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

18. By adding new § 721.1641 to subpart E to read as follows:

§ 721.1641 Polymer of hydroxyethyl acrylate and polyisocyanate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance polymer of hydroxyethyl acrylate and polyisocyanate (PMN P-84-938) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5)(xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(2), (b)(2) and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (h) and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

19. By adding new § 721.1648 to subpart E to read as follows:

§ 721.1648 Polymer of styrene, substituted alkyl methacrylates, 2-ethylhexyl acrylate, methacrylic acid and substituted bis(benzene).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance polymer of styrene, substituted alkyl methacrylates, 2-ethylhexyl acrylate, methacrylic acid and substituted bis(benzene) (PMN P-87-739) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5) (xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(2)(vi) (on-site only), (b)(2)(vi) (on-site only) and (c)(2)(vi) (on-site only).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

20. By adding new § 721.1790 to subpart E to read as follows:

§ 721.1790 Polyurethane.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance polyurethane (PMN P-85-118) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5)(xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(vi) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

21. By adding new § 721.1805 to subpart E to read as follows:

§ 721.1805 2-Propenoic acid, 3-(dimethylamino)-2,2-dimethylpropyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 3(dimethylamino)-2,2-dimethylpropyl ester (PMN P-85-545) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(vii) through (xiv), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

22. By adding new § 721.1810 to subpart E to read as follows:

§ 721.1810 2-Propenoic acid, 3,3,5-trimethylcyclohexyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 3,3,5-trimethylcyclohexyl ester (PMN P-85-547) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(vii) through (a)(5)(xiv), (6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

23. By adding new § 721.1824 to subpart E to read as follows:

§ 721.1824 2-Propenoic acid, 2-methyl-, 3,3,5-trimethylcyclohexyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 2-methyl-, 3,3,5-trimethylcyclohexyl ester (PMN-85-546) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(vii) through (a)(5)(xiv), (6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

24. By adding new § 721.1828 to subpart E to read as follows:

§ 721.1828 2-Propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,14-dioxo-5,12-diazahexadecane, 1,16-diyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,14-dioxo-5,12-diazahexadecane, 1,16-diyl ester (PMN P-85-544) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5)(xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (e) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

25. By adding new § 721.1837 to subpart E to read as follows:

§ 721.1837 Epoxy resin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance epoxy resin (PMN P-84-1167) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5) (xv), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c) and (e) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

26. By adding new § 721.1869 to subpart E to read as follows:

§ 721.1869 Resorcinol, formaldehyde substituted carbomonocycle resin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance resorcinol, formaldehyde substituted carbomonocycle resin (PMN P-89-709) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i) through (a)(5)(iii), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i) through (g)(1)(iv), blood effects), and eye effects, (g)(1)(ix), (g)(2)(i) (avoid eye contact as well) through (g)(2)(v), (g)(3)(ii), (g)(4)(i), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (use other than as an additive in rubber) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

27. By adding new § 721.2188 to subpart E to read as follows:

§ 721.2188 1,3,5-Triazine-2,4,6-triamine, hydrobromide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 1,3,5-triazine-2,4,6-triamine, hydrobromide (PMN P-89-644) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

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(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (295,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (h) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

[FR Doc. 90-23148;Filed 9-27-90; 8:45 am]
BILLING CODE 6560-50-F

federal register

Friday
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Part XII

The President

Proclamation 6187—Gold Star Mother's Day, 1990

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Presidential Documents

Title 3—

The President

Proclamation 6187 of September 28, 1990

Gold Star Mother's Day, 1990

By the President of the United States of America

A Proclamation

Few Americans could have a more profound understanding of the price of freedom than our Nation's Gold Star Mothers. These proud and courageous women are the mothers of U.S. military personnel who have perished in the line of duty.

Anyone who has been blessed with children knows that there is no greater heartache than losing a son or daughter. The mothers of those brave and selfless Americans who have died to defend the lives and liberty of others have suffered greatly, yet they have also inspired us with their unfailing faith and patriotism. These women, known as Gold Star Mothers, merit our lasting respect and gratitude.

In his now-famous letter to Mrs. Lydia Bixby, a Boston widow who was reported to have lost several sons during the Civil War, President Abraham Lincoln wrote:

> I feel how weak and fruitless must be any words of mine which should attempt to beguile you from the grief of a loss so overwhelming, but I cannot refrain from tendering to you the consolation that may be found in the thanks of the Republic that they died to save. I pray that the Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.

The American Gold Star Mothers have likewise made an enormous sacrifice for our country, and, on this occasion, we echo President Lincoln's timeless appeal.

Whether they made their final stand for liberty and justice on the beaches of Normandy during World War II, on the harsh terrain of Korea and Vietnam, or, more recently, in places such as Grenada, Lebanon, Panama, and the Persian Gulf region, those heroic Americans who have died while defending the cause of peace and freedom will never be forgotten. To the women who nurtured in them a love of God and country, as well as a sense of duty and concern for others, we offer a heartfelt salute.

The Congress, by Senate Joint Resolution 115 (June 23, 1936), designated the last Sunday in September as "Gold Star Mother's Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 30, 1990, as Gold Star Mother's Day. I call upon all government officials to display the United States flag on government buildings on this day. I also urge the people of the United States to display the flag and to hold appropriate meetings in their homes, churches, synagogues, or other suitable places, as a public expression of the love, sorrow, and reverence that our Nation holds for American Gold Star Mothers.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-22232
Filed 9-27-90; 10:38 am]
Billing code 3195-01-M

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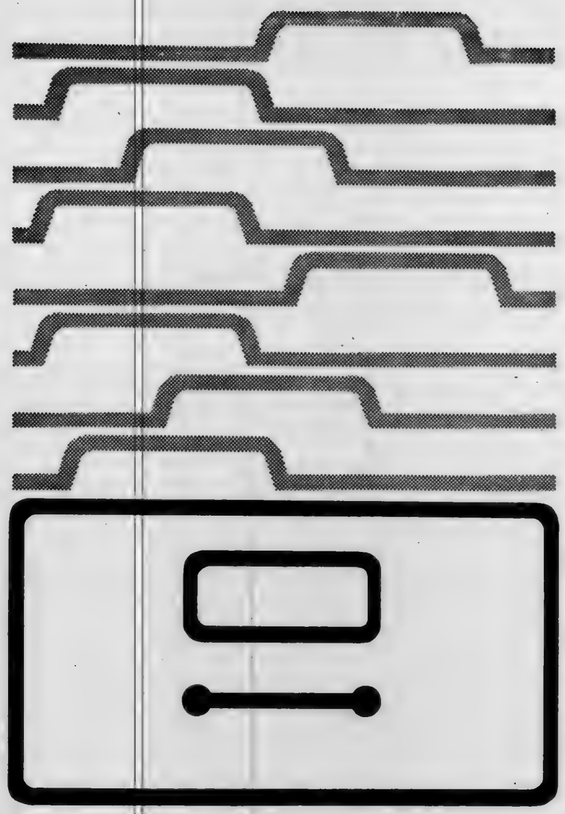
H.R. 7/Pub. L. 101-392
Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990. (Sept. 25, 1990; 104 Stat. 753; 91 pages) Price: $2.50

S.J. Res. 313/Pub. L. 101-393
Designating October 3, 1990, as "National Teacher Appreciation Day". (Sept. 25, 1990; 104 Stat. 844; 1 page) Price: $1.00

S.J. Res. 331/Pub. L. 101-394
To designate the week of September 23 through 29, 1990, as "Religious Freedom Week". (Sept. 25, 1990; 104 Stat. 845; 2 pages) Price: $1.00

S.J. Res. 333/Pub. L. 101-395
To designate the week of September 30, 1990, through October 6, 1990, as "National Job Skills Week". (Sept. 25, 1990; 104 Stat. 847; 1 page) Price: $1.00



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1990

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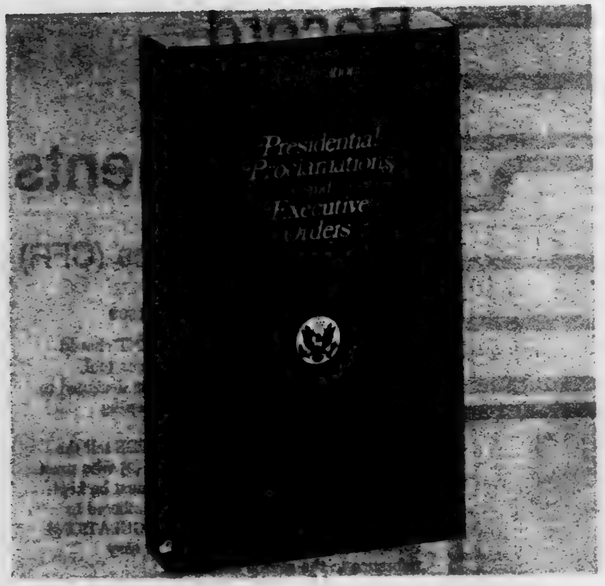

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10-1-90
Vol. 55 No. 190
Pages 39911-40150

federal register

Monday
October 1, 1990

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1204

Availability of Official Information

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: To reflect a change in the delegations of authority from the Chairman, the Merit Systems Protection Board is amending its rules implementing the Freedom of Information Act by changing the official to whom appeals of denials of access to records and denials of fee waivers are to be directed.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Director, Information Services Division, (202) 653-6120.

List of Subjects in 5 CFR Part 1204

Freedom of information, Administrative practice and procedure, Privacy.

Accordingly, the Board amends title 5, part 1204, Subpart C-Appeals of the CFR as follows:

PART 1204—[AMENDED]

1. The authority citation for part 1204 continues to read as follows:

Authority: 5 U.S.C. 552 and 1204, Pub. L. 93-570 and E.O. 12600.

2. Section 1204.21 is revised to read as follows:

§ 1204.21 Submission.

A person may appeal a denial by the Clerk of the Board, or by any regional director, of access to agency records, waiver of fees, or reduction of fees. The appeal must be filed with the Executive Director, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419. Any appeal must include a copy of the initial request, a copy of the letter denying the request, and a statement of the reasons why the appellant believes the denying official erred.

Dated: September 25, 1990.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 90-23088 Filed 9-28-90; 8:45 am]
BILLING CODE 7400-01-M

5 CFR Part 1205

Privacy Act Regulations

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: To reflect a change in the delegations of authority from the Chairman, the Merit Systems Protection Board is amending its rules implementing the Privacy Act by changing the official to whom appeals of denials of access to records and denials of fee waivers are to be directed.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Director, Information Services Division, (202) 653-6120.

List of Subjects in 5 CFR part 1205

Privacy, Administrative practice and procedure, Government employees.

Accordingly, the Board amends 5 CFR Part 1205 Subpart D–Appeals as follows:

1. The authority citation for part 1205 continues to read as follows:

Authority: 5 U.S.C. 552a and 1204.

2. Section 1205.21(a) is revised to read as follows:

§ 1205.21 Submitting appeal.

(a) A partial or complete denial, by the Clerk of the Board or a regional director, of a request for amendment may be appealed to the Executive Director, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419.

* * * * *

3. Section 1205.22 is revised to read as follows:

§ 1205.22 Decision on appeal.

(a) The Executive Director will decide the appeal within 30 working days unless that official determines that there is good cause for extension of that deadline. If an appeal is improperly labeled, does not contain the necessary information, or is submitted to an inappropriate official, the time period for processing the appeal will begin when the Executive Director receives the appeal and the necessary information.

(b) If the request for amendment of a record is granted on appeal, the Executive Director will direct that the amendment be made. A copy of the amended record will be provided to the requester.

(c) If the request for amendment of a record is denied, the Executive Director will notify the requester of the denial and will inform the requester of:

(1) The basis for the denial;

(2) The right to judicial review of the decision under 5 U.S.C. 552a(g)(1)(A); and

(3) The right to file a concise statement with the Board stating the reasons why the requester disagrees with the denial. This statement will become a part of the requester's record.

Dated: September 25, 1990.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 90-23087 Filed 9-28-90; 8:45 am]
BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-89-12E]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Final Amendments to the United States Standards for Dry Whey and the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the United States Standards for Dry Whey. The revision allows the moisture removed from cheese curd as a result of salting ("salty whey") to be collected for further processing as whey if the

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collection of the moisture and the removal of the salt from the moisture are conducted in an approved manner. The revision takes into consideration new technology for removing salt from salty whey. A corollary change has been made in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Duane R. Spomer, Head, Dairy Standardization Section, U.S. Department of Agriculture, Agricultural Marketing Service, Dairy Division, room 2750 South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-3171.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the final rule will not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions will not increase costs to those utilizing the standards.

In accordance with the United States Department of Agriculture policy for regulatory review, the Dairy Standardization Section conducted a review of the United States Standards for Dry Whey. The objective of the review was to obtain both current and historical information relating to a proposal to allow the moisture removed from cheese curd as a result of salting (salty whey) to be collected for further processing as whey if the salty whey has been collected and the salt has been removed in an approved and sanitary manner. The review took into consideration new technology for removing salt from salty whey.

The review involved the collection and evaluation of information from the Department's Dairy Grading Section and representatives of the whey processing industry. It was determined that modern equipment and processes can collect the salty whey and remove the salt from it in a sanitary manner. In the past, salty whey has been discarded. The U.S. Standards for Dry Whey have been revised to allow the collection of salty whey and, after the salt has been removed, the further processing of the remaining material as whey.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When dry whey is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for grading service provided by USDA.

A corollary change has been made in Part 58, Subpart B, entitled General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of whey set forth therein with the revised U.S. Standards for Dry Whey.

Changes Adopted in the Final Rule

This document makes the following revisions to the United States Standards for Dry Whey and amends the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service:

1. Revise the definition for whey to allow the moisture removed from cheese curd as a result of salting (salty whey) to be collected for further processing as whey if the salty whey has been collected and the salt has been removed in an approved and sanitary manner.

2. A corollary change has been made in part 58, subpart B, entitled General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform to the definition of whey set forth therein with the revised U.S. Standards for Dry Whey.

Response to Industry Comments

A rulemaking document proposing the changes outlined above was published in the **Federal Register** on June 15, 1990 (55 FR 24248). A 60-day comment period was provided so that interested persons could submit comments on the proposed changes.

The Agency received one comment form an institute representing the dry products industry, and one comment from an individual representing a major dairy company. Both commenters were in favor of the proposed changes and both suggested that the revision be made effective as soon as the docket is printed in the **Federal Register** as a final rule.

Good cause is found for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because of the new technology which enables salty whey to be further processed. Applicants for service should be able to utilize this technology as soon as possible. Additionally, both comments received supported an immediate effective date and no useful purpose would be served by any delay in the effective date of the rule.

List of Subjects in 7 CFR Part 58

Dairy products, food grades and standards, food labeling, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is revised as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Sections 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627, unless otherwise noted.

2. In subpart B, § 58.806(a) is revised to read as follows:

§ 58.806 Meaning of words.

* * * * *

(a) *Whey.* "Whey" is the fluid obtained by separating the coagulum from milk, cream, and/or skim milk in cheesemaking. The acidity of the whey may be adjusted by the addition of safe and suitable pH adjusting ingredients. Moisture removed from cheese curd as a result of salting may be collected for further processing as whey if the collection of the moisture and the removal of the salt from the moisture are conducted in accordance with procedures approved by the Administrator.

* * * * *

3. The authority citation for 7 CFR part 58, subpart G continues to read as follows:

Authority: Agricultural Marketing Act of 1946; secs. 205, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624.

4. In subpart G, § 58.2601 is revised to read as follows:

§ 58.2601 Whey.

"Whey" is the fluid obtained by separating the coagulum from milk, cream, and/or skim milk in cheesemaking. The acidity of the whey may be adjusted by the addition of safe and suitable pH adjusting ingredients. Moisture removed from cheese curd as a result of salting may be collected for further processing as whey if the collection of the moisture and the removal of the salt from the moisture are conducted in accordance with procedures approved by the Administrator.

Signed at Washington, DC, on September 26, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-23093 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Stabilization and Conservation Service

7 CFR Parts 723, 724, 725, and 726

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, with minor corrections, the proposed rule published in the Federal Register on June 20, 1990 (55 FR 25096). This rule amends the regulations at 7 CFR parts 723, 724, 725, and 726 which implements the tobacco marketing quota and acreage allotment programs authorized by the Agricultural Adjustment Act of 1938, as amended (the 1938 Act). This rule removes 7 CFR parts 724, 725, and 726; and revises part 723 to consolidate parts 724, 725, and 726. It deletes obsolete and unnecessary provisions and includes Puerto Rico (type 46) tobacco in marketing quota regulations. No substantive changes of current regulations are included in this final rule.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Raymond S. Flessing, Agricultural Program Specialist, Tobacco and Peanuts Division, ASCS-USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 447-4318.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Information collection requirements contained in this regulation have been approved by OMB under the provisions of 44 U.S.C., chapter 35 and have been assigned OMB #0560-0058 and #0560-0006.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The regulations in 7 CFR parts 723 through 726 set forth the provisions of the tobacco marketing quota and acreage allotment programs. Part 723 is currently applicable to Cigar-filler (type 41) and Maryland (type 32) tobacco. Part 724 is currently applicable to Fire-cured, Dark air-cured, Virginia sun cured, Cigar-binder (types 51 and 52), Cigar-filler and binder (types 42, 43, 44, 54, and 55) tobacco. Part 725 is currently applicable to Flue cured tobacco and part 726 is currently applicable to Burley tobacco. This final rule revises part 723 and removes all references to Cigar-binder (types 51 and 52) tobacco in part 724 since marketing quotas are not currently in effect with respect to these kinds of tobacco.

A proposed rule was published in the Federal Register on June 20, 1990, (55 FR 25096), to consolidate 7 CFR parts 723 through 726 into part 723. This was done because numerous provisions in the various parts were identical. Therefore, consolidation of the parts will result in more uniformity in the provisions and more efficient program administration. This rule does not impose additional regulatory provisions. However, obsolete and unnecessary regulations are removed. The rule reduces paperwork and recordkeeping by tobacco producers and industry entities.

The public was given 30 days to submit written comments on the proposed rule published in the Federal Register on June 20, 1990, (55 FR 25096) with respect to any provisions of part 723 which are unnecessary or unclear. There were two (2) public comments received on the proposed rule from State ASC Committees. These comments addressed typographical errors and omission of certain provisions. These pertinent errors are corrected in the final rule. The comments included recommendations for changes in the tobacco program that were not included for consideration in the proposed rule. While these recommendations are not included in the final rule because the public was not afforded an opportunity to comment on them, these recommendations will be considered for inclusion in a future proposed rule. Accordingly, the proposed rule which was published in the Federal Register on June 20, 1990, (55 FR 25096) is adopted, with minor corrections, as the final rule.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 724

Acreage allotments, Disaster assistance, Marketing quotas, Penalties, Pesticides and pests, Reporting requirements, Tobacco.

7 CFR Part 725

Acreage allotments, Disaster assistance, Marketing quotas, Penalties, Pesticides and pests, Reporting requirements, Tobacco.

7 CFR Part 726

Disaster assistance, Marketing quotas, Penalties, Pesticides and pests, Reporting requirements, Tobacco.

Final Rule

For the reasons set forth in the preamble, chapter VII, title 7 of the CFR is amended as follows:

PARTS 724, 725, and 726—[REMOVED]

Accordingly, parts 724, 725, and 726 are removed and the present part 723 is revised to read as follows:

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PART 723—TOBACCO

Subpart A—General Provisions

Sec.

723.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
723.102 Applicability.
723.103 Administration.
723.104 Definitions.
723.105 Extent of determinations, computations, and rule for rounding fractions.
723.106 Location of farm for administrative purposes.

Subpart B—Allotments, Quotas, Yields, Transfers, Release and Reapportionment, History Acreages, and Forfeitures

723.201 Determination of preliminary farm acreage allotments and preliminary farm marketing quotas.
723.202 Determining farm acreage allotment, except for flue-cured tobacco.
723.203 Determination of flue-cured tobacco preliminary farm yields.
723.204 Determination of farm yields and normal yields.
723.205 Determination of farm acreage allotments and effective farm acreage allotments for flue-cured tobacco.
723.206 Determining farm marketing quotas and effective farm marketing quotas.
723.207 Determination of acreage allotments or burley marketing quotas for new farms.
723.208 Determination of acreage allotments, marketing quotas, and yields for divided farms.
723.209 Determination of acreage allotments, marketing quotas, and yields for combined farms.
723.210 Corrections of errors and adjusting inequities in acreage allotments and marketing quotas for old farms.
723.211 Allotments, quotas, and yields for farms acquired under right of eminent domain.
723.212 Time for making reduction of farm marketing quotas or acreage allotments for violation of the marketing quota or acreage allotment regulations for a prior marketing year.
723.213 Approval of acreage allotments and marketing quotas and notices to farm operators.
723.214 Application for review.
723.215 Transfer of tobacco farm acreage allotment or farm marketing quota that cannot be planted or replanted due to a natural disaster.
723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.
723.217 Release and reapportionment of old farm acreage allotments for Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco.
723.218 Determining tobacco history acreage.
723.219 Forfeiture of burley tobacco marketing quota.

Subpart C—Tobacco Subject to Quota, Exemptions From Quotas, Marketing Cards, and General Penalty Provisions

723.301 Identification of tobacco subject to quota.
723.302 Tobacco for experimental purposes.
723.303 Production of registered or certified flue-cured tobacco seed.
723.304 Determination of discount varieties.
723.305 Issuance of marketing cards.
723.306 Claim stamping and replacing marketing cards.
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723.308 Rate of penalty.
723.309 Persons to pay penalty.
723.310 Date penalty is due.
723.311 Lien for penalty.
723.312 Request for refund of penalty.
723.313 Identification of marketings.

Subpart D—Recordkeeping, Reporting Requirements, Marketing Penalties, and Other Penalties

723.401 Registration of burley or flue-cured warehouse operators or dealers.
723.402 Warehouse authorized to retain producer marketing cards between sales.
723.403 Auction warehouse operators' records and reports.
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723.405 Dealers exempt from regular records and reports on MQ–79; and season report for dealers.
723.406 Provisions applicable to damaged tobacco or to purchases of tobacco from processors or manufacturers.
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723.409 Producer penalties; false identification and related issues.
723.410 Penalties considered to be due from a warehouse operator, dealers, buyers, and others excluding the producer.
723.411 Records and reports regarding hauling, processing, and storage of tobacco.
723.412 Separate records and reports from persons engaged in tobacco related businesses.
723.413 Length of time records and reports are to be kept.
723.414 Failure to keep records and make reports or making false report or record.
723.415 Examination of records and reports.
723.416 Information confidential.

Authority: 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c, 1363, 1372–75, 1377, 1378 and 1421.

Subpart A—General Provisions

§ 723.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 723) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of U.S.C. chapter 35 and have been assigned OMB control

§ 723.102 Applicability.

The regulations contained in this subpart are applicable to the 1990 and subsequent crops of burley; flue-cured; fire-cured; dark air-cured; Virginia sun-cured; cigar-filler and binder (types 42, 43, 44, 54, and 55); and Cigar filler (type 46) tobacco. These regulations govern the establishment of farm marketing quotas and acreage allotments, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties and the keeping of records and making of reports. All of the provisions of these regulations apply to each kind of tobacco for which marketing quotas are in effect unless the wording of the text indicates otherwise.

§ 723.103 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service ("ASCS") and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county ASC committees").

(b) State and county ASC committees, and representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State ASC committee shall take any action required by these regulations which has not been taken by the county ASC committee. The State ASC committee shall also:

(1) Correct, or require a county ASC committee to correct any action taken by such county ASC committee which is not in accordance with the regulations of this part, or

(2) Require a county ASC committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county ASC committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the regulations of this part or from reversing or modifying any determination made by a State or county ASC committee.

§ 723.104 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration for all kinds of tobacco except as may otherwise be indicated. The definitions in and provisions of parts 718, 719 and 720 of this chapter are hereby incorporated by reference in

subject matter or the provisions of these regulations require otherwise.

(b) *Terms.* The following terms shall be defined as set forth in this paragraph.

Act. The Agricultural Adjustment Act of 1938, as amended.

Active burley tobacco producer. Any person who intends to be a burley tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intention on a form provided by the Deputy Administrator.

Active flue-cured tobacco producer. (1) Any person who shared in the risk of producing a crop of flue-cured tobacco in at least one of the three years preceding the current year, or

(2) Any person who intends to become a flue-cured tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intention on a form approved by the Deputy Administrator.

Allowable floor sweepings. The quantity of floor sweepings determined by multiplying 0.0024 times the total producer first sales of the respective kind of tobacco at auction for the season for the warehouse involved.

Auction sale. A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business including sale of all lots of tobacco at public auction in sequence at a given time.

Base Period. The 5 calendar years immediately preceding the year for which farm acreage allotments or marketing quotas are currently being established.

Buyer. A person who engages to any extent in acquiring or marketing tobacco in the form normally marketed by producers.

Buyers corrections account. The warehouse account of tobacco purchased at auction by the buyer but not delivered to the buyer, or any tobacco returned by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouse operator and supported by an adjustment invoice from the buyer. This account shall include the pounds deducted resulting from returned lots, short lots, and short weights, and pounds added resulting from long lots and long weights, which buyers debit or credit to the warehouse operator and support with adjustment invoices.

Carryover tobacco. Tobacco produced prior to the current calendar year which has not been marketed or otherwise disposed of prior to the beginning of the marketing year for the current crop.

Considered planted acreage. An acreage that is used for determining an

tobacco when the acreage planted on the farm to the kind of tobacco in the current year is less than the farm acreage allotment established for such farm in the current year. With respect to:

(1) *Flue-cured tobacco.* If flue-cured tobacco was marketed from the farm during the current year, the considered planted acreage is an acreage determined by subtracting the planted acres from the farm acreage allotment. If flue-cured tobacco was not marketed from the farm in the current year, the considered planted acreage is an acreage, not to exceed the farm's acreage allotment, that is equal to the sum of the acreage:

(i) That could not be planted to flue-cured tobacco because of a natural disaster,

(ii) Computed for pounds leased from the farm,

(iii) In the eminent domain pool,

(iv) Reduced for overmarketing,

(v) Reduced for violation of marketing quota regulations, and

(vi) Converted from the production of flue-cured tobacco during the respective crop year in accordance with part 704 of this chapter.

(2) *A kind of tobacco other than burley or flue-cured tobacco.* The considered planted acreage for a farm is an acreage, not to exceed the farm's acreage allotment, that is equal to the sum of the acreage:

(i) That could not be planted to the kind of tobacco because of a natural disaster.

(ii) Temporarily transferred from the farm.

(iii) Temporarily released.

(iv) Converted from production of the kind of tobacco in accordance with part 704 of this chapter.

(v) In the eminent domain pool.

(vi) Reduced for violation of the regulations set forth in this part.

Container. A package in which tobacco is marketed, packed, and stored.

Current crop. The crop planted in the current year.

Current year. The calendar year for which acreage allotments are being established, or tobacco history acreage and yields are being determined, or the farm is being considered under the provisions of the marketing quota program.

Dealer. A person who engages to any extent in acquiring or marketing tobacco in the form normally marketed by producers.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department

Effective farm acreage allotment. The effective farm acreage allotment for flue-cured tobacco is the allotment determined under Sec. 723.205 of this part.

Effective farm marketing quota. The effective farm marketing quota is the current year farm marketing quota plus or minus any temporary quota adjustments.

Excess tobacco for a farm. (1) For burley and flue-cured tobacco. The quantity of tobacco marketed above 103 percent of the effective farm marketing quota.

(2) *For kinds of tobacco other than burley or flue-cured.* That quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm times the number of acres harvested in excess of the farm acreage allotment, plus any carryover excess tobacco.

Experimental tobacco. Tobacco grown by or under the direction of a publicly owned agricultural experiment station for experimental purposes only.

False identification. False identification occurs if:

(1) Tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on any farm when, in fact, it was produced on another farm; or

(2) Tobacco was marketed or was permitted to be marketed in any marketing year from a farm and was not identified by a tobacco marketing card for the farm; or

(3) The farm operator or any other producer on a farm permits the use of the tobacco marketing card for the farm to record a marketing of tobacco when, in fact, no tobacco was marketed from the farm.

(4) A tobacco marketing card issued to market a kind of tobacco is used to market another kind of tobacco produced on the same farm.

Family farm corporation. A corporation for which:

(1) Not less than 50 percent of the stock is owned by:

(i) An individual or;

(ii) An individual in combination with:

(A) The spouse of such individual; or

(B) The parent, aunt, uncle, child, grandchild, or cousin of such individual; or

(C) A spouse of any individual specified in paragraph (1)(ii)(B) and;

(2) One or more of the individuals specified in paragraph (1) participates in the direct management of the day to day operations of the corporation.

Farm acreage allotment. For flue-

in accordance with § 723.206 of this chapter.

Farm marketing quota—(1) *For burley tobacco, old farms.* The pounds determined by multiplying the preliminary farm marketing quota by the national factor and adjusting the result for any permanent quota adjustment.

(2) *For burley tobacco, new farms.* The pounds for the farm determined by the county ASC committee with the approval of the State ASC committee.

(3) *For flue-cured tobacco.* The pounds determined by multiplying the farm acreage allotment by the farm yield.

(4) *For kinds of tobacco other than burley or flue-cured.* The actual production of tobacco on the farm acreage allotment, which shall be the average yield per acre for the entire acreage of tobacco harvested on the farm times the farm acreage allotment.

Farm yield. The yield determined as provided in § 723.204 of this part.

Floor sweepings. The scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business.

Green weight. The weight of tobacco which is in the form normally marketed by farmers prior to being redried, or processed.

Leaf account tobacco. The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouse operator, including floor sweepings purchased from another warehouse operator or dealer, as adjusted by the debits and credits to the buyers correction account. Such quantity shall not include tobacco in the form not normally marketed by producers, including tobacco pickings, and floor sweepings which accumulate on the warehouse floor.

Market. The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. "Marketing" and "marketed" shall have corresponding meaning to the term "market."

Marketing recorder. Any employee of the U.S. Department of Agriculture, or any employee of an Agricultural Stabilization and Conservation Service county (ASCS) office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketing of tobacco.

Marketing year. (1) For flue-cured tobacco, the period beginning July 1 of the current year and ending June 30 of the following year.

(2) For kinds of tobacco other than flue cured. The period beginning October 1 of the current year and ending September 30 of the following year.

New farm. A farm for which an acreage allotment or marketing quota is established for the current year from the national reserve that is set aside for such purpose from the national acreage allotment or marketing quota established for the kind of tobacco.

Nonauction sale. Any first marketing of tobacco other than by a sale at auction.

Old farm—(1) *For burley tobacco.* A farm which had burley tobacco planted or considered planted in one or more years of the base period.

(2) *For tobacco other than burley.* A farm on which there is tobacco history acreage in one or more years of the base period.

Overmarketings. The pounds by which the pounds marketed exceed the effective farm marketing quota.

Planted or considered planted credit. For burley tobacco, credit that is assigned in the current year for a farm with an established farm marketing quota when:

(1) Burley tobacco is planted on the farm.

(2) Burley tobacco could not be planted because of a natural disaster.

(3) Quota is:

(i) Leased and transferred from the farm, or

(ii) In the eminent domain pool.

(4) A restrictive lease on federally owned land is in effect prohibiting tobacco production.

(5) Effective quota is zero because of overmarketings or a violation of regulations, or

(6) Acreage is converted from production of burley tobacco in accordance with part 704 of this chapter.

Pound. The amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is normally marketed by a producer, would equal 1 pound standard weight.

Preceding year. The calendar year immediately preceding the year for which the allotments and quotas are established, or the marketing year preceding the marketing year for which the allotments and quotas are established.

Preliminary farm marketing quota. For burley tobacco, the farm marketing quota for the preceding year.

Preliminary farm yield. For flue-cured tobacco, the yield determined for a farm as provided in § 723.203 of this part.

Processed, Processing. A method of preparing green weight tobacco for storage in which the tobacco may be redried, stemmed, tipped or threshed and the resulting product packed in a container.

Production record. A record prepared by a processor to account for the processing of tobacco.

Quota adjustments. For burley tobacco:

(1) *Temporary.* Adjustments for:

(i) Effective undermarketings,

(ii) Overmarketings from any prior year,

(iii) Reapportioned quota from quota released from farms in the eminent domain pool,

(iv) Quota transferred by lease or by owner,

(v) Pounds in violation of the regulations for a prior year, and

(vi) Pounds reduced from the burley tobacco quota during the current year in accordance with part 704 of this chapter.

(2) *Permanent.* Adjustments for:

(i) Old farm adjustment from reserve,

(ii) Pounds of quota transferred to the farm from the eminent domain pool,

(iii) Pounds of quota transferred to or from the farm by sale,

(iv) Pounds of quota transferred to the farm from the forfeiture pool, or

(v) Pounds of forfeited quota.

Resale. The disposition by sale, barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

Sale. The first marketing of tobacco on which the gross amount of the sale price therefore has been or could be readily determined.

Sale date. The date on which the gross amount of the sale price of tobacco is determined.

Sale day. The period at the end of which the warehouse operator bills to buyers the tobacco purchased by them during such period.

Scrap tobacco. The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

Shared in the risk of production. For burley or flue-cured tobacco, involvement in the production of the respective kind of tobacco by a person who:

(1) Invests in the production of a crop of the respective kind of tobacco in an amount which is not less than 30 percent of the proceeds of the sale of the crop;

(2) Depends solely on a share of the proceeds from the marketing of the tobacco for the return on the investment;

(3) Waits until such crop of tobacco is marketed to receive any return on the investment; and

(4) Maintains records, for a period of 3 years after the end of the marketing year in which the tobacco is sold, which may be used to verify that the provisions of this definition have been met.

Strip, scrap, stem. Types of products resulting from processing of tobacco.

Suspended sale. Any marketing of tobacco at auction for which the sale is not identified by a producer marketing card or a dealer's identification card by the end of the sale day on which such marketing occurred.

Tillable cropland. With respect to flue-cured tobacco only, cropland (excluding orchards, vineyards, land devoted to trees, and land being prepared for non-agricultural uses) which the county ASC committee determines can be planted to crops without unusual preparation or cultivation.

Tobacco. Kinds of tobacco that are subject to marketing quotas as follows: Burley tobacco, (type 31); Flue-cured tobacco, (types 11, 12, 13, and 14); Fire-cured tobacco (types 21, 22, and 23); Dark air-cured tobacco (types 35 and 36); Virginia sun-cured tobacco (type 37); Cigar filler (type 46); and Cigar-filler and binder tobacco (types 42, 43, 44, 54, and 55) as classified by the Agricultural Marketing Service at part 30 of this title.

Tobacco available for marketing. All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

Tobacco in the form not normally marketed by producers. Tobacco leaves, stems, strips, scrap or parts thereof that are the result of green tobacco having been redried, stemmed, tipped, threshed or otherwise processed.

Tobacco pickings. The residue which accumulates in the course of processing tobacco prior to the redrying of such tobacco, consisting of scrap, stems, portions of leaves, and leaves of poor quality shall be considered to be tobacco in the form not normally marketed by producers.

Trucker. A person who trucks, or who otherwise hauls tobacco for a producer, or for any other person.

Undermarketings. For burley or flue-cured tobacco, the actual undermarketings are the pounds by which the effective farm marketing quota is more than the pounds of the respective kind of tobacco marketed, and the effective undermarketings are the smaller of actual undermarketings or the sum of the previous year's farm marketing quota plus pounds of quota temporarily transferred to the farm for the previous year. However, with respect to the 1989 crop, actual undermarketings are the number of pounds by which the effective farm marketing quota is more than the sum of the number of pounds of tobacco marketed and number of pounds for which a disaster payment was made on the 1989 crop of tobacco under part 1477 of this title.

Warehouse operator. A person who engages in the business of conducting a sale of tobacco at public auction.

§ 723.105 Extent of determinations, computations, and rule for rounding fractions.

(a) *General.* All rounding herein shall be in accordance with the provisions of part 793 of this chapter.

(b) *Allotments.* Farm acreage allotments shall be determined in hundredths of acres.

(c) *Percent excess.* The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess," shall be determined in tenths of a percent.

(d) *Converted rate of penalty.* For tobacco other than burley or flue-cured, the amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty," shall be determined in tenths of a cent.

(e) *Percentage reduction for violation.* A percentage of reduction in an allotment due to a violation shall be determined in tenths of a percent.

(f) *Yields and quotas.* Yields and quotas shall be determined in whole pounds.

§ 723.106 Location of farm for administrative purposes.

The location of a farm in a county for administrative purposes shall be as provided in part 719 of this chapter.

Subpart B—Allotments, Quotas, Yields, Transfers, Release and Reapportionment, History Acreages, and Forfeitures

§ 723.201 Determination of preliminary farm acreage allotments and preliminary farm marketing quotas.

(a) *Flue-cured tobacco.* A preliminary farm acreage allotment shall be determined for the current year for each farm which has flue-cured tobacco history acreage for the base period. The preliminary farm acreage allotment shall be the same as the farm acreage allotment established for the preceding year.

(b) *Burley tobacco.* The preceding year's farm marketing quota shall be the current year's preliminary farm marketing quota for each old farm except that the preliminary farm marketing quota shall be zero if:

(1) The farm or all of cropland has gone out of agricultural production and eminent domain procedure of part 719 of this chapter does not apply.

(2) Quota that was pooled under the provisions of part 719 of this chapter has been canceled.

(3) A new farm quota that was established in a prior year is canceled.

(4) There was no acreage of burley tobacco planted or considered planted for any year of the base period.

(c) *Kinds of tobacco other than flue-cured and burley.* A preliminary farm acreage allotment shall be determined for each farm which has tobacco history acreage, as established under paragraph § 723.210 of this part in the base period. If the history acreage for the previous year is the same as the basic allotment, the preliminary allotment shall be the same as the previous year's basic allotment. Otherwise, the preliminary allotment shall be the simple average of the sum of the basic allotment and history acreage for the preceding year.

§ 723.202 Determining farm acreage allotment, except for flue-cured tobacco.

With respect to each kind of tobacco, the preliminary allotments determined for all old farms shall be adjusted uniformly so that the total of such allotments for old farms plus the reserve acreage available for establishing new farm allotments, adjusting inequities in acreage allotments for old farms, and for correcting errors in old farm allotments shall not exceed the national acreage allotment established for such kind of tobacco.

§ 723.203 Determination of flue-cured tobacco preliminary farm yields.

(a) *Old farms.* The preliminary farm yield for a flue-cured tobacco old farm for the current year shall be determined as follows:

(1) *Farm having preliminary farm acreage allotment.* The preliminary farm yield established for the farm shall be the same preliminary farm yield as was in effect for the preceding year.

(2) *Farm not having preliminary farm acreage allotment.* The preliminary farm yield shall be determined by dividing the farm yield by the national yield factor.

(b) *New Farms.* The preliminary farm yield for a new farm shall be determined by dividing the farm yield determined in accordance with § 723.204 of this part for such farm by the national yield factor applicable for the year in which the new farm allotment was established.

§ 723.204 Determination of farm yields and normal yields.

(a) *Flue-cured tobacco.* The farm yield for an old farm shall be determined by multiplying the preliminary farm yield, if the farm has such a yield, by the national yield factor for the current year.

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The farm yield for new farms and old farms that do not have a preliminary yield shall be that yield, which the county ASC committee determines for the farm taking into consideration:

(1) The soil and other physical factors affecting the production of tobacco on the farm, and

(2) The farm yields determined for other farms on which the soil and other physical factors affecting the production of tobacco are similar.

(b) *Burley tobacco.* The farm yield for a farm on which a farm yield has been established shall be the same in the current year as the farm yield previously established for the farm. For any farm not having a previously established yield, the county ASC committee shall establish a yield based on similar farms having a farm yield; however, such yield shall not exceed 2500 pounds.

(c) *All kinds of tobacco except burley and flue-cured.* The normal yield for a farm shall be that yield which the county ASC committee determines is normal for the farm taking into consideration the yields obtained on the farm during any of the years of the base period for which data are available, the soil and other physical factors affecting the production of tobacco on the farm, and the yields obtained on other farms in the locality which are similar with respect to such factors. The normal yield first determined for a farm for any year in accordance with the foregoing provision shall serve as the normal yield for the farm for all purposes in connection with the tobacco marketing program for the year for which such normal yield is determined.

§ 723.206 Determination of farm acreage allotments and effective farm acreage allotments for flue-cured tobacco.

(a) *Farm acreage allotments.* The farm acreage allotment shall be determined by multiplying the national acreage factor as determined by the Secretary for the current year by the preliminary farm acreage allotment for the current year and adjusting the result by:

(1) *Upward adjustment.* Adding the:

(i) Acreage approved in accordance with the provisions of § 723.210 of this part in order to adjust for an inequity or to correct an error;

(ii) Acreage determined by dividing the pounds of quota which are purchased in the current year by the farm yield; and

(iii) Acreage determined by dividing the pounds of forfeited quota which are approved for adjustment from the forfeiture pool by the farm yield.

(2) *Downward Adjustment.* Subtracting the:

(i) Acreage determined by dividing the pounds of quota sold in the current year by the farm yield; and

(ii) Acreage of forfeited allotment.

(b) *Effective farm acreage allotment.* The effective farm acreage allotment for the current year shall be determined by dividing by the effective farm marketing quota by the farm yield.

§ 723.208 Determining farm marketing quotas and effective farm marketing quotas.

(a) *Burley tobacco.* The burley farm marketing quota shall be determined by multiplying the national factor as determined by the Secretary for the current year by the preliminary farm marketing quota for the current year and adjusting the result for permanent quota adjustments.

(b) *Flue-cured tobacco.* The flue-cured farm marketing quota shall be determined by multiplying the farm acreage allotment by the farm yield.

(c) *Burley or flue-cured tobacco.* The effective farm marketing quota shall be the farm marketing quota adjusted by:

(1) *Upward adjustments.* Adding the:

(i) Effective undermarketings from the preceding marketing year,

(ii) The pounds of quota which are temporarily transferred to the farm in the current year.

(2) *Downward adjustments.* Subtracting the pounds of quota that are:

(i) Overmarketed from the preceding marketing year,

(ii) Overmarketed from any year before the preceding year but have not been subtracted when determining the effective farm marketing quota in a prior year.

(iii) Temporarily transferred from the farm in the current year.

(iv) Reduced in the current year as a result of a violation in a prior year as provided for in § 723.408 of this part.

(v) Determined, for flue-cured tobacco only, by multiplying the farm yield by the acres reduced from the flue-cured tobacco acreage allotment during the current year in accordance with part 704 of this chapter.

(vi) For burley tobacco only, designated for reduction under a Conservation Reserve Program contract in accordance with part 704 of this chapter.

§ 723.207 Determination of acreage allotments or burley marketing quotas for new farms.

(a)(1) *All kinds of tobacco.* The acreage allotment or burley marketing quota established in any crop year for all new farms shall not exceed the national acreage or poundage, as applicable, reserved for new farms for the respective kind of tobacco. The acreage allotment or burley marketing quota for a new farm shall be that acreage or burley marketing quota which the county ASC committee, with the approval of the State ASC committee, determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator; the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Such acreage allotments or burley marketing quota shall not exceed 50 percent (75 percent for Cigar-filler and Binder tobacco) of the average of the applicable acreage allotments or burley marketing quotas established for at least two but not more than five old farms which are similar with respect to land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco; and with respect to flue-cured tobacco acreage allotments, shall not exceed one acre.

(2) *Kinds of tobacco, except burley and flue-cured.* If the acreage planted to tobacco on a new tobacco farm is less than 75 percent of the tobacco acreage allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the sum of the tobacco planted acreage and the prevented planted tobacco acreage as determined under part 718 of this chapter for the farm.

(b)(1) *Written application.* The farm operator must file an application for a new farm acreage allotment or marketing quota at the office of the county ASC committee where the farm is administratively located on or before February 15 of the year for which the new farm acreage allotment or marketing quota is requested.

(2) *Operator requirements.* The operator requesting a new farm acreage allotment or marketing quota must be the sole owner of the farm, except for Cigar-filler and Binder tobacco, the operator need not own the farm. The farm operator shall not own or have an ownership interest in or operate any other farm in the United States for which a tobacco allotment or quota for any kind of tobacco is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm.

(4)(i) *Income from farming.* The operator must expect to obtain during the current year more than 50 percent of the producer's income from the production of agricultural commodities or products. The following shall be considered in computing the operator's income:

(A) *Farm income.* Income from farming shall include the estimated return from home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm(s). The estimated return from the production of the requested new farm allotment or quota shall not be included.

(B) *Non-farm income.* Non-farming income shall include but not limited to salaries, commissions, pensions, social security payments, and unemployment compensation.

(C) *Spousal income.* The spouse's farm and non-farm income shall be included in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of their current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provisions for low-income farmers.* The county ASC committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and non-farm sources is so low that it will not provide a reasonable standard of living for the operator and the operator's family, and a State ASC committee representative approves such action. In making their determination, the county ASC committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family income, estimated family off-farm income, number of dependents, and other factors affecting the individual's ability to provide a reasonable standard of living.

(5) *Experience.* The operator must have had experience in producing, harvesting, and marketing the kind of tobacco requested. Such experience must have been gained by being a sharecropper, tenant, or farm operator (bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least 2 of the 5 years immediately preceding the year for which the new farm allotment is requested. The experience must have been gained on a farm having a tobacco allotment for such years for the kind of tobacco requested in the application. However, for Cigar-filler and binder tobacco only, the operator must have experience in any prior year in the production of tobacco as a farm owner, farm operator, sharecropper, tenant, warehouse operator, or laborer on a farm which produced Cigar-filler and binder tobacco.

(6) *Operator has not sold or forfeited allotment.* For flue-cured tobacco only, during the current or the 4 preceding years, the operator must not have sold or forfeited any flue-cured tobacco allotment from any farm.

(c) *Eligibility requirements for the farm.* A new farm acreage allotment or marketing quota may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm acreage allotment, an allotment or quota for any kind of tobacco.

(2) *Availability of land, type of soil, and topography.* The available land, type of soil, and topography of the land on the farm must be suitable for tobacco production. Also, continuous production of tobacco must not result in an undue erosion hazard.

(3) *Eminent domain acquisition.* A farm which includes land acquired by an agency having the right of eminent domain for which the entire tobacco allotment was pooled pursuant to part 719 of this chapter, which is subsequently returned to agricultural production shall not be eligible for a new farm allotment or marketing quota for a period of 5 years from the date the former owner was displaced.

(4) *Farm includes land previously having a tobacco acreage allotment.* A farm which includes land which has no tobacco allotment because the owner did not designate an allotment for such land when the parent farm was reconstituted pursuant to part 719 of this chapter shall not be eligible for a new farm acreage allotment for a period of 5 years beginning with the year in which the reconstitution became effective.

(5) *Entire quota sold.* A new farm tobacco acreage allotment may not be established for a farm if, during the current year or the 4 preceding years, the farm was constituted as any part of a farm for which an acreage allotment or marketing quota had been established and for which the current or a former owner sold or permanently transferred all of the tobacco acreage allotment or marketing quota.

(d) *False information.* Any new farm acreage allotment or marketing quota which was determined by the county ASC committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant, shall be canceled by the county ASC committee as of the date the allotment or quota was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment or quota shall be canceled effective for the current crop year.

(e) *Failure to plant.* A new farm acreage allotment or marketing quota shall be reduced to zero if no tobacco is planted on the farm the first year.

§ 723.209 Determination of acreage allotments, marketing quotas, and yields for divided farms.

(a) *Flue-cured tobacco.* The farm acreage allotment for the divided farm shall be divided pursuant to the provisions of part 719 of this chapter. History acreages and other basic data shall be apportioned among the divided tracts as provided in part 719 of this chapter.

(b) *Burley tobacco.* The farm marketing quota for the divided farm shall be divided pursuant to the provisions of part 719 of this chapter. Other basic data shall be apportioned among the divided tracts the same as the farm marketing quota.

(c) *Burley and flue-cured tobacco*—(1) *Tract yield.* The tract yield for the tracts divided from a parent farm shall be the same as the tract yield established for the tracts before the division of the parent farm. If a tract is divided, the tract yields for the resulting tracts shall be the same as the tract yield established for the tract before it was divided.

(2) *Single tract farm.* If a tract that is divided from a parent farm becomes a single tract farm, the tract yield shall become the preliminary farm yield and the farm yield for the farm shall be determined by multiplying the preliminary farm yield by the national yield factor for the current year.

(3) *Carryover tobacco.* Where carryover tobacco produced on a parent farm is marketed after the effective date of a reconstitution, such marketings shall be charged to the divided tracts in the same ratio as the marketing quotas are established for the divided tracts or as the county ASC committee determines that:

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(i) The proceeds from such marketings are received by the owner or operator of one or more of the divided tracts, or

(ii) The owners of the divided tracts agree.

§ 723.209 Determination of acreage allotments, marketing quotas, and yields for combined farms.

(a) *Burley tobacco.* The farm yield for a combined burley farm shall be the weighted average of the tract yields for the tracts being combined. The weighted average shall be the summation of the extensions of each respective tract's contribution percentage times the tract's yield.

(b) *Flue-cured tobacco.* Flue-cured farm acreage allotments, history acreages, and other basic data for combined farms shall be computed for the base period in accordance with part 719 of this chapter, except that the preliminary farm yield for a combined farm shall be the weighted average of the tract yields for the tracts that comprise the combination. The weighted average shall be the summation of the extensions of each respective tract's contribution percentage times the tract's yield. The farm yield for the combined farm shall be determined by multiplying the preliminary farm yield for the combined farm by the national yield factor for the current year.

§ 723.210 Corrections of errors and adjusting inequities in acreage allotments and marketing quotas for old farms.

(a)(1) *General.* The allotment or quota for a farm under a long-term land use program agreement shall be given the same consideration under this section as the allotment or quota for any other old farm. Notwithstanding the limitations contained in any other section of this part, the farm acreage allotment or marketing quota for each kind of tobacco established for an old farm may be increased to correct an error or adjust an inequity if the county ASC committee determines, with the approval of a representative of the State ASC committee, that the increase is necessary to establish an allotment or quota for such farm which is fair and equitable in relation to the allotment or quota for other old farms in the county in which the farm is located. Correction of errors shall be made out of that portion of the national reserve held at the national level.

(2) *Burley tobacco.* The reserve for adjusting inequities under this paragraph will be prorated to States based on the relationship of the total of the preliminary farm marketing quotas in each State to the national total of preliminary farm marketing quotas.

(3) *All kinds of tobacco except burley tobacco.* The reserve for adjusting inequities under this paragraph will be prorated to States based on the relationship of the total preliminary farm acreage allotments in each State to the national total of preliminary farm acreage allotments.

(b) *Basis for adjustment.* Increases to adjust inequities in acreage allotments or marketing quotas shall be made on the basis of the past farm acreage, yields, and farm acreage allotments of tobacco, making due allowances for failed acreage and acreage prevented from being planted because of a natural disaster as determined under part 718 of this chapter; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The total of all adjustments in old farm allotments or quotas under this paragraph shall not exceed the pounds apportioned to the county for such purpose.

(c)(1) *Burley tobacco.* Adjustments in a farm marketing quota under this paragraph shall become a part of the farm marketing quota.

(2) *Flue-cured tobacco.* Acreage apportioned to a farm under this section becomes a part of the farm acreage allotment. The farm marketing quota for such a farm shall be adjusted by multiplying the adjusted farm acreage allotment by the farm yield.

(3) *All other kinds of tobacco.* For all other kinds of tobacco, acreage approved for a farm under this section becomes a part of the farm acreage allotment.

§ 723.211 Allotments, quotas, and yields for farms acquired under right of eminent domain.

(a) *Determination of acreage allotments and marketing quotas.* The determination of farm acreage allotments and marketing quotas for farms acquired by an agency having the right of eminent domain, the transfer of such allotments or quotas to a pool, and reallocation from the pool shall be administered as provided in part 719 of this chapter. Where all or a part of an allotment or quota is pooled, all or a proportionate part of the farm acreage allotment or marketing quota shall be pooled.

(b) *Closing dates.* The State ASC committee shall establish, in accordance with instructions issued by the Deputy Administrator, a final date for:

(1) *Release.* Releasing pooled farm acreage allotment or farm marketing quota to the county ASC committee for reapportionment to other farms in the county having allotments or quotas for the same kinds of tobacco.

(2) *Request for reapportionment.* Filing a request to receive reapportioned acreage or quota from the county ASC committee for the current year.

(c) *Displaced owner release.* The displaced owner of a farm may, not later than the final release date established by the State ASC committee for the current year, release in writing to the county ASC committee for the current year, all or any part of the acreage allotment or burley tobacco marketing quota for the farm in a pool under part 719 of this chapter for reapportionment for the current year by the county committee to other farms in the county having allotments or marketing quotas for the same kind of tobacco.

(d) *Reapportionment.* The county ASC committee may reapportion, not later than 30 days after the final date established by the State ASC committee for requesting reapportioned acreage or marketing quota for the current year, the released acreage or quota or any part thereof to other farms in the county on the basis of the past farm acreage or marketings and the past farm acreage allotments or quotas for the same kind of tobacco; land, labor, and equipment available for the production of such kind of tobacco; crop rotation practices; and soil and other physical factors affecting the production of such kind of tobacco.

(e) *Effect of reapportionment.* For purposes of establishing future farm allotments or quotas, any reapportioned allotment or quota shall not be considered as planted on the farm to which the allotment or quota was reapportioned.

(f) *Burley or flue-cured tobacco provisions.* For burley or flue-cured tobacco:

(1) *Farm Yield.* The farm yield for a farm to which a pooled marketing quota is transferred shall be determined in accordance with instructions issued by the Deputy Administrator.

(2) *Undermarketings or overmarketings.* The undermarketings of a farm acquired by eminent domain shall be added to the marketing quota for the receiving farm and the overmarketings of the acquired farm shall be subtracted from the marketing quota of the receiving farm.

(3) *Undermarketings while in eminent domain pool.* The pooled quota is considered planted while in the pool. Therefore, for the purpose of determining undermarketings during the time the quota is pooled, the effective quota is considered to be zero.

§ 723.212 Time for making reduction of farm marketing quotas or acreage allotments for violation of the marketing quota or acreage allotment regulations for marketing year.

Any reduction made in a farm acreage allotment or farm marketing quota for the current year for any of the reasons provided for in § 723.408 of this part, shall be made no later than April 1 of the current year in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia; or May 1 in all other States. If the reduction cannot be made by such dates for the current year, the reduction shall be made in the farm acreage allotment or farm marketing quota next established for the farm, but no later than by corresponding dates in a later year. No reduction shall be made in the farm acreage allotment or farm marketing quota for any farm for a violation if the farm acreage allotment or marketing quota for such farm for any prior year was reduced because of the same violation.

§ 723.213 Approval of acreage allotments and marketing quotas and notices to farm operators.

(a) *Review by State ASC committee.* All farm yields, acreage allotments, and marketing quotas shall be determined by the county ASC committee of the county in which the farm is located and shall be reviewed by a representative of the State ASC committee.

(b) *Notice to farm operator.* An official notice of the effective farm acreage allotment or farm marketing quota shall be mailed to the operator of each farm shown by the records of the county ASC committee to be entitled to an allotment or quota. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment or quota is established. Insofar as practicable, all notices shall be mailed in time to be received prior to the date of any tobacco marketing quota or acreage allotment referendum. A copy of such notice containing the date of mailing or a printout summary of such data shall be maintained for not less than 30 days in a conspicuous place in the county ASCS office and shall thereafter be kept available for public inspection in the office of the county ASC committee. A copy of the notice of acreage allotment or marketing quota certified as true and correct shall be furnished to any person interested in the farm for which the allotment or quota is established.

(c) *Mailing notices*—(1) *All kinds of tobacco.* If the county ASC committee determines that the acreage allotment or farm marketing quota established for any farm may be changed because of,

(i) *Violations.* A violation of the acreage allotment or marketing quota regulations for a prior marketing year,

(ii) *Agricultural production.* Removal of the farm from agricultural production,

(iii) *Farm division.* Division of the farm, or

(iv) *Farm combination.* Combination of the farm, mailing of the notice of such acreage allotment or marketing quota may be delayed, but not later than the date specified in paragraph (c)(2) of this section.

(2) *Time for mailing notices.* The notice of acreage allotment or marketing quota for any farm shall be mailed no later than April 1 of the current year in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia or May 1 of the current year in all other States.

(d) *Marketing quota erroneous notice.* (1) If the official written notice of the farm acreage allotment and marketing quota issued for any farm erroneously stated an acreage allotment or marketing quota larger than the correct effective farm acreage allotment or marketing quota, the acreage allotment or marketing quota shown on the erroneous notice shall be deemed to be the tobacco acreage allotment or marketing quota for the farm for the current year only, if the county ASC committee determines (with the approval of the State Executive Director) that the:

(i) Error was not so gross as to place the operator on notice thereof, and

(ii) Operator, relying upon such notice and acting in good faith, materially changes the operator's position with respect to the production of the crop.

(2) Undermarketings and overmarketings for farms for which the erroneous notice of marketing quota is applied shall be determined based on the correct effective farm marketing quota.

(3) For purposes of determining history acreage the correct acreage allotment shall be used, in determining whether or not 75 percent of the allotment has been planted.

§ 723.214 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for the producer's farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the county ASCS office to have such allotment and marketing quota reviewed by a review committee in accordance with part 711 of this chapter.

§ 723.215 Transfer of tobacco farm acreage allotment or farm marketing quota that cannot be planted or replanted due to a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The State ASC committee shall determine those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any of the tobacco acreage allotment or marketing quota for any farm in the county. The county ASC committee of each county affected by the determination shall publicize the determination.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of tobacco acreage with the farm acreage allotment or marketing quota for such year to another farm or farms in the same county or in any other nearby county in the same or another State if such acreage cannot be planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county ASC committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to a nearby county, the county ASC committee for the nearby county shall be consulted before action is taken by the county ASC committee receiving the application.

(c)(1) *Amount of burley tobacco transfer.* The burley quota to be transferred shall not exceed the smaller of:

(i) The effective farm quota established under this part less such quota planted to tobacco and not destroyed by the natural disaster, or

(ii) The quota requested to be transferred.

(2) *Amount of transfer for other than burley tobacco.* The allotment to be transferred shall not exceed the smaller of:

(i) The farm allotment established under this part less such acreage planted to tobacco and not destroyed by the natural disaster, or

(ii) The allotment requested to be transferred.

(d) *County ASC committee approval.* The county ASC committee shall approve the transfer if it finds that:

(1) All or part of the farm acreage allotment or marketing quota for the

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transferring farm could not be timely planted or replanted because of the natural disaster.

(2) One or more of the producers of tobacco on the transferring farm will be a bona fide producer engaged in the production of tobacco on the receiving farm and will share in the proceeds of the tobacco.

(e) *Cancellation of transfer.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county ASC committee, or the Deputy Administrator may cancel such transfer. Action by the county ASC committee to cancel a transfer shall be subject to the approval of the State ASC committee or its representative.

(f) *Acreage history credits.* Any acreage transferred under this paragraph shall be considered for the purpose of determining future allotments or quotas to have been planted to tobacco on the farm from which such allotment or quota is transferred.

(g) *Closing dates.* The closing date for filing applications for transfers with the county ASC committee shall be July 15 of the current year. Notwithstanding such closing date requirement, the county ASC committee may accept applications filed after the closing date upon a determination by the county ASC committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State ASC committee approves such determination.

§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

(a) Except with respect to cigar binder (types 54 and 55) tobacco, tobacco acreage allotments or marketing quotas may be transferred between eligible farms in accordance with the provisions of this section.

(1) *Types of transfers.* With respect to:

(i) Cigar filler (type 46) and cigar filler (types 42, 43, and 44), tobacco, transfers may be by lease only.

(ii) Flue-cured tobacco, transfers may be by:

(A) Sale, or

(B) Lease under certain natural disaster conditions provided in this section.

(iii) Burley tobacco, transfers may be by:

(A) Lease,

(B) Owner, or

(C) Sale, when a sale is required to prevent forfeiture of purchased or reallocated quota.

(iv) Fire-cured, dark air-cured, and Virginia sun-cured tobacco, transfers may be by:

(A) Lease,

(B) Owner, or

(C) Sale.

(2) *Transfer agreement.* In order to transfer a marketing quota or allotment between two eligible farms, including a marketing quota or allotment that is pooled in accordance with part 719 of this chapter, the transfer must be recorded on Form ASCS–375 and:

(i) *Where to file.* Filed in the county ASCS office which serves the county in which the transferring farm is located for administrative purposes.

(ii) *Signature-burley tobacco.* Signed by, for burley tobacco only:

(A) *Leases.* The owner and operator of the transferring farm and the owner or operator of the receiving farm.

(B) *Sales.* The owner of the selling farm and an active burley tobacco producer who is the buyer. If the buyer is neither owner nor operator of the farm to which the quota will be assigned, the owner or operator of the farm must give written consent for the quota to be assigned to the farm.

(C) *Owner transfers.* The owner of the transferring farm, who also must be the owner or operator of the receiving farm.

(iii) *Signature-flue-cured tobacco.* Signed by, for flue-cured tobacco only:

(A) *Leases.* The owner of the transferring farm and the owner or operator of the receiving farm.

(B) *Sales.* The owner of the selling farm and an active flue-cured tobacco producer who is the buyer. If the buyer is neither owner nor operator of the farm to which allotment and quota will be assigned, the owner or operator of the farm must be given written consent for the allotment and quota to be assigned to the farm.

(iv) *Signatures—except burley and flue-cured tobacco.* Signed by, for all kinds of tobacco other than burley and flue-cured tobacco, the owner and operator of the transferring farm and the owner or operator of the receiving farm.

(v) *Witness.* Each person whose signature is required by paragraphs (a)(2) (ii), (iii), or (iv) of this section must sign Form ASCS–375 in the presence of a State or county ASC committee member or employee who shall sign Form ASCS–375 as a witness, except that when both the owner and the operator of a transferring farm must sign, such witness is required for the signature of either the owner or operator, but not both. If such signatures cannot be witnessed in the county ASCS office where the farm is administratively located, they may be witnessed in any State or county ASCS office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers that are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county ASCS office mails Form ASCS–375 for the required signatures;

(b) *Effective date.* In order for the transfer to be effective for the current year, the Form ASCS–375 shall be filed:

(1) *When to file—burley tobacco.* For burley tobacco:

(i) On or before July 1 of the current year, except as provided in paragraph (b)(1)(ii) of this section. An agreement to transfer quota by lease may be considered to have been filed on July 1 of the current year if such transfer agreement is filed not later than the end of the marketing year that begins during the current year and the county ASC committee, with the concurrence of the State ASC committee, determines that on or before July 1 of the current year the lessee and lessor agreed to such lease and transfer of quota and the failure to file such transfer agreement did not result from gross negligence on the part of any party to such lease and transfer.

(ii) After July 1 of the current crop year and before February 16 of the following calendar year when the transfer is by lease and the transferring farm has suffered a loss of production of burley tobacco due to hail, drought, excessive rain, wind, tornado, or other natural disasters as determined by the Deputy Administrator.

(2) *When to file—flue-cured tobacco.* For flue-cured tobacco:

(i) On or before June 15 if the transfer is by sale.

(ii) After June 30 and on or before November 15 for a transfer by lease when the transferring farm has suffered a loss of production of flue-cured tobacco due to drought, excessive rain, hail, wind, tornado, or other natural disasters as determined by the Deputy Administrator.

(3) *When to file—except burley and flue-cured tobacco.* For all other kinds of tobacco, by the date established by the State ASC committee, except that a lease shall be effective if the county ASC committee, with the approval of a State ASC committee representative, finds that the producer was prevented from timely filing the transfer agreement due to reasons beyond the control of the producer.

(c) *Approval or disapproval.* A transfer agreement shall not be approved before the period for filing an application for review of the initial notice of allotment or quota has expired. The county ASC committee or its designee shall approve each transfer agreement that meets the eligibility requirements of this section. The county ASC committee shall disapprove any transfer agreement that does not meet the eligibility requirement of this section. Any approval or disapproval of a transfer agreement shall to the extent possible be made within 30 days after the transfer agreement is filed with the county ASC committee unless additional time is required as the result of conditions beyond the control of the county ASC committee. However;

(1) *Burley tobacco.* If an agreement is filed after July 1 which provides for the sale of quota, a transfer agreement shall not be approved until the next year's quota is computed for the selling farm. In addition, if marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(2) *Flue-cured tobacco.* If an agreement is filed after June 15 which provides for the sale of an allotment and quota, a transfer agreement shall not be approved until next year's allotment and quota is computed for the selling farm. In addition, if a marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(d) *Time of determination.* An approved transfer agreement shall become effective for the then current crop year, except that if an agreement that is filed after June 15 for the sale of flue-cured tobacco quota or after July 1 for the sale of burley tobacco quota, such approved agreement shall become effective for the next crop year.

(e) *Burley tobacco.* For burley tobacco only:

(1) *Basis for transfer by sale.* If the transfer of a quota is by sale, the transfer shall be based on part or all of the farm poundage quota.

(2) *Basis for transfer by lease or owner.* If the transfer of a quota is by lease or by the owner, transfer shall be based on a part of or all of the effective farm poundage quota.

(3) *Accumulation of quota.* A transfer by lease or by owner shall not be approved if the county ASC committee determines that the primary purpose of the transfer is to accumulate the quota on the farm (i.e., alternately transferring to and from the farm for 2 or more years to maintain the quota without satisfactory evidence of plans for producing the quota on the receiving farm).

(4) *Subleasing.* In order to determine whether there is any subleasing of a burley farm marketing quota, the current year is divided into two periods, the period up to and including July 1, and the period after July 1. The county ASC committee shall not approve a transfer during either period if the effect would be both a transfer to and from the farm during the same period. However, a transfer may be approved within any crop year if quota is transferred from a farm for one or more years and the farm subsequently is combined with another farm that otherwise is eligible to receive quota by lease or by the owner.

(5) *Transferring farm restrictions.* An agreement to transfer quota from a farm by lease or by the owner shall not be approved:

(i) *Limitation.* If the pounds of quota being transferred exceed the difference obtained by subtracting from the effective farm marketing quota the total pounds of quota purchased and/or reallocated from forfeited quota in the current and two preceding years, as adjusted to reflect changes in national quota factors which have occurred since each respective purchase and/or reallocation of quota. However, this provision shall not be applicable to transfer agreements that are filed after July 1.

(ii) *New farm.* If the farm is a new farm.

(iii) *Reduction pending.* If consideration of a marketing quota violation is pending which may result in a quota reduction for the farm for the current year. However, if the county ASC committee determines that a decision will not be made on the pending case on or before the date specified in § 723.212 of this part, a 1-year transfer will be approved if otherwise eligible.

(iv) *Filed on or before July 1.* Unless the receiving farm is administratively located in the same county as the transferring farm.

(v) *Filed after July 1.* If the transfer agreement is filed after July 1, unless the county ASC committee in the county in which the farm is located for administrative purposes determines that the:

(A) Farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of a flood, hail, wind, drought, excessive rain, tornado, or other natural disaster.

(B) Acreage planted to burley tobacco on the farm was sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota.

(C) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(D) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(E) Receiving farm is administratively located in the same State as the transferring farm.

(vi) *Consent of lien holder.* For a multiple year transfer, if the farm is subject to lien, unless the lien holder agrees in writing to the transfer; and

(vii) *Claim for marketing quota penalty.* If a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid: However, this provision shall not apply if the claim is paid or the entire proceeds of the lease of the quota are applied against the claim and the county ASC committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(viii) *Forfeiture pending.* To the extent that forfeiture of such quota is expected to become final before July 1.

(6) *Receiving farm restrictions.* An agreement to transfer quota to a farm by lease or by owner shall not be approved:

(i) *Filed on or before July 1.* If the transfer agreement is filed on or before July 1:

(A) Unless the receiving farm is administratively located in the same county as the transferring farm.

(B) If the pounds of quota being transferred to the farm by lease or by the owner exceed the smaller of 15,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(ii) *Filed after July 1.* If the transfer agreement is filed after July 1, unless the:

(A) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(B) Pounds of quota to be transferred to the lessee farm do not exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

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(C) Transferring farm is administratively located in the same State as the receiving farm.

(7) Selling farm restrictions. A transfer of quota from a farm by sale shall not be approved:

(i) *Forfeiture otherwise required.* Unless forfeiture of the quota otherwise would be required. However, this provision may be waived if:

(A) The quota was purchased and/or reallocated to the farm during four preceding years; and

(B) The county ASC committee, with the concurrence of a representative of the State ASC committee, determines that the failure to permit the sale of quota, to the extent otherwise permitted by this section, would cause an undue hardship on the seller and the:

(1) Sale is in connection with the settlement of an estate which includes the farm for which the quota was established;

(2) Owner of the quota is experiencing financial distress to the extent that current year financing is unlikely;

(3) Owner of the quota is disabled due to health reasons to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota; or

(4) Owner of the quota is sharing in the risk of production as an investing producer and loses resources necessary to produce the crop due to reasons beyond such owner's control such as the loss of a tenant or sharecropper and a replacement cannot be obtained.

(ii) *Location of farms.* Unless both the selling farm and the buying farm are administratively located in the same county.

(iii) *Pounds in excess of required forfeiture.* If the pounds of quota being transferred exceed the pounds of quota for which forfeiture otherwise is required.

(iv) *Reduction pending.* If consideration of an indicated marketing quota violation is pending which may result in quota reduction for the farm for the current year. However, if the county ASC committee determines that a decision will not be made on the pending case on or before the date specified in § 723.212 of this part, a transfer will be approved if otherwise eligible.

(v) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the quota in order to prevent forfeiture.

(vi) *Claim for marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: However, this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the quota are applied against the claim and the county ASC committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(8) *Restrictions on buying farm.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producers.* Unless the buyer is an active burley tobacco producer.

(ii) *Cropland limitation.* If the sum of the pounds of quota being transferred, plus the pounds of quota previously transferred to the farm in the current year by lease or by the owner, exceeds the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(iii) *Quota previously sold.* If the farm owner sold quota from the farm during the current or either of the two preceding years to prevent a forfeiture of the quota.

(iv) Unless both the buying farm and the selling farm are administratively located in the same county.

(9) *Period of transfer.* A transfer by lease or by owner may be for a period of one to five years: However, an agreement to transfer quota by lease shall be limited to the current crop year if the transfer is filed after July 1 in accordance with the natural disaster provisions of this section.

(10) *Redetermination of quota after transfer by lease or by the owner.* After a transfer by lease or by the owner, the effective farm marketing quota shall be redetermined for both the transferring farm and the receiving farm.

(11) *Apportionment of data-selling farm.* The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

(i) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;

(ii) The pounds of quota which have been transferred from the selling farm by lease or by the owner in the current year;

(iii) The pounds of quota which have been reduced in the current year as the result of a marketing quota violation in a prior year;

(iv) The pounds of quota transferred to the farm by lease or by owner in the previous year;

(v) The previous year's farm marketing quota; and

(vi) The previous year's effective farm marketing quota.

(12) *Apportionment of data-buying farm.* The buying farm's share of each respective item of farm data shall be determined by subtracting the pounds which are retained on the selling farm for the respective item from the pounds which were established for the selling farm for the respective item before the current sale of quota. However, the pounds of quota transferred from the selling farm by lease or by the owner and/or the pounds of quota reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which were transferred by lease or by the owner, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall he added to any previous data for the buying farm.

(13) *Redetermination Quota after sale or purchase of quota.* After adjusting the data in accordance with the provisions of this section, the effective farm marketing quota shall be determined for both the buying and selling farm.

(14) *Farm division after transfer by lease.* If a farm is divided after there has been a transfer of a marketing quota to the farm by lease, the transferred quota shall be divided in the manner which is designated in writing by the lessee. In the absence of a written designation, the leased quota shall be apportioned in the same manner as the farm marketing quota of the parent farm.

(15) *Multiple year transfer by lease or by owner.* The effective farm marketing quota on a receiving farm having a multiple-year transfer agreement in effect shall be adjusted for each year for which such transfer agreement is in effect to reflect any decrease in the national quota factor which causes the farm marketing quota established for the transferring farm to be less than the pounds of quota which have been transferred to the receiving farm.

(16) *Considered planted credit.* Considered planted credit shall be given to the transferring farm when tobacco quota is transferred from the farm by lease or by owner.

(f) *Flue-cured tobacco.* For flue-cured tobacco only:

(1) *Location of buying and selling farms.* Marketing quota transferred by sale must be to a farm administratively located within the same county.

(2) *Maximum quota to be transferred by sale.* If the transfer is by sale, the transfer shall be based on part or all of the farm poundage quota. The maximum quota that may be transferred by sale is the farm poundage quota.

(3) *Transfer by lease-involvement of outside parties.* If the transfer is by lease, only the lessor and lessee (or any attorney, trustee, bank, or other agent who regularly represents either the lessor or lessee in business transactions unrelated to the production or marketing of tobacco) may be parties to, or involved in the arrangements for such transfer. The transfer shall be based on a portion or all of the effective farm poundage quota. The maximum quota that may be transferred by lease is the effective farm poundage quota.

(4) *Lessor farm restrictions.* A transfer of quota from a farm by lease shall not be approved:

(i) *New farm.* If the farm is a new farm.

(ii) *Natural disaster.* Unless the county ASC committee in the county in which the farm is located for administrative purposes determines that the:

(A)*(1)* The farm has planted an acreage equal to or more than 90 percent of the effective farm acreage allotment, or

(2) In accordance with guidelines issued by the Deputy Administrator, the planted acreage of flue-cured tobacco on the farm is sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota;

(B) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(C) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(D) Farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a drought, excessive rain, hail, wind, tornado, or other natural disaster as determined by the Deputy Administrator.

(iii) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the lessor for tobacco marketing quota penalty and the claim remains unpaid unless the claim is paid or the entire proceeds of the lease of the allotment and quota are applied against the claim and the county ASC committee determines that the amount of the lease represents a reasonable price for the pounds of quota being leased.

(iv) *Located in the same State.* Unless the lessor farm is administratively located in the same State as the lessee farm.

(5) *Lessee farm restrictions.* A transfer of quota to a farm by lease shall not be approved:

(i) *Price support eligibility.* Unless the producers on the farm qualify for price support under the provisions of part 1464 of this title; and

(ii) *Limitation.* If the pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

(iii) *Located in same State.* Unless the lessee farm is administratively located in the same State as the lessor farm.

(6) *Selling farm restrictions.* A transfer of quota from a farm by sale shall not be approved:

(i) *Previously purchased and/or reallocated quota.* If the farm marketing quota includes quota that was bought, and/or reallocated from the quota which has been forfeited and the purchase and/or reallocation became effective in the 4 preceding years: However, this provision shall not be applicable if:

(A) *(1)* The quota being sold was purchased in such period, if forfeiture of such quota is required by § 723.220 of this part, and the amount of quota being transferred does not exceed the amount of quota for which forfeiture otherwise is required in accordance with the provisions of § 723.220 of this part; or

(2) The county ASC committee, with the concurrence of a representative of the State ASC committee, determines that the failure to approve the sale would cause an undue hardship on the seller and:

(B) The sale is in connection with the settlement of an estate which includes the farm for which the quota was established;

(C) The owner of the quota is experiencing financial distress to the extent that current year financing is unlikely;

(D) The owner of the quota is disabled due to health reasons to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota; or

(E) The owner of the quota is sharing in the risk of production as an investing producer and loses resources necessary to produce the crop due to reasons beyond such owner's control such as the loss of a tenant or share cropper and a replacement cannot be obtained.

(ii) *Reduction pending.* If consideration of an indicated violation is pending which may result in an allotment and quota reduction for the farm for the current year. However, if the county ASC committee determines that a decision will not be made on the pending case on or before April 1, a transfer may be approved.

(iii) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the allotment and quota in order to prevent forfeiture.

(iv) *Consent of lien holder.* If the farm is subject to a lien unless the lien holder agrees in writing to the transfer: However, consent of a lien holder is not required for a transfer of the pounds of quota for which forfeiture is required in accordance with the provisions of § 723.220 of this part.

(v) *Claim for marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: However, this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the allotment and quota are applied against the claim and the county ASC committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(vi) *Allotment and quota subject to an approved Conservation Reserve Program contract.* If the allotment and quota is subject to an approved Conservation Reserve Program contract, unless forfeiture otherwise would be required in accordance with the provisions of § 723.220 of this part.

(7) *Buying farm restrictions.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producer.* Unless the buyer is an active flue-cured tobacco producer.

(ii) *Tillable cropland limitation.* If the sum of the pounds of quota being transferred, plus the pounds of quota previously transferred to the farm in the current year by lease, exceeds the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of tillable cropland by the farm yield.

(iii) *Quota previously sold.* If the farm owner sold quota from the farm during the current or any of the 4 preceding years or 2 years if such sale was to prevent a forfeiture of the quota.

(iv) *Installment payment option.* Unless the buyer of the flue-cured tobacco acreage allotment and marketing quota has been afforded an

option to pay for such allotment and quota in two to five equal annual installments payable each fall beginning with the fall of the crop year in which the transfer becomes effective and such buyer certifies on a form prescribed by the Deputy Administrator that such option has been made available to the buyer.

(8) *Allotment and quota after transfer by lease.* The effective farm acreage allotment and the effective farm marketing quota shall be determined for both the lessee farm and the lessor farm in accordance with the provisions of §§ 723.205 and 723.208 of this part, respectively.

(9) *Apportionment of data after transfer of quota by sale-selling farm.* The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

(i) The planted and considered planted acres for the base period;

(ii) The history acres for the base period;

(iii) The farm acreage allotment for the current year and for the base period;

(iv) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;

(v) The pounds of quota which have been transferred from the selling farm by lease in the current year;

(vi) The acres of allotment which have been reduced in the current year as the result of a marketing quota violation in a prior year;

(vii) The pounds of quota transferred to the farm by lease in the previous year;

(viii) The previous year's farm marketing quota;

(ix) The previous year's effective farm marketing quota; and

(x) The previous year's marketings.

(10) *Apportionment of data-buying farm.* The pounds of farm marketing quota which have been purchased shall be divided by the farm yield for the buying farm in order to determine the farm acreage allotment for the buying farm. The buying farm's share of other farm data shall be determined by subtracting the acres or pounds, as applicable, which are retained on the selling farm from the acres or pounds which were established for the selling farm before the current sale of quota.

acres of reduction resulting from a marketing quota violation for the buying farm shall be multiplied by a factor determined by dividing the farm yield of the selling farm by the farm yield of the buying farm in order to determine the acres of reduction from the buying farm for the current year. The pounds of quota transferred from the selling farm by lease and/or the acres of allotment reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which are leased, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall be added to any previous data for the buying farm.

(11) *Allotment and quota.* After adjusting the data in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm marketing quota shall be determined for both the buying and the selling farm.

(12) *Effect of price support eligibility.* If a lease agreement is filed after the farm operator reports the acreage of tobacco on the farm in the current year, the effective farm acreage allotment which has been determined prior to the approval of the transfer will be used in determining price support eligibility for the farm.

(13) *Violation of lease provisions.* (i) If, after a lease agreement is approved, information is brought to the attention of the county ASC committee which indicates that either the lessor or the lessee, or both, knowingly filed a false certification with respect to a transfer of quota by lease, the county ASC committee shall schedule a hearing, notify such person of the time and place of the hearing, and present evidence at the hearing with respect to the allegation of false certification. If, as a result of the evidence presented, the county ASC committee determines that such person knowingly made a false certification, the county ASC committee shall notify the person of the determination and afford such person 15 days after the mailing of the notice to request a review of the determination by a review committee as provided for by part 711 of this chapter.

(ii) If it is determined that the lessor knowingly made a false certification, the

established for the lessor's farm shall be reduced by that percentage which the leased quota was of the total flue-cured tobacco farm marketing quota established for the farm in the year of the lease.

(iii) If it is determined that the lessee knowingly made a false certification, the lease agreement for purposes of the flue-cured tobacco marketing quota program with respect to the lessee's farm shall be considered to be null and void as of the date approved by the county ASC committee.

(14) *Considered planted credit.* Considered planted credit shall be given to the lessor farm for the tobacco acreage allotment which is deducted as the result of the transfer of quota from the farm by lease.

(15) *Sale of quota with installment payment option.* Notwithstanding any other provision of this section the owner of a farm who sells any flue-cured tobacco acreage allotment and marketing quota may:

(i) Negotiate with more than one prospective buyer before selling such allotment and quota; or

(ii) Sell such allotment and quota to any eligible buyer whom such owner may select; or

(iii) Sell such allotment and quota for a single payment; or

(iv) Include provisions in the agreement of sale to protect the seller's interest if the buyer fails to make full payment. Such provisions may not include the use of such allotment and quota as collateral for purposes of protecting the seller's interest in the allotment and quota.

(v) Flue-cured tobacco acreage allotment and marketing quota purchased in accordance with this subparagraph shall not revert to the seller's farm but shall remain with the farm to which assigned at the time of purchase even though the buyer fails to make full payment to the seller for such allotment and quota.

(g) *Burley and flue-cured tobacco.* For burley or flue-cured tobacco:

(1) *Carryover tobacco.* If tobacco is marketed after the entire farm marketing quota of the producing farm has been transferred by sale, the tobacco shall be considered as having been marketed on each farm to which farm marketing quota was transferred by sale in accordance with a transfer agreement filed after June 15 for flue-cured tobacco, or July 1 for burley tobacco, of the last year in which a farm marketing quota was established for the producing farm. Such marketing shall be prorated to

farm. If there was more than one farm to which a farm marketing quota was transferred by sale, the marketing may be assigned to the farms in the manner agreed to in writing by each of the buyers of such farm marketing quota.

(2) *Cancellation of transfer.* A transfer of flue-cured allotment and quota, or burley quota, under this section which was approved in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county ASC committee. For the purpose of determining any overmarketings and undermarketings from the farms, and for the purpose of determining eligibility for price support and marketing quota penalties, the cancellation shall be effective as of the date of approval. However, such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes if the:

(i) Transfer approval was made in error or on the basis of incorrect information which had been unknowingly furnished by the parties to the agreement; and

(ii) Parties to the transfer agreement were not notified of the cancellation before the marketing for the receiving farm exceeded the correct effective farm marketing quota.

(3) *Canceled because of fraud.* If a transfer of a flue-cured allotment and quota, or burley quota, is canceled because of fraud on the part of the owner of the transferring farm but no fraud is attributable to either the owner or operator of the receiving farm, such cancellation shall be effective as of the date of approval of the transfer except for purposes of determining eligibility for price support and marketing quota penalties for the receiving farm. In such case, the overmarketings shall be charged against the farm from which the transfer was made if the farm, after any reconstitution which may be necessary as a result of fraud, is assigned a flue-cured allotment and quota, or burley quota, against which the overmarketings could be charged. Otherwise, the overmarketings shall be charged against any other farm involved in the fraud having a flue-cured allotment and quota, or burley quota, after any reconstitution required by such fraud. Notwithstanding the foregoing, any overmarketings on the receiving farm which are in excess of the amount of quota involved in the canceled transfer shall be charged against the receiving farm.

(4) *Dissolution or revision of a transfer agreement.* A transfer agreement may be dissolved or minor revisions made with respect to such

parties to the agreement is made to the county ASC committee by November 15 of the current marketing year for flue-cured tobacco, or by February 15 of the current marketing year for burley tobacco. After any such dissolution or revision of a transfer agreement, an official notice of the flue-cured acreage allotment and marketing quota, or burley quota, shall be issued by the county ASC committee to each of the operators involved in the transfer agreement.

(h) *Cigar tobacco.* For cigar-filler (type 46) and cigar-filler (types 42, 43, and 44) tobacco only, the provisions of paragraph (j) of this section are applicable in addition to the following:

(1) *Farm eligible.* The owner and operator (acting together if different person) of any farm for which an old farm tobacco acreage allotment is established for the current year may lease and transfer all or any part of the farm acreage allotment established for such farm to any other owner or operator of a farm in the same county with a current year's allotment (old or new farm) for the same kind of tobacco for use on such farm. Transfer of allotments by lease shall not exceed 5 years.

(2) *Transfer approved acre per acre.* The lease and transfer shall be approved acre per acre.

(3) *Considered planted credit.* The amount of allotment acreage which is leased from a farm shall be considered for the purpose of determining future allotments (and tobacco history acreage) to have been planted to tobacco on such farm. The amount of allotment acreage which is leased and transferred to a farm shall not be taken into account in establishing allotments for subsequent years for such farms.

(4) *Limitation on acreage transferred.* The total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm shall not exceed 30 percent of the acreage of cropland in the farm, except that in the case of cigar-filler (types 42, 43, 44, and 46) transfers, such transfers shall be limited to a total of 10 acres.

(5) *Transfer from the pool.* Allotments in a pool pursuant to part 719 of this chapter may be eligible for lease and transfer during the 3-year life of the pooled allotment. An agreement to lease and transfer shall not serve to extend the life of such pooled allotment.

(i) *Fire-cured, Dark air-cured, and Virginia sun-cured tobacco.* For Fire-cured, Dark air-cured, and Virginia sun-cured tobacco, only, the provisions of this section are applicable in addition to the

(1) *Persons eligible to file a record of transfer (ASCS–378)—sale or lease.* The owner and operator of any old farm for which a Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment is established for the current year may sell or lease all or any part of such allotment to any other owner or operator of a farm in the same county, and in the same State for Virginia fire-cured (type 21) or Virginia sun-cured (type 37) tobaccos. The receiving farm need not be an old farm. In the case of a permanent transfer, a statement signed by all parties to the transaction confirming that the sale has been made shall be filed with the county ASC committee.

(2) *By owner.* The owner of any old tobacco farm for which a Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment is established for the current year may transfer any or all of such allotment permanently, or for a term of years designated by the owner, to another farm in the same county (within the same State for Virginia fire-cured and Virginia sun-cured tobacco) owned or controlled by such owner.

(3) *Maximum period of transfer by lease.* Transfer of allotments by lease shall not exceed 5 years.

(4) *Productivity adjustment-reductions in farm allotments being transferred.* The county ASC committee shall determine a normal yield per acre for each farm from which, and for each farm to which, a tobacco acreage allotment or any part thereof is transferred. (For across county line transfers, the county ASC committee for the county in which each farm is located shall determine the normal yield.) If the normal yield for the farm to which transfer is made for the year the transfer is to take effect exceeds the normal yield for the farm from which the transfer is to take effect by more than 10 percent, the allotment so transferred shall be reduced for differences in farm productivity. The county ASC committee shall determine the amount of allotment to be transferred by sale, lease, and by owner, where productivity adjustment is required under this paragraph as follows:

(i) Multiply the normal yield established for the farm from which the allotment is being transferred by the acreage being transferred, then

(ii) Divide the result by the normal yield established for the farm to which the allotment is to be so transferred. The amount of allotment so transferred from a farm shall be the full amount and the amount of allotment so transferred to a farm shall be the reduced amount. In the case of temporary transfers of allotment

owner, the productivity adjustment and amount so transferred shall be redetermined by the county ASC committee each year the transfer remains in effect.

(5) *Adjustments in farm history acreage.* The farm history acreage for the immediately preceding 5 years on farms from which and to which permanent transfer of allotment is made shall be adjusted by the county ASC committee for each of the base years to correspond with the amount of allotment transferred between the farms. In the case of temporary transfers of allotment for 1 or more years by lease or by owner, the farm history acreage shall not be reduced on the farm from which the transfer is made and farm history acreage shall not be transferred to the receiving farm.

(6) *Limitation on acreage transferred.* The total of the Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment which may be transferred for each kind of tobacco, by sale, lease, or by owner, to a farm shall not exceed 10 acres of allotment. However, the total of each acreage for each kind of tobacco allotted to any farm after such transfer (the sum of its own allotment and the acreage transferred after any adjustment in normal yields for the current year) shall not exceed 80 percent of the acreage of cropland on the farm. The cropland in the farm for the current year for purposes of such transfers shall be the total cropland as defined in part 719 of this chapter.

(7) *Prohibition on permanent transfer.* A permanent transfer by sale or by owner shall not be approved from any farm to which an allotment was permanently transferred by sale or by owner within the 3 immediately preceding crop years.

(8) *Temporary transfer to non-owned farm.* A transfer requested on a temporary basis to a farm controlled but not owned by the applicant shall be approved only if the applicant will be the operator of the farm to which the transfer is to be made for each year of the period for which the transfer is requested. When the applicant for whom such transfer has been approved no longer is the operator of the receiving farm due to conditions beyond such operator's control, the transfer shall remain in effect unless the transfer is terminated under the provisions of paragraph (j) of this section. Conditions beyond the operator's control shall include, but not be limited to, death, illness, incompetence, or bankruptcy of such person.

(9) *Transfer of pooled allotment.* Allotments established for a farm as pooled allotment under part 719 of this chapter may be transferred on a:

(i) Permanent basis during the 3-year life of a pooled allotment, or

(ii) Temporary basis for a term of years not to exceed the remaining number of crop years of such 3-year period. A temporary agreement to transfer shall not serve to extend the life of such pooled allotment.

(10) *New farm eligibility.* Any farm from which the entire farm allotment is sold or permanently transferred by the owner shall not be eligible for a new farm tobacco allotment for the kind transferred during the 5 years following the year in which such transfer is made.

(11) *Transfer of history acreage.* Permanent transfer of allotment shall have the effect of transferring history acreage, farm base, and marketing quota attributable to such allotment. In the case of a transfer by lease, the transferred allotment shall be considered for purposes of establishing future allotments to have been planted on the farm from which such allotment was transferred.

(j) *Tobacco except burley, flue-cured, and cigar (types 54 and 55).* For tobacco that may be transferred in accordance with the provisions of paragraph (h) or (i) of this section, the following provisions shall also apply:

(1) *New farm allotment.* A new farm allotment shall not be transferred.

(2) *Tobacco allotment subject to an approved Conservation Reserve Program contract.* A transfer of allotment designated for reduction under a Conservation Reserve Program contract shall not be approved.

(3) *Subleasing prohibited.* A transfer of allotment from a farm shall not be approved during the period for which a current temporary transfer agreement is in effect that transferred quota to the same farm.

(4) *Limitation on transfer to and from a farm in the same year.* If a transfer agreement is in effect for the current crop year for a farm, a transfer of allotment shall not be approved during the same crop year:

(i) From such farm receiving allotment by transfer for such year, or

(ii) To such farm which had allotment transferred from it for such year.

(5) *Farm in violation.* If consideration of a violation is pending which may result in an allotment reduction for a farm for the current year, the county ASC committee shall delay approval of any transfer of allotment from or to the farm until the violation is cleared or the allotment reduction is made. However, if the allotment reduction in such case cannot be made effective for the current crop year before the final date for reducing allotments for violations, the transfer may be approved by the county ASC committee. In any case, if, after a transfer of a tobacco acreage allotment has been approved by the county ASC committee, it is determined that the allotment for the farm from which or to which such acreage is transferred is to be reduced for a violation, the allotment reduction for such farm shall be delayed until the following year.

(6) *Claim for tobacco marketing quota penalty.* A transfer of acreage allotment from a farm shall not be approved if a claim has been filed against the lessor, seller, or transferring owner for a tobacco marketing quota penalty and the claim remains unpaid. However, this provision shall not apply if the claim is paid or the entire proceeds of the lease or sale of the allotment are applied against the claim and the county ASC committee determines that the amount paid for the lease or sale represents a reasonable price for the acres of allotment being transferred.

(7) *Approval after review period.* A transfer of allotment shall not be approved by the county ASC committee for any farm before the time of filing an application for review, as shown on the original allotment notice for the farm, has expired. If an application for review is filed for a farm involved in a transfer agreement, such agreement shall not be approved by the county ASC committee until the allotment for such farm is finally determined pursuant to part 711 of this chapter.

(8) *Acreage allotment after lease and transfer.* The acreage allotment determined after a temporary transfer for a farm under the provisions of this section shall be the allotment of such farm for the current year only for the purpose of determining:

(i) Excess acreage,

(ii) The amount of penalty to be collected on marketings of excess tobacco including absorption of carryover penalty tobacco,

(iii) Eligibility for price support, and

(iv) The farm marketing quota and the percentage reduction for a violation in the allotment for the farm.

(9) *Cancellation of transfer.* Any transfer of allotment under this section which was approved by the county ASC committee in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county ASC committee. Such cancellation shall be effective as of the date of approval for purposes of determining eligibility for price support and marketing quota penalties except that such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes, if:

(i) The transfer approval was made in error or on the basis of incorrect information unknowingly furnished by the parties to the transfer agreement; and

(ii) The parties to the transfer agreement were not notified of the cancellation before the tobacco was planted.

(10) *Dissolution or revision.* A transfer agreement may be dissolved or minor revisions made where a request by all parties to the agreement is made in writing to the county ASC committee. Such written notification shall be filed prior to planting the tobacco. A late filed request to dissolve or revise the transfer may be effective for the current year if the county ASC committee with approval of a representative of the State ASC committee determines that the producer was prevented from timely filing for reasons beyond such producer's control.

(11) *Reconstituted farm.* The allotment for a farm being divided or combined in the current year shall be the allotment after the transfer has been approved. Notwithstanding the above, in the case of a division, the county ASC committee shall allocate the acreage that was transferred by lease to the tracts involved in the division as the parent farm owners and operators designate in writing. In the absence of such designation, the county ASC committee shall apportion the leased acreage.

(12) *Consent of lien holder.* A transfer of allotment other than by annual lease shall not be approved from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lien holder.

§ 723.217 Release and reapportionment of old farm acreage allotments for Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco.

(a) *Annual or permanent release of acreage allotments to State committee.* Except as provided in this paragraph, all or any part of a farm acreage allotment on which Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco will not be produced and which the operator of the farm voluntarily releases on an annual basis, or both the owner and operator voluntarily releases on a permanent basis, in writing to the State ASC committee by not later than the final date for filing releases established by the State ASC committee for the current year shall be deducted from the allotment of such farm.

(1) For the farm voluntarily releasing tobacco farm acreage allotment on an annual basis, such acreage will be considered as having been planted on the releasing farm for the purpose of establishing allotments for subsequent years. For the farm receiving such annual released acreage, such acreage shall not be taken into account in establishing future allotments for the farm. The tobacco history acreage for a farm releasing on a permanent basis shall not be taken into account in establishing future allotments for the farm. The tobacco history acreage for a farm releasing on a permanent basis shall be adjusted to reflect the acreage permanently released.

(2) An acreage allotment shall not be released either annually or permanently:

(i) From the eminent domain allotment pool if an application for transfer from the pool has been filed in accordance with part 719 of this chapter;

(ii) From a new farm; or

(iii) To the extent such acreage is designated for reduction under a Conservation Reserve Program contract.

(b) *Reapportionment of released acreage allotment.* The acreage voluntarily released on an annual or permanent basis for the current year may be reapportioned by the State ASC committee to any farm in any county in the State including a farm receiving a new farm allotment. The State ASC committee shall select the counties to which the released acreage will be reapportioned. The county ASC committee shall select the farms to which the released acreage will be reapportioned. The State ASC committee shall keep records on both an annual and permanent basis of the source of acreage released. Any acreage released for the current year on a permanent basis which is not reapportioned by the State ASC committee in the current year may be reapportioned in the following year. The county ASC committee for the county receiving released acreage may reapportion the tobacco allotment acreage on an annual or permanent basis to other farms in the county in amounts determined by the county ASC committee to be fair and reasonable on the basis of land, labor, and equipment available for production of Cigarfiller and binder (types 42, 43, 44, 54, and 55) tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Released acreage should not be reapportioned on a temporary or permanent basis to any farm unless there is assurance from the operator to the county ASC committee that the released acreage being received will be produced. Allotment reapportioned to a farm on an annual basis can only be used by the receiving farm for increased production during the current year. Allotment reapportioned to a farm on a permanent basis shall be added to the current year allotment or shall serve to establish an allotment for a farm without a current allotment. A farm shall be eligible to receive reapportionment of released acreage on either or both an annual or permanent basis only if a written request is filed by the farm owner or operator at the office of the county ASC committee not later than the final date for filing such requests established by the State ASC committee for the current year.

§ 723.218 Determining tobacco history acreage.

With respect to each respective kind of tobacco, the tobacco history acreage shall be determined for each farm for which a tobacco acreage allotment was established for such kind of tobacco for the current year.

(a) The history acreage shall be the same as the farm acreage allotment for the respective kind of tobacco if in the current year, or either of the two preceding years, the sum of the planted and considered planted acreage of such kind of tobacco was as much as 75-percent of the farm acreage allotment. Otherwise, the history acreage shall be the sum of the planted and considered planted acreage of such kind of tobacco.

(b) Notwithstanding any other provision of this section, for the respective kind of tobacco, the history acres for the current year and for each year of the base period shall be reduced to zero if:

(1) A new farm allotment was canceled;

(2) The allotment was in a pool established in accordance with the eminent domain provision of part 719 of this chapter and the period of eligibility has expired for transferring the allotment from the pool; or

(3) The county ASC committee determines that the farm has been retired from agricultural production and the allotment is not eligible for pooling in accordance with the eminent domain provisions of part 719 of this chapter.

§ 723.219 Forfeiture of burley tobacco marketing quota.

(a) *Determination of quota subject to forfeiture.* (1) For purposes of paragraph (b) of this section, the phrase "owns a farm" means ownership of:

(i) A farm as constituted under part 719 of this chapter, if the entire farm shares a common ownership; or

(ii) All of the land within a farm which shares a common ownership if the parent farm consists of tracts of land having separate ownerships.

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(2) For purposes of paragraph (b) of this section, the county ASC committee shall apportion, in accordance with the provisions of part 719 of this chapter, the burley tobacco quota assigned to a farm between the various tracts of land which are separately owned by:

(i) A person not using the land on the farm for which a burley tobacco marketing quota is established for agricultural purposes.

(ii) A person who uses the land on the farm for which the burley tobacco marketing quota is established for agricultural purposes or for educational, instructional, or demonstrational purposes.

(3) The farm marketing quota determined under this section for each farm or tract, as applicable, shall be the amount of quota subject to forfeiture under this section.

(b) *Person who does not use the land on the farm for which the marketing quota is established for agricultural purposes or does not use such marketing quota for educational, instructional, or demonstrational purposes.* For purposes of this paragraph, the term "person" means a person as defined in part 719 of this chapter, including any governmental entity, public utility, educational institution, religious institution or joint venture (but not including any farming operation involving only spouses), but excluding any individual.

(1) *Required forfeiture.* With respect to any person owning a farm for which a burley tobacco marketing quota is established, if the county ASC committee determines that such person does not use the land on such farm for agricultural purposes, or does not use such burley tobacco marketing quota for educational, instructional, or demonstrational purposes, such person shall forfeit such quota which is not sold on or before December 1 of the year after any year for which the county ASC committee makes such determination.

(2) *Agricultural purposes.* Land on the farm for which a burley tobacco marketing quota is established shall be considered to be used for agricultural purposes if the county ASC committee determines that:

(i) In the current year or either of the 2 preceding years such land is used for the production of:

(A) Row crops of any type;

(B) Livestock or poultry (including pasture and forage for livestock);

(C) Trees (including orchards and vineyards); or

(D) Hay or native grasses on open land; or

(ii) In the current year such farm is owned by an educational institution which uses such burley tobacco marketing quota solely for educational, instructional, or demonstrational purposes.

(3) *Documentation.* Within 30 days after a written request is made by the county ASC committee, or within such extended time as may be granted by the county ASC committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(1) of this section have been met with respect to such person. Upon failure of such person to timely respond to this request, the county ASC committee shall determine that the person does not use the land on the farm for agricultural purposes, or does not use the burley tobacco marketing quota for educational, instructional, or demonstrational purposes.

(c) *Buyer of quota fails to share in the risk of production*—(1) *Forfeiture required.* If any person buys burley tobacco quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the 5 crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Failure to utilize purchased quota.* The failure to utilize purchased burley tobacco quota for the production of tobacco shall not result in the forfeiture of such quota, but the 5-year period which is specified in paragraph (c)(1) of this section shall be extended 1 year for each year in which the quota is not utilized.

(3) *Reduction for failure to share in the risk of production.* The effective quota shall be reduced, but not below zero pounds, for leasing and marketing quota purposes only, to the extent of the purchased quota for each crop after the crop year in which the buyer of such quota fails to share in the risk of producing a crop of tobacco which is subject to such quota.

(4) *Determining forfeited amount.* If only part of the quota on a farm is attributable to a purchased quota, the amount of the farm marketing quota which must be forfeited under paragraph (c) of this section shall be determined by increasing or decreasing each respective purchase of farm marketing quota for the farm to reflect changes in national quota factors since the purchase occurred and subtracting the pounds of quota which have been sold to prevent forfeiture.

(d) *Hearing.* Before any forfeiture of quota becomes effective under the provisions of this section, the county ASC committee shall:

(1) Schedule a hearing for the affected person.

(2) Notify the affected person of the hearing at least 10 days in advance of the hearing.

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county ASC committee as to whether or not:

(i) Any of the conditions for forfeiture specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of allotment and quota when such forfeiture conditions have been determined to exist with respect to the provisions of paragraph (b) of this section.

(4) Notify the affected persons of the county ASC committee determination and, if forfeiture of quota is to be required, afford such person an opportunity to appeal to a review committee in accordance with the provision of part 711 of this chapter.

(e) *Apportionment of data and determination of quota after forfeiture*—(1) *Apportionment of data.* The pounds of farm marketing quota retained on the forfeiting farm after the forfeiture shall be divided by the farm marketing quota established for the farm before the forfeiture to determine a factor for apportioning farm data. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data for the forfeiting farm:

(i) Overmarketings which have been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(ii) Pounds of quota transferred from the forfeiting farm by lease or by the owner in the current year.

(iii) Pounds of quota reduced in the current year for a marketing quota violation in a prior year.

(iv) Previous year's effective farm marketing quota.

(v) Previous year's marketings.

(vi) Previous year's farm marketing quota.

(vii) Pounds of quota transferred to the farm by lease or by owner in the previous year.

The portion of the forfeiting farm data which shall be included in a forfeiture pool for the county shall be determined by subtracting the pounds of each respective item of farm data which are retained on the forfeiting farm from the pounds of the respective item of data which were established for the forfeiting farm before forfeiture.

(2) *Forfeiture pool.* The data for the forfeiture pool shall be added to any previous data in the forfeiture pool.

(3) *Quota after forfeiture.* After adjustment of data, the effective farm marketing quota shall be determined in accordance with the provisions of § 723.206 of this part for the forfeiting farm.

(f) *Forfeiture pool*—(1) *Establishing forfeiture pool.* A forfeiture pool shall be established in each county in which a forfeiture of quota occurs. The forfeiture pool shall be increased to include data for each forfeiture and shall be decreased for each reallocation in order to reflect any forfeited or reallocated amounts of:

(i) Farm marketing quota for the current year.

(ii) Quota reduced for marketing quota violations.

(iii) Quota transferred from the forfeiting farm by lease or by the owner.

(iv) Previous year's effective farm marketing quota.

(v) Previous year's marketings.

(2) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factor used in determining quotas for old farms. Quota data in the forfeiture pool shall be decreased each time any burley tobacco quota is reallocated from the forfeiture pool. Such decrease in the quota data will be made in the same proportion as the pounds of quota which are reallocated from the pool are to the pounds of quota which were in the pool before the reallocation.

(g) *Reallocation of quota from forfeiture pool*—(1) *Application.* In order to establish eligibility to receive quota from the forfeiture pool in the current year, an application must be made on a form approved by the Deputy Administrator. Such application must be filed:

(i) *Who may file.* By an active producer.

(ii) *When to file.* On or before April 30. The State ASC committee may establish an earlier date if notice of such earlier date is given in time for interested applicants to file an application by the earlier date.

(iii) *Where to file.* At the county ASCS office which serves the farm for which the application is filed.

(2) *Eligibility of applicant.* In order for an applicant to be eligible for quota from the forfeiture pool, the county ASC committee must determine that:

(i) The application was filed timely.

(ii) The applicant is an active tobacco producer.

(iii) During the current year or during the 4 years preceding the current year, the applicant has not sold or forfeited quota from any farm.

(3) *Time to reallocate.* The county ASC committee shall:

(i) Not reallocate any quota from the forfeiture pool until the time has passed for filing an application for forfeited quota for the current year.

(ii) Reallocate any quota from the forfeiture pool only during the 30-day period beginning on the day after the final day for filing an application for quota from the forfeiture pool.

(4) *Reallocation by county ASC committee.* Reallocation of any burley tobacco quota shall be made by the county ASC committee. In making its determination of the amounts of quota to reallocate, the county ASC committee may consider the size of the current quotas on the farms of the eligible applicants, the length of time the applicants have been farming tobacco, the type of farming done by the applicants (i.e., livestock, grain, or other commodities), previous leasing history of the applicants, and such other factors which in the judgment of the county ASC committee should be considered. A burley tobacco quota may be reallocated to a farm which currently does not have a burley tobacco quota. A factor shall not be used to reallocate quota between all eligible applicants.

(5) *Basis for reallocation from forfeiture pool.* Reallocation from the forfeiture pool shall be on the basis of pounds of farm marketing quota.

(6) *Amount of quota to be reallocated.* The county ASC committee may reallocate all or part of the quota in the forfeiture pool. The minimum amount of quota which may be reallocated to an eligible applicant is the total amount of quota in the pool or 100 pounds, whichever is less. The maximum amount is 500 pounds. However, up to 1,500 pounds may be allocated with State ASC committee concurrence.

(7) *Data for receiving farm.* All data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The data determined for the receiving farm in accordance with the provisions of this paragraph shall be added to any previous data for the receiving farm.

(8) *Quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the effective farm marketing quota shall be determined for the receiving farm.

(h) *Forfeiture of reallocated quota.* Any burley tobacco quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 5 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (c)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 5-year period which is specified in this paragraph shall be extended by a year for each year in which the quota is not utilized.

(i) *Successor-in-interest.* A successor-in-interest shall be subject to the provisions of this section in the same manner and to the same extent as would be applicable to the person whose interest has been assumed by such successor-in-interest.

(j) *New owner of farm.* The new owner of a farm on which a portion or all of the farm marketing quota for such farm was either purchased and/or was reallocated from forfeited quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 30 of the current crop year and such owner would otherwise be required to sell or forfeit the farm marketing quota because in the preceding crop year the owner of such quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated quota, the new owner may be considered the buyer of the quota instead of being considered as a successor-in-interest to the previous owner of the farm. However, the new owner must furnish to the county ASC committee on or before June 30 of the current year a certification that such owner intends to become an active burley tobacco producer. Any purchased or reallocated quota, which is acquired by a new owner who is not considered to be the buyer of the quota in accordance with the provisions of this paragraph, shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased

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the quota at the time the farm was acquired.

(2) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the buyer of burley tobacco quota which was transferred to a farm but which was not owned by such buyer if the buyer ceases to share in the risk of production of burley tobacco produced on the farm.

§ 723.220 Forfeiture of flue-cured tobacco acreage allotment and marketing quota.

(a) *Determination of allotment and quota subject to forfeiture.* (1) For purposes of paragraphs (b) and (c) of this section, the phrase "owns a farm" means ownership of:

(i) A farm as constituted under part 719 of the chapter if the entire farm shares a common ownership; or

(ii) All of the land within a common ownership if the parent farm consists of separate ownership tracts of land.

(2) For purposes of paragraphs (b) and (c) of this section, the county ASC committee shall, in accordance with the provisions of part 719 of this chapter, apportion the flue-cured tobacco acreage allotment and marketing quota assigned to a farm between:

(i) All land which is owned by any person which is not significantly involved in the management or use of land for agricultural purposes, as described in paragraph (b) of this section; and

(ii) Each common ownership tract of land in the farm other than that described in paragraph (a)(2)(i) of this section.

(3) With respect to the provisions of paragraph (c) of this section, an acreage allotment and marketing quota shall be determined for a tract in accordance with paragraph (a)(2)(ii) of this section only to the extent that records are available to show the contribution which the tract made to the flue-cured tobacco acreage allotment of the parent farm.

(4) The farm acreage allotment and farm marketing quota determined under this section for each farm or tract, as applicable, will be the amount of allotment and quota subject to forfeiture under this section.

(b) *Persons not significantly involved in management or use of land for agricultural purposes.* For purposes of this paragraph, the term "person" means a person as defined in part 719 of this chapter, including any: Governmental entity, public utility, educational institution, or religious institution, but not including any: Individual, partnership, joint venture, family farm corporation, trust, estate, or similar entity (as determined by the Deputy Administrator) in which 50 percent or more of the beneficial interest is in one or more individuals; or educational institution that uses a flue-cured tobacco acreage allotment and marketing quota for instructive or demonstrational purposes.

(1) *Required forfeiture.* If at any time the county ASC committee determines that any person which owns farm for which a flue-cured tobacco acreage allotment and marketing quota are established is not significantly involved in the management or use of land for agricultural purposes, such person shall forfeit such allotment and quota which is not sold on or before December 1 of the year for which the county ASC committee makes such a determination.

(2) *Owner ceases to be significantly involved.* A person shall be considered to be significantly involved in the management or use of land for agricultural purposes if the county ASC committee determines that:

(i) For the 3 preceding years, more than 20 percent of the gross income of the person has been derived from the management or use of land for the production of crops which are planted and harvested annually, and/or livestock, including pasture and forage for livestock; and

(ii) Any other person or all other persons which in combination own more than 50 percent of the assets of the owner of the flue-cured tobacco allotment and marketing quota also meet the criteria specified in paragraph (b)(2)(i) of this section.

(3) *Documentation.* Within 30 days after a written request is made by the county ASC committee, or within such extended time as may be granted by the county ASC committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(2) of this section have been met with respect to such person. Upon failure of such person to timely respond to such request, the county ASC committee shall determine that the person is not significantly involved in the management or use of land for agricultural purposes.

(c) *Flue-cured tobacco farm acreage allotment exceeds 50 percent of tillable cropland.* If any person owns a farm for which the flue-cured tobacco farm acreage allotment assigned to the land owned by the person exceeds 50 percent of the tillable cropland on such farm, the person shall take steps, such as the sale of allotment, the purchase of tillable cropland, or conversion of land to tillable cropland status, which will result in the elimination of the excess or the person shall forfeit flue-cured tobacco acreage allotment and marketing quota for the farm. The amount of the allotment and quota subject to forfeiture shall be the amount of such excess that remains on or after:

(1) July 1 of the year, after the year of acquisition, if the farm was acquired after December 1, 1982.

(2) July 1 of the year after the crop year for which the change(s) become effective, for increases in allotment resulting from changes in national acreage or national yield factors.

(3) July 1 of the year after the year in which the farm owner disposes of an acreage of tillable cropland or changes the status of land in the farm so as to cause such land to lose its tillable cropland status.

(d) *Farm includes purchased allotment.* If a farm includes purchased allotment, notwithstanding the provisions of paragraph (c)(1) of this section, when the flue-cured tobacco farm acreage includes acreage of purchased allotment and the flue-cured tobacco farm acreage allotment exceeds 50 percent of the tillable cropland because the owner disposed of an acreage of tillable cropland after purchasing the allotment, the forfeiture shall not take place until July 1 of the year after the year of such disposal.

(e) *Buyer of allotment fails to share in risk of production.*—(1) *Forfeiture required.* If any person buys a flue-cured acreage allotment and quota under the provisions of § 723.216 of this part and such person fails to share in the risk of producing the tobacco which was planted under such allotment and quota during any of the 5-crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased allotment and quota which is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Fails to utilize purchased allotment and quota.* Failure to utilize purchased allotment and quota for the production of tobacco shall not subject such allotment and quota to forfeiture, but the 5-year period of paragraph (e)(1) of this section shall be extended 1 year for each year in which the allotment and quota is not utilized.

(3) *Reduction for failure to share in risk of production.* The effective allotment and quota shall be reduced, but not below zero acres or pounds, for planting, leasing, and marketing quota purposes only, to the extent of purchased allotment and quota for each crop year after the crop year in which the buyer of such allotment and quota fails to share in the risk of producing a crop of tobacco planted under such allotment and quota.

(4) *Determining forfeited amount.* If a farm resulted from purchased allotment or quota, the amount of farm marketing quota which must be forfeited under paragraph (e) of this section shall be determined by:

(i) Increasing or decreasing each respective purchase of farm marketing quota for the farm to reflect any annual changes in national acreage and national yield factors subsequent to the year of purchase.

(ii) Adding the amounts determined in paragraph (e)(4)(i) of this section, multiplying the result by the farm yield for the farm, and subtracting the pounds of quota which have been sold to prevent forfeiture.

(f) *Tobacco not planted nor considered planted.* Notwithstanding any other provision of this part, any person who owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established, shall forfeit such allotment and quota after February 15 of any year immediately following the 1st year of the 3-year period immediately preceding the year for which the county ASC committee determines that flue-cured tobacco was not planted nor considered planted on such farm during at least 2 years of such 3-year period.

(g) *Hearing.* Before any forfeiture of allotment and quota becomes effective under the provisions of this section, the county ASC committee shall:

(1) Schedule a hearing for the affected person.

(2) Notify the affected person of the hearing at least 10 days in advance of the hearing.

(3) Make a determination, on the basis of evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county ASC committee as to whether:

(i) Any of the conditions of requiring forfeiture as specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of a flue-cured tobacco acreage allotment and marketing quota.

(4) Notify the affected person of the county ASC committee determination and, if forfeiture of allotment and quota is to be required, afford such person an opportunity to appeal to a review committee under the provision of part 711 of this chapter.

(5) Wait until the period has passed for the affected person to appeal the county ASC committee or review committee determination that allotment and quota must be forfeited under the provisions of this section.

(h) *Apportionment of data and determination of allotment and quota after forfeiture.*—(1) *Apportionment of data.* The pounds of farm marketing quota retained on the forfeiting farm after the forfeiture shall be divided by the farm marketing quota established for the forfeiting farm before the forfeiture to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data of the forfeiting farm, the:

(i) Planted and considered planted acres for the base period.

(ii) History acres for the base period.

(iii) Farm acreage allotment for the base period.

(iv) Overmarketings which have not been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(v) Acres of allotment reduced in the current year for a marketing quota violation in a prior year.

(vi) Previous year's effective farm marketing quota.

(vii) Previous year's marketings.

(viii) Previous year's farm marketing quota.

(ix) Pounds of quota transferred from the forfeiting farm by lease in the current year.

(x) Pounds of quota transferred to the farm by lease in the previous year.

The portion of the forfeiting farm data which shall be included in a forfeiture pool for the county shall be determined by subtracting the acres or pounds which are retained on the forfeiting farm from the acres or pounds established for the forfeiting farm before forfeiture.

(2) *Forfeiture pool.* The data for the forfeiture pool shall be added to any previous data in the forfeiture pool.

(3) *Allotment and quota after forfeiture.* After adjustment of data, the effective farm acreage allotment and the effective farm marketing quota shall be determined in accordance with § 723.205 and 723.206 of this part, respectively, for the forfeiting farm.

(i) *Forfeiture pool.*—(1) *Establishing forfeiture pool.* A forfeiture pool shall be established in each county in which a forfeiture of allotment and quota occurs. The forfeiture pool shall be increased to include data for each forfeiture and shall be decreased for each reallocation in order to reflect any forfeited or reallocated amounts of the:

(i) Farm acreage allotment for the current year and for the base period.

(ii) Farm marketing quota for the current year and for the base period.

(iii) Acres reduced for violation.

(iv) Planted and considered planted acres for the base period.

(v) History acres for the base period.

(vi) Previous year's effective farm marketing quota.

(vii) Previous year's marketing.

(viii) Quota transferred from the forfeiting farm by lease.

(2) *Yield for forfeiture pool.* The farm yield for the forfeiture pool shall be determined by dividing the farm marketing quota in the forfeiture pool by the farm acreage allotment in the forfeiture pool. The preliminary farm yield for the forfeiture pool shall be determined by dividing the farm yield by the national yield factor.

(3) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factors used in determining yields, allotments, and quotas for old farms. Acreage and quota data in the forfeiture pool shall be decreased each time quota is reallocated from the forfeiture pool, such decrease to be made in the same proportion as the pounds of quota which are reallocated from the pool are to the pounds of quota which were in the pool before the reallocation.

(j) *Reallocation of allotment and quota from forfeiture pool.*—(1) *Application.* In order to establish eligibility to receive allotment and quota from the forfeiture pool in the current year, an application must be made on a form approved by the Deputy Administrator. Such application must be filed:

(i) *Who may file.* By an active producer.

(ii) *When to file.* On or before March 31. The State ASC committee may establish an earlier date if notice of such earlier date is given in time for interested applicants to file an application by the earlier date.

(iii) *Where to file.* At the county ASCS office which serves the farm for which the application is filed.

(2) *Eligibility of applicant.* In order for an applicant to be eligible for allotment and quota from the forfeiture pool, the county ASC committee must determine that:

(i) The application was filed timely.

(ii) The applicant is an active producer.

(iii) During the current year or during the 4 years preceding the current year, the applicant has not:

(A) Sold or forfeited allotment and quota from any farm.

(B) Used the designation method of division to retain less allotment than the farm would have retained by another method of division.

(3) *Time to reallocate.* The county ASC committee shall:

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(i) Not reallocate any allotment and quota from the forfeiture pool until the time has passed for filing an application for forfeited allotment and quota for the current year.

(ii) Reallocate any allotment and quota from the forfeiture pool only during the 30-day period beginning on the day after the final day for filing an application for allotment and quota from the forfeiture pool.

(4) *Reallocation by county ASC committee.* Reallocation of any allotment and quota shall be made by the county ASC committee. In making its determination of the amounts to reallocate, the county ASC committee may consider the size of the current allotments on the farms of the eligible applicants, the length of time the applicants have been farming tobacco, the type of farming done by the applicants (i.e., livestock, grain, or other commodities), and other factors which in the judgment of the county ASC committee should be considered. Allotment and quota may be reallocated to a farm which currently does not have a flue-cured tobacco allotment. A factor shall not be used to reallocate allotment and quota between all eligible applicants.

(5) *Basis for reallocation from forfeiture pool.* Reallocation from the forfeiture pool shall be on the basis of pounds of farm marketing quota.

(6) *Amount of quota to reallocate.* The county ASC committee may reallocate all or part of the quota in the forfeiture pool.

(i) *Minimum.* The minimum amount of quota which may be reallocated to an eligible applicant is the total amount of quota in the pool or 200 pounds, whichever is less.

(ii) *Maximum.* The maximum amount of quota which may be reallocated to an eligible applicant is 1,000 pounds. However, with State ASC committee approval, up to 2,500 pounds may be allocated.

(7) *Data for receiving farm.* All data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The pounds of farm marketing quota reallocated to a farm shall be divided by the farm yield for the farm to determine the amount of reallocated farm acreage allotment. The data determined for the receiving farm in accordance with the provisions of this paragraph shall be added to any previous data for the receiving farm.

(8) *Allotment and quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm marketing quota shall be determined for the receiving farm according to §§ 723.205 and 723.206, respectively, of this part.

(k) *Forfeiture of reallocated allotment and quota.* Allotment and quota which is reallocated to a farm under the provisions of this section shall be forfeited if the applicant to whom the allotment and quota is reallocated fails to share in the risk of production of tobacco produced under such allotment and quota during any of the 5 years beginning with the crop year during which the allotment and quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner as is provided in paragraph (e)(4) of this section for forfeiture of purchased quota. Forfeiture shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced under such allotment and quota. While the failure to utilize such allotment and quota shall not subject such allotment and quota to forfeiture, the 5-year period, as provided for in this paragraph, shall be extended by a year for each year in which the allotment and quota is not utilized.

(l) *Successor-in-interest.* The successor-in-interest shall be subject to the provisions of this section in the same manner and to the same extent as would be applicable to the person whose interest was assumed.

(m) *New owner.* The new owner of a farm on which a portion or all of the farm acreage allotment and farm marketing quota for such farm was either purchased and/or was reallocated from forfeited allotment and quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 15 of the current crop year and such owner would otherwise be required to sell or forfeit the farm acreage allotment and farm marketing quota because in the preceding crop year the owner of such allotment and quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated allotment and quota, the new owner may be considered the buyer of the allotment and quota instead of being considered as a successor-in-interest to the previous owner of the farm. However, the new owner must furnish to the county ASC committee on or before June 15 of the current year a certification that such owner intends to become an active flue-cured tobacco producer. Any purchased or reallocated allotment and quota, which is acquired by a new owner who is considered to be the buyer of the allotment and quota in accordance with the provisions of this paragraph, shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased the allotment and quota at the time the farm was acquired.

(n) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the buyer of allotment and quota which was transferred to a farm but which was not owned by such buyer if the buyer ceases to share in the risk of the production of tobacco produced on the farm.

Subpart C—Tobacco Subject to Quota, Exemptions From Quotas, Marketing Cards, and General Penalty Provisions

§ 723.301 Identification of tobacco subject to quota.

(a) Except as provided in paragraphs (b) and (c) of this section, any tobacco which is determined by a representative of the State ASC committee or county ASC committee to have the same appearance and characteristics as a kind of tobacco for which marketing quotas are in effect shall be deemed to be a quota kind of tobacco. Such tobacco shall continue to be deemed a quota kind of tobacco unless it has been certified by the Agricultural Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511) and implementing regulations (7 CFR part 29), prior to removal of the tobacco from the State where it was produced, as a kind of tobacco not subject to marketing quotas.

(b) Any kind of tobacco for which marketing quotas are not in effect that is produced in a State where marketing quotas are in effect for any kind of tobacco shall be subject to the quota for the kind of tobacco for which marketing quotas are in effect in that State. If marketing quotas are in effect in a State for more than one kind of tobacco, nonquota tobacco produced in the State shall be subject to the quota for the kind of quota tobacco produced in the State having the highest price support under the Agricultural Act of 1938.

(c) Paragraph (b) of this section shall not apply to:

(1) Maryland (type 32) tobacco when it is nonquota tobacco and produced on a farm for which a marketing quota for Maryland (type 32) tobacco was established when marketing quotas for such kind of tobacco were last in effect (1965);

(2) Cigar-filler (type 41) tobacco when it is nonquota tobacco and produced in Pennsylvania;

(3) Cigar-wrapper (types 61 and 62) tobacco when it is nonquota tobacco and produced in Connecticut, Massachusetts, Georgia or Florida;

(4) Tobacco produced in a quota State that is represented to be nonquota tobacco and that is readily and distinguishably different from all kinds of quota tobacco, as determined by the Agricultural Marketing Service, U.S. Department of Agriculture, through application of the standards issued by the Secretary for the inspection and identification of tobacco. Such inspection and identification shall be made prior to removal of the tobacco from the State where it was produced; and

(5) Tobacco which is nonquota tobacco and produced in a quota area in which the total of the acreage allotments for quota tobacco established for farms is less than twenty acres.

§ 723.302 Tobacco for experimental purposes.

For farms on which tobacco is being grown for experimental purposes by or under the direction of a publicly owned agricultural experiment station, such tobacco shall be exempt from any penalties otherwise required by this part if, before the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, the director of such publicly owned agricultural experimental station furnishes a report, to the State Executive Director for the State in which the farm is located, that includes the following information:

(a) Name and address of the publicly owned agricultural experiment station.

(b) Name of the owner, and name of the operator if different from the owner, and the farm number of each farm on which tobacco is grown for experimental purposes only.

(c) The acreage or poundage of tobacco that is to be grown on each farm for experimental purposes only.

(d) A certification signed by the director of the publicly owned agricultural experiment station to the effect that such acreage or poundage of tobacco is being grown for each farm for experimental purposes only, the tobacco is being grown under the auspices of such director, and the acreage of each plot was considered necessary for carrying out the experiment.

§ 723.303 Production of registered or certified flue-cured tobacco seed.

Producers of registered or certified flue-cured tobacco seed may devote flue-cured tobacco acreage in excess of the effective allotment to seed production without such acreage of tobacco causing a "No Price Support" entry on the marketing card issued for the farm if an agreement is signed by the farm operator, and the producer, if different from the operator, which provides:

(a) *Destruction prior to harvest.* For the destruction prior to harvest of all tobacco produced on the acreage designated for seed production.

(b) *Producer payment of compliance costs.* That the producers shall pay the cost of compliance visits to a farm by representatives of the county ASC committee for the purposes of:

(1) Designating and determining the acreage of seed production, and

(2) Determining that no tobacco has been harvested from the acreage designated for seed production and to witness destruction of tobacco leaves.

(c) *Agreement.* That the producer(s) signing the agreement shall agree to timely notify the county ASCS office when the tobacco seed has been harvested.

(d) *No history credit.* That the planting of the tobacco acreage for seed production will not create history acreage for the purpose of establishing future farm allotments.

(e) *Cancellation of marketing cards.* That if the county ASC committee determines that any of the terms and conditions of the agreement have been violated or any material misrepresentation has been made, any marketing card issued for the farm in recognition of the agreement shall be recalled and canceled, and a marketing card shall be issued to reflect that tobacco produced on the farm is not eligible for price support.

§ 723.304 Determination of discount varieties.

(a) *Definition. Discount variety* means any of the flue-cured tobacco seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244, or a mixture or strain of such seed varieties, or any breeding line of flue-cured tobacco seed varieties, including, but not limited to, 187-Golden Wilt (also designated by such names as No-Name, XYZ, Mortgage Lifter, Super XyZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244. However, where there is growing in a field offtype plants of not more than 2 percent, such offtype plants shall not be considered in certifying the flue-cured tobacco variety being produced. Flue-cured tobacco variety which is not certified to be discount variety shall be considered as "acceptable variety."

(b) *Producer report.* The operator, or any producer, on each farm producing flue-cured tobacco shall file with the county ASCS office a report on MQ-84 showing whether or not discount variety tobacco was planted on the farm.

(c) *Failure to file report.* If the operator of a farm on which flue-cured tobacco is being produced in the current year fails or refuses, within 7 days after a request of the county ASC committee on MQ-84-1, Notice of Action Required Regarding Determination of Seed Varieties of Flue-Cured Tobacco, to file a report on MQ-82, showing whether or not there was planted any of the discount varieties of flue-cured tobacco on such farm, all flue-cured tobacco produced on such farm shall be considered by the county ASC committee to be discount variety tobacco unless the county ASC committee finds that failure to comply with the request was due to circumstances beyond the control of the farm operator.

(d) *Notice to farm operator.* The farm operator having discount variety tobacco shall be given written notice by certified mail on MQ-84-2, Notice of Determination of Discount Variety of Flue-Cured Tobacco. This notice to the farm operator shall constitute notice to all persons who, as owner, operator, landlord, tenant, or sharecropper, are interested in the tobacco grown on the farm.

(e) *Producer's right to recertify.* Any producer on a farm who received a Form MQ-84-2 notifying such producer that the farm has discount variety tobacco when in fact an acceptable variety is being produced may recertify on Form MQ-82.

(f) *Issuance of marketing cards.* (1) If a farm is considered to have discount variety tobacco available for marketing and the farm is eligible for price support, the county ASCS executive director shall issue MQ-76, bearing the notation "Discount Variety-Limited Price Support." If the farm is considered to have discount variety tobacco but it is not eligible for price support, the county ASCS executive director shall issue MQ-76, bearing the notation "Discount Variety-No Price Support."

(2)(i) Where an MQ-76, bearing the notation, "Discount Variety-Limited Price Support" is issued for a farm, the card may be exchanged at the county ASCS office for an MQ-76, without the notation, or

(ii) Where an MQ-76, bearing the notation "Discount Variety-No Price

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Support" is issued for a farm the card may be exchanged at the county ASCS office for MQ–76 with the notation "No Price Support." However, the farm operator shall establish to the satisfaction of the county ASC committee that there has been no commingling or substitution of discount variety tobacco produced on the farm or on any other farm operated by such operator, and that all discount variety tobacco has been marketed or satisfactorily disposed of, or accounted for.

(3) MQ–76 issued to identify marketings of tobacco grown for experimental purposes by or for publicly owned experiment stations shall bear the notation "Discount Variety-Limited Price Support" if such tobacco is discount variety tobacco.

(g) *Identification of flue-cured leaf account tobacco as acceptable variety*— (1) Whenever the Director determines there is a significant amount of discount variety tobacco available for marketing in any marketing year, the Director may cause to be initiated the provisions of this paragraph. In addition, the Director may terminate any action initiated hereunder when it is determined that no discount variety of flue-cured tobacco remains available for sale during the remainder of the current marketing season. Notification to warehouse operators of action required under this paragraph shall be by the State ASCS executive director.

(2)(i) Each warehouse operator who offers for auction sale any leaf account flue-cured tobacco on a warehouse floor other than such operator's own floor, and who requests the other warehouse operator to identify such tobacco as being "acceptable variety" shall execute MQ–79–1 (Flue-Cured), Dealer's Certification-Resale Tobacco.

(ii) Each warehouse operator who is participating in the Commodity Credit Corporation price support program, and who identifies resale tobacco indicating that such tobacco with a "certified" lot ticket indicating that such tobacco is covered by an executed MQ–79–1.

(iii) Each executed MQ–79–1 (Flue-Cured) shall show the following information with respect to each lot of resale tobacco:

(A) Crop year.

(B) Name and address of warehouse where the tobacco is being offered for sale.

(C) Tobacco sale bill number and date.

(D) Date, signature of dealer and current address, and dealer identification number.

(3)(i) Each dealer or any other person who offers for auction sale any resale flue-cured tobacco on a warehouse floor which is participating in the Commodity Credit Corporation price support program and on which floor eligible resale flue-cured tobacco is identified with a "certified" lot ticket, and who requests the warehouse operator to identify such operator's tobacco as being an "acceptable variety," shall execute MQ–79–1 (Flue-Cured), Dealer's Certification-Resale Tobacco.

(ii) Each executed MQ–79–1 (Flue-Cured) shall show the following information with respect to resale tobacco:

(A) Crop year.

(B) Name and address of warehouse where the tobacco is being offered for sale.

(C) Date, signature of dealer and current address and dealer identification number.

(D) Tobacco sale bill number and date.

(iii) Each dealer or any person who acquires acceptable variety tobacco in a manner which would make it eligible for certification on MQ–79–1, or who has on hand both discount variety tobacco and acceptable variety tobacco, and desires to dispose of acceptable variety tobacco prior to disposing of the discount variety tobacco, may apply in writing to the State ASCS executive director for a special authorization to have the acceptable variety tobacco certified when offered for auction sale.

(h) Estimate of production. For any farm on which discount variety tobacco is being grown, a Form MQ–92, Estimate of Production, shall be obtained.

§ 723.305 Issuance of marketing cards.

(a) *General.* Each marketing of tobacco from a farm in a quota area shall be identified by a valid marketing card unless prior to marketing an AMS certification is issued for such tobacco to indicate that such tobacco is a nonquota kind of tobacco.

(1) A marketing card (MQ–76 or MQ–77) shall be issued for the current marketing year for each farm having quota tobacco available for marketing. Cards shall be issued in the name of the farm operator except that:

(i) Cards issued for tobacco grown for experimental purposes only shall be issued in the name of the experiment station,

(ii) Cards issued to a successor-in-interest shall be issued in the name of the successor-in-interest,

(iii) For kinds of tobacco other than flue-cured and burley, if a part of a farm which includes the tobacco acreage on the farm is cash leased to such producer, cards shall be issued in the name of such producer. The face of the marketing card may show the name of other interested producers. A marketing card may be issued in the name of a producer who is not the farm operator if the county ASC committee determines pursuant to the procedure in paragraph (a) (2) of this section that such producer has been or likely will be deprived of the right to use the marketing card issued for the farm to market such producer's proportionate share of the crop.

(2) If the county ASC committee has reason to believe that one or more producers on the farm have been or likely will be deprived of the right to use such marketing card to market such producer's proportionate share of the crop, a hearing shall be scheduled by the county ASC committee and the operator of the farm and the producer or producers involved shall be invited to be present, or to be represented, at which time they shall be given the opportunity to substantiate their claims concerning the use of the farm marketing card to market each such producer's proportionate share of the effective farm marketing quota for such crop. At least two members of the county ASC committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice. A summary of the evidence presented at the hearing shall be prepared for use of the county ASC committee. If the farm operator or other producer(s) on the farm do not attend the hearing, or are not represented, the county ASC committee shall make its decision on the basis of information available to such committee. If the county ASC committee finds that any producer on the farm has been or likely will be deprived of the right to use the marketing card issued for the farm to market such producer's proportionate share of the crop, a separate marketing card shall be issued to such producer. With respect to burley and flue-cured tobacco, the marketing card issued for the farm shall be recalled and a separate marketing card, showing 103 percent of the producer's proportionate share of the effective farm marketing quota shall be issued to each such producer who it is determined has been or likely will be deprived of the opportunity to market such producer's proportionate share of the crop and another card (or other cards if considered preferable by the county ASC committee) shall be issued showing 103 percent of the effective farm marketing quota to enable the other producers on the farm to market their proportionate shares. The marketing cards issued pursuant to this

subparagraph shall reflect the proportionate pounds, if any, already marketed by each producer.

(3) The procedure in paragraph (a)(2) of this section shall not apply to a person who was a producer on the farm in a prior year but who is not a producer in the current crop year.

(b) *Person authorized to issue marketing cards.* The county ASCS executive director shall be responsible for the issuance of marketing cards. For kinds of tobacco other than burley and flue-cured tobacco, each marketing card shall bear the actual or facsimile signature of the county ASCS executive director who issued the card.

(c) *Rights of producers and successors-in-interest.* (1) Each producer having a share in tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing such producer's proportionate share.

(2) Any person who succeeds, other than a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm, shall, to the extent of such succession, have the same right to the use of the marketing card and bear the same liability for penalties as the original producer.

(d) *No price support-burley and flue-cured tobacco.* For burley and flue-cured tobacco, the notation "No Price Support" shall be entered on each marketing card issued for the use of:

(1) *Farm.* The farm if any producer on the farm is ineligible for price support under the provisions of part 1464 of this title.

(2) *Producer.* The producer on a farm if the producer is ineligible for price support under the provisions of part 1464 of this title.

(e) *Farm quota data entered on marketing card and supplemental card for burley or flue-cured tobacco:*

(1) Any marketing card issued to market burley or flue-cured tobacco shall show when issued, in the space provided on the reverse side, the pounds computed by multiplying 103 percent times the effective farm marketing quota.

(2) Notwithstanding paragraph (e)(1) of this section, if the tobacco available for marketing from the farm is determined by the county ASC committee or the county ASCS executive director to be less than the effective farm marketing quota, for purposes of issuing a marketing card and showing thereon the farm's 103 percent of the effective quota, the effective farm marketing quota for the farm shall be considered to be the pounds determined to be available for marketing from the farm. If any producer on the farm satisfies the county ASC committee or county ASCS executive director that the quantity of tobacco produced on the farm in the current year, plus any carryover tobacco from a prior year, is greater than the previously determined pounds of tobacco available for marketing from the farm, the pounds shown on the marketing card shall be increased accordingly, but not to exceed an amount which would cause the total pounds shown on the marketing card to equal 103 percent of the effective farm marketing quota.

(3) Upon request by the farm operator, a supplemental marketing card bearing the same name and identification as shown on the original marketing card may be issued for a farm upon return to the county ASCS office of an original marketing card or a supplemental marketing card. The pounds computed as the balance of 103 percent of quota from a prior marketing card shall be shown in the first space on the reverse side of the marketing card.

(4) Upon written request of the farm operator two or more marketing cards may be issued for a farm if the farm operator specifies the number of pounds of quota to be assigned to each marketing card. In such case, the total pounds of quota specified in the entry, "103 percent of quota," on all marketing cards issued for the farm may not exceed 103 percent of the effective farm marketing quota.

(f) *Farm quota data entered on marketing card and supplemental card for any kind of tobacco other than burley or flue-cured:* (1) Within quota marketing card. A within quota marketing card, MQ–76, indicating the tobacco is eligible for price support shall be issued for use in identifying the kind of tobacco that is available for marketing from a farm when such tobacco:

(i) Is eligible for price support according to the provisions of part 1464 of this title.

(ii) Was grown for experimental purposes by a publicly owned agricultural experiment station.

(2) *Excess marketing card.* An excess marketing card (MQ–77) shall be issued for a farm for marketing a kind of tobacco that is ineligible for price support. Before the MQ–77 is issued the county ASCS executive director shall enter on such marketing card the rate of any penalty that is to be deducted from the proceeds from any marketing of tobacco identified by such marketing card. An MQ–77 shall be issued for each farm for each kind of tobacco for which:

(i) There is excess tobacco available for marketing from the farm; or

(ii) The producer is not an eligible producer or the tobacco is not eligible tobacco as determined in accordance with part 1464 of this title.

(3) *Full penalty rate.* The full penalty rate shall be entered on each MQ–77 issued to identify tobacco produced on a farm for which:

(i) An acreage allotment was not established;

(ii) The farm operator or another producer on the farm prevents the county ASC committee from obtaining information necessary to determine the correct acreage of tobacco on the farm;

(iii) The farm operator fails in accordance with part 718 of this chapter to provide a certification of acreage planted to tobacco, or

(iv) The farm operator or another producer on the farm has not agreed to make contributions to the No Net Cost Fund or pay assessments to the No Net Cost Account, as applicable, in accordance with part 1464 of this title.

(4) *Converted penalty rate.* Except as provided in paragraph (f)(3) of this section, a converted penalty rate shall be entered on each MQ–77 issued to identify tobacco produced on a farm from which there is excess tobacco available for marketing and the percentage of excess is less than 100 percent. For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty for the current crop by the percent excess determined according to this paragraph. For a farm without carryover tobacco from a prior year, the percent excess shall be determined by dividing the excess acreage of tobacco by the harvested acreage of tobacco for the farm. For a farm having carryover tobacco from a prior year, the percent excess shall be determined as follows:

(i) Determine the number of "carryover" acres by dividing the number of pounds of carryover tobacco from the prior year by the normal yield for the farm for that year. Reduce such "carryover" acres by the amount determined by subtracting the harvested acreage from the allotment in the current year. If the "carryover" acres are entirely offset by the underharvested acreage, the percent excess will be zero and a MQ–76 may be issued if the farm otherwise is eligible for price support and the remainder of this paragraph (f)(4) of this section are inapplicable.

(ii) Determine the number of "within quota carryover acres" by multiplying the "carryover acres" by the "percent within quota" (i.e., 100 percent minus

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the percent excess) for the year in which the carryover tobacco was produced.

(iii) Determine the "total acres" of tobacco by adding the "carryover acres" and the acreage of tobacco harvested in the current year.

(iv) Determine the "excess acres" by subtracting from the "total acres" the sum of the current year's allotment and the "within quota carryover acres."

(v) Determine the percent excess by dividing the "excess acres" by the "total acres."

(5) Except as provided in paragraphs (f) (3) and (4) of this section, a zero penalty rate shall be entered on any MQ–77 issued in accordance with this section.

(g) *Other marketing card data.* Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

§ 723.306 Claim stamping and replacing marketing cards.

(a) *Claim stamping.* If a person is indebted to the United States and such indebtedness has been recorded on the county debt record, any marketing card issued for the farm on which the person has a producer interest shall bear the notation "U.S. Claim" followed by the amount of the indebtedness. The name of the debtor-producer, if different from the farm operator, shall be recorded directly under the claim notation. The notation "TMQ" indicating tobacco marketing quota as the type of indebtedness shall constitute notice to any buyer that until the amount of penalty is paid, the United States has a lien with respect to any crop of tobacco in which the debtor-producer has an interest. A claim notation other than "TMQ" shall constitute notice to any buyer that subject to prior liens, the net proceeds from any tobacco pledged as collateral for a price support loan shall be paid to the "Agricultural Stabilization and Conservation Service, USDA" to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notation and information concerning an indebtedness to the United States shall not constitute a waiver by the debtor-producer of any right to contest the validity of such indebtedness by appropriate appeal. As claim collections are made, the amount of the claim shown on the card shall be revised to show the claim balance. If requested by the producer, the county ASCS executive director who issued the marketing card shall issue a claim-free marketing card when the claim has been paid.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to executive director, two or more marketing cards may be issued for any farm. Upon the return to the county ASCS office of a marketing card which had been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county ASCS executive director who issued the card to have been lost, destroyed, or stolen.

§ 723.307 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid if:

(1) It is not issued or delivered in the manner prescribed;

(2) An entry is omitted or is incorrect;

(3) It is lost, destroyed, stolen, or becomes illegible; or,

(4) Any erasure or alteration has been made and not properly initialed by the county ASCS executive director.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county ASCS executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes invalid (other than by loss, destruction or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county ASCS executive director who issued the card, or by a marketing recorder), the farm operator, or the person in possession of the card, shall return it to the county ASCS office at which it was issued.

§ 723.308 Rate of penalty.

The rate of penalty for a marketing year shall be equal to seventy-five (75) percent of the average market price for the kind of tobacco for the immediately preceding marketing year as determined by the U.S. Department of Agriculture. The rate of penalty will be determined and announced annually for each marketing year in a notice published in the Federal Register.

§ 723.309 Persons to pay penalty.

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer or dealer through an auction sale shall be paid by the warehouse operator who may deduct the penalty from the price paid to the producer or dealer.

(b) *Nonauction sale.* The penalty due on tobacco acquired directly from a producer or dealer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer in the case of a sale.

(c) *Marketing outside the United States.* The penalty due on marketings by a producer or dealer directly to any person outside the United States shall be paid by the producer or dealer making the sale.

§ 723.310 Date penalty is due.

(a) *Payment of penalty.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the State ASCS office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the tobacco sale bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include the following:

(1) Advances to producers,

(2) Charges for hauling, or

(3) Any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sales.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

§ 723.311 Lien for penalty.

(a) *Lien on tobacco.* Until the amount of any penalty which is imposed in accordance with the provisions of section 314 of the Act (7 U.S.C. 1314) is paid, a lien shall exist in favor of the United States for the amount of the penalty on:

(1) The tobacco with respect to which

(2) Any other tobacco subject to marketing quotas in which the person liable for payment of the penalty has an interest and which is marketed in the same or a subsequent marketing year.

(b) *Lien precedence.* The lien on any other tobacco attaches at the time the debt is entered as a debt record in:

(1) *Indebted producers.* The county ASCS office for the county in which a subsequent crop of tobacco is grown.

(2) *Indebted warehouse operator.* The State ASCS office for the State in which the warehouse is located.

(3) *Indebted dealer.* The State ASCS office for the State to which the dealer is required to file reports.

(c) *Availability of list of marketing quota penalty debts.* Each county and State ASCS office shall maintain a list of tobacco marketing penalty debts which have been entered on the debt record for the respective office. The list shall be available for examination upon request by any interested person.

§ 723.312 Request for refund of penalty.

Any person who paid any penalty may request the return of the amount of any such payment which is in excess of the amount required to be paid. Such request shall be filed on Form MQ–65, Farm Record and Account, with the county ASCS office within 2 years after the payment of the penalty. Approval of return shall be by the county ASC committee, subject to the approval of the State ASCS executive director.

§ 723.313 Identification of marketings.

(a) *Burley or flue-cured tobacco.* With respect to:

(1) *Identification of producer marketings.* Each auction and nonauction marketing of burley or flue-cured tobacco shall be identified by a valid marketing card, Form MQ–76, issued for the farm. The reverse side of the marketing card shall show in pounds:

(i) 103 percent of quota,

(ii) Balance of 103 percent of quota after each sale, and

(iii) Date of each sale.

(2) *Cross-references of tobacco sale bill number to prior sale bill.* Each warehouse operator, for each lot of tobacco weighed in on the warehouse floor for sale the same day, shall cross-reference the tobacco sale bill to each prior tobacco sale bill for tobacco identified by the same marketing card. To accomplish the cross-reference, each other tobacco sale bill number shall be entered by the warehouse operator in the "Remarks" space on the tobacco sale bill, on all copies, at the time such

(3) *Recording producer sale.* Each producer sale at auction shall be recorded on Form MQ–72–1, Report of Tobacco Auction Sale, and each producer sale at nonauction shall be recorded on a Form MQ–72–2, Report of Tobacco Nonauction Purchase. For producer sales at nonauction, the dealer purchaser shall execute Form MQ–72–2 and shall enter the data on Form MQ–76. For producer sales at auction, Form 72–1 and Form MQ–76 shall be executed only by the ASCS marketing recorder.

(4) *Identification of dealer marketings of resale tobacco.* Each auction and nonauction marketing of resale tobacco in the current year, such tobacco shall be identified by a dealer identification card, Form MQ–79–2, issued to the dealer for use in the current marketing year.

(b) *Dark air-cured, fire-cured, or Virginia sun-cured tobacco.* With respect to dark air-cured, fire-cured, or Virginia sun-cured tobacco:

(1) *Identification of producer marketings.* Each marketing of such kind of tobacco from a farm shall be identified by a valid marketing card issued for the farm for the respective kind of a tobacco, either an MQ–76 or MQ–77 (including sale memo). With respect to each nonauction sale from:

(i) A within quota farm a check mark shall be entered on the inside of MQ–76, and

(ii) An excess farm for which an MQ–77 is issued, an executed bill of nonauction sale shall be prepared, and such bill of nonauction sale shall be delivered to a marketing recorder or other person who is authorized to issue sale memos.

(2) *Suspended sale and sales without marketing cards.* Any suspended sale, which is not identified by an MQ–76 or MQ–77 (including a sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks after the date of marketing, whichever comes first, shall be identified by MQ–82, Sale Without Marketing Card, as a marketing of excess tobacco. Form MQ–82 shall be executed only by a marketing recorder or other representative of the State ASCS executive director.

(3) *Other persons authorized to execute MQ–76 or MQ–77 (including sale memo).* (i) A warehouse operator who has been authorized during the current marketing year on MQ–78, Tobacco Warehouse Organization, may record a sale on MQ–76 or MQ–77 (including the issuance of a sale memo) to identify a sale for a farm if a marketing recorder is not available at the warehouse when the marketing card

(ii) Any warehouse operator, or dealer, who engages in the business of acquiring scrap tobacco from farmers, and who has been authorized on MQ–78, may for each purchase of scrap tobacco execute an MQ–76, or MQ–77 (including a sale memo if the bill of nonauction sale has been executed).

(4) *Verification of sales processed during the absence of marketing recorder.* Any person authorized on MQ–78 to act as a marketing recorder shall promptly present to a marketing recorder for verification such warehouse bill (floor sheet) processed and identified by an MQ–76 or MQ–77 (including any sale memos) executed in the absence of a marketing recorder.

(5) *Withdrawal of approval to act as marketing recorder.* The authorization on MQ–78 for persons may be withdrawn by the State ASCS executive director if such action is determined to be necessary to properly enforce the regulations in this part.

(c) *Separate display on auction warehouse floor.* Any warehouse operator upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each respective kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Use a lot ticket that is distinguishably different from the lot ticket used to identify any other kind of tobacco.

(3) Identify each lot by a lot ticket clearly showing the kind of tobacco. However, if where the tobacco is represented to be a nonquota kind the lot ticket shall have imprinted thereon the type designation for the kind of quota tobacco normally marketed in the area.

(4) Make and keep records that will ensure a separate accounting and reporting of each of such kinds of tobacco (quota and nonquota) sold at auction over the warehouse floor.

(d) *Identification of returned first sale (producer) tobacco.* When resold at auction, tobacco which has been previously sold and returned to the warehouse by the buyer is resale tobacco. When such tobacco is resold by the warehouse operator, it shall be identified as leaf account resale tobacco.

(e) *Verification of penalties by warehouse operators or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouse operator or dealer to determine whether the amount of penalty shown to be due has been

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operator shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(f) *Check register.* The serial number of the tobacco sale bill(s) shall be recorded by the warehouse operator on the check register or check stub for the check written covering the auction sale of tobacco by a producer.

(g) *Marketing card and sale memo for cigar tobacco.* With respect to cigar tobacco:

(1) If a sale of producer's cigar tobacco to a buyer is not identified with a marketing card (MQ–76 or MQ–77) issued for the farm, including a sale memo from MQ–77, by the end of the sale day and recorded and reported on MQ–79 (CF&B), Buyers Record, by the tenth day of the calendar month next following the month during which the sale occurred, the marketing shall be identified on MQ–79 (CF&B) as a marketing of excess tobacco and reported not later than the tenth day of the calendar month next following the month during which the sale date occurred, the marketing shall be identified on MQ–79 (CF&B) as a marketing of excess tobacco, and reported not later than the tenth day of the calendar month next following the month during which the sale day occurred.

(2) *Verification of penalty by buyer.* Each excess sale memo issued by a buyer shall be verified by the buyer to determine whether the amount of penalty shown to be due has been correctly computed and such buyer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in issuing the sale memo.

Subpart D—Recordkeeping, Reporting Requirements, Marketing Penalties, and Other Penalties

§ 723.401 Registration of burley or flue-cured warehouse operators or dealers.

(a) *Warehouse registration.* For burley and flue-cured tobacco, any warehouse operator dealing in either flue-cured or burley tobacco shall be registered with the U.S. Department of Agriculture. Such registration will be handled by the North Carolina State ASCS Office, Raleigh, North Carolina.

(b) *Dealer registration.* Except for dealers who are exempt from the requirements for maintaining regular records and reports on the Form MQ–79 as provided in § 723.405 of this part, each person who expects to deal in burley and flue-cured tobacco during a marketing year shall annually register with the U.S. Department of Agriculture for the respective marketing year beginning with the 1989–1990 marketing year. Such registration shall be handled by the North Carolina State ASCS Office, Raleigh, NC. Registration may be accomplished by such person filing a MQ–79–S–A, after March 1 of the calendar year in which the marketing year begins, at the local county ASCS business is located. The applicant shall provide the names of other individuals who will be authorized to use the assigned dealer registration number to transact business on behalf of the applicant. Only one dealer registration number will be issued to each dealer entity. Persons maintaining the same residence shall be considered one entity, unless such persons can substantiate to the satisfaction of the State ASC committee for the State in which the application is made, that such persons operate their tobacco business entirely as separate entities.

(1) *Issuance of dealer cards.* After approval by the North Carolina State ASCS Office, each dealer will be assigned a four-digit identification number and issued a dealer identification card (Form MQ–79–2).

(2) *TMQ lien notation.* If a lien has been established against a dealer as a result of a tobacco marketing quota penalty such dealer, upon notification by the applicable State ASCS office, shall return the dealer identification card to the State ASCS office within 15 days of notification. Upon timely return of the dealer identification card the lien shall be annotated on the card and promptly returned to the dealer.

§ 723.402 Warehouse authorized to retain producer marketing cards between sales.

(a) *General.* Notwithstanding any other provisions of this part, to facilitate the scheduling of farmer's tobacco to the warehouse, marketing cards, with the permission of the producer, may be retained at the warehouse between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(b) *Warehouse eligible to retain producers marketing cards between sales.* A warehouse shall be eligible to retain producer marketing cards between sales if the operator thereof shall:

(1) Execute and file on a form approved by ASCS a written request with the State ASC committee (or county ASC committee if designated by the State ASC committee).

(2) Agree to be responsible to ASCS for an amount of money equal to that amount that may be assessed against any producer as marketing quota penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse was authorized to have custody of the marketing card, for:

(i) Burley or flue-cured tobacco for any overmarketing resulting from errors made at the warehouse in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on producer's marketing card.

(ii) Tobacco falsely identified for marketing by use of the producer's marketing card.

(iii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(iv) Any burley or flue-cured tobacco marketed at the warehouse in excess of 103 percent of quota as shown on the producer's marketing card.

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse to facilitate the scheduling of farmer's tobacco. The journal shall show for each card retained the:

(i) Name of the operator;

(ii) Serial number of farm;

(iii) Marketing card number, if applicable;

(iv) Date marketing card obtained from producer; and

(v) Date marketing card returned to producer.

Such journals shall be maintained for the length of time and under the conditions required for other warehouse records.

(4) Agree to return the marketing card to the producer at any time the producer may so request, or in the absence of a request, return it to the producer within 7 days after the close of the warehouse for the season.

(5) Agree that this authorization may be terminated by ASCS for failure to comply with provisions of this agreement.

(c) *Penalties considered to be the responsibility of warehouse operators.* Notwithstanding any other provision of this part, a warehouse operator who executes and files a written request with the State ASC committee (or county ASC committee if designated by the State ASC committee) for authorization to retain producer's marketing cards at the warehouse, with grower permission, shall be responsible to ASCS for an amount of money equal to the amount that may be assessed against the producer as marketing quota penalties if the marketing that is the basis of such assessment occurred while the warehouse was authorized to have custody of the marketing card, for:

(1) Any burley or flue-cured tobacco overmarketings resulting from errors made at the warehouse in entering "balance after sale" pounds on the burley or flue-cured producer's marketing card or failure to deduct pounds sold on the producer's marketing card. However, the warehouse operator shall not be responsible for any penalty under this subparagraph, if such penalty would not have been assessed against the producer in accordance with § 723.409(e) of this part.

(2) Tobacco falsely identified for marketing by use of the producer's marketing card.

(3) Producer's failure to account for any tobacco marketed by use of such producer's marketing card.

(4) With respect to burley or flue-cured producers, tobacco marketed at the warehouse in excess of 103 percent of quota as shown on the producer's marketing card.

§ 723.403 Auction warehouse operators' records and reports.

(a) *Report on Form MQ–78, Tobacco Warehouse organization.* Each warehouse operator shall annually, prior to opening of auction markets, furnish ASCS an executed Form MQ–78 showing:

(1) Form of business organization.

(2) Names and addresses of warehouse officials and bookkeeper.

(3) Names and addresses of other warehouses in which the officials and bookkeepers have a financial interest.

(4) Names and addresses of custodians of warehouse records, including their location.

(b) *Separate records and reports.* Each auction warehouse operator shall keep the records and make the reports separately for each quota or nonquota kind of tobacco as provided in this section.

(c) *Record of marketing.* Each warehouse operator shall:

(1) *Auction or nonauction sale.* Keep such records as will enable the warehouse operator to furnish the following information to State ASCS office with respect to each sale of tobacco made at such person's warehouse:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the producer, in the case of a sale by a producer.

(ii) The name of the seller in the case of a resale.

(iii) Date of sale.

(iv) Number of pounds sold.

(v) Amount of any penalty and the amount of any deduction for such penalty from the price paid the producer.

(vi) With respect to each individual lot of tobacco constituting an auction sale, the:

(A) Name of purchaser.

(B) Number of pounds sold.

(C) Gross sale price.

(2) *Separate account records.* Maintain records of all purchases and resales of tobacco by the warehouse operator to show a separate account for:

(i) Nonauction purchases by or on behalf of the warehouse operator of farmer-owned tobacco.

(ii) Purchases and resales of:

(A) Leaf account tobacco.

(B) Floor sweeping tobacco.

(d) *Tobacco sale bill for burley and flue-cured tobacco.* (1) Each burley or flue-cured tobacco warehouse operator shall use tobacco sales bills furnished at the warehouse operator's expense showing, as a minimum, the following information:

(i) Tobacco sale bill number;

(ii) For flue-cured tobacco only, registration number assigned the warehouse by the Department;

(iii) Name and address of warehouse where sale is held;

(iv) For flue-cured tobacco only, the identification of other producers having an interest in the tobacco;

(v) Date of sale;

(vi) Number of pounds in each lot;

(vii) Name and address of seller; and

(A) Farm number (including State and county codes) for producer tobacco, and

(B) Dealer registration number for resale tobacco;

(viii) Identification number, if available, for each lot of tobacco to be offered for sale;

(ix) Poundage balance before sale for producer tobacco based on 103 percent of farm quota;

(x) Name or symbol of purchaser of each lot which is sold;

(xi) Gross number of pounds sold;

(xii) Sale price for each lot and gross sale price for all lots sold;

(xiii) Nonauction purchases by the warehouse holding the sale;

(xiv) Tobacco grade for tobacco consigned to price support;

(xv) The buyer's grade symbol for tobacco bought by private buyers.

(xvi) The letters "N/A" in the buyer and grade space for nonauction purchases by the warehouse.

(xvii) Marketing quota penalty collected; and

(xviii) Amount withheld from sale to cover claims due the United States.

(2) At the end of each sale day, the tobacco sale bills shall be sorted and filed in numerical order by sale dates, and lot tickets shall be filed in an orderly manner by sale dates or by numerical order.

(e) *Identification of tobacco for marketing.*—(1) *Marketing card.* Each marketing of tobacco from a farm in any State for which a farm marketing quota has been established for any kind of tobacco shall be identified by a marketing card issued for the farm on which such tobacco was produced (unless prior to the marketing of such tobacco an AMS inspection certificate is obtained showing that the tobacco offered for sale is a kind of tobacco not subject to marketing quotas).

(2) *Recording farm identification.* For burley or flue-cured tobacco, at the time the tobacco is weighed in, the warehouse operator shall record on the tobacco sale bill, the State and county codes and the farm serial number from the marketing card issued for the farm from which the tobacco is to be marketed.

(3) *Return of marketing card.* For tobacco that is to be sold at auction, the warehouse operator shall retain the marketing card until the producer has been paid for the sale of the tobacco or the tobacco is removed from the warehouse by the producer at which time the marketing card shall be returned to the producer. In any case where a producer's marketing card is found in the possession of a warehouse operator, and no producer on the farm for which the card is issued has tobacco on the floor for sale, or tobacco for which settlement is not yet completed, such card will be picked up by an ASCS representative for return to the producer. The warehouse operator shall be responsible for the safekeeping and proper use of the marketing card during such person's retention of the marketing card.

(4) *No price support.* For burley or flue-cured tobacco, if tobacco is to be marketed at auction from a farm for which a marketing card is issued bearing the notation "No Price Support", the warehouse operator shall enter the same notation on the tobacco sale bill at the time the tobacco is weighed in for sale. The warehouse operator shall prepare a separate tobacco sale bill to cover any tobacco which represents more than 103 percent of the effective farm marketing quota and the notation "No Price Support" shall be shown on such tobacco sale bill. The sale of such tobacco shall be considered a separate sale.

(5) *Nonauction purchase.* The warehouse operator shall enter the letters "NA" on each line of a tobacco sale bill on which there is recorded tobacco purchased by or for the

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warehouse at nonauction sale and shall record on all such tobacco sale bills:

(i) For burley or flue-cured tobacco, the farm serial number from the marketing card that is used to identify the tobacco at the time of the nonauction purchase.

(ii) For tobacco other than burley or flue-cured, the serial number of the marketing card that is used to identify the tobacco at the time of the nonauction purchase.

(6) *Copy of sale bill.* The warehouse operator shall furnish to the producer a copy of the tobacco sale bill bearing the letters "NA" for any lot of such tobacco purchased by the warehouse operator.

(7) *Lot ticket.* At the time tobacco is weighed for marketing, the warehouse operator shall record the weight of the lot of tobacco on the tobacco sale bill and on the lot ticket. The sale bill number on which the lot of tobacco is recorded shall be recorded on the lot ticket. If the marketing card which is presented to identify the tobacco at weigh-in bears the notation "No Price Support," the same notation shall be entered by the warehouse operator on the lot ticket for each lot of tobacco which is identified with the same marketing card.

(8) *Recording serial number of marketing card.* For tobacco other than burley or flue-cured, before the tobacco is offered for sale, the warehouse operator shall record, on the sale bill, the serial number of the Form MQ–76 or MQ–77 issued for the farm from which the tobacco is to be marketed at auction.

(9) *Recording sale bill number.* For tobacco other than burley or flue-cured, the serial number of the sale bill shall be recorded:

(i) By the warehouse operator on the check register or check stub from the check written to cover an auction sale of tobacco by a producer.

(ii) On the inside of the marketing card by the marketing recorder or warehouse operator for each sale of tobacco by a producer.

(10) *Burley or flue-cured marketings.* A marketing card used to cover a sale of burley or flue-cured tobacco shall show on the reverse side the poundage balance of the "103 percent of quota."

(i) *Auction sale.* At the time of weigh-in the tobacco sale bill shall show the poundage balance of 103 percent of the farm's quota. The tobacco sale bill shall show the pounds on which penalty is due, and the amount of penalty.

(ii) *Nonauction sale to a warehouse operator at the warehouse.* If the tobacco sale bill includes both an auction sale and a nonauction sale such combined pounds shall be used to compute and reflect the balance of the "103 percent of quota." The tobacco sale bill shall show the pounds on which penalty is due and the amount of the penalty.

(iii) *Nonauction country purchase by a warehouse operator.* The warehouse operator shall deduct, from the balance of the "103 percent of quota" entry on the marketing card, the pounds of tobacco purchased as a nonauction country purchase. In addition, each warehouse operator shall record on Form MQ–79 and on Form MQ–72–2, Report of Tobacco Nonauction Purchase, each nonauction country purchase of tobacco made by such warehouse operator. The data to be reported on Form MQ–72–2 is set forth in § 723.404 of this part.

(11) *Sale memo and bill of nonauction sales.* For tobacco other than burley or flue-cured, a record of sales on Forms MQ–76, MQ–77, or MQ–82, Sale Without Marketing Card (including sale memo from MQ–77 or MQ–82), shall be obtained by a warehouse operator to cover each marketing of tobacco from a farm through a warehouse and each nonauction sale of tobacco purchased by or for the warehouse operator including scrap tobacco obtained as a result of providing curing space or stripping space for farmers. Each MQ–76 and MQ–77 (including sale memo) shall be executed as follows:

(i) *Auction sale.* An auction sale identified by MQ–76 shall show in the spaces provided thereon, the sale bill number, check-mark to show the sale was by auction, a check-mark to show nonauction for purchases identified "NA" on the sale bill, pounds sold, name and address of warehouse, and date of sale. In addition, each sale memo issued from MQ–77 to cover an auction sale shall show on the first page thereof in all of the spaces provided therefor, the warehouse bill number, pounds sold, amount of penalty due, name and address of warehouse, and date of sale.

(ii) *Nonauction sale to a warehouse operator who does not prepare a sale bill.* An MQ–76 used to cover a nonauction sale of tobacco to a warehouse operator who does not prepare a sale bill to cover the sale shall show, a check-mark to indicate sale was by nonauction, pounds sold, name and address of the warehouse, and date of sale. When an MQ–77 is used under this paragraph, a sale memo shall be executed, including the signature of the producer on the reverse side.

(iii) *Nonauction sale to a warehouse operator who prepares a sale bill.* When a warehouse operator purchases:

(A) All the delivery of a producer's tobacco at a nonauction sale and prepares a sale bill to cover the purchase, on MQ–76 there shall be shown the bill number, check-mark to show nonauction purchases, pounds sold, name and address of warehouse, and date of sale. When an MQ–77 is used a sale memo shall be executed, including the signature of the producer on the reverse side.

(B) Part of a delivery of a producer's tobacco as a nonauction purchase and the remainder of the tobacco is sold at auction, if such tobacco is identified by an MQ–76 the Record of Sales shall be completed to show the name and address of the warehouse, the date of sale, the sale bill number, check-mark under both auction and nonauction, and, under "Lbs. Sold," the total number of pounds covered by the entire delivery. If the sale is identified by an MQ–77, the sale memo (front) shall be completed to show the sale bill number, the total number of pounds covered by the entire delivery under "Lbs. Sold," the amount of penalty due, name and address of the warehouse, and the date of sale. In addition, the reverse side of the sale memo shall show the number of pounds sold at nonauction.

(f) *Nonquota tobacco or quota tobacco of a different kind.* If tobacco is presented for sale that is represented to be nonquota tobacco or should there be a question as to what kind of quota tobacco is being offered for sale, an inspection shall be obtained from the Agricultural Marketing Service of this Department (AMS) after the tobacco is weighed and in line for sale. The lot ticket for the tobacco shall be cross-referenced to the sale bill by sale bill number and date. The sale bill shall show the producer's name and address and the State and county code and farm number of the farm on which the tobacco was produced. If an AMS inspection shows that a lot of tobacco is of a different kind than that identified by the lot ticket, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared. Copies of the lot ticket and sale bill shall be furnished to the State ASCS office at the end of the sale day.

(g) *Labeling tobacco sale bill for resale tobacco.* In the case of resales, each sale bill shall show "resale" and:

(1) For dealers, the name of the dealer making each resale; and

(2) For the warehouse, the name of the warehouse and either "floor sweepings" or "leaf account" tobacco.

(h) *Suspended sale record.* (1) Any tobacco sale bill covering sale of tobacco for which a valid marketing card or dealer identification card was not presented at the end of the sale day shall be given to a marketing recorder who shall stamp such bills, "Suspended", and shall handle according to instructions provided by the Deputy Administrator.

(2) When cleared, such suspended sale shall show "suspended-cleared" and date cleared. If a suspended sale is not cleared from suspension by the last auction sale day for the warehouse for the season (or for burley tobacco only, within 7 days of the sale if such date is earlier), it shall be considered a sale of excess tobacco and penalty at the full rate shall be remitted by the warehouse operator.

(i) *Payee to be shown on auction warehouse check.* Any auction warehouse which issues a check to cover the auction or nonauction sale of tobacco shall issue such check only in the name of the payee. A warehouse check shall not be issued in the name of the seller and bearer, for example "John Doe or Bearer."

(j) *Warehouse entries on other dealer's reports.* Each warehouse operator shall record, or have the dealer record, on a Form MQ–79 the total purchases and resales made by each such dealer or other warehouse operator during each sale day at the warehouse. Warehouse operators shall sign the Form MQ–79 on the same line as the transaction is recorded when a dealer resells tobacco at the warehouse. If any tobacco resold by the dealer and carried over by the dealer from a crop produced prior to the current crop, an entry shall be made on the MQ–79 to clearly show such fact.

(k) *Warehouse data for burley or flue-cured tobacco.* (1) Each operator of a burley or flue-cured tobacco auction warehouse shall prepare at the end of each sale day a report on MQ–80, Daily Warehouse Sales Summary, showing for each sale day:

(i) For each manufacturer, buyer, order buyer, and any tobacco cooperative, pounds of tobacco purchased at auction (consigned in the case of tobacco cooperatives).

(ii) The sum of the items for paragraph (k)(1)(i) of this section.

(iii) Resales at auction for each person listed under paragraph (k)(1)(i) of this section.

(iv) For each dealer subject to reporting purchases and resales on MQ–79, as originally billed, the total pounds of tobacco purchased at auction, and resales at auction.

(v) The total pounds purchased at auction at the warehouse for the leaf account.

(vi) The total pounds purchased at nonauction at the warehouse for the leaf account.

(vii) The sum of the total pounds for paragraphs (k) (v) and (vi) of this section.

(viii) The total leaf account resales.

(ix) The total floor sweeping resales.

(x) The sum of the total purchases for paragraphs (k)(1) (ii), (iv), and (vii) of this section.

(xi) The sum of the total resales for paragraphs (k)(1) (ii), (iv), (viii) and (ix) of this section.

(xii) The totals of the purchases column on the Form MQ–79 representing the nonauction purchases for the warehouse leaf account.

(xiii) The totals of the resales column on Form MQ–79 representing the nonauction resales (including floor sweepings nonauction sales) by the warehouse.

(xiv) For each warehouse sale of excess tobacco from a farm, the applicable farm number with daily remittance of the penalty due to accompany Form MQ–72–1.

(xv) For each dealer, at the time of settlement having excess resale tobacco, the applicable dealer identification number with daily remittance of the penalty due.

(2) As to the information required to be entered on MQ–80, Daily Warehouse Sales Summary, by the marketing recorder, the warehouse operator shall keep and make available such records as will enable the marketing recorder to enter thereon:

(i) The total number of Forms MQ–72–1 for the sale day and the sum of pounds sold, and

(ii) The total number of suspended sale bills and the sum of such pounds sold.

(3) At the end of the season, each warehouse operator shall:

(i) Report on the final MQ–80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location,

(ii) Permit its inspection by a representative of ASCS, and

(iii) Provide for the weighing of such tobacco, to be witnessed by an ASCS representative, and furnish to such representative a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(4) The warehouse operator shall furnish to the marketing recorder a copy of each executed MQ–80.

(5) Before the next marketing season begins, carryover tobacco reported by the warehouse operator as provided in paragraph (k)(3) of this section shall be reinspected by a representative of ASCS.

(i) If the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the warehouse operator shall:

(A) Provide for the weighing of such tobacco which shall be witnessed by a representative of ASCS.

(B) Furnish to such representative at the time of weighing a certification as to the actual weight of the tobacco.

(ii) If the ASCS representative determines that the weight of the tobacco is different, by reweighing, then the amount reported on the initial certification, the initial weight, together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (k)(3) of this section, shall be used for the purpose of determining the amount of penalty, if penalty is due.

(iii) The reweighed quantity shall be the official pounds to be credited to the account as carryover tobacco.

(l) *Warehouse data for tobacco other than burley or flue-cured.* (1) Each operator of a tobacco auction warehouse, other than the operator of a burley or flue-cured auction warehouse, shall prepare and promptly forward at the end of each sale day to the State ASCS office a report on MQ–80, Daily Auction Warehouse Report, showing for each sale day, unless otherwise stated below:

(i) For each dealer or buyer as originally billed, the total pounds of tobacco purchased at auction and resales at auction on the warehouse floor.

(ii) For any association as originally billed, the total pounds and gross amount of loan tobacco acquired at auction, and resales at auction, if any, on the warehouse floor.

(iii) The total pounds of:

(A) Leaf account purchases at auction on the warehouse operator's own floor,

(B) Leaf account purchases at nonauction sale for which a floor sheet is prepared,

(C) All leaf account resales at auction on the warehouse operator's own floor, including resales of tobacco from the warehouse operator's buyers corrections account, and

(D) All resales at auction on the warehouse operator's own floor of floor sweepings which accumulated on the warehouse operator's own floor.

(iv) The respective sums of the purchases, including loan tobacco, and resales for paragraphs (l)(1) (i), (ii), and (iii) of this section.

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(v) The computed total of first sales at auction on the warehouse floor.

(vi) The warehouse gross sale pounds for the day as billed to buyers.

(vii) The pounds on warehouse check register if shown thereon, and

(viii) The total pounds of the resales.

(ix) On the report for the last sale day for the season, the pounds of all tobacco on hand whether such tobacco represents leaf account tobacco or floor sweepings which accumulated on the warehouse operator's own floor.

(x) For each warehouse sale of excess tobacco from a farm, the applicable sale memo and numbers thereof with remittance of the penalty due as shown thereon.

(2) As to information required to be entered on MQ–80, Daily Auction Warehouse Report, by the marketing recorder, the warehouse operator shall keep and make available such records as will enable the marketing recorder to enter thereon:

(i) For each sale identified by an MQ–76, MQ–77 (including sale memo), or MQ–82, Sale Without Marketing Card, the pounds sold:

(ii) For each sale suspended, the warehouse bill(s) number and pounds sold;

(iii) For each sale cleared from suspension, the MQ–76 number or, for MQ–77 or MQ–82, the sale memo number and the date of clearance.

(3) When a producer rejects the sale of a lot of tobacco, and the tobacco has been billed out and the bills presented to the buyer, the warehouse operator shall not change the marketing card, or Form MQ–80 on which the sale was reported. If the warehouse operator gains possession of the tobacco and it is resold by such warehouse operator, it shall be identified as resale tobacco.

(4) In balancing first sales (represented by marketing recorder's total) with computed first sales (bill-out total minus resales as reported by the warehouse operator) the State ASCS executive director is authorized to approve reports with variance not to exceed one-half of 1 percent of such pounds.

(5) At the end of the season, each warehouse operator shall:

(i) Report on the final MQ–80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location,

(ii) Permit its inspection by a representative of ASCS, and

(iii) Provide for the weighing of such tobacco (to be witnessed by a representative of ASCS) and furnish to such representative a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due. Separate data shall be reported for floor sweeping tobacco.

(m) *Bill-out invoice.* For flue-cured tobacco when the tobacco has been sold at auction, the bill-out invoice to the buyer shall include the warehouse registration number (warehouse code), sale bill number, and line number on which the lot of tobacco was recorded on the sale bill.

(n) *Maintaining copies of bill-out invoices to purchaser or daily summary journal sheet to reflect daily transactions.* For each marketing year, the warehouse operator shall maintain copies of the bill-out invoice to the purchaser by grades showing the pounds purchased. In lieu of this requirement, the warehouse operator may prepare and maintain for each sale day on a current basis a daily summary journal sheet to reflect for each purchaser (including warehouse leaf account or other similar account) pounds and dollar amounts for:

(1) Tobacco originally billed to the purchaser.

(2) Mathematical billing errors and corrections (added and deducted) from purchaser's adjustment invoices.

(3) Short (deducted) and long (added) weights from purchaser's adjustment invoices.

(4) Short (deducted) and long (added) lots from purchaser's adjustment invoices.

(5) Net tobacco received and paid for by purchase.

(o) *Handling rejected (producer) sale after bill-out.* Where a producer rejects the sale of a lot of tobacco, and the tobacco has been billed-out and bills presented to the buyer, the warehouse operator shall not change the MQ–76 or MQ–80 on which the sale was reported. If the warehouse operator gains possession of the tobacco, and it is resold by such warehouse operator, it shall be identified as resale tobacco.

(p) *Report to county ASCS office of long weights and long lots.* Each warehouse operator shall report to the county ASCS office or maketing recorder long weights and long lots of producer tobacco (first sales) for which the farmer has been paid.

(q) *Record and report of warehouse operator's leaf account purchases and resales not on such warehouse operator's floor.*

(1) Each warehouse operator shall keep a record and make reports on MQ–79, Dealer's Report, showing:

(i) All nonauction purchases of tobacco, except nonauction purchases at such warehouse operator's warehouse which are reported on MQ–80.

(ii) All purchases and resales of tobacco at public auction through warehouses other than such operator's own warehouse.

(iii) All nonauction resales of tobacco.

(2) Form MQ–79 shall be prepared and a copy, including copies of Form MQ–72–2 for all nonauction purchases of burley or flue-cured tobacco, forwarded to the State ASCS office not later than the end of the calendar week (at the end of each sale day during the auction season for such warehouse) in which such tobacco was purchased or resold.

(3) If tobacco is purchased prior to the opening of the local auction market, an MQ–79 shall be prepared and a copy, together with copies of MQ–72–2 for all nonauction purchases of burley or flue-cured tobacco, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets.

(4) A remittance for all penalties shown by the entries on Form MQ–79 and Form MQ–72–2 to be due shall be forwarded to the State ASCS office with the original copy of MQ–79.

(5) Resales of floor sweepings shall be reported separately from leaf account tobacco.

(r) *Buyers corrections account.* Each warehouse operator shall keep such records including negative adjustment invoices as will enable the warehouse operator to furnish a weekly report on Form MQ–71 to the State ASCS office showing the total pounds of the debits (for returned lots, short lots, and short weights of tobacco) and the credits (for long lots and long weights of tobacco) to the buyers corrections account. Where the warehouse operator returns to the seller tobacco debited to the buyers corrections account, the warehouse operator shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the buyers corrections account and a corresponding purchase (debit entry) in the case of a dealer on such dealer's MQ–79, Dealer's Report. Any balancing figure reflected on the warehouse operator's summary of bill-outs shall not be included in the buyers corrections account.

(s) *Reporting of processed leaf account tobacco.* Any warehouse operator who delivers tobacco to a firm for the purpose of redrying, processing, or stemming of such tobacco shall, by the end of the week in which such tobacco was delivered, report to the State ASCS office on MQ–79, Dealer's Report:

(1) The date delivered;

(2) Name and address of the firm to which the tobacco was delivered, and

(3) The pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered a resale on the date of delivery for the purpose of balancing the warehouse account and collection of penalties where penalties are due.

(t) *Report of farm scrap resulting from grading tobacco for farmers.* Any warehouse operator or any other person who grades tobacco for farmers shall maintain records which will enable such person to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(u) *Report of farm scrap resulting from furnishing stripping space for farmers.* Any warehouse operator or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable such person to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(v) *Producer tobacco.* Producer tobacco (first sale) in possession of a warehouse operator, resulting from long weights and long lots, which has not previously been identified by a sale shall be recorded and reported in the same manner as a nonauction sale to a warehouse operator who does not prepare a warehouse bill (floor sheet) and shall be reported on MQ–79, Dealer's Record. Penalty shall be due on this tobacco at the full penalty rate for the respective kind of tobacco or, if the kind is not known, at the penalty rate for the kind of tobacco generally marketed through the warehouse.

§ 723.404 Dealer's records and reports, excluding cigar tobacco buyers.

(a) *General.* This section is applicable to all kinds of tobacco except cigar tobacco.

(1) Each dealer, except as provided in § 723.405 of this part shall keep by kinds of tobacco the records and make the reports separately for each kind (quota and nonquota) of tobacco as provided in this section. Adjustment invoices, including the adjustment invoices for any sale day for which there is no adjustment to be made, required to be furnished to an auction warehouse shall be identified by the warehouse identification number (if applicable) and the reporting dealer's identification number (if applicable) as well as the names of the warehouse and dealers involved in the transaction.

(2) Each dealer shall properly execute the "Receipt for Dealer's Record" contained in MQ–79, which is issued to the dealer, and shall transmit such receipt to the applicable State ASCS office.

(b) *Record of marketings.* A dealer shall keep records which provide the following information for each lot of tobacco, including scrap tobacco, purchased or sold by the dealer:

(1) *Purchases.* (i) The name of:

(A) The warehouse through which the tobacco was purchased, if purchased at a warehouse auction; or

(B) The operator of the farm on which the tobacco was produced, if purchased from a producer as a nonauction purchase, and the name of the producer of the tobacco, if different from the operator; or

(C) The seller if purchased as a nonauction purchase from a warehouse operator or dealer.

(ii) The identification number of the warehouse, farm, or dealer, as applicable, at/from which the tobacco was purchased.

(iii) The address, the producer association number, if applicable, and percentage share of the proceeds of the farm operator and any other producer from whom tobacco was purchased as a nonauction purchase.

(iv) The date of purchase.

(v) The pounds of tobacco purchased.

(vi) The gross purchase price.

(vii) The amount of penalty.

(viii) The amount deducted for the "No Net Cost Tobacco Assessment."

(ix) The quantity of tobacco purchased from a prior crop and carried over for marketing in a subsequent crop year.

(2) *Sales.* (i) The name and identification number of the:

(A) Warehouse through which the tobacco was sold, if sold at a warehouse auction, or

(B) Buyer if the tobacco was sold at a nonauction sale.

(ii) The date of sale.

(iii) The pounds of tobacco sold.

(iv) The gross sale price.

(c) *Nonauction purchases.* (1) Each purchase of tobacco from a producer from a quota producing area shall be identified by a marketing card, issued for the farm on which the tobacco was produced unless an AMS inspection is obtained prior to purchase which shows that tobacco being offered for sale is a kind not subject to marketing quotas.

(2) For burley and flue-cured tobacco:

(i) After each nonauction purchase, the dealer shall enter a declining balance of "100 percent of quota" on the reverse side of the marketing card. The declining balance shall be determined by reducing the previous "100 percent of quota" entry on the marketing card by the number of pounds of tobacco purchased. The date the tobacco was purchased also shall be entered on the marketing card at the time each lot of tobacco is purchased.

(ii) After each nonauction purchase, the dealer shall prepare a form MQ–72–2 which shall set forth the following:

(A) The date of the purchase.

(B) The registration number of the dealer.

(C) The name and address of the person selling the tobacco.

(D) The identification number (farm number, warehouse code, or dealer number, as applicable) of the person selling the tobacco.

(E) The pounds of tobacco purchased.

(F) The amount of penalty collected.

(G) The method (estimating or weighing) of determining the pounds of tobacco marketed.

(H) The signature of the seller and the date signed.

(iii) The dealer shall make deductions for the producer No Net Cost Tobacco Assessment as provided for in part 1464 of this title. For nonauction purchases which are made by the dealer from producers, the dealer shall make a deduction in accordance with part 1464 of this title from the price paid to the producer for the tobacco. However, a deduction shall not be made if the original "100 percent of quota" entry on the marketing card used to identify the tobacco was zero pounds. The amount of the deduction which is applicable to tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer No Net Cost Tobacco Assessment for each such marketing year.

(3) For all other kinds of tobacco:

(i) When a Form MQ–77 Marketing Card is used to identify a nonsection sale, the producer's signature shall be obtained on the reverse side of a sale memo which is a part of the Form MQ–77. A nonsection sale not identified by a marketing card shall be identified by a Form MQ–82 executed by a marketing recorder or other representative of the State ASC committee. The dealer shall record each nonauction purchase of tobacco on Form MQ–79, Dealer's Record.

(ii) The dealer shall make deductions for producer contributions to the No Net Cost Tobacco Account provided for in part 1464 of this title. For nonauction purchases which are made by the dealer

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from producers, the dealer shall make a deduction in accordance with part 1464 of this title from the price paid to the producer for the tobacco. However, a deduction shall not be made if the marketing card used to identify a kind of tobacco shows a converted penalty rate of 100 percent. The amount of the deduction which is applicable to such kind of tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer contribution to the No Net Cost Tobacco Account or Fund for each such marketing year.

(d) *Record and report of purchases and resales.* (1) For burley and flue-cured tobacco, each dealer shall keep a record and make reports on Form MQ–79 showing all purchases and resales, excluding tobacco not in the form normally marketed by producers. After each transaction is entered on the Form MQ–79, each dealer shall enter a balance to reflect the pounds of tobacco remaining that may be sold without causing prior resales to exceed prior purchases. Any tobacco sold in excess of such balance shall be considered excess tobacco and subject to a marketing quota penalty at the full penalty rate. The purchaser shall sign the Form MQ–79 on the same line as the transaction is recorded by the dealer who is offering such tobacco for resale. In the event of a purchase or resale of tobacco which is purchased by the dealer from a crop of tobacco produced prior to the current crop, the Form MQ–79 shall be annotated to indicate that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(2) For all other kinds of tobacco, each dealer shall keep a record and make reports on Form MQ–79 showing all purchases and resales of tobacco made by or for the dealer and, in the event of a purchase or resale of tobacco which is purchased prior to the current crop, the fact that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(3) A Form MQ–79 shall be prepared and a copy (together with executed copies of Form MQ–72–2 for all nonauction purchases of burley and flue-cured tobacco) shall be forwarded to the State ASCS office not later than the end of the calendar week in which such tobacco was purchased or resold. However, if tobacco is purchased prior to the opening of the local auction market, a Form MQ–79 shall be prepared and a copy, together with executed copies of Form MQ–72–2 for all nonauction purchases, shall be forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale date of the local auction markets. In addition, if tobacco is resold in a State other than where the tobacco is produced and the auction markets at such location open earlier than the auction market where the tobacco normally would be sold at auction by farmers, reports together with executed copies of Form MQ–72–2 for all nonauction purchases shall be prepared and forwarded to the State ASCS office not later than the end of the calendar week which would include the first day of the local auction market where the resale takes place.

(4) The data to be entered on Form MQ–72–2 for nonauction purchases from a producer shall be the data which is enumerated in accordance with the provisions of paragraph (c)(2) of this section.

(5) At the end of the dealer's marketing operation, but not later than April 1 for tobacco other than flue-cured and December 15 for flue-cured tobacco, such dealer shall for each kind of tobacco:

(i) Show the word "final" on the Dealer's Report, MQ–79, for the season,

(ii) Report on such "final" MQ–79 for the season the quantity of tobacco on hand and its location,

(iii) Permit its inspection by a representative of ASCS, and

(iv) Provide for weighing of such tobacco (to be witnessed by a representative of ASCS) and furnish a certification as to the actual weight of such tobacco. After the weight of such tobacco has been determined as provided in this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(6) Notwithstanding the provisions of paragraph (d)(5) of this section any dealer having tobacco transactions after April 1 for tobacco other than flue-cured and December 15 for flue-cured tobacco, shall make reports on MQ–79 at the end of each week, as provided in paragraph (d)(3) of this section.

(7) For burley and flue-cured tobacco, before the next marketing season begins, carryover tobacco reported by the dealer as provided in paragraph (d)(5) of this section shall be reinspected by a representative of ASCS. When the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the dealer shall provide for the weighing of such tobacco which shall be witnessed by an ASCS representative. The dealer shall furnish to such representative at the time of weighing a certification as to the actual weight of such tobacco. If an ASCS representative determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial weight together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (d)(5) of this section shall be used for the purpose of determining penalty, if penalty is due. Penalty shall be assessed, after the initial certification and reconciliation, when the redetermined pounds exceed the amount determined by taking the initial pounds of carryover tobacco plus purchases, minus resales. The redetermined pounds shall be the official pounds to be credited to the account as carryover.

(8) In addition to Form MQ–79 and Form MQ–72–2, if applicable, a Form MQ–79 (Supplemental) shall be executed to record information relating to each purchase of tobacco for which a marketing assessment to the No Net Cost Tobacco Account is deducted from the price paid to the producer for the tobacco. The Form MQ–79 (Supplemental) shall be forwarded to the State ASCS Office at the time of forwarding the Form MQ–79 on which the purchase is recorded. A check, draft, or money order in the amount of the deduction recorded on Form MQ–79 (Supplemental) and drawn payable to Commodity Credit Corporation shall be forwarded to the State ASCS office at the same time as Forms MQ–79 and MQ–79 (Supplemental).

(e) *Daily report to warehouse operator for buyers correction account.* Notwithstanding the provisions of § 723.405 of this part, reports shall be made as follows:

(1) Any dealer, buyer, or any other person receiving tobacco from or through a warehouse operator at an auction sale or otherwise, which is not invoiced to such person or which is incorrectly invoiced to such person by the warehouse operator, shall furnish to the warehouse operator on a daily sales basis an adjustment invoice or buyers settlement sheet.

(2) Each dealer who purchases tobacco on a warehouse floor for any sale day in which there is no adjustment required in the account as shown on the warehouse bill-out invoice for that sale day, shall file a negative report with the warehouse operator for that sale day.

(3) Such reports as required under paragraphs (d) (1) and (2) of this section shall be furnished daily, if practicable (otherwise, they shall be furnished at the end of each week), and shall show the identification number of the warehouse where the purchase was made.

(f) *Reporting of processed tobacco.* Any dealer who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall, by the end of the week in which such tobacco was delivered, report to the State ASCS office on MQ–79, Dealer's Report:

(1) The date delivered;

(2) Name and address of the firm to which the tobacco was delivered; and

(3) Pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the dealer account and collection of penalties where penalties are due.

(g) *Tobacco represented to be a nonquota kind.* Any dealer who plans to purchase tobacco that was produced on a farm in a quota area shall treat such tobacco as a quota kind of tobacco according to the provisions of this part 723 unless prior to the purchase a certification is obtained from an AMS inspector to indicate that such tobacco is a nonquota kind of tobacco. In such case, the dealer shall mail or otherwise deliver to the State ASCS office, on the date of the purchase, a copy of the AMS certification and a statement signed by the AMS inspector, the producer, and the dealer to indicate the:

(1) State and county code and farm number of the farm on which the tobacco was produced.

(2) Name and address of the producer.

(3) Name and address of the dealer.

(4) Weight of the tobacco.

§ 723.405 Dealers exempt from regular records and reports on MQ–79; and season report for dealers.

(a) Any dealer or buyer who acquires tobacco in the form in which tobacco ordinarily is sold by farmers and resells 5 percent or less of any such tobacco shall not be subject to the requirements of § 723.404 of this part except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of § 723.404(e) of this part. A dealer or buyer whose resales in the form normally marketed by producers farmers exceed 5 percent of their purchases as a direct result of order buying for another dealer for a service fee may report under paragraph (b) of this section in lieu of § 723.404 of this part (except for requirements which relate to nonauction purchases from producers and requirements of § 723.404(e) of this part.

(b)(1) This paragraph is applicable only to burley and flue-cured tobacco. Each dealer or buyer shall make a report to the Director, not later than February 1 of each year for flue-cured and April 1 for burley tobacco, showing by States where acquired, source and pounds of all tobacco, in the form normally marketed by producers, purchased at auction or nonauction including tobacco received which was not billed to the dealer or buyer. Any acquisition of tobacco in the form normally marketed by producers by the dealer or buyer during the marketing year (October 1 through September 30 for burley tobacco and July 1 through June 30 for flue-cured tobacco) which is not included in the initial report shall be reported in like manner no later than the end of the calendar week following the week in which the tobacco was acquired. The report shall show:

(2) For purchases at auction for each warehouse;

(i) USDA registration number (warehouse code),

(ii) Name and address of warehouse,

(iii) Gross pounds originally billed to the buyer,

(iv) Gross pounds billed to the buyer for which payment was made,

(v) Gross pounds from the company correction account deducted for short lots and short weights and returned lots, and

(vi) Gross pounds from the company correction account added for long lots and long weights.

(3) For purchases at nonauction;

(i) Name and address of seller (dealer or farmer),

(ii) Seller's number (dealer's registration number or farm number, including State and county code), and

(iii) Pounds purchased.

§ 723.406 Provisions applicable to damaged tobacco or to purchases of tobacco from processors or manufacturers.

(a) *Damaged tobacco.* Any dealer, warehouse operator, or other person who plans to purchase tobacco that was damaged by fire, water, or any other cause shall prior to purchase report such plans to the State ASCS office issuing Form MQ–79, Dealer's Record Book. Such report shall be timely made so that an ASCS representative can determine the marketable value of such damaged tobacco, and so that the weighing and removal of such tobacco can be witnessed by an ASCS representative. Any damaged tobacco purchased before such plans are reported to the State ASCS office and before such tobacco is inspected by an ASCS representative shall be deemed excess tobacco and penalty at the full rate shall be due.

(b) *Purchase from processor or manufacturer.* Any tobacco purchased by a dealer, warehouse operator, or other person from a processor or manufacturer shall be considered to be tobacco in the form not normally marketed by producers unless the purchaser obtains from the processor or manufacturer a certification stating that such purchased tobacco is in the form normally marketed by producers. The certification by the processor or manufacturer shall be on a form prescribed by the Deputy Administrator certifying to ASCS that the tobacco involved in the transfer of ownership is in the form normally marketed by producers. No purchase credit shall be given to a dealer, warehouse operator, or other person on MQ–79, Dealer's Record Book, for any purchase of tobacco which is not in the form normally marketed by producers. Tobacco which meets the definition of pickings as defined in this part shall be considered tobacco in the form not normally marketed by producers.

(c) *Report by dealer or warehouse operator.* Any dealer, warehouse operator or other person who plans to purchase tobacco in the form normally marketed by producers from a processor or manufacturer shall, prior to purchase, report such plans to the State ASCS office issuing form MQ–79, Dealer's Record Book, to such person. Such report shall be made timely so that a representative of ASCS may inspect the tobacco to determine its marketable value and whether the tobacco is in the form normally marketed by producers. Any tobacco purchased from processors or manufacturers before such plans are reported to the state ASCS office and before the tobacco is inspected by an ASCS representative or an inspection is declined by an ASCS representative shall be deemed excess tobacco and the penalty at the full rate shall be due.

(d) *Report by processor or manufacturer.* Each processor or manufacturer shall make a report to the Director, showing the quantity of tobacco sold in the form not normally marketed by producers to dealers and buyers other than processor or manufacturers. The report shall be filed no later than the end of the calendar week following the week in which such tobacco was sold and shall show the name of the purchaser, the date of the sale and the pounds sold.

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§ 723.407 Cigar tobacco buyer's records and reports.

(a) *This section is a applicable to buyers of cigar tobacco*—(1) *Definition of cigar buyer.* With respect to this section, a buyer is any person who buys cigar tobacco including an association or cooperation that receives tobacco from producers for the purpose of:

(i) Selling it for the producers, or

(ii) Placing it under price-support loan through Commodity Credit Corporation.

(2) *Report of buyer's name and address.* Each buyer shall properly execute, detach, and promptly forward to the State ASCS office, "Receipt for Buyer's Record" contained in MQ–79 (CF&B), which is issued to the buyer.

(b) *Record of purchases.* A buyer shall keep records which provide the following information for each lot of each kind of tobacco purchased or sold by the buyer, including tobacco obtained from grading tobacco for producers or furnishing curing space, or stripping space:

(1) The name of:

(i) The operator of the farm on which the tobacco was produced; or

(ii) The name and address of the seller, in the case of a sale by a person other than the farm operator.

(2) The identification number of the farm at/from which the tobacco was purchased.

(3) The date of purchase.

(4) The pounds of tobacco purchased.

(5) The gross purchase price.

(6) The amount of penalty.

(7) The amount deducted for "No Net Cost Tobacco Account or Fund."

(c) *Report of sales.* Each buyer shall maintain records which will show, by kind of tobacco, the disposition of tobacco purchased under paragraph (b) of this section.

(d) *Deductions for producer contributions.* The buyer shall make deductions for producer contributions to the No Net Cost Tobacco Account or Fund as provided in part 1464 of this title. For nonauction purchases which are made by the dealer from producers, the buyer shall make a deduction in accordance with part 1464 of this title from the price paid to the producer for the tobacco. However, a deduction shall not be made if the marketing card used to identify the tobacco shows a converted penalty rate of 100 percent. The amount of the deduction which is applicable to such kind of tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer contribution to the No Net Cost Tobacco Account or Fund for each such marketing year.

(e) *Identification of sale or marketing card memo and buyers records.* Each MQ–76 and each sale memo from an MQ–77 used to identify each sale of tobacco by a producer shall be properly executed by the buyer. The serial number of the MQ–76 marketing card or sale memo from an HQ–77 to identify such tobacco, shall be recorded on the buyer's copy of the MQ–79 (CF&B) and on the check register or check stub for the check written with respect to such tobacco.

(f) *Record and report of purchases of tobacco from producers.* (1) Each buyer shall keep a record and make reports on MQ–79 (CF&B), Buyer's Record, showing by kinds of tobacco purchased by or for such buyer from producers. Such record and report shall show for each sale the sale date, the name of the farm operator, (and the name and address of the person selling the tobacco if other than the operator), the serial number of the within quota marketing card (MQ–76), and from each excess card (MQ–77), the sale memo number used to identify the sale, the pounds of tobacco represented in the sale, the rate of penalty shown on the sale memo (MQ–77), and the amount of penalty. If a marketing card is not presented by the producer, the buyer shall record and report the purchase as provided above except that the buyer shall enter the word "None" in the space for the serial number of the marketing card (MQ–76) or sale memo (MQ–77), the applicable rate of penalty per pound in the space for rate of penalty, and shall show the name and address of the seller in the space for the seller's name.

(2) The original of MQ–79 (CF&B), excess sale memos (MQ–77), and a remittance for all penalties shown by entries on MQ–79 (CF&B) and on the excess sale memos (MQ–77) to be due shall be forwarded to the State ASCS office not later than the 10th day of the calendar month next following the month during which the sale date occurred.

(3) In addition to Form MQ–79 a Form MQ–79 (Supplemental) shall be executed to record information relating to each purchase of tobacco for which a contribution to the No Net Cost Tobacco Account or Fund is deducted from the price paid to the producer for the tobacco. The Form MQ–79 (Supplemental) shall be forwarded to the State ASCS office at the time of forwarding the Form MQ–79 on which the purchase is recorded. A check, draft, or money order in the amount of the deduction recorded on Form MQ–79 (Supplemental) and drawn payable to Commodity Credit Corporation shall be forwarded to the State ASCS office at the same time as Form MQ–79 and MQ–79 (Supplemental).

§ 723.408 Producer's records and reports.

(a) *Failure to file reports or filing false reports.* (1) With respect to any kind of tobacco, if the producer on a farm files an incomplete or incorrect report, fails to file a report, or files or aids or acquiesces in the filing of any false report with respect to the amount of such kind of tobacco produced on or marketed from the farm, applicable tobacco acreage allotment or burley farm marketing quota next established for such farm shall be reduced, unless the county and State ASC committees determine, according to instructions issued by the Deputy Administrator, that such reduction is not required.

(2) For all kinds of tobacco except burley tobacco, if a farm operator files a report of acreage of the applicable kind of tobacco on the farm and, after a determination of the acreage, it is determined by the county ASC committee (with approval of the State ASC committee) that the report was false (either significantly under reported or significantly over reported by more than the tolerance for reporting as provided in part 718 of this chapter) in what amounts to a scheme or device to defeat the purpose of the program, the allotment next established for the farm shall be reduced by an amount determined by multiplying the acreage falsely reported (difference between reported and determined acreage) by:

(i) With respect to flue-cured tobacco, the farm yield established for the farm for the year in which the false report was filed, or

(ii) For any other kind of tobacco, the actual yield per acre for the year in which the false report was filed.

(b) *Harvesting second crop tobacco from the same farm.* For all kinds of tobacco except burley, if in the same calendar year more than one crop of tobacco was grown from:

(1) The same tobacco plants, or

(2) Different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested.

(c) *False identification.* If there is false identification of any kind of tobacco, the applicable farm acreage allotment or farm marketing quota next established for the farm and kind of tobacco involved shall be reduced, except that such reduction for any such farm shall not be made if the county and State ASC committees determine, according to instructions issued by the Deputy Administrator, that such reduction is not required.

(d) *Report on marketing card.* (1) The operator of each farm on which tobacco is produced shall return to the county ASCS office each marketing card issued for the farm whenever marketings from the farm are completed and, in no event, later than,

(i) June 1 of the marketing year in the case of cigar tobacco, and

(ii) For all other kinds of tobacco, not later than 20 days after the close of the tobacco auction markets for the marketing year for the locality in which the farm is located. Failure to return the marketing card within 15 days after written request by certified mail from the county ASCS executive director shall constitute failure to account for disposition of all tobacco marketed from the farm unless disposition of tobacco marketed from the farm is otherwise accounted for to the satisfaction of the county ASC committee.

(2) For all kinds of tobacco except burley and flue-cured:

(i) At the time the marketing card is returned to the county ASCS office, the farm operator must certify with respect to each:

(A) MQ–77, to the quantity of tobacco on hand and its location.

(B) MQ–76, to the accuracy of the Record of Sales recorded on the card.

(ii) Failure of the farm operator to make the applicable certification shall constitute failure to satisfactorily account for the disposition of tobacco marketed from the farm.

(3) Upon failure to satisfactorily account to the county ASC committee for disposition of tobacco marketed from the farm the allotment or quota next established for such farm and such kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county ASC committee and a representative of the State ASC committee that the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition. However, such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or no person connected with such farm for the year for which the acreage allotment or quota is being established caused, aided, or acquiesced in the failure to furnish such proof.

(e) *Report of production and disposition.* (1) In addition to any other reports which may be required by this subpart, the operator or any producer on a farm (even though the harvested acreage does not exceed the acreage allotment or even though no farm acreage allotment or farm marketing quota was established for the farm) shall, upon written request by certified mail from the State or county ASC committee, furnish on MQ–108, Report of Production and Disposition, a written report of the acreage, production and disposition of all tobacco produced on the farm by sending the same to the State or county ASC committee within 15 days after the request was mailed showing as to the farm at the time of filing such report with respect to the applicable kind of tobacco the:

(i) Total harvested acres,

(ii) Total amount of tobacco on hand and its location,

(iii) Total pounds of tobacco produced,

(iv) Name and address of the warehouse operator, dealer, or other person to or through whom tobacco was marketed, and the number of pounds marketed, the gross price paid and the date of the marketings, and

(v) Complete details as to any tobacco disposed of other than by sale.

(2) With respect to any farm on which burley or flue-cured tobacco was produced or available for marketing from carryover tobacco, the operator or any producer on the farm (even though the harvested acreage does not exceed the flue cured farm acreage allotment or even though no farm acreage allotment or farm marketing quota was established for the farm) shall, upon written request from the county ASC committee, furnish on Form MQ–108–1, Report of Unmarketed Tobacco, a written report of the amount and location of the applicable kind of tobacco produced on the farm which is unmarketed at the end of the marketing season and the amount the applicable kind of tobacco produced by such operator or producer on any other farm, which is unmarketed at the end of the marketing season and which is stored on the farm, by sending the report to the county ASC committee within 15 days after the request was mailed to such person at such person's last known address.

(3) Failure to file the MQ–108 or MQ–108–1 as requested, or the filing of MQ–108 or MQ–108–1 which is found by the State or county ASC committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm, constitute failure to account for the disposition of tobacco produced on the farm and the allotment or quota next established for such farm shall be reduced, except that such reduction shall not be made if it is established to the satisfaction of the county or State ASC committee that failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: However, such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or no person connected with such farm for the year for which the farm acreage allotment or farm marketing quota is being established caused, aided, acquiesced in the failure to furnish such proof.

(f) *Reports by producer-manufacturers.* (1) For all kinds of tobacco except burley and flue-cured tobacco, each producer who manufactures tobacco products from tobacco produced by or for such person as a producer, shall report to the State ASCS office with respect to each farm on which such tobacco is produced and as soon as all tobacco from the farm has been weighed as follows:

(i) If the harvested acreage is within the allotment, the producer-manufacturer shall report the total pounds of tobacco produced, the date(s) on which such tobacco was weighed, the farm serial number of the farm on which it was produced, and the estimated value of such tobacco.

(ii) If the harvested acreage is in excess of the allotment, the producer-manufacturer shall report the total pounds of tobacco produced on the farm, the date(s) on which the tobacco was weighed, the farm serial number of the farm on which it was produced, the estimated value of the tobacco, and the location of the tobacco. If the required reports are not made, penalty shall be paid on the tobacco by the producer-manufacturer, at the converted rate of penalty shown on the marketing card issued for the farm, when it is moved from the place where it can be conveniently inspected by the county ASC committee at any time separate and apart from any other tobacco.

(2) If the producer-manufacturer has excess tobacco and does not pay the penalty thereon at the converted rate of penalty shown on the marketing card, such producer-manufacturer shall notify in writing the buyer of the manufactured product or the buyer of any residue resulting from processing the tobacco, at time of sale of such product or residue, of the precise amount of penalty due on such manufactured product or residue. In such event, the producer-manufacturer shall immediately notify the State ASCS executive director and shall account for the disposition of such

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tobacco by furnishing the State ASCS executive director a report on a form to be furnished by such State ASCS executive director, showing the name and address of the buyer of the manufactured products or residue, a detailed account of the disposition of such tobacco and the exact amounts of penalty due with respect to each such sale of such products or residue to indicate, together with copies of the written notice that was given to the buyer of such products or residue to indicate the exact amount of the penalty due.

(3) Failure to file the report required in paragraph (f)(2) of this section, or the filing of a report which is found by the State ASC committee to be incomplete or incorrect, shall be considered failure of the producer-manufacturer to account for the disposition of tobacco produced on the farm and the allotment next established for the farm shall be reduced for such failure, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State ASC committees, that:

(i) The failure to furnish such report of disposition was unintentional and the producer-manufacturer on such farm could not reasonably have been expected to furnish such report of disposition. However such failure will be construed as intentional unless such report of disposition is furnished and payment of all additional penalty is made, or

(ii) No person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the failure to furnish such report. The producer-manufacturer shall be liable for the payment of penalty.

(g) *Amount of allotment or quota reductions*—(1) *Burley tobacco.* For burley tobacco, the farm marketing quota determined for a farm for the current year shall be reduced by that amount of tobacco which is involved in a marketing quota violation as described in paragraphs (a), (b), (c), (d), or (e), of this section which occurred in any prior year. However, the amount of such reduction shall not exceed the current year farm marketing quota. The county ASC committee shall determine the amount of tobacco involved in the marketing quota violation. If the actual quantity of tobacco involved in such violation is unknown, the county ASC committee shall determine the quantity by considering both the condition of the crop during production, if known, and such other information as is available.

(2) *Kinds of tobacco except burley tobacco.* The amount of reduction in the allotment for the current year for a violation described in paragraphs (a), (c), (d), (e), or (f) of this section shall be that percentage, but not to exceed 100 percent, which the amount of the tobacco involved in the violation is of the respective farm marketing quota for the farm for the year in which the violation occurred times the current year farm acreage allotment. The quantity of tobacco in violation shall be determined by the county ASC committee. If known, the actual quantity shall be determined by the county ASC committee to be the amount of tobacco involved in the violation. If the actual quantity is unknown, determine the quantity by taking into consideration the condition of the crop during production, if known, and such other information that is available.

(h) *Allotment or quota reduction for combined farms.* If the farm involved in the violation is combined with another farm prior to the reduction, the allotment or quota reduction shall be applied as heretofore provided in this section to that portion of the farm acreage allotment or farm marketing quota for which a reduction is required.

(i) *Allotment or quota reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments or quota for the divided farms required to be reduced.

(j) *Quota reductions for flue-cured tobacco.* For flue-cured tobacco only, if an acreage allotment reduction is made under this section, the marketing quota shall be reduced to reflect such reduction in an amount determined by multiplying the acreage reduction by the farm yield.

(k) *County administrative hearing in connection with violations.* Except for the failure to return a marketing card, the allotment or quota for any farm shall not be reduced for a violation under this section until the operator of the farm has been afforded an opportunity to discuss the nature and extent of the violation with the county ASC committee. If after having been afforded an opportunity to discuss a violation with the county ASC committee the farm operator fails or refused to discuss the violation, the county ASC committee shall take action as required by this part.

(l) *Sequence of allotment or quota reductions.* For burley and flue-cured tobacco, if the tobacco farm acreage allotment or farm marketing quota for a farm is to be reduced in the current year because of both:

(1) A violation, and

(2) Overmarketings in a prior year, the reduction in the farm acreage allotment or farm marketing quota for the violation shall be made before making the reduction for overmarketings.

(m) *Correction of farm records.* For burley and flue-cured tobacco, where farm data for actual marketings are determined to be incorrect because of a violation, the records shall be corrected for each farm on which the tobacco was produced, and for each farm whose card was used to identify marketings.

(n) *Report on Form MQ–62, Estimate of Production.* An estimate of production, Form MQ–62, shall be prepared immediately prior to harvest for each farm for which the county or State ASC committee or a representative of the county or State ASC committee believes than an MQ–62 for the farm would be in the best interests of the program. The county ASC committee shall have the authority to visit any farm for the purposes of making an estimate of production or determination of planted acreage needed to complete an estimate of production.

(o) *Effect of false identification on establishing future farm marketing quotas.* Notwithstanding any other provision of this section, with respect to burley or flue-cured tobacco, if a producer falsely identifies such tobacco as having been produced on or marketed from a farm, the quantity of the tobacco which is falsely identified shall be considered, for the purpose of establishing future farm marketing quotas, as having been produced on both the farm for which it was identified as having been produced, and the farm of actual production, if known, or, as the case may be, such quantity of tobacco shall be considered as actually marketed from the farm.

§ 723.409 Producer penalties; false identification and related issues.

(a) *Penalties for marketing over 103 percent of farm quota-burley and flue-cured tobacco.* For burley and flue-cured tobacco, a penalty at the full rate shall be due on any marketings which exceeds 103 percent of the effective farm marketing quota.

(b) *Penalties for false identification or failure to account-burley tobacco*—(1) *For burley tobacco.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, penalty at the full rate shall be due on the larger of the:

(i) Actual marketings above 103 percent of the effective farm marketing quota, or

(ii) Amount of tobacco equal to 25 percent of the effective farm marketing quota. The requirement of paragraph (b)(ii) of this section shall not be applied if the county ASC committee determines with concurrence of State ASC committee, that assessment of penalty based on 25 percent of the effective farm marketing quota would be unduly harsh when compared with the pounds in violation and no adverse effect on the program would result.

(2) *For flue-cured tobacco.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on the farm, a penalty at the full rate shall be assessed on the larger of:

(i) The actual marketings above 103 percent of the effective farm marketing quota; or

(ii) The sum of pounds equal to 25 percent of the effective farm marketing quota plus the pounds determined by multiplying the farm yield times the acres harvested in excess of the effective farm acreage allotment. If such amount exceeds the amount determined in accordance with paragraph (b)(2)(i) of this section the penalty assessed may be based on the amount determined in accordance with such paragraph if the county ASC committee determines, with the concurrence with the State ASC committee, that the penalty assessed on the amount determined in accordance with this paragraph would be unduly harsh in relation to the quantity of tobacco which is falsely identified or which is not accounted for and the tobacco program would not be adversely effected.

(3) *For kinds of tobacco other than burley or flue-cured tobacco.* (i) If any producer falsely identifies or fails to account for the disposition of any kind of tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in the current year in excess of the farm acreage allotment for the kind of tobacco shall be deemed to have been marketed from such farm.

(ii) If any producer who manufactures tobacco products from tobacco produced by or for such person fails to make the reports or makes a false report, the producer shall be deemed to have failed to account for the disposition of tobacco produced on the farm(s) involved. The filing of a report by a producer under § 723.408 of this part which the State ASC committee finds to be incomplete or incorrect, shall constitute a failure to account for the disposition of tobacco produced on the farm.

(c) *Canceled allotment or quota.* If part or all of the tobacco produced on a farm has been marketed and the farm acreage allotment or farm marketing quota for the farm is canceled, any penalty due on the marketings shall be paid by the producers.

(d) *Overmarketing proportionate share of effective farm marketing quota-burley or flue-cured tobacco.* With respect to burley or flue cured tobacco, if the county ASC committee determines that the farm operator or another producer on the farm has marketed more than 103 percent of such operator's or producer's share of the effective farm marketing quota with intent to deprive some other producer on the farm from marketing such producer's proportionate share of the same crop of tobacco, such operator or other producer shall be liable for marketing penalties at the full rate per pound for each pound of tobacco marketed above 103 percent of such producer's share of the effective farm marketing quota. However, the sum of such penalties shall not exceed the total penalties due on total marketings above 103 percent of the effective farm marketing quota for the farm on which such tobacco was produced. Before assessment of penalty pursuant to this paragraph, a hearing shall be scheduled by the county ASC committee and the operator and affected producers shall be invited to be present, or to be represented, to determine whether the operator or another producer on the farm has marketed more than 103 percent of such person's proportionate share of the effective farm marketing quota. The notice of the hearing shall request the farm operator and affected producers to bring to the hearing floor sheets and other relevant supporting documents. At least two members of the county ASC committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken to impose penalty shall be taken after the hearing. If the farm operator or other affected producer does not attend the hearing, or is not represented, the county ASC committee shall make a determination on the basis of available records and shall assess any penalties that may be required against the applicable person.

(e) *Penalties not to be assessed-burley or flue-cured tobacco.* With respect to burley or flue-cured tobacco, if the operator or another producer on the farm markets a quantity of tobacco above 103 percent of the effective farm marketing quota for the farm and such overage is found to have been caused by the failure to record or improper recording of tobacco poundage data on the marketing card, that amount of the penalty as was due to such failure to record or improper recording will not be required to be paid by the farm operator or other producer if:

(1) For amounts of $10 or less, the county ASC committee, and

(2) For amounts over $10, the county ASC committee, with the approval of the State ASC committee, determines that each of the following conditions is applicable:

(i) The failure to record or incorrect recording resulted from action or inaction of a marketing recorder or another ASCS employee, and

(ii) The farm operator or another producer on the farm had no knowledge of such failure or error. Overmarketings for a farm for which the marketing penalty will not be paid pursuant to the provisions of this paragraph shall be determined based upon the correct effective farm marketing quota and correct actual marketings of tobacco from the farm.

(f) *Ineligible for price support.* A penalty at the full rate announced for a kind of tobacco for the current marketing shall be assessed on any marketing of any kind of tobacco by any producer on a farm if such producer is ineligible for price support because the farm operator or other producer on the farm has not agreed to make a contribution to the No Net Cost Fund or pay an assessment to the No Net Cost Account, as applicable, in accordance with part 1464 of this title.

(g) *Person to pay penalty when erroneous rate is shown on card (except burley and flue-cured tobacco).* If an erroneous penalty rate is shown on a marketing card and tobacco is identified by such card, the producer shall remit any additional penalty due for the sale.

§ 723.410 Penalties considered to be due from a warehouse operator, dealers, buyers, and others excluding the producer.

Any marketing of tobacco under one of the following conditions shall be considered to be a marketing of excess tobacco.

(a) *Auction sale without burley or flue-cured tobacco marketing card.* For burley and flue-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouse operator unless prior to marketing, an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Auction sale without dark air-cured, fire-cured, or Virginia sun-cured tobacco marketing card.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any first marketing of tobacco

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at an auction sale by a producer which is not identified by a valid marketing card (MQ–76 or MQ–77 (including sale memo)) on or before the last warehouse sale day of the marketing season, or within 4 weeks following the date of marketing, whichever comes first, shall be identified by an MQ–82, and shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouse operator.

(c) *Burley or flue-cured tobacco nonauction sale.* For burley and flue-cured tobacco, any nonauction marketing of tobacco which:

(1) Is not identified by a valid marketing card and recorded at the time of marketing on MQ–79, Dealer's Report, the marketing card, and MQ–72–2, Report of Tobacco Nonauction Purchase; or,

(2) If purchased prior to the opening of the local auction market for the current year, it is not identified by a valid marketing card and recorded on MQ–79, the marketing card, and MQ–72–2, Report of Tobacco Nonauction Purchase not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be considered a marketing of excess tobacco. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ–79, unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(d) *Nonauction sale, except burley, flue-cured, and cigar tobacco.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any nonauction sale of tobacco which:

(1) Is not identified by an MQ–76 or MQ–77 (including a valid sale memo); and

(2) Recorded on MQ–79, Dealer's Record, not later than the end of the calendar week in which the tobacco was purchased; or

(3) If purchased prior to the opening of the local auction market for the current year, is not identified by an MQ–76 or MQ–77 (including a valid sale memo) and recorded on MQ–79 not later than the end of the calendar week which includes the first day of the local auction markets, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the purchaser of such tobacco.

(e) *Failure to obtain an MQ–76 and sale memo, and failure to record a sale on MQ–76-cigar tobacco.* Any sale of cigar tobacco for which a dealer:

(1) If within quota, fails to record the sale on the marketing card issued for the farm, or

(2) If the tobacco was produced on a farm for which an excess marketing card was issued, fails to obtain a valid sale memo by the end of the sale date, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the required record.

(f) *Leaf account tobacco.* If warehouse resales exceed prior leaf account purchases, such marketings shall be considered to be a marketing of excess tobacco unless such warehouse operator furnishes evidence acceptable to the State ASC committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State ASC committee shall not be based on the warehouse operator's proof of purchase of tobacco that is not in the form normally marketed by producers even though such evidence indicates that resales exceed prior leaf account purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the warehouse operator's prior purchases of leaf account tobacco.

(g) *Dealer tobacco—burley or flue-cured.* The burley or flue-cured tobacco resales by a dealer (as shown or due to be shown on Form MQ–79), which are in excess of such dealer's total prior purchases of the respective kind of tobacco (as shown or due to be shown on Form MQ–79) shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time the marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. Penalty due which is not withheld by a warehouse operator shall be remitted weekly by the dealer to the State ASCS office with his reports on Form MQ–79.

(h) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouse operator or dealer, but which is not reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouse operator or dealer furnishes proof of such resale which is acceptable to the State ASCS executive director. The penalty thereon shall be paid by the warehouse operator or dealer who fails to make the report as required.

(i) *Marketing falsely identified by a person other than the producer of the tobacco.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which the tobacco was produced, and the source of production of the tobacco is unknown, such marketing shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The marketing quota penalty shall be paid by the person who marketed the tobacco.

(j) *Carryover tobacco, except cigar tobacco.* Any tobacco on hand, except for cigar tobacco, and reported or due to be reported under § 723.403 of this part for warehouse operators and § 723.404 of this part for dealers shall be included as a resale in determining whether an account for a kind of tobacco has excess resales. Unless the warehouse operator furnishes proof acceptable to the State ASC committee and unless the dealer furnishes proof acceptable to the State ASCS executive director, showing that such account does not represent excess tobacco, penalty at the full rate for the respective kind of tobacco shall be paid thereon by such warehouse operator or dealer.

(k) *Unrecorded sale of cigar tobacco.* Any sale of cigar tobacco which is not recorded on MQ–79 (CF&B), Buyer's Record Book, by the 10th day of the month following the month during which the sale dated occurred shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the record.

(l) *Floor sweepings.* Any person who markets floor sweepings in excess of allowable floor sweepings shall be subject to a civil penalty of 150 percent of the average market price for the immediately preceding marketing year, as determined by the U.S. Department of Agriculture. The calculated penalty rate shall be rounded to the nearest whole cent. Any floor sweepings on hand more than 30 days (15 days with respect to flue-cured tobacco) after the warehouse closes for the auction season shall be considered marketed. The floor sweepings on hand shall be weighed by the warehouse operator and the weight shall be certified by the warehouse operator, such weighing to be done in the presence of a representative of either the county ASC committee or State ASC committee. Floor sweepings which are destroyed in the presence of a representative of the county ASC committee, within 30 days (15 days with respect to flue-cured tobacco) after the warehouse closes shall not be considered as marketed when determining the quantity of floor sweepings marketed. If the county ASC committee determines, after the warehouse has been closed for the auction season for more than 30 days (15 days with respect to flue-cured tobacco), that the cumulative quantity of floor sweepings marketed and considered marketed in the current marketing year is in excess of the allowable floor sweepings, the person responsible for such marketings shall be given notice of the determination and shall be afforded an opportunity to request reconsideration of such determination in accordance with the provisions of part 780 of this chapter. A determination that a civil penalty is due for marketing floor sweepings in excess of the allowable floor sweepings shall not become final and shall not be assessed until such person has been afforded an opportunity for a hearing and such person has exhausted the applicable administrative remedies. The notice of assessment shall require such person to pay the civil penalty to the "Agricultural Stabilization and Conservation Service, USDA" within 15 days after the mailing of the notice.

(m) *Blending tobacco not in the form normally marketed by producers—burley and flue-cured tobacco.* Tobacco purchased from processors or manufacturers that is considered not in the form normally marketed by producers that is blended with tobacco in the form normally marketed by producers shall not be credited as a purchase to the dealer's or warehouse operator's account by the State ASC committee when reconciling the warehouse operator's leaf account or the dealer's purchases and resales. Tobacco not in the form normally marketed by producers that is blended with other tobacco shall be deemed to be excess tobacco and penalty shall be due on the pounds of tobacco by which a warehouse operator's or dealer's resales exceed prior purchases.

§ 723.411 Records and reports regarding hauling, processing, and storage of tobacco.

(a) *Trucker records.* Each trucker shall keep such records as will enable such trucker to furnish the State ASCS office a report with respect to each lot of tobacco received by such trucker showing.

(1) The name and address of the producer;

(2) The date of receipt of the tobacco;

(3) The number of pounds received;

(4) The location where received; and

(5) The name and address of the person to whom it was delivered.

(b) *Processor records.* Each firm engaged in the business of processing tobacco shall keep records with respect to each lot of tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouse operator, or other person for whom the tobacco was received.

(2) The date of receipt of tobacco.

(3) The number of pounds (green weight) received.

(4) The purpose for which tobacco was received (redrying or stemming).

(5) The amount of any advance or loan made by such person on the tobacco.

(6) The disposition of the tobacco including the net weight of the tobacco processed and the number of containers by classification (stripe, stems, scrap or leaf).

(7) Person to whom delivered and pounds involved.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased at auction or tobacco which was previously reported on Form MQ–79. Where such firm qualifies for the exemption in § 723.405 of this part, such firm is required to report only such tobacco received that does not belong to such firm.

(c) *Records for stored tobacco.* Each firm engaged in storing unprocessed tobacco shall keep records with respect to each lot of unprocessed tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouse operator, marketing agent or other person for whom the tobacco was received;

(2) The date and receipt of the tobacco;

(3) The number of pounds received;

(4) The amount of any advance or loan made by such firm;

(5) The disposition of the tobacco; and

(6) The person to whom delivered and the pounds involved.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by such firm at auction or for which such firm had previously reported on Form MQ–79. Where such firm qualifies for the exemption in § 723.405 of this part, the firm is only required to report such tobacco received for storage that does not belong to such firm.

§ 723.412 Separate records and reports from persons engaged in tobacco related businesses.

Any person who is required to keep any record or make any report as a warehouse operator, dealer, buyer, trucker, or as a person engaged in the hauling, processing, or storage of tobacco, and who is engaged in more than one such business, shall keep such records as will enable such person to make separate reports for each such business in which such person is engaged to the same extent for each such business as if the person were engaged in no other business.

§ 723.413 Length of time records and reports are to be kept.

Records to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State ASCS executive director, or the Director.

§ 723.414 Failure to keep records and make reports or making false report or record.

(a)(1) *Failure to keep records and make reports.* Under the provisions of section 373(a) of the Act, any warehouse operator, processor, buyer, dealer, trucker, or person engaged in the business of sorting, redrying, stemming, packing, or otherwise processing tobacco who fails to make any report or keep any record as required, or who makes any false report or record, is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $500 for each offense. In addition, any tobacco warehouse operator, dealer, or buyer who fails, upon being requested to do so, to remedy a violation by submitting complete reports and keeping accurate records shall be subject to an additional fine, not to exceed $5,000.

(2) *Failure to obtain producer marketing card or sale memo.* The failure of any dealer or warehouse operator to obtain a:

(i) Producer's marketing card, MQ–76 and MQ–77, to identify a sale of producer tobacco, or

(ii) Dealer identification card, MQ–79–2, to cover a resale of tobacco, shall constitute a failure to make a report.

(b) *False representation—warehouse operators, dealers, and processors.* The monetary penalties described in this part are in addition to penalties

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prescribed by other criminal statutes including 18 U.S.C. 231 which provides for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused "106 percent of quota poundage" on marketing cards.

§ 723.416 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining the information required to be furnished, in any report, but not so furnished, any warehouse operator, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, stemming, picking, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State ASCS executive director and by employees of the Office of Investigation and Office of Audit, and of the Tobacco and Peanuts Division of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture upon written request by the State ASCS executive director, all such books, papers, records, lot tickets, tobacco sale bills, buyer adjustment invoices, accounts, canceled checks, check register, check stubs, correspondence, contracts, documents, warehouse bill-out invoices or daily summary journal sheet, the tissue copy of Form MQ-72-1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse and memoranda as the State ASCS executive director has reason to believe are relevant and are within the control of such person.

§ 723.416 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and community committees, and all county ASCS office employees. Only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the Act. The provisions of this section shall not be deemed to prohibit the issuance of general statements based upon the report of a number of parties which statements do not identify the information furnished by any person.

Signed in Washington, DC, on September 20, 1990.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90-22779 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-18; Amdt. 39-6749]

Airworthiness Directives; Garrett Engine Division, Allied-Signal Incorporated, Models TPE331 Series Turboprop and TSE231-3U Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), which requires the periodic replacement of the third stage stator assembly. This AD is needed to prevent thermal fatigue of the sheet metal inner seal support and/or the outer ring nozzle support, which has resulted in uncontained third stage turbine rotor failures. Uncontained rotor fragments can cause structural/system airplane damage, passenger injury, and possible loss of the airplane.

DATES: Effective October 1, 1990.

Comments for inclusion in the docket must be received on or before October 31, 1990.

ADDRESSES: Submit comments in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket Number 90-ANE-18, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable engine manufacturer's service bulletins (SB) may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034; telephone (602) 225-2548, and may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM-140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5346.

SUPPLEMENTARY INFORMATION: Three incidents of multiple circumferential cracking of the inner seal support and outer ring nozzle support of the third stage stator assembly have been reported. The accumulated cyclic life of the assemblies were within a range of 2,232 to 4,228 cycles. The FAA has determined that failure of the inner seal support and outer ring nozzle support of the third stage stator may result in the seal support moving aft and making contact with the third stage turbine wheel. If uncorrected, this contact could result in an uncontained separation of the third stage turbine rotor assembly. Uncontained rotor fragments can cause structural/system airplane damage, passenger injury, and possible loss of airplane.

The FAA has determined, based on service experience, that the manufacturer's recommended replacement interval of 6,000 hours for the Part Number (P/N) 868379-5 third stage stator assembly is inadequate. Therefore, the FAA has reduced the service life limit of the P/N 868379-5 third stage stator assembly to 1,800 cycles.

Since this condition is likely to exist or develop in other engines with stators of the same type design, this AD requires the periodic replacement of the third stage turbine stator assembly on certain TSE/TPE331 series engines to correct an unsafe condition.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedures hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, therein, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 90-ANE-18, 12 New England Executive Park, Burlington, Massachusetts 01803.

All communications received by the deadline date indicated above will be considered by the Administrator and the AD may be amended in light of comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It had been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13, the following new airworthiness directive (AD):

Garrett Engine Division, Allied-Signal, Inc. (formerly Garrett Turbine Engine Co., GTEC, formerly AiResearch Manufacturing Company of Arizona) applies to model TPE331-1, TPE 331-2, TPE 331-2UA, TPE 331-3U, TPE 331-3UW, TPE 331-5, TPE 331-6A, TPE 331-6, TPE 331-6A turboprop and TSE331-3U turboshaft engines equipped with Part Number (P/N) 868379-5 third stage stator assemblies.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained third stage turbine rotor failure, replace P/N 868379-5 third stage stator assembly with a serviceable assembly, in accordance with the following schedule:

a. Replace within the next 300 cycles in service after the effective date of this AD, if the stator assembly has more than 1,500 cycles, since new or since rework to a P/N 868379-5 configuration, on the effective date of this AD.

b. Replace prior to accumulating 1,800 cycles in service since new or since rework to P/N 868379-5 configuration if the stator assembly has less than 1,500 cycles or less in service on the effective date of this AD.

Note: Guidance and information regarding the replacement of the stator assembly can be obtained from Garrett Service Bulletin (SB) TPE331-A72-0699, R2, dated June 28, 1990.

c. Thereafter, replace at intervals not to exceed 1,800 cycles in service since new or rework.

Note: Refer to Garrett SB TPE/TSE331-72-0019, R14, dated July 24, 1990, for definition of critical component service life limits, including the required life limit, cycle definitions, and stator serviceability.

d. Aircraft may be ferried in accordance with the provisions of FAR 21, 197 and 21.199 to a base where the AD can be accomplished.

e. Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425, may approve an equivalent means of compliance or an adjustment of the compliance schedule which provides an equivalent level of safety.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034. This information may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803.

This amendment becomes effective on October 1, 1990.

Issued in Burlington, Massachusetts, on September 17, 1990.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-23061 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ANE-07; Amdt. 39-6841]

Airworthiness Directives; Air Cruisers Co., TSO-C69a; Emergency Evacuation Slide/Raft System P/N D30659-( )

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires relocation of the slide/raft life-line on Air Cruisers Co., TSO-C69a Emergency Evacuation Slide/Raft System P/N D30659-( ) installed on Boeing Model 757 series airplanes. The AD is needed to prevent the life-line from being ingested into the aspirator during inflation. This condition, if not corrected, could result in damage to the aspirator and prevent completion of the inflation of the slide/raft unit, resulting in hinderance of emergency evacuation of the airplane.

DATES: Effective October 31, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of October 31, 1990.

ADDRESSES: The applicable service bulletin may be obtained from Air Cruisers Co. P.O. Box 160, Belmar, New Jersey 07719-0160 or may be examined in the Office of the Assistant Chief Counsel, room 311, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Aerospace Engineer, New York Aircraft Certification Office, Systems and Equipment Branch, ANE-173, Engine & Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an airworthiness directive (AD) which will require relocation of the slide/raft life-line on Air Cruisers Co. TSO-C69a Emergency Evacuation Slide/Raft

System P/N D30659-( ), installed on Boeing Model 757 series airplanes, was published in the Federal Register on December 13, 1989 (54 FR 51034).

The proposal was prompted by Air Cruisers Co. Emergency Evacuation Slide/Raft deployment tests by Boeing Commercial Airplane Co. wherein the slide/raft located on the left hand side at door 4 of a Boeing Model 757 series airplane failed to inflate properly. It was determined that this was caused by the life-line webbing, located on the lower tube aspirator-side of the slide/raft forming an unrestrained loop when the slide/raft is folded. During the initial stages of inflation, the loop can be sucked into the lower tube aspirator which could result in damage to the aspirator and prevent proper inflation of the slide/raft which could hinder emergency evacuation of the airplane.

A previous amendment to part 39, AD 89-19-06, Amendment 39-6321, published in the Federal Register on September 15, 1989 (54 FR 38209), adopted an AD which applies to Boeing Model 757 series airplanes, equipped with certain Air Cruisers Co. escape slides and certain Air Cruisers Co. slide/rafts. As AD 89-19-06 requires modification of the slide/raft assemblies to which this AD would be applicable, compliance with this AD would not be possible without the earlier changes. Therefore, compliance with the requirements of AD 89-19-06 must be accomplished before compliance with the requirements of this AD. The FAA has considered the effect that the required compliance time for AD 89-19-06 has on the compliance time for this AD. Even if compliance with AD 89-19-06 is not attained until April 1991, compliance with this AD can be accomplished within the required time and should not disrupt service. Accordingly, this AD does not alter AD 89-19-06 and reference to AD 89-19-06 is made only to note that AD 89-19-06 must be complied with before complying with this AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received indicating agreement and no foreseeable, difficulties in meeting the compliance requirements of 18 months after the effective date of this AD. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves approximately 241 slide/rafts, and will take approximately 1 manhour per slide/raft and that the average labor cost would be $40 per manhour. Parts will be supplied by Air Cruisers at no cost. Based on these figures, the total cost impact of the AD is estimated to be $9,640. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Air Cruisers Company: Applies to Air Cruisers Company TSO-C69a Emergency Evacuation Slide/Raft System, P/N D30659-( ), which are listed below, and are installed on Boeing Model 757 airplanes:

Slide/Raft System P/N D30659-109, having Slide/Raft Assembly P/N D30656-109 (pre Service Bulletin (SB) 105-25-17);

Slide/Raft Systems P/N D30659-109 and -112, having Slide/Raft Assemblies P/N D30656-116 and -115 respectively (post SB 105-25-17 and pre SB 105-25-27);

Slide/Raft Systems P/N D30659-115 and -116, having Slide/Raft Assembly P/N D30656-115 and -116 respectively (post SB 105-25-27 and pre SB 105-25-29);

Slide/Raft Systems P/N D30659-121 and -124, having Slide/Raft Assembly P/N D30656-121 and -124 respectively (post SB 105-25-29.

The above listed slide/raft assemblies bear one of the following serial numbers (S/N): 0001 through 0233, 0180MOD, 0169MOD, 0165MOD, 0205MOD, 0207MOD, 0216MOD, 0228MOD, and 0230MOD.

Compliance with the requirements of AD 89-19-06, Amendment 39-6321, published in the Federal Register on September 15, 1989, (54 FR 38209), is required prior to compliance with the requirements of this AD.

Compliance is required by January 1, 1992, unless already accomplished.

To prevent ingestion of the life-line, which could hinder the emergency evacuation of the airplane, accomplish the following:

(a) Modify and re-identify the slide/raft in accordance with paragraph 2 (Accomplishment Instructions) of Air Cruisers company Service Bulletin No. 105-25-30, Revision 1, dated August 21, 1990.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance (schedule) times specified in this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, Engine & Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Valley Stream, New York 11581.

The modification and re-identification procedures shall be done in accordance with the following Air Cruisers' document:

Document	Page No.	Issue/ Rev	Date
Air Cruisers. SB 105-25-30.	1, 2, 3, 4, 5	Rev. 1	August 21, 1990.
	6, 7, 8	Original	April 10, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719-0180. Copies may be inspected at the Regional Rules Docket Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region 12, New England Executive Park, room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street, NW., room 8301, Washington, DC 20591.

This amendment becomes effective on October 31, 1990.

Issued in Burlington, Massachusetts, on September 11, 1990.

Jay J. Pardee,

Acting Manager, Engine & Propellor Directorate, Aircraft Certification Service

[FR Doc. 90-23060 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ASW-43; Amdt. 39-6669]

Airworthiness Directives; McDonnell Douglas Helicopter Co. Model 369 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends an existing airworthiness directive (AD) which requires repetitive inspections of the main rotor (M/R) drive shaft on MDHC Model 369D series helicopters. The amendment extends the applicability of the inspection requirements to include all Model 369 series helicopters; reflects the latest service information notices; and clarifies the main rotor drive shaft retirement life. This action is necessary because undetected cracks in the main rotor drive shaft may result in structural failure and as a consequence loss of the helicopter.

DATES: Effective: October 31, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of October 31, 1990.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Attention: Publications Department, MS543/D213, Mesa, Arizona 85205, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, ANM-143L, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5247.

SUPPLEMENTARY INFORMATION: A proposal to amend Amendment 39-4275 (46 FR 60807, December 14, 1981), AD 81-26-01, by requiring repetitive inspections of the main rotor (M/R) drive shaft on MDHC Model 369D series helicopters, was published in the Federal Register on April 16, 1990 (55 FR 14428). Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposed amendment is adopted without change.

After issuing Amendment 39-4275, which currently requires a visual inspection of the main rotor drive shaft for cracks on the Hughes Model 369D helicopter, the FAA determined that: (1) All Model 369 series helicopters should be affected, and (2) the main rotor drive shaft retirement life for specific models should be changed. Therefore, the FAA is amending Amendment 39-4275 by extending the applicability to include all Model 369 series helicopters. In addition, paragraph (a) has been changed to include compliance time for the later models; Hughes Service Information Notice (SIN) FN-4, dated July 29, 1983, and MDHC SIN EN-4, dated April 29, 1983, for the later models are added to the requirement of paragraph (a)(1); the information in the "NOTE" following paragraph (a)(2) is included as a new paragraph (a)(3) to clarify that mandatory language is included to specify the main rotor drive shaft retirement life for specific Model 369 aircraft; and finally, paragraph (c) is amended to update the FAA address.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves 365 aircraft at an approximate cost to each aircraft of only $100 per year, or a total annual cost to the affected fleet of only $36,500. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-4275 (46 FR 60807, December 14, 1981), AD 81-26-01, by revising the applicability paragraph; by revising paragraphs (a) and (a)(1); by revising the "NOTE" paragraph following paragraph (a)(2) and redesignating it as paragraph (a)(3); and by revising paragraph (c), as follows:

McDonnell Douglas Helicopter Company (MDHC): Applies to all Model 369 series helicopters equipped with main rotor drive shaft, part number (P/N) 369D25510, certificated in any category. (Docket Number 89-ASW-43)

Compliance is required as indicated, unless already accomplished.

To prevent failure of the main rotor drive shaft, P/N 369D25510, which could result in the loss of the helicopter, accomplish the following:

(a) Prior to the accumulation of 300 hours' total time in service on the P/N 369D25510 drive shaft, or within the next 25 hours' additional time in service from December 17, 1981, for the Model 369D or from the effective date of this amended AD for Models 369E and F (whichever occurs later), and thereafter at repetitive intervals not to exceed 300 hours' additional time in service since the last such inspection:

(1) Visually inspect the spherical spline and adjacent shaft area of the drive shaft, P/N 369D25510, in accordance with the instructions contained in Hughes Service Information Notices (SIN) DN-69, dated November 30, 1981; FN-4, dated July 29, 1983; or MDHC SIN EN-4, dated April 29, 1983; as applicable.

* * * * *

(3) Drive shaft retirement is established at 3,410 hours' time in service for Models 369F and FF, and 5,020 hours' time in service for Models 369D and E.

* * * * *

(c) An alternative method of compliance, which provides an equivalent level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, ANM-100L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5200.

November 30, 1981; previously incorporated by reference at 46 FR 63807 (December 14, 1981); FN-4, dated July 28, 1982; or MDHC SIN EN-4, dated April 28, 1983, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Attention: Publications Department, MS 543/P 213, Mesa, Arizona 85205. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, 4400 Blue Mount Road, Room 158, Bldg. 3B, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

This amendment becomes effective October 31, 1990.

This amendment amends Amendment 39-4275 (46 FR 63807, December 14, 1981), AD 81-26-01.

Issued in Fort Worth, Texas, on July 30, 1990.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-23089 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 510

Implementation of the Minimum Wage Provisions of the Fair Labor Standards Amendments of 1989 in Puerto Rico

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; amendment.

SUMMARY: On March 30, 1990, an interim final rule was published implementing the minimum wage provisions of the 1989 Amendments to the Fair Labor Standards Act (FLSA) in the Commonwealth of Puerto Rico. These Amendments provide, in part, that the increases in the FLSA minimum hourly wage rates from $3.35 to $3.80 (effective April 1, 1990) and to $4.25 (effective April 1, 1991) may, for certain employers, be phased in over extended periods of time in the Commonwealth, based on the average hourly earnings in particular industries as those industries are defined in the Standard Industrial Classification (SIC) Code.

In preparing this interim final rule, the Department found that only limited employment and earnings information was available for employees in agriculture. While the available information was considered sufficient for a short-term interim final rule placing agriculture within the phase-in schedules provided for the Commonwealth, the Department requested the Commonwealth to conduct an additional study of the wages paid agricultural workers and to report its findings to the Department by June 1, 1990.

The interim final rule also stated that the provision with respect to agriculture would expire on its own terms on August 1, 1990, and, if the survey was not timely completed and forwarded to the Department, all employers in agriculture would become subject to the full minimum wage increases to $3.80 and $4.25 required by the 1989 Amendments retroactive to April 1, 1990.

The survey was conducted but the Department was unable to complete its review prior to the August 1, 1990, deadline. On July 28, 1990, the Department published an amendment in the Federal Register extending the August 1 deadline with respect to agriculture to October 1, 1990, during which time the provisions of the original interim final rule published on March 30 with respect to agriculture remained in effect. In conducting a thorough review of the material submitted, the Department determined that additional information was necessary to complete its review prior to issuing a final decision with respect to agriculture in Puerto Rico. The Department is therefore extending the October 1 deadline with respect to agriculture to January 1, 1991. As with the previous extension, the provisions with respect to agriculture of the original interim final rule published on March 30 will remain in effect.

EFFECTIVE DATE: This amendment to the interim final rule is effective on October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, room S3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 1990 (55 FR 12114), interim final regulations were published in the Federal Register implementing the minimum wage provisions of the 1989 FLSA Amendments in Puerto Rico. With respect to agricultural activities in Puerto Rico (SIC major groups 01, 02, 08, and 09), the Department found, after reviewing available information on agriculture, that only limited employment and hourly earnings data were available for agricultural workers from various sources within the Commonwealth government, and that no survey had been conducted. (Agricultural activities included within SIC Major Group 07, Agricultural Services, were surveyed and treated previously under nonmanufacturing industries.)

The information available at the time the interim final rule was prepared provided a basis for concluding that it was probable that average hourly earnings in agriculture fell below $4.00 an hour except in sugarcane farming activities where the average was probably above $4.00 an hour but less than $4.65. Accordingly, a determination was made to place agricultural workers under Tier 3, the tier applicable to industries in which the average hourly wage rate is less than $4.00 and that is subject to a five-year phase-in of the minimum wage increases, with the exception of sugarcane workers who were placed under Tier 2, applicable to industries in which the average hourly wage rates are greater than $4.00 but less than $4.65 and subject to a four-year phase-in.

While the available information was considered sufficient for purposes of placement under the interim final rule, the Department, pursuant to its verification responsibilities under the statute, requested the Commonwealth government to conduct a more complete and thorough study of the wages paid agricultural workers. The survey was to be conducted for a current representative time period and was to cover various crop categories. The Commonwealth agreed to conduct this survey and to forward the results to the Department for review not later than June 1, 1990.

In the interim final rule, the Department stated that the tier placements for agriculture were being done on an interim basis and would expire on their own terms on August 1, 1990, if the survey to be conducted by the Commonwealth was not timely completed and forwarded to the Department for review and evaluation. The Commonwealth submitted its survey to the Department prior to June 1, 1990.

The initial review of the data submitted could not be completed prior to the original August 1 deadline. Thus, on July 28, 1990 (55 FR 30463), the Department published an amendment extending the deadline until October 1, 1990. During its review the Department found that additional information, including applicable collective bargaining agreements, was necessary

and that a thorough review could not be completed prior to the October 1 deadline. Therefore, the Department is extending the expiration date of the interim final rule with respect to agriculture until January 1, 1991. During this time, the conditions stated in the interim final rule remain in effect.

II. Procedural Matters

The application of the Paperwork Reduction Act, Executive Order 12291, and Regulatory Flexibility Act to this rule is discussed in the Preamble to the interim final rule published on March 30, 1990 (55 FR 12114).

III. Administrative Procedure Act

The Secretary has determined that the public interest requires immediate issuance of this amendment in order to continue to comply with the requirements of the 1989 Amendments. Insufficient time existed between the receipt of the special survey and October 1, 1990, for the Department to complete its review of the data submitted. Failure to extend the expiration date would result in employers in agriculture not being able to utilize the minimum wage relief intended by Congress. Accordingly, the Secretary for good cause finds, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest.

For the same reasons, the Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this amendment to the interim final rule cannot be published 30 days before its effective date.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 510

Employment, Investigations, Law enforcement, Puerto Rico, Incorporation by reference, Minimum wages.

Signed at Washington, DC., on this 26th day of September 1990.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

PART 510—IMPLEMENTATION OF THE MINIMUM WAGE PROVISIONS OF THE 1989 AMENDMENTS TO THE FAIR LABOR STANDARDS ACT IN PUERTO RICO

1. The authority citation for part 510 continues to read as follows:

Authority: Sec. 4, Pub. L. 101-157, 103 Stat. 938; 29 U.S.C. 201 *et seq.*

2. In § 510.20, paragraph (d) is revised to read as follows:

§ 510.20 Wage surveys in Puerto Rico.

* * * * *

(d) *Agriculture.* The supplemental survey conducted for nonmanufacturing industries did not include agricultural employers. The Commonwealth agreed to conduct a survey of wages paid agricultural workers. The survey was to be conducted for a current representative time period and to cover various crop categories. The results of the survey were to be forwarded to the Department no later than June 1, 1990, in order to be incorporated in a final regulation. The Commonwealth submitted its survey to the Department for review. In conducting its review of this survey, the Department found that additional information was necessary to complete its review. The results of this survey will be incorporated in a subsequent rule.

* * * * *

3. Section 510.23 is revised to read as follows:

§ 510.23 Agricultural activities eligible for minimum wage phase-in.

Based on limited information available at the time of the adoption of 29 CFR part 510, the Department concluded that it was probable that average hourly earnings fell below $4.00 per hour in all agricultural activities except sugarcane farming. In sugarcane farming, it was probable that average earnings fell between $4.00 and $4.65 per hour. Accordingly, a determination was made to categorize, on an interim basis, sugarcane workers in Tier 2 and all other agricultural workers in Tier 3 pending the receipt of more complete data. A survey was forwarded by the Commonwealth prior to June 1, 1990, but the Department needed additional time to obtain supplemental information and to conduct a thorough review of this survey. Therefore, the interim placements of agricultural workers under Tiers 2 (sugarcane) and 3 (all other agricultural workers) are extended until January 1, 1991. Any correction in the applicable tier with respect to agriculture that may be necessary following completion of the review of the data submitted will be retroactive to April 1, 1990.

[FR Doc. 90-23219 Filed 10-25-90; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 317 and 321

Issuance and Payment By Banks and Other Financial Institutions of United States Savings Bonds and Savings Notes (Freedom Shares)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The purpose of the final rule is to amend, separately and simultaneously, the regulations governing issuing and paying agents to authorize the discontinuance, reduction, or delay in payments of fees for issuing Series EE savings bonds on or after October 1, 1990, and for paying savings bonds and savings notes on or after the aforesaid date. These changes are being made to authorize the Secretary of the Treasury to take actions to meet budgetary reductions effected pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985. A companion notice is also being published in the Federal Register to announce the actions taken.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jacqueline L. Jackson, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Washington, DC 20239-0001, (202) 376-4320.

SUPPLEMENTARY INFORMATION: The final rule will provide the Secretary of the Treasury with authority to discontinue, reduce, or delay the payment of fees to qualified issuing and paying agents of United States Savings Bonds and Savings Notes, referred to herein collectively as "bonds". The provisions of 31 CFR part 317, also issued as Department of the Treasury Circular, Public Debt Series No. 4-87, Second Revision, at § 317.6(b), and of 31 CFR part 321, also issued as Department of the Treasury Circular No. 750, Fourth Revision, at § 321.23(a), provide for the payment of fees to savings bond issuing and paying agents. They further provide that a schedule of fees, and the basis on which the fees are computed and paid, will be separately published in the Federal Register.

The regulatory amendments are being made to grant the Secretary the authority to effect the mandatory cuts that may be required to comply with the sequestration provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, 2 U.S.C. 901, *et*

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seq. (commonly referred to as the Gramm-Rudman-Hollings Act).

The final rule authorizes the Secretary to discontinue, reduce or delay the payment of fees to issuing and paying agents for servicing savings bonds, effective October 1, 1990, and until further notice, in the event the sequestration provisions become effective, or budgetary reductions otherwise make such action necessary. Payment of fees withheld, as described above, may be made once appropriations are authorized, at least to the extent funds are available therefor, and as permitted by law. The final rule reflects this intention.

Accordingly, the regulations are being amended to authorize the discontinuance, reduction or delay of the payment of fees, should such action be deemed necessary to meet in part the budgetary cuts made under the Gramm-Rudman-Hollings Act, or in appropriations legislation. A separate notice is also being issued to amend the current fee schedules. The notice is being published simultaneously with the final rule.

31 CFR parts 317 and 321 will be amended by adding identical paragraphs 317.6(b)(2) and 321.23(a)(3), respectively, to authorize discontinuance, reduction or delay of the payment of fees.

Procedural Requirements

This rule is not considered a "major rule," as defined in Executive Order No. 12291, "Federal Regulation." A regulatory impact analysis, therefore, is not required.

Because this final rule relates to public contracts and procedures for United States securities, the notice, public comment and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information contained in these regulations; therefore, no approval by the Office of Management and Budget, pursuant to the Paperwork Reduction Act, is required.

List of Subjects in 31 CFR Parts 317 and 321

Banks, Banking, Bonds, Government securities.

Dated: September 26, 1990.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

In 31 CFR chapter II, part 317 (Department of the Treasury Circular, Public Debt Series No. 4–67, Second Revision) and part 321 (Department of the Treasury Circular No. 750, Fourth Revision), are hereby amended as follows:

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

1. The authority citation for part 317 is revised to read as follows:

Authority: 31 U.S.C. 3105, 2 U.S.C. 901, 5 U.S.C. 301.

§317.6 [Amended]

2. Section 317.6 is amended by designating paragraph (b) as (b)(1) and adding a new paragraph (b)(2) to read as follows:

* * * * *

(b) *Fees.* * * *

(2) To comply with the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 901, *et seq.*), or the legislative resolution resulting therefrom, the Secretary may authorize, upon notice in the **Federal Register**, the discontinuance, reduction or delay of fee payments. Fee payments so affected may subsequently be paid in accordance with the schedule of fees as hereafter published, subject to the availability of funds therefor, and to the extent permitted by law. Fee payments for servicing occurring after notice of the resumption of such payments has been published in the **Federal Register** will be made in accordance with the schedule of fees published in such notice.

* * * * *

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

1. The authority citation for part 321 is revised to read as follows:

Authority: 31 U.S.C. 3105, 2 U.S.C. 901, 5 U.S.C. 301.

§ 321.23 [Amended]

2. Section 321.23 is amended by adding a new paragraph (a)(3) to read as follows:

(a) Fees. * * *

(3) To comply with the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 901, *et seq.*), or the legislative resolution resulting therefrom, the Secretary may authorize, upon notice in the **Federal Register**, the discontinuance, reduction or delay of fee payments. Fee payments so affected may subsequently be paid in accordance with the schedule of fees as hereafter published, subject to the availability of funds therefor, and to the extent permitted by law. Fee payments for servicing occurring after notice of the resumption of such payments has been published in the **Federal Register** will be made in accordance with the schedule of fees published in such notice.

* * * * *

[FR Doc. 90-23233 Filed 9-27-90 10:39 am]

BILLING CODE 4810-10-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 775

Procedures for Implementing the National Environmental Policy Act

AGENCY: Department of the Navy, DoD.

ACTION: Correction to final rule.

SUMMARY: The final regulations providing procedures for Department of the Navy compliance with the National Environmental Policy Act of 1969, as amended, were published in the **Federal Register** of August 20, 1990 (55 FR 33890–01). An error in § 775.6(c) was published by mistake. The following text replaces that section.

EFFECTIVE DATE: This correction to the final regulations will become effective October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas J. Peeling, telephone (202) 325–7344/0521, Special Assistant for Environmental Planning, Office of the Deputy Chief of Naval Operations (Logistics), room 10N67, Hoffman Bldg. II, 200 Stovall St., Alexandria, Virginia 22332–2300.

Section 775.6(c) is corrected to read as follows:

§ 775.6 Planning considerations.

* * * * *

(c) CEQ regulations (40 CFR 1508.18(a)) define major federal actions subject to evaluation under NEPA to include, among other things, "new and continuing activities". The term "new activities" is intended to encompass future actions, i.e., those which are not ongoing at the time of the proposal. The term "continuing activities" which may necessitate the preparation of a NEPA document will be applied by the Department of Navy to include activities which are presently being carried out in fulfillment of the Navy mission and function, including existing training functions, where:

(1) The currently occurring environmental effects of which have not been previously evaluated in a NEPA document, and there is a discovery that substantial environmental degradation is occurring, or is likely to occur, as a result of ongoing operations (e.g., a discovery that significant beach erosion is occurring as a result of continuing amphibious exercises, new designation of wetland habitat, or discovery of an endangered species residing in the area of the activity), or

(2) There is a discovery that the environmental effects of an ongoing activity are significantly and qualitatively different or more severe than predicted in a NEPA document prepared in connection with the commencement of the activity.

A substantial change in a continuing activity (such as a substantial change in operational tempo, area of use, or in methodology/equipment) which has the potential for significant environmental impacts should be considered a proposal for a new action and be documented accordingly. Preparation of a NEPA document is not a necessary prerequisite, nor a substitute, for compliance with other environmental laws.

Dated: September 28, 1990.

Sandy Maisonne,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90-23145 Filed 9-28-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-90-71]

Special Local Regulations for Marine Events; Riverfest 1990; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Riverfest 1990 to be held October 6, 1990. The event consists of approximately 35 homebuilt rafts racing on a course on the Cape Fear River, Wilmington, North Carolina. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 11 a.m. to 2:30 p.m. October 6, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in the district office until September 7, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Conners, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Old Wilmington Riverfront Celebration, Inc. submitted an application dated August 28, 1990 to hold the Riverfest 1990 Raft Races. The event consists of approximately 35 homebuilt, manually powered rafts racing on a course on the Cape Fear River, Wilmington, North Carolina. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event. Since the main shipping channel will not be closed for an extended period of time, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary and the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and determined the final rule does not raise sufficient implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and determined categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in permanent regulations 33 CFR 100.35T5 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0571 is added to read as follows:

§ 100.35-0571 Cape Fear River, Wilmington, North Carolina.

(a) *Definitions*—(1) *Regulated area.* The waters of the Cape Fear River from shoreline to shoreline and bounded to the north by a line drawn from latitude 34°14'22.5" North, longitude 77°57'23.0" West, to latitude 34°14'24.0" North, longitude 77°57'06.5" West and to the south by the U.S. Route 74/76 highway bridge, center point latitude 34°13'38.0" North, longitude 77°57'06.5" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Fort Macon.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in

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paragraph (e)(1) of these regulations, but may not block a navigable channel.

(c) *Effective dates:* These regulations are effective from 11 a.m. to 2:30 p.m. October 6, 1990.

Dated: September 21, 1990.

H.B. Gehring,

Captain, U.S. Coast Guard Commander, Fifth Coast Guard District Acting.

[FR Doc. 90-23169 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5-90-074]

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the Federal Highway Administration, the Coast Guard is issuing temporary regulations that govern the operation of the drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, to extend the times that the draw remains closed to vessel traffic. The purpose of the temporary regulation is to allow the bridge owner the time needed to replace the electrical system which has reportedly been short-circuiting during bridge openings and to make other repairs necessary for the smooth operation of the drawbridge. This action provides for the reasonable needs of navigation.

DATES: This temporary rule is effective from September 22, 1990, until January 25, 1991, unless amended or terminated before that date.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: In the regulation of this drawbridge, this temporary regulation was preceded by a temporary deviation from the regulations in 33 CFR 117.255. That temporary deviation was published in the Federal Register (55 FR 31384) on August 2, 1990.

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and CAPT M. K. Cain, Project Attorney.

Discussion of Temporary Regulation

The Federal Highway Administration has requested that the drawbridge regulations be temporarily amended to restrict openings during September 22, 1990, through January 25, 1991, for the Woodrow Wilson Bridge across the Potomac River, mile 103.8, between Alexandria, Virginia and Oxon Hill, Maryland. The requested change will reflect the emergency schedule, with some modification, that is now in effect until September 21, 1990, on the Woodrow Wilson Bridge. In order for the bridge owner to repair the electrical system on this bridge, the Coast Guard is temporarily restricting the number of drawbridge openings and scheduling all openings to occur at designated times for all vessels, with certain concessions for large commercial ships that call at Robinson Terminals located above the bridge at Alexandria, Virginia. Advance notification will continue to be required for all openings in order that maintenance personnel may be on site at each scheduled opening to correct any electrical malfunction that may occur. According to the bridge owner, there is an immediate need to relocate the catwalk that is located under the main span of the bridge and change the material the catwalk is presently constructed of from steel to aluminum to help solve the problem of electrical breakdowns. The electrical cables are located in this catwalk, and it appears that heavy vibration is occurring whenever large trucks cross over the drawbridge. This supposedly causes the electrical system to short-circuit and the electrical cables to snap. Work will also have to be completed on the center switch which operates the locks that hold the bascule spans in place once the draw has been closed to navigation. Because of the immediate need for repairs to this bridge, good cause exists for publishing this temporary regulation without publication of a notice of proposed rulemaking. Delaying this rule for publication of a notice of proposed rulemaking would be contrary to the public interest. The Coast Guard believes these temporary restrictions will not unduly restrict vessel passage through the bridge, as vessel operators and the marine industry can plan transits around this temporary regulation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary regulation will not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this temporary regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Since the economic impact of this temporary regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This temporary regulation has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.255 is temporarily amended by revising paragraphs (a) (1) and (2) and by adding paragraphs (a) (3) through (7) to read as follows. This is a temporary rule and will not appear in the Code of Federal Regulations.

§ 117.255 Potomac River.

(a) * * *

(1) Shall open for all vessels with a 2-hour advance notice on weekdays from 12 midnight to 4 a.m., and on Saturdays, Sundays, and Federal Holidays from 12 midnight to 6 a.m.

(2) Shall open for all vessels with a 2-hour advance notice on weekdays at 12 noon, and on weekends and Federal Holidays falling on Fridays or Mondays at 12 noon and 9 p.m.

(3) Shall open for commercial vessels over 1600 gross tons on weekdays from 10 a.m. to 1 p.m. and from 9 p.m. to 12 midnight and on Saturdays, Sundays and Federal Holidays from 9 p.m. to 12 midnight with a 2-hour advance notice.

(4) Advance notification for all openings other than those provided for in paragraph 3 below should be directed to the operator in the bridge tower by telephone at (202) 727-5522 or by marine radio VHF Channels 13 or 16.

(5) Commercial vessels requiring transit at other than any of the above times due to tidal stages may receive special permission from Commander, Fifth Coast Guard District, Portsmouth, VA, and must provide a 24-hour advance notice followed by a 1-hour advance confirmation of arrival.

(6) Need not open for any vessel from 6:30 a.m. to 9 a.m. and 4 p.m. to 6:30 p.m., Monday through Friday, except Federal Holidays.

(7) This temporary regulation is effective beginning September 22, 1990, and will terminate January 25, 1991, after which time the existing subparagraphs (a) (1) and (2) of § 117.255 shall again be effective.

Dated: September 20, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 90-23164 Filed 9-28-90; 3:39 pm]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5-90-074]

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule, supplementary information and request for comments.

SUMMARY: On September 20, 1990, at the request of the Federal Highway Administration, temporary regulations were issued governing the operation of the drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, (the Woodrow Wilson Bridge) to extend the times that the draw remains closed to vessel traffic during the time necessary to complete repairs to the bridge. This document provides additional information concerning the temporary rule and provides for public comment on the provisions of that rule. The temporary rule may be modified based on the comments received.

DATES: Comments must be received on or before October 16, 1990.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704-5005.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: The permanent regulations for this drawbridge are contained in 33 CFR 117.255. On August 2, 1990 temporary deviations from those regulations were published in the Federal Register (55 FR 31384) to facilitate emergency repairs to the electrical systems. These emergency deviations expired on September 21, 1990. The temporary regulations issued on September 20, 1990 modified the restrictions on bridge openings authorized by the temporary deviations, and were effective September 22, 1990. The temporary regulations will remain in effect until January 25, 1991, unless amended or terminated before that date. The temporary regulations were published elsewhere in this edition of the Federal Register. Good cause was found to exist for issuing the temporary regulations without publishing a notice of proposed rulemaking and, in order to facilitate permanent repairs and ensure the continued reliable operation of the bridge until those repairs are completed, the temporary rules were made effective in less than 30 days from the date of publication. An opportunity for public comment is, however, desirable to ensure that the temporary regulation is both reasonable and workable. The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD5-90-074) and the specific section of the rule to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Drafting Information:

The drafter of this notice is Alfred F. Bridgman, Office of Chief Counsel.

Discussion of Temporary Regulation

The temporary regulations were issued at the request of the Federal Highway Administration (FHWA). Before issuing the temporary regulations, the Coast Guard and the FHWA held a meeting on September 14, 1990, with known interested parties. The meeting was attended by representatives of state and local governments, highway users, commercial and recreational vessel operators, the Virginia Pilot Association, and local trade organizations.

As a result of this meeting, it was apparent that additional time would be needed to effect repairs to the bridge and it also appeared that these repairs could be carried out with less restrictions on bridge openings than authorized by the emergency deviations. In particular, commercial vessels may request openings at night starting at 9 p.m. rather than at midnight. This change, when combined with provisions for openings from 10 a.m. to 1 p.m., or when necessitated due to tidal conditions, should meet the reasonable needs of navigation during the extended period of the temporary regulations.

For the convenience of the reader, the following comparison of the opening of the Woodrow Wilson Bridge under the provisions of 33 CFR 117.255, the temporary deviations, and the temporary regulations is summarized as follows:

1. Under the provisions of 33 CFR 117.255, the bridge operated as follows:

a. Would not open for any vessel except large commercial vessels needing tidal considerations from 6 a.m. to 10 a.m. and from 3 p.m. to 8 p.m., Monday through Friday. Larger commercial vessels were given slightly less restrictive hours for openings.

b. At all other times, the bridge would open provided one hour advance notice was given.

2. Under the 60-day temporary deviation in effect from July 23, 1990, through September 21, 1990, the bridge operated as follows:

a. Would open for all vessels on weekdays at 12 noon and from 12 midnight to 4 a.m., with advance notice.

b. Would open for all vessels on weekends at 12 noon, 9 p.m., and from midnight to 6 a.m., with advance notice.

c. Would open for commercial vessels on weekdays from 10 a.m. to 1 p.m. and at certain other pre-approved times for tidal considerations, with advance notice.

d. Would not open at any other time.

3. Under the temporary regulations issued on September 20, 1990, the bridge will operate as follows through January 25, 1991.

a. Will open for all vessels on weekdays at 12 noon and from 12 midnight to 4 a.m., with advance notice.

b. Will open for all vessels on weekends at 12 noon, 9 p.m. and from 12 midnight to 6 a.m., with advance notice.

c. Will open for commercial vessels on weekdays from 10 a.m. to 1 p.m. and from 9 p.m. to 12 midnight, with advance notice.

d. Will open for commercial vessels on weekends from 9 p.m. to 12 midnight.

e. Will open at certain other pre-approved times, except during rush hours, for commercial vessels needing

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tidal considerations, with advance notice.

f. Will not open at any other time.

Although representatives of all known interested parties were invited to the meeting held on September 14, 1990, and their views were fully considered, the Coast Guard is providing this further opportunity for comment. Comments should be limited to the restrictions imposed by the temporary regulations and the appropriate duration of those restrictions. The Coast Guard has received petitions for changes to the regulations in 33 CFR 117.256 that would apply after repairs to the bridge are completed, and will be considering these petitions, or other modifications to the "permanent" rules, in a separate rulemaking. The Coast Guard will provide public notice and opportunity to comment on that future rulemaking.

Dated: September 24, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-23163 Filed 9-28-90; 2:20 pm]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-90-84]

Drawbridge Operation Regulations; Indian Creek, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the 63rd Street drawbridge, mile 4.0, in order to ease the burden on navigation since special operating restrictions are no longer necessary to accommodate the needs of vehicular traffic.

EFFECTIVE DATE: This rule becomes effective on October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Brodie Rich, (305) 536-4103.

DRAFTERS INFORMATION: The drafters of this rule are Mr. Brodie E. Rich, project officer, and Lt. Genelle Tanos, project attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are no longer needed to accommodate the needs of vehicular traffic. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. This action will not have a significant economic impact on a substantial number of small entities.

Discussion of Comments

A proposed rule was published in the Federal Register on July 17, 1990, and Coast Guard Public Notice 22-90 was issued on July 31, 1990. No comments were received.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-01(g).

§ 117.293 [Removed]

2. Section 117.293 is revoked.

Dated: September 19, 1990.

J.L. Linnon,

Captain, U.S. Coast Guard Commander, Seventh Coast Guard District, Acting.

[FR Doc. 90-23167 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-90-87]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Carolina

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the State of South Carolina, the Coast Guard is temporarily changing the regulations governing the operation of the Wappoo Creek Drawbridge, mile 470, at Charleston, by permitting the draw to be closed to all non-exempt vessels an additional one-half hour at the beginning of the morning regulated period. This change is being made because of complaints about highway traffic delays caused by the increased bridge openings as a result of the seasonal migration of vessels on the Atlantic Intracoastal Waterway. This action will accommodate the increase in vehicular commuter traffic originating from James Island and will continue to provide for the reasonable needs of navigation.

EFFECTIVE DATE: These temporary regulations become effective on October 1, 1990 and will terminate on November 30, 1990.

ADDRESSES: Comments regarding this temporary change should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131-3050. Any comments received will be available for inspection and copying in the Office of the Bridge Administrator located in room 484, Brickell Plaza Building, 909 SE. 1st Avenue, Miami, Florida. Documents and comments concerning this regulation may be inspected Monday through Friday between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt, (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested parties submitting written views, comments, data, or arguments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change to the temporary regulation.

Drafting Information

The drafters of this notice are Mr. Gary Pruitt, Bridge Administration Specialist, project officer, and LT Genelle G. Tanos, project attorney.

Discussion of Temporary Regulations

This temporary regulation changes only the morning regulated period on weekdays. The draw presently opens on signal except that the draw need not open from 6:30 a.m. to 9 a.m. Monday through Friday except federal holidays. This temporary change, which increases the existing authorized morning closed period by one-half hour is intended to decrease the number of openings caused by recreational vessels just prior to the beginning of the morning rush hour traffic. Elimination of the bridge openings from 6 a.m. to 6:30 a.m. on weekdays should improve the morning traffic flow with minimum impact on normal navigation. Because this is a temporary regulation, it will not appear in the Code of Federal Regulations.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because it exempts public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property. Since the economic impact is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In Consideration of the foregoing, the Coast Guard has amended part 117 of title 33 Code of Federal regulations as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. For the period between October 1, 1990, and November 30, 1990, paragraph (d) of § 117.911 is revised to read as follows:

Note: This regulation is temporary and will not appear in the Code of Federal Regulations.

117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(d) SR 171/700 bridge across Wappoo Creek Mile 470.8 at Charleston. The draw shall open on signal, except that the draw need not open from 6 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m. Monday through Friday, except federal holidays. From April 1 to November 30 from 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, the bridge need not open except on the hour and on the half-hour. From April 1 to November 30, from 9 a.m. to 7 p.m., on Saturdays, Sundays and federal holidays, the bridge need not open except on the hour and half-hour.

* * * * *

Dated: September 13, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90-23168 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Los Angeles/Long Beach Reg. 90-07]

Security Zone Regulations; Port of Los Angeles, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in the Port of Los Angeles, California around any vessels moored at LA berths 54 and 55 during the effective period of these regulations. The zone is needed to safeguard vessels involved in military equipment outloads at LA berths 54 and 55 against destruction, loss, or injury from sabotage or other subversive acts, accidents, or causes of a similar nature. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATES: This regulation becomes effective at 1 p.m., September 13, 1990. It terminates at 12 midnight, October 3, 1990.

FOR FURTHER INFORMATION CONTACT: LCDR R.M. Miles at (213) 499-5570.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss, or injury to vessels involved in military equipment outloads at LA berths 54 and 55.

Drafting Information

The drafters of this regulation are LCDR R.M. Miles, project officer for the captain of the port, and LCDR J.J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation will begin 1 p.m. on September 13, 1990. This security zone is necessary to ensure the security of vessels involved in military equipment outloads at LA berths 54 and 55.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1106 is added to read as follows:

§ 165.T1106 Security Zone: Vessels Moored at Berths 54 and 55, Port of Los Angeles, California.

(a) *Location.* The following area is a security zone: The waters of Los Angeles Harbor within 100 yards of any vessels moored at LA berths 54 and 55.

(b) *Effective date:* This regulation becomes effective at 1 p.m., September 13, 1990. It terminates at 12 midnight, October 3, 1990.

(c) *Regulations.* In accordance with the general regulations in section 165.33 of this part, entry into this zone is prohibited unless authorized by the captain of the port. Section 165.33 also contains other general requirements.

Dated: September 13, 1990.

J.S. Morris,

Captain, U.S. Coast Guard, Captain of the Port Los Angeles/Long Beach.

[FR Doc. 90-23170 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Charleston, SC Reg. 90-02]

Safety/Security Zone Regulations; Cooper River, Ordnance Reach and Port Terminal Reach, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a combined safety and security zone in the Cooper River in the vicinity of Ordnance Reach and Port Terminal Reach from Buoy 63 to Daymarker 58. The zone extends across the entire width of the Cooper River. The zone is needed to safeguard personnel, vessels, facilities, and the environment against injury destruction or loss from sabotage or other subversive acts, accidents or other

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causes of a similar nature, and protect boats and onlookers from harm and to prevent interference with ongoing Department of Defense cargo loading operations. Entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, SC.

EFFECTIVE DATES: This regulation becomes effective at approximately 12 p.m. Eastern Daylight Time (E.D.T.), September 11, 1990. It terminates at the conclusion of vessel loading operations, at approximately 12 p.m. E.D.T., October 15, 1990 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Steven J. Boyle (803) 724-7689.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard personnel, vessels, waterfront facilities, and the environment against injury, loss, or destruction.

Drafting Information

The drafters of this regulation are LT Steven J. Boyle, project officer for the Captain of the Port, and LT Genelle Tanos, project attorney, Seventh Coast Guard District.

Discussion of Regulation

The incident requiring this regulation will occur on September 11, 1990 through October 15, 1990 when military cargo will be loaded at the Army T.C. Dock and the State Ports Authority North Charleston Terminal. The protection of vital United States assets as well as the safety of unwary boaters and onlookers necessitates the establishment of both a safety and security zone. Coast Guard and other security vessels will patrol and enforce the zone and manage vessel traffic as necessary. Other vessels will not be permitted to enter, transit, or loiter in the safety/security zone without the permission of the Captain of the Port or his on-scene representatives. Only minor delays to mariners is foreseen.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of 33 CFR part 165.

Federalism:

The action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

Regulation:

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—MARINE SAFETY, SECURITY MEASURES

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. A new § 165.T0792 is added to read as follows:

§ 165.T0792 Safety/Security Zone: Establishment of Temporary Safety and Security Zone, Cooper River, Ordnance Reach and Port Terminal Reach, Buoy 63 to Daymarker 58, Charleston, South Carolina.

(a) *Location.* The following area is a safety/security zone zone: An area encompassing the entire width of the Cooper River, between buoy 63 and daymarker 58.

(b) *Effective date.* This regulation becomes effective on September 11, 1990, at approximately 12 p.m. E.D.T. It terminates at the conclusion of vessel loading operations, approximately 12 p.m. E.D.T., on October 15, 1990 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) The COTP Charleston will activate this zone or specific portions thereof by means of locally promulgated broadcast notice to mariners. Once implemented, all vessels and persons are prohibited from entering unless authorized by the Captain of the Port Charleston, SC.

(2) The general regulations governing safety and security zones contained in 33 CFR 165.23 and 165.33 apply.

Dated: 11 September 1990.

Robert L. Storch, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 90-23004 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COD-05-90-72, COTP Hampton Roads, Regulation 90-RFR 072]

Security Zone Regulations; Chesapeake Bay, James River, Port of Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone encompassing the grounds, piers and waterside of Newport News Marine Terminal, Newport News, Virginia. This zone is needed to prevent destruction, loss or injury to military equipment and supplies while military operations are being carried out at Newport News Marine Terminal. The Captain of the Port, Hampton Roads, Virginia will enforce a security zone consisting of the Newport News Marine Terminal property enclosed within the perimeter fence and extending southwesterly from the shoreline at position 36-58-09.2N latitude, 76-25-43.0W longitude to a point at 36-58-00.0N latitude, 76-25-58.1W longitude, thence northwesterly to a point at 36-58-19.5N latitude, 76-25-13.1W longitude, and returning northeasterly to the shoreline at position 36-58-27.0N latitude, 76-25-58.4W longitude. Individuals or vessels will not be allowed to approach within 200 yards of the Newport News Marine Terminal, except as permitted by the Captain of the Port or his designated representative. Movement of individuals and vehicles within Newport News Marine Terminal may be restricted or prohibited.

EFFECTIVE DATE: This regulation is effective beginning September 17, 1990 and terminates on or about November 31, 1990, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: LCDR J. J. Saboe, Project Officer, at USCG Marine Safety Office Hampton Roads. Telephone: (804) 441-3294, (FTS) 827-3294. Normal working hours are 7:30 a.m. to 4 p.m. weekdays except for holidays.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss or injury to resources involved in the military operations taking place in the vicinity of the Newport News Marine Terminal.

Drafting Information

The drafter of this regulation is LTJG C. E. Rawson, project officer for the Captain of the Port, Hampton Roads.

Discussion of Regulation

A security zone is being established encompassing the grounds, piers and waterside of Newport News Marine Terminal, Newport News, Virginia from September 18, 1990 until the completion of military operations taking place there. This zone is needed to safeguard materials and persons in the vicinity from sabotage or other subversive acts, accidents, or other causes of a similar nature while military operations are being conducted. This security zone will encompass the Virginia Port Authority property known as Newport News Marine Terminal, at Warick Blvd, Newport News, Virginia, 23607, that is enclosed by a perimeter fence. The security zone will also include the waters of the James River within 200 yards of the piers of Newport News Marine Terminal, bounded by a line extending southwesterly from the shoreline at position 36-58-09.2N latitude, 76-25-43.0W longitude to a point at 36-58-00.0N latitude, 76-25-58.1W longitude, thence northwesterly to a point at 36-58-19.5N latitude, 76-26-13.1W longitude, and returning northeasterly to the shoreline at position 36-58-27.0N latitude, 76-25-58.4W longitude. The security zone will be enforced from September 18, 1990 until approximately November 30, 1990. Coast Guard personnel will be on scene at all times while the security zone is in effect. Coast Guard vessels will enforce the security zone over the water whenever a vessel involved in the military operations is inside the security zone. Commercial and recreational boats will not be permitted to enter the security zone, except as permitted by the Captain of the Port.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5

2. In part 165, a new section is added, to read as follows:

§ 165.T0872 Security zone: Chesapeake Bay, James River, Port of Hampton Roads, Virginia.

(a) *Location:* The following area is a security zone: The grounds of the Newport News Marine Terminal, Newport News, Virginia, enclosed by a fence surrounding the perimeter, and the waters of the James River within 200 yards of the piers of Newport News Marine Terminal, encompassed by a line drawn southwesterly from the shoreline at position 36-58-09.2N latitude, 76-25-43.0W longitude to a point at 36-58-00.0N latitude, 76-25-58.1W longitude, thence northwesterly to a point at 36-58-19.5N latitude, 76-26-13.1W longitude, and returning northeasterly to the shoreline at position 36-58-27.0N latitude, 76-25-58.4W longitude.

(b) *Definitions:* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf. The following officers have or will be designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the security zone, the senior member of each Coast Guard Maritime Security Patrol, the Coast Guard Officer of the Day at Newport News Marine Terminal and the Duty Officer at the Marine Safety Office, Norfolk, VA.

(1) The Captain of the Port, Hampton Roads and the Duty Officer at the Marine Safety Office, Norfolk, Virginia can be contacted at telephone number (804) 441-3307.

(2) The senior boarding officer on each vessel enforcing the security zone can be contacted on VHF-FM channel 13 and 16.

(c) *Regulation:* (1) In accordance with the general regulations in 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia.

(2) The operator of any vessel in the immediate vicinity of this security zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any individual inside the perimeters of the fence surrounding Newport News Marine Terminal shall be subject to the direction and control of any commissioned, warrant or petty officer of the United States Coast Guard.

(d) *Effective date:* This regulation is effective beginning September 17, 1990 and terminates on or about November 31, 1990 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

Dated: September 14, 1990.

G.J.E. Thornton,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 90-23003 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-14-M

46 CFR Part 25

[CGD 88-002]

RIN 2115-AC89

Regulations Implementing the Pollution-Prevention Requirements of Annex V of MARPOL 73/78; correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting an error in the final rule published in the Federal Register on September 4, 1990 (55 FR 35988; CGD 88-002). The interim rule under this rulemaking (54 FR 16384; April 28, 1989) amended 46 CFR 25.50-1, a section intended to remind the reader that certain provisions of title 33 also apply. On May 2, 1990, a separate Coast Guard rulemaking (CGD 88-002a) further amended 46 CFR 25.50-1 in an interim rule (55 FR 18578). The amended language in the interim rule in the separate rulemaking (CGD 88-002a) was inadvertently omitted in the final rule of the present rulemaking (88-002). This notice corrects the text of 46 CFR 25.50-1 accordingly.

EFFECTIVE DATE: September 4, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce P. Novak, Regulations and Administrative Law Division (G-LRA), (202) 267-0128, between 7 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The following correction is made in CGD 88-002, Regulations Implementing the Pollution-Prevention Requirements of Annex V of MARPOL 73/78, published in the Federal Register on September 4, 1990. On page 35988, column three, add new paragraphs 5 and 6 to read as follows:

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PART 25—REQUIREMENTS

5. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3306, 4104, and 4302; 49 CFR 1.46.

6. Section 25.50–1, including the note, is revised to read as follows:

§ 25.50–1 Criteria.

Each uninspected vessel must meet the garbage discharge, waste management plan, and placard requirements of 33 CFR part 151.

Note: 33 CFR 151.67 prohibits the discharge of plastic or garbage mixed with plastic into the sea or the navigable waters of the United States. "Plastic" and "garbage" are defined in 33 CFR 151.05.

Dated: September 25, 1990.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–23046 Filed 9–28–90; 8:45 am]

BILLING CODE 4910–14–M

46 CFR Parts 50, 56, and 61

[CGD 77–140]

RIN 2115–AA17

Vessel Piping Systems

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The U.S. Coast Guard is correcting errors in an amendment to regulations governing vessel piping systems which appeared in the **Federal Register** on Monday, October 2, 1989 (CGD77–140).

FOR FURTHER INFORMATION CONTACT: Howard L. Hime, Engineering Branch, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2206.

SUPPLEMENTARY INFORMATION: The Coast Guard published a final rule concerning vessel piping systems in the **Federal Register** on Monday, October 2, 1989 (CGD77–140). In preparing the final regulations, editorial errors were made. As this is a technical amendment that does not change the substance of the rules, publication of this document for comment is not required.

Correction

In rule document 77–140 beginning on page 40590 in the issue of Monday, October 2, 1989, make the following corrections:

§ 56.01–2 [Corrected]

1. On page 40599, in the third column, in the second line, in the entry for ANSI B16.1–75, in § 56.01–2(b), the word "Pipe" should be removed.

§ 56.01–2 [Corrected]

2. On page 40599, in the third column, in the nineteenth line, in the entry for ANSI B16.10–86, in § 56.01–2(b), "Dimensions of Valves" should read "Dimensions of Ferrous Valves".

§ 56.01–2 [Corrected]

3. On page 40599, in the third column, in the seventy-fifth and seventy-sixth lines, in the entry for ANSI B16.2.2–87 in § 56.01–2(b), "[Inch Series]" should be removed.

§ 56.01–2 [Corrected]

4. On page 40600, in the first column, in the forty-ninth line, in the entry for ASTM A 134–80 in § 56.01–2(b), "NPS 16 and Over." should read "NPS 16 and over.)"

§ 56.01–2 [Corrected]

5. On page 40600, in the third column, in the sixty-eighth line, in the entry for ASTM B 16–85 in § 56.01–2(b), "Road" should read "Rod".

§ 56.01–2 [Corrected]

6. On page 40600, in the third column, in the seventieth line, in the entry for ASTM B 16–85 in § 56.01–2(b), the words "Shapes for use in" should be removed.

§ 56.01–2 [Corrected]

7. On page 40601, in the first column, in the second line, in the entry for ASTM B 68–83 in § 56.01–2(b), "Tubes" should read "Tube".

§ 56.01–2 [Corrected]

8. On page 40601, in the second column, in the twenty-ninth line, in the entry for ASTM D 2863–77 in § 56.01–2(b), "Plastic" should read "Plastics".

§ 56.01–2 [Corrected]

9. On page 40601, in the second column, beginning in the fifty-second line, in the entry for ASTM F 1120–87 in § 56.01–2(b)d, "Expansion Joints for Piping" should read "Expansion Joints for Use in Marine Piping".

§ 56.01–2 [Corrected]

10. On page 40601, in the second column, in the fifty-sixth line, in the entry for ASTM F 1123–87 in § 56.01–2(b), "Joints" should read "Joints for Use in Marine Piping Applications".

§ 56.01–2 [Corrected]

11. On page 40601, in the second column, beginning in the sixty-ninth line, in the entry for ASTM F1199–88 in § 56.01–2(b), "(All Temperatures and Pressures)" should be removed.

§ 56.01–2 [Corrected]

12. On page 40601, in the second column, beginning in the seventy-second line, in the entry for ASTM F 1199–88 in § 56.01–2(b), "(150 psig and 150 °F Maximum" should be removed.

§ 56.01–2 [Corrected]

13. On page 40601, in the second column, beginning in the seventy-sixth line, in the entry for ASTM F 1200–88 in § 56.01–2(b), "(Above 150 psig and 150 °F)" should be removed.

§ 56.01–2 [Corrected]

14. On page 40601, in the third column, in the tenth line, in § 56.01–2(b), "303, Morristown, NY 07960:" should read "303, Morristown, NJ 07960".

§ 56.01–5 [Corrected]

15. On page 40602, in the first column, in amendatory instruction 19, amending Table 56.01–5(a), "revised" should read "amended".

§ 56.20–1 [Corrected]

16. On page 40604, in the first column, in section 56.20–1, the first line of paragraph (c)(2) which reads, "2. Valves must be designed so that the" should read "(2) Valves must be designed so that the".

§ 56.50–50 [Corrected]

17. On page 40606, in the third column, in 56.50–50, in the twelfth line of paragraph (k), "Alternated designs" should read "Alternative designs".

§ 56.50–55 [Corrected]

18. On page 40609, in the first column, in § 56.50–55, in the last sentence of paragraph (e)(1), "practical" should read "practicable".

§ 56.50–60 [Corrected]

19. On page 40609, in the second column, in § 56.50–60, in the eighth line of paragraph (j), "practicale" should read "practicable".

§ 56.50–60 [Corrected]

20. On page 40609, in the third column, in § 56.50–60, in the fifth line of paragraph (1), "56.50(k)" should read "56.50–55(k)".

§ 56.60–1 [Corrected]

21. On page 40612, in the first column, in Table 56.60–1(b), in the seventeenth line, "B16.18–Cast Brass Solder Joints.4" should read "B16.18–Cast Copper Alloy Solder Joints.4".

§ 56.60–1 [Corrected]

22. On page 40612, in the first column, in Table 56.60–1(b), beginning in the nineteenth line, "B16.22–Wrought Copper and Bronze Solder Joint Fittings.4" should read "B16.22–Wrought Copper and Copper Alloy Solder Joint Fittings.4".

§ 56.60–1 [Corrected]

23. On page 40612, in the first column, in Table 56.60–1(b), beginning in the twenty-first line, "B16.23–Cast Bronze Solder-Joint Drainage Fittings.4" Should read "B16.23–Cast Copper Alloy Solder-Joint Drainage Fittings.4".

§ 56.70–15 [Corrected]

24. On page 40615, in Table 56.70–15, in the second line, "Maximum thickness (in inches of reinforcement for design temperature" should read "Maximum thickness (in inches) of reinforcement for design temperature".

Dated: September 25, 1990.

D.H. Whitten,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 90–23047 Filed 9–28–90; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–428; RM–6775]

Radio Broadcasting Services; Sylvania, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293A to Sylvania, Georgia, as that community's first local FM service, at the request of Sam Mac Broadcasting System, Inc. *See* 54 FR 41127, October 5, 1989. Channel 293A can be allotted to Sylvania in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are North Latitude 32–44–54 and West Longitude 81–37–36. With this action, this proceeding is terminated.

DATES: Effective November 8, 1990; the window period for filing applications will open on November 9, 1990, and close on December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6550.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–428, adopted September 11, 1990, and released September 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Sylvania, Georgia, Channel 293A.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–23050 Filed 9–28–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–389; RM–6821]

Radio Broadcasting Services; Abbeville, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 286C3 for Channel 285A at Abbeville, Louisiana, and modifies the license of Station KROF–FM to specify operation on the higher powered channel at the request of Abbeville Broadcasting Service, Inc. *See* 54 FR 39021, September 22, 1989. The coordinates for Channel 286C3 at Abbeville are 30–00–40 and 92–07–21. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–389, adopted September 11, 1990, and released September 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Louisiana by removing Channel 285A and adding Channel 286C3 at Abbeville.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–23051 Filed 9–28–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–390; RM–7148]

Radio Broadcasting Services; Lampasas and Franklin, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Shamrock Communications, Inc., substitutes Channel 255C1 for Channel 256C1 at Lampasas, Texas, and modifies the license of Station KLTD(FM) to specify operation on the alternate class C1 channel, in order to improve service within Station KLTD(FM)'s primary coverage area. In addition, the Commission substitutes Channel 270A for unoccupied but applied-for Channel 255A at Franklin, Texas. *See* 55 FR 327, January 4, 1990. The applicant for Channel 255A at Franklin, Franklin Community Broadcasting, will be permitted to amend its application to specify Channel 270A without loss of cut-off protection. Channel 255C1 can be allotted to Lampasas in compliance with the Commission's minimum distance separation requirements and can be used at Station KLTD(FM)'s present transmitter site. The coordinates for Channel 255C1 at Lampasas are North Latitude 30–43–34 and West Longitude 97–59–23. Channel 270A can be allotted to Franklin in compliance with the

Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 270A at Franklin are 31-01-36 and 96-29-00. Channel 270A can also be used at the Franklin applicant's proposed transmitter site at coordinates 31-02-58 and 96-28-06. Mexican concurrence has been received since Lampasas is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-598, adopted September 11, 1990, and released September 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73 [AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Texas, is amended by removing Channel 255A and adding Channel 270A at Franklin, and by removing Channel 256C1 and adding Channel 255C1 at Lampasas.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23052 Filed 9-28-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-444; RM-6861]

Radio Broadcasting Services; Pulaski, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C3 for Channel 296A at Pulaski, Virginia, and modifies its license for Station WPSK(FM) to specify operation on the higher class co-channel at the request of New River Media Group. *See* 54 FR, 42808, October 16, 1989. The coordinates for the allotment of Channel 296C3 at Pulaski, Virginia, are 37-01-43 and 80-48-18. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-444, adopted September 13, 1990, and released September 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73 [AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended, under Virginia, by adding Channel 296C3 and removing Channel 296A at Pulaksi.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23053 Filed 9-28-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

Federal Acquisition Regulation (FAR); Miscellaneous Amendments and Technical Amendments; Correction

AGENCIES: Department of Defense (DoD), General Services Administration) (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; Correction.

SUMMARY: This final rule corrects the amendatory language in two documents published in the **Federal Register**. The documents were published on November 28, 1989 (54 FR 48978) and September 18, 1990 (55 FR 38516). This document is necessary to ensure that the Code of Federal Regulations is correctly amended.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon A. Kiser, (202) 501-4755.

Corrections

1. In FR Doc. 89-27616 beginning on page 48978 in the **Federal Register** of Tuesday, November 28, 1989, amendatory instruction 112 appearing on page 49000 is corrected to read: "112. Section 53.301-1447 is added to read as follows:".

2. In FR Doc. 90-21554 beginning on page 38516 in the **Federal Register** of Tuesday, September 18, 1990, amendatory instruction 59 appearing on page 38520 is corrected to read: "59. Section 53.301-1447 is revised to read as follows:".

Dated: September 27, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 90-23243 Filed 9-28-90; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

48 CFR Parts 219, 237, 247 and 252

Department of Defense Acquisition Regulations; Miscellaneous Amendments; Correction

AGENCY: Department of Defense.

ACTION: Final rule; corrections.

SUMMARY: DoD has promulgated regulations in two separate issues the **Federal Register** which require correction. The **Federal Register** of December 19, 1989 (54 FR 53612) contains two errors that are hereby corrected by this notice. In addition, the **Federal Register** of May 8, 1990 (55 FR 19070) contains two errors that are hereby corrected by this notice. These documents contained miscellaneous amendments to the acquisition regulations.

EFFECTIVE DATES: Section 247.573-1 is effective January 30, 1990. The effective date for the correction to amendatory instruction for section 219.704 is April 16, 1990; the effective date for the correction to amendatory instruction for section 237.7407 is April 16, 1990, and the effective date for the correction to amendatory instruction for section 252.215-7003 is January 30, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(MARS), room 3D139, Pentagon, Washington, DC 20301-3062, (703) 697-7266.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulatory System.

Therefore, 48 parts 219, 237, 247 and 252 are corrected as follows:

1. The authority citation for 48 CFR parts 219, 237, 247 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and FAR subpart 1.3.

2. In **Federal Register** document 90-10032 beginning on page 19070 in the issue of May 8, 1990 make the following corrections:

a. On page 19078, in the first column, amendatory instruction No. 34 is corrected, in the ninth line, by removing "of the second sentence."

b. On page 19080, in the first column, amendatory instruction No. 61 is corrected, in the second line, by adding "introductory text" after "paragraph (b)."

3. In **Federal Register** document 90-29807 beginning on page 53612 in the issue of December 29, 1989, an amendment to section 247.573-1 which appeared on page 53620, in columns 1 and 2, and in **Federal Register** document 90-10032 beginning on page 19070 in the issue of May 8, 1990, an amendment to section 247.573-1 which appeared on page 19080, in column 2, incorrectly amended this section. Section 247.573-1 is correctly revised to read as follows:

247.573-1 Purchase of ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies to those acquisitions where ocean transportation is not the purpose of the contract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), in developing the following:

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation by sea of supplies.

(c) The contracting officer shall ascertain from each offeror whether the supplies will be transported by sea under the resulting contract (see 247.574(a)).

(1) When the successful offeror indicates in the response to the solicitation, that ocean transportation will be used, the contractor must comply with the requirements of the Cargo Preference Act of 1904.

(2) If the successful offeror's response to the solicitation provision is that the offeror does not anticipate that supplies will be transported by sea, there still remains the possibility that during contract performance the contractor will discover that ocean transportation must be used. In that event, the terms of the statute still apply to the contractor, requiring the contractor to use U.S.-flag vessels unless certain narrow conditions exist (see 247.572(b) above). The contractor must notify the Government of the changed circumstances, i.e., that it intends to use ocean transportation, and comply with the requirements of the Cargo Preference Act.

(d) When the contracting officer is notified in accordance with the clause at 252.247-7203, Transportation of Supplies by Sea, that the contractor or subcontractor considers that:

(1) No U.S.-flag vessels are available: the contracting officer shall request confirmation from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC), that no U.S.-flag vessels are available.

(2) The freight charges to the armed services, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons having no involvement in the contract: The contracting officer may waive or approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment. Prior to granting such a waiver, the contracting officer shall solicit oral or written advice from the Commander, MSC or designated representative, MSC. The Commander, MSC shall consider, as appropriate, evidence from published tariffs, industry publications, the Maritime Administration, and other available sources when advising the contracting officer whether the waiver should be granted.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable: The contracting officer shall forward a report to the Commander, MSC through the head of the contracting activity and the Director, Office of Contracts and Business Management, MSC. The report shall take into consideration that the Cargo Preference Act of 1904 is, in part, a subsidy of the U.S.-flag commercial shipping industry which starts from the premise that lower prices can be obtained from foreign shippers. Accordingly, the report should consider not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (*i.e.*, costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the mandatory use of U.S.-flag vessels in extraordinarily inefficient circumstances. If the Commander, MSC or designated representative concurs with the contracting officer, the report will be forwarded to the Secretary of the Navy, via ASN(S&L)(CHM), for a determination.

(i) The report shall be in D&F format and include, as appropriate, an analysis of whether the cost to the armed services is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis; a comparison of U.S.-flag rates charged on comparable routes; efficiency of operation regardless of rate differential (*i.e.*, suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, *etc.*); and any other relevant economic and financial considerations affecting the armed services.

(ii) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

4. In **Federal Register** document 90-29807 beginning on page 53612 in the issue of December 29, 1989, an amendment to section 252.215-7003 which appeared on page 53620, in the third column, in amendatory instruction No. 46, in the third and forth lines, " '(JAN 1990)' in lieu of '(FEB 1989)' " is corrected to read " '(JAN 1990)' in lieu of '(MAR 1989)' ".

[FR Doc. 90-22886 Filed 9-28-90; 8:45 am]

BILLING CODE 3810-01-M

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 504, 505, 515, and 552

[APD 2800.12A, CHGE 14]

Acquisition Regulation; Procurement Integrity

AGENCY: Office of GSA Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (CSAR) (APD 2800.12A), chapter 5, is amended to add § 503.104 and related subsections to subpart 503.1 in order to implement and supplement the Federal Acquisition Regulation (FAR) requirements on procurement integrity; to revise § 504.803 to provide instructions to contracting officers on the placement of documents related to procurement integrity requirements in the contract file; to revise § 505.303–70 to provide for notification of certain contract awards to be made to the Office of Congressional Affairs on the same day the contract is awarded; to revise § 505.403 to provide for use of a caution notice on any proprietary or source selection information provided to members of Congress; to add § 515.612 to identify the releasing authority for proprietary or source selection information after source selection; to add §§ 552.203–71, 552.203–72 and 552.203–73 to provide the text of provisions and clauses related to procurement integrity to be included in solicitations and contracts for the acquisition of leasehold interests in real property; to revise the matrix at 552.370 to add references to the provisions at FAR 52.215–12, Restrictions on Disclosure and Use of Data; CSAR 552.203–71, Prohibited Conduct; CSAR 552.203–72, Requirement for Certificate of Procurement Integrity; to add references to the clauses at FAR 52.203–9, Requirement for Certificate of Procurement Integrity—Modification and CSAR 552.203–73, Price Adjustment for Illegal or Improper Activity. CSA is also adding to the CSAR looseleaf GSA Form 3606, Procurement Integrity Certification of Departing CSA Procurement Official, GSA Form 3611, Cover Page Source Selection Information, and GSA Form 3617, Record of Authorization of Access to Proprietary or Source Selection Information. The matrixes and GSA Forms are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets, N.W, Washington, DC 20405. The intended effect is to implement and supplement the FAR as amended by FAC 84–60 and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

GSA's initial implementation of the FAR procurement integrity provisions was published as a temporary rule with request for comments on July 14, 1989 (54 FR 29720). Comments submitted by the Electronic Industries Association, the Council of Defense and Space Industry Associations, the Office of Federal Procurement Policy and various GSA offices were considered in formulating this rule. Revisions made to the FAR by FAC 84–60 have also been considered.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it implements the FAR by providing agency procedures for implementing the procurement integrity provisions at FAR subpart 3.1. In addition, the rule supplements the FAR by codifying provisions and clauses for use in contracts for the acquisition of leasehold interests in real property. Therefore, a Regulatory Flexibility Analysis has not been prepared.

D. Paperwork Reduction Act

This rule contains information collection requirements which implement the provisions of Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, as amended by section 814 of Public Law 101–189. The referenced public laws require contractors to certify, prior to execution of each contract, modification or extension in excess of $100,000, with respect to conduct prohibited by the Act in contracts for the acquisition of leasehold interests in real property. Because the FAR does not apply to acquisitions of leasehold interests in real property a Certificate of Procurement Integrity substantially the same as the FAR Certificate of Procurement Integrity is provided for use in such acquisitions in this rule. The information collections have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned control number 3090–0247. The title of the collection is 48 CFR part 503—Procurement Integrity. The estimated annual burden for this collection is 1,668 hours. This is based on an estimated average burden hour per response of approximately 2 hours, 1 response per respondent, and an estimated 800 respondents per year. Comments on the information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 503, 504, 505, 515, and 552

Government procurement.

1. The authority citation for 48 CFR parts 503, 504, 505, 515, 552 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 503—[AMENDED]

2. Sections 503.104, 503.104–4, 503.104–5, and 503.104–7 through 503.104–12 are added to read as follows:

503.104 Procurement integrity.

503.104–4 Definitions.

Property, as used in FAR 3.104 and in this section, also means acquisitions of leasehold interests in real property.

503.104–5 Disclosure, protection, and marking of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary and source selection information shall—

(1) Ensure documents are marked as prescribed in FAR 3.104–5(c).

(2) Provide physical security for documents in the office environment during and after duty hours.

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, "double wrapping" with more than one envelope and sealing of envelopes.

(4) Maintain strict control over oral communications regarding the acquisition.

(b) The GSA Form 3611, Cover Page Source Selection Information, may be used as the cover page for documents that contain source selection information. The use of the GSA Form 3611 does not eliminate the requirement to mark each page of the document that contains source selection information.

(c)(1) The following classes of persons are authorized access to proprietary and source selection information to the extent necessary to accomplish their requisite duties and responsibilities with respect to a particular procurement:

(i) Requirements generators, including client agency representatives, program and technical experts involved in the development of statements of work, specifications or similar documents.

(ii) Contracting personnel acting in support of the contracting officer.

(iii) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement.

(iv) Supervisors in the contracting officer's chain of command.

(v) Attorneys in the Office of General Counsel and Regional Counsel's Offices.

(vi) Contract auditors in the Office of Inspector General and Regional Inspector General's offices.

(vii) Engineers and other technical support personnel who provide support to the contracting officer.

(viii) Small Business Technical Advisors.

(ix) Small Business Administration (SBA) personnel responsible for reviewing determining not to set-aside acquisitions, determining the small business status of offerors under FAR 19.302, processing applications for Certificates of Competency under FAR subpart 19.6, reviewing subcontracting plans, or awarding contracts under the 8(a) program.

(x) Department of Labor (DOL) personnel responsible for making eligibility determinations under the Walsh-Healey Public Contracts Act or for processing preaward EEO clearances under FAR 22.805.

(xi) Personnel in the Credit and Finance Branch, Region 6, and other personnel who provide support to the contracting officer in making contractor responsibility determinations.

(xii) Personnel serving on technical evaluation boards or source selection evaluation boards.

(xiii) Contract clearance personnel.

(2) The Associate Administrator for Acquisition Policy may authorize additional classes of persons access to proprietary or source selection information.

(3) The contracting officer may authorize persons access to proprietary or source selection information when such access is necessary to the conduct of the procurement and to the extent that the person has a "bona fide need to know." Access must be limited to only that information needed by the person to perform his/her responsibilities.

(4) The GSA Form 3617, Record of Authorization of Access to Proprietary or Source Selection Information, may be used to maintain the list of individuals authorized access to proprietary or source selection information.

(5) Release of proprietary or source selection information under FAR 3.104–5(d)(3) must be made by letter citing obligation to maintain a list of persons authorized access to proprietary or source selection information and to provide the list to the contracting officer for inclusion in the contract file.

(6) In accordance with FAR 3.104–5(i), the following caution notice must be prominently displayed on any document that releases proprietary or source selection information:

This document, or portions thereof, contains proprietary or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil, and/or criminal penalties as provided by law.

(7) For requests from an individual Member of Congress see 505.403.

§ 503.104–7 Postemployment restriction applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.

(a) The supervisor of each departing GSA employee shall determine whether the departing employee is a procurement official within the meaning of the statute, that is, the employee has participated personally and substantially in the conduct of a GSA procurement or contract modification outside the scope of the contract in excess of $100,000 that has not been completed at the time of the employee's departure. For purposes of this determination, a procurement is not considered complete until all actions associated with the award or modification of the procurement have been taken. If the supervisor determines the departing employee is a procurement official, even though the employee's duties may be completed, the supervisor shall have the departing employee read, sign, and date the GSA Form 3606, Procurement Integrity Certification of Departing GSA Procurement Official. The supervisor will forward the GSA Form 3606, or copy thereof, to the applicable contracting officer(s) for inclusion in the applicable contract file(s). Copies of the GSA Form 3606 should be annotated to identify the contract file which contains the original certification so that it can be retrieved, if necessary.

(b) The contracting officer shall obtain the GSA Form 3606 from any contractor employee serving as a procurement official who ceases performance of those duties during the conduct of a procurement expected to result in a contract or modification in excess of $100,000. (See FAR 3.104–10(d) and 52.203–13).

503.104–8 Knowing violations, duty to inquire, and ethics advisory opinions.

(a) If a contracting officer has not been appointed, the contracting director shall serve as the Administrator's designee and respond to inquires under FAR 3.104–8(d) and (e) regarding proprietary and source selection information.

(b) Requests for ethics advisory opinions under FAR 3.104–8(e) must be submitted to the appropriate ethics official.

503.104–9 Certification requirement.

Contracting Officer shall submit requests for waiver of certification requirements under FAR 3.104–6(f)(2) to the HCA for transmittal to the Senior Procurement Executive (see 502.101). The Senior Procurement Executive will recommend that the Administrator approve or disapprove the request.

503.104–10 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.203–71, Prohibited Conduct, in solicitations for the acquisition of leasehold interests in real property expected to exceed $25,000.

(b) The contracting officer shall insert the provision at 552.203–72, Requirement for Certificate of Procurement Integrity, in solicitations for the acquisition of leasehold interests in real property expected to exceed $100,000 unless pursuant to FAR 3.104–6(f) a certification is not required or a waiver has been granted.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.203–73, Price Adjustments for Illegal or Improper Activity, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed $25,000 and all contracts and modifications to contracts exceeding $25,000 which do not already contain the clause when the modification is expected to exceed $25,000.

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503.104-11 Processing violations or possible violations.

(a)(1) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has no impact on the pending award or selection of a source shall be submitted, along with supporting documentation, to the HCA or SES designee for review and concurrence before award of a contract. In addition, the nature and circumstances of the violation or possible violation, together with any supporting documentation, must be referred to the Inspector General in accordance with agency regulations.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred along with all related information available to the HCA, who will:

(i) Refer the matter immediately to the Inspector General.

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104-11 (b) and (d).

(b) If the HCA or SES designee determines under FAR 3.104-11(f) that there are urgent and compelling circumstances, or that it is otherwise in the Government's interest to award or modify a contract, the HCA or SES designee shall notify the Administrator.

503.104-12 Ethics program training requirements.

(a) Except as provided in paragraph (b) of this section, the contracting officer is not responsible for ensuring that another agency's employee(s), who may function as a procurement official on behalf of that agency in interacting with GSA personnel, has executed the Procurement Official's Procurement Integrity Certification pursuant to FAR 3.104-12. Such interaction may occur in the requirements determination process and the development of specifications or statements of work.

(b) Where a non-Government person or another agency's employee(s) act on behalf of GSA (e.g., serves on a Source Selection Board) the contracting officer is responsible for obtaining the Procurement Officials's Procurement Integrity Certification from non-GSA or non-Government persons involved in the selection of a source in a GSA procurement.

PART 504—[AMENDED]

3. Section 504.803 is amended by revising paragraphs (a) (23) and (25) to read as follows:

504.803 Contents of contract files.

(a) * * *

(23) Contractual action. Successful bid or proposal and all pertinent correspondence applicable to the contractual action. Subcontracting plans that are incorporated in and made a material part of a contract, as required by FAR 19.705-5(a)(5), and the successful competing contractor's certificate of procurement integrity required by FAR 3.104-9(b), should be filed under this tab.

* * * * *

(25) Any required approvals—GSA Form 1535, Recommendation for Award, or GSA Form 3584, Checklist for Review of Subcontracting Plan (as applicable). The contracting officer's and any departing procurement official's certificate of procurement integrity, required by FAR 3.104-7(e) and 503.104-7 and the record of individuals authorized access to proprietary or source selection information, required by FAR 3.104-5(d)(2) and 3.104-9(e)(iii) should be filed under this tab.

* * * * *

PART 505—[AMENDED]

4. Section 505.303-70 is amended by revising paragraph (b)(2) and adding paragraphs (b)(4) and (c) to read as follows:

505.303-70 Notification of proposed substantial awards and awards involving Congressional interest.

* * * * *

(b) *Notification procedures.* * * *

(2) Except for submittals hand delivered to S, the submittal must be made by facsmile transmission and, in the case of proposed 8(a) awards, on GSA Form 2677, Minority Contract Fact Sheet. Except for contracts awarded under urgent and compelling circumstances, notification to S of an award must be made on the same day that the award is made and 24 hours before telephonic notice (if applicable) is provided to the contractor. If the timeframe for notification to S cannot be met, the Contracting Director must notify S by telephone.

* * * * *

(4) The notification to S will contain sensitive preaward information and should be labeled accordingly. S and regional Congressional liaison offices will be responsible for the security of such information and will establish procedures governing the release of such information before official notification of award. Unless otherwise authorized by the contracting officer, the release of such information prior to award shall be limited to Members of Congress and their staff.

(c) *Release of awards.* (1) Release of notifications which require priority processing as determined by the Associate Administrator for Congressional Affairs will be accomplished at the time and date specified.

(2) Unless notified to the contrary, contracting activities may release awards of the type described in (a) and (b) of this section, or information pertinent thereto, upon the expiration of two full workdays (48 hours) after the time and date of notification to S established either by the facsimile transmission or hand delivery.

5. Section 505.403 is added to read as follows:

505.403 Requests from Members of Congress.

When responding to a Congressional inquiry would result in disclosure of classified material, confidential business information, proprietary or source selection information as defined in FAR 3.104-4 or information prejudicial to a competitive acquisition, the contracting officials shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity (HCA), include the caution notice prescribed in 503.104-5(d)(6) in the response, and inform the Office of Congressional Affairs of the action taken.

PART 515—[AMENDED]

6. Section 515.612 is added to read as follows:

515.612 Formal source selection.

After the source selection, the releasing authority under FAR 15.612(e)(1) shall be the Contracting Officer. The contracting officer shall obtain the advice and concurrence of assigned legal counsel before releasing proprietary or source selection information outside the agency.

PART 552—[AMENDED]

7. Sections 552.203-71, 552.203-72 and 552.203-73 are added to read as follows:

552.203-71 Prohibited conduct.

As prescribed in 503.104-10(a), insert the following provision:

Prohibited Conduct (SEP 1990)

(a) *Prohibited conduct.* The Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), provides that during the conduct of any Federal agency procurement of property or services, no competing contractor or officer, employee, representative, agent, or consultant of any competing contractor shall knowingly—

(1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of the agency, except as provided in FAR 3.104-6(b);

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of the agency; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of the agency, prior to the award of a contract any proprietary or source selection information regarding the procurement.

(b) *Penalties.* Civil penalties for violation of these prohibitions are up to $100,000 for an individual or $1,000,000 for an offeror or prospective offeror other than an individual. Criminal penalties are up to 5 years imprisonment and/or a fine in accordance with Title 18, United States Code.

(End of Provision)

552.203-72 Requirement for Certificate of Procurement Integrity.

As prescribed in 503.104-10(b), insert the following provision:

Requirement for Certificate of Procurement Integrity (SEP 1990)

(a) *Definitions.* The definitions at FAR 3.104-4 are hereby incorporated in this provision, except that "property" also means acquisitions of leasehold interests in real property.

(b) *Certifications.* The officer or employee responsible for the offer submitted in response to this solicitation shall submit the following certification to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificate. The Contracting Officer will request the successful offeror to submit the certificate before awarding a lease contract exceeding $100,000.

Certificate of Procurement Integrity

(1) I, *[Name of certifier]*, am the officer or employee responsible for the preparation of this offer and hereby certify that to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27 (a), (b), (d) or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement *(solicitation number)*.

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of *[Name of offeror]* who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet)). ENTER "NONE" IF NONE EXISTS———

(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

[Signature of officer or employee responsible for offer] Date

[Typed name of officer or employee responsible for offer]

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under title 18, United States Code, section 1001.

(c) Pursuant to FAR 3.104-9(d), the offeror may be requested to execute additional certifications at the request of the Government. Failure of an offeror to submit the additional certification may cause its offer to be rejected.

(d) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Government, after the evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interest of the Government, such as disqualification of the offeror.

(e) In making the certification in subparagraph (b)(2) of the certificate, the officer or employee of the competing contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for 6 years from the date of a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(f) Certifications under paragraphs (b) and (c) of this provision are material representations of fact upon which reliance will be placed in awarding a contract.

(End of Provision)

552.203-73 Price adjustment for illegal or improper activity.

As prescribed in 503.104-10(c), insert the following clause:

Price Adjustment for Illegal or Improper Activity (Sep 1990)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

(End of Clause)

Dated: September 20, 1990.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-23088 Filed 9-28-90; 8:45 am]

BILLING CODE 6820-61-M

* Section 27 became effective on December 1, 1990.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 734, 737, and 752

[AIDAR Notice 90-3]

Major Systems Acquisition and Advisory and Assistance Services

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to reflect the most recent OMB control number and expiration date for the various AIDAR information collections, to lower the dollar threshold for application of major system acquisition procedures, based on consultations with the Office of Federal Procurement Policy, and to conform the current FAR coverage of advisory and assistance services.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Kelly, MS/PPE, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523-1435. Telephone: (703) 875-1534.

SUPPLEMENTARY INFORMATION: The list of AIDAR information collection has been updated and the current OMB Control Number and expiration date are reflected, together with the current address to which comments directed to OMB may be sent. No new information collections have been added, nor have existing information collections been revised in any way which will increase recordkeeping or reporting burdens.

AID's regulations on major system acquisition have been revised based on consultations with the Office of Federal Procurement Policy. As revised, our coverage provides a lower dollar threshold, calls for a review of proposed major systems acquisitions against the criteria for such systems established by OMB Circular A-109 and FAR part 34, and requires advance approval of major systems designations by the Procurement Executive.

Our regulations on contracting for consulting services have been revised to conform to the requirements of the current FAR and OMB Circular governing advisory and assistance services.

The changes being made by this final rule are not considered significant rules under FAR 1.301 or subpart 1.5, nor major rules as defined in Executive Order 12291. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature and subject matter of this final rule, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this final rule or any other part of the AIDAR at any time. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the Preamble.

List of Subjects in 48 CFR Parts 701, 734, 737, and 752

Government procurement.

For the reasons set out in the Preamble, chapter 7 of title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in parts 701 and 752 continue to read as follows:

Authority: Section 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

2. Section 701.105 is revised to read as follows:

701.105 OMB approval under the Paperwork Reduction Act.

(a) The following information collections established by the AIDAR have been approved by OMB and assigned OMB control number 0412-0520 (expiration date 12/31/90):

AIDAR segment	Burden hrs. per report
733.7003(c)	40
752.208-70	4
752.219-8	1
752.245-70	1
752.245-71	1
752.7001(a)	.5
752.7001(b)	.5
752.7002(i)	1
752.7003	8
752.7004(b)(4)	.5
752.7032	2

(b) Public reporting burden for these collections of information is estimated as shown in paragraph (a) of this section. The estimated burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to:

Agency for International Development, Office of Procurement Policy, Planning & Evaluation, MS/PPE, Washington, DC 20523-1435; and

Office of Management and Budget, OMB Paperwork Reduction Project (0412-0520), Washington, DC 20503.

3. Part 734 is revised to read as follows:

PART 734—MAJOR SYSTEM ACQUISITION

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

734.002-70 AID policy.

In order for an AID acquisition to be considered a major system acquisition it must meet the criteria of OMB Circular A-109 and FAR part 34, and must have an estimated value of $15 million or more during the first year of the contract. All major systems acquisition must be approved in advance by the Procurement Executive.

4. Part 737 is revised to read as follows:

PART 737—SERVICE CONTRACTING

Subpart 737.2—Advisory and Assistance Services

Sec.
737.205-70 Management controls.
737.208 Requesting activity responsibilities.
737.207 Contracting Officer responsibilities.
737.270 AID advisory and assistance executive.

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

Subpart 737.2—Advisory and Assistance Services

737.205-70 Management controls.

At the conclusion of each contract for advisory and assistance services, the Contracting Officer will require a written evaluation assessing the utility of deliverables and the performance of the Contractor from the cognizant project office. One copy of the evaluation will be retained in the contract file, and one copy will be sent to the AID Advisory and Assistance Executive (see 737.270). Failure to submit the required written evaluation may, at the discretion of the AID Advisory and Assistance Executive, result in refusal to process further requests for contracts for advisory and assistance services from the delinquent project office pending submission of the missing evaluation.

737.208 Requesting activity responsibilities.

(a)-(b) [Reserved]

(c) AID's written approval procedures for advisory and assistance services are as follows:

(1) A signed justification and approval, as specified in paragraph (c)(2) of this section, must accompany each request for a contract for advisory and assistance services. If the Contracting Officer determines that a requested contract is for advisory and assistance services and the required justification and approval has not been prepared, the request will be returned to the cognizant project office together with a Memorandum stating that the requested contract has been determined to be for advisory and assistance services, that justification and approval is required, and that the request for contract services will be acted upon when it is returned accompanied by the required justification and approval.

(2) The justification and approval must be clearly identified as a justification for advisory and assistance services, and must provide the following information:

(i) *Need and utilization:* State concisely the specific need for procuring the advisory and assistance service, including the objectives and the anticipated benefits for the Agency. State the estimated cost of the services, and evaluate the cost in terms of anticipated utilization of the work product.

(ii) *Review of prior work:* Briefly describe efforts made to ensure that the proposed advisory and assistance service does not, in the given circumstances, duplicate work conducted previously. Where appropriate, describe the results of an AID Data Bank search. (The AID Data Bank is located in the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division—PPC/CDIE/DI).

(iii) *In-house capability:* Describe the expertise needed for the service and state whether such expertise exists in AID. If it is found that the expertise does exist in AID, and is available for assignment to the work, state why AID personnel are not being assigned to the task.

(3) The justification must be approved by an officer one level above the organizational unit requesting the service but two levels above during the fourth quarter of the fiscal year. For Mission-awarded direct contracts, these guidelines regarding approval levels should be followed whenever possible; however, throughout the fiscal year, the approval officer need be no higher than the principal AID Officer at the post. Over and above these requirements, any advisory and assistance services contract of $1,000,000 or more must be approved by the AID Advisory and Assistance Executive (see 737.270).

737.207 Contracting Officer responsibilities.

(a)-(f) [Reserved]

(g) In cases where a single contract finances activities included within the definition of advisory and assistance services and activities excluded from the definition, the Contracting Officer is responsible for determining whether the primary purpose of the contract is advisory and assistance services, in which case the contract will be classed as a contract for advisory and assistance services.

737.270 AID advisory and assistance executive.

(a) As required by OMB Circular A-120, the Administrator has designated the Assistant to the Administrator for Management Services as the AID Advisory and Assistance Executive, responsible for assuring that advisory and assistance acquisitions comply with the terms of OMB Circular A-120.

(b) The AID Advisory and Assistance Executive is designated as the official who shall review and approve each request for acquisition of advisory and assistance services with a total estimated obligation of $1,000,000 or more.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7020 [Removed and Reserved]

5. Section 752.7020 is removed and reserved.

Dated: August 3, 1990.

John F. Owens,
Procurement Executive.

[FR Doc. 90-23074 Filed 9-28-90; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 171, 172, 173, 175, 177, 178, and 179

[Docket No. HM-189K, Amdt. Nos. 106-7, 107-22, 171-109, 172-121, 173-223, 175-46, 177-77, 178-96, and 179-44]

Hazardous Materials Regulations; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This amendment corrects editorial errors and makes minor regulatory changes to the Hazardous Materials Regulations (HMR). This action is necessary to reduce misunderstandings of the HMR. The intended effect is to promote accuracy of the HMR. These amendments are minor regulatory changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATES: October 1, 1990. The correction to § 173.247(a)(12)(iii) is effective December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Beth L. Romo, Standards Division, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION: In its maintenance of the HMR, RSPA performs an annual review of the regulations to detect errors which may be causing confusion to users. Inaccuracies detected in title 49, Code of Federal Regulations (49 CFR), parts 100 through 199, revised as of October 1, 1989, include typographical errors, incorrect references to the other rules and regulations in the CFR, and misstatements of certain regulatory requirements. Additionally, in response to inquiries which RSPA received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure are unnecessary. For the same reason, these amendments are effective without the customary 30-day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

RSPA has determined that this rule, are promulgated, is not a major rule under the terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment were not prepared, as these amendments are not substantive changes to the HMR.

Based on limited information available concerning the size and nature of entities likely to be affected by these amendments, I certify that these amendments will not, as promulgated have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The following is a section-by-section summary of the amendments:

Section 107.315. In paragraph (c), the room number "2225" is removed and replaced with the room number "9512".

Section 107.402. In paragraph (a), the parenthetical routing designation "(DHM-20)" is removed and replaced with the routing designation "(DHM-32)".

Part 172. In the table of sections to part 172, subpart F, the heading to § 172.525 is amended by removing the word "EMPTY" and inserting, in its place, the word "RESIDUE".

Section 172.101. In the Hazardous Materials Table, the following changes are made:

a. In the line entry "1,1-Difluoroethylene (R-1132A)", in column 1 the letter "A" is removed, and in column 3(a) the identification number "UN1959" is added.

b. In the line entry "Methyl formate", in column 5(a) the wording "allons" is removed and replaced with the section reference "173.118", the section reference "173.119" is added in column 5(b), and the maximum net quantities "1 quart" and "10 gallons" are added in column 6(a) and column 6(b) respectively.

Section 172.331. In the first sentence in paragraph (d), the wording "Each person who offers a motor carrier a hazardous material in a bulk packaging for transportation * * *" is removed and replaced with the wording "Each person who offers a bulk packaging containing a hazardous material for transportation * * *" to provide clarity and consistency with paragraph (e).

Section 172.510. In paragraph (a), the spelling for the EXPLOSIVES A placard is corrected.

Section 173.12. In paragraph (e), the ending of the last sentence is revised to read "* * *; and oleum (*fuming sulfuric acid*)" for clarity.

Section 173.217. In the section heading and in paragraph (a), the description "trichloroisocyanuric acid, dry" is added. This material is currently authorized by the § 172.101 Table to be packaged in accordance with this section.

Section 173.247. In paragraph (a)(12)(iii), effective December 31, 1990, the word "tank" was inadvertently omitted. The provision is corrected to read "the cargo tank is not made of aluminum."

Section 173.252. In paragraph (a)(5), the word "confirm" is replaced by the correct word "conform".

Section 175.10. In paragraph (a)(7), a period is added in the section reference to read "§ 135.91".

Section 175.630. In paragraph (a), two incorrect spellings of the word "poisons" are corrected.

Section 177.870. In paragraph (f), sixth line, the word "paranitraniline" is revised to read "paranitroaniline".

Throughout parts 106, 107, 171, 172, 173, 175, 177, 178, and 179, amendments are made to reflect a change in the zip code for the Department of Transportation, Nassif Building, from "20590" to "20590-0001".

List of Subjects

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

PART 106—RULEMAKING PROCEDURES

1. The authority citation for part 106 is revised to read as follows:

Authority: Sec. 902(h)(1), Pub. L. 85-726, 72 Stat 784 (49 U.S.C. 1472(h)(1)); sec. 3, Pub. L. 93-481, 82 Stat. 720 (49 U.S.C. 1672); secs. 104, 105, 109, Pub. L. 93-633, 88 Stat. 2157 (49 App. U.S.C. 1803, 1804, 1808); sec. 21(a), Pub. L. 89-670 (49 U.S.C. 1653, 1657(e)); sec. 203, Pub. L. 96-129, 93 Stat. 1004 (49 U.S.C. 2002).

§§ 106.5 and 106.9 [Amended]

2. In part 106, the zip code "20590" is revised to read "20590-0001" in the following places: § 106.5(a); § 106.9.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

3. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1808, 1808-1811; 49 CFR 1.45 and 1.53; Pub. L. 89-670 (49 App. U.S.C. 1653(d), 1655).

§ 107.315 [Amended]

4. In § 107.315(c), the wording "Room 2228" is revised to read "Room 9112".

§ 107.402 [Amended]

5. In § 107.402(a), the parenthetical wording "(DMT-20)" is revised to read "(DHM-32)".

§§ 107.103, 107.105, 107.111, 107.123, 107.203, 107.215, 107.315, 107.325, 107.335, 107.402, 107.502, Subpart B (Appendix A) [Amended]

6. In addition to the amendments set forth above, the zip code "20590" is revised to read "20590-0001" in the following places:

§ 107.103(b)(1)
§ 107.105(a)(1)
§ 107.111(b)(1)
§ 107.123(a)
§ 107.203(b)(1)
§ 107.215(b)(1)
§ 107.315(c)
§ 107.325(a)
§ 107.325(b)
§ 107.335
§ 107.402(a)
§ 107.502(c) (Redesignated as § 107.502(d) effective December 31, 1990)
Part 107, subpart B, appendix A (both places it appears)

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

7. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808; 49 CFR part 1.

§§ 171.7, 171.16 and 171.20 [Amended]

8. In part 171, the zip code "20590" is revised to read "20590-0001" in the following places: § 171.7(b); § 171.16(b); § 171.16 Note; § 171.20(b).

PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

9. The authority citation for part 172 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR part 1.

§ 172.101 [Amended]

10. In § 172.101, the Hazardous Materials Table is amended by revising, in appropriate alphabetical sequence, the entries listed below:

172.10—HAZARDOUS MATERIAL TABLE

+AW	Hazardous materials description and proper shipping names	Hazard class	Identification number	Labels required (if not excepted)	Packaging		Maximum net quantity in one package		Water Shipments		(c) Other requirements
					(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	Passenger vessel	
(1)	(2) [Revised]	(3)	(3A)	(4)	(5)		(6)		(7)		
	1,1-Difluoroethylene	Flammable gas.	UN1959	Flammable gas.	173.306	173.304	Forbidden	300 pounds	1, 2	5	Stow away from living quarters.
	Methyl formate	Flammable liquid.	UN 1243	Flammable liquid.	173.118	173.119	1 quart	10 gallons	1, 3	4	

§ 172.331 [Amended]

11. In § 172.331(d), the beginning of the first sentence is amended by removing the wording "Each person who offers a motor carrier a hazardous material in a bulk packaging for transportation" and adding, in its place, the wording "Each person who offers a bulk packaging containing a hazardous material for transportation".

§ 172.407 [Amended]

12. In § 172.407, in paragraphs (d)(1) and (d)(3), the zip code "20590" is revised to read "20590-0001".

§ 172.510 [Amended]

13. In § 172.510(a), the term "EXPLOSIVE A" is revised to read "EXPLOSIVES A".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

§ 173.12 [Amended]

15. In § 173.12(e), at the end of the sentence, the phrase "and sulfuric acid, fuming." is revised to read "and oleum *(fuming sulfuric acid)*."

§ 173.217 [Amended]

16. § 173.217, in the section heading, the description "trichloroisocyanuric acid, dry;" is added between the description "sodium dichloro-s-triazinetrione, dry;" and the description "tricholoro-s-triazinetrione, dry.".

§ 173.217 [Amended]

16a. In § 173.217, in the introductory text of paragraph (a), the description "trichloroisocyanuric acid, dry," is added between the description "sodium dichloro-s-triazinetrione, dry," and the description "trichloro-s-triazinetrione, dry,".

§ 173.247 [Amended]

17. In § 173.247, in paragraph (a)(12)(iii), effective 12-31-90, the sentence "The cargo is not made of aluminum" is revised to read "The cargo tank is not made of aluminum.".

§ 173.252 [Amended]

18. In § 173.252, in the fourth sentence of paragraph (a)(5), the word "confirm" is revised to read "conform".

§§ 173.22, 173.28, 173.34, 173.300a, 173.300b, and 173.471 [Amended]

19. In addition to the amendments set forth above, the zip code "20590" is revised to read "20590-0001" in the following places:

§ 173.22a(b)
§ 173.28(m)(3)(ii)
§ 173.34(e)(l)(iv)
§ 173.300a(b)(1)
§ 173.300a(e)
§ 173.300b(b)(1)
§ 173.471(e)

PART 175—CARRIAGE BY AIRCRAFT

20. The authority citations for part 175 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

§ 175.10 [Amended]

21. In § 175.10(a)(7), the section reference" 135 91" is revised to read "135.91".

§ 175.45 [Amended]

22. In § 175.45(c), the zip code "20590" is revised to read "20590-0001".

§ 175.630 [Amended]

23. In § 175.630(a), the word "posions" and the word "poisions" are removed each place they appear and are replaced with the word "poisons".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

24. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR part 1.

§ 177.825 [Amended]

25. In § 177.825, in paragraph (b)(1)(iii)(A), effective 10-1-90, the zip code "20590" is revised to read "20590-0001".

§ 177.870 [Amended]

26. In § 177.870(f), the word "paranitraniline" is revised to read "paranitroaniline".

PART 178—SHIPPING CONTAINER SPECIFICATIONS

27. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808, 49 CFR part 1, unless otherwise noted.

§§ 178.16-16, 178.17-6, 178.45-17, 178.65-14 [Amended]

28. In part 178, the zip code "20590" is revised to read "20590-0001" in the following places: § 178.16-16(c)(2); § 178.17-6(b)(2); § 178.45-17(e); § 178.65-14(d).

PART 179—SPECIFICATIONS FOR TANK CARS

29. The authority citation for part 179 continues to read as follows:

Authority: 49 App U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

§ 179.105-4 [Amended]

30. In § 179.105-4(c), the zip code "20590" is revised to read "20590-0001".

Issued in Washington, DC, on September 25, 1990, under the authority delegated in 49 CFR part 1.

Travis P. Dungan,
Administrator, Research and Special Programs Administration.

[FR Doc. 90-23109 Filed 9-28-90; 8:45 am]
BILLING CODE 4910-60-M

VOL 55 ISS 190 OCT 1 1990 UMI

Proposed Rules

Federal Register
Vol. 55, No. 190
Monday, October 1, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1930 and 1944

RIN 0575-AA89

Farm Labor Housing Loan and Grant Program, Loan Agreement and Income Eligibility for Domestic Farm Laborers

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Farm Labor Housing Loan and Grant Regulations. The intended effect is to make changes to the basic rules of the Labor Housing Regulations affecting potential applicants and the FmHA field staff concerning unauthorized rents, income eligibility, occupancy of labor housing, and delegation of authority. These revisions are proposed because of Agency agreements with the Inspector General and are determined to be in the best interest of farm labor tenants and the government.

DATES: Comments must be received on or before November 30, 1990.

ADDRESSES: Submit written comments in duplicate to the office of the Chief, Directives and Forms Management Branch, Farmers Home Administration Room 6348, South Agriculture Building, Washington, DC 20250. All comments made pursuant to this notice will be available for public inspection at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tom Sanders, Senior Loan Officer, Special Authorities Branch, Multi-family Housing Processing Division, FmHA, USDA, Washington, DC 20250, Telephone (202) 382-1606 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "Non major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions, or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability to United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart C, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environmnet and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an environmental impact statement is not required.

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, Farm Labor Housing Loans and Grants, and 10.427, Rural Rental Assistance Payments (Rental Assistance), and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

The Administrator has determined that the proposed action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements. The proposed action will effect new borrowers for non-rental labor housing, unauthorized rents, and above-moderate income tenant occupancy.

General Information

The Labor Housing program provides housing financing for the exclusive use of domestic farm labor through the use of loans, grants and rental assistance to farmers, family farm partnership, family farm corporation, association of farmers, public bodies, and public or private nonprofit organizations. However, the use of grant funds is restricted to public bodies and public or private nonprofit organizations.

The Labor Housing program serves two borrower groups. The first group, farm owners, use the Labor Housing loan program as an adjunct to their farming operations; such loans are referred to as "on-farm" loans. The second group, public bodies and nonprofit organizations, use the loan grant, and rental assistance programs to provide affordable rental housing for farm laborers serving the local agricultural market area; such housing is referred to as "off-farm".

The owners of Labor Housing may or may not charge rent to the farmworker based on the purpose for which the original assistance was provided. If the original assistance is "on-farm", then housing for the farmworker may be on a non-rental basis. If the original assistance is "off-farm", then housing for the farmworker is on an affordable rent basis, in accordance with statutes.

The Officer of Inspector General made several recommendations pertaining to loan and grant administration and borrower servicing procedures. This proposed rule change addresses the necessary loan and Grant Making and Borrower Servicing rules.

The Inspector General recommended that the Agency:

1. Ensure the proposed rule contains sufficient provisions addressing (1) the use of loan agreements when rental income is to be collected by LH [Labor Housing] borrowers, (2) required servicing of cases where unauthorized rent was collected by LH borrowers, and (3) whether unauthorized rent collections should be collected and applied to LH loan accounts.

2. Establish procedures to (1) require that above-moderate-income LH tenants pay rental rates based on their ability to pay or comparable market rental rates, or (2) prohibit temporary LH occupancy by above-moderate-income households.

3. Establish procedures for rental payments which exceed approved/subsidized rental rates to be remitted to FmHA as additional payments on LH loans.

The basic issues to be addressed for public comment are (1) Use of loan agreements, (2) income eligibility for occupancy, and (3) use and disposition of authorized and unauthorized rents.

Waiving the use of loan agreements has been within the State Director's authority, if "the applicant receives no rental income from the tenants, and • • • the applicant is an individual or family farm corporation or partnership." However, the audit showed that many borrowers who had not signed loan agreements were charging rents. Therefore, the waiver authority is being removed and a loan agreement for "on-farm" non-rental housing is proposed. A loan agreement signed at the time of loan making will provide full disclosure to the farm owner of what the Government will require if the non-rental basis of the dwelling changes.

For tenant income eligibility, it is necessary to distinguish between "on-farm" tenants and "off-farm" tenants. There exists in the regulations an unintended link of income eligibility and farm worker eligibility for the "on-farm" tenant. We have expanded the definition of substantial portion of income to include the provision of housing as partial compensation for farm work. In view of the employment relationship of the farm worker with the farm owner when housing is provided rent free, we consider such farmworkers to meet the substantial portion of income rule. Income verification of farm workers housed and in his/her employment will not be required of the farm owner.

For tenants who reside in labor housing "off-farm", there has been no change in FmHA rules concerning their income eligibility, reporting requirements, or substantial portion of income. However, when eligible "off-farm" housing tenants become income ineligible, FmHA hereby proposes that they pay an appropriate tenant shelter cost contribution or prevailing rental rate for the area. They may choose to remain in the rental housing as long as vacancies exist, but must vacate should the housing be needed for income eligible farm workers. This revision will also promote full occupancy of FmHA financed farm labor housing and enable such facilities to maintain economic viability, lessen possible vandalism of vacant units, and reduce the long-term subsidy costs.

By permitting occupancy and charging a market rent to above-moderate income ineligibles, we propose that excess rents collected must go for the tenants' housing benefit: (1) Operating and maintenance expenses, (2) debt service, and (3) refunded to the Agency for reduction of interest subsidy. This applies to both the "on-farm" and "off-farm" housing. Any changes to rents must be authorized by the Agency in advance. In those circumstances, as raised by the OIG audit, any rent charged for non-rental housing is unauthorized and must be refunded to the tenant. If the tenant has moved on, then the disposition of unauthorized rent should be in the order cited above.

Due to the nature of the Labor Housing programs, the provision of housing through an intermediary, similar to the Rural Rental Housing Section 515 program, and unclear lines of servicing authorities as reflected in the OIG recommendation, all labor housing loan and grant servicing is proposed to be delegated to the District Director.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant Programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, and Reporting requirements.

7 CFR Part 1944

Farm labor housing, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, and Rural housing.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B of subpart C is amended by revising paragraphs VI B 6 a 5, VII C 1, and VII C 2; and by adding paragraph VI B 6 a 7 to read as follows:

Exhibit B Exhibits to Subpart C—Multiple Housing Management Handbook

• • • • • •

VI. Renting Procedure

• • • • • •

B. • • •

6. • • •

a. • • •

(5) Tenants residing in RRH units who are ineligible, because their household income exceeds the maximum for the RRH project, will be charged the FmHA approved market rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved market rental rate.

• • • • • •

(7) Tenants residing in LH units who are ineligible because their household income exceeds the maximum for the area will be charged rents as set out in this section. Such tenants will be charged the lesser of the required shelter cost contribution set out in paragraph II NN of this Exhibit or the prevailing rental rates for the area, as determined by the Agency, based on the best information available. Any income derived from such tenants which is in excess of that needed to meet annual LH project expenditures, FmHA LH loan payment, and any authorized reserve contribution must be used as set out in this section. Such income may be used to properly maintain the security property in accordance with an FmHA approved budget or remitted to the Agency for crediting to the Rural Housing Insurance Fund.

• • • • • •

VII. Verification and Certification of Tenant Income and/or Employment

• • • • • •

C • • •

(1) Verification of income is required for domestic farm laborers, including migrants, except in instances where housing is provided as part of employment compensation for farm labor. When the tenants do not have easily verifiable income, the borrower may project monthly income expected to be received by the tenants during occupancy for determining eligibility and subsidy assistance.

(2) Verification that all LH tenants have sufficient income from farm labor employment, that meets the definition of domestic farm labor, is required for all domestic farm laborers, including migrants. Employment verification is an addition to income verification for those tenants described in paragraph VII C 1 above. Verification must be documented and filed in the "Tenant Record File" or in the borrower loan docket.

• • • • • •

PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

4. Section 1944.183 is amended by redesignating paragraphs (bb) (1) (i) and (ii) as (bb) (1)(i)(A) and (B), by adding new paragraphs (bb) (1)(i) introductory

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text and (ii), and by revising the introductory text of paragraph (bb) (1) and paragraph (bb) (4) to read as follows:

§ 1944.153 Definitions.

* * * * *

(bb) *Substantial portion of income.* That portion of income received which has been derived from farm labor performed by a farm laborer as defined in paragraph (a) of this section.

(1) To determine if income is considered substantial, the measure to be used will be as follows:

(i) For housing rented to farm laborers and owned by public bodies and public or private nonprofit organizations, and other owners (farmer, family farm partnership, family farm corporation, or an association of farmers) when charging rent on a rental basis by choice or servicing regulations:

* * * * *

(ii) For housing owned by a farmer, family farm partnership, family farm corporation, or an association of farmers and operated on a nonrental basis, substantial portion of income is earned when housing is provided by the owner as part of employment compensation for farm labor.

* * * * *

(4) The tenant who qualifies as a domestic farm laborer in order to reside or continue to reside in any project with a nonrestrictive farm labor clause in the mortgage convenants § 1944.176 (d)(5)) must not have household income which exceeds the moderate income limit as shown in exhibit C of subpart A of part 1944 of this chapter (which is available in any FmHA office), for the appropriate household size and appropriate geographical area.

(i) Income for purposes of this section is defined in Exhibit B (II)(c) of subpart C of part 1930 of this chapter and also includes the full amount of periodic payments received from Social Security (including Social Security payments received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements) and other similar types of periodic receipts, as well as any payments that will begin during the next 12 months, such as payments in lieu of earnings, such as unemployment and disability compensation, worker compensaion and serverance pay.

(ii) Exempted income is income of dependents, unmarried minors, under 18 years of age except as specified in paragraph (bb)(4)(i) of this section. (tenants or co-tenants or spouses of either are not considered as minors for purposes of this section).

(iii) For servicing purposes, an exception to the moderate income rule is permitted in accordance with Exhibit B, paragraph VI of part 1930, subpart C of this chapter.

* * * * *

5. Section 1944.154 is revised to read as follows:

§ 1944.154 Responsibility for LH processing and servicing.

All LH loan and/or LH grant application processing and servicing is the responsibility of the FmHA District Director.

6. Section 1944.164 is amended by revising paragraph (g)(2) to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(g) * * *

(2) All other loan applicants of this subpart will execute a loan agreement in substantially the same format as exhibit D (for rental units) or exhibit K (for non-rental units). Any necessary changes must be approved by OGC.

* * * * *

7. Section 1944.176 is amended by redesignating paragraphs (c), (d), (e) and (f) as paragraphs (d), (e), (f) and (g) respectively; by removing paragraph (d)(5) and redesignating paragraphs (d) (6) and (7) as (d) (5) and (6); and by adding new paragraph (c) to read as follows:

§ 1944.176 Loan and/or grant closing.

* * * * *

(c) *LH loan agreement.* A LH loan agreement, prepared and authorized as provided in § 1944.164 (g) will be dated and executed by the applicant on the date of loan closing. The executed agreement will be filed with the mortgage or other security instrument in the District Office case file.

* * * * *

8. Exhibit K of subpart D is added to read as follows:

Exhibit K—Loan Agreement (LH Insured Loan to Individual for Non-Rental Housing)

A. General Provisions

1. This agreement is entered into on _____ (Date).

2. This agreement is between

_____

_____

(borrower's name whether one or more), whose mailing address is

_____

and the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (the Government).

3. This agreement is made in return for receiving Labor Housing (LH) loan assistance from the Government totaling $_____ as evidenced by a Promissory Note dated _____.

4. The borrower agrees to comply with Government regulations governing the LH loan program.

5. This agreement is in addition to any other agreements entered into with the Government such as any promissory note, mortgage or deed of trust, loan approval requirements, etc.

B. Rent and Occupancy

Occupany of the housing will be limited to domestic farmworkers or migrants as defined in this Subpart unless the Government gives prior written approval for other occupany, except that in no case will a member of the borrowers's immediate family occupy the housing.

The borrower agrees:

(1) To meet the LH loan objectives by providing decent, safe, and sanitary housing for eligible tenants;

(2) To provide the housing rent free to eligible farmworker tenants, except for any customary and reasonable damage deposit or clean-up fee;

(3) To get the Government's prior approval before collecting utility charges (i.e. fuel, water, waste disposal, etc.) from tenants;

(4) To get the Government's prior approval if there is a need to permit occupancy by tenants who are normally not eligible to occupy the housing unit and in no case will a member of the borrower's immediate family occupy the housing, and;

(5) To get the Government's prior approval if there is a need to charge rent to tenants. The borrower agrees to provide a management plan, which meets requirements set out in Government regulations, whenever rents are charged to tenants. The management plan will describe how the housing operation will be conducted. The borrower agrees to get the Government's prior approval before charging rents to tenants or changing any existing rents.

C. Recordkeeping

The borrower agrees:

(1) To provide the Government financial information as required by Government regulations;

(2) To provide annual certification of employment of eigible tenants as occupany changes, not less than once per year, and;

(3) To keep information required by Government regulations and make the information available for Government inspection.

D. Compliance with federal, state, and local laws and regulations

The borrower agrees to comply with applicable federal, state, and local laws and regulations, including but not limited to, the following:

(1) To provide equal housing opportunities to tenants;

(2) To operate the housing in a safe environment;

(3) To maintain comprehensive property insurance on the property taken as security;

(4) To pay taxes and assessments on the property taken as security, and;

(5) To make the security property available for inspection by the Government.

E. Disposition of Labor Housing Security Property

The borrower agrees:

(1) Not to sell or otherwise dispose of property taken as security for the LH Loan without the Government's prior written approval;

(2) Not to sell or enter into any business arrangement which may potentially or acutally place the housing operation under the management or control of another party without the prior approval of the Government, and;

(3) To prohibit any liens to be taken on the security property without the prior approval of the Government.

F. Enforcement Considerations

The borrower understands that any violation of the terms of this agreement may enable the Government to declare the note immediately due and payable and may adversely affect the borrower's ability to obtain other Government loans or grants.

G. General Provisions

This agreement may be cited in the security instrument and other instruments or agreements as the "Loan Agreement of _____ 19____."

(date of this instrument)

H. Signature(s).

_____

Signature of Borrower

_____

Signature of Borrower

_____

Witness

_____

Witness

Dated: August 8, 1990.

David T. Chen,

Associate Administrator, Farmers Home Administration.

[FR Doc. 90-23028 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

(CGD1-90-063)

Special Anchorage Area; Burlington Harbor, VT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish a special anchorage area in Lake Champlain. This anchorage is located in the waters contiguous to Burlington, Vermont. The Harbormaster for the Department of Parks and Recreation, City of Burlington, Vermont requested this area be designated to facilitate the growing number of pleasure craft needing mooring space in the area. This regulation will provide a safe anchorage well away from fairways where vessels less than 65 feet in length can safely remain unlighted at night and during periods of reduced visibility. There are no such anchorages available in the immediate area.

DATES: Comments must be received on or before November 15, 1990.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 109, Governors Island, New York, NY 10004-5096. The comments and other materials referenced in this notice will be available for inspection and copying at the Waterways Management Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade C. W. Jennings, Waterways Management Officer, Commander, Coast Guard New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD1-90-063] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG C. W. Jennings, Project Officer, Coast Guard Group New York and Lt. J. B. Gately, Project Attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulations

The area proposed for designation as a special anchorage is located in the waters contiguous to Burlington, VT, in Lake Champlain known as the Inner Harbor. The Captain of the Port, New York was contacted by Mr. Donald Bessler, Harbormaster for the City of Burlington, Vermont regarding the establishment of this special anchorage. The principal reason for the request is to provide a clearly defined area for recreational vessels to moor. Increased recreational vessel traffic in the Burlington area has prompted a need to specify exactly where vessels may moor to keep them from anchoring in harms way. The City of Burlington has indicated that it is willing to manage and administer this mooring area. The area will be available to the general public. There are no special anchorages designated in this area at this time.

This rule would allow anchoring of small boats (vessels under 65 feet in length) without requiring them to display anchor lights or sound fog signals. The area will not affect navigable channels and is located where general navigation will not endanger or be endangered by unlighted vessels. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2071 as set out in the authority citation for all of part 110.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Establishment of this proposed special anchorage area will not require dredging or result in increased cost to any segment of the public.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Lists of Subjects in 33 CFR Part 110

Special Anchorage Areas.

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Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.8 is amended by adding paragraph (h) to read as follows:

§ 110.8 Lake Champlain, NY and VT.

* * * * *

(h) *Burlington Harbor, VT.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
44°28'14.2" N	73°13'18.0" W
44°28'14.2" N	73°13'21.0" W
44°28'24.2" N	73°13'18.9" W

and thence along the shoreline to the point of the beginning.

Dated: August 29, 1990.

R.I. Rybacki,

Rear Admiral U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 90–23171 Filed 9–28–90; 8:45 am]

BILLING CODE 491–14–M

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33 CFR Part 165

[CGD 13–90–03]

Regulated Navigation Area; Puget Sound, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations for a Regulated Navigation Area (RNA) in Puget Sound and adjacent waters in northwestern Washington. This action would delete the provisions for Temporary Special Traffic Lanes (TSTL), but would retain the requirement for vessels congesting the traffic lanes to move out of the way of through traffic in the Traffic Separation Scheme (TSS). As it currently exists, the TSTL is a temporary, two-way, 1,000 yard wide traffic lane that must be vacated for through traffic. The TSTL may be established by the Puget Sound Vessel Traffic Service (VTS) when fishing or other operations have reached or may reach such concentrations as to significantly impede navigation or create a hazard. Deleting provisions for the TSTL will result in the restoration of traffic separation between opposing through traffic at all times.

This proposed amendment would also establish prohibited fishing areas in three ferry crossings and in an area adjacent to the main ship channel draw span of the Hood Canal Bridge. Establishing prohibited fishing areas will eliminate the frequent hazardous traffic conflicts between deep draft vessels (through traffic) and fishing vessels in those areas.

This amendment also requires vessels fishing in or near the TSS to monitor the VTS VHF–FM working frequency. VTS broadcasts provide information about through traffic transiting the TSS, its location, and projected arrival time. An alternative to the radio listening requirement would be to stay clear of the TSS. This amendment eliminates the requirement for specific sound signals, which are in conflict with the Collision Regulations (hereafter called 72 COLREGS) rules 35 and 36. Vessels may continue to use sound signals in accordance with Rule 36.

This amendment is needed due to the large number of user conflicts and potentially hazardous situations which frequently develop during periods of heavy congestion. The intended effect of this proposed action is to prevent vessel collisions and groundings, property loss, loss of life, and environmental damage resulting from conflicts between the varied users of these waters, including fishing vessels, pleasure craft, passenger ferries, towboats, and deep draft vessel traffic.

DATES: A public hearing will be held on October 11, 1990. All requests to present oral testimony must be received on or before October 9, 1990. All written comments must be received on or before November 15, 1990.

ADDRESSES: Written comments, and requests to present oral testimony, should be submitted to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. Comments will be available for inspection in room 3410 at the above address. Normal office hours are 8 a.m. to 4 p.m., Monday through Friday, except holidays. Written comments or requests to present oral testimony may also be hand delivered to this address. The public hearing will be conducted between 1 p.m.–4 p.m. and 6 p.m.–8 p.m. in the South Auditorium on the fourth floor of the Federal Building, 915 Second Avenue, Seattle, Washington 98174.

FOR FURTHER INFORMATION CONTACT: CDR Michael J. Haucke, USCG, Puget Sound Vessel Traffic Service, 1519 Alaskan Way South, Seattle, Washington 98134. Telephone (206) 286–5640.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 13–90–03), and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. In addition, interested persons are invited to attend the Public Hearings and present oral or written statements on this proposal. Persons wishing to make an oral statement should notify CDR Haucke by October 9, 1990 and indicate the approximate amount of time required. Comments at the Public Hearing are normally heard in the order the requests to comment are received. A written summary or copy of the oral presentation should be included with the request. The proposed rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Drafting Information

The drafters of this notice are CDR Michael J. Haucke, USCG, Puget Sound Vessel Traffic Service and LT Deborah K. Schram, USCGR, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulation

On August 13, 1984 the Coast Guard published a final rule to establish a Regulated Navigation Area in Puget Sound and adjacent waters in northwestern Washington. That rule was preceded by a Notice of Proposed Rulemaking (NPRM) on October 27, 1983 and a Supplemental Notice of Proposed Rulemaking (SNPRM) on May 10, 1984. The final rulemaking reestablished a former U.S. Army Corps of Engineers' regulation and established procedures for Puget Sound Vessel Traffic Service (PSVTS) to activate Temporary Special Traffic Lanes (TSTL) to facilitate a safe and orderly flow of traffic during periods of congestion. The present rule represents a compromise between commercial fishing and commercial transportation interests. In lieu of prohibited fishing zones, the present rule provides that fishing vessels and other craft will clear a path within a TSTL when through traffic approaches. The rule also requires that all vessels operating within an established TSTL monitor the VTS radio frequency

continuously. Activating the TSTL results in confining two way ship traffic in a one half mile wide lane and eliminates the separation zone. The proposed amendment to the existing rule eliminates provisions for the TSTL. The normal Traffic Separation Scheme, or TSS, is the system of traffic lanes, separation zones, and precautionary areas intended to promote safety by directing vessel traffic through distinct, separated routes. The TSS is clearly shown on all official marine charts of the Puget Sound region. It is described in detail in 33 CFR 161.183 through 161.187. The TSTL has proven to be ineffective in reducing user conflicts and defeats the most valuable feature of the TSS, the traffic separation zone.

Even with enforcement vessels on scene, the Coast Guard has had difficulty keeping the TSTL clear. Deep draft vessels following the lane are forced to maneuver to avoid concentrations of boats and nets, resulting in frequent close-quarters situations, both with fishing vessels and with opposing deep draft traffic within the single TSTL lane. The requirement, when the TSTL is implemented, for vessels engaged in fishing or other operations, to draw in their gear, maneuver, or otherwise clear the TSTL no later than 15 minutes before the arrival of through traffic, would apply to both lanes of the TSS under the proposed rule. This system is much safer because it does not eliminate the traffic separation zone afforded by the TSS. PSVTS will broadcast the Estimated Time of Arrival (ETA) of through traffic in areas of congestion. The proposed rule retains the requirement, as currently prescribed in the existing rule, to monitor the PSVTS VHF–FM frequency. Vessels with fishing gear in the water, in or near the traffic lanes, must tend their gear in a manner so as to ensure the fishing vessel and its gear are outside the separation zone and the occupied lane of the TSS when a through vessel approaches.

Prohibited fishing zones near ferry crossings would be reestablished under this amended rule. Army Corps of Engineers regulations establishing prohibited fishing zones near ferry crossings were cancelled in 1983. When the Coast Guard proposed to reestablish them in 1983, public comment persuaded the Coast Guard to establish TSTLs instead. This practice has proven to be totally ineffective. Numerous complaints to Congress, the Coast Guard, and the media, call for reinstatement of the prohibited fishing areas. The Port Angeles Pilots complain they fear collisions with fishing boats and other large ships. Towboat operators complain they have difficulty maneuvering unwieldy tows between boats and nets. Ferries, typically carrying hundreds of passengers, fear collisons and cite difficulties holding to strict schedules. Fishing grounds stretch over broad areas of Puget Sound and adjacent waters, making it difficult for ferries to alter their routes around the congestion caused by the fishing vessels. The existing rule calls for vessels operating in the Edmonds-Kingston ferry crossing to clear the lane 15 minutes prior to a ferry arrival. Ferry transit frequency coupled with the time required to set and retrieve nets make fishing in the crossing zone, for practical purposes, impossible. The proposed rule clarifies this situation by prohibiting fishing in the ferry crossing entirely.

The prohibited fishing areas around the Mukilteo-Clinton and Fauntleroy-Vashon-Southworth routes will be one quarter mile wide on either side of a line connecting the ferry landings. The prohibited fishing area around the Edmonds to Kingston ferry route is slightly larger because of a problem created by the route's proximity to the northern boundary of fishing area 10. If a one quarter mile wide zone were established on either side of a line connecting the ferry landings at Edmonds and Kingston, a very small unrestricted fishing area at the western end of the boundary would continue to exist. Experience has shown that leaving this very small area open to fishing only causes confusion and leads to further congestion. The effect of the proposed Edmonds-Kingston prohibited fishing area is to only allow commercial fishing in area 10 south of the prohibited fishing area.

A prohibited fishing area would also be established within a one half nautical mile radius of the main ship channel draw span of the Hood Canal Bridge. This restriction only applies when naval combatants are transiting the draw span. Trident Submarine commanding officers and the Commander, Submarine Group 9 have expressed grave concern over the safety of fishing vessels who maneuver near the bridge and hamper the passage of submarines.

The General portion of the existing rule, § 165.1301, dealing with sound signals is in apparent conflict with rules 35 and 36 of the Collision Regulations (72 COLREGS) and has been removed.

The General portion of the existing rule, Part 165.1301, requiring fishing vessels to show a quick flash of light and illuminate their nets has proven to be ineffective in congested areas, and has been removed.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with DOT policy and procedures for simplification, analysis, and review of regulation (DOT Order 2100.5). The economic impact of this proposal is expected to be minimal since only a very small area, in comparison to the area of Puget Sound and the adjacent waters, is involved. The effect of the prohibited fishing areas is to move the congestioin away from ferry commuter routes and a narrow bridge opening. These prohibited fishing areas are not expected to have a significant effect on the overall ability of commercial fishing vessels to catch fish. Therefore, further economic evaluation is not necessay. This economic assessment is subject to change depending on comments received.

Based upon this assessment it is certified, in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regualtion has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it appears that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, comments regarding possible impact this proposed change to the rule may have on state fisheries regulations, Native American fishing rights, or other federalism concerns are requested. This assessment may be changed in light of comments received.

Environmental Concerns

The proposed change to the existing Regulated Navigation Area appears to be categorically excluded from environmental assessment requirements. However, comments addressing possible impacts this proposed change may have on the human environment or potential inconsistencies with any Federal, state, or local law or administrative determinatioin relating to the environment are solicited. A final determination regarding the possible need for an environmental assessment will be made after receipt of written comments on the public meeting.

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List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

PART 165 [AMENDED]

1. The authority citation for part 165 of title 33, Code of Federal Regulations continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.1301 is revised to read as follows:

§ 165.1301 Puget Sound, Washington—regulated navigation area.

(a) The following is a regulated navigation area—All the following northwestern Washington waters under the jurisdiction of the Captain of the Port Puget Sound: Puget Sound, Hood Canal, Possession Sound, Elliot Bay, Commencement Bay, the San Juan Archipelago, Rosario Strait, Guemes Channel, Bellingham Bay, U.S. waters of the Strait of Juan de Fuca and Georgia Strait, and all waters adjacent to the above.

(b) This regulation is intended to enhance vessel traffic safety during periods of vessel congestion. Operations potentially creating vessel congestion include, but are not limited to, vessels engaged in fishing, including gillnet or purse seine, recreational fishing derbies, sailboat races or regattas, and marine parades. For the purposes of these rules, the definition of "vessels engaged in fishing" is identical to that found in rule 3 of the 72 COLREGS.

(c) *General regulations.* (1) Vessels engaged in fishing or any operation other than through transit of a traffic lane within an established Traffic Separation Scheme (TSS), as defined in 33 CFR 161.183 through 161.187 and 161.262 through 161.264, may not remain in, nor may their gear remain in a traffic lane when another vessel or vessel with a tow engaged in through transit of a traffic lane approaches the area of congestion. Vessels not in through transit of a traffic lane within a TSS shall draw in their gear, maneuver, or otherwise clear the traffic lane at least fifteen minutes before the arrival of the through vessel to enable the through traffic vessel to pass safely and without delay. Vessels which are required by this rule to leave the traffic lane must also remain clear of the designated separation zones.

(2) Vessels engaged in fishing or operations other than through transit of a traffic lane in or near a traffic lane or separation zone must:

(i) Monitor the PSVTS VHF–FM radio channel in use for the area in which the vessel is operating, and

(ii) At all times tend nets or other gear placed in the water so as to facilitate the movement of the vessel or gear from the lane for approaching vessels.

(3) Vessels engaged in gillnet fishing at any time between sunset and sunrise in any of the above listed waters shall display, at the end of the net most distant from the vessel, an all-round (32 point) white light visible for a minimum of two nautical miles at least three feet above the surface of the water.

(4) Nothing in these rules shall be construed as relieving anyone from their responsibility to comply with the applicable rules as set forth in the 72 COLREGS.

(d) Prohibited fishing areas. Vessels engaged in fishing, including gillnet and purse seine fishing, are prohibited in the following areas.

(1) Edmonds-Kingston Ferry lane to include the waters within a line drawn from latitude 47°47'10" N, longitude 122° 29'46" W, thence northerly along the shore to Apple Cove Point Light, thence easterly to latitude 47°49'12" N, longitude 122°22'32" W, thence southerly along the shore to latitude 47°48'16" N, longitude 122°23'43" W, thence westerly to the point of beginning.

(2) Mukilteo-Clinton Ferry lane to include the waters within one quarter nautical mile on either side of a straight line connecting the Mukilteo and Columbia Beach ferry landings.

(3) Fauntleroy-Vashon-Southworth Ferry lane to include the waters within one quarter nautical mile on either side of the straight line connecting the Fauntleroy, Vashon, and Southworth ferry landings.

(e) The Hood Canal Bridge prohibited fishing area to include the waters within a one half nautical mile radius of the main ship channel draw span of the Hood Canal Bridge. Vessels engaged in fishing are prohibited within this area during the transit of the draw span by naval combatants.

Dated: September 18, 1990.

Rudy K. Peschal,

Acting District Commander, Thirteenth Coast Guard District.

[FR Doc. 90-23172 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Dalea foliosa (Leafy Prairie-clover)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The Service has received a request, as provided for by section 4(b)(5) of the Endangered Species Act, for a public hearing on the Service's proposal to list *Dalea foliosa* (leafy prairie-clover) as an endangered species. This notice announces a public hearing for the proposal and reopens the comment period.

DATES: A public hearing on the proposal will be held October 16, 1990, from 7 p.m. to 10 p.m. in Columbia, Tennessee. The proposal comment period, which originally closed on May 29, 1990, is reopened October 1, 1990, and closes on November 1, 1990.

ADDRESSES: The public hearing will be held in the auditorium in the Clement Building at Columbia State Community College, Columbia, Tennessee. Comments should be sent to the Field Supervisor, Asheville Field Office, 100 Otis Street, room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Asheville Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above field office address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Dalea foliosa (Gray) Barneby (leafy prairie-clover), a perennial member of the pea family (Fabaceae), is known from only 15 locations—Alabama (2 sites), Tennessee (9 sites) and Illinois (4 sites). It is threatened throughout its range by habitat alteration; residential, commercial, and industrial development; livestock grazing; and conversion of its limited habitat to pasture. On March 27, 1990, the Service published in the **Federal Register** (55 FR 11230) a proposal to list *Dalea Foliosa* as an endangered species. Section 4(b)(5) of the Endangered Species Act provides for a public hearing on a proposed listing, if requested. The Service received letters requesting a public hearing from Mr. Steve Parks, Chief Administrative Officer for the Upper Duck River Development Agency, and Mr. William E. Gentner, City Manager of the City of Columbia.

The Service has scheduled a public hearing on the proposal to list *Dalea foliosa* as an endangered species. The hearing will be held in the auditorium of the Clement Building, Columbia State Community College, Columbia, Tennessee, on October 16, 1990, from 7 p.m. to 10 p.m.

Those parties wishing to make statements for the record should provide a copy of their statements to the Service at the start of the hearing.

Author

The primary author of this notice is Mr. Robert M. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 19, 1990.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 90-23057 Filed 9-28-90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Plant Manihot walkerae (Walker's manioc) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list *Manihot walkerae* as an endangered species, under the authority contained in the Endangered Species Act of 1973 (Act), as amended. Walker's manioc is endemic to Tamaulipan brushland in the Lower Rio Grande Valley of south Texas and northeast Mexico. At present, one population is known from Texas. There are no recently verified populations in Mexico, although plants were collected there in the past. It is likely that the plant still occurs in suitable brush habitat. This species is threatened by brush clearing, livestock grazing, and increased urbanization and recreation.

DATES: Comments from all interested parties must be received by November 30, 1990. Public hearing requests must be received by November 15, 1990.

ADDRESSES: Comments and material concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Dr., Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Philip Clayton (see **ADDRESSES**) at (512) 888–3346 or FTS 529–3346.

SUPPLEMENTARY INFORMATION:

Background

Manihot walkerae (Walker's manioc) is a perennial herb that presently is known from only one site in the U.S. The species was first collected by Schott in 1853 at Ringgold Barracks, Starr County, Texas, but this was misidentified as *Manihot carthagenesis*, a species of tropical America (Turner 1982). Subsequent collections were made in 1888, 1940, and 1980. The type material was collected by E.J. Walker in 1940 and transmitted to H.B. Parks for identification; he in turn transmitted it to V.L. Cory. Cory sent the material for identification to Croizat, who recognized it as a new species. The species was described in 1942. Rogers and Appan (1973), in their monograph of *Manihot* (Manihotoides) for the Flora Neotropica, retained the species as *Manihot walkerae*.

This member of the family Euphorbiaceae is a profusely branched perennial herb that grows to 0.8 meters (1.6 feet). The stems are slender and the alternate leaves are palmately deeply 5-lobed with the middle lobe being 2–5 centimeters (0.8–2.0 inches) long. The flowers are white, somewhat fleshy, 5–10 millimeters (0.2–0.4 inches) long, and are either male or female. The fruit is a three-parted globular capsule about 1 centimeter (0.4 inches) in diameter. Each fruit produces three seeds.

Walker's manioc has been found at 100–200 meters (328–656 feet) elevation among thorny shrubs along the Rio Grande in south Texas, presumably in relatively deep, loamy soils, and at 41 meters (135 feet) elevation, northeast of the Rio Grande on the periphery of dense native brush in sandy-loam soil. It has also been found growing up through protective thorn shrubs on sandy prairie overlying caliche in Tamaulipas, Mexico. The species occurs in Tamulipan brushland dominated by *Acacia (acacia), Prosopis glandulosa* (mesquite), *Pithecellobium flexicaule* (Texas ebony), and *Leucophyllum frutescens* (cenizo). The exact habitat preferences of Walker's manioc are unknown.

One natural population of Walker's manioc is known in the U.S. at present. The species is historically known from the Rio Grande Plains of southern Texas and northeastern Mexico. Plants have been collected in Starr and Hidalgo Counties, Texas, and in the State of Tamaulipas, Mexico. Collections from natural habitat have been made from only seven localities. The northeastern Tamaulipas populations may still exist, but their presence has not been verified. Turner (1982) made several attempts over a 5-year period to locate the species in the vicinity of previously known sites and elsewhere in Texas, but failed to locate plants. Lonard (*in litt.*) did not find *Manihot walkerae* during searches in wooded sites along the Rio Grande in Texas. Clayton (*in litt.*) located the species in 1990 at a perviously unrecorded site in Hidalgo County, Texas.

Plants are being cultivated at the University of Texas, Austin, and the San Antonio Botanical Gardens in Texas. Brush clearing for cultivation, range improvement, and urban and recreational development has destroyed much of the suitable habitat for *Manihot walkerae*. However, the collector of the type specimen believes that *M. walkerae* still occurs in brush habitats. Turner (1982) believes that natural populations still occur along the Rio Grande in areas of previous collections, and Lonard (*in litt.*) suggested an additional area to survey in Texas.

Manihot walkerae is related to the important crop plant, *Manihot esculenta* (cassava). It may be possible to interbreed *M. walkerae* and *M. esculenta* and thus provide a valuable gene pool for the improvement of cassava. Loss of *M. walkerae* could have considerable impacts to humans, judging by the potential it might hold for food and drug purposes (Turner 1982; Clayton, pers. comm.). *M. walkerae* may contain genes that provide salt or drought tolerance, or disease resistance, to the plant. These properties would be beneficial for cassava.

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1513 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a

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report of those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4 of the Act and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act.

This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication. *Manihot walkerae* was included in the July 1, 1975, notice of review and in the June 16, 1976, proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979 (44 FR 70796), the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired; this notice of withdrawal included *Manihot walkerae*.

On December 15, 1980 (45 FR 82480), September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Manihot walkerae* was included in these notices as a category 1 species. Category 1 comprises taxa for which the Service has sufficient biological data to support proposing them as endangered or threatened.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 1 year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having been newly submitted on that date. Because *Manihot walkerae* was included in the 1980 notice, the petition to list this species was treated as being newly submitted on October 12, 1982. In 1983, 1984, 1985, 1986, 1987, 1988, and 1989, the Service made the required 1-year findings that listing of *Manihot walkerae* was warranted, but precluded by other listing actions of higher priority. Biological data, supplied by Turner (1982), fully support the listing of *Manihot walkerae*. This proposed rule constitutes the final 1-year finding required by section 4(b)(3)(B) of the Act for this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Manihot walkerae* Croizat (Walker's manioc) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Manihot walkerae* is endemic to Tamaulipan brushland, a unique ecosystem found only in south Texas and northeastern Mexico. Since the early 1900's, 95 percent of native Tamaulipan brushland has been cleared for agriculture, urban development, and recreation. In riparian areas, 99 percent of native brush has been destroyed. It is estimated that 98 percent of the lush, subtropical region of the Rio Grande delta has been cleared in the United States (USFWS 1980), and a large percentage of similar habitat has been cleared in Mexico (Collins 1984). Water development on the Rio Grande has substantially reduced river flow, resulting in altered riparian habitats and additional brush clearing. Brush is destroyed in the Lower Rio Grande Valley by mechanical clearing, herbicides, and fire (Jahrsdoerfer and Leslie 1988).

Manihot walkerae is near extinction because of extensive conversion of Tamaulipan brushland to cropland and improved pasture in the Rio Grande plains of southwestern Texas and adjoining Mexico. Land that remains in native vegetation is used for cattle production and is often severely overgrazed. Attempts to locate previously known sites for *Manihot walkerae* in Texas have been unsuccessful (Lonard, *in litt.*; Turner 1982). One new *Manihot walkerae* site was discovered recently (Clayton, *in litt.*). Any existing Mexican populations are under severe threat because the region is heavily grazed and cultivated. (Turner, *in litt.*).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known. Because of its rarity, *Manihot walkerae* is of interest to botanists, plant breeders, and drug companies. *M. walkerae* may contain genes that provide resistance to salt, drought, or disease. The species may also contain biodynamic compounds that could be useful for disease treatment. Therefore, collection is a minor but present threat.

C. *Disease or predation.* While cattle grazing or trampling may not kill mature plants with an established root system, these actions may kill seedlings and affect the reproduction of mature plants, thereby reducing recruitment rates in the population.

D. *The inadequacy of existing regulatory mechanisms. Manihot walkerae* is not currently protected by either Federal or State law in the U.S. and Mexico. The Act would provide protection and encourage active management through the "Available Conservation Measures" described below.

E. *Other natural or manmade factors affecting its continued existence.* Scarcity and limited distribution make this species vulnerable to both natural and human threats. Any further reduction in plant numbers could reduce the reproductive capabilities and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Manihot walkerae* as endangered without critical habitat. This status is appropriate because the previously known populations in the U.S. have been eliminated and only one site is known at present. The previously known population site in Mexico is in an area of heavy grazing and cultivation. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. There is only one known population of *Manihot walkerae* at present. Loss of even a few plants to activities such as collection for scientific purposes could extirpate the species. Publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. In addition, the Service does not have authority to designate critical habitat in areas outside the jurisdiction of the United States. As discussed under factor B in the Summary of Factors Affecting the Species, *Manihot walkerae* is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of: (1) Removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of a critical habitat description and map would make *Manihot walkerae* more vulnerable and increase enforcement problems. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Manihot walkerae*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affected a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known populations of *Manihot walkerae* that either occur on Federal land and/or would be affected by activities authorized, funded, or carried out by a Federal agency. However, the International Boundary and Water Commission clears brush to maintain canals on the U.S. side of the Rio Grande. The Corps of Engineers authorizes pipeline construction projects in the area. If it is determined that such activities could have an effect on *Manihot walkerae*, section 7 consultation would have to be initiated. The plant likely occurs on Federal refuge lands in south Texas.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22201 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Ecological Services Field Office, Corpus Christi, TX (see ADDRESSES).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Collins, K. 1984. Status and management of native south Texas brushlands. U.S. Fish and Wildlife Service, Ecological Services, Corpus Christi, TX. 18 pp.

Jahrsdoerfer, S.E. and D.M. Leslie, Jr. 1988. Tamaulipan brushland of the Lower Rio Grande Valley of south Texas: description, human impacts, and management options. U.S. Fish and Wildlife Service, Biological Report 88(36). 63 pp.

Rogers, D.J. and S.G. Appan. 1973. Manihot, Manihotoides (Euphorbiaceae). Flora Neotropica, Monograph No. 13, pp. 63–65. Hafner Press, New York.

Turner, B.L. 1982. Status report, *Manihot walkerae* Croizat. U.S. Fish and Wildlife Service, Albuquerque, NM. 9 pp.

U.S. Fish and Wildlife Service. 1980. Department of the Interior Habitat Preservation Plan—preservation of areas of important fish and wildlife habitat: Cameron, Hidalgo, Starr, and Willacy Counties, Texas. Albuquerque, NM. 92 pp.

Author

The primary author of this proposed rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103 (505/766–3072 or FTS 474–3072).

List of Subject in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Euphorbiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Euphorbiaceae—Euphorb family:						
Manihot walkerae	Walker's manioc	U.S.A. (TX), Mexico.	E		NA	NA

Dated: September 21, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-23040 Filed 9-28-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

DEPARTMENT OF LABOR

Shortage Number Determination for Special Agricultural Workers

AGENCIES: Office of the Secretary, United States Department of Agriculture; Office of the Secretary, United States Department of Labor.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Secretaries of Agriculture and Labor (the Secretaries) have determined jointly that the number of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the Immigration and Nationality Act (INA), to meet a shortage of workers to perform seasonal agricultural services (SAS), during fiscal year (FY) 1991, is zero.

Notice is also given that the Secretaries have calculated jointly the annual numerical limitation on the number of such aliens who should be admitted or who should otherwise acquire the status of aliens lawfully admitted for temporary residence, under section 210A of the INA. The annual numerical limitation for FY 1991 is 480,145. This number represents the upper limit on the number of aliens who may be authorized for admission or adjustment of status. The actual number of aliens to be admitted or whose status is to be adjusted for FY 1991 is the "shortage number" announced above.

DATES: This notice is effective during the period October 1, 1990, through September 30, 1991, unless superseded by a subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mr. Gary B. Reed, DOL; telephone (202) 523–6007, or Mr. Al French, USDA; telephone (202) 447–4737.

SUPPLEMENTARY INFORMATION: Section 303 of the Immigration Reform and Control Act of 1986 added section 201A to the Immigration and Nationality Act (INA). Section 210A of the INA requires that before the beginning of each FY, starting with FY 1990 and ending with FY 1993, the Secretaries determine jointly, according to a specific statutory formula, the number of additional aliens (if any) who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence to meet a shortage of workers to perform SAS. These aliens are known as replenishment agricultural workers (RAWs) and the number of such workers to be admitted in each FY is known as the "shortage number." The INA further provides that the Attorney General shall provide for the admission of a number of RAWs equal to the shortage number, or, if less, a number of RAWs equal to the annual numerical limitation which is established by a statutory formula contained in section 210A(b) of the INA. The Secretaries make the calculation of the annual numerical limitation concurrently with their determination of the shortage number. Regulations regarding the procedure used in the determination of the shortage number and calculation of the annual numerical limitation have been promulgated jointly by the Secretaries. Identical versions of the regulations were published in the **Federal Register** on January 2, 1990 (55 FR 106), and are located at 7 CFR part 1 and 29 CFR part 503. Criteria for admission as a RAW are established by the Immigration and Naturalization Service (INS) in regulations located at 8 CFR part 210a.

Because the INS was unable to complete adjudication of all special agricultural worker (SAW) applications by the end of FY 1990, the Secretaries will recalculate the annual numerical limitation prior to the end of each fiscal quarter. This will be done each time by including all those aliens who have been finally adjudicated as SAWs subsequent to any earlier determination of the annual numerical limitation, and by adjusting the number of SAWs who worked in SAS to take into account the increase in the number of reportable workers who obtained SAW status. These quarterly recalculations will continue until the Secretaries are advised by INS and the Director of the Bureau of the Census (the Director) that all applications for SAW status have been finally adjudicated. Thereafter, the annual numerical limitation will be calculated annually for the entire FY.

In recognition of the uncertainties associated with agricultural production, section 210A(a)(7) of the INA contains emergency procedures for adjusting the shortage number. The procedures through which a group or association representing employers or potential employers of individuals who perform SAS may request an increase in the shortage number are set forth in 7 CFR le.20 and 29 CFR 503.20. Until the Secretaries are advised by INS and the Director that all applicants for SAW status have been finally adjudicated, if an emergency increase in the shortage number is granted pursuant to 7 CFR le.20 and 29 CFR 503.20, but addtional RAWs would otherwise be barred from entry due to the annual numerical limitation, the Secretaries will recalculate the annual numerical limitation based upon the most recent data available from INS and the Director.

Authority: 8 U.S.C. 1161.

Done at Washington, DC, this 26th day of September, 1990.

Jack C. Parnell,

Deputy Secretary of Agriculture.

Done at Washington, DC, this 28th day of September, 1990.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 90-23151 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-01-M, 4510-23-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-180]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test a Genetically Engineered Plant-Associated Microorganism

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

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SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the University of Wisconsin to allow the field testing in Columbia County, Wisconsin, of *Pseudomonas syringae* pv. *syringae* genetically engineered by introducing the transposon, Tn*5*, into the genetic locus responsible for the synthesis of syringomycin. The assessment provides a basic for the conclusion that the field testing of the genetically engineered plant-associated micro-organism will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Liberman, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–135–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

The University of Wisconsin, Madison, Wisconsin, has submitted an application for a permit for release into the government, to field test *Pseudomonas syringae pv. syringae* genetically engineered by introducing the transposon, Tn*5*, into the genetic locus responsible for the synthesis of syringomycin. The field trial will take place in Columbia County, Wisconsin.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the genetically engineered plant-associated micro-organism under the conditions described in the University of Wisconsin application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the University of Wisconsin, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A strain derived from the phytopathogenic bacterium, *P. syringae* pv. *syringae*, is being field tested. The derived strain is less virulent than the wild-type strain. *P. syringae* pv. *syringae* is indigenous to the state of Wisconsin. The virulent wild-type strain from which the strain was derived was isolated from the proposed test site.

2. *P. syringae* pv. *syringae* was attenuated by introducing the transposon, Tn*5*, into the genetic locus responsible for the synthesis of syringomycin. Syringomycin has been identified as a virulence factor associated with brown spot disease in bean. The strain of *P. syringae* pv. *syringae* containing the Tn*5* insertion is no longer able to produce syringomycin.

3. Tn*5* is not expected to bestow on *P. syringae* pv. *syringae* plant pest characteristics. It is not expected to enhance the invasion or pathogenic characteristics of *P. syringae* pv. *syringae*.

4. Reversion of the recombinant strain would result in restoration of the virulent phenotype of the parental strain. This would not result in the introduction of a new plant pest since the parental strain is indigenous to bean fields in Wisconsin.

5. Isolates of *P. syringae* pv. *syringae* from natural sources show phenotypical and genotypic variation. Introduction of an additional variant would not be expected to disrupt the competitive balance of strains of *P. syringae* pv. *syringae* co-existing in an already diverse environment.

6. *P. syringae* pv. *syringae* will be introduced onto bean plants by two methods of inoculation. One method, inoculation of seeds, would not be expected to present a unique risk of dissemination into neighboring bean fields. The second method is the application of the bacteria to plants by an aqueous spray. This second method of inoculation will be performed under calm wind conditions to minimize dispersal by wind.

7. Monitoring for the persistence of the recombinant bacterium in the soil will be carried out post-harvest. After seed harvest, the introduced strains of *P. syringae* pv. *syringae* will be followed through the winter, and into the subsequent growing season. Roots and foliage of the rotation crop, corn, will also be sampled for these strains.

8. No human health risks are posed by the introduction of *P. syringae* pv. *syringae* carrying Tn*5*. The antibiotic resistance markers encoded for by this transposon do not target agents that are used in human anti-bacterial therapy.

9. The test site is small, approximately 1.5 acres, and is located on land that is used for experimental purposes only.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 25th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–23152 Filed 9–28–90; 8:45 am]

BILLING CODE 3410–34–M

Federal Grain Inspection Service

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the States of California and Washington, and the Kankakee, IL Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the California Department of Food and Agriculture (California), Washington Department of Agriculture (Washington), and Kankakee Grain Inspection, Inc. (Kankakee).

DATES: Comments must be postmarked on or before November 15, 1990.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

SprintMail users may respond to [PMARSDEN/FGIS/USDA].

Telecopier users may send responses to the automatic telecopier machine at 202–447–4628, attention: Paul Marsden. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the August 1, 1990, **Federal Register** (55 FR 31203). Applications were to be postmarked by August 31, 1990. California, Washington, and Kankakee were the only applicants for designation in those areas, and each applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Authority: Public Law 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: September 21, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90–23013 Filed 9–28–90; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Gibson City (IL) and Indianapolis (IN) Agencies and the State of Wyoming

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are Donald Swanstrom dba Gibson City Grain Inspection Department (Gibson City), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), and Wyoming Department of Agriculture (Wyoming).

DATES: Applications must be postmarked on or before October 31, 1990.

ADDRESSES: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone 202–447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Gibson city, located at 207 East 8th Street, Gibson City, IL 60936, Indianapolis, located at 1250 Bethel Avenue, Beech Grove, IN 46107, and Wyoming located at 1510 East 5th Street, Cheyenne, WY 82001, were designated under the Act on April 1, 1988, as official agencies, to provide official inspection services.

The designation of this official agency terminates on March 31, 1991, Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Gibson City, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Livingston County line from the ICG Railroad line;

Bounded on the East by the Livingston County line; the Ford County line; the southern Ford County line west to Interstate 57; Interstate 57 south to State Route 136;

Bounded on the South by State Route 136 west to a point approximately 10 miles west of the eastern McLean County line; and

Bounded on the West from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with the ICG Railroad line northeast to the northern Livingston County line.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Farm Service, Arrowsmith, McLean County (located inside Bloomington Grain Inspection Department's area).

An exception to Gibson City's assigned geographic area is the following location inside Gibson City's area which has been and will continue

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to be served by the following official agency:

Bloomington Grain Inspection Department: Bunge Corporation, Pontiac, Livingston County.

The geographic area presently assigned to Indianapolis, in the State of Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion, Monroe; Morgan; and Shelby Counties.

The geographic area presently assigned to Wyoming, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Wyoming, except the geographic area assigned to Denver Grain Inspection, which is as follows: Goshen County, Platte County, and those locations in Laramie County: Albin Elevator, Albin; Farmers Coop, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine bluffs Feed and Grain, Pine Bluffs.

Interested parties, including Gibson City, Indianapolis, and Wyoming, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation is each specified geographic area is for the period beginning April 1, 1991, and ending March 31, 1994. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Public Law 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: September 21, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90-23014 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-EN-M

Cancellation of Designation Issued to Glen Wallace dba Springfield Grain Inspection Department and Request for Designation Applicants in Illinois

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces that Glen Wallace dba Springfield Grain Inspection Department (Springfield), has requested the cancellation of his designation, effective March 31, 1991. A request for designation applicants is also included in this notice.

DATES: Applications must be postmarked on or before October 31, 1990.

ADDRESSES: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act (Act) specified that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

Springfield, located at 1301 North Fifteenth Street, Springfield, IL 62702 was designated under the Act on June 1, 1989, as an official agency, to provide official inspection services. The designation of this official agency was scheduled to terminate on May 31, 1992. Springfield requested the voluntary cancellation of its designation, effective March 31, 1990.

The geographic area presently assigned to Springfield, in the State of Illinois, pursuant to section 7(f)(2) of the act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Schuyler, Cass, and Menard County liners; the western Logan County line north to State Route 10: State Route 10 east to the west side of Beason;

Bounded on the East by a straight line from the west side of Beason southwest to Elkhart on Interstate 55; a straight line from Elkhart southeast to Stonington on State Route 48; a straight line from Stonington southwest to Irving on State Route 16;

Bounded on the South by State Route 16 west to Interstate 55; a straight line from the junction of Interstate 55 and State Route 16 northwest to the junction of State Route 111 and the Morgan County line; the southern Morgan and Scott County lines;

Bounded on the West by the western Scott, Morgan, Cass, and Schuyler County lines.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: East Lincoln Farmers Grain Co., Lincoln, Logan County (located inside Bloomington Grain Inspection Department's area); Chestervale Elevator Company, Chestervale, Logan County (located inside Decatur Grain Inspection, Inc.'s area); and Cargill, Inc., Florence, Pike County (located inside Quincy Grain Inspection & Weighing Service's area).

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning April 1, 1991, and ending March 31, 1994. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above or forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Public Law 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: September 21, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90-23015 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of the Hastings (NE) Agency, and the State of New York

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Hastings Grain Inspection, Inc. (Hastings), and the New York State Department of Agriculture and Markets (New York) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: November 1, 1990.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. B ox 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive order and Departmental Regulation do not apply to this action.

The Service announced that Hastings' and New York's designations terminate on October 31, 1990, and requested applications for official agency designation to provide official services within specified geographic areas in the May 1, 1990, Federal Register (55 FR 18144). Applications were to be postmarked by May 31, 1990. Hastings and New York were the only applicants for designation in those areas and each applied for the entire area currently assigned to that agency.

The Service announced the applicant names in the July 2, 1990, Federal Register (55 FR 27270) and requested comments on the applicants for designation. Comments were to be postmarked by August 16, 1990. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Hastings and New York are able to provide official services in the geographic areas for which the Service is renewing their designation.

Effective November 1, 1990, and terminating October 31, 1993, Hastings and New York are designated to provide official inspection services in their specified geographic areas, as previously described in the May 1, Federal Register.

Interested persons may obtain official services by contacting Hastings at 402-462-4254, and New York at 716-238-6266.

Authority: Public Law 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: September 21, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90-23012 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-EN-M

Food Safety and Inspection Service

[Docket No. 90-021N]

Unpaid Furlough of FSIS Employees During the Budget Sequestration Period of October 1, 1990, Through October 15, 1990

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final notice of personnel action affecting inspection services.

SUMMARY: On August 29, 1990, FSIS published a notice in the Federal Register (55 FR 35334) announcing its proposed plan to furlough all Agency employees for as much as the last 36 hours they are scheduled to work immediately preceding October 15, 1990. This document provides final notice that under the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177), as amended, effective October 1, 1990, FSIS' operating budget for fiscal year (FY) 1991 will be significantly reduced due to the sequestration of 32.4 percent of its appropriated funding.

By law, FSIS may not obligate funds in excess of the amount available under such a sequestration. Consequently, FSIS will furlough all Agency personnel, initially for 32 hours during the period October 1—October 14, 1990, in order to remain within the limits of funds available for administration of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). During this initial sequestration period, all employees of FSIS will be placed on unpaid furlough for the last 32 hours they are scheduled to work immediately preceding October 15, 1990.

Federally funded inspection provided at official establishments, including importers and exporters, will be reduced commensurate with such furloughs, effectively shutting down establishment operations during those periods.

Furlough days for the remainder of FY 1991 will be scheduled, as necessary, based on the final sequestration order to be issued October 15 by the President and will be the subject of a future notice.

FOR FURTHER INFORMATION CONTACT: Mr. William Hudnall, Deputy Administrator for Administrative Management, FSIS, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-4425.

SUPPLEMENTARY INFORMATION:

Background

Based on the August 23, 1990, initial Presidential Order sequestering funds under the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177), as amended, also known as the Gramm-Rudman-Hollings Act (hereinafter, the Balanced Budget Act), the Food Safety and Inspection Service's FY 1991 budget will be reduced by 32.4 percent effective October 1, 1990. The sequestration of funds results in an operating budget for FSIS that is below the level needed to provide current services in FY 1991.

The following events control FY 1991 sequestration actions absent agreement between Congress and the Administration on a FY 1991 budget accommodating the Balanced Budget Act requirements:

- The Congressional Budget Office issued an initial sequestration report to Congress and the Office of Management and Budget (OMB) on August 20, 1990 (55 FR 34150, August 21, 1990).
- OMB issued an initial sequester report on August 25, 1990 (55 FR 35032, August 27, 1990).
- The President issued an initial order August 25, 1990, to take effect on October 1, 1990 (55 FR 35733, August 27, 1990).
- Between October 1st and October 15th, the amounts sequestered pursuant to the initial order are required to be withheld from obligation or expenditure.
- The Director of OMB is required to issue a final report on October 15, 1990.
- On October 15th, the President is required to issue a final order, to be effective upon issuance.
- If the final order specifies that a permanent sequester is required, then the amounts withheld under the initial order may be left unchanged, reduced, incremented, or amended.

Consequently, sequestration during the period of October 1st through October 14th will be based on the President's August 25, 1990, initial order, which requires a sequestration of 32.4 percent of the Agency's appropriated funds to be applied to that 1st 2-week portion of FY 1991.

Sequestration amounts that may apply to FSIS's FY 1991 budget subsequent to October 14th based on the President's October 15 final order, are speculative at this time, and will be the subject of a future notice, if necessary.

The PPIA and FMIA require that the Secretary of Agriculture, by delegation to the Administrator of the Food Safety and Inspection Service, shall cause to be made, by inspectors appointed for that

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purpose, an examination and inspection of all livestock and poultry slaughtered for food, and food products made therefrom, and shall otherwise regulate the production and distribution of such products to assure they are wholesome, not adulterated, and properly marked, labeled and packaged. The PPIA and FMIA further provide that only inspected and passed product may be introduced into commerce. Under those laws, all establishments subject to inspection must have inspectors on duty at the establishments to inspect and pass the product being produced, or cease operations. (21 CFR part 451, *et seq.*, and 21 CFR part 601, *et seq.*, respectively).

Regulation of meat and poultry activities under the PPIA and FMIA requires annual appropriations. Federal officers and employees are legally prohibited from obligating Federal funds in excess of appropriated amounts. The Antideficiency Act, at 31 U.S.C. 1517(a), prohibits officers and employees of the United States Government from making an obligation or expenditure exceeding an apportionment. Violation of this provision is a criminal act (31 U.S.C. 1519).

Similarly, 31 U.S.C. 1341 prohibits Federal officers or employees from making obligations or expenditures exceeding the amounts available in an appropriation or fund; and 31 U.S.C. 1350 also provides criminal sanctions for violators of that provision.

31 U.S.C. 1342 also prohibits Federal officers or employees from accepting voluntary services, except in limited circumstances.

When furloughs of Federal employees are effected due to lack of funds, agencies are not authorized to permit any furloughed employee to report for or engage in any agency employment during the period of the employee's furlough. Criminal penalties apply for violation of this section as well (31 U.S.C. 1350).

The Balanced Budget Act provides that when funds provided in annual appropriations acts are sequestered, it shall be done from each affected program, project, and activity as set forth in the most recently enacted applicable appropriations act and accompanying committee reports including joint resolutions providing continuing appropriations and accompanying reports for the program, project or activity in question.

FSIS has five inspection activities for its appropriated funds: slaughter inspection, processing inspection, import-export inspection, laboratory services, and grants to States. The Balanced Budget Act also provides for a sequester of the reimbursements (industry payment for overtime and holiday services) and trust fund activities within FSIS.

There are currently about 9,000 permanent full time (PFT) employees in FSIS, approximately 82 percent of whom are directly involved in providing inspection services at official establishments. The remaining 18 percent provide technical, scientific, and administrative support.

Approximately 88 percent of the Agency's budget is spent on employee salaries and benefits. Most of the remainder of the Agency's budget is spent on fixed (nondiscretionary) costs such as space, communication systems, and direct support of inspection services such as travel, supplies, and related services (*e.g.*, laboratory analyses of product samples). Consequently, the greatest portion of the reduction in expenditures required to accommodate any sequestration of FSIS' funding must be applied against employee salaries and benefits.

Notice of Intent to Furlough Personnel

To accommodate the initial Balanced Budget Act sequestration for FY 1991, during the period of October 1 through October 14, 1990, FSIS will furlough its employees 32 hours.

Based on the Administrator's mandate to provide inspection services to the extent funding is available, furlough days will be further limited to the end of the period in question. Because different employees have differing work schedules, all employees will be furloughed the last 32 hours they are scheduled to work immediately preceding October 15, 1990.

Due to the size, scope and timing of this initial suquestration, the Administrator contemplates that no exceptions can be made to this initial FY 1991 furlough requirement.

This personnel action may yet be amended or cancelled as a consequence of legislation enacted prior to October 15, and prior to the actual furlough of FSIS employees. In that event, FSIS will try to ensure timely notification of all affected parties of such amendment or cancellation so as to minimize the potential for unncessary disruption of inspection activities.

Done at Washington, DC, on: September 27, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90-23289 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Big Eight Mile Timber Sale, North Fork Timber Sale and Alder Timber Sale Salmon National Forest, Lemhi County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, and regenerate new stands of trees in the area between Big Eight Mile Creek and the drainage of Big Timber Creek. These actions have a proposed implementation date of 1991, and are designed to produce short-term and long-term timber outputs through timber management. The project area is located approximately eight air miles southwest of Leadore, Idaho. Portions of the proposed actions are located within the 303,127 acre Lemhi Range Roadless Area. This area is now listed as No. 13–903 on the Salmon National Forest and as No. 06–903 on the Challis National Forest. The area was formerly listed as RARE II No. 4–503.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received by November 15, 1990.

ADDRESSES: Send written comments to Salmon National Forest, P.O. Box 729, Salmon, Idaho 83467.

FOR FURTHER INFORMATION: Questions concerning the proposed action and EIS should be directed to Lynn Bennett, Environmental Coordinator, Salmon National Forest, phone: (208) 756–2215.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Salmon National Forest Plan (approved January 11, 1988), which provides the overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the Desired Future Condition for the area being analyzed. This proposed action is designed to emphasize production of short-term and long-term timber outputs through timber management. The Salmon National Forest Land and Resource Management Plan assigned the potentially affected area a 5B Management Area prescription. For a detailed description of the above Management Area prescriptions, refer to Salmon National Forest Land and Resource Management Plan pages IV–129 through IV–133.

The proposed actions will occur in Management Area 5B. The emphases for the proposed actions in this area is on producing long term timber outputs through a moderate level of investment in regeneration and thinning.

An environmental assessment for a portion of this proposal has been completed (August 4, 1989). As a result of that analysis and extensive scoping, the Salmon National Forest concluded the proposal may have a significant effect on the quality of the human environment and decided to prepare this EIS. The previous scoping and analysis also identified the following potential issues related to the proposed action:

- What will be the effects of the proposal on big game habitat?
- What will be the impacts on water quality?
- How will the proposal affect the roadless character of the area?
- How will the proposal contribute to a healthy, productive forest that will economically provide timber for the market place on a sustainable basis for the present and the future?
- What will be the economics of the proposed action?

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 45 days from the date of publication of this Notice in the Federal Register. An open-house meeting will be held in Leadore, Salmon, and Idaho Falls for the purpose of identifying issues. The date, time, and location of these meetings will be published in *The Recorder-Herald* (Salmon, Idaho).

Preparation of the EIS will include the following steps.

1. Define the purpose of and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2 and 3 will be completed through the scoping process.

Step 5 will describe a range of alternatives developed in response to the key issues. One of these will be the "No Action" alternative, in which the existing roadless character of the Lemhi Range Roadless Area would be maintained. Other alternatives will be developed based on scoping.

Step 7 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

The approximate boundary of the area used for this analysis is as follows: The north boundary is Big Eight Mile Creek and the Salmon National Forest Boundary. The east boundary shall be defined by the Salmon National Forest Boundary as it runs approximately nine air miles south east to the south east quarter of Section 4, T 14 N, R 26 E. From this point the south boundary runs up the north ridge of Sheephorn Peak. The west boundary starts at Sheephorn Peak and meanders in a north west direction through Rocky Peak and Gun Sight Peak, and joins the north boundary at Big Eight Mile Creek.

Of the approximately 23,000 acres in this analysis area, an estimated 18,000 acres are within the Lemhi Range Roadless Area boundary on the Salmon National Forest. These 18,000 acres are in the east central portion of the Lemhi Range Roadless Area. In addition to the boundaries defined above, the scope of analysis for the issue "effects on roadless character" will be the entire 303,127 acre Lemhi Range Roadless Area.

The proposed management activities would be administered by the Leadore Ranger District of the Salmon National Forest in Lemhi County, Idaho.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process (the next 45 days following publication of this Notice in the Federal Register) and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in March, 1991. At that time the EPA will publish an availability notice of the Draft EIS in the Federal Register. The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the availability notice in the Federal Register.

The Forest Service believes it is important to alert reviewers of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and so that it alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.)

The final EIS is expected to be released in May, 1991. The Forest Supervisor for the Salmon National Forest, who is the responsible official for the EIS, will then make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision, also made available in May, 1991. An availability notice of the Final Environmental Impact Statement and Record of Decision will be published by the EPA in the Federal Register.

Dated: September 21, 1990.

John E. Duma,

Forest Supervisor, Salmon National Forest.

[FR Doc. 90-23136 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-11-M

Timberline Lodge Winter Sports Resort; Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, with assistance from the firm of Sno-engineering Inc. (Bellevue, WA), will prepare an environmental impact statement (EIS) for a proposal to impose a winter sports recreation program within the boundaries of the Timberline special use permit on the Zigzag Ranger District, Mt. Hood National Forest, Clackamas County, Oregon. The Forest Service invites written comments and suggestions on the scope of the analysis. In addition, Forest Service gives notice of the full environmental analysis and decision making process that will occur on the Forest Service proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be submitted by November 15, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Michael Edrington; Forest Supervisor; Mt. Hood National Forest; 2955 NW Division Street; Gresham, Oregon 97030.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Dan Crittenden, Timberline Ski Area Planner, Zigzag Ranger District, Mt. Hood National Forest, 70220 E. Highway 26, Zigzag, Oregon 97049, phone (503) 622-3191.

SUPPLEMENTARY INFORMATION: A final environmental statement was prepared for the Timberline winter sports resort in 1975. The permittee R.L.K. Company has now proposed additional development beyond the scope of the 1975 statement. A new environmental impact statement (EIS) will be written to replace the 1975 statement and evaluate the new development proposals.

In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this site. One alternative will consider no additional development (No Action). Another alternative will consider the development specified in the proposal filed by R.L.K. Company on September 18, 1990. A range of alternatives will be developed and examined to deal with the significant issues developed during the scoping process.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will continue seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be intersted in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Oregon Department of Transportation (ODOT) will be invited to participate as cooperating agency. ODOT has expressed an interest in any potential impacts to State Highway 26.

The Mt. Hood National Forest has scheduled three meetings for the public to provide comments they as follows: October 11 and 16, 1990, 7:30 pm at the Mt. Hood's Supervisor Office and October 27, 1990, 2:00 p.m. at Wy East day lodge complex. Notice of meeting dates and locations will be published in local newspapers and newsletter and posted in public buildings well in advance of the meetings.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by May 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Timberline Lodge Area participate at that time.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental reviews of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S.C. 519, 553 (1978). Also enviromental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period on the draft EIS ends, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by July 1991. In the final EIS, the Forest Service is required to respond to the comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Michael S. Edrington, Forest Supervisor, is the responsible official. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR part 217.

Dated: September 25, 1990.

Judith E. Lavin,

Deputy Forest Supervisor.

[FR Doc. 90-23150 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-11-M

Shasta Costa Timber Sale and Integrated Resource Projects Siskiyou National Forest, Curry County, OR; Draft Environmental Impact Statement, Extension of Comment Period

AGENCY: Pacific Northwest Region, Forest Service USDA.

ACTION: Notice of extension of comment period.

SUMMARY: The Notice of Availability of the Draft Environmental Impact Statement for the Siskiyou National Forest Shasta Costa Timber Sales and Integrated Resource Projects was published in the **Federal Register** on July 27, 1990.

The closing date for receiving comments on the Draft Environmental Impact Statement is hereby extended from September 25, 1990 to October 11, 1990. This extension is at the request of the US Environmental Protection Agency.

FOR ADDITIONAL INFORMATION CONTACT: Kurt Wiedenmann, Project Leader, Shasta Costa Project, Gold Beach Ranger District, 1225 S. Ellensburg Avenue, Gold Beach, Oregon 97444; telephone (503) 247-3651.

Dated: September 20, 1990.

Abel M. Camarena,

Acting Forest Supervisor, Siskiyou National Forest.

[FR Doc. 90-23079 Filed 9-28-90; 8:45 am]

BILLING CODE 3410-11-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 90-2-86CD]

1986 Cable Royalty Distribution Proceeding

AGENCY: Copying Royalty Tribunal.

ACTION: Notice concluding 1986 cable distribution proceeding.

SUMMARY: The Tribunal annouces that no more controversies exist concerning the distribution of the 1986 cable copyright royalties. Accordingly, the proceeding is concluded.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., suite 450, Washington, DC 20036 (202-653-5175).

SUPPLEMENTARY INFORMATION: On March 7, 1990, the Tribunal commenced the 1986 cable copyright royalty distribution proceeding, noting that although there were no Phase I controversies, there existed four Phase II controversies concerning the distribution of cable fees to copyright owners. 55 FR 8100.

The parties in all four Phase II categories have subsequently informed the Tribunal that these controversies no longer exist. Accordingly, the 1986 cable copyright royalty distribution proceeding is hereby concluded.

Dated: September 25, 1990.

J.C. Argetsinger,

Chairman.

[FR Doc. 90-23108 Filed 9-28-90; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, part 203, Improper Business Practices and Personal Conflicts of Interest; No Form; Control Number 0704-0277.

Type of Request: Extension to an existing collection.

Average Burden Hours Minutes per Response: 100 hours.

Responses per Respondent: One.

Number of Respondents: 1,000.

Annual Burden Hours: 100,000.

Annual Responses: 1,000.

Needs and Uses: DoD FAR Supplement, part 203.170, requires contractors to annually report if they have provided compensation to former DoD employees. This requirement is necessary to comply with Public Law 99-500, section 931.

Affected Public: Businesses or other for-profit; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: September 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-23098 Filed 9-28-90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Renewal of the Defense Intelligence Agency Advisory Board

AGENCY: Office of the Secretary, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of Defense published a notice on September 17, 1990, 55 FR 38126. They inadvertently identified the "Strategic Defense Initiative Advisory Committee." This organization should have read "Defense Intelligence Agency Advisory Board." This document is published to correct the error. All other information remain unchanged.

Dated: September 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 90-23081 Filed 9-28-90; 8:45 am]

BILLING CODE 3810-01-M

Women in the Services Advisory Committee Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of DACOWITS is to assist the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATES: October 21-24, 1990 (Summarized agenda follows).

ADDRESSES: Sheraton Colorado Springs Hotel, 2886 South Circle Drive, Colorado Springs, Colorado, unless otherwise noted in agenda.

AGENDA: Sessions will be conducted daily and will be open to the public. The agenda will include the following:

Sunday, October 21, 1990, 8 a.m.-7:30 p.m.

No-host Breakfast (current DACOWITS members only); Conference registration; DoD Sex Roles in the Active Duty Military Survey briefing; Get Acquainted Luncheon (current DACOWITS members, military representatives, legal advisors, and liaison officers only); Force Restructuring briefing; Training and Deployment of Women in the Reserve Forces briefing; Subcommittee Sessions; and Social.

Monday, October 22, 1990, 8 a.m.-10 p.m.

Official Opening Ceremony; Subcommittee Sessions; OSD Luncheon (by invitation only); and OSD Reception and Dinner (by invitation only).

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Tuesday, October 23, 1990, 6:15 a.m.–8 p.m.

Field trip to the U.S. Air Force Academy and Cheyenne Mountain Air Force Base, hosted by the U.S. Air Force; and Executive Committee Mark-up.

Wednesday, October 24, 1990, 8 a.m.–2:30 p.m.

No-host Breakfast (current DACOWITS members only); Individual Review of Resolutions; Members of the Public Presentations; Air Force Gender Neutral Accession Program briefing; New DACOWITS Chair Luncheon; and General Business Session.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mary C. Pruitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122 or, after October 1, 1990, (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference.

(1) Members of the public will not be permitted to attend official OSD luncheon or reception and dinner.

(2) All business sessions, to include the Executive Committee meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 5.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentation from members of the public will be permitted only on Wednesday, October 24 before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by October 5 and make available 100 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy either before or by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee meetings, or the Business Session on Wednesday, October 24.

Dated: September 18, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–23080 Filed 9–28–90; 8:45 am]

BILLING CODE 3810–01–M

Chlorofluorocarbons (CFCS) Advisory Committee Meeting

ENVIRONMENTAL: Chlorofluorocarbons (CFCs) Advisory Committee.

ACTION: Notice of Subcommittee II meeting.

SUMMARY: This is the second CFC Advisory Subcommittee II meeting to discuss the research approach and data needs.

DATES: Tuesday, October 23, 1990.

ADDRESSES: Litton Industries 490 L'Enfant Plaza East, SW., Suite 8206 Washington, DC 20024–2179.

FOR INFORMATION: Mr. Mark V. Stanga (202) 863–4201 Due to limited space and security considerations please contact Aloyd Karmali (703) 934–3187 for attendance information and admission number.

Dated: September 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 90–23082 Filed 9–28–90; 8:45 am]

BILLING CODE 3810–01–M

Chlorofluorocarbons (CFCS) Advisory Committee Meeting

ENVIRONMENTAL: Chlorofluorocarbons (CFCS) Advisory Committee.

ACTION: Notice of Subcommittee III Meeting.

SUMMARY: This is the first CFC Advisory Subcommittee III meeting to discuss the data needs and proposed methodology for responding to the Advisory Committee questions regarding replacing ozone-depleting chemicals whose production is restricted by the Montreal Protocol.

DATES: Tuesday, October 16, 1990.

ADDRESSES: Harris Corporation, 1201 E. Abingdon Drive, Suite 500, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sands, (407) 724–3711. Due to limited space and security considerations please contact Gina Godfrey (703) 934–3796 for attendance information and admission number.

Dated: Septemer 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–23083 Filed 9–28–90; 8:45 am]

BILLING CODE 3810–01–M

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Friday, November 9, 1990 (9 a.m. to 5 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Threat Modeling and Simulation.

Dated: September 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–23084 Filed 9–28–90; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 6, 1990; Tuesday, November 13, 1990; Tuesday, November 20, 1990; Tuesday, November 27, 1990 at 10 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and priviledged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: September 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–23085 Filed 9–28–90; 8:45 am]

BILLING CODE 3810–01–M

Determination

AGENCY: Office of the Secretary, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of Defense published a determination on June 26, 1990. 55 FR 25993. In the table for Aluminum Oxide, Requirements column, first line, change 347,000 to 374,000. This document is published to correct the transposition of numbers. All other information remain unchanged.

Dated: September 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–23099 Filed 9–28–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on the Extension of Dormant Munitions Storage Life and Insensitive High Explosives Research and Development will meet on 16 October 1990, from 8 a.m. to 5 p.m. at ASD Detachment 24 and AFATL, Eglin AFB, Florida, and on 17 October 1990, from 8 a.m. to 5 p.m. at the Air Force Engineering & Services Center, Tyndall AFB, Florida

The purpose of this meeting is to gather information in support of the SAB study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (1).

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–23101 Filed 9–28–90; 8:45 am]

BILLING CODE 3810–01–M

USAF Scientific Advisory Board; Meeting

September 24, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Post Deployment Software Support (PDSS) will meet on October 22, 1990 from 9:00 AM to 11:00 AM at Headquarters Air Force Logistics Command (AFLC), Wright-Patterson AFB, OH.

The purpose of this meeting will be to present the results of the PDSS study to the Commander, AFLC. This meeting will involve discussions of classified defense and contractor proprietary matters listed in section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–23102 Filed 9–28–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management

AGENCY: Military Traffic Management Command (MTMC)

ACTION: Carrier disqualification resulting in removal from Department of Defense Personal Property Program.

SUMMARY: The Military Traffic Management Command (MTMC) will begin to automatically terminate Department of Defense (DOD) carrier approval and return Letters of Intent for carriers who are disqualified, worldwide, for one year or more. Because physical, organizational, and/or financial changes may occur during a disqualification period of one-year or more, the carrier must apply for reapproval for participation in the DOD Personal Property Program. Therefore, MTMC requests public comment on the proposed insertion of the following sentences into the Personal Property Traffic Management Regulation, DOD 4500.34R, and the Tender of Service, Appendix A:

ITEM (Separate numbers will be affixed for each regulation, as appropriate):

Carriers that are disqualified worldwide, from participating in the DOD Personal Property Program for one year or more, will automatically have their DOD carrier approval terminated, and Letters of Intent (LOIs) returned. If, after the disqualification period has ended, the carrier desires to do business with DOD, it must apply for DOD approval as a new carrier.

Note: This same policy will apply to carriers that are debarred or suspended as listed in Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs, published by U.S. General Services Administration, Office of Acquisition Policy.

DATES: Comments must be received by October 31, 1990.

ADDRESSES: Comments may be addressed to: Headquarters, Military Traffic Management Command, ATTN:

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MTPP-C, (Mrs. Guzzardo), room 406, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mrs. Rosemarie F. Guzzardo at (703) 756-1190, or Mrs. Mary Sullivan at (703) 756-1784.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90-23067 Filed 9-28-90; 8:45 am]

BILLING CODE 3710-08-M

Defense Contract Audit Agency

Privacy Act of 1974; Delete a Record System

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Deletion of a record system.

SUMMARY: The Defense Contract Audit Agency proposes to delete one record system to its inventory of record systems subject to the Privacy Act of 1974, as amended 5 U.S.C. 552a).

DATES: Effective without further notice on October 1, 1990.

ADDRESSES: Send any comments to Mr. Dave Henshall, ATTN: CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178. Telephone (202) 274-4400.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency record systems, as prescribed by the Privacy Act of 1974 (5 U.S.C. 552a), have been published in the Federal Register as follows:.

50 FR 22943, May 29, 1985 (DoD Compilation, changes follow); 50 FR 50339, Dec. 10, 1985; 51 FR 18017, May 16, 1986; 54 FR 37360, Sept. 8, 1989; 54 FR 43316, Oct. 24, 1989; 54 FR 46758, Nov. 7, 1989; 55 FR 6618, Feb. 27, 1990; 55 FR 21917, May 30, 1990 (DCAA Address Directory); 55 FR 36847, Sept. 7, 1990.

Dated: September 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 240.2

SYSTEM NAME:

Statements of Employment and Financial Interest (50 FR 22889, May 29, 1985).

REASON:

This system is satisfactorily addressed by Office of Government Ethics record system notice OGE/GOVT-2, Confidential Statements of Employment and Financial Interests (55 FR 6330, February 22, 1990).

[FR Doc. 90-23068 Filed 9-28-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Chapter 1 Migrant Education Coordination Program for State Educational Agencies

ACTION: Notice of proposed funding priorities for fiscal years 1991 and 1992.

SUMMARY: The Secretary of Education proposes to establish absolute priorities for fiscal years 1991 and 1992 grant competitions under the Chapter 1—Migrant Education Coordination Program for State Educational Agencies. Under the priorities and as mandated by statute, funds would be reserved for a project that addresses a national system for credit exchange and accrual. Remaining funds would be reserved for projects that address one of the 7 additional priorities developed in consultation with the States, that are designed to improve the interstate and intrastate coordination among State and local educational agencies of the educational programs available for migratory students.

DATES: Comments must be received on or before October 31, 1990.

ADDRESSES: Comments should be addressed to Dr. Francis V. Corrigan, Office of Elementary and Secondary Education, U.S. Department of Education, room 2145, 400 Maryland Avenue, SW., Washington, DC 20202-6135. Telephone: (202) 401-0740.

SUPPLEMENTARY INFORMATION: Authority for the Chapter 1—Migrant Education Coordination Program for State Educational Agencies is contained in section 1203 of the Elementary and Secondary Education Act of 1965. Under this program, awards are made to State educational agencies (SEAs) to improve the inter- and intrastate coordination of the educational programs available for migratory students. The statute directs the Secretary to make awards to SEAs in consultation with, and with the approval of, the States. The statute also directs the Secretary to fund at least one project that addresses a national system for credit exchange and accrual.

To foster the desired State review and consultation, the Director of the Office of Migrant Education summarized fiscal year 1990 priorities and those proposed for fiscal years 1991 and 1992 in a survey distributed to all SEA directors of migrant education requesting them to rank the priorities and recommend additional ones. Twenty-one State directors responded to the survey. Respondents represented the variety of State programs, including States receiving large and small allocations, homebase and upstream States, and States from all three migrant streams. The Secretary has considered the results of the survey, as well as the input of State directors at professional meetings and conferences of migrant educators.

The proposed priority to establish a national project for a system of credit exchange and accrual is required by statute and is ranked first. The Secretary believes that the second proposed priority, the establishment of a stop-over migrant service center, warrants a higher ranking than the remaining proposals because of the significant recruitment and coordination services that can be provided annually to a large number of migrant children and their families who pass through a particular State en route to locations elsewhere. As noted in the discussion of public comment on the October 23, 1989 final regulations for the Chapter 1 Migrant Education Program (54 FR 43238), the Secretary believes that Section 1203 funds are a particularly good source of support for this type of project since the children passing through a stopover site will likely remain in the State for too short a period to generate adequate funding for the project out of the State's section 1201 allocation.

The Secretary believes that the ordering of the remaining proposed priorities best meets the coordination needs of the Migrant Education Program and is consistent with the expressed needs and concerns of the States.

If these proposed priorities are selected as final priorities, one or more of them may be addressed by continuing to fund existing projects for additional years, or by funding wholly new projects.

Final priorities will be established on the basis of public comment and other relevant Departmental considerations, and will be announced in a notice in the Federal Register. A notice inviting applications for this competition will be published at that time, after which application packages will be available. This notice of proposed priorities does not solicit applications, and Department of Education (ED) staff will not review concept papers or preapplications.

Proposed Absolute Priorities

In accordance with the Education Department General Administrative Regulations (EDCAR) in 34 CFR 75.105(c)(3), the Secretary proposes to establish the following absolute priorities under the Migrant Education Coordination Program for State Educational Agencies. For the 1991 and 1992 grant competitions, the Secretary will announce, through a notice published in the Federal Register the absolute priorities for this program selected from the types of projects proposed in this notice. The publication of these proposed priorities does not bind the Department of Education to fund projects in these areas, except as otherwise directed by statute. Moreover, the publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Priority 1 is required by statute and may be funded by grant or contract. The publication of the other proposed priorities in this notice neither binds the Department of Education to fund projects in any or all of these areas nor prevents it from funding these projects by contract.

A directory of proposed priorities is listed first for convenience of review, with discussion of each priority further in this notice.

Priority 1. Establishing a National Project for a System of Credit Exchange and Accrual.
Priority 2. Establishing a Migrant Stop-Over Site Service Center.
Priority 3. Improving the Coordination and Delivery of Preschool Services to Migratory Children.
Priority 4. Improving Coordination of Educational Opportunities for Migratory Children through Parental Involvement.
Priority 5. National Association of State Directors of Migrant Education (NASDME) Analysis and Support.
Priority 6. Improving Coordination of Interstate and Intrastate Identification and Recruitment of Currently Migratory Children.
Priority 7. Dropout Prevention for Migrant Students.
Priority 8. Improving Coordination of Educational Programs and Oportunities for Migratory Children in Summer Programs.

Priority 1. Establishing a National Project for a System of Credit Exchange and Accrual

Under this priority, as required by statute, the Secretary would fund a project to develop and establish a national program of credit exchange and accrual to help currently migratory students meet high school graduation requirements and receive their high school diplomas.

The project would build upon the existing Migrant Student Record Transfer System (MSRTS). MSRTS tracks credits earned by students towards their curernt school district's graduation requirements, but is not a vehicle for ensuring that credits earned in one jurisdiction will count towards graduation requirements in another State or locality. The grantee would work with SEAs to develop a system whereby credits earned by migrant students could be uniformly acknowledged, transferred, and counted towards graduation requirements among the various States and school districts. The project would take into account the varying SEA and local educational agency regulations and policies concerning credit accrual, credit transfer, and graduation requirements.

The project would also utilize findings from recent studies on secondary education for migratory students, such as the Secondary Dropout Prevention Program and ED's *Handbook of Effective Migrant Education Practices.*

Priority 2. Establishing a Migrant Stop-Over Site Service Center

Under this priority, the Secretary would fund a project that would provide educational, health, recreation, and other services at a stopover site used by migrant children and their families who are migrating to work at locations in other States. Through recruitment efforts at the site, the project would identify migratory children and inform their parents or guardians of educational services available in the locations to which they are planning to travel, and inform officials in these destinations of the expected arrival of the children. The project would also be responsible for establishing linkages to Department of Labor, Head Start, health care and other services that benefit migrant children. The project's location must enable it to serve large numbers of migrant children and their families annually through cooperative efforts of various Federal, State and local agencies, and its staff must possess adequate expertise and experience to identify and recruit migrant children, and to set up quick education linkages in many States.

Priority 3. Improving the Coordination and Delivery of Preschool Services to Migratory Children

Under this priority, the Secretary would award a grant to one or more SEAs to establish one or more local demonstration projects that implement innovation methods to improve the coordination and operation of preschool services across school district or State boundaries or both. The innovative practices for coordinating and serving migrant preschool children, especially currently migratory preschool children, would be designed by the grantee and operationalized at the local demonstration projects based on a review of current research on preschool education, including current ED studies of preschool education and ED's *Handbook of Effective Migrant Education Practices.*

After implementing innovative practices through the local demonstrations, the grantee would identify the particular innovative techniques employed at the demonstration sites, as well as the effectiveness, costs, and cost-effectiveness of these techniques. In addition, as a subsidiary focus, the grantee would develop and disseminate appropriate training materials and conduct, in cooperation with ED, a limited number of training workshops to assist other SEA and LEA personnel in coordinating and operating preschool services for migrant children.

Priority 4. Improving Coordination of Educational Opportunities for Migratory Children Through Parental Involvement

Under this priority, the Secretary would award a grant to one or more SEAs to establish one or more local demonstration projects that implement innovative methods to coordinate and conduct—across State or school district boundaries—parental involvement activities for migrant children. The innovative practices for coordinated parent involvement activities would be designed by the grantee and operationalized at the local demonstration projects. The design would be based on a review of current research and practices related to parent involvement, including ED's *Handbook of Effective Migrant Education Practices.*

After implementing innovative practices through local demonstrations, the grantee would identify the particular innovative techniques that were employed at the demonstration sites, as well as the effectiveness, costs, and cost-effectiveness of these techniques. As a subsidiary focus, the grantee would develop and disseminate appropriate training materials. The grantee would conduct, in cooperation with ED, a limited number of training workshops to assist other SEA and LEA personnel in coordinating and conducting activities for the parents of migrant children.

Priority 5. National Association of State Directors of Migrant Education (NASDME) Analysis and Support

Under this priority, the Secretary would support a project for State Directors of Migrant Education that would (1) Improve their ability to coordinate programs and projects among the States and (2) improve the

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quality of those programs and projects. The project would enhance the State directors' collective efforts to provide analysis, program implementation, management and improvement activities; conduct special committee meetings on program requirements or initiatives common to all SEAs such as evaluation, MSRTS, credit accrual, or quality control; engage in special coordination endeavors within the migrant education program and with other Federally funded programs; and ensure dissemination and specific collaborative efforts among Federal, State and local staff pertaining to migratory students and their families. Additional activities to enhance interstate coordination would include attention to technological applications, comprehensive data reporting requirements, policy development, and technical assistance. To support this operation, the funded SEA would receive financial support to maintain a small NASDME support staff to assist State directors in performing the above-mentioned coordination activities. The NASDME staff would also assemble, maintain and disseminate information on exemplary program practices, and work in conjunction with MSRTS to provide a data bank on exemplary programs. Funds would also be made available to help State directors defray the costs of attending NASDME national and subcommittee meetings and other related professional activities.

Priority 6. Improving Coordination of Interstate and Intrastate Identification and Recruitment of Currently Migratory Children

Under this priority, the Secretary would fund a project that would build upon previous identification and recruitment (I&R) studies, MSRTS data, and ongoing practices in I&R. The project would be designed for the purpose of more rapidly identifying migrant families as they move from school district to school district. Presently, States and their operating agencies use different types of notification systems to inform potential receiving school districts that new migrant families will either be arriving or that they may have already arrived in the receiving school districts. Identifying and assessing the different notification systems used would be the major task of this project. Following assessment of the systems, recommendations would be made to the SEAs and the Secretary concerning which systems work best and which are the ones most easily replicated. Criteria to assess the efficacy of the notification systems would include: (a) Frequency and accuracy of identification and recruitment of previously unidentified currently interstate migratory children in the receiving State; and (b) The number of currently migratory children that each notification system identifies for enrollment in two or more school districts during a 12-month period.

Priority 7. Dropout Prevention for Migrant Students

Under this priority, the Secretary would fund a local demonstration project to help two or more States adopt and institutionalize model programs for jointly assisting high-risk currently migratory students who are potential or actual dropouts from secondary school and who would benefit from special services in those States. The project would utilize a variety of reserach and operational projects such as Migrant Education Secondary Assistance project (MESA), the Interstate Migrant Secondary Team Project, Migrant Dropout Model, ED's *Handbook of Effective Migrant Education Practices*, and the Migrant Attrition Project (MAP) to develop a strategy for improving retention rates and recruiting the dropouts back into the classroom.

The project would provide information and practical approaches to State directors and specialists on identifying potential dropouts, preventing dropout, reducing attrition rates, and expanding migrant education services to dropouts (including alternative schooling programs such as work-study projects). As a subsidiary focus, the project would develop and disseminate appropriate training materials and conduct a limited number of training workshops for SEA personnel to assist them in addressing the dropout problem within and among States.

Priority 8. Improving Coordination of Educational Programs and Opportunities for Migratory Children in Summer Programs

Under this priority, the Secretary would fund a project to identify issues related to coordinating migrant education summer programs with regular school programs and improve communications between sending and receiving States in which migratory children enroll in summer programs. The project would: (1) Examine the varieties of summer migrant programs in terms of their duration, costs, intensity, and methods of instruction; (2) Analyze the short- and long-term effects selected summer migrant education programs have upon continued schooling and graduation from high school; (3) Organize workshops to develop training materials to facilitate improved coordination among SEAs and LEAs serving the same children in receiving and sending schools; and (4) Analyze the additional costs of serving migratory children in various types of summer programs compared to costs of serving those children in regular school programs.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

The Secretary invites public comment on the merits of the proposed priorities, including suggested modifications.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in room 2145, FOB-6, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 2783.

(Catalog of Federal Domestic Assistance Number 84.144, Chapter 1—Migrant Education Coordination Program for State Educational Agencies)

Dated: September 24, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-23005 Filed 9-28-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM91-2-20-000]

Algonquin Gas Transmission Co. Proposed Changes in FERC Gas Tariff

September 24, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 20, 1990, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed to be effective October 1, 1990

27 Rev Sheet No. 211
23 Rev Sheet No. 214
4 Rev Sheet No. 220

Algonquin states that it is filing 4 Rev Sheet No. 220 pursuant to section 4 of Rate Schedule ATAP of Algonquin's FERC Gas Tariff permitting the tracking of changes in the rates for the service underlying Rate Schedule ATAP as set forth in Texas Eastern Transmission Corporation's filing of August 31, 1990 in Docket Nos. RP90-161-000 and TM91-1-17-000. Furthermore, Algonquin states that pursuant to sections 10 and 9 of Rate Schedules STB and SS-III it is filing 27 Rev Sheet No. 211 under Rate Schedule STB and 23 Rev Sheet No. 214 under Rate Schedule SS-III to track rate changes in the underlying services provided by Texas Eastern's Rate Schedules SS-2 and SS-3.

Algonquin also states that the effect of the instant changes on Rate Schedule ATAP is to increase the commodity rates by $0.0004 per MMBtu with a minimum rate of $0.0621 and a maximum rate of $0.2190 per MMBtu while the interim commodity rate increased to $0.5553 per MMBtu. The effect under Rate Schedule STB is to increase the Withdrawal rate by $0.0005 to $0.0917 per MMBtu. The effect under Rate Schedule SS-III is to increase the FDDQ Withdrawal rate by $0.0005 to $0.0919 per MMBtu and to increase the Non-FDDQ Withdrawal rate by $0.0005 to $0.2151 per MMBtu.

Pursuant to section 4.2(c) of Rate Schedule ATAP, section 10.3 of Rate Schedule STB and section 9.3 of Rate Schedule SS-III, Algonquin is proposing an effective date of October 1, 1990 to coincide with the effective date of Texas Eastern's underlying filing.

Algonquin notes that a copy of the instant filing was served upon each of the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23103 Filed 9-28-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-16-000]

National Fuel Gas Supply Corp. Proposed Changes in FERC Gas Tariff

September 24, 1990.

Take notice that on September 20, 1990, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective November 1, 1990.

Fourth Revised Sheet No. 71.1
Third Revised Sheet Nos. 71-A.1 through 71-A.2
Fourth Revised Sheet No. 71-B.1
Sixth Revised Sheet No. 71-C
Original Revised Sheet No. 71-C.1
Fourth Revised Sheet Nos. 72.1 through 72.3
Third Revised Sheet No. 72.4
Third Revised Sheet Nos. 72-A-1 through 72-A-7
Fourth Revised Sheet Nos. 72-B.1 through 72-B.4
Third Revised Sheet Nos. 72-B.5 through 72-B.7
Original Revised Sheet No. 72-C.1

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of section 20 of the General Terms and Conditions to National's FERC Gas Tariff, First Revised Volume No. 1. National further states that its pipeline-suppliers which have received approval to bill take-or-pay charges to National are: Columbia Gas Transmission Corporation, CNG Transmission Corporation, Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, and Tennessee Gas Pipeline Company.

National notes that copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23104 Filed 9-28-90; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration

Proposed Rate Adjustment, Public Comment Forum, and Opportunities for Public Review and Comment; Jim Woodruff Project

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of extension of comment period and change in effective date of rate adjustment.

SUMMARY: Southeastern published a proposal to revise existing schedules of rates and charges applicable to the sale of power from the Jim Woodruff Project effective for the period, February 20, 1991, through September 19, 1995, in 55 FR 32966 (August 13, 1990). A Public Information and Comment Forum was held September 13, 1990, in Tallahassee, Florida.

Pursuant to the request of several customers, Southeastern decided to have an additional public comment forum. Southeastern published a notice of the public comment forum in the Federal Register of September 13, 1990, 55 FR 37734 to be held at 10 a.m. on October 30, 1990, in Tallahassee, Florida. At the forum on September 13, 1990, Southeastern and the customers agreed to extend the end of the comment period to 60 days after the Forum on October 30, 1990. This extension necessitates a change in the effective date for the rate period.

DATES: The end of the comment period will be extended from November 16, 1990, until December 31, 1990. The revised rate schedules for the Jim Woodruff Project are now proposed to be effective for the period April 20, 1991, through September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Power Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-9911.

Issued in Elberton, Georgia, September 20, 1990.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 90-23160 Filed 9-28-90; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

Merlin E. Zitzner; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous Federal Register Notice (FR Doc. 90-17846) published at page 31231 of the issue for Wednesday, August 1, 1990.

Under the Federal Reserve Bank of Chicago, the entry for Merlin E. Zitzner is amended to read as follows:

1. *Merlin E. Zitzner,* to acquire an additional 2.23 percent and thereby acquire control of The Baraboo Bancorporation, Inc., Baraboo, Wisconsin, and thereby indirectly acquire The Baraboo National Bank, Baraboo, Wisconsin; Green Lake State Bank, Green Lake, Wisconsin; and The State Bank of Viroqua, Viroqua, Wisconsin.

Comments on this application must be received by October 16, 1990.

Board of Governors of the Federal Reserve System, September 25, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-23114 Filed 9-28-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Establishment

Pursuant to section 501(j) of the Public Health Service Act, 42 U.S.C. 290aa(j) (1990), and the Federal Advisory Committee Act, 5 U.S.C. appendix 2 (1990), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, announces the establishment, effective August 31, 1990, of the following committee:

Drug Testing Advisory Board, NIDA

Unless renewed by appropriate action prior to expiration, the Drug Testing Advisory Board, NIDA, shall terminate 2 years from the date this charter is approved.

Dated: September 21, 1990.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-23177 Filed 9-28-90; 8:45 am]

BILLING CODE 4160-20-M

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published monthly, and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division ofApplied Research, National Institute on Drug Abuse, Room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies, sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800-627-8200.
American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408-727-5525.
American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100.
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866.
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.
Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312-880-6000.
CBC Clinilab, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840, (name changed: formerly Chem-Bio Corporation).
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810.
Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117.
Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500.
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917.
CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263.
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006.
DrugScan, Inc., P. O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310
ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601-236-2609
Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205-9996, 205-934-0965
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267
Harris Medical Laboratory, P. O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817-878-5600
HealthCare/Preferred Laboratory, 3011 W. Grand Boulevard, Detroit, MI 48202, 313-875-2112
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961
Laboratory Specialists, Inc., P. O. Box 4350, Woodland Hills, CA 91365, 800-331-8570, (name changed: formerly Abused Drug Laboratories).
Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203-334-6157
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800-533-1710/507-284-3631
Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800-281-0089
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515
MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612-636-7466
Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414-257-7439
Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309-672-4928,
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 312-595-3888 ext.671
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100 (name changed: formerly Maryland Medical Laboratory, Inc.).
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-3050; (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361
PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201-769-8500.
PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177.
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600.
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400.
Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614-889-1061.
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-3537.
Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle, NC 27709, 919-361-7770.
Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303-799-3822.
Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800-631-5250.
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601-342-1286.
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010; (name changed: formerly International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447; (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8175 Presidential Drive, Atlanta, GA 30340, 404-934-9205; (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301; (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520.
South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219-234-4176.
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800-338-0166.
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405-272-7052.
St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314-577-8628.

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

[FR Doc. 90-23257; Filed 9-28-90; 8:45am]

BILLING CODE 4160-20-M

Centers for Disease Control

National Committee On Vital and Health Statistics (NCVHS); Subcommittee on Long-Term Care Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting (working session).

Name: NCVHS Subcommittee on Long-Term Care Statistics.

Time and date: 9 a.m.-5 p.m., October 18, 1990.

Place: Room 303A-305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this working session is for the Subcommittee to discuss its report to the NCVHS concerning the nursing home resident assessment system. No public testimony will be taken.

Contact person for more information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number (301) 436-7050.

Dated: September 21, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-23068 Filed 9-28-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90M-0273]

Grain Processing Corp.; Premarket Approval of Pure-Dent® B851 Absorbable Dusting Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Grain Processing Corp., Muscatine, IA, for premarket approval under the Medical Device Amendments of 1976, of Pure-Dent® B851 Absorbable Dusting Powder, intended for use as a lubricating powder for surgical gloves. After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 10, 1990, of the approval of the application.

DATES: Petitions for administrative review by October 31, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

SUPPLEMENTARY INFORMATION: On December 20, 1989, CDRH received from Grain Processing Corp., Muscatine, IA 52761, an application for premarket approval of Pure-Dent® B851 Absorbable Dusting Powder. The device is indicated for use as a lubricating powder for surgical gloves.

On April 12, 1990, the General Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended conditional approval of the application. Grain Processing Corp. has fulfilled the recommended conditions. On August 10, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kenneth A. Palmer (HFZ-410), address above.

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Opportunity for Administrative Review

Section 515(d)(3) of the Federal Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 31, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53)

Dated: September 19, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-23118 Filed 9-28-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90M-0244]

Sorin Biomedica, S.p.A.; Premarket Approval of EBK

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sorin Biomedica, S.p.A. Saluggia (VC) Italy, c/o Incstar Corp. Stillwater, NM, for premaket approval, under the Medical Device Amendments of 1976, of the EBK. After reviewing the recommendation of the Microbiology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 13, 1990, of the approval of the application.

DATES: Petitions for administrative review by October 31, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1096.

SUPPLEMENTARY INFORMATION: On June 19, 1989, Sorin Biomedica, S.p.A., Saluggia (VC) Italy, c/o Incstar Corp., Stillwater, NM 55082, submitted to CDRH an application for premarket approval of EBK. EBK is an in vitro radioimmunoassay indicated for the qualitative determination of hepatitis B e antigen (HBeAg) and the antibody to HBeAg (anti-HBe) in human serum or plasma. This device is for use as an aid in diagnosis and monitoring of patients infected with hepatitis B virus (HBV).

On December 6, 1898, the Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended aproval of the application. On July 13, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Joseph L. Hackett (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 31, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53)

Dated: September 19, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-23119 Filed 9-28-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90M-0245]

Sorin Biomedica, S.p.A.; Premarket Approval of AB-HAVK

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sorin Biomedica, S.p.A., Saluggia (VC) Italy, c/o Incstar Corp., Stillwater, MN 55082, for premarket approval, under the Medical Device Amendments of 1976, of the AB-HAVK. After reviewing the recommendation of the Microbiology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 13, 1990, of the approval of the application.

DATES: Petitions for administrative review by October 31, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1096.

SUPPLEMENTARY INFORMATION: On August 10, 1989, Sorin Biomedica, S.p.A., Saluggia (VC) Italy, c/o Incstar Corp., Stillwater, MN 55082, submitted to CDRH an application for premarket approval of AB-HAVK. The AB-HAVK is an in vitro radioimmunoassay intended for the qualitative determination of total antibodies to hepatitis A virus (anti-HAV) in human serum or plasma.

On February 8, 1990, the Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 13, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Joseph L. Hackett (HFZ-440), address above.

Opportunity for Administration Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 21 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 31, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 19, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-23120 Filed 9-28-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90M-0278]

Vista Optics, Ltd.; Premarket Approval of Vista Optics, Optacryl 18 (Kolfocon A) and Vista Optics, Optacryl 32 (Kolfocon B) Rigid Gas Permeable Contact Lenses (Clear and Tinted)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Vista Optics, Ltd., Staplehurst, England, for premarket approval, under the Medical Device Amendments of 1976, of the Vista Optics, Optacryl 18 (kolfocon A) and Vista Optics, Optacryl 32 (kolfocon B) Rigid Gas Permeable Contact Lenses. The devices are to be manufactured under an agreement with Pilkington Visioncare, Menlo Park, CA, which has authorized Vista Optics, Ltd., to incorporate information contained in its approved premarket approval application for the Optacryl (polyacrylate-silicone) Rigid Gas Permeable Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 14, 1990, of the approval of the application.

DATES: Petitions for administrative review by October 31, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

SUPPLEMENTARY INFORMATION: On May 24, 1988, Vista Optics, Ltd., Staplehurst, England, submitted to CDRH an application for premarket approval of the Vista Optics, Optacryl 18 (kolfocon A) and Vista Optics, Optacryl 32 (kolfocon B) Rigid Gas Permeable Contact Lenses. Both the spherical Vista Optics, Optacryl 18 lenses and the spherical Vista Optics, Optacryl 32 lenses are available as clear lenses or tinted blue, green, violet, or gray. The lenses are indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lenses may be worn by persons who may exhibit astigmatism of 4.00 diopters or less that does not interfere with visual acuity. The lenses are to be disinfected using a chemical (not heat) disinfection system. The tinted lenses contain the color additives [phthalocyaninato(2-)] copper (21 CFR 74.3045) of D&C Green No. 6 (21 CFR 74.3206) for the blue lenses; phthalocynanine green (21 CFR 73.3124) for the green lenses; D&C Violet No. 2 (21 CFR 74.3602) for the violet

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lenses; and D&C Violet No. 2 (21 CFR 74.3602), D&C Green No. 6 (21 CFR 74.3206), and 4-[(2,4-dimethylphenyl)azo]-2,4-dihydro-5-methyl-2-phenyl-3H-pyrazol-3-one (21 CFR 73.3122) for the gray lenses in accordance with the color additive provisions as cited. The application includes authorization from Pilkington Visioncare, Menlo Park, CA 94025, to incorporate information contained in its approved premarket approval application for the Optacryl (polyacrylate-silicone) Rigid Gas Permeable Contact Lens (clear and tinted).

On August 14, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved final labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of Vista Optics, Optacryl 16 (kolfocon A) and Vista Optics, Optacryl 32 (kolfocon B) Rigid Gas Permeable Contact Lenses (clear and tinted) states that the lenses are to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 31, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 19, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-23121 Filed 9-28-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements in BPD-664, Medicare Geographical Classification Review Board (MGCRB) Procedures and Criteria; *Form Numbers:* HCFA-R-136; *Use:* These procedures and criteria govern the MGCRB and provides guidelines to use when considering hospitals' requests for reclassification for either their wage index and/or standardized amount; *Frequency:* Annually; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 182; *Average Hours per Response:* 14.75; *Total Estimated Burden Hours:* 2,685.

The HCFA published notice in the Federal Register dated September 11, 1990, of submission of this request but has now requested expedited review by the OMB. Regulation BPD-664 which contains the MGCRB procedures and criteria was published in the Federal Register on September 7, 1990. The public has seven (7) days from date of this notice to comment on this information collection.

2. *Type of Request:* Extension; *Title of Information Collection:* Medicare Qualification Statement for Federal Employees; *Form Number:* HCFA-565; *Use:* This information is required on individuals filing for hospital insurance benefits to determine if they are qualified for Medicare entitlement based on their Federal employment. *Frequency:* One-time; *Respondents:* individuals/households; *Estimated Number of Responses:* 4,300; *Average Hours per Response:* .17; *Total Estimated Burden Hours:* 731.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Emergency and Foreign Hospital Services—Beneficiary Statement in Canadian Travel Claims; *Form Number:* HCFA-R-96; *Use:* This data, collected from Medicare beneficiaries traveling in Canada, is used by intermediaries to determine if the beneficiary was traveling between Alaska and another State through Canada by the most direct route without unreasonable delay to acquire medical care and, therefore, entitled to benefits. *Frequency:* On Occasion; *Respondents:* Individuals/households; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 375.

4. *Type of Request:* Extension; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report; *Form Number:* HCFA-2552-Demo; *Use:* These reports are required of Medicare providers of services in the States of California and Colorado that participate in the demonstration specified in section 4007(c)(1) of the Omnibus Budget Reconciliation Act of 1987; *Fequency:* Annually; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 700; *Average Hours per Response:* 1 (reporting) and 142 (recordkeeping); *Total Estimated Burden Hours:* 5,600 (reporting) and 99,400 (recordkeeping) for a total of 105,000.

5. *Type of Request:* Revision; *Title of Information Collection:* Quarterly Periodic Interim Payment (PIP) Report; *Form Number:* HCFA-3055; *Use:* This form provides HCFA with a current assessment of providers receiving advanced funding through the PIP program in order to monitor intermediary performance and to direct significant trends; *Frequency:* Quarterly; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Respondents:* 220; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 220.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Departmental Clinical Laboratory Survey Report Form; *Form Number:* HCFA-1557; *Use:* This form is used by the State agency surveyor to record data collected in order to determine compliance with individual conditions of participation and report it to the Federal Government; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 5,060; *Average Hours per Response:* 2; *Total Estimated Burden Hours:* 10,120.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 24, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-23116 Filed 9-28-90; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Establishment; Board of Scientific Counselors, Clinical Center

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92-463, 86 Stat. 770-776] and section 402(b)(6), of the Public Health Service Act, as amended [42 U.S. Code 282(b)(6)], the Acting Director, National Institutes of Health (NIH), announces the establishment of the Board of Scientific Counselors, Clinical Center.

This Board will advise the Director, NIH; Deputy Director for Intramural Research, NIH; and the Director, Clinical Center, concerning the Clinical Center's intramural clinical research programs.

Duration of this Board is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: September 18, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90-23079 Filed 9-28-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Iodinated Glycerol

The HHS' National Toxicology program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of iodinated glycerol, used as a mucolytic expectorant to clear bronchiolar secretions.

Two-year toxicology and carcinogenesis studies were conducted by administering 0, 125, or 250 mg/kg iodinated glycerol in water by gavage to groups of 50 male rats and 50 male mice 5 days per week for 103 weeks. Groups of 50 female rats and 50 female mice were administered doses of 0, 62, or 125 mg/kg on the same schedule.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity [1] for male F344/N rats administered iodinated glycerol, as indicated by increased incidences of mononuclear cell leukemia and follicular cell carcinomas of the thyroid gland. Adenomas of the nasal cavity in two high dose male rats may have been related to the administration of iodinated glycerol. There was no evidence of carcinogenic activity for female F344/N rats administered 62 or 125 mg/kg iodinated glycerol by gavage for 103 weeks. There was no evidence of carcinogenic activity for male B6C3F1 mice administered 125 or 250 mg/kg iodinated glycerol by gavage for 103 weeks. There was some evidence of carcinogenic activity for female B6C3F1 mice administered iodinated glycerol, as indicated by increased incidences of adenomas of the anterior pituitary gland and neoplasms of the harderian gland. Squamous cell papillomas of the forestomach may have been related to the administration of iodinated glycerol.

Significant nonneoplastic lesions considered related to exposure of iodinated glycerol were squamous metaplasia and focal atrophy of the salivary gland in male and female rats. Dilatation of the thyroid gland follicle and follicular cell hyperplasia were observed in male and female mice.

Copies of Toxicology and Carcinogenesis Studies of Iodinated Glycerol (Organidin® (CAS No. 8634-39-9)) in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 340) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: September 24, 1990.

David P. Rall,

Director.

[FR Doc. 90-23075 Filed 9-28-90; 8:45 am]

BILLING CODE 4140-01-M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: Two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Nalidixic Acid

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of nalidixic acid, an oral antimicrobial agent used to treat bacterial infections of the urinary tract.

Two-year toxicology and carcinogenesis studies were conducted by feeding diets containing 0, 2,000, or 4,000 ppm nalidixic acid to groups of 50 male and 50 female F344/N rats and 50 male and 50 female B6C3F1 mice for 103 weeks.

Under the conditions of these 2-year feed studies, there was clear evidence of carcinogenic activity [1] of nalidixic acid for F344/N rats, as indicated by increased incidences of preputial gland neoplasms in males and clitoral gland neoplasms in females. There was equivocal evidence of carcinogenic activity for male B6C3F1 mice fed diets containing nalidixic acid, as indicated by marginally increased incidences of subcutaneous tissue neoplasms. There

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: Two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

was no evidence of carcinogenic activity for female B6C3F1 mice fed diets containing 2,000 or 4,000 ppm nalidixic acid for 2 years.

Questions or comments about this Technical Report should be directed to Dr. F.W. Karl at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–2926.

Copies of Toxicology and Carcinogenesis Studies of Nalidixic Acid in F344/N Rats and B6C3F1 Mice (Feed Studies) (TR 368) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: September 24, 1990.

David P. Rall,

Director.

[FR Doc. 90–23076 Filed 9–28–90; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program, Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2,6-Xylidine

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of 2,6-xylidine, a chemical intermediate used principally in the production of dyes. It is also a component of tobacco smoke, a degradation product of aniline-based pesticides, and a metabolite of certain drugs, particulary the xylidine group of local anesthetics.

Toxicology and carcinogenesis studies were conducted by feeding diets containing 2,6-xylidine at concentrations of 0, 300, 1,000, or 3,000 ppm to groups of 56 rats of each sex for 102 weeks.

Under the conditions of these 2-year feed studies, 2,6-xylidine was clearly carcinogenic for male and female Charles River CD rats, causing significant increases in the incidences of adenomas and carcinomas of the nasal cavity. Rhabdomyosarcomas, a rare tumor of the nasal cavity, were observed in dosed rats of each sex. In addition, the increased incidences of subcutaneous fibromas and fibrosarcomas in male and female rats and the increased incidence of neoplastic nodules of the liver in female rats may have been related to the administration of 2,6-xylidine.

Questions or comments about this Technical Report should be directed to Dr. James Huff at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3780.

Copies of Toxicology and Carcinogenesis Studies of 2,6-Xylidine (2,6-Dimethylaniline) in Charles River CD Rats (Feed Studies) (TR 278) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: September 24, 1990.

David P. Rall,

Director.

[FR Doc. 90–23077 Filed 9–28–90; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Toluene

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of toluene, used to back-blend gasoline, as an intermediate in the synthesis of benzoic acid, benzyl and benzoyl derivatives, saccharin, medicines, dyes, perfumes, toluene diisocyanates, TNT, and toluene sulfonate detergents; and as a solvent in paints, lacquers, gums, thinners, adhesives, inks, plant resins, and pharmaceutical and cosmetic products.

Toxicology and carcinogenesis studies were conducted by whole-body inhalation exposure of 50 F344/N rats of each sex and 50 B6C3F1 mice of each sex to 0, 120 (mice only), 600, or 1,200 ppm toluene 6.5 hours per day, 5 days per week, for 103 weeks.

Under the conditions of these 2-year inhalation studies, there was no evidence of carcinogenic activity [1] for male or female F344/N rats exposed to toluene at concentrations of 600 or 1,200 ppm. There was no evidence of carcinogenic activity for male or female B6C3F1 mice exposed by inhalation to toluene at concentrations of 120, 600, or 1,200 ppm for 2 years.

The study scientist for these studies is Dr. J.E. Huff. Questions or comments about this Technical Report should be directed to Dr. Huff at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3780.

Copies of Toxicology and Carcinogenesis Studies of Toluene in F344/N Rats and B6C3F1 Mice (Inhalation Studies) (TR 371) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: September 28, 1990.

David P. Rall,

Director.

[FR Doc. 90–23078 Filed 9–28–90; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: Two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-90-3154; FR-2909-N-01]

FHA Debenture Recall

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Room 9138, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1591. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures with coupon rates of 9 percent or higher, outstanding as of September 30, 1990. The date of the call is January 1, 1991. To insure timely payment, debentures should be presented to the Federal Reserve Bank of Philadelphia by December 1, 1990.

The debentures will be redeemed at par plus accured interest. Interest will cease to accure on the debentures as of the call date. Final interest on any called debenture will be paid with the principal at redemption. During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by a mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer or denominational exchanges of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1990. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after October 1, 1990. Payment of final principal and interest due on January 1, 1991, will be made to the registered holder or assignee.

Instructions for the presentation and surrender of debentures for redemption will be provided to holders by the Department.

Dated: September 24, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 90–23144 Filed 9–28–90; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-00-4333-00; FES 90-28]

Availability of Final Wilderness Environmental Impact Statement (EIS) for the Encampment River Canyon, Prospect Mountain and Bennett Mountains Wilderness Study Areas of the Great Divide Resource Area, Rawlins District, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of The Great Divide Final Wilderness Environmental Impact Statement, Wyoming.

SUMMARY: The Great Divide Wilderness Environmental Statement assesses the environmental consequences of managing three wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) A "No Wilderness Alternative" for each wilderness study area and (2) an "All Wilderness Alternative" for each wilderness study area.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are:

Encampment River Canyon—4,547 acres—4,547 acres suitable for wilderness; Prospect Mountain—1,145 acres—1,145 acres suitable for wilderness; and Bennett Mountains—6,003 acres—6,003 acres nonsuitable for wilderness.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and by the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no action on these proposals can be taken by the Secretary of the Interior during the 30 days following the filing of this EIS. This complies with the Council of Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Bureau of Land Management, Rawlins District, P.O. Box 670, Rawlins, Wyoming 82301.

Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, Office of Public Affairs, 1849 C Street, NW., Washington, DC 20240.

Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

Bureau of Land Management, Rawlins District Office, 1300 North Third Street, Rawlins, Wyoming 82301.

Bureau of Land Management, Great Divide Resource Area Office, 1300 North Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Bob Tigner, EIS Team Leader, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301 (307) 324–7171.

Dated: September 24, 1990.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 90–23146 Filed 9–28–90; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Reclamation

Friant Division, Central Valley Project, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent, notice of scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA), the Department of the Interior, Bureau of Reclamation (Reclamation), will prepare an EIS evaluating the impacts associated with the execution and renewal of long-term water service contracts in the Friant Division of the Central Valley Project.

DATES AND LOCATIONS: Public Scoping Meetings are scheduled as follows:

December 4, 1990, 7 p.m., Red Lion Inn—Kern River room, 3100 Camino Del Rio Court, Bakersfield, California.

December 5, 1990, 1 p.m., Sheraton Smugglers Inn—Ballroom, 3737 North Blackstone, Fresno, California.

December 5, 1990, 7 p.m., Sheraton Smugglers Inn—Ballroom, 3737 North Blackstone, Fresno, California.

FOR FURTHER INFORMATION CONTACT: Mr. Jim McNamara, Project Manager (MP-440), (916) 978–5034 or Mr. John Brooks, Environmental Specialist (MP-405), (916) 978–5048, 2800 Cottage Way, Sacramento, California 95825–1898.

SUPPLEMENTARY INFORMATION: Reclamation delivers water for irrigation and municipal and industrial use under 28 long-term water service contracts in the Friant Division of the Central Valley Project in California. Those contracts, most of which are originally executed in the 1940's and 1950's, are now being renewed. Under Reclamation law (Act of July 2, 1956, ch. 492, 70 Stat. 483), Reclamation must renew the contracts for a long term if requested to do so. Reclamation law defines a long-term contract as exceeding 10 years. The law also provides that, in the renewals, the contractors have a first right to the same quantity of water that has been beneficially used. Therefore, the proposed Federal action is the renewal of long-term water service contracts in the Friant Division for the same quantity of water as has ben beneficially used in the past. The proposed EIS will evaluate the environmental impacts associated with the execution of those renewal contracts, the impacts associated with the continued diversion and delivery of water under the contracts, and alternative means of minimizing environmental impacts associated with the continued water deliveries.

In accordance with the June 29, 1988, opinion released by the Chairman of the Council on Environmental Quality, the no action alternative considered in the EIS will be contract renewal with the same terms except those required to be changed by Reclamation law. The full scope of the EIS will be determined through the NEPA scoping process, but possible alternatives to the proposed action to be evaluated will include such things as shorter term contracts, modification of the timing of water deliveries, methods to decrease water losses in the delivery system, changes in price, improved conservation, and improved use of ground water. Additional alternatives proposed during the scoping process will also be considered.

The contracts will continue to be renewed as they expire in order for Reclamation to meet its statutory obligations. The contracts, however, will contain a provision making them subject to modification by the United States in order to implement the results of the final EIS. Furthermore, Reclamation retains the right to make operational changes in the Friant Division, but such

changes would also undergo analysis under NEPA and the Endangered Species Act.

Scoping and formulation of general background information for the EIS will begin in November 1990, with public scoping meetings to be held in December. An information document for the EIS is scheduled to be completed by November 17, 1990. A draft EIS is scheduled to be released in early 1992, with a final EIS expected to be available in the last quarter of 1992.

Dated: September 24, 1990.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 90-2304 Filed 9-28-90; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Service

Intent to Prepare an Environmental Impact Statement for the Establishment of a National Wildlife Refuge and Protection of Wetlands in South Sacramento County, CA

AGENCY: U.S. Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of intent and scoping period.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary for the preparation of an environmental impact statement (EIS) to explore the feasibility of establishing a National Wildlife Refuge and protection of wetlands on or near Stone Lakes in south Sacramento County, California. Comments received from all parties during an earlier environmental assessment scoping process will be incorporated into the scope and content of this EIS. Additional opportunities for public involvement will further define the scope of this EIS. This notice is being furnished pursuant to the National Environmental Policy Act (NEPA) regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS.

SCOPING INFORMATION: Persons wishing to participate in the scoping process are encouraged to contact the U.S. Fish and Wildlife Service, Sacramento Realty Field Offices as soon as possible. Interested agencies, organizations, and individuals are encouraged to participate in the public program for this project in order to identify and discuss major issues, concerns, and opportunities that should be addressed in the EIS. Written comments will also be accepted.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Jerome, Refuge Manager, U.S. Fish and Wildlife Service, 2233 Watt Avenue, suite 375, Sacramento, California 95825-0509, Telephone: 916-978-4420.

SUPPLEMENTARY INFORMATION: The preparation of an environmental assessment document to explore the feasibility of establishing a national wildlife refuge in south Sacramento County was initiated in March 1990. As a result of the scoping process, the Service has determined that the preparation of an Environmental Impact Statement is appropriate. Consistent with Department guidelines, the Service determined that the proposed project may result in potentially significant environmental effects related to the conversion of agricultural lands to wetlands.

Public workshops and meetings with local, state, and federal agencies have been conducted. The scope and content of these meetings, including existing issues and concerns documents, will be incorporated into the subsequent EIS scoping process. In addition, a range of preliminary alternatives that describe various acquisition objectives will provide the basis for environmental impact assessment.

Background

The Central Valley of California encompasses an area of over 13 million acres which included an estimated four million acres of wetlands in the 1850's. Today, estimates of remaining wetlands in California's Central Valley have ranged from slightly less than 400,000 acres to 280,000 acres. The loss of wetlands coupled with declining waterfowl populations and other wetlands dependent species nationwide has resulted in management concerns at the local, state, and federal levels.

Since 1988, there has been heightened public interest in the protection of riparian areas in the Stone Lakes area. Separate Congressional and State Legislative appropriations resulted in widespread public support for the establishment of a National Wildlife Refuge. Other public and non-profit land managers have initiated wetland protection programs with the establishment of the Consumnes Preserve to the south of Stone Lakes.

The Stone Lakes area represents remnants of a variety of native plant communities such as willow, cottonwood, and oak riparian forests. Seasonally flooded wetlands and vernal pools occur throughout the study area. The area provides an important component of the Pacific Flyway and provides wintering, nesting, and feeding habitat for 23 species of waterfowl. In addition, the area provides habitat for several species of flora and fauna that are candidates for the endangered species list.

The purpose and need for the establishment of Stones Lakes National Wildlife Refuge is supported by the wildlife and habitat values that characterize the area. The location of Stone Lakes to urban populations and development create opportunities for environmental education and interpretation but threaten the future availability of the habitat.

Dated: September 24, 1990.

Marvin L. Plenert,

Regional Director.

[FR Doc. 90-23154 Filed 9-28-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Martin Van Buren National Historic Site, Kinderhook, NY; Public Review Period for Amendment to the 1986 Development Concept Plan

In accordance with the National Park Service Planning Guidelines in the preparation of Development Concept Plans and Environmental Assessments, notice is hereby given that the National Park Service is amending the 1986 Development Concept Plan/ Environmental Assessment for Martin Van Buren National Historic Site Park Operations and Visitor Facilities. A final document, which contains a proposal for a new park operations and visitor service building, is available for review from the Superintendent beginning October 1, 1990. Comments on the draft document should be submitted in writing by November 1, 1990, to the Superintendent, Martin Van Buren National Historic Site, P.O. Box 545, Rt. 9H, Kinderhook, New York 12106. The National Park Service prepares Development Concept Plans to ensure adequate consideration of reasonable alternatives in advance of undertaking development proposals.

Dated: September 21, 1990.

Marie Rust,

Acting Regional Director.

[FR Doc. 90-23092 Filed 9-28-90; 8:45 am]

BILLING CODE 4310-70-M

Acadia National Park Advisory Commission, Bar Harbor, ME; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1, section 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, October 22, 1990.

The Commission was established pursuant to Public Law 99-420, section 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Acadia National Park Headquarters, McFarland Hill, Route 233, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held March 6, 1990;
2. Presentation of findings by the Land Acquisition Committee;
3. Presentation of findings by the Conservation Easement Committee; and
4. Proposed agenda and date of the next Commission meeting.

The meeting is open to the public. Interested persons may make oral/ written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning these meetings may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609 telephone: (207) 288-3338.

Dated: September 21, 1990.

Marie Rust,

Acting Regional Director.

[FR Doc. 90-23093 Filed 9-28-90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31711]

Georgia Southern and Florida Railway Co.—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT), has agreed to grant overhead trackage rights to Georgia Southern and Florida Railway Company (GS&F) between the end of the CSXT/GS&F jointly-owned track at Track Station 2+69 and the ownership point between CSXT and South Carolina Central Railroad Company, Inc., at valuation station 5665+07, in Cordele, GA, a distance of approximately 952 feet. The trackage rights will become effective on September 30, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: R. Allan Wimbish, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: September 18, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-23156 Filed 9-28-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-71]

David W. Warren, D.O.; Denial of Application

On July 13, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to David W. Warren, D.O. (Respondent), of 751 East 63d Street, suite 478, Kansas City, Missouri 64110, proposing to deny his application, executed on August 2, 1987, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing proceedings, the hearing was held in Kansas City, Missouri on July 12 and 13, 1989. On March 30, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed, and on May 17, 1990, the administrative law judge transmitted the record in this proceeding to the Acting Administrator. The Administrator has considered that record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent received his degree as a doctor of osteopathic medicine in 1960 and, after serving an internship, entered private practice as a sole practitioner. In 1960 or 1961, Respondent became acquainted with a nurse's aide at the hospital where he was serving his internship. The woman subsequently became Respondent's patient and in about 1971 or 1972, Respondent helped her obtain treatment for drug addiction at a methadone clinic.

According to Respondent, on June 2 or 3, 1974, the woman came to his office and "demanded" that he write her a prescription for some controlled substance, perhaps Quaaludes (at the time a Schedule II controlled substance, but now a Schedule I controlled substance). Respondent stated that the woman threatened his family and reminded Respondent that her husband was considered a "hit man". Consequently, according to Respondent, when the woman gave him a list of drugs for which she wanted prescriptions, he acceded to her wishes, and issued prescriptions.

The administrative law judge noted that in an earlier DEA proceeding (discussed more fully below), Respondent testified that the woman did not threaten him with physical harm. Respondent conceded on cross-examination in the instant hearing, that in the earlier proceeding he testified that the only threat the woman made to him was that if did not issue the prescriptions she sought she would turn him over to the authorities. Respondent also testified that the woman returned to his office about twice more and that he wrote controlled substance prescriptions for her on those occasions. In addition, several times other people came to his office with lists of prescriptions they wanted and said that the woman had sent them.

In 1974, DEA began an investigation of Respondent after receiving information from the woman that Respondent sold prescriptions for Schedule II controlled substances for $10 per prescription. As part of that investigation, on June 14, 1974, investigators gave the woman $70 to purchase ten prescriptions and gave her a list of names in which the prescriptions were to be issued. The woman then visited Respondent, who gave her five prescriptions for Quaalude and two for biphetamine. Each prescription was in one of the names on

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the list she had been provided by the investigators.

The woman returned to Respondent's office on June 20, 1974, again with $70 provided by DEA. On this occasion, Respondent wrote nine prescriptions for Schedule II substances, but since the woman only had enough money to pay for seven prescriptions, Respondent told her that he would give the other two to someone else. Of the seven prescriptions obtained by the woman, one was in the name of an investigator and the others were in names taken from Respondent's files by the woman, in the presence of Respondent's receptionist.

On June 21, 1974, the woman again went to Respondent's office, with $100 furnished by DEA. Respondent asked her how she felt, she said she had never felt better, and Respondent started writing prescriptions. The woman interrupted Respondent and said that she wanted Ritalin, a Schedule II controlled substance, and Respondent asked whether she wanted 10 or 20 mg. pills. She indicated a preference for 10 mg. dosage units and Respondent wrote ten prescriptions in ten different names (three of which were of DEA employees), each for 100 dosage units of Ritalin 10 mg. The woman told Respondent that she wanted ten prescriptions in order to obtain a bottle of 1,000 Ritalin from the pharmacy, and thus avoid carrying around different containers. Also during this visit, Respondent told the woman that she had enough information on him to "send him away for 20 years," and the woman responded that they had been "partners in crime for 20 years," and that "they couldn't send [Respondent] away without sending [her]" as well.

The woman returned to Respondent's office on July 1, 1974, with $100 supplied by the DEA. During this visit, Respondent advised the woman that he had learned that "the heat was on," and indicated that he was reluctant to write the prescriptions. Nevertheless, he did give the woman ten prescriptions, each for 100 Ritalin 10 mg.

Also as part of the investigation, on May 1, 1975, DEA investigators checked names and addresses of purported patients on controlled substance prescriptions issued by Respondent (other than those issued to the woman) and seized from a local pharmacy. The investigators ascertained that most of the names and addresses on those prescriptions were false—either the address did not exist or the persons who lived at the address were not acquainted with Respondent. On August 20, 1975, investigators checked another 43 prescriptions issued by Respondent and found that only one of the names and addresses on those prescriptions was that of a bona fide patient of Respondent.

On February 9, 1965, Respondent was indicted in the United States District Court for the Western District of Missouri, Western Division on one count of distributing dl-amphetamine and methaqualone, and one count of distributing methylphenidate, all Schedule II controlled substances. On February 9, 1976, Respondent pled *nolo contendere* to distributing methylphenidate, and the other count was dismissed. Respondent received a suspended sentence, was fined $5,000, and was placed on probation for five years. The probation was terminated early, on September 17, 1979.

On June 16, 1981, Respondent was indicted on charges of mail fraud, and was later convicted, following a jury trial, on three felony counts of six-count indictment. The conviction resulted from an undercover investigation by postal inspectors, who had pretended to have been in an automobile accident. Respondent submitted claims to insurance companies for office visits which did not occur and for treatments which were not provided. Respondent's conviction was affirmed by the United States Court of Appeals for the Tenth Circuit, and he was sentenced to three years incarceration on each count. Respondent served nine months at a minimum security prison and then spent four months in a halfway house.

Respondent testified that he was dropped from participation in Missouri's Medicaid program approximately 10 or 12 years prior to the hearing in this matter, and that he was accused of committing Medicaid fraud. Respondent denied ever engaging in such fraud.

On February 19, 1975, the Missouri Department of Health, Bureau of Narcotics and Dangerous Drugs (BNDD) initiated proceedings against Respondent's State-controlled substance registration. On April 14, 1976, Respondent's application for State registration was denied under a provision of Missouri law specifying that no such registration could be granted to anyone who had been convicted within the previous five years of any felony relating to controlled substances. Respondent appealed the denial to a State circuit court, which found that Respondent's plea of *nolo contendere* did not constitute a "conviction" under Missouri law and rendered a decision in Respondent's favor. That decision was upheld on appeal in *Warren* v. *Director, Missouri Division of Health*, 565 S.W.2d 740 (Mo. Ct. of App., Kansas City District, 1978). However, the appellate court also noted that under the current interpretation of Federal law, a *nolo* plea was considered a conviction, despite a suspension of sentencing. As a result of these court proceedings, BNDD issued respondent a one-year State-controlled substance registration.

Respondent's DEA registration expired in or about May 1975. Respondent applied for a new registration in April 1976 and again in January 1977, but on both occasions, withdrew the applications after Orders to Show Cause were issued. In November 1979, Respondent applied again for a DEA registration, an Order to Show Cause was issued, and Respondent requested a hearing. The hearing was held on July 15 and 16, 1980, in Kansas City, Missouri. The administrative law judge presiding at that proceeding recommended that Respondent's application be denied. On January 19, 1981, the then-Administrator issued a final order adopting the administrative law judge's opinion in its entirety and denying Respondent's application for registration. Thereafter, in March 1981, Respondent received an exemption to allow him to order controlled substances for administration at Lakeside Hospital.

On March 12, 1985, following his mail fraud conviction, Respondent surrendered his professional license to the Missouri State Board of Registration for the Healing Arts, but was reinstated to the practice of medicine in December 1985 pursuant to an agreement by which Respondent was to be on probation for either three years or the length of his parole, whichever was longer.

Respondent again applied for a DEA Certificate of Registration in October 1986, but withdrew the application after being advised by DEA personnel that he was ineligible for registration, because he was not then registered with the Missouri Bureau of Narcotics and Dangerous Drugs to handle controlled substances. Respondent then filed for a Missouri controlled substance registration. On July 31, 1987, following a hearing, Respondent entered into a Memorandum of Understanding with BNDD. The Memorandum provided, among other things, that Respondent would be permitted to prescribe only certain Schedule III, IV and V controlled substances, and that he would not be permitted to dispense any controlled substances. It also provided that Respondent would be allowed to administer controlled substances at hospitals where he maintained privileges, but that the administrator and chief of staff of any such hospitals were to be notified of Respondent's agreement with the BNDD.

On August 2, 1987, Respondent again applied for DEA registration in Schedules III, IV and V. It is that application which is the subject of the instant proceeding.

At the hearing in this matter, several osteopathic doctors testified on Respondent's behalf. None of these individuals appeared to be fully aware of Respondent's past history regarding the handling of controlled substances. As a result, their testimony was not given significant weight.

Respondent testified at the hearing that he needed a DEA registration in order to have hospital privileges and because many of his patients require controlled substances. In addition, according to Respondent, his inability to prescribe controlled substances "has really limited my scope or ability to practice medicine fully and to actually feel like I am a physician * * *." In 1987, Respondent successfully completed a course in prescribing controlled substances. The administrative law judge concluded, however, that Respondent's testimony at the hearing indicated a substantial lack of familiarity with various aspects of handling these medications. Respondent conceded that he is not familiar with the recordkeeping requirements for DEA registrants or with any of the responsibilities under Federal law with respect to controlled substances.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "(i)n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of those factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86-60, 53 FR 5326 (1988).

In the instant case, all of the factors should be considered. State authorities have taken various actions regarding Respondent and he has been convicted of criminal offenses involving controlled substances. His prescribing practices and compliance with Federal and state laws are certainly at issue, and his mail fraud conviction and termination of Medicaid privileges may be considered "other conduct" referenced by the fifth factor.

Respondent pled *nolo contendere* to one count of distributing methylphenidate, a felony offense. A conviction which follows a plea of *nolo contendere* constitutes a conviction in the context of these administrative proceedings. See, *Pearce* v. *U.S. Department of Justice, Drug Enforcement Administration*, Docket No. 87-4117 (6th Cir., December 5, 1988, not published), affirming the Administrator's final order in *Charles E. Pearce, M.D.*, Docket No. 86-71, 52 FR 45677 (1987); *Sokoloff* v. *Saxbe*, 501 F.2d 571 (2nd Cir. 1974). Accordingly, the administrative law judge found that Respondent has been convicted of a controlled substance-related felony offense.

There is no dispute that Respondent was convicted of mail fraud and the administrative law judge concluded that that conviction should be considered as "other conduct which may threaten the public health and safety." The administrative law judge further concluded that Respondent's attempts to minimize the significance of his conviction were not persuasive.

The administrative law judge concluded that Respondent's application should be denied. Judge Bittner stated that although Respondent asserted that the events leading to his convictions are remote in time, it is noteworthy that only about five years after the termination of his probation following his drug distribution conviction, Respondent engaged in the conduct leading to his mail fraud conviction.

Additionally, the administrative law judge concluded that the record established that Respondent issued prescriptions for no medical purpose not only to the one woman, but to other persons as well. Respondent contended that he acted under duress in issuing these prescriptions. However, Respondent did not impress the administrative law judge as a particularly credible witness, for he appeared more concerned with insuring that his testimony fit his asserted defenses than with telling the truth. Accordingly, Judge Bittner found that the record did not establish that Respondent issued any prescriptions under duress.

The administrative law judge also noted that while Respondent stated that he recognized that his actions were wrong, he continues to assert various excuses for his conduct, and showed more concern for the consequences of his wrongdoing than remorse for his behavior. Further, the character witnesses who testified on Respondent's behalf did not impress the administrative law judge as being in a position to fully evaluate either his rehabilitation or the likelihood that he would be able to appropriately discharge the responsibilities of a DEA registrant in the future.

Finally, and not insignificantly, the administrative law judge concluded that Respondent does not appear even now to have the requisite knowledge of how controlled substances should be handled. Judge Bittner recognized that Respondent has not had authority to handle controlled substances for some years. However, it is not an undue burden to expect someone seeking registration to handle controlled substances to become knowledgeable about the regulations and appropriate use of those substances.

Although a DEA registration would be of some benefit to Respondent's practice, the administrative law judge concluded that that factor does not outweigh the other concerns discussed above. Consequently, the administrative law judge found that Respondent's registration would be inconsistent with the public interest and recommended that his application for registration be denied. The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration, executed on August 2, 1987, by David W. Warren, D.O., be, and it hereby is, denied.

Dated: August 20, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90-23062 Filed 9-28-90; 8:45 am]

BILLING CODE 4410-09-M

Justice Management Division

[AAG/A Order No. 44-90]

Privacy Act of 1974; Addition of a New Routine Use to a System of Records

AGENCY: Department of Justice, Justice Mangement Division (JMD).

ACTION: Notification of the addition of a new routine use.

SUMMARY: JMD proposes to add a new routine use to its system of records entitled, "Employee Assistance Program (EAP) Treatment and Referral Records, JUSTICE/JMD-016."

DATES: JMD invites interested parties to submit comments on the proposed routine use on or before October 31, 1990. JMD will adopt the new routine use without further notice on November 30, 1990, unless JMD receives comments which result in a contrary determination.

ADDRESSES: Please submit comments to Roberta Gross, Director, Employee Assistance Program, Justice Management Division, Department of Justice, 10th St. and Pennsylvania Ave., NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Roberta Gross, Director, Employee Assistance Program, Justice Management Division, Department of Justice, 10th St. and Pennsylvania Ave., NW., Washington, DC 20530. Telephone: (202) 514-1846.

SUPPLEMENTARY INFORMATION: JMD proposes to add a new routine use to its EAP Treatment and Referral system of records, JUSTICE/JMD-016. The new routine use would allow a permissive disclosure to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

The Privacy Act permits disclosure upon a showing of compelling circumstances affecting the health or safety of an individual. 5 U.S.C. 552a(b)(8). The new routine use makes clear that the Department may make disclosure to third parties of imminent and potential criminal activity which physically threatens an EAP client or a third party.

The Routine Use

The new routine use will be added as a routine use (b) to JUSTICE/JMD-016 and reads as follows:

(b) To the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

Dated: September 20, 1990.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 90-23072 Filed 9-28-90; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 43-90]

Privacy Act of 1974; Report of New System of Records

AGENCY: Department of Justice, Justice Management Division.

ACTION: Notice of New System.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Justice Management Division (JMD), hereby establishes a new system of records entitled "Employee Assistance Program (EAP) Treatment and Referral Records, JUSTICE/JMD-016." This system is established to enable JMD to provide assessment, counseling, and referral services to outside treatment facilities for those employees who are experiencing one or more of a variety of personal or work-related problems.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Roberta Gross, Director, Employee Assistance Program, Justice Management Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. Telephone: (202) 514-1846.

SUPPLEMENTARY INFORMATION: On April 2, 1990, the Justice Management Division (JMD) published a notice of intent to establish a new system of records entitled "Employee Assistance Program (EAP) Treatment and Referral Records, JUSTICE/JMD-016." *See* 55 FR 12296. JMD invited public comment. In addition, the notice advised the public that JMD had provided a report on the proposed system to the Office of Management and Budget and to the Congress. JMD received no public comment. However, Congressman Bob Wise, Chairman of the Government Information, Justice and Agriculture Subcommittee of the Committee on Government Operations, United States House of Representatives, did provide comments concerning the notice. JMD has accepted Congressman Wise's comments and has amended the routine uses that it proposed for the system.

Specifically, we have eliminated routine uses that would have allowed disclosure "[t]o medical personnel to the extent necessary to meet a bona fide medical emergency" and "[t]o the extent necessary to prevent harm to another person." As explained by Chairman Wise, exemption (b)(8), 5 U.S.C. 552a(b)(8), to the Privacy Act already provides authority to make these disclosures. We have also eliminated another proposed routine use that would have allowed disclosure "[t]o qualified personnel, in sanitized form, for the purpose of conducting scientific research, management audits, financial audits, or program evaluations." Exemption (b)(5), 5 U.S.C. 552a(b)(5), provides sufficient authority and means to meet the purpose of this proposed routine use. Similarly, we have eliminated a proposed routine use permitting disclosure pursuant to court order, because exemption (b)(11), 5 U.S.C. 552a(b)(11), provides authority for such disclosure.

We have retained a routine use "[t]o report, under State law, incidents of suspected child abuse or neglect to appropriate State or local authorities." In addition, we are today publishing for comment in a separate notice an additional proposed routine use.

Dated: September 20, 1990.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/JMD-016

SYSTEM NAME:

Employee Assistance Program Treatment and Referral Records, JUSTICE/JMD-016.

SYSTEM LOCATION:

Justice Management Division, Department of Justice, 10th St. & Constitution Avenue, NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Offices, Boards and Divisions and, upon occasion, of the Bureaus of the Department (as listed at 28 CFR 0.1); United States Attorney organizations; and the Office of Justice Programs of the Department of Justice who have sought counseling or been referred to or for treatment through the EAP. To the limited degree that treatment and referral may be provided to family members of these employees, these individuals, too, may be covered by the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of employees (and in limited cases, employee family members) who have sought or been referred to the EAP for treatment or referral. Examples of data found in such records include: Notes and documentation of internal EAP counseling, records of treatment and counseling referrals, records of employee attendance at treatment and counseling programs, prognosis or treatment information, documents received from supervisors or personnel on work place problems or performance, home addresses and/or phone numbers, insurance data, supervisors' phone number, addresses of treatment facilities or individuals providing treatment, leave records, written consent forms and abeyance agreements (see below), information on confirmed unjustified positive drug tests, results from EAP treatment drug tests and identification data, such as sex, job title and series, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, *et seq.* and 290ee, *et seq.*; 42 CFR Sec. 2, *et seq.*; Executive Order 12564, 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. No. 100-71, Sec. 503 (July 11, 1987).

PURPOSE:

These records are to be used by EAP personnel in the execution of the counseling and rehabilitation function. They document the nature and effects of employee problems and counseling by the EAP and referral to, and progress and participation in, outside treatment and counseling programs and the rehabilitation process. These records may also be used to track compliance with agreements made to mitigate discipline based upon treatment (abeyance agreements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures permitted by the Privacy Act itself,[1] 5 U.S.C. 552a(b), permissive disclosures, without individual consent, are as follows:

To report, under State law, incidents of suspected child abuse or neglect to appropriate State or local authorities.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. The request should follow the record access procedure, listed above, and should state clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Records are generated by EAP personnel, referral counseling and treatment programs or individuals, the employee who is the subject of the record, personnel office and the employee's supervisor. In the case of drug abuse counseling, records may also be generated by the staff of the Drug-Free Workplace Program and the Medical Review Officer.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored in paper folders in locked file cabinets in accordance with 42 CFR 2.16.

RETRIEVABILITY:

Records are indexed and retrieved by identifying number or symbol, cross-indexed to employee names.

SAFEGUARDS:

Records are kept in a secure room in locked file cabinets. Only the EAP Administrator or a designated staff member will access or disclose the records.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with the counselor unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. Records are destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Director, Employee, Assistance Program, Justice Management Division, Department of Justice, 10th St. & Constitution Avenue, N.W., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Make all requests for access in writing to the system manager identified above. Clearly mark the envelope and letter "Freedom of Information Act/Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in counseling, any other information which may assist in identifying and locating the record, and a return address.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 90-23071 Filed 9-28-90; 8:45 am]

BILLING CODE 4410-01-M

[1] To the extent that release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act, JMD will follow such restrictions. *See* 42 U.S.C. 290dd and 290ee.

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 87-7D]

Cable Compulsory License; Specialty Station Determination

AGENCY: Copyright Office, Library of Congress.

ACTION: Final specialty station list.

SUMMARY: The Copyright Office of the Library of Congress issues this notice to publish a final list of specialty broadcast stations in connection with the administration of the cable compulsory license, section 111, title 17 of the United States Code. The Office employed a combination of television broadcaster affidavits and public comments to establish an updated specialty station list. The stations listed allege by affidavit that they qualify as specialty stations under former FCC rules (47 CFR 76.5(kk)) in effect on June 24, 1981.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION:

Background

In response to petitions from members of the public to make certain determinations concerning the administration of the cable compulsory license, 17 U.S.C. 111, the Copyright Office published a notice of inquiry with respect to possible changes in the list of specialty broadcast stations originally developed by the Federal Communications Commission ("FCC"). On September 18, 1989, a policy decision (54 FR 38461) and a request for information (54 FR 38466) were issued inviting all interested television broadcast stations claiming to qualify as specialty stations under the FCC's former distant signal carriage rules to submit to the Office sworn affidavits stating that in the preceding calendar year the programming of their stations satisfied the FCC's former requirements for specialty station status.

On April 4, 1990, the Office published a list of the stations that filed affidavits (55 FR 12575), and solicited from

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interested parties comments as to whether any station on the preliminary list failed to qualify as a specialty station. Three sets of comments were received, each containing late requests from broadcast stations which failed to file affidavits within the time periods scheduled for submission of affidavits, comments, or reply comments, as publicly set forth in the Office's announcements in the Federal Register. No filings were received which commented on or objected to the stations contained on the updated specialty station list published April 4, 1990.

The Office hereby publishes a final list of specialty stations, effective January 1, 1991, for the accounting period 1991/1 and thereafter. The list includes only those stations as published for public comment on April 4, 1990. Copyright Office licensing examiners will refer to this list in examining cable systems' claims on their statements of account that particular stations are specialty stations. If a cable system claims specialty station status for a broadcast television station not on the list, the cable system is expected to make a convincing legal argument in writing as to the validity of its claim that the station deserves specialty station status even though it did not request to be included on the most recent list.

While the Copyright Office originally announced its intention to revisit the specialty station list at three year intervals, the Office has decided to deal with the three late filings now rather than wait three years. Accordingly, although the list published today is final and will be effective January 1, 1991, in a separate notice the Office will open a new public proceeding and invite broadcast stations to submit affidavits in accordance with the procedure published at 54 FR 38461 and 54 FR 38466 (September 18, 1989). Two of the late filings are in proper form and will be considered in the new proceeding. These are filings by KORO (Corpus Christi) and six stations owned by the Telemundo Group. The filing by the Canadian Broadcasting Corporation must be resubmitted in proper affidavit form.

FINAL ANNOTATED LIST OF SPECIALTY STATIONS: CALL LETTERS AND CITIES OF LICENSE

KLUZ..... Albuquerque, New Mexico.
KNAT..... Albuquerque, New Mexico.
K48AM.. Albuquerque, New Mexico.
WKBS.... Altoona, Pennsylvania.
K39AB... Bakersfield, California.

FINAL ANNOTATED LIST OF SPECIALTY STATIONS: CALL LETTERS AND CITIES OF LICENSE—Continued

KDOR.... Bartlesville, Oklahoma.
KITU..... Beaumont, Texas.
WCLJ..... Bloomington, Indiana.
WRDG... Burlington, North Carolina.
WDLI..... Canton, Ohio.
WCFC.... Chicago, Illinois.
WSNS... Chicago, Illinois.
WCLF.... Clearwater, Florida.
WTGL.... Cocoa, Florida.
KDTX.... Dallas, Texas.
WTJP.... Gadsden, Alabama.
KUVN.... Garland, Texas.
WLXI..... Greensboro, North Carolina.
WPCB.... Greensburg/Pittsburgh, Pennsylvania.
KFTV..... Hanford/Fresno, California.
KLUJ..... Harlingen, Texas.
W47AD.. Hartford, Connecticut.
KWHH... Hilo, Hawaii.
KHAI..... Honolulu, Hawaii.
KWHE... Honolulu, Hawaii.
KETH..... Houston, Texas.
WHMB... Indianapolis, Indiana.
WHKE... Kenosha, Wisconsin.
WWTO.. LaSalle, Illinois.
WACX.... Leesburg, Florida.
WEJC.... Lexington, North Carolina.
KMEX.... Los Angeles, California.
KWHY... Los Angeles, California
WTKK.... Manassas, Virginia.
WTCT.... Marion, Illinois.
WHFT.... Miami, Florida.
WLTV.... Miami, Florida.
WMPV... Mobile, Alabama.
KCSO.... Modesto, California.
WMCF.... Montgomery, Alabama.
WHTN... Nashville, Tennessee.
WSFJ..... Newark, Ohio.
KMLM.... Odessa, Texas.
KSBI..... Oklahoma City, Oklahoma.
KTBO.... Oklahoma City, Oklahoma.
WSWS... Opelika, Alabama.
WXTV.... Patterson, New Jersey.
WHBR... Pensacola, Florida/Mobile, Alabama.
W35AB.. Philadelphia, Pennsylvania.
KPAZ..... Phoenix, Arizona.
KTVW.... Phoenix, Arizona.
KVTN..... Pine Bluff, Arkansas.
KTDZ..... Portland, Oregon.
KTBY..... Poughkeepsie, New York.
KREN.... Reno, Nevada.
WKOI..... Richmond, Indiana.
WAQP.... Saginaw, Michigan.
KWEX.... San Antonio, Texas.
KSCI..... San Bernardino, California.
KDTV..... San Francisco, California.
KTSF..... San Francisco, California.
KTBN..... Santa Anna, California.
CKSH.... Sherbrooke, Quebec, Canada.
WHME... South Bend, Indiana.
KTAJ..... St. Joseph, Missouri.
KTBW.... Tacoma, Washington.
K52AO.. Tucson, Arizona.
KWHB... Tulsa, Oklahoma.

Dated: September 18, 1990.

Ralph Oman,

Register of Copyrights.

[FR Doc. 90-23107 Filed 9-28-90; 8:45 am]

BILLING CODE 1410-08-M

[Docket No. RM 90-3]

Cable Compulsory License; Specialty Station List: Request for Information

AGENCY: Library of Congress, Copyright Office.

ACTION: Request for information.

SUMMARY: The Copyright Office has established an annotated list of specialty stations for purposes of administration of the cable compulsory license, section 111 of title 17 of the United States Code. The Office hereby invites all interested television broadcast stations not on the Copyright Office Specialty Station List who claim specialty station status under the former distant signal carriage rules of the Federal Communications Commission at 47 CFR 76.5(kk) (June 24, 1981) to submit to the Copyright Office sworn affidavits stating that in the preceding calendar year the programming of their stations satisfied the FCC's former requirements for specialty station status.

DATES: Affidavits should be received in the Copyright Office on or before December 3, 1990.

ADDRESSES: The sworn affidavit should be addressed, if sent by mail to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Department 17, Washington, DC 20540. If delivered by hand, the comments should be brought to: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Department 17, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION: The Copyright Office has established a final, annotated list of specialty stations for the purpose of administation of the cable compulsory license of section 111 of the Copyright Act, title 17 of the United States Code. The procedure for establishing and updating the list was published on September 18, 1989 at 54 FR 38461.

As part of the public proceeding to establish the specialty station list, the Office received several late requests for addition to the list. The Office proposes to consider these requests in this new proceeding to update the established list. All television broadcast stations not on the established Copyright Office Specialty Station List who claim specialty station status pursuant to the Federal Communication Commission's former rules at 47 CFR 76.5(kk) (June 24, 1981) are invited to request that the station be added to the Copyright Office Specialty Station List. The request should be made in the form of an affidavit by an appropriate officer or agent of the station. We specify no particular format for the affidavit.

Subsequently, the Office will publish a notice in the Federal Register and invite public comment as to whether particular stations qualify as specialty stations. At the conclusion of the proceeding, the Office will publish an updated Copyright Office Specialty Station List.

Dated: September 17, 1990.

Ralph Oman,

Register of Copyrights.

[FR Doc. 90-23106 Filed 9-28-90; 8:45 am]

BILLING CODE 1410-08-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Education and Human Resources has determined that the establishment of the Special Emphasis Panels listed below are necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committees:

Special Emphasis Panel in Research Career Development

Special Emphasis Panel in Teacher Preparation and Enhancement

Purpose: Primarily, to advise on the merit of special emphasis proposals or applications submitted to the Division of Research Career Development and Division of Teacher Preparation and Enhancement for financial support.

Balanced Membership Plan: Membership will be selected on an "as needed" basis in response to specific proposals, applications, or sites to be reviewed. Members will be selected for their demonstrated scientific and engineering expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving geographic balance and to enhancing representation for women, minority, younger and disabled scientists.

Responsible NSF Official: Dr. Terence Porter, Director, Division of Research Career Development and Dr. Charles Puglia, Acting Director, Division of Teacher Preparation and Enhancement National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dated: September 28, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-23175 Filed 9-28-90; 8:45 am]

BILLING CODE 7555-01-M

Animal Learning and Behavior Advisory Panel Meeting

The National Science Foundation announces the following meeting:

NAME: Advisory Panel for Animal Learning and Behavior.

DATE AND TIME: October 17-19, 1990, 8:30 a.m.-5 p.m. each day.

PLACE: National Science Foundation, 1800 G Street, NW., in room 536, Washington, DC 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Fred Stollnitz, Program Director, Animal Behavior, room 320, National Science Foundation, Washington, DC 20050, Telephone (202) 357-7949.

PURPOSE OF MEETING: To provide advice and recommendations concerning support for research in animal behavior.

AGENDA: Closed—To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-23111 Filed 9-28-90; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Special Emphasis Panel in Cross-Disciplinary Activities

AGENCY: National Science Foundation.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

NAME: Special Emphasis Panel in Cross-Disciplinary Activities.

DATES: October 11 and 12, 1990.

TIMES: 8:30 to 5 each day.

PLACE: Riverside Hotel, 924 25th Street, NW., Washington, DC.

TYPE OF MEETING: Closed.

AGENDA: Review of Small Scale Final Panel for Institutional Infrastructure Program.

CONTACT: Dr. Harry Hedges, Head, Cross-Disciplinary Activities, National Science Foundation, Rm. 304, National Science Foundation, Washington, DC 20550.

REASON FOR LATE NOTICE: It was determined that the Small Scale Panel would need to hold a second meeting, in addition to the one being held on October 2.

Dated: September 28, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-23176 Filed 9-28-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Physiological Processes; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Public Law 92-463, the National Science Foundation announces the following meeting.

NAME: Advisory Panel for Physiological Processes.

DATE AND TIME: October 15-19, 1990, 8:30 a.m. to 5 p.m.

PLACE: National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Conference Room 1243.

TYPE OF MEETING: Part Open—October 16, 12 p.m.—1 p.m. (open) October 18, 12 p.m.—1 p.m. (open) All other times the meeting is closed.

CONTACT PERSON: Dr. Ronald Alvarado, Program Dicretor, Physiological Processes, room 321-B, National Science Foundation, Washington, DC 20550, 202/357-7975.

PURPOSE OF ADVISORY PANEL: To provide advice and recommendations concerning support for research in Physiological Processes.

BEST COPY AVAILABLE

AGENDA: Open—General discussion of the current status and future plans of the Physiological Processes Program.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: September 24, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-23112 Filed 9-28-90; 8:45 am]

BILLING CODE 7555-01-M

PEACE CORPS

Information Collection Request Under OMB Review

AGENCY: United States Peace Corps.

SUMMARY: In compliance with the Paperwork Reduction Act [44 U.S.C. 3502 et seq], this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. Peace Corps has requested an expedited review of the collection by October 19, 1990, so that we can obtain timely information from the respondents. A copy of the information collection form may be obtained from Dr. Tom Eng, Office of Medical Services, United States Peace Corps, 1990 K Street, NW., Washington, DC 20526. Dr. Eng may be reached at 202-606-3512.

Comments on this information collection should be addressed to Mr. Marshall Mills, Desk Officer, Office of Management and Budget, Washington, DC 20503.

INFORMATION COLLECTION ABSTRACT:

Title: Evacuation Survey.

Need for and use of the information: Peace Corps needs this information in order to improve services to Peace Corps Volunteers who have been evacuated from Peace Corps countries in emergency situations and better prepare for any future evacuations.

Respondents: Returned Peace Corps Volunteers.

Burden on the public:

a. *Annual reporting burden:* 177 hours.

b. *Annual recordkeeping burden:* 0 hours.

c. *Estimated average burden per response:* 20 minutes.

d. *Frequency of response:* One-time survey.

e. *Estimated number of likely respondents:* 530.

This notice is issued in Washington, DC on September 21, 1990.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 90-23045 Filed 9-28-90; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28460; File No. SR-BSE-90-16]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Fees for Fingerprint Processing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 12, 1990, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE, pursuant to rule 19b-4 of the Act, submitted a proposed rule change to amend its plan for fingerprinting pursuant to rule 17f-2(c) under the Act. The Exchange proposes to increase its fingerprint processing fees from $23.00 to $26.00 per fingerprint card processed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Effective October 1, 1990, the Federal Bureau of Investigation will increase its processing charge for user-fee applicant fingerprint cards from $20.00 to $23.00 per fingerprint card submitted. The Exchange states that, in order to pass through this $3.00 increase to floor members, an equivalent increase is required in the BSE's charge for the fingerprint cards from $23.00 to $26.00. The BSE's current $3.00 charge per fingerprint card for Exchange processing will, however, remain constant.[1]

The statutory basis for the proposed rule change is Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among BSE members and issuers and other persons using its facilities. In addition, the proposed rule change is consistent with section 6(b)(5) of the Act in that it enables the Exchange to recover its costs with respect to the processing of fingerprint cards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charges imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] Pursuant to Rule 17f-2(c) under the Act, the Exchange filed a plan with the Commission allowing the BSE to act as a processor of fingerprints for its members and others.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference section, 450 Fifth Street, NW., Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-90-16 and should be submitted by October 22, 1990.

Dated: September 24, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23066 Filed 9-28-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28464; File No. SR-BSE-90-17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to its Constitution Regarding the Distribution of Gratuity Fund Proceeds

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1990, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE, pursuant to Rule 19b-4 of the Act, submitted a proposed rule change to amend Article XVII, section 5 of its Constitution to make language regarding the distribution of Gratuity Funds proceeds to the surviving spouse and adopted children uniform throughout section 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Article XVII, section 5 of the BSE Constitution regarding the distribution of Gratuity Fund proceeds to make the language of the text uniform throughout. On July 10, 1990, the Commission approved proposed rule change SR-BSE-85-3, a portion thereof which dealt with the distribution of Gratuity Fund proceeds.[1] Part of the changes to the Gratuity Fund section were to delete references to the word "widow" and to use in its place the gender neutral phrase "surviving spouse," and in addition to provide for adopted children to be included among those who share in the distribution of proceeds. Due to an omission, these changes were not made throughout section 5 of Article XVII, and the Exchange now seeks to make the language of this section clear and consistent.

The statutory basis for the proposed rule change in section 6(b)(5) of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

[1] *See* Securities Exchange Act Release No. 28191 (July 10, 1990), 55 FR 28969 (July 16, 1990) by which the Commission approved revisions to the BSE's Constitution.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The BSE Board of Governors approved proposed amendments to the Constitution on December 20, 1984. The Exchange notified its membership of the proposal and received no comments on the proposed amendment.[2]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is concerned solely with the administration of the Exchange and also is a stated policy, practice or interpretation concerned with the meaning, administration or enforcement of Article XVII, section 5 of the BSE Constitution, which governs the distribution of Gratuity Fund proceeds, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in

[2] Article XXIV, section 1 of the BSE Constitution provides that any amendment to the Constitution which is adopted by the Board of Governors shall be submitted to the Exchange members. If the amendment is not protested by fifteen Exchange members prior to the expiration of the seventh business day after the date of delivery or mailing of the proposed amendment, then the amendment is deemed approved.

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accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-90-17 and should be submitted by October 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 24, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23090 Filed 9-28-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28459; File No. SR-CSE-90-12]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange Relating to Member Fees and Assessments

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 31, 1990, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to reduce its fees for processing electronic transmissions of Regulation T and Rule 15c3-3 extension requests, from $1.00 to $.50 per request.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce the Exchange's current fee for processing electronic transmissions of Regulation T and Rule 15c3-3 extension requests,[1] thereby reducing costs to users of the Exchange's automated processing facilities.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of dues, fees, and other charges among Exchange members and issuers and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] Regulation T, issued by the Board of Governors of the Federal Reserve System pursuant to the Act, governs the extension of credit to customers by brokers-dealers for purchasing securities. 12 CFR part 220. Rule 15c3-3 under the Act governs the extension of credit for selling securities. 17 CFR 240.15c3-3. Under Regulation T (12 CFR 220.8(d) and 4(c)(3)(ii)) and Rule 15c3-3(n), a broker-dealer may request an extension of time for payment or delivery of securities from any registered national securities exchange or a registered national securities association.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-90-12 and should be submitted by October 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 24, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23091 Filed 9-28-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues and To Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

September 24, 1990.

On September 12, 1990, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges (UTP) pursuant to section 12(f)(1)(c) of the Securities Exchange Act of 1934 ("Act") inthe follwoing over-the-counter (OTC) securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-6233	COST	Costco Wholesale Corp. $.01 par value
7-6234	RTRSY	Reuters Holdings PLC ADR No par value

The MSE also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act on the following issues:

File No.	Symbol	Issuer
7-6235	MENT	Mentor Graphics Corp. No Par value
7-6236	MCRN	Micron Technologies Inc. $.10 par value

Comments

Interested persons are invited to submit, on or before October 15, 1990, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commision, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23094 Filed 9-28-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28455; File No. SR-NSCC-90-17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the National Securities Clearing Corporation Relating to a Modification to its Automated Customer Account Transfer Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-NSCC-90-17) as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would replace specific references in NSCC's Automated Customer Account Transfer ("ACAT") rules regarding NSCC's obligation to report transfer details to Designated Examining Authorities ("DEAs"), with a general provision of the same effect.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to replace specific references in NSCC's ACAT rules regarding NSCC's obligation to report transfer details to DEAs, with a general provision of the same effect.

NSCC's Shareholders Agreement with the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. ("NASD") obligations NSCC to provide, upon request, information relating to transactions of their respective Members. In accordance with the terms of this Agreement and pursuant to the request of the NYSE and NASD, NSCC reports various information regarding customer account transfers to these DEAs. The information is used by the NYSE and NASD to enforce compliance with their rules on customer account transfers.

NSCC's ACAT rule contains specific references regarding information which may be reported to a Members' DEA, *e.g.*, a Delivering Member's failure to submit customer account asset data within the time frame established by the DEA.

NYSE and NASD determine, from time to time, what information they would like to have reported. To cover the breadth that such requests could take, and since NSCC is obligated to provide this information, NSCC believes it is appropriate to delete the specific references and adopt a general reference to NSCC's obligation to report such data.

Since the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions and will be implemented consistently with the safeguarding of securities in its custody or control for which it is responsible, it is consistent with section 17A of the Act and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act because the proposal restates NSCC's obligation to provide ACAT data to DEAs, does not adversely affect the safeguarding of securities and funds in its custody or control or for which it is responsible and does not significantly affect the rights or obligations of NSCC or persons using ACAT. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that

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may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-90-17 and should be submitted by October 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1990.

Margaret McFarland,

Deputy Secretary.

[FR Doc. 90-23069 Filed 9-28-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28456; File No. SR-NSCC-90-14]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corporation Regarding a Modification to Its Fund/SERV Rules

September 20, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. Subsequently, NSCC amended the filing to provide for Commission review pursuant to section 19(b)(2), rather than section 19(b)(3)(A), of the Act.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change, as described below, is to provide for the automated processing of mutal fund underwritings and tender offers through NSCC's Fund/SERV service.

[1] *See* letter from Alisa Hoffman, Associate Counsel, NSCC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated September 12, 1990.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide for the automated processing of mutual fund underwritings and tender offers through NSCC's Fund/SERV service.

Mutual funds occasionally offer, (1) a new fund through an underwriting, and (2) to buy back mutual fund shares from shareholders through a tender offer. In underwritings there is often an extended time period (known as the "offering period") during which an individual may place an order to purchase the shares. In tender offers, there is an extended period during which a shareholder can place an order for redemption at a certain price. Therefore, in both underwritings and tender offers, unlike other mutual fund purchases and redemptions, settlement does not necessarily occur five days after trade date.

In underwritings, shares can be offered on a preliminary basis prior to rgistration. Orders placed during this time are considered "expressions of interest." The orders do not become firm commitments until "ticketing date." Prior to ticketing date, expressions of interest can be withdrawn.

Issuers may place certain restrictions on participation in an underwriting or tender offer. For example, certain broker-dealers may be ineligible to purchase shares during the offering period or for a time after the offering period (called the "colling off period" for underwritings), purchases of additional shares during the cooling off period may be prohibited, and exchanges following the tender period may not be allowed.

NSCC currently processes orders for underwritings and tender offers. However, due to the extended settlement timeframe and ability to withdraw orders this requires manual intervention. NSCC has recognized that it can modify the Fund/SERV system to accommodate underwritings and tenders on an automated basis.

Under the proposal, a mutual fund will be required to submit to NSCC the details of the underwriting and tender. Certain of these details, such as ticketing date, settlement date, and restrictions on participation and types of transactions, will be used as part of NSCC's purchase order edit process. Purchases and tenders which are submitted but do not meet the mutual fund's pre-established parameters will be rejected by NSCC. The mutual fund will nevertheless continue to be responsible for rejecting orders that are not acceptable.

The change will enable members to submit orders and expressions of interest over an extended time frame. During this period, data will be forwarded to the mutual funds. Confirmation, correction and rejection capabilities will continue to be available. Confirmed items will pend in the system and will settle on the date provided by the Mutual Fund.

The proposal will allow members to delete any expression of interest until ticketing date. Deletions submitted after ticketing date will be rejected. Once expressions of interest become orders (in the case of underwritings) and the tender period ends, normal Fund/SERV processing time frames and procedures will apply.

NSCC will cause underwriting orders and orders pursuant to tenders to settle on the date provided by the Mutual Fund. If NSCC does not receive notice of changes in the settlement date or cancellation of the underwriting or tender within sufficient time to delete the items from processing or settlement, the affected member and Mutual Fund will be required to adjust the item directly between themselves.

The rule filing also makes a technical correction to the current Fund/SERV rules to clarify that NSCC will not process redemption transactions in mutual fund shares where book share mutual funds are held in customer name or mutual fund shares are held in physical form unless the mutal fund issues a "release" to NSCC.

Since the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions for which NSCC is responsible, it is consistent with the requirements of section 17A of the Act, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of NSCC. All submissions should refer to File Number SR-NSCC-90-14 and should be submitted by October 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23067 Filed 9-28-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28454; File No. SR-NYSE-90-41]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 80A (Limitations on Trading During Significant Market Declines)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend NYSE Rule 80A to clarify the applicability of the Rule's provisions regarding stabilization procedures as they apply to index arbitrage stock liquidation orders entered on the last business day of a month prior to the expiration or settlement of options or futures contracts based on a stock index. The NYSE requests accelerated approval for the proposal so that its provisions will be in effect on a temporary basis on Friday, September 21, 1990, the next expiration Friday. The Exchange also requests permanent approval of the proposal beyond the September 1990 expiration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the stabilization requirements of Rule 80A as they apply to orders to liquidate stock positions established in relation to index options or futures contracts entered on the last business day prior to the expiration of such index options or futures contracts (so-called "expiration Fridays"). Under paragraphs (c) and (d) of Exchange Rule 80A, when the Dow Jones Industrial Average ("DJIA") advances or declines by 50 points or more from its previous trading day's closing value, all index arbitrage orders (as defined in Rule 80A) to buy or sell any of the component stocks of the Standard & Poor's 500 Stock Price Index ("S&P 500 Index") must be entered with the instruction "buy minus" (in the event of a 50 point advance in the DJIA) or "sell plus" (in the event of a 50 point decline in the DJIA). The requirements remain in effect for the remainder of the trading day, unless the DJIA moves to within 25 points of its previous day's close, when the restrictions are removed. They are reinstated if the DJIA again moves 50 points or more away from the previous day's close. The purpose of the "buy minus"—"sell plus" requirements for index arbitrage orders is to promote market stabilization by minimizing excess volatility during periods of significant market movement.

The Exchange proposes to add paragraph (g) to Exchange Rule 80A to provide that the provisions of paragraphs (c) and (d) of Exchange Rule 80A will not apply on expiration Fridays to index arbitrage market-at-the-close ("MOC") orders to liquidate previously established stock positions.[1] The Exchange does not believe that this provision will adversely affect market stability because market stabilization in what are usually the most active of these stocks is fostered by the order entry and imbalance publication procedures utilized by the Exchange on expiration Fridays. Under those procedures, MOC orders relating to

[1] The Commission approved the provisions of paragraphs (c) and (d) of Exchange Rule 80A as a pilot program to run until July 31, 1991. *See* Securities Exchange Act Release No. 28282, 55 FR 31468 (July 30, 1990) (order approving File Nos. SR-NYSE-90-5 and SR-NYSE-90-11).

index derivative products in the 50 highest capitalized stocks in the S&P 500 Index, and any component stocks of the Major Market Index not included in this group of 50, must be entered by 3 p.m. Eastern Time. This allows for publication of order imbalances in these stocks to be made at times subsequent to 3 p.m. to attract orders on the opposite side of an imbalance. The only MOC orders in such stocks which may be entered after 3 p.m. are orders which offset a published imbalance. However, the liquidation of positions relating to a strategy involving stock index futures, stock index options, or options on stock index futures, using MOC orders entered after 3 p.m., is not permitted, even if such orders might offset reported imbalances. These procedures have generally proven effective in maintaining market equilibrium on expiration Fridays.

The Exchange believes that its opening procedures have been very effective in minimizing any excess volatility that may be associated with the expiration of these derivative index products whose settlement value is based on the NYSE opening price. The Exchange is continuing to urge that the settlement value of all derivative index products be based on the NYSE opening price.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part that the rules of the Exchange are to be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

In addition to seeking permanent approval for the proposed rule change, the NYSE has requested accelerated approval for the proposal so that its provisions will be in effect on a temporary basis on Friday, September 21, 1990, the next expiration Friday.

The Commission believes that the proposed exemption from paragraphs (c) and (d) of Exchange Rule 80A for index arbitrage MOC orders entered on expiration Fridays should be approved for the September 21, 1990 expiration to enable persons to unwind previously established arbitrage positions. Moreover, the market stabilizing effects of the NYSE's closing procedures on expiration Fridays should help to counteract the impact of the unwinding of such positions.

Accordingly, the Commission finds that the proposed rule change to provide an exemption from Exchange Rule 80A for index arbitrage MOC orders on Friday, September 21, 1990, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, section 6.[8] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission finds good cause for approving the proposal on a temporary basis for Friday, September 21, 1990, prior to the thirtieth day of publication of notice of filing thereof in the Federal Register in order to permit investors to unwind previously established index arbitrage positions without the risk of market exposure should Exchange Rule 80A be triggered on September 21, 1990. With respect to permanent approval of the proposal, within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 22, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the portion of the proposed rule change (SR-NYSE-90-41) allowing the proposal to be in effect on a temporary basis on Friday, September 21, 1990, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: September 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23068 Filed 9-28-90; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. 78f (1994).

[9] 15 U.S.C. 78s(b)(2) (1994).

[4] 17 CFR 200.30-3(a)(12) (1989).

DEPARTMENT OF STATE

[Public Notice 1272]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on October 29, 1990 at 10 a.m. in room 3524 Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meeting is to review and approve delayed contributions for the meeting of Study Group VII, to review the results of September meeting of Study Group VIII, and the October meeting of Study Group XVII, as well as to review comments and action on proposals for the Organization, work plan, and terms of reference for the subcommittee on Message Handling Systems-Management Domain. Any other business within the scope of Study Group may be raised and considered.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance for the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Gary Fereno, State Department, Washington, DC, telephone (202)647-5220. All attendees must use the C Street entrance to the building.

Dated: September 18, 1990.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 90-23070 Filed 9-28-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 90-27]

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commerical Space Transportation Advisory Committee. The meeting will take place on Thursday, October 18, 1990 from 8:30 a.m. to 4:30 p.m. in room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street, SW. in Washington, DC. This will be the twelfth meeting of the Committee. The meeting will address issues as outlined in the attached agenda.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained by contacting Linda H. Strine at (202) 366-5770.

Dated: September 25, 1990.

Stephanie Lee-Miller,

Director, Office of Commercial Space Transportation.

Draft Comstac Agenda, Thursday, October 18, Rm. 2230

8:30-8:45 a.m.
Welcome Remarks—Secretary Skinner.

8:45-9 a.m.
Opening of COMSTAC Meeting—Dr. Lovelace.

9-9:10 a.m.
Introduction of the Honorable Bob Walker, (R-Pa.)—Ms. Lee-Miller (Invited).

9:10-9:30 a.m.
Congressman Walker—Legislative Update.

9:30-10:20 a.m.
OCST Director's report—Ms. Lee-Miller.

10:20-10:30 a.m.
Break.

10:30-11:30 a.m.
OCST Staff Reports—Licensing Issues—Norman Bowles.
Trade and Other Policy Issues—Gerald Musarra.

11:45-12:45 p.m.
Lunch—Mess.

1-1:20 p.m.
Trade Issues—Report on ESA Negotiations; Update on PRC Agreement—Gerald Musarra.

1:20-1:30 p.m.
Q&A.

1:30-1:45 p.m.
New Policy Issues: International Working Group Report—Al Kahlet.

2-2:15 p.m.
Procurement Working Group Report—Jerry Simonoff.

2:30-2:45 p.m.
Infrastructure Working Group Report—Steve Dorfman.

3-3:30 p.m.
New COMSTAC Issues and business—Dr. Lovelace.

3:30-4 p.m.
Announcement of new COMSTAC Chairman—Dr. Lovelace.

4-4:40 p.m.
Closing Remarks and Adjourn—Lovelace & Lee-Miller.

[FR Doc. 90-23069 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 90-066]

Chemical Transportation Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). This Committee advises the Chief, Office of Marine Safety, Security and Environmental Protection on regulatory requirements for promoting safety in the transportation of hazardous materials on vessels and the transfer of these materials between vessels and waterfront facilities.

Applications will be considered for eight expiring terms and any other existing vacancies. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in application from minorities and women.

The Committee usually meets at least once a year in Washington, DC, with Subcommittee meetings for specific problems on an as-required basis.

DATES: Requests for applications should be received no later than January 1, 1991.

ADDRESSES: Persons interested in applying should write to Commandant (G-MTH-1), U.S. Coast Guard, 2100 Second St. SW., Washington, DC, 20593-1000.

FOR FURTHER INFORMATION CONTACT: CDR Gordon Marsh or LCDR Bob Fitch, at the above mailing address or telephone (202) 267-1217.

Dated: September 25, 1990.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-23178 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-14-M

[CGD 90-057]

Meeting of the Subcommittee on Inert Gas Systems, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Inert Gas Systems of the Chemical Transportation Advisory Committee (CTAC) will hold a meeting on Wednesday, October 24, 1990, in Room 1103, Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The Subcommittee was formed to develop guidelines for the safe operation and maintenance of inert gas systems. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. This meeting will be devoted to reviewing problems associated with the maintenance of existing inert gas systems in which the manufacturer of the system is either no longer in business or the specific system design is no longer produced and major components are not readily available.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements

should notify the persons indicated under "FOR FURTHER INFORMATION CONTACT" no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Fitch or Commander Gordon Marsh, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1217.

Dated: September 25, 1990.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-23174 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-14-M

Aviation Security Advisory Committee Meeting

AGENCY: Federal Aviation Administration.

ACTION: Notice of Aviation Security Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held October 18, 1990, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-3133.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held October 18, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for the meeting is to continue the review of several recommendations from the Report of the President's Commission on Aviation Security and Terrorism. Subcommittee chairs will provide updates on their subcommittee actions since the September 17, 1990, committee meeting. Attendance at the October 18 meeting is open to the public, but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at anytime.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-3133.

Issued in Washington, DC on September 21, 1990.

Monte R. Belger,

Acting Assistant Administrator for Civil Aviation Security.

[FR Doc. 90-23056 Filed 9-28-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 26-90]

Treasury Notes of September 30, 1992, Series AE-1992

Washington, September 20, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $11,500,000,000 of United States securities, designated Treasury Notes of September 30, 1992, Series AE-1992 (CUSIP No. 912827 ZH 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Maturing notes held by Federal Reserve Banks as agents for foreign and international monetary authorities may be rolled over on a noncompetitive basis within the public offering amount.

2. Description of Securities

2.1. The Notes will be dated October 1, 1990, and will accrue interest from that date, payable on a semiannual basis on March 31, 1991, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1 p.m., Eastern Daylight Saving time, Tuesday, September 25, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, September 24, 1990, and received no later than Monday, October 1, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, *e.g.*, 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis or price per hundred, *e.g.*, 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, October 1, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, September 27, 1990. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

John A. Kliesyus,

Acting Fiscal Assistant Secretary.

[FR Doc. 90-23187 Filed 9-28-90; 2:23 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 27-90]

Treasury Notes of September 30, 1994, Series P-1994

Washington, September 20, 1990.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of September 30, 1994, Series P-1994 (CUSIP No. 912827 ZJ 4),

hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Maturing notes held by Federal Reserve Banks as agents for foreign and international monetary authorities may be rolled over on a noncompetitive basis within the public offering amount.

2. Description of Securities

2.1. The Notes will be dated October 1, 1990, and will accure interest from that date, payable on a semiannual basis on March 31, 1991, and each subsequent 6 months on September and March 31 through the date that the principal becomes payable. They will mature September 30, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, *i.e.*, Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1 p.m., Eastern Daylight Saving time, Wednesday, September 26, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 25, 1990, and received no later than Monday, October 1, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals *e.g.*, 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender alloted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, *e.g.*, 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes alloted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, October 1, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bill, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, September 27, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

John A. Kliesyne,
Acting Fiscal Assistant Secretary.

[FR Doc. 90-23186 Filed 9-28-90; 3:28 pm]
BILLING CODE 4810-40-M

Customs Service

Reduction of Service at Ports of Entry in the Event of Sequestration

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Customs may be required to initiate a number of emergency measures, including the reduction of hours of service at all ports of entry and the closing of certain small ports of entry, if its appropriations are sequestered pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985. This document gives notice to the public that Customs may be required to reduce services unless Congress passes a deficit-reduction program.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of the Comptroller, (202) 566-5187.

SUPPLEMENTARY INFORMATION:

Background

The Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177) subjects all Federal agencies to sequestration of their appropriations in the event that Congress does not pass a deficit-reduction program.

Officers and employees of Federal agencies are legally prohibited from obligating funds in excess of the post-sequester amount. The Antideficiency Act provides criminal sanctions for exceeding an apportionment or over-obligating funds. Section 1517(a) of title 31 prohibits officers and employees of the United States Government from making an obligation or expenditure exceeding an apportionment. An officer or employee of the U.S. government could be subject to criminal sanctions for making obligations or expenditures exceeding the amounts available in an appropriation fund. Section 1342 of title 31 prohibits officers or employees from volunteering to work.

In accordance with the above, in the event of a sequestration of funds, Customs, depending on the size and duration of the sequester, may need to either reduce or curtail hours of service. Among the emergency measures Customs anticipates that it may undertake are the reduction of hours of services at ports of entry and the possible closing of certain ports of entry. Customs will notify the public of specific port closures or reductions by press releases both nationally and locally. As soon as Customs is aware that such measures are required, the Commissioner will inform members of major trade organiations of the reduced hours or closing of particular ports of entry through written notices and will hold meetings, if possible. Further notification will be made on the local level by district directors and port directors who will hold meetings with trade organixtions and major users of their facilities to inform them of any reductions or closures.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: September 27, 1990.

Nancy L. Worthington,
Acting Assistant Secretary of the Treasury.

[FR Doc. 90-23323 Filed 9-27-90; 4:28 pm]
BILLING CODE 4820-02-M

Fiscal Service

[Department of the Treasury Circulars, Public Debt Series No. 4-87, Second Revision, and No. 750, Fourth Revision]

Bonds and Notes, U.S. Savings; Banks and Other Financial Institutions

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice on fee payments for issuing and paying agents.

SUMMARY: This notice is being published to announce that fees payable to qualified issuing and paying agents of United States Savings Bonds will be discontinued, reduced, or delayed effective October 1, 1990, for all bonds issued, and all bonds and savings notes paid, on or after that date. This action is being taken in response to the sequestration provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, or the legislative resolution resulting therefrom. A final rule, appearing simultaneously in the Federal Register today, amends the governing regulations to authorize discontinuance of, or reduction or delay in the payment of fees.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jacqueline L. Jackson, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Washington, DC 20239-0001 (202) 376-4320.

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SUPPLEMENTARY INFORMATION: 31 CFR part 317, also issued as Department of the Treasury Circular, Public Debt Series No. 4–87, Second Revision, at § 317.8 (b), and 31 CFR part 321, also issued as Department of the Treasury Circular No. 750, Fourth Revision, at § 321.23 (a), provide, respectively, for the payment of fees to issuing agents of United States Savings Bonds, and to paying agents of such bonds and Savings Notes, collectively referred to herein as United States Savings Bonds. These sections further provide that a schedule of fees, and the basis on which the fees are computed and paid, will be separately published in the **Federal Register**. Further, both Parts provide that the Secretary of the Treasury has the authority to amend the provisions thereof, as needed. By final rule, also published in today's **Federal Register**, the above sections were amended to authorize discontinuance, reduction, or delay of the payment of fees to issuing and paying agents should timely action to avoid sequestration, as described below, not occur, or should budgetary cuts otherwise necessitate such action.

The sequestration provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 901, *et seq.*), also known as the Gramm-Rudman-Hollings Act, provide for circumstances under which mandatory cuts in appropriations to Federal departments and agencies will be required by the beginning of the new fiscal year, October 1, 1990. This notice is being issued to notify the issuing and paying agents of United States Savings Bonds that, if the sequestration provisions become effective, or if budgetary reductions otherwise necessitate such action, the fees paid to issuing and paying agents for servicing savings bonds will be discontinued, reduced, or delayed until further notice. Payment of fees so affected may be hereafter made to the extent funds therefor become available, and provided such action is permitted by law.

The fee schedules are incorporated by reference in all issuing and paying agent agreements and the appropriate Treasury regulations, as well as the Issuing Agent Fee Statement (PDF 4962) distributed to issuing agents.

Dated: September 26, 1990.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

Schedule of Fees

To meet the mandatory cuts in appropriations required by the sequestration provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 901, *et seq.*), or in resulting legislation, the fees for the issue and payment of United States Savings Bonds are hereby discontinued, reduced, or delayed. This discontinuance, reduction, or delay shall remain effective until further notice. Once Congress has enacted appropriations legislation under which payments can be resumed, to the extent consistent with law, and depending upon the availability of funds therefor, payment will be made for servicing provided during the period the fees were discontinued, reduced, or delayed. Such payments will be made in accordance with the previous, or a revised, schedule of fees. In view of the exigency, in the event reductions in fees are made, public announcement of the reduced fees will be made as soon as possible after the appropriations legislation has become law, followed by appropriate notice in the **Federal Register**.

[FR Doc. 90–23234 Filed 9–27–90; 8:45 am]

BILLING CODE 4810–40–M

Office of Thrift Supervision

Hidalgo Federal Savings and Loan Assoc.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Hidalgo Federal Savings and Loan Association, Edinburg, Texas on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23139 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Mercer Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by Section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Mercer Federal Savings Bank, Trenton, New Jersey, on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23140 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Sentry Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Sentry Savings Bank, F.S.B., Hyannis, Massachusetts, on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23141 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Texas Commercial Federal Savings Assoc.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Texas Commercial Federal Savings Association, Sulphur Springs, Texas on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23142 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Yorkville Federal Savings Assoc.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Yorkville Federal Savings Association, [illegible]

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23143 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Caprock Federal Savings and Loan Assoc.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Caprock Federal Savings and Loan Association, Lubbock, Texas, with the Resolution Trust Corporation as sole Receiver for the Association on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23135 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings and Loan Assoc. of Seminole; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Seminole, Seminole, Oklahoma, Docket No. 2954, on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23127 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

First Savings Association, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Savings Association, F.A., Bismarck, North Dakota, Docket No. 5746, on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23128 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Heritage Federal Savings and Loan Assoc.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Heritage Federal Savings and Loan Association, Monroe, North Carolina, OTC Docket No. 5634, with the Resolution Trust Corporation as sole Receiver for the Association on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervison.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23137 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Hidalgo Savings and Loan Assoc.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Hidalgo Savings and Loan Association, Edinburg, Texas on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervison.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23129 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Mercer Savings Bank, SLA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Mercer Savings Bank, SLA, Trenton, New Jersey, Docket No. 1900, on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervison.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23130 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Mercury Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Mercury Federal Savings and Loan Association, Huntington Beach, California, Docket No. 6833, on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervison.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23131 Filed 9–28–90; 8:45 am]

BILLING CODE 6720–01–M

Midwest Federal Savings Bank of Minot; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Midwest Federal Savings Bank of Minot, Minot, North Dakota, with the Resolution Trust Corporation as sole Receiver for the Association on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–23136 Filed 9–28–90; 8:45 am]

North Carolina Savings and Loan Association, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for North Carolina Savings and Loan Association, F.A., Charlotte, North Carolina, Docket No. 8769, on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23132 Filed 9-28-90; 8:45 am]

BILLING CODE 6720-01-M

Sentry Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as sole Receiver for the Sentry Federal Savings Bank, Hyannis, Massachusetts, Docket No. 1450, on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23133 Filed 9-28-90; 8:45 am]

BILLING CODE 6720-01-M

Texas Commercial Savings Assoc.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Texas Commercial Savings Association, Sulphur Springs, Texas on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23134 Filed 9-28-90; 8:45 am]

BILLING CODE 6720-01-M

Yorkville Federal Savings and Loan Assoc.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Yorkville Federal Savings and Loan Association, Bronx, New York on September 21, 1990.

Dated: September 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23135 Filed 9-28-90; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Courtly Splendor: Twelve Centuries of Treasures from Japan" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Museum of Fine Arts, Boston beginning on or about October 17, 1990 to on or about November 25, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: September 25, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-23129 Filed 9-28-90; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6979, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by October 31, 1990.

Dated: September 25, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Placement Certificate for Manufactured Home.
3. VA Form 26-6544.
4. The form transmits the veteran's and dealer's-seller's certification on placement of a manufactured home on the site previously approved by VA; and assures that the veteran has received the manufacturer's warranty and all accessories included in the loan.
5. On occasion.
6. Individuals or house; businesses or other for-profit.
7. 500 responses.
8. ⅛ hour.
9. Not applicable.

[FR Doc. 90-23122 Filed 9-28-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by October 31, 1990.

Dated: September 25, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

1. Veterans Benefits Administration.
2. Statement in Support of Claim.
3. VA Form 21-4138.
4. The form is used by or on behalf of a claimant to provide self-certified statements in support of various types of claims processed by VA. The information is used to determine eligibility to VA benefits.
5. On occasion.
6. Individuals or households.
7. 752,000 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 90-23123 Filed 9-28-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The Agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by October 31, 1990.

Dated: September 25, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Water—Plumbing Systems Inspection Report (Manufactured Home).
3. VA Form 26-8731a.
4. The form is completed by inspectors and serves as an inspection report on the water and plumbing systems of used manufactured home units proposed as security for guaranteed loans. The information is used to determine acceptability of VA guaranteed financing.
5. On occasion.
6. Individuals or house; businesses or other for-profit.
7. 1,000 responses.
8. 2 hours.
9. Not applicable.

[FR Doc. 90-23124 Filed 9-28-90; 8:45 am]

BILLING CODE 8320-01-M

VOL 55 ISS 190 OCT 1990 UMI

Sunshine Act Meetings

Federal Register
Vol. 55, No. 190
Monday, October 1, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection e(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 8:34 a.m. on Tuesday, September 27, 1990, the Corporation's Board of Directors determined, on motion of C.C. Hope, Jr., Director (Appointive), seconded by Robert L. Clarke, Director (Comptroller of the Currency), concurred in by Andrew C. Hove, Jr., Vice Chairman of the Board of Directors, T. Timothy Ryan, Jr., Director (Office of Thrift Supervision), and L. William Seidman, Chairman of the Board of Directors, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the Bank Insurance Fund's mid-year results.

The Board further determined, by the same majority vote, that no notice of the change in the subject matter of the meeting earlier than September 21, 1990, was practicable.

Dated: September 27, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-23259 Filed 9-27-90; 1:40 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:51 p.m. on Tuesday, September 25, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Recommendation concerning administrative enforcement proceedings.

Matters relating to the probable failure of certain insured banks.

Matters relating to assistance agreements with depository institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairperson Andrew C. Hove, Jr., concurred in by Director Robert L. Clarke (Comptroller of the Currency), Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Baord Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: September 26, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-23237 Filed 9-27-90; 10:49 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 190
Monday, October 1, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44558; FRL 3800-9]

TSCA Chemical Testing; Receipt of Test Data

Correction

In notice document 90-21272 beginning on page 37356, in the issue of Tuesday, September 11, 1990, make the following correction:

On page 37357, in the first column, in the file line at the end of the document, "FR Doc. 90-21722" should read "FR Doc. 90-21272".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Carcinogenic Potential of Selected Dusts Assessment; NIOSH Meeting

Correction

In notice document 90-21065 beginning on page 36897 in the issue of Friday, September 7, 1990, make the following correction:

On page 36897, in the second column, in the fifth line, "FR Doc. 90-21605" should read "FR Doc. 90-21065".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Floyd A. Santner, M.D.; Denial of Applications

Correction

In notice document 90-21306 beginning on page 37581, in the issue of Wednesday, September 12, 1990, make the following correction:

On page 37583, in the second column, on the fourth line, "FR Doc. 90-21038" should read "FR Doc. 90-21306".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AAL-7]

Proposed Amendment to Anchorage, King Salmon, Point Barrow, Kotzebue, and Nome Transition Areas; AK

Correction

In proposed rule document 90-21366 beginning on page 37486, in the issue of Wednesday, September 12, 1990, make the following correction:

§ 71.181 [Corrected]

On page 37487, in the second column, under Anchorage, AK [Revised], in the 18th line, "Cordova" was misspelled.

BILLING CODE 1505-01-D

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federal register

Monday
October 1, 1990

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules; Final Rule

BEST COPY AVAILABLE

VOL 55 ISS 190 OCT 1 1990 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-90-3079; FR-2790-F-02]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final fair market rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective on October 1 of each year. The Department published proposed FY 1991 FMRs for the Section 8 Existing Housing Program on May 18, 1990 (55 FR 20682) and solicited public comments. Today's notice announces final FY 1991 FMR schedules for the Section 8 Existing Housing Certificate Program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Existing Housing Certificate Program (part 882, subpart F); the Section 8 Moderate Rehabilitation Program (part 882, subparts D and E); and Section 8 existing housing assisted under part 886, subparts A and C (Section 8 loan management and property disposition programs). FMRs are also used to determine payment standard schedules in the Housing Voucher Program.

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Rental Assistance Division, Office of Elderly and Assisted Housing, telephone (202) 708-0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708-0577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually, to be effective on October 1 of each year. The FMRs must reflect changes based on the most recent available data, so FMRs will be current for the year in which they apply. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment, analyzing the public comment, and publishing final FMRs. (See 24 CFR 888.115.) On May 18, 1990 (55 FR 20682), the Department proposed FMRs for Section 8 existing housing for FY 1991. Today's notice contains an analysis and response to public comments and makes appropriate revisions to the proposed FMRs.

The FMRs for 1991 announced in this notice govern the following Section 8 Housing Assistance Payments Programs: The Section 8 Existing Housing Certificate Program under part 882 (subparts A and B), including space rentals by owners of manufactured homes (subpart F), the Moderate Rehabilitation Program under part 882 (subparts D and E), the Section 8 Housing Assistance Program for Projects with HUD-insured or HUD-held Mortgages under part 886 (subpart A), as well as for existing housing under the Section 8 Housing Assistance Program for the Disposition of HUD-owned Projects under Part 886 (subpart C). In addition, FMRs are used to establish payment standards for the Housing Voucher Program.

Proposed Fair Market Rents

The proposed FY 1991 FMRs published on May 18, 1990 (55 FR 20682) reflected estimated rent levels projected forward to April 1, 1991. The criteria and methodology used by HUD in developing the proposed FMRs appear at 24 CFR part 888, subpart A, and have been in use since 1983.

The criteria used by HUD in developing FMRs are: (1) The 45th percentile rent (that is, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) rents based on units occupied by recent movers (households who moved within two years before the date of the survey data used in these calculations); and (3) exclusion from the data base of public housing units and recently completed housing (units built within two years of the survey dates). (See 24 CFR 888.113.) The FMRs for manufactured home spaces are based on the 45th percentile rent for manufactured home spaces. (See 24 CFR 888.113(a).)

In establishing the proposed FMRs, HUD used the most accurate data available. Data used to compute the FY 1991 FMRs include the 1980 Census data, Post-1980 American Housing Survey (AHS) data, the reliable area specific data submitted by public commenters since FY 1986, the year the FMRs were revised with the 1980 Census.

The proposed FY 1991 FMRs were calculated by updating FY 1990 FMRs one additional year to April 1, 1991, based on the most recent CPI data available on average annual changes for rentals and utilities. The proposed FY 1991 FMRs for manufactured home spaces were calculated by updating FY 1990 FMRs to April 1, 1991, using the most current average annual change in the CPI residential rent index (with heating costs included in the rent factored out).

Administrative Fees

The FMRs published for effect will be used to calculate the PHA ongoing administrative fee. For a PHA administering a Section 8 program in an area where the two-bedroom FMR has increased, the PHA's administrative fee will be adjusted as of October 1, 1990. For a PHA administering a Section 8 program in an area where the two-bedroom FMR is decreased, the PHA's administrative fee will be adjusted as of the first day of the PHA's fiscal year that begins after October 1, 1990.

Public Comments

HUD received 99 comments covering 86 FMR areas in response to the publication of its proposed FY1991 FMRs. This total included comments from three metropolitan areas that supported the proposed FMRs, and a comment from a PHA in Arkansas covering nine nonmetropolitan counties that was subsequently withdrawn because the commenter misunderstood the purpose of the notice and did not have concerns about the FMRs.

Based on the Department's incorporating results of the 1987 and 1988 AHS data and decreases in two local CPI surveys, reductions in this year's FMRs were proposed for the following six areas:

San Jose, CA PMSA; Boulder-Longmont, CO PMSA; Denver, CO PMSA; Buffalo, NY PMSA; Oklahoma City, OK MSA; Salt Lake City-Ogden, UT MSA.

Comments were received from all six of these areas. Only one, however, included sufficient rental market data to cause the Department to revise the proposed FMRs. The rental survey information submitted for Salt Lake City resulted in a final FMR that is less than the previous year's FMR, but higher than the proposed FMR.

The Department proposed no change in the FMRs for areas in Alaska based on a prior decision that the Anchorage CPI survey more accurately reflected local market rent changes than did the West Census Region CPI data. A comment received from the State Agency presented information showing that conditions had recently improved in some of the Alaska FMR areas. As a result of this comment, modifications have been approved for the following areas:

Fairbanks-North Star, Juneau, Kenai Peninsula, Ketchikan, Kodiak Island, Matanuska-Susitna, Sitka, Valdez, Wrangle-Petersburg.

The Department evaluated all of the comments carefully and has modified FMRs where the survey data were acceptable or where deficiencies were identifiable and could be corrected. Based on the results of this evaluation, the FMRs for 25 areas are being increased in response to information provided by the commenters. For 15 areas, no rental housing survey data were submitted, while for 34 other areas, the surveys submitted were found to be inadequate to provide a basis for revising the FMRs or were determined not to be representative of the rent level for the entire FMR area.

Solely because of the need to comply with the August 23, 1990 Order issued by the United States District Court in *Kyte v. Housing Authority of the City of Pittsburgh, et al.*, Civ. Action No. 83-1287 (W.D.Pa.), the FMRs for the Pittsburgh, Pennsylvania PMSA have been calculated other than in accordance with the applicable regulations in 24 CFR 888.113. However, publication of the Pittsburgh FMRs is done without waiving in any respect the Department's rights to appeal and seek a stay pending appeal of that Order, or to take any other lawful steps to have the Pittsburgh FMRs restored to the level required by the regulations.

Rental Housing Survey Instrument

In the May 18, 1990 publication of the proposed FMRs, the Department announced the availability of an FMR survey approach that is based on a Random Digit Dialing (RDD) telephone survey methodology. This survey provides a statistically reliable means for obtaining FMR estimates, and is recommended for use in areas that have a sufficient number of Section 8 units under contract to justify the approximately $15,000 to $20,000 individual survey cost. The RDD survey technique is based on a sampling procedure that uses computers to select a statistically random sample, dial and keep track of the telephone numbers, and process the responses. Because of the complexity of drawing the sample and sequencing the large number of calls required to complete one of these surveys successfully, the use of a survey contractor with specialized knowledge and equipment is required.

The "PHA Guide to Conducting a Fair Market Rent (FMR) Telephone Survey" is available from HUD USER by calling 1-800-245-2691. This guide is intended for local governments or PHAs that believe their FMRs are too high, or too low, and wish to obtain the data needed to revise them. The information contained in the guide provides a full explanation of how to decide whether to use the survey and step-by-step instructions on how to proceed. Because it takes a minimum of two to three months to contract for and conduct one of these surveys, interested PHAs concerned about the accuracy of their FMRs may wish to begin now to ensure that results are available in time for the next publication of FMRs.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321-4374) is unnecessary, since the Section 8 Existing Housing program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the section 8 program.

This document does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the document indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are amended as follows:

Dated: September 21, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Section 8 Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. FMRs for Existing Housing (Schedule B) are established for all Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England states.

b. FMRs for Manufactured Home spaces in the Section 8 Certificate Program (Schedule D) are established for all MSAs, PMSAs, selected nonmetropolitan portion of each State.

c. The current 339 MSAs and PMSAs are those established by the Office of Management and Budget effective in June 1990.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by MSA-PMSA and nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each MSA and PMSA are listed immediately following the listings of the FMR dollar amounts. All of the

constituent parts of an MSA that are in more than one State can be identified by consulting listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FRM area name.

BILLING CODE 4210-27-M

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A B A M A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anniston, AL MSA	243	294	346	435	486	Calhoun
Birmingham, AL MSA	282	343	403	504	564	Blount, Jefferson, St Clair, Shelby, Walker
Columbus, GA-AL MSA	251	302	358	448	505	Russell
Decatur, AL MSA	248	301	356	445	499	Lawrence, Morgan
Dothan, AL MSA	284	343	404	506	566	Dale, Houston
Florence, AL MSA	256	313	370	459	514	Colbert, Lauderdale
Gadsden, AL MSA	222	271	321	401	449	Etowah
Huntsville, AL MSA	286	346	407	511	572	Madison
Mobile, AL MSA	295	358	421	527	592	Baldwin, Mobile
Montgomery, AL MSA	260	318	374	469	525	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	274	333	393	490	551	Tuscaloosa

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	205	249	294	368	412
Bullock	209	254	299	375	420
Chambers	203	247	291	365	407
Chilton	199	243	287	358	400
Clarke	222	271	321	401	449
Cleburne	203	247	291	365	407
Conecuh	222	271	321	401	449
Covington	205	249	294	368	412
Cullman	248	301	356	445	499
De Kalb	235	285	334	417	470
Fayette	199	243	287	358	400
Geneva	205	249	294	368	412
Hale	199	243	287	358	400
Jackson	235	285	334	417	470
Lee	264	309	388	487	512
Lowndes	209	254	299	375	420
Marengo	222	271	321	401	449
Marshall	218	265	312	388	434
Perry	222	271	321	401	449
Pike	222	270	320	399	447
Sumter	222	271	321	401	449
Talladega	203	247	291	365	407
Wilcox	222	271	321	401	449

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bibb	199	243	287	358	400
Butler	213	258	305	382	428
Cherokee	203	247	291	365	407
Choctaw	222	271	321	401	449
Clay	203	247	291	365	407
Coffee	278	336	396	496	555
Coosa	203	247	291	365	407
Crenshaw	209	254	299	375	420
Dallas	222	271	321	401	449
Escambia	188	231	269	338	378
Franklin	199	243	285	356	398
Greene	199	243	287	358	400
Henry	205	249	294	368	412
Lamar	199	243	287	358	400
Limestone	210	256	302	378	424
Macon	222	270	320	399	447
Marion	199	242	285	356	398
Monroe	222	271	321	401	449
Pickens	199	243	287	358	400
Randolph	203	247	291	365	407
Talladega	203	247	291	365	407
Washington	222	271	321	401	449
Winston	199	242	285	356	398

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

ALASKA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anchorage, AK MSA	382	465	547	684	766	Anchorage

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aleutian I	454	551	649	812	909
Bristol Bay	454	551	649	812	909
Fairbanks No. Star	431	524	616	770	862
Juneau	543	659	775	969	1085
Ketchikan Gateway	550	668	786	983	1100
Kodiak Island	609	739	870	1088	1219
Nome	454	551	649	812	909
Pr Wales-Outer Ket	454	551	649	812	909
Skgwy-Ykutt-Angoon	454	551	649	812	909
Valdez-Cordova	573	695	818	1023	1145
Wrangellpetersburg	510	619	728	910	1019

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bethel	454	551	649	812	909
Dillingham	454	551	649	812	909
Haines	454	551	649	812	909
Kenai-Penin	419	509	599	749	839
Kobuk	454	551	649	812	909
Matanuska-Susitna	386	468	551	689	771
North Slope	454	551	649	812	909
Sitka	510	619	728	910	1019
Southeastfairbanks	373	454	534	668	749
Wade Hampton	454	551	649	812	909
Ykn-Koykk	454	551	649	812	909

ARIZONA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Phoenix, AZ MSA	403	490	575	720	806	Maricopa
Tucson, AZ MSA	393	479	564	706	791	Pima

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Apache	287	349	411	514	576
Coconino	365	443	522	654	732
Graham	293	357	418	525	589
Lapaz	370	450	531	663	744
Navajo	287	349	411	514	576
Santa Cruz	293	357	418	525	589
Yuma	370	450	531	663	744

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cochise	293	357	418	525	589
Gila	295	360	426	531	593
Greenlee	293	357	418	525	589
Mohave	370	450	531	663	744
Pinal	295	360	426	531	593
Yavapai	385	443	522	654	732

ARKANSAS

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Fayetteville-Springdale, AR MSA	267	323	381	476	534	Washington
Fort Smith, AR-OK MSA	257	314	370	464	519	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	308	373	439	551	617	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	298	361	425	529	592	Crittenden
Pine Bluff, AR MSA	254	311	367	460	514	Jefferson
Texarkana, TX-Texarkana, AR MSA	255	310	366	459	513	Miller

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A R K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Arkansas	216	261	310	387	434
Baxter	245	298	353	440	495
Boone	245	298	353	440	495
Calhoun	207	254	297	373	417
Chicot	206	249	294	369	414
Clay	231	281	329	413	463
Cleveland	213	258	306	382	428
Conway	212	257	305	381	426
Cross	217	267	314	388	434
Desha	206	249	294	369	414
Franklin	192	233	275	343	384
Garland	226	277	324	406	457
Greene	231	281	329	413	463
Hotspring	226	277	324	406	457
Independence	241	293	346	432	484
Jackson	241	293	346	432	484
Lafayette	211	254	301	378	424
Lee	217	267	314	388	434
Little River	211	254	301	378	424
Madison	245	298	353	440	495
Mississippi	249	305	358	447	503
Montgomery	226	277	324	406	457
Newton	245	298	353	440	495
Perry	212	257	305	381	426
Pike	226	277	324	406	457
Polk	230	279	327	409	460
Prairie	185	225	267	333	372
St Francis	217	267	314	388	434
Searcy	245	298	353	440	495
Sharp	241	293	346	432	484
Union	207	254	297	373	417
White	241	293	346	432	484
Yell	212	257	305	381	426
Ashley	206	249	294	369	414
Benton	254	309	360	443	495
Bradley	206	249	294	369	414
Carroll	245	298	353	440	495
Clark	226	277	324	406	457
Cleburne	241	293	346	432	484
Columbia	207	254	297	373	417
Craighead	271	327	386	482	542
Dallas	207	254	297	373	417
Drew	206	249	294	369	414
Fulton	241	293	346	432	484
Grant	213	258	306	382	428
Hempstead	211	254	301	378	424
Howard	211	254	301	378	424
Izard	241	293	346	432	484
Johnson	212	257	305	381	426
Lawrence	231	281	329	413	463
Lincoln	206	249	294	369	414
Logan	192	233	275	343	384
Marion	245	298	353	440	495
Monroe	188	235	267	333	372
Nevada	211	254	301	378	424
Ouachita	207	251	295	371	417
Phillips	217	267	314	388	434
Poinsett	231	281	329	413	463
Pope	212	257	305	381	426
Randolph	231	281	329	413	463
Scott	192	233	275	343	384
Sevier	211	254	301	378	424
Stone	241	293	346	432	484
Van Buren	241	293	346	432	484
Woodruff	241	293	346	432	484

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C A L I F O R N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anaheim-Santa Ana, CA PMSA	604	732	863	1078	1208	Orange
Bakersfield, CA MSA	403	489	576	720	807	Kern
Chico, CA MSA	353	430	506	632	708	Butte
Fresno, CA MSA	367	447	526	657	737	Fresno
Los Angeles-Long Beach, CA PMSA	536	642	747	957	1081	Los Angeles
Merced, CA MSA	346	420	495	637	723	Merced
Modesto, CA MSA	386	469	554	693	775	Stanislaus
Oakland, CA PMSA	533	648	763	954	1068	Alameda, Contra Costa
Oxnard-Ventura, CA PMSA	515	627	737	921	1033	Ventura
Redding, CA MSA	367	447	526	657	737	Shasta
Riverside-San Bernardino, CA PMSA	437	516	602	779	877	Riverside, San Bernardino
Sacramento, CA MSA	388	463	554	805	855	El Dorado, Placer, Sacramento, Yolo
Salinas-Seaside-Monterey, CA MSA	441	538	629	789	884	Monterey
San Diego, CA MSA	475	583	684	857	959	San Diego
San Francisco, CA PMSA	639	775	919	1144	1281	Marin, San Francisco, San Mateo
San Jose, CA PMSA	590	716	844	1054	1181	Santa Clara
Santa Barbara-Santa Maria-Lompoc, CA MSA	498	605	713	893	999	Santa Barbara
Santa Cruz, CA PMSA	572	694	819	1023	1146	Santa Cruz
Santa Rosa-Petaluma, CA PMSA	503	610	720	901	1009	Sonoma
Stockton, CA MSA	341	412	485	621	725	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	467	534	628	907	978	Napa, Solano
Visalia-Tulare-Porterville, CA MSA	342	417	491	712	779	Tulare
Yuba City, CA MSA	302	389	434	572	642	Sutter, Yuba

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alpine	403	489	576	720	807
Calaveras	403	489	576	720	807
Del Norte	367	447	526	657	737
Humboldt	379	460	542	678	761
Inyo	403	489	576	720	807
Lake	367	447	526	657	737
Madera	332	404	475	597	666
Mendocino	367	447	569	719	737
Mono	403	489	576	720	807
Plumas	337	409	481	601	676
San Luis Obispo	455	554	653	817	915
Siskiyou	337	409	481	601	676
Trinity	367	447	526	657	737

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Amador	403	489	576	720	807
Colusa	303	370	436	548	614
Glenn	303	370	436	548	614
Imperial	382	464	546	683	765
Kings	332	404	475	594	666
Lassen	337	409	481	601	676
Mariposa	403	489	576	720	807
Modoc	337	409	481	601	676
Nevada	451	550	646	808	904
San Benito	332	404	509	654	734
Sierra	451	550	646	808	904
Tehama	337	409	481	601	676
Tuolumne	403	489	576	720	807

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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COLORADO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of NSA/PMSA within STATE
Boulder-Longmont, CO PMSA	359	437	514	643	721	Boulder
Colorado Springs, CO MSA	327	396	467	585	655	El Paso
Denver, CO PMSA	332	404	476	594	666	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	376	458	538	673	755	Larimer
Greeley, CO MSA	326	395	465	583	653	Weld
Pueblo, CO MSA	325	393	463	580	651	Pueblo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alamosa	325	393	463	580	651
Baca	283	341	396	496	557
Chaffee	360	436	513	643	721
Clear Creek	360	436	513	643	721
Costilla	325	393	463	580	651
Custer	360	436	513	643	721
Delores	325	393	463	580	651
Elbert	277	337	396	496	557
Garfield	408	495	584	731	818
Grand	429	519	611	765	858
Hinsdale	429	519	611	765	858
Jackson	429	519	611	765	858
Kit Carson	277	337	396	496	557
La Plata	361	433	511	638	716
Lincoln	283	341	396	490	557
Mesa	408	495	584	731	818
Moffat	408	495	584	731	818
Montrose	429	519	611	765	858
Otero	283	341	396	496	557
Park	360	436	513	643	721
Pitkin	429	519	611	765	858
Rio Blanco	408	495	584	731	818
Routt	429	519	611	765	858
San Juan	325	393	463	580	651
Sedgwick	277	337	396	496	557
Teller	360	436	513	643	721
Yuma	277	337	396	496	557

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Archuleta	325	393	463	580	651
Bent	283	341	396	496	557
Cheyenne	277	337	396	496	557
Conejos	325	393	463	580	651
Crowley	283	341	396	496	557
Delta	429	519	611	765	858
Eagle	429	519	611	765	858
Fremont	360	436	513	643	721
Gilpin	360	436	513	643	721
Gunnison	429	519	611	765	858
Huerfano	325	393	463	580	651
Kiowa	283	341	396	496	557
Lake	360	436	513	643	721
Las Animas	325	393	463	580	651
Logan	277	337	396	496	557
Mineral	325	393	463	580	651
Montezuma	325	393	463	580	651
Morgan	277	337	396	496	557
Ouray	429	519	611	765	858
Phillips	277	337	396	496	557
Prowers	283	341	396	496	557
Rio Grande	325	393	463	580	651
Saguache	325	393	463	580	651
San Miguel	429	519	611	765	858
Summit	429	519	611	765	858
Washington	277	337	396	496	557

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bridgeport-Milford, CT PMSA	467	568	670	836	938	Fairfield county towns of Bridgeport, Easton, Fairfield Monroe, Shelton, Stratford, Trumbull New Haven county towns of Ansonia, Beacon Falls, Derby Milford, Oxford, Seymour
Bristol, CT PMSA	388	471	555	695	779	Hartford county towns of Bristol, Burlington Litchfield county towns of Plymouth
Danbury, CT PMSA	506	617	725	908	1018	Fairfield county towns of Bethel, Brookfield, Danbury New Fairfield, Newtown, Redding, Ridgefield, Sherman Litchfield county towns of Bridgewater, New Milford
Hartford, CT PMSA	467	569	665	839	935	Hartford county towns of Avon, Bloomfield, Canton East Granby, East Hartford, East Windsor, Enfield Farmington, Glastonbury, Granby, Hartford, Manchester Marlborough, Newington, Rocky Hill, Simsbury South Windsor, Suffield, West Hartford, Wethersfield Windsor, Windsor Locks Litchfield county towns of Barkhamsted, New Hartford Middlesex county towns of East Haddam New London county towns of Colchester Tolland county towns of Andover, Bolton, Columbia Coventry, Ellington, Hebron, Somers, Stafford, Tolland Vernon, Willington
Middletown, CT PMSA	393	478	564	706	791	Middlesex county towns of Cromwell, Durham, East Hampton Haddam, Middlefield, Middletown, Portland
New Britain, CT PMSA	416	505	595	744	835	Hartford county towns of Berlin, New Britain, Plainville Southington
New Haven-Meriden, CT MSA	503	612	721	903	1010	Middlesex county towns of Clinton, Killingworth New Haven county towns of Bethany, Branford, Cheshire East Haven, Guilford, Hamden, Madison, Meriden New Haven, North Branford, North Haven, Orange Wallingford, West Haven, Woodbridge
New London-Norwich, CT-RI MSA	447	544	639	799	896	New London county towns of Bozrah, East Lyme, Franklin Griswold, Groton, Ledyard, Lisbon, Montville, New London North Stonington, Norwich, Old Lyme, Preston, Salem Sprague, Stonington, Waterford Windham county towns of Canterbury
Norwalk, CT PMSA	539	655	771	964	1081	Fairfield county towns of Norwalk, Weston, Westport Wilton
Stamford, CT PMSA	650	790	930	1163	1302	Fairfield county towns of Darien, Greenwich, New Canaan Stamford
Waterbury, CT MSA	408	491	579	723	811	Litchfield county towns of Bethlehem, Thomaston Watertown, Woodbury New Haven county towns of Middlebury, Naugatuck, Prospect Southbury, Waterbury, Wolcott

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

CONNECTICUT continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	388	471	555	695	779	Hartland
Litchfield	430	522	614	769	861	Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury Salisbury, Sharon, Torrington, Warren, Washington Winchester
Middlesex	482	584	687	860	963	Chester, Deep River, Essex, Old Saybrook, Westbrook
New London	343	419	493	618	693	Lebanon, Lyme, Voluntown
Tolland	466	566	665	834	934	Mansfield, Union
Windham	411	500	589	737	826	Ashford, Brooklyn, Chaplin, Eastford, Hampton, Killingly Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock

DELAWARE

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Wilmington, DE-NJ-MD PMSA	417	499	594	743	883	New Castle

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Kent	333	404	476	595	667

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sussex	333	404	476	595	667

DIST. OF COLUMBIA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Washington, DC-MD-VA MSA	511	621	731	914	1023	Washington

FLORIDA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bradenton, FL MSA	358	436	514	642	719	Manatee
Daytona Beach, FL MSA	347	421	495	620	695	Volusia
Fort Lauderdale-Hollywood-Pompano Beach, FL PMSA	422	513	604	756	845	Broward
Fort Myers-Cape Coral, FL MSA	369	447	526	660	740	Lee
Fort Pierce, FL MSA	369	447	526	660	740	Martin, St Lucie
Fort Walton Beach, FL MSA	246	298	351	440	492	Okaloosa
Gainesville, FL MSA	312	379	446	559	625	Alachua, Bradford
Jacksonville, FL MSA	326	396	466	584	656	Clay, Duval, Nassau, St Johns
Lakeland-Winter Haven, FL MSA	293	358	422	527	591	Polk
Melbourne-Titusville-Palm Bay, FL MSA	337	404	477	597	669	Brevard
Miami-Hialeah, FL PMSA	403	491	578	722	809	Dade
Naples, FL MSA	378	459	541	677	758	Collier

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

FLORIDA continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ocala, FL MSA	293	378	419	523	586	Marion
Orlando, FL MSA	360	439	516	628	702	Orange, Osceola, Seminole
Panama City, FL MSA	260	318	375	470	524	Bay
Pensacola, FL MSA	291	356	419	523	586	Escambia, Santa Rosa
Sarasota, FL MSA	388	472	556	694	779	Sarasota
Tallahassee, FL MSA	308	372	440	551	616	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	351	427	503	627	703	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton-Delray Beach, FL MSA	376	449	533	640	705	Palm Beach

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	238	287	338	424	476
Charlotte	356	434	511	637	715
Columbia	244	296	348	436	488
Dixie	217	267	314	392	440
Franklin	201	244	286	359	402
Glades	356	434	511	637	715
Hamilton	217	267	314	392	440
Hendry	356	434	511	637	715
Holmes	334	283	334	419	469
Jackson	209	253	298	374	420
Lafayette	217	267	314	392	440
Levy	272	331	389	486	545
Madison	217	267	314	392	440
Okeechobee	255	311	366	458	514
Sumter	272	329	389	486	545
Taylor	217	267	314	392	440
Wakulla	258	314	369	461	517
Washington	234	285	335	421	470

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Calhoun	201	244	286	359	402
Citrus	272	329	389	486	545
De Soto	255	311	366	458	514
Flagler	275	332	392	490	551
Gilchrist	217	267	314	392	440
Gulf	201	244	286	359	402
Hardee	255	311	366	458	514
Highlands	255	311	366	458	514
Indian River	369	447	526	660	740
Jefferson	201	244	286	359	402
Lake	286	348	408	513	575
Liberty	201	244	286	359	402
Monroe	419	508	672	804	873
Putnam	275	332	392	490	551
Suwannee	217	267	314	392	440
Union	217	267	314	392	440
Walton	274	331	391	489	549

GEORGIA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany, GA MSA	270	326	386	483	541	Dougherty, Lee
Athens, GA MSA	279	340	400	500	560	Clarke, Jackson, Madison, Oconee
Atlanta, GA MSA	394	479	564	705	790	Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale, Spalding, Walton
Augusta, GA-SC MSA	284	343	400	500	560	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	302	368	433	542	609	Catoosa, Dade, Walker
Columbus, GA-AL MSA	251	302	358	448	505	Chattahoochee, Columbus

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 093090

GEORGIA continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Macon-Warner Robins, GA MSA	280	343	404	505	562	Bibb, Houston, Jones, Peach
Savannah, GA MSA	284	346	407	509	571	Chatham, Effingham

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Appling	233	283	334	417	468
Bacon	218	265	312	391	439
Baldwin	221	270	317	397	445
Barton	236	287	339	424	476
Berrien	231	280	329	413	462
Brantley	218	265	312	391	439
Bryan	269	312	369	461	517
Burke	222	271	318	400	447
Camden	257	312	369	461	517
Carroll	269	324	382	478	534
Chattooga	236	287	339	424	476
Clinch	218	265	312	391	439
Colquitt	224	274	321	402	450
Crawford	188	230	270	338	377
Dawson	212	261	305	378	421
Dodge	226	277	321	403	445
Early	226	277	321	403	450
Elbert	214	260	307	385	431
Evans	233	283	334	417	468
Floyd	236	287	339	424	476
Gilmer	252	307	360	451	507
Glynn	257	312	369	461	517
Grady	226	277	321	403	450
Habersham	235	285	337	421	472
Hancock	226	277	321	403	445
Harris	230	280	324	404	450
Heard	249	303	357	447	501
Jasper	226	277	321	403	445
Jefferson	222	271	318	400	447
Johnson	226	277	321	403	445
Lanier	231	280	329	413	462
Liberty	257	312	369	461	517
Long	257	312	369	461	517
Lumpkin	213	261	305	378	421
Macon	226	277	321	403	450
Meriwether	249	303	357	447	501

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Atkinson	218	265	312	391	439
Baker	226	277	321	403	450
Banks	209	255	300	375	421
Ben Hill	231	280	329	413	462
Bleckley	226	277	321	403	445
Brooks	231	280	329	413	462
Bulloch	233	283	334	417	468
Calhoun	226	277	321	403	450
Candler	233	283	334	417	468
Charlton	226	276	321	396	439
Clay	226	277	321	403	450
Coffee	218	265	312	391	439
Cook	231	280	329	413	462
Crisp	224	274	321	402	450
Decatur	226	277	321	403	450
Dooly	226	277	321	403	450
Echols	231	280	329	413	462
Emanuel	222	271	318	400	447
Fannin	252	307	360	451	507
Franklin	209	255	300	375	421
Glascock	222	271	318	400	447
Gordon	236	287	339	424	476
Greene	212	257	303	378	425
Hall	302	363	432	539	607
Haralson	236	287	339	424	476
Hart	209	255	300	375	421
Irwin	231	280	329	413	462
Jeff Davis	233	283	334	417	468
Jenkins	222	271	318	400	447
Lamar	208	252	298	373	417
Laurens	221	270	317	397	445
Lincoln	222	271	318	400	447
Lowndes	231	280	329	413	462
McIntosh	257	312	369	461	517
Marion	230	280	324	404	450
Miller	226	277	321	403	450

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

GEORGIA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mitchell	226	277	321	403	450
Montgomery	230	281	329	406	450
Murray	252	307	360	451	507
Pickens	252	307	360	451	507
Pike	208	252	298	373	417
Pulaski	226	277	321	403	445
Quitman	224	274	321	402	450
Randolph	226	277	321	403	450
Screven	230	281	329	406	450
Stephens	246	302	353	443	493
Sumter	251	308	363	453	510
Taliaferro	222	271	318	400	447
Taylor	226	277	321	403	450
Terrell	226	277	321	403	450
Tift	231	280	329	413	462
Towns	212	261	305	378	421
Troup	255	308	361	450	503
Twiggs	188	230	270	338	377
Upson	208	252	298	373	417
Warren	222	271	318	400	447
Wayne	233	283	334	417	468
Wheeler	226	277	321	403	445
Whitfield	252	307	360	451	507
Wilkes	222	271	318	400	447
Worth	226	277	321	403	450

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Monroe	188	230	270	338	377
Morgan	212	257	303	379	425
Oglethorpe	212	257	303	379	425
Pierce	218	265	312	391	439
Polk	236	289	339	424	476
Putnam	226	277	321	403	445
Rabun	212	261	305	378	421
Schley	230	280	324	404	450
Seminole	226	277	321	403	450
Stewart	230	280	324	404	450
Talbot	224	274	321	402	450
Tattnall	233	283	334	417	468
Telfair	226	277	321	403	445
Thomas	262	318	375	472	527
Toombs	233	283	334	417	468
Treutlen	226	277	321	403	445
Turner	231	280	329	413	462
Union	212	261	305	378	421
Ware	218	265	312	391	439
Washington	226	277	321	403	445
Webster	230	280	324	404	450
White	212	261	305	378	421
Wilcox	226	277	321	403	445
Wilkinson	226	277	321	403	445

HAWAII

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Honolulu, HI MSA	486	591	695	875	980	Honolulu

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hawaii	450	545	640	803	899
Maui	530	644	758	948	1061

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Kauai	560	682	802	1002	1122

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

I D A H O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Boise City, ID MSA	379	461	543	679	761	Ada

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	295	360	423	528	593
Bear Lake	306	372	439	550	616
Bingham	308	376	439	550	616
Boise	295	360	423	528	593
Bonneville	331	401	474	592	664
Butte	331	401	474	592	664
Canyon	295	360	423	528	593
Cassia	314	381	449	561	630
Clearwater	306	372	439	550	616
Elmore	295	360	423	528	593
Fremont	331	401	474	592	664
Gooding	314	381	449	561	630
Jefferson	331	401	474	592	664
Kootenai	306	372	439	550	616
Lemhi	331	401	474	592	664
Lincoln	314	381	449	561	630
Minidoka	314	381	449	561	630
Oneida	306	372	439	550	616
Payette	295	360	423	528	593
Shoshone	306	372	439	550	616
Twin Falls	314	381	449	561	630
Washington	295	360	423	528	593

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bannock	308	376	439	550	616
Benewah	306	372	439	550	616
Blaine	314	381	449	561	630
Bonner	306	372	439	550	616
Boundary	306	372	439	550	616
Camas	314	381	449	561	630
Caribou	306	376	439	550	616
Clark	331	401	474	592	664
Custer	331	401	474	592	664
Franklin	306	372	439	550	616
Gem	295	360	423	528	593
Idaho	306	372	439	550	616
Jerome	314	381	449	561	630
Latah	306	372	439	550	616
Lewis	306	372	439	550	616
Madison	331	401	474	592	664
Nez Perce	306	372	439	550	616
Owyhee	295	360	423	528	593
Power	306	376	439	550	616
Teton	331	401	474	592	664
Valley	295	360	423	528	593

I L L I N O I S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aurora-Elgin, IL PMSA	451	550	649	810	909	Kane, Kendall
Bloomington-Normal, IL MSA	324	395	464	579	650	Mclean
Champaign-Urbana-Rantoul, IL MSA	314	381	450	565	631	Champaign
Chicago, IL PMSA	441	543	635	799	894	Cook, Du Page, Mchenry
Davenport-Rock Island-Moline, IA-IL MSA	345	420	494	617	691	Henry, Rock Island
Decatur, IL MSA	314	381	450	565	631	Macon
Joliet, IL PMSA	455	554	655	818	919	Grundy, Will
Kankakee, IL MSA	311	377	445	557	625	Kankakee
Lake County, IL PMSA	467	568	666	837	937	Lake
Peoria, IL MSA	365	443	521	653	730	Peoria, Tazewell, Woodford

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

ILLINOIS continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rockford, IL MSA	331	403	474	592	663	Boone, Winnebago
St. Louis, MO-IL MSA	340	413	487	608	681	Clinton, Jersey, Madison, Monroe, St Clair
Springfield, IL MSA	332	404	475	594	665	Menard, Sangamon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	246	299	352	441	494
Bond	270	331	388	486	544
Bureau	300	366	432	539	604
Carroll	278	338	400	500	559
Christian	285	345	407	510	572
Clay	254	308	365	455	511
Cranford	254	308	365	455	511
De Kalb	363	440	519	648	726
Douglas	270	331	388	486	544
Edwards	246	299	352	441	494
Fayette	254	308	365	455	511
Franklin	288	348	412	517	578
Gallatin	228	276	328	408	457
Hamilton	246	299	352	441	494
Hardin	228	276	328	408	457
Iroquois	283	342	404	507	568
Jasper	254	308	365	455	511
Jo Daviess	278	338	400	500	559
Knox	293	356	416	523	587
Lawrence	254	308	365	455	511
Livingston	283	342	404	507	568
Mcdonough	270	330	383	478	532
Marion	254	308	365	455	511
Mason	283	339	402	497	553
Mercer	264	321	377	474	532
Morgan	283	339	402	497	553
Ogle	278	338	400	500	559
Piatt	270	331	388	486	544
Pope	228	276	328	408	457
Putnam	300	366	432	539	604
Richland	254	308	365	455	511
Schuyler	246	299	352	441	494
Shelby	285	345	407	510	572
Stephenson	278	338	400	500	559
Vermilion	283	342	404	507	568

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alexander	228	276	328	408	457
Brown	246	299	352	441	494
Calhoun	275	335	396	493	553
Cass	283	339	402	497	553
Clark	270	331	388	486	544
Coles	270	331	388	486	544
Cumberland	270	331	388	486	544
De Witt	270	331	388	486	544
Edgar	270	331	388	486	544
Effingham	254	308	365	455	511
Ford	283	342	404	507	568
Fulton	300	366	432	539	604
Greene	275	335	396	493	553
Hancock	264	321	377	474	532
Henderson	264	321	377	474	532
Jackson	288	348	412	517	578
Jefferson	277	336	401	500	557
Johnson	228	276	328	408	457
La Salle	340	413	487	610	684
Lee	340	413	487	610	684
Logan	283	339	402	497	553
Macoupin	285	345	407	510	572
Marshall	300	366	432	539	604
Massac	228	276	328	408	457
Montgomery	285	345	407	510	572
Moultrie	285	345	407	510	572
Perry	270	331	388	486	544
Pike	246	299	352	441	494
Pulaski	228	276	328	408	457
Randolph	270	331	388	486	544
Saline	228	276	328	408	457
Scott	283	339	402	497	553
Stark	300	366	432	539	604
Union	228	276	328	408	457
Wabash	246	299	352	441	494

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

ILLINOIS continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Warren	270	330	383	478	532
Wayne	246	299	352	441	494
Whiteside	340	413	487	610	684
Washington	270	331	388	486	544
White	246	299	352	441	494
Williamson	288	348	412	517	578

INDIANA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, IN MSA	269	327	384	482	541	Madison
Bloomington, IN MSA	290	353	416	521	583	Monroe
Cincinnati, OH-KY-IN PMSA	320	389	458	572	641	Dearborn
Elkhart-Goshen, IN MSA	284	344	406	508	570	Elkhart
Evansville, IN-KY MSA	298	355	417	523	585	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	298	360	420	527	585	Allen, De Kalb, Whitley
Gary-Hammond, IN PMSA	361	438	516	646	724	Lake, Porter
Indianapolis, IN MSA	336	408	480	600	672	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion Morgan, Shelby
Kokomo, IN MSA	295	361	423	531	594	Howard, Tipton
Lafayette-West Lafayette, IN MSA	313	381	448	560	628	Tippecanoe
Louisville, KY-IN MSA	270	327	384	479	537	Clark, Floyd, Harrison
Muncie, IN MSA	257	311	366	454	508	Delaware
South Bend-Mishawaka, IN MSA	292	354	413	513	572	St Joseph
Terre Haute, IN MSA	265	323	377	469	521	Clay, Vigo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	263	320	373	467	523
Benton	252	308	363	454	508
Brown	297	363	427	536	600
Cass	261	319	375	469	526
Crawford	218	265	312	392	440
Decatur	297	363	427	536	600
Fayette	256	310	363	454	508
Franklin	256	310	363	454	508
Gibson	284	344	406	508	570
Greene	246	297	353	442	494
Huntington	260	318	373	467	523
Jasper	263	321	377	473	530
Jefferson	284	344	406	508	570
Knox	252	304	353	442	494
Lagrange	271	328	386	484	543
Lawrence	274	334	393	492	550
Bartholomew	297	363	427	536	600
Blackford	239	290	342	427	480
Carroll	252	308	363	454	508
Clinton	252	308	363	454	508
Daviess	246	297	353	442	494
Dubois	218	265	312	392	440
Fountain	252	308	363	454	508
Fulton	253	307	361	455	508
Grant	239	290	342	427	480
Henry	239	290	342	427	480
Jackson	297	363	427	536	600
Jay	239	290	342	427	480
Jennings	297	363	427	536	600
Kosciusko	275	333	391	482	539
La Porte	287	349	410	513	577
Marshall	263	321	377	473	530

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I N D I A N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Martin	246	297	353	442	494
Montgomery	252	308	363	454	508
Noble	270	328	386	484	543
Orange	218	265	312	392	440
Parke	252	308	363	454	508
Pike	284	344	406	508	570
Putnam	285	347	408	510	571
Ripley	284	344	406	508	570
Scott	271	329	388	486	545
Starke	269	321	377	473	530
Sullivan	252	308	363	454	508
Union	256	310	363	454	508
Wabash	245	296	350	440	492
Washington	292	356	419	525	588
Wells	267	321	374	469	523
Miami	261	319	375	469	526
Newton	263	321	377	473	530
Ohio	284	344	406	508	570
Owen	289	352	413	518	581
Perry	218	265	312	392	440
Pulaski	263	321	377	473	530
Randolph	229	280	342	427	480
Rush	252	308	363	454	508
Spencer	218	265	312	392	440
Steuben	270	328	386	484	543
Switzerland	284	344	406	508	570
Vermillion	261	318	371	461	511
Warren	252	308	363	454	508
Wayne	257	311	366	454	508
White	252	308	363	454	508

I O W A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cedar Rapids, IA MSA	336	406	478	600	673	Linn
Davenport-Rock Island-Moline, IA-IL MSA	345	420	494	617	691	Scott
Des Moines, IA MSA	333	405	477	598	670	Dallas, Polk, Warren
Dubuque, IA MSA	310	375	442	554	620	Dubuque
Iowa City, IA MSA	351	428	503	630	705	Johnson
Omaha, NE-IA MSA	305	370	435	545	613	Pottawattamie
Sioux City, IA-NE MSA	302	367	432	540	606	Woodbury
Waterloo-Cedar Falls, IA MSA	337	407	480	602	675	Black Hawk, Bremer

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	253	309	363	456	509
Allamakee	268	325	384	480	536
Audubon	269	327	387	482	540
Boone	307	371	437	547	614
Buena Vista	264	319	377	471	530
Calhoun	269	327	387	482	540
Cass	276	336	394	494	554
Cerro Gordo	266	323	381	476	534
Chickasaw	268	325	384	480	538
Clay	264	319	377	471	530
Clinton	300	363	429	536	602
Adams	253	309	363	456	509
Appanoose	253	309	363	456	509
Benton	263	318	375	470	527
Buchanan	268	325	384	480	538
Butler	268	325	384	480	538
Carroll	269	327	387	482	540
Cedar	300	363	429	536	602
Cherokee	269	327	387	482	540
Clarke	253	309	363	456	509
Clayton	268	325	384	480	538
Crawford	269	327	387	482	540

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Davis	253	309	363	456	509
Delaware	300	363	429	536	602
Dickinson	264	319	377	471	530
Fayette	268	325	384	480	538
Franklin	266	323	381	476	534
Greene	269	327	387	482	540
Guthrie	269	327	387	482	540
Hancock	266	323	381	476	534
Harrison	276	336	394	494	554
Howard	268	325	384	480	538
Ida	269	327	387	482	540
Jackson	300	363	429	536	602
Jefferson	280	341	400	502	563
Keokuk	264	319	377	471	529
Lee	281	343	403	504	566
Lucas	253	309	363	456	509
Madison	283	346	406	508	570
Marion	283	346	406	508	570
Mills	276	336	394	494	554
Monona	269	327	387	482	540
Montgomery	276	336	394	494	554
O Brien	264	319	377	471	530
Page	276	336	394	494	554
Plymouth	269	327	387	482	540
Poweshiek	279	340	399	500	562
Sac	269	327	387	482	540
Sioux	264	319	377	471	530
Tama	279	340	399	500	562
Union	253	309	363	456	509
Wapello	300	362	428	535	600
Wayne	253	309	363	456	509
Winnebago	266	323	381	476	534
Worth	266	323	381	476	534

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Decatur	253	309	363	456	509
Des Moines	281	343	403	504	566
Emmet	264	319	377	471	530
Floyd	266	323	381	476	534
Fremont	276	336	394	494	554
Grundy	268	325	384	480	538
Hamilton	269	327	387	482	540
Hardin	279	340	399	500	562
Henry	281	343	403	504	566
Humboldt	269	327	387	482	540
Iowa	263	318	375	470	527
Jasper	283	346	406	508	570
Jones	263	318	375	470	527
Kossuth	266	323	381	476	534
Louisa	281	343	403	504	566
Lyon	264	319	377	471	530
Mahaska	253	309	363	456	509
Marshall	279	340	399	500	562
Mitchell	266	323	381	476	534
Monroe	253	309	363	456	509
Muscatine	281	343	403	504	566
Osceola	264	319	377	471	530
Palo Alto	264	319	377	471	530
Pocahontas	269	327	387	482	540
Ringgold	253	309	363	456	509
Shelby	276	336	394	494	554
Story	307	371	437	547	614
Taylor	253	309	363	456	509
Van Buren	253	309	363	456	509
Washington	263	318	375	470	527
Webster	269	327	387	482	540
Winneshiek	268	325	384	480	538
Wright	269	327	387	482	540

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

KANSAS

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Kansas City, MO-KS MSA	311	378	444	555	622	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	338	410	484	604	678	Douglas
Topeka, KS MSA	306	373	437	550	614	Shawnee
Wichita, KS MSA	326	396	471	587	654	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	213	259	305	381	429
Atchison	246	299	352	441	494
Barton	247	301	355	443	496
Brown	246	299	352	441	494
Chautauqua	213	259	305	381	429
Cheyenne	215	262	308	387	433
Clay	269	328	387	484	540
Coffey	269	328	387	484	540
Cowley	213	259	305	381	429
Decatur	215	262	308	387	433
Doniphan	246	299	352	441	494
Elk	213	259	305	381	429
Ellsworth	267	325	382	480	536
Ford	253	308	363	455	510
Geary	269	328	387	484	540
Graham	215	262	308	387	433
Gray	253	308	363	455	510
Greenwood	269	328	387	484	540
Harper	247	301	355	443	496
Hodgeman	253	308	363	455	510
Jefferson	234	284	335	417	469
Kearny	253	308	363	455	510
Kiowa	247	301	355	443	496
Lane	253	308	363	455	510
Linn	213	259	305	381	429
Lyon	269	328	387	484	540
Marion	269	328	387	484	540
Meade	253	308	363	455	510
Montgomery	226	275	324	406	455
Morton	253	308	363	455	510
Neosho	226	275	324	406	455
Norton	215	262	308	387	433
Osborne	215	262	308	387	433
Pawnee	247	301	355	443	496

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	213	259	305	381	429
Barber	247	301	355	443	496
Bourbon	213	259	305	381	429
Chase	269	328	387	484	540
Cherokee	226	275	324	406	455
Clark	253	308	363	455	510
Cloud	267	325	382	480	536
Comanche	247	301	355	443	496
Crawford	226	275	324	406	455
Dickinson	269	328	387	484	540
Edwards	247	301	355	443	496
Ellis	215	262	308	387	433
Finney	253	308	363	455	510
Franklin	224	283	334	416	467
Gove	215	262	308	387	433
Grant	253	308	363	455	510
Greeley	253	308	363	455	510
Hamilton	253	308	363	455	510
Haskell	253	308	363	455	510
Jackson	246	299	352	441	494
Jewell	267	325	382	480	536
Kingman	247	301	355	443	496
Labette	226	275	324	406	455
Lincoln	267	325	382	480	536
Logan	215	262	308	387	433
Mcpherson	284	345	406	510	570
Marshall	269	328	387	484	540
Mitchell	267	325	382	480	536
Morris	269	328	387	484	540
Nemaha	246	299	352	441	494
Ness	253	308	363	455	510
Osage	234	284	335	417	469
Ottawa	267	325	382	480	536
Phillips	215	262	308	387	433

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pottawatomie	269	328	387	484	540
Rawlins	215	262	308	387	433
Republic	267	325	382	480	536
Riley	269	328	387	484	540
Rush	247	301	355	443	496
Saline	267	325	382	480	536
Seward	253	308	363	455	510
Sherman	215	262	308	387	433
Stafford	247	301	355	443	496
Stevens	253	308	363	455	510
Thomas	215	262	308	387	433
Wabaunsee	269	328	387	484	540
Washington	267	325	382	480	536
Wilson	213	259	305	381	429

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pratt	247	301	355	443	496
Reno	284	345	408	510	570
Rice	284	345	408	510	570
Rooks	215	262	308	387	433
Russell	215	262	308	387	433
Scott	253	308	363	455	510
Sheridan	215	262	308	387	433
Smith	215	262	308	387	433
Stanton	253	308	363	455	510
Sumner	247	301	355	443	496
Trego	215	262	308	387	433
Wallace	215	262	308	387	433
Wichita	253	308	363	455	510
Woodson	213	259	305	381	429

K E N T U C K Y

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cincinnati, OH-KY-IN PMSA	320	389	458	572	641	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	280	352	441	536	595	Christian
Evansville, IN-KY MSA	298	355	417	523	585	Henderson
Huntington-Ashland, WV-KY-OH MSA	299	363	429	537	603	Boyd, Carter, Greenup
Lexington-Fayette, KY MSA	313	381	447	561	628	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN MSA	270	327	384	479	537	Bullitt, Jefferson, Oldham, Shelby
Owensboro, KY MSA	245	297	351	438	491	Daviess

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	231	281	327	404	452
Anderson	287	351	412	515	577
Barren	245	297	352	438	493
Bell	249	305	358	447	503
Bracken	231	280	329	413	463
Breckinridge	226	277	324	406	454
Caldwell	246	299	355	443	497
Carlisle	238	288	338	422	473
Casey	225	275	323	404	452
Clinton	231	281	327	404	452
Cumberland	231	281	327	404	452
Elliott	212	257	305	381	427
Fleming	231	280	329	413	463

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	194	236	278	347	389
Ballard	238	288	338	422	473
Bath	231	280	329	413	463
Boyle	280	338	400	500	560
Breathitt	237	287	338	424	475
Butler	194	236	278	347	389
Calloway	238	288	338	422	473
Carroll	237	288	338	423	475
Clay	212	257	303	379	426
Crittendon	246	299	355	443	497
Edmonson	194	236	278	347	389
Estill	280	338	400	500	560
Floyd	280	338	399	449	505

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Franklin	287	351	412	515	577
Gallatin	237	288	338	425	475
Grant	237	288	338	425	475
Grayson	226	277	324	406	454
Hancock	239	290	343	429	479
Harlan	249	305	358	447	503
Hart	194	236	278	347	389
Hickman	236	286	336	422	473
Jackson	212	257	303	379	426
Knott	237	287	338	424	475
Larue	226	277	324	406	454
Laurence	212	257	305	381	427
Leslie	237	287	338	424	475
Lewis	231	280	329	413	463
Livingston	213	258	306	382	428
Lyon	213	258	306	382	428
Mccreary	231	281	327	404	452
Madison	280	338	400	500	560
Marion	226	277	324	406	454
Martin	250	306	359	449	505
Meade	256	313	368	461	516
Mercer	287	351	412	515	577
Monroe	194	236	278	347	389
Morgan	231	281	329	413	463
Nelson	226	277	324	406	454
Ohio	239	290	343	429	479
Owsley	237	287	338	424	475
Perry	237	287	338	424	475
Powell	208	252	297	373	420
Robertson	231	280	329	413	463
Rowan	231	280	329	413	463
Simpson	247	301	356	445	499
Taylor	231	281	327	404	452
Trigg	213	258	306	382	428
Union	239	290	343	429	479
Washington	226	277	324	406	454
Webster	239	290	343	429	479
Wolfe	237	287	338	424	475

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Fulton	236	286	336	422	473
Garrard	280	338	400	500	560
Graves	236	286	336	422	473
Green	231	281	327	404	452
Hardin	256	313	368	461	516
Harrison	251	280	359	449	504
Henry	211	256	301	378	424
Hopkins	246	299	355	443	497
Johnson	250	306	359	449	505
Knox	246	297	349	436	487
Laurel	212	296	373	388	426
Lee	237	287	338	424	475
Letcher	237	287	338	424	475
Lincoln	280	338	400	500	560
Logan	247	301	356	445	499
Mccracken	246	289	341	422	473
Mclean	239	290	343	429	479
Magoffin	250	306	359	449	505
Marshall	246	289	341	422	473
Mason	231	280	329	413	463
Menifee	231	281	329	413	463
Metcalfe	194	236	278	347	389
Montgomery	231	280	329	413	463
Muhlenberg	246	299	355	443	497
Nicholas	208	252	297	373	420
Owen	237	288	338	425	475
Pendleton	237	286	336	422	473
Pike	250	306	359	449	505
Pulaski	231	281	327	404	452
Rockcastle	212	257	303	379	426
Russell	225	275	323	404	452
Spencer	211	256	301	378	424
Todd	213	258	306	382	428
Trimble	211	256	301	378	424
Warren	247	301	356	445	499
Wayne	231	281	327	404	452
Whitley	249	305	358	447	503

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

L O U I S I A N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Alexandria, LA MSA	263	321	378	473	528	Rapides
Baton Rouge, LA MSA	332	402	474	592	664	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma-Thibodaux, LA MSA	293	358	420	524	588	Lafourche, Terrebonne
Lafayette, LA MSA	332	402	474	592	664	Lafayette, St Martin
Lake Charles, LA MSA	267	322	376	469	524	Calcasieu
Monroe, LA MSA	262	320	376	471	526	Ouachita
New Orleans, LA MSA	348	423	498	622	698	Jefferson, Orleans, St Bernard, St Charles, St John The St Tammany
Shreveport, LA MSA	298	362	429	536	600	Bossier, Caddo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Acadia	226	277	326	406	457
Assumption	197	239	280	351	394
Beauregard	180	220	260	327	365
Caldwell	206	249	294	362	405
Catahoula	223	272	322	402	450
Concordia	223	272	322	402	450
East Carroll	179	219	258	324	361
Evangeline	217	263	310	390	436
Grant	223	272	322	402	450
Iberville	188	229	269	337	378
Jefferson Davis	180	220	260	327	365
Lincoln	234	286	336	420	471
Morehouse	179	219	258	324	361
Plaquemines	330	399	471	589	659
Red River	234	286	336	420	471
Sabine	234	286	336	420	471
St James	197	239	280	351	394
St Mary	268	328	385	481	539
Tensas	179	219	258	324	361
Vermilion	226	277	326	406	457
Washington	212	258	303	381	427
West Carroll	179	219	258	324	361
Winn	223	272	322	402	450

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	180	220	260	327	365
Avoyelles	223	272	322	402	450
Bienville	234	286	336	420	471
Cameron	180	220	260	327	365
Claiborne	234	286	336	420	471
De Soto	234	286	336	420	471
E Feliciana	188	229	269	337	378
Franklin	179	219	258	324	361
Iberia	268	328	385	481	539
Jackson	179	219	258	324	361
La Salle	223	272	322	402	450
Madison	179	219	258	324	361
Natchitoches	234	286	336	420	471
Pointe Coupee	188	229	269	337	378
Richland	179	219	258	324	361
St Helena	188	229	269	337	378
St Landry	217	263	310	390	436
Tangipahoa	212	258	303	381	427
Union	179	219	258	324	361
Vernon	223	272	322	402	450
Webster	203	247	291	363	407
W Feliciana	188	229	269	337	378

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

M A I N E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bangor, ME MSA	344	419	493	618	693	Penobscot county towns of Bangor, Brewer, Eddington Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town Orono, Orrington, Penobscot Indian I, Veazie Waldo county towns of Winterport
Lewiston-Auburn, ME MSA	362	432	488	546	621	Androscoggin county towns of Auburn, Greene, Lewiston Lisbon, Mechanic Falls, Poland, Sabattus
Portland, ME MSA	424	539	682	764	919	Cumberland county towns of Cape Elizabeth, Cumberland Falmouth, Freeport, Gorham, Gray, North Yarmouth Portland, Raymond, Scarborough, South Portland, Standish Westbrook, Windham, Yarmouth York county towns of Buxton, Hollis, Old Orchard Beach
Portsmouth-Dover-Rochester, NH-ME MSA	456	555	651	818	914	York county towns of Berwick, Eliot, Kittery North Berwick, South Berwick, Wells, York

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	318	372	439	539	596	Durham, Leeds, Livermore, Livermore Falls, Minot, Turner Wales
Aroostook	320	389	459	573	643	
Cumberland	355	431	507	630	701	Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison Naples, New Gloucester, Pownal, Sebago
Franklin	334	378	450	532	604	
Hancock	336	400	468	585	653	
Kennebec	336	409	482	604	675	
Knox	324	395	465	583	653	
Lincoln	320	388	458	573	642	
Oxford	334	378	450	532	604	
Penobscot	331	400	465	582	653	Alton, Argyle, Bradford, Bradley, Burlington, Carmel Carroll, Charleston, Chester, Clifton, Corinna, Corinth Dexter, Dixmont, Drew, East Millinocket, Edinburg Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush Greenfield, Howland, Hudson, Kingman, Lagrange Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag Maxfield, Medway, Milford, Millinocket, Mount Chase Newburgh, Newport, North Penobscot, Passadumkeag, Patten Plymouth, Prentiss, Sebopis, Springfield, Stacyville Stetson, Summit, Twombly, Webster, Whitney, Winn Woodville
Piscataquis	276	336	396	499	557	
Sagadahoc	367	494	532	621	729	
Somerset	320	388	459	573	642	
Waldo	324	395	465	583	653	Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom Islesboro, Jackson, Knox, Liberty, Lincolnville, Monroe Montville, Morrill, Northport, Palermo, Prospect Searsmont, Searsport, Stockton Springs, Swanville Thorndike, Troy, Unity, Waldo

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 082090

MAINE continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Washington	324	395	465	583	653	
York	406	478	604	621	754	Acton, Alfred, Arundel, Biddeford, Cornish, Dayton Kennebunk, Kennebunkport, Lebanon, Limerick, Limington Lyman, Newfield, Parsonsfield, Saco, Sanford, Shapleigh Waterboro

MARYLAND

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Baltimore, MD MSA	382	465	547	684	767	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Annes, Baltimore
Columbia, MD MSA	503	610	718	898	1005	Columbia
Cumberland, MD-WV MSA	275	327	383	473	528	Allegany
Hagerstown, MD MSA	307	373	440	551	616	Washington
Washington, DC-MD-VA MSA	511	621	731	914	1023	Calvert, Charles, Frederick, Montgomery, Prince George'S
Wilmington, DE-NJ-MD PMSA	417	499	594	743	883	Cecil

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Caroline	290	348	409	514	576
Garrett	276	335	395	492	553
St Marys	421	509	594	744	824
Talbot	332	403	475	595	665
Worcester	299	366	427	534	598

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Dorchester	297	361	427	534	598
Kent	302	369	434	544	609
Somerset	297	361	427	534	598
Wicomico	354	433	508	535	598

MASSACHUSETTS

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Boston, MA PMSA	608	739	869	1087	1217	Bristol county towns of Mansfield, Norton, Raynham Essex county towns of Lynn, Lynnfield, Nahant, Saugus Middlesex county towns of Acton, Arlington, Ashland, Ayer Bedford, Belmont, Boxborough, Burlington, Cambridge Carlisle, Concord, Everett, Framingham, Groton Hollision, Hopkinton, Hudson, Lexington, Lincoln Littleton, Malden, Marlborough, Maynard, Medford Melrose, Natick, Newton, North Reading, Reading Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury Townsend, Wakefield, Waltham, Watertown, Wayland, Weston Wilmington, Winchester, Woburn Norfolk county towns of Bellingham, Braintree, Brookline Canton, Cohasset, Dedham, Dover, Foxborough, Franklin Holbrook, Medfield, Medway, Millis, Milton, Needham Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton Walpole, Wellesley, Westwood, Weymouth, Wrentham Plymouth county towns of Carver, Duxbury, Hanover, Hanson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

M A S S A C H U S E T T S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Hingham, Hull, Kingston, Lakeville, Marshfield Middleborough, Norwell, Pembroke, Plymouth, Plympton Rockland, Scituate Suffolk county towns of Boston, Chelsea, Revere, Winthrop Worcester county towns of Berlin, Bolton, Harvard Hopedale, Lancaster, Mendon, Milford, Southborough Upton
Brockton, MA PMSA	472	570	715	867	973	Bristol county towns of Easton Norfolk county towns of Avon Plymouth county towns of Abington, Bridgewater, Brockton East Bridgewater, Halifax, West Bridgewater, Whitman
Fall River, MA-RI PMSA	404	482	579	670	740	Bristol county towns of Fall River, Somerset, Swansea Westport
Fitchburg-Leominster, MA MSA	443	535	633	791	887	Middlesex county towns of Ashby Worcester county towns of Ashburnham, Fitchburg Leominster, Lunenburg, Westminster
Lawrence-Haverhill, MA-NH PMSA	504	614	736	842	936	Essex county towns of Amesbury, Andover, Boxford Georgetown, Groveland, Haverhill, Lawrence, Merrimac Methuen, Newbury, Newburyport, North Andover, Salisbury West Newbury
Lowell, MA-NH PMSA	485	590	689	835	952	Middlesex county towns of Billerica, Chelmsford, Dracut Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough Westford
New Bedford, MA MSA	412	463	548	670	740	Bristol county towns of Acushnet, Dartmouth, Fairhaven Freetown, New Bedford Plymouth county towns of Marion, Mattapoisett, Rochester
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	392	474	559	685	783	Bristol county towns of Attleboro, North Attleborough Rehoboth, Seekonk Norfolk county towns of Plainville Worcester county towns of Blackstone, Millville
Pittsfield, MA MSA	409	496	580	721	814	Berkshire county towns of Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond Stockbridge
Salem-Gloucester, MA PMSA	535	650	765	956	1072	Essex county towns of Beverly, Danvers, Essex, Gloucester Hamilton, Ipswich, Manchester, Marblehead, Middleton Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield Wenham
Springfield, MA MSA	445	541	636	795	890	Hampden county towns of Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield West Springfield, Wilbraham Hampshire county towns of Belchertown, Easthampton Granby, Huntington, Northampton, Southampton South Hadley
Worcester, MA MSA	424	522	611	768	856	Worcester county towns of Auburn, Barre, Boylston Brookfield, Charlton, Clinton, Douglas, Dudley East Brookfield, Grafton, Holden, Leicester, Millbury

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

MASSACHUSETTS continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Northborough, Northbridge, North Brookfield, Oxford Paxton, Princeton, Rutland, Shrewsbury, Spencer Sterling, Sutton, Uxbridge, Webster, Westborough West Boylston, Worcester
NONMETROPOLITAN COUNTIES	**EFF**	**1 BR**	**2 BR**	**3 BR**	**4 BR**	**Towns within non metropolitan counties**
Barnstable	548	676	774	967	1085	
Berkshire	359	437	514	644	721	Adams, Alford, Becket, Clarksburg, Egremont, Florida Great Barrington, Hancock, Monterey, Mount Washington New Ashford, New Marlborough, North Adams, Otis, Peru Sandisfield, Savoy, Sheffield, Tyringham, Washington West Stockbridge, Williamstown, Windsor
Bristol	398	482	568	682	759	Berkley, Dighton, Taunton
Dukes	548	676	774	967	1085	
Franklin	418	496	579	729	811	
Hampden	376	457	538	674	755	Blandford, Brimfield, Chester, Granville, Holland Tolland, Wales
Hampshire	489	568	696	838	973	Amherst, Chesterfield, Cummington, Goshen, Hadley Hatfield, Middlefield, Pelham, Plainfield, Ware Westhampton, Williamsburg, Worthington
Nantucket	548	676	774	967	1085	
Plymouth	425	516	607	738	851	Wareham
Worcester	398	470	568	696	774	Athol, Gardner, Hardwick, Hubbardston, New Braintree Oakham, Petersham, Phillipston, Royalston, Southbridge Sturbridge, Templeton, Warren, West Brookfield Winchendon

MICHIGAN

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ann Arbor, MI PMSA	415	505	595	744	834	Washtenaw
Battle Creek, MI MSA	280	341	400	503	564	Calhoun
Benton Harbor, MI MSA	312	380	445	558	625	Berrien
Detroit, MI PMSA	349	425	499	625	699	Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair Wayne
Flint, MI MSA	296	359	425	531	594	Genesee
Grand Rapids, MI MSA	332	407	477	596	673	Kent, Ottawa
Jackson, MI MSA	309	374	441	552	618	Jackson
Kalamazoo, MI MSA	321	388	456	561	625	Kalamazoo
Lansing-East Lansing, MI MSA	338	405	474	590	659	Clinton, Eaton, Ingham
Muskegon, MI MSA	274	333	393	492	551	Muskegon
Saginaw-Bay City-Midland, MI MSA	308	368	432	541	606	Bay, Midland, Saginaw

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

MICHIGAN continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcona	244	299	351	440	493
Allegan	283	346	406	508	570
Antrim	307	371	437	547	614
Baraga	250	304	358	448	503
Benzie	307	371	437	547	614
Cass	278	338	397	498	558
Cheboygan	244	299	351	440	493
Clare	269	327	387	482	540
Delta	241	294	347	433	486
Emmet	307	371	437	547	614
Gogebic	250	304	358	448	503
Gratiot	308	373	439	551	616
Houghton	281	342	403	503	606
Ionia	286	347	408	509	570
Iron	250	304	358	448	503
Kalkaska	307	371	437	547	614
Lake	281	343	403	504	566
Lenawee	305	369	435	545	611
Mackinac	241	294	347	433	486
Marquette	307	371	437	547	614
Mecosta	281	343	403	504	566
Missaukee	307	371	437	547	614
Montmorency	244	299	351	440	493
Oceana	273	331	391	490	547
Ontenagon	250	304	358	448	503
Oscoda	244	299	351	440	493
Presque Isle	244	299	351	440	493
St Joseph	285	348	410	513	574
Schoolcraft	241	294	347	433	486
Tuscola	278	336	394	494	554
Wexford	307	371	437	547	614

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alger	241	294	347	433	486
Alpena	244	299	351	440	493
Arenac	269	327	387	482	540
Barry	285	348	410	513	574
Branch	285	348	410	513	574
Charlevoix	307	371	437	547	614
Chippewa	241	294	347	433	486
Crawford	244	299	351	440	493
Dickinson	250	317	374	468	526
Gladwin	269	327	387	482	540
Grand Traverse	307	371	437	547	614
Hillsdale	305	369	435	545	611
Huron	278	336	394	494	554
Iosco	269	327	387	482	540
Isabella	308	373	439	551	616
Keweenaw	250	304	358	448	503
Leelanau	307	371	437	547	614
Luce	241	294	347	433	486
Manistee	307	371	437	547	614
Mason	281	343	403	504	566
Menominee	307	371	437	547	614
Montcalm	283	346	406	508	570
Newaygo	281	343	403	504	566
Ogemaw	269	327	387	482	540
Osceola	281	343	403	504	566
Otsego	244	299	351	440	493
Roscommon	269	327	387	482	540
Sanilac	278	336	394	494	554
Shiawassee	304	368	434	542	609
Van Buren	278	338	397	498	558

MINNESOTA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Duluth, MN-WI MSA	313	373	440	552	619	St Louis
Fargo-Moorhead, ND-MN MSA	313	381	447	561	629	Clay
Minneapolis-St. Paul, MN-WI MSA	382	464	550	688	768	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Washington, Wright

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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MINNESOTA continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rochester, MN MSA	332	403	475	594	665	Olmsted
St. Cloud, MN MSA	316	384	453	568	634	Benton, Sherburne, Stearns

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aitkin	284	346	407	510	572
Beltrami	273	332	391	488	549
Blue Earth	316	383	444	550	606
Carlton	286	348	407	510	572
Chippewa	252	308	363	455	508
Cook	284	346	407	510	572
Crow Wing	267	324	405	502	558
Douglas	283	345	405	506	570
Fillmore	262	318	376	470	525
Goodhue	273	332	388	482	540
Houston	262	318	376	470	525
Itasca	286	348	407	510	572
Kanabec	284	346	407	510	572
Kittson	273	332	391	488	549
Lac Qui Parle	252	308	363	455	508
Lake Of The Woods	273	332	391	488	549
Lincoln	261	314	368	458	509
Mcleod	298	363	427	535	597
Marshall	273	332	391	488	549
Meeker	298	363	427	535	597
Morrison	267	324	382	478	536
Murray	261	314	368	458	509
Nobles	261	314	368	458	509
Otter Tail	283	345	405	506	570
Pine	284	346	407	510	572
Polk	273	332	391	488	549
Red Lake	273	332	391	488	549
Renville	298	363	427	535	597
Rock	261	314	368	458	509
Sibley	296	361	423	529	593
Stevens	283	345	405	506	570
Todd	267	324	382	478	536
Wabasha	273	332	388	482	540
Waseca	269	328	385	482	540
Wilkin	283	345	405	506	570
Yellow Medicine	252	308	363	455	508

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Becker	283	345	405	506	570
Big Stone	252	308	363	455	506
Brown	269	328	385	482	540
Cass	267	324	382	478	536
Clearwater	273	332	391	488	549
Cottonwood	252	308	363	455	506
Dodge	256	311	366	458	513
Faribault	269	328	385	482	540
Freeborn	309	376	443	554	621
Grant	283	345	405	506	570
Hubbard	273	332	391	488	549
Jackson	261	314	368	458	509
Kandiyohi	298	363	427	535	597
Koochiching	284	346	407	510	572
Lake	284	346	407	510	572
Le Sueur	296	361	423	529	593
Lyon	261	314	368	458	509
Mahnomen	273	332	391	488	549
Martin	269	328	385	482	540
Mille Lacs	284	346	407	510	572
Mower	262	318	376	470	525
Nicollet	296	361	423	529	593
Norman	273	332	391	488	549
Pennington	273	332	391	488	549
Pipestone	261	314	368	458	509
Pope	283	345	405	506	570
Redwood	252	308	363	455	508
Rice	309	376	443	554	621
Roseau	273	332	391	488	549
Steele	309	376	443	554	621
Swift	252	308	363	455	508
Traverse	283	345	405	506	570
Wadena	267	324	382	478	536
Watonwan	269	328	385	482	540
Winona	264	318	376	470	525

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

MISSISSIPPI

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Biloxi-Gulfport, MS MSA	260	318	375	470	525	Hancock, Harrison
Jackson, MS MSA	332	403	476	596	666	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	298	361	425	529	592	De Soto
Pascagoula, MS MSA	286	346	406	512	574	Jackson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	230	265	313	415	449
Amite	191	232	272	340	383
Benton	213	259	307	385	431
Calhoun	250	305	359	448	508
Chickasaw	257	306	359	452	505
Claiborne	191	232	272	340	383
Clay	247	288	337	424	475
Copiah	201	245	289	361	404
Forrest	248	302	356	444	499
George	194	236	278	347	389
Grenada	253	308	362	453	509
Humphreys	220	268	316	395	442
Itawamba	236	286	336	422	472
Jefferson	191	232	272	340	383
Jones	250	291	328	373	415
Lafayette	250	305	359	448	505
Lauderdale	246	298	352	441	493
Leake	210	256	303	381	427
Leflore	250	278	327	427	480
Lowndes	272	337	388	519	541
Marshall	213	259	307	385	431
Montgomery	192	234	274	343	385
Newton	210	256	303	381	427
Oktibbeha	237	288	337	424	475
Pearl River	248	302	356	444	499
Pike	230	265	313	415	449
Prentiss	213	259	307	385	431
Scott	210	256	303	381	427
Simpson	201	245	289	361	404
Stone	248	302	356	444	499
Tallahatchie	232	280	329	411	464
Tippah	213	259	307	385	431
Tunica	232	280	329	411	464
Walthall	191	232	272	340	383

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcorn	229	277	326	406	458
Attala	192	234	274	343	385
Bolivar	220	268	316	395	442
Carroll	192	234	274	343	385
Choctaw	247	288	337	424	475
Clarke	248	301	352	441	493
Coahoma	232	280	329	411	464
Covington	194	236	278	347	389
Franklin	191	232	272	340	383
Greene	194	236	278	347	389
Holmes	192	234	274	343	385
Issaquena	220	268	316	395	442
Jasper	248	301	352	441	493
Jefferson Davis	194	236	278	347	389
Kemper	248	301	352	441	493
Lamar	248	302	356	444	499
Lawrence	191	232	272	340	383
Lee	267	323	379	477	534
Lincoln	191	232	272	340	383
Marion	248	302	356	444	499
Monroe	236	286	336	422	472
Neshoba	210	256	303	381	427
Noxubee	237	288	337	424	475
Panola	232	280	329	411	464
Perry	194	236	278	347	389
Pontotoc	257	306	358	452	505
Quitman	232	280	329	411	464
Sharkey	220	268	316	395	442
Smith	210	256	303	381	427
Sunflower	220	268	316	395	442
Tate	232	280	329	411	464
Tishomingo	213	259	307	385	431
Union	257	306	359	452	505
Warren	280	340	400	503	562

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Washington	220	268	316	395	442
Webster	247	288	337	424	475
Winston	247	288	337	424	475
Yazoo	280	340	400	503	562

MISSOURI

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Columbia, MO MSA	273	331	390	488	547	Boone
Joplin, MO MSA	256	287	338	424	475	Jasper, Newton
Kansas City, MO-KS MSA	311	378	444	555	622	Cass, Clay, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	251	305	359	448	505	Buchanan
St. Louis, MO-IL MSA	340	413	487	608	681	Crawford, Franklin, Jefferson, St Charles, St Louis St. Louis
Springfield, MO MSA	261	320	376	472	528	Christian, Greene

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	239	289	342	429	480
Atchison	225	276	324	406	455
Barry	220	268	317	396	443
Bates	215	260	308	385	433
Bollinger	253	309	362	452	510
Caldwell	225	276	325	406	455
Camden	242	293	345	433	484
Carroll	233	283	334	416	469
Cedar	215	260	308	385	433
Clark	239	289	342	429	480
Cole	265	322	380	476	533
Crawford	231	282	330	414	467
Dallas	220	268	317	396	443
De Kalb	225	276	324	406	455
Douglas	209	254	298	373	419
Gasconade	231	282	330	414	467
Grundy	239	289	342	429	480
Henry	215	260	308	385	433
Holt	225	276	324	406	455
Howell	209	254	298	373	419
Johnson	242	294	363	467	485
Laclede	242	293	345	433	484
Lewis	237	288	338	422	470
Linn	239	289	342	429	480
Maries	209	254	298	373	419
Marion	242	294	363	467	485
Mercer	209	254	298	373	419
Miller	220	268	317	396	443
Mississippi	209	254	298	373	419
Moniteau	225	276	324	406	455
Monroe	225	276	324	406	455
Montgomery	215	260	308	385	433
Morgan	220	268	317	396	443
New Madrid	209	254	298	373	419
Nodaway	239	289	342	429	480
Oregon	209	254	298	373	419
Osage	225	276	324	406	455
Ozark	209	254	298	373	419
Pemiscot	209	254	298	373	419
Perry	225	276	324	406	455
Pettis	225	276	324	406	455
Phelps	225	276	324	406	455
Pike	225	276	324	406	455
Polk	220	268	317	396	443
Pulaski	225	276	324	406	455
Putnam	209	254	298	373	419
Ralls	225	276	324	406	455
Randolph	225	276	324	406	455
Reynolds	209	254	298	373	419
Ripley	209	254	298	373	419
Saline	225	276	324	406	455
Schuyler	209	254	298	373	419
Scotland	209	254	298	373	419
Scott	209	254	298	373	419
Shannon	209	254	298	373	419
Shelby	209	254	298	373	419
Stoddard	209	254	298	373	419
Stone	220	268	317	396	443
Sullivan	209	254	298	373	419
Taney	220	268	317	396	443
Texas	209	254	298	373	419
Vernon	209	254	298	373	419
Warren	225	276	324	406	455
Washington	209	254	298	373	419
Wayne	194	236	278	347	389
Wilkinson	191	232	272	340	383
Yalobusha	192	234	274	343	385

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Andrew	261	306	359	448	506
Audrain	265	322	380	476	533
Barton	215	260	308	385	433
Benton	215	260	308	385	433
Butler	209	254	303	377	422
Callaway	265	322	380	476	533
Cape Girardeau	253	309	362	452	510
Carter	209	254	303	377	422
Chariton	233	283	334	416	469
Clinton	225	276	324	406	455
Cooper	265	322	380	476	533
Dade	220	268	317	396	443
Daviess	225	276	325	406	455
Dent	231	282	330	414	467
Dunklin	209	254	298	373	419
Gentry	225	276	324	406	455
Harrison	225	276	325	406	455
Hickory	215	260	308	385	433
Howard	265	322	380	476	533
Iron	253	309	362	452	510
Knox	239	289	342	429	480
Lawrence	220	268	317	396	443
Lincoln	231	282	330	414	467
Livingston	239	289	342	429	480
Macon	239	289	342	429	480
Madison	209	254	298	373	419
McDonald	220	268	317	396	443
Mississippi	209	254	298	373	419
Nodaway	239	289	342	429	480
Oregon	209	254	298	373	419
Osage	225	276	324	406	455
Ozark	209	254	298	373	419
Pemiscot	209	254	298	373	419
Perry	225	276	324	406	455
Pettis	225	276	324	406	455
Phelps	225	276	324	406	455
Pike	225	276	324	406	455
Polk	220	268	317	396	443
Pulaski	225	276	324	406	455
Putnam	209	254	298	373	419
Ralls	225	276	324	406	455
Randolph	225	276	324	406	455
Reynolds	209	254	298	373	419
Ripley	209	254	298	373	419
Saline	225	276	324	406	455
Schuyler	209	254	298	373	419
Scotland	209	254	298	373	419
Scott	209	254	298	373	419
Shannon	209	254	298	373	419
Shelby	209	254	298	373	419
Stoddard	209	254	298	373	419
Stone	220	268	317	396	443
Sullivan	209	254	298	373	419
Taney	220	268	317	396	443
Texas	209	254	298	373	419
Vernon	209	254	298	373	419
Warren	225	276	324	406	455
Washington	209	254	298	373	419

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

MISSOURI continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mcdonald	220	268	317	396	443
Madison	253	309	362	452	510
Marion	237	286	338	422	470
Miller	242	293	345	433	484
Moniteau	265	322	380	476	533
Montgomery	231	282	330	414	467
New Madrid	209	254	298	373	419
Oregon	209	254	298	373	419
Ozark	209	254	298	373	419
Perry	253	309	362	452	510
Phelps	270	328	385	487	547
Polk	220	268	317	396	443
Putnam	239	289	342	429	480
Randolph	231	282	330	414	467
Ripley	209	254	303	377	422
Ste. Genevieve	253	309	362	452	510
Saline	233	283	334	416	469
Scotland	239	289	342	429	480
Shannon	209	254	298	373	419
Stoddard	209	254	298	373	419
Sullivan	239	289	342	429	480
Texas	209	254	298	373	419
Warren	231	282	330	414	467
Wayne	209	254	303	377	422
Worth	225	276	324	406	455

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Macon	231	282	330	414	467
Maries	231	282	330	414	467
Mercer	225	276	325	406	455
Mississippi	209	254	298	373	419
Monroe	231	282	330	414	467
Morgan	242	293	345	433	484
Nodaway	235	278	334	406	455
Osage	265	322	380	476	533
Pemiscot	209	254	298	373	419
Pettis	233	283	334	416	469
Pike	231	282	330	414	467
Pulaski	242	293	345	433	484
Ralls	237	286	338	422	470
Reynolds	209	254	303	377	422
St Clair	215	260	308	385	432
St Francois	253	309	362	452	510
Schuyler	239	289	342	429	480
Scott	253	309	362	452	510
Shelby	231	282	330	414	467
Stone	220	268	317	396	443
Taney	220	268	317	396	443
Vernon	215	260	308	385	432
Washington	231	282	330	414	467
Webster	220	268	317	396	443
Wright	209	254	298	373	419

MONTANA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Billings, MT MSA	358	433	510	627	714	Yellowstone
Great Falls, MT MSA	315	382	451	565	632	Cascade

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaverhead	314	381	449	561	630
Blaine	293	356	418	524	587
Carbon	295	359	423	529	593
Chouteau	293	356	418	524	587
Daniels	293	356	418	524	587
Deer Lodge	314	381	449	561	630
Fergus	295	359	423	529	593

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Big Horn	295	359	423	529	593
Broadwater	314	381	449	561	630
Carter	295	359	423	529	593
Custer	295	359	423	529	593
Dawson	295	359	423	529	593
Fallon	295	359	423	529	593
Flathead	320	390	458	574	643

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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MONTANA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Gallatin	346	425	503	623	701
Glacier	293	356	418	524	587
Granite	314	381	449	561	630
Jefferson	314	381	449	561	630
Lake	320	390	458	574	643
Liberty	293	356	418	524	587
Mccone	295	359	423	529	593
Meagher	314	381	449	561	630
Missoula	320	390	458	574	643
Park	314	381	449	561	630
Phillips	293	356	418	524	587
Powder River	295	359	423	529	593
Prairie	295	359	423	529	593
Richland	295	359	423	529	593
Rosebud	295	359	423	529	593
Sheridan	293	356	418	524	587
Stillwater	295	359	423	529	593
Teton	293	356	418	524	587
Treasure	295	359	423	529	593
Wheatland	295	359	423	529	593
Yl-St-Nt-Pk	314	381	449	561	630

NEBRASKA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Lincoln, NE MSA	310	377	444	556	623	Lancaster
Omaha, NE-IA MSA	305	370	435	545	613	Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	302	367	432	540	606	Dakota

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	277	338	397	498	557
Arthur	235	285	336	421	470
Blaine	228	276	325	407	458
Box Butte	259	315	371	464	520
Brown	228	276	325	407	458
Burt	248	303	356	446	500
Cass	245	299	351	439	494
Chase	235	285	336	421	470
Cheyenne	228	276	325	407	458
Colfax	248	303	356	446	500

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Garfield	295	359	423	529	593
Golden Valley	295	359	423	529	593
Hill	293	356	418	524	587
Judith Basin	295	359	423	529	593
Lewis And Clark	359	443	522	647	731
Lincoln	320	390	458	574	643
Madison	314	381	449	561	630
Mineral	320	390	458	574	643
Musselshell	295	359	423	529	593
Petroleum	295	359	423	529	593
Pondera	293	356	418	524	587
Powell	314	381	449	561	630
Ravalli	320	390	458	574	643
Roosevelt	293	356	418	524	587
Sanders	320	390	458	574	643
Silver Bow	314	381	449	561	630
Sweet Grass	295	359	423	529	593
Toole	293	356	418	524	587
Valley	293	356	418	524	587
Wibaux	295	359	423	529	593

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Antelope	269	327	387	481	541
Banner	228	276	325	407	458
Boone	248	303	356	446	500
Boyd	228	276	325	407	458
Buffalo	277	338	397	498	557
Butler	245	299	351	439	494
Cedar	269	327	387	481	541
Cherry	228	276	325	407	458
Clay	277	338	397	498	557
Cuming	248	303	356	446	500

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Custer	228	276	325	407	458
Dawson	235	285	336	421	470
Dixon	269	327	387	481	541
Dundy	235	285	336	421	470
Franklin	277	338	397	498	557
Furnas	235	285	336	421	470
Garden	228	276	325	407	458
Gosper	235	285	336	421	470
Greeley	228	276	325	407	458
Hamilton	277	338	397	498	557
Hayes	235	285	336	421	470
Holt	232	284	334	418	464
Howard	277	338	397	498	557
Johnson	248	299	351	439	494
Keith	235	285	336	421	470
Kimball	228	276	325	407	458
Lincoln	235	285	336	421	470
Loup	228	276	325	407	458
Madison	269	327	387	481	541
Morrill	228	276	325	407	458
Nemaha	245	299	351	439	494
Otoe	245	299	351	439	494
Perkins	235	285	336	421	470
Pierce	269	327	387	481	541
Polk	245	299	351	439	494
Richardson	245	299	351	439	494
Saline	245	299	351	439	494
Scotts Bluff	265	318	371	461	513
Sheridan	228	276	325	407	458
Sioux	228	276	325	407	458
Thayer	248	299	351	439	494
Thurston	248	302	356	446	500
Wayne	269	327	387	481	541
Wheeler	228	276	325	407	458
Dawes	228	276	325	407	458
Deuel	228	276	325	407	458
Dodge	248	303	356	446	500
Fillmore	245	299	351	439	494
Frontier	235	285	336	421	470
Gage	272	330	389	487	544
Garfield	228	276	325	407	458
Grant	235	285	336	421	470
Hall	277	338	397	498	557
Harlan	277	338	397	498	557
Hitchcock	235	285	336	421	470
Hooker	236	288	336	421	470
Jefferson	248	299	351	439	494
Kearney	277	338	397	498	557
Kaya Paha	232	284	334	418	464
Knox	269	327	387	481	541
Logan	235	286	336	421	470
Mcpherson	235	286	336	421	470
Merrick	277	338	397	498	557
Nance	248	303	356	446	500
Nuckolls	277	338	397	498	557
Pawnee	245	299	351	439	494
Phelps	277	338	397	498	557
Platte	248	303	356	446	500
Red Willow	235	285	336	421	470
Rock	232	284	334	418	464
Saunders	245	299	351	439	494
Seward	245	299	351	439	494
Sherman	228	276	325	407	458
Stanton	269	327	387	481	541
Thomas	236	288	336	421	470
Valley	228	276	325	407	458
Webster	277	338	397	498	557
York	245	299	351	439	494

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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N E V A D A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Las Vegas, NV MSA	445	540	636	797	893	Clark
Reno, NV MSA	549	666	786	982	1102	Washoe

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Churchill	391	470	554	692	776	Douglas	391	470	554	692	776
Elko	391	470	554	692	776	Esmeralda	387	470	554	692	776
Eureka	387	470	554	692	776	Humboldt	391	470	554	692	776
Lander	391	470	554	692	776	Lincoln	387	470	554	692	776
Lyon	391	470	554	692	776	Mineral	391	470	554	692	776
Nye	387	470	554	692	776	Pershing	391	470	554	692	776
Storey	391	470	554	692	776	White Pine	387	470	554	692	776
Carson City	391	470	554	692	776						

N E W H A M P S H I R E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Lawrence-Haverhill, MA-NH PMSA	504	614	736	842	936	Rockingham county towns of Atkinson, Brentwood, Danville Derry, East Kingston, Hampstead, Kingston, Newton Plaistow, Salem, Sandown, Seabrook, Windham
Lowell, MA-NH PMSA	485	590	689	835	952	Hillsborough county towns of Pelham
Manchester, NH MSA	439	534	628	785	883	Hillsborough county towns of Bedford, Goffstown Manchester Merrimack county towns of Allenstown, Hooksett Rockingham county towns of Auburn, Candia
Nashua, NH PMSA	506	615	726	908	1017	Hillsborough county towns of Amherst, Brookline, Hollis Hudson, Litchfield, Merrimack, Milford, Mont Vernon Nashua, Wilton Rockingham county towns of Londonderry
Portsmouth-Dover-Rochester, NH-ME MSA	458	555	651	816	914	Rockingham county towns of Exeter, Greenland, Hampton New Castle, Newfields, Newington, Newmarket North Hampton, Portsmouth, Rye, Stratham Strafford county towns of Barrington, Dover, Durham Farmington, Lee, Madbury, Milton, Rochester, Rollinsford Somersworth

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	381	461	536	665	745	
Carroll	377	456	539	674	756	
Cheshire	461	559	658	822	921	
Coos	352	427	504	628	705	
Grafton	392	476	562	702	787	
Hillsborough	500	606	714	892	1000	Antrim, Bennington, Deering, Francestown, Greenfield

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 082090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Merrimack	500	606	714	892	1000	Greenville, Hancock, Hillsborough, Lyndeborough, Mason New Boston, New Ipswich, Peterborough, Sharon, Temple Weare, Windsor Andover, Boscawen, Bow, Bradford, Canterbury, Chichester Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker Hill, Hopkinton, Loudon, Newbury, New London, Northfield Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster Wilmot
Rockingham	489	587	689	862	954	Chester, Deerfield, Epping, Fremont, Hampton Falls Kensington, Northwood, Nottingham, Raymond South Hampton
Strafford	427	522	615	770	849	Middleton, New Durham, Strafford
Sullivan	381	461	538	670	753	

NEW JERSEY

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem, PA-NJ MSA	360	425	497	626	698	Warren
Atlantic City, NJ MSA	419	512	601	751	844	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	591	717	851	1064	1192	Bergen, Passaic
Jersey City, NJ PMSA	418	509	599	750	839	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	547	665	782	980	1097	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	492	597	703	878	986	Monmouth, Ocean
Newark, NJ PMSA	490	596	701	876	982	Essex, Morris, Sussex, Union
Philadelphia, PA-NJ PMSA	408	495	583	729	817	Burlington, Camden, Gloucester
Trenton, NJ PMSA	500	606	716	895	1002	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	401	488	573	718	804	Cumberland
Wilmington, DE-NJ-MD PMSA	417	499	584	743	883	Salem

NEW MEXICO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albuquerque, NM MSA	367	446	524	656	736	Bernalillo
Las Cruces, NM MSA	292	353	416	521	584	Dona Ana
Santa Fe, NM MSA	427	519	612	764	857	Los Alamos, Santa Fe

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E W M E X I C O continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Catron	263	319	377	471	527
Cibola	263	319	377	471	527
Curry	271	330	389	487	544
Eddy	314	382	451	564	631
Guadalupe	271	330	389	487	544
Hidalgo	263	319	377	471	527
Lincoln	286	347	409	511	573
Mckinley	365	443	522	654	732
Otero	286	347	409	511	573
Rio Arriba	244	297	349	436	490
Sandoval	308	376	442	553	620
San Miguel	271	330	389	487	544
Socorro	286	347	409	511	573
Torrance	271	330	389	487	544
Valencia	263	319	377	471	527

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Chaves	286	347	409	511	573
Colfax	271	330	389	487	544
De Baca	271	330	389	487	544
Grant	263	319	377	471	527
Harding	271	330	389	487	544
Lea	314	382	451	564	631
Luna	263	319	377	471	527
Mora	271	330	389	487	544
Quay	271	330	389	487	544
Roosevelt	271	330	389	487	544
San Juan	365	443	522	654	732
Sierra	286	347	409	511	573
Taos	293	354	417	522	585
Union	271	330	389	487	544

N E W Y O R K

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany-Schenectady-Troy, NY MSA	358	430	508	640	712	Albany, Greene, Montgomery, Rensselaer, Saratoga Schenectady
Binghamton, NY MSA	322	388	459	568	638	Broome, Tioga
Buffalo, NY PMSA	298	363	427	534	596	Erie
Elmira, NY MSA	327	397	468	585	657	Chemung
Glens Falls, NY MSA	337	410	483	603	678	Warren, Washington
Jamestown-Dunkirk, NY MSA	302	368	433	544	607	Chautauqua
Nassau-Suffolk, NY PMSA	582	707	832	1042	1164	Nassau, Suffolk
New York, NY PMSA	437	531	625	783	877	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester, NY	522	633	745	931	1042	Westchester
Niagara Falls, NY PMSA	301	366	432	539	604	Niagara
Orange County, NY PMSA	449	546	642	802	898	Orange
Poughkeepsie, NY MSA	490	596	702	877	984	Dutchess
Rochester, NY MSA	384	470	553	692	771	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	338	405	474	593	665	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	310	376	443	553	620	Herkimer, Oneida

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

NEW YORK continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allegany	289	344	405	507	569
Cayuga	337	410	482	603	678
Clinton	321	384	451	561	617
Cortland	344	420	495	620	694
Essex	308	373	437	548	615
Fulton	314	335	393	493	551
Hamilton	307	373	437	548	615
Lewis	330	400	471	589	661
St Lawrence	314	380	449	561	628
Schuyler	317	385	454	569	638
Steuben	317	385	454	569	638
Tompkins	344	420	495	620	694
Wyoming	315	380	449	561	628

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cattaraugus	284	343	405	507	569
Chenango	334	405	476	597	667
Columbia	317	385	454	569	638
Delaware	310	378	445	554	622
Franklin	307	373	437	548	615
Genesee	314	380	449	561	628
Jefferson	343	419	493	616	691
Otsego	310	378	445	554	622
Schoharie	310	378	445	554	622
Seneca	337	410	483	603	678
Sullivan	359	436	513	642	720
Ulster	398	481	567	707	794
Yates	315	382	451	566	631

NORTH CAROLINA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Asheville, NC MSA	270	329	388	483	542	Buncombe
Burlington, NC MSA	327	397	468	585	657	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC MSA	301	363	427	533	598	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	277	390	407	526	644	Cumberland
Greensboro--Winston-Salem--High Point, NC MSA	282	344	403	507	568	Davidson, Davie, Forsyth, Guilford, Randolph, Stokes Yadkin
Hickory, NC MSA	247	299	353	442	497	Alexander, Burke, Catawba
Jacksonville, NC MSA	255	312	368	461	516	Onslow
Raleigh-Durham, NC MSA	324	394	465	581	651	Durham, Franklin, Orange, Wake
Wilmington, NC MSA	270	329	388	483	542	New Hanover

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	244	294	345	432	474
Ashe	244	294	345	432	474
Beaufort	270	329	388	483	542
Bladen	260	318	374	468	524
Caldwell	244	295	348	437	487
Carteret	253	309	363	457	512
Chatham	324	394	465	581	651
Chowan	260	313	368	454	507
Cleveland	283	343	403	505	565
Craven	279	339	399	503	563
Dare	260	313	368	454	507
Edgecombe	253	309	363	457	512

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anson	246	295	345	433	483
Avery	253	306	359	448	491
Bertie	270	329	388	483	542
Brunswick	245	298	351	440	492
Camden	260	313	368	454	507
Caswell	245	297	350	439	491
Cherokee	210	256	303	381	427
Clay	210	256	303	381	427
Columbus	258	311	367	459	514
Currituck	297	357	409	509	561
Duplin	230	278	327	407	459
Gates	260	313	368	454	507

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Graham	210	256	303	381	427
Greene	237	287	337	424	474
Harnett	237	287	337	424	474
Henderson	265	325	383	478	536
Hoke	230	278	327	407	459
Iredell	245	378	441	509	569
Johnston	260	305	359	448	505
Lee	286	353	406	511	573
Mcdowell	256	312	367	460	514
Madison	265	325	383	478	536
Mitchell	253	306	359	448	492
Moore	246	295	345	433	483
Northampton	253	309	363	457	512
Pasquotank	260	313	366	454	507
Perquimans	260	313	366	454	507
Pitt	270	329	388	483	542
Richmond	246	295	345	433	483
Rockingham	245	297	350	439	491
Sampson	237	287	337	424	474
Stanly	256	312	367	469	513
Swain	210	256	303	381	427
Tyrrell	260	313	366	454	507
Warren	235	285	334	420	470
Watauga	348	420	491	615	675
Wilkes	292	351	412	516	565
Yancey	272	328	386	481	529

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Granville	235	285	334	420	470
Halifax	253	309	363	457	512
Haywood	245	298	352	441	495
Hertford	270	329	388	483	542
Hyde	260	313	366	454	507
Jackson	269	326	384	480	538
Jones	253	309	363	457	512
Lenoir	253	309	363	457	512
Macon	265	324	383	478	537
Martin	270	329	388	483	542
Montgomery	246	295	345	433	483
Nash	259	317	373	468	523
Pamlico	253	309	363	457	512
Pender	223	272	320	402	518
Person	235	285	334	420	470
Polk	256	312	367	460	514
Robeson	241	297	344	426	482
Rutherford	256	312	367	460	514
Scotland	218	264	313	391	438
Surry	232	281	330	413	464
Transylvania	265	325	383	478	536
Vance	235	285	334	420	470
Washington	260	313	366	454	507
Wayne	237	287	337	424	474
Wilson	259	317	373	468	523

NORTH DAKOTA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bismarck, ND MSA	313	381	448	580	629	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	313	381	447	581	629	Cass
Grand Forks, ND MSA	297	361	427	533	597	Grand Forks

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	263	322	380	476	531
Benson	272	329	388	485	546
Bottineau	263	322	380	476	531
Burke	263	322	380	476	531
Dickey	272	329	388	485	546
Dunn	263	322	380	476	531
Emmons	239	289	342	429	479
Golden Valley	263	322	380	476	531
Griggs	272	329	388	485	546
Kidder	239	289	342	429	479
Logan	272	329	388	485	546
McIntosh	272	329	388	485	546
McLean	239	289	342	429	479
Mountrail	263	322	380	476	531
Oliver	239	289	342	429	479
Pierce	263	322	380	476	531
Ransom	246	298	353	441	493
Richland	246	298	353	441	493
Sargent	246	298	353	441	493
Sioux	239	289	342	429	479
Stark	263	322	380	476	531
Stutsman	272	329	388	485	546
Traill	246	298	353	441	493
Ward	263	322	380	476	531
Williams	263	322	380	476	531

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barnes	272	329	388	485	546
Billings	263	322	380	476	531
Bowman	263	322	380	476	531
Cavalier	272	329	388	485	546
Divide	263	322	380	476	531
Eddy	272	329	388	485	546
Foster	272	329	388	485	546
Grant	239	289	342	429	479
Hettinger	263	322	380	476	531
La Moore	272	329	388	485	546
McHenry	263	322	380	476	531
McKenzie	263	322	380	476	531
Mercer	239	289	342	429	479
Nelson	272	329	388	485	546
Pembina	272	329	388	485	546
Ramsey	272	329	388	485	546
Renville	263	322	380	476	531
Rolette	272	329	388	485	546
Sheridan	239	289	342	429	479
Slope	263	322	380	476	531
Steele	246	298	353	441	493
Towner	272	329	388	485	546
Walsh	272	329	388	485	546
Wells	272	329	388	485	546

O H I O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Akron, OH PMSA	308	374	442	553	619	Portage, Summit
Canton, OH MSA	272	329	388	485	546	Carroll, Stark
Cincinnati, OH-KY-IN PMSA	320	389	458	572	641	Clermont, Hamilton, Warren
Cleveland, OH PMSA	328	398	468	583	652	Cuyahoga, Geauga, Lake, Medina
Columbus, OH MSA	310	372	442	552	621	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway Union
Dayton-Springfield, OH MSA	286	350	407	512	569	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	324	396	465	582	652	Butler
Huntington-Ashland, WV-KY-OH MSA	299	363	429	537	603	Lawrence
Lima, OH MSA	287	350	411	516	579	Allen, Auglaize
Lorain-Elyria, OH PMSA	302	369	435	545	610	Lorain
Mansfield, OH MSA	259	318	372	468	522	Richland

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

O H I O continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Parkersburg-Marietta, WV-OH MSA	283	344	405	509	569	Washington
Steubenville-Weirton, OH-WV MSA	290	354	414	520	585	Jefferson
Toledo, OH MSA	329	402	474	592	663	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	282	343	404	506	566	Belmont
Youngstown-Warren, OH MSA	287	350	411	518	579	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	257	311	363	452	510
Ashtabula	304	369	436	546	610
Brown	257	311	363	452	510
Clinton	261	320	376	472	526
Coshocton	225	286	338	419	472
Darke	261	320	376	472	526
Erie	296	360	425	530	595
Gallia	283	344	405	509	569
Hancock	279	338	398	497	559
Harrison	260	318	374	470	524
Highland	257	311	363	452	510
Holmes	276	336	395	494	554
Jackson	253	309	362	452	510
Logan	279	338	398	497	559
Meigs	250	304	358	447	503
Monroe	281	342	402	505	563
Morrow	253	309	362	452	510
Noble	281	342	402	505	563
Paulding	293	356	419	524	589
Pike	253	309	362	452	510
Putnam	283	344	405	509	569
Sandusky	296	360	425	530	595
Seneca	260	318	374	470	524
Tuscarawas	276	336	395	494	554
Vinton	283	344	405	509	569
Williams	293	356	419	524	589

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	284	347	407	511	571
Athens	270	331	391	487	547
Champaign	275	334	394	492	552
Columbiana	270	326	386	482	541
Crawford	260	318	374	470	524
Defiance	293	356	419	524	589
Fayette	261	320	376	472	526
Guernsey	278	337	397	496	557
Hardin	279	338	398	497	559
Henry	293	356	419	524	589
Hocking	250	304	358	447	503
Huron	260	318	374	470	524
Knox	253	309	362	452	510
Marion	253	309	362	452	510
Mercer	261	320	376	472	526
Morgan	281	342	402	505	563
Muskingum	261	318	374	470	524
Ottawa	296	360	425	530	595
Perry	250	304	358	447	503
Preble	285	348	408	513	573
Ross	261	320	376	472	526
Scioto	253	309	362	452	510
Shelby	282	342	403	504	563
Van Wert	283	344	405	509	569
Wayne	284	347	407	511	571
Wyandot	260	318	374	470	524

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

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OKLAHOMA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Enid, OK MSA	310	378	445	557	624	Garfield
Fort Smith, AR-OK MSA	257	314	370	464	519	Sequoyah
Lawton, OK MSA	267	325	384	479	537	Comanche
Oklahoma City, OK MSA	289	352	414	518	580	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	338	411	484	605	678	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	206	255	298	372	414
Atoka	182	222	262	328	367
Beckham	231	280	330	413	464
Bryan	219	267	314	394	441
Carter	219	267	314	394	441
Choctaw	182	222	262	328	367
Coal	182	222	262	328	367
Craig	264	323	379	475	533
Delaware	206	252	295	369	414
Ellis	236	288	339	423	476
Grady	218	265	312	392	439
Greer	231	280	330	413	464
Harper	236	288	339	423	476
Hughes	212	258	303	381	426
Jefferson	218	266	312	392	439
Kay	274	332	392	489	549
Kiowa	231	280	330	413	464
Le Flore	182	222	262	328	367
Love	219	267	314	394	441
Mcintosh	212	258	303	381	426
Marshall	219	267	314	394	441
Murray	219	267	314	394	441
Noble	274	332	392	489	549
Okfuskee	212	258	303	381	426
Ottawa	264	323	379	475	533
Payne	272	330	388	485	543
Pontotoc	219	267	314	394	441
Roger Mills	231	280	330	413	464
Stephens	218	266	312	392	439
Tillman	218	265	312	392	439
Washita	231	280	330	413	464
Woodward	236	288	339	423	476

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alfalfa	236	288	339	423	476
Beaver	236	288	339	423	476
Blaine	236	288	339	423	476
Caddo	218	265	312	392	439
Cherokee	206	255	298	372	414
Cimarron	236	288	339	423	476
Cotton	218	265	312	392	439
Custer	231	280	330	413	464
Dewey	236	288	339	423	476
Garvin	219	267	314	394	441
Grant	274	332	392	489	549
Harmon	231	280	330	413	464
Haskell	182	222	262	328	367
Jackson	231	280	330	413	464
Johnston	219	267	314	394	441
Kingfisher	274	332	392	489	549
Latimer	182	222	262	328	367
Lincoln	261	317	373	468	524
Mccurtain	332	283	339	418	466
Major	236	288	339	423	476
Mayes	278	333	394	491	551
Muskogee	212	258	303	381	426
Nowata	264	323	379	476	532
Okmulgee	212	258	303	381	426
Pawnee	261	317	373	468	524
Pittsburg	182	222	262	328	367
Pushmataha	182	222	262	328	367
Seminole	217	264	312	387	490
Texas	336	388	339	423	476
Washington	264	323	379	476	533
Woods	336	288	339	423	476

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

AGE 39

O R E G O N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Eugene-Springfield, OR MSA	387	472	556	695	778	Lane
Medford, OR MSA	385	468	552	689	773	Jackson
Portland, OR PMSA	343	418	492	650	720	Clackamas, Multnomah, Washington, Yamhill
Salem, OR MSA	361	442	520	649	727	Marion, Polk

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	353	429	505	632	708
Clatsop	343	418	492	614	688
Coos	369	448	528	660	740
Curry	369	448	528	660	740
Douglas	369	448	528	660	740
Grant	353	429	505	632	708
Hood River	374	454	535	671	749
Josephine	369	448	528	660	740
Lake	337	410	483	604	677
Linn	359	437	516	645	721
Morrow	353	429	505	632	708
Tillamook	343	418	492	614	688
Union	353	429	505	632	708
Wasco	374	454	535	671	749

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	359	437	516	645	721
Columbia	343	418	492	614	688
Crook	374	454	535	671	749
Deschutes	374	454	535	671	749
Gilliam	353	429	505	632	708
Harney	337	410	483	604	677
Jefferson	374	454	535	671	749
Klamath	337	410	483	604	677
Lincoln	343	418	492	614	688
Malheur	337	410	483	604	677
Sherman	374	454	535	671	749
Umatilla	353	429	505	632	708
Wallowa	353	429	505	632	708
Wheeler	353	429	505	632	708

P E N N S Y L V A N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem, PA-NJ MSA	350	425	497	626	698	Carbon, Lehigh, Northampton
Altoona, PA MSA	311	377	445	558	623	Blair
Beaver County, PA PMSA	271	329	388	484	543	Beaver
Erie, PA MSA	357	435	511	641	718	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	371	449	528	657	735	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	301	368	432	540	606	Cambria, Somerset
Lancaster, PA MSA	374	455	534	670	751	Lancaster
Philadelphia, PA-NJ PMSA	408	495	583	729	817	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	307	373	439	549	615	Allegheny, Fayette, Washington, Westmoreland
Reading, PA MSA	350	426	501	626	702	Berks
Scranton--Wilkes-Barre, PA MSA	283	350	408	503	570	Columbia, Lackawanna, Luzerne, Monroe, Wyoming
Sharon, PA MSA	331	401	475	595	666	Mercer
State College, PA MSA	399	486	573	716	802	Centre
Williamsport, PA MSA	301	368	432	540	606	Lycoming
York, PA MSA	336	410	482	603	676	Adams, York

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Armstrong	348	422	497	622	697
Bradford	288	351	413	516	578
Cameron	292	355	418	524	587
Clearfield	298	362	427	533	598
Crawford	296	357	423	529	593
Forest	284	348	409	510	573
Fulton	280	341	401	503	562
Huntingdon	280	341	401	503	562
Jefferson	298	362	427	533	598
Lawrence	296	357	423	529	593
Mifflin	289	352	422	520	580
Northumberland	311	382	427	533	598
Potter	292	355	418	524	587
Snyder	289	352	414	520	580
Susquehanna	288	351	413	516	578
Union	334	392	483	600	653
Warren	296	357	423	529	593

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	280	341	401	503	562
Butler	346	420	494	620	693
Clarion	284	348	409	510	573
Clinton	292	353	415	520	580
Elk	292	355	418	524	587
Franklin	320	390	457	574	642
Greene	298	362	427	533	598
Indiana	346	422	497	622	697
Juniata	289	352	414	520	580
Mckean	292	355	418	524	587
Montour	298	362	427	533	598
Pike	414	503	591	739	828
Schuylkill	323	379	461	558	607
Sullivan	288	351	413	516	578
Tioga	288	351	413	516	578
Venango	284	348	409	510	573
Wayne	353	429	505	630	707

RHODE ISLAND

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Fall River, MA-RI PMSA	404	482	578	670	740	Newport county towns of Little Compton, Tiverton
New London-Norwich, CT-RI MSA	447	544	639	799	896	Washington county towns of Hopkinton, Westerly
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	392	474	559	685	783	Providence county towns of Burrillville, Central Falls Cumberland, Lincoln, North Smithfield, Pawtucket Smithfield, Woonsocket
Providence, RI PMSA	427	519	610	763	855	Bristol county towns of Barrington, Bristol, Warren Kent county towns of Coventry, East Greenwich, Warwick West Warwick Newport county towns of Jamestown Providence county towns of Cranston, East Providence Foster, Glocester, Johnston, North Providence Providence, Scituate Washington county towns of Exeter, Narragansett North Kingstown, Richmond, South Kingstown

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Kent	373	453	534	668	749	West Greenwich
Newport	488	592	698	873	977	Middletown, Newport, Portsmouth
Washington	373	453	534	668	749	Charlestown, New Shoreham

SOUTH CAROLINA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, SC MSA	245	297	349	438	490	Anderson
Augusta, GA-SC MSA	284	343	400	500	560	Aiken
Charleston, SC MSA	302	369	435	542	609	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	301	363	427	533	596	York
Columbia, SC MSA	306	373	440	550	615	Lexington, Richland
Florence, SC MSA	248	301	356	445	499	Florence
Greenville-Spartanburg, SC MSA	267	325	384	479	538	Greenville, Pickens, Spartanburg

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Abbeville	215	261	310	384	426
Bamberg	223	274	322	403	451
Beaufort	278	338	399	499	559
Cherokee	215	260	308	386	434
Chesterfield	214	259	306	384	431
Colleton	278	338	399	499	559
Dillon	214	259	306	384	431
Fairfield	210	256	302	378	424
Greenwood	215	261	310	384	426
Horry	259	316	372	466	522
Kershaw	243	294	346	435	486
Laurens	215	261	310	384	426
Mccormick	210	256	302	378	424
Marlboro	214	259	306	384	431
Oconee	264	324	382	477	535
Saluda	210	256	302	378	424
Union	215	260	308	386	434

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allendale	223	274	322	403	451
Barnwell	223	274	322	403	451
Calhoun	331	381	333	407	457
Chester	215	260	308	386	434
Clarendon	243	294	346	435	486
Darlington	214	259	306	384	431
Edgefield	210	256	302	378	424
Georgetown	259	316	372	466	522
Hampton	278	338	399	499	559
Jasper	278	338	399	499	559
Lancaster	232	284	334	413	462
Lee	243	294	346	435	486
Marion	214	259	306	384	431
Newberry	210	256	302	378	424
Orangeburg	223	274	322	403	451
Sumter	243	294	346	435	486
Williamsburg	259	316	372	466	522

Note: The FMRS for unit sizes larger than 4 BRS are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

SOUTH DAKOTA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rapid City, SD MSA	285	344	401	497	556	Pennington
Sioux Falls, SD MSA	301	366	430	540	604	Minnehaha

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aurora	256	310	362	454	508
Bennett	233	282	333	417	467
Brookings	251	304	354	441	499
Brule	253	308	362	454	508
Butte	277	337	396	497	556
Charles Mix	253	308	362	454	508
Clay	253	308	362	454	508
Corson	233	282	333	417	467
Davison	256	310	362	454	508
Deuel	227	273	325	404	448
Douglas	253	308	362	454	508
Fall River	277	337	396	497	556
Grant	251	304	354	441	499
Haakon	233	282	333	417	467
Hand	256	310	362	450	502
Harding	277	337	396	497	556
Hutchinson	253	308	362	454	508
Jackson	233	282	333	417	467
Jones	233	282	333	417	467
Lake	220	269	315	395	443
Lincoln	256	310	362	454	508
Mccook	220	269	315	395	443
Marshall	245	300	353	443	496
Mellette	233	282	333	417	467
Moody	220	269	315	395	443
Potter	233	282	333	417	467
Sanborn	256	310	362	454	508
Spink	245	300	353	443	496
Sully	233	282	333	417	467
Tripp	233	282	333	417	467
Union	253	308	362	454	508
Yankton	253	308	362	454	508

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beadle	256	310	362	450	502
Bon Homme	253	308	362	454	508
Brown	274	331	388	486	544
Buffalo	233	282	333	417	467
Campbell	233	282	333	417	467
Clark	227	273	325	404	448
Codington	251	304	354	441	499
Custer	277	337	396	497	556
Day	245	300	353	443	496
Dewey	233	282	333	417	467
Edmunds	245	300	353	443	496
Faulk	245	300	353	443	496
Gregory	233	282	333	417	467
Hamlin	227	273	325	404	448
Hanson	256	310	362	454	508
Hughes	304	372	435	544	608
Hyde	233	282	333	417	467
Jerauld	256	310	362	454	508
Kingsbury	220	269	315	395	443
Lawrence	283	337	396	497	556
Lyman	233	282	333	417	467
Mcpherson	245	300	353	443	496
Meade	285	344	401	497	556
Miner	220	269	315	395	443
Perkins	233	282	333	417	467
Roberts	245	300	353	443	496
Shannon	233	282	333	417	467
Stanley	304	372	435	544	608
Todd	233	282	333	417	467
Turner	256	310	362	454	508
Walworth	233	282	333	417	467
Ziebach	233	282	333	417	467

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

TENNESSEE

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Chattanooga, TN-GA MSA	302	368	433	542	609	Hamilton, Marion, Sequatchie
Clarksville-Hopkinsville, TN-KY MSA	280	352	441	536	595	Montgomery
Jackson, TN MSA	275	330	392	488	551	Madison
Johnson City-Kingsport-Bristol, TN-VA MSA	253	308	362	453	509	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	279	340	399	500	560	Anderson, Blount, Grainger, Jefferson, Knox, Sevier Union
Memphis, TN-AR-MS MSA	298	361	425	529	592	Shelby, Tipton
Nashville, TN MSA	331	404	476	594	667	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	238	299	340	424	476
Bledsoe	248	302	356	445	499
Campbell	202	246	292	363	404
Carroll	223	272	321	402	449
Claiborne	202	246	292	363	404
Cocke	229	279	322	404	452
Crockett	229	277	325	408	458
Decatur	244	298	351	439	491
Dyer	229	277	325	408	458
Fentress	223	275	324	404	453
Gibson	229	277	325	408	458
Greene	221	270	316	396	445
Hamblen	235	285	337	421	472
Hardeman	244	298	351	439	491
Haywood	234	293	335	420	470
Henry	223	272	321	402	449
Houston	208	250	295	369	413
Jackson	194	239	283	354	393
Lake	229	277	325	408	458
Lawrence	238	299	340	424	476
Lincoln	269	324	382	478	534
McNairy	248	302	356	445	499
Macon	223	275	324	404	453
Maury	238	299	340	424	476
Monroe	238	293	343	429	480
Morgan	202	246	292	363	404
Overton	223	275	324	404	453
Pickett	223	275	324	404	453
Putnam	331	380	329	413	462
Roane	238	293	343	429	480

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	223	272	321	402	449
Bradley	248	302	356	445	499
Cannon	223	275	324	404	453
Chester	244	298	351	439	491
Clay	194	239	283	354	393
Coffee	238	299	340	424	476
Cumberland	223	275	324	404	453
De Kalb	223	275	324	404	453
Fayette	234	285	335	420	470
Franklin	269	324	382	478	534
Giles	238	299	340	424	476
Grundy	248	302	356	445	499
Hancock	221	270	316	396	445
Hardin	244	298	351	439	491
Henderson	244	298	351	439	491
Hickman	238	299	340	424	476
Humphreys	208	250	295	369	413
Johnson	215	262	309	387	433
Lauderdale	234	293	335	420	470
Lewis	238	287	339	424	476
Loudon	238	293	343	429	480
Monsiry	244	298	351	439	491
Marshall	238	299	340	424	476
Meigs	248	302	356	445	499
Moore	238	299	340	424	476
Obion	232	285	325	411	458
Perry	238	287	339	424	476
Polk	248	302	356	445	499
Rhea	248	302	356	445	499
Scott	202	248	292	363	404

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Smith	223	275	324	404	453
Trousdale	223	275	324	404	453
Warren	231	280	329	413	462
Weakley	223	272	321	402	449
Stewart	206	250	295	369	413
Van Buren	231	280	329	413	462
Wayne	236	287	339	424	476
White	231	280	329	413	462

T E X A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Abilene, TX MSA	301	368	433	542	609	Taylor
Amarillo, TX MSA	279	338	399	498	558	Potter, Randall
Austin, TX MSA	357	429	506	632	708	Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	321	389	459	574	642	Hardin, Jefferson, Orange
Brazoria, TX PMSA	324	393	463	579	648	Brazoria
Brownsville-Harlingen, TX MSA	284	345	405	508	569	Cameron
Bryan-College Station, TX MSA	376	459	538	673	755	Brazos
Corpus Christi, TX MSA	328	398	469	587	658	Nueces, San Patricio
Dallas, TX PMSA	369	450	529	661	740	Collin, Dallas, Denton, Ellis, Kaufman, Rockwall
El Paso, TX MSA	281	339	400	500	561	El Paso
Fort Worth-Arlington, TX PMSA	326	395	466	582	653	Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	291	354	417	521	584	Galveston
Houston, TX PMSA	300	364	429	537	601	Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	277	335	395	493	554	Bell, Coryell
Laredo, TX MSA	260	318	373	468	525	Webb
Longview-Marshall, TX MSA	316	384	451	563	632	Gregg, Harrison
Lubbock, TX MSA	235	294	346	489	540	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	283	344	403	506	567	Hidalgo
Midland, TX MSA	362	441	519	651	728	Midland
Odessa, TX MSA	360	439	516	645	723	Ector
San Angelo, TX MSA	303	370	436	546	613	Tom Green
San Antonio, TX MSA	337	409	482	603	675	Bexar, Comal, Guadalupe
Sherman-Denison, TX MSA	278	336	397	496	556	Grayson
Texarkana, TX-Texarkana, AR MSA	255	310	366	459	513	Bowie
Tyler, TX MSA	320	388	458	572	640	Smith
Victoria, TX MSA	390	473	557	699	782	Victoria
Waco, TX MSA	263	318	371	462	514	Mclennan
Wichita Falls, TX MSA	287	349	412	514	577	Wichita

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	242	293	346	432	485
Angelina	282	340	402	504	563
Archer	232	283	332	416	466
Atascosa	248	301	357	447	499
Bailey	234	286	337	419	467
Bastrop	246	298	352	442	495
Bee	267	326	384	478	537
Borden	226	279	327	408	459
Brewster	207	251	294	369	415
Brooks	267	326	384	478	537
Burleson	248	300	355	444	497
Caldwell	246	298	352	442	495
Callahan	240	291	341	428	481
Carson	252	305	360	451	506
Castro	252	305	360	451	506
Cherokee	242	293	346	432	485
Clay	232	283	332	416	466
Coke	216	263	310	389	434
Collingsworth	252	305	360	451	506
Comanche	240	291	341	428	481
Cooke	265	324	382	476	535
Crane	207	251	294	369	415
Crosby	234	286	337	419	467
Dallam	252	305	360	451	506
Deaf Smith	252	305	360	451	506
De Witt	260	318	373	468	525
Dimmit	223	275	323	402	451
Duval	267	326	384	478	537
Edwards	231	283	331	407	459
Falls	212	258	302	382	426
Fayette	248	298	352	442	495
Floyd	234	286	337	419	467
Franklin	255	310	365	459	512
Frio	248	301	357	447	499
Garza	234	286	337	419	467
Glasscock	226	279	327	408	459
Gonzales	260	318	373	468	525
Grimes	248	300	355	444	497
Hall	252	305	360	451	506
Hansford	252	305	360	451	506

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Andrews	207	251	294	369	415
Aransas	267	326	384	478	537
Armstrong	252	305	360	451	506
Austin	286	347	408	512	574
Bandera	248	301	357	447	499
Baylor	232	283	332	416	466
Blanco	226	279	327	408	460
Bosque	212	258	302	382	426
Briscoe	252	305	360	451	506
Brown	234	286	337	419	467
Burnet	226	279	327	408	460
Calhoun	260	318	373	468	525
Camp	221	269	320	398	447
Cass	255	310	365	459	512
Chambers	295	359	423	529	592
Childress	232	283	332	416	466
Cochran	234	286	337	419	467
Coleman	234	286	337	419	467
Colorado	286	347	408	512	574
Concho	216	263	310	389	434
Cottle	232	283	332	416	466
Crockett	216	263	310	389	434
Culberson	207	251	294	369	415
Dawson	226	279	327	408	459
Delta	255	310	365	459	512
Dickens	234	286	337	419	467
Donley	252	305	360	451	506
Eastland	240	291	341	428	481
Erath	240	291	341	428	481
Fannin	265	324	382	476	535
Fisher	240	291	341	428	481
Foard	232	283	332	416	466
Freestone	212	258	302	382	426
Gaines	207	251	294	369	415
Gillespie	248	301	357	447	499
Goliad	260	318	373	468	525
Gray	252	305	360	451	506
Hale	234	286	337	419	467
Hamilton	226	279	327	408	460
Hardeman	232	283	332	416	466

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hartley	252	305	360	451	506
Haskell	240	291	341	428	481
Hemphill	252	305	360	451	506
Henderson	242	293	346	432	485
Hill	263	317	371	466	521
Hockley	234	286	337	419	467
Hood	286	347	408	512	574
Hopkins	255	310	365	459	512
Houston	251	303	359	450	505
Howard	226	279	327	408	459
Hudspeth	207	251	294	369	415
Hunt	265	324	382	476	535
Hutchinson	252	305	360	451	506
Irion	216	263	310	389	434
Jack	232	283	332	416	466
Jackson	260	318	373	466	525
Jasper	267	326	384	478	537
Jeff Davis	207	251	294	369	415
Jim Hogg	254	307	363	457	510
Jim Wells	267	326	384	478	537
Jones	240	291	341	428	481
Karnes	204	248	293	366	409
Kendall	248	301	357	447	499
Kenedy	267	326	384	478	537
Kent	240	291	341	428	481
Kerr	248	301	357	447	499
Kimble	218	262	310	389	434
King	234	286	337	419	467
Kinney	231	283	331	407	453
Kleberg	267	326	384	478	537
Knox	234	286	337	419	467
Lamar	258	310	365	459	513
Lamb	234	286	337	419	467
Lampasas	226	279	327	408	460
La Salle	323	375	323	402	451
Lavaca	260	318	373	466	525
Lee	246	298	352	442	496
Leon	258	310	366	459	513
Limestone	212	258	302	382	426
Lipscomb	252	305	360	451	506
Live Oak	267	326	384	478	537
Llano	226	279	327	408	460
Loving	207	251	294	369	415
Lynn	234	286	337	419	467
Mcculloch	234	286	337	419	467
Mcmullen	267	326	384	478	537
Madison	258	310	366	459	513
Marion	221	269	320	398	447
Martin	226	279	327	408	459
Mason	216	263	310	389	434
Matagorda	286	347	408	512	574
Maverick	231	283	331	407	453
Medina	248	301	357	447	499
Menard	216	262	310	389	434
Milam	248	298	352	442	496
Mills	234	286	337	419	467
Mitchell	240	291	341	428	481
Montague	232	283	332	416	466
Moore	252	305	360	451	506
Morris	255	310	365	459	512
Motley	234	286	337	419	467
Nacogdoches	282	340	402	504	563
Navarro	212	258	302	382	426
Newton	267	326	384	478	537
Nolan	240	291	341	428	481
Ochiltree	252	305	360	451	506
Oldham	252	305	360	451	506
Palo Pinto	240	291	341	428	481
Panola	242	293	346	432	485
Parmer	252	305	360	451	506
Pecos	207	251	294	369	415
Polk	282	340	402	504	563
Presidio	207	251	294	369	415
Rains	230	282	329	406	448
Reagan	216	263	310	389	434
Real	231	283	331	407	453
Red River	258	310	366	459	513
Reeves	207	251	294	369	415
Refugio	267	326	384	478	537
Roberts	252	305	360	451	506

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Robertson	248	300	355	444	497
Rusk	242	293	346	432	485
San Augustine	220	269	318	398	445
San Saba	234	286	337	419	467
Scurry	240	291	341	428	481
Shelby	220	269	318	398	445
Somervell	212	258	302	382	426
Stephens	240	291	341	428	481
Stonewall	240	291	341	428	481
Swisher	252	305	360	451	506
Terry	234	286	337	419	467
Titus	255	310	365	459	512
Tyler	256	310	366	459	513
Upton	226	279	327	408	459
Val Verde	231	282	331	407	453
Walker	291	355	419	524	586
Washington	256	310	366	459	513
Wheeler	252	305	360	451	506
Willacy	267	326	384	478	537
Winkler	207	251	294	369	415
Wood	221	269	320	398	447
Young	232	283	332	416	466
Zavala	231	282	331	407	453

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Runnels	234	286	337	419	467
Sabine	220	269	318	398	445
San Jacinto	282	340	402	504	563
Schleicher	216	263	310	389	434
Shackleford	240	291	341	428	481
Sherman	252	305	360	451	506
Starr	220	268	317	395	443
Sterling	216	263	310	389	434
Sutton	216	263	310	389	434
Terrell	207	251	294	369	415
Throckmorton	240	291	341	428	481
Trinity	256	323	381	474	533
Upshur	221	269	320	398	447
Uvalde	231	283	331	407	453
Van Zandt	230	282	329	406	449
Ward	207	251	294	369	415
Wharton	286	347	408	512	574
Wilbarger	232	283	332	416	466
Wilson	204	248	292	366	409
Wise	286	347	408	512	574
Yoakum	234	286	337	419	467
Zapata	220	268	317	395	443

U T A H

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Provo-Orem, UT MSA	300	365	428	536	602	Utah
Salt Lake City-Ogden, UT MSA	288	350	412	515	577	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaver	328	399	471	587	658
Cache	302	367	433	541	607
Daggett	374	455	535	670	750
Emery	374	455	535	670	750
Grand	374	455	535	670	750
Juab	328	399	471	587	658
Millard	328	399	471	587	658
Piute	328	399	471	587	658
San Juan	374	455	535	670	750

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Box Elder	302	367	433	541	607
Carbon	374	455	535	670	750
Duchesne	374	455	535	670	750
Garfield	328	399	471	587	658
Iron	328	399	471	587	658
Kane	328	399	471	587	658
Morgan	374	455	535	670	750
Rich	302	367	433	541	607
Sanpete	328	399	471	587	658

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

U T A H continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sevier	328	399	471	587	658
Tooele	302	367	433	541	607
Wasatch	374	455	535	670	750
Wayne	328	399	471	587	658
Summit	374	455	535	670	750
Uintah	374	455	535	670	750
Washington	359	431	509	635	714

V E R M O N T

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Burlington, VT MSA	447	544	639	799	896	Chittenden county towns of Burlington, Charlotte Colchester, Essex, Hinesburg, Jericho, Milton, Richmond St. George, Shelburne, South Burlington, Williston Winooski Franklin county towns of Georgia Grand Isle county towns of Grand Isle, South Hero

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	358	434	512	639	717	
Bennington	363	447	524	654	737	
Caledonia	305	370	435	545	611	
Chittenden	413	504	593	743	833	Bolton, Buels, Huntington, Underhill, Westford
Essex	305	370	435	545	611	
Franklin	340	413	487	608	681	Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield Fletcher, Franklin, Highgate, Montgomery, Richford St. Albans, St. Albans, Sheldon, Swanton
Grand Isle	305	370	435	545	611	Alburg, Isle La Motte, North Hero
Lamoille	369	448	526	659	738	
Orange	363	443	521	651	730	
Orleans	305	370	435	545	611	
Rutland	396	481	565	706	792	
Washington	363	447	524	654	737	
Windham	382	466	547	684	768	
Windsor	392	475	560	700	784	

V I R G I N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charlottesville, VA MSA	351	428	503	629	704	Albemarle, Fluvanna, Greene, Charlottesville
Danville, VA MSA	269	326	384	480	538	Pittsylvania, Danville
Johnson City-Kingsport-Bristol, TN-VA MSA	253	308	362	453	509	Scott, Washington, Bristol
Lynchburg, VA MSA	289	359	414	506	580	Amherst, Campbell, Lynchburg
Norfolk-Virginia Beach-Newport News, VA MSA	359	436	514	642	719	Gloucester, James City, York, Chesapeake, Hampton Newport News City, Norfolk, Poquoson, Portsmouth, Suffolk

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V I R G I N I A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Richmond-Petersburg, VA MSA	321	386	450	565	633	Virginia Beach, Williamsburg City Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights, Hopewell, Petersburg, Richmond
Roanoke, VA MSA	282	343	402	505	565	Botetourt, Roanoke, Roanoke, Salem
Washington, DC-MD-VA MSA	511	621	731	914	1023	Arlington, Fairfax, Loudoun, Prince William, Stafford Alexandria, Fairfax, Falls Church City, Manassas Manassas Park City

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Accomack	265	320	372	460	514
Amelia	233	282	331	416	467
Augusta	281	341	401	503	563
Bedford	242	294	348	434	486
Brunswick	219	267	313	393	440
Buckingham	233	282	331	416	467
Carroll	237	287	338	425	475
Clarke	282	343	402	505	565
Culpeper	292	355	420	523	586
Dickenson	250	291	345	431	482
Fauquier	292	355	420	523	586
Franklin	242	294	348	434	486
Giles	280	340	399	500	560
Greensville	219	267	313	393	440
Henry	282	343	402	504	564
Isle Of Wight	226	277	321	401	440
King George	331	403	475	592	666
Lancaster	254	311	367	459	514
Louisa	296	358	420	523	586
Madison	296	358	420	523	586
Mecklenburg	219	267	313	393	440
Montgomery	341	414	486	612	682
Northampton	265	320	372	460	514
Nottoway	233	282	331	416	467
Page	282	343	402	505	565
Prince Edward	233	282	331	416	467
Rappahannock	292	355	420	523	586
Rockbridge	281	341	401	503	563
Russell	269	326	384	480	539
Smyth	237	287	338	425	475
Spotsylvania	331	403	475	592	666

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	281	341	401	503	563
Appomattox	284	341	399	500	560
Bath	281	341	401	503	563
Bland	237	287	338	425	475
Buchanan	269	326	384	480	539
Caroline	331	403	475	592	666
Charlotte	233	282	331	416	467
Craig	219	267	313	392	439
Cumberland	233	282	331	416	467
Essex	254	311	367	459	514
Floyd	280	340	399	500	560
Frederick	282	343	402	505	565
Grayson	237	287	338	425	475
Halifax	233	282	331	416	467
Highland	281	341	401	503	563
King And Queen	254	311	367	459	514
King William	254	311	367	459	514
Lee	240	291	345	431	482
Lunenburg	233	282	331	416	467
Mathews	254	311	367	459	514
Middlesex	254	311	367	459	514
Nelson	246	298	352	440	493
Northumberland	254	311	367	459	514
Orange	296	358	420	523	586
Patrick	242	294	348	434	486
Pulaski	280	340	399	500	560
Richmond	254	311	367	459	514
Rockingham	281	341	401	503	563
Shenandoah	282	343	402	505	565
Southampton	226	277	321	401	440
Surry	226	277	321	401	440

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sussex	219	267	313	393	440
Warren	282	343	402	505	565
Wise	271	327	386	482	541
Bedford	242	294	348	434	486
Clifton Forge City	281	341	401	503	563
Emporia	219	267	313	393	440
Fredericksburg	392	476	560	700	784
Harrisonburg City	322	391	460	574	643
Martinsville City	282	343	402	504	564
Radford	341	414	486	612	682
Staunton	281	341	401	503	563
Winchester	342	415	488	610	683

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Tazewell	269	326	384	480	539
Westmoreland	254	311	367	459	514
Wythe	256	312	362	448	501
Buena Vista	281	341	401	503	563
Covington	281	341	401	503	563
Franklin	219	267	313	393	440
Galax	227	287	338	425	475
Lexington	281	341	401	503	563
Norton	270	326	385	481	540
South Boston City	233	282	331	416	467
Waynesboro	281	341	401	503	563

W A S H I N G T O N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bellingham, WA MSA	385	446	524	670	737	Whatcom
Bremerton, WA MSA	368	448	526	657	739	Kitsap
Olympia, WA MSA	381	462	544	681	764	Thurston
Richland-Kennewick-Pasco, WA MSA	305	371	436	545	610	Benton, Franklin
Seattle, WA PMSA	416	507	592	765	842	King, Snohomish
Spokane, WA MSA	321	381	449	574	635	Spokane
Tacoma, WA PMSA	330	401	473	630	701	Pierce
Vancouver, WA PMSA	283	344	451	595	661	Clark
Yakima, WA MSA	335	406	478	599	672	Yakima

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	272	331	388	488	546
Chelan	329	399	472	588	660
Columbia	353	428	505	631	708
Douglas	329	399	472	588	660
Garfield	353	428	505	631	708
Grays Harbor	355	431	508	635	713
Jefferson	355	431	508	635	713
Klickitat	330	401	472	591	664
Lincoln	272	331	388	488	546
Okanogan	300	363	430	539	603
Pend Oreille	272	331	388	488	546
Skagit	361	442	519	649	726
Stevens	272	331	388	488	546

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Asotin	353	428	505	631	708
Clallam	355	431	508	635	713
Cowlitz	259	315	370	606	662
Ferry	272	331	388	488	546
Grant	272	331	388	488	546
Island	361	442	519	649	726
Kittitas	300	363	430	539	603
Lewis	330	401	472	591	664
Mason	355	431	508	635	713
Pacific	355	431	508	635	713
San Juan	361	442	519	649	726
Skamania	330	401	472	591	664
Wahkiakum	330	401	472	591	664

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

WASHINGTON continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Walla Walla	353	428	505	631	708
Whitman	353	428	505	631	708

WEST VIRGINIA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charleston, WV MSA	363	441	520	651	729	Kanawha, Putnam
Cumberland, MD-WV MSA	275	327	383	473	528	Mineral
Huntington-Ashland, WV-KY-OH MSA	299	363	429	537	603	Cabell, Wayne
Parkersburg-Marietta, WV-OH MSA	283	344	405	509	569	Wood
Steubenville-Weirton, OH-WV MSA	290	354	414	520	585	Brooke, Hancock
Wheeling, WV-OH MSA	282	343	404	506	566	Marshall, Ohio

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	260	316	373	468	522
Boone	259	314	371	464	519
Calhoun	301	353	409	533	587
Doddridge	253	310	366	457	512
Gilmer	278	333	404	501	552
Greenbrier	239	290	343	428	480
Hardy	249	305	358	448	503
Jackson	301	353	409	533	587
Lewis	260	316	373	468	522
Logan	250	305	358	448	503
Marion	308	374	440	552	617
Mercer	245	299	353	441	495
Monongalia	308	374	440	552	617
Morgan	263	320	376	470	526
Pendleton	249	305	358	448	503
Pocahontas	239	290	343	428	480
Raleigh	250	301	348	434	487
Ritchie	220	268	314	392	440
Summers	250	301	353	441	495
Tucker	260	316	373	468	522
Upshur	260	316	373	468	522
Wetzel	263	320	377	472	528
Wyoming	250	301	348	434	487

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Berkeley	305	370	435	544	609
Braxton	229	278	326	409	459
Clay	259	314	371	464	519
Fayette	239	290	343	428	480
Grant	249	305	358	448	503
Hampshire	249	305	358	448	503
Harrison	301	353	409	533	587
Jefferson	295	359	422	528	591
Lincoln	250	305	358	448	503
Mcdowell	242	295	347	434	487
Mason	250	305	358	448	503
Mingo	250	305	358	448	503
Monroe	250	301	353	441	495
Nicholas	239	290	343	428	480
Pleasants	220	268	314	392	440
Preston	308	374	440	552	617
Randolph	260	316	373	468	522
Roane	301	353	409	533	587
Taylor	253	310	366	457	512
Tyler	220	268	314	392	440
Webster	239	290	343	428	480
Wirt	220	268	314	392	440

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

WISCONSIN*

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Appleton-Oshkosh-Neenah, WI MSA	283	345	408	509	570	Calumet, Outagamie, Winnebago
Duluth, MN-WI MSA	313	373	440	552	619	Douglas
Eau Claire, WI MSA	280	343	405	504	566	Chippewa, Eau Claire
Green Bay, WI MSA	283	345	410	509	570	Brown
Janesville-Beloit, WI MSA	313	382	450	563	631	Rock
Kenosha, WI PMSA	352	430	504	633	707	Kenosha
La Crosse, WI MSA	336	408	480	600	672	La Crosse
Madison, WI MSA	336	410	489	593	683	Dane
Milwaukee, WI PMSA	338	407	482	603	672	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	382	464	550	688	768	St Croix
Racine, WI PMSA	318	387	456	570	639	Racine
Sheboygan, WI MSA	291	352	416	521	584	Sheboygan
Wausau, WI MSA	283	345	408	509	570	Marathon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	289	350	414	519	582
Barron	275	336	394	494	555
Buffalo	262	316	375	467	526
Clark	275	336	394	494	555
Crawford	248	304	356	447	500
Door	261	313	370	456	509
Florence	248	304	356	447	500
Forest	270	328	385	485	540
Green	270	328	383	477	529
Iowa	261	315	373	465	523
Jackson	262	316	375	467	526
Juneau	289	350	414	519	582
Lafayette	261	315	373	465	523
Lincoln	270	328	385	485	540
Marinette	253	306	358	449	500
Menominee	253	309	364	456	510
Oconto	248	304	356	447	500
Pepin	262	316	375	467	526
Polk	275	336	394	494	555
Price	253	309	364	456	510
Rusk	253	309	364	456	510
Sawyer	253	309	364	456	510
Taylor	253	309	364	456	510
Vernon	248	304	356	447	500
Walworth	303	368	432	540	607

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	253	309	364	456	510
Bayfield	253	309	364	456	510
Burnett	253	309	364	456	510
Columbia	265	319	378	472	530
Dodge	265	319	378	472	530
Dunn	275	336	394	494	555
Fond Du Lac	311	376	427	532	582
Grant	261	315	373	465	523
Green Lake	283	345	408	509	570
Iron	253	309	364	456	510
Jefferson	303	368	432	540	607
Kewaunee	261	313	370	456	509
Langlade	270	328	385	485	540
Manitowoc	261	313	370	456	509
Marquette	253	309	364	456	510
Monroe	262	316	375	467	526
Oneida	270	328	385	485	540
Pierce	262	316	375	467	526
Portage	289	350	414	519	582
Richland	261	315	373	465	523
Sauk	288	351	414	518	579
Shawano	253	309	364	456	510
Trempealeau	262	316	375	467	526
Vilas	270	328	385	485	540
Washburn	253	309	364	456	510

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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WISCONSIN continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Waupaca	253	309	364	456	510
Wood	289	350	414	519	582
Waushara	253	309	364	456	510

WYOMING

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Casper, WY MSA	420	511	600	752	842	Natrona
Cheyenne, WY MSA	347	420	497	624	697	Laramie

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Albany	268	330	390	487	540
Campbell	268	330	390	487	540
Converse	268	330	390	487	540
Fremont	268	330	390	487	540
Hot Springs	275	335	396	492	552
Lincoln	268	330	390	487	540
Park	275	335	396	492	552
Sheridan	371	455	535	667	752
Sweetwater	268	330	390	487	540
Uinta	268	330	390	487	540
Weston	275	335	396	492	552
Big Horn	275	335	396	492	552
Carbon	268	330	390	487	540
Crook	268	335	396	492	552
Goshen	268	330	390	487	540
Johnson	268	330	390	487	540
Niobrara	268	330	390	487	540
Platte	268	330	390	487	540
Sublette	268	330	390	487	540
Teton	353	425	503	631	708
Washakie	275	335	396	492	552

GUAM

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Guam	440	529	625	782	880

PUERTO RICO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aguadilla, PR MSA	225	275	325	405	455	Aguada, Aguadilla, Isabela, Moca
Arecibo, PR MSA	330	400	470	590	660	Arecibo, Camuy, Hatillo, Quebradillas
Caguas, PR PMSA	275	330	390	490	545	Aguas Buenas, Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Mayaguez, PR MSA	225	275	325	405	455	Anasco, Cabo Rojo, Hormigueros, Mayaguez, San German
Ponce, PR MSA	320	390	460	575	645	Juana Diaz, Ponce
San Juan, PR PMSA	320	390	460	575	645	Bayamon, Barceloneta, Canovanas, Carolina, Catano Corozal, Dorado, Fajardo, Florida, Guaynabo, Humacao Juncos, Las Piedras, Loiza, Luquillo, Manati, Naranjito Rio Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto Vega Alta, Vega Baja

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092090

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

P U E R T O R I C O continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adjuntas	215	265	310	390	435
Arroyo	215	265	310	390	435
Ceiba	215	265	310	390	435
Coamo	215	265	310	390	435
Culebra	215	265	310	390	435
Guayama	215	265	310	390	435
Jayuya	215	265	310	390	435
Lares	215	265	310	390	435
Maricao	215	265	310	390	435
Morovis	215	265	310	390	435
Orocovis	215	265	310	390	435
Penuelas	215	265	310	390	435
Sabana Grande	215	265	310	390	435
San Sebastian	215	265	310	390	435
Utuado	215	265	310	390	435
Villalba	215	265	310	390	435
Yauco	215	265	310	390	435

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Charlotte Amalie	450	547	643	804	900
St. Thomas	450	547	643	804	900

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aibonito	215	265	310	390	435
Barranquitas	215	265	310	390	435
Ciales	215	265	310	390	435
Comerio	215	265	310	390	435
Guanica	215	265	310	390	435
Guayanilla	215	265	310	390	435
Lajas	215	265	310	390	435
Las Marias	215	265	310	390	435
Maunabo	215	265	310	390	435
Naguabo	215	265	310	390	435
Patillas	215	265	310	390	435
Rincon	215	265	310	390	435
Salinas	215	265	310	390	435
Santa Isabel	215	265	310	390	435
Vieques	215	265	310	390	435
Yabucoa	215	265	310	390	435

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
St. Croix	401	487	574	717	803

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: ALABAMA	69	80
MSA: Anniston, AL	72	81
MSA: Birmingham, AL	103	113
MSA: Columbus, GA-AL	93	103
MSA: Decatur, AL	69	80
MSA: Dothan, AL	67	76
MSA: Florence, AL	81	87
MSA: Gadsden, AL	72	81
MSA: Huntsville, AL	103	113
MSA: Mobile, AL	82	88
MSA: Montgomery, AL	82	87
MSA: Tuscaloosa, AL	96	109
EXCEPTION COUNTY: LIMESTONE	81	89
EXCEPTION COUNTY: MARSHALL	81	89
NON METRO STATE: ALASKA	159	159
MSA: Anchorage, AK	176	176
EXCEPTION COUNTY: KETCHIKAN	159	168
NON METRO STATE: ARIZONA	102	130
MSA: Phoenix, AZ	143	170
MSA: Tucson, AZ	102	143
NON METRO STATE: ARKANSAS	38	43
MSA: Fayetteville-Springdale, AR	64	68
MSA: Fort Smith, AR-OK	35	38
MSA: Little Rock-North Little Rock, AR	55	57
MSA: Memphis, TN-AR-MS	95	95
MSA: Pine Bluff, AR	28	30
MSA: Texarkana, TX-Texarkana, AR	112	128
EXCEPTION COUNTY: BENTON	53	55
EXCEPTION COUNTY: LITTLE RIVER	88	99
NON METRO STATE: CALIFORNIA	160	210
PMSA: Anaheim-Santa Ana, CA	391	391
MSA: Bakersfield, CA	150	230
MSA: Chico, CA	160	210
MSA: Fresno, CA	230	259
PMSA: Los Angeles-Long Beach, CA	190	319
MSA: Merced, CA	160	210
MSA: Modesto, CA	239	259

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Oakland, CA	265	347
PMSA: Oxnard-Ventura, CA	243	368
MSA: Redding, CA	180	210
PMSA: Riverside-San Bernardino, CA	161	264
MSA: Sacramento, CA	185	220
MSA: Salinas-Seaside-Monterey, CA	230	289
MSA: San Diego, CA	276	302
PMSA: San Francisco, CA	284	370
PMSA: San Jose, CA	338	394
MSA: Santa Barbara-Santa Maria-Lompoc, CA	189	289
PMSA: Santa Cruz, CA	247	309
PMSA: Santa Rosa-Petaluma, CA	247	297
MSA: Stockton, CA	239	259
PMSA: Vallejo-Fairfield-Napa, CA	257	294
MSA: Visalia-Tulare-Portersville, CA	180	210
MSA: Yuba City, CA	180	210
EXCEPTION COUNTY: SAN LUIS OBI	219	289
NON METRO STATE: COLORADO	N/A	N/A
PMSA: Boulder-Longmont, CO	215	236
MSA: Colorado Springs, CO	180	170
PMSA: Denver, CO	245	265
MSA: Fort Collins-Loveland, CO	143	180
MSA: Greeley, CO	143	180
MSA: Pueblo, CO	143	180
EXCEPTION COUNTY: ALAMOSA	119	143
EXCEPTION COUNTY: ARCHULETA	143	180
EXCEPTION COUNTY: BACA	119	143
EXCEPTION COUNTY: BENT	119	143
EXCEPTION COUNTY: CHAFFEE	145	180
EXCEPTION COUNTY: CHEYENNE	119	143
EXCEPTION COUNTY: CLEAR CREEK	143	180
EXCEPTION COUNTY: CONEJOS	119	143
EXCEPTION COUNTY: COSTILLA	119	143
EXCEPTION COUNTY: CROWLEY	119	143
EXCEPTION COUNTY: CUSTER	143	180
EXCEPTION COUNTY: DELTA	143	180
EXCEPTION COUNTY: DELORES	143	180
EXCEPTION COUNTY: EAGLE	231	259
EXCEPTION COUNTY: ELBERT	119	143
EXCEPTION COUNTY: FREMONT	143	180
EXCEPTION COUNTY: GARFIELD	231	259
EXCEPTION COUNTY: GILPIN	164	189
EXCEPTION COUNTY: GRAND	143	180
EXCEPTION COUNTY: GUNNISON	143	180

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: HINSDALE	143	160
EXCEPTION COUNTY: HUERFANO	119	143
EXCEPTION COUNTY: JACKSON	143	160
EXCEPTION COUNTY: KIOWA	119	143
EXCEPTION COUNTY: KIT CARSON	119	143
EXCEPTION COUNTY: LAKE	143	160
EXCEPTION COUNTY: LA PLATA	143	160
EXCEPTION COUNTY: LAS ANIMAS	119	143
EXCEPTION COUNTY: LINCOLN	119	143
EXCEPTION COUNTY: LOGAN	119	143
EXCEPTION COUNTY: MESA	143	160
EXCEPTION COUNTY: MINERAL	119	143
EXCEPTION COUNTY: MOFFAT	231	259
EXCEPTION COUNTY: MONTEZUMA	143	160
EXCEPTION COUNTY: MONTROSE	143	160
EXCEPTION COUNTY: MORGAN	119	143
EXCEPTION COUNTY: OTERO	119	143
EXCEPTION COUNTY: OURAY	143	160
EXCEPTION COUNTY: PARK	143	160
EXCEPTION COUNTY: PHILLIPS	119	143
EXCEPTION COUNTY: PITKIN	231	259
EXCEPTION COUNTY: PROWERS	119	143
EXCEPTION COUNTY: RIO BLANCO	231	259
EXCEPTION COUNTY: RIO GRANDE	119	143
EXCEPTION COUNTY: ROUTT	231	259
EXCEPTION COUNTY: SAGUACHE	119	143
EXCEPTION COUNTY: SAN JUAN	143	160
EXCEPTION COUNTY: SAN MIGUEL	143	160
EXCEPTION COUNTY: SEDGWICK	119	143
EXCEPTION COUNTY: SUMMIT	231	259
EXCEPTION COUNTY: TELLER	119	143
EXCEPTION COUNTY: WASHINGTON	119	143
EXCEPTION COUNTY: YUMA	119	143
NON METRO STATE: CONNECTICUT	160	160
PMSA: Bridgeport-Milford, CT	208	208
PMSA: Bristol, CT	160	160
PMSA: Danbury, CT	159	159
PMSA: Hartford, CT	174	174
PMSA: Middletown, CT	174	174
PMSA: New Britain, CT	174	174
MSA: New Haven-Meriden, CT	156	156
MSA: New London-Norwich, CT-RI	149	149
PMSA: Norwalk, CT	196	196
PMSA: Stamford, CT	196	196

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 58

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Waterbury, CT	160	160
NON METRO STATE: DELAWARE	70	70
PMSA: Wilmington, DE-NJ-MD	142	142
NON METRO STATE: DIST. OF COLUMBIA	N/A	N/A
MSA: Washington, DC-MD-VA	194	194
NON METRO STATE: FLORIDA	87	87
MSA: Bradenton, FL	126	126
MSA: Daytona Beach, FL	112	112
PMSA: Fort Lauderdale-Hollywood-Pompano Beach, FL	183	183
MSA: Fort Myers-Cape Coral, FL	117	117
MSA: Fort Pierce, FL	85	85
MSA: Fort Walton Beach, FL	87	87
MSA: Gainesville, FL	87	87
MSA: Jacksonville, FL	81	95
MSA: Lakeland-Winter Haven, FL	87	87
MSA: Melbourne-Titusville-Palm Bay, FL	103	103
PMSA: Miami-Hialeah, FL	145	145
MSA: Naples, FL	87	87
MSA: Ocala, FL	87	87
MSA: Orlando, FL	103	103
MSA: Panama City, FL	87	87
MSA: Pensacola, FL	87	87
MSA: Sarasota, FL	117	117
MSA: Tallahassee, FL	81	81
MSA: Tampa-St. Petersburg-Clearwater, FL	117	117
MSA: West Palm Beach-Boca Raton-Delray Beach, FL	149	149
EXCEPTION COUNTY: BAKER	79	92
EXCEPTION COUNTY: COLUMBIA	87	87
EXCEPTION COUNTY: WAKULLA	79	92
NON METRO STATE: GEORGIA	63	63
MSA: Albany, GA	56	59
MSA: Athens, GA	63	63
MSA: Atlanta, GA	101	109
MSA: Augusta, GA-SC	85	87
MSA: Chattanooga, TN-GA	56	81
MSA: Columbus, GA-AL	93	103
MSA: Macon-Warner Robins, GA	67	62
MSA: Savannah, GA	70	81

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: BRYAN	63	64
EXCEPTION COUNTY: TWIGGS	56	61
NON METRO STATE: HAWAII	N/A	N/A
MSA: Honolulu, HI	N/A	N/A
NON METRO STATE: IDAHO	119	119
MSA: Boise City, ID	128	149
NON METRO STATE: ILLINOIS	113	122
PMSA: Aurora-Elgin, IL	230	248
MSA: Bloomington-Normal, IL	127	127
MSA: Champaign-Urbana-Rantoul, IL	103	103
PMSA: Chicago, IL	244	260
MSA: Davenport-Rock Island-Moline, IA-IL	139	146
MSA: Decatur, IL	139	139
PMSA: Joliet, IL	244	260
MSA: Kankakee, IL	101	101
PMSA: Lake County, IL	230	248
MSA: Peoria, IL	189	207
MSA: Rockford, IL	186	198
MSA: St. Louis, MO-IL	103	119
MSA: Springfield, IL	122	129
NON METRO STATE: INDIANA	62	80
MSA: Anderson, IN	69	69
MSA: Bloomington, IN	65	65
PMSA: Cincinnati, OH-KY-IN	125	131
MSA: Elkhart-Goshen, IN	89	89
MSA: Evansville, IN-KY	82	87
MSA: Fort Wayne, IN	76	103
PMSA: Gary-Hammond, IN	118	136
MSA: Indianapolis, IN	97	111
MSA: Kokomo, IN	89	102
MSA: Lafayette-West Lafayette, IN	83	123
MSA: Louisville, KY-IN	87	96
MSA: Muncie, IN	68	74
MSA: South Bend-Mishawaka, IN	102	107
MSA: Terre Haute, IN	65	80
EXCEPTION COUNTY: ADAMS	62	80
EXCEPTION COUNTY: BLACKFORD	70	80
EXCEPTION COUNTY: GIBSON	62	80

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: GRANT	70	80
EXCEPTION COUNTY: HENRY	70	80
EXCEPTION COUNTY: JAY	70	80
EXCEPTION COUNTY: MARSHALL	74	80
EXCEPTION COUNTY: RANDOLPH	70	80
EXCEPTION COUNTY: SULLIVAN	63	75
EXCEPTION COUNTY: VERMILLION	63	75
EXCEPTION COUNTY: WAYNE	70	80
EXCEPTION COUNTY: WELLS	62	80
NON METRO STATE: IOWA	97	104
MSA: Cedar Rapids, IA	111	129
MSA: Davenport-Rock Island-Moline, IA-IL	129	146
MSA: Des Moines, IA	119	127
MSA: Dubuque, IA	111	138
MSA: Iowa City, IA	111	127
MSA: Omaha, NE-IA	104	122
MSA: Sioux City, IA-NE	107	107
MSA: Waterloo-Cedar Falls, IA	111	129
NON METRO STATE: KANSAS	85	97
MSA: Kansas City, MO-KS	99	121
MSA: Lawrence, KS	87	100
MSA: Topeka, KS	85	97
MSA: Wichita, KS	100	106
EXCEPTION COUNTY: JEFFERSON	81	94
EXCEPTION COUNTY: OSAGE	81	94
NON METRO STATE: KENTUCKY	76	84
PMSA: Cincinnati, OH-KY-IN	125	131
MSA: Clarksville-Hopkinsville, TN-KY	81	87
MSA: Evansville, IN-KY	82	87
MSA: Huntington-Ashland, WV-KY-OH	92	92
MSA: Lexington-Fayette, KY	96	110
MSA: Louisville, KY-IN	87	95
MSA: Owensboro, KY	88	106
NON METRO STATE: LOUISIANA	82	98
MSA: Alexandria, LA	81	95
MSA: Baton Rouge, LA	95	112
MSA: Houma-Thibodaux, LA	80	93
MSA: Lafayette, LA	87	103

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 61

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Lake Charles, LA	93	110
MSA: Monroe, LA	81	95
MSA: New Orleans, LA	100	115
MSA: Shreveport, LA	87	103
EXCEPTION COUNTY: GRANT	79	92
EXCEPTION COUNTY: WEBSTER	82	96
NON METRO STATE: MAINE	142	163
MSA: Bangor, ME	142	163
MSA: Lewiston-Auburn, ME	108	108
MSA: Portland, ME	177	201
MSA: Portsmouth-Dover-Rochester, NH-ME	142	163
NON METRO STATE: MARYLAND	127	127
MSA: Baltimore, MD	204	204
MSA: Cumberland, MD-WV	127	127
MSA: Hagerstown, MD	195	195
MSA: Washington, DC-MD-VA	194	194
PMSA: Wilmington, DE-NJ-MD	142	142
EXCEPTION COUNTY: ST MARYS	220	220
NON METRO STATE: MASSACHUSETTS	174	174
PMSA: Boston, MA	169	183
PMSA: Brockton, MA	169	169
PMSA: Fall River, MA-RI	108	108
MSA: Fitchburg-Leominster, MA	129	129
PMSA: Lawrence-Haverhill, MA-NH	160	171
PMSA: Lowell, MA-NH	160	171
MSA: New Bedford, MA	149	149
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	148	148
MSA: Pittsfield, MA	161	161
PMSA: Salem-Gloucester, MA	169	183
MSA: Springfield, MA	127	127
MSA: Worcester, MA	111	111
NON METRO STATE: MICHIGAN	122	135
PMSA: Ann Arbor, MI	175	189
MSA: Battle Creek, MI	104	122
MSA: Benton Harbor, MI	122	135
PMSA: Detroit, MI	170	183
MSA: Flint, MI	148	148
MSA: Grand Rapids, MI	111	120

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 62

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Jackson, MI	122	122
MSA: Kalamazoo, MI	128	131
MSA: Lansing-East Lansing, MI	143	166
MSA: Muskegon, MI	111	113
MSA: Saginaw-Bay City-Midland, MI	129	129
EXCEPTION COUNTY: BARRY	100	116
EXCEPTION COUNTY: IONIA	122	135
EXCEPTION COUNTY: OCEANA	106	106
EXCEPTION COUNTY: SHIAWASSEE	142	142
EXCEPTION COUNTY: VAN BUREN	122	126
NON METRO STATE: MINNESOTA	87	87
MSA: Duluth, MN-WI	89	101
MSA: Fargo-Moorhead, ND-MN	138	155
MSA: Minneapolis-St. Paul, MN-WI	209	222
MSA: Rochester, MN	126	126
MSA: St. Cloud, MN	110	110
EXCEPTION COUNTY: POLK	133	151
NON METRO STATE: MISSISSIPPI	82	96
MSA: Biloxi-Gulfport, MS	95	112
MSA: Jackson, MS	103	126
MSA: Memphis, TN-AR-MS	95	95
MSA: Pascagoula, MS	81	95
EXCEPTION COUNTY: STONE	82	96
NON METRO STATE: MISSOURI	68	78
MSA: Columbia, MO	97	104
MSA: Joplin, MO	68	75
MSA: Kansas City, MO-KS	99	121
MSA: St. Joseph, MO	100	107
MSA: St. Louis, MO-IL	103	119
MSA: Springfield, MO	70	76
EXCEPTION COUNTY: ANDREW	95	102
NON METRO STATE: MONTANA	N/A	N/A
MSA: Billings, MT	178	199
MSA: Great Falls, MT	150	170
EXCEPTION COUNTY: BEAVERHEAD	143	160
EXCEPTION COUNTY: BIG HORN	143	160
EXCEPTION COUNTY: BLAINE	102	119
EXCEPTION COUNTY: BROADWATER	143	160

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: CARBON	143	160
EXCEPTION COUNTY: CARTER	102	119
EXCEPTION COUNTY: CHOUTEAU	102	119
EXCEPTION COUNTY: CUSTER	143	160
EXCEPTION COUNTY: DANIELS	102	119
EXCEPTION COUNTY: DAWSON	143	160
EXCEPTION COUNTY: DEER LODGE	143	160
EXCEPTION COUNTY: FALLON	102	119
EXCEPTION COUNTY: FERGUS	102	119
EXCEPTION COUNTY: FLATHEAD	143	160
EXCEPTION COUNTY: GALLATIN	143	160
EXCEPTION COUNTY: GARFIELD	102	119
EXCEPTION COUNTY: GLACIER	102	119
EXCEPTION COUNTY: GOLDEN VALLE	102	119
EXCEPTION COUNTY: GRANITE	143	160
EXCEPTION COUNTY: HILL	102	119
EXCEPTION COUNTY: JEFFERSON	143	160
EXCEPTION COUNTY: JUDITH BASIN	102	119
EXCEPTION COUNTY: LAKE	143	160
EXCEPTION COUNTY: LEWIS+ CLARK	143	160
EXCEPTION COUNTY: LIBERTY	102	119
EXCEPTION COUNTY: LINCOLN	143	160
EXCEPTION COUNTY: MCCONE	102	119
EXCEPTION COUNTY: MADISON	143	160
EXCEPTION COUNTY: MEAGHER	143	160
EXCEPTION COUNTY: MINERAL	143	160
EXCEPTION COUNTY: MISSOULA	143	160
EXCEPTION COUNTY: MUSSELSHELL	143	160
EXCEPTION COUNTY: PARK	143	160
EXCEPTION COUNTY: PETROLEUM	102	119
EXCEPTION COUNTY: PHILLIPS	102	119
EXCEPTION COUNTY: PONDERA	102	119
EXCEPTION COUNTY: POWDER RIVER	143	160
EXCEPTION COUNTY: POWELL	143	160
EXCEPTION COUNTY: PRAIRIE	102	119
EXCEPTION COUNTY: RAVALLI	143	160
EXCEPTION COUNTY: RICHLAND	102	119
EXCEPTION COUNTY: ROOSEVELT	102	119
EXCEPTION COUNTY: ROSEBUD	143	160
EXCEPTION COUNTY: SANDERS	143	160
EXCEPTION COUNTY: SHERIDAN	102	119
EXCEPTION COUNTY: SILVER BOW	143	160
EXCEPTION COUNTY: STILLWATER	102	119
EXCEPTION COUNTY: SWEET GRASS	102	119
EXCEPTION COUNTY: TETON	102	119
EXCEPTION COUNTY: TOOLE	102	119

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) AGE 64

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: TREASURE	143	160
EXCEPTION COUNTY: VALLEY	102	119
EXCEPTION COUNTY: WHEATLAND	102	119
EXCEPTION COUNTY: WIBAUX	102	119
EXCEPTION COUNTY: YL-ST-NT-PK	143	160
NON METRO STATE: NEBRASKA	88	108
MSA: Lincoln, NE	120	127
MSA: Omaha, NE-IA	104	122
MSA: Sioux City, IA-NE	107	107
NON METRO STATE: NEVADA	113	130
MSA: Las Vegas, NV	239	267
MSA: Reno, NV	239	267
NON METRO STATE: NEW HAMPSHIRE	128	142
PMSA: Laurence-Haverhill, MA-NH	160	171
PMSA: Lowell, MA-NH	160	171
MSA: Manchester, NH	146	160
PMSA: Nashua, NH	183	183
MSA: Portsmouth-Dover-Rochester, NH-ME	142	163
NON METRO STATE: NEW JERSEY	131	131
MSA: Allentown-Bethlehem, PA-NJ	129	129
MSA: Atlantic City, NJ	202	202
PMSA: Bergen-Passaic, NJ	275	276
PMSA: Jersey City, NJ	267	267
PMSA: Middlesex-Somerset-Hunterdon, NJ	313	313
PMSA: Monmouth-Ocean, NJ	240	290
PMSA: Newark, NJ	258	267
PMSA: Philadelphia, PA-NJ	224	224
PMSA: Trenton, NJ	197	197
PMSA: Vineland-Millville-Bridgeton, NJ	174	174
PMSA: Wilmington, DE-NJ-MD	142	142
NON METRO STATE: NEW MEXICO	106	123
MSA: Las Cruces, NM	106	123
MSA: Albuquerque, NM	119	138
MSA: Santa Fe, NM	106	123
EXCEPTION COUNTY: SANDOVAL	113	128
NON METRO STATE: NEW YORK	183	183

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Albany-Schenectady-Troy, NY	191	191
MSA: Binghamton, NY	114	114
PMSA: Buffalo, NY	135	135
MSA: Elmira, NY	122	122
MSA: Glens Falls, NY	153	153
MSA: Jamestown-Dunkirk, NY	290	290
PMSA: Nassau-Suffolk, NY	210	272
PMSA: New York, NY	218	218
PMSA: Niagara Falls, NY	129	129
PMSA: Orange County, NY	151	151
MSA: Poughkeepsie, NY	290	290
MSA: Rochester, NY	174	174
MSA: Syracuse, NY	141	141
MSA: Utica-Rome, NY	143	143
EXCEPTION COUNTY: WESTCHESTER	258	258
NON METRO STATE: NORTH CAROLINA	57	70
MSA: Asheville, NC	81	95
MSA: Burlington, NC	81	95
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	81	95
MSA: Fayetteville, NC	81	95
MSA: Greensboro--Winston-Salem--High Point, NC	81	95
MSA: Hickory, NC	57	70
MSA: Jacksonville, NC	57	70
MSA: Raleigh-Durham, NC	81	95
MSA: Wilmington, NC	81	95
EXCEPTION COUNTY: BRUNSWICK	64	76
EXCEPTION COUNTY: CURRITUCK	101	101
EXCEPTION COUNTY: MADISON	64	76
NON METRO STATE: NORTH DAKOTA	110	127
MSA: Bismarck, ND	156	173
MSA: Fargo-Moorhead, ND-MN	138	166
MSA: Grand Forks, ND	119	147
NON METRO STATE: OHIO	79	79
PMSA: Akron, OH	117	117
MSA: Canton, OH	85	85
PMSA: Cincinnati, OH-KY-IN	125	131
PMSA: Cleveland, OH	125	125
MSA: Columbus, OH	111	129
MSA: Dayton-Springfield, OH	85	85
PMSA: Hamilton-Middletown, OH	101	104

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Huntington-Ashland, WV-KY-OH	93	93
MSA: Lima, OH	111	111
PMSA: Lorain-Elyria, OH	134	134
MSA: Mansfield, OH	104	104
MSA: Parkersburg-Marietta, WV-OH	93	93
MSA: Steubenville-Weirton, OH-WV	83	83
MSA: Toledo, OH	140	169
MSA: Wheeling, WV-OH	85	85
MSA: Youngstown-Warren, OH	104	104
EXCEPTION COUNTY: CHAMPAIGN	79	79
EXCEPTION COUNTY: OTTAWA	100	134
EXCEPTION COUNTY: PREBLE	79	79
EXCEPTION COUNTY: PUTNAM	81	81
EXCEPTION COUNTY: VAN WERT	81	81
NON METRO STATE: OKLAHOMA	79	85
MSA: Enid, OK	79	85
MSA: Fort Smith, AR-OK	35	38
MSA: Lawton, OK	80	87
MSA: Oklahoma City, OK	82	90
MSA: Tulsa, OK	87	95
EXCEPTION COUNTY: LE FLORE	34	37
EXCEPTION COUNTY: MAYES	79	85
NON METRO STATE: OREGON	151	160
MSA: Eugene-Springfield, OR	178	184
MSA: Medford, OR	151	160
PMSA: Portland, OR	201	223
MSA: Salem, OR	178	184
NON METRO STATE: PENNSYLVANIA	91	91
MSA: Allentown-Bethlehem, PA-NJ	129	129
MSA: Altoona, PA	119	119
PMSA: Beaver County, PA	93	93
MSA: Erie, PA	119	119
MSA: Harrisburg-Lebanon-Carlisle, PA	135	135
MSA: Johnstown, PA	119	119
MSA: Lancaster, PA	123	123
PMSA: Philadelphia, PA-NJ	224	224
PMSA Pittsburgh, PA	97	97
MSA Reading, PA	123	123
MSA: Scranton--Wilkes-Barre, PA	109	109
MSA Sharon, PA,	91	91

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: State College, PA	91	91
MSA: Williamsport, PA	91	91
MSA: York, PA	123	123
EXCEPTION COUNTY: SUSQUEHANNA	91	91
NON METRO STATE: RHODE ISLAND	142	142
PMSA: Fall River, MA-RI	108	108
MSA: New London-Norwich, CT-RI	149	149
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	149	149
PMSA: Providence, RI	149	149
NON METRO STATE: SOUTH CAROLINA	63	63
MSA: Anderson, SC	63	63
MSA: Augusta, GA-SC	85	87
MSA: Charleston, SC	81	81
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	81	95
MSA: Columbia, SC	70	81
MSA: Florence, SC	63	63
MSA: Greenville-Spartanburg, SC	70	70
NON METRO STATE: SOUTH DAKOTA	94	110
MSA: Rapid City, SD	94	110
MSA: Sioux Falls, SD	122	148
NON METRO STATE: TENNESSEE	63	63
MSA: Chattanooga, TN-GA	56	81
MSA: Clarksville-Hopkinsville, TN-KY	61	87
MSA: Jackson, TN	63	63
MSA: Johnson City-Kingsport-Bristol, TN-VA	87	87
MSA: Knoxville, TN	70	70
MSA: Memphis, TN-AR-MS	95	95
MSA: Nashville, TN	95	112
NON METRO STATE: TEXAS	68	85
NON METRO STATE: TEXAS	68	85
MSA: Abilene, TX	59	66
MSA: Amarillo, TX	110	115
MSA: Austin, TX	100	117
MSA: Beaumont-Port Arthur, TX	103	117

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Brazoria, TX	105	123
MSA: Brownsville-Harlingen, TX	81	95
MSA: Bryan-College Station, TX	100	112
MSA: Corpus Christi, TX	85	112
PMSA: Dallas, TX	79	101
MSA: El Paso, TX	114	129
PMSA: Fort Worth-Arlington, TX	79	101
PMSA: Galveston-Texas City, TX	102	114
PMSA: Houston, TX	108	127
MSA: Killeen-Temple, TX	103	112
MSA: Laredo, TX	70	87
MSA: Longview-Marshall, TX	95	109
MSA: Lubbock, TX	109	112
MSA: Mc Allen-Edinburg-Mission, TX	93	112
MSA: Midland, TX	112	117
MSA: Odessa, TX	112	117
MSA: San Angelo, TX	95	103
MSA: San Antonio, TX	81	95
MSA: Sherman-Denison, TX	87	103
MSA: Texarkana, TX-Texarkana, AR	112	126
MSA: Tyler, TX	87	92
MSA: Victoria, TX	68	85
MSA: Waco, TX	90	103
MSA: Wichita Falls, TX	63	70
EXCEPTION COUNTY: CALLAHAN	58	64
EXCEPTION COUNTY: CLAY	62	68
EXCEPTION COUNTY: HOOD	70	88
EXCEPTION COUNTY: JONES	58	64
EXCEPTION COUNTY: WISE	70	88
NON METRO STATE: UTAH	N/A	N/A
MSA: Provo-Orem, UT	143	160
MSA: Salt Lake City-Ogden, UT	160	178
EXCEPTION COUNTY: BEAVER	102	119
EXCEPTION COUNTY: BOX ELDER	102	119
EXCEPTION COUNTY: CACHE	102	119
EXCEPTION COUNTY: CARBON	143	160
EXCEPTION COUNTY: DAGGETT	102	119
EXCEPTION COUNTY: DUCHESNE	102	119
EXCEPTION COUNTY: EMERY	143	160
EXCEPTION COUNTY: GARFIELD	102	119
EXCEPTION COUNTY: GRAND	143	160
EXCEPTION COUNTY: IRON	102	119
EXCEPTION COUNTY: JUAB	102	119
EXCEPTION COUNTY: KANE	102	119

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: MILLARD	102	119
EXCEPTION COUNTY: MORGAN	102	119
EXCEPTION COUNTY: PIUTE	102	119
EXCEPTION COUNTY: RICH	102	119
EXCEPTION COUNTY: SAN JUAN	102	119
EXCEPTION COUNTY: SANPETE	102	119
EXCEPTION COUNTY: SEVIER	102	119
EXCEPTION COUNTY: SUMMIT	102	119
EXCEPTION COUNTY: TOOELE	108	120
EXCEPTION COUNTY: UINTAH	143	160
EXCEPTION COUNTY: WASATCH	102	119
EXCEPTION COUNTY: WASHINGTON	102	119
EXCEPTION COUNTY: WAYNE	102	119
NON METRO STATE: VERMONT	133	154
MSA: Burlington, VT	160	183
EXCEPTION COUNTY: CHITTENDEN	161	186
EXCEPTION COUNTY: FRANKLIN	137	158
EXCEPTION COUNTY: GRAND ISLE	151	173
EXCEPTION COUNTY: ORANGE	149	172
EXCEPTION COUNTY: WASHINGTON	153	177
EXCEPTION COUNTY: WINDHAM	197	227
EXCEPTION COUNTY: WINDSOR	212	243
NON METRO STATE: VIRGINIA	90	90
MSA: Charlottesville, VA	90	90
MSA: Danville, VA	90	90
MSA: Johnson City-Kingsport-Bristol, TN-VA	87	87
MSA: Lynchburg, VA	81	81
MSA: Norfolk-Virginia Beach-Newport News, VA	128	128
MSA: Richmond-Petersburg, VA	126	126
MSA: Roanoke, VA	87	87
MSA: Washington, DC-MD-VA	194	194
EXCEPTION COUNTY: APPOMATTOX	79	79
EXCEPTION COUNTY: CRAIG	85	85
NON METRO STATE: WASHINGTON	130	151
MSA: Bellingham, WA	130	169
MSA: Bremerton, WA	130	169
MSA: Olympia, WA	130	169
MSA: Richland-Kennewick-Pasco, WA	178	178
PMSA: Seattle, WA	167	235
MSA: Spokane, WA	142	160

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Tacoma, WA	149	176
PMSA: Vancouver, WA	186	206
MSA: Yakima, WA	143	150
NON METRO STATE: WEST VIRGINIA	87	87
MSA: Charleston, WV	95	95
MSA: Cumberland, MD-WV	127	127
MSA: Huntington-Ashland, WV-KY-OH	92	92
MSA: Parkersburg-Marietta, WV-OH	92	92
MSA: Steubenville-Weirton, OH-WV	83	83
MSA: Wheeling, WV-OH	85	85
EXCEPTION COUNTY: BERKELEY	125	125
EXCEPTION COUNTY: JEFFERSON	125	125
EXCEPTION COUNTY: MORGAN	125	125
EXCEPTION COUNTY: WIRT	85	85
NON METRO STATE: WISCONSIN	97	104
MSA: Appleton-Oshkosh-Neenah, WI	122	129
MSA: Duluth, MN-WI	89	101
MSA: Eau Claire, WI	113	123
MSA: Green Bay, WI	119	127
MSA: Janesville-Beloit, WI	119	127
PMSA: Kenosha, WI	133	143
MSA: La Crosse, WI	107	117
MSA: Madison, WI	179	188
PMSA: Milwaukee, WI	139	148
MSA: Minneapolis-St. Paul, MN-WI	209	222
PMSA: Racine, WI	131	138
MSA: Sheboygan, WI	97	104
MSA: Wausau, WI	97	104
NON METRO STATE: WYOMING	N/A	N/A
MSA: Casper, WY	239	259
MSA: Cheyenne, WY	143	171
EXCEPTION COUNTY: ALBANY	143	171
EXCEPTION COUNTY: BIG HORN	143	171
EXCEPTION COUNTY: CAMPBELL	239	259
EXCEPTION COUNTY: CARBON	239	259
EXCEPTION COUNTY: CONVERSE	239	259
EXCEPTION COUNTY: CROOK	143	171
EXCEPTION COUNTY: FREMONT	239	259
EXCEPTION COUNTY: GOSHEN	143	171
EXCEPTION COUNTY: HOT SPRINGS	143	171

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: JOHNSON	143	171
EXCEPTION COUNTY: LARAMIE	143	171
EXCEPTION COUNTY: LINCOLN	143	171
EXCEPTION COUNTY: PARK	143	171
EXCEPTION COUNTY: PLATTE	143	171
EXCEPTION COUNTY: SHERIDAN	239	259
EXCEPTION COUNTY: SUBLETTE	143	171
EXCEPTION COUNTY: SWEETWATER	239	259
EXCEPTION COUNTY: TETON	143	171
EXCEPTION COUNTY: UINTA	143	171
EXCEPTION COUNTY: WASHAKIE	143	171
EXCEPTION COUNTY: WESTON	143	171

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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[FR Doc. 90-22976 Filed 9-28-90; 8:45 am]
BILLING CODE 4210-27-C

VOL
55
ISS
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federal register

Monday
October 1, 1990

Part III

Department of Education

34 CFR Part 682
Stafford Loan, Supplemental Loans for Students, PLUS, and Consolidation Loan Programs; Interpretation; Rule

VOL 55 ISS 190 OC 1 1990 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 682

Stafford Loan, Supplemental Loans for Students, PLUS, and Consolidation Loan Programs

AGENCY: Department of Education.

ACTION: Notice of interpretation.

SUMMARY: The Secretary interprets regulations issued for the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loans for Students (SLS) Program, the PLUS Program, and the Consolidation Loan Program, collectively referred to as the Guaranteed Student Loan (GSL) Programs, that prescribe the actions lenders and guarantee agencies must take to collect loans guaranteed under the GSL Programs. The substance of the interpretation is that these regulations preempt State law regarding the conduct of these loan collection activities.

EFFECTIVE DATE: This interpretation takes effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of this interpretation, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Pam Moran, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, room 4310, Mail Stop 5345, ROB-3, 7th and D Streets SW., Washington, DC 20202-5449, telephone number (202) 708-8242.

SUPPLEMENTARY INFORMATION: Questions have recently arisen about whether regulations issued by the Secretary to prescribe the actions that lenders must take to exercise due diligence in collecting delinquent GSL obligations, 34 CFR 682.411, and that guarantee agencies must take to collect defaulted GSL obligations, 34 CFR 682.410(b)(4), preempt State law. The Secretary issues this interpretation that 34 CFR 682.410(b)(4) and 34 CFR 682.411 preempt State law, including State case law, statutes, and regulations that are inconsistent with the provisions of these GSL regulations.

Background

Under section 432(a)(1) of the Higher Education Act of 1965, as amended (the HEA), 20 U.S.C. 1082(a)(1), the Secretary is authorized to prescribe such regulations as may be necessary to carry out the purposes of part B of title IV of the HEA. Among the purposes of part B is to authorize the Secretary to guarantee loans insured by guarantee agencies, 20 U.S.C. 1071(a)(1)(D), and in furtherance of that purpose, to ensure that holders of loans guaranteed under the GSL programs exercise due diligence in attempting to collect those loans. 20 U.S.C. 1078(c)(2)(A).

In regulations adopted in 1979 and in effect through 1986, the Secretary established detailed directions specifying the collection actions to be taken by lenders on loans guaranteed directly by the Department under the Federal Insured Student Loan Program (FISLP) component of the GSL programs. *See:* 45 CFR 177.511 (1979), 34 CFR 682.511 (1985). Those regulations, however, imposed no comparable requirements on lenders with regard to loans guaranteed by State or private non-profit guarantee agencies, or on those agencies themselves, in collecting GSL program obligations that were reinsured and subsidized by the Department. The dramatic increase in the number and amount of delinquent and defaulted GSL obligations held by these parties between 1980 and 1986 demonstrated the need to adopt similar standards in the collection of these loans as well.

On November 10, 1986, therefore, the Secretary published regulations that prescribed, in 34 CFR 682.411, the steps that lenders must take to attempt to collect delinquent loans guaranteed by State and non-profit guarantee agencies in order for those loans to qualify for coverage under the Secretary's reinsurance agreements with the guarantee agencies. In 34 CFR 682.410(b)(4) of those same regulations, the Secretary prescribed the steps that guarantee agencies must take to attempt to collect defaulted loans on which they have paid default claims. Both regulations require holders of GSL obligations to complete a particular sequence of written and oral contacts with the borrower to demand repayment of delinquent or defaulted loan obligations, and to use skip-tracing if needed to locate debtors; guarantee agencies are also required, under certain circumstances, to sue borrowers, and to enforce judgments taken against the borrowers.

The Secretary expressly promulgated these rules in order to establish the "minimal level of effort necessary to protect the Federal fiscal interest in diligent loan collection," both by guarantee agencies and by lenders. 51 FR 40943. As reflected in the summary of comments and responses on the proposed rule, 51 FR 40943–40944, none of the parties that commented on these regulations raised specific questions or comments regarding the existence or effect of State law regulating debt collection activities on the conduct of the required collection actions described here. Moreover, in the preceding seven years during which lenders holding FISLP obligations had already been subject to comparably prescriptive collection rules, no instances had come to the Secretary's attention in which State rules were found to restrict or otherwise affect compliance with those FISLP-specific rules. For these reasons, the Secretary did not believe there was any need to articulate his intention to preempt inconsistent State laws in promulgating the GSL regulations at issue here in 1986. Nevertheless, in promulgating the rules as the "minimum level of [collection] effort necessary" to accomplish the Federal purpose, the Secretary clearly intended these 1986 rules to establish a uniform national minimum level of collection activity, and therefore to preempt any State rule that would hinder or prohibit the collection actions required under the rules.

Need for Issuance of Interpretation

Specific questions have now arisen about the effect of particular State laws that may restrict or prohibit holders of GSLP obligations from taking some of the actions required under these regulations. For example, in a number of instances borrowers who were contacted by a loan servicer acting on behalf of a lender after the servicer had been notified that the borrowers were represented by counsel asserted that the servicer had violated State law prohibiting those direct contacts. Similar charges were asserted by borrowers who were contacted directly by a guarantee agency after the agency had been notified that the borrowers were represented by counsel. Still other borrowers asserted that holders of GSL obligations violated State law by continuing to demand repayment of loans on which the borrowers had raised objections to repayment of their loans. In each of these instances, the borrowers invoked State law to attempt to prevent the holder of the loan from commencing or completing the sequence of collection actions prescribed in these regulations; the borrowers have also sought damages from the holders of these loans for the alleged violations of State law. Other State statutes have recently come to light that would prohibit lenders and guarantee agencies from taking any collection action to collect a loan if the school at which the borrower enrolled closed during the academic period for which the loan was made.

These recent developments demonstrate the need to immediately clarify the Secretary's intention to preempt inconsistent State law that underlay the promulgation of these GSL collection regulations in 1986. The Secretary recognized in November 1986 that if there were State laws inconsistent with these GSL regulations, those laws could pose a substantial obstacle to lender and agency efforts to comply with the GSL regulations. Since it is clear that those State laws in fact now exist, the threat of substantial financial penalties for potential violations of those State laws could force holders of GSL Program loans to choose between incurring those penalties by complying with the GSL regulations, or refraining from federally-required collection efforts and losing the Federal guarantee. The possibility of those penalties, moreover, would not only tend to make holders of loans reluctant to complete the required collection actions, but reluctant to undertake those actions at all, and in fact, reluctant to make new loans. If those State laws were to apply to collection activity of the kind required in the regulations, they would thwart the congressional intention implemented in these regulations that holders exercise due diligence in attempting to recover on these loans, to the serious detriment of the GSL Programs.

In issuing the following interpretation explaining the Secretary's intention to preempt State law in promulgating the 1986 regulations, the Secretary stresses the limited nature of this action in displacing State rules and authority. This preemption applies only to actions to collect loans that are federally guaranteed through the vehicle of Federal reinsurance agreements with the guarantee agencies and, in most cases, directly federally subsidized as well. These regulations are designed to prevent defaults and the loss to the Federal Treasury, through claims under the Department's reinsurance commitments, caused by these defaults, and, where these losses have already occurred, to recover from defaulting borrowers the amounts paid from the Treasury. Therefore, rather than intruding into transactions in which the Federal Government has no direct involvement, this preemption is narrowly tailored to apply to situations in which the Federal Government has already given borrowers financial benefits, and has incurred, or will in all likelihood incur in the near future, even greater costs because of default on loans.

Thus, while this preemption imposed no added costs on States, the preemptive effect of these regulations extended no farther than is reasonably necessary to achieve an effective minimum standard of collection action. Given the strength of the public interest in preventing the need for Federal payments on defaulted loans, and in recovering those amounts after payment has been made, the Secretary believed at the time these regulations were promulgated, and continues to believe, that any balancing of interests between appropriate State regulation of collection actions on private debts and the need for a uniform minimum national standard of collection action on publicly-financed student loan debts tips decidedly in favor of diligent student loan collection.

A great deal of the collection action on GSL Program loans is performed for guarantee agencies by third party collection contractors. In balancing the need for local regulation of collection activity on GSL obligations against the public need for efficient and effective collection activity, the Secretary took particular note of the existence of Federal law that regulated the conduct of these third party collectors of defaulted student loans. These debt collectors were subject to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692–1692o, prior to the promulgation of these GSL regulations, and even under these preempting regulations, they remain subject to the FDCPA.[1] Thus, while the GSL regulations preempt inconsistent State laws regarding pre-litigation collection activity, significant Federal protection for GSL debtors remains under the FDCPA. On the other hand, Federal law does not typically regulate the conduct of litigation in State courts or the enforcement of judgments, two areas traditionally regarded as within the sovereignty of State governments, and this GSL regulatory preemption has little or no impact on the exercise of that State power.

Not only did the Secretary regard the issuance of regulations preempting State law affecting student loan collections as well within the general authority and responsibility given under 20 U.S.C. 1082(a)(1), but the Secretary notes that he has long been authorized under 20 U.S.C. 1080(b) to contract with guarantee agencies and other parties to collect defaulted FISLP obligations, and to set the terms of those contracts so as to avoid unfair or oppressive collection practices by those parties in their collection efforts. In promulgating these regulations to set detailed minimum levels of collection activity, the Secretary was exercising this same kind of authority, over the activities of some of the very same GSL participants, in collecting loans in which the Federal government has almost the same financial interest as those to which 20 U.S.C. 1080(a) expressly applies.

[1] The Secretary has been advised by Federal Trade Commission representatives that no State has yet applied for exemption from coverage under the FDCPA under 15 U.S.C. 1692o, and therefore there is no need at this time to address the effect of this preemption under GSL regulations on State law as it might affect third-party collectors in a State for which the FTC has granted an exemption from compliance with the FDCPA.

Interpretation

The Secretary promulgated §§ 682.410(b)(4) and 682.411 to establish minimum required collection actions on GSL obligations, and intended these provisions of the GSL regulations to preempt contrary or inconsistent State law to the extent necessary to permit compliance with the Federal regulations. The Secretary issues this interpretation to clarify that intention and to explain the scope of that preemptive effect.

1. Contacts With Borrowers by Demand Letters and Telephone Calls

First, the Department's regulations require lenders and agencies to make a number of contacts with the borrower directly, at specified intervals, using particular warnings to attempt to persuade the borrower to repay the loan. §§ 682.410(b)(4) (i)–(vi), 682.411 (c)–(f). The regulations require both lenders and guarantors to use skip-tracing if necessary, §§ 682.410(b)(4)(xii), 682.411(g), and direct lenders to seek timely preclaims assistance from their respective guarantors. § 682.411(h).

These provisions comprehensively regulate the pre-litigation informal collection activity on GSL obligations, by specifically requiring holders to complete a sequence of collection contacts with debtors. These provisions therefore preempt State law that would prohibit, restrict, or impose burdens on the completion of that sequence of contacts either on GSLP loans in general, or on any category of GSLP loans. §§ 682.410(b)(4) (i)–(vi), (xii); 682.411 (c)–(h). Moreover, because holders of GSLP loans commonly engage servicers and collection agencies to perform these dunning activities, this preemption includes any State law that would hinder or prohibit any activity taken by these third parties to complete these required steps.

2. Litigation and Judgment Enforcement

The regulations in § 682.410(b)(4) (vii)–(xi) generally require guarantee agencies to sue defaulters and to attempt to enforce judgments entered against defaulters, but do not otherwise dictate the manner in which the agency

3. Other Collection Activities

This interpretation applies only to preemption by §§ 682.410(b)(4) and 682.411. The Secretary does not attempt here to describe which other provisions of the GSL regulations, or the HEA itself, provisions also relates to loan collection and preempts any conflicting or inconsistent State law.

In addressing the preemptive effect of these collection regulations, the Secretary likewise does not suggest that

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2. Litigation and Judgment Enforcement

The regulations in § 682.410(b)(4)(vii)–(xi) generally require guarantee agencies to sue defaulters and to attempt to enforce judgments entered against defaulters, but do not otherwise dictate the manner in which the agency must conduct the litigation or enforce the judgment. Therefore, the regulations do not preempt State law that would affect the conduct of litigation or the enforcement of judgments, but would only preempt those State laws, if any, that would conflict with the regulatory requirement that a guarantee agency initiate suit and attempt to enforce a judgment.[3]

3. Other Collection Activities

This interpretation applies only to preemption by §§ 682.410(b)(4) and 682.411. The Secretary does not attempt here to describe which other provisions of the GSL regulations, or the HEA itself, preempt State law. The Secretary does note, with regard to other collection actions, that the HEA itself expressly requires holders of GSL obligations to report the status of those loans to credit reporting agencies, 20 U.S.C. 1080a, makes GSL borrowers liable for reasonable collection costs, 20 U.S.C. 1091a(b)(1), and abrogates the defense of infancy on GSL obligations. 20 U.S.C. 1091a(b)(2). Each of these three provisions also relates to loan collection and preempts any conflicting or inconsistent State law.

In addressing the preemptive effect of these collection regulations, the Secretary likewise does not suggest that other provisions of GSL regulations do not suggest that other provisions of GSL regulations do not also preempt State law if a direct conflict exists between the requirements of the regulations and State law, or if compliance with State law would frustrate achievement of the purposes of the regulations.

Authority: 20 U.S.C. 1082.

Dated: August 28, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-23063 Filed 9-28-90; 8:45 am]

BILLING CODE 4000-01-M

[3] The HEA itself preempts State law in two areas directly affecting the litigation of GSL obligations: The calculation of the statute of limitations on lawsuits to collect these loans, and the recovery of collection costs from the borrower. 20 U.S.C. 1091a(a)(2), (b)(1).

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Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7, 18, 57 and 75
Electric Cables, Signaling Cables, and Cable Splice Kits; Proposed Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 18, 57 and 75

RIN 1219-AA57

Electric Cables, Signaling Cables and Cable Splice Kits

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement new procedures for testing and approval of electric cables, signaling cables and cable splice kit designs. The proposed rule would revise the existing requirements for acceptance of cables in 30 CFR part 18, would establish the flame-resistant requirements for approval of cable splice kit designs, and would contain the approval requirements for signaling cables, all which are currently being granted acceptance by MSHA.

DATES: Written comments must be received on or before November 30, 1990. It is proposed that part 7, subpart K and §§ 7.44(k), 18.35(a)(3), 18.94(a)(2), and conforming amendments to parts 57 and 75 will be effective upon adoption of the final rule. It is proposed that §§ 18.1, 18.2, 18.6(a), 18.6(b), 18.6(i), 18.9, and 18.64 will be effective one year from adoption of the final rule.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposal contains information collection requirements in § 7.403. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA (see address at the end of this discussion). The respondents would be mine equipment manufacturers. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection information. In each instance, the resultant information collection would be used by MSHA to assess compliance with the proposed requirements. The information collection requirements contained in the proposal are discussed below.

Proposed § 7.403 would require applicants seeking approval of electric cables, signaling cables, and cable splice kits to submit an application for approval. MSHA estimates that there would be 51 applications submitted per year, each requiring 1 hour to prepare, and 3 applications submitted per year, each requiring 4 hours to prepare. The estimated burden hours are 63.

Existing § 7.4(a) requires records of test results and procedures that must be retained for at least 3 years. Standard testing protocols used by the manufacturing community include the keeping of records of product testing; therefore, no additional burden hours are assigned to this requirement.

Existing § 7.4(d) requires applicants to report to MSHA and knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that manufacturers would submit 126 reports per year requiring 15 minutes per report. Estimated burden hours are 32.

The proposal would require applicants to maintain records on the distribution of each product bearing an approval marking as set forth in § 7.7(c). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply; therefore, no burden hours are assigned to this requirement.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Balston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, and to the Office of Information and Regulatory Affairs of OMB, Attention: Diana Rowen, Desk Officer for the Mine Safety and Health Administration, room 3001, New Executive Office Building, Washington, DC 20503.

II. Background

This proposal, in one year, would replace the current regulations and acceptance programs covering the testing and approval for flame resistance of electric cables, signaling cables, and cable splice kits found in 30 CFR part 18. These revisions are proposed pursuant to section 508 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 957).

Under this proposal, electric cables, signaling cables, and splice kits would be evaluated for approval under the procedures of MSHA's part 7, Testing By Applicant or Third Party. Electric cables, signaling cables, and splice kits meet the criteria for applicant or third party testing because they are products possessing characteristics that can be objectively tested in a routine and readily reproducible manner with no elements of subjective analysis.

As explained in that rulemaking, part 7 initiated a revised role for MSHA in the evaluation and testing of selected products used in underground mines. Products approved under part 7 are required to be tested by the applicant or by a third party selected by the applicant to conduct the testing. All testing is to be conducted using MSHA-specified test procedures with certification of test results by the applicant. In addition, the Agency has the right to observe all product testing. When requesting approval, the applicant is required to submit certain product information. This includes, for example, drawings and specifications to document compliance with the technical requirements. Based upon an evaluation of the technical documentation, MSHA observations of product testing, and a review of the certification statements, MSHA will issue an approval or notice denying approval of the product.

Once a product is approved under part 7, an approval holder is required to inspect or test critical characteristics of the product as part of its quality assurance program. Under the provisions of subpart A, the approval holder will report to MSHA any knowledge that a product has been distributed with critical characteristics not meeting required specifications. Upon receiving such a report, MSHA will work with the approval holder to implement appropriate corrective action. Since critical characteristics are features of a product which, if not built to specification, can create a hazard, immediate notification should be by expeditious means, such as by telephone. MSHA will perform periodic audits of products approved under part 7 to ensure that they are being manufactured as approved. If a product fails to meet the technical requirements of part 7 or creates a hazard related to its use, MSHA will take immediate action to address the problem, including revocation of the approval, if necessary.

III. Discussion and Summary of the Proposed Rule

MSHA's existing regulations governing the approval of electric cables (30 CFR part 18) were last revised in 1968. Since that time, technological advances in insulation and jacket material, as well as manufacturing techniques, have led to the development of improved electric cables suitable for use in underground mines having potentially explosive atmospheres.

As a new subpart K to part 7, this proposal specifies the technical requirements and test procedures for the approval of electric cables, signaling cables, and cable splice kits. This proposal is derived from existing part 18 and current MSHA policies interpreting parts 18 and 75. The purpose of this proposed revision is to provide objective criteria for applicant or third party testing and to replace subjective technical requirements with performance-oriented tests. These proposed tests are based on MSHA's engineering experience with the subjective criteria in the existing approval requirements. Except where indicated, they are not intended to introduce more stringent testing methods but rather to more explicitly state the tests used in MSHA's current testing program which have proven to be effective. By using these test procedures, manufacturers can measure, evaluate, and certify compliance of their product with the requirements of this subpart in order to receive an MSHA approval.

This proposal is consistent with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

IV. Section-by-Section Discussion

Section 7.401 Purpose and Effective Date

This section is derived from § 18.1 and defines the purpose and scope of electric cable, splice kit, and signaling cable approvals issued under this subpart. Electric cables are used for the transmission and distribution of electric energy for powering equipment in both gassy metal/nonmetal mines and coal mines. Splice kits are used in the repair of damaged electric cables. Signaling cables are used in the transmission of optical signals or electric signals in current-limited applications which include low-energy communication circuits and intrinsically safe remote control circuits. Because of the hazard presented by fire in underground coal mines and gassy underground metal/nonmetal mines, MSHA safety standards such as 30 CFR 75.600, 57.4067, 57.22310 and 57.22311 require the use of flame-resistant cables. In addition, MSHA safety standards in 30 CFR 75.604 address flame-resistant splices in electric cables; however, the flame-resistant performance requirements for splices are not specified. This proposal would modify the existing requirements for acceptance of cables contained in §§ 18.6(b), 18.6(i), and 18.64 of this chapter and establish the flame-resistant requirements for approval of electric cable splice kit designs. Additionally, this proposal would contain the approval requirements for signaling cables which are currently being granted acceptance by MSHA. Amendments to 30 CFR parts 7 and 18, which reflect the revisions proposed to the cable and splice kit programs, are also included in the proposal.

MSHA proposes a 1-year phase-in period for these requirements. During this period, MSHA will accept applications for approval of electric cables, signaling cables, and splice kit designs under this subpart, as well as applications for acceptance and extensions of acceptance for these products under existing procedures. After 1 year, the applicable portions of part 18 referring to cables would be modified and the signaling cable and splice kit acceptance programs discontinued. All cables and splice kit designs submitted for approval would be required to meet the requirements of this subpart.

Section 7.402 Definitions

The following definitions which apply to the approval of electric cables, cable splice kits, and signaling cables are new. They are intended to clarify the requirements of subpart K.

Component. This definition would include any material in a splice kit which becomes part of the splice. Materials such as conductor insulation, outer jacket, and shielding would be included in this definition. Assembly instructions, cleaning solvents, abrasive strips and other materials included in the splice kit, necessary for preparing the splice but not part of the final assembly, would not be included in this definition.

Conductor. This definition would specify a conductor to be a bare or insulated wire or combination of wires not insulated from one another, suitable for carrying an electric current.

Electric cable. This definition would identify as an electric cable the assembly of one or more insulated conductors of electric current under a common or integral jacket. Additionally, an electric cable could contain one or more uninsulated conductors. Under the definition, single conductor cables as well as multiple conductor cables would be covered. While the minimum materials comprising an electric cable would be specified, materials such as filler and metallic shielding could also be included. The cable construction and type would determine those additional materials which may be included in the assembly.

Filler. This definition would include the materials used to fill the interstices of a cable to provide for a substantially uniform cross section of the completed assembly. A uniform cross section facilitates application of the jacket material and aids in controlling final assembly dimensions, material thickness and conductor configuration within the cable or splice assembly.

Jacket. This definition would specify a jacket to be a nonmetallic abrasion-resistant outer covering of a cable or splice. The jacket is intended to provide protection against physical damage. Commonly used jacket materials include neoprene and polyvinyl chloride.

Power conductor. This definition would identify a power conductor to be an insulated conductor of a cable assembly through which the primary electric current or power is transmitted.

Signaling cable. Under this definition, a signaling cable could be a fiber optic cable. It could also be a cable containing electric conductors, of cross-sectional area less than #14 AWG, used where the circuit cannot deliver electric currents which could increase conductor temperatures beyond the normal operating temperature as established for the current-carrying capacity of the conductors. These cables would normally be used to transmit signals for audio or visual annuciation. Equipment using these cables is typically powered by regulated power supplies or batteries. This equipment would generally include, but not be limited to, intrinsically safe systems.

Splice. This definition would specify a splice to be the mechanical joining of one or more severed conductors in a single length of a cable and would include the replacement of insulation and jacket. A splice is intended as a repair to a damaged electric cable.

Splice Kit. This definition would identify a cable splice kit as a group of materials and related instructions for making a flame-resistant splice in an electric cable. The materials typically included in a splice kit would include replacement jacket, insulation, shielding (if for shielded cable), cable cleaner, abrasive strips, and assembly instructions.

Section 7.403 Application Requirements

Section 7.403(a) would contain the application requirements for approval of electric cables and signaling cables. These requirements are derived from existing requirements of 30 CFR 18.6 and the standard application procedures required to include complete splice assembly instructions and technical specifications related to the flame resistance of the splice, such as type of material and identifying number for each component used in the finished product. Design factors such as material thickness, conductor configuration, kind

testing samples is an appropriate method to make a determination as to whether an electric cable, signaling cable, or splice made from a splice kit meets the technical requirement of this subpart. Section 7.405(a) would provide for the flame testing of a sample of each production run, batch, or lot as one

of the test chamber. It would clarify the requirement that the chamber be completely open at the top and front as well as have provisions (supports) for mounting the test specimen and energizing electric cable or splice specimens with electric current. It would also require that the floor of the chamber be fabricated or lined with a

current to energize and regulate electric current flow through the electric cable or spliced test specimen. It would clarify the existing requirement by specifying the type of conductors which would be subject to heating current. It would add a new requirement concerning the output voltage of the current source because MSHA believes unpredictable

would be maintained in § 7.407(a)(1). Section 7.407(a)(2) would add a new requirement for conditioning all specimens before testing and for maintaining the same environmental conditions during testing. Temperature and moisture content of the specimen at the start of and during the flame resistance test may affect the

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Section 7.403 Application Requirements

Section 7.403(a) would contain the application requirements for approval of electric cables and signaling cables. These requirements are derived from existing requirements of 30 CFR 18.6 and the standard application procedures presently in use. Under this proposal, an application for approval would be required to provide product identification information to include cable type, construction, number and size of conductors, and voltage rating for all cables containing electric conductors. Applications would also be required to include technical specifications related to the flame resistance of the product, such as the type of material and identifying number for each material comprising the finished assembly, as well as current-carrying capacity (rated ampacity) with the corresponding ambient temperature upon which the current rating is based. Since current-carrying capacity is not a factor in determining the flame resistance of signaling cables, the proposal would not require this information to be provided for this product. Technical information related to jacket, conductor insulation, and filler materials would be required for all electric cables and signaling cables approved under this subpart. Because applicable design factors such as material thickness, conductor configuration, kind and position of shield or braid coverings, and type of construction may affect the flame-resistant performance of electric cables or signaling cables, the proposal would require that complete design specifications or a reference to an existing consensus design standard specification such as the Insulated Cable Engineer's Association (ICEA) Publication No. S-19-81, Fourth Edition, be submitted with the application. If a product submitted for approval is not based on an existing consensus design standard specification, the application would be required to be accompanied by complete specifications related to the design of the product or include information which details differences in design between the product and an existing consensus design standard specification.

Section 7.403(b) contains the application requirements for approval of electric cable splice kit designs which would similarly be based on existing procedures. Under the proposal, applications for approval would be required to include product identification information such as trade names, style, code numbers, and voltage rating. Applications would also be required to include complete splice assembly instructions and technical specifications related to the flame resistance of the splice, such as type of material and identifying number for each component used in the finished product. Design factors such as material thickness, conductor configuration, kind and position of shield or braid coverings, and type of construction could affect the flame-resistant performance of a splice. Therefore, the proposal would require that the complete design specifications or a reference to a published design standard be provided with the application. This information would include identification of the type of splice (shielded, non-shielded) and final assembly dimensions for all components required for splices in each cable that the splice kit is designed to repair.

MSHA would use the application information to evaluate electric cables, signaling cables, and splice kit designs submitted for approval or extension of approval, as well as to identify those bearing an MSHA approval marking as those approved by the Agency.

Fees

In accordance with 30 CFR part 5, fees for MSHA processing of an application under part 7 are subject to an hourly charge. Fee schedules are updated at least once every 3 years and published in the Federal Register.

Under the 1990 rate schedule, the Agency would charge $36 per hour and an application fee of $100 for processing requests for approval or extensions of approval for electric cables, signaling cables and splice kits under subpart K of part 7.

Section 7.404—Technical Requirements

Proposed § 7.404 is derived from and would retain the existing technical requirement of § 18.35(a)(3) for flame resistance of electric cables and apply the same criteria to splices in electric cables. The test presently used for signaling cables would also be incorporated. Flame resistance would be demonstrated by successful completion of the applicable flame test, as specified in the subpart. A complete description of the flame test is contained in the discussion of proposed §§ 7.407 and 7.408.

Section 7.405—Critical Characteristics

This section would be new. Certain critical characteristics would have to be inspected or tested from each production run, batch, or lot manufactured. MSHA realizes that it is not necessary to perform flame tests in all cases, but MSHA believes that flame testing samples is an appropriate method to make a determination as to whether an electric cable, signaling cable, or splice made from a splice kit meets the technical requirement of this subpart. Section 7.405(a) would provide for the flame testing of a sample of each production run, batch, or lot as one method to ensure continued compliance with the flame-resistant requirements. In addition, the Agency is aware that inspections and tests other than flame testing may be used to determine whether a product meets the technical requirements of this subpart. As an alternate to flame testing, § 7.405(b) would provide that the materials that contribute to the flame-resistant characteristic, along with a sample of the cable or splice kit assembly for each production run, batch, or lot, could be inspected or tested. Such inspections or tests would be conducted to verify material composition, thickness, and, for cables, position within the finished product in relationship to the approved design.

Appropriate inspection or test procedures other than flame testing that would satisfy the requirements of § 7.405(b) are dependent upon the materials used that contribute to the flame-resistant characteristic of the product as well as the manufacturing process used. MSHA has, therefore, not identified these inspection or test procedures specifically. Inspections could include observation of the color or consistency of the materials or sample of the Assembly. Tests could include chemical analysis or physical analysis of the elongation, tear resistance and tensile strength of the materials that comprise the final product. MSHA requests specific comment on the costs associated with this proposed requirement as well as existing quality assurance programs.

Section 7.406 Flame Test Apparatus.

The flame test apparatus described in § 7.406 would be the same as that presently used by MSHA for conducting tests under § 18.64 (a) and (b). Because variations in design would change the conditions of the test or disturb the burning process, the design factors essential to obtaining uniform and consistent test results are stated for each principal part of the flame test apparatus. They are based on equipment presently used by MSHA. However, where variations do not affect the reliability of the test results, MSHA has not specified design characteristics and would allow design flexibility.

Section 7.406(a) would retain the existing requirement concerning the size of the test chamber. It would clarify the requirement that the chamber be completely open at the top and front as well as have provisions (supports) for mounting the test specimen and energizing electric cable or splice specimens with electric current. It would also require that the floor of the chamber be fabricated or lined with a noncombustible material, such as metal, that will not readily extinguish burning matter which may fall from the specimen during testing. This reduces the possibility that burning matter will either ignite the floor of the chamber or be extinguished due to the composition of the floor material. Disturbance of the burning process by such events would affect the reliability of the test results.

Section 7.406(b) would retain and clarify the existing requirement that the specimen holder (support) be constructed of three metal rods and be designed to support and maintain the specimen at a specific level within the test chamber. The present requirement that the metal rods be wrapped with asbestos tape to reduce the cooling effect would be replaced with a new requirement that the rods have a nominal diameter of approximately 1/16 inch. Further, the length of the horizontal portion of the rod which contacts the test specimen would be defined to be approximately 12 inches in length. Existing regulations do not specify rod size, and MSHA believes that this new regulation would provide uniform control of the cooling effects of the rods upon the test specimen, thereby improving the repeatability of the test.

Section 7.406(c) would retain and clarify the existing requirements concerning the type of fuel and gas burner used to ignite the test specimen. It would continue to specify a natural gas type Tirrill burner as the gas ignition source. It would clarify the existing requirement concerning the natural gas fuel for the burner by specifying that the gas be composed of at least 90 percent combustible hydrocarbons, with a methane content of at least 80 percent. These fuel specifications, derived from the fuel used by MSHA in flame testing, would be considered necessary in order to ensure proper operation of the gas burner. Variations in gas composition would affect the BTU output as well as the flame temperature of the gas during the igniting process. The Agency believes the specified gas compositions would allow the use of most natural gas supplies while ensuring the consistency and reliability of the test results.

Section 7.406(d) would retain the existing requirement for a source of either alternating current or direct current to energize and regulate electric current flow through the electric cable or spliced test specimen. It would clarify the existing requirement by specifying the type of conductors which would be subject to heating current. It would add a new requirement concerning the output voltage of the current source because MSHA believes unpredictable results would occur if an incompatible voltage were used to energize test specimens during the flame test. In addition to the existing requirement for a device to monitor the flow of electric current through the power conductors of electric cables and spliced test specimens, § 7.406(e) would require that the instrument measure current flow within an accuracy of ± 1 percent. This monitoring accuracy would be necessary to attain a consistent heating rate of the cable.

Section 7.406(f) would retain the existing requirement for a device to measure the conductor temperature of the electric cable and spliced test specimen. It would allow for design flexibility in the type of device provided and not require the use of a thermocouple-type instruction as specified in existing regulations. However, MSHA would require that the device measure conductor temperature within an accuracy of ± 2 percent. In addition, the device used would have to be capable of measuring the temperature without removing any cable material from the test specimen in order to make the temperature measurements. Any material disturbed in inserting the device, such as a thermocouple, would be required to be returned as closely as possible to its original location and be maintained there for the duration of the testing. MSHA believes that if such material were removed or unduly displaced, unpredictable cooling effects could occur which would affect the repeatability of the test. Section 7.406(d) through 7.406(f) does not apply to signaling cables because signaling cables are not tested with any preheating requirements.

Section 7.407 Test for Flame Resistance of Electric Cables and Cable Splices

The flame test described in § 7.407(a) is derived from § 18.64 (a), (c), and (d). It would be the same as that presently used, with some minor changes detailed below. MSHA's experience with this procedure is that it produces repeatable, objective test results which assess the flame-resistant properties of electric cables and is considered equally effective for testing splices.

Existing requirements concerning the size and preparation of test specimens would be maintained in § 7.407(a)(1). Section 7.407(a)(2) would add a new requirement for conditioning all specimens before testing and for maintaining the same environmental conditions during testing. Temperature and moisture content of the specimen at the start of and during the flame resistance test may affect the repeatability of test results.

Section 7.407(a)(3) would retain and clarify existing requirements concerning the location for measuring conductor temperature for electric cables and spliced cables. It would provide flexibility in the method of securing the sensing element of the temperature measuring instrument. The existing requirement for tying the flap of jacket and insulation material with wire would be replaced by the more performance-oriented requirement that any disturbed jacket or insulation material be restored as closely as possible to its original location and be maintained there for the duration of the test. Unpredictable cooling effects could occur if such material were displaced.

Section 7.407(a)(4) would retain existing requirements concerning the mounting of the applicable test specimen on the rods positioned within the chamber. It would provide flexibility in the placement of the test chamber by deleting the existing requirement for using a ventilated hood or canopy, although use of a hood or canopy would still be acceptable. The existing requirement for the test specimen to be free from external air currents during testing would be retained and, as stated previously, the test chamber would have to be placed in an area having controlled temperature and humidity, because uncontrolled environmental conditions could affect the burning process.

Section 7.407(a)(5) would specify the adjustment of the flame from the gas ignition source and retain present specifications concerning flame height and size. Also, a new requirement would be added to require that the flame be blue in color without a persistence of yellow coloration. This would provide for a controlled and consistent flame during the igniting process. The persistence of yellow coloration indicates maladjustment or impurities in the fuel. The requirement for a controlled and consistent flame would provide more consistent repeatable test results.

Section 7.407(a)(6) would retain the existing requirement for connecting electric cable and spliced test specimens to the current source. It would require that connections be secure and

compatible with the size of the specimen's power conductors, as improper connections would produce undesirable heating effects affecting temperature measurement and yielding unreliable results.

Section 7.407(a)(7) would retain and clarify the existing test procedure requirements for electric cable and

the burning process and the results of the tests. MSHA has not specified a method for removing the flame or electric current in order to provide more performance-related requirements and to allow design flexibility. Section 7.407(a)(11) would require that the duration of burning be recorded and that the measurement of the time the

the proposed rule without requiring modification to the manufacturing process.

These test procedures are essentially unchanged since 1968 and MSHA specifically requests comment on the appropriateness of these tests and how improvements could best be

area having controlled temperature and humidity because uncontrolled environmental conditions could affect the burning process.

Section 7.408(a)(4) would specify the adjustment of the flame from the gas ignition source and retain present specifications concerning flame height and size. Also, a new requirement would

testing three cable specimens, respectively. It would clarify that the measurement be made longitudinally along the cable axis to provide for a consistent measurement parameter. Also clarified would be the determination that the burned length would include any charred length.

requirements for the jacket in a splice kit would be proposed to remain unchanged from existing policy. The approval marking would be required to be legible and permanent and appear at least once on the outside of the assembled splice.

MSHA believes the revised approval

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compatible with the size of the specimen's power conductors, as improper connections would produce undesirable heating effects affecting temperature measurement and yielding unreliable results.

Section 7.407(a)(7) would retain and clarify the existing test procedure requirements for electric cable and spliced test specimens by specifying that all power conductors be energized with electric current. It would retain the intent of the existing requirement that the value of the effective heating current be five times the rated power conductor ampacity but specifically state that the rating be based on using an ambient temperature of 104 °F (40 °C) for consistency. This would modify the existing requirement to address advances in technology, thereby providing the flexibility for testing a variety of cable constructions that result in various current ratings.

Section 7.407(a)(8) would retain the existing requirement for electric cable and spliced test specimens for monitoring the current flow through the power conductors and clarify the existing requirement for adjusting the effective heating current to within ±5 percent, as required, to maintain the proper value. This would provide a controlled and consistent heating process, thus improving the repeatability of the test results.

Section 7.407(a)(9) would retain and clarify the existing procedure for the location and application of the flame. For electric cables, the tip of the inner cone from the flame of a gas burner would be applied directly beneath the test specimen for 60 seconds at a location 14 inches from one end of the cable and between the supports separated by a 16-inch distance. For spliced cable specimens, the tip of the inner cone from the flame of a gas burner would be applied for 60 seconds beneath the midpoint of the splice jacket.

Section 7.407(a) (10) and (11) would retain the existing requirements concerning the duration of exposure to external flame and the measurement and recording of burn time of the specimen, respectively. Section 7.407 (a)(10) would require the flame from the gas burner and the electric current to be removed simultaneously from the test specimen after the specified time period. It would further require that the flame from the gas burner be removed from beneath the test specimen in a manner which would not disturb air currents created during the burning process within the test chamber. If special care is not taken, unnatural turbulences could be produced which could affect the burning process and the results of the tests. MSHA has not specified a method for removing the flame or electric current in order to provide more performance-related requirements and to allow design flexibility. Section 7.407(a)(11) would require that the duration of burning be recorded and that the measurement of the time the specimen continues to burn after the flame from the gas burner has been removed begin concurrently with flame removal. The duration of burning would include the burn time of material that falls from the test specimen after the flame from the gas burner has been removed. This requirement is based on an interpretation of the existing requirement for measuring burn time and is currently considered as a factor for evaluating the flame-resistant properties of electric cables and splices under existing procedures.

Section 7.407(a) (12) and (13) would retain the existing requirements for measuring the length of burned area of the test specimen and for testing three cable specimens, respectively. It would clarify that the measurement be made longitudinally along the cable axis to provide for a consistent measurement parameter. Also clarified would be the determination that the burned length include any charred length.

Section 7.407(b) of this section is derived from § 18.64(e). It would modify and expand the requirements to include splices. This section would set forth the criteria for acceptable performance for this test. It would require that each of the three specimens tested exhibit burn times not exceeding 240 seconds and the length of burned area be less than 6 inches. This change from the present requirement that two of three specimens meet the acceptable performance criteria would address advances in technology. The existing criteria for acceptable performance for testing were developed approximately 40 years ago based upon the use of natural rubber-jacketed cables. Two out of three specimens represented optimal performance and was acceptable for these cables. Jacket materials presently used have better flame-resistant properties, and three out of three represents the optimal performance for these synthetic compounds and produces reliable test results. The Agency believes that the technology currently used in the manufacturing process has advanced to provide more consistent flame-resistant properties for the manufactured product. The test results of cable and splice acceptance applications for the past several years indicate the products currently being manufactured and marketed would meet the proposed rule without requiring modification to the manufacturing process.

These test procedures are essentially unchanged since 1968 and MSHA specifically requests comment on the appropriateness of these tests and how improvements could best be incorporated into the approval process.

Section 7.408 Test for Flame Resistance of Signaling Cables

The flame test described in § 7.408 is derived from § 18.64 (a), (c), and (d). The procedure would be the same as that presently performed under the signaling cable acceptance program. The test apparatus for signaling cables would be the same as that for electric cables except that there would be no preheating requirement. Preheating would not be performed for these cables due to their intended use. Fiber optic cables do not carry electric current and therefore would not be subject to electric current heating. Cables having electric conductors of cross-sectional area less than #14 AWG for use as signaling cables are used in low-current applications, as stated earlier. Equipment using these signaling cables is typically powered by batteries or by regulated power supplies which are not capable of delivering currents which exceed the current-carrying capacities of the conductors. As a result, the signaling cables are not subject to excessive currents that would cause the conductors to become overheated. Electrically preheating the cable during testing would simulate a condition to which these cables would not be subjected.

The requirements concerning the size and preparation of test specimens would be specified in paragraph 7.408(a)(1).

Section 7.408(a)(2) would add a new requirement for conditioning all specimens before and during testing. As stated previously, temperature and moisture content of the specimen at the start of and during the flame resistance test may affect the repeatability of test results.

Section 7.408(a)(3) would retain existing requirements concerning the mounting of the applicable test specimen on the rods positioned within the chamber. It would provide flexibility in the placement of the test chamber by removing the existing requirement for using a ventilated hood or canopy, although use of a hood or canopy would still be acceptable. The existing requirement for the test specimen to be free from external air currents during testing would be retained, and the test chamber would have to be placed in an area having controlled temperature and humidity because uncontrolled environmental conditions could affect the burning process.

Section 7.408(a)(4) would specify the adjustment of the flame from the gas ignition source and retain present specifications concerning flame height and size. Also, a new requirement would be added to require that the flame be blue in color without a persistance of yellow coloration. This would provide for a controlled and consistent flame during the igniting process. The persistence of yellow coloration indicates maladjustment or impurities in the fuel. The requirement for a controlled and consistent flame would provide more consistent repeatable test results. Paragraph 7.408(a)(5) would retain and clarify the existing procedure for the location and application of the flame. The flame would be applied for 30 seconds directly beneath the sample centered between either end support and the center support.

Section 7.408(a) (6) and (7) would retain the existing requirements concerning the duration of exposure to external flame and the measurement and recording of burn time of the specimen, respectively. Section 7.408(a)(6) would require the flame from the gas burner be removed from the test specimen after the specified time period. It would further require that the flame from the gas burner be removed from beneath the test specimen in a manner which would not disturb air currents created during the burning process within the test chamber. If special care is not taken, unnatural turbulences could be produced which could affect the burning process and the results of the tests. MSHA has not specified a method for removing the flame in order to provide a more performance-oriented requirement and to allow design flexibility. Section 7.408(a)(7) would require that the duration of burning be recorded and that the measurement of the time the specimen continues to burn after the flame from the gas burner has been removed begin concurrently with flame removal. The duration of burning would include the burn time of material that falls from the test specimen after the flame from the gas burner has been removed. This requirement is based on an interpretation of the existing requirement for measuring burn time and is currently considered as a factor for evaluating the flame-resistant properties of signaling cables under existing procedures. Section 7.408(a) (8) and (9) would retain the existing requirement for measuring the length of burned area of the test specimen and for testing three cable specimens, respectively. It would clarify that the measurement be made longitudinally along the cable axis to provide for a consistent measurement parameter. Also clarified would be the determination that the burned length would include any charred length.

Section 7.408(b) would be derived from § 18.64(e) and the existing signaling cable acceptance program. It would specify the criteria for acceptable performance for this test. It would require that each of the three specimens tested exhibit burn times not exceeding 60 seconds, which is the same as is presently required under the signaling cable flame test program. This time is shorter than for electric cables and splices because the signaling cables are not preheated. The allowable length of burned (charred) area specified; i.e., not exceeding 6 inches, would remain the same as the present criteria for this product. The requirement that each of the three specimens meet the acceptable performance criteria of this section would be consistent with the existing signaling cable acceptance program.

Section 7.409 Approval Markings

Section 7.409 is derived from existing § 18.64(f) which requires approval markings on electric cables. It would expand the marking requirements to include signaling cables and splices. The proposal would also add additional marking requirements for electric cables and signaling cables. The marking requirements for splices would remain the same as that covered by existing policy. Under part 18, MSHA requires trailing cables to be marked at intervals not exceeding 12 feet with the marking impressed in the jacket or as raised letters and figures on an impressed background. Other types of cable may be marked in the same manner or have a durable marking printed on the surface of the cable at intervals not exceeding 3 feet.

The proposal would require all approved cables to be legibly and permanently marked on the jacket at 3-foot intervals and would require the marking to include additional information pertaining to the size and number of conductors, type of cable, and voltage rating for those cables containing electric conductors, as well as the MSHA-assigned approval number. Although the proposal imposes additional cable marking requirements, it would allow flexibility by not specifying the marking method. The 12-foot marking interval currently specified under part 18 has been deleted from the proposal to provide for identification of shorter sections of cable. The marking requirements for the jacket in a splice kit would be proposed to remain unchanged from existing policy. The approval marking would be required to be legible and permanent and appear at least once on the outside of the assembled splice.

MSHA believes the revised approval marking requirements for cables will facilitate identification of approved cables. Mine operators are obligated to maintain permissible equipment in approved condition. Equipment manufacturers are obligated to assemble permissible equipment according to the design approved by MSHA. Additionally, underground equipment is required to use electric cables and conductors of proper size for the loads involved. Improper cable selection when installing or replacing cables on permissible equipment could cause potential fire and explosion hazards. Cable marking information pertaining to the size (gauge) and number of conductors as well as cable type and voltage rating for cables containing electric conductors, in addition to the MSHA approval number designation, is considered necessary for a proper and complete identification of an electric cable or signaling cable. Based upon experience, MSHA believes that there are cable manufacturers who are producing "MSHA accepted" cables that comply with the marking requirements as stated in this proposal.

Section 7.410 Post-approval Product Audit

This section would be new and would implement the post-approval product audit requirement of subpart A. Paragraph (a) would specify that upon request by MSHA, 12 feet of an approved electric cable or approved signaling cable design be provided at no cost for auditing purposes. Paragraph (b) would specify that 3 approved splice kits of an approved splice kit design, as well as 12 feet of MSHA-approved cable for which the splice is designed to repair, be provided at MSHA's request at no cost. Subpart A sets forth that a product will be audited no more than once a year unless MSHA has cause to audit more frequently.

Section 7.411 New Technology

This section is derived from existing § 18.20(b). Section 7.411 would allow approval of cables and splice kit designs that incorporate technology for which the specific requirements of this subpart are not applicable, if MSHA determines that the product is as safe as those which meet the requirements of this subpart. To implement this provision,

MSHA would prescribe appropriate test procedures and performance requirements when such an approval is sought.

Once MSHA approves an electric cable, signaling cable or splice kit under this section, the Agency will make the modified tests and requirements used by MSHA to evaluate a particular technology available to manufacturers and other interested persons. If, over a period of time, MSHA receives a number of applications for the same type of technology or newly adapted technology, MSHA will revise the electric cable, signaling cable or splice kit approval regulations through the rulemaking process to recognize such developments.

Conforming Amendments

The changes being proposed to MSHA's current requirements for acceptance of cable and splice kits as flame resistant would also necessitate certain conforming modifications to the Agency's safety standards in 30 CFR parts 57 and 75. Currently MSHA's standards require mine operators to use cable which is accepted as flame resistant pursuant to 30 CFR 18.64 in underground coal and metal and nonmetal mines. (See §§ 57.4057, 57.22310, 57.22311, and 75.600–1.) In addition, permanent splices in cable used in underground coal mines must also be flame resistant (see § 75.604(c)).

On December 4, 1989, preceding completion of this proposal, MSHA published proposed revisions to its electrical safety standards for underground coal mines (54 FR 50062) and surface and underground metal and nonmetal mines (54 FR 50158). Although the two electrical proposals would make changes in the current standards requiring flame-resistant cables and splices, the proposals continue to specify cable and splice flame resistance as determined by MSHA in accordance with § 18.64. These proposed electrical safety standards are presently before the public for comment until June 15, 1990, for the metal and nonmetal proposed standards (55 FR 4264) and until August 10, 1990, for the underground coal proposed electrical revisions (55 FR 5858).

To avoid conflict with amendatory language already proposed for the parts 57 and 75 electrical standards, MSHA has not proposed amendatory language to these parts in the regulatory text of this proposal. Instead, it is the purpose of this discussion to provide the public with notice of the language changes the Agency would make to parts 57 and 75 if the revisions to the cable and splice kit acceptance programs proposed here become final.

Revisions would be made wherever part 57 or part 75 requires cables or splices to be flame resistant or references the flame-resistance test in § 18.64. In its electrical rules, MSHA would amend any such safety standard language to state that cables or splices "be accepted or approved by MSHA as flame resistant." The modified wording would allow mine operators to use any cable or splice determined by MSHA to be flame resistant without regard to the specific approval part under which the approval or acceptance was issued. This is possible because cable and splices already tested and accepted by the Agency as flame resistant would remain unaffected by this proposal to approve cable and splice kits under the procedures of part 7. The Agency specifically solicits comments on this language and its effect on the proposed electrical standards.

Derivation Table

The following derivation table lists: (1) Each section number of the proposed rule (New Section) and (2) the section number of the existing standard from which the proposed section is derived (Old Section).

DERIVATION TABLE

New section	Old section
7.401	18.1
7.402	New
7.403	18.5
7.404	18.35(a)(3)
7.405	New
7.406	18.64 (a) and (b)
7.407(a)	18.64 (a), (c) and (d)
7.407(b)	18.64(e)
7.408(a)	18.64 (a), (c) and (d)
7.408(b)	18.64(e)
7.409	18.64(f)
7.410	New
7.411	18.20(b)

Distribution Table

The following distribution table lists: (1) Each section number of the existing part 18 standard (Old Section) and (2) each section number of proposed subpart K of part 7 (New Section). New section numbers marked with an asterisk (*) refer to subpart A—the general provisions of part 7 applicable to all technical product subparts.

DISTRIBUTION TABLE

Old section	New section
18.1	7.1*, 7.401, 18.1
18.2	7.2*, 18.2
18.5	7.3*, 7.403, 18.5
18.9(a)	7.4(c)*, 18.9(a)
18.10	7.5*, 18.10(a)
18.15	7.3(a)*, 18.15
18.16	7.9*, 18.16
18.20(b)	7.411*, 18.20(b)
18.35(a)(3)	7.404
18.64(a)	7.406, 7.407(a), 7.408(a)
18.64(b)	7.406
18.64(c)	7.407(a) and 7.408(a)
18.64(d)	7.407(a) and 7.408(a)
18.64(e)	7.407(b) and 7.408(b)
18.64(f)	7.409

V. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an initial analysis to identify the potential costs and benefits associated with proposed subpart K. Executive Order 12291 requires that a Regulatory Impact Analysis (RIA) be performed for any regulation that would have a major impact on the economy. MSHA has determined that the proposal would not result in major cost increases nor have an incremental effect of $100 million or more on the economy; therefore, a Regulatory Impact Analysis is not necessary.

This initial analysis has formed the basis for the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. The Regulatory Flexibility Act requires that in developing regulatory proposals agencies evaluate compliance alternatives that minimize any adverse impact on small businesses. Proposed subpart K would clarify the standards which industry must meet for approval of electric cables, signaling cables, and cable splice kits. MSHA designed its product testing requirements to be as performance oriented as possible to allow manufacturers to choose the most cost-effective option. Performance-oriented standards should benefit both large and small manufacturers.

The proposal would upgrade existing requirements in 30 CFR 18.64 that address the acceptance of electric cables as flame resistant. It would establish flame-resistant requirements for the approval of signaling cables and cable splice kit designs. MSHA currently accepts these products under the requirements in § 18.64, which have been modified for signaling cables and cable splice kits. The proposal also would include current terminology, not in part 18, in the definitions section of part 7; eliminate unnecessary provisions, such as certain cable marking requirements; and, where possible, provide alternative methods of compliance.

This proposed rule does not significantly alter the existing technical requirement for electric cables, signaling cables, and cable splice kits. MSHA requires certain electric cables used in underground coal and gassy metal/nonmetal mines to be approved (accepted). MSHA has interpreted this to include signaling cables and splice kits, although existing requirements do not include approval criteria for these materials. The proposed rule sets out, with little modification, the approval criteria presently used by MSHA to approve these products. MSHA expects all currently accepted electric cables, signaling cables and splice kit materials to be able to meet the proposed technical requirements. There is no additional cost associated with this requirement, since existing regulations require approval. Any necessary testing of products required by MSHA either is not substantially different from that currently undertaken or does not impose significant costs compared to the sales value of the product. The application procedures, testing procedures, quality assurance program, and annual audit do not impose significant costs.

The proposal would increase private-sector involvement in the approval of mining products. For the first time, in lieu of testing only by MSHA, the applicant or a third party selected by the applicant would test electric cables, signaling cables, and splices in electric cables. The Agency anticipates that this new procedure would reduce duplicate testing of products in some cases and eliminate associated costs and potential delays in product approvals. In addition, MSHA expects that this procedure would enhance the safety of miners through the more rapid introduction of technological advances in mining products.

During the phase-in period for subpart K, which would be 1 year from the effective date of the final rule, MSHA would grant extensions of approval only pursuant to the part under which the original approval was granted. After the phase-in period, MSHA would discontinue issuing acceptances under the existing acceptance programs, and all applications for an approval or an extension of approval for electric cables, signaling cables, and cable splice kits would be subject to the provisions of part 7. If a manufacturer does not change a product that has a current acceptance, then it can continue to be manufactured and used.

The proposal would affect 124 foreign and domestic firms that currently have MSHA acceptances for electric cables, signaling cables, or cable splice kits. Of these firms, 70 manufacture electric cable, 4 manufacture signaling cable, 2 manufacture both signaling and electric cable, and 48 manufacture splice kits. About 33 percent of these firms have not had any contact with MSHA in the past 10 years.

MSHA estimates that the annual compliance cost increase due to the provisions of subpart K would be about $14,922, but there would be an offsetting cost reduction of about $7,140 from MSHA testing fees and shipping costs. The total annual incremental cost increase, therefore, would be about $7,781. Product audits, the most costly provision, would cost about $6,700.

VI. Executive Order 12612

The Agency has reviewed the final rule in accordance with Executive Order 12612 regarding federalism and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under this Executive Order.

List of Subjects in 30 CFR Parts 7 and 18

Mine safety and health, Underground mining.

Dated: September 24, 1990.

John B. Howerton,

Deputy Assistant Secretary for Mine Safety and Health.

It is proposed that chapter I of title 30 of the Code of Federal Regulations be amended as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY

1. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

2. Section 7.44 is amended by revising the first sentence of paragraph (k) to read as follows:

§ 7.44 Technical requirements.

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(k) Cables within a battery box shall be accepted by MSHA as flame resistant under part 18 of this chapter or approved under subpart K of this part.

• • •

• • • • • •

3. A new subpart K is added to part 7 to read as follows:

Subpart K—Electric Cables, Signaling Cables and Cable Splice Kits

Sec.
7.401 Purpose and effective date.
7.402 Definitions.
7.403 Application requirements.
7.404 Technical requirements.
7.405 Critical characteristics.
7.406 Flame test apparatus.
7.407 Test for flame resistance of electric cables and cable splices.
7.408 Test for flame resistance of signaling cables.
7.409 Approval markings.
7.410 Post-approval product audit.
7.411 New technology.

Subpart K—Electric Cables, Signaling Cables and Cable Splice Kits

§ 7.401 Purpose and effective date.

This subpart establishes the flame-resistant requirements for approval of electric cables, signaling cables and cable splice kit designs. Applications for approval or extension of approval submitted after (date 1 year after the effective date of this subpart) shall meet the requirements of this subpart.

§ 7.402 Definitions.

The following definitions apply in this subpart.

Component. Any material in a cable splice kit which becomes part of a splice.

Conductor. A bare or insulated wire or combination of wires not insulated from one another, suitable for carrying an electric current.

Electric cable. An assembly of one or more insulated conductors of electric current under a common or integral jacket. A cable may also contain one or more uninsulated conductors.

Filler. Materials used to fill the interstices of a cable in order to provide for a substantially uniform cross section of the completed cable assembly.

Jacket. A nonmetallic abrasion-resistant outer covering of a cable or splice.

Power conductor. An insulated conductor of a cable assembly through which the primary electric current or power is transmitted.

Signaling cable. A fiber optic cable, or a cable containing electric conductors of cross-sectional area less than #14 AWG used where the circuit cannot deliver currents which would increase conductor temperatures beyond that established for the current-carrying capacity of the conductors.

Splice. The mechanical joining of one or more severed conductors in a single length of a cable including the replacement of insulation and jacket.

Splice kit. A group of materials and related instructions which clearly identify all components and detail procedures used in safely making a flame-resistant splice in an electric cable.

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§ 7.403 Application requirements.

(a) *Electric cables and signaling cables.* A single application may address two or more sizes, types, and constructions if the products do not differ in composition of materials or basic design. Applications shall include the following information for each product:

(1) Product information:

(i) Cable type (for example, G or G–GC).

(ii) Construction (for example, round or flat).

(iii) Number and size (gauge) of each conductor.

(iv) Voltage rating for all cables containing electric conductors.

(v) For electric cables, current-carrying capacity of each conductor, with corresponding ambient temperature upon which the current rating (ampacity) is based, of each power conductor.

(2) Design standard. Specify any published consensus standard used and fully describe any deviations from it, or fully describe any nonstandard design used.

(3) Materials. Type and identifying numbers for each material comprising the finished assembly.

(b) *Splice kit.* A single application may address two or more sizes, types, and constructions if the products do not differ in composition of materials or basic design. Applications shall include the following information for each product:

(1) *Product information.* (i) Trade name or designation (for example, style or code number).

(ii) Type of kit (for example, shielded or nonshielded).

(iii) Voltage rating.

(2) *Design standard.* Specify any published design standard used and fully describe any deviations from it, or provide complete final assembly dimensions for all components used in splices for each cable that the splice kit is designed to repair.

(3) *Materials.* Type of materials, supplier, supplier's stock number or designation for each component.

(4) Complete splice assembly instructions which clearly identify all components and detail procedures used in safely making the splice.

§ 7.404 Technical requirements.

(a) Electric cables and splices shall be flame resistant when tested in accordance with § 7.407.

(b) Signaling cables shall be flame resistant when tested in accordance with § 7.408.

§ 7.405 Critical characteristics.

(a) A sample from each production run, batch, or lot of manufactured electric cable, signaling cable, or splice made from a splice kit shall be flame tested, or

(b) A sample of the materials that contribute to the flame-resistant characteristic of the cable or splice and a sample of the cable or splice kit assembly shall be visually inspected or tested through other means for each production run, batch, or lot to ensure that the finished product meets the flame-resistance test.

§ 7.406 Flame test apparatus.

The principal parts of the apparatus used to test for flame resistance of electric cables, signaling cables and splices shall include:

(a) *Test chamber.* A rectangular enclosure meansuring 17 inches deep by 14½ inches high by 39 inches wide and completely open at the top and front. The floor or base of the chamber shall be fabricated or lined with a noncombustible material that will not extinguish burning matter which may fall from the test specimen during testing. The chamber shall have permanent connections mounted to the back wall, sides, or floor of the chamber which extend to the sample end location. These are used to energize the electric cable and splice specimens. They are not used, but may stay in place, when testing signaling cables.

(b) *Specimen holder (support).* A specimen holder (support) consisting of three separate metal rods each measuring approximately 3/16 inch in diameter (nominal) to support the specimen. The horizontal portion of the rod which contacts the test specimen shall be approximately 12 inches in length.

(c) *Gas ignition source.* A standard natural gas type Tirrill burner, with a nominal inside diameter of ⅜ inch, to apply the flame to the test specimen. The fuel for the burner shall be natural gas composed of at least 98 percent combustible hydrocarbons, with at least 80 percent being methane.

(d) *Current source.* (For electric cables and splices only). A source of electric current (either alternating current or direct current) for heating the power conductors of the test specimen. The current source shall have a means to regulate current flow through the test specimen and have an open circuit voltage not exceeding the voltage rating of the test specimen.

(e) *Current measuring device.* (For electric cables and splices only). An instrument to monitor the effective value of heating current flow through the power conductors of the specimen within an accuracy of ± 1 percent.

(f) *Temperature measuring device.* (For electric cables and splices only). An instrument to measure conductor temperature within an accuracy of ± 2 percent without the necessity of removing material from the test specimen in order to measure the temperature.

§ 7.407 Test for flame resistance of electric cables and cable splices.

(a) *Test procedure.* (1) For electric cables, prepare 3 specimens of cable, each 3 feet in length, by removing 5 inches of jacket material and 2½ inches of conductor insulation from both ends of each test specimen. For splices, prepare a splice specimen in each of 3 sections of MSHA-approved flame-resistant cable. The cable shall be of the type that the splice kit is designed to repair. The finished splice shall not exceed 18 inches or be less than 6 inches in length for test purposes. The spliced cables shall be 3 feet in length with the midpoint of the splice located 14 inches from one end. Both ends of each of the spliced cables shall be prepared by removing 5 inches of jacket material and 2½ inches of conductor insulation. The type, amperage, voltage rating, and construction of the cable shall be compatible with the splice kit design. Each splice shall be made in accordance with the instructions provided with the splice kit.

(2) Prior to testing, condition each test specimen for a minimum of 24 hours at a temperature of 70±10 °F (21.1±5.5 °C) and a relative humidity of 55±10 percent. These environmental conditions shall be maintained during testing.

(3) For electric cables, locate the sensing element of the temperature measuring device 26 inches from one end of each test specimen. For splices, locate the sensing element 12 inches from the midpoint of the splice and 10 inches from the end of the cable. The sensing element must be secured so that it remains in direct contact with the metallic portion of the power conductor for the duration of the flame-resistant test. If a thermocouple-type temperature measuring instrument is used, connect the sensing element through the cable jacket and power conductor insulation. Other means for monitoring conductor temperature may be used, provided the temperature measurement is made at the same location. If the jacket and conductor insulation must be disturbed to insert the temperature measuring device, each must be restored as closely as possible to its original location and maintained there for the duration of the testing.

(4) Center the test specimen horizontally in the test chamber on the three rods. The three rods shall be positioned perpendicular to the longitudinal axis of the test specimen and at the same height, which permits the tip of the inner cone from the flame of the gas burner, when adjusted in accordance with the test procedure, to touch the jacket of the test specimen. The specimen shall be maintained at this level for the duration of the flame test. The two outermost rods shall be placed so that 1 inch of cable jacket extends beyond each rod. For electric cables, the third rod shall be placed 14 inches from the end of the test specimen nearer the temperature monitoring location on the specimen. For splices, the third rod shall be placed between the splice and the temperature monitoring location at a distance 8 inches from the midpoint of the splice. The specimen shall be free from external air currents during testing.

(5) Adjust the gas burner to give an overall blue flame 5 inches high with a 3-inch inner cone. There shall be no persistence of yellow coloration.

(6) Connect all power conductors of the test specimen to the current source. The connections shall be secure and compatible with the size of the cable's power conductors in order to reduce contact resistance.

(7) Energize all power conductors of the test specimen with an effective heating current value of 5 times the power conductor ampacity rating (to the nearest whole ampere) at an ambient temperature of 104 °F (40 °C).

(8) Monitor the electric current through the power conductors of the test specimen with the current measuring device. Adjust the amount of heating current, as required, to maintain the proper effective heating current value within ± 5 percent until the power conductors reach a temperature of 400 °F (204.4 °C).

(9) For electric cables, apply the tip of the inner cone from the flame of the gas burner directly beneath the test specimen for 60 seconds at a location 14 inches from one end of the cable and between the supports separated by a 16-inch distance. For splices, apply the tip of the inner cone from the flame of a gas burner for 60 seconds beneath the midpoint of the splice jacket.

(10) After subjecting the test specimen to external flame for the specified time, fully remove the flame of the gas from beneath the specimen without disturbing air currents within the test chamber. Simultaneously turn off the heating current.

(11) Record the amount of time the test specimen continues to burn after the flame from the gas burner has been removed. The duration of burning includes the burn time of any material that falls from the test specimen after the flame from the gas has been removed.

(12) Record the length of burned (charred) area of each test specimen measured longitudinally along the cable axis.

(13) Repeat the procedure for the remaining two specimens.

(b) *Acceptable performance.* Each of the three test specimens shall meet the following criteria:

(1) The duration of burning shall not exceed 240 seconds.

(2) The length of the burned (charred) area shall not exceed 6 inches.

§ 7.408 Test for flame resistance of signaling cables.

(a) *Test procedure.* (1) Prepare 3 samples of cable each 2 feet long.

(2) Prior to testing, condition each test specimen for a minimum of 24 hours at a temperature of 70 ± 10 °F (21.1 ± 5.5 °C) and relative humidity of 55 ± 10 percent. These environmental conditions shall be maintained during testing.

(3) Center the test specimen horizontally in the test chamber on the three rods. The three rods shall be positioned perpendicular to the longitudinal axis of the test specimen and at the same height, which permits the tip of the inner cone from the flame of the gas burner, when adjusted in accordance with the test procedure, to touch the test specimen. The specimen shall be maintained at this height for the duration of the flame test. The two outermost rods shall be placed so that 1 inch of cable extends beyond each rod. The third rod shall be placed at the midpoint of the cable. The specimen shall be free from external air currents during testing.

(4) Adjust the gas burner to give an overall blue flame 5 inches high with a 3-inch inner cone. There shall be no persistence of yellow coloration.

(5) Apply the tip of the inner cone from the flame of the gas burner for 30 seconds directly beneath the specimen centered between either end support and the center support.

(6) After subjecting the test specimen to external flame for the specified time, fully remove the flame of the gas from beneath the specimen without disturbing air currents within the test chamber.

(7) Record the amount of time the test specimen continues to burn after the flame from the gas burner has been removed. The duration of burning includes the burn time of any material that falls from the test specimen after the flame from the gas has been removed.

(8) Record the length of burned (charred) area of each test specimen measured longitudinally along the cable axis.

(9) Repeat the procedure for the remaining two specimens.

(b) *Acceptable performance.* Each of the three test specimens shall meet the following criteria:

(1) The duration of burning shall not exceed 60 seconds.

(2) The length of the burned (charred) area shall not exceed 6 inches.

§ 7.409 Approval marking.

Approved electric cables, signaling cables, and splices shall be legibly and permanently marked with the MSHA-assigned approval marking. For electric cables and signaling cables, the marking shall appear at intervals not exceeding 3 feet and shall include the MSHA-assigned approval number in addition to the number and size (gauge) of conductors and cable type. For cables containing electric conductors, the marking shall also include the voltage rating. For splices, the marking shall be placed on the jacket so that it will appear at least once on the assembled splice.

§ 7.410 Post-approval product audit.

Upon request by MSHA, but no more than once a year except for cause, the approval holder shall supply to MSHA for audit at no cost—

(a) 12 feet of an approved electric cable or approved signaling cable; or

(b) 3 splice kits of one approved splice kit design and 12 feet of MSHA-approved cable that the splice kit is designed to repair.

§ 7.411 New technology.

MSHA may approve cable products or splice kits that incorporate technology for which the requirements of this subpart are not applicable if the Agency determines that they are as safe as those which meet the requirements of this subpart.

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

4. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

§ 18.1 [Amended]

5. Section 18.1 is amended by removing the phrase "cables, hoses, and conveyor belts," and inserting "hoses and conveyor belts,".

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§ 18.2 [Amended]

6. Section 18.2 is amended by removing the phrase "cable, hose, or conveyor belt" and inserting "hose or conveyor belt" in the definitions of "Acceptance," "Acceptance marking," and "Applicant."

§ 18.6 [Amended]

7. Section 18.6(a) is amended by removing the phrase "cables, hose, or conveyor belt," and inserting "hose or conveyor belt,".

§ 18.8 [Amended]

8. Section 18.8(b) is removed and reserved.

§ 18.9 [Amended]

9. Section 18.9(l) is amended by removing the phrase "cable, hose, or conveyor belt," and inserting "hose or conveyor belt,", and removing the words "Cable—a sample having a minimum length of 12 feet;".

§ 18.9 [Amended]

10. Section 18.9(a) is amended by removing the phrase "cable, hose, or conveyor belt," and inserting "hose or conveyor belt,".

11. Section 18.35(a)(3) is revised to read as follows:

§ 18.35 Portable (trailing) cables and cords.

(a) • • •

(3) Be accepted as flame resistant under this part or approved under subpart K of part 7 of this chapter.

• • • • •

§ 18.64 [Removed]

12. Section 18.64 is removed.

13. Section 18.94(a)(2) is revised to read as follows:

§ 18.94 Application for field approval; contents of application.

(a) • • •

(2) The trade name and the flame resistance acceptance number of any cable, cord, hose, or conveyor belt installed on the machine for which prior acceptance or approval by MSHA has been issued.

• • • • •

[FR Doc. 90-22108 Filed 9-28-90; 8:45 am]
BILLING CODE 4510-43-M

federal register

Monday
October 1 1990

Part V

Department of Agriculture

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection and Official Weighing Services; Proposed Rule

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection and Official Weighing Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to increase the fees charged for official inspection and weighing services performed under the United States Grain Standards Act (USGSA), as amended. The proposed fee increase is necessary to recover, as nearly as practicable, the costs of providing official inspection and weighing services. The proposed fee increase would provide sufficient revenue to cover operating costs and maintain a reserve in the Grain Inspection Packers and Stockyards Administration (GIPSA) Fund.

DATES: Comments must be received by November 30, 1990.

ADDRESSES: Comments should be submitted to the Director, Compliance Division, Federal Grain Inspection Service, USDA, 1400 Independence Avenue SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dan Haley, Director, Compliance Division, Federal Grain Inspection Service, USDA, 1400 Independence Avenue SW., Washington, DC 20250, (202) 382-1738.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major." It will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Most of the entities that receive official inspection and weighing services do not meet the requirements for small entities. FGIS is required by statute to make services available and to recover costs of providing such services as nearly as practicable.

Background

The USGSA, as amended (7 U.S.C. 71 et seq.), authorizes FGIS to provide official inspection and weighing services for grain moving in domestic and export commerce. Section 7(j) of the USGSA requires that fees charged for official inspection and weighing services be reasonable and, as nearly as practicable, cover the costs of providing such services, including the costs of administration and supervision. Section 7(j) also requires that the fees be established in accordance with the cost of performing the services, except that the fees may not be increased more than 10 percent per year unless the Secretary of Agriculture determines that such an increase is necessary to maintain adequate funds in the GIPSA Fund.

The fiscal year 1988 revenue of $19,778,546 did not cover operating costs of $22,488,972 resulting in a negative margin of $2,710,426. The fiscal year 1989 revenue of $22,488,972 did not cover operating costs of $22,566,180 resulting in a negative margin of $77,208.

The fiscal year 1989 offers the most current one-year figures available to compare FGIS's inspection and weighing

§ 800.71 [Revised]

SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN THE UNITED STATES [1]

Inspection and weighing service (bulked or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection and Official Weighing Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to increase its fees by 13.5 percent for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The proposed change is intended to cover, as nearly as practicable, the FGIS operating costs, including related supervisory and administrative costs.

DATES: Comments must be submitted on or before October 31, 1990.

ADDRESSES: Written comments must be submitted to Paul D. Marsden, Federal Grain Inspection Service, USDA, Room 0628 South Building, Box 96454, Washington, DC 20090–6454; telemail users may respond to (IRSTAFF/FGIS/USDA) telemail; telex users may respond to Paul D. Marsden, TLX 7607351 ANS: FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447–4628.

All comments received will be made available for public inspection during regular business hours in Room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul D. Marsden, Federal Grain Inspection Service, USDA, Room 0628 South Building, Box 96454, Washington, DC 20090–6454; telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services do not meet the requirements for small entities. FGIS is required by statute to make services available and to recover costs of providing such services as nearly as practicable.

Background

The USGSA, as amended (7 U.S.C. 71 *et seq.*), provides that FGIS shall charge and collect reasonable fees that cover its estimated cost for performing official inspection, weighing, reinspection, and appeal inspection services. The fees are to cover, as nearly as practicable, and taking into consideration any proceeds from the sale of samples, the FGIS costs for performance of these official services, including related administrative and supervisory costs. FGIS costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment. The current USGSA fees became effective on January 5, 1987 (51 FR 43723). The fees were designed to cover, as nearly as practicable, the level of operating costs as projected for fiscal year 1988. They presently appear in § 800.71 on Schedule A of the regulations, Fees for Official Inspection, Weighing, and Appeal Inspection Services, Performed in the United States (7 CFR 800.71 (Schedule A)).

A proposed rule was published on June 28, 1990, in the **Federal Register** (55 FR 26598) which would amend 7 CFR 800.71 (Schedule A) to provide for a separate fee for official track scale test services. Currently, applicants that request and are provided official railroad track scale test services are assessed the noncontract hourly rate of $38.80 for regular workday (Monday to Saturday), and $52.80 for nonregular workday (Sunday and Holiday).

The proposed new hourly rates for official railroad track scale test services are: regular workdays (Monday to Saturday) $56.60 per hour, and nonregular workdays (Sunday and Holiday) $73.60 per hour. Comments on the June 28 proposed rule were to be submitted on or before July 30, 1990. While this proposed rule reflects the June 28 proposal, this action does not make changes to the previously proposed rule for railroad track scale test services.

FGIS continually monitors its cost, revenue, and operating reserve levels to assure that there are sufficient resources for operations. During the fiscal years 1988 and 1989 FGIS continued to implement cost-saving measures in an effort to provide cost-effective quality services. As a result, the revenue of $23,396,548 covered the operating costs of $19,778,546 for fiscal year 1988. However, the fiscal year 1989 revenue of $22,488,972 did not cover operating costs of $22,566,180 resulting in a negative margin of $77,208.

The fiscal year 1989 offers the most current one-year figures available to compare FGIS's inspection and weighing operating costs with revenue. These figures were used to project the budgeted fiscal year 1990 inspection and weighing costs and establish revenue levels necessary to cover the projected operating costs. During the period October 1, 1989 to July 31, 1990, the actual operating cost was $16,248,057 and the revenue was $16,645,965, resulting in a loss of $1,602,092. The fiscal year 1990 loss is projected to be as high as $1,922,510. This trend, which is expected to continue, would require an increase in fees to recover projected operating costs and maintain a 3 month operating reserve. While the quantity of inspection and weighing services may fluctuate, certain FGIS costs remain constant.

Proposed Action

It is proposed to increase fees for inspection, weighing, reinspection, and appeal inspection services by 13.5 percent including both the contract hourly rates and noncontract hourly rates for original inspection and official weighing. The official inspection and weighing services hourly rates include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, certifying inspection and weighing results, and other services requested by the applicant when performed at the point of service. The proposed railroad track scale test services fees proposed at 55 FR 26598 would not be changed by this action.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grains.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.71 is revised to read as follows:

§ 800.71 [Revised]

SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN THE UNITED STATES [1]

Inspection and weighing service (bulked or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing		
(i) Contract (per hour per service representative)	$33.10	$45.90
(ii) Noncontract (per hour per service representative)	44.00	59.90
(2) Reinspection, appeal inspection, Board appeal inspection, and review of weighing services: [2] [3]		
(i) Grading service:		
(A) Grade and factors (per sample)	64.20	82.80
(B) Protein test (per sample)	16.10	20.80
(C) Factor determination (per factor)	32.10	41.60
(ii) Sampling services (per hour per service representative)	64.20	82.80
(iii) Review of weighing service (per service representative)	64.20	82.80
(3) Extra copies of certificates (per copy)	3.00	3.00
(4) Official track scale testing service	56.60	73.60

[1] Official inspection and weighing services include, but are not limited to: grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services performed at locations where FGIS is providing original inspection service shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] If at the request of the Service a file sample is located and forwarded by an agency for an official appeal, the agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

Dated: August 29, 1990.

D.R. Galliart,

Acting Administrator.

[FR Doc. 90–21491 Filed 9–28–90; 8:45 am]

BILLING CODE 3410–EN–M

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Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 60
Health Education Assistance Loan Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

RIN 0906-AC67

42 CFR Part 60

regulations as a temporary stop-gap measure until the program is phased out or the legislation is amended.

The HEAL program has been flawed from its inception. Although designed to be self-financing, HEAL has relied on ever-increasing premiums from new loans to pay off defaults from old loans. holders comply with a 5 percent default standard, measured on an annual basis. A 5 percent standard is consistent with the standard established for the Health Professions Student Loan (HPSL) program in 1983, and is considered by the Department to be a reasonable standard for health professions

on loans entering repayment in FY 1989 for which default claims were filed and approved for payment by the end of the second succeeding fiscal year would be available at the end of FY 1991 (September 30, 1991). In November 1991, the Department would notify schools, lenders, and holders of their FY 1989 designed to assist lenders in meeting the default standard by making clear their authority to deny or reduce a HEAL loan in cases where the proposed debt level compared with expected income indicates a strong likelihood of default.

The Department also is proposing to add a new paragraph (h) to this section days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

RIN 0906-AC87

42 CFR Part 60

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend existing regulations governing the Health Education Assistance Loan (HEAL) program to establish performance standards against which school, lender, and holder default rates would be measured; to require a lender to apply more stringent creditworthiness standards in determining an applicant's eligibility for a HEAL loan; to require lenders to report a borrower's HEAL indebtedness to one or more credit bureaus at the time the loan is made; to strengthen a school's authority to deny a HEAL loan to an applicant who is expected to have difficulty repaying the loan; to require a school to withhold services from a defaulted HEAL borrower, except in cases of bankruptcy; and to include hearing procedures prior to termination from the program.

DATES: To be considered, comments must be received by November 30, 1990.

ADDRESSES: Respondents should address written comments to Fitzhugh Mullan, M.D., Acting Director, Bureau of Health Professions (BHPr), room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: James W. Farrington, D.M.D., Deputy Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8-48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-1173.

SUPPLEMENTARY INFORMATION: The Secretary is proposing in this Notice of Proposed Rulemaking (NPRM) to amend the HEAL regulations to establish performance standards against which school, lender, and holder default rates would be measured. Recognizing that the HEAL program is seriously flawed, the Secretary has developed these regulations as a temporary stop-gap measure until the program is phased out or the legislation is amended.

The HEAL program has been flawed from its inception. Although designed to be self-financing, HEAL has relied on ever-increasing premiums from new loans to pay off defaults from old loans. In the early years of HEAL, premiums from each year's guarantees never covered defaults resulting from those guarantees. While HEAL collected about $537,000 in premiums from loans guaranteed in FY 1982, claims from those guarantees totalled approximately $18 million. For loans guaranteed in FY 1983 and FY 1984, HEAL collected premiums of $3 million and $6 million respectively. However, claims resulting from those loans far outpaced premiums, totalling $22 million and $21 million respectively.

In recent years, the dollars paid in claims, and the amounts currently in litigation that are expected to result in future claims, have increased significantly as rising numbers of loans have entered repayment each year. Loans in repayment increased by more than $200 million to $1.1 billion from FY 1988 to FY 1989. HEAL disbursements peaked at $321 million in FY 1986 and decreased to $222 million in FY 1987. Loan volume was $230 million in FY 1988 and $250 million in FY 1989. The decrease in disbursements since FY 1986 has resulted in a decrease in the amount of insurance premium income being paid into the Student Loan Insurance Fund (SLIF).

The continuing increase in dollar volume of HEAL claims and potential claims, coupled with the significant decline in loan disbursements (and therefore insurance premium income), now jeopardize the solvency of the SLIF, creating a need for appropriations to pay HEAL claims. Given the magnitude of HEAL's flaws, there is a need for fundamental reform. However, until the program is phased out or major reforms can be legislated, short term steps are necessary to minimize claims in the existing HEAL program. As such, these regulations propose to establish default standards, with which schools, lenders, and holders would be required to comply to continue participating in the HEAL program.

Schools, lenders, and holders all play a significant role in helping to assure the collectibility of HEAL loans, and all benefit from participation in the HEAL program. Accordingly, this approach is designed to assure accountability among all parties which are involved in and benefit from the HEAL program.

The Secretary is proposing in these regulations that schools, lenders, and holders comply with a 5 percent default standard, measured on an annual basis. A 5 percent standard is consistent with the standard established for the Health Professions Student Loan (HPSL) program in 1983, and is considered by the Department to be a reasonable standard for health professions borrowers. HPSL schools have been successful in complying with the 5 percent standard, in spite of objections from schools and professional associations when it initially was proposed. Since the implementation of the HPSL standard in 1983, there has been no Congressional action opposing the 5 percent level, an indication that the Congress also considers this a reasonable default standard for health professions borrowers.

To measure compliance with the 5 percent standard, the Secretary is proposing the use of a default rate formula that focuses on default rates by Federal fiscal year (October 1-September 30). Under this formula, the original principal amount of loans that enter repayment in a given fiscal year, and for which a default claim is filed with the Department and approved for payment by the end of the second succeeding fiscal year, would be divided by the original principal amount of all loans that entered repayment in that fiscal year. Claims paid due to death, disability, and bankruptcy, as authorized by the HEAL regulations, would not be included in the numerator.

The proposal to use a formula that focuses on loans entering repayment within a given fiscal year is designed to measure the effectiveness of activities undertaken by schools, lenders, and holders which affect the likelihood of repayment by the borrower. For purposes of determining which loans fall into the default category, the formula provides up to 3 years for a default claim to be filed and approved for payment by the Department. The 3-year period is based on a sampling of approximately 3,400 loans for which HEAL claims have been paid, with an original principal value of $24.3 million. This data showed that, of the $24.3 million in original principal paid on these claims, significant amounts could be attributed to claims filed during each of the first 3 years of repayment, with the amount dropping off for claims filed after the third year, as follows: first year—42 percent; second year—29 percent; third year—17 percent; fourth year—9 percent; after the fourth year—3 percent.

Fiscal Year 1989 would be the first year for which progress toward meeting the standard would be measured. Data on loans entering repayment in FY 1989 for which default claims were filed and approved for payment by the end of the second succeeding fiscal year would be available at the end of FY 1991 (September 30, 1991). In November 1991, the Department would notify schools, lenders, and holders of their FY 1989 default rates. The formula for determining the FY 1989 default rate can be expressed as follows: Dollar (principal) amount of loans entering repayment in FY 1989 and defaulting in FYs 1989, 1990, and 1991 divided by dollar (principal) amount of loans entering repayment in FY 1989. Initial penalties of suspension or termination, based on FY 1990 default rates, would become effective January 1, 1993. Rates for each subsequent fiscal year would be measured annually thereafter, with penalties effective January 1 of the fiscal year in which the default rate calculation is made.

To assist schools and lenders in complying with the proposed default standards, these regulations also would propose to allow more stringent standards to be applied in determining an applicant s eligibility for a HEAL loan and would require a school to withhold services from a defaulted HEAL borrower except in instances where the borrower has filed for bankruptcy

Since schools, lenders, and holders each play a different role in the HEAL program, the implementation of the performance standard, including the penalties for noncompliance, would vary somewhat in recognition of these differences. The specific amendments proposed are described below according to the subparts, section numbers, and headings of the HEAL regulations affected.

Subpart D—The Lender

Section 60.33 Making a HEAL Loan

The Department is proposing to amend paragraph (c) of this section to provide that a lender, in determining an applicant s eligibility for a HEAL loan, must compare the applicant s anticipated indebtedness from all sources at the anticipated time of repayment with the applicant's expected income (based on, for example, average starting incomes for graduates in the course of study for which the applicant is requesting the HEAL loan, or other sources of expected income), and may deny or reduce the amount of the HEAL loan if the lender determines that the expected income would be insufficient to allow the applicant to make the payments required by the anticipated level of indebtedness. This provision is designed to assist lenders in meeting the default standard by making clear their authority to deny or reduce a HEAL loan in cases where the proposed debt level compared with expected income indicates a strong likelihood of default.

The Department also is proposing to add a new paragraph (h) to this section to require the lender to report a borrower's HEAL indebtedness to one or more credit bureaus at the time the loan is made. The Department believes that the reporting of all HEAL loans to credit bureaus will help reduce defaults by assuring that other potential creditors of a borrower have access to information on the borrower's HEAL indebtedness and take this into consideration when determining whether to extend additional credit to the borrower.

Section 60.43 Limitation, Suspension, or Termination of the Eligibility of a HEAL Lender or Holder

This section currently provides that the Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible lender that violates any provision of title VII, part C, subpart I of the Act as amended (42 U.S.C. 294-294l), these regulations, or agreements with the Secretary concerning the HEAL program. This action is to be taken in accordance with procedures for the limitation, suspension, or termination of the eligibility of lenders under the Federal Insured Student Loan Program as set forth in 34 CFR part 682.

The Department is proposing to revise this section to provide that prior to terminating a lender's or holder's participation in the program, the Secretary will provide the lender or holder with an opportunity for a hearing and will follow the hearing procedures which the Department has adopted for the Health Professions Student Loan program.

To help assure that the hearing process is administered as efficiently and cost-effectively as possible for the lenders, holders, and the Federal Government, the revision would set forth procedures for determining whether a hearing is warranted and would involve an administrative summary judgment proceeding.

Under these procedures, the Secretary will provide any lender or holder subject to termination with a written notice specifying his or her intention to terminate the lender's or holder's participation in the program and stating that the entity may request, within 30 days of the receipt of this notice, a formal hearing If the lender or holder requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The lender or holder does not provide a statement of material, factual .ssues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the lender or holder setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the lender or holder will be terminated from participation in the program. An entity will be permitted to reapply for participation in the program. An entity will be permitted to reapply for participation in the program when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

Section 60.44 Performance Standard for Lenders

The Department is proposing to add a new § 60.44 to subpart D which would require that, to continue originating loans, lenders must maintain a fiscal year lender default rate of not more than 5 percent, based on loans originated by the lender.

To calculate a lender's default rate, "applicable defaults" would be divided by the "fiscal year base," expressed as a percentage. For this purpose, "applicable defaults" would mean the original principal amount of loans originated by the lender that enter the repayment period in a given fiscal year, and for which default claims are filed with the Department and approved for payment by the end of the second succeeding fiscal year. "Fiscal year base" means the original principal amount of loans originated by the lender that entered repayment in that fiscal year.

A lender that complies with the lender default standard would continue to be in active status for originating loans. A lender that fails to comply with the standard would be placed in probation for 1 year. During probation, loans could continue to be made to any eligible applicant. At the end of probation, a lender that meets the 5 percent default standard would be placed in active

status; a lender with a lender default rate exceeding the standard would be placed in a termination status. During termination, a lender would not be authorized to make any new HEAL loans, but could make disbursements to cover the remaining amounts of loans already approved. A lender for which authority to originate loans has been terminated would be eligible to return to active status for originating loans when it achieves the 5 percent standard.

Under this proposal, lenders with lender default rates exceeding 5 percent for 2 consecutive years would be placed in terminated status for purposes of originating HEAL loans. The Department believes that this approach would provide lenders with adequate time to make any improvements necessary to comply with the standard, while at the same time most effectively safeguarding the HEAL program by excluding lenders with default rates that exceed acceptable levels from originating additional loans. Borrowers should not be adversely affected by the termination of a lender's authority to originate loans, since they should be able to secure loans from other approved lenders.

Section 60.45 Performance Standard for Holders of HEAL Loans

The Department is proposing to add a new § 60.45 to subpart D which would require that, to continue purchasing loans, holders must maintain a fiscal year holder default rate of not more than 5 percent, based on loans held either at the time of default or at the end of the fiscal year on which the default rate is based. For purposes of calculating a holder default rate, a holder would be defined as an entity other than the originator of the HEAL loan.

To calculate a holder's default rate, "applicable defaults" would be divided by the "fiscal year base," expressed as a percentage. For this purpose, "applicable defaults" means the original principal amount of loans entering repayment in a given fiscal year that were held by the holder at the time of default, and for which a default claim is filed with the Department and approved for payment by the end of the second fiscal year following the fiscal year during which repayment began. "Fiscal year base" means the original principal amount of all loans entering repayment in that fiscal year that were held by the holder at the end of that fiscal year, plus the "applicable defaults."

A holder that complies with the 5 percent standard would continue to be in active status for purchasing loans. A holder that fails to comply with the standard would be placed in probation for 1 year. During probation, loans could continue to be purchased from lenders and other holders. At the end of probation, a holder that meets the holder default standard would be placed in active status; a holder with a default rate exceeding the standard would be placed in a termination status. During termination, a holder would not be authorized to purchase any HEAL loans. A holder for which the authority to purchase loans has been terminated would be eligible to return to active status for purchasing loans when it achieves the 5 percent standard.

Holders with default rates exceeding the 5 percent standard for 2 consecutive years would be placed in terminated status for purposes of purchasing HEAL loans. The Department believes that this approach would provide holders with adequate time to make any improvements necessary to comply with the standard, while at the same time most effectively safeguarding the HEAL program by excluding entities with default rates that exceed acceptable levels from purchasing and thus taking on the responsibility for servicing additional loans.

Subpart E—The School

Section 60.51 The Student Loan Application

The Department is proposing to amend paragraph (e) of this section to provide that a school, in determining an applicant s eligibility for a HEAL loan, must compare the applicant's anticipated indebtness from all sources at the anticipated time of repayment with the applicant s expected income (based on, for example, average starting incomes for graduates in the course of study for which the applicant is requesting the HEAL loan, or other sources of expected income levels), and may deny or reduce the amount of the HEAL loan if the school determines that the expected income would be insufficient to allow the applicant to make the payments required by the proposed level of indebtedness. This provision is designed to assist schools in meeting the default standard by providing them with authority to deny or reduce a HEAL loan in cases where the anticipated debt level compared with expected income indicates a strong likelihood of default.

Section 60.60 Limitation, Suspension of the Eligibility of a HEAL School

This section currently provides that the Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible school that violates any provision of title VII, part C, subpart I of the Act as amended (42 U.S.C. 294–294l), these regulations, or agreements with the Secretary concerning the HEAL program. This action is to be taken in accordance with procedures for the limitation, suspension, or termination of the eligibility of schools under the Student Assistance General Provisions of the Department of Education as set forth in 34 CFR part 668.

The Department is proposing to revise this section to provide that prior to terminating a school's participation in the program, in accordance with section 739(a)(3) of the Act, the Secretary will provide the school an opportunity for a hearing and will follow the hearing procedures which the Department has adopted for the Health Professions Student Loan program.

To help assure that the hearing process is administered as efficiently and cost-effectively as possible, the revision would set forth procedures for determining whether is hearing is warranted and would involve an administrative summary judgment proceeding. Procedures for schools would parallel those for lenders and holders as discussed under § 60.43 Limitation, suspension, or termination of the eligibility of a HEAL lender or holder A school would be permitted to reapply for participation in the program when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

Section 60.61 Responsibilities of a HEAL School

The Department is proposing to add a new paragraph (d) to this section to require that a school withhold services, including, but not limited to, academic transcripts, financial aid transcripts, and alumni services, from a defaulted HEAL borrower, except in instances where the borrower has filed for bankruptcy. This proposal is intended to assist schools in meeting the default standards by making clear their authority to take action against defaulted borrowers, and thus deter future defaults. The exception to withholding services when a borrower has filed for bankruptcy would assure that the "fresh start" provision of the Bankruptcy Code is not violated.

Section 60.62 Performance Standard for Schools

The Department is proposing to add a new § 60.62 to subpart E which would require that, to continue participating in the HEAL program, schools must maintain a fiscal year school default rate of not more than 5 percent.

To calculate a school default rate, "applicable defaults" would be divided by the "fiscal year base," expressed as a percentage. For this purpose, "applicable defaults" means the original principal amount of loans made to the school s borrowers that enter repayment in a given fiscal year, and for which a default claim is filed with the Department and approved for payment by the end of the second succeeding fiscal year "Fiscal year base" means the original principal amount of all loans made to the school s borrowers that entered repayment in that fiscal year.

Fiscal year 1989 would be the first year for which progress toward achieving the standard would be measured. Each school would be required to achieve the 5 percent standard by FY 1995 when its FY 1992 default rate would be measured, and would be provided a phase-in period to achieve compliance with the 5 percent standard.

Prior to the measurement of its FY 1992 default rate, if a school has a default rate for any year greater than 5 percent, it will be required, by the end of the following year, to achieve the 5 percent standard or meet reductions as follows:

(1) If the school is in the 10 percent (adjusted upward to the nearest whole number) of schools in its health profession with the highest default rates, it will be required to reduce its rate by 50 percent from the prior year's rate until it reaches the 5 percent standard; provided that no school in this category would be required to reduce its rate to a level below the maximum rate permitted for the remaining 90 percent of schools in its health profession, as described below.

(2) If a school is not in the 10 percent (adjusted upward to the nearest whole number) of schools in its health profession with the highest rates, it must reduce its default rate by 25 percent from the prior year's rate until it reaches the 5 percent or less standard.

The phase-in period is designed to assist a school in meeting the standard by taking into account the wide variations in default rates by health profession and by assuring that schools with the highest default rates are making adequate progress toward achieving the standard. Fiscal Year 1986 annual default rates for major HEAL disciplines range by health profession from a low of 9.3 percent for osteopathic medical schools to a high of 18.4 percent for chiropractic schools. This approach is also consistent with a legislative amendment to the program which the Congress included in the Health Professions Reauthorization Act of 1988 (title VI of Public Law 100–607, enacted on November 4, 1988). Specifically, Public Law 100–607 amended the statute to authorize the Secretary to establish reasonable limits for default rates for borrowers in each of the health professions.

A school that complies with the 5 percent standard or required reduction would continue to be in active status. A school that fails to comply with the standard or reduction would be placed in probation for 1 year. During probation, loans could continue to be approved for any eligible applicant. At the end of probation, a school that meets the standard or reduction would be placed in active status; a school with a default rate exceeding the standard or required reduction would be placed in suspension. During suspension, a school could approve loans for previous HEAL borrowers only.

At the end of 1 year of suspension, a school which meets the standard or required reduction would be placed in active status. A school with a default rate that continues to exceed the standard or reduction would remain in suspension for up to 4 years, or as long as it has previous HEAL borrowers still enrolled, whichever is shorter. This provision is designed to allow previous HEAL borrowers to receive funding through the remainder of their educational program, and thus prevent these students from being forced to drop out due to a lack of available funding. A school with a default rate that continues to exceed the standard would be terminated at the end of 4 years in suspension, or when previous HEAL borrowers have completed their educational program, whichever is sooner. During termination, a school would not be authorized to approve HEAL loans for any of its students. A terminated school would be eligible to apply for reentry into the program when it achieves a 5 percent or less default rate for 2 consecutive years. The 2-year period is designed to assure that a school demonstrates stability in its default rate before it reenters active status, and is considered necessary because of the length of time associated with suspending and terminating a school.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal. Under this proposed rule schools, lenders, and holders would be required to comply with default standards to continue participating in the HEAL program. These proposals may require some additional resources in those instances where a school, lender or holder consistent with its role in the HEAL program, is doing an unsatisfactory job of assuring that borrowers understand and comply with their repayment responsibilities. However, they should not require significant additional resources for the majority of schools, lenders, and holders. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL schools, lenders, or holders.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collections are shown below with an estimate of the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Health Education Assistance Loan (HEAL) Program: Performance Standards.

Description of Respondents: Non-profit institutions and Businesses or other for profit.

Description: Lenders must report new HEAL loans to credit bureaus. Lenders and schools requesting a hearing prior to termination must submit a statement of material issues in dispute.

BEST COPY AVAILABLE

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section requirement	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
60.33(h)	66	29,000 (borrowers)	1 min.	483 hrs.
60.43(b)	10	1	3 hrs.	30 hrs.
60.60(b)	90	1	3 hrs.	270 hrs.
Total Burden Hours				

year shall be calculated 2 years after the end of the base fiscal year.

(c) A lender that fails to comply with the requirements of paragraph (a) of this section shall be placed on probation for originating loans for 1 year, effective January 1 of the fiscal year in which the calculation of the lender default rate is

default rate for a fiscal year shall be calculated 2 years after the end of the fiscal year.

(c) A holder that fails to comply with the requirements of paragraph (a) of this section shall be placed on probation for purchasing loans for 1 year, effective January 1 of the fiscal year in which the

§ 60.60 Limitation, suspension, or termination of the eligibility of a HEAL school.

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible school that violates or fails to comply with any provision of title VII, part C,

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section requirement	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
60.33(h)	65	29,000 (borrowers)	1 min.	483 hrs.
60.43(b)	10	1	3 hrs.	30 hrs.
60.60(b)	90	1	3 hrs.	270 hrs.
Total Burden Hours				783 hrs.

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 42 CFR Part 60

Educational study programs, Health professions, Loan programs—education, Loan programs—health, Medical and dental schools, Reporting requirements, Student aid.

Accordingly, the Department of Health and Human Services proposes to amend 42 CFR part 60 as follows:

Dated: August 7, 1990.

James O. Mason,

Assistant Secretary for Health.

Approved: May 10, 1990.

Louis W. Sullivan,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.108, Health Education Assistance Loan Program)

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for 42 CFR part 60 is revised to read as follows:

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739 of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 562, 99 Stat. 529–532, 102 Stat. 3122–3125 (42 U.S.C. 294–294l).

2. Section 60.33, in subpart D, is amended by redesignating introductory paragraph (c), (c)(1), and (c)(2) as (c)(1) introductory text, (c)(1)(i), and (c)(1)(ii); and by adding new paragraphs (c)(2) and (h) to read as follows:

Subpart D—The Lender

§ 60.33 Making a HEAL loan.

* * * * *

(c) *Lender determination of the borrower's creditworthiness.*

* * * * *

(2) In determining an applicant's eligibility for a HEAL loan, a lender must compare the applicant's anticipated indebtedness from all sources at the anticipated time of repayment with the applicant's expected income (based on, for example, average starting incomes for graduates in the course of study for which the applicant is requesting the HEAL loan) and may deny or reduce the amount of the HEAL loan if the lender determines that the expected income would be insufficient to allow the applicant to make the payments required by the anticipated level of indebtedness.

* * * * *

(h) The lender must report a borrower's HEAL indebtedness to one or more credit bureaus within 30 days of the date the loan is made.

3. Section 60.43 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and adding a new paragraph (b) to read as follows:

§ 60.43 Limitation, suspension, or termination of the eligibility of a HEAL lender or holder.

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible lender or holder that violates or fails to comply with any provision of title VII, part C, subpart I of the Act as amended (42 U.S.C. 294–294l), these regulations, or agreements with the Secretary concerning the HEAL program. Prior to terminating a lender or holder's participation in the program, the Secretary will provide the entity an opportunity for a hearing in accordance with the procedures under paragraph (b) of this section.

(b) The Secretary will provide any lender or holder subject to termination with a written notice specifying his or her intention to terminate the lender or holder's participation in the program and stating that the entity may request, within 30 days of the receipt of this notice, a formal hearing. If the entity requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if;

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The lender or holder does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the lender or holder setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the lender or holder will be terminated from participation in the program. An entity will be permitted to reapply for participation in the program when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

* * * * *

4. A new § 60.44 is added to subpart D to read as follows:

§ 60.44 Performance standard for lenders.

(a) Beginning with its FY 1989 default rate, and for each fiscal year default rate thereafter, except as provided in paragraph (c) of this section, a lender must have a lender default rate (as calculated under paragraph (b) of this section) of not more than 5 percent to be eligible to continue making HEAL loans. A lender that meets the standard shall be in active status for making loans.

(b) The lender default rate shall be the ratio (stated as a percentage) that "applicable defaults" bears to the "fiscal year base." For this purpose, applicable defaults means the original principal amount of loans originated by the lender that enter repayment in a given fiscal year, and for which a default claim is filed with the Department and approved for payment by the end of the second succeeding fiscal year. "Fiscal year base" means the original principal amount of loans originated by the lender that entered repayment in that fiscal year. The lender default rate for a fiscal year shall be calculated 2 years after the end of the base fiscal year.

(c) A lender that fails to comply with the requirements of paragraph (a) of this section shall be placed on probation for originating loans for 1 year, effective January 1 of the fiscal year in which the calculation of the lender default rate is made. During probation, the lender may continue to make loans to any eligible applicant. At the end of probation, a lender that has met the lender default standard for the most recently calculated fiscal year shall be placed in active status for making loans; a lender with a lender default rate exceeding the standard shall have its authority to make loans terminated. Prior to termination, a lender will be provided an opportunity for a hearing in accordance with § 60.43. During termination, a lender is not authorized to make any new HEAL loans, but may make disbursements to cover the remaining amounts of loans already approved. A lender for which the authority to make loans has been terminated is eligible to return to active status if its achieves a fiscal year lender default rate of 5 percent or less for any subsequent fiscal year.

5. A new § 60.45 is added to subpart D to read as follows:

§ 60.45 Performance standard for holders of HEAL loans.

(a) Beginning with its FY 1989 default rate, and for each fiscal year default rate thereafter, except as provided in paragraph (c) of this section, a holder must have a holder default rate (as calculated under paragraph (b) of this section) of not more than 5 percent to be eligible to continue purchasing HEAL loans. For purposes of calculating a holder default rate, a holder is defined as an entity other than the originator of the HEAL loan. A holder that meets the standard shall be in active status for purchasing loans.

(b) The holder default rate shall be the ratio (stated as a percentage) that "applicable defaults" bears to the "fiscal year base." For this purpose, *applicable defaults* means the original principal amount of loans entering repayment in a given fiscal year that were held by the holder at the time of default, and for which a default claim is filed with the Department and approved for payment by the end of the second fiscal year following the fiscal year during which repayment began. *Fiscal year base* means the original principal amount of all loans entering repayment in that fiscal year that were held by the holder at the end of that fiscal year, plus the applicable defaults." The holder default rate for a fiscal year shall be calculated 2 years after the end of the fiscal year.

(c) A holder that fails to comply with the requirements of paragraph (a) of this section shall be placed on probation for purchasing loans for 1 year, effective January 1 of the fiscal year in which the calculation of the default rate is made. During probation, the holder may continue to purchase loans. At the end of probation, a holder that has met the holder default standard for the most recently calculated fiscal year shall be placed in active status for purchasing HEAL loans; a holder with a holder default rate exceeding the standard shall have its authority to purchase loans from lenders or other holders terminated. Prior to termination, a holder will be provided an opportunity for a hearing in accordance with § 60.43. During termination, a holder is not authorized to purchase any HEAL loans. A holder for which the authority to purchase loans has been terminated is eligible to return to active status for purchasing loans when it achieves a fiscal year holder default rate of 5 percent or less for any subsequent fiscal year.

6. Section 60.51, in subpart E, is amended by revising paragraph (e) to read as follows:

Subpart E—The School

§ 60.51 The student loan application.

* * * * *

(e) State that it has no reason to believe that the borrower may not be willing or able to repay the HEAL loan. In determining an applicant's eligibility for a HEAL loan, a school must compare the applicant's anticipated indebtedness from all sources at the anticipated time of repayment with the applicant's expected income (based on, for example, average starting incomes for graduates in the course of study for which the applicant is requesting the HEAL loan) and may deny or reduce the amount of the HEAL loan if the school determines that the expected income would be insufficient to allow the applicant to make the payments required by the anticipated level of indebtedness;

* * * * *

7. Section 60.60 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising paragraph (a); and by adding a new paragraph (b) to read as follows:

§ 60.60 Limitation, suspension, or termination of the eligibility of a HEAL school.

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible school that violates or fails to comply with any provision of title VII, part C, subpart I of the Act as amended (42 U.S.C. 294–294l), these regulations, or agreements with the Secretary concerning the HEAL program. Prior to terminating a school's participation in the program, the Secretary will provide the school an opportunity for a hearing in accordance with the procedures under paragraph (b) of this section.

(b) The Secretary will provide any school subject to termination with a written notice specifying his or her intention to termination the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program. A school will be permitted to reapply for participation in the program when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

* * * * *

8. Section 60.61 is amended by adding a new paragraph (d) to read as follows:

§ 60.61 Responsibilities of a HEAL school.

* * * * *

(d) A school must withhold services, including, but not limited to, academic transcripts, financial aid transcripts, and alumni services, from a defaulted borrower except in instances where the borrower has filed for bankruptcy.

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9. A new § 60.62 is added to subpart E to read as follows:

§ 60.62 Performance standard for schools.

(a) Beginning with its FY 1989 default rate, and for each fiscal year thereafter, except as provided in paragraphs (c) and (d) of this section, a school must have a default rate (as calculated under paragraph (b) of this section) of not more than 5 percent or meet required reductions to be eligible to continue participating in the HEAL program. A school that meets the standard or the reductions required under paragraph (c) of this section shall be in active status.

(b) The school default rate shall be the ratio (stated as a percentage) that applicable defaults bears to the fiscal year base. For this purpose, applicable defaults means the original principal amount of loans made to the school's borrowers that enter repayment in a given fiscal year, and for which a default claim is filed with the Department and approved for payment by the end of the second succeeding fiscal year. Fiscal year base means the original principal amount of all loans made to the school's borrowers that entered repayment in that fiscal year. The school default rate for a fiscal year shall be calculated 2 years after the end of the fiscal year.

(c) Prior to the measurement of its FY 1992 default rate, if a school has a default rate for any year greater than 5 percent, it will be required, by the end of the following fiscal year, to achieve the 5 percent standard or meet reductions as follows:

(1) If the school is in the 10 percent (adjusted upward to the next higher whole number) of schools in its health profession with the highest default rates, it will be required to reduce its rate by 50 percent from the prior year's rate until it reaches the 5 percent or less standard. *Provided,* that no school covered by this paragraph shall be required to reduce its rate in any fiscal year to a level below the maximum rate permitted for any school covered by paragraph (c)(2) of this section for such year.

(2) If a school is not in the 10 percent (adjusted upward to the next higher whole number) of schools in its health profession with the highest default rates, it must reduce its default rate by 25 percent from the prior year's rate until it reaches the 5 percent or less standard.

(3) Effective with the measurement of its FY 1992 default rate, each school must achieve a default rate of 5 percent or less to be eligible to continue participating in the HEAL program.

(d) A school that fails to comply with the requirements of paragraph (a) or paragraph (c) of this section shall be placed in probation for 1 year, effective January 1 of the fiscal year in which the calculation of the school default rate is made. During probation, the school may continue to approve loans to any eligible applicant. At the end of probation, a school that has met the 5 percent default standard or the required reduction for the most recently calculated fiscal year shall be placed in active status; a school with a default rate exceeding the standard or not meeting the required reduction shall be placed in suspension effective January 1 of the fiscal year in which the calculation of the default rate is made, and must comply with the requirements of paragraph (e) of this section.

(e) During a period of suspension resulting from failure to comply with the school default standard or the required reduction, a school may approve loans for its previous HEAL borrowers only. At the end of 1 year of suspension, a school that has met the school default standard or required reduction for the most recently calculated fiscal year shall be placed in active status; a school with a default rate exceeding the standard may remain in suspension for up to 4 years, or as long as it has previous HEAL borrowers still enrolled, whichever is shorter. A school with a default rate that continues to exceed the standard shall be terminated at the end of 4 years in suspension, or when its previous HEAL borrowers have completed their educational program, whichever is sooner. Prior to termination, a school will be provided an opportunity for a hearing in accordance with § 60.60.

(f) A school terminated for failure to comply with the school default standard may not approve HEAL loans for any of its students. A school for which authority to approve loans has been terminated is eligible to return to active status when it achieves a fiscal year school default rate of 5 percent or less for 2 consecutive fiscal years.

[FR Doc. 90-23056 Filed 9-28-90; 8:45 am]
BILLING CODE 4160-15-M

federal register

Monday
October 1, 1990

Part VII

Department of Education

Office of the Secretary

34 CFR Part 668

Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Part 668

RIN 1840-AB39

Student Assistance General Provisions

regulations implement requirements that are common to the participation of postsecondary institutions in the title IV, HEA programs. The title IV, HEA programs include the Pell Grant, Stafford Loan (formerly Guaranteed Student Loan (GSL)), PLUS, Supplemental Loans for Students (SLS),

occupation, is eligible to receive. However, the application of this formula does not prevent an institution from using its own credit hour measurements of that program for its own purposes.

Background on Clock Hour to Credit Hour Conversions

the program were measured in clock hours, needy full-time students in this program would have received a full Pell Grant of $2,200 and Stafford Loan of $2,625 in 1988-89. However, the institution had previously converted to credit hours and represented the dental assistant program as 48 semester credit

Institutions Affected by These Proposed Regulations

These proposed regulations will apply to undergraduate vocational training programs at all institutions which offer programs in semester, trimester, or quarter hours, including those institutions currently considered by the

recalculation becomes a program of less than six months (16 semester or trimester hours or 24 quarter hours) but more than 8 semester or trimester hours of 12 quarter hours. The program loses its eligibility for the Pell Grant, campus-based, SSIG, and Byrd Scholarship programs. The program remains eligible to participate in the Guaranteed Student Loan

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DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Part 668

RIN 1840-AB39

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend subpart A of the Student Assistance General Provisions regulations to eliminate a serious abuse of the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). The Secretary is proposing to add provisions to subpart A of the Student Assistance General Provisions regulations that establish a regulatory formula for the calculation of semester, trimester, or quarter hours in undergraduate vocational training programs offered in semester, trimester, or quarter hours that prepare students for gainful employment in a recognized occupation. This regulatory formula will govern the determination of whether the educational program qualifies as an eligible program under § 668.8, and the amount of title IV, HEA program assistance that a student who is enrolled in that eligible program may receive. These proposed regulations apply only to calculations made for title IV, HEA program purposes. They are not intended to and do not interfere with the supervision or control over the curriculum, program of instruction or administration of an educational institution.

DATES: Comments must be received on or before October 31, 1990.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Carney M. McCullough, Chief, Pell Grant Policy Section, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW. (Regional Office Building 3, room 4318), Washington, DC 20202-5346.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Andrade, Program Specialist, Pell Grant Policy Section, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW. (Regional Office Building 3, room 4318), Washington, DC 20202-5346. Telephone (202) 708-7888.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that are common to the participation of postsecondary institutions in the title IV, HEA programs. The title IV, HEA programs include the Pell Grant, Stafford Loan (formerly Guaranteed Student Loan (GSL)), PLUS, Supplemental Loans for Students (SLS), Consolidation Loan, State Student Incentive Grant (SSIG), Income Contingent Loan (ICL), Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. The last three programs are known collectively as the "campus-based programs."

Description of Proposed Changes

The Secretary is proposing to amend § 668.8 by adding a new paragraph (c). Under this new paragraph, an institution that offers an undergraduate vocational training program in semester, trimester, or quarter hours as described in § 668.8(a)(2) (iii), (iv), or (v) must use a regulatory formula to determine the number of semester, trimester, or quarter hours in that program for the purpose of determining whether the program meets one of the qualifications of an eligible program under § 668.8. This regulatory formula establishes the number of semester, trimester, or quarter hours on the basis of the number of clock hours of instruction provided in that program.

The Secretary is basing this regulatory formula upon the definition of the term "academic year" that has been in use under the title IV, HEA programs for almost 20 years. Under this long-standing, commonly-accepted definition, which is in § 668.2, the Secretary has defined an academic year as at least 24 semester or trimester hours, 36 quarter hours, or 900 clock hours of instruction. Applying this definition to the comparability between credit hours and clock hours, the latter term being defined in § 668.2, the proposed formula provides that a semester or trimester hour must provide at least 37.5 clock hours of instruction (900 clock hours divided by 24 semester or trimester hours), while a quarter hour must provide at least 25 clock hours of instruction (900 clock hours divided by 36 quarter hours).

In addition, the Secretary is proposing to add a new section, § 668.9. In this new section the Secretary proposes that an institution must use the formula contained in § 668.8(c) to calculate the amount of title IV, HEA program assistance that a student, who is enrolled in an undergraduate vocational program offered in semester, trimester, or quarter hours that prepares students for gainful employment in a recognized occupation, is eligible to receive. However, the application of this formula does not prevent an institution from using its own credit hour measurements of that program for its own purposes.

Background on Clock Hour to Credit Hour Conversions

For many years, the Secretary has been concerned that many institutions that offered undergraduate vocational training programs in clock hours have purported to increase the quantity of education they offered in those programs simply by converting those clock hour programs to credit hour programs. In addition, other institutions have also measured their undergraduate vocational programs in credit hours, seemingly without regard to the number of clock hours in those programs.

As a result, undergraduate vocational training programs that were not, or could not have been, of sufficient educational quantity to qualify for certain title IV, HEA programs when measured in clock hours, qualified for those title IV, HEA programs when measured in credit hours. In other instances, institutions began awarding Title IV, HEA assistance as though the quantity of education in their programs had doubled or tripled, even though the actual quantity of education provided had not increased at all. This abuse has been documented over the last several years, more recently in the ED Office of Inspector General audits, and has two major consequences.

An example of the first consequence of this abuse occurred at a trade school which offered a 10-week casino dealer program consisting of 309 clock hours of instruction. A 309 clock-hour vocational program is not an eligible program for the Pell Grant and campus-based programs because the HEA requires such an eligible program to be at least a six month program (*i.e.*, at least 600 clock hours, 16 semester or trimester credit hours, or 24 quarter credit hours). The school converted that program into a program of 27.7 quarter credit hours. Therefore, solely by virtue of the conversion technique, this institution's 309 clock-hour program is now considered to be a six month training program eligible for the Pell Grant Program and the campus-based programs.

An example of the second consequence of this abuse, that was uncovered by the Office of the Inspector General, occurred in the following manner. An institution that was audited offered a 900 clock-hour dental assistant program that the institution considered to be a program of one academic year. If the program were measured in clock hours, needy full-time students in this program would have received a full Pell Grant of $2,300 and Stafford Loan of $2,625 in 1988-89. However, the institution had previously converted to credit hours and represented the dental assistant program as 48 semester credit hours, equivalent to two academic years. Thus, the program appeared to have doubled in quantity of educational instruction without any increase in the amount of instruction offered in the program. As a result, in 1988-89 and 1989-90, students qualified for two full Pell Grants and two maximum Stafford Loans or $4,925 more than if the program were measured in clock hours.

An additional consequence of this abuse is that these institutions have increased their tuition and fee charges for these programs even though no additional services were provided, because students could obtain greater amounts of title IV, HEA program assistance.

The Secretary is proposing these regulations only after attempting over the past decade to curb this abuse by relying on institutional self-regulation, accrediting agencies standards and reviews of accredited institutions, and existing State law. However, those attempts met with only limited success.

Limited Scope of the Proposed Regulations

In proposing these regulations, the Secretary recognizes that there may be a legitimate need to convert clock hours into credit hours. This need is especially important when a student, for example, transfers from a clock-hour program at a trade school into a credit hour program at a community college using quarter hours. The Secretary recognizes that the acceptance of transfer credit is solely within the purview of the new institution accepting the student. These proposed regulations do nothing to interfere with these important relationships, nor do they obstruct a student's ability to transfer between institutions that measure academic progress in clock hours and those that measure academic progress in credit hours. The Secretary's objective in proposing these regulations is simply to ensure institutions cannot, for purposes of the title IV, HEA programs, purport to increase the quantity of education of their educational programs without increasing the amount of educational instruction offered to their students in those programs.

Institutions Affected by These Proposed Regulations

These proposed regulations will apply to undergraduate vocational training programs at all institutions which offer programs in semester, trimester, or quarter hours, including those institutions currently considered by the Secretary to be eligible institutions. These proposed regulations will also apply to those programs currently considered by the Secretary to be eligible programs that are offered in credit hours. Moreover, these regulations will apply to institutions using credit hours with or without academic terms.

Under the provisions of § 668.8(c), an institution offering an undergraduate vocational training program described in § 668.8(a)(2) (iii), (iv), or (v) in credit hours must calculate the number of clock hours of instruction provided in that program using the definition of clock hour set forth in § 668.2. Next, the institution must divide that number of clock hours by 37.5 to determine the number of semester or trimester hours, or by 25 to determine the number of quarter hours in that program. Under § 668.9, an institution must use the number of credit hours calculated under § 668.8(c) when determining a student's enrollment status, cost of attendance, and amounts of assistance, under the title IV, HEA programs.

Impact of These Proposed Regulations on an Eligible Program

The recalculation of credit hours required by these sections may turn a currently eligible program into an ineligible program, may appear to reduce the quantity of education provided in an eligible program, and may consequently affect the amount of Title IV, HEA program assistance students enrolled in that program may receive. For example, if the recalculated number of semester hours in an educational program is less than 16, the educational program would not be considered by the Secretary to be a six-month training program under the definition in § 668.2 or as an eligible program under § 668.8(a)(2)(iv). Thus, the recalculation would result in a loss of eligibility for the educational program for the Pell Grant and campus-based programs, and students enrolled in that program will no longer be eligible for assistance under the Pell Grant and campus-based programs. The Secretary views that the most likely changes of program eligibility will include the following:

A one-year program (at least 24 semester or trimester hours or 36 quarter hours) after recalculation becomes a program of less than six months (16 semester or trimester hours or 24 quarter hours) but more than 8 semester or trimester hours of 12 quarter hours. The program loses its eligibility for the Pell Grant, campus-based, SSIG, and Byrd Scholarship programs. The program remains eligible to participate in the Guaranteed Student Loan programs.

A six-month program after recalculation becomes a program of less than 8 semester or trimester hours or 12 quarter hours. The program loses its eligibility for all Title IV, HEA programs.

Proposed Effective Date For These Regulations

Subject to public comment, the Secretary anticipates that these proposed regulations, as amended in the final regulations, will become effective beginning with the 1991-92 award year and for periods of enrollment beginning on or after July 1, 1991 for the Guaranteed Student Loan Programs. However, for purposes of the Pell Grant Program, if a student is enrolled in a credit hour program that has a payment period that falls within the 1990-91 and 1991-92 award years, and the institution considers that payment period to be part of the 1990-91 award year, the institution is not required to recalculate for that payment period. The Secretary has made this determination to ensure that, for Pell Grant Program purposes, students who are enrolled in educational programs affected by these provisions during the payment period when these regulations become effective will not be adversely affected during that payment period.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a serious economic impact on a substantial number of small entities. The small entities affected by these proposed regulations are small institutions of postsecondary education. Since some of these small institutions that will be affected by these regulations have received a "windfall profit" by participating in the types of abuse that these proposed regulations will prevent, some institutions will be denied that "windfall profit" and thus be affected economically.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that any accrediting agency or State agency or specific objections commenters have with these proposed regulations.

2. In § 668.8, paragraph (c) is added, to read as follows:

§ 668.8 Eligible program.

* * * * *

(c) For the purposes of determining whether an undergraduate educational

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Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays. To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

The Secretary requests comments on whether institutions should use the formula proposed in § 668.8(c) for other Title IV, HEA program purposes, such as whether students qualify for deferments under the Guaranteed Student Loan and Perkins Loan programs.

Additionally, the Secretary is interested in receiving comments from institutions on specific problems that institutions anticipate they may have in implementing the proposed regulations, or specific objections commenters have with these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; Supplemental Loans for Students Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.226; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069; Robert C. Byrd Honors Scholarship Program, 84.185)

Dated: July 19, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. In § 668.8, paragraph (c) is added, to read as follows:

§ 668.8 Eligible program.

* * * * *

(c) For the purposes of determining whether an undergraduate educational program satisfies the requirements contained in paragraphs (a)(2) (iii), (iv), or (v) of this section in credit hours, and the number of credit hours in that educational program—

(1) A semester hour must include at least 37.5 clock hours of instruction;

(2) A trimester hour must include at least 37.5 clock hours of instruction; and

(3) A quarter hour must include at least 25 clock hours of instruction.

(Authority: 20 U.S.C. 1082, 1085, 1088, 1091, 1141)

3. Section 668.9 is added to subpart A, to read as follows:

§ 668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating awards.

In determining the amount of Title IV, HEA program assistance that a student enrolled or accepted for enrollment in an undergraduate educational program described in § 668.8(a)(2) (iii), (iv), or (v) is eligible to receive, the institution shall apply the formula contained in § 668.8(c) to determine the number of semester, trimester, or quarter hours in that program, if the institution measures academic progress in that program in semester, trimester, or quarter hours.

(Authority: 20 U.S.C. 1082, 1085, 1088, 1091, 1141)

[FR Doc. 90-23208 Filed 9-28-90; 8:45 am]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

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CFR ISSUANCES 1990
January—July 1990 Editions and Projected October, 1990 Editions

This list sets out the CFR issuances for the January—July 1990 editions and projects the publication plans for the October, 1990 quarter. A projected schedule that will include the January, 1991 quarter will appear in the first Federal Register issue of January.

For pricing information on available 1989—1990 volumes

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20 Parts:
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400–499
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21 Parts:
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500–599
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800–1299
1300–End

22 Parts:
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23

24 Parts:
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1700–End

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1990
January—July 1990 Editions and Projected October, 1990 Editions

This list sets out the CFR issuances for the January—July 1990 editions and projects the publication plans for the October, 1990 quarter. A projected schedule that will include the January, 1991 quarter will appear in the first Federal Register issue of January.

For pricing information on available 1989—1990 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1—16—January 1
Titles 17—27—April 1
Titles 28—41—July 1
Titles 42—50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1990 editions:

Title	
CFR Index	1–199
	200–End
1–2	
	10 Parts:
3 (Compilation)	0–50
	51–199
4	200–399 (Cover only)
	400–499
5 Parts:	500–End
1–699	
700–1199	11
1200–End	
	12 Parts:
6 [Reserved]	1–199
	200–219
7 Parts:	220–299
0–26	300–499
27–45	500–599
46–51	600–End
52	
53–209	13
210–299	
300–399	14 Parts:
400–699	1–59
700–899	60–139
900–999	140–199
1000–1059	200–1199
1060–1119	1200–End
1120–1199	
1200–1499	15 Parts:
1500–1899	0–299
1900–1939	300–799
1940–1949	800–End
1950–1999	
2000–End	16 Parts:
	0–149
8	150–999
	1000–End
9 Parts:	

Titles revised as of April 1, 1990:

Title	
17 Parts:	23
1–199	
200–239	24 Parts:
240–End	0–199
	200–499
18 Parts:	500–699
1–149	700–1699
150–279	1700–End
280–399	
400–End	25
19 Parts:	26 Parts:
1–199	1 (§§ 1.0-1–1.60)
200–End	1 (§§ 1.61–1.169)
	1 (§§ 1.170–1.300)
20 Parts:	1 (§§ 1.301–1.400)
1–399	1 (§§ 1.401–1.500)
400–499	1 (§§ 1.501–1.640)
500–End	1 (§§ 1.641–1.850)
	1 (§§ 1.851–1.907)
21 Parts:	1 (§§ 1.908–1.1000)
1–99	1 (§§ 1.1001–1.1400)
100–169	1 (§ 1.1401–End)
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200–299	30–39
300–499	40–49
500–599	50–299
600–799	300–499
800–1299	500–599
1300–End	600–End
22 Parts:	27 Parts:
1–299	1–199
300–End	200–End

Titles revised as of July 1, 1990:

Title	
28	400–End
29 Parts:	35
0–99	
100–499	36 Parts:
500–899	1–199*
900–1899	200–End*
1900–1910 (§§ 1901.1000–1910.441)	37*
1910 (§§ 1910.1000–End)	
1911–1925 (Cover only)	38 Parts:
1926	0–17*
1927–End	18–End*
30 Parts:	39*
0–199	
200–699	40 Parts:
700–End	1–51*
	52*
31 Parts:	53–60*
0–199	61–80*
200–End	81–85
	86–99*
32 Parts:	100–149
1–189	150–189*
190–399	190–259*
400–629*	260–299*
630–699	300–399
700–799	400–424 (Cover only)
800–End	425–699 (Cover only)
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125–199*	41 Parts:
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	90–139		1200–End
44	140–155	48 Chapters:	
	156–165	1 (Parts 1–51)	50 Parts:
		1 (Parts 52–99)	1–199
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		2 (Parts 252–299)	
		3–6	
		7–14	
		15–End	

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1990

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day

A new table will be published in the first issue of each month.

Projected October 1, 1990 editions:

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166–199		Chs. 7–14	
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500–End			
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40–69		178–199	
70–79		200–399	
80–End		400–999	
		1000–1199	
48 Parts:		1200–End	
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TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1990

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October 2	October 17	November 1	November 16	December 3	December 31
October 3	October 18	November 2	November 19	December 3	January 2
October 4	October 19	November 5	November 19	December 3	January 2
October 5	October 22	November 5	November 19	December 4	January 3
October 9	October 24	November 8	November 23	December 10	January 7
October 10	October 25	November 9	November 26	December 10	January 8
October 11	October 26	November 13	November 26	December 10	January 9
October 12	October 29	November 13	November 26	December 11	January 10
October 15	October 30	November 14	November 29	December 14	January 14
October 16	October 31	November 15	November 30	December 17	January 14
October 17	November 1	November 16	December 3	December 17	January 15
October 18	November 2	November 19	December 3	December 17	January 16
October 19	November 5	November 19	December 3	December 18	January 17
October 22	November 6	November 21	December 6	December 21	January 21
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October 24	November 8	November 23	December 10	December 24	January 22
October 25	November 9	November 26	December 10	December 24	January 23
October 26	November 13	November 26	December 10	December 26	January 24
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October 30	November 14	November 29	December 14	December 31	January 28
October 31	November 15	November 30	December 17	December 31	January 29

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Rules and Regulations

Federal Register
Vol. 55, No. 191
Tuesday, October 2, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in

period on July 2, 1990. Accordingly, the regulation is being amended as proposed.

Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more. SBA

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Rules and Regulations

Federal Register
Vol. 55, No. 191
Tuesday, October 2, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loans, Alter Ego

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This final rule amends the alter ego regulation relevant to the SBA business loan program to correspond with the alter ego rules applicable to its development company program. Under the final rule, an alter ego holding company is eligible for financial assistance under the business loan program if the required lease between it and the operating concern, used as collateral for the loan, includes options exercisable exclusively by the operating concern and the balance of the alter ego regulation's requirements are met. The effect of this final regulation is to relieve affected borrowers from paying expensive recordation fees which might apply to long term leases without options.

EFFECTIVE DATES: October 2, 1990.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6574.

SUPPLEMENTARY INFORMATION: On May 3, 1990, SBA published a notice of proposed rulemaking in the **Federal Register** (55 FR 18614) in which it proposed to allow the alter ego real estate holding company to be eligible for financial assistance if the required lease between it and the operating concern, used as collateral for the loan, includes options exercisable exclusively by the operating concern. No comments were received by the end of the comment period on July 2, 1990. Accordingly, the regulation is being amended as proposed.

In order to be eligible to receive financial assistance under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), a real estate holding company or alter ego must, among other things, pledge as collateral the lease of the property between it and the operating concern, and such lease must have a remaining term at least equal to the term of the loan. This requirement may be found at § 120.101-2(e)(6) of SBA regulations (13 CFR 120.10-2(e)(6)). A similar requirement is contained in the regulations affecting loans by development companies (see 13 CFR 108.8(d)(5)).

In several states a lease in excess of 5 years must be recorded, and the recordation fee can be expensive. On March 12, 1990, SBA amended the above regulation affecting development companies (55 FR 9110) so that the lease may include options exercisable solely by the operating small business concern so long as the lease and the options together do not exceed the term of the loan. The amendment of the development company regulation permitted the lease to be divided into shorter option periods which will not require recordation.

Since there is no reason for the rules on alter ego loans in the development company area to be different from the rules affecting business loans, the SBA is amending the regulation on business loans to bring it in conformity with the development company regulation. Thus, in a 7(a) business loan to an alter ego real estate holding company the lease between the alter ego and the operating small business concern could include options exercisable exclusively by such small business concern. All other provisions of the alter ego regulations would remain unchanged. This final regulation would relieve affected borrowers from paying expensive recordation fees which might apply to long term leases without options.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this rule will not have a significant impact on a substantial number of small entities. SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more. SBA estimates that no more than $10 million of alter ego business loans would be made where the lease term plus options equal the term of the loan. The rule does not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This final rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 120

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634 (b)(6)), SBA amends part 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.101-2(e)(6) is revised to read as follows:

§ 120.101-2 Type of business.

* * * * *

(e) *Lending or Investment, "Alter Ego".*

* * * * *

(6) It must pledge the lease (including options exercisable exclusively by such operating company) between it and the operating company having a remaining term at least equal to the term of the loan and a lien on the property itself as collateral for the loan.

* * * * *

(Catalogue of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Dated: July 23, 1990.

Susan Engeleiter,
Administrator.

[FR Doc. 90-23204 Filed 10-1-90; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-68-AD; Amdt. 39-6757]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

consideration has been given to the single comment received.

The commenter supported the rule, but recommended that the compliance time for installation of the new brake and modification of the brake control system be reduced from the proposed 180 days to 90 days. The FAA does not concur with the commenter's recommendation. The FAA has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

dated December 18, 1986, replace the pushbutton switch with a two-position mechanical switch, in accordance with this service bulletin.

D. Within 180 days after the effective date of this AD, install a new brake control unit in accordance with Aerospatiale Service Bulletin ATR42-01-0005, Revision 2, dated January 2, 1990; Revision 3, dated March 15, 1990; or Revision 4, dated June 18, 1990;

14 CFR Part 39

[Docket No. 90-NM-49-AD; Amdt. 39-6758]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

accommodate the required inspection and proof pressure test during a "D" check (at next D-check visit, not to exceed December 31, 2000). The FAA does not concur. The proposed time was calculated as 1,860 flight cycles for the initial inspection, plus 3,000 additional flight cycles for the stress relieving procedure. This totals a compliance time

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-68-AD; Amdt. 39-6757]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 series airplanes, which currently requires the addition of a relay to the propeller brake control unit to maintain the electrical power supply, and replacement of the push button switch with a two-position mechanical switch. This amendment requires the installation of a new brake and modification of the propeller brake control system. Additionally, this amendment revises the applicability to specify that the Model ATR42-300 and ATR42-320 series airplanes are the models affected. This amendment is prompted by reports of electrical problems causing the brake to engage prior to command. This condition, if not corrected, could lead to overheating of the propeller brake and damage to the engine.

EFFECTIVE DATE: November 9, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88-14-06 R1, Amendment 39-6202 (54 FR 18274, April 28, 1989), applicable to all Aerospatiale ATR42-300 and ATR42-320 series airplanes, to require the installation of a new brake and modification of the propeller brake control system, was published in the Federal Register on May 8, 1990 (55 FR 19083).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule, but recommended that the compliance time for installation of the new brake and modification of the brake control system be reduced from the proposed 180 days to 90 days. The FAA does not concur with the commenter's recommendation. The FAA has determined that the proposed compliance time of 180 days is appropriate in consideration of the safety aspects addressed, the average utilization rate of the affected operators, the practical aspects of an orderly modification of the fleet during regular maintenance periods, and the availability of required modification parts. The affected operators always have the option to accomplish the required modifications at an earlier date.

Since the issuance of the Notice, Aerospatiale has issued: Revision 3 to Service Bulletin ATR42-61-0005, dated March 15, 1990, and Revision 4, dated June 19, 1990; Revision 2 to Service Bulletin ATR42-61-0022, dated June 15, 1990; and Revision 2 to Service Bulletin ATR42-61-0023, dated March 15, 1990. These revisions clarify the procedures for installing the new brake and modification of the propeller brake control system. The final rule has been revised to include the latest revision to these service bulletins as appropriate sources of service information.

Paragraph H. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. The FAA has determined that these changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 56 airplanes of U.S. registry will be affected by this AD, that it will take approximately 238 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required modification kits will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $533,120.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6202 (54 FR 18274; April 28, 1989), AD 88-14-06 R1, with the following new airworthiness directive:

Aerospatiale: Applies to all Model ATR42-300 and ATR42-320 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the propeller brake from overheating and causing damage to the engine, accomplish the following:

A. Within 100 hours time-in-service after May 29, 1989 (the effective date of AD 88-14-06 R1) for airplanes listed in Aerospatiale Service Bulletin ATR42-61-0013, Revision 1, dated December 8, 1987, modify the propeller brake electronic control wiring, in accordance with this service bulletin.

B. Within 100 hours time-in-service after May 29, 1989 (the effective date of AD 88-14-06 R1), for the airplanes listed in Aerospatiale Service Bulletin ATR42-61-0014, Revision 2, dated November 15, 1988, modify the propeller brake control unit, in accordance with this service bulletin.

C. Within 100 hours time-in-service after May 29, 1989 (the effective date of AD 88-14-06 R1), for the airplanes listed in Aerospatiale Service Bulletin ATR42-61-0010, Revision 3, dated December 19, 1988, replace the pushbutton switch with a two-position mechanical switch, in accordance with this service bulletin.

D. Within 180 days after the effective date of this AD, install a new brake control unit in accordance with Aerospatiale Service Bulletin ATR42-61-0005, Revision 2, dated January 2, 1990; Revision 3, dated March 15, 1990; or Revision 4, dated June 19, 1990.

E. Within 180 days after the effective date of this AD, install a modified propeller brake in accordance with Aerospatiale Service Bulletin ATR42-61-0022, Revision 1, dated September 25, 1989, or Revision 2, dated March 15, 1990.

F. Within 180 days after the effective date of this AD, modify the propeller brake indicating logic, in accordance with Aerospatiale Service Bulletin ATR42-61-0023, Revision 1, dated December 1, 1989; or Revision 2, dated March 15, 1990.

G. As an alternative to paragraphs A through F. of this AD, operators may remove the propeller brake from the airplane in accordance with Aerospatiale Service Bulletin ATR42-61-0016, Revision 1, dated September 1, 1988.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note.—The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manger, Standardization Branch, ANM-113.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6202, AD 88-14-06 R1.

This amendment becomes effective November 9, 1990.

Issued in Renton, Washington, on September 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

FR Doc. 90-23214 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-46-AD; Amdt. 39-6758]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires penetrant inspection and proof pressure testing of the engine bleed air crossover ducts, and repair or replacement, as necessary; and a one-time stress relieving of the duct welds. This amendment is prompted by reports of cracked or ruptured ducts which have resulted in damaged aircraft components, air turnbacks, and other significant interruptions to scheduled service. This condition, if not corrected, could lead to failure of the crossover manifold ducting which, in turn, could result in damage to the air conditioning packs, wing fairing panels, and/or electrical wiring.

EFFECTIVE DATE: November 9, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mahinder K. Wahi, Systems and Equipment Branch, Seattle Aircraft Certification Office, ANM-130S; telephone (206) 227-2673. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires inspection, testing, and repair or replacement, as necessary, and stress relieving of the engine bleed air crossover ducts, was published in the Federal Register on May 9, 1990 (55 FR 19271).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, commenting on behalf of its members, requested that the proposed compliance period be changed to accommodate the required inspection and proof pressure test during a "D" check (at next D-check visit, not to exceed December 31, 2000). The FAA does not concur. The proposed time was calculated as 1,850 flight cycles for the initial inspection, plus 3,000 additional flight cycles for the stress relieving procedure. This totals a compliance time of 5,850 flight cycles or approximately 5-½ years based on average air carrier aircraft utilization data. This is adequate even for "D" check scheduling.

One commenter, a foreign operator, requested that the rule be revised to require that inspection and stress relieving be conducted only at ducts A1 and A16 (locations). Inspection should be optional for other ducts, since only A1 and A16 are located near wire bundles of adjacent systems. The FAA does not concur. Since issuance of the Notice, two more incidents of crossover duct failures have occurred involving duct locations A10, A13, A14, and A15, causing extensive damage to adjacent ducts, support structure, air conditioning wiring, center wing panel, air conditioning access door, and the fiberglass panel between the air conditioning compartment and the wheel well.

This commenter also requested that the economic impact analysis be revised to include the cost of extra shipsets to be purchased, the shop cost, the scrap cost, the heat treatment cost, and the extra downtime due to revised compliance time. The FAA does not concur. The economic analysis is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, i.e., "replacement, if necessary," since those actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

This commenter also suggested that a leak check every 3,000 hours and a visual check every 1,500 hours should be adequate in lieu of stress relieving, as these checks have revealed cracks and allowed detection of premature duct rupture. The FAA does not concur. While inspection may have worked for the commenter, stress relieving has been found to be much more effective. The commenter may apply for approval of its method as an alternate means of compliance to its airworthiness authorities.

The airframe manufacturer proposes the following changes:

1. Delete reference to "wing leading edge panels," since damage resulting from duct rupture in the crossover would be to the underwing fairing panels instead. The FAA concurs and the AD has been revised accordingly.

2. Revise the phrase, "conduct a penetrant inspection and proof pressure test" to "conduct a penetrant inspection, proof pressure test, and penetrant

Issued in Renton, Washington, on September 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23213 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-67-AD; Amdt. 39-6759]

Airworthiness Directives; Boeing Model 767-300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767-300ER series airplanes, which requires a one-time inspection to verify that an improved structural modification (ISM) has been accomplished on the fuselage skin panels at body station 1016, and repair, if necessary. This amendment is prompted by reports of cracks in the fuselage skin panels at body station 1016. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: November 9, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mahinder K. Wahi, Systems and Equipment Branch, Seattle Aircraft Certification Office, ANM-130S; telephone (206) 227-2673. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 767-300ER series airplanes, which requires a one-time inspection to verify that an improved structural modification (ISM) has been accomplished on the fuselage skin panels at body station 1016, and repair, if necessary, was published in the Federal Register on May 31, 1990 (55 FR 21971).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-27A0099, dated May 31, 1990, which describes procedures for inspecting the FSPM; Boeing Service Bulletin 767-27-0097, dated April 12, 1990, which provides instructions to modify the Model 767-300ER to ensure that an FSPM not intended for that model will

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal

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1. Delete reference to "wing leading edge panels," since damage resulting from duct rupture in the crossover would be to the underwing fairing panels instead. The FAA concurs and the AD has been revised accordingly.

2. Revise the phrase, "conduct a penetrant inspection and proof pressure test" to "conduct a penetrant inspection, proof pressure test, and penetrant inspection again," to clarify the procedures specified in the referenced Boeing Service Bulletin 747–36–2078. The FAA concurs and the final rule has been revised to clarify this point.

3. Allow credit for inspection and testing already conducted in accordance with Service Bulletin 747–36–2078, Revision 1, dated June 15, 1989, prior to the effective date of this AD. The FAA concurs and has allowed 4,000 cycles since last inspection.

4. Conduct the repair or replacement of ducts in accordance with Service Bulletin 747–36–2078, Revision 2, dated August 16, 1990, since Revision 1, dated June 15, 1989, contained some incorrect duct part numbers for certain airplanes; the inspection, proof pressure test, and the stress relieving procedures are not affected by Revision 2. The FAA concurs and the final rule has been revised accordingly. The FAA has reviewed and approved Boeing Service Bulletin 747–36–2078, Revision 2, dated August 16, 1990, which merely corrects certain duct part numbers.

5. Approve as teminating action the replacement of all duct assemblies in accordance with Service Bulletin 747–36–2078, Revision 2, dated August 16, 1990. The FAA concurs and a new paragraph C. has been added which specifies such terminating action.

Paragraph D of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 640 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 172 airplanes of U.S. registry will be affected by this AD, that it will take approximately 236 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators for the initial required action is estimated to be $1,623,680, and a similar amount for the terminating action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, except Model 747–400, line position 002 through 707, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent damage to air conditioning packs, wing fairing panels, and/or electrical wiring as a result of failure of crossover pneumatic ducts, accomplish the following:

A. Prior to the accumulation of 5,850 flight cycles, or within 4,000 flight cycles since last inspection and testing in accordance with Boeing Service Bulletin 747–36–2078, Revision 1, dated June 15, 1989, or within the next 1,850 flight cycles after the effective date of this AD, whichever occurs later, conduct a penetrant inspection, proof pressure test, and penetrant inspection again to detect cracks or ruptures of the crossover ducts, in accordance with the Accomplishment Instructions, Items A. through F., J., and K. of Boeing Service Bulletin 747–36–2078, Revision 2, dated August 16, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with the service bulletin. The stress relieving procedure specified in Items G., H., and I. of the service bulletin may be accomplished in conjunction with the penetrant inspection and proof pressure testing required by this paragraph, and constitutes terminating action for the requirements of paragraph B. of this AD, for all crossover pneumatic ducts.

B. Prior to the accumulation of 3,000 flight cycles after accomplishment of the initial inspection required by paragraph A. of this AD, accomplish the following actions concurrently:

1. Conduct a penetrant inspection, proof pressure test, and penetrant inspection again to detect cracks or ruptures of the crossover ducts, in accordance with Items A. through F., J., and K. of the Accomplishment Instructions of Boeing Service Bulletin 747–36–2078, Revision 2, dated August 16, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with the service bulletin.

2. Conduct stress relieving of the crossover ducts in accordance with Items G., H., and I. of the Accomplishment Instructions of Boeing Service Bulletin 747–36–2078, Revision 2, dated August 16, 1990.

C. Replacement of all ducts in accordance with Boeing Service Bulletin 747–36–2078, Revision 2, dated August 16, 1990, constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Inspector (PI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

This amendment becomes effective November 9, 1990.

Issued in Renton, Washington, on September 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23213 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-183-AD; Amdt. 39-6759]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires a one-time inspection to locate discrepant flap/stabilizer position modules (FSPM), and modification, if necessary. This amendment is prompted by a report that it is possible to intermix certain FSPM on certain Model 767 series airplanes. An inappropriate intermix can result in the reduction of performance of the protection systems during takeoff and landing.

EFFECTIVE DATE: October 16, 1990.

ADDRESSES: The applicable service information may be obtained from The Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Aerospace Engineer, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM–130S; telephone (206) 227–2671. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: It has been reported that the installation of a non-Model 767–300ER flap/stabilizer position module (FSPM) on a Model 767–300ER will result in a reduced altitude ground proximity warning system (GPWS) warning, and that the installation of a Model 767–300ER FSPM on other Model 767's will result in a takeoff configuration warning not being generated at flaps 25 (during takeoff). Thus, an inappropriate intermix of the FSPM could result in the reduction of the performance of the protection systems during takeoff and landing.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–27A0099, dated May 31, 1990, which describes procedures for inspecting the FSPM; Boeing Service Bulletin 767–27–0097, dated April 12, 1990, which provides instructions to modify the Model 767–300ER to ensure that an FSPM not intended for that model will not function; and Component Service Bulletin 285T0099–27–03, dated April 12, 1990, which provides instructions for modifying and renumbering the FSPM.

Since this condition is likely to exist on other airplanes of the same type design, this AD requires a one-time check of the FSPM to determine if the proper part has been installed, and a corresponding modification, if necessary, of P/N 285T0099–15 FSPM for the Model 767–300ER; and modification of the Model 767–300ER so that only the proper FSPM will function. These procedures are to be accomplished in accordance with the service bulletins previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line number 001 through 280, certificated in any category. Compliance required within the next 30 days after the effective date of this AD, unless previously accomplished.

To ensure that only the correct flaps/stabilizer position module (FSPM) will function in the airplane, accomplish the following:

A. Perform a one-time inspection to determine that the three FSPM's located in the P50 card file are the correct part number, in accordance with Boeing Alert Service Bulletin 767–27A0099, dated May 31, 1990.

B. For Model 767–300ER series airplanes: Modify the FSPM connector keying in accordance with Boeing Service Bulletin 767–27–0097, dated April 12, 1990.

C. Install FSPM P/N 285T0099–17 in accordance with Boeing Service Bulletin 767–27–0097, dated April 12, 1990.

Note.—FSPM P/N 285T0099–15 may be reworked and renumbered in accordance with Boeing Component Service Bulletin 285T0099–27–03, dated April 12, 1990.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note.—The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to The Boeing Commercial Airplane Group, P.O. Box 3707, Seattle,

Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective October 16, 1990.

Issued in Renton, Washington, on September 20, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23215 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-08-AD; Amdt. 39-6711]

Airworthiness Directives; Cessna Model 180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) that requires installation of an instrument panel placard until the fuel tank primary vent is relocated behind the left wing strut on certain Cessna Model 180 airplanes. The FAA has received reports of fuel loss induced by syphoning due to a blockage of the primary over the wing fuel vent tube. These actions will preclude loss of fuel out of the alternate fuel vent hole opening and subsequent loss of engine power.

EFFECTIVE DATE: November 13, 1990.

ADDRESSES: Cessna Service Kit SK180-6, applicable to this AD, may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-08-AD, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone (316) 946-4427.

Discussion

Reports have been received over the years of Cessna Model 180 airplanes being susceptible to fuel syphoning due to inadvertent and/or undetected ice blockage of the primary over the wing fuel vent tube. A high number of fuel loss incidents have been reported. Cessna manufactured 2,486 Model 180 Series airplanes from 1953 through 1955 with an over the wing fuel tank vent tube. These vents were subsequently determined to be susceptible to ice accretion. Inadvertent or undetected ice encounters may block the fuel vent tube inlet resulting in fuel being syphoned out the alternate vent hole on the aft side of the fuel vent tube. As a result, the fuel gauges may be erroneous as the bottom of the fuel bladder may be lifted toward the top of the wing due to negative tank internal pressure.

In the mid 1956 model year production, the Model 180 fuel tank vent tube was relocated under the wing behind the left wing lift strut. This vent location was used through the most recent production of the light single engine series airplanes.

In 1963, the Cessna Model 180 series incorporated a second vent tube located behind the right wing lift strut. These dual primary fuel vents were utilized on all Cessna Model 180 series airplanes manufactured from 1963 through the most recent production.

The FAA has determined that there is a valid need to provide all remaining early Cessna Model 180 airplanes (approximately 1,000) with under the wing fuel tank vents. Some of the Cessna Model 180 airplanes manufactured with the single over the wing fuel vent were later equipped with Cessna service kits to relocate the vent behind the left wing strut. During 1956, Cessna offered Service Kit SK-180-6, which consisted of an exchange program to provide fuel tanks with nipples capable of accommodating the under the wing vent for the early Model 180 airplanes.

Subsequently in 1959, Cessna offered Service Kit SK 180-17A, which provided instructions and hardware to relocate the over the wing fuel vent tube-equipped airplanes to the under the wing vent location. The Cessna vent relocation kits were discontinued several years ago. Cessna has advised the FAA it is not practical to make the Cessna vent relocation kits available again. However, Cessna will provide the instructions to equip their Model 180 airplanes with an under the wing fuel vent. The detail parts can then be ordered and produced individually rather than as a boxed kit. The fuel bladder would have to be obtained from a source other than Cessna since Cessna is no longer able to procure it.

An Advanced Notice of Proposed Rulemaking (ANPRM) to amend part 39 of the Federal Aviation Regulations was published in the Federal Register on April 21, 1989 (54 FR 16127). This ANPRM included an AD requiring modification of the early Cessna Model 180 fuel vent system to prevent syphoning and undetected fuel loss. The ANPRM resulted from a review of accident and incident files and malfunction and defect reporting system records on these airplanes.

Interested parties were afforded an opportunity to comment on the ANPRM. Several questions about modifications to the airplane fuel vent system and operating procedures were asked. One commenter concurred with the proposal to require modification to the airplane fuel tank (bladder) vents. Several of the commenters stated they believed that the alternate vent hole in the fuel caps, which was required by AD 79-10-14R1, Amendment 39-5901 (53 FR 14784; April 26, 1988), should be sufficient if the alternate vent hole in the over the wing fuel vent tube became plugged. The FAA has determined that it is undesirable to rely totally on the vented fuel caps if the primary vent is so susceptible to an icing encounter. Recent accidents involving airplanes so equipped show that the negative pressure aft of the over the wing vent tube will syphon fuel and negate the benefits of the vented fuel cap.

Two of the commenters stated that they were in favor of using placards or Airplane Flight Manual Supplements to caution pilots on the susceptibility of the over the wing alternate fuel vent to syphon, which may be induced by ice obstruction of the forward facing primary opening in the over the wing fuel vent tube. The FAA concurred with these comments and believed that answering these questions about modifications to the airplane fuel vent system and operating procedures would better determine the need to improve the level of safety on the over the wing tube of these airplanes.

Subsequently, a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on February 28, 1990 (55 FR 6999). The NPRM proposed that a placard and primary fuel vent relocation be accomplished. Interested parties were once again given the opportunity to comment, and seven comments were received. Five commenters were opposed to the proposed modification due to the time in service they had experienced with their airplanes without any significant fuel syphoning. The FAA does not concur and believes these could be potential fuel syphoning problems with all affected airplanes.

One commenter objected to the "500 hour time frame" but recognized the "potential problem". Six commenters believed that the $200.00 cost figure was not realistic and that the bladders might be damaged if they were removed for the singular reason of complying with the AD. The FAA's intention was that 500 hours of operation on these "classic aircraft" would be enough time for the bladder to be replaced due to normal wear and that the $200.00 figure was intended to be the cost over and above the cost of normal bladder repair or replacement. However, the FAA has become aware, due to the comments received, that many of these 30 plus-year-old airplanes still have the original fuel bladders installed and they are considered airworthy. Therefore, in light of the comments received, the FAA has changed the final rule to agree with the comments proposing the use of the placard until the existing fuel bladders are replaced due to normal wear.

Also two comments referred to AD 83-13-01, Amendment 39-4672 (48 FR 29468; June 27, 1983), which requires a placard warning pilots of the possibility of fuel syphoning and bladder collapse due to leaking fuel caps on single under the wing primary fuel vent-configured Cessna 182 series airplanes. There have not been any reports of this problem on the existing Cessna Model 180 series airplanes equipped with the single under the wing vent. Therefore, at this time, the placard requirements of AD 83-13-01 are not considered applicable to single under the wing primary fuel vent-configured Cessna 180 airplanes.

Since the condition described is likely to exist or develop in other Cessna Model 180 airplanes of the same design, this AD requires installation of a caution placard on all Cessna Model 180 airplanes not equipped with an under the wing fuel vent and subsequent installation of an under the wing vent. The placard would caution the pilot about the possibility of fuel loss in the event of an inadvertent icing encounter. Regarding the fuel vent modification, Cessna advises that operators must obtain the Part Number (P/N) 0726000-13 fuel cell from a source other than Cessna since they are no longer able to procure bladder fuel tanks. Cessna also recommends that an operator may duplicate the Cessna Service Kits SK 180-6 by obtaining copies of the kit instructions from Cessna Customer Services. The detail parts can then be ordered and procured individually rather than as a boxed kit.

This would be true for those operators purchasing a new tank or desiring to convert their airplanes presently equipped with the P/N 0726000-13 fuel cell to the under the wing fuel vent configuration provided by SK 180-6. The FAA has determined that the overall majority of the affected airplanes are treated as "collectors items" and as such are not subject to repeated icing encounters. In addition, the nature of the fuel system modification is such that every consideration should be given to accomplishing the modification during other maintenance on the airplane. Therefore, the compliance time on the modification has been established when the left fuel tank is removed for any purpose.

The FAA has determined that there are approximately 1,000 airplanes affected by the adopted AD. The cost of inspecting, placarding, and later modifying the affected airplanes per the adopted AD is estimated to be $200.00 per airplane. The total cost is estimated to be $200,000. The cost of compliance with the adopted AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Cessna: Applies to Model 180 airplanes (Serial Numbers 30000 thru 32487) equipped with over the wing (cabin) primary fuel vents, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To preclude undetected fuel loss on airplanes equipped with an over the wing (above cabin top) fuel vent tube, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, fabricate and install the following placard on the instrument panel in full view of the pilot using letters at least ¼ in. high: "CAUTION, UNDETECTED FUEL LOSS AND ERRONEOUS FUEL GAUGING MAY OCCUR AFTER AN INADVERTENT ICING ENCOUNTER."

(b) When the left fuel bladder is removed for any purpose, modify or install a fuel tank (bladder) equivalent to Cessna Part Number 0726000-13 (fuel vent in the outboard end of the fuel tank container), and relocate the primary fuel vent opening to behind the left lift strut in accordance with Cessna Service Kit SK 180-6. (Under the wing primary fuel vents behind both the left and right wing lift struts are acceptable).

(c) The placard specified in paragraph (a) of this AD is not required if the airplane has been modified per the requirements of paragraph (b) of this AD.

Note 1.—Fuel tank bladders and modifications may be obtained from (but not limited to) the following sources:

1. Aero Tire and Tank, Inc., 11219 Shady Trail, Dallas, TX 75229.
2. Aviation Fuel Cells International, 5080 Shelby Drive, Memphis, TN 38115.
3. Floats and Fuel Cells, 4010 Pilot Drive, suite 3, Memphis, TN 38118.
4. Aviation Materials, 4300 Swinnea Road, Memphis, TN 38118.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) The placard installation required by this AD is preventative maintenance and may be performed by the holder of a pilot certificate issued under FAR part 61 subject to the limitations of FAR 43.3. The maintenance record entries required by FAR 43.9 and FAR 91.417 must be accomplished.

(f) An alternate means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, room 100, Wichita, Kansas 67209.

Note 2.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office. All persons affected by this directive may obtain copies of the documents referred to herein upon request to Cessna Aircraft Services, P.O. Box 1521, Wichita, Kansas 67201; or may examine these documents at

the FAA, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 13, 1990.

Issued in Kansas City, Missouri, on September 13, 1990.

Donald C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23216 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-124-AD; Amdt. 39-6712]

Airworthiness Directives; Dornier Model Do28D and Do28D-1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, which currently requires supplemental structural inspections, and repair or replacement

Dornier: Applies to Models Do28D and Do28D-1 (all serial numbers) airplanes, certificated in any category. Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent engine mount failure, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD

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the FAA, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 13, 1990.

Issued in Kansas City, Missouri, on September 13, 1990.

Donald C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23228 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-24-AD; Amdt 39-6785]

Airworthiness Directives; Dornier Luftfahrt GmbH, Models Do28D and Do28D-1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Dornier Luftfahrt GmbH, Models Do28D and Do28D-1 airplanes. This action requires inspection of riveted connections between the L-section and formed sheet on the left-hand and right-hand engine supports. the FAA has received reports of loose rivets due to engine mount vibration. The actions of this AD will preclude failure of the engine support and possible loss of the airplane.

EFFECTIVE DATE: November 13, 1990.

ADDRESSES: Dornier Service Bulletin (SB) No. 1131-1613, dated August 2, 1989, applicable to this AD, may be obtained from Dornier Luftfahrt GmbH, P.O. Box 3, D-8031 Wessling, Federal Republic of Germany (FRG). This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Aerospace Engineer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy; Telephone (322) 513.38.30, or Mr. Herman C. Belderok, Aerospace Engineer, FAA, Central Region, Aircraft Certification Service, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring initial and repetitive visual inspections of the riveted connections between the L-section and the formed sheet on the right-hand and left-hand engine supports on certain Dornier Model Do28D and Do28D-1 airplanes was published in the Federal Register on June 12, 1990 (55 FR 23749). The proposal resulted from Dornier Luftfahrt GmbH, the manufacturer, reporting that the riveted connections between the L-section and the formed sheet on the right-hand and the left-hand engine mounts can become loose due to engine vibration on Do28D Series airplanes. The movement between the parts will permit increased engine vibration, induced movement, and further degradation of the riveted connections. This loose condition, if not corrected, will result in a rupture of the engine support and possible loss of the airplane.

Consequently, Dornier issued SB No. 1131-1613, dated August 2, 1989, which requires initial and repetitive visual inspections of the riveted connections between the L-section and the formed sheet on the right-hand and left-hand engine supports on these airplanes. It also requires the removal and replacement of any damaged or loose rivets plus replacement of all universal and Huck blind rivets having a diameter of 3.2mm (.126 in) with steel blind rivets having a diameter of 4.0mm.

The German Civil Airworthiness Authority (LBA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the Federal Republic of Germany, classified this SB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under LBA registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design, certificated for operation in the United States.

The FAA examined the available information related to the issuance of Dornier SB No. 1131-1613, dated August 2, 1989, and the mandatory classification of this service bulletin by the LBA, and concluded that the condition addressed by Dornier SB No. 1131-1613, was an unsafe condition that may exist on other airplanes of this type, certificated for operation in the United States. Accordingly, the FAA proposed an amendment to part 39 of the Federal Aviation Regulations to include an AD on this subject.

Interested parties were afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Therefore, this AD is the same as proposed in the NPRM except for minor editorial revisions and clarifications.

The FAA has determined that this regulation involves three airplanes at an approximate per inspection cost of $80 for each airplane, for a total fleet cost of $240 for each inspection. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small business entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continued to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Dornier: Applies to Models Do28D and Do28D-1 (all serial numbers) airplanes, certificated in any category. Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent engine mount failure, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD visually inspect the riveted connections between the L-section and formed sheet of the right-hand and left-hand engine mounts.

(1) If no loose or damaged rivets are found, reinspect the connections at intervals of 100 hours TIS thereafter.

(2) If any loose or damaged rivets are found, prior to further flight remove and replace any damaged rivets, and replace all universal and Huck blind rivets having a diameter of 3.2mm (.126 in) with steel blind rivets having a diameter of 4.0mm in accordance with the instructions contained in Dornier Service Bulletin No. 1131-1613, dated August 2, 1989. Reinspect the connections at intervals of 100 hours TIS thereafter.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location were this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

Note.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Dornier Luftfahrt GmbH, P.O. Box D-8031 Wessling, Federal Republic of Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 13, 1990.

Issued in Kansas City, Missouri, on September 13, 1990.

Donald C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23222 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-127-AD; Amendment 39-6786]

Airworthiness Directives; Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, which currently requires supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness. This amendment will revise the inspection program to add or revise significant structural items to inspect for fatigue cracks. This amendment is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

EFFECTIVE DATE: November 9, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-06-09, Amendment 39-6570 (55 FR 13261, April 10, 1990), applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, to require a revision to the inspection program to add or revise significant structural items to inspect for fatigue cracks, and repair, if necessary, was published in the Federal Register on July 10, 1990 (55 FR 28222).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 343 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $427,960 the first year and annually thereafter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6570 (55 FR 13261, April 10, 1990), AD 90-06-09, with the following new airworthiness directive:

Fokker: Applies to Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, all serial numbers, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the structural integrity of these airplanes, accomplish the following:

A. Within six months after May 14, 1990 (the effective date of Amendment 39-6570, AD 90-06-09), incorporate into the FAA-approved maintenance inspection program the inspections, inspection intervals, repairs, or replacements defined in Fokker SIP Document No. 27438, Part I, including revisions up through August 15, 1988; and

Issued in Renton, Washington, on September 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23216 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

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extending from the 5-mile radius to 8.5 miles northeast of the airport.

Issued in Des Plaines, Illinois on September 19, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90-23217 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

certain appliance categories, including refrigerators, refrigerator-freezers, and freezers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all refrigerators, refrigerator-freezers and freezers presently manufactured. Certain point-of-sale promotional materials must

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

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To ensure the structural integrity of these airplanes, accomplish the following:

A. Within six months after May 14, 1990 (the effective date of Amendment 39-6570, AD 90-06-09), incorporate into the FAA-approved maintenance inspection program the inspections, inspection intervals, repairs, or replacements defined in Fokker SIP Document No. 27438, Part I, including revisions up through August 15, 1988; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document.

B. Within six months after the effective date of this amendment, incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker Structural Inspection Program (SIP) Document No. 27438, Part I, including revisions up through February 1, 1990; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document.

C. Cracked structure detected during the inspections required by paragraphs A., and B. of this AD, must be repaired or replaced, prior to further flight, in accordance with instructions in Document No. 27438, including revisions up through February 1, 1990.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note.—The request should be submitted directly to the Manager, Standardization Branch, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Washington.

This amendment supersedes Amendment 39-6570, AD 90-06-09.

This amendment becomes effective November 9, 1990.

Issued in Renton, Washington, on September 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23216 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AGL-8]

Alternation of Transition Area; Ludington, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Ludington, MI, transition area to accommodate a revised NDB Runway 25 Standard Instrument Approach Procedure (SIAP) to Mason County Airport, Ludington, MI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace.

EFFECTIVE DATES: 0901 u.t.c., December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 13, 1990, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter a transition area airspace near Ludington, MI (55 FR 23949).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the designated transition area airspace near Ludington, MI. The transition area is being modified to accommodate a revised NDB Runway 25 SIAP to Mason County Airport, Ludington, MI. The modification to the existing airspace will consist of a 3-mile width each side of the 067° bearing from the airport, extending from the 5-mile radius area to 8.5 miles northeast of the airport.

The revised procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ludington, MI [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Mason County Airport (lat. 43°57'50" N., long. 86°24'31" W.); and within 3 miles each side of the 067° bearing from the airport extending from the 5-mile radius to 8.5 miles northeast of the airport.

Issued in Des Plaines, Illinois on September 19, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90-23217 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances; Ranges of Comparability for Refrigerators, Refrigerator-Freezers, and Freezers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for refrigerators, refrigerator-freezers, and freezers.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. This notice publishes the new range figures, which, under §§ 305.10, 305.11 and 305.14 of the rule, must be used on labels on refrigerators, refrigerator-freezers, and freezers manufactured on and after December 31, 1990 and in advertising of refrigerators, refrigerator-freezers, and freezers in catalogs printed after December 31, 1990. Properly labeled refrigerators, refrigerator-freezers, and freezers manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR § 305.14 need not be revised.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to Section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including refrigerators, refrigerator-freezers, and freezers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all refrigerators, refrigerator-freezers and freezers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a refrigerator, refrigerator-freezer or freezer is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for refrigerators, refrigerator-freezers, and freezers, which were calculated using the 1990 representative average energy cost for electricity (7.88 cents per kilowatt-hour) published by DOE on March 12, 1990,[4] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends Appendices A-1, A-2 and B of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of refrigerators, refrigerator-freezers, and freezers beginning December 31, 1990.

[1] 44 FR 66466, 16 CFR part 305.

[2] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

[3] Reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[4] 55 FR 9384. The Commission published these figures on April 10, 1990, at 55 FR 13289.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988); 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In Appendices A1, A2 and B, Paragraph 1 of each and the introductory text in Paragraph 2 of each are revised to read as follows:

Appendices

* * * * *

Appendix A1 to Part 305—Refrigerators

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 2.5	$21	$29
2.5 to 4.4	25	34
4.5 to 6.4	22	49
6.5 to 8.4	(1)	(1)
8.5 to 10.4	35	39
10.5 to 12.4	39	53
12.5 to 14.4	39	44
14.5 to 16.4	55	56
16.5 and over	64	64

[1] No data submitted.

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 7.88¢ per kilowatt hour.

* * * * *

Appendix A2 to Part 305—Refrigerator-Freezers

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 10.5	$56	$57
10.5 to 12.4	57	75
12.5 to 14.4	65	68
14.5 to 16.4	57	69
16.5 to 18.4	69	99
18.5 to 20.4	69	116
20.5 to 22.4	77	114
22.5 to 24.4	82	125
24.5 to 28.4	82	139

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Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
26.5 to 29.4	98	133
29.5 and over	(1)	(1)

[1] No data submitted.

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 7.88¢ per kilowatt hour.

* * * * *

Appendix B to Part 305—Freezers

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 5.5	$23	$51
5.5 to 7.4	26	43
7.5 to 9.4	30	33
9.5 to 11.4	29	56
11.5 to 13.4	30	61
13.5 to 15.4	36	66
15.5 to 17.4	34	74
17.5 to 19.4	48	88
19.5 to 21.4	40	95
21.5 to 23.4	46	89
23.5 to 25.4	103	103
25.5 to 27.4	51	62
27.5 to 29.4	100	100
29.5 and over	127	212

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 7.88¢ per kilowatt hour.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-23288 Filed 10-1-90; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 239

[Release No. 33-6874; S7-23-88]

Amendment to Form 144

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; form revision.

SUMMARY: The Commission is today amending Form 144. The amendment will conform the text of the notice to the recently amended terms of rule 144 and remove a requirement to provide unnecessary information.

EFFECTIVE DATE: October 2, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Hyatte, Special Counsel, (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On April 19, 1990, the Commission adopted amendments to rule 144[1] under the Securities Act of 1933.[2] The amendments, which became effective with publication in the **Federal Register**,[3] included the rescission of former rule 144(d)(3) and the redesignation of the remaining subparagraphs of paragraph (d). Under the rescinded provision of the rule, the holding period on restricted securities was suspended during any period the holder of such securities held a short position, put or other option to sell on securities of the same class.

One consequence of the Commission's action was to render obsolete Instruction 2 to Table I on Form 144, the notice of proposed sales required by rule 144(h). Because the rescission of rule 144(d)(3) has made short sales, puts and other options sell irrelevant to the calculation of holding periods under the rule, the Commission is today publishing an amendment to Form 144 that deletes the instruction requiring the unnecessary disclosure.

List of Subjects in 17 CFR part 239

Securities, Reporting and recordkeeping requirements.

Text of Amendments

Title 17, chapter II, part 239 of the Code of Federal Regulations is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.* * * *

§ 239.144 [Amended]

2. Amending Form 144 (17 CFR 239.144) by removing instruction 2 to Table I and removing the designation "1." from the remaining instruction.

Note: Form 144 does not appear in the Code of Federal Regulations.

By the Commission.

Dated: September 24, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23269 Filed 10-1-90; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 230.144.

[2] 15 U.S.C. 77a *et seq.*

[3] Securities Act Release No. 6862, 55 FR 17933 (April 30, 1990).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR chapter I

[T.D. 90-79]

RIN 1515-AA61

Customs Regulations Amendments To Conform With the Harmonized System of Tariff Classification

AGENCY: U.S. Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On December 21, 1988, T.D. 89-1 was published in the **Federal Register** (53 FR 51244) to set forth interim amendments to the Customs Regulations conforming those regulations to the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS and the interim regulations went into effect on January 1, 1989. This document adopts those interim regulations as final rules, with some changes both in response to comments received during the public comments period and in order to correct errors in the published interim regulations.

EFFECTIVE DATES: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: John G. Black, Commercial Rulings Division (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1983, the International Convention on the Harmonized Commodity Description and Coding system was opened for signature. The Harmonized Commodity Description and Coding System (Harmonized System, or HS), set forth as an Annex to that Convention, is a multipurpose product nomenclature developed over a 10-year period under the auspices of the Customs Co-operation Council in Brussels, Belgium. It is intended to be used to describe and classify goods in international trade for customs (including tariff), trade statistics, and transport documentation purposes. The anticipated use of the HS on a worldwide basis was expected to increase uniformity and predictability of trade data and to promote standardization of trade and transport documentation. The U.S. and its major trading partners were directly and continually involved in the development of the HS. The Convention with its Annex was implemented for international use on January 1, 1988.

In anticipation of possible adoption of the HS by the U.S., the President in August 1981 requested that the U.S. International Trade Commission initiate an investigation for the purpose of preparing a conversion of the Tariff Schedules of the United States (TSUS), the then-existing reference source for determining the classification of imported merchandise, into the structure of the HS. The resulting conversion followed the HS texts but also provided product descriptions and numerical coding beyond the 6-digits of the international system in order to take into account U.S. tariff and statistical requirements. Thus, each tariff (duty rate) provision was coded in 8-digits and each statistical reporting number in 10-digits. This conversion, submitted to the president on June 30, 1983, was reviewed and revised by the Trade Policy Staff Committee, Office of the U.S. Trade representative, and was republished as TPSC 84-78 on September 30, 1984. A further, more comprehensive, revision published in October 1986 was the basis for GATT Ariticle XXVIII negotiations between the U.S. and its major trading partners looking toward U.S. adoption of the HS.

Following the conclusion of the GATT negotiations, a final conversion entitled the harmonized Tariff Schedule of the United States (HTSUS) was prepared and submitted to Congress with proposed legislation to approve U.S. accession to the HS Convention and to implement the HTSUS as the new U.S. tariff schedule. This purposed legislation was enacted as part of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, August 23, 1988. Section 1203 of the Act approved U.S. accession to the HS Convention, section 1204 enacted the HTSUS as a replacement for the TSUS, and section 1217(b) provided that section 1204 would take effect on January 1, 1989. On October 31, 1988, the U.S. deposited its instruments of accession to the HS Convention, thereby becoming a Contracting Party thereto.

On December 21, 1988, Customs published T.D. 89-1, 53 FR 51244, setting forth interim amendments to the Customs Regulations (19 CFR chapter I) to conform those regulations to the HS and in particular to reflect the structure, language, and numbering of the HS-based HTSUS; the amendments involved principally the replacement of TSUS numerical and organizational references with the new corresponding HTSUS references, the amendment of regulatory texts to reflect HTSUS terminology which differed from that of the TSUS, and, for purposes of style, the elimination of many footnotes. Although the interim amendments took effect on January 1, 1989, in order to coincide with the implementation of the HTSUS, the notice solicited public comments on those amendments and, after an extension of time published on March 7, 1989, 54 FR 9429, the public comment period closed on March 21, 1989. On February 15, 1989, Customs published T.D. 89-25, 54 FR 6661, to clarify and correct certain authority citations set forth in T.D. 89-1.

After the interim regulations went into effect, guidelines were drafted by the National Import Specialist Division of Customs to assist the trade and Customs field personnel in the uniform application of criteria for accurate and complete invoices for various specific HTSUS provisions, with particular reference to the requirements of 19 CFR 141.89(a) which was amended by T.D. 89-1. After reviewing the comments received in response to the interim regulations and the draft guidelines on invoice requirements, Customs determined that it would be beneficial to obtain further information from the importing community relating to the invoice requirements under 19 CFR 141.89(a) and the draft guidelines. Accordingly, on November 14, 1989, Customs published a notice at 54 FR 47348 which (1) announced a series of public meetings to be held in New York from November 27 to December 8, 1989, to discuss invoice requirements with the importing community and (2) reopened the comment period of the interim regulations solely regarding the invoice requirements, with comments to be submitted on or before February 7, 1990.

Discussion of Comments and Final Action

A total of fourteen comments were received from the public in response to T.D. 89-1, all but three of which concerned either invoice requirements or issues outside the scope of the interim regulations. In addition, in excess of sixty comments were subsequently received from the public either with reference to the draft guidelines on invoice requirements or in response to the November 14, 1989, notice which reopened the comment period for invoice requirement purposes.

In view of the large number of complex issues raised in the numerous comments received on invoice requirements, and in consideration of the significant impact which invoice requirements have on the trade community, Customs has determined that further study is necessary before those invoice issues can be properly resolved. At the same time, there are other issues raised in the public comments or disclosed during Customs internal review which clearly warrant changes to the interim regulatory texts or to other provisions in 19 CFR chapter I which were not reflected in T.D. 89-1 or T.D. 89-26. Accordingly, in order to not delay implementation of those other changes pending resolution of the invoice issues, Customs has determined that (1) the interim regulations should be adopted as a final rule which should also reflect technical or editorial changes to the interim texts and to other regulatory provisions based on the public comments and Customs internal review, and (2) all issues regarding invoice requirements should be dealt with as appropriate in a separate document at a later date. The public comments received on non-invoicing issues, and the final changes to the regulations based on those comments or on Customs own review, are discussed below.

Part 7

The authority citation for part 7 is being revised to reflect the proper HTSUS General Note cite which was not corrected in T.D. 89-26.

Part 10

The following changes are being made to part 10 to correct errors in T.D. 89-1 or, in one instance, to insert a T.D. 89-1 change which is not reflected in current 19 CFR chapter I:

Section 10.47 was amended by T.D. 89-1 by replacing the item 870.27, TSUS, reference with the words "subheading 4705.00.00, Harmonized Tariff Schedule of the United States"; this number should have been "9705.00.00" which is the HTSUS subheading that covers the goods of former item 870.27, TSUS. However, on further review Customs has determined that the entire section should be removed. It is noted in this regard that, although all of the products of TSUS item 870.27 were transferred to HTSUS subheading 9705.00.00, the HTSUS provision (1) covers other products in addition to those of TSUS item 870.27; (2) does not describe products "imported for" any specific uses as provided in TSUS item 870.27; and (3) does not contain the limiting language "and not for sale or other commercial use" used in TSUS item 870.27. Inasmuch as the regulatory requirement for the filing of a declaration regarding the intended uses of the imported merchandise was based on statutory standards which have been removed, the regulation no longer serves any purpose and thus should not be retained.

Section 10.53, which concerns antiques, was amended in several

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places by replacing TSUS items 708.20 and 708.25 with references to HTSUS subheadings 9705.00.60 and 9706.00.50. The references to subheadings 9705.00.60 are being deleted because that subheading covers neither antiques nor products for which age is a factor for classification purposes. In addition, the references to "Chapter 99" in paragraphs (f) and (g) of this section are being corrected to read "Chapter 97".

The references in sections 10.76(a) and (b) to HTSUS subheading "9817.70" are being corrected to read "9817.00.70".

The reference in section 18.58(a) to HTSUS subheading "9624.20" is being corrected to read "9624.90.20".

T.D. 89-1 amended § 10.121(a) by replacing the TSUS headnote reference at the end thereof with a reference to "U.S. Note 1, Subchapter XVII, Chapter 98, HTSUS". However, this change is not reflected in the current version of 19 CFR chapter I. This printing error is corrected in this document.

Part 19

T.D. 89-1 amended § 19.37(a) in part by replacing the reference to Schedule 6, Part 1 or 2, TSUS, with a reference to "Chapter 26, 71, 72, and 73" of the HTSUS. Two commenters stated that the amended section, which identifies those metal-bearing materials that may be smelted or refined in bonded warehouses, is improperly limited in scope because it does not cover metals other than iron or steel. These commenters argued that the HTSUS reference should be to "Chapters 26 and 71 through 83", and they pointed out in this regard that this would align the regulation with 19 U.S.C. 1312(f) which was amended to refer to these HTSUS Chapters by section 1214(h) of the Omnibus Trade and Competitiveness Act of 1988.

Customs agrees that the regulatory provision should be changed as suggested by these commenters so as to reflect the scope of the statutory provision which is the basis for, and is cited in, the regulation. Although the mention of Chapters 82 and 83 in the statute and regulation broadens the scope by including articles not previously covered by Schedule 6, parts 1 and 2, TSUS, the meaning of "metal-bearing materials" set forth in 19 U.S.C. 1312(f) remains the same. Thus, § 19.17 will continue to apply to metal-bearing ores and other metal-bearing materials, metal waste and scrap, unwrought metal, and metal compounds.

Part 24

T.D. 89-1 inadvertently failed to replace the TSUS references with appropriate HTSUS references in sections 24.23(b)(1)-(3); this document corrects these omissions. The document also inserts the proper HTSUS reference in section 24.23(b)(4). The amendments to sections 24.23(b) (1), (3) and (4) conform to amendments to 19 U.S.C. 58c(a)(9) effected by the Omnibus Trade and Competitiveness Act of 1988 and by the Customs and Trade Act of 1990.

Part 132

T.D. 89-1 amended section 132.6 by replacing the reference to TSUS General Headnote 3(e) (which should have been amended previously to read General Headnote "3(d)") with a reference to HTSUS "General Note 3(c)". The amended regulation, which has reference to products of Communist countries and areas, should have referred to HTSUS General Note "3(b)". This document corrects this error.

Part 134

T.D. 89-1 revised § 134.43(a) by deleting the list of TSUS item numbers and, in order to ensure the same scope, by inserting in the regulation the names of additional specific types of products covered by those TSUS numbers. However, "dental instruments" (covered by deleted TSUS item 708.25) and "scientific and laboratory instruments" (which were listed in the regulation before its revision) were inadvertently left out of the text appearing in T.D. 89-1. This document inserts those references.

Section 134.43(b) was amended by T.D. 89-1 by replacing the existing TSUS headnote references with a reference to "Chapter 91, Additional U.S. Note 4", but without referring to the "Harmonized Tariff Schedule of the United States". This incomplete citation is correct.

Part 141

T.D. 89-1 revised § 141.4(b) to cite specific HTSUS provisions covering vessels for which an entry must be filed. Inadvertently omitted from the revised text were references to HTSUS heading 8907 and subheadings 8905.90.10 and 8906.00.10. This document corrects this oversight. In addition, the reference to General Note "5" is being corrected to read "4" in § 141.4(a).

Part 142

T.D. 89-1 as published in the Federal Register (but not as published in the *Customs Bulletin*) omitted some lines, consisting of (1) the authority citation for part 142 and (2) an amendment to § 142.6(a)(4), the latter comprising a direct conversion to HTSUS terminology without any change in substance. This document sets forth those omitted lines.

Part 151

One commenter suggested a number of changes to the regulatory provisions concerning petroleum and petroleum products. With regard to §§ 151.13(a)(1) and 151.44(a), this commenter argued in favor of using metric tons and gallons, rather than barrels, as units of quantity, because many U.S. and foreign petroleum measurement operations are conducted on an English (gallon) or metric (metric ton) basis and thus use of the barrel standard would cause confusion and lead to inconsistencies. Moreover, this commenter stated that any use of a barrel standard should be based on clearly defined metric guidelines and conversion factors, pointing out that the definition of "barrel" in Additional U.S. Note 7 to chapter 27, HTSUS, should refer to "158.9873 liters" rather than "158.98 liters". With regard to the analysis methods and standards set forth in the tables under §§ 151.13(a)(2) and 151.14, the commenter proposed a number of changes involving both the inclusion of API (American Petroleum Institute) standards with the existing ASTM standards and the addition of some new standards and methods. Finally, this commenter argued in favor of use of a net quantity (defined to mean Net Standard Volume, *i.e.*, excluding sediment and water) for entry and reporting purposes, with the deletion of the reference to "gross quantity" in § 151.13(a)(1) (to be consistent with the "net quantity" reference in § 151.47) and with the deletion of the § 151.46 Customs Form 4315 allowance application procedure (to reduce the paperwork burden on Customs and importers).

Customs does not agree with the proposal to replace the barrel unit of quantity with metric tons or gallons. Barrels are specifically provided for in the Units of Quantity column opposite heading 2710 in the HTSUS, and Customs has no authority to apply a regulatory standard which conflicts with the statutory standard. Similarly, Customs has no authority to modify Additional U.S. Note 7 to chapter 27 to refer to "158.9873" liters. Questions regarding possible amendments to the provisions set forth in the HTSUS more properly fall under the jurisdiction of the U.S. International Trade Commission.

With regard to the proposal to amend the tables under §§ 151.13(a)(2) and 151.14 by including API testing standards with the ASTM standards and by adding new standards and methods, Customs does not believe that it is necessary or appropriate to take such action at the present time. No allegation has been made to the effect that the standards set forth in the regulations are incorrect or otherwise unsuitable, and Customs simply does not have the manpower resources that would be required to determine whether the API and other suggested standards and methods in fact correspond precisely to the existing ASTM standards contained in the regulations. Customs recognizes, however, that some API standards were developed jointly with the ASTM standards and thus may be equivalent. Accordingly, in order to not foreclose the use of alternate but fully equivalent testing standards and in order to avoid regulatory amendments whenever a specified ASTM standard is replaced by a new ASTM standard, the table under § 151.13(a)(2) is being amended in this document by adding the words "or other equivalent approved method", where appropriate, within the parentheses after the ASTM standard specified in the "Characteristic (analysis method)" column. It should be noted, however, that a laboratory which wishes to use a testing standard not specified in the regulation must obtain approval from Customs for use of that alternate standard in order to ensure that the results will be acceptable to Customs.

Finally, Customs does not agree with the proposals to provide in the regulations for the use of only net quantity and to do away with the Customs Form 4315 allowance application procedure. The present regulations adequately provide the option of using net quantity both for purposes of gauging reports (§ 151.13(a)(1)) and for entry purposes (§ 151.47). However, there may be circumstances where the importer may prefer to make entry based on the gross quantity, for example when the analytical laboratory report is not available for filing with the entry summary as required under § 151.47; in such a case the importer could later file the Customs Form 4315 so as to ensure that liquidation would be based on the net quantity. Customs sees no reason to deprive importers of this flexibility. In addition, retention of the Customs Form 4315 procedure is necessary because Customs often uses the form to verify the importer's claim against the gauger's or Customs laboratory test, and the determination of sediment and water by a Customs-accredited commercial laboratory, rather than simply accepting the net standard volume as determined by a party not under the control of Customs prior to arrival in the U.S., is a necessary control procedure.

Customs has also determined during its internal review of the interim regulations that other changes should be made to the regulations in part 151. These changes, and the reasons therefore, are as follows:

1. All references to the analysis of sugar (sucrose, raw sugar), molasses, and standard newsprint (HTSUS headings 1701, 1703, and 4801) have been removed from §§ 151.13(a)(2) and 151.14. The removal of sugar and molasses testing is due to the fact that, effective January 10, 1989, Customs laboratories assumed the responsibility for testing sugar and for reporting quantities for purposes of the sugar quota program; thus, it is no longer necessary for commercial laboratories to do the testing and therefore no such laboratories have been approved for such purposes (except in the case of molasses weight per gallon which uses a Fahrenheit standard and thus is no longer relevant under the HTSUS). The removal of the standard newsprint testing is necessitated by the fact that commercial laboratories are unwilling to perform this type of testing due to high testing costs, with the result that Customs has no basis for monitoring this type of testing. The resulting changes to the regulations involve: (1) Removal of "TAPPI, ICUMSA," from the text of § 151.13(a)(2); (2) removal of the references in question from the "HTSUS", "Product", and "Characteristic (analysis method)" columns in the table under § 151.13(a)(2); (3) removal of the words "the International Commission for Uniform Methods of Sugar Analysis (ICUMSA)," from § 151.13(g)(1); and (4) redrafting of § 151.14 by removing the table and setting forth the regulation in paragraph form to reflect the retention of only one category (sediment and water).

2. The spelling of "naptha" is being corrected to read "naphtha" in the two tables under § 151.13.

3. Section 151.46 is being revised to set forth a cross-reference to § 158.13, and the substance of § 151.46 is being transferred to § 158.13 as a separate subparagraph under paragraph (a). It is noted in this regard that T.D. 89-1 revised § 151.46 (to reflect the amendment to 19 U.S.C. 1507 effected by section 1902 of the Omnibus Trade and Competitiveness Act of 1988) to provide for an allowance for all detectable water and sediment in imported petroleum and petroleum products. However, the revision of § 151.46, by removing the cross-reference to § 158.13 and by including substantive procedural requirements (formerly covered exclusively by § 158.13) in revised § 151.46, has resulted in a contextual or organizational problem: § 151.46 no longer refers to any quantitative standards (which is the overall context of part 151) but rather refers to procedures for obtaining an allowance for duty purposes (which is the context of part 158), with the result that there may be difficulty in knowing where to find the allowance provisions relating to petroleum and petroleum products. The transfer of the substance of present § 151.46 to § 158.13, with modifications to the titles of both sections and other consequential changes to clarify that different standards apply to petroleum products than to other types of products, will obviate these problems.

Finally, the citation of authority for part 151 is being revised by deleting the authority citation for § 151.43, a section removed and reserved by T.D. 87-39, 52 FR 9784.

Part 159

T.D. 89-1 amended § 159.7(a)(1) by replacing the reference to TSUS Schedule 1, part 12, with a reference to HTSUS headings 2207 and 2208. However, products covered by the TSUS reference also fall under HTSUS headings 2203, 2204, 2205, and 2206. Accordingly, the regulation is amended by this document to include references to those additional headings.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in the final regulation in § 134.22(b), pertaining to country of origin marking on imported containers or holders, has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504 (h)) under control number 1515-0163. The estimated average burden associated with the collection of information in this final rule is 15 seconds per response and

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10 minutes on an annual basis per respondent. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR, Chapter I

Customs duties and inspection; Harmonized tariff schedule of the United States, Imports.

Amendments to the regulations

Accordingly, the interim rule amending 19 CFR chapter I which was published at 53 FR 51244–51271 on December 21, 1988, is adopted as a final rule with the following changes:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624.

§ 10.47 [Removed and Reserved]

2. Part 10 is amended by removing § 10.47 and by marking it "reserved".

§ 10.53 [Amended]

3. Section 10.53 is amended as follows:

(a) Paragraphs (a) and (c) are amended by removing the words "9705.00.00 or".

(b) Paragraphs (b), (d), and (f) are amended by removing the words "subheadings 9705.00.00 and" wherever they appear and by adding, in their place, the word "subheading".

(c) Paragraphs (f) and (g) are amended by removing the words "Chapter 98" and by adding, in their place, the words "Chapter 97".

§ 10.76 [Amended]

4. Section 10.76, paragraphs (a) and (b), are amended by removing the words "subheading 9817.70" and by adding, in their place, the words "subheading 9817.00.70".

§ 10.90 [Amended]

5. Section 10.90, paragraph (a), is amended by removing the words "subheading 8524.20" and by adding, in their place, the words "subheading 8524.90.20".

§ 10.121 [Amended]

6. Section 10.121, paragraph (a), is amended by removing the words "headnote 1, part 6, schedule 8, Tariff Schedules of the United States" and by adding, in their place, the words "U.S. Note 1, Subchapter XVII, chapter 98, HTSUS".

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

§ 19.17 [Amended]

2. Section 19.17, paragraph (a), is amended by removing the words "Chapter 26, 71, 72, and 73" and by adding, in their place, the words "Chapters 26 and 71 through 83".

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701; Pub. L. 99–662, unless otherwise noted.

§ 24.23 [Amended]

2. Section 24.23 is amended as follows:

(a) Paragraph (b)(1) is amended by removing the words "schedule 8, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202)" and by adding, in their place, "Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS; 19 U.S.C. 1202)".

(b) Paragraph (b)(2) is amended by removing the words "(General Headnote 3(a), TSUS)" and by adding, in their place, "(General Note 3(a)(iv), HTSUS.)".

(c) Paragraph (b)(3) is amended by removing the words "(General Headnote 3(e)(vii), TSUS.)" and by adding, in their place, "(General Note 3(c)(v), HTSUS.)".

(d) Paragraph (b)(4) is amended by removing the words "least developed developing countries. (General Headnote 3(e)(vi), TSUS.)" and by adding, in their place, "least-developed beneficiary developing countries. (General Note 3(c)(ii)(B), HTSUS.)".

PART 132—QUOTAS

1. The authority citation for part 132 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 132.6 [Amended]

2. Section 132.6 is amended by removing the words "General Note 3(c)" and by adding, in their place, the words "General Note 3(b)".

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1304, 1624.

§ 134.43 [Amended]

2. Section 134.43 is amended to read as follows:

(a) Paragraph (a) is amended by adding after "surgical instruments," the words "dental instruments, scientific and laboratory instruments,".

(b) Paragraph (b) is amended by adding after "Additional U.S. Note 4" the words ", Harmonized Tariff Schedule of the United States".

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 141.4 [Amended]

2. Section 141.4 is amended as follows:

(a) Paragraph (a) is amended by removing the words "General Note 5" and by adding in their place, the words "General Note 4".

(b) Paragraph (b) is revised to read as follows:

(b) Vessels (not including vessels classified in headings 8903 and 8907 and subheadings 8905.90.10 and 8906.00.10 or in Chapter 98, HTSUS, such as under subheadings 9804.00.35 or 9813.00.35). See also Chapter 89, Additional U.S. Note 1.

* * * * *

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 142.6 [Amended]

2. Section 142.6, paragraph (a)(4), is amended by removing the first two sentences and by adding, in their place, the following: "The appropriate eight-digit subheading from the Harmonized Tariff Schedule of the United States. If the importer is uncertain of the appropriate subheading number, Customs shall assist him at his request."

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 6 and 9, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Section 151.42 also issued under 19 U.S.C. 1460, 1594, 1602;

Section 151.46 also issued under 19 U.S.C. 1507;

* * * * *

§ 151.12 [Amended]

2. Section 151.12 is amended as follows:

(a) The table under paragraph (a)(1) is amended by removing from the Product column the word "naptha" and by adding, in its place, the word "naphtha".

(b) Paragraph (a)(2) is amended by removing the words "TAFFI, KUMBA," from the last sentence before the table.

(c) Paragraph (a)(2) is further amended by removing the table and by adding, in its place, the following table:

HTSUS	Product	Characteristic (analysis method)
2707.10 through 2707.30 and 2902.20 through 2902.44.	Benzene toluene and xylene	—Distillation characteristics (ASTM D 86). —Xylene isomer content (ASTM D 2306 or other equivalent approved method). —Percent composition by weight (ASTM D 2360, D 3797, D 5769, D 4492 or other equivalent approved methods).
2709	Crude petroleum	—Water by distillation (ASTM D 4006 or other equivalent approved method). —Sediment and water (ASTM D 96 or other equivalent approved method). —API gravity (ASTM D 287 or other equivalent approved method).
2710 (various subheadings)	Such as, fuel oil, motor fuel, Kerosene, naphtha, and lubricating oils.	—Sediment by extraction (ASTM D 473 or other equivalent approved method). —Distillation characteristics (ASTM D 86 or other equivalent approved method). —Water by distillation (ASTM D 95 or other equivalent approved method). —Sediment and water (ASTM D 96 or other equivalent approved method). —API gravity (ASTM D 287 or other equivalent approved method). —Reid vapor pressure (ASTM D 323 or other equivalent approved method). —Saybolt universal viscosity (ASTM D 445 and D 2161 or other equivalent approved methods). —Sediment by extraction (ASTM D 473 or other equivalent approved method). —Percent by weight sulfur (ASTM D 1266, ASTM D 2662, or ASTM D 2139, or other equivalent approved methods). —Percent by weight lead (ASTM D 2547, ASTM D 2599, or ASTM D 3341, or other equivalent approved methods). —Antiknock index (ASTM D 2699 (RON) and ASTM D 2700 (MON); see ASTM D 439).
Chapter 29 (various subheadings)	Organic compounds in bulk and in liquid form.	—Identify using HTSUS descriptions or common or IUPAC nomenclature. —Composition, giving percent by weight of each component. (Various methods published by ASTM, API, AOAC, USP, and similar organizations, may used for identity and composition, e.g., ASTM D 2593 for betadiene, D 2192 for aldehydes, ketones, and similar substances. Approved methods involving gas or liquid chromatography, infrared spectroscopy mass spectrometry, nuclear magnetic resonance spectrometry, and various "wet" chemical procedures and physical tests, e.g., refractive index, and melting point, may also be used.)

(d) Paragraph (g)(1) is amended by removing the words "the International Commission for Uniform Methods of Sugar Analysis (ICUMSA).".

3. Section 151.15 is revised to read as follows:

§ 151.14 Use of commercial laboratory tests in liquidation.

The "sediment and water" characteristic as set out in § 151.13(a)(2) and as determined by a Customs-accredited commercial laboratory shall be used for Customs purposes if the difference between the value found by the commercial laboratory and the value found by the Customs laboratory does not exceed 0.12 percent. If the difference exceeds this limit and the Customs-accredited commercial laboratory cannot establish that Customs is in error, then the Customs results shall be used.

4. Section 151.46 is revised to read as follows:

§ 151.46 Allowance for detectable moisture and impurities.

An allowance for all detectable moisture and impurities present in or upon imported petroleum or petroleum products shall be made in accordance with § 158.13 of this chapter.

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

1. The authority citation for part 158 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, unless otherwise noted. Subpart C also issued under 19 U.S.C. 1555.

2. Section 158.13 is revised to read as follows:

§ 158.13 Allowance for moisture and impurities.

(a) *Application by importer.* (1) *Petroleum and petroleum products.* An application for an allowance in duties under section 507, Tariff Act of 1930, as amended (19 U.S.C. 1507), for all detectable moisture and impurities present in or upon imported petroleum or petroleum products shall be made by the importer on Customs Form 4315. The application shall be filed with the district director within 10 days of the district director's receipt of the gauging report or within 10 days of Customs acceptance of the entry's invoice gauge.

(2) *Other products.* An application for an allowance in duties under 19 U.S.C. 1507 for products other than petroleum or petroleum products for excessive moisture or other impurities not usually found in or upon such or similar

merchandise shall be made by the importer or Customs Form 4315. The application shall be filed with the district director within 10 days after the report of weight or gauge has been received by the district director or within 10 days after the date upon which the entry or a related document was endorsed to show that invoice weight or

of announcing that, unless extended by Congress, the current maximum mortgage limits for high-cost areas will no longer be in effect after September 30, 1990, and will revert to the limits in effect before fiscal year 1990.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT:

continuing resolution is enacted, the authority to set limits in excess of 150% of the statutory limits will expire after September 30, 1990, except for mortgages insured under Title II of the NHA:

(1) Pursuant to a conditional commitment or master conditional

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 90–101]

Security Zone Regulations; Port of Los Angeles, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone around the Los Angeles Harbor Department's Cruise Ship Terminal at Berth 93 in the Port of Los Angeles. This security zone is necessary to protect the cruise ship terminal and the vessels moored there from sabotage or other subversive acts. Entry into this zone is prohibited unless authorized by the Captain of the Port, Los Angeles/Long Beach.

EFFECTIVE DATE: This regulation becomes effective on October 2, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Steve Sarb, Marine Safety Office, Los Angeles/Long Beach, (213) 519–6251.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as

"school year," and clarify that VA does not pay program participants a stipend following graduation.

EFFECTIVE DATE: The regulations are effective November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Charlotte Beason, Director, Health Professional Scholarship Program

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merchandise shall be made by the importer or Customs Form 4315. The application shall be filed with the district director within 10 days after the report of weight or gauge has been received by the district director or within 10 days after the date upon which the entry or a related document was endorsed to show that invoice weight or gauge has been accepted by the Customs inspector or other Customs officer.

(b) *Allowance by district director.* If the district director is satisfied after any necessary investigation that the merchandise contains moisture or impurities as described in paragraph (a) of this section, he shall make allowance for the amount thereof in the liquidation of the entry.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 31 U.S.C. 372. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 159.7 [Amended]

2. Section 159.7(a)(1) is amended by removing the words "headings 2207 and 2208" and by adding, in their place, the words "headings 2203 through 2208".

Carol Hallett,

Commissioner of Customs.

Approved: September 26, 1990.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 90-23246 Filed 10-1-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-90-3155; FR-2912-N-1]

FHA Single Family Maximum Mortgage Limits; Reduction of High Cost Ceilings

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of reduction of FHA single family maximum mortgage limits for high-cost areas.

SUMMARY: This Notice is for the purpose of announcing that, unless extended by Congress, the current maximum mortgage limits for high-cost areas will no longer be in effect after September 30, 1990, and will revert to the limits in effect before fiscal year 1990.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9272; telephone (202) 708-2700. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, Room 9160; telephone (202) 708-2880; 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. 1710-1749, authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

The Department published lists of high-cost areas on January 12, 1990 (55 FR 1312) and June 14, 1990 (55 FR 24075), listing all areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area.

Currently, the National Housing Act provides that HUD can grant mortgage insurance for a one-family dwelling in a high-cost area up to a maximum of $101,250 (150% of the medium one-family dwelling mortgage limit), with corresponding increases for two-, three-, and four-family dwellings. For fiscal year 1990, however, as a condition in the Departments of Veterans Affairs and Housing and Urban Development Appropriation Act (Pub. L. 101-144), HUD as authorized to insure high-cost area mortgages up to 185% of the base statutory mortgage insurance limits provided for in the NHA ($124,875 in the case of a one-family dwelling). If no continuing resolution is enacted, the authority to set limits in excess of 150% of the statutory limits will expire after September 30, 1990, except for mortgages insured under Title II of the NHA:

(1) Pursuant to a conditional commitment or master conditional commitment issued by HUD on or before September 30, 1990; or

(2) Pursuant to an appraisal report or master appraisal report signed by a Direct Endorsement underwriter on or before September 30, 1990; or

(3) Pursuant to a certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or before September 30, 1990.

Since the authority to increase limits was temporary, HUD did not amend its regulations to conform them to the 185% increase of the basic mortgage limit in high-cost areas for fiscal year 1990. The current regulations, which limit insurance coverage to 150% of the base amount in high-cost areas, have been waived in those areas where local cost data supported a limit in excess of 150%.

If a continuing resolution on appropriations for fiscal year 1991 becomes law, the 185% maximum might be extended in accordance with its terms.

This Document

Today's document is for the purpose of announcing that, unless pending legislation is enacted by the Congress to extend the authority to increase maximum mortgage limits in high-cost areas beyond September 30, 1990, any area whose current temporary high-cost limit exceeds 150% of the base statutory mortgage insurance limits will be limited to the maximum mortgage insurance limit in effect before fiscal year 1990 (*i.e.*, $101,250 for a one-family dwelling, $114,000 for a two-family dwelling, $138,000 for a three-family dwelling, and $160,500 for a four-family dwelling).

Increased limits in high-cost areas for Title I loans (combination manufactured home and lot loan and lot-only loans) will also revert to the limits in effect before fiscal year 1990.

Dated: September 26, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-23268 Filed 10-1-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 90-10]

Security Zone Regulations; Port Hueneme, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: Captain of the Port Los Angeles/Long Beach Regulation 90-08 established a security zone in Port Hueneme, California around any vessels moored at Port Hueneme wharfs 4 and 6. Due to changing operations the Coast Guard is establishing an additional security zone in Port Hueneme, California around any vessels moored at Port Hueneme wharfs 3 and 5 during the effective period of these regulations. The zone is needed to safeguard vessels involved in military equipment outloads at Port Hueneme wharfs 3, 4, 5, and 6 against destruction, loss, or injury from sabotage or other subversive acts, accidents, or causes of a similar nature. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATES: This regulation becomes effective at 12 noon, September 20, 1990. It terminates at 12 midnight, October 15, 1990.

FOR FURTHER INFORMATION CONTACT: LCDR R.M. Miles at (213) 499-5570.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss, or injury to vessels involved in military equipment outloads at Port Hueneme wharfs 3, 4, 5, and 6.

Drafting Information

The drafters of this regulation are LCDR J. Brusseau, project officer for the captain of the port, and LCDR J.J Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation will begin 12 noon on September 20, 1990. This security zone is necessary to ensure the security of vessels involved in military equipment outloads at Port Hueneme wharfs 3, 4, 5, and 6.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1111 is added to read as follows:

§ 165.T1111 Security Zone: Vessels Moored at Wharfs 3 and 5, Port Hueneme, California.

(a) *Location.* The following area is a security zone:

The waters of Port Hueneme within 100 yards of any vessels moored at Port Hueneme wharfs 3 and 5.

(b) *Effective Date:* This regulation becomes effective at 12 noon, September 20, 1990. It terminates at 12 midnight, October 15, 1990.

(c) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the captain of the port. Section 165.33 also contains other general requirements.

C.T. Desmond,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 90-23300 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AE27

Health Professional Scholarship Program—Associate Degree in Nursing

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations governing the Health Professional Scholarship Program to implement new statutory provisions, to clarify the law on the length of eligibility for a stipend, and to facilitate more cost-effective program administration. These amendments will change the "purpose statement" in the regulations, change the definitions of the terms "degree" and "school year," and clarify that VA does not pay program participants a stipend following graduation.

EFFECTIVE DATE: The regulations are effective November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Charlotte Beason, Director, Health Professional Scholarship Program (143B), Office of Academic Affairs, Veterans Health Services and Research Administration, Department of Veterans Affairs (202) 233-3568.

SUPPLEMENTARY INFORMATION: VA published proposed amendments to the regulations governing the Department's Health Professional Scholarship Program on pages 13554-13555 of the Federal Register dated April 11, 1990. Interested persons were given 30 days to submit comments, suggestions, or objections regarding the regulations. The Department received no comments and is now publishing the amendments, without change, as final regulations.

VA has determined that these proposed regulations are not major as defined by Executive Order 12291, Federal Regulation. They will not have an effect on the economy of $100 million and will not result in any major increases in costs or prices for anyone; nor will they have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The amended regulations affect only individuals who apply and are selected for VA Health Professional Scholarship Program awards. These regulations will, therefore, impose no regulatory burdens on small entities.

The Catalog of Federal Domestic Assistance Number for this program is: 64.023.

List of Subjects in 38 CFR Part 17

Health professions, scholarships and fellowships.

Approved: September 12, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 17—[AMENDED]

38 CFR Part 17, Medical, is amended as follows:

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1. Section 17.600 is revised to read as follows:

§ 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to set forth the requirements for the award of scholarships under the Department of Veterans Affairs Health Professional Scholarship Program to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for VA and for the Nation. Disciplines include nursing, physical therapy, occupational therapy, and other specified direct or indirect health-care disciplines if needed by VA.

2. In § 17.601 paragraphs (h) and (p) are revised to read as follows:

§ 17.601 Definitions.

* * * * *

(h) *Degree* means a course of study leading to a doctor of medicine, doctor of osteopathy, doctor of dentistry, doctor of optometry, doctor of podiatry, or an associate degree, baccalaureate degree, or master's degree in a nursing specialty needed by VA; or a baccalaureate or master's degree in another direct or indirect health-care service discipline needed by VA.

* * * * *

(p) *School year* means, for purposes of the stipend payment, all or part of the 12-month period from September 1 through August 31 during which a participant is enrolled in the school as a full-time student.

§ 17.606 [Amended]

3. In § 17.606, new paragraph (a)(7) is added to read as follows:

(a) * * *

(7) A participant's eligibility for a stipend ends at the close of the month in which degree requirements are met.

* * * * *

[FR Doc. 90-23293 Filed 10-1-90; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

RIN 2900-AD77

Disabling Effects of Chronic Alcoholism

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 provides that the disabling effects of chronic alcoholism shall not be considered to be the result of the veteran's willful misconduct for the purpose of extending a delimiting date under any education benefit or rehabilitation program administered by the Department of Veterans Affairs (VA). The intended effect of this final rule is to implement this provision of the statute with respect to the vocational rehabilitation program.

EFFECTIVE DATES: November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Triestman (202) 233-6496, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, 202-233-6496.

SUPPLEMENTARY INFORMATION: At pages 40688 and 40689 of the **Federal Register** of October 3, 1989, the Department of Veterans Affairs published proposed regulations which implemented section 109 of the Veterans Benefits and Programs Improvement Act of 1988 (Public Law 100-689). That section states that for the purposes of extending the eligibility period for training and rehabilitation services under any of the educational assistance or vocational rehabilitation programs administered by the Department of Veterans Affairs, the disabling effects of chronic alcoholism will not be considered to have been the result of willful misconduct.

Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed regulatory amendments. One letter was received.

The letter contained two objections to the proposed regulation and suggestions as to how these objections could be remedied. First, the letter writer objected to the regulation's exclusion of a general diagnosis of chronic alcoholism alone as constituting disabling effects of chronic alcoholism for which an extension of eligibility could be approved. It was suggested that extensions of eligibility be granted on the basis of any such medical diagnosis since this was seen as more consistent with VA's policy of broadly interpreting the law to grant every benefit that could be supported thereunder and of resolving reasonable doubt in the veteran's favor.

The law specifies that an extension of eligibility may only be granted if the veteran has been prevented from participating in a vocational rehabilitation program because of the disabling effects of chronic alcoholism. A diagnosis of alcoholism does not, in and of itself, satisfy the statutory requirement since the nature of alcoholism is such that it can exist and yet not manifest itself in effects which are shown to have prevented educational pursuit. The proposed regulation appropriately implements the law by providing that certain alcohol-induced physical or mental disorders, medically diagnosed as manifestations of chronic alcoholism, which are determined to have prevented the commencement or completion of a rehabilitation program will be considered "disabling effects of chronic alcoholism." The determination of the effect of such disorders on the veteran's ability to pursue a vocational rehabilitation program is made on the basis of an individual review of the evidence in each case. VA uses available medical information together with other evidentiary indications of occupational or educational impairment to reach a decision. If reasonable doubt exists, that doubt is resolved in the veteran's favor.

The writer's second objection to the proposed regulation concerns the requirement that there be a minimum period of 30 days of infeasibility for vocational rehabilitation before an adjustment of the basic 12-year period of eligibility may be granted. The writer states that this rule denies an extension to veterans who have been prevented from training because of chronic alcoholism since the average duration of alcohol treatment programs is 28 days. The objection appears to assume that the only period which will be considered in determining the duration of the extension is the period during which the veteran was in a treatment program. This assumption is not correct. In determining whether the conditions for an adjustment of the eligibility period are met, VA includes the 28-day or other period during which the veteran was in treatment and the period during which the veteran, as indicated above, is shown to have experienced occupational or educational impairment due to the disabling effects of chronic alcoholism. Further, we note that the existing 30-day minimum medical infeasibility for training requirement derives from administrative judgment that infeasibility for a lesser period would not be of such significance vis-a-vis the individual's ability to complete a vocational rehabilitation program that extending the program for a like period would be of any appreciable advantage. The requirement is uniformly applicable to all mental or physical disabilities and we find no basis for distinguishing the disabling effects of chronic alcoholism in this regard.

Thus, after careful consideration, we find that the objections do not warrant changing the regulation. The regulation is adopted as final.

A technical correction to paragraph (c)(3) is being made by adding the phrase, "disabling effects of." This phrase was inadvertently omitted in the proposed regulation. No substantive changes are being made.

VA has determined that these amended regulations do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulations. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

These regulatory amendments are retroactively effective. These are interpretive rules which implement statutory provisions. Moreover, VA finds that good cause exists for making these rules, like the section of the law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit.

The Secretary certifies that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 30, 1990.

Edward J. Derwinski,
Secretary of Veterans Affairs.

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended by revising paragraph (c) of § 21.42 to read as follows:

§ 21.42 Basic period of eligibility deferred.

* * * * *

(c) *Medical condition prevents initiation or continuation.* (1) The basic 12-year period of eligibility shall not begin to run or continue to run during any period of 30 days or more in which the veteran's participation in vocational rehabilitation is infeasible because of the veteran's medical condition, which condition may include the disabling effects of chronic alcoholism, subject to paragraph (c)(5) of this section. The 12-year period shall begin or resume when it is feasible for the veteran to participate in a vocational rehabilitation program, as that term is defined in § 21.35.

(2) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's rehabilitation program.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of "disabling effects of chronic alcoholism."

(4) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(5) The disabling effects of chronic alcoholism, which prevent initiation or continuation of participation in a vocational rehabilitation program after November 17, 1988, shall not be considered to be the result of willful misconduct.

(Authority: 38 U.S.C. 1503(b)(1), Pub. L. 100-689)

[FR Doc. 90-23294 Filed 10-1-90; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3778-9]

Standards of Performance for New Stationary Sources Amendments to Subpart J (Petroleum Refineries) and Addition of Performance Specification 7 to Appendix B

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this action is five-fold: (1) To require (as opposed to being an option) the monitoring of sulfur dioxide (SO_2) in gases discharged into the atmosphere from the combustion of fuel gases or, as an alternative, the monitoring of hydrogen sulfide (H_2S) in fuel gases; (2) to delete the mention of controlling SO_2 after combustion of fuel gases; (3) to delete the monitoring requirement of H_2S in gases discharged into the atmosphere from Claus sulfur recovery plants, but require the monitoring of other reduced sulfur compounds using continuous emission monitoring systems (CEMS's) or SO_2 CEMS's after oxidizing the reduced sulfur compounds to SO_2; (4) to add Performance Specification (PS) 7 for H_2S CEMS's to Appendix B of this part; and (5) to clarify ambiguities in the existing regulations. All affected fuel gas combustion devices and Claus plants in petroleum refineries, subject to subpart J of 40 CFR part 60, will be required to install and operate CEMS's within 1 year of the promulgation date. These monitoring requirements are not new, but previous H_2S and reduced sulfur CEMS installations were contingent upon the Agency's promulgation of PS's. These amendments were published in the **Federal Register** on March 1, 1989 (54 FR 8564) and April 28, 1989 (54 FR 18306).

DATES: *Effective Date:* October 2, 1990.

Judicial review. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A-88-24, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Room M-1500, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1063.

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SUPPLEMENTARY INFORMATION:

I. The Rulemaking

The present monitoring requirements for fuel gas combustion devices under § 60.105(a) (3) and (4) allows the options of monitoring SO_2 after fuel gases are combusted or monitoring H_2S in the fuel gases. Since October 6, 1975 (40 FR 46250), affected facilities choosing to monitor H_2S in the fuel gases have been exempted from the monitoring requirements of § 60.105(a)(4) because PS's for H_2S CEMS's had not been established. This rulemaking will amend the emission monitoring requirements to end this exemption. The effect of this rulemaking will be to require affected facilities to monitor SO_2 after fuel gas combustion or, as an alternative, H_2S in the fuel gas.

When fuel gases are burned in a combustion device, the H_2S is converted to SO_2. The resulting SO_2 concentration is substantially less than the corresponding H_2S in the fuel gas due to dilution from added combustion air. The amount of dilution air required for complete fuel gas combustion hinges upon the makeup of fuel gas components (primarily hydrogen and hydrocarbons) and their stoichiometric need for oxygen. The EPA investigated a number of typical fuel gas compositions and their combustion products and determined that, at zero percent excess air, the concentration of SO_2 formed from combusting fuel gas containing H_2S at the standard level (162 ppm) ranged from 9 to 25 ppm with the majority of values between 15 and 20 ppm. This agrees with the 15- to 20-ppm SO_2 level noted in the background document to the proposed petroleum refineries standard.

Realizing the complexity of establishing the SO_2/H_2S equivalency on a case-by-case basis, EPA has selected 20 ppm to represent the compliance level for SO_2. In addition, rather than requiring monitoring of the effluent after each combustion device, EPA is allowing the monitoring of SO_2 after only one of the combustion devices as long as that one location accurately represents the fuel gas being burned by all of the combustion devices.

During 1978 and 1982, EPA conducted evaluations of H_2S CEMS's and concluded that acceptable H_2S CEMS's were not available (see section 4 of PS 7). However, a State agency and a local agency reported that H_2S CEMS's have been installed under their jurisdiction that are operating satisfactorily. Certification test reports that have been submitted for Agency review indicate that, at least in these cases, acceptable CEMS accuracy and calibration drift (CD) are attainable. Other data from regulatory agencies have shown varying degrees of success in certifying and auditing H_2S CEMS's. Most of these data were taken from H_2S CEMS's of the same type, and instrument performance appears to be linked to operator and maintenance proficiency. Thus, EPA has decided to allow the use of H_2S CEMS's for fuel gases as an alternative to SO_2 CEMS's for combusted fuel gases. For this purpose, PS 7 was proposed.

In reviewing the regulations, EPA determined that the option of controlling SO_2 after combusting the fuel gases was not being used. Also, this option does not appear to be an economically feasible alternative for future consideration. Therefore, mention of this control option is being deleted from the regulation. This action, however, does not prohibit the use of such control devices. In the future, sources that desire to burn fuel gases containing H_2S in excess of 230 mg/dscm and control the resulting SO_2 emissions may petition the Administrator for an alternative compliance demonstration.

Hydrogen sulfide and reduced sulfur emitted from Claus plants are regulated by standards set at 10 and 300 ppm, respectively. Reduced sulfur compounds, though determined separately from H_2S, are also inclusive of H_2S by definition. The Agency has determined that it is difficult to monitor the disproportionate concentrations of H_2S and other reduced sulfur compounds on a continual basis, especially at levels near the standards. Therefore, a separate determination of H_2S apart from other reduced sulfur compounds will not be required, but only the continuous monitoring of reduced sulfur compounds. Performance Specification 5 and Method 15 or 15A will be used to evaluate the reduced sulfur CEMS performance.

For greater flexibility, CEMS that oxidizes the reduced sulfur to SO_2 and analyzes the concentration of the resulting SO_2 will be allowed. Rather than trying to determine the concentration of SO_2 equivalent to the reduced sulfur concentration, EPA will use the level of 250 ppm SO_2 (dry basis, zero percent excess air) to represent the SO_2 compliance level. This concentration is consistent with the control option of combusting the effluent gases under § 60.102(a)(2)(i).

In addition to the above changes, ambiguities in the existing regulations are being clarified by correcting inconsistencies and by specifying pertinent testing procedures that originally were only implied.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, neither does it change any emission standard nor make it more stringent. Rather, the rulemaking will facilitate the use of acceptable CEMS's and allow affected facilities to comply with monitoring requirements to which they are already subject.

II. Public Participation

The opportunity to hold public hearings at 10 a.m. on March 22, 1989 for the proposed subpart J revisions and May 19, 1989 for proposed PS 7 was presented but no one desired to make an oral presentation. The public comment periods were from March 1 to July 12, 1989 for the subpart J revisions and from April 28 to July 12, 1989 for PS 7.

III. Significant Comments and Changes to the Proposed Rulemaking

Seven comment letters were received from the proposal of the rulemakings. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The significant comments and subsequent method changes are listed here.

1. One commenter requested that permeation tube calibration systems and scrubbers be allowed as alternatives to Methods 3, 6, and 11 for span calibration and zero checks of CEMS's. The commenter noted that commercially available systems have been found to be extremely accurate and reliable for fuel gas and Claus plant units and are far superior to older, labor-intensive, wet-chemical procedures.

Approving alternatives for specific calibration systems beyond the EPA reference methods is not within the scope of the rulemaking. Written requests for approval should be submitted to the Director of EPA's Technical Support Division. The request must include a clearly defined procedure that can be uniformly followed, supporting data showing the alternative's comparability to the reference method, and procedures addressing the appropriate quality assurance (QA) measures.

2. Another commenter strongly urged EPA to take a "more reasonable" approach to the exemption from the CO CEMS requirement provided in § 60.105(a)(2)(ii). The following reasons were offered to support this stand:

a. A demonstration that CO emissions are less than 50 ppm was thought to be excessively restrictive. Instead, a limit of 30 percent of the standard should be ample to show that a unit is designed for high-efficiency regeneration and that a CEMS is not warranted.

b. Requiring 30 days of continuous monitoring data to demonstrate a CEMS would not be necessary. Although this may be desirable in some instances, it was recommended that performance test data be allowed in lieu of continuous monitoring data.

c. The language in § 60.105(a)(2)(ii) needs clarifying to require that EPA issue an exemption when the required information is submitted with the written request. As proposed, a lack of response from EPA would leave the owner or operator in an unclear compliance status.

d. It was not clear to the commenter if any additional requirements with the revisions [i.e., CEMS relative accuracy (RA) demonstrations] affect owners or operators who submitted requests for exemption under the existing requirements.

The Method 6 flow rate of 2 liters/min in § 60.105(a)(3)(iii) was questioned. With the Method 6 detection limit at 3.4 mg SO_2 when sampling at 1 liter/min for 20 minutes, it was not understood why a larger sample was needed, since this is approximately 6 percent of the 20 ppm standard. This change was considered an added complication, and it was recommended that it be reconsidered. If this change could be truly justified, some flexibility in the sampling flow rate was requested, such as "approximately 2 liters/min."

Finally, the commenter objected to what was thought to be a change to rolling 3-hour averaging periods for determining compliance with § 60.105(a)(3) and (4). It was noted that no rationale for this change was discussed in the supplementary information, and that this was clearly an added recordkeeping requirement, not a clarification. Current rules were thought to require that monitoring records be kept for 3-hour block periods, of which there are eight per day. A 1986 EPA memorandum to directors of EPA Regional air divisions was cited as evidence of the EPA policy of using block averages. By increasing the requirement to rolling 3-hour periods, the Agency would cause a threefold increase to the recordkeeping burden and a triple counting of any extended periods of excess emissions.

The proposed rule does not change the CEMS exemption requirements nor the averaging period of the existing regulation. Therefore, comments to these points and any subsequent changes based on the comments are beyond the scope of this rulemaking.

Concerning the issuance of an exemption, the intent of the wording in § 60.105(a)(2)(ii) is to note that the exemption is contingent upon the Agency's decision after reviewing the submitted demonstration data and exemption request, not upon its submission. Mentioning that an exempted source is not required to perform additional CEMS testing requirements is not necessary since an exemption from monitoring implies that no CEMS will be installed to further test. Under normal situations, a source that has submitted an exemption request is not required to perform additional testing until the Agency makes a decision. In some cases though, the Agency may need to request interim tests. However, if the decision is such that a CEMS must be installed, this CEMS may be subjected to an RA test.

The requirement in § 60.105(a)(3)(iii) to operate Method 6 at 2 liters/min for at least 30 minutes was made to minimize the analytical error that results from measuring small titration volumes. For routine Method 6 analyses, sample titration volumes of at least 2 ml are desired to minimize the error contributed by buret inaccuracy and the averaging of duplicate measurements. To add flexibility and conform with the guidelines given in Method 6, an approximate sampling flow rate of 2 liters/min will be required.

Finally, the requirement for 3-hour rolling SO_2 averages is not a change from current practice. The block averaging period mentioned in the March 1986 memorandum is applicable specifically to determinations of compliance with applicable national air quality standards. Current policy permits emission limits established to comply with such standards to be expressed either as block or rolling averages. The same holds true for compliance with emission control requirements under applicable part 60 standards. In the case in question, the rolling average was the original intent. Thus today's action is not a change from the present requirements.

3. One commenter thought that PS 7 left much to be desired. Basic measures of analyzer performance, such as calibration error, response time, and operational test period were thought to be needed. Having to meet the CD specification on only 6 out of 7 test days would not encourage adjustment of the analyzer when drift exceeds the specification. Compliance with the CD specification without exceptions was preferred, with short-term and zero drift specifications also included. At the very least, language indicating that States may impose additional or more stringent specifications was desired.

The commenter thought that the requirement to report only excess emissions would not allow an agency to take into account performance during compliance periods when determining enforcement action. Requiring sources to report data for all times periods was favored since a different enforcement action may be appropriate for a source that operates most of the time near the standard than for a source that usually operates well below the standard.

Continual CEMS compliance and Appendix F procedures were not mandated for subpart J sources. The PS test procedures are not designed for long-term evaluation nor for continual compliance but to provide the initial check of the instrument's capabilities at the time of installation. The Agency feels that CEMS data accuracy and representativeness can be demonstrated sufficiently by RA and CD tests. A more in-depth evaluation of the CEMS at the discretion of the operator is encouraged, but this additional testing need not be required since the overall quality of monitor data can be determined by the RA and CD tests.

The RA and CD specifications are determined from studies of CEMS performance over extended periods of time. In an Agency study of H_2S CEMS's, the most reliable instruments were only capable of meeting CD's of 5 percent or less on 6 of 7 test days.

The changing of reporting requirements is beyond the scope of this rulemaking. The purpose of the rulemaking is to revise the subpart J monitoring and testing requirements to add clarity and additional information that were originally left out. This does not include revising the reporting criteria that have become a standard procedure for many source categories. Regulations governing State's authority are neither addressed nor regulated in subpart J but in other sections of the regulations.

4. A commenter noted that the wording change to § 60.104 might be construed to limit the exemption of flare gas associated with emergency malfunction situations. This should be clarified by revising the wording to recognize the fact that process upset gases, even when not the direct result of an "emergency malfunction" (e.g., process unit upsets due to changing feedstock, etc.), must be handled by a flare system for safety considerations. The proposed wording has been clarified to reflect this.

5. Another commenter saw no technical reason why the SO_2 CEMS's should not be used for direct compliance with SO_2 emission limitations at subpart J sources. The proposed revisions were thought to be inconsistent with the subpart Db ruling which uses the same

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CEMS's as subpart J for direct compliance. The proposed rule also appeared to conflict with current EPA policy (as suggested in an EPA internal memorandum) of using CEMS data in the enforcement process. Because of the quantity of SO_2 emissions from refineries, and due to past experience with several refineries under the commenter's jurisdiction, the enforcement of continuous compliance with SO_2 emission limitations was thought to be imperative.

The commenter also felt that incinerators following Claus plants should be monitored for temperature and oxygen to ensure total sulfur oxidation to SO_2. It was noted that in § 60.153(b)(3), the operators of incinerators located at sewage treatment plants are required to install, calibrate, maintain, and operate temperature devices. Similar language was desired for subpart J incinerators.

The same commenter questioned the flexibility of spans allowed in § 60.105(a)(1) for opacity CEMS's. The commenter argued that the benefits of additional accuracy refinements do not justify the costs as long as Method 9 remains the sole compliance method. The commenter felt that the arguments for allowing the use of CEMS data in lieu of Method 9 observations for compliance determinations were still valid when the CEMS is properly installed, certified, and maintained in accordance with PS 1 of appendix B. It was argued that the Agency either allow the CEMS data for direct compliance or eliminate the allowance for span flexibility.

It was initially determined when the subpart J regulations were developed that the monitoring data would be used to document excess emissions. This requirement cannot be changed in this rulemaking since such a change would constitute a major action instead of a clarification and would require a separate assessment and proposal with accompanying CEMS QA specifications. The oxidation efficiency of the control device will be documented through Method 15 testing for reduced sulfur compounds, and the added requirements for oxygen and temperature CEMS's will not be necessary.

The use of noncompliance CEMS's in the proposed revisions is not inconsistent with EPA policy mentioned in the memorandum. As noted in the memorandum, data from CEMS's that are not the compliance method "should be used to monitor the continuous compliance of sources and to initiate follow-up action including on-site inspections, requesting further information, and issuing a notice of violation."

6. A commenter from industry inquired about a situation in which some of their refinery's facilities were required by the EPA Regional Office and the State agency to install CEMS's under applicable Prevention of Significant Deterioration (PSD) and construction permit requirements even though fuel gas combustion devices have been exempted for H_2S monitoring requirements since 1975. Thirteen analyzers were installed at a significant cost. Twelve of these analyzers were installed between 1977 adn 1983 during EPA's performance evaluation of H_2S CEMS's. Although EPA concluded that acceptable H_2S CEMS's were not available, the refinery was still required to install whatever analyzers were available at that time. In view of this, the commenter made the following recommendations.

a. The CEMS's that were required to be installed by State or Federal permits prior to the proposal date of the subject rule should be exempt from performance specification test (PST) requirements.

b. The regulations should allow bench testing and certification of the CEMS's by the manufacturer.

c. If a facility has installed more than one CEMS of the same make and manufacturer, only one PST need be conducted to certify the remaining CEMS's. The cost of certifying several identical analyzers is significant and an unnecessary expense.

For CEMS's that have already been installed under Regional Office PSD requirements, exemptions or "grandfathering" of new monitoring requirements must be requested on a case-by-case basis through the Regional Office that Required the initial CEMS installation.

The Agency does not feel that CEMS bench testing and certification by the manufacturer represents a fail-safe means of verifying instrument performance. Manufacturers have a vested interest in the outcome of such evaluations. Bench testing may be routinely done to initially demonstrate the reliability of the instrument to the purchaser. However, this should not be substituted for a complete and observed PST after the CEMS has been installed and is functioning under actual conditions.

All CEMS's that are not monitoring the same process stream will need to be evaluated by PST, regardless of make or manufacturer. Experience has shown that, even with identical CEMS's performance can vary from unit to unit. Factors that affect the performance of CEMS's include internal malfunctions that may be specific to individual units as well as operational variables that reflect operator technique. The initial performance of each CEMS can only be verified by testing each unit under actual installed conditions.

7. A commenter recommended that an exemption should be allowed when it is demonstrated that the reduced sulfur H_2S emissions from subject Claus units are well below the respective 300 and 10 ppm standard levels during routine and normal operation. With Sulften tail gas treating units, continuous H_2S CEMS's are already utilized and the reduced sulfur was reported to be barely detectable. Unit upsets and upstream operational problems will reflect loss of optimum operating conditions long before any resultant increased emissions exceed the reduced sulfur regulatory limit. Therefore, an exemption from the continuous monitoring of reduced sulfur and oxygen from these sources should be allowed.

In addition, the commenter recommended that the time period for CEMS installation at affected refineries be extended to at least 18 months to allow sufficient time for procurement, installation, and calibration of the instrument. Where H_2S analyzers are employed as standard equipment for Claus recovery plants, the analyzer may serve as the CEMS, provided it passes the PST and reflects representative measurement of emissions. Monitoring exemptions may be considered in those cases where emissions are routinely much lower than the standard and where there is an economic incentive to operate the device to minimize operational problems and upset conditions. Exemptions for devices that meet these conditions are best considered on case-by-case requests since such devices represent a minority of the total in operation.

The Agency does not think an extension of the CEMS installation period is warranted. Affected sources are notified by the proposed rulemaking of the intended monitoring needs. An approximate period of 1 year between regulation proposal and promulgation affords time to survey the CEMS market. In conjunction with the 1-year installation period, this has proven to be adequate.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development.

The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. The Agency has determined that this rulemaking would not result in any of the adverse economic effects set forth in section 1 of the Order as grounds for finding a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of an RFA analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

This rule does not change any information collection requirements currently approved by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Information requirements contained in 40 CFR part 60, Appendix A are cleared under OMB Control Number 2060-0022.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, and Petroleum refineries.

Dated: September 21, 1990.

William K. Reilly,

Administrator.

40 CFR part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority for part 60 continues to read:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

§ 60.17 [Amended]

2. In § 60.17(a)(58) through (59), mention of "§ 60.108(b)(2)" is revised to read "§ 60.106(j)(2)."

§ 60.103 [Amended]

3. In § 60.103(a), the phrase "gases which contain carbon monoxide in excess of 0.050 percent by volume." is revised to read "gases that contain carbon monoxide (CO) in excess of 500 ppm by volume (dry basis)."

4. In § 60.104, paragraphs (a)(1), (2)(i), and (2)(ii) are revised to read as follows:

§ 60.104 Standards for sulfur oxides.

(a) * * *

(1) Burn in any fuel gas combustion device any fuel gas that contains hydrogen sulfide (H_2S) in excess of 230 mg/dscm (0.10 gr/dscf). The combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from this paragraph.

(2) * * *

(i) For an oxidation control system or a reduction control system followed by incineration, 250 ppm by volume (dry basis) of sulfur dioxide (SO_2) at zero percent excess air.

(ii) For a reduction control system not followed by incineration, 300 ppm by volume of reduced sulfur compounds and 10 ppm by volume of hydrogen sulfide (H_2S), each calculated as ppm SO_2 by volume (dry basis) at zero percent excess air.

5. In § 60.105, (a)(1) through (a)(7), (a)(13)(i), (d), and (e) are revised, and (a)(14) is removed to read as follows:

§ 60.105 Monitoring of emissions and operations.

(a) * * *

(1) For fluid catalytic cracking unit catalyst regenerators subject to § 60.102(a)(2), an instrument for continuously monitoring and recording the opacity of emissions into the atmosphere. The instrument shall be spanned at 60, 70, or 80 percent opacity.

(2) For fluid catalytic cracking unit catalyst regenerators subject to § 60.103(a), an instrument for continuously monitoring and recording the concentration by volume (dry basis) of CO emissions into the atmosphere, except as provided in paragraph (a)(2)(ii) of this section.

(i) The span value for this instrument is 1,000 ppm CO.

(ii) A CO continuous monitoring system need not be installed if the owner or operator demonstrates that the average CO emissions are less than 50 ppm (dry basis) and also files a written request for exemption to the Administrator and receives such an exemption. The demonstration shall consist of continuously monitoring CO emissions for 30 days using an instrument that shall meet the requirements of Performance Specification 4 of Appendix B of this part. The span value shall be 100 ppm CO instead of 1,000 ppm, and the relative accuracy limit shall be 10 percent of the average CO emissions or 5 ppm CO, whichever is greater. For instruments that are identical to Method 10 and employ the sample conditioning system of Method 10A, the alternative relative accuracy test procedure in § 10.1 of Performance Specification 2 may be used in place of the relative accuracy test.

(3) For fuel gas combustion devices subject to § 60.104(a)(1), an instrument for continuously monitoring and recording the concentration by volume (dry basis, zero percent excess air) of SO_2 emissions into the atmosphere (except where an H_2S monitor is installed under paragraph (a)(4) of this section). The monitor shall include an oxygen monitor for correcting the data for excess air.

(i) The span values for this monitor are 50 ppm SO_2 and 10 percent oxygen (O_2).

(ii) The SO_2 monitoring level equivalent to the H_2S standard under § 60.104(a)(1) shall be 20 ppm (dry basis, zero percent excess air).

(iii) The performance evaluations for this SO_2 monitor under § 60.13(c) shall use Performance Specification 2. Methods 6 and 3 shall be used for conducting the relative accuracy evaluations. Method 6 samples shall be taken at a flow rate of approximately 2 liters/min for at least 30 minutes. The relative accuracy limit shall be 20 percent or 4 ppm, whichever is greater, and the calibration drift limit shall be 5 percent of the established span value.

(iv) Fuel gas combustion devices having a common source of fuel gas may be monitored at only one location (i.e., after one of the combustion devices), if monitoring at this location accurately represents the S_2 emissions into the atmosphere from each of the combustion devices.

(4) In place of the SO_2 monitor in paragraph (a)(3) of this section, an instrument for continuously monitoring and recording the concentration (dry basis) of H_2S in fuel gases before being burned in any fuel gas combustion device.

(i) The span value for this instrument is 425 mg/dscm H_2S.

(ii) Fuel gas combustion devices having a common source of fuel gas may

be monitored at only one location, if monitoring at this location accurately represents the concentration of H_2S in the fuel gas being burned.

(iii) The performance evaluations for this H_2S monitor under § 60.13(c) shall use Performance Specification 7. Method 11 shall be used for conducting the relative accuracy evaluations.

(5) For Claus sulfur recovery plants with oxidation control systems or reduction control systems followed by incineration, a continuous monitoring system to measure the concentration of SO_2 emissions in the gases discharged to the atmosphere.

(i) For reporting purposes, the SO_2 exceedance level for this monitor is 250 ppm (dry basis, zero percent excess air).

(ii) The performance evaluations for this SO_2 (and O_2) monitor under § 60.13(c) shall use Performance Specification 5. Methods 15 or 15A and Method 3 shall be used for conducting the relative accuracy evaluations.

(6) For Claus sulfur recovery plants with reduction control systems not followed by incineration, a continuous monitoring system to measure the concentration of reduced sulfur emissions (as SO_2) discharged to the atmosphere.

(i) For reporting purposes, the SO_2 exceedance level for this monitor is 300 ppm; or

(iii) All 12-hour periods during which the average concentration of SO_2 as measured by the SO_2 continuous monitoring system under § 60.105(a)(7) exceeds 250 ppm (dry basis, zero percent excess air).

$\%CO_2$ = Carbon dioxide concentration, percent by volume (dry basis).
$\%CO$ = Carbon monoxide concentration, percent by volume (dry basis).
$\%O_2$ = Oxygen concentration, percent by volume (dry basis).
K_1 = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) [0.0185 (lb-min)/(hr-dscf-%)].
K_2 = Material balance and conversion factor,

high, a flow control valve may be used to reduce the pressure. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line. The sampling time and sample volume shall be at least 10

corrected for moisture and oxygen as the arithmetic average of the SO_2 equivalent for each sample during the run. Method 4 shall be used to determine the moisture content of the gases as the paragraph (f)(1) of this section. The sampling time for each sample shall be equal to the time it takes for four Method 15 samples

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be monitored at only one location, if monitoring at this location accurately represents the concentration of H_2S in the fuel gas being burned.

(iii) The performance evaluations for this H_2S monitor under § 60.13(c) shall use Performance Specification 7. Method 11 shall be used for conducting the relative accuracy evaluations.

(5) For Claus sulfur recovery plants with oxidation control systems or reduction control systems followed by incineration subject to § 60.104(a)(2)(i), an instrument for continuously monitoring and recording the concentration (dry basis, zero percent excess air) of SO_2 emissions into the atmosphere. The monitor shall include an oxygen monitor for correcting the data for excess air.

(i) The span values for this monitor are 500 ppm SO_2 and 10 percent O_2.

(ii) The performance evaluations for this SO_2 monitor under § 60.13(c) shall use Performance Specification 2. Methods 6 and 3 shall be used for conducting the relative accuracy evaluations.

(6) For Claus sulfur recovery plants with reduction control systems not followed by incineration subject to § 60.104(a)(2)(ii), an instrument for continuously monitoring and recording the concentration of reduced sulfur and O_2 emissions into the atmosphere. The reduced sulfur emissions shall be calculated as SO_2 (dry basis, zero percent excess air).

(i) The span values for this monitor are 450 ppm reduced sulfur and 10 percent O_2.

(ii) The performance evaluations for this reduced sulfur (and O_2) monitor under § 60.13(c) shall use Performance Specification 5, except the calibration drift specification is 2.5 percent of the span value rather than 5 percent. Methods 15 or 15A and Method 3 shall be used for conducting the relative accuracy evaluations. If Method 3 yields O_2 concentrations below 0.25 percent during the performance specification test, the O_2 concentration may be assumed to be zero and the reduced sulfur CEMS need not include an O_2 monitor.

(7) In place of the reduced sulfur monitor under paragraph (a)(6) of this section, an instrument using an air or O_2 dilution and oxidation system to convert the reduced sulfur to SO_2 for continuously monitoring and recording the concentration (dry basis, zero percent excess air) of the resultant SO_2. The monitor shall include an oxygen monitor for correcting the data for excess oxygen.

(i) The span values for this monitor are 375 ppm SO_2 and 10 percent O_2

(ii) For reporting purposes, the SO_2 exceedance level for this monitor is 250 ppm (dry basis, zero percent excess air).

(iii) The performance evaluations for this SO_2 (and O_2) monitor under § 60.13(c) shall use Performance Specification 5. Methods 15 or 15A and Method 3 shall be used for conducting the relative accuracy evaluations.

* * * * *

(13) * * *

(i) The test methods as described in § 60.106(k);

* * * * *

(d) For any fluid catalytic cracking unit catalyst regenerator under § 60.102 that uses an incinerator-waste heat boiler to combust the exhaust gases from the catalyst regenerator, the owner or operator shall record daily the rate of combustion of liquid or solid fossil-fuels (liters/hr or kg/hr) and the hours of operation during which liquid or solid fossil-fuels are combusted in the incinerator-waste heat boiler.

(e) For the purpose of reports under § 60.7(c), periods of excess emissions that shall be determined and reported are defined as follows:

Note: All averages, except for opacity, shall be determined as the arithmetic average of the applicable 1-hour averages, e.g., the rolling 3-hour average shall be determined as the arithmetic average of three contiguous 1-hour averages.

(1) *Opacity.* All 1-hour periods that contain two or more 6-minute periods during which the average opacity as measured by the continuous monitoring system under § 60.105(a)(1) exceeds 30 percent.

(2) *Carbon monoxide.* All 1-hour periods during which the average CO concentration as measured by the CO continuous monitoring system under § 60.105(a)(2) exceeds 500 ppm.

(3) *Sulfur dioxide from fuel gas combustion.* (i) All rolling 3-hour periods during which the average concentration of SO_2 as measured by the SO_2 continuous monitoring system under § 60.105(a)(3) exceeds 20 ppm (dry basis, zero percent excess air); or

(ii) All rolling 3-hour periods during which the average concentration of H_2S as measured by the H_2S continuous monitoring system under § 60.105(a)(4) exceeds 230 mg/dscm (0.10 gr/dscf).

(4) *Sulfur dioxide from Claus sulfur recovery plants.* (i) All 12-hour periods during which the average concentration of SO_2 as measured by the SO_2 continuous monitoring system under § 60.105(a)(5) exceeds 250 ppm (dry basis, zero percent excess air); or

(ii) All 12-hour periods during which the average concentration of reduced sulfur (as SO_2) as measured by the reduced sulfur continuous monitoring system under § 60.105(a)(6) exceeds 300 ppm; or

(iii) All 12-hour periods during which the average concentration of SO_2 as measured by the SO_2 continuous monitoring system under § 60.105(a)(7) exceeds 250 ppm (dry basis, zero percent excess air).

6. In § 60.106, paragraphs (a) through (d) are revised, paragraphs (e) through (h) are redesignated as (g) through (j), and new paragraphs (e), (f) and (k) are added to read as follows:

§ 60.106 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter (PM) standards in § 60.102(a) as follows:

(1) The emission rate (E) of PM shall be computed for each run using the following equation:

$$E = \frac{K\, c_s\, Q_{sd}}{R_c}$$

where:

E = Emission rate of PM, kg/1000 kg (lb/1000 lb) of coke burn-off.

c_s = Concentration of PM, g/dscm (lb/dscf).

Q_{sd} = Volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

R_c = Coke burn-off rate, kg coke/hr (1000 lb coke/hr).

K = Conversion factor, 1.0 (kg^2/g)/(1000 kg) [10^3 lb/(1000 lb)].

(2) Method 5 shall be used to determine the concentration (c_s) of PM and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(3) The coke burn-off rate (R_c) shall be computed for each run using the following equation:

$$R_c = K_1\, Q_r\, (\%CO_2 + \%CO)K_2\, Q_a - K_3\, Q_r\, [(\%CO/2) + \%CO_2 + \%O_2]$$

where:

R_c = Coke burn-off rate, kg/hr (1000 lb/hr).

Q_r = Volumetric flow rate of exhaust gas from catalyst regenerator before entering the emission control system, dscm/min (dscf/min).

Q_a = Volumetric flow rate of air to FCCU regenerator, as determined from the fluid catalytic cracking unit control room instrumentation, dscm/min (dscf/min).

$\%CO_2$ = Carbon dioxide concentration, percent by volume (dry basis).

%CO = Carbon monoxide concentration, percent by volume (dry basis).

$\%O_2$ = Oxygen concentration, percent by volume (dry basis).

K_1 = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) [0.0186 (lb-min)/(hr-dscf-%)].

K_2 = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm-%)[0.1303 (lb-min)/(hr-dscf-%)].

K_3 = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) [0.0062 (lb-min)/(hr-dscf-%)].

(i) Method 2 shall be used to determine the volumetric flow rate (Q_r).

(ii) The emission correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine CO_2, CO, and O_2 concentrations.

(4) Method 9 and the procedures of § 60.11 shall be used to determine opacity.

(c) If auxiliary liquid or solid fossil-fuels are burned in an incinerator-waste heat boiler, the owner or operator shall determine the emission rate of PM permitted in § 60.102(b) as follows:

(1) The allowable emission rate (E_s) of PM shall be computed for each run using the following equation:

$$E_s = 1.0 + A\,(H/R_c)\,K'$$

where:

E_s = Emission rate of PM allowed, kg/1000 kg (lb/1000 lb) of coke burn-off in catalyst regenerator.

1.0 = Emission standard, kg coke/1000 kg (lb coke/1000 lb).

A = Allowable incremental rate of PM emissions, 0.18 g/million cal (0.10 lb/million Btu).

H = Heat input rate from solid or liquid fossil fuel, million cal/hr (million Btu/hr).

R_c = Coke burn-off rate, kg coke/hr (1000 lb coke/hr).

K' = Conversion factor to units of standard, 1.0 (kg^2/g)/(1000 kg) [10^3 lb/(1000 lb)].

(2) Procedures subject to the approval of the Administrator shall be used to determine the heat input rate.

(3) The procedure in paragraph (b)(3) of this section shall be used to determine the coke burn-off rate (R_c).

(d) The owner or operator shall determine compliance with the CO standard in § 60.103(a) by using the integrated sampling technique of Method 10 to determine the CO concentration (dry basis). The sampling time for each run shall be 60 minutes.

(e) The owner or operator shall determine compliance with the H_2S standard in § 60.104(a)(1) as follows: Method 11 shall be used to determine the H_2S concentration. The gases entering the sampling train should be at about atmospheric pressure. If the pressure in the refinery fuel gas lines is relatively high, a flow control valve may be used to reduce the pressure. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line. The sampling time and sample volume shall be at least 10 minutes and 0.010 dscm (0.35 dscf). Two samples of equal sampling times shall be taken at about 1-hour intervals. The arithmetic average of these two samples shall constitute a run. For most fuel gases, sampling times exceeding 20 minutes may result in depletion of the collection solution, although fuel gases containing low concentrations of H_2S may necessitate sampling for longer periods of time.

(f) The owner or operator shall determine compliance with the SO_2 and the H_2S and reduced sulfur standards in § 60.104(a)(2) as follows:

(1) Method 6 shall be used to determine the SO_2 concentration. The concentration in mg/dscm (lb/dscf) obtained by Method 6 is multiplied by 0.3754 to obtain the concentration in ppm. The sampling point in the duct shall be the centroid of the cross section if the cross-sectional area is less than 5.00 m^2 (54 ft^2) or at a point no closer to the walls than 1.00 m (39 in.) if the cross-sectional area is 5.00 m^2 or more and the centroid is more than 1 m from the wall. The sampling time and sample volume shall be at least 10 minutes and 0.010 dscm (0.35 dscf) for each sample. Eight samples of equal sampling times shall be taken at about 30-minute intervals. The arithmetic average of these eight samples shall constitute a run. Method 4 shall be used to determine the moisture content of the gases. The sampling point for Method 4 shall be adjacent to the sampling point for Method 6. The sampling time for each sample shall be equal to the time it takes for two Method 6 samples. The moisture content from this sample shall be used to correct the corresponding Method 6 samples for moisture. For documenting the oxidation efficiency of the control device for reduced sulfur compounds, Method 15 shall be used following the procedures of paragraph (f)(2) of this section.

(2) Method 15 shall be used to determine the reduced sulfur and H_2S concentrations. Each run shall consist of 16 samples taken over a minimum of 3 hours. The sampling point shall be the same as that described for Method 6 in paragraph (f)(1) of this section. To ensure minimum residence time for the sample inside the sample lines, the sampling rate shall be at least 3.0 lpm (0.10 cfm). The SO_2 equivalent for each run shall be calculated after being corrected for moisture and oxygen as the arithmetic average of the SO_2 equivalent for each sample during the run. Method 4 shall be used to determine the moisture content of the gases as the paragraph (f)(1) of this section. The sampling time for each sample shall be equal to the time it takes for four Method 15 samples.

(3) The oxygen concentration used to correct the emission rate for excess air shall be obtained by the integrated sampling and analysis procedure of Method 3. The samples shall be taken simultaneously with the SO_2, reduced sulfur and H_2S, or moisture samples. The SO_2, reduced sulfur, and H_2S samples shall be corrected to zero percent excess air using the equation in paragraph (b)(3) of this section.

* * * * *

(k) The test methods used to supplement continuous monitoring system data to meet the minimum data requirements in § 60.104(d) will be used as described below or as otherwise approved by the Administrator.

(1) Methods 6, 6B, or 8 are used. The sampling location(s) are the same as those specified for the monitor.

(2) For Method 8, the minimum sampling time is 20 minutes and the minimum sampling volume is 0.02 dscm (0.71 dscf) for each sample. Samples are taken at approximately 60-minute intervals. Each sample represents a 1-hour average. A minimum of 18 valid samples is required to obtain one valid day of data.

(3) For Method 6B, collection of a sample representing a minimum of 18 hours is required to obtain one valid day of data.

(4) For Method 8, the procedures as outlined in this section are used. The equivalent of 18 hours of sampling is required to obtain one valid day of data.

* * * * *

§ 60.105 [Amended]

7. In newly redesignated § 60.105(h)(3), (4), and (5), mention of "§ 60.106(f)(2)," "§ 60.106(f)(1)," or "(f)" is revised to read "§ 60.106(h)(2)," "§ 60.106(h)(1)," or "(h)," respectively.

§ 60.106 [Amended]

8. In newly redesignated § 60.106(i), (i)(2)(i), and (i)(7), mention of "(g)(12)," "§ 60.105(g)(3)," or "(g)(6)" is revised to read "(i)(12)," "§ 60.106(i)(3)," or "(i)(6)," respectively.

§ 60.106 [Amended]

9. In newly redesignated § 60.106(i)(7), "(a)(4)" is revised to read "(b)(3)."

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§ 60.106 [Amended]

10. In newly redesignated § 60.106(j)(3)(ii), "(h)(2)" is revised to read "(j)(2)."

§ 60.107 [Amended]

11. In § 60.107(b)(1)(ii), "(a)(14)" is revised read to "§ 60.106(k)."

§ 60.107 [Amended]

12. In § 60.107(b)(2), "§ 60.106(g)(12)" is revised to read "§ 60.106(i)(12)."

§ 60.107 [Amended]

13. In § 60.107(c)(1)(i), "§ 60.106(f)" is revised to read "§ 60.106(h)."

§ 60.107 [Amended]

14. In § 60.107(c)(1)(ii), "§ 60.106(g)" in both places is revised to read "§ 60.106(i)."

§ 60.107 [Amended]

15. In § 60.107(c)(1)(iii), "§ 60.106(h)" is revised to read "§ 60.106(j)."

§ 60.108 [Amended]

16. In § 60.108(d), "§ 60.106(g) or (h)" is revised to read "§ 60.106(i) or (j)."

§ 60.109 [Amended]

17. In § 60.109(b)(2), "60.106(g)(12)" is revised to read "60.106(i)(12)."

18. In Appendix B, by adding Performance Specification 7 to read as follows:

Appendix B–Performance Specifications

* * * * *

Performance Specification 7—Specifications and Test Procedures for Hydrogen Sulfide Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 *Applicability.* 1.1.1 This specification is to be used for evaluating the acceptability of hydrogen sulfide (H_2S) continuous emission monitoring systems (CEMS's) at the time of or soon after installation and whenever specified in an applicable subpart of the regulations.

1.1.2 This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS. To evaluate CEMS performance, the Administrator may require, under Section 114 of the Act, the source owner or operator to conduct CEMS performance evaluations at other times besides the initial test. *See* § 60.13(c).

1.1.3 The definitions, installation specifications, test procedures, data reduction procedures for determining calibration drifts (CD) and relative accuracy (RA), and reporting of Performance Specification 2 (PS 2), Sections 2, 3, 5, 6, 8, and 9 apply to this specification.

1.2 Principle. Reference method (RM), CD, and RA tests are conducted to determine that the CEMS conforms to the specification.

2. Performance and Equipment Specifications

2.1 *Instrument zero and span.* This specification is the same as Section 4.1 of PS 2.

2.2 *Calibration drift.* The CEMS calibration must not drift or deviate from the reference value of the calibration gas or reference source by more than 5 percent of the established span value for 6 out of 7 test days (e.g., the established span value is 300 ppm for subpart J fuel gas combustion devices).

2.3 *Relative accuracy.* The RA of the CEMS shall be no greater than 20 percent of the mean value of the RM test data in terms of the units of the emission standard or 10 percent of the applicable standard, whichever is greater.

3. Relative Accuracy Test Procedure

3.1 Sampling Strategy for RM Tests, Correlation of RM and CEMS Data Number of RM Tests, and Calculations. These are the same as that in PS 2, § 7.1, 7.2, 7.3, and 7.5, respectively.

3.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 11 is the RM for this PS.

4. Bibliography

1. U.S. Environmental Protection Agency. Standards of Performance for New Stationary Sources; Appendix B; Performance Specifications 2 and 3 for SO_2, NO_x, CO_2, and O_2 Continuous Emission Monitoring Systems; Final Rule. 48 CFR 23608. Washington, DC U.S. Government Printing Office. May 25, 1983.

2. U.S. Government Printing Office. Gaseous Continuous Emission Monitoring Systems—Performance Specification Guidelines for SO_2, NO_x, CO_2, O_2, and TRS. U.S. Environmental Protection Agency. Washington, D.C. EPA–450/3–82–026. October 1982. 26p.

3. Maines, G.D., W.C. Kelly (Scott Environmental Technology, Inc.), and J.B. Homolya. Evaluation of Monitors for Measuring H_2S in Refinery Gas. Prepared for the U.S. Environmental Protection Agency. Research Triangle Park, N.C. Contract No. 68–02–2707. 1978. 60 p.

4. Ferguson, B.B., R.E. Lester (Harmon Engineering and Testing), and W.J. Mitchell. Field Evaluation of Carbon Monoxide and Hydrogen Sulfide Continuous Emission Monitors at an Oil Refinery. Prepared for the U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication No. EPA–600/4–82–054. August 1982. 100 p.

[FR Doc. 90–22983 Filed 10–1–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 88–057d]

RIN 2115–AC45

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the pre-employment drug testing requirement for two categories of marine employers: Large employers (those having more than 50 employees) and medium employers (those having from 11 to 50 employees). This change will minimize the need for additional pre-employment testing by these large and medium employers until December 1990 and relieve them of an unintended economic burden caused by implementation of pre-employment testing before the implementation of random testing.

EFFECTIVE DATE: This rule is effective October 2, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T. A. Murphy, Project Manager, Marine Investigation Division (G–MMI), Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–2215.

SUPPLEMENTARY INFORMATION: When deciding on appropriate exceptions to pre-employment testing requirements, the Department of Transportation was reviewing drug program rules for six different operating modes. The modal rules generally provided an exception to pre-employment testing for employees who had been covered for a full year by a random testing program conducted by their previous employer. It was the Department's intent that after passing a pre-employment test, employees would be covered by an employer's random testing program and would not need additional pre-employment testing when they changed jobs.

Many large marine employers began pre-employment testing as early as May 1, 1989. Medium employers began pre-employment testing on the December 21, 1989 implementation date. The current Coast Guard regulations provide that maritime personnel subject to an employer's random testing program continuously for the previously twelve months may be excepted from a pre-employment test when changing jobs. Coast Guard random testing was postponed in response to the Court's decision in *Transportation Institute, et al,* v. U.S. Coast Guard, No 88–3429 (D.D.C., Dec. 18, 1989).

Therefore, until the promulgation of random drug testing regulations, an employee will not be able to use the random program exception from pre-employment testing. Thus, maritime employees who change jobs need to have evidence that they have passed a pre-employment drug test within the past six months in order to be hired without an additional pre-employment drug test.

The January 8, 1990 pre-employment revision (55 FR 634) extended the effective date of some pre-employment tests to relieve the unintended economic burden of repeated testing. At that time, over 20,000 employees of large marine employers had been pre-employment tested since May 1989 at a cost of slightly over one million dollars. While precise figures are not available at this time, since January 1990, additional new employees of both large and medium marine employers have been pre-employment tested. Without a further extension of the effective date for pre-employment tests, these employees will all have to be retested if they change jobs.

The Coast Guard, therefore, is revising § 16.205(a) to provide that employees who have successfully passed a pre-employment test between May 1, 1989 and June 21, 1989, may be deemed to have passed a pre-employment test on June 21, 1990 and therefore, until December 21, 1990, will not need to have further pre-employment testing when they change jobs. The Coast Guard also is revising § 16.205(b) to provide the same benefit to medium employers. These changes will minimize the need for additional pre-employment testing by large and medium employers relieving them of an unintended economic burden.

This rule relieves employers of the unintended economic and administrative burden of additional testing. The Coast Guard finds that notice and public comment are not necessary. Requiring notice and comment would unduly delay the relief sought to be provided by this rule and would, therefore, be contrary to the public interest, and good cause exists under 5 U.S.C. 553(b) to publish this rule without notice and comment. As provided in 5 U.S.C. 553(d)(1), this rule relieves a restriction and may be made effective less than 30 days after publication in the **Federal Register**. The rule will be effective immediately upon publication in the **Federal Register**.

Regulatory Assessment

This final rule revises the requirements for pre-employment testing by medium and large marine employers in the final rule published on November 21, 1988, as modified on June 23, 1989 and on January 8, 1990. It does not change the basic regulatory structure of that rule. Based on currently reported costs of about $50 per test, this revision will relieve medium and large marine employers of an economic burden in excess of one million dollars over the next six months.

Regulatory Flexibility Determination

The amendments in this final rule modify the requirements for pre-employment testing for large employers (who have more than 50 employees) and medium employers (who have between 11 and 50 employees). Pre-employment testing requirements for small employers are not affected. Therefore, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not amend the recordkeeping and reporting requirements of the final rule published on November 21, 1988.

Environmental Assessment

The Coast Guard has considered the environmental impact of this amendment to the rules promulgated on November 21, 1988, and concluded that, under section 2.B.2.1. of Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

Federalism Implications

In accordance with Executive Order 12612, the Coast Guard has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 16

Seamen, Marine safety, Navigation (Water), Alcohol and alcoholic beverages, Drugs.

Final Rule

For the reasons set forth in the preamble, title 46, chapter I, of the Code of Federal Regulations is amended as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701; 49 CFR 1.46.

2. Section 16.205 is amended by revising paragraphs (a) and (b) to read as follows:

§ 16.205 Implementation of chemical testing programs.

(a) Each employer who employs more than 50 employees required to be tested under this part implemented the pre-employment testing program required in § 16.210 not later than July 21, 1989. An employee who passed a pre-employment test under these rules during the period between May 1, 1989, and June 21, 1990, shall be deemed to have successfully passed a pre-employment test on June 21, 1990. All other employer testing programs required by this part, except the random testing program which has been suspended until further notice, were implemented not later than December 21, 1989.

(b) Each employer who employs from 11 to 50 employees required to be tested under this part implemented the pre-employment, serious marine incident and reasonable cause testing programs required by this part not later than December 21, 1989. An employee who has passed a pre-employment test under these rules in the period between October 1, 1989 and June 21, 1990, shall be deemed to have successfully passed a pre-employment test on June 21, 1990.

* * * * *

Dated: September 27, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–23297 Filed 10–1–90; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 89–524; FCC 90–309; RM–6554]

Use of Narrow-Band Direct-Printing (NB–DP) Frequencies in the Maritime Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule would require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB–DP) frequencies. This action was initiated by a petition for rule making (RM–6554) filed September 27, 1988, by Mobile

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Marine Radio, Inc. The effect of this rule is to prevent granting NB–DP frequencies to public coast stations that do not need or will not use them efficiently.

EFFECTIVE DATE: November 5, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George Dillon, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 89–534, adopted September 5, 1990, and released September 24, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The following collection of information contained in these rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should direct their comments to Bruce McConnell (202) 395–3785, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632–7513.

OMB number: 3060–0435

Title: Section 80.361 Frequencies for narrow-band direct-printing (NB–DP) and data transmissions.

Action: New Collection

Respondents: Individuals, state or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of response: On occasion

Estimated annual response: 2 responses; 4 hours total; 2 hours per response

Needs and uses: Rule is needed to ensure spectrum efficiency by requiring applicants to provide justification for frequency assignment.

Summary of Report and Order

1. The Commission amended the Maritime Services Rules (47 CFR part 80) to require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB–DP) frequencies. Public coast station NB–DP operations provide world-wide, high-seas radioteletype service between ships and points on land. Applicants for new or additional NB–DP frequencies would be required to show the schedule of service of each currently licensed or proposed NB–DP frequency and to show a need for additional NB–DP frequencies based upon at least 40 percent usage of existing NB–DP frequencies during the three busiest hours of a specified time. The need showing is meant to prevent granting NB–DP frequencies to public coast stations that do not need or will not use them efficiently, thereby keeping the frequencies available for public coast stations that will use them efficiently.

Final Regulatory Flexibility Analysis

2. Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), our analysis is as follows:

3. *Reason for action.* This action is being taken to incorporate into the Commission's Rules a requirement that applicants for narrow-band direct-printing frequencies justify the need for those frequencies.

4. *Objectives.* The action would prevent granting Nb–DP frequencies to public coast stations that do not need or will not use them efficiently, thereby keeping them available for public coast stations that will.

5. *Legal basis.* The action is authorized under sections 4(i) and 303 (f) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 (f) and (r).

6. *Reporting, recordkeeping and other compliance requirements.* Public coast station applicants will be required to include in their applications for additional frequencies a traffic showing based on records kept for other purposes.

7. *Federal rules which overlap, duplicate, or conflict with this rule.* None.

8. *Description, potential impact, and number of small entities involved.* The only impact of this rule will be on public coast station applicants and licensees. The requirement will be a small addition to the application. There are currently fewer than ten licensees providing NB–DP services. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new information collection requirement on a small number of licensees. The information that must be submitted is similar to a prior requirement and based on records kept for other purposes. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

9. Accordingly, *It is ordered* that under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, part 80 of the Commission's Rules *is amended,* as set forth in the Appendix below.

10. *It is further ordered* that these rule amendments shall become effective on November 5, 1990.

11. *It is further ordered* that a copy of this *Report and Order* be sent to the Chief Counsel for advocacy of the Small Business Administration.

12. *It is further ordered* that this proceeding *is terminated.*

List of Subjects in 47 CFR Part 80

Maritime services, Narrow-band direct-printing, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 80 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1065, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.361 is amended by revising the introductory text in paragraphs (a) preceding the table and adding concluding text consisting of paragraph (a)(1) through (a)(3) following the table to read as follows:

§ 80.361 Frequencies for narrow-band direct-printing (NB–DP) and data transmissions.

(a) The following table describes the frequency pairs available to ship and public coast stations for narrow-band direct-printing (NB–DP) and data transmission.

* * * * *

Applicants for coast station frequencies must submit a substantial showing of need based on the following factors:

(1) The schedule of service provided for licensed frequencies, or that is proposed for new frequencies;

(2) For additional frequency assignments within frequency bands that the applicant is already licensed to operate in, *e.g.* 4 MHz band, 6 MHz band, a factual showing that for any four days within a consecutive ten day period in each of the two months immediately prior to the filing of the application, the applicant has used its currently assigned frequency or frequencies (within that band) an aggregate average of at least 40 percent of the time during the three busiest hours of each day for exchanging communications; and

(3) Any other facts supporting the need for the proposed service.

* * * * *

[FR Doc. 90–23292 Filed 10–1–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900706–0198]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule and notice of closure; extension of effectiveness.

SUMMARY: An emergency rule that (1) Adds wreckfish to the management unit of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), (2) establishes a fishing year for wreckfish commencing April 16, 1990, (3) establishes a commercial quota of 2 million pounds (907,194 kilograms) for the fishing year that commenced April 16, 1990, and (4) establishes a catch limit of 10,000 pounds (4,536 kilograms) per trip is in effect through November 1, 1990. Under that emergency rule, the fishery for wreckfish in the exclusive economic zone (EEZ) off the South Atlantic states was closed on August 8, 1990, when the quota was reached. The Secretary of Commerce (Secretary) extends the emergency rule and fishery closure for an additional 90 days (through January 30, 1991) to allow sufficient time to implement an amendment to the FMP that would continue management of the wreckfish resource. The intended effect of this rule is to respond to an emergency in the snapper-grouper fishery be reducing the fishing mortality of wreckfish.

EFFECTIVE DATES: November 2, 1990, through January 30, 1991.

ADDRESSES: Copies of documents supporting this action may be obtained from Robert A. Sadler, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the FMP, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Under section 305(e)(2)(B) and (e)(3)(B) of the Magnuson Act, the Secretary promulgated an emergency rule (55 FR 32257, August 8, 1990) effective for 90 days (August 3 through November 1, 1990) to reduce the fishing mortality of the wreckfish resource off the South Atlantic states. Under that emergency rule, the Secretary closed the wreckfish fishery on August 8, 1990, when the quota was reached (55 FR 32835, August 10, 1990). The closure was to remain in effect through November 1, 1990, the limit of effectiveness of the emergency rule under which the closure was undertaken. The Secretary extends the emergency rule and the closure for an additional 90 days in accordance with section 305(e)(3)(B) of the Magnuson Act because conditions justifying the emergency action and closure remain unchanged. The 90-day extension will prevent the resumption of wreckfish harvest in the EEZ until more permanent management measures can be implemented.

The management measures in the initial emergency rule were promulgated to prevent a resource collapse. Details concerning the basis for the emergency rule and the classification of the rulemaking are contained in the initial emergency rule and are not repeated here. This extension is necessary to prevent a lapse in management of wreckfish prior to the implementation of Amendment 3 to the FMP that will continue appropriate management measures. a proposed rule to implement Amendment 3 was published in the **Federal Register** on September 24, 1990 (55 FR 39023).

As required by section 305(e)(3)(B) of the Magnuson Act, the Secretary and the Council have agreed that the emergency rule should be promulgated for an additional period of 90 days. Accordingly, the provisions of the emergency rule, as published on August 8, 1990 (55 FR 32257), and the notice of closure, as published on August 10, 1990 (55 FR 32835), remain effective through January 30, 1991.

Other Matters

This extension of an emergency rule is exempt from the normal review procedures of E.O. 12291 as provided for in section 8(a)(1) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 26, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–23301 Filed 10–01–90; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 656

[Docket No. 90650–0244]

RIN 0648–AB25

Atlantic Striped Bass Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule prohibiting the harvest and possession of Atlantic striped bass in the exclusive economic zone (EEZ) 3–200 nautical miles (5.6–370.6 km) offshore from Maine through Florida. This final rule is promulgated under the Atlantic Striped Bass Conservation Act Appropriations Authorization (Act), Public Law 100–589. The Act requires the Secretary of Commerce (Secretary), after certain consultations, to issue regulations governing fishing for Atlantic striped bass in the Atlantic EEZ. Under these regulations, harvest of Atlantic striped bass from the Atantic Coast EEZ is prohibited. Additionally, possession by a person of Atlantic striped bass is prohibited in the Atlantic EEZ, with the following exception: In the EEZ within Block Island Sound, north of a line connecting Montauk Point Light, Montauk Point, New York, and Block Island Southeast Light, Block Island, Rhode Island; and west of a line connecting Point Judith Light, Point Judith, Rhode Island and Block Island

Southeast Light, Block Island, Rhode Island. Within this geographical area, Atlantic striped bass may be possessed and transported aboard a vessel through the EEZ, provided that the vessel with Atlantic striped bass aboard is not used for fishing while in the EEZ, and the vessel remains in continuous transit. Additionally, no bycatch of Atlantic

while a vessel is engaged in fishing; thus the proposed rule would have only prohibited the possession of Atlantic striped bass while the vessel is engaged in fishing for Atlantic striped bass, but did not prohibit possession of Atlantic striped bass while fishing for other species. The third comment indicated that the proposed rule would be unenforceable.

Massachusetts commented that the proposed rule is totally unnecessary, based on limited historical harvest in

striped bass in the EEZ, while harvest was legal in adjoining state waters, would be confusing to the public and law enforcement agencies. New York indicated that state landing laws would make regulating the harvest in the EEZ unnecessary.

Massachusetts commented that the

to prevent potential damage to the stocks.

NOAA has determined that dockside enforcement, such as suggested by Massachusetts, would be ineffective, because the origin of harvest of Atlantic striped bass seen at dockside could not be determined. NOAA does not agree

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Southeast Light, Block Island, Rhode Island. Within this geographical area, Atlantic striped bass may be possessed and transported aboard a vessel through the EEZ, provided that the vessel with Atlantic striped bass aboard is not used for fishing while in the EEZ, and the vessel remains in continuous transit. Additionally, no bycatch of Atlantic striped bass from the EEZ may be retained. These regulations provide protection to the Atlantic Coast striped bass and ensure the effectiveness of state regulations.

EFFECTIVE DATE: November 1, 1990.

ADDRESSES: Copies of the environmental assessment/regulatory impact review are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel or Austin R. Magill, 301–427–2347.

SUPPLEMENTARY INFORMATION:

Background

Section 6 of the Act requires that "[t]he Secretary of Commerce shall promulgate regulations on fishing for Atlantic striped bass in the EEZ that the Secretary determines to be consistent with the national standards set forth in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851) and necessary and appropriate to—(1) Ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal state; and (2) achieve conservation and management goals for the Atlantic striped bass resource." In developing the regulations, the Secretary shall consult with the Atlantic States Marine Fisheries Commission (ASMFC), the appropriate Regional Fishery Management Councils (Councils), and each affected Federal, state and local government entity. Section 6 of the Act specifies that any regulations imposed would cease to have force and effect at the close of September 30, 1991. Section 6 also states that the appropriate Councils may prepare a fishery management plan (FMP) for Atlantic striped bass in the EEZ, which, if approved and implemented, would supersede any regulations promulgated by the Secretary.

In response to the requirements of section 6 of the Act, the NMFS developed several regulatory options for the EEZ and consulted with the ASMFC; the New England and Mid-Atlantic Councils; and other affected Federal and state entities. Because of rather divergent views, NMFS determined that a full record of comment was necessary before determining whether to proceed with a proposed rule. Therefore, an advance notice of proposed rulemaking (ANPR), published August 16, 1989, at 54 FR 33735, requested public comment on proposed options. The comments received in response to the ANPR favored a ban on the harvest from the EEZ. An issue identified by the Striped Bass Management Board of the ASMFC and the New England Fishery Management Council was the need to transport through the EEZ Atlantic striped bass that were legally taken in state waters. A person harvesting Atlantic striped bass legally at Block Island, Rhode Island, must traverse the EEZ to transport the fish by boat to the mainland. This was accommodated in the proposed rule (55 FR 25677; June 22, 1990) by allowing a person to transport Atlantic striped bass through the EEZ, provided that person does not engage in fishing while in the EEZ. However, in response to comments received, the final rule prohibits possession of Atlantic striped bass in the EEZ, except in an area of Block Island Sound, as defined below.

This action is intended to protect the stocks of Atlantic striped bass in the EEZ and ensure effectiveness of state regulations for reasons discussed in the preamble to the proposed rule, which are not repeated here. Additionally, consistency of these actions with the national standards of the Magnuson Act was also discussed in the preamble to the proposed rule and is not repeated here.

Comments and Responses

Written comments regarding the proposed rule were submitted by: The Mid-Atlantic Fishery Management Council; the ASMFC; the State of Delaware, Division of Fish and Game; the Maryland Department of Natural Resources, Tidewater Administration; the New York State Department of Environmental Conservation, Division of Marine Resources; the Commonwealth of Massachusetts, Division of Marine Fisheries; the State of North Carolina, Division of Marine Fisheries; the Department of the Interior, Office of Environmental Affairs; the U.S. Coast Guard; the Sport Fishing Institute; the Times Mirror Magazines; the Atlantic Sportfishing Association; the National Coalition for Marine Conservation; and one individual from the State of Virginia.

Comment: The Mid-Atlantic Fishery Management Council supported the proposed rule, but suggested that possession of Atlantic striped bass on a vessel in the EEZ while the vessel is not engaged in fishing be allowed only in the area between Block Island and the Rhode Island mainland. Thus, possession of Atlantic striped bass would be prohibited at all times in the remainder of the EEZ. The Department of the Interior also supported the prohibition on harvest, but suggested that the provision for possession be allowed only between Block Island and the mainland and that vessels receive permits to transport Atlantic striped bass through the EEZ. The Coast Guard commented that prohibiting possession would be very difficult to enforce and suggested that possession of Atlantic striped bass be prohibited on a vessel unless that vessel is in continuous transit from one location in state waters to another location in state waters.

Response: NOAA agrees in part with these comments. The final rule allows possession of Atlantic striped bass in the EEZ only within Block Island Sound north of a line connecting Montauk Light, Montauk Point, New York and Block Island Southeast Light, Block Island, Rhode Island; and west of a line connecting Point Judith Light, Point Judith, Rhode Island and Block Island Southeast Light, Block Island, Rhode Island. In this area, possession of Atlantic striped bass is permitted, provided no fishing takes place from the vessel with Atlantic striped bass aboard while in the EEZ and the vessel is in continuous transit. NOAA makes this change in the final rule to provide for better enforcement of the regulations in the EEZ, while still allowing fishermen to take Atlantic striped bass from Block Island (in Rhode Island state waters) and legally transport (in the geographical area specified above) them to the mainland. NOAA limits this exception to the Rhode Island area because the only location where a fisherman can take Atlantic striped bass legally in state waters and *must* traverse the EEZ en route to the mainland is Block Island, Rhode Island.

Comment: The Maryland Tidewater Administration opposed the proposed rule and provided three specific comments. First, the proposed rule prohibiting the possession of Atlantic striped bass while the vessel is engaged in fishing in the EEZ would apply only to fish caught in the EEZ and not to fish caught outside the EEZ. The second comment indicated that in § 656.2, "fishing or to fish" was defined as pertaining to only Atlantic striped bass, while § 656.3(c) only prohibited possession of Atlantic striped bass while a vessel is engaged in fishing; thus the proposed rule would have only prohibited the possession of Atlantic striped bass while the vessel is engaged in fishing for Atlantic striped bass, but did not prohibit possession of Atlantic striped bass while fishing for other species. The third comment indicated that the proposed rule would be unenforceable.

Response: One intent of the proposed rule was to allow the possession during transit through the EEZ of Atlantic striped bass taken legally from state waters. As discussed above, prohibiting the possession of these fish on a vessel while transiting the EEZ would not allow a fisherman to return by vessel to the mainland with Atlantic striped bass taken legally from Rhode Island state waters; the final rule accommodates this situation.

NOAA has changed the definition of "fishing or to fish" in the final rule to include fishing for any species of finfish or shellfish, which prohibits the possession of Atlantic striped bass while engaged in fishing for other species. The change in the definition of "fishing or to fish" and the geographical restriction of the area of the EEZ where possession is allowed (only if not fishing) facilitates enforcement of the final rule.

Comment: The State of Delaware, the Sport Fishing Institute, the National Coalition for Marine Conservation, the Times Mirror Magazines, the Atlantic Sportfishing Association, and one individual from Virginia supported the proposed rule as written, indicating the need for conservation of the stocks in the EEZ. Delaware also favored implementation of the proposed rule to prevent any "loopholes" in state regulations from becoming a problem. The Sport Fishing Institute and the National Coalition for Marine Conservation stated that the proposed regulations would facilitate the enforcement of state regulations, since state enforcement personnel would not be faced with determining the origin of Atlantic striped bass while trying to enforce state regulations.

Response: The final rule as implemented is more restrictive than the proposed rule, providing for even greater enforceability and conservation for the stocks, as well as help ensure the effectiveness of state regulations.

Comment: The ASMFC, the New York Division of Marine Resources, the Massachusetts Division of Marine Fisheries, and the North Carolina Division of Marine Fisheries stated that they did not support the proposed rule. The ASMFC commented that the prohibition on harvest of Atlantic striped bass in the EEZ, while harvest was legal in adjoining state waters, would be confusing to the public and law enforcement agencies. New York indicated that state landing laws would make regulating the harvest in the EEZ unnecessary.

Massachusetts commented that the proposed rule is totally unnecessary, based on limited historical harvest in the EEZ, the existence of state landing laws to regulate the harvest from the EEZ (except in Pennsylvania), and their opinion that there are no known existing "loopholes" in any other state landing laws. The latter comment is based on a "review" of state laws by ASMFC. Massachusetts suggested that it would be easier to monitor the port of Philadelphia than the entire EEZ. The North Carolina Division of Marine Fisheries stated that the proposed rule is unnecessary because management actions by the states and ASMFC will achieve management objectives; and that the rule would violate the Magnuson Act's national standard 4 by discriminating against North Carolina trawler fishermen, would cause wastage of otherwise legal Atlantic striped bass if taken under state rules within the 3-mile limit, and would limit a state's ability to manage Atlantic striped bass through a bycatch fishery. North Carolina also indicated that the states, through the ASMFC Plan, should be given the opportunity to achieve the management objectives of the Plan without additional federal rules.

Response: NOAA believes that the issue of confusion for the public and enforcement is not relevant, inasmuch as different regulations for Atlantic striped bass exist among states. The final rule implemented by this rulemaking is not complex and should be easily understood. The comment from New York and Massachusetts that state landing regulations would "regulate" the harvest from the EEZ may apply for New York and Massachusetts, but NOAA believes that it has not been conclusively demonstrated that there are no "loopholes" in the laws of each of the Atlantic coastal states that could allow landings of large quantities of Atlantic striped bass from the EEZ; nor is NOAA assured that states will not amend their regulations, thereby creating loopholes even if none now exist. An example is the apparent lack of adequate landing laws in Pennsylvania to regulate landing of Atlantic striped bass. NOAA believes that the potential for similar situations in other states remains, and that the prohibition on harvest of Atlantic striped bass from the EEZ is necessary to prevent potential damage to the stocks.

NOAA has determined that dockside enforcement, such as suggested by Massachusetts, would be ineffective, because the origin of harvest of Atlantic striped bass seen at dockside could not be determined. NOAA does not agree with the comment by the North Carolina Division of Marine Fisheries that this rule is unnecessary as it pertains to potential damage to the stocks. Also, NOAA concludes that this rule does not discriminate against residents of North Carolina because the prohibition of harvest is uniform throughout the range of the Atlantic striped bass in the EEZ. Additionally, NOAA does not believe that the rule will prevent a state from having a bycatch fishery for Atlantic striped bass; a state may, through state regulations, allow Atlantic striped bass to be taken legally from state waters in fisheries directed on other species. NOAA does not believe that there would be any wastage of legally taken Atlantic striped bass taken under state regulations in state waters. The rule prohibits a fisherman from entering the EEZ with Atlantic striped bass taken legally from state waters. This prohibition should encourage fishermen to fish first in the EEZ if they want to harvest Atlantic striped bass from state waters *and* fish in the EEZ on a single trip. Finally, NOAA believes, as stated in the Proposed Rule, that the states have the primary responsibility for management of Atlantic striped bass and this rule complements and supports the state management activities under the ASMFC Plan.

Changes From the Proposed Rule

Based on comments received on the proposed rule, the following changes were made in the final rule:

(1) Under § 656.2, Definitions, the definition of "fishing or to fish" in the proposed rule referred to the catching, taking or harvesting of Atlantic striped bass. In the final rule, "fishing or to fish" has been modified to refer to the catching, taking, or harvesting of fish. "Fish" has been defined in the final rule to include finfish (including highly migratory species), mollusks, crustaceans, and all other forms of marine animal and plant life. Thus, under the final rule, possession of Atlantic striped bass is permitted in the EEZ only in the Block Island Sound area (as defined elsewhere in this preamble and in § 656.3(c)) when no fishing is taking place from the vessel.

Additionally, the definition of "retain" has been revised. The speedy release and return to the sea is critical to the

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survival of striped bass captured in any manner. The final rule definition eliminates the "reasonable opportunity" to return the fish to the sea, which was in the proposed rule, and determined to be unenforceable.

(2) Under § 656.3, the proposed rule would have allowed possession of Atlantic striped bass in the Atlantic coast EEZ, provided that the vessel was

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and

List of Subjects in 50 CFR Part 656

Fishing, Fisheries.

Dated: September 26, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI is

southeast point of Block Island, Rhode Island.

Continuous transit means that a vessel remains continuously underway while in the EEZ.

EEZ means the Exclusive Economic Zone of the United States, from 3 to 200 nautical miles (5.6–370.8 km) offshore of the United States, beginning at the seaward boundary of the territorial sea

has otherwise been released from the capture gear.

Secretary means the Secretary of Commerce or a designee.

§ 656.3 Prohibitions.

No person shall:

(a) Take and retain any Atlantic striped bass within the EEZ;

(j) Resist a lawful arrest for any act prohibited by the Act or these regulations;

(k) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the Act or the regulations in this part.

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survival of striped bass captured in any manner. The final rule definition eliminates the "reasonable opportunity" to return the fish to the sea, which was in the proposed rule, and determined to be unenforceable.

(2) Under § 656.3, the proposed rule would have allowed possession of Atlantic striped bass in the Atlantic coast EEZ, provided that the vessel was not engaged in fishing. This possession provision was made to accommodate transporting Atlantic striped bass taken from state waters to the mainland. NOAA has determined that this provision is necessary only in a narrowly-defined area. Thus, the final rule prohibits possession of Atlantic striped bass in the Atlantic EEZ, except for the following area: The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, New York and Block Island Southeast Light, Block Island, Rhode Island; and west of a line connecting Point Judith Light, Point Judith, Rhode Island and Block Island Southeast Light, Block Island, Rhode Island. Within this area, possession of Atlantic striped bass is permitted provided no fishing takes place from a vessel while in the EEZ and the vessel is in continuous transit.

(3) Under § 656.3(a), the prohibition in the proposed rule included to "(f)ish for" striped bass. To facilitate enforcement, this specific language has been removed in the final rule, which prohibits the taking or retention of Atlantic striped bass.

(4) The proposed rule stated that, as mandated in the Act, regulations imposed by the Secretary on fishing for Atlantic striped bass in the EEZ would expire coincident with the expiration of the Act on September 30, 1991. However, if the Act is reauthorized, the regulations implemented in this final rule will continue to be effective. If the Act is not reauthorized, the regulations in this rule will be drawn through a document published in the Federal Register. Thus, the final rule does not include an expiration date for the regulations.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that these regulations are consistent with the Atlantic Striped Bass Act Appropriations Authorization, Public Law 100-589, and the Magnuson Act, 16 U.S.C. 1851 *et seq.*, are necessary and appropriate to ensure the effectiveness of state regulations pertaining to Atlantic striped bass, and will achieve conservation and management goals for the Atlantic striped bass resource.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Florida. Georgia does not have an approved coastal zone management program. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Maine, New Hampshire, Connecticut, New York, New Jersey, North Carolina and South Carolina agreed with this determination. Massachusetts, Rhode Island, Delaware, Maryland, Virginia, and Florida did not respond within the statutory time period and, therefore, consistency is automatically inferred.

The Assistant Administrator has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order (E.O.) 12291. This determination is based on the regulatory impact review (RIR), which concludes that the benefits of the rule outweigh the costs, that there are no significant negative impacts on small businesses, and that there are no mandatory reporting requirements.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

NOAA prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the environment as a result of this rule. Interested reviewers may obtain a copy of the assessment and finding of no significant impact (see ADDRESSES).

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Deputy Assistant Secretary of Commerce for Intergovernmental Affairs determined that the proposed management measures and regulations had sufficient federalism implications to warrant preparation of a federalism assessment (FA). The FA concluded that the regulations are consistent with the principles, criteria, and requirements of E.O. 12612 set forth in sections 2 through 5. The rule does not affect the states' abilities to discharge traditional state government functions or other aspects of state sovereignty.

List of Subjects in 50 CFR Part 656

Fishing, Fisheries.

Dated: September 26, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI is amended by adding part 656 to read as follows:

PART 656—ATLANTIC STRIPED BASS FISHERY

Sec.
656.1 Purpose and scope.
656.2 Definitions.
656.3 Prohibitions.
656.4 Relation to the Magnuson Act.
656.5 Civil procedures.

Authority: 16 U.S.C. 1851 note.

§ 656.1 Purpose and scope.

The regulations in this part implement section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, Public Law 100-589, and govern fishing for and possession of Atlantic striped bass in the EEZ on the Atlantic coast.

§ 656.2 Definitions.

The terms used in this part have the following meanings:

Act means the Atlantic Striped Bass Conservation Act Appropriations Authorization, Public Law 100-589.

Area of Custody means any vessel, building, vehicle, live car, pound, pier, or dock facility where Atlantic striped bass might be found.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis*, found in the waters of the Atlantic Ocean north of Key West, Florida.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary to enforce the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Block Island Southeast Light means the aid to navigation light located at Southeast Point, Block Island, Rhode Island, and defined as follows: Located at 40° 09.2'N., 71° 33.1'W; is 201 feet (61.3 m) above the water; and is shown from a brick octagonal tower 67 feet (20.4 m) high attached to a dwelling on the southeast point of Block Island, Rhode Island.

Continuous transit means that a vessel remains continuously underway while in the EEZ.

EEZ means the Exclusive Economic Zone of the United States, from 3 to 200 nautical miles (5.6-370.6 km) offshore of the United States, beginning at the seaward boundary of the territorial sea of the coastal states.

Fish means finfish (including highly migratory species), mollusks, crustaceans, and all other forms of marine animal and plant life.

Fishing or *to fish* means:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish; or

(c) Any operation at sea in support of, or in preparation for, any activity described in paragraphs (a) or (b) of this definition.

(d) The term does not include any scientific research authorized by the Federal Government or by any state government.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(a) Fishing; or

(b) Aiding and assisting one or more vessels at sea in the performance of any activity related to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Montauk Light means the aid to navigation light located at Montauk Point, New York, and defined as follows: Located at 41° 04.3'N., 71° 51.5'W.; is shown from an octagonal, pyramidal tower, 108 feet (32.9 m) high, and has a covered way to a dwelling.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, state, local, or foreign government or any entity of any such government.

Point Judith Light means the aid to navigation light located at Point Judith, Rhode Island, and defined as follows: located at 41° 21.7'N., 71° 28.9'W.; is 65 feet (19.8 m) above the water; and is shown from an octagonal tower 51 feet (15.5 m) high.

Retain means to fail to return Atlantic striped bass to the sea immediately after the hook has been removed or the fish has otherwise been released from the capture gear.

Secretary means the Secretary of Commerce or a designee.

§ 656.3 Prohibitions.

No person shall:

(a) Take and retain any Atlantic striped bass within the EEZ;

(b) Fail to return to the water immediately, with the least possible injury, any Atlantic striped bass taken within the EEZ incidental to the commercial or recreational fishing for species of fish other than Atlantic striped bass;

(c) Possess any Atlantic striped bass on board a fishing vessel while such vessel is in the Atlantic coast EEZ, except for the following area: The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, New York and Block Island Southeast Light, Block Island, Rhode Island; and west of a line connecting Point Judith Light, Point Judith, Rhode Island and Block Island Southeast Light, Block Island, Rhode Island. Within this area, possession of Atlantic striped bass is permitted, provided no fishing takes place from the vessel while in the EEZ and the vessel is in continuous transit;

(d) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export, any Atlantic striped bass taken and retained in violation of the Act or the regulations in this part;

(e) Interfere with, obstruct, delay, or prevent by any means a lawful investigation, search or seizure conducted in the process of enforcing the Act;

(f) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, transporting, purchase, sale, or transfer of any Atlantic striped bass;

(g) Refuse to allow an authorized officer to board any fishing vessel or to enter any area of custody for the purpose of conducting any search, inspection or seizure in connection with the enforcement of the Act or the regulations in this part;

(h) Dispose of any Atlantic striped bass, or parts, or other matter, in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel;

(i) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connection with enforcement of the Act or the regulations in this part;

(j) Resist a lawful arrest for any act prohibited by the Act or these regulations;

(k) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the Act or the regulations in this part.

§ 656.4 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal forfeitures, and enforcement apply with respect to the regulations in this part as if the regulations in this part were issued under the Magnuson Act.

§ 656.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and the regulations in this part.

[FR Doc. 90-23244 Filed 10-1-90; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 91060-0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of rescission of closure to directed fishing and increased observer coverage; request for comments.

SUMMARY: NOAA announces the rescission of a previous notice of closure for domestic annual processing (DAP) of "Other Rockfish" in the Western Regulatory Area of the Gulf of Alaska. Required observer coverage is expanded to 100 percent coverage for all vessels participating in this fishery. These actions are necessary to assure optimum use of groundfish in the Gulf of Alaska. The intent of these actions is to promote fishery objectives of the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska.

DATES: Effective 12 noon, Alaska local time (A.l.t.), September 27, 1990.

Comments are invited on or before October 12, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region [Regional Director], National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

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FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR 611.92 and part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1990 TAC specified for "Other Rockfish" in the Western Regulatory Area is 4,300 mt (55 FR 3223, January 31, 1990). Under § 672.20(c)(3), the Regional Director declared that "Other Rockfish" in this area should be treated in the same manner as prohibited species when he determined that the TAC for "Other Rockfish" would be reached by August 3, 1990 (55 FR 32261, August 8, 1990).

This closure was predicted from high rates of harvest that proved to be discontinuous. Catch rates were substantially lower than predicted, and 2,551 mt of "Other Rockfish" remained in the Western Regulatory Area after the closure. Therefore, on August 16, 1990, the Secretary rescinded the August 3, 1990, closure to avoid underharvest of the TAC (55 FR 34283, August 22, 1990).

On August 31, 1990, the Regional Director determined that the TAC for "Other Rockfish" in the Western Regulatory Area would be reached and consequently issued a notice prohibiting retention of "Other Rockfish" in the Western Regulatory Area (55 FR 36651, September 6, 1990).

Subsequently, the Regional Director has determined that 570 mt of "Other Rockfish" remains unharvested in the Western Regulatory Area and that ongoing groundfish operations are being unnecessarily constrained under the existing closure. Consequently, he is rescinding the previously issued notice of closure, thereby allowing directed fishing for "Other Rockfish" in the Western Regulatory Area of the Gulf of Alaska by vessels in DAP operations. The rescission is effective 12 noon, A.l.t., September 27, 1990, and remains in effect through midnight, A.l.t., December 31, 1990, subject to other closures prior to that date.

Section 672.27(c)(1) provides that, if required to do so by the Regional Director, the operator of a vessel must carry an observer aboard the vessel whenever fishing or processing operations are conducted. Given the relatively small harvest amount of "Other Rockfish" still available for the Western Regulatory Area, the anticipated level of effort in this fishery, and the difficulties the Regional Director has experienced in catch monitoring, the Regional Director has determined that complete observer data will be required to prevent exceeding the remaining TAC. Consequently, the Regional Director requires that the operator of each vessel participating in the "Other Rockfish" fishery carry an observer on board the vessel whenever engaging in directed fishing for "Other Rockfish" within the Western Regulatory Area of the Gulf of Alaska.

The Regional Director finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP operations who would otherwise be prohibited from fishing due to a premature fishery closure, while assuring adequate catch data collection for monitoring purposes. However, interested persons are invited to submit comments in writing to the address above on or before October 12, 1990.

Classification

This action is taken under §§ 672.20(c)(3) and 672.27(c)(1) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting Requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: September 27, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23291 Filed 9-27-90; 2:29 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of rescission of closure to directed fishing and increased observer coverage; request for comments.

SUMMARY: NOAA announces the rescission of a previous notice of closure for domestic annual processing (DAP) of sablefish in the Western Regulatory Area of the Gulf of Alaska. Required observer coverage is expanded to 100 percent coverage for all vessels participating in this fishery. These actions are necessary to assure optimum use of groundfish in the Gulf of Alaska. The intent of these actions is to promote fishery objectives of the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska.

DATES: *Effective* 12 noon, Alaska local time (A.l.t.), September 27, 1990.

Comments are invited on or before October 12, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR 611.92 and part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1990 TAC specified for sablefish in the Western Regulatory Area is 3,770 mt, of which the trawl share is 750 mt (55 FR 3223, January 31, 1990). The TAC allocated to trawl gear was designated as bycatch to support directed fisheries for other groundfish species; therefore, the Secretary prohibited directed fishing for sablefish in the Gulf of Alaska with trawl gear during the 1990 fishing year (55 FR 3230, January 31, 1990).

Currently, 447 mt of the trawl share of sablefish remains unharvested in the Western Regulatory Area. The Regional Director has reviewed the status of sablefish and has determined that ongoing groundfish trawl fisheries operations are being unnecessarily constrained under the existing directed fishing closure. Consequently, he is rescinding the previously issued notice of closure, thereby allowing directed fishing for sablefish with trawl gear in the Western Regulatory Area of the Gulf of Alaska by vessels in DAP operations. Rescission is effective 12 noon, A.l.t., September 27, 1990, and remains effective through midnight, A.l.t., December 31, 1990, subject to other closures prior to that date.

Section 672.27(c)(1) provides that, if required to do so by the Regional Director, the operator of a vessel must carry an observer aboard the vessel whenever fishing or processing operations are conducted. Given the relatively small harvest amount for the sablefish fishery still available, the anticipated level of effort in this fishery, and the difficulties the Regional Director has experienced in monitoring catch, the Regional Director has determined more complete observer data will be required to prevent exceeding the remaining TAC. Consequently, the Regional Director requires that the operator of each vessel participating in the trawl sablefish fishery carry an observer on board the vessel whenever engaging in directed fishing for sablefish with trawl gear within the Western Regulatory Area of the Gulf of Alaska.

The Regional Director finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP operations who would otherwise be prohibited from fishing due to a premature fishery closure, while assuring adequate catch data collection for monitoring purposes. However, interested persons are invited to submit comments in writing to the address previously cited on or before October 12, 1990.

Classification

This action is taken under §§ 672.20(c)(2) and (g) and § 672.27(c)(1) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: September 27, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23290 Filed 9-27-90; 2:29 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 191
Tuesday, October 2, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and

unlawful activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the

or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his/her activities, or of the identity of confidential sources, witnesses, and law enforcement personnel and could provide information to enable the subject to avoid detection or

and law enforcement by alerting the subject of an investigation, thereby enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators and

Proposed Rules

Federal Register
Vol. 55, No. 191
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2412

Privacy Act; New Exempt System of Records

AGENCY: Federal Labor Relations Authority (FLRA).

ACTION: Proposed rule and request for comments.

SUMMARY: The FLRA is establishing a new system of records under the Privacy Act of 1974, as amended, to consist of the investigative files of the FLRA's Office of the Inspector General (OIG). Pursuant to a determination by the Chairman of the FLRA, this proposed rule adds 5 CFR 2412.16 to exempt the system of records from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a (j) and (k). By relieving the OIG of certain restrictions, the exemptions will help ensure that the OIG may efficiently and effectively perform investigations and other authorized duties and activities.

DATES: Comments must be received on or before November 1, 1990.

ADDRESSES: Forward comments to the Office of the Solicitor, Federal Labor Relations Authority, 500 C Street, SW., Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Paul D. Miller, Inspector General, FLRA, 500 C Street, SW., Washington, DC 20424, (202) 382-6002.

SUPPLEMENTARY INFORMATION: Elsewhere in today's Federal Register, the FLRA is publishing a proposed system notice to establish a new system of records, "FLRA/OIG-1, Office of the Inspector General Investigative Files," under the Privacy Act, 5 U.S.C. 552a, as amended. The following proposed amendment of the FLRA's Privacy Act regulations, 5 CFR part 2412, exempts the new system of records from certain provisions of the Act. These provisions require, among other things, that the agency provide notice when collecting information, account for certain disclosures, permit individuals access to their records, and allow them to request that the records be amended. These provisions would interfere with the conduct of OIG investigations if applied to the OIG's maintenance of the proposed system of records.

Accordingly, it is proposed to exempt this new system of records from specified provisions of the Privacy Act, pursuant to sections (j)(2) and (k)(2) of the Act. Section (j)(2), 5 U.S.C. 552a(j)(2), makes provision for exempting a system of records "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws * * *," and which consists of:

(1) Information complied for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informats and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

Section (k)(2), 5 U.S.C. 552a(k)(2), makes provision for exempting a system of records consisting of "investigatory material compiled for law enforcement purposes," where such materials are not within the scope of the (j)(2) exemption pertaining to criminal law enforcement.

Where applicable, section (j)(2) may be invoked to exempt a system of records from any Privacy Act provision except: 5 U.S.C. 552a(b) (conditions of disclosure); (c) (1) and (2) (accounting of disclosures and retention of accounting, respectively); (e)(4) (A) through (F) (system notice requirements); (e) (6), (7), (9), (10), and (11) (miscellaneous agency requirements relating to system maintenance); and (i) (criminal penalties). Section (k)(2) may be invoked to exempt a system or records from 5 U.S.C. 552a(c)(3) (making accounting of disclosure available to the subject individual), (d) (access to records), (e)(1) (maintaining only relevant and necessary information), (e)(4) (G) through (I) (notice of certain procedures), and (f) (promulgation of certain Privacy Act rules).

The proposed system of records contains information covered by the (j)(2) and (k)(2) exemptions. The OIG investigatory files are maintained pursuant to official investigational and law enforcement functions of the FLRA's Office of the Inspector General under the authority of the 1988 amendments to the Inspector General Act of 1978. *See* Pub. L. No. 100-504, amending Pub. L. No. 95-452, 5 U.S.C. app. at 1184 (1988). With reference to 5 U.S.C. 552a(j)(2), the OIG constitutes an agency component that performs as one of its principal functions activities pertaining to the enforcement of criminal laws. *See* Section 4 of the Inspector General Act of 1978, as amended, 5 U.S.C. app. at 1185-86 (1988).

Information covered under the (j)(2) exemption includes, but is not limited to, information compiled for the purpose of identifying criminal offenders and alleged offenders and consisting of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; information compiled for the purpose of a criminal investigation, including reports of informats and investigators, that is associated with an identifiable individual; or reports of enforcement of the criminal laws from arrest or indictment through release from supervision.

With reference to 5 U.S.C. 552a(k)(2), the OIG is authorized by the Inspector General Act of 1978, as amended, to conduct investigations relating to programs and operations of the FLRA. Information contained in OIG investigative files under the (k)(2) exemption relates to non-criminal law enforcement matters, such as information pertaining to the investigation of civil, administrative, or regulatory violations and similar wrongdoing.

The disclosure of information contained in this system of records, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take action to prevent detection of unlawful activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified or retained would significantly impede the effectiveness of OIG investigative activities and in addition, could preclude the apprehension and successful prosecution or discipline of persons engaged in fraud or other illegal activity.

In addition to maintaining the integrity and confidentiality of criminal investigations and protecting individuals from harm, the exemptions are needed for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. These accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families and lead to the improper influencing of witnesses, the destruction of evidence or the fabrication of testimony.

(2) 5 U.S.C 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since these systems of records are being exempted from subsection (d) of the Act, concerning access to records, this section is inapplicable to the extent that these systems of records will be exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him/her, to request amendment to such records, to request a review of an agency decision not to amend such records and to contest the information contained in such records. Granting access to records in this system of records could inform the subject of an investigation of an actual or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his/her activities, or of the identity of confidential sources, witnesses, and law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation, thereby enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a Federal Register notice concerning its procedures for notifying an individual, at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record and how to contest its content. Since this system of records is being exempted from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that this system of records will be exempt from subsection (f) and (d) of the Act. Although the system would be exempt from these requirements, OIG has published information concerning its notification, access, and contest procedures because, under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a Federal Register

notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since this system

For the reasons set out in the preamble, the FLRA proposes to amend title 5, chapter XIV, subchapter B, part 2412 of the Code of Federal Regulations, as follows:

PART 2412—PRIVACY

1. The authority for Part 2412

Edge corporations and foreign banks and other international banking matters (Docket No. R-0703) until October 14, 1990.

DATES: Comments must be received by October 14, 1990.

ADDRESSES: All comments, which should refer to Docket No. R-0703,

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Docket No. 25630; Summary Notice No. PR-90-24]

Summary of Rulemaking Petition

those conducted by a propeller-driven aircraft having a maximum certificated seating capacity of less than 75 passenger seats or a turbojet aircraft having a maximum certificated seating capacity of less than 30 passenger seats.

Petitioner requests that the requirements of part 36, subpart K of the Federal Aviation Regulations be

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notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although the system will be exempt from this requirement, OIG has published such a notice in broad generic terms.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines "maintain" to include the collection of information, complying with this provision could prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which seems unrelated, irrelevant, or incomplete when collected can take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his/her request if any system of records named by the individual contains a record pertaining to him/her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation were able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since this system would be exempt from subsection (d) of the Act, concerning access to records, the requirements of subsection (f) (2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable to the extent that this system of records will be exempted from subsection (d) of the Act. Although this system would be exempt from the requirements of subsection (f) of the Act, OIG has promulgated rules which establish agency procedures because, under certain circumstances, it could be appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d) (1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since this system of records would be exempt from subsections (c) (3) and (4), (d), (e) (1), (2), (3) and (4) (G) through (I), (e) (5) and (8), and (f) of the Act, the provisions of subsection (g) of the Act would be inapplicable to the extent that this system of records will be exempted from those subsections of the Act.

For these reasons, it is proposed to exempt the proposed system of records containing OIG investigative files under exemptions (j)(2) and (k)(2) of the Privacy Act by amending the FLRA's Privacy Act regulations, 5 CFR part 2412. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA certifies that the proposed rule amendment will not, if adopted, have a significant impact on a substantial number of small entities, because the Privacy Act applies only to "individuals," and individuals are not "small entities" within the meaning of the Regulatory Flexibility Act. The FLRA further certifies that the rule amendment has been reviewed under Executive Order No. 12291 and has been determined not be a "major rule," since it will not have an annual effect on the economy of $100 million or more.

List of Subjects in 5 CFR Part 2412

Privacy Act.

For the reasons set out in the preamble, the FLRA proposes to amend title 5, chapter XIV, subchapter B, part 2412 of the Code of Federal Regulations, as follows:

PART 2412—PRIVACY

1. The authority for Part 2412 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 2412.16 would be added as follows:

§ 2412.16 Exemptions.

(a) *OIG Files Compiled for the Purpose of a Criminal Investigation and for Related Purposes.* Pursuant to 5 U.S.C. 552a(j)(2), the FLRA hereby exempts the system of records entitled, "FLRA/OIG–1, Office of the Inspector General Investigative Files," insofar as it consists of information compiled for the purposes of a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for subsections (b), (c)(1) and (2), (e)(4) (A) through (F), (e)(6), (7), (9), (10), (11) and (i).

(b) *OIG Files Compiled for Other Law Enforcement Purposes.* Pursuant to 5 U.S.C. 552a (k)(2), the FLRA hereby exempts the system of records entitled, "FLRA/OIG–1, Office of Inspector General Investigative Files," insofar as it consists of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

Dated September 28, 1990.

Solly Thomas,

Executive Director.

[FR Doc. 90–23235 Filed 10–1–90; 8:45 am]

BILLING CODE 6727–01–M

FEDERAL RESERVE BOARD

12 CFR Parts 211 and 265

[Docket No. R–0703]

Regulation K—International Banking Operations; Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Because of requests for additional time, the Board of Governors of the Federal Reserve System has extended the period for receipt of public comments on its proposal to revise its regulation dealing with the activities of Edge corporations and foreign banks and other international banking matters (Docket No. R–0703) until October 14, 1990.

DATES: Comments must be received by October 14, 1990.

ADDRESSES: All comments, which should refer to Docket No. R–0703, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B–2223, 20th & Constitution Avenue, NW., Washington, DC between the hours of 8:45 and 5:15 p.m. weekdays. Comments may be inspected in Room B–1122 between 8:45 and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Ricki Rhodarmer Tigert, Associate General Counsel (202/452–3428), Kathleen M. O'Day, Managing Senior Counsel (202/452–3786), Kimberly A. Lynch, Attorney (202/458–3584), Legal Division; or Michael G. Martinson, Assistant Director (202/452–3640), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: On August 1, 1990 (55 FR 32434, August 9, 1990), the Board requested comment on a proposal to revise the provisions of Regulation K governing the permissible foreign activities of U.S. banking organizations; investments by U.S. banking organizations under the general consent procedures; qualified business entities to which Edge corporations may provide full banking services in the United States; and case-by-case exemptions from the standard for qualifying foreign banking organizations. Comment was requested on the proposal by September 30, 1990. The Board has received a number of inquiries requesting additional time within which to submit comments. In light of the issues involved in the proposal and in order to afford interested parties an opportunity to present their views on the matter, the comment period has been extended to October 14, 1990.

By order of the Board of Governors, acting through its Secretary under delegated authority, September 25, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–23115 Filed 10–1–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Docket No. 25920; Summary Notice No. PR–90–24]

Summary of Rulemaking Petition Received From American Airlines, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for rulemaking.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of a petition by American Airlines, Inc., to allow aircraft certificated for 110 seats or less and that meet Stage 3 noise requirements to use commuter slots at Chicago's O'Hare International Airport. The purpose of this notice is to improve the public's awareness of this aspect FAA's regulatory activities. Neither the publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before December 3, 1990.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 25717, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3491.

SUPPLEMENTARY INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC–10), Room 915, FAA Headquarters Building (FOB–10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

Part 93, subpart K of the Federal Aviation Regulations (14 CFR part 93, subpart K) limits the number of aircraft operations at O'Hare International Airport and limits the type of aircraft that may use commuter slots. Under § 93.123(c), commuter operations are those conducted by a propeller-driven aircraft having a maximum certificated seating capacity of less than 75 passenger seats or a turbojet aircraft having a maximum certificated seating capacity of less than 56 passenger seats.

Petitioner requests that the requirements of part 93, subpart K of the Federal Aviation Regulations be amended to permit aircraft certificated for 110 seats or less and that meet Stage 3 noise requirements to use commuter slots at O'Hare International Airport. Petitioner states that the use of Stage 3 aircraft with up to 110 passenger seats would upgrade and increase service to small and medium-sized communities and would enhance competition in the Chicago area, as well as throughout the United States.

Petitioner requests that either public notice and comment on this petition be waived and that the FAA proceed immediately to the publication of a notice of proposed rulemaking, or, alternatively, that the comment period on the petition be limited to 15 days. The FAA believes, however, that all interested and affected parties should be given the opportunity to comment on this petition. In consideration of the complexity and potential impacts of the rulemaking action requested, the FAA further believes that a full comment period of 60 days is necessary in order to obtain reasoned comments from the users of the airspace system. Therefore, the FAA is publishing the petition for public comment in accordance with the procedures contained in agency regulations, 14 CFR 11.27(b).

Issued in Washington, DC on September 28, 1990.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 90–23211 Filed 10–1–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–93–AD]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes, which currently requires measurement to determine

wear of certain flap ball screwjack no-back assemblies, and replacement, if necessary. This action would revise the initial compliance threshold and the intervals for the repetitive measurements required by the existing AD. This proposal would also require modification of the screwjack no-back assemblies which would terminate the

submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–92–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive negative, and substantial

Industrie Service Bulletin A300–27–072, dated April 10, 1984, at the earlier of the following:

1. Prior to 12,000 landings; or

2. Whichever is the later of the following:

a. Within 1,000 landings after the effective date of this AD; or

b. Within the next "N" of landings after the effective date of this AD, as determined by the following formula: N=3,000—

Issued in Renton, Washington, on September 17, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–23223 Filed 10–1–90; 8:45 am]

BILLING CODE 4910–13–M

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wear of certain flap ball screwjack no-back assemblies, and replacement, if necessary. This action would revise the initial compliance threshold and the intervals for the repetitive measurements required by the existing AD. This proposal would also require modification of the screwjack no-back assemblies which would terminate the need for the repetitive measurements. This condition, if not corrected, could result in reduced controllability of the airplane.

DATES: Comments must be received no later than November 20, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-92-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-92-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On September 17, 1987, the FAA issued AD 87-21-03, Amendment 39-5736 (52 FR 36752, October 1, 1987), to require repetitive measurements and replacement, if necessary, of certain flap ball screwjack no-back assemblies. That action was prompted by reports of excessive wear of the carbon friction discs in the screwjack no-back assemblies. This condition, if not corrected, could result in the screwjack becoming reversible and could lead to an asymmetrical flap condition in the event of a flap transmission shaft failure, which could cause reduced controllability of the airplane.

Recently, the FAA has been advised that the existing AD requires the initial measurement of backlash later in the screwjack life cycle, and repeat measurements (when the backlash is less than .33 mm) at more frequent intervals, than specified in the parallel foreign airworthiness directive and the manufacturer's recommendation. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has issued revised Airworthiness Directive 84-066-061(B)R2, dated April 18, 1990, related to this subject.

After further review of the currently available data, the FAA has determined that the initial measurement requirement of the existing AD must be conducted at an earlier threshold in order to determine excessive wear of the carbon friction discs in the screwjack no-back assemblies in a more timely manner. Further, the repetitive measurement interval may be extended for backlash measurements of less than .33 mm, without compromising safety.

Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984, describes the procedures for conducting a jackhead axial backlash measurement on certain flap ball screwjacks, and replacement of the screwjack, if necessary. The French DGAC has classified this service bulletin as mandatory.

Airbus Industrie Service Bulletin A300-27-173, dated May 2, 1984, describes the installation of Modification AI 5240, which consists of installing a new carbon friction disc, a modified drive shaft, and a collar to the no-back mechanism.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 87-21-03 with a new airworthiness directive that would require repetitive measurements and replacement, if necessary, of certain flap ball screwjack no-back assemblies. This proposal would also require eventual modification of the flap ball screwjack no-back assemblies, which would terminate the need for the repetitive inspections. The proposed actions would be required to be accomplished in accordance with the Airbus service bulletins described above.

The degree of assurance necessary as to the adequacy of inspection/measurement needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections/measurements, has caused the FAA to place less emphasis on repetitive inspections/measurements and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position of continual inspection/measurement, the FAA has decided to require, whenever practicable, airplane modifications necessary to remove the source of the problem addressed. The proposed modification requirements of this action are in consonance with that policy.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8.5 manhours per airplane to accomplish the measurements, and approximately 25.5 manhours to accomplish the modifications, and that the average labor cost would be $40 per manhour. The estimated cost for the required parts is $3,046. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $290,926.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5736 (52 FR 36752, October 1, 1987), AD 87-21-03, with the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in any category, equipped with the flap ball screwjack no-back mechanisms, as listed in Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984, which have not been modified in accordance with Modification AI 5240, as described in Airbus Industrie Service Bulletin A300-27-173, dated May 2, 1984. Compliance is required as indicated, unless previously accomplished.

To prevent excessive wear of the carbon friction disc of the no-back assemblies, which could lead to an asymmetric flap condition in the event of flap transmission shaft failure, accomplish the following:

A. For airplanes on which flap jamming with one or more affected flap screwjacks has occurred, perform a jackhead axial backlash measurement on the affected flap ball screwjacks in accordance with Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984, at the earlier of the following:

1. Prior to 13,000 landings; or

2. Within 1,000 landings after November 3, 1987 (the effective date of Amendment 39-5736, AD 87-21-03).

B. For airplanes on which flap jamming with any of the affected flap screwjacks has not occurred, perform a jackhead axial backlash measurement on the affected flap ball screwjacks in accordance with Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984, at the earlier of the following:

1. Prior to 18,000 landings; or

2. Whichever is the later of the following:

a. Within 1,000 landings after the effective date of this AD; or

b. Within the next "N" of landings after the effective date of this AD, as determined by the following formula: N=3,800—0.2× (number of accumulated landings).

C. If backlash is found, repeat the measurement required by paragraph A. or B. of this AD, at the following intervals:

1. If the backlash is less than or equal to 0.33 mm, prior to the accumulation of 3,800 landings after the last measurement.

2. If the backlash is more than 0.33 mm but less than or equal to 0.49 mm, prior to the accumulation of 2,000 landings after the last measurement.

3. If the backlash is more than 0.44 mm, but less than or equal to 0.56 mm, prior to the accumulation of 1,000 landings after the last measurement.

D. Replace the flap ball screwjack within the next 250 landings when a measurement required by paragraph A. or B. of this AD indicates that the backlash is greater than 0.56 mm.

E. Within 18 months after the effective date of this AD, modify the flap ball screwjack assemblies by installing a new carbon friction disc, a modified drive shaft, and a collar to the no-back mechanism, in accordance with Airbus Industrie Service Bulletin A300-27-173, dated May 2, 1984. Installation of this modification constitutes terminating action for the repetitive measurements required by paragraph C. of this AD.

Note.—This Airbus Service Bulletin references Lucas Aerospace Service Bulletin No. 1066-27-1160 for additional modification instructions.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note.—The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant Principal Inspection (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 17, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23223 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-174-AD]

Airworthiness Directives; Airbus Industrie Model A310-200 and A310-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Airbus Industrie Model A310-200 and A310-300 series airplanes, which would require repetitive visual inspections and electrical continuity tests to detect broken or missing vespel bushes in the flap universal joint assemblies, and replacement of universal joint bushes, if necessary. This proposal is prompted by reports of abnormal angular backlash found in some flap drive shaft-universal joint assemblies, due to loose, broken, or missing vespel bushes installed in the universal joint forkends. This condition, if not corrected, could result in flap failure and subsequent partial loss to lift in one wing with associated degradation of controllability of the airplane.

DATES: Comments must be received no later than November 20, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-174-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue., SW Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

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SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-174-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Airbus Industrie Model A310-200 and A310-300 series airplanes. There have been reports of abnormal angular backlash found in some flap drive shaft-universal joint assemblies due to loose, broken, or missing vespel bushes installed in he universal joint forkends. This condition, if not corrected, could result in flap failure and subsequent partial loss of lift in one wing with associated degradation of controllability of the airplane.

Airbus Industrie has issued Service Bulletin A310-27-2054, Revision 1, dated March 16, 1990, which describes procedures for repetitive visual inspections and electrical continuity tests to detect broken or mission vespel bushes in the flap system universal joint assemblies, and replacement of universal joint bushes, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90-092-109(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections and electrical continuity tests to detect broken or missing vespel bushes in the flap system universal joint assemblies, and replacement of the universal joint bushes, if necessary, in accordance with the service bulletin previously described.

It is estimated that 22 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A310-200 and A310-300 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent flap failure due to broken or missing vespel bushes in the flap system universal joint assemblies, accomplish the following:

A. Prior to the accumulation of 8,000 landings, or within 350 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,500 landings, perform a visual inspection and electrical continuity tests of the flap system universal joint assemblies, in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 1, dated March 16, 1990.

Note.—The Airbus service bulletin references Lucas/Liebherr Service Bulletin No. 551A-27-613, dated March 1989, for additional instructions.

B. If any universal joint bushes are missing or broken, replace the bushes prior to further flight, in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 1, dated March 16, 1990. After replacement, repeat the inspections required by paragraph A. of this AD at intervals not to exceed 3,500 landings.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note.—The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 17, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23221 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-168-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which would require a one-time measurement of the voltage and frequency outputs from Static Inverters No. 1 and No. 2, and recalibration, if necessary. This proposal is prompted by a report of inadvertent operation of the stick shaker and stick pusher shortly after takeoff due to a faulty static inverter. This condition, if not corrected, could result in erroneous stick shake and stick push occurrences, which could adversely affect the controllability of the airplane.

DATES: Comments must be received no later than November 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-168-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-168-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model BAC 1-11 200 and 400 series airplanes. There has been a report of inadvertent operation of the stick shaker and stick pusher shortly after takeoff. The cause has been attributed to a fault within the static inverter, which resulted in both stick shake and stick push operating in advance of the normal stall vane operating angle positions on one system. This condition, if not corrected, could result in erroneous stick shake and stick push occurrences, which could adversely affect the controllability of the airplane.

British Aerospace has issued Alert Service Bulletin 27-A-PM0005, Issue 1, dated March 28, 1990, which describes procedures for a one-time measurement of the voltage and frequency outputs from Static Inverters No. 1 and No. 2, and recalibration, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time measurement of the voltage and frequency outputs from Static Inverters No. 1 and No. 2, and recalibration, if necessary, in accordance with the service bulletin previously described.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless

14 CFR Part 39

[Docket No. 90-NM-178-AD]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the replacement of the MLG wire harness assembly brackets; and installation of torque link dampers and torque link subassemblies on the MLG, in accordance with the service

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to certain Model F-28 Mark 0100 series airplanes; Serial Numbers 11244 through 11288, 11286 through 11283, 11288, 11289, 11291 through 11293, 11295,

14 CFR Part 39

[Docket No. 90-ANE-12]

Airworthiness Directives; General Electric Company (GE) CF6-6, CF6-45, CF6-50, and CF6-50A Series Turbofan Engines

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure stall warning protection, accomplish the following:

A. Within 600 hours time-in-service, or within 120 days after the effective date of this AD, whichever occurs first, measure the voltage and frequency outputs of Static Inverters No. 1 and No. 2, in accordance with the Accomplishment Instructions in British Aerospace Alert Service Bulletin 27-A-PM6026, Issue 1, dated March 28, 1990. If the measured voltage and/or frequency do not conform with the tolerances as detailed in the Maintenance Manual, Paragraph E, "Stall Protection—Simulated Flight Condition Check," prior to further flight, remove the inverter from the airplane and recalibrate it in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manger, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 18, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23220 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-178-AD]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which would require replacement of main landing gear (MLG) wire harness assembly brackets; and installation of the MLG torque link dampers, and subassemblies at the apex of the MLG torque links. This proposal is prompted by a recent report of an incident in which the MLG failed, after airplane touchdown, due to vibration. This condition, if not corrected, could result in failure of the MLG.

DATES: Comments must be received no later than November 20, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-178-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-178-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-28 Mark 0100 series airplanes. There has been a recent report of an incident of main landing gear (MLG) failure, after airplane touchdown, due to vibration of the left-hand MLG. The most probable cause of the MLG failure was high amplitude oscillation in a lateral torsional mode as a result of the lack of positive damping. This condition, if not corrected, could result in failure of the MLG.

Fokker has issued Service Bulletin F100-32-034, dated March 9, 1990, which describes procedures for: (1) The replacement of the main landing gear (MLG) wire harness assembly brackets; and (2) the installation of torque link dampers and torque link assemblies on the MLG. This service bulletin references Dowty Rotol Service Bulletin F100-32-34, dated March 14, 1990, for additional instructions. The RLD has classified the Fokker service bulletin as mandatory, and has issued Airworthiness Directive BLA No. 90-022 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the replacement of the MLG wire harness assembly brackets; and installation of torque link dampers and torque link subassemblies on the MLG, in accordance with the service bulletin previously described.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately 35 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $175. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $23,625.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to certain Model F-28 Mark 0100 series airplanes; Serial Numbers 11244 through 11263, 11266 through 11283, 11286, 11289, 11291 through 11293, 11295, 11297, 11300, 11303, and 11308; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent main landing gear (MLG) vibration and subsequent failure of the MLG, accomplish the following:

A. For airplanes Serial Numbers 11244 through 11263, 11266 through 11283, 11286, 11289, 11291, 11293, 11295, and 11297: Within 180 days after the effective date of this AD, replace the MLG wire harness assembly brackets, in accordance with Fokker Service Bulletin F100-32-034, dated March 9, 1990.

B. For airplanes Serial Numbers 11244 through 11266, 11268 through 11283, 11286, 11289, 11291 through 11293, 11295, 11297, 11300, 11303, and 11308: Within 180 days after the effective date of this AD, install torque link (TL) dampers and TL subassemblies on the MLG in accordance with Dowty Rotol Service Bulletin F100-32-34, dated March 14, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 17, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23222 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ANE-12]

Airworthiness Directives; General Electric Company (GE) CF6-6, CF6-45, CF6-50, and CF6-50A Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to GE CF6-6, CF6-45, CF6-50, and CF6-50A series engines, which would establish an inspection program for stage 1 fan disks. This proposal is prompted by the discovery of five stage 1 fan disks with cracks in the dovetail post area. This condition, if not corrected, could result in disk post fracture, multiple fan blade release, engine power loss, and uncontained engine failure.

DATES: Comments must be received no later than October 31, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90-ANE-12, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments must be marked: Docket No. 90-ANE-12.

Comments may be inspected at the above address in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7005.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be

submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket No. 90-ANE-12." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been five reports of cracks in the dovetail post area of stage 1 fan disks in CF6-6 series engines. Four of these disks have separated, resulting in uncontained engine failures. The cracks have been found at the aft corner of the dovetail post, and have propagated forward. Metallurgical examination of the disks indicates that the cracks have initiated from fretting damage. The fretting damage is caused by excessive movement between the fan blade dovetail and the disk dovetail post. This condition, if not corrected, could result in disk post fracture, multiple fan blade release, engine power loss, and uncontained engine failure.

The FAA examined the available information related to the issuance of Aerospatiale Service Bulletin No. 42, dated October 1988, and the mandatory classification of this Aerospatiale Service Bulletin No. 42 of the DGAC. Based on the foregoing, the FAA

exceed 7,500 cycles since last inspection (CSLI).

(b) For CF6-6 series engines, ultrasonic inspect and FPI the stage 1 fan disk dovetail post for cracks in accordance with SB 72-985, dated August 28, 1990, at the next fan disk exposure after the effective date of this AD. Thereafter, reinspect per SB 72-985 at each fan disk exposure, not to exceed 7,500 CSLI.

(c) For CF6-50A series engines, ultrasonic

design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Aerospatiale Service Bulletin No. 42, dated October 1988, and the mandatory classification of this Aerospatiale Service Bulletin No. 42 of the DGAC. Based on the foregoing, the FAA

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); Reopening of Comment Period.

SUMMARY: This notice revises an earlier proposed Airworthiness Directive (AD), applicable to certain SOCATA Models TB 20 and TB 21 airplanes, which would have required initial and repetitive

be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-ANE-12." The post card will be date/time stamped and returned to the commenter.

Discussion

The FAA has determined that three CF6-50 and two CF6-80A stage 1 fan disks have been found to contain cracks in the dovetail post area. The cracks are located at the radially inboard edge of the pressure face. The cause of the cracking is under investigation, however, preliminary findings indicate a peak stress condition at the blade/disk dovetail point of contact. The high stress condition may be due substantially to a higher than intended frictional stress component of the fan blade/disk pressure surface areas. There is also the potential for disk material fatigue property degradation due to a plasma spray operation in the noted area. The proposed AD would require repetitive ultrasonic and fluorescent penetrant inspections for cracks in the fan disk post area of CF6-6/-45/-50/-80A series engines.

There are approximately 2,891 CF6-6/-45/-50/-80A series engines of the affected design in the worldwide fleet. It is estimated that 634 engines of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per engine per inspection to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $250,000 dollars annually.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) models CF6-6/-45/-50/-80A series turbofan engines installed on, but not limited to, McDonnell-Douglas DC-10, Boeing 747, Boeing 767, Airbus A310 and Airbus A300 type aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent stage 1 fan disk post failure, which could result in a multiple fan blade release and fracture, multiple fan blade release, engine power loss, and uncontained engine failure accomplish the following:

(a) For CF6-50/45 series engines, ultrasonic inspect and fluorescent penetrant inspect (FPI) the stage 1 fan disk dovetail post for cracks in accordance with GE Service Bulletin (SB) 72-698, dated August 29, 1990, at the next fan disk exposure after the effective date of this AD. Thereafter, reinspect per SB 72-909 at each fan disk exposure, not to exceed 7,500 cycles since last inspection (CSLI).

(b) For CF6-6 series engines, ultrasonic inspect and FPI the stage 1 fan disk dovetail post for cracks in accordance with SB 72-668, dated August 29, 1990, at the next fan disk exposure after the effective date of this AD. Thereafter, reinspect per SB 72-668 at each fan disk exposure, not to exceed 7,500 CSLI.

(c) For CF6-80A series engines, ultrasonic inspect and FPI the stage 1 fan disk dovetail post for cracks in accordance with SB 72-675, dated August 29, 1990, at the next fan disk exposure after the effective date of this AD. Thereafter, reinspect per SB 72-675 at each fan disk exposure, not to exceed 7,500 CSLI.

(d) Parts found cracked during inspection in accordance with paragraphs (a), (b) or (c) of this AD, must be removed from service prior to further flight.

(e) For the purpose of this AD, fan disk exposure is defined as any engine maintenance action where the fan disk is exposed to the piece part level.

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on September 13, 1990.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-23230 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-20-AD]

Airworthiness Directives; SOCATA Models TB 20 and TB 21 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); Reopening of Comment Period.

SUMMARY: This notice revises an earlier proposed Airworthiness Directive (AD), applicable to certain SOCATA Models TB 20 and TB 21 airplanes, which would have required initial and repetitive visual inspections for cracks of fuselage frame No. 0 adjacent to the engine mount and landing gear mount. That proposal was prompted by three reports of cracks in this fuselage frame. The proposed actions will preclude failure of the fuselage frame and resulting loss of structural integrity. This action revises the proposed rule by expanding the applicability of the AD to include the latest information from the manufacturer.

DATES: Comments must be received on or before November 16, 1990.

ADDRESSES: Aerospatiale Service Bulletin No. 42/1, dated July 1990, applicable to this AD, may be obtained from Aerospatiale, Aeroport Tarbes-Ossum-Lourdes, B.P. 930 65009, Tarbes Cedex, France; Telephone 62.51.7300. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-20-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Everett Pittman, Aerospace Engineer, Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Richard F. Yotter, Aerospace Engineer, Project Support Section-Foreign, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-20-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD, applicable to certain SOCATA Models TB 20 and TB 21 airplanes, which would have required initial and repetitive inspections of fuselage frame No. 0 for cracks, was published in the Federal Register on June 4, 1990 (55 FR 22804).

That action was prompted by three reports of incidents of cracked fuselage frame No. 0 on SOCATA Models TB 20 and TB 21 airplanes. Cracking of the fuselage frame could result in an unsafe landing gear attachment or a loose engine mount. As a result, SOCATA has issued Aerospatiale Service Bulletin No. 42, dated October 1988, which requires initial and repetitive visual inspections of the fuselage frame No. 0 for cracks and repair as necessary.

The Direction Generale de L'Aviation Civile (DGAC), which has the responsibility and authority to maintain the continuing airworthiness of these airplanes in France, classified Aerospatiale Service Bulletin No. 42 and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under French registration, this action has the same effect that an AD has on airplanes certificated for operated in the United States.

The FAA relies upon the certification of the DGAC combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Aerospatiale Service Bulletin No. 42, dated October 1988, and the mandatory classification of this Aerospatiale Service Bulletin No. 42 of the DGAC. Based on the foregoing, the FAA determined that the condition addressed by Aerospatiale Service Bulletin No. 42, dated October 1988, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, an AD was proposed which would require an initial and repetitive visual inspections of fuselage frame No. 0 on SOCATA Models TB 20 and TB 21 airplanes and the repair or cracked frames prior to further flight, in accordance with the above Service Bulletin.

Since the issuance of the proposal, the FAA has been notified that the manufacturer and the DGAC have revised the applicable service information to include additional airplanes. Since this expanded applicability goes beyond the scope of the earlier proposed AD, the proposal has been revised accordingly and the comment period has been reopened to provide additional time for public comment.

The FAA has determined there are approximately 148 airplanes affected by the proposed AD. The cost of inspecting airplanes affected by the proposed AD is estimated to be $80 per airplane. The total cost is estimated to be $11,840. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action: (1) Is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Aviation safety, Safety, Incorporation by reference, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

SOCATA: Applies to Models TB 20 and TB 21 airplanes, serial numbers 1 through 1000, certificated in any category.

Compliance is required initially and thereafter as indicated, unless previously accomplished.

To prevent failure of the fuselage frame and resulting loss of structural integrity, accomplish the following:

(a) Initially and thereafter at each annual inspection, visually inspect fuselage frame No. 0 adjacent to the engine mount and landing gear mount for cracks in accordance with the Accomplishment Instructions of SOCATA Aerospatiale Service Bulletin No. 42/1, dated July 1990.

(b) If cracks are found, prior to further flight, repair in accordance with the Accomplishment Instructions of the above Service Bulletin.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium.

Note. The request should be forwarded through an FAA Maintenance Inspector, who may add comments had been send it to the Manager, Brussels ACO.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class D airspace area at Dahlgren, VA [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of NSWC Dahlgren (lat. 38°18'38"N., long. 77°02'14"W.), excluding that airspace which overlaps Restricted Areas R-6611A and R-6612. This Transition Area is effective from 0600 to 2300 local, daily.

ADDRESSES: Written comments should be addressed to:

Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 300, 999 18th Street, Denver, Colorado 80202-2405.

Copies of the state submittal are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, One Denver Place, Suite 300, 999 18th Street, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Air Quality Control Division, Colorado Department of Health, 4210 East 11th Avenue, Denver, Colorado 80220.

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Socata: Applies to Models TB 20 and TB 21 (Serial Numbers (S/N) 1 through 1051, except S/N 1040 and S/N 1042) airplanes, certificated in any category.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent structural failure of the fuselage frame in the area of the landing gear attachment, accomplish the following:

(a) On airplanes with more than 1,500 hours time-in-service (TIS) on the effective date of this AD, within the next 100 hours TIS after the effective date of this AD and, thereafter, at intervals not to exceed 500 hours TIS, visually inspect the fuselage frame No. 0 for cracks in the area of the engine mount and landing gear mount per the instruction in Aerospatiale Service Bulletin (SB) No. 42/1, dated July 1990. Prior to further flight repair any cracked frames found per the instructions in the above SB.

(b) On airplanes with less than 1,500 hours TIS on the effective date of this AD, within the next 100 hours TIS or prior to accumulating 1,600 hours TIS whichever occurs later, and, thereafter, at intervals not to exceed 500 hours TIS, visually inspect the fuselage frame No. 0 for cracks in the area of the engine mount and landing gear mount per the instructions in Aerospatiale SB No. 42/1. Prior to further flight repair any cracked frames found per the instructions in the above SB.

(c) The repetitive inspections specified in paragraphs (a) and (b) of this AD are no longer required when the airplane has been modified in accordance with Socata Kit 9152.

(d) The airplane may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium.

Note. The request should be forwarded through an FAA Maintenance Inspector, who may add comments had been send it to the Manager, Brussels ACO.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Aerospatiale Aeroport Tarbes-Ossum-Lourdes, B.P. 930 65009 Tarbes, France; Telephone 62.51.7300; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 11, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23224 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AEA-11]

Proposed Establishment of Transition Area; Dahlgren, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Department of the Navy has requested that the Federal Aviation Administration (FAA) establish a 700 foot Transition Area to accommodate planned instrument approach procedures to the Naval Surface Warfare Center (NSWC) Dahlgren, Dahlgren, VA. The intended effect of this proposed action is to segregate aircraft operating under instrument flight rules conditions from those operating under visual flight rules in controlled airspace. Additionally, the status of the airport would be changed from VFR to IFR.

DATES: Comments must be received on or before October 30, 1990.

ADDRESSES: Send comments on the rule in triplicate to:

Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 90-AEA-11, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AEA-11". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot Transition Area at Dahlgren, VA, due to the proposed establishment of instrument approach procedures to NSWC Dahlgren, Dahlgren, VA. Additionally, this area would be charted enabling pilots to circumnavigate this area during instrument meteorological conditions. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Insert the following:

Dahlgren, VA [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of NSWC Dahlgren (lat. 38°19'28"N, long. 77°02'34"W.), excluding that airspace which overlaps Restricted Areas R-6911A and R-6913. This Transition Area is effective from 0600 to 2300 local, daily.

Issued in Jamaica, New York, on September 13, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90-23229 Filed 10-1-90; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3849-6]

Approval and Promulgation of State Implementation Plans; Colorado; PM-10 New Source Review and Rule for Emission Control Trading

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to approve revisions to the Colorado State Implementation Plan (SIP) submitted on November 17, 1988, by the Governor of Colorado. The revisions proposed for approval include: (1) Amendments to Colorado Regulation No. 3 and the Common Provisions Regulation to provide for the review of new sources to protect the PM-10 national ambient air quality standards (NAAQS) and for consistency with EPA requirements; (2) amendments to Colorado Regulation No. 3 to provide for certification and trading of emissions reduction credits; (3) amendments to Colorado Regulation No. 3 to increase permit processing and annual fees. In addition to these revisions, the Governor also submitted revisions to Regulation Numbers 1, 11 and 13, which are addressed in other Notices.

EPA is proposing to approve these amendments because they are consistent with EPA policy and regulations, and in order to maintain consistency between the State and federally approved plans. However, as discussed below, EPA has previously identified deficiencies in various sections of Regulation No. 3 and approval of this submittal does not relieve the State from correcting those deficiencies.

DATES: Comments must be received on or before November 1, 1990.

ADDRESSES: Written comments should be addressed to:

Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Copies of the state submittal are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following office:

Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, suite 500, 999 18th Street, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 293-1773, FTS 564-1773.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act (CAA) require EPA to review periodically and, if appropriate, revise the criteria on which each NAAQS is based along with the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM-10) on July 1, 1987 (52 FR 24634). As a result, States must revise their State Implementation Plans (SIPs) to show attainment and maintenance of the new NAAQS. Since the SIP must protect both the PM-10 standard and the total suspended particulate (TSP) prevention of significant deterioration (PSD) increments, it must trigger preconstruction review for a major new or modified source which would emit significant amounts of either TSP or PM-10.

The State administers a New Source Review (NSR) program under Part D of the Act for major stationary sources and modifications, which was originally approved by EPA on April 30, 1981 (46 FR 24180). The State also administers a PSD program under Part C of the Act which was originally approved by EPA on September 2, 1988 (51 FR 31125). Both the April 30, 1981, Notice (46 FR 24180), concerning NSR, and the September 2, 1988, Notice (51 FR 31125), concerning PSD, contained limited disapprovals regarding sources excluded from requirements due to certain exemptions in the State rules, including the exemption of fugitive dust and certain fuels. EPA promulgated federal regulations for these source categories.

The November 17, 1988, submittal contains revisions to Regulation No. 3 and the Common Provisions Regulation that incorporate protection of the PM-10 NAAQS under both the NSR and PSD

programs and make the regulations more consistent with EPA requirements. However, the approval of the November 17, 1988 submittal will not remove the earlier disapprovals and federal promulgations.

EPA has also identified additional deficiencies in the Colorado PSD and NSR programs for which the State is on November 17, 1988, by the Governor of Colorado. The revisions include amendments to the NSR and PSD programs necessary to protect the PM-10 NAAQS and provide for consistency with EPA requirements, amendments to Colorado Regulation No. 3 to provide for certification and trading of emission

compounds through modifications to the New Jersey motor vehicle emissions inspection and maintenance program. These regulations reflect commitments made in the New Jersey SIP, which was approved by EPA on November 9, 1983 (48 FR 51472).

DATES: EPA must receive comments on

As part of its plan to demonstrate attainment of the National Ambient Air Quality Standards in a 1983 revision to its SIP, the State proposed to evaluate and implement, as appropriate, the following amendments to the New Jersey I/M program contained in the New Jersey Administrative Code, Chapter 7, Subchapter 15.

vehicles possessing them as original manufacturer equipment.

The examinations established by this amendment were to be phased-in according to the following schedule.

Date	Model year	Registered weight
Dec. 2, 1985	1985 and later	Under 8,001

—Those portions of revision to N.J.A.C. 7:27-15, "Control and Prohibition of Air Pollution from Gasoline-Fueled Motor Vehicles," and those portions of rule N.J.A.C. 7:27B-4, "Air Test Method 4, Testing Procedures for Motor Vehicles," that relate to:

—More stringent emission standards for post-1980 model year light-duty

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programs and make the regulations more consistent with EPA requirements. However, the approval of the November 17, 1988 submittal will not remove the earlier disapprovals and federal promulgations.

EPA has also identified additional deficiencies in the Colorado PSD and NSR programs for which the State is on a schedule to correct. EPA issued a SIP call to the State on May 26, 1988, which identified the NSR and PSD deficiencies. The State submitted a work-plan to address the SIP call, including the NSR and PSD deficiencies by September 30, 1989. These deficiencies (which were discussed in a letter to the State on August 17, 1988, as part of the public comment on the regulations being acted on here) include inconsistencies with EPA-required definitions, notification procedures, and the exemption from offset requirements of sources locating in "clean" areas within nonattainment areas. Today's proposed approval does not address these deficiencies, which remain outstanding.

EPA published an Emissions Trading Policy Statement on December 4, 1986 (51 FR 43814). The policy described emission trading and set out general principles EPA uses to evaluate bubbles and other emissions trades, as well as approvable state generic rules under the CAA and applicable federal regulations. This submittal repeats the requirements set out in the EPA Policy for emission trading, and requires that all bubbles be approved by EPA as individual SIP revisions. The present regulation, which the submittal would replace, allowed offset credit for shutdowns occurring after July 1, 1979. The November 17, 1988, submittal does not allow offset credit for prior shutdowns except for replacement units where the shutdown occurred not more than one year prior to the permit application and those which have already been certified under the old regulation. These provisions meet the requirements of 40 CFR 51.165(a)(3)(ii)(C) as amended on June 28, 1989 (54 FR 27274).

This submittal also includes amendments to Colorado Regulation No. 3, section VI., to increase permit processing and annual fees. Annual fees are increased from the present fee of $60 per emission source to a fee of $157 per emission source while the permit processing fee is increased by approximately $2 per hour. The fees are to recover program costs, and are encouraged by the CAA.

Proposed Action

EPA proposes to approve the revisions to the Colorado State Implementation Plan (SIP) submitted on November 17, 1988, by the Governor of Colorado. The revisions include amendments to the NSR and PSD programs necessary to protect the PM-10 NAAQS and provide for consistency with EPA requirements, amendments to Colorado Regulation No. 3 to provide for certification and trading of emission reduction credits, and amendments to Colorado Regulation No. 3 to increase permit processing and annual fees. EPA is proposing to approve these amendments because they are consistent with EPA policy and regulations, and in order to maintain consistency between the State and federally approved plans. However, as discussed above, EPA has previously identified deficiencies in various sections of Regulation No. 3, and approval of this submittal does not relieve the State of its obligation to correct those deficiencies.

Interested parties are invited to comment on all aspects of these proposed actions.

Under 5 U.S.C. 605(b), I certify that this SIP Revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401-7642.

Dated: June 30, 1990.

James J. Scherer,
Regional Administrator.

[FR Doc. 90-23287 Filed 10-1-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Region II Docket No. 100; FRL-3848-1]

Approval and Promulgation of Implementation Plans; New Jersey; Revisions to the 1982 Ozone and Carbon Monoxide Attainment Plan

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes approval of a revision to the New Jersey State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection on March 6, 1987. The State's proposed SIP revision consists of regulations to control the emissions of carbon monoxide and volatile organic compounds through modifications to the New Jersey motor vehicle emissions inspection and maintenance program. These regulations reflect commitments made in the New Jersey SIP, which was approved by EPA on November 9, 1983 (48 FR 51472).

DATES: EPA must receive comments on or before November 1, 1990.

ADDRESSES: All comments should be addressed to:

Constantine Sidamon-Eristoff, Regional Administrator, Environmental Protection Agency, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

Copies of the proposed revision are available for public inspection during normal business hours at:

Environmental Protection Agency, Air Programs Branch, Jacob K. Javits Building, 26 Federal Plaza, Room 1005, New York, New York 10278.

New Jersey Department of Environmental Protection, Division of Environmental Quality, 401 East State Street—CN-027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Background

A. New Jersey State Implementation Plan

On November 9, 1983, the Environmental Protection Agency (EPA) announced final approval of a revision to the New Jersey State Implementation Plan (SIP) (48 FR 51472). As part of that revision, the State committed to study and, as appropriate, to implement certain improvements to its motor vehicle emissions inspection and maintenance (I/M) program. On March 6, 1987, the State submitted to EPA a draft of a revision to its SIP that provided the results of this further study and made commitments to implement certain improvements.

Today's **Federal Register** proposal provides the results of EPA's review of the draft New Jersey SIP revision. Additional discussion of the State's submittal, EPA's review criteria, and the results of EPA's review are contained in a Technical Support Document that is available for public inspection at the locations identified in the **"ADDRESSES"** section of today's notice.

As part of its plan to demonstrate attainment of the National Ambient Air Quality Standards in a 1983 revision to its SIP, the State proposed to evaluate and implement, as appropriate, the following amendments to the New Jersey I/M program contained in the New Jersey Administrative Code, Chapter 7, Subchapter 15.

- Adoption of more stringent emissions standards,
- Elimination of the 24-35 month inspection exemption for new cars.
- Implementation of an I/M program for heavy-duty gasoline vehicles, and
- Establishment of an anti-tampering/malfunction diagnosis program for light-duty vehicles.

As discussed in the next section, items 1-4, these measures have been implemented. In addition, the State has adopted an amendment with regard to I/M waivers. This additional amendment is described in item 5 in the next section.

Amendments to Subchapter 15

1. *More stringent emissions standards for post-1980 model year vehicles.* This amendment was proposed by New Jersey on November 5, 1984, adopted on December 28, 1984 with an effective date of January 21, 1985 and became operative on July 1, 1985. The adopted idle standards are: carbon monoxide, 1.2% hydrocarbons, measured as hexane, 220 parts per million.

2. *Elimination of the inspection exemptions for new cars.* This amendment was proposed by New Jersey October 1, 1984, adopted on December 17, 1984 and became operative July 1, 1985.

3. *Inspection and Maintenance of Heavy Duty Gasoline Fueled Vehicles.* This amendment applies to gasoline fueled motor vehicles that have a gross vehicle weight exceeding 6,000 pounds. The adopted standards are:

Model Year	Idle Co (%)	Idle HC (ppm as Hexane)
Pre-1966	8.5	1,400
1966-1970	8.5	1,200
1971-1974	6.0	700
1975-1978	4.0	500
1979 & later	3.0	300

This amendment was proposed by New Jersey on November 5, 1984, adopted on December 28, 1984, and became operative on July 1, 1985.

4. *Examination of emissions control systems for tampering.* This amendment applies to all post-1974 model year gasoline-fueled motor vehicles under 8,501 pounds. It requires the examination of the catalytic converter and the fuel filler neck inlet restrictor for vehicles possessing them as original manufacturer equipment.

The examinations established by this amendment were to be phased-in according to the following schedule.

Date	Model year	Registered weight
Dec. 2, 1986	1985 and later	Under 8,001 pounds.
May 1, 1986	1982 and later	Under 8,001 pounds.
July 1, 1986	1982 and later	Under 8,501 pounds.
Jan. 1, 1987	1979 and later	Under 8,501 pounds.
May 1, 1987	1975 and later	Under 8,501 pounds.

However, on April 24, 1987, the State suspended the inspection of inlet restrictors because of concerns expressed by the inspectors about exposure to gasoline during the inspections. A final draft of an occupational health and safety study of the inspections which was prepared by an outside consultant, was submitted to NJDEP in October 1989; the report will be finalized later in 1990.

Should the report indicate that no increased health risks are incurred by performing these inspections, the State will re-establish the inclusion of the fuel inlet restrictor inspection as part of the normal inspection process. The schedule for re-establishing these inspections will be included in the final notice of this SIP revision.

5. *Inspection and Maintenance Waivers.* In its request to revise the SIP, the State proposed to exempt from inspections two classes of vehicles (the State is able to grant such waivers under the existing authority of N.J.A.C. 7:25-15.8.):

- Vehicles that fail initial inspections and have been identified by EPA as having design features that could cause them to be incorrectly identified as failing the New Jersey test ("pattern failures") and,
- Vehicles that cannot be tested because a preceding vehicle caused a "hydrocarbon hangup" in the emissions test equipment.

Since its submittal to EPA as a proposed revision to the SIP, these procedures for inspecting motor vehicles in New Jersey were revised to eliminate the need for the hydrocarbon hangup exemption. Consequently, EPA is not addressing this exemption as a part of today's action.

EPA's Proposed Action

In today's action, EPA proposes to approve for inclusion in the New Jersey SIP the following elements of the State's submittal.

—Those portions of revision to N.J.A.C. 7:27-15, "Control and Prohibition of Air Pollution from Gasoline-Fueled Motor Vehicles," and those portions of rule N.J.A.C. 7:27B-4, "Air Test Method 4, Testing Procedures for Motor Vehicles," that relate to:

—More stringent emission standards for post-1980 model year light-duty, gasoline-fueled motor vehicles.

—Emissions standards for heavy-duty, gasoline-fueled motor vehicles.

—The withdrawal of test procedures for conducting exhaust emission tests from N.J.A.C. 7:27-15 and their inclusion in the new rule, N.J.A.C. 7:27B-4.

—Revisions to N.J.A.C. 13:20-28 that reduce the valid term of inspections performed by new car dealers on newly-registered vehicles.

Today EPA is also proposing to approve two additional elements of the State's submittal. For reasons discussed later in this notice, EPA will need to adjust its assessment of the emissions reductions attributable to the I/M program to reflect the inclusion of these elements.

—Those portions of N.J.A.C. 7:27-15 and N.J.A.C. 7:27B-4 that relate to the establishment of an anti-tampering/malfunction diagnosis program for light-duty vehicles.

—Exemptions from emissions inspections that are granted under the provisions of N.J.A.C. 7:27-15.8 to vehicles characterized as pattern failures for which their are no known corrections.

EPA's Review Criteria

Section 172(b) of the Act, as further interpreted in EPA's January 22, 1981 **Federal Register** notice (46 FR 7182), lists the following requirements for the provisions of nonattainment SIPs that relate to I/M programs:

- Adoption by the state after reasonable notice and public hearing.
- Identification of and commitment to the financial and manpower resources necessary to carry out the SIP provisions.
- Evidence of public, local government, and state legislative involvement and consultation and an analysis of the alternative effects of the SIP provisions, with a summary of the public comment on such analysis.
- Written evidence that the state and general purpose local governments:

—Have adopted by statute, regulation, ordinance, or other legally enforceable document, the necessary requirements and schedules and timetables for compliance, and,

BEST COPY AVAILABLE

—Are committed to implement and enforce the appropriate elements of the SIP.

Inspection and Maintenance Program

The State's submittal notes that the non-methane hydrocarbon emission reductions attributable to the modifications to the I/M program are

TABLE 2.—CALENDAR YEAR 1987 HC EMISSIONS REDUCTIONS PROJECTED IN THE 1982 SIP THAT WERE ATTRIBUTED TO THE MEASURES THAT ARE THE SUBJECT OF THIS PROPOSED SIP REVISION

Measure	Emissions reductions
(A) More stringent emissions standards for post-1980 model year light-duty gasoline fueled motor vehicles (tons/year)	1,286
(B) I/M procedures and standards for heavy-duty gasoline fueled motor vehicles (tons/year)	1,286
(C) Anti-tampering/malfunction diagnosis program for light-duty vehicles (tons/year)	1,286
(D) Elimination of the 24-35 month inspection exemption for new cars (tons/year)	1,286
(E) Implementation of an I/M program for heavy-duty gasoline vehicles (tons/year)	1,286
(F) Total (tons/year)	1,286

Plumbtesmo test procedure. This decision was based on studies conducted by the State that are summarized in a report entitled, "An Evaluation of the Use of Lead Sensitive Test Paper for Detecting Vehicle Misfueling in a Centralized Inspection/Maintenance Program." This report drew the following conclusions about

Protection (NJDEP) indicated that NJDMV no longer exempted vehicles because of hydrocarbon hangup. Vehicles presented for inspection while an analyzer is locked out are now tested with a reinspection analyzer at the end of a lane.

3. *I/M waivers for pattern failures.* EPA has identified groups of vehicles that, although they do not violate federal requirements of section 110 and part D of the Clean Air Act and 40 CFR part 51.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive

sending a written request to: Chief, Health Effects Assessment Section II, Health Effects Branch, Office of Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Written comments on the proposed guidance should be sent to the URTH Comment Clerk, Health Effects Branch,

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—Are committed to implement and enforce the appropriate elements of the SIP.

Inspection and Maintenance Program

The State's submittal notes that the non-methane hydrocarbon emission reductions attributable to the modifications to the I/M program are 5,774 tons/year or 14.2 metric tons/day less than had been anticipated at the time of the 1982 SIP revision. The State now estimates that a reduction in 1987 emissions of non-methane hydrocarbons of 8,373 tons/year or 20.8 metric tons/day can be achieved through implementation of the I/M program modifications in effect prior to January 1, 1988. The estimated reduction attributed to each individual program element is shown in Table 1. The State's original projection of reduction in 1987 non-methane hydrocarbon emissions as contained in the 1982 New Jersey SIP was 14,157 tons/year or 35.0 metric tons/day. This reduction is attributed to individual program elements as shown in Table 2.

The State's submittal notes several reasons for the lower levels of emission reductions in the more recent projections:

- The emission reductions that were projected to result from the anti-tampering program were estimated by making assumptions about the program's operational features. The program that was actually implemented is not a comprehensive as was originally envisioned, therefore, it provides less reduction in emissions.
- The benefits attributable to the program were calculated for the current proposed revision using local data rather than the national average data that was used when the 1982 New Jersey SIP revisions were prepared.

TABLE 1.—PROJECTED REDUCTIONS OF HC EMISSIONS AS OF MAY 1, 1987 ATTRIBUTABLE TO MEASURES IN THIS PROPOSED SIP REVISION

Measure	Emissions reductions
(A) More stringent emissions standards for post-1980 model year light-duty gasoline fueled motor vehicles (tons/year)	648
(B) I/M procedures and standards for heavy-duty, gasoline fueled vehicles (tons/year)	6,227
(C) Anti-tampering examination of: Catalytic converter and fuel filler (tons/year)	1,098
(D) Elimination of the new car dealer exemption for emissions tests for vehicles 24 to 36 months old (tons/year)	648
Total (tons/year)	8,373
Total (metric tons/day)	20.8

Reference: "Revision to the State Implementation Plan for Attainment and Maintenance of the National Ambient Air Quality Standards for Ozone and Carbon Monoxide," Appendix III, Table 1, State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, March 1987

TABLE 2.—CALENDAR YEAR 1987 HC EMISSIONS REDUCTIONS PROJECTED IN THE 1982 SIP THAT WERE ATTRIBUTED TO THE MEASURES THAT ARE THE SUBJECT OF THIS PROPOSED SIP REVISION

Measure	Emissions reductions
(A) More stringent emissions standards for post-1980 model year light-duty gasoline fueled motor vehicles (tons/year)	1,266
(B) I/M procedures and standards for heavy-duty, gasoline fueled vehicles (tons/year)	5,052
(C) Anti-tampering examination of: Catalytic converter and fuel filler (tons/year)	6,267
(D) Elimination of the new car dealer exemption for emissions tests for vehicles 24 to 36 months old (tons/year)	1,593
Total (tons/year)	14,157
Total (metric tons/day)	35

Reference: "Revision to the State Implementation Plan for Attainment and Maintenance of the National Ambient Air Quality Standards for Ozone and Carbon Monoxide," Appendix III, Table 2, State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, March 1987.

- In 1984, EPA introduced a version of its computer program to calculate mobile source emission factors that was an update to the version that was used for the 1982 New Jersey SIP revisions. This newer model incorporated updated estimates of in-use emissions for emission control system tampering rates and fuel volatility.

EPA's Review

The reader is referred to the Technical Support Document to today's notice for a complete discussion of EPA's review of the proposed revision to the New Jersey SIP. A summary of this review follows. In this review, EPA evaluated the adequacy of the program in achieving the claimed emission reductions and the accuracy of the procedures used to determine those reductions.

A. Program review. EPA disagrees with the State's interpretation of EPA policy as it applies to three elements of the New Jersey I/M program. These areas are:

—Plumbtesmo testing
—I/M waivers for hydrocarbon hangup
—I/M waivers for pattern failures

This finding did not affect EPA's overall approval of the operational changes that New Jersey has made to its program. However, in the case of hydrocarbon hangup and pattern failures, the State's interpretation of EPA policies will result in decreased emission reduction credits for the program.

1. *Plumbtesmo testing.* This test for the presence of lead deposits in a vehicle's exhaust pipe resulting from the use of leaded gasoline was proposed for adoption in the 1982 version to the revision to the New Jersey SIP. However, in an August 18, 1986 notice in the *New Jersey Register*, the State announced its decision not to adopt the Plumbtesmo test procedure. This decision was based on studies conducted by the State that are summarized in a report entitled, "An Evaluation of the Use of Lead Sensitive Test Paper for Detecting Vehicle Misfueling in a Centralized Inspection/Maintenance Program." This report drew the following conclusions about the use of Plumbtesmo paper in New Jersey.

- The Plumbtesmo test is inaccurate at operating conditions typical of the centralized lanes.
- The rate of vehicle misfueling in New Jersey is well below the national rate.
- The incidence of leaded gasoline being sold as unleaded gas in New Jersey is very low.

Consequently, the State saw little benefit in performing tests with Plumbtesmo paper.

EPA's Field Operations and Support Division (FOSD) reviewed the report of the Plumbtesmo study. A memorandum, dated October 7, 1986 from Richard Kozlowski, Director of FOSD, to Conrad Simon, Director of the Air and Waste Management Division of EPA Region II raised the following points about the New Jersey study:

- EPA's experience with over 15,000 uses of Plumbtesmo paper confirms its effectiveness at high tailpipe temperatures.
- New Jersey's survey of misfueled vehicles cannot be compared to EPA's because of the differences in the vehicle populations that were sampled.
- EPA agrees with the conclusion of the New Jersey study that the potential for inadvertent misfueling appears to be low.

2. *I/M waivers for hydrocarbon hangup.* The emissions analyzers operated by the State in the centralized inspection lanes measure "hydrocarbon hangup" within the sample system. To avoid false failures caused by a preceding high reading, the analyzer "locks out" and prevents an inspection if the hangup exceeds 20 ppm. To maintain vehicle throughput, the operating practices of the New Jersey Division of Motor Vehicles (NJDMV) exempted from emissions testing any vehicle that is presented for inspection while the analyzer is locked out.

In its request to revise the SIP, the State proposed to include this exemption as part of its program for vehicle I/M. However, in a September 14, 1988 letter reporting on the State's progress in addressing deficiencies that had been identified by EPA in its audit of the New Jersey I/M program, the New Jersey Department of Environmental Protection (NJDEP) indicated that NJDMV no longer exempted vehicles because of hydrocarbon hangup. Vehicles presented for inspection while an analyzer is locked out are now tested with a reinspection analyzer at the end of a lane.

3. *I/M waivers for pattern failures.* EPA has identified groups of vehicles that, although they do not violate federal emission standards, may fail state I/M short tests because of idiosyncracies in the vehicles' design and operation under the conditions of the short test. EPA terms these groups of vehicles "pattern failures." Citing this information, New Jersey's submittal proposes to exempt an estimated 40,000 vehicles from emission inspections because the State believes these vehicles fall into pattern failure categories for which EPA confirmed no correction.

EPA believes that every vehicle should receive an initial emissions test. A vehicle could fail the test for reasons which have nothing to do with a pattern failure, e.g., a vehicle identified with a pattern failure associated with carbon monoxide emissions could fail for excessive hydrocarbon emissions. Also, not all vehicles in a group will fail.

Nonetheless, the State can, if it chooses, exempt these vehicles from emissions inspections. EPA will adjust its estimate of the emissions reductions attributable to the program to reflect this exemption.

B. Review of claimed emissions reductions. EPA has reviewed the emission reductions attributable to the modifications to the State's program discussed in this notice. The results of this review are contained in the Technical Support Document to this notice. This review indicates that the State generally followed correct procedures in determining the emission reductions attributable to its actions, although several minor errors were discovered. EPA has corrected these errors and recalculated the reductions. EPA calculated a reduction in emissions of non-methane hydrocarbons in 1987 of 9,156 tons per year compared to the State's estimate of 8,373 tons per year.

Conclusion

EPA is proposing approval of the State's modifications to its I/M program for inclusion in the SIP. EPA is soliciting comments on these modifications and on EPA's determination of the emissions reductions attributable to them.

The Administrator's decision to approve or disapprove this submittal will be based upon the comments received and on whether the SIP revision as a whole meets the requirements of section 110 and part D of the Clean Air Act and 40 CFR part 51.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: February 23, 1990.

Constantine Sidamon-Eristoff,
Regional Administrator, Region II, Environmental Protection Agency.

This document was received by the Office of the Federal Register September 26, 1990.

[FR Doc. 90-23181 Filed 10-1-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 141

[WH-FRL-3848-6]

Variance and Exemptions for Primary Drinking Water Regulations; Unreasonable Risk to Health Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of proposed guidance for determining unreasonable risk to health.

SUMMARY: This notice announces the availability of a guidance document for determining unreasonable risks to health. The purpose of this guidance is to assist States with primacy in the issuance of variances or exemptions from a Maximum Contaminant Level. In this guidance, EPA is providing several ways that an unreasonable risk to health might be determined. Actual values are stated for various proposed or regulated drinking water contaminants with an upper bound that is recommended. EPA invites written comments on this proposed guidance.

DATES: Written comments must be submitted by December 3, 1990.

ADDRESSES: Copies of the Guidance for Determining Unreasonable Risks to Health may be obtained from the EPA Safe Drinking Water Hotline. The toll-free number is (800) 426-4791; local and Alaska call (202) 382-5533, Monday through Friday, 8:30 a.m. to 4:30 p.m. EST. Copies may also be obtained by sending a written request to: Chief, Health Effects Assessment Section II, Health Effects Branch, Office of Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Written comments on the proposed guidance should be sent to the URTH Comment Clerk, Health Effects Branch, Office of Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jennifer Orme, Chief, Health Effects Assessment Section II, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7586, or one of the EPA Regional Office contacts listed below. General information may also be obtained from the EPA *Drinking Water Hotline*. The toll-free number is (800) 426-4791, local: (202) 382-5533.

EPA Regional Offices

I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 565-3602, Jerome Healey
II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264-1800, Walter Andrews
III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597-8227, Jon Capacasa
IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 347-2913, Allen Antley
V. 230 S. Dearborn Street, Chicago, IL 60604, Phone: (312) 353-2152, Ed Watters
VI. 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 255-7155, Tom Love
VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 234-2815, Ralph Langemeier
VIII. One Denver Place, 999 18th Street, Suite 300, Denver, CO 80202-2413, Phone: (303) 293-1408, Patrick Crotty
IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974-0912, Steve Pardieck
X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 442-4092, Jan Hastings.

Dated: September 25, 1990.

Michael B. Cook,
Director, Office of Drinking Water.

[FR Doc. 90-23285 Filed 10-1-90; 8:45 am]
BILLING CODE 6560-50-M

VOL 55 ISS 191 OC 2 1990 UMI

40 CFR Parts 180, 185, and 186

[OPP-300215A; FRL-3801-8]

Ethylene Bisdithiocarbamates; Additional Comment Period for Reduction and Revocation of Tolerances and Food/Feed Additive Regulations for Mancozeb, Maneb, Metiram, and Zineb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Addition to comment period.

SUMMARY: On May 16, 1990, EPA issued proposed rules to reduce and/or revoke tolerances and food/feed additive regulations for mancozeb, maneb, metiram, and zineb. In response to several international requests, EPA is reopening the comment period to allow an additional 90-day period for public comment for all commodities cited in the May 16 document.

DATES: Written comments, identified by the document control number, OPP-300215A, must be received on or before December 31, 1990.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone number: (703)-557-2805.

Information submitted in any comment concerning this document may be claimed confidential by marking any or all parts of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of a comment or parts of a comment which do not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. The EBDCs public docket, which contains all non-CBI written comments, will be available for public inspection and copying in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Kathleen Martin, Review Manager, Special Review Branch, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs (Crystal Station 1), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2805 Jefferson Davis Hwy., Third Floor, Arlington, VA 22202, telephone (703)-308-8035.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 16, 1990 (55 FR 20416), EPA issued a proposed rule to (1) reduce and/or revoke tolerances for residues of the fungicides mancozeb, maneb, and metiram in or on 56 raw agricultural commodities covered by 45 pesticide registrations; (2) revoke mancozeb food/feed additive regulations for bran, flour, and milled feed fractions of barley, oats, and rye in processed foods and animal feed; and (3) revoke tolerances for residues of the fungicide zineb in or on all raw agricultural commodities. The document proposed effective dates of tolerance action by crop, with the caveat that actual dates would depend upon the timing of EPA's Final Determination on the EBDC's and the period different commodities would take to clear channels of trade. The May 16, 1990 Federal Register proposal provided for a 90-day public comment period, to close on August 14, 1990.

In the Federal Register of August 22, 1990 (55 FR 34288), EPA issued a document to correct several technical errors in the May 16, 1990 proposal. The public comment period for commodities affected by the corrections was extended to August 28, 1990.

Several foreign governments or groups have requested that EPA allow additional time to comment on the May 16, 1990 proposal. These requests are noted in the public docket and are summarized below.

The embassies of Columbia, Honduras, and Mexico wish additional time to provide their views on the impacts which they believe EBDC tolerance reductions and/or revocations would have on their countries' agriculture, economy, and trade interests, and they have stated that the August 14, 1990 deadline made foreign comment impracticable. The government of the Federal Republic of Germany has suggested that they believe a trade barrier could ensue if the United States were to reduce and/or revoke EBDC's tolerances more strictly than the European Community, and it has requested additional time in order to provide information on this point. Additionally, the Delegation of the Commission of European Communities (EC) has requested additional time to complete a scientific assessment of the issues and to coordinate between the Commission and the 12 EC countries. Finally, a Canadian fruit growers' association has suggested that tolerance reductions and/or revocations could pose negative impacts on the Canada-U.S. apple trade and has requested additional time to prepare comment detailing its views on possible impacts of the proposed rules.

EPA understands that some foreign interests may have had some difficulty meeting the original deadline to comment on the proposed rules to reduce and/or revoke EBDC tolerances. EPA is thus reopening the public comment period for an additional 90 days. The period will close on December 31, 1990.

Dated: September 24, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-23242 Filed 10-1-90; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 260, 261, 262, 264, 265, 270, and 271

[FRL-3848-4]

Hazardous Waste Management System; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Grant a BDAT Treatment Variance for Craftsman Plating and Tinning Corporation and Northwestern Plating Works in Chicago, Illinois, and CyanoKEM, Inc in Detroit, Michigan.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) is today proposing to grant a site-specific variance from Land Disposal Restriction (LDR) standards for F006 wastes generated by Craftsman Plating and Tinning Corporation and Northwestern Plating Works in Chicago, Illinois. Additionally the Agency is proposing to grant a site-specific variance from the LDR standards for F011 and F012 wastes for CyanoKEM in Detroit, Michigan. If this proposal is finalized, all three facilities may land dispose of their wastes provided they comply with the alternative treatment standard and also comply with all other treatment standards for the wastes specified in 40 CFR 268.43. For Craftsman Plating and Northwestern Plating, the alternative total cyanide treatment standard for F006 nonwastewaters is 3100 mg/kg and 2000 mg/kg, respectively. For CyanoKEM, Inc., the alternative amenable and total cyanide standards for F011 and F012 nonwastewaters are 30 mg/kg and 590 mg/kg, respectively.

All three companies submitted a petition to EPA under 40 CFR 268.44, which allows facilities to petition EPA for a variance from the application LDR treatment standards. A facility submitting such a petition believes that their waste is more difficult to treat than the wastes that EPA considered in developing the treatment standards. After a comprehensive review of the petition submitted by Craftsman, Northwestern, and CyanoKEM, EPA believes that, with regard to cyanides, their wastes are more difficult to treat than the wastes EPA considered in establishing amenable and total cyanide standards for F006, F011, and F012 wastes.

DATES: EPA is requesting comments on today's proposed decision. Comments will be accepted until October 10, 1990. Comments postmarked after the close of the comment period will be stamped "late".

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-350), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Richard Kinch, Chief, Waste Treatment Branch (OS-322). U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. Identify your comments at the top with the regulatory docket number: F-90-TLVP-FFFFF.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, except for federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, please contact Monica Chatmon-McEaddy, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-7243.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under Section 3004(m) of the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA has interpreted this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was sustained by the D.C. Circuit in *HWTC vs. EPA*, 886 F.2d 355 (D.C. Circuit 1989). The Agency has recognized that there may be wastes that cannot be treated to levels specified in the rules, due to the fact that the wastes are in a form that is substantially more difficult to treat than those the Agency evaluated in establishing the treatment standard. (51 FR 40576, November 7, 1986.) For such wastes, EPA has established a treatability variance (Section 268.44), which if granted becomes the treatment standard for this waste.

B. Facility Operation and Process

The Craftsman Plating and Tinning Corporation is an electroplating firm located in Chicago, Illinois. The facility performs plating of various ferrous parts, approximately 50 percent of the electroplating is performed using cyanide based solutions. The treatment system used at this facility consists of alkaline chlorination for destruction of amenable cyanides, and chemical precipitation and filtration for treatment of various toxic metals.

Northwestern Plating Works is an electroplating firm located in Chicago, Illinois. The facility performs plating of various ferrous parts, approximately 60 percent of the electroplating is performed using cyanide based solutions. The treatment system used at this facility consists of alkaline chlorination for destruction of amenable cyanides, addition of ferrous sulfate to aid in the removal of the complex iron cyanides before the clarification step, and chemical precipitation and filtration for treatment of various toxic metals. The filtered solids are classified as F006 and are the subject of the petition submitted by Northwestern. This is the same technology used by EPA as the basis for the BDAT treatment standard for cyanides in F006 wastes. The filtered solids are classified as F006 and are the subject of the petitions submitted by Craftsman and Northwestern.

CyanoKEM, Inc. is a hazardous waste treatment facility located in Detroit, Michigan. The facility specializes in the treatment of high concentration cyanide wastes including cyanide based heat treating wastes. They receive approximately 10,000 gallons per year of heat treating wastes. The treatment system used at this facility consists of alkaline chlorination, chemical precipitation and filtration. Additionally, the facility has a redissolving system for solubilizing cyanides found in nonwastewaters. The heat treating wastes that CyanoKEM receives are classified as F011 and F012; in addition, their treatment of F011 wastes generates a residual that falls under the definition of F012 wastes.

C. Summary of Petitions

As noted above, Craftsman's and Northwestern's treatment system for wastewater generates a residual material that falls under EPA's definition of F006 and which is subject to the land disposal restriction standards for F006 nonwastewaters. The specific standard of concern for both facilities is the total cyanide standard of 590 mg/kg as measured by SW-846 methods 9010 or 9012 using a 10 gram sample size and a distillation time of one hour and fifteen minutes. Craftsman's and Northwestern's positions are that their F006 waste is more difficult to treat than the waste EPA considered in developing the treatment standard for total cyanide in F006 wastes. Specifically, they point to the fact that their waste contains substantial amounts of ferro-ferricyanides (complex iron cyanides) and that these types of cyanides may not be treated by the technology that EPA used as the basis for the standard (see 54 FR 26610, June 23, 1989).

As noted above, F011 and F012 wastes are treated at the CyanoKEM facility. CyanoKEM contends that they are unable to achieve the BDAT standards for total and amenable cyanides in these wastes and, as such, is requesting a treatment variance. The BDAT standards for total and amenable cyanide in F011 and F012 wastes are 110 mg/kg and 9.1 mg/kg, respectively. CyanoKEM is requesting alternative standards of 590 mg/kg for total cyanide and 30 mg/kg for amenable cyanide. CyanoKEM's position is that their F011/F012 wastes are more difficult to treat than the waste EPA considered in developing the treatment standard for total cyanide in F011/F012 nonwastewater. CyanoKEM goes on to say that the F011 and F012 wastes received by their facility are similar to the F006-F009 electroplating wastes for which EPA has established higher cyanide standards. The treatment data submitted by CyanoKEM show that they can achieve the F006-F009 standards,

but cannot currently comply with the F011 and F012 BDAT standards.

II. Basis for Determination

A. Site-Specific Conditions

Under 40 CFR 268.44, EPA allows facilities to apply for a site-specific variance in cases where a waste is generated under conditions specific to only one facility and the waste can not

nonwastewater, a determination can be made regarding whether a facility has properly designed and is properly operating their alkaline chlorination system, i.e. by reducing the amenable cyanides in the waste, proper destruction of the cyanides has been performed by alkaline chlorination.

Craftsman Plating is reducing amenable cyanides from 300 ppm in the alkaline chlorination. Northwestern Plating is reducing the amenable cyanides to less than 1 ppm in the effluent wastewater and the sludge. EPA is, therefore, using their findings on the concentration of amenable cyanides in the F006 wastes as the principal determinant of whether a variance is warranted for total cyanide and, if so, the appropriate alternative treatment

and a variance from 9.1 mg/kg for amenable cyanide to 30 mg/kg. EPA's review of CyanoKEM's waste characterization data for F011 and F012 wastes confirms that their waste more closely approximates the wastes treated for development of the F006-F009 cyanide standards than the F011/F012 wastes tested by EPA. The CyanoKEM treated at CyanoKEM's facility is warranted. EPA believes that the available data supports a transfer of the performance of alkaline chlorination achieved for treatment of amenable and total cyanides for F006-F009 wastes to F011 and F012 wastes.

At this time, the Agency is soliciting comments on the approach of

amenable cyanide. Only in cases where the amenable cyanide concentration is in compliance with the current BDAT standard of 30 mg/kg will the facilities be allowed the variance. As indicated, EPA is proposing a variance for total cyanide only. Based on the information in this record, both facilities are able to

but cannot currently comply with the F011 and F012 BDAT standards.

II. Basis for Determination

A. Site-Specific Conditions

Under 40 CFR 268.44, EPA allows facilities to apply for a site-specific variance in cases where a waste is generated under conditions specific to only one facility and the waste can not be treated to the specified standard for that waste even though well-operated treatment of the type used to establish the treatment standard is utilized to treat the waste.

EPA has reviewed the petition submitted by both Craftsman and Northwestern and believes that, as requested, a site-specific variance is warranted with respect to the total cyanide standard for both facilities. Specifically, EPA believes that the cause of the high concentrations of complex iron cyanides at these facilities can be attributed to site-specific electroplating formulations and operations. Such site-specific conditions would include the type of ferrous parts being plated (e.g., whether or not the parts are irregularly shaped), the type and concentration of chemical additives, the bath temperature, the pH of the cyanide bath, the condition of ferrous parts the plating thickness, the duration of the plating process, current density, and other process factors. Similarly, the Agency believes that an appropriate alternative treatment standard for total cyanide would only reflect the site-specific processing condition at Craftsman and Northwestern.

EPA has reviewed the petition submitted by CyanoKEM and believes that, as requested, a site-specific variance is warranted with respect to the amenable and total CYANIDE standards. Specifically, EPA believes that CyanoKEM is the only facility that treats F011/F012 wastes generated in a manner that results in these wastes containing high concentrations of cyanide and iron, a potential complexing agent.

B. Alternative Treatment Standard for Cyanides

EPA's technical rationale for proposing approval of a BDAT treatment variance for Craftsman focuses primarily on the Agency's belief that complex iron cyanides are not easily treated using the BDAT technology of alkaline chlorination. Consistent with this position, EPA believes that by examining the concentration of amenable cyanides (i.e., cyanides not complexed with iron) in the treated wastes, both wastewater and nonwastewater, a determination can be made regarding whether a facility has properly designed and is properly operating their alkaline chlorination system, i.e. by reducing the amenable cyanides in the waste, proper destruction of the cyanides has been performed by alkaline chlorination.

Craftsman Plating is reducing amenable cyanides from 300 ppm in the effluent to less than 1 ppm in the effluent wastewater and the sludge. This substantial reduction indicates that the alkaline chlorination treatment system is being operated properly. EPA is, therefore, using the concentration of amenable cyanides in the F006 wastes as the principal determinant of whether a variance is warranted for total cyanide and, if so, the appropriate alternative treatment concentration.

EPA also sought additional means of assuring that Craftsman's treatment system is being operated properly. On November 16, 1989, the Agency conducted an engineering site visit at Craftsman Plating. The Agency observed that the treatment system was well operated due to the fact that concentration of the amenable cyanide were reduced significantly. In fact, the electroplating wastewater generated by the facility contained concentration of amenable cyanide greater than 300 ppm and was reduced to less than 1 ppm by the treatment system. In addition, treatment was conducted in afford with normal design and operating parameters. The F006 wastes generated from the treatment system is 30% solid with a concentration of total cyanides ranging from 600–1000 ppm.

In the case of Craftsman, there is one data point that shows both total and amenable cyanide concentrations for their F006 waste. These concentrations are 1,160 mg/kg for total and <1.0 mg/kg for amenable cyanides, respectively. Using these data and accounting variability in the amount of complex iron cyanides that will be generated, EPA has determined that an appropriate alternative total cyanide standard for the Craftsman facility located in Chicago, Illinois is 3,100 mg/kg. The calculation of the treatment standard can be found in the Proposed Background Document for this site-specific treatability variance. The alternative treatment standard is derived by using a variability factor of 2.8 times the concentration of total cyanides in the waste. In a similar manner, EPA's technical rationale for proposing approval of a BDAT treatment variance for Northwestern focuses primarily on the Agency's belief that complex iron cyanides are not easily treated using the BDAT technology of alkaline chlorination. Northwestern Plating is reducing the amenable cyanides to less than 1 ppm in the effluent wastewater and the sludge. EPA is, therefore, using their findings on the concentration of amenable cyanides in the F006 wastes as the principal determinant of whether a variance is warranted for total cyanide and, if so, the appropriate alternative treatment concentration. Therefore, by reducing the amenable cyanides in the waste proper destruction of the cyanides has been performed by alkaline chlorination.

On November 16, 1989, the Agency conducted an engineering site visit at Northwestern Plating. The Agency observed that the treatment system was well operated due to the fact that the concentration of amenable cyanide was reduced significantly. In fact, the electroplating wastewater generated by the facility contained amenable cyanides greater than 200 ppm. As mentioned before, the cyanide concentration in the effluent was reduced to less than 1 ppm. The F006 generated from the treatment system is 33% solids with a concentration of total cyanides ranging from 700–1000 ppm. Based on these observations, the Agency concluded that the facility was well operated.

Also, the treatment data submitted in the petition contained one data point that shows both total and amenable cyanide concentrations for their F006 waste. The concentration of total cyanide in the waste is 708 mg/kg. Using these data and accounting for variability in the amount of complex iron cyanides that will be generated, EPA has determined that an appropriate alternative total cyanide standard for the Northwestern facility located in Chicago, Illinois is 2000 mg/kg.

The calculation of the treatment standard can be found in the Proposed Background Document. The alternative treatment standard is derived by using a variability factor of 2.8 times the concentration of total cyanides in the waste.

Also, the Agency is requesting additional treatment data from Craftsman Plating and Northwestern Plating. Because of these data, the Agency may promulgate different alternative treatment standards as proposed.

EPA is also proposing to grant alternative treatment standards for total and amenable cyanide in the F011 and F012 wastes treated at CyanoKEM's facility in Detroit, Michigan. Specifically, EPA is proposing to grant a variance from the current standard of 110 mg/kg for total cyanide to 590 mg/kg and a variance from 9.1 mg/kg for amenable cyanide to 30 mg/kg. EPA's review of CyanoKEM's waste characterization data for F011 and F012 wastes confirms that their waste more closely approximates the wastes treated for development of the F006–F009 cyanide standards than the F011/F012 wastes tested by EPA. The CyanoKEM F011/F012 wastes have total cyanide concentrations as high as 204,000 ppm compared to 71,750 ppm for wastes used to develop BDAT for F006–F009 and 22,700 ppm for wastes used as the basis for current F011 and F012 standards. Moreover, iron concentrations that, when combined with cyanide, inhibit cyanide treatment are much higher in the F011/F012 wastes treated by CyanoKEM than in the F011/F012 wastes treated by EPA: over 46,000 ppm of iron in the wastes at CyanoKEM compared to 140 ppm estimated for the EPA tested F011/F012 wastes. On the other hand, iron concentrations in the wastes used as the basis for F006–F009 were as high as 11,917 ppm.

The Agency conducted an engineering site visit at the CyanoKEM facility on January 23, 1990. The primary purpose of this visit was to review CyanoKEM's records on F011 and F012 in order to be sure that the wastes treated were similar to the characteristics of F006 through F009. The second purpose of the visit was to determine whether the treatment system is well operated. A copy of the engineering site visit report is in the administrative record for today's proposed rule.

At the site, the Agency reviewed some of the characterization sheets on F011 and F012. From the review, the Agency determined that the characteristics of F011 and F012 wastes (i.e., cyanide and iron concentration) treated by CyanoKEM were similar to the F006 wastes. Also, based on observations of the facility, the Agency concluded that the treatment system was well operated.

For the above reasons, the Agency believes that an alternative treatment standard for F011 and F012 wastes treated at CyanoKEM's facility is warranted. EPA believes that the available data supports a transfer of the performance of alkaline chlorination achieved for treatment of amenable and total cyanides for F006–F009 wastes to F011 and F012 wastes.

At this time, the Agency is soliciting comments on the approach of developing treatability groups for F011 and F012 wastes based on the concentration of metals (specifically iron) and cyanides. In the Second Third Final Land Disposal Restrictions Rule (51 FR 28611), the Agency promulgated cyanide and metal treatment standards for F011 and F012 wastes. The wastes treated by the Agency contained total cyanide concentration ranging up to 30,000 ppm and iron concentration ranging up to 140 ppm. The treatment standards for these wastes were based on the performance of electrolytic oxidation followed by alkaline chlorination. Also, the Agency concluded that F011 and F012 wastes contained lower concentration of iron than F006 wastes. Based on the iron concentration of the F011 and F012 wastes treated by the Agency as compared to the characterization data provided in CyanoKEM's treatability variance, these wastes are different. Treatment data shows that this difference does impact the performance of the treatment system. Therefore, the Agency is soliciting comments on establishing a treatability group for F011 and F012 based on a low iron concentration (i.e. less than 140 ppm) to achieve total and amenable cyanide treatment standards of 110 mg/kg and 9.1 mg/kg, respectively; and a high iron treatability group (i.e. greater than 140 ppm) to achieve total and amenable cyanide treatment standards of 590 mg/kg and 30 mg/kg, respectively.

C. Conditions for Total Cyanide Variance

For both Craftsman and Northwestern Plating, the total cyanide analysis must be accompanied by an analysis for amenable cyanide. Only in cases where the amenable cyanide concentration is in compliance with the current BDAT standard of 30 mg/kg will the facilities be allowed the variance. As indicated, EPA is proposing a variance for total cyanide only. Based on the information in this record, both facilities are able to comply with the amenable cyanide standard, therefore the Agency is not proposing to change the amenable cyanide standard.

For CyanoKEM, the metal treatment standards for F011 and F012 nonwastewaters and the cyanide and metal treatment standards for the wastewaters must be met in order to dispose of the waste. As indicated, EPA is proposing a variance for amenable and total cyanides only in F011 and F012 nonwastewaters treated at this facility.

Dated: September 17, 1990.

Sylvia K. Lowrance,

Director, Office of Solid Waste.

For the reasons set out in the preamble, title 40, chapter I, Part 268 of the Code of Federal Regulations is proposed to be amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.44 is amended by adding paragraphs (m) and (n) to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(m) [Reserved].

(n) The following facilities are excluded from the treatment standard under § 268.43 (a), Table CCW and are subject to the following constituent concentrations.

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS

Facility name and address [1]	Waste Code	See also	Regulated hazardous constituent	Wastewaters concentration (mg/l)	Non-wastewaters concentration (mg/kg)
Craftsman Plating and Tinning, Corp., Chicago, IL.	F006	Table CCWE in 268.41	Cyanides (Total)	[2] 1.2	[3]3,100
			Cyanides (Amenable)	[2] 0.86	30
			Cadmium	1.8	NA
			Chromium	0.32	NA
			Lead	0.040	NA
			Nickel	0.44	NA

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TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS—Continued

Facility name and address [1]	Waste Code	See also	Regulated hazardous constituent	Wastewaters concentration (mg/l)	Non-wastewaters concentration (mg/kg)
Northwestern Plating Works, Inc., Chicago, IL	F006	Table CCWE in 268.41	Cyanides (Total)	[2] 1.2	[3] 2,000
			Cyanides (Amenable)	[2] 0.86	30
			Cadmium	1.6	NA
			Chromium	0.32	NA
			Lead	0.040	NA
			Nickel	0.44	NA
CyanoKEM, Inc., Detroit, MI	F011	Table CCW in 268.41	Cyanides (Total)	1.9	[3] 590
			Cyanides (Amenable)	0.1	30
			Chromium (Total)	0.32	NA
			Lead	0.04	NA
			Nickel	0.44	NA
CyanoKEM, Inc., Detroit, MI	F012	Table CCW in 268.41	Cyanides (Total)	1.9	[3] 590
			Cyanides (Amenable)	0.1	30
			Chromium (Total)	0.32	NA
			Lead	0.04	NA
			Nickel	0.44	NA

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR Section 268.7
[2] Cyanide Wastewater Standards for F006 are based on analysis of composite samples.
[3] Cyanide Nonwastes are analyzed using SW–846 Method 9010 or 9012; sample size 10 grams; distillation time: one hour and fifteen.
Note: NA means Not Applicable.

[FR Doc. 90–23180 Filed 10–1–90; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF ENERGY

48 CFR Parts 950, 952, and 970

Acquisition Regulation; Nuclear Hazard Indemnity Clauses; Extension of Time

AGENCY: Department of Energy.

ACTION: Proposed rule; extension of time.

SUMMARY: On August 17, 1990 (55 FR 33730), the Department of Energy (DOE) published a proposed rule revising the Department of Energy Acquisition Regulation (DEAR) The proposed rule implements provisions of the Price-Anderson Amendments Act of 1988 as those amendments affect the Nuclear Hazards Indemnity clauses currently in the DEAR

The Department has received a request for extension of the comment period beyond October 1, 1990. It has been brought to our attention that this rule and the Department's proposed rule concerning accountability for profitmaking and fee bearing management and operating contractors ("Accountability NOPR"), published on August 10, 1990, at 55 FR 32874, have similar comment periods. To provide appropriate time for interested organizations to consider both rules, the DOE has determined that the comment period for the Hazards Indemnity clauses should be extended.

DATES: The comment period is extended until November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb, Procurement Policy Division (PR–121), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–8264, FTS 896–8264.

Issued in Washington, DC, on September 25, 1990.

Berton J. Roth,

Deputy Director, Office of Procurement, Assistance and Program Management.

[FR Doc. 90–23341 Filed 9–28–90; 10:14 am]
BILLING CODE 6450–01–M

Notices

Federal Register
Vol. 55, No. 191
Tuesday, October 2, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking, Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The meeting will be held at 4 p.m. on Wednesday, October 10, 1990, at the Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037 (Library, 5th floor).

The committee will meet to discuss two new projects: (1) A study of administrative responses to congressional demands for information, by Peter Shane, Professor of Law, University of Iowa; and (2) a study of the Medicaid rulemaking process, conducted by Eleanor Kinney, Director, Program for Law, Medicine and the Health Care Industry, Indiana University School of Law.

For further information concerning this meeting, contact Kevin Jessar, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC. (Telephone: 202–254–7020.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: September 27, 1990.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 90–23305 Filed 10–1–90; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Participation Agreement.

Form Numbers: Agency—ITA–4008P and ITA 4008P(a), OMB—0625–0147.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 5800 respondents; 1,933 reporting hours.

Average Hours Per Response: 20 minutes.

Needs and Uses: The International Trade Administration (ITA) sponsors up to 200 overseas trade promotion events each fiscal year. These events include trade fairs, trade and seminar missions, and catalogue or video-catalogue shows in which U.S. companies display, demonstrate, and promote their goods and services in foreign markets. The Participation Agreement is the vehicle by which individual firms agree to participate in ITA's trade promotion program, identify the products or services they intend to sell or promote, and record their required financial contribution to the Department of Commerce. It is a contract between an individual firm and Commerce. ITA collects the information for four primary purposes: (1) To identify firms which have agreed to participate in specific overseas trade promotion events; (2) to establish the financial contribution which the individual firms will make and keep track of their payments; (3) in connection with facilitating the shipment of exhibition goods using private sector freight forwarding companies; and (d) to collect participant profile information such as export experience and company size for evaluative purposes.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 20, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–23192 Filed 10–1–90; 8:45 am]
BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Petition Format for Requesting Relief under U.S. Antidumping Duty Law.

Form Numbers: Agency—ITA–357P and 19 CFR 353.12, OMB—0625–0105.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 85 respondents; 3,400 reporting hours.

Average Hours Per Response: 40 hours.

Needs and Uses: Under section 732 of the Tariff Act of 1930, as amended, the Department of Commerce is required to initiate an antidumping duty investigation when a domestic interested party alleges the elements

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necessary for the imposition of an antidumping duty on an imported product. The antidumping petition is used to gather the information necessary to determine whether an antidumping duty investigation is warranted. The information requested relates to the existence of sales at less than fair value and injury to the affected U.S. industry. This information is necessary in setting forth an allegation that foreign merchandise is being dumped in the United States and forms the basis for initiating an investigation.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: September 25, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-23193 Filed 10-1-90; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-588-045]

Steel Wire Rope From Japan; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on steel wire rope from Japan. Interested parties who object to this revocation must submit their comments in writing not later than October 31, 1990.

EFFECTIVE DATE: October 2, 1990

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1973, the Department of Treasury published an antidumping finding on steel wire rope from Japan (38 FR 28571). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)), we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than October 31, 1990, interested parties, as defined in § 353.2(k) of the Department's regulation's (19 CFR 353.2(k)), may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by October 31, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by October 31, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: September 25, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-23198 Filed 10-1-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-803]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Leather From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of leather as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant rates are indicated in the "Suspension of Liquidation" section of this notice.

We are directing the U.S. Customs Service to suspend liquidation on all entries of leather from Argentina that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice and to require a cash deposit on entries of there products in the amounts equal to the estimated net bounty or grant.

EFFECTIVE DATE: October 2, 1990.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 377-0192 or 377-5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 3030 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers producers, or exporters in Argentina of leather. We determine that the following programs confer bounties or grants:

- Resolution 321: Embargo on Cattle Hide Exports
- Circular RF-153: Pre-Export Financing
- Discounts of Foreign Currency Accounts Receivable under Circular RF-21
- Tax Deduction under Decree 173
- Import Duty Reduction under Decree 964

Case History

Since the completion of our Preliminary Determination *[Preliminary Affirmative Countervailing Duty Determination: Leather from Argentina*, 55 FR 28925 (July 16, 1990), (*Preliminary Determination)]*, the following events have occurred.

On July 12 and 13, 1990, we held disclosure meetings on calculation methodology with counsel for respondents and petitioners, respectively. On July 11, 12, and 18, 1990, respondents submitted corrections to their responses regarding pre-export financing.

On July 26, 1990, petitioners requested a hearing and on July 31, 1990, respondents requested permission to participate in the hearing.

We conducted verification in Buenos Aires, Argentina, from July 23 through August 3, 1990, of the questionnaire responses of the Government of Argentina (GOA), Camara de la Industria Curtidora Argentina (CICA), Curtiembres Fonseca, S.A. (CF), Federico Meiners Ltda., S.A. (Meiners), Compania Industrial del Cuero, S.A. (CIDEC), Ultrahide, S.A. (Ultrahide), Antonio Esposito, S.A. (Esposito), Coplinco, S.A. (Coplinco), Grunbaum, Rico y Daucourt, S.A.I.C.F. (Graubaum), Gibaut Hermanos, S.A. (Gibaut), and Manuel Neira, S.A.I.C.F. (Neira).

On August 13 1990, respondents filed corrections of the minor discrepancies discovered at verification. Case briefs were filed on September 4, 1990, by petitioners and respondents; rebuttal briefs were filed by both parties on September 7, 1990. A public hearing was held at the Department of Commerce on September 10, 1990.

Scope of Investigation

The product covered by this investigation is leather. The types of leather that are subject to this investigation includes bovine (excluding upper and lining leather not exceeding 28 square feet, buffalo leather, and upholstery leather), sheep (excluding vegetable pretanned sheep and lambskin leather), swine, reptile (excluding vegetable pretanned and not fancy reptile leather), patent leather, calf and kip patent laminated, and metalized leather. Leather is an animal skin that has been subjected to certain treatment to make it serviceable and resistant to decomposition. It is used in the footwear, clothing, furniture and other industries. The types of leather included within the scope of this investigation are currently classified under HTS item numbers 4104.10.60, 4104.10.80, 4104.21.00, 4104.22.00, 4104.29.50, 4104.29.90, 4104.31.50, 4104.31.60, 4104.31.80, 4104.39.50, 4104.39.60, 4104.39.80, 4105.12.00, 4105.19.00, 4105.20.30, 4105.20.60, 4107.10.00, 4107.29.80, 4107.90.30, 4107.90.60, 4109.00.30, 4109.00.40, and 4109.00.70. The HTS item number(s) are provided for convenience and Customs purposes. The Department's written description of the merchandise under investigation remains dispositive.

Analysis of Programs

For purposes of this investigation, the period for which we are measuring bounties or grants ("the review period") is calendar year 1989, which corresponds to the most recently completed fiscal year of the majority of the respondent companies. The other respondent companies each have different fiscal years which overlap this period. In accordance with our practice in such situations, we have chosen the most recently completed calendar year as our review period.

Based upon our analysis of the petition, the responses to our questionnaires, and verification, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Argentina of leather under the following programs:

A. Resolution 321: Embargo on Cattle Hide Exports

1. Background

Since 1972, the GOA has implemented two different types of restrictions on the export of cattle hides: Export embargoes and export taxes. In 1972, the GOA implemented an embargo on the export of cattle hides under Decree 2861. This embargo was lifted in 1979 and was replaced by an export tax under Resolution 909. In September 1985, the GOA again instituted an embargo under Resolution 321.

The 1972 embargo was instituted to promote the development of a domestic leather tanning industry. In 1979, the U.S. Tanners' Council filed a section 301 petition regarding the Argentine embargo on cattle hides. Consequently, the GOA and the United States reached an agreement in 1979 to eliminate the embargo. While Argentina reserved the right to impose an export tax on hides, the tax was to be phased out completely over three years. Although Argentina made the scheduled export tax reduction in 1979, it implemented another measure which effectively negated part of the concession. This measure instituted a minimum export price on cattle hides which was used instead of the transaction price in determining the amount of tax to be charged on exports. Since the minimum export price was generally higher than the transaction price, the effective tax rate was at a rate higher than the reduced rate Argentina had agreed in 1979 would apply. Moreover, in 1981, Argentina failed to implement the scheduled export tax reduction called for in the agreement.

In October 1981, another section 301 petition was filed by the U.S. industry regarding Argentina's breach of the 1979 agreement. Although the United States Trade Representative (USTR) initiated a section 301 investigation, it was dropped shortly thereafter with the consent of the U.S. industry. The USTR decided that the issue was more appropriately pursued under section 125 of the Trade Act of 1974, which gave the President the authority to terminate the 1979 U.S.-Argentina Agreement. In 1982, the U.S. and Argentina exchanged diplomatic notes terminating the agreement.

The export tax on hides was increased in both 1982 and 1984. In 1985, the current embargo on cattle hides was imposed. Resolution 321, which implemented the embargo, states that "(i)t is necessary to negotiate measures to maintain the volume of supply of raw materials adequate to the needs of the domestic market of the leather tanning and manufacturing sector, facilitating a smooth flow of supplies while avoiding any undue increase in prices."

2. Analysis of Current Embargo

The embargo applies only to cattle hides, which are sold primarily, if not exclusively, to leather tanners. Thus, we determine that the embargo is limited to a specific industry and is, therefore, countervailable to the extent that it has caused hide prices to be lower than they would have been absent the embargo.

When the petition in this investigation was filed, we held petitioners to an extremely high standard of proof, requiring them to substantiate their claim that the embargo had a direct and discernible effect on hide prices in Argentina. In their petition, they provided substantial source and secondary documentation, demonstrating the comparability of Argentine, United Kingdom (U.K.), and U.S. hide quality; documenting U.S., U.K. and Argentine hide prices over 30 years; and outlining their analysis of how the embargo is linked directly with the price differential between Argentine hide prices on the one hand, and U.S. and U.K. hide prices on the other. We initiated on the embargo because petitioners provided evidence, based on two sets of reasonable benchmark prices for comparable hides, which indicated that the embargo may have suppressed the price of untanned hides in Argentina, thereby resulting in a benefit specific to Argentine leather producers.

At the time of our *Preliminary Determination*, the information on the record concerning the embargo was inconclusive. Although we had information which demonstrated that hide prices in the six largest exporting nations, including the United States, were higher than Argentine hide prices, respondents argued, and some data suggested, that other factors may have contributed to the price effects, and that the embargo may have had only a limited impact, if any, on prices. At verification, we gathered and verified

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data on Argentine hide prices, hide exports, cattle slaughter, inflation, and exchange rates over a 28 year period from 1962 to 1989. We also collected from published sources U.S. hide and leather price data, and Argentine leather price data, for the same period.

The historical comparison of the U.S. and Argentine hide price data for the period 1962 to 1989 shows a clear link between the imposition of the 1972 embargo and a divergence in U.S. and Argentine hide prices. Average annual Argentine and U.S. hide prices are fairly constant and at virtual parity from 1962 through 1972. After 1972 and until the embargo was terminated in 1979, Argentine hide prices were consistently, and generally markedly, lower than U.S. hide prices. From 1981 to 1984, during a period when the embargo was not in effect, Argentine hide prices moved closer to, and at times exceeded, U.S. prices. Finally, when the hide embargo was reimposed in 1985, average annual Argentine hide prices again diverged and remained consistently below average annual U.S. prices. Thus, there is a cognizable and discernible link between the Argentine hide embargo and the average annual U.S.-Argentine hide price differentials.

Although hide prices in Argentina are certainly affected by other factors, such as variations in quality, inflation, cattle slaughter, and leather prices, we have analyzed all of these factors in an attempt to isolate cause and effect relationships between each of them and the U.S.-Argentine hide price differentials. None of these factors can be conclusively linked to the divergence in prices that occurred after the embargoes.

For example, respondents argue that the primary reason for the divergence in prices after 1972 was a deterioration in the quality of Argentine hides. According to respondents, prior to the 1970s, Argentine cattle were raised under different conditions and the hides were produced by large, sophisticated packers. It is extremely unlikely however, that these changes can account for the abrupt divergence in prices which occurred in 1972. Respondents also cite inflation as a possible cause for the divergence. In our calculations, however, we converted all Argentine hide prices from the Argentine currency to U.S. dollars, essentially negating the effects of Argentine inflation. Furthermore, all of the factors listed above, to a greater or lesser degree, were at work both before and after the embargoes were imposed.

The best measure we have of what prices would have been in the absence of the current embargo is a benchmark based on U.S. hide prices. U.S. hide prices are the best benchmark for two reasons. First, excerpts of published articles and studies submitted by petitioners indicate that U.S. and Argentine hide quality is comparable. In addition, we saw no evidence at either the Argentine or the U.S. tanneries we visited that the leather produced from Argentine hides is significantly inferior to that produced from U.S. hides. Second, the United States is the largest cattle hide producer among countries which freely trade such hides. Thus, U.S. hide prices are indicative of world hide prices.

As detailed above, a comparison of Argentine and U.S. hide prices during periods in which Argentina maintained an embargo on hides clearly demonstrates that Argentine hide prices were consistently lower than U.S. hide prices. Therefore, we determine that the Argentine cattle hide embargo is countervailable.

3. Calculation of Benefit

We calculated the benefit from the embargo as follows. First, we calculated the annual average differential between the price of Argentine steer hides (*novillos*) and U.S. butt-branded steer hide prices as a percentage of the Argentine hide price for the periods the embargo was in effect (May 1972–October 1979, and September 1985–December 1989, the end of the review period). (It should be noted that both sets of prices are for salted, non-fleshed, branded hides, and neither set includes brokerage fees.)

From this, we subtracted the average differential expressed as a percentage of the Argentine hide price for the years prior to the first embargo (January 1962, the first month for which we obtained data, through April 1972). We did so because we observed a slight U.S.-Argentine hide price differential in the period 1962–1972. Consequently, we are assuming that a portion of the price differential during the embargo periods is attributable to normal market forces independent of the embargoes. To measure the effect of these market forces we are using, as a surrogate, the price differential as a percentage of the Argentine price observed in the 1962–1972 period, when there were significant exports of cattle hides from Argentina.

Next, we multiplied the result by the value of each respondent's hide purchases during the review period to obtain an absolute benefit amount for each company. We then allocated each company's benefit over its total sales during the review period. Finally, we weight-averaged the resulting benefits by each company's proportion of respondents' exports to the United States during the review period, excluding those companies with significantly different aggregate benefits. The estimated net bounty or grant is 14.17 percent *ad valorem* for all manufacturers, producers and exporters in Argentina of leather except Ultrahide and Esposito, which have significantly different aggregate benefits. The estimated net bounties or grants for Ultrahide and Esposito are 23.34 percent *ad valorem*, and 7.74 percent *ad valorem*, respectively.

B. Circular RF–153: Pre-Export Financing

Circular RF–153 allows exporters to receive pre-export financing from Central Bank funds in the form of dollar-indexed loans. The program is administered by the Central Bank of Argentina. The amount of the loan can equal up to 65 percent of the f.o.b. export value if the merchandise to be exported is produced solely from domestically-produced inputs. If the exporter uses imported materials, the level of financing is reduced according to the imported content of the merchandise to be exported. Loans under this program are made to individual corporate borrowers by commercial banks which, in turn, are reimbursed by the Central Bank. Loans are extended to exporters of leather for a maximum period of 150 days.

The principal and interest payments under this program are indexed to the austral/dollar exchange rate. The loans are given in australes but are tied to a fixed dollar amount based on the exchange rate prevailing on the date of the loan. At the time of repayment, the fixed dollar amount is reconverted to australes based on the exchange rate prevailing on that date, and the borrower must repay the new austral amount. In addition, the borrower must make quarterly interest payments in australes, in most cases applying an eight percent annual interest rate to the fixed dollar amount. These interest payments are converted to australes at the exchange rate prevailing at the end of each quarter. Effective October 1, 1989, the eight percent interest rate was increased to ten percent.

Pre-export financing under Circular RF–153 was renamed under Circular A–598, and subsequently replaced by Central Bank Communication A–1205 on June 3, 1988. Communication A–1205 set up a mechanism for Argentine commercial banks to source export financing directly from international banks instead of through the Central Bank. At verification, we found that the Central Bank rebates three percent (of the loan principal times the number of days in the loan divided by 365) to the foreign banks providing the funds. The rebate, which can be passed on to exporters, is meant to compensate the foreign banks for their increased exposure, or risk, in obtaining the funds.

This new, externally-sourced financing coexisted with the Central Bank-sourced financing until January 1, 1990. After that date, Central Bank lines of credit were "temporarily suspended" under Communication A–1585, and pre-export financing by commercial banks was conducted only with foreign bank funds.

We verified that the following companies received RF–153 loans on which interest was paid during the review period: CF, Meiners, CIDEC, Ultrahide, Esposito, Grunbaum, and Gibaut. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

As the benchmark for short-term (less than one-year) loans, it is our practice to use the average interest rate for an alternative source of short-term financing in the country in question. In determining this benchmark, we normally rely upon the predominant source of short-term financing. In the absence of a single, predominant source of such financing, we may use a benchmark composed of the interest rates for two or more sources of short-term financing, weighted, whenever possible, according to the value of financing from each source. (See our *Preliminary Determination* for a discussion of the benchmark used in previous Argentine cases.)

We verified that, during the review period, the predominant source of commercial, bank-related (as opposed to credit from supliers) financing in Argentina is dollar-indexed financing. Neither the Central Bank nor any other Argentine government agency maintains statistics on the interest rates charged on commercial dollar-indexed financing. However, we verified that most of the respondent companies received pre-export financing under Communication 727, later renamed Copex 1680 financing. Copex 1680 establishes the current maximum terms for pre-export financing with foreign funds. The terms are as follows: 110 days for traditional exports (grain, oilseed, and other agricultural products), and 290 days for non-traditional exports (manufactured, or "industrial," products, which include leather). With the exception of these terms, the Central Bank does not regulate this type of pre-export financing. We verified that interest rates for both traditional and non-traditional exports are freely negotiated, and that rates for non-traditional exports are generally a few percentage points higher than rates for traditional exports, due to the increased risk involved. We also verified that the new external lines opened up under Communication A–1205 are meant to augment the existing externally-sourced financing under Copex 1680. As discussed above, Communication A–1205 financing is accompanied by a rebate of three percent of the loan principal, adjusted for the term of the loan, from the Central Bank to the commercial bank. No such rebates accompany Copex 1680 financing.

Therefore, we have decided to use as a benchmark the interest rate on dollar-indexed loans for non-traditional exports offered by commercial banks in Argentina under Copex 1680. In this way, we are comparing dollar-indexed financing to dollar-indexed financing. The use of a dollar-indexed benchmark is consistent with our past practice, in that it is the predominant alternative source of short-term financing available in Argentina. Thus, we determine that it is appropriate to use a dollar-indexed benchmark when examining the degree to which Circular RF–153 loans provide a benefit to Argentine exporters.

Comparing the benchmark rate to the rates charged on RF–153 loans during the review period, we find that the RF–153 loans are preferential and, therefore, confer a bounty or grant on exports of leather.

To calculate the benefit from RF–153 loans on which interest was paid during the review period, we followed the short-term loan methodology which has been applied consistently in our past determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 49 FR 18006, April 26, 1984; *see also, Alhambra Foundry* v. *United States*, 628 F. Supp. 402 (CIT, 1985). Accordingly, we compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate.

Because we verified that individual RF–153 loans can cover several export shipments to different destinations, we allocated each company's interest savings over the value of its total export sales during the review period. We then weight-averaged the resulting benefits by each company's proportion of respondents' exports to the United States during the review period, excluding those companies with significantly different aggregate benefits. The estimated net bounty or grant is 0.66 percent *ad valorem* for all manufacturers, producers and exporters in Argentina of leather except Ultrahide and Esposito, which have significantly different aggregate benefits. The estimated net bounties or grants for Ultrahide and Esposito are 0.82 percent *ad valorem*, and 0.25 percent *ad valorem*, respectively.

As noted in our *Preliminary Determination*, it is the Department's policy to take into account program-wide changes which (1) occur after the review period but before our preliminary determination and (2) can be measured. (A "program-wide" change is defined as a change which is (1) not limited to an individual firm or firms and (2) effectuated by an official act.) However, because we verified that the externally-sourced pre-export financing under Communication A–1205, which replaced the Central Bank-sourced financing, is accompanied by a rebate which may affect the interest actually paid by exporters, the net effect of this change is indeterminate at this time. Accordingly, we are not adjusting the duty deposit rate for the suspension of Central Bank-sourced pre-export financing.

C. Discounts of Foreign Currency Accounts Receivable Under Circular RF–21

Administered by the Central Bank, this program provides financing for up to 80 percent of the f.o.b. value of export shipments. Financing under this program allows exporters to provide financing to their foreign purchasers. Operations are documented through bills of exchange in U.S. dollars, which are discounted in the same currency by local banks. Circular RF–21 loans can be given for a maximum term of one year, with equal repayments of principal at periods not exceeding six months. Interest is paid on June 30 and December 31 (or at the maturity of the loan). In order to obtain export financing under this program, the exporter must show documented evidence of an export transaction to be completed within 30 days.

All discounts were based on Central Bank-sourced funds until the promulgation of Communication A–1205 in June 1988. Communication A–1205, which replaced RF–21, preserved the treatment exporters received under RF–21 but allowed commercial banks to source funds directly from international banks as well as from the Central Bank. At verification we found that discounts from international banks are accompanied by rebates from the Central Bank to the bank providing the discounts (similar to the rebates accompanying the externally-sourced pre-export financing opened up under Communication 1205, discussed under Section I.B., above). We verified that these rebates reduced the interest paid

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by the respondent company which received externally-sourced discounts. Unlike the Central Bank-sourced pre-export financing, Central Bank-sourced discounts were not completely disallowed after January 1, 1990.

We verified that two respondents, CIDEC and Meiners, received RF–21 discounts on which interest was paid during the review period. Because only exporters are eligible for these discounts, we determine that they are countervailable to the extent that they are provided at preferential rates.

We used as our benchmark the same rate described above in reference to RF–153 financing. Because RF–21 discounts are tied to individual shipments, we allocated each company's interest savings over the value of its exports to the United States during the review period. We then weight-averaged the resulting benefits by each company's proportion of respondents' exports to the United States during the review period, excluding those companies with significantly different aggregate benefits. The estimated net bounty or grant is 0.13 percent *ad valorem* for all manufacturers, producers and exporters in Argentina of leather except Ultrahide and Esposito, which have significantly different aggregate benefits. The estimated net bounty or grant for both Ultrahide and Esposito is zero.

D. Tax Deduction Under Decree 173/85

Decree 173 provides a deduction from taxable income equal to ten percent of export earnings. It is administered by the General Director of Taxation.

Because only exporters are eligible to claim this deduction, we determine that it is countervailable. We verified that all the respondent companies claimed this deduction on their tax returns filed during the review period.

In order to calculate the benefit under this program, we allocated each company's tax savings over the value of its total export sales during the review period. We then weight-averaged the resulting benefits by each company's proportion of respondents' exports to the United States during the review period, excluding those companies with significantly different aggregate benefits. The estimated net bounty or grant is 0.01 percent *ad valorem* for all manufacturers, producers and exporters in Argentina of leather except Ultrahide and Esposito, which have significantly different aggregate benefits. The estimated net bounties or grants for Ultrahide and Esposito are zero and 0.03 percent *ad valorem*, respectively.

We verified that companies continue to claim this benefit, even though the government suspended the deduction under Decree 553/89 of May 2, 1989. In addition, we verified that tax losses, which are partially attributable to the Decree 173 deduction, can be carried forward for five years, and that these losses are adjusted for inflation. Accordingly, we are not adjusting the duty deposit rate to reflect the suspension of this program.

E. Import Duty Reduction under Decree 964

At verification we found that CF received a reduction of duties payable on a machine imported during the review period. The reduction was granted through Resolution 1156 of May 3, 1989, which authorized CF to import the machine at the reduced rate of duty within seven days. The Resolution states that the duty reduction is only for imports of items not manufactured in Argentina.

The Resolution refers to Decree 964 of 1988, which, in turn, refers to Law 21,608 of 1977. The Law, which was passed by Congress, regulates industrial promotion policies. The Decree, executed by the President, describes the general benefits available and the eligibility criteria for these benefits. The Resolution, promulgated by the Ministry of Industry and Commerce, grants a specific, one-time benefit to CF.

Decree 964 states that it is meant to "augment industrial competitiveness and increase the level of exportation." We requested and received no evidence at either the government or at CF to indicate that the import duty reduction received by the company was not contingent upon export performance. Having received no information on Decree 964 or CF's usage of this program prior to verification, we are assuming, based on the best information available, that the benefit provided to CF under this Decree was contingent upon export performance, and is, therefore, countervailable.

For purposes of calculating the benefit, we are treating the import duty reduction as a grant. Because CF received the reduction during the review period, and the difference between the duty paid by CF and the duty the company would have paid absent the reduction is less than 0.50 percent of the value of its total exports during the review period, we allocated the full amount of this difference to the review period. We used total exports for the 0.50 percent test because the reduction was contingent upon export performance.

We allocated each company's benefit from this program (*i.e.*, the import duty savings for CF, and zero benefits for the other companies) over the value of its total export sales during the review period. We then weight-averaged the resulting benefits by each company's proportion of respondents' exports to the United States during the review period, excluding those companies with significantly different aggregate benefits. The estimated net bounty or grant is less than 0.005 percent *ad valorem* for all manufacturers, producers and exporters in Argentina of leather except Ultrahide and Esposito, which have significantly different aggregate benefits. The estimate net bounty or grant for both Ultrahide and Esposito is zero.

II. Programs Determined Not To Be Used

We determine, based on verified information, that manufacturers, producers, or exporters in Argentina of leather did not apply for, claim or receive benefits during the review period for exports of leather to the United States under the following programs:

A. *Export Payments Under Decree 178: Programa Especial de Exportaciones (PEEX)*
B. *Post-Export Financing: OPRAC 1–9*
C. *Reembolso*
D. *Financing Investments for Exports (FIDEX)*
E. *Corrientes Regional Tax Incentives*
F. *Industrial Parks*
G. *Low-Cost Loans for Projects Outside Buenos Aires*
H. *Exemption from Stamp Tax Under Decree 186/78*
I. *Government Trade Promotion Programs*
J. *Incentives for Export from Southern Ports*

For a complete description of these programs, see the *Preliminary Determination*.

Comments

Comment 1

Respondents argue that petitioners lack standing and do not represent the domestic industry. They cite *Suramerica de Aleaciones Laminadas, C.A.* v. *U.S.*, Slip. Op. 90–79 at 32 (CIT Aug. 22, 1990), in which the Court of International Trade held that the Department cannot presume industry support for a petition, especially when it receives notice of industry opposition.

Petitioners argue that they do have standing in this investigation and that the above cited case does not apply because the opponents' position in this investigation derives from their status as importers. According to petitioners, the Court in *Suramerica* pointed out that *Suramerica* case differs from another recent case, *Comeau Seafoods Ltd.* v. *U.S.*, 724 F. Supp. 1407 (CIT 1989), in which those opposing the petition were importers of the subject merchandise. Petitioners quote and excerpt from the *Suramerica* decision, which states that

the Court accepted the Department's argument in *Comeau* that the opposition's position is due to their status as importers.

DOC Position

The Department does not agree with the holding of *Suramerica*. We continue to maintain that petitioners have standing. The reasons for this decision were discussed in our *Preliminary Determination*.

Comment 2

Respondents argue that the Department's *Preliminary Determination* was incorrect in that any benefit from the cattle hide embargo is not limited to a specific industry or group of industries and that this determination is inconsistent with Department precedent in Non-Rubber Footwear from Argentina: Final Results of Administrative Review of Countervailing Duty Order (49 FR 45130, March 16, 1984) and Leather Wearing Apparel from Argentina: Final Results of Administrative Review of Countervailing Duty Order (50 FR 45139, October 30, 1985).

Petitioners argue that the Department was correct in its preliminary determination in finding that the cattle hide embargo is limited. Petitioners state that, in contrast to the cases cited by respondents, the subject of the present case is leather and not finished leather goods, such as footwear and wearing apparel. In the earlier cases, the Department did not find measures affecting hides to be limited to leather footwear or apparel producers, because leather is also used in a wide variety of other industries. With regard to the present case, petitioners assert that an embargo on hides is limited to leather tanners because tanners are the only users of hides. They further assert that the Department is not reversing its decisions in the earlier cases because it has never before addressed the issue of whether the hide embargo benefits leather tanners.

DOC Position

We agree with petitioners. The embargo applies only to cattle hides, and cattle hides are used exclusively by the tanning industry in the production of leather.

Comment 3

Petitioners assert that the Department does not need to establish how hide prices were determined because the benchmark provides the "control" and is, therefore, a measure of all the macroeconomic factors that make up the actual price. Through a series of detailed charts and calculations petitioners contend that the other factors raised by respondents throughout this investigation, such as Argentina's "cheap beef policy", hyperinflation, currency devaluation, fluctuations in slaughter, and hide quality, have not caused the price differential between U.S. and Argentine hides. While recognizing that these factors may have some impact on price fluctuations, petitioners argue that because hide prices began to diverge in 1972 (as illustrated in a historical chart attached to their brief), it is the embargo, and not these other factors, which caused the price differential.

Specifically, with respect to hide quality, petitioners point out that prior to 1972, when Argentine and U.S. hide prices were virtually identical, the hides were basically the same as they are now. Furthermore, they state that hide quality is a very subjective issue, and that each country has its own problems when it comes to the quality of the raw materials. For example, U.S. hides have larger brands than Argentine hides, and because many are fattened on feedlots, U.S. hides have both barbed wire scratches from their time spent in pastures, and stains from the feedlots. Both Argentine and U.S. hides have the same exposure to tick and bug bites. Petitioners cite several sources, including an excerpt from an independent multi-client study done by Landell Mills Commodities Studies, Inc. in August 1989, "Leather to the year 2000" (attached as appendix 3 to petitioners' case brief), which states that U.S. hides and Argentine hides are ranked equally behind those of northern Europe. Finally, petitioners contend that while each country has a variety of quality problems, the leather that is produced from both countries is comparable.

Respondents argue that the overwhelming impact of factors such as hyperinflation, massive currency devaluations, cattle slaughter, hide quality, and government policies concerning export taxes on leather, import duties, and exchange rate policies make it impossible for the Department to isolate and quantify the effect of the embargo, or use normal economic assumptions. They further argue that petitioners have taken an overly simplistic approach to the analysis of these factors and have in fact erred in several calculations. Specifically, respondents contend that the exchange rates used by petitioners in the graphs comparing U.S. and Argentine hide prices over time are incorrect because exporters are compelled to exchange their foreign currency at a mix of exchange rates and not only at the financial exchange rate used by petitioners.

Furthermore, respondents argue that the inferior quality of the hides in Argentina accounts for much of the price differential. They claim that deteriorating slaughterhouse practices in the early 1970s led to hides scarred by knife holes and being delivered untrimmed. Also, they contend that Argentine hides have more frequent barbed wire and brush scratches from extended range feeding of cattle as compared with U.S. hides, and that the quality of the leather produced in Argentina is therefore inferior.

DOC Position

While the Department recognizes that the factors mentioned by respondents may cause fluctuations in prices, we find, based on a long-term analysis of hide prices since 1962, that the embargo is the primary reason for the divergence between U.S. and Argentine hide prices. We recreated graphs similar to those submitted by petitioners, which illustrate the 1972 price divergence, using all the exchange rate information available to the Department, including information independently obtained by the Department. (We note that certain exchange rate information, although requested during verification, was not provided by respondents and could not otherwise be obtained by the Department.) We found that no matter which exchange rates were used, the outcome remained the same: Prices diverged at the time of the embargoes.

With respect to hide quality, the arguments presented by both parties indicate that hide quality is a subjective issue that could not have caused the initial 1972 price divergence. After touring tanneries in both the United States and Argentina, and analyzing the information on the record, we find that, while hides in Argentina do have imperfections like those identified by respondents, similar or other problems can be found in U.S. hides. Moreover, published studies submitted by petitioners indicate that U.S. and Argentine hides are equally beset with imperfections, and are both similarly ranged as being inferior to northern European hides. In sum, we find that neither exchange rates, hide quality, nor any of the other factors cited by respondents, can be conclusively linked to the divergence in the hide prices after 1972.

Comment 4

Petitioners argue that the test of whether a subsidy exists in this case is

not whether the embargo caused prices to decrease, but whether prices would have been higher if the embargo did not exist. Petitioners further contend that a comparison of prices before and after 1985 is inappropriate because the export tax system also substantially limited the export of hides. Instead, a long-term analysis of pricing trends should be used.

the cost of manufacturing. This methodology more accurately represents the benefit attributable to the products under investigation which are entering the United States.

Comment 6

Petitioners argue that the Department should not use a dollar-indexed

DOC Position

We did not adjust our cash deposit rate to reflect the suspension of Central Bank-sourced pre-export financing because the externally-sourced financing which replaced it is accompanied by interest rate rebates, which may affect the interest paid by exporters. (*See*, section I.B. of this

exemption or remission in respect of the production and distribution of exported products, of indirect taxes *in excess* of those levied in respect of the production and distribution of like products when sold for domestic consumption" (emphasis added). We found no evidence during this investigation that VAT taxes were being excessively rebated by the Argentine government

contingent upon its export performance. Furthermore, when the Department previously found programs under the Industrial Promotion Law to be not limited to a specific industry or group of industries (*see*, Final Countervailing Duty Determination: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina, 49 FR 18006, April 26, 1984),

information that we deemed necessary for making our final determination. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (B–099) of the Main Commerce Building.

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not whether the embargo caused prices to decrease, but whether prices would have been higher if the embargo did not exist. Petitioners further contend that a comparison of prices before and after 1985 is inappropriate because the export tax system also substantially limited the export of hides. Instead, a long-term analysis of pricing trends should be used.

Respondents contend that the embargo had no effect on hide prices and that there is no evidence on the record which shows that the embargo caused an actual reduction in the price of hides.

DOC Position

We believe that the most important indicator as to whether the embargoes confer a benefit is not whether hide prices fell following the imposition of the embargoes, but whether the embargoes caused prices in Argentina to be lower than they would have been absent the embargoes. At verification, we collected data on hide prices and exchange rates going back to 1982. We believe that a long-term analysis of these data is necessary to determine whether the embargoes caused hide prices to fall below U.S. prices and, therefore, bestow a benefit upon Argentine tanners.

Comment 5

Petitioners assert that the following methodology should be used in the Department's cattle hide embargo calculations. First, the Department should establish the price differential between Argentine hide prices and world hide prices. Next, the Department should multiply the price differential as a percentage of the Argentine hide price by the hide cost as a percentage of the total cost of manufacturing leather. Using the individual company cost of production figures, the Department should then calculate a subsidy rate for each company.

DOC Position

We describe how we calculated the estimated net bounty or grant due to the embargo in section I.A., above. We used total sales because the embargo provides benefits to all tanners, regardless of whether they produce only leather or a combination of leather and leather products. Moreover, we verified that all respondents sell only leather and leather products, with leather products representing only a very small percentage of their sales. It is the Department's standard practice to calculate the net bounty or grant as a percentage of the appropriate sales amount rather than as a percentage of the cost of manufacturing. This methodology more accurately represents the benefit attributable to the products under investigation which are entering the United States.

Comment 6

Petitioners argue that the Department should not use a dollar-indexed benchmark in its calculations of RF–153 and FR–21 financing. Instead, they maintain that the Department should use the short-term austral rate available to domestic companies to finance domestic shipments. Petitioners also contend that if the Department were to continue to use a dollar-indexed benchmark, the Department should include all risk factors in this benchmark.

Respondents argue that the Department should continue to use a dollar-indexed benchmark because none of the exporters used austral financing in 1989, and, moreover, there was very little austral financing in the Argentine economy, given the excessively high interest rates associated with such financing. Respondents also assert that the interest rates used by the Department in its *Preliminary Determination* already contain risk factors because they are freely-negotiated rates.

DOC Position

We agree with respondents. We verified that dollar-indexed financing was the predominant form of commercial financing in Argentina during the review period. Furthermore, because the Copex 1680 rates which we used as our benchmark already include risk factors, are freely negotiated, and do not involve rebates, it is not necessary to add additional risk factors. (*See*, section I.B. of this notice.)

Comment 7

Petitioners argue that, because Communication 1595 only "temporarily suspended" the RF–153 program, the Department should not consider this a program-wide change, and should not adjust the cash deposit rate.

Respondents argue that the information obtained by the Department during verification established the fact that Communication A–1595 effectively terminated pre-export financing from Central Bank sources. The word "suspended" was used due to political difficulties in Argentina associated with the use of the word "terminated". They further contend that there are no procedures in place for the revival of this program and, moreover, there are no funds available for such credit.

DOC Position

We did not adjust our cash deposit rate to reflect the suspension of Central Bank-sourced pre-export financing because the externally-sourced financing which replaced it is accompanied by interest rate rebates, which may affect the interest paid by exporters. (*See*, section I.B. of this notice).

Comment 8

Respondents argue that the methodology the Department used in calculating benefits under Circulars RF–153 and FR–21 overstates the 1989 benefit in two ways. First, the Department should not include in its calculations interest payments made in 1988 and 1990. Second, respondents assert that there is no reason to convert the benefit back into australes for the subsidy calculation, but that if the Department does convert back to australes, the australes should be converted into dollars at the actual exchange rate prevailing when the interest was paid. They assert that the rate of 2,400 australes per dollar used by the Department in its *Preliminary Determination* overstates the benefit because the official market closing rate for December 28, 1989 was 1,790 australes per dollar.

DOC Position

We agree, and have adjusted our calculations accordingly.

Comment 9

Petitioners contend that the Department should countervail the Argentine government's rebate of value-added taxes (VAT) for exporters. They further argue that, although the government is not currently returning VAT payments to exporters, the companies are accuring this benefit and list the amount due them on their financial statements as a tax receivable.

Respondents assert that the principle that indirect taxes (such as VAT) can be rebated upon export without conferring a subsidy is widely accepted among nations. They state that the Department has continually followed this rule, and that this practice was approved by the Supreme Court of the United States (*See, Zenith Radio Corporation* v. *U.S.*, 437 U.S. 443, 450–1, 1978).

DOC Position

We agree with respondents that VAT taxes may be rebated upon export without conferring a subsidy. Section (g) of the Illustrative List of Export Subsidies in the *Subsidies Code* states that the following is a subsidy: "the exemption or remission in respect of the production and distribution of exported products, of indirect taxes *in excess* of those levied in respect of the production and distribution of like products when sold for domestic consumption" (emphasis added). We found no evidence during this investigation that VAT taxes were being excessively rebated by the Argentine government.

Comment 10

Petitioners argue that the Department should include any benefits under Decree 173 in its calculation of the cash deposit rate because companies can continue to receive benefits under this program due to the fact that the deduction can be carried forward for five years.

Respondents argue that, while it might be possible that a small portion of a company's tax loss carry-forward could be attributed to the Decree 173 deduction, any benefits received would be insignificant. Furthermore, they state that since Decree 173 was eliminated on May 2, 1989, no further benefits can be accrued.

DOC Position

Since tax losses, which are partially attributable to the Degree 173 deduction, can be carried forward for five years, and these losses are adjusted for inflation, exporters may continue to receive residual benefits under this program even though it was suspended. Therefore, the Department has not adjusted the cash deposit rate to take into account the suspension of the program. (*See*, Section I.D. of this notice.)

Comment 11

Petitioners contend that any benefit CF received pursuant to the Industrial Promotion Law under Resolution 1156 is limited to exporters, and that the Department should therefore include this benefit in this subsidy calculations.

Respondents argue that benefits under the Industrial Promotion Laws are not restricted to exporters and cannot be analyzed as export subsidies. They further contend that the Department has in the past analyzed the Industrial Promotion Laws as domestic programs, and that the Department verified that Resolution 1156 was not limited to a specific industry.

DOC Position

Decree 984, under which Resolution 1156 was promulgated, specifically states that it is meant to "increase the level of exportation." There is no other evidence on the record to indicate that the benefit received by CF was not contingent upon its export performance. Furthermore, when the Department previously found programs under the Industrial Promotion Law to be not limited to a specific industry or group of industries (*see*, Final Countervailing Duty Determination: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina, 49 FR 18006, April 28, 1984), Decree 984 of 1988 was not in effect. We have therefore determined this benefit to be an export subsidy for purposes of this determination. (*See*, section I.E. of this notice.)

Comment 12

Petitioners assert that if duty drawback payments received by respondents are excessive, the Department should include the excess drawback portion as a countervailable benefit.

Respondents argue that there is no evidence on the record which indicates the Argentine drawback system grants excessive rebates of important duties or that it rebates duties on non-physically incorporated inputs. Furthermore, respondents assert that the Argentine drawback system satisfies the Department's three-part test: (1) It operates for the purpose of rebating import charges; (2) the government established a reasonable system to ascertain the level of drawback based on the import duties paid for the chemicals used to produce each type of leather exported; and (3) the government periodically re-examines and adjusts the drawback rate to reflect changes in import duties. Therefore, there is no reason for the Department to consider duty drawbacks a countervailable benefit.

DOC Position

We established that the Argentine duty drawback system does satisfy the Department's three-part test with respect to exports of leather products. Furthermore, we found no evidence that respondents received excessive drawbacks. Therefore, we do not consider the drawbacks received by respondents to bestow a counteravailable benefit.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting internal documents and ledgers, tracing information in the responses to source documents, accounting ledgers and financial statements, and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (B–099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with section 776 of the Act, we are directing the U.S. Customs Service to suspend liquidation on all entries of leather from Argentina which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require cash deposits on all entries of the subject merchandise in the amounts indicated below:

Manufacturer/producer/exporter	Estimated net bounty or grant (percent)
Ultrahide	24.16
Esposito	8.02
All others	14.97

This suspension will remain in effect until further notice.

This determination and order are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: September 24, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–23195 Filed 10–1–90; 8:45 a.m.]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: Department of Commerce International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 90–00009.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Port Authority of New York & New Jersey. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The

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regulation implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products and Services

All products and services.

2. Export Trade Facilitation Services (as they relate to the export of products and services)

All trade facilitation services in connection with the export of products and services, including consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, trade documentation, freight forwarding, communication and processing of foreign orders, warehousing, foreign exchange and financing.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and the Republic of South Africa.

Export Trade Activities and Methods of Operation

The Port Authority may:

1. Require that exporters using its trade facilitation services sign exclusive dealing contracts allowing the Port Authority to be their sole export intermediary for sales to specified markets.

2. Require exporters using its trade facilitation services to export through the Port of New York and New Jersey.

3. Sign exclusive distributorship agreements with other export intermediaries which require such other export intermediaries not to handle competing products and services.

4. Sign exclusive arrangements with its clients that require the Port Authority not to represent competing companies.

Definitions

Export Intermediary means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of export trade facilitation services.

Dated: September 25, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-23194 Filed 10-1-90; 8:45 am]

BILLING CODE 3510-DR-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Completion

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the final affirmative threat of injury and negative material injury determinations made by the United States International Trade Commission, respecting new steel rails from Canada, Secretariat. File No. USA-89-1904-09/10.

SUMMARY: Pursuant to rule 81 of the *Article 1904 Panel Rules* ("Rules"), the Panel Review the final determination described above was completed on September 13, 1990.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: By a decision dated August 13, 1990, the Binational Panel affirmed the USITC's final affirmative threat of injury and negative material injury determinations Notice of the panel decision was published in the Federal Register on August 31, 1990 (55 FR 35704).

No request for an extraordinary challenge committee has been filed with the responsible Secretary. Accordingly, pursuant to rule 81, this Notice of Completion of Panel Review shall be effective on September 13, 1990, the 31st day following the filing of the Panel Decision. Pursuant to rule 85, the panelists are discharged from their duties effective September 13, 1990

Dated: September 25, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90-23240 Filed 10-1-90; 8:45 am]

BILLING CODE 3510-GT-M

DEPARTMENT OF EDUCATION

Special Study Panel on Education Indicators; Meeting

AGENCY: Special Study Panel on Education Indicators, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Special Study Panel on Education Indicators. This notice also describes the function of the Study Panel. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: November 1, 1990, 9 a.m. to 5:30 p.m. and November 2, 1990, 9 a.m. to 4 p.m.

ADDRESSES: Hyatt Regency—Bethesda, 1 Bethesda Metro Center, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Paul Mertins, National Center for Education Statistics, 555 New Jersey Avenue, NW., Washington, DC 20208-5650, (202) 357-6369.

SUPPLEMENTARY INFORMATION: The Special Study Panel on Education Indicators is established under section 406(g)(3) of the General Education Provisions Act (20 U.S.C. 1221e-1). The Study Panel is established to make recommendations concerning the determination of education indicators. The Study Panel advises the Commissioner of the National Center for Education Statistics on the development of indicators on the current state of the American education system. The meeting of the Study Panel is open to the public. The agenda includes the following items: November 1—Review of Study Panel's progress and discussion of indicators within six education issue areas; November 2—continued discussion of appropriate indicators for each issue area.

Records are kept of all Study Panel proceedings and are available for public inspection from 9 a.m. to 5 p.m. at the office of the Study Panel at the National Center for Education Statistics, 555 New Jersey Avenue, NW., room 518, Washington, DC 20208.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-23197 Filed 10-1-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance: State of Idaho, Boise, ID

ACTION: Notice of Noncompetitive Grant award to the State of Idaho.

SUMMARY: "Research & Development Grant—Environmental Oversight and Monitoring Agreement."

The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitive basis, a grant for approximately $3,300,000 with the State of Idaho, Boise, ID. This grant will carry the activity through September 30, 1994. This action is authorized by 42 U.S.C. 2011 *et seq.* The Secretary of Energy announced a Ten Point Plan designed to chart a new course for the DOE toward full accountability in the areas of environmental protection and public health and safety. Idaho was invited to participate in negotiations which led to the execution of a formal Agreement between Idaho and DOE. The objective of the Agreement is to assure the citizens of Idaho that health, safety and the environment are being protected through DOE actions. The implementation of the Agreement is in two parts, (1) the Environmental Oversight and Monitoring grant which was announced previously and (2) this Research and Development grant. The intent of this second grant is to develop State resources and capabilities to run the State Independent Monitoring and Oversight Program. The State of Idaho and State universities and colleges will develop innovative techniques and new technologies to conduct research and development on environmental monitoring problems at the INEL. The activities funded will also train technicians and develop necessary technologies to fulfill the oversight and monitoring Agreement. The Agreement provides the State with the means to assume a more substantive role in overseeing DOE's Compliance with State environmental laws and to help it to assure the citizens of Idaho that DOE operations do not constitute a health hazard. The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR part 600.7(b)(2)(i)(C). The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The work definitely meets the intent of the Secretary's Ten Point Plan and addresses a public need (assuring that DOE operations do not constitute a health hazard). Public response may be addressed to the contract specialist below.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Marshall Garr, Contract Specialist (208) 526-1536.

Dated: September 19, 1990.

R. Jeffrey Hoyles,

Director, Contracts Management Division.

[FR Doc. 90-23281 Filed 10-1-90; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

EURATOM; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)-147, for the transfer from Germany to Sweden of 416.556 kilograms of natural uranium, and 2,987.716 kilograms of uranium enriched to an average of 3.1 percent in the isotope uranium-235, in the form of fuel elements for the OKG-1 power reactor, in Sweden.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on September 27, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-23278 Filed 10-1-90; 8:45 am]

BILLING CODE 6450-01-M

EURATOM; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)-146, of the transfer from Germany to Sweden of 4 irradiated fuel rods containing 722 grams of uranium, enriched to approximately 3.2 percent in the isotope uranium-235, for use in a research and development project on fuel behavior. Upon completion of the project, the fuel rods will be disposed of as waste.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on September 27, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-23279 Filed 10-1-90; 8:45 am]

BILLING CODE 6450-01-M

Euratom; Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the

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Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreements involves approval of the following retransfers: RTD/JA(EU)-51, for the transfer from Germany to Japan of 4,100 grams of uranium, enriched to 19.75 percent in the isotope uranium-235, for use as fuel elements for the JRR-3 research reactor. RTD/JA(EU)-50, for the transfer from Germany to Japan of fuel elements containing 99.272 grams of uranium, enriched to 19.95 percent in the isotope uranium-235, for use as fuel in the JRR-3 research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on September 27, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-23280 Filed 10-1-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-587-000, et al.]

Nevada Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 25, 1990.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Co.

Docket No. ER90-587-000

Take notice that on September 18, 1990, Nevada Power Company (Nevada) tendered for filing a tariff schedule entitled Supplemental Service—Silver State Power Association (Silver State) hereinafter "the Schedule". The primary purpose of the Schedule is to establish the rates and terms for the sale of firm supplemental power to members of Silver State who have executed supplemental power agreements with Nevada.

Nevada requests an effective date of September 1, 1990 and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the filing were served upon the members of Silver State.

Comment date: October 10, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Co.

Docket No. ER84-804-015

Take notice that on September 17, 1990, Southwestern Public Service Company (SWEPCO) tendered for filing its compliance refund report pursuant to the Commission's orders issued on May 3, 1990 and August 31, 1990 in this docket.

Comment date: October 10, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23196 Filed 10-1-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of August 17 Through August 24, 1990

During the Week of August 17 through August 24, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 24, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 17 through August 24, 1990]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 20, 1990	Franc Pajek Company, Walnut Creek, CA 94598	LFA-0065	Appeal of an information request denial. If granted: Franc Pajek Company would receive access to DOE information.
Aug. 20, 1990	Paul I. Noel, Patton, PA 16668	LFA-0064	Appeal of an information request denial. If granted: Paul I. Noel would receive information regarding a disability he received when working on a contaminated radiation engine during his early military service.
Aug. 21, 1990	Ray P. Leasy, Jr. Washington, DC	LFA-0066	Appeal of an information request denial. If granted: The August 6, 1990 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Ray P. Leasy, Jr. would receive access to DOE information.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case number
8/17/90 thru 8/24/90.	Crude Oil refund, application received.	RF272-80491 thru RF272-80694.
8/17/90 thru 8/24/90.	Texaco Oil refund, application received.	RF321-8070 thru RF321-9209.
8/17/90 thru 8/24/90.	Gulf Oil refund, application received.	RF300-11539 thru RF300-11704.
8/20/90	Robbinsdale Spur	RF303-1413.
8/21/90	S.K. Harrell	RF307-10147.
8/23/90	Dudley Fuel Co., Inc.	RF325-7.
8/23/90	Colony Arco Service	RF304-11958.
8/24/90	Shell Service Center	RF315-10036.
8/24/90	Kearney's Oil Service, Inc.	RF323-8.
8/24/90	H.C. Woodmansee	RF323-9.

[FR Doc. 90-23286 Filed 10-1-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-55-NG]

Amoco Energy Trading Corp.; Order Granting Blanket Authorization To Import Canadian Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Amoco Energy Trading Corporation blanket authorization to import up to 300 Bcf of Canadian natural gas over a two-year term under contracts with terms of two years or less beginning September 23, 1990.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 25, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23283 Filed 10-1-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; During the Week of June 25 Through June 29, 1990

During the week of June 25 through June 29, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Issued in Washington, DC, September 26, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23282 Filed 10-1-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-59-NG]

Great Lakes Gas Transmission Co. Great Lakes Gas Transmission Limited Partnership; Order Reassigning Existing Authorizations To Import and Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order reassigning existing authorizations to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Great Lakes Gas Transmission Limited Partnership (Great Lakes LP) to succeed to all of Great Lakes Gas Transmission Company's (Great Lakes) existing authorization to import an export natural gas and also authorizing Great Lakes LP to be substituted as applicant in Great Lakes' pending request for import and export authority.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 25, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23285 Filed 10-1-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; During the Week of June 25 Through June 29, 1990

During the week of June 25 through June 29, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

American Federation of Government Employees, Local 3824, AFL-CIO, 6/26/90, LFA-0048

The American Federal of Government Employees, Local 3824, AFL-CIO (AFGE), filed an Appeal from a denial by the Western Area Power Administration (WAPA) in Golden, Colorado, of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that WAPA had inadequately explained its decision to withhold position descriptions. Consequently, the DOE instructed WAPA to issue a new determination on AFGE's FOIA request. Important issues that were considered in the Decision and Order were: (i) The standards for the adequacy of a FOIA determination; (ii) the standards to invoke Exemption 6; (iii) the possible application of OMB regulations on release of position descriptions, job elements, and performance standards; (iv) the standards for segregation and release of non-exempt materials; and (v) the inapplicability of the Privacy Act as a justification for withholding responsive documents under the FOIA.

Electronic Data Systems Corporation, 6/27/90, LFA-0047

The Electronic Data Systems Corporation (EDS) filed an Appeal from a denial by the Contracting Officer (CO) of the Bonneville Power Administration (BPA) of the DOE of a request for documents under the Freedom of Information Act (FOIA). The EDS appealed that the BPA had withheld the entirety of the cost proposal, technical proposal, and best and final offer submitted by the Unisys Corporation in its winning bid for the BPA Contract No. DE-AC79-90BP1145. The BPA withheld the documents based upon a finding that the material was exempt from disclosure under Exemption b (4) of the FOIA. In considering the Appeal, the DOE found that the CO had not adequately justified the withholding of the entirety of the documents. Therefore, the OHA remanded the matter for the CO to formulate a more adequate determination.

Frank Pajek Company, 6/25/90, LFA-0050

On June 8, 1990, Frank Pajek Company (Pajek) filed a Motion for Reconsideration of a Decision and Order issued to it on May 22, 1990, by the DOE. In that Decision, the DOE denied Pajek's Appeal from a denial by the Acting Assistant Manager for Administration of the DOE San

BEST COPY AVAILABLE

Francisco Operations Office. The Acting Assistant Manager had denied a request for information filed pursuant to the Freedom of Information Act for a copy of all of the bids submitted for the Lawrence Livermore National Laboratory's Labor Only Contract RFQ #5724000A. The DOE had found that Pajek's request had been currently

Remedial Order, Green made direct refunds to its customers. The DOE concluded that the balance of the Green remedial order fund is in excess of the amount needed to make restitution to its injured customers and, therefore, should be deposited in the U.S. Treasury for use by the states in energy conservation programs in accordance with section

30 days of the date of the Decision and Order, Mr. Smith submit a satisfactory explanation for his filing of two Applications, the misrepresentations in those Applications, and his failure to notify the DOE of his receipt of an unwarranted refund. The DOE concluded that Mr. Smith should remit $2,013 (representing the refund granted

Goodell's Service. Goodell's established that it purchased Gulf products indirectly from a Gulf jobber that in turn did not show that it absorbed any of Gulf's alleged overcharges. Accordingly, Goodell's was treated in the same manner as we generally treat applicants who purchased directly from Gulf. The Application was approved using a

filed objections and a Motion for Discovery with respect to this Application. In their submission, the States attempted to rebut the end-user presumption of injury. The DOE determined that the presumption was applicable to the applicant, and that the Motion for Discovery should be denied. The DOE further determined that a

State's consumers of petroleum products in a timely manner.

Texaco Inc./Abbott's Texaco, 6/25/90, RF321-21, RF321-5803

The DOE issued a Decision and Order denying duplicate refund Applications filed by Abbott's Texaco in the Texaco, Inc. special refund proceeding. The

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Francisco Operations Office. The Acting Assistant Manager had denied a request for information filed pursuant to the Freedom of Information Act for a copy of all of the bids submitted for the Lawrence Livermore National Laboratory's Labor Only Contract RFQ #5724900A. The DOE had found that Pajek's request had been currently denied since all the requested material was confidential and commercial or financial information within the purview of Exemption 4. In considering the Motion for Reconsideration, the DOE found that Pajek had not demonstrated the existence of any changed circumstances or an error that would warrant a change in its Decision to withhold bid information. Accordingly, the DOE denied Pajek's Motion for Reconsideration.

Natural Resources Defense Council, 6/28/90, KFA-0057

The Natural Resources Defense Council (NRDC) filed an Appeal from a denial by the Office of Classification of a Request for Information that the NRDC had submitted under the Freedom of Information Act. Upon review by the Office of Defense Programs, the DOE found that the requested information no longer contained Unclassified Controlled Nuclear Information, and therefore, the material could be released. Accordingly, the DOE ordered the Office of Classification and Technology Policy to release the requested information to the NRDC.

William R. Bowling II, 6/27/90, KFA-0258

William R. Bowling II filed an Appeal from a partial denial by the Director of the Office of the Executive Secretariat of a Request for Information that he filed under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE determined that most of the material previously deleted from the redacted copy of the document provided to Mr. Bowling was properly classified and thus had been properly withheld under Exemption 3 of the FOIA. However, the DOE determined that certain information that was previously withheld could now be released. Accordingly, the Appeal was denied in part and granted in part.

Implementation of Special Refund Procedures

Green Oil Company, 6/26/90, LEF-0013

The DOE issued a Decision and Order implementing a plan for the distribution of $221.64, plus accrued interest, received pursuant to a Remedial Order issued to Green Oil Company on October 24, 1978. In accordance with the Remedial Order, Green made direct refunds to its customers. The DOE concluded that the balance of the Green remedial order fund is in excess of the amount needed to make restitution to its injured customers and, therefore, should be deposited in the U.S. Treasury for use by the states in energy conservation programs in accordance with section 3003(d) of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

Exxon Corporation/Firestone Tire and Rubber Company, 6/29/90, RF307-10034

The DOE issued a Decision and Order granting an Application for Refund filed by Firestone Tire and Rubber Company in the Exxon Corporation special refund proceeding. Firestone estimated its monthly purchases from Exxon using actual invoices from certain years during the consent order period. Because Firestone clearly explained its estimation methodology and because its estimates were reasonable in light of the purchase records which were available, its purchase volume figures were accepted. The refund granted in this Decision was $3,240 ($2,479 principal plus $761 interest).

Exxon Corporation/Sabine Towing & Transportation, 6/29/90, RF307-10131

The DOE issued a Supplemental Decision and Order to Sabine Towing & Transportation in the Exxon Corporation special refund proceeding to correct the amount of the refund granted to the firm in an earlier decision. In the original Decision and Order, Sabine was granted a refund of $1,969 ($1,507 principal plus $462 interest). Upon review, however, it was determined that the correct amount of the refund was $2,427 ($1,857 principal plus $570 interest).

Exxon Corporation/Victor C. Smith, 6/27/90, RF307-10130

The DOE issued a Decision and Order concerning two Applications for Refund and two refunds that were granted to Victor C. Smith from consent order funds obtained from Exxon Corporation. In the Decision and Order, the DOE determined that Mr. Smith owned only one retail motor gasoline outlet during the consent order period (January 1, 1973, through January 28, 1981) and therefore should have filed only one refund Application. The DOE determined that one of the refunds was improperly granted and should be immediately rescinded. The DOE also determined that the second refund should also be rescinded unless, within 30 days of the date of the Decision and Order, Mr. Smith submit a satisfactory explanation for his filing of two Applications, the misrepresentations in those Applications, and his failure to notify the DOE of his receipt of an unwarranted refund. The DOE concluded that Mr. Smith should remit $2,013 (representing the refund granted to Mr. Smith plus interest accrued since the date of payment) to the DOE for deposit in the Exxon escrow fund.

Gulf Oil Corporation/Brantley's Holiday Gulf, Et al., 6/28/90, RF300-8173, Et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. None of these five applicants were able to substantiate the claim that they were purchasers of Gulf products during the consent order period. Accordingly, the five Applications were denied.

Gulf Oil Corporation/Cache Road Ice Dock, Et al., 6/27/90, RF300-61, Et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant established that it purchased some or all of its Gulf products indirectly from a Gulf jobber. The jobbers that supplied these five applicants either have not applied in the Gulf proceeding or have already received refunds under the presumptions of injury. Accordingly, we treated the five applicants in the same manner as we generally treat applicants that purchased directly from Gulf. Each Application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $18,060.

Gulf Oil Corporation/Daniels Gulf Service, East Stone Drive Gulf, 6/29/90, RF300-8660, RF300-8707

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Daniels Gulf Service and East Stone Drive Gulf. Neither applicant substantiated the claim that it was a purchaser of Gulf products during the consent order period. Accordingly, both Applications were denied.

Gulf Oil Corporation/Goodell's Service, 6/27/90, RF300-8590

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Goodell's Service. Goodell's established that it purchased Gulf products indirectly from a Gulf jobber that in turn did not show that it absorbed any of Gulf's alleged overcharges. Accordingly, Goodell's was treated in the same manner as we generally treat applicants who purchased directly from Gulf. The Application was approved using a presumption of injury. The refund granted in this Decision is $1,678.

Pepsi-Cola San Joaquin Bottling Company, 6/27/90, RF272-43735

The DOE issued a crude oil refund to Pepsi-Cola San Joaquin Bottling Company (San Joaquin). Two Waiver and Releases had been signed by affiliates of San Joaquin that had filed refund claims in the Surface Transporters refund proceeding. The DOE found that the Waivers were not binding on San Joaquin because San Joaquin did not become affiliated with the Waiver-signing firms until seven months after it filed its crude oil refund Application. If San Joaquin's Application had been evaluated as soon as it was received by DOE, the firm would have been granted a refund. The DOE found that it would therefore be inequitable to deny San Joaquin a refund. The firm was accordingly granted a refund of $1,207 based on its purchases of 1,509,194 gallons of petroleum products.

Schwan's Sales Enterprises, 6/29/90, RF272-6111, RD272-6111

The DOE issued a Decision and Order granting an Application for Refund filed by Schwan's Sales Enterprises, Inc., in the subpart V crude oil special refund proceeding. In that Decision and Order, the DOE found that the applicant was an end-user of the refined petroleum products for which it sought a refund, because the products were consumed in the course of its normal business activities as a vendor of frozen foods. Since this activity is not related to the petroleum industry, the applicant was presumed to have been injured by the crude oil overcharges. A consortium of 30 states and 2 territories (the States) filed objections and a Motion for Discovery with respect to this Application. In their submission, the States attempted to rebut the end-user presumption of injury. The DOE determined that the presumption was applicable to the applicant, and that the Motion for Discovery should be denied. The DOE further determined that a refund of $53,824 should be granted to Schwan's Sales Enterprises.

Shell Oil Company/Crawford Oil Co., Inc., Et al., 6/27/90, RF315-4489, Et al.

The DOE issued a Decision and Order granting 32 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each applicant was granted a refund under the presumption for mid-level claimants. In cases where an individual or firm submitted more than one Application, the claims were consolidated. The total of the refunds granted in the Decision was $120,667 ($95,103 principal plus $25,667 in interest).

Standard Oil Co. (Indiana), Et al./Oklahoma, 6/27/90, RM21-204 Et al., RQ-558

The State of Oklahoma requested permission to use a total of $120,000 in second-stage funds to initiate two Restitutionary programs. The State proposed to expend $20,000 on the Joint Transportation Demonstration Project to encourage the utilization of public transportation in the Oklahoma City area and to expend $100,000 in its Oil Collection and Recycling Program to establish used motor oil recycling centers in communities throughout the State. These programs would be funded by the State's remaining $47,474 ($22,109 in principal and $25,365 in interest) in *Vickers* monies and $72,526 in interest which has accrued on previously disbursed second-stage monies since their deposit in a State investment account. Oklahoma's second-stage Application for Refund and its Motions for Modification were approved in full, because the two programs should provide Restitutionary benefits to the State's consumers of petroleum products in a timely manner.

Texaco Inc./Abbott's Texaco, 6/25/90, RF321-21, RF321-5803

The DOE issued a Decision and Order denying duplicate refund Applications filed by Abbott's Texaco in the Texaco, Inc. special refund proceeding. The applicant filed two Applications for the same retail outlet. Both Applications certified that the applicant had filed only one refund Application in the Texaco refund proceeding. In view of the false certification, the DOE determined that both refund Applications should be denied.

Texaco Inc./Smith Bros. Texaco, 6/28/90, RF321-4557, RF321-5800

The DOE issued a Decision and Order denying duplicate refund Applications filed by Smith Bros. Texaco in the Texaco, Inc. special refund proceeding. The Applicant filed two Applications within one month of each other. Both Applications certified that the Applicant had filed only one refund Application in the Texaco refund proceeding. In view of the false certification, the DOE determined that both refund Applications should be denied.

Vickers Energy Corp./Missouri, 6/26/90, RQ1-553

The DOE issued a Decision and Order involving a second-stage refund Application filed by the State of Missouri in the Vickers special refund proceeding. The State asked that the DOE disburse to it $108,769 in previously approved Vickers funds. The DOE had been unable to disburse these funds pending the outcome of *Highland Petroleum, Inc.* v. *United States Department of Energy*, No. 85-C-545 (D.Colo. June 2, 1988). As the DOE was now able to release the funds, Missouri's request was granted.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case no.	Date
Atlantic Richfield Co./Rias Arco, *et al.*	RF304-4202	6/29/90
Buffalo Fuel Corp., Inc., *et al.*	RF272-66612	6/29/90
City of Gastonia, *et al.*	RF272-66004	6/27/90
Connelly Farms, *et al.*	RF272-66002	6/27/90
Continental Trend Resources, *et al.*	RF272-42021	6/27/90
Exxon Corp./Bumgarner Oil Co., Inc., *et al.*	RF307-6967	6/27/90
Exxon Corp./Federal Express Corp.	RF307-6729	6/29/90
Gulf Oil Corp./A.C. Wagley, Inc., *et al.*	RF300-6990	6/29/90
Gulf Oil Corp./Buck's Gulf Service, *et al.*	RF300-8178	6/27/90
Gulf Oil Corp./Genstar Stone Products Co.	RF300-10383	6/29/90
Gulf Oil Corp./Jones Gulf Service Giacobbe's Gulf	RF300-10448, RF300-10702	6/29/90

Name	Case no.	Date
Imperial MFG. Co., *et al.*	RF272-63005	9/27/90
National Starch/Chemcial Corporation, *et al.*	RF272-61004	9/26/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Alan Elliott Blonder	RF321-3008
Bernie's Getty Service	RF321-2360
Bethany Service Center	RF307-205
Bill Lapley's Gulf	RF300-10804
Daly's Arco	RF304-9771
Deal & Sullivan Texaco	RF321-4817
Deerfield Arco	RF304-5960
Dudley Oil Co.	RF321-3465
Farmers Cooperative Grain & Supply Co.	RF321-6327
Hilltop Shelly	RF321-2417
Hite Oil Co.	RF321-2416
Holiday Inn Texaco	RF321-6690
Hupp Texaco	RF321-1066
Logan Valley Mall Arco	RF304-9707
Longle's Gulf	RF300-11078
McKeans Exxon	RF307-9963
Merchant's Square Exxon	RF307-10076
Merritt Oil Co.	RF321-4252, RF321-4362, RF321-6332
Morris & Ray's Service Station	RF315-2500
Parteeau Bros. Getty	RF321-2412
Perle Truckstop	RF307-6067
Quin's Gulf Service	RF300-10992
Rabon's Gulf Service	RF300-11125
Rainwater Service Station	RF321-5206
Ted Fox Gulf	RF300-10970
Thomson's Texaco	RF321-3479
Valley Arco	RF304-9636

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 26, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-23285 Filed 10-1-90; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders During the Week of July 16 Through July 20, 1990

During the week of July 16 through July 20, 1990 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Donald J. Anderson, 7/16/90, LFA-0052

Donald J. Anderson filed an Appeal from a determination issued by the Albuquerque Operations Office (AOO) that withheld under the personal privacy exemption the name of the author of a memorandum Mr. Anderson requested in his Freedom of Information Act (the FOIA) request. In considering the Appeal, the DOE found that the justification for withholding the requested information was inadequate under the FOIA because it failed to state the nature of the privacy interest involved. The Appeal was therefore granted and the matter was remanded to the AOO, who was directed to either release the information or issue a new determination.

Radiation Sterilizers, Incorporated, 7/16/90, LFA-0053

Radiation Sterilizers, Incorporated (RSI) filed an Appeal from a determination issued by the Oak Ridge Operations Office (Oak Ridge) in which Oak Ridge released all the documents requested in RSI's Freedom of Information Act (the FOIA) request but withheld under Exemption 5 handwritten notes on the front page of one of the released documents. In considering the Appeal, the DOE found that the notes reflected the author's predecisional opinions and were therefore the kind of information that the deliberative process privilege of Exemption 5 was designed to protect. The Appeal was therefore denied.

Request for Modification and/or Rescission

Texas, 7/16/90, LER-0005

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by the State of Texas concerning its previously approved Energy Resource Optimization program. This program will use $6 million in Stripper Well monies to provide grants to institutions such as universities to make detailed computer models of oil and gas reservoirs located on State lands. Texas had asked that the OHA remove the restriction that it had placed on this program forbidding the participation of Stripper Well plaintiffs in the program. Texas requested that Chevron, the successor in interest to Gulf, a plaintiff, and Oryx Energy Company, a spin-off of Sun Company, another plaintiff, be allowed to participate in the program. The DOE denied the State's request, concluding that it would be inequitable for those entities which caused the Stripper Well overcharges to benefit from state programs designed to redress those overcharges.

Refund Applications

Exxon Corporation/Belcher Oil Co. et al., 7/19/90 RF307-8734 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Exxon Corporation special refund proceeding. Since all of the applicants are currently owned by the Coastal Corp., the volume totals from these applications were combined in order to determine Coastal's allocable share. Since Coastal did not provide a detailed demonstration of injury, it received 40 percent of its allocable share under the medium-range presumption of injury. The refund granted in this Decision was $65,785 ($50,000 principal plus $15,785 interest).

Exxon Corporation/Martin's Exxon, 7/20/90, RF307-10137

The DOE issued a Decision and Order rescinding a duplicate refund of $350 granted to Martin's Exxon (Martin's) in the Exxon Corporation special refund proceeding. The Decision stated that unless Martin's satisfactorily explained its filing of duplicate applications and its acceptance of the double refund, the DOE would consider the sanction of rescinding both refunds.

Gulf Oil Corporation/Anderson's Gulf, 7/20/90, RR300-6

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted on behalf of Anderson's Gulf (Anderson's) in the Gulf Oil Corporation special refund proceeding by Federal Refunds, Inc. Anderson's original application was denied a refund because the applicant was unable to demonstrate that it purchased Gulf products during the consent order period. However, in its Motion for Reconsideration, Anderson's was able to demonstrate that it did purchase Gulf products during this period, and therefore was granted a refund using a presumption of injury. The refund granted to Anderson's in this Decision, which includes principal and interest, is $1,314.

Gulf Oil Corporation/C&G Gulf Service, 7/20/90, RF300-8183

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation refund proceeding on behalf of C&G Gulf Service. C&G Gulf Service did not substantiate its claim as a purchaser of Gulf products during the consent order period. Accordingly, the Application was denied.

Gulf Oil Corporation/Craig's Gulf Service Country Gulf, 7/18/90, RF300-10424, RF300-10853

The DOE issed a Decision and Order denying Applications for Refund filed by Craig's Gulf Service and Country Gulf in the Gulf Oil Corporation refund proceeding. Despite several requests, the firms did not submit any sample records, such as invoices or tax forms, to substantiate their claim that they were in the business of retailing Gulf products during the consent order period. Therefore, the Applications were denied.

Gulf Oil Corporation/Marlton Gulf, Hudson Gulf Service, Pecosh Gulf, RF300-10431, RF300-10436, RF300-10439

The DOE issued a Decision and Order denying Applications for Refund in the Gulf Oil Corporation refund proceeding filed by Marlton Gulf, Hudson Gulf Service, and Pecosh Gulf. Despite several requests the firms did not submit sample records, such as invoices or tax forms, to substantiate their claim that they were in the business of retailing Gulf products during the consent order period. Therefore, the Applications were denied.

Gulf Oil Corporation/Ranch Acres Gulf, Anadarko Service, Rainbow Gulf, 7/16/90, RF300-10434, RF300-10435, RF300-10802

The DOE issued a Decision and Order denying Applications for Refund in the Gulf Oil Corporation refund proceeding filed by Ranch Acres Gulf, Anadarko Gulf, and Rainbow Gulf. Despite several requests from the OHA, the firms did not submit sample records, such as invoices or tax forms, to substantiate their claim that they were in the business of retailing Gulf products during the consent order period. Therefore, the Applications were denied.

Gulf Oil Corporation/W.W. Davidson, 7/18/90, RF300-11168

The DOE issued a Supplemental Order rescinding a duplicate refund in the amount of $3,611 granted to W.W. Davidson in the Gulf Oil Corporation refund proceeding.

Murphy Oil Corporation/Lutz-Yelton Oil Company, Inc., Space Petroleum, Inc., 7/19/90, RF309-1285, RF309-1286

The DOE issued a Decision and Order granting two Applications for Refund in the Murphy Oil Corporation special refund proceeding. Since the two applicants were merged into the same parent company, the parent company was granted a single refund under the mid-level reseller injury presumption, based on the combined purchases of the applicants. The total refund granted was $6,560 ($5,094 in principal and $1,466 in interest).

Murphy Oil Corporation/Williamson Spur Oil, Bill's River Service, 7/16/90, RF309-1395, RF309-1402

The DOE issued a Decision and Order granting a portion of one Application for Refund and denying another Application for Refund in its entirety in the Murphy Oil Corporation special refund proceeding. The two applicants were preliminarily identified as spot purchasers. Since neither applicant showed that it was a regular purchaser of Murphy petroleum products or attempted to rebut the spot purchaser presumption of non-injury, the portions of the applicants based on spot purchases were denied. However, one of the claimants did purchase motor gasoline on a regular basis from Murphy, and it was granted a refund of $2,223 ($1,726 in principal and $497 in interest) under the small claims injury presumption based on these purchases.

OSCO Shipping A/S, 7/20/90 RF272-43252

The DOE issued a Decision and Order in the Subpart V crude oil overcharge refund proceeding granting a refund to Osco Shipping A/S, foreign flagship carrier. Osco purchased 15,724,812 gallons of petroleum products in the United States during the period of price controls. Osco was accordingly granted a refund of $12,580.

Philadelphia Dry Yeast Company, Inc., 7/20/90, RC272-93

The DOE issued a Decision and Order rescinding a $1,340 refund granted to Philadelphia Dry Yeast Company, Inc. in the crude oil overcharge refund proceeding, because the applicant had not provided a curent correct address to which to send its refund check.

Plaquemines Oil Sales Corp./Buras Fuel Docks, 7/17/90, RR305-4

The DOE issued a Decision and Order denying Buras fuel Docks' second Motion for Reconsideration of a denial of its refund application in the Plaquemines Oil Sales Corp. special refund proceeding. The DOE determined that the pricing information recently uncovered by Buras was not sufficient to alter the DOE's earlier determination that the claimant was not injured. The DOE further found that Buras' representative should have made an adequate seach for additional information before filing the prior Motion for Reconsideration on behalf of the firm. Accordingly, the firm's Motion for Reconsideration was denied.

R.S. Albright, Inc., 7/19/90, RC272-92

The DOE issued a Decision and Order rescinding a $2,722 refund granted to R.S. Albright, Inc. in the crude oil overcharge refund proceeding, because the applicant had failed to provide a current correct address to which to send its refund check.

Safeway Stores Inc., 7/20/90, RF272-23633, RD272-23633

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Safeway Stores, Inc., based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant is a retailer and manufacturer of food products and an end-user of refined petroleum products. The DOE rejected the arguments of a group of states contending that since the demand for food is inelastic, firms in the food industry would have been able to pass through increased fuel costs. The DOE found these arguments too vague and general to warrant credence. The DOE also rejected a Motion for Discovery filed by the States. Accordingly, the DOE granted Safeway a refund of $157,536.

Standard Oil Co. (Indiana)/Texas, Charter Oil Company/Texas, National Helium Corporation/Texas, Vickers Energy Corporation/Texas, Pennzoil Company/Texas, OKC Corporation/Texas, Coline Gasoline Corporation/Texas, Perry Gas Processors, Inc./Texas, Standard Oil Company (Indiana) Texas, Belridge Oil Company/Texas, Palo Pinto Oil Company/Texas, Worldwide Energy Corporation/Texas, Loveladdy Oil Company/Texas, Fagadau Energy Corporation/Texas, Gas Engine and Compressor Service/Texas, ADA Resources, Inc./Texas, 7/17/90, RM251-183, RM23-184, RM3-185, RM1-186, RM10-187, RM13-188, RM3-189, RM183-190 RM21-191, RM8-192, RM5-193, RM31-194, RM33-195, RM35-196, RM32-197, RM34-198

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The DOE issued a Decision and Order granting a motion for modification filed by the State of Texas requesting permission to spend $1,348,986 in unspent second-stage funds plus $1,439,914 in interest accrued on those funds on two new programs. The State proposed to spend $788,880 on a Diesel Fuel Conservation Program and $2,000,000 on a Transportation for Low-Income Persons Program. The Conservation Program would introduce a variety of conservation methods to consumers of diesel fuel. The Transportation Program would provide free transportation to welfare recipients, the elderly, and residents of institutions. The DOE found that these programs would provide restitution of injured petroleum consumers by reducing their diesel fuel consumption and costs and by providing accessible public transportation.

Refund Applications

The Office of Hearings and Appeals granted funds to refund applicants in the following Decisions and Orders:

Name	Case No.
Atlantic Richfield Co./C&C Oil & Supply Co., Inc. *et al.*	RF304-2273
Atlantic Richfield Co./Thrifty Paving Co. *et al.*	RF304-9400
Delbert Davis & Sons *et al.*	RF272-72016
Diocese of Worcester *et al.*	RF272-71522
Exxon Corp./Clark Gas & Oil Co., Inc.	RF307-6820
Clark Gas & Oil Co., Inc.	RF307-6821
Nelson-Wilson, Inc.	RF307-6971
Exxon Corp./Longview Exxon Service *et al.*	RF307-663
Exxon Corp./Stewart's Exxon Service *et al.*	RF307-1619
Fargo Freight Terminal and Warehouse *et al.*	RF272-63503
Gulf Oil Corp./Frank's Gulf *et al.*	RF300-8900
Gulf Oil Corp./Peacock Gulf Service Center.	RF300-5984
Peacock Oil Co.	RF300-5985
Gulf Oil Corp./Rosito Gulf	RF300-10014
Colonial Gulf	RF300-10028
Hudson Foods, Inc. *et al.*	RF272-00450
Logan Paving Co. *et al.*	RF272-70500
Shell Oil Co./Newtown Shell *et al.*	RF315-6507
Texaco Inc./Lee's Texaco Service *et al.*	RF321-602
Chappell E-Z Go #34	RF304-7681, RF307-7301
Colonial Gulf	RF300-11002
Doug Hughes	RF304-6802
Fisher's Bellefonte Exxon	RF307-6209
Fred Hurley Trucking Co., Inc.	RF272-75838
Garber Industries, Inc.	RF272-32272, RD272-32272
Lagrange Gulf Service Center	RF300-8233
Princess Cruises	RF272-453, RD272-453
Ramsey's Exxon	RF307-6416
Sarge's Service Center	RF315-7215
Stanley J. Douezan	RF315-6690
Tidewater Gulf	RF300-10010
Vern's E-Z Go Station #17	RF304-7436
Vern's E-Z Go Station #733	RF304-7437
Vern's E-Z Go Station #733	RF307-6910
Vern's E-Z Go Station #17	RF307-6911
Vern's E-Z Go Station #17	RF315-6274
Vern's E-Z Go Station #733	RF315-6697
Vern's E-Z Go Station #733	RF321-2747
Vern's E-Z Go Station #17	RF321-2746
Vince's Exxon	RF307-6437
Whitty's Service	RF360-6253

Dismissals

The following submissions were dismissed:

Name	Case No.
Ashville Exxon	RF307-5718
Bells Rd. Exxon	RF307-8979
Bellevale Road Exxon	RF307-9430
Bob Martin Shell	RF315-6638
Bob Martin Shell	RF315-6639
Bob Martin Shell	RF315-9940
Chappell E-Z Go #33	RF304-7680, RF307-7900

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 24, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-23286 Filed 10-1-90 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3849-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instruments.

DATE: Comments must be submitted on or before November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Mobile Sources Emission Factors Survey (EPA ICR # 0819.05; OMB § 2060-0060). This is a renewal of a previously approved collection.

Abstract: The Office of Mobile Sources conducts a survey by testing a random sample of privately owned motor vehicles, stratified by class, mileage, and geographical area. The purpose of the survey is to characterize levels of exhaust pollutants for each combination of class and mileage in the sample. EPA uses the data generated by this survey to model air pollution produced by mobile sources, and to determine the impact of regulations and the benefits of control programs.

Burden Statement: The public annual reporting burden for this collection of information is estimated to average .389 hour per response. This estimate includes the time needed to review instructions.

Respondents: Owners of in-use motor vehicles.

Estimated No. of Respondents: 5,270.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,051 hours.

Frequency of Collection: annually.

Title: NSPS for Synthetic Fiber Production Facilities (subpart HHH)—Information Requirements. (ICR # 1156.05; OMB # 2060-0059). This is a renewal of a previously approved collection.

Abstract: Owners or operators of synthetic fiber production facilities must notify EPA of each construction, modification, startup, shutdown, malfunction, and of the results of initial performance tests. They must record and maintain for a period of two years all data and calculations from all tests, and from the continous monitoring system. They must also report periods of excess emissions of volatile organic compounds (VOCs) quarterly; when in compliance, they must report VOC emissions semiannually. These data are used by the States and/or EPA to determine compliance with the standards, to target inspections, and, when necessary, as evidence in court.

Burden Statement: The public annual burden for this collection of information is estimated to average 12 hours per response for reporting, and 63 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of synthetic fiber production facilities.

Estimated No. of Respondents: 23.

Estimated No. of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 1,995 hours.

Frequency of Collection: Quarterly or semiannually.

Title: NSPS for the Lime Manufacturing Industry (subpart HH)—Information Requirements. (ICR # 1167.03; OMB # 2060-0063). This is a renewal of a previously approved collection.

Abstract: Owners or operators of lime manufacturing facilities must notify EPA of each construction, modification, startup, shutdown, malfunction, and of the date and results of initial performance tests. Owners or operators must install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) for the measurement and recording of opacity. However, facilities with positive-pressure fabric filters may employ a certified observer to monitor visible emissions at least once a day. Owners or operators of the affected facilities must report periods of excess opacity quarterly; when in compliance, they must submit semiannul reports of opacity observations. The States and/or EPA use these data to determine compliance with the standards, to target inspections, and, when necessary, as evidence in court.

Burden Statements: The public annual burden for this collection of information is estimated to average 18 hours per response for reporting and 63 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed, and review the collection of information.

Respondents: Owners or operators of lime manufacturing industry.

Estimated No. of Respondents: 29.

Estimated No. of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondent: 2,870 hours.

Frequency of Collection: Quarterly and Semiannually.

Send comments regarding the burden estimates, or any other aspects of these information collections, including suggestions for reducing the burdens, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 1563.01; Regulation of Fuels and Fuel Additives: Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; was approved 08/08/90; OMB # 2060-0200; expires 08/31/93.

EPA ICR # 1564.02; NSPS for Small Industrial-Commercial-Institutional Steam Generating Units; was approved 09/07/90; OMB # 2060-0202; expires 09/30/93.

EPA ICR # 1570.01; Approval and Promulgation of Implementation Plans, California—South Coast Air Basin, Plans for Ozone and Carbon Monoxide (Proposed Rule); was disapproved 09/06/90.

EPA ICR # 1460.02; Survey of Pharmaceutical Industry (Detailed Questionnaire); OMB # 2040-0146. The following are the terms of clearance that accompany the OMB Notice of Action: "The information in this survey is being collected to support regulatory investigations under both the Clean Water Act and the new Clean Air Act. The ICR contains three parts: Part A for the Technical Information, part B for the Financial and Economic Information and part C for Certification. Given the information needs of the two EPA offices, OMB finds parts A and C, and section 2 of part B are approved, as amended by D. Anderson letter to T. Hunt on August 15, 1990, as they meet the requirements of the Paperwork Reduction Act. However, section 1 of part B (Facility Information) fails to meet the requirements of 5 CFR 1320.4(b) (1) and (3) and is not approved. EPA has *not* demonstrated that (1) the facility level information has practical utility in EPA's financial impact analysis under the Clean Water Act and (2) it has adopted the least burdensome alternative to fulfill its statutory obligations.

EPA shall consider making section one of part B optional for those companies willing to accept the use of company-level financial averages or certify no financial impact (i.e. plant closures and job losses) for selecting the best available technology economically achievable. In addition, EPA could conduct a random follow-up sample of facilities (company names masked to protect confidential business information) that opted out of completing the optional facility level data, if additional characteristics are necessary to complete an adequate financial impact analysis. In the course of considering alternatives to the detailed financial facility information in part B, EPA should also consider any reasonable, less burdensome alternatives for the technical information (in part A) as well, to the extent that these alternatives also meet EPA's needs. EPA shall evaluate the implications of any new options for smaller businesses as well. EPA should work with respondents and other commenters on the ICR and OMB to develop quickly a reasonable, less burdensome alternative to collecting facility financial information that meets EPA's needs. EPA shall submit a new ICR when this task is completed. OMB will review any new ICR expeditiously.

The waste minimization/pollution prevention section is unlikely to provide a sufficient basis for extrapolating a waste minimization or pollution prevention action taken at one or several sites (with their unique characteristics) to the whole industry. As a result, EPA should carefully evaluate the generalizability of the data and the need to conduct a follow-up study of any waste minimization approaches during EPA's wastestream sampling.

OMB is approving the ICR for the requested 18 months, but only for the 68,400 hours OMB estimates it would take to complete parts A, C and section 2 of part B.

Dated: September 26, 1990.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 90-23286 Filed 10-1-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3835-7]

Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions; Case-By-Case Extensions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Action to Grant Case-by-Case Extensions.

SUMMARY: EPA is granting final approval to American Cyanamid Company in Westwego, Louisiana and Celanese Engineering Resins, Inc., in Bishop, Texas for a six-month extension of the August 8, 1990, effective date of the hazardous waste injection restrictions applicable to the specific injected wastes impacted by the August 8, 1990, ban date (California listed wastes, solvents less than one (1)

percent solvent constituents and First Third wastes). This action responds to petitions submitted under 40 CFR 148.4 according to procedures set out in 40 CFR 268.5, which allows any person to request that the Administrator grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that the petitioner has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste. The Agency proposed action on this request in a July 5, 1990, Federal Register notice (55 FR 27659). By granting approval to these case-by-case petitions, American Cyanamid and Celanese—Bishop can continue to inject the above identified wastes until February 8, 1991, but not later than this date without being subject to the prohibitions applicable to such wastes. EPA is taking no action on E.I. du Pont de Nemours & Co., Inc., in Orange, Texas for an extension of the August 8, 1990, effective date of the hazardous waste injection restrictions applicable to the California listed wastes, solvents less than one (1) percent solvent constituents and First Third wastes. The Du Pont—Orange petition for an exemption of the land disposal restrictions imposed by the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act has not yet demonstrated that the no migration standard can be met. EPA must be able to propose to approve a no migration petition prior to allowing a case-by-case extension.

DATES: This action is effective August 7, 1990.

ADDRESSES: The docket for this action is located at the EPA Region 6 library, 1445 Ross Avenue, Dallas, Texas 75202, and is open during normal business hours, 8 a.m. through 4 p.m., Monday through Friday. The public can review all docket materials by visiting the library.

FOR FURTHER INFORMATION CONTACT: For information contact Oscar Cabra, Jr., Chief Water Supply Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-2733 or telephone (214) 655-7150, FTS 255-7150.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposal and Response to Comments

A. Background

A more complete discussion of the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA), may be found in previous rulemakings by the Agency. See 55 FR 22520, June 1, 1990.

On July 26, 1988, EPA promulgated a final rule (53 FR 26116, effective August 8, 1988), that established an effective date of August 8, 1990 for injected spent F001–F005 solvent wastes containing less than 1 percent solvent constituents. An August 8, 1990, effective date was established for specified California list wastes that are deep well injected. See 53 FR 30908, effective August 8, 1990.

Section 3004(m) requires the Agency to set levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. Wastes that meet treatment standards established by EPA are no longer prohibited and may be land disposed.

Section 3004(d), (e), (f), and (g) also allows the applicant to demonstrate to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The no migration petition process has been established by the Agency for injected wastes under 40 CFR part 148 subpart C. See 53 FR 28118, July 26, 1988.

Congress recognized that adequate alternative treatment, recovery, or disposal capacity any of which is protective of human health and the environment may not be available by the applicable statutory effective dates and authorized EPA to grant a variance (based on the earliest dates that such capacity will be available) from the effective date which would otherwise apply to specific hazardous wastes (RCRA § 3004 (h)(2) and (h)(3)). In addition, under section 3004(h)(3), the Agency can grant case-by-case extensions of the statutory deadlines for up to one year beyond the applicable deadlines. These extensions are renewable once for up to one additional year.

On November 7, 1986, EPA published a final rule (51 FR 40572) establishing the regulatory framework to implement the land disposal restrictions program including procedures for submitting case-by-case extensions under § 268.5. On July 26, 1988, EPA published a final rule (53 FR 28118) establishing restrictions and requirements for Class I hazardous waste injection wells, including the framework for the no migration petition process and allowing case-by-case extensions under § 148.4 following § 268.5 procedures.

B. Demonstration Requirements

1. Summary of Requirements

Case-by-case extension applications must satisfy the requirements outlined in 40 CFR 268.5. These requirements include those specified in RCRA section 3004(h)(3): the applicant must have entered into a binding contractual commitment to construct or otherwise provide alternative capacity (40 CFR 268.5(a)(2)), but due to circumstances beyond his control, this alternative capacity cannot reasonably be made available by the applicable effective date (40 CFR 268.5(a)(3)).

In addition, EPA has established by regulation the following requirements: the applicant must demonstrate that he has made a good faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste (40 CFR 268.5(a)(1)). Again, the applicant must demonstrate why this nationwide capacity cannot reasonably be made available by the effective date.

Additional requirements for case-by-case demonstrations are summarized in the July 5, 1990, proposal to today's notice. See 55 FR 27659.

2. Commitment to Provide Protective Disposal Capacity

EPA believes that the applicants for case-by-case extensions have shown the necessary commitment to provide protective disposal capacity within the meaning of RCRA § 3004(h)(3) and 40 CFR 268.5(a)(1). These provisions require an applicant to make two showings: (1) That the proposed "disposal capacity" is "protective of human health and the environment", and (2) that the applicant has made "a binding contractual commitment to construct or otherwise provide" such capacity. The Agency construes the first phrase to mean a no migration unit. No migration findings in 40 CFR parts 148 or 268 provide for a variance to the land disposal prohibitions and, accordingly, are functionally equivalent to compliance with treatment standards under part 268. Moreover, the statute defines protective disposal capacity for purposes of RCRA section 3004(d), (e), and (g) as no migration units. EPA also considers no migration capacity as protective disposal capacity for purposes of RCRA section 3004(h)(2).

With respect to showing a "binding contractual commitment", where applicants have already constructed (and, indeed, are operating) the disposal units at issue, EPA interprets the regulatory language to require objective indicia of applicant's commitment to provide this capacity. EPA's approach is in line with similar practical interpretations of regulatory language. For example, the Agency has construed the term "commenced construction" to include facilities which have completed construction but did not commence operations. See 46 FR 2344, 2348 (January 9, 1981).

EPA believes that where the Agency has concluded that a no migration petition is sufficient to propose a no migration finding, this proposed finding is legitimate indicia that the applicant is, in good faith, committed to providing protective disposal capacity for purposes of 40 CFR 268.5. See 55 FR 22520. If EPA were to require an actual no migration finding as a condition for a case-by-case extension, such a reading would effectively read the phrase "protective disposal capacity" out of RCRA 3004(h)(3) in violation of all standard tenets of statutory construction, which require that all terms be given effect when possible. The term would be read out of the statute because once the no migration petition was granted, there is no need to seek a case-by-case extension as wastes could be disposed directly in the unit. In addition, case-by-case extensions necessarily involve predictions about future capacity. For example, such predictive findings specifically include the need for permits that may not yet be issued. See 40 CFR 268.5(a)(5).

Today's case-by-case extensions are based on objective indicia of the applicant's commitment to provide disposal capacity. First, the petitioner's application is based on already constructed wells. Thus, these petitioner's commitment are more definitive from petitions based solely on contracts to construct such capacity. See RCRA section 3004(h)(3). Second, the injection wells have all been permitted under both RCRA and SDWA standards, thus further demonstrating a commitment to provide this capacity. The applicants have demonstrated that only a no migration finding prevents the units from being available as protective disposal capacity. Third, today's applicants have made substantial contractual commitments in preparing the no migration petitions. Finally, EPA has a good basis for believing that this capacity will, in fact, be provided in a short period of time. Permitted hazardous waste injection wells, as a class of units, have a good record for obtaining no migration findings. EPA has already issued 21 no migration findings. EPA has already proposed approval for the no migration petitions for the facilities in this notice and believes that they will eventually be granted final approval.

3. Requirement to Seek Other Alternative Capacity

The applicant's commitment to provide protective disposal capacity is not the sole basis for EPA granting a case-by-case extension. Under 40 CFR 268.5(a)(1), applicants must also make a good faith effort to seek other protective treatment, recovery, or disposal where feasible during the period that his proposed alternative capacity is not available. Such good faith efforts under 268.5(a)(1) can be evaluated considering both the expected time period that the alternative capacity will take to become available and technical difficulties that the operator will face in bringing his waste to alternative capacity in consideration of factors in 268.5(a)(3).

There is limited other capacity under (a)(1) to eventually handle the waste from the well operators in this proposal. However, due to logistic problems of retooling, repiping, and transportation of the large volume of waste at issue, this other capacity is not reasonably available during the short period of time EPA anticipates is necessary to process final no migration approvals or denials for these wells.

4. Reasons Alternative Capacity Cannot Reasonably be Made Available by the Applicable Effective Date

Today's applicants have, in good faith, pursued the no migration process with reasonable belief that the Agency would provide a no migration finding by the August 8, 1990, effective date. The operators submitted their no migration petitions in a timely manner, and have responded appropriately to Agency requests for additional information in order to make a determination on the petition.

The timing of the actual finding is beyond the applicant's control. This no migration finding is a precondition to the provision of the alternative disposal capacity. EPA has reviewed 65 no migration petitions in an intensive, time-consuming process. The order that decisions are made are primarily a function of Agency resources and priorities. This no migration review process is the reason that the applicant's wells may not be available as no migration units by the effective prohibition dates.

The well operators in today's notice have documented several logistic problems that make short-term capacity not reasonably available. The facilities in question involve production operations directly connected by piping, or otherwise rely on immediate disposal in on-site injection wells. In order to make the necessary adjustments, the facilities would need to temporarily shutdown, perform necessary retooling and repiping, and construct a transportation system to move the large volumes of waste at issue. The receiving facility would also need to make substantial adjustments to receive these large waste volumes. These factors indicate that the other capacity is not reasonably available for short-term waste management. EPA has relied on similar criteria in providing nationwide variances under RCRA section 3004(h)(2). See 55 FR 22520.

5. Response to Comments

Several comments were received by the Agency concerning the proposed case-by-case extensions.

Comments and Responses

Comment: EPA should grant an extension as soon as the Agency decides that it will propose approval of a no migration petition.

Response: The Agency has stated both in the preamble to the Third Third final rule, June 1, 1990, (55 FR 22520) and in the July 5, 1990 proposal to grant a case-by-case extension to a facility (55 FR 27659), that a proposed no migration petition would serve as the indicia that the applicants are committed to provide protective disposal capacity. A proposal indicates that EPA has formally reviewed the no migration petition and found the application to be promising for final approval. The tentative finding is made upon signature by the Agency. Once a no migration petition is proposed, and all other conditions for the case-by-case extension application are met, the Agency will grant final approval for the case-by-case extension as expeditiously as possible.

Comment: EPA should grant the extention for one-full year.

Response: The statutory language in RCRA section 3004(h)(3) does not provide for specific guidance regarding the time period the Agency may grant, other than allowing the Agency to grant at a maximum a one-year case-by-case extension renewable for a maximum of one additional year. In this regard, the Agency can grant these extensions for a time period that it perceives is justifiable for a given circumstance. The facilities seeking case-by-case extensions have provided information relating to the logistical difficulties they would encounter if they need to seek alternative treatment capacity. The Agency believes that this information is adequate to allow a granting of up to a six-month extension. EPA agrees that a

six-month period is preferable to the 3-month period because of the potential delays in expected final decision making. The Agency believes that this is enough time for further review, public hearing, public comment, preparation of the final decision, and the publication of a final decision to either grant or deny a no migration petition. The Agency will

remedy any violations of RCRA or EPA regulations.

III. Petition(s)

A. Facility Summary

American Cyanamid Company, Westwego, Louisiana, Celanese Engineering Resins, Inc., Bishop, Texas, and E. I. du Pont de Nemours & Co., Inc.,

40 CFR 268.5(a)(3) American Cyanamid has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) American Cyanamid has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

demonstrations have satisfied all the requirements for a case-by-case extension of the August 8, 1990, effective date of the hazardous waste injection restrictions.

Therefore, EPA is granting an extension of the August 8, 1990, effective date of the restrictions on these wastes for American Cyanamid and Celanese—

Administrator's Conference Room 1103 West Tower.

The Executive Committee will review reports from the Standing Committees of the Science Advisory Board. The Environmental Engineering Committee will submit the Municipal Solid Waste Research Review; The Environmental Processes and Effects Committee will

amended (CERCLA), notice is hereby given of a proposed Administrative Order on Consent under section 122(g) concerning the Ninth Avenue Dump site in Gary, Indiana. The proposed Consent Order requires eighty-five (85) *de minimis* potentially responsible parties (PRPs) to pay a total of approximately $6,500,000 to reimburse the United

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six-month period is preferable to the 3-month period because of the potential delays in expected final decision making. The Agency believes that this is enough time for further review, public hearing, public comment, preparation of the final decision, and the publication of a final decision to either grant or deny a no migration petition. The Agency will act as expeditiously as possible to finalize the proposed actions, and expects this action to be finished within a six-month time-frame. Should this not occur, the Agency may, upon request of the petitioner, consider extending the case-by-case petition for an additional year.

If a petition is denied, the basis for the case-by-case extension is no longer present. A new basis, such as contractual commitment to obtain alternative treatment capacity, must be provided in order for the Agency to consider any further extension under 40 CFR 268.5. Such a showing could include a contract contingent on the Agency's denial of a no migration petition. Today's applicants have shown no such commitment.

Comment: EPA should grant a one-year extension that would terminate only upon final, unconditional approval of its no migration petition.

Response: The Agency has previously stated that once a no migration petition is granted, conditionally or otherwise, the determination has been made that this exemption represents protective disposal capacity. Since the underlying need for the case-by-case extension is no longer present, the case-by-case extension will automatically terminate. See 55 FR 22874. EPA disagrees, however, that it should provide a full year to address logistic problems following a denial of a no migration petition.

Comment: There is no basis for making the exemption conditional upon no violations of RCRA.

Response: The Agency originally proposed termination of the case-by-case extension upon violation by the facility of *any* law or regulations implemented by EPA. EPA believes that it has authority for such a condition.

Upon reconsideration, the Agency agrees with the commenter that minor paper violations should not necessarily result in termination of the case-by-case extension. The Agency will only consider termination of the case-by-case extension if the petitioner fails to make a good faith effort to meet the schedule for completion, the Agency revokes any required permit, or if conditions in the application change. The Agency will rely on its enforcement authority to remedy any violations of RCRA or EPA regulations.

III. Petition(s)

A. Facility Summary

American Cyanamid Company, Westwego, Louisiana, Celanese Engineering Resins, Inc., Bishop, Texas, and E. I. du Pont de Nemours & Co., Inc., Orange, Texas have petitioned EPA to grant them a twelve month extension of the effective date of the hazardous waste injection restrictions applicable to the following wastes: California listed wastes, solvents less than one (1) percent solvent constituents, and First Third wastes.

EPA is granting an extension of the effective date of the applicable restrictions for six months from the hazardous waste injection restrictions effective date of August 8, 1990, for the above referenced wastes, for American Cyanamid and Celanese—Bishop. American Cyanamid's and Celanese—Bishop's requests and supporting documentation are available in the public docket for this notice. EPA is taking no action on Du Pont—Orange's request for a case-by-case extension because du Pont has not yet demonstrated that the no migration standard can be met.

B. Description of Petitioning Facility

American Cyanamid Company is a chemical manufacturing company which operates five hazardous waste injection wells in Westwego, Louisiana.

Celanese Engineering Resins, Inc. is a chemical manufacturing company which operates three hazardous waste injection wells in Bishop, Texas.

E. I. du Pont de Nemours & Co. Inc. is a chemical manufacturing company which operates six hazardous waste injection wells in Orange, Texas.

C. Case-by-Case Extension Petition Demonstrations

American Cyanamid Company's application for an extension of the effective date includes the following demonstrations:

40 CFR 268.5(a)(1) American Cyanamid has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity, or to establish such capacity by the effective data of the applicable restrictions.

40 CFR 268.5(a)(2) American Cyanamid has entered into a binding contractual commitment to provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) American Cyanamid has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) American Cyanamid has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

40 CFR 268.5(a)(5) American Cyanamid has provided a detailed schedule for obtaining alternative capacity, including dates.

40 CFR 268.5(a)(6) American Cyanamid has arranged for adequate capacity to manage the waste during the extension period.

40 CFR 268.5(a)(7) No surface impoundments or landfills will be used by American Cyanamid to manage the waste during the extension period.

Celanese Engineering Resins, Inc.'s application for an extension of the effective date includes the following demonstrations:

40 CFR 268.5(a)(1) Celanese—Bishop has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity, or to establish such capacity by the effective data of the applicable restrictions.

40 CFR 268.5(a)(2) Celanese—Bishop has entered into a binding contractual commitment to provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) Celanese—Bishop has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) Celanese—Bishop has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

40 CFR 268.5(a)(5) Celanese—Bishop has provided a detailed schedule for obtaining alternative capacity, including dates.

40 CFR 268.5(a)(6) Celanese—Bishop has arranged for adequate capacity to manage the waste during the extension period.

40 CFR 268.5(a)(7) The surface impoundments or landfills used by Celanese—Bishop to manage the waste during the extension period will meet the requirements of 40 CFR 268.6(h)(2).

III. Agency Action

For the reasons discussed above, the Agency believes that American Cyanamid's and Celanese—Bishop's demonstrations have satisfied all the requirements for a case-by-case extension of the August 8, 1990, effective date of the hazardous waste injection restrictions.

Therefore, EPA is granting an extension of the August 8, 1990, effective date of the restrictions on these wastes for American Cyanamid and Celanese—Bishop. These wastes could be injected over a six month period, starting from the effective date of August 8, 1990, *or* until a final decision of the applicant's no migration petition is made, but not later than February 8, 1990, (unless an additional extension is granted). If that decision approves the no migration variance, then the case-by-case extension will expire. If EPA denies the no migration variance, then the case-by-case extension will only be effective while the operator takes all steps necessary to move his waste to other available capacity according to the schedules in the administrative record.

American Cyanamid and Celanese—Bishop must each submit a progress report two months after the effective date of the extension is granted, addressing the progress being made to obtain alternative disposal capacity. The Agency must be notified of any change in the conditions specified in the petition. The extension would remain in effect unless American Cyanamid or Celanese—Bishop fail to make a good faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, or if conditions certified in the application change.

(Sections 1008, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924)).

Dated: September 25, 1990.

Myron O. Knudson,

P.E., Director, Water Management Division (6W), EPA Region 6.

[FR Doc. 90-22862 Filed 10-1-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3849-6]

Executive Committee, Open Meeting

October 23-24, 1990

Under Public Law 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board will hold a public meeting on October 23 from 8:30 a.m. to 5 p.m. and October 24 from 8:30 a.m. to 12 noon. The meeting will be held at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, Administrator's Conference Room 1103 West Tower.

The Executive Committee will review reports from the Standing Committees of the Science Advisory Board. The Environmental Engineering Committee will submit the Municipal Solid Waste Research Review; The Environmental Processes and Effects Committee will submit two reviews: the Evaluation of the Ecoregion Concept and the Evaluation of the EMAP Ecological Indicators; the Indoor Air Quality/Total Human Exposure Committee will submit the Human Exposure Research Strategies Review and the Review of the Report to Congress on Agency's Action on its Indoor Air Quality Implementation Plan; and the Subcommittee's review on the Forest Effects Research Review.

At the meeting there will be a briefing from the Risk Assessment Council on developments in risk characterization. There will also be a discussion of recent issues raised on Risk Assessment in various forums; e.g., Science Magazine and Office of Management and Budget's Regulatory Program of the U.S. Government. A progress report will be made on the implementation of the Management and Organization and Mission and Functioning Committee reports, both on the SAB staff and the equipment. There will be a summary video of recent public hearings on an Ecological Research Institute.

The SAB has been requested, by the Agency, to review numerous topics to FY 91. At this meeting the Executive Committee will discuss which reviews will be conducted during FY 91.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Joanne Foellmer or Dr. Donald G. Barnes, Staff Director, Science Advisory Board, at 202-382-4126, one week prior to the meeting date.

Dated: September 25, 1990.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 90-23162 Filed 10-1-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3849-3]

Administrative Order on Consent; Ninth Avenue Dump Site, IN

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Response, Compensation and Liability Act, as amended (CERCLA), notice is hereby given of a proposed Administrative Order on Consent under section 122(g) concerning the Ninth Avenue Dump site in Gary, Indiana. The proposed Consent Order requires eighty-five (85) *de minimis* potentially responsible parties (PRPs) to pay a total of approximately $6,500,000 to reimburse the United States a portion of its past costs and to contribute to the estimated costs of implementing the remedial actions selected for the Ninth Avenue Dump site, including oversight costs.

DATES: Comments must be received on or before November 1, 1990.

ADDRESSES: Comments should be addressed to the U.S. EPA Office of Regional Counsel, 230 South Dearborn Street, 5CS-TUB-3, Chicago, Illinois, and should refer to the Ninth Avenue Dump site.

FOR FURTHER INFORMATION CONTACT: Mary E. Butler, Office of Regional Counsel, U.S. EPA, Region V, 230 South Dearborn Street, 5CS-TUB-3, Chicago, Illinois 60604, (312) 353-8814.

SUPPLEMENTARY INFORMATION: Notice of section 122(g). *de minimis* settlement Consent Order: In accordance with section 122(i)(1) of CERCLA, notice is hereby given that on or about November 11, 1990, a proposed *de minimis* settlement was agreed to by eight-five (85) potentially responsible parties (PRPs). The proposed Consent Order concerns the hazardous waste site known as the Ninth Avenue Dump, located in Gary, Indiana. The proposed Consent Order requires those PRPs named as *de minimis* respondents to the Order to pay approximately $6,500,000. A portion of this sum will be paid to the United States as reimbursement for past costs, estimated oversight costs and as a penalty against *de minimis* respondents who failed to comply with the Unilateral Administrative Order issued on December 7, 1988. A portion of the total will also be paid to reimburse the Secretary of the Interior for estimated natural resource damage and a portion will be placed into escrow accounts. The majority of the monies placed into the escrow accounts will be used to reimburse non-participants to the Consent Order who implement the selected remedies; however, a portion of those monies may be used to reimburse U.S. EPA for any additional work necessary at the site.

U.S. EPA entered into this agreement under the authority of section 122(g) of CERCLA. Section 122(g) authorizes settlement of claims under section 106 or 107 of CERCLA if such settlement involves only a minor portion of the

response costs and the amount and toxicity of the settling parties' contribution at the site is minimal. Where total response costs incurred by the United States for the site exceed $500,000 (excluding interest), the Attorney General of the United States must issue prior written approval of the order. In this case the U.S. EPA determined that the eighty-five (85) parties to the Consent Order satisfied the statutory requirements for participation in a settlement under section 122(g) of CERCLA. U.S. EPA also determined that response costs incurred thus far at the site exceed $500,000 and accordingly the Attorney General has approved this settlement.

Under the terms of the settlement, the eighty-five (85) settling PRPs will pay the full amount required under the Consent Order within thirty (30) days of the effective date of the Consent Order. In return, the U.S. EPA covenants not to sue these PRPs for those costs.

U.S. EPA will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order.

A copy of the proposed Consent Order may be obtained in person or by mail from the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 5CS–TUB–3, 230 South Dearborn Street, Chicago, Illinois 60604.

Authority The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sections 9601–9675.

Dated: August 17, 1990.

Ralph R. Bauer,

Acting, Regional Administrator.

[FR Doc. 90-23183 Filed 10-1-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–42030G; FRL 3802–4]

Testing Consent Agreement Development for Mesityl Oxide; Solicitation for Interested Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's procedures for requiring the testing of chemical substances and mixtures under section 4 of the Toxic Substances Control Act (TSCA) include the adoption of enforceable consent agreements (ECAs) and the promulgation of test rules. ECAs may be adopted where consensus on an industry test program is reached in a timely manner by EPA, affected manufacturers and/or processors, and other interested parties. If timely consensus cannot be reached or appears unlikely, and the Agency makes certain statutory findings under TSCA, then EPA would issue a test rule. This notice serves three purposes under these procedures. First it requests "interested persons" who wish to participate in testing negotiations for mesityl oxide (MO; CAS. No. 141–79–7) to identify themselves to EPA. Second, it announces a public meeting to initiate testing negotiations for this chemical. Third, it proposes a target schedule for implementation of the consent agreement process.

DATES: Submit written notice of interest to be designated an interested party on or before October 18, 1990. A public meeting will be held on October 18, 1990. Persons interested in attending the public meeting should notify EPA by calling Mary Louise Hewlett, (202) 475–8162, before October 18, 1990.

ADDRESSES: Submit written request to be an "interested party" in triplicate, identified by the document control number (OPTS–42030G) to: TSCA Public Docket Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Rm. E–543B, 401 M St., SW., Washington, DC 20460. (202) 554–1404 TDD (202) 554–0551

SUPPLEMENTARY INFORMATION: EPA has amended the procedural regulations in 40 CFR part 790 (51 FR 23706; June 30, 1986), which govern the development and implementation of testing requirements under section 4 of TSCA. These amendments establish procedures for using ECAs to develop testing requirements under section 4 of the Act.

I. Identification of Interested Parties

Under 40 CFR 790.22, the testing negotiation procedures are initiated by the publication of a Federal Register notice which invites persons interested in participating in or monitoring negotiations for the development of an ECA to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in this notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties". The procedures for these negotiations are described in 40 CFR 790.22. Individuals and groups desiring to have the status of "interested parties" in the development of the ECA for MO should submit a written request to the Agency at the address given above on or before October 18, 1990.

II. Public Meeting

A public meeting will be held at 2:00 on October 18, 1990, in Rm. 103, Northeast Mall, EPA Headquarters, 401 M St., SW., Washington, DC 20460, to announce EPA's preliminary testing determination for health effects testing of MO to initiate testing negotiations. Persons interested in attending this meeting should notify Mary Louise Hewlett, (202) 475–8162, by telephone before October 18, 1990.

III. Timetable for Negotiating Test Agreement

In accordance with the procedures for the development of ECAs established in 40 CFR 790.22 and the Agency's plans to re-propose a test rule for MO (if an ECA cannot be developed in that time) the following target schedule is established for MO.

October 18, 1990—Public Meeting to initiate testing negotiations. Also, deadline for notice of "interested party" designation.

December 28, 1990—Decision by EPA on whether to use consent order or test rule.

January 25, 1991—Draft consent order sent to interested parties (if EPA decides to use consent order).

May 3, 1991—Issuance of consent order.

Authority: 15 U.S.C. 2603

Dated: September 20, 1990.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90-23240 Filed 10-2-90; 8:45 am]

BILLING CODE 6560-50-F

[OPTS–59206B; FRL 3803–7]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–90–16. The test marketing conditions are described below.

EFFECTIVE DATES: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 382–2440.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–90–16. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. The test marketing period, production volume, use, disposal methods, and number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–90–16. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–90–16

Date of Receipt: July 24, 1990.

Notice of Receipt: August 6, 1990 (55 FR 31882).

Applicant: Confidential.

Chemical: (G) Bis(hexamethylene)tris-demethiocarbamic acid.

Use: (G) Sulfur solvent for natural gas production. *Production Volume:* (Confidential). *Number of Customers:* (Confidential).

Test Marketing Period: (Confidential).

Risk Assessment: EPA identified concerns for developmental toxicity, neurotoxicity and thyroid toxicity, based on test data on analogous chemicals; and chronic toxicity to the liver and lungs, based on test data on the TME substance. The submitted test data also showed that the TME substance is corrosive to the skin and eyes. Because of these corrosive properties, EPA expects that workers will wear the protective equipment specified in the Material Safety Data Sheet ("MSDS") submitted with the TME application. EPA does not expect the manufacturing, processing, and use of the TME substance to result in inhalation exposures to workers. Therefore, the corrosive nature of the TME substance, low predicted inhalation exposures, and the exposure controls specified in the MSDS mitigate EPA's concerns for human health.

EPA also identified environmental concerns for the TME substance based on Quantitative Structural Activity Relationships ("QSARs") derived from test data on structurally similar dithiocarbamates. EPA expects toxicity to aquatic organisms to occur at a concentration of 9 parts-per-billion ("ppb") TME substance in surface waters. However, EPA expects that the TME substance will be deep-well injected and will not be released to surface water. This use/disposal method will not result in surface water concentrations that exceed EPA's concern concentration.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: September 24, 1990.

Lawrence E. Culleen,

Acting Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 90-23241 Filed 10-1-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL–3849–8]

National Pollutant Discharge Elimination System (NPDES) General Permit for Activities Related to Natural Gas Production Within the Geographical Boundaries of Southern Ute Indian Reservation as Located Within the Political Boundaries of the State of Colorado

AGENCY: U.S. Environmental Protection Agency (EPA), Region VIII.

ACTION: Notice of intent to issue general permit.

SUMMARY: Region VIII of the U.S. Environmental Protection Agency (EPA) is hereby giving notice of its tentative determination to issue a National Pollutant Discharge Elimination System (NPDES) general permit for certain limited activities relating to the production of natural gas within the geographical boundaries of the southern Ute Indian Reservation, located in the southwest portion of the State of Colorado, NPDES permit Number COG–075000. Issuance of the General Permit is intended to provide a more efficient means of granting discharge authorization for these facilities. A draft general permit which incorporates the requirements of the Federal Clean Water Act and the NPDES regulations promulgated thereunder at 40 CFR part 122 *et seq.* has been prepared by EPA. The draft permit establishes proposed effluent requirements and standards based on technology and water quality considerations, prohibitions, best Management practices, and other conditions applicable to the types of waste waters generated by construction facilities. Persons meeting the prequalification requirements of the general permit and seeking discharge authorization will be required to submit a Notice of Intent (NOI) to discharge and a request for discharge approval prior to their commencement of any discharge.

DATES: Public comments on this proposal must be on or before November 19, 1990.

ADDRESSES: Public comments should be sent to: Mr. Steve A. Burkett, P.E. (8WM–C), Chief, Compliance Branch, Water Management Division, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

For a copy of the complete text of the draft permit and the Statement of Basis and Fact Sheet, please call or write Ms. Daniela Thigpen at the above-listed address or telephone (303) 293–1432 or FTS 330–1432. Questions regarding the

specific requirements proposed by the draft general permit may be directed to Mr. Robert D. Shankland, telephone (303) 293–1587.

A public meeting to review and entertain comments on the draft permit has tentatively been scheduled as follows:

Date: November 7, 1990.

Time: 7:00 p.m.

Location: Ute Mountain Ute Tribal Park Visitor Center, Towaoc, Colorado.

A. Background

The Southern Ute Indian Reservation is located in the southwest portion of the State of Colorado. The Reservation is bounded on the north by the Colorado River, on the east by the Los Pinos River, on the south by the New Mexico State line, and on the west by the Utah State line. The Reservation is approximately 1,000 square miles in area.

Natural gas production within the Reservation is currently conducted by approximately 20 operators. Production is from the Ignacio-Blanco Field, the Ute Dome Field, and the Red Mesa Field. Production is from the Dakota, Mesaverde, Pictured Cliffs, Fruitland, and Ojo Alamo formations. Approximately 1,000 wells are currently producing natural gas within the Reservation.

Natural gas production activities are conducted by a number of operators. Activities include drilling, completion, workover, and production operations. Drilling operations include the drilling of new wells and the deepening of existing wells. Completion operations include the fracturing of wells to stimulate production. Workover operations include the cleaning out of wells to remove sand and other debris which has accumulated in the well bore. Production operations include the separation of natural gas from water and other liquids, the dehydration of natural gas, and the compression of natural gas for transmission to market.

Natural gas production activities generate a number of waste streams. Drilling operations generate drilling muds and drill cuttings. Completion operations generate fracturing fluids and sand. Workover operations generate sand and other debris. Production operations generate produced water, condensate, and glycol. Produced water is the largest waste stream generated by natural gas production activities.

Produced water is water which is produced from the natural gas formation during production operations. Produced water is usually separated from the natural gas at the wellhead. Produced water is usually stored in tanks at the wellhead. Produced water is usually not being returned to the coal beds because the return of the water might interfere with gas production. To date, most of the produced water has been disposed of by injecting it underground into another formation in accordance with the requirements of the Underground Injection Control (UIC) permit program of the Federal Safe Drinking Water Act.

Construction activities associated with natural gas production are anticipated to be from areas of natural and homogenous materials. Construction excavations associated with existing landfills, hazardous waste disposal sites or the cleanup of contaminated groundwater are entirely outside the scope of this permit or, for that matter, the general permit process.

Once pipelines and containment structures are constructed, they are usually not modified. Pipelines are usually buried. Containment structures are usually earthen dikes. Pipelines and containment structures are usually not modified. Pipelines are usually buried. Containment structures are usually earthen dikes.

C. Coverage Under the Permit

Inclusion of each of the above activities under a single NPDES General Permit restricted to the geographical confines of the Southern Ute Indian Reservation appears to be a sensible approach to effective environmental regulation. The general permit provides the Agency with a vehicle to review the permit reduces the administrative burden on regulated sources.

James J. Scherer,

Regional Administrator, Region VIII.

[FR Doc. 90-23184 Filed 10-1-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL LABOR RELATIONS

1184 (1988). Among the OIG's statutory duties are the prevention and detection of fraud, waste, and abuse relating to the agency's programs and operations, through the conduct of audits and investigations and the preparation of reports to the agency's Chairman and to Congress.

The system of records being

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specific requirements proposed by the draft general permit may be directed to Mr. Robert D. Shankland, telephone (303) 293–1587.

A public meeting to review and entertain comments on the draft permit has tentatively been scheduled as follows:

Date: November 7, 1990.

Time: 7 p.m.

Location: La Plata County Fairgrounds, Extension Building, 2500 Main Street, Durango, Colorado 81301.

SUPPLEMENTARY INFORMATION:

A. Regulatory Background

Section 301(a) of the Clean Water Act (CWA) provides that the discharge of pollutants is unlawful except in accordance with an NPDES permit. Discharges that occur within Indian Country are the jurisdiction of the EPA unless the Agency enters into an agreement with a Tribe or other Indian political body authorizing the Tribe to regulate these discharges in lieu of EPA doing so. No Tribal body has such jurisdiction within the Southern Ute Indian Reservation. Under EPA's regulations at 40 CFR 122.28, EPA may issue a single general permit to point sources within the same geographic area if the regulated sources:

(1) Are involved in the same or substantially similar operations;

(2) Generate and discharge the same types of waste;

(3) Require the same permit effluent limitations and/or operating conditions;

(4) Require similar monitoring requirements; and,

(5) In the opinion of the NPDES Director, are more appropriately controlled under a general permit than an individual permit.

As in the case of any individual permit issued under the NPDES program, violation of any condition of a general permit constitutes a violation of the Clean Water Act and is fully enforceable under section 309 of the Act.

Any owner or operator authorized by the general permit may be excluded from the general permit by applying for an individual permit as provided for by 40 CFR 122.28(b).

B. Coal Bed Methane Production

The production of methane gas by coal-bed degasification within the Southern Ute Indian Reservation is from coal beds located within the Fruitland Formation. Those coal beds contain water, so the degasification process results in the mixture of methane gas and water being brought to the ground surface via wells. The water is separated from the gas at the ground surface. Currently, the produced water is not being returned to the coal beds because the return of the water might interfere with gas production. To date, most of the produced water has been disposed of by injecting it underground into another formation in accordance with the requirements of the Underground Injection Control (UIC) permit program of the Federal Safe Drinking Water Act. However, in some situations this has proven to be very expensive.

Although treatment of the produced water by technologies such as reverse osmosis to reduce salinity in the water to acceptable levels is expensive, it may still be more cost effective to treat and discharge than to continue to re-inject the produced water. In addition, it is unknown how much of the produced water can actually be re-injected into the formation without encountering some problems like plugging in the formation. Should such a problem arise, treatment and discharge of the produced water will become appealing as an alternative.

There presently are approximately 700 of these methane gas wells located on the Reservation. The Energy Resources Division of the Southern Ute Tribe has estimated that approximately 500 million barrels (21 billion gallons) of water could be produced over the next ten years unless there are changes in the gas production technology that will reduce the volume of produced water. It is unknown how much of this water may actually ever be discharged.

In the primary pollutant of concern for the produced water is total dissolved solids (TDS), a measure of the salinity of the water. TDS concentrations in the untreated produced water, mostly sodium bicarbonate, have ranged from less than 1,000 mg/L to more than 10,000 mg/L. Analysis of untreated water has indicated that most wells have only trace amounts of organic pollutants in the produced water. Best Available Treatment (BAT) for reducing TDS suggests that, after treatment, TDS discharges should not exceed 500 mg/L.

Development of the well fields has created a need for pipeline delivery systems. Construction of these pipelines sometimes involve excavations (e.g., trenching) which may fill with water from the resident groundwater or from surface runoff. Another dewatering activity is to temporarily lower the water table around the construction site so as to prevent groundwater from flowing into the excavation. Although dewatering of such excavations is commonly done, it is unlawful to do so without an NPDES permit authorization.

Construction dewatering discharges under the general permit are generally anticipated to be from areas of natural and homogenous materials. Construction excavations associated with existing landfills, hazardous waste disposal sites or the cleanup of contaminated groundwater are entirely outside the scope of this permit or, for that matter, the general permit process.

Once pipelines and containment vessels are constructed, it may be necessary to test these vessels for leakage and stress prior to placing them into final service regardless of the material to be contained in the vessel or pipeline. Water is generally used to "hydrostatically" test the system and secure against its failure while in service.

Locally available water of relatively high quality is normally used for hydrostatic testing. If a surface water source is used and the water is returned to the same source, essentially no additional pollutants should be introduced to the environment. However, if a groundwater source is used, the same considerations given for produced water from coal-bed gas production apply to these sources. If chlorinated municipal water is used, chlorine becomes of major concern.

Originally, EPA considered including sand and gravel production activities within the context of the general permit. Excavation of sand and gravel construction materials needed for the gas production activities will likely occur in the area. Based on a reevaluation of our information and on comments by the State of New Mexico on a preliminary draft of the general permit, sand and gravel operations will not be included under this general permit. Although TDS contributions from sand and gravel operations were anticipated to be minimal, quantifying the TDS contribution from such sources could not be made. Further, sand and gravel operations can often be operated as "no discharge" facilities. In the event that a discharge from a sand and gravel operation is necessary and appropriate, a facility may apply for an individual permit discharge authorization.

EPA has sought preliminary input on the requirements of the general permit from a variety of Federal Agencies, the State of Colorado, the State of New Mexico, the Colorado River Salinity Forum, the Southern Ute Indian Tribe, interested citizens groups, and industry representatives. The draft general permit incorporates many of the comments received from these parties as well as attempts to respond to concerns that were raised.

C. Coverage Under the Permit

Inclusion of each of the above activities under a single NPDES General Permit restricted to the geographical confines of the Southern Ute Indian Reservation appears to be a sensible approach to effective environmental regulation. The general permit provides the Agency with a vehicle to review the proposed discharges on a collective basis rather than on an individual case-by-case basis. As such, the Agency can more effectively use its limited resources to evaluate any cumulative impacts from the potential coal-bed discharges. By their nature, general permits are written to promote "environmentally conservative" requirements which push the application of state-of-the-art technology upon potential discharges. General permits do not allow for variances for facilities seeking less stringent requirements.

Facilities seeking authorization to discharge under the general permit are obligated to submit information demonstrating their ability to comply with the general permit.

D. Economic Impact

EPA has reviewed the effect of Executive Order 12291 on this proposed general permit and has determined the proposal not to be major under that Order. This proposal is subject to review by the Office of Management and Budget (OMB) as required by the Executive Order. Any comments from OMB to EPA and any EPA responses to those comments will be made available for public inspection at the U.S. Environmental Protection Agency, Compliance Branch, Water Management Division, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405.

E. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these draft general NPDES permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget under submissions made for the Clean Water Act's NPDES permit program.

F. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces the administrative burden on regulated sources.

James J. Scherer,

Regional Administrator, Region VIII.

[FR Doc. 90-23184 Filed 10-1-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL LABOR RELATIONS AUTHORITY

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Federal Labor Relations Authority (FLRA).

ACTION: Advance notice with request for comments; publication of proposed system notice for a new system of records.

SUMMARY: The FLRA is establishing a new system of records under the Privacy Act to consist of the investigatory files of the FLRA's Office of the Inspector General (OIG). The publication of this proposed system notice is one of the steps required to establish the new system. The new system of records facilitates the OIG's ability to collect, maintain, use, and disclose information pertaining to individuals, thus helping to ensure that the OIG may efficiently and effectively perform its investigations and other authorized duties and activities.

DATES: Comments must be received on or before November 1, 1990. Unless changes are made in response to comments received from the public, this action is effective upon final publication of the amendment the FLRA's Privacy Act regulations, 5 CFR part 2412, set forth in proposed form elsewhere in today's issue of the Federal Register.

ADDRESSES: Forward comments to the Office of the Solicitor, Federal Labor Relations Authority, 500 C Street, SW., Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Paul D. Miller, Inspector General, FLRA, 500 C Street, SW., Washington, DC 20424, (202) 382–0002.

SUPPLEMENTARY INFORMATION: As required by U.S.C. 552a(e)(4) and (11), the FLRA is notifying the public of the establishment of a new system of records in the FLRA's Office of the Inspector General (OIG). This system is being established as part of the formal creation of an OIG within the FLRA by action dated March 24, 1989, and the appointment of the FLRA's Inspector General on September 25, 1989, under the authority of the 1988 amendments to the Inspector General Act of 1978. *See* Public Law No. 100–504, amending Public Law No. 95–452; 5 U.S.C. app. at 1184 (1988). Among the OIG's statutory duties are the prevention and detection of fraud, waste, and abuse relating to the agency's programs and operations, through the conduct of audits and investigations and the preparation of reports to the agency's Chairman and to Congress.

The system of records being established consists of investigatory files compiled and maintained by the OIG. Due to the law enforcement nature of these records, the proposed system is exempt from certain provisions of the Privacy Act, including disclosure to individuals who are subjects of records in system. *See* 5 U.S.C. 552a(j)(2) and (k)(2). The exempt status of the system is the subject of a companion notice of proposed rulemaking to amend the FLRA's Privacy Act regulations, 5 CFR part 2412. That notice is published elsewhere in today's issue of the Federal Register. Pursuant to 5 U.S.C. 552a(r) and OMB Circular No. A–130, the FLRA has submitted its report on the proposed establishment of this system of records to both Houses of Congress and to OMB.

Accordingly, the FLRA proposes to establish the following system of records:

FLRA/OIG–1

SYSTEM NAME:

FLRA/OIG–1—Office of the Inspector General Investigative Files.

SECURITY CLASSIFICATION: NOT APPLICABLE

SYSTEM LOCATION:

Office of the Inspector General, Federal Labor Relations Authority, 500 C Street, SW., Washington, DC 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of OIG investigations relating to the programs and operations of the Federal Labor Relations Authority. Subject individuals include, but are not limited to, current and former employees; contractors, subcontractors, their agents or employees; and others whose actions affect the FLRA, its programs and operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits; documents, records, or copies obtained during the investigation; interview notes, investigative notes, staff working papers, draft materials, and other

documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, section 4.

PURPOSE:

To conduct and document investigations by the OIG to determine the existence of allegations or suspicions of illegal acts or violations affecting the FLRA programs and operations. In the course of investigations, to enable the OIG to obtain assistance from other agencies or entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) To the appropriate Federal, State, local, or foreign agency responsible for investigating or prosecuting a violation or for enforcing or implementing a statute, rule, regulation, or order, where the information may indicate a violation of law or regulation.

(b) Where such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, and needs to evaluate the individual's qualifications, suitability, and loyalty to the United States Government, or

(b) Where such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, and needs to evaluate the individual's qualifications, suitability, and loyalty to the United States Government, or

(c) To the Department of Justice or the Office of the Solicitor of the Federal Labor Relations Authority and for disclosure by such parties,

(a) To the extent relevant and necessary in connection with litigation in proceedings before a court or other adjudicative body, where the government is a party to or has an

a unique control number assigned to each investigation.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in lockable rooms. Access is restricted to individuals whose duties require access to the records. File cabinets and rooms are

Dated: September 28, 1990.

Solly Thomas,

Executive Director.

[FR Doc. 90-23230 Filed 10-1-90; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL MARITIME COMMISSION

Parties: Port of Portland (Port); Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen).

Synopsis: The Agreement amends the parties' basic agreement to provide for: (1) Evergreen to extend its terminal use agreement with the Port of one year; and (2) the per-container rate to increase by 2.5 percent effective October 1, 1990.

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documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, Pub. L. No. 95–452, as amended by the Inspector General Act Amendments of 1988, Pub. L. No. 100–504, 5 U.S.C. app. at 1184 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosure generally permitted under 5 U.S.C. 552a(b), these records or information in these records may specifically be disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified herein shall be construed to limit or waive any other routine use specified herein.

(1) To other agencies, offices, establishments, and authorities, whether federal, state, local, foreign, or self-regulatory (including, but not limited to, organizations such as professional associations or licensing boards), authorized or with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information,

(a) Indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, or

(b) Indicates a violation or potential violation of a professional, licensing, or similar regulation, rule or order, or otherwise reflects on the qualifications or fitness of an individual licensed or seeking to be licensed;

(2) To any source, private or governmental, to the extent necessary to secure from such source information relevant to and sought in furtherance of a legitimate investigation or audit of the OIG;

(3) To agencies, offices, or establishments of the executive, legislative, or judicial branches of federal, state, or local government;

(a) Where such agency, office, or establishment has an interest in the individual for employment purposes, including a security clearance or determination as to access to classified information or restricted areas, and needs to evaluate the individual's qualifications, suitability, and loyalty to the United States Government, or

(b) Where such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or

(c) Where the records or information in those records are relevant and necessary to a decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning an employee, or

(d) Where disclosure is requested in connection with the award of a contract or other determination relating to a government procurement, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter, including, but not limited to, disclosure to any Federal agency responsible for considering suspension or debarment actions where such record would be germane to a determination of the propriety or necessity of such action, or disclosure to the United States General Accounting Office, the General Services Administration Board of Contract Appeals, or any other Federal contract board of appeals in cases relating to an agency procurement;

(4) To the Office of Personnel Management, the Office of Government Ethics, the Merit Systems Protection Board, the Office of the Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel, of records or portions thereof relevant and necessary to carrying out their authorized functions, such as, but not limited to, rendering advice requested by the OIG, investigations of alleged or prohibited personnel practices (including unfair labor or discriminatory practices), appeals before official agencies, offices, panels, boards, or courts, and authorized studies or reviews of civil service or merit systems or affirmative action programs;

(5) To independent auditors or other private firms with which the Office of Inspector General has contracted to carry out an independent audit or investigation, or to analyze, collate, aggregate or otherwise refine data collected in the system of records, subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records;

(6) To the Department of Justice or the Office of the Solicitor of the Federal Labor Relations Authority and for disclosure by such parties,

(a) To the extent relevant and necessary in connection with litigation in proceedings before a court or other adjudicative body, where the government is a party to or has an interest in the litigation, and the litigation is likely to affect the agency or any component thereof, including where the agency, or an agency component, or an agency official or employee in his or her official capacity, or an individual agency official or employee whom the Department of Justice has agreed to represent, is a defendant, or

(b) For purposes of obtaining advice concerning the accessibility of a record or information under the Privacy Act or the Freedom of Information Act;

(7) To the National Archives and Records Administration for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

(8) To a congressional office from the record of a subject individual in response to an inquiry from the congressional office made at the request of that individual, but only to the extent that the record would be legally accessible to that individual;

(9) To any direct recipient of federal funds, such as a contractor, where such record reflects serious inadequacies with a recipient's personnel and disclosure of the record is for purposes of permitting a recipient to take corrective action beneficial to the government;

(10) To debt collection contractors for the purpose of collecting debts owed to the government as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718; or

(11) To a grand jury agent pursuant either to a federal or state grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

The OIG Investigative File consist of paper records maintained in file folders and data maintained on computer diskettes. The folders and diskettes are stored in file cabinets in the OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by

a unique control number assigned to each investigation.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in lockable rooms. Access is restricted to individuals whose duties require access to the records. File cabinets and rooms are locked during non-duty hours.

RETENTION AND DISPOSAL:

The OIG Investigative Files are kept indefinitely.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Federal Labor Relations Authority, 500 C Street, SW., Washington, DC 20424

NOTIFICATION PROCEDURE:

By mailing or delivering a written request bearing the individual's name, return address, and signature, addressed as follows: Privacy Act Request, Office of the Solicitor, Federal Labor Relations Authority, 500 C Street, SW., Washington, DC 20424

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Employees or other individuals on whom the record is maintained, non-target witnesses, FLRA and non-FLRA records, to the extent necessary to carry out OIG investigations authorized by the Inspector General Act of 1978, as amended, 5 U.S.C. app. at 1184 (1988).

SYSTEM(S) EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), to the extent the system of records relates in any way to the enforcement of criminal laws.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f), to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2). These exemptions are set forth in the Authority's Privacy Act regulations, 5 CFR part 2412, as amended; see 5 CFR 2412.16.

Dated: September 26, 1990.

Solly Thomas,

Executive Director.

[FR Doc. 90-23236 Filed 10-1-90; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200420.

Title: City of Los Angeles/Nippon Yusen Kaisha Terminal Agreement.

Parties: City of Los Angeles (City), Nippon Yusen Kaisha (NYK).

Synopsis: The Agreement provides for the non-exclusive preferential assignment of Berths 211–215 and approximately 100.11 acres, as well as the construction of improvements, to be used for the docking/mooring of vessels and the handling, loading and unloading of cargo. The Agreement provides for certain minimum annual guarantees to commence upon completion of the construction of the terminal facility and provides for revenue sharing of tariff charges for dockage and wharfage. NYK agrees to move all of its Southern California container cargo through the Port of Los Angeles and also provides the City a two million revenue ton per year O.C.P. guarantee. In the first year of operation, NYK is entitled to an adjustable compensation credit of $3,500,000 in consideration of, among other things, NYK providing four gantry cranes at the premises. The Agreement's term expires 25 years after the terminal delivery date (expected to be August 20, 1991), but may be renewed for an additional 10 years.

Agreement No.: 224–200158–001.

Title: Port of Portland/Evergreen Marine Corporation (Taiwan) Ltd. Terminal Agreement.

Parties: Port of Portland (Port); Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen).

Synopsis: The Agreement amends the parties' basic agreement to provide for: (1) Evergreen to extend its terminal use agreement with the Port of one year; and (2) the per-container rate to increase by 2.5 percent effective October 1, 1990.

By Order of the Federal Maritime Commission.

Dated: September 26, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-23185 Filed 10-1-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 28, 1990.

Background

Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (title 44 U.S.C. chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Request for OMB Approval To Extend Without Revision

Report title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

Agency form number: FFIEC 019.

OMB docket number: 7100-0213.

Frequency: Quarterly.

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Reporters: U.S. branches and agencies of foreign banks.

Annual reporting hours: 14,400.

Estimated average hours per response: 12 hours.

Estimated number of respondents: 300. Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 3105, 3108 for the Board of

December 19, 1989, added a new title IX to the Public Health Service Act (the Act) which established the Agency for Health Care Policy and Research (the Agency) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act established, within the Agency, the Office of the

3. Urinary Incontinence in the Adult
4. Prediction, Prevention and Early Treatment of Pressure Sores in Adults
5. Delivery of Comprehensive Care in Sickle Cell Disease
6. Pain Management
7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting

5600 Fishers Lane, Rockville, MD 20857, Phone 301–443–8754, Fax 301–443–7474.

Meetings on the other topics will be held in the near future and will also be announced in the Federal Register.

Dated: September 26, 1990.

J. Jarrett Clinton,

Assistant Surgeon General, Acting Administrator.

Following a day and a half of presentations by experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and write a draft statement in response to the following questions:

—What is the most accurate, cost-effective method of diagnosing hyperparathyroidism?

Update on Activities of the Reproductive and Developmental Toxicology Program Review Subcommittee

Symposium Report—Mouse Pulmonary Carcinogenesis

2:20 p.m.–3:20 p.m.—Review of Chemicals Nominated for NTP Studies. The nominations of five chemicals will be reviewed. The chemicals were

Reporters: U.S. branches and agencies of foreign banks.
Annual reporting hours: 14,400.
Estimated average hours per response: 12 hours.
Estimated number of respondents: 300. Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 3105, 3106 for the Board of Governors of the Federal Reserve System; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the Federal Deposit Insurance Corporation; and the National Bank Act (12 U.S.C. 161) for the Office of the Comptroller of the Currency) and is given confidential treatment (5 U.S.C. 552(b)(8)).

All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. The data collected are used to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures.

Board of Governors of the Federal Reserve System, September 26, 1990.
William W. Wiles,
Secretary of the Board.
[FR Doc. 90-23209 Filed 10-1-90; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Urinary Incontinence in the Adult

A public meeting is being held on clinical practice guidelines for Urinary Incontinence in the Adult. The guidelines are under development by a panel of expert and health care consumers, arranged for by the Agency for Health Care Policy and Research. A Notice announcing the development of the clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28 (55 FR 35185).

The meeting to address guidelines for Urinary Incontinence in the Adult will be held on October 16, as follows: October 16, 1990, Ritz-Carlton Hotel, 8 a.m. to Noon, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act) which established the Agency for Health Care Policy and Research (the Agency) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act established, within the Agency, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Section 912 of the Act directs the Forum to arrange for the development and periodic review and updating of:

Clinically relevant guidelines that may be used by physicians, educators and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act also provides that by not later than January 1, 1991, the Administrator of the Agency shall assure the development of an initial set of guidelines, standards, performance measures, and review criteria that includes not less than 3 clinical treatments or conditions that:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency or the type of treatment provided; or
2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act lists factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management and thereby benefit a significant number of individuals;
2. Reduce clinically significant variations among providers in making diagnoses and providing treatments, or reduce significant variations in the outcomes of health care services or procedures; and
3. Reduce variations in the services and procedures utilized for diagnosis and treatment (and potentially produce savings in health care expenditures).

Based on these statutory criteria, consultation with the Health Care Financing Administration, studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics have been selected for initial guideline development:

1. Visual impairment due to Cataract in the Aging Eye
2. Diagnosis and Treatment of Benign Prostatic Hyperplasia
3. Urinary Incontinence in the Adult
4. Prediction, Prevention and Early Treatment of Pressure Sores in Adults
5. Delivery of Comprehensive Care in Sickle Cell Disease
6. Pain Management
7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting

To meet the requirement to assure the development of initial guidelines by January 1991, the Forum has arranged for panels of experts in the above listed topics and consumers who will develop the specific guidelines. Panel responsibilities include assessment of the available scientific evidence and clinical consensus and determination of the scope of the guideline.

In addition to the solicitation of relevant written material in the above-referenced Federal Register Notice published on August 28 (55 FR 35185), a series of public meetings is being arranged to provide an opportunity for interested parties to provide relevant information and comments concerning the particular guidelines under development.

Arrangements for October 16 Public Meeting on Urinary Incontinence in the Adult

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement. The Office of the Forum for Quality and Effectiveness in Health Care is making the administrative arrangements for this public meeting on behalf of the panel. Attendees must register with the Forum at the address set out below by October 9 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information should also submit copies of these to the Forum by October 9. If more requests to make oral statements are received than can be accommodated between 8 AM–Noon on October 16, the co-chair persons will allocate speaking time in a manner which ensures, to the extent possible, that the views of health care professionals and providers, health care consumers, and product and pharmaceutical manufacturers are all represented. Attendees who cannot be allocated speaking time because of time constraints may be assured that their written comments will be considered by the panel in developing the guidelines. Stephen H. King, M.D., Director, Forum for Quality & Effectiveness in Health Care, Agency for Health Care Policy & Research, Parklawn Building, rm 18A46, 5600 Fishers Lane, Rockville, MD 20857, Phone 301-443-5754, Fax 301-443-7474.

Meetings on the other topics will be held in the near future and will also be announced in the **Federal Register**.

Dated: September 26, 1990.
J. Jarrett Clinton,
Assistant Surgeon General, Acting Administrator.
[FR Doc. 90-23261 Filed 10-1-90; 8:45 am]
BILLING CODE 4160-90-M

National Institutes of Health

Consensus Development Conference On Diagnosis and Management of Asymptomatic Primary Hyperparathyroidism

Notice is hereby given of the NIH Consensus Development Conference on "Diagnosis and Management of Asymptomatic Primary Hyperparathyroidism" which will be held on October 29–31, 1990 in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute of Diabetes and Digestive and Kidney Diseases and the NIH Office of Medical Applications Research.

Hyperparathyroidism is increasingly being recognized in asymptomatic patients as a result of widespread use of multiphasic screening tests that lead to detection of hypercalcemia. Because the disease is now known to be more common than previously appreciated, with two new cases occurring per thousand women over 60 years of age per year, primary care physicians as well as endocrinologists are increasingly interested in the correct diagnosis and proper management of patients with hyperparathyroidism.

Physicians are often uncertain about the management of patients with subtle or absent signs and symptoms and a clear biochemical diagnosis of hyperparathyroidism. Especially difficult are decisions about indications for surgery and how patients should be monitored to detect silent organ damage, particularly progressive bone loss. Data are now available on the natural history of asymptomatic hyperparathyroidism, but controversy exists about the interpretation of this information and its implications for patient management.

This conference will bring together endocrinologists, surgeons, radiologists, epidemiologists, health care providers and the public to examine issues related to the diagnosis and management of asymptomatic primary hyperparathyroidism.

Following a day and a half of presentations by experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and write a draft statement in response to the following questions:

—What is the most accurate, cost-effective method of diagnosing hyperparathyroidism?
—Are there patients with asymptomatic hyperparathyroidism who can safely be followed? Should they be?
—If not operated on, how should asymptomatic patients be monitored and managed?
—What are the indications for surgery in patients with asymptomatic hyperparathyroidism?
—What is the role of gland localization technology in management of patients with asymptomatic hyperparathyroidism?
—What research should be done to clarify issues in diagnosis and management of hyperparathyroidism?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Judy Corbett, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 468-6555.

Dated September 24, 1990.
William Raub,
Acting Director, NIH.
[FR Doc. 90-23201 Filed 10-1-90; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program, Board of Scientific Counselors' Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina, on October 15 and 16, 1990.

The meeting will begin at 1:30 p.m. on October and will be open to the public from 1:30 p.m. to 6 p.m. The preliminary agenda topics with approximate times are as follows:

1:30 p.m.–3:20 p.m.:
Update on Activities of the Technical Reports Review Subcommittee
Update on Activities of the Reproductive and Developmental Toxicology Program Review Subcommittee
Symposium Report—Mouse Pulmonary Carcinogenesis

2:20 p.m.–3:20 p.m.—Review of Chemicals Nominated for NTP Studies.—The nominations of five chemicals will be reviewed. The chemicals were evaluated by the NTP Chemical Evaluation Committee on September 12, 1990, and are (with CAS Nos. in parentheses): (1) Dichlorodiphenylsulfone (80-07-9); (2) Dicyclopentadiene (77-73-6); (3) Methylene Blue (61-73-4, 7220-79-3); (4) Phosphine (7803-51-2); and (5) Propylene Glycol T-Butyl Ether (57018-52-2).

3:45 p.m.–4:15 p.m.:
Concept Reviews
A. Investigation of Molecular Mechanisms of Chemical Carcinogenesis in Mammalian Cell Systems;
B. Immunotoxicity of Workplace Xenobiotics in Humans;
C. Studies of Chemical Disposition in Mammals

4:15 p.m.–5 p.m.
NTP Quality Control and Quality Assurance Programs—Long-term Animal Studies

The meeting on October 16 will be open to the public from 8:30 a.m. until adjournment. The preliminary agenda topics with approximate times are as follows:

8:30 a.m.–8:45 a.m.:
Report of the Director, NTP

8:45 a.m.–11:30 a.m.:
Program on Cell Proliferation in Liver and Forestomach Carcinogenesis

11:30 a.m.–12 Noon:
Program on Toxicity and Carcinogenesis

1 p.m.–4:30 p.m.:
Program on Toxicity and Carcinogenesis (cont'd.)

Public Comments—Persons wanting to make remarks from the floor during time allowed for public comments must notify the Executive Secretary by telephone or by mail no later than October 10, 1990, and provide a copy of any written remarks by October 12, 1990. Oral presentation should supplement written statements and will be restricted to five minutes.

The Executive Secretary, Dr. Larry G. Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541-3971, FTS 629-3971, will have available a roster of Board members and other program information prior to the meeting and summary minutes subsequent to the meeting.

Dated: September 26, 1990.
David P. Rall, M.D., Ph.D.
Director, National Toxicology Program.
[FR Doc. 90-23202 Filed 10-1-90; 8:45 am]
BILLING CODE 4140-01-M

National Toxicology Program, Availability of Technical Report on Toxicology and Carcinogenesis

comments about this Technical Report should be directed to Dr. Irwin at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3340.

Copies of Toxicology and Carcinogenesis Studies of Benzofuran in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 370) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233,

stipulations. The goal of this alternative is to change present management direction so that identified surface resource values are protected in a manner that gives priority to the surface resource.

Alternative C

Alternative C, the No Leasing Alternative, places primary emphasis on

FOR FURTHER INFORMATION OR COPIES OF THE DRAFT RMP/EIS, CONTACT: Brian D. Mills, RMP Team Leader, Oklahoma Resource Area, 200 NW Fifth Street, room 548, Oklahoma City, Oklahoma 73102, Telephone: (405) 231-5491 or FTS 736-5491.

Dated: September 21, 1990.
Larry L. Woodard,

ACTION: Notice of the Availability of Environmental Document Prepared for an OCS Minerals Research Cruise and Study on the Pacific OCS.

SUMMARY: The MMS, in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA),

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Dated: September 26, 1990.
David P. Rall, M.D., Ph.D.
Director, National Toxicology Program.
[FR Doc. 90-23202 Filed 10-1-90; 8:45 am]
BILLING CODE 4140-01-M

National Toxicology Program, Availability of Technical Report on Toxicology and Carcinogenesis Studies of Benzofuran

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of benzofuran, used as an intermediate in the polymerization of coumarone-indene resins found in various corrosion-resistant coatings such as paints and varnishes, in water-resistant coatings for paper products and fabrics, and in adhesives approved for use in food containers.

Toxicology and carcinogenesis studies were conducted by administering to groups of 50 male rats 0, 30, or 60 mg/kg benzofuran in corn oil by gavage, 5 days per week for 103 weeks. Groups of 50 female rats were administered 0, 60, or 120 mg/kg on the same schedule. Groups of 50 male mice were administered 0, 60, or 120 mg/kg and groups of 50 female mice were administered 0, 120, or 240 mg/kg on the same schedule.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity [1] of benzofuran for male F344/N rats receiving doses of 30 or 60 mg/kg per day. There was some evidence of carcinogenic activity of benzofuran for female F344/N rats, based on increased incidences of tubular cell adenocarcinomas of the kidney. There was clear evidence of carcinogenic activity for male and female B6C3F1 mice, based on increased incidences of neoplasms of the liver, lung and forestomach.

Exposure to benzofuran increased the severity of nephropathy in male rats, increased the incidences of nephropathy in female rats, and induced hepatocellular metaplasia in the pancreas in female rats. Nonneoplastic lesions observed in mice exposed to benzofuran included syncytial alteration of the liver, bronchiolar epithelial hyperplasia, and epithelial hyperplasia of the forestomach.

The study scientist for these studies is Dr. Richard Irwin. Questions or comments about this Technical Report should be directed to Dr. Irwin at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3340.

Copies of Toxicology and Carcinogenesis Studies of Benzofuran in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 370) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: September 26, 1990.
David P. Rall,
Director.
[FR Doc. 90-23200 Filed 10-1-90; 8:45 am]
BILLING CODE 4140-01-M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-040-00-4410-14]

Notice of Availability and Opportunity for Public Hearings; Kansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, Oklahoma Resource Area, announces the availability of the Draft Kansas Resource Management Plan/ Environmental Impact Statement (RMP/EIS) for public review and comment. This document analyzes land use planning options for BLM-managed Federal minerals throughout the State of Kansas.

DATES: Comments on the Draft RMP/EIS will be accepted if they are submitted or postmarked no later than January 7, 1991.

ADDRESSES: Comments can be sent to: Paul Tanner, Area Manager, BLM, Oklahoma Resource Area, 200 NW Fifth Street, room 548, Oklahoma City, OK 73102, or submitted at one of the three public hearings. The public hearings conducted to receive oral and written comments on the Draft Kansas RMP/EIS will be at the following locations:

Date and time	City	Meeting location
October 30, 1990, 3 pm.	Lenexa, KS	La Quinta Inn, I-35 & 95th Street.
October 31, 1990, 3 pm.	Salina, KS	Ramada Inn, I-70 & US Hwy 81N.
November 1, 1990, 3 pm.	Pratt, KS	Seville Inn, 1400 West US Hwy 54.

Oral testimony at these hearings will be limited to 10 minutes per executive order, law, regulation or policy.

Approximately 506,000 acres would be open to leasing. Approximately 101,000 acres would be closed to fluid leasing. As with all alternatives, person. A copy of the Draft RMP/EIS will be sent to all individuals, Government agencies, and groups who have expressed interest in the Kansas planning process.

SUPPLEMENTARY INFORMATION: The Draft Kansas RMP/EIS identifies and analyzes the future options for managing the Federal mineral estate situated within Kansas administered by the BLM. The planning area for the Kansas RMP includes all BLM-managed Federal mineral estate within Kansas. The Federal mineral estate encompasses over 744,000 acres of both split estate minerals (Federal minerals under private or State surface) and minerals under other Federal surface management agencies lands. Not included are Federal minerals under the U.S. Forest Service-managed Cimarron National Grassland. The issue addressed by this RMP/EIS effort is the leasing and development of the BLM-managed Federal oil and gas mineral resource. The Draft Kansas RMP was prepared using the BLM planning regulations issued under the authority of the Federal Land Policy and Management Act of 1976. The Draft RMP provides a comprehensive framework for managing and allocating Federal minerals within Kansas over the next 15-20 years..

Three RMP alternatives have been developed to describe the different management options available to BLM for administering Federal oil and gas in Kansas. Each alternative presents a different level of oil and gas leasing stipulation application. Together with the Continuing Management Guidance each of the alternatives forms a separate, feasible land-use plan.

The three alternatives developed for the Kansas RMP are summarized below:

Alternative A

The Current Management Alternative constitutes the no action alternative. Under this alternative fluid mineral leases would continue to be issued with the standard oil and gas lease provisions as well as with surface resource protection stipulations required by other resources would continue to be managed as described in the Continuing Management Guidance and Actions section of chapter 2 of the document.

Alternative B

The Preferred Alternative, Intensive Surface Protection, places primary emphasis on protecting important environmental values through the use of additional oil and gas leasing stipulations. The goal of this alternative is to change present management direction so that identified surface resource values are protected in a manner that gives priority to the surface resource.

Alternative C

Alternative C, the No Leasing Alternative, places primary emphasis on removing Federal oil and gas from availability for development. This alternative changes management direction so that the highest priority is placed on the protection of surface resources from disturbance caused by oil and gas development.

Under Alternative B, fluid mineral leases would not be issued. Approximately 642,000 acres of Federal oil and gas would be closed to fluid leasing.

FOR FURTHER INFORMATION OR COPIES OF THE DRAFT RMP/EIS, CONTACT: Brian D. Mills, RMP Team Leader, Oklahoma Resource Area, 200 NW Fifth Street, room 548, Oklahoma City, Oklahoma 73102, Telephone: (405) 231-5491 or FTS 736-5491.

Dated: September 21, 1990.
Larry L. Woodard,
State Director.
[FR Doc. 90-23125 Filed 10-1-90; 8:45 am]
BILLING CODE 4310-84-M

Minerals Management Service

Environmental Document Prepared For Proposed Research Cruise on the Pacific Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of the Availability of Environmental Document Prepared for an OCS Minerals Research Cruise and Study on the Pacific OCS.

SUMMARY: The MMS, in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Revised Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), prepared by the MMS for the following Research Cruise proposed on the Pacific OCS.

Parties	Activity	Location	Date
Oregon Placer Minerals Technical Task Force, Oregon Department of Geology and Minerals Industries, Minerals Management Service (DOI), U.S. Geological Survey (DOI).	Research cruise to facilitate data collection and analysis for delineation of placer deposits off the Oregon coast.	Cape Blanco area, bounded by 42°46' to 42°56' N latitude and 124°34' to 124°39' W longitude. Rogue River area, bounded by 42°45' to 42°39' N latitude and 124°25' to 124°36' W longitude.	9/19/90 to 10/4/90

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about EAs and FONSIs prepared for activities on the Pacific OCS are encouraged to contact the MMS office in the Pacific OCS Region.

FOR FURTHER INFORMATION CONTACT: Regional Supervisor, Leasing and Environment, Pacific OCS Region, Minerals Management Service, 1340 West Sixth Street, Mail Stop 7300, Los Angeles, California, 90017, Telephone (213) 894-6775.

SUPPLEMENTARY INFORMATION: The MMS prepares EAs and FONSIs for proposals which relate to research and development of mineral resources on the Pacific OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant affects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: September 14, 1990.
J. Lisle Reed,
Regional Director.
[FR Doc. 90-23100 Filed 10-1-90; 8:45 am]
BILLING CODE 4310-MR-M

Outer Continental Shelf Advisory Board—Policy Committee/Scientific Committee; Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The Policy Committee and the Scientific Committee of the Outer Continental Shelf (OCS) Advisory Board will meet from Tuesday, October 30 through Thursday, November 1, at the Wilmington Hilton, 301 North Water Street, Wilmington, North Carolina (919-763-5900). Below is a schedule of meetings that will occur.

An Information Management Workshop will be held from 8 a.m. to 5 p.m. on Tuesday, October 30. The agenda for the Workshop will cover the following subjects:

- A demonstration of the new Environmental Studies Database.
- Presentations on information management systems in other Federal agencies.
- Discussion on the MMS Environmental Studies information management needs for the future.

The Policy Committee and the Scientific Committee will meet in joint session from 8:30 a.m. to 5:15 p.m. on Wednesday, October 31. The agenda will cover the following principal subjects:

- The Role of Science in the Future of the OCS Program.
- Report of the Joint Policy/Scientific Committee Subcommittee on Scientific Environmental Information and OCS Decisionmaking.
- The Role of Public Education in the OCS Program.
- Availability of Scientific Information from *Exxon Valdez* Oil Spill Damage Assessment Studies.

The Policy Committee will meet on Thursday, November 1, 8 a.m. to 4:45 p.m. The agenda will cover the following subjects:

- Energy Responses to the Gulf Crisis.
- Report of the Oil Spill Recommendations Implementation Subcommittee.
- Status Report on Mobil Exploration Plan for the Manteo Play Off North Caroline.

The Scientific Committee will meet in plenary session on Thursday, November 1 from 8 a.m. to 10 a.m. The agenda will cover the following subjects:

BEST COPY AVAILABLE

- Committee business and resolutions.
- Environmental Studies Program Status Review.

The Scientific Committee will meet in subcommittee from 10 a.m. to 5 p.m.

All of the Advisory Board meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the Scientific

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 5, 1990. Interested persons may obtain a copy of

waiver of the 60-day requirement has been requested of OMB. Therefore, please submit comments by November 1, 1990. The public, OMB, and the Congress are invited to submit any comments to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice,

contained in DOJ Order 2540.2D, dated December 20, 1977.

PURPOSE OF THE SYSTEM:

Information in the system will be used to assign, manage, and control the use of vehicle parking spaces for which the Department of Justice is responsible. Information in the system will be used

computer at the Justice Data Computer Center.

RETRIEVABILITY:

DOJ employee parking records are retrieved by employee name directly and/or by asking the system to segregate a list, by name, of those who work for a particular DOJ component.

• Committee business and resolutions.
• Environmental Studies Program Status Review.

The Scientific Committee will meet in subcommittees from 10 a.m. to 5 p.m.

All of the Advisory Board meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the Scientific Committee plenary session with lesser numbers at the subcommittee meetings.

Upon request, interested parties may make oral or written presentations to the Policy Committee. Such requests should be made no later than October 15, 1990, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 1849 C Street NW., Room 4230, Washington, DC 20240, Attention: Carolita Kallaur.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, contact Carolita Kallaur at 202-208-3504.

Minutes of the Joint Policy/Scientific Committee meeting and the Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service, Department of the Interior, 1849 C Street NW., Room 2070, Washington, DC 20240.

All inquiries concerning the Scientific Committee meeting and Subcommittee meetings should be addressed to Don Aurand, Chief, Branch of Environmental Studies. All inquiries concerning the Information Management Workshop should be addressed to: Mr. Norman Hurwitz, Branch of Environmental Studies. Their address is the Minerals Management Service, Offshore Environmental Assessment Division, Mail Stop 4310, 381 Elden Street, Herndon, Virginia 22070, telephone 703-787-1717.

Dated: September 28, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

[FR Doc. 90-23202 Filed 10-1-90; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 108X)]

Southern Railway Co.; Abandonment Exemption—in Oconee County, SC

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 0.23-mile line of railroad between mileposts Z-43.88 and Z-44.09, at Walhalla, Oconee County, SC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 1, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 12, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 22, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: F. Blair Wimbush, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 5, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 24, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-23158 Filed 10-1-90; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

[AAG/A Order No. 45-90]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Justice Management Division, Department of Justice, proposes to modify a system of records entitled "Department of Justice (DOJ) Controlled Parking Records, JUSTICE/JMD-017." Notice of the system was last published on December 11, 1987 (52 FR 47272).

The system notice has been rewritten to more fully and more accurately describe the system. Revisions include both factual and editorial changes. The most significant changes are (1) including certain former DOJ employees and other Federal agency employees as individuals covered by the system and (2) adding a new routine use. The routine use will permit the disclosure of information to other Federal agencies to enable the Department of Justice, as well as other Federal agencies, to ensure fairness in agency parking programs.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system modifications. However, a waiver of the 60-day requirement has been requested of OMB. Therefore, please submit comments by November 1, 1990. The public, OMB, and the Congress are invited to submit any comments to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 529, IND Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: September 13, 1990.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/JMD-017

SYSTEM NAME:

Department of Justice (DOJ) Controlled Parking Records

SYSTEM LOCATION:

U.S. Department of Justice; 10th Street and Constitution Avenue, NW., Washington, DC 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOJ employees and other Federal agency employees who have applied, and are either participants or appear on a "wait list," for vehicle parking space which is assigned and controlled by the Department of Justice, per Department of Justice Order 2340.2D, dated December 20, 1977. The system also covers former DOJ employees who participated in the parking program during their employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper records including DOJ car/van pool space applications and written requests for executive, unusual and handicapped parking assignments. Computer records include data from the employee applications and/or from personnel records. Data from personnel records may include any data needed to process an application for parking—such as that needed to verify employment e.g., Federal service computation date, organization code, or that needed to identify parking assignments that are no longer valid, e.g., separation date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 40 U.S.C. 471 *et seq.*; Executive Order 12191; and Federal Property Management Regulations at 41 CFR 101-20. Operating procedures are contained in DOJ Order 2540.2D, dated December 20, 1977.

PURPOSE OF THE SYSTEM:

Information in the system will be used to assign, manage, and control the use of vehicle parking spaces for which the Department of Justice is responsible. Information in the system will be used also to verify the validity of DOJ parking assignments and, similarly, to assist other Federal agencies in verifying the accuracy and fairness of their parking assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records or information may be disclosed as is necessary to respond to congressional inquiries on behalf of constituents.

Records may be disclosed to the National Archives and Records Administration and the to the General Services Administration in records management inspections conducted under the authority of Title 44 U.S.C. 2904 and 2906.

(1) DOJ may provide an affirmative, negative or "non-DOJ employee" response to a Federal agency which inquires as to whether or not individuals who are listed as DOJ employee participants in that agency's parking program are also listed as participants in the DOJ parking program; (2) DOJ may provide to any Federal agency either a single employee name or a list of that agency's employees who are participants in the DOJ parking program in order to elicit from that agency an affirmative, negative, or "non-employee" response as to whether the same individual(s) are listed as employee participants in that agency's parking program. Because parking spaces may be assigned according to a variety of established priorities among Federal agencies and, in some instances, according to specific criteria, e.g., carpools with the greatest number of participants (except in a tie), disclosure would enable another Federal agency (in the first instance) and DOJ (in the second instance) to review the validity of parking space assignments, identify and take appropriate action with respect to those who violate parking assignment policies (as set forth in published agency operating procedures and policies), and thus allocate spaces fairly.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a locked file cabinet and on the IBM main frame computer at the Justice Data Computer Center.

RETRIEVABILITY:

DOJ employee parking records are retrieved by employee name directly and/or by asking the system to segregate a list, by name, of those who work for a particular DOJ component. Former DOJ employee names are retrieved by asking the system to segregate a list, by name, of those parking participants who have separated from employment with DOJ. Other Federal agency employee names are retrieved by asking the system to segregate a list, by name, of those parking participants who are employees of a particular Federal agency.

SAFEGUARDS:

Records are in a locked room during non-duty hours. In addition, paper records are kept in a locked filing cabinet; and the computer is key-locked and has password protection. Information is disseminated to those employees who have a need-to-know to perform their duties.

RETENTION AND DISPOSAL:

Parking assignments are revalidated annually. Paper and automated parking records are retained for the duration of an individual's parking assignment and disposed of in accordance with General Records Schedule, 36 CFR 1228.22.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Property Management Services, Facilities and Administrative Services Staff, Information and Administrative Services, Justice Management Division, U.S. Department of Justice, 10th Street and Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURES:

Address requests to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Address requests to the system manager.

RECORD SOURCE CATEGORIES:

Employee applications; personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

[FR Doc. 90-23191 Filed 10-1-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 12, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of September 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner	Union/workers	Location	Date received	Date of petition	Petition No.	Articles produced
Latrobe Steel Co.	United Steelworkers of America	Latrobe, PA	09/24/90	09/21/90	TA-W-24,643	Stainless steel bar.
White Consolidated Industries, Inc.	United Steelworkers of America	Mansfield, OH	09/24/90	09/21/90	TA-W-24,657	Refrigerators.
Philips Manufacturing Co., Inc.	Workers	Newark, NJ	09/24/90	09/21/90	TA-W-24,658	Electronic components.
NJE Corp.	Workers	Dayton, NJ	09/24/90	09/21/90	TA-W-24,660	Electronic components.
Endicott Johnson Corp.	Workers	Forest City, NY	09/24/90	09/21/90	TA-W-24,637	Footwear.
Colonial Corp/Monroe Industries	Workers	Tellico Plains, TN	09/24/90	09/21/90	TA-W-24,631	Men's and boy's pants.
George Harris Oil Co.	Workers	Abilene, TX	09/24/90	09/21/90	TA-W-24,625	Oil and gas.
J. Schoenmann, Inc.	Workers	Hackensack, NJ	09/24/90	09/21/90	TA-W-24,641	Men's and boy's clothing.

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24,643; Latrobe Steel Co., Latrobe, PA
TA-W-24,657; White Consolidated Industries, Inc., Mansfield, OH
TA-W-24,658; Philips Manufacturing Co., Inc., Newark, NJ
TA-W-24,660; NJE Corp., Dayton, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24,637; Endicott Johnson Corp., Forest City, NY

A certification was issued covering all workers separated on or after July 7, 1989.

TA-W-24,631; Colonial Corp/Monroe Industries, Tellico Plains, TN

A certification was issued covering all workers separated on or after June 25, 1989.

A certification was issued covering all workers separated on or after August 1, 1990.

TA-W-24,625; George Harris Oil Co., Abilene, TX

A certification was issued covering all workers separated on or after September 9, 1989.

TA-W-24,641; J. Schoenmann, Inc., Hackensack, NJ

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DEPARTMENT OF LABOR

Employment and Training Administration

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The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 12, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 12, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 17th day of September 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Erico Fastening Systems (IUE)	Moorestown, NJ	9/17/90	9/05/90	24,846	Fasteners.
Future Logging (Company)	Springfield, OR	9/17/90	8/30/90	24,847	Logging.
General Motors SPO (UAW)	N Brunswick, NJ	9/17/90	8/30/90	24,848	Auto Parts.
Goody Products, Inc. (Workers)	Kearney, NJ	9/17/90	8/03/90	24,849	Hair Accessories.
Harbor Pallet (Workers)	Hoquium, WA	9/17/90	8/31/90	24,850	Shingles & Shakes.
Joseph Love, Inc. (Workers)	New York, NY	9/17/90	9/06/90	24,851	Dresses.
Joseph Love, Inc. (Workers)	College Pt., NY	9/17/90	9/06/90	24,852	Dresses.
Koret of California, Inc. Plant #9 (ILGWU)	San Francisco, CA	9/17/90	9/05/90	24,853	Sportswear.
Koret of California, Inc. Plant #10 (ILGWU)	San Francisco, CA	9/17/90	9/05/90	24,854	Sportswear.
Koret of California, Inc. Howard Plant (ILGWU)	San Francisco, CA	9/17/90	9/05/90	24,855	Sportswear.
Land & Marine Rental Co./Tesoro Petroleum (Workers).	Vernal, UT	9/17/90	9/06/90	24,856	Oilfield Equipment.
Magnetic Metals Corp. (IUE)	Camden, NJ	9/17/90	9/06/90	24,857	Magnetic Lamination.
National Starch & Chemical Co. (GC)	Plainfield, NJ	9/17/90	9/10/90	24,858	Liquid Adhesives.
Nevasky Co. (Workers)	Philipsburg, PA	9/17/90	8/29/90	24,859	Suits & Coats.
Oxford of Commerce (Workers)	Commerce, GA	9/17/90	9/10/90	24,860	Slacks.
Petren Drilling Corp. (Company)	Englewood, CO	9/17/90	8/30/90	24,861	Oil & Gas
Petren Drilling Corp. (Company)	Canadian, TX	9/17/90	8/30/90	24,862	Oil & Gas.
RCA Business Telephone Systems	Mt. Laurel, NJ	9/17/90	8/24/90	24,863	Telephone Systems.
Seismograph Service Corp. (Company)	Tulsa OK	9/17/90	9/11/90	24,864	Oil & Gas.
Sherwood Medical Co.	San Diego, CA	9/17/90	8/31/90	24,865	Medical Devices.
Superior Combustion Industries, Inc.	Emmaus, PA	9/17/90	9/06/90	24,866	Boiler & Parts.
Wonderknit/Scoreboard (Workers)	Galax, VA	9/17/90	9/04/90	24,867	Mens' Shirts.

[FR Doc. 90-23273 Filed 10-1-90; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24, 605; (The) Eastern Co., Alloy Foundries Div., Naugatuck, CT

TA-W-24, 607; Holophane Co., Inc., Edison, NJ

TA-W-24, 602; Crane Midwest, St. Louis, MO

TA-W-24, 619; Reichert Shake & Fencing, Inc., Toledo, WA

TA-W-24, 604; Crescent Brick Co., Altoona, PA

TA-W-24, 581; Premier Thread Co., Inc., Lincoln, RI

TA-W-24, 651; Standard Gauge, Poughkeepsie, NY

TA-W-24, 612; Macgregor Sports, Inc., Fond du Lac, WI

TA-W-24, 630; Alymar Bags, Inc., Brooklyn, NY

TA-W-24, 606; Lear Siegler Seating Corp., Chesterfield, MO

TA-W-24, 621; Thermal Systems, Inc., Salt Lake City, UT

TA-W-24, 622; Thermal Systems, Inc., Denver, Co

TA-W-24, 625; Thermal Systems, Inc., Jacksonville, FL

TA-W-24, 626; Thermal Systems, Inc., Springfield, MA

TA-W-24, 643; Latrobe Steel Co., Latrobe, PA

TA-W-24, 657; White Consolidated Industries, Inc., Mansfield, OH

TA-W-24, 658; Phillips Manufacturing Co., Inc., Newark, NJ

TA-W-24, 648; NJK Corp., Dayton, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24, 596; (The) Central Steel Drum Co., Newark, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24, 593; Bessemer Processing Co., Inc., Newark, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24, 629; Allergan Pharmaceuticals, Inc., Greenville, TN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24, 645; Maxwell House Coffee Co., Hoboken, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24, 603; Cray Research, Inc., Chippewa Falls, WI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24, 588; Air Cooled Applications, Div. of American Precision, Inc., Lockport, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24, 597; Chevron U.S.A., Eastern Region, New Orleans, LA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-24, 590; Cindy-Jo, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after June 28, 1989.

TA-W-24, 600; Cooper Sportswear Manufacturing Co., Inc., Newark, NJ

A certification was issued covering all workers separated on or after June 28, 1989.

TA-W-24, 637; Endicott Johnson Corp., Forest City, NY

A certification was issued covering all workers separated on or after July 7, 1989.

TA-W-24,601; Colonial Corp/Monroe Industries, Tellico Plains, TN

A certification was issued covering all workers separated on or after June 25, 1989 and before July 31, 1990.

TA-W-24,620; Stevens Sportswear Co., Inc., Pachuta, MS

A certification was issued covering all workers separated on or after June 28, 1989.

TA-W-24,616; Niemor Contractors, Inc., Newark, NJ

A certification was issued covering all workers separated on or after June 28, 1989.

TA-W-24,609; Lee Co., Merriam, KS

A certification was issued covering all workers separated on or after July 16, 1989.

TA-W-24,599; Cleve-Tenn Industries, Inc., Newark, NJ

A certification was issued covering all workers separated on or after June 28, 1989.

TA-W-24,628; Westfield Sewing Co., Westfield, NY

A certification was issued covering all workers separated on or after June 27, 1989 and before June 30, 1990.

TA-W-24,611; Amphenol Corp., Bendix Connector Operation, Sidney, NY

A certification was issued covering all workers separated on or after January 1, 1990.

TA-W-24,614; Miller Printing Equipment Corp., Pittsburgh, PA

A certification was issued covering all workers separated on or after September 2, 1990.

TA-W-24,594; Brittain Creek Cedar, Inc., Aberdeen, WA

A certification was issued covering all workers separated on or after January 1, 1990 and before September 1, 1990.

TA-W-24,613; Marmot Mountain International, Inc., Grand Junction, CO

A certification was issued covering all workers separated on or after June 29, 1989.

TA-W-24,642; Johnson Controls, Inc., Milwaukee, WI

A certification was issued covering all workers separated on or after July 9, 1989.

TA-W-24,655; The Timberland Co., Bangor, ME

A certification was issued covering all workers separated on or after August 1, 1990.

TA-W-24,625; George Harris Oil Co., Abilene, TX

A certification was issued covering all workers separated on or after September 9, 1989.

TA-W-24,641; J. Schoeneman, Inc., Chambersburg, PA

A certification was issued covering all workers separated on or after July 6, 1989.

TA-W-24,641A; J. Schoeneman, Inc., Owens Mills, MD

A certification was issued covering all workers separated on or after July 6, 1989.

TA-W-24,641B; Wiltex Co., Wilmington, DE

A certification was issued covering all workers separated on or after July 6, 1989.

TA-W-24,633; AT&T Technology Networks Systems, Phoenix Works, Phoenix, AZ

A certification was issued covering all workers separated on or after July 6, 1989.

I hereby certify that the aforementioned determinations were issued during the month of September 1990. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: September 24, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-23274 Filed 10-1-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,505; TA-W-24,584]

Jim Gold Logging, Hoquiam, WA; Panhandle Royalty Co., Oklahoma City, OK: Adjustment Assistance

Dismissal of Applications for Reconsideration

Pursuant to 28 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of trade Adjustment Assistance for workers at the Jim Gold Logging, Hoquiam, Washington and Panhandle Royalty Company, Oklahoma City, Oklahoma. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's

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determinations. Therefore dismissal of the applications were issued.

TA-W-24,505; Jim Gold Logging, Hoquiam, Washington (September 21, 1990)

TA-W-24,584; Panhandle Royalty Company, Oklahoma City, Oklahoma (September 21, 1990)

the adoption of subpart 0 to part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart 0 sets forth the State's schedule for the adoption of Federal standards. By letter dated August 29, 1990, from

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective October 2, 1990.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania, this

operation with slightly higher enrichment and slightly extended fuel irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission

(less than one percent) in the heat per irradiated fuel cask in transit.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed changes.

The Notice of Consideration of

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate IV-1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-23253 Filed 10-1-90; 8:45 am]

BILLING CODE 7590-01-M

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determinations. Therefore dismissal of the applications were issued.

TA-W-24,505; Jim Gold Logging, Hoquiam, Washington (September 21, 1990)

TA-W-24,584; Panhandle Royalty Company, Oklahoma City, Oklahoma (September 21, 1990)

Signed at Washington, DC this 24th day of September 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-23275 Filed 10-1-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,760]

Northern Chatham Bedding Company, Rahway, NJ

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 20, 1990 in response to a worker petition which was filed on behalf of workers at Northern Chatham Bedding Company, Rahway, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 25th day of September 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-23276 Filed 10-1-90; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Maryland State Standards; Notice of Approval

1. *Background*—Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the Federal Register (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart O sets forth the State's schedule for the adoption of Federal standards. By letter dated August 29, 1990, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: 29 CFR 1910.1450, subpart Z, and appendices A and B, pertaining to Occupational Exposure to Hazardous Chemicals in Laboratories as published in the Federal Register of January 31, 1990 (55 FR 3327), and corrections to that standard published in the Federal Register of March 6, 1990 (55 FR 7967) and March 30, 1990 (55 FR 12110). This standard is contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after a public hearing on June 29, 1990. This standard was effective on September 3, 1990.

2. *Decision*—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. *Location of the Supplements for Inspection and Copying*—A copy of the standards supplements, along with the approved plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, 3535 Market Street, suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, room N-3700, Third Street and Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation*—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective October 2, 1990.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania, this 11th day of September 1990.

Linda R. Anku,

Regional Administrator.

[FR Doc. 90-23277 Filed 10-1-90; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-416]

Entergy Operations, Inc., et al. Grand Gulf Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29, issued to Entergy Operations, Inc., (the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would increase the fuel enrichment and core average burnup relating to extended fuel irradiation.

The proposed action is in accordance with the licensee's application for amendment in support of Cycle 5 reload operations dated June 8, 1990, and the criticality analysis for the Cycle 5 reload fuel submitted on April 26, 1990.

The Need for the Proposed Action

The proposed changes are needed to allow the licensee the flexibility of extending the fuel irradiation, thereby permitting operation for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the Technical Specifications (TS) for Fuel Cycle 5. The proposed revisions would permit use of fuel enrichments up to 3.80 percent U-235 and burnup levels up to 40 gigawatt days per metric ton (GWD/MT). The previous maximum fuel enrichment was 3.47 percent and burnup was 34 GWD/MT. The safety considerations associated with reactor operation with slightly higher enrichment and slightly extended fuel irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite and there is no significant increase in allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that this proposed action would result in no significant radiological impact.

With regard to potential nonradiological impacts of reactor operation with extended irradiation, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR part 20. The proposed changes will not result in a measurable change to the nonradiological plant effluents and therefore will not have any other environmental impact. The Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," which was published in the Federal Register on August 11, 1988 (53 FR 30355). This action was in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of transportation of the increases in the fuel enrichment up to 5% and irradiation limits up to 60 GWD/MT are either unchanged or may, in fact, be reduced from those summarized in Table S-4, as set forth in 10 CFR 51.52(c). Those findings are applicable to the proposed amendment for Grand Gulf Nuclear Station, Unit 1. For Grand Gulf Nuclear Station, Unit 1, the core thermal power level at which the plant is licensed to operate, 3830 megawatts, exceeds the 3800 megawatts assumed in the analysis of 10 CFR 50.52. The only change in environmental impact from that summarized in Table S-4 for this higher power is an insignificant increase (less than one percent) in the heat per irradiated fuel cask in transit.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed changes.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on July 25, 1990 (55 FR 30297). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the operation of Grand Gulf Nuclear Station, Units 1 and 2, dated September 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the licensee's submittals dated April 26, 1990, and June 8, 1990, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 27th day of September 1990.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate IV-2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-23253 Filed 10-1-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS), that were published September 27, 1989 (54 FR 39094), are renewed by this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The ACRS is a statutory group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a nuclear powar reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those pertaining to radiological safety. ACRS full Committee meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACRS Meetings

An agenda is published in the Federal Register for each full Committee meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACRS meetings, the following requirements shall apply:

(a) Persons wishing to submit written comments regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a

(f) A transcript is normally kept for certain open portions of the meeting and it will be available in the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the

Commission by Susan Hiatt, on behalf of Ohio Citizens for Responsible Energy. The Petition requested that the Commission order the immediate shutdown of the Perry Nuclear Power Plant, and pursue enforcement action against Cleveland Electric Illuminating Company based upon the assertion that the facility, from November 1989 to April

by Diablo Canyon employees, and (4) the rule's broad application to workers outside of the radiologically controlled areas and to those whose work could not create challenges to safety systems or complicate the response to off-normal conditions.

The NRC staff has concluded that the IBEW request cannot be approved and

Dated at Rockville, Maryland, this 26th day of September, 1990.

For the Nuclear Regulatory Commission.

James E. Dyer,

Acting Project Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-23252 Filed 10-1-90; 8:45 am]

1990, through the NWTRB library on a two-week loan basis. Those interested should contact Ms. Victoria Reich, NWTRB librarian (703-235-4473).

The NWTRB was established by the Nuclear Waste Policy Amendments Act (NWPAA) of 1987 (Pub. L. 100-203) to evaluate the scientific and technical validity of activities undertaken by the

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(a) Persons wishing to submit written comments regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the Federal Register notice for the individual meeting in care of the ACRS, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so at least one or two days before the meeting, if possible, or prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director of the Committee (telephone: 301/492–4516 ATTN: the Designated Federal Official specified in the Federal Register notice for the meeting) between 7:30 a.m. and 4:15 p.m., Washington, DC, time.

(d) Questions may be asked only by ACRS members, Committee consultants and staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information that may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those open sessions of the meeting when a transcript is being kept.

(f) A transcript is normally kept for certain open portions of the meeting and it will be available in the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

ACRS subcommittee meetings will also be conducted in accordance with these procedures, as appropriate. When subcommittee meetings are held at locations other than Bethesda, MD, reproduction facilities are usually not available. Accordingly, persons wishing to submit written comments regarding agenda items should provide 25 copies for use at such meetings.

Special Provisions When Proprietary Sessions are to be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Dated: September 28, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-23255 Filed 10-1-90; 8:45 am]

BILLING CODE 7590-01-M

Cleveland Electric Illuminating Co., et al., Perry Nuclear Power Plant, Unit 1; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision concerning a Petition submitted to the Commission by Susan Hiatt, on behalf of Ohio Citizens for Responsible Energy. The Petition requested that the Commission order the immediate shutdown of the Perry Nuclear Power Plant, and pursue enforcement action against Cleveland Electric Illuminating Company based upon the assertion that the facility, from November 1989 to April 6, 1990, had operated in a condition contrary to that permitted by its operating license, as defined by the plant technical specifications.

The Director, Office of Nuclear Reactor Regulation, has determined to deny the request. The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206," DD–90–06, which is available for public inspection in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room for the Perry Nuclear Power Plant located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

A copy of the Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland this 25th day of September 1990.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 90-23251 Filed 10-1-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 and 50-323]

Pacific Gas & Electric Company, Diablo Canyon Nuclear Power Plant Units 1 and 2; Denial of Exemption Request, Filed by International Brotherhood of Electrical Workers, AFL–CIO, Local 1245

The U.S. Nuclear Regulatory Commission (the Commission) has denied an exemption request by the IBEW, Local 1245, from the Commission's random drug testing program at the Diablo Canyon Nuclear Power Plant. The IBEW stated that its request is based on (1) Diablo Canyon's excellent safety record, (2) the reliability and validity of the previous fitness-for-duty policy in effect at Diablo Canyon prior to January 3, 1990, (3) the absence of evidence of drug use or alcohol abuse by Diablo Canyon employees, and (4) the rule's broad application to workers outside of the radiologically controlled areas and to those whose work could not create challenges to safety systems or complicate the response to off-normal conditions.

The NRC staff has concluded that the IBEW request cannot be approved and has, therefore, denied it. The basis for the staff's denial is that the arguments made by the IBEW are not unique to the Diablo Canyon plant. Similar arguments could be made for any operating power reactor within the Commission's jurisdiction. Further, these arguments were addressed and rejected by the Commission prior to promulgation and adoption of the fitness-for-duty regulation (see 54 FR 24468 et seq.). If the IBEW members were exempted from the provisions of 10 CFR 26.24(a)(2), there would be no logical basis not to exclude all applicable power reactor employees from the provisions of the section in question. As noted in the staff's Safety Evaluation, a recent report submitted to the Commission showed that for the period from January 1 to June 30, 1990, there were two positive random drug tests and three positive for-cause tests at Diablo Canyon. Thus, the granting of an exemption patently would not be in the public interest.

In essence, the IBEW petition requests that the Commission assume that the IBEW's arguments will ultimately be adopted by the courts (presumably through and including the United States Supreme Court) and that the provisions of 10 CFR 26.24(a)(2) should be invalidated. This is an assumption that the Commission has already considered and rejected. Granting the relief sought through an exemption would be tantamount to a finding by the Commission that 10 CFR 26.24(a)(2) should not have been included in the fitness-for-duty rule in the first place. As discussed above, there is no basis in fact or law for such a finding.

For further details with respect to this action, see the IBEW's request for an exemption dated March 13, 1990, as supplemented by letter dated May 25, 1990, and the Safety Evaluation by the Office of Nuclear Reactor Regulation relating to Denial of Exemption Request by IBEW. These documents are available at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 26th day of September, 1990.

For the Nuclear Regulatory Commission.

James E. Dyer,

Acting Project Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-23252 Filed 10-1-90; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Pursuant to the Nuclear Waste Technical Review Board's (NWTRB) authority under section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the NWTRB Quality Assurance Panel will hold its first panel meeting from 8:30 a.m.–5 p.m. on November 1, 1990, and from 8:30 a.m.–12:30 p.m. on November 2, 1990, at the NWTRB Conference room, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473. Discussions will focus on the implementation of the Department of Energy's (DOE) quality assurance program. Panel members will hear from representatives of the Nuclear Regulatory Commission (NRC), the DOE, the State of Nevada, the Environmental Protection Agency (EPA) and others.

On November 1, 1990, the NRC will discuss quality assurance program requirements. Representatives from the DOE will comment on their interpretation of the NRC's requirements, and explain the implementation of the quality assurance programs at DOE headquarters, field, and contractor offices. The State of Nevada will address its experiences pertaining to the implementation of a quality assurance program. The EPA will provide a perspective on quality assurance at another federal agency.

On November 2, 1990, the panel will hear from DOE's participant organizations on their experiences in quality assurance implementation. The organizations making presentations include the United States Geological Survey (USGS), Lawrence Livermore National Laboratory (LLNL), and Sandia National Laboratories (SNL). Briefings will be followed by discussions.

The public is welcome to participate as observers. Those who wish to attend should contact the NWTRB office, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473, on or before October 24, 1990. The meeting will be transcribed, and transcripts will be available beginning November 28, 1990, through the NWTRB library on a two-week loan basis. Those interested should contact Ms. Victoria Reich, NWTRB librarian (703–235–4473).

The NWTRB was established by the Nuclear Waste Policy Amendments Act (NWPAA) of 1987 (Pub. L. 100–203) to evaluate the scientific and technical validity of activities undertaken by the DOE in its civilian nuclear waste disposal program. The Board is charged with evaluating activities related to the packaging and transportation of high-level radioactive waste, including spent fuel. In the same law, the U.S. Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, as a possible location for a permanent underground repository for spent nuclear fuel and defense high-level waste.

For further information contact the NWTRB office at 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: October 15, 1990.

Dr. William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90-23186 Filed 10-1-90; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST)

The President's Council of Advisors on Science and Technology will meet on October 11–12, 1990. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Briefing of the Council on the current activities of Office of Science and Technology Policy.
2. Briefing of the Council on current federal activities and policies in science and technology.
3. Discussion of issues and topics for potential working group panels.
4. Discussion of composition of working groups.

Portions of the October 11–12 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of

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the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Sally Sherman (202) 395–3902, prior to 3 p.m. on October 10, 1990. Ms. Sherman is also available to provide specific information regarding time, place and agenda for the open session.

Dated: September 25, 1990.

Ms. Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 90–23340 Filed 9–28–90; 9:47 am]

BILLING CODE 3170–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash, (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

New, Proxy Interviews, File No. 270–343.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to conduct interviews of up to 150 persons or entities concerning practical application of the Commission's proxy rules under section 14 of the Securities Exchange Act of 1934. These interviews are necessary to gain a greater understanding and appreciation of the procedures adopted to comply with the proxy rules. Each interview is estimated to require one burden hour.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0104, 0287, and 0362), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 25, 1990.

[FR Doc. 90–23272 Filed 10–1–90; 8:45 a.m.]

BILLING CODE 8010–01–M

[Release No. 34–28471; File No. SR–CBOE–90–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Implementation of a Regulatory Oversight Fee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1990, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to implement a Regulatory Oversight Service Fee as described in the text of proposed Exchange Rule 2.22(a). Additions are italicized. Deletions are bracketed.

Rule 2.22 Other Fees or Charges

No change.

(a) Regulatory Oversight Service Fees. Member Organizations that are subject to the SEC Net Capital Rule and for which the Exchange has been assigned as the Designated Examining Authority ("DEA") pursuant to SEC Rule 17d–1 shall be required to pay an annual regulatory fee of $0.40 per $1,000 Gross Revenue as reported on their FOCUS Report.

(b) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

As the DEA pursuant to SEC Rule 17d–1, the Exchange has been providing regulatory oversight service to the member organizations it has been assigned for no charge. The New York Stock Exchange ("NYSE") and the National Association of Securities Dealers ("NASD") have imposed regulatory fees and assessments on their members for several years in an effort to offset the costs of regulatory oversight. The NYSE fee is $0.42 per $1,000 gross revenue from the member's FOCUS Report (NYSE Rule 129). The NASD assessments of gross income are based on transactions in state and municipal securities, over-the-counter securities and U.S. Government securities of examined members. While both the NYSE and NASD impose a minimum fee/assessment, the CBOE will not place into effect a minimum fee. The Exchange intends to use the fees to offset the direct regulatory costs incurred as a result of performing its self-regulatory obligations as to the specifically designated firms. The fee will only apply to those specific firms for which the regulatory service is provided and the Exchange will bill each such firm directly.

(2) Basis

The CBOE believes that the proposed rule change is consistent with section 6(h) of the Act, in general, and furthers the objectives of section 6(h)(4), in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 23, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 25, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23270 Filed 10–1–90; 8:45 am]

BILLING CODE 8010–01–M

[Release NO. 34–28470; File No. SR–PHLX–90–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Foreign Currency Options Trading Hours

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 27, 1990, and September 4, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 of the Act, the PHLX is submitting a proposed rule change notifying the Commission of changes in the Exchange's hours for trading of PHLX foreign currency options. Specifically, for foreign currency options trading, the proposal will allow an 18-hour trading day during eastern daylight time and a 19-hour trading day during eastern standard time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The proposed rule change was revised by Amendment 1, which was filed on September 4, 1990.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In September 1988, the Commission approved a proposed rule change modifying the hours that trading of foreign currency options may be conducted on the Exchange.[2] The rule provides flexibility for the Exchange to establish specific hours on the condition, among others, that the Exchange apprise the Commission of any changes in hours via a rule change filed pursuant to section 19(b)(3)(A) under the Act. Accordingly, the Exchange hereby notifies the Commission that commencing on September 20, 1990, trading hours of foreign currency options will be lengthened to coincide with prime afternoon business hours in Tokyo and the Far East. In addition, in order to accommodate the internal operations functions of various securities information processors, there will be a one and one-half hour intermission in trading during each trading day. Trading hours of foreign currency options will be as follows:

During Eastern Daylight Time, foreign currency options trading hours shall be:
Commence trading: 7 p.m.
Intermission: 11 p.m. to 12:30 a.m.
Commence trading: 12:30 a.m.
Close: 2:30 p.m.

During Eastern Standard Time, foreign currency options trading hours shall be:
Commence trading: 6 p.m.
Intermission: 10 p.m. to 11:30 p.m.
Commence trading: 11:30 p.m.
Close: 2:30 p.m.

The PHLX believes that by coordinating its trading hours in foreign currency options with active foreign exchange trading in both the Far Eastern and European foreign exchange markets, the PHLX will be better able to meet the exchange rate risk protection and related hedging needs of both Far Eastern and European manufacturing, banking and commercial firms. The PHLX will provide its members with adequate notice of the time change made as a result of implementation of the proposed rule change. In this regard, the PHLX has already notified foreign currency option floor participants regarding the proposed change in trading hours.

The PHLX expects the extension of its trading hours in its foreign currency options contracts to be treated merely

[2] *See* Securities Exchange Act Release No. 26067 (September 16, 1988), 53 FR 36930 (order approving File No. SR–PHLX–88–25).

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as an extension of the existing trading day. Since the initiation of extended foreign currency option trading hours in 1988, each trading day has been deemed to commence at 6 p.m. Eastern Standard Time or 7 p.m. Eastern Daylight Time and continue until 2:30 p.m. the following afternoon. The initiation of further expanded trading hours would not alter this arrangement. For example, open interest and volume will continue to be calculated at the end of the trading day reflecting activity for the entire trading day. Margin requirements will continue to be based upon a calculation of positions created throughout the entire trading day. The Exchange's real-time trade comparison system will be utilized throughout all trading hours and augmented computer processing for the expanded trading hours transactions will be initiated by the Exchange and the Options Clearing Corporation ("OCC"), respectively. In this regard, the PHLX will assign market surveillance and operations staff personnel to cover the expanded trading hours. The PHLX does not believe it will be necessary at the initiation of the expanded trading day to amend existing capital and/or position limit rules. The Exchange believes that existing foreign currency options traders and brokers should provide sufficient market participation and corresponding liquidity during the expanded trading hours.

The PHLX also notes that the inter-bank currency markets effectively operate on a twenty-four (24) hour basis. Hence, persons that establish foreign exchange positions prior to normal U.S. business hours are at risk that the underlying currency markets may move against them while the PHLX market is not yet open for trading. The expansion of the foreign currency options trading hours will provide an opportunity for market participants to protect themselves better against currency market fluctuations.

The PHLX believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote further the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–90–26 and should be submitted by October 23, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 25, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23271 Filed 10-1-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2458 & #2459]

Wisconsin (and Contiguous Counties in Minnesota); Declaration of Disaster Loan Area

Buffalo County and the contiguous counties of Eau Claire, Pepin, and Trempealeau in the State of Wisconsin and Wabasha and Winona Counties in the State of Minnesota constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred on September 9, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 23, 1990, and for economic injury until the close of business on June 24, 1991, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th fl., Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 245812 for the State of Wisconsin and 245912 for the State of Minnesota. For economic injury the numbers are 713700 for Wisconsin and 713800 for Minnesota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 24, 1990.

Sally Narey,

Acting Administrator.

[FR Doc. 90-23205 Filed 10-1-90; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is 9% percent for the fiscal quarter beginning October 1, 1990.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–1(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October–December quarter of FY 91, this rate will be 8%.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 90-23206 Filed 10-1-90; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting; New Mexico

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Albuquerque, will hold a public meeting at 9 a.m. on Friday, October 26, 1990, at the SBA Office, 625 Silver SW., suite 320, Albuquerque, New Mexico, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Tom W. Dowell, District Director, U.S. Small Business Administration, 625 Silver SW., suite 320, Albuquerque, New Mexico 87102, phone (505) 766–1902 or FTS 474–1902.

Dated: September 24, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-23208 Filed 10-1-90; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting; Texas

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Houston, will hold a public meeting at 12 noon on Tuesday, October 23, 1990, at the First City Financial Center, San Jacinto room, 13th floor, 1301 Fannin, Houston, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney W. Martin, District Director, U.S. Small Business Administration, 2525 Murworth, suite 112, Houston, Texas 77054, phone (713) 660–4409.

Dated: September 24, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-23207 Filed 10-1-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1273]

Advisory Committee to United States Section International Commission for the Conservation of Atlantic Tunas; Partially Closed Meeting

The Advisory Committee to the United States Section of the International Commission for the Conservation of Atlantic Tunas will meet on October 15,1990, at the Department of Commerce Auditorium, 14th and Constitution Avenue, NW., Washington, DC, at 9:30 a.m. This session will discuss the ICCAT billfish program, swordfish preparations and workshop results, yellowfin tuna research needs, and a review of 1990 bluefin tuna preparations. In addition, the Committee will consider a report of the bluefin tuna fishery conducted in the U.S. and Canadian Zone and estimates of Japanese harvest of tunas, billfish, swordfish, and sharks in the Atlantic U.S. Exclusive Economic Zone (EEZ). A review of the South Atlantic Fishery Management Council's Amendment I to the Swordfish Management Plan will also be discussed, as well as the U.N. General Assembly Resolution on Driftnets and related matters. The session will be open to the public.

The Advisory Committee will also meet at 9:30 a.m. on October 16, 1990. These sessions will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States' negotiating position to be taken at the Annual Meeting of the International Commission for the Conservation of Atlantic Tunas to be held in Madrid, Spain, November 12–16, 1990. The members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(d) and 5 U.S.C. 552b(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Fisheries Affairs (OES/OFA), Room 5806, U.S. Department of State, Washington, DC 20520. Mr. Hallman can be reached by telephone on (202) 647–2335.

Dated: September 17, 1990.

R. Tucker Scully,

Acting Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 90-23189 Filed 10-1-90; 8:45 a.m.]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB); Paperwork Reduction Act of 1980, as amended by Public Law 99–591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, Tn 37402; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Energy Center Feedback Form.

Frequency of Use: On occasion.

Type of Affected Public: State or local governments, non-profit institutions.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 100.

Estimated Total Annual Burden Hours: 50.

Estimated Average Burden Hours Per Response: .5.

Need For and Use of Information: The

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Energy Center Feedback Form will provide data on the effectiveness of the TVA Energy Center's educational materials, exhibits, and programs. The data will be analyzed to determine what changes, if any, are needed to meet the Energy Center's educational objectives.

Louis S. Grande,
Vice President, Information Services Senior Agency Official.

[FR Doc. 90-23231 Filed 10-1-90; 8:45 am]
BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-90-40]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 22, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No._____, 800 Independence Avenue, SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 25, 1990.

Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26294
Petitioner: Douglas Aircraft Company
Sections of the FAR affected: 14 CFR 121.358
Description of relief sought: To allow American Airlines and Delta Airlines to operate pertinent aircraft without the required windshear equipment for 9 months after the mandatory compliance date of January 2, 1991.

Docket No.: 26297
Petitioner: Fairchild Aircraft Corporation
Sections of the FAR affected: 14 CFR 91.531(a)(3)
Description of relief sought: To allow petitioner to conduct its nonrevenue SA 227 commuter category operations with a single pilot rather than the two pilots required by the regulation.

Docket No.: 26298
Petitioner: North American Airlines
Sections of the FAR affected: 14 CFR 121.356(a).
Description of relief sought: To allow petitioner an extension of the December 31, 1991, date until June 30, 1992, by which its one Boeing 757 airplane must be equipped with an approved TCAS II traffic alert and collision avoidance system.

Docket No.: 26332
Petitioner: Learjet Inc.
Sections of the FAR affected: 14 CFR 47.65
Description of relief sought: To exempt petitioner from the citizenship requirement to allow issuance of a Dealers Aircraft Registration Certificate to petitioner.

Dispositions of Petitions

Docket No.: 26136
Petitioner: Air Methods Corporation International
Sections of the FAR affected: 14 CFR 135.213(b), 135.219, and 135.225 (a)(1) and (a)(2)
Description of relief sought disposition: To allow petitioner's pilots to make instrument flight rule instrument approach procedures at airports/heliports that do not have an approved weather reporting source. Denial, September 21, 1990, Exemption No. 5239

Docket No.: 26167
Petitioner: Ameriflight, Inc.
Sections of the FAR affected: 14 CFR 135.85(a)
Description of relief sought disposition: To allow Ameriflight to transport crewmembers and mechanics of other certificate holders on its cargo flights conducted under part 135. Denial, September 21, 1990, Exemption No. 5240

Docket No.: 070CE
Petitioner: Beech Aircraft Corporation
Sections of the FAR affected: 14 CFR 23.207(c)
Description of relief sought disposition: To amend Exemption No. 5077 to permit type certification of the Beech Model B300C airplane (a cargo door version of the Model B300) with a stall warning beginning at airspeeds greater than 10 knots or 15 percent above the stalling speed. Exemption No. 5077 applies only to the Beech Model B300. Grant, September 6, 1990, Exemption No. 5077A

[FR Doc. 90-23229 Filed 10-1-90; 8:45 am]
BILLING CODE 4910-13-M

[Special Committee 142]

Radio Technical Commission for Aeronautics (RTCA); Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/MORE S) S Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463, 5 U.S.C., Appendix I), notice is hereby given for the twenty-third meeting of RTCA Special Committee 142 on Air traffic control radar beacon system/mode select (ATCRBS/MODE S) S airborne equipment held October 23-24, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, Commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of meeting agenda; (3) Review of comments to proposed change 3 (RTCA paper no. 153-90/SC142-267) to RTCA/DO-181; (4) Draft Revised Change 3 to RTCA/DO-181; (5) Other Business; (6) Date and Place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 24, 1990.

Geoffrey R. McIntyre,
Designated Officer.

[FR Doc. 90-23228 Filed 10-1-90; 8:45 am]
BILLING CODE 4910-13-M

[Special Committee 162]

Radio Technical Commission for Aeronautics (RTCA); Aviation Systems Design Guidelines for Open Systems Interconnection (OSI); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463, 5 U.S.C., Appendix I), notice is hereby given for the Thirteenth meeting of RTCA Special Committee 162 on Aviation Systems Design Guidelines For Open Systems Interconnection (OSI) held October 29-31, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, Commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of minutes of the twelfth meeting Held July 16-18, 1990, RTCA Paper No. 261-90/SC 162-95 (previously distributed); (3) Reports of Working Group Activities; (4) Reports of related activities being conducted by other organizations; (5) Preparation of 1991 Committee Work Program; (6) Working Groups meet in separate sessions; (7) Other Business; (8) Date and Place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 24, 1990.

Geoffrey R. McIntyre,
Designated Officer.

[FR Doc. 90-23227 Filed 10-1-90; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 26, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-0256
Form number: IRS Forms 941C and 941C PR
Type of review: Revision
Title: Statement of Correct Information
Description: Used by employers to correct previously reported FICA or income tax data. It may be used to support a credit or adjustment claimed on a current return for an error in a prior return period. The information is used to reconcile wages and taxes previously reported or used to support a claim for refund credit or adjustment of FICA or income tax.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated number of respondents/recordkeepers: 958,050
Estimated Burden Hours Per Respondent/Recordkeeper:
Form 941C—7 hours, 25 minutes
Form 941C PR—5 hours, 59 minutes
Frequency of response: On occasion
Estimated total reporting/recordkeeping Burden: 7,138,944 hours
Clearance officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 90-23247 Filed 10-1-90; 8:45 am]
BILLING CODE 4820-01-M

Public Information Collection Requirements Submitted to OMB for Review

September 26, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB number: 1512-0142
Form number: ATF F 2734 (5100.25)
Type of review: Extension
Title: Specific Export Bond-Distilled Spirits or Wine
Description: ATF F 2734 (5100.25) is used to ensure the payment of taxes on shipments of wine and distilled spirits. The form describes the taxable articles, the surety company, the specific conditions of the bond coverage and the persons that are accountable for tax payment.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated number of respondents: 1
Estimated burden hours per response: 1 hour
Frequency of response: On occasion
Estimated total reporting burden: 1 hour
OMB number: 1512-0492
Form number: ATF REC 5000/24
Type of review:: Extension
Title: Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents
Description: ATF Form 5000.24 is completed by persons who owe tax on distilled spirits, beer, wine, cigars, cigarettes, cigarette papers and tubes, snuff and smoking tobacco (pipe). The return is prescribed by law for the collection of these taxes. ATF uses the form to identify the taxpayer, the premises and period covered by the tax return, taxpayer's liability, and adjustments affecting the amount paid.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Small businesses or organizations
Estimated number of respondents: 506,189

Estimated burden hours per response: 1 hour
Frequency of response: On occasion
Estimated total reporting burden: 1 hour
Clearance officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

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for working sessions on October 29 and 30 and the preparation of a written report to the Secretary of the Treasury on October 31, 1990.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations

Sunshine Act Meetings

Federal Register
Vol. 55, No. 191
Tuesday, October 2, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

Tuesday, October 2
1:00 p.m.—Affirmation/Discussion and Vote (Public Meeting)

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Estimated burden hours per response: 1 hour
Frequency of response: On occasion
Estimated total reporting burden: 1 hour
Clearance officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Managemetn and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90-23248 Filed 10-1-90; 8:45 am]
BILLING CODE 4810-31-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on October 29, 30 and October 31, 1990, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for working sessions on October 29 and 30 and the preparation of a written report to the Secretary of the Treasury on October 31, 1990.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of United States Code.

Dated: September 25, 1990.

Michael E. Basham,
Acting Assistant Secretary, (Domestic Finance).
[FR Doc. 90-23256 Filed 10-1-90; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 191
Tuesday, October 2, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL SCIENCE BOARD

DATE AND TIME: October 12, 1990, 8:30 a.m., Executive Closed Session; October 12, 1990, 8:45 a.m., Closed Session; October 12, 1990, 9:30 a.m., Open Session.

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED AUGUST 16:

Friday, October 12, 1990

Executive Closed Session (8:30 a.m. to 8:45 a.m.)

1. Minutes—August 1990 Meetings.
2. NSB and NSF Nominees.
3. Future NSF Budgets.

Friday, October 12, 1990

Closed Session (8:45 a.m. to 9:30 a.m.)

4. Grants and Contracts.

Friday, October 12, 1990

Open Session (9:30 a.m. to 11:30 a.m.)

Swearing-in Ceremony for New NSB Members.

5. Proposed 1991 Award Review Exemptions.
6. Chairman's Report.
7. Minutes August 1990 Meetings.
8. Director's Report.
9. Detection of Gravtational Waves.
10. Other Business.

Thomas Ubois,
Executive Officer.
[FR Doc. 90-23421 Filed 9-28-90; 3:31 pm]
BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, October 10, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last two items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Safety Recommendations: "Most Wanted" Program.
2. Marine Accident Report: Engineroom Fire Aboard U.S. Tankship *Charleston,* Coast of South Carolina, March 7, 1989.
3. Marine Accident Report: Sinking of the U.S. Tug *Barcona* by the U.S. Navy Nuclear Attack Submarine U.S.S. *Houston,* San Pedro Channel, California, June 14, 1989.
4. Opinion and Order: Administrator v. Mardirosian, Docket SE-8746, disposition of respondent's appeal.
5. Opinion and Order: Administrator v. Friesen and Ashcraft, Dockets SE-9404 and 9401; disposition of respondent's appeals.

News Media Contact: Alan Pollock 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382-6525.

Dated: September 28, 1990.

Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 90-23430 Filed 9-28-90; 3:53 pm]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 1, 8, 15, and 22, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 1

Monday, October 1

2:00 p.m.—Briefing on Conformity of Guidance on Low Level Waste Disposal Facilities With Requirements of 10 CFR Part 61 (Public Meeting)

Tuesday, October 2

1:00 p.m.—Affirmation/Discussion and Vote (Public Meeting)
a. Petitions of Intervene and Requests for Hearing in Shoreham Operating License Amendment Proceeding

Week of October 8 (Tentative)

There are no Commission meetings scheduled for the week of October 8.

Week of October 15 (Tentative)

Monday, October 15

10:00 a.m.—Briefing on Regulatory Impact Survey Recommendations (Public Meeting)
2:00 p.m.—Briefing on Decoupling Siting Requirements From Future Designs and Update of Source Term Matters (Public Meeting)

Wednesday, October 17

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 22 (Tentative)

Thursday, October 25

10:00 a.m.—Periodic Briefing on Industry Implementation of Generic Safety Issues (Public Meeting)

Friday, October 26

10:00 a.m.—Briefing on NUMARC's Perspective of the State of the Nuclear Industry (Public Meeting)
11:30 a.m.—Affirmative/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are essentially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings, call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (303) 492-1661.

Dated: September 27, 1990.

William M. Hill, jr.,
Office of the Secretary.
[FR Doc. 90-23366 Filed 9-28-90; 12:57 pm]
BILLING CODE 7590-01-M

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Corrections

Federal Register
Vol. 55, No. 191
Tuesday, October 2, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 151

[Docket 90-023]
RIN 0579-AA30

Importation of Certain Animals, Poultry, Animal and Poultry Products, and Animal Embryos

Correction

In rule document 90-17541 beginning on page 31484 in the issue of Thursday, August 2, 1990, make the following correction:

§ 151.7 [Corrected]

On page 31562, in the third column, in amendment number 14 for § 151.7, in the first line, "§ 151.7a" should read "§ 151.7(a)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

Correction

In the notice appearing on page 38375 in the issue of Tuesday, September 18, 1990, the **Federal Register** document number in the third column, at the end of the document should read "FR Doc. 90-22006".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900796-0235]

RIN 0648-AD59

Snapper-Grouper Fishery of the South Atlantic

Correction

In proposed rule document 90-22415 beginning on page 39023 in the issue of Monday, September 24, 1990, in the third column, under **DATES**, in the second line, "October 16, 1990." should read "November 2, 1990."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-00-4212-14; IDI-6872, IDI-27435]

Termination of Recreation and Public Purposes Classification and Realty Action; Direct Sale of Public Land in Canyon County, ID

Correction

In notice document 90-22297 beginning on page 38755 in the issue of Thursday, September 20, 1990, in the third column, under **SUMMARY**, in the eighth line, "W½SW¼NE½" should read "W½SW¼NE¼".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co., (Big Rock Point Plant), Exemption

Correction

In the notice beginning on page 38422 in the issue of Tuesday, September 18, 1990, the **Federal Register** document number appearing on page 38424, in the sixth line of the second column should read "FR Doc. 90-22030".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Gaurd

46 CFR Part 91

[CGD 85-099]

RIN 2115-AC42

Navigation Bridge Viability

Correction

In rule document 90-18467 beginning on page 32244 in the issue of Wednesday, August 8, 1990, make the following correction:

§ 91.55-5 [Corrected]

On page 32248, in the second column, in § 91.55-5 the paragraph designated (1) should be designated (i).

BILLING CODE 1505-01-D

federal register

Tuesday
October 2, 1990

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, et al.
Advanced Qualification Program; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 108, 121, and 135

[Docket No. 25804, Amdt. Nos. 61-88, 108-8, 121-219, 135-37; SFAR-58]

RIN 2120-AC 85

Advanced Qualification Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR) establishes a voluntary, alternative method for the training, evaluation, certification, and qualification requirements of flight crewmembers, flight attendants, aircraft dispatchers, instructors, evaluators and other operations personnel subject to the training and qualification requirements of 14 CFR parts 121 and 135. The FAA has developed this alternative method in response to recommendations made by representatives from the government, airlines, aircrew professional organizations, and airline industry organizations. The SFAR is designed to improve aircrew performance and allows certificate holders that are subject to the training requirements of parts 121 and 135 to develop innovative training programs that incorporate the most recent advances in training methods and techniques.

EFFECTIVE DATE: October 2, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. David Catey, Air Carrier Branch, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8094.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 1989, the FAA issued Notice of Proposed Rulemaking (NPRM) 89-4 (54 FR 7670). This notice proposed to establish a voluntary, alternative method for meeting the training, evaluation, certification, and qualification requirements for flight crewmembers, flight attendants, aircraft dispatchers, instructors, evaluators and other operations personnel subject to the training and qualification requirements of 14 CFR parts 121 and 135.

Statement of the Problem

14 CFR parts 61, 63, 65, 108, 121, and 135 contain the Federal Aviation Regulations that regulate air carrier training programs and the training and qualification requirements, including applicable certification requirements, for pilots, flight instructors, check airmen and other evaluators, flight crewmembers other than pilots, aircraft dispatchers, and other operations personnel. The most detailed and rigorous training and qualification requirements are contained in subparts N and O of part 121. The last comprehensive changes to subparts N and O were made in Amendment 121-55 issued on December 22, 1969 (35 FR 84, January 3, 1970). Current requirements do not reflect recent advancements in aircraft technology or advancements in training methods and techniques. Certain regulations regarding training, checking, and testing of persons who conduct or support airline operations of advanced technology aircraft are becoming obsolete. The FAA has been accommodating air carrier training needs by issuing exemptions to current training program requirements.

Programmed hours (i.e., the hours of training prescribed in the regulation) in the current regulations are not conducive to the most efficient use of new training methods. In addition, current certification practical test requirements no longer provide for a complete evaluation of the knowledge and skills needed to operate certain new aircraft.

Of special importance is the consensus among industry and government that training should emphasize crew coordination and the management of crew resources. Traditionally, airline training and checking has been weighted toward the pilot in command (PIC) with less stringent requirements for the other crewmembers. This has led to training and checking of pilots on an individual basis, in an environment that is not crew-task oriented. Furthermore, flight crewmember training historically has focused on flying skills and systems knowledge while neglecting factors such as communication skills, coordination and decision making.

Evidence accumulated in the last decade suggests that a high percentage of air carrier incidents and accidents have been caused, at least in part, by a failure of the flightcrew to use readily available resources. National Aeronautics and Space Administration (NASA) studies which were performed over the last ten years indicate that more than 60% of fatal air carrier accidents were not directly related to mechanical failure or lack of pilot skills but rather to a breakdown in cockpit communication. These NASA studies emphasize a deficiency in present recurrent training in skills related to human factors.

The name given to these skills is Cockpit Resource Management (CRM). CRM is generally understood to be the effective use of all resources available to the crew—hardware, software, and all persons involved in aircraft operation—to achieve safe and efficient flight operations. While some airlines have developed CRM programs, certainly not all who could benefit from such programs are doing so. Many who would like to incorporate such training need guidance in developing CRM programs.

In June of 1988, the National Transportation Safety Board (NTSB) issued a Safety Recommendation (A-88-71) on the subject of CRM training. The recommendation stemmed from an NTSB accident investigation of a Northwest Airlines crash on August 16, 1987, in which 148 passengers, 6 crewmembers, and 2 people on the ground were killed.

The NTSB noted that both pilots had received single-crewmember training during their last flight simulator training and proficiency checks and that the last CRM training they had received was 3.5 hours of ground school (general) CRM training in 1983. As a result of its investigation, the NTSB recommended that all part 121 carriers:

Review initial and recurrent flightcrew training programs to ensure that they include simulator or aircraft training exercises which involve cockpit resource management and active coordination of all crewmember trainees and which will permit evaluation of crew performance and adherence to those crew coordination procedures.

History

On August 27, 1987, the then FAA Administrator addressed the chief pilots and certain executives of numerous air carriers at a meeting held in Kansas City. One of the issues discussed at the meeting focused on flight crewmember performance issues. This meeting led to the creation of a Joint Government-Industry Task Force (Joint Task Force) on flight crew performance comprised of representatives from major air carriers and air carrier associations, flight crewmember associations, commuter air carriers and regional airline associations, and government organizations.

The major substantive recommendations to the Administrator from the Training Working Group of the Joint Task Force were the following: (1) Require part 135 commuters whose airplane operations require two pilots to

comply with part 121 training, checking, qualification, and recordkeeping requirements. (2) Provide for a Special Federal Aviation Regulation (SFAR) and Advisory Circular (AC) to permit development of innovative training programs. (3) Establish a National Air Carrier Training Program Office to provide training program oversight at the national level. (4) Require seconds in command (SICs) to satisfactorily perform their duties under the supervision of check airmen during operating experience. (5) Require all training to be accomplished through a certificate holder's training program. (6) Provide for approval of training programs based on course content and training aids rather than using specific programmed hours. (7) Require Cockpit Resource Management (CRM) training and encourage greater use of Line-Oriented Flight Training (LOFT).

In response to the Joint Task Force recommendation to provide for an SFAR and AC to permit development of innovative training programs, the FAA issued a draft AC and a Notice of Proposed Rulemaking (54 FR 7670, February 22, 1989). The proposed SFAR and AC provided for a voluntary, alternative method for meeting the training, evaluation, certification, and qualification requirements in parts 61, 63, 65, 121, and 135. This voluntary, alternative method is called an "Advanced Qualification Program" (AQP). In effect, the proposed and final SFAR would allow a certificate holder to establish an AQP with training curriculums that depart from current requirements and that take advantage of the most advanced training techniques as long as its AQP meets the SFAR requirements and provides at least an equivalent means of compliance with current regulations in all categories of training and in all subject categories (e.g., windshear and emergency training). Because an approved AQP will build on the present system, it will be as safe as or an improvement on the safety level of the current system. The FAA considered all comments on the proposed SFAR and AC in developing this final rule and the accompanying AC.

Related Advisory Circulars

In addition to the AQP AC developed as part of this rulemaking a number of other Advisory Circulars are relevant and are referred to throughout this document. They are:

AC 120-51 Cockpit Resource Management Training.
AC 120-35A Line Operational Simulations.
AC 120-40 Airplane Simulator Qualification.
AC 120-45 Airplane Flight Training Devices Qualification.

Reorganization of Final Rule

As proposed, section 3 of the SFAR contained almost one-third of the text. For ease of usage, this text is dealt with in sections 3 through 6 of the final rule. Throughout the following discussion of comments, the proposed rule section is referred to when describing comments and the final rule section is referred to where appropriate.

Discussion of Comments

General

Twenty-six persons or organizations submitted comments on the proposed SFAR and the AC. Many submitted multiple comments. Comments were submitted by air carriers, air carrier associations, crewmember associations, commuter and regional airline associations, pilot training centers, equipment manufacturers, and individuals.

Virtually all of the commenters commend the FAA for taking rulemaking action that would allow for innovation in training and encourage CRM training. Most of the commenters raise specific concerns about the proposed SFAR and the draft AC. A discussion of the issues raised by commenters follows.

Task Force Recommendations

The preamble to the proposed SFAR stated that the Joint Task Force recommendations were separated into those that should be incorporated in an SFAR and those that would be incorporated in subsequent rulemaking actions. Five commenters state that the Joint Task Force recommendations were meant to be taken as a whole.

Response: The preamble statement was incorrect. The FAA chose to proceed immediately with the SFAR because the agency lacks the resources to implement all of the Joint Task Force recommendations at once. Also, information obtained from the voluntary programs implemented under the SFAR would be of value to the agency in determining the need for future changes to parts 121 and 135. The FAA will proceed with the other recommendations as resources permit.

Inclusion of Hazardous Materials and Security Training

The preamble to the proposed SFAR stated that, to avoid duplication of effort, an AQP would not be applicable to the training requirements in two specific areas, security training for crewmembers under 14 CFR 108.33 and 121.417(b)(3)(v) and 135.331(b)(3)(v) and hazardous materials training under 121.433a and 135.333. Regarding security training, the FAA stated that efforts were underway to provide an alternative training method similar to the methods proposed under the SFAR. Regarding hazardous materials training, the FAA stated that current requirements already reflected the content-based approach proposed in the SFAR for other training.

Seventeen commenters object to the exclusion of hazardous materials and security training from an AQP. Commenters state that, since current requirements regarding hazardous material and security training require a 12-calendar month cycle, if these areas of training are not included in the rule, far less economic incentive exists to establish an AQP. As one commenter states, an important feature of the SFAR is that higher quality training and appropriate safeguards will allow an increase in the time interval between training sessions beyond the 12-calendar month recurrent training currently required in these two areas. Therefore, if these areas of training are not covered under an AQP, 12-calendar month recurrent training in these areas would remain mandatory and destroy the flexibility and economic incentive for an AQP.

Response: The FAA has reconsidered the proposed exclusion and agrees with the commenters. Hazardous materials and security training will be included under an AQP. Section 108.23(b) concerning security training has been revised to allow for this. The AQP AC has been amended accordingly.

Section 108.23(b) has also been revised to allow flexibility for security training that is conducted under 121.417 or 135.331. Whenever a crewmember who is required to take recurrent security training completes the training in the calendar month before or the calendar month after the calendar month in which that training is required, he is considered to have completed the training in the calendar month in which it was required. This amendment is not related to AQP which otherwise provides the same flexibility for recurrent training. This amendment is being included to allow certificate holders the same flexibility in scheduling recurrent security training as they now have in scheduling other recurrent training under current 121.417 and 135.33.

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Planned Hours

Proposed section 3(b)(1) stated that a qualification curriculum must include "planned hours of ground instruction, flight instruction * * * and evaluation." The planned hours would replace programmed hour requirements in part 121 subpart N and, thereby, provide more flexibility while maintaining a concept of appropriate training time needed to cover specific areas of training.

Five comments were received on this subject. One commenter questions whether the term "planned hours" refers only to ground instruction or also to flight instruction. One commenter states that programmed hours should be required to guarantee a minimum level of training. Two commenters state that hourly requirements should not exist and that all training should be objective based. One commenter states that at least planned hours should be required.

Two comments were also received on a related issue. Paragraph 71 of the draft AQP AC states that if an individual is evaluated and does not pass, the individual must complete the planned hours of the curriculum. According to the comments, this appears to be a penalty rather than an effort to train to proficiency.

Response: The "planned hours" in proposed section 3(b)(1) (final rule section 5(a)) refers to both ground training and flight training. The AQP must state how many hours are planned for each type of training; however, in both cases, the training is objective based and, therefore, the number of hours needed for a particular student is flexible—it may take more or fewer hours than what is planned for that curriculum. Ground training continues until the student can show that he or she has mastered the material. Similarly, flight training continues until the student can show that he or she has progressed successfully through the curriculum and demonstrates proficiency in the knowledge and skills needed to serve in a specific crew position for a specific make, model, and series aircraft (or variant). The AQP AC has been rewritten to clarify the requirement.

In response to the related comment on paragraph 71 of the draft AC, the FAA has changed the AQP AC language (paragraph 38(h)) to remove the apparent penalty. If an individual fails a proficiency evaluation, that individual should complete additional training as needed before being administered another proficiency evaluation.

Crew and Aircraft Curriculum Requirements

The proposed SFAR would require that each AQP curriculum specify the make, model, and series aircraft (or variant) and each crewmember position or other position to be covered by the curriculum. Positions to be covered include all flight crewmember positions, instructors, and evaluators, and may include other positions, such as flight attendants, aircraft dispatchers, and other operations personnel.

Nine comments pertain to this requirement. Several commenters state that fleet specific curriculums should not apply to flight attendants and aircraft dispatchers. Several commenters state that differences between variants of a make, model, and series aircraft should be handled by a different curriculum rather than having each curriculum specific to a variant as appropriate. One commenter states that only pilot crewmembers should be included in mandatory participation, and flight engineers should be excluded, since flight engineer training events and devices are different from those for pilots. One commenter states that eliminating traditional categories of training (initial, transition, etc.) will require the same training regardless of previous experience. One commenter requests that flight attendants be included in AQPs as soon as possible. Another requests that an AQP be allowed to cover only flight attendants or aircraft dispatchers.

A related comment concerns elimination of aircraft "groups" in the AQP. This comment states that the "group" concept is still applicable to portions of the AQP AC that refer to specific category/class and powerplants.

Response: The requirement that an AQP curriculum is specific to make, model, series aircraft (or variant) and to duty positions of crewmembers is retained in the final rule as is the provision that it may apply to flight attendants, aircraft dispatchers, and other operations personnel. The curriculum must apply to all flight crewmembers, including flight engineers, in order to incorporate CRM training effectively. It could not apply only to aircraft dispatchers and flight attendants, since a main purpose of an AQP is to develop training programs that emphasize crew coordination. While the FAA agrees with comments regarding the importance of including flight attendants and aircraft dispatchers in an AQP and encourages certificate holders to do so, it is requiring that an AQP apply to flight crewmembers since CRM training for flight crewmembers is the most urgent need. Furthermore, the studies and research being done in CRM have focused primarily on cockpit communications and coordination.

All qualification and continuing qualification curriculums must be aircraft specific because of differences among make, model, and series aircraft (or variant). These differences apply to flight attendants and aircraft dispatchers as well as to flight crewmembers. An AQP establishes proficiency objectives that are aircraft and duty position specific. A certificate holder would be required to establish a separate curriculum for a variant of a make, model, or series aircraft if the FAA determines that knowledge or skills required for safe operation are significantly different and, therefore, require a certificate holder to provide additional training or other qualifications for crewmembers and dispatchers who operate the variant aircraft. For example, if an individual moves from one aircraft to another, to a variant design configuration of an aircraft make, model, and series, or from one crewmember position to another, that individual would be subject to the qualification requirements of the specific curriculum. However, an individual would not be required to repeat any common requirements of curriculums in which he or she has already achieved proficiency. The AQP would allow the certificate holder to select from a curriculum those modules for which the individual must achieve proficiency to be qualified under a specific curriculum. Hence, the concept of an aircraft- and duty position-specific curriculum incorporates traditional differences and transition training. The AQP does not require redundant training where proficiency has already been achieved.

The FAA's purpose as stated in the preamble to the proposed SFAR is to eliminate all references to aircraft groups as defined in § 121.400. The AC contains no such references.

Frequency of Training

The proposed SFAR in Section 3(c)(1) would require continuing qualification curriculums which must include a continuing qualification cycle with, initially, a 26-calendar month limit. During this continuing qualification cycle, each person qualified under an AQP must receive a balanced mix of training and evaluation in all events and subjects that were required for original qualification. The continuing qualification cycle duration may be extended by approval of the Administrator in 36-calendar month increments to a maximum cycle of 39 calendar months.

Under the proposal, each continuing qualification cycle must include recurring training sessions at a training facility for each person qualified under an AQP. The frequency of the sessions must be approved by the Administrator. Initially, the frequency could not exceed 13 months. Thereafter, upon demonstration that an extension is warranted, the Administrator could approve an extension in 3-month increments to a maximum of 26 months.

Seventeen comments were received on these proposed requirements, specifically on (1) the interval between recurring training sessions; (2) the overall duration for a continuing qualification cycle; and (3) the maximum 3-calendar month increments by which the intervals between recurring training sessions and the duration of continuing qualification cycles could be extended.

- Several commenters object to the 3-calendar month increment limit on extensions, stating that 6 calendar months would be more reasonable given the effort required to prove that an extension is warranted. Some commenters want no limit on increments for extending the intervals between recurring training sessions and the duration of continuing qualification cycles.
- Some commenters want no limits on continuing qualification cycles or the intervals between training sessions. They prefer that recurrent training be based solely on maintaining proficiency as evaluations indicate a need.
- Some commenters maintain that the 3-calendar month increment was too conservative since carriers have obtained exemptions that extended recurrent qualification steps by 6 calendar months, without any degradation in safety.
- Several commenters, including pilot and flight engineer associations, object to extending recurrent qualification limits.
- Several commenters are concerned that justifying an extension might be hard to do. These commenters are uncertain how they would show no loss of knowledge or skills. Other commenters question how air carriers could demonstrate no degradation in safety. One commenter believes that the FAA should eliminate extension provisions from the SFAR until the FAA has established rigid criteria for approving extensions.
- Specific issues concerning continuing qualification are (1) whether the requirements for recurrent training at a facility preclude home study; (2) whether new hires and new aircraft would be treated more restrictively; and (3) whether the language in proposed § 3(c)(1) should be changed from "the frequency of these recurring sessions" to "the intervals between recurring sessions."

Response: With a minor exception, the final rule retains the continuing qualification cycle duration as proposed. None of the comments raise significant issues that would warrant changes to the proposed requirements. The initial maximum limit on the duration of intervals between recurring training sessions is basically the minimum requirement in part 121 and part 135 now, including the exemptions issued for PIC proficiency checks.

However, the rule language and the AQP AC have been revised to clarify the relationship of the duration of the continuing qualification cycle and the maximum duration of the interval allowed between training sessions.

The final rule (Section 6(b)(1)) states that each continuing qualification cycle must include at least one evaluation period. During an evaluation period each person qualified under an AQP must receive at least one training session at a training facility. Also, each person qualified under an AQP must complete a proficiency evaluation as required under SFAR Section 6(b)(3), and each PIC must complete an online evaluation as required under SFAR Section 6(b)(3). An individual's proficiency evaluation may be accomplished over several training sessions if a certificate holder provides more than one training session in an evaluation period.

Section 6(c) states the duration of a continuing qualification cycle and evaluation period. Initially, a continuing qualification cycle may not exceed 26 calendar months, and the evaluation period may not exceed 13 calendar months. Increments for extending the duration and maximum limits remain as proposed.

The AQP AC has also been revised to be consistent with the SFAR and to provide guidance in structuring a continuing qualification curriculum in the interest of efficiency and safety. In accordance with the methodology for curriculum development recommended in the AQP AC, proficiency objectives to be evaluated during a cycle may be divided between critical and non-critical proficiency objectives. All critical proficiency objectives, as approved by the Administrator, would have to be evaluated within an evaluation period, while non-critical proficiency objectives could be evaluated periodically over the longer duration of the continuing qualification cycle. While this level of detail is not specified in the rule, the rule language allows for more efficient structuring of evaluation curriculum segments.

The purpose of a continuing qualification cycle is to provide flexibility with reasonable time limits. If either an evaluation period or a continuing qualification cycle is extended by 3 calendar months with approval by the Administrator, and proficiency evaluations thereafter indicate no loss of proficiency, then the extension is more efficient without any degradation in safety. If there is a loss of proficiency, then the certificate holder would resume its previous frequency for recurrent training and proficiency evaluation.

Concerns of commenters regarding justification for extension of an evaluation period or continuing qualification cycle are unfounded. Rigid criteria for approval of an extension are not necessary, since analysis of data collected from training and from evaluations required by the SFAR will provide continuous monitoring of the proficiency of the persons being trained and evaluated. No extensions will be approved unless collected data supports justifying an extension. The FAA considers the 3-month limit on extensions appropriate for careful monitoring of the effect of an extension on proficiency. Since an applicant will be continuously collecting proficiency data, the 3-month limit does not impose an unreasonable burden.

In response to specific comments: (1) The requirements for training under a continuing qualification curriculum do not preclude home study as long as home study has been approved as part of an AQP curriculum; (2) new hires and new aircraft would be treated more restrictively as indicated in the AQP AC, since neither the certificate holder nor the FAA in such cases would have a valid basis to justify extending evaluation periods or continuing qualification cycles; (3) the concept of evaluation periods corrects the terminology problem in "frequency of recurring sessions."

Data Collection and Recordkeeping

Proposed SFAR Section 4(c) would require that each qualification and continuing qualification curriculum include data collection procedures. Data collected from crewmembers, instructors, and evaluators will enable the FAA to determine whether the training and evaluations accomplish the overall objectives of the curriculum.

Acceptable guidelines for data collection are set forth in the AC. Proposed Section 9 would require that an applicant for an AQP establish and maintain records in sufficient detail to establish the training, qualification, and certification of each person qualified under an AQP. The AC specifies acceptable guidelines for establishing and maintaining such individual

program validation purpose of data collection and recordkeeping functions and to establish an acceptable approach for meeting the requirements. The AC provides guidance for validation of an AQP through approval and documentation of activities throughout the development, implementation, and continuing operation of an AQP; FAA

Response: The certificate holder is responsible for ensuring that adequate records will be established and maintained. The training center could be authorized to maintain such records under the supervision of the certificate holder. Thus, duplicate records are not required.

- *Comment*: Certificate holders

or under typical part 121 or part 135 training programs, it must maintain flight time records for applicable crewmembers in sufficient detail to show compliance with the applicable FAR.

- *Comment*: In the AQP AC, the record requirements mix personnel and scheduling records with training records. *Response*: The FAA does not

curriculum must include training and evaluations" in CRM skills. Fourteen of the comments address the subject of CRM, and while none of these commenters objects to the inclusion of CRM in an AQP, most raise questions concerning the specifics of CRM training. Five commenters object to the requirement for evaluation of CRM training. These commenters maintain

of this rulemaking. While other suggestions are valid, the FAA does not agree that specific additional requirements should be added to the SFAR. The FAA expects that as certificate holders gain more experience in conducting CRM training, some of these suggestions may be incorporated into FAA advisory material.

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Acceptable guidelines for data collection are set forth in the AC. Proposed Section 9 would require that an applicant for an AQP establish and maintain records in sufficient detail to establish the training, qualification, and certification of each person qualified under an AQP. The AC specifies acceptable guidelines for establishing and maintaining such individual records.

As proposed and in the final rule, data collection and recordkeeping are two separate functions. The data submitted to the FAA for analysis and validation must be submitted without names or other elements that would identify an individual or group of individuals. This data will be analyzed by the FAA to monitor the effectiveness of AQP training, to determine the validity of requests for extensions of training intervals and cycles, and to monitor the effectiveness of CRM training. Individual recordkeeping by certificate holders is needed to show whether or not each crewmember, aircraft dispatcher, or other operations personnel complies with the applicable requirements of the FAR and this SFAR; e.g., qualification training, qualifications, required physical examinations, flight and duty time records, and frequency of training and evaluation.

Twelve comments were received on data collection and recordkeeping. Generally these comments show concern that the burden of data collection and recordkeeping might offset any advantages of participating in an AQP.

Response: There can be no AQP without data collection and without records on individual crewmembers, aircraft dispatchers, and other operations personnel. The FAA can only evaluate the validity of a certificate holder's AQP through the collection of data. The certificate holder must collect the data and make that data accessible, without identifying individuals, to the FAA's Air Carrier Training Branch for analysis and evaluation. The individual crewmember, aircraft dispatcher, and the other operations personnel records are to be maintained by a certificate holder, because without them there would be no record of these persons' qualifications and continuing qualifications. Thus, the requirement for individual records that must be maintained under an AQP remains the same as under present § 121.683.

The data collection requirements and recordkeeping requirements (final rule Sections 7(c) and 12) are the same as those proposed; however, the AC (Chapter 9) has been rewritten in light of specific comments to clarify the overall program validation purpose of data collection and recordkeeping functions and to establish an acceptable approach for meeting the requirements. The AC provides guidance for validation of an AQP through approval and documentation of activities throughout the development, implementation, and continuing operation of an AQP; FAA analysis and evaluation of anonymous performance/proficiency data collected by the applicant; and establishment and maintenance of individual qualification records.

Specific comments relating to data collection and recordkeeping requirements and FAA responses are as follows:

• *Comment:* Data may be used in a punitive way against an airman. *Response:* The data submitted to the FAA for analysis must not be traceable to an individual. This point has been clarified in the AC.

• *Comment:* Once a program has been validated, data should be destroyed. *Response:* The FAA is not requiring that data be destroyed after validation. Since the data is not identified by individual, destruction of it after some point would be a matter of efficiency, and does not need to be regulated.

• *Comment:* Data collection requirements should provide a method for a trainee (and instructor) to show to the approving authority his or her perception of the effectiveness of an AQP. *Response:* The FAA agrees that this would be worthwhile. A certificate holder may use an anonymous questionnaire to accomplish this. The FAA is not specifically requiring this feedback method because it is only one of many methods for evaluating a program.

• *Comment*: It may be impossible to show by data collection and analysis that an AQP curriculum maintains or exceeds past levels of crewmember competency. *Response*: The FAA recognizes that raw data alone may not indicate clearly whether an AQP curriculum maintains or exceeds past levels of crew competency. However, the FAA believes that, when analyzed, the data collected by the certificate holder will indicate trends and will provide the basis for making necessary judgments about the effectiveness of an AQP program.

• *Comment*: Once a program is validated, the data requirements should be reviewed to determine if continued collection is needed. *Response*: The FAA agrees and will do so.

• *Comment*: Duplication of recordkeeping will occur if the training center and certificate holder are both required to maintain records on airmen. *Response*: The certificate holder is responsible for ensuring that adequate records will be established and maintained. The training center could be authorized to maintain such records under the supervision of the certificate holder. Thus, duplicate records are not required.

• *Comment*: Certificate holders should not be required to keep records on training center airmen. *Response*: Neither the SFAR nor the AC requires them to do so.

• *Comment*: Certificate holders who have an approved computerized recordkeeping system under part 121 should not be required to establish a separate system. *Response*: The FAA will not automatically approve any particular computerized systems under the SFAR. However, the FAA will accept automated systems provided they adequately follow AQP AC guidelines. In some cases this may require enhancement of an existing system.

• *Comment*: The FAA should state why present basic records are not sufficient. *Response*: Present basic recordkeeping requirements are not based on proficiency training and evaluation within a continuing qualification cycle. Therefore, some changes are needed. However, the AQP recordkeeping requirements are fundamentally the same as the present requirements.

• *Comment*: Only training records should be maintained, not flight time records. *Response*: The specific reference to flight time records has been deleted from the AC (paragraph 182) since a certificate holder may choose to keep flight time records in another system while maintaining currency records in the AQP recordkeeping system. Records that pertain to qualification and continuing qualification must be maintained. This includes currency records, since currency is part of continuing qualification. Flight time records are currently required in accordance with §§ 121.683 and 135.63. The AQP SFAR recordkeeping requirements do not establish new requirements for a separate recordkeeping system for certificate holders who conduct both training and qualification in accordance with the requirements of part 121 or part 135 and the requirements of the AQP SFAR. However, in such cases a certificate holder may elect to maintain a separate recordkeeping system. With respect to flight time records, regardless of whether or not a certificate holder elects to conduct its crewmember training and qualification under an AQP or under typical part 121 or part 135 training programs, it must maintain flight time records for applicable crewmembers in sufficient detail to show compliance with the applicable FAR.

• *Comment*: In the AQP AC, the record requirements mix personnel and scheduling records with training records. *Response*: The FAA does not agree that AQP AC does this. The AQP AC provides guidance for one means of compliance with AQP SFAR requirements and related FAR requirements. A certificate holder may develop an alternative means of compliance if it can show that the alternative means of compliance is equivalent to that described in published advisory material.

• *Comment*: The requirement in the draft AC that records for individuals who qualify under an AQP be maintained for 36 calendar months is too restrictive. *Response*: The AQP SFAR recordkeeping requirements do not provide for a particular retention period for these persons' individual records. Section 12 of this SFAR states, in pertinent part, that each certificate holder shall show that it will establish and maintain records in sufficient detail to establish the training, qualification and certification of each person qualified under an AQP. In addition, the AQP AC does not provide for a particular retention period for these records. The AQP AC merely provides guidance to certificate holders on how to document in these persons' individual records that they are qualified under an AQP. The 36 calendar-month records retention period in the AQP AC is merely a guideline. However, it should be noted that certificate holders who elect not to retain detailed individual records may lose some of the flexibility and efficiency that AQPs are capable of providing.

• *Comment*: Draft AQP AC paragraph 116(2) should indicate that the format of an AQP record will differ from the record of an airman who qualified for a position under a subpart N training program. *Response*: There is no reason to mention format differences in the AC. The guidance paragraph in question states only that records should "show the result and completion date of other training and qualification that permitted an individual to advance to his current assignment." (Paragraph 184(c) of final AC.) The format of these other records may or may not differ from AQP records format.

CRM

Section 4(b) of the proposed SFAR (final rule section 7(b)) states that "each curriculum must include training and evaluations" in CRM skills. Fourteen of the comments address the subject of CRM, and while none of these commenters objects to the inclusion of CRM in an AQP, most raise questions concerning the specifics of CRM training. Five commenters object to the requirement for evaluation of CRM training. These commenters maintain that objective criteria for evaluating CRM have not been established and further that CRM training is most effective in changing behavior when it is not evaluated.

Response: FAA has stated in the accompanying AQP AC nine elements that are appropriate in a CRM session. Initially, a participant in a CRM session would not be subject to a pass/fail decision. However, once data have been collected to validate the effectiveness of CRM training sessions, the FAA believes that objective criteria for evaluation can be developed. After that objective criteria is established, it will become part of qualification and continuing qualification curriculums. An evaluation of a CRM session will result in feedback to each participant and, as appropriate, additional individual or group training will be required.

One commenter provides suggestions concerning the availability of specific participant records and suggests several techniques that could be used to achieve maximum protection of individuals.

Response: While initially there will be no evidence in a person's file that could be interpreted as a failure of a CRM session, an individual's record would reflect that additional training in particular areas was considered necessary as a result of a CRM evaluation. However, once the FAA has developed objective criteria for evaluating CRM performance of an individual, the criteria will be used in determining whether an individual is qualified, including certification, and meets continuing qualification requirements. Thus, when CRM objective criteria are fully implemented, it will be possible for an individual to fail a CRM session.

Several of the commenters that generally support the inclusion of CRM training in each AQP suggest the need for regular renewal of CRM scenarios, and the need to make CRM a general requirement beyond the SFAR. Those commenters also suggest using the highest level of flight simulator for Line Operational Simulations and giving instructors and evaluators additional training in teaching and evaluating CRM and Line Operational Simulations.

Response: Imposing CRM as a general requirement would be beyond the scope of this rulemaking. While other suggestions are valid, the FAA does not agree that specific additional requirements should be added to the SFAR. The FAA expects that as certificate holders gain more experience in conducting CRM training, some of these suggestions may be incorporated into FAA advisory material.

PIC Online Evaluation

Proposed section 3(c)(4)(ii) states in part that for a PIC, "An online evaluation in an aircraft must be completed within 30 days of either side of the midpoint between recurring training sessions."

Nine comments were received on this proposed requirement. Most suggest that the provision for flexibility be based on the "calendar month before/calendar month after" concept now used generally in the FARs, since this provides greater flexibility and is easier to track under the systems already in use by most certificate holders. Several commenters also state that, as written, the proposal could require more frequent checks than under the present rules, since it requires an online evaluation at the midpoint between recurring training sessions.

Response: The FAA agrees that the "calendar month before/calendar month after" concept in the present rules could effectively be used here, and this section of the SFAR (section 6(b)(3)(ii)(A)) has been changed accordingly. This section has also been revised to clarify the FAA's intent that an online evaluation must occur at or near the midpoint of a PIC's evaluation period.

One commenter questions whether the FAA intends this requirement to replace the traditional line check requirement.

Response: The FAA's intent is that the required online evaluation would replace the line check. Because persons other than the PIC would be evaluated at the same time, the SFAR requirement is actually broader than the traditional line check.

A related issue raised by four commenters concerns section 3(c)(4)(iii), which proposed to require that during a PIC online evaluation, the second in command and flight engineer also must be evaluated. Commenters question (1) what criteria would apply to the flight engineer and SIC evaluations; (2) whether this is a new requirement; and (3) whether the evaluator would have to have a flight engineer rating in order to evaluate the flight engineer.

Response: This is a new requirement. Section 5(b)(3) of the SFAR states that evaluators must have appropriate training and evaluation to qualify a

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person to evaluate on a particular make, model, and series aircraft (or variant). AC paragraph 40(c)(2)(ii), as clarified, states that "an evaluation for an online evaluation will hold the airman certificates and ratings for all individual positions being evaluated." The specific criteria for evaluating these other crew positions during the PIC online evaluation are not provided in the AC. This criteria will be developed by the certificate holder for FAA approval as part of the continuing qualification curriculum.

Certification under an AQP

Two commenters object to the limitation stated in the preamble that initially certification under proposed SFAR section 5 would be limited to pilots who hold a commercial pilot certificate with an instrument rating. One commenter states that it understood that the SFAR would also include certification for flight engineers and aircraft dispatchers.

Response: The rule language is not limited as assumed by the commenters. The preamble language referred to by these commenters states that initially certification under an AQP will be "limited to pilots who hold a commercial pilot certificate with an instrument rating, because the FAA has not yet developed appropriate criteria to serve as a basis for obtaining a commercial pilot certificate." However, the preamble further states that, until these criteria are developed, the FAA will review any certificate holder's request for commercial pilot certification under an AQP on a case-by-case basis. The FAA will also treat requests for flight engineer and aircraft dispatcher certification under an AQP on a case by case basis.

Proposed section 5(a) allows a person enrolled in an AQP to receive the required certificates or ratings under an AQP if certain requirements are met. One requirement is that "training and evaluation of required maneuvers and procedures under the AQP must meet minimum certification and rating criteria established by the Administrator * * *"

Five commenters thought that the criteria should be established by the certificate holder and approved by the Administrator.

Response: The language of § 8 of the final rule has been changed from required maneuvers and procedures "to knowledge and skills." The revised language is more appropriate since the regulation also applies to flight engineers and aircraft dispatchers. Also section 8(a) has been clarified to show that the applicant for certification must meet minimum certification and rating criteria in parts 61, 63, and 65. The Administrator may accept substitutes for the practical test requirements of those parts, as applicable. Guidelines for developing substitutes for the practical test are set forth in chapter 4 of the AC. The operator should show that substitute practical tests provide individual proficiency equivalent to or greater than that provided by the practical tests described in parts 61, 63, and 65 of the FAR.

One commenter expresses concern that the AQP would allow a flight engineer applicant who is the holder of a commercial pilot certificate with an instrument rating to satisfy the aeronautical experience or skill requirements of part 63 under an AQP and thereby reduce the requirements for a Flight Engineer certificate.

Response: The concern expressed is not valid; any certifications that occur under an AQP will meet the aeronautical experience requirements of part 63 and performance standards equivalent to or greater than existing standards, thus ensuring that there is no reduction in safety.

Flight Simulators and Flight Training Devices

Proposed section 6 stated that a person who wishes to use a flight training device or flight simulator must request that the Administrator evaluate the flight training device or flight simulator to assign a qualification level to it. Each flight training device or flight simulator to be used in an AQP must be evaluated for a certain qualification level and also approved for its intended use in a specified AQP. Furthermore, each flight simulator or flight training device must be part of a flight simulator or flight training device continuing qualification program. Specific guidelines for flight simulator and flight training device evaluation, approval, and continued qualification are set forth in the AQP AC.

Ten commenters address the issue of flight simulators and flight training devices. Only one commenter is in favor of the requirement as proposed. Certificate holders who commented are concerned that the draft AQP AC and the proposed SFAR would mandate more restrictive flight simulator requirements than those currently in effect. In general, these commenters express confusion about the FAA's intention, particularly since the preamble to the proposed SFAR states that the advisory material on approval and evaluation of flight simulators and flight training devices will appear either in the AQP AC or in ACs being developed by the FAA. The draft AQP AC lists as guidelines for evaluation AC 120-40 and AC 120-45. One commenter requests that since the AQP AC references the other ACs, drafts of the others should be published for public review. Commenters also raise technical questions referring to specific portions of the draft AQP AC.

Response: To clarify the FAA's intention, the final rule and the AC have been changed. Section 9 of the rule differentiates between: (1) Flight training devices and flight simulators that will be used in an AQP for: (a) Evaluation, (b) training sessions that assess whether an individual is ready for evaluation, (c) meeting currency requirements, or (d) Line Operational Simulations (LOS); and (2) training devices that are used for other than the purposes listed in (1) above.

Flight training devices and flight simulators to be used for any of the listed purposes must be evaluated by the Administrator and assigned a qualification level in accordance with the criteria set forth in AC 120-40, as amended, and AC 120-45, as amended.

Under these procedures, the FAA's National Simulator Program Manager (NSPM) will evaluate and, if warranted, recommend approval of a flight simulator or flight training device for a specific level of simulation. The recommendation will be submitted to the Air Carrier Training Branch for appropriate action. Final approval will include the level of simulation, the flight training maneuvers and procedures allowed for airman certification (training, currency, and evaluation), and the specific AQP in which it can be used. Levels of simulation that are hybrids of two levels contained in ACs 120-40 and 120-45 will be considered. All flight training devices and flight simulators that have been qualified and approved for a certificate holder's specific AQP use must also be part of, and maintained under, the certificate holder's continuing qualification program.

Training devices to be used in an AQP for other than the listed purposes must be approved by the Administrator. An applicant for approval of such a training device must identify the device by its nomenclature and describe how it would be used. If the device and its use are approved, the device must be part of a continuing program to provide for its serviceability and fitness to perform its intended functions as approved by the Administrator.

These training equipment requirements are for the most part a continuation of present policy on flight training devices and flight simulators. Training devices and simulators currently qualified as flight training devices and flight simulators by the FAA may be used in approved AQPs at their current qualification level without completing an additional qualification evaluation.

The FAA does not consider the inclusion of detailed charts in the AQP AC as a limiting factor on the overall process. An applicant can assume that, for the listed maneuvers and procedures, the FAA has indicated a range of classification levels for flight training devices or flight simulators that is acceptable. However, as set forth in the AQP AC, an applicant continues to have the option of requesting approval of alternatives, whether or not these alternatives are within the range set forth in the AQP AC charts.

Incentive to Participate

Several commenters point out that since participation in an AQP is voluntary, certificate holders will participate only if opportunity for innovation is allowed. These commenters are concerned that the proposed SFAR and AQP AC are too structured. One commenter stresses the need for clarity in the regulations; another expresses a concern that excessive data collection requirements would discourage participation.

Response: The FAA agrees with the need for clarity in this, as in all of its regulations and has tried to simplify and clarify this final rule whenever possible. Similarly, the FAA has required, and will continue to require, as little paperwork, recordkeeping, and data collection as possible. However, since the ultimate success of the AQP concept will depend on the success achieved by those who sign up initially, the FAA will need data adequate to validate individual programs and the overall concept.

The FAA recognizes that the details contained in the draft AQP AC may have caused some commenters to conclude that AQP is highly structured and therefore might not allow for as much innovation as they envisioned. However, a certain amount of detail in the AC is imperative to provide eligible certificate holders with an opportunity to participate. The AC recommends methods and procedures at a level of detail enabling successful implementation. This does not prohibit some certificate holders from designing their own program in ways that depart from the acceptable methods and procedures contained in the AQP AC. The FAA can approve such a program as long as the applicant can show that the proposed AQP is consistent with the AQP SFAR requirements and that any deviation from the guidance contained in the AQP AC is acceptable.

The AC has been revised to provide more detailed guidance for an acceptable AQP development and maintenance methodology that will allow for innovation through systematic development and approval of an AQP.

Training Centers

Proposed SFAR section 8 and chapter 9 of the draft AQP AC establish requirements and acceptable standards for a certificate holder who uses a training center to conduct any of its AQP training, and requirements and acceptable standards by which a training center may obtain provisional approval of an AQP curriculum. Several commenters identify concerns with the proposed SFAR and AQP AC on this subject.

- One concern is that under the proposed SFAR only a certificate holder is eligible to obtain approval of an AQP, and many training centers are not certificate holders. One commenter requests that all references to a certificate holder throughout the SFAR include the additional words "or a training center that qualifies under this SFAR."
- One commenter states that the requirements in proposed section 8 (a) and (b) are basically directed at certificate holders, not training centers. Training centers that are not certificate holders need a prescribed method of training and qualifying airmen. Neither the existing regulations nor the proposed SFAR addresses this issue. Qualifying airmen employed by a training center by the same methods required for certificate holder airmen is not workable.
- According to one commenter, a non-certificate holder training center should be eligible for obtaining approval of extensions of its continuing qualification cycle. The proposed SFAR language limits extensions to certificate holders.
- One commenter thinks that qualifying training centers should be authorized to give AQP training only if the training is identified with a specific part 121 or part 135 certificate holder. Training in the certificate holder's AQP should be required for instructors and evaluators employed by the training center. Also a certificate holder should be required to provide differences training for any differences between a training center's training equipment and the certificate holder's.
- One commenter expresses concern that since the proposed SFAR restricts eligibility of certificate holders who operate under part 135 to those who are required to have an approved training program under § 135.341, all single-pilot certificate holders would be prevented from using an AQP. While such a certificate holder would probably not develop its own AQP, it might want to use a training center's AQP curriculum for a particular aircraft.

Response: Eligibility for an AQP is targeted to certificate holders who are required to have an approved training program under § 121.401 or § 135.341. Under Section 11(a) of the SFAR a certificate holder may arrange to have AQP training, qualification, or evaluation performed by a training center if the training center's curriculum (segments and portions of segments) have been provisionally approved by the Administrator. The final rule makes clear that a training center may obtain provisional approval either independently or in conjunction with a certificate holder that is applying for an AQP.

A training center must apply for provisional approval and must show that it has: (1) A curriculum for qualification and continuing qualification for each instructor or evaluator employed by the training center; (2) adequate facilities for any planned training; (3) curriculums (segments or portions of) specific to make, model, and series aircraft (or variant), and specific to crewmembers or other positions. (Section 11(b)(1), (2), and (3)).

Once a training center's curriculum (segment or portion) has been provisionally approved, it must be tailored to a certificate holder's specific needs before it is eligible for approval as a certificate holder's AQP curriculum. (Section 11(a)(2)).

A training center is limited to provisional approval of a curriculum. The qualification and continuing qualification curriculum it develops for its instructors and evaluators must be approved and must provide instructor and evaluator qualifications for AQP training and evaluator duties but will not be considered an AQP curriculum. However, approval of instructor and evaluator curriculums will allow a training center to develop curriculums according to the AC guidelines and to utilize the AQP qualification and continuing qualification concepts. To clarify that AC guidance applies to training centers as well as certificate holders, the AC material now addresses, where appropriate, the "applicant" rather than the "certificate holder" or "operator."

The proposed section 8(b)(1) (now section 11(b)(1)) has been changed by

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requiring an applicant for provisional approval to have a curriculum for instructors and evaluators, rather than an "approved" curriculum, since approval of a curriculum would be part of the provisional approval process.

The AC (Chapter 6) has been revised to provide guidelines to training centers in the methodology they should use to obtain provisional approval.

The SFAR does not require that each instructor or evaluator in a training center complete a full indoctrination program for each certificate holder for which the training center conducts training. Rather, a training center that provides training for a number of part 121 or part 135 certificate holders can develop a generic indoctrination program and specify the elements appropriate to each certificate holder. When the Administrator gives approval to a certificate holder to use a provisionally approved training center curriculum as part of the certificate holder's AQP, the Administrator's approval is equivalent to an "initial" approval under § 121.405 or § 135.325, as applicable.

The SFAR does not prevent a certificate holder that uses only one pilot in its operations under part 135 from developing a training program using the guidelines contained in the AQP AC (or using a training center's AQP-type program).

To clarify the status of training centers and training center employees, the applicability sections of both parts 121 and 135 (§§ 121.1 and 135.1) have been amended to make it clear that training centers and their employees are subject to the applicable rules of those respective parts when they seek to and actually perform services for certificate holders. Thus, a training center and its employees would be in much the same status as a maintenance facility that provides service to a part 121 or part 135 certificate holder. However, the fact that a training center can bring itself and its employees within the jurisdiction of part 121 or part 135 by seeking provisional approval of a curriculum does not make the training center a certificate holder nor does it ensure the training center that its services will be sought by a certificate holder. Furthermore, as indicated previously, provisional approval of a curriculum does not ensure that that curriculum will automatically be approved for use by a certificate holder, if a certificate holder applies to use that provisionally approved curriculum in its AQP. In most cases specific tailoring to the certificate holder's needs will be necessary.

Submission to District Offices

Application for approval of an AQP (proposed section 7(a); final rule section 10(a)) and application for provisional approval of a curriculum by a training center (proposed section 8(a)(1); final rule section 11(a)(1)) must be made to the appropriate FAA Flight Standards District Office.

Three commenters question the need for referencing the Flight Standards District Office. One states that it confuses the process since the Administrator is mentioned also. The other states that internal FAA organizational structure is not normally addressed in the rule and that there is no reason for an exception in this case.

Response: With respect to the approval authority, the commenters are technically correct. This authority is vested in the Administrator unless the Administrator delegates the authority to another person. Since "Administrator" is defined in 14 CFR part 1 to mean the Administrator "or any person to whom he has delegated authority in the matter concerned," it is not necessary to state the level of delegation within the rule. However, there are numerous places (e.g., §§ 121.358(b)(1), 121.77(b) and its proposed successor § 119.41(c)) where the present regulations are more specific because the FAA wants to ensure that initial contact is with the appropriate FAA local office.

Five-Year Termination

Five comments were received on the proposed expiration date of the SFAR in proposed section 10 (final rule section 13). All five comments state that an expiration date 5 years after the effective date is not long enough to prove the effectiveness of an AQP, especially considering the effort involved in development, approval, and validation of an AQP curriculum.

Response: The FAA believes that 5 years is long enough to determine effectiveness of approved AQPs.

Instructor and Evaluator Qualification

Ten comments were received on the qualification and continuing qualification requirements for instructors and evaluators. Issues raised and FAA responses are as follows:

• Section 2 defines an "evaluator" as a person who meets and maintains all of the qualifications under the AQP for an instructor * * *" Several commenters point out that this requires that an evaluator must always be a qualified instructor. However, air carriers use line check pilots and initial operating experience check pilots who have never been flight instructors or evaluators.

Response: The FAA acknowledges that evaluator qualification requirements may not include all instructor requirements. For example, a person who has served as an instructor, an evaluator, or both in one make, model, and series aircraft could be an excellent evaluator in a similar aircraft without being fully qualified as an instructor in the second aircraft. Therefore, the rule and AQP AC have been changed to allow qualifying evaluators not otherwise qualified as instructors.

• Proposed section 3(b)(2) (ii) and (iii) set forth qualification curriculum requirements for instructors and evaluators. Several commenters requested that these requirements be broadened to include flight simulator, classroom, flight attendant, and dispatcher instructors. One commenter asks if the SFAR permits the use of flight simulator only instructors.

Response: The SFAR language (final rule section 5(b) (2) and (3)) has been broadened to permit the use of flight simulator, classroom, flight attendant, and dispatcher instructors, provided the FAA has approved the qualification standards under an AQP and the instructor meets those standards.

• One commenter stated that Line-Oriented Flight Training (LOFT) for 3 person crews must use instructors and evaluators that are active line qualified airmen.

Response: This rule and its accompanying AQP AC do not spell out prerequisites for instructors and evaluators conducting Line Operational Simulations (which includes LOFT). General guidance will be supplied in a Line Operational Simulations AC.

• One commenter says there is a problem with proposed section 3(c)(3)(iii) which requires instructors and evaluators who are limited to conducting their duties in flight simulators and flight training devices to have appropriate proficiency instruction in a flight training device or flight simulator on normal, abnormal, and emergency flight procedures and maneuvers. According to the commenter this would not teach an instructor or evaluator what he or she needs to know such as how to operate an instructor's console in a jump seat position. Proposed paragraph (c)(3) also requires recurring instruction for instructors and evaluators once every 26 calendar months. As proposed this instruction would be in a flight simulator and flight training device on normal, abnormal, and emergency flight procedures. This commenter states that instructors would not need recurring instruction in procedures and maneuvers which they teach. The instruction itself should count as recurrent training.

Response: The FAA does not agree that instructors and evaluators have no need for training under a continuing qualification program in the procedures that they instruct or observe as instructors and evaluators. There is always a need to be kept current in changes in procedures, or equipment, or both. With respect to the commenter's concern that the SFAR does not require that the instructor or evaluator be trained in operating an instruction console in a jump seat position, the FAA points out that the SFAR does not duplicate all of the present FAR requirements. Sections 121.413 and 135.339 or alternative AQP requirements would ensure that each instructor or evaluator will be qualified in appropriate instruction or evaluation techniques, including operation of a console.

Flight Instruction and Evaluation Tables

The draft AQP AC presents flight instruction and evaluation tables in chapter 4, "Qualification Curriculums." Nine commenters raised questions about these flight instruction/evaluation events tables. Virtually all commenters question the appropriateness of using these tables to impose more restrictive requirements than are in the present rules. Several point out that if a carrier did not have the level of flight simulator required by these draft tables, pilots would have to perform potentially dangerous maneuvers in an airplane. They question the appropriateness of making flight simulator use less available than under present rules. Several state that if the tables are retained (and at least one commenter thinks they should be eliminated) then further introductory language is needed to explain how the tables work. The consensus of the commenters is that the tables should not be viewed as minimum standards but rather as acceptable standards. That is, that use of a media as shown in the tables is automatically approved but that to quote one commenter, "use of media outside the indicated range would be authorized if satisfactorily justified."

Response: The FAA's intent is as recommended by these commenters. The tables are intended as acceptable standards, that is, if an AQP applicant uses the tables, the applicant is assured that in this area its application will be approved automatically. However, an applicant is free to propose utilization outside the charted ranges of qualification levels. FAA approval of utilization outside the charted range will depend upon adequate justification. The AC now clarifies this intent. In reorganizing the AC, the tables were moved to Appendix C; they were also revised.

Acceptable Standards

One commenter suggested that the term "minimum standards" throughout the AQP AC be replaced by the term "acceptable standards." This commenter believes that the connotation of "minimum standards" "is not helpful to the FAA or the industry."

Response: The term "minimum standards" is used in the subtitle of title VI of the FA Act and repeatedly throughout title VI and is, the FAA believes, appropriate in describing the Federal Aviation Regulations. However, the AQP AC has been revised to use the term "acceptable" when appropriate to show that an applicant may obtain approval for an AQP that does not entirely follow the guidelines in the AQP AC but is an alternative equivalent to the guidelines in the AQP AC.

Proficiency Evaluation

Six comments were received on proposed section 3(c)(4)(i) which requires a proficiency evaluation for PICs, SICs, and flight engineers during each recurring training session. Three commenters request rewriting the paragraph because, as written, no training (including ground school sessions) could be conducted without accomplishing flight proficiency evaluations. They contend such a requirement might actually discourage frequent training sessions. Two commenters state that evaluations should be required on alternating training visits.

Response: The language of the SFAR has been clarified. The requirement for evaluation in section 6(b)(1) is tied to a certificate holder's evaluation period within an approved continuing qualification cycle and not to the number of visits that a person may make to a training facility to participate in training sessions. That is, if a certificate holder elects to divide its recurring training into more than one training session within an evaluation period, the certificate holder would only be required to conduct at least one proficiency evaluation during an evaluation period and would not be required, as proposed, to conduct one following each training session. However, a certificate holder that conducts several training sessions within an evaluation period would not be prevented from conducting proficiency evaluations as part of each training session.

One commenter asks if this proficiency evaluation requirement is related to the instrument proficiency check in § 135.297 or to the competency check required in § 135.293.

Response: The proficiency evaluation required by section 6(b)(2) (i) and (ii) would most likely consist of elements of both regulations. The SFAR requires that elements to be included must be approved as part of the continuing qualification curriculum.

Recency Requirements

Proposed section 3(c)(3)(iv) states that continuing qualification for PICs and SICs under an AQP must include recency of experience requirements in accordance with § 121.439.

Several commenters have questions about this requirement. One commenter thinks the requirement should be deleted since it is already in part 121. Another commenter asks if recency requirements of part 121 would apply or those required in an AQP. One commenter says that recency requirements are not presently tracked by training departments and so should not be part of training.

Response: In the final rule the FAA has changed the recency requirement of section 6(b)(4) by deleting the reference to § 121.439 and adding the word "approved" to recency requirements. The reference to recency requirements has been retained to make it clear that compliance with these requirements is an element of a continuing qualification curriculum. Guidelines on recency requirements are contained in the AQP AC.

Dual Operators

One commenter states that the part 135 proposed SFAR requirements are not compatible with parts 91 and 61. A PIC for an operator who operates under parts 91 and 135 would still be required to have a check every 12 calendar months as required by § 61.58.

Response: The FAA agrees that the proposed SFAR would not allow the flexibility intended for dual operators under parts 91 and 135. Therefore, the FAA is amending § 61.58 to provide that pilots maintaining continuing qualification under an approved AQP are considered to have met these check requirements.

Advisory Committee

In the preamble to the proposed SFAR, the FAA states that it is considering establishing a training advisory committee under the Federal Advisory Committee Act. Three commenters state strong support for this

idea. Two focus on the makeup of the committee. One states that it should be apolitical and the other states that it is essential that the line pilot be represented on the committee.

FAA Response: The FAA is in the process of establishing an advisory committee under the Federal Advisory Committee Act.

the designee of the applicant's operations inspector. The review and analysis findings will be documented in a report with recommendations for acceptance or rejection to the Manager, Air Carrier Training Branch.

Review and analysis procedures will be the same for certificate holders and training centers, except that for training centers, consultation between FAA, other government agencies, and industry associations.

Beyond the Scope of the Notice

A few comments were received that did not directly relate to the proposal. These comments included information

State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the

GM-15 manager, a total of 21 inspectors, specialists, and analysts, one GS-11 programmer, and two GS-6 secretaries. Field sections will share 5 workstations, a printer, plotter, and a telefax machine. The estimated annual cost of the new branch is $2.2 million and a one-time cost of equipment of $80,000.

would be increased by $18.5 million per year; for the part 135 operators, some of their training costs are estimated to be increased by $662,000 per year. Both the large part 121 and the large part 135 operators could have an annual net cost savings as a result of this SFAR—$96.4 million for large part 121 operators, and

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idea. Two focus on the makeup of the committee. One states that it should be apolitical and the other states that it is essential that the line pilot be represented on the committee.

FAA Response: The FAA is in the process of establishing an advisory committee under the Federal Advisory Committee Act.

Curriculum Development

Four commenters point out that the draft AQP AC Chapter 2 "Overview: Components of an Advanced Qualification Program" is not as helpful as it should be for developing an AQP curriculum.

FAA Response: The FAA has revised the AQP AC to provide more detailed guidelines for developing AQP curriculums. Chapter 2 of the AQP AC provides an overview and new chapter 7 provides details on how to develop, implement, and maintain an AQP.

Principal Operations Inspectors and Approval

A comment from a training center expresses concern about the approval process. The commenter believes that Principal Operations Inspectors (POI) might frustrate the application of the AQP concept, particularly for training centers that have received provisional approval and may be asked to alter that curriculum to the specific needs of a certificate holder by a POI. What was approved in the first stage may be disapproved by the POI at the second stage.

Another commenter states that the FAA should provide for a central authority to review and approve AQPs to assure standardization.

Response: The FAA has established the Air Carrier Training Branch to ensure standardization of the AQP approval process. While AQP applications must be submitted to the Flight Standards District Office charged with the overall inspection of the certificate holder's or training center's operations, the application will be forwarded to the Air Carrier Training Branch for review and appropriate action.

The AQP AC has been revised to show procedures of the approval process in greater detail than the draft AC showed. The Air Carrier Training Branch will lead the review and analysis for each phase of the approval process. The review and analysis team will include an instructional system design specialist, air carrier operations specialists, a data management specialist, a civil aviation security inspector, an inspector from the National Simulator Program Staff, and the designee of the applicant's operations inspector. The review and analysis findings will be documented in a report with recommendations for acceptance or rejection to the Manager, Air Carrier Training Branch.

Review and analysis procedures will be the same for certificate holders and training centers, except that for training centers the development process ends in provisional approval until the provisionally approved curriculum is tailored to a certificate holder's operations and reevaluated for approval as the certificate holder's AQP.

At no stage of the approval process would a POI or any member of the team act alone to accept or reject an application for an AQP. The initial submission of required documents to a POI would not be forwarded to the Air Carrier Training Branch if it was incomplete or otherwise not in compliance with submission procedures in the AQP AC.

Indoctrination

The proposed SFAR requires in section 3(a) that each AQP have separate curriculums for indoctrination that cover: (1) Company policies and practices for all newly hired persons; (2) general aeronautical knowledge for newly hired flight crewmembers and dispatchers; (3) methods and theories of instruction and the knowledge needed to use flight training devices and flight simulators for instructors; and (4) requirements, methods, policies, and practices of evaluating for evaluators.

Several commenters state that they did not think indoctrination curriculums should be mandatory. They should be optional as needed, for example, with entry level aircraft.

Response: Having an indoctrination curriculum as part of an AQP is required. If crewmembers have already completed indoctrination, repeating the curriculum will not be required. As discussed earlier, the presence of a curriculum in an AQP does not mean that each module of the curriculum must be used in every instance. It means that the curriculum objectives have been included in the program and if those objectives have not already been accomplished by a trainee, they must be.

Comment Period

Two commenters state that the 60-day comment period was insufficient. One of these commenters requests an additional 6 months and also requests that helicopter operations be considered in any future actions.

Response: The 60-day comment period for the proposed SFAR was considered to be adequate given the previous consultation between FAA, other government agencies, and industry associations.

Beyond the Scope of the Notice

A few comments were received that did not directly relate to the proposal. These comments included information on training and training equipment, as well as an objection to the increase in the use of 2-person flight crews.

Miscellaneous Technical Comments

Several comments were received that request changes or clarifications of specific wording in the proposal. None of these comments would involve significant substantive changes. The FAA has considered these comments and, if appropriate, has changed or clarified the language accordingly.

Revision of the Advisory Circular

Certain revisions necessitated by comments have led to a reorganization of portions of the AC and the addition of new material. In particular AC Chapter 7, "Five Phases of the Advanced Qualification Program," Chapter 8, "Approval Process for an Advanced Qualification Program," and Chapter 9, "Advanced Qualification Program Validation" provide more detailed guidance than that provided in the draft AQP AC.

Regulatory Evaluation

The AQP is not mandatory; it is left up to the discretion of the individual certificate holder as to whether to adopt the AQP, and the FAA assumes that certificate holders will do so only if it improves their training effectiveness and safety or is otherwise in their economic interest. In fact, the limited available industry data suggests that benefits to the adopter could exceed costs. Therefore, it is assumed that this SFAR will not impose any additional net cost on the industry.

These regulations might make possible some costs savings in the air carriers' crew training programs. This may occur because: (1) Training time would be related to the attainment of individual proficiency instead of set hours of training, and (2) the frequency of recurring training for PIC's could be reduced thereby reducing training costs.

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in the executive order, therefore a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Since the AQP will build upon the current system, the FAA expects it to provide levels of safety equal to or higher than that provided by current regulations. If after evaluation by the FAA's Air Carrier Training Branch, the AQP is determined to provide a higher level of safety than the current system, the FAA may consider making it mandatory for certain classes of operators under a future rulemaking action.

The only FAA costs attributable to this SFAR are those of establishing and operating an Air Carrier Training Branch with three sections with assistance from appropriate Security and Hazardous Material personnel. This branch would assume the primary responsibility for the final review and analysis of air carrier training programs submitted to the FAA for approval under the provisions of the SFAR.

The Air Carrier Training Branch will gather and analyze data to verify and validate proficiency requirements and program qualifications and will monitor and evaluate the AQP. This staff will consist of three sections, each with a GM-15 manager, a total of 21 inspectors, specialists, and analysts, one GS-11 programmer, and two GS-6 secretaries. Field sections will share 5 workstations, a printer, plotter, and a telefax machine. The estimated annual cost of the new branch is $2.2 million and a one-time cost of equipment of $30,000.

The primary benefit expected of the proposed SFAR would be a reduction of the number of air carrier accidents in which crew coordination problems are a contributing factor. A review of NTSB aviation accident data reveals that during the past 20 years, there were 17 such accidents involving part 121 air carriers and 17 accidents involving part 135 air carriers. These accidents have resulted in 667 fatalities and 160 serious injuries and the costs of these types of accidents were $1,329 million or about $66 million dollars per year.

Accidents in which crew coordination problems were a contributing factor appear to have occurred at a consistent rate during the past 20 years for part 121 departures; there were 0.17 ±0.08 accidents of this type per 1 million part 121 IFR departures. For part 135 operators, these types of accidents declined during the 70's and have been level during the 80's at .84 ±.40 accidents per 1 million part 135 IFR departures. To be conservative, the FAA used the upper bounds of these estimates (.28 accidents per 1 million part 121 IFR departures and 1.24 accidents per 1 million part 135 IFR departures) to project the number of future accidents in which crew coordination problems are a contributing factor. Applying accident rates to forecasted departures for the period 1991 to 1995 the projected number of part 121 and part 135 accidents of this type are 9.0 and 17.9, respectively.

The economic losses due to these projected accidents would be substantial: $809 million due to part 121 air carrier accidents and $119 million due to part 135 air carrier accidents. The average annual loss during this period is estimated to be $145 million a year. Accident trends will be closely monitored during the 5-year life of the SFAR to determine the impact of the AQP. AQP would also make possible some cost savings in the large air carriers' training programs. The limited available information suggests that large part 121 operators might have a crew training cost savings of $61.9 million per year and that large part 135 operators would have a cost savings of $5.1 million per year. Some training costs, however, would be increased by this SFAR. For the large part 121 operators, it is estimated that some training costs would be increased by $18.9 million per year; for the part 135 operators, some of their training costs are estimated to be increased by $662,000 per year. Both the large part 121 and the large part 135 operators could have an annual net cost savings as a result of this SFAR—$36.4 million for large part 121 operators, and $4.4 million for large part 135 operators. These cost savings and cost increases are explained in more detail in the regulatory evaluation.

Two benefit-cost comparisons are made in this evaluation in order to take into account the uncertainties regarding the effectiveness of this program at reducing accidents and the amount of participation of part 121 and part 135 operators in this program. In the first comparisons it is assumed that 100 percent of the large part 121 and part 135 operators will participate in this program starting in the first year. It is also assumed that this program is only 20 percent effective at reducing aviation accidents in which cockpit crew coordination problems are a contributing factor. This is an arbitrary low number chosen to be a conservative estimate of the chief benefits of this program (another benefit would be a reduction in crew training costs for the large operators); the FAA expects this proposed program to be more effective than 20 percent. In the second comparison, it is assumed that only 5 percent of the crews used by the large part 121 and part 135 operators will participate in the program and that the program will only be one percent effective at reducing the above type of accidents. The second comparison is a worst case scenario.

In both comparisons, the potential benefits of this rule exceed the estimated costs of the program. In the first comparison, the present value of the 5-year stream of benefits is $433 million which is $345 million greater than the present value of the 5-year stream of costs which is $88 million. In the second comparison, the present value of the 5-year stream of benefits is $22 million which also exceeds the present value of the 5-year stream of costs which is $10 million. Both of these ratios will be higher if the SFAR is more effective than 20 percent at reducing accidents in which cockpit crew coordination problems are a contributing factor. The FAA, therefore, determines that the benefits of the proposed SFAR will exceed the costs that may result from it.

International Trade Impact

The proposal would have little or no impact on trade for both U.S. firms doing

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business overseas and foreign firms doing business in the United States. The proposals are likely to improve training efficiency and, therefore, reduce costs for U.S. air carriers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The proposals would impact those entities regulated by part 121 and part 135. The FAA's criteria for "a substantial number" is a number which is not less than 11 and which is more than one third of the small entities subject to the rule. For air carriers a small entity has been defined as one who owns, but does not necessarily operate, nine aircraft or less. The FAA's criteria for "a significant impact" are at least $3,800 per year (1989 dollars) for an unscheduled carrier and $53,400 or $95,600 per year (1989 dollars) for a scheduled carrier depending on whether or not the fleet operated includes small aircraft (60 or fewer seats).

This SFAR does not impose any costs upon part 121 and part 135 certificate holders because the provisions in this SFAR are voluntary. It is left to the discretion of the certificate holders as to whether they will adopt the provisions of this SFAR. Those that do, will do so because adopting this SFAR will improve their operations and safety without a net increase in costs or because it is in their economic interest. The FAA believes that the larger air carriers are most likely to adopt the provisions of this SFAR and that the smaller air carriers would not. The smaller air carriers would not be able to adopt the provisions in this SFAR because they do not have the necessary facilities and equipment and because of the high turnover rate of their pilots. Flight training centers might alleviate the first problem. As a result of economies of scale, these centers could offer flight crew training programs that make maximum use of flight simulators and flight training devices to small air carriers at affordable rates. However, the high turnover rate of their pilots necessitates that small air carriers concentrate their pilot training on improving and maintaining pilot proficiency and discourages small air carriers from adopting AQP.

This SFAR imposes no additional cost on any small part 121 certificate holder nor any additional cost on any small part 135 certificate holder. Therefore, the proposed amendments to 14 CFR parts 121 and 135 will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aviation safety, Safety.

14 CFR Part 63

Air Safety, Air transportation, Airmen, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airmen, Aviation safety, Air transportation, Aircraft.

14 CFR Part 108

Airplane operator security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

14 CFR Part 121

Aircraft pilots, Airmen, Aviation safety, Pilots, Safety.

14 CFR Part 135

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Pilots.

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends title 14, chapter I of the Code of Federal Regulations, as set forth below:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. In part 61 the table of contents is amended by adding SFAR No. 58 to read as follows:

Special Federal Aviation Regulations

SFAR No. 58 [Note]

3. A section for Special Federal Aviation Regulations is added to read as follows:

Special Federal Aviation Regulations

SFAR No. 58

Editorial Note: For the text of SFAR No. 58, see part 121 of this chapter.

4. Section 61.58 is amended by revising paragraph (e) to read as follows:

§ 61.58 Pilot in command proficiency check: Operation of aircraft requiring more than one required pilot.

* * * * *

(e) This section does not apply to persons conducting operations subject to parts 121, 127, 133, 135, and 137 of this chapter or to persons maintaining continuing qualification under an Advanced Qualification Program approved under SFAR 58.

* * * * *

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

5. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, 1427, 1429, and 1430; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

6. In part 63 the table of contents is amended by adding SFAR No. 58 to read as follows:

Special Federal Aviation Regulations

SFAR No. 58 [Note]

7. A section for Special Federal Aviation Regulations is added to read as follows:

Special Federal Aviation Regulations

SFAR No. 58

Editorial Note: For the text of SFAR No. 58, see part 121 of this chapter.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

8. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

9. In part 65 the table of contents is amended by adding SFAR No. 58 to read as follows:

Special Federal Aviation Regulations

SFAR No. 58 [Note]

10. A section for Special Federal Aviation Regulations is added to read as follows:

Special Federal Aviation Regulations

SFAR No. 58

Editorial Note: For the text of SFAR No. 58, see part 121 of this chapter.

PART 108—AIRPLANE OPERATOR SECURITY

11. The authority citation for part 108 continues to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, 1421, and 1424; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

12. Section 108.23(b) is revised to read as follows:

§ 108.23 Training.

* * * * *

(b) No certificate holder may use any person as a crewmember on any domestic or international flight unless within the preceding 12 calendar months or within the time period specified in an Advanced Qualification Program approved under SFAR 58 that person has satisfactorily completed the security training required by § 121.417(b)(3)(v) or § 135.331(b)(3)(v) of this chapter and as specified in the certificate holder's approved security program. With respect to training conducted under § 121.417 or § 135.331, Whenever a crewmember Who is required to take recurrent training completes the training in the calendar month before or the calendar month after the calendar month in which that training is required, he is considered to have completed the training in the calendar month in which it was required.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

13. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

14. In part 121 the table of contents of Special Federal Aviation Regulations is amended by adding SFAR No. 58 to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 58

15. In part 121 the section of Special Federal Aviation Regulations is amended, by adding SFAR No. 58 to read as follows:

Special Federal Aviation Regulations

* * * * *

Special Federal Aviation Regulation No. 58—Advanced Qualification Program

Section
1. Purpose and eligibility.
2. Definitions.
3. Required Curriculums.
4. Indoctrination Curriculums.
5. Qualification Curriculums.
6. Continuing Qualification Curriculums.
7. Other Requirements.
8. Certification.
9. Training Devices and Simulators.
10. Approval of Advanced Qualification Program.
11. Approval of Training, Qualification, or Evaluation by a Person Who Provides Training by Arrangement.
12. Recordkeeping requirements.
13. Expiration.

Contrary provisions of parts 61, 63, 65, 121, and 135 of the Federal Aviation Regulations notwithstanding—

1. *Purpose and Eligibility.*

(a) This Special Federal Aviation Regulation provides for approval of an alternate method (known as "Advanced Qualification Program" or "AQP") for qualifying, training, certifying, and otherwise ensuring competency of crewmembers, aircraft dispatchers, other operations personnel, instructors, and evaluators who are required to be trained or qualified under parts 121 and 135 of the FAR or under this SFAR.

(b) A certificate holder is eligible under this Special Federal Aviation Regulation if the certificate holder is required to have an approved training program under § 121.401 or § 135.341 of the FAR, or elects to have an approved training program under § 135.341.

(c) A certificate holder obtains approval of each proposed curriculum under this AQP as specified in section 10 of this SFAR.

(d) A curriculum approved under the AQP may include elements of present Part 121 and Part 135 training programs. Each curriculum must specify the make, model, and series aircraft (or variant) and each crewmember position or other positions to be covered by that curriculum. Positions to be covered by the AQP must include all flight crewmember positions, instructors, and evaluators and may include other positions, such as flight attendants, aircraft dispatchers, and other operations personnel.

(e) Each certificate holder that obtains approval of an AQP under this SFAR shall comply with all of the requirements of that program.

2. *Definitions.* As used in this SFAR:

Curriculum means a portion of an Advanced Qualification Program that covers one of three program areas: (1) indoctrination, (2) qualification, or (3) continuing qualification. A qualification or continuing qualification curriculum addresses the required training and qualification activities for a specific make, model, and series aircraft (or variant) and for a specific duty position.

Evaluator means a person who has satisfactorily completed training and evaluation that qualifies that person to evaluate the performance of crewmembers, instructors, other evaluators, aircraft dispatchers, and other operations personnel.

Facility means the physical environment required for training and qualification (e.g., buildings, classrooms).

Training center means an independent organization that provides training under contract or other arrangement to certificate holders. A training center may be a certificate holder that provides training to another certificate holder, an aircraft manufacturer that provides training to certificate holders, or any non-certificate holder that provides training to a certificate holder.

Variant means a specifically configured aircraft for which the FAA has identified training and qualification requirements that are significantly different from those applicable to other aircraft of the same make, model, and series.

3. *Required Curriculums.* Each AQP must have separate curriculums for indoctrination, qualification, and continuing qualification as specified in sections 4, 5, and 6 of this SFAR.

4. *Indoctrination Curriculums.* Each indoctrination curriculum must include the following:

(a) For newly hired persons being trained under an AQP: Company policies and operating practices and general operational knowledge.

(b) For newly hired flight crewmembers and aircraft dispatchers: General aeronautical knowledge.

(c) For instructors: The fundamental principles of the teaching and learning process; methods and theories of instruction; and the knowledge necessary to use aircraft, flight training devices, flight simulators, and other training equipment in advanced qualification curriculums.

(d) For evaluators: Evaluation requirements specified in each approved curriculum; methods of evaluating crewmembers and aircraft dispatchers and other operations

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personnel; and policies and practices used to conduct the kinds of evaluations particular to an advanced qualification curriculum (e.g., proficiency and online).

5. *Qualification Curriculums.* Each qualification curriculum must include the following:

(a) The certificate holder's planned hours of training, evaluation, and supervised operating experience.

(b) A list of and text describing the training, qualification, and certification activities, as applicable for specific positions subject to the AQP, as follows:

(1) *Crewmembers, aircraft dispatchers, and other operations personnel.* Training, evaluation, and certification activities which are aircraft- and equipment-specific to qualify a person for a particular duty position on, or duties related to the operation of a specific make, model, and series aircraft (or variant); a list of and text describing the knowledge requirements, subject materials, job skills, and each maneuver and procedure to be trained and evaluated; the practical test requirements in addition to or in place of the requirements of parts 61, 63, and 65; and a list of and text describing supervised operating experience.

(2) *Instructors.* Training and evaluation to qualify a person to impart instruction on how to operate, or on how to ensure the safe operation of a particular make, model, and series aircraft (or variant).

(3) *Evaluators.* Training, evaluation, and certification activities that are aircraft and equipment specific to qualify a person to evaluate the performance of persons who operate or who ensure the safe operation of, a particular make, model, and series aircraft (or variant).

6. *Continuing Qualification Curriculums.* Continuing qualification curriculums must comply with the following requirements:

(a) *General.* A continuing qualification curriculum must be based on—

(1) A continuing qualification cycle that ensures that during each cycle each person qualified under an AQP, including instructors and evaluators, will receive a balanced mix of training and evaluation on all events and subjects necessary to ensure that each person maintains the minimum proficiency level of knowledge, skills, and attitudes required for original qualification; and

(2) If applicable, flight crewmember or aircraft dispatcher recency of experience requirements.

(b) *Continuing Qualification Cycle Content.* Each continuing qualification cycle must include at least the following:

(1) *Evaluation period.* An evaluation period during which each person qualified under an AQP must receive at least one training session and a proficiency evaluation at a training facility. The number and frequency of training sessions must be approved by the Administrator. A training session, including any proficiency evaluation completed at that session, that occurs any time during the two calendar months before the last date for completion of an evaluation period can be considered by the certificate holder to be completed in the last calendar month.

(2) *Training.* Continuing qualification must include training in all events and major subjects required for original qualification, as follows:

(i) For pilots in command, seconds in command, flight engineers, and instructors and evaluators: Ground training including a general review of knowledge and skills covered in qualification training, updated information on newly developed procedures, and safety information.

(ii) For crewmembers, aircraft dispatchers, instructors, evaluators, and other operation personnel who conduct their duties in flight: Proficiency training in an aircraft, flight training device, or flight simulator on normal, abnormal, and emergency flight procedures and maneuvers.

(iii) For instructors and evaluators who are limited to conducting their duties in flight simulators and flight training devices: Proficiency training in a flight training device and/or flight simulator regarding operation of this training equipment and in operational flight procedures and maneuvers (normal, abnormal, and emergency).

(3) *Evaluations.* Continuing qualification must include evaluation in all events and major subjects required for original qualification, and online evaluations for pilots in command and other eligible flight crewmembers. Each person qualified under an AQP must successfully complete a proficiency evaluation and, if applicable, an online evaluation during each evaluation period. An individual's proficiency evaluation may be accomplished over several training sessions if a certificate holder provides more than one training session in an evaluation period. The following evaluation requirements apply:

(i) Proficiency evaluations as follows:

(A) For pilots in command, seconds in command, and flight engineers: A proficiency evaluation, portions of which may be conducted in an aircraft, flight simulator, or flight training device as approved in the certificate holder's curriculum which must be completed during each evaluation period.

(B) For any other persons covered by an AQP a means to evaluate their proficiency in the performance of their duties in their assigned tasks in an operational setting.

(ii) Online evaluations as follows:

(A) For pilots in command: An online evaluation conducted in an aircraft during actual flight operations under part 121 or part 135 or during operationally (line) oriented flights, such as ferry flights or proving flights. An online evaluation in an aircraft must be completed in the calendar month that includes the midpoint of the evaluation period. An online evaluation that is satisfactorily completed in the calendar month before or the calendar month after the calendar month in which it becomes due is considered to have been completed during the calendar month it became due. However, in no case is an online evaluation under this paragraph required more often than once during an evaluation period.

(B) During the online evaluations required under paragraph (b)(3)(ii)(A) of this section, each person performing duties as a pilot in command, second in command, or flight engineer for that flight, must be individually evaluated to determine whether he or she—

(*1*) Remains adequately trained and currently proficient with respect to the particular aircraft, crew position, and type of operation in which he or she serves; and (*2*) Has sufficient knowledge and skills to operate effectively as part of a crew.

(4) *Recency of experience.* For pilots in command and seconds in command, and, if the certificate holder elects, flight engineers and aircraft dispatchers, approved recency of experience requirements.

(c) *Duration periods.* Initially the continuing qualification cycle approved for an AQP may not exceed 28 calendar months and the evaluation period may not exceed 13 calendar months. Thereafter, upon demonstration by a certificate holder that an extension is warranted, the Administrator may approve extensions of the continuing qualification cycle and the evaluation period in increments not exceeding 3 calendar months. However, a continuing qualification cycle may not exceed 39 calendar months and an evaluation period may not exceed 26 calendar months.

(d) *Requalification.* Each continuing qualification curriculum must include a curriculum segment that covers the requirements for requalifying a crewmember, aircraft dispatcher, or other operations personnel who has not maintained continuing qualification.

7. *Other Requirements.* In addition to the requirements of sections 4, 5, and 6, each AQP qualification and continuing qualification curriculum must include the following requirements:

(a) Approved Cockpit Resource Management (CRM) Training applicable to each position for which training is provided under an AQP.

(b) Approved training on and evaluation of skills and proficiency of each person being trained under an AQP to use their cockpit resource management skills and their technical (piloting or other) skills in an actual or simulated operations scenario. For flight crewmembers this training and evaluation must be conducted in an approved flight training device or flight simulator.

(c) Data collection procedures that will ensure that the certificate holder provides information from its crewmembers, instructors, and evaluators that will enable the FAA to determine whether the training and evaluations are working to accomplish the overall objectives of the curriculum.

8. *Certification.* A person enrolled in an AQP is eligible to receive a commercial or airline transport pilot, flight engineer, or aircraft dispatcher certificate or appropriate rating based on the successful completion of training and evaluation events accomplished under that program if the following requirements are met:

(a) Training and evaluation of required knowledge and skills under the AQP must meet minimum certification and rating criteria established by the Administrator in parts 61, 63, or 65. The Administrator may accept substitutes for the practical test requirements of parts 61, 63, or 65, as applicable.

(b) The applicant satisfactorily completes the appropriate qualification curriculum.

(c) The applicant shows competence in required technical knowledge and skills (e.g., piloting) and cockpit resource management knowledge and skills in scenarios that test both types of knowledge and skills together.

(d) The applicant is otherwise eligible under the applicable requirements of part 61, 63, or 65.

9. *Training Devices and Simulators.*

(a) *Qualification and approval of flight training devices and flight simulators.* (1) Any training device or simulator that will be used in an AQP for one of the following purposes must be evaluated by the Administrator for assignment of a flight training device or flight simulator qualification level:

(i) Required evaluation of individual or crew proficiency.

(ii) Training activities that determine if an individual or crew is ready for a proficiency evaluation.

(iii) Activities used to meet recency of experience requirements.

(iv) Line Operational Simulations (LOS).

(2) To be eligible to request evaluation for a qualification level of a flight training device or flight simulator an applicant must—

(i) Hold an operating certificate; or

(ii) Be a training center that has applied for authorization to the Administrator or has been authorized by the Administrator to conduct training or qualification under an AQP.

(3) Each flight training device or flight simulator to be used by a certificate holder or training center for any of the purposes set forth in paragraph (a)(1) of this section must—

(i) Be, or have been, evaluated against a set of criteria established by the Administrator for a particular qualification level of simulation;

(ii) Be approved for its intended use in a specified AQP; and

(iii) Be part of a flight simulator or flight training device continuing qualification program approved by the Administrator.

(b) *Approval of other Training Equipment.* (1) Any training device that is intended to be used in an AQP for purposes other than those set forth in paragraph (a)(1) of this section must be approved by the Administrator for its intended use.

(2) An applicant for approval of a training device under this paragraph must identify the device by its nomenclature and describe its intended use.

(3) Each training device approved for use in an AQP must be part of a continuing program to provide for its serviceability and fitness to perform its intended function as approved by the Administrator.

10. *Approval of Advanced Qualification Programs.*

(a) *Approval Process.* Each applicant for approval of an AQP curriculum under this SFAR shall apply for approval of that curriculum. Application for approval is made to the certificate holder's FAA Flight Standards District Office.

(b) *Approval Criteria.* An application for approval of an AQP curriculum will be approved if the program meets the following requirements:

(1) It must be submitted in a form and manner acceptable to the Administrator.

(2) It must meet all of the requirements of this SFAR.

(3) It must indicate specifically the requirements of parts 61, 63, 65, 121 or 135, as applicable, that would be replaced by an AQP curriculum. If a requirement of parts 61, 63, 65, 121, or 135 is replaced by an AQP curriculum, the certificate holder must show how the AQP curriculum provides an equivalent level of safety for each requirement that is replaced. Each applicable requirement of parts 61, 63, 65, 121 or 135 that is not specifically addressed in an AQP curriculum continues to apply to the certificate holder.

(c) *Application and Transition.* Each certificate holder that applies for one or more advanced qualification curriculums or for a revision to a previously approved curriculum must comply with § 121.405 or § 135.325, as applicable, and must include as part of its application a proposed transition plan (containing a calendar of events) for moving from its present approved training to the advanced qualification training.

(d) *Advanced Qualification Program Revisions or Rescissions of Approval.* If after a certificate holder begins operations under an AQP, the Administrator finds that the certificate holder is not meeting the provisions of its approved AQP, the Administrator may require the certificate holder to make revisions in accordance with § 121.405 or § 135.325, as applicable, or to submit and obtain approval for a plan (containing a schedule of events) that the certificate holder must comply with and use to transition to an approved Part 121 or Part 135 training program, as appropriate.

11. *Approval of Training, Qualification, or Evaluation by a Person who Provides Training by Arrangement.*

(a) A certificate holder under part 121 or part 135 may arrange to have AQP required training, qualification, or evaluation functions performed by another person (a "training center") if the following requirements are met:

(1) The training center's training and qualification curriculums, curriculum segments, or portions of curriculum segments must be provisionally approved by the Administrator. A training center may apply for provisional approval independently or in conjunction with a certificate holder's application for AQP approval. Application for provisional approval must be made to the FAA's Flight Standards District Office that has responsibility for the training center.

(2) The specific use of provisionally approved curriculums, curriculum segments, or portions of curriculum segments in a certificate holder's AQP must be approved by the Administrator as set forth in section 10 of this SFAR.

(b) An applicant for provisional approval of a curriculum, curriculum segment, or portion of a curriculum segment under this paragraph must show that the following requirements are met:

(1) The applicant must have a curriculum for the qualification and continuing qualification of each instructor or evaluator employed by the applicant.

(2) The applicant's facilities must be found by the Administrator to be adequate for any planned training, qualification, or evaluation for a part 121 or part 135 certificate holder.

(3) Except for indoctrination curriculums, the curriculum, curriculum segment, or portion of a curriculum segment must identify the specific make, model, and series aircraft (or variant) and crewmember or other positions for which it is designed.

(c) A certificate holder who wants approval to use a training center's provisionally approved curriculum, curriculum segment, or portion of a curriculum segment in its AQP, must show that the following requirements are met:

(1) Each instructor or evaluator used by the training center must meet all of the qualification and continuing qualification requirements that apply to employees of the certificate holder that has arranged for the training, including knowledge of the certificate holder's operations.

(2) Each provisionally approved curriculum, curriculum segment, or portion of a curriculum segment must be approved by the Administrator for use in the certificate holder's AQP. The Administrator will either provide approval or require modifications to ensure that each curriculum, curriculum segment, or portion of a curriculum segment is applicable to the certificate holder's AQP.

12. *Recordkeeping Requirements.* Each certificate holder and each training center holding AQP provisional approval shall show that it will establish and maintain records in sufficient detail to establish the training, qualification, and certification of each person qualified under an AQP in accordance with the training, qualification, and certification requirements of this SFAR.

13. *Expiration.* This Special Federal Aviation Regulation terminates on October 2, 1995 unless sooner terminated.

16. In part 121, § 121.1 is amended by redesignating paragraph (c)(2) as (c)(3) and by adding a new paragraph (c)(2) to read as follows:

§ 121.1 Applicability.

* * * * *

(c) * * *

(2) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58; and

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

17. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983].

18. In part 135 the table of contents of Special Federal Aviation Regulations is amended by adding SFAR No. 58 to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 58 [Note]

19. The section of Special Federal Aviation Regulations is amended, by adding SFAR No. 58 [Note] to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 58

Editorial Note: For the text of SFAR No. 58, see part 121 of this chapter.

20. In part 135, § 135.1 is amended by redesignating paragraph (a)(4) as (a)(5) and adding a new paragraph (a)(4) to read as follows:

§ 135.1 Applicability.

* * * * *

(a) * * *

(4) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58; and

* * * * *

Issued in Washington, DC.

James B. Busey,

Administrator.

Appendix—Advanced Qualification Program Advisory Circular

[Note: This appendix will not appear in the Code of Federal Regulations.]

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Chapter 1. Introduction and Definitions: Advanced Qualification Program (AQP)

Section 1. Introduction

1. Purpose

This Advisory Circular (AC) provides Federal Aviation Administration (FAA) guidance for approval of an Advanced Qualification Program (AQP) under Special Federal Aviation Regulation 58 (SFAR 58). An AQP is an alternate method of qualifying, training, certifying, and otherwise ensuring the competency of flight crewmembers, flight attendants, aircraft dispatchers, instructors, evaluators, and other operations personnel subject to the training and evaluation requirements of Federal Aviation Regulation (FAR) parts 121 and 135. The AQP encourages innovation in the methods and technology that are used during instruction and evaluation, and efficient management of training systems. The intent of this SFAR is to achieve the highest possible standards of individual and crew performance without undue increases in the cost to maintain training resources. An objective of all AQPs is to provide effective training that will enhance professional qualifications to a level above the present standards that are provided in FAR parts 121 and 135.

2. Background

The requirements for training programs and crewmember qualification of subparts N and O of FAR part 121 have not changed significantly since 1970. However, the capabilities and use of simulators and other computer-based training devices in training and qualification activities have changed dramatically since 1970. SFAR 58 and this AC allow certificate holders that are subject to the training and evaluation requirements of part 121 and part 135 and training centers that intend to provide training for eligible certificate holders to develop innovative training and qualification programs that incorporate the most recent advances in training methods and techniques.

3. Acceptable Method of Compliance

The methods and procedures in this AC describe one acceptable means of compliance with SFAR 58. Alternate means that are proposed by an applicant will be considered.

4. Training Facilities and Equipment

Each organization authorized to participate in an AQP will have the facilities, equipment, and courseware necessary to support the activities which are provided for in the AQP. Examples of facilities include classrooms, self-paced learning stations, breakrooms, recordkeeping facilities, etc. Examples of equipment include computer-based instructional equipment and home study equipment. Examples of courseware include lesson plans, flight maneuver packages, audiovisual programs, workbooks, computer courseware, etc.

5. FAA Qualification and Approval of Equipment Used in an AQP

FAA qualification is neither required nor granted for each facility or piece of equipment used in AQPs. However, equipment such as simulators or training devices that are used in an AQP to establish or maintain qualification or currency of personnel will be evaluated against a set of criteria established by the Administrator for a particular level of simulation (qualification level), and specifically approved for use in an AQP. Guidance on qualification and approval is provided in chapter 10 and in appendix C of this AC.)

6.–9. Reserved

Section 2. Definitions

10. Definitions

The following terms are used throughout this AC and are defined as follows:

Advanced Qualification Program.

An alternate qualification program for personnel operating under FAR parts 121 and 135 and for evaluators and instructors of recognized training centers that will provide such training. An AQP integrates a number of training features and factors aimed at improving airman performance when compared to traditional programs. The principal factor is true proficiency-based qualification and training. This proficiency base (expressed as performance objectives) is systematically developed, maintained and validated.

Anonymous Data. Data that cannot be identified with a named individual.

Applicant. A certificate holder that is required to have a training program under FAR 121.401 or 135.341 or that elects to have a training program under 135.341 and that applies for an AQP; or a training center that applies to conduct training and evaluation for an eligible certificate holder under an AQP.

Curriculum Segment. An integral part of a curriculum which can be separately evaluated and individually approved but by itself does not qualify a person for a duty position. First level of curriculum detail (*Segment*, Module, Lesson, Lesson Element).

Difficulty. The quality of being hard to perform, comprehend, or solve. As used in this AC, the definition assumes a task/subtask is performed. How often a task/subtask is performed.

Instructional Delivery Methods. See method.

Job. Duties, tasks, subtasks to be performed by an individual.

Knowledge. Specific information required to enable a student to develop the skills and attitudes to effectively

adequate. See also "proficiency objective."

Performance Statement. A statement of physical and/or cognitive activities which, when executed or carried out, will complete the work required for a specific portion of a job. Specific portions are defined as task, subtask and elements.

Proficiency Objective. A statement of physical and/or cognitive activities which, when executed or carried out, will complete the work required for a specific portion of a job. Specific portions are defined as task, subtask and elements.

Qualification Standards. Standards that describe the level of performance that must be achieved by an individual to demonstrate proficiency on a task/subtask.

Qualification Curriculum. A curriculum that is required for a person to qualify for a duty position.

Recurrent Curriculum. A curriculum that is required for a person to maintain qualification for a duty position.

Scenario. A simulated flight or ground event that is used to evaluate crew performance.

Subtask. A subdivision of a task. Each subtask must be performed to accomplish the task.

Task. A duty assignment that is performed by an individual.

Task Analysis. A detailed description of the skills, knowledge, attitudes, and abilities required to perform a task/subtask.

Training Center. A business entity that provides training and evaluation services to certificate holders under an AQP.

Training Center Curriculum. A curriculum that is required for a person to qualify for a duty position at a training center.

Training Center Curriculum Segment. An integral part of a training center curriculum which can be separately evaluated and individually approved but by itself does not qualify a person for a duty position. First level of training center curriculum detail (*Segment*, Module, Lesson, Lesson Element).

Validation. The process of collecting empirical data to demonstrate that the qualification standards are adequate.

Validity. The quality of being well-grounded, sound, or correct. As used in this AC, the definition assumes a task/subtask is performed. How often a task/subtask is performed.

11.–19. Reserved.

Chapter 2. Overview of the Advanced Qualification Program

Section 1. Introduction

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Anonymous Data. Data that cannot be identified with a named individual.

Applicant. A certificate holder that is required to have a training program under FAR 121.401 or 135.341 or that elects to have a training program under 135.341 and that applies for an AQP; or a training center that applies to conduct training and evaluation for an eligible certificate holder under an AQP.

Attitude. Mental state relating to: willingness to discharge responsibilities; ability to handle stress; ability to make decisions (judgment); and situational awareness.

Certificate Holder. Holder of an operating certificate and operations specifications which authorize part 121 or part 135 operations.

Cockpit Resource Management. The effective use of all resources available to a crew, including hardware, software, and all persons involved in aircraft operations to achieve safe and efficient flight. For additional information, see AC 120-51, as amended, "Cockpit Resource Management Training."

Cognitive. A mental process by which knowledge is created through sensory perception and/or reason.

Conditions. Existing circumstances which affect performance; e.g., external environment (weather, runway condition, airport area, etc.; internal environment (system emergencies, etc.).

Continuing Qualification Cycle. A measure of time that includes at least one evaluation period and additionally contains training in, and evaluation of all non-critical proficiency objectives.

Courseware. Instructional material developed for each curriculum. This is the information in lesson plans, flight event descriptions, computer software programs, audiovisual programs, workbooks, and handouts.

Criterion. A standard or rule where a judgment is made; e.g., pass/fail criterion.

Criticality. A determination of the relative impact of substandard performance on safety. The relative need for awareness, care, exactness, accuracy, correctness for the success of an outcome or operation.

Currency Item. A terminal proficiency objective for which individuals and/or crews can maintain proficiency by repeated performance of the item in normal line operations.

Curriculum. A portion of an AQP that covers one of three program areas: (1) indoctrination, (2) qualification, and (3) continuing qualification. A qualification or continuing qualification curriculum addresses the required training and qualification activities for a specific make, model, and series aircraft (or variant) and for a specific duty position.

Curriculum Segment. An integral part of a curriculum which can be separately evaluated and individually approved but by itself does not qualify a person for a duty position. First level of curriculum detail (*Segment,* Module, Lesson, Lesson Element).

Difficulty. The quality of being hard to perform, comprehend, or solve. As used in this AC, the definition concerns a task or subtask and is expressed in relative terms of least to most.

Duty. All the actions (tasks, subtasks, etc.) required by one's position or occupation.

Duty Position. The operating position of a crewmember, or other person. For part 121 and part 135 operations, duty positions include pilot in command (PIC), second in command (SIC), flight engineer (FE), flight navigator (NAV), instructor (IN), and evaluator (EV), aircraft dispatcher, flight attendant, or other ground operations personnel such as those dealing in security or hazardous materials.

Enabling Proficiency Objective. A separate knowledge, skill, or attitude which helps students achieve a higher order instructional objective. For example, knowledge of an "operating limitation" supports the "start engine" subtask.

Evaluation. Careful appraisal of an individual by an evaluator to ascertain whether the standards required for a specified level of proficiency exist.

Evaluator. A person who has satisfactorily completed training and evaluation that qualifies that person to evaluate the performance of crewmembers, instructors, other evaluators, aircraft dispatchers, and other operations personnel.

Event. An integral part of training or evaluation which is task-oriented and requires the use of specific procedures.

Facility. The physical environment required for training and qualification; e.g., buildings, classrooms.

Flight Training Equipment. Aircraft and those flight training devices or flight simulators that are used for any of the following purposes: (1) Required evaluation of individual or crew proficiency; (2) training activities that determine if an individual is ready for an evaluation; (3) activities used to meet recency of experience requirements; and (4) Line Operational Simulations (LOS).

Formative Evaluation. Process of reviewing courseware for technical accuracy, instructional soundness, and suitability for use by instructor, evaluator and student in media and facility; e.g., small group tryout, audit, and analysis.

Frequency. Number of occurrences of a task/subtask in a specific period of duty (1 flight, 1 trip, 1 month, 1 year, etc.) How often a task/subtask is performed.

Instructional Delivery Methods. See method.

Job. Duties, tasks, subtasks to be performed by an individual.

Knowledge. Specific information required to enable a student to develop the skills and attitudes to effectively recall facts, identify concepts, apply rules or principles, solve problems, and think creatively. It is demonstrated through actual performance.

Lesson. A meaningful division of learning consistent with the method of study, learning, or testing of performance (proficiency) objectives. The third level of curriculum definition (Segment, Module, *Lesson,* Lesson, Element).

Lesson Element. A subgroup of activities within a lesson. It is the fourth level of curriculum detail (Segment, Module, Lesson, *Lesson Element*).

Line Operational Simulations (LOS). A Line Operational Simulation is a training and evaluation scenario that simulates an operational flight and that accurately replicates interaction among a flight crew and between a flight crewmember and dispatch personnel, other crewmembers, air traffic controllers, and ground operations. These simulations are conducted for training and evaluation purposes and include abnormal and emergency occurrences. For additional information, see AC 120-35, as amended, "Line Operational Simulations.")

Media. Physical means for providing the instructional content. Includes entire set of instructional presentation materials; e.g., workbooks to simulators.

Method. (1) An ordered or systematic process for achieving an end; (2) A mode of procedure for instruction or evaluation; e.g: lecture, seminar; individual or group interactive procedural training; computer-based; event or scenario simulation; written, aural, or automated quiz or test; manual or automated performance measurement.

Module. A group of subject matter under a specific curriculum segment. Second of four curriculum levels of detail (Segment, *Module,* Lesson, Element).

Motor Skill. The eye to hand (and/or foot) coordination involved in interface of the man with the machine. Synonymous with "hands-on skill."

Objective. Statement of behavior including performance statement, conditions under which the performance occurs, and the standards to which the performance will occur to be correct or adequate. See also "proficiency objective."

Performance Statement. A statement of physical and/or cognitive activities which, when executed or carried out, will complete the work required for a specific portion of a job. Specific portions are defined as task, subtask and elements.

Planned Hours. The estimated amount of time (as specified in a curriculum segment outline) that it takes an average student to complete instruction, demonstration, practice, and evaluation, as appropriate, to reach proficiency.

Proficiency Objective. An objective containing the criteria for a required level of performance.

Proficiency Objective Criticality. Relative importance of a proficiency objective as it relates to the safe outcome of an operation. Used to determine the need for attention in training and evaluation. The determination is based on rating/ranking of consequence of error and relative difficulty. Relative difficulty should consider frequency of occurrence in normal operations as well as basic complexity and time compression.

Provisional Approval. FAA approval of the fitness, willingness and ability of a training center operation to conduct a generic course of instruction by make, model and series aircraft (or variant). FYI: Provisional approval of a generic curriculum does not constitute approval to conduct training for a specific part 121 or 135 applicant.

Qualification Standards. The terminal and supporting proficiency objectives coupled with test and evaluation strategies (where, how and by whom measured). Qualification Standards and previous experience provides a baseline of mastery for a job. Demonstration that an individual has met certain or all of these standards may lead to certification.

Segment (Instructional). See curriculum segment.

Skill. An ability to perform an activity or action. Divided into motor/hands-on and cognitive categories.

Standard of Performance. Observable, measurable parameters of performance with tolerances; e.g., course deviation degrees, + or −.

Subtask. Specific separate step or activity required in the accomplishment of a task.

Summative Evaluation. Training program evaluation accomplished in a full operational setting. Usually accomplished during the first full increment of classes with a full student complement.

Supporting Proficiency Objective. A proficiency objective created at the subtask level. A document describing a supporting proficiency objective and containing all knowledge, skills, attitudes and ability behaviors in that subtask.

Syllabus. An outline arrangement of curriculum segments, modules, lessons, and lesson elements in learning order sequence. Includes the schedule for planned hours, media, methods, and scenario where applicable.

Task. Unit of work within a duty, having identifiable beginning and ending points, and resulting in a measurable product.

Task Analysis. A specific method or procedure used to: (1) Provide a detailed, sequential listing of tasks, subtasks, and elements (if required) with skill, knowledge, attitude and ability characteristics that clearly define and completely describe the job; (2) provide consideration for conditions surrounding the job both in the environment and in the equipment used; (3) provide standards (parameters and tolerances) which provide safe and effective job accomplishment; and (4) identify characteristics of: (a) consequence of error, (b) relative difficulty, (c) frequency of occurrence in specific operations, and (d) time to accomplish the task.

Terminal Proficiency Objective. The highest level of definition for an objective. A derivative of a task. Accomplishment of a terminal objective (task) includes all subtasks.

Throughput. The need for replacement personnel to fill periodic attrition at specific duty positions. Throughput may be expressed as the number of persons requiring qualification during a twelve month period.

Training Center. An independent organization that provides training under contract or other arrangement to certificate holders. A training center may be a certificate holder that provides training to another certificate holder, an aircraft manufacturer that provides training to certificate holders, or any non-certificate holder that provides training to a certificate holder.

Training or Evaluation Module. See module.

Validation. Determination that required/desired results were produced. In training systems, the methods and procedures for development, implementation and maintenance as well as performance objectives and results will be validated.

Variant. A specifically configured aircraft for which the FAA has identified training and qualification requirements that are significantly different from those applicable to other aircraft of the same make, model, and series.

11.–19. Reserved.

Chapter 2. Overview of the Advanced Qualification Program

Section 1. Introduction

20. Purpose of the Advanced Qualification Program

The AQP is a qualification program for personnel operating under FAR parts 135 and 121. It integrates a number of training and evaluation features and factors that are aimed at improving performance as compared to traditional programs. The principle factor of the AQP is true proficiency-based qualification and training. This proficiency-basis (expressed as performance objectives) is systematically developed, maintained and empirically validated.

21. Overall Objectives of the Advanced Qualification Program

The following is a list of general objectives of the AQP:

(1) To improve safety through improved training and evaluation.

(2) To be responsive to changes in industry in new aircraft technology, operations, and training methods.

(3) To enable the use of training centers.

22. General Characteristics of Advanced Qualification Programs

The following is a list of the general characteristics of AQPs:

(1) Participation is voluntary.

(2) An AQP will employ innovative training and qualification concepts.

(3) It may build upon an existing training program or be completely new.

(4) Qualification of the AQP program will be based on individual and team performance expressed as proficiency objectives and on the structure and maintenance of all elements (curriculum, facilities, training equipment, instructors, evaluators, courseware and quality assurance) of the program.

(5) Individual and team proficiency, and the AQP itself, will be empirically validated by data collection and analysis.

(6) Training will be systematically developed with an audit trail for all training and data requirements.

(7) The methods used for development, implementation and maintenance of program operations will be continued throughout the life of the program.

23. Requirements of Advanced Qualification Programs

AQPs will:

(1) Accommodate make, model, and series aircraft (or variant).

(2) Provide three types of curriculums: indoctrination (for new hires, new instructors and new evaluators),

(7) Train and evaluate instructors and evaluators.

(8) Provide data to the FAA to validate training methods and the training program.

(9) Integrate appropriate advanced flight training equipment. A level 6 or 7 flight training device or a flight simulator will be required to support operation of an AQP. Detailed administrative procedures for the phased approval process are provided in chapters 7 and 8.

25. Advanced Qualification Program Validation

An AQP will be evaluated for overall conformance with major objectives

23. Requirements of Advanced Qualification Programs

AQPs will:

(1) Accommodate make, model, and series aircraft (or variant).

(2) Provide three types of curriculums: indoctrination (for new hires, new instructors and new evaluators); qualification; and continuing qualification curriculums for every duty position.

(3) Provide data that validates, proficiency-based qualification of personnel which meets or exceeds existing part 121 and/or part 135 standards.

(4) Conduct training and evaluation in a crew or team environment.

(5) Train and evaluate Cockpit Resource Management (CRM). AC 120-51, "Cockpit Resource Management Training," as amended, provides additional guidance on CRM training. Specific CRM factors are described in the AC. Objectives and objective measures will be developed and applied for each factor for every task and subtask as applicable.

Note: CRM issues and measures are not completely developed at this writing. AQP is expected to support the further development of CRM. Collection and analysis of anonymous data (not identified with a named individual) will validate the CRM factors as well as overall crew performance. Until CRM performance factors can be validated, data should be collected without pass/fail consideration. However, correction of below standard performance to standard is expected. For measuring CRM factors a 5-point rating scale is suggested with 3 equating to satisfactory performance.

(6) Use Line Operational Simulations for both training and evaluation. Guidance for conducting Line Operational Simulations is provided in AC 120-35, as amended, "Line Operational Simulations."

(7) Train and evaluate instructors and evaluators.

(8) Provide data to the FAA to validate training methods and the training program.

(9) Integrate appropriate advanced flight training equipment. A level 6 or 7 flight training device or a flight simulator will be required to support line operational scenarios.

(10) Support FAA analysis of automated performance data. Performance data gathered during proficiency evaluations will be provided to the FAA in digital form for use in an automated database.

(11) Provide an AQP management plan that includes a transition plan. All applicants will provide a plan to transition from a traditional program to an AQP and from an AQP to a traditional program.

Section 2. The Five-Phase Approach

24. The Five-Phase Approach for Developing an Advanced Qualification Program

The FAA and the applicant will participate in a phased approval process. The approval activities fall into 5 phases, each consisting of one or more specific approval/validation actions. These phases are:

I—Initial Application
II—Curriculum Development
  Step 1—Develop Proficiency Objectives
  Step 2—Develop Syllabus
  Step 3—Develop Training Requirements and Plans
III—Training System Implementation
IV—Initial Operations
V—Continuing Operations

AQP curriculum development will use a systematic process proposed by the applicant and approved by the FAA. Figure 2-1 illustrates how the phased approval actions interface with development, implementation, and operation of an AQP. Detailed administrative procedures for the phased approval process are provided in chapters 7 and 8.

25. Advanced Qualification Program Validation

An AQP will be evaluated for overall conformance with major objectives. These objectives include: improving safety by training and qualifying students to proficiency, employing Line Operational Simulation for training and evaluations, incorporating CRM principles, improving instructor and evaluator qualification programs, using a crew or team complement for training and qualification, and using appropriate advanced training equipment. Two classes of data will be generated to support evaluation:

a. *Program Audit Database.* The Program Audit Database will be created and maintained throughout the five phases of the FAA approval process. The data will be used to validate program development, implementation and maintenance. Documentation of specific activities required in chapter 7 will be provided to the FAA. (A list of documents appears in appendix D.)

b. *Performance/Proficiency Database.* The Performance/Proficiency Database will be generated during Phases III, IV and V of the approval process. It will provide student, instructor, and evaluator performance/proficiency data to validate the effectiveness of the AQP. The data will be one means used to identify any changes required to improve the AQP. It will also be used to develop proficiency projections, to establish group performance norms, and to verify and validate qualification requirements. Performance/proficiency data will be used to support research and development of CRM principles, methods, and measures.

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ADVANCED QUALIFICATION PROGRAM

5 PHASES OF APPROVAL - - DEVELOPMENT, IMPLEMENTATION AND OPERATION ACTIVITIES

PHASES	DEVELOPMENT	IMPLEMENTATION	OPERATION
INITIAL APPLICATION	Cover Letter/Transition Plan Supporting Data Phase 1 Approval		
CURRICULUM DEVELOPMENT			
STEP 1- Develop Proficiency Objectives	Supporting Task Analysis Prepare Proficiency Objectives Student Entry Level Analysis Qualification Standards		
STEP 2- Syllabus Development	Objectives into Curriculum Lesson Development Lessons into Modules, Segments		
STEP 3- Training Requirements Development with Implementation/Operations Plan	Establish Training Resource Requirements Implementation and Operations Plan		
TRAINING SYSTEM IMPLEMENTATION		Courseware Development and Implementation Qualification of Instructors and Evaluators Formative Evaluation	
INITIAL OPERATIONS			Summative Evaluation Crew Training all Curriculums
CONTINUING OPERATIONS			All Training and Evaluation Quality Assurance Program Maintenance

Fig. 2-1

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c. *Integration of the Two Databases.* Together the two databases provide the information needed to evaluate and control an AQP process. Each database is independent but interacts with the other. Changes to certain parts of the Program Audit Database will result in changes to training and/or results of proficiency evaluations. Conversely, undesirable proficiency evaluation results may indicate the need for changes to the training program which require changes in the Program Audit Database.

d. *Data Control Procedures.* This AC lists the documents required to provide the data necessary to apply for and operate under an AQP. All documents and document sections will be titled as indicated throughout chapter 7. A complete listing of titles in development sequence is provided in appendix D. Each document will have:

(1) A title page which has the applicant's identification, the revision status by number and date, and signature blocks for the applicant's assigned individuals responsible for AQP PROGRAM CONTROL and for the FAA official responsible for approval.

(2) A table of contents for the document.

26.–35. Reserved

Chapter 3. Basic Curriculum Requirements

36. Advanced Qualification Program Curriculum Requirements

For each make, model, and series aircraft (or variant) and for each duty position, three curriculums will be developed. These curriculums are indoctrination, qualification, and continuing qualification.

Examples of the subject materials and training events appropriate to indoctrination, qualification, or continuing qualification curriculums appear in appendices A, B, and C of this AC. These examples are based on requirements in FAR parts 121 and 135. An applicant with an approved program may follow the standard requirements expressed in those regulations or may generate new curriculum content and format through the process described in chapter 7 of this AC. In all cases, terminal and enabling proficiency objectives will be created (as explained in chapter 7) that include CRM principles and use Line Operational Simulation for training and evaluation. Differences between standard regulatory requirements and those specified in an operator's AQP authorized under SFAR–58 will be identified by the applicant. The program proposed by the applicant must provide individual and crew proficiency equivalent to or better than that provided by traditional programs.

37. Indoctrination Curriculum

An indoctrination curriculum consists of all training elements which will be learned and evaluated before an individual may begin a qualification curriculum. Indoctrination curriculum segments are ground training, special purpose training, and evaluation. Two distinct areas of ground training indoctrination are: (1) Certificate holder-specific training and, (2) duty position-specific training. Certificate holder-specific training acquaints crewmembers, dispatchers, instructors, evaluators, and other operations personnel with company policies and practices and general operational knowledge. Duty position-specific training provides the basic aeronautical knowledge needed to begin aircraft-specific training. Emergency situation training, which is part of indoctrination, is partially certificate holder-specific and partially duty position-specific.

For an example indoctrination curriculum, see Figure 3–1. For detailed information on subject matter appropriate to a standard indoctrination curriculum, see appendix A.

38. Qualification Curriculums

a. *General.* An AQP must include a qualification curriculum for each duty position in each make, model, and series aircraft (or variant). Figure 3–2 provides an example of a qualification curriculum. Each qualification curriculum will include ground training activities, flight training activities, evaluation, special purpose training, and supervised operating experience. Each AQP may also include a curriculum segment or evaluation modules which describe in detail the practical tests which will be used for persons who will acquire airman certificates, or additional category, class, instrument or type ratings through an AQP. CRM and Line Operational Simulations must be integral to any qualified curriculum.

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SAMPLE OF AN INDOCTRINATION CURRICULUM

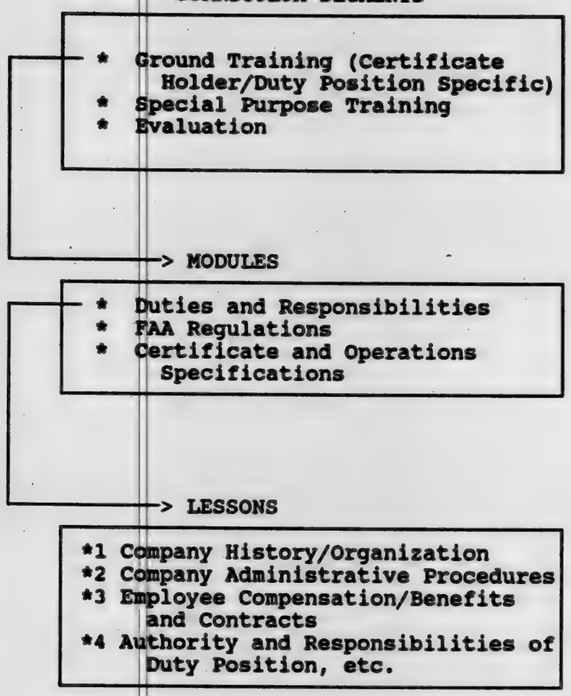

Fig. 3-1

SAMPLE OF A QUALIFICATION CURRICULUM
(FOR PIC B727)

b. *Pilot and Flight Engineer Ground Qualification Activities.* To be qualified for a particular duty position in a specific make, model, and series aircraft (or variant), a person will receive aircraft-specific ground training. This training includes general operational subjects, aircraft systems, aircraft system integration, and emergency drill

h. *Planned Hours.* Qualification curriculums will include planned hours for ground training, flight training, evaluation, and supervised operating experience.

39. Use of Flight Training Equipment in Qualification Curriculums

Flight training equipment consists of

positions and aircraft assignments. A person who is qualified on more than one make, model, and series aircraft (or variant) or in more than one duty position should be simultaneously enrolled in a separate continuing qualification curriculum for each assigned aircraft and duty position. However, a person who is

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SAMPLE OF A QUALIFICATION CURRICULUM
(FOR PIC B727)

CURRICULUM SEGMENTS

- Ground Training
- Flight Training
- Evaluation
- Special Purpose Training
- Supervised Operating Experience

> MODULES
(Phases of Flight)

- Preparation
- Surface Operations
- Takeoff
- Climb
- Enroute Navigation Descent
- Approach
- Visual Segment and Landing, etc.

> LESSONS

1. Normal/Alternate Procedures General
2. Non Precision Skill Groups 1 and 2
3. Non Precision Skill Group 3
4. Non Precision Skill Group 4
5. Precision IFR Approach Skill Group 1
6. Precision IFR Approach Skill Group 2
7. Precision IFR Approach Skill Groups 3, 4, and 5
8. Emergency Procedures

Fig. 3-2

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b. *Pilot and Flight Engineer Ground Qualification Activities.* To be qualified for a particular duty position in a specific make, model, and series aircraft (or variant), a person will receive aircraft-specific ground training. This training includes general operational subjects, aircraft systems, aircraft system integration, and emergency drill training. For further details on ground training subjects, see appendix B.

c. *Pilot and Flight Engineer Flight Qualification.* Each AQP includes curriculum segments for flight training, flight evaluation, and supervised operating experience for appropriate personnel. Standard flight qualification events for pilots and flight engineers are presented in appendix C.

d. *Evaluation.* Each AQP includes curriculum segments for evaluation of individuals and crew proficiency.

e. *Special Purpose Training.* Curriculum segments may include special purpose training. These are portions of ground and flight training that have specific application; e.g., to crewmembers who are in international operations, or for initial introduction of new flight operations, such as CAT III approaches. Special purpose training may initially be a separate curriculum segment that is later integrated into ground and flight training segments.

f. *Supervised Operating Experience.* Supervised operating experience curriculum segments are integral to qualification curriculums. An applicant may develop supervised operating experience curriculum segments which include required iterations of specific events and activities. Supervised operating experience will be directly supervised by an appropriately and currently qualified evaluator. The person gaining the experience will perform the duties of his newly assigned position at the control station that is appropriate for pilot, engineer, instructor, or evaluator. For pilots and flight engineers, supervised operating experience may be obtained only during actual flight operations.

g. *Airman Certification.* Curriculum segments may include evaluation modules developed to provide alternative practical tests for airman certification. In these modules the applicant must show, to the FAA's satisfaction, that the proposed test will ensure individual competency that equals or exceeds the standards in part 61, 63, or 65 and ensures each person certificated through an AQP has demonstrated satisfactory interactive CRM skills. (See chapter 4 of this AC.)

h. *Planned Hours.* Qualification curriculums will include planned hours for ground training, flight training, evaluation, and supervised operating experience.

39. Use of Flight Training Equipment in Qualification Curriculums

Flight training equipment consists of seven levels of flight training devices, four levels of flight simulators, and aircraft. The approved use of each item of flight training equipment for airman qualification is listed in the maneuvers and procedures tables in appendix C. The devices and simulators listed in the tables are the types of flight training equipment (other than aircraft) which may be approved for use in an AQP. Before any flight training device or flight simulator can be used for LOFT, Line Operational Simulations, recency of experience activities, evaluation or instruction conducted to assess whether a person has attained a terminal proficiency objective, it must be evaluated and qualified by the National Simulator Program Manager (NSPM) and approved by the FAA for its specific use in the applicant's AQP. ACs 120-40, as amended, "Airplane Simulator Qualification," and 120-45, as amended, "Airplane Flight Training Devices Qualification," provide the qualification policy, criteria, and detailed technical descriptions of flight simulators and flight training devices. Those ACs are the only authorized source documents and will be used for evaluation and qualification of flight training devices and flight simulators. Since those ACs are presently undergoing revision, appendix F of this AC describes the flight training devices and flight simulators applicable to AQI. These descriptions are to be used in connection with the approval tables in appendix C.

40. Continuing Qualification Curriculum

a. *General.* AQPs must include continuing qualification curriculums based on continuing qualification cycles. Continuing qualification cycles should efficiently utilize available training resources and accommodate appropriate combinations of environmental and operational situations.

b. *Applicability.* Continuing qualification applies to all persons subject to an AQP, including instructors and evaluators. In an AQP, fully qualified persons are automatically scheduled for continuing qualification activities specifically designed to maintain their proficiency in their duty positions and aircraft assignments. A person who is qualified on more than one make, model, and series aircraft (or variant) or in more than one duty position should be simultaneously enrolled in a separate continuing qualification curriculum for each assigned aircraft and duty position. However, a person who is simultaneously assigned as a flight crewmember, instructor, and/or evaluator on the same aircraft may be enrolled in a continuing qualification curriculum which combines the activities necessary to maintain skill and proficiency in all duty positions.

c. *Types of Activities.* Continuing qualification curriculums should outline a uniform timetable for the following: (i) Continuing qualification ground training; (ii) continuing qualification flight proficiency training; (iii) evaluation which includes flight proficiency evaluations and online evaluations; (iv) currency activities (including recency of experience activities); and (v) special purpose training. Continuing qualification should have a proper balance between training, evaluation, and currency. Generally, continuing qualification curriculum segments contain the same elements and events as qualification curriculum segments; however, continuing qualification segments are not as detailed for each module or element and therefore require fewer training hours. Continuing qualification curriculum segments exclude certification and supervised operating experience modules. Special purpose training segments in continuing qualification curriculums are used for the same purposes as in qualification curriculums. For an example of a continuing qualification curriculum see Figure 3-3.

(1) *Continuing Qualification Ground Training.* Continuing qualification will include ground instruction and evaluation for pilots, flight engineers, instructors, evaluators, and other operations personnel that includes a general review of knowledge and skills, attitudes and abilities covered in qualification training as well as updated information. Ground instruction reviews basic airmanship, including operational techniques, emergency situation training, the knowledge, skills, and attitudes required to operate a specific aircraft, and information concerning newly developed procedures. It includes newly developed safety information and newly modified airmanship techniques.

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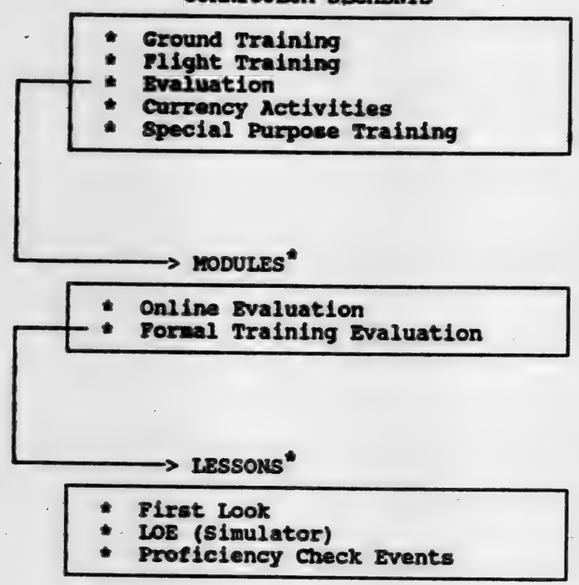
SAMPLE OF A CONTINUING QUALIFICATION CURRICULUM
(FOR PIC B727)

(2) *Continuing Qualification Flight Proficiency Training.* Pilots, flight engineers, and those instructors and evaluators who conduct flight training or flight evaluations will complete proficiency training designed for their respective duty position in an aircraft, flight training device, or flight simulator on normal, alternate, abnormal and

(4) *Flight Crewmember Currency Activities.* The applicant's AQP should show compliance with either the currency requirements in FAR part 121.439 or specific, equivalent currency activities. The currency activities schedule, if not met during line operations, may be satisfied through a flight currency reestablishment activity

curriculums. These modules should be regularly revisited to maintain both individual and crew proficiency. Each continuing qualification curriculum will identify the frequency of training sessions at a training facility for each person qualified under an AQP. During a continuing qualification cycle all terminal proficiency objectives must be

SAMPLE OF A CONTINUING QUALIFICATION CURRICULUM
(FOR PIC B727)



* Continuing Qualification Curriculums contain similar, less detailed modules/elements as compared to Qualification Curriculums.

Fig. 3-3

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(2) *Continuing Qualification Flight Proficiency Training.* Pilots, flight engineers, and those instructors and evaluators who conduct flight training or flight evaluations will complete proficiency training designed for their respective duty position in an aircraft, flight training device, or flight simulator on normal, alternate, abnormal and emergency flight events. Flight proficiency training permits pilots and engineers to experience and practice the procedures and maneuvers (events) which are not normally encountered in day-to-day flight operations. For instructors and evaluators who are limited to conducting their duties in flight simulators and flight training devices, flight proficiency training may be conducted in flight simulators and flight training devices.

(3) *Evaluations.* Continuing qualification must include evaluation in all events and major subjects required for original qualification. Flight proficiency evaluations and online evaluations are described below.

(i) *Flight Proficiency Evaluations.* Flight proficiency evaluations may be conducted in a flight training device, aircraft, flight simulator or a combination thereof. Their purpose is to permit evaluation of pilots, flight engineers, instructors, and evaluaters as they perform the procedures and maneuvers specified for evaluation in the continued qualification curriculums.

(ii) *Online Evaluations.* Online evaluations are evaluations of an entire flight crew which are conducted by an evaluator during actual part 121 or part 135 flight operations or during operationally oriented flights such as ferry flights or proving flights. Online evaluations must be included in the continuing qualification curriculums for pilots in command only. However, during online evaluations each person performing duties as a pilot in command, second in command, or flight engineer must be individually evaluated as to: (1) Proficiency in the particular aircraft, crew position, and type of operation; and (2) skills and ability to operate effectively as part of a crew. To conduct such an evaluation, an evaluator will hold the airman certificates and ratings for all individual positions being evaluated.

(4) *Flight Crewmember Currency Activities.* The applicant's AQP should show compliance with either the currency requirements in FAR part 121.439 or specific, equivalent currency activities. The currency activities schedule, if not met during line operations, may be satisfied through a flight currency reestablishment activity specified in the continuing qualification curriculum. Currency activities for instructors and evaluators who are not "line crewmembers" will be specified in each AQP. These instructor and evaluator activities should enable each instructor or evaluator to maintain proficiency in teaching and evaluating the events the person is authorized to perform.

d. *Line Operational Simulations.* In an AQP, Line Operational Simulations include both training and evaluation during operational flight simulations designed to upgrade the skills and proficiency of flight crewmembers both as individuals and as team members. These activities require the team to make decisions concerning operations while simultaneously requiring high quality demonstrations of individual abilities. CRM skills should be seriously tested and challenged by the scenarios designed for Line Operational Simulations. Guidance for this training and evaluation are set forth in AC 120-35, as amended, "Line Operational Simulations," and AC 120-51, as amended, "Cockpit Resource Management."

41. Continuing Qualification Cycles

Activities in a continuing qualification curriculum must occur within a scheduled period called a "continuing qualification cycle." The continuing qualification cycle should provide sufficient detail to show compliance with the SFAR. Elements of ground training activities, flight training activities, proficiency and online evaluations and currency activities should be specifically identified. The schedule for the cycle should specify the period between each type of activity and the order in which activities will be performed. Developing a continuing qualification activity schedule involves selecting, revising, and ordering modules (with related proficiency objectives) from indoctrination and qualification curriculums. These modules should be regularly revisited to maintain both individual and crew proficiency. Each continuing qualification curriculum will identify the frequency of training sessions at a training facility for each person qualified under an AQP. During a continuing qualification cycle all terminal proficiency objectives must be trained and evaluated.

a. *Evaluation Period.* Each continuing qualification cycle must include at least one evaluation period. All critical proficiency objectives will be trained and evaluated during this period. (See chapter 7 discussion of critical proficiency objectives.) The initial evaluation period duration cannot be more than 13 months. For an illustration of the interrelationship between training sessions, evaluation, and currency activities within a continuing qualification cycle, see Figures 3-4. Events that occur within an evaluation period are:

(1) *Training Sessions.* Each evaluation period must include at least one training session, but may include two or more. Training sessions cannot be more than 13 months apart. However, a training session that occurs during the 2 months preceding the last month of an evaluation period will be considered to occur on schedule.

(2) *Online Evaluation.* For pilots in command, an online evaluation must be scheduled in the calendar month that includes the midpoint of the evaluation period. However, to allow flexibility, the online evaluation may be completed during the month after or the month before the midpoint month.

(3) *Proficiency Evaluations.* For pilots in command, seconds in command, flight engineers, and other persons covered by an AQP, a proficiency evaluation in an aircraft, flight training device, and/or flight simulator must be completed during each evaluation period. Typically, the proficiency evaluation will occur during a required training session; however, if more than one training session is completed during an evaluation period, proficiency evaluation may be divided among training sessions. Proficiency evaluation of non-critical proficiency objectives may be spread throughout the continuing qualification cycle.

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CONTINUING QUALIFICATION CYCLE EXAMPLE

SKYWAY'S AVIATION PILOT-IN-COMMAND LEAR 23/24 AIRCRAFT

CONTINUED QUALIFICATION CYCLE

< > = Currency - Repetitive Happenings to Maintain/Establish Currency
( ) = Training - Ground, Flight, Simulator
[ ] = Evaluation - Proficiency Check, LOE, First Look, Online Check

Activity	Month 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
Currency Activities	< >		< >		< >		< >		< >		< >		< >		< >											
Training ( )			( )[1]						( )																( )	
Evaluation [ ]	[O][2]				[O][3]								[R][4]								[O][3]					[R][4]

[1] ( ) = First Training Activity for Newly Qualified PIC's Only
[2] [O] = Evaluation for Initial Qualification
[3] [O] = Online Check (PIC)
[4] [R] = Recurring Training Session and Proficiency Check (PIC/SIC/FE)
Note: The specific details of each activity are explained in SKYWAY's Continuing Qualification Curriculums.

Figure 3-4

BILLING CODE 4910-13-C

b. *Extensions.* The FAA may approve extensions of the continuing qualification cycle, in increments not exceeding 3 calendar months, up to a maximum of 30 months upon demonstration by an applicant that the extension is warranted. The FAA may also approve an extension of an evaluation period in increments not exceeding 3 calendar months up to a maximum of 28 calendar months. To obtain approval for extension of a continuing qualification cycle or evaluation period, an applicant must show that individuals subject to the AQP are able to maintain their knowledge and skills under the already approved schedules and that a rational basis exists for believing that no loss of knowledge, skill, or abilities would result from the extension. An extension will be allowed to continue, or an additional extension will be granted, only if an operator's record and independent FAA evaluation show that the extension is appropriate as a means to maintain or increase the level of crewmember or dispatcher competency. The FAA will consider approving extensions to the duration of evaluation periods and continuing qualification cycles if evidence substantiates that the extension will maintain or increase the level of safety in air transportation.

c. *Validation.* The continuing qualification cycles and evaluation periods will be subject to continued demonstration of overall effectiveness. The demonstration will be dependent on the data submitted by the applicant for program validation. (See chapter 9 for validation requirements.) To ensure adequate individual and crew qualification, an applicant must show that its AQP has the capability to monitor each individual's demonstrated proficiency.

42. Flight Crewmember Requalification

A person who fails to comply with the requirements of a continuing qualification curriculum becomes unqualified for the duty position and must be requalified to resume serving in that duty position. An AQP should provide means for requalification. An AQP should also establish time limits beyond which an individual would be required to repeat the entire indoctrination curriculum and/or qualification curriculum to requalify.

43.–50. Reserved

Chapter 4. Airman Certification

51. *General*

SFAR 58 provides an alternative practical testing means to certificate pilots, flight engineers, and aircraft dispatchers. At this time, the process for certification of dispatchers through AQPs has not been formulated but will be addressed in a future version of this AC. At this time, the criteria developed for certification of pilots through AQPs is limited to pilots who hold at least a Commercial Pilot Certificate with an Instrument Rating. In the future the FAA may establish criteria for other types of pilots. Until these criteria are developed the FAA will review on a case by case basis any applicant's request for other types of pilot certification under an AQP.

52. Practical Test Criteria

An applicant for certification must be eligible under the applicable requirements of parts 61, 63, or 65, except that an operator may develop practical tests for certification which, when specifically approved by the Manager, Air Carrier Training Branch, may be used in place of the practical tests prescribed in parts 61, 63, or 65 of the FAR. Development of practical tests to be used in place of the practical tests prescribed in parts 61, 63, or 65 should be based on the tables in appendix C of this AC and other relevant information such as aircraft flight manuals and Flight Standardization Board reports. These practical tests should consist of maneuvers and procedures for pilots; procedures and basic skills for flight engineers; and knowledge and procedures for aircraft dispatchers. Practical tests proposed by the operator should be shown to provide individual proficiency equivalent to or better than that provided by the practical tests prescribed in parts 61, 63, or 65 of the FAR.

53. Completion of Qualification Curriculum

An applicant for airman certification under an AQP will successfully complete the appropriate qualification curriculum.

54. Demonstration of Individual Skills

Applicants for certification will show competence in required technical skills and CRM skills in actual or simulated operational scenarios that test both types of skills together.

55. Authorized Evaluation Personnel

Certification tests will be conducted by a person who is designated in writing by the Manager, Air Carrier Training Branch, as qualified to conduct the particular evaluation. Only the following personnel may be designated by the Manager, Air Carrier Training Branch, to conduct airman certification evaluations in an AQP.

a. *FAA operations inspectors* who are currently qualified on the make, model, and series aircraft (or variant) and who are thoroughly familiar with the specific alternative evaluation process in the particular AQP.

b. *Aircrew program designees* (APDs currently qualified on the make, model, and series aircraft (or variant), who have completed evaluator qualification and maintain continuing qualification as evaluator under the particular AQP.

c. *Designated examiners* currently qualified on the make, model, and series aircraft (or variant), who have completed evaluator qualification and maintain continuing evaluator qualification under the particular AQP.

56. Disposition of Airman Certification Documents

Persons authorized to conduct airman certification evaluations under an AQP will issue either a temporary airman certificate or notice of disapproval for each certification evaluation conducted and will write "SFAR 58" in the top margin of the application form. The completed file will be mailed to the FAA Flight Standards District Office identified in the individual AQP for further disposition in accordance with FAA internal directives.

57.–60. Reserved

Chapter 5. Training and Evaluation of Instructors and Evaluators

61. General

Each AQP (including provisional AQP curriculums for training centers) should provide instructor and evaluator indoctrination, qualification, and continuing qualification.

62. Training and Evaluation

Each instructor and evaluator should receive training in and be evaluated on the methods of qualification and the use of flight simulators, flight training devices, aircraft, and other media used in the AQP. A means of maintaining currency in the use of these methods and media should be included in each instructor and evaluator continuing qualification curriculum.

63. Instructor Courses

a. *Instructor Indoctrination.* Indoctrination for instructors should include the following elements:

(1) The learning process.

(2) Elements of effective teaching.

(3) Student evaluation, quizzing, and testing.

(4) Overview of AQP program development, implementation, and operation policy.

(5) Lesson preparation and application.
(6) Classroom instructing techniques.
(7) Techniques for instructing in the cockpit environment.

b. *Instructor Qualification.* Instructor qualification should include development of knowledge and skills in the following:
(1) Effective use of specific flight training devices and flight simulators used in the AQP.
(2) Limitations on use of training equipment used in the AQP.
(3) How to conduct training modules for students with varying backgrounds and varying levels of experience and ability.
(4) Evaluation of performance against objective standards.
(5) Effective preflight and postflight instruction.
(6) Instructor responsibilities.
(7) Effective analysis and correction of common errors.
(8) Teaching/Facilitation of CRM skills.
(9) Performance and analysis of standard flight events and procedures.
(10) Qualification at the instructor duty position in the flight simulator, flight training device, and/or aircraft.
(11) Safety considerations in the training environment.
(12) Data gathering procedures.

c. *Instructor Continuing Qualification.* Each instructor continuing qualification curriculum segment should include a schedule for recency of instructor experience and for ground and flight training to enhance, upgrade, and maintain each instructor's knowledge, skills, and abilities. Each instructor's continuing qualification curriculum should include a schedule for critical examination of each instructor's abilities.

64. Evaluator Training and Evaluation

Persons selected to be evaluators should have experience as instructors and have shown their ability to observe and judge the effectiveness of individual training courses and of individual instructors, as well as the overall effectiveness of an AQP. All evaluators will complete curriculums which consist of indoctrination and qualification. After qualifying, evaluators will maintain their qualification through participation in a continuing qualification curriculum segment specifically designed to enhance evaluator skills, knowledge, and abilities. Whenever a person is maintaining qualification as both an instructor and an evaluator, a single continuing qualification curriculum segment may be developed to maintain both skills.

a. *Content of Evaluator Indoctrination Curriculum.* Evaluator indoctrination curriculum segments include the following elements:
(1) Evaluation policies and techniques.
(2) The role of the evaluator.
(3) Administrative procedures.
(4) General safety considerations.
(5) Evaluating CRM skills.

b. *Content of Evaluator Qualification Curriculum.* Evaluator qualification curriculum segments should include the following elements and events:
(1) For each crewmember position requiring a particular evaluation the methods of conducting:
(i) Online evaluations.
(ii) In flight proficiency evaluations.
(iii) Proficiency evaluations in flight simulators and/or flight training devices.
(iv) Special purpose evaluations (e.g., long range navigation).
(2) The standards for the evaluations in (1).
(3) When applicable, the methods and standards associated with airman certification evaluation.
(4) If applicable, how to conduct evaluations while simultaneously serving as PIC, SIC, or safety pilot.
(5) Safety considerations for the various types of evaluations.
(6) Safety considerations particular to the make, model, and series aircraft (or variant).
(7) How to evaluate instructors.
(8) How to evaluate other evaluators.
(9) Company policies with regard to the conduct of evaluations.
(10) FAA policies with regard to the conduct of evaluations.
(11) Administrative requirements particular to evaluations.
(12) Evaluating CRM skills.
(13) Briefing and debriefing techniques.
(14) Data gathering procedures.

c. *Content of Evaluator Continuing Qualification Curriculum.* Each evaluator continuing qualification curriculum segment should include a schedule for recency of evaluator experience and for ground and flight training to enhance, upgrade, and maintain each evaluator's knowledge, skills, and abilities. Each evaluator's continuing qualification curriculum should include a schedule for critical examination of each evaluator's standardization and abilities.

65. Instructor and Evaluator CRM Training and Evaluation

All instructors and evaluators should receive instruction and be evaluated in CRM objectives and training methods. For additional information on CRM, (See AC 120-51, as amended, "Cockpit Resource Management Training.")

66.–70. Reserved

Chapter 6. Training Centers

71. Purpose.

This chapter provides guidance to (1) any training center that intends to provide training, qualification, or evaluation for a certificate holder's AQP, and (2) any certificate holder that intends to arrange for a training center to accomplish training, qualification, or evaluation under an AQP.

72. General Guidelines

a. *Approval: When Required.* A certificate holder that provides qualification under an AQP to its own employees does not need to be approved as a training center. A certificate holder that provides training, qualification, or evaluation for other certificate holders and any other organization that provides training, qualification, or evaluation for certificate holders is considered a training center.

b. *Provisional Approval.* A training center should obtain provisional approval of each curriculum segment or portion of a curriculum segment that it proposes to offer for use by others. A training center would not have to have a contract or other arrangement with a particular certificate holder to obtain provisional approval. However, provisional approval does not convey automatic approval for use of a provisionally approved curriculum segment as part of a certificate holder's AQP. Permission to use a training center's provisionally approved curriculum segment as part of a particular certificate holder's AQP depends on the FAA's assessment of the adequacy of the training center's curriculum material to meet the certificate holder's specific needs. Modification of the training center's curriculum materials usually will be required to ensure that the material conforms with the certificate holder's training and qualification needs. Instructors and evaluators employed by training centers will demonstrate competency to teach and evaluate in conformity with the certificate holder's approved training and qualification standards, operational methods, techniques, and procedures.

c. *Certificate Holder Operations-Specific Training.* Generally, operations-specific (i.e., specific to a certificate holder) training will be provided directly by a certificate holder rather than by a training center. A certificate holder that wishes to contract with or otherwise arrange for conduct of operations-specific curriculum segments by a training center will show that the training center, including the center's instructors and evaluators, is fully qualified and competent to accomplish operations-specific curriculum segments.

73. Application for Provisional Approval of Training Center Curriculum Material

a. *Application for Provisional Approval.* Application is made to the Air Carrier Training Branch through the training center's local Flight Standards District Office. The application may be submitted independently by a training center or in conjunction with a certificate holder that is applying for an AQP.

b. *Five-Phase Approval Process.* Each application will be submitted through the five-phase approval process explained in Chapter 7. Provisional curriculum approval will require successful completion of Phases I, II, and III. Approval of Phase IV training will only be granted when the provisional curriculum segments are incorporated in or adapted to a specific certificate holder's AQP.

74. Approval for Use in an AQP

Approval for use of a training center's provisionally approved curriculum segments in a certificate holder's AQP will be given only at the time the certificate holder applies for approval of its AQP and only if the FAA determines that the curriculum segments are appropriate for the certificate holder's required training.

75.–80. Reserved

Chapter 7. Five Phases of the Advanced Qualification Program

Section 1. Introduction

Each of the five phases for developing implementing, and maintaining an AQP are described in detail in this chapter. Each phase and step must be FAA approved before the applicant may proceed to the next step or phase. Each phase and step consists of specific activities including the documentation of those activities. The documentation is established and maintained as part of the Program Audit Database. A description of the administrative procedures for each phase or step of the approval process is provided in chapter 8.

Section 2. Phase I: Initial Application

81. General

In the initial application phase, the applicant must establish its intent and approach for developing an AQP. The applicant will develop the methods to meet specific regulatory requirements. The applicant will also develop a Supporting Data Package that includes the basic information used to develop, implement, and operate a proficiency-based qualification program. This data package becomes part of the Program Audit Database and is kept current throughout the life of the AQP.

82. Program Audit Database

The organization of the Program Audit Database will be established during Phase I of the approval process. The database will continue to be generated and maintained throughout all five phases.

83. Documentation for Phase I

To begin the application process the following documents are required:

a. *Program Audit Database Master List.* A master list of all documents in the database is required for each make, model, and series aircraft (or variant). A sample list of these documents is presented in Appendix D. All documents should be listed by title and have a corresponding summary description.

b. *Application Cover Letter.* The application cover letter will address at least the following issues:
(1) The applicant's intent to develop, implement, and operate an AQP.
(2) The specific concept, approach and methodology for developing the AQP (specific methods and procedures for all steps).
(3) The specific concept, approach and methodology for implementing the AQP.
(4) How and to what extent the AQP will differ from a traditional training program.
(5) How the AQP will be operated and maintained.
(6) How CRM will be integrated and measured.
(7) How security and hazardous material training will be addressed (as applicable).
(8) How Line Operational Simulation concepts will be integrated into both evaluation and training.
(9) How existing levels of performance and safety will be met or exceeded.

c. *Transition Plan.* An applicant will include a separate transition plan (containing a calendar of events) to accompany the cover letter. Transition from one program to another (traditional to AQP or AQP to traditional) may include a period of overlap as one program is phased in and the other phased out. The following guidelines for transition are offered:
(1) Currently qualified personnel may transition between traditional recurrent training curriculums and continuing qualification curriculums.
(2) Personnel who have completed initial, transition or upgrade curriculums may enter a continuing qualification curriculum.
(3) Personnel who have completed a traditional basic indoctrination curriculum, but have not completed an initial, transition or upgrade curriculum, should not enter AQP qualification curriculums until they complete the difference items for the AQP indoctrination curriculum.
(4) Partial transition plans are not acceptable.
(5) The transition plan may provide for incremental implementation of indoctrination, qualification, and AQP continuing qualification curriculums in Phase IV (Initial Operations), and incremental final approval in Phase V.

d. *Supporting Data Package.* The supporting data package will include the following information:
(1) Job Listing for each make, model, and series aircraft (or variant). This requirement may be met by using existing task analyses available to the applicant in currently approved programs. A job listing shall include the following:
- Duty position (e.g., pilot in command, instructor, and evaluator).
- Task (e.g., Accomplish VOR/LOC non-precision instrument approach; or Accomplish visual landing).
- Subtask (for VOR/LOC non-precision approach) (e.g., Accomplish Procedure Turn; or Perform Final Approach Phase).

(Note: If further breakdown of subtasks is desired, elements may be used.)

(2) Aircraft configuration and performance baseline. For each make, model, and series aircraft (or variant) the following information shall be provided:
- Cockpit design layout.
- Aircraft system design.
- Training and qualification recommendations included in Flight Standardization Board reports.
- Aircraft performance.
- Aircraft flight manuals.
- Operations manuals.
- Environmental characteristics of terminals and enroute operating areas.

(3) Trainee demographics. The following demographic data will be part of the supporting data:
- Summary data for trainee experience and entry level should be provided. Entry requirements for ground and flight instructors and evaluators should be provided; e.g., previous experience working for the applicant.

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Students should be identified as a group in terms of previous experience with high, low and mean experience included.

(Note: It may be desirable to create curriculums for more than one student entry level population for a single duty qualification.)

• The current and anticipated need for replacement crewmembers by duty position (throughput) should be provided.

(4) Documents governing operations. A catalogue of documents governing operations including but not limited to: Operating Specifications; Federal Aviation Regulations; Instrument Procedures; Advisory Circulars; International Civil Aviation Organization Procedures (ICAO); flight manuals; Flight Standardization Board reports; etc.

(Note: To take exception to the provisions of these or any other existing documents in developing an AQP, the applicant will identify and support the exception.)

(5) Training equipment description. This document should describe the training equipment to be used and the organization responsible for its security and maintenance. Flight simulators and/or flight training devices should be identified by make, model, serial number, and manufacturer; or by the FAA identification number assigned by the National Simulator Program Manager. Specifically, the applicant will identify any new training equipment to be used. If qualification is required, the applicant should state when it intends to submit a test guide and a request for equipment qualification. Qualification requests will be processed in accordance with ACs 120-40 and/or 120-45, as amended. (For more information on flight simulators, flight training devices, and other training equipment, see chapter 10 of this AC.)

(6) Facilities description. Each AQP submission should describe the facilities the applicant intends to use. These facilities may belong to a certificate holder or may be operated by a training center. In either case, the applicant should describe the location, type of facility, classrooms, training aids, and other features that contribute to creating and maintaining a positive learning environment.

(7) Courseware description. The applicant should describe the kinds of courseware (instructional materials) to be used. Examples include: lesson plans, audiovisual programs, workbooks, mission folders, weather briefings, etc.

(8) Operating environment description. The applicant should describe its operating environment including the complete range of physical environmental factors expected to be encountered in operations. Environmental factors are critical to development of Line Operational Simulation scenarios and meaningful proficiency objectives. Environmental factors include:

• Weather norms and extremes (e.g., *minimum* extremes of expected weather conditions.)

• Normal, abnormal and emergency equipment operation.

84. Review of the Initial Application Package

When the applicant has submitted the cover letter and supporting data, the FAA will review the application package and meet with the applicant to discuss findings. This conference *does not constitute approval.* It provides a means for the FAA to acquire an understanding of the applicant's approach and to establish communication with the applicant. After the conference, the FAA will either grant approval to continue into Phase II, Step 1, or inform the applicant of AQP application requirements which have not been met.

85. Reserved

Section 3. Phase II: General Curriculum Development

86. General: Curriculum Development

Phase II has three steps which require FAA review and approval. Step 1 is development of proficiency objectives and Qualification Standards. Proficiency objectives are established and matched with appropriate test and evaluation strategies to create Qualification Standards. Step 2 is development of a complete training curriculum and syllabus. Step 3 is development of training resource requirements and an Implementation and Operations Plan. A clear linkage will be established and maintained between the Qualification Standards developed in Step 1, the curriculum and syllabus developed in Step 2, and the training resource requirements and Implementation and Operations Plan developed in Step 3. (See Figure 7-1.) This linkage will be provided by a systematic approach to development of a complete instructional system. This chapter recommends a systematic approach and a methodology which is acceptable to the FAA. Innovation and practical application may result in equally acceptable variations. However, in any methodology used, the following list of factors should be included (or considered where appropriate) for each task, subtask, knowledge, skill, attitude and ability:

CURRICULUM DEVELOPMENT STEPS

Requirement	Development activity
Step 1	
Proficiency Objectives. Qualifications Standards.	Conduct Task/Subtask Analysis. Prepare Proficiency Objectives. Analyze Student Entry Levels. Allocate Proficiency Objectives to Appropriate Curriculum. Formulate Test And Evaluation Strategies.
Step 2	
Syllabus for: Indoctrination Qualification. Continuing Qualification.	Organize Curriculum Into Segment (by Objectives). Establish Learning Order. Develop Lessons. Organize Lessons Into Modules.
Step 3	
Training Resource Requirements. Implementation and Operations.	Determine Training Resource Requirements. Develop Implementation and Operations Plan.

Fig. 7-1

a. *Factors That Should Always Be Included:*

• Statement of performance.

• Environmental conditions affecting difficulty/success.

• Performance standards (parameters with tolerances).

• Abnormal and emergency procedure contingencies.

• Repetition of events needed to reach proficiency (qualification).

• Student entry level performance evaluated against proficiency objectives.

• Document references (title, page, paragraph) governing or specifying the operation.

b. *Factors That Are Necessary if Non-critical Terminal Proficiency Objectives Are To Be Identified:*

• Consequence of error to safety.

• Relative difficulty.

• Frequency of occurrence (or period between occurrence) in normal operations.

c. *Factors Required if the Flight Training Equipment Charts (Appendix C) Are Not Used:*

• Exterior visual, perceptual motion and aural cues.

• Cockpit equipment control and display characteristics required for hands-on skills.

d. *Factors That Are Necessary if Currency Events Are To Be Established for Continuing Qualification Curriculums:*

• Minimum period between rehearsals to maintain proficiency (continuing qualification).

• Frequency of occurrence (or period between occurrences) in normal operations.

e. *Additional Factors:*

• Equipment and system operation dependencies (if used for establishing learning sequences for curriculum development).

• Criterion for success upon which performance standards are based. If new performance standards are to be created this criterion should be established for each task and subtask; e.g., the tracking standards for VOR approaches are based on navigation requirements. The navigation requirements are the criteria for success.

f. *Use of Factors.* The factors listed in a. through e. above should normally be organized in a task analysis as presented in Phase II, Step 1. The task analysis of Step 1 will yield data for other activities in Steps 2 and 3 as well as providing the data for establishing proficiency objectives in Step 1. The FAA suggests that all task analysis factors be considered together.

Section 4. Phase II, Step 1: Proficiency Objective Development

87. General Requirements for Proficiency Objective Development

a. *Purpose.* This is the most critical step in AQP development. In this step, a task analysis will be conducted to support development and analysis of proficiency objectives and development of the syllabus in Step 2. Proficiency objectives, together with evaluation and test strategies, will be used to develop Qualification Standards. The approved task analysis, proficiency objectives and Qualification Standards become the basis for all subsequent curriculum development, implementation, and operation. Qualification Standards form much of the baseline for subsequent program validation activities.

b. *Cockpit Resource Management.* During Step 1 the applicant must use CRM factors and principles in developing proficiency objectives. Applicants should provide innovative approaches to deal with both the training and measurement of CRM. CRM factors will be incorporated into the tasks and subtasks as skills, knowledge, and attitudes. CRM factors will be individually identified in an existing task analysis and "flagged" for evaluation. If the applicant is unable to identify the CRM factors in an existing task analysis, or no task analysis exists, a separate CRM task analysis will be accomplished. CRM factors provide much of the information required to create team or crew objectives.

c. *Hazardous Materials and Security.* The applicant will include hazardous materials and security training requirements in the task analyses and in development of proficiency objectives.

d. *Documentation Required for Phase II, Step 1.* Two documents are required for the proficiency development step. These documents are:

(1) The Supporting Task Analysis

(2) The Qualification Standards

88. Supporting Task Analysis

Development of proficiency objectives is based on a supporting task analysis. Each subtask or element (as identified in the job listing in Phase I) is analyzed for a number of factors as described in the paragraphs below. The subtasks and elements are summarized into tasks and additional factors of analysis are then accomplished. The order of the analysis activities may differ from that presented in this AC, but the analysis activities must be accomplished in some specific order acceptable to the Administrator. A flow chart of suggested task analysis activities is presented in Figure 7-2. Worksheets for these activities are provided in appendix E.

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TASK ANALYSIS

DUTY POSITION

SUBTASK ANALYSIS

TASK SUMMARY

a. *Skill, Knowledge, and Attitude Listing.* The applicant analyzes each subtask or element for required knowledge, skills, and attitudes. This analysis includes the CRM factors. Skills are classified as either motor or cognitive. An example of a subtask or elements skills, knowledge, and attitudes listing, with representative CRM factors, follows:

(Note: Subtask summaries are accomplished where elements are used.)

b. *Environment Analysis.* Each subtask is analyzed for environment considerations. The following environmental factors apply:

(1) The natural environment; e.g., ceiling, visibility, wind, turbulence, wet runway, etc.

d. *Subtask Factors Analysis.* For this activity, the applicant collects data for a variety of factors. Figure 7-3 shows these factors and their purposes. The "references" factor and the "success criterion" factor are used in lesson development. The references factor is necessary for maintaining current curriculums ("curriculum currency

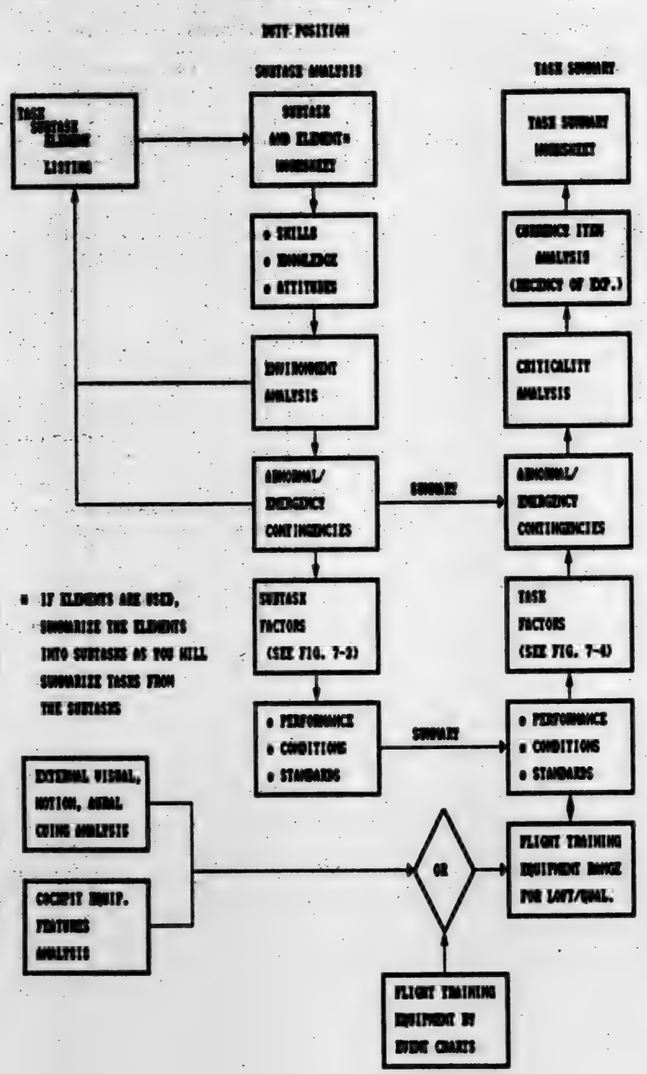

FIG. 7-2

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a. *Skill, Knowledge, and Attitude Listing.* The applicant analyzes each subtask or element for required knowledge, skills, and attitudes. This analysis includes the CRM factors. Skills are classified as either motor or cognitive. An example of a subtask or elements skills, knowledge, and attitudes listing, with representative CRM factors, follows.

(Note: This example is not intended to be complete. Rather, it shows three examples of each category: knowledge, motor skill, cognitive skill and attitude.)

EXAMPLE

Subtask: Perform Procedure Turn
Knowledge—Know when to execute a procedure turn.
Knowledge—Know what types of procedure turns apply.
Knowledge—Know procedures for the applicable procedure turn.
Cognitive Skill—Decide on the appropriate type of procedure turn.[1]
Cognitive Skill—Determine drift from course and heading comparisons.
Cognitive Skill—Determine inbound intercept angle/heading.
Motor Skill—Turn to and maintain outbound heading; maintain altitude.
Motor Skill—Turn inbound, maintain _____ deg. bank.
Motor Skill—Accomplish verbal communication as required.[1]
Motor Skill—Maintain holding airspeed.
Attitude—Be aware of primary systems operations.[1]
Attitude—Be aware of other aircraft.[1]
Attitude—Be aware of air traffic control radio communications.[1]

[1] CRM factors.

(Note: Subtask summaries are accomplished where elements are used.)

b. *Environment Analysis.* Each subtask is analyzed for environment considerations. The following environmental factors apply:

(1) The natural environment; e.g., ceiling, visibility, wind, turbulence, wet runway, etc.

(2) The operational environment and terminal areas including enroute where flight activities are conducted; e.g., navigation, out of service, etc.

(3) The operational configuration of the aircraft; e.g., center of gravity, weight, minimum equipment list, etc.

(Note: Where environmental conditions increase difficulty of an element or a subtask, or otherwise change the performance significantly, a separate element or subtask is to be generated.)

c. *Abnormal Emergency Contingencies.* For each element or subtask, the applicant should identify any equipment abnormality or emergency which increases difficulty or affects performance of the subtask; e.g., engine failure, partial flight controls, hydraulic system/s failure, high or low operating weights.

Note: 1: Equipment abnormalities or emergencies may be appended to each subtask and/or separate subtasks may be created. 2: Environmental conditions and abnormal and emergency contingencies are used to create Line Operational Simulation scenarios for qualification and continuing qualification curriculums.

d. *Subtask Factors Analysis.* For this activity, the applicant collects data for a variety of factors. Figure 7-3 shows these factors and their purposes. The "references" factor and the "success criterion" factor are used in lesson development. The references factor is necessary for maintaining current curriculums ("curriculum currency maintenance"). The success criterion factor may be needed if subtask performance standards are new or different from contemporary performance standards. Success criterion is that data which define the limits of safe operation. For example, procedure turn safe operating envelopes may be found in TERPS documentation. Contemporary performance standards for subtasks may be found in materials such as FAA pilot test standards, ACs, etc The other factors (relative consequence of error, relative difficulty, time to accomplish, and trails required to reach proficiency) are optional for use in lession development. For relative rating of factors such as consequence of error or difficulty, a five point scale is recommended with 5 (five) most, 1 (one) least. (for further discussion of these factors, see paragraph g. of this section.)

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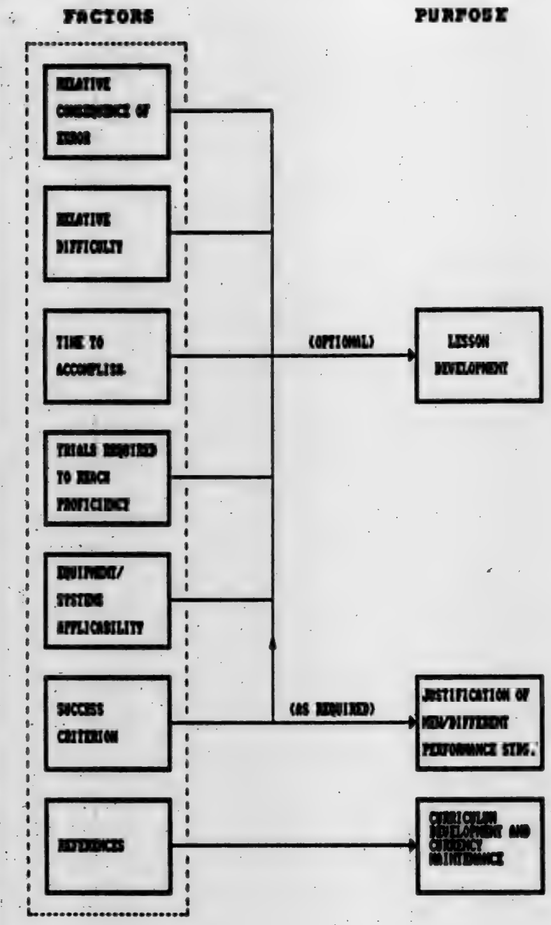

FIG. 7-7

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e. *Subtask Performance, Conditions, Standards.* After the preceding actions are accomplished, the applicant prepares a statement of performance, conditions, and standards for each subtask. (See the worksheet in appendix E as an example.) The performance statement includes consideration for summaries of all the skill, knowledge, and attitudes listed for the subtask. Conditions are taken from the environment analysis and abnormal emergency contingencies. The standards are taken from existing documents such as the FAA pilot test standards or will be established by the applicant. This subtask data (performance, conditions and standards) provides the basis for supporting proficiency objectives.

f. *Task Summary from Subtask Analysis Data.* When the subtask analysis is complete, a task summary is created from portions of the subtask data from all of the applicable subtasks for each task. (See appendix E and Figure 7–2.) The task summary consists of:

(1) A summary of the abnormal/ emergency conditions.

(2) Summary statements of performance, conditions and standards from each subtask.

(3) The flight training equipment range selected from appendix C.

(Note: A cueing analysis and cockpit equipment features analysis is necessary to support flight training equipment selections that are outside the range in appendix C or for events (tasks) not covered in appendix C.)

g. *Task Factors Analysis.* For each task summary accomplished through paragraph f. above, an analysis of the factors as shown in Figure 7–4 is completed. Figure 7–4 also shows the purpose for each factor analysis. These purposes are:

(1) Curriculum Currency Maintenance. As with the subtask analysis, listing references (documents defining the operational procedures, conditions, standards, etc.) is necessary to maintain current curriculums.

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TASK FACTORS

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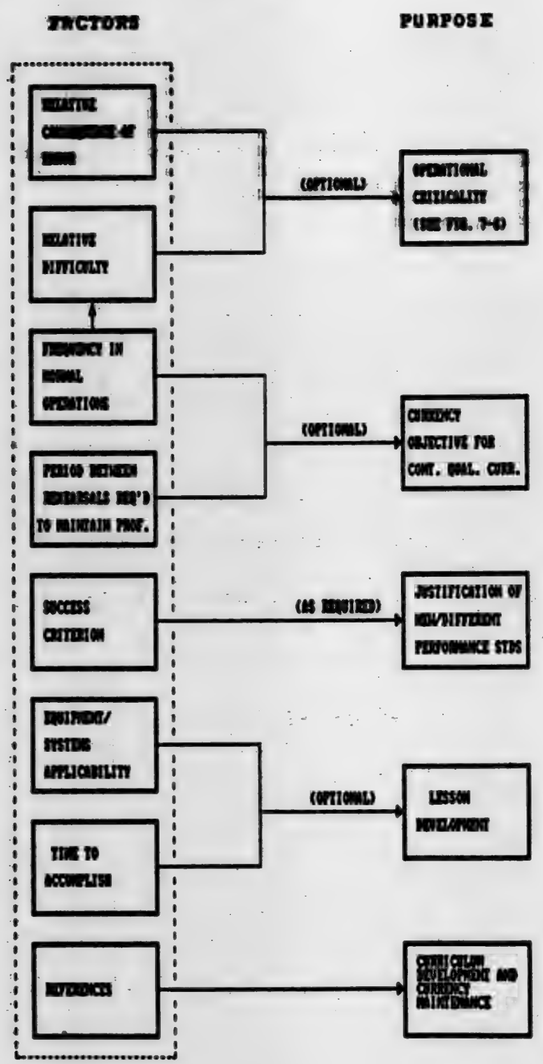

FIG. 7-4

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(2) Lesson Development. Factors of equipment/systems applicability (to the task accomplishment) and time to accomplish the task are suggested to aid the curriculum developers in creating lessons.

(3) Justification for New/Different Performance Standard. The success criterion factor will be included to support performance standards not contained in a contemporary document. Subtask data may be summarized at the task level for this requirement.

(4) Currency Event. Currency event candidates may be identified (for selection later in the process) by collecting data on:

(i) Frequency of task occurrence in normal operations.

(ii) The maximum interval of time that can be allowed between rehearsals of a task without a loss of proficiency.

If the frequency of occurrence in normal operations is more than the maximum interval allowed between rehearsals, a currency event candidate may be identified.

(5) Operational Criticality. Each task provides data to create a terminal proficiency objective. (See section 69a.) If non-critical tasks can be identified, their respective terminal objectives may be accomplished over the continuing qualification cycle. Otherwise, all terminal objectives will be considered critical and therefore will be accomplished during each evaluation period. The two factors used to make the criticality assessment are:

(i) Relative consequence of error (impact on safety if a major error is made).

(ii) Relative difficulty of task to all other tasks.

Figure 7-5 suggests an approach to task criticality assessment acceptable to the Administrator. A five point scale (five most, one least) is used for both factors. For consequence of error, most may be associated with loss of life. Relative difficulty should take into consideration the frequency of occurrence in normal flight operations as well as task complexity, time compression, etc. A relative rating of 4 or greater for either factor denotes a critical task. Also, if both ratings are 3 (totaling 6), the task is critical. All other ratings would be non-critical.

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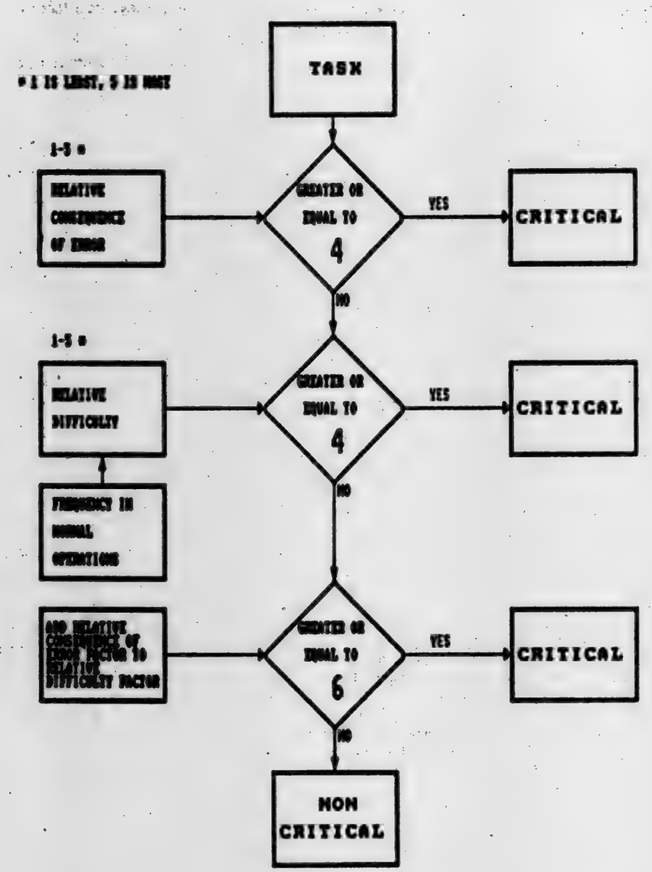

FIG.7-5

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h. *Completion of Task Summary.* Completion of the task summary analysis provides the body of data required to create terminal proficiency objectives, test and evaluation strategies and curriculums of indoctrination, qualification, and continuing qualification.

89. Proficiency Objectives

For each duty position, proficiency objectives are extracted from the subtask and task analysis. A proficiency objective has three elements: (1) A statement of performance; (2) a statement of pertinent equipment and environment conditions surrounding the performance; and (3) the parameters and tolerances which define standards of satisfactory performance. Terminal proficiency objectives are extracted from the summary task analysis. Supporting proficiency objectives are extracted from the subtask analysis. (See Figure 7-6.)

a. *Terminal Proficiency Objectives.* Terminal proficiency objectives are statements of performance, conditions, and standards established at the task summary level. A complete set of terminal proficiency objectives will fully describe a particular job in the applicant's flight operation. Terminal proficiency objectives may be classified as critical or noncritical on the basis of an operational criticality assessment. Terminal proficiency objectives which are currency event items may be identified from candidate items developed during the subtask analysis or task summary analysis and used in development of continuing qualification curriculums. Statements of terminal proficiency objectives should also include the range of flight training equipment to be used, the abnormal and emergency contingencies to be considered, and lesson development factors.

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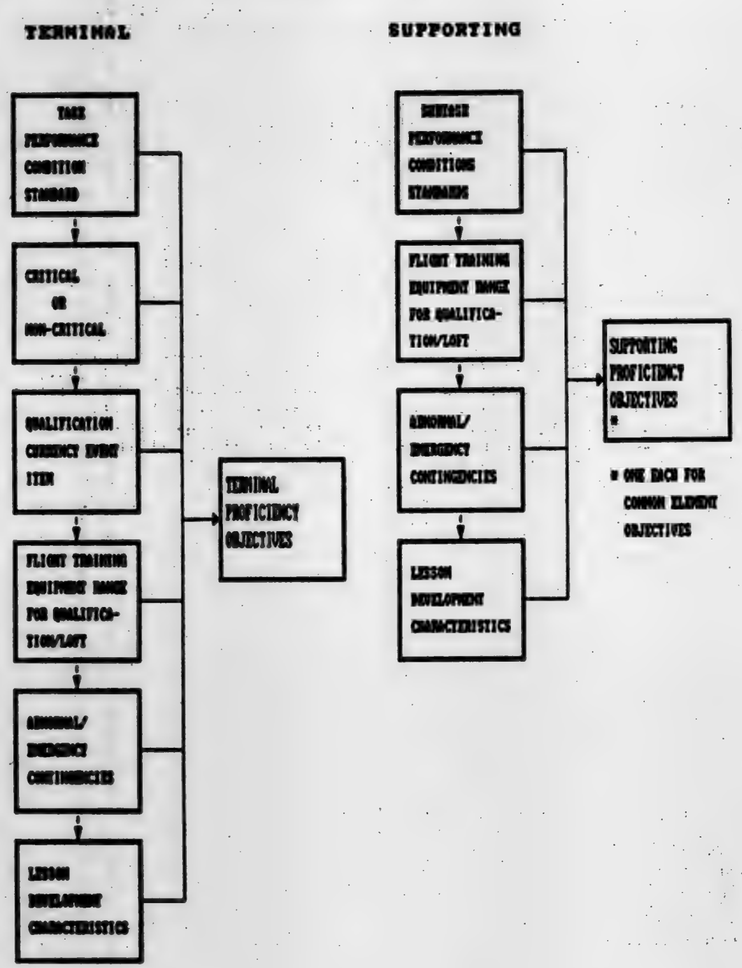

(Note: A set of multiple conditions may suggest that multiple terminal proficiency objectives are required for each task. In any case, an applicant will create terminal proficiency objectives appropriate to the applicant's operation. Examples of multiple conditions include: high and low gross weight; cold weather and hot weather operation; and forward and aft CGs.)

b. *Supporting Proficiency Objectives.* Supporting proficiency objectives are used to develop training and evaluation curriculum lessons, modules, and segments. A supporting proficiency objective is prepared for each subtask. A supporting proficiency objective includes a statement of performance, conditions, and standards, extracted from the subtask analysis. Supporting proficiency objectives include the range of flight training equipment to be used, the abnormal and emergency contingencies considered, and the lesson development characteristics.

c. *Common Element Supporting Proficiency Objectives.* Identifying common element objectives is useful in creating ground and flight curriculum modules that do not have unnecessary repetition of supporting proficiency objectives. Identical supporting proficiency objectives may appear in several terminal proficiency objectives. These supporting objectives are identified as a common element supporting proficiency objectives.

d. *Enabling Proficiency Objectives.* Enabling proficiency objectives are used to prepare individuals and crews for subsequent training in an operational cockpit environment. An applicant may identify a certain knowledge factor, cognitive skill, motor skill, or attitude as an enabling proficiency objective. These are not normally carried forward in the supporting performance objective statement. However, performance of a supporting proficiency objective would depend on a student acquiring the particular knowledge, skill, or attitude.

e. *Document References.* All references used in defining the performance, conditions and standards for each proficiency objective must be listed by title and chapter in the documentation of the proficiency objectives.

90. Establishing Qualification Standards

The Qualification Standards document is the single most important part of any AQP. It provides the complete proficiency baseline for all duty positions. It lists both terminal and supporting proficiency objectives. This baseline provides the major elements which enable qualification curriculum and continuing qualification curriculum syllabus development in Phase II, Step 2. The document also provides the basis for validation of individual and crew performance. Figure 7-7 depicts the process for establishing Qualification Standards. The document is organized as follows:

a. *Student Entry Analysis.* The applicant will accomplish and document a student entry level performance analysis for terminal proficiency objectives and supporting proficiency objectives. A 4-point performance difference rating scale, Figure 7-8, is suggested. Highly skilled instructors who are familiar with the experience and background of the student population and knowledgeable of the terminal and supporting proficiency objectives should make the rating. This analysis provides guidance to determine efficient teaching strategies for the indoctrination and qualification curriculums. This analysis can also identify where training is not needed, where basic "enabling" skills must be taught, and what number of trials are expected for an applicant to reach terminal proficiency objective standards. More than one population group may be used in conducting the student entry analysis for a single duty position.

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ESTABLISH QUALIFICATION STANDARDS

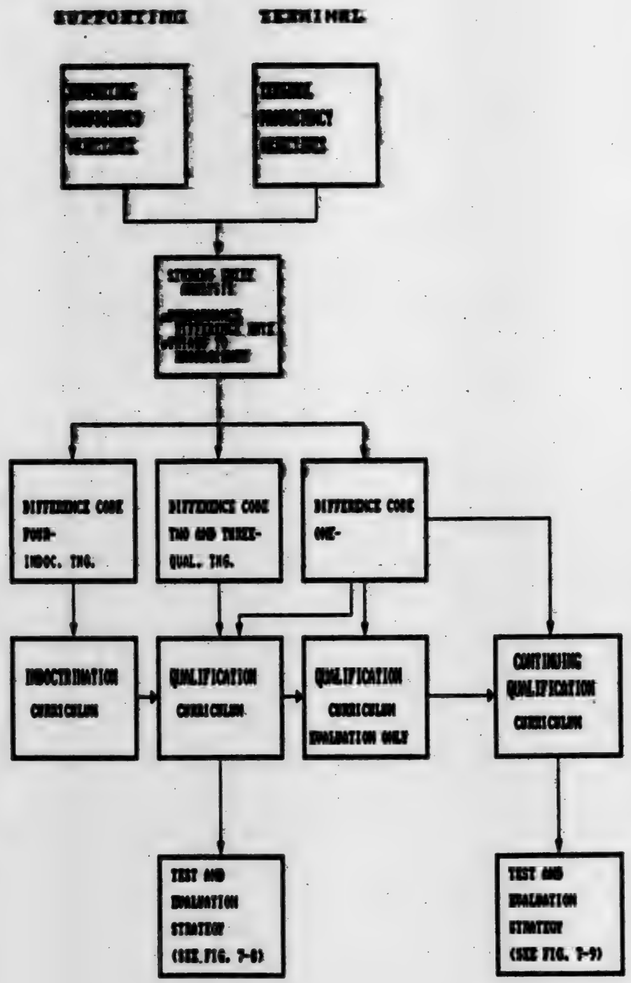

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FIG.7-7

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PERFORMANCE DIFFERENCE RATING SCALE	
Performance difference code	Performance difference description
1	Meets or exceeds the required performance.
2	Can accomplish tasks with minor errors or omissions. May take longer than expected or allowed.
3	Cannot accomplish tasks. Does demonstrate basic background skills and knowledge.
4	Does not demonstrate basic background experiences, skills or knowledge. Unfamiliar with simplest elements of a task.

Fig. 7-8

b. *Allocation of Proficiency Objectives.* The Qualification Standards document will identify the curriculum (indoctrination, qualification, or continuing qualification) in which specific proficiency objectives will be met. The applicant will consider student entry level in determining this allocation. All terminal proficiency objectives must be included in a qualification curriculum regardless of entry level analysis. The supporting proficiency objectives the entry level analysis determines what objectives will be taught under each curriculum. Supporting proficiency objectives with a performance difference code of 4 should be included in an indoctrination curriculum and again, along with objectives with a performance difference code of 3 and 2, in a qualification curriculum. A difference code of 1 would not require indoctrination or qualification training but would indicate that the candidate is ready for proficiency maintenance provided for in the continuing qualification curriculum. All objectives should also be covered in continuing qualification test and evaluation strategies.

c. *Developing a Test and Evaluation Strategy.* (1) *General.* [As used here, "test" means the process of gathering, formatting and reporting discrete individual and crew proficiency data. "Evaluation" means the process of analyzing that data by comparison with sets of specific criteria.] The applicant will develop a test and evaluation strategy for indoctrination, qualification (Figure 7-8), and continuing qualification (Figure 7-9) curriculum proficiency objectives. Each strategy must describe how, when, where, and by whom the data is gathered and the evaluation is conducted. The analysis may be used for, but is not limited to, the following purposes:

(i) Validating individual and crew proficiency.

(ii) Validating specific performance factors.

(iii) Projecting proficiency trends, etc.

(2) *The Process.* An applicant will develop a test and evaluation strategy as follows:

(i) For qualification curriculums divide terminal proficiency objectives into critical and non-critical sets.

(ii) For continuing qualification curriculums select from terminal proficiency objectives those that are currency events and divide objectives that are not currency events into critical and non-critical sets. Critical events will be evaluated in each evaluation period; non-critical events will be evaluated in each continuing qualification cycle.

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TEST AND EVALUATION STRATEGY

QUALIFICATION CURRICULUM

TEST AND EVALUATION STRATEGY

CONTINUING QUALIFICATION CURRICULUM

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TEST AND EVALUATION STRATEGY

QUALIFICATION CURRICULUM

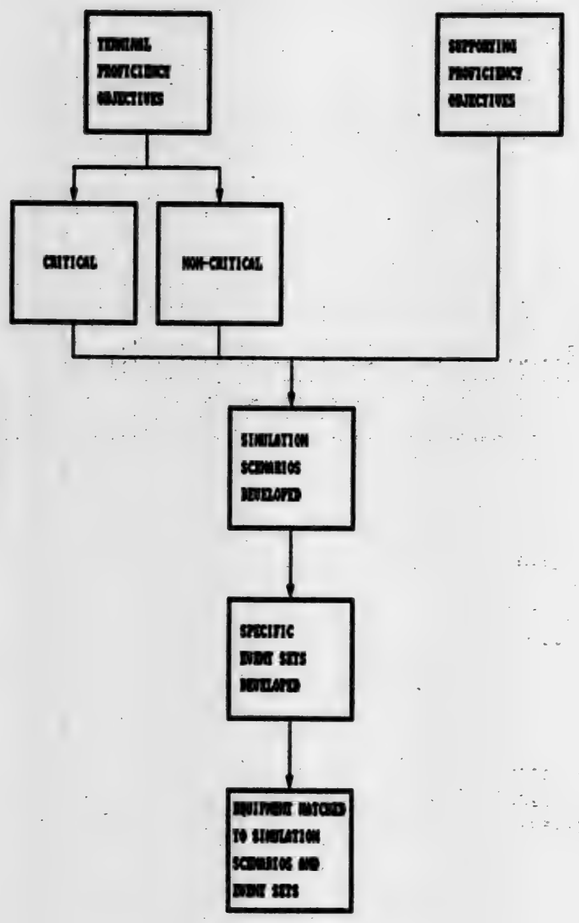

FIG.7-9

TEST AND EVALUATION STRATEGY

CONTINUING QUALIFICATION CURRICULUM

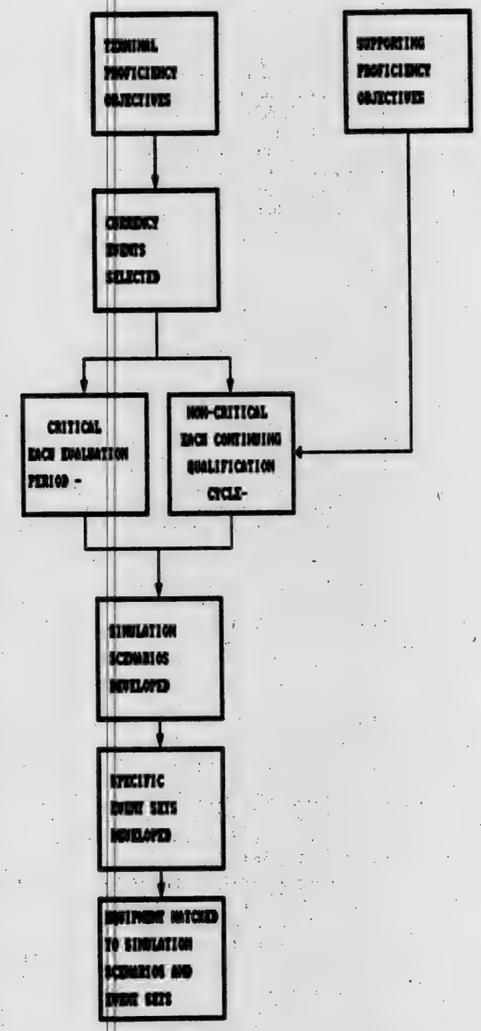

FIG.7-10

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(iii) For continuing qualification divide currency events into critical and non-critical. Critical will be validated by test and evaluation in the initial evaluation period; non-critical currency events are validated by test and evaluation in the initial continuing qualification cycle in each continuing qualification cycle.

(iv) For both qualification and

Syllabus Development

General

Start With

Qualification standards each curriculum: Consists of terminal and supporting proficiency objectives with test and evaluation strategies. The strategies include identification of

individual lessons presented in a meaningful sequence with evaluation milestones. The sequence is assembled into training and evaluation modules. Modules are grouped into segments of training, evaluation, and supervised operating experience.

b. *Format Of Continuing Qualification Curriculums.* If a criticality assessment

05. Documentation Required for Step 2

Two documents will be submitted to the FAA for approval. The first document is titled *Curriculum*

Development Methodology; the second is titled *Advanced Qualification Curriculum.*

a. *Curriculum Development Methodology (for each Make, Model, Series, Variant).* This document includes the following sections:

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(iii) For continuing qualification divide currency events into critical and non-critical. Critical will be validated by test and evaluation in the initial evaluation period; non-critical currency events are validated by test and evaluation in the initial continuing qualification cycle in each continuing qualification cycle.

(iv) For both qualification and continuing qualification curriculums develop Line Operational Simulation scenarios that integrate proficiency objectives (terminal and supporting) for all duty positions by task.

(v) For both qualification and continuing qualification curriculums develop specific event sets that integrate supporting proficiency objectives and terminal proficiency objectives not otherwise contained in simulation scenarios.

(vi) For both qualification and continuing qualification curriculums allocate scenarios and events to flight training equipment.

(Note: The applicant should provide a separate supporting rationale when deviation from the tables in appendix C is proposed.)

91. Approval of Phase II, Step 1 Documentation

Once the FAA has approved the supporting task analysis and Qualification Standards, the applicant may proceed with Phase II, Step 2.

Section 8. Phase II, Step 2: Syllabus Development

92. General: Syllabus Development

A syllabus is the learning order sequence of curriculum segments, modules, lessons, and lesson elements. It includes identification of the planned hours, media, methods, and scenarios to be used. A syllabus for each curriculum is developed by using the Qualification Standards approved in Phase II, Step 1.

The purpose of Step 2 is to provide a syllabus for each of the three curriculums by duty position and make, model, and series aircraft (or variant). The syllabus development process as shown in Fig. 7–11 includes:

a. Extracting procedural and cognitive skills, knowledge and attitudes from the subtask for each approved supporting proficiency objective.

b. Allocating proficiency objectives (terminal and supporting) and procedural/cognitive skills, knowledge, and attitudes to one or more of the curriculum segments.

Syllabus Development

General

Start With

Qualification standards each curriculum: Consists of terminal and supporting proficiency objectives with test and evaluation strategies. The strategies include identification of currency, critical and non-critical proficiency objectives and evaluation simulation scenarios/event sets matched with flight training equipment.

Activity 1

Extract procedural and cognitive skills, knowledge and attitudes from the subtask for each approved supporting proficiency objective.

Activity 2

For each curriculum, allocate the approved proficiency objectives (terminal and supporting) and procedural/cognitive skills, knowledge and attitudes to appropriate curriculum segments.

Activity 3

Establish learning/rehearsal order (learning hierarchy) for each segment's objectives and/or skills, knowledge and attitudes. Integrate individual duty/crew positions into crew operations.

Activity 4

Develop sequenced (training and evaluation) lessons with media and methods for each segment's objectives and/or skills, knowledge and attitudes, optimize line operational scenarios for training and evaluating proficiency objectives. Develop oral and/or written tests for skills, knowledge and attitudes.

Activity 5

Develop modules by allocating a lesson or lessons into sequenced groups of common subjects. Integration of training and evaluation from all segments may be accomplished. Supervised operating experience will be included in the qualification curriculum, currency events in the continuing qualification curriculum.

c. Establishing a learning hierarchy for each segment's objectives and skills.

d. Developing sequenced lessons for each segment's objectives and skills, knowledge, and attitudes.

e. Grouping and sequencing the lessons into basic modules by subject or purpose.

93. Basic Curriculum Requirements

a. *General Format of Curriculums.* Each curriculum is based on terminal, supporting, and enabling objectives. Each curriculum is organized into individual lessons presented in a meaningful sequence with evaluation milestones. The sequence is assembled into training and evaluation modules. Modules are grouped into segments of training, evaluation, and supervised operating experience.

b. *Format Of Continuing Qualification Curriculums.* If a criticality assessment is used, critical terminal objectives must be trained and evaluated during each evaluation period of a continuing qualification cycle. Non-critical objectives may be trained and evaluated during each continuing qualification cycle.

c. *Content of a Lesson.* Each lesson will contain:

(1) The proficiency objectives for training or evaluation with the associated references as listed in the Qualification Standards document.

(2) The elements or events that will be introduced, practiced or evaluated.

(3) The training equipment to be used.

(4) A functional description of the courseware required.

(5) Guidance to instructors and evaluators.

(6) Student instruction manual, reading material, and workbook.

(7) Identification of any supporting computer software.

(8) The standard format for gathering and reporting proficiency data; i.e., grade slips.

(9) Planned class size and facility location.

(10) The number of instructors/evaluators required.

(Note: Appendices A, B, and C provide examples of subject matter which should be considered when developing indoctrination, qualification and continuing qualification curriculums. These examples will not be used by the FAA as final criteria for content or organization. They are representative of information and format normally found in contemporary programs. An applicant should develop curriculums that are appropriate to its specific needs.)

94. Phase II, Step 2 Activities Summary

Figure 7–11 outlines the activities that will be accomplished in developing a syllabus. Figure 7–12 depicts those activities as they apply to an indoctrination curriculum; Figure 7–13 depicts those activities as they apply to developing qualification curriculums; Figure 7–14 depicts those activities as they apply to developing continuing qualification curriculums. On the basis of these activities, the applicant prepares the documents described below.

95. Documentation Required for Step 2

Two documents will be submitted to the FAA for approval. The first document is titled *Curriculum Development Methodology*; the second is titled *Advanced Qualification Curriculum.*

a. *Curriculum Development Methodology (for each Make, Model, Series, Variant).* This document includes the following sections:

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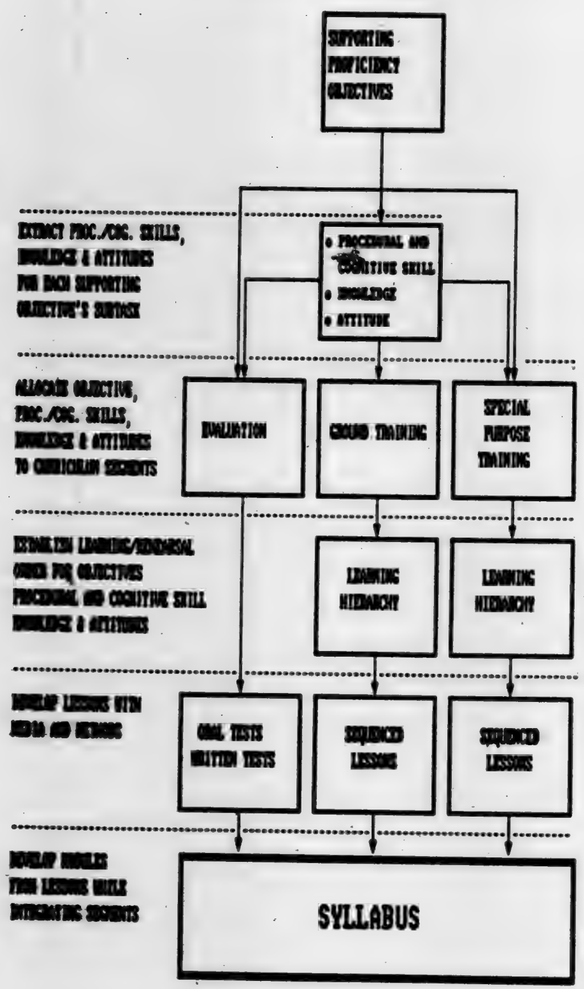

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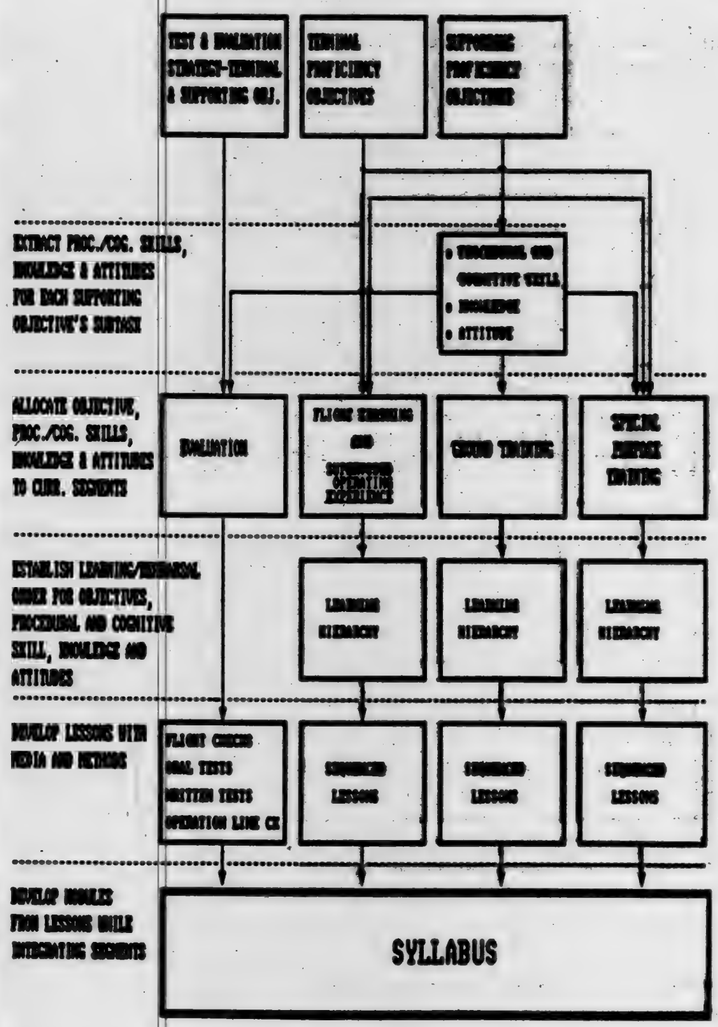

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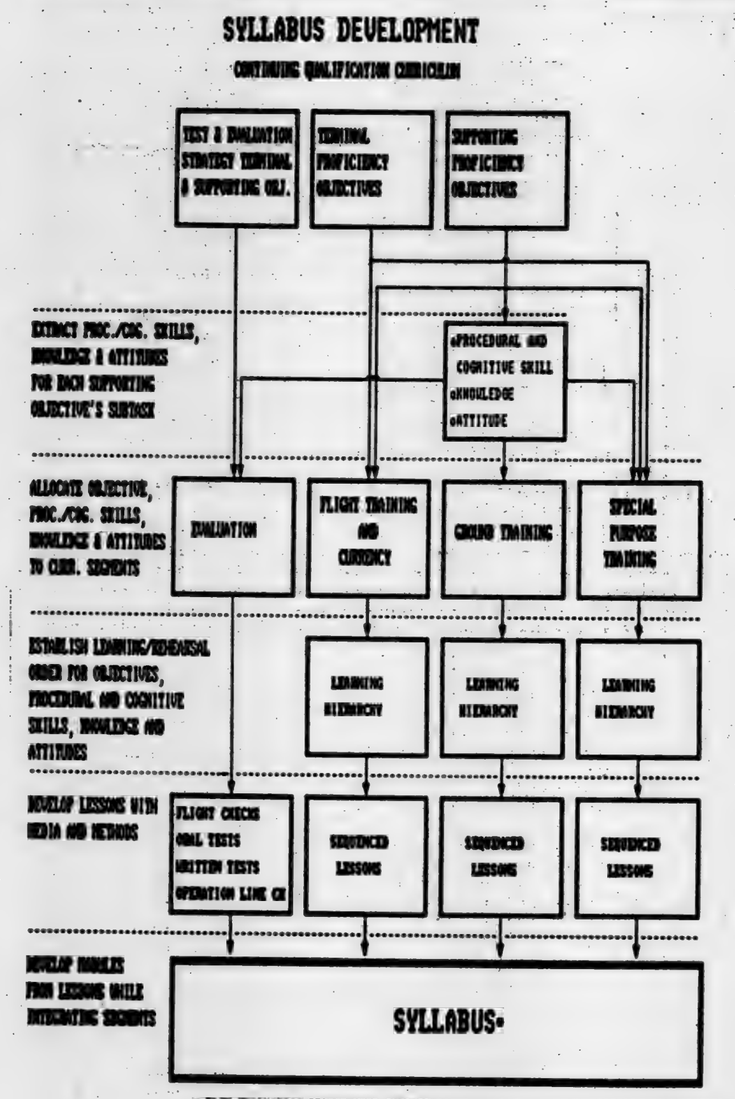

FIG.7-14

7-45

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(1) The Curriculum Development Procedures. This section describes the procedure for allocating objectives into segments, organizing segments into a learning hierarchy, developing lessons with media and methods, and finally developing modules from lessons while integrating segments. It describes how the media and methods to be used in each lesson were selected. It explains on what basis lessons were grouped into modules and modules into segments and explains how segments were integrated into a syllabus.

(2) Proficiency Objectives and Training Media. This section lists the proficiency objectives and their associated training media/method.

(3) Learning Order Sequence. This section lists terminal and supporting proficiency objectives in learning order sequence.

(4) Curriculum Test Strategy. This section is a detailed plan for describing how evaluation is accomplished throughout the curriculum.

b. *AQP Curriculum.* There will be three curriculums (indoctrination, initial qualification, and continuing qualification) for every duty position in a specific make, model, and series aircraft (or variant). Each curriculum will be constructed in the following order: curriculum segment, module, lesson, and lesson element.

96. Review and Approval of Step 2.

The Curriculum Development Methodology document and the AQP curriculum will be submitted to FAA for review and approval.

Section 6. Phase II, Step 3: Development of Training Requirements and Plans

97. General: Training Resource Requirements and Plans

Phase II, Step 3, consists of determining the resource requirements for an AQP curriculum. The applicant will develop the documents described in the following paragraphs.

98. AQP Training Resource Requirements

In this document, the applicant presents the analysis of the training requirements for implementing the entire AQP. The following sections are included:

a. *Facilities.* This section describes the required facilities.

b. *Curriculum Courseware.* This section describes all the courseware required to implement the AQP curriculum; e.g., for instructors and students—manuals, handbooks, workbooks, tests, grade sheets, software required to support simulation scenarios.

c. *Instructor Requirements.* This section describes the instructor requirements for conducting the AQP curriculum; e.g., the number, type, and qualification of instructors.

d. *Evaluator Requirements.* This section describes evaluator requirements for conducting the AQP curriculum; e.g., number, etc.

e. *Equipment.* This section describes equipment requirements; e.g., projectors, blackboards, mockups, computers, simulators, training devices.

f. *Quality Control.* This section describes quality control requirements; e.g., plans for assuring and maintaining the quality of the program data and performance measurement data.

99. AQP Implementation and Operations Plan

This document describes the plan for implementing and operating the AQP. It includes the following sections:

a. *Curriculum Schedule.* This section includes proposed schedules for the AQP curriculums.

b. *Transition Plan.* The transition plan, provided with the application in Phase I, will be updated and made part of the Implementation and Operations Plan.

c. *Equipment Test Plan.* This section describes the plan for developing the baseline performance data for and testing of the required hardware, software, and other equipment. It includes the ATG (Approval Test Guide) for any flight training devices and flight simulators.

d. *Formative Evaluation Plan.* This section describes the plan for evaluation of facilities, courseware, equipment, students, instructors, evaluators, and performance measurement techniques. The plan normally includes provisions for small group tryouts of all new courseware, software, and equipment.

e. *Summative Evaluation Plan.* This section describes the plan for evaluation of the AQP during Phase IV, Implementation. The plan specifies methods for evaluating training, terminal proficiency objectives and supporting proficiency objectives. The plan will be used in Phase IV to evaluate data in the Program Audit Database and in the Performance/ Proficiency Database.

f. *AQP Maintenance Plan.* This section describes the plan for maintaining control of the AQP approval documents, maintaining curriculum currency, upgrading equipment, monitoring and responding to demographic changes, and for using training/evaluation feedback to maintain and improve the AQP.

g. *Automated Data Processing Equipment Plan.* This section identifies automation equipment that will be used in an AQP and describes how that equipment will be used.

h. *Performance/Proficiency Data Collection Procedures.* This section describes the manual and automated data collection procedures to be used during implementation and operation. The data will be collected on individual and crew performance/ proficiency objectives. If automated performance measurement is to be used, this section will describe the associated data collection, storage, analysis, quality control and security procedures. The section also describes the applicant's procedures for presenting the data to the FAA. See Chapter 9 for further details on collecting performance/ proficiency data.

100. Approval Process for Phase II, Step 3

The training resources requirements document and the Implementation and Operations Plan are both presented to the FAA for approval.

Section 7. Phase III: Training System Implementation and Courseware Development and Implementation

101. General: Phase III

To this point, the applicant has curriculums and plans which have FAA approval. In Phase III, to implement the AQP, the applicant will acquire and test (called "formative evaluation") the resources required to support the curriculums. These activities include qualification of instructors and evaluators.

102. Phase III Activities

During this phase the applicant will accomplish the following:

a. Develop and implement courseware and testing materials.

b. Implement the FAA-approved Formative Evaluation Plan.

(Note: This evaluation will consist of small group tryouts of each lesson using actual students and instructors/evaluators.)

c. Train, evaluate, and qualify instructors and evaluators. (See chapter 5 of this AC.)

d. Review and, if necessary, modify both the Summative Evaluation Plan and the AQP Maintenance Plan using the information gained in implementation of the Formative Evaluation Plan.

103. No Jeopardy Evaluation

Formative evaluation will normally involve no jeopardy or credit for students, since its primary purpose is to determine lesson suitability and effectiveness. The applicant may choose, however, to give student credit for part or all training and qualification achieved in the formative evaluation.

approval of the AQP will be granted. A satisfactory completion of Phase III indicates to the FAA that the applicant is properly and adequately equipped to execute the AQP. If formative evaluation reveals a need for any change in the curriculum, the change will be made using the AQP curriculum configuration control procedures in the

c. The applicant will continue to conduct functional test for required hardware, software, equipment; and coded test data for updating the equipment test results from Phase III.

109. Required Documentation.

Evaluation results of Phase IV will be submitted as an update to the

applicant withdraws or modifies the AQP. This phase requires continuation of the AQP Maintenance Plan as well as continued documentation of the data requirements for all curriculums. Data will continue to be collected and analyzed by the applicant and the FAA for verification of student, instructor, and evaluator proficiency. (See chapter

participate in an AQP. The approval process applies to a request for a new AQP or to revisions to a currently approved AQP. This chapter establishes how the FAA will grant or withdraw approval of all or part of an AQP. Approval is handled by the Air Carrier Training Branch at FAA Headquarters, Washington, DC, except for approval of

inspector. Full involvement of all members of the review team is expected during the review and evaluation activities.

c. *Review of the Application.* The application will be evaluated:

- Against the data requirements in Chapters 7 and 9 of this AC.
- For the applicant's understanding of

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103. No Jeopardy Evaluation

Formative evaluation will normally involve no jeopardy or credit for students, since its primary purpose is to determine lesson suitability and effectiveness. The applicant may choose, however, to give student credit for part or all training and qualification achieved in the formative evaluation. The decision to give credit must be approved by the FAA before conducting the formative evaluation and must be documented in the Implementation and Operations Plan.

104. Documentation for Phase III

Documentation includes the results of formative evaluation, summative evaluation (of instructors and evaluators), AQP maintenance, and equipment testing. These results will be included in the Implementation and Operations Plan Results document in the following sections.

a. *Courseware and Testing Document Catalogue.* This section is a list of all applicable training and testing documents.

b. *Formative Evaluation of Courseware/Curriculum.* This section describes results of the formative evaluation of facilities, courseware, equipment, instructors, evaluators, and performance measurement techniques. It also presents training operations results (e.g.; student test results, performance/proficiency data for instructors and evaluators) and includes recommendations for curriculum revisions.

c. *Summative Evaluation.* This section describes the results of the summative evaluation of the AQP curriculum for instructors and evaluators.

d. *Maintenance Evaluation.* Any findings from the formative evaluation of the courseware and curriculums that necessitate change will be implemented in accordance with the applicant's approved AQP Maintenance Plan. The results of evaluating the effectiveness of the AQP Maintenance Plan will be described in this section.

e. *Equipment Test.* This section reports results of the functional tests for required hardware, software, and equipment, and contains actual test data.

105. Initial Approval

The FAA will complete a review of the Implementation and Operations Plan Results, sample the formative evaluation of lessons, and conduct other evaluations of AQP components. If the applicant's formative evaluation is satisfactory, and the FAA determines the curriculum is effective, an initial approval of the AQP will be granted. A satisfactory completion of Phase III indicates to the FAA that the applicant is properly and adequately equipped to execute the AQP. If formative evaluation reveals a need for any change in the curriculum, the change will be made using the AQP curriculum configuration control procedures in the Implementation and Operations Plan. These changes will be complete and documented before the FAA will grant initial approval.

106. Provisional Approval for Training Centers

Approval for a training center AQP will be "provisional" unless the AQP is developed for a specific part 121 or 135 certificate holder's operation. (See definition of "provisional approval.") Provisionally approved AQPs must be tailored for a specific part 121 or 135 certificate holder's operation before the AQP may be used by the certificate holder. Tailoring will include making appropriate changes to Phase I, II, and III documents.

(Note: Training centers that elect to proceed with AQP development without a part 121 or 135 certificate holder partner will do so at their own risk.)

Section 8. Phase IV: Initial Operations

107. General.

In this phase the applicant implements the first full training cycle of all AQP curriculums. This full cycle will include complete exercise of indoctrination, qualification, and continuing qualification curriculums.

108. Phase IV Activities.

During Phase IV, the applicant and the FAA will accomplish the following:

a. The applicant will implement and operate the full AQP training and evaluation cycle and the AQP Maintenance Plan.

b. The applicant will implement and complete the summative evaluation including collecting Program Audit Data, and individual Performance/Proficiency Data, analyses and reports. Collected data will be used by:

(1) The applicant for its internal quality control program to maintain curriculum and courseware concurrency, suitability, and adequacy.

(2) The FAA to analyze and validate individual instructor, evaluator and student performance.

(3) The FAA to analyze and validate program development, implementation and maintenance procedures.

(4) The applicant and the FAA to support analysis for special subjects such as CBI; performance factors.

c. The applicant will continue to conduct functional test for required hardware, software, equipment, and coded test data for updating the equipment test results from Phase III.

109. Required Documentation.

Evaluation results of Phase IV will be submitted as an update to the summative evaluation, maintenance evaluation, and equipment test results of the Implementation and Operations Plan Results document that was submitted originally in Phase III.

a. *Summative Evaluation Results.* This update describes the results of the summative evaluation of the AQP and of student, instructor, and evaluator performance. It also describes the results of evaluating methods, media, scenarios and performance measurement used in the AQP. The results of a student feedback instrument (i.e.; surveys, questionnaires) will be reported in this document.

b. *AQP Maintenance Evaluation.* This update describes the results obtained by the methods used for maintaining curriculum currency, upgrading equipment, monitoring and responding to demographic changes, and for using training and evaluation feedback to maintain and improve the AQP.

c. *Equipment Tests Results.* This updates results of the functional tests for required hardware, software, and equipment, and contains actual test data.

110. Approval Process

After the applicant completes at least one indoctrination and qualification curriculum and one full continuing qualification cycle of the continuing qualification curriculum, the FAA will complete an initial operations evaluation of the AQP. This will include an FAA review of the results of summative evaluation, maintenance evaluation, and equipment tests, and analyses of all student performance data. Review of the applicant's AQP maintenance, summative evaluation, and data collection processes will be critical elements of the FAA's Phase IV, initial operations evaluation. The FAA will recommend changes to the curriculum as indicated by results of the initial operations evaluation. FAA approval at the conclusion of Phase IV constitutes final AQP approval.

Section 9. Phase V: Continuing Operations

111. General.

In this phase, the applicant continues operation of the AQP until approval is withdrawn by the FAA or until the applicant withdraws or modifies the AQP. This phase requires continuation of the AQP Maintenance Plan as well as continued documentation of the data requirements for all curriculums. Data will continue to be collected and analyzed by the applicant and the FAA for verification of student, instructor, and evaluator proficiency. (See chapter 9 for full discussion of performance/proficiency data.) Data will also be collected and analyzed by the applicant for:

a. Continued validation of the AQP.

b. Identification requirements for curriculum changes.

c. Program maintenance.

112. Quality Assurance

For AQP success, each applicant will pay particular attention to overall program quality assurance. Continued validation of individual and team proficiency, as achieved and maintained by all personnel, is particularly important. Continued validation of overall program completeness, accuracy, and currency, as provided by the Program Audit Database, is also very important. Elements of program control should assure that quality in proficiency is maintained. The applicant's continued commitment to identify and execute required changes is essential to a successful AQP. The FAA will expect any AQP quality assurance program to identify needed changes in curriculum, courseware and equipment, and to make these changes before unwanted trends in reduced proficiency are seen.

113. Required Documentation

After final approval has been granted the AQP Maintenance Plan will be continued and evaluation results will continue to be documented. A Continuing Program Evaluation Results document is needed on a quarterly basis. This document describes evaluation results for curriculum currency, equipment upgrade, as well as response to demographic changes, and to training and evaluation feedback. The training and evaluation feedback will be used to determine the effectiveness of any changes made to the AQP as a result of summative evaluation and AQP Maintenance Plan activities.

114.–123. Reserved

Chapter 8. Approval Process for an Advanced Qualification Program

Section 1. General

124. The Approval Process

The approval process applies to part 121 and part 135 operators and operators of training centers that participate in an AQP. The approval process applies to a request for a new AQP or to revisions to a currently approved AQP. This chapter establishes how the FAA will grant or withdraw approval of all or part of an AQP. Approval is handled by the Air Carrier Training Branch at FAA Headquarters, Washington, DC, except for approval of training for hazardous materials and security, which is handled by the Air Carrier Branch of the Office of Civil Aviation Security.

125. Initiating the Process

The AQP approval process can be initiated in two ways:

(1) An operator can inform the FAA by letter of plans to establish or change an AQP; or

(2) The FAA can inform an operator that revisions to its AQP are required, based on acquired information relative to training techniques, aviation technology, aircraft operational history, or operator performance.

126.–128. Reserved

129. Phased Review

Applicants will develop, implement, and operate their AQP in five sequential phases as explained in chapter 7 of this AC. These five phases are:

I. Initial application.
II. Curriculum development.
III. Training system implementation.
IV. Initial operations.
V. Continuing operations.

The following paragraphs describe how the FAA will work with an applicant to review or analyze material and to provide guidance for phased approvals. The activities and documentation for each phase are described in chapter 7.

Section 2. Phased Approval Procedures

130. Phase I. Initial Application

a. *Applicant.* The applicant submits a written application which consists of the following:

(1) A Program Audit Database Master List.
(2) An Application Cover Letter.
(3) A Transition Plan.
(4) A Supporting Data Package.

b. *FAA Review Team.* The FAA Air Carrier Training Branch will lead the review and analysis of the application. The review and analysis team will include an instructional system design specialist, air carrier operations specialists, and a data management specialist. The team will also include a civil aviation security inspector, an inspector from the national simulator program staff, and the designee of the applicant's principal operations inspector. Full involvement of all members of the review team is expected during the review and evaluation activities.

c. *Review of the Application.* The application will be evaluated:

- Against the data requirements in Chapters 7 and 9 of this AC.
- For the applicant's understanding of AQP concepts.
- For evidence of the applicant's ability to execute the processes of development, implementation, and operation.

d. *Evaluation Report.* An application evaluation report will be completed by the review team and provided to the Manager of the Air Carrier Training Branch. After the Manager, Air Carrier Training Branch, accepts the report, a conference will be held with the applicant. After determining that the applicant's data submittal is satisfactory, the Manager of the Air Carrier Training Branch will approve acceptance of the application. This approval permits the applicant to proceed to Phase II.

131. Phase II. Curriculum Development

This phase is most important and involves the highest level of program development activity. The applicant continues to add to and build upon the Program Audit Database in three steps. Each step ends in an FAA approval. Step 1 is proficiency objective development; Step 2 is syllabus development; and Step 3 is development of training requirements and plans. The FAA review and analysis team from Phase I will be augmented with a member from the Examinations Support Branch of the Aviation National Field Office and a member from an applicable Aircraft Evaluation Group. Maintaining team integrity will be emphasized.

a. *Required Documents.* The applicant will submit the following documents for each duty position and make, model, and series aircraft (or variant):

For Step 1:
(1) Supporting Task Analysis
(2) Qualification Standards

For Step 2:
(1) Curriculum Development Methodology
(2) AQP Curriculum

For Step 3:
(1) AQP Training Resource Requirements
(2) AQP Implementation and Operations Plan

b. *Review and Evaluation.*

(1) For Step 1. The FAA review and analysis team will evaluate the documents and prepare a report, with recommendations, for the Manager, Air

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Carrier Training Branch. When the Manager, Air Carrier Training Branch, has completed final negotiations with the applicant and is satisfied that the proficiency objectives are complete and representative of proficiency equal to or better than that provided by traditional programs, he will submit his recommendation to the Director of Flight Standards for review. Upon satisfactory completion of this review, the Manager, Air Carrier Training Branch, will approve the Qualification Standards in writing. This permits the applicant to continue with Step 2, Syllabus Development.

(2) For Step 2. The FAA review and analysis team will evaluate the Step 2 documents and report its findings to the Manager, Air Carrier Training Branch. When the manager approves the report, it will be passed to the applicant's Principal Operations Inspector (POI). The POI will forward the report, with any necessary explanations, to the applicant. When the applicant has taken any required action identified in the report, the Manager, Air Carrier Training Branch, will approve the applicant's Curriculum Development Methodology and, at the recommendation of the POI, approve the applicant's AQP curriculum. This permits the applicant to proceed with Step 3, Training Requirements and Plans.

(Note: If elements of the Program Audit Database are changed, subsequent changes to the approved curriculum will include a Program Audit Database review by the Manager, Air Carrier Training Branch.)

(3) For Step 3. The FAA review and analysis team will review the Training Resources Requirements document and the Implementation and Operations Plan for completeness and to determine the capability of the applicant's resources to support the curriculum. A key item of review will be the data (Program Audit Database and Performance/Proficiency Database) gathering aspects of the applicant's Implementation and Operations Plan. A report (and briefing) will be provided to the Manager, Air Carrier Training Branch. The Manager, Air Carrier Training Branch, will transmit recommendations to the POI for action. The Manager, Air Carrier Training Branch, will ensure that the recommendations are understood and accepted by the applicant before providing written approval of the Training Resources Requirements document and Implementation and Operations Plan. This approval will allow the applicant to proceed to Phase III.

132. Phase III. Implementation

In this phase, the applicant will acquire and conduct formative testing of all training resource requirements in accordance with the Implementation and Operations Plan.

a. *Documentation.* Results of this step will be supplied to the FAA in the form of a single document entitled *Implementation and Operations Plan Results.* This document is an exhibit in the Program Audit Database. In addition, the Performance/Proficiency Database described in chapter 3 will be initiated in this phase using the instructor and evaluator performance exhibits. (Data collection procedures were established in Phase II, Step 3.). The qualification records for instructors and evaluators will be generated and maintained.

b. *FAA Review and Evaluation.* FAA data gathering and analysis during the implementation phase will include surveillance of specific activities and a final review and analysis of the Implementation and Operations Plan Results document.

(1) Surveillance of formative evaluation activities and evaluation of instructors and evaluators will be accomplished by assigned FAA field inspectors who will be taking evaluator training for their own qualification. The POI will ensure inspection of all instructor and evaluator qualification records for completeness and correctness. Surveillance will be augmented with visits from representatives of the Manager, Air Carrier Training Branch. Representatives of the National Simulator Program Manager will participate for flight training device or flight simulator evaluation and qualification.

(2) Proficiency data will be collected by the applicant and submitted to the FAA to be reviewed and analyzed by the Manager, Air Carrier Training Branch. The execution of the applicant's AQP Maintenance Plan (a component of the Implementation and Operations Plan) and the effectiveness of the applicant's supporting quality control system will be reviewed jointly by the Manager, Air Carrier Training Branch, and the POI.

(3) The Implementation and Operations Plan Results document will be reviewed by the FAA review and analysis team. The team will report its findings (with briefing) to the POI and the Manager, Air Carrier Training Branch. The POI and the Manager, Air Carrier Training Branch, will review the applicant's total program when requested to do so by the applicant and when the applicant's program is considered ready for review by the Manager, Air Carrier Training Branch, and by the National Simulator Program Manager. Readiness exists when all elements specified in the training resource requirements are available and fully operational. After a successful review of the total program, the POI and the Manager, Air Carrier Training Branch, will provide initial approval to a part 121 or 135 operator or provisional approval to a training center. Initial approval allows execution of the Implementation and Operations Plan for the AQP through one complete cycle of all curriculums.

(4) A provisional approval allows a training center to engage with a part 121 or 135 operator in tailoring a provisionally approved curriculum to specific operations. When a training center and a certificate holder enter an agreement to jointly conduct an AQP, all application activities through Phase III will be resubmitted. The FAA review team will re-evaluate the entire Phase I, II and III package for completeness, accuracy and appropriateness for the specific certificate holder for which the AQP is being implemented. A successful review will result in a written initial approval to both the training center and the certificate holder from the Manager, Air Carrier Training Branch.

133. Phase IV. Initial Operations

a. *Applicant.* The applicant operates and maintains all AQP equipment and submits updated summative evaluation results, AQP maintenance evaluation results, and equipment test results from data the applicant collects from the first full training cycles.

b. *Review and Evaluation.* The FAA will monitor Phase IV activities with traditional and specialized surveillance, with data collection and analysis of anonymous data and by making a formal review of all results.

(1) Surveillance of the applicant's Phase IV operations will be accomplished by field inspectors who are qualified as evaluators and by other FAA representatives.

(2) The National Simulator Program Staff will evaluate flight training devices and flight simulators.

(3) Representatives of the Manager, Air Carrier Training Branch, will witness training courses for all curriculums.

(4) Civil Aviation Security will witness curriculum elements which have security and hazardous materials objectives.

(5) A joint (FAA and applicant) program review will be held 30 days after the first exercise of an initial qualification curriculum and every 60 days during the first continuing qualification cycle. The purpose of the reviews is to identify, recommend and plan needed changes. Approval of these changes will be by appropriate FAA authority in accordance with the applicant's approved curriculum maintenance procedures.

(6) The Manager, Air Carrier Training Branch, will receive and analyze required anonymous proficiency data monthly. A proficiency validation and projection database will be generated by duty position.

(7) A complete summative evaluation review, jointly accomplished by the FAA review and analysis team and the applicant, should be conducted as soon as possible after the second evaluation period of a newly established continuing qualification curriculum. The applicant is responsible for preparing a summative evaluation results, updated AQP maintenance evaluation results, and updated equipment test results. The purpose of the review is to determine that:

- The proficiency measures (standards) for each duty position are valid and being achieved.
- The Program Audit Database and curriculums are being maintained in accordance with the approved Implementation and Operations Plan.
- Recordkeeping is complete and accurate.

(8) A complete summative evaluation and maintenance evaluation review report will be prepared by the review and analysis team and submitted to the Manager, Air Carrier Training Branch. The report will include any recommended changes to the AQP. The Manager, Air Carrier Training Branch, will forward the report to the POI for review and for presentation to the applicant for action. When the applicant implements the recommended changes, the POI and the Manager, Air Carrier Training Branch, will issue final approval. Final approval permits continued operation of the AQP.

(Note: Eventual transition of CRM evaluation to pass/fail criteria should be anticipated and integrated into initial qualification and continuing qualification curriculums during the first continuing qualification cycle of Phase IV or at the next earliest and appropriate opportunity. Final written approval of a program which does not include pass/fail CRM criteria will include a statement that final approval is contingent on eventual compliance with this condition.)

134. Phase V. Continuing Operations

Phase V is continuing operation of the applicant's AQP under FAA surveillance. The AQP Maintenance Plan will be continued and reviewed. A Continuing Program Evaluation Results document will be submitted and reviewed on a quarterly basis.

135. Database Management and Analysis

a. *Data Analysis.* The FAA has chosen to accomplish proficiency analysis, validation of performance measures and other statistical analysis and research at a central location for all AQPs. The analysis will be accomplished with equipment compatible with personal computers using an independent file for each applicant.

b. *Location of Data.* The Program Audit Database libraries may be located at any site agreed to by the Manager, Air Carrier Training Branch, and the applicant. Maintenance, storage and location of proficiency data (currency and performance) used for qualification will be the responsibility of the certificate holder (or training center, for its employees). Proficiency data, used by the applicant for validating qualification programs, will be kept at the principal training site designated by the operator.

Section 3. FAA Procedures for Approval Actions

136. Method of Granting Initial or Provisional Approval

a. *Approval by Letter.* The FAA will grant initial or provisional AQP approval by letter. The approval letter will include at least the following information:

(1) The specific identification of the curriculums and curriculum segments initially or provisionally approved including page numbers and revision control dates (date of revision for any page).

(2) A statement that initial or provisional approval is granted and what the effective and expiration dates (for initial approval) are.

(3) Any specific conditions affecting the approval.

(4) A request that the applicant provide the FAA with advanced notice of scheduled activities so evaluations may be planned.

b. *Copies.* A copy of the Audit Database Catalogue and the approval letter shall be maintained by the POI in the certificate holder's District Office during the period of initial approval. A copy of the same material shall be maintained by the Air Carrier Training Branch. Copies of a training center's provisionally approved curriculum material shall be maintained at the training center's local Flight Standards District Office, the Air Carrier Training Branch, and the assigned District Office of any certificate holder that is using the training center.

137. Method of Denying Initial or Provisional Approval

If the FAA determines that initial (or provisional approval for training centers) must be denied, the FAA will notify all the effected operators in writing. The letter will identify any deficiency which was the cause of denial. The principal applicant may redevelop or correct the deficiencies and resubmit the AQP for approval.

138. Withdrawal of Initial or Provisional Approval

The FAA may decide to withdraw initial or provisional approval at any time the AQP is not in regulatory compliance, does not provide for safe operations, or does not effectively prepare crewmembers or dispatchers to meet qualification objectives. The FAA will withdraw initial or provisional approval in writing to all affected operators stating the reasons for the withdrawal, and the effective date of withdrawal. An applicant who receives a letter of withdrawal may revise or refine the curriculum and resubmit it for initial or provisional approval.

139.–148. Reserved

149. Final Approval

Based on the results of evaluations accomplished during the period of initial approval, the FAA will grant or deny final approval of an AQP. Final approval is accomplished by stamped endorsement of AQP documents and by approval letter.

a. *Stamped Approval Endorsement.* For final approval, the original and a copy of each title page and table of contents pages of all AQP Program Audit Database documents are stamped approved, dated, and signed by a designated FAA operations official. The approval stamp will be a facsimile of the following:

FAA FINAL APPROVAL

OFFICE DESIGNATOR: _____
EFFECTIVE DATE: _____
NAME: _____
SIGNATURE: _____

As approved changes are made to AQP Program Audit Database documents, the "Final Approval" endorsement will be reaccomplished on each table of contents page.

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b. *Approval Letter.* All letters of final approval will be signed by the Manager, Air Carrier Training Branch. When training centers are not involved, the Manager, Air Carrier Training Branch, may delegate this authority to the operator's assigned POI. The letter will specifically identify the subject curriculums, contain a statement that final approval is granted, and provide the effective date of approval.

c. *Copies.* A copy of the approval letter will be kept on file in the operator's assigned District Office, at the Air Carrier Training Branch, and at the location designated by the operator as its principal training site.

150.–157. Reserved

158. Revisions to an AQP

Circumstances that typically trigger revisions are changes in the kinds, size, or complexity of operations, changes in the configuration of aircraft, and changes in special authorizations permitted through operations specifications, maintenance programs, MELs; exemptions or deviations. Revisions will usually involve all or portions of each phase of the approval process. However, the process may be abbreviated according to the extent of the revision. The Manager, Air Carrier Training Branch, may delegate revision approval authority to POIs.

159. General Provisions for Withdrawal of Final Approval

The FAA may withdraw final approval of a curriculum any time if the FAA determines that sufficient safety reasons exist or that required data is not being maintained and provided. Before withdrawing approval, the FAA will make reasonable efforts to convince an applicant to correct its AQP. The FAA will withdraw approval by letter. The letter will identify the affected curriculums, state the reasons for the withdrawal, and state the effective date of the withdrawal (except in an emergency, not less than seven days after receipt of the letter). The letter will advise the certificate holder that withdrawal may be appealed and provide instructions on how to appeal.

160. Appeal of a Withdrawal

To appeal withdrawal of final approval, an operator should petition the Director, Flight Standards Service, for reconsideration within 30 days after receiving withdrawal notification. The petition should be in writing and explain in detail why the operator believes the withdrawal should not occur. The Director may immediately deny the petition after considering all relevant information presented to him if he believes that an emergency exists which directly affects aviation safety. In this case the Director will inform the operator, by letter, of his decision to deny the appeal due to the existence of an emergency. The letter will state that an emergency exists and describe the deficiencies and the actions necessary to correct them. If the Director does not believe that an emergency exists, he will carefully consider both the operator's petition for appeal and the FAA's reason for withdrawal of approval. In this case, the operator's petition, provided it goes out within 30 days, stays withdrawal and the operator may continue to use the AQP curriculum pending the decision of the Director, Flight Standards Service. The Director may find it necessary to conduct additional evaluations of the operator's AQP. In any case, the Director will make a final decision within 60 days of receiving the operator's petition. The Director may rescind or modify the letter of withdrawal or uphold the withdrawal. If the decision is to modify or uphold the withdrawal, the operator will be notified by letter. The letter will contain the reasons for denying all or part of the petition.

161. Expiration

Final approval does not expire.

162.–171. Reserved

Chapter 9. Advanced Qualification Program Validation

Section 1. Introduction

172. Purpose

This chapter provides guidelines for complying with AQP program validation requirements.

173. Validation Concept

Section 7(c) of SFAR 58 requires that each qualification and continuing qualification curriculum include procedures for collecting data from crewmembers, instructors, and evaluators. This data will be used to enable the FAA to determine if the overall objectives of an AQP curriculum are being achieved and to validate AQP curriculums. The concept of validation begins with the operator's process for developing an AQP and continues for the life of an AQP. There are four parts to the validation of an AQP: (1) The phased approval process; (2) the Program Audit Database; (3) the Performance/Proficiency Database; and (4) records kept on qualified personnel. Each of these parts is discussed in the following sections.

Section 2. Validation through the Phased Approval Process

174. Phased Approval Process

As explained in chapter 7 of this AC, development and approval of an AQP is accomplished in five phases. The phases are:

I. Initial Application;
II. Curriculum Development;
III. Training System Implementation;
IV. Initial Operations; and
V. Continuing Operations.

Each phase, and the three individual steps in Phase II, require FAA approval before proceeding to the next step or phase. The approval process is in itself a method for validating that the development procedures of an AQP have been appropriately used and that the management needed to maintain an AQP is occurring. The FAA provides guidance, review, and surveillance throughout the approval process.

Section 3. Program Audit Database

175. Documentation of an AQP

At the beginning of Phase I, an applicant will create a Program Audit Database. This is basically a file of documents that will be developed and kept current throughout all phases of development and approval. The applicant and the FAA use this data to validate program development, implementation, and maintenance. A list of the documents required for each phase is in appendix D. Procedures for creating the Program Audit Database are in chapter 2. Development activities and content requirements for each document are in chapter 7.

Section 4. Performance/Proficiency Database

176. Purpose of the Performance/Proficiency Database

An applicant will collect performance/proficiency data for instructors and evaluators during Phase III—Training System Implementation, and for all participants during Phase IV—Initial Operations, and Phase V—Continuing Operations. These data form the Performance/Proficiency Database. The data are used to validate student, instructor and evaluator proficiency; establish performance norms; validate Qualification Standards; and conduct research and development of CRM principles, methods, and measures. The applicant and the FAA will use data to evaluate the effectiveness of an AQP in meeting its objectives. The information may also be used to support a request for modification of an approved AQP. For example, if an applicant requests

FAA approval for extending evaluation periods in a continuing qualification curriculum, the applicant will support its request with collected data which show that present crewmember performance warrants the extension. Data will be used by the FAA to establish group performance norms and to judge AQPs according to how well they meet or exceed these norms. During the continuing qualification cycle data may be used to develop projections for how proficiency is maintained in terms of rising or falling performance. The FAA may also use this data in comparison with accident/incident statistics to ensure that AQP changes achieve the desired effect on accident/incident rates.

177. Specific Data Collection for Phases III, IV, and V

a. *Phase III: Training System Implementation.* Graded evaluator and instructor performance/proficiency data will be collected during training and evaluation.

b. *Phase IV: Initial Operations; Phase V: Continuing Operations.* In Phase IV during implementation of the first continuing qualification cycle and in Phase V during continuing operations the following data will be collected: (1) All terminal proficiency objective data for students, instructors, and evaluators will be gathered in training activities, online evaluations, and proficiency evaluations; (2) currency events will be recorded; and (3) CRM measures will be made.

178. Procedures for Performance/Proficiency Data Collection

a. *General Procedures.* Specific crewmember data will be maintained by the operator. All data to be provided to the FAA should be in summary form and deidentified prior to submission. Analysis of the data by the applicant and by the FAA should be at a level of group performance to identify performance trends. Where appropriate, crew complement performance should be measured and analyzed.

b. *Performance Evaluation.* All terminal proficiency objectives will be observed by evaluators. Those not observed in Line Operational Evaluation will be observed in proficiency evaluations or other methods appropriate to evaluation of the objectives.

c. *Pre-training Evaluation.* At the beginning of the formal training done at the end of an evaluation period, pre-training baseline performance evaluation data will be collected in a Line Operational Simulation with no jeopardy to the student. The type of data to be collected in pre-training evaluations is described below.

(1) *Routine Operations Items.* All events which have been selected as currency items will be validated by pre-training measurement. Pre-training data should be gathered on selected currency items to validate that proficiency is being maintained through routine operations. Proficiency objectives which the applicant intends to propose as currency items will also be tested. For example, if the applicant has decided (on the basis of the analysis described in chapter 7) to give currency item credit for critical fuel transfer operations during cruise in everyday operations, the applicant will collect data to validate the frequency with which a student operates the fuel panel in normal, everyday operations. The fuel transfer proficiency objective will then be evaluated through pre-training proficiency measurement. If fuel transfer performance data pre-training measurement is found satisfactory, the performance objective for that student may be designated as a currency item.

(2) *Non-routine Operations Items.* During pre-training evaluation, data will be collected on normal, abnormal and emergency procedure proficiency objectives which do not occur on a routine or frequent basis in everyday operations. Data should also be collected for environmental conditions that are not ordinarily encountered.

(3) *CRM Objectives.* CRM objectives will also be measured during pre-training evaluation.

(4) *Non-critical Terminal Proficiency Objectives.* The pre-training evaluation will include measurement of items classified as non-critical terminal proficiency objectives which are proposed to be spread throughout the full continuing training cycle (not addressed in each evaluation period).

d. *Cockpit Resource Management.* At the time of this writing, CRM issues and measures are not fully developed. Therefore, data should currently be collected without pass/fail consideration for those being evaluated. AC 120-51, as amended, "Cockpit Resource Management Training," provides additional guidance on CRM. In AQPs, specific CRM factors should be defined objectively. Examples of CRM factors include communication, situational awareness, problem solving, decision making, judgment, team management, stress management, team review, and interpersonal skills. Measurement methods might include evaluator rating scales, participant surveys and video tape critiques. All data should be anonymous except that the instructors or evaluators should be identified on crewmember surveys and evaluations. The FAA expects applicants to incorporate new CRM knowledge regularly.

e. *Automated Analysis Data.* An operator with an AQP is required to provide proficiency data in digital form to the FAA. The data will reflect all terminal proficiency objectives and include proficiency data gathered during pre-training, training, and evaluations. This anonymous, global data will be used to develop performance projections. When both evaluator ratings and automated performance measurement systems are used, the automated system will provide data for each proficiency objective that is also evaluator-rated. The automated performance measurement system should measure time out of tolerance (performance standards) for all terminal proficiency objectives.

f. *Data Requirements.* Individual or crew performance data should include a measure of proficiency objectives on a scale that discriminates levels of performance. At a minimum, a 5-point rating scale should be used. Data should be collected each time an evaluator observes performance of a proficiency objective during any type of evaluation.

(1) Evaluation data should include:

(i) Identification of the proficiency objective.

(ii) Date the objective was observed.

(iii) Ratings for each observation.

(2) Training data should also be collected for program evaluation and validation purposes. The crewmembers, instructors, and evaluators should be identified by code to protect anonymity. Training data should include:

(i) The total number of times each proficiency objective is performed by an individual and/or a crew.

(ii) The total number of times each proficiency objective is performed before it is successfully accomplished.

(iii) The ratings for each objective.

g. *Questionnaires.* At the end of a qualification curriculum or recurrent training session, an applicant may provide a questionnaire to students and instructors to solicit evaluation of the curriculum or training session. The questionnaire should provide a rating scale and the factors to be rated.

179. Analysis of Data

Data will be used for the following purposes.

a. *Validating Student, Instructor, Evaluator Proficiency.* Performance data is recorded in individual files to verify an individual's qualification to perform a duty. This data is not analyzed for

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purposes of validating individual performance.

b. *Validating the Training Program.* Performance data should be used to validate the AQP. One example of the kind of analysis that may be done to validate the training program is to compare pre-training and post-training performance to determine the percentage of students who mastered each proficiency objective and their corresponding average scores. Another example is analysis of the number of repetitions of a performance objective before it is accomplished at the terminal proficiency level. This analysis will provide summaries that may show, for example, that 95 percent of all pilots in command have successfully accomplished a particular objective in 10 iterations with little improvement thereafter.

c. *Establish Performance Norms.* Summary distributions (e.g., means, modes, standard deviations) of actual performance scores may be used to establish performance norms.

d. *Validate Terminal Proficiency Objectives.* Pre-training evaluation mean scores for currency item and other proficiency objectives will be examined. The frequency of training required to maintain proficiency will be examined.

e. *Conducting Research on Cockpit Resource Management.* Data may be used for research in CRM factors. One method of analysis is to compare pre-training evaluations and post-training proficiency scores by indicating the percent of students who successfully mastered CRM skills and the corresponding average score. Another method is to summarize variations in CRM performance scores which track variations in CRM training techniques or evaluation methods.

f. *Comparing Accident/Incident Data.* The FAA will compare specific proficiency objective scores (to include CRM factors) to performance suspected in accident/incidents.

180. Database Retention

The Performance/Proficiency Database will be maintained by the certificate holder or the training center. Anonymous data used for projections (including automated performance data measures), data for CRM research and development, and student/instructor/evaluator critiques of the AQP will be provided to the FAA. Only proficiency data is to be kept on a continuing basis. Data will be maintained on any proficiency objectives that are candidates for changes in requirements until the changes have been validated and granted final FAA approval.

Section 5. Records on Qualified Individuals

181. Recordkeeping Requirements

A certificate holder or training center will establish and maintain appropriate records to validate individuals' qualification. This section provides guidance for establishing and maintaining records. The recordkeeping requirements are a part of the approved Performance/Proficiency Database under an AQP and may be followed in lieu of the standard part 121 or 135 recordkeeping requirements.

182. Contents of Individual Records

The record for each individual who is being qualified or has qualified under an AQP should contain the following:

a. Full name (First, Middle Initial, Last) of the individual.

b. Duty Position(s).

c. Airman certificate type, number, and ratings (if applicable).

d. Date, class, and any limitations of the person's most recent medical certificate.

e. Aeronautical experience by hours, by aircraft, and by type of operation (i.e., FAR 121, foreign air carrier, military, etc.).

f. Make, model, and series aircraft (or variant) qualified to operate (by duty position).

g. Special Route/Area/Airport qualification as required.

h. Special operation qualifications; e.g., CAT II, CAT III.

i. The date of and reason for any action taken concerning an individual's release from employment, date, and reason.

183. Responsibility for Training and Qualification Records

Individual crewmember and dispatcher qualification records are the responsibility of the certificate holder. However, an operator may arrange for a training center to maintain the records of training and qualification for each individual qualified under an AQP. Existing records that comply with the AQP requirements and are otherwise acceptable to the FAA as meeting part 121 and 135 requirements do not need to be duplicated.

184. Individual Qualification Activity Records

Individual qualification activity records should include the following:

a. *Record Identification.* Each record should identify the make, model, and series aircraft (or variant), and duty position.

b. *Record Detail.* The operator will maintain records of indoctrination, qualification, continuing qualification, and accomplishments required by the approved AQP for the person's *current assignment(s).* These records will be maintained in sufficient detail to show how the individual satisfied the requirements of each curriculum. A line item entry that a curriculum was completed as of a particular date is not adequate.

The records should include:

(1) The completion date for each indoctrination curriculum modules or lessons.

(2) The completion dates for all qualification curriculum modules or lessons.

(3) The completion dates for continuing qualification curriculum activities. These records should contain:

(i) Currency events by date accomplished.

(ii) Online evaluations by date wjth grade.

(iii) Proficiency evaluations by date with grade.

(iv) Ground and flight training by date with grade.

c. *Other Training.* Records should show the result and completion date of other training and qualification that permitted an individual to advance to his current assignment.

185. Retention of Records

Records should be retained in accordance with the following guidelines.

a. *Minimum Retention.* The minimum retention period should ensure that a person's training and qualification status can be determined. To provide a baseline for program changes, detailed records, as described in paragraph 184 above, will be kept, showing each person's participation in the AQP during the first three evaluation periods for a new AQP curriculum. Thereafter records will be kept for at least the previous continuing qualification cycle. Actions more than one continuing qualification cycle old may be documented by a dated, line item record. However, if actions more than one continuing qualification cycle old are to be used as the basis for later qualifications (e.g., changing to another certificate holder, qualifying on a different make, model, and series aircraft (or variant)), detailed records will be kept available. In the absence of these detailed records, the individual may be required to qualify by completing all curriculum requirements. Certificate holders, individuals, and training centers should understand the risks associated with discarding detailed records.

b. *Retention after Release.* All records should be kept for at least 6 months after a person's release from a duty assignment.

186. Guidelines for Computerized Recordkeeping

The FAA may approve the use of computer record systems. The following guidelines are provided for approval of computerized recordkeeping systems.

a. *Guidelines.* When designing a computerized recordkeeping system, use the following considerations:

(1) Records should contain all the information required for a manual system.

(2) Each record should be certified by an instructor, supervisor, or evaluator.

(3) The certificate holder or training center should designate a representative to be responsible for checking and validating the accuracy and completeness of the record.

b. *Approval.* The following outlines the approval procedure for a computerized recordkeeping system.

(1) *Initial Approval.* Initial approval may be granted at the end of Phase III to use a computerized recordkeeping system. A request for initial approval should identify:

(i) The type and location of computer equipment.

(ii) The methods used for providing duplicate records during the period of initial approval.

(iii) The methods and schedules for updating records.

(iv) The means used for identifying individuals.

(v) The type and amount of training provided to qualify personnel who operate and maintain the recordkeeping system.

(vi) The means used to identify instructors, supervisors or evaluators who certify results of training, evaluation, and/or qualification.

(vii) The validation checks proposed to verify the accuracy of information before it is entered into the computerized system.

(viii) The identity of the person(s) responsible for conducting the validation checks.

(ix) A procedure which ensures that persons responsible for making data entries are clearly identified and that entries are made only under the direct control of those persons.

(2) *Final Approval.* Final approval (at the end of Phase IV), is appropriate only after an operational demonstration shows that the computerized recordkeeping system is accurate, secure, and adequate to support the AQP.

187.–190. Reserved

Chapter 19. Qualification of Training Equipment for Use in an AQP

Section 1. Approval Procedures for all Training Equipment

191. General

Any simulator or training device that is intended to be used in an AQP for any of the following purposes must be qualified as a flight simulator or a flight training device: (1) required evaluation of individual or crew proficiency; (2) training activities that determine if an individual is ready for an evaluation; (3) activities used to meet recency of experience requirements; and (4) Line Operational Simulations (LOS). To be qualified, a simulator or training device will be evaluated against a set of criteria established by the Administrator for a particular level of simulation (a qualification level). A qualified flight simulator or flight training device will be specifically approved by the FAA for its intended use in an AQP. A flight simulator or flight training device will be part of a flight simulator or flight training device continuing qualification program. All other training equipment (not used for any purpose listed above) will be identified by the applicant and its use approved by the Manager, Air Carrier Training Branch. This chapter outlines acceptable procedures for the qualification, approval, and continuing qualification of flight simulators and flight training devices for use in an AQP and for approval of other training equipment used in AQP. Appendix F of this AC provides functional descriptions of flight training equipment.

(Note: When used in this chapter the terms "evaluation," "qualification" and "continuing qualification" apply to training equipment and should not be confused with the use of these terms in other chapters of this AC.)

Section 2. Specific Procedures for Qualification and Approval of Flight Simulators and Flight Training Devices

192. Criteria for Flight Simulator and Flight Training Device Qualification

The National Simulator Program Manager shall approve the qualification level of a flight simulator or flight training device in accordance with the following criteria:

a. The criteria for airplane simulators is in AC 120-40, as amended, "Airplane Simulator Qualification."

b. The criteria for flight training devices is in AC 120-45, as amended, "Airplane Flight Training Devices Qualification."

c. Criteria for helicopter simulators and training devices qualification are being developed and will be released at a later date in an AC.

193. Initial Approval of Flight Simulators and Flight Training Devices for Use in an AQP

As part of the approval of an AQP, the Manager, Air Carrier Training Branch, will approve use of a flight simulator or flight training device for use in the AQP. Appendix C of this AC presents tables that specify the use of flight simulators and flight training devices in an AQP. Each AQP curriculum segment which includes use of a flight simulator or flight training device should specify the make, model, serial number and manufacturer of the flight simulator or flight training device or the FAA identification number of the flight simulator or flight training device assigned by the National Simulator Program Manager.

194. Currently Qualified Devices

Training devices and simulators currently qualified as flight training devices and flight simulators by the FAA may be used in approved AQPs at the current qualification level without completing an additional qualification evaluation.

195. Devices Not Currently Qualified

Candidate devices (not currently qualified by the Administrator) may not be used as flight training devices or flight simulators equipment in an approved AQP until they are qualified.

196. Continuing Qualification of Flight Simulators and Flight Training Devices

Each flight simulator and flight training device used in an AQP should:

a. *Maintain the performance,* functions, and other characteristics that are required for that qualification level as demonstrated during the initial or upgrade evaluation;

b. *Be modified to conform with any modification* to the aircraft being replicated or any modification or change to the mathematical model used that results in a change in the performance, functions, or other characteristics that may affect the operation of the device at that qualification level;

c. *Be given a daily functional preflight test* administered by maintenance before use;

d. *Have a daily discrepancy log* that is maintained for the instructor or evaluator to enter each discrepancy at the end of each training or evaluation session, and for the maintenance personnel to enter each discrepancy after a daily functional preflight test but

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before the simulator is used for training and/or evaluation;

e. *Have a documented software configuration control system* which contains a record of all software changes or modifications and which assures that systems software changes which might affect flight performance in handling qualities, ground handling, or systems functions approved by the Administrator be implemented only after notification to and concurrence by the Administrator; and

f. *Have an approved Component Inoperative Guide* to reflect the authorized use if a performance feature, or other characteristic, does not continue to meet initial qualification criteria.

197. Failure To Maintain Initial Qualification Level

Except as noted in the paragraph below, training devices or flight simulators failing to maintain the performance, functions, and other characteristics that are required for initial qualification may not be used in training, evaluation, or certification of airmen to ensure attainment of terminal proficiency objectives.

198. Component Inoperative Guide

If the Administrator has authorized the use of a Component Inoperative Guide (CIG) for the flight training device or flight simulator, and any performance, functions, or other characteristic does not meet the criteria for initial qualification because of an inoperative component listed in the CIG, the FAA will limit but not prohibit the use of the device in the AQP.

199. Responsibility of Sponsor

As used in this AC with respect to flight training devices and flight simulators, a "sponsor" is a person who requests that the Administrator conduct an evaluation of a flight training device or flight simulator for assignment of a qualification level; and agrees to accept the responsibilities outlined in paragraphs a., b., and c. below.

a. *Maintaining Performance Level.* Each sponsor of a flight training device or flight simulator used in an AQP shall be responsible for ensuring that the device maintains the performance, functions, and other characteristics required for the qualification level assigned as a result of the initial or upgrade evaluation.

b. *Maintenance.* The sponsor may arrange with another person for the maintenance, preventive maintenance, or required testing of the device; however, this does not relieve the sponsor of the responsibility in paragraph a. above.

c. *Component Inoperative Guide (CIG).* The sponsor shall remove the flight training device or flight simulator from use, or limit its use according to the CIG, when the sponsor is first made aware that any problem exists with the device that affects its performance, functions, or other characteristics. In such situations, as soon as possible, the sponsor will inform any person using, or scheduled to use, the device that its use has been suspended or limited, and, if limited, how it has been limited.

d. *Withdrawing Sponsorship.* At least 30 days before withdrawing as a sponsor, the sponsor should notify the Administrator and any person using, or scheduled to use, the device that he is withdrawing as sponsor of the flight training device or flight simulator.

200. Scheduled Recurrent Evaluations

Flight training devices and flight simulators previously qualified by the Administrator and used in an AQP will follow the previously arranged and approved schedule for recurrent evaluation and the currently approved Approval Test Guide (ATG). However, the evaluation will be conducted as outlined in this AC and recorded as a scheduled recurrent evaluation. Subsequent scheduled recurrent evaluation will follow an established due date. Flight training devices and flight simulators not previously qualified by the Administrator or those being upgraded for use in an AQP shall be included in a continuing qualification program and evaluation schedule.

201. Time Periods for Scheduled Recurrent Evaluations

The scheduled recurrent evaluations shall be accomplished according to the following schedule:

a. *The first scheduled recurrent evaluation* will be conducted not later than the sixth month after the initial or upgrade evaluation. After this first recurrent evaluation, a due month will be scheduled for subsequent recurrent evaluations.

b. *Subsequent scheduled recurrent evaluations* should be conducted at 12-month intervals except as noted below. Failure to accomplish an evaluation in accordance with the evaluation schedule will result in loss of qualification status for the device.

c. *Flexibility.* Scheduled recurrent evaluations conducted in the month before or the month after the due month will be considered to have been accomplished during the due month. Scheduled recurrent evaluations may also be conducted more than one month before the due month if properly coordinated. However, this would establish a new due month for subsequent scheduled recurrent evaluations.

d. *Time Required for a Recurrent Evaluation.* Scheduled recurrent evaluations will normally be scheduled for 8 hours and will consist of functional tests and approximately 50 percent of the tests in the ATG. Additionally, in accordance with a schedule approved by the Administrator and at 2 equally spaced intervals between the scheduled recurrent evaluations, the sponsor will conduct 50 percent of the balance of the validation tests (25 percent of the ATG tests), certify that the test results are within prescribed tolerances, and maintain the results in a file for review by the National Simulator Program Manager. Such a schedule means that all validation tests in the ATG will be completed annually.

202. No-Notice Evaluations

During the interval between the scheduled recurrent evaluations, the Administrator will conduct at least 1 no-notice recurrent evaluation.

a. *Content.* A no-notice recurrent evaluation will consist of the following:

(1) A review of ATG validation tests accomplished since the last recurrent evaluation (either scheduled or no-notice);

(2) A review of the device's discrepancy log (including daily maintenance preflight, discrepancies, and action taken to clear discrepancies); and

(3) Observation of the device during normally scheduled training or evaluation functions.

b. *Additional Content.* If the device is available, the following items may also be accomplished:

(1) Assessing the state of the visual, motion, and other systems; and

(2) Flying the device.

c. *Reason for Limiting the Content.* A no-notice recurrent evaluation does not have the same level of detail and does not take as long as a scheduled recurrent evaluation because it is based on the premise that the sponsor is maintaining the performance, functions, and other characteristics of the device at the level required for initial qualification.

203. Change of Qualification Level

The upgrading of a flight training device or flight simulator may occur only after initial or upgrade evaluation. The downgrading of a flight training device or flight simulator may occur only after a special evaluation or a scheduled recurrent evaluation.

204. Discrepancies

If the flight training device or flight simulator evaluator observes a discrepancy during the scheduled recurrent evaluation or the no-notice evaluation which, in his opinion, may affect the qualification status, he may, after notifying the sponsor of his discovery, and at his discretion, withdraw the qualification status of the device. This original qualification status may be regained through correction of the discrepancy and on the authority of the National Simulator Program Manager.

Section 3. Approval of Training Equipment Other Than Flight Training Devices or Flight Simulators

205. Initial Approval

Each device (other than flight training devices or flight simulators) to be used in an AQP shall be identified in the Supporting Data Package (see paragraph 83.d.(5)) by its nomenclature along with a description of its intended use. In the AQP Supporting Data Package, the applicant will explain the relationship of the equipment performance to the training it will support. The FAA will review proposed training equipment requirements during the application phase and when evaluating the syllabus lessons. Phase II approval of a syllabus will include initial approval of all associated training equipment.

206. Maintaining Approval and Performance

a. *Responsibility.* The applicant is responsible for continuous maintenance of any training equipment.

b. *Maintenance of Equipment Functions.* To ensure that all training equipment continuously functions as intended, each applicant should:

(1) Provide all proposed equipment modifications to the FAA for approval.

(2) Conduct a daily functional check before use of the equipment.

(3) Provide a discrepancy log.

(4) Provide a maintenance and configuration control system that documents maintenance and FAA approved modifications.

c. *FAA Evaluation of Applicant's Maintenance.* The maintenance and configuration control system will be capable of detecting deficiencies in training equipment performance and requirements for adjusting training equipment utilization in an AQP. Deficiencies will be corrected through modification of the equipment and/or the curriculum. The FAA will evaluate the applicants ability to maintain training equipment during:

(1) The formative evaluation conducted in Phase III.

(2) The summative evaluation conducted during Phase IV.

(3) Continuing operation conducted during Phase V.

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Appendix A

Considerations for Indoctrination Curriculum Subjects

A. Certificate Holder-Specific Indoctrination

The subject area of an indoctrination curriculum referred to as "certificate holder-specific" includes elements that pertain to the certificate holder's methods of compliance with regulations and safe operating practices. The following are examples of possible elements of certificate holder-specific subject areas for flight crewmembers:

(1) Duties and responsibilities:
- Company history, organization, and management structure.
- Operational concepts, policies, and kinds of operation.
- Company forms, records, and administrative procedures.
- Employee professional and rules of conduct.
- Authority and responsibilities of duty position.
- Personal equipment.
- Company Manual organization, revisions, and employee responsibilities concerning manuals and after their use during line operations.

(2) Appropriate provisions of the Federal Aviation Regulations and other applicable regulations:
- Flight crewmember certification, training, and qualification requirements.
- Medical certificates, physical examinations, and fitness for duty requirements.
- Flight control requirements (dispatch, flight release or flight locating).
- Flight time limitations, duty periods and rest requirements.
- Recordkeeping requirements.
- Company manuals.
- Flightcrew emergency authority, what to do in the event of interference with crewmembers, how to report these occurrences.

(3) Content of Operating Specifications:
- Regulatory basis in part 121 or part 135 (as applicable) and the FA Act of 1958 (as amended).
- Definitions, description, and organization of operations specifications.
- Limitations and authorizations of operations specifications.
- Description of operations authorized under the certificate.
- Description of FAA certificate holding district office and responsibilities of FAA principal inspectors.

(4) Emergency situations:
(a) Flight crewmember duties and responsibilities.
- Emergency assignments.
- Pilot in Command's emergency authority.
- Reporting incidents and accidents.

(b) Crew coordination and company communication:
- Cabin crew notification procedures.
- Ground agencies (FAA, Airport Authority) notification procedures.
- Company communication procedures.

(c) Ground Evacuation:
- Aircraft configuration.
- Directing passenger flow.
- Blocked or jammed exit procedures.
- Fuel spills and other ground hazards.
- Handicapped persons.

(d) Ditching:
- Cockpit and cabin preparation.
- Passenger briefing.
- Crew coordination.
- Primary swells, secondary swells, and sea conditions.
- Ditching heading considering wind and water conditions.
- Ditching at night.

(e) Previous aircraft accidents/incidents:
- NTSB accident report reviews.
- Human factors/considerations.
- NASA reporting system.

B. Duty Position-Specific Indoctrination

The duty position-specific modules of an indoctrination curriculum segment provide a basis for students to enter subsequent qualification curriculums. These modules address appropriate portions of a certificate holder's manual and the standard practices of airmanship and flight procedures referenced in other documents such as the Airman's Information Manual. Emphasis in duty position-specific training is not *aircraft* specific. Instead, it should relate to the kinds of operation and general characteristics of the certificate holder's fleet of aircraft. The objective of duty position-specific training is to ensure each student has acquired the basic knowledge and abilities necessary for part 121 and/or part 135 operations. The scope of duty position-specific training varies according to the anticipated duty position evaluators (EV), instructors (IN), pilots-in-command (PIC), seconds-in-command (SIC), flight engineers (FE), aircraft dispatchers (AD), and flight attendants (FA). The following are examples of possible elements for the "duty position-specific" subject areas for flight crewmembers:

(1) Company Flight Control:
- Dispatch, flight release, or flight locating systems and procedures (as applicable).
- Organization, duties, and responsibilities.
- Weather and Notice to Airman information.
- Company communications.

(2) Principles of Weight and Balance:
- Definitions (such as zero fuel weight, moment, etc.).
- General loading procedures and center of gravity computations.
- Effects of fuel burn and load shifts in flight.
- Weight and balance forms, load manifests, fuel slips and other applicable documents.

(3) Principles of Aircraft Performance and Airport Analysis:

- Definitions (such as balanced field, VMC, obstruction planes, maximum endurance, etc.).
- Effects of temperature and pressure altitude.
- Ground Proximity Warning Systems (GPWS).
- TERPS criteria (obstacle clearance standards).
- Airport analysis system (as appropriate

(d) Rapid Decompression:
- Respiration.
- Hypoxia, hypothermia, hyperventilation.
- Time of useful consciousness.
- Gas expansion/bubble formation.
- Physical phenomena and actual incidents.

(e) Crewmember incapacitation:
- Company procedures.
- Reporting requirements (NTSB).
- Special operational conditions such as unpaved runways, high altitude airports and drift down requirements.

B. Aircraft Systems

The second subject area of a qualification curriculum is "aircraft systems." Instruction and evaluation on each aircraft system should be given in sufficient detail to ensure the student clearly understands system

and, if applicable, antiskid systems. Other typical elements include steering (nose or body steering gear), bogie arrangements, air/ground sensor relays, and visual downlock indicators.

(10) Ice and Rain Protection. Typical elements include each anti-icing and deicing system which prevents or removes airfoil, flight control, engine, pitot-static probe, fluid outlet, cockpit window, and aircraft structure ice. Other typical elements include system

(18) Oxygen. Typical elements are the aircraft oxygen system including the fixed passenger, crew systems, and installed portable systems. Other typical elements include sources of oxygen (gaseous or solid), flow and distribution networks, automatic deployment systems, regulators, pressure levels, gauges, and servicing requirements.

(19) Lighting. Typical elements are the cockpit, cabin, and external lighting systems including power sources, switch positions,

(meteorological, weight, and MEL/CDL items), required fuel loads, weather planning (lower than standard takeoff minimums or alternate airport requirements).

(3) Display Systems. Typical elements include use of weather radar and other CRT displays (checklist, vertical navigation or positional navigation displays).

(4) Navigation Systems. Elements typically include preflight and inflight operation of

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- Definitions (such as balanced field, VMC, obstruction planes, maximum endurance, etc.).
- Effects of temperature and pressure altitude.
- Ground Proximity Warning Systems (GPWS).
- TERPS criteria (obstacle clearance standards).
- Airport analysis system (as appropriate to the kinds of operation and aircraft used).
- Effects of contaminated runways.

(4) Principles of Meteorology:
- Basic weather definitions (such as forecasts, reports, and symbols).
- Temperature, pressure, and winds.
- Atmosphere moisture and clouds.
- Air masses and fronts.
- Thunderstorms, icing and windshear.

(5) Principles of Navigation:
- Definitions (such as class I, class II navigation).
- Basic navigational instruments and equipment.
- Concepts and procedures pertaining to dead reckoning and pilotage.
- Navigational aids.
- VHF, VLF, LORAN and self-contained systems (as applicable).

(6) Airspace and ATC Procedures:
- Definitions (such as precision approaches, airways, and ATIS).
- Description of airspace.
- Navigation performance and separation standards.
- Controller and pilot responsibilities.
- ATC communications.
- Air traffic flow control.

(7) Enroute and Terminal Area Charting and Flight Planning:
- Terminology of charting services such as Jeppesen or NOAA.
- Takeoff minimums, landing minimums, and alternate requirements.
- Company flight planning procedures.
- Flight service and international procedures (as applicable).
- Airport diagrams.

(8) Concepts of Instrument Procedures:
- Definitions (such as MDA, HAA, HAT, DH, CAT II, ILS, and NOPT).
- Non-precision approaches.
- Circling, visual, and contact approaches (as applicable).

(9) Emergency Situations:

(a) Aircraft Fires
- Principles of combustion and classes of fire.
- Toxic fumes and chemical irritants.
- Use of appropriate hand held extinguisher.
- Lavatory fires.
- Smoke masks, goggles, and Protective Breathing Equipment (PBE).

(b) First Aid and Medical Equipment:
- Contents of first aid kit.
- Contents of the medical kit.
- Kit integrity requirements.
- Use of individual items.

(c) Illness, injury, and basic first aid:
- Principles of CPR.
- Ear and sinus blocks.
- Seeking medical assistance.
- Treatment of shock.
- Heart attack.
- Emergencies during pregnancy.

(d) Rapid Decompression:
- Respiration.
- Hypoxia, hypothermia, hyperventilation.
- Time of useful consciousness.
- Gas expansion/bubble formation.
- Physical phenomena and actual incidents.

(e) Crewmember Incapacitation:
- Company procedures.
- Reporting requirements (NTSB).
- Interference with crewmembers resulting in incapacitation.

(f) Uninhabited Environment Situations:
- Basic survival.
- Decision to remain within aircraft.
- Position reporting and communications.
- Emergency ground to air signals.
- Shelter, food, and water.

Appendix B—Considerations for Pilot and Flight Engineer Ground Training Subjects

To be qualified for a particular duty position in a specific make, model, and series aircraft (or variant), a person needs aircraft specific ground training. This training for both qualification and continuing qualification curriculums includes general operational subjects, aircraft systems, aircraft system integration, and emergency drill training.

A. General Operational Subjects

The subject area referred to as "general operational subjects" includes instruction on operational requirements that are specific to the aircraft in which qualification is being conducted. General operational subjects might include the following:

(1) Dispatch, flight release, or flight locating procedures.

(2) Weight and balance procedures including use of company weight and balance forms.

(3) Adverse weather practices including procedures which will be followed when operating in the following conditions:
- Icing.
- Turbulence.
- Heavy precipitation.
- Thunderstorms with associated windshear and microburst phenomena.
- Low visibility.
- Contaminated runways.

(4) Procedures for operating communications and navigation equipment in accordance with the following:
- Specific company communications requirements.
- ATC clearance requirements.
- Area departure and arrival requirements.
- Enroute requirements.
- Approach and landing requirements.

(5) Specific performance characteristics of the aircraft during all flight regimes including:
- The use of charts, tables, tabulated data and other related manual information.
- Normal, abnormal and emergency performance problems.
- Meteorological and weight limited performance factors (temperature, pressure, contaminated runways, precipitation, climb/runway limits).
- Inoperative equipment performance limiting factors (for example, inoperative anti-skid, if allowed by MEL).
- Special operational conditions such as unpaved runways, high altitude airports and drift down requirements.

B. Aircraft Systems

The second subject area of a qualification curriculum is "aircraft systems." Instruction and evaluation on each aircraft system should be given in sufficient detail to ensure the student clearly understands system components, limitations, relevant controls, actuators, annunciators and procedures for the various system configurations he will use. It is not possible to list every conceivable aircraft system that should be included in a curriculum segment; however, the following illustrates the depth and scope that should be provided:

(1) Aircraft General. Typical elements include an overview of the basic aircraft such as dimensions turning radius, panel layouts, cockpit and cabin configurations, and other major systems and components or appliances.

(2) Powerplants. Typical elements include a basic description of the engine, its thrust rating, engine components such as accessory drives, ignition, oil, fuel control, hydraulic, and bleed air features.

(3) Electrical. Typical elements should include the sources of aircraft power including engine driven generators, APU generator, and external power. Other elements include electrical buses and related components such as circuit breakers, fuses, aircraft batteries and other applicable standby power systems.

(4) Hydraulic. Typical elements are the hydraulic reservoirs, pumps, accumulators; the means of routing hydraulic fluid through filters, check valves, interconnects to associated actuators and other hydraulically operated components.

(5) Fuel. Elements include the fuel tank system (location and quantities), engine driven pumps, boost pumps, systems valves, crossfeeds, quantity indicators and provisions (if applicable) for fuel jettisoning.

(6) Pneumatic. Typical elements include bleed air sources such as engine, APU, or external ground air; the means of routing, venting and controlling bleed air via associated valves, ducts, chambers, and the purpose and operation of temperature and pressure limiting devices.

(7) Air Conditioning and Pressurization. Typical elements include heaters, air conditioning packs, fans, and other environmental control devices. Pressurization system components include elements such as outflow and relief valves with associated automatic, standby, and manual pressurization controls and annunciators.

(8) Flight Controls. Elements include primary controls (yaw, pitch, and roll devices) and secondary controls (leading/trailing edge devices, flaps, trim, and damping mechanisms). Automatic stability and control systems should be included. Redundant systems capabilities should also be included.

(9) Landing Gear. Typical elements are the landing gear extension and retraction mechanism (including the operating sequence of struts, doors, and locking devices), brake and, if applicable, antiskid systems. Other typical elements include steering (nose or body steering gear), bogie arrangements, air/ground sensor relays, and visual downlock indicators.

(10) Ice and Rain Protection. Typical elements include each anti-icing and deicing system which prevents or removes airfoil, flight control, engine, pitot-static probe, fluid outlet, cockpit window, and aircraft structure ice. Other typical elements include system components such as pneumatic/electrical valves, sensors, ducts, electrical elements, or pneumatic devices, and pumps.

(11) Equipment and Furnishings. Typical elements are aircraft exits, galleys, water and waste systems, lavatories, cargo areas, crewmember and passenger seats, bulkheads, seating or cargo configuration, and non-emergency equipment and furnishings.

(12) Navigation Equipment. Typical elements are flight navigation system components including flight directors, horizontal situation indicators, radio magnetic indicators, navigation receivers (ADF, VOR, OMEGA, LORAN-C, RNAV, Marker Beacon, DME, etc.). Other typical elements include inertial system (INS, IRS), functional displays, fault indicators, comparator systems, transponders, radio altimeters, weather radars, and cathode ray tube (or other computer generated) displays of aircraft position and navigation information.

(13) Auto Flight System. Typical elements include such items of equipment as the autopilots, autothrottles and their interface with aircraft flight director and navigation systems including automatic approach tracking, autoland, and automatic fuel or performance management systems.

(14) Flight Instruments. Typical elements should include an overview of the panel arrangement and the electrical, pneumatic, and primary and alternate pitot-static sources for flight instruments. Other elements include attitude, heading (directional gyro and magnetic), airspeed and vertical speed indicators, altimeters, standby flight instruments, and other relevant instruments.

(15) Communication Equipment. Typical elements include VHF/HF radios, audio panels, service and inflight interphone system, passenger address systems, voice recorders, and air/ground data communications systems (ACARS).

(16) Warning Systems. Typical elements are aircraft aural, visual, and tactile warning systems including recognition of the character and degree of urgency related to each signal. Other typical elements include warning and caution annunciator systems including windshear, and ground proximity and takeoff warning systems.

(17) Fire Protection. Typical elements include fire and overheat sensors, loops, modules, or other means of providing visual and/or aural indications of fire or overheat detection. Other typical elements include procedures for use of fire wall shutoff controls, manual and automatic extinguishing systems, and power sources necessary to provide protection for fire and overheat conditions in engines, APUs, cargo bays, wheel wells, the cockpit, the cabin, and lavatories.

(18) Oxygen. Typical elements are the aircraft oxygen system including the fixed passenger, crew systems, and installed portable systems. Other typical elements include sources of oxygen (gaseous or solid), flow and distribution networks, automatic deployment systems, regulators, pressure levels, gauges, and servicing requirements.

(19) Lighting. Typical elements are the cockpit, cabin, and external lighting systems including power sources, switch positions, and spare lightbulb locations.

(20) Emergency Equipment. Typical elements describe the type, location, use, and purpose of each installed item of emergency equipment such as fire and oxygen bottles, protective breathing equipment (PBE), first aid kits, life rafts, life preservers, crash axes, emergency exits and lights. Other typical elements include each item of egress equipment such as slides, slide rafts, escape straps or handles, hatches, ropes, ladders or moveable stairs.

(21) Auxiliary Power Unit (APU). Typical elements should include installation of the APU, its capacity and operation, including its electrical and bleed air capabilities and how it interfaces with the aircraft systems. These elements include APU components such as inlet doors, exhaust ducts, and fuel supply.

C. Aircraft System Integration

The third subject area of a qualification curriculum is referred to as "System Integration." This area provides instruction and evaluation on how aircraft systems interrelate with respect to normal, abnormal, and emergency procedures. This training ranges from procedures as basic as how to apply power to the aircraft electrical and pneumatic systems with the APU, to complex tasks such as how to program computerized navigation and autoflight systems. System integration should include developing flightcrew interaction in the use of checklists and other operational procedures. It is normally conducted using training equipment which portrays a specific cockpit layout and includes switch and indicator logic. The flight training devices and flight simulators described in Advisory Circular 120-45, as amended, "Airplane Flight Training Devices Qualification," and Advisory Circular 120-40, as amended, "Airplane Simulator Qualification," may be used for system integration. Additionally, computer based instruction or other interactive media may be used. System integration may be conducted in concert with aircraft systems training or as an independently conducted part of a qualification curriculum. System integration serves as a logical connection between ground instructional delivery methods and flight training. It allows students to become familiar with a particular cockpit layout, checklists, operator procedures, and other areas which are best learned before conducting actual flight events. The following are examples of typical system integration elements:

(1) Use of Checklist. Typical elements include safety checks, cockpit preparation (switch position and checklist flows), checklist callouts and responses, and checklist sequence.

(2) Flight Planning. Elements typically include performance limitations (meteorological, weight, and MEL/CDL items), required fuel loads, weather planning (lower than standard takeoff minimums or alternate airport requirements).

(3) Display Systems. Typical elements include use of weather radar and other CRT displays (checklist, vertical navigation or positional navigation displays).

(4) Navigation Systems. Elements typically include preflight and inflight operation of receivers, on-board navigation systems, and flight plan information input and retrieval.

(5) Autoflight. Typical elements include the autopilots, autothrust, and flight director systems including appropriate procedures, normal and abnormal indications, and annunciators.

(6) Cockpit Familiarization. Typical elements involve activation of aircraft system controls and switches to include normal, abnormal, and emergency switch and control positions and relevant annunciators, lights and/or other caution and warning systems.

System integration is particularly effective where aircraft are equipped with relatively sophisticated computerized navigation, flight director, performance, and/or autoflight systems. The key to effectiveness in this area is to use training equipment which provides an accurate, real time capability, and interactive media for student practice. The functional requirements of these devices do not necessarily include motion, visual systems or aircraft specific flight handling characteristics. However, each device should accurately portray relevant keyboards, switches, other controls, CRT's and other displays and will usually include air/ground and flight path logic.

D. Emergency Drill Training

The fourth subject area of a qualification curriculum is Emergency Drill Training. This training might include at least the following events:

(1) Operation of each type of emergency exit in the normal and emergency modes.

(2) Operation of each type of hand held fire extinguisher.

(3) Operation of each type of emergency oxygen system.

(4) Donning, use, and inflation of life preservers and the use of other flotation devices (if applicable).

(5) Ditching procedures (if applicable) including cockpit preparation, crew coordination, passenger briefing and cabin preparation, the use of lifelines, and boarding of passengers and crew into a life-raft or slide raft.

(6) Donning and use of protective breathing equipment.

Appendix C—Tables of Qualification Events and Associated Flight Training Equipment

The following tables provide a list of qualification events which may be used in developing approved flight curriculum segments for airplane operations. An applicant who proposes to deviate from the provisions in these tables should consult the guidance in Chapter 7 of this AC. Symbols used in these tables are as follows:

(S) The certificate holder or training center should specify in its curriculums if the event requires seat specific qualification.

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Q Whenever a pilot first undergoes qualification (with the particular Part 121 and Part 135 certificate holder) to operate a specific category and class of aircraft with a specific kind of powerplant, certain events should be accomplished in at least the media indicated by the letter "Q." For example: A Convair 580 PIC who was never qualified in a turbojet with the same airline would be required to use at least a Level C flight simulator for qualification in a DC-9.

[ ] Indicates an event which should be included in a curriculum if the certificate holder's operations specifications authorize the specific kind of operation.

X Indicates the beginning and end of the range of media authorized for use in training, evaluation, and certification.

P Indicates that partial task credit is awarded using the indicated media. Full credit may be taken on the media between the lowest and highest "X."

M Indicates motion is required to perform the event in the specified level of training device.

V Indicates specified events that may be performed in the designated level of simulator if the National Simulator Program Manager determines the simulator's visual system is adequate for the event.

(ME) Indicates an event applicable only to multiengine aircraft.

Others Is for additional events, identified by AQP development methods, including maneuvers and procedures unique to an aircraft or its operation.

Performance Turn A turn using the minimum turn radius as limited by available thrust and by compliance with the certificate limits established for the aircraft. Performance turns are intended to demonstrate handling and performance qualities in accelerated flight and to demonstrate the characteristics and features of automatic flight control systems in turning, banking, and accelerated flight.

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FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
PREPARATION	Visual Inspection									*X
	Pre Taxi Procedures	X								X
	Flight Planning * Weather * MEL/CDL * Performance Limitations * Weight & Balance			X						X
	Others									
SURFACE OPERATIONS	Normal/Alternate									
	Starting	X								X
	Pushback (S)					X				X
	[] Powerback (S)						X			X
	Taxi (S)							X		X
	[] CAT III Taxi (S)							X	X	
	Pre Takeoff Checks	X								X
	Post Landing Checks	X								X
	Parking (S)							X		X
	Shutdown	X								X
	Others									

* A set of properly detailed and sequenced pictorials may be approved.

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
SURFACE OPERATIONS	Abnormal/Emergency									
	Starting	X								X
	Emergency Evacuation			X						X
	Shutdown	X								X
	Open									
TAKEOFF	Normal/Alternate									
	Normal					X		Q		X
	Crosswind					X		Q		X
	Special Performance					X		Q		X
	[] Low Visibility					X		Q		X
	Open									
	Abnormal/Emergency									
	Crosswind (Normal in an aircraft when no crosswind situation exists) w/simulated failure of the most critical powerplant at the most critical point along the takeoff path which requires a decision to discontinue the takeoff.					X		Q		X
	Open									

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FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
TAKEOFF	Abnormal/Emergency									
	Crosswind (ME) (Normal in aircraft if no crosswind situation exists) with a simulated failure of the most critical powerplant at the most critical point along the takeoff path which requires a decision to continue the takeoff.					X		Q		X
	Rejected Special Performance with maximum braking			P	P	X			X	P
	[] Rejected Low Visibility					X				X
	Open									

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FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
TAKEOFF	Abnormal/Emergency									
	Crosswind (Normal in an aircraft when no crosswind situation exists) w/simulated failure of the most critical powerplant at the most critical point along the takeoff path which requires a decision to continue the takeoff.					X		Q		X
	Rejected Special Performance with maximum braking			P	P	X			X	P
	[] Rejected Low Visibility					X				X
	Open									

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FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
TAKEOFF	Abnormal/Emergency									
	Crosswind (ME) (Normal in aircraft if no crosswind situation exists) with a simulated failure of the most critical powerplant at the most critical point along the takeoff path which requires a decision to continue the takeoff.					X		Q		X
	Rejected Special Performance with maximum braking			P	P	X			X	P
	[] Rejected Low Visibility					X				X
	Open									

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FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
INFLIGHT OPERATION	Normal/Alternate									
	Climb			X						X
	Enroute Navigation		X							X
	High Speed Handling Characteristics					X			Q	X
	High Altitude Handling Characteristics					X			Q	X
	Descent			X						X
	Others									
	Abnormal/Emergency									
	Climb with failure of critical powerplant (ME)					X				X
	Enroute Navigation		X							X
	Maximum Rate Descent					X				X
	Others									
INFLIGHT MANUEVER	High Angle of Attack Manuevers					X			Q	X
	Performance Turns					X				X
	Others									

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
VFR ENROUTE TERMINAL OPERATIONS (REQUIRED IF CERTIFICATE HOLDER IS AUTHORIZED TO CONDUCT VFR ENROUTE OPERATIONS)	Normal/Alternate									
	Traffic Patterns							V	V	X
	Others									
	Abnormal/Emergency									
	Traffic Patterns -any emergency/ abnormal airplane configurations							V	V	X
	Others									
NONPRECISION IFR APPROACHES	Normal/Alternate									
	[] Nonprecision Skill Group 1 (includes ASR)		X							X
	[] Nonprecision Skill Group 2 (includes NDB)			X						X
	[] Nonprecision Skill Group 3 (includes LOC B/C)			X						X
	[] Nonprecision Skill Group 4 (includes VOR, RNAV, TACAN)		X							X
	[] Nonprecision Skill Group 5 (includes AZI, LDA, LOC, SDF)		X							X

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
NONPRECISION IFR APPROACHES	[] Nonprecision Skill Group 6 (DME ARC)		X							X
	Open									
	Abnormal/Emergency									
	[] Nonprecision Skill (Any Group) including missed approach with failure of the most critical powerplant during approach procedure				X					X
	Open									

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
PRECISION IFR APPROACH	Normal/Alternate									
	[] Precision Skill Group 1 (includes PAR)			X						X
	[] Precision Skill Group 2 (includes ILS/MLS & CAT I ILS/MLS)			X						X
	[] Precision Skill Group 3 (CAT II ILS/MLS) [S]			X						X
	[] Precision Skill Group 4 (CAT III ILS/MLS) [S]			X						X
	[] Precision Skill Group 5 (Steep ILS/MLS)			X						X
	Open									
	Abnormal/Emergency									
	[] Precision Skill (Any Group) including missed approach with failure of most critical powerplant during the approach				X					X
	Open									

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
VISUAL SEGMENT AND LANDING	Normal/Alternate									
	[] From VFR Traffic Pattern from VFR Enroute							V	V	X
	From a Non-Precision Instrument Approach (including final approach segment)							X——	Q———	X
	[] From a Circling Approach (including final approach segment)							V	V	X
	From a Precision Approach (including final approach segment)							X——	Q———	X
	[] From a CAT II Approach							X——	———	X
	[] From a CAT III Approach							X——	X	
	[] Special Performance							X——	Q———	X
	Crosswind							X——	Q———	X
	Currency Landings						X	———	———	X
	Others									

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
	Abnormal/Emergency									
	[ ] From a VFR Pattern from VFR Enroute								V	X
	From a Precision or Non-Precision App. (including the final approach segment)							X——	———	X
	Of the following:									
	1. Rejected Landing							X——	———	X
	2. Landing with Trim Malfunction	-						X——	———	X
	3. Landing with 50% available powerplants with the loss of power on one side of the airplane (Center engine and 1 outboard engine failed on 3 engine airplanes) (ME)	For 2-Engine Airplanes / For Airplanes With 3 or More Engines				X——	———	X——	———	X
	4. Landing with 1 powerplant inop for aircraft with 3 or more engines (ME)							X——	———	X
	5. With Flap/Slat Malfunction							X——	———	X
	6. With loss of Flight Control Power (if applicable)							X——	———	X
	Others									

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
VISUAL SEGMENT AND LANDING	Normal/Alternate									
	[] From VFR Traffic Pattern from VFR Enroute							V	V	X
	From a Non-Precision Instrument Approach (including final approach segment)							X——	Q———	X
	[] From a Circling Approach (including final approach segment)							V	V	X
	From a Precision Approach (including final approach segment)							X——	Q———	X
	[] From a CAT II Approach							X——	———	X
	[] From a CAT III Approach							X——	X	
	[] Special Performance							X——	Q———	X
	Crosswind							X——	Q———	X
	Currency Landings						X	———	———	X
	Others									

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
	Abnormal/Emergency									
	[ ] From a VFR Pattern from VFR Enroute								V	X
	From a Precision or Non-Precision App. (including the final approach segment)							X——	———	X
	Of the following:									
	1. Rejected Landing							X——	———	X
	2. Landing with Trim Malfunction	-						X——	———	X
	3. Landing with 50% available powerplants with the loss of power on one side of the airplane (Center engine and 1 outboard engine failed on 3 engine airplanes) (ME)	For 2-Engine Airplanes / For Airplanes With 3 or More Engines				X——	———	X——	———	X
	4. Landing with 1 powerplant inop for aircraft with 3 or more engines (ME)							X——	———	X
	5. With Flap/Slat Malfunction							X——	———	X
	6. With loss of Flight Control Power (if applicable)							X——	———	X
	Others									

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FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
DURING ANY PHASE	Normal/Alternate									
	Airframe and Powerplant Systems Operations	FYI: When these systems are operated in conjunction with a particular event, the level of required flight training device or flight simulator is as required for that particular event. When an isolated system is operated, it may be done using any approved flight training equipment.								
	Airconditioning									
	Antiicing/Deicing									
	Auxiliary Powerplant									
	Communications									
	Electrical									
	Flaps									
	Flight Controls									
	Fuel and Oil									
	Hydraulic									
	Landing Gear									
	Pneumatic									
	Powerplant									
	Pressurization									
	Others									

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FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
DURING ANY PHASE	Normal/Alternate									
	Flight Management & Guidance Systems	FYI: When these systems are operated in conjunction with a particular event, the level of required flight training device or flight simulator is as required for that particular event. When an isolated system is operated, it may be done using any approved flight training equipment.								
	Airborne Radar									
	Auto. Landing Aids									
	Autopilot									
	Collision Avoidance System									
	Flight Data Displays									
	Flight Management Computers									
	Navigation Systems									
	Stall Warning/ Avoidance									
	Stability & Control Augmentation									
	Windshear Avoidance Equipment									
	Others									
	Airborne Procedures									
	Holding		X							X
	Others									

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FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

		TRAINING DEVICE LEVEL				SIMULATOR LEVEL				
FLIGHT PHASE	EVENT	4	5	6	7	A	B	C	D	ACFT
DURING ANY PHASE	Normal/Alternate									
	Navigation									
	Others									
	Airborne Procedures									
	Holding									
	Others									

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

		TRAINING DEVICE LEVEL				SIMULATOR LEVEL				
FLIGHT PHASE	EVENT	4	5	6	7	A	B	C	D	ACFT
DURING ANY PHASE	Normal/Alternate									
	Navigation									
	Others									
	Airborne Procedures									
	Holding									
	Others									

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
DURING ANY PHASE	Abnormal/Emergency									
	Airframe and Powerplant Systems Operations	FYI: When these systems are operated in conjunction with a particular event, the level of required flight training device or flight simulator is as required for that particular event. When an isolated system is operated, it may be done using any approved flight training equipment.								
	Airconditioning									
	Antiicing/Deicing									
	Auxiliary Powerplant									
	Communications									
	Electrical									
	Fire in any System or Location									
	Flaps									
	Flight Controls									
	Fuel and Oil									
	Hydraulic									
	Landing Gear									
	Pneumatic									
	Powerplant									
	Pressurization									
	Others									

FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
DURING ANY PHASE	Abnormal/Emergency									
	Flight Management & Guidance Systems	FYI: When these systems are operated in conjunction with a particular event, the level of required flight training device or flight simulator is as required for that particular event. When an isolated system is operated, it may be done using any approved flight training equipment.								
	Airborne Radar									
	Auto. Landing Aids									
	Autopilot									
	Collision Avoidance System									
	Flight Data Displays									
	Flight Management Computers									
	Navigation Systems									
	Stall Warning/ Avoidance									
	Stability & Control Augmentation									
	Windshear Avoidance Equipment									
	Others									
	Airborne Procedures									
	Air Hazard Avoidance							X	—	X
	Windshear/Microburst			X*	X*	X	—	—	X	
	X* Note: For those operators required to comply with Part 121, windshear/microburst events must be accomplished in a Flight Simulator.									
	Others									

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SPECIAL PURPOSE
ADDITIONAL FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
TAKEOFF	(Normal/Alternate) Short Field							X	O	X
	Soft Field								X	X
	Obstacle Clearance							X	O	X
	Open									
	(Abnormal/Emergency) Rejected Short Field (Max Breaking)					X				X
	Open									

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SPECIAL PURPOSE
ADDITIONAL FLIGHT QUALIFICATION EVENTS
PILOTS
LAND AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
VISUAL SEGMENT AND LANDING	(Normal/Alternate) Short Field								X	X
	Soft Field								X	X
	Obstacle Clearance							X		X
	Open									
	(Abnormal/Emergency) Rejected Obstacle Clearance					X				X
	Open									

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FLIGHT QUALIFICATION
WATER OPERATIONS EVENTS
PILOTS
AMPHIBIOUS AND SEAPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
SURFACE OPERATION	(Normal/Alternate) Taxiing								X—X	
	Step Taxiing								X—X	
	Sailing								X—X	
	Docking/Mooring								X—X	
	Ramp Operations								X—X	
	Open									
	(Abnormal/Emergency) Rough Water Taxi								X—X	
	Taxiing with one Power Plant Inoperative (ME)								X—X	
	Emergency Evacuation				X——	——	——	——	——	—X
	Open									

FLIGHT QUALIFICATION
WATER OPERATIONS EVENTS
PILOTS
AMPHIBIOUS AND SEAPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
TAKEOFF	(Normal/Alternate) Normal								X—X	
	Crosswind								X—X	
	Obstacle Clearance								X—X	
	Rough Water								X—X	
	Glassy Water								X—X	
	Open									
	(Abnormal/Emergency) Crosswind (normal in an aircraft if no crosswind exists) with failure of the most critical powerplant at the most critical point along the takeoff path which requires a decision to discontinue the takeoff. (ME)								X—X	
	Rejected Obstacle Clearance							X—	—X	
	Open									

FLIGHT QUALIFICATION
WATER OPERATIONS EVENTS
PILOTS
AMPHIBIOUS AND SEAPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
VISUAL SEGMENT AND LANDING	(Normal/Alternate) Crosswind								X—X	
	Obstacle Clearance								X—X	
	Glassy Water								X—X	
	Rough Water								X—X	
	Open									
	Crosswind (normal in an aircraft if no crosswind exists) with most critical powerplant inoperative. (ME)								X—X	
	Rejected Obstacle Clearance								X—X	
	Open									

FLIGHT QUALIFICATION EVENTS
FLIGHT ENGINEERS
TRANSPORT CATEGORY AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL 4	5	6	7	SIMULATOR LEVEL A	B	C	D	ACFT
PREPARATION	Airplane Preflight * Logbook * Safety Checks * Cabin/Interior * Exterior Walkaround * Deicing * Servicing	Exterior walkaround can be done using approved pictorial displays								
GROUND OPERATION	Performance Data * TOLD * Airport Analysis * Weight & Balance									
	Use of Checklist * Panel Setup									
	Starting * Normal * Abnormal - External Pwr - External Air - Battery Only									
	Communications * Station Procedures * ACARS									
	Taxi									
TAKEOFF	Normal			M	M					
	Rejected * Brake Energy			M	M					
	Engine Failure/Fire									
	Fuel Jettison									
	Emergency Return									

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FLIGHT QUALIFICATION EVENTS
FLIGHT ENGINEERS
TRANSPORT CATEGORY AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL				SIMULATOR LEVEL				ACFT
		4	5	6	7	A	B	C	D	
CLIMB	Normal * Power		X							X
	One Engine Inop.		X							X
	Fuel Management	X								X
	Pressurization * Manual * Automatic	X								X
EN ROUTE	Cruise Power		X							X
	Step Climb		X							X
	Fuel Management		X							X
	High Altitude Performance		X							X
	Powerplant Shutdown and Restart		X							X
DESCENT	Normal		X							X
	Maximum Rate			M	M	X				X
APPROACH	Landing Data	X								X
	Landing Gear Malfunctions			M	M	X				X
	Flap/Spoiler Malfunctions			M	M	X				X
	Approach Monitoring		X							X
LANDING	Normal			M	M	X				X
	With Landing Gear Malfunction			M	M	X				X
	Emergency Evacuation			X						X

FLIGHT INSTRUCTION/EVALUATION
FLIGHT ENGINEERS
TRANSPORT CATEGORY AIRPLANES

FLIGHT PHASE	EVENT	TRAINING DEVICE LEVEL				SIMULATOR LEVEL				ACFT
		4	5	6	7	A	B	C	D	
DURING ANY PHASE Normal, Abnormal, Alternate, and Emergency Procedures	Fires			X						X
	Smoke Control			X						X
	Powerplant Failure			X						X
	Pressurization		X							X
	Pneumatic	X								X
	Air Conditioning	X								X
	Fuel and Oil	X								X
	Electrical		X							X
	Hydraulic		X							X
	Flight Control			X						X
	Anti Icing & Deicing		X							X
	Cabin Equipment									X

BILLING CODE 4910-13-C

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Appendix D—Program Audit Database Table of Contents

The following is the Program Audit Database Table of Contents. Descriptions and guidance for creating and maintaining the listed documents are in Chapter 7 of this AC.

APPENDIX D—PROGRAM AUDIT DATA BASE TABLE OF CONTENTS APPROVAL PHASE RELATIONSHIPS AND APPROVAL AUTHORITY

Document Title With Sections	Approval Phases					Approval Authority
	I	II	III	IV	V	
Program Audit Data Base Master List	D	U	U	M	M	AFS-210
Application Cover Letter	D					
Transition Plan	D	U	M	O		AFS-210
Supporting Data Package	D	U	U	M	M	AFS-210
Supporting Task Analysis		D/O	M	M	M	AFS-210
Qualification Standards		D/O	M	M	M	AFS-210
Curriculum Development Methodology		D/O	M	M	M	AFS-210
AQP Curriculum		D	O/M	O/M	O/M	AFS-210/POI
AQP Training Resource Requirements		D	O	M	M	AFS-210/POI
AQP Implementation and Operations Plan		D	O/M	O/M	O/M	AFS-210/POI/NSPM
1. Curriculum Schedule		D	O/M	O/M	O/M	AFS-210/POI
2. Transition Plan	D	U	O	O		AFS-210
3. Equipment Test Plan	D		O			AFS-210/NSPM
4. Formative Evaluation Plan		D	O			AFS-210/POI/NSPM
5. Summative Evaluation Plan		D	U	O		AFS-210/POI
6. AQP Maintenance Plan		D	U	O	O	AFS-210/POI
7. ADP Equipment Plan		D	U	O	O	AFS-210
8. Data Collection Procedures		D	U/O	O	O	AFS-210
AQP Implementation and Operations Plan		D	O/M	O/M	O/M	AFS-210/POI/NSPM
1. Curriculum Schedule		D	O/M	O/M	O/M	AFS-210/POI
2. Transition Plan	D	U	O	O		AFS-210
3. Equipment Test Plan		D	O			AFS-210/NSPM
4. Formative Evaluation Plan		D	O			AFS-210/POI/NSPM
5. Summative Evaluation Plan		D	U	O		AFS-210/POI
6. AQP Maintenance Plan		D	U	O	O	AFS-210/POI
7. ADP Equipment Plan		D	U	O	O	AFS-210
8. Data Collection Procedures		D	U/O	O	O	AFS-210

D=Develop.
U=Update.
M=Maintenance.
O=Operate.
AFS 210=Manager, Air Carrier Training Branch.
POI=Principal Operations Inspector.
NSPM=National Simulator Program Manager.
Note: Data on security and hazardous materials will be reviewed by the Air Carrier Traning Branch, Office of Civil Aviation Security.

Appendix E—Task/Subtask Analysis Worksheets

The following worksheets may assist an applicant to accomplish and document the task/subtask analysis and proficiency objective development described in chapter 7 of this AC.

APPENDIX E—PROGRAM AUDIT DATA BASE TABLE OF CONTENTS APPROVAL PHASE RELATIONSHIPS AND APPROVAL AUTHORITY

Document Title With Sections	Approval Phases					Approval Authority
	I	II	III	IV	V	
Program Audit Data Base Master List	D	U	U	M	M	AFS-210
Application Cover Letter	D					
Transition Plan	D	U	M	O		AFS-210
Supporting Data Package	D	U	U	M	M	AFS-210
Supporting Task Analysis		D/O	M	M	M	AFS-210
Qualification Standards		D/O	M	M	M	AFS-210
Curriculum Development Methodology		D/O	M	M	M	AFS-210
AQP Curriculum		D	O/M	O/M	O/M	AFS-210/POI
AQP Training Resource Requirements		D	O	M	M	AFS-210/POI
AQP Implementation and Operations Plan		D	O/M	O/M	O/M	AFS-210/POI/NSPM
1. Curriculum Schedule		D	O/M	O/M	O/M	AFS-210/POI
2. Transition Plan	D	U	O	O		AFS-210
3. Equipment Test Plan	D	O				AFS-210/NSPM
4. Formative Evaluation Plan		D	O			AFS-210/POI/NSPM
5. Summative Evaluation Plan		D	U	O		AFS-210/POI
6. AQP Maintenance Plan		D	U	O	O	AFS-210/POI
7. ADP Equipment Plan		D	U	O	O	AFS-210
8. Data Collection Procedures		D	U/O	O	O	AFS-210
9. Courseware and Equipment Test Document Catalog			D	M	M	AFS-210/POI/NSPM
AQP Implementation and Operation Plan Results			O	O	O	AFS-210/POI
1. Formative Evaluation of Courseware/Curriculum			O			AFS-210/POI

APPENDIX E—PROGRAM AUDIT DATA BASE TABLE OF CONTENTS APPROVAL PHASE RELATIONSHIPS AND APPROVAL AUTHORITY—Continued

Document Title With Sections	Approval Phases					Approval Authority
	I	II	III	IV	V	
2. Summative Evaluation Results				O		AFS-210/POI
3. Maintenance Plan Results				O	O	AFS-210/POI
4. Equipment Test Results			O	O		AFS-210/POI/NSPM
AQP Continuing Program Evaluation Results					O	AFS-210/POI

D=Develop.
U=Update.
M=Maintain.
O=Oper.

Appendix F—Flight Training Equipment Descriptions

A. Level 4—Flight Training Device

(1) Purpose. To permit learning, development, and practice of skills and cockpit procedures necessary to understand and operate the integrated systems of a specified aircraft.

(2) Functional Description. A level 4 training device has the following characteristics and components:

- A replica of the flight deck panels, switches, controls, and instruments in proper relationship to represent the aircraft for which training is to be accomplished.
- Systems indications which respond appropriately to switches and controls which are required to be installed for the training or evaluation to be accomplished.
- Air/ground logic, not simulated aerodynamic capabilities are required.

B. Level 5—Flight Training Device

(1) Purpose. To permit learning, development, and practice of skills, cockpit procedures, and instrument flight procedures necessary to understand and operate the integrated systems of a specific aircraft in typical flight operations in real time.

(2) Functional Description. A level 5 training device has the following characteristics and components:

- A replica of the flight deck panels, switches, controls, and instruments in proper relationship to represent the aircraft for which training is to be accomplished.
- Systems indications which respond appropriately to switches and controls which are required to be installed for the training or evaluation to be accomplished.
- Simulated aerodynamic capabilities representative of the make, model, and series of the aircraft (or variant).
- Functional flight and navigational controls, displays, and instrumentation.
- Control forces and control travel of sufficient precision to manually fly an instrument approach.

C. Level 6—Flight Training Device

(1) Purpose

- To permit learning, development, and practice of skills in cockpit procedures, instrument flight procedures, certain symmetrical maneuvers and flight characteristics necessary to operate the integrated systems of a specific aircraft in typical flight operations.
- To permit the use of previously approved nonvisual simulators and the continued use of advanced training devices (ATD) for those part 135 operators approved to use them.

(2) Functional Description. A level 6 training device has the following characteristics and components:

- Systems indications which respond appropriately to switches and controls which are required to be installed.
- Replication of the cockpit of the aircraft for which training is to be accomplished.
- Simulated aerodynamic capabilities which closely represent the specific aircraft in ground and flight operations.
- Functional flight and navigational controls, displays, and instrumentation.
- Control forces and control travel which correspond to the aircraft.
- Instructor controls.

(Note: Nonvisual Simulators Are Categorized With Level 6 Training Devices.)

D. Level 7—Flight Training Device

(1) Purpose. To permit learning, development, and practice of skills in cockpit procedures, instrument flight procedures and maneuvers, and flight characteristics necessary to operate the integrated systems of a specific aircraft in typical flight operations.

(2) Functional Description. A level 7 training device has the following characteristics and components:

- Systems representations, switches, and controls which are required by the type design of the aircraft and by the approved training program.
- Systems which respond appropriately and accurately to the switches and controls of the aircraft being simulated.
- Full-scale replication of the cockpit of the aircraft being simulated.
- Correct simulation of the aerodynamic and ground dynamic characteristics of the aircraft being simulated.
- Correct simulation of the effects of selected environmental conditions which the simulated aircraft might encounter.
- Control forces, dynamics, and travel which correspond to the aircraft.
- Instructor controls and seat.

E. Level a Flight Simulator

(1) Purpose. To permit development and practice of the necessary skills for accomplishment of flight operational tasks to a prescribed standard of airman competency in a specific aircraft and duty position. Level A flight simulators may be used for specified pilot recency of experience requirements and specified flight operational task training requirements.

(Note: Level A Flight Simulators Comply With The Technical Standards Specified For Basic (Visual) Simulators in AC 120-40, as Amended.)

(2) *Functional Description.* Level A flight simulators have the following characteristics and components:

- Systems representations, switches, and controls which are required by the type design of the aircraft and by the user's approved training program.
- Systems which respond appropriately and accurately to the switches and controls of the aircraft being simulated.
- Full-scale replication of the cockpit of the aircraft being simulated.
- Correct simulation of the aerodynamic characteristics of the aircraft being simulated.
- Correct simulation of the effects of selected environmental conditions which the simulated aircraft might encounter.
- Control forces and travel which correspond to the aircraft.
- Instructor controls and seat.
- At least a night visual system with at least a 45 degree horizontal by 30 degree vertical field of view for each pilot station.
- A motion system with at least 3 degrees of freedom.

F. Level B Flight Simulator

(1) Purpose. To permit development and practice of the necessary skills for accomplishment of flight operational tasks to a prescribed standard of airman competency in a specific aircraft and duty position. Level B flight simulators may be used for pilot recency of experience requirements and specified flight operational task training requirements.

(Note: Level B Flight Simulators Comply With the Technical Standards Specified for Phase I Simulators in part 121, appendix H and AC 120-40, as Amended.)

(2) Functional Requirements. Level B flight simulators have the following characteristics and components:

- Systems representations, switches, and controls which are required by the type design of the aircraft and by the user's approved training program.

- Systems which respond appropriately and accurately to the switches and controls of the aircraft being simulated.
- Full-scale replication of the cockpit of the aircraft being simulated.
- Correct simulation of the aerodynamic characteristics including ground effect, and ground dynamic characteristics of the aircraft being simulated.
- Correct simulation of the effects of selected environmental conditions which the

- Systems representations, switches, and controls which are required by the type design of the aircraft and by the user's approved training program.
- Systems which respond appropriately and accurately to the switches and controls of the aircraft being simulated.
- Full-scale replication of the cockpit of the aircraft being simulated.
- Correct simulation of the aerodynamic characteristics including ground effect, and

III Simulators: in part 121, appendix H and AC 120-40, as Amended)

(2) Functional Description. Level D flight simulators have the following characteristics and components:

- Systems representations, switches, and controls which are required by the type design of the aircraft and by the user's approved training program.
- Systems which respond appropriately and accurately to the switches and controls

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• Systems which respond appropriately and accurately to the switches and controls of the aircraft being simulated.
• Full-scale replication of the cockpit of the aircraft being simulated.
• Correct simulation of the aerodynamic characteristics including ground effect, and ground dynamic characteristics of the aircraft being simulated.
• Correct simulation of the effects of selected environmental conditions which the simulated aircraft might encounter.
• Control forces and travel which correspond to the aircraft.
• Instructor controls and seat.
• At least a night visual system with at least a 45 degree horizontal by 30 degree vertical field of view for each pilot station.
• A motion system with at least 3 degrees of freedom.

G. Level C Flight Simulator

(1) Purpose. To permit development and practice of the necessary skills for accomplishment of flight operational tasks to a prescribed standard of airman competency in a specific aircraft and duty position. Level C flight simulators may be used for pilot recency of experience requirements and specified flight operational task training.

(Note: Level C Flight Simulators Comply With the Technical Standards Specified for "Phase II Simulators" in Part 121, Appendix H and AC 120-40, as Amended.)

(2) Functional Description. Level C flight simulators have at least the following characteristics and components:

• Systems representations, switches, and controls which are required by the type design of the aircraft and by the user's approved training program.
• Systems which respond appropriately and accurately to the switches and controls of the aircraft being simulated.
• Full-scale replication of the cockpit of the aircraft being simulated.
• Correct simulation of the aerodynamic characteristics including ground effect, and ground dynamic characteristics of the aircraft being simulated.
• Correct simulation of the effects of selected environmental conditions which the simulated aircraft might encounter.
• Control forces, dynamics, and travel which correspond to the aircraft.
• Instructor controls and seat.
• At least a night and dusk visual system with at least a 75 degree horizontal by 30 degree vertical field of view for each pilot station.
• A motion system with at least 6 degrees of freedom.

H. Level D Flight Simulator

(1) Purpose. To permit development and practice of the necessary skills for the accomplishment of flight operational tasks to a prescribed standard of airman competency in a specific aircraft and duty position. Level D flight simulators may be used for all flight operational task training except for static aircraft training.

(Note: Level D Flight Simulators Comply With the Technical Standards Specified for Phase III Simulators: in part 121, appendix H and AC 120-40, as Amended)

(2) Functional Description. Level D flight simulators have the following characteristics and components:

• Systems representations, switches, and controls which are required by the type design of the aircraft and by the user's approved training program.
• Systems which respond appropriately and accurately to the switches and controls of the aircraft being simulated.
• Full-scale replication of the cockpit of the aircraft being simulated.
• Correct simulation of the aerodynamic characteristics including ground effect, and ground dynamic characteristics of the aircraft being simulated.
• Correct simulation of selected environmentally affected aerodynamic and ground dynamic characteristics of the aircraft being simulated considering the full range of its flight envelope in all approved configurations.
• Correct any realistic simulation of the effects of environmental conditions which the aircraft might encounter.
• Control forces, dynamic, and travel which correspond to the aircraft.
• Instruction controls and seat.
• A daylight, dusk, and night visual system with at least a 75 degree horizontal by 30 degree vertical field of view for each pilot station.
• A motion system with at least 6 degrees of freedom.

[FR Doc. 90-22285 Filed 9-26-90; 11:26 am]
BILLING CODE 4910-13-M

federal register

Tuesday,
October 2, 1990

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates; Grooming; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates; Grooming

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on Grooming. The amendment specifies that inmates may not wear wigs or artificial hairpieces, unless medical authorization to do so is approved by the Warden. Previous Bureau policy specified that a female inmate may wear a wig or hairpiece, while a male inmate may not wear an artificial hairpiece. The intent of this proposal is to provide for the security, good order, and discipline of the institution, and to apply this provision equally to male and female inmates.

EFFECTIVE DATE: November 1, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 741, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Grooming. A proposed rule on this subject was published in the Federal Register February 21, 1990 (55 FR 6181). Two comments were received on this proposal. One commenter expressed agreement with the intent of treating male and female inmates equally, but objected to the proposed rule as drafted, stating that the use of wigs with medical authorization posed security concerns to an institution. The other commenter also objected to the proposal, stating that the utilization of wigs or artificial hairpieces by male inmates in a maximum security institution with medical authorization only was totally contrary to institution security. As stated in the Federal Register, the intent of the proposal was to provide for the security, good order, and discipline of the institution, and to apply the provision equally to male and female inmates. In publishing this final rule, the Bureau is making a change in wording which clarifies the provision for security, good order, and discipline of the institution, and is consistent with the intent of the published proposed rule. As adopted, § 551.3 now specifies that inmates may not wear wigs or artificial hairpieces, unless medical authorization to do so is approved by the Warden. The prohibition on wearing wigs or artificial hairpieces applies equally to both male and female inmates, which was the intent of the published proposed rule. Section 551.1 allows for the consideration of security, good order, and discipline of the institution in this policy; § 551.5 allows the Warden to impose restrictions or exceptions for documented medical reasons. As revised, § 551.3 therefore allows the Warden to exercise his or her existing discretion in the approval of medical authorization to wear wigs or artificial hairpieces.

In adopting the proposed rule as final with the above changes, the Bureau has made no change in the intent of the published proposed rule. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 551

Prisoners.

Dated: September 21, 1990.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 551 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99.

2. Section 551.3 is revised to read as follows:

§ 551.3 Hairpieces.

Inmates may not wear wigs or artificial hairpieces, unless medical authorization to do so is approved by the Warden.

[FR Doc. 90–23250 Filed 10–1–90; 8:45 am]

BILLING CODE 4410–05–M

federal register

Tuesday,
October 2, 1990

Part IV

Small Business Administration

13 CFR Part 107

Small Business Investment Companies; Management and Private Capital Requirements; Interim Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Management and Private Capital Requirements

AGENCY: Small Business Administration.

Specialized Small Business Investment Companies (SSBICs) licensed pursuant to section 301(d) of the same Act (56 FR 26803). The Notice indicated that SBA would use the moratorium period to review criteria under which SBIC and SSBIC licenses are issued as well as other program regulations. While that review is still ongoing, SBA has

impartially determined by responsible persons within the companies. In order to ensure this to the maximum extent possible SBA is hereby imposing new requirements regarding the composition of boards of directors and valuation committees which generally perform such valuations.

Thus, in the case of a Corporate SBIC

3. These rules apply to all 360 currently operating Licensees, including 134 SSBICs.

4. The potential benefits of these regulations have been set forth in the respective discussions of these proposals above, under Supplementary Information.

5. The potential costs of these

all Corporate Licensees (including Corporate section 301(d) Licensees) shall have at least a 5 member board of directors of which at least 40% of the members are independent of and not otherwise affiliated with the Licensee; *Provided however*, That this requirement shall not immediately apply to any Licensee licensed before the

license granted on the basis of such application. Any such Licensee or applicant shall have six months from the effective date of this requirement to comply with this requirement."

5. Section 107.101, is amended by revising the introductory text to paragraph (d) and paragraph (d)(1) to

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Management and Private Capital Requirements

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: SBA is publishing this interim final rule containing several amendments to the regulations governing the Small Business Investment Company (SBIC) program which are presently in force. These regulatory changes are designed to increase minimum capital requirements for Small Business Investment Companies (SBICs) and Specialized Small Business Investment Companies (SSBICs) and to ensure the objectivity and impartiality of the valuation of investments made by SBICs and SSBICs. They are designed to protect SBA's exposure with respect to government funds it makes available to such entities (Leverage). They take effect immediately upon publication with respect to new applicants for Licenses to act as SBICs or SSBICs and prospectively with respect to applications in-house on the effective date and Licensees which have been licensed as of the effective date.

DATES: These regulations are effective October 2, 1990. For existent Licensees and for Licensees which become licensed based upon applications in-house prior to the effective date of these regulations, these regulatory requirements will take effect 6 months from the date of publication in order to afford an adequate opportunity for compliance. For applicants which file applications subsequent to the effective date of this regulation, the regulation will be binding upon publication. Comments will be accepted until November 1, 1990.

ADDRESSES: Written comments should be addressed to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, Telephone (202) 653-6584.

SUPPLEMENTARY INFORMATION: On June 29, 1990, the Small Business Administration announced by Notice a 90 day moratorium on the approval for new licenses for Small Business Investment Companies (SBICs) licensed pursuant to section 301(c) of the Small Business Investment Act and Specialized Small Business Investment Companies (SSBICs) licensed pursuant to section 301(d) of the same Act. (56 FR 26803). The Notice indicated that SBA would use the moratorium period to review criteria under which SBIC and SSBIC licenses are issued as well as other program regulations. While that review is still ongoing, SBA has determined that there is an immediate need to implement new regulatory requirements in two areas in order to permit uninterrupted program operations after the expiration of the moratorium while satisfying SBA's need to reduce its fiscal vulnerability. These two areas involve the requirements for minimum private capital invested in a SBIC or SSBIC by its owners and the composition of the bodies which perform the valuations of the investments of SBICs and SSBICs.

With respect to the former area of concern, section 302 of the Small Business Investment Act prescribes minimum capital requirements for SBICs and Special SBICs. This section has been implemented by regulations found at 13 CFR 101(d)(1). Presently the minimum capital requirement for SBICs and SSBICs is $1,000,000. SBA is not satisfied that this requirement is sufficient to secure its provision of future funding to SBICs and SSBICs. Thus it is hereby raising the minimum capital requirement by amendment to § 107.101(d)(1) to $3,000,000 for SBICs and $2,000,000 for SSBICs. This requirement will apply to new applicants to either program immediately upon publication in the Federal Register. However, in order to avoid undue hardship, all applications in-house prior to the effective date of this regulation will be judged under the minimum capital regulatory requirement in effect prior to the effective date. In addition any licensed SBIC or SSBIC, or applicant which has been licensed under prior regulatory requirements may continue to retain minimum capital in the amount required by regulations in effect prior to the effective date of this amendment without violating this amendment. However, any such SBIC or SSBIC is required by the terms of this regulation to meet the new applicable minimum capital requirement by one year from the effective date of this amendment in order to be eligible thereafter for Leverage pursuant to SBA's regulations.

With respect to the latter area of concern, SBA recognizes that under applicable standards SBICs and SSBICs are responsible for valuing their investments. SBA is desirous of ensuring that the valuation of investments made by SBICs and SSBICs is accurately and impartially determined by responsible persons within the companies. In order to ensure this to the maximum extent possible SBA is hereby imposing new requirements regarding the composition of boards of directors and valuation committees which generally perform such valuations.

Thus, in the case of a Corporate SBIC or SSBIC a minimum 5 member Board of Directors will be required and no less than 40% of its membership will be required to be independent or not otherwise affiliated with the Licensee. In the case of a non-corporate SBIC or SSBIC with a Corporate General Partner, the Board of Directors of the Corporate General Partner will be required to have at least 5 members, 40% of whom are unaffiliated with or not otherwise related to the Licensee or the Corporate General Partner. In the case of a Partnership SBIC which does not have a Corporate General Partner, a valuation committee consisting of at least 5 members, 40% of whom are independent of and not otherwise affiliated with the Partnership will be required. For existent Licensees and for Licensees which become licensed based upon applications in-house prior to the effective date of these regulations, these regulatory requirements will take effect 6 months from the date of publication in order to afford an adequate opportunity for compliance. For applicants which file applications subsequent to the effective date of this regulation, the regulation will be binding upon publication.

Compliance With Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291 and the Regulatory Flexibility Act

SBA has determined that these regulations, taken as a whole, will constitute a major rule for purposes of Executive Order 12291, because they are likely to have an annual impact on the national economy of $100 million or more. In this regard, these regulations may have a significant economic impact on a substantial number of small entities. Pursuant to E.O. 12291 and 5 U.S.C. 603, SBA offers the following regulatory flexibility and economic impact analysis.

1. This action, taken as a whole, is designed to reduce losses being sustained by SBICs and by SBA as their guarantor.

2. The legal basis for these regulations is section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c).

3. These rules apply to all 360 currently operating Licensees, including 134 SSBICs.

4. The potential benefits of these regulations have been set forth in the respective discussions of these proposals above, under Supplementary Information.

5. The potential costs of these regulations cannot be quantified or even estimated, as for the most part these regulatory proposals would only prevent transactions from being consumated, such as high-risk leveraging of Licensees at the expense of SBA as guarantor.

6. There are no federal rules which duplicate, overlap or conflict with these rules.

7. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost, as explained above under No. 5.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35 we hereby certify that these regulations, will impose no new record-keeping requirements.

SBA hereby finds that notice and public comment prior to the effective date of these regulations is impracticable. These regulations respond to an immediate need to ensure that the disposition of government funds is adequately protected. These regulations are, therefore, effective upon publication. However, SBA is soliciting public comments on them and will consider those comments in the development of final rules on the matter.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs/business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations, is amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 661 *et seq.*, as amended, Pub. L. 100-590 and Pub. L. 101-162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101-162; 15 U.S.C. 687(d); 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100-590.

§ 107.3 [Amended]

2. In § 107.3, the term "Licensee" is amended by adding after the first sentence a new sentence to read as follows: "In order to be eligible for Leverage pursuant to these regulations, all Corporate Licensees (including Corporate section 301(d) Licensees) shall have at least a 5 member board of directors of which at least 40% of the members are independent of and not otherwise affiliated with the Licensee; *Provided however*, That this requirement shall not immediately apply to any Licensee licensed before the effective date of this requirement; nor to any license applicant whose application was on file with SBA before the effective date of this requirement, nor with respect to any License granted on the basis of such application. Any such Licensee or applicant shall have six months from the effective date of this requirement to comply with this requirement."

§ 107.4 [Amended]

3. Section 107.4(b)(2) is amended by adding the following two sentences at the end to read as follows: "In order to be eligible for Leverage pursuant to these regulations, a Limited Partnership SBIC with a Corporate General Partner shall insure that the Corporate General Partner shall have at least a 5 member board of directors of which at least 40% of the members are independent of and not otherwise affiliated with the Unincorporated Licensee or the Corporate General Partner; *Provided, however*, That this requirement shall not immediately apply to any Licensee licensed before the effective date of this requirement; nor to any license applicant whose application was on file with SBA before the effective date of this requirement, nor with respect to any license granted on the basis of such application. Any such Licensees or applicant shall have six months from the effective date of this regulation to comply with this requirement."

* * * * *

§ 107.4 [Amended]

4. Section 107.4(b)(3) is amended by removing the word "and" before (iii) and by removing the period and adding "; and" after the word "succession", and by adding a new paragraph (b)(3)(iv) to read as follows: "(iv) In order to be eligible for Leverage pursuant to these regulations, if the partnership does not have a Corporate General Partner it shall have a valuation committee of at least 5 members, at lest 40% of whom are independent and not otherwise affiliated with the partnership, *Provided, however*, That this requirement shall not immediately apply to any Licensee licensed before the effective date of this requirement; nor to any license applicant whose application was on file with SBA before the effective date of this requirement; nor with respect to any license granted on the basis of such application. Any such Licensee or applicant shall have six months from the effective date of this requirement to comply with this requirement."

§ 107.101 Operational requirements.

* * * * *

(d) *Minimum capital.* Every Licensee and section 301(d) Licensee shall have:

(1) In the case of a Licensee, Private Capital of at least $3,000,000 *Provided however*, That the requirement for $3,000,000 Private Capital shall not apply with respect to any Licensee licensed before the effective date of this regulation; nor with respect to any license application on file with SBA before the effective date of this regulation, nor with respect to any license granted on the basis of such application. Any Licensee or applicant which has become licensed before the effective date of this regulation or has filed an application before the effective date of this regulation is permitted to have such Private Capital as is required by regulation in effect prior to the effective date of this regulation. *Provided further, however*, that any such Licensee or applicant, one year from the effective date of this regulation will be required to have $3,000,000 Private Capital in order to be eligible for Leverage pursuant to these regulations. In the case of a section 301(d) Licensee, Private Capital of at least $2,000,000 *Provided however*, That the requirement for $2,000,000 Private Capital shall not apply with respect to any section 301(d) Licensee licensed before the effective date of this regulation; nor with respect to any license application on file with SBA before the effective date of this regulation, nor with respect to any license granted on the basis of such application. Any such section 301(d) Licensee or license applicant which has become licensed before the effective date of this regulation or has filed an application before the effective date of this regulation is permitted to have such Private Capital as is required by regulation in effect prior to the effective date of this regulation. *Provided further, however*, That any such section 301(d) Licensee or applicant, one year from the effective date of this regulation will be required to have $2,000,000 Private Capital in order to be eligible for Leverage pursuant to these regulations.

* * * * *

Dated: September 20, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-23239 Filed 9-27-90; 1:39 pm]

BILLING CODE 8025-01-M

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Dated: September 20, 1990.
Owen Regnier,
Administrator.
[FR Doc. 90-23239 Filed 9-27-90; 1:39 pm]
BILLING CODE 4910-62-M

federal register

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Restriction on Certain Flights from the United States to the Republic of the Philippines; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26027; Special Federal Aviation Regulation (SFAR) No. 57]

Restriction on Certain Flights from the United States to the Republic of the Philippines; Final Rule

of U.S.-registered aircraft throughout the world. Under section 103 of the Federal Aviation Act of 1958, as amended, the FAA is charged with the regulation of air commerce in a manner to best promote safety and fulfill the requirements of the national security.

On June 3, 1989, Robert M. Kimmitt, Undersecretary of State for Political

Philippines or to any intermediate destination on a trip whose ultimate destination is the Republic of the Philippines (54 FR 40624; October 2, 1989). SFAR-57, which applies to all operations in the United States or any of its territories, expires on October 1, 1990.

Reason for Final Rule Without Notice; Effective Date of Final Rule

At the time of the adoption of SFAR-57, it was determined that any flight engaged in the transportation by aircraft of the remains of Ferdinand Marcos would present a potential hazard to flight. In the preamble to the rule, it was noted that the effectiveness of the rule

compensation by a commercial operator, or by an operator certificated by the United States. Benefits in the form of potential prevention of injury to persons and damage to property are not quantifiable and would occur outside the United States. For these reasons, the costs and benefits of the regulation considered under DOT Regulatory

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26027; Special Federal Aviation Regulation (SFAR) No. 57]

Restriction on Certain Flights from the United States to the Republic of the Philippines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule; amendment.

SUMMARY: This action extends the expiration date of a Special Federal Aviation Regulation (SFAR) prohibiting the transportation by aircraft of the remains of Ferdinand Marcos from the territory of the United States to the Republic of the Philippines or to any intermediate destination on a trip whose ultimate destination is the Republic of the Philippines. This action is taken to prevent an undue hazard to the aircraft that would be engaged in such transportation, as well as to persons involved in the flight, in consideration of measures taken by the Government of the Republic of the Philippines to prevent the landing of the aircraft in the Republic of the Philippines. This amendment extends the expiration date of the SFAR from October 1, 1990, to October 1, 1991.

DATES: *Effective date:* October 1, 1990. *Expiration date:* SFAR No. 57 expires on October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Gregory S. Walden, Chief Counsel, Office of the Chief Counsel, AGC-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3222.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Department of Transportation, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft throughout the world. Under section 103 of the Federal Aviation Act of 1958, as amended, the FAA is charged with the regulation of air commerce in a manner to best promote safety and fulfill the requirements of the national security.

On June 3, 1989, Robert M. Kimmitt, Undersecretary of State for Political Affairs, U.S. Department of State (DOS), sent a letter to Robert E. Whittington, Acting Administrator, Federal Aviation Administration, requesting that the FAA act to prohibit the return by transportation of the remains of former Philippines President Ferdinand Marcos to the Republic of the Philippines. The DOS letter noted that in a May 20, 1989, diplomatic note to the U.S. Embassy in Manila, the Government of the Republic of the Philippines restated its policy of opposition of the return of Mr. Marcos to the Philippines and stated that this policy applied in the event of Mr. Marcos' death. In a May 22 note to the U.S. Embassy in Manila, the Government of the Philippines states that it has taken action to prevent the return of the Marcos remains, by instructing all Philippine ports and aeronautical authorities not to give entry or landing clearance to vessels or aircraft bearing those remains. In a Memorandum Circular to commercial airlines and private aircraft operators dated May 26, the Philippine Government served notice of its prohibition on the entry of the Marcos remains into the Philippines. The contents of the May 22 note and the May 26 Memorandum Circular were consolidated in a revised Memorandum Circular issued by the Philippine Government on June 9, 1989.

It was the conclusion of DOS that the concerns of the Philippine Government were well-founded. The DOS concluded that the return of the Marcos remains to the Philippines was contrary to U.S. strategic and foreign policy interests and would create a danger to the aircraft and persons involved in the flight. The DOS was also concerned for the safety of any aircraft and crew involved in the return of the Marcos remains, as well as others who might be present at the actual or expected destination. The safety of these persons, who might include U.S. citizens, in the Philippines could be threatened by civil unrest in that country if the remains of Ferdinand Marcos were returned to the Philippines.

Upon the death of Mr. Marcos, the FAA, on September 28, 1989, based on the DOS findings and after its own independent evaluation, issued SFAR-57 to prohibit the transportation by aircraft of the remains of Ferdinand Marcos to the Republic of the Philippines or to any intermediate destination on a trip whose ultimate destination is the Republic of the Philippines (54 FR 40624; October 2, 1989). SFAR-57, which applies to all operations in the United States or any of its territories, expires on October 1, 1990.

On August 29, 1990, a diplomatic note restating the Philippine Government's opposition to the return of Mr. Marcos was sent to the U.S. Embassy in Manila. Attached to the August 29 note was a copy of an Advisory Memorandum, signed on July 16, 1990, advising all commercial airlines and private aircraft operators that the June 9, 1989, Memorandum Circular remained "in full force and effect."

On September 24, 1990, Undersecretary Kimmitt sent a letter to James B. Busey, Administrator, Federal Aviation Administration, requesting the FAA to extend the October 1, 1990, expiration date of SFAR-57. In the letter, the Undersecretary noted that DOS concludes that the concerns of the Philippine Government continue to be well-founded:

> After careful review of the current situation in the Philippines, the Department [of State] has concluded that our concerns expressed last year regarding the consequences for both U.S. foreign policy interests and aviation safety of a return of Mr. Marcos' body remain valid, and therefore that continued measures should be taken to prevent its return to the Philippines.

Copies of the August 29 Philippine diplomatic note and the September 14 DOS letter have been placed in the docket for this rulemaking.

Temporary Restrictions on Flights Leaving the United States

On the basis of the above, and the reasons set forth in the preamble to SFAR-57, I find that the circumstances which continue to exist in the Republic of the Philippines, including the possibility of civil unrest if the remains of former President Ferdinand Marcos are returned to that country, represent a hazard to any aircraft used for that purpose. Accordingly, these circumstances require action by the FAA in order to maintain the safety of flight and promote the national security interests of the United States. In order to prevent operation of an aircraft for the purpose of returning the Marcos remains to the Philippines, it is necessary for the FAA to amend SFAR-57 to extend the expiration date from October 1, 1990, to October 1, 1991.

Reason for Final Rule Without Notice; Effective Date of Final Rule

At the time of the adoption of SFAR-57, it was determined that any flight engaged in the transportation by aircraft of the remains of Ferdinand Marcos would present a potential hazard to flight. In the preamble to the rule, it was noted that the effectiveness of the rule may be extended. Because the circumstances in effect at the time of the adoption of SFAR-57 continue to exist, it is necessary to extend the expiration date of SFAR-57 to October 1, 1991, in order to maintain safety of flight. The FAA has received no comments on the rule in the year it has been in effect, and the solicitation of public comment at this time would not be likely to produce meaningful comments on the extended rule. For these reasons, and because this action would not impose any significant compliance burden on the public, I find that further notice and public procedure under 5 U.S.C. 553(b) are unnecessary and contrary to the public interest. In order to continue the rule in effect, I find that good cause exists for making this rule effective in fewer than 30 days after publication.

The rule contains an expiration date of October 1, 1991, but may be extended if circumstances in effect at that time warrant.

Regulatory Evaluation

The cost of this regulation is limited to the net revenue of a single flight between the United States—specifically Hawaii—and the Republic of the Philippines. However, such a flight would not necessarily be conducted for compensation by a commercial operator, or by an operator certificated by the United States. Benefits in the form of potential prevention of injury to persons and damage to property are not quantifiable and would occur outside the United States. For these reasons, the costs and benefits of the regulation considered under DOT Regulatory Policies and Procedures are minimal, and a further regulatory evaluation will not be conducted.

Conclusion

The FAA has determined that this action (1) is not a "major rule" under Executive Order 12291; and (2) is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Republic of the Philippines.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

> Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; Pub. L. 100-202; 49 U.S.C. 100(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Special Federal Aviation Regulation (SFAR) No. 57 is revised to read as follows:

SFAR No. 57—Restriction on Certain Flights from the United States to the Republic of the Philippines

1. *Applicability.* This rule applies to all operations in the United States.

2. *Special flight restrictions.* No person may operate an aircraft or initiate a flight carrying the remains of Ferdinand Marcos from the Hawaiian Islands or any other point in the United States to any point in the Republic of the Philippines or to any intermediate destination on a flight the ultimate destination of which is the Republic of the Philippines.

3. *Expiration.* This special rule expires October 1, 1991.

Issued in Washington, DC on September 27, 1990.

James B. Busey,
Administrator.

[FR Doc. 90-23339 Filed 9-28-90; 10:57 am]
BILLING CODE 4910-13-M

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Part VI

The President

Proclamation 6188—National Job Skills Week, 1990
Proclamation 6189—Minority Enterprise Development Week, 1990
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Title 3—

Proclamation 6188 of September 28, 1990

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Title 3—

The President

Proclamation 6189 of September 28, 1990

National Job Skills Week, 1990

By the President of the United States of America

A Proclamation

Throughout most of the past decade, the United States has enjoyed remarkable, uninterrupted economic growth. This Nation's prosperity and its continued leadership in global economic affairs are, in large part, a tribute not only to the ingenuity and drive of American workers but also to the traditional strength of our academic institutions and the fundamental validity of free market principles.

As we approach the 21st century, however, the United States faces significant new challenges. Remaining a leader in the increasingly competitive global marketplace will require greater knowledge and improved skills among members of our labor force—knowledge and skills that will enable them to keep pace with continued advances in science and technology. A projected slowdown in work force growth and other demographic changes, such as the changing age profile of our work force and the many types of new work force entrants, also call for higher quality education in America and more effective job training.

A major Federal program to assist workers in acquiring the education and occupational skills they need is conducted under the Job Training Partnership Act (JTPA). Through the JTPA, private organizations and businesses work in concert with government agencies to provide training and employment opportunities for older, disadvantaged, and dislocated workers, as well as for those who previously have not been able to compete in the labor market because of lack of education or skills. By promoting higher levels of literacy, education, and skill among members of the Nation's work force, the JTPA is not only contributing to the personal fulfillment and success of individual participants, but also helping to keep our country strong and prosperous in a rapidly changing world.

To focus national attention on current and evolving work force needs, the Congress, by Senate Joint Resolution 333, has designated the week of September 30 through October 6, 1990, as "National Job Skills Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 30 through October 6, 1990, as National Job Skills Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-23472
Filed 10-01-90; 11:03 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 6189 of September 28, 1990

Minority Enterprise Development Week, 1990

By the President of the United States of America

A Proclamation

As we move toward the 21st century, the United States is challenged by the need to build a strong foundation for continued economic growth and prosperity. If we are to remain a leader in the global marketplace, we must increase our competitiveness through the production and delivery of high quality goods and services, and we must fully utilize the talents and ideas of all our workers. To do so, we must ensure that all Americans not only have the opportunity to participate in our free enterprise system, but also have the knowledge and skills needed to master ever more sophisticated technology in the workplace.

Achieving our goals for the 21st century will require an education system that is second to none, and it will require market-oriented government policies that sustain a climate conducive to business success. It will also require the best efforts of the private sector.

Minority business men and women have always demonstrated the kind of commitment to excellence that is vital to keeping America strong and competitive. Industrious and determined, these individuals have taken advantage of the opportunities available in our free enterprise system, helping to create jobs and contributing to the development of their communities. Time and again, minority entrepreneurs have demonstrated the power of individual initiative and private enterprise, reaffirming our conviction that freedom and opportunity are the key to success for individuals and nations.

During "Minority Enterprise Development Week," we recognize the outstanding achievements of the Nation's minority business men and women. The theme of this year's observance, "Quality Business Partners: America's Minority Entrepreneurs," calls due attention to the contributions that minority men and women make to our economic vitality. This week, as we salute the more than 1.5 million minority entrepreneurs in the United States, let us also renew our commitment to providing the education, training, and equality of opportunity that will enable more Americans to join them as valued partners in the economic life of our country.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of September 30 through October 6, 1990, as Minority Enterprise Development Week. I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-23473
Filed 10-01-90; 11:04 am]
Billing code 3195-01-M

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Proclamation 6190 of September 28, 1990

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Presidential Documents

Proclamation 6199 of September 28, 1990

Child Health Day, 1990

By the President of the United States of America

A Proclamation

On Child Health Day, we express our resolve, as individuals, families, and as a Nation, to ensure that every American child receives the best possible start in life—beginning with quality health care throughout pregnancy for expectant mothers and extending through each child's formative years. On this occasion and, indeed, throughout the year, thousands of health care providers, government officials, and other concerned Americans work together to achieve this goal, urging pregnant women to protect the lives of their unborn children through proper nutrition and prenatal care; encouraging parents to have their children immunized; and promoting education in child nutrition, safety, development, and hygiene.

The 1990 World Summit for Children dramatically illustrates that the concern for child health extends worldwide. This year, our observance of Child Health Day—an annual event in the United States since 1928—underscores our national commitment to build a better future for America's children.

Since the inception of Child Health Day in the first half of this century, we have not only worked to bring basic health care services to greater numbers of poor and underserved children but also focused increased attention on the prevention of childhood diseases and accidents. In recent years, we have also established more specialized services for children with particular health care needs, such as birth defects and chronic illnesses.

As we celebrate the advances we have made in promoting child health in the United States, we also do well to reflect on the work that remains to be done. During this observance of Child Health Day, we devote special attention to the unique problems and needs of adolescents.

Adolescence is an important, and sometimes difficult, time of transition. In addition to experiencing many physical and emotional changes, teenagers must cope with new peer pressures, increasing responsibilities, and the desire for greater independence. Most young Americans weather successfully the ups and downs of adolescence. Tragically, however, the future of far too many of our teens is being threatened by experimentation with drugs and alcohol, promiscuity, violence, and crime.

As individuals, families, and as a Nation, we must continue working to overcome the factors that can lead to physical and emotional health problems among adolescents—factors such as illiteracy, poverty, neglect, moral confusion, and the breakdown of family life. We can help America's teens to lead safer, healthier lives by teaching them—through word, deed, and example—the importance of sound nutrition and regular exercise and the dangers of such activities as smoking and drinking. We can also reduce the incidence of teen pregnancy—and the spread of sexually transmitted diseases—by helping our children to develop strong values, greater self-esteem, and the skills needed to overcome negative peer pressure. As a Nation, we must also rediscover the values of faithfulness, commitment, and self-sacrifice as they apply to marriage and family life.

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While the government must not, and, indeed, cannot, assume the primary responsibility of parents in caring for their children, it can join health care providers and other private organizations in helping to promote the well-being of our Nation's teens. This year, as we observe Child Health Day, let us redouble our efforts to build a constructive partnership among parents, health care professionals, members of the clergy, educators, and public officials at all levels of government. What we do to promote the health and well-being of young Americans is an investment in their future and in the future of our entire country.

The Congress, by Joint Resolution approved May 18, 1928, as amended (36 U.S.C. 143), has called for the designation of the first Monday in October as "Child Health Day" and has authorized and requested the President to issue annually a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Monday, October 1, 1990, as Child Health Day. I urge all Americans to join me in renewing our commitment to protecting the lives and health of all our Nation's children as we focus special attention on the needs of adolescents.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-23474
Filed 10-01-90; 11:06 a.m.]
Billing code 3195-01-M

Presidential Documents

Proclamation 6191 of September 28, 1990

General Pulaski Memorial Day, 1990

By the President of the United States of America

A Proclamation

Long before he gave his life for the sake of America's Independence, General Casimir Pulaski had demonstrated the depth of his devotion to the cause of liberty and human dignity. As a young count and patriot in Poland, the beloved land of his birth, Pulaski fought against tyranny and foreign domination with unrelenting courage and determination. Finally, when forced into exile, he chose to join our ancestors in their struggle for freedom and independence. Pulaski volunteered for the Continental Army, where he eventually became leader of his own cavalry unit.

On October 9, 1779, while leading a charge during the siege of Savannah, General Pulaski was mortally wounded. Two days later, this loyal friend of the American Revolution and tireless champion of freedom went to his eternal rest.

General Pulaski did not live to enjoy the triumph of the American Revolutionary War, but today we know that his sacrifices—and the sacrifices of all those who labored to support our fledgling Nation in its struggle for liberty—were not made in vain. Today, more than 200 years after his death, the United States continues to be blessed with freedom, peace, and prosperity. General Pulaski's fellow Poles have thrown off the oppressive weight of communist rule and have begun to enter the community of free nations.

Like many of his contemporaries, Casimir Pulaski knew that the hopes of freedom-loving peoples around the world were invested in our Nation's great experiment in self-government. In joining the American War for Independence, he affirmed a belief we cherish to this day: because liberty is the God-given right of all men, the cause of freedom is universal. When the rights to life, liberty, and the pursuit of happiness are secured anywhere, they are strengthened and reaffirmed everywhere.

This October 11, as we recall the death of General Casimir Pulaski, one of the great heroes of the Revolutionary War and first of many individuals of Polish descent to earn a place of honor in American history, let us also renew our commitment to the ideals for which he gave his life.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, October 11, 1990, as General Pulaski Memorial Day and direct the appropriate government officials to display the flag of the United States on all government buildings on that day. In addition, I encourage the people of the United States to commemorate this occasion as appropriate throughout the land.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-23475

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Executive Order 12730 of September 30, 1990

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-23475
Filed 10-01-90; 11:06 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12730 of September 30, 1990

Continuation of Export Control Regulations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) (hereafter referred to as "the Act"),

I, GEORGE BUSH, President of the United States of America, find that the unrestricted access of foreign parties to U.S. goods, technology, and technical data and the existence of certain boycott practices of foreign nations, in light of the expiration of the Export Administration Act of 1979, constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency with respect to that threat.

Accordingly, in order (a) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States; (b) to further significantly the foreign policy of the United States, including its policy with respect to cooperation by U.S. persons with certain foreign boycott activities, and to fulfill its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious economic impact of foreign demand, it is hereby ordered as follows:

Section 1. Notwithstanding the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*), the provisions of that Act, the provisions for administration of that Act, and the delegations of authority set forth in Executive Order No. 12002 of July 7, 1977, Executive Order No. 12214 of May 2, 1980, and Executive Order No. 12131 of May 4, 1979, as amended by Executive Order No. 12551 of February 21, 1986, shall, to the extent permitted by law, be incorporated in this order and shall continue in full force and effect.

Sec. 2. All rules and regulations issued or continued in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, including those published in Title 15, Chapter III, Subchapter C, of the Code of Federal Regulations, Parts 768 to 799 inclusive, and all orders, regulations, licenses, and other forms of administrative action issued, taken, or continued in effect pursuant thereto, shall, until amended or revoked by the Secretary of Commerce, remain in full force and effect, the same as if issued or taken pursuant to this order, except that the provisions of sections 203(b)(2) and 206 of the Act (50 U.S.C. 1702(b)(2) and 1705) shall control over any inconsistent provisions in the regulations. Nothing in this section shall affect the continued applicability of administrative sanctions provided for by the regulations described above.

Sec. 3. Provisions for administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this order also shall constitute authority for the issuance and continuation in full force and effect of all rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative action issued, taken, or continued in effect pursuant thereto, relating to the administration of section 38(e).

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Sec. 4. This order shall be effective as of midnight between September 30, 1990, and October 1, 1990, and shall remain in effect until terminated. It is my intention to terminate this order upon the enactment into law of a bill reauthorizing the authorities contained in the Export Administration Act.

George Bush

THE WHITE HOUSE,
September 30, 1990.

[FR Doc. 90-23478
Filed 10-01-90; 11:07 am]
Billing code 3195-01-M

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3265/Pub. L. 101-396
Federal Communications Commission Authorization Act of 1990. (Sept. 28, 1990; 104 Stat. 848; 4 pages) Price: $1.00

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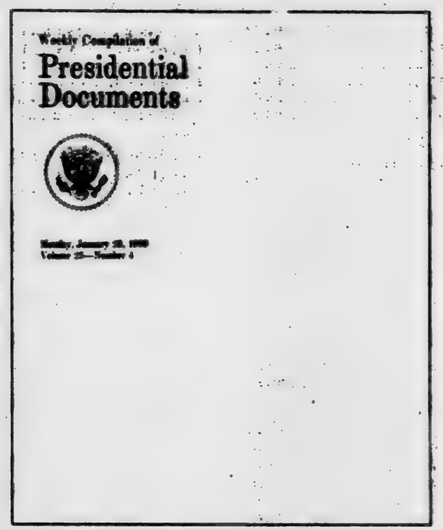
The Weekly Compilation of Presidential Documents

Administration of George Bush



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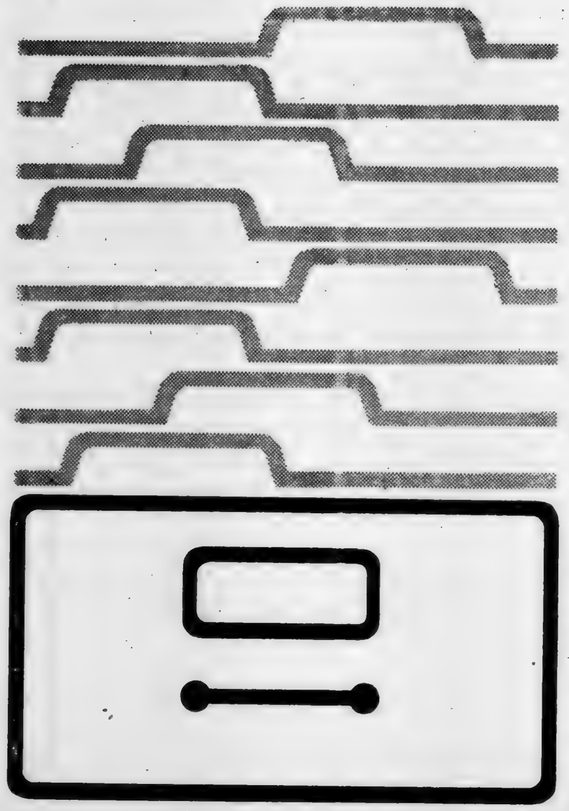

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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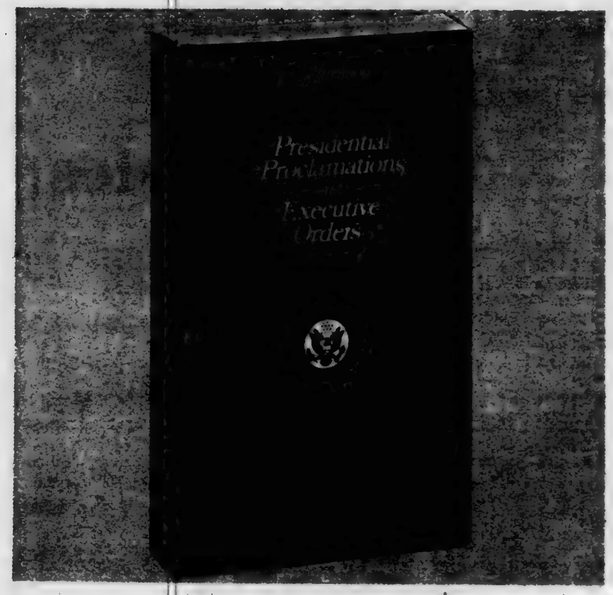

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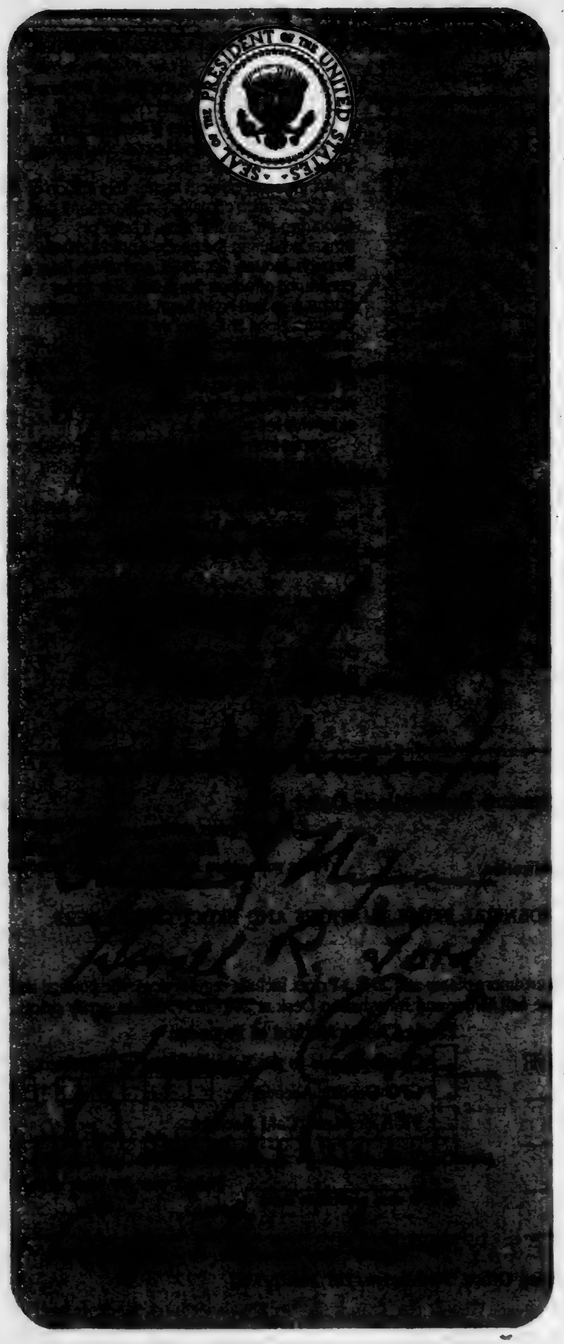

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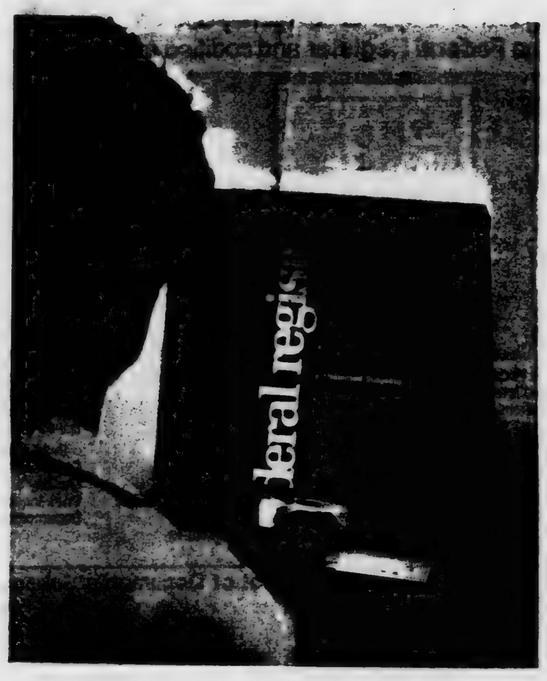

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-193]

Oriental Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are removing the Oriental fruit fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. The regulations were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from Los Angeles County, California, and that the regulations are no longer necessary. This rule relieves restrictions on the interstate movement of regulated articles from the previously quarantined area in Los Angeles County, California.

DATES: Interim rule effective September 28, 1990. Consideration will be given only to comments received on or before December 3, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-193. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

We established the Oriental fruit fly regulations (7 CFR 301.93 *et seq.*; referred to below as the regulations) and quarantined an area of Los Angeles County, California—in the West Covina area—in a document effective on August 15, 1989, and published in the Federal Register on August 21, 1989 (54 FR 34477-34483, Docket No. 89-144). The regulations imposed restrictions on the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. The regulations also designated soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles.

We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles and Orange Counties, California, from the list of quarantined areas. Amendments affecting California were made effective on September 19, October 16, and October 20, 1989; and on August 3 and September 6, 1990 (54 FR 39161-39162, Docket No. 89-170; 54 FR 43037-43038, Docket Number 89-180; 54 FR 43575-43576, Docket Number 89-187; 55 FR 32240-32241, Docket Number 90-149; 55 FR 32238-32240, Docket Number 90-157; and 55 FR 37311-37312, Docket Number 90-176). Immediately prior to the effective date of this document, only one area—a portion of Los Angeles County, California, that includes Lynwood, South Gate, Downey, Paramont, Compton, Willowbrook, and Watts—was listed as a quarantined area.

Based on insect trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, we have determined that the Oriental fruit fly has been eradicated from the previously quarantined portion of Los Angeles County, California. The last finding of Oriental fruit fly was made in this area on July 12, 1990.

Since then, no evidence of Oriental fruit fly infestations has been found in this area. Based on Departmental experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that Oriental fruit fly infestations no longer exist in Los Angeles County, California. We are therefore removing the Oriental fruit fly regulations.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. A portion of Los Angeles County, California—including Lynwood, South Gate, Downey, Paramont, Compton, Willowbrook, and Watts—was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, the Oriental fruit fly regulations now impose an unnecessary regulatory burden on the public. We are therefore taking immediate action to remove these regulations.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100

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million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive order 12291.

This regulation affects the interstate movement of previously regulated articles from a portion of Los Angeles County, California. The small entities that may be affected by this regulation are approximately 120 fruit/produce markets, 20 nurseries, and 146 retail fruit/produce vendors. These entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

It appears that most of these small entities sold previously regulated articles primarily for local intrastate, not interstate markets. The sale of these articles will therefore remain unaffected by the regulatory provisions we are removing. Also, many of these entities sold other items in addition to the previously regulated articles so that the effect, if any, of this regulation on these entities will be minimal.

The effect of this regulation on these entities that did move previously regulated articles interstate was minimized by the availability of various treatments specified in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations. The specified treatments, in most cases, allowed these small entities to move previously regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Original fruit fly, Plant disease, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.93 through 301.93–10 [Removed and Reserved]

2. "Subpart—Oriental Fruit Fly" (7 CFR 301.93 through 301.93–10) is removed and reserved.

Done in Washington, DC, this 26th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–23386 Filed 10–2–90; 8:45 am]

BILLING CODE 3410–34–M

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

CFR Correction

In title 7 of the Code of Federal Regulations, parts 1940 to 1949 revised as of January 1, 1989, and January 1, 1990, § 1944.16 (i) was incorrectly removed. The missing text to be reinstated on page 334 of the January 1, 1989, revision and on page 332 of the January 1, 1990, revision should read as follows:

§ 1944.16 Dwelling requirements.

* * * * *

(i) *Design features/amenities in existing dwellings.* Existing dwellings with design features which add significantly to the value of the dwelling (such as those listed in paragraph (e) of this section) will not be financed unless the cost of the dwelling is no more than the cost of a new dwelling, and the dwelling with such a feature is determined by the County Supervisor to be modest. Amenities such as those outlined in paragraph (f) of this section may be included in existing dwellings unless the County Supervisor determines that a combination of those amenities causes the dwelling to be above modest.

BILLING CODE 1505–01–D

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, 114, and 116

[Notice 1990–16]

Debts Owed by Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On June 27, 1990 (55 FR 26378), the Commission published the text of new rules governing the extension of credit and settlement of debts owed by candidates and political committees. 11 CFR part 116. New forms to implement the provisions of these regulations were transmitted to Congress on June 28, 1990. The Commission announces that these rules and the new forms are effective as of October 3, 1990.

EFFECTIVE DATE: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E. Street, NW., Washington, DC 20463, (202) 376–5690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code requires that any rule or regulation prescribed by the Commission to implement title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The new rules at 11 CFR part 116 and the conforming amendments to 11 CFR 100.7(a)(4), 104.3(d) and 104.11(b) were transmitted to Congress on June 22, 1990. Thirty legislative days expired in the House of Representatives on September 14, 1990 and in the Senate on September 17, 1990.

Section 438(d) of title 2, United States Code also provides that any forms prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. If neither House disapproves the forms within ten legislative days of their transmittal, the Commission may prescribe the form in question. New FEC Form 8, entitled "Debt Settlement Plan" was transmitted to Congress on June 28, 1990. Ten legislative days expired in the Senate and the House of Representatives on July 23, 1990.

Announcement of Effective Date: 11 CFR 100.7(a)(4), 104.3(d), 104.11(b), 114.10 and part 116, and new FEC Form 8 are effective as of October 3, 1990. Accordingly, the new debt settlement rules will apply to all debt settlement requests received by the Commission on or after the effective date. Debt settlement requests received prior to the effective date will be processed under the previous rules.

Dated: September 27, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90–23352 Filed 10–2–90; 8:45 am]

BILLING CODE 6715–01–M

11 CFR Parts 102, 104 and 106

[Notice 1990–13]

Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On June 26, 1990 (55 FR 26056), the Commission published the text of revised regulations at 11 CFR parts 102, 104 and 106 providing for allocation of expenses for activities that jointly benefit both federal and non-federal candidates and elections. These regulations implement the contribution and expenditure limitations and prohibitions established by 2 U.S.C. 441a and 441b, provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* The Commission announces that these rules are effective as of January 1, 1991. The Commission's new forms implementing the reporting provisions of these regulations will also take effect on January 1, 1991.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376–5690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before final promulgation. The revisions to 11 CFR parts 102, 104 and 106 were transmitted to Congress on June 18, 1990. It should be noted that this transmittal date was incorrectly reported as June 15, 1990 in an earlier notice (55 FR 26056). Thirty legislative days expired in both the House and the Senate on September 11, 1990. Thus, the Commission may now prescribe these new regulations.

Section 438(d) also requires that any form prescribed by the Commission be transmitted to the Speaker of the House of Representatives and the President of the Senate ten legislative days before final promulgation. A set of new reporting forms was transmitted to Congress on June 22, 1990. These forms are intended to implement the reporting provisions of the new allocation regulations at 11 CFR parts 104 and 106. Ten legislative days expired in both the House and the Senate on July 17, 1990. Thus, the Commission may now prescribe these new reporting forms.

The Commission is announcing today that its revised regulations at 11 CFR parts 102, 104 and 106 will take effect on January 1, 1991. These regulations govern the allocation of expenses for activities that jointly benefit both federal and non-federal candidates and elections. They apply to party committees, nonconnected committees, and (under certain circumstances) separate segregated funds that make disbursements on behalf of both federal and non-federal candidates and elections. The regulations set forth procedures for how such costs are to be allocated between a committee's federal and non-federal accounts, and for how allocated expenses are to be paid. In addition, the regulations clarify how committees are to allocate expenses attributable to more than one clearly identified candidate. The regulations also specify additional information that is to be reported to the Commission by each type of committee covered by the rules. The new reporting forms being prescribed today implement these new disclosure requirements.

The effective date of these regulations is being delayed to give affected committees sufficient time to develop the data and reporting capabilities necessary to comply with the new allocation requirements. Reports filed for reporting periods ending prior to January 1, 1991 need not include the additional information or forms required by the new regulations, including 1990 year-end reports that are due on January 31, 1991. However, reports for periods beginning on or subsequent to January 1, 1991 must comply with the new allocation requirements and, when appropriate, must include the new reporting forms.

Announcement of Effective Date: 11 CFR parts 102, 104 and 106, as published at 55 FR 26056, are effective as of January 1, 1991. New forms implementing the reporting provisions of these regulations are also effective as of January 1, 1991

Dated: September 27, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90–23351 Filed 10–2–90; 8:45 am]

BILLING CODE 6715–01–M

11 CFR Parts 106, 9003, 9007, 9033, 9035 and 9038

[Notice 1990–15]

Presidential Primary and General Election Candidates; Technical Requirements for Computerized Magnetic Media

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On June 27, 1990 (55 FR 26392), the Commission published the text of new and revised rules governing the production of computerized information maintained or used by publicly funded Presidential primary and general election campaign committees. 11 CFR 106.2(c), 9003.3, 9003.6, 9007.1(b), 9033.12, 9035.1(c) and 9038.1(b). The Commission also prepared new technical standards designed to ensure the compatibility of magnetic media provided for Commission use during its mandatory audits of these committees. *See* Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding (CMMR), available from the Commission's Public Records Office or the Audit Division. The Commission announces that these rules and the new technical standards are effective as of October 3, 1990.

EFFECTIVE DATE: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376–5690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, and 26 U.S.C. 9009(c) and 9039(c), require that any rule or regulation prescribed by the Commission to implement titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of

the Senate thirty legislative days prior to final promulgation. The new rules at 11 CFR 9003.6 and 9033.12 and the revisions to 11 CFR 106.2(c), 9003.3, 9007.1(b), 9035.1(c) and 9038.1(b) were transmitted to Congress on June 22, 1990. Thirty legislative days expired in the Senate and the House of Representatives on September 18, 1990.

Announcement of Effective Date

11 CFR 106.2(c), 9003.3 (a), (b) and (c), 9003.6, 9007.1(b), 9033.12, 9035.1(c) and 9038.1(b), as published at 55 FR 26392 are effective as of October 3, 1990. The technical standards set forth in the CMMR are also effective as of October 3, 1990.

Dated: September 27, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-23350 Filed 10-2-90; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Number 90-ACE-04]

Alteration of Control Zone and Transition Area; Dodge City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects an error in the transition area description for Dodge City, Kansas. In the transition area description, Dodge City Regional Airport was incorrectly referred to as Dodge City Municipal Airport.

EFFECTIVE DATE: 0901 UTC, December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 90-18800 published on August 10, 1990, (55 FR 32813) altered the control zone and transition area descriptions for Dodge City, Kansas. In the transition area description Dodge City Regional Airport was incorrectly listed as Dodge City Municipal Airport. This action corrects that error.

Adoption of the Correction

§ 71.181 [Corrected]

Accordingly, pursuant to the authority delegated to me, Federal Register Document 90-18800 beginning on page 32813, published on August 10, 1990, is corrected by removing the words "Dodge City Municipal Airport" and substituting the words "Dodge City Regional Airport" in the second column, in § 71.181, in the third line of the transition area description.

Authority: 49 U.S.C. 1348(a), 1510; Executive Order 10854; 49 U.S.C. 106(g), (Revised Pub. L. 97-449, January 12, 1983; 14 CFR 11.69). Issued in Kansas City, Missouri, on September 10, 1990.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 90-23218 Filed 10-2-90; 8:45 am]

BILLING CODE 4910-13-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Privacy Act; Information and Requests

AGENCY: International Trade Commission.

ACTION: Final rule.

SUMMARY: This notice sets forth final rules that the U.S. International Trade Commission has adopted relating to two new systems of records entitled "Office of Inspector General Investigative Files (General)" and "Office of Inspector General Investigative Files (Criminal)". These rules, 19 CFR 201.32 (d) and (e), exempt the new systems from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a (j) and (k).

EFFECTIVE DATE: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Jane E. Altenhofen, Inspector General, 202-252-2210. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: Notice of a new system of records entitled "Office of Inspector General Investigative Files" was published in the Federal Register on May 9, 1990 (55 FR 19371). This system was to contain records and information compiled during the course of investigations into possible violations of criminal and other laws conducted by the Inspector General. Accompanying this notice was a proposed rule to exempt this system of records from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a (j) and (k). The proposed rule was published in the Federal Register on May 9, 1990 (55 FR 19278).

When the Office of Inspector General (OIG) was established in the Commission by the Inspector General Act Amendments of 1988, Public Law 100-504, it was given the responsibility of detecting and preventing fraud and abuse in the programs and operations of the Commission. An integral part of this responsibility involves conducting investigations into possible violations of criminal as well as civil laws. In order to allow the OIG to carry out this function effectively, the Commission proposed the establishment of a single system of investigative records, which was to be exempt from certain provisions of the Privacy Act of 1974, pursuant to sections (j) (2) and (k) (2) of that Act.

The exemptions are necessary in order to protect the integrity of the system of records. Access by subject individuals, among others, to the Investigative Files, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take action to prevent detection of unlawful activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified or retained would significantly impede the effectiveness of OIG investigatory activities and, in addition, could preclude the apprehensive and successful prosecution or discipline of persons engaged in fraud or other illegal activity.

In response to the proposed rule providing exemptions for the original system, the Commission received a comment, from Congressman Robert Wise, Chairman of the Government Information, Justice, and Agriculture Subcommittee of the Committee on Government Operations. Congressman Wise objected to the use of the (j)(2) exemption for all of the IG's investigatory records. He suggested, however, that "if an IG office establishes a clearly identifiable subunit that performs as its principal function criminal functions, the separate records of that subunit may qualify for the (j)(2) exemption."

In response to Congressman Wise's comments, the OIG has established two systems of records. The primary system, containing investigatory materials compiled for law enforcement purposes, will be entitled Office of Inspector General Investigative Files (General). The second system, entitled Office of Inspector General Investigative Files (Criminal), will be maintained and used by the OIG's newly established Criminal Investigations Subunit.

The primary system of records will contain material compiled for law enforcement purposes during the course of non-criminal investigations. These files, the Office of Inspector General Investigative Files (General), will be maintained by the OIG, and will be exempt from certain requirements of the Privacy Act under section (k)(2).

The secondary system will contain information compiled during criminal investigations and will be used and maintained by the OIG's newly established Criminal Investigations Subunit. The sole function of the new subunit will be to conduct investigations into possible criminal violations. Thus the principal function of this subunit would be an activity pertaining to the enforcement of criminal laws. This subunit will maintain the system of records entitled Office of Inspector General Investigative Files (Criminal), and this system will be exempt from certain requirements of the Privacy Act under section (j)(2).

The Commission has determined that this rule does not constitute a major rule under section 1(b) of Executive Order 12291 because it will not result in (1) an annual effect on the economy of at least $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, or innovation. In addition, the Regulatory Flexibility Act, 5 U.S.C. 605(b), does not apply since this rule will not have significant impact on a substantial number of small entities. The Privacy Act concerns the rights of individuals, who do not constitute small entities under the Regulatory Flexibility Act.

List of subjects in 19 CFR part 201

Privacy, Reporting and Recordkeeping Requirements.

For the reasons set forth above, the U.S. International Trade Commission proposes to amend 19 CFR part 201, subpart D, as follows:

PART 201—RULES OF GENERAL APPLICATION

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a.

1. The authority citation for subpart D continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Part 201, Subpart D, is amended to add §§ 201.32(d) and 201.32(e) as follows:

§ 201.32 Specific exemptions.

* * * * *

(d) Pursuant to 5 U.S.C. 552a(k)(2), and in order to protect the effectiveness of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, records contained in the system titled Office of Inspector General Investiative Files (General), insofar as they include investigatory material compiled for law enforcement purposes, shall be exempt from this subpart and from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of section 3 of the Privacy Act. *Provided, however,* that if any individual is denied any right, privilege, or benefit to which he is otherwise entitled to under Federal law due to the maintenance of this material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identify of a source who furnished information to government investigators under an express promise that the identity of the source would be held in confidence.

(e) Pursuant to 5 U.S.C. 552a(j)(2), and in order to protect the confidentiality and integrity of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, records maintained in the Office of Inspector General Investigative Files (Criminal), insofar as they contain information pertaining to the enforcement of criminal laws, shall be exempt from this subpart and from the Privacy Act, *except that,* subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i) shall still apply to these records.

By the Commission.

Dated: September 26, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-23374 Filed 10-2-90; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333 and 448

[Docket No. 76N-482A]

RIN 0905-AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC First Aid Antibiotic Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that amends the final monograph for over-the-counter (OTC) first aid antibiotic drug products in 21 CFR part 333 that establishes conditions under which these drug products are generally recognized as safe and effective and not misbranded. This amendment revises the standards for bacitracin zinc-polymyxin B sulfate topical aerosol. FDA is concurrently amending the antibiotic regulations in 21 CFR part 448 to be consistent with the monograph for OTC first aid antibiotic drug products. This amendment of the final monograph is a part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective October 3, 1991; a written notice of participation and request for hearing on the amendment to 21 CFR 448.513e(a)(1) by November 2, 1990; data, information, and analyses to justify a hearing on the amendment to 21 CFR 448.513e(a)(1) by December 3, 1990.

ADDRESSES: Written comments or requests for a hearing on the amendment to § 448.513e(a)(1) to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 11, 1987 (52 FR 47312), FDA issued a final monograph for OTC first aid antibiotic

drug products (21 CFR part 333, subpart B). The monograph provided for bacitracin zinc-polymyxin B sulfate topical aerosol containing, in each 90-gram container, 10,000 units of bacitracin and 200,000 units of polymyxin B (§ 333.120(a)(7)) (21 CFR 333.120(a)(7)).

On June 2, 1988, FDA received a final monograph for OTC first aid antibiotic drug products, the agency was notified that the underlying NDA for the aerosol product had been amended to provide for a change in the container size from a 90-gram container to an 85-gram container, as allowed under § 314.70(d) (21 CFR 314.70(d)). The amount of antibiotics per 85-gram container would be the same as that in the 90-gram container. The agency was also notified that the manufacturer of the product intended to begin marketing the 85-gram container as soon as possible after the effective date of the final monograph. Because the 85-gram container is a new container size, it may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially

Any person who decides to seek a hearing must file (1) on or before November 2, 1990, a written notice of participation and request for hearing, and (2) on or before December 3, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest

2. Section 333.120 is amended by revising paragraph (a)(7) to read as follows:

§ 333.120 Permitted combinations of active ingredients.

* * * * *

(a) * * *

(7) Bacitracin zinc-polymyxin B

21 CFR Part 341

[Docket No. 89N-0411]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for

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drug products (21 CFR part 333, subpart B). The monograph provided for bacitracin zinc-polymyxin B sulfate topical aerosol containing, in each 90-gram container, 10,000 units of bacitracin and 200,000 units of polymyxin B (§ 333.120(a)(7)) (21 CFR 333.120(a)(7)).

On June 3, 1988, FDA received a citizen petition (Docket No. 78N-0462/CP) requesting the amendment of § 333.120(a)(7) to delete the "90-gram" specification for the container size so that § 333.120(a)(7) would be consistent with the antibiotic regulation in § 448.513e(a)(1) which does not specify a container size for bacitracin zinc-polymyxin B sulfate topical aerosol.

On October 13, 1989, FDA received an amendment to the citizen petition (Docket No. 78N-0462/AMD1) requesting that § 333.120(a)(7) be revised to state the concentration of antibiotics contained in each gram, rather than designating the concentration of antibiotics contained in each "90-gram" container. The petitioner stated that vehicles and/or inert gases that could be used in the aerosol product vary in specific gravity and/or weight. The petitioner mentioned that if it wished to reformulate the product to change, add, or delete either the "suitable vehicle" or the "suitable inert gases," the final product would still provide the same number of units of antibiotics but the total container content might be at variance from the required 90 grams. Accordingly, the petitioner requested the § 333.120(a)(7) be revised to read "Bacitracin zinc-polymyxin B sulfate topical aerosol containing, in each gram, 120 units of bacitracin zinc and 2,350 units of polymyxin B * * *." The petitioner concluded that this approach would be consistent with other monograph listings in §§ 333.110 and 333.120.

In developing the final monograph for OTC first aid antibiotic drug products, the agency stated that the dosage forms included in the monograph reflected those dosage forms identified in Subpart F of the specific antibiotic regulations that applied to first aid antibiotics (52 FR 47312 at 47313). Although § 448.513e does not state a container size, as the petitioner noted, that particular section of the antibiotic regulations was based on an approved new drug application (NDA) for an aerosol product in a 90-gram container. When the final monograph for OTC first aid antibiotic drug products was prepared, it was necessary to state therein the size of the container to inform other manufacturers of the amount of antibiotics per total container size. After publication of the final monograph for OTC first aid antibiotic drug products, the agency was notified that the underlying NDA for the aerosol product had been amended to provide for a change in the container size from a 90-gram container to an 85-gram container, as allowed under § 314.70(d) (21 CFR 314.70(d)). The amount of antibiotics per 85-gram container remained the same in accord with § 448.513e(a)(1): 10,000 units of bacitracin and 200,000 units of polymyxin B. These amounts are equivalent to 117.65 units of bacitracin per gram and 2352.94 units of polymyxin B per gram, and are very close to the rounded-off amounts requested by the petitioner.

After reviewing the citizen petition, the agency agreed that it would be appropriate to revise §§ 333.120(a)(7) and 448.513e(a)(1) to state the concentration of antibiotics contained in each gram of the final product. This revision would allow manufacturers to market other size aerosol products containing these antibiotics and would allow greater flexibility in reformulating existing products if the manufacturer elected to change the suitable vehicle and/or inert gases. The agency's proposed regulation, in the form of a proposed amendment of the final monograph for OTC first aid antibiotic drug products, was published in the Federal Register of May 11, 1990 (55 FR 19868). In that document, the agency proposed to amend the final monograph for OTC first aid antibiotic drug products in § 333.120(a)(7) and the exiting antibiotic regulation in § 448.513e(a)(1) to provide for bacitracin zinc-polymyxin B sulfate topical aerosol containing, in each gram, 120 units of bacitracin and 2,350 units of polymyxin B. In addition, the agency corrected an error that existed in § 448.513e(a)(1): 120 percent should have read 130 percent. Interested persons were invited to submit written comments by July 10, 1990, and to submit requests for an informal conference on the proposed change in § 448.513e(a)(1) by June 11, 1990.

No comments were received in response to the proposed amendments and no requests for an informal conference were received in response to the proposed amendment to 21 CFR 448.513e(a)(1).

As discussed in the proposal (55 FR 19868), the agency advised that any final rule resulting from the proposal would be effective 12 months after its date of publication in the Federal Register. Therefore, on or after October 3, 1991, any OTC drug product that is not in compliance with the final rule may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 19868). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this amendment of the final monograph for OTC first aid antibiotic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC first aid antibiotic drug products is not expected to pose such an effect on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by the amendment to 21 CFR Part 448.513e(a)(1) may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown.

Any person who decides to seek a hearing must file (1) on or before November 2, 1990, a written notice of participation and request for hearing, and (2) on or before December 3, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified, with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 333

First aid antibiotic drug products, Labeling, Over-the-counter drugs.

21 CFR Part 448

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, subchapter D of chapter I of title 21 of the Code of Federal Regulations is amended in parts 333 and 448 as follows:

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 333.120 is amended by revising paragraph (a)(7) to read as follows:

§ 333.120 Permitted combinations of active ingredients.

* * * * *

(a) * * *

(7) Bacitracin zinc-polymyxin B sulfate topical aerosol containing, in each gram, 120 units of bacitracin and 2,350 units of polymyxin B in a suitable vehicle, packaged in a pressurized container with suitable inert gases: *Provided*, That is meets the tests and methods of assay in § 448.513e(b) of this chapter.

* * * * *

PART 448—PEPTIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 448 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. Section 448.513e is amended by revising paragraph (a)(1) to read as follows:

§ 448.513e Bacitracin zinc-polymyxin B sulfate topical aerosol.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin zinc-polymyxin B sulfate topical aerosol is bacitarcin zinc, polymyxin B sulfate in a suitable and harmless vehicle, packaged in a pressurized container with suitable and harmless inert gases. Each gram contains 120 units of bacitracin and 2,350 units of polymyxin B. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. It contains not more than an average of 10 microorganisms per container. The bacitracin zinc used conforms to the standards prescribed by § 448.13(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

* * * * *

Dated: September 3, 1990

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-23347 Filed 10-2-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 341

[Docket No. 89N-0411]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) antitussive drug products in 21 CFR part 341. As amended, only the term "lozenge" is used to describe a solid dosage form oral antitussive drug product intended for dissolution in the mouth. Also, the final monograph is amended to clarify that a systemically acting antitussive drug product can be marketed in a lozenge dosage form. This amendment of the final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 12, 1987 (52 FR 30042), FDA issued a final monograph for OTC antitussive drug products (21 CFR part 341) that established conditions under which these products are generally recognized as safe and effective and not misbranded. The monograph currently provides for menthol to be used in a "lozenge" or "compressed tablet" dosage form (See §§ 341.3(c) and 341.74(d)(2)(iii).)

After publication of the antitussive final monograph, the United States Pharmacopeia (U.S.P.) (Ref. 1) added a definition for "lozenges." This definition, which became official in January 1990, is as follows:

> Lozenges are solid preparations containing one or more medicaments, usually in a flavored, sweetened base which are intended to dissolve or disintegrate slowly in the mouth. They can be prepared by molding (gelatin and/or fused sucrose or sorbitol base) or by compression of sugar based tablets. Molded lozenges are sometimes referred to as pastilles while compressed lozenges are often referred to as troches. They are usually intended for treatment of

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local irritation or infections of the mouth or throat but may contain active ingredients intended for systemic absorption after swallowing.

The new U.S.P. definition of "lozenge" includes "compressed tablet" dosage forms. Accordingly, to make the antitussive final monograph consistent with the U.S.P. definition, FDA proposed an amendment to the final monograph in the Federal Register of October 2, 1989 (54 FR 40412). The proposal stated that only the term "lozenge" would be used to describe a solid dosage form to be dissolved in the mouth for a local effect. Thus, the term "compressed tablet" would be deleted from §§ 341.3(c) and 341.74(d)(2)(iii). In addition, FDA proposed to amend the definition of an "oral antitussive drug" in § 341.3(b) to clarify that such drugs may also be formulated as lozenges.

As mentioned, these revisions were proposed so that the monograph would conform to the U.S.P. definition of lozenges. Also, the agency was aware that antitussive drug products intended for systemic use were currently being marketed as lozenges (Ref. 2). The agency concluded that the revised definition of an oral antitussive drug would also be consistent with the new U.S.P. definition of lozenges.

References

(1) "The United States Pharmacopeia XXII—The National Formulary XVII," The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1692, 1989.

(2) "Physicians' Desk Reference—For Nonprescription Drugs," 9th Ed., Medical Economics Co., Inc., Oradell, NJ, pp. 512, 518, 651, and 662, 1988.

One comment from a manufacturer was submitted in response to the proposal. A copy of the comment is on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. In proceeding with this amendment to the final monograph, the agency has considered the issues raised in the comment.

The comment expressed no objection to the proposed amendment to the antitussive final monograph provided that the following assumptions were correct:

1. A term other than lozenge could be used in the product's trade name or in the directions for use in § 341.74(d)(2)(iii). The comment stated that the terms "drop" and "cough drops" are the most widely used terms for this type of antitussive drug product.

In the proposal, the agency stated that various types of lozenges such as compressed tablets, troches, or pastilles would not be described in final monographs. However, these terms could continue to be used in labeling (54 FR 40412). Thus, the terms "drop" and "cough drop" can be used in a product's directions and as part of its trade name.

2. A term other than lozenge may be used in connection with the appropriate statement of identity.

The statement of identity for this type of product in § 341.74 (a) is "cough suppressant" or "antitussive (cough suppressant)" only. The monograph does not allow use of the term "lozenge," or any similar term, as part of the statement of identity. However, as noted above, terms other than lozenge may be used as part of the product's trade name.

3. The term "drop" or "cough drop" may be used in lieu of "lozenge" and will not affect the right to use the language "FDA Approved Information," as permitted by 21 CFR 330.1(c), where otherwise all other language has been stated as it appears exactly in the monograph.

The designation "FDA Approved Information" can be used under the terms of § 330.1(c)(2)(i) under certain conditions. If indication information appears in the boxed area, it must be stated in the exact language of the monograph. Other information that appears within the boxed area also must be stated in exact language where exact language has been established and identified by quotation marks in the final monograph. Regarding use of the term "drop" or "cough drop" in the boxed area, none of the indications or warnings information appearing in quotation marks in the final monograph contains the word "lozenge;" therefore, there would be no need to substitute the term "drop" or "cough drop" in these portions of the labeling. The word "lozenge" does appear in the directions information in the final monograph, but not in quotation marks. Thus, appropriate alternate words, such as "drop" or "cough drop," may be used in the boxed area in place of the word "lozenge" that appears in the monograph directions for such products.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking on OTC antitussive drug products (54 FR 40412 at 40413). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessments determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this amendment of the monograph for OTC antitussive drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking amending the final monograph for OTC antitussive drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 341

Antitussive drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, subchapter D of chapter I of title 21 of the Code of Federal Regulations is amended in part 341 as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.3 is amended by revising paragraphs (b) and (c) to read as follows:

§ 341.3 Definitions.

* * * * *

(b) *Oral antitussive drug.* A drug that either is taken by mouth or is dissolved in the mouth in the form of a lozenge and acts systemically to relieve cough.

(c) *Topical antitussive drug.* A drug that relieves cough when inhaled after being applied topically to the throat or chest in the form of an ointment or from a steam vaporizer, or when dissolved in the mouth in the form of a lozenge for a local effect.

* * * * *

3. Section 341.74 is amended by revising paragraph (d)(2)(iii) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(d) * * *

(2) * * *

(iii) *For products containing menthol identified in § 341.14(b)(2) in a lozenge.* The product contains 5 to 10 milligrams menthol. Adults and children 2 to under 12 years of age: Allow lozenge to dissolve slowly in the mouth. May be repeated every hour as needed or as directed by a doctor. Children under 2 years of age: Consult a doctor.

* * * * *

Dated: September 4, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-23345 Filed 10-2-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1-87-088]

Special Anchorage Area; Perth Amboy, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is redesignating Anchorage Ground 45–A as a special anchorage. This anchorage is located in the waters contigous to the City of Perth Amboy, New Jersey. Raritan Yacht Club has requested the redesignation because the anchorage has historically been utilized solely by small recreational vessels. These vessels are currently required to be lighted at night. Raritan Bay is currently experiencing a resurgence of recreational boating during the summer months. This regulation will provide a safe anchorage well away from fairways where vessels less than 65 feet in length can safely remain unlighted at night. There are no such anchorages currently available in the immediate area.

EFFECTIVE DATE: November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C. W. Jennings, Waterways Management Officer, Captain of the Port, New York, at (212) 668–7933.

SUPPLEMENTARY INFORMATION: On December 1, 1989 the Coast Guard published a notice of proposed rulemaking in the Federal Register for these regulations (54 FR 49776). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are LTJG C.W. Jennings, project officer, Captain of the Port, New York and LT J.B. Gately, project attorney, First Coast Guard District Legal Office.

Discussion of Comments

As previously stated no comments regarding the NPRM were received. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Establishment of this proposed special anchorage area will not require dredging or result in increased cost to any segment of the public.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, part 110 of title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.60 paragraph (aa) is added to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(aa) South of Perth Amboy, New Jersey. The waters bounded by a line connecting the following points:

Latitude	Longitude
40°30'19.8"	74°18'49.8"
40°30'17.8"	74°18'38.8"
40°30'02.8"	74°18'45.0"
40°29'36.0"	74°18'28.2"
40°29'30.8"	74°18'22.0"
40°29'47.2"	74°18'02.8"
40°30'02.0"	74°18'43.0"

and thence along the shoreline to the point of beginning.

§ 110.155 [Amended]

3. Section 110.155 is amended by removing and reserving paragraph (j)(3).

Dated: August 29, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 90-23280 Filed 10-2-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 90-172]

Safety Zone Regulations; Americas Cup Restaurant Octoberfest Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Connecticut River between Middletown, CT and Portland, CT. This safety zone is needed to protect marine traffic from the safety hazard associated with a fireworks display in a narrow channel. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation becomes effective at 9:15 p.m. October 13, 1990, 15 minutes prior to the display. It terminates upon completion of the display at approximately 10 p.m. October 13, 1990, unless terminated sooner by the Captain of the Port. Rain date for this event will be 14 October 1990 at the same times.

FOR FURTHER INFORMATION CONTACT: Lt. David Skewes (203) 468–4404 or Captain of the Port, Long Island Sound duty watchstander at (203) 468–4464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register Publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect any marine traffic from the potential hazards involved.

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Drafting Information

The drafters of this regulation are LT David D. Skewes, project officer for Captain of the Port Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is a fireworks display in the navigable waters of the United States. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic from the possible hazards associated with the fireworks display.

This regulation is issued pursuant to U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160–5.

2. A new § 165.T1172 is added to read as follows:

§ 165.T1172 Safety Zone: Americas Cup Restaurant Octoberfest Fireworks Display.

(a) *Location.* The following area is a safety zone: All waters within a 500 ft radius around the fireworks launching platform approximately 500 ft offshore and directly adjacent to the Americas Cup Restaurant on the Connecticut River in Middletown, CT. The launching platform will be moved into and then anchored in the channel at approximately 6 p.m., between Connecticut River Buoys N"92" to the North and N"90" to the South. The main channel of the river will be closed to all marine traffic from 9:15 p.m. to until the completion of the display at approximately 10 p.m.

(b) *Effective date.* This regulation becomes effective on October 13, 1990 at 9:15 p.m. approximately 15 minutes prior to the display. It terminates upon completion of the display at approximately 10 p.m. October 13, 1990, unless terminated sooner by the Captain of the Port. Rain date will be 14 October 1990 at the same times.

(c) *Regulations:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: September 19, 1990.

H. Bruce Dickey,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 90–23299 Filed 10–2–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 248, 249, 250, 252, and 253

[FRL–3836–6]

Guidelines for Federal Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Guidelines, request for comments.

SUMMARY: The Environmental Protection Agency (EPA) has issued a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a procuring agency purchases certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirement of Section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230; 40 CFR part 249). EPA issued a final guideline for paper and paper products containing recovered materials on June 22, 1988 (53 FR 23546; 40 CFR part 250), a final guideline for lubricating oils containing re-refined oil on June 30, 1988 (53 FR 24699; 40 CFR part 252), a final guideline for retread tires on November 17, 1988 (53 FR 46556; 40 CFR part 253), and a final guideline for building insulation products on February 17, 1989 (54 FR 7328; 40 CFR part 248).

As procuring agencies have implemented these guidelines, a number of issues have arisen and been identified by EPA. Some issues affect all of the guidelines; other issues affect only specific guidelines. EPA will from time to time publish **Federal Register** notices addressing such issues, as well as revisions to the existing guidelines or proposing new guidelines.

Today's notice addresses three issues. The first issue concerns a process for expediting EPA assistance to procuring agencies. The second issue concerns possible broad changes EPA is examining for printing and writing papers under the paper procurement guideline. EPA is requesting public comment on this second issue. The third issue concerns advice recently provided by EPA to procuring agencies in the case of a specific recovered material under the paper procurement guideline.

DATES: EPA urges interested parties to comment in writing on the questions identified in the second issue addressed in today's notice. The deadline for submitting written comments is December 3, 1990. The public must send on original and two copies of their comments to the RCRA Docket at the address below. Place docket number "F–90–PGPP–FFFFF" on all comments.

ADDRESSES: The RCRA docket for this notice is located in Room 2427 (Mailcode OS-305) of the U.S. EPA, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–0327 for appointments. The public may copy materials from any docket at a cost of $0.15 per page. The reference number for this docket is "F-90-PGPP-FFFFF.

FOR FURTHER INFORMATION CONTACT: EPA Procurement Hotline at (703) 941–4452 or Richard Braddock, U.S. EPA, Municipal Solid Waste Program, Mailcode OS-301, 401 M Street, SW., Washington, DC 20460, telephone: (202) 382–2780.

SUPPLEMENTARY INFORMATION:

Notice Outline

I. Introduction.
II. Issue (1): EPA Procedure for assisting procuring agencies.
A. Responsibilities under Section 6002 of RCRA.
B. Implementation of Section 6002 of RCRA.
C. Actual examples of the EPA procedure.
III. Issue (2): EPA investigation of broad changes in the minimum content standards for high grade printing and writing papers.
A. Background.
B. Inclusion of postconsumer content in high grade printing and writing papers.
C. Inclusion of deinked waste paper content in high grade printing and writing papers.
D. Phase-in of postconsumer or deinked waste paper content in high grade printing and writing papers.
E. Investigation of revised mill broke definition.
F. Summary of request for comment.
IV. Issue (3): Including certain preconsumer recovered materials in procuring agencies' minimum content standards.
A. Background.
B. Preconsumer recovered material used by a specialized technology.
C. Federal procurement of preconsumer recovered material used by a specialized technology.

I. Introduction

The Environmental Protection Agency (EPA) today is addressing three issues pertaining to section 6002 of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. 6962. In general terms, section 6002 requires each procuring agency subject to the statute to procure certain items of composed of the highest percentage of recovered materials practicable. EPA is responsible for preparing guidelines to assist procuring agencies in meeting the statutory requirements and to provide information on recovered materials. These guidelines must designate items that can be produced with recovered materials and whose procurement will carry out the objectives of section 6002.

Issue (1) applies to all procurement guidelines issued by EPA and clarifies procedures for implementing section 6002 of RCRA. EPA has adopted a new process, which is described in this notice, for providing information and advice to procuring agencies in carrying out their responsibilities. This process modification is being implemented to expedite government response to market developments for products containing recovered materials.

Issue (2) concerns the Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials (53 FR 23546; 40 CFR part 250), published on June 22, 1988. EPA is examining broad changes to the minimum content standards for high grade printing and writing papers. Specifically, EPA is investigating changes to the "waste paper" definition, including the possible addition of a recommended percentage for postconsumer content in high grade printing and writing papers. EPA is soliciting public comment on these possible changes.

Issue (3) also concerns the paper procurement guideline. EPA recently advised two Federal procuring agencies that it would be appropriate to include sawdust, used by Lincoln Pulp and Paper Co. and Eastern Fine Paper, Inc. in Maine, in their minimum content standards for high grade printing and writing paper. This notice explains EPA's view that in this case, the sawdust is recovered for use in the manufacture of paper by means of a specialized technology (i.e., it is not used in the paper making process as standard practice). Also, in this case, the sawdust does not have viable alternative uses, and its recovery provides specific environmental benefits.

II. Issue (1): EPA Procedure for Assisting Procuring Agencies.

EPA has examined a number of approaches to assist the large array of procuring agencies in implementing the procurement guidelines, especially given the dynamic nature of technologies and products utilizing recovered materials. In examining this issue, EPA reviewed its statutory role and responsibilities and that of procuring agencies implementing section 6002 of RCRA.

A. Responsibilities Under Section 6002 of RCRA

Section 6002 of RCRA assigns specific responsibilities to the EPA, the Office of Federal Procurement Policy (OFPP), Federal specification-writing agencies, and individual procuring agencies. Brief summaries of the assigned responsibilities follow:

EPA is responsible for preparing guidelines for use by procuring agencies in fulfilling their responsibilities under the Act. The guidelines are published in the Federal Register and serve three purposes. First, they designate items produced with recovered materials for which a Federal procurement guideline is appropriate. EPA selects procurement items based on the following four criteria:

(1) The waste material must constitute a significant solid waste management problem due either to volume, degree of hazard, or difficulties in disposal;

(2) Economic methods of separation and recovery must exist;

(3) The material must have technically proven uses; and

(4) The Federal government's ability to affect purchasing or use of the final product or recovered material must be substantial.

Second, the guidelines provide product information concerning availability and performance of products produced with recovered materials. Third, the guidelines set forth recommended procurement practices to aid agencies in procuring products made with recovered materials including, where appropriate, recommended levels of recovered materials to be contained in the procured product. To date, EPA has completed guidelines for five procurement items: paper and paper products, re-refined oil, retread tires, building insulation materials, and cement and concrete containing fly ash.

Within one year of the publication of an EPA guideline, procuring agencies must assure that specifications for the items covered by the guideline require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the designated items. In addition, procuring agencies must develop an affirmative procurement program for procuring the designated items. The program must assure that items composed of recovered materials will be purchased to the maximum extent practicable; the program must be consistent with applicable provisions of Federal procurement law; and the program must contain at least the following four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification of recovered material content; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

By May 8, 1988, Federal specification-writing agencies were to have reviewed and revised their procurement specifications in order to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials.

OFPP is responsible for implementing the requirements of section 6002 of RCRA. OFPP must coordinate policy contained in section 6002 with other policies on Federal procurement in such a way as to maximize the use of recovered materials. Every two years, beginning in 1994, OFPP is to report to the Congress on actions taken by Federal agencies to implement Section 6002. OFPP has issued reports covering 1984/1985, 1986/1987, and 1988/1990.

B. Implementation of Section 6002 of RCRA

Once a procurement guideline is issued, responsibility for complying with Section 6002 rests with the procuring agencies. Under RCRA Section 6002, it is the responsibility of all procuring agencies to monitor and procure guideline items containing the highest quantity of recovered materials practicable. EPA's published recommendations on procurement practices are a first step for procuring agencies, but, as the statute indicates, they are *recommended* practices, not strict requirements. Procuring agencies are responsible for revising their

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programs as needed to achieve the statutory goal.

RCRA section 6002 does not give EPA explicit implementation responsibilities after it issues a guideline, other than revising the guideline from time to time. Revising a guideline and publishing it in the **Federal Register**, however, often takes up to two years. Therefore, in addition to guideline revisions, EPA has adopted a process for providing information and advice to procuring agencies in carrying out their responsibilities.

The following on-going activities have been implemented to assist procuring agencies:

- EPA set up a Procurement Guidelines Hotline at (703) 941–4452. The hotline distributes information and answers questions on the guidelines and distributes lists of manufacturers and distributors of guideline items. Also, through the hotline, EPA collects market information on the manufacture and availability of guideline items.
- EPA monitors and helps resolve guideline implementation problems by tracking questions that come into the hotline and by working with representatives of various Federal procuring agencies.
- EPA publicizes the guidelines through speeches at conferences, articles in various trade magazines, meetings, with affected agencies, manufacturers and vendors, and the distribution of descriptive materials.
- EPA is planning a series of regional workshops for 1991 and 1992 to educate Federal and state procuring agencies on the guidelines. EPA is also providing grants to local government organizations to conduct procurement workshops.

In addition to the above activities, EPA has initiated a new process to help communicate current knowledge about guideline items to Federal procuring agencies and assist them in meeting their responsibilities under section 6002. The process consists of numbered memoranda called *Procurement Guideline Advisories* (PGA's) which are distributed to procuring agencies to inform them of changes in the market for a particular guideline item. These memoranda can be referenced by procuring agencies as they revise and update their affirmative procurement programs. Periodically, EPA may propose changes to the guidelines to reflect these and other modifications to EPA's recommendations for affirmative procurement programs.

As an example of the above process, EPA might conclude that the recommended minimum content standard for a particular paper item could be increased because market changes have made higher content levels readily available at a reasonable price. Procuring agencies using the lower minimum content standard may not be procuring items composed of the highest percentage of recovered materials practicable as required by RCRA Section 6002. As EPA is apprised of the situation, it can investigate a higher minimum content standard and advise the procuring agencies through a Procurement Guideline Advisory. Procuring agencies can then revise their affirmative procurement programs. Later, EPA could propose the higher minimum content standard along with other changes as revisions to the paper guideline.

EPA believes that this process of issuing Procurement Guideline Advisories followed by periodic formal revisions to the guidelines will best enable EPA to assist procuring agencies. Procuring agencies can and should respond to the development of innovative technologies and suitable products which meet the goals of the procurement guidelines, based on their experiences and on information received from EPA and others. They should not wait for **Federal Register** notices of revisions in EPA's recommended standards. This way, all procuring agencies can implement RCRA Section 6002 in a more timely manner and accomplish the goal of encouraging the development of markets for recovered materials.

C. Actual Examples of the New EPA Process

Case 1—Rock Wool Insulation

An example of the PGA process is shown in the case of EPA's Procurement Guideline for Building Insulation Products [40 CFR part 248; 54 FR 7328 (February 17, 1989)].

EPA received information that the recommended minimum content standard for slag in rock wool insulation was below current industry practice and could be raised, thereby increasing the amount of recovered materials procured. EPA conducted a survey of nine major manufacturers of rock wool insulation and found that the present minimum content level, in most cases, is lower than the present level of recovered materials being used by rock wool manufacturers. Six of the nine manufacturers indicated that they were either currently exceeding or could easily meet a 75 percent minimum content standard. Of the three manufacturers which could not easily meet a 75 percent minimum content standard, two did not meet the original 50 percent standard.

Based on results of the survey, EPA believes that it is appropriate for procuring agencies to revise their specifications for rock wool insulation to a higher minimum content standard of 75 percent slag. EPA issued Procurement Guideline Advisory #1 which makes this information available to Federal procuring agencies for their consideration in revising their affirmative procurement programs. Based on procuring agency experience and EPA review of the industry, EPA may formally propose this change as part of a future guideline revision.

Case 2—High Speed Copier Paper and Forms Bond

An example of procuring agencies implementing RCRA section 6002 by revising their affirmative procurement program is shown in the case of high speed copier paper and forms bond.

In the paper guideline, EPA did not recommend a minimum content standard for high speed copier paper and forms bond, which includes computer and carbonless paper. At the time of promulgation, EPA found insufficient production of these papers with recycled content to assure adequate competition. Since publication of the guideline, however, a number of high speed copier papers and forms bond with recycled content are now available.

EPA supplied the Joint Committee on Printing (JCP), which sets Federal Government specifications for fine printing and writing papers, with information on the increased availability of high speed copier papers and forms bond. Based on this information and based on the success of their first year's experience procuring paper meeting EPA minimum content standards, JCP developed several new paper specifications for recycled content. These new specifications, among other things, set minimum content standards for high speed copier paper and forms bond.

JCP has informed Federal procuring agencies of the new specifications. EPA is planning to issue a second Procurement Guideline Advisory containing the JCP specifications. Based on procuring agency experience and EPA review of the industry, EPA may propose a revision to the paper guideline as part of a future rulemaking.

III. Issue (7): EPA Investigation of Broad Changes in the Minimum Content Standards for High Grade Printing and Writing Papers.

A. Background

Section 6002(h) of RCRA divides the universe of recovered paper materials into (1) postconsumer materials and (2) manufacturing, forest residues, and other wastes. Postconsumer materials are defined as two types: (i) "Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage" and, (ii) "All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste." The Hazardous and Solid Waste Amendments of 1984 amended section 6002 of RCRA to require that, in the case of paper, the EPA guideline would maximize the use of postconsumer recovered material.

In promulgating the paper guideline, EPA recommended postconsumer minimum content standards for most grades of paper. However, EPA found that it was not advisable to recommend postconsumer minimum content standards for printing and writing papers. For technical and economic reasons, few manufacturers of printing and writing papers were found to be willing or able to meet such a standard. Thus, for printing and writing papers, EPA recommended a "waste paper" minimum content standard which includes postconsumer recovered materials and certain categories of non-postconsumer recovered materials.

The paper guideline defines "Waste paper" (40 CFR 250.4(ss)) to include all postconsumer recovered materials as defined in RCRA Section 6002(h)(1), plus the following preconsumer waste paper categories: (1) Dry paper paperboard waste generated after completion of the paper making process and, (2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters or others. In describing the "waste paper" recommendation, EPA indicated that as more "waste paper" is used for printing and writing papers, there will be less available as a raw material for other products such as tissue and towel. As a result, manufacturers of these products will use more postconsumer recovered materials. (See 53 FR 23554, June 22, 1988 for additional discussion.)

During the last year, manufacturers of both newsprint and tissue paper grades have announced new or expanded deinking capacity, thus raising the prospect of additional use of postconsumer materials. Anticipating similar expansions in the deinking capacity for producing high quality pulp for use in printing and writing papers, EPA is evaluating possible revisions to the minimum content standards for these paper grades. The evaluation will be based on the following two goals:

(1) The Federal Government should use its purchasing power to encourage the market for high grade printing and writing papers containing postconsumer recovered materials. There is presently little deinking capacity to convert postconsumer recovered materials to a quality pulp for use in printing and writing papers. Expanding the deinking capacity entails large capital investments on the part of the paper industry. Therefore, as the deinking capacity expands, the minimum content standards should be adjusted to help provide continued incentive for market expansion.

(2) The Federal Government should maintain high participation in recovered material paper markets. Since EPA issued the paper procurement guideline, a high percentage of Federal paper purchases have successfully met the minimum content standards for high grade printing and writing papers. For example, the Joint Committee on Printing recently stated that 85 percent of the Government Printing Office's direct paper purchases meet EPA's minimum content standards. During the first six months of fiscal year 1990, the overall average of EPA's publications and letterheads printed on paper meeting the minimum content standards exceeded 98 percent.

Moving too quickly to stringent postconsumer minimum content standards could reduce the Federal government's purchases of paper containing recovered materials. Procuring agencies put a great deal of effort into developing new specifications and bid packages. Failure to receive adequate bids in response to solicitations for paper with postconsumer content may lead procuring agencies to drop the use of any minimum content standards in new solicitations. This opens up the procurement process to paper with less recycled content than under current practice. Therefore, revising EPA's recommended minimum content standards must balance the desire to help provide a market for printing and writing papers containing postconsumer recovered materials with a realistic assessment of the markets.

EPA is monitoring the market for printing and writing papers in anticipation of adding or phasing in postconsumer minimum content standards at some point in the future. The purpose of this section of today's notice is to request public comment on possible actions EPA can take.

B. Inclusion of Postconsumer Content in High Grade Printing and Writing Papers

EPA is considering recommending minimum content standards for high grade printing and writing papers consisting of a combination of "waste paper" content and postconsumer content. For example, EPA might choose to recommend a minimum of 45% "waste paper" content and 5% postconsumer content. EPA is interested in receiving information on whether or not such an approach is feasible, given the current supply of printing and writing papers with postconsumer content, and, if so, what percentages of "waste paper" content and postconsumer content EPA should recommend for various high grade printing and writing papers.

The high grade printing and writing papers for which EPA has recommended minimum content standards (see 53 FR 23555) are shown in Table 1.

TABLE 1.—EPA RECOMMENDED MINIMUM CONTENT STANDARDS FOR SELECTED HIGH GRADE PRINTING AND WRITING PAPERS

	Minimum percentage of waste paper
Offset printing	50.
Mimeo and duplicator paper	50.
Writing (stationery)	50.
Office paper (e.g., note pads)	50.
Paper for high-speed copiers	[1]
Envelopes	50.
Form bond including computer paper and carbonless	[1]
Book papers	50.
Bond papers	50.
Ledger	50.
Cover stock	50.
Cotton fiber paper	25 percent recovered cotton fiber.

[1] At the time of promulgation, EPA found insufficient production of these papers with recycled content to assure adequate competition.

EPA's decision to adopt recommended postconsumer content standards will be based on the following criteria: printing and writing papers with postconsumer content are adequately available to procuring agencies at a reasonable price; adequate competition exists in the market for printing and writing papers with postconsumer content; and printing and writing papers with postconsumer

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content can meet performance specifications. EPA is interested in obtaining information addressing these criteria for all of the above papers including paper for high speed copiers and form bond, which includes computer paper and carbonless.

C. Inclusion of Deinked Waste Paper Content in High Grade Printing and Writing Papers

It may be possible that use of any minimum percentage of postconsumer content will cause extreme restrictions on availability and competition over the next several years. Anticipating such restrictions, EPA is considering recommending deinked waste paper standards in place of postconsumer content standards for printing and writing papers. An alternative is to adopt a deinked waste paper standard. A deinked waste paper standard would include all postconsumer recovered materials and printed preconsumer waste paper. Printed preconsumer waste paper includes such materials as printer's overruns, misprints and unsold stock, and unsold magazines or newsprint.

A deinked waste paper standard would include only recovered materials which typically must be deinked before being converted into pulp for printing and writing papers. Therefore, this category of recovered materials can help stimulate the investment in deinking capacity required before the use of postconsumer recovered materials can expand. Also, because some categories of deinked waste paper are readily available to paper manufacturers, paper meeting a minimum deinked waste paper content standard may be available sooner than paper meeting a strict postconsumer content standard.

If it decides to recommend a deinked waste paper standard, EPA will consider adopting a combination of "waste paper" content and deinked waste paper content. For example, EPA might choose to recommend minimum content standards of 45% "waste paper" content and 5% deinked waste paper content. EPA is interested in receiving information on whether or not such an approach is feasible, given the current supply of printing and writing papers with deinked waste paper content, and, if so, what percentages of "waste paper" content and deinked waste paper content EPA should recommend for various high grade printing and writing papers. Comments should also address how these percentages will affect price, availability, competition and performance of the final product.

D. Phase-in of Postconsumer or Deinked Waste Paper Content in High Grade Printing and Writing Papers

It may not be possible, at this time, to recommend either postconsumer or deinked waste paper minimum content standards for printing and writing papers. In that case, EPA might consider a phased-in approach. Such an approach could recommend that procuring agencies begin using a specified percentage of postconsumer or deinked waste paper content in their minimum content standards at some future point in time. This future point in time would be set to allow for capital investments in deinking equipment. The purpose of phasing in the standards would be to help assure paper manufacturers considering investment in deinking equipment that a market for their products will exist.

EPA is asking for comment on the positive or negative aspects a phased-in approach would have on the market for paper products with postconsumer or deinked content. If EPA chooses such an approach, then what are reasonable percentages of postconsumer or deinked waste paper content to recommend and what is a reasonable point in the future to recommend that the percentages take effect?

E. Investigation of Revised Mill Broke Definition

EPA's "waste paper" definition excludes mill broke, which is defined as any paper waste generated before completion of the papermaking process. According to RCRA Section 6002, this means any paper waste generated during "those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets" (40 CFR 252.4(ss)(2)(i)).

Since the paper guideline went into effect on June 22, 1989, EPA has received a number of inquiries concerning the mill broke definition. These inquiries point out that the definition is not always clear in how it applies to the actual paper making process. Also, EPA received information suggesting that paper mills are able to satisfy the current 50% "waste paper" minimum content standards by using paper waste generated completely in-house but which is not mill broke under the present definition.

The information suggests that paper mills may save paper waste generated after cutting and trimming of the paper machine reel into smaller rolls until enough paper waste is available to satisfy a 50 percent "waste paper" minimum content standard. The mills can then use this accumulated paper waste to manufacture a paper batch meeting the guideline's minimum content standards. This practice of using only in-house paper waste does not divert waste from landfills and does not stimulate demand in the waste paper markets in order to indirectly promote the use of postconsumer recovered materials. EPA believes that although this practice may qualify under the guideline, it is not consistent with the intent of the guideline. Therefore, EPA is interested in receiving information on whether or not this is actually happening. If it is, how can EPA restructure the mill broke definition to prevent the practice?

F. Summary of Request for Comment

EPA is asking for information concerning postconsumer content and/or deinked waste paper content in high grade printing and writing papers. Information and comments should address how content percentages will affect price, availability, competition and performance of the final product. EPA is asking for comment on the positive or negative aspects of a phased-in approach on the market for paper products with either postconsumer or deinked waste paper content. EPA is also interested in receiving information on whether or not paper mills are able to meet the guideline requirements by using paper waste generated completely in-house. If they are, how can EPA restructure the mill broke definition to prevent the practice?

On issues raised about postconsumer and/or deinked waste paper content standards, EPA is particularly interested in hearing from paper manufacturers who produce printing and writing papers using either postconsumer recovered materials or deinked waste paper. EPA is also interested in learning about the experiences of state and local procurement programs using postconsumer or deinked waste paper minimum content standards. On the issues raised about the mill broke definition, EPA is particularly interested to hear from state and local procurement agencies that use mill broke definitions which differ from EPA's.

IV. Issue (3): Including Certain Preconsumer Recovered Materials in Procuring Agencies' Minimum Content Standards

A. Background

The Hazardous and Solid Waste Amendments of 1984 amended section 6002 of RCRA to require that, in the case of paper, the EPA guideline would maximize the use of postconsumer recovered material. Congressman Wyden, in the Congressional debates preceding adoption of this amendment, stated the following (129 Cong. Rec. H9160 (daily ed.) Nov. 3, 1983):

> The GSA two-part definition [of recycled paper] recognizes the difference between postconsumer recovered materials—the materials headed for our Nation's landfills—and the pulp and paper industry manufacturing wastes and forest residues which are often used in the papermaking process as standard practice or have alternative uses if they are not recovered for the papermaking process.

In other words, HSWA focuses on promoting the use of postconsumer recovered materials through the paper guideline because these materials typically head for landfills.

As stated in section III of this Federal Register notice, EPA found that it was not advisable to recommend exclusively postconsumer minimum content standards for printing and writing papers at the time that the paper guideline was issued. Thus, EPA recommended "waste paper" minimum content standards, which include all postconsumer recovered materials as defined in RCRA section 6002(h)(1), plus the following preconsumer waste paper categories: (1) Dry paper and paperboard waste generated after completion of the papermaking process and, (2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters or others.

B. Preconsumer Recovered Material Used in a Specialized Technology

Since issuing the paper guideline, EPA learned of a situation in which a specialized papermaking technology uses waste sawdust in the manufacture of printing and writing papers. Lincoln Pulp and Paper Co., in Maine, employs a specialized pulping technology for recovering sawdust from sawmills. This process converts to a beneficial use a waste which is otherwise typically disposed of on land. Lincoln's pulp is then used by Eastern Fine Paper, Inc., also in Maine, to manufacture fine printing and writing papers.

Presently, Maine does not appear to have viable alternative markets for sawdust. Based on correspondence received by EPA from the Maine Department of Environmental Protection (DEP), sawdust generated in central and northern Maine which is not converted into paper pulp presents a solid waste problem. It is either piled or landfilled, presenting a run-off or leachate problem, or less frequently burned. Burning small particle sized sawdust in combustion devices typical of Maine presents an air pollution problem, according to the Maine DEP.

Sawdust is excluded from the "waste paper" definition used in EPA's paper guideline (see 53 FR 23551 (June 22, 1988)). Adoption of EPA's definition and the consequent reduction in the amount of Federal purchases of paper containing fibers recovered from sawdust could result in a reduction in the manufacture of pulp and fine paper by Lincoln and Eastern. A reduction would most likely cause an increase in the amount of sawdust piled or burned in Maine.

C. Federal Procurement of Preconsumer Recovered Material Used by a Specialized Technology

Based on the situation described above, Lincoln and Eastern requested that EPA include sawdust in its recommended minimum content standards. In light of the solid waste problems associated with sawdust in Maine, EPA developed a set of criteria to determine if it would be appropriate for procuring agencies to include certain preconsumer recovered materials (such as the sawdust used by Lincoln and Eastern) in their minimum content standards.

The criteria used for examining a specific paper manufacturing process using a specific recovered material are as follows:

(1) Will including the recovered material in procuring agencies' minimum content standards either directly or indirectly displace the use of post consumer recovered materials?

(2) Does the recovered material have economically viable alternative uses within the area where it is generated? (i.e., the recovered material will not be disposed if it is not used in paper manufacturing.)

(3) Is the material recovered for use in paper manufacturing as a standard practice in the industry (i.e., recovery does not require the use of specialized technologies)?

If the answer to any of the above questions is yes, then the EPA believes it is *not appropriate* to include the recovered material in minimum content standards. EPA believes it is appropriate for procuring agencies to include a recovered material which passes these criteria in their minimum content standards for printing and writing papers. The above criteria reflect both the solid waste management benefits and potential negative effects on postconsumer recovered material markets.

EPA evaluated sawdust used by Lincoln and Eastern under the above criteria to determine if it would be appropriate for procuring agencies to include it in their minimum content standards. Under the first criterion, printing and writing papers have not been generally available to the Federal government with postconsumer content. Therefore, including sawdust used by Lincoln and Eastern should not directly displace postconsumer recovered materials.

Also, including sawdust used by Lincoln and Eastern should not indirectly displace postconsumer recovered materials by pushing preconsumer waste paper into lower grade paper products which are presently using postconsumer recovered materials. The portion of Lincoln's paper pulp produced from sawdust is lower than 50 percent. Therefore, Eastern Fine Papers must mix a 100 percent "waste paper" pulp with Lincoln's pulp to meet a 50 percent minimum content standard which includes Lincoln's pulp made from sawdust. The 50 percent standard assures that Eastern must use a substantial amount of "waste paper". Under such circumstances including sawdust in minimum content standards would not be inconsistent with the statutory obligation to purchase paper with postconsumer recovered materials content to the maximum extent practicable.

Under the second criterion, information received from Lincoln, Eastern and the Maine DEP, indicates that sawdust does present a solid waste disposal problem in Maine when not used in paper manufacturing. The sawdust will typically be piled or landfilled because economically viable alternative markets do not exist in central and northern Maine. Lincoln Pulp and Paper purchases over 200,000 tons of sawdust annually, virtually all of the sawdust produced by sawmills in central and northern Maine. This tonnage is approximately 70 percent of all sawdust produced in Maine.

Composting sawdust has not proven to be a viable alternative for the large volume of sawdust produced in this area. Composting is being employed in the area, but it does not adequately deal with the large number of existing sawdust piles left scattered throughout Maine from poor disposal practices of the past.

Under the third criterion, Lincoln employs a specialized M&D digester to convert small particle sized sawdust from Maine sawmills into paper pulp. Lincoln produces a pulp blend derived from sawdust and hard wood chips. Therefore, Lincoln relies on sawdust, which is derived exclusively from

softwood trees, to upgrade the strength of its pulp.

EPA believes that sawdust used by Lincoln and Eastern qualifies under the above criteria. On May 25, 1990, EPA informed Federal paper procuring agencies that EPA believes that it is appropriate to include sawdust, as it is

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-322, adopted September 18, 1990, and released September 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-613, adopted September 18, 1990, and released September 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-600, adopted September 18, 1990, and released September 28, 1990. The full

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softwood trees, to upgrade the strength of its pulp.

EPA believes that sawdust used by Lincoln and Eastern qualifies under the above criteria. On May 25, 1990, EPA informed Federal paper procuring agencies that EPA believes that it is appropriate to include sawdust, as it is being used by Lincoln Pulp and Paper, Co. and Eastern Fine Paper, Inc., in their minimum content standards for printing and writing papers.

EPA's statement to procuring agencies pertains only to sawdust as it is being used by Lincoln and Eastern. Other paper manufacturers may face a similar situation and feel that sawdust used by their process should be included in procuring agencies' minimum content standards for printing and writing papers. For example, a spcialized paper manufacturing process may use the same type of sawdust particles as Lincoln Pulp and Paper in Maine. If the manufacturing process is located in a region where viable alternative markets exist for the sawdust, however, the sawdust would not be appropriate for inclusion in the minimum content standards of procuring agencies.

Dated: September 17, 1990.

Mary A. Gade,

Acting Assistant Administrator Office of Solid Waste and Emergency Response.

[FR Doc. 90-22982 Filed 10-2-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-322; RM-6841]

Radio Broadcasting Services; Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 225C1 for Channel 225C2 at Tuscaloosa, Alabama, and modifies the license issued to Radio South, Inc., for Station WTUG(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an additional expanded coverage FM service. *See* 54 FR 31061, July 26, 1989. Coordinates for Channel 225C1 at Tuscaloosa are 33-03-36 and 87-32-43. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-322, adopted September 18, 1990, and released September 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Tuscaloosa, Alabama, is amended by removing Channel 225C2 and adding Channel 225C1.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23403 Filed 10-2-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-564; RM-7016]

Radio Broadcasting Services; Forrest City, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C3 for Channel 228A at Forrest City, Arkansas, and modifies the license of Forrest City Broadcasting Company for Station KBFC(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with a wide coverage area FM service. *See* 54 FR 52421, December 21, 1989. Coordinates used for Channel 228C3 at Forrest City are 34-52-36 and 90-55-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-564, adopted September 18, 1990, and released September 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Forrest City, Arkansas, is amended by removing Channel 228A and adding Channel 228C3.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23404 Filed 10-2-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-613; RM-7027]

Radio Broadcasting Services; Seelyville, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 240A to Seelyville, Indiana, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Victory Christian Center. *See* 55 FR 1463, January 16, 1990. Coordinates for Channel 240A at Seelyville are 39-29-50 and 87-17-21. With this action, the proceeding is terminated.

DATES: Effective November 13, 1990; the window period for filing applications on Channel 240A at Seelyville, Indiana, will open on November 14, 1990, and close December 14, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-613, adopted September 18, 1990, and released September 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Seelyville, Channel 240A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23401 Filed 10-2-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-328; RM-6807]

Radio Broadcasting Services; Columbia, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C3 for Channel 276A at Columbia, Louisiana, and modifies the Class A license issued to Tom Gay, d/b/a The Radio Group, for Station KCTO-FM, as requested, to specify operation on the higher powered channel, thereby providing that community with an expanded coverage FM service. *See* 54 FR 38309, September 25, 1989. Coordinates for Channel 276C3 at Columbia are 32-02-00 and 92-15-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-328, adopted September 18, 1990, and released September 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Columbia, Louisiana, is amended by removing Channel 276A and adding Channel 276C3.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23400 Filed 10-2-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-435; RM-6819]

Radio Broadcasting Services; Fuquay-Varina, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Cedar Raleigh Limited Partnership, substitutes Channel 280C3 for Channel 280A at Fuquay-Varina, North Carolina, and modifies its license for Station WNND to specify operation on the higher powered channel. *See* 54 FR 41469, October 10, 1989. Channel 280C3 can be allotted to Fuquay-Varina in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (6.0 miles) east to avoid a short-spacing to Station WTQR, Channel 281C, Winston-Salem, North Carolina. The coordinates for Channel 280C3 at Fuquay-Varina are North Latitude 35-33-46 and West Longitude 78-41-51. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-435, adopted September 18, 1990, and released September 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under North Carolina, is amended by removing Channel 280A and adding Channel 280C3 at Fuquay-Varina.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23399 Filed 10-2-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-494; RM-5969]

Radio Broadcasting Services; Big Stone Gap, VA and Barbourville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C2 for Channel 228A at Big Stone Gap, Virginia, and modifies the license of Station WLSD-FM, accordingly, as that community's first wide coverage area FM service, at the request of Valley Broadcasting, Inc. This action also substitutes Channel 241A for Channel 228A at Barbourville, Kentucky, and modifies the license of Station WYWY-FM, accordingly, in order to accomplish the Big Stone Gap substitution. Channel 228C2 can be allotted to Big Stone Gap in compliance with the Commission's minimum

distance separation requirements with a 7.8 kilometers (4.9 miles) site restriction at coordinates 36-53-22 and 82-51-38. Channel 241A can be used at the present transmitter site of Station WYWY-FM at Barbourville. The coordinates are 36-51-55 and 83-53-55. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-494, adopted September 18, 1990, and released September 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Kentucky, is amended by removing Channel 241A and adding Channel 228C2 at Big Stone Gap.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23398 Filed 10-2-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-494; RM-5969]

Radio Broadcasting Services; Big Stone Gap, VA and Barbourville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C2 for Channel 228A at Big Stone Gap, Virginia, and modifies the license of Station WLSD-FM, accordingly, as that community's first wide coverage area FM service, at the request of Valley Broadcasting, Inc. This action also substitutes Channel 241A for Channel 228A at Barbourville, Kentucky, and modifies the license of Station WYWY-FM, accordingly, in order to accomplish the Big Stone Gap substitution. Channel 228C2 can be allotted to Big Stone Gap in compliance with the Commission's minimum

on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest

Other Corrections

It has been noted also that at the beginning of the codification section the revision language (Part 20—[AMENDED] 2.) incorrectly references Part 21. That line should read: "2. § 20.110 is revised to read as follows:"

In summary, this document corrects

destruction or adverse modification of (critical) habitat * * *" Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed 1990-91 migratory bird hunting season regulations.

In July 12 and August 3, 1990

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distance separation requirements with a 7.8 kilometers (4.9 miles) site restriction at coordinates 36–53–22 and 82–51–38. Channel 241A can be used at the present transmitter site of Station WYWY–FM at Barbourville. The coordinates are 36–51–55 and 83–53–55. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87–494, adopted September 18, 1990, and released September 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Virginia, by removing Channel 228A and adding Channel 228C2 at Big Stone Gap; and under Kentucky, by removing Channel 228A and adding Channel 241A at Barbourville.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–23402 Filed 10–2–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR); Technical Amendment and Correction; Correction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the Technical Amendments and Correction final rule published in the **Federal Register** on September 18, 1990 (55 FR 38516). This document is necessary to ensure that the Code of Federal Regulations is correctly amended.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon A. Kiser, (202) 501–4755.

Correction

1. In FR Doc. 90–21554, beginning on page 38516 in the issue of Tuesday, September 18, 1990, amendatory instruction number 49, appearing on page 38518, in the second and third columns, was inadvertently added and is hereby removed.

Dated: September 28, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 90–23370 Filed 10–2–90; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands For the 1990–91 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule corrects the recent final rule on special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This amendment is in response to tribal and other requests for Service corrections of final rule provisions for tribal hunting under established guidelines. The parent rule for these corrections is necessary to allow establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect on October 3, 1990.

ADDRESSES: Comments received on final and proposed special hunting regulations and tribal proposals are available for public inspection during normal business hours in Room 634–Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. Communications regarding the documents should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 634-Arlington Square, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240 (703/358–1773).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the Friday, August 31, 1990 **Federal Register** (55 FR 35838), the U.S. Fish and Wildlife Service (Service) finalized special migratory bird hunting regulations for the 1990–91 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines are consistent with the March 10-September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. Tribes that desired special hunting regulations in the 1990–91 hunting season were requested in the February 23, 1990, **Federal Register** (55 FR 6584) to submit a proposal that included details

on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985–86 hunting season, and they were made final beginning with the 1988–89 hunting season. The final rule referenced above contained errors in regulations for three Tribes that are corrected in this amendment.

Tribal Requests For Regulations Corrections

The Shoshone-Bannock Tribes of the Fort Hall Indian Reservation in Fort Hall, Montana, requested that the season date be corrected in the "Ducks' category (50 CFR 20.110(c)(1)) in the final regulations. The beginning and ending dates for the season should be October 20 and December 17, respectively, and they are so noted in this amendment.

The Great Lakes Indian Fish and Wildlife Commission (GLIFWC), Odanah, Wisconsin, notified the Service, on September 7, 1990, that a part of the information contained in 50 CFR 20.110(g)(8)(vi) is incorrect. The part that is incorrect pertains to shooting from structures, and is noted as "* * * sec. NR 10.12(1)(C), Wis. Adm. Code (shooting from structures) * * *" Instead, the reference should have been to § 10.09 of the Tribal Model Off-Reservation Conservation Code (Structures), a conservation code similar to the requirements of 50 CFR part 20 and which results from the *Voigt* litigation that the Tribes and the State of Wisconsin have agreed to. The change requested by the GLIFWC is made in this amendment.

Also, the Confederated Salish and Kootenai Tribes of the Flathead Nation, Pablo, Montana, advised that the special goose area anticipated for early closing was incorrectly described in the final rule. The special goose hunting area (50 CFR 20.110(h)(2) Special Exception for Geese) is redescribed in this amendment. The date of opening was given incorrectly as November 30, 1990; it should have been November 25, 1990.

Other Corrections

It has been noted also that at the beginning of the codification section the revision language (Part 20—[AMENDED] 2.) incorrectly references Part 21. That line should read: "2. § 20.110 is revised to read as follows:"

In summary, this document corrects the final rule published on August 31, 1990, that amended § 20.110 of 50 CFR to make current for the 1990–91 migratory bird hunting season the taking regulations that will apply on certain Federal Indian reservations, off-reservation trust lands and ceded lands.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 86–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On April 23, 1990 (at 55 FR 15349), the Service proposed nontoxic shot zones for the 1990–91 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones for the 1990–91 hunting season was published in the **Federal Register** on August 16, 1990 (at 55 FR 33526). All of the hunting regulations covered by this final rule are in compliance with the Service's nontoxic shot restrictions.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "That Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and shall) "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed 1990–91 migratory bird hunting season regulations.

In July 12 and August 2, 1990, biological opinions, the Division of Habitat Conservation advised the Office of Migratory Bird Management of the conclusions that the proposed action will not affect either listed species or critical habitat.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the August 8, 1990 **Federal Register** (at 55 FR 32348), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634–Arlington Square, Washington, DC 20240. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** on August 12, 1990 (55 FR 33204).

Authorship

The primary author of this final rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the *Code of Federal Regulations* is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186; 40 Stat. 755 (16 U.S.C. 701–708h) sec. 3(h), Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712).

(Editorial Note: The following annual

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–23306 Filed 10–2–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

an SMZ around an AR can act as an incentive for the construction of an AR.

A description of Site H, the background on the proposal for designation of Site H as an SMZ, the management measures proposed for Site H, the procedural requirements of the FMP for designation of an AR as an SMZ, the criteria required by the FMP to

accruing to the other groups using this popular site. NOAA concurs.

Comment: Four commenters cited the fact that some artificial reef materials had been placed on "live bottom," resulting in damage to the area. They suggested that this violates the national standard 4 requirement that allocations promote conservation.

National Standard 8

Comment: One commenter suggested that the loss of 2.9 percent of an already severely limited fishing area would violate national standard 8.

Response: National standard 8 requires that management measures account for variations and contingencies in fisheries. It is intended to assure that

not in conflict with the tenets of the National Artificial Reef Plan.

Legal Opinions

Comment: Several commenters questioned the legality of approving Site H as an SMZ based upon an opinion offered by a NOAA lawyer in 1988 that such action was not defensible.

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PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186; 40 Stat. 755 (16 U.S.C. 701–708h) sec. 3(h), Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712).

[Editorial Note: The following annual hunting regulations provided for by § 20.110 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature].

2. Section 20.110 is amended by revising paragraphs (c)(1), (g)(8)(vi), and the Special Exception for Geese in (h)(2) to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

* * * * *

(c) *Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Members Only).*

(1) *Ducks (including Merganser). Season Length and Dates:* October 20 through December 17.

* * * * *

(g) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

* * * * *

(8) *General Conditions:*

* * * * *

(vi) *Wisconsin Zone.* Tribal members will comply with sec. NR 10.09 (1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. 10.09, Tribal Model Off-Reservation Cons. Code (Structures), sec. NR 10.12 (1)(g), Wis. Adm. Code (decoys), and sec. 29.27 Wis. Stats. (duck blinds).

* * * * *

(h) *Flathead Indian Reservation, Pablo, Montana (Nontribal Members Only).*

* * * * *

(2) Geese: * * *

Special Exception for Geese: A special early closure for all goose hunting will begin at sunset, November 25, 1990, within the following area: Beginning at Ronan, thence north along U.S. Highway 93 to Polson and Elmo, thence south along said highway to its intersection with State Route 382, thence south along said highway to Perma, thence along the north and west side of Flathead River upstream from Perma to Sloan's Bridge, thence north from Sloan's Bridge along Sloan Road to its intersection with Round Butte Road, thence east along said road to Ronan, the point of beginning. Lands outside those boundaries will close to Canada goose hunting at sunset on December 30, 1990.

* * * * *

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–23300 Filed 10–2–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900938–0239]

RIN 0648–AC97

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA establishes a special management zone (SMZ), covering 2 square nautical miles (6.86 km²), around an artificial reef (AR) at Key Biscayne Artificial Reef Site (Site H), which is located in the Exclusive Economic Zone off Dade County, Florida. Within the SMZ, fish trapping, bottom longlining, spearfishing, and harvesting of jewfish are prohibited. The intended effect is to promote orderly use of the fishery resources on and around the AR, to reduce potential user-group conflicts, to maintain the intended socioeconomic benefits of the AR to the maximum extent practicable, and to maintain and promote conservation.

EFFECTIVE DATE: November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), prepared by the South Atlantic Fishery Management Council (Council) and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides for designation of ARs as SMZs following Council recommendation to the Director, Southeast Region, NMFS.

An AR creates fishing opportunities that would not otherwise exist and may increase biological production. The cost of constructing and maintaining an AR may be substantial and the intended socioeconomic benefits (e.g., recreational fishing, tournaments, or sport diving) can be reduced or eliminated if highly efficient fishing gear and fishing practices are not restrained. Therefore, the possibility of establishing an SMZ around an AR can act as an incentive for the construction of an AR.

A description of Site H, the background on the proposal for designation of Site H as an SMZ, the management measures proposed for Site H, the procedural requirements of the FMP for designation of an AR as an SMZ, the criteria required by the FMP to be evaluated for designation of an AR as an SMZ, and evaluation of those criteria were contained in the proposed rule (55 FR 28066, July 9, 1990) and are not repeated here.

Comments and Responses

Eleven written comments were received on the proposed rule. Three fish-trap fishermen and one private citizen objected to implementation of the rule. Three recreational fishermen, an editor of an outdoor magazine, the Assistant County Manager for Dade County, Florida, a sportfishing organization, and a sportfishing club commented in support of the proposed rule. Responses to critical comments by category follow.

National Standard 4

All of the commenters objecting to the proposed rule stated that establishment of the SMZ would violate one or more of the national standard 4 requirements that allocations be fair and equitable, reasonably calculated to promote conservation, and designed to avoid any entity acquiring excessive shares of fishing privileges.

Comment: Several commenters stated that trap fishermen have been severely restricted and are now confined to a fishing area of only 28 square nautical miles (96 km²); whereas, recreational fishermen have no geographical limitations. They suggested that the loss of an additional 2.9 percent of their available fishing area due to implementation of the SMZ would not result in a "fair and equitable" allocation as required by national standard 4.

Response: NOAA disagrees. The issue is not the degree of regulation but whether or not the additional regulation is justified. Most of the existing restrictions on fish trapping were imposed by NOAA and Florida as necessary and appropriate management measures. Regarding the proposed action, the national standard guidelines state that an allocation may impose a hardship on one group if it is outweighed by the total benefits received by others. The Council concluded that the loss of 2.9 percent of the available trapping area would be offset by benefits accruing to the other groups using this popular site. NOAA concurs.

Comment: Four commenters cited the fact that some artificial reef materials had been placed on "live bottom," resulting in damage to the area. They suggested that this violates the national standard 4 requirement that allocations promote conservation.

Response: NOAA disagrees. Neither NOAA nor the Council condones placement of reef materials on "live bottom" areas. However, these materials were placed years prior to consideration of this site as an SMZ. The proposed action that is being evaluated is the establishment of various restrictions within the reef site. This action will reduce fishing mortality at the site somewhat and will contribute to conserving the fishery resources. Further, establishment of the SMZ will contribute to the more rational use of the resource, which according to the national standard guidelines, also promotes conservation.

Comment: Several commenters stated that the recreational harvest of fish from the Site H was estimated to be 330,000—440,000 pounds (150,000—200,000 kilograms) annually, compared to only 5,020 pounds (2,277 kilograms) annually for trap fishermen. They indicated that this imbalance demonstrated that the recreational sector was harvesting an "excessive share" in violation of national standard 4.

Response: NOAA disagrees. The data cited are somewhat misleading, because the recreational estimate included all species of fish, as well as fish that were released; whereas, the estimated trap harvest included only snapper-grouper species that were retained. However, there is little doubt that the recreational sector harvests more of the resource than does the existing trap fishery in that area. This does not necessarily constitute an "excessive share" in the context of national standard 4. The "excessive share" criterion was designed to avoid monopolistic effects, resulting from allocations, on a fishery-wide basis, not to micromanage the distribution of fishing privileges within every small geographic area. This criterion does not guarantee fishing privileges to every sector of a fishery regardless of circumstances. The concept of an "excessive share" must be evaluated in relation to the justification for the allocation. NOAA believes that the Council has presented an acceptable rationale to support the proposed allocation and that the action does not violate the "excessive share" criterion.

National Standard 6

Comment: One commenter suggested that the loss of 2.9 percent of an already severely limited fishing area would violate national standard 6.

Response: National standard 6 requires that management measures account for variations and contingencies in fisheries. It is intended to assure that fishery management plans allow for uncertainties in fisheries and incorporate suitable buffers to ensure conservation. NOAA believes that the issue of loss of fishing area is more pertinent to national standard 4 and has addressed the comment accordingly.

Consumer Interests

Comment: One individual stated that establishment of the SMZ would decrease commercial access to national fishery resources and increase costs to consumers.

Response: The proposed action only restricts use of certain types of fishing gear within a 2-square nautical mile (6.86-km²) area. The area remains accessible to commercial fishermen using allowable fishing gear. Because of this continued access and the small portion of the overall snapper-grouper fishery that is affected, NOAA does not believe that there will be a measurable impact on consumers.

Prohibition of All Commercial Fishing

Comment: One of the individuals supporting the proposed rule suggested that all commercial fishing be prohibited in the SMZ and that commercial fishermen should build their own ARs.

Response: The procedures in the FMP for establishing SMZs allow for prohibition or restriction of types of gear that are incompatible with the intended uses of the SMZ. Prohibition of fishing by user-group categories is not authorized. The opportunity to establish an SMZ is available to anyone, including commercial fishermen, who possesses a Corps of Engineers permit for an AR site or fish attracting device.

Conflict with National Artificial Reef Plan

Comment: One commenter claimed that establishment of the SMZ would conflict with the National Artificial Reef Plan and referenced the guidelines for AR construction in that plan.

Response: The construction of the AR occurred years prior to the request for an SMZ and is not the focus of this regulatory action. The gear restrictions proposed within the SMZ are intended to reduce fishing mortality and potential user conflicts. The proposed action is not in conflict with the tenets of the National Artificial Reef Plan.

Legal Opinions

Comment: Several commenters questioned the legality of approving Site H as an SMZ based upon an opinion offered by a NOAA lawyer in 1986 that such action was not defensible.

Response: The key issue then and now remains whether the designation represents a fair and equitable balancing of the various interests of different users of the resources in the area. Since 1986, surveys documenting the recreational usage of the area have become available, and a prohibition of all spearfishing is now proposed. These factors must now be considered in weighing whether the benefits to be derived from designation will outweigh, on the whole, the detriments and costs to certain users. Unlike recreational user information, commercial landings data and trap location information have not improved since 1986. In the absence of landings data and trap location information specific to Site H supplied by fishermen, such information can only be approximated by extrapolating from trap landings data from the vicinity. That process suggests Site H is a small percentage of the area presently fished by the fish trappers and that only approximately 3 percent of total trap landings are attributable to Site H. Furthermore, information suggests that the larger impacts will be on spearfishermen who catch approximately four to nine times the amount of fish caught by trap fishermen from Site H. Accordingly, the balancing of these factors does not reveal potential inconsistencies with the national standards of the Magnuson Act.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with

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foreign-based enterprises in domestic or export markets. The Council prepared a regulatory impact review (RIR) for this action. A summary of the economic effects was included in the proposed rule and is not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this determination was included in the proposed rule and is not repeated here.

These measures are part of a Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

The Council determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program. A letter was sent to Florida, the only state involved, advising of this determination.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 27, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.24, a new paragraph (a)(22) is added and paragraph (c)(3) is revised to read as follows:

§ 646.24 Area limitations.

(a) * * *

(22) *Key Biscayne/Artificial Reef—H:* The area is bounded on the north by 25°42.82'N. latitude; on the south by 25°41.32'N. latitude; on the east by 80°04.22'W. longitude; and on the west by 80°05.53'W. longitude.

* * * * *

(c) * * *

(3) In the SMZs specified in paragraphs (a)(20) and (a)(22) of this section, the use of spearfishing gear is prohibited.

[FR Doc. 90-23382 Filed 10-2-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 192
Wednesday, October 3, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

[Notice 1990-14]

11 CFR Parts 106 and 114

Corporate and Labor Organization Expenditures

AGENCY: Federal Election Commission.

ACTION: Additional request for comments.

SUMMARY: The Federal Election Commission is seeking further comments to help determine what changes in its regulations are warranted following the Supreme Court opinion in *Austin* v. *Michigan Chamber of Commerce*, ___ U.S. ___, 110 S. Ct. 1391 (1990) ("*Austin*"), and other judicial decisions regarding section 441b of the Federal Election Campaign Act, 2 U.S.C. 441b. The rulemaking was initiated to address issues raised in *Federal Election Commission* v. *Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*").

DATES: Comments must be received on or before November 2, 1990.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Section 441b of the Federal Election Campaign Act (2 U.S.C. 431 *et seq.*) bars corporations from making contributions or expenditures in connection with any election to a federal office. In 1986 the Supreme Court ruled that section 441b's ban on independent expenditures by a non-profit corporation formed to promote "pro-life" causes was a violation of free speech under the First Amendment. *Federal Election Commission* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"). When applied to a small, non-profit entity or group which lacked formal organization, the Court found that the requirements of section 441b created a disincentive for such organizations to engage in political speech by imposing additional regulations on them. 479 U.S. at 254. Further, the Court delineated three essential features for determining which nonprofit corporations would be exempt from section 441b's restriction on corporate spending.

In *MCFL* the Court also began to focus on what qualifies as an expenditure under section 441b. The Court indicated that it would consider any communication which expressly advocates the election or defeat of a candidate an expenditure subject to section 441b's prohibition on corporate spending.

A. The Commission's MCFL Rulemaking

The National Right to Work Committee (NRWC) filed a petition for rulemaking with the Federal Election Commission on February 24, 1987. The petition requested that the Commission initiate a rulemaking to revise its regulations to incorporate the "express advocacy" test set forth in *MCFL* as the standard for judging expenditures, specifically with reference to 11 CFR 114.3 and 114.4.

In response to the NRWC petition, the Commission published a Notice of Availability on May 4, 1987 to invite public comment on the petition. *See*, 52 FR 16275. Subsequently, on January 7, 1988, the Commission published an Advance Notice of Proposed Rulemaking which not only sought comment on the issue raised by NRWC, but also broadened the scope of the Commission's inquiry to include the wide range of questions raised by the *MCFL* decision. *See*, 53 FR 416. The Commission also held a hearing on November 16, 1988 at which 2 witnesses testified concerning these issues.

The Federal Election Commission is continuing to review its regulations in light of the *MCFL* decision. On March 27, 1990, in *Austin* v. *Michigan Chamber of Commerce*, ___ U.S. ___, 110 S. Ct. 1391 (1990), the Supreme Court again emphasized the limited nature of the *MCFL* exception through its interpretation of a Michigan statute containing prohibitions very similar to section 441b. Since *Austin* further expounded on the characteristics of an MCFL-type corporation, the Commission now seeks additional comments on these issues. These comments will aid the Commission in further consideration of regulations in light of the most recent judicial decisions.

B. MCFL Issues Discussed in Austin

Section 54(1) of the Michigan Campaign Finance Act prohibits corporations from, among other things, making independent expenditures in connection with state candidate elections. Such expenditures are only allowable if they are from segregated funds used for political purposes. The Michigan State Chamber of Commerce (Chamber) sought injunctive relief against section 54(1)'s enforcement, arguing the restrictions violated their constitutional right to free speech. The Court examined the Chamber under the three essential features described in *MCFL* and found that the Chamber did not qualify for exempt status.

The first of these essential features is that the corporation must be formed for the express purpose of promoting political ideas, and cannot engage in business activities. The Chamber was not formed expressly to promote political ideas. The purposes of the corporation, as set forth in the bylaws, included providing services to the membership involving business and economic issues. The Chamber conducted a wide variety of activities of a non-political nature, which included but were not limited to:

(1) Compiling and disseminating information relating to social, civic, and economic conditions;

(2) Holding seminars to educate its members;

(3) Promoting ethical business practices;

(4) Holding seminars and conventions and issuing publications which focused on business and economic issues;

(5) Litigation activities on behalf of the business community;

(6) Sponsoring the Michigan New Products Awards Competition; and

(7) Sponsoring a program to increase awareness of investment opportunities in the Caribbean Basin.

"The Chamber's non-political activities therefore suffice to distinguish it from *MCFL* in the context of this characteristic." 110 S. Ct. at 1399.

The Commission welcomes comments and suggestions which might be raised

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by the Court's interpretation of this first feature. It appears from the Court's decision that a corporation may be considered to be engaging in business activities, even if its main purpose is not profit making. In *Austin*, the Court pointed to the Chamber's educational activities as among those which fell outside of the requirements. *Id.*, at 1399. Comments are welcome on how this requirement might be developed more fully in the regulations. In particular, what other activities might qualify as business activities, thus placing a corporation outside of the Court's exemption?

The second *MCFL* feature is that the corporation have no shareholders or other persons affiliated so as to have a claim on its assets and earnings. "This ensures that persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity." *Id.*, at 1399, quoting 479 U.S. at 264. The Chamber failed to meet this requirement. The Court pointed out that its members might be reluctant to withdraw because of the loss of economic benefit received from the Chamber. This economic benefit stemmed from opportunities to establish contacts with other members of the business community, and benefits derived from the Chamber's non-political programs.

The Commission seeks comments on issues raised by this point. In particular, what kinds of economic benefit might a person derive from a non-profit organization so as to create a disincentive to disassociation? For example, some organizations provide their members with credit cards or insurance at favorable rates. Might the loss of this favorable rate qualify as a disincentive to disassociation sufficient to place the non-profit corporation outside of the Court's exemption?

The final characteristic on which the *MCFL* Court relied was that MCFL was not established by, and had a policy against accepting contributions from, business corporations. The Court emphasized that there must be total "independence from the influence of business corporations." *Id.*, at 1400. This feature serves to remove the potential for a non-profit organization to act as a conduit for a corporations' money in the "political marketplace." *Id.*, quoting 479 U.S. at 264. The fact that the Chamber had no policy against accepting contributions from business corporations placed them outside the Court's exception. Comments on this point are welcome.

C. Other Recent Court Cases

On June 29, 1990, the District Court for the District of Maine addressed several aspects of the *MCFL* and *Austin* decisions, including the effect of these opinions on the validity of the Commission's voter guide regulations at 11 CFR 114.4(b)(5)(i). *See, Faucher* v. *Federal Election Commission*, No. 90-0112-B, slip op. (D. Me. June 29, 1990) ("*Faucher*"). The court determined that the Maine Right to Life Committee did not qualify for the *MCFL* exception because the committee lacked a policy against receiving contributions from corporations. However, the court employed an express advocacy test in evaluating the Commission's voter guide regulation. The court concluded that "the regulation, as currently promulgated with its focus on issue advocacy, is contrary to the statute as the United States Supreme Court has interpreted it and, therefore, beyond the power of the FEC." *Id.*, at 10. The Commission has appealed the portion of the opinion addressing express advocacy and the voter guide rules.

A similar issue regarding the application of an express advocacy standard under section 441b was presented in *Federal Election Commission* v. *National Organization of Women*, 713 F. Supp. 428 (D.D.C. 1989) ("*NOW*"). In this case, another district court applied an express advocacy standard to determine whether section 441b permitted an incorporated membership organization to use general treasury funds for solicitation letters directed to the general public. The court in *NOW* concluded that the corporation had not violated section 441b because the letters in question did not go beyond issue discussion to express electoral advocacy. The Commission has also filed an appeal in this case.

Although subsequent judicial decisions in the *Faucher* and *NOW* cases, as well as other litigation, may affect the resolution of these issues, commenters may wish to address the issues raised by these decisions.

Dated: September 27, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-23352 Filed 10-2-90; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AEA-06]

Proposed Alteration of Control Zone and Transition Area; Lewisburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to revise the Control Zone and the 700 foot Transition Area at Lewisburg, WV, established for the Greenbrier Valley Airport, Lewisburg, WV, due to the reorganization of air traffic control procedures in the area. Additionally, the geographic coordinates of the airport are being updated in each description to reflect the actual location of the airport. The intent of this proposed action is to reduce that amount of controlled airspace to that which is deemed necessary by the FAA to contain aircraft operating under instrument flight rules from the surface to the base of adjacent controlled airspace.

DATES: Comments must be received on or before November 5, 1990.

ADDRESSES: Send comments on the rule in triplicate to:

Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 90-AEA-06, FAA Eastern Region, Federal Building No. 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AEA-06". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering amendments to §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the descriptions of the Lewisburg, WV, Control Zone and 700 foot Transition Area established for the Greenbrier Valley Airport, Lewisburg, WV, due to the reorganization of air traffic control procedures in the area. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control zones, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lewisburg, WV [Revised]

Within a 5-mile radius of the center of the Greenbrier Valley Airport, Lewisburg, WV (lat. 37°51'30" N., long. 80°23'59" W.); within 4 miles either side of a 218°(T) 224°(M) bearing from the BUSHI LOM, extending from a point 5.5 miles southwest of the LOM to the 5-mile radius area. This Control Zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective times will thereafter be published in the Airport/Facility Directory.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lewisburg, WV [Revised]

Within a 9.5-mile radius of the center of the Greenbrier Valley Airport, Lewisburg, WV (lat. 37°51'30" N., long. 80°23'59" W.); within 5 miles either side of a 218°(T) 224°(M) bearing from the BUSHI LOM, extending from the 9.5-mile radius area to 11.5 miles southwest of the LOM.

Issued in Jamaica, New York, on September 12, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90-23225 Filed 10-3-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-90-1492; FR-2706-P-01]

RIN 2502-AE83

Amendments to the Form 2530 Review Process

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Generally, under 24 CFR 200.210-.430, prospective principals in HUD's multifamily housing programs are subject to a review of their previous participation in HUD and similar programs in order to determine whether their participation should be approved. Approval is granted unless one of the identified standards for disapproval is met and a determination is made that the principal should not be approved, or a decision is made to withhold approval or grant conditional approval.

Under the Department's current regulations, a principal who has defaulted on previous mortgages cannot be disapproved on that basis unless the Multifamily Participation Review Committee (MPRC) finds that the mortgage default is attributable, or legally imputable, to the fault or neglect of the principal. The purpose of this rule is to give the MPRC more discretion in determining whether to disapprove participation in circumstances where a principal has previously been involved in mortgage defaults. The rule also proposes to make certain technical amendments to clarify existing policies.

COMMENT DUE DATE: December 3, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street,

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SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is (202) 708–4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708–2084.

FOR FURTHER INFORMATION CONTACT: Bruce J. Weichmann, Director, Participation Compliance Division, Office of Management, room 9114, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–6768. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–9300. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Since 1966, the Department has utilized a procedure to consider a person's record of pass performance in determining whether the Department should allow participation in an additional project. The procedure requires a principal's certification to his or her prior participation in multifamily projects, and the disclosure of other information which could affect the approval for the proposed participation. (The certification is submitted on HUD Form 2530, and in the housing industry the certification/approval process is commonly referred to as the "2530 process" or "2530 review process".)

Approval through the 2530 review process is required for participation in programs insuring multifamily mortgages under the National Housing Act; sale of projects owned or with a mortgage held by HUD (including all-cash sales); finance of projects pursuant to section 202 of the Housing Act of 1959; and participation in public housing projects as well as certain housing projects of HUD's housing program in which at least 20% of the units receive a subsidy from HUD. The 2530 certificate must be submitted by the owners of a project and by individuals and entities participating in the development, ownership, or management of projects covered by the 2530 review process.

The 2530 review process involves the submission of a certification by the principal, a review of that certification and other information about the principal by HUD, and approval, conditional approval, or disapproval of the proposed participation. Approval is granted unless one or more of the specified standards for disapproval are met.

This proposed rule would:

(1) Clarify, by amendment to § 200.213(c)(3), that the only Section 8 programs exempt from the 2530 review process are the tenant-based programs described in 24 CFR part 882, subparts A, B, C & F, and the housing voucher program described in 24 part 887;

(2) Clarify, by amendment to § 200.213(e), the applicability of the 2530 review process to all sales, including "all cash" sales;

(3) Add nursing home administrators and operators to the definition of "principal" in § 200.215(e);

(4) Define "risk" to include consideration of the financial stability of the principal and the capacity of the principal to meet HUD's procedures under new § 200.215(h). (Participants in all-cash sales of projects would be approved only if approval would further the objectives of the Department);

(5) Delete certain superfluous language in § 200.230 (c) and revise disapproval standards under § 200.230 (c)(1) to allow HUD more discretion for disapproval in circumstances where there are mortgage defaults, assignments or foreclosures;

(6) Add a new paragraph (f) to § 200.230 to include submission of a false or materially incomplete 2530 certificate as a basis for disapproval, and redesignate existing paragraph (f) as paragraph (g); and

(7) Revise § 200.243 (a) to limit hearing rights to the submission of written briefs or documentary evidence, where disapproval is based on suspension or debarment.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule would simply clarify existing policies and procedures involved in the 2530 review process.

This rule is listed as sequence number 1149, under the Office of Housing, in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16226, 16241), under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102 (2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332). The finding of no significant impact is available for public inspection and copying Monday through Friday, 7:30 a.m. until 5:30 p.m. in the office of the Rules Docket Clerk, Ofice of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12612, federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule is limited to reviewing continuing participation in the Department's programs. No programmatic or policy changes result from its promulgation which would affect existing relationships between Federal and State and local governments.

Executive Order 12606, the family. The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs related to family concerns.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs: housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 200 would be amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 would continue to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 200.213, paragraph (c)(3) and paragraph (e) would be revised to read as follow:

§200.213 Applicability of procedures.

* * * * *

(c) * * *

(3) Housing assistance payments under section 8 of the United States Housing Act of 1937 (with the exception of the programs described in 24 CFR part 882, subparts A, B, C & F, and in 24 CFR part 887, which are tenant-based programs);

* * * * *

(e) Sales of projects by the Secretary, including "all cash" sales.

3. In § 200.215, paragraph (e)(1) would be revised and a new paragaph (h) would be added, to read as follows:

§ 200.215 Definitions.

* * * * *

(e) *Principal.* (1) An individual, joint venture, partnership, corporation, trust, nonprofit association, or any other public or private entity proposing to participate, or participating, in a project as sponsor, owner, prime contractor, Turnkey Developer, management agent, nursing home administration or operator packager, or consultant; and architects and attorneys who have any interest in the project other than an arms-lengths fee arrangement for professional services.

* * * * *

(h) *Risk.* In order to determine whether a participant's participation in a project would constitute an unacceptable risk, the following factors must be considered: financial stability; previous performance in accordance with HUD statues, regulations, and program requirements; general business practices; or other factors which indicate to the MPRC that the principal could not be expected to operate the project in a manner consistent with furthering the Department's purpose of supporting and providing decent, safe and affordable housing for the public.

4. In § 200.230, paragraphs (c) and (c)(1) would be revised, and current paragraph (f) would be redesignated as paragraph (g) and a new paragraph (f) would be added, to read as follows:

§ 200.230 Standards for disapproval.

* * * * *

(c) Unless the Review Committee finds mitigating or extenuating circumstances that enable it to make a risk determination for approval, any of the following occurrences attributable or legally imputable to a principal may be the basis for disapproval, whether or not the principal was actively involved in the project:

(1) Mortgage defaults, assignments or foreclosures, unless the Review Committee determines that the default, assignment or foreclosure was caused by circumstances beyond the principal's control;

* * * * *

(f) Submission of a false or materially incomplete form 2530 certification application.

* * * * *

5. In § 200.243, paragraph (a) would be revised to read as follows:

§ 200.243 Hearing rules—How and when to apply.

(a) A principal who has been disapproved, conditionally approved, or who has had approval withheld by the Review Committee, either initially or after reconsideration, or who is disapproved by the Participation Control Officer, may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, except as modified by this section. Requests for hearing must be made within 30 days from the date of receipt of notice of the adverse determination.

(1) Except as provided in paragraphs (a) (2) and (3) of this section, a principal may request an oral hearing before a hearing officer.

(2) Where a disapproval is based solely on a suspension or debarment that has been previously adjudicated, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

(3) Where a disapproval is based on a suspension and an appeal is pending, the hearing shall be stayed pending the outcome of the suspension, unless the parties and the hearing officer agree that the matter should be consolidated with the suspension for hearing.

* * * * *

Dated: August 23, 1990.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90–23329 Filed 10–3–90; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–63–90]

RIN 1545–AP06

Disclosure of Tax Return Information for Purposes of Quality of Peer Reviews

AGENCY: Internal Revenue Service, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Internal Revenue Service is soliciting written comments from the public on issues to be addressed in proposed regulations under section 7216(b)(3) of the Internal Revenue Code of 1986. Section 7216(b)(3) provides for the disclosure or use of tax return information for "quality or peer reviews".

DATE: Deliver or mail written comments by October 31, 1990.

ADDRESS: Send comments to Internal Revenue Service, Attn: CC:CORP:T:R (IA–63–90), room 4429, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Lisa Byun, Attorney-Advisor, Office of the Assistant Chief Counsel (Income Tax and Accounting), at 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1989 amended Code section 7216(b)(3) to authorize and direct the Treasury to issue regulations permitting the disclosure or use of tax return information for "quality or peer reviews," subject to conditions prescribed by the regulations. A regulations project has been opened for this purpose.

The Service requests comments from the public as to this new provision. For example: (1) Should the permissible disclosure or use be limited to voluntary quality or peer reviews, or should it be extended to mandatory quality or peer reviews; (2) Should the disclosure or use for mandatory quality or peer review be limited only to reviews on behalf of professional organizations and/or their

members, or should it be extended to tax return preparation franchise operations where the agreement provides that the franchisor has the right to perform quality reviews; (3) Should the review include all matters within the scope of operating a tax practice, or should it be limited to the rendering of tax advice and the preparation of tax return; (4) Who should be permitted to perform the quality or peer reviews (e.g., all tax return preparers as defined in § 301.7216-1(b)(2) or only CPAs, attorneys, and enrolled agents); (5) Should secretaries and other support personnel of the reviewer(s) be allowed to provide assistance in conducting the quality or peer reviews; and (6) Are the sanctions provided by Code sections 6713 and 7216 adequate, or should other safeguards be considered in order to protect the taxpayer's privacy rights.

E. Leon Kennedy,

Deputy Assistant Chief Counsel (Income Tax and Accounting).

[FR Doc. 90-23356 Filed 9-28-90; 11:02 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[IA-258-84]

RIN 1545-AH32

Economic Performance Requirement; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of location for public hearing on proposed regulations.

SUMMARY: This document provides notice of a change of location for a public hearing on proposed regulations relating to the requirement that economic performance occur in order for an amount to be incurred by a taxpayer using an accrual method of accounting.

DATES: The public hearing will be held on October 22, 1990, beginning at 10 a.m. Outlines of oral comments must be received by Friday, October 5, 1990.

ADDRESSES: The public hearing will be held in the Old Post Office Building, room M09, 1100 Pennsylvania Avenue, NW., Washington, DC (use 12th street entrance). Requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [IA-258-84], room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), room 4429, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice appearing in the **Federal Register** for Wednesday, July 18, 1990 (55 FR 29224), announced, among other things, that a public hearing relating to economic performance requirements would be held on October 22, 1990, beginning at 10 a.m. in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The proposed regulations were published in the **Federal Register** for Thursday, June 7, 1990 (55 FR 23235).

The location for the public hearing has changed, and will be held in the Old Post Office Building, room M09, 1100 Pennsylvania Avenue NW., Washington, DC (use 12th street entrance).

In all other respects the details regarding the hearing will remain the same.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-23303 Filed 10-2-90; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-7-90]

RIN 1545-AO42

Nuclear Decommissioning Fund Qualification Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the qualification requirements of nuclear decommissioning reserve funds that combine their assets for investment purposes. Section 468A provides special rules pursuant to which a taxpayer is allowed a deduction for the tax year in which the taxpayer makes a contribution to a Nuclear Decommissioning Reserve Fund ("Fund"), notwithstanding the fact that economic performance with respect to the nuclear decommissioning costs will occur in a later tax year.

DATES: The public hearing will be held on Thursday, December 20, 1990, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, December 6, 1990.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-7-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that contain proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide rules under section 468A of the Internal Revenue Code of 1986 (55 FR 26460, June 28, 1990). Section 468A, relating to nuclear decommissioning costs, was added to the Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 609).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, December 6, 1990, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-23357 Filed 10-2-90; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-014; FRL-3850-1]

Alabama: Ozone Plan Revisions for Jefferson County; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 3, 1978 (43 FR 8962), EPA designated Jefferson County, Alabama, as nonattainment for ozone. The State submitted State Implementation Plan (SIP) revisions designed to achieve the ozone standard; however, this control strategy did not result in attainment of the National Ambient Air Quality Standards (NAAQS) by December 31, 1982. Consequently, on February 24, 1984, EPA notified the Governor of Alabama that the SIP was substantially inadequate to achieve the NAAQS for ozone in Jefferson County and called upon the State to revise its SIP. The Alabama Department of Environmental Management (ADEM) submitted a final SIP revision to EPA on November 21, 1985. However, delays due to the determination that the Jefferson County regulations were not yet enforceable by the State prevented prompt review of the SIP submittal by EPA. On April 8, 1987, the Alabama Environmental Management Commission adopted the Jefferson County VOC regulations. On April 20, 1987, ADEM submitted the completed package to EPA for approval. This SIP submittal from ADEM is a comprehensive package which includes all the regulations within chapter 8—Control of Volatile Organic Compounds, and a control strategy demonstrating attainment for ozone NAAQS by December 31, 1987. This submittal requires approval or disapproval by EPA of each regulation within chapter 8 and of the control strategy demonstration. Since the Jefferson County area did not attain the standard, the control strategy is inadequate. Upon review of the submittal, several regulations were identified as being deficient and therefore cannot be approved at this time. ADEM was notified of the identified deficiencies and asked to withdraw the regulations that were identified as being deficient. ADEM requested that EPA disapprove the regulations containing deficiencies.

Therefore, EPA, is at this time proposing to disapprove the control strategy and the regulations within chapter 8—Control of Volatile Organic Compound Emissions that do not satisfactorily meet the Control Techniques Guidelines (CTG)/Reasonably Available Control Technology (RACT) requirements and subsequent regulations and policy for nonattainment areas. The regulations that have been identified as being deficient and are being proposed for disapproval, are listed in the Supplemental Information section of this notice. The public is invited to submit written comments on the proposed actions.

DATES: To be considered, comments must be submitted by November 2, 1990.

ADDRESSES: Written comments should be addressed to Diane T. Altsman of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Division, Alabama Department of Environmental Management, 1751 Congressman William L. Dickinson Drive, Montgomery, Alabama 36130.

Jefferson County Department of Health, 1400 Sixth Avenue, South, P.O. Box 2648, Birmingham, Alabama 35202.

FOR FURTHER INFORMATION CONTACT: Diane T. Altsman, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), EPA designated Jefferson County, Alabama, as nonattainment for ozone. The State was subsequently required to revise its ozone State Implementation Plan (SIP) for Jefferson County. Alabama officially submitted the SIP revisions to EPA on April 19, 1979. On June 3, 1980 (43 FR 37430), EPA announced final approval of the Alabama ozone SIP. The State had calculated that an 18.2% reduction in hydrocarbon emissions was needed to achieve the ozone standard in Jefferson County by December 31, 1982.

However, the control strategy for ozone referenced above did not result in attainment of the NAAQS for ozone by December 31, 1982. Consequently, on February 24, 1984, EPA notified the Governor of Alabama that the SIP was substantially inadequate to achieve the NAAQS for ozone in Jefferson County and called upon the State to revise the SIP. ADEM submitted the final SIP revision to EPA on November 21, 1985.

During EPA's review of the submittal, it was determined that the revised Jefferson County VOC regulations were not enforceable by the State. Therefore, on August 26, 1986, ADEM was advised that the SIP revision was not approvable. On April 15, 1987, the Alabama Environmental Management Commission signed a resolution adopting the Jefferson County rules as a part of the State VOC regulations and on April 20, 1987, ADEM resubmitted the SIP revision to EPA. The submittal included numerous individual RACT regulations as well as a demonstration that Jefferson County would attain the ozone standard by December 31, 1987. However, current data indicate that the area has not yet attained the standard. Thus, EPA cannot now approve the attainment demonstration. In addition, certain of the RACT regulations do not meet all applicable criteria.

Today we are proposing to disapprove the attainment demonstration and the following regulations within Chapter 8—Control of Volatile Organic Compound Emissions that do not meet the CTG/RACT requirements and subsequent regulations and policy for nonattainment areas. For details on the deficiencies identified within each regulation, please refer to the Technical Support Document available for inspection at the EPA Regional Office address listed in this notice. *Applicability*—8.1.1(b)(2), 8.1.1(c), 8.1.1(d); *Loading and Storage of VOC*—8.3.1, 8.3.2(b)(3); *Fixed-Roof Petroleum Liquid Storage Vessels*—8.4.4(b); *Bulk Gasoline Plants*—8.5.3(a); *Bulk Gasoline Terminals*—8.6.3(a)(3), 8.6.6; *Gasoline Dispensing Facilities—Stage I Control*)—8.7.4(c); *Petroleum Refinery Sources*—8.8.2, 8.8.4, 8.8.5(a); *Automobile and Light-Duty Truck Manufacturing*—8.11.5; *Paper Coating*—8.11.6(b); *Magnet Wire Coating*—8.11.8(b); *Compliance Methods*—8.11.9(b), 8.11.9(3); *Solvent Metal Cleaning*—8.12.4(c)(3), 8.12.5(c)(5), 8.12.6(b)(3); *Cutback Asphalt*—8.13.2(a); *Petition For Alternative Controls*—8.14; *Test Methods and Procedures*—8.16; *Manufacture of Pneumatic Rubber Tires*—8.17.3 (a) and (d); *Perchloroethylene Dry Cleaning Systems*—8.19.3; *Leaks From Petroleum Refinery Equipment*—8.21.11, 8.21.12, 8.21.13; *Petroleum Liquid Storage In External Floating Roof Tanks*—8.23.1(h), 8.23.4(b)(3), 8.23.5(c); *Aerospace Assembly and Component Coatings Operation*—8.25; *Gasoline Dispensing Facilities*—8.30.1(a).

The submitted regulations were reviewed based on EPA's CTG documents for various VOC source categories. ADEM was notified of the

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deficient regulations within the SIP and of the need for their correction. EPA is proposing disapproval of the deficient regulations in today's notice. Although § 8.16—Test Methods and Procedures, is among the Jefferson County regulations being disapproved in today's notice, the Alabama Department of Environmental Management regulations address Test Methods and Procedures and are applicable and enforceable in Jefferson County. Therefore, disapproval of § 8.16 will not hinder any enforcement capabilities in Jefferson County. The revisions that satisfactorily meet the CTG/RACT requirements and subsequent regulations and policy are being proposed for approval in a separate Federal Register notice in order not to delay or deter compliance enforcement issues.

Proposed Action

EPA is proposing to disapprove the Jefferson County VOC regulations listed above and the control strategy.

The public is invited to participate in this rulemaking by submitting written comments on these proposed actions.

Under 5 U.S.C. 605(b), I certify that this disapproval action will not have a significant economic impact on a substantial number of small entities because its purpose is to provide the State the basis for correcting its SIP.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Hydrocarbons, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: September 27, 1990.

[FR Doc. 90-23389 Filed 10-2-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 144 Through 148

[FRL-3829-4]

Underground Injection Control Programs; Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: The Commonwealth of Puerto Rico has applied to the United States Environmental Protection Agency (EPA) under the provisions of the Safe Drinking Water Act, as amended (the Act) for approval of its Underground Injection Control (UIC) program.

This notice is being given to inform the public that EPA has received a complete UIC program submission from the Commonwealth of Puerto Rico and has scheduled a public hearing on it. If, after the conclusion of the proceedings summarized below, the Administrator of EPA makes a final decision to approve the Commonwealth's UIC program, granting primary UIC enforcement responsibility (primacy) to Puerto Rico, Puerto Rico's Environmental Quality Board (EQB) will be required to administer the program consistent with all the UIC regulations established by EPA.

DATES: The EPA will conduct a Public Hearing on the above-identified UIC program application at EPA's Caribbean Field Office (CFO), at the address below on November 13, 1990, from 10 a.m. until all interested persons have been heard.

Interested persons may submit comments on the program application to the Chief of the D/GWP Branch or the Director of CFO at the below addresses no later than November 6, 1990.

ADDRESSES: The hearing will be held at: U.S. Environmental Protection Agency, Region II—Caribbean Field Office (CFO), Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00907.

Please send written comments and requests to testify to Pedro A. Gelabert, Director, at the address above, or Walter E. Andrews, Chief, Drinking/Ground Water Protection Branch (D/GWP), U.S. Environmental Protection Agency, 26 Federal Plaza, Room 845, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Please direct calls to Robert Ferri at (212) 264–1600 or Luis Campos-Bistani, Chief, Water Quality Section at (809) 729–6920.

SUPPLEMENTARY INFORMATION: The purpose of this public hearing is to receive comments from interested persons and the public on the UIC program application submitted to EPA by the Commonwealth. EPA reserves the right to cancel the hearing should there be no significant public interest. Interested parties will be notified if the hearing is canceled.

A tape recording or written transcript of the hearing shall be made available to the public at EPA's CFO and at EPA's Region II Drinking/Ground Water Protection Branch (D/GWP) as part of the administrative record described below. All comments presented at the public hearing shall be considered by EPA in making its final decision.

The program application prepared by EQB is part of the administrative record. The administrative record is on file at EPA's CFO and at EPA's Region II D/GWP Branch at the below addresses and may be inspected and copied at a charge of $.15 per copy sheet at any time between 8:30 a.m. and 4 p.m., Monday through Friday. A copy of the program application and other available information may be obtained by writing to the Chief of the Region II D/GWP Branch at the above address.

All persons who believe that approving Puerto Rico's UIC program is not appropriate have an obligation to raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All supporting material must be submitted in full unless it is already included in the administrative record. If the Water Management Division Director or the Director of CFO finds that comments, submitted in a timely manner, appear to raise substantial new questions, either may extend the public comment period.

Any person who submits timely written or oral comments or requests notice of the final approval decision shall receive notice of the Administrator's final decision. Within 30 days of service of such notice, any interested person may petition the Administrator to review any condition of the Puerto Rico UIC program approval decision.

Dated: September 24, 1990.

Paul Moltnari,

Acting Director, Water Management Division.

[FR Doc. 90-23328 Filed 10-2-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 73-20; Notice 14]

RIN 2127-AC58

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Fuel System Integrity; Termination of Rulemaking Proceeding

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: The purpose of this notice is to announce the termination of a rulemaking proceeding to amend Standard No. 301, *Fuel System Integrity*,

to set performance requirements that would ensure that the fuel system as a whole, or an appropriate part thereof (i.e., the fuel tank), is capable of performing in a manner equivalent to fuel systems incorporating high density polyethylene plastic fuel tanks with regard to: (1) Resisting hydrostatic rupture; (2) avoiding a "flame-throwing characteristic" when the system is heated externally; and, (3) resisting puncture. The agency issued an Advance Notice of Proposed Rulemaking in March of 1989 concerning the possibility of such an amendment. After considering the comments to that notice and conducting further research and analysis, the agency has determined that there is not sufficient evidence of a safety need to warrant further rulemaking at this time.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen NRM–12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Steet, SW., Washington, DC, 20590, Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, limits the amount of fuel spillage that can occur from fuel systems during and for a 30-minute period following front, rear, and lateral barrier impact tests. Briefly, these limits are: (1) From impact until the vehicle has ceased motion, spillage must not exceed one ounce; (2) for a five-minute period following cessation of motion, fuel spillage must not exceed five ounces; and (3) for the following 25-minute period, fuel spillage during any one-minute interval must not exceed one ounce. The standard is intended to reduce deaths and injuries occuring from fires that result from fuel spillage during and after motor vehicle crashes. The standard applies to new passenger cars, and to multipurpose passenger vehicles, trucks, and buses (including school buses) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, and to school buses with a GVWR greater than 10,000 pounds. Specific performance requirements for individual components of the fuel system, such as the fuel tank, are not currently included in the standard. In 1988, Mr. Thomas J. Feaheny petitioned the agency to amend Safety Standard No. 301 to set performance requirements that would ensure that the fuel system as a whole, or an appropriate part thereof (e.g., the fuel tank), would be capable of performing in a manner equivalent to a fuel system having a high density polyethylene (HDPE) plastic fuel tank with regard to: (1) Resisting a phenomenon called hydrostatic rupture, which the petitioner stated is a likely cause of massive fuel leakage in a crash; (2) avoiding a "flame-throwing characteristic" when the system is heated externally; and (3) resisting puncture. Specifically, the petitioner requested that the standard be amended to incorporate three additional tests: the drop test, the under-vehicle fire test, and the puncture test. A result of adopting the petitioner's suggested amendment would have been to require the incorporation of HDPE fuel systems on all vehicles affected by the rule.

In response to the Feaheny petition, the agency issued an Advance Notice of Proposed Rulemaking (ANPRM) in March 1989 announcing that the agency was considering possible amendments to Standard No. 301 and requesting technical and other information concerning the necessity for such a regulation (54 FR 9855 March 8, 1989). To assist the agency in determining whether the petitioner is correct in stating that the performance of HDPE fuel tanks is superior to metallic fuel tanks, NHTSA solicited comments on the safety and practicability of new performance requirements directly evaluating the ability of fuel systems to withstand hydrostatic rupture, flame-throwing characteristics, and puncture resistance. The agency also requested makes, models, and identification numbers (VINs) for vehicles that have been equipped with non-metallic fuel tanks from 1980 to 1988 so that the agency could use data in the Fatal Accident Reporting System (FARS) to compare the fire involvement rate of vehicles with metallic fuel tanks against the fire involvement rate of vehicles with non-metallic fuel tanks.

Overview of Commenters Responses

Twenty-one commenters responded to the ANPRM. A summary of these comments was prepared and submitted to the docket. The petitioner's claim that non-metallic fuel tanks are superior to steel fuel tanks was disputed by most commenters. Commenters consistently stated that passenger safety is not at risk because of the use of metallic fuel tanks, and neither is safety guaranteed because HDPE materials are used. HDPE characteristics do not in themselves make non-metallic fuel tanks safer than metallic fuel tanks, for without specific and proper design considerations, all fuel systems could present safety problems.

Commenters indicated that the flame-throwing characteristic which the petitioner alluded to is nothing more than a controlled burn off of fuel when exposed to fire. Because the tank can be designed to direct the flame away from the passenger compartment, escape would still be possible even after this has occurred. Commenters indicated that HDPE fuel tanks did not exhibit this characteristic because the tank did not survive long enough to build up pressure. Commenters indicated that this is a different, possibly greater hazard.

Commenters indicated that there are performance differences between metallic and non-metallic fuel tanks, and these differences are manifest in component testing. However, commenters also consistently expressed their belief that the dynamic vehicle crash tests stipulated in Standard No. 301 are the most practicable and objective means for meeting the statutory requirements of the National Traffic and Motor Vehicle Safety Act. Commenters indicated that Standard No. 301 represents most real-world crash configurations and conditions, and is the most stringent standard of its type in the world. It was stated that rupture and puncture resistance are adequately covered by Standard No. 301.

Statistical Analysis

Four commenters: Chrysler, Ford, Volvo, and Volkswagen, submitted VINs in response to this request. Data from two of these commenters, Ford and Volkswagen, were eliminated because they did not meet the following criteria:

(1) Vehicles of a particular make, model and model year for which some vehicles were equipped with steel tanks and others with plastic.

(2) Vehicles of a particular make and model in which an entire year's production was equipped with steel tanks in one or more model years and with plastic in other model year(s).

The agency's National Center for Statistics and Analysis (NCSA) used the Fatal Accident Reporting System's (FARS) data files to determine the fire incidence rate of Chrysler and Volvo vehicles equipped with plastic and steel fuel tanks during the period 1980–1988. NCSA determined that, statistically, there is no difference between the rates of fire in fatal accidents involving Volvo vehicles equipped with steel fuel tanks and those equipped with pastic fuel tanks. However, for Dodge and Jeep vehicles, the analysis could not determine if there was a difference in fire incidence rates associated with plastic tanks compared to metallic tanks. While the calculated rates for vehicles with the two types of tanks were different, the difference could not be attributed to the type of tank. Other factors that may affect fire occurrence, such as tank size and mounting, could

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not be accounted for in the analysis. NCSA has prepared a document, available in the docket for this rulemaking, which discusses the accident data analysis in greater detail. The agency will continue to monitor our accident files to determine what action, if any, should be taken. However, for the purposes of this rulemaking, the data do not support the petitioner's claim.

Conclusion

Contrary to the petitioner's assertion, currently available data does not show any lessened incidence of fires in vehicles with HOPE fuel tanks. In fact, the FARS analysis discussed above appears to bear out the commenters' point that HOPE fuel tanks alone do not guarantee greater fuel system integrity. The performance of the fuel system in a crash depends not just on the attributes of the fuel tank, but on the design and construction of the entire fuel system.

Standard No 301 does not now require, nor has it ever required, manufacturers to install any particular type of fuel tank or other fuel system component to comply with the standard. Instead, any fuel system that provides the specified performance may be installed to comply with those requirements. This approach has consistently been followed to enable and encourage the automobile industry to develop and improve the safety characteristics of the fuel systems offered to the public. If the agency were to require the installation of one particular component in the fuel system, such as HOPE fuel tanks, this requirement would discourage the industry from exploring other types of fuel tanks and other changes that could improve the safety protection afforded by vehicle fuel systems, including innovative modifications of existing types of fuel tanks or the development of entirely new types of fuel tanks or fuel systems. The agency is very reluctant to take such an action.

This is not to say that the agency cannot envision circumstances under which it might consider mandating the use of just one type of fuel tank in motor vehicles. The agency would consider such a mandate if there were clear and convincing evidence that a single type of fuel tank had significant safety advantages over any other type of fuel tank in any fuel system, and if such a mandate would satisfy all other statutory criteria.

There is, however, no such evidence in this instance. Mr. Feaheny did not provide any data demonstrating that HOPE fuel tanks would be more effective in reducing injury to occupants of motor vehicles than any other type of fuel tank. Further, the available data from other sources, including the agency's data files, do not support Mr. Feaheny's petition. Mr. Feaheny did not provide, nor is the agency aware of, any data showing that metal fuel tanks are less safe or less effective than HOPE fuel tanks.

Absent any such data and evidence at this time, the agency has no reason to mandate a single type of fuel tank. Thus, NHTSA has decided to terminate this rulemaking action.

Even though NHTSA is terminating this rulemaking action, the agency will continue to monitor the safety aspects of HOPE and metal fuel tanks. The NCSA will analyze State data files to expand on the FARS data analysis. When this analysis is completed, NCSA will prepare a supplemental report for the docket. The agency will also continue to monitor the Vehicle Complaint Report Files in the Office of Defects Investigation for problems related to metallic and non-metallic fuel tanks.

Issued on September 27, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-23332 Filed 10-2-90; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 55, No. 192
Wednesday, October 3, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

BACKGROUND: Under the Paperwork Reduction Act (44 U.S.C., chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted two copies of the attached information collection proposal to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. ACTION is requesting an expedited review by OMB with final action by October 31, 1990.

Comments may be directed to:

Janet Smith, ACTION, Clearance Officer, ACTION, 1100 Vermont Avenue NW., Washington, DC 20525, Tel: (202) 634-9245.

and

Daniel Chenok, Desk Officer for ACTION, Office of Management & Budget, 3200 New Executive Office Bldg., Washington, DC 20503, Tel: (202) 395-7316.

Title of Form (s): VISTA Literacy Corps Evaluation.

Need and Use: The information provided by this survey will be used to assess the degree to which the VISTA Literacy Corps is meeting its legislative mandate and to evaluate strengths and weaknesses of the program.

Type of Request: New.

Respondent's Obligation to Reply: Voluntary.

Description of Respondents: Community volunteers & project sponsors.

Frequency of Collection: Nonrecurring.

Estimated Number of Annual Responses: 610.

Average Burden Hours per Response: .25 hrs.

Dated: September 28, 1990.

Janet Smith

Clearance Officer, ACTION

OMB No:

Expires:

VISTA Literacy Corps Evaluation

Project Sponsor Questionnaire

Project:

Name of Respondent:

Title:

Project Mailing Address:

Project Telephone Number: (_____)

Instructions

This questionnaire is part of a study being conducted by Development Associates for the ACTION Agency. The purpose of the study is to examine the effects of the VISTA Literacy Corps experience on the VISTA volunteers and the communities in which they served.

The study is authorized under PL101-204. While you are not required to respond, your answers are needed to make our reports comprehensive and accurate. Your responses will be kept confidential to the extent permissible under the law, and you will not be identified in any report resulting from this study. These questions should take approximately 30 minutes to complete.

Please answer the following questions as completely and accurately as you can. Thank you for your participation in this evaluation.

Please return to: Development Associates, Inc., 2924 Columbia Pike, Arlington, VA 22204.

Sponsoring Organization

1. For how many years has the organization sponsoring this VISTA literacy project been in existence? _____ years

2. What is the nature of the sponsoring organization?
   - Local literacy council (private) 1
   - Local affiliate of a national literacy organization 2
   - Community based organization/community action agency 3
   - Local school system 4
   - City or county government 5
   - College or university 6
   - Church or church-related organization 7
   - State government 8
   - Other 9

3. Is literacy the *primary* focus of this organization?
   Yes . . . 1 No . . . 1
   If no, what are the major activities of the organization?

4. For how many years has this organization been providing literacy services? _____ years

5. How many *paid* staff members of the organization (not including VISTA volunteers) are involved in literacy efforts?
   a. Full-time staff _____
   b. Part-time staff _____

6. How many community volunteers (i.e., non-VISTA) are involved in the literacy efforts of this organization?

7. What is the total annual cash budget for your literacy program (not including VISTA grant funds or VISTA volunteer allowances)? $_____

8. How much funding does the literacy program receive from the following sources? (Estimate, if necessary)
   - Federal government (excluding VISTA) ..... $_____
   - State government ..... $_____
   - Local government ..... $_____
   - Local private sources (e.g., United Way) ..... $_____
   - Local businesses ..... $_____
   - Private contributions ..... $_____
   - Other private sources (e.g., foundation grants) ..... $_____
   - Other _____ $_____
   - Other _____ $_____

9. In what ways are the literacy efforts of your organization related to the efforts of other organizations in the community? (Circle all that apply).

BEST COPY AVAILABLE

We receive referrals of clients from other organizations 1
We make referrals of clients to other literacy organizations 2
We meet regularly with other organizations to discuss client needs and to plan programs 3
Our programs/activities are sometimes taken over or assumed by other organizations 4
We sometimes take over or assume the programs/activities of other organizations 5
We sometimes have joint training of staff or tutors with other organizations 6
We provide or receive tutors to/from other organizations 7
We provide or receive technical assistance to/from other organizations 8
Other 9

Project Clients

10. How many clients does your literacy program presently serve?

_____

11. What percentage of your literacy program clients are receiving:

	Percent
Regular literacy instruction	_____
English-as-Second Language (ESL) instruction	_____
Total	100

12. What percentage of your literacy program clients are receiving:

	Percent
Individual (one-on-one) tutoring	_____
Group instruction	_____
Total	100

13. When they entered your literacy program, what percentage of your clients were reading at the following grade levels? (Please estimate, if necessary)

	Percent
0–4	_____
5–8	_____
9–12	_____
Total	100

14. What percentage of your clients are: (Estimate, if necessary)

	Percent
Male	_____
Female	_____
Total	100

15. What percentage of your clients are: (Estimate, if necessary)

	Percent
Hispanic	_____
Black	_____
White, non-Hispanic	_____
Asian/Pacific Islander	_____
Native American	_____
Total	100

16. What percentage of your clients are: (Estimate, if necessary)

	Percent
17 years or less	_____
18–25 years	_____
26–45 years	_____
46–60 years	_____
61 years or more	_____
Total	100

17. What percentage of your clients are: (Estimate if necessary)

	Percent
Unemployed	_____
Employed part-time	_____
Employed full-time	_____
Total	100

18. What percentage of your clients: (Estimate, if necessary)

	Percent
Have family incomes at or below the poverty level?	_____
Are parents of children between the ages of 2–8?	_____

19. In the community served by this project, what is the (Estimate, if necessary)

	Percent
Unemployment rate?	_____
Percentage of households living in poverty?	_____
Percentage of adults with less than a ninth grade education?	_____

20. What procedures do you use for recruiting clients? (Circle all that apply)

Referrals from community agencies 1
Referrals from employers 2
Referrals from churches 3
Television or radio announcements 4
Signs or brochures throughout community 5
Tables/booths at community settings 6
Announcements in newspapers 7
Other _____ 8
Other _____ 9

21. What is the average length of time clients participate in the literacy program? _____ months

VISTA Volunteers

22. How many VISTA volunteers are presently serving the project? _____

23. How were those VISTA volunteers recruited? (Circle all that apply

Newspaper advertisement 1
Radio or television announcement 2
Word-of-mouth 3
Referral from ACTION 4
Previous contact with organization (as client or tutor) 5
Other: _____ 6
Other: _____ 7

24. What services do VISTA volunteers provide? (Circle all that apply)

General community awareness/public relations 1
Recruitment of clients 2
Recruitment of tutors or other volunteers 3
Assessment of client needs 5
Evaluation of client progress 5
Direct provision of tutoring services 6
Training of tutors 7
Development of management or administrative systems 8
Fundraising 9
Curriculum development 10
Other _____ 11
Other _____ 12

25. To what extent do your VISTA volunteers perform the same or different activities? (Circle one)

All VISTA volunteers perform basically the same activities 1
There is some overlap among VISTA volunteers, but they also have some distinct activities 2
There is little or no overlap in what the VISTA volunteers do 3
There is only one VISTA volunteer 4

26. What are the activities in which VISTA volunteers are most effective?

a. _____
b. _____
c. _____

27. What are the activities in which VISTA volunteers are least effective?

a. _____
b. _____
c. _____

28. How many hours per week, on the average, do volunteers work? _____ hours

29. On the average, how many hours of training do VISTA volunteers receive *from your agency:*

a. when they begin as VISTA volunteers? _____ hours
b. in the average year after initial training? _____ hours

30. What are the major topics on which training is provided, and who provides the training?

Topic	Provider
a.	
b.	
c.	
d.	

31. How many hours per week do you or other organization staff spend supervising VISTA volunteers? _____ hours

Effects of VISTA Project

32. How has the presence of VISTA volunteers influenced the effectiveness of your literacy program? (Circle all that apply)

Increased number of regular literacy clients served (from _____ to _____) 1
Increased number of ESL clients served (from _____ to _____) 2
Increased number of tutors (from _____ to _____) 3
Increased number of other volunteers (from _____ to _____) 4
Expanded program into different parts of the community 5
Expanded program to serve new groups of clients (specify: _____) 6
Improved effectiveness of tutors 7
Increased average reading level (from _____ grade to _____ grade) 8
Improved management or administrative systems (specify: _____) 9
Increased resources for the operation of the program (Cash $_____ In-kind $_____) 10
Increased cooperation or partnerships with other organizations 11
Developed new assessments of community literacy needs 12
Developed plans for new literacy programs or areas 13
Other: _____ 14
Other: _____ 15

33. What *formal* data, if any, do you collect concerning the effectiveness of your literacy program? (Circle all that apply)

Reading tests (pre and post) 1
Writing tests (pre and post) 2
Workbook or text completion units 3
Life skills outcomes (drivers licenses, citizenship, etc.) 4
New or improved job outcomes 5
Other: _____ 6
Other: _____ 7

34. How do you believe the literacy program will be affected when the VISTA project ends? (Circle one)

I expect there to be an expansion in services after the VISTA project ends 1
I believe that there will be little change in services 2
I believe that a few services will be lost 3
I believe that many of our services will be lost 4
I believe that our overall program may be discontinued 5

35. What preparations, if any, have you made to deal with the end of the VISTA project (e.g., hiring staff, training additional staff or volunteers)?

a. _____
b. _____
c. _____

OMB No.:
Expires:

VISTA Literacy Corps Evaluation

VISTA Volunteer Mail Questionnaire

Name: _____

Sponsor: _____

Sponsor City and State: _____

Instructions

This questionnaire is part of a study being conducted by Development Associates for the ACTION Agency. The purpose of the study is to examine the effects of the VISTA Literacy Corps experience on the VISTA volunteers and the communities in which they served.

The study is authorized under PL 101–204. While you are not required to respond, your answers are needed to make our reports comprehensive and accurate. Your responses will be kept confidential to the extent permissible under the law, and you will not be identified in any report resulting from this study. These questions should take approximately 20–30 minutes to complete.

Please answer the following questions as completely and accurately as you can. Thank you for your cooperation.

Please return to: Development Associates, Inc., 2924 Columbia Pike, Arlington, VA 22204.

Background

1. Date when you started as a VISTA volunteer with this project: _____/_____/_____

2. What is your age? _____

3. Are you:
Male . . . 1 Female . . . 2

4. What is your racial/ethnic group? (Circle one)

Hispanic 1
Black 2
White, non-Hispanic 3
Asian/Pacific Islander 4
Native American/Aleut 5
Other: _____ 6

5. How far have you gone in school? (Circle one)

Eighth grade or less 1
Some high school 2
High school graduate 3
Some college or postsecondary technical school 4
College graduate 5
At least some graduate study 6

6. What were you doing immediately prior to entering VISTA? (Circle all that apply)

Working full-time 1
Working part-time 2
Serving as a volunteer or tutor 3
Attending school 4
Retired 5
Other 6

7. Were you living in the community served by the project when you were recruited for VISTA?
Yes . . . 1 No . . . 2

8. Were you affiliated in any way with the sponsoring agency of this project (as a volunteer, employee, etc.) before you joined the VISTA project?
Yes . . . 1 No . . . 2

9. Did you have training or experience working with people with limited literacy skills prior to joining VISTA?
a. Training: Yes . . . 1 No . . . 2
b. Experience: Yes . . . 1 No . . . 2
c. If yes, please describe.

_____

10. What motivated you to become a VISTA volunteer?
a. _____
b. _____

11. Do you have responsibility for any special subgroups of clients (e.g., non-English speakers, senior citizens, school dropouts, parents of young children)?
Yes . . . 1 No . . . 2
If yes, which subgroups?

Project Activities

12. How many hours per week do you spend on the following activities?
a. Client recruitment _____
b. Community, outreach/public awareness _____
c. Instruction/tutoring of clients in groups _____
d. Individual instruction/tutoring of clients _____
e. Development of outreach/promotional materials _____
f. Evaluation of client progress _____
g. Recruitment of literacy tutors or other volunteers _____
h. Training of literacy tutors _____
i. Project recordkeeping _____
j. General office administration _____
k. Development of management or administrative systems _____
l. Fundraising _____
m. Curriculum development _____
n. Assessment of client needs _____
o. Other: _____
p. Other: _____
Total Hours per week _____

13. In which activities do you feel you have been particularly effective or successful?
a. _____
b. _____
c. _____

14. In which activities, if any, do you feel you have been *less* effective or successful?
a. _____
b. _____
c. _____

15. How would you rate your overall effectiveness as a VISTA volunteer? (Circle one)
Not very effective . . . 1
Somewhat effective . . . 2
Effective . . . 3
Very effective . . . 4

16. How many hours per week, on the average, do you spend meeting with your supervisor? _____ hours

Training

17. Since you have been assigned to your VISTA project, how much formal training have you received *from any source* to help you perform your activities? (Enter 0 if none) _____ hours

18. What were the major content areas of that training and from whom did you receive it? (Circle all that apply.)

	Sponsoring organization	VISTA	Other source
a. Goals and objectives of VISTA	1	2	3
b. VISTA administrative procedures	1	2	3
c. Activities to be performed at sponsoring organization	1	2	3
d. Goals and objectives of the sponsoring organization	1	2	3
e. Administration/management of a literacy program	1	2	3
f. Use of local volunteers as literacy tutors	1	2	3
g. Program recordkeeping	1	2	3
h. Approaches to literacy tutoring	1	2	3
i. Training of literacy tutors	1	2	3
j. Materials for literacy tutoring	1	2	3
k. Fundraising	1	2	3
l. Communication/public relations	1	2	3
m. Other:	1	2	3
n. Other:	1	2	3

19. Which of the categories of training which you have received have been most useful?
a. _____
b. _____
c. _____

20. Which of the categories of training have been least useful?
a. _____
b. _____
c. _____

21. In what areas do you need additional training in order to help you do your job?

Effectiveness of Activities

22. To what extent have you personally seen the following improvements in the lives of participants based on literacy tutoring?

	Not at all	A little	Some	A lot
a. Improved life skills (drivers licenses, citizenship, etc.)	1	2	3	4
b. Improved ability to perform job functions	1	2	3	4
c. New jobs or job promotions	1	2	3	4
d. Increase in sense of self-worth/self-esteem	1	2	3	4
e. Increased personal enjoyment of reading	1	2	3	4
f. Increased enrollment in other education programs	1	2	3	4
g. Greater involvement in children's learning	1	2	3	4
h. Greater family satisfaction	1	2	3	4
i. Other	1	2	3	4
j. Other	1	2	3	4

23. How would you rate the *overall success* of the VISTA literacy project? (Circle one)
Not very successful . . . 1
Somewhat successful . . . 2
Successful . . . 3
Very successful . . . 4
I can't really rate this . . . 5

Impact of VISTA Literacy Corps Experience on You

24. Please rate the extent to which your VISTA experience has helped you in each of the following areas. (Circle one in each row.) Note: it may not have helped because you may have already been strong in the area.

Area	Not at all	A little	Some	A lot
a. Ability to define life goals	1	2	3	4
b. Personal self-confidence	1	2	3	4
c. Ability to organize my time	1	2	3	4
d. Ability to plan and complete taks assignments	1	2	3	4
e. Reading and writing skills	1	2	3	4
f. Ability to get along with supervisors and co-workers	1	2	3	4
g. Ability to get along with different types of people who are clients	1	2	3	4
h. Knowledge of literacy issues	1	2	3	4
i. Motivation to do well on a job	1	2	3	4
j. Ability to teach or train others	1	2	3	4

25. What are the two most important things which you received from your VISTA experience thus far?
a. —
xs
b. —
xs

26. Are there any suggestions or recommendations you would make to improve the VISTA Literacy Corps program?
a. —
xs
b. —
xs

OMB No:
Expires:

VISTA Literacy Corps Evaluation

Former Volunteer Telephone interview

Name:

Telephone Number: (_____)

Sponsor of VISTA Project:

Sponsor City and State:

Instructions

Read the following instructions to the interviewee:

This interview is part of a study being conducted by Development Associates for the ACTION Agency. The purpose of the study is to examine the effects of the VISTA Literacy Corps Experience on CITA volunteers and the communities in which they served.

The study is authorized under PL 101–204. While you are not required to respond, your answers are needed to make our reports comprehensive and accurate. Your responses will be kept confidential to the extent permissible under law, and you will not be identified in any report resulting from this study. The questions should take approximately 10–15 minutes.

1. What was the date on which you started with the VISTA literacy project?
2. What was the date on which you ended your work on the VISTA project?
3. Why did you leave the project?

4. Were you living in the community served by the project when you were recruited for VISTA?
Yes . . . 1 No . . . 2
5. Are you presently employed?
Yes . . . 1 No . . . 2 (Skip to Question 10)
6. Are you working full-time or part-time?
Yes . . . 1 Part-time . . . 2
7. Is your job related to your VISTA experience?
Yes . . . 1 No . . . 2 (Skip to Question 10)
8. How is it related?
9. What is your occupation?
10. Are you presently attending school?
Yes . . . 1 No . . . 2 (Skip to Question 14)
11. Are you attending full-time or part-time?
Full-time . . . 1 Part-time . . . 2
12. Is your schooling related to your VISTA experience?
Yes . . . 1 No . . . 2
13. What are you studying in school?
14. May I ask your age? xxxx
15. Are you male or female? (ASK only, if unsure)
Male . . . 1 Female . . . 2
Hispanic . . . 1
Black . . . 2
White . . . 3
Asian . . . 4
Native American . . . 5
Other . . . 6
17. How far have you gone in school? (Do not read options.)
Eighth grade or less . . . 1
Some high school . . . 2
High school graduate . . . 3
Some college . . . 4
College graduate . . . 5
Graduate study . . . 6

I'd next like to ask some questions about your VISTA project experience.

18. On the average, how many hours a week did you you work with the project?
19. ON which of the following activities did you spend at least one hour per week?

a. Client recuritment	1	2
b. Community outreach/public awareness	1	2
c. Group instruction or tutoring	1	2
d. Individual instruction or tutoring	1	2
e. Development of outreach or promotional materials	1	2
f. Evaulation of client progress	1	2
g. Recruitment of tutors or other volunteers	1	2
h. Training of tutors	1	2
i. Project recrodkeeping	1	2
j. General office administration	1	2
k. Development of management or administrative systems	1	2
l. Fundrasing	1	2
m. Curriculum development	1	2

n. Assessment of client needs . . . 1 2

20. What other activities, if any, did you perform?
a. _____
b. _____
c. _____

21. What were your two or three most important things you learned from your VISTA experience?
a. _____
b. _____
c. _____

22. To what extent do you feel the VISTA experience affected you. Would you say it had a positive effect on your
Not very effective . . . 1
Somewhat effective . . . 2
Effective . . . 3
Very effective . . . 4
[Don't know/can't rate] . . . 5

28. I'm interested in how you feel the VISTA experience affected you. Would you say it had a positive effect on your

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: ACTION.

ACTION: Information collection submitted to the Office of Management and Budget for review.

ACTION: Notice; vacation of northern spotted owl guidance.

SUMMARY: The Department of Agriculture gives notice that the Chief of the Forest Service is vacating the decision contained in the December 1988 Record of Decision which amended the Regional Guide for the Pacific

petition requesting the listing of the northern spotted owl as an endangered species under the Endangered Species Act. After issuance of the 1988 Record of Decision, the Fish and Wildlife Service, on June 23, 1989, proposed to list the northern spotted owl as threatened, 54 FR 26666.

Subsequently, under the authority of

Service that the species is in danger of extinction and therefore does not have a viable population, as defined at 36 CFR 219.19, in the area in which it is listed. As a consequence of the listing of the northern spotted owl, the Forest Service's regulatory authority for planning and management of the habitat of the northern spotted owl is

n. Assessment of client needs 1 2

20. What other activities, if any, did you perform?

a. _____
b. _____
c. _____

21. What were your two or three major project activities?

a. _____
b. _____
c. _____

22. In performing your project activities, what training in addition to that you received would have been helpful to you?

a. _____
b. _____
c. _____

23. How would you rate your overall effectiveness as a VISTA volunteer? Would you say you were . . .

Not very effective 1
Somewhat effective 2
Effective 3
Very effective 4

24. In which activities do you feel you were particularly effective or successful?

a. _____
b. _____
c. _____

25. In which activities do you feel you were less effective or successful?

a. _____
b. _____
c. _____

26. I'm interested in how you think the VISTA literacy project in which you worked affected the lives of clients? What positive outcomes, if any, did you see for clients? [Do not read alternatives]

Improved life skills (drivers license, citizenship) 1
Improved ability to perform job functions 2
New jobs or job promotions 3
Increased personal enjoyment of reading 4
Increased enrollment in other educational programs 5
Greater involvement in children's learning 6
Greater family satisfaction 7
Other 8
Other 9

27. How would you rate the *overall effectiveness* of the VISTA literacy project for which you worked? Would you say it was

Not very effective 1
Somewhat effective 2
Effective 3
Very effective 4
[Don't know/can't rate] 5

28. I'm interested in how you feel the VISTA experience affected you. Would you say it had a positive effect on your . . .

	Yes	No	Not sure
a. Ability to define life goals	1	2	3
b. Personal self-confidence	1	2	3
c. Ability to organize your time	1	2	3
d. Ability to plan and complete work assignments	1	2	3
e. Reading and writing skills	1	2	3
f. Ability to get along with supervisors and co-workers	1	2	3
g. Ability to get along with different types of people as clients	1	2	3
h. Knowledge of literacy issues	1	2	3
i. Motivation to do well on a job	1	2	3
j. Ability to teach or train others....	1	2	3

29. What were one or two most important things you got out of your VISTA experience?

a. _____
b. _____

30. Are there any suggestions or recommendations you would make to improve the VISTA Literacy Corps program?

a. _____
b. _____

Thank you

[FR Doc. 90-23361 Filed 10-2-90; 8:45 am]
BILLING CODE 6050-28-M

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: ACTION.

ACTION: Information collection submitted to the Office of Management and Budget for review.

SUMMARY: The following form(s) have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments received by November 2, 1990. Send comments to both:

Janet Smith, Clearance Officer, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525, Tel: (202) 634-9245.
and
Daniel Chenok, Desk officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503, Tel: (202) 395-7316.

Title of Form(s): Older Americans Volunteer Programs "Project Grant Application".

ACTION Forms No(s): ACTION Form 424-OA.

Need and Use: ACTION uses this application to evaluate new grantees' capability to sponsor OAVP programs; once funded, this application is used to monitor compliance with ACTION guidelines.

Type of Request: Project grant application.

Respondent's Obligation to Reply: Required to obtain/retain benefits.

Descriptions of Respondents: Public agencies and private non-profit organizations.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 1200.

Average Burden Hours per Response: 16 hours/response.

Estimated Annual Reporting or Disclosure Burden: 18,428 hrs/total.

Janet Smith,
Clearance Officer, ACTION.

[FR Doc. 90-23365 Filed 10-3-90; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Northern Spotted Owl Habitat Management

AGENCY: Office of the Secretary, USDA.

ACTION: Notice; vacation of northern spotted owl guidance.

SUMMARY: The Department of Agriculture gives notice that the Chief of the Forest Service is vacating the decision contained in the December 1988 Record of Decision which amended the Regional Guide for the Pacific Northwest Region with regard to management of northern spotted owl habitat. Section 318 of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 provided that the Forest Service should review and revise as appropriate the December 1988 Record of Decision by September 30, 1990. The portion of the Pacific Southwest Region's 1984 Regional Guide establishing standards and guidelines for management of northern spotted owl habitat is also vacated. Pending enactment of new legislation, any applicable action by the Endangered Species Committee, adoption of a recovery plan by the Fish and Wildlife Service, or the results of further consultation between the Forest Service and the Fish and Wildlife Service, the Service will conduct timber management activities in a manner not inconsistent with the Interagency Scientific Committee recommendations during this interim period.

FOR FURTHER INFORMATION CONTACT: Questions and comments concerning this notice should be addressed to James C. Overbay, Deputy Chief, National Forest Systems, Forest Service, U.S.D.A., P.O. Box 96090, Washington, DC 20090-6090, (202) 453-8205.

SUPPLEMENTARY INFORMATION: In December 1988, following publication of a supplemental environmental impact statement for amendment of the Pacific Northwest Regional Guide (National Forests in Oregon and Washington), the Chief of the Forest Service issued a Record of Decision establishing standards and guidelines for management of habitat of the northern spotted owl in the Pacific Northwest Region. The 1988 decision complied with the regulatory requirement at 36 CFR 219.19 to maintain viable populations of vertebrate species and sought to ensure that protection for the northern spotted owl was provided for on National Forest System lands.

The analysis leading to the 1988 Record of Decision occurred during the same time period that the United States Fish and Wildlife Service was considering whether to list the northern spotted owl under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq. In January 1987, the Fish and Wildlife Service received a petition requesting the listing of the northern spotted owl as an endangered species under the Endangered Species Act. After issuance of the 1988 Record of Decision, the Fish and Wildlife Service, on June 23, 1989, proposed to list the northern spotted owl as threatened, 54 FR 26666.

Subsequently, under the authority of an interagency agreement between the Forest Service, USDA; the National Park Service; the Bureau of Land Management; and the Fish and Wildlife Service, USDI, an Interagency Scientific Committee was chartered to develop a scientific strategy for conservation of northern spotted owls. In October 1989, subsection 318(b)(6)(B) of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 directed the Chief of the Forest Service to consider the report of the Interagency Scientific Committee and other new information subsequent to the 1988 Record of Decision, and "to review and revise as appropriate, the December 1988 Record of Decision." The subsection further directed that any changes to the Record of Decision were to be completed, and "in effect not later than September 30, 1990."

On April 2, 1990, the Interagency Scientific Committee released its findings and recommendations in a report entitled "A Conservation Strategy for the Northern Spotted Owl." On June 22, 1990 the Fish and Wildlife Service listed the northern spotted owl under the Endangered Species Act as threatened throughout its range, 55 FR 26114. Although the notice did not then express an opinion on the standards and guidelines adopted in the 1988 Record of Decision, in its July 23, 1990 Biological Opinion on "Formal Consultation on the U.S. Forest Service Section 318 Timber Sale Program" (Opinion) the Fish and Wildlife Service said that the Spotted Owl Habitat Area (SOHA) system is not effective as a long-term conservation strategy to meet the requirements of the Endangered Species Act. Opinion at 12.

On June 26, the Secretaries of Agriculture and the Interior formed an Interagency Task Force to devise a forest management plan for the Forest Service for fiscal year 1991 and to determine ways to achieve a balance between preservation of the northern spotted owl and the protection of jobs and economic opportunity in the Pacific Northwest. The Task Force completed its work on September 21, 1990, and recommended, among other things, that Congress consider legislation to address the issue.

Listing of a species under the Endangered Species Act constitutes a determination by the Fish and Wildlife Service that the species is in danger of extinction and therefore does not have a viable population, as defined at 36 CFR 219.19, in the area in which it is listed. As a consequence of the listing of the northern spotted owl, the Forest Service's regulatory authority for planning and management of the habitat of the northern spotted owl is superseded by the requirements of the Endangered Species Act. In addition the Fish and Wildlife Service's Biological Opinion in effect, constitutes a judgment that the 1988 Record of Decision is not an adequate long-term conservation strategy under the Endangered Species Act.

Taking consideration of the statutory requirements and scientific analysis referenced above, the 1988 Record of Decision, and all direction therein, is vacated. The SOHAs established in compliance with the Record of Decision direction are, therefore, also vacated, as well as any previous decisions concerning management of spotted owl habitat. As a result, all final Forest Plans are therefore amended to incorporate this vacation and return the SOHAs established in compliance with the 1988 Record of Decision to the land classifications of the adjacent lands as established in the respective final Forest Plans. Pending enactment of new legislation, any applicable action by the Endangered Species Committee, adoption of a recovery plan by the Fish and Wildlife Service, or the results of further biological consultation between the Forest Service and the Fish and Wildlife Service, the Forest Service will conduct timber management activities in a manner not inconsistent with the Interagency Scientific Committee recommendations, which are more than sufficient to assure compliance with the Endangered Species Act during this interim period. Consultation under the Endangered Species Act will follow the Fish and Wildlife Service's June 1990 "Interim Procedures Leading to Endangered Species Act Compliance for the Northern Spotted Owl", or subsequent procedures issued by the Fish and Wildlife Service.

All Forest Service actions involving the northern spotted owl or its habitat will henceforth be carried out in compliance with the requirements of the Endangered Species Act, not 36 CFR 219.19.

Because the listing of the northern spotted owl also affects four national forests in northern California, all direction in the 1984 Pacific Southwest Regional Guide pertaining to the northern spotted owl is also vacated. This includes SOHAs established in

compliance with that Record of Decision direction on the affected national forests. Although the Pacific Southwest Regional Guide established standards and guidelines for management of spotted owl habitat throughout California, this notice only affects the Regional Guide direction applicable to the northern spotted owl. Direction

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344-2766, (FTS) 344-2766.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to Animal Biotechnology Cambridge Ltd., an exclusive license to practice the said

support the price of the 1988 through 1990 crops of sugar beets and sugarcane through nonrecourse loans. Section 201(j) further provides that the Secretary shall support the price of domestically grown sugarcane at such level as the Secretary determines appropriate, but not less than 18.00 cents per pound, raw value, and the price of domestically

default of the loan, or (C) elimination of storage, handling, and carrying charges on the forfeited loan collateral.

These determinations are required to be made in accordance with the provisions of section 201(j) of the Agricultural Act of 1949 and section 1009 of the Food Security Act of 1985. Section 1012(b) of the Food Security Act

processing location of the sugar offered as collateral for a price support loan. These adjustments (i.e., location differentials) have been calculated in the same manner as they have been in previous years. The loan rates for sugar processed in specific regions have been based upon the transportation costs associated with moving that sugar to the

per pound. Both of these rates will be further adjusted to reflect the processing location of the sugar offered as collateral for a price support loan (i.e., location differentials).

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: David Wolf, Price Support Branch,

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compliance with that Record of Decision direction on the affected national forests. Although the Pacific Southwest Regional Guide established standards and guidelines for management of spotted owl habitat throughout California, this notice only affects the Regional Guide direction applicable to the northern spotted owl. Direction applicable to the California owl is not affected. This is because only the northern spotted owl has been listed under the Endangered Species Act.

This notice applies to the 13 National Forests in the Pacific Northwest Region affected by the 1988 Record of Decision, the Mt. Baker-Snoqualmie, Gifford Pinchot, Siuslaw, Umpqua, Siskiyou, Okanogan, Wenatchee, Willamette, Winema, Olympic, Mt. Hood, Deschutes, and the Rogue River. This notice also applies to four northern California forests that contain northern spotted owls, the Six Rivers, Mendocino, Klamath and Shasta-Trinity.

This notice is effective as of September 30, 1990, and constitutes compliance with the requirements of section 318. The Endangered Species Act applies to this notice of vacation; the National Environmental Policy Act, 42 U.S.C. 4321, et seq., and the National Forest Management Act, 16 U.S.C. 1600, et seq., do not apply.

Dated: September 28, 1990.

John L. Evans,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 90-23386 Filed 10-2-90; 8:45 am]

BILLING CODE 3410-11-M

Agriculture Research Service

Intent To Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Animal Biotechnology Cambridge, Ltd., Cambridge, England, on U.S. Patent Application Serial No. 07/349,669, "Method to Preselect the Sex of Offspring," filed May 10, 1989.

DATES: Comments must be received by December 3, 1990.

ADDRESSES: Please send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 401, BARC-W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344-2786, (FTS) 344-2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to Animal Biotechnology Cambridge Ltd., an exclusive license to practice the said invention disclosed in U.S. Patent Application Serial No. 07/349,669, "Method to Preselect the Sex of Offspring," filed May 10, 1989. Notice of Availability was given in the Federal Register on July 26, 1989.

Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Animal Biotechnology Cambridge, Ltd., has submitted a complete and sufficient application for a license and has entered into a Cooperative Research and Development Agreement with the Agricultural Research Service providing for further development of the invention.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 and will conform to the intent of 15 U.S.C. 3710a. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C 209 and 37 CFR 404.7 and the intent 15 U.S.C. 3710a.

William H. Tallent,

Assistant Administrator.

[FR Doc. 90-23327 Filed 10-2-90; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

1990 Crop Sugar Beets and Sugarcane Price Support Loan Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice announces the national price support loan rates established by the Secretary of Agriculture with respect to the 1990 crop of domestically grown sugar beets and sugarcane and also sets forth the levels at which price support will be made available. The national (weighted average) loan rate for raw cane sugar will be 18.00 cents per pound. The national (weighted average) loan rate for refined beet sugar will be 21.93 cents per pound. Both of these rates will be further adjusted to reflect the processing location of the sugar offered as collateral for a price support loan (i.e., location differentials).

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: David Wolf, Price Support Branch, Cotton, Grain and Rice Price Support Division, ASCS, US Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447-4704. Copies of the Regulatory Impact Anlaysis are available from Jane K. Phillips, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This notice has been reviewed under USDA procedures established in accordance with the provision of Department Regulation 1512-1 and Executive Order 12291 and has been classified as "major" since this action may have an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

An Environmental Evaluation with respect to the price support loan program has been completed. It has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This notice sets forth determinations with respect to the following issues which are briefly described:

1. Loan Rates

Section 201(j) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985, provides that the Secretary of Agriculture is required to support the price of the 1986 through 1990 crops of sugar beets and sugarcane through nonrecourse loans. Section 201(j) further provides that the Secretary shall support the price of domestically grown sugarcane at such level as the Secretary determines appropriate, but not less than 18.00 cents per pound, raw value, and the price of domestically grown sugar beets at such level as the Secretary determines is fair and reasonable in relation to the loan level for sugarcane.

2. Location Differentials

The application of differentials to loan rates is common to most price support programs administered by CCC. The loan rates for sugar processed in specific regions will be based upon the transportation costs associated with moving sugar to the markets that are normal for those regions.

3. Minimum Price Support Levels

The minimum price support levels are the minimum amounts that must be paid to producers by a processor participating in the price support loan program. The minimum price support levels are set forth by regions. In general, these support levels would be reflected in contracts between individual processors and producers for the 1990 crop of sugar beets and sugarcane.

4. Determination of Average Quality or Recovery of Sugar Per Net/Gross Ton

The minimum price support levels may be adjusted for sugarcane or sugar beets of non-average quality. Accordingly, "average quality" is defined.

5. Cost Reduction Options

Section 1009(a) of the Food Security Act of 1985 provides that whenever the Secretary determines that an action authorized by that section will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small and medium-sized producers participating in such program, the Secretary shall take such action with respect to that commodity program. For the purposes of the sugar price support program, these actions include: (1) The Commercial purchases of commodities by the Secretary; and (2) the settlement of nonrecourse loans at an amount less than the total of the principal loan amount and accumulated interest, but not less than the principal amount, if such action will result in: (A) receipt of a portion rather than none of the accumulated interest, (B) avoidance of default of the loan, or (C) elimination of storage, handling, and carrying charges on the forfeited loan collateral.

These determinations are required to be made in accordance with the provisions of section 301(j) of the Agricultural Act of 1949 and section 1009 of the Food Security Act of 1985. Section 1017(b) of the Food Security Act of 1985 provides that the Secretary shall determine the rate of loans and price support levels for any of the 1986 through 1990 crops of commodities covered under the Agricultural Act of 1949 without regard to the requirements for notice and public participation in rulemaking prescribed in section 553 of title 5, United States Code, or in any directive of the Secretary.

Determination

1. Loan Rates

The national (weighted average) loan rate for the 1990 crop (as defined in 7 CFR 1435.302(k), the 1990 crop generally consists of sugar beets and sugarcane processed during the period July 1, 1990 through June 30, 1991) shall be 21.93 cents per pound for refined beet sugar and 18.00 cents per pound for cane sugar, raw value, incuding the cane sugar, raw value, contained in refined cane sugar, sugarcane syrup, and edible molasses. This is the minimum statutory loan rate for cane sugar. It has been determined that the loan rate established for sugar beets is fair and reasonable in relation to the loan level for sugarcane. In the case of refined or speciality sugar made from raw cane sugar, the rate shall be the appropriate regional rate applied to the quantity of the refined or specialty sugar converted to an equivalent quantity of cane sugar, raw value.

The 1990 loan rate for refined beet sugar reflects the value of the sugar based on the relationship between the weighted average of grower returns for sugar beets and the weighted average of grower returns for sugarcane, expressed on a cents per pound basis for refined beet sugar and raw cane sugar, for the immediately preceding 10-year period. After adjustment to reflect the proper price relationship, the estimated 1990 sugar beet crop fixed marketing costs (which are incurred by beet processors regardless of the disposition of the sugar) are added to make up the basic loan rate for refined beet sugar. This is the same method that was used for the 1988 crop.

2. Location Differentials

The loan rates determined for both raw cane sugar and refined beet sugar have been adjusted to reflect the processing location of the sugar offered as collateral for a price support loan. These adjustments (i.e., location differentials) have been calculated in the same manner as they have been in previous years. The loan rates for sugar processed in specific regions have been based upon the transportation costs associated with moving that sugar to the markets that are normal for those regions.

The processing regions and applicable 1990 crop regional loan rates for refined beet sugar shall be listed below:

Region number and description	Cents per pound of refined sugar
1. Michigan and Ohio	22.80
2. Minnesota and the eastern half of N. Dakota	22.06
3. Northeastern quarter of Colorado; Nebraska; and the southeastern quarter of Wyoming	21.85
4. Texas	22.40
5. Montana and the northeastern quarter of Wyoming and western half of N. Dakota	21.44
6. That part of Idaho east of the eastern boundary of Owyhee County and of such boundary extended northward	21.27
7. That part of Idaho west of the eastern boundary of Owyhee County and of such boundary extended northward; Oregon	21.27
8. California	22.21

Note: Fixed marketing expenses are considered in computation to insure equality with support prices for sugarcane.

The processing regions and applicable 1990 regional crop loan rates for cane sugar, raw value, shall be as listed below except that, for such sugar processed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States, the applicable loan rate shall be 17.75 cents per pound:

Region	Cents per pound raw sugar value
Florida	17.95
Louisiana	18.44
Texas	18.25
Hawaii	17.86
Puerto Rico	18.20

Note: Molasses is a by-product of sugar processing. It is not included in the calculation of the sugar loan rate.

3. Minimum Price Support Levels

Based on the established regional loan rates, the minimum price support levels for sugar beets and sugarcane of average quality processed in the indicated regions are as follows:

For 1990 crop sugar beets:

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Region (same as in previous beet sugar table)	Support price per net ton
1	[1] $30.00
2	[2] 32.01
3	33.77
4	36.54
5	33.70
6	33.96
7	33.96
8	35.04

[1] If (1) the sugar extracted by a processor from the 1990 crop yields, on the average, less than 223.17 pounds per net ton of sugar beets delivered and accepted by the processor, or (2) the processor's net return on by-products per net ton of sugar beets delivered and accepted by the processor averages less than $7.95 per ton, then the required minimum price support rate per ton of sugar beets will be adjusted. The adjusted rate will be determined by: (a) multiplying $0.2175 (the loan rate per pound less $.0105 considered as fixed marketing expenses) by the average pounds and hundredths of pounds of sugar extracted per ton, (b) adding thereto the net return to the processor on by-products per net ton of sugar beets delivered and accepted, and (c) multiplying the result by 53.1 percent.

[2] If (1) the sugar extracted by a processor from the 1990 crop yields, on the average, less than 256.17 pounds per net ton of sugar beets delivered and accepted by the processor, or (2) the processor's net return on by-products per net ton of sugar beets delivered and accepted by the processor averages less than $8.47 per net ton, then the required minimum price support rate per ton of sugar beets will be adjusted. The adjusted rate will be determined by: (a) multiplying $0.2101 (the loan rate per pound less $.0105 considered as fixed marketing expenses) by the average pounds and hundredths of pounds of sugar extracted per ton, (b) adding thereto the net return to the processor on by-products per net ton of sugar beets delivered and accepted, and (c) multiplying the results by 53.1 percent.

For 1990 crop sugarcane in Florida, $25.76 per ton.

For 1990 crop sugarcane in Louisiana, with a core sampler, $21.98 per gross ton. For 1990 crop sugarcane in Louisiana, without a core sampler, $23.70 per net ton.

For 1990 crop sugarcane in Texas, $19.57 per gross ton.

For 1990 crop sugarcane in Hawaii, $22.97 per net ton.

For 1990 crop sugarcane in Puerto Rico, $17.94 per gross ton.

The prices indicated above must be adjusted for sugar beets or sugarcane of nonaverage quality if the producer and processor have agreed upon a method for such adjustment in the terms and conditions of their marketing contract.

4. Average Quality Sugar Beets and Sugarcane

For 1990 crop sugar beets, "average quality" means sugar beets containing 16.09 percent sucrose.

For 1990 crop sugarcane processed in Florida, "average quality" means sugarcane containing 14.72 percent sucrose in normal juice.

For 1990 crop sugarcane processed in Louisiana with a core sampler, "average quality" means sugarcane which yields 192.71 pounds of raw sugar per gross ton. For 1990 crop sugarcane processed in Louisiana without a core sampler, "average quality" means sugarcane containing 13.37 percent sucrose in normal juice and 84.59 percent purity.

For 1990 crop sugarcane processed in Texas, "average quality" means sugarcane which yields 144.77 pounds of raw sugar per gross ton.

For 1990 crop sugarcane processed in Hawaii, "average quality" means sugarcane which yields 246.88 pounds of raw sugar per gross ton.

For 1990 crop sugarcane processed in Puerto Rico, "average quality" means sugarcane which yields 144.66 pounds of raw sugar per gross ton.

5. Cost Reduction Options

The decision not to implement any cost reduction options as outlined in the Supplementary Information above has been made. The Secretary reserves the right to initiate at a later date any action not previously included but authorized by Section 1009 of the Food Security Act of 1985.

Signed at Washington, DC, on September 27, 1990.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-23342 Filed 10-2-90; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

Final Environmental Impact Statement; Old Dominion Electric Cooperative

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), as lead Federal agency, is issuing a Final Environmental Impact Statement (FEIS) pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. section 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and REA Environmental Policy and Procedures (7 CFR part 1794). This Old Dominion Electric Cooperative (Old Dominion) FEIS is being issued in connection with potential REA financing assistance in connection with construction of 50 percent of the Clover Coal-Fired Generation Project. The Clover Project is proposed as a two-unit 786 MW (net) coal-fired generating station. The U.S. Army Corps of Engineers (Norfolk and Wilmington Districts), U.S. Department of the Interior (Fish and Wildlife Service), and the Virginia Council on the Environment have acted as cooperating agencies during the NEPA process.

FOR FURTHER INFORMATION CONTACT: Mr. Larry A. Belluzzo, Director, Northeast Area—Electric, Room 0241, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–1420 or Mr. Edward Tatum, Jr., Director of Transmission and Environment, Old Dominion Electric Cooperative, 4201 Dominion Boulevard, Glen Allen, Virginia 23060, telephone (804) 747–0592..

SUPPLEMENTARY INFORMATION: Old Dominion has requested financing assistance from REA in order to construct and operate its share of the Clover Project.

The Clover Project would be located in northeastern Halifax County near the town of Clover. The 713 hectare (1,760 acre) site is adjacent to the Roanoke (Staunton) River. Major components include two 393 MW pulverized coal-fired units, mechanical draft cooling towers, wet limestone flue gas desulfurization system, 32.4 hectare (80 acre) supplemental water storage reservoir, 121 hectare (300 acre) solid waste landfill, and two 5 kilometer (3 mile), 230 kv transmission lines. Coal would be delivered to the site by railroad.

Plant facilities that will be located within the 100-year floodplain of the Roanoke River include the intake and discharge structures and intake pumphouse. Less than 0.4 hectare (1 acre) of 100-year floodplain will be impacted. Activities associated with construction and operation of the project will impact approximately 7.4 hectares (18.4 acres) of wetlands.

Alternatives examined to the proposed project included no action, conservation and land management, purchased power, joint ventures with other utilities and independent power producers, alternative generation technologies, and alternative sites. The other two finalist sites evaluated are Passapatanzy in King George County and Sutherland in Dinwiddie County. Units 1 and 2 are scheduled for commercial operation in 1994 and 1995 respectively. Old Dominion has negotiated an agreement with Virginia Electric and Power Company by which each party will have 50 percent undivided ownership interest in the total Clover Project.

Copies of the FEIS may be examined or obtained from REA or Old Dominion during regular business hours at the addresses provided in this notice.

Copies have been sent to the Federal, State, and local agencies and all recipients of the DEIS. This document has also been sent to the following libraries:

Charlotte County Free Library, Charlotte Courthouse, Virginia 23923.
Appomattox Regional Library, Dinwiddie Station, P.O. Box 880, Dinwiddie, Virginia 23841.
McKenney Public Library, P.O. Box 308, McKenney, Virginia 23872.
Rohoic Public Library, P.O. Box 630–B, Rohoic Station, Route 4, Petersburg, Virginia 23803.
L.E. Smoot Memorial Library, Route 3, King George, Virginia 22485.
Halifax County Public Library, P.O. Box 236, Halifax, Virginia 24558.
Southside Regional Library, Clarksville Branch, P.O. Box 1145, Clarksville, Virginia 23927.
Southside Regional Library, Boydton Branch, P.O. Box 10—Washington Street, Boydton, Virginia 23917.
Southside Regional Library, Butler Memorial Branch, 315 Marshall Street, Chase City, Virginia 23924.
South Boston Public Library, 309 Broad Street, South Boston, Virginia 24592.
Central Rappahannock Library, 1201 Caroline Street, Fredericsburg, Virginia 22401.

Persons, organizations, and agencies wishing to comment should do so in writing within 30 days to REA at the address provided in this notice. The 30-day period will begin on the date of the Environmental Protection Agency's notice of availability in the Federal Register or the date of the notices published for Old Dominion in newspapers of general circulation in the proposed project area, whichever comes later.

All comments received within the 30-day period will be considered in the formulation of final determinations regarding the approval of REA funding of the project. These final determinations will be made in REA's Record of Decision for this project. Agencies, organizations, and individuals who wish to be notified when the Record of Decision is available are requested to notify REA in writing at the address given in this notice of such interest.

Final REA action, pursuant to the proposed Old Dominion project, will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in NEPA and requirements of other relevant environmental statutes, regulations, and Executive Orders have been met.

Dated: September 21, 1990.

George E. Pratt,

Deputy Administrator.

[FR Doc. 90-23304 Filed 10-2-90; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Minority Business Development Agency.

Title: 1987 Characteristics of Business Owners Survey.

Form Number: CBO–1 OMB Control Number: N/A.

Type of Request: Extension of the expiration date.

Burden: 175,000 responses; 43,750 reporting hours. Average hours per response is one quarter hour.

Needs and Uses: The information is used to provide a framework for assessing and directing existing Government programs and policies designed to promote the business activities of minorities and women and for planning and managing future programs and research efforts.

Affected Public: Individuals, and both small and large business.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Gary Waxman, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20530.

Dated: September 27, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-23302 Filed 10-2-90; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held October 18, 1990, 10:30 a.m., Herbert C. Hoover Building, room 1629, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda: General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 12, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4059.

Dated: September 28, 1990.

Betty A. Farrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-2340 Filed 10-2-90; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 38-90]

Proposed Foreign-Trade Zone—Fort Wayne, IN; Application and Public Hearing, Temporary Postponement of Public Hearing

The public hearing for the above case (55 FR 38373, 9/18/90), involving a proposed foreign-trade zone in Fort Wayne, Indiana, that was scheduled for October 12, 1990, is temporarily postponed. A further notice will announce the new date for hearing.

The application is available for public inspection at:

Department of Economic Development, 840 City-County Building, One Main Street, Fort Wayne, Indiana 46802.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., room 4213, Washington, DC 20230.

Dated: September 28, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-23363 Filed 10-2-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-403-801]

Preliminary Determination of Sales at Less Than Fair Value; Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that imports of fresh and chilled Atlantic Salmon (salmon) from Norway are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all salmon from Norway, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by December 11, 1990.

EFFECTIVE DATES: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Edward Easton or Tracey Oakes, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769, 377-1778, or 377-3174, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that imports of salmon from Norway are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the notice of initiation on March 28, 1990 (55 FR 11418), the following events have occurred. On April 25, 1990, the ITC published its determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Norway of fresh and chilled Atlantic salmon (55 FR 17507).

On April 30, 1990, the Department presented its questionnaires to counsel for eight exporters that accounted for more than 60% of the imports of Norwegian salmon into the U.S. during the period of investigation: Sea Star International A/S, Skaarfish Floro Fryseri A/S, Fremstad Group A/S, Chr. Bjelland Seafoods A/S, R. Domstein & Co., Hallvard Leroy A/S, Saga A/S, and Salmonor A/S. In addition, the Department submitted questionnaires to counsel for three Norwegian organizations: Norske Fiskeoppdretternes Forening, Norske Fiskeoppdretternes Salgslag, and Norges Ferskfiskomseinings Landsforening. On May 10, 1990, the Department received responses to Section A of the questionnaire from the eight exporters and complete responses from the Norwegian organizations. On July 27, 1990, the Department received responses to sections B & C of the questionnaire from the eight exporters.

On August 3, 1990, petitioner alleged that sales below cost of production were being made. On August 21, 1990, the Department delivered cost of production questionnaires to 11 fishfarmers who reportedly supplied the eight exporters with the subject merchandise during the period of investigation. Responses to the cost questionnaires, which are due September 28, 1990, will be analyzed prior to making the final determination.

On or about September 11, 1990, respondents submitted revised computer tapes in response to our deficiency questionnaires. Those tapes were formatted incorrectly, and the respondents again submitted revised computer tapes on September 13, 1990. Those computer tapes were used in the analysis for all respondents except Hallvard Leroy, whose tape was again formatted incorrectly. Respondent Hallvard Leroy submitted a new computer tape on September 21, 1990, which was not received in time to be used in the preliminary determination, but which may be used in the final determination. For the purposes of this preliminary determination, we used the first computer tape submitted by Hallvard Leroy adjusted for values submitted in its deficiency response.

Scope of Investigation

The product covered by this investigation is the species Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under the following Harmonized Tariff Schedule (HTS) subheading: 0302.12.00.02.9.

Period of Investigation

The period of investigation is September 1, 1989 through February 28, 1990.

Such or Similar Comparisons

For the purpose of this investigation we have determined that all salmon comprises a single category of such or similar merchandise. Product comparisons were made on the basis of the following criteria: (1) Whole or gutted; (2) grade of salmon (superior, ordinary, or production); and (3) weight (kg.).

Fair Value Comparisons

To determine whether sales of salmon from Norway to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For all companies, we based the United States price on purchase price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States.

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, brokerage and handling, foreign inland freight, export credit insurance, discounts, inland/marine insurance and Norwegian export duties, in accordance with section 772(d)(2) of the Act.

Foreign Market Value (FMV)

In order to determine whether there were sufficient sales of salmon in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1) of the Act. Only one of the respondents, Hallvard Leroy, had a viable home market. For the other seven respondents, the volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, for these seven companies, we determined that home market sales did not constitute a viable basis for calculating FMV.

In accordance with § 353.49(b) of the Department's regulations, for the seven companies with non-viable home markets, we chose the third country market with the most similar merchandise to that sold in the United States and the greatest volume of sales. For six of the seven companies, the largest third country market also had identical comparisons to subject merchandise sold in the United States. For one company, Chr. Bjelland, we chose the third country market with the most identical comparisons, West Germany, over the country with the largest volume of sales, France.

We made deductions, where appropriate, for foreign inland freight, brokerage and handling, inland/marine insurance, credit, Norwegian export duties, export credit insurance, third country import duties, export licensing fees, warranties, discounts and rebates.

A. Salmonor A/S

United States Price

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland/marine insurance, and Norwegian export duties, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

We determined that sales to The Netherlands were the most appropriate basis for calculating FMV. We calculated FMV based on the c.i.f. prices to unrelated customers in The Netherlands. We made deductions, where appropriate, for inland freight, inland insurance, Norwegian export duties, export credit insurance, and rebates. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for differences in credit and warranty expenses.

B. Sea Star International

United States Price

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland/marine insurance, and Norwegian export duties, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

We determined that sales to France were the most appropriate basis for calculating FMV. We calculated FMV based on the C.i.f. prices to unrelated customers in France. We made deductions, where appropriate, for inland freight, inland insurance, Norwegian export duties, export credit insurance, and handling. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for the difference in credit expenses. Since commissions were included in the weighted average FMV calculation but were not paid on U.S. sales, we allowed an offset amounting to the lesser of indirect selling expenses incurred in the U.S. market or the average third country commission, in accordance with § 353.56(b) of the Department's regulations.

C. Skaarfish Mowi A/S

United States Price

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland/marine insurance, discounts, foreign inland freight, and Norwegian export duties, in accordance with section 772(d)(2) of the Act. We recalculated export duties based on f.o.b. prices.

Foreign Market Value

We determined that sales to France were the most appropriate basis for calculating FMV. We calculated FMV based on c.i.f., duty paid prices to unrelated purchasers in France. We made deductions, where appropriate, for foreign inland freight, handling, inland insurance, Norwegian export duties and French import duties. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for differences in credit and warranty expenses. Where commissions were paid on U.S. sales and not in the third country market, we allowed an offset amounting to the lesser of the average indirect selling expenses incurred in the third country or the U.S. commission, in accordance with § 353.56(b) of the Department's regulations.

D. Fremstad Group A/S

United States Price

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland/marine insurance, Norwegian export duties and discounts, in accordance with section 772(d)(2) of the Act. We recalculated export duties based on f.o.b. prices.

Foreign Market Value

We determined that sales to West Germany were the most appropriate basis for calculating FMV. We calculated FMV based on c.i.f. prices to unrelated purchasers in West Germany. We made deductions, where appropriate, for inland freight and brokerage, inland insurance, Norwegian export duties, and discounts. We recalculated export duties based on f.o.b. prices. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for differences in credit and warranty expenses.

R. Domstein and Co.

United States Price

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland/marine insurance, discounts, foreign inland freight, foreign brokerage and handling, inland/marine insurance, credit, Norwegian export duties, export credit insurance, third country import duties, export licensing fees, warranties, discounts and rebates.

Foreign Market Value

We determined that sales to France were the most appropriate basis for calculating FMV. We calculated FMV based on c.i.f. prices to unrelated purchasers in France. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, inland/marine insurance, credit, Norwegian export duties, export credit insurance, third country import duties, export licensing fees, warranties, discounts and rebates. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for differences in credit and warranty expenses. Where commissions were paid on U.S. sales and not in the third country, we allowed an offset amounting to the lesser of the average indirect selling expenses incurred in the third country, or the U.S. commission, in accordance with § 353.56(b) of the Department's regulations.

H. Hallvard Leroy A/S

United States Price

We calculated purchase price based

Manufacturer/Producer/Exporter	Margin percentage
Salmonor A/S	1.90
Sea Star International	1.13
Skaarfish Mowi A/S	1.68
Fremstad Group A/S	2.53
R. Domstein and Co.	4.76
Saga A/S	4.33

attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and § 353.15 of the

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

September 27, 1990.

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R. Domstein and Co.

United States Price

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland/marine insurance, discounts, foreign inland freight, brokerage and handling, and Norwegian export duties, in accordance with section 772(d)(2) of the Act. We recalculated export duties based on f.o.b. prices.

Foreign Market Value

We determined that sales to France were the most appropriate basis for calculating FMV. We calculated FMV based on c.i.f. prices to unrelated purchasers in France. We made deductions, where appropriate, for foreign inland freight, inland/marine insurance and Norwegian export duties. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments for differences in credit and warranty expenses. On sales where commissions were included in the weighted average FMV, we deducted third country commissions and added U.S. commissions in accordance with § 353.56(b) of the Department's regulations. Despite our request in the questionnaire and the deficiency letter, respondent failed to provide information on U.S. indirect expenses. Therefore, if commissions were included in the weighted average FMV calculation and were not paid on the corresponding U.S. sales, then we deducted the average third country commission from FMV and added the average third country commission as the offset as the best information available (BIA). If commissions were paid on the U.S. sales and were not included in the sales used in calculating the weighted average FMV as BIA, then we added the U.S. Commission to FMV and made no offset, because no indirect selling expenses were reported by Domstein.

F. Saga A/S

United States Price

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland/marine insurance, discounts, foreign inland freight, brokerage and handling, and Norwegian export duties in accordance with section 772(d)(2) of the Act. We recalculated export duties based on f.o.b. prices.

Foreign Market Value

We determined that sales to France were the most appropriate basis for calculating FMV. We calculated FMV based on c.i.f. prices to unrelated purchasers in France. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, inland/marine insurance, Norwegian export duties, and export licensing fees. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for differences in credit and warranty expenses. We recalculated reported credit expenses using Saga's claimed interest rate and the average number of days from shipment date to payment date. On sales where discounts were granted, we deducted the discounts from the gross price before recalculating credit. Since commissions were included in the weighted average FMV calculation and were not paid on U.S. sales, we allowed an offset amounting to the lesser of U.S. indirect selling expenses or the average third country commission, in accordance with 353.56(b) of the Department's regulations.

G. Chr. Bjelland

United States Price

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland/marine insurance, Norwegian export duties and export credit insurance, in accordance with section 772(d)(2) of the Act. We recalculated export duties based on f.o.b. prices.

Foreign Market Value

We determined that sales to West Germany were the most appropriate basis for calculating FMV. We calculated FMV based on the c.i.f. prices to unrelated customers in West Germany. We made deductions, where appropriate, for inland freight, inland insurance, and Norwegian export duties. We recalculated export duties based on f.o.b. prices. Because all comparisons involved purchase price sales, we made circumstances of sale adjustments, where appropriate, for differences in credit expenses and export credit insurance. We recalculated U.S. credit expense using Bjelland's domestic interest rate for sales to West Germany to impute credit, consistent with Departmental practice. Where commissions were paid on U.S. sales and not in the third country, we allowed an offset amounting to the lesser of the average indirect selling expenses incurred in the third country, or the U.S. commission, in accordance with § 353.56(b) of the Department's regulations.

H. Hallvard Leroy A/S

United States Price

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland/marine insurance, and Norwegian export duties and export licensing fees, in accordance with section 772(d)(2) of the Act. We recalculated the export duty based on f.o.b. prices.

Foreign Market Value

Since Hallvard had a viable home market, we calculated FMV based on c.i.f. and f.o.b. prices to unrelated customers in Norway. We made deductions, where appropriate, for inland freight, and inland insurance. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for the difference in credit expenses which we recalculated using the actual period between shipment date and payment date.

Currency Conversion

When calculating foreign market value, we made currency conversions in accordance with § 353.60 of our regulations (19 CFR 353.60), using the exchange rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of salmon from Norway except those from Sea Star International, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs service shall require a cash deposit or posting of a bond, except for Sea Star International, equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Margin percentage
Salmonor A/S	1.90
Sea Star International	[1].13
Skaarfish Mowi A/S	1.66
Fremstad Group A/S	2.53
R. Domstein and Co.	4.75
Saga A/S	4.33
Chr. Bjelland	4.90
Hallvard Leroy A/S	3.11
All Others	2.96

[1] DeMinimis.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring or threaten material injury to the U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

In accordance with section 353.38 of the Department's regulations (19 CFR 353.38), case briefs or other written comments in at least ten copies must be submitted no later than November 13, 1990, and rebuttal briefs no later than November 15, 1990. In accordance with § 353.38(b) of the Department's regulations (19 CFR 353.38(b)), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on November 19, 1990, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and § 353.15 of the regulations (19 CFR 353.15).

Dated: September 28, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23364 Filed 10-2-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council's Swordfish Stock Assessment Review Panel, consisting of one South Atlantic Council staff member, one outside scientist appointed by each of the five Regional Fishery Management Councils involved in the development of the Swordfish Fishery Management Plan, and two National Marine Fisheries Service (NMFS) scientists appointed by the NMFS Southeast Fisheries Center (SEFC), will hold a public meeting on October 9-10, 1990, at the NMFS SEFC in Miami, Florida. The meeting will begin at 1 p.m., on October 9 and will adjourn on October 10 at noon. The Panel will determine the appropriate values for allowable biological catch (ABC) and total allowable catch (TAC), based on the swordfish stock assessment recently completed by the International Commission for the Conservation of Atlantic Tuna (ICCAT). The Panel also will estimate the swordfish bycatch of the tuna fishery for 1990.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone; (803) 571-4366.

Dated: September 27, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23361Filed 10-2-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

September 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATES: October 4, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 347/348 is being reduced to account for carryforward used during the previous agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48293, published on November 22, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 27, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of November 18, 1989 issued to you by the Chairman, Committee for the implementation of Textile Agreements. That directive

concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on October 4, 1990, you are

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-23359 Filed 10-2-90; 8:45 am]

BILLING CODE 3510-DR-M

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

The Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (1990) presents the Harmonized Tariff Schedule numbers under each of the

Category	Changes in the 1990 Correlation
	Add 5112.30.3000—Woven fabrics of combed wool or of combed fine animal hair, mixed mainly or solely with man-made staple fibers.
	Delete 5112.90.6010.
	Add 5112.90.6011—Woven fabrics of combed wool or combed fine animal hair, containing 30% or more by weight of silk or silk waste, valued over $33/kg, mixed mainly or solely with cotton.
	Delete 5112.90.6090.
	Add 5112.90.6091—Woven fabrics of combed wool or combed fine animal hair, other than containing 30% or more by weight of silk or silk waste, valued over $33/kg, other than mixed mainly or solely with cotton.

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concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on October 4, 1990, you are directed to reduce to 364,914 dozen [1] the limit for Categories 347/348, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1989.

Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 90-23359 Filed 10-2-90; 8:45 am]
BILLING CODE 3510-DR-M

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States: Changes to the 1990 Correlation

September 28, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1990 Correlation.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

The Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (1990) presents the Harmonized Tariff Schedule numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The attached list includes some Harmonized Tariff Schedule numbers that have been published in the second supplement of the Harmonized Tariff Schedule of the United States (1990). The Correlation should be amended to reflect the changes indicated below:

Category	Changes in the 1990 Correlation
331	Delete 6216.00.3810. Add 6216.00.3811—Gloves, mittens and mitts, other than impregnated, coated or covered with plastics or rubber, of cotton, other than ice hockey and field hockey gloves and ski or snowmobile gloves, without fourchettes. Delete 6216.00.3820. Add 6216.00.3821—Gloves, mittens and mitts, other than impregnated, coated or covered with plastics or rubber, of cotton, other than ice hockey, field hockey and ski or snowmobile gloves, with fourchettes.
369	Delete 6406.10.7560 Add 6406.10.7700—Parts of footwear; removable insoles, heel cushions and similar articles, etc., of cotton, other than uppers of which less than 50% of the external surface area is textile materials.
410	Delete 5111.11.1000. Add 5111.11.3000—Woven fabrics of carded wool or carded fine animal hair, containing 85% or more by weight of wool or of fine animal hair, of a weight not exceeding 300 g/m2, hand-woven, with a loom width of less than 76 cm. Delete 5111.11.6030. Add 5111.11.7030—Woven fabrics of carded wool or of carded fine animal hair, other than hand-woven, with a loom width of less than 76 cm, wholly or in part of fine animal hair. Delete 5111.11.6060. Add 5111.11.7060—Woven fabrics of carded wool or of carded fine animal hair, other than hand-woven, with a loom width of less than 76 cm, other than wholly or in part of fine animal hair. Delete 5111.20.6000 Add 5111.20.6001—Woven fabrics of carded wool or carded fine animal hair, mixed mainly or solely with man-made filaments, other than containing 85% or more by weight of wool or of fine animal hair. Delete 5111.30.6000. Add 5111.30.6001—Woven fabrics of carded wool or of carded fine animal hair other than containing 85% or more by weight of wool or of fine animal hair, mixed mainly or solely with man-made staple fibers. Delete 5111.90.6000. Add 5111.90.7000—Woven fabrics of carded wool or of carded fine animal hair containing 30% or more by weight of silk or silk waste, valued over $33/kg. Delete 5112.11.0030. Add 5112.11.2030—Woven fabrics of combed wool or of combed fine animal hair containing 85% or more by weight of wool or of fine animal hair, of a weight not exceeding 200 g/m2, wholly or in part of fine animal hair. Delete 5112.11.0060. Add 5112.11.2060—Woven fabrics of combed wool or of combed fine animal hair, containing 85% or more by weight of wool or of fine animal hair, of a weight not exceeding 200 g/m2, wholly or in part of fine animal hair. Delete 5112.19.5010. Add 5112.19.5011—Woven fabrics of combed wool or of combed fine animal hair, containing 85% or more by weight of wool or of fine animal hair, other than of a weight not exceeding 200 g/m2, wholly or in part of fine animal hair, weighing not more than 270 g/m2. Delete 5112.19.5020. Add 5112.19.5021—Woven fabrics of combed wool or of fine animal hair, containing 85% or more by weight of wool or of fine animal hair, wholly or in part of fine animal hair, weighing not more than 270 g/m2 but not more than 340 g/m2. Delete 5112.19.5040. Add 5112.19.5041—Woven fabrics of combed wool or of fine animal hair, other than wholly or in part of fine animal hair, containing 85% or more by weight of wool or fine animal hair, weighing more than 270 g/m2. Delete 5112.19.5050. Add 5112.19.5051—Woven fabrics of combed wool or of fine animal hair, other than wholly or in part of fine animal hair, containing 85% or more by weight of wool or of fine animal hair, weighing more than 270 g/m2 but not more than 340 g/m2. Delete 5112.20.6000. Add 5112.20.3000—Other woven fabrics of combed wool or of combed fine animal hair mixed mainly or solely with man-made filaments. Delete 5112.30.0000.

Category	Changes in the 1990 Correlation
	Add 5112.30.3000—Woven fabrics of combed wool or of combed fine animal hair, mixed mainly or solely with man-made staple fibers. Delete 5112.90.6010. Add 5112.90.6011—Woven fabrics of combed wool or combed fine animal hair, containing 30% or more by weight of silk or silk waste, valued over $33/kg, mixed mainly or solely with cotton. Delete 5112.90.6090. Add 5112.90.6091—Woven fabrics of combed wool or combed fine animal hair, other than containing 30% or more by weight of silk or silk waste, valued over $33/kg, other than mixed mainly or solely with cotton.
414	Add 5111.20.4000—Woven fabrics of carded wool or of fine animal hair, mixed mainly or solely with man-made filaments, tapestry fabrics and upholstery fabrics of a weight not exceeding 140 g/m2. Add 5111.11.2000—Woven fabrics of carded wool or of carded fine animal hair, containing 85% or more by weight of wool or of fine animal hair, of a weight not exceeding 300 g/m2, tapestry fabrics and upholstery fabrics of a weight not exceeding 140 g/m2. Add 5111.30.1000—Woven fabrics of carded wool or of carded fine animal hair, mixed mainly or solely with man-made staple fibers, tapestry fabrics and upholstery fabrics of a weight not exceeding 140 g/m2. Add 5111.90.4800—Woven fabrics of carded wool or of carded fine animal hair, other than containing 30% or more by weight of silk or silk waste, and other than being valued over $33/kg, tapestry fabrics and upholstery fabrics of a weight exceeding 300 g/m2. Add 5111.90.5000—Woven fabrics of carded wool or of carded fine animal hair, other than containing 30% or more by weight of silk or silk waste and other than being valued over $33/kg, tapestry fabrics and upholstery fabrics of a weight not exceeding 140 g/m2. Add 5112.11.1800—Woven fabrics of combed wool or of combed fine animal hair, containing 85% or more by weight of wool or of fine animal hair, of a weight not exceeding 200 g/m2. Tapestry fabrics and upholstery fabrics of a weight not exceeding 140 g/m2. Delete 5112.19.1000. Add 5112.19.1001—Woven fabrics of combed wool or of combed fine animal hair, containing 85% or more by weight of wool or fine animal hair, tapestry fabrics and upholstery fabrics of a weight not exceeding 300 g/m2. Add 5112.20.1000—Other woven fabrics of combed wool or of combed fine animal hair, mixed mainly or solely with man-made filaments, tapestry fabrics and upholstery fabrics of a weight exceeding 300 g/m2. Add 5112.20.2000—Other woven fabrics of combed wool or of combed fine animal hair, mixed mainly or solely with man-made filaments, tapestry fabrics and upholstery fabrics of a weight exceeding 140 g/m2. Delete 5112.90.0500. Add 5112.30.1800—Woven fabrics of combed wool or of combed fine animal hair, mixed mainly or solely with man-made staple fibers, tapestry fabrics and upholstery fabrics of a weight exceeding 300 g/m2. Add 5112.30.2000—Woven fabrics of combed wool or of combed fine animal hair mixed mainly or solely with man-made staple fibers, tapestry of a weight not exceeding 140 g/m2. Add 5112.90.4000—Woven fabrics of combed wool or of combed fine animal hair, other than mixed mainly or solely with man-made staple fibers, tapestry fabrics and upholstery fabrics of a weight exceeding 300 g/m2. Add 5112.90.5000—Woven fabrics of combed wool or of combed fine animal hair, other than mixed mainly or solely with man-made staple fibers, tapestry fabrics and upholstery fabrics of a weight not exceeding 140 g/m2.
459	Delete 5803.90.1000. Add 5803.90.1100—Gauze, other than narrow fabrics of heading 5806, of other textile materials, of wool or fine animal hair, tapestry fabrics and upholstery fabrics of a weight not exceeding 140 g/m2. Add 5803.90.1200—Gauze, other than narrow fabrics of heading 5806, of other textile materials, of wool or fine animal hair, other than tapestry fabrics and upholstery fabrics of a weight not exceeding 140 g/m2. Delete 6406.10.8020.
631	Add 6406.10.9530—Parts of footwear; removable insoles, heel cushions and similar articles, uppers and parts thereof, other than stiffeners of textile materials, other than cotton, of wool or fine animal hair. Delete 6116.93.2010. Add 6116.93.2011—Gloves, mittens and mitts, knitted or crocheted, other than impregnated, coated or covered of plastics or rubber, of synthetic fibers, other than containing 23% or more by weight of wool or fine animal hair, without fourchettes. Delete 6116.93.2020. Add 6116.93.2021—Gloves, mittens and mitts, knitted or crocheted, other than impregnated, coated or covered with plastics or rubber, of synthetic fibers, other than containing 23% or more by weight of wool or fine animal hair, with fourchettes. Delete 6116.99.6020. Add 6116.99.6021—Gloves, mittens and mitts, knitted or crocheted, other than impregnated, coated or covered with plastics or rubber, of other textile materials, of artificial fibers, other than ice hockey, field hockey, ski or snowmobile gloves, mittens and mitts, without fourchette. Delete 6116.99.6040. Add 6116.99.6041—Gloves, mittens and mitts, knitted or crocheted, other than impregnated, coated or covered with plastics or rubber, of other textile materials, of artificial fibers, other than ice hockey, field hockey, ski or snowmobile gloves, mittens and mitts, with fourchette.
669	Delete 6406.10.8040. Add 6406.10.9040—Parts of footwear; removable insoles, heel cushions and similar articles, uppers and parts thereof other than stiffeners, of textile materials other than cotton, of man-made fibers.
845	Delete 5006.00.0090. Add 5006.00.9900—Silk yarn and yarn spun from silk waste, put up for retail sale; silkworm gut; other than containing 85% or more by weight of silk or silk waste.
899	Delete 6406.10.8060. Add 6406.10.9060—Parts of footwear; removable insoles, heel cushions and similar articles, uppers and parts thereof, other than stiffeners, of textile materials other than cotton, wool or fine animal hair, or man-made fibers.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 90-23360 Filed 10-2-90; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 90-79-NG]

Corpus Christi Gas Marketing, Inc.; Application to Export Natural Gas to Mexico

gas to Mexico for spot market sales both for its own account as well as for the accounts of others. The gas to be exported will be supplied by producers primarily in the state of Texas. The Mexican purchasers of the gas are expected to include, but are not limited to, commercial and industrial end-users and local distribution companies. CCGM may file a protest, motion to intervene or notices of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or

this notice, in accordance with 10 CFR 590.318.

A copy of CCGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30

pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of System Supply for End Users, Inc. (SSEU), under Columbia Gulf's blanket certificate issued in Docket No. CP86-239-000 pursuant to section 7 of

September 24, 1990.

Take notice that Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251, filed in the above referenced dockets, prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 90-79-NG]

Corpus Christi Gas Marketing, Inc.; Application to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 10, 1990, of an application filed by Corpus Christi Gas Marketing, Inc. (CCGM) requesting blanket authorization to export from the United States to Mexico up to 145 Bcf of natural gas over a two-year period commencing with the date of first delivery. CCGM intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported gas. CCGM states that it will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 2, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Xavier Puslowski, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4708.
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 3E–042, FE–50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: CCGM is a Texas corporation with its principal place of business in Corpus Christi, Texas. CCGM intends to export natural gas to Mexico for spot market sales both for its own account as well as for the accounts of others. The gas to be exported will be supplied by producers primarily in the state of Texas. The Mexican purchasers of the gas are expected to include, but are not limited to, commercial and industrial end-users and local distribution companies. CCGM states that all export sales will result from arms-length negotiations and that prices will be determined by market conditions.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any point of exit on the international border where existing pipeline facilities are located.

CCGM requests that an authorization be granted on an expedited basis. Except in emergency circumstances, 10 CFR 590.205(a) of FE's administrative procedures provides for a public comment period of not less than 30 days. CCGM does not indicate any emergency circumstances that would justify expedited consideration. Accordingly, a decision on the application will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notices of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CCGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 27, 1990.

Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23407 Filed 10-2-90; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-2255-000, et al.]

Columbia Gulf Transmission Co. et al.; National Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gulf Transmission Co.

[Docket No. CP90-2255-000]

September 24, 1990.

Take notice that on September 19, 1990, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP90-2255-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of System Supply for End Users, Inc. (SSEU), under Columbia Gulf's blanket certificate issued in Docket No. CP86-239-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to transport, on an interruptible basis, up to 30,000 MMBtu per day for SSEU. Columbia Gulf states that construction of facilities would not be required to provide the proposed service.

Columbia Gulf further states that the maximum day, average day, and annual transportation volumes would be approximately 30,000 MMBtu, 10,000 MMBtu and 3,650,000 MMBtu respectively.

Columbia Gulf advises that service under § 284.223(a) commenced July 1, 1990, as reported in Docket No. ST90-3824-000.

Comment date: November 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

Florida Gas Transmission Co.

[Docket No. CP90-2253-000 [1], Docket No. CP90-2254-000]

[1] These prior notice requests are not consolidated.

Take notice that Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251, filed in the above referenced dockets, prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by FGT and is included in the attached appendix.

FGT also states that each would provide the service for each shipper under an executed transportation agreement, and that FGT would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Applicant	Shipper name	Peak Day,[1] Avg., Annual	Points of—		Start-up date, rate schedule, service type	Related dockets[2]
				Receipt	Delivery		
CP90-2253-000	FGT	Nortech Energy Corp	25,000 18,750 9,125,000	Various	Various	8-2-90, ITS-1, Interruptible.	CP89-555-001, ST90-4551-000
CP90-2254-000	FGT	Citrus Industrial Sales Company.	400,000 300,000 146,000,000	Various	Various	8-3-90, ITS-1, Interruptible.	CP89-555-001, ST90-4550-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Natural Gas Pipeline Co. of America

[Docket No. CP90-2200-000]

September 24, 1990.

Take notice that on September 14, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-2200-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon certain facilities in Harrison County, Texas under Natural's blanket certificate issued in Docket No. CP82-402-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the the request which is on file with the Commission and open to public inspection.

By order issued January 12, 1976, in consolidated Docket Nos. CP74-286-000 and CP75-198-000, the Commission issued to Natural a limited term-certificate of public convenience and necessity, with pre-granted abandonment, authorizing the sale of gas to Arkansas Louisiana Gas Company (Arkla) under Rate Schedule X-65 and another certificate of public convenience and necessity authorizing the construction and operation of facilities necessary to effectuate the sale. Natural advises that sales under the certificate authority terminated in September of 1977 and that the Commission was notified to terminate its Rate Schedule X-65 on September 15,

1977. Because it has no alternative use for the facilities authorized to effectuate the subject sale, Natural now seeks to abandon them in place. Natural states that the facilities include 1,441 feet of 4½ inch lateral pipeline, one 3-inch measuring station and one 3-inch side tap, all located in Harrison County, Texas. Natural estimates that the

delivery point to B&F Operating Company (B&F), a natural gas producer, as a sales tap to provide jurisdictional services, including transportation services pursuant to subpart G of part 284 of the Commission Regulations. Natural explains that it is currently providing interruptible transportation

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, and United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the

Docket No. (Date filed)	Shipper name (Type)	Peak day, average day, annual MMBtu	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start-up date
CP90-2219-000 (9-17-90)	Elf Aquitaine, Inc. (Marketer).	30,000 10,000 10,950	OLA, LA	LA	7-14-89, ITS-1, 2, Interruptible.	ST90-4367, 8-14-90
CP90-2220-000 (9-17-90)	Shell Gas Trading Company.	55,000 20,000 7,300,000	OLA, LA	LA	5-26-87, ITS-1, 2, Interruptible.	ST90-4477, 8-14-90

1977. Because it has no alternative use for the facilities authorized to effectuate the subject sale, Natural now seeks to abandon them in place. Natural states that the facilities include 1,441 feet of 4½ inch lateral pipeline, one 3-inch measuring station and one 3-inch side tap, all located in Harrison County, Texas. Natural estimates that the proposed abandonment would cost $7,000. Lastly, Natural asserts that none of its customers would be affected by this proposal.

Comment date: November 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

Natural Gas Pipeline Company of America

[Docket No. CP90-2201-000]

September 24, 1990.

Take notice that on September 14, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-2201-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authority to operate an existing delivery point, and associated delivery facilities, as a sales tap under Natural's blanket certificate issued in Docket No. CP82-402-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the the request which is on file with the Commission and open to public inspection.

Natural states that it seeks authorization to operate an existing delivery point to B&F Operating Company (B&F), a natural gas producer, as a sales tap to provide jurisdictional services, including transportation services pursuant to subpart G of part 284 of the Commission Regulations. Natural explains that it is currently providing interruptible transportation services at this delivery point under Rate Schedule ITS, pursuant to subpart B of part 284 of the Commission's Regulations and that it has received a request to provide firm transportation at this delivery point under Rate Schedule FTS, pursuant to subpart G of part 284 of the Commission's Regulation. Natural explains further that the instant authorization is sought so that it can provide a requested self-implementing sales service at this delivery point under its Rate Schedule IS-1. Natural asserts that it has sufficient capacity to provide this service at the delivery point interconnecting with B&F without detriment or disadvantage to Natural's peak day and annual delivery capability. Lastly, Natural advises that, based on typical operating pressures, the maximum daily delivery capacity of the delivery point is 2,000 Mcf.

Comment date: November 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

Columbia Gulf Transmission Co., Columbia Gulf Transmission Co., United Gas Pipe Line Co.

[Docket No. CP90-2219-000, Docket No. CP90-2220-000, Docket No. CP90-2222-000]

September 24, 1990.

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, and United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-239-000 and Docket No. CP88-6-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (Date filed)	Shipper name (Type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start-up date
CP90-2219-000 (9-17-90)	Elf Aquitaine, Inc. (Marketer).	30,000 10,000 10,950	OLA, LA	LA	7-14-89, ITS-1, 2, Interruptible.	ST90-4367, 8-14-90
CP90-2220-000 (9-17-90)	Shell Gas Trading Company (Marketer).	55,000 20,000 20,075,000	OLA, LA	LA	5-25-87, ITS-1, 2, Interruptible.	ST90-4477, 8-11-90
CP90-2222-0000 (9-17-90).	Equitable Resources Marketing Company (Marketer).	257,500 257,500 93,987,500	OLA, LA, TX, MS	LA, OTX	8-17-88, ITS-1, 2, Interruptible.	ST90-4718, 8-29-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Transwestern Pipeline Co., Transcontinental Gas Pipe Line Corp., El Paso Natural Gas Co.

[Docket No. CP90-2237-000, Docket No. CP90-2238-000, Docket No. CP90-2240-000, Docket No. CP90-2241-000, Docket No. CP90-2242-000, Docket No. CP90-2243-000]

September 25, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg., annual	Points of—		Start-up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP90-2237-000, 9-18-90.	Transwestern Pipeline Co.	Mar Oil and Gas Corp.	20,000 15,000 7,300,000	AZ, OK, NM, TX.	TX, OK, NM, AZ.	8-1-90, ITS-1	ST90-4466-000
CP90-2237-000, 9-18-90.	Transwestern Pipeline Co.	Arco Natural Gas Marketing, Inc..	50,000 37,500 18,250,000	AZ, OK, NM, TX.	TX, AZ	8-2-90, ITS-1	ST90-4466-000
CP90-2240-000, 9-18-90.	Transcontinental Gas Pipe Line Corporation.	Natural Gas Clearinghouse, Inc.	600,000 20,000 219,000,000	On TX, Off TX, On LA, Off LA, MS, PA.	On LA, On TEX, NJ.	8-1-90, IT	ST90-4519-000
CP90-2241-000, 9-18-90.	El Paso Natural Gas Company, 9-18-90.	Enron Gas Marketing, Inc.	198,842 198,842 72,577,330	All on System	AZ, CA, CO, NM, OK, TX.	8-1-90, T-1	ST90-4345-000
CP90-2242-000, 9-18-90.		Gas Mark, Inc	8,034 5,150 1,879,750	All on System	AZ	8-1-90, T-1	ST90-4341-000
CP90-2243-000, 9-18-90.		ARCO Natural Gas Marketing, Inc.	30,900 30,900 11,278,500	All on System	NM	8-8-90, T-1	ST90-4428-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Tennessee Gas Pipeline Co.

[Docket No. CP90-2213-000]

September 25, 1990.

Take notice that on September 17, 1990, Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252 (Tennessee), filed in docket No. CP90-2213-000 a prior notice request pursuant to §§ 157.205 and 284.212 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to add a delivery point for Altresco Pittsfield, L. P. (Altresco) under its blanket certificate issued at Docket No. CP82-413-000 pursuant to section 7 of the NGA, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection.

Tennessee states that by Commission order issued May 2, 1990, in Docket Nos. CP88-171-000 and CP88-171-001, *et al.*, Tennessee was authorized, inter alia, to transport up to 31,500 Dth of natural gas

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per day for Altresco. As stated in the May 2, 1990 order, the gas is to be received by Tennessee from TransCanada PipeLines Limited (TransCanada) at the Niagara import point and transported and delivered by Tennessee to Berkshire Gas Company (Berkshire) for further transportation and delivery by Berkshire to the Altresco cogeneration project in Pittsfield, Massachusetts.

It is further stated that, the point of delivery of gas by Tennessee to Berkshire was established to be at a point on Tennessee's main line where Tennessee had previously installed hot taps and DAC facilities under § 284.3(c) of the Commission's regulations.

It is stated that the total quantities to be delivered to Berkshire would not exceed presently authorized quantities and the change is not prohibited by Tennessee's existing tariff. Tennessee states that it has sufficient capacity in its system to accomplish delivery of the additional gas to the West Pittsfield delivery point without detriment or disadvantage to any other customer.

Tennessee states that it requests authorization to add the West Pittsfield delivery point as a delivery point to deliver a maximum daily quantity of 31,500 Dth to Berkshire for the account of Altresco consistent with the authorization issued by the Commission order on May 2, 1990, in Docket Nos. CP88-171-000 and CP88-171-001, *et al.*

Comment date: November 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

Florida Gas Transmission Co., Florida Gas Transmission Co., Florida Gas Transmission Co., Florida Gas Transmission Co., Tennessee Gas Pipeline Co., Texas Eastern Transmission Corp.

[Docket No. CP90-2247-000, Docket No. CP90-2248-000, Docket No. CP90-2249-000, Docket No. CP90-2250-000, Docket No. CP90-2251-000, Docket No. CP90-2252-000]

September 25, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper Name	Peak day,[1] avg., annual	Points of— Receipt	Points of— Delivery	Start-up date, rate schedule	Related dockets [2]
CP90-2247-000, 9-19-90.	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	Pennzoil Gas Marketing Co.	25,000 18,750 9,125,000	TX, LA, MS, AL, FL, Off TX.	TX, LA	8-1-90, ITS-1	CP88-555-000, ST90-4496-000
CP90-2248-000, 9-19-90.	do	Panhandle Trading Co	125,000 93,750 45,625,000	TX, LA, MS, AL, FL, Off TX.	TX, LA, MS, AL, FL.	8-2-90, ITS-1	CP89-555-000, ST90-4541-000
CP90-2249-000, 9-19-90.	do	Brooklyn Interstate Natural Gas Corporation.	50,000 37,500 18,250,000	TX, LA, MS, AL, FL, Off TX.	TX, LA, MS, AL.	8-1-90, ITS-1	CP89-555-000, ST90-4439-000
CP90-2250-000, 9-19-90.	do	Shell Gas Trading Co	75,000 56,250 27,375,000	TX, LA, MS, AL, FL, Off TX.	TX, LA, MS	8-1-90, ITS-1	CP89-555-000, ST90-4447-000
CP90-2251-000, 9-19-90.	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Ocean State Power	60,000 60,000 21,900,000	MA, NJ, RI, NY, PA.	MA, NJ, RI, NH, CT, NY, PA.	8-17-90, IT	CP87-115-000, ST90-4545-000
CP90-2252-000, 9-19-90.	Texas Eastern Transmission Corporation, 5400 Westheimer Court, Houston, TX 77252.	Access Energy Corporation.	50,000 50,000 18,250,000	LA, Off LA, AL, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV.	Off OA, NJ	7-12-90, IT-1	CP86-135-000, ST90-4090-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Green Canyon Pipe Line Co., Northern Natural Gas Co., Division of Enron Corp., United Gas Pipe Line Co., United Gas Pipe Line Co., United Gas Pipe Line Co., United Gas Pipe Line Co.

[Docket No. CP90-2256-000, Docket No. CP90-2259-000, Docket No. CP90-2260-000, Docket No. CP90-2261-000, Docket No. CP90-2262-000, Docket No. CP90-2263-000]

September 25, 1990.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: November 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start-up date
CP90-2256-000 (9-21-90)	Enron Gas Marketing, Inc. (Marketer).	100,000 40,000 [3] 36,500,000	OLA	OLA	6-8-90, IT, Interruptible	ST90-4355-000, 8-4-90
CP90-2259-000 (9-21-90)	MidCon Marketing Corporation (Marketer).	300,000 25,000 109,500,000	OK, TX, KS, IA, IND.	TX, KS	8-1-90, IT-1, Interruptible	ST90-4273-000, 8-1-90
CP90-2260-000 (9-21-90)	International Paper Company (End user).	8,240 8,240 3,007,600	OLA, MS, LA	LA	2-25-88, ITS, Interruptible [2].	ST90-4390-000, 7-20-90
CP90-2261-000 (9-21-90)	International Paper Company (End user).	4,635 4,635 1,691,775	LA	MS	7-1-90, FTS, Firm [2]	ST90-4427-000, 8-1-90
CP90-2262-000 (9-21-90)	Louisiana State Gas Corporation (Intrs P/L).	309,000 309,000 112,785,000	Various	Various	10-1-88, ITS, Interruptible [2].	ST90-4564-000, 8-23-90
CP90-2263-000 (9-21-90)	LL&E Gas Marketing, Inc. (Marketer).	20,600 20,600 7,519,000	LA, MS	LA, MS	10-3-88, ITS, Interruptible [2].	ST90-4563-000, 8-16-90

[1] Offshore Louisiana is shown as OLA.
[2] Green Canyon's quantities are in dekatherms.
[3] As amended.

Applicant's address	Blanket docket
Green Canyon Pipe Line Company, P.O. Box 1396, Houston, Texas 77251.	CP89-515-000
Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	CP86-435-000
United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	CP88-6-000

El Paso Natural Gas Co.

[Docket No. CP90-2214-000]

September 25, 1990.

Take notice that on September 17, 1990, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application in Docket No. CP90-2214-000, under sections 7(b) and 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity under the optional certificate procedures, subpart E of part 157 of the Commission's Regulations. El Paso requests authorization for: (i) The construction and operation of additional facilities on its San Juan Triangle, San Juan Mainline and Permian-San Juan Crossover Systems to provide incremental capacity for new transportation service under its blanket transportation certificate and (ii) conditional pre-granted abandonment of the facilities and related transportation services. El Paso's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that in the event that the Commission is unable to issue a single order addressing both non-environmental and environmental issues, El Paso requests the issuance of a phased determination of non-environmental and environmental issues, in order that it may proceed with necessary administrative and purchasing activities to facilitate commencement of construction at the earliest possible date. In any event, El Paso requests approval of its proposal by December 31, 1990.

Specifically, El Paso states it is seeking a certificate of public convenience and necessity authorizing the construction and operation of facilities to provide: (i) 835,000 Mcf/d of incremental pipeline capacity on its San Juan Triangle System; (ii) 400,000 Mcf/d of incremental pipeline capacity on its San Juan Mainline System; and (iii) for the bi-directional flow of natural gas on El Paso's Permian-San Juan Crossover System, all to accommodate a new transportation service through El Paso's expanded interstate transmission system.

El Paso estimates that the total capital cost of the proposed expansion is $241.5 million. This includes facilities costing $233.3 million for which El Paso is specifically seeking authorization in this application and auxiliary installations costing $8.2 million which El Paso states will be constructed under § 2.55 (a) of the Commission's Regulations. El Paso

plans to place the proposed facilities in service by Spring, 1992, assuming shipper subscriptions are sufficient and that regulatory authorizations are in place.

El Paso claims that in order to add 835,000 Mcf/d of firm, new capacity on its San Juan Triangle System, it must construct and operate approximately 54

two-part firm rate which is embodied in El Paso's proposed new firm Rate Schedule T-5 is consistent with the requirements of section 157.103 of the Commission's Regulations. El Paso states that the rates are cost-based and have prescribed maximum and minimum levels.

El Paso will offer a separate

capacity, to those shippers that have executed a transportation agreement consistent with Rate Schedule T-1, and in accordance with the shipper's position on El Paso's interruptible transportation queue. In providing Rate Schedule T-1 service, El Paso does not propose to make any distinction between existing capacity and the

construction has a limited impact on the environment because it takes place in an existing utility corridor. El Paso states that the environmental impact of construction and operation of many of the facility additions proposed in this application have already been reviewed by the Commission in the Final Environmental Impact Report/Statement

the receipt of incremental volumes from the San Juan Basin for transportation and delivery to markets both in El Paso's traditional California service area and to the east of El Paso's system. El Paso further claims that such facility additions will also significantly increase the operational flexibility and reliability of El Paso's system generally, to the

sections 7(b) and 16 of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission, for authorization that would approve abandonment of certain sales service and certain rate schedules, all as more fully set forth in the application which is on file with the Commission and open to

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plans to place the proposed facilities in service by Spring, 1992, assuming shipper subscriptions are sufficient and that regulatory authorizations are in place.

El Paso claims that in order to add 835,000 Mcf/d of firm, new capacity on its San Juan Triangle System, it must construct and operate approximately 54 miles of pipeline loop, additional compression facilities totalling 12,000 horsepower, and additional metering facilities on that system.

El Paso also states it intends to construct and operate approximately 178 miles of pipeline loop, additional compression facilities totalling 23,516 horsepower, and additional metering equipment on the San Juan Mainline System in order to render a new firm incremental transportation service of 400,000 Mcf/d on its San Juan Mainline System westward from the San Juan Triangle System to the terminus of its San Juan Mainline System at the Arizona-California border near Topock, Arizona.

El Paso states that following this construction, it will be able to effect increased deliveries at or near Topock, Arizona to existing California natural gas distribution systems, as well as to the facilities to be constructed and operated by Mojave Pipeline Company (Mojave).

El Paso is also proposing to construct new metering facilities on its Permian-San Juan Crossover System and make certain changes to the compressor piping at its existing Caprock, Lincoln, and Belen Compressor Stations to transport some 429,000 Mcf/d on a firm basis eastward from its expanded San Juan Basin System to its Plains Compressor Station for further transportation to eastern and midwestern United States markets. El Paso states that as reconfigured, these facilities will allow El Paso to flow gas either eastward or westward on this part of its system.

El Paso also states that is does not seek specific authorization to transport gas through its proposed facilities for specific shippers. Rather, El Paso intends to render firm transportation services pursuant to a new rate schedule under the provisions of its blanket transportation certificate issued in Docket No. CP88-433-000.

El Paso states its proposed new incremental firm transportation service will be offered under the provisions of proposed Rate Schedule T-5, which is to be contained in its FERC Gas Tariff, First Revised Volume No. 1-A, and will incorporate, as applicable, the general terms and conditions contained in that tariff. El Paso states that its proposed two-part firm rate which is embodied in El Paso's proposed new firm Rate Schedule T-5 is consistent with the requirements of section 157.103 of the Commission's Regulations. El Paso states that the rates are cost-based and have prescribed maximum and minimum levels.

El Paso will offer a separate Transportation Service Agreement for each of the segments identified in its application, *i.e.*, Blanco to Topock and Blanco to Plains in accordance with the proposed terms and provisions of Rate Schedule T-5. The proposed initial rate for the Blanco to Topock service consists of a Monthly Reservation Charge with a minimum of $0.00 and a maximum of $8.6668, and a Usage Charge which has a minimum of $0.0002 and a maximum of $0.3691. The proposed initial rate for the Blanco to Plains service consists of a Monthly Reservation Charge with a minimum of $0.00 and a maximum of $4.6644, and a Usage Charge which has a minimum of $0.0001 and a maximum of $0.1693.

El Paso states that new incremental firm transportation service will be available to prospective shippers based on El Paso's existing firm transportation log. El Paso proposes that in the event that the aggregate volumes of firm incremental transportation service sought by prospective shippers exceeds the incremental capacity which El Paso proposes to add to its system through this application, El Paso will give preference to those shippers, in the order they appear in the log, who provide assurance that gas will, in fact, flow under their contracts, as evidenced by the Shipper's demonstration of an existing entitlement to receive firm transportation service from the downstream pipeline or the local distribution system which will receive the shipper's gas that El Paso proposes to deliver.

El Paso further notes that on August 31, 1990, it filed an application to amend its blanket transportation certificate issued at Docket No. CP88-433-000 to allow for brokering of firm capacity on El Paso's existing and proposed incremental facilities. El Paso proposes that this capacity brokering program will be available to shippers contracting for incremental firm capacity under the proposed Rate Schedule T-5 on such terms and conditions as are ultimately approved by the Commission.

El Paso states it will continue to provide interruptible service in accordance with existing Rate Schedule T-1 of its FERC Gas Tariff, First Revised Volume No. 1-A. El Paso states that interruptible service will be offered from time to time, based on the availability of capacity, to those shippers that have executed a transportation agreement consistent with Rate Schedule T-1, and in accordance with the shipper's position on El Paso's interruptible transportation queue. In providing Rate Schedule T-1 service, El Paso does not propose to make any distinction between existing capacity and the additional capacity which El Paso proposes to add to its system by this application.

El Paso further states that in the event of a facility outage or other event which prevents the full use of El Paso's facilities at design capacity, the allocation of available capacity among firm customers shall be *pro rata* based on each such customer's confirmed quantities, not to exceed contract demand, to total confirmed quantities which are affected by the capacity constraints. In making such allocation, El Paso does not propose to make any distinction between existing capacity and the additional capacity which El Paso proposes to add to its system by this application, or between shippers receiving service under Rate Schedule T-3 and those shippers receiving service under Rate Schedule T-5.

El Paso states that it has chosen to offer its new firm transportation service on an incremental rate basis, reflecting the complete cost of the new facilities plus an allocated portion of existing costs. Consequently, El Paso says it can insure, as the optional certificate regulations require, that none of the risk of investment in the new service will fall on the existing customers. El Paso further claims that because the rates are set on an incremental basis and reflect the actual cost of the proposed service, prospective shippers can more accurately gauge their market alternatives, and El Paso will be able to obtain, prior to construction, a precise measure of shipper needs.

El Paso notes it has used the depreciation component of its presently effective rates, and a return component as detailed in its application. El Paso further notes that the proposed rates do not differentiate between seasonal peak and off-peak service, but do reflect the distance of haul and are designed for deliveries at Topock and Plains. Because this is an entirely new service without any history, El Paso believes that this is the most reasonable basis upon which to devise rates.

El Paso states that its proposed facilities consist entirely of pipeline looping, metering facilities, and the addition of compressor units at certain of its existing compressor stations. El Paso claims that this type of construction has a limited impact on the environment because it takes place in an existing utility corridor. El Paso states that the environmental impact of construction and operation of many of the facility additions proposed in this application have already been reviewed by the Commission in the Final Environmental Impact Report/Statement (FEIR/S) adopted by the Commission with respect to the Kern River Gas Transmission Company and Mojave projects in Docket Nos. CP85-522-000 and CP85-437-000. El Paso states that this FEIR/S addressed, *inter alia*, the facility additions to El Paso's San Juan Mainline System proposed at Docket Nos. CP86-197-000 & 001. El Paso states the prior Commission findings concerning the FEIR/S apply to this proposal as well, because the same or similar facilities are part of this application.

However, El Paso states that the proposed facilities not previously reviewed by the Commission are specifically addressed in El Paso's environmental exhibits filed with its application, together with material associated with previously evaluated facilities. El Paso states that the proposed facilities not previously reviewed by the Commission will be constructed in areas that are environmentally comparable to, and in most cases adjacent to, the specific segments of line reviewed in the FEIR/S.

El Paso claims that the proposed facilities are required by the present and future public convenience and necessity in order to provide El Paso with incremental capacity necessary to accommodate anticipated growth in the availability of natural gas in the San Juan Basin producing area, and otherwise to permit El Paso to serve increasing end user demands in California and other markets, including off-system markets. El Paso states that its proposal will serve a national security interest by relieving capacity constraints which are and will continue to restrain the delivery of available domestically-produced natural gas to U.S. consumers.

El Paso asserts that the need for increased pipeline capacity in the San Juan Triangle has arisen because of major new reserve additions, most particularly of coal seam gas, in the San Juan Basin producing area. El Paso states that the proposed San Juan Triangle expansion is designed to provide the additional firm transportation capacity which is needed to accommodate this increased production capability. El Paso claims that the additional facilities will permit the receipt of incremental volumes from the San Juan Basin for transportation and delivery to markets both in El Paso's traditional California service area and to the east of El Paso's system. El Paso further claims that such facility additions will also significantly increase the operational flexibility and reliability of El Paso's system generally, to the benefit of all of El Paso's customers including users of its existing system.

El Paso states that given the worldwide energy situation which exists, the proposed project offers substantial, assured benefits to the United States as a whole in terms of enhancing national energy security. El Paso claims that its incremental capacity expansion will facilitate the movement of large new supplies of domestic natural gas to markets throughout the United States. El Paso says, it will do this by eliminating current and projected capacity constraints which otherwise will increasingly inhibit the production and delivery of gas from one of the Nation's most important producing areas, the San Juan Basin.

El Paso states that when completed, the project will permit the transportation and delivery of additional San Juan Basin volumes equivalent to approximately 138,000 barrels per day of oil, which in turn will serve to reduce the need for an equivalent amount of oil imports. El Paso further states that the additional revenues which San Juan Basin producers will realize through the marketing of these incremental volumes will also be available to finance domestic exploration and development which will further increase the Nation's energy resource base.

Comment date: October 16, 1990, in accordance with Standard Paragraph F at the end of the notice.

Transcontinental Gas Pipe Line Corp.

[Docket Nos. CP90-2228-000, CP90-2229-000 and CP72-255]

September 25, 1990.

Take notice that on September 17, 1990, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed applications in Docket Nos. CP90-2228, CP90-2229 and CP72-255. Transco filed the application in conjunction a negotiated settlement (Settlement) that was concurrently filed in Docket Nos. CP88-391, *et al.* In the Docket Nos. CP88-391, *et al.*, proceedings, Transco is seeking authorization for a restructuring of its sales and transportation services and to implement a Gas Inventory Charge. In Docket No. CP90-2228 Transco filed an application, pursuant to sections 7(b) and 16 of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission, for authorization that would approve abandonment of certain sales service and certain rate schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Specifically, Transco states that it desires to abandon service to its customers under Rate Schedules CD and IFS. The requested abandonment authorizations, according to Transco, would implement a negotiated provision of the Settlement between Transco and its customers, which was filed concurrently herewith in Docket Nos. CP88-391, *et al.* Transco states that such service is no longer needed in view of the service to be offered under the new FS Rate Schedule proposed in its Settlement. Transco further states that the Rate Schedules CD and IFS themselves should also be abandoned.

Docket No. CP90-2229 was filed by Transco, pursuant to section 7(c) of the Natural Gas Act, seeking a certificate of public convenience and necessity to establish an Optional Firm Service (OFS) Rate Schedule and to provide service to OFS customers under the terms described therein. Transco states that it requests certificate authority to provide OFS service on an unbundled basis to its historical sales customers which intend to use all or a portion of their permanent conversion firm transportation (FT) entitlements to transport to their city gate delivery points OFS gas purchased from Transco on mutually agreeable, individually negotiated terms.

Docket No. CP72-255 was also filed pursuant in section 7(c) of the Natural Gas Act. By this instant filing Transco seeks to amend the certificate of public convenience and necessity issued in Docket No. CP72-255 on September 21, 1972, *Transcontinental Gas Pipe Line Corporation*, 48 FPC 573 (1972), which authorized Transco to provide liquefied natural gas (LNG) service under Rate Schedule LG-S to Transco's CD, G, and OG Rate Schedule customers. Transco states that it seeks to amend the certificate to obtain Commission authorization to permit Rate Schedule LG-S customers to receive LNG service without requirement that such customer be purchasing gas from Transco. As an alternative to such purchase requirement, Transco seeks to allow a customer to arrange for a concurrent delivery of natural gas to Transco using transportation services under Transco's Rate Schedule IT or FT. Transco states

that the natural gas to be concurrently delivered may be gas purchased either from third parties or Transco under Transco's Rate Schedule FS or IS.

Comment date: October 11, 1990, in accordance with Standard Paragraph F at the end of this notice.

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

requiring North Penn to develop rates based on a certified purchase obligation that was automatically abandoned pursuant to Commission regulations.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective

Pipeline and Docket No.	
(1) Northern Natural Gas Co., TC90-6-000, Filed: September 6, 1990	Index of large volume consumer classifications as reviewed and approved by the data verification committee commencing with the 1990-91 heating season. Second Revised Sheet Nos. 110-112.
(2) Williams Natural Gas Co., TC90-12-000, Filed: September 14, 1990	Third Revised Sheet No. 113.
(3) Mississippi River Transmission Corp., TC90-11-000, Filed: September 14,	Second Revised Sheet No. 114 of FERC Gas Tariff, Original Volume No. 1. First Revised Sheet No. 92.

that the natural gas to be concurrently delivered may be gas purchased either from third parties or Transco under Transco's Rate Schedule FS or IS.

Comment date: October 11, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23321 Filed 10-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ-90-3-27-002]

North Penn Gas Co., Proposed Changes in FERC Gas Tariff

September 26, 1990.

Take notice that North Penn Gas Company (North Penn) on September 24, 1990 tendered for filing First Revised Sheet No. 3A to its FERC Gas Tariff First Revised Volume No. 1.

The revised tariff sheet is being filed in compliance with the FERC order of August 27, 1990 in the above referenced Docket and sets forth North Penn's Quarterly PGA proposed to be effective September 1, 1990. The filing reflects an increase in the average cost of gas for the G-1 Rate Schedule of $.97 per Mcf.

North Penn has not removed CNG standby cost from this filing. North Penn has filed a Request for Rehearing and Clarification of the FERC letter order dated August 27, 1990 in TQ90-3-27-000, requesting clarification that North Penn need not wait for a later PGA proceeding to recover standby charges but may include such charges as a separate component in this PGA.

North Penn will file as part of its filing in TA90-1-27, in compliance with the FERC letter order dated August 29, 1990, tariff sheets containing language including pipeline standby charges as a separate component.

North Penn has not increased its Tennessee Gas Pipeline Company's contract demand volume as provided for in the August 27, 1990 letter order in the instant proceeding. As set forth in its Request for Rehearing and Clarification of that order, North Penn believes that the FERC made an obvious error in requiring North Penn to develop rates based on a certified purchase obligation that was automatically abandoned pursuant to Commission regulations.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective September 1, 1990, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective September 1, 1990, as proposed.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 4, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23320 Filed 10-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TC90-9-000 et al.]

Northern Natural Gas Co. et al. Tariff Sheet Filings

September 26, 1990.

Take notice that the following pipelines [1] have filed revised tariff sheets to become effective November 1, 1990, pursuant to § 281.204(b)(2) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

[1] Addressees of the pipelines are listed in the appendix hereto.

Pipeline and Docket No.	
(1) Northern Natural Gas Co., TC90-9-000, Filed: September 6, 1990	Index of large volume consumer classifications as reviewed and approved by the data verification committee commencing with the 1990-91 heating season.
(2) Williams Natural Gas Co., TC90-12-000, Filed: September 14, 1990	Second Revised Sheet Nos. 110-112.
(3) Mississippi River Transmission Corp., TC90-11-000, Filed: September 14, 1990.	Third Revised Sheet No. 113. Second Revised Sheet No. 114 of FERC Gas Tariff, Original Volume No. 1. First Revised Sheet No. 92. First Revised Sheet No. 93. First Revised Sheet No. 95. First Revised Sheet No. 96 of FERC Gas Tariff, Second Revised Volume No. 1.
(4) Columbia Gas Transmission Corp., TC90-14-000, Filed: September 14, 1990	First Revised Sheet No. 270. First Revised Sheet No. 271. First Revised Sheet No. 272. First Revised Sheet No. 273. First Revised Sheet No. 274. First Revised Sheet No. 276. First Revised Sheet No. 277. First Revised Sheet No. 278. First Revised Sheet No. 279. First Revised Sheet No. 280. First Revised Sheet No. 281. First Revised Sheet No. 282. First Revised Sheet No. 283. First Revised Sheet No. 284. First Revised Sheet No. 285. First Revised Sheet No. 286. First Revised Sheet No. 287. First Revised Sheet No. 288. First Revised Sheet No. 289. First Revised Sheet No. 290. First Revised Sheet No. 291. First Revised Sheet No. 292. First Revised Sheet No. 293. First Revised Sheet No. 294. First Revised Sheet No. 295. First Revised Sheet No. 296. First Revised Sheet No. 297. First Revised Sheet No. 298. First Revised Sheet No. 299. First Revised Sheet No. 300. First Revised Sheet No. 301. First Revised Sheet No. 302. First Revised Sheet No. 303. First Revised Sheet No. 304. First Revised Sheet No. 305. Original Sheet No. 306 of FERC Gas Tariff, First Revised Volumen No. 1.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 9, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois Cashell,

Secretary.

Appendix

Mississippi River Transmission Corp., 9900 Clayton Road, St. Louis, Missouri 63124.

Williams Natural Gas Co., P.O. Box 3288, Tulsa, Oklahoma 74101.

Northern Natural Gas Co., 2223 Dodge Street, Omaha, Nebraska 68102.

Columbia Gas Transmission Corp., 1700 MacCorkle Ave, SE., P.O. Box 1273, Charleston, West Virginia 25325-1273.

[FR Doc. 90-23322 Filed 10-2-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3849-9]

Region IX; Rescission of Prevention of Significant Deterioration (PSD) Permit

In the matter of PSD Permit E-4-3 NSR SFB 78-03 issued to:

Kaiser Cement Corporation
Permanente Cement Plant
Permanente, California

On December 26, 1978, the U.S. Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) Permit to the applicant named above for approval to construct a modernization of the cement plant by

(1) Replacing the wet process facilities with dry process facilities of equal capacity, and

Converting the plant's primary fuel from oil to coal.

Section 52.21(w)(2), (3) of the PSD regulations amended on August 7, 1980, states that any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21, as in effect on June 19, 1978, may request that the Administrator rescind the permit, if the applicant shows that the PSD regulations, as amended on August 7, 1980, would not apply to the source or modification.

Having received Kaiser's request for rescission, EPA has reconsidered the PSD permit issued for the Permanente plant modernization and has determined that the modernization has been made subject to a federally enforceable limitation on the potential of the

modernized facility to emit (40 CFR 52.21 (b)(4)) such that the modernization resulted in no net increase in emissions within the meaning of the PSD regulations and that, therefore, the modernization project was not subject to PSD requirements. Therefore, EPA has rescinded the PSD permit by Settlement Agreement dated September 17, 1990.

has met the requirements stated in 40 CFR 142.10.

South Dakota's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public elect to hold a hearing on his own motion, this determination shall become effective on November 2, 1990.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

ADDRESSES: All documents relating to this determination are available for inspection at the following locations:

Estimated Annual Burden: 2 responses; .5 hours average burden per response; 1 hour total annual burden.

Needs and Uses: Section 74.21 requires that a licensee of an auxiliary broadcast station notify the FCC in Washington, DC, as soon as practicable, in the event of an emergency where the station is operated in a manner other than that for which it is authorized. This

Synopsis: The agreement amends the basic agreement to (1) reduce 19,846.46 square feet of leased area located at Hangar 20 (formerly Hangar 22); (2) adjust the monthly rental; (3) increase the security fee for the payment of rentals and other charges from $100,000.00 to $148,272.15; and (4) establish a new penalty clause in the amount of $4,942.40 per day.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0254]

Cytokine and Growth Factor Pre-pivotal Trials Information Package; Availability

modernized facility to emit (40 CFR 52.21 (b)(4)) such that the modernization resulted in no net increase in emissions within the meaning of the PSD regulations and that, therefore, the modernization project was not subject to PSD requirements. Therefore, EPA has rescinded the PSD permit by Settlement Agreement dated September 17, 1990.

This PSD action is reviewable under section 307(b)(1) of the Clean Air Act in the Ninth Circuit Court of Appeals. A petition for review must be filed with the Ninth Circuit on or before 60 days from date of publication in the **Federal Register**.

This determination and related background information are available for public inspection at the U.S. Environmental Protection Agency, New Source Section, 1235 Mission Street, San Francisco, California, 94103.

Dated: September 19, 1990.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

[FR Doc. 90-23391 Filed 10-2-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3850-2]

Public Water System Supervision Program Revision for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of South Dakota has revised its approved Public Water System Supervision (PWSS) Primacy Program. South Dakota has developed: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690); and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations and has approved these State program revisions. This determination shall become effective November 2, 1990 and was based upon a thorough evaluation of South Dakota's PWSS program which has met the requirements stated in 40 CFR 142.10.

South Dakota's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before November 2, 1990. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: James J. Scherer, Regional Administrator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2405.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of South Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of South Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on November 2, 1990.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

ADDRESSES: All documents relating to this determination are available for inspection at the following locations: U.S. EPA Region VIII Regional Library, 999 18th Street, Denver, Colorado 80202-2405, between the hours of 10 a.m. and 4 p.m. (MST), Mon.-Fri. and the SD Department of Water and Natural Resources, Office of Drinking Water, Joe Foss Building, Pierre, South Dakota 57501-3181, between the hours of 8 a.m. and 5 p.m. (CST), Mon.-Fri.

FOR FURTHER INFORMATION CONTACT: David Schmidt, EPA Region VIII, Public Water Supply Program Section (8WM-DW) at the Denver address given above, telephone (303) 293-1415, (FTS) 330-1415.

Dated: September 26, 1990.

Kerrigan G. Clough,

Acting Regional Administrator, EPA, Region VIII.

[FR Doc. 90-23394 Filed 10-2-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 26, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW; suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0194.

Title: Section 74.21, Broadcasting emergency information.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 2 responses; .5 hours average burden per response; 1 hour total annual burden.

Needs and Uses: Section 74.21 requires that a licensee of an auxiliary broadcast station notify the FCC in Washington, DC, as soon as practicable, in the event of an emergency where the station is operated in a manner other than that for which it is authorized. This notification shall specify the nature of the emergency and the use to which the station is being put. The licensee shall also notify the FCC when the emergency operation has been terminated. The notifications are used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-23405 Filed 10-2-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224-003597-005.

Title: Puerto Rico Ports Authority and Trailer Marine Transport Corporation Terminal Lease Agreement.

Parties: Puerto Rico Ports Authority, Trailer Marine Transport Corporation.

Filing Party: Mayra N. Cruz Alvarez, Contract Supervisor, Apartado 2829, San Juan, Puerto Rico 00936-2829.

Synopsis: The agreement amends the basic agreement to (1) reduce 19,846.46 square feet of leased area located at Hangar 20 (formerly Hangar 22); (2) adjust the monthly rental; (3) increase the security fee for the payment of rentals and other charges from $100,000.00 to $148,272.15; and (4) establish a new penalty clause in the amount of $4,942.40 per day.

By Order of the Federal Maritime Commission.

Dated: September 28, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-23412 Filed 10-2-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200294-002.

Title: Georgia Ports Authority/ Japanese Three Lines Terminal Agreement.

Parties: Georgia Ports Authority, Japanese Three Lines.

Synopsis: The Agreement provides a corrected revised schedule of rates in accordance with the terms of the basic agreement. The Agreement provides a consolidated rate for wharfage, dockage, crane rental, land use and stevedoring use fee; as well as, specific rates for rail loading and unloading; daily reefer charge; receiving and delivery to/from motor carrier and special service moves; stack utilization charge; and terminal inventory data fee.

By Order of the Federal Maritime Commission.

Dated: September 28, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-23413 Filed 10-2-90; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0254]

Cytokine and Growth Factor Pre-pivotal Trials Information Package; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an information package for cytokine and growth factor pre-pivotal trials. The information package will assist sponsors in preparing for meetings with representatives of the Center for Biologics Evaluation and Research (CBER) before the development of pivotal studies.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the information package to the Congressional, Consumer, and Internal Affairs Staff, Center for Biologics Evaluation and Research (HFB-142), Food and Drug Administration, Park Bldg., Rm. 158, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request. Submit written comments on the information package to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Copies of the information package and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Andrea Chamblee, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of an information package to assist sponsors of experimental cytokines, growth factors, and similar products in preparing for meetings with CBER. Many of these agents are developed rather rapidly, with early initiation of clinical efficacy trials. In addition, many of these products are being studied as therapy for life-threatening or severely debilitating illnesses. Subpart E (21 CFR

part 312) of the regulations governing investigational new drug applications (21 CFR 312.80 through 312.88) describes procedures for expedited development of products intended for the treatment of such illnesses. Under these procedures, when appropriate, product development can move rapidly from early safety testing into clinical trials intended to

manufacturing and product controls, animal studies, and clinical studies. The package also contains attachments including lists of: (1) "Points to Consider" and other related documents, (2) interim reference reagents for human cytokines, and (3) testing procedures to be considered for cytokine and growth factor products.

Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on

July 11, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading

State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to Health Maintenance Organizations under 1903(m) of the Act take into account the payment rates specified in number 1 above.

HCFA has also developed several

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part 312) of the regulations governing investigational new drug applications (21 CFR 312.80 through 312.88) describes procedures for expedited development of products intended for the treatment of such illnesses. Under these procedures, when appropriate, product development can move rapidly from early safety testing into clinical trials intended to demonstrate effectiveness.

Accelerated development programs can create challenges for manufacturers. Before initiation of efficacy trials to support licensure ("pivotal trials"), issues of product manufacture, specifications, and formulation should be resolved so that the product used in pivotal trials will be manufactured and formulated in essentially the same way as the planned licensed product.

FDA strongly recommends that sponsors meet with CBER before initiating pivotal trials. The meeting would often be an end of "Phase 2" meeting, but could be conducted at an earlier stage, including the end of "Phase 1" under the new subpart E procedures (see 21 CFR 312.21, 312.47 and 312.82). During such a meeting, it is generally expected that a summary of manufacturing methods and controls, and animal and in vitro testing results will be presented and that any outstanding issues will be discussed. The plan for pivotal trials should be presented, and issues of trial design should be discussed. At these meetings, CBER staff will provide advice and guidance to sponsors. If appropriate, outside expert consultants or advisory committee members may be involved on consulted on unresolved issues. A primary goal of these meetings is for CBER and sponsors to reach agreement on the design of trials which would be adequate to provide sufficient data on safety and effectiveness to support a decision on the approvability of a product for marketing.

To assist sponsors of cytokine, growth factor, and similar products in preparing for such meetings, CBER has developed this information package. This package does not present new information, but summarizes certain available information and directs attention to regulations, "Points to Consider" documents, and other related documents that are pertinent to development of such products.

The current regulations, guidelines, "Points to Consider" documents, and other related documents referenced in the information package may be obtained from the Congressional and Public Affairs Staff (HFB–140) (address above).

Specifically, the information package provides information regarding manufacturing and product controls, animal studies, and clinical studies. The package also contains attachments including lists of: (1) "Points to Consider" and other related documents, (2) interim reference reagents for human cytokines, and (3) testing procedures to be considered for cytokine and growth factor products.

The recommendations included in this information package are not requirements. A manufacturer may choose to use alternative procedures even though they are not described in the information package. A manufacturer who wishes to use other procedures is encouraged to discuss the matter with the agency. Interested persons are encouraged to use this opportunity to submit comments on the information package if they have suggestions. The comments will be reviewed by FDA to determine whether the material provided should be revised or if additional information should be included in the information package.

Requests for a single copy of the information package should be sent to the Congressional and Public Affairs Staff (address above).

Interested persons may, at any time, submit written comments on the information package to the Dockets Management Branch (address above). Such comments will be considered in determining whether further revisions to this information package are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The information package and received comments may be seen in the Dockets Management Branch at the times and days listed above.

Dated: September 26, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–23406 Filed 10–2–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90N–0291]

Drug Export; Abbott HIVAB HIV–1/HIV–2 (rDNA) EIA

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed an application requesting approval for the export of the biological product Abbott HIVAB HIV–1/HIV–2 (rDNA) EIA to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB–124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The drug export provision in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, Diagnostics Division, Abbott Park, IL 60064, has filed an application requesting approval for the export of the biological product Abbott HIVAB HIV–1/HIV–2 (rDNA) EIA to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The Abbott HIVAB HIV–1/HIV–2 (rDNA) EIA is an in vitro recombinant DNA (rDNA) enzyme immunoassay (EIA) for the simultaneous detection of antibodies to Human Immunodeficiency Viruses Type 1 and/or Type 2 (HIV–1/HIV–2) in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on July 11, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by October 15, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and udner authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: September 18, 1990.

P. Michael Dubinsky,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 90–23346 Filed 10–2–90; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Reconsideration of Disapproval of Texas State Plan Amendment (SPA); Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on November 6, 1990, in Room 1950, 1200 Main Tower, Dallas, Texas 75202 to reconsider our decision to disapprove Texas State Plan Amendment 90–13.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk October 16, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 967–3015.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Texas State Plan amendment (SPA) number 90–13.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Texas SPA 90–13 contains a list of obstetrical and pediatric payment rates and data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants.

The issue in this matter is whether the plan amendment complies with section 1926 and 1902(a)(30)(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States are also to provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act).

OBRA 89 was passed on December 19, 1989, and HCFA is developing its final policy concerning what is required to determine that the State is in compliance with section 1902(a)(30)(A) of the Act. HCFA has, however, initially determined that for obstetrical and pediatric rate SPA's to be approval, they must include the following:

1. Payment rates for this year and next year (i.e. 1990 and 1991) for those obstetrical and pediatric services covered under the State plan. Pediatric rates must be specified by procedure and HCFA recommends the same format be followed for obstetrical services.

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to Health Maintenance Organizations under 1903(m) of the Act take into account the payment rates specified in number 1 above.

HCFA has also developed several guidelines that, if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual revision dated March 26, 1990.

Based upon the data submitted, HCFA has determined that the Texas amendment does not comply with the statutory requirements of section 1926 of the Act, and, thus, also does not comply with section 1902(a)(30)(A). The State argues that it has met the statutory requirements under guideline 1 of the draft State Medicaid manual revision. It permits a State to document compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. The State claims that it exceeds the 50 percent criteria. HCFA believes, however, that the data are insufficient since the methodology employed to develop the documentation is inconsistently applied across the geographic areas specified. Thus, HCFA cannot be certain of the accuracy of the obstetrical and pediatric practitioner rates.

The notice to Texas announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

September 26, 1990.

Donald L. Kelley, M.D.,

State Medicaid Director, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714–9030.

Dear Dr. Kelley: I am responding to your request for reconsideration of the decision to disapprove Texas State Plan Amendment (SPA) 90–13. The amendment contains a list of Medicaid obstetrical and pediatric payment rates and data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants.

The issue in this matter is whether the plan amendment complies with section 1926 and 1902(a)(30)(A) of the Social Security Act.

I am scheduling a hearing on your request for reconsideration to be held on November 6, 1990, at 10:00 a.m. in Room 1950, 1200 Main Tower, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 967–3015.

Sincerely,

Gail R. Wilensky,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 28, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90–23367 Filed 10–3–90; 8:45 am]

BILLING CODE 4120–03–M

Hearing: Reconsideration of Disapproval of Wisconsin State Plan Amdt. (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 14, 1990 in the 16th floor Conference room, 105 West Adams, Chicago, Illinois to reconsider our decision to disapprove Wisconsin State Plan Amendment 90–0005.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by October 18, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, suite 110, Security Office Park, 700 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 967–3015.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Wisconsin State Plan amendment (SPA) number 90–0005.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 to establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Wisconsin SPA 90–0005 contains a list of Medicaid obstetrical and pediatric payment rates and data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants. The State has also provided data explaining how fee-for-service payment rates for obstetrical and pediatric services are incorporated into the capitation rates for medicaid contracting HMOs.

The issue in this matter is whether the proposed plan amendment with regard to the fee-for-service payment rates, violates the statutory requirements of section 1926 of the Act and, thus, also does not comply with section 1902(a)(30)(A).

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101–239, requires that, by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act).

OBRA 89 was passed on December 19, 1989, and the Health Care Financing Administration (HCFA) is developing its final policy concerning what is required to determine that the State is in compliance with section 1902(a)(30)(A) of the Act. HCFA has, however, initially determined that for obstetrical and pediatric rate SPAs to be approvable, they must include the following:

1. Payment rates for this year and next year (i.e., 1990 and 1991) for those obstetrical and pediatric services covered under the State's plan. Pediatric rates must be specific by procedure, and we recommend the same format be followed for obstetrical services;

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to Health Maintenance Organizations (HMOs) under 1903(m) take into account the payment rates specified in number 1 above.

HCFA has also developed several guidelines that, if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual revision dated March 26, 1990.

Based upon the data submitted, HCFA has determined that the Wisconsin amendment does not comply fully with the statutory requirements of section 1926 of the Act, and, thus, also does not comply with section 1902(a)(30)(A). The State argues that Wisconsin met the statutory requirement under guideline 1 of the draft State Medicaid manual revision, which permits the State to document its compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or the Medicaid participation is at the same rate as Blue Shield participation. The State claims that Wisconsin exceeds the 50 percent criteria. HCFA believes, however, that the data are insufficient to meet the statutory requirements because Wisconsin has overestimated the number of participating practitioners and underestimated the total number of practitioners. The State further acknowledges that the number of practitioners in each county has been requested from Wisconsin's Department of Regulation and Licensing, but is not available for this submission. Thus, HCFA cannot be certain of the accuracy of the State's obstetrical and pediatric participation data. Therefore, HCFA disapproved this portion of the State plan amendment.

The State did, however, provide data explaining how fee-for-service payment rates for obstetrical and pediatric services are incorporated into the capitation rates for Medicaid contracting HMOs, and this portion of the amendment was approved.

The notice to Wisconsin announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. George F. MacKenzie, Administrator,
Division of Health.
Department of Health and Social Services
P.O. Box 309, Madison, Wisconsin 53701.

Dear Mr. MacKenzie: I am responding to your request for reconsideration of the decision to partially disapprove Wisconsin

State Plan Amendment (SPA) 90–0005. The amendment contains a list of Medicaid obstetrical and pediatric payment rates and data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants. The State has also provided data explaining how fee-for-service payment rates for obstetrical and pediatric services are incorporated into the capitation rates for Medicaid contracting Health Maintenance Organizations.

The issue in this matter is whether the State's proposed amendment with regard to the fee-for-service payment rates complies fully with the statutory requirements of sections 1926 and 1902(a)(30)(A) of the Social Security Act.

I am scheduling a hearing on your request to be held on November 14, 1990, at 10 a.m. in the 16th floor conference room, 105 West Adams, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 967–3015.

Sincerely,

Gail R. Wilensky,

Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 27, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90–23366 Filed 10–2–90; 8:45 am]

BILLING CODE 4120–03–M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for approval of an information collection for a Follow-Up of Youth Using Runaway and Homeless Youth Centers.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to:

Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Follow-up of Youth Using Runaway and Homeless Youth Centers.

OMB No.: 0980–0200.

Description: The specific objectives of the evaluation are to provide the Family and Youth Service Bureau and the Administration for Children, Youth and Families with information to:

- Assess the long-term effects of services provided by runaway and homeless youth centers on the development and welfare of such youth;
- Describe the strategies and characteristics of centers that have been successful in promoting long-term gains; and
- Describe the barriers that have hindred the delivery of lasting benefits.

Annual Number of Respondents: 869.

Annual Frequency: 1.

Average Burden Hours Per Response: 46 mins.

Total Burden Hours: 751.

Dated: September 27, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90–23383 Filed 10–2–90; 8:45 am]

BILLING CODE 4130–01–M

Child Abuse and Neglect Prevention and Treatment; Proposed Research and Demonstration Priorities for Fiscal Year 1991

AGENCY: Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Notice of proposed fiscal year 1991 child abuse and neglect research and demonstration priorities for the Office of Human Development Services.

SUMMARY: This notice identifies proposed priorities for research on the causes, prevention, identification and treatment of child abuse and neglect; on appropriate and effective investigative, administrative and judicial procedures with respect to cases of child abuse; and for demonstration or services programs and projects designed to prevent, identify and treat child abuse and neglect.

Comments on these priorities and suggestions for other topics are invited. The actual solicitation of grant applications will be published separately, at a later date, in the **Federal Register**. Solicitations for contracts will be announced in the *Commerce Business Daily*. No proposals, concept papers or other forms of application should be submitted at this time.

Section 105(a)(2)(B) of the Child Abuse Prevention and Treatment Act of 1988 (the Act), as amended, requires the Department to publish proposed priorities for research and demonstration activities for the purpose of soliciting comments from the public, including individuals knowledgeable in the field of prevention and treatment of child abuse and neglect. Final priorities will reflect consideration of recommendations received from the field in response to this notice.

DATES: In order to be considered, comments must be received no later than December 4, 1990.

ADDRESSES: Comments should be sent to: Wade F. Horn, Ph.D., Commissioner, Administration for Children, Youth and Families, Attention: National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013, (202) 245–0347.

SUPPLEMENTARY INFORMATION:

I. Background:

The National Center on Child Abuse and Neglect (NCCAN) is located in the Children's Bureau within the Administration for Children, Youth and Families of the Office of Human Development Services.

NCCAN conducts activities designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include: Conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; providing grants to eligible States for developing, strengthening and carrying out child abuse and neglect prevention and treatment programs and programs relating to the investigation and prosecution of child abuse cases. In addition, the legislatively mandated Advisory Board and Child Abuse and Neglect and the Inter-Agency Task Force on Child Abuse and Neglect produce periodic reports regarding child abuse and neglect activities.

Pursuant to section 105(a)(2)(B) of the Child Abuse Prevention and Treatment Art of 1988 (the Act), as amended, this notice identifies proposed priorities for research on the causes, prevention, identification and treatment of child abuse and neglect; on appropriate and effective investigative, administrative

- Status of Measurement Development in the Study of Child Abuse and Neglect
- Field Initiated Research on Child Abuse and Neglect
- Consortium for Longitudinal Studies of Child Maltreatment

Demonstration Projects:

- Utilizing Results of Demonstration Grant Clusters: Parent Aide and Respite Care

improved services for children and families and increase the knowledge in the field. As specified in the proposed priority areas, we intend to pay special attention to issues of ethnic and cultural relevance in the design of demonstration projects and research studies as well as in the development of measures,

potential of these data sets for subsequent use by other researchers. In addition, grantees will be expected to follow an NCCAN-suggested format in the preparation of final program reports in order to achieve broader dissemination and successful utilization of findings by policymakers,

NCCAN proposes that longitudinal studies be coordinated with the NCCAN-sponsored Consortium for Longitudinal Studies of Child Maltreatment which seeks to aggregate compatible projects into a longitudinal study database. It is intended that these studies will also obtain information on

such a grant on behalf of the student, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Postsecondary Accreditation. There are no overhead costs allowed for this program. The full

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Pursuant to section 105(a)(2)(B) of the Child Abuse Prevention and Treatment Act of 1988 (the Act), as amended, this notice identifies proposed priorities for research on the causes, prevention, identification and treatment of child abuse and neglect; on appropriate and effective investigative, administrative and judicial procedures with respect to cases of child abuse; and for demonstration or service programs and projects designed to prevent, identify, and treat child abuse and neglect. It also identifies proposed topics to be discussed in symposia to be convened during fiscal year (FY) 1991. The proposed demonstration and service projects include priorities for training, innovative programs and other projects which show promise for addressing issues related to child maltreatment. Final research and demonstration priorities will take into consideration public comments. The solicitation for grant applications will be published in the **Federal Register**; solicitations for contracts will appear in the *Commerce Business Daily*.

In addition to projects funded under priority areas selected as a result of this announcement, NCCAN intends to continue funding for:

- The Clearinghouse on Child Abuse and Neglect Information
- The National Information Clearinghouse for Infants with Disabilities and Life Threatening Conditions
- The planning and implementation of a national data collection and analysis program for collecting data from official State reports on child abuse and neglect, as required by section 105(b) of the Act.

Moreover, NCCAN intends to support a competitively awarded project to examine the incidence and prevalence of child abuse and neglect. NCCAN also intends to support a competitively awarded project to plan and conduct the Tenth National Conference on Child Abuse and Neglect, which will take place in FY 1994.

II. Recent Research and Demonstration Topics

Recently funded research and demonstration projects supported by NCCAN in fiscal years 1989 and 1990 have addressed the following topics:

NCCAN Priority Areas Funded in FY 1989

Research Projects:
- Family Functioning of Neglectful Families
- Community-Based Prevention of Child Maltreatment
- Prosecution of Child Maltreatment Cases
- Judicial Review Process
- Impact of Treatment Approaches for Intrafamilial Child Sexual Abuse
- Status of Measurement Development in the Study of Child Abuse and Neglect
- Field Initiated Research on Child Abuse and Neglect
- Consortium for Longitudinal Studies of Child Maltreatment

Demonstration Projects:
- Utilizing Results of Demonstration Grant Clusters: Parent Aide and Respite Care Programs
- Adaptation of Child Sexual Abuse Training Curricula for Demonstration with Native American Populations
- Parents' Self-Help Groups
- Prevention of Physical Child Abuse and Neglect

NCCAN Priority Areas Funded in FY 1990

Research Projects:
- Joint Law Enforcement/Child Protective Services Investigations of Reports of Child Maltreatment
- Psychological Impact of Child Maltreatment
- Empirical Evaluations of Treatment Approaches for Child Victims of Physical or Sexual Abuse
- Field Initiated Research for Child Abuse and Neglect

Demonstration Projects:
- Synthesis and Utilization of Results of "Child Victims as Witnesses" Projects
- Review of Existing Training for Judges to Improve the Criminal and Civil Court Intervention Process in Child Sexual Abuse Cases
- Strengthening of Leadership and Resources for Cultural Competence in Child Abuse and Neglect
- National Conference on Child Abuse and Neglect.

Because the project periods for many of the grants funded in FY 1990 extend up to five years, the subject areas listed above, with two exceptions, are not being considered for funding in FY 1991. The two exceptions are: (1) Field Initiated Research on Child Abuse and Neglect, which is being repeated, and (2) the planning for and conduct of the next National Conference on Child Abuse and Neglect to be held in FY 1994, which will be competitively awarded.

III. Proposed Child Abuse and Neglect Research and Demonstration Priorities for FY 1991

The Office of Human Development Services (OHDS) solicits comments and suggestions concerning each of the proposed priorities for FY 1991 described below. We also solicit suggestions for topics not covered in this announcement, but which are timely and related to specific needs in the field of child abuse and neglect. Any suggestions for new topics should keep in mind the issues already being addressed in current projects, as listed above. Comments should also build on the current base of knowledge in child abuse and neglect and its prevention, identification and treatment. Knowledge gained through proposed research and demonstration priorities should lead to improved services for children and families and increase the knowledge in the field. As specified in the proposed priority areas, we intend to pay special attention to issues of ethnic and cultural relevance in the design of demonstration projects and research studies as well as in the development of measures, evaluations and objectives.

More detailed information on prior and continued projects supported by NCCAN as well as other studies on child maltreatment are available through the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013.

As a result of funding commitments for current projects, fewer funds will be available for new grants in FY 1991 than in previous years. An estimated total of $1.3 million may be available for such projects. Consequently, we have limited the number of research and demonstration priorities proposed in this amendment. Respondents are encouraged to recommend how proposed issues should be prioritized. All estimates of the availability of funds are subject to Congressional appropriations.

No acknowledgment will be made of the comments submitted in response to this notice, but all comments received by the deadline will be reviewed and given thoughtful consideration in the preparation of the final funding priorities for child abuse and neglect activities in FY 1991. Copies of the final program announcement will be sent to all persons who comment on these proposed priorities.

A. Proposed Research Priorities

The proposed research priority areas have been developed as the result of information and suggestions received from the field including NCCAN-sponsored research symposia, the NCCAN Research Grantees Meeting, Hearings on Issues in Research on Maltreatment convened by the Research Committee of the U.S. Advisory Board on Child Abuse and Neglect, and discussions held directly with the U.S. Advisory Board on Child Abuse and Neglect.

NCCAN plans to continue building on recommendations made at the meetings described above. We recognize the importance of longer timeframes with suitable funding levels to enable projects to both initiate and conclude studies with appropriate products and processes for the dissemination of findings. We propose that all future successful applicants include plans to prepare data sets according to NCCAN-suggested procedures to ensure the potential of these data sets for subsequent use by other researchers. In addition, grantees will be expected to follow an NCCAN-suggested format in the preparation of final program reports in order to achieve broader dissemination and successful utilization of findings by policymakers, practitioners, and other researchers. We will also encourage the use of common data collection instruments across studies where applicable. The review process for applications that are to be submitted in response to the final announcement will continue to be that of peer review.

1. Field Initiated Research for Child Abuse and Neglect

There is an ongoing need to generate new knowledge and an understanding of critical issues in the field in order to improve its capacity to prevent, identify and treat child abuse and neglect. The purpose of this priority area is to support new research designed to carry out the legislative responsibilities established for the National Center on Child Abuse and Neglect by the Child Abuse Prevention and Treatment Act of 1988, as amended. These responsibilities include the conduct of research on the causes, prevention, identification and treatment of child abuse and neglect, and on appropriate and effective investigative, administrative and judicial procedures with respect to cases of child abuse, particularly child sexual abuse.

Research issues to be addressed are those that will expand the current knowledge base, build on prior research, contribute to practice and provide insights into new approaches to the prevention and treatment of child maltreatment. Such issues include, but are not limited to, alternative methods for measuring prevalence; recurrence rates and causes of recidivism; child fatalities; the impact of feedback on reporter and Child Protective Services (CPS) system behavior; parent and child experiences with the CPS system; factors that promote resilience in maltreated children; collaborative approaches to assessment and treatment for parallel traumas experienced by the child such as substance abuse plus maltreatment; prevention of revictimization; transfer of appropriate technology from other fields; and methods for translating and disseminating critical bodies of research for use in practice. The proposed research studies should be designed to address current and emerging issues that have direct application to the field of child abuse and neglect.

NCCAN proposes that longitudinal studies be coordinated with the NCCAN-sponsored Consortium for Longitudinal Studies of Child Maltreatment which seeks to aggregate compatible projects into a longitudinal study database. It is intended that these studies will also obtain information on the ability of maltreated children to deal with normative developmental transitions. Further, it is proposed that data sets be prepared in accordance with suggested procedures being developed by the National Data Archive on Child Abuse and Negelct that would enable others to readily use the data.

2. Graduate Research Fellowships in Child Abuse and Neglect

The research community has highlighted the need to draw new researchers into the field of child abuse and neglect. Researchers at NCCAN-sponsored research symposia and grantees' meetings and the Hearings on Issues in Research on Child Maltreatment convened by the Research Committee of the U.S. Advisory Board on Child Abuse and Neglect have recommended the granting of stipends at the doctoral level as one of several vehicles to address this need. In response to this recommendation, NCCAN proposes to support individual fellowships for doctoral candidates to complete dissertations addressing critical issues in child abuse and neglect.

NCCAN seeks to expand the research capacity of the field by encouraging more students to seek careers in child abuse and neglect research through the granting of graduate fellowships for doctoral candidates to complete their dissertations. The questions to be addressed and issues to be studied for graduate fellowships are those related, but not limited, to the Priority Area on Field Initiated Research for Child Abuse and Neglect.

Students seeking these Graduate Research Fellowships must be enrolled as doctoral candidates in their sponsoring institutions. Proposals submitted by sponsoring institutions must include candidates' resumes outlining education, employment experience and publications. Information should also be included on the academic status of the candidate. A letter of support from a sponsoring faculty member must be provided for each doctoral candidate seeking a Fellowship.

While an individual is considered to be the beneficiary of the grant support, awards would be made to eligible institutions on behalf of qualified candidates. To be eligible to administer such a grant on behalf of the student, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Postsecondary Accreditation. There are no overhead costs allowed for this program. The full amount of the stipend is to go directly to the graduate student. No more than two awards per institution will be made. Awards would be for a twelve-month period and would be used to cover stipends, dependent allowances, university fees and major costs for conducting the proposed study project, including any necessary travel.

3. Research on Male Juvenile Sexual Offenders

In 1980, NCCAN funded 14 three-year demonstration projects for the management and treatment of intrafamily child sexual abuse cases. Almost every project found substantial increases in the number of reports of male juvenile sexual offenders compared to previous years. In the treatment of adult sexual offenders, these programs also found patterns of perpetration that began during the adolescent years with the victimization of younger children. This finding, along with other research, suggests that the untreated adolescent sexual abuser is likely to become an adult sexual offender. Other studies citing the problem of sex offenses by adolescents have further found that a large number of these offenders have a history of being sexually abused. Therefore, without intervention, male victims of sexual abuse may repeat their victimization on others. A study in Washington State also added documentation to the growing concern over the number of pre-adolescent children who are victimizing other children (26 percent were 6 to 12 years old at the time of the sexually aggressive behavior).

The Preliminary Report of the Task Force of the National Adolescent Perpetrators Network, completed in 1988, pointed out that specialized treatment programs had grown significantly from the 20 programs identified in 1982. Most recently, the Nationwide Survey of Juvenile and Adult Sex-Offender Treatment Programs, completed in May 1990 by the Safer Society Program, identified 626 programs that specialized in treatment for the juvenile sexual offender. Over half of these programs provide services to 6 to 12 year old victims who act out sexually. Little, however, is known about the effectiveness of these various

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treatment approaches and for which juvenile offenders a particular type of treatment is most effective.

NCCAN is interested in supporting studies that build on current methodologies and research to measure the effectiveness of treatment approaches for this population of 6 to 12 year olds in order to prevent repeat victimization. Information is needed on the outcomes of different types of treatment for different lengths of time and for different types of maltreatment and child and family characteristics. Research questions to be addressed also include the relationship between early childhood victimization and perpetration and the identification of the at-risk pre-adolescent population most prone to become offenders. NCCAN recognizes the complexities in assessing the effectiveness of various treatment approaches for the range of topologies represented in this population.

B. Proposed Demonstration and Service Priorities

1. National Resource Centers on Child Abuse and Neglect

Section 106(b) of the Child Abuse Prevention and Treatment Act, as amended, requires that Resource Centers be established that serve defined geographic areas; that are staffed by multi-disciplinary teams of personnel trained in the prevention, identification and treatment of child abuse and neglect; and that provide advice and consultation to individuals, agencies and organizations which request such services. To comply with that mandate, NCCAN seeks to support a Child Abuse and Neglect Resource Center and a Child Sexual Abuse Resource Center through Cooperative Agreements. Both Centers are expected to have qualified personnel, adequate resources and the organizational, professional and educational capacity to carry out the intent of the legislation.

On a nationwide basis, the National Resource Center on Child Abuse and Neglect will provide leadership, resource information and materials, technical assistance and professional consultation in the prevention, identification, diagnosis and treatment of child abuse and neglect; the training of professionals in the field of child abuse and neglect; and the identification, verification and dissemination of best practices and treatment models.

On a nationwide basis, the National Resources Center on Child Sexual Abuse will provide leadership, resource information and materials, technical assistance and professional consultation in the prevention, identification, diagnosis and treatment of child sexual abuse; the investigation, management and prosecution of child sexual abuse cases from the initial report through disposition; the training of professionals in the field of child sexual abuse; and the identification, verification and dissemination of best practices and treatment models.

The two proposed Resources Centers will provide assistance to State and local agencies, organizations and individuals involved in child abuse and neglect prevention and treatment and in related fields. To that end, questions related to the type and extent of the assistance needed by the field must be addressed, as well as questions related to how to ensure that the latest knowledge on the prevention, identification and treatment of child abuse and neglect, including child sexual abuse, will be provided. In addition, the provision of assistance and consultation must be conducted in a manner that takes into account varying circumstances and conditions in the field and the client population, requiring that questions of flexibility, options for delivery and appropriateness of content be addressed.

Specific objectives related to the Centers' efforts to provide assistance to the field will include:

- Identifying emerging child abuse and neglect/child sexual abuse issues and preparing information and policy papers for the field addressing such issues;
- Identifying, documenting and developing innovative or exemplary resources, such as training curricula, manuals and studies, and assisting the field in adapting such resources to meet specific needs;
- Providing technical assistance, training and consultation to improve professional competency and to promote the utilization of resources and best practices related to child abuse and neglect and child sexual abuse, including methods and techniques for program implementation and evaluation; and
- Developing a network of professionals in child abuse and neglect and related fields and linking these individuals with other persons and agencies requesting assistance.

NCCAN proposes to implement these projects as Cooperative Agreements. (A Cooperative Agreement is Federal financial aid in which substantial Federal involvement is anticipated.) The respective responsibilities of Federal staff and project staff would be identified and agreed upon prior to award.

2. Collaborative Arrangements Between State Child Welfare Agencies and State Title IV–A Agencies to Train Job Opportunity and Basic Skills (JOBS) Participants to Work as Child Protective Services Paraprofessionals

A major area of concern to NCCAN and to the child abuse field in general is the overwork and heavy caseloads experienced by many child protective services (CPS) workers. This situation has led in many localities to burn-out and high turnover which has restricted the ability of public agencies to deliver needed services. NCCAN is interested in the potential offered by the Job Opportunity and Basic Skills (JOBS) program to provide innovative ways to support the work of child protective services workers and, perhaps, to enable public agencies to augment current services.

The August 1990 report of the U.S. Advisory Board on Child Abuse and Neglect states that "reported cases of child maltreatment have more than doubled in the past decade. * * * The child protection system has not expanded to meet the challenges posed by these changes. The huge increase in cases has not only affected the CPS agencies charged with investigating cases. It also has had significant effects on law enforcement agencies, juvenile and criminal courts, prosecutor offices, public defender offices, and mental health agencies involved with investigating, adjudicating, or treating maltreated children and their families." These same stressors, it should be noted, are also adversely impacting the ability of child welfare agencies to develop and support innovative efforts to prevent child maltreatment.

The Family Support Act of 1988 (the Act) authorized the JOBS program, which shifts the primary purpose of the AFDC program from providing cash assistance to help welfare recipients become employed and self-sufficient. The Act requires that all States implement the JOBS program, which provides education, job training, and work activities for participants, by October 1, 1990.

Participants in the JOBS program can constitute a valuable resource to State CPS agencies. Participants, through the education and training supported by the JOBS program, could be trained as paraprofessionals to work in support roles with child protection and child welfare professionals or to augment the services provided by these professionals in capacities such as "home visitors."

NCCAN is interested in soliciting joint applications from State child welfare/child protection agencies and State title IV–A agencies to address the preparation and training of paraprofessionals in the child protection field. These State agencies would be expected to enter into collaborative arrangements to provide training to JOBS participants. Project sponsors would need to determine the type of training that would be provided and the training methods that would be employed. The specific paraprofessional role(s) for which JOBS participants would be trained and the methods that would be employed in evaluating the effectiveness of the demonstration training projects would also need to be defined.

C. Symposia

In addition to the above activities, NCCAN proposes to convene symposia in FY 1991 with selected experts on subject areas of critical concern to the field of child abuse and neglect. The selection of topics for the symposia will focus on issues on which some research and demonstration efforts have occurred but for which there is no clear direction for further development.

The purpose of each symposium is to review what is known to the field, but nees further exploration, and to identify areas about which little is known and which require closer examination. The symposia should result in recommendations for multi-year strategies to further explore some topics and to identify new areas for examination. This will be accomplished by bringing together small groups of selected experts who will assess the major issues and identify trends and problems in the field. Substantive reports of publishable quality will be prepared based upon the discussions during and findings of the symposia.

Comments are requested on the following symposia topics which NCCAN proposes to address in FY 1991:

- The Effectiveness of Intervention and Treatment by Child Protective Services,
- Prevention of Child Abuse and Neglect, and
- Children in Court.

(Catalog of Federal Domestic Assistance Program Number 13.670, Child Abuse and Neglect Prevention and Treatment.)

Dated: September 27, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved September 27, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90-23385 Filed 10-2-90; 8:45 am]
BILLING CODE 4130-01-M

Runaway and Homeless Youth Proposed Priorities for Fiscal Year 1991

AGENCY: Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Notice of Proposed Fiscal Year 1991 Runaway and Homeless Youth Program Priorities for the Office of Human Development Services.

SUMMARY: The Runaway and Homeless Youth Act requires the Department to publish annually for public comment a proposed plan specifying priorities the Department will follow in making grants under this title. Final priorities selected will take into consideration the comments and recommendations received from the field in response to this notice.

The public, particularly those knowledgeable about and experienced in providing services to runaway and homeless youth, are urged to respond. In implementing the final priorities, the actual solicitations of grant applications will be published at a later date in the Federal Register. Solicitations for contracts will be published in the "Commerce Business Daily." No proposals, concept papers or other forms of application should be submitted at this time.

DATES: To be considered, comments must be received no later than November 19, 1990.

ADDRESSES: Please address comments to: Wade F. Horn, Ph.D., Commissioner, Administration for Children, Youth and Families. Attention: Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, (202) 245–0102.

SUPPLEMENTARY INFORMATION:

I. Purpose

The purpose of the Runaway and Homeless Youth Act (the Act) is to improve services for and increase knowledge about runaway and homeless youth and their families. This Act is administered by the Family and Youth Services Bureau (FYSB) of the Administration for Children, Youth and Families (ACYF).

The Act authorizes financial assistance to establish or strengthen community-based centers designed to address the immediate service needs of runaway and homeless youth and their families; to fund a national communication system; to provide grants to statewide and regional non-profit organizations for the provision of training and technical assistance to agencies and organizations eligible to establish and operate runaway and homeless youth centers; to make grants for research, demonstration, and service projects; and to provide informational assistance to potential grantees interested in establishing runaway and homeless youth centers.

The Act also authorizes a transitional living grant program under which grants were awarded for the first time in fiscal year (FY) 1990.

II. Background

The Family and Youth Services Bureau is located within the Administration for Children, Youth and Families, Office of Human Development Services, Department of Health and Human Services.

The Family and Youth Services Bureau is responsible for administering the Runaway and Homeless Youth Act at the Federal level. To carry out the purposes of the Act, FYSB conducts activities that address crisis needs of runaway and homeless youth and their families through the establishment or strengthening of more than 340 community-based programs providing temporary shelter, counseling, and aftercare services. The Family and Youth Services Bureau also supports coordinated network grants designed to share information, expertise, and resources among service providers, and a toll-free 24-hour National Runaway Switchboard which serves as a neutral channel of communication between young people and their families and as a source of referral to needed services.

III. Annual Program Priorities

As required by section 364 of the Act, we are proposing for public comment the following FY 1991 priorities and are soliciting comments and recommendations on these priorities. We also encourage suggestions for topics not covered in this announcement but which are timely and relate to the needs of runaway and homeless youth.

Commentors should be aware that Section 366(a)(2) requires that 90 percent of the funds appropriated under Part A of the Runaway and Homeless Youth Act be used to establish and strengthen runaway and homeless youth basic centers. Total funding under Part A of the Act for FY 1991 is expected to be approximately $28.6 million, depending on Congressional action.

In providing suggestions and recommendations, commentors should also be aware of research and demonstration projects supported by FYSB in previous years. These include:

- Enhancing cooperation between law enforcement agencies and runaway and homeless youth centers;

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- Preventing alcohol abuse among minority youth;
- Demonstrating integrated treatment for dysfunctional families of at-risk youth by runaway and homeless youth basic centers;
- Developing transitional living programs for homeless youth;
- Promoting Private Industry Council (PIC) youth employment partnerships with centers for runaway and homeless youth;
- Mainstreaming troubled youth;
- Improving participation of minority youth in runaway and homeless youth centers; and
- Preventing youth suicide.

For further information concerning these and other research and development projects supported by FYSB in earlier years, commentors are invited to contact Mr. Edward Bradford, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20201, telephone: (202) 245-0060.

No acknowledgement will be made of the comments received in response to this notice, but all comments received by the deadline will be considered in preparing the final runaway and homeless youth funding priorities. Final priorities will be published prior to December 31, 1990 as required by the Act.

The selected priority area statements soliciting applications for grants under the research and demonstration program will be included in the Office of Human Development Services' (OHDS) Coordinated Discretionary Funds Program (CDP) Federal Register announcement for FY 1991. The priority statements and requests for applications for the Basic Centers, the National Communication System, and the Transitional Living Projects will appear in one or more additional Federal Register announcements as in previous years. Copies of these program announcements will be sent to all persons who comment on these proposed priorities. Solicitations for contracts for technical assistance and training and selected evaluation priorities will be published in the "Commerce Business Daily" during FY 1991.

A. Priorities for Runaway and Homeless Youth Basic Centers

Part A, section 311 of the Act authorizes the Department to make grants to public and private entities to establish and operate local runaway and homeless youth centers to provide services to deal primarily with the immediate needs of runaway or otherwise homeless youth and their families in a manner which is outside the law enforcement structure and the juvenile justice system.

Approximately 340 grants, of which one-third will be competitive new awards, will be funded in FY 1991 to support organizations which provide services to fulfill the four major goals of the Runaway and Homeless Youth Program. These goals are to:

1. Alleviate the problems of runaway and homeless youth;
2. Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services;
3. Strengthen family relationships and encourage stable living conditions for youth; and
4. Help youth decide upon a future course of action.

Community-based centers that address the immediate needs (e.g., outreach, temporary shelter, food, clothing, counseling, aftercare, and related services) of runaway and homeless youth and their families will be established or strengthened through the conduct of a competitive grant review process. The review criteria and the accompanying application forms and procedures will be published in a Federal Register announcement.

Funds for basic center grants are allotted annually among the States and other qualifying jurisdictions on the basis of their relative population of individuals who are less than 18 years of age. For the past several years, basic center grants have been awarded for three-year project periods. Approximately one-third of the basic center grants expire each year, requiring these agencies to compete for new awards. The remaining two-thirds of the basic center grants receive non-competitive continuation awards. Within any given State, in consequence, specific grantees may fall within any one of three different funding cycles. This has led to some perceived unfairness and inequity in funding. In those years in which Federal funding has increased substantially for the overall program, competing applicants have had an opportunity to receive substantial increases in their grant awards while non-competing (continuation) grantees have been denied the potential for comparable increases. In addition, a number of grantees receiving relatively small annual awards (e.g., under $25,000, as opposed to the national average of approximately $75,000) have become locked into a repeating cycle of small awards from which they perceive no exit. In view of this situation, we solicit comments on a possible new policy which would place all basic center grants within a given State on the same competitive cycle. The purpose of such a policy would be to improve the fairness of the competitive process and to increase equity among basic center grantees.

Additionally, in previous years, agencies eligible to receive continuation grants under the basic center program have been precluded from competing for available funds to permanently increase their approved three-year funding levels. The intent of this policy has been to maintain or increase the number of agencies in each State receiving Federal support to provide basic center services to runaway and homeless youth. We are interested in public comments on a possible change in this practice under which non-competing continuation grantees would be allowed to compete for supplemental funds to their existing grants. Such supplemental funding would be for the purposes of strengthening and/or expanding basic center services to runaway and homeless youth and their families, and would be available only if there was a significant increase in State allocations.

B. Priorities for a National Communications System

Part A, section 313 of the Runaway and Homeless Youth Act, as amended, mandates support for a national communication system to assist runaway and homeless youth in communicating with their families and with service providers and earmarks $750,000 in FY 1991 for this purpose. The current grant for this system, which was awarded in 1986 to Metro-Help, Inc. of Chicago to operate the National Runaway Switchboard, expires in February, 1991.

In addition, there are other national, toll-free, runaway hotlines which operate in the United States. There are also numerous State and regional hotlines providing similar services for runaways, and a variety of toll-free numbers for related services (e.g., the Missing Child Hotline operated by the National Center for Missing and Exploited Children). These agencies and others could potentially apply for the national communication system grant.

The Family and Youth Services Bureau intends to publish an announcement in the Federal Register indicating the availability of funds for the national communication system. A new award will be made by February 1, 1991, in order to avoid any disruption in services.

C. Priorities for Transitional Living Grants

Part B, section 321 of the Runaway and Homeless Youth Act, as amended, authorizes grants to establish and operate transitional living projects for homeless youth. The Transitional Living Program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21.

The first transitional living grants were awarded in September, 1990, for three-year project periods and 15-month budget periods. This will allow the Family and Youth Services Bureau to initiate a second round of competitive funding in FY 1991. Approximately 30 new transitional living grant awards are expected to be made in FY 1991. The review criteria and the accompanying application forms and procedures will be published in a Federal Register announcement.

Several programs within FYSB are targeted to homeless populations, along with a number of Federal programs outside FYSB, and coordination among these programs would enhance services and reduce duplication. The Family and Youth Services Bureau will continue to work with other DHHS agencies to coordinate health and mental health services for homeless youth and with the Department of Housing and Urban Development to coordinate housing for homeless youth. In addition, technical assistance and training activities to relevant programs will be coordinated across FYSB-administered programs (see paragraph D below).

D. Priorities for Technical Assistance and Training

Both the Runaway and Homeless Youth Act, section 314, and the Drug Abuse Prevention Program for Runaway and Homeless Youth, section 3511 of the Anti-Drug Abuse Act of 1988, also administered by FYSB, authorize support to nonprofit organizations for the purpose of providing training and technical assistance to runaway and homeless youth service providers. For the past several years, these general services have been provided through coordinated networking grantees in each of the ten Federal regions.

Beginning in FY 1991, FYSB proposes to adopt a more consolidated approach to supporting its training and technical assistance program and to shift from grants to contracts. Departmental policy requires that technical assistance and training of the highly specific nature contemplated by FYSB be delivered through contracts rather than through grants. Accordingly, we will follow a competitive process for the award of contracts to regional, nonprofit organizations that will integrate and deliver these technical assistance and training services across the country. Further, because of the substantial differences in geographic size, youth population, and number of FYSB grantees in the various Federal Regions, we are contemplating consolidating some service delivery areas and awarding only five or six such contracts. This consolidation would be a more cost effective use of the limited technical assistance and training funds available. We are particularly interested in comments on the advantages and disadvantages of consolidating service delivery areas and on the potential impact of reducing the number of Federally-supported agencies providing training and technical assistance across the country.

The Family and Youth Services Bureau intends to support a training and technical assistance program that promotes consistent, high quality, technical assistance and training opportunities for runaway and homeless youth service providers across the country. In part, this program would analyze, and disseminate a number of existing model programs resulting from recent research and demonstration efforts in suicide prevention, independent/transitional living, outreach, aftercare, and other related youth service areas. The program will also carry out the training activities authorized by the Drug Abuse Prevention Program for Runaway and Homeless Youth. A curriculum for those activities is currently being developed. We would appreciate comments on any additional specific areas of focus of interest to the field.

E. Priorities for Research, Demonstration, and Service Projects

Section 315 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway and homeless youth. These activities are important in order to identify emerging issues and to develop and test models which address such issues. For FY 1991, we are considering several priority areas for research and demonstration projects. Recognizing that there are not sufficient funds to support projects in all of these areas, we encourage comments from the field on which of these projects would be most helpful to the youth service community. In addition, comments are encouraged regarding the focus of and refinements to the projects being proposed. When final determination of the priorities is established, proposals to carry out the specific projects will be solicited through the Federal Register announcement for the OHDS Coordinated Discretionary Funds Program (CDP). Activities more appropriately carried out through contracts will be solicited through the "Commerce Business Daily".

Potential priority areas for FY 1991 research and development projects include:

(1) Services for Runaway and Homeless Youth With Disabilities

This priority area would focus on enhancing the ability of youth service providers to meet the needs of runaway and homeless youth who are disabled or who have parents or guardians with disabilities. We are particularly interested in comments regarding the need for an assessment of the current ability of service providers to meet the needs of runaway and homeless youth with disabilities. Alternatively, demonstration projects could be funded to develop models to meet the needs of such youth.

(2) Survey of State Runaway and Homeless Youth Laws and Funding

Several States have or are in the process of developing statutes and funding to address the runaway and homeless youth issue. This priority area would identify and describe the extent and substance of these State laws and of State support for runaway and homeless youth services. A final report on current State practices and policies effecting runaway and homeless youth would be developed and disseminated.

(3) Transitional Living/Independent Living Collaboration

The purpose of this proposed priority area would be to support demonstrations which would develop and test models of interagency collaboration between projects funded under the Transitional Living Program for Homeless Youth and the Independent Living Initiatives Program for youth in foster care under title IV-E of the Social Security Act. Both programs are administered by ACYF.

Some of the youth to be served by the transitional living projects may be eligible for Federal support under Title IV-E of the Social Security Act and, therefore, are eligible for Independent Living Program services. Moreover, the

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service needs of homeless youth and older youth in foster care are similar. Therefore, coordination of the housing and social services available under the respective programs could produce a cost-effective and comprehensive program model for nationwide replication.

(4) Comprehensive Service Delivery Models

This priority area would provide financial support to stimulate the identification and packaging of exemplary models of comprehensive youth services delivery, including best practices in State and local collaboration between runaway and homeless youth centers and other service providers. We would be particularly interested in identifying those formal agreements which facilitate the provision of medical, education, employment, and other services to runaway and homeless youth. The models developed would be used to inform the runaway and homeless youth service field on effective methods for expanding, managing and improving services.

(5) Home-Based Care—An Alternative to Shelter

This priority area would focus on the development of home-based intervention models, including mediation, designed to meet the needs of at-risk youth and their families. Many basic centers have identified the need for intensive and sustained family-based support in order to best meet the needs of potential runaway and other at-risk youth, and home-based mediation approaches are being used by some providers as an alternative to shelter programs. Projects funded under this priority area would be required to conduct cost-benefit analyses and evaluations of the effectiveness of this approach.

(6) Staff Development and Minority Recruitment

Recruitment and retention of qualified staff, particularly minority staff, have been identified as problems for many runaway and homeless youth service providers. To address these problems, this priority area would support the development of youth services curricula to be used by schools of social work in bachelor or master level degree programs, as well as the development and delivery of in-service training models for staff currently employed by youth service organizations. In addition, emphasis would be given to increasing the number of minorities working in the area of youth services by providing financial support for the education and professional training of minority students pursuing undergraduate or graduate degrees in social work who express an interest in working with adolescents.

(7) Field-Initiated Research—Impact of Family Trends on Adolescent Runaway Behavior

A number of significant changes in family demographics, economic conditions, and social trends in America over the last two or three decades are having an impact on adolescent behavior. This priority area would call for field-initiated research to identify one or more of these trends and assess the impact on runaway behavior, drug abuse, participation in gangs, or other identified trends in adolescent behavior, and to relate the research findings to enhancing the quality of youth services. We would propose to limit eligibility for such grants to institutions which demonstrate the capability to conduct research in collaboration with FYSB-supported youth programs.

F. Priorities for Evaluation

Third party evaluations are important means of identifying and measuring the outcomes of federally supported programs. Information from such evaluations can be used to improve program quality and to determine program effectiveness. The following two evaluation projects, which would be funded through contracts, are planned for FY 1991:

(1) Evaluation of the Transitional Living Program

The first grants under the new Transitional Living Program were awarded in FY 1990 and a design for the evaluation of these projects is being developed. The focus of the planned evaluation will be the effectiveness of the services provided by these projects, primarily in terms of client outcomes.

(2) Evaluation of Services Provided by Basic Centers for Runaway and Homeless Youth

This proposed project would utilize a pretested instrument to study approximately 2,000 youth who have been served by the basic centers funded under the Runaway and Homeless Youth Act. Findings from a project funded in FY 1989 indicate that establishing contact with runaway and homeless youth is a difficult task. Under this proposed project, a national network of center staff would be used to track and contact individual youth and to conduct follow-up interviews. The findings from the study would provide updated information on the effectiveness of the services provided to runaway and homeless youth for use at the Federal and service provider levels.

(Catalog of Federal Domestic Assistance, Program Number 13.623, Runaway and Homeless Youth; effective October 1, 1990, Program Number 93.623).

Dated: September 27, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: September 27, 1990.

Maryh Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90-23384 Filed 10-2-90; 8:45 a.m.]

BILLING CODE 4130-01-M

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the Subcommittee of the National Cancer Advisory Board meeting which was published in the **Federal Register** (55 FR 38397) on September 18, 1990.

The Subcommittee on Special Actions for Grants which was scheduled to meet on October 1 at 8 a.m., Building 31C, Conference Room 6, will now meet at 1 p.m. The entire meeting will be closed to the public.

Dated: September 28, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23335 Filed 10-2-90; 8:45 am]

BILLING CODE 4140-01-M

Health Resources and Services Administration

Program Announcement for Grants for Two-Year Programs of Schools of Medicine or Osteopathic Medicine

The Health Resources and Services Administration announces that applications for fiscal year 1991 Grants for Two-Year Programs of Schools of Medicine or Osteopathic Medicine are now being accepted under the authority of section 788(a), Public Health Service Act and section 631 of Public Law 100-607.

The Administration's budget request for fiscal year 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any changes in this policy.

Section 788(a) authorizes the award of grants to maintain and improve schools which provide the first or last two years of education leading to the degree of doctor of medicine or osteopathic medicine. Grants provided under this authority to schools that were in existence on September 30, 1965, may also request support for construction and purchase of equipment.

To be eligible for a grant under this authority, the applicant must be a public or nonprofit private school providing the first or last two years of education leading to the degree of doctor of medicine or osteopathic medicine and be accredited or be operated jointly with a school that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

Review Criteria

Approval of all applications will be based on an analysis of the following factors:

(1) The extent to which the project meets the intent of section 788(a) legislation;

(2) The administrative and management ability of the applicant to carry out grant supported objectives in a cost effective manner;

(3) The adequacy of the qualifications and experience of the staff and faculty;

(4) The relative effectiveness of the proposed project in improving the quality of and/or access to medical education; and

(5) The extent to which the project is effective in its recruitment and retention of minority and disadvantaged students.

In addition, the following mechanism may be applied in determining the funding of approved applications:

Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

Funding Priority for Fiscal Year 1991

The following funding priority was established in fiscal year 1989 after public comment and the Administration is extending this priority in fiscal year 1991.

In determining the order of funding of approved applications, a funding priority will be given to:

Projects which satisfactorily demonstrate an enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic, American Indian, Alaskan Native minority trainees) that have been recruited, and retained.

Requests for application materials, questions regarding grants policy and completed applications should be directed to:

Grants Management Officer (D-31), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6902.

Should additional programmatic information be required, please contact:

Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-04, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-3614.

The standard application from PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline is December 3, 1990. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

This program is listed at 13.140 in the "Catalog of Federal Domestic Assistance." Applications submitted in response to this announcement that request construction assistance are subject to the Intergovernmental Review under provisions of Executive Order 12372, as supplemented by 45 CFR 100, Intergovernmental Review of Federal Programs. Applications submitted for program support only are not subject to intergoveramental review under these provisions.

Dated: September 12, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-23349 Filed 10-3-90; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 3,3'-Dimethoxybenzidine Dihydrochloride

The HHS National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of 3,3'-dimethoxybenzidine dihydrochloride, used principally as an intermediate in the production of commercial bisazobiphenyl dyes for coloring textiles, paper, plastic, rubber, and leather.

Toxicology and carcinogenesis studies were conducted by administering doses of 0, 60, 170 or 330 ppm 3,3'-dimethoxybenzidine dihydrochloride in drinking water to groups of F344/N rats of each sex for a period of 21 months.

Under the conditions of these 21-month drinking water studies, there was clear evidence of carcinogenic activity [1] of 3,3'-dimethoxybenzidine dihydrochloride for male F344/N rats, as indicated by benign and malignant neoplasms of the skin, Zymbal gland, preputial gland, oral cavity intestine, liver, and mesothelium. Increased incidences of astrocytomas of the brain may have been related to chemical administration. There was clear evidence of carcinogenic activity of 3,3'-dimethoxybenzidine dihydrochloride for female F344/N rats, as indicated by benign and malignant neoplasms of the Zymbal gland, clitoral gland, and mammary gland.

Increases in neoplasms of the skin, oral cavity, large intestine, liver and uterus/cervix were also considered to be related to chemical administration of 3,3'-dimethoxybenzidine dihydrochloride.

The study scientist for these studies is Dr. D. Morgan. Questions or comments about this Technical Report should be directed to Dr. Morgan at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-2284.

Copies of Toxicology and Carcinogenesis Studies of 3,3'-Dimethoxybenzidine Dihydrochloride in F344/N Rats (Drinking Water Studies) (TR 372) are available without charge from the NTP Public Information Office.

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

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MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated September 27, 1990.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 90-23336 Filed 10-2-90; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of CS2

The HHS National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of CS2, an eye and respiratory irritant used as an aerosol to control riots.

Toxicology and carcinogenesis studies were conducted by exposing 50 rats of each sex to CS2 at target concentrations of 0, 0.075, 0.25 or 0.75 mg/m3, 6 hours daily, 5 days a week, for 105 weeks. Groups of 50 mice of each sex were exposed to 0, 0.75, or 1.5 mg/m3 on the same schedule.

Under the conditions of these inhalation studies, there was no evidence of carcinogenic activity [2] of CS2 for male or female F344/N rats exposed to 0.075, 0.25, or 0.75 mg/m3 in air for up to 2 years. There was no evidence of carcinogenic activity for male or female B6C3F1 mice exposed to 0.75 or 1.5 mg/m3 in air for up to 2 years. Concentration-related decreases in the incidences of pitutary gland adenomas and lymphomas were observed in female mice.

Exposure to CS2 caused degeneration and squamous metaplasia of the olfactory epithelium, hyperplasia and metaplasia of the respiratory epithelium, and proliferation of the periosteum of the nasal passage of rats. In mice, exposure to this compound caused suppurative inflammation and hyperplasia and squamous metaplasia of the respiratory epithelium of the nasual passage.

The study scientist for these studies is Dr. Kamal Abdo. Questions or comments about this Technical Report should be directed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7619.

Copies of Toxicology and Carcinogenesis Studies of CS2 (94% o-Chlorobenzalmalononitrile) in F344/N Rats and B6C3F1 Mice (Inhalation Studies) (TR 377) are available without charge from the NTP Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: September 27, 1990.

David P. Rall,

Director National Toxicology Program.

[FR Doc. 90-23337 Filed 10-2-90; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Allyl Glycidyl Ether

The HHS National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of allyl glycidyl ether, used as a resin intermediate and as a stabilizer of chlorinated compounds, vinyl resins, and rubber.

Toxicology and carcinogenesis studies were conducted by exposing groups of 50 rats and 50 mice of each sex to air containing allyl glycidyl ether at concentrations of 0, 5, or 10 ppm for 6 hours per day, 5 days per week for 103 weeks for rats and 102 weeks for mice.

Under the conditions of these 2-year inhalation studies, there was equivocal evidence of carcinogenic activity [3] of allyl glycidyl ether for male Osborne-Mendel rats, based on the presence of one papillary adenoma of respiratory epithelial origin, one squamous cell carcinoma of respiratory epithelial origin, and one poorly differentiated adenocarcinoma of olfactory epithelial origin, all occurring in the nasal passage of males exposed to 10 ppm. There was no evidence of carcinogenic activity of allyl glycidyl ether for female rats. One papillary adenoma of the respiratory epithelium was present in a female rat exposed to 5 ppm. There was some evidence of carcinogenic activity of allyl glycidyl ether for male B6C3F1 mice, based on the presence of three adenomas of the respiratory epithelium, dysplasia in four males, and focal basal cell hyperplasia of the respiratory epithelium in seven males in the nasal passage of mice exposed to 10 ppm. There was equivocal evidence of carcinogenic activity of allyl glycidyl ether for female mice, based on the presence of one adenoma of the respiratory epithelium and focal basal cell hyperplasia of the respiratory epithelium in seven females exposed to 10 ppm. The sensitivity of the assay to detect potential carcinogenicity may have been reduced in male rats because of poor survival in all groups.

The study scientist for these studies is Dr. Gary Boorman. Questions or comments about this Technical Report should be directed to Dr. Boorman at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3440.

Copies of Toxicology and Carcinogenesis Studies of Allyl Glycidyl Ether in Osborne-Mendel Rats and B6C3F1 Mice (Inhalation Studies) (TR 376) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: September 27, 1990.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 90-23338 Filed 10-2-90; 8:45 am]

BILLING CODE 4140-01-M

[2] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

[3] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3157]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours need to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 27, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside).

Office: Housing.

Description of the Need for the Information and its Proposed Use: This rule authorizes using section 8 assistance in existing multifamily projects with HUD-insured or HUD-held mortgages, including section 202 projects and projects sold by HUD subject to purchase money mortgages.

Form Number: None.

Respondents: Individuals or households, State or local governments, and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Content of applications	300		1		20		6,000
Notice upon contract expiration	175		1		.5		88

Total Estimated Burden Hours: 6,088.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 708-3944, Scott Jacobs, OMB (202) 395-6880.

[FR Doc. 90-23330 Filed 9-2-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3156]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of respose, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reductionu Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 26, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Supplement to Subscription Agreement for Cooperative Housing Applicants Under Sections 213 and 221(d)(3).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The form HUD-93232A is a critical element and source document by which the Department determines the cooperative member and group capacity to meet the financial requirements of the project.

Form Number: HUD-93232A.

Respondents: Individuals or households.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-93232A	10,000		1		.7		7,000

Total Estimated Burden Hours: 7,000.
Status: Reinstatement.
Contact: William Harris, (202) 708–1223, Scott Jacobs, OMB, (202) 395–6880.

[FR Doc. 90–23331 Filed 10–2–90; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed has been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement, related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Paperwork Reduction Project 1076–0113, Washington, DC 20503 at (202) 395–7340.

Title: 25 CFR 21.3—State or other contracting agency furnish plan of operation.

Abstract: The Bureau requires a plan executed by the State or other agency entering into a contract with the Bureau specifying the services and assistance to be rendered under the terms of the contract, and a budget showing the plan for expenditures of funds. Upon approval of the contract no deviation from the plan shall be made without prior approval.

Bureau Form Number: none.
Frequency: Annually, or at time of contract.
Description of Respondents: States or other agencies who contract with the Bureau.
Annual Responses: 4.
Annual Burden Hours: 16.
Bureau Clearance Officer: Gail Sheridan (202) 208–2685.

Dated: September 6, 1990.
Betty B. Tippeconnic,
Acting Chief, Division of Social Services.
[FR Doc. 90–23369 Filed 10–2–90; 8:45 am]
BILLING CODE 4310–02–M

Bureau of Land Management

[MT–070–00–4050–91]

Montana; Area Closure, Headwaters Resource Area; Butte District, MT

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Emergency area closure on public lands.

SUMMARY: Notice is hereby given that all public lands in the Johnny's Gulch/Hauser Lake Area, south of the Johnny's Gulch Road in section 32, T. 11 N., R. 1 W., and sections 5 and 6, T. 10 N., R. 1 W. north of the Missouri River and east of Brown's Gulch Road will be closed to all unauthorized entry including motorized vehicles, hiking, hunting and fishing activities. This closure shall remain in effect from October 15 through December 31, 1990. This area is located about 15 miles northeast of Helena, Montana. The purpose of this closure is to prevent disturbance to migrant bald eagles utilizing the area during the period. Authority or this closure is 43 CFR 8341.2.

FOR FURTHER INFORMATION CONTACT: Merle Good, Headwaters Resource Area Manager, P.O. Box 3388, Butte, Montana 59702.

Dated: September 24, 1990.
Orval L. Hadley,
Acting District Manager.
[FR Doc. 90–23343 Filed 10–2–90; 8:45 am]
BILLING CODE 4310–DN–M

[MT–940–08–4520–11]

Land Resource Management; Survey Plat Filings: Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: Plat of survey for the following described land accepted September 5, 1990, will be officially filed in the Montana State Office, Billings, Montana, effective 30 days after publication.

Principal Meridian, Montana

T. 1 S., R. 33 E.

The plat representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of sections 24 and 25, a portion of the reestablished original meander line of sections 24 and 25, a portion of the 1922–1923 adjusted original meanders of the left bank of the Big Horn River, and an island in sections 24 and 25, and the survey of a portion of the medial line of an abandoned channel, certain division of accretion and reliction lines, and certain new meanders of the left bank of the Big Horn River, Township 1 South, Range 33 East, Principal Meridian, Montana.

The triplicate original of the following described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on the plat, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. The protested plat of survey will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

This survey was executed at the request of the Bureau of Indian Affairs, Billings, Area Office.

EFFECTIVE DATE: September 19, 1990.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: September 21, 1990.
Robert W. Faithful,
Acting State Director.
[FR Doc. 90–23344 Filed 10–2–90; 8:45 am]
BILLING CODE 4310–DN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–311]

Certain Air Impact Wrenches; Notice of Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this date, James M. Gould, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation in addition to George C. Summerfield, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: September 26, 1990.
Lynn I. Levine,
Director, Office of Unfair Import Investigations.
[FR Doc. 90–23372 Filed 10–2–90; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 337–TA–170 (Advisory Opinion Proceedings)]

Certain Bag Closure Clips; Issuance of an Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue an advisory opinion finding that the importation of certain bag closure clips by Hoan Products, Inc. of Dayton, New Jersey would not violate the general exclusion order issued at the conclusion of the above-captioned investigation.

ADDRESSES: Copies of the advisory opinion and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1104.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On February 5, 1990, Hoan Products, Inc. (Hoan) of Dayton, New Jersey, filed a request pursuant to Commission interim rule 211.54(b) for an advisory opinion that importation of two types of bag closure clip would not violate the exclusion order issued at the conclusion of Inv. No. 337–TA–170, Certain Bag Closure Clips (Bag Clips). Hoan later withdrew its request as to one type of clip.

On February 27, 1990, the Commission issued an order instituting an advisory opinion proceeding based on Hoan's request. The Commission's order called for briefing by Hoan, the patent holder Chip Clip Corp. (Chip Clip), and the Commission's Office of Unfair Import Investigations. Chip Clip did not respond to the Commission's order.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 211.54(b) of the Commission's Interim Rules of Practice and Procedure (19 CFR 211.54(b))

By order of the Commission.
Issued: September 24, 1990.
Kenneth R. Mason,
Secretary.
[FR Doc. 90–23371 Filed 10–2–90; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 332–292]

California Pesticide Residue Initiative: Probable Effects on U.S. International Trade in Agricultural Food Products

AGENCY: United States International Trade Commission.

ACTION: Notice of request for additional written information.

SUMMARY: Following receipt on May 10, 1990, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–292, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing information with respect to the following:

(1) The extent to which enactment of the "California Environmental Protection Act of 1990" (Initiative) could create major differences between California and Federal standards for chemical residues in food;

(2) The volume and value, by country of origin, of agricultural fresh and processed food products imported through the ports of California, and the volume and value, by country of origin, of the imported agricultural fresh and processed food products marketed in California;

(3) The volume and value, by country of destination, of agricultural fresh and processed food products exported through the ports of California, and the volume and value, by country of destination, of California agricultural fresh and processed food products which are exported; and

(4) The potential international trade effects which would flow from enactment of the Initiative.

The notice of investigation was published in the **Federal Register** on June 7, 1990 (55 FR 23307).

The Commission submitted in confidence its interim report on the investigation on September 28, 1990. That report addressed the first three items of the USTR's request. It also contained preliminary infomation, including a review of relevant studies obtained during the course of the investigation, on the potential economic trade effects which would flow from enactment of the Initiative (the fourth item listed in the USTR's request). The final report on the investigation, scheduled to be submitted in confidence not later than December 31, 1990, will more fully address the fourth item listed in the request.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen Burket (202–252–1316) or David Ignersoll (202–252–1309), Agriculture Division, Office of Industries, U.S. International Trade Commission. Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202) 252–1810.

WRITTEN SUBMISSIONS: Because of the lag in time between the original date for assurance of consideration of written statements submitted in connection with the Notice of investigation (July 24, 1990) and the scheduled submission of the final report to the USTR (Dec. 31, 1990), interested persons are invited to submit additional written statements concerning the fourth item on which the USTR requested information, particularly any quantitative effects on industries as a whole. New information may also be provided on any of the first three items listed in the request. To be assured of consideration, the additional written statements (original plus 14 copies) must be received by the close of business (5:15 p.m.) on November 1, 1990. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform to the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

By order of the Commission.
Issued: October 1, 1990.
Kenneth R. Mason,
Secretary.
[FR Doc. 90–23375 Filed 10–2–90; 8:45 am]
BILLING CODE 7020–02–M

Privacy Act of 1974; Establishment of Systems of Records

AGENCY: International Trade Commission.

ACTION: Final Notice of the Establishment of Systems of Records for the Investigative Files of the Office of Inspector General.

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SUMMARY: This notice is published in accordance with the requirements of section 552a(e)(4) of the Privacy Act. The notice describes the establishment of two systems of records for the investigative files of the Office of Inspector General in the U.S. International Trade Commission. These systems will be titled Office of Inspector General Investigative Files (General) and Office of Inspector General Investigative Files (Criminal).

Notice of the new system was published in the Federal Register on May 9, 1990 (55 FR 19371) and interested persons were given until July 6, 1990, to submit comments. The Commission received only one comment, which is descussed below. As a rsult of the comment, the Commission has decided ro split the originally proposed system into two systems as described below.

EFFECTIVE DATE: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Jane E. Altenhofen, Inspector General, 202–252–2210. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: In accordance with the Inspector General Act Amendments of 1988 (Public Law 100–504, which amended Public Law 95–452 and is codified at 5 U.S.C. App. 3), the Commission established an Office of Inspector General. The functions of the Office of Inspector General, an independent unit within the Commission, include the detection and prevention of fraud, waste and abuse and the promotion of economy and efficiency in Commission programs and operations. The Office may participate in the investigation of those engaging in fraudulent or abusive activities. The Office also reports suspected violations of criminal law to the Attorney General and informs Congress and the Chairman of the Commission about deficiencies and vulnerabilities in the Commission's programs and operations.

The Commission originally proposed the establishment of a single system of IG investigative records, pursuant to the Privacy Act, entitled Office of Inspector General Investigative Files. This system of records was to be maintained solely by the Office of Inspector General and remain separate from other Commission records. The system was to be exempt from certain requirements of the Privacy Act pursuant to sections (j)(2) and (k)(2) of that Act.

In the original notice, the Commission requested comments on the system from interested persons. The Commission received one comment, from Congressman Robert Wise, Chairman of the Government Information, Justice, and Agriculture Subcommittee of the Committee on Government Operations. Congressman Wise objected to the use of the (j)(2) exemption for all of the IG's investigatory records. He suggested, however, that "if an IG office establishes a clearly identifiable subunit that performs as its principal function criminal functions, the separate records of that subunit may qualify for the (j)(2) exemption."

In response to Congressman Wise's comments, the OIG has established two systems of records. The primary system, containing investigatory materials compiled for law enforcement purposes, will be entitled Office of Inspector General Investigative Files (General). The second system, entitled Office of Inspector General Investigative Files (Criminal), will be maintained and used by the OIG's newly established Criminal Investigations Subunit. Both systems will have the same location, categories of individuals covered, categories of system records and record sources. This information is set forth in this notice and is identical to the information set forth in the earlier notice. Both systems of records have the same routing uses, as set forth below.

The Commission will claim an exemption for the geneal system from certain requirements of the Privacy Act pursuant to section (k)(2) of the Act. It will also claim exemptions for the criminal system from certain requirements of the Act pursuant to sections (j)(2) and (k)(2) of the Act. These exemptions are established in rules that are being published as final elsewhere in this issue of the **Federal Register**.

Accordingly, the Commission announces the establishment of the following systems of records for its Office of Inspector General:

System names:

Office of Inspector General Investigative Files (General) and Office of Inspector General Investigative Files (Criminal)

Systems location:

Office of Inspector General, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Categories of individuals covered by the systems:

These systems of records contain records on individuals who are or have been subjects of the Office of Inspector General's investigations relating to the programs and operations of the Commission.

Categories of records in the systems:

The general system will contain investigatory materials collected by the OIG's main unit for law enforcement purposes. The criminal system will contain records maintained by the OIG's criminal investigations subunit, and consisting of information compiled for the purpose of a criminal investigation and associated with an identifiable individual.

The systems will contain documentation of any and all complaints or allegations initiating investigations; all relevant correspondence; witness statements; affidavits; copies of all subpoenas issued; transcripts of any testimony taken in the investigation and accompanying exhibits; documents and other records or copies obtained during the investigation; internal staff memoranda, staff working papers and other documents and records relating to the investigation; and all reports on the investigation.

Authority for maintenance of the systems:

Public Law 95–452, as amended by Public Law 100–504 (5 U.S.C. App. 3)

Routine uses of records maintained in the systems, including categories of users and the purposes of such uses:

Information in the systems may be disclosed, upon assurances that any party receiving the information will comply with the Privacy Act safeguards or provide the maximum protection permitted under the relevant federal, foreign, state, or local laws:

(1) Where there is an indication of a violation or a potential violation of law, whether civil, criminal or regulatory in nature, whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether federal, foreign, state, or local.

(2) To federal, foreign, state, or local authorities in order to obtain information or records relevant to an Office of Inspector General investigation, but only to the extent necessary to explain and justify the need for additional information about the subject individual.

(3) To federal, foreign, state or local governmental authorities maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the granting of a contract, or the issuance of a license, grant or other benefit. Information in the systems may be disclosed for these purposes only to the extent necessary to explain and justify the need for additional information about the subject individual.

(4) To federal, foreign, state, or local governmental authorities in response to their request in connection with the hiring or retention of an employee, disciplinary or other administrative action concerning an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the granting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

(5) To non-governmental parties where those parties may have information the Office of Inspector General seeks to obtain in connection with an investigation, but only to the extent necessary to explain and justify the need for additional information about the subject individual.

(6) To independent auditors, investigators, or other private firms with which the Office of Inspector General has contracted to carry out an independent audit or investigation, or to collate, aggregate or otherwise refine data collected in the system of records. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

(7) In response to a court-issued subpoena or a court order to respond to an administrative subpoena in any litigation or other proceeding.

(8) To the Department of Justice and/or the Office of General Counsel of the Commission when the defendant in litigation is: (a) Any component of the Commission or any employee of the Commission in his or her official capacity; (b) the United States where the Commission determines that the claim, if successful, is likely to directly affect the operations of the Commission; or (c) any Commission employee in his or her individual capacity where the Department of Justice and/or the Office of General Counsel of the Commission agree to represent such employee.

(9) To a Congressional office from the district of an individual in response to an inquiry form the Congresional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the systems: storage:

The Office of Inspector General Investigative Files (Criminal) and the Office of Inspector General Investigative Files (General) consist of paper records maintained in binders or folders. The binders and folders are stored in the Office of Inspector General's file cabinets.

Retrievability:

The records are retrieved by the case title, the name of the subject of the investigation, or a unique control number assigned to each investigation.

Safeguards:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in secure file cabinets in locked offices at all other times.

Retention and disposal:

The records in these systems will be retained indefinitely.

Systems manager(s) and address:

Inspector General, Office of Inspector General, U.S. International Trade Commission, 500 E Street, SW., Room 220, Washington, DC 20436.

Notification procedure:

Requests to determine whether either of these systems of records contains a record pertaining to the requesting individual may be made by mail in accordance with the procedures set forth in the Commission rules at 19 CFR part 201 subpart D. Requests should be addressed to the Privacy Act Officer, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. Individuals should clearly indicate both on the envelope and in the letter that it is a Privacy Act request.

Record access procedures:

The procedures for requesting and obtaining access to individual records in a records system are contained in the Commission rules, at 19 CFR part 201 subpart D (§§ 201.22–201.32).

Record source categories:

These files will contain information supplied by the following: Individuals, including those to whom the information relates where practicable; witnesses, corporations, and other entities; records of individuals and of the Commission; records of other entities; federal, foreign, state or local bodies and law enforcement agencies; documents; correspondence; transcripts of testimony; and other miscellaneous sources.

Contesting record procedures:

The procedures for requesting correction or amendment to records maintained in either of these systems are contained in the Commission rules, at 19 CFR part 201 subpart D.

Systems exemptions from certain provisions of the Privacy Act:

Pursuant to 5 U.S.C. 552a(k)(2), the system of records entitled Office of Inspector General Investigative Files (General) is exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f) of the Privacy Act.

Pursuant to 5 U.S.C. 552a(j)(2), the system of records entitled Office of Inspector General Investigative Files (Criminal) is exempted from all provisions of the Privacy Act except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (9), (10), and (11), and (i).

Both of these exemptions are established in the Commission rules, at 19 CFR 201.32.

Dated: September 26, 1990.

By the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–23373 Filed 10–2–90; 8:45 am]

BILLING CODE 7020–02

DEPARTMENT OF JUSTICE

Arthur Bursey; Notice of Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 18, 1990, a proposed Partial Consent Decree in *United States* v. *Arthur Bursey, et al.*, Civil No. 81–299D, was lodged with the United States District Court for the District of New Hampshire resolving the matter as to certain defendants. The proposed Partial Consent Decree concerns the response to the existence of asbestos, a hazardous substance, at certain sites in New Hampshire pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Resource Conservation and Recovery Act. This Partial Consent Decree resolves the claims of the United States and the State of New Hampshire alleged in the complaint against Anthony Matarazzo and Rose Matarazzo. Two previous consent decree resolved the governments' claims againt the majority of the defendants. There continue to be

unresolved claims against Arthur Bursey.

Under the terms of the Consent Decree, these defendants agree to file a notice of institutional controls and related covenants concerning their site. They also will provide access to the site and undertake the necessary institutional controls.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bursey*, D.J. Ref. 90-7-1-165.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20044, (202) 347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-23306 Filed 10-2-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Advisory Panel on the Dictionary of Occupational Titles (APDOT); Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Advisory Panel on the Dictionary of Occupational Titles (APDOT) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) on August 28, 1990.

The APDOT is being established as part of the Secretary of Labor's Workforce Quality Agenda to improve the quality of the work force. The APDOT will assist the Department of Labor in meeting the goals of the Secretary's Agenda by providing a diversified range of user perspectives on the Dictionary of Occupational Titles (DOT). The DOT is a document which is used extensively in business, education and government. It defines, classifies and describes occupations in the labor market. The last edition of the DOT was published in 1977. The APDOT will provide advice on a new edition.

The APDOT will report to and advise the Assistant Secretary for Employment and Training on the development, publication and dissemination of the DOT.

TIME: The meeting will begin at 9 a.m. on October 24, 1990, and continue until close of business at 5 p.m. that day; and will reconvene at 9 a.m. on October 25, 1990, and adjourn at 2:30 p.m. that day.

PLACE: The Canterbury Hotel, 1733 N Street NW., Washington, DC 20036.

AGENDA: Matters to be considered as part of the agenda for the APDOT meeting include:

Welcome and Introductions
APDOT Goals, Expectations and Operational Procedures
History and Background of DOT
Background on the Scope of the DOT Review Project including:
- Type of occupational information needed
- Basis for selection of occupations
- Ways of organizing and classifying information
- Collection, publication and dissemination of information

PUBLIC PARTICIPATION: The meeting will be open to the public. A half hour (4:15-4:45 p.m.) on October 24 will be set aside for public comments. Individuals wishing to speak to the panel should call Dr. Marilyn Silver at 202-535-0189. Seating will be available for the public on a first-come, first-serve bases.

Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Marilyn B. Silver, Executive director, Advisory Panel on the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor 200 Constitution Avenue NW., Washington, DC 20210. Papers received on or before November 15, 1990 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Marilyn B. Silver, Executive Director, Advisory Panel on the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 535-0189.

Signed at Washington, DC, this 27th day of September 1990.

Roberta T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 90-23397 Filed 10-2-90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

White House Conference Advisory Committee Meeting

Date and Time: Oct. 15th 1990—9 a.m. to 9 p.m., Oct. 16th 1990—10:45 a.m. to 4 p.m.

Place: Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036, Ph. 1 202 483-6000.

Advisory Committee in Embassy Room A. Subcommittee meeting rooms to be announced at the meeting.

Status: All meetings are open.

Matters To Be Discussed: White House Conference on Library and Information Services (WHCLIS) Advisory Committee meeting:

Oct. 15, 1990

—9-11:45 a.m.
—Presentation of plans for the White House Conference on Library and Information Services
—11:45 a.m.—Noon
—Meeting of Subcommittee Chairs
—Noon-1 p.m. (Working Lunch)
—National Conference Program Planning
—1:15-2 p.m.
—Task Group Meetings
—2-5 p.m.
—Subcommittee Meetings
—5:10-7 p.m.
—Field Tour for WHCAC Members
—7:30-9 p.m. (Working Dinner)

Oct. 16, 1990

—8:30-11 a.m.
—Field Tour for WHCAC Members
—11 a.m.-12:30 p.m.
—WHCAC Chairman's Report
—Presentation of FY 1991 Spending Plan for WHCLIS
—12:30-2:30 p.m. (Working Lunch)
—WHCAC Subcommittee Reports
—2:30-3 p.m.
—Public Comment Time
—3-4 p.m.
—Future Meeting Dates
—WHCLIST Update
—Old and New Business
—4 p.m.
—Adjourn

Persons appearing before, or submitting only written statements to the Advisory Committee, are asked to hand over to the Committee prior to presenting testimony, 60 copies of their prepared statement. This will insure that ample copies are available for the members of the Advisory Committee, the attending press and the observers.

To request further information or to make special arrangements for handicapped individuals, contact Mark Scully (1 202) 254-3100, no later than one week in advance of the meeting.

Dated: September 20, 1990.

Mary Alice Hedge Kenealy,

Designated Federal Official for WHCAC NCLIS.

[FR Doc. 90-23319 Filed 10-2-90; 8:45 am]

BILLING CODE 7527-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 25th meeting on October 24-25, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. each day. The entire meeting will be open to the public.

The purpose of the meeting will be to review and discuss the following topics:

- The Committee will be briefed by the DHLWM staff on the "Phase I Demonstration of the Nuclear Regulatory Commission's Capability to Conduct a Performance Assessment for an HLW Repository."
- The Committee will be briefed on a recent report by Sandia National Laboratories which concluded that there is reasonable confidence that compliance of the WIPP facility with the EPA standards is achievable.
- The Committee will hear a briefing for information on Performance Assessment Methodology for an LLW site by NMSS.
- The Committee will be briefed by a member of the NRC's Nuclear Safety Research Review Committee relative to its findings on the NRC's radio-active waste research program.
- The Committee will be briefed on the results of a recent meeting of its human intrusion working group. The committee may also discuss future plans to study requirements for controlling a repository's release of Carbon-14.
- The Committee will discuss the complexities and problems associated with licensing an LLW disposal facility, particularly with respect to siting and the NRC-state interface.
- The Committee will hear an overview of NRC Waste Management related research.
- The Committee will discuss developments related to the Technical Assessment Review (TAR) of geologic and geophysical evidence pertaining to structural geology in the vicinity of the proposed exploratory shaft with one of its consultants.
- The Committee will discuss anticipated and proposed Committee activities, meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS so far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated September 27, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-23367 Filed 10-2-90; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 10, 1990 through September 21, 1990. The last biweekly notice was published on September 19, 1990 (55 FR 38398).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Documen Room, the Gelman Building, 2120 L Street, NW, Washington, DC The filing

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of requests for hearing and petitions for leave to intervene is discussed below.

By November 2, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Alabama Power Company, Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: August 27, 1990

Description of amendment request: The proposed changes replace the existing heatup/cooldown curves found in Technical Specification 3/4.4.10 with new curves applicable through 14 effective full power years (EFPY) of operation. These changes will allow operation of the Joseph M. Farley Nuclear Plant (Farley), Unit 2, beyond the 8 EFPY limit of the existing heatup and cooldown curves. Operation of Farley, Unit 2, could reach the 8 EFPY limit of the existing curves as early as March 23, 1991.

The proposed curves are based on the analysis of surveillance Capsule X that was removed from the Unit 2 vessel after approximately 6.41 EFPY. The analysis of Capsule X is documented by WCAP-12471, "Analysis of Capsule X from the Alabama Power Company, Joseph M. Farley Unit 2 Reactor Vessel Radiation Surveillance Program," submitted to the NRC via Alabama Power Company letter dated April 12, 1990.

Bases section 3/4.4.10 is also being revised to reflect that the proposed heatup/cooldown curves are applicable for 14 EFPY of operation as well as to delete Figure B 3/4.4-1 which is no longer used.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Alabama Power Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

Neither the probability nor the consequence of a previously evaluated accident is increased due to the updated pressure-temperature operating limits. The adjusted reference temperature of the limiting beltline material was used to correct the beltline pressure-temperature curves to account for irradiation effects. Thus, the operating limits are adjusted to incorporate the initial fracture toughness conservatism present when the reactor vessel was new. The adjusted reference temperature calculations were performed utilizing the guidance contained in Regulatory Guide 1.99, Revision 2. The updated curves provide assurance that brittle fracture of the reactor vessel is prevented; therefore, the consequences of a previously evaluated accident are not significantly increased as a result of this change.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The updated pressure-temperature operating limits will not create the possibility of a new or different kind of accident than previously evaluated. The revised operating limits are merely an update of the old limits by taking into account the effects of irradiation embrittlement, utilizing criteria defined in Regulatory Guide 1.99, Revision 2. The updated pressure-temperature curves are conservatively adjusted to account for the effects of irradiation on the limiting reactor vessel material. No physical changes to the plant are being made, therefore, no new modes of operation are provided.

3. The proposed change does not involve a significant reduction in a margin of safety.

The method for performing analyses to guard against brittle fracture in reactor pressure vessels as presented in "Protection Against Non-ductile Failure," Appendix G to Section III of the ASME Boiler and Pressure Vessel Code has been used. This method utilizes the fracture mechanics concepts and is based on the reference nil-ductility temperature (RT_{ndt}). These methods have been used to set the operating limits for Farley Unit 2 and take into account the effect of irradiation on the reactor vessel materials while maintaining a required margin of safety. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 9, 1990

Description of amendment request: The proposed amendment would make minor nomenclature changes consistent with Standard Technical Specifications; removes the requirements that the Technical Section Manager must hold a Senior Reactor Operators License; removes the requirement that the Operation Review Committee (ORC) Chairman be the Technical Section Manager; substitutes a requirement of "within 24 hours" for "immediately" for reporting disagreements between ORC members and the Chairman to the Senior Vice President-Nuclear; corrects the reference to 10 CFR 50.36(c)(1)(i) to 10 CFR 50.36(c)(1)(i)(A) concerning actions to be taken if a safety limit is violated; extends the allowable ORC review time from 7 days to 14 days for temporary changes to procedures; and renumbers the pages.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

1. Operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed amendment does not alter any equipment configuration or equipment.

Removing the SRO requirement currently imposed on the Technical Section Manager is administrative, is consistent with STS, and allows a wider range of candidates for the position. The removal of the SRO requirements does not affect the safe operation of the plant because the holder of the position must meet the requirements of the American National Standards Institute N18.1-1971, "Selection and Training of Personnel for Nuclear Power Plants," in accordance with Pilgrim Technical Specification 6.3 "Unit Staff Qualifications." Removing the requirement that the ORC Chairman be the Technical Section Manager does not impact plant safety for the same reasons.

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Substituting "within 24 hours" for immediately for reporting disagreements between ORC members and the ORC Chairman is to provide a concrete, measurable time period in pace of the vague "immediately." The 24 hour period is consistent with Standard Technical Specifications.

Adding an (A) to correct the reference to 10 CFR 50.36(c)(1)(i)(A) does not impact the safe operation of Pilgrim, and is strictly administrative. Changing "Facility" to "Unit" is a nomenclature change consistent with Standard Technical Specifications and is administrative and does not impact safety. Numbering the pages sequentially is also strictly administrative with no impact on safe operation.

Extending time allowed for the ORC to review temporary changes to procedures from 7 to 14 days is consistent with Standard Technical Specifications. It is an administrative change that is made to reduce the number of special, single-purpose ORC meetings convened solely to satisfy the 7 day requirement.

Adding a reference that 6.9.B was deleted as part of Amendment has no impact on safety. It reflects an earlier amendment and is made to explain the numbering sequence in consideration of the blank pages being removed from Technical Specifications. Deleting "d" from Table 6.9.1 reflects Amendment of March 1, 1988, which incorporated the Radiological Effluent Technical Specifications (RETS) into Pilgrim's Technical Specifications. Amendment makes 6.9.1.d unnecessary and its removal is administrative with no impact on safety.

The proposed changes are administrative and are consistent with Standard Technical Specifications. The proposed changes do not alter the configuration of Pilgrim, or the operation of equipment; hence, the operation of Pilgrim in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operations of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter equipment configuration or equipment. It is administrative and is consistent with Standard Technical Specification; therefore, operating Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident previously evaluated.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The proposed administrative changes do not affect equipment or processes impacting the margin of safety; hence, operating Pilgrim in accordance with the proposed changes does not involve a significant reduction in the margin of safety.

This change has been reviewed and approved by the Operations Review Committee and reviewed by the Nuclear Safety and Audit Committee.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Acting Project Director: Victor Nerses

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 21, 1990

Description of amendment request: The proposed amendment would change the Technical Specification to remove cycle-specific parameter limits, add alternative requirements for fuel assembling, upgrade the minimum critical power ration (MCPR) safety limits and changes to make the affected Technical Specifications consistent with the "Improved BWR Technical Specifications for BWR/45."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

1. Remove Cycle-specific Parameter Limits

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the cycle-specific limits will still be determined by analyzing the same postulated events previously analyzed. The removal of the cycle-specific limits from the Technical Specifications has no influence or impact on a Design Basis Accident occurrence. Each Design Basis Transient and accident analyses previously addressed will be examined with respect to changes in the cycle dependent parameters using the NRC-approved reload design methodologies to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed per the requirements of 10 CFR 50.59, will ensure future reloads not involve a significant increase in the probability or consequences of an accident previously evaluated. The plant will continue to operate within the limits specified in the Core Operating Limits Report (COLR) and to take the same actions when, or if, the limits are exceeded as required by the current Technical Specifications.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical alterations of plant configuration, changes to setpoints, or safety limits are proposed. As stated above, the removal of the cycle-specific limits does not influence, impact, nor contribute in any way to the improbability or consequences of any accident. The cycle-specific limits will be calculated using the NRC-approved methods. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when, or if, limits are exceeded.

C. The proposed changes do not involve a significant reduction in a safety margin because they do not affect any operating practices, limits or safety-related equipment. The margin of safety presently provided by the current Technical Specifications remains unchanged. The proposed amendment still requires operation within the core limits as obtained from the NRC-approved reload design methodologies and appropriate actions to be taken if limits are violated. The development of the limits for future reloads will continue to conform to those methods described in the NRC-approved documentation. In addition, each future reload will involve a safety review to assure that operation of the plant within the cycle-specific limits will not involve a significant reduction in a margin of safety.

2. Alternative Requirements for Fuel Assemblies

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because any future modification of fuel assemblies must be justified by a cycle-specific reload analysis using an NRC-approved methodology. The reload analysis will postulate the same events previously analyzed using NRC-approved reload design methodologies to ensure the transient evaluation of the new reload core is bounded by previously accepted analyses. This examination, which will be performed per the requirements of 10 CFR 50.59, will ensure the modified reload core will not involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change will improve the response of the fuel performance program and result in potential reductions in future occupational radiation exposure and plant radiological releases.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because any future modification of fuel assemblies will be justified using NRC-approved methodology which will ensure conformance to existing design limits and safety analysis bases. This examination, which will be performed per the requirements of 10 CFR 50.59, will ensure the modified reload core will not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a safety margin because any future modification of fuel assemblies will be justified using NRC-approved methodology per the requirements of 10 CFR 50.59. This examination will ensure the modification of fuel assemblies does not involve a significant reduction in a safety margin.

3. Upgraded Minimum Critical Power Ratio (MCPR) Safety Limit

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The NRC-approved methodology used to derive the upgraded MCPR safety limit of 1.04 applied the same criteria as that used to derive the current MCPR safety limit of 1.07. The upgraded MCPR safety limit value of 1.04 ensures fuel cladding protection equivalent to that provided with the 1.07 safety limit maintained. In the safety evaluation for Amendment 14 to NEDE-21401-P-A (GESTAR-II), dated December 27, 1987, the NRC approved the use of the 1.04 MCPR safety limit for D-lattice BWRs subject to the following constraints: 1) the fuel has a beginning of life R-factor of greater than or equal to 1.04 and consists of fuel types P8 x 8R, BP8 x 8R, GE8 x 8E, or GE8 x 8EB, 2) the fuel is at least 2.80 weight percent U-235 bundle average enrichment, and 3) the lower enrichment bundles residing in the core have operated for at least 2 cycles. Because the Pilgrim Nuclear Power Station currently meets these constraints and will meet them in future reloads, the 1.04 MCPR safety limit provides the same degree of assurance for fuel cladding integrity as the 1.07 MCPR safety limit did for previously reload cores. Thus, the consequences of accidents previously evaluated are not significantly increased. The MCPR safety limit does not affect any physical system or equipment that could change the probability of an accident. Therefore, the proposed change does not involve a significant increase in the probability of any accident previously evaluated.

B. Adoption of the proposed MCPR safety limit value does not affect the function of any component or system. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The use of the 1.04 MCPR safety limit reflects the utilization of current General Electric fuel design and does provide the same margin of safety as 1.07 does with older General Electric fuel types as discussed in the previously referenced NRC safety evaluation. Because equivalent fuel cladding protection is provided with the 1.04 MCPR safety limit, the design criterion that 99.9 percent of all fuel rods do not expesience boiling transition following any design basis transient is met. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

4. Improved Technical Specifications

A. Proposed changes are made to make selected sections of Technical Specifications consistent with the "Improved BWR Technical Specifications for BWR/4s," contained in NEDC-31661, dated April 1989, as revised. To accomplish this, Technical Specifications were relocated and redundant requirements deleted to clarify the format and improve readability. In addition, the following minor modifications were included.

1. The conditions for applicability for the MCPR and thermal power safety limits are revised to be consistent with Technical Specification bases and restated in psig to be easily compared to plant instrumentation. The result of this change is to increase the range of applicability of the MCPR safety limit (and correspondingly decrease the range of applicability for the thermal power safety limit) by reactor steam dome pressure of 0.3 psid. Specifically, the reactor steam dome pressure of 800 psia converts to 785.3 psig, which is rounded off to 785 psig and results in a difference of 0.3 psid. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Current Technical Specification 1.1.C is deleted because it is redundant to the requirements of 10 CFR 50.36(c)(1)(ii)(A) and 10 CFR 50.73(b)(3). In the case that reactor scram is accomplished by indirect means, 10 CFR 50 requires an analysis be performed to determine whether safety limits were exceeded when the direct scram signal failed to perform as expected. Thus, current Technical Specification 1.1.C makes no new requirements and may be deleted.

3. The reactor vessel water level safety limit is revised from not less than 12 inches above the top of active fuel to greater than the top of active fuel. No safety analyses or design basis transients rely on a reactor vessel water level safety limit of 12 inches above the top of active fuel. In addition, the change does not alter the automatic or manual response of the operators or plant equipment to any design basis transient. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

4. An alternative action statement is added to Technical Specification 3.1.B.1 in the event that the maximum fraction of limiting power density (MFLPD) exceeds the fraction of rated power (FRP). Specifically, the APRM gain may be adjusted such that the APRM readings are greater than or equal to MFLPD, in lieu of adjusting the APRM scram and rod block trip setpoints. Both alternative actions result in conservative adjustments in the APRM setpoints and provide adequate protection from exceeding safety limits. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As discussed above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not involve any changes to plant design or configuration. They only serve to conform the Technical Specifications to "Improved BWR Technical Specifications for BWR/4s." For this reason, the proposed changes do not create the possibility of a new or different kind of accident previously evaluated.

C. The change in the range of applicability of the MCPR and thermal power safety limits of 0.3 psi does not involve a significant reduction in a safety margin. The change in the reactor vessel water level safety limit to the top of active fuel does not involve a significant reduction in a safety margin because it maintains an adequate margin for effective action before the water level reaches two-thirds core height. No fuel damage is predicted if the water level is maintained above two-thirds core height. A reactor vessel water level safety limit of the top of active fuel is consistent with the NRC-approved "Standard Technical Specifications," NUREG-0123, Revision 3, issued Fall 1980 and the "Improved Technical Specifications." Accordingly, the proposed changes do not involve a significant reduction in a safety margin.

5. Administrative Changes

A. The proposed changes include editorial changes to update the Table of Contents, correct grammatical and spelling errors, correct a reference to the Final Safety Analysis Report (FSAR), make the Technical Specification formal consistent, and add text inadvertently deleted in a previous amendment. These changes add to the clarity and readability of Technical Specifications and are considered to be entirely administrative in nature. Accordingly, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no plant design or configuration changes are involved.

C. The proposed changes do not involve a significant reduction in a safety margin because they do not affect any operating practices, limits, or safety-related equipment.

These changes have been reviewed and approved by the Operations Review Committee and reviewed by the Nuclear Safety Review and Audit Committee.

Based on the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Acting Project Director: Victor Nerses

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Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: August 17, 1987, as supplemented May 30, 1990, June 29, 1990, and July 30, 1990.

Description of amendments request: Carolina Power & Light Company has requested extensions of the expiration dates for the Brunswick Steam Electric Plant (BSEP), Unit Nos. 1 and 2, operating licenses (OL) from the present dates of February 7, 2012, to September 8, 2016, for Unit 1 and February 6, 2010, to December 27, 2014, for Unit 2. The current expiration dates are based upon the construction permit (CP) issuance date of February 7, 1970. At the time the full power OL were issued, it was NRC practice to specify an expiration date of 40 years from the date of CP issuance. This resulted in an effective OL of 33 years and 5 months for Unit 1 and 35 years and 2 months for Unit 2. NRC Regulations (10 CFR 50.51) specify that such licenses be issued for a period not to exceed 40 years. For the past several years it has been the NRC's practice to extend these licenses upon request with adequate justification from the licensee to regain the difference between the OL an CP durations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (the licensee) has reviewed the proposed changes and has determined that the requested amendments do not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the plant was designed and constructed on the basis of 40 years of plant operation. The original BSEP FSAR analyzed operation of the facility for a minimum of 40 years. Procedures and programs are in place to detect abnormal deterioration and aging of critical plant components. A comprehensive environmental qualification program has been developed for BSEP to ensure that environmental qualification is maintained throughout the life of the facility. No changes to operational restrictions or physical alterations to the facility will be made as a result of this request. The proposed amendment will merely allow a full 40 years operation of the BSEP units.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The margin of safety established in the original BSEP FSAR is based on a minimum operational period of 40 years. The proposed amendment merely provides this 40-year period.

The licensee has concluded that the proposed amendments meet the three standards in 10 CFR 50.92 and, therefore, involve no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendments do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: August 17, 1987, as supplemented July 9, 1990.

Description of amendment request: Carolina Power & Light Company has requested an extension of the expiration date for the H. B. Robinson Steam Electric Plant, Unit No. 2, (HBR2) operating license (OL) from the present date of April 13, 2007, to July 31, 2010. The current expiration date is based upon the construction permit (CP) issuance date of April 13, 1967. At the time the full power (OL) was issued, it was NRC practice to specify an expiration date of 40 years from the date of CP issuance. This resulted in an effective OL of less that 37 years. NRC Regulations (10 CFR 50.51) specify that such licenses be issued for a period not to exceed 40 years. For the past several years it has been the NRC's practice to extend these licenses upon request from the licensee with adequate justification to regain the difference between the OL an CP durations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the plant was designed and constructed on the basis of 40 years of plant operation. The Robinson Plant Environmental Report and FSAR (Final Safety Analysis Report) analyzed for a minimum of 40 years of operation. Procedures and programs are in place to detect abnormal deterioration and aging of critical plant components. A comprehensive environmental qualification program has been developed for the Robinson Plant to ensure that environmental qualification is maintained throughout the life of the facility. No changes to operational restrictions or physical alterations to the facility will be made as a result of this request. The proposed amendment will merely allow a full 40 years operation to the HBR2.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modifications to the plant.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The margin of safety established in the Robinson Plant FSAR is based on a minimum operational period of 40 years. No modifications have been made to the Robinson Plant which adversely affect the conclusions of the Robinson Plant FSAR. The proposed amendment merely provides this 40-year period.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: August 21, 1990, as supplemented September 19, 1990.

Description of amendment request: The requested changes to the Technical Specifications: (a) upgrade the plant vent radiation monitor (particulate, iodine, and noble gas detection), (b) upgrade the stack flow monitor and incorporate isokinetic sampling of the plant vent effluents, (c) provide new control room indication and recording equipment for the upgraded instrumentation, and (d) permanently divert the condenser air ejector discharge from the atmospheric vent to the plant vent and remove the automatic divert interlock from the condenser air ejector radiation monitor. These changes are required as a result of Plant Modification M-1005 which removes, modifies, and installs radiation detection equipment related to the plant vent system. Additionally, a change is desired to the required actions of the radiation monitors (RMS-11 and 12) to assure adequate effluent accountability for containment vessel (CV) releases when containment integrity is not required and the associated effluent monitoring instrumentation is out of service.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed.

Regarding the probability of previously analyzed accidents, the instrumentation changes which require the proposed amendment merely provide effluent accountability. Neither the existing monitors nor the new monitors participate in any accident sequence, therefore, the new monitors cannot increase the probability of any accident previously evaluated. This proposed amendment does not increase the probability of a previously evaluated accident because it upgrades instrumentation designed to follow the course of an accident and thereby reduces the probability of equipment malfunction. This equipment does not perform any control function associated with any analyzed accident.

Regarding the consequences of an accident previously analyzed, the equipment which requires the proposed amendment is not required to function to mitigate the consequences of an accident. Further, eliminating the need to divert condenser discharge from the atmospheric vent to the plant vent on high activity levels eliminates the consequences of equipment malfunction since the condenser air radiation monitor no longer performs a control function. Replacing the two plant vent gas monitors with a single monitor does not increase the consequences of an equipment malfunction since the two monitors do not perform redundant waste gas system isolation function and the capability to obtain grab samples of the plant vent is provided and required in the event of a failure of the plant vent monitor.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The equipment changes which require the proposed amendment upgrade plant vent monitoring equipment and permanently divert condenser air ejector discharge to the plant vent. The new equipment performs the same function as the existing equipment. No different operating conditions or functions associated with this project are created, therefore, the proposed amendment does not create the possibility of a new or different accident from any accident previously evaluated.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety.

Although the plant vent radiation monitor does not perform any safety related functions to prevent or to mitigate the consequences of any analyzed and unanalyzed accidents, its operation is a Technical Specification item and is required to monitor and assure that plant operation is within limits. The five detectors associated with the replacement plant vent radiation monitoring system have equal or greater equipment performance specifications compared to the existing detectors.

The detection of particulate radiation also improves because the new isokinetic sample nozzles have a greater particle collection efficiency. The replacement plant vent radiation monitors are installed in the same location as the existing off line detectors, so there is no significant change in the sample transport tubing. Therefore, there is no significant decrease in a margin of safety.

This effort requires changes to the plant Technical Specifications to correctly identify instrumentation which monitor plant gaseous effluents. The Technical Specifications will also be revised to eliminate the requirements of the condenser evacuation system radiation monitoring equipment. This equipment is no longer a Technical Specification requirement since effluents from this system are discharged to the plant vent and are monitored by the plant vent radiation detection equipment. At present, there are two low range noble gas detectors monitoring the plant vent. One detector provides isolation of the waste gas system on high activity level plus indication and alarm functions. The second detector provides indication and alarm functions only. These two low range noble gas detectors are replaced with a single low range gas detector. This single detector provides control, indication, and alarm functions of the existing two detectors. The new detector incorporates present-day technology with highly reliable components for improved performance and operability. Manual sampling of the specific release paths and of the plant vent are required by the operating procedures should the plant vent monitor fail; therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power &

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Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: August 29, 1990

Description of amendment request: Modification is required as a result of evaluations that were conducted pursuant to the requirements of NUREG-0737, Item III.D.3.4, Control Room Habitability. The control room filter system previously identified in the Technical Specifications (TS) is being replaced with a new system.

The TS Section 3.15 specification of operability will be revised to identify active and passive components and redundancy of active safety-related components. The basis is revised to consider radiation exposure limits specified in 10 CFR 50, Appendix A, General Design Criterion 19, Control Room.

Technical Specification Section 4.15 defines the revised surveillance requirements for the control room air conditioning system. Requirements will be added for temperature and pressure testing and staggered testing of redundant equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

A. Would the operation of the facility involve a significant increase in the probability or consequence of an accident previously evaluated?

The probability of occurrence of any Chapter 15 accident previously evaluated is not increased by this modification and Technical Specification change because neither the Control Room Habitability System proposed nor the system being replaced contribute to the probability of any previously evaluated accident. The reliability and availability of the new system is enhanced over that of the old system (pre-refueling outage 13) due to the redundancy of the safety-related active components provided. Properly coordinated power supplies are provided for the new equipment.

There is no increase in the consequences of an accident previously evaluated. Instead, the consequences of an accident are reduced because of the reduction in the radiological dose to the control room operators resulting from an improved filter system and the reduction of unfiltered in leakage into the control room. Also, redundancy of active safety-related components enhances system availability and reliability.

The dose calculations for the modifications to the Control Room Habitability System demonstrate that the dose to the control room operators does not exceed the limits established by 10 CFR 50, Appendix A, General Design Criterion 19, "Control Room."

B. Would the operation of the facility create the possibility of a new or different kind of accident from any accident previously evaluated?

The possibility of a new kind of accident from any accident previously evaluated will not be created by this modification and Technical Specification change. The Control Room Habitability System interfaces with the safety-related electrical distribution system and the safety-related service water system. Proper coordination of power supplies is provided; the service water system addition design considers the additional demand on the service water system and is designed to Seismic Class 1 requirements. The redundancy of safety-related active components provided by this modification increases the reliability of the Control Room Habitability System to perform its function. Adequate separation between safety trains is provided to assure that a single failure of an active component will not result in system inoperability. No single active failure can cause adverse conditions resulting in new accident scenarios but bounded by present accident analyses.

The possibility of a different kind of accident from any accident previously evaluated will not be created by this modification and Technical Specification change. The Control Room Habitability System interfaces with the safety-related electrical distribution system and the safety-related service water system. Proper coordination of power supplies is provided; the service water system addition design considers the additional demand on the service water system and is designed to Seismic Class 1 requirements. The redundancy of safety-related active components provided by this modification increases the reliability of the Control Room Habitability System to perform its function. Adequate separation between safety trains is provided to assure that a single failure of an active component will not result in system inoperability. No single active failure can cause adverse conditions resulting in new accident scenarios not bounded by present accident analyses.

C. Would the operation of the facility involve a significant reduction in the margin of safety?

The margin of safety is enhanced by this modification and Technical Specification change. Redundancy of equipment is provided where it did not previously exist. Radiological conditions for control room operators are improved due to the higher efficiency charcoal bed and the reduced unfiltered inleakage thereby improving the ability of the operator to respond to the accidents previously evaluated.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: September 10, 1990.

Description of amendment request: The proposed amendment would revise the Reactor Coolant System (RCS) Pressure/Temperature Limits of Technical Specifications (TS) 3.4.9.1 and 3.4.9.2 to protect the reactor pressure vessel (RPV) from the potential of brittle fracture as the RPV neutron exposure increases from three (3) effective full power years (EFPY) to five (5) EFPY.

In addition, the low pressure overpressure protection (LTOP) set points are adjusted accordingly and an effective lower temperature limit for usage of the LTOP set points has been added to ensure that the setpoints are used only in the region where the system can provide the necessary protection.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a no significant hazards consideration exists. A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does to involve a significant increase in the probability or consequences of an accident previously evaluated as described below.

Technical Specifications 3.4.9.1 and 3.4.9.2 "REACTOR COOLANT SYSTEM PRESSURE/TEMPERATURE LIMITS" provide RCS pressure-temperature limits to protect the reactor pressure vessel from brittle fracture by closely separating the region of normal operations from the region where the vessel is subject to brittle fracture. The heatup and cooldown rates of Specifications 3.4.9.1 and 3.4.9.2, and LTOP setpoints in Specification 3.4.9.4 are designed to ensure that the 10 CFR 50 Appendix G pressure-temperature limits for the RCS are not exceeded during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests.

General Design Criterion 31 of Appendix A to 10 CFR 50 requires that the reactor coolant boundary shall be designed with sufficient margin to assure that when stressed under operating, maintenance, testing, and postulated accident conditions (1) the boundary behaves in a nonbrittle manner and (2) the probability of rapidly propagating fracture is minimized.

Title 10 of the Code of Federal Regulations Part 50 Appendix G, "Fracture Toughness Requirements," requires the effects of changes in the fracture toughness of reactor vessel materials caused by neutron radiation throughout the service life of nuclear reactors to be considered in the pressure-temperature limits. The 'change' is used in conjunction with the initial material reference temperature (RT_{NDT}) to establish the limiting pressure-temperature curves. Regulatory Guide 1.99 contains procedures for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Using the RG 1.99 Revision 2 and Appendix G to 10 CFR 50, new Nil Ductility Reference Temperatures (RT_{NDT}) and limiting pressure-temperature curves were prepared for the projected reactor vessel exposure at five Effective Full Power Years (EFPY) of operation. These new curves in conjunction with the associated changes in the heatup and cooldown ranges and the existing Low Temperature Overpressure Protection System setpoints provide the required assurance that the reactor pressure vessel is protected from brittle fracture up to five EFPY of operation.

Therefore, the proposed amendment to the pressure-temperature limitations, the heatup and cooldown ranges, and the recalculated limiting material (RT_{NDT}) do not involve a significant increase in the probability or consequences of an accident previously evaluated; collectively they maintain the required buffer necessary to protect the reactor vessel from brittle fracture given a limiting mass or temperature input to the RCS for up to five EFPY of operation.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment does not introduce any new equipment, operating procedures or constraints. It simply adjusts the existing operating limits to compensate for the shift in the nil ductility reference temperature of the reactor vessel due to neutron exposure. Therefore no new accident or malfunction mechanism is introduced by this amendment.

3. The propose amendment does not involve a significant reduction in the margin of safety.

The heatup and cooldown rates of Specifications 3.4.9.1 and 3.4.9.2, and LTOP setpoints in Specifications 3.4.9.4 are designed to ensure that the 10 CFR 50 Appendix G pressure-temperature limits for the RCS are not exceeded during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests.

New Nil Ductility Reference Temperatures and limiting pressure-temperature curves were prepared for the projected reactor vessel exposure at five Effective Full Power Years of operation. This resulted in a lowering of the Appendix G curves. To compensate, the effective ranges to the heatup and cooldown rates were shifted, where necessary, in order to maintain the reactor vessel protection provided by LTOPs.

The revised heatup and cooldown ranges, in conjunction with the current rates and LTOP setpoints ensure that the Appendix G pressure-temperature curves are not challenged given a limiting mass or heat input to the RCS during normal operations, anticipated occurrences and system hydrostatic testing.

Since restrictions remain in place to ensure the Appendix G operating limits of the reactor vessel are not challenged, the margin of safety defined in the Technical Specification Bases is not significantly reduced by this change.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: July 17, 1990

Description of amendment request: The proposed amendment would add the Centerior Service Company as a licensee to Facility Operating Licenses NPF-58 for the Perry Nuclear Power Plant (PNPP). The proposed addition would authorize both the Cleveland Electric Illuminating (CEI) Company and Centerior Service Company (wholly-owned subsidiaries of Centerior Energy Corporation) to act as agents on behalf of the other licensees for the PNPP, and have exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

Under the proposed reorganization of Centerior Energy Corporation, the CEI Nuclear organization would report to Centerior Service Company. As a result, the PNPP Technical Specifications would be revised to reflect a change in the title of the CEI Vice President-Nuclear Group to Centerior Service Company Vice President, Nuclear-Perry.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensees have provided the following analysis of no significant hazards considerations using the Commission's standards.

This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously

evaluated since this is an administrative change which only involves the addition of an additional licensee into the Operating License (OL), and a title change for the Vice-President in charge of the nuclear organization. As noted above, technical qualifications necessary to operate PNPP continue to be provided by the previously approved CEI nuclear organization, and well-defined lines of authority, responsibility and communication continue to exist for all activities affecting the safety of the plant. The additional licensee being added to the OL is a wholly owned subsidiary of the same corporation to which the current owner/operator (CEICO) belongs. These changes do not make any changes to plant systems or have any affect[sic] on accident conditions or assumptions. They also do not affect possible initiating events for accidents previously evaluated, or any system functional requirements.

The proposed amendment does not create the possibility of a new or different kind of accident since it is an administrative change which only involves designation of licensees and the title of a management representative. The proposed changes do not create the possibility of a new or different accident since they do not affect the reactor coolant pressure boundary or other plant systems or structures in such a manner that could initiate any new or different accidents, and since they do not adversely affect any system functional requirements nor plant maintenance or operability requirements.

The proposed amendment does not involve a significant reduction in the margin of safety since it is administrative in nature, and does not affect any USAR design or accident assumption, nor any Technical Specification bases.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis. Therefore, the staff proposes to determine that the licensees' request does not involve a significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Commonwealth Edison Company, Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendment: August 31, 1990

Description of amendments request: Commonwealth Edison Company, the licensee, submitted an application to amend the Technical Specifications of Operating License No. DPR-29 for Quad Cities Nuclear Power Station, Unit 2. This application would change the Technical Specifications to reflect the use of generically approved fuel type GE 8x8NB and the resultant change in the Minimum Critical Power Ratio (MPCR) safety limit from 1.07 to 1.06.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards consideration using the Commission's standards.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The primary fission product barrier will continue to be protected during normal and transient operation. Operation of all secondary fission product barriers are unaffected by this change.

The 1.06 MCPR safety limit value will preserve the required margin of safety for clad integrity. This MCPR safety limit ensures that 99% of the fuel rods would be expected to avoid boiling transition during steady-state or transient conditions with a 95% confidence level. The new fuel type (GE8x8NB) and analytical methods for establishing the safety limit have received NRC approval. Thus, this change does not increase the probability or consequences of a previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The primary fission product barrier will continue to be protected during normal and transient operation. Operation of all secondary fission product barriers are unaffected by this change. No new operational modes are introduced by this change. Thus, the possibility of new or different accidents is not created.

3. The proposed change does not involve a significant reduction in the margin of safety.

The required margin will be maintained for all fuel types and increased for some fuel types. The proposed Technical Specification change reflects the required safety limit for GE8x8NB fuel, while establishing a MCPR safety limit that is more conservative than required for all other fuel types. The margin of safety is therefore not significantly reduced.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: August 14, 1990

Description of amendment request: The amendment would revise Technical Specifications Section 6.2.2.g(4), 6.5.1.2, and 6.3.4 to reflect changes in the organizational structure of the Operations and Engineering Departments. The proposed changes would:

a) remove the reference to titles from the portion of the Technical Specifications dealing with working hour limitations,

b) modify the composition of the Plant Review Committee, and

c) change the title of the individual required to hold a Senior Reactor Operators License and responsible for directing the activities of licensed operators.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee provided an analysis that addresses the above three standards in the amendment application. The licensee stated that the changes do not involve a significant

hazards consideration for the following reasons:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The organizational changes do not affect plant operation. Essential elements of the organizational structure have been retained through the addition of general requirements modeled after the guidance and philosophy provided in Generic Letter 88-20.

(2) Does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature. No modifications to plant equipment, changes to setpoints or operating limitations are being proposed. Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does not involve a significant reduction in the margin of safety.

The proposed changes continue to endorse the guidelines for a "Unit Review Group" which require a chairman and a minimum of four members. The licensee will continue to maintain its Quality Assurance Program implementation to assure equivalent performance of its organizational elements.

The NRC staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with its conclusion. Therefore, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Robert C. Pierson

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: August 15, 1990

Description of amendment request: The amendment would modify Technical Specification 1.1.4 in accordance with the guidance in Generic Letter 89-14, "Line Item Improvement in Technical Specification - Removal of the 3.25 Limit on Extending Surveillance Intervals." Technical Specification 1.1.4 currently permits surveillance intervals to be extended up to 25 percent of the specified interval. However, this Technical Specification limits extending surveillance intervals, so that the combined time intervals for any three consecutive surveillances do not exceed 3.25 times the specified intervals. The proposed change would delete the 3.25 extension limitation. The surveillance interval will still be constrained by the 25 percent interval extension criterion of T/S 1.1.4.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1

Deletion of the 3.25 extensions limitation will not significantly affect equipment reliability and does not affect the probability or consequences of accidents previously evaluated. The surveillance interval will still be constrained by the 25 percent interval extension criteria of T/S 1.1.4. The risk to safety is low in contrast to the alternative of a forced shutdown to perform these surveillances. A safety benefit is incurred when a surveillance interval is extended at a time that conditions are not suitable for performing the surveillance; such as, during transient operating conditions or conditions in which safety system are out of service because of ongoing maintenance or other surveillance activities.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The proposed revision to the T/S will not result in any physical alteration to any plant system, nor would there be a change in the method by which any safety-related system performs its function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

Deletion of the requirement that any three consecutive surveillance interval shall not exceed 3.25 times the interval will not significantly affect equipment reliability, rather it will reduce the potential to interrupt normal plant operations due to surveillance scheduling. This proposed revision will allow all surveillance intervals to be constrained by the maximum allowable extension of 25 percent of the specified surveillance interval, which may enhance safety when used during plant operation.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Robert C. Pierson

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 4, 1990

Description of amendment request: The proposed amendments would reduce the required measured reactor coolant system flowrate by one percent from 97220 GPM/loop to 96258 GPM/loop. Also, an administrative change is being made to delete references to the RTD bypass manifold system. This system was removed from both McGuire units and previously approved by the NRC in Facility Operating License Amendment Nos. 84 (Unit 1) and 65 (Unit 2).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

With regard to the proposed amendments, the licensee states that the changes do not involve a significant hazards consideration and has provided the following in support of that determination:

1. This amendment will not significantly increase the probability or consequences of any accident previously evaluated.

No component modification, system realignment, or change in operation will occur which could affect the probability of any accident or transient. The reduction in flow will not change the probability of actuation of any Engineered Safety Feature (ESF) or other device. The consequences of previously analyzed accidents have been found to be insignificantly different if a 1% lower flow rate is assumed in the analyses.

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The system transient response is not affected by the initial RCS flow assumption, unless the initial assumption is so low as to impair the steady-state core cooling capability or the steam generator heat transfer capability. This is clearly not the case with a 1% reduction in RCS flow.

2. This amendment will not create the possibility of any new or different accident not previously evaluated.

No component modification, system realignment, or change in operating procedure will occur which could create the probability of a new event not previously considered. The reduction in flow will not initiate any new events. All credible accident scenarios have been considered.

3. This amendment will not involve a significant decrease in a margin of safety.

As described in Attachment II [licensee's September 4, 1990, application], the decrease in RCS flow has been analyzed and found to have an insignificant effect on the applicable transient analyses in the FSAR. The reduced flow rate resulted in slightly reduced DNB limits. Figure 2.1-1 provides revised core safety limits for T-avg. as a function of power at the reduced flow rate. These limits will provide equivalent assurance that operating parameters will remain acceptable.

The Axial Flux Difference limits given in T.S. 3/4.2.1 are unchanged, and all of the current thermal hydraulic design criteria are satisfied at the reduced flow conditions. The current overtemperature delta T and overpower delta T setpoints are conservative and provide the necessary protection. However, the dead band of the f(delta I) function (see Note 1 of Table 2.2-1) was revised from -29% greater than $q_t - q_b$ greater than +9% to -29% greater than $q_t - q_b$ greater than +7%. The effect of this change is to assure protection in the event of a power imbalance between the top and bottom of the core. No margins of safety are reduced by these changes.

The Commission has made a preliminary review of the licensee's no significant hazards consideration including the licensee's assessment of the impact of the requested amendments on the Final Safety Analysis Report accident analyses and agrees with the licensee's determination. Accordingly, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001

NRC Project Director: David B. Matthews

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: August 16, 1990

Description of amendment request: The proposed license amendment would revise the Independent Safety Engineering Group (ISEG) reporting and administrative requirements. These changes are needed as a result of organizational changes within the Nuclear Energy Department.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and do not affect Technical Specifications that preserve safety analysis assumptions. Additionally, these changes do not modify the physical design and/or operation of the plant. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

Criterion 2

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are administrative in nature and will not lead to material procedural changes or to physical modifications to the facility. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Criterion 3

Use of the modified specification would not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in or required and maintained by the Technical Specifications.

The changes proposed amend the Independent Safety Engineering Group (ISEG) administrative control and reporting requirements and will focus the control, reports and reporting requirements of the ISEG to the Chairman, Company Nuclear Review Board. Florida Power & Light Company (FPL) will thus ensure the most efficient and effective use of the ISEG's products. However, changing the administrative control and reporting requirements will not affect any margin of safety.

Based on the above, we have determined that the proposed amendment does not (1) involve significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 28, 1990

Description of amendment request: The proposed amendment would modify the Technical Specification requirements of the Facility Review Committee (FRC) and the Nuclear Review Board (NRB) by deleting the specific composition list for each and replacing it with general statements defining levels of expertise for membership. Additional proposed changes include the NRB quorum, alternates, and an editorial change that deletes a reference to the initial year of operation, which has been completed. Requirements regarding meeting frequency, audit/review areas, and records will remain unchanged.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

Criterion 1: Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and do not affect assumptions contained in the safety analyses nor do they affect technical specifications that preserve safety analysis assumptions. Additionally, these changes do not modify the physical design and/or operation of the plant. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

Criterion 2: Use of the revised specifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are administrative in nature and will not lead to material procedural changes or to physical modifications to the facility. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Criterion 3: Use of the modified specification would not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to or modify the safety margin defined in or required and maintained by technical specifications. The deletion of the specific composition list of the FRC and NRB members will not decrease the effectiveness of these organizations. Administrative controls are in place to control membership, qualifications and review requirements for both the onsite review activity and the independent review program.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff agrees that due to the administrative nature of the proposed changes, a significant increase is not involved in the probability or consequences of a previously evaluated accident. The proposed changes would not create the possibility of a new or different kind of accident from any previously evaluated, and they would not involve a significant reduction in the margin of safety. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

NRC Project Director: Christopher I. Grimes

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 18, 1989 and supplemented July 30, 1990. The December 18, 1989, submittal was previously noticed April 4, 1990 (55 FR 12594).

Description of amendment request: The proposed change would revise the description of the Plant Operations Committee (PORC) and Nuclear Safety Review Board (NSRB) compositions included in the plant's technical specifications 6.5.1.1 and 6.5.2.2, respectively. Currently, the composition of both groups is defined by organizational titles. In the proposed change for the PORC, the members shall be senior experienced onsite individuals, at the manager level or equivalent, representing each of the following disciplines: engineering, operations, chemistry, health physics, quality assurance/quality control, and maintenance. One of the members shall meet the requirements for a Radiation Protection Manager. Originally (December 18, 1989), the NSRB would be comprised of a full time chairman and at least four individuals who have obtained the position of area manager. The July 30, 1990, submittal contained a revised mark-up of Section 6.5.2.2. The proposed NSRB would be comprised of senior managers reporting to at least the vice presidential level within the licensee organization. Additional members shall be appointed so that the NSRB will have the capability to review technical matters identified in Technical Specification 6.5.2.1, namely: nuclear power plant operations, nuclear engineering, chemistry and radiochemistry, metallurgy, instrumentation and control, radiological safety, mechanical and electrical engineering, civil engineering, training, nuclear assurance, nuclear licensing, plant security, and environmental impact.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application. Based on the staff review, the proposed changes will change neither the technical disciplines required nor the level of expertise represented on the committees. The function of the PORC will remain unchanged. With respect to the NSRB, the members will continue to be qualified in accordance with ANSI 3.1-1981 and Regulatory Guide 1.8. Consequently, the changes are considered administrative. The staff has reviewed the licensee's no significant hazards consideration determination. For the reasons stated above, the staff believes these proposed amendments involve no significant hazards consideration.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Christopher I. Grimes

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 21, 1988

Description of amendment request: The proposed amendment would add a note to Technical Specification 3/4.4.1.3 to specify that the recirculation loop flow is the summation of the flows from all of the jet pumps associated with a single recirculation loop.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3)

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Involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed request and has provided the following no significant hazards consideration determination:

(1) The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated because the proposed clarification to Technical Specification 3/4.4.1.3 will ensure that the correct parameter is monitored such that the intent of the Specification is satisfied.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because it will not result in any changes to plant design parameters or change any mode of plant operation, and will not create any new failure mode for the plant.

(3) The proposed change does not involve a significant reduction in any margin of safety. The proposed clarification to Technical Specification 3/4.4.1.3 will clarify the intent of the subject Specification. Therefore, the plant will continue to be operated in accordance with the margins assumed in pertinent design calculations.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 30, 1989

Description of amendment request: The proposed amendment would delete the upper limit on the values for the heat energy required to be dissipated from the heaters for the Standby Gas Treatment System and the Control Room Ventilation System.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed request and has provided the following no significant hazards consideration determination:

(1) The proposed change does not involve a significant increase in the probability or consequences of a previously analyzed accident. The VG and VC system heaters operate to reduce the relative humidity in the VG and VC charcoal beds following initiation of these systems. Since these systems are initiated following the onset of an accident the heaters can not impact the probability of occurrence of an accident. The minimum required heat dissipation rate for these heaters is not changed and the heaters will continue to be required to function in accordance with their design requirements. Therefore, there is no change in the consequences of an accident.

(2) This proposed change does not create the possibility of a new or different kind of accident. The proposed change is applicable only to the heat dissipation capability of the VG and VC system heaters and does not involve any change to the plant's physical configuration or the operation of any plant systems.

(3) The proposed change does not involve a significant reduction in a margin of safety. The proposed change does not involve a reduction in the minimum required heat output of the heaters therefore the heaters would continue to reduce the relative humidity, when required, to the levels assumed in the safety analysis. The over-temperature cutout prevents any overheating concerns.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 30, 1989

Description of amendment request: The proposed amendment would add a 3.0.4 exemption to ACTION requirements associated with Technical Specification 3.5.2 (Emergency Core Cooling Systems - Shutdown), 3.9.11.1 (Refueling Operations, Residual Heat Removal and Coolant Circulation, High Water Level), and 3.9.11.2 (Refueling Operations, Residual Heat Removal and Coolant Circulation, Low Water Level).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed request and has provided the following no significant hazards consideration determination:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to Specifications 3.9.11.1 and 3.9.11.2 do not involve a significant degradation in decay heat removal and/or coolant circulation requirements since decay heat removal and/or coolant circulation is provided for in the ACTION requirements of the affected Specifications. The proposed change to Specification 3.5.2 does not constitute a significant reduction in ECCS water makeup capability since only OPERATIONAL CONDITIONS 4 AND "5*" are affected, and during these conditions one ECCS subsystem/system is sufficient for water makeup requirements for the short time (four hours) allowed by ACTION "a" of Specification 3.5.2. Furthermore, the proposed changes do not involve a significant increase in the probability or consequences of the primary postulated accidents associated with shutdown conditions (inadvertent criticality and fuel handling accident) since those accident are prevented or mitigated by other controls, design features, and requirements.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not involve any changes to plant design nor does it involve a significant change in plant operation from what is currently allowed by the Technical Specifications. The impact of the proposed changes is limited strictly to the potential effect of ECCS availability and core decay heat removal/coolant circulation relative to the volume of water contained in the reactor cavity/upper containment pools during Mode 5 (excluding fuel handling operations). IP believes that the proposed changes do not involve a significant change to the requirements for meeting these concerns during these conditions.

(3) The proposed change does not involve a significant reduction in a margin of safety assumed or required in any accident or transient analysis. As noted above, the proposed changes do not involve a significant reduction in core decay heat removal capability or ECCS makeup capability for the applicable plant conditions.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 30, 1989

Description of amendment request: The proposed amendment would delete the operability requirement for certain valves dedicated to the Residual Heat Removal system steam condensing mode which the licensee has committed not to use.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed request and has provided the following no significant hazards consideration determination:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will remove the requirement to maintain OPERABILITY of the RS system controls for valves 1E12-F052A/B and 1E12-F028A. These valves are only used during operation of the RHR system in the steam condensing mode which is not allowed by the CPS procedures and precluded through appropriate controls in accordance with established commitments.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve any change to the configuration or operation of any plant components, structures or systems as described in the CPS Updated Safety Analysis Report.

(3) The proposed change does not involve a significant reduction in any margin of safety, since operation of the RHR system in the steam condensing mode from either the main control room or the RS system is not assumed or required in any accident analysis as explained per IP's original commitment to not utilize the steam condensing mode of operation.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: August 31, 1990

Description of amendment request: The proposed amendment would revise the operability and surveillance provisions of Technical Specification 3/4.6.5 to reflect that two drywell post-LOCA vacuum relief valves are provided in series in each penetration.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed request and has provided the following no significant hazards consideration determination:

(1) With the proposed changes, the Technical Specifications will still ensure that the drywell post-LOCA vacuum relief valves can perform their required safety functions. Specifically, the revised Action "a" would still ensure that the minimum number of valves/penetrations remain available to perform the opening functions of these valves/penetrations; revised Actions "b" and "c" and the proposed footnote "**" would still ensure that each drywell vacuum relief penetration is sufficiently closed to maintain the drywell bypass leakage within the limits of the plant design and the current Action Statements for DRYWELL INTEGRITY. As a result, plant operation would continue to be maintained within the bounds of the current safety analyses. Therefore, these proposed changes do not result in a significant increase in the probability or the consequences of any accident previously evaluated.

(2) The proposed change does not involve any change to the plant design. Therefore, no new failure modes are involved, and plant operation continues to be limited to the bounds of the current safety analyses. As a result, these proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The incorporation of the proposed changes into the Technical Specifications will not adversely impact the capability of the drywell post-LOCA vacuum relief valves to perform their required safety functions. Additionally, plant operation will continue to be limited to the bounds of the current safety analyses. Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: August 31, 1990

Description of amendment request: The proposed amendment would make several changes to the neutron monitoring functions of Technical Specifications 3/4.3.1, "Reactor Protection Instrumentation"; 3/4.3.6, "Control Rod Block Instrumentation"; and 3/4.3.7.6, "Source Range Monitors." The changes would incorporate statements of exception to Technical Specification 4.0.4, clarify startup surveillance requirements, delete APRM Neutron Flux-High RPS setpoint

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verification, revise SRM control rod block applicability, revise IRM and SRM control rod block channel calibration frequency, and incorporate an editorial change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed request and has provided the following no significant hazards consideration determination:

(1) These proposed changes do not result in any change to the plant design or its operating modes. Therefore, these proposed changes cannot increase the probability of any accident previously evaluated.

The proposed addition of Surveillance Requirements 4.3.1.4 and 4.3.6.2, together with the incorporation of the proposed additional text for Surveillance Requirements 4.3.6.2, 4.3.7.6.a and 4.3.7.6.b, provide the flexibility required to perform the associated IRM and SRM surveillances during plant shutdowns following extended operation in Operational Condition 1. These surveillances cannot be performed with the unit in Operational Condition 1. The proposed changes merely provide the formal means to avoid violation of Technical Specification 4.0.4 and provide adequate time to perform these surveillances without causing unnecessary stress on plant personnel to complete these surveillances under the provisions of Action Statements (or Technical Specification 3.0.3). Adequate scram protection and neutron monitoring capability are provided by the APRMs during the short time period needed to perform these surveillances.

The proposed change to allow entry into Operational Condition 1 before the APRM gains have been adjusted to conform to the power values calculated by a heat balance provides adequate time for plant conditions to be achieved that will result in an accurate heat balance calculation. The APRM Flow-Biased Simulated Thermal Power-High function still provides adequate scram protection during the short time period needed to achieve 25% of RATED THERMAL POWER and perform these APRM gain adjustments after entering Operational Condition 1.

The proposed deletion of the requirements to perform Channel Functional Tests within 24 hours prior to startup or within 24 hours prior to moving the reactor mode switch from the Shutdown position, unless performed within the previous seven days, makes these requirements easier to implement without reducing the effectiveness of these surveillances. The Technical Specifications, when revised as proposed, will still require that these Channel Functional Tests be performed within seven days prior to entering the conditions for which these instruments are required.

The deletion of the setpoint verification of the APRM Neutron Flux-High RPS function at least once per seven days still provides adequate assurance that this trip function is properly calibrated. This RPS setpoint is maintained at a constant value and is therefore similar to the APRM Neutron Flux-High, Setdown RPS function which does not currently require setpoint verification at least once per seven days. This proposed change is also consistent with the Standard Technical Specifications and the Technical Specifications of the other BWR/6 plants.

Regarding the proposed change to modify the Applicability of the SRM control rod block functions with respect to Operational Condition 2, the Technical Specifications, as revised, will still ensure that adequate monitoring of neutron flux levels are available to the operator during control rod movements. The IRMs on range 3 or higher provide adequate neutron monitoring capability without the SRMs. The SRMs provide no other input to the RCAIS other than ensuring neutron monitoring is available during control rod movements.

The proposed change to the Channel Calibration frequency for the IRM and SRM control rod block functions should not result in any significant change in the availability of these functions with respect to ensuring that neutron monitoring capability is available to the operators during control rod movements at low power conditions.

The remaining changes are editorial only and do not affect any technical requirements of the current Technical Specifications.

Based upon the above, these proposed changes cannot increase the probability or the consequences of any accident previously evaluated.

(2) These proposed changes do not result in any change to the plant design or operation. As a result, no new failure modes are introduced. Therefore, these proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As discussed in (1) above, these proposed changes still provide adequate assurance that each of the applicable safety functions are capable of being effected when required, including reactor scram protection, control rod block, and neutron monitoring. Therefore, these proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 9, 1990

Description of amendment request: The proposed amendment would change Section 3, Limiting Conditions for Operation, and Section 4, Surveillance Requirements, of the Technical Specifications for Millstone Nuclear Power Station, Unit No. 2. The proposed changes would be consistent with the guidance and proposed changes recommended by Generic Letter 87-09, which was issued as part of the initiative to improve Technical Specifications.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded and the staff agrees that they do not involve a significant hazards consideration in that the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

a. Section 3.0: The current Technical Specification 3.0.4 prohibits changing mode of operation unless all Limiting Conditions for Operation (LCOs) are met. Certain Technical Specifications, however, contain an exemption to Technical Specification 3.0.4 that allows start-up with equipment or parameters that are not in compliance with an applicable LCO. This exemption typically is provided for that equipment covered by Technical Specifications that is not necessary to adequately mitigate design basis accidents. In these cases, because equipment operability does not impact the design basis, there is no need for a restriction on plant start-up. In all of these cases except one (Technical Specification 3.4.8), the ACTION statements allow continued operation for an indefinite period. (Technical Specification 3.4.8 provides an exemption so that a posttrip iodine spike will not preclude restart.)

The proposed revision to Technical Specification 3.0.4 would specifically allow entry into an operational mode while subject to ACTION requirements, provided those requirements allow indefinite continued operation. The revised Technical Specification 3.0.4 is thus consistent with the concept and intent of the current Technical Specifications; the numerous exemptions from Technical Specification 3.0.4 would no longer be necessary or appropriate. As such, the proposed changes will not increase the probability or consequences of any accident previously analyzed.

Several other current Technical Specifications in Section 3.0 (3.4.3., 3.4.8, 3.6.1.3, and 3.7.1.2) contain limited exemptions from the current Technical Specification 3.0.4 that cannot be simply deleted as a result of the proposed revision to Technical Specification 3.0.4. NNECO has therefore proposed revisions to these that are consistent with the intent of Generic Letter 87-09 and that ensure change. Therefore, these proposed changes as well as the various editorial changes will also not impact the probability or consequences of accidents previously analyzed.

Finally, the proposed changes to Technical Specification 3.0.4 also impact other individual Technical Specifications which do not currently contain an exemption from T.S. 3.0.4 (e.g., Technical Specification 3.6.3.1, which permits indefinite continued operation with an inoperable containment isolation valve provided the penetration is isolated by a deactivated valve). In these cases, the proposed revisions to Technical Specification 3.0.4 would allow start-up because the applicable ACTION requirements allow indefinite continued operation. However, this minor change is consistent with the objective of Generic Letter 87-09 and the intent of the other proposed revisions, i.e., to allow mode changes when subject to ACTION requirements that do not impact continued operation. In these cases, the ACTION requirements provide an equivalent level of safety without requiring a shutdown. Allowing start-up in these situations will therefore have no adverse impact on the probability or consequences of any accident previously analyzed.

b. Section 4.0: The proposed change would revise Technical Specification 4.0.4 to allow a delay of up to 24 hours to implement ACTION requirements in the event a required surveillance was not performed and the allowable outage time limits of the ACTION statement are less than 24 hours. This delay would apply only in the event of a missed surveillance; it would not apply to a failed surveillance.

The proposed delay in implementing the ACTION requirements is intended to allow sufficient time to complete the required surveillance. The proposal recognizes that a missed surveillance is much less significant than a failed surveillance. Further, given that the vast majority of surveillances performed meet relevant acceptance criteria, in most cases the missed surveillance — will demonstrate the equipment to be operable. The proposed change recognizes that it is overly conservative to assume that equipment is inoperable simply because a surveillance was missed.

This proposed change to Technical Specification 4.0.4 does not impact the integrity of any component or of the reactor coolant pressure boundary. The proposed change does not impact, in a substantive way, the operability or surveillance requirements for any component, nor does it change the way surveillance/testing is performed. NNECO therefore concludes that the change will not increase the probability or consequences of any accident previously analyzed.

The proposed change to Technical Specification 4.0.4 is essentially a clarification of existing Technical Specifications. As such, this change will also have no effect on the probability or consequences of accidents previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

None of the proposed changes to either Section 3.0 or Section 4.0 of the Technical Specifications or the proposed editorial changes will have any impact on plant response. The amendments requested also involve no changes to plant equipment or to either normal or emergency operating procedures. Thus, no new failure modes will be introduced.

In addition, all of the equipment affected by the change to Technical Specification 3.0.4 is either not required for mitigation of a design basis accident or the applicable Technical Specification ACTION statement provides an equivalent level of safety. Thus, plant response will be unaffected.

In summary, NNECO concludes that the proposed changes will not create the possibility of any new or different kind of accident from those previously analyzed.

3. Involve a significant reduction in the margin of safety.

As discussed above, none of the proposed changes to either Section 3.0 or Section 4.0 of the Technical Specifications or the editorial changes will impact plant equipment, plant response, or any parameter related to the integrity of the reactor coolant pressure boundary. Further, the proposed changes will not affect either normal or emergency operating procedures. Therefore, the proposed changes will not impact any safety limit or reduce any margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: July 10, 1990, as supplemented August 24, 1990

Description of amendment request: The proposed change to the Indian Point 3 (IP3) Technical Specifications would increase the allowed outage time (AOT) for the Emergency Diesel Generators (EDGs). Technical Specification Section 3.7.B.1. (page 3.7-2) would be changed to allow an EDG outage time of seven days, instead of the currently allowed 72 hours. A seven day AOT was in effect when IP3 was originally licensed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Operation of Indian Point 3 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of the proposed change is expected to result in an increase in the probability of core damage, from 1.54×10^{-4}/year to 1.56×10^{-4}/year. This increase is considered to be insignificant relative to the underlying uncertainties involved. This proposed change would return the EDG AOT technical specification to 7 days. Seven days is the original technical specification and licensing basis value of the EDG AOT.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Operation of Indian Point 3 in accordance with the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No change is being made in the manner in which the EDG's provide plant protection. No new modes of plant operation are involved. Extending the EDG AOT does not necessitate physical alteration of the plant or changes in plant operational limits. This proposed change would return the EDG AOT technical specification to 7 days. Seven days is the original technical specification and licensing basis value of the EDG AOT.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Operation of Indian Point 3 in accordance with the proposed license amendment does not involve a significant reduction in a margin of safety.

As detailed in the study contained in Appendix A, extending the EDG allowed outage time involves an incremental reduction in the margin of safety. The magnitude of this reduction is insignificant compared to the uncertainties involved.

The capability to power vital and auxiliary system components remains available via the other two EDGs. This proposed change would return the EDG AOT technical specification to 7 days. Seven days is the original technical specification and licensing basis value of the EDG AOT.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change

does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: August 31, 1990

Description of amendment request: This amendment to the Indian Point 3 Technical Specifications would amend Section 3.1.B (Heatup and Cooldown), Section 4.3 (Reactor Coolant System Integrity Testing), and Section 3.1.C (Minimum Conditions for Criticality). Sections 3.1.B and 4.3 are being amended to incorporate revised pressure-temperature limits. These revisions are being made in accordance with Generic Letter 88-11 which requested that licensees use the methodology of Regulatory Guide (RG) 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials," to predict the effect of neutron radiation on reactor vessel materials. Section 3.1.C is being amended to delete Section 3.1.C.2 which establishes pressure-temperature requirements on the reactor coolant system when the reactor is critical.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Neither the probability nor the consequences of a previously analyzed accident is increased due to the proposed changes. The adjusted reference temperature of the limiting beltline material was used to correct the pressure-temperature curves to account for irradiation effects. Thus, the operating limits are adjusted to incorporate the initial fracture toughness conservatism present when the reactor vessel was new. The adjusted reference temperature calculations were performed utilizing the guidance contained in RG 1.99, Revision 2. The updated curves provide assurance that brittle fracture of the reactor vessel is prevented.

Removal of the pressure-temperature limits for criticality does not increase the consequences or probability of any accident because these limits are conservatively encompassed and are bounded by the requirements of specification 3.1.C.3.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The updated P-T limits will not create the possibility of a new or different kind of accident. The revised operating limits merely update the existing limits by taking into account the effects of radiation embrittlement, utilizing criteria defined in RG 1.99, Revision 2. The updated P-T curves are conservatively adjusted to account for the effect of irradiation on the limiting reactor vessel material.

No change is being made to the way the pressure-temperature limits provide plant protection. No new modes of operation are involved. Incorporating this amendment does not necessitate physical alteration of the plant.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed amendment does not involve a significant reduction in the margin of safety. The pressure-temperature operating limits are designed to provide a margin of safety. The required margin is specified in ASME Boiler and Pressure Vessel Code, Section III, Appendix G and 10 CFR [Part] 50, Appendix G. The revised curves are based on the latest NRC guidelines along with actual neutron flux/fluence data for the reactor vessel. The new limits retain a margin of safety equivalent to the original margin when the vessel was new and the fracture toughness was slightly greater. The new operating limits account for irradiation embrittlement effects, thereby maintaining a conservative margin to safety.

The removal of the pressure-temperature for criticality does not reduce the plant safety margin because these limits are conservatively encompassed and bounded by the requirement of specification of 3.1.C.3.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 19, 1990

Description of amendment request: The proposed amendment would revise Table 3.6-1 and Table 4.4-1 (Page 5 of 7) of the Technical Specifications to reflect the removal of Containment Isolation Valves UH-37 and UH-38. Containment Isolation Valves UH-37 and UH-38 are on the Auxiliary Steam Supply and Condensate Return (ASC) System steam supply and condensate return lines, respectively. These lines originally were designed to supply steam to the Containment Unit Heaters. Since the temperature in containment is maintained without the use of the Unit Heaters, auxiliary steam is no longer required to be supplied to containment. Valves UH-37 and UH-38 are therefore being removed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes reflect a plant modification that will enhance the integrity of the containment penetrations associated with the ASC steam supply and condensate return lines. The modification will cap the two lengths of piping penetrating containment. The capped piping will be leak tight, therefore the technical specification changes associated with this modification do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes reflect a plant modification that will provide containment isolation at the containment penetrations associated with the ASC steam supply and condensate return lines. Since this is the same function currently provided by containment isolation valves UH-37 and UH-38, the removal of these valves and associated technical specification changes to not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed amendment does not involve a significant reduction in a margin of safety since it reflects a plant modification that will enhance containment integrity by providing leak tight seals at the penetrations associated with the ASC steam supply and condensate return lines.

The staff has reviewed and agrees with the licensee's analysis of the

significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 4, 1990

Description of amendment request: The amendment would eliminate the average Power Range Monitor (APRM) downscale Reactor Protection System (RPS) scram Technical Specification (TS) requirements (Item 2e in TS Tables 2.2.1-1, 3.3.1-1, 3.3.1-2 and 4.3.1.1-1). The APRM downscale scram was designed to reactivate the Intermediate Range Monitor (IRM) upscale scram functions when the associated APRM channel is downscale and the Reactor Mode switch is in the Run position. Normally, proper Reactor Mode switch positioning is administratively ensured by compliance with the integrated operating procedures for plant startup and shutdown. The surveillance tests for the APRM downscale trip function, required by the TS, require the plant to be placed in a "half scram" condition, thus increasing the probability of a spurious trip or ESF actuation. Since the downscale trip is not judged to be performing a function with a value commensurate with its associated risk or burden, the licensee proposes elimination of its TS requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: 1) involve a significant increase in the probability or consequences of an accident previously evaluated; 2) create the possibility of a new or different kind of accident from any accident previously evaluated; or 3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents of concern with respect to the APRM/IRM companion scram, caused by an APRM downscale concurrent with either an IRM "high high" or inoperable trip, are the rod drop accident (RDA) and the low power rod withdrawal error (RWE). The FSAR and reload safety analyses do not credit this scram function in the termination of either of these accidents. Since this scram function is not credited in the termination of these accidents, the elimination of this scram function has no adverse effect on previously evaluated accidents.

2. Create the possibility of a new or different accident from any accident previously evaluated.

The limiting accidents in the operating region of transition between the startup and run modes are well understood and are evaluated in the FSAR and/or reload safety analyses. Elimination of the APRM downscale/IRM "high high" or inoperable caused scram does not introduce any new accident scenario since it is not credited in the termination of these events (i.e., RDA and RWE). Less limiting events in this region such as control rod initiated fast period events either due to operator error or CRD malfunction are subsets of the lower power RWE event and are bounded by both it and the design basis RDA. In addition, General Electric has indicated that for reactivity insertion events occurring with an inappropriate mode switch position, the only effect of the deletion of the APRM downscale scram would be that the initial power level could be a few percent lower. The generic General Electric analyses have been performed at a spectrum of power levels that would bound any possible event at Hope Creek with this proposed change.

3. Involve a significant reduction in a margin of safety.

The APRM downscale/IRM "high high" or inoperable caused scram is not credited in the termination of any transient which would challenge a safety limit. As such, the elimination of this scram function has no effect on any Technical Specification defined safety limit.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 10, 1990 and Supplement dated August 28, 1990

Description of amendment request: The Operating Licenses for Salem 1 and Salem 2, DPR-10 and DPR-75, respectively, would be amended to add a new Section 2.J to DPR-70 and Section 2.N to DPR-75, to read:

"The terms of the May 6, 1983 Order have been satisfied by the incorporation of the long term corrective action requirements into the Salem Updated Final Safety Analysis Report (Appendix 7.A)."

Basis for proposed no significant hazards consideration determination: On May 6, 1983, the Nuclear Regulatory Commission issued an Order modifying the operating licenses for the Salem Generating Station, Unit Nos. 1 and 2. The Order referenced a series of letters in which Public Service Electric and Gas Co. (PSE&G) had submitted its corrective action program in response to the reactor breaker failures. This corrective action program included short term, interim and long term actions.

Subsequently, the Order was modified by letter dated January 31, 1984, to change the implementation schedule for several long term actions, and again on March 18, 1988, to remove the requirement to submit Nuclear Oversight Committee Reports on a quarterly basis. The March 18, 1988 letter also stated that the terms of the Order have been satisfactorily completed.

PSE&G has performed a detailed review of the correspondence addressing the corrective action program and identified a total of forty-three (43) long term program commitments which will be consolidated into a new updated Final Safety Analysis Report (UFSAR) appendix. The contents of this appendix will be controlled in accordance with the provisions of 10 CFR 50.59.

The consolidation of the long term program commitments into the UFSAR assures that changes to these programs will be properly controlled. Any changes involving an unreviewed safety question or a change in the technical specifications would be submitted to the Commission for prior approval.

The forty-three (43) program element descriptions will be grouped in the UFSAR under the following headings:

- Training
- Procurement & Management
- Operating Procedures
- Maintenance & Surveillance
- Control of Vendor Information

The Commission has provided

determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Bishop, Cook,

determination analysis. Based upon this review, the staff agrees with the licensee's analysis.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115

The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a

any transient in Mode 3. In addition, all other safety systems used to mitigate any accidents postulated in Mode 3 are not affected. It has been demonstrated that the DNB and the PCT limits as defined in the FSAR remain applicable for non-LOCA postulated events. For the SGTR analysis, the core decay heat would be significantly less in Mode 3 and, therefore, the consequences are bounded by the results provided in the FSAR. Therefore, the probability or consequences of an

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: July 18, 1990

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The forty-three (43) program element descriptions will be grouped in the UFSAR under the following headings:

- Training
- Procurement & Management
- Operating Procedures
- Maintenance & Surveillance
- Control of Vendor Information

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The license has analyzed the proposed amendment to determine if a significant hazards consideration exists:

1. The proposed change does not increase the probability or the consequences of an accident previously evaluated because all breaker-related technical specification requirements remain in effect and additional controls, beyond 10 CFR 50.59 and 50.71(e), apply as follows:

a. Training: 10 CFR 55; Regulatory Guides 1.8, 1.58 and 1.146; Generic Letters 81-01 and 84-14; INPO 85-002, 86-016, 86-025, 86-026, 88-006 and 88-007.

b. Procurement & Management: 10 CFR 50.54(a)(3); Regulatory Guides 1.33 and 1.44.

c. Operating Procedures: Regulatory Guide 1.33; Generic Letters 83-32 and 85-09; INPO 84-024.

d. Maintenance & Surveillance: Regulatory Guide 1.33; Generic Letters 83-27, 83-28 and 89-14; INPO 85-028, 85-038 and 87-028.

e. Control of Vendor Information: Regulatory Guide 1.33; Generic Letters 82-04, 83-28 and 90-04; INPO 84-010, 87-009 and 89-015.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated because the change does not entail any alteration to the plant design, installed equipment or the operating procedures.

3. The proposed change does not involve a significant reduction in a margin of safety because the change neither impacts compliance with 10 CFR 50.62 nor affects the safety limits, limiting safety system settings, surveillance requirements, limiting control settings, limiting conditions for operations, design features, or administrative controls as described in the Salem Technical Specifications.

The staff has reviewed the licensee's submittals and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Bishop, Cook, Purcell and Reynolds, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: June 1, 1990

Description of amendment request: The proposed amendment would change the Ginna Technical Specifications, similar to the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (NUREG-0452, Revision 4), in specifying time limits when required to shutdown the plant due to the quadrant to average power tilt ratio exceeding 1.12.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

(1) Operation of the facility in accordance with the proposed amendment to provide generically accepted guidance would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The guidance merely specifies the time by which the required power reductions must be accomplished. Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Since the power reductions (50% and hot shutdown) are still required, use of the modified specification would not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff agrees with the licensee's analysis.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Bishop, Cook, Purcell & Reynolds, 1400 L Street N.W., Washington, DC 20005-3502

NRC Project Director: Victor Nerses (Acting)

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: May 16, 1990 and August 13, 1990

Description of amendment request: The amendment proposes to modify Technical Specification (TS) 3/4.4.2, Safety Valves, for both the shutdown and operating conditions. Specifically, TS 3/4.4.2.1 covering shutdown would be modified to change the setpoint tolerance from plus or minus 1% to plus or minus 3%. In addition, the surveillance requirement for this TS was proposed to be modified to indicate that either the surveillance requirements of Specification 4.0.5 shall be met or the pressurizer safety valve shall have its lift set pressure verified under cold conditions. The tolerance was also changed to plus or minus 3% for TS 3/4.4.2.2. A footnote was added to indicate that Mode 3 applicability did not apply when there had been at least five days of operation in Modes 5 or 6 since the reactor was last critical and all rod cluster control assemblies (RCCA) are fully inserted with all control rod drive mechanisms (CRDM) deenergized. The bases for this TS, 3/4.4.2, were also proposed to be modified to indicate that the pressurizer safety valves are designed to relieve a given amount of saturated steam at the valve setpoint plus 3% accumulation. In addition, the proposed change to this bases section deleted the indication that the safety valves will demonstrate their lift settings only during shutdown and that such a demonstration would be performed in accordance with the 1974 Edition of Section XI of the ASME Boiler and Pressure Vessel Code. In the proposed change, no edition of the code was specified.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

South Carolina Electric & Gas Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

The PSVs [pressurizer safety valves] provide protection from overpressurization of the primary system, and are actuated after an accident is initiated. However, the accidental depressurization of the RCS [reactor coolant system] can be initiated by the opening of a PSV. Increasing the tolerance on these valves does not create a new failure mode or result in a lift setpoint that would increase the probability of an inadvertent opening of these valves. Also, as discussed in the evaluation [safety], DNBR [departure from nucleate boiling ratio] and PCT [primary coolant temperature] values affected by the non-LOCA [non-loss-of-coolant accident] and LOCA accident [SIC] events remain within the limits specified in the licensing basis documentation. The evaluation also demonstrates that the mass/energy releases inside and outside the containment previously documented in the FSAR remain valid. In addition, the SGTR [steam generator tube rupture] analyses show that the change in the pressurizer safety valve setpoint tolerance has no impact on the analysis. Therefore, the probability or consequences of an accident previously evaluated in the FSAR would not be increased due to changing the PSV lift setpoints by 3% with respect to the current Technical Specification value.

[With respect to the allowance of PSV testing in Mode 3], the installed [Crosby Gage and Valve] SPVD setpoint verification device does not restrict the vertical movement of the spindle before, during or after testing. The internal mechanism of the SPVD triggers a solenoid and releases the spindle allowing the valve to reseat. It is highly unlikely that the valve with the SPVD installed will fail in an open position, thus initiating a transient. Since the plant is in Mode 3, the plant is in a no load condition. Assuming that all rods are inserted and deenergized while the valves are being tested, no reactivity may be added to the primary through rod motion. Because of this, the PSVs are not required to mitigate any transient in Mode 3. In addition, all other safety systems used to mitigate any accidents postulated in Mode 3 are not affected. It has been demonstrated that the DNB and the PCT limits as defined in the FSAR remain applicable for non-LOCA postulated events. For the SGTR analysis, the core decay heat would be significantly less in Mode 3 and, therefore, the consequences are bounded by the results provided in the FSAR. Therefore, the probability or consequences of an accident previously evaluated in the FSAR will not be increased due the verification of the PSV setpoint values in Mode 3.

2. The proposed change does not create a new or different kind of accident from any previously evaluated.

As previously stated, the PSVs provide overpressurization protection for the primary system. The analyses results as presented in the FSAR remain valid and no new failure mechanisms were determined. Thus, the possibility of an accident which is different than any already evaluated in the FSAR would not be created due to changing the PSV lift setpoints by 3% with respect to the current Technical Specification value.

All safety systems required in Mode 3 function, and no new failure modes are identified for any system or component, nor has any new limiting single failure been identified. Therefore, testing the PSVs in Mode 3 does not create the possibility of an accident which is different than any already evaluated in the FSAR.

3. The proposed change does not represent a significant reduction in the margin of safety

As indicated in the evaluation, the conclusions provided in the FSAR remain valid. All acceptance criteria continue to be met. Therefore, there is no reduction in the margin of safety defined in the bases to the Technical Specifications.

The verification of the PSV setpoint values in Mode 3 does not restrict the values from performing their intended function. All acceptance criteria continue to be met. Thus, there is no reduction in the margin of safety as defined in the bases to the Technical Specifications.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: July 18, 1990

Description of amendment request: The proposed Technical Specification (TS) changes concern the deletion of Figure 3.1-3, "Required Shutdown Margin (Modes 3, 4 and 5)," from the TS and add a reference to it in 3.1.1.2, Shutdown Margin Modes 3, 4, and 5. In TS 3.1.1.2, reference is now made to the Administration Controls Section 6.9.1.11, Core Operating Limits Report (COLR) and Figure 3.1-3 is now located to the COLR. Additionally, the proposed change revises Bases Sections 3/4.1.2, Boration Systems, to delete the reference to Figure 3.1-3 and replaces it with a reference to the COLR. A change is also proposed to the Bases Section 3/4.2.1, Axial Flux Difference, so it refers to the COLR rather than the Peaking Factor Limits Report (PFLR). Amendment No. 88 to the Summer Facility Operating License replaced the PFLR with the COLR. Finally, Administrative Control Section 6.9.1.11 is proposed to be modified to add the shutdown margin limits of TS 3.1.1.2 to the scope of the COLR and WCAP-9272-P-A is identified as the document describing the methodology used in developing the shutdown margin limits for modes 3, 4 and 5.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

South Carolina Electric & Gas Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed change does not involve a significant increase in the probability or

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consequences of an accident previously evaluated.

The removal of the Required SDM curve [Shutdown Margin Curve (SDM), Figure 3.1-3] from the Virgil C. Summer Nuclear Station Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The limits in the curve, although not in Technical Specifications, will be followed in the operation of the Virgil C. Summer Nuclear Station. The proposed amendment still requires exactly the same actions to be taken when or if limits are exceeded as is required by current Technical Specifications. Each accident analysis addressed in the Virgil C. Summer Nuclear Station Final Safety Analysis Report (FSAR) will be examined with respect to changes in the required SDM, which are obtained from application of the NRC-approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed per the requirements of 10CFR50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to change "PFLR" to "COLR" in Technical Specification Basis 3/4.2.1 is administrative in nature and does not, therefore, involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated earlier, the removal of the required SDM curve has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operations will be altered as a result of this proposed change. The curve's data will continue to be calculated using the NRC-approved methods. The Technical Specifications will continue to required operation within the required limits, and appropriate actions will be taken when or if limits are exceeded.

The proposed revision the change "PFLR" to "COLR" in Technical Specification Basis 3/4.2.1 is administrative in nature. The change simply deletes a reference to an obsolete report (PFLR) and references the report which replaced it (COLR).

For these reasons, the proposed amendment does not in any way create the possibility of an accident which is new or different from any accident previously evaluated.

3. The proposed amendment does not result in a significant reduction in the margin of safety.

The margin of safety is not affected by the removal of the required SDM curve from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. The proposed amendment continues to require operation within the limits obtained from the NRC-approved reload design methodologies and appropriate actions to be taken when or if limits are violated remain unchanged.

The development of the required SDM curves for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each future reload will involve a 10CFR50.59 safety review to assure that operation of the unit within the curve will not involve a significant reduction in a margin of safety.

The proposed revision to change "PFLR" to "COLR" in Technical Specification Basis 3/4.2.1 is administrative in nature. The change simply deletes a reference to an obsolete report (PFLR) and references the report which replaced it (COLR). The change does not affect the margin of safety currently provided by the Technical Specifications.

Therefore, the proposed change does not impact the operation of the Virgil C. Summer Nuclear Station in a manner that involves a reductions in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: August 22, 1990

Description of amendment request: Proposed Change No. 232, which was submitted by Amendment Application No. 187, proposes to revise Technical Specification Section 6.4, "Training," to reference the correct edition of the National Fire Protection Association (NFPA) standard concerning the fire brigade training program. The existing Technical Specifications make reference to the 1976 edition of the NFPA standard, but that standard has no 1976 edition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The operation of San Onofre Unit 1, in accordance with this proposed change, will not involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change involves only a clarification of a reference to an incorrect edition of NFPA Standard No. 27. This change will result in the Technical Specification referencing the edition of the NFPA standard on which the fire brigade training is based, rather than the yearly issue date of the NFPA Code. Therefore, this change will improve the quality of Technical Specification Section No. 6.4.2. The change is administrative in nature and will not affect accident probabilities or consequences.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed revision is administrative in nature and does not affect previously analyzed accidents or create any new accidents. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not create the possibility of a new or different kind of accident.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed revision is an administrative change only. It does not impact any margin of safety. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: James E. Dyer, Acting

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: August 31, 1990.

Description of amendment request: Proposed Change No. 151, submitted by Amendment Application No. 188, proposes to revise Technical

Specification (TS) Section 3.3, "Safety Injection and Containment Spray Systems," Section 3.5.5, "Containment Isolation Instrumentation," and Section 4.2, "Safety Injection and Containment Spray System." The licensee has proposed this change to improve the existing Technical Specifications by making the specifications more complete, using the Westinghouse Standard Technical Specifications (STS) for the format and basis to the degree practical. More specifically, the following changes are being proposed:

1. Existing Specification 3.3, "Safety Injection and Containment Spray Systems," is replaced by new Specification 3.3, "Emergency Core Cooling Systems (ECCS)."

2. 72-hour action statements are provided for emergency core cooling system (ECCS) components as allowed by STS requirements.

3. The existing requirement of TS 3.3.1.C to perform surveillance testing of redundant components or trains prior to entry into the associated action statement is deleted to conform with current STS requirements.

4. Specification 3.3.1 is revised to specify ECCS operability requirements and associated action statements for reactor coolant system (RCS) pressure greater than or equal to 600 psig. The Basis Section is revised accordingly.

5. Specification 3.3.2 and accompanying Basis is added to specify ECCS operability requirements and associated action statements for RCS pressure less than 600 psig.

6. Existing Specification 3.3.2, "Shutdown Status," is retitled Specification 3.3.3, "Isolation of Feedwater/Safety Injection From Reactor Coolant System." Operability requirements are clarified to allow isolation of the safety injection/feedwater pumps from the RCS at 600 psig; a new action statement is included which will require a once per shift verification of the remaining positive barrier should one of the two barriers not be operable; the requirement to place the feedwater pump breaker in the racked out position is changed to provide for operation of the breaker in the test position; and certain cross-references are corrected. A note is added to clarify boron concentration requirements for the safety injection piping. The note states that the boron concentration in the safety injection piping from the refueling water storage tank to cold leg injection valves MOV-850A, B and C does not have to be maintained when the safety injection piping is isolated from the RCS for shutdown conditions. The Basis Section is revised accordingly.

7. Existing Specification 3.3.3, "Minimum Boron Concentration in the Refueling Water Storage Tank (RWST) and Safety Injection (SI) Lines and Minimum RWST Water Volume," is renumbered as Specification 3.3.4 with the same title. Minor changes to cross-references have been made, and a clarification regarding boron concentration in SI lines during shutdown conditions is added as discussed in the previous section.

8. Existing Specification 3.3.4, "Minimum Solution Volume Hydrazine Concentration in the Hydrazine Tank," has been combined with the containment spray system requirements of existing Specification 3.3.1.A.2 to form Specification 3.3.5, "Containment Spray System." Containment spray flow limiting valves CV-517 and CV-516 are required to be maintained in the open position for the injection phase and must be operable so they can be closed during the recirculation phase; the provisions of existing Specification 3.3.1.D which would require placing CV-517 and CV-516 in the closed position is removed; RWST supply valve MOV-883 is included in the specification to assure it is operable for containment spray; and the specification requires both refueling water pumps to be operable in Modes 1 through 4.

9. Existing Specification 3.3.5, "Primary Coolant System Pressure Isolation Valves," was renumbered Specification 3.3.6. Minor revisions are made to move the MODE requirement into the APPLICABILITY section and to refer to the specification in the action statement; a Basis section is added; and Table 3.3.6-1 is revised to use the new tag numbers for the existing check valves.

10. New Specification 3.3.7, "Component Cooling Water System," is added to provide operability requirements for the component cooling water system.

11. New Specification 3.3.8, "Status of ECCS Components," is added to provide operability requirements for ECCS valves.

12. Specification 3.5.5, "Containment Isolation Instrumentation," is changed to specify a 72-hour action statement instead of a 6-hour action statement for the sequencer subchannels to conform with the 72 hour time limit currently allowed for the sequencer.

13. Specification 4.2.1, "Safety Injection and Containment Spray System Periodic Testing," is changed to include additional requirements consistent with STS requirements and to correct minor typographical errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No

The Emergency Core Cooling System (ECCS) is designed to protect the core and to mitigate the radiological consequences in the worst design basis LOCA and MSLB. The ECCS also functions for less-severe accident conditions. The proposed change will increase the operability requirements for the ECCS, and therefore will not increase the potential consequences or probability of an accident.

The proposed change revises Technical Specification Section 3.3 by organizing the section by ECCS sub-systems and defining train alignment and MODE operability requirements within each subsection. New action statements and section titles are in accordance with the STS. The revised specifications are based on train-alignment, as applicable, with the SONGS 1 electrical distribution system.

The operability requirements are being revised as follows:

The SONGS 1 design has redundant pump trains connected to common flow paths, such as two pumps connected to three common flow paths. The proposed change provides separate operability requirements for the pumps and flow paths. The use of separate operability requirements will reduce the potential for misalignment of components and therefore not increase the potential of causing an accident, or increase the consequences of an accident.

ECCS components required to be operable in MODES 1, 2, and 3 above 600 psig are separated from those required for MODE 3 below 600 psig and MODE 4. This will effectively increase the time safety injection is required to be available over the requirements of the existing specifications, and does not increase the consequences of accidents requiring ECCS operation.

STS 72-hour action statements for redundant pump trains and flow paths, including the primary injection and recirculation flow paths, are provided. The proposed change also moves the requirements for the Containment Spray and Component Cooling Water Systems from Section 3.3.1 to separate sections, and revises Table 3.3.5-1 with new valve numbers.

The amendment provides for increased availability of cold leg safety injection by requiring one pump train, consisting of one charging pump and associated flow paths, in MODE 3 (below 600 psig) and MODE 4. It also requires the hot leg and cold leg recirculation paths to be operable through MODE 4. The hot leg recirculation requirements incorporate the alternate hot leg path into the specifications. Operability of these paths is not currently required by the Technical Specifications. Specific requirements have been added for the residual removal heat exchanger valves to assure they will be operable, since they are currently not environmentally qualified for submergence. The proposed specification also includes requirements for the recirculation pump discharge valves, which are being modified during the current Cycle 11 refueling outage. The new specifications for these systems do not increase the potential consequences of an accident, or probability of an accident. The proposed change provides additional ECCS system availability as compared to that required under the existing specifications, and assures the components are operated in accordance with the design basis.

The incorporation of Specification 3.3.8, "Status of ECCS Components," will enhance safety by providing requirements for ECCS train operability and specific component requirements. This will therefore, not increase the potential adverse consequences of, or probability of an accident. The proposed change will clarify to the operating personnel the requirements of the Technical Specifications for the ECCS and provide the means to effectively determine the required status of the ECCS components to assure the systems are operable.

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The potential for a mass addition transient is decreased by permitting isolation of the feedwater pumps from the safety injection system at an RCS pressure of 600 psig, allowing sufficient time to isolate the system prior to reaching the 500 psig limit of Specification 3.3.3. Overpressurization above 600 psig is not a concern, since it would be limited by the shut-off head of the feedwater pumps to about 1175 psig. Permitting the feedwater pump breakers to be in the test position still assures the pumps cannot operate, and does not adversely affect any safety related equipment. Therefore these changes will not increase the potential consequences or, increase the probability of an accident.

The discrepancy in existing Specification 3.3.1.D which required isolation of the containment spray system, with a recirculation pump out of service, has have removed. Additionally, specific requirements have been incorporated to assure the containment spray flow liming valves are maintained in the correct positions. These two changes have a significant impact in improving safety by assuring the containment spray system is operable. Therefore these changes do not increase the potential consequences of an accident, or probability of an accident.

Current administrative controls require entry into Specification 3.0.3 whenever containment spray flow limiting valves CV-517 and CV-518 are found to be inoperable or whenever one component on the hot leg or cold leg recirculation path is found to be inoperable. In this event, the shutdown process must commence within one hour. The addition of the 72 hour action statements of the STS will reduce the need to enter Specification 3.0.3.

The incorporation of the 72 hour action statement is within the guidelines of the STS and does not contribute substantially to unavailability of the ECCS. The proposed change removes the need to enter Specification 3.0.3 by providing action statements for systems with redundant trains to allow continued plant operation for up to 72 hours. This is consistent with the assumption of single failure relaxation in the corresponding action statements of the STS, and is consistent with assumptions of the accident analyses in Chapter 15 of the UFSAR.

Use of the 72 hour action statement will significantly reduce the number of potential plant transients required under the one hour action statement of Specification 3.0.3. The reduction in plant transients will not increase the potential for an accident, or adverse consequences. The incorporation of the 72 hour action statement will benefit overall safety.

The STS one hour action statements for low mode operations have also been incorporated in the proposed change. In the lower modes, MODE 3 at an RCS pressure less than 600 psig, the consequences of an accident are less severe. The action statement allows 20 hours to reach MODE 5. This time limit is accepted due to the reduced effects of an accident from these conditions, and the stable reactivity condition of the core and reduced decay heat removal requirements in the lower modes of operation.

New surveillance requirements have been incorporated from the STS to perform a containment inspection, and review ECCS valve status. These requirements are an improvement over the existing specification. The containment inspection will assure the suction path of the recirculation pumps is clear of debris. The ECCS surveillance will help assure the ECCS is maintained operable. Surveillance of valves located inside the containment has not been included, since access to these areas is restricted, and also to limit exposure of operations personnel. The new surveillances will not increase the potential consequences of any accident and do not increase the probability of an accident.

Incorporation of separate sections into the proposed specification for the component cooling system and containment spray systems is consistent with the STS. The provisions of the existing specifications have been maintained in the new sections and augmented with more detailed requirements. The component cooling water system specification includes the 480v modification being installed in the Cycle 11 refueling outage and the alignment of component cooling water pump G-15C with Train B. The new action statement to allow the removal from operation of one component cooling water heat exchanger for an extended period is based on the preliminary results of a Probabilistic Risk Assessment (PRA). The preliminary PRA examined the loss of component cooling water scenarios and concluded that the risk of core damage was not significantly increased by the new specification. We are in the process of performing a detailed PRA to support these preliminary conclusions. Based on the preliminary results these specifications will not increase the potential consequences of an event, or the probability of an accident.

The increase in the action statement time limit for the containment isolation from the safety injection sequencer subchannel does not disable the containment isolation function. The change removes a discrepancy within the existing specifications. Since the containment isolation signal will still be operable directly from the containment transmitters, and the other sequencer channel will be operable, the change only reduces a portion of diversity of the trip within a single train. The operation of the containment isolation function is not significantly impacted by this change, and therefore it does not increase the probability of an accident or the potential consequences of an accident.

The proposed change does not degrade any physical barriers which could alter the consequences analyzed in the UFSAR, and therefore the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change will revise Section 3.3, the ECCS Specifications, consistent with the Westinghouse Standard Technical Specifications (STS). The proposed change will incorporate current STS guidance into the Technical Specifications by providing a 72-hour action statement associated with an inoperable safety injection train and removing the action statement requirement to test redundant trains which has caused unnecessary entry into Specification 3.0.3. The potential for new accidents has not been increased, and number of plant transients which would have any potential to cause an accidents [sic] is not increased by this change.

The operability requirements for the safety injection system will require one train of cold leg injection, via the charging system, to be operable in MODE 4, consistent with the STS, and extend the existing requirements for ECCS operation in MODES 1 through 3. This change does not increase the potential for any new or different accident, since it assures the operability of existing systems.

Specification 3.3.3 requires isolation of the safety injection/feedwater pumps at an RCS pressure of 500 psig. The proposed change will allow the isolation to be initiated at 600 psig and completed before reaching 500 psig. The addition of a 100 psi margin for isolation of the safety injection and feedwater pumps will reduce the potential for a mass addition transient in low temperature conditions which may exceed the capability of the Overpressure Mitigation System and, consequently, the Appendix G limits for the reactor vessel. This change does not increase the potential for a new accident, since it will assure the isolation is completed prior to reaching the restrictive limits of the heatup/cooldown curve.

Consistent with the corrective actions provided in LER 89-024, "Unit 1 CV-517 and CV-518 Failure Mode on Loss of Instrument Air," the proposed change will require valves CV-517 and CV-518 to remain open for containment spray by requiring the valves to be operable and capable of being closed during the recirculation phase. Action statements have been provided to assure the valves are maintained in accordance with the specification. A clarification of the train alignment of components of the Recirculation System and system operability is provided in the Basis for Section 3.3.1. This change assures the containment spray system is operable as required and does not create potential for an new type of accident.

The extension of the action statement time limit for one component cooling heat exchanger has been reviewed to determine if there is a significant increase in the risk of core damage during this time. Preliminary results of the PRA indicate the effect on the risk due to a potential loss of component cooling has been found to be small, and does not significantly increase the potential for an accident initiated by either loss of the component cooling water system, or a LOCA.

The proposed change increases the operability requirements for the ECCS, and gives detailed guidance on the operation of required components. These changes improve the operation and assure the availability of the ECCS. The increase in ECCS operability does not alter core parameters, or degrade fission product barriers in any manner which would result in a new, or unanalyzed condition.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The safety analysis for design basis accidents has concluded that the ECCS will provide sufficient core cooling (for LOCA), and boron injection (for MSLB), to remain within acceptable limits with an assumed worst case single active failure. The proposed change will maintain the ECCS components and power supplies in an alignment consistent with the current analysis assumptions and provide for operational flexibility within the analysis. The overall impact will not be a reduction in the margin of safety and is an improvement [sic] the existing specifications.

As an example, the proposed change will require containment spray flow limiting valves CV-517 and CV-518 to remain open for proper containment spray system flow to assure containment peak pressure remains within the safety analysis. The valves also will be required to be operable such that they can be closed for recirculation. This will not decrease the margin of safety, and assure both the containment spray flow and recirculation flows will be within design margins.

A clarification regarding the recirculation system is provided as a result of recent commitments to upgrade the hot leg recirculation system. In addition, the proposed change will provide train definitions, MODE operability requirements and the associated action statements consistent with the STS. It also will decrease the potential for a mass addition transient in the RCS by enabling the timely isolation of the feedwater/safety injection pumps. These changes will not decrease the margin of safety and will assure the ECCS components are available to [sic] as assumed in the safety analysis.

The proposed change provides relief from the provisions of the current Specification requiring 3.0.3 entry, and subsequent plant shutdown. The current Specifications were generally written prior to the issuance of the Westinghouse STS and do not contain action statements for many of the ECCS required components. In most instances the proposed change incorporates the STS action statement time limits into the Specifications. The use of standard action statements will reduce the need to enter 3.0.3, and the corresponding potential for shutdown transients. This will not decrease the margin of safety and will reduce the number of potential shutdown transients.

The change in the action statement time limit for the containment isolation function of the sequencer subchannels from 8 hours to 72 hours, corresponds to the time limit approved for the sequencer in Amendment No. 86. Operation without the subchannel affects the diversity of one the portion of the containment isolation train, and does not disable the affected train. The change does not significantly reduce the margin of safety, since it only affects one train, and the redundant train will remain fully operational. The change will permit increased operational flexibility, in accordance with the provisions of Specification 3.7, and reduce the potential for plant transients which could result from implementing a plant shutdown under the current six hour action statement.

The proposed Technical Specifications for operation of the ECCS are in accordance with the provisions of the STS and the safety analysis contained in the UFSAR Section 15. The proposed change assures the ECCS will be aligned and operated as required by the safety analysis. The proposed revision does not alter the results of the current safety analysis, or decrease the effectiveness of the Technical Specifications in maintaining the analysis limits and assumptions, such as the peak cladding temperature, DNBR, or the peak containment pressure. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: James E. Dyer, Acting

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 24, 1990

Description of amendment request: The license amendment request proposes to implement Technical Specification changes as described in NRC Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or the Process Control Program." In accordance with the guidance of Generic Letter 89-01, the proposed change adds new programmatic requirements governing radioactive effluents and radiological environmental monitoring to the Administrative Controls section of the Technical Specifications. Existing Technical Specifications containing procedural details on radioactive effluents, solid radioactive wastes, environmental monitoring, and associated reporting requirements are concurrently being deleted. The procedural details which are to be deleted are being incorporated into the Offsite Dose Calculation Manual (ODCM) or Process Control Program (PCP) as appropriate. The Technical Specification definitions of the ODCM and PCP are also revised to reflect these changes. This amendment request is being proposed as an improvement to the existing Technical Specifications as recommended by Generic Letter 89-01 and consistent with the Commission's Policy Statement for Technical Specifications Improvements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application. The licensee's findings are as follows:

Standard 1 - Involves a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

This proposed change alters only the format and location of procedural detail and administrative controls relative to radioactive effluents, solid radioactive waste, and radiological environmental monitoring. The change is administrative in nature and does not involve any change to the configuration or operation of plant equipment. Therefore, this proposed change does not increase the probability or consequences on any previously evaluated accident.

Standard 2 - Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated.

Since this proposed change does not involve any change to the configuration or method of operation of any plant equipment, it does not create the possibility of a new or different kind from those previously evaluated.

Standard 3 - Involve A Significant Reduction in the Margin of Safety.

This proposed change relocated procedural detail from the Technical Specifications to the ODCM or PCP. However, new

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administrative controls are added to the Technical Specifications which assure the proper control and maintenance of these documents and provides an equivalent level of assurance that activities involving radioactive effluents, solid radioactive waste, and radiological environmental monitoring are conducted in full compliance with regulatory requirements. Therefore, there is no reduction in the margin of safety.

The proposed change does not involve any actual change in the methodology used in the control of radioactive effluents, solid radioactive waste, or radiological environmental monitoring. This change provides for the relocation of procedural detail outside of the Technical Specifications but adds appropriate administrative controls to provide continued assurance of compliance to applicable regulatory requirements. This proposed change complies with the guidance provided by NRC in Generic Letter 89-01.

The staff has reviewed the licensee's no significant hazards considerations determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: Christopher I. Grimes

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: August 22, 1990

Brief description of amendment request: The proposed amendment would revise Technical Specification 3/4.7.1.2, "Ultimate Heat Sink," to increase the allowable ultimate heat sink temperature from 82° F to 88° F. The proposed change would allow the licensee to use the ultimate heat sink to cool plant equipment when it is necessary to remove the normal service water system from service for required maintenance and when normal service water temperature nears its design limit of 95° F and adequate temperature differentials are unobtainable.

Date of individual notice in **Federal Register:** August 31, 1990 (55 FR 35743)

Expiration date of individual notice: October 1, 1990

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: July 3, 1990, as supplemented August 22, 1990.

Brief description of amendment: Amendment Application No. 185 proposes to change Technical Specification 3.4.3, "Auxiliary Feedwater System," to allow the minimum system flow requirement to be reduced from 125 gpm to 100 gpm.

Date of publication of individual notice in **Federal Register:** September 10, 1990 (55 FR 37273).

Expiration date of individual notice: Comment period expires October 10, 1990.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: August 13, 1990

Brief description of amendment: This amendment modifies the existing 0-12 effective full power year (EFPY) heatup and cooldown curves and rates based on the guidance provided in Regulatory Guide 1.99, Revision 2. In addition, adjustments were made to the low temperature overpressure protection (LTOP) mitigating system including changes to the power operated relief valves (PORVs) lift setpoint and the reactor coolant pump (RCP) start controls. The supporting TS Bases were also modified to be consistent with the above TS changes.

Date of issuance: September 18, 1990

Effective date: September 18, 1990

Amendment No.: 146

Facility Operating License No. DPR-53. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 17, 1990 (55 FR 33790)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 14, 1990, as supplemented August 9 and 29, 1990.

Brief Description of amendments: The amendments change the TS to (1) permit the removal of the rod sequence control system and (2) reduce the rod worth minimizer cut off setpoint from 20% rated thermal power to 10% rated thermal power.

Date of issuance: September 11, 1990

Effective date: September 11, 1990

Amendment Nos.: 144 and 175

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 1990 (55 FR 14501) The August 9, 1990 and August 29, 1990, letters provided supplemented information that did not alter the staff's initial determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: May 16, 1990

Brief description of amendments: The proposed amendment to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the LaSalle County Station, Units 1 and 2, Technical Specifications (TS) to revise the "single largest load reject" test value discrepancy between the TS and the UFSAR by using the more conservative UFSAR value. Also, to clarify the requirements for the automatic bypassing of the diesel generator trips on an ECCS actuation signal for Division 3 the licensee is proposing to reword the requirement so that it is consistent with the LaSalle Station design and the Branch Technical Position BTP ICSB-17 and Position 7 of the Regulatory Guide 1.9.

Date of issuance: September 13, 1990

Effective date: September 13, 1990

Amendment Nos.: 75 and 59

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 1990 (55 FR 26279) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 13, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: July 16, 1990

Brief description of amendments: Revision of Technical Specifications to reflect a High Pressure Coolant Injection (HPCI) area fire protection modification which replaces spot-type heat detectors with a linear heat detector.

Date of issuance: September 13, 1990

Effective date: September 13, 1990

Amendment Nos.: 126 and 122

Facility Operating License Nos. DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32324) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 13, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

NRC Project Director: Richard J. Barrett

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: July 26, 1990

Brief description of amendment: The amendment will provide an exception to specification 4.0.4 for entry into Mode 3 for surveillance requirement 4.7.1.2.2, "Auxiliary Feedwater System Operability." This TS change will allow the plant to progress to Mode 3 without first demonstrating auxiliary feedwater operability.

Date of Issuance: September 19, 1990

Effective date: September 19, 1990

Amendment No.: 131

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (55 FR 32715 dated August 10, 1990). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by September 10, 1990, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated September 19, 1990.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: November 15, 1988 as supplemented November 16, 1989.

Brief description of amendment: This amendment revises a list of required accident monitoring instrumentations to eliminate confusion with the Technical Specifications (TS) and better reflect the as-built conditions of the plant.

Date of issuance: September 10, 1990

Effective date: September 10, 1990

Amendment No.: 56

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21305) The November 16, 1989 submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 27, 1989

Brief description of amendment: This amendment revises the Technical Specifications (TS) by adding a remote-manual primary containment isolation valve, associated with the installation of enhanced primary containment water level instrumentation, to the valves listed in TS Table 3.6.3-1, Primary Containment Isolation Valves.

Date of issuance: September 13, 1990

Effective date: September 13, 1990

Amendment No.: 57

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 15, 1990 (55 FR 5523) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 24, 1990

Brief description of amendments: The amendments relocate tabular listings of containment penetration conductor overcurrent protective devices from the TSs to Chapter 16 of the Final Safety Analysis Report, "Selected Licensee Commitment Manual."

Date of issuance: September 18, 1990

Effective date: September 18, 1990

Amendment Nos.: 114 and 96

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 16, 1990 (55 FR 20353) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 13, 1990

Brief description of amendments: The amendments delete a portion of the surveillance requirements of TS 4.5.2.d regarding periodic verification that the suction isolation valves of the Residual Heat Removal (ND) System automatically close on a Reactor Coolant System signal less than or equal to 560 psig. These amendments, in effect, authorize removal of the ND Autoclosure Interlock (ACI) circuitry.

Date of issuance: September 11, 1990

Effective date: September 11, 1990

Amendment Nos.: 112 and 94

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32326) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: August 9, 1989 as supplemented on March 30 and June 15, 1990.

Brief description of amendment: The amendment added limiting conditions for operation and reporting requirements to the Arkansas Nuclear One, Unit 1 Technical Specifications (ANO-1 TS) regarding Seismic Monitoring Instrumentation and changed the exiting surveillance testing requirements for clarity and to achieve consistency with the ANO-2 TS.

Date of issuance: September 13, 1990

Effective date: September 13, 1990

Amendment No.: 135

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46139) The March 30 and June 15, 1990 supplements provided clarifying information and did not change the proposed finding of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: March 9, 1990

Brief description of amendment: This amendment revises Technical Specifications 2.2.1, Reactor Trip Setpoints, and 3/4.3.2, Engineered Safety Feature Actuation System Instrumentation. The changes lower the Reactor Protection System generator level-low trip setpoint from greater than or equal to 37.0% narrow range to greater than or equal to 20.5% narrow range. The Auxiliary Feedwater Actuation System setpoint for the steam generator level-low trip is lowered from its current value of greater than or equal to 29.0% narrow range to greater than or equal to 19.0% narrow range. The changes also reduce the Auxiliary Feedwater System response time on low steam generator level. Additionally, the changes revise the allowable values for steam generator and feedwater header high differential pressure for auxiliary feedwater initiation.

Date of Issuance: September 11, 1990

Effective Date: September 11, 1990

Amendment No.: 105

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 4, 1990 (55 FR 12592) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 1, 1990

Brief description of amendments: The amendments revise administrative Technical Specification 6.7.4.a by removing the parenthetical reference to the Boron Recycle System from the description of systems included in a program of leakage inspection and testing.

Date of issuance: September 18, 1990

Effective date: September 18, 1990

Amendment Nos.: 35 & 15

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 1990 (55 FR 14506) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 1990. No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: November 20, 1989

Description of amendment request: The amendment exempted two containment isolation valves from monthly position verification to reduce personnel radiation exposure.

Date of issuance: September 18, 1990

Effective date: September 18, 1990

Amendment No.: 46

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28478) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: July 11, 1990, as supplemented September 12, 1990

Description of amendment request: This amendment revised the Action for the Divisions III and IV inverters to require only that the High Pressure Core Spray system be declared inoperable and the appropriate ECCS Action requirements be followed.

The initial amendment request was supplemented by the licensee's submittal dated September 12, 1990, which described a change in circumstances due to a problem that developed with the Division III Shutdown Service Water pump. Due to the essential support provided to the inverter's heat removal system by the SSW system, the removal of the SSW pump from service would require declaring the inverters inoperable which would require plant shutdown be initiated in 24 hours.

Date of issuance: September 17, 1990

Effective date: September 17, 1990

Amendment No.: 45

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. Notice of consideration of issuance of the initial application was published in the **Federal Register** on September 5, 1990 (55 FR 36345). No comments were received on that notice. No public comments were requested on the September 12, 1990 letter which requested emergency handling of the July 11, 1990 application. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a safety Evaluation dated September 17, 1990.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: May 14, 1990

Brief description of amendment: This amendment changes Technical Specification (TS) 3/4.7.1.5.1.b, "Steam Generator Stop Valves," to require full valve closure within 8 seconds. TS Table 3.3-5, "Engineered Safety Features Response Times," has been changed to reflect the increased closure time. In addition, a number of editorial changes have been made to TS 3.3-5 for readability.

Date of issuance: September 18, 1990

Effective date: September 18, 1990

Amendment No.: 135

Facility Operating License No. DPR-74. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 1990 (55 FR 26287). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: July 27, 1988, as revised June 29, 1990

Brief description of amendment: The amendment revised the Technical Specifications to conform with the guidance of NRC Generic Letter 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping." Additional changes updating schedules for the 10-year inservice inspection and testing programs and other clarifications were also included.

Date of issuance: September 19, 1990

Effective date: September 19, 1990

Amendment No.: 169

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30301) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1990. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 1, 1990

Brief description of amendment: The amendment changed the Cooper Nuclear Station Technical Specifications by: 1) Deleting the existing limit of 3.25 times the surveillance interval for three successive surveillances, 2) utilizing the suggested wording of Generic Letter 89-14 to define the 25 percent surveillance allowance, and 3) incorporating the suggested wording for the Bases from the Generic Letter into the Cooper Technical Specifications.

Date of issuance: September 11, 1990

Effective date: September 11, 1990

Amendment No.: 134

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30302) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1990.

No significant hazards consideration comments received: No.

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Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: June 18, 1990

Brief description of amendment: The change to the Technical Specifications would add a requirement to ensure the operability and periodic testing of a modification made to the 14A to 14G tie breaker.

Date of issuance: September 12, 1990

Effective date: September 12, 1990

Amendment No.: 45

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30303) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 13, 1990

Brief description of amendment: The amendment changes Millstone Unit 3 Technical Specification (TS) 4.0.2 by deleting the requirement that the combined time interval for any three consecutive surveillance intervals is not to exceed 3.25 times the specific surveillance interval.

Date of issuance: September 19, 1990

Effective date: September 19, 1990

Amendment No.: 54

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30304) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 29, 1990

Brief description of amendment: The amendment changes Millstone Unit 3 Technical Specification (TS) 4.4.8, "Specific Activity," to allow reactor startup without prior determination of E-bar (a measurement of the specific activity of all isotopes in the reactor coolant that have half lives greater than 10 minutes).

Date of issuance: September 19, 1990

Effective date: September 19, 1990

Amendment No.: 55

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32329) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 12, 1990

Brief description of amendments: Temporary extension of allowable Limiting Condition for Operation for Service Water System from 3 days to 7 days.

Date of issuance: September 20, 1990

Effective date: Unit 1, as of date of issuance and must be implemented on a one-time basis only during the refueling outage scheduled to start on September 8, 1990. Unit 2, as of date of issuance and must be implemented on a one-time basis only during the refueling outage scheduled to start on March 9, 1991.

Amendment Nos.: 100 and 68

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 20, 1990 (55 FR 33992) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 20, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 28, 1989 as supplemented on February 16, 1990. The supplemental letter provided administrative information. The staff has determined that this information does not affect the proposed no significant hazards determination.

Brief description of amendments: These amendments changed the Technical Specification to reflect the addition of high-high radiation trip signal requirement for the control circuitry purge and vent isolation valves located on lines larger than two inches in diameter.

Date of issuance: September 7, 1990

Effective date: September 7, 1990

Amendment Nos.: 156 and 158

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 2, 1990 (55 FR 18412) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: June 21, 1990, as supplemented July 27, 1990.

Brief description of amendment: The amendment revises the Technical Specifications to remove cycle-specific parameter limits from the Technical Specifications and to reference a Core Operating Limits Report. These changes are in accordance with NRC Generic Letter 88-16.

Date of issuance: September 11, 1990

Effective date: September 11, 1990

Amendment No.: 103

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30309) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: July 26, 1990

Brief description of amendment: The amendment revises the Technical Specifications to incorporate a cycle-specific change regarding the substitution of two failed fuel rods, located in assembly T53 at the core center, with two stainless steel rods.

Also included in this amendment is a correction to Technical Specification page 5.3-2 which incoporates text previously approved by Amedment No. 86 but inadvertently deleted by Amendment No. 101.

Date of issuance: September 19, 1990

Effective date: September 19, 1990

Amendment No.: 104

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32331) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 21, 1990 and supplemented by letter dated July 18, 1990. The supplemental letter did not increase the scope of the original amendment request and did not affect the staff's original no significant hazards analysis.

Brief description of amendments: These amendments relaxed the reportability requirements for the reactor trip and reactor trip bypass breakers surveillance testing.

Date of issuance: September 10, 1990

Effective date: Units 1 and 2: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment Nos. 114 and 96

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 1990 (55 FR 26293) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: February 23, 1990 and supplemented by letters dated June 28, 1990 and August 8, 1990. The supplemental letters did not increase the scope of the original amendment request and did not affect the staff's original no significant hazards determination.

Brief description of amendment: This amendment modified the Subcooling Margin Monitor (SMM) Technical Specifications (TSs) and included TSs for the Reactor Vessel Level Instrumentation System (RVLIS) with interim requirements. The RVLIS technical specifications include a footnote terminating the applicability of the interim action statement at the end of the Salem Unit 2 6th refueling outage (Fall 1991) when RVLIS will be upgraded. In addition, Tables 3.3-11a and 3.3-11b have been combined into Table 3.3-11.

Date of issuance: September 10, 1990

Effective date: Unit 2 is effective as of the date of issuance to be implemented within 30 days of the date of issuance.

Amendment No. 95

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21979) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: December 28, 1989, as supplemented March 16, 1990

Brief description of amendment: This amendment revised the license condition concerning the Fire Protection Plan and added administrative controls to the Technical Specifications (TS) in support of the Fire Protection Plan as described in Generic Letter 86-10, "Implementation of Fire Protection Requirements," dated April 24, 1986. It also removed the Fire Protection requirements from the TS to the Fire Protection Plan as described in Generic Letter 88-12, "Removal of Fire Protection requirements from Technical Specification," dated August 2, 1988.

Date of issuance: September 10, 1990

Effective date: September 10, 1990

Amendment No.: 115

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30310). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

NRC Project Director: John T. Larkins, Acting

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: April 19, 1990

Brief description of amendments: These amendments revise the Technical Specifications deleting reference to a fixed in line rotometer as listed on Table 3.2.D. for radwaste liquid effluent monitoring instrumentation. This instrument has been replaced as a consequence of a plant modification to improve the licensee's ability to measure radiological liquid effluent discharges.

Date of issuance: September 7, 1990

Effective date: September 7, 1990

Amendment Nos.: 175, 178, 146

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 1990 (55 FR 26294) The

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Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: June 26, 1990

Brief description of amendments: The amendments add an NRC standard fire protection license condition to the operating licenses and relocate fire protection requirements from the TS to the NA-1&2 Updated Final Safety Analysis Report.

Date of issuance: September 13, 1990

Effective date: September 13, 1990

Amendment Nos.: 140 and 123

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the operating licenses and the Technical Specifications.

Date of initial notice in Federal Register: August 8, 1990 (55 FR 32333) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 13, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 25, 1990

Brief description of amendment: This amendment changes Technical Specifications by specifying only the tank level and deleting the redundant gallons values for the Safety Injection Tank (SIT). Also, the "Bases" for Section 3/4.5.4 will be revised to show that the SIT reserve is increased from 40,000 gallons to 52,000 gallons.

Date of issuance: September 10, 1990

Effective date: September 10, 1990

Amendment No.: 136

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 8, 1990 (55 FR 32335) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: December 19, 1989, as supplemented March 30, 1990.

Brief description of amendment request: The amendment removed cycle-specific parameters from the Technical Specifications (TS) Sections 3.2.1. (Average Planar Linear Heat Generation Rate), 3.2.2 (Minimum Critical Power Ratio) and 3.2.3 (Linear Heat Generation Rate) and placed them in the Core Operating Limits Report (COLR). It also modified section 5.3.1 of the TS for fuel descriptions and added a definition for the COLR to the TS. The amendment also added a reporting requirement to submit the COLR to the NRC staff for information and review.

Date of issuance: September 13, 1990

Effective date: September 13, 1990

Amendment No. 33

Facility Operating License No. NPF-58.

This amendment revised the Technical Specifications. Date of individual notice in Federal Register: September 20, 1990 (55 FR 38763)

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By November 2, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington,

BEST COPY AVAILABLE

DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: September 11, 1990

Brief description of amendment: The amendment modifies the Technical Specifications by changing the containment spray interlock trip level setting in TS Table 3.2.2 from between 4.5 and 5.5 psig to between 9.0 and 10.0 psig.

Date of issuance: September 17, 1990

Effective date: September 17, 1990

Amendment No.: 46

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated September 17, 1990.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of Application for amendment: September 4, 1990

Brief description of amendment: The amendments changed the Technical Specifications to provide relief from the provisions of Section 3.8.1.1 (A.C. Sources-Operation) action b, by permitting a one-time extension of the limiting condition for operation (LCO) from 72 hours to 15 days.

Date of Issuance: September 13, 1990

Effective Date: September 6, 1990

Amemdment Nos.: 99 and 67

Facility Operating License Nos. NPF-14 and NPF-22: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. These amendments were authorized by telephone on September 6, 1990 and confirmed by letter dated September 6, 1990.

The Commission's related evaluation of the amendments, consultation with the Commonwealth of Pennsylvania and final no significant hazards consideration determination are contained in a Safety Evaluation dated September 13, 1990.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge 2300 N Street N.W., Washington, DC 20037.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18071.

NRC Project Director: Walter R. Butler

Dated at Rockville, Maryland, this 26th day of September 1990.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects-III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 90-23254 Filed 10-2-90; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-461]

Illinois Power Co., et al.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 47 to Facility Operating License No. NPF-62, issued to Illinois Power Company and Soyland Power Cooperative, Inc. (the licensee), which revised the Technical Specifications for operation of the Clinton Power Station, Unit No. 1 (the facility), located in DeWitt County, Illinois. The amendment was effective as of the date of issuance.

This amendment revised the Technical Specifications (TS) to remove the requirement for isolation of the Containment Monitoring (CM) and Process Sampling (PS) Systems upon a Containment Building Exhaust High Radiation signal.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 14, 1988 (53 Fr 22247) No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to the action see (1) the application for amendments dated February 5, 1988 (2) Amendment No. 47 to License No. NPF-62, (3) the Commission's related Safety Evaluation dated Sept. 25, 1990 and (4) the Environmental Assessment dated August 6, 1990 (55 FR 33192). All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC., and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 25th day of September, 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[FR Doc. 90-23368 Filed 10-2-90; 8:45 a.m.]

BILLING CODE 7590-01-M

[Docket No. 50-281]

Virginia Electric and Power Co. (Surry Power Station, Unit 2); Exemption

I.

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Operating License No. DPR-37, which authorizes operation of Surry Power Station (SPS), Unit 2. The operating license provides, among other things, that the SPS, Unit 2 is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site in Surry County, Virginia.

II.

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that the primary containment shall meet the leakage test requirements set forth in 10 CFR part 50, appendix J. More specifically, section III.D.3 of appendix J, "Type C tests," requires that:

> Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.

By letter dated September 14, 1990, as supplemented September 18, 1990, VEPCO requested a schedular exemption from the regulatory requirements of 10 CFR part 50, appendix J, section III.D.3 until June 30, 1991. This section requires, in part, periodic testing of isolation barriers (valves) associated with certain containment penetrations. The interval between leak rate tests is not to exceed 2 years. A recent quality assurance audit of the Surry Inservice Inspection program revealed that VEPCO's implementation of the Type C test program does not satisfy this test interval requirement. Due to a misinterpretation of appendix J, VEPCO was unaware of this anomaly until September 7, 1990. VEPCO had interpreted appendix J to mean that the 2-year inspection interval was initiated at the end of the overall Type C periodic testing rather than applied individually to each valve. VEPCO requested an exemption from this requirement so that the required testing on certain containment isolation valves can be performed during the 1991 SPS, Unit 2 refueling outage, which is in excess of the maximum allowed 2-year interval which expires on September 18, 1990. Therefore, the proposed exemption would allow a one-time relief from performing Type C tests for valves which would otherwise require testing between September 18, 1990 and April 1991. In the above submittals, VEPCO evaluated the acceptability of the exemption request. More details are contained in the NRC's Safety Evaluation issued concurrent with this exemption.

III.

SPS, Unit 2 was shut down for refueling on September 10, 1988 and remained in refueling outage until September 19, 1989 (374 days) to perform maintenance and modifications. During this interval, the last local Type C tests were completed. Due to the extended maintenance outage, the next refueling outage is currently scheduled for the second quarter of 1991. The interval between the refueling outages will exceed the 2-year limit of appendix J. Therefore, an exemption to this appendix J requirement in the form of a one-time extension of the interval is being requested. In addition to this exemption request, by letter dated September 14, 1990, VEPCO requested a one-time conforming Technical Specifications (TS) change to reflect the requested exemption by adding a footnote to TS 4.4.B.2 and 4.4.D denoting the appendix J exemption.

As indicated above, the intent of appendix J was that isolation valves and associated penetrations be tested during each refueling outage but at intervals not to exceed 2 years. SPS, Unit 2 is presently scheduled for a refueling outage in April 1991. The exemption would allow local leak rate Type C tests for the 76 affected containment isolation valves to be postponed until the next refueling outage, which is in excess of the 2-year interval. Such an extension is desirable in order to prevent the need for earlier shutdown of the plant to perform the required tests.

During the extended maintenance outage which lasted approximately 1 year, modifications and testing were performed on the emergency diesel generators, the circulating and service water systems and the electrical distribution system. In addition, during this time, plant components were not exposed to the normally severe operating temperatures, pressures and radiation conditions. As of April 30, 1991, when this exemption expires, the total exposure time for the valves and containment penetrations to the normal plant operating environment will be only about 19 months; the remainder calendar time between valve testing will have occurred during periods of cold shutdown in a less hostile environment. Based on the good material condition, improved maintenance history of the subject valves, and the projected leakage rate, the granting of an extension will not impair valve operability or significantly degrade leak tightness.

The 2-year interval requirement for the Type C penetrations is intended to be often enough to prevent significant deterioration from occurring and long enough to permit the local leak rates tests (LLRTs) to be performed during plant outages. In addition, leak testing of the penetrations during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Moreover, some penetrations, because of their intended functions, cannot be tested at power operation. For penetrations that cannot be tested during power operation or those that, if tested during plant operation, would cause a degradation in the plant's overall safety (e.g., the closing of a redundant line in a safety system), the increase in confidence of containment integrity following a successful test is not significant enough to justify a plant shutdown specifically to perform the LLRTs within the 2-year time period, especially in light of the above discussions.

IV.

Pursuant to 10 CFR 50.12(a)(2)(v), the Commission will not consider granting a schedular exemption unless the licensee has made good faith efforts to comply with the regulation. The NRC staff believes that VEPCO has taken prudent steps to improve the containment integrity and, if not for the extended refueling outage, would have complied with appendix J.

Based on our evaluation, the NRC staff has concluded VEPCO has made good faith efforts to comply with the requirements of appendix J and that the special circumstances as described in 10 CFR 50.12(a)(2)(v) exist, in that the exemption would provide only temporary relief from the applicable regulation. However, based on the information provided, it is the staff's view that the exemption interval shall be effective until April 30, 1991 rather than the requested date of June 30, 1991, because this interval should provide sufficient time to complete the required tests following the start of the April 5, 1991, refueling outage. Therefore, the staff has determined that a schedular exemption for 10 CFR part 50, appendix J should be granted.

V.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

A temporary exemption is granted from the requirements of section III.D.3, which requires a local leak rate test be conducted within 2-year interval. For good cause shown, this exemption extends that period by approximately 7 months from September 18, 1990 until April 30, 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (55 FR 38618).

A copy of the licensee's request for exemption dated September 14, 1990, as supplemented September 18, 1990, is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW. Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

This exemption is effective upon

Department of Agriculture

One Staff Assistant to the Director, Programs and Planning, Office of Public Affairs. Effective August 21, 1990.

One Private Secretary to the Administrator, Farmers Home Administration. Effective August 22, 1990.

Department of Defense

Two Law Clerks to Judges, U.S. Court of Military Appeals. Effective August 13, 1990.

One Principal Director to the Deputy Assistant Secretary for Drug Enforcement Policy. Effective August 17, 1990.

One Executive Assistant to the Assistant Secretary for Civil Rights. Effective August 27, 1990

Federal Communications Commission

One Special Assistant to the Director, Office of International Communications. Effective August 1, 1990.

One Special Assistant to the Regional Administrator—Regional Housing Commissioner. Effective August 27, 1990.

One Executive Assistant to the President, Government National Mortgage Association. Effective August 28, 1990.

One Special Assistant to the General

One Confidential Assistant to the Executive Director. Effective August 30, 1990.

Small Busines Administration

One Special Assistant to the Associate Deputy Administrator for Special Programs. Effective August 6,

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A copy of the licensee's request for exemption dated September 14, 1990, as supplemented September 18, 1990, is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW. Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of September 1990.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-23309 Filed 10-2-90; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

Excepted Service: Schedules A, B, and C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on August 31, 1990 (55 FR 12973). Individual authorities established or revoked under Schedules A, B, or C between August 1, 1990, and August 31, 1990, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1990.

Schedule A

No Schedule A authorities were established or revoked during August.

Schedule B

No Schedule B authorities were established or revoked during August.

Schedule C

Department of the Air Force

One Confidential Assistant to the Secretary. Effective Ausut 17, 1990.

Department of Agriculture

One Staff Assistant to the Director, Programs and Planning, Office of Public Affairs. Effective August 21, 1990.

One Private Secretary to the Administrator, Farmers Home Administration. Effective August 22, 1990.

One Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective August 28, 1990

Agency for International Development

One Special Assistant to the Deputy Assistant Administrator, Bureau for Asia, Near East and Europe, Effective August 9, 1990.

One Special Assistant to the Assistant Administrator, Bureau for Latin America and the Caribbean. Effective August 15, 1990.

One Special Assistant to the Assistant Administrator, Bureau for External Affairs. Effective August 15, 1990.

Commission on Civil Rights

One Special Assistant to a Commissioner. Effective August 3, 1990.

Commodity Futures Trading Commission

One Administrative Assistant to a Commissioner. Effective August 28, 1990.

Department of Commerce

One Special Assistant to the Chief of Staff. Effective August 9, 1990.

One Special Assistant to the Chief of Staff. Effective August 10, 1990.

One Confidential Assistant to the Chief Counsel of Technology. Effective August 10, 1990.

One Confidential Assistant to the Deputy Assistant Secretary for Technology Policy. Effective August 10, 1990.

One Deputy to the Director, Office of Export Trading Company Affairs. Effective August 10, 1990.

One Confidential Assistant to the Assistant Secretary for Trade Development. Effective August 15, 1990.

One Confidential Assistant to the Deputy Under Secretary for International Trade. Effective August 16, 1990.

One Special Assistant to the Senior Advisor to the Secretary. Effective August 22, 1990.

One Confidential Assistant to the Under Secretary for International Trade. Effective August 23, 1990.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Development. Effective August 31, 1990.

Department of Defense

Two Law Clerks to Judges, U.S. Court of Military Appeals. Effective August 13, 1990.

One Principal Director to the Deputy Assistant Secretary for Drug Enforcement Policy. Effective August 17, 1990.

One Government Affairs Officer to the Deputy Assistant Secretary for Drug Enforcement Policy. Effective August 17, 1990.

One Private Secretary to the Assistant Secretary (Special Operations/Low Intensity Conflict). Effective August 28, 1990.

One Confidential Assistant to the Under Secretary for Acquisition. Effective August 29, 1990.

One Director of Protocol to the Secretary. Effective August 30, 1990.

Department of Energy

One Special Assistant to the Director, Division of Congressional Affairs and State Liaison, Federal Energy Regulatory Commission. Effective August 1, 1990.

One Special Assistant to the Associate Director for Human Resource Management. Effective August 15, 1990.

One Staff Assistant to the Chief of Staff. Effective August 16, 1990.

One Confidential Assistant to the Press Secretary. Effective August 22, 1990.

One Senior Policy Advisor to the Director, Office of Environmental Restoration and Waste Management. Effective August 28, 1990.

One Staff Assistant to the Director, Office of Nuclear Safety. Effective August 29, 1990.

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective August 29, 1990.

Department of Transportation.

One Staff Assistant to the Director, Office of Small and Disadvantaged Business Utilization. Effective August 13, 1990.

One Director, Office of Speechwriting and Research, to the Assistant Secretary for Public Affairs. Effective August 21, 1990.

Department of Education

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective August 6, 1990.

One Deputy to the Director, Private Sector Initiative Staff. Effective August 17, 1990.

One Executive Assistant to the Deputy Under Secretary for Management. Effective August 22, 1990.

One Executive Assistant to the Assistant Secretary for Civil Rights. Effective August 27, 1990

Federal Communications Commission

One Special Assistant to the Director, Office of International Communications. Effective August 1, 1990.

General Services Administration

One Confidential Assistant to the Regional Administrator, Region 5. Effective August 22, 1990.

One Special Assistant to the Commissioner, Public Buildings Service. Effective August 22, 1990.

One Confidential Assistant to the Regional Administrator, Region 7. Effective August 30, 1990.

Department of Health and Human Services

One Special Assistant to the Associate Commissioner for Public Affairs, Social Security Administration. Effective August 1, 1990.

One Confidential Staff Assistant to the Staff Director, Advisory Council on Social Security, Health Care Financing Administration. Effective August 3, 1990.

One Confidential Staff Assistant to the Staff Director, Advisory Council on Social Security, Health Care Financing Administration. Effective August 6, 1990.

One Director, Office of Family Planning, to the Deputy Assistant Secretary for Populatioin Affairs. Effective August 9, 1990.

One Special Assistant to the Assistant Secretary for Planning and Evaluatiion. Effective August 15, 1990.

One Special Assistant to the Assistant Secretary for Family Support. Effective August 16, 1990.

One Special Assistant to the Deputy Director, Office of Child Support Enforcement. Effective August 23, 1990.

One Special Assistant to the Deputy Assistant Secretary for Legislation (Health). Effective August 30, 1990.

Department of Housing and Urban Development

One Special Assistant to the Secretary. Effective August 6, 1990.

Two Assistants to the Deputy Assistant Secretary for Congressional Relations. Effective August 16, 1990.

One Special Assistant—Multifamily Housing for Resident Initiatives, to the Deputy Assistant Secretary for Multifamily Housing Programs. Effective August 22, 1990.

One Staff Assistant to the Assistant Secretary for Housing—Federal Housing Commissioiner. Effective August 23, 1990.

One Special Assistant to the Regional Administrator—Regional Housing Commissioner. Effective August 27, 1990.

One Executive Assistant to the President, Government National Mortgage Association. Effective August 28, 1990.

One Special Assistant to the General Deputy Assistant Secretary for Housing. Effective August 30, 1990.

Interstate Commerce Commission

One Attorney—Advisor to a Commissioner. Effective August 17, 1990.

Department of Interior

One Special Assistant to the Assistant Secretary and Director, External Affairs. Effective August 6, 1990.

One Special Assistant to the Secretary and Executive Director of Correspondence to the Special Assistant—Policy and Programs (Chief of Staff). Effective August 17, 1990.

One Staff Assistant to the Director, Office of Surface Mining. Effective August 17, 1990.

One Special Assistant to the Executive Assistant to the Director. Effective August 17, 1990.

Department of Justice

One Special Assistant to the Assistant Attorney General, Environment and Natural Resources Division. Effective August 3, 1990.

One Staff Assistant to the Deputy Director, Office of Public Affairs. Effective August 17, 1990.

One Confidential Assistant to the Director, Office of Policy Development. Effective August 30, 1990.

One Confidential Assistant to the Deputy Director, Office of Policy Development. Effective August 30, 1990.

Department of Labaor

One Special Assistant to the Chief of Staff. Effective August 29, 1990.

National Transportation Safety Board

One Director, Office of Congressional and Intergovernmental Relations, to the Chairman. Effective August 10, 1990.

Office of Management and Budget

One Legislative Assistant to the Associate Director for Legislative Affairs. Effective August 16, 1990.

Office of Science and Technology Policy

One Correspondence and Information Control Assistant to the Assistant to the President. Effective August 3, 1990.

President's Commission on Executive Exchange

One Assistant to the Associate Director for Education. Effective August 10, 1990.

One Confidential Assistant to the Executive Director. Effective August 30, 1990.

Small Busines Administration

One Special Assistant to the Associate Deputy Administrator for Special Programs. Effective August 6, 1990.

One Special Assistant to the Regional Administrator, Region IX. Effective August 27, 1990.

One Special Assistant to the Counselor to the Administrator. Effective August 28, 1990.

Department of State

One Special Assistant to the Under Secretary for Political Affairs. Effective August 3, 1990.

One Secretary—Stenographer to the Assistant Secretary for Intelligence and Research. Effective August 10, 1990.

One Staff Assistant to the Special Assistant to the Assistant Secretary, Bureau of Public Affairs. Effective August 23, 1990.

One Special Assistant to the Under Secretary for Economic Affairs. Effective August 27, 1990.

The United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective August 29, 1990.

Department of the Treasury

One Staff Assistant to the Director, United States Mint. Effective August 9, 1990.

One Director, Office of Public Affairs, to the Deputy Assistant Secretary (Public Affairs). Effective August 13, 1990.

One Counselor to the Chief Counselor, Office of Thrift Supervision. Effective August 16, 1990.

One Confidential Assistant to the Under Secretary for International Affairs. Effective August 16, 1990.

One Travel Assistant to the Deputy Assistant Secretary for Administration. Effective August 31, 1990.

United States Information Agency

One Special Assistant (Writer/Editor) to the Director, Office of Public Liaison. Effective August 29, 1990.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp., R218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-23355 Filed 10-2-90; 8:45 am]

BILLING CODE 6325-01-M

OVERSIGHT BOARD

Regions 3 Through 6 Advisory Board Meetings

AGENCY: Oversight Board.

ACTION: Meeting notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby published for the regional advisory board meetings for Regions 3 through 6. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. October 16, 1990, 10 a.m to 3:30 p.m., Chicago, IL, Region 3 Advisory Board.
2. October 30, 1990, 10 a.m. to 3:30 p.m., Oklahoma City, OK, Region 4 Advisory Board.
3. November 1, 1990, 9 a.m. to 2:30 p.m., Albuquerque, NM, Region 5 Advisory Board.
4. November 8, 1990, 10 a.m. to 3:30 p.m., Phoenix, AZ, Region 6 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Chicago, IL—Northwestern University School of Law, Strawn Hall, McCormick Bldg., 350 E. Superior.
2. Oklahoma City, OK—Metro Tech Conference Center, 1900 Springlake Dr.
3. Albuquerque, NM—Albuquerque Technical Vocational Institute, Jeannette Stromberg Hall, Auditorium C311, 2000 Coal S.E.
4. Phoenix, AZ—Phoenix Civic Plaza, 225 E. Adams St.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Oversight Board/RTC, 1777 F. Street, NW., Washington, DC 20232, 202/786-9575.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the ACT), Public Law No. 101-73, 103 Stat. 183, 382-383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The advisory boards provide the Resolution Trust Corporation (RTC) with information and recommendations on the policies and programs for the sale of RTC-owned real property assets.

Agenda: A detailed agenda will be available at the meeting.

Discussions will center around the activities of that particular region as related to seller financing for RTC real estate assets, affordable housing, asset marketing, and utilization of the private sector. In addition, there will be briefings by the RTC on activity pertaining to that region and policy updates by the Oversight Board.

Statements: Interested persons may present data, information, or views in writing on the issues pending before the advisory board. Persons wishing to make oral statements are to notify the contact person 10 days before each meeting giving a brief statement on the nature of the remarks. Time permitting, oral comments will be limited to approximately five minutes.

All meetings are open to the public. Seating is available on a first come first served basis.

Dated: September 28, 1990.

Art Siddon,

Acting Vice President, Office of Public Affairs.

[FR Doc. 90-23385 Filed 10-2-90; 8:45 am]

BILLING CODE 3825-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28475; International Series Release No. 157; File No. SR-AMEX-89-16]

Self-Regulatory Organizations; American Stock Exchange, Inc; Order Approving Proposed Rule Change Relating to the Listing and Trading of a Broad-Based Index Option Contract Based on the Japan Index

I. Introduction and Background

On June 28, 1989, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list for trading a new index option contract based on the Japan Index ("Japan Index" or "Index")—a broad-based index of Japanese stocks that are traded on the Tokyo Stock Exchange ("TKE").

The proposed rule change was noticed in Securities Exchange Act Release No. 27026 (July 12, 1989), 54 FR 30299.[3] One comment letter was received regarding the proposed rule change.[4]

II. Description of the Proposal

The AMEX proposes to list options based on the Japan Index, a price-weighted index [5] developed by the AMEX that is comprised of 210 Japanese stocks traded on the TKE. The AMEX proposes to trade standardized European-style options (exercisable only at expiration) based on the Index. Options on the Index will be governed by current Exchange rules applicable to the trading of index options.[6] These rules govern matters such as disclosure, account approval and suitability, position and exercise limits,[7] margin, and trading halts and suspensions.[8]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] On September 8, 1989, the AMEX amended its proposal to among other things, provide for a modified price calculation formula for certain high-priced securities in the Index that will "down scale" the weight of these stocks in the Index. *See* Securities Exchange Act Release No. 27233 (September 8, 1989), 54 FR 38470. No comments were received on the proposed amendment. Subsequently, the Commission received two additional amendments to the proposal that were not noticed by the Commission because they were primarily technical in nature regarding the calculation and composition of the Index. On December 7, 1989, the AMEX filed Amendment No. 2 with the Commission to provide that the settlement value of the Index will be determined based on the closing prices of component securities in the TKE's afternoon trading session, rather than the TKE's morning trading session. On July 2, 1990, the AMEX filed Amendment No. 3 that, among other things, increases the number of stocks in the Index and amends the stock selection criteria. The notable changes in these amendments are described in more detail below.

[4] The Commission received a late comment letter from Nihon Keizai Shimbun, Inc. ("NKS"), the Japanese company that calculates the Nikkei Stock Average ("Nikkei"), arguing that the Commission should delay approval of the Index options until its alleged proprietary claims to the Japan Index are resolved. *See* letter from Susumu Kajita, Director, Databank Bureau, NKS, to Jonathan G. Katz, Secretary, Commission, dated September 18, 1990 ("NKS letter"). The Commission also received a response to the NKS letter from the AMEX. *See* letter from Gordon L. Nash, Senior Executive Vice President, AMEX, to Jonathan G. Katz, Secretary, Commission, dated September 21, 1990 ("AMEX letter").

[5] In a price-weighted index, an issue's weight in the index is based on its price per share rather than its total market capitalization (*i.e.*, price per share times the number of shares outstanding). In order to ensure that certain high-priced securities contained in the Index do not have an inordinately higher weight in comparison to other stocks in the Index, the AMEX has proposed to "down scale" the price of these securities. In particular, for those component securities with a par value greater than 50 yen, the AMEX will calculate the price of that stock, for Index purposes, to be equal to the last sale price of the stock divided by the ratio of the par value of the stock to a par value of 50. Currently, there are four securities in the Index that would be subject to this provision. Specifically, the price of Nippon Telegraph & Telephone would be divided by 1000 while the prices of Tokyo Electric Power, Kansai Electric Power and Tohu Co. would be divided by ten.

[6] *See* Amex Rules 900C-980C.

[7] Pursuant to Exchange Rule 906C(b), the Exchange proposes to establish a position limit of 25,000 contracts on the same side of the market for the Index contracts, provided that no more than 15,000 contracts will be permitted in the series of the nearest expiration month.

[8] *See* Securities Exchange Act Release No. 26708 (October 19, 1988), 53 FR 41637, that provides for a one hour trading halt in all index options traded on the AMEX if the Dow Jones Industrial Average ("DJIA") declines 250 points from the previous day's closing value and a two hour trading halt if the DJIA declines 400 points from the previous day's closing value. Additionally, AMEX Rule 918C permits the Exchange to halt or suspend trading in options on a stock index if, among other reasons, unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[9] The Exchange proposes that, for those stocks included in the Index whose price is down-scaled *see* note 5, *supra*) the trading volumes for such stocks conversely should be up-scaled for the purpose of compliance with the trading volume criterion because these securities may have a low average monthly trading volume because their price per share is inordinately higher than the other stocks in the Index

Continued

The TKE-traded securities selected by the AMEX for the Index must meet eligibility standards with respect to market value, trading activity, and price level. First, in order for a security to be included in the Index, its minimum market value in Japanese yen, as measured by the product of the security's last sale price and total shares outstanding, must be 20 billion yen (approximately 129 million dollars as of June 25, 1990) for the preceding 20 business days before inclusion in the Index.

Second, any security selected for inclusion in the Index must have traded an average of more than 100,000 shares per month over the previous six months.[9] In addition, at least 75% of the component securities must have average monthly trading volumes of not less than 750,000 shares per month over the previous six month period.

Third, the Exchange has designed share price eligibility standards to ensure that no single issue will have a disproportionate impact on the Index. Specifically, the AMEX proposes that the yen price per share for each component security in the Index during the preceding 20 business days before inclusion or continuation in the Index must be less than 10 times the average price of stocks in the Index. The Exchange proposal also provides that no component security will have an Index weight in excess of 7.5%. In addition, as discussed above, the Exchange has proposed to "down scale" the price of certain highpriced securities so that they are eligible for inclusion and do not have a disproportionately large weight in the Index. In order to ensure that no industry group within the Japanese market dominates the Index, when selecting component Japanese securities for the Index, the AMEX will give consideration to the selection of securities that are representative of the various components of the Japanese stock market. The 210 stocks that currently comprise the Index represent 35 different industry groups and the three largest industry groups, electric equipment, chemicals, and textiles only comprise 10.42%, 8.01%, and 6.3% of the Index, respectively.

Moreover, the AMEX reserves the right in maintaining the Index to increase or decrease the number of stocks included in the Index by as many as 25 stocks in order to maintain a balanced industry representation of the Japanese market.[10] Furthermore, the AMEX will administer the Index, applying offsetting divisor adjustments to the Index in light of stock splits, stock repurchases or other corporate actions that would otherwise cause a discontinuity in the Index values. In addition, the AMEX will review the performance of each security at the end of each calendar quarter and, if any should fail to meet the eligibility standards, the AMEX will consider the selection of suitable replacements.

The Exchange, for purposes of calculating the Index, will use last sale price information of the component securities from the TKE. However, in the event that on any day a component security does not trade on the TKE but does trade on the Osaka Stock Exchange ("OSE"), the last sale price on the OSE will be used for calculating the Index trading value to be published that day. The Index will be calculated and disseminated once a day before the opening of U.S. trading. The information will be disseminated to vendors through the Options Price Reporting Authority ("OPRA") system. A benchmark Japan Index value of 280.00 was established for the Index on April 2, 1990. The closing Index value on September 18, 1990, based on the closing price of the TKE on that day, was 238.90. The multiplier for the Index is 100.[11]

For option trading purposes, the daily value of the Index will be determined based on the closing prices of component securities in the latest trading session held that calendar day on the TKE[12] (normally the afternoon trading session except if that session has been canceled due to a holiday or other reason). The options will expire on the Saturday following the third Friday of the expiration month. The last trading day in an options series normally will be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday), except in the event of a holiday.[13]

For settlement purposes, the settlement value of the Index also will be determined based on the closing TKE prices of component securities in the afternoon trading session on the trading day in Japan following the last day of trading in the expiring contracts. Thus, normally, because trading in expiring options contracts will cease on a Thursday at 4:15 e.s.t., the Index settlement value will be determined at the close of the Friday afternoon TKE trading session, that is, at 1 a.m., e.s.t., on Friday morning.

The Index will be valued in U.S. dollars even though the Index is comprised entirely of Japanese stocks. The Exchange will assign a value of one U.S. dollar to each 100 decimal points of the Index. Thus, as the Index value reflects changes in the yen prices of the component stocks, the option premium values change in U.S. dollars, without regard to fluctuations in the yen/dollar exchange rate. This index valuation method is designed for investors that primarily are concerned with changes in the yen price levels of the Japanese market and not in the combined effect of price movements in the Japanese stock market and changes in the yen/dollar exchange rate.[14]

[10] The Commission believes that a significant increase or decrease in the number of stocks currently included in the Index, apart from this possible change by the Exchange of 25 stocks, would represent a material change to the terms of the AMEX contract and require a re-examination of the contract by the Commission.

[11] An index multiplier is a number which determines the total dollar value of each point of the underlying index. A multiplier of 100 means that for each point by which an option is in-the-money, there is a $100 increase in intrinsic value.

[12] On normal business weekdays, the TKE holds two two-hour trading sessions daily. The morning trading session runs from 9:00 a.m. to 11:00 a.m. Tokyo time, and the afternoon trading session runs from 1:00 p.m. to 3:00 p.m. Tokyo time. In terms of e.s.t., the Friday TKE morning session runs from 7:00 p.m. to 9:00 p.m. e.s.t. on Thursday night, and the Friday TKE afternoon trading session runs from 11:00 p.m. to 1:00 a.m. e.s.t. later that Thursday night. (Three Saturdays each month the TKE also holds a morning trading session.)

[13] The AMEX proposal includes special expiration schedules to account for holidays in the Japanese or U.S. exchanges. Specifically, the Exchange proposes that in the event that the TKE is closed on the third calendar Friday of a contract month due to a Japanese holiday or other reason, the last trading day for expiring Index options contracts will be the Exchange business day in New York which precedes the last TKE trading day prior to the third calendar Friday of the month. Likewise, the Exchange proposes that in the event that the Thursday preceding expiration Friday is not an AMEX business day, the preceding business day will be the last trading day for expiring Index options.

[14] Unlike index options on the U.S. market, the Index options, by themselves, will not provide a perfect hedge to a corresponding portfolio of Japanese stock because movements in the dollar/yen exchange rate also effect the value of the portfolio. Investors could utilize positions in exchange rate products (*e.g.*, currency futures, forwards, and options), however, in conjunction with investments in Idex options if their investment objective is to capture both Japanese stock market and dollar/yen currency movements.

Moreover, the proposed valuation method permits the options premiums to be quoted in U.S. dollars and the trading accounts to be denominated in U.S. dollars. Accordingly, all Exchange, Options Clearing Corporation and clearing member systems will be able to accommodate the trading, clearance and settlement of the Index options without effective manner. Finally, the Commission noted that investors could pursue a strategy designed to supplement their dividend income by writing options on the Index.

The trading of options on the Index raises several concerns, namely issues related to index design, surveillance, and market impact. The Commission derivative product and the exchange where the underlying shares are traded. The Commission believes that such an agreement is a valuable component of any program aimed at detecting and deterring potential intermarket manipulation.

The AMEX concluded a surveillance

the expanded agreement to be satisfactory.[23]

C. Market Impact

The Commission believes that the listing and trading of Index options on the AMEX will not adversely impact the securities markets in the U.S. or Japan. First, as previously mentioned, existing to its internationally recognized and well-established Nikkei Average." [26] Accordingly, NKS requests that the Commission delay consideration of approval of Japan Index options until this potential conflict is resolved and, in the alternative, that any Commission order approving Index options be made investor confusion stemming from the trading of Japan Index options nor will NKS's rights to the NIKKEI be undermined.

The NKS letter was submitted well after the public comment period ended.[27] Nevertheless, after examining NKS's letter, the Commission has

Moreover, the proposed valuation method permits the options premiums to be quoted in U.S. dollars and the trading accounts to be denominated in U.S. dollars. Accordingly, all Exchange, Options Clearing Corporation and clearing member systems will be able to accommodate the trading, clearance and settlement of the Index options without alteration.

III. Discussion

The Index is the first stock index option contract traded on a U.S. exchange that is comprised exclusively of Japanese stocks. Options contracts based on an international stock market index and index warrants based on the Japanese stock market, however, already are listed and traded on the AMEX.[15] The Commission believes that the availability of options on the Index is consistent with section 6(b)(5) of the Act in that it should help to remove impediments to a free and open securities market because the Index option will provide investors with a means to hedge exposure to market or systematic risk associated with Japanese stock investments.[16] In this regard, the trading of listed options on an index of Japanese stocks will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the Japanese stock market. The Commission also believes that the Index option will provide investors a means by which to make investment decisions in the Japanese equity market, thus allowing them to establish positions or increase existing positions in Japanese stocks in a cost effective manner. Finally, the Commission noted that investors could pursue a strategy designed to supplement their dividend income by writing options on the Index.

The trading of options on the Index raises several concerns, namely issues related to index design, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the AMEX adequately has addressed these concerns.

A. Index Design and Structure

The broad diversification, large capitalization, and liquid markets of the Index's component stocks significantly minimize the potential for manipulation of the Index. The ten most highly weighted stocks in the Index account for approximately 15.79% of the Index's value. Further, the index component stocks are highly capitalized as the median and mean capitalization for the 210 firms (as of September 13, 1990) was 419,422 million yen (3.04 billion dollars (assuming an exchange rate of 138 yen to the dollar)) and 947,484 million yen (6.86 billion dollars), respectively. Moreover, all issues are actively traded on the TKE with the median and mean monthly trading volume for the 210 issues of 3,247,000 and 4,586,348 shares, respectively.[17] Thus, the Index is clearly a broad-based index which should not be overly susceptible to manipulative activity. Moreover, the Index will be widely and publicly disseminated via OPRA.[18]

B. Surveillance

The AMEX has developed a special surveillance program for Index options, and the Commission has found the program to be adequate. All the procedures which currently apply to the AMEX's existing stock index options surveillance program will apply to the surveillance of trading in Japan Index options. Second, the AMEX will utilize the surveillance procedures that have been in place since the beginning of 1990 for the trading of warrants based on the Nikkei, a stock index that includes substantially all of the Index stocks.

As a general matter, before approving a new derivative product, the Commission requires that a surveillance sharing agreement be in place between the exchange that proposes to trade the derivative product and the exchange where the underlying shares are traded. The Commission believes that such an agreement is a valuable component of any program aimed at detecting and deterring potential intermarket manipulation.

The AMEX concluded a surveillance sharing agreement with the TKE in 1988 which obligates the parties to use their best efforts to compile and transmit information which includes, but is not limited to, transactions on the exchanges, price quotations, clearing data, and the identity of persons holding large positions in selected AMEX derivative products or their underlying stocks. The surveillance agreement initially only covered the AMEX's IMI options, but the agreement was amended in 1989 to cover the AMEX's Nikkei warrants.[19] The TKE also has executed substantially identical agreements with the Chicago Board of Trade ("CBOT") to cover the trading of futures on the Tokyo Stock Price Index ("TOPIX"),[20] the Chicago Mercantile Exchange ("CME") to cover the trading of Nikkei futures, and the Chicago Board Options Exchange, Inc. ("CBOE") to cover the trading of options on the TOPIX.[21]

While the AMEX requested the TKE to expand its surveillance sharing agreement to include options on the Japan Index, the TKE initially deferred executing the expanded agreement and instead requested that the AMEX delay its planned trading of Index options because of concerns in Japan over the apparent impact of trading in derivation instruments on the cash market in Japan. Subsequently, the AMEX and the TKE expanded their surveillance sharing agreement to cover Japan Index options.[22] The Commission has found

[15] The Commission has approved an AMEX proposal to list and trade a broad-based index of international stocks, the International Market Index ("IMI") that includes a substantial Japanese component. *See* Securities Exchange Act Release No. 28053 (March 21, 1989), 54 FR 12705. The IMI is a capitalization-weighted index of 50 foreign stocks, including eleven Japanese stocks that comprise approximately 45.6% of the weighting of the IMI. These 11 stocks also are included in the Index, but the aggregate price weight of such issues is only 4.39% of the index. Additionally, the Commission has approved the listing and trading by the AMEX of index warrants based on a broad-based index of the Japanese stock market, the Nikkei stock average ("Nikkei"). *See* Securities Exchange Act Release No. 28565 (December 22, 1989), 55 FR 378. The Nikkei is an internationally recognized, price-weighted index comprised of 225 actively-traded stocks on the TKE. The Nikkei Index is calculated and managed by Nihon Keizai Shimbun, Inc. of Japan.

[16] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new option proposal upon a finding that the introduction of such option is in the public interest. Such a finding would be difficult with respect to an option product that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[17] The Index criteria requires that at least 75% of the Index's component stocks must have a monthly trading volume in excess of 750,000 shares. In fact, during the period October to March 1990, only 8 of the 210 issues had a monthly trading volume less than 750,000 shares.

[18] In this respect the Index is identical to other indexes that are calculated and disseminated by an exchange, such as the Major Market Index.

[19] Agreement between the AMEX and the TKE to Share Market Surveillance Information ("AMEX/TKE Agreement"), dated November 4, 1988, and Amendment No. 1 to the AMEX/TKE Agreement, dated December 8, 1989.

[20] The TOPIX is a broad-based, capitalization-weighted index comprised of all the common stocks listed on the First Section of the TKE.

[21] The CME commenced trading in Nikkei futures on September 25, 1990 and the CBOT plans to start trading TOPIX futures on September 27, 1990.

[22] While the Commission believes that the consummation of a surveillance sharing agreement between the AMEX and TKE provides the optimal vehicle for information requests concerning Japan index options, the Commission believes that the Memorandum of Understanding ("MOU") between the Commission and the Japanese Ministry of Finance ("MOF") also may be used by these agencies for the exchange of surveillance or investigatory information relating to trading in Index options.

the expanded agreement to be satisfactory.[23]

C. Market Impact

The Commission believes that the listing and trading of Index options on the AMEX will not adversely impact the securities markets in the U.S. or Japan. First, as previously mentioned, existing AMEX stock index options rules and surveillance procedures will apply to option contracts based on the Index. Second, the Commission notes that the Index is broad-based and diversified and includes highly capitalized securities that generally are traded actively on the TKE. Moreover, at the present time, index options and index futures contracts based on other broad-based Japanese stock market indexes, the TOPIX and the Nikkei, are traded on Japanese securities and futures markets;[24] Nikkei futures are traded on Singapore and Chicago exchanges; numerous warrant and off-exchange options are traded world-wide on Japanese stock market indexes; and Nikkei warrants are traded on the AMEX. Accordingly, because derivative index instruments already are trading in Japanese and other world markets and other Japanese-based instruments will soon be trading in the U.S., the Commission believes that the introduction of Index options by the AMEX should not have a significant effect on the underlying Japanese securities markets.

D. Proprietary Concerns

The NKS letter raises concern surrounding the similarities between the Japan Index and the NKS's own Nikkei Index.[25] Specifically, the letter states that "the [AMEX's] unauthorized use of an index, regardless of its name, which demonstrates striking similarities to the Nikkei Average, is likely to cause undesirable confusion and potential disruption in the securities market, and to undermine NKS's rights with respect to its internationally recognized and well-established Nikkei Average."[26] Accordingly, NKS requests that the Commission delay consideration of approval of Japan Index options until this potential conflict is resolved and, in the alternative, that any Commission order approving Index options be made "expressly without prejudice to any rights NKS may have with respect to the validity of any claims raised with respect to [the AMEX's] option."[27]

In response to the NKS letter, the AMEX stated that it strongly disagreed with NKS's assertion that the use of the Japan Index, which is a proprietary index developed solely by the Amex, is likely to cause confusion and market disruption or undermine NKS's rights with respect to the Nikkei.[28] In support of its position, the AMEX raised several distinctions between the Japan Index and the Nikkei. First, with regard to the composition of the Index, the AMEX points out that there are 15 fewer stocks in the Japan Index than in the Nikkei and that there are several stocks included in the Japan Index that are not in the Nikkei and vice versa.[29] Second, the Japan Index is expressed in terms of U.S. dollars calculated at a fixed ratio of 100 yen to the dollar, while the Nikkei is expressed in yen. Third, the level of the Japan Index is approximately 1/100th the value of the Nikkei, making it extremely unlikely that investors would be confused by the two indexes. Finally, the AMEX points out that the two indexes have different industry weightings; procedures for settlement value calculation; frequency of index calculation (once-a-day vs. real-time); divisors; and stock inclusion and replacement standards.

In addition, the Amex argues that it knows of "no legal theory which enables NKS to prohibit another party from using the prices of a particular stock or group of stocks traded on the [TKE] for purposes of measuring the overall performance of that market, merely because NKS has used such prices in its index."[30] Moreover, the AMEX asserts that by the nature of what the Japan Index and the Nikkei are intended to do, that is, measure the performance of the TKE, it is inevitable that the leading stocks on the TKE would be included in both indexes. Accordingly, the AMEX contends that neither will there be investor confusion stemming from the trading of Japan Index options nor will NKS's rights to the NIKKEI be undermined.

The NKS letter was submitted well after the public comment period ended.[31] Nevertheless, after examining NKS's letter, the Commission has concluded that it would be inappropriate to forestall approval of Japan Index options because a third party may raise a proprietary claim. Specifically, to the extent that NKS's argument raises a claim of misappropriation or infringement of a protected property right, the Commission believes it is inappropriate for the Commission to attempt to resolve these issues in a proceeding involving the approval of a security to be traded in a particular marketplace. To take such delaying action anytime a third party claim is asserted would stifle new product innovation and development. This is particularly true where, as here, the AMEX has demonstrated several aspects of its Japan Index that differentiate it from the Nikkei Index. Congress has enacted an elaborate statutory framework for the establishment, preservation, and protection of intellectual property rights and established specific federal agencies to administer these laws. Separate state causes of action also may be available to NKS, as well as possible recourse to Japanese laws. The plain language of the U.S. securities laws does not suggest that Congress intended that the Commission attempt, in the context of an approval proceeding for a securities product, to resolve intellectual property right claims that can be pursued elsewhere. Accordingly, the NKS assertions do not form a basis for the Commission to disapprove or delay the AMEX proposal.[32]

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to a

[23] The Commission notes that, pursuant to the agreement, certain components of the Index, specifications of the option contract, or trading rules pertaining to Index options may be changed in the future. Some or all of these changes may require Commission approval under section 19(b) of the Act.

[24] Index option contracts and futures contracts on the TOPIX are traded on the TKE and the Tokyo Futures Exchange, respectively. Index options and futures contracts based on the Nikkei are traded on the OSE.

[25] The NKS letter states that the Nikkei consists of 225 stocks traded on the TKE while the Japan Index consists of 210 stocks traded on the TKE. The letter also states that "[a] comparison of the stocks for the Japan Index and the Nikkei Average indicates that the Japan Index uses most, and potentially all, of the stocks used in computing the Nikkei Average." NKS letter, *supra* note 4, at 1.

[26] *Id.*

[27] *Id.* at 2.

[28] AMEX letter, *supra* note 4, at 1.

[29] In particular, 20 of the 225 stocks in the Nikkei are not in the Japan Index (9.5% of the number of stocks in the Index) and five of the 210 stocks in the Index are not in the Nikkei.

[30] AMEX letter, *supra* note 4, at 2.

[31] Specifically, the comment period for the proposal as originally filed expired on August 9, 1990, and the comment period for amendments to the proposal expired on October 8, 1990.

[32] The Commission is not required by the Act and has not made a legal determination of proprietary claims flowing from the AMEX's use of the Japan Index. This is not to say, however, that the Commission might not separately have a federal interest in the outcome of any proceeding challenging a new product or be willing to express a view regarding such a proceeding had NKS filed its comment letter in a timely manner or in the event a subsequent action provides the Commission adequate opportunity to address these matter.

national securities exchange, and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–AMEX–89–16) be, and hereby is, approved.

(iii) for an RR or ROP who transfers from another organization—$15.00.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

(B) Self-Regulatory Organization's Statement on Burden on Competition

for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated September 27, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23379 Filed 10-2-90; 8:45 am]

BILLING CODE 8010-01-M

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any

(ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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national securities exchange, and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–AMEX–89–16) be, and hereby is, approved.

Dated: September 27, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–23324 Filed 10–2–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28479; File No. SR–CBOE–90–26]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Implementation of Registration Fees for Registered Representatives

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1990, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to implement a registration fee as described in the text of proposed Exchange Rule 2.22(b). Additions are italicized. Deletions are bracketed.

Rule 2.22 Other Fees or Charges.

No change.

(a) No Change. Proposed in SR–CBOE–90–25.

(b) Registration Fees. Member organizations shall pay application, maintenance and transfer registration fees for their Series 7 qualified Registered Representatives ("RR") as described in Rule 9.3 and Registered Options Principals ("ROP") as described in Rule 9.2. The fees are listed below:

(i) for each new RR or ROP applicant—$15.00.

(ii) for the maintenance of each RR or ROP Registration—$15.00/yr.

(iii) for an RR or ROP who transfers from another organization—$15.00.

[33] 15 U.S.C. 78s(b)(2) (1982).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose.

The Exchange proposes (1) to implement a new minimal fee which will be paid by member organizations to maintain RR and ROP registration; and (2) to reduce existing fees for applying for or transferring a ROP or RR registration. The new fee will be $15.00 per year to maintain a RR or ROP registration. It will be used to offset the costs associated with providing routine examinations of CBOE member organizations and their offices and the reviewing of RR and ROP activities. In addition to implementing a new annual fee, the Exchange also proposes to reduce the existing fee for transferring ROPs and RRs from $25.00 to $15.00 and to reduce the existing fee for ROP and RR registration from $50.00 to $15.00 per applicant. Thus the proposed rule change provides for the following fees: (1) $15.00 per year to maintain a ROP or RR registration; (2) $15.00 per applicant for a new RR or ROP; and (3) $15.00 for RR or ROP transfer. The CBOE represents that these fees are similar to ones imposed by the New York Stock Exchange ("NYSE"), the National Association of Securities Dealers and the American Stock Exchange for registered representatives. For example, the NYSE charges the following fees for RRs and ROPs: (1) $46.00 per year to maintain a ROP or RR registration; (2) $65.00 per applicant for a new RR or ROP; and (3) $43.000 for a RR or ROP transfer.

(2) Basis.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(4) in particular in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 24, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated September 27, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23379 Filed 10–2–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28472; File No. SR–DTC–90–11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Depository Trust Company Relating to a Procedure For Disposal of Worthless Warrants, Rights and Put Options

September 26, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 6, 1990, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR–DTC–90–11) as described in Items I, II, and III below, which items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a procedure for disposal of worthless warrants, rights, and put options. The proposed procedure is as follows:

DTC will contact the issuer or transfer agent after the expiration date of the warrant, right, or put option to verify that it has in fact expired and that the certificates representing such rights are worthless.

DTC will then obtain written confirmation from the issuer or transfer agent of said expiration and that the certificates representing such rights are worthless.

DTC will then notify Participants: (a) That, per the issuer or transfer agent, said warrants, rights or put options have expired; (b) that they will be deleted from Participants' positions on or after the thirtieth day following the date of the notice; and (c) that DTC may then destroy the physical certificates.

On or after the date that is thirty days after the notice, DTC will delete said warrants, rights, or put options from Participants' positions and, at DTC's discretion, destroy the certificates.

DTC will retain copies of all destroyed rights, warrants, and put options for a period of seven years.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC intends to dispose of worthless warrants, rights, and put options. Currently, DTC has thousands of certificates in its vaults representing hunderds of expired warrants, rights, and put options. The purpose of the proposed rule change is to eliminate the expenses that attend continued safekeeping of such worthless securities (*e.g.*, vault space, audit requirements, etc.) and to clarify the procedure for disposal of such securities.

The prosposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act in that it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC has discussed the proposed rule change with the Securities Operations Division of the Securities Industry Association, which has orally expressed approval of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements, with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–90–11 and should be submitted by October 24, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23378 Filed 10–2–90; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

September 27, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Allstate Municipal Income Opportunity Trust III Common Stock, $.01 Par Value (File No. 7–6244).

Donnelly Corportion: Class A Common Stock, $.01 Par Value (File No. 7–6245).

Henley International, Inc.: Common Stock, $.001 Par Value (File No. 7–6246).

H.W. Kaufman Financial Group, Inc.: Common Stock, $.0025 Par Value (File No. 7–6247).

Solomon, Inc.: Units of Beneficial Interest of Solomon Phibro Oil Trust, No Par Value (File No. 7–6248).

Genentech, Inc.: Common Stock, $.02 Par Value (File No. 7–6249).

Wheelabrator Technologies, Inc.: Common Stock, $.01 Par Value (File No. 7–6250).

Cadence Design Systems, Inc.: Common Stock, $.01 Par Value (File No. 7–6251).

Diagnostek, Inc.: Common Stock, $.01 Par Value (File No. 7–6252).

Florida Public Utilities Company: Common Stock, $1.50 Par Value (File No. 7–6253).

Mid-America Bancorp: Common Stock, No par Value (File No. 7–6254).

Emerging Mexico Fund, Inc.: Common Stock, $.10 Par Value (File No. 7–6255).

National Media Corp.: Common Stock, $.01 Par Value (File No. 7–6256).

Pamida Holdings Corp.: Common Stock, $.01 Par Value (File No. 7–6257).

C&S/Sovran Corporation: Common Stock, $1.00 Par Value (File No. 7–6258).

The Germany Fund: Common Stock, $.001 Par Value (File No. 7–6259).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 19, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–23325 Filed 10–2–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28473; File No. S7–9–90]

Self-Regulatory Organizations; Order Granting Temporary Exemption From Registration as a Securities Information Processor to National Association of Securities Dealers for Market Services, Inc.

On March 28, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 11A(b)(2) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 11Ab2–1 thereunder,[2] an application for registration of its subsidiary, Market Services, Inc. ("MSI"), as an "exclusive securities information processor"[3] for the operation of the PORTAL Market.[4] Section 11A(b)(1) of the Act provides for the registration with the Commission of those securities information processors that perform the function of an exclusive securities information processor on behalf of a national securities exchange or registered securities association. On April 27, 1990, the Commission provided notice of the application and temporary exempted MSI from registration as a securities information processor through July 26, 1990.[5] On July 30, 1990 the Commission extended the exemption through September 24, 1990.[6] This order grants the NASD a further exemption until October 25, 1990.[7] To date, the Commission has received no comments concerning this application.

The Commission finds that an extension until October 25, 1990, of the order granting MSI a temporary exemption from registration is appropriate and consistent with the public interest, the protection of investors and the purposes of section 11A of the Act provided, however, that all the term and conditions of the April 27, 1990, order shall continue in full effect during the term of this exemption.

It is Therefore Ordered, pursuant to section 11A(b)(1) of the Act, that the NASD is hereby granted a temporary exemption from the section 11A(b)(1) requirement that it register as a securities information processor until October 25, 1990. It is further ordered that MSI, during the term of the exemption, is subject to all the terms and conditions of Securities Exchange Act Release No. 27957, April 27, 1990, which initially granted the NASD a temporary exemption from registering MSI.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 26, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23380 Filed 10–2–90; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78k–1(b)(2) (1987).

[2] *See* letter to Jonathan G. Katz, Secretary, SEC, from Frank J. Wilson, Executive Vice-President and General Counsel, NASD, dated March 28, 1990.

[3] MSI is a securities information processor within the definition of section 3(a)(22)(A) of the Act and an exclusive processor within the definition of section 3(a)(22)(B) of the Act.

[4] The PORTAL Market is a screen-based system for primary placements and secondary trading on Rule 144A securities. The Commission, in separate releases, adopted Rule 144A under the Securities Act of 1933 and approved an NASD proposed rule change to implement the PORTAL Market under the Exchange Act. *See* Securities Act Release No. 6862, April 23, 1990; and Securities Exchange Act Release No. 27956, April 27, 1990.

[5] *See* Securities Exchange Act Release No. 27957 (April 27, 1990).

[6] *See* Securities Exchange Act Release No. 28283, July 30, 1990.

[7] The NASD consented by letter, dated July 27, 1990, to a 90-day extension for Commission action. *See* letter to Christine A. Sakach, Branch Chief, Division of Market Regulation, SEC, from John Pilcher, attorney, NASD, dated July 27, 1990.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 27, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Alltel Corporation: Common Stock, $1 Par Value (File No. 7–6237).

Americribe Corporation: Common Stock, $1 Par Value (File No. 7–6238).

Great American Bank, FSB: Common Stock, $1 Par Value (File No. 7–6239).

Playboy Enterprises, Inc.: Class A Common Stock, $0.01 Par Value (File No. 7–6240).

Playboy Enterprises, Inc: Class B Common Stock, $0.01 Par Value (File No. 7–6241).

Tacoma Boatbuilding Company: Common Stock, $0.01 Par Value (File No. 7–6242).

Unocal Exploration Corporation: Common Stock, $.10 Par Value (File No. 7–6243).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 19, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–23320 Filed 10–2–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17762; 812–7563]

Axe-Houghton Fund B, Inc., et al.; Notice of Application

September 27, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Axe-Houghton Fund B, Inc. ("Fund B"), Axe-Houghton Income Fund, Inc. ("Income Fund"), Axe-Houghton Money Market Fund, Inc. ("Money Market Fund"), and Axe-Houghton Stock Fund, Inc. ("Stock Fund") (collectively, the "Acquired Funds"); Axe-Houghton Fund B ("New Fund B"), Axe-Houghton Growth Fund ("New Growth Fund"), and Axe-Houghton Income Fund ("New Income Fund"), each a series of Axe-Houghton Fund, Inc. (the "New Axe Funds"); USF&G Cash Reserve Fund ("New Cash Fund"), a new series of USF&G Money Market Funds, Inc. (the "New Money Market Funds"); and USF&G Financial Services Corporation ("USF&G Financial Services").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 17(b) of the 1940 Act from section 17(a) thereof.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) of the 1940 Act exempting them from the provisions of sections 17(a) of the 1940 Act to permit New Fund B, New Growth Fund, New Income Fund, and New Cash Fund to acquire substantially all the assets of Fund B, Stock Fund, Income Fund, and Money Market Fund, respectively, in exchange for shares of each of the corresponding Acquired Fund.

FILING DATE: The application was filed on July 20, 1990, and amended on September 27, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Acquired Funds, 400 Benedict Avenue, Tarrytown, New York 10591; New Axe Funds and New Money Market Funds, 275 Commerce Drive, Fort Washington, Pennsylvania 19034; and USF&G Financial Services, 100 Light Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The New Axe Funds and the New Money Market Funds (the "New Series Companies") are Maryland corporations registered under the 1940 Act as open-end, management investment companies. USF&G Review Management Corp. ("Review Management") will serve as manager and administrator to the New Series Companies. Axe-Houghton Management, Inc. ("Axe-Houghton") will be the investment adviser of New Fund B, New Growth Fund, and New Income Fund, while Chancellor Capital Management, Inc. ("Chancellor") will be the investment adviser of New Cash Fund. USF&G Investment Services, Inc. ("USF&G Investment Services") will be the principal underwriter and distributor of New Fund B, New Growth Fund, New Income Fund, and New Cash Fund (together, the "Acquiring Funds"). Review Management, Axe-Houghton, Chancellor, and USF&G Investment Services are wholly-owned subsidiaries of USF&G Financial Services, a wholly-owned subsidiary of USF&G Corporation.

2. Each of the Acquired Funds is a Maryland corporation registered as an open-end, management investment company. Axe-Houghton serves as investment adviser and administrator to each of the Acquired Funds. At September 14, 1990, USF&G Corporation and its affiliates, including employee benefit plans, owned 7.91% of Fund B, 11.4% of the Income Fund, 88.94% of the Money Market Fund, and 15.31% of the Stock Fund.

3. As a result of these relationships, Review Management, Axe-Houghton, Chancellor, and USF&G Investment Services are under the common control of USF&G Financial Services and, ultimately, USF&G Corporation. In addition, USF&G Corporation and its affiliates have a 5% or greater ownership interest in each of the Acquired Funds and, prior to the reorganization, will own all of the outstanding shares of each of the New Series Companies as a result of the initial capitalization of such companies.

4. Subject to shareholder approval by at least a majority of the outstanding voting securities of each Acquired Fund and receipt of an opinion of counsel regarding certain tax matters, each Acquiring Fund proposes to acquire substantially all of the assets and liabilities of the corresponding Acquired Fund in exchange for shares of such Acquiring Fund. Thus, New Fund B would acquire the assets of Fund B, New Growth Fund would acquire the assets fo Stock Fund, New Income Fund would acquire the assets of Income Fund, and New Cash Fund would acquire the assets of Money Market Fund, in exchange for each of the shares of the respective Acquiring Fund. The value of an Acquired Fund's assets will be the value of such assets computed as of the close of business of the New York Stock Exchange on the closing date, and the net asset value of a share of an Acquiring Fund will be the net asset value per share computed as of the close of business of the New York Stock Exchange on the closing date. The number of shares to be issued by an Acquiring Fund in connection with the acquisition of assets will be determined by dividing the value of the assets of the Acquired Fund by the per share net asset value of the Acquiring Fund

immediately prior to the reorganization. On or before the closing date, each Acquired Fund will seek to discharge all of its known liabilities and obligations. Any liabilities and obligations not discharged by an Acquired Fund will be assumed by the corresponding Acquiring Fund. However, USF&G Investment Services will pay all expenses incurred by the Acquired and Acquiring Funds in connection with the reorganizations.

5. As soon as practicable after the closing date, each Acquired Fund will liquidate and distribute *pro rata* to its respective shareholders of record as of the close of business on the closing date the full and fractional shares of the corresponding Acquiring Fund received in the transfer of assets. An Acquired Fund will accomplish the liquidation and dissolution by transferring the Acquiring Fund shares credited to Acquired Fund's account on the books of the New Series Company to accounts on the books of such New Series Company in the names of the Acquired Fund's shareholders. Simultaneously, all issued and outstanding shares of the Acquired Funds will be cancelled.

6. At a meeting held on July 11, 1990, each Acquired Fund's board of directors approved the proposed reorganization in principle and authorized the filing of preliminary proxy materials of the Acquired Fund. These proxy materials were filed by the New Series Companies with the SEC on July 16, 1990 in combined proxy and registration statements. At another meeting on September 13, 1990, each board of directors gave its final approval to the reorganization and called a special meeting of shareholders to be held October 31, 1990, at which the shareholders will vote on the reorganization.

7. In approving the proposed transactions, the board of directors of each Acquired Fund considered, among other things, the following factors: (a) The commitment of USF&G Corporation and its subsidiaries to developing and marketing a USF&G family of funds, (b) the proposed management, advisory, and distribution arrangements of the Acquiring Funds, and (c) the continuity of the Acquired Funds' investment objectives and policies. The respective boards of directors believe that the reorganization will benefit shareholders of the Acquired Funds by providing a more extensive choice of portfolio investment objectives than now exists in the Axe-Houghton family of funds. Participation in the USF&G family of funds is expected to result in growth of assets through the marketing and distribution efforts of a new distributor under a revised sales structure.

Applicants' Legal Analysis

1. Certain Acquiring and Acquired Funds have investment advisers that are under common control, and, therefore, may be deemed to be "affiliated persons" of one another within the meaning of section 2(a)(3)(C) of the 1940 Act. Additionally, USF&G Corporation and its affiliates own 5% or more of each of the Acquired Funds, and, prior to the reorganization, will have a greater than 5 percent interest in the New Series Companies.

2. Rule 17a–8 provides that a merger, consolidation, or sale of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors, and/or common officers shall be exempt from the provisions of section 17(a), provided that the board of directors of each affiliated investment company involved, including a majority of those directors that are not interested persons of any such investment company, determine (a) that participation in the transaction is in the best interest of that company, and (b) that the interests of the existing shareholders of that investment company will not be diluted as a result of its effecting the transaction. In addition, these findings and the basis upon which the findings are made must be recorded fully in the minute books of each investment company.

3. Applicants submit that the proposed transactions would be exempt from the provisions of section 17(a) by virtue of Rule 17a–8 under the 1940 Act but for the fact that the Acquired Funds and the Acquiring Funds are affiliated by a reason other than a common investment adviser, common directors, and/or common officers. Applicants submit that, consistent with section 17(b) of the 1940 Act, the terms of the proposed reorganizations are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed reorganizations are consistent with the purposes of the 1940 Act and the policies of the Acquired and Acquiring Funds as recited in the respective registration statements and reports filed under the 1940 Act.

Applicants' Conditions

Applicants agree to the following as express conditions to any order issued on this application:

1. The board of directors of each Acquired Fund and each New Series Company, including a majority of the directors who are not interested persons of the Acquired Fund or the New Series Company, shall have determined:

(a) That participating in the transaction is in the best interests of the Acquired Fund and the Acquiring Fund, and

(b) That the interests of existing shareholders of the Acquired Fund and the Acquiring Fund shall not be diluted as a result of the transaction.

2. Such fundings, and the bases upon which the fundings were made, shall have been recorded fully in the minute books of each Acquired Fund and New Series Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23377 Filed 10–2–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17761; File No. 812–7528]

Nationwide Life Insurance Co, et al.

September 27, 1990.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Nationwide Life Insurance Company ("Nationwide"), NACo Variable Account ("NACoVA), and Nationwide Financial Services, Inc. ("NFS").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges from the assets of the NACoVA pursuant to certain group variable annuity contracts.

FILING DATE: The application was filed on May 31, 1990 and amended on September 10, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission no later than 5:30 p.m. on October 22, 1990. Request a hearing in writing, giving the nature of your interest, the reasons for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also

send it to the Secretary of the Commission, along with proof of service by affidavit or, in the case of attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Staff Attorney, at (202) 272–3045, or Heidi Stam, Assistant Chief, at (202) 272–2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier (800) 231–3282 (in Maryland, (301) 258–4300).

Applicants' Representations

1. Nationwide is a stock life insurance company incorporated under the laws of Ohio. The NACoVA, registered as a unit investment trust under the 1940 Act, was established to fund certain group variable annuity contracts (the "NACoVA Contracts") issued by Nationwide. NFS is the general distributor for the NACoVA Contracts. The NACoVA Contracts are designed for use in connection with a deferred compensation program (the "NACo Plan") sponsored by the National Association of Counties ("NACo"). NACoVA Contracts will be issued to NACo member counties participating in the NACo Plan to fund Internal Revenue Code section 457 plans for employees-participants ("Participants"). Purchase payments under the NACoVA Contracts will be allocated to the NACoVA and invested in shares of one or more mutual funds that are registered under the 1940 Act.

2. No sales charge is deducted from purchase payments made under the NACoVA Contracts. A contingent deferred sales charge ("CDSC") may be assessed against NACoVA Contract values upon termination of a NACoVA Contract by the owner, or withdrawal by the owner of all or part of the NACoVA Contract value. Nationwide will assess the CDSC against the amount withdrawn by deducting an amount from each Participant's account. The number of completed years in the NACoVA Contract to the time of termination or withdrawal determines the amount of the CDSC. The declining CDSC is established at a maximum of 4 percent of purchase payments.

3. An annual administrative charge is deducted from the NACoVA Contract value. This administrative charge is $12 per Participant per year for semi-annual statements, and $15 per Participant per year for quarterly statements. In addition, the NACoVA Contracts provide for the daily deduction of an actuarial risk fee, equal on an annual basis to 0.95 percent of the daily net asset value of the NACoVA. Of this 0.95 percent actuarial risk fee, 0.45 percent is designed to recover expenses for the administration of NACoVA. The 0.45 percent administration portion of the actuarial risk fee is deducted during both the "pay-in" accumulation phase and the "pay-out" annuity phase. Nationwide relies upon Rule 26a–1 under the 1940 Act to assess the administrative charge and the administration portion of the actuarial risk fee. In this regard, Nationwide will monitor the proceeds of the administrative charge and the administrative portion of the actuarial risk fee to ensure that they do not exceed expenses without profit. A confidential, proprietary actuarial demonstration supporting the administrative charge and the 0.45 percent administration portion of the actuarial risk fee is maintained by Nationwide for the Commission's review upon request.

4. Nationwide will designate a portion of its annual actuarial risk fee of 0.95 percent as compensation for assuming a mortality and expense risk under the NACoVA Contract. These components are 0.10 percent for the mortality risk and 0.40 percent for the expense risk (collectively, the "Mortality and Expense Risk Charge").

5. The expense risk Nationwide assumes is the guarantee that the annual administrative charge and the administrative portion of the actuarial risk fee will never be increased regardless of actual expenses incurred by Nationwide. The mortality risk Nationwide assumes is the annuity risk of guaranteeing to make monthly payments for the lifetime of retired Participants regardless of how long the retired Participants may live.

6. The Applicants represent that the Mortality and Expense Risk Charge is within the range of industry practice for comparable annuity products and is reasonable in relation to the risks assumed under the NACoVA Contracts. This representation is based upon Nationwide's analysis of publicly available information of other insurance companies of similar size and risk ratings offering similar products. Nationwide will maintain, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparable survey. Nationwide also maintains a supporting actuarial memorandum demonstrating the reasonableness of the Mortality and Expense Risk Charge, given the risks assumed under the NACoVA Contracts. This memorandum will be made available to the Commission upon request.

7. If the Mortality and Expense Risk Charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will be borne by Nationwide; conversely, if the Mortality and Expense Risk Charge proves more than sufficient, the excess will be a profit to Nationwide. Should the charge result in a profit, it will become part of Nationwide's General Account surplus.

8. Nationwide advances sales commissions from surplus, since there is no front-end sales load. However, Nationwide intends to recover these commissions through the CDSC, when applicable. Should revenue from the CDSC prove insufficient to cover all sales expenses, Nationwide bears this short-fall in the General Account. To this extent, some portion of the profit, if any, from the Mortality and Expense Risk Charge could be used to make up unrecovered sales expenses. Nationwide represents that there is a reasonable likelihood that NACoVA's proposed distribution financing arrangement will benefit NACoVA and the owners of the NACoVA Contracts. The basis for this conclusion is set forth in a memorandum which will be made available to the Commission upon request.

9. The Applicants represent that investments of the NACoVA will be made only in investment companies which, if they should adopt any distribution financing plan under Rule 12b–1 under the 1940 Act, will be made up of a Board of Trustees or Directors, the majority of whom will be "disinterested" as defined by the 1940 Act. Such Board of Directors or Trustees must formulate and approve any such distribution plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23378 Filed 10–2–90; 8:45 am]

BILLING CODE 8010–01–M

VOL 55 ISS 192 OCT 3 1990 UMI

DEPARTMENT OF STATE

[Public Notice 1274]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet during a two-day period beginning October 17, 1990 (10 am to 5 pm), in Room 1912, at the Department of State, 2201 C Street, NW. Washington, DC. Study Group A will continue its work on October 18, 1990, (10 am to 5pm) in Room 1517, also at the State Department.

Study Group A deals with international telecommunications policy and services.

The morning session on October 17 will include an its agenda issues related to the upcoming meetings of CCITT Study Groups I and III; discussion of a U.S. delegation to a joint meeting of CCITT/CCIR experts for a review of existing ISDN/satellite CCITT Recommendations; and a debrief of the recently concluded meetings of Working Parties of the Ad Hoc Group for CCITT Resolution No. 16. The afternoon session will deal only with the initial preparations for the January-February, 1991, meeting of the CCITT ad hoc group for Resolution 18.

The meeting of Study Group A on October 18 will relate specifically to the revisions of the CCITT Recommendations relating to leased circuits as covered by the D.1 to 3 and D.6 CCITT Recommendations.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 202-647-2592. All attendees must use the C Street entrance to the building.

Dated: September 18, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 90-23306 Filed 10-2-90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1275]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group C; Meeting

The Department of State announces that Study Group C of the U.S. organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet October 17, 1990, at 9:30 a.m., Newark Airport Sheraton Hotel, Newark, New Jersey.

The agenda will include discussions of issues relating to fiber optics within the activities of CCITT Study Group XV.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should advise the office of Mr. Dennis Thovson, Chairman of U.S. Study Group C, by calling Ellen Bradley, (201) 234-6624.

Dated: September 18, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 90-9-56; Docket 40626 Agreement CAB 1175 as amended]

Application of the International Air Transportation Association for Approval of Revised Traffic Conference Provisions Pursuant to Sections 412 and 414 of the Federal Aviation Act; Order Extending time

Issued by the Department of Transportation on the 26th day of September, 1990.

By Order 90-9-7, served September 7, 1990, the Department authorized the filing of comments in response to the application and pleadings filed in this docket. Such comments are due by October 17, 1990.

By letter dated September 18, 1990, the European Civil Aviation Conference requests that, in view of the importance of this matter, the deadline for comments be extended to the end of November 1990.

We feel that good cause has been shown for the requested extension, and we will grant it. Moreover, to provide potentially interested persons the maximum amount of time to take advantage of our action, we are granting the extension without waiting for answers to the request.

Accordingly, The date of filing responsive comments in Docket 40626 is extended to November 30, 1990.

A copy of this order will be published in the Federal Register.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 90-23411 Filed 10-2-90; 8:45 am]

BILLING CODE 4910-62-M

[Order 90-9-51; Docket 47085]

Application of MESA Airlines, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Mesa Airlines, Inc., fit and awarding it a certificate of public convenience and necessity to engage in domestic scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than October 12, 1990.

ADDRESSES: Objections and answers to objections should be filed in Docket 47085 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division [P-56, room 6401], U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, [202] 366-2343.

DATED: September 27, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-23348 Filed 10-2-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Aircraft Registration; Treatment of Leases With an Option to Purchase; Legal Opinion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of legal opinion.

SUMMARY: This notice of legal opinion is issued by the FAA Chief Counsel to advise interested parties of the treatment of leases with an option to purchase when they are submitted to the FAA Aircraft Registry to support aircraft registration.

ADDRESSES: Information concerning this opinion may be requested from the Assistant Chief Counsel for the Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125-4904.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Assistant Chief Counsel for the Aeronautical Center, address above, or by calling (405) 680-3296 or FTS 747-3296.

SUPPLEMENTARY INFORMATION: Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401) requires the Secretary of Transportation to register aircraft to its owner upon appropriate application. The Federal Aviation Regulations dealing with aircraft registration are found at 14 CFR part 47. A continually recurring question is whether a lessee under a lease with an option to purchase is considered the owner for purposes of registration. In 1938, the Civil Aeronautics Authority in "In the Matter of Charles P. O'Connor for Registration of Aircraft" (1 CAA 5), determined that the conditional vendee under a contract of conditional sale would be considered the owner for purposes of aircraft registration. Since that time, the agency has consistently considered that a lease with an option, where the option price is nominal, is equivalent to a conditional sale, and the lessee may be considered the owner. On March 28, 1961, the Acting Chief Counsel published an opinion in the Federal Register (46 FR 18877) stating that finance leases with certain specified characteristics were leases intended as security, and the lessee would be considered the owner for purposes of aircraft registration.

Now, certain members of the aviation financing community have asked for the opinion of the agency on leases with an option to purchase, where the option price is higher than "nominal," but in which there are economic compulsions on the lessee to exercise the option. This opinion addresses those concerns, and states the agency position with respect to such leases.

Accordingly, the FAA publishes its response to one of the inquiries, that of Bank of America, concerning the treatment of leases with substantial option prices, where there is an economic compulsion to exercise the option.

Issued in Washington, DC, on September 24, 1990.

Gregory S. Walden,

Chief Counsel.

Peter Leiter, Esquire
General Counsel, Bank of America National Trust and Savings Association
555 California Street
San Francisco, CA 94104

Treatment of Leases With an Option to Purchase for Aircraft Registration

Dear Mr. Leiter: In accordance with your request of June 15, 1990, and that of many other counsel involved in aircraft financing, we have undertaken an extensive review of agency interpretations of what constitutes a lease intended as security, or a conditional sale, rather than a true lease where the option price is significantly in excess of a "nominal" amount. We have undertaken the review in light of significant changes to the Uniform Commercial Code, Article 2A and current practices of aircraft financing based on changes in multinational tax treatment. This letter is intended to state the circumstances in aircraft financial transactions where the lessee under a lease with an option to purchase will be considered the owner for aircraft registration.

The Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), requires the Secretary of Transportation to issue a Certificate of Aircraft Registration for eligible aircraft to that applicant who is the owner (49 U.S.C. 1401(c)). The Federal Aviation Administration (FAA) Aircraft Registry determination of apparent ownership is conclusive of nationality, but not conclusive as to ownership in any proceeding in which the issue of ownership is in proceedings to determine it (49 U.S.C. 1401(f)). Accordingly, the FAA has made administrative determinations of apparent ownership for aircraft registration purposes, and continues to do so in increasingly complex aircraft financing transactions. For example, on March 28, 1961, the Acting Chief Counsel published a Legal Opinion in the Federal Register (46 FR 18877) that finance leases with certain specified characteristics would be treated as leases intended as security, and that the lessee under a finance lease would be treated as the owner for purposes of aircraft registration.

One of the most complex areas of the determination of ownership is the treatment of leases with an option to purchase. Historically, the agency has interpreted leases with an option to purchase as being equivalent to a conditional sale when the option price is 10 percent of the value of the aircraft (the "nominal consideration" or "bright line" test) at the time the lease is executed. Over the years, as the complexities of aircraft financing have increased, we have been able to determine ownership in other transactions involving the lessee's exercise of the option (such as defeased leases, where the lessee deposits with a neutral bank an amount which will be sufficient over the term of the lease to pay all rentals and the purchase option price, and the lessee is legally relieved of those obligations) when we were persuaded that the lessee was committed either to exercise the option or that we could make a determination that the transaction was one intended for security because there were factors indicating that the lessor was a financier only.

One of the most persuasive changes has been the multitude of commercial and tax law cases that have led to the promulgation of Article 2A of the Uniform Commercial Code (UCC), Leases, and most particularly the changes to section 1-201(37), the definition of "Security Interests." We recognize that this Article to date has been adopted in only six states (California, Minnesota, Nevada, Oklahoma, Oregon, and South Dakota), but the drafted language is highly persuasive, and there are many reported cases which hold substantially the same.

In this regard, you and other counsel have provided us with thorough studies of commercial and tax law cases in those situations where the option price clearly exceeds our 10 percent bright line, but where there are other economic factors which the courts considered persuasive in determining that the lessee is bound to exercise the option, and thus be treated as the owner as if the transaction were a sale, not a lease. Many cases declare that the substance of the transaction controls, not the form (i.e., characterization as a lease). *Swift Dodge* v. *Commissioner*, 692 F.2d 651 (9th Cir., 1982).

We are here primarily concerned with the situations where the contract states that if the lessee does not exercise the option to purchase at the end of the lease term, there are essentially two conceptual alternatives: One, where the lessee must nevertheless pay the full value of the aircraft (full payout); and Two, those situations where there is significant economic compulsion on the lessee to exercise the option.

As to the first situation, many aircraft financing transactions submitted for our review contain a purchase option well above the 10 percent bright line, i.e., 35 to 45 percent of lessor's cost. (For purposes of this discussion, lessor's cost and the value of the aircraft are considered identical.) Under new UCC 1-201(37), and many of its predecessor cases, the mere presence of a purchase option does not make the transaction one intended for security, so we must look to the other factors to decide if it is a true lease, or one intended for security. A familiar provision as a mandatory alternative to the purchase option is the requirement that the lessee must nevertheless pay a sum substantially identical to the purchase option, variously called a Residual Value, Termination Fee, Refurbishing Fee, or even a Termination Rental Adjustment Compensation. The purpose of such a payment is to assure the lessor that it will get its money back from the transaction, nothing more or less, and is assured at the time of execution of the lease what its return will be.

Since either in the exercise of the option, or, if not exercised, upon payment of the residual value, the lessor is assured of getting its money back, there is every indication to us that the transaction is one intended for security. It has also been characterized as a conditional sale with a zero option, since there is a mandatory full payout. It is

therefore simply a financing scheme, and meets the test of the Federal Aviation Regulations, § 47.5(d), which states that "* * * 'owner' includes a buyer in possession, a bailee, or a lessee of an aircraft under a contract of conditional sale, and the assignee of that person." We are also satisfied that this allows the lease to be considered as "security" within the meaning of UCC 1-201(37), both new and old.

Article 2A of the UCC, and the cases which have led to its promulgation, have made it clear that the lessee under a finance lease is considered the owner of the goods for purposes of Article 2A. Section 2A-103(1)(g) defines a finance lease as a lease in which the lessor does not select, manufacture or supply the goods, acquires the goods or the right to possession and use of the goods in connection with the lease, and either the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract, the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract, the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any rights, limitations, or warranties, under the contract by which the lessor acquired the goods or the right to possession and use of the goods, or the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any rights, limitations, or warranties, under the contract by which the lessor acquired the goods or the right to possession and use of the goods. Section 2A-103(1)(j) defines a lease contract as one in which the lessee has the right to acquire the goods or an undertaking to acquire them for no additional consideration or upon additional compensation, but subject to the terms of the agreement. Section 2A-103(1)(k) defines a lease agreement as the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Section 2A-103(1)(l) defines a lease term as the time period during which the lease is in effect. Section 2A-103(1)(m) defines a lease agreement as the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Section 2A-103(1)(n) defines a lease term as the time period during which the lease is in effect.

Section 2A-103(1)(o) defines a lease agreement as the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Section 2A-103(1)(p) defines a lease term as the time period during which the lease is in effect.

Section 2A-103(1)(q) defines a lease agreement as the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Section 2A-103(1)(r) defines a lease term as the time period during which the lease is in effect.

Section 2A-103(1)(s) defines a lease agreement as the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Section 2A-103(1)(t) defines a lease term as the time period during which the lease is in effect.

Section 2A-103(1)(u) defines a lease agreement as the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Section 2A-103(1)(v) defines a lease term as the time period during which the lease is in effect.

Section 2A-103(1)(w) defines a lease agreement as the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Section 2A-103(1)(x) defines a lease term as the time period during which the lease is in effect.

Section 2A-103(1)(y) defines a lease agreement as the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Section 2A-103(1)(z) defines a lease term as the time period during which the lease is in effect.

Practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons making statements will be given the opportunity to do so in the same order in which they make their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on September 20, 1990.

Administrator, National Oceanic and Atmospheric Administration.

Assistant Secretary for Tax Policy, Department of the Treasury.

James E. Saast,

Secretary, Maritime Subsidy Board, Maritime Administration.

[FR Doc. 90-23314 Filed 10-3-90; 8:45 am]

therefore simply a financing scheme, and meets the test of the Federal Aviation Regulations, § 47.5(d), which states that "* * * 'owner' includes a buyer in possession, a bailee, or a lessee of an aircraft under a contract of conditional sale, and the assignee of that person." We are also satisfied that this allows the lease to be considered as "security" within the meaning of UCC 1-201(37), both new and old.

As to the second situation, there are several alternatives we have reviewed. These alternatives come into play if the option will not be exercised, and there is no provision for a full payout. These alternatives are best considered under what the cases and learned treaties call a "benefits and burdens" analysis; also called by various other names, such as the "no lessee in its right mind" test, or the "no lessee may prudently abandon" test. The benefits and burdens test essentially requires a determination that the economic incentives and disincentives of the alternatives to exercise the option mandate a prudent lessee to exercise the option. This is stated in the new UCC, section 1-201(37)(x) (second sentence) as: "Additional consideration (such as the option price) is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease if the option is not exercised." [parenthetical example is ours]

One of the alternatives (assuming no full payout) is a requirement that if the option is not exercised, the aircraft must be sold, with the lessee bearing the burden of loss if the proceeds do not equal the option price by paying the difference to the lessor, or, if the aircraft brings more at fair market value than the option price (or Residual Value, etc.) the excess over the option price goes to the *lessor*.

The risk of "downside" loss if the sale results in a loss is borne by the lessee, and if the proceeds exceed the option price, the lessee bears the risk of significant loss of any equity it may have acquired over the term of the lease, as well as the loss of profit on the aircraft at the sale when the "upside" goes to the lessor. These are not insignificant losses, and we are persuaded that the presence of such alternatives to exercise of the purchase option constitute one of the economic compulsions on the lessee to exercise the purchase option.

Other economic compulsion factors (assuming no full payout, and no mandatory sale of the aircraft) may be the requirement that the lessee return the aircraft to the lessor at the end of the term with a full refurbishing at a cost that would exceed the option price; or, the lessee must elect to purchase the aircraft one year before the end of the term, and if it elects not to purchase, may not use the aircraft and nevertheless pay the monthly rentals; it may not purchase another aircraft of similar size and purpose; it must offer the aircraft for sale bearing all costs of maintenance and sales demonstration; bear all costs of the loss of use of the aircraft; etc.

We have also considered the situation in a refinancing, or sale and leaseback arrangement, where the lessee is also a sublessor, with a sublease term that exceeds the "head" lease term, thus requiring the lessee to either exercise the option so as to be able to make the aircraft available to the sublessee for the balance of the subterm, replace the aircraft at higher cost to the lessee, or suffer the damages as a result of being unable to provide the leased aircraft because it failed to exercise the purchase option. While this aspect, standing alone, is not fully persuasive of an economic incentive, it is a factor to be considered in determining the benefits and burdens on the lessee to exercise the option.

Also as part of the benefits and burdens analysis, we have considered the situation where the prospective value of the aircraft at the end of the term exceeds the option price. While we are not persuaded that this aspect, standing alone, is completely determinative of the issue of economic compulsion to exercise the option, it is helpful in determining that the lessee would lose not only its equity in the aircraft, but also its opportunity fully to acquire an asset of greater value than the option price. When considered with other aspects, it would provide information that "the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised" (UCC 1-207(37)(x)) would exceed the cost of exercising the option, leading to a determination that it would be exercised under all reasonably foreseeable circumstances.

In asking you and other aircraft financing counsel for your analysis, the agency asked for evaluation of the tests of true lease/conditional sale stated in the *Brookside Drug Store* case (29 UCC Reporter 230). Uniformly, the response has been that the *Brookside* case has been discredited, since most of the tests relate to clauses that are common to both true leases and conditional sales. In addition, there is no uniformity as to whether the tests are cumulative, or stand alone; accordingly, we have determined that application of the *Brookside* tests will not constitute the standard for FAA decisions on leases intended as security.

One of the standard tests for determining whether a lease is actually one intended for security is that the burdens and benefits are those of the lessee, and require the lessee to bear all costs of maintenance, taxes, operation, insurance, etc. While this is also a customary feature of aircraft true leases, it nevertheless should be a necessary element of leases intended as security, and will be stated as a requirement.

Many of the cases we have reviewed also discuss the fact that in a lease intended as security, the lessee does not have the unilateral right to terminate the lease without economic penalty. This penalty is customarily an amount roughly equal to unpaid rentals and the termination fee, or roughly equal to the lessor's remaining obligation under its acquisition financing. We consider it important to require, as we have opined on previous occasions, that the lessee may not have the unilateral right to walk away with economic impunity.

Accordingly, we are of the opinion that the Registry should recognize as the owner for aircraft registration purposes the lessee under a lease with an option to purchase when:

(1) The purchase option is 10 percent or less of the value of the aircraft determined at the time the lease is executed; OR

(2) The purchase option price is above the 10 percent bright line, but contains a requirement that if the option is not exercised, the lessee nevertheless is obligated to pay a residual value or termination sum equal to or exceeding the purchase option price; OR

(3) The purchase option is higher than 10 percent and there is no mandatory full payout if the option is not exercised, but the option price is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

In all cases where a lease in form is to be considered a lease intended for security, the following usual factors must also be present:

(a) The lessee has the obligations of maintenance, insurance, taxes, operations and risk of loss; and

(b) The lease must not permit the lessee the unilateral right to terminate the lease without economic penalty.

In reaching these conclusions, we are indebted to you and to the other counsel and offices who have given us the benefit of their considerable time and research into complex tax and commercial law.

Sincerely,
Gregory S. Walden,
Chief Counsel.

[FR Doc. 90-23260 Filed 10-2-90; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

[BS-AP-NO. 2965]

Norfolk and Western Railway Co.; Public Hearing

The Norfolk and Western Railway Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the traffic control system from Arcadia, Ohio to Lima, Ohio, and from South Lima, Ohio, to Muncie, Indiana.

This proceeding is identified as FRA Block Signal Application Number 2965.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Wednesday, November 14, 1990, in the Burgundy Room of the Holiday Inn at 3320 Coliseum Boulevard in Fort Wayne, Indiana.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on September 28, 1990.

J. W. Walsh,
Associate Administrator for Safety.

[FR Doc. 90-23313 Filed 10-2-90; 8:45 am]
BILLING CODE 4910-06-M

[BS-AP-NO. 2977]

Union Pacific Railroad Co., CSX Transportation, Southern Railway Co.; Public Hearing

The Union Pacific Railroad Company, CSX Transportation and Southern Railway Company have petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed conversion of the manual interlocking at Mt. Vernon, Illinois, to automatic operation.

This proceeding is identified as FRA Block Signal Application Number 2977.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Friday, November 16, 1990, in the County Board Room of the Jefferson County Court House at Tenth and Broadway Streets in Mount Vernon, Illinois.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they make their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on September 20, 1990.

J.W. Walsh,
Associate Administrator for Safety.

[FR Doc. 90-23312 Filed 10-2-90; 8:45 am]
BILLING CODE 4910-06-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals from a Capital Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under section 607 of the Act shall be 9.28 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1990.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calender year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

Dated: September 27, 1990.

Warren G. Leback,
Maritime Administrator,

Jennifer Joy Wilson,
Acting Administrator, National Oceanic and Atmospheric Administration.

Kenneth W. Gideon,
Assistant Secretary for Tax Policy.

So ordered by Maritime Administrator, Maritime Administration.

Administrator, National Oceanic and Atmospheric Administration.

Assistant Secretary for Tax Policy, Department of the Treasury.

James E. Saari,
Secretary, Maritime Subsidy Board, Maritime Administration.

[FR Doc. 90-23314 Filed 10-3-90; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 79-17; Notice 40]

New Car Assessment Program; Deformable Moving Barrier Crash Test Results and Analysis

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of closing a docket.

SUMMARY: This notice announces the agency's decision to discontinue additional testing to determine if a Deformable Moving Barrier (DMB) should be used in the agency's New Car Assessment Program (NCAP). After reviewing the DMB program in relation to its other crash testing activities, NHTSA has determined that DMB testing in NCAP is of lower priority. Given the agency's budget constraints and the uncertain benefits that could currently be derived from DMB testing in NCAP is of lower priority. Given the agency's budget constraints and the uncertain benefits that could currently be derived from DMB testing in NCAP, the agency has decided not to conduct further research about such a device for NCAP in the near future. Therefore, this notice closes the docket on the use of a DMB in NCAP.

FOR FURTHER INFORMATION CONTACT: Mr. James Hackney, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-5282.

SUPPLEMENTARY INFORMATION:

Under the New Car Assessment Program (NCAP), new vehicles are crashed in frontal tests at 35 miles per hour (mph) into a fixed rigid barrier (FRB). The crash tests represent head-on collisions between two identical vehicles each moving at 35 mph, or one parked and the other moving at 70 mph. The tests are designed to provide information to consumers about relative levels of occupant protection and vehicle safety performance among vehicles of similar size and weight. These data, however, cannot be used to compare information on

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crashworthiness among vehicles of different sizes and weights.

Because consumers may incorrectly use NCAP data when comparing vehicles of different sizes and weights, the agency conducted experimental crashworthiness testing with a Deformable Moving Barrier (DMB), a device which might permit such comparisons. The DMB tests attempted to examine the role of vehicle weight, structure, and delta V (change in velocity) on occupant injury levels. The program consisted of frontal impacts between a DMB and a vehicle, each moving at 35 miles per hour, with a closing velocity of 70 mph. The DMB is a fixed-axle, four-wheeled, steel-framed vehicle weighing 3,000 pounds with a replaceable front energy-absorbing face. It is designed to absorb a portion of the crash energy while simulating an average-weight "other" vehicle in a vehicle-to-vehicle collision. Ten vehicles weighing from 2,020 to 3,750 pounds were tested. The agency analyzed the data from DMB and FRB tests of identical vehicles for relationships between the two crash modes and real-world crash data. The program was experimental in nature and was not intended to provide conclusive results on the DMB test configuration.

The agency's report compared the results of previous NCAP tests with DMB tests in an attempt to assess whether the effects of vehicle weight, structure, and delta V are evident in the dummy injury measurements of each test series. ("Analysis of NHTSA's 35-MPH Frontal Crash Tests of Vehicles by a Deformable Moving Barrier," 79-17-GR-061 (March 1988)). The report reached several tentative conclusions. First, the regression analysis demonstrated a weak relationship between vehicle weight and dummy unjury measures. Second, DMB tests showed some correlation between vehicle weight and delta V and unjury measures. Third, DMB tests appeared to assess the effects of vehicle mass differences and structural crashworthiness. Four, DMB tests appeared to offer a repeatable structure for use as a surrogate vehicle in vehicle-to-vehicle crash tests. The report warned that many other vehicle and occupant factors influence frontal crashworthiness and that the DMB used in the test was an experimental structure which would need modifications.

The agency requested comments about the DMB technical report, including the DMB's design and test repeatability. (53 FR 10182, March 29, 1988). The notice also sought test data and analyses about DMBs in frontal crashes, including General Motors' efforts in this area. In a May 23, 1988 notice, the agency announced an extension of the comment period an additional 45 days. (53 FR 18369)

Ten manufacturers and the Insurance Institute for Highway Safety (IIHS) commented about the DMB's characteristics, and real-world crashes. The commenters offered many different opinions about DMB versus FRB testing. While Chrysler, Honda, and Volvo favored the development of DMB testing, Ford and Nissan favored continuing FRB testing rather than DMB testing. GM, Renault and Volkswagen, recommended alternative testing programs. IIHS suggested that DMB testing be supplemental to rather than a replacement for FRB tests. Subaru believed that DMB test results would be misinterpreted by consumers, in the same manner as NCAP's FRB results. Toyota stated that DMB tests would be detrimental to highway safety.

Several commenters criticized specific characteristics of the DMB tests. For instance, they advised that the DMB was stiffer than real-world vehicles. Others believed that the DMB poses problems with repeatability and reproducibility. Several commenters were concerned that the DMB program would significantly increase testing costs. Commenters also questioned whether DMB test data could be correlated with real-world injuries.

After reviewing the docket comments in relation to its crash testing activities, NHTSA has decided to discontinue any further examination of the possible use of a DMB in NCAP testing. After studying the alternative approaches suggested by the commenters, the agency has presented the agency's preliminary plans for different types of frontal testing at the 12th International Technical Conference on Experimental Vehicles in Sweden. The agency anticipates extensive research into frontal crash modes and crash configurations, including car-to-car full and offset frontal, offset barrier, and higher speed tests. The agency is also considering the development of different test devices and test procedures. The agency will continue to review the results from its efforts relative to NCAP and to examine NCAP and other crash test results relative to real-world injury data. In relation to these efforts, NHTSA has determined that DMB testing is of lower priority. In addition, the agency agrees with comments that to make the DMB program reliable, additional research on vehicle closing speed, orientation at impact, and the DMB's characteristic such as its stiffness and symmetry would be necessary. Given the agency's budget constraints and the uncertain benefits currently obtainable from DMB use in NCAP testing, the agency will not pursue this subject in the near future. This notice announces the agency's decision to close Docket No. 79-17, Notice 38 on DMB testing.

Issued on September 27, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-23310 Filed 10-2-90; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 90-22-IP-No. 1]

Uniroyal Goodrich Tire Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

Uniroyal Goodrich Tire Company (Uniroyal Goodrich), of Troy, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.109, Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 109 requires that tires have molded into or onto both sidewalls one size designation, except that equivalent inch and metric size designations may be used. Uniroyal Goodrich manufactured 3,100 tires that were stamped with the incorrect size designation of P225/80VR15 on the DOT serial number black sidewall side. The correct size designation for these tires is P225/60VR15.

Uniroyal Goodrich supports its petition for inconsequential noncompliance with the following:

(1) The proper load rating appears on both sidewalls.

(2) Any person purchasing this speed rated tire could obviously see that the tire was a 60 aspect ratio tire rather than an 80 aspect ratio.

(3) The industry does not have a P225/80 aspect ratio tire available, so no consumer would purchase these tires as 80 aspect tires.

(4) Uniroyal Goodrich knows of only one tire produced during the 43rd week of 1989 and at most, there is a limited number in the field.

Interested persons are invited to submit written data, views and arguments on the petition of Uniroyal Goodrich described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 2, 1990.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 27, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-23311 Filed 10-2-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 27, 1990.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Interal Revenue Service

OMB Number: 1545-0704.

Form Number: 5471, Schedules M, N, and O.

Type of Review: Resubmission.

Title: Information Return of U.S Persons with Respect to Certain Foreign Corporations.

Description: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of sections 6035, 6038 and 6046 and the regulations thereunder pertaining to the involvement of U.S. persons with certain foreign corporations.

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 88,000.

Estimated Burden Hours Per Response/Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
5471	79 hrs., 10 min.	23 hrs., 57 min.	29 hrs., 53 min.
Sch. M (5471)	24 hrs., 23 min.	24 min.	49 min.
Sch. N (5471)	6 hrs., 22 min.	3 hrs., 35 min.	3 hrs., 52 min.
Sch. O (5471)	10 hrs., 31 min.	12 min.	23 min.

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 6,756,925 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-23354 Filed 10-2-90; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 55, No. 192
Wednesday, October 3, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 39232, September 25, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 10:30 a.m., Friday, September 28, 1990, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Consideration of issues related to legislative matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 1, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-23504 Filed 10-1-90; 12:30 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNOR

TIME AND DATE: 10:00 a.m., Tuesday, October 9, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 28, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-23462 Filed 10-1-90; 10:13 am]
BILLING CODE 6210-01-M

federal register

Wednesday
October 3, 1990

Part II

Postal Service

39 CFR Part 111
Eligibility Requirements for Automated Rate Categories; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Automated Rate Categories

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal will amend the Domestic Mail Manual to update the physical preparation, optical character reader (OCR) readability, and barcode preparation requirements for pieces qualifying for current automation based rate categories (First-Class nonpresorted ZIP + 4, ZIP + 4 Presort, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded mail) to more accurately reflect the types of mailpieces that can be efficiently processed on current automation equipment.

This rule also proposes significant changes in postal policy for addressing mail that qualifies for automation based discounts. It will require: 1) that mailers use the finest level (depth) of ZIP + 4 code available for an address in the USPS ZIP + 4 data file on their mailpieces (in either numeric or barcode form or both); 2) that complete addresses necessary to obtain the finest level of ZIP + 4 code available for the delivery point appear in the address on mailpieces entered at all automation based rates; 3) that, for nonbarcoded ZIP + 4 mailings, the addresses also appear in the standardized format prescribed by the Postal Service; and 4) that Coding Accuracy Support System (CASS) certified software be used to match addresses with the USPS ZIP + 4 database to ensure that the ZIP + 4 codes appearing numerically and/or in barcode form are accurate and the finest level of ZIP + 4 coding available for each delivery point. Mailpieces that do not bear the finest level of ZIP + 4 coding (either as a numeric ZIP + 4 code or a ZIP + 4 barcode, as appropriate) will not be eligible for automation based rate discounts.

DATE: Comments must be received on or before November 2, 1990.

ADDRESS: All written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza West, SW, Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Martin, (202) 268–5176, for information on all aspects except addressing requirements for finest level of ZIP + 4 code, standardized or complete addresses, and CASS certification.

Mr. Paul Bakshi, (202) 268–3520, for information concerning the requirements for finest level of ZIP + 4 code, standardized or complete addresses, and CASS certification.

SUPPLEMENTARY INFORMATION: The current physical optical character reader (OCR) readability requirements for ZIP + 4 mail were formulated in 1983 when the Postal Service's automation program was just beginning. At that time, the regulations were written for a single-line OCR environment, and the Postal Service had limited experience with the acceptability and readability of various types of mailpieces.

The sophistication of the equipment deployed in the Postal Service's automation program has increased since its beginnings in 1983, most notably in the shift to primary use of multi-line OCRs. Furthermore, the Postal Service has obtained more experience governing the mailpiece preparation needs of our automation equipment since the original Domestic Mail Manual (DMM) requirements for automation compatible pieces were published in 1983. Currently, the USPS is rapidly expanding the amount of mail it handles on automation equipment and has proposed expansion of automation discounts in the pending rate case, PRC Docket No. R90–1. Accordingly, the Postal Service needs to update the eligibility requirements for mailpieces that obtain a discount because they can be efficiently processed on automation equipment.

Similarly, as the Postal Service moves towards automation as the primary means of processing mail, the importance of correct ZIP + 4 codes and barcodes increases. The finest level (depth) of ZIP + 4 coding is necessary to assign an address to the correct carrier route as well as to group mail within a carrier route by block face, floor in a large building, cluster of boxes, firm, or other specific geographic location. As the Postal Service moves towards use of barcode sorters to place mailpieces for letter carriers in delivery point walk sequence, use of the finest level (depth) of ZIP + 4 coding will become even more important. Under this environment, mail will be sequenced for delivery by barcode sorter, which means a letter-size piece with an incorrect barcode may not be detected until the letter carrier is about to deliver the piece on the street. Therefore, the accuracy of mailer applied barcodes becomes of utmost importance to the efficient processing of automation compatible mail.

The following changes governing eligibility for First-Class nonpresorted ZIP + 4, Presorted ZIP + 4, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4 and ZIP + 4 barcoded rate categories are proposed to ensure that only the types of mailpieces that can be efficiently processed on current automation equipment can qualify for automation based rates. The first group of changes addresses the physical characteristics of mailpieces. The second group of changes focuses on the accuracy and completeness of addresses used on automation rate mail. The third group of changes will rectify some anomalous requirements with regard to First-Class ZIP + 4 Presort rate mailings.

In reviewing the proposed addressing changes, customers are urged to pay particular attention to the following areas:

(1) The requirement for the finest level (depth) of ZIP + 4 coding, and use of CASS certified software to obtain the ZIP + 4 codes;

(2) The requirement for complete addresses on all mailpieces qualifying for automation based rate discounts, including ZIP + 4 barcoded mail;

(3) The requirement for complete and standardized addresses for nonbarcoded ZIP + 4 rate mail.

(4) The requirement that mailpieces not meeting the finest level of ZIP + 4 code requirement, or the complete and/or standardized address requirement as appropriate, do not qualify for ZIP + 4 or ZIP + 4 barcoded rates; and

(5) The requirement that pieces not meeting the finest level of ZIP + 4 code requirement or the complete and/or standardized address requirement must not contain the ZIP + 4 code in their address and, if in a ZIP + 4 barcoded mailing, must not bear a ZIP + 4 barcode.

The reviewer should also note that the eligibility requirements proposed in this rulemaking will apply, in accordance with their terms, to the current automation based rate categories of mail—nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 barcoded First-Class Mail; and basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded third-class mail. In the rate change case currently pending before the Postal Rate Commission (PRC Docket No. R90–1), the Postal Service has requested that the Commission issue a favorable recommended decision on the establishment of additional automation based rate categories. If those rate categories are established, the Postal Service intends to apply these proposed eligibility requirements to those new rate categories as well. However, this proposal to amend the eligibility requirements for existing automation based rate categories is not conditional upon the outcome of the rate proceeding. The Postal Service expects to issue the final rule on these proposed eligibility requirements for existing ZIP + 4 coded and ZIP + 4 barcode rate mail prior to the completion of the rate proceedings.

A. Physical Characteristics

(1) New minimum thickness requirements and requirements for the basis weight of paper stock used to prepare mailings at all automation based rates (nonpresorted ZIP + 4, ZIP + 4 Presort, First-Class ZIP + 4 Barcoded; basic ZIP + 4, 5-digit ZIP + 4, and third-class ZIP + 4 barcoded rates) are proposed to limit eligibility to those pieces that are sufficiently sturdy to be successfully transported through the USPS's current automation equipment. Engineering studies and mailer complaints concerning damaged pieces have shown that mailpieces that are at least 3½ by 5 inches and not larger than 4¼ by 6 inches can be successfully processed on automation equipment if they are at least .007 of an inch thick and the basis weight requirements discussed below for the paper stock are met. Pieces larger than 4¼ by 6, however, generally must be prepared with paper stock meeting the basis weight requirements discussed below and be at least .009 of an inch thick to be successfully processed on automation equipment. Accordingly, proposed sections 324.411 and 624.441 require that pieces measuring over 4¼ inches in height and/or 6 inches in length must be at least .009 of an inch thick.

Engineering tests have also shown that paper envelopes, paper used to prepare self-mailers (folded single sheets) and the outer covering sheet or sheets of other mailpieces must have a minimum basis weight of 20 pounds in order to be successfully transported through automation equipment. Therefore, proposed sections 324.44a, 325.41, 624,444a, 624.54, and 624.64 establish a minimum 20 pound basis weight requirement for these types of mailpieces. Engineering studies have also shown that cards must be printed on paper stock meeting a standard industry minimum basis weight of 75 pounds and must be free from groundwood (unless specially coated) in order to be stiff enough to be successfully transported through automation equipment. Therefore, proposed sections 324.44b 325.41, 624.444b 624.54 and 624.64, require that cards mailed at automation rates meet a minimum 75 pound basis weight requirement.

(2) Engineering tests performed to date have shown that there is a reduction in throughput on automation equipment for pieces that exceed 2 ounces in weight. An even more pronounced drop-off of throughput occurs at the 2½ ounce point. Therefore, proposed sections 324.42, 325.41, 624.442, 624.54, and 624.64 provide that pieces weighing over 2.5 ounces will not qualify for automation based rates (First-class nonpresorted ZIP + 4, Presorted ZIP + 4, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded rates).

(3) New requirements concerning mailpiece construction are proposed for all automation based rate categories. The current requirements for automation compatible mail were designed under the assumption that enveloped mail would be submitted for automated rate categories. In 1988, barcoding incentives were added to both First- and third-class mail, and two levels of ZIP + 4 discounts were added to third-class mail. This expansion in the types of automation rate discounts available has produced an expansion in the types of mailpieces submitted for automation based rate discounts. The incidence of non-enveloped mailpieces being submitted at ZIP + 4 and ZIP + 4 barcoded rates is increasing. Self-mailers prepared from folded single sheets, and booklet type mailpieces, that are open on three sides, cannot be successfully processed on the current automation equipment. Testing on equipment has resulted in a determination of methods of closure that could make such mailpieces suitable for processing on automation equipment. As a result of this testing, proposed sections 324.43, 325.6, 624.443, 624.54, and 624.64, (pertaining to First-class nonpresorted ZIP + 4, Presorted ZIP + 4, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded mail) will require that all pieces be prepared in a sealed envelope or be sealed on all four edges, with the exception of self-mailers, double postcards, and booklet type mailpieces if prepared with two tabs. The folded edge or spine of self-mailers, double cards, and booklets prepared with tabs must be the bottom edge of the mailpiece in relation to the address. The tabs must be placed on the top edge of each of these mailpieces, one within one inch of the left edge and one within one inch of the right edge of each mailpiece. As an alternative, the top edge can be spot glued or continuously glued.

(4) Rigid items within mailpieces such as pens, pencils, keys and bottle caps are not flexible enough to negotiate the turns that mail must go through in current automation equipment. Accordingly, proposed sections 324.434, 325.6, 624.443c, 624.54 and 624.66 (pertaining to First-Class nonpresorted ZIP + 4, Presorted ZIP + 4, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded mail) will provide that such items are not mailable at any of the automation based rates, and that the contents of mailpieces must be able to bend easily when subjected to a transport belt tension of 40 pounds around an 11-inch diameter drum. This proposed section also requires that odd-shaped items that meet the flexibility criteria such as small coins or tokens may be included in automation based rate mailings only if they are firmly affixed to part of the contents and are wrapped in the envelope's other contents in order to streamline the mailpiece. This is intended to prevent these odd-shaped items from damaging mail or equipment, or puncturing and exiting the mailpieces during automated processing.

(5) Address labels and other labels or stickers that are not securely and uniformly glued with permanent adhesive, including stickers or labels designed for removal, tend to peel off mailpieces as they are transported through postal automation equipment. This results in undeliverable or damaged mailpieces. Accordingly, proposed sections 324.435, 325.41, 624.443e, 624.54, and 624.64 (pertaining to First-Class nonpresorted ZIP + 4, Presorted ZIP + 4, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded mail) require that all labels and stickers, including address labels, affixed to the outside of mailpieces entered at any of the automation based rates be completely affixed with permanent glue or adhesive.

(6) Mailpieces that are poly-wrapped or poly-bagged cannot be successfully transported through Postal Service automated equipment. Accordingly, sections 324.45, 325.6, 624.445, 624.54, and 624.66 (pertaining to First-Class nonpresorted ZIP + 4, Presorted ZIP + 4, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded mail) will prohibit the mailing of mailpieces wrapped in such a manner at any of the automation based rates.

(7) Postal Service OCRs must use water-based ink to spray barcodes

(because of the hazardous nature of other inks). Accordingly, the paper upon which mailings at the ZIP + 4 rates are printed must allow water-based ink applied by an ink jet to dry within ⅛ of a second, without smearing. To ensure the production of readable barcodes, proposed sections 324.45, 624.445, and

requirement will ensure that any shadow cast by the edges of the window will not be read as an address character by an OCR.

(14) It has been determined by engineering studies that a background reflectance criteria for the material on which the barcode is printed of at least 50 percent in the red and 45 percent in

of the mailpiece, but this will still allow ¾ of an inch tolerance for placement of the first bar of an ABC barcode. Similarly, the location of the area within which the first bar of a 5-digit barcode could appear will also be moved ¼ of an inch further from the right edge of the mailpiece, and will still allow ⅛ of an

B. Requirements for Content of Addresses and Accuracy of ZIP + 4 Codes for All Automation Based Rate Categories

The use of accurate ZIP + 4 codes is extremely important on all mail that will be entered at a discounted rate based upon the Postal Service's ability to

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(because of the hazardous nature of other inks). Accordingly, the paper upon which mailings at the ZIP + 4 rates are printed must allow water-based ink applied by an ink jet to dry within ½ of a second, without smearing. To ensure the production of readable barcodes, proposed sections 324.45, 624.445, and 624.54 require use of this type of paper for mail entered at nonpresorted ZIP + 4, ZIP + 4 Presort, Basic ZIP + 4, and 5-digit ZIP + 4 rates. These sections further specify that mailpieces prepared with glossy paper, paper with glossy coatings, and non-paper material such as spun bonded olefin, will not be accepted for mailing at ZIP + 4 rates unless approved by the USPS Engineering and Development Center. Such approval will be granted only if it is demonstrated such materials can accept water-based ink in the manner indicated above.

(8) Because there must be a certain amount of contrast between the background on the mailpiece and the ink used to print the address to assure the OCR can accurately read the address, more precise reflectance requirements are proposed in sections 324.65, 624.454, and 624.55 (for nonprestorted ZIP + 4, ZIP + 4 Presort, basic ZIP + 4 and 5-digit ZIP + 4 mail only). These sections will:

(a) Add a requirement that the background reflectance of the material upon which the address is printed must be at least 50 percent in the red and 45 percent in the green portions of the optical spectrum.

(b) Clarify that the current provision for a print contrast ratio of at least 40 percent is mandatory. A new requirement that a print contrast ratio of 45 percent is required if the address is covered by a glassine window (as opposed to clear plastic material) is also proposed.

(c) Require that the envelope material, any insert material that can be viewed through an address window, or the outermost sheet of a non-enveloped mailpiece, must be sufficiently opaque to prevent non-address printing on material inside the mailpiece from "showing through" to the extent that it affects OCR processing. The regulation specifies that a print contrast ratio of any non-address print that may show through in the OCR read area must not exceed 15 percent when measured in the red and green spectra.

(d) Require that the outer surface of the front of the mailpiece (the envelope, card, insert material, or outermost sheet of a non-enveloped piece) not contain dark fibers or background patterns that produce a print contrast ratio of more than 15 percent when measured in the read and green spectra.

(9) Postal Service multi-line OCRs are designed to read the entire address, including the name of the recipient, in order to apply the best possible ZIP + 4 barcode to the mailpiece. To ensure that the finest depth of ZIP + 4 coding is achieved, proposed sections 324.62, 624.452 and 624.55 (for nonpresorted ZIP + 4, ZIP + 4 Presort, basic ZIP + 4 and 5-digit ZIP + 4 mail only) contain a new requirement that the entire address must be printed in the OCR read area.

(10) The Postal Service's multi-line OCR scanners have the capability to read within ⅛ of an inch from the left and right edges of mailpieces. Taking advantage of this capability will make it easier for smaller card-type mailpieces to qualify for ZIP + 4 rates because addresses can more easily be printed in the OCR read area if it is expanded an extra ⅛ inch towards both the left and right edges of mailpieces. To accommodate the need discussed in (9) above to place the entire address within the OCR read area, the uppermost boundary of the OCR read area is also extended from 2¼ inches from the bottom edge to 2¾ inches from the bottom edge. Accordingly, proposed sections 324.61, 624.451 and 624.55 (for nonpresorted ZIP + 4, ZIP + 4 Presort, basic ZIP + 4 and 5-digit ZIP + 4 mail only), specify that the OCR read area is formed inside the following boundaries:

(a) ⅛ of an inch from the left edge,

(b) ⅛ of an inch from the right edge,

(c) 2¾ of an inches from the bottom edge,

(d) ⅝ of an inch from the bottom edge.

(11) Because OCRs can scan the entire face of most mailpieces, placing the return address in the OCR read area is prohibited. To further assure that return address information is not considered part of the address by OCR equipment, proposed criteria specifying a particular location for the return address on mailpieces in ZIP + 4 rate mailings have been developed. Proposed sections 324.63b, 624.453b, and 624.55 (for nonpresorted ZIP + 4, ZIP + 4 Presort, basic ZIP + 4 and 5-digit ZIP + 4 mail only) require return addresses to be placed outside the OCR read area and in the top left corner of the front of the mailpiece in an area no further right than half of the length of the mailpiece, and no lower than ⅛ of the height of the mailpiece. Proposed sections 324.63c, 624.453c, and 624.55 also require mailer endorsements concerning forwarding, return, and address correction services to appear below the return address, but outside the OCR read area.

(12) The Postal Service has performed studies that show a need for high quality print in addresses, as defined by a list of criteria, in order to assure a high degree of error free OCR readability. Accordingly, the following list of criteria that define OCR readable type are added to proposed sections 324.64, 624.455 and 624.55 (for nonpresorted ZIP + 4, ZIP + 4 Presort, basic ZIP + 4 and 5-digit ZIP + 4 mail only):

(a) Machine printed addresses are required.

(b) Italic, script, artistic, cyrillic, "light", "bold," etc., type fonts and dot matrix printing with separated matrix elements of .005 of an inch or more are not acceptable.

(c) A high degree of print quality is required for address characters (no smudges, faded characters, voids, or extraneous ink).

(d) A uniform character height of no less than 80 mils nor more than 200 mils is required.

(e) The height of address characters divided by their width must fall between 1.1 and 1.7.

(f) A uniform character stroke width of no less than 10 mils nor more than 30 mils is required.

(g) A clear vertical column of at least 10 mils and no more than 40 mils is required between each character of the address.

(h) A clear vertical space of no less than the width of one full "em" character or more than the width of five full characters must exist between words of the address.

(i) Spacing between lines of the address must be uniform and no less than 30 mils or more than the height of two full characters.

(j) The lines of the address must not be skewed more than 5 degrees relative to the bottom of the mailpiece.

(13) To ensure that addresses printed on inserts that appear through windows are readable by OCR equipment, a requirement that non-tinted clear or transparent material glued securely on all edges is used to cover windows, if they are covered, is proposed in sections 324.66, 624.456, and 624.55 (for nonpresorted ZIP + 4, ZIP + 4 Presort, basic ZIP + 4 and 5-digit ZIP + 4 mail only). (As indicated earlier, glassine may be used to cover windows only if the address information measured through the glassine meets a print contrast ratio of 45 percent.) A requirement that a clear space of at least ⅛ of an inch appear between the address block and the top, bottom and side edges of the address window is also proposed in sections 324.66, 624.456, and 624.55 (for nonpresorted ZIP + 4, ZIP + 4 Presort, basic ZIP + 4 and 5-digit ZIP + 4 mail only). This requirement will ensure that any shadow cast by the edges of the window will not be read as an address character by an OCR.

(14) It has been determined by engineering studies that a background reflectance criteria for the material on which the barcode is printed of at least 50 percent in the red and 45 percent in the green portions of the optical spectrum is needed in conjunction with the current print reflectance difference to ensure a high degree of readability of barcodes. Proposed sections 325.51d and 624.68d (for First- and third-class ZIP + 4 barcoded mail only) add this requirement.

(15) When the wide area barcode readers currently being tested by the Postal Service are installed, it is expected that printing and markings will be acceptable in the barcode clear zone provided they do not lower the reflectance of the barcode to less than 50 percent in red and 45 percent in the green portions of the optical spectrum. Proposed sections 325.51 b and d and 624.68 b and d (for First- and third-class ZIP + 4 barcoded mail only) will contain a notice that this relaxation of the requirements is expected to go into effect when wide area barcode readers are deployed.

(16) This rule proposes to relax the horizontal spacing of the bars comprising barcodes from 21 bars plus or minus one bar per inch to 22 bars plus or minus two bars per inch. Both current barcode readers and wide area barcode readers being tested can read barcodes prepared according to the relaxed requirement. The pitch (a bar and a space) requirements are revised accordingly in proposed sections 325.51c and 624.68c (for First- and third-class ZIP + 4 barcoded mail only) to require the pitch to be at least .0416 of an inch and no greater than .050 of an inch. In addition, the spacing (a clear vertical column) betwen bars must never be less than .012 of an inch.

(17) When the Advanced Bar Code (ABC) system is deployed, additional space will be required to the right of any mailer-applied 5-digit barcodes in order for Postal Service OCRs to be able to add the "B Plus" field showing the additional 6 digits of the barcode. Accordingly, proposed sections 325.51c and 624.68c (for First- and third-class ZIP + 4 barcoded mail only) contain a notice that effective with deployment of the ABC system, the left edge of the barcode clear zone will be moved ¼ of an inch further from the right edge of the envelope. The location of the area within which the first bar of an ABC barcode must appear will also be moved ¼ of an inch further from the right edge of the mailpiece, but this will still allow ¾ of an inch tolerance for placement of the first bar of an ABC barcode. Similarly, the location of the area within which the first bar of a 5-digit barcode could appear will also be moved ¼ of an inch further from the right edge of the mailpiece, and will still allow ⅛ of an inch tolerance for placement of the starting bar of a 5-digit barcode.

(18) It is expensive for the Postal Service to handle mail with bad barcodes. Such pieces sometimes incur repeated processing through automation until the barcodes are manually obliterated. Then, the pieces must be manually or mechanically processed. Thus, sections 323.11, 323.3, 624.11, 624.21, and 624.31 are amended to show that matter entered at non-automation based rates bearing either a ZIP + 4 or 5-digit barcode will be required to meet the addressing, ZIP + 4 coding, and barcoding requirements of automation based rate mail to preclude an influx of erroneous or non-readable barcodes on pieces in these mailings; and to preclude an influx of 5-digit barcodes placed too far to the right on the mailpiece thereby preventing the Postal Service OCR's from completing the barcode. Furthermore, a recommendation is being added to these DMM sections that mail in non-automation based rate categories not be entirely prepared with 5-digit barcodes. This mail must undergo multi-line OCR processing to add the "B field" (the "plus 4" codes). Differences in inks used for barcodes by the USPS and industry can cause difficulties in OCR detection and reading of mailer applied barcodes when printed with different inks. This sometimes results in OCR's overprinting barcodes on mailer barcoded pieces which in turn produces pieces that are unreadable by USPS barcode sorters. Accordingly, the USPS would prefer that mailings that are not ZIP + 4 coded be submitted as non-barcoded pieces. Also, mailings bearing only 5-digit barcodes may be mistaken for mail bearing ZIP + 4 codes (or in the future ABC barcodes) and be sent to barcode sorters for processing. This results in delays since such pieces will be rejected off of barcode sorters and resubmitted for OCR processing. This problem will result in even greater service delays when the Postal Service deploys barcode sorters to smaller post offices. Such 5-digit coded mail, if erroneously sent to a delivery post office for barcode sorting, would have to be returned to the general mail facility for application of a "B field" or "B Plus field" or to be manually sorted.

B. Requirements for Content of Addresses and Accuracy of ZIP + 4 Codes for All Automation Based Rate Categories

The use of accurate ZIP + 4 codes is extremely important on all mail that will be entered at a discounted rate based upon the Postal Service's ability to process the mail more efficiently on its automated mail processing equipment. Therefore, a requirement that the finest level (depth) of ZIP + 4 code appear on mailpieces entered at any automation based rate is proposed in sections 324.2, 325.3, 624.431, 624.531, and 624.63. This requirement is necessary to make sure that mail processed on automation equipment is assigned to the proper carrier route, as well as properly sorted by block face, floor in a large building, cluster of boxes, firm, or other specific location. Mail bearing erroneous ZIP + 4 codes or barcodes, or mail bearing ZIP + 4 codes or barcodes that are not the finest level (depth) of ZIP + 4 code possible for an address, such as default building codes, will not qualify for automation based rates.

Because the Postal Service has no efficient means to verify that the numeric ZIP + 4 code or ZIP + 4 barcode, applied to mail entered at automation based rates, is the correct code, or to correct an erroneous code after acceptance, the Postal Service has determined that it must regulate the permissible means for obtaining ZIP + 4 code information in order to ensure that only the finest level of ZIP + 4 coding is used on mail receiving a discount for that coding. Thus, the Postal Service is proposing to require the use of complete addresses on mailpieces for all automation based rate categories (First-Class nonpresorted ZIP + 4, ZIP + 4 Presort, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded rates). A complete address is one that contains all delivery address elements necessary to assure that a match can be made to the finest level (depth) of ZIP + 4 code shown for a delivery point in the USPS ZIP + 4 database. In addition to the street address (including street number, street name, post office box numbers, city, and state) apartment numbers, suite numbers, rural route box numbers, firm names, and all directional prefixes and suffixes will be required in those instances where they are necessary to obtain the finest level of ZIP + 4 coding. Only approved last line names (as shown in the USPS City State file) may be used in a complete address.

Addresses on mail that must undergo OCR processing (for non-ZIP + 4

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barcoded mailings at nonpresorted ZIP + 4, ZIP + 4 Presort, basic ZIP + 4 and 5-digit ZIP + 4 mail) will also be required to be in a standardized format to ensure that the finest depth of ZIP + 4 barcodes will be applied to those pieces during OCR processing. A standardized address is printed in a specified format prescribed by the Postal Service. Only approved last line names (as shown in the USPS City State file) may be used in a standardized and complete address. All suffixes, directionals, and abbreviations must appear in a standardized address as they appear in the ZIP + 4 and City State files. Detailed guidelines for preparing standardized and complete addresses are set forth in Publication 28, *Postal Addressing Standards*. Pieces in automation based rate category mailings that do not meet these complete and/or standardized address requirements, as appropriate, will not qualify for automation based rates. Such pieces will also be prohibited from bearing any ZIP + 4 code in their address or any ZIP + 4 barcode on the mailpiece. This latter requirement is necessary so that the Postal Service can verify the 85 percent requirement for finest level of ZIP + 4 code and the requirements for standardized and/or complete addresses by means of the current documentation requirements that apply to the 85 percent requirement, and by checks of the matching software used to assign ZIP + 4 codes to addresses.

In order to ensure that addresses have been coded to the finest level of ZIP + 4 code, and that complete addresses appear on mailpieces for automation based rate mailings, mailers will be required to demonstrate that they use high quality ZIP + 4 matching software. Accordingly, only software that has a current Coding Accuracy Support System (CASS) certification from the Postal Service and utilizes up-to-date USPS ZIP + 4 databases will be permissible for use in assigning ZIP + 4 codes to addresses for automation based rate mailings (First-Class nonpresorted ZIP + 4, Presorted ZIP + 4, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded mail). The software used to code the mailing list or lists used for an automation based rate mailing must have a valid CASS certification at the time of coding. Furthermore, mailings prepared from that mailing list or lists must be entered within 6 months of the coding date. National Change of Address (NCOA) licensees and the USPS (when USPS diskette coding service is used) are considered CASS certified vendors. The CASS certification process, which involves having a mailer assign ZIP + 4 codes to test address lists provided by the Postal Service, is the means by which the Postal Service tests that matching software properly assigns ZIP + 4 codes to addresses. If this proposal is adopted, the Postal Service will use CASS certification to ensure that matching software does not assign ZIP + 4 codes to addresses that are incomplete and thus cannot have the finest level of ZIP + 4 code assigned. Proposed sections 324.34, 325.44, 624.432d, 624.532d, and 624.644, explain how a mailer or software vendor may obtain CASS certification testing. Proposed sections 324.33, 325.43, 624.432c, 624.532c, and 624.643 set forth the documentation that will be required to be presented, with all mailings entered at automation based rates, to demonstrate that the mailings was prepared using an address list that had been properly matched using CASS certified software.

Hardcopy ZIP + 4 code directories are not an acceptable means of obtaining ZIP + 4 codes for automation based rate eligibility, because it is impractical for the Postal Service to update these directories on a sufficiently frequent basis to assure accurate up-to-date Zip + 4 coding.

C. Rate Qualification Changes for First-Class ZIP + 4 Presort Rate Mailings

(1) The requirements in 324.76 for preparing barcodes on inserts that appear through windows in the envelope for purposes of qualifying ZIP + 4 barcoded mail for ZIP + 4 Presort rates will be deleted. This will eliminate the current anomaly whereby less restictive requirements in 324.78 apply to barcodes appearing on inserts in mail that is submitted at the ZIP + 4 Presort rate than required for barcodes on inserts in mail in First-Class ZIP + 4 barcoded rate mailings. ZIP + 4 Presort rate mailings prepared with ZIP + 4 barcodes on inserts that appear through windows will be required to meet the same insert and window requirements currently in effect for such pieces mailed at the ZIP + 4 barcoded rate.

(2) Pieces in combined ZIP + 4 Presort mailings prepared under 365 and 366, DMM, that do not bear a ZIP + 4 code or ZIP + 4 barcode, will be required to meet the new physical preparation requirements, and if prepared without barcodes, also meet the OCR readability requirements. This will assure that all pieces in these mailings submitted for OCR processing (including the non-ZIP + 4 coded pieces) are processable on OCR equipment, and if submitted as part of mailings prepared with ZIP + 4 barcodes, will meet the requirements necessary to allow smooth transport of non-ZIP + 4 barcoded pieces through the barcode sorters.

(3) Currently, mailers submitting First-Class ZIP + 4 Presort mailings prepared under the optional preparation requirements in 366 are precluded from placing in those mailings mailpieces that are for 3-digit ZIP Code areas not on the automated site 3-digit listing in Exhibit 122.63m. These regulations will allow pieces for 3-digit ZIP Code areas not listed in Exhibit 122.63m to be placed in the residual portion of optional combined ZIP + 4 Presort mailings prepared in accordance with DMM 366. This will eliminate the necessity to prepare a separate mailing for non-automated site ZIP Code areas, provided the mailer is willing to pay nonpresorted rates on the pieces included in the residual portion of the mailing.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 533 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

2. Add the following to the end of 124.47:

Letter-size pieces mailed at First- and third-class automation based rates (First-Class nonpresorted ZIP + 4, ZIP + 4 Presort, ZIP + 4 barcoded; third-class basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded) must meet the requirements of 324.434, 325.6, 624.443c, 624.54, and 624.66. These sections require letter-sized pieces mailed at automation based rates to be flexible enough to be transported through Optical Character Reader (OCR) and Barcode Sorter (BCS) equipment, specifically excludes rigid items such as pens, pencils, and bottle caps within mailpieces, and requires that small odd-shaped items that meet the flexibility requirements be affixed to part of the contents of the mailpiece and wrapped in the envelope's other contents so that the shape of the mailpiece is streamlined.

PART 323—PRESORTED FIRST-CLASS MAIL AND CARRIER ROUTE FIRST-CLASS MAIL

3. Add the following note to the end of 323.11:

Note: It is strongly recommended that Presorted First-Class mailings *not* be prepared so that pieces in the mailing bear a postnet 5-digit barcode. If a Presorted First-Class mailing is prepared with postnet barcodes (either ZIP + 4 or 5-digit) the pieces in the mailing must meet the ZIP Coding, addressing, documentation, and barcoding requirements in 325.3 through 325.5.

4. Add the following sentence to the end of section 323.2:

It is strongly recommended that carrier route First-Class mailings *not* be prepared so that pieces in the mailing bear a 5-digit postnet barcode. If a carrier route First-Class mailing is prepared with postnet barcodes (either ZIP + 4 or 5-digit) the pieces in the mailing must meet the ZIP Coding, addressing, documentation, and barcoding requirements in 325.3 through 325.5.

PART 324—ZIP + 4 FIRST-CLASS MAIL

5. In part 324, revise section 324.2 to read as follows:

324.2 ZIP Code Requirements. Each piece in a mailing must bear the correct ZIP + 4 code. The correct ZIP + 4 code is the finest level (depth) of ZIP + 4 code listed in the current USPS ZIP + 4 database for the complete address as defined in 324.3. The addressing, ZIP + 4 matching and documentation requirements of 324.3 must also be met. Either the correct numeric ZIP + 4 code in the address, or the correct ZIP + 4 barcode prepared in accordance with 324.7 will satisfy the requirement for a ZIP + 4 code. If a correct ZIP + 4 barcode appears on pieces in the mailing, the addressing and documentation requirements in 325.4 may be met instead of those in 324.3. Pieces bearing a ZIP + 4 barcode must also bear either the correct numeric 5-digit ZIP Code or the correct numeric ZIP + 4 code in the address.

Note: As provided in 365.22, 366.23, and 366.11b, up to 15 percent of the pieces in combined ZIP + 4 Presort and Presorted First-Class mailings prepared in accordance with the requirements in 365 or 366 are not required to bear a ZIP + 4 code or a standardized address. Such pieces must, however, bear the correct 5-digit numeric ZIP Code.

6. In part 324, delete existing 324.3 through 324.7 and replace it with the following new sections 324.3 through 324.7:

324.3 Accuracy of ZIP + 4 Coding.

.31 Address Requirements.

a. *Standardized and Complete Address Required.* In order to ensure accurate matching of the address to the finest depth of ZIP + 4 code as required in section 324.2, standardized and complete address as set forth in the remainder of this section must be used on all pieces qualifying for the ZIP + 4 Presort rate, except that pieces prepared with barcodes as described in 324.7 may instead meet the addressing requirements in 325.4. Detailed guidelines for preparing standardized and complete addresses are set forth in Publication 28, *Postal Addressing Standards*. To the extent possible, the addresses on pieces bearing 5-digit ZIP Codes as permitted in 365 and 366, should also be standardized.

Note: For purposes of qualifying for nonpresorted ZIP + 4 rates and ZIP + 4 Presort rates, the OCR readability requirements in 324.8 must be met instead of those in Publication 28.

b. *General Definition.* A standardized and complete address is one that contains all delivery address elements, such as firm name, address (street) number, pre-directional, street name, suffix, post directional, secondary address unit designator and number (e.g. APT 202, STE 200, etc.), or rural route number and box number (e.g. RR 5 Box 10), highway contract route and box number (e.g. HC 4 Box 45), or post office box number (e.g. PO Box 456), necessary to obtain an exact match with the ZIP + 4 file currently in effect to the finest level of ZIP + 4 code. A standardized address must also contain the correct city, state and ZIP + 4 code. Only approved last line (city or place) names as described in the city-state file currently in effect must be used. The address elements can be fully spelled or abbreviated. When abbreviated, the delivery address line abbreviations must be obtained from the ZIP + 4 file and the last line abbreviations must be obtained from the city-state file. Standardized addresses must be output to the mailpiece in the format shown in Exhibit 122.36, and further specified in 122.35. Detailed guidelines for the standardized address format are contained in Publication 28, *Postal Addressing Standards*. Pieces with addresses that do not meet the standardized and complete address requirements do not qualify for ZIP + 4 rates, and further, must not show a ZIP + 4 code in the address.

Note: Pieces prepared with barcodes in accordance with 324.7 may meet the requirements of 324.4 instead of the requirements of this section although it is recommended that they use standardized address formats as required in this section.

c. *Secondary Address Units.* Firm names and secondary address unit designators and numbers that show the specific apartment, building, floor, suite, unit, room, department, etc., are required to appear in the address on the mailpiece where such firm names or secondary address unit numbers are necessary to obtain a match with the finest level of ZIP + 4 code in the ZIP + 4 database. In instances where a firm name or secondary address unit number is needed to obtain the finest level of ZIP + 4 code, but is not known, the address that appears on the mailpiece must not bear a ZIP + 4 code (nor may the piece bear a ZIP + 4 barcode if prepared in accordance with 324.7). This means that alternative or default ZIP + 4 codes for a building are not acceptable on mailpieces entered at the ZIP + 4 rates when finer ZIP + 4 codes for apartment ranges, floors, suites, firms, etc., within that building are listed in the USPS ZIP + 4 database.

Note: To enhance delivery of mailpieces, mailers should make every effort to place secondary address unit designators and numbers on mailpieces where they exist for an address, even when secondary address unit numbers (or ranges of numbers) are not contained in the ZIP + 4 file for that street address and, therefore, are not needed to obtain a match to the finest level of ZIP + 4 code.

d. *Rural Routes and Highway Contract Routes.* A standardized and complete address for rural routes and highway contract routes contains the rural route or highway contract route number and the box number necessary to obtain an exact match with the ZIP + 4 file currently in effect to the finest possible level of ZIP + 4 code. The rural route or highway contract route box number must appear in the address on the mailpiece when it is necessary to obtain the finest level of ZIP + 4 code. In instances where a box number is needed to obtain the finest level of ZIP + 4 code but is not known, the address that appears on the mailpiece must not bear a ZIP + 4 code (nor may the piece bear a ZIP + 4 barcode if prepared in accordance with 324.7). This means that alternative or default ZIP + 4 codes for the route are not acceptable on mailpieces entered at the ZIP + 4 rates when finer ZIP + 4 codes for specified

box number ranges within that route are listed in the USPS ZIP + 4 database.

Note: To enhance delivery of mailpieces, mailers should make every effort to place box numbers for rural routes and highway contract routes on mailpieces where they exist for an address, even when box numbers (or ranges of box numbers) are not contained in the ZIP + 4 file for that route and therefore are not needed to obtain a match to the finest level of ZIP + 4 code.

e. *Post Office Box Addresses.* Post office box addresses must contain a post office box number that can be exactly matched with the ZIP + 4 file currently in effect.

.32 Requirements for Standardizing Addresses, Determining if Addresses are Complete, and Assigning ZIP + 4 Codes

.321 *Permissible Methods.* Any of the methods listed below for standardizing addresses, determining if addresses are complete, and assigning ZIP + 4 codes to addresses may be used. No other methods are permissible.

a. National Change of Address (NCOA) process.

b. Coding Accuracy Support System (CASS) certified matching software for ZIP + 4 matching.

c. USPS diskette ZIP + 4 coding service.

d. PC or mini-computer based manual look-up system that uses CASS certified software.

.322 *Up-to-Date CASS Certification and ZIP + 4 Database.* The ZIP + 4 matching software described in 324.321 a through d, must, at the time of ZIP + 4 coding, have a valid CASS certification and use the current USPS ZIP + 4 base file that has been updated with all monthly or quarterly change transaction files pertaining to that base file.

.323 *Date of Matching.* Addresses in mailings must have been matched using the ZIP + 4 matching software and current ZIP + 4 database described in 324.322 to obtain the correct ZIP + 4 numeric code within 6 months of the mail entry date.

.324 *Matching Rules.* Software parameter options governing the matching logic or rules used in certified software that could result in an address with an incorrect ZIP + 4 code, or assignment of a ZIP + 4 code that is not the finest level of ZIP + 4 code for the complete address must not be used. The address output to the mailpiece must reflect any decisions made by the software in determining the ZIP + 4 code. For example, suppose a mailpiece for a given city and Zip Code contains the address 123 Main Street. The ZIP + 4 file shows both a North Main Street and a South Main Street for that city and each has a street address number range that includes 123. The software matching logic either must not assign a ZIP + 4 code to the mailpiece, or must revise the address to conform to the directional selected. If the address is revised to match the address shown for a selected ZIP + 4 code, that address, including the chosen directional, must be output to the mailpiece in a standardized format as required in 324.31.

.33 Required Documentation.

a. *A Vendor's CASS Certified Software.* Mailers must submit a copy of Form 35XX with each ZIP + 4 mailing. A copy of the vendor's CASS certification, a copy of the invoice, as well as a copy of the job specification and/or output report(s) that show services were received from the CASS certified vendor must be attached to the Form 35XX. The documents must show the date the services were performed, the total number of addresses submitted for coding, and the total number of addresses successfully ZIP + 4 coded.

Note: National Change of Address (NCOA) licensees and the USPS (when USPS diskette coding service is used) are considered CASS certified vendors.

b. *A Mailer's CASS Certified Software.* Mailers using their own software that has a valid CASS certification must submit with each ZIP + 4 mailing a copy of Form 35XX. A copy of their CASS certification and internal records showing the date the mailing list was coded, the total number of addresses on the list, and the total number of addresses on the list that were successfully ZIP + 4 coded, must be attached to the Form 35XX.

c. *Mailings Comprised of or Derived From Several Different Mailing Lists.* When a mailing is comprised of addresses from several different mailing lists that may each have been ZIP + 4 coded by different methods or different mailers or vendors, the documentation described in 324.33 a and b must be provided for each mailing list included in the mailing. Example: A mailing contains addresses from Mailing List A that was ZIP + 4 coded by a CASS certified vendor, and addresses from part of Mailing List B that was ZIP + 4 coded with the mailer's CASS certified software. This mailing must be accompanied by a single Form 35XX, the supporting documents described in 324.33a (for Mailing List A) and the supporting documents described in 324.33b (for Mailing List B).

.34 *Obtaining CASS Certification.* Mailers must write or call the National Address Information Center at the following address to arrange for testing of their ZIP + 4 matching software.

CASS/ZIP + 4 MATCHING
NATIONAL ADDRESS INFORMATION CENTER
6060 PRIMACY PKY STE 101
MEMPHIS TN 38188–0001

Toll-free line: 1–800–238–3150
or in Tennessee: 1–800–233–0453

.35 *Obtaining ZIP + 4 Code Products.* Mailers may order the following ZIP + 4 products from the Postal Service:

a. *ZIP + 4 Base Tape and Quarterly Cumulative Updates.* This contains a master copy of the ZIP + 4 data base plus quarterly updates of all add, change, or delete actions that have occurred within the data base since the last release date.

b. *ZIP + 4 Base Tape and Monthly Transactions.* This contains a master copy of the ZIP + 4 data base plus monthly updates of all add, change, or delete actions that have occurred within the database since the last release date.

c. *Technical Guide.* This is a hard copy (paper) catalog that provides data formats and field definitions of the records in ZIP + 4 products. The guide automatically accompanies any ZIP + 4 product ordered. It may also be ordered independently for informational purposes.

d. *Ordering ZIP + 4 Tape Products.* The products in 324.35 a and b are available for the entire nation or for individual states and may be obtained by sending a written request and the appropriate payment to the following address:

ZIP + 4 PRODUCT ORDER
ADDRESS INFORMATION CENTER
6060 PRIMACY PARKWAY STE 101
MEMPHIS TN 38188–0008

For information on charges, call 1–800–238–3150. In the written request, mailers must specify the name of the tape product desired, whether the national tape is requested, or a list of the specific states requested. The written request must also specify which of the following magnetic tape characteristics are required:

1600 BPI or 6250 BPI
9 track
ASCII or EBCDIC
Reel or Cartridge at 38K BPI

324.4 Physical Mailpiece Requirements for Automation Compatibility

.41 Shape and Dimensions

.411 *Size.* Each piece in a mailing must meet the following requirements:

a. Its length must be at least 5 inches and not more than 11½ inches. This is the dimension parallel to the address.

b. Its height must be at least 3½ inches and not more than 6⅛ inches.

c. Its thickness must be at least .007 of an inch for pieces that do not exceed any of the following dimensions: 4¼ inches in height, 6 inches in length. Its thickness must be at least .009 of an inch for pieces greater than 4¼ inches in height or greater than 6 inches in length.

d. Its thickness must not exceed .250 of an inch.

Note: To qualify for postcard rates the size limits in 322.2a and b must be met (not smaller than 3½ by 5 inches, nor large than 4¼ by 6 inches, not less than .007 of an inch thick, and not greater than .0095 of an inch). All other requirements for post cards in 322 must also be met to quality for the postcard rates.

.412 *Shape.* Each piece in the mailing must be rectangular in shape.

.413 *Aspect Ratio.* For each piece in the mailing, the length of the piece divided by its height must not be less than 1.3 nor more than 2.5.

.42 *Weight.* The weight of a mailpiece, including its contents, must not exceed 2.5 ounces.

.43 Mailpiece Construction

.431 *Enveloped or Secured Edges.* Except as provided in 324.432 and 324.433, each piece in a ZIP + 4 mailing must be:

a. Prepared in a sealed envelope (the perferred method of preparation), or

b. Sealed or glued on all four edges.

Note: Clasps, staples, string, buttons or other protrusions that may cause equipment jams and damage to the mail must not be used to seal mail.

.432 *Folded Self-Mailers and Double Postcards.* Single or multiple sheets folded into a letter-size self-mailer and double post cards need not comply with 324.431 if they are prepared so that the fold is on the longest edge and at the bottom of the mailpiece parallel to the address, and the top edge contains a minimum of two tabs used to hold the piece together. The first tab must be placed within one inch of the left edge of the mailpiece. The second tab must be placed within one inch of the right edge of the mailpiece. The tabs must not interfere with recognition of postage information, rate markings, or return addresses. See Exhibit 324.432. The tabs must be held in place by permanent gum or pressure sensitive non-removable adhesive. Cellophane tape is acceptable. Additional tabs may be placed on such mailpieces. As an alternative to the use of tabs, the top edge may be spot glued with a permanent glue or adhesive in the same manner and locations specified above for tabs, or the top edge may be continuously glued.

Note: Clasps, staples, string, buttons or other protrusions which may cause equipment jams and damage to the mail must not be used to tab or seal mail.

BILLING CODE 7710-12-M

EXHIBIT 324.432 – Preparation of Folded Self-Mailers and Double Postcards

BILLING CODE 7710-12-C

.433 *Booklet-Type Mailpieces.* Multiple pages bound together to form a letter-size book or booklet-type mailpiece need not comply with 324.431 if prepared so that the bound edge or spine is on the longest edge and at the bottom of the mailpiece parallel to the address, and the top unbound edge of the mailpiece contains a minimum of two tabs used to hold the edges together. The first tab must be placed within one inch of the left edge of the mailpiece. The second tab must be placed within one inch of the right edge of the mailpiece. The tabs must not inerfere with recognition of postage information, rate markings, or return addresses. See Exhibit 324.433. The tabs must be held in place by permanent gum or pressure sensitive non-removeable adhesive. Cellophane tape is acceptable. Additional tabs may be placed on such mailpieces. As an alternative to the use of tabs, the pages may be spot glued at the top edge with a permanent glue or adhesive in the same manner and locations specified above for tabs, or the top edge may be continuously glued.

Note: Clasps, staples, string, buttons or other protrusions that may cause equipment jams and damage ot the mail must not be used to tab or seal mail.

BILLING CODE 7710-12-M

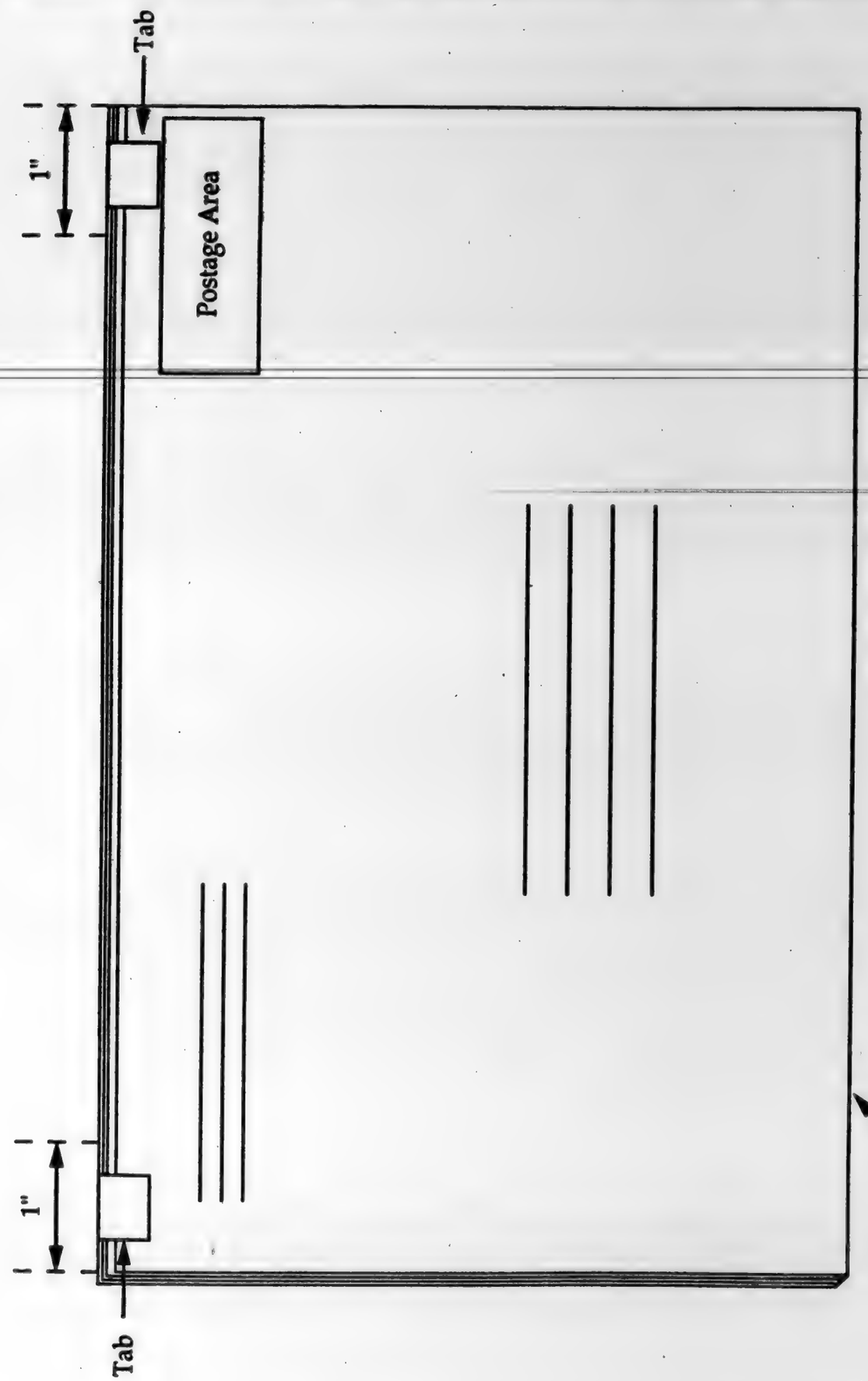

EXHIBIT 324.433 – Preparation of Booklet-Type Publications

BILLING CODE 7710-12-C

.434 Contents of Mailpiece.

a. *Flexibility.* The mailpiece and its contents must be reasonably flexible to ensure transport through automated equipment. The mailpiece, including its contents, must be able to bend easily when subjected to a transport belt tension of 40 pounds around an 11-inch diameter drum. Pens, pencils, keys, bottle caps and other rigid items are prohibited within mailpieces. Reasonably flexible items such as credit cards are permissible.

b. *Odd Shaped Items.* Odd-shaped items such as small coins and tokens that meet the flexibility criteria of 324.434a are permissible within mailpieces only if they are firmly affixed to part of the contents of the mailpiece and are wrapped in the envelope's other contents so that the shape of the mailpiece is streamlined to facilitate automated processing.

.435 *Adhesive on Address Labels and Stickers.* Address labels and other labels and stickers that are affixed to the outside of mailpieces must be affixed with permanent gum or pressure sensitive non-removable adhesive, and must be completely and uniformly affixed to the mailpiece.

Note: Pressure sensitive labels provided to mailers by the USPS for purposes of labeling packages to sortation levels are made with pressure sensitive non-removable adhesive and are permissible on the outside of mailpieces.

.44 Stiffness.

a. *Pieces Other than Cards.* Paper envelopes and paper used to prepare folded self-mailers must have a minimum basis weight of 20 pounds, using a 17 inch by 22 inch sheet size and 500 sheets. The front and back covers of unenveloped bound mailpieces such as catalogs, booklets and brochures, must meet the 20 to 20 pound minimum basis weight requirement. The front and back sheets of mailpieces formed of cut sheets that are glued on the outer edges must meet the 20 pound minimum basis weight requirement. See also the minimum thickness requirements in 324.411c.

b. *Cards.* Cards must be printed on paper stock meeting a standard industry basis weight of 75 pounds or greater, with none less than 71.25 pounds, for 500 sheets measuring 25 inches by 38 inches. The paper must be free from groundwood except when coated with a substance that adds to the paper's ability to resist an applied bending force.

Note: Cards exceeding 4¼ inches in height, 6 inches in length, or .0095 of an inch in thinckness are subject to postage at the applicable regular First-Class rate for matter other than cards. Cards exceeding 4¼ inches in height or 6 inches in length must also have a minimum thickness of .009 of an inch as described in 324.411c. In addition, since the importance of thickness and stiffness increases as card size increases, it is recommended that cards exceeding 4¼ inches in height or 6 inches in length be produced from stock with a higher basis weight. Recommended examples are: (1) a vellum Bristol with a basis weight of at least 80 pounds (22½ inches × 28½ inches, 550 sheet base); (2) an Index stock with a basis weight of at least 90 pounds (25½ inches ×30½ inches, 500 sheet base); or (3) an offset stock with a basis weight of at least 100 pounds (25 inches ×38 inches, 500 sheet base).

.45 Ability to Accept U.S. Postal Service Ink Jet Printer Appliced Water-Based Barcode Ink. The paper or other material used for the envelope or outermost sheet of the address side of ZIP + 4 rate mailings must allow printing of barcodes by USPS ink jet printers used with Optical Character Reader (OCR) equipment without smearing. The paper must allow water-based ink applied with ink-jet to dry within ½ of a second without smearing. Coatings, particularly glossy coatings, may prevent the water-based ink from USPS ink jet printer applied barcodes from drying quickly. Similarly, certain non-paper, plastic-like materials such as spun bonded olefin are not acceptable for ZIP + 4 rate mailings because they will not allow water-based USPS ink jet applied barcode ink to dry without smearing. Glossy paper, paper with glossy coatings and non-paper materials will be accepted at the ZIP + 4 rates only if approved by the USPS Engineering and Development Center, 8403 Lee Highway, Merrifield, VA 22082–8101. Such approval will be granted only if testing shows the material will allow water-based USPS ink jet applied ink to dry within ½ of a second. A written request for testing and a minimum of 50 sample mail pieces must be submitted to the USPS Engineers and Development Center for testing and approval at least 6 weeks prior to mailing at ZIP + 4 rates. A copy of the request for approval must be sent to the office of mailing along with one sample piece. A copy of the letter of approval must accompany the mailing.

Note: Poly-wrapped or poly-bagged materials are not accepted at ZIP + 4 rates.

324.5 *Barcode Clear Zone.* The barcode clear zone is the rectangular area formed inside the following boundaries: ⅝ of an inch from the bottom edge of the mailpiece, 4⅛ inch from the right edge of the mailpiece, and the bottom edge. See Exhibit 324.5. No printing or markings that would lower the reflectance (see section 324.65a) to less than 50 percent in the red and 45 percent in the green portions of the optical spectrum, except for a properly prepared barcode in accordance with 324.8, can be placed within the barcode clear zone. In addition, the bottom edge of address windows must be at least ½ of an inch from the bottom edge of the envelope.

Note: Pieces prepared with a window in the barcode clear zone through which a barcode printed on an insert will show may be used only under the conditions in 324.7. If a ZIP + 4 barcode does not appear through the window (there is either no barcode or there is a 5-digit barcode), the piece will not qualify for the ZIP + 4 rate and may not count toward the requirement in 365.22 or 366.11b that at least 85 percent of the pieces in a combined ZIP + 4 Presort mailing bear a ZIP + 4 code.

324.6 OCR Readability.

.61 *OCR Read Area.* The OCR read area is a rectangular area on the address side of the mailpiece formed inside the following boundaries:

a. ½ inch from the left edge.

b. ½ inch from the right edge.

c. 2¾ inches from the bottom edge (top of the rectangular area).

d. ⅝ of an inch from the bottom edge (bottom of the rectangular area).

See Exhibit 324.61.

BILLING CODE 7710-12-M

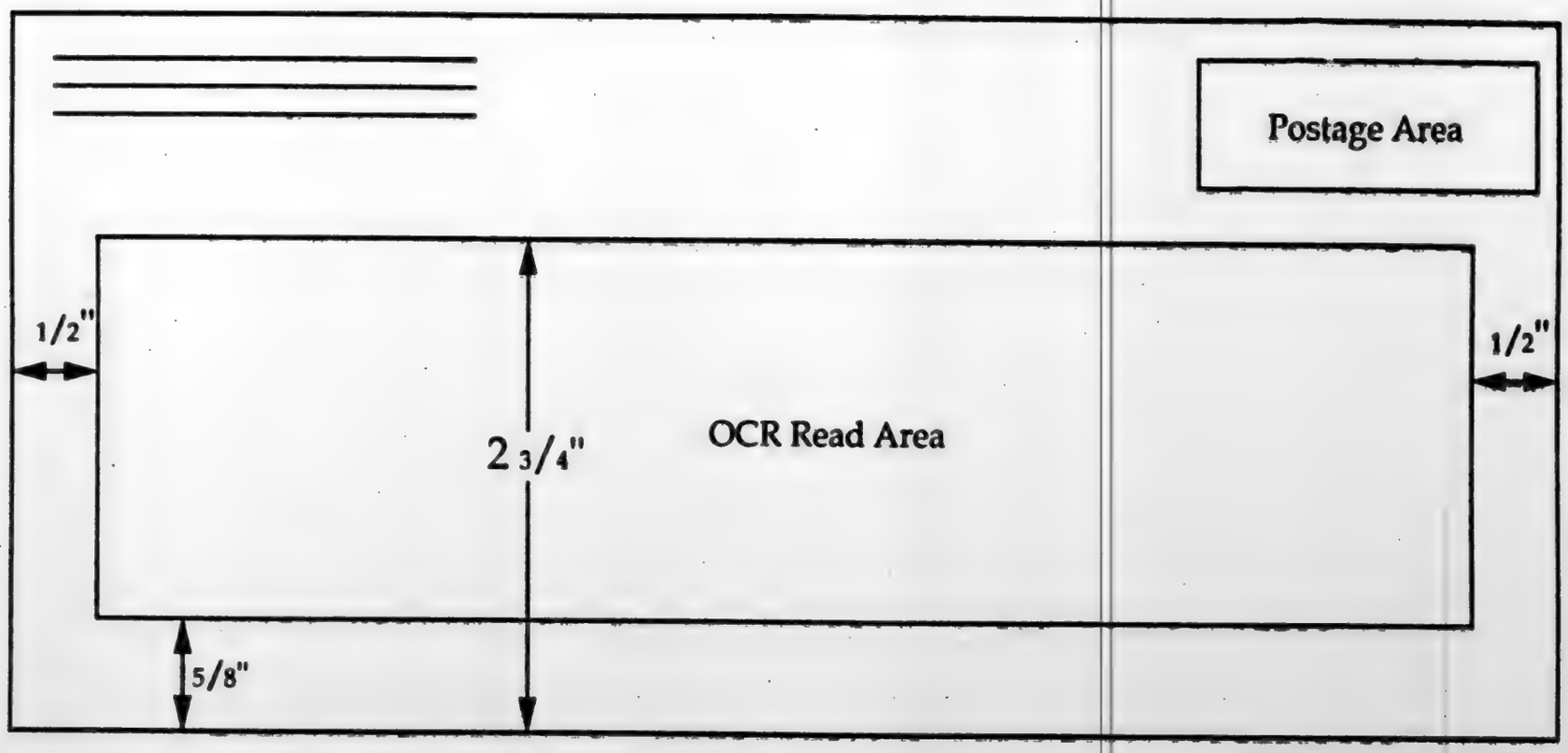

EXHIBIT 324.61 – OCR Read Area

BILLING CODE 7710-12-C

.62 *Placement of Address.* All lines of the address (exclusive of optional lines above the name of recipient line) must be contained within the OCR read area defined in 324.61. A uniform left margin must be maintained for the name and address information. See 324.31 for further requirements governing the address format and content.

.63 *Limits for Non-Address Printing in OCR Read Area.*

a. *Non-Address Printing or Markings.* There must be no markings, printing, or die cuts (except for the edges of address windows prepared in accordance with 324.66) in the OCR read area on either side of, or below, any of the address lines. Non-address printing or markings may appear within the OCR read area only if positioned above the address lines. This requirement also applies to addresses printed on inserts in window envelopes. For purposes of this section, address lines include the name of the recipient, firm name, building name, apartment or other secondary address unit numbers, house or building numbers, street, rural route number, highway contract route number, box number, city, state and ZIP Code. For purposes of this section, address lines exclude optional lines above the name of recipient line such as keylines and optional endorsement lines.

b. *Return Addresses.* Return address information must not appear within the OCR Read Area. The return address must appear in the top left corner of the mailpiece, and extend no further than 50 percent (half) of the length of the mailpiece to the right edge and no lower than 33.3 percent (one-third) of the height of the mailpiece from the top as shown in Exhibit 324.63b.

BILLING CODE 7710-12-M

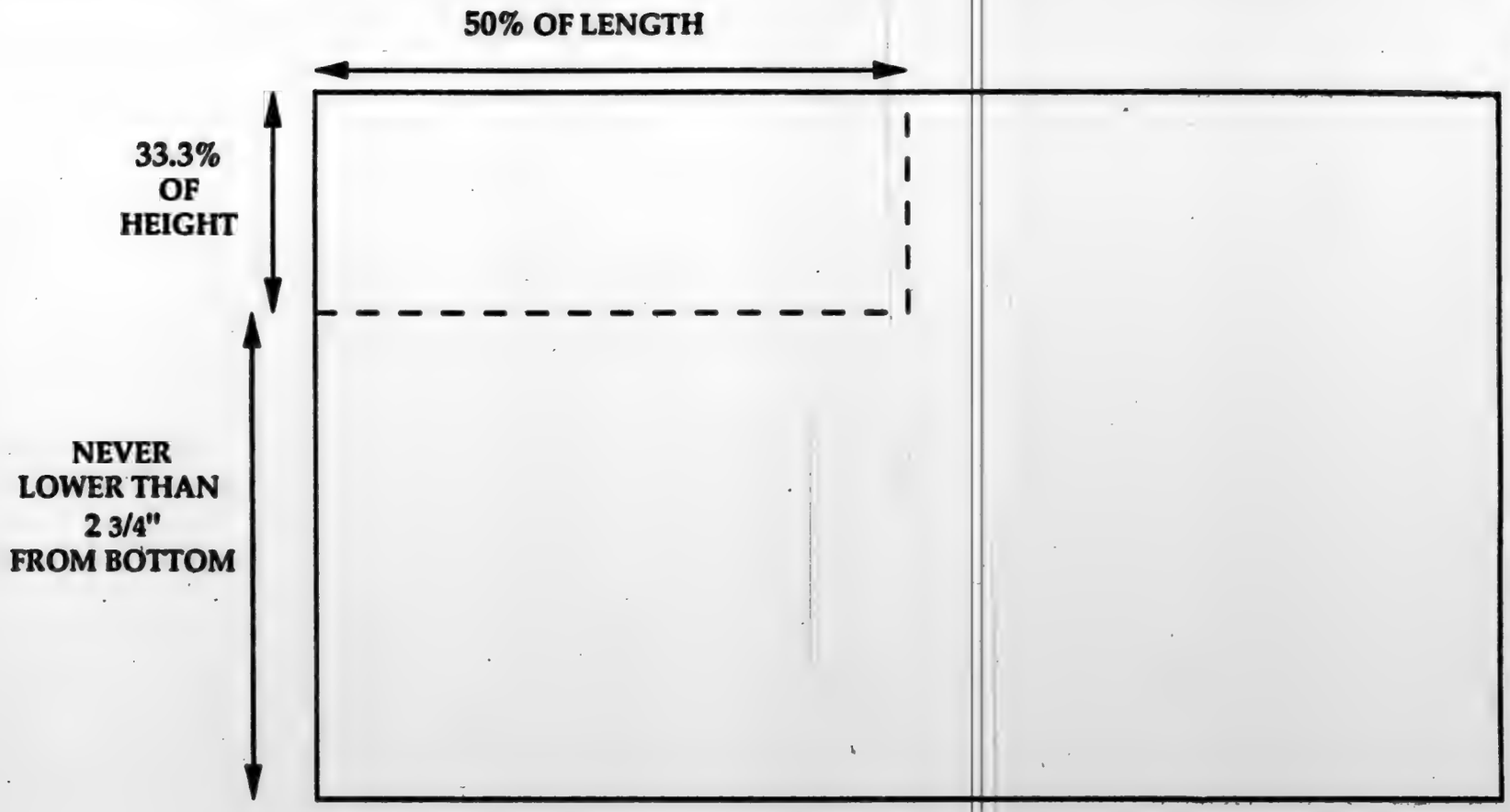

EXHIBIT 324.63b – Placement of Return Addresses

BILLING CODE 7710-12-C

c. *Mailer Endorsements.* Mailer endorsements concerning forwarding, return, and address correction services must not appear within the OCR Read Area. They must, however, appear below the return address (preferably, immediately below the return address) and meet all other requirements of 159.151 and 122.17.

.64 Optical Character Reader (OCR) Readable Type Required.

a. *General.* A type font that is readable by USPS Optical Character Reader (OCR) equipment is required. Type fonts that meet the requirements in 324.64 are considered OCR readable type fonts. Italic, script, artistic, cyrillic, other highly-stylized fonts, and dot matrix characters with separated matrix elements of .005 of an inch or more are not considered OCR readable. Block style typewriter and line printer type are normally OCR readable. The fonts identified in Exhibit 324.64a are acceptable and have been tested to meet the requirements of 324.64 b, d, e, and f.

b. *Machine Printed Addresses Required.* All lines of the delivery address must be machine printed. It is recommended that the entire address be printed in upper case characters.

c. *Print Quality.* A high degree of print quality must be maintained. Mailpieces bearing type that is smudged or faded or contains voids within character strokes or extraneous ink outside of character boundaries are not acceptable at ZIP + 4 rates.

The type styles in the left column have been tested on USPS OCRs and verified to have a high degree of readability. The styles in the right column have not been tested but are considered to be equivalent type faces by the National Composition Association*. Each horizontal grouping is considered to be a family of equivalent typefaces.

EXHIBIT 324.64A—OCR READABLE TYPE FONTS

Tested and verified	Similar styles
Century Light Schoolbook	Century.
Elite	
Friz Quadrata	
Futura Medium	Airport.
	Alphatura.
	Contempra.
	Futura.
	Photura.
	Sparta.
	Stylon.
	Tachica.
	Techno.
	Tempo.
	Twentieth Century.

EXHIBIT 324.64A—OCR READABLE TYPE FONTS—Continued

Tested and verified	Similar styles
	Vogue.
Helios	Akzidenz-Grotesk Buch.
Helios Light	Aristocrat.
Helvetica	Claro
Helvetica Light	Europa Grotesk.
Helvetica Regular	Geneva.
Megaron Bold	Hamilton.
Megaron Medium	Newton.
Triumvirate	Sonoman Sanserif.
Triumvirate Bold	Spectra.
Triumvirate Regular	Vega.
Honeywell H200	
IBM 1403	
IBM 1428	
Manifold 72	
Koronna Regular	Aquarius.
	Corona.
	Crown.
	Koronna.
	News No. 2.
	News No. 5.
	News No. 6.
	Nimbus.
	Royal.
News Gothic	Alpha Gothic.
Trade Gothic	Classified News.
Newtext Regular Condensed.	
OCR-A	
OCR-B	
Optima	Athana.
	Chelmsford.
	Musica.
	October.
	Omega.
	Optimist.
	Oracle.
	Roma.
	Theme.
	Zenith.
Pica	
Standard Typewriter	
Stymie Medium	Alexandria.
	Beton.
	Cairo.
	Kemak.
	Memphis.
	Pyramid.
	Rockwell.
Univers	Alphavers.
Univers 5	Eterna.
Univers Medium	Galaxy.
	Kosmos.
	Versatile.
Universal	

* Equivalent typefaces were taken from a book entitled "TYPEFACE ANALOGUE" by W. F. Wheatley for the National Composition Association.

d. *Character Height.* The height of address characters must be no less than 80 mils nor more than 200 mils. (A mil equals .001 of an inch.) Ten or twelve point plain style of type is recommended. (A point equals .0138 of an inch.)

e. *Character Stroke Width.* The width of address character strokes must be uniform and no less than 10 mils (¾ point) nor more than 30 mils (2 points).

f. *Character Height to Width Ratio.* The height of address characters divided by their width must fall between 1.1 and 1.7. A mid-range height to width ratio of about 1.4 to 1 is recommended (the height divided by the width is 1.4).

g. *Space Between Characters.* A clear vertical column of at least 10 mils (¾ point) and no more than 40 mils (3 points) must exist between each character of the address.

h. *Space Between Words.* A clear vertical space no less than the width of one full "em" character (e.g., capital M) or more than the width of five full characters must exist between words of the address. (This includes spacing between the state abbreviation and the ZIP + 4 code.)

i. *Space Between Lines of the Address.* Spacing between lines of the address must be uniform and no less than 30 mils (two points) or more than the height of two full characters. (Maximum of 400 mils or 29 points.)

j. *Skew of Address Lines.* The lines of the address must not be skewed (slanted) more than five degrees relative to the bottom edge of the mailpiece.

.65 Reflectance Requirements.

a. *Background Reflectance.* The material on which the delivery address will appear (envelope, card, insert material, or outermost sheet) must produce a background reflectance of at least 50 percent in the red and 45 percent in the green portions of the optical spectrum. (White and pastel colors generally satisfy this requirement.) These reflectance measurements must be made with a USPS envelope reflectance meter.

b. *Print Contrast Ratio—Contrast Between the Ink Used in the Address and the Background of the Mailpiece.* A print contrast ratio greater than or equal to 40 percent in both the red and green portions of the optical spectrum is required. If glassine windows are used the print contrast ratio must be greater than or equal to 45 percent. The print contrast ratio is determined in the following manner:

$$PCR = \frac{\text{Reflectance of the background}}{\text{Reflectance of the background} - \text{Reflectance of the ink}} \times 100 = \%$$

Note: This requirement is generally satisfied by using black or dark blue ink on a white background. Other color combinations should be measured to ensure compliance with the minimum print contrast ratio.

c. *Print Contrast Ratio—Opacity.* Envelope material, insert material as

viewed through an envelope window, or the outermost sheet of a mailpiece, must have sufficient opacity to prevent non-address printing from "showing through" to the extent that it will affect OCR processing. The print contrast ratio of the non-address print that shows through in the OCR read area and barcode clear zone must not exceed 15 percent when measured in the red and green spectra. (See section 324.65b for an explanation of how to compute the print contrast ratio.)

d. *Print Contrast Ratio—Dark Fibers and Background Patterns.* The material on which the delivery address will appear (envelope, card, insert material, or outermost sheet) must not contain dark fibers or background patterns (checks, etc.) that produce a print contrast ratio of more than 15 percent when measured in the red and green spectra. If material on which the delivery address will appear is printed in a "halftone screen" it must not contain fewer than 200 lines per inch or be printed with more than a 20 percent screen (dot size).

.66 Additional Requirements for Envelopes with Address Windows and Their Inserts.

a. *Clear Space Required Between Address and Address Window Edges.* A clear space of at least ⅛ of an inch must be left between the address block and the top, bottom, and side edges of the window. This clear space must exist, even when the insert is moved to its full limits in each direction within the envelope. The bottom edge of the address window must not extend more than ⅛ of an inch into the barcode clear zone (see 324.5).

b. *Window Covers.* Address windows, if covered, must be covered with a non-tinted clear or transparent material glued securely on all edges. The recommended window cover material is cellophane or polystyrene. The address, as viewed through the window material, must meet the minimum print contrast ratios described in 324.65. Certain types of glassine material interfere with OCR readability. Therefore, glassine may be used for window cover material only if the address information measured through the glassine meets a print contrast ratio of 45 percent (as measured by 324.65b).

324.7 Prebarcoded Mail at ZIP + 4 Rates

.71 General Requirements

a. *Pieces Prepared With ZIP + 4 Barcodes.* Mailers may elect to enter at ZIP + 4 rates, mailings that have been prepared with ZIP + 4 barcodes that meet the barcoding specifications listed in 325.51. Mailpieces that bear a correct ZIP + 4 barcode need not bear a numeric ZIP + 4 code in the address, and need not meet the OCR readability requirements in 324.6 to qualify for ZIP + 4 rates. Furthermore, mailers may comply with the addressing requirements in 325.4 instead of the requirements in 324.3. All other requirements of 324 must be met.

b. Pieces Prepared With Five-Digit Barcodes.

(1) *General.* ZIP + 4 Presort rate mailings prepared with ZIP + 4 barcodes and prepared under the provisions of 365 or 366 may include pieces with 5-digit barcodes. All pieces bearing a 5-digit barcode must meet the requirements of 324.2 through 324.5, except that mailers may meet the addressing requirements in 325.4 instead of the requirements in 324.3. The 5-digit barcode must meet the specifications in 325.51c through h and 325.52b. The 5-digit barcode must also meet the requirements in 324.71b(2) or b(3).

(2) *Five-Digit Barcodes Printed Directly on Mailpieces.* The location of the barcode must be as described in 325.51b except that the left-most bar of the barcode must be located between 3-7/6 inches and 4 inches from the right edge of the mailpiece (see Exhibit 325.52c(1)). If such pieces also bear a numeric ZIP + 4 code in the address and meet the standardized address requirements in 324.3 and the OCR readability requirements in 324.6, they may qualify for the ZIP + 4 Presort rate or for the nonpresorted ZIP + 4 rate, and may count toward the 85 percent ZIP + 4 requirement in 365.22 or 366.11b. Otherwise, they are eligible only for Presorted First-Class or single-piece First-Class rates.

(3) *Five-Digit Barcodes Printed on Inserts.* Five-digit barcodes printed on inserts that will appear through a window in the barcode read area must be located in accordance with either 325.51h(2) or 325.52c(1). Such pieces cannot qualify for the ZIP + 4 Presort rate nor, if in the residual portion, for the nonpresorted ZIP + 4 rate, and may not count toward the 85 percent ZIP + 4 requirement in 365.22 or 366.11b. They will not qualify for the ZIP + 4 rates even if they bear a numeric ZIP + 4 code in the address, meet the standardized address requirements in 324.3, and the OCR readability requirements in 324.6.

c. Pieces Prepared Without Barcodes. ZIP + 4 Presort rate mailings prepared with ZIP + 4 barcodes and prepared in accordance with 365 or 366 may include pieces without any barcodes. Each piece without a barcode must meet the requirements in 324.2 through 324.5. If such pieces also bear a correct numeric ZIP + 4 code in the address, meet the complete and standardized address requirements in 324.3, the OCR readability requirements in 324.6, and do not bear a window in the barcode clear zone, they will qualify for the ZIP + 4 Presort rate, or, if in the residual portion, the nonpresorted ZIP + 4 rate. Such OCR readable pieces with complete and standardized addresses prepared without windows in the barcode clear zone may also count toward the 85 percent ZIP + 4 requirement in 365.22 or 366.11b. However, pieces bearing a window in the barcode clear zone that is blank may not qualify for any ZIP + 4 rates, nor may they count toward the 85 percent ZIP + 4 requirement in 365.22 or 366.11b, even if they bear a numeric ZIP + 4 code in the address, meet the standardized address requirements in 324.3, and meet the OCR readability requirements in 324.6.

PART 325—ZIP + 4 BARCODED RATE

7. In 325.11a, delete the words "324.72 through 324.77, and".

8. Revise 325.11b to read:

b. Meet the physical requirements for automation compatibility in 324.41 through 324.44.

9. Revise 325.121a to read as follows:

a. *ZIP + 4 Barcoded Rate.* A piece in a 5-digit package will qualify for the ZIP + 4 Barcoded rate if it bears a correct ZIP + 4 barcode prepared in accordance with 325.51.

10. In 325.121b(1) change the phrase "and it meets the barcode clear zone and OCR readability requirements in 324.5 and 324.6." to "meets the standardized address format requirements in 324.3, and the barcode clear zone and OCR readability requirements in 324.5 and 324.6."

11. In 325.121b(2), change the phrase "and it meets the barcode clear zone and OCR readability requirements of 324.5 and 324.6" to "it meets the standardized address format requirements of 324.3; and it meets the barcode clear zone and OCR readability requirements in 324.5 and 324.6".

12. In the note under 325.121b(2), change the phrase "and meet the OCR readability and other requirements for the ZIP + 4 rate." to "and meet the OCR readability, standardized address format, and other requirements for the ZIP + 4 rates."

13. In 325.121c(2), change the phrase "and it does not meet the barcode clear zone and OCR readability requirements of 324.5 and 324.6 necessary to qualify for the ZIP + 4 Presort rate." to "and it

does not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements of 324.5 and 324.6 necessary to qualify for the ZIP + 4 Presort rate.

14. Revise the note under 325.121c(3) to read as follows:

Note: Such a piece is ineligible for the ZIP + 4 Presort rate even if it bears a ZIP + 4 code in the address and meets the OCR readability, standardized address format, and other ZIP + 4 preparation requirements.

15. In 325.122a(1) delete the reference "324.72 through 324.77, and".

16. Revise the note under 325.122a(1) to read as follows:

Note: When a piece bears a correct ZIP + 4 barcode, it is not necessary that a numeric ZIP + 4 code appear in the address, nor is it necessary for the piece to meet the standardized address format requirements in 324.3 or the OCR readability requirements in 324.6 to qualify for the ZIP + 4 Presort rates.

17. In 325.122a(2) change the phrase "and it meets the barcode clear zone and OCR readability requirements in 324.5 and 324.6." to "it meets the standardized address format requirements in 324.3; and it meets the barcode clear zone and OCR readability requirements of 324.5 and 324.6.

18. In the note under 325.122(3) change the phrase "and meet the OCR readability and other requirements for the ZIP + 4 rate." to "and meet the standardized address, OCR readability and other requirements for the ZIP + 4 rate."

19. In 325.122b(2), change the phrase "and it does not meet the barcode clear zone and OCR readability requirements" to "and it does not meet the standardized address format requirements in 324.3 or the barcode clear zone and OCR readability requirements".

20. Revise the note under 325.122b(3) to read as follows:

Note: Such a piece is ineligible for the ZIP + 4 Presort rate, even if it bears a ZIP + 4 code in the address and meet the standardized address format, OCR readability, and other ZIP + 4 preparation requirements.

21. In 325.123a(1), delete the words "324.72 through 324.77, and".

22. In 325.123a(2), change the phrase "and it meets the barcode clear zone and OCR readability requirements" to "it meets the standardized address format requirements in 324.3; and it meets the barcode clear zone and OCR readability requirements".

23. In 325.123a(3), change the phrase "and it meets the barcode clear zone and OCR readability requirements" to "it meets the standardized address format requirements in 324.3; and it meets the barcode clear zone and OCR readability requirements".

24. In the note under 325.123a(3), change the phrase "and meet the OCR readability" to "and meet the standardized address format, OCR readability,".

25. In 325.123b (2), change the phrase "and it does not meet the barcode clear zone and OCR readability requirements" to "and it does not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

26. In the note under 325.123b (3), change the phrase "and meets the OCR readability and other ZIP + 4 preparation requirements." to "and meets the standardized address format, OCR readability, and other ZIP + 4 preparation requirements."

27. Delete the title and first two sentences of 325.3 and replace them with the following. The remainder of this section (the exception and the note) is unchanged.

325.3 Required Percentage of ZIP + 4 Barcoded and Completely Addressed Pieces. At least 85 percent of the total pieces in each mailing must bear a correct ZIP + 4 barcode prepared in accordance with 325.51 and meet the complete address requirements of 324.4. This 85 percent requirement is applied to the total number of pieces in all presort levels in the mailing regardless of the rate claimed for an individual piece. The correct ZIP + 4 barcode is the one that represents the finest level (depth) of ZIP + 4 code listed in the current USPS ZIP + 4 database for the complete address, as defined in 325.4. The addressing, ZIP + 4 matching, and documentation requirements of 325.4 must also be met. Each piece, whether or not it bears a ZIP + 4 barcode, must bear either correct numeric ZIP + 4 code or the correct numeric 5-digit ZIP Code in the address.

28. Delete current 325.41 and 325.42. Renumber current 325.43 through 325.45 as 325.7 through 325.9.

29. Insert new 325.4 to read as follows:

325.4 Accuracy of ZIP + 4 Barcoding—Addressing and ZIP + 4 Database Matching Requirements.

.41 Complete Addresses Required

a. *General.* To ensure accurate matching of the address to the finest level of ZIP + 4 code, as required in section 325.3 complete addresses are required on all pieces in a ZIP + 4 barcoded rate mailing that bear a ZIP + 4 barcode. A complete address is one which contains all delivery address elements, such as firm name, address (street) number, predirectional, street name, suffix, post directional, secondary address unit designator and number (e.g. APT 202, STE 100, etc.) or rural route number and box number (e.g. RR5 Box 10), highway contract route and box number (e.g. HC 4 Box 45), or post office box number (e.g. PO BOX 456), necessary to obtain an exact match with the ZIP + 4 file currently in effect to the finest level of ZIP + 4 code. A complete address must also contain the correct city and state. Only approved last line (city or place) names as described in the city-state file currently in effect may be used. The address on each piece in the mailing must also bear either the correct 5-digit ZIP Code or the correct ZIP + 4 code. Pieces with addresses that do not meet the complete address requirements do not qualify for ZIP + 4 or ZIP + 4 barcoded rates and further, must not show a ZIP + 4 code in the address or a ZIP + 4 barcode on the mailpiece.

b. *Secondary Address Units.* Firm names and secondary address unit designators and numbers that show the specific apartment, building, floor, suite, unit, room, department, etc., are required to appear in the address on the mailpiece where such firm names or unit designators are necessary to obtain a match with the finest level of ZIP + 4 code in the ZIP + 4 database. In instances where a firm name or secondary address unit number is needed to obtain the finest level of ZIP + 4 code but is not known, the address that appears on the mailpiece must not bear a ZIP + 4 code and the piece must not bear a ZIP + 4 barcode. This means that alternative or default ZIP + 4 codes for a building are not acceptable on mailpieces entered at the ZIP + 4 barcoded rates or the ZIP + 4 Presort or nonpresorted ZIP + 4 rates when finer ZIP + 4 codes for apartment ranges, floors, suites, firms, etc., within that building are listed in the USPS ZIP + 4 database.

Note: To enhance delivery of mailpieces, mailers should make every effort to place secondary address unit designators and numbers on mailpieces where they exist for an address, even when secondary address unit numbers (or ranges of numbers) are not contained in the ZIP + 4 file for that street address and therefore are not needed to obtain a match with the finest level of ZIP + 4 code.

c. *Rural Routes and Highway Contract Routes.* A standardized and complete address for rural routes and highway contract routes contains the rural route or highway contract route number and box number necessary to obtain an exact match with the ZIP + 4

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file currently in effect to the finest possible level of ZIP + 4 code. The rural route or highway contract route box number must appear in the address on the mailpiece when it is necessary to obtain the finest level of ZIP + 4 code. In instances where a box number is needed to obtain the finest level of ZIP + 4 code but is not known, the address that appears on the mailpiece must not bear a ZIP + 4 code and the piece must not bear a ZIP + 4 barcode. This means that alternative or default ZIP + 4 codes for the route are not acceptable on mailpieces entered at the ZIP + 4 barcoded rates or the ZIP + 4 Presort or nonpresorted ZIP + 4 rates, when finer ZIP + 4 codes for specified box number ranges within that route are listed in the USPS ZIP + 4 database.

Note: To enhance delivery of mailpieces, mailers should make every effort to place box numbers for rural routes and highway contract routes on mailpieces where they exist for an address, even when box numbers (or ranges of box numbers) are not contained in the ZIP + 4 file for that route and therefore are not needed to obtain a match to the finest level of ZIP + 4 code.

d. *Post Office Box Addresses.* Post office box addresses must contain a post office box number that can be exactly matched with the ZIP + 4 file currently in effect.

.42 Requirements for Obtaining Correct ZIP + 4 Barcodes and Determining if Addresses are Complete.

.421 Permissible Methods. Any of the methods listed below for obtaining correct ZIP + 4 coding information to apply barcodes (and/or correct ZIP + 4 numeric codes if mailers wish to obtain the ZIP + 4 Presort or Nonpresorted ZIP + 4 rates on non-ZIP + 4 barcoded pieces as described in 325.12) and for determining if addresses are complete may be used. No other methods are permissible.

a. National Change of Address (NCOA) process.

b. Coding Accuracy Support System (CASS) certified matching software for ZIP + 4 matching.

c. USPS diskette ZIP + 4 coding service.

d. PC or mini-computer based manual look-up system that uses CASS certified software.

.422 Up-to-Date CASS Certification and ZIP + 4 Database. The ZIP + 4 matching software described in 325.421 a through d, must, at the time of ZIP + 4 coding, have a valid CASS certification and use the current USPS ZIP + 4 base file that has been updated with all monthly or quarterly change transaction files pertaining to that base file.

.423 Date of Matching. Addresses in mailings must have been matched using the ZIP + 4 matching software and current ZIP + 4 database described in 325.422 to obtain the correct ZIP + 4 barcode (and correct ZIP + 4 numeric code if mailers wish to obtain the ZIP + 4 Presort or Nonpresorted ZIP + 4 rates on non-ZIP + 4 barcoded pieces as described in 325.12) within 6 months of the mail entry date.

.424 Matching Rules. Software parameter options governing the matching logic or rules used in certified software that could result in applying an incorrect ZIP + 4 barcode to the mailpiece, or a ZIP + 4 barcode that does not represent the finest level of ZIP + 4 code for the address must not be used. If the address output to the address can be changed, any decisions made by the software in determining the ZIP + 4 code must be output to the address. For example, if a mailpiece for a given city and ZIP Code contains the address 123 Main Street, and the ZIP + 4 file shows both a North Main Street and a South Main Street for that city, and each has a street address number range that includes 123, the software matching logic either must not assign a ZIP + 4 code and ZIP + 4 barcode to the mailpiece (since this is not a complete address as required in 325.41), or must assign one of the directionals to the address. If a directional is assigned to the address, the address output to the mailpiece must include the directional and the barcode printed on the mailpiece must be the correct one for the directional printed on the mailpiece. If the address output to the mailpiece cannot be changed, such as in OCR processing, the matching logic used must prevent application of a ZIP + 4 barcode to mailpieces with an incomplete or inaccurate address.

.43 Required Documentation.

a. *A Vendor's CASS Certified Software.* Mailers must submit a copy of Form 35XX with each ZIP + 4 barcoded rate mailing. A copy of the vendor's CASS certification, a copy of the invoice, as well as a copy of the job specification and/or output report(s) that show services were received from the CASS certified vendor must be attached to the Form 35XX. The documents must show the date the services were performed, the total number of addresses submitted for coding, and the total number of addresses successfully ZIP + 4 coded and/or ZIP + 4 barcoded.

Note: National Change of Address (NCOA) licensees and the USPS (when USPS diskette coding service is used) are considered CASS certified vendors.

b. *A Mailer's CASS Certified Software.* Mailers using their own software that has a valid CASS certification must submit with each ZIP + 4 barcoded rate mailing a copy of Form 35XX. A copy of their CASS certification and internal records showing the date the mailing list was coded, the total number of addresses on the list, and the total number of addresses on the list that were successfully ZIP + 4 coded and/or ZIP + 4 barcoded, must be attached to the Form 35XX.

c. *Mailings Comprised of or Derived from Several Different Mailing Lists.* When a mailing is comprised of addresses from several different mailing lists that may each have been ZIP + 4 coded and/or ZIP + 4 barcoded by different methods or different mailers or vendors, the documentation described in 325.43a and b must be provided for each mailing list included in the mailing. Example: A mailing contains addresses from Mailing List A that was ZIP + 4 coded by a CASS certified vendor, and addresses from part of Mailing List B that was ZIP + 4 coded with the mailer's CASS certified software. This mailing must be accompanied by a single Form 35XX, the supporting documents described in 325.43a (for Mailing List A) and the supporting documents described in 325.43b (for Mailing List B).

.44 Obtaining CASS Certification. Mailers must write or call the National Address Information Center at the following address to arrange for testing of their ZIP + 4 matching software.

CASS/ZIP + 4 MATCHING
NATIONAL ADDRESS INFORMATION CENTER
6060 PRIMACY PKY STE 101
MEMPHIS TN 38188-0001

Toll-free line: 1-800-238-3150
or in Tennessee: 1-800-233-0453

.45 Obtaining ZIP + 4 Code Products. Mailers may order ZIP + 4 products as described in 324.35.

30. Delete 325.51a.

31. Renumber and retitle 325.51b, "Inserts" as 325.51h, "Barcodes on Inserts."

32. Renumber and retitle 324.72, "ZIP + 4 Barcodes" as 325.51a "ZIP + 4 Barcode Makeup." Within new 325.51a, change the references from "Exhibit 324.72" to "Exhibit 325.51a."

33. Insert new 325.51b through d as follows:

b. *Barcode Location.* The location of the ZIP + 4 barcode must be on the address side of the mailpiece and within a clear space known as the "barcode clear zone," which must be free of any printing other than the barcode. The barcode clear zone extends ⅝ of an inch from the bottom and at least 4½ inches from the right edge of the mailpiece. Within the barcode clear zone, the left-most bar of the barcode must be located between 3¼ inches and 4 inches from the right edge of the mailpiece (the horizontal position of the barcode). The vertical position of the barcode must be in the area between 5/16 of an inch and 7/16 of an inch from the bottom of the mailpiece. The bottom of the bars must be positioned ¼ of an inch (plus or minus 1/16 of an inch) from the bottom edge of the mailpiece (see Exhibit 325.51b). These horizontal and vertical placement limits form the rectangular "barcode read area." The entire barcode must be completely contained within the barcode read area. See Exhibit 325.51b. ZIP + 4 barcodes may be printed on inserts that will appear through a window on an envelope provided the window on the envelope and the barcode on the insert meet the specifications in 325.51g.

Note 1: Upon deployment of Wide Area Barcode Readers (WABCRs) which is expected to occur some time in 1991, printing and markings in the barcode clear zone will be acceptable provided they do not lower the background reflectance to less than 50 percent in the red and 45 percent in the green portion of the optical spectrum.

Note 2: Upon deployment of the Advanced Bar Code (ABC) system, the barcode clear zone and read area will be moved ¼ of an inch further to the left for those mailers printing barcodes in the lower right corner of the mailpiece. That is, the barcode clear zone will extend 4¾ inches from the right edge of the mailpiece, and the left-most bar of the barcode must begin between 4¼ and 3½ inches from the right edge of the mailpiece.

c. *Barcode Dimensions and Spacing.* A full bar must be .125 ± .010 of an inch in height. A half bar must be .050 ± .010 of an inch in height. The width of all bars must be equal and must be .020 ± .005 of an inch. Horizontal spacing of the bars must be 22 ± 2 bars per inch. Pitch (a bar and a space) must be at least .0416 of an inch and no greater than .050 of an inch. The spacing (a clear vertical column) between bars must never be less than .012 of an inch.

d. *Background Reflectance.* The material on which the barcode will appear (envelope, card, insert material, or outermost sheet) must produce a background reflectance of at least 50 percent in the red and 45 percent in the green portions of the optical spectrum. (White and pastel colors generally satisfy this requirement.) The reflectance measurements shall be made with a USPS envelope reflectance meter.

19. Renumber Exhibit 324.72 as Exhibit 325.51a.

20. Renumber Exhibit 324.73 as Exhibit 325.51b.

21. Renumber and retitle 324.75, "Background Contrast" as 325.51e, "Background and Barcode Reflectance Difference."

22. Renumber 324.76 and 324.77 as 325.51f and 325.51g.

23. Add new 325.51h(1)(e) as follows:

(e) The top edge of the window must be at least ⅝ of an inch from the bottom of the mailpiece.

24. Delete 325.51h(2)(b). Renumber 325.51h(2)(c) as 325.51h(2)(b).

25. Insert note under new 325.51h(2)b as follows:

Note: Upon deployment of Wide Area Barcode Readers (WABCRs) which is expected to occur some time in 1991, printing and markings in the barcode clear zone will be acceptable provided they do not lower the background reflectance to less than 50 percent in the red and 45 percent in the green portion of the optical spectrum.

26. Delete 325.51b(2)(d) and insert new 325.51g(2) (c) and (d) as follows:

(c) The barcode must meet the location requirements in 325.51b. These location requirements must be met when the insert is moved to any of its limits within the envelope.

(d) A clear space of at least ⅛ of an inch must be left between the barcode and the top, left and right edges of the window. (There must be no bottom edge to the window as described in 325.51h(1)(b).) This clear space must exist, even when the insert is moved to any of its limits within the envelope.

27. In 325.52a, change the reference "324.74 through 324.77" to "325.51 c through h."

28. In 325.52b, change the references "324.72" to "325.51a."

29. In 325.52c(1), change the reference "324.73" to "325.51b."

30. In 325.52c(2), change the reference "325.51b(2)" to "325.51h(2)."

31. In the note under 325.52c(2), change the phrase "and meet the OCR readability" to "and meet the standardized address format, OCR readability".

32. Insert new 325.6 to read as follows:

325.6 Physical Requirements. Each piece in the mailing must meet the physical requirements for automation compatibility in 324.41 through 324.44. In addition, poly-wrapped or poly-bagged pieces are not permissible at ZIP + 4 barcoded rates.

PART 361—ADDRESSING

33. Add the following sentence to the end of 361.5:

See 324.2 and 324.3 for a further definition of a correct ZIP + 4 code and further requirements concerning addressing for ZIP + 4 rate mailings.

34. In 361.6 change the reference "324.71c through 324.77 and 325.51b," to "325.51". Add the following sentence to the end of this section: See 325.3 and 325.41 for a further definition of correct ZIP + 4 code, correct ZIP + 4 barcode, and further requirements concerning addressing for ZIP + 4 barcoded mailings.

PART 364—ZIP + 4 BARCODED FIRST-CLASS MAIL

35. In the exception under 364.411, change the reference "324.72 through 324.77, and 325.51" to "325.51."

36. In 364.412b(1), change the reference "324.72 through 324.77, and 325.51" to "325.51."

37. In 364.412b(2)(a), insert the phrase "meet the standardized address format requirements in 324.3," after the phrase "contain the correct ZIP + 4 code in the address,".

38. In 364.412b(2)(b), insert the phrase "meet the standardized address format requirements in 324.3," after the phrase "contain the correct ZIP + 4 code in the address,".

39. In the note under 364.412b(2)(b), insert the phrase "meet the standardized address format requirements," after the phrase "even if they bear a numeric ZIP + 4 code in the address,".

40. In 364.412b(3)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

41. In 364.412c(1) change the reference "324.72 through 324.77, and 325.51" to "325.51".

42. Change the note in 364.412c(1) to read as follows:

Note: When a piece bears the correct ZIP + 4 barcode, it is not necessary that a numeric ZIP + 4 code appear in the address, nor is it necessary to meet the standardized address format requirements in 324.3 or the OCR readability requirements in 324.6, to qualify for the ZIP + 4 Presort rates.

43. In 364.412c(2)(a), insert the phrase "meet the standardized address format requirements in 324.3," after the phrase "contain the correct ZIP + 4 code in the address,".

44. In 364.412c(2)(b), insert the phrase "meet the standardized address format requirements in 324.3," after the phrase "contain the correct ZIP + 4 code in the address,".

45. In the note under 364.412c(2)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the OCR readability and other requirements for the ZIP + 4 rate" to

"even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

46. In 364.412c(3)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

47. In 364.412c(3)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

48. In 364.412c(4)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

49. In 364.412c(4)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

50. In 364.412c(5)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

51. In 364.412c(5)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

52. In 364.412c(6)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

53. In 364.412c(6)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

54. In 364.412c(7)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

55. In 364.412c(7)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

56. In 364.412c(8)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

57. In 364.412c(8)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

58. In 364.412c(9)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

59. In 364.412c(9)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

60. In 364.412c(10)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

61. In 364.412c(10)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

62. In 364.412c(11)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

63. In 364.412c(11)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

64. In 364.412c(12)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

65. In 364.412c(12)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

66. In 364.412c(13)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

67. In 364.412c(13)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

68. In 364.412c(14)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

69. In 364.412c(14)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

70. In 364.412c(15)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

71. In 364.412c(15)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

72. In 364.412c(16)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

73. In 364.412c(16)(b), change the phrase "even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

barcoding requirements of 624.63, 624.64 and 624.65.

74. Add the following sentence to the end of part 624.31:

It is strongly recommended that carrier route presort mailings *not* be prepared so that pieces in the mailing bear a 5-digit postnet barcode. If a carrier route presort rate mailing is

.432 Accuracy of ZIP + 4 Coding.

a. Address Requirements.

(1) *Standardized and Complete Addresses Required.* In order to ensure accurate matching of the address to the finest depth of ZIP + 4 code as required in section 624.431, standardized and complete addresses as set forth in the

recommended that they use standardized address formats as required in this section.

(3) *Secondary Address Units.* Firm names and unit designators and numbers that show the specific apartment, building, floor, suite, unit, room, department, etc., are required to appear in the address on the mailpiece

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"even if they bear a numeric ZIP + 4 code in the address and meet the standardized address format, OCR readability and other requirements for the ZIP + 4 rate".

46. In 364.412c(3)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

47. In 364.412d(1), change the reference "324.72 through 324.77, and 325.51" to "325.51".

48. Change the note in 364.412d(1) to read as follows:

Note: When a piece bears the correct ZIP + 4 barcode, it is not necessary that a numeric ZIP + 4 code appear in the address, nor is it necessary to meet the standardized address format requirements in 324.3 or the OCR readability requirements in 324.8, to qualify for the ZIP + 4 Presort rates.

49. In 364.412d(2)(a), insert the phrase "meet the standardized address format requirements in 324.3," after the phrase "contain the correct ZIP + 4 code in the address,".

50. In 364.412d(2)(b), insert the phrase "meet the standardized address format requirements in 324.3," after the phrase "contain the correct ZIP + 4 code in the address,".

51. In the note under 364.412d(2)(b), change the phrase "and meet the OCR readability and other ZIP + 4 requirements." to "and meet the standardized address format, OCR readability, and other ZIP + 4 requirements.".

52. In 364.412d(3)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements" to "and do not meet the standardized address format requirements in 324.3, or the barcode clear zone and OCR readability requirements".

53. Change the note under 364.412d(3)(b) to read as follows:

Note: Such pieces are ineligible for the nonpresorted ZIP + 4 rate even if they bear the ZIP + 4 code in the address and meet the standardized address format, OCR readability, and other ZIP + 4 preparation requirements.

54. In 364.42b, change the reference "324.72 through 324.77, and 325.51" to "325.52".

55. In 364.432a(1), change the reference "324.72 through 324.77, and 325.51" to "324.51".

56. In Exhibit 364.412, change the first footnote to read as follows:

"Does NOT include pieces prepared with a window in the barcode clear zone. The address must meet the standardized and complete address requirements, including the requirement for the correct numeric ZIP + 4 code, and be OCR readable.

57. In Exhibit 364.42, change the first footnote to read as follows:

"Does NOT include pieces prepared with a window in the barcode clear zone. The address must meet the standardized and complete address requirements, including the requirement for the correct numeric ZIP + 4 code, and be OCR readable.

PART 365—COMBINED PRESORT MAILINGS

58. Add the title "Minimum Quantity Requirement" to 365.21.

59. Revise 365.22 to read as follows:

365.22 *85 Percent Requirement.* At least 85 percent of the pieces in a combined mailing must bear a correct ZIP + 4 code, and either a complete and standardized address as required in 324.3, or if ZIP + 4 barcoded, a complete address as required in 325.4. The correct ZIP + 4 code is the finest level (depth) of ZIP + 4 code listed in the current USPS ZIP + 4 database (as defined in 324.32) for the complete address. All pieces that do not bear the correct numeric ZIP + 4 code must bear the correct numeric 5-digit ZIP Code.

60. Insert new 365.23 to read as follows:

365.23 *Other Requirements.* All pieces in the mailig must meet the requirements of 324.3 through 324.6.

61. Revise 365.24 to read as follows:

365.24 *Presort.* All pieces in a combined mailing (both 5-digit ZIP Coded and ZIP + 4 coded pieces) must be presorted together to the finest extent possible as required in 366.

62. Add the title "Rate Marking" to 365.25.

63. Add the title "Postage Payment" to 365.26.

64. Add the title "Carrier Route Presort Mailings" to 365.27. Delete the last sentence of 365.27 and replace it with "Nonqualifying pieces of a carrier route mailing may qualify for the ZIP + 4 rate only if all pieces in the mailing bear a ZIP + 4 code. See 367.424."

PART 366—PREPARATION REQUIREMENTS FOR OPTIONAL COMBINED ZIP + 4 PRESORT AND PRESORTED FIRST-CLASS MAILINGS (DESTINATING AT AUTOMATED SITES)

65. Change the title of 365.11a from "Minimum Pieces" to "Minimum Quantity Requirement."

66. Revise 366.11b to read as follows:

b. *85 Percent Requirements.* At least 85 percent of the pieces in the mailing must bear a correct ZIP + 4 code, and either the complete and standardized address as required in 324.3 or, if ZIP + 4 barcoded, a complete address as required in 325.4. The correct ZIP + 4 code is the finest level (depth) of ZIP + 4 code listed in the current USPS ZIP + 4 database (as defined in 324.32) for the complete address. All pieces that do not bear the correct numeric ZIP + 4 code must bear the correct numeric 5-digit ZIP Code.

67. Delete section 366.11c.

68. Renumber current 366.11d through f as new 366.11f through h.

69. Insert new 366.11c through e as follows:

c. *Other Requirements.* All pieces in the mailing must meet the requirements of 324.3 through 324.7.

d. *Presort.* All pieces in an optional combined mailing (both 5-digit ZIP Coded and ZIP + 4 coded pieces) must be presorted together to the finest extent possible as described in 366.2 through 366.4 and 366.12.

e. *Rate Marking.* All pieces must bear an appropriate rate category marking (see 362.5).

70. Add the following exception to the end of 366.11g:

Exception: Mailers may place pieces for 3-digit ZIP Code areas not listed in Exhibit 122.63m in the residual portion of the mailing. Such pieces must be paid for at the appropriate nonpresorted ZIP + 4 or single piece First-Class rates.

71. Add the following as the second sentence to 366.12: Residual pieces also include pieces a mailer wishes to include for a 3-digit ZIP Code area not listed in Exhibit 122.63m that also do not qualify for the presort rates under the provisions of 366.

PART 624—CONDITIONS FOR SPECIFIC BULK RATE PREPARATION LEVELS

72. Add the following sentence to the end of 624.11:

It is strongly recommended that basic level rate mailings *not* be prepared so that pieces in the mailing bear a 5-digit postnet barcode. If a basic level mailing is prepared with postnet barcodes (either ZIP + 4 or 5-digit) the pieces in the mailing must meet the ZIP Coding, addressing, documentation, and barcoding requirements of 624.63, 624.64 and 624.65.

73. Add the following sentence to the end of 624.21:

It is strongly recommended that five-digit level rate mailings *not* be prepared so that pieces in the mailing bear a 5-digit postnet barcode. If a five-digit level mailing is prepared with postnet barcodes (either 5-digit or ZIP + 4) the pieces in the mailing must meet the ZIP Coding, addressing, documentation, and barcoding requirements of 624.63, 624.64 and 624.65.

74. Add the following sentence to the end of part 624.31:

It is strongly recommended that carrier route presort mailings *not* be prepared so that pieces in the mailing bear a 5-digit postnet barcode. If a carrier route presort rate mailing is prepared with postnet barcodes (either ZIP + 4 or 5-digit) the pieces in the mailing must meet the ZIP Coding, addressing, documentation, and barcoding requirements of 624.63, 624.64 and 624.65.

75. In 624.4, change 624.41 to read as follows:

624.4 Basic ZIP + 4 Rate Mailings

624.41 *General.* Each mailing must meet the requirements of 623 in addition to the requirements in 624.4. Only letter-size pieces that bear a correct ZIP + 4 code and meet the requirements of 624.42 through 624.49 may qualify for the basic ZIP + 4 rate. Pieces in a basic ZIP + 4 mailing that bear only a correct 5-digit ZIP Code are subject to the basic level rate.

Note: Carrier route presort level rate pieces must not be included in a basic ZIP + 4 rate mailing.

76. Revise 624.43 to read as follows:

624.43 ZIP Code and Address Requirements

.431 *Required Percentage of ZIP + 4 Coded and Properly Addressed Pieces.* At least 85 percent of the total pieces in each mailing must bear the correct numeric ZIP + 4 code and meet the standardized and complete address requirements in 624.432. The correct ZIP + 4 code is the finest level (depth) of ZIP + 4 code listed in the current USPS ZIP + 4 database for the complete address, as further described in 624.432. Pieces not bearing the correct numeric ZIP + 4 code must bear the correct numeric 5-digit ZIP Code. Only pieces that bear a standardized and complete address that includes the correct numeric ZIP + 4 code, qualify for the basic ZIP + 4 rate.

Note 1: The 85 percent ZIP + 4 code requirement may be applied to a mailing list or cycle rather than an individual mailing under the conditions in 624.462.

Note 2: Pieces in a basic ZIP + 4 mailing prepared with ZIP + 4 barcodes must bear complete addresses including the correct numeric ZIP + 4 code, but need not show the addresses in the standardized address format, to qualify for the basic ZIP + 4 rate. See 624.49 for the requirements pertaining to barcoding pieces in basic ZIP + 4 rate mailings. For the requirements pertaining to ZIP + 4 barcoded rate mailings, see 624.6.

.432 *Accuracy of ZIP + 4 Coding.*

a. Address Requirements.

(1) *Standardized and Complete Addresses Required.* In order to ensure accurate matching of the address to the finest depth of ZIP + 4 code as required in section 624.431, standardized and complete addresses as set forth in the remainder of this section must be used on all pieces qualifying for the ZIP + 4 rates. An exception is that in mailings prepared with ZIP + 4 barcodes, the addressing requirements in 624.641 may be met as prescribed in 624.49 (and 624.59). Detailed guidelines for preparing standardized and complete addresses are set forth in Publication 28, *Postal Addressing standards.* To the extent possible, the addresses on pieces bearing 5-digit ZIP Codes as permitted in 624.431, should also be standardized.

Note: For purposes of qualifying for ZIP + 4 rates, OCR readability requirements in 624.451 through 624.456 must be met instead of those in Publication 28.

(2) *General Definition.* A standardized and complete address is one that contains all delivery address elements, such as firm name, address (street) number, pre-directional, street name, suffix, post directional, secondary address unit designator and number (e.g. APT 202, STE 100, etc.), or rural route number and box number (e.g. RR 5 Box 10), highway contract route and box number (e.g. HC 4 Box 45), or post office box number (e.g. PO Box 458), necessary to obtain an exact match with the ZIP + 4 file currently in effect to the finest level of ZIP + 4 code. A standardized address must also contain the correct city, state and ZIP + 4 code. Only approved last line (city or place) names as described in the city-state file currently in effect must be used. The address elements can be fully spelled or abbreviated. When abbreviated, the delivery address line abbreviations must be obtained from the ZIP + 4 file and the last line abbreviations must be obtained from the city-state file. Standardized addresses must be output to the mailpiece in the format shown in Exhibit 122.33, and further specified in 122.35. Detailed guidelines for the standardized address format are contained in Publication 28, Postal Addressing Standards. Pieces with addresses that do not meet the standardized and complete address requirements do not qualify for ZIP + 4 rates and further must not show a ZIP + 4 code in the address.

Note: Pieces prepared with barcodes in accordance with 624.49 (or 624.59), may meet the requirements in 624.641 instead of the requirements of this section although it is recommended that they use standardized address formats as required in this section.

(3) *Secondary Address Units.* Firm names and unit designators and numbers that show the specific apartment, building, floor, suite, unit, room, department, etc., are required to appear in the address on the mailpiece where such firm names or secondary address unit numbers are necessary to obtain a match with the finest level of ZIP + 4 code in the ZIP + 4 database. In instances where a firm name or secondary address unit number is needed to obtain the finest level of ZIP + 4 code but is not known, the address that appears on the mailpiece must not bear a ZIP + 4 code (nor may the piece bear a ZIP + 4 barcode if prepared in accordance with 624.49). This means that alternative or default ZIP + 4 codes for a building are not acceptable on mailpieces entered at the ZIP + 4 rates when finer ZIP + 4 codes for apartment ranges, floors, suites, firms, etc., within that building are listed in the USPS ZIP + 4 database.

Note: To enhance delivery of mailpieces, mailers should make every effort to place secondary address unit designators and numbers on mailpieces where they exist for an address, even when secondary address unit numbers (or ranges of numbers) are not contained in the ZIP + 4 file for that street address and, therefore, are not needed to obtain a match to the finest level of ZIP + 4 code.

(4) *Rural Routes and Highway Contract Routes.* A standardized and complete address for rural routes and highway contract routes contains the rural route or highway contract route number and the box number necessary to obtain an exact match with the ZIP + 4 file currently in effect to the finest possible level of ZIP + 4 code. The rural route or highway contract route box number must appear in the address on the mailpiece when it is necessary to obtain the finest level of ZIP + 4 code. In instances where a box number is needed to obtain the finest level of ZIP + 4 code but is not known, the address that appears on the mailpiece must not bear a ZIP + 4 code (nor may the piece bear a ZIP + 4 barcode if prepared in accordance with 624.49 or 624.59). This means that alternative or default ZIP + 4 codes for the route are not acceptable on mailpieces entered at the ZIP + 4 rates when finer ZIP + 4 codes for specified box number ranges within that route are listed in the USPS ZIP + 4 database.

Note: To enhance delivery of mailpieces, mailers should make every effort to place box numbers for rural routes and highway contract routes on mailpieces where they

exist for an address, even when box numbers (or ranges of box numbers) are not contained in the ZIP + 4 file for that route and therefore are not needed to obtain a match to the finest level of ZIP + 4 code.

(5) *Post Office Box Addresses.* Post office box addresses must contain a post office box number that can be exactly matched with the ZIP + 4 file currently in effect.

b. Requirements for Standardizing Addresses, Determining if Addresses are Complete, and Assigning ZIP + 4 Codes

(1) *Permissible Methods.* Any of the methods listed below for standardizing addresses, determining if addresses are complete, and assigning ZIP + 4 codes to addresses may be used. No other methods are permissible.

(a) National Change of Address (NCOA) process.

(b) Coding Accuracy Support System (CASS) certified matching software for ZIP + 4 matching.

(c) USPS diskette ZIP + 4 coding service.

(d) PC or mini-computer based manual look-up system that uses CASS certified software.

(2) *Up-to-Date CASS Certification and ZIP + 4 Database.* The ZIP + 4 matching software described in 624.432b(1) (a) through (d) must, at the time of ZIP + 4 coding, have a valid CASS certification and use the current USPS ZIP + 4 base file that has been updated with all monthly or quarterly change transaction files pertaining to that base file.

(3) *Date of Matching.* Addresses in mailings must have been matched using the ZIP + 4 matching software and current ZIP + 4 database described in 624.431b(2) to obtain the current ZIP + 4 numeric code within 6 months of the mail entry date.

(4) *Matching Rules.* Software parameter options governing the matching logic or rules used in certified software that could result in an address with an incorrect ZIP + 4 code, or assignment of a ZIP + 4 code that is not the finest level of ZIP + 4 code for the complete address must not be used. The address output to the mailpiece must reflect any decisions made by the software in determining the ZIP + 4 code. For example, suppose a mailpiece for a given city and ZIP Code contains the address 123 Main St. The ZIP + 4 file shows both a North Main Street and a South Main Street for that city and each has a street address number range that includes 123. The software matching logic either must not assign a ZIP + 4 code to the mailpiece, or must revise the address to conform to the directional selected. If the address is revised to match the address shown for a selected ZIP + 4 code, that address, including the chosen directional, must be output to the mailpiece in a standardized format as required in 624.432a.

c. Required Documentation

(1) *A Vendor's CASS Certified Software.* Mailers must submit a copy of Form 35XX with each ZIP + 4 mailing. A copy of the vendor's CASS certification, a copy of the invoice, as well as a copy of the job specification and/or output report(s) that show services were received from the CASS certified vendor must be attached to the Form 35XX. The documents must show the date the services were performed, the total number of addresses submitted for coding, and the total number of addresses successfully ZIP + 4 coded.

Note: National Change of Address (NCOA) licensees and the USPS (when USPS diskette coding service is used) are considered CASS certified vendors.

(2) *A Mailer's CASS Certified Software.* Mailers using their own software that has a valid CASS certification must submit with each ZIP + 4 mailing a copy of Form 35XX. A copy of their CASS certification and internal records showing the date the mailing list was coded, the total number of addresses on the list, and the total number of addresses on the list that were successfully ZIP + 4 coded, must be attached to the Form 35XX.

(3) *Mailing Comprised of or Derived from Several Different Mailing Lists.* When a mailing is comprised of addresses from several different mailing lists that may each have been ZIP + 4 coded by different methods or different mailers or vendors, the documentation described in 624.432c (1) and (2) must be provided for each mailing list included in the mailing. Example: A mailing contains addresses from Mailing List A that was ZIP + 4 coded by a CASS certified vendor, and addresses from part of Mailing List B that was ZIP + 4 coded with the mailer's CASS certified software. This mailing must be accompanied by a single Form 35XX, the supporting documents described in 624.432c(1) (for Mailing List A) and the supporting documents described in 624.432c(2) (for Mailing List B).

d. *Obtaining CASS Certification.* Mailers must write or call the National Address Information Center at the following address to arrange for testing of their ZIP + 4 matching software.

CASS/ZIP + 4 MATCHING
NATIONAL ADDRESS INFORMATION CENTER
6060 PRIMACY PKY STE 101 MEMPHIS TN 38188-0001

Toll-free line: 1-800-238-3150
or in Tennessee: 1-800-233-0433

e. *Obtaining ZIP + 4 Code Products.* Mailers may order the following ZIP + 4 products from the Postal Service:

(1) *ZIP + 4 Base Tape and Quarterly Cumulative Updates.* This contains a master copy of the ZIP + 4 database plus quarterly updates of all add, change, or delete actions that have occurred within the data base since the last release date.

(2) *ZIP + 4 Base Tape and Monthly Transactions.* This contains a master copy of the ZIP + 4 database plus monthly updates of all add, change, or delete actions that have occurred within the database since the last release date.

(3) *Technical Guide.* This is a hard copy (paper) catalog that provides data formats and field definitions of the records in ZIP + 4 products. The guide automatically accompanies any ZIP + 4 product ordered. It may also be ordered independently for informational purposes.

(5) *Ordering ZIP + 4 Tape Products.* The products in 624.432e(1) and (2) are available for the entire nation or for individual states and may be obtained by sending a written request and the appropriate payment to:

ZIP + 4 PRODUCT ORDER
ADDRESS INFORMATION CENTER
6060 PRIMACY PARKWAY STE 101
MEMPHIS TN 38188-0008

For fee information call 1-800-238-3150. In the written request mailers must specify the name of the tape product desired, whether the national tape is requested or a list of the specific states requested. The written request must also specify which of the following magnetic tape characteristics are required:

1600 BPI or 6250 BPI
9 track
ASCII or EBCDIC
Reel or Cartridge at 32K BPI

77. Delete 624.441 through 624.443.

78. Renumber 624.444 and 624.445 as 624.46 and 624.47.

79. Renumber section 624.446 as 624.48.

80. Renumber 624.448a as 624.481; renumber 624.446a(1) and (2) as 624.481a and b; renumber section 624.446b as 624.482.

81. In new section 624.481, change the reference "624.446b" to "624.482."

82. In new section 624.482, change the reference to "624.446a" to "624.481".

83. Renumber existing sections 624.45 through 624.47 as section 624.491 through 624.493. Insert the heading "624.49 Pieces Prepared With Barcodes and Barcode Windows" above new section 624.491.

84. Revise 624.491 to read as follows:

.491 Pieces Prepared With ZIP + 4 Barcodes. Barcodes representing the correct, finest level of ZIP + 4 code for the complete address shown on each piece as defined in 624.431 and 624.432, that are prepared in accordance with 624.65, may appear on pieces in a basic ZIP + 4 mailing. Pieces in basic ZIP + 4 rate mailings prepared with barcodes need not meet the OCR readability requirements in 624.451 through 624.456 to qualify for the basic ZIP + 4 rates. ZIP + 4 barcoded pieces may also meet the complete address requirements in 624.64 instead of the standardized and complete address requirements in 624.432. In either case, pieces bearing a ZIP + 4 barcode must also bear a numeric ZIP + 4 code in the address to qualify for the basic ZIP + 4 rate. ZIP + 4 barcoded pieces that do not bear the correct numeric ZIP + 4 code must bear the correct numeric 5-digit ZIP Code in the address and will qualify for the basic rate.

85. In new 624.492, change the reference "624.43" to "624.431".

86. In new 624.492, change the phrase at the end of the second sentence "and the pieces meet the OCR readability requirements in 624.443" to "the pieces meet the OCR readability requirements in 624.451 through 624.456, and the pieces meet the standarized and complete address requirements in 624.432."

87. In new 624.492, change the phrase at the end of the last sentence "even if the pieces bear a ZIP + 4 numeric code in the address and meet the OCR readability requirements" to "even if the pieces bear the correct numeric ZIP + 4 code in the address, bear a standardized and complete address, and meet the OCR readability requirements.

88. In new 624.493, change the reference "624.43" to "624.431;" change the reference "624.46" to "624.492."

89. Add new 624.44 through 624.45 as follows:

624.44 Physical Mailpiece Requirements for Automation Compatibility

.441 Shape & Dimensions

a. *Size.* Each piece in a mailing must meet the following requirements:

(1) Its length must be at least 5 inches and not more than 11½ inches. This is the dimension parallel to the address.

(2) Its height must be at least 3½ inches and not more than 6½ inches.

(3) Its thickness must be at least .007 of an inch for pieces that do not exceed any of the following dimensions: 4¼ inches in height, 6 inches in length. Its thickness must be at least .009 of an inch for pieces greater than 4¼ inches in height or greater than 6 inches in length.

(4) Its thickness must not exceed .250 of an inch.

b. *Shape.* Each piece in the mailing must be rectangular in shape.

c. *Aspect Ratio.* For each piece in the mailing, the length of the piece divided by its height must not be less than 1.3 nor more than 2.5.

.442 Weight. The weight of a mailpiece, including its contents, must not exceed 2.5 ounces.

.443 Mailpiece Construction

a. *Enveloped or Secured Edges.* Except as provided in 624.443b and 624.443c, each piece in a ZIP + 4 mailing must be:

(1) prepared in a sealed envelope (the preferred method of preparation), or

(2) sealed or glued on all four edges.

Note: Clasps, staples, string, buttons or other protrusions that may cause equipment jams and damage to the mail must not be used to seal mail.

b. *Folded Self-Mailers and Double Cards.* Single or multiple sheets folded into a letter-size self-mailer, and double cards, need not comply with 624.443a if they are prepared so that the fold is on the longest edge and at the bottom of the mailpiece parallel to the address, and the top contains a minimum of two tabs used to hold the piece together. The first tab must be placed within one inch of the left edge of the mailpiece. The second tab must be placed within one inch of the right edge of the mailpiece. The tabs must not interfere with recognition of postage information, rate markings or return addresses. See Exhibit 624.433b. The tabs must be held in place by permanent gum or pressure sensitive non-removable adhesive. Cellophane tape is acceptable. Additional tabs may be placed on such mailpieces. As an alternative to the use of tabs, the top edge may be spot (or continuously) glued with a permanent glue or adhesive in the same manner and locations specified above for tabs.

Note: Clasps, staples, string, buttons or other protrusions which may cause equipment jams and damage to the mail are unacceptable for tabbing or sealing mail.

BILLING CODE 7710-12-M

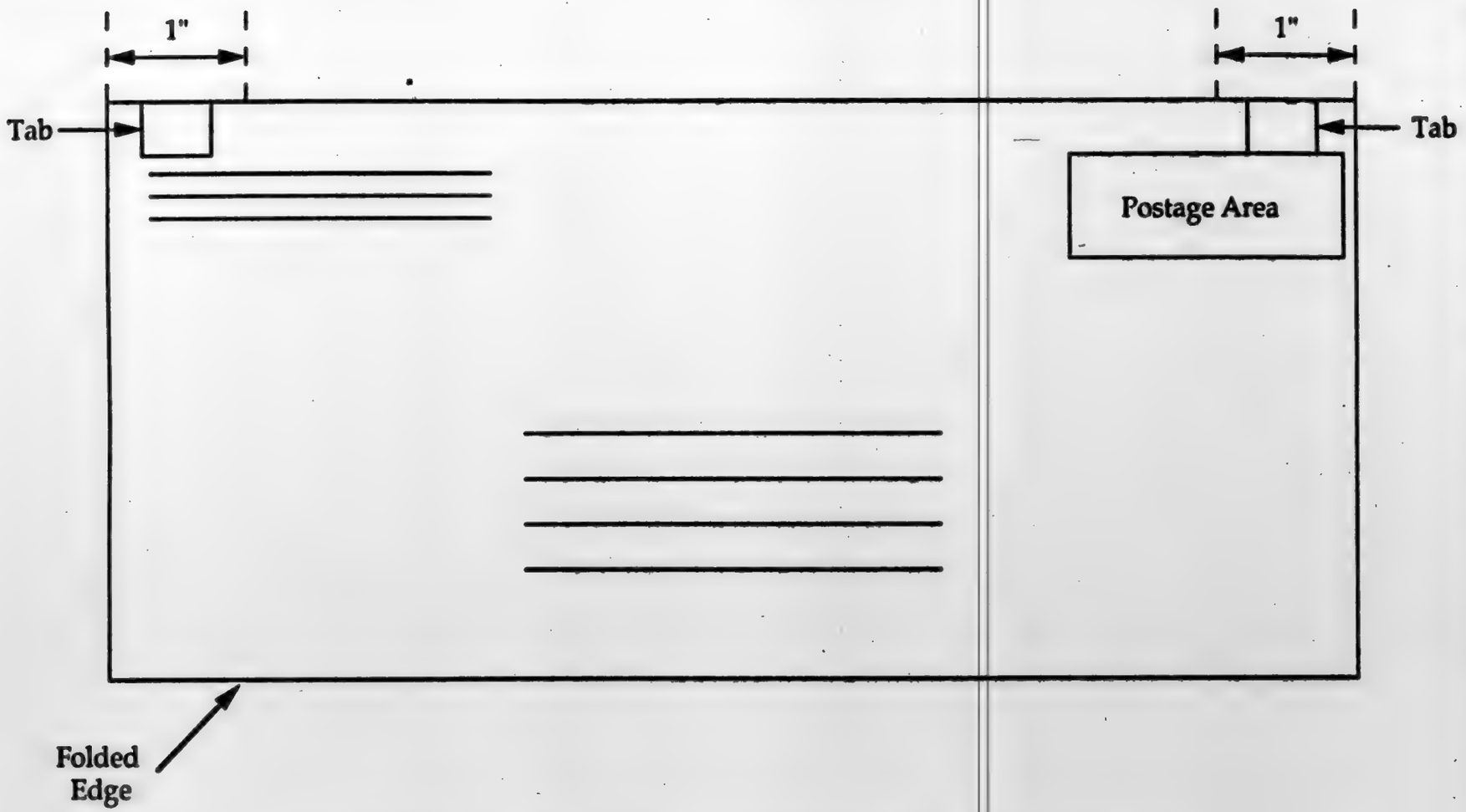

EXHIBIT 624.443b – Preparation of Folded Self-Mailers and Double Cards

BILLING CODE 7710-12-C

c. *Booklet-Type Mailpieces.* Multiple pages bound together to form a letter-size book or booklet-type mailpiece need not comply with 624.443a if prepared so that the bound edge or spine is on the longest edge and at the bottom of the mailpiece parallel to the address, and the top unbound edge of the mailpiece contains a minimum of two tabs used to hold the edges together. The first tab must be placed within one inch of the left edge of the mailpiece. The second tab must be placed within one inch of the right edge of the mailpiece. The tabs must not interfere with recognition of postage information, rate markings or return addresses. See Exhibit 624.433c. The tabs must be held in place by permanent gum or pressure sensitive non-removable adhesive. Cellophane tape is acceptable. Additional tabs may be placed on such mailpieces. As an alternative to the use of tabs, the pages may be spot glued at the top edge with a permanent glue or adhesive in the same manner and locations specified above for tabs, or the entire top edge may be continuously glued.

BILLING CODE 7710-12-M

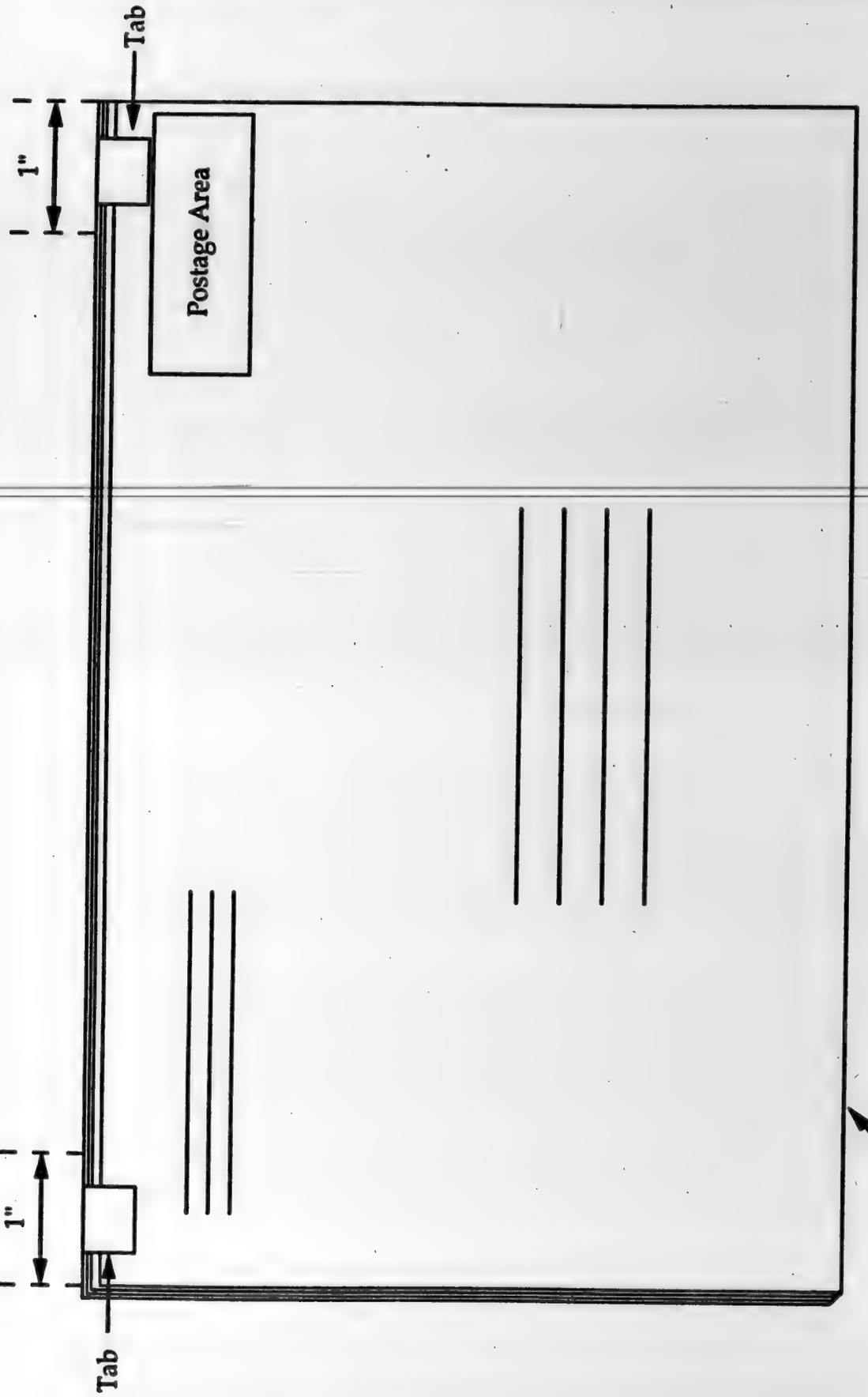

EXHIBIT 624.443c– Preparation of Booklet-Type Publications

BILLING CODE 7710-12-C

Note: Clasps, staples, string, buttons or other protrusions that may cause equipment jams and damage to the mail must not be used to tab or seal mail.

d. Contents of Mailpiece.

(1) *Flexibility.* The mailpiece and its contents must be reasonably flexible to ensure transport through automated equipment. The mailpiece, including its contents, must be able to bend easily when subjected to a transport belt tension of 40 pounds around an 11-inch diameter drum. Pens, pencils, keys, bottle caps and other rigid items are prohibited within mailpieces. Reasonably flexible items such as credit cards are permissible.

(2) *Odd Shaped Items.* Odd-shaped items such as small coins and tokens that meet the flexibility criteria of 624.443d(1) are permissible within mailpieces only if they are firmly affixed to part of the contents of the mailpiece and are wrapped in the envelope's other contents so that the shape of the mailpiece is streamlined to facilitate automated processing.

e. *Adhesive on Address Labels and Stickers.* Address labels and other labels and stickers that are affixed to the outside of mailpieces must be affixed with permanent gum or pressure sensitive non-removable adhesive, and must be completely and uniformly affixed to the mailpiece.

Note: Pressure sensitive labels provided to mailers by the USPS for purposes of labeling packages to sortation level are made with pressure sensitive non-removable adhesive and are permissible on the outside of mailpieces.

.444 Stiffness.

a. *Pieces Other than Cards.* Paper envelopes and paper used to prepare folded self-mailers, must have a minimum basis weight of 20 pounds, using a 17 inch by 22 inch sheet size and 500 sheets. The front and back covers of unenveloped bound mailpieces such as catalogs, booklets and brochures, must meet the 20 pound minimum basis weight requirement. The front and back sheets of mailpieces formed of cut sheets that are glued on the outer edges must meet the 20 pound minimum basis weight requirement. See also the minimum thickness requirements in 624.441a(3).

b. *Cards.* Cards must be printed on paperstock meeting standard industry basis weight of 75 pounds or greater, with none less than 71.25 pounds, for 500 sheets measuring 25 inches by 38 inches. The paper must be free from groundwood except when coated with a substance that adds to the paper's ability to resist an applied bending force.

Note: Cards exceeding 4¼ inches in height and 6 inches in length must also have a minimum thickness of .009 of an inch as described in 624.441a(3). In addition, since the importance of thickness and stiffness increases as card size increases, it is recommended that cards exceeding 4¼ inches in height or 6 inches in length be produced from stock with a higher basis weight. Recommended examples are: (1) a vellum Bristol with a basis weight of at least 80 pounds (22½ inches × 28½ inches, 550 sheet base); (2) and Index stock with a basis weight of at least 90 pounds (25½ inches × 30½ inches, 500 sheet base); or (3) an offset stock with a bases weight of at least 100 pounds (25 inches by 38 inches, 500 sheet base).

.445 Ability to Accept U.S. Postal Service Ink Jet Printer Applied Water-Based Barcode Ink. The paper or other material used for the envelope or outermost sheet of the address side of ZIP + 4 rate mailings must allow printing of barcodes by USPS ink jet printers used with Optical Character Reader (OCR) equipment without smearing. The paper must allow water-based ink applied with ink-jet to dry within ⅛ of a second without smearing. Coatings, particularly glossy coatings, may prevent the water-based ink from USPS ink jet printer applied barcodes from drying quickly. Similarly, certain non-paper, plastic-like materials such as spun bonded olefin are not acceptable for ZIP + 4 rate mailings because they will not allow water-based USPS ink jet applied barcode ink to dry without smearing. Glossy paper, paper with glossy coatings, and non-paper materials will be accepted at the ZIP + 4 rates only if approved by the USPS Engineering and Development Center, 8403 Lee Highway, Merrifield, VA 22082–8101. Such approval will be granted only if testing shows the material will allow water-based USPS ink jet applied ink to dry within ⅛ of a second. A written request for testing and a minimum of 50 sample pieces must be submitted to the USPS Engineering and Development Center for testing and approval at least 6 weeks prior to mailing at ZIP + 4 rates. A copy of the request for approval must be sent to the office of mailing along with one sample piece. A copy of the letter of approval must accompany the mailing.

Note: poly-wrapped or poly-bagged materials are not acceptable at ZIP + 4 rates.

624.45 OCR Readability and Barcode Clear Zone

.451 OCR Read Area. The OCR read area is a rectangular area on the address side of the mailpiece formed inside the following boundaries:

a. ½ inch from the left edge.

b. ½ inch from the right edge.

c. 2¾ inches from the bottom edge (top of the rectangular area.)

d. ⅝ of an inch from the bottom edge (bottom of the rectangular area.)

.452 Placement of Address. All lines of the address (exclusive of optional lines above the name of recipient line) must be contained within the OCR read area defined in 624.451. A uniform left margin must be maintained for the name and address information. See 624.432a for further requirements governing the address format.

BILLING CODE 7710-12-M

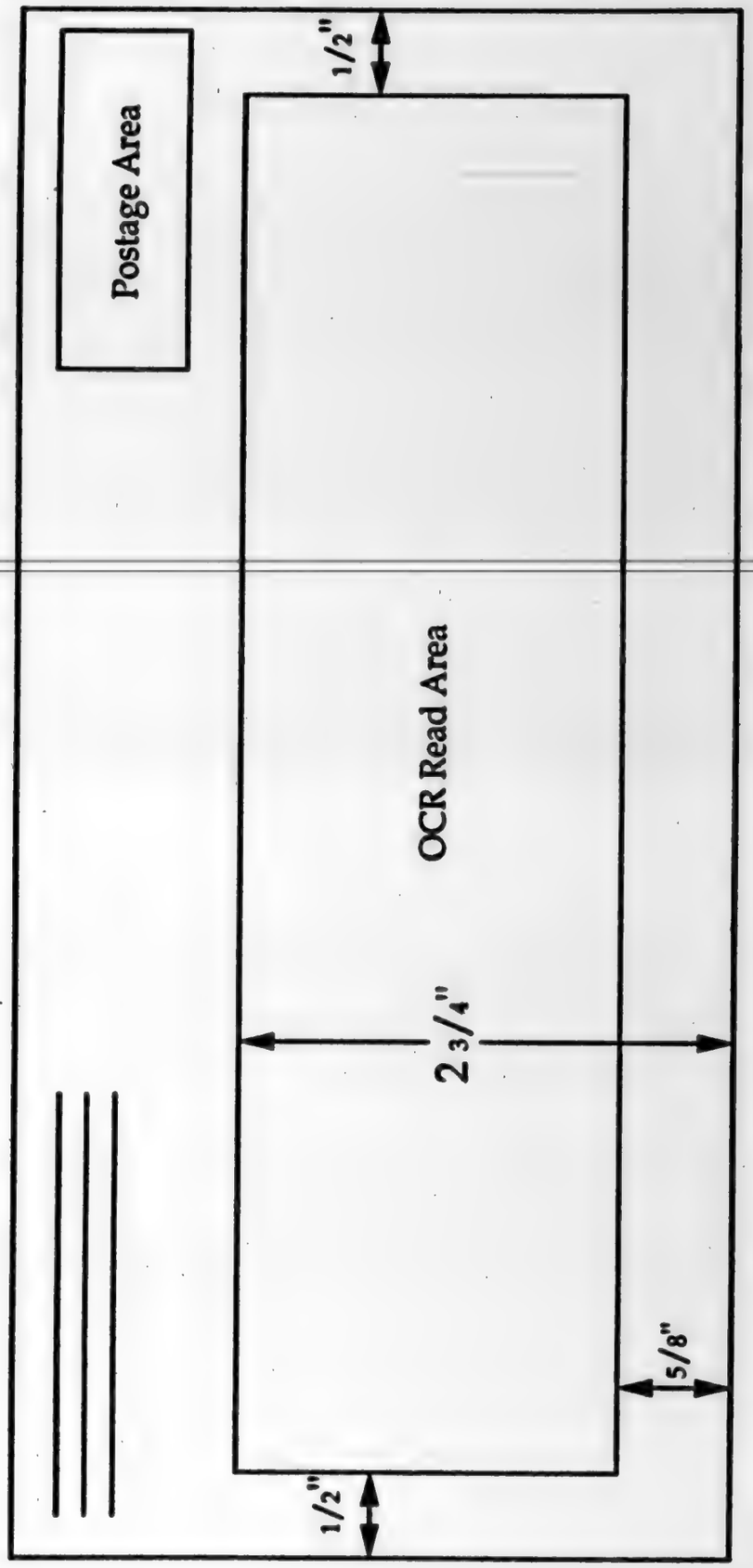

EXHIBIT 624.451 – OCR Read Area

BILLING CODE 7715-12-C

.453 Limits for Non-Address Printing in OCR Read Area.

a. *Non-Address Printing or Markings.* There must be no markings, printing, or die cuts (except for the edges of address windows prepared in accordance with 624.456) in the OCR Read Area on either side of, or below, any of the address lines. Non-address printing or markings may appear within the OCR Read Area only if positioned above the address lines. This requirement also applies to addresses printed on inserts in window envelopes. For purposes of this section, address lines include the name of the recipient, firm name, building name, apartment or other secondary address unit numbers, house or building numbers, street, rural route number, highway contract route number, box number, city, state and ZIP Code. For purposes of this section, address lines exclude optional lines above the name of recipient line such as keylines and optional endorsement lines.

b. *Return Addresses.* Return address information must not appear within the OCR Read Area. In addition, the return address must appear in the top left corner of the mailpiece, and extend no further than 50 percent (half) of the length of the mailpiece to the right edge and no lower than 33.3 percent (one-third) of the height of the mailpiece from the top as shown in Exhibit 624.453b.

BILLING CODE 7710-12-M

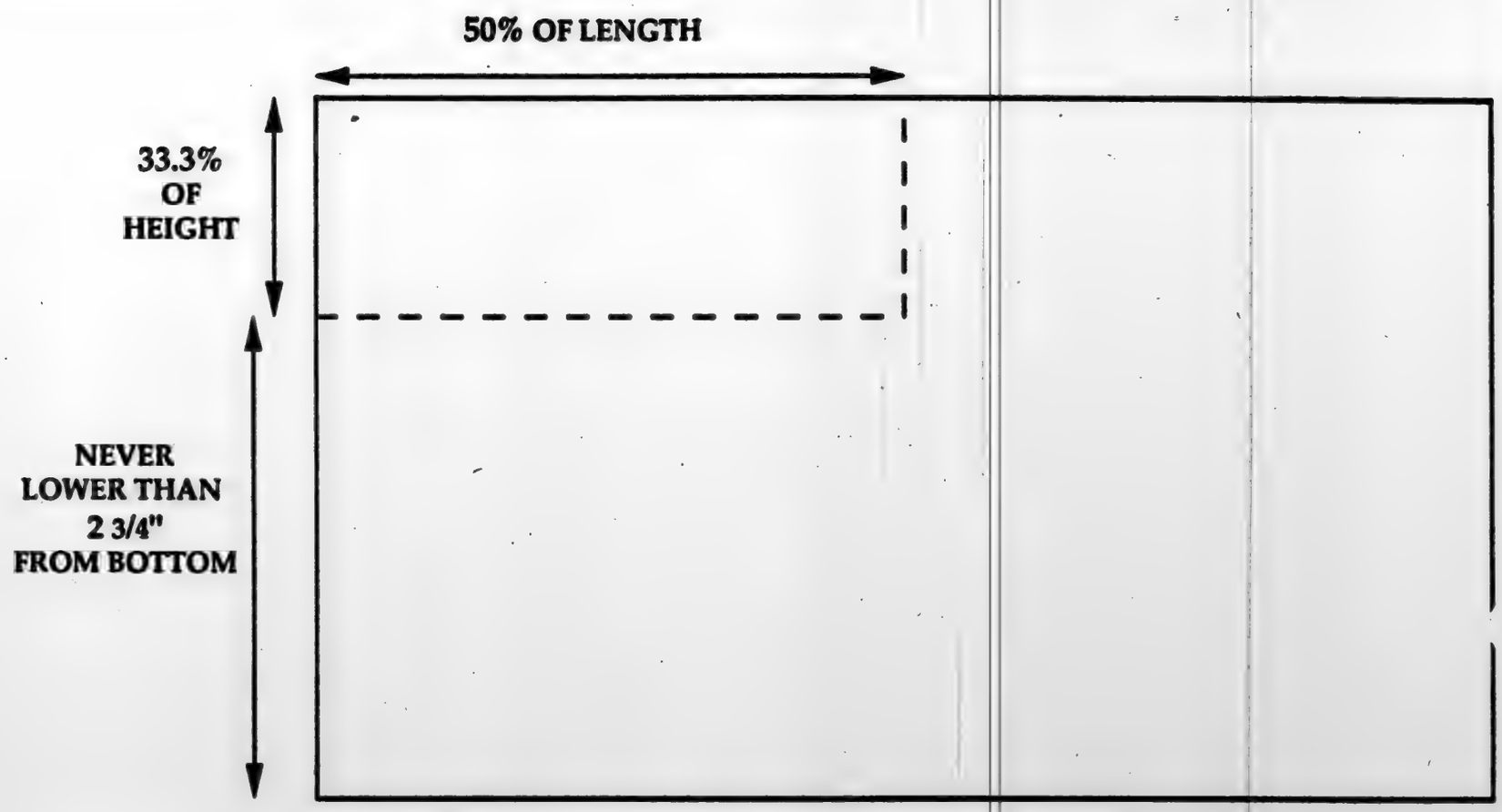

EXHIBIT 624.453b – Placement of Return Addresses

BILLING CODE 7710-12-C

c. *Mailer Endorsements.* Mailer endorsements concerning forwarding, return, and address correction services must not appear within the OCR Read Area. They must, however, appear below the return address (preferably immediately below the return address) and meet all other requirements of 159.151 and 122.17.

.454 Optical Character Reader (OCR) Readable Type Required.

a. *General.* A type font that is readable by USPS Optical Character Reader (OCR) equipment is required. Type fonts that meet the requirements in 624.454 are considered OCR readable type fonts. Italic, script, artistic, cyrillic, other highly-stylized fonts, and dot matrix characters with separated matrix elements of .005 of an inch or more are not considered OCR readable. Block style typewriter and line printer type are normally OCR readable. The fonts identified in Exhibit 624.454a are acceptable and have been tested to meet the requirements of 624.454 b, d, e, and f.

The type styles in the left column have been tested on USPS OCRs and verified to have a high degree of readability. The styles in the right column have not been tested but are considered to be equivalent type faces by the National Composition Association.* Each horizontal grouping is considered to be a family of equivalent typefaces.

EXHIBIT 624.454a—OCR READABLE TYPE FONTS

Tested and verified	Similar styles
Century Light Schoolbook.	Century.
Elite	
Friz Quadrata	
Futura Medium	Airport.
	Alphatura.
	Contempra.
	Futura.
	Photura.
	Sparta.
	Stylon.
	Techtica.
	Techno.
	Tempo.
	Twentieth Century.
	Vogue.
Helios	Akzidenz-Grotesk.
	Buch.
Helios Light	Aristocrat.
Helvetica	Claro.
Helvetica Light	Europa Grotesk.
Helvetica Regular	Geneva.
Megaron Bold	Hamilton.
Megaron Medium	Newton.
Triumverate	Sonoman Sanserif.
Triumverate Bold	Spectra.
Triumverate Regular	Vega.
Honeywell H200	
IBM 1403	
IBM 1428	
Manifold 72	
Koronna Regular	Aquarius.
	Corona.
	Crown.
	Koronna.
	News No. 3.
	News No. 5.
	News No. 6.
	Nimbus.
	Royal.
News Gothic	Alpha Gothic.
Trade Gothic	Classified News.
Newtext Regular Condensed.	
OCR-A	
OCR-B	
Optima	Athena.
	Chelmsford.
	Musica.
	October.
	Omega.
	Optimist.
	Oracle.
	Roma.
	Theme.
	Zenith.
Pica	
Standard Typewriter	
Stymie Medium	Alexandria.
	Beton.
	Cairo.
	Karnak.
	Memphis.
	Pyramid.
	Rockwell.
Univers	Alphavers.
Univers 5	Eterna.
Univers Medium	Galaxy.
	Kosmos.
	Versatile.
Universal	

*Equivalent typefaces were taken from a book entitled "TYPEFACE ANALOGUE" by W.F. Wheatley for the National Composition Association.

b. *Machine Printed Addresses Required.* All lines of the delivery address must be machine printed. It is recommended that the entire address be printed in upper case characters.

c. *Print Quality.* A high degree of print quality must be maintained. Mailpieces bearing type that is smudged or faded or contains voids within character strokes or extraneous ink outside of character boundaries are not acceptable at ZIP + 4 rates.

d. *Character Height.* The height of address characters must be no less than 80 mils nor more than 200 mils. (A mil equals .001 of an inch.) Ten or twelve point plain style of type is recommended. (A point equals .0138 of an inch.)

e. *Character Stroke Width.* The width of address character strokes must be uniform and no less than 10 mils (¾ point) nor more than 30 mils (2 points).

f. *Character Height to Width Ratio.* The height of address characters divided by their width must fall between 1.1 and 1.7. A mid-range height to width ratio of about 1.4 to 1 is recommended (the height divided by the width is 1.4).

g. *Space Between Characters.* A clear vertical column of at least 10 mils (¾ point) and no more than 40 mils (3 points) must exist between each character of the address.

h. *Space Between Words.* A clear vertical space no less than the width of one full "em" character (e.g., capital M) or more than the width of five full characters must exist between words of the address. (This includes spacing between the state abbreviation and the ZIP + 4 code.)

i. *Space Between Lines of the Address.* Spacing between lines of the address must be uniform and no less than 30 mils (two points) or more than the height of two full characters. (Maximum of 400 mils or 29 points.)

j. *Skew of Address Lines.* The lines of the address must not be skewed (slanted) more than five degrees relative to the bottom edge of the mailpiece.

.455 Reflectance Requirements.

a. *Background Reflectance.* The material on which the delivery address will appear (envelope, card, insert material, or outermost sheet) must produce a background reflectance of at least 50 percent in the red and 45 percent in the green portions of the optical spectrum. (White and pastel colors generally satisfy this requirement.) These reflectance measurements shall be made with a USPS envelope reflectance meter.

b. *Print Contrast Ratio—Contrast Between the Ink Used in the Address and the Background of the Mailpiece.* A print contrast ratio greater than or equal to 40 percent in both the red and green portions of the optical spectrum is required. If glassine windows are used the print contrast ratio must be greater than or equal to 45 percent. The print contrast ratio is determined in the following manner:

$$PCR = \text{Reflectance of the Background} - \frac{\text{Reflectance of the ink}}{\text{Reflectance of the Background}} \times 100 = \%$$

Note: This requirement is generally satisfied by using black or dark blue ink on a white background. Other color combinations should be measured to ensure compliance with the minimum print contrast ratio.

c. *Print Contrast Ratio—Opacity.* Envelope material, insert material as viewed through an envelope window, or the outermost sheet of a mailpiece, must have sufficient opacity to prevent non-address printing from "showing through" to the extent that it will affect OCR processing. The print contrast ratio of the non-address print that shows through in the *OCR read area and barcode clear zone* must not exceed 15 percent when measured in the red and green spectra. (See section 624.455b for an explanation of how to compute the print contrast ratio.)

d. *Print Contrast Ratio—Dark Fibers and Background Patterns.* The material on which the delivery address will appear (envelope, card, insert material, or outermost sheet) must not contain dark fibers or background patterns (checks, etc.) that produce a print contrast ratio of more than 15 percent when measured in the red and green spectra. If material on which the delivery address will appear is printed in a "halftone screen" it must not contain fewer than 200 lines per inch or be printed with more than a 20 percent screen (dot size).

.458 Additional Requirements for Envelopes with Address Windows and Their Inserts.

a. *Clear Space Required Between Address and Address Window Edges.* A clear space of a least ⅛ of an inch must be left between the address block and the top, bottom and side edges of the window. This clear space must exist, even when the insert is moved to its full limits in each direction within the envelope. The bottom edge of the address window must not extend more than ⅛ of an inch into the barcode clear zone (see 624.457).

b. *Window Covers.* Address windows, if covered, must be covered with a non-tinted clear or transparent material glued securely on all edges. The recommended window cover material is cellophane or polystyrene. The address, as viewed through the window material, must meet the minimum print contrast ratios described in 624.455. Certain types of glassine material interfere with OCR readability. Therefore, glassine may be used for window cover material only if the address information measured through the glassine meets a print contrast ratio of 45 percent as measured by 624.455b.

624.457 *Barcode Clear Zone.* The barcode clear zone is the rectangular area formed inside the following boundaries: ⅝ of an inch from the bottom edge of the mailpiece, 4½ inches from the right edge of the mailpiece, and the bottom edge. See Exhibit 624.457. No printing or markings that would lower the reflectance (section 624.454a) to less than 50 percent in the red and 45 percent in the green portions of the optical spectrum, except for a properly prepared barcode in accordance with 624.49, can be placed within the barocde clear zone. In addition, the bottom edge of address windows must be at least ⅛ of an inch from the bottom edge of the envelope.

90. In 624.5, change 624.51 to read as follows:

624.5 Five-Digit ZIP + 4 Rate Mailings

624.51 *General.* Each mailing must meet the requirements of 623 in addition to the requirements in 624.5. Only letter-size pieces that bear a correct ZIP + 4 code, a standardized and complete address in accordance with 624.432 (as referenced in 624.532), meet the sortation requirements of 624.56 (are part of a package of 10 or more pieces to the same 5-digit ZIP Code destination, and are placed in a 5-digit or 3-digit sack that contains at least 125 pieces or 15 pounds of mail), and otherwise meet the requirements of 624.52 through 624.59 may qualify for the 5-digit ZIP + 4 rate. Pieces that bear a 5-digit ZIP Code and are sorted in accordance with 624.561 may qualify for the 5-digit presort level rate. Residual pieces (see 624.562) that bear a ZIP + 4 code and a standardized and complete address may qualify for the basic ZIP + 4 rate. Residual pieces that bear a 5-digit ZIP Code may qualify for the basic presort level rate.

Note: Carrier route presort level rate pieces may not be included in a 5-digit ZIP + 4 rate mailing.

91. Revise 624.53 to read as follows:

624.53 ZIP Code and Address Requirements

.531 Required Percentage of ZIP + 4 Coded and Properly Addressed Pieces. At least 85 percent of the total pieces in each mailing must bear the correct numeric ZIP + 4 code and meet the standardized and complete address requirements in 624.432 (as referenced in 624.532). The correct ZIP + 4 code is the finest level (depth) of ZIP + 4 code listed in the current USPS ZIP + 4 database for the complete address, as further described in 624.432 (as referenced in 624.532). Pieces not bearing the correct numeric ZIP + 4 code must bear the correct numeric 5-digit ZIP Code. Only pieces that bear a standardized and complete address that includes the correct numeric ZIP + 4 code qualify for the 5-digit ZIP + 4 rate.

Note 1: The 85 percent ZIP + 4 code requirement may be applied to a mailing list or cycle rather than an individual mailing under the conditions in 624.562.

Note 2: Pieces in a 5-digit ZIP + 4 mailing prepared with ZIP + 4 barcodes must bear complete addresses, including the correct numeric ZIP + 4 code, but need not show addresses in the standardized address format to qualify for the 5-digit ZIP + 4 rate or, if in the residual portion of the mailing, the basic ZIP + 4 rate. See 624.59 for the requirements pertaining to barcoding pieces in 5-digit ZIP + 4 rate mailings. For the requirements pertaining to ZIP + 4 barcoded rate mailings, see 624.6.

.532 Accuracy of ZIP + 4 Coding.

a. *Address Requirements.* The standardized and complete address requirements in 624.432a(1) through (5) must be met.

b. *Requirements for Standardizing Addresses, Determining if Addresses are Complete, and Assigning ZIP + 4 Codes.* The matching requirements in 624.432b must be met.

c. *Required Documentation.* Documentation to prove the requirements in 624.532a and b have been met must be submitted with each mailing in accordance with 624.432c.

d. *Obtaining CASS Certification.* See 624.432d.

e. *Obtaining ZIP + 4 code products.* See 624.432e.

92. Delete the heading 624.54, and delete current 624.541 through 624.543.

93. Renumber 624.544 and 624.56; renumber 624.544a as 624.561; renumber 624.544b as 624.562.

94. In new 624.561, change the reference 624.544b to 624.562.

95. In new 624.562, change the reference 624.544a to 624.561; change the reference 624.53 to 624.531.

96. Renumber 624.545 as 624.57.

97. Renumber 624.546 as 624.58.

98. Renumber 624.546a as 624.581; renumber 624.546a(1) as 624.581a; renumber 624.546a(2) as 624.581b; renumber 624.546a(3) as 624.581c.

99. Within new 624.581, change the reference to 624.546b to 624.582; change the reference to 624.546c to 624.583.

100. Renumber 624.546b as 624.582; renumber 624.546b(1) as 624.582a; renumber 624.546b(2) as 624.582b.

101. Within new 624.582, change the reference to 624.546a to 624.581.

102. Renumber 624.546c as 624.583; change the reference within this section from 624.546a to 624.581.

103. Renumber existing sections 624.55 through 624.57 as 624.591 through 624.593. Insert the heading "624.59 Pieces Prepared With Barcodes and Barcode Windows" above new 624.491.

104. Revise new 624.591 to read as follows:

.591 Pieces Prepared With ZIP + 4 Barcodes. Barcodes representing the correct, finest level of ZIP + 4 code for the complete address shown on each piece as defined in 624.531 and 624.532, that are prepared in accordance with 624.65, may appear on pieces in a 5-digit ZIP + 4 rate mailing. Pieces in 5-digit ZIP + 4 rate mailings prepared with barcodes need not meet the OCR readability requirements in 624.451 through 624.456 (as referenced in 624.55) to qualify for the 5-digit ZIP + 4 rates. ZIP + 4 barcoded pieces may also meet the complete address requirements in 624.64 instead of the standardized and complete address requirements in 624.432 (as referenced in 624.532). In either case, pieces bearing a ZIP + 4 barcode must also bear a numeric ZIP + 4 code in the address to qualify for the 5-digit ZIP + 4 rate, or if in the residual portion of the mailing, the basic ZIP + 4 rate. ZIP + 4 barcoded pieces that do not bear the correct numeric ZIP + 4 code must bear the correct numeric 5-digit ZIP Code in the address and will qualify for the 5-digit rate, or if in the residual portion of the mailing the basic rate.

105. In new 624.592, change the reference 624.66 to 624.652; change the reference 624.53 to 624.531; change the reference 624.66b(3)(a) to 624.562b(3)(a).

106. In new 624.592, change the phrase "the pieces bear a numeric ZIP + 4 code in the address; and the pieces meet the OCR readability requirements in 624.443" at the end of he second sentence to "the pieces bear the correct, finest depth of numeric ZIP + 4 code in the address, the pieces meet the OCR readability requirements in 624.451 through 624.456 (as referenced in 624.55), and the standardized and complete address requirements in 624.432 (as referenced in 624.532)."

107. In new 624.592, change the phrase "even if the pieces bear a ZIP + 4 numerical code in the address and meet the OCR readability requirements" at the end of the last sentence to "even if the pieces bear the correct numeric ZIP + 4 code in the address, bear a standardized and complete address, and meet the OCR readability requirements."

108. In new 624.593, change the reference 624.53 to 624.531; change the reference 624.56 to 624.592.

109. Add new 624.54 through 624.55 as follows:

624.54 *Physical Mailpiece Requirements for Automation Compatibility.* Each piece in the mailing must meet the physical requirements in section 624.44.

624.55 *OCR Readability and Barcode Clear Zone.* Each piece in the mailing must meet the OCR readability and barcode clear zone requirements in section 624.45.

Note: Pieces prepared with a window in the barcode clear zone through which a ZIP + 4 barcode does not appear (there is either no barcode or there is a 5-digit barcode) may not qualify for any ZIP + 4 rates and may not count toward the 85 percent ZIP + 4 coded pieces requirement in 624.531.

110. In 624.6, revise 624.611 to read as follows:

624.6 ZIP + 4 Barcode Rate Mailings

.61 General

.611 *Description.* Each mailing must meet the requirements of 623 in addition to the requirements in 624.6. Only letter-size pieces that bear a correct ZIP + 4 barcode and a complete address (as defined in 624.63 and 624.64), prepared in accordance with 624.651, and that are part of a 5-digit package of 10 or more pieces, prepared in accordance with 624.681 may qualify for the third-class ZIP + 4 barcode rate. Pieces that do not bear the correct ZIP + 4 barcode and that cannot be sorted to a 5-digit package may be included in the mailing as provided by 624.63 and 624.682. The rates for which such pieces may qualify are described in 624.612.

111. In 624.612a change the reference 624.643a to 624.681.

112. In 624.612a(1) change the reference 624.643a to 624.681; change the phrase "a ZIP + 4 barcode prepared in accordance with 624.65" to "a correct ZIP + 4 barcode prepared in accordance with 624.651."

113. In 624.612a(2) change the reference 624.643a to 624.681.

114. In 624.612a(2)(a) change the phrase "and it meets the barcode clear zone and OCR readability requirements in 624.442, 624.443, and 624.542" to "it meet the standardized address format requirements in 624.432, and the barcode clear zone and OCR readability requirements in 624.45 (as referenced in 624.55)."

115. In 624.612a(2)(b) change the reference 624.66b to 624.552b; change the phrase "and it meets the barcode clear zone and OCR readability requirements of 624.442, 624.443, and 624.542" to "it meets the standardized address format requirements in 624.432, and it meets the barcode clear zone and OCR readability requirements of 624.45 (as referenced in 624.55)."

116. In the note under 624.612a(2)(b) change the phrase "and meet the OCR readability" to "and meet the standardized address format, OCR readability,".

117. In 624.612a(3) change the reference 624.643 to 624.681.

118. In 624.612a(3)(b) change the phrase "and it does not meet the barcode clear zone and OCR readability requirements of 624.442, 624.443, and 624.542" to "and it does not meet the standardized address format requirements in 624.432, or the barcode clear zone and OCR readability requirements of 624.45 (as referenced in 624.55)".

119. In the note under 624.612a(3)(c), change the phrase "and meet OCR readability" to "and meets OCR Readability, standardized address format,".

120. In 624.612b change the reference 624.643b to 624.682.

121. In 624.612b(1) change the reference 624.643b to 624.682.

122. In 624.612b(1)(s) change the reference 624.65 to 624.681.

123. In the note under 624.612b(1)(a) change the phrase "to meet the OCR readability requirements," to read "to meet the standardized address format or the OCR readability requirements,".

124. In 624.612b(1)(b) change the phrase "and it meets the barcode clear zone and OCR readability requirements in 624.422 and 624.443" to "meets the standardized address format requirements in 624.432, and it meets the barcode clear zone and OCR readability requirements in 624.45."

125. In 624.612(b)(1)(c) change the reference 624.66b(3)(a) to 624.652b(3)(a).

126. In 624.612b(1)(c) change the phrase "and it meets the barcode clear zone and OCR readability requirements of 624.422 and 624.443" to "it meets the standardized address format requirements in 624.432, and it meets the barcode clear zone and OCR readability requirements in 624.45."

127. In the note under 624.612b(1)(c), change the phrase "and meet the OCR readability" to "and meet the OCR readability, standardized address format,".

128. In 624.612b(2), change the reference 624.643b to 624.682.

129. In 624.612b(2)(b) change the phrase "and it does not meet the barcode clear zone and OCR readability requirements in 624.422 and 624.443" to "and it does not meet the standardized address format requirements in 624.432, or the barcode clear zone and OCR readability requirements of 624.45."

130. In the note under 624.612b(2)(c) change the phrase "and meet the OCR readability" to "and meets the OCR readability, standardized address format,".

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131. Revise 624.63 to read as follows:

624.63 *Required Percentage of ZIP + 4 Barcoded and Completely Addressed Pieces.* At least 85 percent of the total pieces in each mailing must bear a correct ZIP + 4 barcode prepared in accordance with 624.651 and meet the complete address requirements of 624.64. This 85 percent requirement is applied to the total number of pieces in all presort levels in the mailing regardless of the rate claimed for an individual piece. The correct ZIP + 4 barcode is the one that represents the finest level (depth) of ZIP + 4 code listed in the current USPS ZIP + 4 database for the complete address, as defined in 624.64. The addressing, ZIP + 4 matching, and documentation requirements of 325.4 must also be met. Each piece, whether or not it bears a ZIP + 4 barcode must bear either the correct numeric ZIP + 4 code or the correct numeric 5-digit ZIP Code in the address.

Exception: The 85 percent ZIP + 4 barcode and complete address requirement may be applied to a mailing list or cycle rather than an individual mailing under the conditions in 624.693.

Note: All mailings must include at least 200 pieces or 50 pounds of pieces that bear a correct ZIP + 4 barcode, a complete address, and otherwise qualify for the ZIP + 4 barcoded rate.

132. Delete the heading 624.64 and delete 624.61 and 624.642.

133. Renumber 624.643 as 624.66.

134. Renumber 624.643a as 624.661; change the reference 624.643b to 624.662.

135. Renumber 624.643b as 624.662; change the reference 624.643a to 624.661; change the reference 624.65 to 624.651.

136. Renumber 624.644 as 624.67.

137. Renumber 624.645 as 624.691; insert new heading above this section to read "624.69 Documentation."

138. In 624.691, change the reference 624.646 to 624.692; change the reference 624.647 to 624.693; change the references "Exhibit 624.645" to "Exhibit 624.691."

139. In 624.692a(1), change the reference 624.65 to 624.651.

140. In 624.691a(2)(a), change the phrase "and meet the barcode clear zone and OCR readability requirements of 624.441 and 624.443" to "meet the standardized address format requirements in 624.43, and meet the barcode clear zone and OCR readability requirements 624.45 (as referenced in 624.55)".

141. In 624.691a(2)(b), change the reference 624.66b(3)(a) to 624.652b(3)(a).

142. In 624.691a(2)(b), change the phrase "and meet the barcode clear zone and OCR readability requirements of 624.442 and 624.443" to "meet the standardized address format requirements in 624.43; and meet the barcode clear zone and OCR readability requirements of 624.45 (as referenced in 624.55)".

143. In the note under 624.691a(2)(b), change the phrase "and meet the OCR readability" to "and meet the standardized address format, OCR readability".

144. In 624.691a(3)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements of 624.442 and 624.443" to "and do not meet the standardized address format, barcode clear zone, and OCR readability requirements of 624.45 (as referenced in 624.55)".

145. In the note under 624.691a(3)(c), change the phrase "and meet the OCR readability" to "and meet the standardized address format, OCR readability,".

146. In 624.691b, change the reference 624.646 to 624.692.

147. In 624.691b(1), change the reference 624.65 to 624.651.

148. In the note under 624.691b(1), change the phrase "to meet the OCR readability requirements" to "to meet the standardized address format, or OCR readability requirements".

149. In 612.691b(2)(a), change the phrase, "and meet the barcode clear zone and OCR readability requirements in 624.442 and 624.443" to "meet the standardized address format requirements in 624.43; and meet the barcode clear zone and OCR readability requirements of 624.45 (as referenced in 624.55)".

150. In 624.691b(2)(b), change the reference 624.66b(3)(a) to 624.652b(3)(a).

151. In 624.691b(2)(b), change the phrase "and meet the barcode clear zone and OCR readability requirements of 624.442 and 624.443" to "meet the standardized address format requirements in 624.43; and meet the barcode clear zone and OCR readability requirements of 624.45.

152. In the note under 624.691b(2)(b), change the phrase "and meet the OCR readability" to "and meet the standardized address format, OCR readability,".

153. In 624.691b(3)(b), change the phrase "and do not meet the barcode clear zone and OCR readability requirements of 624.442 and 624.443" to "and do not meet the standardized address format requirements in 624.43, or the barcode clear zone and OCR readability requirements of 624.45".

154. In the note under 624.691b(3)(b), change the phrase "and otherwise meet the OCR readability" to ", meet the standardized address format, OCR readability".

155. Renumber Exhibit 624.645 (p. 1) as Exhibit 624.691 (p. 1); revise the first footnote to read as follows:

* Does NOT include pieces prepared with a window in the barcode clear zone. The address must meet the standardized and complete address requirements, including the requirement for the correct numeric ZIP + 4 code, and be OCR readable.

156. Renumber Exhibit 624.645 (p. 2) as Exhibit 624.691 (p. 2); revise the first footnote to read as follows:

*Does NOT include pieces prepared with a window in the barcode clear zone. The address must meet the standardized and complete address requirements, including the requirement for the correct numeric ZIP + 4 code, and be OCR readable.

157. Renumber 624.646 as 624.692.

158. In 624.692, change the reference 624.645 to 624.691.

159. In 624.692a, change the reference 624.65 to 624.651.

160. In 624.692b, change the reference 624.65 to 624.651.

161. Renumber 624.647 as 624.693.

162. In 624.693, change the reference 624.645 to 624.691.

163. Insert new 624.64 as follows:

624.64 Accuracy of ZIP + 4 Barcoding—Addressing and ZIP + 4 Database Matching Requirements.

.641 Complete Address Required.

a. *General.* To ensure accurate matching of the address to the finest level of ZIP + 4 code as required in section 624.63, complete addresses are required on all pieces in a ZIP + 4 barcoded rate mailing that bear a ZIP + 4 barcode. A complete address is one which contains all delivery address elements, such as firm name, address (street) number, predirectional, street name, suffix, post directional, secondary address unit designator and number (e.g. APT 202, STE 100, etc.) or rural route number and box number (e.g. HC 4 Box 45), or post office box number (e.g. PO BOX 458), necessary to obtain an exact match with the ZIP + 4 file currently in effect to the finest level of ZIP + 4 code. A complete address must also contain the correct city and state. Only approved last line (city or place) names as described in the city-state file currently in effect may be used. The address on each piece in the mailing must also bear either the correct 5-digit ZIP Code or the correct ZIP + 4 code. Pieces with addresses that do not meet the complete address requirements do not qualify for ZIP + 4 or ZIP + 4 barcoded rates and further, must not show a ZIP + 4 code in the address or a ZIP + 4 barcode on the mailpiece.

b. *Secondary Address Units.* Firm names and secondary address unit designators and numbers that show the specific apartment, building, floor, suite, unit, room, department, etc., are required to appear in the address on the mailpiece when such firm names or unit designators are necessary to obtain a match with the finest level of ZIP + 4 code in the ZIP + 4 database. In instances where a firm name or secondary address unit number is needed to obtain the finest level of ZIP + 4 code but is not known, the address that appears on the mailpiece must not bear a ZIP + 4 code and the piece must not bear a ZIP + 4 barcode. This means that alternative or default ZIP + 4 codes for a building are not acceptable on mailpieces entered at the ZIP + 4 barcoded rates or the basic ZIP + 4 or 5-digit ZIP + 4 rates when finer ZIP + 4 codes for apartment ranges, floors, suites, firms, etc., within that building are listed in the USPS ZIP + 4 database.

Note: To enhance delivery of mailpieces, mailers should make every effort to place secondary address unit designators and numbers on mailpieces where they exist for an address, even when secondary address unit numbers (or ranges of numbers) are not contained in the ZIP + 4 file for that street address and therefore are not needed to obtain a match with the finest level of ZIP + 4 code.

c. *Rural Routes and Highway Contract Routes.* A standardized and complete address for rural routes and highway contract routes contains the rural route or highway contract route number and box number necessary to obtain an exact match with the ZIP + 4 file currently in effect to the finest possible level of ZIP + 4 code. The rural route or highway contract route box number must appear in the address on the mailpiece when it is necessary to obtain the finest level of ZIP + 4 code. In instances where a box number is needed to obtain the finest level of ZIP + 4 code but is not known, the address that appears on the mailpiece must not bear a ZIP + 4 code and the piece must not bear a ZIP + 4 barcode. This means that alternative or default ZIP + 4 codes for the route are not acceptable on mailpieces entered at the ZIP + 4 barcoded rates or the basic ZIP + 4 or 5-digit ZIP + 4 rates, when finer ZIP + 4 codes for specified box number ranges within that route are listed in the USPS ZIP + 4 database.

Note: To enhance delivery of mailpieces, mailers should make every effort to place box numbers for rural routes and highway contract routes on mailpieces where they exist for an address, even when box numbers (or ranges of box numbers) are not contained in the ZIP + 4 file for that route and therefore are not needed to obtain a match to the finest level of ZIP + 4 code.

e. *Post Office Box Addresses.* Post office box addresses must contain a post office box number that can be exactly matched with the ZIP + 4 file currently in effect.

.642 Requirements for Obtaining Standardized Addresses and ZIP + 4 Codes

a. *Permissible Methods.* Any of the methods listed below for obtaining correct ZIP + 4 coding information to apply barcodes (and/or correct ZIP + 4 numeric codes if mailers wish to obtain the basic ZIP + 4 or 5-digit ZIP + 4 rates on non-ZIP + 4 barcoded pieces in the mailing as described in 624.612) and for determining if addresses are complete may be used. No other methods are permissible.

(1) National Change of Address (NCOA) process.

(2) Coding Accuracy Support System (CASS) certified matching software for ZIP + 4 matching.

(3) USPS diskette ZIP + 4 coding service.

(4) PC or mini-computer based manual look-up system that uses CASS certified software.

b. *Up-to-Date CASS Certification and ZIP + 4 Database.* The ZIP + 4 matching software described in 624.642a(1) through (4) must, at the time of ZIP + 4 coding, have a valid CASS certification and use the current USPS ZIP + 4 base file that has been updated with all monthly or quarterly change transaction files pertaining to that base file.

c. *Date of Matching.* Addresses in mailings must have been matched using the ZIP + 4 matching software and current ZIP + 4 database described in 624.642b to obtain the correct ZIP + 4 barcode (and correct ZIP + 4 numeric code if mailers wish to obtain basic ZIP + 4 or 5-digit ZIP + 4 rates on non-ZIP + 4 barcoded pieces as described in 624.612) within 6 months of the mail entry date.

d. *Matching Rules.* Software parameter options governing the matching logic or rules used in certified software that could result in applying an incorrect ZIP + 4 barcode to the mailpiece, or a ZIP + 4 barcode that does not represent the finest level of ZIP + 4 code for the address must not be used. If the address output to the address can be changed, any decisions made by the software in determining the ZIP + 4 code must be output to the address. For example, if a mailpiece for a given city and ZIP Code contains the address 123 Mail Street, and the ZIP + 4 file shows both a North Main Street and a South Main Street for that city, and each has a street address number range that includes 123, the software matching logic either must not assign a ZIP + 4 code and ZIP + 4 barcode to the mailpiece (since this is not a complete address as required in 624.641), or must assign one of the directionals to the address. If a directional is assigned to the address, the address output to the mailpiece must include the directional and the barcode printed on the mailpiece must be the correct one for the directional printed on the mailpiece. If the address output to the mailpiece cannot be changed, such as in OCR processing, the matching logic used must prevent application of a ZIP + 4 barcode to mailpieces with an incomplete or inaccurate address.

.643 Required Documentation.

a. *A Vendor's CASS Certified Software.* Mailers must submit a copy of Form 35XX with each ZIP + 4 barcoded rate mailing. A copy of the vendor's CASS certification, a copy of the invoice, as well as a copy of the job specification and/or output report(s) that show services were received from the CASS certified vendor must be attached to the Form 35XX. The documents must show the date the services were performed, the total number of addresses submitted for coding, and the total number of addresses successfully ZIP + 4 coded and/or ZIP + 4 barcoded.

Note: National Change of Address (NCOA) licensees and the USPS (when USPS diskette coding service is used) are considered CASS certified vendors.

b. *A Mailer's CASS Certified Software.* Mailers using their own software that has a valid CASS certification must submit with each ZIP + 4 mailing a copy of Form 35XX. A copy of their CASS certification and internal records showing the date the mailing list was coded, the total number of addresses on the list, and the total number of addresses on the list that were successfully ZIP + 4 coded and/or ZIP + 4 barcoded must be attached to the Form 35XX.

c. *Mailings Comprised of or Derived from Several Different Mailing Lists.* When a mailing is comprised of addresses from several different mailing lists that may each have been ZIP + 4 coded and/or ZIP + 4 barcoded by different methods or different mailers or vendors, the documentation described in 624.643a and b must be provided for each mailing list included in the mailing. Example: A mailing contains addresses

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from Mailing List A that was ZIP + 4 coded by a CASS certified vendor, and addresses from part of Mailing List B that was ZIP + 4 coded with the mailer's CASS certified software. This mailing must be accompanied by a single Form 35XX, the supporting documents described in 624.643a (for Mailing List A) and the supporting documents described in 624.643b (for Mailing List B).

.644 *Obtaining CASS Certification.* Mailers must write or call the National Address Information Center at the following address to arrange for testing of their ZIP + 4 matching software.

CASS/ZIP + 4 MATCHING
NATIONAL ADDRESS INFORMATION CENTER
6060 PRIMACY PKY STE 101
MEMPHIS TN 38188-0001

Toll-free line: 1-800-238-3150
or in Tennessee: 1-800-233-0453

.645 *Obtaining ZIP + 4 Code Products.* Mailers may order ZIP + 4 products as described in 624.432e.

164. Renumber 624.65 as 624.651 and change the title to read "ZIP + 4 Barcode Physical Requirements."

165. Add a new section heading above 624.651 to read "624.65 Barcode Requirements."

166. Delete 624.651a (previous section 624.65a).

167. Renumber 624.65b as 624.651a; change the references "Exhibit 624.65b" to "Exhibit 624.651a."

168. Delete 624.65 c and d and replace them with new 624.651 b, c, and d that read as follows:

b. *Barcode Location.* The location of the ZIP + 4 barcode must be on the address side of the mailpiece and within a clear space known as the "barcode clear zone," which must be free of any printing other than the barcode. The barcode clear zone extends ⅝ of an inch from the bottom and at least 4⅛ inches from the right edge of the mailpiece. Within the barcode clear zone, the left-most bar of the barcode must be located between 3¼ inches and 4 inches from the right edge of the mailpiece (the horizontal position of the barcode). The vertical position of the barcode must be in the area between 5/16 of an inch and 7/16 of an inch from the bottom of the mailpiece. The bottom of the bars must be positioned ⅛ of an inch (plus or minus 1/16 of an inch) from the bottom edge of the mailpiece (see Exhibit 624.651b). These horizontal and vertical placement limits form the rectangular "barcode read area." The entire barcode must be completely contained within the barcode read area. See Exhibit 624.651b. ZIP + 4 barcodes may be printed on inserts that will appear through a window on an envelope provided the window on the envelope and the barcode on the insert meet the specifications in 624.651h.

Note 1: Upon deployment of Wide Area Barcode Readers (WABCRs) which is expected to occur sometime in 1991, printing and markings in the barcode clear zone will be acceptable provided they do not lower the background reflectance to less than 50 percent in the red and 45 percent in the green portion of the optical spectrum.

Note 2: Upon deployment of the Advanced Bar Code (ABC) system, the barcode clear zone and read areas will be moved ¼ of an inch further to the left for those mailers printing barcodes in the lower right corner of the mailpiece. That is, the barcode clear zone will extend 4¾ inches from the right edge of the mailpiece, and the left-most bar of the barcode must begin between 4¼ and 3½ inches from the right edge of the mailpiece.

c. *Barcode Dimensions and Spacing.* A full bar must be .125± .010 of an inch in height. A half bar must be .050± .010 of an inch in height. The width of all bars must be equal and must be .020± .005 of an inch. Horizontal spacing of the bars must be 22±2 bars per inch. Pitch (a bar and a space) must be at least .0416 of an inch and no greater than .050 of an inch. The spacing (a clear vertical column) between bars must never be less than .012 of an inch.

d. *Background Reflectance.* The material on which the barcode will appear (envelope, card, insert material, or outermost sheet) must produce a background reflectance of at least 50 percent in the red and 45 percent in the green portions of the optical spectrum. (White and pastel colors generally satisfy this requirement.) The reflectance measurements shall be made with a USPS envelope reflectance meter.

169. Renumber Exhibit 624.65b as Exhibit 624.651a.

170. Renumber Exhibit 624.65c as Exhibit 624.651b.

171. Renumber 624.65 e through h as 624.651 e through h.

172. Change the title of 624.651e from "Background Contrast" to "Background and Barcode Reflectance Difference."

173. In 624.651h, add a new subsection 624.651h(1)(e) to read as follows:

(e) The top edge of the window must be at least ⅝ of an inch from the bottom of the mailpiece.

174. Delete 624.651h(2)(b).

175. Renumber 624.651h(2)c as 624.651h(2)(b).

176. Insert note under new 624.651h(2)(b) as follows:

Note: Upon deployment of Wide Area Barcode Readers (WABCRs) which is expected to occur sometime in 1991, printing and markings in the barcode clear zone will be acceptable provided they do not lower the background reflectance to less than 50 percent in the red and 45 percent in the green portion of the optical spectrum.

177. Delete 624.651h(2)(d) and insert new 624.651h(2) (c) and (d) as follows:

(c) The barcode must meet the location requirements in 624.651b. These location requirements must be met when the insert is moved to any of its limits within the envelope.

(d) A clear space of at least ⅛ of an inch must be left between the barcode and the top, left and right edges of the window. (There must be no bottom edge to the window as described in 624.651h(1)(b).) This clear space must exist, even when the insert is moved to any of its limits within the envelope.

178. Renumber 624.66 as 624.652.

179. Renumber 624.66a as 624.652a.

180. Renumber 624.66b as 624.652b.

181. In 624.652b(1) change the reference 624.65 d through h to 624.561 c through h; change the reference 624.66b (2) and (3) to 624.652b (2) and (3).

182. In 624.652b(2) change the reference 624.65b to 624.651a; change the reference Exhibit 624.65b to Exhibit 624.651a.

183. In 624.652b(3)(a) change the reference 624.65c to 624.651b; change the reference Exhibit 624.66b(3) to Exhibit 624.652b(3).

184. In 624.652b(3)(b) change the reference 624.65c to 624.651b.

185. Insert new 624.66 to read as follows:

624.66 *Physical Requirements.* Each piece in the mailing must meet the physical requirements for automation compatibility in 624.441 through 624.444. In addition, poly-wrapped or poly-bagged pieces are not permissible at the barcoded rates.

PART 629—MAILPIECE CHARACTERISTICS

186. Add the following to the end of 629.32:

"See 624.43, 624.53 and 624.63 and 624.64 for a further definition of a correct ZIP + 4 code and further requirements for addressing of mailings at the basic ZIP + 4, 5-digit ZIP + 4 and ZIP + 4 barcoded rates."

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,
Assistant General Counsel, Legislative Division.

[FR Doc. 90-23245 Filed 10-2-90; 8:45 am]
BILLING CODE 7710-12-M

federal register

Wednesday
October 3, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 23
Small Airplane Airworthiness Review Program; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 26344; Notice No. 90-23]

RIN 2120-AD30

Small Airplane Airworthiness Review Program Notice No. 3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes changes to the powerplant and equipment airworthiness standards for normal, utility, acrobatic and commuter category airplanes that are based on certain proposals and recommendations discussed at the Small Airplane Airworthiness Review Conference held on October 22–26, 1984, in St. Louis, Missouri. These proposals arise from the recognition, by both government and industry, that updated safety standards are needed to maintain an acceptable level of safety in the design requirements for small airplanes that are used in both private and commercial operations. The proposed changes, if adopted, would provide design requirements applicable to advancements in technology being incorporated in current designs and reduce the regulatory burden in showing compliance with some requirements while maintaining an acceptable level of safety.

DATES: Comments must be received on or before April 1, 1991.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26344, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: Room 915-G, 800 Independence Avenue, SW, Washington, DC 20591. Comments delivered must be marked Docket No. 26344. Comments may be inspected in room 915-G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of Assistant Chief Counsel, room 1558, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of each proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are invited. Public comments are specifically solicited by this notice on the following subjects:

Proposal 58, Section 23.1143, Engine Controls

Proposal 60, Section 23.1147, Mixture Controls

Athough these two proposals, as evaluated with the data currently available to the FAA, do not show a positive quantitative economic benefit, the FAA has included these proposals in this notice and is soliciting public comments that may provide additional information as to cost and safety benefits that may result from the adoption of these proposals.

Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26344." The postard will be date stamped and returned to the commenter. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center, (APA-200), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA announced the Small Airplane Airworthiness Review Program and invited all interested persons to submit proposals for changes to part 23 of the FAR (48 FR 4290, January 31, 1983; Notice No. CE-83-1). The Review Program objective was to encourage public participation in improving and updating the airworthiness standards applicable to small airplanes.

In response to requests from interested persons, the FAA issued Notice No. CE-83-1A, which reopened the period for submission of proposals. This action (48 FR 28623, June 9, 1983) was based upon an FAA determination that it would be in the public interest to allow more time for the public and the aviation industry to submit their proposals.

By the close of the reopened proposal period on May 3, 1984, the FAA had received approximately 560 proposals in response to Notice Nos. CE-83-1 and CE-83-1A. On July 25, 1984, the FAA issued Notice No. CE-84-1 (49 FR 30053), Availability of Agenda, Compilation of Proposals, and Announcement of the Small Airplane Airworthiness Review Program Conference. The conference to discuss these proposals was held October 22-26, 1984, in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in the docket, Docket No. 23494.

Notice No. 1 of the Small Airplane Airworthiness Review Program was directed toward improvement of crashworthiness and the final rule was published, as amendment 23-36 (53 FR 30602, August 15, 1988). Notices numbered 2 and 5 address issues of specific concern in past and current certification programs and they were published in the **Federal Register** (54 FR 9276 and 54 FR 9338, March 6, 1989). Notice No. 4 addresses flight and structures issues not addressed in previous notices. This notice addresses systems and powerplant issues.

A number of proposals were submitted to the conference that did not result in proposed changes to part 23. The FAA's decision to take no further regulatory action on those proposals is based on information gained at the conference or during post-conference review. The regulatory sections are included below along with the explanation of why no action was taken to amend the rule.

No action is being taken to amend § 23.939.

Explanation: Conference proposal 323 recommended adding a new § 23.939(b) to require turbocharged engine installations meet certain detailed operation, test, and mechanical requirements. Comments at the conference did not support this proposal; therefore, proposal 323 will receive no further consideration.

Reference: Conference proposal 323.

No action is being taken to amend § 23.954.

Explanation: Conference proposal 328 recommended deleting the fuel system lightning protection requirements for conventional light airplanes of less than 3000 pounds because lightning protection is not needed for this class of airplane. Conference commenters did not support such a change in part 23. It cannot be ensured that any aircraft will not be exposed to lightning; therefore, proposal 328 will received no further consideration.

Reference: Conference proposal 328.

No action is being taken to amend § 23.1105.

Explanation: Conference proposal 394 recommended revising § 23.105(b) to limit the current rule to airplanes over 1500 pounds maximum weight. The proposal was withdrawn without conference discussion; therefore, the FAA plans no further action on this proposal.

Reference: Conference proposal 394.

No action is being taken to amend § 23.1182.

Explanation: Conference proposal 408 recommended adding interpretive material to § 23.1182 for airplanes of not more than 3000 lbs. maximum weight. The proposal was withdrawn at the conference without discussion; therefore, the FAA plans no further action on this proposal.

Reference: Conference proposal 408.

No action is being taken to amend § 23.1301.

Explanation: Conference proposal 417 recommended that the applicability of § 23.1301 for airplanes with a maximum weight of 3,000 pounds or less be limited to that equipment required by the operating regulations and those that are essential for safe operations. Since amendment 23-20, section 23.1301 has required that all installed equipment, whether optional or required, meet the functional and installation requirements applicable to essential equipment. Most airplanes certificated to Part 23 requirements have installed optional equipment, such as cigarette lighters, unrequired instrumentation, instrumentation that is redundant to required instrumentation, and so forth. Frequently, operations are predicated on use of optional equipment. In such operations, it is essential to safety for the affected optional equipment to perform its intended function. Therefore, the FAA considers it necessary to retain the requirements of this section. Since the conference, FAA has issued amendment 91-206 (53 FR 236, December 13, 1988), with an effective date of December 13, 1988. This amendment revises part 91 to permit rotorcraft nonturbine-powered airplanes, gliders, and lighter-than-air aircraft, for which an approved Master Minimum Equipment List has not been developed, to be operated with certain inoperative instruments and equipment that are not essential for the safe operation of the aircraft. These rules permit operation of an aircraft with inoperative instruments and equipment within the framework of a controlled program of maintenence inspections, repairs, and parts replacements. Basically, the only instruments and equipment that are permitted to be inoperative, and only for certain situation, would be unneeded communications and navigation radios, convenience equipment, optional installed instruments and equipment and those instruments and equipment not required by § 91.33 for the kind of flight operation being conducted. Since this final rule addresses the concerns of this conference proposal, no further action is being taken on conference proposal 417.

Reference: Conference proposal 417.

No action is being taken to amend § 23.1353.

Explanation: Conference proposal 458 recommended revising § 23.1353(g) by adding the word "or" between paragraphs (g)(1) and (g)(2) so there would be an alternative design permitted. The regulations now provide for three alternatives since there is an "or" between paragraphs (g)(2) and (g)(3). Therefore, the "or" between paragraphs (g)(1) and (g)(2) is understood. Conference proposal 457 recommended revising § 23.1353(g) so that a low energy charging power source would be acceptable, but it was withdrawn after the discussion of conference proposal 458.

Reference: Conference proposals 457 and 458.

No action is being taken to amend § 23.1413.

Explanation: Conference proposal 466 recommended replacing the specific requirement for the latching device, that is, the metal to metal latching device in § 23.1413, with objective words. This proposal was opposed at the conference since other acceptable methods have not been shown. Metal to fabric latching devices or buckles have been shown to wear, deteriorate and fail in survivable crashes.

Amendment 23-32 (50 FR 46872, November 13, 1985) amended the shoulder harness requirements but it did not amend § 23.1413 to extend the metal to metal latching device requirement to harnesses. The FAA does not believe any lesser quality latching device should be used for harnesses than is allowed for safety belts. Since the conference, § 23.1413 was revised by amendment 23-36 (53 FR 30602, August 15, 1988), effective September 14, 1988, to require that each safety belt and shoulder harness be equipped with a metal to metal latching device.

Reference: Conference proposal 466.

No action is being taken in this notice for conference proposal 517a.

Explanation: Conference proposal 517a recommended amending several sections of part 23, primarily in the fuel system area, to require improved post-crash fire protection. The proposal was based on National Transportation Safety Board (NTSB) Recommendations A-80-90, -91, and -92. The extensive discussion at the conference only addressed the concept of improved crash resistance of fuel systems as presented by the sponsor. No details of proposed rule changes were discussed. These NTSB recommendations were addressed in a separate notice of proposed rulemaking on crash resistant fuel systems for part 23 airplanes and will not be considered further in this notice.

Reference: Conference proposal 517a.

Regulatory Evaluation Summary

Benefit-Cost Analysis

The FAA is required to examine the potential benefits and costs of each proposed rulemaking action to ensure that the public is not burdened with rules where costs outweigh their benefits. This section contains an evaluation that quantifies, to the maximum possible extent, the potential costs and benefits expected to accrue from updating the airworthiness standards for part 23 airplanes.

This NPRM addresses the powerplants and equipment requirements of part 23 airplanes. The various powerplant sections include general provisions for installation, certification, and protection of engines and propellers; and specific provisions for fuel systems and their components, oil systems, cooling systems, induction systems, exhaust systems, powerplant controls, accessories, and fire protection. The sections on equipment include general standards for installation and performance, and specific standards for instrument

Costs

Proposed § 23.1143 would not have significant cost impacts on airplane piston engine manufacturers. The proposal would not present a major design problem for manufacturers of reciprocating engines. This assessment is based on the informed judgment of FAA personnel and information

airplanes that resulted in 1 fatality, 10 serious injuries, and 31 minor injuries. There is a high likelihood that these accidents would have been prevented had proposed § 23.1143 (including proposed § 23.1147) been in effect. Adding in the aircraft damage, which is expected to occur from a typical accident in the future involving these

dollars. Therefore, as the result of this revision, the FAA currently uses a minimum value of $1.5 million to statistically represent a human fatality avoided. In addition, the FAA uses $840,000 and $2,300 for serious and minor injury values. Other critical values have also been revised.

The cost-benefit analysis of these proposed or existing rule. A review of domestic general aviation manufacturers indicates that only six companies have 75 or fewer employees. Therefore, this NPRM would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49

and propellers; and specific provisions for fuel systems and their components, oil systems, cooling systems, induction systems, exhaust systems, powerplant controls, accessories, and fire protection. The sections on equipment include general standards for installation and performance, and specific standards for instrument installation, electrical systems and equipment, lights, safety equipment, and miscellaneous equipment.

The FAA estimates that the cost of compliance that is expected to accrue from implementation of the proposed rule would be $51,000 (discounted, in 1989 dollars) between 1990 and 1999. This assessment is based on the belief that only proposed §§ 23.1143 (Engine Controls) and 23.1147 (Mixture Controls) would impose greater than negligible but less than significant costs on aircraft manufacturers.

Although the proposed rule would incorporate minor to major changes to powerplant and equipment requirements of part 23, most of such changes are expected to impose negligible costs on manufacturers. Many of the proposed changes are simply a formalization of requirements that the small airplane industry is already satisfying, some proposed changes clarify or simplify the rules, and others are intended to have greater impact on enhancing safety.

Some of the proposed rule changes would require manufacturers to either redesign their components or equipment, to install additional equipment, or to conduct additional tests for certification. Most of these requirements would have negligible impacts on manufacturers because almost none of the requirements would be retroactive. Manufacturers would not be required to change their airplanes to comply with the proposed requirements. Because of the depressed state of the general aviation industry, which is likely to continue in the near future, considerably fewer airplane designs are expected to appear on the market than in the past. This would reduce the extent of costs that the industry would have to bear.

Cost-Benefit Effect of Proposed Sections 23.1143 (Engine Controls) and 23.1147 (Mixture Controls)

Section 23.1143 would require an adequate backup in the event of failure of the pilot's control installation to the fuel metering device. Section 23.1147 would require that, in the event of failure to the pilot's control installation, the mixture control device be automatically positioned at the full-rich setting.

Costs

Proposed § 23.1143 would not have significant cost impacts on airplane piston engine manufacturers. The proposal would not present a major design problem for manufacturers of reciprocating engines. This assessment is based on the informed judgment of FAA personnel and information received from industry. The total cost of designing a newly type certificated piston engine is estimated to be as high as $21 million (in 1989 dollars). The design cost for this proposal (engine controls) cannot be separated from the proposal for mixture controls (§ 23.1147). The combined design cost associated with these two proposals is estimated to range from $52,000 to $104,000 per newly type certificated engine. This estimate is based on discussions with airplane engine manufacturers and the General Aviation Manufacturers Association (GAMA). This evaluation assumes that only one engine (piston) design will be newly type certificated over the next 10 years (1990–1999), based primarily on the informed judgment of FAA personnel. Thus, the proposal's impact (including proposed § 23.1147) on total design costs is very small and would probably not affect the decision to produce a newly type certificated engine design. Hardware costs would be minimal, probably no more than $5.00 per individual engine, which consists of springs and fasteners.

The $52,000–$104,000 design costs would be distributed over each engine expected to be sold. If the proposal's design costs are distributed over 1,000 engines in the 10 year period, design costs per engine would range between $52–$104. Using the midpoint of this range, design costs are estimated to be $78 per engine. Adding the $5 per engine hardware cost to the newly type certificated engine design costs yields a $83 cost of the proposal per individual engine. Total cost of the proposal over the 10 year period is estimated to be $83 times 1,000 engines or $83,000 ($51,000 discounted, 10 percent, 10 years). All cost estimates are expressed in 1989 dollars.

Benefits

The potential benefits of proposed § 23.1143 (including proposed § 23.1147) would be enhanced safety. Such safety would take the form of a reduced likelihood of aviation accidents resulting in fatalities, injuries (serious and minor), and, to a lesser extent, property damage. According to accident data compiled by the National Transportation Safety Board, which include years 1982 through 1987, there were 71 accidents in part 23 airplanes that resulted in 1 fatality, 10 serious injuries, and 31 minor injuries. There is a high likelihood that these accidents would have been prevented had proposed § 23.1143 (including proposed § 23.1147) been in effect. Adding in the aircraft damage, which is expected to occur from a typical accident in the future involving these airplane engines, and applying monetary values to each category of casualties and damage, the average baseline annual risk exposure amounts to $11,034,000 (1989 dollars). This benefit estimate embodies global parameters in regard to the number of occupants per accident, injury distributions, etc., rather than reliance on those associated with the 71 baseline accidents. This approach is employed because there is a greater probability that future accidents would be characterized by the global parameters rather than the historic 71 accidents. Global in this evaluation refers to potential benefit estimates that take into account typical passenger (including pilot) load factors of future accidents that would involve single and multiengine (reciprocating) airplanes rather than reliance on what actually took place in the historic 71 accidents. This approach also makes the same considerations for aircraft damage, though this does employ a higher degree of uncertainty. This approach is considered to be more realistic of what we can reasonably expect in the future in the event of a typical accident related to these engines in the absence of these two proposed amendments.

The potential benefits of proposed § 23.1143 are estimated for the 10 year period 1990–1999. The benefit estimate is based on the premise that 1,000 newly type certificated reciprocating engines, which are assumed to be installed primarily in airplanes produced under amended type certificates, will be produced over the 10 year period. After taking into account the proportion of newly type certificated piston engines expected to come into U.S. service relative to the number of engines in the existing airplane fleet, the potential reduction in risk exposure is estimated to be $301,000 ($158,000 discounted, 10 percent, 10 years) over the next 10 years. This potential benefit estimate of $301,000 is based on a recent revision by the FAA in accordance with guidelines issued by The Office of the Secretary of Transportation, dated June 22, 1990. This revision was done in order to better provide the public and government officials with a benchmark comparison of expected safety benefits of rulemaking actions over an extended period of time with estimated costs in dollars. Therefore, as the result of this revision, the FAA currently uses a minimum value of $1.5 million to statistically represent a human fatality avoided. In addition, the FAA uses $640,000 and $2,300 for serious and minor injury values. Other critical values have also been revised.

The cost-benefit analysis of these proposed amendments, taken together, shows that the total potential benefits ($158,000) outweigh the total estimated costs ($51,000) by a factor of 3.1. As noted above, this benefit estimate of $158,000 is based on data in addition to that for these two proposed amendments. Such data have supplemented what was found in the accidents database by adjusting for typical passenger load factors and aircraft damages. These additional data adjustments reflect a more realistic approach as to the outcome of a typical accident involving single and multiengine (reciprocating) airplanes. Since the estimated implementation cost of $83.00 per newly installed engine sold is viewed as minor, coupled with the belief that potential safety benefits would at least be equal to the per engine cost, these two proposed amendments are considered to be cost-beneficial.

On balance, the FAA believes that all of the proposed amendments are cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional information related to the costs and benefits that are expected to accrue from implementation of the proposed rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

This NPRM would amend part 23 of the Federal Aviation Regulations. Part 23 prescribes airworthiness standards for the issue of type certificates for normal, utility, acrobatic, and commuter category airplanes. Under the criteria of the RFA, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA size threshold for a determination of a small entity for aircraft manufacturers is 75 or fewer employees. A substantial number of small entities is defined as a number that is not fewer than eleven and that is more than one-third of the small entities subject to a proposed or existing rule. A review of domestic general aviation manufacturers indicates that only six companies have 75 or fewer employees. Therefore, this NPRM would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This NPRM is expected to have neither an adverse impact on the trade opportunities of U.S. manufacturers of part 23 airplanes doing business abroad nor on foreign aircraft manufacturers doing business in the United States. Since the certification rules are applicable to both foreign and domestic manufacturers, which sell in the United States, there would be no competitive trade advantage to either.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation that is not major under the provisions of Executive Order 12291, (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and (3) in addition, I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

List of Subjects in 14 CFR Part 23

Aircraft, Air transportation, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend part 23 of the Federal Aviation Regulations (14 CFR part 23), as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a) 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g).

2. Section 23.901 is amended by revising paragraphs (b), (d), and (e), and adding a new paragraph (f) to read as follows:

§ 23.901 Installation.

* * * * *

(b) Each powerplant installation must be constructed and arranged to—

(1) Ensure safe operation to the maximum altitude for which approval is requested.

(2) Be accessible for necessary inspections and maintenance.

(3) Result in vibration characteristics that do not exceed those established during the type certification of the engine.

* * * * *

(d) Each turbine engine installation must be constructed and arranged to provide continued safe operation without a hazardous loss of power or thrust while being operated in rain for at least 3 minutes with the rate of water ingestion being not less than 4 percent, by weight, of the engine induction airflow rate at the maximum installed power or thrust approved for takeoff and at flight idle. The engine must accelerate and decelerate safely following stabilized operation under these rain conditions.

(e) The powerplant installation must comply with—

(1) The installation and operating instructions provided under the engine and propeller type certificates; and

(2) The applicable provisions of this subpart.

(f) Each auxiliary power unit installation must meet the applicable portions of this part.

Explanation: This proposal will clarify the intent of this section by adding the words "powerplant" and "installation" in paragraphs (b) and (e); by adding vibration characteristic requirements for any airplanes; by correcting the reference for installation instructions from § 33.5 to the affected engine and propeller type certificate; by revising the water ingestion requirement to show that the engine installation does not degrade the water ingestion capability of the engine; and by adding an auxiliary power unit installation requirement.

Conference proposal 306 recommended the insertion of the words "or control" into paragraph (a)(2) after the word "safety"

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because the definition of what constitutes a powerplant installation should include the "control" of major propulsion units. At the conference, one commenter agreed with the additional words; however, three commenters disagreed. These commenters contended that without a definition of the word "control", the addition would cause more confusion than clarification about what is included in a powerplant installation.

The FAA has further considered this issue and concluded that the purpose of § 23.901(a) is to define an airplane powerplant installation for part 23 so that the requirements that follow would apply to all components of the installation that are necessary for propulsion and that affect the safety of the major propulsive units. It follows that each component that affects safety includes all components needed for control of the major propulsive units. Therefore, the adoption of the additional words "or control" would neither add a substantive requirement not already in the rule, nor clarify the requirement.

Conference proposal 306 recommended that the word "installation" be inserted into § 23.901(b) after the word "powerplant" to clarify the requirement that the following rules apply to those components of the installation that are not already certificated or otherwise approved. During discussion at the conference, one commenter supported the change. The FAA considers it clarifying and has incorporated it into this proposal.

Conference proposal 307 recommended deletion of the word "turbine" from § 23.901(d). Such change would require reciprocating engines to show water ingestion capability at the same level as turbine engines. The consensus of the conference was that this suggested revision was not justified. The FAA agrees with this consensus.

Conference proposal 307 also recommended revising the requirement for rain ingestion capability from "at rated takeoff power or thrust" to "at the maximum power or thrust approved for takeoff." This was not discussed in detail at the conference. The FAA has further considered this issue. Part 33 requires a showing of ingestion capability at rated takeoff power or thrust. In most installations, the rated takeoff power or thrust is approximately equivalent to the maximum power or thrust approved for takeoff on the particular airplane, but there are a number of installations where the maximum approved engine power is substantially derated. Operating the engine at its derated power may place engine operation in a regime where the rain ingestion capability was not demonstrated adequately during type certification of the engine. Substantiation to the proposed requirement will show that the installation of the engine in the airframe, even with derated power, has not impaired the engine's rain-ingestion capability. To remove redundancy and to foster consistency within the FAR, the first four words of § 23.901(d) are revised to read "Each turbine engine installation . . .".

Conference proposal 309 recommended that a new paragraph (f) be added to specify auxiliary power unit installation requirements. At the conference, the commenters agreed that the rule is needed.

Conference proposal 310 recommended that § 23.901(e)(1) be revised by replacing the words "under § 33.5 of this chapter" with the words "under the engine and propeller type certificates" because not all engines installed on new airplanes are certificated under part 33. Some engines in current production were certificated under Civil Air Regulations, part 13, and imported engines are certificated through part 21 and the applicable bilateral agreements. Since the powerplant installation also includes propellers, the FAA has determined that it is appropriate to insert a similar requirement for propeller installation instructions into this section.

Conference proposal 311 recommended a change similar to proposal 310.

The FAA has determined that the turbopropeller vibration requirements should apply to all part 23 airplanes and has deleted the words "commuter category" from paragraph (b)(3) in this proposal.

Reference: Conference proposals 305, 306, 307, 309, 310, and 311.

3. Section 23.903 is amended by revising paragraphs (d)(1) and (e)(2) to read as follows:

§ 23.903 Engines.

* * * * *

(d) * * *

(1) The design of the installation must be such that risk of fire or mechanical damage to the engine or airplane, as a result of starting the engine in any conditions in which starting is to be permitted, is reduced to a minimum. Any techniques and associated limitations for engine starting must be established and included in the Airplane Flight Manual (AFM), approved manual material, or applicable operating placards. Means must be provided for—

(i) Restarting any engine in flight, and

(ii) Stopping any engine in flight, after engine failure, if continued engine rotation would cause a hazard to the airplane.

* * * * *

(e) * * *

(2) There must be means for stopping combustion of any engine and for stopping the rotation of any engine if continued rotation would cause a hazard to the airplane. Each component of the engine stopping system located in any fire zone must be fire resistant. In addition, each component of the engine restarting system located in any fire zone must be fire resistant. If hydraulic propeller feathering systems are used for stopping the engine, the hydraulic feathering lines or hoses must be fire resistant.

* * * * *

Explanation: This proposal will require a means for restarting any engine in flight and will allow continued rotation of any engine after failure if continued rotation will not create a hazard to the airplane, and will clarify the stopping and restarting system fire resistance requirements.

Conference proposal 306 recommended the deletion of the last sentence of current § 23.903(d)(1) because the requirements of § 23.33 are adequate to limit windmilling speeds to reasonable levels, under recommended glide airspeed, after engine failure. After further examination of the cited requirements and the conference discussion, the FAA has concluded that deletion of the last sentence of paragraph (d)(1) is not justified. The requirement of § 23.33 speaks to overspeeding of operating engines while the last sentence of § 23.903(d)(1) refers to overspeeding (windmilling) of a failed engine. Windmilling of a piston engine on a single-engine or multiengine-powered airplane usually is not a hazard. Therefore, the FAA has determined that § 23.903(d) should be revised to allow continued rotation of a piston engine on single-engine and multiengine-powered airplanes after engine failure if continued rotation of the failed engine does not create a hazard. In the third sentence of current § 23.903(d)(1), the words "for multiengine airplanes" are deleted to require the means for restarting engines applicable to any engine for both single and multiengine airplanes.

Conference proposal 312 recommended revising § 23.903(e)(2) to allow windmilling of a shutdown turbine engine where no hazard to the airplane is involved, to require the components of both the stopping and restarting systems on the engine side of the firewall to be at least fire resistant, and to require any propeller feathering hoses involved in the stopping and restarting systems to be at least fire resistant.

Conference proposal 313 recommended revising § 23.903(e)(2) in a similar manner. The justification given for both of these proposals is that turbine engines can windmill safely.

Conference discussion resulted in a consensus that supported these conference proposals. The two proposals contend that most turbine engines can windmill without hazard to the airplane and should not be required to be stopped when no hazard results from continued rotation. Allowing non-hazardous windmilling of an engine removes a burden from the aviation public and is considered relieving in nature. Therefore, the FAA proposes to amend § 23.903(e)(2) to allow non-hazardous windmilling of the engines. Since all requirements relative to stopping and starting engines are appropriate to all categories of part 23 turbine-engine-powered airplanes, the phrase "for commuter category airplanes" is deleted from paragraph (e)(2).

Conference proposal 314 recommended simplified engine requirements for airplanes of not more than 1500 pounds. The consensus of commenters at the conference was that Joint Airworthiness Regulations E and 22 should not be incorporated into part 23. The FAA agrees and will not consider this proposal.

The FAA is proposing the establishment of fire zones in part 23 airplanes in new § 23.1181. Therefore, fire zone terminology has been incorporated in this and several other proposals throughout this notice.

Reference: Conference proposals 308, 312, 313, and 314.

4. Part 23 is amended by adding a new § 23.904 to read as follows:

§ 23.904 Automatic power reserve system.

If installed, an automatic power reserve (APR) system that automatically advances the power or thrust on the operating engine(s), when any engine fails during takeoff, must comply with appendix H of this part.

Explanation: See proposal 98.

5. Section 23.905 is amended by adding paragraphs (e), (f), (g), and (h) to read as follows:

§ 23.905 Propellers.

* * * * *

(e) All areas of the airplane forward of the pusher propeller that are likely to accumulate and shed ice into the propeller disc during any operating condition for which the airplane is certificated must be suitably protected to prevent ice formation, or it must be shown that any ice shed into the propeller disc will not create a hazardous condition.

(f) Each pusher propeller must be marked so that the disc is conspicuous under normal daylight ground conditions.

(g) If the engine exhaust gases are discharged into the pusher propeller disc, it must be shown by tests, or analysis supported by tests, that the propeller is capable of continuous safe operation.

(h) All engine cowling, access doors, and other removable items must be designed to ensure that they will not separate from the airplane and contact the pusher propeller.

Explanation: This proposal adds four requirements for pusher propeller configurations: (1) Ice shedding will not create a hazard; (2) the propeller disc is conspicuously marked; (3) the propeller can withstand engine exhaust gases; (4) and items from the airplane will not separate and contact the propeller. The FAA has received several applications for pusher propeller configurations. The FAA has found these configurations to be novel and unusual design features relative to the applicable requirements. Special conditions were necessary to provide the level of safety intended by the applicable requirements. The FAA has further considered the issues of propeller disc conspicuity, ice likely to be shed into the propeller disc, and engine exhaust gases that are discharged into the propeller disc.

Propeller disc conspicuity is of concern during ground operations. Ground personnel and boarding and deplaning passengers are accustomed to tractor propellers. With pusher propellers, there is a significantly higher probability of inadvertent contact with a turning propeller. Therefore, the FAA is proposing additional requirements for pusher propeller conspicuity. Additional conspicuity of tractor propellers could enhance ground operations safety, but the FAA is concerned that any additional visual attention-getters in the pilot's normal viewing area could adversely affect collision avoidance.

Most propeller installations are subject to ice being shed into them, if only from the propeller spinner. Typically, for tractor propellers, no significant damage results. However, for pusher propellers that are very close to the fuselage and well back from the front of the airplane's nose, ice shed from the forward fuselage, and from the wings may cause significant propeller damage. Therefore, the FAA is proposing requirements to ensure such damage does not cause a hazardous condition.

In most pusher propeller installations, the engine exhaust gases pass through the propeller disc. Many factors affect the temperature of these gases when they contact the propellers and propeller tolerance to these gases varies with propeller design and materials. Therefore, the FAA is proposing requirements to ensure damage to the propellers does not occur as a result of exhaust gas impingement.

In pusher propeller installations, design factors need to be incorporated to ensure that removable items do not separate from the airplane and contact the propeller.

Reference: Conference proposals 315, 316, and special conditions recently promulgated that apply to pusher propellers.

6. Section 23.909 is amended by revising the heading; by removing the workd "turbosupercharger" and replacing it with the word "turbocharger" each time it appears in paragraphs (b) and (c); by revising paragraph (a); and by adding new paragraphs (d) and (e) to read as follows:

§ 23.909 Turbocharger systems.

(a) Each turbocharger must be approved under the engine type certificate or it must be shown that the turbocharger system, while in its normal engine installation and operating in the engine environment—

* * * * *

(d) Each intercooler installation, where provided, must comply with the following—

(1) The mounting provisions of the intercooler must be designed to withstand the loads imposed on the system;

(2) It must be shown that, under the installed vibration environment, the intercooler will not fail in a manner allowing portions of the intercooler to be ingested by the engine; and

(3) Airflow through the intercooler must not discharge directly on any airplane component (e.g., windshield) unless such discharge is shown to cause no hazard to the airplane under all operating conditions.

(e) Engine power, cooling characteristics, operating limits, and procedures affected by the turbocharger system installations must be evaluated. Turbocharger operating procedures and limitations must be included in the Airplane Flight Manual in accordance with § 23.1581 of this part.

Explanation: This proposal expands and clarifies the intent of the requirements for turbocharger system standards by adding an engine/turbocharger operating environment requirement and intercooler installation requirements.

Conference proposal 317 recommended revising § 23.909(a) to require that turbochargers be compatible with the engine environment in which turbochargers will be expected to operate. The justification given was that the current rule has been interpreted as allowing turbochargers to be approved as part of the airplane type design rather than as part of the engine type design. Current § 23.909(a)(1) allows a bench test of the turbocharger system by itself; it need not be installed on an engine. This test does not subject the turbocharger system to the engine environment, nor the engine to the turbocharger environment. The FAA concludes that it is necessary to test the turbocharger and the engine as a unit, and incorporates the proposal as recommended.

Conference proposal 318 recommended revising § 23.909(a)(1) to require that the turbocharger undergo an additional 500 hours of flight testing, including at least 400 hours of operation at 75 percent cruise power or normal cruise power for the engine with which it is installed. The objective is the same as the previously cited conference proposal 317. The justification cited mismatches in turbocharger/engine combinations; however, consensus of the conference discussion was opposed to this proposal because such prolonged testing is not needed. The FAA agrees and conference proposal 318 will not receive further consideration.

Although it was not discussed at the conference, the FAA is aware of the trend toward adding intercoolers into turbocharger systems and has determined that there is a need for airworthiness standards for such installations. Therefore, the FAA has developed proposed standards for intercoolers covering mounting loads, vibration environment, and the cooling airflow exhaust. The standards are incorporated into new paragraph (d) of this proposal.

The FAA has determined that engine power, cooling characteristics, operating limits, and procedures attributable to the turbocharger system must be evaluated and documented in the Airplane Flight Manual. These requirements are incorporated into new paragraph (e) of this proposal. Since this proposal addresses the total turbocharger system installation, the section heading is revised by adding the word "systems".

Reference: Conference proposals 317 and 318.

7. Part 23 is amended by adding a new § 23.911 to read as follows:

§ 23.911 Propulsion drive system design.

Propulsion drive systems as defined in paragraph (a) of this section must meet the requirements as set forth in §§ 23.911 through 23.921 of this part.

(a) The propulsion drive system includes all parts necessary to transmit drive system powered by more than one engine must be—

(1) Designed so that torque to the propeller is not interrupted after failure of any engine or element in the propeller drive system; and

(2) Examined in detail to determine all components and their failure modes that would be critical to the continued safe flight and landing of the airplane. For values determined by the drive system type design or the maximum value shown during type tests.

(2) The maximum allowable temperature for the transmission oil.

(3) The time limit for the use of power, gas temperature, and speed corresponding to the limitations established in paragraphs (b) and (c) of

instruments must be provided for any gear box or transmission:

(a) An oil pressure warning device for each pressure-lubricated gear box to indicate when the oil pressure falls below a safe value;

(b) A low oil quantity warning indicator for each gear box, if lubricant is self-contained;

second from takeoff setting to idle in accordance with § 33.73 of this chapter.)

(3) The time duration of all engines at takeoff power setting must total one hour and does not include the time required to go from takeoff to idle and back to takeoff speed.

(c) *Endurance tests; maximum continuous run.* Three hours of

propeller speed expected in service, assuming that speed and torque limiting devices, if any, function properly.

(i) *Endurance tests; one-engine-out application.* A total of at least 400 full differential power applications, including those specified in paragraphs (b) and (g) of this section (120 engine power setting cycles in each of

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7. Part 23 is amended by adding a new § 23.911 to read as follows:

§ 23.911 Propulsion drive system design.

Propulsion drive systems as defined in paragraph (a) of this section must meet the requirements as set forth in §§ 23.911 through 23.921 of this part.

(a) The propulsion drive system includes all parts necessary to transmit power from the engine(s) to the propeller(s) that have not been approved as part of the engine(s) or propeller(s). This includes couplings, universal joints, drive shafts, supporting bearings for shafts, brake assemblies, clutches, gear boxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the propulsion drive system.

(b) Each propulsion drive system powered by more than one engine must be arranged so that the propeller and its control will continue to be operated by the remaining engine(s) if any engine fails.

(c) Each multiengine propulsion drive system must incorporate a device to automatically disengage any engine from the propeller if that engine fails.

(d) If a transmission is torque limited, a means to prevent exceeding the torque limit must be provided unless it can be shown by design and tests that the torque limit cannot be exceeded.

(e) The oil for components of the propulsion drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure operation with any engine inoperative.

(f) There must be cooling provisions to maintain the fluid temperatures in any propulsion drive transmission within design values under any critical ground and flight operating condition. Compliance must be shown by ground and flight tests.

(g) Torque limiting means must be provided on all accessory drives that are located on the propulsion drive system in order to prevent the torque limits established for those drives from being exceeded.

(h) There must be provisions to minimize the hazards resulting from failure of an engine to transmission drive shaft such that the airplane can continue flight to a safe landing.

(i) A positive means must be provided to indicate that an engine is inoperative, or it must be determined that required instruments will readily alert the pilot when an engine is inoperative.

(j) In addition to the propulsion drive system complying with the requirements in § 23.903(c), the installed propulsion drive system powered by more than one engine must be—

(1) Designed so that torque to the propeller is not interrupted after failure of any engine or element in the propeller drive system; and

(2) Examined in detail to determine all components and their failure modes that would be critical to the continued safe flight and landing of the airplane. For each component and its failure modes identified by this examination, it must be shown—

(i) By appropriate test that such a failure is not likely to occur in the system component's service life established by these tests; or

(ii) That the system is designed so continued safe flight and landing can be accomplished after occurrence of the failure.

(k) The following applies to the propeller pitch control—

(1) No loss of normal propeller pitch control may cause hazardous overspeed of the propeller under all intended operations.

(2) Each propeller pitch control and pitch locking (safety) device must be subjected in tests to cyclic loading that simulates the frequency and amplitude to which the components would be subjected during 1,000 hours of propeller operations.

(3) Compliance with paragraph (k)(2) of this section may be shown by a rational analysis based on the results of tests on similar components.

Explanation: This proposal, and several related proposals, presents requirements for propulsion drive systems that are designed to connect the engine(s) with the propeller(s) when they are not joined directly and are not approved as part of the engine type design. The FAA has received applications for approval of this type system, which is novel and unusual relative to the applicable requirements. In response to these applications, it is required by § 21.16 that special conditions be established. To preclude the need for further special conditions, the FAA is introducing the requirements into part 23.

Reference: Cited special conditions.

8. Part 23 is amended by adding a new § 23.913 to read as follows:

§ 23.913 Propulsion drive system limitations.

(a) The propulsion drive system limitations must be established so that they do not exceed the corresponding limits approved for the engine, propeller, and drive system components.

(b) For all engines, takeoff operation must be limited by—

(1) The powerplant maximum rotational speed for takeoff operation and the maximum rotational propeller speed may not be greater than the values determined by the drive system type design or the maximum value shown during type tests.

(2) The maximum allowable temperature for the transmission oil.

(3) The time limit for the use of power, gas temperature, and speed corresponding to the limitations established in paragraphs (b) and (c) of this section.

(c) For turbine engines, takeoff operation must also be limited by—

(1) The powerplant maximum allowable gas temperature at maximum allowable power or torque for each engine considering the power input limitations of the transmission with all engines operating; and

(2) The powerplant maximum allowable gas temperature at maximum allowable power or torque for each engine considering the power input limitations of the transmission with one engine inoperative.

(d) For all engines, continuous operation must be limited by—

(1) The powerplant maximum rotational speed for continuous operation. The maximum rotational propeller speed may not be greater than the values determined by the drive system type design maximum value shown during type tests;

(2) The maximum allowable temperature for the transmission oil;

(3) A low oil quantity warning; and

(4) A low oil pressure warning.

(e) For turbine engines, continuous operation must also be limited by—

(1) The powerplant maximum allowable gas temperature for continuous operation and the maximum allowable power or torque for each engine considering the power input limitations of the transmission with all engines operating; and

(2) The powerplant maximum allowable gas temperature at maximum allowable power or torque for each engine considering the power input limitations of the transmission with one engine inoperative.

(f) Ambient temperature limitations (including limitations for winterization installations if applicable) must be established as the maximum ambient atmosphere temperature at which compliance with the cooling provisions of §§ 23.1041 through 23.1045 is shown.

Explanation: See proposal 7.

9. Part 23 is amended by adding a new § 23.915 to read as follows:

§ 23.915 Propulsion drive system instruments.

In addition to the requirements of § 23.1305 of this part, the following instruments must be provided for any gear box or transmission:

(a) An oil pressure warning device for each pressure-lubricated gear box to indicate when the oil pressure falls below a safe value;

(b) A low oil quantity warning indicator for each gear box, if lubricant is self-contained;

(c) An oil temperature warning device to indicate unsafe oil temperatures in each gear box;

(d) A tachometer for each propeller;

(e) A torquemeter for each transmission driving a propeller; and

(f) A chip detecting and indicating system for each gear box.

Explanation: See proposal 7.

10. Part 23 is amended by adding a new § 23.917 to read as follows:

§ 23.917 Propulsion drive system and control mechanism tests.

(a) *Endurance tests; general.* The propulsion drive system, as defined in § 23.911, and the propeller(s) control mechanism must be tested as prescribed in paragraphs (b) through (k) of this section for at least 200 hours plus the time required to meet paragraphs (i) and (j) of this section. For the 200-hour portion, these tests must be conducted as follows:

(1) Twenty each, ten-hour test cycles consisting of the test times and procedures in paragraphs (b) through (h) of this section;

(2) The tests must be conducted on the airplane or on a representative portion of the fuselage or nacelle for all or a portion of these tests if determined appropriate;

(3) The test torque must be determined by actual powerplant limitations; and

(4) The test torque must be absorbed by the actual propellers to be installed or an FAA approved alternate.

(b) *Endurance tests; takeoff torque run.* The takeoff torque run endurance test must be conducted as follows:

(1) The takeoff torque run must consist of a one-hour run on the engine(s) at the torque corresponding to takeoff power, but with the engine power setting alternately cycled every five minutes to as low an engine idle speed as practicable. For multiengine installations, differential power is applied such that one engine is at takeoff setting and the other engine(s) is at idle setting.

(2) Deceleration and acceleration of the engines and/or of individual engines and drive systems must be performed at the maximum rate. (This corresponds to a one-second movement of the power lever from idle to takeoff setting and one second from takeoff setting to idle in accordance with § 33.73 of this chapter.)

(3) The time duration of all engines at takeoff power setting must total one hour and does not include the time required to go from takeoff to idle and back to takeoff speed.

(c) *Endurance tests; maximum continuous run.* Three hours of continuous operation at the torque corresponding to maximum continuous power and speed must be conducted as follows:

(1) The propeller(s) must be operated at a minimum of 15 times each hour between test configuration maximum and minimum pitch positions of the propeller(s) except that the change in pitch position movements need not produce loads exceeding the maximum loads encountered in flight.

(2) The minimum and maximum pitch position must be held for at least 10 seconds and the rate of change of pitch position must be at least as rapid as that for normal operation.

(d) *Endurance tests; 90 percent of maximum continuous run.* One hour of continuous operation at the torque corresponding to 90 percent of maximum continuous power must be conducted at maximum continuous rotational propeller speed.

(e) *Endurance tests; 80 percent of maximum continuous run.* One hour of continuous operation at the torque corresponding to 80 percent of maximum continuous power must be conducted at the minimum rotational propeller speed intended for this power.

(f) *Endurance tests; 60 percent of maximum continuous run.* Two hours of continuous operation at the torque corresponding to 60 percent of maximum continuous power must be conducted at the minimum rotational propeller speed intended for this power.

(g) *Endurance tests; engine malfunctioning run.* It must be determined whether malfunctioning of components, such as the engine fuel or ignition systems, or unequal engine power can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be acccomplished under those conditions, 1 hour of which must be included in each cycle and the remaining hours of which must be accomplished at the end of 20 cycles. If no detrimental condition results, an additional hour of operation in compliance with paragraph (b) of this section must be conducted.

(h) *Endurance tests; overspeed run.* One hour of continuous operation must be conducted at the torque corresponding to maximum continuous power and at the maximum rotational propeller speed expected in service, assuming that speed and torque limiting devices, if any, function properly.

(i) *Endurance tests; one-engine-out application.* A total of at least 400 full differential power applications, including those specified in paragraphs (b) and (g) of this section (120 engine power setting cycles in each of paragraphs (b) and (g) of this section totaling 240 cycles) must be made at takeoff torque and RPM. If during these tests it is found that a critical dynamic condition exists, an investigative assessment to determine the cause shall be performed throughout the torque speed range. In each of the remaining 160 engine power setting cycles (160 per engine drive branch) a full differential power application must be performed and the drive shaft of the engine-out must be at rest.

(j) Any components affected directly and/or indirectly by any existing flight loads must be investigated for the same flight conditions as the propeller(s) and their service lives must be determined by fatigue tests or by other acceptable methods. In addition, an acceptable level of safety must be provided for—

(1) Each component in the propeller drive system whose failure would preclude further flight; and

(2) Each component common to all engines of a multiengine airplane.

(k) Each part tested, as prescribed in this section, must be in a serviceable condition at the end of the tests. No intervening disassembly that might affect these results may be conducted.

Explanation: See proposal 7.

11. Part 23 is amended by adding a new § 23.919 to read as follows:

§ 23.919 Additional propulsion drive system tests.

Additional dynamic, endurance, and operational tests and vibratory investigations must be performed to determine that the drive mechanism is safe. The following additional tests and conditions apply:

(a) If the torque output of all engines to the transmission can exceed the highest engine or transmission torque limit, and that output is not directly controlled by the pilot under normal operating conditions (such as where the primary engine power control is accomplished through the propeller(s) control), the following test must be conducted. Under conditions associated with all engines operating, apply 200 cycles to the drive system for 10 seconds each, of a torque that is at least equal to the lesser of—

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(1) The maximum torque used in complying with paragraph (b) of § 23.917 plus 10 percent; or

(2) The maximum torque attainable under normal operating conditions, assuming that any torque limiting devices function properly.

(b) For a multiengine propulsion drive system with each engine alternately inoperative, apply to the remaining transmission inputs the maximum transient torque attainable under normal operating conditions, assuming that any torque limiting devices function properly. Each transmission input must be tested at this maximum torque for at least 15 minutes.

(c) The drive system must be subjected to 50 overspeed runs, each 30±3 seconds in duration at a speed of at least 120 percent of maximum continuous speed or other maximum overspeed that is likely to occur in service, plus a margin of speed approved by the Administrator for that overspeed condition. These runs must be conducted as follows:

(1) Overspeed runs must be alternated with stabilizing runs from 1 to 5 minutes duration each 60 to 80 percent of maximum continuous speed.

(2) Acceleration and deceleration must be accomplished in a period no longer than 10 seconds and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

(3) Overspeed runs must be made with the propellers in the flattest pitch for smooth operation.

(d) The test prescribed in paragraphs (a) and (c) of this section must be conducted on the airplane and the torque must be absorbed by the propeller to be installed, except other ground or flight test facilities with other appropriate methods of torque absorption may be used if the conditions of support and vibration are no less severe than the conditions that would exist during a test on the airplane.

(e) Each part tested, as prescribed in this section, must be in serviceable condition at the end of the tests. No intervening disassembly that might affect test results may be conducted.

(f) If drive shaft couplings are used and shaft misalignment or deflections are probable, loads must be measured in flight for the installation limits affecting misalignment. These loads must be combined to show adequate fatigue life.

Explanation: See proposal 7.

12. Part 23 is amended by adding a new § 23.921 to read as follows:

§ 23.921 Propulsion drive system shafting critical speed.

(a) The critical speeds of any shafting must be determined by test except that analytical methods may be used if reliable methods of analysis are available for the particular design.

(b) If any critical speed lies within, or close to, the operating ranges for idling and power-on conditions, the stresses occurring at that speed must be within design limits. This must be shown by tests.

(c) If analytical methods are used and show that no critical speed lies within the permissible operating ranges, the margins between the calculated critical speeds and the limits of the allowable operating ranges must be adequate to allow for possible variations between the computed and actual values.

Explanation: See proposal 7.

13. Section 23.925 is amended by redesignating paragraphs (b) and (c) as (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 23.925 Propeller clearance.

* * * * *

(b) *Aft-mounted propellers.* The airplane must be designed such that the propeller will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoff and landings. If a tail wheel, bumper, or an energy absorption device is provided to show compliance with this paragraph, the following apply:

(1) Suitable design loads must be established for the tail wheel, bumper, or energy absorption device; and

(2) The supporting structure of the tail wheel, bumper, or energy absorption device must be designed to withstand the loads established in paragraph (b)(1) of this section and inspection/replacement criteria must be established for the tail wheel, bumper, or energy absorption device and provided as part of the information required by § 23.1529.

* * * * *

Explanation: Typical small airplanes have been of the tractor propeller configuration. Recently, the FAA has received several applications for pusher propeller configurations. The FAA found for those configurations, which it considered unique relative to the applicable requirements, that special conditions were necessary to provide the level of safety intended by the applicable requirements. This proposal would eliminate the need for further special conditions relative to ground clearance for pusher propeller installations.

Reference: Special conditions mentioned above.

14. Section 23.933 is revised to read as follows:

§ 23.933 Reversing systems.

(a) For propeller reversing systems—

(1) Each system must be designed so that no single failure, likely combination of failures or malfunction of the system will result in unwanted reverse thrust under any operating condition. Failure of structural elements need not be considered if the probability of this type of failure is extremely improbable.

(2) Compliance with paragraph (a)(1) of this section must be shown by failure analysis, or testing, or both, for propeller systems that allow the propeller blades to move from the flight low-pitch position to a position that is substantially less than the normal flight, low-pitch stop position. The analysis may include or be supported by the analysis made to show compliance with § 35.21 for the type certification of the propeller and associated installation components. Credit will be given for pertinent analysis and testing completed by the engine and propeller manufacturers.

(b) For turbojet and turbofan reversing systems—

(1) Each system intended for ground operation only must be designed so that no single failure or malfunction of the system will result in unwanted reverse thrust under any expected operating condition. Failure of structural elements need not be considered if the probability of this type of failure is extremely improbable.

(2) Each system intended for inflight use must be designed so that no unsafe condition will result during normal operation of the system, or from any failure, or likely combination of failures of the reversing system under any operating condition including ground operation. Failure of structural elements need not be considered if the probability of this type of failure is extremely improbable.

(3) Each system must have means to prevent the engine from producing more than idle forward thrust when the reversing system malfunctions; except that it may produce any greater forward thrust that is shown to allow directional control to be maintained, with aerodynamic means alone, under the most critical reversing condition expected in operation.

Explanation: This proposal clarifies the reversing system requirements by separating the propeller reversing systems from the turbojet/turbofan reversing systems, and by amending the requirements for propeller reversing systems to allow incorporating a "beta range" of propeller blade pitch angles.

Conference proposal 320 recommended the addition of the world "propeller" as the first word in paragraph (a) and the addition of the words "and turbofan" as the second and third words in paragraphs (b) and (c) to clarify the type of reversing system each paragraph is to apply. This would ensure that the rules also apply to turbofan engine fan duct reversers.

Conference discussion indicated that current requirements are unclear. Since the conference, the FAA has reviewed the background of these requirements, along with state-of-the-art reversing systems, including special conditions applicable to reversing systems, and has concluded that clarification of the rule is necessary. This proposal separates the propeller reversing system requirements from the turbojet/turbofan reverser system requirements.

Since all requirements of this section are appropriate for all categories of part 23 airplanes, paragraph (d) applicable to turbopropeller-powered commuter category airplanes is deleted.

Reference: Conference proposal 320.

15. Part 23 is amended by adding a new § 23.934 to read as follows:

§ 23.934 Turbojet and turbofan engine thrust reverser systems tests.

Thrust reverser systems of turbojet or turbofan engines must meet the requirements of § 33.97 of this chapter or it must be demonstrated by tests that engine operation and vibratory levels are not affected.

Explanation: This proposal would incorporate a rule similar to § 25.934 to establish the engine/reverser compatibility testing requirements for thrust reversing systems on turbojet and turbofan engines.

Conference proposal 321 recommended the adoption of the testing requirements of § 33.97 of this chapter because § 23.933 contains installation design requirements for thrust reverser systems but no engine/reverser test compatibility requirements. This proposal would not require any additional testing for those systems type certificated as part of the engine.

At the conference, one commenter opposed requiring a 150-hour block test with a thrust reverser installed on an engine because it is expensive and serves no technical purpose. This commenter agreed that it is important to investigate any asymmetric effects the reverser may have on the engine and to ensure the compatibility of the reverse/engine combination. The commenter opposed any reference to thrust reverse testing requirements.

Another commenter stated that until the conference proposal appeared, it was assumed that § 33.97 was applicable to part 23 airplanes since there is nothing limiting the requirement to part 25 airplanes. This commenter stated that if § 33.97 is not applicable to part 23 airplanes, the FAA should clarify the applicability. Another commenter stated that endurance testing of a thrust reverser on its intended provided valuable answers. Since most fan thrust reversers are asymmetric, the effect on the engine should be investigated. In addition to inlet distortion, there is also an exhaust distortion so it is important to retain the test for the lessons learned from the thrust reverser and from the engine.

The FAA has further studied this issue and does not agree that there is an additional expense to the public imposed by this proposal because these same requirements have been imposed for add-on and retrofit reverser systems for many years. FAA policy is to forego the extra 150-hour test. When a thrust reverser is added or retrofitted, the reverser installation must demonstrate that the engine operation and vibratory levels are not affected. Sufficient test instrumentation is required to provide substantiating data that the operation and vibratory characteristics of the engine are not adversely affected.

The reverser test requirements of § 33.97 have been part of the FAR for twenty years, whereas this proposal is directed primarily at retrofit systems. The FAA has determined that the test requirements proposed are appropriate for those engine/reverser combinations not yet tested.

Reference: Conference proposal 321.

16. Section 23.937 is amended by designating the current text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 23.937 Turbopropeller-drag limiting systems.

* * * * *

(b) As used in this section, drag limiting systems include manual or automatic devices that, when actuated after engine power loss, can move the propeller blades toward the feather position to reduce windmilling drag to a safe level.

Explanation. This proposal adds a definition of drag limiting systems, as recommended by conference proposal 322, to clarify their function. The consensus of the conference discussion supported clarification of the requirements.

Reference: Conference proposal 322.

§ 23.943 [Amended]

17. Section 23.943 is amended by removing the words "expected for the acceleration" and replacing them with "of acceleration expected in service".

Explanation: This change would clarify the requirement. Conference proposal 325 recommended adding interpretive material. Conference consensus was that the recommendation is not regulatory in nature and should not be included in the rules.

Conference proposal 326 recommended the insertion of the phrase "in service" to avoid a rule interpretation requiring negative acceleration tests for extended durations on those airplanes not expected to experience long term negative accelerations in service. Conference discussion supported this recommendation. In all cases, it has been FAA practice to ensure, during type certification, that no hazardous malfunction occurs at the negative acceleration levels and for the durations expected in service. Therefore, the FAA concludes that adding the clarifying words "in service" are appropriate.

Reference: Conference proposals 325 and 326.

18. Section 23.961 is amended by revising paragraph (a) to read as follows:

§ 23.961 General.

(a) Each fuel system must be constructed and arranged to ensure fuel flow at a rate and pressure established for proper engine and auxiliary power unit functioning under each likely operating condition, including any maneuver for which certification is requested and during which the engine or auxiliary power unit is permitted to be in operation.

* * * * *

Explanation: This proposal would amend the general fuel system rules to make them applicable to auxiliary power unit fuel systems.

Conference proposal 327, and several other conference proposals to be addressed later, recommend identifying the specific requirements applicable to the installation of auxiliary power units in small airplanes.

Conference discussion concentrated on APUs intended for inflight use, ground use only, and unattended ground use. Conferees discussed the merits of having different levels of requirements based on the various uses. The FAA has further reviewed these issues and concludes the new APU requirements should be stated objectively; thereby allowing the applicant to select the phases of operation for which approval is desired.

Reference: Conference proposal 327.

§ 23.963 [Amended]

19. Section 23.963 is amended by removing the word "drain" and inserting in its place the word "escape", and by adding the phrase "after valve shutoff" at the end of the last sentence of paragraph (b)(1).

Explanation: This proposal clarifies the intent of paragraph (b)(1). The purpose of this rule is to limit fuel loss into the engine compartment due to failure or damage of any fuel system component downstream from the firewall shutoff valve or other valve providing that function. The word "drain" used in other sections of this part denotes a discharge of fluids under controlled conditions, even through that control may be limited to draining overboard. This rule addresses an uncontrolled release of fuel into an area of possible ignition source and the word "escape" more appropriately defines the objective.

Reference: This proposal resulted from recent questions regarding the interpretation of this rule.

20. Section 23.965 is amended by removing the word "carburetor" and inserting in its place the word "engine" in paragraph (a); by inserting the words "or its" before the word "bypass" in paragraph (a)(2); by adding new paragraphs (a)(3), (a)(4) and (f)(3); and by revising paragraphs (c) introductory

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text, (c)(1), (c)(3), (d)(2), (e), and (f)(2) to read as follows:

§ 23.955 Fuel flow.

(a) * * *

(3) If there is a flowmeter without a bypass, it must not have any failure mode that would restrict fuel flow below the level required in this fuel flow demonstration; and

(4) The fuel flow must include that flow needed for vapor return flow, jet pump drive flow, and for all other purposes for which fuel is used.

* * * * *

(c) *Pump systems.* The fuel flow rate for each pump system (main and reserve supply) for each reciprocating engine must be 125 percent of the fuel flow required by the engine at the maximum takeoff power approved under this part.

(1) This flow rate is required for each main pump and each emergency pump, and must be available when the pump is operating as it would during takeoff;

* * * * *

(3) The fuel pressure, with main and emergency pumps operating simultaneously, must not exceed the fuel inlet pressure limits of the engine.

(d) * * *

(2) If there is a placard providing operating instructions, a lesser flow rate may be used for transferring fuel from any auxiliary tank into a larger main tank. This lesser flow rate must be adequate to maintain engine cruise power but the flow rate must not overfill the main tank at lower engine powers.

(e) *Multiple fuel tanks.* For reciprocating engines that are supplied fuel from more than one tank, if engine power loss becomes apparent due to fuel depletion from the tank selected, it must be possible after switching to any full tank, in level flight, to obtain 75 percent maximum continuous power on that engine in not more than—

(1) 10 seconds for naturally aspirated single-engine airplanes;

(2) 20 seconds for turbocharged single-engine airplanes, provided that 75 percent maximum continuous naturally aspirated power is regained within 10 seconds; or

(3) 20 seconds for multiengine airplanes.

(f) * * *

(2) For multiengine airplanes, notwithstanding the lower flow rate allowed by paragraph (d) of this section, be automatically uninterrupted with respect to any engine until all the fuel scheduled for use by that engine has been consumed. In addition—

(i) For the purposes of this section, "fuel scheduled for use by that engine" means all fuel in any tank intended for use by a specific engine.

(ii) The fuel system design must clearly indicate the engine for which fuel in any tank is scheduled.

(iii) Compliance with this paragraph must require no pilot action after completion of the engine starting phase of operations.

(3) For single-engine airplanes, compliance with this paragraph must require no pilot action after completion of the engine starting phase of operations unless means are provided that unmistakenly alert the pilot to take any needed action at least five minutes prior to the needed action; such pilot action must not cause any change in engine operation; and such pilot action must not distract pilot attention from essential flight duties during any phase of operations for which the airplane is approved.

Explanation: This proposal clarifies the requirements and incorporates changes relative to single-engine, turbine-powered fuel systems that will allow inflight fuel management, will ensure uninterrupted fuel to the engine until all useable fuel has been consumed, and will provide for cross-flow prevention between interconnected tanks when the airplane is not being operated.

Conference proposal 329 recommends revising paragraph (a) to simplify fuel system testing for airplanes of less than 1500 pounds maximum weight. A conference commenter objected to compromising fuel system validation for any size airplane. The FAA agrees and proposes no further consideration of proposal 329.

Conference proposal 330 recommended revising paragraph (a) by replacing the word "carburetor" with the word "engine" to expand the applicability of this paragraph to all types of powerplant installations as intended under the "general" heading. At the conference, no comments were offered. The FAA concurs with this recommendation and proposes amending paragraph (a) accordingly.

Conference proposal 331 recommended revising paragraph (a)(2) by adding the following, explanatory sentence to the existing rule concerning fuel flow through the flowmeter bypass during the flow test: "If the flowmeter does not have a bypass, it should be modified to simulate a probable malfunction that would restrict fuel flow." The justification was that § 23.1337(c) allows the option of a flowmeter that does not incorporate a bypass, if malfunctions do not severely limit fuel flow. At the conference, no comments were offered. The FAA has further reviewed this issue and has concluded that clarification is necessary. Many flowmeters without a separate bypass are capable of allowing the required fuel flow through the fuel flow sensing element even when the element is blocked. Therefore, the FAA is proposing clarifying wording in paragraph (a)(2).

Conference proposal 332 recommended revising paragraph (b) by replacing the phrase "consumption of the engine" with the phrase "flow required by the engine". The justification given was that fuel injected reciprocating engines may return a substantial amount of fuel to the tanks under normal operating conditions. A system based merely on the fuel "consumed" by the engine would be inadequate to meet the combined consumption and return flow demands. At the conference, no comments were offered. The FAA has considered this issue and concluded that the fuel flow requirements should include all flow passing through the system to the engine compartment. Therefore, the FAA is proposing clarifying wording in paragraph (b).

Conference proposal 333 recommended revising paragraph (c) by removing that portion of the paragraph stating "* * * takeoff fuel flow of the engine at the maximum power approved for takeoff under Part 33 of this chapter or lesser power selected and approved for takeoff under this part" and inserting a new portion stating, "* * * fuel flow required by the engine at the maximum takeoff power selected and approved for takeoff under this part." The justification given was that reciprocating engine maximum fuel flows under installed conditions may be higher than those approved for takeoff under part 33 due to engine cooling requirements. The justification also considered this recommended revision to incorporate the intent of SFAR 23.46(b). At the conference, the proponent of conference proposal 333 was asked to clarify how the proposal would account for the fuel flow that is returned to the tanks and is not consumed by the engine. The proponent stated that the intent of the conference proposal was to address the limitation in the current rule; i.e., the proposal addresses fuel flow in terms of takeoff fuel flow for the engine. The proponent further stated that the purpose was to expand the rule to cover systems that have off-takes for jet pumps and to assure that the fuel pump flow requirement would be 125 percent of the fuel flow needed by the engine installation.

Conference proposal 334 recommended revising paragraph (c) by inserting between the second use of the word "engine" and the word "at", the phrase "plus any fuel returned to the tanks as vapor return flow"; by replacing the phrase "under part 33 of this chapter" with the phrase "during type certification of the engine"; and by adding a new paragraph (3) to read, "The fuel pressure with main and emergency pumps operating simultaneously may not exceed the engine limits for fuel inlet pressure." The justification given was that this rule needs to be expanded to include the vapor return flow in the fuel flow tests for fuel metering devices having return flow systems. The justification further recommended the rule require an investigation to assure maximum fuel pressures are not exceeded when the main and emergency pumps are operated at the same time.

When conference proposal 334 was presented at the conference, one commenter opposed the change to paragraph (c) in preference to conference proposal 333. The commenter considered that the term "fuel flow required" in conference proposal 333 covered all the requirements; e.g., the fuel flow required into the engine compartment for all the purposes associated with operating the engine.

The FAA has further reviewed the issues raised by conference proposals 333 and 334 and is proposing paragraph (a)(4) to define the term "fuel flow required" in order to clarify the intent of all paragraphs of this section.

Conference proposal 335 recommended revising paragraph (d)(2) by deleting the words "small" and "large" and revising the last part to read, "* * * if there is a suitable placard that provides fuel transfer procedures to prevent fuel starvation and overfilling the main tank(s)." The justification was that there are always questions as to the relative size of the "small" auxiliary tank and the "large" main tank. Also, the placard requirement should consider not opening the valve to the auxiliary inadvertently. At the conference, the only commenter agreed with the proposed change.

Conference proposal 336 recommended revising paragraph (d)(2) to read: "If there is a suitable placard providing appropriate operating instructions, a lesser flow rate may be used for a small auxiliary tank feeding into a large main tank." The justification given was that the currently required placard (operating limitation) would prohibit the pilot from opening the auxiliary tank to main tank ports if the main tank was below a predetermined amount. At the conference, the proponent requested the proposal be modified by deleting the word "small".

The FAA has further reviewed the issues raised by conference proposals 335 and 336 and has concluded that the use of the terms "small" and "large" was originally intended to establish the relative sizes of the affected auxiliary and main tanks where a reduced flow rate is allowed. The FAA is proposing to revise the rule to clarify and simplify it while retaining the relationship of tank sizes and functions.

Conference proposal 337 recommended revising paragraph (e) by replacing the term "engine malfunctioning" with the term "engine power loss". At the conference, one commenter questioned requiring the return to full fuel pressure when full power possibly could be obtained without full fuel pressure. Another commenter asked the definition of "power loss".

Conference proposal 338 recommended revising paragraph (e) to allow more time to regain full power for turbocharged engines, as follows: "10 seconds for naturally aspirated engines; 20 seconds for turbocharged, single-engine airplanes, provided naturally aspirated power is regained in 10 seconds; and * * *." The justification given was that during testing of a turbocharged, single-engine-powered airplane, it was found that an engine power recovery of over 10 seconds was experienced due to the time required for the turbocharger to regain normal speed. Therefore, § 23.955(e) should be revised to account for turbocharger boost recovery lag and to introduce a requirement that full nonsupercharged power be regained in 10 seconds for such engines. At the conference, one commenter stated that the additional 10 seconds requested came from the experience that more time is needed to get the turbocharger up to speed. This is a characteristic of the turbocharged engine.

Another commenter wanted to confirm that 10-second allowances were not cumulative; i.e., 10 seconds allowed for a naturally aspirated engine plus 10 seconds for the turbocharger plus 10 seconds for multiple engines. Further, this commenter stated that the rule should apply when engine power is actually lost, airplane yaw is felt, or the decay of power is heard rather than when a gauge indicates a power loss.

Another commenter recommended that the rule should say 10 seconds for the restoration of normal operation rather than restoration to "full" power. This commenter also stated the real concern is that the engine is smoothly regaining power.

The FAA has reviewed these issues and the applicable rules. Since "full" power depends on a number of variables, the FAA proposes to require ability to regain 75 percent maximum continuous power on the affected engine in 10 to 20 seconds, as appropriate. This value of power is used for many certification requirements in part 23. Although it may appear to relax the requirements, the intended level of safety will be maintained. The intent of this rule is to impose a maximum limit on the time needed to regain power after a power loss due to fuel starvation brought on by inadvertently running the selected tank dry.

This proposed revision of paragraph (e) will also allow additional time for turbocharged engines to regain power and will clarify when the 10-second allowances are cumulative for single-engine, turbocharged engines and when the allowances are not cumulative for multiengine airplanes.

There was no conference proposal to revise paragraph (f)(2); however, since the conference, compliance with the current requirements in turbine-powered, single-engine airplanes has resulted in unacceptable operational characteristics. The current requirement that flow of all fuel scheduled for use by an engine be automatically uninterrupted mandates that on single-engine airplanes all fuel must be available to the engine without any pilot action to manage fuel after engine start. This precludes using the normally installed tank valves to prevent cross-flow of gasoline between sides of the airplane while parked and to balance fuel between wings during flight. The intent of paragraph (f)(2) is to assure that all the usable turbine fuel aboard the airplane will find its way to the engine(s) without further attention from the pilot once the fuel is turned on and the engine(s) is started. This intent must be matched by a reasonable balance between the need to transfer fuel among wing tanks during flight and the need to prevent fuel in partially filled tanks from transferring to one side of the airplane while parked, which could result in subsequent unsafe flight. A new paragraph (f)(3) is proposed to define single-engine and tubine-powered airplane fuel flow requirements.

Reference: Conference proposals 329, 330, 331, 332, 333, 334, 335, 336, 337, and 338.

21. Section 23.957 is amended by designating the current paragraph as "(a)"; and by adding a new paragraph (b) to read as follows:

§ 23.957 Flow between interconnected tanks.

* * * * *

(b) If fuel can be pumped from one tank to another in flight, the fuel tank vents and the fuel transfer system must be designed so that no structural damage to any airplane component can occur because of overfilling of any tank.

Explanation: This proposal incorporates a limitation on fuel transfer to prevent damage to the airplane due to overpressurizing any fuel tank.

Conference proposal 339 addresses this issue. The justification given was that the rules do not include provisions to prevent structural or fuel tank damage that could occur when transferring fuel between tanks. At the conference, no comments were submitted. The FAA is proposing to require that fuel transfer systems that can pump fuel from one tank to another be designed so that they cannot cause damage to tanks or other airplane components.

Reference: Conference proposal 339.

22. Section 23.961 is revised to read as follows:

§ 23.961 Fuel system hot weather operation.

Each fuel system must be free from vapor lock when using fuel heated to its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, the initial temperature must be 100 °F, −0°, +5 °F or the maximum outside air temperature for which approval is requested, whichever is more critical.

Explanation: This proposal clarifies the intent of this rule and expands the rule to include fuels of different volatility levels.

Conference proposal 340 recommended replacing the existing § 23.961 rule with the language of § 25.961. The justification given was that the existing rule is totally deficient concerning what is required to show compliance. Also, there is always a question regarding the definition of a fuel system conducive to vapor formation. At the conference, a commenter recommended that these tests be conducted with the highest volatility fuel in the airplane.

Another commenter recommended that if the proposal is going to require "the fuel temperature must be at least 110°F", after the climb to altitude, the fuel temperature will be lower; therefore, the work "initially" should be inserted.

Another commenter requested that the record show what is deficient with the present rule. The present rule does not specify the fuel octane, the vapor pressure, the actual climb conditions, or fuel temperature degradation allowed during climb.

Conference proposal 341 recommended revising § 23.961 by removing the article "a" and replacing it with the words "an initial". The justification given was that this change will provide a realistic condition for initiation of the hot fuel test and reflects the language developed for (nonadopted) § 24.961(a)(5). At the conference, a commenter stated that the fuel should be at an initial temperature of 110°F, and this conference proposal reflects what has been a successful certification practice. Another commenter stated a preference for the previous conference proposal with the provision that the "initial temperature" is inserted into paragraph (a)(5).

Conference proposal 342 recommended revising § 23.961 to read:

"(a) No fuel system shall be conducive to vapor formation. Where fuel lines pass in close proximity to heated areas, adequate shielding or insulation shall be used to prevent unnecessary transfer of heat energy to the fuel while the airplane is in operation.

"(b) Each fuel system shall be capable of sustained vapor-free operation at the maximum altitude for which certification is sought, using fuel with a Reid Vapor Pressure of 15.0 psi, under standard day conditions, with the auxiliary fuel pump (if any) on."

The justification given was that the present regulation is weak in that it does not specify Reid vapor pressure of the fuel, it allows fuel systems to be conducive to vapor formation, and makes no demands that fuel lines be minimally protected from heat. Further, the present requirement for a vapor test using fuel heated to 110°F is poor in that preheated fuel has a lower vapor potential than cold fuel that is fed to a heated engine compartment. Present test requirements are thus ambiguous and even self-defeating.

At the conference, the consensus objected to this conference proposal because the proposed language would be very difficult to administer.

Post conference review of these comments and other technical data led the FAA to develop the present proposal. The current rule has been in use for many years and the intent is understood by the affected aviation community, but only aviation gasoline was used. The main question on current systems concerns the higher volatility (lower initial boiling point) of other fuels such as automobile fuel (autogas) and turbine fuels. Heating autogas to 110°F may change the composition of the fuel considerably. This proposal requires that the fuel be heated to its critical temperature with respect to vapor formation.

The recommendation that the rule be changed to allow an initial temperature of 110°F, and then accepting a temperature degradation during the climb test, was incorporated.

Reference: Conference proposals 340, 341, and 342.

§ 23.963 [Amended]

23. Section 23.963 is amended by removing paragraph (f).

Explanation: This proposal deletes paragraph (f) from § 23.963 since this requirement, which is applicable to only commuter airplanes, is very similar to the requirements in paragraph (e) of § 23.967, which are applicable to all part 23 airplanes. Paragraph (f) was added to part 23 by amendment 23–34 with the other commuter category requirements incorporated into part 23. These commuter category requirements were developed from Special Federal Aviation Regulation (SFAR) No. 23, 41 and appendix A of part 135, which contained interim airworthiness standards for propeller-driven, multiengine airplanes. These interim airworthiness standards were integrated into part 23 without proposed substantive changes to the existing part 23 airworthiness standards.

24. Section 23.965 is amended by revising paragraph (b) to read as follows:

§ 23.965 Fuel tank tests.

* * * * *

(b) Each fuel tank with large, unsupported, or unstiffened flat surfaces, whose failure or deformation could cause fuel leakage, must be able to withstand the following test without leakage, failure, or excessive deformation of the tank walls:

(1) Each complete tank assembly and its support must be vibration tested while mounted to simulate the actual installation.

(2) Except as specified in paragraph (b)(4) of this section, the tank assembly must be vibrated for 25 hours at a total displacement of not less than ⅛s of an inch (unless another displacement is substantiated) while ⅔ filled with water or other suitable test fluid.

(3) The test frequency of vibration must be as follows:

(i) If no frequency of vibration resulting from any rpm within the normal operating range of engine or propeller speeds is critical, the test frequency of vibration in the number of cycles per minute is obtained by multiplying the maximum continuous propeller speed in rpm by 0.9 for propeller-driven airplanes, and for non-propeller driven airplanes, 2,000 cycles per minute.

(ii) If only one frequency of vibration resulting from any rpm within the normal operating range of engine or propeller speeds is critical, that frequency of vibration must be the test frequency.

(iii) If more than one frequency of vibration resulting from any rpm within the normal operating range of engine or propeller speeds is critical, the most critical of these frequencies must be the test frequency.

* * * * *

Explanation: This proposal clarifies that the amplitude of vibration means total displacement and amends the rule to better relate the vibration test frequency to the propulsion means. Further, the paragraph (b) lead-in is clarified.

Conference proposal 342 recommended revising paragraph (b) to clarify the intent of the phrase "large unsupported or unstiffened areas".

At the conference, there was not a clear consensus in the comments of the participants that indicated a problem with the current rule. A commenter observed that all tanks are tested during certification regardless of the lack of clarity relative to what is meant by "large, unsupported, or unstiffened areas." Another commenter observed that "total displacement" was not clear due to the rule specifying "an amplitude."

Conference proposal 344 recommended revising paragraph (b)(3)(i) to better relate the vibration frequency to the propulsion means. The justification given was that the frequency required by paragraph (b)(3)(i) is dependent upon engine speed. This restricts fuel tank certification to a particular engine. Further, the required 90 percent of maximum continuous rpm is unrealistic for turbine engines. At the conference, the intent of the proposal was supported but it was recommended that the proposal be clarified due to differences in turbojet and turboprop means of propulsion. The current rules originated with reciprocating engines and have not been amended to reflect installations of turboprop or turbojet engines in small airplanes. During the discussion, it was suggested that the rule be amended to have separate requirements for propeller-driven and nonpropeller-driven airplanes. The FAA agrees and paragraph (b)(3)(i) is proposed accordingly.

Conference proposal 345 recommended revising paragraph (d) for clarity. The conference discussion did not support the recommended rewording.

The FAA has further reviewed the issues raised in proposal 345 and has concluded that the term "amplitude" for vibration tests needs to be clarified; that the term "flat areas" in paragraph (b) should be changed to "flat surfaces"; and that paragraph (b)(3) should be amended to better relate vibration test frequencies to the airplane's propulsion means. In this regard, the FAA is proposing that the critical test frequency survey include the normal operating range of engine and propeller speeds as appropriate. Where no such critical speed is found for propeller-driven airplanes, the vibration test frequency is proposed to be the maximum continuous propeller speed (rpm) multiplied by 0.9; and for non-propeller-driven airplanes, a fixed test frequency of 2,000 cycles per minute is proposed. This fixed test frequency for non-propeller-driven airplanes is selected because that frequency has been used successfully for the transport category airplanes certificated to part 25. The use of the propeller speed rather than engine speed for propeller-driven airplanes is proposed because the propeller speeds are considered to be more representative of the airplane vibration environment.

Conference proposal 346 recommended deleting certain paragraphs of § 23.965 for airplanes of not more than 1500 pounds. Conference commenters objected to revising this rule based on airplane weight. The FAA plans no further action on this proposal.

Reference: Conference proposals 343, 344, 345, and 346.

25. Section 23.967 is amended by revising paragraph (d) to read as follows:

§ 23.967 Fuel tank installation.

* * * * *

(d) Each fuel tank must be isolated from personnel compartments by a fume-proof and fuel-proof enclosure that is vented and drained to the exterior of the airplane. The required enclosure must sustain any personnel compartment pressurization loads without permanent deformation or failure under the conditions of §§ 23.365 and 23.843 of this part. A bladder-type fuel cell, if used, must have a retaining shell at least equivalent to a metal fuel tank in structural integrity.

* * * * *

Explanation: This proposal permits the installation of fuel tanks in the fuselage of airplanes within certain limitations and it deletes the restriction against fuel tanks in the personnel compartments of multiengine airplanes.

Conference proposal 347 recommended revising paragraph (d) essentially as proposed. The justification given was that the current rule prohibits the installation of a fuel tank in the personnel compartment of multiengine airplanes and that there should be no distinction whether the installation is in a single or multiengine airplane. When the fuel tank is installed in pressurized personnel compartments, the pressurization loads must be considered for the enclosure.

The conference consensus supported the change. The FAA concludes that this change would not adversely affect safety and would relieve a regulatory burden on the public.

Reference: Conference proposal 347.

26. Section 23.971 is revised to read as follows:

§ 23.971 Fuel tank sump.

(a) Each fuel tank must have a drainable sump with an effective capacity, in the normal ground and flight attitudes, of 0.25 percent of the tank capacity, or 1/16 gallon, whichever is greater.

(b) Each fuel tank must allow drainage of any hazardous quantity of water from any part of the tank to its sump with the airplane in the normal ground attitude.

(c) Each reciprocating engine fuel system must have a sediment bowl or chamber that is accessible for drainage; has a capacity of 1 ounce for every 20 gallons of fuel tank capacity; and each fuel tank outlet is located so that, in the normal flight attitude, water will drain from all parts of the tank except the sump to the sediment bowl or chamber.

(d) Each sump, sediment bowl, and sediment chamber drain required by paragraphs (a), (b), and (c) of this section must comply with the drain provisions of § 23.999(b)(1) and (b)(2).

Explanation: The proposal would require both fuel tank sumps and sediment bowl/chambers for reciprocating engine fuel systems. The proposal also requires that hazardous quantities of water must be allowed to drain to a sump with the airplane in the normal ground attitude. Service experience has shown that reciprocating engine airplane fuel systems are susceptible to water collecting in the fuel tanks. Existing rules allow either tank sumps or a sediment bowl/chamber arrangement that does not always prevent this water from reaching the engine, especially in tanks with flexible liners. Otherwise, there are no changes proposed for turbine engine fuel systems.

Reference: None.

27. Section 23.973 is amended in paragraph (c) by adding to the end of the second sentence the phrase "provided such openings comply with the requirements of § 23.975(a) of this part"; and by adding new paragraphs (e) and (f) to read as follows:

§ 23.973 Fuel tank filler connection.

* * * * *

(e) For airplanes with engines requiring gasoline as the only permissible fuel, the inside diameter of the fuel filler opening must be no larger than 2.36 inches.

(f) For airplanes with turbine engines, and not equipped with pressure fueling provisions, the inside diameter of the fuel filler opening must be no smaller than 2.95 inches.

Explanation: This proposal clarifies the requirements for vented fuel filler caps and establishes fuel filler opening dimensions as an aid in preventing misfueling; i.e., the refueling of a reciprocating-engine airplane with turbine-engine fuel.

Conference proposal 348 recommended revising § 23.973(c) by adding the phrase essentially as proposed. The justification was that more detailed requirements for vented tank filler caps are needed and that those details are contained in § 23.975(a). At the conference, the only commenter agreed with the proposal.

Conference proposal 349 recommended deleting the requirements of § 23.973(d) for airplanes of less than 1500 pounds. After some discussion at the conference, the sponsor withdrew the proposal; therefore, the FAA plans no further action on this proposal.

Conference proposal 350 recommended revising § 23.973 by adding new paragraphs (e) and (f) essentially as proposed. The justification given was that providing fuel filler opening dimensional restrictions will be useful in preventing turbine fuel from being put into tanks of airplanes with engines that operate only on gasoline. At the conference, the consensus supported the proposal.

The airplane fuel filler kits currently being supplied by the airplane manufacturers are in accordance with proposed paragraph (e) and (f). Considerable effort has gone into establishing these dimensions and obtaining the cooperation of the airplane manufacturers, the fuel suppliers, and the cognizant industry associations. Current production airplanes of the major manufacturers already comply with these proposed dimensions. The FAA believes that specifying these opening sizes will help reduce the number of misfueling occurrences and, therefore, has included them in this proposal.

Reference: Conference proposals 348, 349, and 350.

§ 23.975 [Amended]

28. Section 23.975 is amended in paragraph (a) introductory text by removing the phrase "of the expansion space" and inserting in its place the phrase "of the fuel tank"; and in paragraph (a)(5) by replacing the semicolon with a period and adding a new sentence "Any drain valves installed in the vent lines must meet the applicable requirements of § 23.999"; at the end of the paragraph.

Explanation: This proposal clarifies the rules on fuel tank vent line termination points and specifies the requirements applicable to vent line drains.

Conference proposal 351 recommended revising paragraph (a) essentially as presented in this proposal. The justification given was that § 23.999, Fuel tank expansion space, does not always require an expansion space. Current paragraph (a) states that the fuel tank must be vented from the top of the expansion space. At the conference, a commenter supported the proposal.

Conference proposal 352 recommended a revision to § 23.975(b), which essentially was incorporated by amendment 23–29. The FAA plans no further action on this proposal.

Conference proposal 353 recommended revising paragraph (a)(5) by adding a vent drain valve provision essentially as proposed. The justification was that § 23.975(a)(5) states "* * * there may be no undrainable points in any vent line * * *" and is not clear as to its intent; it could mean the vent line must slope downward all the way from the top of the tank to the vent outlet. During the conference, one commenter objected to the part of the proposal that adds the drain valve requirements of § 23.999 to vent line drains because parts of § 23.999 are inappropriate. The commenter further contended that vent drains did not need to "discharge clear of all parts of the airplane," just to get a little water out, and that because there are distinct differences between fuel system drains and vent line drains, that should be considered in administering the rules. Another commenter stated that if there is a problem with the wording "applicable requirements of § 23.999", it should be clarified. The proposal is intended to prevent drains from discharging inside the airplane.

The FAA has further considered these issues and has concluded that fuel tank vent drains operate in much the same environment as fuel tank drains in that vent lines

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frequently contain fuel in addition to the water that may condense in them. The vent drains permit the drainage of whatever fluids that have collected at any low points. The fuel tank drains permit the drainage of whatever fluids that have collected at their locations. The FAA, therefore, finds no reason to allow a lower quality drain system for vent line drains than for fuel tank drains.

Conference proposal 354 recommended adding some interpretive material to § 23.975(a)(6). After a short discussion at the conference, the sponsor withdrew the proposal.

Conference proposal 355 recommended a revision to § 23.975(b), which essentially was incorporated by amendment 23–29. After a short discussion, the sponsor withdrew the proposal.

Reference: Conference proposals 351, 352, 353, 354, and 355.

§ 23.977 [Amended]

29. Section 23.977 is amended in paragraph (d) by removing the word "finger".

Explanation: This proposal would require all strainers, not only "finger" strainers, to be accessible for inspection and cleaning.

Conference proposal 356 recommended the removal of the word "finger" from § 23.997(d). The rule currently specifies only fuel tank finger strainers are to be accessible for inspection and cleaning; however, all fuel strainers are subject to contamination and should be accessible for inspection and cleaning. At the conference, only one comment was offered, which agreed with the proposal.

Reference: Conference proposal 356.

§ 23.991 [Amended]

30. Section 23.991 is amended in paragraph (c) by removing the word "normal" and inserting in its place the word "main".

Explanation: This proposal would standardize fuel pump terminology, as defined in § 23.991(a).

Conference proposal 357 recommended adding interpretive material to § 23.991(a)(1), after a short discussion at the conference, the sponsor withdrew the proposal.

Conference proposals 358 and 359 recommended rearranging § 23.991(a) to match § 25.991(a). After a short discussion at the conference, the proposal was withdrawn as inappropriate to Part 23 airplanes.

Reference: Conference proposals 357, 358, and 359.

§ 23.993 [Amended]

31. Section 23.993 is amended in paragraph (d) by removing the words "must be approved or".

Explanation: This proposal deletes inappropriate terminology; all components that are acceptable for installation on a certificated airplane must be approved. In this case, the fuel hoses could be "approved" through the Technical Standard Order system but still not be suitable to the environment of a particular installation; therefore, the subject phase should be deleted.

Reference: None.

§ 23.995 [Amended]

32. Section 23.995 is amended in paragraph (f) by removing the word "check".

Explanation: This proposal would require all valves, not only check valves, to incorporate provisions to preclude incorrect assembly or connection and a resultant unsafe condition.

Conference proposal 363 recommended deleting the word "check" from § 23.995(f). The justification given was that incorrect assembly and connection of fuel selector valves and other fuel valves result in unsafe conditions. The current rule applies only to check valves. One commenter at the conference disagreed with the proposal stating that the current rule addressing check valves is appropriate but is not necessary for all valves. The commenter further stated that a large quantity of fuel valves that have been in production for 25 years do not have such a provision and have not caused any problem because if it is installed improperly, the engine cannot start and an engine that won't start cannot injure anyone.

The FAA further considered these issues and concluded that improper assembly or connection of fuel valves would not necessarily preclude an engine from starting. Improper assembly or connection could cause engine stoppage in flight. Therefore, the FAA concludes that all fuel valves should comply with the proposed requirements of paragraph (f).

Conference proposal 360 recommended relaxing the requirement of § 23.995(d) for airplanes of not more than 1500 pounds to allow gravity or vibration to cause fuel valves to move toward the open position. The consensus of conference commenters was opposed to the proposal. The FAA agrees with the commenters and plans no further action on this proposal.

Conference proposal 361 recommended adding interpretive material to § 23.995 (e) and (f) for airplanes of not more than 1500 pounds. Prior to any discussion, the sponsor withdrew this proposal as inappropriate material.

Conference proposal 362 recommended revising § 23.995 to prevent the inadvertent movement of fuel control valves to the "off" position. The proposal was withdrawn without discussion after the FAA pointed out that the requirement had been incorporated in amendment 23–29.

Reference: Conference proposal 360, 361, 362, and 363.

§ 23.997 [Amended]

33. Section 23.997 is amended in paragraph (d) by removing the phrase "in part 33 of this chapter" and inserting in its place the phrase "during its type certification".

Explanation: This proposal clarifies the intent of the rule.

Conference proposals 364 and 365 recommended revising § 23.997(d) essentially as proposed. The justification given was that engines are also certificated under CAR part 13. The current rule references only part 33 of the FAR. When presented for comment at the conference, the only commenter supported the proposal. Engines certificated to the provisions of CAR part 13 continue to be manufactured and may be incorporated into new airplane designs. Therefore, the FAA concludes this change to be clarifying and necessary.

Reference: Conference proposal 364 and 365.

34. Section 23.999 is amended by removing paragraph (b)(3) in its entirety and by revising paragraph (b)(2) to read as follows:

§ 23.999 Fuel system drains.

* * * * *

(b) * * *

(2) Have a drain valve—

(i) That has manual or automatic means for positive locking in the closed position;

(ii) That is readily accessible;

(iii) That can be easily opened and closed;

(iv) That allows the fuel to be caught for examination;

(v) That can be observed for proper closing; and

(vi) That is either located or protected to prevent fuel spillage in the event of a landing with landing gear retracted.

Explanation: This proposal clarifies that fuel system's drains must have drain valves and adds the requirements that the valve operator must be able to catch the fuel and must be able to observe the valve for proper closing without excessive effort.

Conference proposal 366 recommended revising § 23.999(b)(2) essentially as proposed. The justification given was that many airplane manufacturers have installed remotely operated fuel drains; however, these installations do not permit ready examination of the drained fuel, or a determination that the valve was closed after draining.

In the past few years, the trend has been to install the fuel drain operating provisions in the cockpit. When that is done, it is difficult for the pilot to observe that the drain has indeed drained properly, that it has stopped when the pilot places the control in the closed position, and that no fuel continues to drip from the drain valve. To ensure there is positive closure of the drain valve, the pilot must get out of the airplane to make that observation. Fuel that falls freely to the ground without being caught cannot be adequately examined by the pilot for water or other contaminants. Therefore, a requirement has been added to ensure the pilot can catch the draining fuel to examine it for impurities.

Reference: Conference proposal 366.

§ 23.1001 [Amended]

35. Section 23.1001 is amended in paragraph (f) by removing the word "personnel" and inserting in its place the word "crewmembers".

Explanation: This proposal will standardize the terminology used. In all other instances in part 23 (11 places) the term "crewmembers" is used.

Reference: A question has been raised if "flight personnel" and "flight crewmembers" mean the same. The FAA stated that the terms mean the same people are involved.

36. Section 23.1011 is amended by redesignating paragraphs (a), (b), (c), and (d) as (b), (c), (d), and (e), respectively; and by adding a new paragraph (a) to read as follows:

§ 23.1011 General.

(a) For oil systems and components that have been approved under the engine airworthiness requirements and where those requirements are equal to or more severe than the corresponding requirements of subpart E of this part, that approval need not be duplicated. Where the requirements of subpart E are more severe, substantiation must be shown to the requirements of subpart E.

* * * * *

Explanation: This proposal adds a new paragraph to allow oil systems and components properly approved during engine type certification to be accepted without further substantiation when the standards previously met were equal or more severe than those in this subpart. This proposal is needed to clarify that those oil systems approved through other means, to equal or more severe requirements, need not be reapproved under the oil system requirements of this part. This proposal evolved from the conference discussion of three different proposals and post conference investigations.

Conference proposal 367 recommended adding a new phrase, "if an oil system is needed" at the beginning of current paragraph (a). The justification was that this addition would allow the installation of two-stroke-cycle reciprocating engines for which an airframe-installed oil system is not necessary. The FAA has further reviewed the cited paragraph (redesignated as paragraph (b)) and has concluded that this rule includes two-stroke-cycle engine oil systems and any other configuration of engine oil systems. The oil may be injected into the engine or mixed with the fuel. These systems have been approved as meeting these requirements so a two-cycle engine would not be excluded based on the current § 23.1011.

Conference proposal 368 recommended adding the wording "which is not part of a type certificated engine" after the opening words "each oil tank" of § 23.1013(a) Installation. The justification given was that this addition would clarify that the rule only applied to engine oil tanks installed by the airframe manufacturer. During the discussion at the conference, one proponent stated that this recommendation is intended to permit the airframe manufacturer and the FAA to accept the engine type certification in those cases where the oil tank was indeed included as part of the engine. Proposed paragraph (a) will allow the relief recommended when the affected engine's type certification basis contains requirements equal to or more severe than the requirements of this part applicable to engine oil systems.

Conference proposal 370 recommended inserting the phrase "not approved as part of the engine" after the opening words "each oil tank" of § 23.1015, Oil Tank Tests. The justification given was that part 33 now includes requirements for certification of oil tanks included with the engine and a tank so approved should not require redundant certification in part 23. Conference commenters' main concerns were that the rule be revised to ensure that oil systems are properly substantiated but not require a duplicate substantiation.

The proposed paragraph (a) is formulated to avoid requiring redundant showing of compliance to equivalent criteria, to ensure adequate requirements related to the installation environment, and to ensure that certificated engines are adequately substantiated when installed in part 23 airplanes.

Reference: Conference proposals 367, 368, and 370.

§ 23.1013 [Amended]

37. Section 23.1013 is amended in paragraph (g) by removing the words "a turbine" and inserting in their place the word "an".

Explanation: Conference proposal 369 recommended removing the words "a turbine" from the oil tank filler cap oiltight seal requirement and inserting the word "an" because the current rule requires the oil filler cap to have an oiltight seal only on turbine engines. The conference consensus was that the rule should apply to all types of engines. The FAA concludes the requirement should apply to all airplanes certificated to part 23.

Reference: Conference proposal 369.

38. Section 23.1017 is amended by adding a new paragraph (b)(6) to read as follows:

§ 23.1017 Oil lines and fittings.

* * * * *

(b) * * *

(6) For reciprocating-engine airplanes, breather line blockage due to ice or foreign matter is prevented or pressure relief is provided in the event of such blockage. This pressure relief, if used, must be in a sheltered location to avoid malfunction caused by ice or foreign material.

Explanation: Conference proposal 371 recommended adding a requirement for means of pressure relief in case of breather line blockage. The justification given was that experience has shown that water vapor can progressively accumulate, freeze, and obstruct breather lines in service conditions. Conference commenters objected to a new requirement that looks like an alternative to paragraph (b)(5), especially for turbine engines. Even though the airplane originally complied with paragraph (b)(5), as the engine wears, increased piston blowby sends more and more oil and water vapor through the breather and makes it more likely that the breather will be blocked by ice. Though blockage is not ordinarily a problem, it does occur at the least expected time with the subsequent failure of oil seals and the loss of engine oil.

The FAA has further studied these issues and has concluded that the proposal should be limited to reciprocating engine airplanes.

Reference: Conference proposal 371.

§ 23.1019 [Amended]

39. Section 23.1019 is amended in paragraph (a)(2) by removing the words "under part 33 of this chapter" and inserting in their place the words "for its type certification"; in paragraph (a)(3) by removing the words "an indicator that will" and inserting in their place the words "a means to"; and in paragraph (a)(5) by removing "§ 23.1305(u)" and inserting in its place "§ 23.1305(c)(9)".

Explanation: This proposal revises incorrect references and clarifies paragraph (a)(3).

Conference proposal 372 recommended revising paragraph (a)(2) by replacing the last two prepositional phrases "under part 33 of this chapter" with the phrase "during its type certification". Justification given was that engines are also certificated under CAR part 13. There was no objection to the revision at the conference.

Conference proposal 373 recommended revising paragraph (a)(3) by replacing the words "an indicator" with "a mechanical device on its container". The justification given was clarification as to whether the contamination indicator must be on the filter or on the instrument panel. At the conference, four commenters objected to this wording as being too design restrictive. It was suggested that the rule should be revised to allow any means that gives adequate warning whether the indicator is on the body of the filter, on a remotely located maintenance panel, or on the flight deck instrument panel.

After further review, the FAA has concluded that paragraph (a)(3) should be revised to allow the suggested design flexibility and is proposing to revise paragraph (a)(3) accordingly.

Conference proposal 374 recommended revising paragraph (b) to require all reciprocating-engine powerplant installations to have provisions for installing a spin-on type oil filter capable of removing particulates in the 30-micron range. No justification was given for the recommendation. At the conference, a commenter objected to the recommendation as being too specific and restrictive. The FAA agrees that the current rule covers the provisions intended and allows a spin-on filter of the proper design as long as it meets the mesh and strainer requirements of the engine. The FAA plans no further action on this recommendation.

Paragraph (a)(5) has been revised to reference the proper paragraph in § 23.1305 of this notice.

Reference: Conference proposals 372, 373, and 374.

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40. Section 23.1021 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 23.1021 Oil system drains.

* * * * *

(a) Be accessible;

(b) Have drain valves, or other closures, employing manual or automatic shut-off means for positive locking in the closed position; and

(c) Be located or protected to prevent inadvertent operation.

Explanation: This proposal clarifies the intent and adds a requirement for protection against inadvertent operation. Conference proposal 375 recommended clarifying paragraph (b) by adding "drain valves or other closures". The conference proposal also recommended adding the new requirement to locate or protect oil drains to prevent inadvertent operation. The justification given was that service experience shows that valves with automatic means for locking closed have been unintentionally opened by interference from a retracting landing gear. Also, drain hoses have opened valves when the hose is not properly installed or moves out of proper position.

At the conference, two commenters agreed with adding paragraph (c) but would not support the addition to paragraph (b) because they did not believe it was necessary and were not sure what the implications would be if it were adopted.

The FAA has further reviewed this issue and has concluded that this revision will clarify the requirement.

Reference: Conference proposal 375.

41. Part 23 is amended by adding a new § 23.1024 to read as follows:

§ 23.1024 Oil-air separators.

For reciprocating-engine installations only, each oil-air separator, if installed, must provide means for separating and disposing of any water entrained in the oil.

Explanation: This proposal would add a new requirement defining the function of the oil-air separator.

Conference proposal 376 recommended requiring a means for separating and disposing of any water entrained in the oil vapor in the engine oil system. The justification given was based on service experience that demonstrated oil recovered from oil vapor may contain water. This water can then be introduced into the engine oil system. Discussion at the conference revealed that the proposal was intended for only reciprocating-engine installations.

Reference: Conference proposal 376.

42. Section 23.1027 is amended in paragraphs (b) and (c) by removing the word "trapped" and inserting in its place the word "reserved", and by revising paragraph (a) to read as follows:

§ 23.1027 Propeller feathering system.

(a) If the propeller feathering system uses engine oil and that oil supply can become depleted due to failure of any part of the oil system, a means must be incorporated to reserve enough oil to operate the feathering system.

* * * * *

Explanation: This proposal will allow that amount of engine oil dedicated to the propeller feathering system to be stored in a reservoir other than the oil tank and replaces the word "trapped" with the word "reserved". By definition, the word "reserve" is more appropriate than the word "trap" in this application.

Conference proposal 377 recommended changing the word "tank" to the words "storage container" because engine oil dedicated to the propeller feathering system may be stored in containers other than the oil tank.

At the conference, three commenters objected to the term "storage container" because it makes the rule sound like the pan-type tank crankcase is no longer acceptable and that other rules on container location and possible fire resistance requirements were being brought into question.

One commenter agreed the rule should allow storage means other than the oil tank, and it should simply state the objective that the feathering system has available an adequate supply of oil.

The FAA has further reviewed this issue and has concluded that the proposal is appropriate to those feathering systems that require engine oil to accomplish feathering. Many designs require engine oil for propeller pitch control while feathering is accomplished through springs and/or weights after oil pressure is released or the oil is lost from the system. In such designs, where oil is required for the unfeathering operation, but where engine stoppage involves loss of oil with the propeller automatically moving into feather, unfeathering the propeller is probably not a viable option.

Reference: Conference proposal 377.

43. Section 23.1041 is revised to read as follows:

§ 23.1041 General.

The powerplant and auxiliary power unit cooling provisions must maintain the temperatures of powerplant components and engine fluids, and auxiliary power unit components and fluids within the limits established for those components and fluids under ground and water operating conditions, and flight operation to the maximum altitude for which approval is requested, and after normal engine and auxiliary power unit shutdown.

Explanation: This proposal incorporates cooling provisions for auxiliary power units (APU) and for temperature control of components and fluids on both the propulsion powerplant and the auxiliary power unit after normal shutdown. APUs have been approved in small airplanes and more installations are anticipated in the future. Cooling provisions for both engines and APUs should ensure that the components and fluids do not overheat after the flow of forced cooling air ceases.

Conference proposal 378 recommended revising § 23.1041 by replacing it with the wording of § 25.1041. The justification for this change was that applicants for approval of APU installations should be informed of the applicable requirements.

At the conference, four commenters agreed that adding the APU cooling requirements into the rule was acceptable, but they objected to the new requirement for temperature control (cooling) after normal engine or APU shutdown. The commenters stated that this is the first time the rule would cover "soak-back" after shutdown and there may be a burden to the applicant involved; although soak-back is usually considered during the normal cooling evaluation, the addition of the requirements into the rule may bring up other areas of consideration not well defined.

The FAA has further considered these issues and does not agree that the after-shutdown cooling requirement is new, but is actually a clarification of existing requirements. It is evident that excessive temperatures cannot be allowed to exist in the powerplant or APU installation at any time, including after the engine or APU shutdown when the forced flow of cooling air is usually discontinued. Any damage to the powerplant or APU during soak-back would not be readily detectable by routine inspection before further flight and could cause an unsafe condition.

Conference proposal 379 recommended revising § 23.1041 by replacing the phrase "within the temperature limited established" with the phrase "within the green or normal operating ranges established by the engine manufacturer" and recommended adding to the end of the section, "assuming standard day conditions". No justification was given for the proposed changes to the conference proposal.

At the conference, two commenters objected to the proposed change of proposal 379 because (1) the current rule is stated more objectively than the recommendation: (2) not all temperature limits are established by engine manufacturers; they may be established by the manufacturers of other equipment located in the engine or APU compartment; (3) the "green range" is not the only normal range for temperature; yellow or red arcs or shapes may indicate normal, time-limited temperature ranges; and (4) the revision to standard day conditions is inappropriate since the installation must be tested or corrected to 100 °F hot day criteria. The FAA agrees and is considering no further action on conference proposal 379.

The FAA reviewed the special conditions programs concerning the installation of APUs in Part 23 airplanes and concluded that it is appropriate to propose APU requirements for part 23 at this time.

Reference: Conference proposals 378 and 379.

§ 23.1047 [Amended]

44. Section 23.1047 is amended in paragraph (b)(2) by removing the phrase "in § 23.1337(e)" and inserting in its place the phrase "in § 23.1305(b)(3)".

Explanation: Conference proposal 380 recommended revising the current incorrect reference. At the conference the consensus agreed with the recommendation.

Reference: Conference proposal 380.

45. Section 23.1061 is amended by redesignating paragraph (a)(3) as (a)(4); in newly redesignated paragraph (a)(4) by removing the words "expansion tank" and inserting in their place the words "coolant tank expansion space"; by removing the concluding text of paragraph (a); by revising paragraph (a)(2); and by adding a new paragraph (a)(3) to read as follows:

§ 23.1061 Installation

(a) * * *

(2) There are pads or other isolation means between the tank and its supports to prevent chafing.

(3) Pads or any other isolation means that is used must be nonabsorbent or must be treated to prevent absorption of flammable fluids; and

* * * * *

Explanation: This proposal allows means other than pads to prevent chafing between coolant tanks and their supports and clarifies the reference to the coolant tank expansion space. This change will encourage the use of improved vibration isolation provisions that have been developed.

Conference proposal 381 recommended the addition of the phrase "or other isolation means" after the word "pads" in paragraph (a)(2). The justification given was that consideration should be given to the use of improved isolation provisions that have been developed to reduce vibration, accommodate relative displacement of components and prevent chafing.

At the conference, there was no objection to the recommended addition. However, it was further recommended that the unnumbered sentence at the end of paragraph (a) restricting the padding absorption qualities, be made a part of paragraph (a)(2) so that all rule references to coolant tank padding are together. The FAA has further considered these issues and has found that the padding absorption qualities should be a separate paragraph that follows paragraph (a)(2). Also, in the current paragraph (a)(3), the term "expansion tank" may be interpreted as another tank separate from the coolant tank when in actual practice the expansion space in the coolant tank is accepted as the expansion tank. Therefore, the term "expansion tank" has been replaced by the term "coolant tank expansion space".

Reference: Conference proposal 381.

46. Section 23.1091 is amended by revising the section heading in paragraph (a) by inserting the phrase "and auxiliary power unit and their accessories" after the word "engine" in two places; in paragraph (c)(1) by inserting the phrase "or auxiliary power unit and their accessories" after the word "engine"; by adding two new paragraphs (b)(4) and (b)(5); and by revising paragraph (c)(2) to read as follows:

§ 23.1091 Air induction system.

* * * * *

(b) * * *

(4) Each automatic alternate air door must have an override means accessible to the flight crew.

(5) Each alternate air door must have a position indicator in the cockpit to show the flight crew the position of the alternate air door.

(c) * * *

(2) The airplane must be designed to prevent water, slush or other foreign material on the runway, taxiway, or other airport operating surface from being directed into the engine or auxiliary power unit air inlet ducts in hazardous quantities during takeoff, landing, and taxiing.

Explanation: This proposal incorporates air induction system requirements for auxiliary power units, a flight crew accessible override means for automatic alternate air door systems, a cockpit located position indicator for each alternate air door, and a clarification of the water ingestion and foreign material ingestion requirements. The FAA has determined that these changes are needed to update the rules with current design practices.

Conference proposal 382 recommended revising the air induction system requirements to include the inlet for the auxiliary power unit (APU). The justification given was that a number of applications for approval of APUs have been processed by the FAA and with more expected in the future, it is appropriate to establish suitable requirements in the FAR. At the conference, the consensus agreed with the recommendation.

Conference proposal 383 recommended § 23.1091(a) be amended to prevent intake air being taken from a hot part of the engine compartment, or from any cooling air that has passed over the engine or turbocharger. It also recommended that the pressure drop across the induction air filter in normal cruise flight not exceed one inch of mercury for normally aspirated airplanes. The justification was that some airframe installations seriously compromise the horsepower output and/or detonation limits of the engine as originally certified, due to peculiarities of the induction system that may have a marked deleterious effect on the volumetric efficiency and/or heat burden. At the conference, the consensus was that the recommendations addressed poor design practices, not flight safety issues. The FAA agrees and plans no further action on this recommendation.

Conference proposal 385 recommended that a new paragraph (b)(4) be added that stated: "Each alternate air door must have a manual override accessible to the flight crew and a position indicator to show the flight crew the position of the alternate air door."

The justification was that certain airplanes have been certificated with alternate air doors that open automatically. Service history has shown that these doors can stick or freeze closed making alternate air unavailable. Also, the door can stop midway between outside and heated air so that the required heat rise is diluted and unfiltered air enters the engine. At the conference, the commenters basically supported the need for a rule in this area, but requested clarification and generalization of the rule so that the word "manual" would not necessarily mean "mechanical". The FAA has further considered these issues and is proposing paragraphs (b)(4) and (b)(5). The words "manual override" have been replaced by the words "override means", thus, allowing design latitude. The word "automatic" was inserted to clarify that the rule applies only to automatic alternate air doors. Proposed new paragraph (b)(5) separates the position indicator requirement from the override requirement to clarify that these are indeed separate requirements. In this case, a position indicator can be a light, a dial indicator or, for mechanically actuated doors, the position of the actuator knob or handle in the cockpit.

Conference proposal 386 recommended adding into paragraph (c)(2) the requirement that the airplane must be designed to prevent water or slush on the runway, taxiway, or other airport operating surfaces from being directed into the engine or auxiliary power unit air inlet ducts in hazardous quantities. The justification given was that there has been a controversy regarding classifying water and slush on airport surfaces as foreign matter that may be hazardous if taken into the air induction system. At the conference, two commenters suggested that the language of the rule be minimized as much as possible. The FAA has further reviewed these issues and has simplified the proposal.

Conference proposal 384 recommended revising § 23.1091(b) to delete the requirement for two separate air intakes for airplanes of not more than 1500 pounds maximum weight. The proposal was withdrawn without discussion. The FAA plans no further action on this proposal.

Reference: Conference proposals 382, 383, 384, 385, and 386.

47. Section 23.1093 is amended in paragraphs (a)(3) and (c) by removing the word "carburetors" and inserting in its place the words "fuel metering device"; by revising paragraphs (a)(4), (a)(5), and (b)(1); and by adding new paragraph (a)(6) to read as follows:

§ 23.1093 Induction system icing protection.

(a) * * *

(4) Each airplane with sea level engine(s) using a fuel metering device tending to prevent icing has a sheltered alternate source of air with a preheat of not less than 60 °F with the engines at 75 percent of maximum continuous power;

(5) Each airplane with sea level or altitude engine(s) using fuel injection systems having metering components on

which impact ice may accumulate has a preheater capable of providing a heat rise of 75 °F when the engine is operating at 75 percent of its maximum continuous power; and

(6) Each airplane with sea level or altitude engine(s) using fuel injection systems not having fuel metering components projecting into the airstream on which ice may form, and introducing fuel into the air induction system downstream of any components or other obstruction on which ice produced by fuel evaporation may form, has a sheltered alternate source of air with a preheat of not less than 60 °F with the engines at 75 percent of maximum continuous power.

(b) Turbine engines.

(1) Each turbine engine and its air inlet system must operate throughout the flight power range of the engine (including idling), without the accumulation of ice on engine or inlet system components that would adversely affect engine operation or cause a serious loss of power or thrust—

(i) Under the icing conditions specified in appendix C of part 25 of this chapter; and

(ii) In snow, both falling and blowing, within the limitations established for the airplane for such operation.

* * * * *

Explanation: This proposal adds specific ice protection requirements for fuel injection system designs with and without metering components on which impact ice may accumulate and clarifies the section by replacing the term "carburetors" with the term "fuel metering device" where appropriate. In addition, the proposal eliminates the differences in requirements that are based solely on the number of engines on the airplane or on the method of cooling; i.e., air cooled or liquid-cooled.

Conference proposal 387 recommended replacing the term "carburetor" with the term "fuel metering device" in those places where the device may be other than a conventional venturi carburetor. The reason for the recommendation was that the term "carburetor tending to prevent icing" has been a great source of confusion and has caused difficulty in applying the rules. "Fuel metering device" would be a better term to use than carburetor because fuel injection systems, as well as conventional carburetors, are involved. At the conference, one commenter questioned why there is a difference in heat rise requirements based on the number of engines on the airplane as in the current paragraphs (a)(4), single engine, and (a)(5), multiengine. Almost 30 years ago, a multiengine airplane with no alternate air provision had an accident. A rule change resulted, but only for multiengine airplanes. This anomaly has persisted since.

The FAA has further considered these issues and has concluded that the requirements need to be clarified and aligned with past equivalent safety findings. The current requirement for a heat rise equal to the heat rise in the cooling air downstream of the cylinders was changed to 60 °F at 75 percent maximum continuous power. This heat rise proposal is based on previously approved equivalency to the heat rise downstream of air-cooled cylinders.

Conference proposal 388 recommended the addition of two new paragraphs defining the heat rise requirements for fuel injection system designs based upon whether the systems incorporated components in the induction air stream that could accumulate ice. The justification for the recommendation was that the regulation does not now include specific requirements for various types of fuel injection systems. The proposed additions have been used by the FAA as guidelines for these systems, as covered in an FAA policy letter dated May 21, 1970. At the conference, a commenter suggested that this recommendation be combined with the previous recommendation into an overall section revision.

Based on post conference review of the rule and the policy involved in years of its administration, the FAA concluded that the prime objective has been consistently pursued. The objective of the section is stated explicitly in the first sentence: "Each reciprocating engine air induction system must have means to prevent and eliminate icing." The remainder of paragraph (a) specifies temperature rise requirements to accomplish this objective for certain induction system designs. Experience has shown that for the designs addressed, the heat rise required is adequate to provide the necessary icing protection. However, since there can be an infinite number of induction system designs, the proposed rule sets forth the objective to preclude icing.

Even after the heat rise required for a particular design has been demonstrated, it must be shown that the prime objective of the first sentence is met. When an applicant submits an air induction system design for icing protection evaluation, it is incumbent upon the applicant to demonstrate that not only the appropriate heat rise is met but also that the air induction system prevents icing. In the event icing does occur, the system must have the ability to eliminate icing without hazard to the airplane.

Conference proposal 389 recommended deleting the paragraph (b)(1)(ii) reference to snow, both falling and blowing because insufficient definition of this requirement exists to allow the application of specific analytical or test verification procedures. Experience has shown that normal compliance with the icing certification requirement covers this item. At the conference, one commenter stated that the way the rule is phrased there is no yardstick to reasonably determine compliance; further, this commenter would like to see the requirement deleted.

The FAA has further reviewed this issue and has concluded that the requirement is needed. This requirement is identified in parts 23, 25, 27, and 29, and has been administered adequately for all categories of aircraft.

As a result of an FAA review of the background and policy on § 23.1093(b), it was discovered that the phrase "within the limitations established for the airplane" was mistakenly placed in the middle of paragraph (b)(1). It should be at the end of (b)(1)(ii). The proposal has been revised to align part 23 with part 25, as proposed in Notice 84-21 (49 FR 47358, December 3, 1984).

Reference: Conference proposals 387, 388 and 389.

48. Section 23.1101 is amended by revising the section heading, the introductory text of the section, and paragraph (a) to read as follows:

§ 23.1101 Induction air preheater design.

Each exhaust-heated, induction air preheater must be designed and constructed to—

(a) Ensure ventilation of the preheater when the induction air preheater is not being used during engine operation;

* * * * *

Explanation: This proposal clarifies the cooling requirement for the induction air preheater during those times the preheater is not otherwise being ventilated and cooled through the use of the induction air preheat system and correctly identifies the preheater as an "induction" air preheater rather than only a "carburetor" air preheater.

Conference proposal 390 recommended revising the current wording "when the engine is operated in cold air" to the phrasing "when the engine is in operation." The justification given was that the ventilation requirements of this paragraph should ensure continuous ventilation any time the engine is operating.

Conference proposal 391 recommended revising the current wording to the phrasing "when the carburetor heat control is in the off position." The justification given was that § 23.1101(a) is not very comprehensive and as written, "cold air" could mean cold ambient air and not cold induction air, as intended.

At the conference, the discussion focused on ensuring that the induction air preheat device taking heat from the exhaust will be ventilated and cooled whenever the engine is operating.

When induction air preheat is in use, the preheat device is ventilated and cooled by the induction air flow. The intent is to ensure that the preheat device is ventilated and cooled at all other times the engine is operating. The FAA has further considered these issues and agrees that the requirements need clarification.

Reference: Conference proposals 390 and 391.

49. Section 23.1103 is amended by adding new paragraphs (c), (d), (e), and (f) to read as follows:

§ 23.1103 Induction system ducts.

* * * * *

(c) Each flexible induction system duct must be capable of withstanding the effects of temperature extremes, fuel, oil, water, and solvents to which it is expected to be exposed in service and

maintenance without hazardous deterioration or delamination.

(d) For reciprocating engine installations, each induction system duct must be—

(1) Strong enough to prevent induction system failures resulting from normal backfire conditions; and

(2) Fire resistant in any compartment for which a fire extinguishing system is required.

(e) Each inlet system duct for an auxiliary power unit must be—

(1) Fireproof within the auxiliary power unit compartment;

(2) Fireproof for a sufficient distance upstream of the auxiliary power unit compartment to prevent hot gas reverse flow from burning through the duct and entering any other compartment of the airplane in which a hazard would be created by the entry of the hot gases;

(3) Constructed of materials suitable to the environmental conditions expected in service, except in those areas requiring fireproof or fire resistant materials; and

(4) Constructed of materials that will not absorb or trap hazardous quantities of flammable fluids that could be ignited by a surge or reverse-flow condition.

(f) Any induction system duct supplying air to a cabin pressurization system must be constructed of materials that will not produce hazardous quantities of toxic gases during a powerplant fire.

Explanation: This proposal adds standards for flexible inlet ducts, backfire strength and fire resistance requirements for reciprocating engine inlet ducts, requirements for auxiliary power unit inlet ducts, and requirements for cabin pressurization supply ducts in conjunction with induction system ducts.

Conference proposal 392 recommended the adoption of a new paragraph (c) to read the same as the paragraph proposed here except without the word "hazardous". The justification was that service experience has shown that certain flexible ducting, of the type most commonly used, is susceptible to deterioration and delamination when exposed to heat, fuel, and oil. At the conference, one commenter agreed with the intent of the recommendation but suggested inserting the word "excessive" before the word "deterioration". The FAA further considered this suggestion and concluded that the word "hazardous" is more appropriate to the objective of the proposal.

Conference proposal 393 recommended adding four new paragraphs stating many of the new requirements proposed in paragraphs (d) and (e) of this proposal. The justification given was that applications for approval of auxiliary power unit installations have been received by the FAA and applicants should be informed of the applicable requirements for such approvals.

At the conference, two commenters stated that putting bleed air duct requirements in the induction system section could be inappropriate. The FAA agrees and has not included the recommended paragraph addressing the bleed air duct in § 23.1103(e). Another commenter questioned whether it is intended that the applicant induce a backfire or series of backfires as a means of showing compliance with proposed paragraph (d)(1). The FAA has determined that the applicant is allowed the option of using any method that shows compliance to the rule; in this case, analysis may be more appropriate than actual testing.

Another commenter recommended backfires be limited to reciprocating engines and not be associated with turbine engines. The FAA agrees and has formatted the proposal accordingly.

Another commenter questioned if the phrase "the maximum heat conditions likely to occur" in the conference proposal is to be interpreted as fire resistant. Upon further consideration of these issues, the FAA replaced the questioned phrase with the phrase, "the environmental conditions expected in service."

Subsequent to the conference, the FAA determined as part of its crashworthiness improvements that any duct furnishing air to the cabin must not produce toxic fumes in case of a powerplant fire. A new § 23.1103(f) is proposed to add this requirement.

Reference: Conference proposals 392 and 393.

50. Part 23 is amended by adding a new §23.1107 to read as follows:

§23.1107 Induction system filters.

On reciprocating-engine installations, if an air filter is used to protect the engine against foreign material particles in the induction air supply—

(a) Each air filter must be capable of withstanding the effects of temperature extremes, rain, fuel, oil, and solvents to which it is expected to be exposed in service and maintenance; and

(b) Each air filter subject to failure that will release material large enough to interfere with fuel metering components must be provided with a screen downstream of the filter.

Explanation: This proposal would add design requirements for reciprocating-engine induction air filters not currently addressed in the rules.

Conference proposal 395 recommended a new induction system filter rule that, in addition to the requirements of this proposal, would require that each filter be simple to remove, inspect, and install without special tools and that each filter include instructions for servicing and replacement on the filter itself. The justification for the recommendation was that practically all part 23 airplanes incorporate induction system filters in the primary air ducts. Service experience has shown these filters to be the source of numerous problems: (1) deterioration due to water, heat, age, etc.; (2) incorrect installation sequence; and (3) loose parts clogging the carburetor or injector, etc.

At the conference, a majority of commenters agreed that requirements for induction air filters are appropriate; however, some commenters objected to including specific maintenance procedures in part 23. The FAA has further considered these issues and has concluded that the recommended maintenance procedures should not be included in this proposal.

Reference: Conference proposal 395.

51. Section 23.1121 is amended by adding introductory text to the section; by revising paragraph (c); and by adding a new paragraph (i) to read as follows:

§ 23.1121 General.

For powerplant and auxiliary power unit installations, the following apply—

* * * * *

(c) Each exhaust system must be separated by fireproof shields from adjacent flammable parts of the airplane that are outside of the engine and auxiliary power unit compartments.

* * * * *

(i) All exhaust system materials must meet the requirements of § 23.603 of this part.

Explanation: This proposal incorporates requirements for auxiliary power unit exhaust systems and a requirement for exhaust system materials and workmanship.

Conference proposal 397 recommended inserting the term "and auxiliary power unit" after the word "engine" in paragraph (c). The justification given was that applicants should be informed, through the rules, of the requirements for APU installations.

At the conference, a commenter questioned whether this should be defined as an "auxiliary power unit fire zone compartment". At this time, part 23 does not recognize fire zones as such.

The FAA has further considered these issues and has concluded that the words "fire zone" are not needed in this section. If a designated fire zone rule is adopted for part 23, then the auxiliary power unit compartment will be designated a fire zone by that section. If a fire zone designation proposal is not adopted, then the words "fire zone" would be inappropriate anywhere in part 23.

Two commenters suggested deleting the word "component" in current paragraph (c) because of the possible interpretation that each individual nut, bolt, washer, and clamp may have to be examined rather than taking the exhaust system as a whole. The FAA concurs that the word "component" is unnecessary; however, the term "system" does include each individual part of that system. All pieces of any system must be appropriate to the usage involved, including the environment in which they work. The word "component" has been deleted from the proposal.

Conference proposal 399 recommended the addition of a new pragraph to § 23.1123 establishing exhaust system material requirements and changing the word "manifold" to the word "system" throughout that section. The justification given was that there should be more stringent requirements on exhaust system materials that should

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apply to all exhaust system components, not just the manifold.

A commenter stated that the real change recommended is the addition of the paragraph requiring exhaust system materials to meet the requirements of § 23.603 and recommended that such a material requirement belongs in §23.1121. The FAA agrees and has incorporated new paragraph (i) in this proposal.

Reference: Conference proposals 397, 398,

paragraph (e). The justification given was that: each flexible control must be of an acceptable kind (paragraph (b)); powerplant control failures in small airplanes are common and cause many accidents and incidents; single-strand controls wear rapidly and break at the fastener ends; plastic lined or covered controls melt under fire conditions and jam the control; and the current rules are inadequate to ensure against these types of failures.

further considered these issues and concludes that (1) the primary controls for starting, stopping, and monitoring the auxiliary power unit should be on the flight deck because the status of the systems that may be powered by the APU can be readily determined prior to start-up; (2) other "emergency shutdown" controls may be located elsewhere on the airplane for the convenience of maintenance personnel; (3) where the "emergency shutdown" system is

modicum of control, but that would not necessarily result in the fuel control going to a setting. There is one arrangement where there is an extra control run that acts on a different part of the fuel control unit and is, in effect, a crude power setting device.

Another commenter was concerned about a means of compliance and did not think that there is a single value (setting) that would serve for a given engine installation considering all the parameters of ambient

"engine" and inserting in its place the phrase "reciprocating and turbine engine and must be located and arranged to allow operation by the flight crew."

Explanation: This proposal clarifies the requirement for ignition system control by the flight crew on all types of airplane engines regardless of principle of operation. This will avoid the misinterpretation that § 23.1145 (a)

§ 23.1181 Designated fire zones; regions included.

(a) Designated fire zones are—

(1) The power section of reciprocating engines;

(2) The accessory section of reciprocating engines;

(3) Any complete powerplant compartment in which there is no isolation between the power section and

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apply to all exhaust system components, not just the manifold.

A commenter stated that the real change recommended is the addition of the paragraph requiring exhaust system materials to meet the requirements of § 23.603 and recommended that such a material requirement belongs in §23.1121. The FAA agrees and has incorporated new paragraph (i) in this proposal.

Reference: Conference proposals 397, 398, and 399.

§ 23.1123 [Amended]

52. Section 23.1123 is amended in the section heading and paragraphs (a), (b), and (c) by removing the word "manifold" and inserting in its place the word "system".

Explanation. This proposal makes this section applicable to the total exhaust system rather than to the manifold only.

Conference proposal 398 recommended adding a lead-in sentence to § 23.1123, as follows: "For powerplant and auxiliary power unit installations the following apply:" The justification given was to set forth the exhaust manifold requirements for auxiliary power units when installed in an airplane. At the conference, the consensus agreed with the addition. The FAA concluded from the conference discussion that changing "exhaust manifold" to "exhaust system" in § 23.1123 clarifies the requirement and accomplishes the intent of conference proposal 398 because the requirements are applicable to the exhaust system rather than just the manifold assembly.

Conference proposal 399 recommended changing the word "manifold" to the word "systems" throughout this section because these requirements should apply to all the exhaust system parts that are required to experience the exhaust environment.

Conference proposal 400 recommended adding a sentence to read: "Materials used in exhaust manifolds must retain at least 25 percent of their room-temperature tensile strength when subjected to the highest exhaust gas temperature development in normal continuous high-cruise operation of the powerplant." The justification given was that 321 stainless steel used in exhaust systems loses over 80 percent of its tensile strength at 1650° F.

Conference commenters opposed this type of subjective requirement. The FAA agrees and is considering no further action on this recommendation; however, material requirements are being proposed in new § 23.1121(i).

Reference: Conference proposals 398, 399, and 400.

§ 23.1141 [Amended]

53. Section 23.1141 is amended in paragraph (e) by removing the phrase "For turbine engine powered airplanes".

Explanation. This proposal will make the more stringent powerplant control system requirements of this paragraph applicable to all part 23 airplanes, rather than only turbine-powered airplanes.

Conference proposal 401 recommended the deletion of the first phrase of current paragraph (e). The justification given was that: each flexible control must be of an acceptable kind (paragraph (b)); powerplant control failures in small airplanes are common and cause many accidents and incidents; single-strand controls wear rapidly and break at the fastener ends; plastic lined or covered controls melt under fire conditions and jam the control; and the current rules are inadequate to ensure against these types of failures.

Because of the problems with controls over the years, the FAA is proposing a requirement that no single failure of a control, such as a pushpull control separation, will cause the failure of any powerplant function necessary for safety.

Experience indicates that when the mixture control breaks, the mixture goes to idle cut-off, the engine stops and that is a failure. In the case of throttle control breakage, the throttle goes to idle, and the airplane cannot maintain flight. These are examples of failures that lead to the loss of function necessary for safety.

A commenter pointed out that there are engine systems where a failure that leads to an engine shutdown is not normally, in itself, considered to be a safety hazard. A shutdown is deemed a hazard only in single-engine airplanes and, if a failure that leads to a benign engine shutdown is not acceptable, something else must be done. There have been supplemental type certificates issued for emergency fuel systems that provide a separate fuel supply and insert it directly into the intake manifold through metering valves controlled by the pilot. Once back to the landing field, the fuel is cut off and the pilot makes a dead-stick landing. These fuel systems are for flying over the jungle and ensuring a return home. Such fuel systems are costly, but accomplish the mission.

The FAA has further considered these issues and concludes that paragraph (e) should be applicable to all part 23 airplanes.

Reference: Conference proposal 401.

54. Part 23 is amended by adding a new § 23.1142 to read as follows:

§ 23.1142 Auxiliary power unit controls.

Means must be provided on the flight deck for the starting, stopping, monitoring, and emergency shutdown of each installed auxiliary power unit.

Explanation: This proposal adds a requirement that the controls for any auxiliary power unit and monitoring be installed on the flight deck. Part 23 does not currently address requirements for auxiliary power unit installations; applications for such installations have, therefore, been subject to special conditions.

Conference proposal 403 recommended adding a new section on auxiliary power unit controls similar to § 25.1142. The justification given was that applicants for approval of the auxiliary power units should be informed of the requirements for these installations.

At the conference, a number of commenters spoke on several aspects of the recommendation. A majority of commenters agreed that the auxiliary power unit controls should be on the flight deck; however, clarification was desired. The FAA has further considered these issues and concludes that (1) the primary controls for starting, stopping, and monitoring the auxiliary power unit should be on the flight deck because the status of the systems that may be powered by the APU can be readily determined prior to start-up; (2) other "emergency shutdown" controls may be located elsewhere on the airplane for the convenience of maintenance personnel; (3) where the "emergency shutdown" system is essentially the same as the regular stopping system, there is no justification for addressing both; and (4) the flight crew should not be able to override an APU automatic shutdown.

Reference: Conference proposal 403.

55. Section 23.1143 is amended by adding a new paragraph (g) to read as follows:

§ 23.1143 Engine controls.

* * * * *

(g) For reciprocating single-engine airplanes, each power or thrust control must be designed so that if the control separates from the engine fuel metering device, the airplane is capable of continued safe flight and landing. In the event of such separation, the control must incorporate an adequate back-up system, or the fuel metering device must be automatically positioned at a setting that permits continued safe flight and landing from any point in the flight envelope of the airplane.

Explanation: This proposal requires a back-up system or automatic positioning of the fuel metering device to ensure that the engine continues to furnish adequate power if the pilot's control installation fails. Service experience shows that the primary mode of failure of the engine control is breakage/separation from the fuel metering device. Loss of engine power follows.

Conference proposal 402 recommended adding a new paragraph to § 23.1141 to require that, for small, single-engine airplanes, when throttle linkage separation occurs, the fuel control must go to a setting that will allow the pilot to maintain level flight in the cruise configuration. The justification given was that NTSB Recommendation A-81-6 requested this rule change and the FAA committed to the NTSB to include this recommendation in this review by letter dated October 21, 1983. This conference proposal is more appropriate to § 23.1143 because it addresses the throttle, power, and thrust controls specifically.

At the conference, one commenter had no objection to meeting the objective on single-reciprocating-engine airplanes; however, that commenter did object to the requirement that the fuel control must go to a specific setting. On turbine engines, there are safety back-up systems built into the fuel control. Powerplant control requirements for turbine engine powered airplanes for addressing failures are in § 23.1141(e). No changes are being proposed for these engines. In other cases, it may be possible to provide some supplementary system that will enable a modicum of control, but that would not necessarily result in the fuel control going to a setting. There is one arrangement where there is an extra control run that acts on a different part of the fuel control unit and is, in effect, a crude power setting device.

Another commenter was concerned about a means of compliance and did not think that there is a single value (setting) that would serve for a given engine installation considering all the parameters of ambient conditions, temperature, altitude, loading, etc.

Conference proposal 404 recommended revising § 23.1143 by adding a new paragraph requiring that a means be provided to ensure that if throttle linkage separation occurs in a single-engine airplane, the fuel control will be automatically positioned at the full throttle position for agricultural airplanes, and an intermediate throttle position for other airplanes that will allow the pilot to maintain level flight in the cruise configuration. The justification was the same as conference proposal 402 (NTSB Recommendation A-81-6), except for the final sentence, which states, "However, in consideration of the typical low level operating environment of agricultural airplanes, the Safety Board believes that automatic positioning at the full throttle setting would be most appropriate under similar circumstances involving these type airplanes."

A commenter, citing an investigation done 3 or 4 years prior to the conference, questioned whether throttle control failure was a maintenance problem, as several of the failures occurred when the controls were fitted to the airplane by the manufacturer at least 15 years prior to the accident.

Another commenter stated that this recommendation addresses agricultural single-engine airplanes separately and the classification of the airplanes that have had the problem should be examined more closely. The commenter further stated that there might be differences among the small, single-reciprocating-engine airplanes, turboprop airplanes and turbofan airplanes. Because there is a substantial quality difference in the control mechanisms of these airplanes and the commenter would hate to see a high quality system that has no difficulty in service being burdened with a requirement for unwarranted redundancy.

Another commenter stated that, as an engine manufacturer, it has been offering an additional control capability on turboprop engines for single-engine installations, but has not been able to convince the airplane manufacturers to connect it up.

The FAA, upon further consideration of these issues, has concluded that the proposal should include the power or thrust control terms to make it applicable to reciprocating single-engine airplanes, allow an adequate back-up system as an alternative to a power position setting device, allow a range of power position setting with level flight cruise as a minimum and add the requirement for the capability of safe flight and landing.

Reference: Conference proposals 402 and 404.

§ 23.1145 [Amended]

56. Section 23.1145 is amended in paragraph (a) by removing the word "engine" and inserting in its place the phrase "reciprocating and turbine engine and must be located and arranged to allow operation by the flight crew."

Explanation: This proposal clarifies the requirement for ignition system control by the flight crew on all types of airplane engines regardless of principle of operation. This will avoid the misinterpretation that § 23.1145 (a) and (b) apply only to reciprocating engines.

A manufacturer has recently developed an automatic ignition system for its turboprop engine to correct an engine flameout problem that developed in service. The automatic ignition system proposed would provide the pilot with a choice of an "automatic" position, or a "continuous" position but with no "off" position as required by paragraph (b). The FAA concludes that clarification of § 23.1145 is necessary.

Reference: Questions from the public requesting interpretation and clarification.

57. Section 23.1147 is amended by redesignating the introductory text of paragraph (a) and paragraphs (a)(1) and (a)(2) as paragraphs (a)(1) introductory text, (a)(1)(i), and (a)(1)(ii) respectively; by redesignating the introductory text to the section as the introductory text of paragraph (a); by redesignating paragraph (b) as paragraph (a)(2); and by adding a new paragraph (b) to read as follows:

§ 23.1147 Mixture controls.

* * * * *

(b) A means must be provided to assure that each engine mixture control device will move automatically to the full-rich position in the event it becomes disconnected from the mixture control linkage.

Explanation: This proposal would add a rule to require mixture control go to a full-rich setting if the pilot control system linkage becomes separated for any reason. This requirement would prevent the mixture control from inadvertently moving into idle-cut-off setting when the disconnect occurs. While the full-rich setting is not considered ideal for most circumstances, it is judged to be the best of the alternatives.

Conference proposal 405 recommended adding a new requirement into § 23.1147 to require the mixture control lever to move automatically to the full-rich position in the event the linkage becomes disconnected. A commenter at the conference supported the proposal.

The FAA has concluded that § 23.1147 should be amended to require full-rich fuel mixtures when a mixture control linkage fails, regardless of whether part 33 is subsequently amended to require such features. This amendment to § 23.1147 will ensure currently approved engines that continue to be produced will have this safety feature when installed in part 23 airplanes.

Reference: Conference proposal 405.

58. Part 23 is amended by adding a new § 23.1161 to read as follows:

§ 23.1161 Designated fire zones; regions included.

(a) Designated fire zones are—

(1) The power section of reciprocating engines;

(2) The accessory section of reciprocating engines;

(3) Any complete powerplant compartment in which there is no isolation between the power section and the accessory section, for reciprocating engines;

(4) Any auxiliary power unit compartment;

(5) Any fuel-burning heater and other combustion equipment installation described in § 23.859;

(6) The compressor and accessory sections of turbine engines; and

(7) The combustor, turbine, and tailpipe sections of turbine engine installations that contain liens or components carrying flammable fluids or gases.

(b) For commuter category airplanes, each designated fire zone must meet the requirements of § 23.1195 through § 23.1203.

Explanation: This proposal would add a new section identifying designated fire zones. Previously, fire zones have not been identified as such in part 23, although, functionally, there are a number of fire zones in small airplanes.

Conference proposal 407 recommended a new section be adopted for commuter category airplanes that designated fire zones and was patterned after § 25.1161. The justification given was that a comment in response to Notice No. 83-17 recommended that fire zones be designated for commuter category airplanes.

At the conference, the commenters objected to discussing commuter rules at the part 23 Review. After the FAA requested comments on the conference proposal only in relation to part 23 airplanes, a number of comments were forthcoming. Conference consensus agreed that a new § 23.1161 to designate fire zones would be appropriate but some commenters expressed concerns about proposal details; i.e., the proposal should more clearly define the fire zones for reciprocating engines, turbine engines, auxiliary power units, and combustion heaters and clarify the term "compartment".

The FAA has further considered these issues and, in response to the comments, proposes to define each designated zone with respect to a reciprocating engine, turbine engine, auxiliary power unit, or other combustion device. The commuter requirement was moved to new paragraph (b). The FAA has determined the word "compartment" is the most appropriate of the words available. A compartment can be any size, shape, or configuration. For the purpose of this proposal, compartment means a relatively close-fitting, total enclosure; the word does not inhibit design flexibility.

The FAA concluded that fire zones should be identified and designated, although that

designation does not, in itself, impose any new requirements on them. Adequate fire resistance and fireproofing requirements are already incorporated in several other sections of the rules.

Reference: Conference proposal 407.

59. Section 23.1189 is amended in paragraph (a) introductory text by removing the words "subject to § 23.67(a) and § 23.67(b)(1)" and by revising paragraph (a)(5) to read as follows:

§ 23.1189 Shutoff means.

(a) * * *

(5) Not more than one quart of flammable fluid may escape into the engine compartment after engine shutoff. For those installations where the flammable fluid that escapes after shutdown cannot be limited to one quart, it must be demonstrated that this greater amount can be safely contained or drained overboard.

* * * * *

Explanation: The proposal changes this section's applicability to all multiengine airplanes and quantifies the hazardous amount of flammable fluid. For fuel, the hazardous quantity was established as one quart by FAA policy and practiced many years ago. It was incorporated into § 23.953(b)(1) in 1979 and is proposed for this section to clarify the intent for all flammable fluids.

Conference proposal 409 recommended revising § 23.1189(a)(5) by replacing the words "no hazardous amount of flammable fluid" with the words "no more than one quart of flammable fluid (or any greater amount shown to be safe)". The justification given was that a definition for "hazardous quantity" of flammable fluid is needed.

At the conference, the majority of commenters agreed that such a definition is necessary. One commenter expressed confusion by the term "drain into the engine compartment" because the term could imply draining into a container. This commenter suggested clarification that this is free fluid in the engine compartment.

The FAA has further considered these issues and has concluded that the word "drain" in the current rule should be changed to "escape".

In other sections of the rules, the word "drain" connotes a capability of controlling the flow of fluid, sometimes catching it in a container. "Control" may be limited to ensuring that the fluid drains overboard at predetermined locations in predictable patterns. In this case, the intent is to limit the uncontrolled release or "escape" of flammable fluids to a predictable quantity. It is understood that fluid escaping from a broken component may or may not depart the airframe through existing cowling drain provisions. Therefore, the word "drain" has been changed to the word "escape" in this context.

FAA is proposing another Notice of Proposed Rulemaking on crash-resistant fuel systems for part 23 airplanes. This notice proposes changes to improve crash resistance of fuel systems. A proposed design change is included to limit fuel spillage in survivable accidents to reduce fire-related fatalities. The proposal requires the fuel system to be designed so that no more than 8.0 ounces of fuel will be liberated by any rupture that will occur in specific junctures of lines and connections, as a result of a survivable accident.

The reference to § 23.67 in § 23.1189 is being deleted so § 23.1189 will be applicable to all multiengine airplanes, as originally intended. The reference to § 23.67 in § 23.1189 did not keep current with the changes in § 23.67.

Section 23.67, climb: one engine inoperative, was amended by amendment 23-21, effective March 1, 1978. This amendment changed paragraphs (a) and (b) to be applicable for reciprocating engine-powered multiengine airplanes and added paragraph (c) to be applicable for turbine-powered multiengine airplanes. Paragraphs (a) and (b) are further restricted to airplanes of more than 6,000 pounds and 6,000 pounds or less maximum weight, respectively. Amendment 23-34, effective date February 17, 1987, further amended § 23.67. This amendment added airworthiness standards for commuter category airplanes to part 23 of the FAR. With amendment 23-34, § 23.67, paragraphs (a), (b), and (c) were changed to further limit their application to normal, utility, and acrobatic airplanes and a new paragraph (e) was added for one engine inoperative climb for the commuter category airplanes. During this time, the reference to §§ 23.67(a) and 23.67(b)(1), in § 23.1189, did not change. The original application of § 23.1189 was for all reciprocating engine-powered multiengine airplanes only. Since turbine-powered multiengine airplanes should also be included, the reference to § 23.67 is being deleted.

Reference: Conference proposal 409.

60. Section 23.1191 is amended in paragraph (a) by removing the words "intended for operation in flight,"; in paragraph (b) by removing the word "engine" and inserting in its place the word "isolated"; by removing and reserving paragraph (d) in paragraph (f)(1) by removing the term "2000±50 °F" and inserting in its place the term "2000±150 °F"; and by adding a new paragraph (h)(6) to read as follows:

§ 23.1191 Firewalls.

* * * * *

(h) * * *

(6) Titanium sheet, 0.016 inch thick.

Explanation: This proposal removes a rule that allows, under certain circumstances, fire resistant seals in fireproof firewalls, adds a new firewall material, and clarifies the intent that all heat producing devices must be separated from the airframe by firewalls or shrouds.

Conference proposal 410 recommended the deletion of § 23.1191(d). The justification was that fire resistant seals do not provide an adequate level of safety. Openings in firewalls on single-engine airplanes and multiengine airplanes not subject to § 23.67(a) or (b)(1) should meet the more stringent requirements of § 23.1191(c).

At the conference, a commenter pointed out that § 23.1191(a) requires firewalls, shrouds, etc., only for those heat-producing devices "intended for operation in flight". Such devices, when only operated on the ground, do not require firewall protection.

Another commenter objected to conference proposal 410 because it contained no cost/benefit analysis in the justification and because the group that the commenter represented needed to study and better understand the benefits of the proposal. At the conference, the FAA assured the commenter that such analysis would be accomplished before a proposal is presented for public comment.

The FAA has further considered these issues and has concluded that the intent of this section is to protect the airframe from high temperature producing equipment whether operated in flight or on the ground. Except for the engine, most of this equipment, when or where it is operated, requires little attention from the operator. Even those auxiliary power units only operated on the ground that demand minimum attention, have been and should be required to be installed in fireproof containers or compartments. This proposal would amend paragraph (a) by removing that part referring to operation in flight. In paragraph (b) the word "engine" is changed to the word "isolated" to parallel the requirement with paragraph (a) for all compartments.

The intent of the firewall requirement is to meet the fireproof requirements (withstand 2000° F flame for 15 minutes) for the total firewall installation. Allowing the seals on small openings to burn away after 5 minutes has been permitted; however, these openings have been limited to 1/32 inch radial clearance around components passing through the firewall. Even these openings are required to show by test that a hazardous amount of flame will not pass through. The FAA has concluded that, with the advent of modern, fireproof seals, this rule is obsolete for new designs.

Conference proposal 411 recommended adding a new paragraph (h)(6) to allow the use of 0.016 inch thick titanium sheet for firewall material without further testing. The justification given was that one aircraft manufacturer has qualified and used 0.016 inch thick titanium on its aircraft. This change would allow future use without costly development testing and increases the choice of previously qualified materials. When presented for discussion at the conference, a commenter stated that Joint Airworthiness Requirements (JAR) 25 allows 0.016 inch thick titanium as equivalent to the other materials specified in paragraph (h).

A post conference search discovered CAA Technical Development Report No. 317, dated September 1957, that shows test results for 0.016 inch titanium.

In paragraph (f)(1), the temperature tolerance of ±50 °F is raised to ±150 °F. The readily available test equipment has difficulty maintaining the required tolerance over a five-by-five inch area for five minutes. The FAA has accepted the industry practice of ±150 °F on past certification programs.

Reference: Conference proposals 410 and 411.

61. Section 23.1193 is amended by revising paragraph (b) to read as follows:

§ 23.1193 Cowling and nacelle.

* * * * *

(b) There must be means for rapid and complete drainage of each part of the cowling in the normal ground and flight attitudes. Drain operation may be shown by test, analysis, or both, to ensure that under the most adverse aerodynamic pressure distribution expected in service each drain will operate as designed. No drain may discharge where it will cause a fire hazard.

* * * * *

Explanation: This proposal clarifies the intent of the rule; i.e., the drains must assure that all free fluids depart the airframe under any operating condition, whether in flight or on the ground.

Conference proposal 412 recommended revising paragraph (b) by replacing the words "flight attitudes" with the phrase "during all intended flight conditions" because this rule only requires an evaluation of the drain provision on the ground. Experience has shown that drains that work on the ground may not drain in flight when aerodynamic pressures are acting across the drains.

At the conference, a commenter suggested that the rule should require a flight test evaluation of the drain system. Another commenter objected to the proposed words "all intended flight conditions" because the FAA could require a flight test program that would go on forever and suggested perhaps the language could be improved by allowing analysis as an acceptable means of compliance. The FAA agrees that a test is needed to ensure that the drains work under all flight conditions. Certain evaluations and analyses can be done on the ground, but the ultimate proof is in the flight evaluation. The FAA, upon further consideration, concludes that the better approach to this problem would be to leave the current wording as is and add a new explanatory sentence to clarify the intent of the rule; i.e., that the drains enable any free fluids to escape the airframe under any expected operating condition.

Conference proposal 413 recommended adding a new paragraph (g), "Each cowling must be easily removable, without special tools or techniques, for routine maintenance. No more than 24 fasteners may be used to secure the cowling unless it can be shown that a single unaided technician can remove and install the cowling in less than five minutes using ordinary hand tools, or unless individual access covers sufficient in number and placement to accomplish all required between-100-hour checks have been provided in the cowl exterior". No justification was given for the recommendation. When presented for comment at the conference, the first commenter objected to the proposal as too detailed. The second commenter observed that ordinary hand tools could include can openers, hack saws, and axes; etc., and is not regulatory language. The FAA agrees that while such a requirement could aid in maintenance, it is not an airworthiness standard and plans no further consideration of this conference proposal.

Reference: Conference proposals 412 and 413.

62. Section 23.1195 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (a)(1), (a)(2), and (a)(3), respectively; by designating the introductory text of the section as paragraph (a) introductory text; and by adding a new paragraph (b) to read as follows:

§ 23.1195 Fire extinguishing systems.

* * * * *

(b) If an auxiliary power unit is installed in any airplane certificated to this part, that auxiliary power unit compartment must be served by a fire extinguishing system meeting the requirements of paragraph (a)(2) of this section.

Explanation: This proposal adopts requirements for auxiliary power unit compartment fire extinguishing systems. Currently, there are no requirements for such systems.

Conference proposal 414 recommended revising the § 23.1195, proposed in Notice No. 83-17, by inserting the words "and auxiliary power units" into the lead sentence after the word "airplane" and into paragraph (c) after the word "nacelle", two places. The justification given was that applicants for approval of auxiliary power unit installations should be informed of the requirements for such installations.

The proposal for a new § 23.1195 in Notice 83-17 was issued as a final rule (52 FR 1806, January 15, 1987). At the conference, three commenters objected to the word "simultaneously" because it could mean that the fire extinguishing system could be discharged into both an engine nacelle and the auxiliary power unit compartment at the same time. They did not think that was the intent of the proposed rule. The word "simultaneously" in the conference proposal was intended to indicate the capacity of the fire extinguishing system rather than to literally flood both areas instantaneously. One commenter recommended the adoption of the proposal for all part 23 airplanes, not just the commuter category. Another commenter objected to requiring all part 23 airplanes to have engine compartment fire extinguishing systems. The FAA agrees that there is no need for a fire extinguishing system in many engine installations. However, in some instances, for example where the engine is installed within the fuselage, extinguishing systems have been required.

The FAA has further considered these issues and is proposing a fire extinguishing system for all auxiliary power unit compartments, as such compartments are usually in the fuselage where the consequences of a fire are more varied and adverse than the typical engine fire.

Reference: Conference proposal 414.

63. Section 23.1203 is amended in paragraph (e) by removing the words "an engine compartment" and inserting in their place the words "a fire zone"; by removing the introductory text to the section; and by revising paragraph (a) to read as follows:

§ 23.1203 Fire detection system

(a) There must be means that ensures the prompt detection of a fire in—

(1) An engine compartment of—

(i) Multiengine turbine power airplanes;

(ii) Multiengine reciprocating engine powered airplanes incorporating turbochargers;

(iii) Airplanes with engine(s) located where they are not readily visible from the cockpit; and

(iv) All commuter category airplanes.

(2) The auxiliary power unit compartment of any airplane incorporating an auxiliary power unit.

* * * * *

Explanation: This proposal incorporates new requirements for fire detector systems in auxiliary power unit compartments and in the engine compartments on those airplanes where the engine(s) are not readily visible from the cockpit.

Conference proposal 415 recommended adding a new requirement by inserting the words "auxiliary power units" into the lead-in sentence and the words "and auxiliary power unit compartment" into paragraph (e). The justification given was that applicants for approval of auxiliary power unit installations should be informed of the requirements for such installations.

At the conference, a commenter suggested adding the words "fire zone" after the words "auxiliary power unit compartment" to further define the fire resistance capability of the area. The FAA agrees and proposes to revise paragraph (e) by removing the words "an engine and auxiliary power unit compartment" and replacing them with the words "a fire zone".

Conference proposal 416 recommended revising the lead-in sentence by adding at the end the statement "and airplanes with engine(s) located such that they are not readily visible from the cockpit". The justification given was that an engine compartment fire with an engine that was located on or near the centerline of the aircraft and aft of the pilot's station could go undetected for a significant period of time and could result in catastrophic failure of other main components. At the conference, a commenter agreed that the addition appears reasonable and the FAA agrees.

The FAA has further considered these issues and has concluded that this section lead-in would become too detailed and cumbersome. Therefore, the lead-in sentence and paragraph (a) have been combined and rearranged to clarify the intent of this section.

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Reference: Conference proposals 415 and 416.

64. Section 23.1303 is amended by revising paragraph (c) to read as follows:

§ 23.1303 Flight and navigation instruments.

* * * * *

(c) A direction indicator (nonstabilized magnetic compass).

* * * * *

Explanation: This proposal would clarify the intent of the regulations for a magnetic nonstabilized direction indicator. The nonstabilized magnetic direction indicator, which does not require power from the airplane's electrical systems, provides directional information to the pilot when all other directional navigation systems have failed due to loss of power. There have been contentions that a magnetic direction indicator with a remote magnetic sensor should be acceptable because only one magnetic direction indicator is required and it is more accurate for navigation.

When the requirement for a magnetic direction indicator was promulgated, only a nonstabilized magnetic direction indicator (magnetic compass) was envisioned. Requirements in the operating rules for various kinds of operations are in addition to these basic requirements for type certification. The minimum level of safety established by these regulations was based on the reliability and failure modes of the nonstabilized magnetic compass and its ability to provide continuous heading information due to its functional independency.

Conference proposals 418 and 419 recommended listing all the instruments that are in the operational requirements. They are categorized in parts 91 and 135 by kinds of operations, such as day VFR, night VFR, IFR, and icing. At the conference, the consensus was that such requirements for part 23 airplanes should remain in the operating rules and not be redundantly stated in part 23. Instruments and equipment installed to qualify the airplane for the various kinds of operations set forth in the operating rules must be found to comply with applicable requirements of this subpart and be listed in the Airplane Flight Manual (AFM) in accordance with § 23.1583.

Conference proposal 419 further recommended dual instruments for commuter category airplanes. The minimum crew requirements for type certification may be different than the operational requirements of parts 91 and 135. If a second pilot is required for a specific operation, the instruments used by that pilot must also comply with § 23.1321. The FAA is unaware of any configuration that would comply with § 23.1321 without each pilot having an individual set of instruments.

Proposal 421 is being considered under § 23.1331, since it dealt with independent power sources for instruments.

Reference: Conference proposal 418, 419, and 421.

65. Section 23.1305 is revised to read as follows:

§ 23.1305 Powerplant instruments.

The following are required powerplant instruments:

(a) *For all airplanes.*

(1) A fuel quantity indicator for each fuel tank, or for each assembly of interconnected tanks that function as one tank.

(2) An oil pressure indicator for each engine.

(3) An oil temperature indicator for each engine.

(4) An oil quantity measuring device for each oil tank.

(5) A fire warning means for those airplanes required to comply with § 23.1203.

(b) *For reciprocating engine-powered airplanes.* In addition to the powerplant instruments required by paragraph (a) of this section, the following powerplant instruments are required:

(1) An induction system air temperature indicator for each engine equipped with a preheater and having induction air temperature limitations that can be exceeded with preheat.

(2) A tachometer indicator for each engine.

(3) A cylinder head temperature indicator for—

(i) Each air-cooled engine with cowl flaps;

(ii) Each airplane for which compliance with § 23.1041 is shown at a speed higher than V_c; and

(iii) Each commuter category airplane.

(4) A fuel pressure indicator for each pump fed engine.

(5) A manifold pressure indicator for each altitude engine and for each engine with a controllable propeller.

(6) For each turbocharger installation:

(i) If limitations are established for either carburetor (or manifold) air inlet temperature or exhaust gas or turbocharger turbine inlet temperature, indicators must be furnished for each temperature for which the limitation is established unless it is shown that the limitation will not be exceeded in all intended operations.

(ii) If its oil system is separate from the engine oil system, oil pressure and oil temperature indicators must be provided.

(7) A coolant temperature indicator for each liquid-cooled engine.

(c) *For turbine engine-powered airplanes.* In addition to the powerplant instruments required by paragraph (a) of this section, the following powerplant instruments are required:

(1) A gas temperature indicator for each engine.

(2) A fuel flowmeter indicator for each engine.

(3) A fuel low pressure warning means for each engine.

(4) A fuel low level warning means for any fuel tank that should not be depleted of fuel in normal operations.

(5) A tachometer indicator (to indicate the speed of the rotors with established limiting speeds) for each engine.

(6) An oil low pressure warning means for each engine.

(7) An indicating means to indicate the functioning of the powerplant ice protection system for each engine.

(8) For each engine, an indicating means for the fuel strainer or filter required by § 23.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 23.997(d).

(9) For each engine, a warning means for the oil strainer or filter required by § 23.1019, if it has no bypass, to warn the pilot of the occurrence of contamination of the strainer or filter screen before it reaches the capacity established in accordance with § 23.1019(a)(5).

(10) An indicating means to indicate the functioning of any heater used to prevent ice clogging of fuel system components.

(d) *For turbojet/turbofan engine-powered airplanes.* In addition to the powerplant instruments required by paragraphs (a) and (c) of this section, the following powerplant instruments are required:

(1) For each engine, an indicator to indicate thrust or to indicate a parameter that can be related to thrust, including a free air temperature indicator if needed for this purpose.

(2) For each engine, a position indicating means to indicate to the flight crew when the thrust reverser, if installed, is in the reverse thrust position.

(e) *For turbopropeller-powered airplanes.* In addition to the powerplant instruments required by paragraphs (a) and (c) of this section, the following powerplant instruments are required:

(1) A torque indicator for each engine

(2) A position indicating means to indicate to the flight crew when the propeller blade angle is below the flight low pitch position, for each propeller, unless it can be shown that such occurrence is highly improbable.

(3) For each gearbox or transmission, a chip detector indicator light.

Explanation: This proposal clarifies the powerplant instrument requirements by separating the reciprocating engine, turbine engine, turbojet/turbofan, and turbopropeller requirements; and adding requirements for coolant temperature indicator, fuel low-level warning, manifold pressure indicator, and chip detector indicator.

Conference proposal 422 recommended revising paragraph (a) by adding the phrase "or for each unit of interconnected tanks functioning as a unique tank". The justification given was that this recommendation is consistent with § 23.953(b), which makes no distinction between a single fuel tank and series of fuel tanks interconnected to function as a single fuel tank. At the conference, the commenters agreed the change would clarify the rule; however, one commenter suggested that the word "unique" should be the word "single". The proponent agreed that the word should be "single". Post conference review led to the clarified proposal to ensure that the requirement is consistent with § 23.1337(b)(4).

Conference proposal 423 recommended revising paragraph (b) by inserting the phrase "or a low oil pressure warning" after the word "indicator". The justification given was that usually a pressure indicator comprises 3 ranges: for the proper functioning, for caution, and for warning the crew of a failure or an abnormal condition. An indication in the caution range will require more attention from the crew, which possibly takes corrective actions if the indication goes into the "failure range" (reduce the power, land as soon as possible). With a low oil pressure warning suitably adjusted, the corrective actions will be the same and safety is not impaired. At the conference, the proponent stated that this conference proposal is a cheaper way to achieve the same conclusion. The low pressure warning should be set to function as soon as there is a small loss of oil pressure. Two commenters opposed the change because a single light cannot furnish the trend information, both high and low pressure, that is required in an engine oil pressure instrument. The FAA agrees that, with few exceptions, the powerplant instruments specified under § 23.1305 are expected to provide trend information.

Another commenter pointed out there are trends toward unregulated oil systems that have extreme pressure variations. The commenter stated his belief that a single point indication would be adequate in this case and that the current rule permits such a simple readout, even though it may not meet the part 1 definition of an instrument.

The FAA reviewed the part 1 definition of the word "instrument", and other technical data and has concluded as follows: (1) where a light is sufficient, the instrument requirement should be changed to a "warning means"; (2) where trend information is needed, the word "indicator" should be retained; and (3) where point operation or steps in a sequence need to be shown, the words should be changed to "indicating means"; i.e., the functioning of an ice protection system.

Conference proposal 424 recommended revising § 23.1305(d) by adding a new requirement: "Tachometer scale error must not exceed 2 percent" and by adding to paragraph (h) the words "and for each engine with a controllable propeller". The justification given was that when excessive vibration stresses are found in portions of the normal operating range, § 23.1549(d) requires a red arc on the tachometer that means "do not operate" in this range. Experience and field surveys show tachometers are not accurate enough to prevent operation in the high stress area that ultimately results in propeller blade failures. Manifold pressure, along with engine rpm, is necessary for engines with controllable propellers to determine power settings.

At the conference, six commenters objected to adding the tachometer scale accuracy requirement because they considered it was not needed or appropriate. The conference consensus was to leave it up to the engine installation manual to state the required instrument accuracies. Most engine-propeller combinations do not need a high accuracy instrument to aid in avoiding any excessive vibration rpm ranges. Another commenter stated that the addition to paragraph (h) is acceptable as long as the requirement is restricted to reciprocating engine airplanes. Also, in paragraph (e), the rule should allow the exemption of some rotors from the speed readout requirement where those rotor speeds are not particularly significant. There are a large number of turbine engines with three rotors where one or two rotors are so dependent on the remaining rotor(s) that their speeds are not of any particular interest to the flight crew.

The FAA considered these issues and concluded that the tachometer accuracy is not needed, and no change is needed to paragraph (3) because the words "rotors with established limiting speeds" are adequate. Because of the apparent cost impact of requiring very accurate tachometers in airplanes where they are not needed, the FAA has determined that the appropriate place for specifying instrument accuracy is the engine installation manual. The same is true for the significant rotor speeds of paragraph (e). The installation manual should specify the rotor speed(s) information of use to the flight crew and for tachometer range marking.

Conference proposal 425 recommended adding a new paragraph (x) to read as follows: Each powerplant instrument required in paragraphs (d), (e), (g), (j), (k), (l), and (m) must display trend and rate of change indication. The justification given was that electronic displays, with lighted elements, required a specific, discrete update rate or time to display the information. This rate or time is critical to the readability of the display and is not presently controlled by the regulations.

At the conference, the several commenters did not reach a consensus. After further consideration, the FAA has concluded that each instrument installation must be evaluated individually; however, analog indicators are usually best at showing rates and trends. One commenter stated that paragraph (1) needed clarification and suggested the words "gas stream pressure" be replaced with the word "parameter". The FAA has considered these issues and has concluded that electronic displays should be addressed in a new § 23.1311. Notice 5 of the Small Airplane Airworthiness Review Program contains that proposal. The suggested change to paragraph (1) has been determined to be appropriate and has been incorporated in proposed § 23.1305(d)(1) of this proposal.

Conference proposal 426 recommended revising paragraph (f) by adding "and for each engine with pilot-operated mixture control" and paragraph (h) by adding "and for each engine driving a constant speed propeller" because this section does not properly define the requirements for cylinder head or manifold pressure instruments. Cylinder head limit temperatures can be exceeded by leaning the engine, and manifold pressure is needed to determine power settings and avoid over-boosting. At the conference, a commenter questioned the need for the change to (f), particularly since compliance with § 23.1041 must be shown. Another commenter stated that there are a great number of airplanes in use today that have pilot-operated mixture controls but do not have a cylinder head temperature (CHT) indicator. Another commenter objected to the paragraph (f) proposal if having automatic mixture control would allow deletion of the CHT indicator. The FAA has considered these issues and concluded that paragraph (f) needs to be clarified. As noted previously, the entire section has been rearranged to separate the requirements for the several modes of aircraft propulsion.

Conference proposal 427 recommended revising paragraph (f) by deleting the phrase "with cowl flaps". This would make CHT instrumentation mandatory on all air-cooled reciprocating engines. No further justification was offered. At the conference, five commenters agreed that a CHT indicator would be nice to have on any reciprocating engine installation, but is not always a necessity. The FAA agrees that CHT indicators are handy, but since cooling tests are normally run under critical operating conditions, with or without cowl flaps, there is no need for CHT indicators on all reciprocating engine airplanes. The FAA plans no further action on this recommendation.

Earlier airworthiness standards contained requirements for both liquid-cooled and air-cooled engine installations. The requirement for a coolant temperature indicator for liquid cooled engines was deleted from the rules, without explanation, by Civil Air Regulations, amendment 3–5, effective October 1, 1959. Since there have been few, if any, liquid-cooled engines installed in part 23 airplanes, the lack of this requirement was not noted until the Small Airplane Airworthiness Review Program. New design features are making the liquid-cooled engine attractive for installation; therefore, the requirements for coolant temperature indicator needs to be readopted into part 23.

Conference proposal 429 recommended revising paragraph (g) by inserting the words "or a low fuel pressure warning" after the word "indicator". The justification given was that a low fuel pressure warning will better alert the pilots than an indicator will if the fuel pressure fails. The corrective action taken by the pilot is the same whatever the indication means. At the conference, two commenters supported the proposal, particularly for turbine engine airplanes. Review of equivalency findings allowing fuel low pressure warning lights on some turbine powered airplanes, led the FAA to conclude

a low fuel pressure warning is an acceptable alternative to an indicator for turbine engines.

Conference proposal 430 recommended revising § 23.1305 by deleting paragraph (n) entirely since a requirement to indicate to the crew when the propeller blade angle is below the flight low pitch stop is redundant. Section 23.1155 currently requires that a separate and distinct operation by the crew is necessary to displace the propeller control from the flight

A commenter made the observation that there is a degree of antiquity in this rule. He asked if there was anyone who remembered the perceived hazard that initiated this rule? Also, there are some airplane types that are in compliance with this rule, after the Beta light was deleted, based on power lever position. The FAA replied that some designs could inadvertently get into Beta range due to a particular failure mode and concludes that an indication is needed. The FAA does not

Explanation: This proposal deletes the word "an approved" in § 23.1307, and adds a new requirement that all equipment items necessary for the airplane to operate in the National Airspace System (NAS) to its maximum approved altitude and in all kinds of operations for which it is approved must be included in the type design.

Conference proposal 432 recommended deleting § 23.1307(a) in its entirety, because it

respectively; and adding a new paragraph (b) to read as follows:

§ 23.1329 Automatic pilot system.

* * * * *

(b) If the provisions of paragraph (a)(1) of this section are applied, the quick release (emergency) control must be located on the control wheel (both control wheels if the airplane can be operated from either pilot seat) on the

(2) The failure of the energy supply from one source will not interfere with the proper supply of energy from any other source.

(c) There must be at least two independent sources of power (not driven by the same engine on multiengine airplanes), and a manual or an automatic means to select each power source.

requiring that the attitude and direction indicators on single-engine airplanes have a power source independent from the power source for the pneumatic deicing equipment, autopilot, or cabin pressurization system. The justification for this proposal was that single-engine airplanes do not have adequate gyroscopic instrument redundancy and, between 1978 and 1981, there were large numbers of vacuum pump failures. At the conference, considerable confusion existed

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a low fuel pressure warning is an acceptable alternative to an indicator for turbine engines.

Conference proposal 430 recommended revising § 23.1305 by deleting paragraph (n) entirely since a requirement to indicate to the crew when the propeller blade angle is below the flight low pitch stop is redundant. Section 23.1155 currently requires that a separate and distinct operation by the crew is necessary to displace the propeller control from the flight regime to below the flight idle position. This equates to a conscious and deliberate selection of propeller blade angles below flight idle. Deliberate crew action, when taken in combination with an undeniable and immediately discernible drag rise from propeller blade angles below flight idle stop, will achieve the necessary level of safety envisioned by part 23.

At the conference, a commenter stated that § 23.1305(n) appears to be redundant because § 23.1155 requires stops and distinct operation of the power lever to go to blade angles below flight idle. Another commenter stated that § 23.1305(n) originated with piston engines that incorporated a mechanical flight low pitch stop. If the stop failed, the flight crew should be alerted. Modern propellers on turboprop engines have different characteristics. Any failure of the system on the hydraulic (oil pressure) side will result in the propeller increasing in pitch. The hazard the current rule addresses no longer exists and there is no benefit to the required indication.

A commenter stated that since some airplanes are taxied with the propeller in the Beta range, it is a good idea to have the indication so the pilot knows when the propeller moves into the flight range. Another commenter questioned whether there is a failure mode that could cause the blade to move to low pitch angle, and, therefore, require the pilot to be warned. A commenter stated that modern propellers will move toward feather except in the case of certain structural failures. Older systems could fail in such a way that the blades would go toward flat pitch and, invariably, those propellers had backup systems to prevent that from happening. It should be pointed out that Beta range is not always consigned to ground operation. On short takeoff and landing (STOL) airplanes, it is part of the normal flight regime.

A commenter attempted to clarify the discussion in that some early model reciprocating engine propellers, when hydraulic (oil) pressure was lost, would go into low pitch through normal centrifugal twisting moment forces. Later model propellers are counterweighted so that when hydraulic pressure is removed, the natural geometry and mass of the blade will move it to high pitch position. With respect to the Beta range, modern turboprop engines provide for a Beta light to show when the engine is in the Beta mode of operation. This mode can include reverse pitch and forward blade angles up to and above the flight low pitch stop position. It is a mode of operation controlling blade angle, as opposed to governing. The rule either needs to be deleted or clarified to provide the indication of interest; i.e., the Beta range.

A commenter made the observation that there is a degree of antiquity in this rule. He asked if there was anyone who remembered the perceived hazard that initiated this rule? Also, there are some airplane types that are in compliance with this rule, after the Beta light was deleted, based on power lever position. The FAA replied that some designs could inadvertently get into Beta range due to a particular failure mode and concludes that an indication is needed. The FAA does not see a conflict between §§ 23.1155 and 23.1305; the former requires a stop and a distinct operation of the power lever while the latter requires an indication to the pilot.

The FAA has further considered these issues and concluded that the requirement for a blade position indicating means for each turboprop engine propeller should be retained. This requirement is included in the new turboprop requirement paragraph.

Conference proposal 431 recommended revising § 23.1305(p) by inserting the parenthetical wording "(or manifold)" after the word "carburetor"; and inserting the words "or turbocharger turbine inlet" after the word "gas". The justification given was that this proposal includes fuel injected and turbocharged engines, which may have limiting temperatures. At the conference, the consensus supported the recommendation. The FAA concurs and this recommendation has been included.

Subsequent to the part 23 review, the FAA became aware of safety benefits that could be offered by the installation of a warning light that would alert the pilot that the fuel in the tanks being used was at a low level. Such a low level fuel warning light would alert the pilot to take action to either make a fuel management correction or to land the airplane prior to fuel starvation and engine stoppage. To provide this additional level of safety for fuel systems, a low level warning means has been proposed in § 23.1305(c)(4).

Service experience also indicates that it may be appropriate to require chip detector indicator lights for turbine engines and gear boxes. These lights show trend information in that they indicate distress in the engine bearings and gear drives allowing corrective action before total failure. Generally, if oil filter bypass, low oil pressure, or high oil temperature is indicated, it is too late for effective corrective action; the failure is imminent. Proposed chip detector indicator lights are added in § 23.1305(e)(3).

Reference: Conference proposals 422, 423, 424, 425, 426, 427, 429, 430, and 431.

66. Section 23.1307 is amended in paragraph (a) by removing the words "an approved" and inserting in their place the word "a"; and by adding a new paragraph (c) to read as follows:

§ 23.1307 Miscellaneous equipment

* * * * *

(c) All equipment necessary for an airplane to operate in the National Airspace System (NAS) at its maximum operating altitude and in all kinds of operations and meteorological conditions for which it is certificated in accordance with § 23.1559 must be included in the type design.

Explanation: This proposal deletes the word "an approved" in § 23.1307, and adds a new requirement that all equipment items necessary for the airplane to operate in the National Airspace System (NAS) to its maximum approved altitude and in all kinds of operations for which it is approved must be included in the type design.

Conference proposal 432 recommended deleting § 23.1307(a) in its entirety, because it was redundant to § 23.785(b). Conference proposal 433 recommended deleting only the word "approved" in § 23.1307(a).

Both §§ 23.1307 and 23.785(b) contain seat requirements; however, § 23.1307(a) only requires a seat or berth for each occupant, while § 23.785(b) contains specific design requirements for each seat, berth, safety belt, and shoulder harness, but does not include requirements for a seat or berth to be provided for each occupant. The requirements of § 23.1307(a) were added by amendment 23–23 to eliminate questions as to the maximum seating capacity and compliance with the emergency exit requirements. The FAA does not consider these requirements to be redundant and plans no further action on these recommendations.

A new paragraph (c) is added because the FAA considers it necessary to clarify the type design requirements for part 23 airplanes relative to equipment items. Frequently, manufacturers have requested their airplanes be approved relative to structural, performance, and propulsion requirements for a specific altitude without also requesting approval of necessary equipment to operate at that altitude. The FAA considers it necessary for the type design to include all equipment necessary for operation in accordance with the limitations required by §§ 23.1559 and 23.1583.

Reference: Conference proposals 432 and 433.

67. Section 23.1322 is amended by adding a new paragraph (e) to read as follows:

§ 23.1322. Warning, caution, and advisory lights.

* * * * *

(e) Effective under all probable cockpit lighting conditions.

Explanation: This proposal is addressed in conference proposal 438. It requires that the specific colors be consistent with change in brightness over the full range of ambient light conditions in the cockpit and that the luminance difference and/or color difference be sufficient to preclude confusion or ambiguity under all probable cockpit lighting conditions. Light color is not controlled by a lens color cathode ray tube (CRT) displays now being incorporated into airplanes. Cockpit lighting evaluations are required in § 23.1321 and clarification is needed in this section to assure compliance with these requirements.

Reference: Conference proposal 438.

68. Section 23.1329 is amended by redesignating paragraphs (b), (c), (d), (e), (f), and (g) as (c), (d), (e), (f), (g), and (h), respectively; and adding a new paragraph (b) to read as follows:

§ 23.1329 Automatic pilot system.

* * * * *

(b) If the provisions of paragraph (a)(1) of this section are applied, the quick release (emergency) control must be located on the control wheel (both control wheels if the airplane can be operated from either pilot seat) on the side opposite the throttles, or on the stick control, such that it can be operated without moving the hand from its normal position on the control.

* * * * *

Explanation: This proposal would standardize the location of the quick release (emergency) control for autopilot systems. Standardization permits consistency of pilot responses in preventing hazardous airplane attitudes during autopilot malfunctions.

Conference proposal 443 recommended standardizing the location, but it did not specify the location. Comments at the conference indicated that such a proposal is open to various interpretations and would cause disagreement in the certification process. It was suggested that FAA should specify the location of the quick release control in this proposal. The location specified is consistent with the requirements for part 25 airplanes, except this proposal allows the control to also be located on a stick control.

Conference proposal 444 recommended installing an indicator for determining adequacy of pneumatic or suction source pressure that would affect autopilot function in any axis. Since there is limited production of autopilots that utilize a pneumatic pressure as the autopilot power source and future autopilots are not expected to use pneumatic power, the FAA plans no further action on conference proposal 444.

Reference: Conference proposal 443 and 444.

69. Section 23.1331 is revised to read as follows:

§ 23.1331 Instruments using a power source.

For each gyroscopic instrument the following apply:

(a) Each instrument must have a visual annunciator integral with or adjacent to the instrument to indicate when power is not adequate to sustain proper instrument performance. The power must be sensed at or near the point where it enters the instrument. For electric and vacuum/pressure instruments, the power is considered to be adequate when the voltage or the vacuum/pressure, respectively, is within approved limits.

(b) The installation and power supply systems must be designed so that—

(1) The failure of one instrument will not interfere with the proper supply of energy to the remaining instrument; and

(2) The failure of the energy supply from one source will not interfere with the proper supply of energy from any other source.

(c) There must be at least two independent sources of power (not driven by the same engine on multiengine airplanes), and a manual or an automatic means to select each power source.

Explanation: This proposal requires a visual annunciation to indicate when power for gyroscopic instruments is not adequate, and two independent sources of power for all airplanes. Requirements in current paragraphs (a)(1) and (a)(2) are being deleted because the general requirements of §§ 23.1301 and 23.1309 will adequately address these issues.

Conference proposals 445, 446, and 447 recommended a visual means to indicate the adequacy of the power being supplied to the gyroscopic instruments. It was reported, in many cases, that the pilot does not have adequate warning after instrument power source failure. Section 23.1331 contained a requirement that there must be a means to indicate the adequacy of the power being supplied to the instruments, but this requirement is not specific relative to location. Most low cost gyroscopic instruments do not have a warning flag and, in many cases, this power warning indicator has been located outside the normal pilot scan. Consequently, the pilot's first clue of power failure is that the airplane is either turning, climbing, descending, and so forth, without corresponding instrument indication. If the pilot recognized the failure immediately, the pilot would more readily recognize and disregard erroneous or misleading information and transition quickly to partial panel.

Conference proposals 445, 446, and 448 also recommended requirements for redundant gyroscopic instruments power sources and at least two independent sources of power for multiengine airplanes. Conference proposal 445 would promote standardization in the application of FAA regulations since new technology permits complex systems installed in part 25 airplanes to also be installed in part 23 airplanes. One commenter stated that sophisticated and complex systems may be installed in part 23 airplanes but it is incorrect to assume all new part 23 airplanes will have complex systems. Therefore, the regulations should have a distinction between them, or the price of small simple airplanes will be too high.

The FAA has concluded that the requirements of § 25.1331 are not appropriate to part 23 airplanes. Small Airplane Airworthiness Review Program Notice No. 5 contains a proposal to amend § 23.1309, which would be applicable for complex safety-critical systems, and proposed paragraph (c) will provide adequate power supply redundancy for other airplanes.

Conference proposals 446 and 448 would require redundant power sources for gyroscopic instruments in airplanes approved for night, known icing conditions, and day VFR conditions. Conference proposal 421 recommended amending § 23.1303 by requiring that the attitude and direction indicators on single-engine airplanes have a power source independent from the power source for the pneumatic deicing equipment, autopilot, or cabin pressurization system. The justification for this proposal was that single-engine airplanes do not have adequate gyroscopic instrument redundancy and, between 1978 and 1981, there were large numbers of vacuum pump failures. At the conference, considerable confusion existed relative to what was intended by proposal 421. The FAA concludes the intent was to require redundant power sources for gyroscopic instruments. Proposed paragraph (c) would require such redundancy.

Conference proposal 446 also recommended deleting paragraph (a)(1) and (a)(2) since these requirements are applicable to venturi systems. As previously stated, the FAA is proposing to delete paragraphs (a)(1) and (a)(2).

Reference: Conference proposal 421, 445, 446, 447, and 448.

§ 23.1337 [Amended.]

70. Section 23.1337 is amended in paragraphs (a)(1) and (a)(3) by inserting the words "and auxiliary power unit" after the word "powerplant" and in paragraph (b)(5) by removing the words "a small" and inserting the word "an".

Explanation: This proposal adds APU installation requirements and clarifies fuel quantity indicator requirements.

Conference proposal 449 recommended amending this section to include APU requirements for the reason that applications have been received for approval of auxiliary power unit installations in part 23 airplanes. These installations also need protection from the escape of flammable fluids. At the conference, the only commenter suggested it might be appropriate to place all auxiliary power unit requirements in a separate section rather than scattering them throughout the many different rule sections. In response, the FAA has further considered this issue and has concluded that, in an effort to maintain parallelism among the airworthiness standards, the auxiliary power unit requirements should be addressed where possible in sections with corresponding numbers in other airworthiness parts.

The proposed revision to paragraph (b)(5) will maintain compatibility with proposed changes to § 23.955(d).

Reference: Conference proposal 449.

71. Section 23.1351 is amended by revising paragraphs (c)(1) and (c)(3) and adding a new paragraph (g) to read as follows:

§ 23.1351 General.

* * * * *

(c) * * *

(1) Each generator must be able to deliver its continuous rated power, or such power as is limited by its regulation system;

* * * * *

(3) Means must be provided to disconnect each generator from the battery and other generators when enough reverse current exists that might damage the generator, or will adversely affect the airplane electrical system.

* * * * *

(g) It must be shown by analysis, tests, or both, that the airplane can be

conference proposal 456. After further review, FAA has concluded that the proposal should not be limited to airplanes that operate above 25,000 feet since emergencies resulting in the loss of normal electrical power are critical for all airplanes. Five minutes is considered adequate time to cope with such an emergency so that pilot can operate the airplane safely and assess the reason for the loss of normal electrical power.

clarify the intent of paragraph (a)(1). The existing rules of paragraph (e) require spare fuses for all electric circuits. This proposal would require spare fuses for fuses identified as replaceable in flight, which would be those required by paragraph (d) and any other fuses identified as replaceable in flight. This proposal would also require the fuses be readily accessible and available.

Conference proposal 460 recommended

(3) In addition, two or more circuits installed in accordance with the requirements of paragraph (b)(2) of this section must not be used to supply a load of more than five amperes.

* * * * *

Explanation: The proposal clarifies the master switch arrangement requirement and permits new generations of engines to

be designed to allow a reasonable degree of deformation and stretching without failure and must—

(1) Be isolated from flammable fluid lines; or

(2) Be shrouded by means of electrically insulated flexible conduit, or equivalent, which is in addition to the

conference for this proposal to provide clarification or definite details needed. The proposal was not discussed and the FAA plans no further action on proposal 463.

Reference: Conference proposals 463, 464 and 465.

§ 23.1387 [Amended]

76. Section 23.1387 is amended in

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(3) Means must be provided to disconnect each generator from the battery and other generators when enough reverse current exists that might damage the generator, or will adversely affect the airplane electrical system.

* * * * *

(g) It must be shown by analysis, tests, or both, that the airplane can be operated safely in VFR conditions, for a period of not less than five minutes, with the normal electrical power (electrical power sources excluding the battery and any other standby electrical sources) inoperative, with critical type fuel (from the standpoint of flameout and restart capability), and with the airplane initially at the maximum certificated altitude. Parts of the electrical system may remain on if—

(1) A single malfunction, including a wire bundle or junction box fire, cannot result in loss of the part turned off and the part turned on; and

(2) The parts turned on are electrically and mechanically isolated from the parts turned off.

Explanation: This proposal would allow a generator to be installed and operate below its continuous rating when it has a rating higher than necessary, allow methods other than reverse current cutouts for protecting against reverse current, and would require the airplane to operate safely for 5 minutes without normal electrical power.

Conference proposal 453 recommended revising paragraphs (c)(1) and (c)(3) essentially as proposed herein. The justification given is that the generator-rated output may be higher than required for the electrical loads of the airplane and, in such case, the electrical system (generator output) is limited by its regulation system. The consensus at the conference supported the objective of this conference proposal. The FAA agrees with the need for changing paragraph (c)(1) to clarify its intent and to revise paragraph (c)(3) to relieve the burden to install a specific type of reverse current control where more efficient and less costly controls are now available.

Conference proposal 456 recommended adding paragraph (g), essentially as proposed herein except the requirement would only be applicable for airplanes operated above 25,000 feet. The justification was that part 23 airplanes that operate at high altitudes above 25,000 feet depend upon electrical power for safe operation. Emergencies involving loss of normal electrical power at or above this altitude typically result in the loss of other systems, such as electric fuel pumps, pressurization system, warning system, navigation, communications, and instrumentation. The FAA developed special conditions for part 25 that initiated the requirement in this proposal and it was later adopted into part 25 by amendment 25-41, in 1977. Conference proposal 456 was essentially developed from the part 25 requirements except for the 25,000 foot applicability. When offered for comment at the conference, there were no objections on conference proposal 456. After further review, FAA has concluded that the proposal should not be limited to airplanes that operate above 25,000 feet since emergencies resulting in the loss of normal electrical power are critical for all airplanes. Five minutes is considered adequate time to cope with such an emergency so that pilot can operate the airplane safely and assess the reason for the loss of normal electrical power.

Conference proposal 452 recommended changing the phrase "essential for safe operation" to "essential to flight safety" for consistency in the regulations. A word search of the regulations indicated that there were other phrases such as "essential to safety of flight," and "essential to continued safe operation." All of these phrases have been interpreted to have the same meaning. Since the affected regulations have been administered effectively without significant problems, the FAA does not consider the recommended change to be beneficial.

Conference proposal 451 recommended a dual electrical power distribution system. At the conference, there was confusion as to its applicability and what would be an acceptable means of compliance. The FAA has addressed related issues in Notice 5 of the Small Airplane Airworthiness Review Program and is taking no further action on this conference proposal.

Conference proposal 454 recommended adding a voltmeter as an additional required instrument in paragraph (d) and conference proposal 455 recommended deleting the entire second sentence of § 23.1351(d). Conference commenters considered the ammeter to be more valuable than a voltmeter because an ammeter can better indicate the performance of the generator and the magnitude of the electrical loads. Voltage variations could be small when there are large variations in power or current. The FAA agrees and plans no further action on these two proposals.

Conference proposal 455a, relating to fire resistance of electrical equipment, was considered interpretive material and no further action will be taken in this notice.

Reference: Conference proposals 451, 452, 453, 454, 455a, and 456.

72. Section 23.1357 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 23.1357 Circuit protective devices.

(a) * * *

(1) Main circuits of starter motors used during starting only; and

* * * * *

(e) For fuses identified as replaceable in flight—

(1) There must be one spare of each rating or 50 percent spare fuses of each rating, whichever is greater; and

(2) The spare fuse(s) must be readily accessible to any required pilot.

Explanation: The intent has historically been to protect the airplane from the hazards of all electrical faults. Paragraph (a)(1) exempted starting motor circuits because they did not have power applied, except during engine starting. It is proposed to clarify the intent of paragraph (a)(1). The existing rules of paragraph (e) require spare fuses for all electric circuits. This proposal would require spare fuses for fuses identified as replaceable in flight, which would be those required by paragraph (d) and any other fuses identified as replaceable in flight. This proposal would also require the fuses be readily accessible and available.

Conference proposal 460 recommended paragraph (e) be combined with paragraph (d), so the applicability of paragraph (e) would only be for essential circuits. At the conference, there was an objection to having more than one requirement in one paragraph and it was recommended that the requirements be in separate paragraphs as in this proposal. The requirement to have spare fuses for nonessential circuits, such as cigarette lighter, map light, and refreshment bar, are not necessary for safety. However, if they are identified as replaceable in flight, the available spare fuses for essential circuits are likely to be used to replace them. If spare fuses were used for nonessential circuits and such fuses were not allocated for in establishing the required number of spares, fuses may not be available for the essential circuit replacement.

Conference proposal 459 recommended revising paragraph (a)(2) to clarify that its applicability was for short lengths of wire. At the conference, this recommendation was opposed since there could be different interpretations of what is considered a short length of wire and since the existing rule was clear on this matter.

Reference: Conference proposals 459 and 460.

73. Section 23.1361 is amended by revising paragraphs (a) and (b) to read as follows:

§ 23.1361 Master switch arrangement.

(a) There must be a master switch arrangement to allow ready disconnection of all electric power sources from power distribution systems, except as provided in paragraph (b) of this section. The point of disconnection must be adjacent to the sources controlled by the switch arrangement. A separate switch may be incorporated into the arrangement for each separate power source provided the switch arrangement can be operated by one hand with a single movement.

(b) Load circuits may be connected so that they remain energized when the master switch is open, if the circuits are isolated, or physically shielded, to prevent their igniting flammable fluids or vapors that might be liberated by the leakage or rupture of any flammable fluid system; and—

(1) The circuits are required for continued operation of the engine; or

(2) The circuits are protected by circuit protective devices with a rating of five amperes or less adjacent to the electric power source.

(3) In addition, two or more circuits installed in accordance with the requirements of paragraph (b)(2) of this section must not be used to supply a load of more than five amperes.

* * * * *

Explanation: The proposal clarifies the master switch arrangement requirement and permits new generations of engines to operate with the master switch turned off, as is necessary to isolate hazardous electrical faults.

Subsequent to the receipt of the proposals submitted for the Part 23 Review, engine designs have been developed that depend on an electrical power source for normal ignition and/or fuel pressure. An electrical fault that makes it necessary to turn off the master switches must not cause unintentional disabling of such designed engines. However, the pilot must retain the capability to isolate all sources of electrical energy that might ignite flammable fluids that are likely to escape during a survivable crash landing.

When conference proposal 461 was discussed, a commenter specifically noted that he had no objections to the multiple circuits restriction in the proposal and supported that position. The commenter did express a concern that the proposal, "Load, circuits, such as cabin entry lights whose functions are needed prior to entering the cockpit," may unnecessarily limit those circuits to those functions that are needed before entering the cockpit. It was noted that there are other continuously energized circuits that do meet the "needed prior to entering the cockpit" definition in the proposal. A circuit for an electrical clock was cited as an example.

The FAA has reviewed the proposal and this discussion and agrees that while the proposed wordage was only intended to provide an example of the type of circuit that was permitted by this section, it could be interpreted as more restrictive than intended; therefore, this example language has not been included in this proposal. This action by FAA should not be interpreted as an endorsement to install an unlimited number of circuits that bypass the master switch. This provision was added to, and retained in, the requirements because it was recognized that there are a limited number of electrical functions that are needed when the master switch is in the position. The requirements of this section provide for the safe installation of these circuits. The five ampere load restriction of a new paragraph (b)(3) was added because the FAA was made aware of an installation in which this provision was being used to circumvent the master switch arrangements by using up to four five-ampere fuses to supply a 20 ampere circuit. This restrictive provision should make it clear that such installations are not permitted.

Reference: Conference proposal 461.

74. Section 23.1365 is amended by adding a new paragraph (c) to read as follows:

§ 23.1365 Electric cables and equipment.

* * * * *

(c) Main power cables (including generator cables) in the fuselage must be designed to allow a reasonable degree of deformation and stretching without failure and must—

(1) Be isolated from flammable fluid lines; or

(2) Be shrouded by means of electrically insulated flexible conduit, or equivalent, which is in addition to the normal cable insulation.

Explanation: This proposal provides crashworthiness standards for electrical cables. It would require that electrical cables be designed to allow a reasonable degree of deformation and stretching without failure and be isolated from flammable fluid lines or must be shrouded in insulated flexible conduit. Conference proposal 462 recommended substantially equivalent requirements. A conference commenter questioned whether this proposal is for a specification for the cable or an installation standard since this proposal is substantially equivalent to § 25.1359(c), which has been successfully administered for several years as an installation standard.

Reference: Conference proposal 462.

75. Section 23.1385 is amended in paragraph (c) by removing the phrase ", and must be approved"; by removing paragraph (d); and by redesignating paragraph (e) as paragraph (d); and by revising paragraph (b) to read as follows:

§ 23.1385 Position light system installation.

* * * * *

(b) *Left and right position lights.* Left and right position lights must consist of a red and a green light spaced laterally as far apart as practicable and installed on the airplane such that, with the airplane in the normal flying position, the red light is on the left side and the green light is on the right side.

* * * * *

Explanation: This proposal clarifies the location requirements for the position lights, deletes the requirement for a single circuit, and removes the redundant statement "must be approved". Conference proposal 464 recommended changing paragraph (b) so the location of position lights can be compatible with airplane configurations such as tandem wing, canards, and swept wings. The words "forward on the airplane" in paragraph (b) have been interpreted to mean the first 50 percent of the airplane length.

Conference proposal 465 recommended deleting paragraph (d) since it had been interpreted to prohibit multiple circuits from being installed. A consensus at the conference supported both of these recommendations.

The FAA has further studied these issues and concludes clarification is required and that the proposed requirements are substantively equivalent to the current rule.

Conference proposal 463 recommended that §§ 23.1385 up to 23.1395 and § 23.1401 be rewritten because these sections are too technical. There was no representative at the conference for this proposal to provide clarification or definite details needed. The proposal was not discussed and the FAA plans no further action on proposal 463.

Reference: Conference proposals 463, 464 and 465.

§ 23.1387 [Amended]

76. Section 23.1387 is amended in paragraph (a) by removing the words "forward and rear".

Explanation: Removal of the words "forward and rear" from paragraph (a) is necessary for compatibility with revised § 23.1385.

Reference: Proposal 75.

§ 23.1389 [Amended]

77. Section 23.1389 is amended in paragraph (b) by removing words "Forward and rear" from the heading, by changing the word "position" in the heading to read "Position", and by removing the words "forward and rear" from the first sentence; in paragraph (b)(3) by removing the word "forward" in the last sentence and inserting in its place the words "left and right".

Explanation: These changes are necessary for compatibility with revised § 23.1385.

Reference: Proposal 75.

§ 23.1391 [Amended]

78. Section 23.1391 is amended in the section heading by removing the words "forward and rear" and in the table by removing the words "(forward red and green)" and inserting in their place "(red and green)".

Explanation: These changes are necessary for compatibility with revised § 23.1385.

Reference: Proposal 75.

§ 23.1393 [Amended]

79. Section 23.1393 is amended in the section heading by removing the words "forward and rear".

Explanation: This change is necessary for compatibility with revised § 23.1385.

Reference: Proposal 75.

§ 23.1395 [Amended]

80. Section 23.1395 is amended in the section heading by removing the words "forward and rear".

Explanation: This change is necessary for compatibility with revised § 23.1385.

Reference: Proposal 75.

81. Section 23.1419 is revised to read as follows:

§ 23.1419 Ice protection.

If certification with ice protection provisions is desired, compliance with the requirements of this section and other applicable sections of this part must be shown:

(a) An analysis must be performed to establish, on the basis of the airplane's

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operation needs, the adequacy of the ice protection system for the various components of the airplane. In addition, tests of the ice protection system must be conducted to demonstrate that the airplane is capable of operating safely in continuous maximum and intermittent maximum icing conditions, as described in appendix C of part 25 of this chapter. As used in this section, "Capable of operating safely," means that airplane performance, controllability, maneuverability, and stability must not be less than that required in part 23, subpart B.

(b) In addition to the analysis and physical evaluation prescribed in paragraph (a) of this section, the effectiveness of the ice protection system and its components must be shown by flight tests of the airplane or its components in measured natural atmospheric icing conditions and by one or more of the following tests, as found necessary to determine the adequacy of the ice protection system—

(1) Laboratory dry air or simulated icing tests, or a combination of both, of the components or models of the components.

(a) Flight dry air tests of the ice protection system as a whole, or its individual components.

(3) Flight test of the airplane or its components in measured simulated icing conditions.

(c) A means must be identified or provided for determining the formation of ice on the critical parts of the airplane. Adequate lighting must be provided for the use of this means during night operation. Also, when monitoring of the external surfaces of the airplane by the flight crew is required for operation of the ice protection equipment, external lighting must be provided that is adequate to enable the monitoring to be done at night. Any illumination that is used must be of a type that will not cause glare or reflection that would handicap crewmembers in the performance of their duties. The Airplane Flight Manual or other approved manual material must describe the means of determining ice formation and must contain information for the safe operation of the airplane in icing conditions.

Explanation: This proposal would continue the minimum requirements for airplane design that have been established by the rulemaking process as necessary for safe operations, would remain compatible with other ice protection provisions, would delete the methods of showing compliance by similarity of design, would provide specific test requirements, would clarify the requirement for information that must be provided to the pilot, and would add a reference for compliance with other applicable sections of part 23.

When an airplane is approved with ice protection provisions in accordance with § 23.1419, it is allowed to be routinely dispatched into icing conditions. The public using such airplanes are entitled to the same minimum level of safety as has been established for design of the airplane in other environments. Subpart B of this part does not differentiate levels of safety by type of operation or by the environment in which the airplane is operated. The proposed final sentence to paragraph (a) makes it clear that these requirements must be met by an airplane approved for icing flights.

When icing requirements were first introduced into part 23, the only sections of part 23 that were identified as directly related to § 23.1419 were §§ 23.929 and 23.1309. Subsequent to that action, part 23 has been amended by adding § 23.1416 and Notices 2 and 4 of the small Airplane Airworthiness Review Program contains a proposal for amending §§ 23.775 and § 23.1323 if an icing approval is desired. Because of these and other applicable requirements in part 23, the introductory statement of this section has been expanded to reference compliance with other requirements.

Conference proposal 467 recommended § 23.1419 be amended by replacing its requirements with substantively identical requirements to those in § 25.1419. The justification given was that normal and transport category airplanes must operate in about the same icing environment, but the normal category airplane is more likely to remain in icing conditions for longer periods of time because it may not have the performance capability to exit the icing enviornment as readily as transport category airplanes.

At the conference, commenters did not disagree with the justification, but opposed the recommendation because—

(1) Adverse accident statistics were not cited in the justification;

(2) They could not anticipate any higher quality of certification resulting from the new requirements;

(3) They considered the current requirements adequate;

(4) The proposed requirements would impose additional burdens, as some certification requirements could now be approved without testing; and

(5) Questions were being resolved in a new advisory circular on icing certification.

The FAA remains unconvinced that part 23 airplanes should have lesser icing certification requirements than other certificated aircarft. FAA and NTSB records include many accidents wherein icing is cited as a causal factor. The practice of certification by similarity of designs is considered inadequate for icing certifications because the effects on the airplane performance, handling, etc., cannot be predicted except by test. Therefore, the requirements in this proposal have been revised to identify testing that is more appropriate for the icing flight approval of an airplane.

Although it was not discussed at the conference, paragraph (c) of this proposal includes additional requirements for a means for determining the formation of ice on the critical parts of the airplane. This is necessary because it is not always possible for the crew to visually determine the formation of ice on critical parts of the airplane. The requirement for determining ice formation will provide a means for the pilot to determine when the ice protection equipment should be activated. The requirement for the Airplane Flight Manual to include information for safe operation of the airplane in icing conditions is more appropriate for inclusion in proposed paragraph (c).

Reference: Conference proposal 467.

82. Section 23.1431 is revised to read as follows:

§ 23.1431 Electronic equipment.

(a) In showing compliance with § 23.1309(b)(1) and (2) with respect to radio and electronic equipment and their installations, critical environmental conditions must be considered.

(b) Radio and electronic equipment, controls, and wiring must be installed so that operation of any unit or system of units will not adversely affect the simultaneous operation of any other radio or electronic unit, or system of units, required by this chapter.

Explanation: This proposal would include electronic equipment that is being installed in part 23 airplanes as well as radio equipment. When the existing regulation was adopted, radio equipment was the primary electronic equipment installed. For standardization in the application of FAA requirements, this proposal is consistent with § 25.1431(a) and (c). Section 23.1309(b)(1) and (2) that are referenced are the proposed regulations in Notice 5, Small Airplane Airworthiness Review Program.

83. Section 23.1435 is amended by revising paragraph (c) to read as follows:

§ 23.1435 Hydraulic systems.

* * * * *

(c) *Accumulators.* Hydraulic accumulators or pressurized reservoirs must not be installed on the engine side of any firewall unless—

(1) It is an integral part of an engine or propeller, or

(2) It is a nonpressurized reservoir and the total capacity of all such nonpressurized reservoirs is one quart or less.

Explanation. Conference proposal 468 recommended adding to § 23.1435(c) a requirement that propeller unfeathering accumulators be considered as an integral part of the propeller and small (1 quart max.) nonpressurized reservoirs be acceptable. Propeller unfeathering accumulators have been accepted as an integral part of a propeller. The conference discussion supported clarification of the requirement

and the allowance of some small accumulators, such as for the brake systems on single-engine airplanes. The FAA has further considered these issues and concludes such accumulators should be allowed provided their total capacity is limited to one quart or less.

Proposals 468 and 470 recommended that § 23.1435 be applicable only for hydraulic systems fed by pumps and a new § 23.1436 be added for hydraulic systems with no pumps. These proposals were not accepted since the existing § 23.1435 has been applicable for both types of hydraulic systems without any problems.

Reference: Conference proposals 468, 469, and 470.

84. Section 23.1441 is amended by revising paragraphs (a) and (d); and by adding a new paragraph (e) to read as follows:

§ 23.1441 Oxygen equipment and supply.

(a) If certification with supplemental oxygen equipment is requested, or the airplane is approved for operations at or above altitudes where oxygen is required to be used by the operating rules, oxygen equipment must be provided that meets the requirements of this section and §§ 23.1443 through 23.1449. Portable oxygen equipment may be used to meet the requirements of this part if the portable equipment is shown to comply with the applicable requirements, is identified in airplane type design, and its stowage provisions are found to be in compliance with the requirements of § 23.561.

* * * * *

(d) Each required flight crewmember must be provided with—

(1) Demand oxygen equipment if the airplane is to be certificated for operation above 25,000 feet.

(2) Pressure demand oxygen equipment if the airplane is to be certificated of operation above 40,000 feet.

(e) There must be a means, readily available to the crew in flight, to shut off the oxygen supply at the high pressure source. This shutoff requirement does not apply to chemical oxygen generators.

Explanation. This proposal clarifies the type design requirements in relation to the operating rules, requires installation of demand or pressure demand crewmember oxygen equipment predicated on the airplane's maximum certificated operating altitude, clarifies the requirements relative to portable equipment, and requires a means for crewmembers to shut off the oxygen supply at the source during flight.

Conference proposal 471 recommended requiring a means for the crewmembers to shut off the oxygen supply at the source. The justification given was that, as the result of recent service difficulty investigations, it was noted that some airplane oxygen system installations have been installed with a manual shutoff valve at the supply source, apparently to prevent system leakage during periods when it is not needed. A preflight procedure called for turning the system "on" if flight to an altitude requiring oxygen was anticipated. With the oxygen system shut off, oxygen was not readily available to the crew and passengers, if unexpected incidents of inflight depressurization occurred as the result of smoke in the cockpit, turbine failures, windshield cracking, etc. The need for oxygen supply shutoff was also made evident by several cockpit fires when escaping oxygen accelerated the fire. Fortunately, these fires occurred on the ground and caused no injuries.

While the explanation for this conference proposal cited rationale for readily available shutoff control of oxygen at the source, the actual proposal only addressed shutoff capability if there were a means for shutting off oxygen system pressure. At the conference, one commenter, noting this loophole, reminded conferees of its existence. The same commenter pointed out that the proposed requirement could not be applied to chemical oxygen generating systems. Another commenter, remarked that consideration should be given to requiring that the shutoff means be easily visible to the crewmembers without twisting or turning their bodies to see it. Accordingly, proposed paragraph (e) eliminates the ambiguity and provides an exception for chemical oxygen generators.

Conference proposal 471 also recommended revising § 23.1441 by requiring demand oxygen equipment above 20,000 feet and pressure demand oxygen equipment above 40,000 feet.

At the conference, one commenter, believing that the present requirements that allow continuous flow oxygen equipment for crewmembers and passengers are satisfactory, wanted a further explanation of why they were now considered inadequate. The commenter also wanted to know how previous oxygen system installations were approved. Another commenter questioned the 40,000 foot altitude requirement for pressure demand oxygen equipment because it was halfway up to a flight level. Still another commenter concurred with the proposed altitudes for demand and pressure demand oxygen equipment.

Oxygen requirements for part 23 airplanes were promulgated in 1970. At that time, few small airplanes were pressurized or even capable of operating at altitudes above 18,000 feet. In establishing standards that were simple as well as appropriate, no differentiation was made between crewmember and passenger oxygen requirements.

Prior to 1970, advisory material was available to provide an acceptable means for installing oxygen systems. (Advisory Circular AC 43.13–2, Acceptable Methods, Techniques, and Practices; Aircraft Alterations.)

More recently, airplane performance has improved so that some single-engine airplanes are certificated to 25,000 feet maximum operating altitude and some multiengine airplanes to more than 35,000 feet maximum operating altitude. The 40,000 foot altitude requirement for pressure demand equipment cannot be selected to match a flight level inasmuch as a person breathing 100 percent oxygen without pressure can only get the equivalent of breathing air at 12,000 feet.

As explained in Advisory Circular (AC) 91–8B, continuous flow systems provided adequate oxygen protection for the flight crew up to 25,000 feet and for passengers up to 40,000 feet. Above 40,000 feet, the pressure demand system is necessary. Pressure breathing is intended only for short periods to allow safe descent in emergencies.

In response to conference comments and questions, the FAA offers the following information:

Barometric pressure decreases as altitude increases, causing a reduced oxygen partial pressure in inspired air. At increased altitudes the amount of oxygen reaching body tissues is reduced, resulting in a condition known as hypoxia. Pilot performance is degraded when hypoxia impairs functions of the brain and other organs. Although night vision deterioration is noticeable at an altitude of 5,000 feet, other significant hypoxic effects usually do not occur in normal healthy pilots in unpressurized airplanes below 12,000 feet. From 12,000 to 15,000 feet altitude, in addition to impairment of judgment, memory, and alertness, headache, drowsiness and either a sense of well-being or irritability may occur. At altitudes above 15,000 feet, peripheral vision is lost. The ability to take corrective action is lost in 5 to 12 minutes at 20,000 feet, followed soon thereafter by unconsciousness. In order to maintain oxygen partial pressure in the lungs at a safe level, it is necessary to increase the concentration of oxygen in the inspired air by adding oxygen.

The three types of oxygen systems used in civil aviation are the continuous-flow, demand, and pressure demand systems. The continuous-flow system, as the name implies, provides a constant flow of oxygen to the mask. The flow rate may be manually adjusted or automatically controlled to increase flow with an increase in cabin altitude. The most common continuous-flow mask installed in part 23 airplanes due to its low cost and oxygen economy is the open port dilution rebreathing mask. This mask incorporates a rebreather bag to collect the first portion of the exhaled gases of an exhalation that are high in oxygen content so that these oxygen rich gases can be reinhaled through an orifice in the mask during the next inspiration and dilutes the oxygen flowing into the mask. Unfortunately, such masks cannot automatically provide more oxygen to a pilot who needs an increase because of emotional stress or physical activity.

The demand system delivers a mixture of oxygen and air to the mask only when the user inhales. Up to an altitude of 36,000 feet, it automatically increases the percentage of oxygen in the mixture with increasing altitude. The demand system can provide the user with a mixture of oxygen and air that produces the same effect as breathing air at an altitude of 5,000 feet. The mixture becomes 100 percent oxygen at an altitude of 36,000 feet. At an altitude of 39,000 feet, breathing

100 percent oxygen produces the same effect as breathing air at 10,000 feet.

The pressure demand system delivers 100 percent oxygen to the mask at a positive pressure that, in effect, supercharges the lungs due to the differential pressure between the mask and surrounding barometric pressure. While the pressure demand system can extend the effect of breathing air at an altitude of 10,000 feet to slightly above an

flow requirements, and § 23.1443(b) is derived from § 25.1443 for demand system requirements. The language of the recommended change would allow § 23.1443 to cover both continuous flow oxygen and demand systems without interpretation from part 25."

When presented for comment at the conference, the proponent of proposal 472 explained that the oxygen requirements for

86. Part 23 is amended by adding a new § 23.1445 to read as follows:

§ 23.1445 Oxygen distribution system.

(a) Except for flexible lines from oxygen outlets to the dispensing units, or where shown to be otherwise suitable to the installation, nonmetallic tubing must not be used for any oxygen line

immediately available to crewmembers at their station.

* * * * *

Explanation: This proposal would add presentation requirements for the demand oxygen equipment required by § 23.1441(d) and allow the option of quick-donning type oxygen dispensing units.

Conference proposal 475 recommended

100 percent oxygen produces the same effect as breathing air at 10,000 feet.

The pressure demand system delivers 100 percent oxygen to the mask at a positive pressure that, in effect, supercharges the lungs due to the differential pressure between the mask and surrounding barometric pressure. While the pressure demand system can extend the effect of breathing air at an altitude of 10,000 feet to slightly above an airplane altitude of 40,000 feet, there is an increased effort in breathing. Under normal conditions the body only exerts an effort during inhalation, whereas exhalation occurs when the breathing muscles relax. The reverse is true during pressure breathing where exhalation requires effort and inhalation occurs when the breathing muscles relax. For these reasons, pressure breathing systems are appropriate only for short term emergency use in pressurized airplanes. Neither continuous flow nor demand oxygen systems are suitable in unpressurized airplanes for flight above 40,000 feet.

Performance of the various types of oxygen systems is based upon a normal, healthy individual wearing a mask with a good mask-to-face seal. This does not take into account other factors such as degree of training, physical activity, duration of exposure, general health or altitude tolerance of the user. Since all conditions may not be ideal and safety of the flight is dependent upon alert crewmembers, it is appropriate to require demand oxygen if the airplane is to be certificated for operation above 25,000 feet and pressure demand oxygen equipment if the airplane is to be certificated for operation above 40,000 feet.

Reference: Conference proposal No. 471.

85. Section 23.1443 is revised to read as follows:

§ 23.1443 Minimum mass flow of supplemental oxygen.

(a) If continuous flow oxygen equipment is installed, an applicant must show compliance with the requirements of either paragraphs (a)(1) and (a)(2) or paragraph (a)(3) of this section.

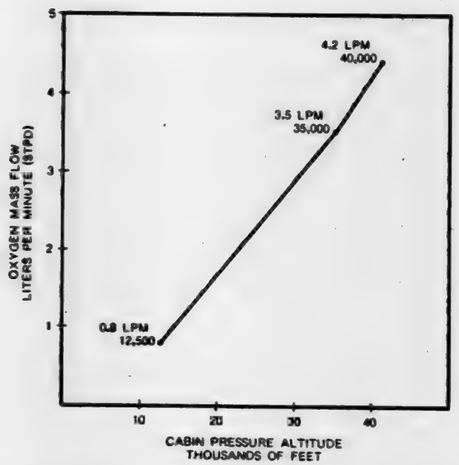
(1) For each passenger, the minimum mass flow of supplemental oxygen required at various cabin pressure altitudes may not be less than the flow required to maintain, during inspiration and while using the oxygen equipment (including masks) provided, the following mean tracheal oxygen partial pressures;

(i) At cabin pressure altitudes above 10,000 feet up to and including 18,500 feet, a mean tracheal oxygen partial pressure of 100 mm. Hg when breathing 15 liters per minute, Body Temperature, Pressure, Saturated (BTPS) and with a tidal volume of 700 cc. with a constant time interval between respirations.

(ii) At cabin pressure altitudes above 18,500 feet up to and including 40,000 feet, a mean tracheal oxygen partial pressure of 83.8 mm. Hg when breathing 30 liters per minute, BTPS, and with a tidal volume of 1,100 cc. with a constant time interval between respirations.

(2) For each flight crewmember, the minimum mass flow may not be less than the flow required to maintain, during inspiration, a mean tracheal oxygen partial pressure of 149 mm. Hg when breathing 15 liters per minute, BTPS, and with a maximum tidal volume of 700 cc. with a constant time interval between respirations.

(3) The minimum mass flow of supplemental oxygen supplied for each user must be at a rate not less than that shown in the following figure for each altitude up to and including the maximum operating altitude of the airplane.



(b) If demand equipment is installed for use by flight crewmembers, the minimum mass flow of supplemental oxygen required for each crewmember may not be less than the flow required to maintain, during inspiration, a mean tracheal oxygen partial pressure of 122 mm. Hg up to and including a cabin pressure altitude of 35,000 feet, and 95 percent oxygen between cabin pressure altitudes of 35,000 and 40,000 feet, when breathing 20 liters per minute BTPS. In addition, there must be means to allow the crew to use undiluted oxygen at their discretion.

(c) If first-aid oxygen equipment is installed, the minimum mass flow of oxygen to each user may not be less than 4 liters per minute, STPD. However, there may be a means to decrease this flow to not less than 2 liters per minute, STPD, at any cabin altitude. The quantity of oxygen required is based upon an average flow rate of 3 liters per minute per person for whom first-aid oxygen is required.

(d) As used in this section:

(1) BTPS means Body Temperature, and Pressure, Saturated (which is, 37° C, and the ambient pressure to which the body is exposed, minus 47 mm. Hg, which is the tracheal pressure displaced by water vapor pressure when the breathed air becomes saturated with water vapor at 37° C).

(2) STPD means Standard, Temperature, and Pressure, Dry (which is, 0° C at 760 mm. Hg with no water vapor).

Explanation: This proposal modifies the oxygen flow rates for small airplanes. These new requirements are needed for current and future airplanes that will be certificated to higher altitudes where oxygen is required.

Conference proposal 472 recommended revising § 23.1443 by designating the present paragraph as paragraph (a) and adding a new paragraph (b) to read essentially the same as § 25.1443(b). The justification given was that "The oxygen flow rate requirements of parts 23 and 25 are different. However, both regulations provide requirements needed to ensure continuous flow rates up to cabin pressure altitudes of 40,000 feet. Proposed § 23.1443 is a combination of these requirements. Proposed § 23.1443(a) contains current § 23.1443 with regard to continuous flow requirements, and § 23.1443(b) is derived from § 25.1443 for demand system requirements. The language of the recommended change would allow § 23.1443 to cover both continuous flow oxygen and demand systems without interpretation from part 25."

When presented for comment at the conference, the proponent of proposal 472 explained that the oxygen requirements for parts 23 and 25 are different and this proposal would make them similar. This proposal would allow § 23.1443 to cover both continuous flow oxygen systems and demand oxygen systems without bringing in an interpretation of part 25, as has been required in the past.

Conference proposal 473 recommended revising § 23.1443 essentially as shown in this proposal since the oxygen flow rate requirements of parts 23 and 25 are different. However, both regulations provide requirements needed to ensure continuous flow rates up to cabin pressure altitudes of 40,000 feet. Proposed § 23.1443 is a combination of these requirements. Sections 23.1443 (a)(1) and (a)(2) contain the continuous flow requirements of part 25 and allow the applicant to comply with those requirements or with paragraph (a)(3), which is the current continuous flow requirement of part 23. Demonstrating compliance with proposed § 23.1443(a)(3) is easier, but results in a larger volume of oxygen and more weight. Demonstrating compliance with §§ 23.1443 (a)(1) and (a)(2) is harder, but results in a lesser volume of oxygen. By allowing the applicant to choose either method of compliance, this requirement permits freedom of design.

When presented for comment at the conference, the FAA confirmed that this conference proposal would allow alternatives of continuous flow oxygen equipment or demand oxygen equipment. With a good face-fitting mask, less oxygen will be used with a demand system than with a continuous flow system. Studies on altitude sickness and the impairment of ability to function on continuous flow equipment at altitudes above 25,000 feet leads the FAA to reconsider this issue, especially for flight crews.

Proposed paragraph (c) provides the flow rate requirements for first-aid oxygen equipment if installed, but does not require its installation. These requirements are identical to the first-aid oxygen flow rate requirements in part 25. With the recent addition on commuter category airplanes in part 23, first-aid oxygen equipment is more likely to be installed in part 23 airplanes.

Proposed paragraph (d) is clarifying by providing definitions of the term "BTPS" and "STPD" as used in this section.

Post conference review of these comments and the oxygen requirements of parts 91, 121, and 135 led to the conclusion that (1) adding the equivalent of the part 25 oxygen requirements to part 23 will provide adequate protection for both flight crew and passengers; and (2) that crewmembers should have demand oxygen equipment for operations above 25,000 feet.

Reference: Conference proposals 472 and 473.

86. Part 23 is amended by adding a new § 23.1445 to read as follows:

§ 23.1445 Oxygen distribution system.

(a) Except for flexible lines from oxygen outlets to the dispensing units, or where shown to be otherwise suitable to the installation, nonmetallic tubing must not be used for any oxygen line that is normally pressurized during flight.

(b) Nonmetallic oxygen distribution lines must not be routed where they may be subjected to elevated temperatures, electrical arcing, and released flammable fluids that might result from any probable failure.

Explanation: This proposal will establish standards for oxygen distribution systems not heretofore required. These requirements will prevent installation of plastic hoses in pressurized oxygen systems.

Conference proposal 474 recommended adopting equipment standards for oxygen systems essentially the same as proposed here. The justification given was that several accidents have occurred in airplanes where nylon tubing was used in an oxygen system pressurized to 70 psi. Because oxygen can support vigorous combustion, oxygen system installations warrant special attention in certification programs.

When presented for comment at the conference, the two commenters agreed that pressurized plastic tubing is inappropriate for oxygen system but did not completely agree with the proposal because they believed the rules should not specifically preclude all nonmetallic tubing. Some composite airplanes may need nonmetallic oxygen lines for lightning strike protection. In view of these comments, a phrase that allows a showing of suitability to the installation was added to the proposal.

Reference: Conference proposal 474.

87. Section 23.1447 is amended by revising paragraph (e) to read as follows:

§ 23.1447 Equipment standards for oxygen dispensing units

* * * * *

(e) If certification for operation above 30,000 feet is requested, the dispensing units must meet the following requirements:

(1) The dispensing units for passengers must be automatically presented to each occupant before the cabin pressure altitude exceeds 15,000 feet.

(2) The dispensing units for crewmembers must be automatically presented to each crewmember before the cabin pressure altitude exceeds 15,000 feet, or the units must be of the quick-donning type, connected to an oxygen supply terminal that is immediately available to crewmembers at their station.

* * * * *

Explanation: This proposal would add presentation requirements for the demand oxygen equipment required by § 23.1441(d) and allow the option of quick-donning type oxygen dispensing units.

Conference proposal 475 recommended essentially the same proposal as presented here. When presented for comment at the conference, the commenters agreed some changes were needed but did not agree on what should be done. The FAA agreed to reconsider the entire oxygen rules package. Post conference review of these comments and the proposals and other technical data has led to the set of proposals herein. These proposals would add oxygen system requirements similar to part 25 and also allow some alternatives under certain conditions.

Reference: Conference proposal 475.

88. Part 23 is amended by adding a new appendix H to read as follows:

Appendix H to Part 23—Installation of an automatic power reserve (APR) system

H23.1, *General.*

(a) This appendix specifies requirements for installation of an APR engine power control system that automatically advances power or thrust on the operating engine(s) in the event any engine fails during takeoff.

(b) With the APR system and associated systems functioning normally, all applicable requirements (except as provided in this appendix) must be met without requiring any action by the crew to increase power or thrust.

H23.2, *Definitions.*

(a) "Automatic power reserve system" means the entire automatic system used only during takeoff, including all devices both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines, including power sources, to achieve the scheduled power increase and furnish cockpit information on system operation.

(b) "Selected takeoff power", notwithstanding the definition of "Takeoff Power" in part 1 of the Federal Aviation Regulations, means the power obtained from each initial power setting approved for takeoff.

(c) "Critical Time Interval", as illustrated in figure H1, means that period starting at V_1 minus one second and ending at the intersection of the engine and APR failure flight path line with the minimum performance all engine flight path line. The engine and APR failure flight path line intersects the one-engine-inoperative flight path line at 400 feet above the takeoff surface. The engine and APR failure flight path is based on the airplane's performance and must have a positive gradient of at least 0.5 percent at 400 feet above the takeoff surface.

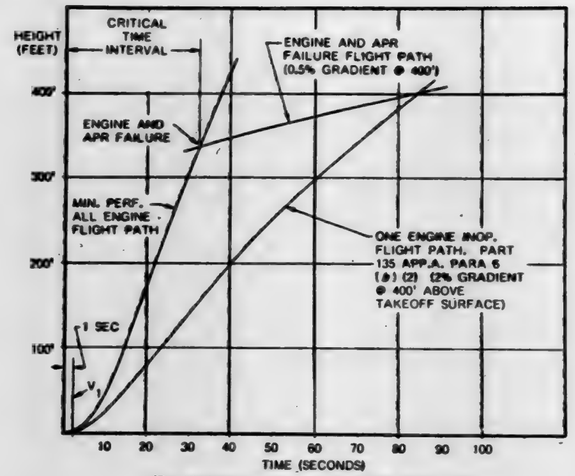


Figure H1.—Critical Time Interval Illustration.

H23.3, *Reliability and performance requirements.*

(a) It must be shown that, during the critical time interval, an APR failure that increases or does not affect power on either engine will not create a hazard to the airplane, or it must be shown that such failures are improbable.

(b) It must be shown that, during the critical time interval, there are no failure modes of the APR system that would result in a failure that will decrease the power on either engine or it must be shown that such failures are extremely improbable.

(c) It must be shown that, during the critical time interval, there will be no failure of the APR system in combination with an engine failure or it must be shown that such failures are extremely improbable.

(d) All applicable performance requirements must be met with an engine failure occurring at the most critical point during takeoff with the APR system functioning normally.

H23.4, *Power setting.*

The selected takeoff power set on each engine at the beginning of the takeoff roll may not be less than—

(a) The power necessary to attain, at V_1, 90 percent of the maximum takeoff power approved for the airplane for the existing conditions;

(b) That required to permit normal operation of all safety-related systems and equipment that are dependent upon engine power or power lever position; and

(c) That shown to be free of hazardous engine response characteristics when power is advanced from the selected takeoff power level to the maximum approved takeoff power.

H23.5, *Powerplant controls—general.*

(a) In addition to the requirements of § 23.1141 of this part, no single failure or malfunction (or probable combination thereof) of the APR, including associated systems, may cause the failure of any powerplant function necessary for safety.

(b) The APR must be designed to—

(1) Provide a means to verify to the flight crew before takeoff that the APR is in an operating condition to perform its intended function;

(2) Automatically advance power on the operating engines following an engine failure during takeoff to achieve the maximum attainable takeoff power without exceeding engine operating limits;

(3) Prevent deactivation of the APR by manual adjustment of the power levers following an engine failure;

(4) Provide a means for the flight crew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation; and

(5) Allow normal manual decrease or increase in power up to the maximum takeoff power approved for the airplane under the existing conditions through the use of power levers, as stated in § 23.1141(c) of this part, except as provided under paragraph H23.5(c) of this appendix.

(c) For airplanes equipped with limiters that automatically prevent engine operating limits from being exceeded, other means may be used to increase the maximum level of power controlled by the power levers in the event of an APR failure. The means must be located on or forward of the power levers, must be easily identified and operated under all operating conditions by single action of any pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 23.777(a), (b), and (c) of this part.

H23.6, *Powerplant instruments.*

In addition to the requirements of § 23.1305 of this part:

(a) A means must be provided to indicate when the APR is in the armed or ready condition.

(b) If the inherent flight characteristics of the airplane do not provide warning that an engine has failed, a warning system independent of the APR must be provided to give the pilot a clear warning of any engine failure during takeoff.

(c) Following an engine failure at V_1 or above, there must be means for the crew to readily and quickly verify that the APR has operated satisfactorily.

Explanation: This proposal incorporates the additional requirements needed in § 23.904 for approval of an automatic system designed to increase power or thrust on the remaining operating engine(s) if an engine loses power on takeoff. This proposal was developed from special conditions since part 23 does not contain airworthiness standards for APR systems.

Conference proposal 319 recommended incorporated essentially the same proposal as presented here with the justification that small airplane manufacturers are currently installing APR systems and requesting certification. One conference commenter opposed adoption of these requirements and presented a list of requirements as an alternative. This alternate list was similar to the alternate special conditions this commenter offered, prior to the conference, in response to the Notice of Proposed Special Conditions published in the Federal Register (49 FR 35123, September 6, 1984).

The conference discussion provided no additional information to that previously offered in comment to the cited notice of proposed special conditions. Those comments to the cited notice are on public record and have been discussed and dispositioned in the Adoption of Final Special Conditions published in the Federal Register (50 FR 5308, February 8, 1985).

This proposal would add a new § 23.904 plus a new appendix H to this part and would maintain parallelism with similar requirements in part 25 of this chapter.

Reference: Conference proposal 319, cited special conditions.

Issued in Washington, DC, on September 17, 1990.

David W. Ostrowski,

Acting Director, Aircraft Certification Service.

[FR Doc. 90-22210 Filed 10-2-90; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
October 3, 1990

Part IV

Department of Education

Projects With Industry; Final Funding Priorities and Applications for New Awards for Fiscal Year 1991; Notice

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DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Projects With Industry; Final Funding Priorities for Fiscal Year 1991

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Year 1991.

SUMMARY: The Secretary announces final funding priorities for fiscal year 1991 for service activities to be supported under the Projects With Industry (PWI) program of the Rehabilitation Services Administration (RSA).

EFFECTIVE DATE: These final priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these final priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Pamela Martin, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3411) Washington:, DC 20202–2740. Telephone (202) 732–5829.

SUPPLEMENTARY INFORMATION: Grants under the Projects With Industry program are authorized by title VI, section 621 of the Rehabilitation Act of 1973, as amended. The purpose of this program is to expand job opportunities in the competitive labor market for individuals with handicaps.

Eligible Applicants

Individual employers, designated State units, other entities such as nonprofit organizations, trade associations, labor unions, and profit-making organizations are eligible applicants under this program.

On May 24, 1990, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (55 FR 21506). Based upon comments received from the public in response to these proposed priorities, the following changes have been made.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 15 parties submitted comments. One of the letters of comment was completely favorable and did not suggest any changes to the proposed priorities. The remaining 14 commenters suggested certain changes. An analysis of the substantive comments and the Secretary's responses are summarized below:

General Comments—Comments Applying to More Than One Priority

Comments: One respondent recommended that the phrase "individuals with severe and other handicaps" contained in several of the priorities be replaced with a more restrictive phrase "individuals with severe handicaps" in order to preclude PWI projects from using scarce resources to serve some individuals who are not severely handicapped and in order to reflect the emphasis in the Title I Vocational Rehabilitation Services Program on expanding and improving services to individuals with severe handicaps.

Discussion: Section 621(a)(1) of the Rehabilitation Act states that the purpose of the PWI program is to promote opportunities for competitive employment of "individuals with handicaps", a broader term that includes individuals with severe handicaps. The effect of adopting in the priorities the more limiting language suggested by this commenter would be to restrict PWI services to just the severely handicapped in contravention of the statute. However, the PWI evaluation standards provide that in selecting persons to receive services, projects must give priority to individuals with severe disabilities. This priority is implemented in the PWI compliance indicators, which establish minimum performance levels for projects in the areas of serving and placing adequate numbers of individuals with severe disabilities.

Changes: None.

Comments: Two respondents recommended the addition of a priority for projects that involve labor unions.

Discussion: While the Secretary fully recognizes the substantial contributions provided by unions as a result of their participation in the PWI program, the Secretary has determined that it would be inappropriate to single out and establish a priority for projects involving unions without establishing priorities for each of the many other entities eligible for support under the PWI program. Moreover, as an eligible grantee, unions can apply for support under any of the priorities.

Changes: None.

Comments: Several respondents recommended the addition of a priority for projects providing technical assistance to business, labor, or service providers. These commenters cited the pending passage of the Americans with Disabilities Act as a reason for the need to include a technical assistance priority and referred also to the authority under section 621(g) of the Rehabilitation Act for the Commissioner of RSA to provide technical assistance to PWI grantees and potential PWI grantees to facilitate the development of relationships with private industry and labor.

Discussion: The Secretary has determined that it would be premature to establish a priority under the PWI program for the provision of technical assistance to employers and businesses prior to the commencement of the development of implementing regulations for the Americans with Disabilities Act. At that time, the various Federal agencies that are involved in administering the Act will have an opportunity to determine the extent of business and industry technical assistance needs and to develop plans and strategies for meeting these needs, including, if appropriate, the development of funding priorities under such programs as PWI. The publication of these final priorities for fiscal year 1991 does not preclude the Department from developing additional priorities to meet these technical assistance needs at a later time.

The Rehabilitation Services Administration is currently conducting on-site compliance reviews and providing technical assistance to PWI grantees. It is expected that one-third of all grantees in existence in 1987 will receive on-site compliance reviews by the end of fiscal year 1991. Thereafter, at least 15 percent of all grantees will receive annual on-site compliance reviews. The Secretary considers that the review and technical assistance now being provided by the Rehabilitation Services Administration adequately meets the current needs of the PWI program and the intent of the technical assistance provision in section 621(g) of the Rehabilitation Act. Further, many of the current PWI grantees provide technical assistance to businesses and industries as part of their on-going project activities.

Changes: None.

Comments: One respondent recommended that a non-priority category be established in order to permit applicants to submit proposals that do not meet any of the priorities.

Discussion: Regulations in 34 CFR 75.105 do not require publication of a non-priority category under these priorities. Instead, the Department simply publishes an application notice in the **Federal Register** announcing the availability of funds to support projects that do not meet any of the priorities selected for funding under the application notice.

Changes: None.

Comments: One commenter suggested that priorities 4, 5, 6, and 7 include language that allows for national projects or projects that have the potential for broad or national replication.

Discussion: Since priorities 4, 5, 6, and 7 do not require any particular geographical scope, applicants under these priorities are free to propose projects of their own geographical design, whether that be national, local, statewide, or regional. Thus, these priorities do not require amendment to permit national projects.

Changes: None.

Comments: One respondent stated that the seven priorities are not mutually exclusive and therefore an applicant could submit a proposal that would meet more than one priority. This respondent believed this might create confusion in assigning the application to a particular priority or might require the application to be reviewed separately under several priorities. This respondent felt, therefore, that the priorities should be changed to address this concern.

Discussion: The Secretary believes that the seven priorities as proposed address the areas of greatest programmatic need in fiscal year 1991 and offer the best mix of geographical and target group priorities to ensure continuation of balanced funding under the PWI program. The Secretary agrees that some applications might be responsive to more than one priority. In those instances, an applicant can choose to have its application reviewed under more than one priority, but the application, of course, could only be funded once.

Changes: The application package will inform applicants that an applicant can choose to have its application reviewed under more than one priority by submitting separate applications for each applicable priority.

Comments: One respondent stated that there is insufficient documentation and evidence to justify absolute preference for priorities 4, 5, 6, and 7.

Discussion: The PWI program is currently supporting projects that focus on the needs addressed by these priorities. The Secretary believes it is essential to continue support of these types of projects in order to assure a balanced PWI program.

Changes: None.

Comments: One respondent fully supported priorities 5, 6, and 7, but expressed concern that these priorities may take away some of the resources necessary for continuation of the basic types of projects now funded by the PWI program.

Discussion: A number of the currently funded PWI projects support disability populations targeted by priorities 5, 6, and 7. Thus, program funds set aside for these priorities will support continuation of these types of projects, but not to the detriment of other types of existing PWI projects that may be recommended for new funding in fiscal year 1991. The Secretary considers priorities 5, 6, and 7 to be among the areas of greatest need and appropriate for inclusion in the funding plans for this program in fiscal year 1991. The Secretary will announce in the notice inviting applications the amount of funding to be set aside for each of the seven priorities to ensure a balanced PWI program.

Changes: None.

Comments: One respondent suggested that absolute preference should be given to those applicants proposing to establish the Business Advisory Council (BAC) required by statute.

Discussion: Section 621(a)(2)(E) of the Rehabilitation Act requires that all PWI projects provide for business advisory councils, composed of representatives of private industry, business concerns, and organized labor, which will identify available jobs within the community and prescribe appropriate training programs. Since the establishment of a Business Advisory Council is a statutory requirement, it is unnecessary to specifically include it in any of the priorities.

Changes: None.

Comments: Several respondents cited the need to include in the priorities an explanation of the requirement in section 621(b)(3) of the Act that "past performance" be considered in making new grant awards in fiscal year 1991 and subsequent fiscal years. One of these respondents further recommended that points be assigned for consideration by peer reviewers and RSA staff.

Discussion: The priority notice contains a statement that funding of particular projects depends on availability of funds, the nature of the final priorities, and the quality of applications received. In addition to these considerations, a number of other requirements contained in the Education Department General Administrative Regulations, section 621 of the Rehabilitation Act, and Projects With Industry program regulations in 34 CFR 369 and 379 govern application requirements and applicant eligibility and establish the process to be used in selecting applications for new awards. The Secretary does not consider the "prior performance" provision suggested by the respondents for inclusion in the priorities to be of any greater importance than the geographical distribution provision in 34 CFR 379.31(a) or any of the many other requirements applicable to new grants awarded under the Projects With Industry program. Those requirements are referenced in the application notice or are included in the application package provided to all prospective applicants. Accordingly, the Secretary has determined that it is not necessary to include a discussion of the "prior performance" provision in this priority announcement.

Regarding the respondent's recommendation that, in assessing past performance, points be assigned for consideration by peer reviewers and RSA, program regulations in 34 CFR 379.31(b) that implement the past performance provision do not provide for the assignment of points. These regulations make clear that past performance is just one of the additional factors the Secretary considers in making final award decisions after applications have been ranked in accordance with program selection criteria.

Changes: None.

Comments: One respondent recommended that the phrase "high demand occupations" be stricken wherever it occurs (priorities 1, 2, 3, and 6) and be replaced with the phrase "occupations consistent with the capabilities and abilities of project participants." The respondent pointed out that a significant number of high demand occupations do not meet the needs of persons with severe disabilities. Another respondent also questioned use of the phrase "high demand occupations" under priority 6.

Discussion: The Secretary agrees that the phrase "high demand occupations" is too restrictive. The intent was to ensure that training and other services are directed toward occupations that meet the labor needs of the geographic area proposed to be served and offer reasonable expectations of stable employment.

However, the Secretary has determined that it is not necessary to add the suggested phrase "occupations consistent with the capabilities and abilities of project participants." All individuals served by projects funded under any of these seven priorities are expected to be placed in appropriate occupations.

Changes: In priorities 1, 2, 3, and 6, the phrase "high demand occupations" is deleted and language substituted that requires training and placement in occupations that reflect current and future employment trends and labor

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market needs of the geographic area proposed to be served.

Comments: Several respondents suggested that RSA should wait until the Rehabilitation Act is reauthorized by the Congress before setting PWI priorities for fiscal year 1992. These respondents noted that possible legislative changes in the PWI program could materially impact upon the 1992 priorities.

Discussion: The Secretary agrees, in light of the reauthorization of the Rehabilitation Act in fiscal year 1991, that it would be premature at this time to publish priorities for fiscal year 1992 also.

Changes: The final priorities have been changed to apply to new awards in fiscal year 1991 only.

Comments: One respondent suggested that eligible applicants who do not respond to priorities 4, 5, 6, or 7 should be permitted to submit a proposal that has merit as an innovative or unique project and advances the purposes of section 621 of the Act by serving a severely disabled population requiring services, an unserved industry, or attempts an untried technique, methodology, or service program.

Discussion: Applicants are not required to respond to priorities 4, 5, 6, or 7. Instead, they may respond to priorities 1, 2, or 3, which are sufficiently broad to allow a wide variety of proposed projects including the areas cited by the respondent.

Changes: None.

Comments: One response from a PWI project Business Advisory Council expressed concern that the priorities suggest an emphasis on traditional group training for one particular job within one particular company and recommended that this training (1) respond to the changing marketplace with more focus on generic transferable skills, (2) not require placement at the training site, (3) permit individual choice of career opportunities, (4) permit placement services for those who already have a chosen career field, (5) not encourage isolation of the disabled, (6) not duplicate existing community training programs, and (7) reflect private sector training methodologies. The respondent suggested certain changes in the wording of priorities 1, 2, 3, and 4 consistent with these recommendations.

Discussion: The Secretary believes that the revision of priorities 1, 2, 3, and 6 to require training based on the labor market needs of the geographic area proposed to be served by the project, as previously discussed, adequately addresses the respondent's first concern that training be flexible and relevant.

With respect to the respondent's second concern that the priorities require job placement at the training site, the Secretary notes that only priority 4 focuses on job skills training at actual job sites. This priority has been revised to specify an expectation that placement will occur at the training site, but not to absolutely require it. Thus, placements at locations other than the training site are permitted under priority 4.

The Secretary believes that the respondent's concerns about whether the priorities permit individual choice of career opportunities and permit placement services for those project participants who have a chosen career field and thus do not need job skills training are addressed in program regulations. Section 379.10 of the regulations specifies the full range of services a project must provide, as appropriate, to the individuals it serves. Among those services are individualized vocational assessments, job development and modification, and placement services. Projects are not required to provide to each individual with handicaps all project services, but only those services that are needed to achieve a competitive job placement.

The respondent's remaining concerns relate to the possible isolation of project trainees, the use of private sector training methodologies, and nonduplication of existing community training programs. The Secretary notes that program evaluation criteria in 34 CFR 379.30 (g) and (h) assess the extent to which projects coordinate with other community service agencies and whether projects propose service delivery approaches that are innovative. The Secretary believes that this kind of application information will help ensure that funded projects will not duplicate existing community training programs. The Secretary also believes that, whenever possible, project training must be integrated with existing skills training provided by business or industry. The Secretary does not believe that these priorities would result in isolation of project trainees.

Changes: Priority 4 has been revised to permit placement at sites other than the training site and to require, to the extent possible, that training provided to individuals with handicaps be integrated with existing training programs.

Comments Specific to Individual Priorities

Priorities 1, 2, and 3

Comments: One commenter stated that the unintended effect of priority 3 was to eliminate the possibility of multi-State or regional PWIs and recommended that all three of the priorities be stricken. Another commenter stated that priority 3 allows regional projects, but the priority is entitled "State Projects"; clarification was requested.

Discussion: Priority 3 clearly covers multi-State (including regional) projects. The Secretary agrees, however, that the title of this priority is misleading and should be changed since it suggests a narrower, single-State geographical focus. The Secretary believes these three geographical priorities are important and should be retained because they afford applicants maximum flexibility in project design yet promote a balanced program of local, State and multi-State, and national projects.

Changes: The title for priorities 1, 2, and 3 has been changed to national, local, or State and multi-State projects.

Comments: One respondent stated that the services listed under priorities 1, 2, and 3 are statutory requirements that should be included under all of the priorities. This respondent stated further that all projects must create and expand job opportunities for individuals with handicaps by providing appropriate job placement services, training for competitive employment, supportive services, modification of jobs, distribution of aids, appliances and adapted equipment, and modification of employer facilities or equipment. The respondent also stated that the criteria should emphasize that one or more of these services is required to qualify for awards under the PWI program and that absolute preference is given to those applicants providing for a business advisory council. Another respondent recommended the inclusion of job modification, worksite modification, and use of assistive technology in each priority. Two other respondents recommended that the final priorities specify the purpose of Projects With Industry and cite other key statutory and regulatory program requirements.

Discussion: The nature of these comments indicates that additional information is needed in the notice of final priorities to clarify the scope of PWI requirements and to ensure that applicants understand that all statutory and regulatory program requirements apply to each priority, even though not specifically mentioned in each priority.

Change: A paragraph identifying general program requirements has been added to the notice prior to the specification of requirements for each individual priority. This paragraph cites the statutory authority and implementing regulations for the PWI program and states that all program requirements apply to each priority.

Comments: One commenter requested a definition or clarification of the phrase "establish national service delivery systems." Another commenter asked for a definition of "national scope" and whether a certain number of States were required.

Discussion: Several national scope organizations (e.g., Goodwill Industries of America, IBM, IAM-CARES) have established national service delivery systems under the PWI program. These organizations establish PWI projects at various sites around the country by (1) determining local and area needs; (2) assisting in the organization of Business Advisory Councils; (3) providing introductions to private industry, networking, consultation, and, in some instances, financial assistance to implement the new program; and (4) helping to obtain on-going financial support for the PWI site. After the project sites have been operational for several years and able to sustain their own programs, the national organization may move on to other sites and establish additional programs. The number of States involved in national programs varies by project; no specific number of sites are required, but the program should be larger in scope than regional PWI programs. The Secretary believes that the information provided in this discussion is sufficient for prospective applicants to determine the nature and scope of national projects, and that no additional information is needed under priorities 1, 2, and 3.

Changes: None.

Comments: One respondent objected to priorities 1, 2, and 3 because they would exclude a single industry or business even though that single business or industry places large numbers of disabled individuals in a variety of different jobs at multiple worksites.

Discussion: These priorities are intended to maximize the variety and number of competitive placements under the Projects With Industry program. To accomplish this purpose, the proposed priorities required project participants to be placed in a number of different businesses and industries. However, the respondent, who currently has a PWI project, is an excellent example of a single business or industry that can meet the purpose of these priorities. The Secretary agrees that the wording in priorities 1, 2, and 3 is unduly restrictive and should be revised to include single businesses or industries that demonstrate in their application that the proposed project meets all other requirements of these priorities and proposes to place a number of individuals into a variety of competitive employment positions at multiple worksites.

Change: Priorities 1, 2, and 3 have been revised to permit placement in single businesses or industries as long as all other priority requirements are met.

Priority 4

Comments: One respondent questioned the concept that all training be done exclusive at the job site because preemployment evaluation and training are excluded by the wording of this priority. Another respondent questioned whether initial placements, transitional employment or followup services would be allowed under this priority. Another respondent questioned whether jobseeking skills and work adjustment training would be allowable under this priority because of the onsite limitations.

Discussion: The intent of the priority is to provide individuals with handicaps with job skill training at an actual job site, while not restricting the provision of other necessary services by location. Based on these comments, the Secretary has decided to clarify that only job skills training must be provided onsite. All other necessary and required services can be provided at other locations.

Changes: The priority has been revised to clarify that only job skills training must be provided to individuals with severe or other disabilities exclusively at actual job sites.

Comments: Two respondents commented that only routine or entry level jobs would be available under this priority and that this would exclude persons with "higher aspirations."

Discussion: The Secretary does not believe that the nature of this priority restricts training and placement to entry level jobs and expects that the job skills training that is provided will be based on transferable skills. Furthermore, it is possible for projects funded under this priority to serve and place certain individuals who may not require the skills training provided under the program but who need other project services.

Changes: None.

Comments: Two respondents suggested that this priority implies the use of "supported employment" or "place and train" or "on-the-job training."

Discussion: Job skills training at actual worksites may involve supported employment services or other on-the-job training concepts, but the priority is not limited to these approaches. Other innovative skill training methods and services can be considered and are highly encouraged under this priority.

Changes: None.

Comment: One commenter suggested that the required role of the Business Advisory Council under priority 4 would be reduced to offering employment to clients, rather than being a partner in program development and consultancy.

Discussion: The Secretary does not believe there is any basis for concluding that the role of the Business Advisory Council in projects supported under priority 4 will be any less substantive or diverse than that in projects supported under other priorities.

Changes: None.

Priority 5

Comments: One commenter suggested that this priority is not needed because funding is available from other sources, but several other commenters highly supported this priority on youth. Two commenters suggested that the priority should be expanded to include all disabled youths, not just youths leaving the educational systems. One of these commenters cited the large number of developmentally disabled youths who have graduated from high school, but remain unemployed as justification of need.

Discussion: The Secretary believes that the goal of placing disabled youths into competitive employment in their early working years is sufficiently important to establish a priority under the PWI program that addresses this need. However, the Secretary agrees that the wording of this priority is too restrictive and should be revised to include also youths with handicaps after they leave the educational system. This change would provide greater flexibility in meeting the needs of this population.

Changes: The title and body of the priority have been broadened to cover young adults with handicaps, not just young adults who are making the transition from school to work.

Priority 6

Comment: One commenter requested a definition of "rural areas."

Discussion: The Secretary has determined that the use of any single definition of rural areas could be considered arbitrary and more restrictive than necessary for this priority. Accordingly, applications proposing projects under this priority must demonstrate that the area to be served is rural.

Changes: None.

Comments: One commenter stated that rural areas have very few opportunities for the types of

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cooperative arrangements that are cited as examples in this priority ("coalitions of independent industries with formal agreements to cooperate, labor unions that have agreements with a multitude of industries, or single industries that have multiple worksites").

Discussion: The Secretary agrees that formalized cooperative agreements may not always be obtainable in certain rural areas. However, these are given only as examples of the types of cooperative arrangements that could be entered into to maximize job placements. Applicants are free to propose cooperative arrangements that are best suited to the rural area proposed to be served.

Changes: None.

Comments: One commenter supported the need for PWI projects in rural areas, but stated that this does not mean that the needs of certain segments of the urban population (blacks, Hispanics and women with work-related disabilities) are being adequately, effectively, or efficiently met under the PWI program.

Discussion: In recognizing the need for a PWI priority for rural areas, the Secretary did not intend to imply that the needs of all urban populations are being fully met by existing PWI programs. The priority is designed to increase the number of rural projects so that individuals with handicaps who reside in rural areas will be better served under the program.

Changes: None.

Priority 7

Comments: One commenter recommended deletion of the final sentence of this priority because it was unnecessarily restrictive in scope. The commenter stated that the requirement for projects to provide training overlooks the fact that an intervention strategy based on job modifications, environmental adaptations, and use of assistive technology might be more appropriate for certain older disabled workers.

Discussion: Regulations in 34 CFR 379.10 list the types of project activities required under the PWI program. Intervention of the type cited by the commenter is included as one of these activities if appropriate for particular project participants. Therefore, if an older worker needs intervention or services other than training, those services must be provided or arranged by the project. The Secretary has determined that the language in the last sentence is not restrictive or all-inclusive of the types of activities required by projects that address this priority. The Secretary has added a new general section to these priorities that cites the requirements in 34 CFR 379.10 as mandatory project services under the PWI program and that makes clear that all program requirements apply to these priorities even though not specifically mentioned in the individual priorities.

Changes: None.

Final Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary may set aside funds and give an absolute preference to applications that respond to one of the following priorities under the Projects With Industry program for fiscal year 1991. An absolute priority is one that permits the Secretary to select for funding only those applications proposing projects that meet one of these priorities. The final priorities are considered to be the areas of greatest need for fiscal year 1991.

The publication of these final priorities does not bind the United States Department of Education to fund projects in any or all of these service areas, unless otherwise specified by statute. Funding of particular projects depends on the availability of funds and the quality of the applications received.

General Requirements Applicable to Each of the Following Priorities

Applications submitted under any of these priorities must provide for all of the types of project activities required in 34 CFR 379.10, fully address the requirements of the specific priority selected, and meet all other statutory and regulatory requirements applicable to this program (section 621 of the Rehabilitation Act and implementing regulations in 34 CFR parts 369 and 379).

Note: The listing of certain specific service requirements under individual priorities should not be considered fully inclusive of all services required by projects under these priorities.

Priorities 1, 2, and 3: National, Local, or State and Multi-State Projects

Because of the need to maximize the variety and number of competitive placements under the Projects With Industry program, priority will be given to projects that provide training, supportive services, job development services, and placement to individuals with severe and other handicaps at a single business or industry or a number of different businesses and industries. The nature of the training must be dictated by current and future employment trends and labor market needs and lead to job placements at multiple worksites.

In addition to these requirements, under priority 1 projects must be national in scope and establish national service delivery systems; under priority 2 projects must be local in scope; and under priority 3 projects must establish two or more project sites in different geographical areas. These two or more project sites may be located within a single State or within two or more States.

Priority 4: Industry-Based Training

Priority will be given to projects that provide job-skills training to individuals with severe or other disabilities exclusively at job sites where those individuals are expected to be subsequently employed, rather than training at simulated worksites. To the extent possible, this training must be integrated into existing skills training programs provided by the business or industry.

Priority 5: Projects to Aid Young Adults with Handicaps

Because of the need to prevent the potentially detrimental effects of early unemployment, priority will be given to projects that serve youths with handicaps, especially those with the most severe handicaps, as they leave or within a few years of their leaving the educational system, including postsecondary educational programs.

Priority 6: Rural Projects

The majority of current PWI projects are located in urban, densely populated areas. Thus, individuals with handicaps who reside in rural areas are not as well served by the PWI program as individuals who reside in urban areas.

Current projects that have formal agreements with a number of different businesses and industries to conduct training and provide employment often have a greater impact on the number of project participants placed than do projects that are more restricted in their opportunities for placement.

Accordingly, priority will be given to projects that serve rural areas and that establish cooperative arrangements to maximize job placements. Examples of cooperative arrangements are coalitions of independent industries with formal agreements to cooperate, labor unions that have agreements with a multitude of industries, or single industries that have multiple worksites. Under this priority, project participants must be trained and placed in occupations that reflect current and future employment trends and labor market needs of the geographic area or areas to be served.

Priority 7: The Older Disabled Worker

Based upon studies and statistics that document the age span of the current workforce through the year 2000, the largest group is composed of individuals who are 45 years of age and older. Accordingly, priority will be given to projects that provide specialized service programs that meet the competitive employment needs of individuals in this age group who have severe or other services, job development, and placement services.

(29 U.S.C. 795g)

(Catalog of Federal Domestic Assistance No. 84.234, Rehabilitation Services Administration)

Dated: September 27, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-23333 Filed 10-2-90; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.234]

Projects With Industry; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of program: To promote opportunities for competitive employment of individuals with handicaps by engaging private industry as partners in training and placement.

Deadline for transmittal of applications: November 30, 1990.

Deadline for intergovernmental review: January 30, 1991.

Applications available: October 1, 1990.

Available funds: $17,000,000.

Awards are to be made in seven priority categories. Specific information regarding estimated funds and awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 60 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR 369 and 379.

The priorities in the notice of final priorities for this program, as published in this issue of the Federal Register, also apply.

PROJECTS WITH INDUSTRY

CFDA No.	CFDA title	Estimated available funds	Estimated average size of awards	Estimated number of awards	Estimated range of awards
84.234A	National Projects [1]	$3,000,000	$300,000	10	$225,000-375,000
84.234B	Local Projects	6,000,000	150,000	40	125,000-175,000
84.234C	State and Multi-State Projects	3,500,000	250,000	14	200,000-300,000
84.234D	Industry-Based Training Projects	750,000	150,000	5	125,000-175,000
84.234E	Projects to Aid Young Adults with Handicaps	1,500,000	150,000	10	125,000-175,000
84.234F	Rural Projects	1,500,000	150,000	10	125,000-175,000
84.234G	Older Disabled Workers Projects	750,000	150,000	5	125,000-175,000

[1] Projects funded under this category may be awarded as cooperative agreements.

For applications or information contact: Sherrita Gary, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3332, Switzer Building, Washington, DC 20202-2649. Telephone (202) 732-1351.

Program Authority: 29 U.S.C. 795g.

Dated: September 28, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-23334 Filed 10-2-90; 8:45 am]

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federal register

Wednesday
October 3, 1990

Part V

United States Information Agency

American Studies Summer Institute, Bureau of Educational and Cultural Affairs; Assistance Program; Summer Institute in American Studies

VOL 55

UNITED STATES INFORMATION AGENCY

American Studies Summer Institute, Bureau of Educational and Cultural Affairs; Assistance Program; Summer Institute in American Studies

Overview

Contingent upon the availability of

airport nearest the university campus. Although some participants, especially from Western Europe, may have visited the U.S., an initial orientation to the U.S. and the campus should be considered an integral part of the institute and should be held at the beginning of the program. The applicant is asked to design a two-part program:

with specific readings required for each unit, accompanied by a required reading list and selected bibliography for the institute.

Activities should include an orientation to the U.S. and the university community, field trips to places of local interest, home stays with families in the area (other secondary educators if

The USIA Program Officer will be available to offer any advice or guidance the university might find useful. To assist the university with programming facilitative services during the tour, there is a possibility of utilizing the programming and hospitality services of volunteer community groups across the country that are affiliated

I. University Costs

Administrative

(1) Salaries, benefits, and services (including support staff) for the program.

(2) Administrative costs, office expenses, and any other costs covering the academic activities during the four-week university program.

expenses on tour should not not exceed $33/day in addition to the cost of the hotel. Campus housing and meals should be shown as separate items and should include a $10/day incidental allowance.

(2) Required books;

(3) Ground transportation for individual or small group special events on campus and during the tour (such as

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UNITED STATES INFORMATION AGENCY

American Studies Summer Institute, Bureau of Educational and Cultural Affairs; Assistance Program; Summer Institute in American Studies

Overview

Contingent upon the availability of funds, the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) is soliciting proposals for a graduate-level American studies institute to take place on or about July 2 to August 15, 1991. Due date for receipt of proposals is COB November 30, 1990. The institute is designed for approximately 35 highly motivated senior secondary school educators in English language, American literature, government, history, society and culture and geography. Participants will come from countries in Europe, Asia, Africa, Latin America and the Middle East. The institute is conducted entirely in English. Participants are expected to have a high-level fluency in English. USI is asking for detailed proposals from institutions which have an acknowledged reputation in American studies and related fields with special expertise in handling cross-cultural programs.

Objectives

The objective of the institute is to support and encourage the efforts of other countries to improve the quality of teaching about American society and culture at the secondary level. The program should be designed for teacher trainers, curriculum developers, textbook writers and/or secondary-level classroom teachers with responsibilities in curriculum planning and materials development whose teaching assignments require a general up-to-date knowledge of American civilization and culture. Many of these educators will be involved in the teaching of English as a foreign language; however educators in the fields of American literature, government, history, society and culture, and geography also participate in this program.

Time Frame and General Description

The institute should run approximately 45 days, beginning on or about Tuesday, July 2 and ending on or about Wednesday, August 15, 1991. The participants will arrive directly at the campus site. International travel from home country to the campus will be the responsibility of the USIA posts abroad. The university program staff will be expected to make arrangements to have participants met upon arrival at the airport nearest the university campus. Although some participants, especially from Western Europe, may have visited the U.S., an initial orientation to the U.S. and the campus should be considered an integral part of the institute and should be held at the beginning of the program. The applicant is asked to design a two-part program:

(a) A four-week academic program at the university and

(b) A two-week escorted tour of two or more different regions of the United States.

The tour segment should be planned, arranged, and conducted by the Program Director and principal university staff and should be seen as an integral part of the program, complementing and reinforcing the academic material. It should not be a whirlwind tour of the U.S. The university should indicate the tour sites, not to exceed three cities in addition to a three-to-four-day visit to Washington, DC, toward the end of the tour. Programming in Washington should include a half-day briefing session at the U.S. Information Agency.

Program Description

The institute should be a graduate-level academic program aimed at improving the participant's understanding of American society and institutions and contemporary national issues. For the purpose of the institute, American studies is understood to include aspects of American history, literature, society and culture, geography and political science. The program should provide an intellectual framework and organizing principles for understanding and teaching about the U.S. The institute should address the diversity, complexity and unity of American contemporary life; provide a basic overview of American institutions such as government, education and religion; and discuss current national issues and the social and political response to these issues. The academic instruction should address a range of views of American values and character expressed through our social, economic and literary history, technological development, and forms of creative expression.

The academic program should maintain a relative balance among plenary sessions, lectures, workshops and practicums. Academic activities should provide opportunities to clarify the themes and issues of the program on a weekly basis. Lengthy lecture sessions should be avoided whenever possible, or associated with workshop or small group discussion periods. The proposal should include a detailed syllabus outlining the focus of the subject matter with specific readings required for each unit, accompanied by a required reading list and selected bibliography for the institute.

Activities should include an orientation to the U.S. and the university community, field trips to places of local interest, home stays with families in the area (other secondary educators if possible), and events which will bring the participants into contact with Americans from different walks of life. These encounters will give the participants a chance to experience American society, its institutions and language, and observe the variety of attitudes that constitute one of our country's most striking characteristics.

In addition to the substantive presentations and discussions about American society, the institute should focus upon pedagogical concerns, materials and curricular development in the context of teaching about the U.S. Samples of secondary school curricula, materials and topical bibliographies in American studies fields should be provided or developed during the program. It should be noted that these participants will not only come from several different disciplines but also from a variety of educational systems. Most systems have rigorous teacher training programs for certification, and classroom methods evaluated and approved by regional inspectors. Similarly, some systems require adherence to an assigned textbook while others allow significant flexibility to teachers in determining what materials they will use in presenting a lesson. The variety of approaches and experiences should provide the basis for interaction which will be both culturally and professionally stimulating to the entire group.

Program Administration

All programming and administrative logistics, management of the academic program and cultural tour will be the responsibility of the project director. The project director should be a full-time, preferably tenured, professor of the university. A project secretary and/or project assistant should be assigned to carry out clerical and administrative duties required for the smooth operation of the institute during the program grant period, from the planning period to the completion of mandatory reports to USIA. USIA will be responsible for all communications to and from the U.S. Information Agency posts abroad (USIS), which submit nominations to the Division for the Study of the U.S. and are responsible for all international travel arrangements for participants.

The USIA Program Officer will be available to offer any advice or guidance the university might find useful. To assist the university with programming facilitative services during the tour, there is a possibility of utilizing the programming and hospitality services of volunteer community groups across the country that are affiliated with the National Council for International Visitors, a nation-wide network that provides hospitality and program assistance to foreign visitors.

If your university decides to submit a proposal, it should provide a detailed plan in response to the needs and priorities outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities and organizations. The proposal must clearly demonstrate quality on-site management capabilities for both the residential and the tour programs. The overall effectiveness of the institute hinges in part upon the leadership, and administrative and organizational capabilities of the project director to coordinate the academic program and to manage the interactions between foreign educators and Americans.

Budget Guidelines

For your guidance, our experience with similar institutes indicates that the cost to organize and administer the 45-day academic and group tour segment of this Institute would be approximately $1,700 per person based on a group of 30 to 35 participants, excluding participant living costs such as international and domestic air travel expenses, cultural allowance, cost for room and board on campus, and hotel and meals on tour.

The proposal should provide a detailed line-item budget outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program from universities, contributions, cost-sharing, or the private sector. Included in the budget worksheet for each budget line-item should be an explanation detailing how costs were computed (in parantheses), *i.e.*, each salary line-item should include position title, annual salary, and per cent of effort used for this program.

The budget should include and elaborate on the following information with derivational cost figures such as unit costs and number per unit whenever possible in parentheses:

I. University Costs

Administrative

(1) Salaries, benefits, and services (including support staff) for the program.

(2) Administrative costs, office expenses, and any other costs covering the academic activities during the four-week university program.

Program

(1) Miscellaneous costs, such as honoraria, film rental, and educational support material on campus, etc.

(2) Group admission costs for all cultural and tour activities during the course of the on-site university institute and weekend tour(s).

(3) Escort tour costs: university escort travel and expenses such as per diem, ground transportation costs for group activities, admission to cultural and tour activities (excluding domestic air travel costs).

(4) Group ground transportation, including meeting participants at the airport upon arrival on campus, airport transfer buses to and from airports and other education group transportation costs on campus and during the tour (excluding domestic air travel costs).

(5) A one-day visit to Washington for a program briefing of university escorts for first-time university applicants only. Per diem for one full day in Washington at a rate of $127 is allowable (excluding round-trip air fare which should be included in the domestic air travel section of the budget.)

Indirect Costs

Indirect costs should be held to a minimum. Universities which were awarded grants to conduct the American studies summer institutes in the past have accepted a level of 8% indirect cost. Universities have considered cost-sharing the amount in excess of 8%. A copy of the indirect cost rate of the cognizant agency should be included.

Domestic Air Travel for Escorts Only

Cost of the domestic program tour and return to campus at the end of the program for the escorts only and, if applicable, round-trip air fare to Washington for program directors(s).

II. Per Capita Participant Costs (included as an addendum to the main budget)

(1) Lodging and Meals: Each foreign participant will receive per diem for the 45-day program. This should cover the costs of room, board and incidentals while on campus and during the tour which should not exceed U.S. Government per diem rates. If itemized separately, meals and incidental expenses on tour should not not exceed $33/day in addition to the cost of the hotel. Campus housing and meals should be shown as separate items and should include a $10/day incidental allowance.

(2) Required books;

(3) Ground transportation for individual or small group special events on campus and during the tour (such as a train or bus fares) not included in the main budget as a group project, only if applicable;

(4) Program and tour admission costs and other incidental costs for group activities on tour not included in the university program budget.

(5) Departure travel allowance not to exceed $70;

(6) A modest cultural allowance, not to exceed $100 per participant; and

(7) Estimated domestic program air fare.

Note: Total participant living costs and domestic air travel should be shown on a per capita breakdown multiplied by the number of participants, estimated at 35.

Summary Budget Sheet

The budget summary should include totals of the following budget categories in the order listed below:

Administrative Costs
Program Cost (university program and tour program)
Total Administrative and Program Costs
Indirect Costs
Domestic Air Fares for escorts only
Total University Costs
Participant Living Costs based on 35 participants
Total Institute Costs

Domestic Air Travel

The university is required to book all domestic program tour flights through a U.S. carrier. If domestic air tickets are issued in the U.S., they should be booked and purchased through the Agency-approved Travel Management Center or a private travel agency using Government Transportation Requests, which allow access to government discount air fares. This applies to all domestic travel for university escorts and participants. Since these funds are withheld by the Agency, they are not subject to indirect costs.

For Institutional Recipients of Previous Awards Only

If your university was funded for a similar program last year, the budget should include last year's detailed line-item budget. Significant differences for each item must be noted and justified.

Funding Arrangements

A USIA cooperative agreement will be issued to the university selected to

conduct the institute covering university administrative and program costs in item I. The university will disburse participant living costs and other authorized allowances approved by the program for participants selected and funded by USIA directly. These costs will be added to the agreement through an amendment, when the number of grants are determined.

(3) Clear evidence of the ability to deliver a substantive academic and pedagogical American studies program;

(4) Demonstrated high quality American studies programs—experience with foreign teachers is desirable;

(5) Provision for a useful evaluation at the conclusion of the institute;

(6) Evidence of strong on-site

approximately May 1 to October 15, 1991.

Mailing of the Proposal

Applicants should submit *ten copies each* of a 500-word summary statement and a detailed proposal not to exceed 20 typed, double-spaced pages addressing the points outlined above and following the detailed budget guidelines.

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Wednesday, October 3, 1990

INFORMATION AND ASSISTANCE

Federal Register

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CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which

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conduct the institute covering university administrative and program costs in item I. The university will disburse participant living costs and other authorized allowances approved by the program for participants selected and funded by USIA directly. These costs will be added to the agreement through an amendment, when the number of grants are determined.

International Travel

Round-trip international travel arrangements from home country to the campus and return from the last tour city (which may be Washington, D.C.) will be made and paid by USIA posts abroad. Participants will be given a modest travel allowance before departure from their home country. If a USIA post cannot issue U.S. dollars, the institution may be requested to provide these allowances. The agreement will be amended to cover such authorized costs.

Selection Criteria

A panel of senior USIA officers experienced in American studies, the exchange of international educators, and foreign affairs will use the following criteria when evaluating proposals for selection:

(1) Quality and imaginative design of the institute;

(2) Quality, rigor, and appropriateness of proposed syllabus to goals of the institute;

(3) Clear evidence of the ability to deliver a substantive academic and pedagogical American studies program;

(4) Demonstrated high quality American studies programs—experience with foreign teachers is desirable;

(5) Provision for a useful evaluation at the conclusion of the institute;

(6) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(7) The experience of professionals and staff assigned to the program;

(8) The availability of local and state resources for the orientation and institute;

(9) A well-thought out and comprehensive cultural tour to complement the academic program;

(10) Cost-effectiveness.

Agreement Dates

The agreement period should begin two to two and-a-half months prior to the beginning of the project date, July 2, for which period only minimal administrative assistance costs will be allowed. The termination date should be 60 to 90 days after the end of the project date of August 15, to cover the required end-of-project report. Approximate time period for the activity on the USIA cover sheet should then be from approximately May 1 to October 15, 1991.

Mailing of the Proposal

Applicants should submit *ten copies each* of a 500-word summary statement and a detailed proposal not to exceed 20 typed, double-spaced pages addressing the points outlined above and following the detailed budget guidelines. Interested institutions should request a USIA grant cover sheet; an Assurance of Compliance form; Certification Regarding Drug-Free Workplace Requirements; Certification Regarding Debarment, Suspension, and Other Responsibility Matters; and Certification for Contracts, Grants and Cooperative Agreements with appropriate Disclosure of Lobbying Activities forms at the address below.

Final proposals along with the forms requested must be received in the Agency by COB Friday, November 30, 1990.

The proposal package should be submitted to: U.S. Information Agency, American Studies Branch, E/AAS Attn: Katherine Passias, Rm. 256, 301 4th St., SW., Washington, DC 20547 Phone (202) 619-4557

Dated: September 24, 1990.

Guy Story Brown,

Director, Office of Academic Programs.

[FR Doc. 90-23408 Filed 10-2-90; 8:45 am]

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H.R. 1101/Pub. L. 101-397

To extend the authorization of appropriations for the Water Resources Act of 1984 through the end of fiscal year 1994. (Sept. 28, 1990; 104 Stat. 852; 3 pages) Price: $1.00

H.R. 2174/Pub. L. 101-398

Mississippi River Corridor Study Commission Act of 1989. (Sept. 28, 1990; 104 Stat. 855; 5 pages) Price: $1.00

H.R. 4501/Pub. L. 101-399

To provide for the acquisition of the William Johnson House and its addition to the Natchez National Historical Park, and for other purposes. (Sept. 28, 1990; 104 Stat. 860; 1 page) Price: $1.00

S. 963/Pub. L. 101-400

Route 66 Study Act of 1990. (Sept. 28, 1990; 104 Stat. 861; 2 pages) Price: $1.00

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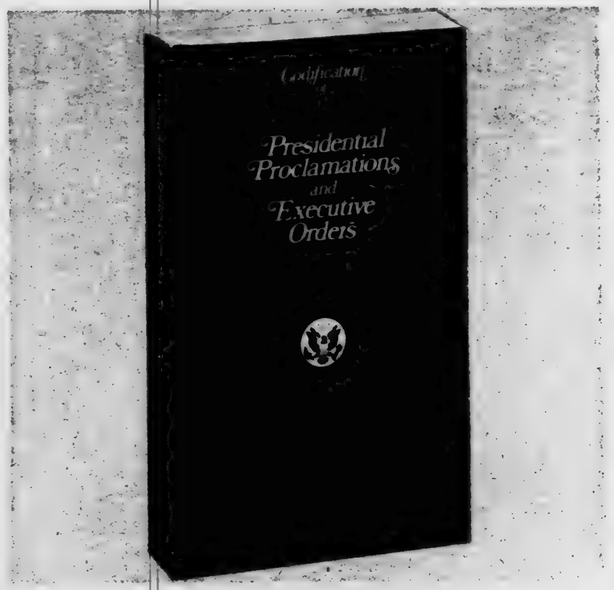

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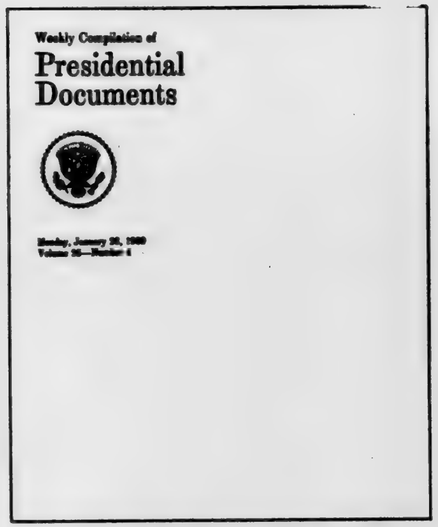

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10-4-90
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VOL 55 ISS 193 OCT 4 1990 UMI

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Rules and Regulations

Federal Register
Vol. 55, No. 193
Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-90-004]

Tobacco Inspection; Burley Tobacco Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations amend the Official Standard Grades for Burley Tobacco to more accurately describe tobacco as it presently appears at the marketplace. This amendment will add two new grades to accommodate green immature tobacco in the Mixed (M) group. These amendments were based on the Department's continuous review and evaluation to determine the adequacy and clarity of current grade standards.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: A notice was published July 2, 1990, (55 FR 27249) that the Department was considering a modification of the Official Standard Grades for Burley Tobacco, U.S. Type 31 and Foreign Type 93, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

Interested parties were provided 30 days to comment on the proposed rule. One comment was received which supported the proposal in its entirety.

The following modifications were proposed: (1) To add new grades M4G and M5G to describe lots of tobacco containing over 20 percent of green immature tobacco in the Mixed (M) Group, and (2) revise the applicable rule (Rule 18) pertaining to tobacco containing 20 percent or more of green immature leaves so that it would apply to lots of tobacco in the M group.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR part 29 for need, currentness, clarity, and effectiveness has been completed.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business. A number of firms which would be affected by this final rule do not meet the definition of small business either because of their individual size or because of their dominant position in one or more marketing area. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This change would not affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and it would not alter the market share or competitive positions of small entities relative to large entities.

Therefore, after consideration of comments on the proposal and other relevant information, the Department hereby adopts the regulations as proposed.

Lists of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, the Department hereby amends the regulations in 7 CFR part 29, subpart C, as follows:

PART 29—[AMENDED]

1. The authority citation for part 29, subpart C, continues to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

2. Section 29.3121 is revised to read as follows:

§ 29.3121 Rule 18.

Any lot of tobacco containing 20 percent or more of green leaves, or any lot which is not crude but contains 20 percent or more of green and crude combined, shall be designated by the color symbol "G" in the X, C, and M groups and the combination color symbol "GF" and "GR" in the B and T groups.

§ 29.3155 [Amended]

3. Section 29.3155 is amended to add at the end of the table thereof:

Grades	Grade names and specifications
M4G	Fair Green Mixed. General quality of X4, C4, B4, and T4, heavy to tissuey body, immature, and 20 percent injury tolerance.
M5G	Low Green Mixed. General quality of X5, C5, B5, and T5, heavy to tissuey body, immature, and 30 percent injury tolerance.

Dated: October 1, 1990.

Daniel Haley,
Administrator.

[FR Doc. 90-23502 Filed 10-3-90; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1956

Servicing Accounts of Borrowers Entering the Armed Forces

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding reference to loan servicing notices. This action is needed because existing regulations refer to obsolete loan servicing notices. This action will result in consistency between regulations.

EFFECTIVE DATE: October 4, 1990.

FOR FURTHER INFORMATION CONTACT: Ann Eggleston, Guaranteed Loan Servicing and Property Management Branch, Farmers Home Administration, USDA, room 5444, Washington, DC, telephone: (202) 475-4009.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and

Background

The Agricultural Credit Act of 1987 (Pub. L. 100-233) requires a number of changes in the Farmers Home Administration (FmHA) regulations and how the agency will continue to do business with its Farmer Programs borrowers. The needed changes to

accordance with subpart S of part 1951 of this chapter, or otherwise in default, the County Supervisor will send exhibit A and the appropriate attachments, as outlined in subpart S of part 1951 of this chapter. * * *

* * * * *

3. Section 1950.104 is amended by

order to conform the regulations to the provisions of the HTS, as modified by Proclamation No. 6179. A Certificate of Quota Eligibility will be required in order for sugars, syrups or molasses to be entered under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS.

The United States Trade Representative certifies that this interim rule will not have a significant economic impact on a substantial number of small

significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

The United States Trade Representative certifies that this interim rule will not have a significant economic impact on a substantial number of small

total quota amount and quota period will be established by the Secretary of Agriculture; the United States Trade Representative will allocate specific quota amounts to each country and area eligible to receive an allocation.

It has been determined that this interim rule is necessary and appropriate to implement additional

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USDA, room 5444, Washington, DC, telephone: (202) 475–4009.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because there will not be an annual effect on the economy of $100 million or more. There will not be a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor will there be significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.401—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 34, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded, with the exception of non-farm enterprise activity, from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190), an Environmental Impact Statement is not required.

Background

The Agricultural Credit Act of 1987 (Pub. L. 100–233) requires a number of changes in the Farmers Home Administration (FmHA) regulations and how the agency will continue to do business with its Farmer Programs borrowers. The needed changes to subpart C of part 1950 were inadvertently not included in the **Federal Register** Publication (53 FR 35638–35798) dated Wednesday, September 14, 1988. However, sufficient notice to affected parties was given by this publication to encourage any necessary comments by the public. Furthermore, subpart S of part 1951 of this chapter specifically provides for all Farmer Programs loans to be serviced under that subpart. These changes will only affect Farmer Programs borrowers who have entered or are entering the military service. The changes are administrative and will require the County Supervisor to send the appropriate loan servicing notices to those borrowers who have entered or are entering the military and who are 180 days delinquent or otherwise defaulted on their FmHA loans. This revision is necessary to meet requirements of the Agricultural Credit Act of 1987. FmHA, for good cause, has found notice of proposed rulemaking unnecessary and impracticable with respect to this technical change, because the change is merely removing an inconsistency which was overlooked earlier. The change will have no effect on how the agency has been handling the program.

List of Subjects in 7 CFR Part 1950

Accounting, Loan programs—agriculture—military personnel.

Accordingly, title 7, chapter XVIII, Code of Federal Regulations is amended as follows:

PART 1950—GENERAL

1. The authority citation for part 1950 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Servicing Accounts of Borrowers Entering the Armed Forces

2. Section 1950.103 is amended by revising the first sentence of paragraph (a)(2) to read as follows:

§ 1950.103 Borrower owing FmHA loans which are secured by chattels.

(a) * * *

(2) *Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO, and/or RHF loans.* If the borrower is delinquent in accordance with subpart S of part 1951 of this chapter, or otherwise in default, the County Supervisor will send exhibit A and the appropriate attachments, as outlined in subpart S of part 1951 of this chapter. * * *

* * * * *

3. Section 1950.104 is amended by revising the fourth sentence of the introductory text and the second sentence of paragraph (d) to read as follows:

§ 1950.104 Borrower owing FmHA loans which are secured by real estate.

* * * Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO, ST, and/or RHF loans and who are delinquent or otherwise in default must be sent exhibit A and the appropriate attachments, as outlined in subpart S of part 1951 of this chapter. * * *

* * * * *

(d) * * * Those borrowers should be sent exhibit A and the appropriate attachments as outlined in subpart S of part 1951 of this chapter. * * *

* * * * *

Dated: August 23, 1990.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 90–23437 Filed 10–3–90; 8:45 am]

BILLING CODE 3410–07–M

UNITED STATES TRADE REPRESENTATIVE

15 CFR Parts 2011 and 2013

Allocation of Tariff-Rate Quota for Imports of Sugar

AGENCY: United States Trade Representative (USTR).

ACTION: Interim rule.

SUMMARY: Presidential Proclamation No. 6179 of September 13, 1990, 55 FR 38293, converted the U.S. sugar import quota into a tariff-rate quota, effective October 1, 1990. This Proclamation provided for the designation of certain amounts of sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS), imported from foreign countries and areas specified in paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS, to be imported subject to the lower duty rates (or duty free) of the tariff-rate quota.

This interim rule amends the regulations previously promulgated to implement the former absolute quota in order to conform the regulations to the provisions of the HTS, as modified by Proclamation No. 6179. A Certificate of Quota Eligibility will be required in order for sugars, syrups or molasses to be entered under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS.

In addition, this interim rule makes numerous minor amendments to update or clarify former provisions. It also reissues the regulations previously promulgated under 7 CFR 6.90–6.93, "Allocations of Sugar Import Quotas for 'Other Specified Countries or Areas,'" to implement the transfer of this authority as proclaimed in Proclamation 6179. Specifically, because of the transfer of authority relating to allocations of sugar import quotas for "Other Specified Countries or Areas," Proclamation 6179 has the effect of rendering void, as of October 1, 1990, those regulations previously promulgated under 7 CFR 6.90–6.93, relating to allocations of sugar import quotas for "Other Specified Countries or Areas." The Secretary of Agriculture will publish a document in the **Federal Register** amending those regulations accordingly in the near future. This interim rule reissues the regulations under the authority of the United States Trade Representative.

DATES: Interim rule effective October 1, 1990; comments must be submitted on or before December 4, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments should be mailed or delivered to Ellen Terpstra, Senior Economist, Agricultural Affairs (room 423), Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506. Comments received may also be inspected at room 423 between 10 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra (Senior Economist, Agricultural Affairs), 202–395–5006 or Richard Steinberg (Assistant General Counsel), 202–395–7305.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under the United States Trade Representative's procedures implementing Executive Order 12291 and has been classified as "not major." It has been determined that the provisions of this interim rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

The United States Trade Representative certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601). It has been determined by an environmental evaluation that this action will not have any significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this interim rule.

Pursuant to the Paperwork Reduction Act of 1980, we have asked for expedited clearance of the information collection requirements imposed by this rule under Office of Management and Budget control number 0551–0014. Comments on any burden resulting from the information collection requirements of this regulation may be forwarded to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. These programs are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Soon after the establishment of a restrictive import quota for sugars, syrups and molasses by Presidential Proclamation 4941 of May 5, 1982 (47 FR 19661), the United States Trade Representative promulgated regulations providing for the issuance of certificates of quota eligibility by foreign governments to implement the country-by-country allocations of the base quota and providing for the allocation of a separate quota for imports of specialty sugars.

Presidential Proclamation No. 6179 of September 13, 1990, 55 FR 38293, modified additional U.S. notes 3 and 4 of chapter 17 of the HTS and the tariff rates applicable to imported sugars, syrups, and molasses in order to convert the U.S. sugar import quota into a tariff-rate quota, effective October 1, 1990. This Proclamation provided for sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS to enter the United States at the lower duty rates of the tariff-rate quota, subject to a quota allocated among supplying countries and areas. As in the past, the total quota amount and quota period will be established by the Secretary of Agriculture; the United States Trade Representative will allocate specific quota amounts to each country and area eligible to receive an allocation.

It has been determined that this interim rule is necessary and appropriate to implement additional U.S. Note 3 to chapter 17 of the HTS, as modified by Proclamation 6179. Because the tariff-rate quota takes effect on October 1, 1990, it is necessary to revise and republish existing regulations on an interim basis, pending public comments, in order to avoid serious disruptions in the trade of sugars, syrups, and molasses, and for other reasons.

Certificates of Quota Eligibility

The regulations previously set forth as 15 CFR part 2011 to provide for certificates of quota eligibility have been revised and republished as subpart A of 15 CFR part 2011. These regulations set forth the terms and conditions under which certificates of quota eligibility will be issued to Canada and to foreign countries which have been allocated a share of the U.S. tariff-rate quota for sugar imports.

Except for specialty sugars (which are covered by the regulations in the new subpart B of part 2011) and except as otherwise discussed below, imported sugars, syrups, and molasses will not be permitted to be entered or withdrawn from warehouse for consumption under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS), unless such sugars, syrups, and molasses are accompanied by a certificate of quota eligibility. Accordingly, all foreign countries and areas which have been allocated a share of the base quota must participate in the certificate of quota eligibility program. The U.S. Customs Service will classify sugar imported from such countries and areas to such subheadings of the HTS only if the sugar is accompanied by a certificate of quota eligibility. The certificate requirement will also apply to all sugars, syrups and molasses imported from Canada regardless of the HTS subheading applicable to such articles.

This interim rule debates the exceptions to the certificate requirements previously allowed by 15 CFR 2011.3(b) for *de minimis* amounts (less than 20 short tons) and by 15 CFR 2011.6(b)–(d) for imports from countries and areas not participating in the certificate program. The deletion of these exceptions is necessary because

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the certificate will be used by the U.S. Customs Service to determine which imports may be classified to subheading 1701.11.1, 1701.12.01, 1701.19.21, 1701.99.01, 1701.90.31, 1806.10.41, or 2106.90.11 of the HTS. A limited exception is provided, as in the previous regulations, for waivers to be granted by the Secretary of Agriculture when a waiver is justified by unusual, unavoidable or otherwise appropriate circumstances, such as the loss or destruction of the certificate, unavoidable delays in transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate.

This interim rule also deletes the transitional provisions previously set forth in § 2011.9, which has become obsolete. Finally, changes in the authority citation, certain definitions, and other provisions have been made to conform to the modifications in additional U.S. note 3 to chapter 17 of the HTS and to remove obsolete references to the International Sugar Agreement, 1977, which has expired.

Specialty Sugars

The regulations previously set forth as 15 CFR part 2013 to provide for the issuance of specality sugar certificates have been revised and republished as subpart B of 15 CFR part 2011. These regulations set forth the terms and conditions under which specialty sugar certificates will be issued to U.S. importers for importing specialty sugars under the lower duty rates of the tariff-rate quota from countries set forth in additional U.S. note 3(b)(i) to chapter 17 of the HTS. These "other specialty sugar source countries" are Belgium, Burma, Cameroon, Denmark, Federal Republic of Germany, France, Hong Kong, Indonesia, Ireland, Itlay, Japan, Kenya, Luxembourg, Netherlands, Netherlands Antilles, People's Republic of China, Republic of Korea, Republic of Yeman, Surinam, Sweden, Switzerland, United Kingdom, and Venezuela.

Specialty sugars imported from these countries will not be permitted to be entered under subheadings 1701.11.01, 1701.12.01, 1701.19.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS unless accompanied by a specialty sugar certificate issued by the Team Leader for Import Quota Programs of the U.S. Department of Agriculture's Foreign Agriculture Service (FAS). Accordingly, all importers of specialty sugars from foreign countries and areas which have been allocated a share of specialty sugar must participate in the specialty sugar certificate program. The U.S. Customs Service will classify specialty sugar imported from such countries and areas to such subheadings of the HTS only if the specialty sugar is accompanied by a specialty sugar certificate.

The only substantial change made by this interim rule to the previous regulations in part 2013 involves the definition of specialty sugars. The former definition in 15 CFR 2013.2(i) included as an element that the specialty sugars not be "currently commercially produced in the United States or reasonably available from domestic sources." This limitation has been replaced with a specific list of the products traditionally considered to be specialty sugars. The list includes brown slab sugar (also known as slab sugar candy), pearl sugar (also known as perl sugar, perle sugar, and nibs sugar), vanilla sugar, rock candy, demerara sugar, silver dragees for cooking and baking, white fondant (a creamy blend of sugar and glucose), ti light sugar (99.2% sugar with the residual comprised of the artificial sweeteners aspartame and acesulfame K), caster sugar, golden syrup, and frediana granella grossa. These products must also be classifiable to subheadings 1701.11.01, 1701.12.01, 1701.19.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS, be the product of a country listed among the "other specialty sugar source countries," and require no further refining, processing, or other preparation prior to consumption, other than incorporation as an ingredient in human food.

In addition, changes in the authority citation, certain definitions, and other provisions have been made to conform to the modifications in additional U.S. note 3 to chapter 17 of the HTS and to remove obsolete references to the International Sugar Agreement, 1977, which has expired.

"Other Specified Countries and Areas"

The regulations previously promulgated by the Secretary of Agriculture and set forth in 7 CFR 6.90–6.93 to provide for allocations of the former absolute quota to the "other specified countries and areas" have been revised and republished as subpart C of 15 CFR part 2011. These regulations set forth the manner in which individual sugar import tariff-rate quota allocations will be calculated for those countries listed as "Other specified countries and areas" in paragraph (b)(i) of additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). These countries and areas are: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua-New Guinea, Paraguay, Saint Christopher-Nevis, and Uruguay.

Proclamation No. 6179 transferred authority from the Secretary of Agriculture to the United States Trade Representative to promulgate regulations providing for such minimum allocation amounts as may be appropriate to provide reasonable access to the U.S. sugar market to these countries. Changes have been made to the authority citation and other provisions to conform to the modifications in additional U.S. note 3 to chapter 17 of the HTS, and the final two sentences of former § 6.93 have been deleted because they were in conflict with the first sentence.

List of Subjects in 15 CFR Part 2011

Allocations for "Other Specified Countries and Areas", Certificates of Quota Eligibility, Imports, Specialty sugars, Sugar.

Accordingly, 15 CFR is amended to read as follows:

1. Part 2011 is revised to read as follows:

PART 2011—ALLOCATION OF TARIFF-RATE QUOTA ON IMPORTED SUGARS, SYRUPS AND MOLASSES

Subpart A—Certificates of Quota Eligibility

Sec.

2011.101 General statement.
2011.102 Definitions.
2011.103 Entry into the United States.
2011.104 Waiver.
2011.105 Form and applicability of certificate.
2011.106 Agreements with foreign countries.
2011.107 Issuance of certificates to foreign countries.
2011.108 Execution and issuance of certificates by the certifying authority.
2011.109 Suspension or revocation of individual certificates.
2011.110 Suspension of certificate system.

Subpart B—Specialty Sugar

2011.201 General statement.
2011.202 Definitions.
2011.203 Issuance of specialty sugar certificates.
2011.204 Entry of specialty sugars.
2011.205 Application for a specialty sugar certificate.
2011.206 Suspension or revocation of individual certificates.
2011.207 Suspension of the certificate system.

Subpart C—Allocations for "Other Specified Countries and Areas"

2011.301 General Statement.
2011.302 Definitions.
2011.303 Allocation of individual import quotas.
2011.304 Applicability.
2011.305 Relationship to overall import quota.
2011.306 Paperwork Reduction Act assigned number.

Authority: Presidential Proclamation No. 6179, September 13, 1990 (55 FR 38293); additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) (19 U.S.C. 1202).

Subpart A—Certificate of Quota Eligibility

§ 2011.101 General statement.

This subpart sets forth the terms and conditions under which certificates of quota eligibility will be issued to foreign countries which have been allocated a share of the U.S. sugar tariff-rate quota. Except for specialty sugars covered by the regulations in subpart B of this part and except as otherwise provided in this subpart, sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS), imported from a foreign country, may not be entered or withdrawn from warehouse for consumption under such HTS subheadings unless such sugars, syrups, or molasses are accompanied by a certificate of quota eligibility. It has been determined that these regulations are necessary and appropriate to implement additional U.S. note 3 to chapter 17 of the HTS.

§ 2011.102 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Additional U.S. note 3* means additional U.S. note 3 to chapter 17 of the HTS, including any amendments thereto.

(b) *Appropriate customs official* means the district or area Director of the U.S. Customs Service, his or her designee, or any other customs officer of similar authority and responsibility for the customs district in which the port of entry is located.

(c) *Certificate of quota eligibility* or "certificate" means a certificate issued by the Secretary to a foreign country or area which, when duly executed and issued by the certifying authority of such foreign country or area, authorizes the entry into the United States of sugar produced in such country under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS.

(d) *Certifying authority* means a person designated by the government of a foreign country who is authorized to execute and issue certificates of quota eligibility on behalf of such foreign country.

(e) *Entry* means entry, or withdrawal from warehouse, for consumption in the customs territory of the United States.

(f) *Foreign country* means any of the following foreign countries or areas: Argentina, Australia, Barbados, Belize, Boliva, Brazil, Canada, Columbia, Congo, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, El Salvador, Fiji, Gabon, Guatemala, Guyana, Haiti, Honduras, India, Jamaica, Madagascar, Malawi, Mauritius, Mexico, Mozambique, Nicaragua, Panama, Papua-New Guinea, Paraguay, Peru, Philippines, Saint Christopher-Nevis, Swaziland, Taiwan, Thailand, Trinidad-Tobago, Uruguay, and Zimbabwe.

(g) *Licensing Authority* means the Team Leader, Import Quota Programs, Import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, or his or her designee.

(h) *Person* means an individual, partnership, corporation, association, estate, trust, or other legal entity, and, wherever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(i) *Quota* means any tariff-rate quota on imports of sugars, syrups or molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS established and allocated pursuant to the provisions of paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 of the HTS.

(j) *Quota period* means any period of time for which a quota for imports of sugar has been established in accordance with additional U.S. note 3.

(k) *Raw value* means, for a given quantity of sugar, the equivalent of that quantity of sugar in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury.

(l) *Secretary* means the Secretary of Agriculture or any officer or employee of the Department of Agriculture to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in the Secretary's place.

(m) *Sugar* means sugar, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11, but does not include specialty sugars as defined in subpart B of this part, or, in the case of "sugar" which is the product of Canada, means sugar, syrups, and molasses described in subheadings 1701.11.02, 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS, which is the product of Canada, but does not include specialty sugars as defined in subpart B of this part.

§ 2011.103 Entry into the United States.

(a) *General.* Except as otherwise provided herein (see §§ 2011.104 and 2011.109), no sugar described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS, which is the product of a foreign country or area, may be entered or withdrawn from warehouse for consumption after 12:01 a.m. October 1, 1990 unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar. Except as otherwise provided herein (see §§ 2011.104 and 2011.109), no sugar described in subheadings 1701.11.02, 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS, which is the product of Canada, may be entered or withdrawn from warehouse for consumption after 12:01 a.m. October 1, 1990 unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar.

(b) *Determinations of weight.* (1) For purposes of determining the amount of sugar which may be entered into the United States under a certificate of quota eligibility, sugar shall be entered on the basis of the actual weight of the sugar, as determined by the appropriate customs official. No adjustments in weight shall be made for the differences in polarization.

(2) The actual weight of the sugar entered into the United States may not exceed the weight specified on the certificate of quota eligibility by more than five percent. Such tolerance may be modified by the Secretary if the Secretary finds that such modification is appropriate to carry out the provisions of this subpart. Notice of any such modification shall be published by the Secretary in the **Federal Register.**

(3) The provisions of this paragraph shall not affect the manner in which the amount of sugar (raw value) entered into the United States is determined for purposes of administering the import quotas imposed under additional U.S. note 3 on sugar described in subheadings 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS.

§ 2011.104 Waiver.

(a) *General.* The Secretary may waive, with respect to individual

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shipments, any or all of the requirements of this subpart if he or she determines that a waiver will not impair the proper operation of the sugar quota system, that it will not have the effect of modifying the allocation of sugar made pursuant to the provisions of paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS, and that such waiver is justified by unusual, unavoidable, or otherwise appropriate circumstances. Such circumstances include, but are not limited to, loss or the destruction of the certificate, unavoidable delays in transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate.

(b) *Request for waiver.* The request for a waiver must be made to the Secretary in writing. The request need not follow any specific format. However, the request should set forth in detail all pertinent information relating to the shipment in question and the basis upon which the waiver should be granted.

(c) *Issuance of waiver.* The Secretary shall notify, in writing, the applicant for the waiver and the Secretary of the Treasury of any waiver granted under the authority of this section. The Secretary may attach any terms, conditions or limitations to the waiver which he or she determines are appropriate.

§ 2011.105 Form and applicability of certificate.

(a) *Contents.* Each certificate shall be numbered and identified by the foreign country. The certificate shall state that the quantity specified on the certificate is eligible to be entered into the United States during the applicable quota period. The certificate shall provide spaces into which the following information must be inserted by the certifying authority of the foreign country: Quantity eligible to be entered; name of shipper; name of vessel; and port of loading. The following information, if known, may also be specified on the certificate by the certifying authority: name and address of consignee; expected date of departure; expected date of arrival in U.S.; and expected port(s) of arrival in the United States. The certificate shall also provide an area where the certifying authority of the foreign country shall affix a seal or other form of authentication and sign and date the certificate.

(b) *Other limitations.* The Secretary may attach such other terms, limitations, or conditions to individual certificates of quota eligibility as he or she determines are appropriate to carry out the purposes of this subpart, provided that such other terms, limitations, or conditions will not have the effect of modifying the allocation of sugar made pursuant to the provisions of paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS. Such terms, limitations or conditions may include, but are not limited to, maximum quantities per certificate and a specified period of time during which the certificate shall be valid. In no event shall the maximum quantity per certificate exceed 10,000 short tons.

(c) *Applicability of the certificate.* The certificate of quota eligibility shall only be applicable to the shipment of sugar for which it was executed and issued by the certifying authority.

§ 2011.106 Agreements with foreign countries.

Agreements or arrangements providing for the certificate system may be entered into by the United States Government with the governments of foreign countries. Such agreements or arrangements may provide for the designation of certifying authorities, the designation of seals or other forms of authentication, the transmittal and exchange of pertinent information, and other appropriate means or forms of cooperation.

§ 2011.107 Issuance of certificates to foreign countries.

(a) *Amount and timing.* The Secretary may issue certificates of quota eligibility to foreign countries for any quota period in such amounts and at such times as he or she determines are appropriate to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account traditional shipping patterns, harvesting period, U.S. import requirements, and other relevant factors.

(b) *Adjustments.* The Secretary may adjust the amount of certificates issued to a certifying authority for any quota period, provided that such adjustment will not have the effect of modifying the allocation of sugar made pursuant to the provisions of paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS, in order to reflect:

(1) The amount of sugar entered into warehouse during previous quota periods;

(2) Anticipated differences in actual weight and weight determined on a raw value basis; and

(3) Other relevant factors.

§ 2011.108 Execution and issuance of certificates by the certifying authority.

(a) *Execution.* The certificate of quota eligibility shall be executed by the certifying authority by:

(1) Entering on the certificate the information required under § 2011.105 of this subpart; and

(2) Affixing a seal or other form of authentication to the certificate.

(b) *Issuance.* The executed certificate shall be issued by the certifying authority to the shipper or consignee specified on the certificate.

(c) *Modifications by the certifying authority.* The terms and conditions set forth in the certificate may not be modified, added to, or deleted by the certifying authority without the prior written approval of the Secretary.

(d) A certificate shall not be considered valid unless it is executed and issued in accordance with this section.

§ 2011.109 Suspension or revocation of individual certificates.

(a) *Suspension or revocation.* The Secretary may suspend, revoke, modify or add further limitations to any certificate if the Secretary determines that such action or actions is necessary to ensure the effective operation of the import quota system for sugar and that such suspension, revocation, modification or addition of further limitations will not have the effect of modifying the allocation of sugar made pursuant to the provisions of paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS.

(b) *Reinstatement.* The Secretary may reinstate or reissue any certificate which was previously suspended, revoked, modified, or otherwise limited under the authority of this section.

§ 2011.110 Suspension of certificate system.

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that such action gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Notice of such suspension and the effective date thereof shall be published in the **Federal Register.**

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this subpart if he or she finds that the conditions set forth in paragraph (a) of this section no longer apply. Notice of such reinstatement and the effective date thereof shall be published in the **Federal Register.**

(c) *Transitional provisions.* In the case of any suspension or reinstatement of the certificate system established by this subpart, the Secretary, in consultation with the United States Trade Representative, may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate customs officials in order to ensure an orderly transition.

Subpart B—Specialty Sugar

§ 2011.201 General statement.

This subpart sets forth the terms and conditions under which specialty sugar certificates will be issued to U.S. importers for importing specialty sugars from countries set forth in additional U.S. note 3(b)(i) to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS). Specialty sugars imported from such countries may not be entered under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS unless accompanied by a specialty sugar certificate. It has been determined that the regulations in this subpart are necessary and appropriate to implement authority conferred on the United States Trade Representative by additional U.S. note 3 to chapter 17 of the HTS. It has further been determined that these regulations give consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT), and that these regulations are necessary and appropriate to assist in fulfilling U.S. obligations under the GATT.

§ 2011.202 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Appropriate Customs official* means the District or Area Director of Customs, his or her designee, or any other Customs officer of similar authority and responsibility for the Customs district in which the port of entry is located.

(b) *Certificate* means a specialty sugar certificate issued by the Certifying Authority permitting the entry of specialty sugar as defined in this section.

(c) *Certifying Authority* means the Team Leader, Import Quota Programs, Foreign Agriculture Service, U.S. Department of Agriculture, or his or her designee.

(d) *Date of entry* means the date on which the appropriate Customs entry form is properly executed and deposited, together with any estimated duties and special import fees and any related documents required by law or regulation to be filed with such form at the time of entry with the appropriate Customs Officer.

(e) *Importer* means any person in the United States importing specialty sugar into the United States.

(f) *Person* means any individual, partnership, corporation, association, estate, trust, or any other business entity, and, whenever applicable, any unit, instrumentality, or agency, of a government, domestic or foreign.

(g) *Other specialty sugar source countries* means the following countries: Belgium, Burma, Cameroon, Denmark, Federal Republic of Germany, France, Hong Kong, Indonesia, Ireland, Italy, Japan, Kenya, Luxembourg, Netherlands, Netherlands Antilles, People's Republic of China, Republic of Korea, Republic of Yemen, Surinam, Sweden, Switzerland, United Kingdom, and Venezuela.

(h) *Quota* means any tariff-rate quota on imports of any sugars, sirups, or molasses provided for in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS applied under the authority of additional U.S. note 3 to chapter 17 of the HTS and any modifications thereto.

(i) *Secretary* means the Secretary of Agriculture or any officer of employee of the Department of Agriculture to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in his place.

(j) *Specialty sugar* means brown slab sugar (also known as slab sugar candy), pearl sugar (also known as perl sugar, perle sugar, and nibs sugar), vanilla sugar, rock candy, demerara sugar, silver dragees for cooking and baking, white fondant (a creamy blend of sugar and glucose), ti light sugar (99.2% sugar with the residual comprised of the artificial sweeteners aspartame and acesulfame K), caster sugar, golden syrup, and ferdiana granella grossa, which in addition:

(1) Are sugars, syrups, or molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the Harmonized Tariff Schedule of the United States.

(2) Are the product of a country listed among the "other specialty sugar source countries," and

(3) Require no further refining, processing, or other preparation prior to consumption, other than incorporation as an ingredient in human food.

§ 2011.203 Issuance of specialty sugar certificates.

(a) Specialty sugars imported into the United States from other specialty sugar source countries may be entered under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS only if such specialty sugars are accompanied by a certificate issued by the Certifying Authority.

(b) A certificate may be issued to an importer who complies with the provisions of this part. The certificate may contain such conditions, limitations or restrictions as the Certifying Authority, in his discretion, deems necessary. The Certifying Authority will issue a certificate if sufficient evidence has been provided to permit the Certifying Authority to make a reasonable determination that the sugar proposed to be imported under the certificate fits the definition of specialty sugars in this subpart.

(c) Subject to quota availability, an unlimited number of complying shipments may enter under a given certificate and a given certificate may cover more than one type of specialty sugar. Issuance of a certificate does not guarantee the entry of any specific shipment of specialty sugars under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS, but only permits entry of such sugar under such HTS subheadings if the applicable quota or quotas are not already filled.

§ 2011.204 Entry of specialty sugars.

An importer or his or her agent must present a certificate to the appropriate Customs official at the time of entry of specialty sugars. Entry of specialty sugars under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS shall be allowed only in conformity with the description of sugars and other conditions, if any, stated in the certificate.

§ 2011.205 Application for a specialty sugar certificate.

Applicants for certificates for the import of specialty sugars must apply in writing to the Certifying Authority. Such letter of application shall contain the following information:

(a) The name and address of the applicant;

(b) A statement of the anticipated quantity of specialty sugars to be imported, if known;

(c) The appropriate six digit HTS subheading number;

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(d) A description of the specialty sugar the importer expects to import during the period of the certificate, including the manufacturer's or exporter's usual trade name or designation and use of such specialty sugar, and the importer's use of such specialty sugar;

(e) Sufficient evidence to permit the Certifying Authority to make a reasonable determination that such sugars are specialty sugars within the definition of specialty sugars in this subpart;

(f) The name of the anticipated consumer of the specialty sugars, if known at time of application; and

(g) The anticipated date of entry, if known at time of application.

The Certifying Authority may waive any provision of this section for good cause if her or she determines that such a waiver will not adversely affect the implementation of this subpart.

§ 2011.206 Suspension or revocation of individual certificates.

(a) *Suspension or revocation.* The Certifying Authority may suspend, revoke, modify or add limitations to any certificate which has been issued if he or she determines that such action or actions is necessary to ensure the effective operation of the quota for specialty sugars or determines that the importer has failed to comply with the requirements of this subpart.

(b) *Reinstatement.* The Certifying Authority may reinstate or restore any certificate which was previously suspended, revoked, modified or otherwise limited under the authority of this section.

(c) The determination of the Certifying Authority under paragraph (a) of this section that the importer has failed to comply with the requirements of this subpart may be appealed to the Director, Import Policy and Trade Analysis Division, Foreign Agriculture Service (FAS), U.S. Department of Agriculture, Washington, DC 20250, within 30 days from the date of suspension or revocation. The request for reconsideration shall be presented in writing and shall specifically state the reason or reasons why such determination should not stand. The Director, Import Policy and Trade Analysis Division, Foreign Agriculture Service (FAS), U.S. Department of Agriculture, Washington, DC 20250, will provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, U.S. Department of Agriculture, Washington, DC 20250, within five working days of receipt of the notification of the Director's decision. The Certifying Authority may take action under paragraph (b) of this section during the pendency of any appeal.

§ 2011.207 Suspension of the certificate system.

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that the quota provided for in additional note 3 to chapter 17 of the HTS is no longer in force or that this subpart is no longer necessary to implement those provisions. Notice of such suspension and the effective date thereof shall be published in the Federal Register.

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this subpart if he or she finds that the conditions set forth in paragraph (a) of this section no longer apply. Notice of such reinstatement and the effective date thereof shall be published in the Federal Register.

(c) *Transitional provisions.* In the case of any suspension or reinstatement of the certificate system established by this subpart, the Certifying Authority may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate Customs officials in order to ensure an orderly transition.

Subpart C—Allocations for "Other Specified Countries and Areas"

§ 2011.301 General Statement.

This subpart sets forth the manner in which individual allocations of the tariff-rate quota will be calculated for those countries listed as "Other specified countries and areas" in paragraph (b)(i) of additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS). It has been determined that the regulations in this subpart are necessary and appropriate to provide reasonable access to the U.S. sugar market to countries listed as "Other specified countries and areas." It has further been determined that these regulations give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

§ 2011.302 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Individual quota amount* means a specific quantity of sugars, syrups and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS, that may be imported from each country and area included in the category of "Other specified countries and areas."

(b) *Other specified countries and areas* means the following countries and areas: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua-New Guinea, Paraguay, Saint Christopher-Nevis, and Uruguay.

(c) *Quota* means any tariff-rate quota on imports of sugars, syrups or molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 180.10.41, and 2106.90.11 of the HTS established under the provisions of paragraph (a) of additional U.S note 3 to chapter 17 of the HTS.

(d) *Total quota amount* means the total amount, as established by the Secretary of Agriculture, of sugars, syrups and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS, that may be entered or withdrawn from warehouse for consumption, during such period as shall be established by the Secretary of Agriculture.

§ 2011.303 Allocation of individual import quota

(a) Each foreign country and area in the category of "Other specified countries and areas" shall be allocated an individual quota amount for each quota period.

(b) The individual quota amount for each country and area in the category of "Other specified countries and areas" shall be the greater of:

(1) The pro rata share of the total quota amount allocated to the category "Other specified countries and areas" for each quota period in question;

(2) 7,258 metric tons, raw value; or

(3) Such other minimum quota amount as shall be determined by the United States Trade Representative to be appropriate to provide reasonable access to the U.S. market for imports from the other specified countries and area.

(c) Notwithstanding paragraph (b) of this section, the United States Trade Representative may provide for the allocation to other specified countries and areas of other individual quota amounts for specific time periods, or other special rules or limitations, in order to ensure an orderly transition in the following circumstances:

(1) The addition or deletion of a country or area to or from the category "Other specified countries and areas;" or

(2) A change from an annual quota period (October 1–September 30) to another quota period.

Notice of any such quotas, rules, or limitations shall be published in the Federal Register.

§ 2011.304 Applicability.

This subpart shall be applicable to the quota period beginning October 1, 1990, and all subsequent quota periods.

§ 2011.305 Relationship to overall import quota.

The allocation of minimum quota amounts to the "Other specified countries and areas" may result in a quota allocation for such category which is in excess of that category's percentage allocation of quota.

§ 2011.306 Paperwork Reduction Act assigned number.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the regulations in this subpart in accordance with 44 U.S.C. chapter 25 and OMB control number 0551–0014 has been assigned.

PART 2013—[REMOVED]

2. Part 2013 is removed.

Signed at Washington, DC, on October 1, 1990.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 90–23603 Filed 10–2–90; 11:28 am]

BILLING CODE 3190–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Ketoprofen Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Laboratories, Inc. The NADA provides for intravenous use of a ketoprofen sterile solution for alleviation of inflammation and pain associated with musculoskeletal disorders in horses.

EFFECTIVE DATE: October 4, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Inc., P.O. Box 518, 800 5th St. NW., Fort Dodge, IA 50501–0518, filed NADA 140–289 which provides for veterinary prescription use of ketoprofen (Ketofen™) sterile aqueous solution to treat inflammation and pain associated with musculoskeletal disorders in horses. The NADA is approved as of September 28, 1990, and the regulations are amended by adding new 21 CFR 522.1225 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

As provided under section 512(c)(2)(F)(i) of the Generic Animal Drug and Patent Term Restoration Act of 1988 (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning September 28, 1990, because ketoprofen is a new chemical entity; i.e., it has not previously been approved under section 512(c)(1).

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.1225 is added to read as follows:

§ 522.1225 Ketoprofen solution.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 100 milligrams of ketoprofen.

(b) *Sponsor.* See 000856 in 21 CFR 510.600(c) of this chapter.

(c) *Conditions of use in horses.*—(1) *Amount.* 1.0 milligram per pound of body weight once daily for up to 5 days.

(2) *Indications for use.* For alleviation of inflammation and pain associated with musculoskeletal disorders in horses.

(3) *Limitations.* For intravenous use only. Do not use in breeding animals. Effects on fertility, pregnancy, or fetal health have not been determined. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 26, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–23466 Filed 10–3–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1445–90]

Delegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend part 0 of title 28 of the Code of Federal Regulations to delegate to the Assistant Attorney General in charge of the Civil Rights Division the authority assigned to the Attorney General by the Americans with Disabilities Act of 1990, Public Law 101–336.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Stewart B. Oneglia, Chief, Coordination & Review Section, U.S. Department of Justice, P.O. Box 66118, Washington, DC 20035–6118, (202) 307–2222 (Voice), (202) 307–2678 (TDD).

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SUPPLEMENTARY INFORMATION: This order is a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of or subject to Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, subpart J of part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 5 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 878(a), 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001–2017p; Pub. L. 91–513, sec. 501; EO 11919; EO 11267; EO 11300; Pub. L. 101–203.

2. Section 0.50 is amended by adding paragraph (l) to read as follows:

§ 0.50 General functions.

* * * * *

(l) Enforcement and administration of the Americans with Disabilities Act of 1990, Public Law 101–336.

Dated: September 24, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90–23408 Filed 10–3–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AD91

Loan Guaranty; Implementation of Public Law 100–198

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations (38 CFR part 36) to comply with certain provisions of Public Law 100–198, the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987, as amended by Public Law 100–253, the Veterans' Home Loan Program Emergency Amendments of 1988 and with certain provisions of Public Law 101–237, the Veterans Home Loan Indemnity and Restructuring Act of 1989. Changes made by these laws which VA will incorporate into the regulations by these amendments are: (1) An increase in the maximum amount of entitlement from $27,500 to $36,000, except that if the loan amount exceeds $144,000 the maximum amount of entitlement is increased to $46,000, (2) a revision of the method for calculating the guaranty amount, (3) a revision of the occupancy requirements, (4) a revision of the requirements for refinancing loans, and (5) a revision in the amount of the funding fee.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Schneider Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, (202) 233–3042.

SUPPLEMENTARY INFORMATION: On November 13, 1989, VA published in the **Federal Register** at pages 47220–47223 proposed regulatory amendments to change: (1) 38 CFR 36.4302, to increase the maximum amount of entitlement and to revise the method for calculating the guaranty amount; (2) §§ 36.4303, 36.4306, and 36.4306a, to revise occupancy requirements; (3) § 36.4306, to limit the amount of refinancing loans to not more than 90 percent of the appraised value of the property; and (4) § 36.4306a, to extend the term of interest rate reduction refinancing loan. Public comments were requested on the proposed amendments, and comments supporting all the changes were received from the vice president of one association.

On December 18, 1989, Public Law 101–237 was enacted. Certain changes made by this law are also being incorporated into the regulations by these amendments.

To comply with provisions of Public Law 101–237, 38 CFR 36.4312(e) is being amended to provide as follows: (1) For all refinancing loans and all loans where the veteran makes no down payment the funding fee shall be 1.25 percent of the loan amount; (2) For loans where the veteran makes a downpayment of 5 percent or more, but less than 10 percent, the funding fee shall be 0.75 percent of the loan amount; and (3) For loans where the veteran makes a downpayment of 10 percent or more, the funding fee shall be 0.50 percent of the loan amount.

Also, to comply with provisions of Public Law 101–237, 38 CFR 36.4302 is being further amended to provide as follows: (1) For loans of $45,000 or less, the maximum guaranty amount shall be 50 percent of the loan amount; (2) For loans of more than $45,000, but no more than $56,250, the maximum guaranty amount shall be $22,500; (3) For loans of more than $56,250, but not more than $144,000, the guaranty amount shall be the lesser of $36,000 or 40 percent of the loan amount; and (4) For loans of more than $144,000, made for the purchase or construction of a home or farm residence or to purchase a residential unit in a condominium, the guaranty amount shall be the lesser of $46,000 or 25% of the loan amount. These amounts are all subject to reduction if the veteran previously used VA loan entitlement.

In addition, § 36.4306 is being further amended to provide three instances in which a refinancing loan that is not an interest rate reduction refinancing loan may be for an amount in excess of 90 percent of the reasonable value. The instances are: (1) To refinance a construction loan; (2) to refinance an installment land sale contract; and (3) to refinance an existing loan assumed by the veteran, provided the new VA loan is at an interest rate lower than that of the loan being refinanced.

In the instances referred to in the preceding paragraph the refinancing loan amount may not exceed the lesser of the reasonable value established by VA or the sum of the outstanding balance on the loan to be refinanced and the closing costs (including discounts) actually paid by the veteran as specified in VA regulations.

VA finds, for good cause, advance publication for notice and public comment is not required on the amendments to 38 CFR 36.4302, 36.4306, and 36.4312(e) required by Public Law 101–237. The regulatory amendments merely update VA regulations consistent with the recent changes in law and do not involve any substantive changes in VA policy or regulations other than those required by the law. Thus, in accordance with the provisions of 38 CFR 1.12, advance publication in the **Federal Register** of these changes is unnecessary. Accordingly, the changes in the regulations are now published as final.

The Secretary hereby certifies that these regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed amendments simply update VA regulations to incorporate the changes which have already been made by Pubic Law 100–198 as amended by Public Law 100–253.

The Secretary has also determined that the regulatory amendments are not a major rule within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.118)

These amendments are issued under Public Law 100–198 as amended by Public Law 100–253 and the authority granted the Secretary by section 210(c) of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan program—housing and community development, Manufactured homes, Veterans.

Approved: September 6, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty, is proposed to be amended as follows:

§ 36.4302 [Amended]

1a. In § 36.4302 redesignate paragraphs (b) through (i) as paragraphs (c) through (j) respectively.

b. In § 36.4302 paragraph (a) and newly designated paragraphs (d)(1) through (3) are revised and paragraph (b) and newly designated paragraph (i)(4) are added to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) With respect to a loan to a veteran guaranteed under 38 U.S.C. 1810 the guaranty shall not exceed the lesser of the dollar amount of entitlement available to the veteran or

(1) 50 percent of the original principal loan amount where the loan amount is not more than $45,000; or

(2) $22,500 where the original principal loan exceeds $45,000, but is not more than $56,250; or

(3) Except as provided in subparagraph (4), the lesser of $36,000 or 40 percent of the original principal loan amount where the loan amount exceeds $56,250; or

(4) The lesser of $46,000 or 25 percent of the original principal loan amount where the loan amount exceeds $144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.

(Authority: 38 U.S.C. 1803(a))

(b) With respect to a loan guaranteed under 38 U.S.C. 1810(a)(8) or (9)(B)(i) the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced.

(Authority: 38 U.S.C. 1803(a))

* * * * *

(d) * * *

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $36,000. The sum remaining is the amount of available entitlement for use except that (i) entitlement may be increased by up to $10,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium, and (ii) entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1812 may not exceed $20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $36,000. The sum remaining is the amount of available entitlement for use except that (i) entitlement may be increased by up to $10,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium, and (ii) entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1812 may not exceed $20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 1812, the amount of entitlement used for that loan is subtracted from $36,000. The sum remaining is the amount of available entitlement for home loans or manufactured home/lot loans guaranteed under 38 U.S.C. 1810, except that entitlement may be increased by up to $10,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans, processed under 38 U.S.C. 1812, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C 1812.

(Authority: 38 U.S.C. 1803(a), 1812(c)(4))

* * * * *

(i) * * *

(4) The loan has been repaid in full, and the loan for which the veteran seeks to use entitlement is secured by the same property which secured the fully repaid loan.

* * * * *

2. In § 36.4303 paragraph (f) is revised to read as follows:

§ 36.4303 Reporting requirements.

* * * * *

(f) Evidence of a guaranty will be issued by the Secretary by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible. Evidence of guaranty or insurance will not be issued on any loan for the purchase or construction of residential property unless the veteran, or the veteran's spouse in the case of a veteran who cannot occupy the property because of active duty status with the Armed Forces, certifies in such form as the Secretary shall prescribe, that the veteran, or spouse of the active duty veteran, intends to occupy the property as his or her home. Guaranty or insurance evidence will not be issued on any loan for the alteration, improvement, or repair of any residential property or on a refinancing loan unless the veteran, or spouse of an active duty service member, certifies that he or she presently occupies the property as his or her home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property which will prevent the veteran or the spouse of the active duty veteran from occupying the property while the work is being completed. In such a case the veteran or spouse of the active duty veteran must certify that he or she intends to occupy or reoccupy the property as his or her home upon completion of the substantial improvements or repairs. All of the mentioned certifications must take place at the time of loan application and closing except in the case of loans automatically guaranteed, in which case veterans or in the case of an active duty veteran, the veteran's spouse shall make the required certifications only at the time the loan is closed.

(Authority: 38 U.S.C. 1804(c))

* * * * *

3. In § 36.4306, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(2) and (a)(3) respectively, the introductory text of paragraph (a) is

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revised, paragraph (a)(1) is added, and, paragraph (c), the last sentence of paragraph (g)(5) and the authority citation to paragraph (g) are revised to read as follows:

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

(a) Any loan for the purpose of refinancing (38 U.S.C. 1810(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied or to be reoccupied if the refinancing loan is for the completion of major alterations, repairs or improvements to the property, by an eligible veteran as the veteran's home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home, shall be eligible for guaranty in an amount as computed under § 36.4302(a) provided that —

(1) The amount of the loan may not exceed an amount equal to 90 percent of the reasonable value of the dwelling or farm residence which will secure the loan, as determined by the Secretary.

(Authority: 38 U.S.C. 1810(e)(1) and 1810(h);)

* * * * *

(c) Nothing shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinance under the provisions of 38 U.S.C. 1810(a)(5) a VA guaranteed or insured (or direct) mortgage loan made to him or her which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as a home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home.

(Authority: 38 U.S.C. 1810(e)(1))

* * * * *

(g) * * *

(5) * * * However, the total guaranty may not exceed the guaranty amount as calculated under § 36.4302(a) of this part.

(Authority: 38 U.S.C. 1803(a))

4. In § 36.4306a paragraphs (a) and (b) are revised to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 1810(a)(8) and (9)(B)(i), a veteran may refinance an existing VA guaranteed, insured or direct loan to reduce the interest rate payable on the existing loan provided the following requirements are met:

(1) The loan must be secured by the same dwelling or farm residence as the loan being refinanced; and

(2) The veteran must own the dwelling or farm residence securing the loan and

(i) Must occupy the dwelling or residence as his or her home; or

(ii) Must have previously occupied the dwelling or residence as his or her home and must certify, in such form as the Secretary shall require, that he or she has previously occupied the dwelling or residence; or

(iii) In any case in which the veteran is on, or was on, active duty status as a member of the Armed Forces and is unable, or was unable, to occupy the residence or dwelling as a home because of such active duty status, the spouse of the veteran must occupy, or must have previously occupied, such dwelling or residence as the spouse's home and must certify to that occupancy in such form as the Secretary shall require.

(Authority: 38 U.S.C. 1810(e)(1))

(3) The amount of the refinancing loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed a dollar amount determined in accordance with § 36.4312(d) (7)(i);

(4) The dollar amount of the guaranty of the 38 U.S.C. 1810(a) (8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(5) The term of the refinancing loan (38 U.S.C. 1810(a)(8)) may not exceed the original term of the loan being financed plus ten years or the maximum loan term allowed under 38 U.S.C. 1803(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 1812 the loan term, if being refinanced under 38 U.S.C. 1810(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 1803(d)(1).

(Authority: 38 U.S.C. 1810(e)(1))

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the lesser of the entitlement used by the veteran to obtain the loan being refinanced or the amount of the guaranty as calculated under § 36.4302(a) of this part. The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 1810(a) (1) through (7) and (9)(A) (i) and (ii) and subsequently transferred to an interest rate reduction refinancing loan (38 U.S.C. 1810(a) (8) or (9)(B)(i)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of § 36.4302(h).

(Authority: 38 U.S.C. 1803(a))

* * * * *

(5) In § 36.4312 paragraph (e)(4) is redesignated (e)(5), paragraphs (e)(1) through (3) are revised and a new paragraph (e)(4) is added to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(e)(1) Subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, a fee must be paid to the Secretary. The fee shall be 1.25 percent of the total loan amount on all refinancing loans and for all loans for the purchase or construction of a home on which the veteran does not make a downpayment. On purchase or construction loans on which the veteran makes a downpayment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 0.75 percent of the total loan amount. On purchase or construction loans on which the veteran makes a downpayment of 10 percent or more, the amount of the funding fee shall be 0.5 percent of the total loan amount. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) Subject to the limitations set out in this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 1814 of title 38 U.S. Code applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of the receipt by the holder of the notice of transfer.

(Authority: 38 U.S.C. 1814, 1829(d))

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the fee described in paragraph (e)(1) of this section is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(4) The fees described in paragraph (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 1801(b) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

6. Section 36.4502 is revised to read as follows:

§ 36.4502 Use of guaranty entitlement.

The guaranty entitlement of the veteran obtaining a direct loan which is closed on or after February 1, 1988, shall be charged with the lessor of the loan amount or an amount which bears the same ratio to $36,000 as the amount of the loan bears to $33,000. The charge against entitlement of a veteran who obtained a direct loan which was closed prior to the aforesaid date, shall be the amount which would have been charged had the loan been closed subsequent to such date.

(Authority: 38 U.S.C. 1811(d)(2)(A))

§ 36.4503 [Amended]

6. a. In § 36.4503 paragraph (a) remove the words "October 1, 1980" where they appear and add, in their place, the words "February 1, 1988".

b. In § 36.4503 paragraph (a) remove the words "$27,500" and add, in their place, the words "$36,000".

c. In § 36.4503 in the authority citation remove the words "(1) and" so the authority citation correctly reads "38 U.S.C. 1811(d)(2)(A)".

[FR Doc. 90-23295 Filed 10-03-90; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 35 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. These revisions are minor, editorial, or clarifying.

EFFECTIVE DATE: September 16, 1990.

FOR FURTHER INFORMATION CONTACT: Catherine V. Pagano, (202) 268-2969.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 35, dated September 16, 1990. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office. The following Summary of Changes section of the transmittal for issue 35 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Summary of Changes

CHAPTER 1

Section 121.22 is revised to recommend that potentially injurious products be enclosed in containers that are difficult for small children to open. (PB 21768, 7-26-90)

Exhibits 122.33, 137.276g(3)(d), and 917.32c are revised to show the attention line as the top line of an address (with or without the word "attention") to comply with automation guidelines.

Exhibits 122.63c-l and p-r are revised to reflect mail processing changes and to remove all unassigned ZIP Codes. Changes are indicated by bold type.

Exhibits 122.63 m, n, o are revised to include additional automated facilities and provide a text reference in the explanation of the lists. The format of **Exhibit 122.63m** is changed to list each 3-digit label individually. **Exhibit 122.63o** is changed to incorporate the current automated area distribution centers. Changes are indicated by bold type (PB 21768, 6-28-90)

Sections 136.2, 136.3, 145.6, 429.18, and **429.62** are amended to provide publishers with a new option for the payment of postage for First- and third-class enclosures in second-class publications. (PB 21768, 7-26-90)

Section 144, *Postage Meters and Meter Stamps,* is amended to provide for metered reply postage for Priority Mail when the rate, determined by the weight of the parcel, is the same for all zones, and to clarify the use of meter-stamped address labels. (PB 21768, 6-28-90)

Section 147, *Exchanges and Refunds,* is amended to set forth in a revised **147.2** the general provisions relating to all refund requests, to reorganize the procedures (currently **147.25** through **147.29**) for refund requests not made at the time of mailing in a new **147.3,** and to adopt new procedures for refund requests made at the time of mailing in a new **147.4.** (PB 21768, 7-26-90)

Section 153.21, *Delivery to Addressee's Agent,* subsection **153.211,** is revised to comply with **911.41.** In **Section 911.41,** the word "him" is replaced by "the addressee." (PB 21768, 6-28-90)

Exhibit 159.151d is revised to clarify any misunderstanding about how to handle third-class mail weighing over 1 ounce. (PB 21764, 5-31-90)

Section 163.533b, *Coiled Stamps,* is amended to reflect the change in the minimum purchase required to receive a plate number. (PB 21764, 5-31-90)

CHAPTER 3

Section 354, *Reusable Mailpieces,* is added to describe the requirements for reusable mailpieces. Reusable mailpieces that are not constructed to meet the applicable requirements must not be accepted into the mail. (PB 21768, 6-28-90)

Section 368, *Preparation Requirements for Optional Combined ZIP + 4 Presort and Presorted First-Class Mailings (Destinating at Automated Sites),* is revised to require that optional 3-digit mail be sorted by automated area distribution centers (AADCs) instead of area distribution centers (ADCs). (PB 21768, 6-28-90)

CHAPTER 4

Sections 423, *Requirements for Specific Categories,* and **424,** *Special Second-Class Privileges,* have several changes to clarify the conditions governing postage refunds when publications are authorized to be mailed at second-class or special second-class rates. These changes do not alter current policies. (PB 21768, 6-28-90)

Sections 445, 644, and **767** are revised to reflect new procedures for obtaining and routing Form 3856, *Application for Authorization to Palletize.* (PB 21769, 6-9-90)

Sections 448, 648, and **768,** *Optional Use of Barcoded Sack Labels,* have been added to include the optional use of barcoded sack labels for second-, third-, and fourth-class mail. **Sections 541.221, 545.432, 641.133, 641.234, 641.323, 641.423, 644.332, 764.21, 767.23, 767.33,** and **767.823** are also revised to

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include consistent language and correct references to the sections affected by these changes. (PB 21769, 8-9-90)

CHAPTER 6

Sections 623 and 644, have new subsections added to allow mailers to combine, on the same pallet, packages from two or more bulk third-class flat-size mailings. This revision is designed to encourage preparation of pallets to the finest level of sortation possible. (PB 21768, 7-26-90)

Section 629.34, *Reusable Mailpieces*, is added to describe the requirements for reusable mailpieces. Reusable mailpieces that are not constructed to meet the applicable requirements must not be accepted into the mail. (PB 21766, 6-28-90)

CHAPTER 9

Section 914.22, *Payment of Fees and Postage*, is revised to clarify the calculation of COD fees and to emphasize that the return address appearing on the COD article must be identical to the return address printed on the COD tag. **Section 914.415** is amended to show that the return address on a COD article must be a domestic address. (PB 21766, 6-28-90)

Section 914.52a(3), is amended to reflect the change in policy for accepting personal checks in payment for COD articles. (PB 21764, 5-31-90)

Section 953.41e, is amended to delete the words "if the parent or guardian so requests in writing," in order to agree with 153.22.

Section 941.123 adds requirements for money order purchases in amounts between $3,000 and $10,000. The following sections are renumbered. (PB 21768, 8-9-90)

Appendix

Appendix, *List of Addresses*, has been added at page 675 showing the complete mailing addresses of individuals and organizations referred to throughout the DMM.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter: Dated: _____ **Federal Register** publication for issue September 18, 1990, 55 FR [insert FR page number]

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-23469 Filed 10-3-90; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3849-2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is approving revisions to the Illinois State Implementation Plan (SIP) for ozone and carbon monoxide (CO). The revisions pertain to the approval of (1) the State's 1982 CO plan and attainment demonstration, (2) its vehicle inspection and maintenance (I/M) program and (3) its transportation control measures. The I/M program and the transportation control measures are required parts of both Illinois' 1982 ozone plan and its 1982 CO plan. USEPA's action is based upon revision requests which were submitted by the State in response to the requirements of part D of the Clean Air Act (Act).

This approval of the I/M program eliminates the basis for USEPA's August 3, 1983 (48 FR 35315) and May 4, 1984 (49 FR 19039) proposed Federal assistance limitations and the August 3, 1983, proposed construction moratorium. Therefore, elsewhere in today's **Federal Register**, USEPA is withdrawing these two notices. However, on November 2, 1989 (54 FR 46271), USEPA proposed to limit certain Federal highway funding assistance for Cook, Lake, Kane, and DuPage Counties, because the State of Illinois had failed to adopt and to submit to USEPA an I/M program commensurate with the severity of the ozone problem in the Chicago area. Even though USEPA is approving the I/M portion of the State's 1982 ozone and CO SIPs today, USEPA believes that the Federal funding restrictions proposed in the November 2, 1989, **Federal Register**, should remain outstanding at this time because the State has not made reasonable efforts to submit all measures necessary to bring the Chicago area into attainment of the ozone National Ambient Air Quality Standard (NAAQS). One measure is enhancement of the existing I/M program.

EFFECTIVE DATE: This final rulemaking becomes effective on November 5, 1990.

ADDRESSES: Copies of the SIP revisions are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Cheryl Newton (312) 886-6061.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added a new part D to title I of the Act. Under part D, the States had to revise their SIPs for all nonattainment areas and submit revisions (1979 plan) to USEPA by January 1, 1979 (secs. 171–178 of the Act; sec. 129(c) (uncodified) of Pub. L. 95–95). The revised plan had to provide for attainment in nonattainment areas by December 31, 1982, unless the State demonstrated that it could not attain either the ozone or CO NAAQS by that date, despite the implementation of all reasonably available control technology (RACT—sec. 172(a) of the Act).

If USEPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987, and the State could defer certain requirements but would have to meet additional, more stringent planning requirements at a later date. States receiving such extensions were to submit a second SIP revision (1982 plan) that provided for attainment by December 31, 1987, which complied with all of the part D requirements (sec. 172(c)).

These second SIP revisions had to be submitted by July 1, 1982 (sec. 129(c) (uncodified), Pub. L. 95–95). On January 22, 1981 (46 FR 7182), USEPA published final criteria for reviewing these revisions. These criteria supplemented the "General Preamble" for SIP revisions for nonattainment areas, which was published on April 4, 1979 (44 FR 20372).[1] Other requirements for plan preparation and USEPA policy guidance were contained in a technical support document (TSD) memorandum dated November 15, 1982. These documents are available for review at the Region V office, listed above.

In April 1979, the State of Illinois submitted its 1979 SIP revisions for ozone and CO in the Illinois portion of the Chicago metropolitan area, and for ozone in the Illinois portion of the St. Louis metropolitan area. In its submittal, the State requested that USEPA extend the attainment date for meeting the ozone and CO standards in these areas until December 31, 1987. USEPA approved this request and the State's 1979 plans on February 21, 1980 (45 FR 11472).

On February 3, 1983 (48 FR 5110), USEPA proposed disapproval of and solicited comment on the 1982 Illinois SIP revisions for ozone and CO, which had been submitted by the Illinois Environmental Protection Agency (IEPA) in draft form on June 30, 1982. On December 3, 1982, the State submitted responses to comments included in USEPA's November 15, 1982, TSD. On May 4, 1983, November 4, 1983, and January 20, 1984, the State submitted substantial revisions to its draft plans.

On August 15, 1984 (49 FR 32601), USEPA again proposed rulemaking on the Illinois 1982 ozone and CO SIP, taking into account the State's submittals designed to address the deficiencies identified in the February 3, 1983 (48 FR 5110) proposed disapproval. In the August 15, 1984, rulemaking, USEPA proposed to approve the State's ozone and CO plans, except for the I/M program which the State had not implemented as committed to in its 1979 SIP. USEPA also proposed to approve the State's attainment demonstration for CO and the transportation control measures.

On April 24, 1989 (54 FR 16372), USEPA again presented its analysis of the ozone and CO SIP elements and proposed rulemaking on each element. USEPA proposed approval of (1) the State's CO plan, including the attainment demonstration, and (2) the State's I/M program and transportation control measures. A summary of USEPA's previous analysis follows.

Attainment Demonstration for CO in the Chicago Area

The Illinois CO SIP includes separate attainment demonstrations for downtown Chicago and for other nonattainment areas in and near Chicago (i.e., the freeway corridors). Illinois submitted two basic attainment demonstrations for downtown Chicago on June 30, 1982, and May 4, 1983. (Illinois also submitted responses to comments on the first demonstration on December 3, 1982.) In its May 4, 1983, submittal, Illinois stated that the analysis included reflected IEPA's best estimate of the anticipated emission reductions from implementation of the Federal Motor Vehicle Control Program (FMVCP).

The May 4, 1983, analysis for CO in downtown Chicago relied on the rollback model. This analysis assumed that the violations monitored downtown were predominately the result of motor vehicle emissions. Stationary source emissions were considered by means of a 0.2 parts per million (ppm) constant background concentration. The rollback analysis relied on emission factors derived for the MOBILE2.5 emission factor model. Illinois also used 1982 air quality data in its analysis in the belief that the use of these data provide a more stringent test of whether attainment will be achieved by 1987, than do the 1979 to 1981 air quality data.

The rollback approach assumes that the non-background component of an observed concentration will decrease by the same percentage as emissions. Illinois provided rollback calculations based on a variety of vehicle operating conditions that might be applicable in the downtown area, as well as for two different ambient temperatures. In all cases, attainment was shown to occur by the end of 1987. USEPA made additional calculations based on slightly different assumptions of vehicle operating conditions. These calculations support Illinois' conclusion that attainment will be achieved by the end of 1987. Rollback calculations for 1979, 1980, and 1981 support Illinois' statement that 1982 air quality data are the most stringent data.

A final issue concerning the downtown attainment demonstration relates to I/M. Illinois' attainment demonstration for CO in downtown Chicago does not reflect the impact of an I/M program. However, consideration of an I/M program would lead to the projection of an earlier attainment date. Thus, Illinois' attainment demonstration may be considered adequate evidence that the CO standard will be achieved in downtown Chicago by the end of 1987. USEPA, therefore, proposed approval of this portion of the CO SIP revision.

The CO attainment demonstration for the freeway corridors was submitted by Illinois on June 30, 1982. This attainment demonstration was based on hot-spot modeling using the CALINE3 model. On August 23, 1982, USEPA sent comments to Illinois on its June 30, 1982, submittal. Based on USEPA comments, the State submitted a corrected analysis on January 20, 1984. This analysis shows that attainment did not occur by 1982 at a few locations in the freeway corridors in the Chicago area. However, these locations were predicted to have 1982 concentrations only slightly above the standard, and it was predicted that, based on reductions obtained from the FMVCP, attainment would occur well before 1987 at all locations in the Chicago area freeway corridors. USEPA, therefore, proposed to approve this portion of the Illinois SIP.

Transportation Control Measures (TCMs)

TCMs, as outlined in section 108 of the Act, are considered reasonably available control measures under section 172(b)(2). Illinois evaluated TCMs pursuant to section 108 of the Act and committed to adopt certain transportation strategies.

The Transportation Control Plan (TCP) for Northeastern Illinois describes eight TCMs to be implemented to obtain the hydrocarbon (HC) and CO reduction goal. The TCP will implement the following TCMs: Public transportation; ride sharing; traffic flow improvements; bicycle promotion; long-range transit; park and ride lots; alternative work schedules; and exclusive bus/car pool lanes. While the State recognized that these TCMs would result in CO emission reductions, no credit was taken as part of the CO attainment demonstration. The attainment demonstration relied entirely on emission reductions from the FMVCP program.

The TCP for the East St. Louis area describes six TCMs to be implemented to provide the HC emission reduction target. The TCP will implement the following TCM package: traffic flow improvements; electric vehicle use; increase in ride sharing; increase in van pooling; 30 percent increase in transit ridership; and park and ride lots. USEPA found these TCMs adequate and proposed approval of these TCMs.

Vehicle Inspection and Maintenance (I/M)

Pursuant to section 172(a)(2) of the Act, the State of Illinois submitted a Part D SIP which demonstrated that the ozone and CO standards could not be attained by 1982 in the Chicago area and that the ozone standard could not be attained by 1982 in the East St. Louis area. Consequently, Illinois requested an extension of time for attainment of the ozone and CO standards in these nonattainment areas. As required by section 172(b)(11)(B), Illinois also submitted a schedule for implementation of I/M in these areas. On February 21, 1980 (45 FR 11472), USEPA approved Illinois' revised SIP for ozone and CO, including the extension requests and the I/M schedule.

On August 3, 1983, (48 FR 35315), USEPA proposed funding and growth restrictions for the State of Illinois under section 176(b) and 173(4), respectively, of the Act for failure to implement its I/

[1] USEPA published four additional notices supplementing the general preamble on July 2, 1979 (44 FR 38563); August 28, 1979 (44 FR 50371); September 17, 1979 (44 FR 53761) and November 23, 1979 (44 FR 67185).

M program in Cook, Lake, Kane, DuPage, St. Clair, and Madison Counties, as required by its approved 1979 SIP. In addition, on May 4, 1984, (49 FR 19039), USEPA proposed to impose certain restrictions on Federal assistance funds for highway construction and air quality planning grants based on the State's failure to submit rules, regulations, and procedures for an I/M program as part of its 1982 SIP revision. Subsequently, State legislation was signed into law in September of 1984 creating the legal authority and funding mechanism for an I/M program.

The State of Illinois contracted with Systems Control, Inc., to develop and operate a centralized network of testing facilities in Cook County and portions of Lake, DuPage, St. Clair, and Madison Counties. Vehicle testing began on May 1, 1986.

Vehicles are tested for hydrocarbon and CO emissions. A probe is inserted into the vehicle tailpipe and the exhaust is analyzed for emissions. If the vehicle passes the test, an annual sticker is issued that indicates compliance with the law. If the vehicle fails to pass the test, the vehicle owner is required to make necessary repairs and submit the vehicle for a retest. If the vehicle is unable to pass a retest, a 1 year waiver is available under certain conditions.

Enforcement of the program is accomplished through a combination of computer matching and sticker enforcement. The primary enforcement mechanism is the suspension of the drivers license and vehicle registration of all violators. The suspensions are made automatically by a computer system which tracks vehicles required to be tested and actual test data. Motorists are also subject to fines based on operating a vehicle with an expired or missing sticker.

USEPA's detailed evaluation of the State's I/M program is contained in TSDs dated June 6, 1986, February 18, 1987, October 20, 1987, and June 5, 1989. These documents are available at the Region V Office listed above.

In the April 24, 1989, Federal Register (54 FR 16372), USEPA addressed the State's I/M submittal and stated that the program meets USEPA requirements for approval. USEPA, therefore, proposed to approve the State's I/M program as part of its ozone and CO SIPS. However, USEPA noted that, during the first year of the program, (1) not all subject vehicles received a test notification from the State and (2) the 7 month enforcement cycle, as specified by State procedures, was not met.

Since the April 24, 1989, rulemaking notice, the State has made significant improvements in the enforcement program. The enforcement effort is achieving an overall compliance rate of at least 95 percent. Further, since February 1988, enforcement action has been consistently taken within the 7 month cycle committed to in the SIP. Other improvements designed to reduce the number of incorrect notices, warnings, and summonses have also been implemented. USEPA has concluded that the enforcement program adequately meets USEPA requirements for approval.

Funding and New Source Growth Restrictions

USEPA's decision to give final approval to the Illinois I/M program as part of the State's 1982 ozone and CO SIPs eliminates the basis for the August 3, 1983, (48 FR 35315) and May 4, 1984, (49 FR 19039) proposed Federal assistance limitations and the August 3, 1983, proposed construction moratorium for the State's failure to submit and implement an I/M program as part of its 1982 SIP revision. USEPA, therefore, is withdrawing these two notices elsewhere in today's Federal Register.

It should be noted that the August 3, 1983, proposed imposition of a construction moratorium had been preceded by an earlier, more broad moratorium. Section 110(a)(2)(I) growth restrictions have been in effect in all Illinois primary nonattainment areas (as to all pollutants for which those areas are designated primary nonattainment) since May 26, 1981, when the Seventh Circuit Court of Appeals invalidated USEPA's approval of the State's new source review rules on State law procedural grounds. See *CBE* v. *EPA*, 649 F.2d 522 (7th Cir. 1981).

The December 31, 1987, ozone attainment deadline has now passed, and the Chicago and St. Louis areas still have not attained the ozone NAAQS. On May 26, 1988, USEPA notified the State that its ozone SIP was substantially inadequate to attain and maintain the ozone NAAQS. Further, on October 17, 1988, USEPA disapproved the Chicago portion of the Illinois ozone SIP (53 FR 40415). At that time, USEPA retained the growth restrictions as provided for in section 110(a)(2)(I) of the Act on major new stationary sources and major modifications of existing sources of volatile organic compounds in the four counties presently designated nonattainment within the Illinois portion of the Chicago ozone nonattainment area, i.e., Cook, DuPage, Kane, and Lake Counties.

Under the Act, Illinois is under a continuing obligation to create a plan which will attain and maintain the ozone NAAQS. On November 2, 1989, (54 FR 46271), USEPA proposed to limit certain Federal highway funding assistance for Cook, Lake, Kane, and DuPage Counties, because the State of Illinois has failed to adopt and to submit to USEPA an I/M program commensurate with the severity of the ozone problem in the Chicago area. USEPA believes that enhancement of the existing program is necessary to help bring the area into attainment of the ozone NAAQS and that such an I/M program is a critical component of the "reasonable efforts" Illinois must make under section 176(a) of the Act.

Even though USEPA is completing final rulemaking on the I/M portion of the State's 1982 ozone and CO SIPs today, USEPA believes that the Federal funding restrictions proposed in the November 2, 1989, Federal Register are available because the State's ozone SIP was disapproved on October 17, 1988, (53 FR 40415). The State has not made reasonable efforts to submit all measures necessary to bring the Chicago area into attainment of the ozone NAAQS. One measure is enhancements to the existing I/M program.

The State is currently pursuing adoption of an enhanced I/M program. In the interim, however, the current Illinois I/M program satisfies all current policy requirements for the I/M program required under section 172(b)(1)(B), and does contribute to improving air quality in the nonattainment areas. Therefore, although USEPA is completing final rulemaking to approve the I/M portion of the Illinois 1982 ozone/CO SIPs, the November 2, 1989, Federal funding restriction proposal remains outstanding. USEPA will take action on any revisions to the State's I/M program in future notices.

Public Comment Discussion

Public comment was solicited on the proposed SIP revisions and on USEPA's proposed rulemaking action. USEPA received comments from the IEPA and Amoco Oil Company (Amoco). A summary of the comments received and USEPA's response is summarized below.

Comment: The first IEPA comment addresses USEPA reference to the enforcement program as a "vehicle inspection sticker system" in the April 24, 1989, notice. IEPA indicates that the primary enforcement mechanism is the suspension of the drivers license and vehicle registration of all violators. The suspensions are made automatically by a computer system which tracks vehicles required to be tested and actual test data. IEPA notes that this type of system is generally referred to as computer matching and is used in conjunction with the requirement for the display of stickers by affected vehicles.

USEPA Response: USEPA agrees with this distinction and has incorporated new language describing the enforcement system into this final approval notice.

Comment: The second IEPA comment concerns recent data IEPA submitted which demonstrates that the required level of enforcement has been attained and is being maintained.

USEPA Response: USEPA accepts the State's demonstration and has concluded that the State's enforcement mechanism meets USEPA policy requirements for approval as part of the State's 1982 ozone and CO SIPs.

Comment: Amoco recommends that USEPA disapprove the existing I/M program in Illinois because the Chicago metropolitan area is not in attainment of the ozone NAAQS. Because a major portion of volatile organic compound emissions are attributed to mobile sources, Amoco supports a strengthening of the current program rather than its approval. Amoco suggests that the Chicago I/M program should be expanded to include more of the metropolitan area and that the existing enforcement mechanism be changed to require a passed emission inspection in order to get license plates for the vehicle each year. Another change recommended by Amoco is to refine the waiver provision by adoption of a repair cost ceiling of $200.00 rather than a low emission tuneup requirement.

USEPA Responses: The April 24, 1989, Federal Register proposed to approve the Illinois I/M program portion of the State's 1982 ozone and CO SIPs. USEPA policy on 1982 SIP approval is contained in the January 22, 1981, Federal Register (46 FR 7182). USEPA has determined that the Illinois I/M program, as designed, meets all Clean Air Act requirements and current policy requirements. While USEPA acknowledges that there are several areas where program improvements could be made and is pursuing such enhancements (see the discussion of the November 2, 1989, Federal Register proposal addressed elsewhere in this notice), if the program meets current USEPA policy requirements, then the design of the program is approvable as a component of the 1982 ozone/CO SIP.

Conclusion

Based on USEPA's proposed rulemaking action and in consideration of the public comments received, USEPA is taking the following final rulemaking actions.

1. The State's I/M program and Transportation Control Measures are approved as part of both the Illinois 1982 ozone and CO SIPS.

2. The State's 1982 CO Plan and attainment demonstration are approved.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 1990. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental cooperation, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 25, 1990.

William K. Reilly,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.720 is amended by adding new paragraph (c)(79) to read as follows:

§ 52.720 Identification of plan.

(c) * * *

(79) On March 20, 1986, November 17, 1986, and July 1, 1987, Illinois submitted its vehicle inspection and maintenance plan for the Chicago and East St. Louis areas.

(i) *Incorporation by reference.* (A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter II: Environmental Protection Agency, Part 276, Procedures To Be Followed in the Performance of Annual Inspections of Motor Vehicle Exhaust Emissions, Adopted at 10 Illinois Register 13954, effective August 13, 1986.

(ii) *Additional material.* (A) "Technical Procedures Memorandum—Enforcement" between the Illinois Secretary of State and the Illinois Environmental Protection Agency, as submitted by Michael J. Hayes, Manager, Division of Air Pollution Control on July 1, 1987.

* * * * *

3. Section 52.722 is revised to read as follows:

§ 52.722 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approved Illinois' plan for the attainment and maintenance of the National Ambient Air Quality Standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all requirements of part D, title I of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980, for the sources covered by CTGs between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

(b) The Administrator finds that the transportation control plans for the East St. Louis and Chicago areas submitted on December 3, 1982, satisfy the related requirements of part D, title I of the Clean Air Act, as amended in 1977.

(c) The Administrator finds that the carbon monoxide control strategy submitted on May 4, 1983, satisfies all requirements of part D, title I of the Clean Air Act, as amended in 1977, except for section 172(b)(6).

[FR Doc. 90-23393 Filed 10-3-90; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-234]

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document (1) delegates authority to the Administrators of the Department of Transportation's Operating Administrations and to the Commandant of the U.S. Coast Guard to carry out provisions of the Federal Technology Transfer Act of 1986; (2) codifies the delegation of authority of the Secretary under Section 7005 of the Consolidated Omnibus Budget

Reconciliation Act of 1985 to the Administrator of the Research and Special Programs Administration (RSPA); (3) makes the necessary adjustments in the delegations to reflect the transfer of functions previously carried out by the former Science and Technology Advisor, and the Office of Technology and Planning Assistance, to pipeline facilities regulated for safety by the RSPA.

This amendment also deletes references to the Science and Technology Advisor and the Office of Technology and Planning Assistance, and redelegates the necessary authority to carry out their functions to the

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

§ 1.22 [Amended]

(h) *Science and technology.* (1) With respect to scientific and technological matters, serve as principal advisor to the Secretary and representative of the Department to the academic community, the private sector, professional organizations, and other Government agencies.

(2) Serve as principal liaison official

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday

8. Acknowledge that the Commission retains the authority to terminate the motor carrier's self-insurance authorization at any time if it appears to the ICC that the motor carrier's financial arrangements fail to provide satisfactory protection for the public.

The ICC made its interim rule (49 CFR 1043.5) final on February 6, 1992 (53 FR

Reconciliation Act of 1985 to the Administrator of the Research and Special Programs Administration (RSPA); (3) makes the necessary adjustments in the delegations to reflect the transfer of functions previously carried out by the former Science and Technology Advisor, and the Office of Technology and Planning Assistance, to the Administrator of RSPA; and (4) delegates certain emergency preparedness functions with respect to civil transportation services to the Administrator of RSPA.

EFFECTIVE DATE: October 4, 1990 for § 1.22; October 4, 1990, for the delegations under the Federal Technology Transfer Act of 1986 (§ 1.45(a)(14)); December 1, 1980, for the delegation of emergency preparedness functions (§ 1.53(e)); April 7, 1986, for the delegation under section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985; (§ 1.53(a)(8)); and October 1, 1987, for adjustments in delegations with respect to functions formerly carried out by the Science and Technology Advisor and the Office of Technology and Planned Assistance (§§ 1.23, 1.53(h), 1.64)).

FOR FURTHER INFORMATION CONTACT: Barbara Betsock, Deputy Chief Counsel, Research and Special Programs Administration, DCC–1, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone number (202) 366–4400, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone number (202) 366–9307.

SUPPLEMENTARY INFORMATION: Section 2 of the Federal Technology Transfer Act of 1986 (Pub. L. No. 99–502; 15 U.S.C. 3710a) authorizes the head of each Federal agency to permit the agency's laboratories to enter into cooperative research and development agreements with other agencies, state and local governments, and the private sector, and to negotiate agreements to license Government-owned inventions. This amendment delegates the authority of the Secretary of Transportation to enter into such agreements to the Administrators of the Department's Operating Administrations and the Commandant of the U.S. Coast Guard.

This amendment also delegates to the Administrator of RSPA the authority to collect pipeline user fees under Section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99–272; 49 U.S.C. App 1682a). Section 7005 of that Act mandates the collection of user fees with respect to pipeline facilities regulated for safety by the RSPA.

This amendment also deletes references to the Science and Technology Advisor and the Office of Technology and Planning Assistance, and redelegates the necessary authority to carry out their functions to the Administrator of RSPA. Those functions were transferred to the RSPA Office of Research and Technology in 1987.

Further, this amendment also redelegates authority to the Administrator of RSPA certain emergency preparedness functions that have been delegated to the Secretary. These functions involve exercise of the Secretary's authority with respect to the assignment of priorities and the allocation of civil transportation services in the event of domestic or national security emergencies. The functions have long been carried out by the Director of the Office of Emergency Transportation, within RSPA, through Departmental Order, DOT 1900.7C, Department of Transportation Crisis Action Plan, of December 1, 1980.

In addition, this amendment makes a technical correction by incorporating into the Code of Federal Regulations the delegations with respect to emergency preparedness. These delegations are set forth in Departmental Order, DOT 1900.7C, but had not been included in the Code.

Since these amendments relate to Departmental management, procedures, and practice, notice and public comment are unnecessary. The delegations of authority to the Administrators of the Operating Administrations to carry out the provisions of the Federal Technology Transfer Act of 1986 are effective as of the date of publication of this Final Rule; the delegation to the Administrator of RSPA for certain emergency preparedness functions became effective on December 1, 1980 (effective date of Departmental Order DOT 1900.7C); the delegation of authority of the Secretary under section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985 to the RSPA Administrator became effective on April 7, 1986 (date of enactment); the adjustments in delegations with respect to the Science and Technology Advisor and the Office of Technology and Planning Assistance became effective on October 1, 1987 (date functions were transferrred).

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

§ 1.22 [Amended]

2. Section 1.22 is amended by revising paragraph (a) by removing "Science and Technology Advisor," and paragraph (e) by removing the words "and Technology and Planning Assistance," inserting the word "and" before "Intergovernmental," and changing the semicolon after the words "Consumer Affairs" to a period.

§ 1.23 [Amended]

3. Section 1.23 is amended by removing the words "sharing of related technology in developing and promoting DOT programs," and the words "and technical assistance;" in paragraph (e) and by removing and reserving paragraph (i).

4. Section 1.45 is amended by adding a new paragraph (a)(14) to read as follows:

§ 1.45 Delegations to all Administrators.

* * * * *

(a) * * *

(14) Carry out the functions vested in the Secretary by section 2 of the Federal Technology Transfer Act of 1986, (Pub. L. No. 99–502; 15 U.S.C. 3710a), which authorizes agencies to permit their laboratories to enter into cooperative research and development agreements.

5. Section 1.53 is amended by adding new paragraphs (a)(8), (e) and (h) to read as follows:

§ 1.53 Delegations to the Administrator of the research and special programs.

* * * * *

(a) * * *

(8) Section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as it relates to pipeline safety user fees.

* * * * *

(3) *Emergency preparedness.* Carry out the functions related to emergency preparedness vested in the Secretary by 49 U.S.C. 101 and 301 or delegated to the Secretary by or through the Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Executive Order 10480, as amended; Executive Order 12148; Executive Order 12656; Reorganization Plan No. 3 of 1978; and such other statutes, executive orders, and other directives as may pertain to emergency preparedness.

* * * * *

(h) *Science and technology.* (1) With respect to scientific and technological matters, serve as principal advisor to the Secretary and representative of the Department to the academic community, the private sector, professional organizations, and other Government agencies.

(2) Serve as principal liaison official for the Department of Transportation with the Office of Science and Technology Policy in the Executive Order of the President.

(3) Serve as Chairperson of the Department of Transportation's Research and Development Coordinating Council.

(4) Serve as Chairperson of the Department of Transportation Navigation Council.

(5) Serve as primary official responsible for coordination and oversight of the Department's implementation of section 2 of the Federal Technology Transfer Act of 1986, (Pub. L. No. 99–502; 15 U.S.C. 3710a), relating to the transfer of Federal technology to the marketplace.

§ 1.64 [Removed]

6. Section 1.64 is removed and reserved.

Issued on: September 24, 1990.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 90–23435 Filed 10–3–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

49 CFR Part 387

[FHWA Docket No. MC–121]

RIN 2125–AB65

Minimum Levels of Financial Responsibility for Motor Carriers; Self-Insurance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule makes permanent an interim rule published in the **Federal Register** on June 18, 1986 at 51 FR 22080. The rule permits certain for-hire motor carriers of property to satisfy the FHWA's financial responsibility requirements by providing evidence that they have received approval from the Interstate Commerce Commission (ICC) to self-insure and have maintained a "satisfactory" safety rating assigned by the FHWA.

EFFECTIVE DATE: This rule is effective November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except on legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA published an interim-final rule (Docket No. MC–121; Amdt. No. 83–18) in the **Federal Register** on June 18, 1986 (51 FR 22080), permitting certain for-hire motor carriers of property to satisfy their financial responsibility requirements by providing evidence that they have received approval from the ICC to self-insure and have maintained a "satisfactory" safety rating assigned by the FHWA (49 CFR § 387.7(d)(3)). The ICC allows carriers to self-insure for bodily injury and property damage, subject to certain conditions. Those conditions require motor carriers to do the following (see 49 CFR 1043.5):

1. Submit carrier quarterly and annual financial statements to the Commission. The statements must include a certification by an appropriate carrier official verifying the accuracy of the information provided. Disclosure is also required of affiliated companies which provide support services for the operations of the motor carrier;

2. File quarterly claim reports detailing the number, dollar amount, nature of its claims experience, and quarterly reports detailing pending court cases relating to or arising from claims experience;

3. Immediately notify the ICC of any pending or contingent liability claim(s) which individually exceed $50,000 or collectively exceed $250,000;

4. Maintain an irrevocable $1 million line of credit, notify the ICC immediately upon any draw-down of the credit line, have unrestricted access to the entire credit line, and draw-down from the credit line only to satisfy bodily injury and property damage claims;

5. In the event of a draw-down, provide the ICC with a plan detailing the motor carrier's proposed response to future liability claims;

6. Notify the ICC prior to the effective date of any change or cancellation of the credit line, or of renewal of the credit line;

7. Maintain a net worth of at least $2 million, and notify the ICC at any time that its net worth falls below that figure, at which time the motor carrier will have 30 days to correct the situation or face termination of the authority to self-insure; and

8. Acknowledge that the Commission retains the authority to terminate the motor carrier's self-insurance authorization at any time if it appears to the ICC that the motor carrier's financial arrangements fail to provide satisfactory protection for the public.

The ICC made its interim rule (49 CFR 1043.5) final on February 6, 1987 (52 FR 3815).

The ICC has allowed motor carriers subject to its jurisdiction to become self-insurers for the past four years. As of May 1990, the Commission had received 88 applications for self-insurance. Fifty-six applications have been granted; nineteen applications have been denied; five have been dismissed or rejected; seven have been withdrawn by the applicant; and one is being processed. Even though 56 applications have been granted, the ICC's records indicate that only 20 motor carriers are actively using their self-insurance authority.

The FHWA promulgated its self-insurance regulation as an interim final rule without opportunity for prior notice and comment. The agency believed "that the seriousness and extent of the current insurance cost and availability problems facing motor carriers of property is good cause to take immediate action. The difficulties engendered by the current crisis are affecting all motor carriers and require immediate action if the agency is going to provide some measure of relief." (51 FR 22082) However, the rule did request subsequent comments from the public. Only six comments were received. All but one of them supported the FHWA's action. The Department of the Army opposed allowing motor carriers of hazardous substances to be self-insurers. The Army questioned the effectiveness of such a program screening out unqualified carriers. It was concerned that recovery of damages from self-insured motor carriers would be difficult, especially when catastrophic accidents occurred. It also believed there was reason to doubt the government could adequately regulate this complex area.

Although self-insurance has proved to be less important than anticipated in resolving the insurance crisis of the mid-1980's, it has functioned effectively for a small number of ICC-authorized motor carriers. Despite the Army's concern, the ICC has received no complaints alleging that a self-insured motor carrier has failed to pay an adjudicated claim arising from a motor vehicle accident. The FHWA is therefore making the June 18, 1986 interim rule final.

The FHWA has determined that this action does not constitute a major rule

under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation.

Since the interim final rule was issued, a minimal number of motor carriers have elected to self-insure. The economic impact of the provisions of the

ACTION: Final rule.

SUMMARY: In September 1989 NHTSA published its first schedule of fees authorized by the Imported Vehicle Safety Compliance Act of 1988, which amended the National Traffic and Motor Vehicle Safety Act of 1966. The 1988 Act

Imported Vehicle Safety Compliance Act of 1988, Public Law 100–562 (54 FR 40100; see this notice for a full description of the agency's methodology and rationale in its determination of costs). Section 108(c)(3)(B) (15 U.S.C. 108(c)(3)(B) of the act provides that the amount or rate of fees shall be reviewed,

include costs attributable to revocation or suspension of a registration.

The total portion attributable to maintenance of the registration program, as estimated by NHTSA, is approximately $169. When added to the $86 representing the registration application (or annual renewal) component, the cost per applicant or

conformity covering such vehicle after NHTSA's determination on its own initiative.

In actuality, the determination process during FY 1990 worked in a different manner than NHTSA contemplated. Applications for registration as importers were not submitted as quickly as expected, with the result that no

cannot estimate in advance with any degree of accuracy how many determinations it will have to make in the coming fiscal year, nor the basis on which the determinations would be made.

The agency reviewed the fee provisions of the 1988 Act, and found no

under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation.

Since the interim final rule was issued, a minimal number of motor carriers have elected to self-insure. The economic impact of the provisions of the interim final rule have been minimal. Therefore, a full regulatory evaluation has not been prepared. For the foregoing reasons, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Accordingly, the interim final rule amending 49 CFR 387.7 which was published in the **Federal Register** at 51 FR 22060 on June 18, 1986, is adopted as a final rule without change.

List of Subjects in 49 CFR Part 387

Highways and roads, Financial responsibility, Insurance, Motor carriers.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety)

Authority: 49 U.S.C. 10927 note; 49 CFR 1.46.

Issued on September 27, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90-23433 Filed 10-3-90; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 594

RIN 2127-AC98

[Docket No. 89-8; Notice 4]

Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In September 1989 NHTSA published its first schedule of fees authorized by the Imported Vehicle Safety Compliance Act of 1988, which amended the National Traffic and Motor Vehicle Safety Act of 1966. The 1988 Act provides that the fees shall be reviewed, and, if appropriate, adjusted at least every 2 years. This final rule adopts certain adjustments which will apply as of October 1, 1990, the beginning of fiscal year 1991.

The agency has determined that the fee for the registration will remain unchanged at $255 for applications for registered importer status, and that the annual fee for renewal of such status will also be $255. The fee required to reimburse the U.S. Customs Service for bond processing costs will increase by twenty cents to $4.55 per bond.

Presently, the fee for a determination of vehicle eligibility for importation is payable by the registered importer who petitions the agency, or by the first person importing a vehicle under a determination made by the agency on its own initiative. These fees are $1,560 if the vehicle is substantially similar to a model certified by its original manufacturer as complying, and $2,150 if it is not. Under the new fee structure adopted, fees will be payable in part by any petitioner for a determination, and in part by the importer of each vehicle covered by a determination, with the agency reconciling costs and fees received in establishing appropriate fees for the next fiscal year. If the determination is made on NHTSA's initiative, the fee will be payable by the importer alone. The cost basis for the fees will remain the same but they will, in theory, be payable by all who benefit from such determinations. The agency has adopted a petition fee of $100 for substantially similar determinations, and $500 for others. Each vehicle imported under either determination will be subject to a fee of $83. Each vehicle imported under a determination made by NHTSA on its own initiative will be subject to a fee of $156.

DATES: The effective date of the final rule is September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, (202-366-5263).

SUPPLEMENTARY INFORMATION:

Introduction

On September 29, 1989, NHTSA adopted 49 CFR part 594, establishing the initial fees authorized by section 108 of the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, Public Law 100-562 (54 FR 40100; see this notice for a full description of the agency's methodology and rationale in its determination of costs). Section 108(c)(3)(B) (15 U.S.C. 108(c)(3)(B) of the act provides that the amount or rate of fees shall be reviewed, and if appropriate, adjusted at least every 2 years. Further, the fees applicable in any fiscal year shall be established before the beginning of such year. The statute authorizes an annual fee to cover the costs of administration of the importer registration program, an annual fee or fees to cover the costs of making import eligibility determinations, and an annual fee or fees to cover the costs of processing the bond furnished to the Customs Service. The purpose of this notice is to adopt appropriate fees for FY 1991, which begins October 1, 1990. A notice of proposed rulemaking on this subject was published on August 31, 1990 (55 FR 35694).

One comment was received on the proposal, from Liphardt & Associates, Inc., a registered importer. The comment was in general opposition to the Imported Vehicle Safety Compliance Act of 1988, and did not address the specific fees proposed in the August notice. Therefore, the agency is adopting all fees as proposed.

Requirements of the Fee Regulation

Section 594.6 Annual Fee for Administration of the Importer Registration Program

Section 108(c)(3)(A)(iii) of the Vehicle Safety Act provides that registered importers must pay "such annual fee as the Secretary establishes to cover the cost of administering the registration program * * *." The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registrations. The reader is referred to the notices of August 31, 1990, and September 29, 1989, for a fuller discussion of the fee and its components.

The initial component of the Registration Program Fee is the portion of the fee attributable to processing and acting upon registration applications. The agency estimates that this portion of the fee will be $86, and identical for both new applications and renewals.

Other costs attributable to maintenance of the registration program arise from reviewing a registrant's annual statement, and verifying the continuing validity of information already submitted. These costs also include costs attributable to revocation or suspension of a registration.

The total portion attributable to maintenance of the registration program, as estimated by NHTSA, is approximately $169. When added to the $86 representing the registration application (or annual renewal) component, the cost per applicant or renewal equals $255. Therefore, NHTSA has determined that the annual registration fee, for the period October 1, 1990 through September 30, 1991, will be $255. In the event that an application is denied or withdrawn, NHTSA will refund all but $86 of this amount, or $169.

Sections 594.7 and 594.8 Fees to Cover Agency Costs in Making Importation Eligibility Determinations

Section 108(c)(3)(A)(iii)(II) also requires Registered Importers to pay "such other annual fee or fees as the Secretary reasonably establishes to cover the cost of * * * making the determinations under this section." Pursuant to part 593, these determinations are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, and certified as meeting the Federal standards, and whether it is capable of being readily modified to meet those standards, or, alternatively, where there is no substantially similar U.S. motor vehicle, whether the safety features of the vehicle comply with or are capable of being modified to comply with the U.S. standards. These determinations are made pursuant to petitions submitted by Registered Importers or manufacturers, or pursuant to determinations made upon the Administrator's initiative. The reader is also referred to the August 31, 1990, and September 29, 1989, notices for a fuller discussion of the costs factors of such determinations.

The agency estimated the total direct and indirect costs for a determination involving a substantially similar vehicle at $1,558.68, and for a non-similar vehicle at $2,151.61. In this light, a fee of $1,560 for substantially similar vehicle determinations, and one of $2,150 for those that are not substantially similar, appeared to fulfill the statutory directive, and was adopted for FY 1990.

Costs appeared similar for those determinations made upon the agency's own initiative, and the same fee was adopted for recovery of costs. The principal issue here was how such costs were to be recovered in the absence of a petitioner. The method adopted was that it be paid by the first Registered Importer who furnished a certificate of conformity covering such vehicle after NHTSA's determiation on its own initiative.

In actuality, the determination process during FY 1990 worked in a different manner than NHTSA contemplated. Applications for registration as importers were not submitted as quickly as expected, with the result that no importer had been registered by the effective date of the 1988 amendments, January 31, 1990, and no peititions filed. Once the initial Registered Importers had been appointed, NHTSA became aware of their reluctance to file determination petitions because of the petition fee. Sensing that an unintended burden on international commerce might result as a consequence, the agency proceeded to propose determinations on its own initiative with respect to vehicles that it believed were properly categorized as "substantially similar." However, the requirement that the entire fee be payable by the first person importing a vehicle under such a determination also was viewed by registered importers as inequitable, and a requirement that would cause hardship. In the comments on the agency's tentative determination, recommendations were made that the fee be split equally among all registered importers, or among the first five or ten vehicles imported under that determination. NHTSA met with registered importers and other interested persons on June 28, 1990, and the matter was discussed in further detail. The registered importers asked NHTSA if it could not impose a flat fee upon each vehicle imported which, like the bond processing fee, would be payable at the time the registered importer submitted certification for the vehicle.

As NHTSA commented in the proposal of August 31, 1990, it is interested in accommodating this view. The imposition of a flat fee per vehicle has the regulatory virtue of simplicity; it is easily understood by the regulated parties and it is easily administered by the agency. The difficult part comes in reconciling the sums realized with actual agency expenses. If the agency estimates that registered importers will conform 200 vehicles in 1991 that are covered by eligibility determinations made in FY91, and that a fee of $100 is appropriate for each, the agency may receive $20,000 in fees. That sum equals the cost of 13 determinations of substantial similarity at the FY90 fee level. Alternatively, this approach would represent 9 determinations of eligibility for non-similar vehicles. The problem is that, although the agency can estimate its costs per determination, it cannot estimate in advance with any degree of accuracy how many determinations it will have to make in the coming fiscal year, nor the basis on which the determinations would be made.

The agency reviewed the fee provisions of the 1988 Act, and found no requirement that it recover its costs in the fiscal year in which they are incurred, or that it be payable by any specific person in any specific manner. NHTSA believed that this flexibility and the provision of the Act which allows it to adjust fees on a yearly basis afforded it a mechanism by which fees can be adjusted to compensate for NHTSA's actual expenses. For example, if the fees received in one fiscal year exceed NHTSA's costs, the overage can in effect be applied to the following year and be considered in determining the fee to be paid for the next fiscal year. Similarly, if NHTSA underestimated its costs, the fee may be adjusted upward in the ensuing fiscal year. NHTSA's limited experience to date indicates that petitions, or determinations on the Administrator's initiative, may vary in issues and complexity, and are likely to consume more time than the agency initially estimated. In addition, the fairest way to recover costs of determinations made on the agency's initiative appears to be to place the burden directly upon the importers of all such vehicles.

Therefore, with respect to FY 1991, NHTSA proposed a restructuring of its fee schedule. The cost basis previously adopted remained at $1,560 for substantially similar determinations, and at $2,150 for others. However, under the restructuring, the fee for a vehicle imported under a determination made on the agency's initiative would not be payable by a Registered Importer, but be payble by the importer of any vehicle covered by any determination made on the agency's initiative. The fee for a vehicle imported under a determination pursuant to a petition would be payable in part by the petitioner (who would still bear some of the cost burden, and not be excused totally from this requirement), and in part by importers. However, the fee to be charged for a vehicle would not be a pro rata share of the costs of the agency in making the eligibility determination for that type of vehicle, but a pro rata share of the costs in making all the eligibility determinations in the fiscal year, adjusted for previous shortfalls and overages.

NHTSA estimated that 610 vehicles may be imported in FY 1991 by registered importers, or persons having contracts with them. It further estimated

that 400 of these vehicles may be imported pursuant to determinations of substantial similarity that would be made before October 1, 1990, and which would be subject to the fee structure in effect for FY 1990. The remaining 210 vehicles would be covered by determinations made in FY 1991. Of the

cover the cost of processing the bond furnished to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if the vehicle is not brought into compliance within such time, that it is

Transportation regulatory policies and procedures. The action does not involve any substantial public interest or controversy. There is no substantial effect upon state and local governments. There is no substantial impact upon a major transportation safety program. Both the number of registered importers

12612 "Federalism" and determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles

§ 594.6 [Amended]

4. In § 594.6, paragraphs (a), (b), (d), (h), and (i), the dates "October 1, 1989" and "September 30, 1990" are revised respectively to read "October 1, 1990" and "September 30, 1991."

certificate of conformity is furnished, is $4.55.

Issued on September 28, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-23420 Filed 9-28-90; 3:53 pm]

BILLING CODE 4910-59-M

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that 400 of these vehicles may be imported pursuant to determinations of substantial similarity that would be made before October 1, 1990, and which would be subject to the fee structure in effect for FY 1990. The remaining 210 vehicles would be covered by determinations made in FY 1991. Of the 210 vehicles, the agency estimated that 30 would be covered by determinations made on its own initiative, and 180 pursuant to determinations made pursuant to petitions.

Of the determinations made pursuant to petitions, NHTSA estimated that 10 petitions would be filed, 8 of which would cover substantially similar vehicles and 2 of them that would not. The estimated total cost of these determinations is $16,780 representing the sum of $12,480 (8 × $1,560) for determinations of substantial similarity, and $4,300 (2 × $2,150) for the remainder. The agency proposed a filing fee of $100 for substantial similarity petitions, and of $500 for those that are not. On this basis, the petitions would bear $1,800 of the total costs (8 × $100 + 2 × $500). Subtracting $1,800 from the total costs leaves $14,980 to be borne by the importers of the 180 vehicles. Thus, NHTSA proposed that importers of vehicles covered by petition determinations pay a fee of $83.

The agency estimated that it may make 3 determinations of substantial similarity on its own initiative in the next fiscal year, and no determinations on the alternative basis. Thus the total costs to be recovered would be $4,680. As there would be no petitioner in such instances from whom a fee may be obtained, the agency proposed that importers bear the full burden of these costs. Assuming that 30 vehicles are imported that are covered by initiative determinations, the agency proposed that each vehicle be subject to a fee of $156. The $83 or $156 would be forwarded to NHSTA by the Registered Importer along with the bond processing fee and the certificate of compliance.

These fees have been adopted as proposed.

NHTSA will use a year of July 1–June 30 as the basis of its calculations for the next fiscal year. This is because of the necessity and time required to prepare and publish proposed fees, to allow a sufficient amount of time to comment upon them, and to prepare and issue a final rule not later than September 30.

Section 594.9 Fee to Recover the Costs of Processing the Bond

Section 108 (c)(3)(A)(iii)(II) also requires a registered importar to pay "such annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if the vehicle is not brought into compliance within such time, that it is exported without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost to the United States Custom Service of processing the bond. For a fuller discussion of these costs, the reader is again referred to the notices of August 31, 1990, and September 29, 1989.

As of August 31, 1990, there had been no entries pursuant to this provision. Accordingly, NHTSA based its calculations on those previously submitted by Customs, adjusted to reflect salary increases. This would result in a slight increase in the present bond processing fee of $4.35. Therefore, NHTSA proposed and is adopting $4.55 as the bond processing fee for FY 1991. The rule also clarifies that the fee applicable to a particular vehicle is based upon the date of importation, not the date the certificate of conformity is furnished.

Effective Date

Pursuant to 5 U.S.C. 553(d)(3), a rule may be published less than 30 days before its effective date, for good cause found. Section 108(c)(3)(B) requires that the fee applicable in any fiscal year shall be established by NHTSA before the beginning of each such year. Therefore, NHTSA finds good cause for an effective date of September 30, 1990, which is earlier than 30 days after publication of the rule, so that the fees established by the rule will be applicable in Fiscal Year 1991, which begins October 1, 1990.

Impacts

After considering the impacts of this rulemaking action, NHTSA has determined that the action is not major within the meaning of Executive Order 12291 "Federal Regulation". It further implements Public Law 100–562 under which fees may be established to cover the costs of administering the program for registration of importers of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards, of determinations that nonconforming vehicles are capable of conformity to the standards, and of reimbursing or advancing the U.S. Customs Service its costs in processing safety standards conformance bonds. It is not significant under Department of Transportation regulatory policies and procedures. The action does not involve any substantial public interest or controversy. There is no substantial effect upon state and local governments. There is no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small, and the number of vehicles to be imported by or through such importers from October 1, 1990 through September 30, 1991, is estimated to be 610. Nevertheless, a regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket, as part of the Regulatory Flexibility Analysis.

NHTSA has analyzed this final rule for purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

The agency has also considered the effects of this final rule in relation to the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies could not pay the fees adopted by this regulation. However, some small businesses currently conforming vehicles may not choose to register as importers because of the fee and other requirements. Accordingly, these businesses will no longer be able to perform conformance work on nonconforming vehicles. The cost to owners or purchasers of modifying nonconforming vehicles to conform with the safety standards may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of administering the registration program and making eligibility determinations, and to compensate Customs for its bond processing costs. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

The agency has analyzed the final rule in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—[AMENDED]

In consideration of the foregoing, 49 CFR part 594 is amended as follows:

1. The authority citation for part 594 continues to read as follows:

Authority: Public Law 100–562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

2. Section 594.3 is revised to read:

§ 594.3 Applicability.

This part applies to any person who applies to NHTSA to be granted the status of Registered Importer under part 592 of this chapter, to any person who has been granted such status, to any manufacturer not a Registered Importer who petitions the Administrator for a determination pursuant to part 593 of this chapter, and to any person who imports a motor vehicle into the United States pursuant to such determination.

3. Sections 594.5 (c), (d), (e), and (g) are revised to read:

§ 594.5 Establishment and payment of fees.

* * * * *

(c) An applicant for status as Registered Importer shall submit an initial annual fee with the application. A Registered Importer shall pay an annual fee not later than October 31 of each year. The fee is that specified in § 594.6(i).

(d) A person who petitions the Administrator for a determination that a vehicle is eligible for importation shall file with the petition the fee specified in § 594.7(e).

(e) A person who imports a vehicle covered by a determination of the Administrator shall pay the fee specified in either § 594.8 (b) or (c), as appropriate. Such fee shall be transmitted to the Administrator by the Registered Importer responsible for such vehicle at the time it furnishes a certificate of conformity pursuant to § 591.7(e) of this chapter.

* * * * *

(g) No application or petition will be accepted for filing or processed before payment of the full amount specified. Except as provided in § 594.6(d), a fee shall be paid irrespective of NHTSA's disposition of the application, or of a withdrawal of an application.

§ 594.6 [Amended]

* * * * *

4. In § 594.6, paragraphs (a), (b), (d), (h), and (i), the dates "October 1, 1989" and "September 30, 1990" are revised respectively to read "October 1, 1990" and "September 30, 1991."

5. Section 594.7 is amended by revising paragraph (e) and adding paragraph (f) to read:

§ 594.7 Fee for filing petition for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed from October 1, 1990 through September 30, 1991, the fee payable for a petition seeking a determination under paragraph (a)(1) above is $100. The fee payable for a petition seeking a determination under paragraph (a)(2) above is $500. If the petitioner requests an inspection of a vehicle, the sum of $550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

(f) In adopting a fee for the next fiscal year, the Administrator employs data based upon the cost of determinations and the amount of fees received for the 12-month period ending June 30 of the fiscal year preceding that fiscal year.

6. Section 594.8 is revised to read:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

(a) A fee as specified in paragraphs (b) and (c) of this section shall be paid by each importer of a vehicle covered by a determination made under part 593 of this chapter to cover the direct and indirect costs incurred by NHTSA in making such determinations.

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $83. The direct and indirect costs that determine the fee are those set forth in §§ 594.7(b), (c), and (d).

(c) If a determination has been made pursuant to the Administrator's initiative the fee is $156. The direct and indirect costs that determine the fee are those set forth in §§ 594.7(b), (c), and (d), and references to "petition" shall be understood as relating to NHTSA's documents that serve as a basis for initiating determinations on its own initiative.

7. Section 594.9 is revised to read:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported from October 1, 1990, through September 30, 1991, for which certificate of conformity is furnished, is $4.55.

Issued on September 28, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90–23420 Filed 9–28–90; 3:53 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511–0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Horse Mountain, California, to the U.S.-Mexico border at midnight, September 21, 1990, to ensure that the subarea coho salmon quota is not exceeded; the regularly scheduled commercial salmon fishery in this subarea reopens for all salmon species except coho salmon at 0001 hours local time, September 22, 1990. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial fishery quota of 5,000 coho salmon, which was reserved preseason for this subarea, will be reached, and the fishery should be closed at midnight, September 21, 1990. This action is necessary to conform to the preseason announcement of 1990 management measures. This action is intended to ensure conservation of coho salmon.

DATES: *Effective:* Closure of the EEZ from Horse Mountain, California, to the U.S.-Mexico border to commercial fishing for all salmon species is effective at 2400 hours local time, September 21, 1990. The regularly scheduled commercial fishery between Horse Mountain, California, and the U.S.-Mexico border reopens for all salmon species except coho salmon effective at 0001 hours local time, September 22, 1990. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989).

Comments: Public comments are invited until October 15, 1990.

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ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206-526-6140; or Rodney R. McInnis (Southwest Region, NMFS), 213-514-6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that a separate catch quota of 5,000 coho salmon has been reserved preseason for the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border. Commercial fishing in this subarea under the 5,000 coho salmon reserve began on August 1, 1990 (55 FR 32916, August 13, 1990).

According to the best available information, the commercial fishery catch in the subarea is projected to reach the 5,000 coho salmon reserve by midnight, September 21. Therefore, commercial salmon fishing from Horse Mountain, California, to the U.S.-Mexico border, is closed effective 2400 hours local time, September 21. In accordance with the preseason notice of 1990 management measures, the regularly scheduled commercial fishery between Horse Mountain, California, and the U.S.-Mexico border, will reopen for all salmon species except coho salmon effective 0001 hours local time, September 22, 1990.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this action was given prior to the times listed above by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of closure of the commercial fishery in the EEZ from Horse Mountain, California, to the U.S.-Mexico border which is effective 2400 hours local time, September, 21, 1990, and reopening of the commercial fishery in the same portion of the EEZ for all salmon species except coho salmon which is effective 0001 hours local time, September 22, 1990.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the California Department of Fish and Game regarding this action. The State of California will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 15, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 28, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23461 Filed 9-28-90; 5:02 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening.

SUMMARY: NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, on September 22, 1990. This fishery was closed at midnight, September 19, 1990, based on projections that the 23,600 coho salmon quota had been reached. Evaluation of landings data following closure of the fishery indicates that sufficient coho salmon remain to allow additional fishing. This action is intended to maximize the harvest of coho salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

DATES: *Effective:* Reopening of the EEZ to commercial salmon fishing from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective 0001 hours local time September 22, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until October 15, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

Management measures for 1990 were effective on May 1, 1990 (55 FR 18894, May 7, 1990). The 1990 commercial fishery for all salmon in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, has been open August 30 through September 14, and September 18 through September 19. Each closure was based on projections that the revised subarea quota of 23,600 coho salmon would be reached by that date. However, subsequent evaluation of landing data indicates that the closures were based on overestimates of actual catch, and the quota had not been reached.

According to the best available information, commercial catches through September 19, 1990, totaled 20,800 coho salmon, leaving 2,800 coho salmon available for harvest in the subarea coho quota. This amount of available coho salmon has been determined to be sufficient for additional fishing beginning on September 22, 1990. This action is being taken in as timely a manner as possible and is consistent with the management objectives for coho salmon in this subarea. As in the original season, Conservation Zone 1, the Columbia River mouth, is closed (55 FR 18894, May 7, 1990).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, September 22, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial fishery in the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, which is effective 0001 hours local time September 22, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 15, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 28, 1990.

David S. Crestin,

Acting Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23462 Filed 9-28-90; 5:02 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 193
Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices

USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington,

The material issues on the record of hearing relate to:

1. Pooling standards for a city plant,

be lowered from 50 percent to 40 percent in recognition of the impact of Christmas on the need for Class I milk at city plants.

The spokesman for DI testified that while the current order does not contain any specific provisions that limit overall diversions of producer milk to nonpool plants, the "touch base" provision does

through November and January and February exceeds 70 percent. He said that the proposed city plant's utilization percentages are about 20 percentage points below the market's Class I utilization for such period. He indicated that 40 percent requirement for the months of March through July and December would be substantially below

distributing plant for the months of short production and the months of flush production that exists under the Tennessee Valley order.

A representative of the National Farmers Organization, Inc. (NFO) participated in the public hearing and filed a brief in support of Dean's proposed city plant Class I disposition

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Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1046

[DA-90-002, Docket No. AO-123-A60]

Milk in the Louisville-Lexington-Evansville Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the pooling requirements for a city plant and a country plant under the Louisville-Lexington-Evansville milk order. The proposed amendments were proposed or supported by several dairy farmer cooperatives that pool a substantial amount of milk on the market. One recommended change would count milk diverted from a city plant to other plants as a receipt of the city plant in determining the city plant's Class I utilization for pool plant status. Another recommended amendment would apply a "net shipment" concept to movements of milk between a country plant and a city plant in determining whether the country plant qualifies to be a pool plant. The recommended changes are based on the record of a public hearing held in Louisville, Kentucky, on March 13–14, 1990. These changes are needed in order to make more milk available to meet the fluid needs of the market.

DATES: Comments are due on or before October 25, 1990.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to (5 U.S.C. 605(b)), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued February 13, 1990; published February 20, 1990 (55 FR 5852).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 21st day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Louisville, Kentucky, on March 13–14, 1990, pursuant to a notice of hearing issued February 13, 1990 (55 FR 5852).

The material issues on the record of hearing relate to:

1. Pooling standards for a city plant, and
2. Pooling standards for a country plant.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling standards for a city plant. The order should be amended to provide that for a city plant to qualify as a pool plant its fluid milk disposition, except filled milk, must be not less than 50 percent in each of the months of August through November and January and February and 40 percent in each of the other months of the plant's receipts of fluid milk products. The percentages should be based on the total quantity of milk received during the month at the plant, except filled milk, and should include milk diverted from the plant.

The current pool plant provisions require a city plant to dispose of as Class I milk not less than 30 percent during the months of May through October and not less than 50 percent in all other months of the plant's receipts of fluid milk products during the 2 months immediately preceding or the current month if the percentages cannot be ascertained for the 2 preceding months.

Dairymen, Inc. (DI), proposed the changes to the city plant pooling requirements that are adopted herein. A witness for DI, who was also authorized to represent Southern Milk Sales, Inc. (SMS), testified that DI supplies about 40 percent of the milk and SMS supplies about 5 to 6 percent of the milk pooled on the Louisville-Lexington-Evansville order. He said that DI supplies milk to all the city plants in the market and SMS delivery milk only to the Kroger plant at Winchester, Kentucky.

The witness for DI said that the basic proposed changes to the city plant provisions are the inclusion of diversions from the city plant in computing the city plant's Class I overall utilization percentage and the increased Class I percentage requirements during the months of May through October. In addition, DI's proposal would switch the qualifying period from the previous two months to the current month. Also, the Class I utilization for December would

be lowered from 50 percent to 40 percent in recognition of the impact of Christmas on the need for Class I milk at city plants.

The spokesman for DI testified that while the current order does not contain any specific provisions that limit overall diversions of producer milk to nonpool plants, the "touch base" provision does place some limit on diversions. He said that under the current provisions over 70 percent of the milk pooled by a city plant can be diverted to nonpool plants.

The witness for DI said that the Secretary of Agriculture in developing the Federal milk marketing order system decided to regulate only milk suitable for human consumption in fluid form. He testified that since Federal milk orders are designed primarily to regulate milk for fluid use, it is necessary to establish standards for determining which milk is eligible to participate in the higher returns for milk sold for Class I use.

The spokesman for DI said that the association of Grade A milk supplies with the fluid milk market does require resolution of conflicting interests. Pooling standards for milk should not be so high that they force uneconomic shipments to plants for the sole purpose of qualifying such milk in the marketwide pool. At the same time, he said appropriate minimum standards are needed to avoid the possibility that milk will share in the Class I use even though it will not be available or delivered to the fluid market when needed.

The DI witness said that, historically, this marketing area has functioned as a reserve supply area for Federal and State order areas to the east and south. He said that marketing conditions in this area have changed and there has been an increase in demand for milk as a result of increased consumption in the area and in nearby areas. Also, there has been an increase in demand for milk, he said, because of the new Kroger plant at Winchester, Kentucky, and to some extent the Kroger plant at Murfreesboro, Tennessee.

The spokesman for DI stated that data for prior years is misleading because of a number of changes in the market that have taken place. He indicated that the Haywood Dairy, a city plant in Louisville, Kentucky, closed in July 1988, the Borden city plant at Lexington, Kentucky, closed in January 1990, the Kroger plant at Winchester, Kentucky, became a city plant in August 1988 and the Southern Belle Dairy plant at Somerset, Kentucky, shifted regulation to the Tennessee Valley order in July 1989.

The spokesman for DI said that the record shows that the Class I utilization for the market for the months of August through November and January and February exceeds 70 percent. He said that the proposed city plant's utilization percentages are about 20 percentage points below the market's Class I utilization for such period. He indicated that 40 percent requirement for the months of March through July and December would be substantially below the market's average Class I utilization during such months. City plants, he said, should not have any difficulty meeting the proposed Class I utilization requirements.

Milk Marketing Inc., (MMI) proposed that the city plant pooling requirements be changed to include milk diverted from the plant as receipts of the plant. MMI's proposal in the notice of hearing would have required Class I disposition of not less than 50 percent in each of the months of November through April and 30 percent in each of the other months. At the hearing MMI withdrew their proposal and supported DI's proposal.

The witness for MMI testified that the qualifying percentages for a city plant should be based upon market experience and should be designed to prevent abuses of the marketwide pooling system. He indicated that DI's proposal more nearly equates provisions of the order with the actual marketing practices of the market over the last several years.

The Kroger Company (Kroger) which operates a city plant at Winchester, Kentucky testified in support of DI's city plant proposal. Kroger's witness stated that increased performance standards are needed especially during the months of August and September when the market experiences a substantial increase in demand for milk for fluid use. He also indicated that an increase in performance requirements from 30 percent to 40 percent for the months of May through July is warranted due to the increased need for Class I milk in the last 4 years.

Dean Foods Company (Dean) also proposed that the city plant pooling requirements be changed. Dean's proposal would require Class I disposition of not less than 50 percent in each of the months of August through November and January and February and 30 percent in each of the other months of a city plant's receipts of fluid milk products.

As the witness for Dean indicated, the only difference between DI's proposal for city plants and Dean's proposal of that for the months of March through July and December, Dean's requirement is 10 percentage points less. He testified that Dean's proposal reflected the 20 points in variation in the Class I disposition standards for a pool distributing plant for the months of short production and the months of flush production that exists under the Tennessee Valley order.

A representative of the National Farmers Organization, Inc. (NFO) participated in the public hearing and filed a brief in support of Dean's proposed city plant Class I disposition percentages. NFO also supported that part of DI's proposal that included milk diverted from a city plant as well as physical receipts at the plant in the volume of milk upon which the city plant's Class I percentage is calculated.

The Class I utilization percentages of producer receipts for 1987, 1988, and 1989 averaged 66, 67 and 66, respectively. For the 3-year period the monthly Class I utilization percentages for the months of August–November and January and February ranged from a low of 63 to a high of 78. During the same 3-year period the monthly Class I utilization percentages for the months of March–July and December ranged from a low of 58 to a high of 71.

There was no objection to the 50 percent standard for the months of August through November and January and February by any of the participants at the hearing. Such standard is from 13 to 26 percentage points less than the average Class I utilization for such months during 1987 through 1989. The 50 percent requirement is warranted in view of the market's Class I utilization during the months of August through November and January and February and is hereby adopted.

The 40 percent standard for the months of March through July and the month of December is a reasonable requirement in view of the market's Class I utilization in such months. The requirement is from 18 to 31 percentage points less than the average Class I utilization for such months during 1987 through 1989. In that regard, the 40 percent requirement for the months of March through July and December is less stringent that the 50 percent requirement during other months of the year. Accordingly, the 40 percent standard appears to be a reasonable requirement for the months of March through July and December and is hereby adopted.

The proposal by DI to include diverted milk from a city plant in the overall Class I disposition standard for pooling such plant should be adopted. In the absence of such requirement the pooling standards adopted herein for a city plant would be virtually meaningless. Unless diversions to another plant are included in the city plant's receipts, the city plant could meet the established

pooling standard by reducing the volume of milk physically received at the plant and diverting such milk to a nonpool plant for manufacturing use.

The DI proposal to switch the qualifying period for city plants from the previous two-month period to the current month should also be adopted. Under the current order, the overall months of September through February and a 40 percent shipping requirement for the other months of the year. The order also provides for automatic pooling of a country plant for the months of March through August provided that the plant qualified as a pool plant in each month during the preceding September through February.

sales. On the other hand, milk supplies casually or incidentally associated with the Class I needs should not be subject to complete regulation of the order or fully share in the Class I sales of plants serving the marketing area. In DI's view, permitting milk that is only casually or incidentally associated with the Class I needs of the market to participate in the

needed for the fluid market. He said that during the fall months of 1989, Kroger was not able to acquire all of the milk that was needed to supply the Winchester plant.

The Carnation Company (Carnation) proposed that a "call" provision be added to the country plant pooling provisions. Their proposal was intended

The Carnation witness testified that Carnation's Maysville plant had been a pool plant on this order from September 1987 until January 1990 when the Borden distributing plant at Lexington closed. He said that Carnation now operates the Maysville plant as a nonpool plant but finds its difficult to compete with proprietary handlers and cooperatives

The Dean spokesman said that if DI's net shipment proposal is adopted that Dean could qualify Armour for pooling purposes.

DI's witness testified that he was authorized by MMI and SMS to testify in opposition to the Carnation proposal. He said that his testimony in support of DI's city plant and country plant proposals

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pooling standard by reducing the volume of milk physically received at the plant and diverting such milk to a nonpool plant for manufacturing use.

The DI proposal to switch the qualifying period for city plants from the previous two-month period to the current month should also be adopted. Under the current order, the overall Class I disposition percentage requirements are based on receipts of milk received at the city plant for the previous two months. Basing the qualifying period on the current month is a more straight forward method of determining if a plant qualifies as a city plant.

2. Pooling standards for a country plant. The order should be amended to provide that for a country plant to qualify as a pool plant it must deliver milk or skim milk to city plants during any of the months of August through November and January and February in an amount not less than 50 percent and during other months of the year in an amount not less than 40 percent of the country plant's receipts of fluid milk. These percentages should be based on milk that is physically received at the plant as well as milk diverted from the plant but should not include milk diverted to the country plant from other plants.

The country plant pooling requirements should also provide that in determining whether a country plant has met the required shipments, milk or skim milk transferred to diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) shall be offset against the country plant's transfers or diversions to such city plant. This offset shall apply to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. The order should continue to provide that country plant may include diverted milk from the country plant to the city plant in meeting up to one-half of its shipping requirements.

The order should also be amended to provide for automatic pooling for a country plant during the period of March through July if the plant qualifies as a pool plant during each of the preceding months of August through February. Pool status would continue to be automatic unless the operator of such country plant notifies the market administrator in writing on or before February 15 of the withdrawal of the plant from the pool for the following months of March through July.

The order currently provides for a 50 percent shipping requirement for the months of September through February and a 40 percent shipping requirement for the other months of the year. The order also provides for automatic pooling of a country plant for the months of March through August provided that the plant qualified as a pool plant in each month during the preceding September through February.

DI proposed a 50 percent minimum shipping requirement for a country plant for the months of August through November, January, and February and 40 percent in the other months. The witness for DU indicated such standards would be consistent with the performance standards proposed for city plants. Also, he said, the 40 percent requirement is consistent with the fact that additional milk is produced during this period. He indicated, too, that the country plant provisions should be modified to provide for automatic pooling for the months of March through July rather than February through July.

DI originally proposed, with respect to a country plant, that a 50 percent shipping requirement apply to the month of December. At the hearing, this 50 percent shipping requirement for the month of December was reduced to 40 percent. DU also proposed a net shipment offset provision that would apply to a country plant. Such proposal would offset milk or skim milk transferred or diverted from a city plant to a country plant against the country plant's transfers or diversions to the city plant.

On cross examination with respect to the "net shipment offset" provision, DI's spokesman clarified the application of such provision. If the plant operates both a Grade A receiving facility and a nonpool processing plant at the same location and the order recognized the two facilities as separate plants for pooling purposes, he said that the intent of the DI proposal is to apply the offset when the city plant transfers or diverts milk back to the country plant or to the nonpool plant.

The witness for DI testified that it is essential to the proper operation of the marketwide pool that minimum standards of performance be established to distinguish between those milk supplies that are primarily serving the fluid needs of the marketing area and those milk supplies that do not serve the fluid market in any way or to a degree that warrants their sharing in the Class I utilization. He indicated that performance standards should be such that Grade A milk supplies, a substantial proportion of which is associated with the fluid market, should be pooled and share in the marketwide equalization associated with the Class I sales. On the other hand, milk supplies casually or incidentally associated with the Class I needs should not be subject to complete regulation of the order or fully share in the Class I sales of plants serving the marketing area. In DI's view, permitting milk that is only casually or incidentally associated with the Class I needs of the market to participate in the marketwide pool does not assure milk being available when needed for Class I use. Also, the pooling of unneeded milk, primarily for manufacturing uses, reduces the blend price of other Grade A producers. It was DI's position that such pooling is contrary to the objectives of the Agricultural Marketing Agreement Act of 1937, as amended, and the history of the federal milk marketing order system.

The DI witness stated that the record shows there has been an increased demand for milk by Louisville city plants. He indicated that during the last half of 1988 and to a greater extent in the last half of 1989, there was not an adequate supply of locally produced milk made available to meet the fluid needs of city plants in the marketing area. He said that over 35 percent of the milk that had to be imported into the marketing area during 1988 and 1989 was acquired by DI from Michigan, Wisconsin and Minnesota. At the same time, he said, the Carnation country plant at Maysville, Kentucky, made little of its Grade A milk available to meet the market's fluid needs.

MMI supported DI's proposed changes to the country plant pooling requirements. The MMI witness said the MMI has pooled about 12 million pounds monthly on this market. All of this milk is delivered to the Kroger plant at Winchester.

The witness for MMI said that is organization had lost about 30 members to the Carnation plant at Maysville. This has required MMI to go outside the market, at an additional cost, in order to supply the Kroger plant at Winchester. The MMI spokesman said that for the period of January 1989 through January 1990, MMI brought in about 1.5 million pounds of outside supplemental milk for delivery to the Kroger plant at Winchester. He said that the record shows that for September 1989, 10 million pounds of other source milk were brought into the market, of which 5 million pounds were classified as Class I while 18 million pounds of producer milk were classified as Class III.

A witness for Kroger testified in support of DI's proposed revision of the country plant pooling requirements. He stated that the pooling requirements should be revised because more milk is needed for the fluid market. He said that during the fall months of 1989, Kroger was not able to acquire all of the milk that was needed to supply the Winchester plant.

The Carnation Company (Carnation) proposed that a "call" provision be added to the country plant pooling provisions. Their proposal was intended as an additional method for pooling a country plant in the event of the adoption of DI's "net shipment" concept for a country plant.

The Carnation proposal would require that the country plant be located in the marketing area or if it is outside the marketing area, it would have to be located in the States of Kentucky or Indiana. In addition, the country plant must (1) receive a daily average of at least 25,000 pounds of milk from producers; (2) have shipped at least 45,000 pounds of milk to city plants in the previous 12 months; (3) have been a pool plant during the previous September–February period; and (4) agree to ship milk to city plants as requested by the market administrator. Carnation's "call" provision would provide that the market administrator could not require the country plant to ship milk in any given month that such shipments would exceed 25 percent of the country plant's milk receipts for the previous month unless the market administrator holds a meeting at which all interested parties are given the opportunity to appear and participate. Even though a meeting is held, the amount of milk that the country plant could be required to ship to city plants would be limited to 50 percent during the months of September through February and 40 percent in other months. Carnation's proposal provides that if the market administrator, after holding a public meeting, deems it necessary to require the country plant to ship more that 25 percent of its milk, such requested shipments would be limited to 3 months (month of the meeting plus the 2 following months).

The Carnation plant manager for the Maysville plant testified that the plant acquires about half of its milk supply from their own dairy farmers and the balance from Huntington Interstate Milk Producers Association. He said that most of their producers are small and that their milk (approximately 4 million pounds per month) is picked up in small tank trucks.

The Carnation witness said that if DI's proposed revision is adopted and Carnation has to give up half of its milk supply, they could not compete with other manufacturers of evaporated milk. He said that most of their competitors are pool plants in other markets.

The Carnation witness testified that Carnation's Maysville plant had been a pool plant on this order from September 1987 until January 1990 when the Borden distributing plant at Lexington closed. He said that Carnation now operates the Maysville plant as a nonpool plant but finds its difficult to compete with proprietary handlers and cooperatives that are able to pay a blend price for milk. The witness for Carnation said that for 1988, the average difference between the market's blend price and the Class III price was $1.27 and for 1989 it was $1.10. He said that for January and February 1990, the difference was $2.15 and $1.72, respectively.

The Carnation witness stated that their proposal would allow a plant, such as the Carnation plant, to serve the fluid market as needed and participate in the marketwide pool and still be able to use its milk supply most of the year for its own manufacturing requirements. He said that the "call" provision has worked reasonably well in other markets.

A witness for Armour, a country plant that also qualifies as a pool plant, testified in support of the Carnation proposal. He said that the Armour plant at Springfield, Kentucky, receives monthly about 6 million pounds of Grade A milk plus about 1 million pounds of manufacturing grade milk.

The Armour witness said that Armour has never failed to deliver milk upon request by a city plant that they were using for qualification purposes. Armour, he said, purchased milk last fall from Wisconsin, Minnesota and Michigan in order to supply the Armour plant at Springfield and to honor commitments to the city plant that Armour was supplying.

The witness for Armour said that last fall the Dean city plant in Louisville, at times, was receiving 70 to 75 percent of Armour's milk. He indicated that last fall Armour net shipped about 20 percent of their milk for a 6-month period and that this fall the amount could be higher.

A witness for Dean said that his company has been purchasing milk from Armour for about 7 years and there are months when Dean returns about as much milk as they receive from Armour. He said that Dean bottles milk only 4 days a week and that they purchase milk from Armour on the days that milk is needed for bottling. On weekends when Dean does not need its full supply of milk, Dean diverts milk to the Armour plant. It was his opinion that Armour was fulfilling its obligation as a country pool plant by making milk available for fluid use.

The Dean spokesman said that if DI's net shipment proposal is adopted that Dean could qualify Armour for pooling purposes.

DI's witness testified that he was authorized by MMI and SMS to testify in opposition to the Carnation proposal. He said that his testimony in support of DI's city plant and country plant proposals should be taken as opposition testimony to Carnation's proposal.

The DI witness said that there are cooperatives supplying the fluid needs of city plants pooled on this market that also operate manufacturing facilities. He indicated that such cooperatives would also like to operate their manufacturing plants when commodity market prices are favorable. It was his opinion that if the cooperatives took the same attitude as Armour or Carnation, the Louisville city plants would find it very difficult to attract an adequate supply of local milk for fluid use.

The DI witness said that marketing conditions in this market are very different from the New York-New Jersey marketing area that has a "call" provision. He said marketing conditions in this market do not require milk to be channeled through country plants for delivery to city plants. In his view, the only purpose of country plant facilities has been to pool milk on the order that is intended primarily for Class III use at the manufacturing plants which such country plants operate in conjunction with their Grade A receiving operations. He said that DI would support the elimination of the country plant pooling provisions.

The National Farmers Organization, Inc. (NFO), filed a brief opposing Carnation's proposal. NFO indicated that the record demonstrated that country plants had qualified for pool plant status by shipping certain volumes of milk to city plants and then receiving milk back from the city plants. The brief stated that the order should not encourage this practice which is wasteful and uneconomic.

NFO stated that Carnation's proposed call provision is inconsistent with the overall marketing conditions in the area. The provision would establish a reserve supply plant situation where country plants would only ship milk if the market administrator required such shipments via a call for additional fluid milk. It was NFO's position that in a market with Class I utilization in excess of 60 percent, an open-ended call provision is inappropriate.

In NFO's view, the country plant language should be amended to include the "net shipment" language proposed by DI. However, NFO suggested that the

percentages should be adjusted during the shipping months to establish a range of a minimum of 25 percent to a maximum of 50 percent. The market administrator would have the discretion to direct more than the minimum amount of 25 percent to be shipped on the basis of information available on the need for additional milk. Such

nonpool plant at Elizabethtown, Kentucky.

The Armour country plant at Springfield supplies milk to the Dean plant primarily when milk is needed for bottling. Usually, Dean bottles milk 4 days out of the week (Monday, Tuesday, Thursday and Friday). On Dean's nonbottling days, the Armour plant

while the standard for the month of December represents a decrease of 10 percentage points. The changes in standards for the 2 months are warranted in view of the increased demand for fluid milk products during August and the decreased demand for such items during December.

The primary problem with the current

meaningful contribution towards meeting the fluid milk demands of the city plants that they serve. A requirement that a country plant ship at least 40 percent of its receipts during the months of March-July and December and 50 percent of its receipts in other months is necessary to identify those plants that are sufficiently associated

previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

products, except filled milk, disposed of in Class I is not less than 50 percent in each of the months of August through November and January and February, and is not less than 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1046.13;

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percentages should be adjusted during the shipping months to establish a range of a minimum of 25 percent to a maximum of 50 percent. The market administrator would have the discretion to direct more than the minimum amount of 25 percent to be shipped on the basis of information available on the need for additional milk. Such shipments to city plants would be solely for Class I usage.

Since September 1987 the Carnation plant at Maysville, Kentucky, has operated at one location both a Grade A receiving operation and a nonpool plant operation. From September 1987-December 1989 the plant's Grade A operation was pooled as a country plant under the Louisville order. Carnation qualified its country plant as a pool plant by shipments from the Grade A facility to a city plant at Lexington, Kentucky, operated by the Borden Company. Then, in January 1990 Borden closed its Lexington plant. As a consequence of the Borden plant closing, the Carnation plant lost its pooling base and became a nonpool plant.

The Carnation plant during the time that it was a pool plant under the order supplied city plants with less than 1 percent of the milk that the country plant was pooling under the order. The remainder of the milk that the Carnation plant supplied to the Borden plant was transferred or diverted from the Carnation plant to the Borden city plant at Lexington, and was then reloaded for shipment back to the Carnation plant. The milk was then processed into manufactured products.

In addition to the milk that the Carnation plant pooled on the Louisville order, the plant also obtained milk from Huntington Interstate, a cooperative association. The milk supplied by the cooperative represented about one-half of the Carnation plant's milk supply.

It is obvious that the Carnation plant when it was pooled under the Louisville order was furnishing only minimal amounts of milk to city plants for fluid use. The plant's primary purpose in becoming a pool plant was to obtain a milk supply that the plant could utilize for manufacturing. As a pool plant, it was able to return a blend price to its dairy farmers for milk that was used almost exclusively in manufacturing uses.

The Armour Company operates a Grade A receiving operation as well as a manufacturing plant at Springfield, Kentucky. The Grade A receiving operation qualifies as a country pool plant under the Louisville order by deliveries of milk to the Dean plant at Louisville. Armour also operates another nonpool plant at Elizabethtown, Kentucky.

The Armour country plant at Springfield supplies milk to the Dean plant primarily when milk is needed for bottling. Usually, Dean bottles milk 4 days out of the week (Monday, Tuesday, Thursday and Friday). On Dean's nonbottling days, the Armour plant receives milk that is diverted from the Dean plant and manufactures such milk.

The Armour plant functions primarily as a balancing plant. On a "net shipments" basis, the Armour plant delivers during the fall months about 25 percent of the milk that it pools under the order. On days when the Armour plant's milk is needed by the Dean plant as much as 75 percent of the country plant's milk is delivered to the city plant.

The Louisville order like other Federal milk orders is designed primarily to assure an adequate supply of milk for fluid use. Consequently, standards must be developed to determine which milk is eligible to participate in the higher revenues generated by classified pricing. Under such pricing method, the highest price is paid for milk sold for Class I use. Minimum standards of performance are needed to distinguish between those milk supplies that are primarily serving the fluid needs of the regulated area and those supplies that do not serve the fluid market to a degree that warrants their sharing in the Class I utilization of the market.

Milk supplies that are casually or incidentally associated with the Class I needs should not be subject to complete regulation of the order or fully share in the Class I sales of plants serving the marketing area. Unless appropriate minimum standards are established, handlers have no assurance that milk will be made available to the fluid market when needed.

The proposed shipping percentages for pooling a country plant that were proposed by DI should be adopted based on this record. The requirement that a country plant deliver milk or skim milk in an amount not less than 50 percent during the months of August through November and January and February and 40 percent in other months is reasonable in view of the market's Class I utilization of producer receipts. These percentages are consistent with the adopted Class I disposition requirements of a city plant as discussed previously. Furthermore, the proposed shipping standards represent no change from the current shipping standards for a country plant except for the months of August and December. For the month of August, the standard adopted represents an increase of 10 percentage points while the standard for the month of December represents a decrease of 10 percentage points. The changes in standards for the 2 months are warranted in view of the increased demand for fluid milk products during August and the decreased demand for such items during December.

The primary problem with the current performance standards for pooling a country plant is that such standards provide no assurance that any of the country plant's receipts will be made available to city plants to meet their fluid milk requirements. The only way that city plants can be assured of receiving milk from a country plant and retaining such milk for fluid use is to establish a "net shipment" requirement.

Unless a "net shipment" requirement is adopted, a performance standard for a country plant is meaningless. As evidence of this, the Carnation plant that was pooled as a country plant for more than 2 years on the Louisville-Lexington-Evansville order delivered enough of its milk supply to a city plant to qualify as a pool plant. However, less than 1 percent of the milk pooled by Carnation was utilized by the city plant for fluid use while the remainder of such milk was returned to the country plant for use in its manufacturing operation. To forestall such pooling practices, a "net shipment" provision is needed and is adopted herein.

In determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) that also receives milk or skim milk as a transfer or diversion from such city plant should be offset against the country plant's transfers or diversions to the city plant.

This decision provides that the offset shall apply to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. This modification allows for the return to the country plant of a limited amount of milk that may be unfit to process into fluid milk products but could be used in manufacturing by a nonpool plant. The hearing record does not reveal the volume of milk that is unfit for use at city plants but indicates that occasionally there is a need for a load of milk to be sent to a manufacturing plant because of a quality problem.

The "call provision" proposed by Carnation should not be adopted. To merit pooling status, a country plant should be required to make some meaningful contribution towards meeting the fluid milk demands of the city plants that they serve. A requirement that a country plant ship at least 40 percent of its receipts during the months of March-July and December and 50 percent of its receipts in other months is necessary to identify those plants that are sufficiently associated with the market to qualify as pool plants.

The "call provision" proposed by Carnation may have applicability in a market where the milk from country plants is needed on an intermittent basis to fulfill the fluid needs of city plants. In the Louisville-Lexington-Evansville market, however, two-thirds of the producer receipts are utilized for Class I purposes. In addition about 10 percent of the producer receipts is utilized for Class II purposes. In view of the market's fluid milk needs for Class I and Class II milk, it is likely that milk shipments will be needed on a month-to-month basis. Furthermore, from an operational standpoint, it would seem that a country plant operator would be in a better position to meet production goals knowing that the country plant must supply a specified percentage of its milk on a month-to-month basis instead of a percentage that could vary from 0 percent one month to 40 to 50 percent in the following month.

For the reasons previously set forth, the proposal to add a "call provision" to the Louisville-Lexington-Evansville order is hereby denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations herein after set forth supplement those that were made when the Louisville-Lexington-Evansville order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1046

Milk marketing orders.

PART 1046—[AMENDED]

1. The authority citation for 7 CFR part 1046 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1046.7, paragraphs (a)(1), (b) and (c) are revised to read as follows:

§ 1046.7 Pool plant.

* * * * *

(a) A city plant which meets the following requirements:

(1) The total quantity of fluid products, except filled milk, disposed of in Class I is not less than 50 percent in each of the months of August through November and January and February, and is not less than 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1046.13; and

(2) * * *

(b) A country plant which delivers milk or skim milk to city plants during any of the months of August through November and January and February equal to not less than 50 percent, and during other months of the year equal to not less than 40 percent, of the milk from persons described in § 1046.12(a)(1) and from handlers described in § 1046.9(c) that is physically received at such country plant (except by diversion from other plants) or diverted therefrom pursuant § 1046.13. In determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) that receives milk or skim milk as a transfer or diversion from such city plant shall be offset against the country plant's transfers or diversion to the city plant to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. The operator of a country plant may include milk diverted pursuant to § 1046.13(b) from such plant to a city plant in meeting up to one-half of the shipping percentage(s) specified in this paragraph.

(c) In March through July a country plant that was a pool plant pursuant to paragraph (b) of this section each month during the preceding August through February, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following.

* * * * *

Signed at Washington, DC, on: October 1, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-23503 Filed 10-3-90; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H-033-d]

RIN 1218-AB25

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

AGENCY: Occupational Safety and Health Administration, Department of Labor

ACTION: Proposed rule; re-opening of the rulemaking record and reconvening of public hearings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing the re-opening of the rulemaking record on non-asbestiform tremolite, anthophyllite and actinolite to allow for the submission of comments and analyses on a recent document submitted to the Agency by the American Thoracic Society (ATS). OSHA is also re-convening the informal public hearing for one day to provide an opportunity for testimony to be presented by the ATS.

DATES: Comments and analyses relevant to issues raised in the ATS final report must be postmarked on or before October 31, 1990. The one day hearing will begin at 9 a.m. on November 9, 1990.

ADDRESSES: Comments should be submitted in quadruplicate to the Docket Officer, Docket H-033-d, Occupational Safety and Health Administration, 200 Constitution Avenue NW., room N2625, Washington, DC 20210; telephone (202)-523-7894.

All written materials received will be available for inspection and copying in the Docket Office, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210, between the hours of 8:15 a.m. and 4:45 p.m.

The informal public hearing will begin at 9 a.m. on November 9, 1990 at the following location: Auditorium, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3649, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On February 12, 1990 OSHA published a Notice of Proposed Rulemaking (NPRM) (55 FR 4938) to amend the asbestos standards (29 CFR 1910.1001; 1926.58) to remove non-asbestiform tremlolite, anthophyllite and actinolite from their scope. Public hearings were held in Washington, DC, May 8–14, 1990. At the close of the hearings, the Administrative Law Judge set the following deadlines for participants to send material to OSHA: June 28, 1990 for the submission of additional information and July 23, 1990 for submission of comments, summation and briefs.

At the time of the hearings, the American Lung Association and its medical division, the American Thoracic Society (ATS), could not submit to the record its final report relating to the health effects of non-asbestiform tremolite, anthophyllite and actinolite. Earlier, the ATS had submitted a draft report to the record (Ex. 472) which discussed the relevant health issues and the ATS's opinion on the regulation of non-asbestiform tremolite, anthopyllite and actinolite. Extensive comment on the draft report had been submitted to the record before the hearing. ATS's final report was scheduled to undergo review for internal approval after the close of OSHA's public hearings. Because of the interest in the ATS report, the hearing participants and OSHA agreed that should the ATS submit a final document at a later date, OSHA would re-open the rulemaking record and reschedule testimony by the ATS.

OSHA has now received the final report from the ATS entitled, "The Health Effects of Tremolite." This document has been placed in the public record (Docket Number H-033-d, Exhibit # 525) and is available for inspection and copying.

Accordingly, at this time OSHA is announcing the re-opening of the rulemaking record to allow for public comments and analyses of the ATS report. OSHA is also re-convening the public hearings to allow ATS's testimony and questioning of ATS by hearing participants. This will provide an opportunity to present and discuss the issues raised in the ATS report.

Public Participation Notice of Hearing

Written Comments

All interested persons are invited to submit written comments on the issues raised in the ATS final report. Written comments must be postmarked on or before October 31, 1990 and submitted in quadruplicate to the Docket Office, Docket Number H-033-d, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The telephone number of the Docket Office is (202)-523-7894, and its hours of operation are 8:15 a.m. to 4:45 p.m., Monday through Friday, except Federal Holidays. Comments limited to 10 pages in length may also be transmitted by facsimile to (202)-523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. Written submissions must clearly identify the issues which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Conduct and Nature of Hearings

Pursuant to section 6(b)(3) of the Act, the ATS will present oral testimony concerning its final report, "The Health Effects of Tremolite," at one day informal public hearing scheduled to begin at 9:00 a.m. on November 9, 1990, in the Auditorium, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

The hearing is open to the public, and all interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the May 8–14, 1990 hearing, will be entitled to ask questions and otherwise participate fully in the proceeding. If time permits, other interested persons may be allowed to ask relevant questions of the ATS witness(es).

The hearings will commence at 9:00 a.m. on November 9, 1990. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal hearing is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15 (a)). Although the presiding offficer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding shall remain informal and legislative in nature. The Agency's intent is to provide an opportunity for effective oral presentations which can proceed expeditiously, in the absence of rigid procedures which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding, rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings and the pre-hearing guidelines issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development.

Thus, questions of relevance, procedure, and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections and comparable matters;

(3) To confine the presentation to the matters pertinent of the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any persons who have participated in the oral proceedings.

Certification of Record and Final Determination After Hearing

Following the close of the post-hearing comment period, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Authority: Sections 6(b), 8(c) and 8(g), Pub. L. 91-596, 84 stat, 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR part 1911: and Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed at Washington, DC on this 28th day of September 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-23417 Filed 10-3-90; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Arkansas permanent regulatory program (hereinafter the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Arkansas rules pertaining to the granting of exemptions for coal extraction incidental to the extraction of other minerals. The amendment is intended to revise the State program to be consistent with corresponding Federal standards.

This notice sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t. November 5, 1990. If requested, a public hearing of the proposed amendment will be held on October 29, 1990. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on October 19, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the first address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Kelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430

Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Division, 8001 National Drive, Little Rock, AR 72209, Telephone: (501) 562-7444

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Office, on telephone number (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program, can be found in the November 21, 1980, Federal Register (45 FR 77003). Subsequent actions concerning the Arkansas program and program amendments can be found at 30 CFR 904.12, 904.15, and 904.16.

II. Proposed Amendment

By letter dated September 20, 1990 (administrative record No. AR-611), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a February 7, 1990, letter that OSM sent to Arkansas in accordance with 30 CFR 732.17(c). Arkansas proposes to amend its program by adding new rules concerning the exemption for coal extraction incidental to the extraction of other minerals. Specifically, Arkansas proposes to amend the Arkansas Surface Coal Mining and Reclamation Code sections: 702.1, scope; 702.5, definitions; 702.11, application requirements and procedures; 702.12, contents of application for exemption; 702.13, public availability of information; 702.14, requirements for exemption; 702.15, conditions of exemption and right of inspection and entry; 702.16, stockpiling of minerals; 702.17, revocation and enforcement; and 702.18, reporting requirements.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include

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explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., c.d.t. on October 19, 1990. The location and time of the hearing will be arranged with those persons requesting the hearing. If there is no request, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have been scheduled to testify, and who wish to do so, will be heard following those who have not been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contracting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 28, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 90-23521 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

Virginia Regulatory Program; Subsidence

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Virginia proposes to amend its rules governing subsidence at sections VR 480-03-19.784.20(f)(2) and VR 480-03-19.817.121(c)(2). The proposed change will require an operator to repair or compensate the owner for subsidence-caused material damage to structures without regard to liability limitations imposed by State law.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is required.

DATES: Written comments must be received on or before 4 p.m. on November 5, 1990. If requested, a public hearing on the proposed amendment will be held on October 29, 1990, requests to present testimony at the hearing must be received on or before 4:00 p.m. October 19, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-8100.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed Virginia program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 Federal Register (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Amendments

In *National Wildlife Federation* v. *Lujan* (Civil Actions 87-1051, 87-1814, and 88-2788, D.D.C. February 12, 1990), the United States District Court for the District of Columbia remanded the Federal rule on subsidence found at 30 CFR 817.12(c)(2) to the Secretary of the Interior with instructions to revise the rule by striking the reference to State law. Because the Virginia regulations at 480-03-19.784.20(f)(2) and 480-03.19.817.121(c)(2) contain the same reference, the Secretary, in accordance with 30 CFR 732.17(f)(1), notified Virginia by letter dated June 22, 1990, (Administrative Record No. VA-751) that Virginia's regulations needed to be updated for consistency with the Federal regulations.

By letter dated September 12, 1990, (Administrative Record No. VA-761) Virginia submitted a proposed amendment to its program pursuant to SMCRA. Virginia proposes to revise its subsidence regulations at VR 480-03-19.784.20(f)(2) and VR 480-03-19.817.121(c)(2) by deleting all references to the liability limitations imposed by State law.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include

explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on October 19, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notice of meetings will be posted in advance at the locations listed under "ADDRESSES". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, and Underground mining.

Dated: September 26, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-23480 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 7

RIN 1024-AB93

National Capital Region Parks; Prohibition of Storage of Property in Lafayette Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Proposed rule and policy statement with request for comments.

SUMMARY: This proposed rule suggests amendments to the National Park Service regulations governing the storage of material in Lafayette Park. A proposed Administrative Policy Statement explains the administration of these regulations. These amendments and statement are intended to formalize restrictions regarding the storage of property in Lafayette Park.

DATES: Written comments must be received on or before December 3, 1990.

ADDRESSES: Written comments may be sent to: Robert Stanton, Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, DC 20242.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region National Park Service, 1100 Ohio Drive SW., Washington, DC 20242, telephone: (202) 619-7223; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, DC 20240, telephone: (202) 208-4338.

SUPPLEMENTARY INFORMATION:

Background

1. History of Lafayette Park

Lafayette Park, originally known as the President's Park, is a rectangular area of approximately seven acres of land situated directly north of the White House on Pennsylvania Avenue. It is bounded on the east by Madison Place, north by H Street, and west by Jackson Place. The property was one of the first parcels of land donated by the original patentees to the District Commissioners for the formation of the Federal City (later Washington) in 1791. The site of what is now Lafayette Park (Park) was originally included in the area known as the President's House and the President's Park, according to the plans of Major Pierre L'Enfant. The entire area extended from 15th to 17th Streets NW., and from H Street on the north and to the Potomac River on the south. In the early 1800's President Thomas Jefferson authorized the Park's separation from the President's House, intending its use for local residents and visitors to Washington. The boundaries of the Park have not been altered up the present day.

In 1824, the grounds were improved and walks laid out in the square on the occasion of the visit of the Marquis de Lafayette, the French general and hero of the American Revolution.

The square was known as the "President's Part" until 1834, when the name "Lafayette Square" was adopted. Since 1933, when control of the National Capital Parks was returned to the Interior Department, the term "Lafayette Park" has been the preferred name and has been adhered to by the National Park Service.

2. Unique Features of the Park

Five memorial statutes, specifically authorized by legislation of Congress, honoring General Andrew Jackson and four foreign heroes of the American Revolution, grace Lafayette Park. The equestrian statue of General Andrew Jackson, the second one of its type to be cast in the United States, stands in the center of the Park. It was dedicated by Senator Stephen A. Douglas in 1853. The heroic bronze statue of General Lafayette, which stands at the southeast corner of the Park, was dedicated in 1891. The second Frenchman honored in the Park is the Comte de Rochambeau, who led the French Expeditionary Force to America during the Revolution. President Theodore Roosevelt dedicated the Rochambeau statue, which stands at the southwest corner of the Park, in 1902. The statue of General Thaddeus Kosciuszko, the Polish engineer who designed some of America's fortifications during the Revolutionary War, was dedicated in 1910 and stands at the northwest corner of the Park. The fifth statue, dedicated by President William Howard Taft in 1910, is that of Baron von Steuben, the Prussian disciplinarian and Inspector General of the Continental Army. If stands at the northwest corner of the Park.

In addition to honoring these five notable figures of America's past, Lafayette Park functions as a formal garden park of meticulous landscaping with flowers, trees, fountains, walk and benches. This aesthetic aspect of the Park has a rich history, going back over 130 years. In 1851, President Millard Fillmore endorsed the appointment of A.J. Downing, one of the most celebrated landscape architects of the day, to prepare plans for the landscaping of Lafayette Square and other park areas of the Nation's Capital. Downing is credited with the landscape

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plan of Lafayette Park, which has generally been adhered to over the years with only slight revisions. The central theme then consisted of wide gravel paths leading to the statue of General Andrew Jackson as smaller meandering walks went past beds of roses and other flowers.

A second major change to take place in the landscaping of Lafayette Park was undertaken by the National Capital Parks in 1936 and 1937. The overall changes made during this period were the removal of the bronze urns to their present-day locations, the redesigning and widening of the walks, the relocation of trees and shrubbery, the closing of small gravel paths and the relocation of flower beds. The overall effect enhanced the beauty of the original Downing plan and made the Park more accessible to those people for whom the Park had originally been intended by President Jefferson—visitors and Washington residents.

Money was appropriate by Congress during the Presidency of John J. Kennedy for the purpose of installing decorative fountains in the Park. By 1969, a water sprinkler system for maintenance of the Park, as well as attractive interior brick walkways, was added to Lafayette Park. Improvements to the Park continue up to the present day. A new Park lighting system, historically accurate to the lamps used in the mid-1800's, was installed in 1965

Lafayette Park is appreciated by Washington, DC residents and visitors alike as a unique natural and historic site. Residents and workers come to Lafayette Park each day to play chess, eat a picnic lunch, stroll through the landscaped setting, or to sit quietly on a bench and read a book. Visitors come to the Park for many of the same reasons in addition to touring the gardens and the monuments. Lafayette park provides and unequaled setting for viewing the north side of the White House. During the summer months, thousands of persons visit the Park each day.

The National Park Service has long recognized the unique environment and sensitive nature of Lafayette Park as a major component in the historic setting of the White House and the national significance of the five major memorials which it contains. The Park Service has neither sponsored nor permitted special events in Lafayette Park for almost ten years. Unlike Farragut Square, where the Park Service permits noontime concerts, or the Ellipse, where the Park Services co-sponsors the National Christmas Pageant of Peace, Lafayette Park has been kept free of all Park Service-sponsored activities.

3. Current situation in Lafayette Park

Being located across from the White House, Lafayette Park is a popular location for park visitors including visitors conducting demonstrations of every sort. Under National Park Service regulations, groups numbering over twenty-five participants must apply for a permit to demonstrate.

The National Park Service, pursuant to 36 CFR 7.96(g)(5)(xii)(1985), had for several year imposed as a condition for a permit a rule which restricted the storage of property in Lafayette Park. On May 23, 1989, the National Park Service stopped imposing the rule when the United States Court of Appeals for the District of Columbia Circuit reversed the criminal conviction against a defendant charged with a violation of the rule restricting the storage of certain property in Lafayette Park. The conviction was reversed because the storage of property rule had not been published for notice and comments pursuant to the Administrative Procedure Act. *United States* v. *Picciotto*, 875 F.2d 345 (D.C. Air. 1989).

Aside from a prohibition against the storage of personal belongings in the context of illegal camping, the National Park Service has no specific regulation governing the placement or storage of property in Lafayette Park. The Park service has regulations governing the use of structures but this does not regulate the placement and storage of other property in Lafayette Park.

Over the years, Lafayette Park has become increasingly littered by assorted property placed or stored there by park visitors—demonstrators and nondemonstrators alike. On any one day, it is not uncommon to have amounts of tarps, bedding, blankets, pillows, sleeping bags, tools, food, luggage, clothes, household items and other similar types of property found within Lafayette Park. Some of such property has been found to remain in the Park for long periods of time. The National Park Service believes the accumulation of such property has had a negative impact on the enjoyment of Park by the visiting public.

A few demonstrators, who maintain 24-hour vigils in the park, store substantial amounts of their personal property within the Park. Such possessions have included bedding, blankets, sleeping bags, clothes, luggage and assorted household items. In addition, there have been numerous park visitors who are not demonstrators who also store personal property such as bedding, blankets, sleeping bags, clothes, luggage and assorted household items in the Park.

United States Park Police officers and National Park Service employees assigned to Lafayette Park during tourist seasons receive many complaints from visitors each year to the effect that the personal property placed and stored in Lafayette Park is unsightly. Complaints noted by the officers and employees include the fact that on occasion paint and lumber are used and stored in the park. National Park Service employees have noted that the use of paint in the Lafayette park has caused damage to park resources including sidewalks and walkways. The use and storage of bedding, blankets and sleeping bags on turf areas have caused damage to these areas. Further, old clothing and shoes have been found littered throughout Lafayette Park. Other complaints noted by the officers and employees include the fact that bedding, blankets and sleeping bags also litter the area.

In addition, over the past three years, the National Park Service has received at least five written requests for some action against the visual blight in Lafayette Park. Typical of these request is the following from a Virginia man:

> I believe that my pursuit of happiness includes my rights to peaceful enjoyment of our privileges and rights. In that respect, I am not happy when I am forced to pass by, and am forced to see the unsightly mess the people who camp and live in Lafayette park have created in the exercise of their rights of political dissent.
>
> We pay huge sums of money, in the form of taxes, to maintain the monuments and keep the National Parks a place in which *all* the people can enjoy and appreciate our heritage. The people who exercise their rights of political dissent, as those in Lafayette Park, deny to *all* the rest of us our rights of peaceful enjoyment.
>
> I am not advocating the removal of those people, nor their unsightly and distasteful expressions of political dissent. I do strongly disagree with their rights (it such rights exist) of cluttering so much of the park by the unsightly spreading of their bedding over the park. I mean they make it ugly!

The National Park Service believes the presence of these items in the Park has a negative impact on its historical and finely landscaped nature.

Regulatory Changes

1. Storage of Property

In order to meet substantial government interests in aesthetics and preservation of park resources, the National Park Service is proposing a rule that would limit the storage of property in Lafayette Park. As noted above, there are no current limitations specifically related to the storage of property in the Park. Further, enforcement of existing camping and abandoned property regulations was not designed to and has not cured the problem of property storage.

The Park Service intends this proposed rule to place reasonable, content-neutral limitations on property storage in order to protect park resources and the unique aesthetic quality of Lafayette Park so that visitors may continue to enjoy the history and beauty of the park and demonstrators will continue to enjoy avenues to communication. This proposed rule is not intended to prohibit demonstrations in Lafayette Park, nor, is it intended to place additional limitations on signs or other similar communicative conduct above and beyond the limitations included in the existing regulations. This proposed rule is also not intended to interfere with demonstrators ability to distribute literature, march, speak, hold vigils, or otherwise exercise first amendment rights.

Specifically, the proposed rule would limit the storage of construction material, tools, lumber, paint, tarps, bedding, blankets, pillows, sleeping bags, food, clothing, literature, papers and all other similar types of personal property which might tend to harm park resources including aesthetic interests. Further, the proposed rule would allow quantities of literature, food and clothing that are actually in use or that are reasonably required during one 24-hour period, as long as such property occupies no more than three cubic feet of space and that the property is attended at all times while in the Park. The three cubic foot limitation was selected as that is the approximate size of a large duffle bag. The National Park Service believes a large duffle bag of gear is more than sufficient to sustain a demonstrator for a day. But, the National Park Service specifically invites public comments on whether the 24-hour criteria or the 3 cubic foot space limitation will fail to afford individuals ample alternatives for communication. Also, the proposed regulation requires park visitors to "attend" their property at all times. Attended is defined as being within three feet of the owner. It is the intention of the National Park Service to require persons to stay near their property while in the park and to take it with them when they leave.

2. Conclusion

The National Park Service believes that the proposed regulatory restriction, taken as a whole, accomplishes the purpose of maintaining Lafayette Park as a historic site and formal garden while still allowing ample avenues of communication for those who wish to demonstrate in the Park or elsewhere in the vicinity of the White House. The Park Service believes that it has a responsibility to maintain a high level of aesthetic quality in the parks under its administration, consistent with its duty to allow citizens an opportunity to express their First Amendment rights. Further, the National Park Service believes that there is clear legal authority for promulgation of this regulation as it is content-neutral, leaves open ample alternative avenues of communication, and is narrowly tailored to meet substantial government interests. The substantial government interest in aesthetics has been affirmed repeatedly by the courts. In fact, the Supreme Court has recognized aesthetics as a substantial government interest in at least two cases decided within recent years. *Metromedia, Inc.* v. *San Diego*, 453 U.S. 490 (1981), *City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U.S. 798 (1983).

Public Participation

The Department of the Interior wishes to ensure that the public will continue to have an opportunity to enjoy the unique history and beauty of Lafayette Park. At the same time, the Park Service recognizes that Lafayette Park provides demonstrators with an important location to exercise their first amendment rights. Because it is very difficult to regulate the use of the Park so that both of these goals can be met simultaneously, the Park Service especially invites comments from all segments of the public, demonstrators and other visitors alike, on all aspects of this proposed rule. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the address noted at the beginning of the rulemaking.

Drafting Information

The following persons participated in the writing of this rule: Richard G. Robbins and Randolph J. Myers, Office the Solicitor, U.S. Department of the Interior.

Compliance with Other Laws

The National Park Service has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This rule does not constitute a major Federal action which significantly affects the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

This rule is not a policy that has takings implications under E.O. 12630.

List of Subjects in 36 CFR Part 7

National parks, National Capital Region parks.

In consideration of the foregoing, it is proposed to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

> **Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

2. Section 7.96 is amended by adding a new paragraph (g)(5)(x)(C) to read as follows:

§ 7.96 National Capital Region Parks.

* * * * *

(g) * * *

(5) * * *

(x) * * *

(C) Storage of construction material, tools, lumber, paint, tarps, bedding, blankets, pillows, sleeping bags, food, clothing, literature, papers and all other similar types of personal property which might tend to harm park resources including aesthetic interests. *Provided, however,* that the presence of quantities of literature, food, clothing, and other personal property actually in use or that are reasonably required by a person during any one 24-hour period shall not constitute storage of property *provided* that no such property may occupy more than three (3) cubic feet of space and *provided further* that such property must be attended at all times while in the Park (the term "attended" is defined as an individual being within three (3) feet of his or her material).

* * * * *

Dated: September 21, 1990.

S. Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90-23215 Filed 10-3-90; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AE19

Loan Guaranty; Servicing Procedures for Holders and Servicers of VA Guaranteed Loans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: To establish a regulatory standard for servicing VA guaranteed loans, the Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations (38 CFR part 36) by adding to the regulations the loan servicing procedures which will be required of holders and servicers of VA guaranteed loans.

DATES: Comments must be received on or before November 5, 1990. Comments will be available for public inspection until (Insert 40 days after publication in the Federal Register). The VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. All written comments will be available for public inspection in room 132, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233-3032.

SUPPLEMENTARY INFORMATION: The guaranty or insurance of a loan by the Secretary is based, in part, on the understanding that adequate servicing will be performed by the loan holder. This servicing responsibility is recognized in the governing law (38 U.S.C. 1804(d)) which authorizes the Secretary to refuse, either temporarily or permanently, to guarantee or insure loans made by a lender or holder who has failed to maintain adequate loan accounting records or to demonstrate proper ability to service loans adequately. This law also provides that such a lender or holder may be barred from acquiring loans which the Secretary has guaranteed or insured.

The current regulations which were promulgated to implement this law provide procedures for suspending a lender or holder who has failed to fulfill this responsibility to service loans adequately. However, they do not prescribe in detail the manner in which loans should be serviced, nor do they define "adequate" servicing. Thus, VA personnel have no clear basis for imposing appropriate sanctions when they review a holder's servicing and find it inconsistent with practices generally employed by prudent lenders.

VA has always expected holders to service VA guaranteed loans in conformity with procedures customarily used by prudent lenders in servicing portfolios of similar-type conventional loans. The proposed regulations, which are based on servicing practices, will clarify what is expected of holders of VA guaranteed loans in the way of servicing. The proposal will also provide standards by which the adequacy of such servicing will be evaluated and provide VA with a clear basis for imposing sanctions when appropriate. In addition, failure to comply with the proposed regulations may subject a holder to a reduction in the amount of a claim payable under Loan Guaranty to the extent that such failure increases the liability of the Secretary. Generally, however, it is anticipated that failure to perform required property inspections and to take timely action to terminate loans secured by abandoned property would be the only situation in which failure to comply with the proposed regulations would demonstrably increase the Secretary's liability and subject a claim to adjustment under 38 CFR 36.4325(b)(11) or (c).

The proposal will also require the holder to provide notice of the default to the original veteran borrower and any other liable obligors within 30 days after a Notice of Intention to Foreclose is provided to the Secretary in cases in which the current owner of the property is not the original veteran borrower.

We understand that many holders do not have information on the original borrower and intervening transferees in their servicing records; however, this information should be available by the time a case is referred to an attorney to initiate foreclosure and holders will be expected to make reasonable efforts to locate these obligors and provide them with notice within the time frame allowed by the proposed regulation.

Under the current regulations holder is defined as "the lender or any subsequent assignee or transferee of the guaranteed obligation." The proposal will amend the definition of holder to include any authorized servicing agent of the lender or of the assignee or transferee if the loan has been assigned or transferred.

Paperwork Reduction Act

Sections 36.4278, 36.4317, and 36.4337 of these regulations contain information collection requirements which will result in a reporting burden. The reporting burden for these collections are as follows:

For §§ 36.4278 and 36.4337 the public reporting burden is estimated to average 5 minutes per response for a total of 415 hours.

For § 36.4317 the public reporting burden is estimated to average 15 minutes per response for a total of 10,625 hours.

The average estimated time per response includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As requested by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve this information collection requirement. Organizations and individuals desiring to submit comments for consideration by OMB on these proposed information collection requirements should address them to the office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey.

The Secretary hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Few VA loans are held and serviced by small entities. Furthermore, the servicing requirements in the regulations are based on practices usual and customary in the industry and are consistent with FHA practices. Meeting the requirements to provide a notice of default to original veteran obligors and a report of property abandonment to the Secretary will have only a slight impact on holders.

The Secretary has also determined that the proposed regulatory amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices of consumers or individual industries, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

These amendments are proposed under the authority granted the Secretary by sections 210(c) and 1804(d) of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: August 28, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty is proposed to be amended as follows:

PART 36—[AMENDED]

§ 36.4202 [Amended]

1. In § 36.4202(e) add the words "or the authorized servicing agent of the lender or of the assignee or transferred if the obligation has been assigned or transferred" and revise the citation to read "Authority: 1803(c)(1)".

§ 36.4216 [Amended]

2. In § 36.4216(a) in the first sentence after the word "adequately" add the words "as required under § 36.4278 and any other requirement of 38 U.S.C. and the regulations" and revise the citation to read "Authority 1804(d)".

§ 36.4217 [Amended]

3. In §36.4217 after the phrase "in writing" add the words "or such other communications medium as may be approved by an official designated in § 36.4221" and add the citation "(Authority: 1803(c)(1))".

4. Section 36.4278 is added to read as follows:

§ 36.4278 Servicing procedures for holders.

(a) The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) Procedures for Providing Information. Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required.

(1) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(2) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) Statement for Income Tax Purposes. Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) Change of Servicing. Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder or servicer, the holder effecting the transfer shall notify or arrange to notify the borrower. The notification shall provide the borrower with the name, address and telephone number of the new holder or servicer and include any special instructions for the handling of payments during the conversion period. Notification pursuant to this paragraph must be mailed to reach the borrower no later than 10 days prior to the due date of the first payment which the borrower is asked to remit to the holder or servicer.

(e) Escrow Accounts. A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. If the holder requires that an escrow account be maintained under the terms of the security instruments, the holder shall establish a system for periodic analysis of the account. This system must be established no later than the end of the second year of the loan and must provide for analysis of the account at least once a year thereafter. The following provisions shall apply to each tax and insurance escrow account which is maintained by the holder:

(1) After an analysis of the account pursuant to this paragraph, the escrow deposit requirements shall be adjusted as necessary to provide a sufficient accumulation of funds to make anticipated tax and insurance disbursements during the ensuing 12-month period.

(2) The borrower shall be given at least 10 days notice of an adjustment in escrow deposit requirements and an adequate explanation of the reasons for any change.

(3) Any surplus or shortage identified through an analysis of the escrow account shall be refunded to or collected from the borrower as provided for in the security instruments unless the holder determines repayment of a shortage pursuant to the terms of the security instruments could affect the borrower's ability to maintain the mortgage obligation and authorizes repayment under terms which are more beneficial to the borrower.

(4) The holder's estimate of escrow deposit requirements shall be based on the best information available as to probable disbursements which will be required to be made from the account in the coming year. In determining escrow deposit requirements, the holder may not require payments in excess of those authorized pursuant to the terms of the Real Estate Settlement and Procedures Act as interpreted by the Department of Housing and Urban Development.

(5) The holder shall not institute foreclosure or repossession without the prior approval of the Secretary when the only default of the borrower is caused by the inability to pay an escrow shortage in a lump sum.

(6) The holder is responsible for obtaining tax and insurance bills and paying them by the due date; any penalties incurred due to late payment may not be charged to the borrower unless such penalties are caused by the borrower's failure to cooperate with the holder in obtaining the bills.

(f) System for Servicing Delinquent Loans. Holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken;

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(g) Collection Actions. Holders should employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, the holder's collection procedures must at least include the following:

(1) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

(2) An effort, concurrent with the written delinquency notice, to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(3) A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower that the loan is in default, state the total amount due and advise and borrower how to contact the holder to make arrangements for curing the default.

(4) In the event the holder has not established contact with the borrower and has not determined the borrower's financial circumstances or established a reason for the default or obtained the borrower's agreement to a repayment plan, then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

The holder must explain any failure to perform these collection actions when reporting loan defaults to the Secretary.

(h) Conducting Interviews with Delinquent Borrowers. When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following:

(1) The reason for the default and whether the reason is a temporary or permanent condition;

(2) The borrower's present income and employment.

(3) The current monthly expenses of the borrower including household and debt obligations.

(4) The borrower's current mailing address and telephone number(s).

(5) A realistic and mutually statisfactory arrangement for curing the default.

(i) Property Inspection. The holder shall make an inspection of the mortgaged property whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made at the following times;

(1) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier;

(2) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

Whenever a holder obtains information which indicates that a mortgaged property is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under § 36.4280(e) within 15 days after the holder confirms the property is vacant.

(j) Collection Records. The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s).

(2) Dated summaries of each personal servicing contact and the result of same.

(3) The indicated reason(s) for default.

(4) The date and result of each property inspection.

(k) Reporting to the Secretary. A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to § 36.4280.

(l) Quality Control Procedures. No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed or insured by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed or insured by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder should:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate the effectiveness of its collection efforts.

(2) Determine how its VA delinquency and foreclosure rates compare with rates in various reports published by the industry, investors and others.

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Authority: 1804(d))

5. In § 36.4280 paragraph (f) and authority citation is added to read as follows:

§ 36.4280 Reporting of defaults.

* * * * *

(f) Except for loans closed pursuant to a commitment issued after March 1, 1989, the notice required under subparagraph (e) of this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by registered mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty or insurance pursuant to VA Regulation 4287(b), but such failure shall not constitute a defense to any legal action to terminate the loan.

(Authority: 1803(c)(1))

§ 36.4301 [Amended]

6. In § 36.4301 in the definition for "holder" add the words "or the authorized servicing agent of the lender or of the assignee or transferee if the obligation has been assigned or transferred" and add the citation "(Authority: 1803(c)(1))".

§ 36.4317 [Amended]

7. In § 36.4317 after the word "appointment)", remove the comma and the word "and" and insert in its place a semicolon; and after the word "thereafter" remove the period and insert in its place a semicolon and the word "and", add paragraph (c) to read "(c) Except for loans closed pursuant to a commitment issued after March 1, 1968, the notice required under this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by registered mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty or insurance pursuant to VA Regulation 4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan (Authority: 1803(c)(1))".

§ 36.4331 [Amended]

8. In § 36.4331(a) after the word "adequately" add the words "as required under § 36.4337 and any other requirements of 38 U.S.C. and the regulations" and revise the citation to read "Authority: 1804(d))".

§ 36.4332 [Amended]

9. In § 36.4332 after the word "writing" add the words "or such other communications medium as may be approved by an official designated in § 36.4342" and add the citation "(Authority: 1803(c)(1))".

10. Section § 36.4337 is added to read as follows:

§ 36.4337 Servicing procedures for holders.

(a) The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) Procedures for Providing Information. Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:

(1) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(2) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) Statement for Income Tax Purposes. Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) Change of Servicing. Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder or servicer to another, the holder effecting the transfer shall notify or arrange to notify the borrower. The notification shall provide the borrower with the name, address and telephone number of the new holder or servicer and include any special instructions for the handling of payments during the conversion period. Notification pursuant to this paragraph must be mailed to reach the borrower no later than 10 days prior to the due date of the first payment which the borrower is asked to remit to the holder or servicer.

(e) Escrow Accounts. A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. If the holder requires that an escrow account be maintained under the terms of the security instruments, the holder shall establish a system for periodic analysis of the account. This system must be established no later than the end of the second year of the loan and must provide for analysis of the account at least once a year thereafter. The following provisions shall apply to each tax and insurance escrow account which is maintained by the holder:

(1) After an analysis of the account pursuant to this paragraph, the escrow deposit requirements shall be adjusted as necessary to provide a sufficient accumulation of funds to make anticipated tax and insurance disbursements during the ensuing 12-month period.

(2) The borrower shall be given at least 10 days notice of an adjustment in escrow deposit requirements and an adequate explanation of the reasons for any change.

(3) Any surplus or shortage identified through an analysis of the escrow account shall be refunded to or collected from the borrower as provided for in the security instruments unless the holder determines repayment of a shortage pursuant to the terms of the security instruments could affect the borrower's ability to maintain the mortgage obligation and authorizes repayment under terms which are more beneficial to the borrower.

(4) The holder's estimate of escrow deposit requirements shall be based on the best information available as to probable disbursements which will be required to be made from the account in the coming year. In determining escrow deposit requirements, the holder may not require payments in excess of those authorized pursuant to the terms of the Real Estate Settlement and Procedures Act as interpreted by the Department of Housing and Urban Development.

(5) The holder shall not institute foreclosure without the prior approval of the Secretary when the only default of the borrower is caused by the inability

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to pay an escrow shortage in a lump sum.

(6) The holder is responsible for obtaining tax and insurance bills and paying them by the due date; any penalties incurred due to late payment may not be charged to the borrower unless such penalties are caused by the borrower's failure to cooperate with the holder in obtaining the bills.

(f) System for Servicing Delinquent Loans Holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken;

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(8) Collection Actions. Holders should employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, the holder's collection procedures must at least include the following:

(1) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

(2) An effort, concurrent with the written delinquency notice, to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(3) A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower that the loan is in default, state the total amount due and advise the borrower how to contact the holder to make arrangements for curing the default.

(4) In the event the holder has not established contact with the borrower and has not determined the borrower's financial circumstances or established a reason for the default or obtained the borrower's agreement to a repayment plan, then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

The holder must explain any failure to perform these collection actions when reporting loan defaults to the Secretary.

(h) Conducting Interviews with Delinquent Borrowers. When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following:

(1) The reason for the default and whether the reason is a temporary or permanent condition.

(2) The borrower's present income and employment.

(3) The current monthly expenses of the borrower including household and debt obligations.

(4) The borrower's current mailing address and telephone number(s).

(5) A realistic and mutually satisfactory arrangement for curing the default.

(i) Property Inspections. The holder shall make an inspection of the mortgaged property whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made at the following times:

(1) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier;

(2) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

When a holder obtains information which indicates that a mortgaged property is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under § 36.4317(a) within 15 days after the holder confirms the property is vacant.

(j) Collection Records. The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s).

(2) Dated summaries of each personal servicing contact and the result of same.

(3) The indicated reason(s) for default.

(4) The date and result of each property inspection.

(k) Reporting to the Secretary. A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to § 36.4315 and § 36.4317.

(l) Quality Control Procedures. No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed or insured by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed or insured by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder should:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate effectiveness of its collection efforts.

(2) Determine how its VA delinquency and foreclosure rates compare with rates in reports published by the industry, investors and others.

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Authority: 1804(d))

[FR Doc. 90-23296 Filed 10-3-90; 8:45 am]

BILLING CODE 6320-01-M

ENVIRONMENT PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans Federal Assistance Limitations; State of Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: USEPA is withdrawing its August 3, 1983, (48 FR 35315) and May 4, 1984, (49 FR 19039) proposed Federal assistance limitations and the August 3, 1983, proposed construction moratorium for Illinois' failure to submit and implement a vehicle inspection and maintenance (I/M) program as part of its 1982 State Implementation Plan revision. Elsewhere in today's Federal Register, USEPA is giving final approval to the Illinois carbon monoxide (CO) plan and attainment demonstration, and the transportation control measures (TCMs) and I/M program, which are part of the both the ozone and CO plans. USEPA's decision to give final approval to the Illinois I/M program eliminates the basis for the two previous sanction notices. USEPA, therefore, is withdrawing these notices.

USEPA, however, is retaining the Federal funding restrictions proposed in the November 2, 1988, Federal Register (54 FR 46271). USEPA proposed to limit certain Federal highway funding assistance for Cook, Lake, Kane, and DuPage Counties, Illinois, because the State has failed to adopt and submit to USEPA an I/M program commensurate with the severity of the ozone problem in the Chicago area. USEPA believes that enhancement of the existing I/M program remains necessary to help bring the area into attainment of the ozone National Ambient Air Quality Standard and that such an I/M program is a critical component of the "reasonable efforts" Illinois must make under section 176(a) of the Clean Air Act. For a complete discussion of these actions, see the supplementary information contained in USEPA's approval of the Illinois CO plan and attainment demonstration, and TCMs and I/M program, found elsewhere in today's Federal Register.

EFFECTIVE DATE: This withdrawal of proposed rulemaking becomes effective immediately.

ADDRESSES: Copies of all materials related to USEPA's actions are available at the following address for review: (It is recommended that you telephone Randolph O. Cano at (312) 886-6036 before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Cheryl Newton, (312) 886-6081.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401 to 7642.

Dated: March 6, 1990.

Valdas V. Adamkus,

Regional Administrator.

Note: This document was received by the Office of the Federal Register September 28, 1990.

[FR Doc. 90-23392 Filed 10-3-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule revises 43 CFR 426.22, Decisions and Appeals, of the existing rules for administration of the Reclamation Reform Act of 1982. This section is being revised to permit recipients of adverse Bureau of Reclamation (Reclamation) decisions (appellants) to elevate their appeals to the Office of Hearings and Appeals (OHA).

The proposed appeal procedure is adopted pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), under which persons aggrieved by a determination of an agency official have an opportunity to appeal that determination to an impartial reviewer. We have now had several years of experience in administering and implementing the Reclamation Reform Act of 1982. That experience suggests that a further formalization of the appeal process, to allow appeals to OHA, would assure that appellants receive a broad-based and impartial review of their appeals.

Interest on any underpayments, as prescribed by section 224(i) of the Reclamation Reform Act of 1982 and 43 CFR 426.23, will continue to accrue during the time any appeal is pending.

The proposed rule adopts the procedure for filing an appeal with OHA as set forth in 43 CFR part 4, subpart G, and other applicable provisions of part 4.

DATES: Comments on this proposed rule must be submitted on or before November 5, 1990.

ADDRESSES: Written comments on the proposed rule are to be submitted to Terry Lynott, Director, Program Services Division; Bureau of Reclamation, Attention D-5100; PO Box 25007; Denver CO 80225.

FOR FURTHER INFORMATION CONTACT: Terry Lynott, telephone number (303) 236-3288.

SUPPLEMENTARY INFORMATION:

Statement of Effects

The Department of the Interior (DOI) has determined that the proposed rule does not constitute a major rule under Executive Order 12291 because the rule will not (1) have a measurable effect on the economy; (2) result in major costs to the public or government agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. Therefore, a Regulatory Impact Analysis is not required and has not been prepared.

Paperwork Reduction Act

The proposed revised rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act (NEPA) Compliance

The DOI has determined that this action meets the criteria for an action categorically excluded from the provisions of NEPA (40 CFR 1508.4) under Departmental Manual part 516 DM 6, appendix 9, section 9.4.A.1—"Changes in regulations or policy

2. Section 426.22 is revised to read as follows:

§ 426.22 Decisions and appeals.

(a) Unless otherwise provided by the Secretary, the Regional Director shall make any determination required under these rules and regulations. A party directly affected by such a

South State Street, PO Box 11568, Salt Lake City, UT 84147.

Regional Director, Great Plains Region, Bureau of Reclamation, 316 North 26th Street, PO Box 36900, Billings, MT 59107.

[FR Doc. 90-23488 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-09-M

telegraphy examinations for amateur operator licenses. Specifically, the proposal would exempt a severely handicapped individual from the thirteen or twenty words per minute (wpm) telegraphy examination upon submission of a physician's certification that the individual, due to a severe handicap, cannot pass the higher speed

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1552

[FRL-3835-2]

Acquisition Regulation: Cost Proposals by Offerors

AGENCY: Environmental Protection

to provide such information on any proposed category rates or on the use of any weighting factors.

EPA solicitations may specify amounts to be proposed for travel or other direct costs. Some offerors have assumed that the specified amounts include indirect cost and fee. The proposed rule will clarify that such

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National Environmental Policy Act (NEPA) Compliance

The DOI has determined that this action meets the criteria for an action categorically excluded from the provisions of NEPA (40 CFR 1508.4) under Departmental Manual part 516 DM 6, appendix 9, section 9.4.A.1—"Changes in regulations or policy directives and legislative proposals where impacts are limited to economic and/or social effects."

Small Entity Flexibility Analysis

The proposed rule will not have a significant economic effect on a substantial number of small entities. The proposed rule merely modifies the existing procedures for appealing a determination made under the acreage limitation rules and regulations.

Public Comment on Proposed Rule

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the Addresses section of this preamble. Comments must be received on or before November 5, 1990.

Authorship

This proposed rule was prepared by the Reclamation Reform Act Task Force, which is chaired by Terry Lynott, Director, Program Services Division, Bureau of Reclamation, Denver Office.

List of Subjects in 43 CFR Part 426

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, it is proposed to revise 43 CFR 426.22 to read as follows:

Dated: September 13, 1990.

Dennis B. Underwood,

Commissioner, Bureau of Reclamation.

PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

1. The authority citation for part 426 continues to read as follows:

Authority: Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97-293, title II, 96 Stat. 1263, as amended by the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203; an the Reclamation Act of 1902, as amended and supplemented 32 Stat. 388, (43 U.S.C. 371 et seq.).

2. Section 426.22 is revised to read as follows:

§ 426.22 Decisions and appeals.

(a) Unless otherwise provided by the Secretary, the Regional Director shall make any determination required under these rules and regulations. A party directly affected by such a determination may appeal in writing to the Commissioner of Reclamation within 30 days from the date of mailing (postmark) of the Regional Director's determination. The affected party shall have 60 days from the date of mailing (postmark) of the Regional Director's determination within which to submit a supporting brief or memorandum to the Commissioner. The Commissioner may extend the time for submitting a supporting brief for memorandum. The Regional Director's determination will be held in abeyance until the Commissioner has reviewed the matter and rendered a decision.

(b) The affected party may appeal the Commissioner's decision to the Secretary by writing to the Director, Office of Hearings and Appeals (OHA), within 30 days from the date of mailing (postmark) of the Commissioner's decision. The appeal provided in this paragraph (b) shall be governed by 43 CFR part 4, subpart G, and other provisions of 43 CFR part 4, where applicable.

(c) Interest on any underpayments will continue to accrue during the time any appeal is pending as provided in 43 CFR 426.23.

(d) Final decisions on appeals rendered by the Commissioner prior to the effective date of this section are hereby validated and may not be further appealed.

(e) Pertinent addresses are shown below:

Commissioner, Bureau of Reclamation, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.
Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Room 1103 Ballston Tower No. 3, Arlington, VA 22203.
Regional Director, Pacific Northwest Region, Bureau of Reclamation, 550 West Fort Street, PO Box 043, Boise, ID 83724.
Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.
Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, PO Box 427, Boulder City, NV 89005.
Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City, UT 84147.
Regional Director, Great Plains Region, Bureau of Reclamation, 316 North 26th Street, PO Box 36900, Billings, MT 59107.

[FR Doc. 90-23488 Filed 10-3-90; 8:45 am]
BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 90-350; DA-1302]

Denial of Request, Filed by The American Radio Relay League, Inc. (ARRL), for Extension of Time To File Comments in the Matter of Making the Amateur Service More Accessible to Persons With Handicaps

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of extension of time.

SUMMARY: The ARRL states that its Executive Committee has not had an opportunity to meet and consider input from its volunteer examiner teams or its general membership. It also argues that there is no urgency to complete this matter because there is already a temporary waiver procedure in place for applicants with severe handicaps who cannot pass the higher speed telegraphy examinations for an amateur radio license. The Commission, however, pointed out that it is important for individuals with severe handicaps to know as soon as possible whether there will be greater accessibility to the higher grade amateur service licenses.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 27, 1990.
Released: September 28, 1990.
By the Acting Chief, Private Radio Bureau:

1. On August 9, 1990, the Commission released a *Notice of Proposed Rule Making* (*Notice*) in this proceeding,[1] proposing to make the amateur service more accessible to severely handicapped individuals, who, because of their handicaps, have extraordinary difficulty in passing Morse code telegraphy examinations for amateur operator licenses. Specifically, the proposal would exempt a severely handicapped individual from the thirteen or twenty words per minute (wpm) telegraphy examination upon submission of a physician's certification that the individual, due to a severe handicap, cannot pass the higher speed telegraphy examination. The due dates for comments and reply comments are September 24, 1990, and October 9, 1990, respectively.

2. On September 21, 1990, The American Radio Relay league, Inc., (ARRL) requested an extension of time to and including November 15, 1990, within which comments may be filed in the proceeding. The ARRL states that it mailed a copy of the *Notice* to each of its volunteer examiner (VE) teams on August 28, 1990, but has not received their responses nor responses from its membership as a whole. The ARRL argues that its Executive Committee has not had an opportunity to meet and consider input from the VE teams or the general membership. The ARRL also argues that with a waiver procedure for the higher speed telegraphy examinations already in place, there is no urgency to complete action in this matter.

3. We have carefully considered ARRL's request for an extension of time, and its supporting arguments. We conclude that the requested extension should be denied. Consistent with the purpose of the Americans with Disabilities Act of 1990,[2] which provides, among other things, a comprehensive national mandate for the elimination of discrimination against individuals with disabilities, it is important for individuals with severe handicaps to know as soon as possible whether there will be greater accessibility to the higher grade amateur service licenses. This proceeding, therefore, should be concluded with all due dispatch.

4. In view of the foregoing, *it is ordered* That ARRL's request for an extension of time to and including November 15, 1990, to file comments in this proceeding *is denied.*

Federal Communications Commission.

Beverly G. Baker,

Acting Chief, Private Radio Bureau.

[FR Doc. 90-23522 Filed 10-3-90; 8:45 am]
BILLING CODE 6712-01-M

[1] 5 FCC Rcd 4689 (1990).

[2] *See* Pub. L. No. 101-336, 104 Stat. 327 (1990).

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1552

[FRL-3835-2]

Acquisition Regulation: Cost Proposals by Offerors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a rule on the submission of cost proposals by offerors. This rule is necessary to ensure that cost proposals are evaluated more thoroughly and on the same basis for all offerors. The intended effect of this action is to require offerors in their cost proposals to provide underlying assumptions in support of proposed category and individual labor rates, to propose the full amount of any travel or other direct cost specified in a solicitation, to propose their standard workyear for acquisitions that require fully dedicated staff, and to identify any management or management support costs to be charged as direct costs.

DATES: Written comments on this proposed rule must be received on or before November 5, 1990.

ADDRESSES: Comments should be addressed to Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers at 202-382-5028.

A. Background

Many offerors propose professional and technical labor as category rates, rather than specific individuals, to comply with professional and technical levels of labor specified in a solicitation. A solicitation will set forth specific educational and work experience requirements for each level, as well as the number of hours for each level. Offerors in responding to a particular professional or technical level will propose a company labor category rate, or will often combine two or more company labor categories to arrive at a combined labor category rate. Offerors are not presently required to provide descriptions and qualifications for company labor categories, nor to explain and to justify any weighting factors used to determine the relative usage of individuals within such a labor category or a combined category rate. Offerors who propose individual rates are similarly not required to justify any weighting factors used to determine the relative usage of proposal individuals. The proposed rule will require offerors to provide such information on any proposed category rates or on the use of any weighting factors.

EPA solicitations may specify amounts to be proposed for travel or other direct costs. Some offerors have assumed that the specified amounts include indirect cost and fee. The proposed rule will clarify that such specified amounts are exclusive of any indirect costs and fee.

On acquisitions requiring a contractor to provide fulltime dedicated staff for a twelve month period(s), EPA has required offerors to propose on a specified number of direct labor hours for each position. By EPA specifying direct labor hours on such acquisitions, contractors whose productive workyear is less than the specified hours may overstate costs, while contractors whose productive workyear is greater than the specified hours may understate costs. Further, contractors may propose costs under this requirement in a manner inconsistent with their accounting system and the manner in which they will incur costs. The proposed rule will require offerors to propose their company's workyear and identify how many hours in each workyear are direct (i.e. productive working hours), and how many are indirect (i.e. paid absences).

The EPA definition of direct labor in the clause at 48 CFR 1552.212-70 does not include management personnel. Direct labor is defined as including technical personnel, and not support personnel such as company management. However, many contractors whose standard accounting practice is to charge management labor as a direct cost have charged such costs as direct. A portion of such direct labor costs is therefore not available for technical effort. The proposed rule will require offerors to identify any management and management support costs to be charged direct.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, established the requirements for the Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule hav been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request

document has been prepared by EPA (ICR No. *1036*) and a copy may be obtained from Wanda Haxton, Information Policy Branch; EPA; 401 M St., SW (PM-223); Washington, DC 20460 or by calling (202) 382-2706.

Public reporting burden for this collection of information is estimated to vary from 1 to 3 hours per response, with an average of 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments of the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The information requested for submission to the Government is readily available and will require a minimal effort for offerors to comply. The rule will require offerors to identify management and management support labor costs to be charged as direct costs, to provide underlying assumptions in support of proposed category and individual rates, and to propose their company's personyear rather than a specified number of hours for acquisitions that require fully dedicated staff over a specific time period. This is information which offerors normally develop in preparing cost proposals. The rule will merely require offerors to disclose this information for evaluation purposes.

The EPA certifies that this rule will not exert a significant impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Parts 1515 and 1552

Government procurement, Contracting by negotiation, Solicitation provisions and contract clauses.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for parts 1515 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat 390, as amended, 40 U.S.C. 486(c).

2. Section 1515.407 is amended by revising paragraph (a)(2) to read as follows:

§ 1515.407 Solicitation provisions.

(a) * * *

(2) Section 1552.215-73, Instructions for the Preparation of Technical and Cost or Pricing Proposals (use Alternate I for cost-reimbursable, level of effort contracts; Alternate II for cost-reimbursable, level of effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) and performance is on a Government facility; or Alternate III for cost-reimbursable, level of effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) and performance is not on a Government facility).

* * * * *

3. In § 1552.215-73, in the provision, paragraph (b)(2)(i) is revised, paragraph (b)(4) is redesignated as paragraph (b)(4)(i), paragraph (b)(4)(ii) is added, and alternate clauses II and III are added to read as follows:

§ 1552.215-73 Instructions for the Preparation of Technical and Cost or Pricing Proposals

* * * * *

(b) * * *

(2) * * *

(i) Attach support schedules indicating types or categories of labor together with labor hours for each category, indicating rate of compensation. If individual labor rates are proposed, give employee names. Explain the basis of the proposed labor rates, including a complete explanation and justification for any judgmental factors used to determine weighting factors applied to either category rates or individual rates. Such explanation should refer to your technical approach as applicable. If internal category rates are the basis of the proposed rates, include a description for each labor category, which identifies the qualifications and experience requirements for each category, and a crosswalk reconciling company labor categories with the labor categories specified in this solicitation. Provide a matrix summarizing the effort proposed, including subcontractors, by professional and technical level.

* * * * *

(4)(i) * * *

(ii) If the solicitation specifies the amount of travel costs, this amount is exclusive of any applicable indirect costs and fee.

* * * * *

Alternate II (XXX-1990). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is on a Government facility, add the following paragraph (b)(2)(v) to the basic provision:

(v) The level of effort for each position is to be proposed in workyears. A workyear is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year = 2080 hours). Your proposal must identify proposed workyears and clearly identify how many hours in each workyear are direct (i.e., productive working hours) and how many are indirect (i.e. paid absences). If your company policy includes a different base work week, your total available hours would be different. For example, if your company's policy calls for a 37.5 hour work week, you would deduct your paid absences from 1950 hours (37.5 hr/wk × 52 wks/yr = 1950 hrs). It should also clearly identify the paid absences as to how many hours are for holiday and how many hours are for vacation and sick leave. The amount of indirect time (paid absences) identified in your proposal must be consistent with company policy and must allow for the ten Federal Government holidays.

Alternate III (XXX-1990). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is not on a Government facility, add the following paragraph (b)(2)(v) to the basic provision:

(v) The level of effort for each position is to be proposed in workyears. A workyear is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year = 2080 hours). Your proposal must identify proposed workyears and clearly identify how many hours in each workyear are direct (i.e. productive working hours) and how many are indirect (i.e. paid absences). If your company policy includes a different base work week, your total available hours would be different. For example, if your company's policy calls for a 37.5 hour work week, you would deduct your paid absences from 1950 hours (37.5 hr/wk × 52 wks/yr = 1950 hrs).

4. Section 1552.215-74 is amended by revising paragraph (a) of the provision to read as follows:

§ 1552.215-74 Cost Proposal Instructions.

* * * * *

(a) Labor.

(1) Technical Labor

Labor categories	Estimated hours	Rate/hour	Total
		$	$
		$	$
		$	$
Technical Labor Cost Subtotal			$

(2) Management Labor

Labor categories	Estimated hours	Rate/hour	Total
		$	$
		$	$
		$	$
Management Labor Cost Subtotal			$
Total Labor Cost Subtotal			$

* * * * *

Dated: September 13, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90-22883 Filed 10-3-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

[FHWA Docket No. MC-122]

RIN 2125-AB65

Minimum Levels of Financial Responsibility for Motor Carriers; Self-Insurance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA is withdrawing an ANPRM published on June 18, 1986, 51 FR 22086, and closing docket No. MC-122. The rulemaking, issued in response to a petition submitted by May Trucking Company, sought comment from interested parties concerning self-insurance as a viable and effective mechanism for demonstrating financial responsibility as required by the Motor Carrier Act of 1980. The FHWA has received no convincing information that the financial interests of the motor carrier industry and the public would be better served if additional self-insurance authority was authorized.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-2963, or Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On June 18, 1986, the FHWA published an ANPRM in the Federal Register (51 FR 22086) seeking public comment concerning whether 49 CFR part 387 should be amended to allow motor carriers to qualify as self-insurers and thereby to satisfy the FHWAs financial responsibility requirements. In the same Federal Register, the FHWA adopted an interim rule to permit certain for-hire motor carriers of property to satisfy the financial responsibility requirements of the DOT (FHWA) by receiving approval from the Interstate Commerce Commission (ICC) to self-insure and maintaining a "satisfactory" safety rating assigned by the FHWA (51 FR 22080). In this regard, the FHWA took careful note of regulatory action by the ICC in response to a companion petition for authority to self-insure submitted by May Trucking Company. The ICC initially denied May's request, and the company filed a petition for reconsideration of that decision. May subsequently filed a separate petition with the FHWA. Upon reconsideration, the ICC granted May's application and adopted interim rules applicable to requests to self-insure. The ICC allowed carriers to self-insure for bodily injury and property damage liability, subject to certain conditions. Those conditions require motor carriers to do the following (See 51 FR 22081, June 18, 1986):

1. Submit carrier quarterly and annual financial statements to the Commission. The statements must include a certification by an appropriate carrier official verifying the accuracy of the information provided. Disclosure is also required of affiliated companies which provide support services for the operations of the motor carrier;

2. File quarterly claim reports detailing the number, dollar amount, nature of its claims experience, and quarterly reports detailing pending court cases relating to or arising from claims experience;

3. Immediately notify the ICC of any pending or contingent liability claim(s) which individually exceed $50,000 or collectively exceed $250,000;

4. Maintain an irrevocable $1 million line of credit, notify the ICC immediately upon any draw-down of the credit line, have unrestricted access to the entire credit line, and draw-down from the credit line only to satisfy bodily injury and property damage claims;

5. In the event of a draw down, provide the ICC with a plan detailing the motor carrier's proposed response to future liability claims;

6. Notify the ICC prior to the effective date of any change or cancellation of the credit line, or of renewal of the credit line;

7. Maintain a net worth of at least $2 million, and notify the ICC at any time that its net worth falls below that figure, at which time the motor carrier will have 30 days to correct the situation or face termination of the authority to self-insure; and

8. Acknowledge that the Commission retains the authority to terminate the motor carrier's self-insurance authorization at any time if it appears to the ICC that the motor carrier's financial

arrangements fail to provide satisfactory protection for the public.

The FHWA's interim rule provided relief only for motor carriers which have received approval from the ICC to self-insure, and which maintain "satisfactory" safety ratings under 49 CFR part 385. The FHWA recognized that there are motor carriers (primarily

the government could adequately regulate this complex area.

A private transportation consultant opposed self-insurance regulation because it would "* * * tread on extremely tenuous ground considering the fragile financial condition of the motor carrier industry and the fragile nature of the banking industry * * * in

the voluntary market may obtain coverage through the involuntary (assigned risk) market.

2. Insurance premiums have levelled off and the vast majority of the motor carrier industry satisfies the FHWA's financial responsibility requirements with some type of purchased insurance.

3. Most for-hire motor carriers who

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Feeding Wild Populations of Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Proposed rule; extension of comment period and announcement of public hearings.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to prohibit the feeding of wild populations of marine mammals. The NMFS has received requests for public hearings on this proposed rule and has extended the comment period.

DATES: Comments on the proposed rule will be accepted until November 8, 1990. Public hearings are scheduled as follows.

1. October 4, 1990, at 7 p.m., Panama City, FL:
1. Panama City, FL—Room 115, Health Sciences Building, Gulf Coast Community College, Highway 98 West;
2. Hilton Head Island, SC—cafeteria, Hilton Head High School, 1983 School Road;
3. Corpus Christi, TX—Agriculture Research Extension Center, Texas

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arrangements fail to provide satisfactory protection for the public.

The FHWA's interim rule provided relief only for motor carriers which have received approval from the ICC to self-insure, and which maintain "satisfactory" safety ratings under 49 CFR part 385. The FHWA recognized that there are motor carriers (primarily private motor carriers of hazardous materials) which are not eligible for ICC approval to self-insure but which are subject to the FHWA's financial responsibility requirements. The FHWA therefore published the June 18, 1986 ANPRM in an effort to obtain information concerning possible regulations that would allow all motor carriers subject to the FHWA's regulations to become self-insurers.

Fourteen commenters responded to the ANPRM. Eight of them supported some type of self-insurance; six of the eight were either for-hire motor carriers, or associations representing for-hire motor carriers, subject to the ICC's financial responsibility requirements. As such, all six have the prerogative of filing for self-insurance authority with the ICC. Another certificated for-hire carrier addressed only the dollar figure the ICC imposed for the establishment of an irrevocable line of credit and the requirement that a motor carrier must maintain a "satisfactory" safety rating to retain the right to self-insure. A labor union concluded that self-insurance could be a feasible option. However, the union also stated that "self-insurance will require the FHWA and possibly other branches of the U.S. Department of Transportation to make a 'substantial commitment of agency resources' for regulation. Unless and until the Department of Transportation is prepared to regulate a self-insurer, as a State regulates an insurance carrier, and expend the necessary resources, self-insurance should not be allowed. Only with the required regulation is self-insurance a viable option in the public interest." A national association of shippers supported self-insurance regulation as long as the government could ensure that the interests of shippers and the public are fully protected.

The Department of the Army opposed allowing motor carriers of hazardous substances to be self-insurers. The Army questioned the effectiveness of such a program screening out unqualified carriers. It was concerned that recovery of damages from self-insured motor carriers would be difficult, especially when catastrophic accidents occurred. It also believed there was reason to doubt the government could adequately regulate this complex area.

A private transportation consultant opposed self-insurance regulation because it would "* * * tread on extremely tenuous ground considering the fragile financial condition of the motor carrier industry and the fragile nature of the banking industry * * *" in the United States. If the insurance industry collectively[,] with the vast resources that they have, cannot cope with the legal and economic conditions inherent in the motor carrier industry, how pray tell, can the individual motor carrier[,] standing alone, cope with the same economic and legal conditions[?]" Further, the commenter contended that the criteria proposed by May Trucking Company, similar to what the ICC requires, could only apply to Class I motor carriers (having operating revenues in excess of $5 million annually). Class II and III motor carriers would be precluded from participation because of the inability to meet the proposed financial constraints.

Only one commenter, an association representing 1,100 small business entities who transport hazardous materials as private motor carriers of property, spoke for the private carrier segment of the motor carrier industry. The association urged the FHWA to explore other ways to relieve the financial responsibility burden. It also urged congressional action to place a cap on monetary awards and attorney fees. The association further stated that it had solved its members' "availability" problem by forming a captive insurance company.

Two commenters addressed issues that were not pertinent to the rulemaking as published.

The ICC has allowed motor carriers subject to its jurisdiction to become self-insurers for the past four years. As of May 1990, the Commission has received 88 applications for self-insurance. Fifty-six applications have been granted. Nineteen application have been denied. Five have been dismissed or rejected. Seven have been withdrawn by the applicant and one is being processed. Even though 56 applications have been granted, the ICC's records indicate that only 20 motor carriers are actively using their self-insurance authority.

From the information submitted to the docket and information generally available to the public, the FHWA concludes that:

1. The insurance market place is working. Insurance, at the required levels, is available to the motor carrier industry. Even the motor carriers who do not qualify to purchase coverage in the voluntary market may obtain coverage through the involuntary (assigned risk) market.

2. Insurance premiums have levelled off and the vast majority of the motor carrier industry satisfies the FHWA's financial responsibility requirements with some type of purchased insurance.

3. Most for-hire motor carriers who may apply to the ICC for the right to self-insure have not done so. Only 20 of the 56 motor carriers (35%) granted such authority are actively using it.

4. There is a lack of interest in self-insurance by private motor carriers of hazardous materials. Only one association, representing a small segment of the private motor carriers industry, commented on the issue, and it concluded that a self-insurance regulation would not assist small business entities.

5. The establishment of a self-insurance program by the FHWA would require a substantial commitment of Agency resources that is unavailable at this time.

In view of the above, the FHWA is withdrawing the ANPRM on this subject and is closing Docket MC-122.

This action does not affect 49 CFR 387.7(d)(3)(1989). Despite the closure of this docket, an ICC decision authorizing a motor carrier to self-insure remains proof of compliance with the FHWA's financial responsibility requirements, provided the carrier maintain a satisfactory safety rating. There appears in the "Rules" section of today's Federal Register, a final rule that makes permanent the interim-final rule adopting subparagraph (d)(3) of 49 CFR 387.7 published on June 18, 1986 at 51 FR 22080.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 387

Highways and roads, Financial responsibility, Insurance, Motor carriers.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety.)

Authority: 49 U.S.C. 10927 note; 49 CFR 1.48.

Issued on September 27, 1990.

T. D. Larson

Administrator.

[FR Doc. 23434 Filed 10-3-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Feeding Wild Populations of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: On August 29, 1990 (55 FR 35328), NMFS issued a proposed rule that would amend the definition of "take" to include feeding marine mammals in the wild. The regulations would prohibit activities such as "dolphin feeding" cruises and feeding marine mammals from docks and piers. NMFS has scheduled four public hearings on this proposed rule and has extended the comment period.

DATES: Comments on the proposed rule will be accepted until November 8, 1990. Public hearings are scheduled as follows.

1. October 4, 1990, at 7 p.m., Panama City, FL;
2. October 10, 1990 at 7 p.m., Hilton Head Island, SC;
3. October 22, 1990 at 7 p.m., Corpus Christi, TX;
4. October 24, 1990, at 1 p.m., Silver Spring, MD.

ADDRESSES: Send written comments to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910.

The hearings will be held at the following locations:

1. Panama City, FL—Room 115, Health Sciences Building, Gulf Coast Community College, Highway 98 West;
2. Hilton Head Island, SC—cafeteria, Hilton Head High School, 1983 School Road;
3. Corpus Christi, TX—Agriculture Research Extension Center, Texas A&M University, Highway 44 West (4 miles west of Corpus Christi Airport);
4. Silver Spring, MD—2nd floor conference room, Silver Spring Metro Center 2, 1325 East West Highway (next door to NMFS).

FOR FURTHER INFORMATION CONTACT: Jeffrey Brown (813) 893-3366 or Margaret Lorenz (301) 427-2322.

Dated: September 27, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90-23440 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 55, No. 193
Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 28, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection: (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

• Food and Nutrition Service.
Employment and Training Program Report.
FNS-583.
Quarterly.
State or local governments; 1,700,212 responses; 339,564 hours; not applicable under 3504(h).
Ellen Henigan (703) 756-3762.

Extension

• Foreign Agricultural Service.
Declaration of Sale.
FAS 359.
On occasion.
Businesses or other for-profit; 504 responses; 126 hours; not applicable under 3504(h).
James (202) 447-5780.

• Agricultural Cooperative Service.
Agricultural Cooperative Service Questionnaire: Market Potential for New Cooperatives (Buyer Survey for New Cooperative Activity).
On occasion.
Businesses or other for-profit; Small businesses or organizations; 105 responses; 53 hours; not applicable under 3504(h).
Thomas H. Stafford (202) 653-6965.

Extension

• Food Safety and Inspection Service.
Regulations Governing Meat Inspection, part 309.16, Livestock Suspected of Having Biological Residues.
FSIS-6800-6.
Recordkeeping; On occasion.
Individuals or households; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 606,000 responses; 69,416 hours; not applicable under 3504(h).
Roy Purdie, Jr. (202) 447-5372.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 90-23436 Filed 10-3-90; 8:45 am]
BILLING CODE 3410-01-M

Types and Quantities of Agricultural Commodities to be Made Available for Donation Overseas in Fiscal Year 1991

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1991.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447-3573.

Determination

I have determined that 2,200,000 metric tons of grain and 109,700 metric tons of butter and butter oil shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1991.

The kinds and quantities of commodities that shall be made available for donation are as follows:

	Commodity	Quantity (Metric Tons)
Grains and Oilseeds	Corn	1,500,000
	Sorghum	700,000
	Total	2,200,000
Dairy Products	Butter and Butter Oil	109,700
	Total	109,700

Done at Washington, DC this 1st day of October 1990.
Clayton Yeutter,
Secretary of Agriculture.
[FR Doc. 90-23501 Filed 10-3-90; 8:45 am]
BILLING CODE 3410-01-M

Office of the Secretary

Meat Import Limitations; Fourth Quarterly Estimate

Public Law 88-482, enacted August 22, 1964, as amended by Public Law 96-177, Public law 100-418, and 100-449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00) (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1990 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As announced in the Notice published in the Federal Register on January 4, 1990 (55 FR 335), the estimated aggregate quantity of meat articles other than products of Canada prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1990 is 1,242.0 million pounds.

In accordance with the requirements of the Act, I have determined that the fourth quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1990 is 1,285 million pounds.

Done at Washington, DC this 28th day of September, 1990.
Clayton Yeutter,
Secretary of Agriculture.
[FR Doc. 90-23500 Filed 10-3-90; 8:45 am]
BILLING CODE 3410-10-M

Forest Service

News Used for Publication of Legal Notice of Appealable Decisions for Pacific Southwest Region, California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Southwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 217. This action is necessary to implement the Secretary of Agriculture's interim rule amending the Forest Service administrative appeal procedures, which was signed on February 26, 1990 and was published in the Federal Register on March 6, 1990. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 5, 1990. The list of newspapers will remain in effect until April 1991 when another notice will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Silverman, Regional Appeals Coordinator, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111, phone: (415) 705-2553.

SUPPLEMENTARY INFORMATION: On February 26, 1990, the Secretary of Agriculture signed an interim rule amending the administrative appeal procedures 36 CFR 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some forest supervisors and district rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Pacific Southwest Regional Forester decisions:
Sacramento Bee, Sacramento, California
Angeles Forest Supervisor decisions:
Los Angeles Times, Los Angeles, California
Arroyo-Seco District Ranger decisions:
Los Angeles Times, Los Angeles, California
Mount Baldy District Ranger decisions:
Los Angeles Times, Los Angeles, California
Saugus District Ranger decisions:
Los Angeles Times, Los Angeles, California
Tujunga District Ranger decisions:
Los Angeles Times, Los Angeles, California
Valyermo District Ranger decisions:
Los Angeles Times, Los Angeles, California

Cleveland National Forest

Cleveland Forest Supervisor decisions:
San Diego Union, San Diego, California
Descanso District Ranger decisions:
San Diego Union, San Diego, California
Palomar District Ranger decisions:
San Diego Union, San Diego, California
Newspaper providing additional notice of Palomar decisions:
Riverside Press-Enterprise, Riverside, California
Trabuco District Ranger decisions:
Orange County Register, Santa Ana, California
Newspaper providing additional notice of Trabuco decisions:
Riverside Press-Enterprise, Riverside, California

Eldorado National Forest

Eldorado Forest Supervisor decisions:
Mountain Democrat, Placerville, California
Amador District Ranger decisions:
Mountain Democrat, Placerville, California
Georgetown District Ranger decisions:
Mountain Democrat, Placerville, California
Pacific District Ranger decisions:
Mountain Democrat, Placerville, California
Placerville District Ranger decisions:
Mountain Democrat, Placerville, California

Inyo National Forest

Inyo Forest Supervisor decisions:
Inyo Register, Bishop, California
Mammoth District Ranger decisions:
Inyo Register, Bishop, California
Mono Lake District Ranger decisions:
Inyo Register, Bishop, California
Mount Whitney District Ranger decisions:
Inyo Register, Bishop, California
White Mountain District Ranger decisions:
Inyo Register, Bishop, California

Klamath National Forest

Klamath Forest Supervisor decisions:
Siskiyou Daily News, Yreka, California
Happy Camp District Ranger decisions:
Siskiyou Daily News, Yreka, California
Goosenest District Ranger decisions:
Siskiyou Daily News, Yreka, California
Oak Knoll District Ranger decisions:
Siskiyou Daily News, Yreka, California
Salmon River District Ranger decisions:
Siskiyou Daily News, Yreka,

California
Scott River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Ukonom District Ranger decisions:
Siskiyou Daily News, Yreka, California

Lake Tahoe Basin

Lake Tahoe Basin Forest Supervisor decisions:
Tahoe Daily Tribune, So. Lake Tahoe, El Dorado County, California

Lassen National Forest

Lassen Forest Supervisor decisions:
Lassen County Times, Susanville, Lassen County, California
Almanor District Ranger decisions:
Chester Progressive, Plumas County, California
Eagle Lake District Ranger decisions:
Lassen County Times, Susanville, Lassen County, California
Hat Creek District Ranger decisions:
Intermountain News, Burney, Shasta County, California
Newspaper providing additional notice of Hat Creek decisions:
Mountain Echo, Fall River Mills, Shasta County, California

Los Padres National Forest

Los Padres Forest Supervisor decisions:
Santa Barbara News Press, Santa Barbara, California
Ojai District Ranger decisions:
Star Free Press, Ventura, California
Monterey District Ranger decisions:
Salinas Californian, Monterey, California
Mount Pinos District Ranger decisions:
The Bakersfield Californian, Kern, California
Santa Barbara District Ranger decisions:
Santa Barbara News Press, Santa Barbara, California
Santa Lucia District Ranger decisions:
Telegram Tribune, San Luis Obispo, California

Mendocino National Forest

Mendocino Forest Supervisor decisions:
Chico Enterprise-Record, Chico, California
Corning District Ranger decisions:
Chico Enterprise-Record, Chico, California
Covelo District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Stonyford District Ranger decisions:
Chico Enterprise-Record, Chico, California
Upper Lake District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Chico Tree Improvement Center Director decisions:
Chico Enterprise-Record, Chico, California

Modoc National Forest

Modoc Forest Supervisor decisions:
Modoc County Record, Alturas, Modoc County, California
Big Valley District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Devil's Garden District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Doublehead District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Newspaper providing additional notice of Doublehead decisions:
Herald News, Klamath Falls, Oregon
Warner Mountain District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California

Plumas National Forest

Plumas Forest Supervisor decisions:
Feather River Bulletin, Quincy, California
Beckwourth District Ranger decisions:
Portola Reporter, Portola, California
Greenville District Ranger decisions:
Indian Valley Record, Greenville, California
La Porte District Ranger decisions:
Oroville Mercury Register, Oroville, California
Milford District Ranger decisions:
Lassen County Times, Susanville, Lassen County, California
Oroville District Ranger decisions:
Oroville Mercury Register, Oroville, California
Quincy District Ranger decisions:
Feather River Bulletin, Quincy, California

San Bernardino National Forest

San Bernardino Forest Supervisor decisions:
San Bernardino Sun, San Bernardino, California
Arrowhead District Ranger decisions:
Mountain News, Blue Jay, California
Big Bear District Ranger decisions:
Big Bear Life and Grizzly, Big Bear, California
Cajon District Ranger decisions:
San Bernardino Sun, San Bernardino, California
San Gorgonio District Ranger decisions:
Yucaipa News Mirror, Yucaipa, California
San Jacino District Ranger decisions:
Idyllwild Town Crier, Idyllwild, California

Sequoia National Forest

Sequoia Forest Supervisor decisions:
Porterville Recorder, Porterville, California
Cannell Meadow District Ranger decisions:
Porterville Recorder, Porterville, California
Greenhorn District Ranger decisions:
Porterville Recorder, Porterville, California
Hot Springs District Ranger decisions:
Porterville Recorder, Porterville, California
Hume Lake District Ranger decisions:
Porterville Recorder, Porterville, California
Tule River Ranger District decisions:
Porterville Recorder, Porterville, California

Shasta-Trinity National Forest

Shasta-Trinity National Forest decisions:
Record Searchlight, Redding, Shasta County, California
Big Bar District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Hayfork District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
McCloud District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Mount Shasta District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Shasta Lake District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Weaverville District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Yolla Bolla District Ranger decisions:
Record Searchlight, Redding, Shasta County, California

Sierra National Forest

Sierra Forest Supervisor decisions:
Frenso Bee, Frenso, California
Kings River District Ranger decisions:
Frenso Bee, Frenso, California
Pineridge District Ranger decisions:
Frenso Bee, Frenso, California
Mariposa District Ranger decisions:
Frenso Bee, Frenso, California
Miarets District Ranger decisions:
Frenso Bee, Frenso, California

Six Rivers National Forest

Six Rivers Forest Supervisor decisions:
Times Standard, Eureka, California
Casquest District Ranger decisions:
Del Norte Triplicate, Crescent City, California
Lower Trinity District Ranger decisions:
Klamath Kourier, Willow Creek, California
Mad River District Ranger decisions:
Times Standard, Eureka, California
Orleans District Ranger decisions:
Klamath Kourier, Willow Creek, California

Stanislaus National Forest

Stanislaus Forest Supervisor decisions:
The Union Democrat, Sonora, California
Calaveras District Ranger decisions:
The Union Democrat, Sonora, California
Groveland District Ranger decisions:
The Union Democrat, Sonora, California
Mi-Wok District Ranger decisions:
The Union Democrat, Sonora, California
Summit District Ranger decisions:
The Union Democrat, Sonora, California

Tahoe National Forest

Tahoe Forest Supervisor decisions:
Grass Valley Union, Grass Valley, California
Downieville District Ranger decisions:
Mountain Messenger, Downieville, California
Foresthill District Ranger decisions:
Auburn Journal, Auburn, California
Nevada City District Ranger decisions:
Grass Valley Union, Grass Valley, California
Sierraville District Ranger decisions:
Mountain Messenger, Downieville, California
Newspapers providing additional notice of Sierraville decisions:
Sierra Booster, Loyalton, California
Portola Recorder, Portola, California
Truckee District Ranger decisions:
Sierra Sun, Truckee, Nevada County, California
Newspaper providing additional notice of Truckee decisions:
Tahoe World, Tahoe City, Placer County, California

Dated: September 27, 1990.

Joyce T. Murasoka,

Deputy Regional Forester.

[FR Doc. 90-23506 Filed 10-3-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Joint Meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee and the Computer Systems Technical Advisory Committee; Closed Meeting

Federal Register citation of previous announcement: pp. 36715-6 September 20, 1990.

Previously announced time of meeting: 9:30 a.m. October 16, 1990.

Changes in meeting: 9:30 a.m., October 25, 1990, Herbert C. Hoover Building, Room 1629, 14th Street and Pennsylvania Avenue NW., Washington, DC. Fully closed.

Dated: October 1, 1990.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90-23402 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 490]

Temporary Extension of Manufacturing Authority for Berg Steel Pipe Corp. Plant Within Foreign-Trade Zone 65; Panama City, FL

Whereas, in 1961, the Foreign-Trade Zones Board (the Board) granted authority to the Panama City Port Authority (PCPA) to establish FTZ 65, Panama City, Florida, and authorized manufacturing under zone procedures for the large diameter steel pipe plant of Berg Steel Pipe Corporation (BSPC) within FTZ 65 for a period of 5 years (Board Order 171, 46 FR 8072);

Whereas, the Board subsequently extended authority for the BSPC operation until September 30, 1990 (Board Order 362, 52 FR 28713);

Whereas, on May 30, 1990, PCPA made application to the Board (FTZ Docket 21-90, 55 FR 23955) for an indefinite extension of authority;

Whereas, the review of the request for an indefinite extension will not be completed by the September 30, 1990, expiration date; and,

Whereas, the FTZ Staff, in a preliminary review, finds that temporary extension of authority until expiration of the extended President's Steel Program and Voluntary Restraint Agreements for Steel (March 31, 1992) would be in the public interest pending completion of the review;

Now, Therefore, the Board hereby orders:

That the manufacturing authority for the BSPC operation within FTZ 65 is extended to March 31, 1992, subject to all of the other conditions in Board Orders 171 and 362, pending completion of the review on PCPA's request for an indefinite time extension.

Signed at Washington, DC this 27th day of September, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 90-23401 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-533-501]

Final Results of Antidumping Duty Administrative Review; Certain Iron Construction Castings From India

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 7, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain iron construction castings from India. The review covers 11 manufacturers and/or exporters of this merchandise to the United States and the period October 28, 1985 through April 30, 1987.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: October 4, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 32366) the preliminary results of its administrative review of the antidumping duty order on certain iron construction castings from India (51 FR 17221, May 9, 1986). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain heavy and light iron construction castings. Heavy castings are limited to manhole covers, rings and frames, catch basin grates and frames, and clean out covers and frames used for drainage or access purposes for public utility, water and sanitary systems. During the review period, heavy castings were classifiable under items 657.0950 and 657.0960 of the Tariff Schedules of the United States

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Annotated ("TSUSA"). This merchandise is currently classifiable under HTS items 7325.10.00.10.9 and 7325.10.00.50.0. Light castings are limited to valve boxes, service boxes and meter boxes which are placed below ground to encase water valves, gas valves, and other valves, or water and gas meters. During the review period, light castings were classifiable under TSUSA item 657.0990. This merchandise is currently classifiable under HTS item 7325.10.00.50.0. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 11 manufacturers/exporters of certain Indian iron construction castings and the period October 28, 1985 through April 30, 1987. East Coast Co., Victory Iron Works, Paharimata Iron Works, Kamala Iron and Foundry, Shree Laxmi Metal and S.K. Iron Foundry and Engineering had no shipments during the period of review. Their deposit rate is the all other rate from the less-than-fair-value investigation.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of the petitioners, the Municipal Castings Fair Trade Council and its individually-named members, and respondents, we held a hearing on September 22, 1989. We also received comments from U.S. importers of iron metal castings from India.

Petitioners' Comments

Comment 1: Petitioners claim that the Department should have verified the questionnaire responses as required by law. Petitioners argue that section 776(b)(3)(A) of the Tariff Act requires verification in all reviews, if timely requested by an interested party, unless verification has been conducted in the two immediately preceding reviews. However, petitioners maintain that even this narrow exception will not apply if an interested party shows good cause for verification. Petitioners argue that verification is warranted in this case because none of the firms reviewed has ever been verified. Moreover, there are omissions in the responses that could be clarified through verification.

Department's Position: We disagree with petitioners' interpretation of the statute. Section 776(b)(3) of the Tariff Act provides that verification is required only if timely requested by an interested party *and* if no verification was conducted during the two immediately preceding reviews and determinations. Since this is the first administrative review in this proceeding, verification is not required.

Nevertheless, parties can claim an exception to this rule if they can show good cause. In this case, petitioners have not shown good cause for verification.

Neither of the reasons provided are sufficient to warrant verification. The Department carefully reviewed all responses and received satisfactory replies to all deficiency questionnaires. Petitioners have not demonstrated that any remaining errors or omissions had any impact on the Department's calculations or results. Regardless of this fact, however, the purpose of verification is to confirm the accuracy of the data submitted, not to supplement responses or to cure omissions. *See, Final Determination of Sales of Less Than Fair Values: Industrial Forklift Trucks from Japan,* (53 FR 12552 (4/15/88) *Final Results of Antidumping Duty Administrative Review; Sodium Nitrate from Chile,* 52 FR 25897 (7/9/87) and *Final Determination of Sales at Less Than Fair Value; Mirrors in Stock Sheet and Lehr End Sizes from the United Kingdom,* 51 FR 43411 (12/2/86). Nor does the fact that the reviewed companies were not previously verified provide good cause for verification in this review. *See, Cellular Mobile Telephones and Subassemblies from Japan; Final Results of Antidumping Duty Administrative Review,* 54 FR 48015 (11/28/89).

Comment 2: Petitioners claim than the Department should calculate constructed value using actual reported profits, rather than the eight percent statutory minimum, to the extent that respondents' questionnaire responses permitted calculation of actual profit. The Department should only use the statutory minimum of eight percent when actual profits amount to less than eight percent.

Petitioners further claim that, even where a respondent does not report profit on a market-specific basis, such as Super Castings which had no home market sales, the Department should calculate constructed value using the actual corporate profit rather than the statutory minimum of eight percent. For example, Super Castings' financial statements show that corporate profit exceeded the statutory minimum. Petitioners maintain that, in the *Final Determination of Sales at Less than Fair Value; Porcelain-on Steel Cooking Ware from Taiwan,* 51 FR 38425, October 10, 1986, in which respondents' production predominantly consisted of the products under investigation, the Department used the actual corporate profit or the eight percent statutory minimum, whichever was higher.

Department's Position: We examined the actual corporate profit of each producer from its financial statements. We calculated the profit by deducting the cost of production from the total sales revenue. We divided the resulting profit by the cost of production. We found that the profit for all companies did not exceed the statutory minimum. Accordingly, for purposes of constructed value, we used the statutory minimum of eight percent profit for all companies.

Comment 3: Petitioners maintain that the Department should not deduct the International Price Reimbursement Scheme ("IPRS") payments from raw material costs in constructed value and cost of production calculations. The IPRS reimburses castings producers for the price differential between domestic and international sources of pig iron. Petitioners maintain that there is no authority under the antidumping laws to treat these payments as reductions to raw material costs. Section 773(e) of the Tariff Act only allows for a reduction of the cost of materials for any internal tax that is remitted upon export. Since the IPRS payment is not a rebate of internal taxes upon export, section 773(e) does not apply and no adjustment can be made for the IPRS payment.

Even if the Department were to make an adjustment for IPRS payments, the Department should deduct these payments from the cost of production, not the cost of materials, in order to be consistent with Indian accounting records. Respondents' financial statements treat the IPRS payments as sales revenue, indicating that IPRS payments are related to the sale of the finished castings product, not the manufacture of that product. As a result, the IPRS payments reduce the producer's overall production costs, not the costs of manufacture. To reclassify the IPRS payments as a reduction to costs of manufacture ignores how these payments are treated for accounting purposes.

Department's Position: IPRS payments reduce the cost of pig iron, not the cost of production, making the cost of castings cheaper to produce because of lower prices for pig iron. In *Alhambra Foundry Co., Ltd.* v. *United States,* 701 F. Supp. 221 (CIT 1988), the Court upheld the Department's treatment of the IPRS as a reduction of raw material costs. The court agreed with the Department's reasoning that, just as raw material costs should be calculated net of duty drawback, the Department should reduce raw material costs by the amount of the IPRS payments, because the IPRS payment effectively reduces the cost of such raw materials to castings producers. Therefore, the Department's adjustment of raw material costs for the IPRS payments was reasonable and consistent with the past practice and judicial precedent. We have received no new evidence from petitioners that suggests that a change in our practice is warranted.

Comment 4: Petitioners maintain that the Department can make a circumstance-of-sale adjustment for the IPRS payments in price-to-price comparisons only when the claim for the adjustment is sufficiently established and quantified. Petitioners argue that Uma and Commex failed to established entitlement to the claim as a circumstance-of-sale adjustment because they failed to show that IPRS payments affected the home market prices of castings.

Further, petitioners claim that respondents failed to adequately quantify the amount of IPRS payments because they did not link the payments to specific sales. The Department should not base IPRS circumstance-of-sale adjustments on amounts claimed on exports, but not actually received.

Department's Position: Castings producers receive export payments under the IPRS program, that are directly tied to, and contingent upon, the sale of castings to the United States. Further, the costs associated with the export of castings are effectively lowered by the IPRS payments. Accordingly, we are making circumstances-of-sale adjustments to foreign market value to account for differences in costs directly related to the sale of castings. In *Sawhill Tubular Div. Cyclops Corp. et al.* v. *United States,* 666 F. Supp. 1550, 11 C.I.T. 491 (1987), the Court of International Trade upheld the Department's adjustment to foreign market value to account for differences in costs, due to the IPRS rebate payments, which directly related to the sales under investigation.

We have no reason to believe that the IPRS amounts reported are inaccurate. The IPRS claims are based upon the exports made during the review period and, therefore, are linked to the sales made during the review period. Because the claimed amounts are sufficiently established and quantified, we see no reason to deny the claimed adjustments for IPRS payments.

Comment 5: Petitioners claim that Super Castings overstated the amount of IPRS payments that reduced its raw material costs because these claimed payments did not correspond to the amount of IPRS payments that Super Castings stated it applied for in its questionnaire response. In addition, these claimed IPRS payments do not correspond to the amounts reported in Super Castings' financial statements.

Department's Position: Super Castings correctly quantified the amount of IPRS payments that reduced its raw material costs. This amount, based on a metric ton of castings produced, will not necessarily correspond to the IPRS amounts applied for on exports because production periods differ from export periods. Further, because IPRS amounts appearing on the financial statements will reflect payments received during the fiscal year, not the amounts received on exports during the review period, the financial statements will not necessarily reflect respondents' production costs during the review period.

Comment 6: Petitioners argue that the Department erred by including an amount for the freight equalization fund ("FEF") tax in the calculation of taxes paid by Super Castings on heavy castings because Super Castings failed to claim that it actually paid this tax. Further, the Department's acceptance of Super Castings' central sales tax ("CST") claim, assuming a 15 percent dealer markup, was arbitrary and unreasonable because Super Castings has not demonstrated entitlement to this claim.

Department's Position: Respondents provided evidence during this review that the FEF tax is paid by all castings producers. Therefore, it was proper to deduct the FEF tax from raw material costs in the constructed value for Super Castings.

Regarding the 15 percent dealer markup on scrap used in calculating the CST tax, we accepted the markup in the fair value investigation, and petitioners have provided no evidence that the markup is inaccurate. Therefore, we have accepted the markup in this review.

Comment 7: Petitioners claim that, because Carnations failed to submit the requested tax information concerning the CCS program, the Department should not have made a reduction from raw material costs in the constructed value calculation for taxes rebated pursuant to the CCS program.

Department's Position: Carnations is an exporter of castings, not a manufacturer. Therefore, it does not have access to the tax information of its suppliers. Since these taxes are incurred in the production process and included in the price Carnations pays for finished castings, we used the average indirect taxes incurred in the Indian castings' industry to calculate the tax incidence paid by Carnations' suppliers as a reasonable estimate of the indirect taxes included in the finished castings price paid by Carnations.

Comment 8: Petitioners claim that the Department erred by calculating U.S. price for all respondents on a cents-per-pound basis. Petitioners claim that many respondents do not sell on a price-per-pound basis and should not have reported their sales as such. For example, Super Castings converted its prices from rupees per metric ton to cents per pound and rounded these figures, which indicates that castings were not sold on a cents-per-pound basis. Respondents have failed to submit price lists, purchase orders, and invoices to support their claims of sales made on a cents-per-pound basis. Petitioners further claim that respondents should have reported actual sales data and allowed the Department to convert. Rounding figures when converting into cents per pound distorts the U.S. price.

Department's Position: Respondents sell on a cents-per-pound basis. Therefore, there is no need to convert currencies for purposes of establishing U.S. price.

Comment 9: Petitioners claim that the Department erred in accepting Carnations' claim for a difference-in-merchandise adjustment for certain fittings on castings sales to third countries. Although Carnations provided material and labor costs of fittings, it did not explain how it arrived at these costs.

Carnations argues that the cost of extra fittings should not be included in constructed value because no extra fittings were used on sales of castings to the United States. Alternatively, Carnations argues, if the cost of extra fittings is included in constructed value, then it must be deducted from foreign market value as a circumstance-of-sale adjustment.

Department's Position: Petitioners have provided no evidence that Carnations' material and labor costs for fittings on castings sales to third countries are inaccurate. Accordingly, we are allowing the claim for a difference-in-merchandise adjustment for the cost of extra fittings on third-country sales.

Since we are including the cost of extra fittings in the cost of constructed value, we are making a difference-in-merchandise adjustment to third country price for the cost of extra fittings.

Respondents' Comments

Comment 10: Respondents request that the Department postpone the final results of administrative review until the Court of International Trade rules in *Kejriwal* v. *United States,* Court No. 89-

04-00172 and *Carnations, et al.* v. *United States,* Court No. 89-04-00216, both challenging the validity of the underlying antidumping duty order. Respondents claim that if the Department publishes its final results of review, the reviewed companies will be unfairly penalized because they will be subject to new deposit rates and will value and could qualify for exclusion from the antidumping duty order.

Furthermore, if Kamala wanted to be excluded from the order, it could have requested exclusion from the determination and order pursuant to § 353.45 of the Commerce regulations (1985). However, Kamala did not avail itself of this opportunity.

these firms. During this review, Neenas and Overseas requested that they should have been excluded from the order because they were related to Kajaria Castings (now Select Steels), which was excluded from the antidumping order. We determined that the exclusion in our less-than-fair-value

Indian castings exporters recognize that the Department has refused to make such an adjustment because countervailing duties have not yet been imposed. However, they claim that they should not be penalized by the Department's delay in completing countervailing duty reviews before an

Comment 18: Respondents argue that the Department should not offset commissions paid on third-country sales by imputing indirect selling expenses on U.S. sales. Section 353.56(b) of the commerce regulations (1988) provides only a limited exception for indirect selling expenses that are actually

(Commex has no home market sales) as rupees per pound. We compared Uma's home market sales to cost of production. For those below-cost sales we used constructed value as foreign market value.

Comment 22: Uma and Commex claims that the Department overstated its cost

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04-00172 and *Carnations, et al.* v. *United States*, Court No. 89-04-00216, both challenging the validity of the underlying antidumping duty order. Respondents claim that if the Department publishes its final results of review, the reviewed companies will be unfairly penalized because they will be subject to new deposit rates and will have to seek an injunction against liquidation of past entries. Additionally, respondents argue that a few months further delay until the court rules in the pending cases will not harm the U.S. industry or the Department's review process.

Department's Position: Section 751 of the Tariff Act contains no provision for suspending completion of administrative reviews pending the outcome of litigation challenging the fair value investigation. Delay of this administrative review would be contrary to the legislative intent for timely assessment and collection of antidumping duties. Timely completions of section 751 reviews would be a practical impossibility if the Department were to suspend completion every time there was litigation pending regarding a prior proceeding.

Comment 11: Kamala Iron Foundry claims that the Department should not have assigned it a margin of 8.43 percent based on best information available. Kamala claims that it did respond to the Department's questionnaire. Kamala reported that it had no exports during the review. Kamala requested exclusion from the review on the grounds that it is not an exporter of castings, but rather is only a supplier to one exporter, Kejriwal.

To support its claim for exclusion, Kamala maintains that the Department determined in the fair value investigation that Kamala was not an exporter of castings, but only a supplier to Kejriwal, and that Kamala did not know the ultimate destination of the goods. The Department also determined that Kejriwal should be excluded from the antidumping order based on no sales at less than fair value. Kamala argues that since Kejriwal was excluded from the order and Kamala was Kejriwal's supplier, Kamala should also have been excluded from the antidumping duty order and not assigned a dumping margin.

Department's Position: We did not investigate and exclude Kamala's sales to the United States during the less-than-fair-value investigation. We only determined that Kamala was a supplier to Kejriwal and that it did not know the ultimate destination of its castings exports. Thus, we had no basis to conclude that Kamala was selling at fair value and could qualify for exclusion from the antidumping duty order.

Furthermore, if Kamala wanted to be excluded from the order, it could have requested exclusion from the determination and order pursuant to § 353.45 of the Commerce regulations (1985). However, Kamala did not avail itself of this opportunity.

For any unreported shipments during the review period, we have assigned Kamala the all other rate from the period of investigation. If Kamala begins to export after the publication of our final results of review, it will be subject to the new shipper deposit rate, which is the highest rate for responding firms. Kamala may request a revocation, pursuant to section 353.25 of the Commerce regulations (1989), based upon three years of sales at not less than fair value.

Comment 12: East Coast Co., Paharimata Iron Works, Shree Laxmi Metal, and S. K. Iron Foundry and Engineering claim that, because they did not ship castings during the review period, they should receive the all other rate established in the fair value investigation.

Department's Position: We agree, and have revised the margins for these firms for the review period to reflect the all other rate established in the less-than-fair-value investigation. If East Coast Co., Paharimata Iron Works, Shree Laxmi, and S.K. Iron Foundry & Engineering begin to ship in the future, they will be subject to the new shipper rate.

Comment 13: Neenaa Foundry and Overseas Foundry claim that they should have been excluded from the antidumping duty order. During the less-than-fair-value investigation, Neenaa and Overseas were found to be related suppliers to Kajaria Castings, which was excluded from the antidumping duty order. Further, Neenaa and Overseas have provided additional evidence showing that they continue to be related to and controlled by Kajaria Castings, now called Select Steels, Ltd. Therefore, Neenaa and Overseas should have been excluded along with their related owner, Select Steels, Ltd.

Department's Position: During the fair value investigation, we determined that Neenaa and Overseas were related suppliers to Kajaria Castings and that they did not know the ultimate destination of the finished castings. However, we did not investigate Neenaa and Overseas as direct exporters of finished castings to the United States. Accordingly, they were not excluded from the antidumping order.

Because we received no requests for review, we did not initiate a review of these firms. During this review, Neenaa and Overseas requested that they should have been excluded from the order because they were related to Kajaria Castings (now Select Steels), which was excluded from the antidumping order. We determined that the exclusion in our less-than-fair-value determination only covers casting exported by Kajaria Castings. Consequently, Neenaa and Overseas were not covered by the exclusion for Kajaria Castings. Moreover, we cannot consider a request for exclusion from the antidumping duty order during an administrative review [*see*, our position to Comment 11). If Neenaa and Overseas export in the future, they will be subject to the new shipper rate.

Comment 14: Respondents believe that it is unreasonable for the Department to use Super Castings' response, as best information available, to calculate the fluctuations in cost for the other firms. Respondents claim that they were unable to report quarterly costs. Respondents further claim this methodology penalizes firms for not providing quarterly accounting data that they do not keep. Respondents argue that they should be treated the same as the companies in the less-than-fair-value investigation, who were not penalized by use of best information available when they reported only annual cost figures.

Moreover, making only upward adjustments for quarterly fluctuations, based on quarterly cost data submitted by Super Castings, is clearly unfair and distorts the actual annual costs of production as reported by these firms.

Finally, respondents claim that they were doubly penalized when the Department applied the percentage quarterly increases from Super Castings' response to cost of production figures as well as to constructed value figures for the other respondents.

Department's Position: We agree, and we have revised the cost figures to reflect the annual costs provided by respondents.

Comment 15: Respondents and importers claim that, pursuant to section 772(d)(1)(D) of the Tariff Act, the Department should add the amount of countervailing duty deposits to the U.S. price for heavy castings for both assessment and cash deposit purposes to avoid double-counting with respect to the export subsidy portion of countervailing duties. Alternatively, the Department should wait until the countervailing duty reviews are completed before publishing the final results of this review.

Indian castings exporters recognize that the Department has refused to make such an adjustment because countervailing duties have not yet been imposed. However, they claim that they should not be penalized by the Department's delay in completing countervailing duty reviews before an adjustment to U.S. price can be made in the antidumping duty reviews.

Department's Position: Section 772(d)(1)(D) of the Tariff Act requires the Department to make an upward adjustment to U.S. price when countervailing duties have been imposed on the subject merchandise. Since countervailing duties have not been imposed on entries of the merchandise covered by this review, we cannot make such an adjustment for assessment purposes under section 772(d)(1)(D) of the Tariff Act.

Moreover, for cash deposit purposes, because all the company rates are zero or *de minimis*, there is no need to adjust the antidumping duty cash deposit for export subsidies, not already accounted for in the constructed value calculation, in this case.

Comment 16: Respondents claim that the Department double-counted the interest expense by including bank interest charges in the SG&A portion of the constructed value calculation and adding U.S. credit to foreign market value as a circumstance-of-sale adjustment. The Department should deduct bank interest charges from SG&A before adding U.S. credit expense, or should leave bank interest charges in SG&A and make no circumstance-of-sale adjustment.

Department's Position: We have revised respondents' constructed value calculation by deducting the actual bank interest charges from SG&A expenses in constructed value and adding U.S. credit as a circumstance-of-sale adjustment, as required by § 353.56 of the Commerce regulations (1989).

Comment 17: Agarwalla claims that the Department double-counted packing and commission charges by including both expenses in SG&A and adding them to foreign market value as circumstance-of-sale adjustments. Agarwalla argues that the Department should either deduct packing and commission charges from SG&A and make circumstance-of-sale adjustments, or leave packaging and commission in SG&A and make no circumstance-of-sale adjustment to foreign market value.

Department's Position: We agree. We deducted packing and commission charges from SG&A. We added to FMV U.S. packing and imputed indirect selling expenses to offset commissions paid in the home market.

Comment 18: Respondents argue that the Department should not offset commissions paid on third-country sales by imputing indirect selling expenses on U.S. sales. Section 353.56(b) of the commerce regulations (1989) provides only a limited exception for indirect selling expenses that are actually incurred in one market to offset commissions paid in the other market. Respondents claim that, since Indian castings exporters sell through unrelated importers in the United States, castings exporters do not incur indirect selling expenses on U.S. sales. Consequently, the offset should not be permitted.

Department's Position: We requested information regarding indirect selling expenses incurred by respondents on U.S. sales. There was no indication from the questionnaire responses that castings exporters do not incur indirect selling expenses. Therefore, as best information available, we imputed the indirect selling expenses on U.S. sales to offset commissions paid on third-country sales.

Comment 19: Agarwalla claims that the Department, in calculating constructed value, incorrectly included the carriage inward expenses for third country sales through Bombay in SG&A, rather than the carriage inward expenses for sales through Calcutta. Agarwalla claims that, since U.S. sales were shipped through Calcutta rather than Bombay, the SG&A expenses should reflect the carriage inward charges for Calcutta, not Bombay.

Department's Position: We agree and have revised our constructed value calculation to reflect the carriage inward expenses incurred on sales made through Calcutta.

Comment 20: Agarwalla claims that the Department failed to account for corrections to errors in its responses for light castings which Agarwalla noted in a letter to the Department.

Department's Position: We revised Agarwalla's light castings data to account for Agarwalla's corrections to Agarwalla's U.S. sales data.

Comment 21: Uma and Commex claim that the Department incorrectly entered the home market sales data as cents per pound rather than rupees per pound as reported in the sales response.

petitioners claim that, even after entering sales data as rupees per pound, there will be insufficient home market sales above cost for these two companies. Consequently, the Department will have to use constructed value as a surrogate for home market prices.

Department's Position: We have revised our calculations by entering Uma's home market sales data (Commex has no home market sales) as rupees per pound. We compared Uma's home market sales to cost of production. For those below-cost sales we used constructed value as foreign market value.

Comment 22: Uma and Commex claims that the Department overstated its cost of production by not deducting the CCS, IPRS, and duty drawback export payments from the cost of raw materials.

Department's Position: We did not deduct the CCS, IPRS, and duty drawback from the cost of raw materials because we were comparing Uma's cost of production with its home market sales, for which the CCS, IPRS, and excise duty drawback were not received.

Comment 23: Uma and Commex claim that the Department did not deduct the full amount of IPRS payments from the cost of raw materials in constructed value and/or from foreign market value as a circumstance-of-sale adjustment. In addition, the Department understated the IPRS amounts deducted from foreign market value when converting IPRS payments from rupee figures per pound to dollar figures per pound. To convert IPRS payments to cents per pound, the Department must convert sales from rupees to dollars and multiply by 100 to arrive at a cents-per-pound figure.

Department's Position: We revised constructed value figures for Uma by deducting the full amount of IPRS payments from the cost of raw materials in constructed value. Since we made IPRS adjustments to home market prices in rupees per pound, there was not need to convert IPRS payments to cents per pound. The net home market price was then converted to cents per pound on the date of each U.S. sale.

Comment 24: Uma and Commex claim that home market packing was understated because the Department failed to multiply the packing amount by 100 when converting rupees to cents per pound.

Department's Position: We agree and have corrected the calculations.

Comment 25: Uma and Commex claim that the insurance deductions from U.S. price were overstated on certain sales because the Department failed to convert these amounts, reported as paise per pound, to rupees per pound before converting them to cents per pound.

Department's Position: We agree and have revised our calculations.

Final Results of the Review

As a result of the comments received, we have revised our preliminary results

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and determine the margins for the period October 28, 1985 through April 30, 1987 to be:

Manufacturer/Exporter	Margin (percent)
R.B. Agarwalla & Co.	0.21
Carnation Enterprises; Pvt. Ltd.	0
Govind Steel Co.	0
Super Castings (India)	0.42
Uma Iron & Steel Co./Commerc Corporation	0.27
East Coast Co.	[1] 0.26
Victory Iron Works	[1] 0.26
Paharimata Iron Works	[1] 0.26
Kamala Iron Foundry	[1] 0.26
Shree Laxmi Metal	[1] 0.26
S.K. Iron Foundry & Engineering	[1] 0.26

[1] No shipments during the period; margin from the less-than-fair-value investigation.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Because all of the companies have zero or *de minimis* dumping margins, the resulting cash deposit rates for all companies are less than 0.5 percent and, therefore, *de minimis*. Accordingly, pursuant to section 751(a)(1) of the Tariff Act, no cash deposit shall be required.

For any future entries of this merchandise from a new exporter not covered in this review, whose first shipments occurred after April 30, 1987, and who is unrelated to any previously reviewed firm, liquidation of entries will be suspended, and no cash deposit will be required. These deposit requirements and waivers are effective for all shipments of certain iron construction castings from India entered, or withdrawn from warehouses, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 of the Department's regulations.

Dated: September 27, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23489 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DS-M

Thiel College, et al.; Application; for Duty-Free Entry of Scientific Instruments: Correction

In FR Doc. 90-2385 at page 3438 in the Federal Register of February 1, 1990, the description of the instrument under docket number 90-001 appearing in the last paragraph of column 3, is corrected to read: *Instrument:* Photomultiplier Power Supply, Model PPS-60.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-23490 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on Amendment 1 to the Fishery Management Plan for the Summer Flounder Fishery (FMP).

DATES: Written comments will be accepted until October 22, 1990. See **"SUPPLEMENTARY INFORMATION"** for dates, times, and locations of the hearings.

ADDRESSES: Send comments to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 302-674-2331.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

1. October 10, 1990—Holiday Inn, 348 duPont Highway, Dover, Delaware.
2. October 10, 1990—Holiday Inn of Rockville Center, 173 Sunrise Highway, Rockville Center, Long Island, New York.
3. October 11, 1990—Wall Township Fire Hall, West Atlantic Avenue at Route 34, Wall, New Jersey.
4. October 11, 1990—Sheraton Salisbury Inn, 300 S. Salisbury Boulevard, Salisbury, Maryland.
5. October 11, 1990—Holiday Inn Riverhead, Exit 72, Long Island Expressway and Route 25, Riverhead, Long Island, New York.
6. October 15, 1990—Elizabethan Inn, Routes 64 and 264, Manteo, North Carolina.
7. October 15, 1990—Skipper Motor Inn, Route 6, Fairhaven, Massachusetts.
8. October 16, 1990—Joslyn Hall, Carteret Community College, 3505 Arendell, Morehead City, North Carolina.
9. October 16, 1990—Dutch Inn, Great Island Road, Galilee, Rhode Island.
10. October 17, 1990—Radisson, 700 Settlers Landing Road, Hampton, Virginia.
11. October 22, 1990—Cape May Extension Office, Dennisville Road, Cape May Court House, New Jersey.

All hearings will begin at 7 p.m., except the Riverhead and Rockville Center hearings, which will begin at 7:30 p.m., and will be tape recorded with the tapes filed as the official transcript of the hearing.

Dated: September 28, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23509 Filed 10-1-90; 12:48 pm]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a public hearing to allow for input on Amendment 3 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fishery (FMP). The hearing will be tape recorded with the tapes filed as the official transcript of the hearing.

DATES: The public hearing will be held on October 21, 1990, at 7 p.m. Written comments will be accepted until October 29, 1990.

ADDRESSES: The hearing is scheduled to be held at the Holiday Inn, 45 Industrial Highway, Essington, Pennsylvania.

Send comments to John C. Bryson, Executive Director of the Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 302-674-2331.

SUPPLEMENTARY INFORMATION: Amendment 3 is intended to bring the FMP into compliance with the guidelines in 50 CFR 602 which require that every fishery management plan include a definition of overfishing. It is proposed that overfishing be defined as the catch of Atlantic mackerel, *Loligo pealei, Illex illecebrosus* or butterfish that exceeds the annual quota for each species. The provision of the FMP concerning setting annual quotas will prevent overfishing.

Dated: October 1, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23523 Filed 10-3-90; 8:45 am]

BILLING CODE 3510

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

September 28, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6041. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 1708, published on January 16, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in the Republic of Korea and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on October 1, 1990, you are directed to amend further the January 11, 1990 directive to adjust the limits for the following categories, in accordance with the provisions of the current bilateral agreement between the Governments of the United States and the Republic of Korea, as amended:

Category	Adjusted 12-Mo. Limit [1]
Sublevels in Group II:	
353/354/653/654	253,138 dozen.
442	49,806 dozen.
632	1,441,377 dozen pairs.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-23494 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

September 28, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6562. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward used and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 26736, published on June 29, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 25, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the period which began on July 1, 1990 and extends through June 30, 1991.

Effective on October 5, 1990, the directive of June 25, 1990 is being amended to adjust the limits for the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the Republic of Turkey:

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Category	Adjusted 12-month limit [1]
Fabric group	
219, 313, 314, 315, 317, 326, 617, 625, 626, 627, and 628, as a group.	90,871,650 square meters of which not more than 22,468,931 square meters shall be in 219. 28,877,404 square meters shall be in 313. 14,886,686 square meters shall be in 314. 22,420,516 square meters shall be in 315. 22,468,289 square meters shall be in 317. 2,607,037 square meters shall be in 326. 16,843,221 square meters shall be in 617. 2,607,037 square meters shall be in 625. 2,607,037 square meters shall be in 626. 2,607,037 square meters shall be in 627. 2,607,037 square meters shall be in 628.
Limits not in a group.	
200	791,671 kilograms.
237	185,732 dozen.
300/301	4,392,226 kilograms.
335	123,304 dozen.
336/636	308,947 dozen.
338/339	1,567,668 dozen of which not more than 1,036,173 dozen shall be in Categories 338-S/339-S.[4]
340/640	869,196 dozen of which not more than 275,679 dozen shall be in Categories 340-Y/640-Y.[5]
341	574,828 dozen of which not more than 212,656 dozen shall be in Category 341-Y.[6]
342/642	372,438 dozen
347/348	1,616,134 dozen of which not more than 796,462 dozen shall be in Categories 347-T/348-T.[8]
350	169,552 dozen.
351/651	300,563 dozen.
361	999,386 numbers.
369-S [9]	980,273 kilograms.
410/624	892,500 square meters of which not more than 577,500 square meters shall be in Category 410.
448	28,250 dozen.
604	1,181,894 kilograms.

[1] The limits have not been adjusted to account to any imports exported after June 30, 1990.

[2] Category 338-S: only HTS numbers 6103.29.2050, 6105.10.8010, 6105.10.8030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0080 and 6114.90.6005; Category 339-C: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.2030, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 340-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060; Category 640-Y: only HTS numbers 6205.30.2010,6205.30.2020, 6205.30.2050 and 6205.90.2060.

[4] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3060.

[5] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0050, 6103.42.1020, 6103.42.1040, 6103.49.2010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.3040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.6010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[6] Category 369-S: only HTS number 6307.10.2005.

The Committee for Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1)).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-23485 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Coverage of Certain Part-Categories for Wool Textile Products Produced or Manufactured in Various Countries

September 26, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered into the United States for consumption or withdrawn from warehouse for consumption on and after October 1, 1990, regardless of the date of export, coverage of part-Categories 410-A and 410-B is being amended on all visa and certification arrangements and all import controls with part-Categories 410-A and 410-B.

The attached directive contains HTS numbers which were published in Supplement II to the 1990 Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50979, published on December 11, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 26, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control and counting directives issued to you by the chairman of CITA, which include part-Categories 410-A and 410-B, produced or manufactured in various countries and entered into the United States for consumption or withdrawn from warehouse for consumption on and after October 1, 1990, regardless of the date of export.

This directive amends, but does not cancel, the directive of December 22, 1988, as amended, which amended visa requirements for all countries for which visa arrangements are in place with the United States Government.

Effective on October 1, 1990, you are directed to make the changes shown below for all countries with part-Categories 410-A and 410-B. These changes are effective for goods entered into the United States for consumption or withdrawn from warehouse for consumption on and after October 1, 1990, regardless of the date of export.

Category	Obsolete No.	New No.
410-A	5111.11.1000	5111.11.3000
	5111.11.5030	5111.11.7030
	5111.11.5050	5111.11.7050
	5111.20.5000	5111.20.6001
	5111.30.5000	5111.30.6001
	5111.90.4000	5111.90.7000
410-B	5112.11.0030	5112.11.2030
	5112.11.0060	5112.11.2060
	5112.19.5010	5112.19.5011
	5112.19.5020	5112.19.5021
	5112.19.5040	5112.19.5041
	5112.19.5050	5112.19.5051
	5112.20.0000	5112.20.3000
	5112.30.0000	5112.30.3000
	5112.90.5010	5112.90.5011
	5112.90.5090	5112.90.5091

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-23493 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, 29 October 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2940 Presidential Drive, Suite 210, Fairborn, Ohio.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities, or in their laboratories. The Microelectronics area includes such program as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: September 28, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-23419 Filed 10-3-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90-2097-000, et al.]

Northern Natural Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP90-2097-000]

September 26, 1990.

Take notice that on August 29, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-2097-000 an application pursuant to section 7(c) of the Natural Gas Act for issuance of a certificate of public convenience and necessity authorizing the increase of 6,400 Mcf of natural gas per day of sales entitlements for Northern States Power Company (NSP), a gas utility customer serving certain communities in Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In order for NSP to serve new and increased requirements in and around the communities of Anoka, Becker, and Marine-on-St. Croix, Minnesota, Northern requests authorization to increase its certificated sales entitlements to NSP by a total of 6,400 Mcf per day, under Northern's seasonal Service Demand Schedule, Rate Schedule SS-1. Northern states, pursuant to an executed service agreement dated July 12, 1990, that the increased sales service would become effective on November 1, 1990 or on the date of the Commission's Order approving the instant application, whichever is later, and continue in effect through March 26, 1991. Northern further states that the additional sales service could be accomplished without constructing new facilities or rearranging presently authorized facilities.

Comment date: October 17, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket Nos. CP90-2271-000, CP90-2273-000, CP90-2273-000, and CP90-2274-000]

September 26, 1990.

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Strategic Defense Initiative Advisory Committee

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC., on October 15, 1990.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on October 15, 1990, the committee will discuss status of the SDI Mid and Terminal Tier Review.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App II, (1982)), it has been determined that this SDI Advisory Committee meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: September 28, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-23418 Filed 10-3-90; 8:45 am]

BILLING CODE 3810-01-M

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual dt	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP90-2271-000 (9-21-90)	Alsey Refractories Co.	365 365 103,000	IL	IL	8-1-90, PT, Firm	ST90-4556, 8-1-90.
CP90-2272-000 (9-21-90)	Entrade Corp. (Marketer).	300,000 100,000 36,500,000	CO, KS	KS	10-18-89, PT, Interruptible.	ST90-4558, 8-1-90.
CP90-2273-000 (9-21-90)	Enron Gas Marketing, Inc. (Marketer).	200,000 200,000 73,000,000	KS, CO, OK, TX	KS	8-5-88, PT, Interruptible.	ST90-4516, 8-1-90.
CP90-2274-000 (9-21-90)	Hadson Gas Systems, Inc.	30,000 30,000 10,950,000	KS, CO	KS	10-23-89, PT, Interruptible.	ST90-4511, 8-1-90.

3. Questar Pipeline Company

[Docket No. CP90-2246-000]

September 26, 1990.

Take notice that on September 19, 1990,[3] Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP90-2246-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Thermal Exploration (Thermal), under Questar's blanket certificate issued in Docket No. CP88-650-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar requests authorization to transport, on an interruptible basis, up to a maximum of 2,750 MMBtu of natural gas per day for Thermal from a receipt point located in Lincoln County, Wyoming to delivery points located in Lincoln and Sweetwater Counties, Wyoming. Questar anticipates transporting 2,000 MMBtu of natural gas on an average day and an annual volume of 730,000 MMBtu.

Questar states that the transportation of natural gas for Thermal commenced January 3, 1990, as reported in Docket No. ST90-1701-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Questar in Docket No. CP88-650-000.

Comment date: October 18, 1990, in accordance with Standard Paragraph F at the end of the notice.

4. Northern Natural Gas Company, Division of Enron Corp., Florida Gas Transmission Company, Florida Gas Transmission Company, Florida Gas Transmission Company, Gas Gathering Corporation.

[Docket Nos. CP90-2289-000 [3], CP90-2291-000, CP90-2292-000, CP90-2293-000, and CP90-2295-000

September 27, 1990

Take notice that on September 24 and 25, 1990, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under Section 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] The request was tendered for filing on September 20, 1990; however, the fee required by Section 381.208(a) of the Commission's Rules was not paid until September 21, 1990. Section 381.108 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak Day [1] avg. annual	Points of receipt	Points of delivery	Start up date, rate schedule	Related [2] dockets
CP90-2288-000 (9-25-90)	Northern Natural Gas Company, Division of Enron Corp., P.O. Box 1188, Houston, TX 77251-1188.	Mock Resources, Inc.	100,000 75,000 36,500,000	IA, KS, MN, NE, NM, OK, SD, TX, WI.	IA, KS, MN, NE, NM, OK, SD, TX, WI.	8-27-90, IT-1	CP88-435-000, ST90-4511-000.
CP90-2291-000 (9-25-90)	Florida Gas Transmission Company, P.O. Box 1188, Houston, TX 77251-1188.	Union Texas Petroleum Corporation.	100,000 75,000 36,500,000	AL, FL, LA, MS, TX, OFF TX.	FL, LA, MS.	8-4-90, ITS-1	CP89-555-000, ST90-4586-000.

Docket No. (date filed)	Applicant	Shipper name	Peak Day [1] avg. annual	Points of receipt	Points of delivery	Start up date, rate schedule	Related [2] dockets
CP90-2282-000 (9-25-90)	Florida Gas Transmission Company, P.O. Box 1188, Houston, TX 77251-1188.	Paragon Gas Corporation.	40,000 30,000 14,600,000	AL, FL, LA, MS, TX, OFF TX.	AL, FL, LA, MS, TX.	8-4-90, ITS-1	CP89-555-000, ST90-4582-000.
CP90-2286-000 (9-25-90)	Florida Gas Transmission Company, P.O. Box 1188, Houston, TX 77251-1188.	Howell Gas Management Company.	50,000 37,500 18,250,000	AL, FL, LA, MS, TX, OFF TX.	AL, FL, LA, MS, TX.	8-4-90, ITS-1	CP89-555-000, ST90-4579-000.
CP90-2285-000 (9-24-90)	Gas Gathering Corporation, P.O. Box 519, Hammond, LA 70404.	U.S. Exploration Company.	5,000 2,000 729,000	LA	LA	9-23-90, IT-1	CP88-129-000, ST90-4588-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Florida Gas Transmission Company

[Docket Nos. CP90-2268-000, CP90-2267-000, CP90-2268-000, CP90-2269-000, and CP90-2270-000]

September 27, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under Section 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of receipt	Points of delivery	Start up date rate schedule	Related [2] dockets
CP90-2266-000 9/21/90	Florida Gas Transmission Company.	Mobil Rocky Mountain, Inc..	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4585-000.
CP90-2267-000 9/21/90	Florida Gas Transmission Company.	Mobil Exploration & Producing North America, Inc..	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4579-000.
CP90-22668-000 9/21/90	Florida Gas Transmission Company.	Mobil Natural Gas, Inc..	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4575-000.
CP90-2269-000 9/21/90	Florida Gas Transmission Company.	Mobil Oil Corporation.	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4576-000.
CP90-2270-000 9/21/90	Florida Gas Transmission Company.	Mobil Oil Exploration & Producing Southeast, Inc..	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4583-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Transwestern Pipeline Company

[Docket No. CP90-2294-000]

September 27, 1990.

Take notice that on September 28, 1990, Transwestern Pipeline Company (Transwestern) 400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-2294-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline, compression, metering and related facilities in the States of New Mexico and Arizona and approval of initial transportation rates, all as more fully set forth in the application on

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file with the Commission and open to public inspection.

Transwestern requests that the Commission authorize the construction and operation of the following facilities: (1) a compressor station of approximately 7950 horsepower with metering and appurtenant facilities, to be located near the City of Bloomfield, San Juan County, New Mexico where Transwestern will interconnect with the facilities of several entities, including several gas plants and the proposed pipelines of Northwest Pipeline Company and TransColorado Gas Transmission; (2) approximately 96.8 miles of 30-inch pipeline (the "San Juan Lateral") extending from the proposed Bloomfield Compressor Station to a point on Transwestern's existing mainline near Station No. 5, the Thoreau Compressor Station, in McKinley County, New Mexico; (3) approximately 199.0 miles of 30-inch mainline looping (in five segments) between the terminus of the proposed San Juan Lateral and the terminus of Transwestern's existing mainline on the Arizona-California border near Needles, California (the "Mainline Expansion"); (4) two meter stations with minor interconnecting pipeline facilities at points on Transwestern's mainline in the State of Arizona, one near Flagstaff, Coconino County, and one near Kingman, Mohave County; and (5) approximately 3.5 miles of 24-inch and 30-inch pipeline, together with metering and appurtenant facilities at its existing Needles measuring station, extending from a point on Transwestern's mainline near its terminus to a proposed interconnection on the Arizona-California border (at the centerline of the Colorado River) with the Colorado River Pipeline Company.

Transwestern estimates the cost of construction for the proposed facilities to be $258 million. Transwestern proposes to accomplish permanent financing of the project by issuing approximately $129,040,000 of long-term debt and obtaining an additional $123,945,000 of equity contributions from its parent company, Houston Pipeline Company. Transwestern proposes to finance the project in a manner which will result in a total capitalization ratio of 50% debt and 50% equity at the commencement of all the proposed facilities.

Transwestern explains that the proposed expansion will add 340,000 Mcf/d of capacity to its mainline system and that upon completion of construction, Transwestern will be able to move over 1.08 Bcf/d to the State of California.

In order to solicit requests for firm transportation service on the proposed San Juan Lateral, Transwestern reports that it initially conducted a twenty-four day open season period, from June 21 through July 15, 1989, during which time all firm requests submitted would be treated as if received at the same time, for purposes of allocating new capacity on the proposed extension. Subsequently, Transwestern explains the open season was extended to include the proposed Mainline Expansion and reopened for three addition open season periods with the last period closing June 29, 1990. Transwestern advises that firm requests received after the last open period would be entered on its log and processed as any other non-open season request. As to requests for interruptible service on the proposed San Juan Lateral and Mainline Expansion, Transwestern asserts that these requests would be accepted on a first-come first serve basis after the proposed facilities are in service. In addition, Transwestern asserts that shippers currently on Transwestern's interruptible log will be able to add receipt points located on the proposed facilities without losing their priority rights.

As a result of the open season periods, Transwestern states that it has negotiated precedent agreements with nine shippers for firm transportation services totaling 509,000 dth per day on the proposed San Juan Lateral, and precedent agreements with six of these shippers for firm transportation services totaling 285,500 dth per day on its mainline. These shippers and related services are as follows:

	Volumes (Mdth/d)		Term (Yrs.)
	San Juan	Mainline	
Pacific Gas and Electric Co.	213	200	15
Southern California Gas Co.	200	0	14
Sunrise Energy Co.	50	50	15
Southern Union Gas Co.	25	25	15
Mesa Operating Limited Partnership	10	0	10
Signal Fuels Trading Co., Inc.	5	5	15
Robert L. Bayless	3	3	15
Bonneville Fuels Corp.	2.4	2.4	15
Industrial Gas Sales	1	0	15
Total Volumes	509.4	285.4	

Transwestern anticipates to render the above firm transportation services pursuant to its blanket transportation certificate issued on March 1, 1988, in Docket No. CP88-133-000. In Docket No. CP90-2294-000, Transwestern also requests approval of its proposed initial rates for transportation services to be rendered on the San Juan Lateral. Transwestern states that its initial rates are based on the cost of service associated with the proposed San Juan facilities. The initial rates proposed would consist of a reservation charge of $0.0710 per dth of contract demand, a maximum commodity rate of $0.0405 and a minimum commodity charge of $0.0100. With respect to service on its mainline facilities, Transwestern explains that it would charge its effective "West of Roswell zone FTS-1 rates" which were included in the Stipulation and Agreement filed for Docket No. RP89-48-000, *et al.* Transwestern states that this stipulation and agreement is currently pending Commission action. Transwestern also seeks approval of its proposed interruptible rates for transportation on its proposed San Juan lateral. The proposed maximum commodity rate for interruptible services on the San Juan Lateral is proposed be $0.0973 per dth and minimum commodity rate is proposed to be $0.100.

Transwestern maintains that its proposed facilities will connect up to 520,000 Mcf/d of natural gas produced in the San Juan Basin (located in Northwestern New Mexico and Southwestern Colorado) directly to its system and will also attach, through proposed interconnections with other interstate systems, gas produced in the Piceance Basin as well as in the Rocky Mountain area. Transwestern estimates that the total deliverability from the San Juan Basin and surrounding areas will exceed 2.9 Bcf/d while the existing pipeline capacity out of this area is only 1.9 Bcf/d.

Transwestern requests that the Commission consider its application in Docket No. CP90-2294-000 in two "phases": (1) all non-environmental issues and (2) environmental issues. Transwestern also request that the non-environmental certificate allow Transwestern to proceed with the construction of those portions of the facilities which are not in environmentally/archaeologically sensitive areas, and to proceed with construction of the remaining segments of the project as environmental clearances for such segments are received in accordance with the requirements of any mitigation plan. Transwestern states that it would assume the risks associated with complying with any mitigation plan, including rerouting, if necessary.

The Commission advises all interested parties that it intends to hold a technical conference to discuss any issues raised by the application or by any interventions requiring Commission review. Notice of the technical conference for Docket No. CP90-2294-000 will be announced at a later date.

Comment date: October 18, 1990, in accordance with Standard Paragraph F at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP90-2257-000]

September 27, 1990.

Take notice that on September 21, 1990, Colorado Interstate Transmission Corporation (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90-2257-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to add a delivery point for service to Williams Natual Gas Company (William), an existing customer, under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In response to a request by Williams, CIG proposes to add the existing Riner Delivery Point located in Sweetwater County, Wyoming for delivery of gas to Williams. CIG states that it transports gas for Williams under Rate Schedule X-14 of CIG's FERC Gas Tariff, Original Volume No. 2, pursuant to the terms of a gas purchase and exchange agreement dated March 11, 1976, as amended, and the authorization granted in Docket No. CP76-422. It is stated that the gas delivered to the proposed delivery point would be for Williams' system supply.

CIG indicates that there would be no change in Williams' certificated entitlement as a result of the addition of the delivery point. CIG states that the proposal would have no adverse impact on its gas supply situation or on its ability to deliver the peak day or annual entitlements to any of CIG's existing customers and that the anticipated deliveries resulting from the proposal would be accommodated by CIG's existing system without detriment or disadvantage to its other customers. It is stated that the proposed addition is not prohibited by CIG's FERC Gas tariff. CIG indicates that no new facilities would be necessary for this proposal.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. U-T Offshore System

[Docket Nos. CP90-2305-000 and Docket No. CP90-2306-000]

September 27, 1990.

Take notice that U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, (U-TOS), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by U-TOS and is summarized in the attached appendix.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Points of		Contract date, rate schedule, service type	Related docket, start up date
			Receipt [1]	Delivery		
CP90-2305-000 (9-26-90)	Koch Hydrocarbon Company (Marketer)	250,000 250,000 91,250,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4703-000 9-9-90
CP90-2305-000 (9-26-90)	Excel Gas Marketing, Inc. (Marketer)	100,000 100,000 36,500,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4699-000 9-10-90

[1] Offshore Louisiana is shown as OLA.

9. Equitrans, Inc., Texas Eastern Transmission Corporation, Texas Eastern Transmission Corporation.

[Docket Nos. CP90-2279-000, CP90-2283-000, and CP90-2284-000]

September 27, 1990.

Take notice that Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275, and Texas Eastern Transmission Corporation, P .O. Box 2521, Houston, Texas 77252-2521, (Applicants), filed with the Commission in the above-referenced dockets prior notice requests pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-553-000 and Docket No. CP88-136-000, as amended, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[7]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation dates; and the related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Points of Receipt [1]	Points of Delivery	Contract date, rate schedule, service type	Related docket, start up date
CP90-2278-000 (9-24-90)	Consolidated Fuel Corporation (Marketer	20,462 1,000 365,000	PA, WV	PA	8-3-88, ITS, Interruptible.	ST90-4572 8-1-90
CP90-2283-000 (9-24-90)	Allied Gas Company (Local Distributor)	2,076 2,076 757,740	AL, AR, IL, IN, KY, LA, OLA, MS, MO, NJ, NY, OH, PA, TN, TX, WV	MD	5-22-90, IT-1, Interruptible.	ST90-4266 7-17-90
CP90-2284-000 (9-24-90)	Philadelphia Electric Company (Local Distributor).	58,104 53,104 19,362,960	AL, AR, IL, IN, KY, LA, OLA, MS, MO, NJ, NY, OH, PA, TN, TX, WV	MD, OH, PA	5-22-90, IT-1, Interruptible.	ST90-4521, 7-16-90

[1] Offshore Louisiana is shown as OLA.

18. Florida Gas Transmission Company

[Docket No. CP90-2276-000 and CP90-2278-000]

September 27, 1990.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets [2]
CP90-2276-000 9-24-90	Florida Gas Transmission Company 1400 Smith St. Houston, TX 77002.	Mobil Producing Texas and New Mexico, Inc.	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Off TX.	TX, LA, MS, AL, FL...	8-4-90 ITS-1	RP89-50, *et al.* ST90-4584-000
CP90-2276-000 9-24-90	Florida Gas Transmission Company 1400 Smith St. Houston, TX 77002.	Mobil Exploration & Producing U.S. Inc.	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Off TX.	TX, LA, MS, AL, FL...	8-4-90 ITS-1	RP89-50, *et al.* ST90-4577-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23432 Filed 10-3-90; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011184-003.

Title: Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione S.p.A., Contship Container lines Ltd./Costa Container Lines S.p.A. and Compagnie General Maritime Space Charter and Sailing Agreement.

Parties:

Evergreen Marine Corporation Italia di Navigazione S.p.A. Compagnie Generale Maritime Contship Containerlines Ltd./Costa Container Lines S.p.A

Synopsis: The proposed amendment would delete Contship Containerlines Ltd./Costa Container Lines S.p.A as a party to the Agreement and would change the name of the Agreement to relect the change in membership.

Agreement No.: 203-0111290-002.

Title: Vessel Operators Hazardous Materials Association Agreement.

Parties:

America-Africa-Europe Line GmbH
Atlantic Container Line B.V.
Evergreen Marine Corporation (Taiwan), Ltd.
Farrell Lines, Inc.
Hapag-Lloyd AG
Kawasaki Kisen Kaisha Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha Line
P&O Containers, Ltd.
Sea-Land Service, Inc.
Wilh. Wilhelmsen Ltd. AS
Zim Israel Navigation Shipping Co., Ltd.
Independent Container Line Ltd.
Columbus Line
Nedlloyd Lijnen B.V.

Synopsis: The proposed amendment would modify section 7.1 of the Agreement to allow ocean carriers under common control to be treated as one party for membership purposes. It would also make other nonsubstantive changes. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 28, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-23443 Filed 10-3-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0690]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final action.

SUMMARY: The Board is adopting a requirement that Reserve Banks notify by telephone all depository institutions that do not have electronic access to Fedwire ("off-line banks") of the receipt of incoming Fedwire third-party funds transfers, including non-value messages that are related to a transfer of funds. Notice will also be provided for settlement transfers and related non-value messages, if the off-line receiving bank has notified its Reserve Bank that it acts on behalf of a respondent institution. In addition to the basic transfer fee (currently $.50), a surcharge per transfer (currently $4.00) will be assessed to the off-line receiving bank for each transfer for which the Reserve Bank attempted to provide telephone notice. Same-day telephone notice of incoming funds transfers to off-line banks will promote efficiency in the payments mechanism by providing timely information, which permits prompt crediting of funds to the accounts of beneficiaries.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), Julius Oreska, Manager (202/452-3878); Christine G. Slater, Senior Financial Services Analyst (202/452-2539), or Sandra Scales, Financial Services Analyst (202/452-2728), Division of Federal Reserve Bank Operations; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Parties to Fedwire funds transfers expect the completion of payments on the same day that the transfers are initiated. Fedwire participants with electronic access to the Reserve Banks receive timely electronic notice of all incoming funds transfers. Off-line banks, however, do not have an electronic connection with the Federal Reserve and are not necessarily notified on the day of the transfer. Without same-day notification, the off-line receiving bank would be unable to credit the account of its customer on the transfer date. Approximately forty-five percent of institutions using Fedwire currently receive funds transfers off-line, although off-line transfers account for less than one percent of total Fedwire volume.

The Federal Reserve currently offers two optional services by which Reserve Banks provide same-day telephone notice to off-line receivers of incoming funds transfers. Under the "standing order" service, the off-line receiving bank requests the telephone notice and pays a surcharge in addition to the basic transfer fee for telephone notice of each incoming funds transfer. The "immediate advice" (type code 12) service enables the sender of the funds transfer to request that the Reserve Bank notify by telephone the off-line receiving bank of a particular funds transfer upon receipt. The sending bank selects specific transfers that should receive telephone notice and pays the surcharge for each transfer selected.

These optional services, by providing the off-line banks prompt notice of incoming funds transfers, enable the banks to make funds available to their customers on a timely basis and better manage their own reserve positions. All off-line banks receive paper advices of credit of Fedwire transfers, which are delivered by courier or mail with the daily account statements. Courier delivery occurs on the next business day; mail delivery usually occurs one or more days after the transfer. The paper

advice of credit is the only means of notifying off-line banks of incoming Fedwire transfers for which telephone notice is not provided.

On May 4, 1990, the Board requested public comment on a proposal to notify by telephone *all* off-line banks of the receipt of incoming third-party funds transfers (55 FR 18758; May 4, 1990).[1] Notice would also be provided for settlement transfers and related non-value messages, if the off-line receiving bank has notified its Reserve Bank that it acts on behalf of a respondent institution. In addition to the basic transfer fee, a surcharge per transfer would be assessed to the off-line receiving bank for each transfer for which the Reserve Bank attempted to provide telephone notice. The off-line receiving bank that credits its beneficiary on a day following the transfer day should similarly by compensating its customer by paying interest on the transfer amount for the period of the delay. Notification to receiving banks on the transfer day would permit them to credit their customer's account on that day, and not have to pay compensation to their customers.

Commenters generally concurred with the pricing aspects of the proposal. Commenters indicated that the new service would improve off-line banks' settlement and reserve account monitoring capability. Eleven commenters noted that the service would facilitate compliance with the funds availability requirements of Article 4A and Regulation CC.

Commenters generally concurred with the pricing aspects of the proposal,

are not set to provide inducements to off-line banks to acquire electronic connections to their Reserve Banks. Nevertheless, in response to the telephone notice service, some off-line banks may reassess whether off-line Fedwire service continues to best address their own and their customers' needs and may find it more cost-

providing prompt notice for non-value Fedwire messages, which are often time-critical, would promote efficiency in the payments mechanism. Therefore, telephone notice will be provided for these messages.

Twelve commenters stated that the Board should require Fedwire participants to be electronically linked

respondent institution. An off-line bank that does not maintain an account for another depository institution will not be required to receive telephone notice of incoming settlement transfers, but could request such notice as an optional service. Transfers to off-line receiving banks from foreign central banks and international agencies (type code 15)

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advice of credit is the only means of notifying off-line banks of incoming Fedwire transfers for which telephone notice is not provided.

On May 4, 1990, the Board requested public comment on a proposal to notify by telephone *all* off-line banks of the receipt of incoming third-party funds transfers (55 FR 18758; May 4, 1990).[1] Notice would also be provided for settlement transfers, if the off-line receiving bank has notified its Reserve Bank that it acts in a correspondent capacity for another bank with respect to transfers received through Fedwire.[2] The Reserve Bank would assess a surcharge to the off-line bank on each transfer for which telephone notice was attempted. (The fee for telephone notice is currently $4.00 per transfer in addition to the basic transfer fee.)

Same-day telephone notice of incoming funds transfers to off-line banks would promote efficiency in the payments mechanism by providing timely information, which permits prompt crediting of funds to the accounts of beneficiaries. Both the recently developed Article 4A of the Uniform Commercial Code and the Expedited Funds Availability Act (12 U.S.C. 4001–4010) encourage prompt funds availability and timely notification to receiving institutions and ultimate beneficiaries.

Under Section 4A–302 of Article 4A, a Reserve Bank would be required to execute funds transfers by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible. If a Reserve Bank executes a transfer in a manner that results in a delay in the payment to the beneficiary, the Reserve Bank would be liable for interest to either the originator or the beneficiary under Section 4A–305(a) of Article 4A. The official comments to Section 4A–305 indicate that a bank that delays the execution of a transfer would generally back-value the credit to the beneficiary's bank to compensate for the delay. This is consistent with current Reserve Bank practice, because the Reserve Bank credits the receiving bank on the day of the transfer, even if an off-line bank does not receive notice of the transfer until one or more days later.

The off-line receiving bank that credits its beneficiary on a day following the transfer day should similarly by compensating its customer by paying interest on the transfer amount for the period of the delay. Notification to receiving banks on the transfer day would permit them to credit their customer's account on that day, and not have to pay compensation to their customers; this would be consistent with Article 4A's objective to ensure timely payment to the beneficiary.

Regulation CC (12 CFR part 229) requires that depository institutions make the proceeds of funds transfers available to their customers at the start of the business day following the day the depository institution receives the transfer. Section 229.10(b) of Regulation CC defines receipt of an electronic payment as occurring when the bank receives both the payment in finally collected funds and the payment instructions. Therefore, same-day notification of funds transfers would be consistent with the purpose of the Expedited Funds Availability Act to ensure prompt availability of funds.

The Board received 34 comments in response to its proposal to require telephone notice to off-line banks of incoming Fedwire funds transfers. The following table reflects comments by category of respondent:

Commercial banks and bank holding companies	25
Savings and loan associations	1
Credit unions	1
Trade associations	4
Federal Reserve Banks	3

Eight commenters are off-line Fedwire participants; 18 depository institution commenters have on-line access to Fedwire; and one depository institution commenter is not a direct Fedwire participant, but occasionally uses a correspondent bank for funds transfers.

All but one of the commenters supported the proposal. Supporting commenters noted that adoption of the proposal would improve the efficiency of the payments mechanism, ensure compliance with the provisions of Article 4A and Regulation CC, and equitably allocate the costs to the party that benefits from the service. The dissenting commenter argued that off-line banks should not have to pay for telephone notice of incoming funds transfers.

Twenty-one commenters stated that the proposed Fedwire telephone notice service would enhance the efficiency of the payments mechanism, ensuring more timely notification of receipt of funds transfers and crediting of funds to the beneficiaries' accounts. Seven commenters indicated that the new service would improve off-line banks' settlement and reserve account monitoring capability. Eleven commenters noted that the service would facilitate compliance with the funds availability requirements of Article 4A and Regulation CC.

Commenters generally concurred with the pricing aspects of the proposal. Thirteen commenters stated that charging the off-line receiving bank rather than the sending bank for the telephone notice was an equitable allocation of the cost of providing the service.[3] These commenters noted that the off-line receiving bank would receive more timely information to use in managing its reserve position, and the bank's customers would benefit from more timely crediting of funds to their accounts. Moreover, several commenters noted that the receiving bank should pay for the telephone notice as a consequence of its decision to participate in Fedwire as an off-line bank, which directly affects its ability to receive prompt notification.

Several commenters suggested that the current fee may not fully recover the cost of providing telephone notices. The American Bankers Association, Washington, DC., and the United States League of Savings Institutions, Chicago, Illinois, stated that the service pricing should be based on cost, including the private sector adjustment factor, and should be justified in accordance with the Monetary Control Act of 1980. The Independent Bankers Association of America, Washington, DC., and the United States League of Savings Institutions expressed concern about using service pricing as an impetus for off-line banks to establish electronic connections to Fedwire. Other commenters stated that off-line banks obtaining electronic access to Fedwire would improve the efficiency of the payments mechanism, and several commenters suggested that the Federal Reserve should use pricing incentives to achieve this objective.

The funds transfer service fees, including the fee for telephone notice, are set to recover the cost of the funds transfer service in accordance with the provisions of the Monetary Control Act and the Board's pricing principles, and are not set to provide inducements to off-line banks to acquire electronic connections to their Reserve Banks. Nevertheless, in response to the telephone notice service, some off-line banks may reassess whether off-line Fedwire service continues to best address their own and their customers' needs and may find it more cost-effective to establish electronic connections with their Reserve Bank rather than pay for telephone notices.

The Chase Manhattan Corporation, New York, New York, the American Bankers Association, and the Independent Bankers Association of America were concerned that an off-line bank would be charged for an attempted telephone notice, even if the Reserve Bank was not successful in contacting the receiving bank. Under the telephone notice service, the Reserve Bank would make several attempts to notify an off-line bank. If an off-line bank cannot be reached on the date of the transfer, then the Reserve Bank staff would attempt to notify the off-line bank soon after the bank opens for business on the next business day. Reserve Banks will charge off-line banks for each transfer requiring telephone notice, even if the notification attempts were unsuccessful, because the Reserve Banks would incur the costs of repeatedly trying to reach the off-line banks.

The United States League of Savings Institutions suggested that the Reserve Banks should accumulate transfers and notify the off-line banks only two or three times per day and charge on the basis of each notification call. The Board believes that notifying off-line banks at predetermined intervals would result in less timely notice and would diminish the benefits of telephone notice. Also, the cost a Reserve Bank incurs to provide telephone notice of incoming transfers varies in proportion to the amount of information provided, that is, with the number of transfers received. Therefore, off-line banks will be notified promptly after receipt of each Fedwire message and charged on the basis of each message.

Several commenters suggested other modifications to the proposed service. Bankers Trust Company, New York, New York, requested that telephone notice be provided for all Fedwire messages, including non-value messages.[4] The Board believes that providing prompt notice for non-value Fedwire messages, which are often time-critical, would promote efficiency in the payments mechanism. Therefore, telephone notice will be provided for these messages.

Twelve commenters stated that the Board should require Fedwire participants to be electronically linked to a Reserve Bank for funds transfer service. These commenters stated that the Board should set a sunset date by which all participants would be required to have electronic access to Fedwire. The Reserve Banks have developed and currently offer banks an intelligent terminal software product, known as FLASH-Light, which enables the Reserve Banks to transmit ACH output data electronically in a print-display format to low-volume receiving banks. To facilitate inexpensive, electronic access for Fedwire notices, the Board anticipates that the Reserve Banks will enhance the FLASH-Light product to provide Fedwire notices and will begin offering this capability to off-line banks during the third quarter of 1991. The Federal Reserve will continue to seek enhancements that would facilitate electronic access.

Wells Fargo Bank, San Francisco, California, noted that telephone notice of incoming Fedwire transfers presents security and operational risks. The Reserve Banks will reiterate to off-line banks the importance of calling the Reserve Bank to confirm the validity and accuracy of all Fedwire telephone notices received. The Reserve Banks will continue to evaluate possible off-line security enhancements, which may be implemented in the future.

First Chicago Corporation, Chicago, Illinois, recommended that the Reserve Banks provide an account status inquiry capability for off-line banks. Several Reserve Banks have implemented an account balance inquiry capability for their Fedwire participants, including off-line banks, and the remaining Reserve Banks are considering offering this capability.

Based on an analysis of the comments received, the Board has adopted a requirement that Reserve Banks notify by telephone all depository institutions that do not have electronic access to Fedwire of the receipt of incoming Fedwire third-party funds transfers and related non-value messages. Notice will also be provided for settlement transfers and related non-value messages, if the off-line receiving bank has notified its Reserve Bank that it may receive Fedwire transfers for credit to a respondent institution. An off-line bank that does not maintain an account for another depository institution will not be required to receive telephone notice of incoming settlement transfers, but could request such notice as an optional service. Transfers to off-line receiving banks from foreign central banks and international agencies (type code 16) will also be subject to the telephone notice service. A per transfer surcharge will be assessed to the off-line receiving bank for each transfer for which the Reserve Bank attempted to provide telephone notice.

The telephone notice service will be implemented on January 1, 1991. This fall, the Board will adopt the 1991 funds transfer fees, including the telephone notice surcharge, as part of the 1991 fee schedules for Federal Reserve priced services.

Competitive Impact Analysis. The Board believes that this action will have no adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Several commenters concurred with the Board's belief that implementing the telephone notice service would have no effect on the operations of the Clearing House Interbank Payments System (CHIPS), because this system does not serve off-line banks.

Correspondent institutions provide access to Fedwire to a number of small institutions, and this action generally will not affect the correspondents' relationship with their respondent institutions. The American Bankers Association and the Chase Manhattan Corporation noted that a sending bank, knowing that an off-line bank would receive telephone notice from its Reserve Bank, may bypass the off-line bank's correspondent bank and remit the funds transfer directly to the off-line bank. The Board believes that relatively few off-line banks would typically receive third-party funds transfers both directly from their Reserve Bank as well as through a designated correspondent account, and that any adverse effect on correspondent services stemming from the proposed telephone notice service would be minimal.

By order of the Board of Governors of the Federal Reserve System, September 28, 1990.
William W. Wiles,
Secretary of the Board.

[FR Doc. 90-23468 Filed 10-3-90; 8:45 am]
BILLING CODE 6210-01-M

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[1] "Third-party" funds transfers refer to all regular funds transfers (type code 10) regardless of whether these transfers include third-party information.

[2] Revised subpart B of Regulation J provides that an off-line bank that does not expressly notify its Reserve Bank in writing that it maintains an account for another bank warrants to that Reserve Bank that the off-line bank does not act as an intermediary bank or a beneficiary's bank with respect to payment orders received through Fedwire for a beneficiary that is a bank. [See § 210.25(b).]

[3] The telephone notice service would replace the current immediate advice service (type code 18), in which the sending bank requests and pays for the telephone notice of a Fedwire transfer to an off-line receiving bank. Transfers submitted as type code 12 would therefore be handled in the same manner as type code 10 transfers. The Board anticipates that the type code 12 message format would no longer be supported as of July 1, 1991.

[4] Non-value Fedwire messages refer to Fedwire messages designated as subtype 01 (request for reversal), 07 (request for reversal of prior day transfer), 21 (request for credit transfer), 23 (refusal of request for funds), or 30 (service message).

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The Adirondack Trust Co. Employee Stock Ownership Plan et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. § 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 18, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Adirondack Trust Company Employee Stock Ownership Plan*, Saratoga Springs, New York; to acquire 14.83 percent of the voting shares of 473 Broadway Holding Corporation, Saratoga Springs, New York, and thereby indirectly acquire The Adirondack Trust Company, Saratoga Springs, New York.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Liberty Bank Stock Bonus Plan and Trust*, Milwaukee, Wisconsin; to acquire 15.99 percent of Class C Preferred Stock of Liberty Bank, Milwaukee, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 61366:

1. *Wayne O'Keefe*, Vienna, Illinois; to acquire 19.95 percent of the voting shares of 1st Bancorp Vienna, Inc., Vienna, Illinois, and thereby indirectly acquire First State Bank of Vienna, Vienna, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Phillip Forstrum*, Perry Forstrum, Paul Forstrum, and John Forstrom, to each acquire 25 percent of the voting shares of Forstrum Bancorporation, Inc., Clara City, Minnesota, as the result of a stock redemption, and thereby indirectly acquire Citizens State Bank of Clara City, Clara City, Minnesota, and Security State Bank of Howard Lake, Howard Lake, Minnesota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *C.O. Ballentine Loving Trust*, to acquire 58.7 percent; and Katy L. Ballentine Loving Trust, to acquire 41.2 percent of the voting shares of Drexel Bancshares, Inc., Drexel, Missouri, and thereby indirectly acquire Bank 10, Drexel, Missouri.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *John E. Holton, Sr.*, to acquire 29.0 percent; John E. Holton, Jr., to acquire 29.0 percent; Terry Canada, to acquire 2.0 percent; James Masten, to acquire 3.0 percent; John Forbis, to acquire 4.0 percent; John Coffee, to acquire 2.0 percent; Billy Mac Sims, to acquire 3.0 percent; Randall Sims, to acquire 1.0 percent; Richard Sims, to acquire 1.0 percent; Richard Fourmentin, to acquire 4.0 percent; Carl Wischkaemper, to acquire 3.0 percent; Carthel Lewis, to acquire 2.0 percent; Jerol Morris, to acquire 1.0 percent; Dannie Morris, to acquire 1.0 percent; Wellington Industries, Inc., to acquire 2.0 percent; Lennie Sims, to acquire 1.0 percent; Don Kiker, to acquire 2.0 percent; Walter Camp, to acquire 2.0 percent; Danny Martin, to acquire 1.0 percent; Warrick's Inc., to acquire 1.0 percent; Millard P. Brown, to acquire 1.0 percent; Elmer Harold Keller, to acquire 2.0 percent; J.B. Oney, to acquire 1.0 percent; Billy Henard, to acquire 1.0 percent; and Hybert Brooks, to acquire 1.0 percent of the voting shares of Wellington State Bank, Wellington, Texas. All of the notificants reside in Wellington, Texas.

G. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *Dr. Roger Chih-Shen Lin*, Honolulu, Hawaii; to acquire 100 percent of the voting shares of EastWest Financial Group, Inc., Honolulu, Hawaii, and thereby indirectly acquire EastWest Bank, National Association, Kihei, Hawaii.

2. *Shirley W. Nelson*, Alamo, California; to acquire an additional 1.37 percent of the voting shares of Summit Bancshares, Inc., Oakland, California, for a total of 12.13 percent, and thereby indirectly acquire Summit Bank, Oakland, California.

Board of Governors of the Federal Reserve System, September 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23464 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

Rurban Financial Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 24, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Rurban Financial Corp.*, Defiance, Ohio; to acquire 100 percent of the voting shares of The First National Bank of Ottawa, Ottawa, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Mountain-Valley Bancshares, Inc.*, Parsons, West Virginia; to acquire 100 percent of the voting shares of Bank of Mill creek, Mill Creek, West Virginia.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Automotive Financial Services, Inc*, Kenner, Louisiana; to become a bank holding company by acquiring 94.86 percent of the voting shares of Merchants Trust & Savings Bank, Kenner, Louisiana.

2. *BJC Holdings, Inc.*, Graceville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Jackson County, Graceville, Florida.

3. *Southwest Florida Banks, Incorporated*, Murdock, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Southwest Florida Bank, National Association, Murdock, Florida; a *de novo* bank.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pinnacle Banc Group*, Oak Brook, Illinois; to acquire 100 percent of the voting shares of The Berwyn National Bank, Berwyn, Illinois.

2. *Royal American Corporation*, Inverness, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Royal American Bank, Inverness, Illinois.

3. *TNB Bancorp, Inc.*, Tuscola, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Tuscola National Bank, Tuscola, Illinois.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Glasgow Bancshares Corporation*, Glasgow, Kentucky; to acquire at least 88 percent of the voting shares of Bowling Green Bank & Trust Company, National Association, Bowling Green, Kentucky.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Emprise Financial Corp.—East*, Wichita, Kansas; to merge with Sierra Petroleum Company, Inc., Wichita, Kansas, and thereby indirectly acquire Emprise Bank, Wichita, Kansas; Emprise Financial Corp.—Hutchinson, Wichita, Kansas; and Emprise Bank, N.A., Hutchinson, Kansas.

2. *Fourth Financial Corporation*, Wichita, Kansas; to merge with American Bank Shares, Inc., Great Bend, Kansas, and thereby indirectly acquire American State Bank and Trust Co., Great Bend, Kansas.

3. *First Bancorp of Kansas*, Wichita, Kansas; to acquire 100 percent of the voting shares of Valley Center Bancshares, Inc., Valley Center, Kansas, and thereby indirectly acquire Arkansas Valley State Bank, Valley Center, Kansas. Comments on this application must be received by October 12, 1990.

G. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Abilene Bankshares of Delaware, Inc.*, Wilmington, Delaware; to acquire 100 percent of the voting shares of First National Bank in Cleburne, Cleburne, Texas.

Board of Governors of the Federal Reserve System, September 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23465 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

The Sanwa Bank, Ltd., Osaka, Japan; Application To Engage in Various Interest Rate and Currency Swap, Foreign Exchange, Brokerage of Futures Contracts on Stock and Bond Indices and Options Thereon, Private Placement, "Riskless Principal" and Related Investment Advisory Activities

The Sanwa Bank, Limited, Osaka, Japan ("Sanwa"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly-owned subsidiary, Sanwa Securities (Delaware) Inc., Dover, Delaware ("Company"), to engage *de novo* in the following activities:

(1)(a) Intermediating in the international swap markets by acting as an originator and principal in interest rate swap and currency sway transactions;

(b) Acting as an originator and principal with respect to certain risk-management products, such as caps, floors and collars, as well as options on swaps, caps, floors and collars ("swap derivative products");

(c) Acting as a broker or agent with respect to the foregoing transactions and instruments;

(c) Acting as an advisor to institutional customers regarding financial strategies involving interest rate and currency swaps and swap derivative products;

(2) Through Company's primary dealer subsidiary, Sanwa-BGK Securities Company, New York, New York, engaging in foreign exchange spot, forward, options, futures and options on futures transactions for the Company's own account for hedging purposes and for other than hedging purposes and buying and selling foreign exchange for the account of others;

(3) Through Company's wholly-owned subsidiary, Sanwa-BGK Futures, Inc., Chicago, Illinois, a futures commission merchant ("FCM"), providing investment advice and execution and clearance services to affiliates and nonaffiliated persons and institutions regarding futures contracts and options thereon on certain stock and bond indexes traded on major commodity exchanges;

(4) Acting as agent in the private placement of all types of securities, including providing related advisory services, and buying and selling all types of securities on the order of investors as "riskless principal."

These activities would be conducted on a nationwide basis.

Company is currently authorized to engage in the following activities:

(1) Underwriting and dealing in obligations of the United States, general obligations of the states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335 ("eligible securities", other securities being "ineligible securities") and engaging in incidental activities;

(2) Purchasing and selling, for its own account, futures, forward and options contracts on eligible securities;

(3) Providing portfolio investment advice and research and furnishing general economic information and advice, general economic statistical forecasting services and industry studies in connection with and as an incident to the proposed eligible securities activities;

(4) Providing discount brokerage of securities pursuant to § 225.25(b)(15) of Regulation Y;

(5) Providing advice in connection with financing transactions to nonaffiliated institutions;

(6) Acting as a FCM for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account, and providing investment advice to institutional customers in conjunction therewith;

(7) Making, acquiring and servicing loans or other extensions of credit pursuant to section 225.25(b)(1) of Regulation Y;

(8) Underwriting and dealing, on a not "engaged principally" basis in the following ineligible securities: (a) certain mortgage-related securities comprised of debt obligations secured by, or representing an interest in, 1-4 family residential mortgages; (b) certain municipal revenue bonds; (c) consumer-

receivable-related securities; and (d) commercial paper; and

(9) Providing securities brokerage and investment advisory services with respect to all types of securities on a combined basis to institutional customers.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in

by a FCM of all of the proposed stock and bond index futures contracts and options thereon, as well as the provision of related investment advice as to substantially all of these instruments. *See, e.g., The Hongkong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990); *Chemical Banking Corporation*, 76 Federal Reserve Bulletin 880 (1990); *The Long*

suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

Board of Governors of the Federal Reserve System, September 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23466 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND

5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the

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receivable-related securities; and (d) commercial paper; and

(9) Providing securities brokerage and investment advisory services with respect to all types of securities on a combined basis to institutional customers.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Sanwa believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved intermediating in the international swap markets by acting as an originator and principal in interest rate swap and currency swap transactions, acting as an originator and principal with respect to swap derivative products, acting as a broker or agent with respect to the foregoing transactions and instruments, and acting as an advisor to institutional customers regarding financial strategies involving the foregoing transactions and instruments. *See The Fuji Bank, Limited,* 76 Federal Reserve Bulletin 768 (1990); *The Sumitomo Bank, Limited,* 75 Federal Reserve Bulletin 582 (1989). Sanwa proposes that company comply with substantially all of the prudential limitations previously relied upon by the Board in approving these activities. *See id.*

The Board has also previously approved engaging in foreign exchange spot, forward, options, futures and options on futures transactions for the Company's own account for hedging purposes and for other than hedging purposes and buying and selling foreign exchange for the account of others. *See Midland Bank, PLC,* 76 Federal Reserve Bulletin—(August 15, 1990); The Bank of Tokyo, Ltd., 76 Federal Reserve Bulletin 654 (1990); *The Nippon Credit Bank, Ltd.,* 75 Federal Reserve Bulletin 308 (1989); *The Hongkong and Shanghai Banking Corporation,* 75 Federal Reserve Bulletin 217 (1989); *Midland Bank, PLC,* 74 Federal Reserve Bulletin 577 (1988). Sanwa proposes that Company would conduct these activities in accordance with substantially all of the prudential limitations relied upon by the Board in these orders and 12 C.F.R. 225.142 (engaging in foreign exchange forward, futures and options contracts for a bank holding company's own account for hedging purposes).

In addition, the Board has previously approved the execution and clearance by a FCM of all of the proposed stock and bond index futures contracts and options thereon, as well as the provision of related investment advice as to substantially all of these instruments. *See, e.g., The Hongkong and Shanghai Banking Corporation,* 76 Federal Reserve Bulletin 770 (1990); *Chemical Banking Corporation,* 76 Federal Reserve Bulletin 660 (1990); *The Long-Term Credit Bank of Japan, Limited,* 76 Federal Reserve Bulletin 554 (1990). Sanwa proposes that Company comply with the conditions set forth in § 225.25(b) (18) and (19) of Regulation Y previously considered by the Board in approving these activities.

Finally, the Board has previously approved the proposed private placement, as agent of the issuer, of all types of securities and buying and selling of all types of securities on the order of investors as "riskless principal." *See, e.g., J.P. Morgan & Company Incorporated,* 76 Federal Reserve Bulletin 26 (1990) ("*J.P. Morgan*"); *Bankers Trust New York Corporation,* 75 Federal Reserve Bulletin 829 (1989) ("*Bankers Trust*"). Sanwa commits that Company will conduct these proposed activities using substantially the same methods and procedures established by the Board in these orders. Sanwa also voluntarily undertakes to conduct these proposed activities in accordance with the prudential limitations set forth in the Board's order approving Sanwa's underwriting of certain bank-ineligible securities, *The Sanwa Bank, Limited,* 76 Federal Reserve Bulletin 568 (1990), as these limitations have been modified by the Board for private placement activities in *J.P. Morgan* and *Bankers Trust.*

Sanwa states that the proposed activities will benefit the public. It believes that they will promote competition and provide added convenience to customers and gains in efficiency. Sanwa takes the position that Company's entry into the swap market will add a significant amount of additional capital to the swap market as a whole. Moreover, Sanwa believes that the proposed activities will not result in any unsound banking practices.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than October 22, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, September 27, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23467 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

TSB Bancorp, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each applicant is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *TSB Bancorp, Inc.,* Woodland, Georgia; to engage *de novo* through its subsidiary, Georgia Home Lending Corporation, Peachtree City, Georgia, formerly Tri-City Mortgage Corporation, in loan marketing services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation,* Chicago, Illinois; to engage *de novo* through its subsidiary, Brinson Trust Company, Chicago, Illinois, in performing trust company functions pursuant to § 225.25(b)(3); and acting as investment or financial advisor pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23468 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for October through November 1990, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study Section	October-November 1990 meeting	Time	Location
AIDs & Related Research 1:			
Dr. Sami Mayyasi, Rm. A13, Tel. 301-496-0012	Nov. 5-6	8:30	Holiday Inn, Bethesda, MD.
AIDs & Related Research 2:			
Dr. Gilbert Meier, Rm. A10, Tel. 301-496-5191	Nov. 2	8:30	Holiday Inn, Chevy Chase, MD.
AIDs & Related Research 3:			
Dr. Marcel Pons, Rm. A13, Tel. 301-496-7266	Oct. 29-31	8:30	Holiday Inn, Bethesda, MD.
AIDs & Related Research 4:			
Dr. Mohinder Poonian, Rm. A10, Tel. 301-496-4666	Nov. 13-14	8:30	Holiday Inn, Bethesda, MD.
AIDs & Related Research 5:			
Dr. Kendall Powers, Rm. A10, Tel. 301-496-4673	Nov. 15-16	8	Holiday Inn, Bethesda, MD.
AIDs & Related Research 6:			
Dr. Gilbert Meier, Rm. A10, Tel. 301-496-5191	Nov. 5	8:30	Holiday Inn, Chevy Chase, MD.
AIDs & Related Research 7:			
Dr. Kendall Powers, Rm. A10, Tel. 301-496-4673	Nov. 9	8	Marriott Hotel, Pooks Hill, Bethesda, MD.
Behavioral and Neurosciences-1:			
Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352	Nov. 14-16	9	The Savoy Suites Hotel, Washington, DC.
Behavioral and Neurosciences-2:			
Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352	Nov. 8	8:30	Omni Shoreham Hotel, Washington, DC.
Biological Sciences-1:			
Dr. James R. King, Rm. A22, Tel. 301-496-1067	Nov. 14-16	8:30	St. James Hotel, Washington, DC.
Biological Sciences-2:			
Dr. Syed Amir, Rm. 326, Tel. 301-496-3117	Nov. 12-14	8:30	Congressional Park Days Inn, Rockville, MD.
Biological Sciences-3:			
Mr. Gene Headley, Rm. A27, Tel. 301-496-6724	Nov. 19-20	8:30	St. James Hotel, Washington, DC.
Biological Sciences:			
Dr. Charles Baker, Rm. 219, Tel. 301-496-7150	Nov. 12-14	8:30	Holiday Inn, Bethesda, MD.
Clinical Sciences-1:			
Ms. Jo Pelham, Rm. 353, Tel. 301-496-7477	Nov. 15-16	8:30	Holiday Inn, Chevy Chase, MD.
Clinical Sciences-2:			
Ms. Jo Pelham, Rm. 353, Tel. 301-496-7477	Nov. 29-30	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Immunology, Virology & Pathology:			
Dr. Lynwood Jones, Rm. A20, Tel. 301-496-7510	Nov. 14-16	8:30	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects:			
Dr. Sandy Warren, Rm. 822, Tel. 301-496-7600	Nov. 26-30	8:30	Hyatt Regency Hotel, Bethesda, MD.
Physiological Sciences:			
Dr. Nicholas Mazarella, Rm. 222, Tel. 301-496-1069	Nov. 14-15	8:30	Holiday Inn, Georgetown, DC.

BEST COPY AVAILABLE

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.845–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: September 26, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23446 Filed 10-3-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of Dental Research Programs Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, October 29–31, 1990. The meeting will be held in the Montgomery-Democracy Room in the Pooks Hill Marriott, Bethesda, Maryland, on October 29, from 8 p.m. to recess. On October 30–31 the meeting will be held in Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will convene on both days at 8:30 a.m. and recess at 5 p.m. on October 30, and adjourn at 1 p.m. on October 31.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs on the causes, nature, diagnosis, treatment and prevention of oral diseases and conditions. Attendance by the public will be limited to space available.

Dr. Wayne Wray, Deputy Director for Extramural Program, NIDR, NIH, Westwood Building, room 502, Bethesda, MD 20892 (telephone 301/496–7748) will provide a summary of the meeting, roster of committee members and substance program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes, National Institutes of Health.)

Dated: September 26, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23447 Filed 10-3-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting; National Kidney and Urologic Diseases Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on November 19, 1990. The Board meeting will begin at 8 a.m. to approximately 3:30 p.m. at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of the long range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: September 28, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23448 Filed 10-3-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases, Special Grants Review Committee, Subcommittee B.

Executive Secretary: Judith M. Podskalny, Westwood Building, room 421A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7563.

Dates of Meeting: October 25, 1990.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: October 25, 1 p.m.–2 p.m.

Closed: October 25, 2 p.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases, Special Grants Review Committee, Subcommittee C.

Executive Secretary: Daniel Matsumoto, Westwood Building, room 404B, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–8830.

Dates of Meeting: November 1, 1990.

Place of Meeting: Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 1, 8 a.m.–8:30 a.m.

Closed: November 1, 8:30 a.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases, Special Grants Review Committee, Subcommittee D.

Executive Secretary: Ann A. Hagan, Westwood Building, room 417A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7841.

Date of Meeting: October 19, 1990.

Place of Meeting: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: October 19, 8:30 a.m.–9 a.m.

Closed: October 19, 9 a.m. to adjournment.

Dated: September 24, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23449 Filed 10-3-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for November 1990.

These meetings will be open to the public to discuss administrative details relating to the committee business for approximately 1 hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Access to Research Careers Review Subcommittee.

Executive Secretary: Dr. Norka Ruiz Bravo, Rm. 9A18, Westwood Building. Telephone: 301-496-7585.

Dates of Meeting: November 1–2.

Place of Meeting: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 1, 8:30 a.m.–9:30 a.m.

Closed: November 1, 9:30 a.m.–5:00 p.m. November 2, 8:30 a.m.–adjournment.

Name of Committee: Genetic Basis of Disease Review Committee.

Executive Secretary: Dr. Arthur Zachary, Rm. 9A14, Westwood Building. Telephone: 301-496-7125.

Date of Meeting: November 5.

Place of Meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 5, 8:30 a.m.–9:30 a.m.

Closed: November 5, 9:30 a.m.–adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Executive Secretary: Dr. Rodney Ulane, Rm. 9A18, Westwood Building. Telephone: 301-496-4772.

Date of Meeting: November 9.

Place of Meeting: Building 31C, Conference Rm. 7, National Institutes of Health, Bethesda, Maryland.

Open: November 9, 8:30 a.m.–9:30 a.m.

Closed: November 9, 9:30 a.m.–adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Executive Secretary: Dr. Carole Latker, Rm. 9A10, Westwood Building. Telephone: 301-496-7125.

Dates of Meeting: November 13–14.

Place of Meeting: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 13, 8:30 a.m.–9:30 a.m.

Closed: November 13, 9:30 a.m.–5:00 p.m. November 14, 8:30 a.m.–adjournment.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Biomedical Research Support Subcommittee.

Executive Secretary: Dr. Mary Stephens, Rm. 9A13, Westwood Building. Telephone: 301-402-0635.

Dates of Meeting: November 15–16.

Place of Meeting: Conference Rm. 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 15, 8:30 a.m.–9:30 a.m.

Closed: November 15, 9:30 a.m.–5:00 p.m. November 16, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13-859, 13-862, 13-863, 13-880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: September 24, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23450 Filed 10-3-90; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, December 6 and 7, 1990, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 4 p.m. on December and from 9 a.m. to 3 p.m. on December 7 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provision set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 3:00 p.m. to adjournment on December 7 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Board members.

Substantive program information may be obtained from Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH Building 10, Room 7N214, phone (301) 496-2116.

Dated: September 24, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23451 Filed 10-3-90; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Biomedical Library Review Committee on November 8–9, 1990, convening at 8:30 a.m. in the Board Room of the

National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on November 8 will be open to the public from 8:30 to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting on November 8 will be closed to the public for review, discussion, and evaluation of individual grant applications from approximately 11 a.m. to 5 p.m., and on November 9 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: September 24, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23452 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 25 and October 26, 1990, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on October 25 and from 8:30 a.m. to approximately 12 noon on October 26 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 25, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: September 24, 1990.

Betty J. Beveridge,

NIH Committee Management Officer, NIH.

[FR Doc. 90–23453 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–90–3158]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Report Management Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 27, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing Development Grant Application Package.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: These forms are used by grantees to update project data essential for preparation of the final HUD/Grantee Agreement. They are also a source document for collecting information to update automated information systems used for program management.

Form Number: HUD–90031 and 90031–A.

Respondents: State or Local Governments.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD 90031 & 90021–A	200		1		4		800
Application	54		1		82		4,428

Total Estimated Burden Hours: 5,228.

Status: Extension.

Contact: Michael A. Levine, HUD, (202) 708–1142. Scott Jacobs, OMB, (202) 395–6880.

Dated: September 27, 1990.

[FR Doc. 90–23427 Filed 10–3–90; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–040–00–4111–15]

Boundary Change, Texas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of boundary change, Tulsa/Roswell districts in Texas.

SUMMARY: Notice is hereby given that Bureau of Land Management (BLM) responsibility for all of Texas is now under the jurisdiction of the Tulsa District Office (TDO) of the New Mexico State Office (NMSO). For the convenience of the public, this transfer combines the southwestern portion of Texas with the eastern and northern portions under one office. The transferred area currently has no producing leases and no inspection and enforcement (I&E) work. BLM responsibility in Texas is limited to the subsurface. An estimated 10% of the workload in Texas has now been incorporated into the approximately 90% for which TDO was previously responsible. The transferred area includes the following 39 counties: Andrews, Borden, Brewster, Coke, Crane, Crockett, Culberson, Dawson, Ector, Edwards, El Paso, Fisher, Gaines, Glasscock, Howard, Hudspeth, Irion, Jeff Davis, Kinney, Loving, Martin, Maverick, Midland, Mitchell, Nolan, Pecos, Presidio, Reagan, Reeves, Schleicher, Scurry, Sterling, Sutton, Terrell, Tom Green, Upton, Val Verde, Ward, Winkler.

DATES: This boundary change was approved March 16, 1990, by the Deputy Director of BLM, and took effect immediately.

FOR FURTHER INFORMATION CONTACT: Jim Sims, District Manager, Tulsa District Office, BLM, 9522–H East 47th Place, Tulsa, Oklahoma 74145, Phone: (918) 581–6480.

Dated: September 28, 1990.

Larry Woodard,

State Director.

[FR Doc. 90–23487 Filed 10–3–90; 8:45 am]

BILLING CODE 4310–FB–M

[WO–150–00–4830–11]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet November 1–3, 1990, at the Plaza-Suite Hotel, 4255 South Paradise Road, Las Vegas, Nevada 89109. The meeting hours will be 8 a.m. to 4 p.m. on Friday, the 2nd, and 8 a.m. to 12 p.m. on Saturday, the 3rd. On Thursday, November 1st, Council members will participate in a field tour of BLM-managed lands at the Red Rock Conservation Area. The proposed agenda for the meeting is:

Friday, November 1

Morning: Opening remarks by National Public Lands Advisory Council Chairman Dave Delcour; Cy Jamison, Director, Bureau of Land Management; and, Acting State Director, BLM-Nevada, Fred Wolf. Topics for morning discussion will include: BLM's Management Plan on the Spotted Owl/Timber issue; an overview/ update of the Wild Horse & Burro Program; and Hazardous Waste Disposal.

Afternoon: The Public Statement period; followed by a briefing on Land Use in the Las Vegas area.

Saturday, November 3

Council old and new business. The Council will then break into three task Force Groups to continue their deliberations on advising the Bureau of Land Management with regards to: Recreation; Research; and, the possibility of the Bureau of Land Management having a Multiple Use Foundation.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on Friday, November 2nd. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments by October 15 to the Bureau of Land Management's Nevada State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limt the length of oral presentations.

DATES: November 2 and 3—Council Meeting. November 2—Public Statements.

ADDRESSES: Copies of Public statements should be mailed by October 15 to: Ms. Carol Hadley, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Nan Morrison, Washington, D.C. Office, BLM, telephone (202) 208–5101; or Carol Hadley, Nevada State Office, BLM, telephone (702)–785–6590.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Date Signed: September 28, 1990.

Cy Jamison,

Director

[FR Doc. 90–23459 Filed 10–3–90; 8:45 am]

BILLING CODE 4310–84–M

[OR–100–01–6310–02; GP1–002]

Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The District Advisory Council for the Bureau of Land Management, Roseburg District will meet November 2, 1990, beginning at 8:30 a.m. in the Roseburg District Office Auditorium. On the agenda are a general update on District activities and programs and a discussion of new forestry concepts.

ADDRESSES: Bureau of Land Management, Roseburg District, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT: Mel Ingerol, Public Affairs Specialist, (503)672-4491.

SUPPLEMENTARY INFORMATION: The meeting is open to the public, and a public comment period will be provided at 10:30 a.m. Written statements for the Council can be mailed to the District Manager prior to the meeting or presented to the Council during the meeting. Summary minutes will be available for public review within 30 days of the meeting.

Dated: September 24, 1990.

Richard G. Burch,

Acting District Manager.

[FR Doc. 90-23477 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-33-M

[AZ-040-01-4410-01]

Joint Meeting for the Safford District Advisory Council and San Pedro Riparian National Conservation Area Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming joint meeting of the Safford District Advisory Council and the San Pedro Riparian National Conservation Area Advisory Committee.

DATES: Wednesday, November 7, 1990, 10 a.m.

ADDRESSES: San Pedro House, Highway 90, Six Miles East of Sierra Vista.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463 and 94-579 and 43 CFR part 1784. The agenda for the meeting will include:

1. Update on the Safford District Resource Management Plan (RMP)
2. Report from Advisory Council Sub-committee on AZ Wilderness Bill Implementation Plan
3. Management Update
4. Tour of Murry Springs Paleontological Site
5. Business Meeting for Council and San Pedro Committee

The meeting will be open to the public. Interested persons may make oral statements to the Council between 11 am. and 12 noon. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, Arizona 85546, by 4:15 pm., Tuesday, November 6, 1990.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: September 20, 1990.

Margaret Jensen,

Acting District Manager.

[FR Doc. 90-23486 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-32-M

[MT-070-00-4050-91-43H: MT M78651]

Montana; Realty Action; Recreation and Public Purposes (R&PP) Act Lease; Last Chance Handgunners

AGENCY: Interior, Bureau of Land Management, Butte District, Interior.

SUMMARY: This notice amends the original Notice of Realty Action for MT M78651 published on August 23, 1990 (Vol. 55, No. 164, page 34622. The lands described in that Notice have been examined and found suitable for classification for lease to Last Chance Handgunners pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*).

Dated: September 25, 1990.

Merle N. Good,

Headwaters Area Manager.

[FR Doc. 90-23478 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-DN-M

[WY-010-00-4212-14; W-84096]

Realty Action; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; sale of public land in Hot Springs and Washakie Counties, Wyoming.

SUMMARY: The following lands have been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713). The proposed sale will be a direct sale of the surface estate of three individual parcels to the identified governmental entities, at not less than the appraised fair market value. The proposed Action will provide for the sale of all parcels on the sale date, but the sale of individual parcels may be delayed until all requirements have been met. The lands are legally described as follows:

Sixth Principal Meridian

Parcel Number 1: T. 40 N., R. 99 W.
Sec. 24, lot 4 (2.5 acres)
Parcel Number 2: T. 44 N., R. 98 W.
Sec. 23: E½NE¼NE¼NE¼, N½NE¼S E¼NE¼NE¼ (6.25 acres)
Sec. 24: W½NW¼NW¼NW¼NW¼, NW¼SW¼NW¼NW¼NW¼ (1.875 acres)
Parcel Number 4: T. 47 N., R. 93 W.
Sec. 22: E½NE¼ (80.0 acres)
Sec. 23: SW¼NW¼ (40.0 acres).

The above land aggregates 130.625 acres more or less.

FOR FURTHER INFORMATION CONTACT: Leonard Larsen, Realty Specialist, Bureau of Land Management, Grass Creek Resources Area, P.O. Box 119, Worland, Wyoming 82401 (307) 347-9871.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate, reserving all the minerals to the United States. The primary purpose in conveying the subject lands out of public ownership is to meet the public need identified by local governmental entities. Parcels number 1 and number 2, currently under lease for school facilities, will be offered to the Hot Springs County School District Number 1. Parcel number 4 will be offered to the Washakie County Solid Waste Disposal District Number 1 for county landfill purposes.

The proposed sale is consistent with the Grass Creek Resource Area Management Framework Plan and will serve important public objectives. The land contains no known public values. The planning document and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Worland District Office, 101 South 23rd Street, Worland, Wyoming.

Coveyance of the public land will be subject to:

1. A right-of-way for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals, and subject to:

Parcel Number 1: 1. C-044124, Oil and Gas Lease.

Parcel Number 2: 1. Wyoming State Highway 170, Right-of-Way;

2. W-58063, Tri-County Telephone Right-of-Way;

3. W-81732, Hot Spring REA, Right-of-Way;

4. W-81720, Hot Springs County School District Number 1, Right-of-Way; and

5. C-058729, Oil and Gas Lease.

Parcel Number 4: 1. W-044926, Pacific Power Right-of-Way; and

2. W-85009, W-88248, and W-112472, Oil and Gas Leases.

The public land described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws, upon publication of this notice in the Federal Register. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever comes first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Worland, P.O. Box 119, Worland, Wyoming 82401. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final.

Dated: September 26, 1990.

Joseph T. Vessels,

Area Manager.

[FR Doc. 90-23485 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-32-M

[AZ-930-00-4214-11; A-12973]

Proposed Modification and Continuation of Withdrawal; Arizona

September 26, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years Secetarial Order of October 23, 1907, which withdrew 120.00 acres in the Coconino National Forest for use as the Blue Ridge Campground, formerly the Moqui Ranger Station (1907) and subsequently renamed the Blue Ridge Administrative Site (1915).

The Forest Service proposes to continue the withdrawal for campground purposes for 20 years, and does not anticipate any changes in land use. The land will remain closed to operation of the mining laws only.

DATES: Comments to this notice should be received by January 2, 1991.

ADDRESSES: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602 640-5509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Secretarial Order dated October 23, 1907, withdrawing the lands from all forms of use for an indefinite period of time, be modified and continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described land in the State of Arizona. Additionally, it is proposed that the authorized land-use change from administrative site purposes to that of campground purposes.

Gila and Salt River Meridian

T. 14 N., R. 11 E.,
Sec. 21, N½NW¼, SW¼NW¼.
The area described contains 120.00 acres in Coconino County.

The purpose of the withdrawal is to protect a 10-unit campground valued at $15,000 from prospecting and possible disturbance caused by mining operations. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the BLM will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of a final determination will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Phillip D. Moreland,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-23479 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-32-M

[AZ-930-00-4214-11; A-12997]

Proposed Modification and Continuation of Withdrawal; Arizona

September 26, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years a portion of Secretarial Order of October 26, 1906, as amended. This order withdrew lands in the Kaibab and Coconino National Forests; however, this notice pertains only to the land located within the Kaibab National Forest. Another notice will be published for the land located within the Coconino National Forest.

The lands were withdrawn for ranger station and administrative site purposes. With the exception of 30 acres of the Camp Clover administrative site, the lands continue to be utilized for such purposes. It is anticipated, that there will be no additional changes in land-use. The Forest Service proposes that the lands withdrawn for the Spring Valley Ranger Station No. 4 and the Camp Clover Administrative Site No. 13 continue to be segregated from operation under the mining laws.

DATES: Comments to this notice should be received on or before January 2, 1991.

ADDRESSES: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 640-5509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Secretarial Order of October 26, 1906, as amended be modified and continued for 20 years as it pertains to 110 acres of the Spring Valley Ranger Station No. 4 and 190 acres of the Camp Clover Administrative Site No. 13. Both sites contain improvements valued at $8,000 and $116,000, respectively. The order will be terminated on 30 acres of the Camp Clover Administrative Site. Actions are taken pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands in the State of Arizona:

Gila and Salt River Meridian

Continue.
T. 23 N., R. 4 E.,
Sec. 22, E½S W¼;
Sec. 27, N½NE¼NW¼, NE¼NW¼ NW¼—110.00 acres.
T. 22 N., R. 2 E.,
Sec. 31, E½SE¼, E½SW¼SE¼, E½W½ SW¼SE¼;
Sec. 32, W½SW¼—190.00 acres.
Terminate.
T. 22 N., R. 2 E.,
Sec. 31, W½W½SW¼SE¼—10.00 acres.
Sec. 32, S½SW¼NW¼—20.00 acres.

The areas described contain 300 acres on which the withdrawal will be continued and 30 acres on which it will be terminated, all lands are located in Coconino County.

The purpose of the withdrawal is for the administration and protection of a ranger station and an administrative site. Continuation of the secretarial order will continue closure of the lands

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to operations under the mining laws only and will impose a 20-year life on the withdrawal unless extended. Termination of the withdrawal on the subject 30 acres is simply a record clearing action as the land has already been transferred into private ownership via a Forest Service exchange. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigation, as is necessary, to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Phillip D. Moreland,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-23480 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-01-4214-11; GP1-001; OR-22213(WASH), OR-22370(WASH)]

Proposed Continuation of Withdrawals, Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Interior, Bureau of Reclamation proposes that the two separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The Bureau of Reclamation proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands within the Yakima project are involved:

1. OR-22213(WASH), Secretarial Order dated January 15, 1908, 40 acres located in Sec. 10, T. 14 N., R. 16 E., W.M., in Yakima County, approximately 19 miles northwest of Yakima.

2. OR-22370(WASH), Secretarial Order dated August 16, 1907, approximately 6,087 acres located in Secs. 24, 25, and 36, T. 18 N., R. 11 E., and Secs. 13, 14, 15, 20, 21, 22, 23, 24, 26, 27, 28, 29, 32, 33, 34, and 35, T. 16 N., R. 12 E., in Yakima County, approximately 29 miles northwest of Naches.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws. The Bureau of Reclamation requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: September 20, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-23481 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-01-4214-10; GP1-003; OR-7964(WASH)]

Partial Termination of Proposed Withdrawal and Reservation of Land; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has cancelled its application in part to withdraw certain land for protection of the Wolf Creek Research Natural Area. This action will open 7.1 acres to mining. The land has been and remains open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Notice of U.S. Department of Agriculture, Forest Service application OR-7964(WASH) for withdrawal and reservation of land was published as FR Doc. 77-8629 of the issue dated March 7, 1977. The purpose of the proposed withdrawal is to protect Wolf Creek Research Natural Area located five miles west of Winthrop, Washington. The applicant agency has determined that a portion of the proposed withdrawal is no longer needed and has cancelled the application as to the following described land:

Willamette Meridian

Okanogan National Forest

T. 34 N., R. 20 E., unsurveyed,
Sec. 1, that portion of the N½ located northerly of the centerline of Virginia Ridge Road No. 3619.

The area described contains approximately 7.1 acres in Okanogan County, Washington.

Pursuant to the regulations contained in 43 CFR 2310.2-1(c), at 8:30 a.m., on November 5, 1990, subject to valid existing rights, the provisions of other existing withdrawals, and the requirements of applicable law, the land described above will be opened to location and entry under the United States mining laws. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land remaining in withdrawal application OR-7964(WASH) is amended to read as follows:

Willamette Meridian

Okanogan National Forest

T 34. N., R. 20 E., unsurveyed,
Sec. 1, that portion of the N½ described as follows: Beginning at the section corner common to sections 35 and 36 on the south boundary of T. 35 N., R. 20 E., thence S. 0°08'51" E., a distance of 1,238 feet; thence generally along the left bank of Wolf Creek bearing S. 60°00'00" E., a distance of 2,185 feet; thence N. 82°19'09" E., a distance of 1,415.73 feet; thence along a line passing through Corner No. 3 and terminating at Corner No. 2 of H.E.S. No. 217, said line bearing N. 0°17'12" W., a distance of 2,159 feet; thence along a line on the south boundary of section 36, T. 35 N., R. 20 E., bearing S. 89°51'30" W., a distance of 642.47 feet to the south one quarter section corner of said section 36; thence continuing along the south boundary of said section 36 on a bearing of S. 89°56'00" W., a distance of 177 feet to the centerline of Virginia Ridge Road No. 3619; thence along the centerline of said road bearing S. 34°05'00" W., a distance of 230 feet; thence N. 85°15'00" W., a distance of 616 feet; thence S. 83°15'00" W., a distance of 243 feet; thence N. 77°20'00" W., a distance of 198 feet; thence N. 56°40'00" W., a distance of 165 feet; thence N. 36°05'00" W., a distance of 153 feet; thence S. 85°00'00" W., a distance of 107 feet; thence N. 64°35'00" W., a distance of 20.98 feet to a point intersecting the south boundary of said section 36; thence S. 89°56'00" W., a distance of 974.63 feet along the south boundary of said section 36 to the point of beginning.

The area described contains approximately 142.9 acres in Okanogan County, Washington.

Dated: September 20, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-23482 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Availability of Draft Revised Recovery Plan for the Grizzly Bear (Ursus arctos horribilis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of the draft revised recovery plan for grizzly bear (*Ursus arctos horribilis*). This threatened species occurs in several populations in the lower 48 states. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before December 3, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting: Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812, 406/329-3223 or (FTS) 585-3223. Written comments and materials regarding this plan should be sent to the Recovery Coordinator at the Missoula, Montana, address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, at the Missoula, Montana address (406) 329-3223; FTS 585-3223.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and provide initial estimates of time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1975, (40 FR 31734) due to current and potential threats to the species' populations and habitat from human activities. The plan addresses grizzly bear recovery in seven ecosystems. Populations of grizzly bear are known in five of the seven ecosystems—the Yellowstone ecosystem population in Wyoming, Idaho, and Montana; the Cabinet-Yaak ecosystem in Idaho and Montana; the Northern Continential Divide ecosystem in Montana; the Selikirk ecosystem in Washington and Idaho; and the North Cascades ecosystem in Washington. As yet, there is no firm evidence of grizzly bear in the Bitterroot ecosystem in Montana and Idaho, or the San Juan ecosystem in Colorado. Threats to the grizzly bear population come from habitat modification caused by human activities such as logging, recreational development, subdivisions, and mining and energy development, and from direct human/bear conflicts as a result of interactions with recreational use, livestock operations, highway and railroad corridors, illegal mortality, etc.

Recovery efforts have focused on protecting the species' populations and habitat from habitat-destroying activities through section 7 and section 9 of the Act and research on bear biology and habitat needs. Recovery criteria have been established for four of the ecosystems (Yellowstone, Cabinet-Yaak, Northern Continental Divide, and Selkirk). Further evaluation of the other ecosystems (North Cascades, Bitterroot and the San Juan) will be needed to determine recovery critiera. Delisting can be achieved independently for each of the grizzly bear populations as there are no known connections between any of the populations.

Public Comments Solicited

The Service solicits written comments on the Grizzly Bear Recovery Plan revision described above. All comments received by the date specified above will be considered prior to approval of the revised plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 28, 1990.

Wilbur N. Ladd, Jr.,

Acting Regional Director.

[FR Doc. 90-23507 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Training and Qualifications of Personnel in Well-Control Training

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of approved well-control training schools.

SUMMARY: As published in the Federal Register on December 21, 1978 (43 FR 59551) the Minerals Management Service (MMS) is providing, for public information, a current list of MMS approved well-control schools.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Rivero, Minerals Management Service, Mail Stop 4800, 381 Elden

Street, Herndon, Virginia, 22070–4817, telephone (703) 787–1584.

SUPPLEMENTARY INFORMATION: On January 19, 1982, the MMS was established under Secretarial Order No. 3071. The **Federal Register** Notice of February 19, 1982 (43 FR 7508) published the MMSS–OCS–T 1 Training Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," Second Edition. The following is a list of MMS approved well-control schools:

MMS Approved Well-Control Schools

Legend

Job Classification:
RH—Rotary Helper
DM—Derrickman
DR—Driller
TP—Toolpusher
OR—Operator's Representative

Blowout—Preventer Stack Type

SUR—Surface BOP Stack
SUB—Subsea BOP Stack

It is anticipated that periodic Notices of this type will be published in the future on an as-needed basis.

Dated: September 27, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

BASIC SCHOOLS

No.	School Name	Type	Class	Approved/Expires	Comment
1	Alaska Vocational Technical Center	SUR SUB	DR TP OR	04/23/88 to 04/23/92	
2	Arco Oil and Gas Company	SUR SUB	TP OR	12/10/88 to 12/10/92*	
3	Basic Research and Training, Incorporated	SUR SUB	DR TP OR	11/09/88 to 11/09/92	
4	Baroid Corporation	SUR SUB	DR TP OR	07/02/87 to 07/02/91	
5	BP Exploration Inc	SUR SUB	DR TP OR	02/10/89 to 02/10/93	
6	Chevron Services Company	SUR SUB	OR	06/19/87 to 06/19/94	
7	Cities Service Company	SUR SUB	DR TP OR	06/19/87 to 06/19/91	
8	Conoco, Incorporated	SUR SUB	OR	11/01/90 to 11/01/94*	
9	Eastern New Mexico University	SUR SUB	DR TP OR	08/19/89 to 08/19/93	
10	Exxon Company U.S.A	SUR SUB	DR TP OR	09/18/90 to 09/18/94	
11	Global Marine Drilling Company	SUR SUB	DR TP OR	04/21/90 to 04/21/94*	
12	Grace, Shursen, Moore and Associates	SUR SUB	DR TP OR	10/13/88 to 10/13/92	
13	Houston Community College	SUR SUB	DR TP OR	09/18/87 to 09/18/91	
14	International Drilling School	SUR SUB	DR TP OR	11/10/90 to 11/10/94*	
15	Loffland Brothers Company	SUR	DR TP OR	01/24/88 to 01/24/92*	
16	Louisiana State University	SUR SUB	DR TP OR	11/10/86 to 11/10/90	
17	M. I. Drilling Fluids Company	SUR SUB	DR TP OR	06/23/90 to 06/23/94*	
18	Milpark Drilling Fluids	SUR SUB	DR TP OR	01/18/87 to 01/18/91*	
19	Murchison Drilling Schools	SUR SUB	DR TP OR	05/29/87 to 05/29/91	
20	Ocean Drilling & Exploration Company (ODECO)	SUR SUB	DR TP OR	05/29/87 to 05/29/91	
21	Odessa College	SUR SUB	DR TP OR	05/11/88 to 05/11/92	
22	Oilfield Training Consultants	SUR SUB	DR TP OR	06/13/88 to 06/13/92	
23	Oilfield Training Seminars Incorporated	SUR SUB	DR TP OR	07/30/87 to 07/30/91	
24	Oklahoma Petroleum Training Corporation	SUR SUB	DR TP OR	07/31/88 to 07/31/92	
25	Parker Drilling Company	SUR SUB	DR TP OR	10/29/88 to 10/29/92	
26	Pennsylvania State University	SUR SUB	DR TP OR	09/03/89 to 09/03/93**	
27	Pool Offshore Company	SUR SUB	DR TP OR	03/19/87 to 03/19/91	
28	Prentic Training Company	SUR SUB	DR TP OR	01/15/89 to 01/15/93	
29	Randy Smith Well Control Schools	SUR SUB	DR TP OR	01/04/89 to 01/04/93	
30	Reading & Bates Drilling Company	SUR SUB	DR TP OR	02/05/90 to 02/05/94	
31	Rike Service, Incorporated	SUR SUB	DR TP OR	01/16/87 to 01/16/91	
32	Santa Fe Drilling Company	SUR SUB	DR TP OR	05/29/86 to 05/29/92*	
33	Sedco Forex	SUR SUB	DR TP OR	01/18/89 to 01/18/93	
34	Shell Oil Company	SUR SUB	DR TP OR	07/07/87 to 07/07/91	
35	Texaco	SUR SUB	DR TP OR	02/15/87 to 02/15/91	
36	The Training Company Incorporated	SUR SUB	DR TP OR	01/06/87 to 01/06/91	
37	Triton Engineering Services	SUR SUB	OR	03/11/87 to 03/11/91	
38	University of Houston at Victoria	SUR SUB	DR TP OR	10/16/89 to 10/16/93	
39	University of Oklahoma	SUR SUB	DR TP OR	07/10/87 to 07/10/91	
40	University of Southwestern Louisiana	SUR SUB	DR TP OR	11/17/87 to 11/17/91	
41	University of Texas (Petex)	SUR SUB	DR TP OR	05/08/87 to 05/08/91	
42	Unocal	SUR SUB	DR TP OR	09/16/88 to 09/16/92	
43	Ventura College	SUR SUB	DR TP OR	03/15/87 to 03/15/91	
44	Well Control School	SUR SUB	DR TP OR	11/09/88 to 11/09/92	
45	Westec-Taft College	SUR SUB	DR TP OR	04/12/87 to 04/12/91	
46	Western Oceanic, Incorporated	SUR SUB	DR TP OR	05/01/89 to 05/01/93	
47	Western Well Control School	SUR	DR TP OR	05/30/89 to 05/30/93	
48	Uintah Basin Area Vocational Center	SUR SUB	DR TP OR	05/11/90 to 05/11/94*	
	The following school's Basic well-control programs have expired:				
	Operators, Inc	SUR SUB	DR TP OR	03/01/89	Expired
	Cudd Pressure Control, Incorporated	SUR SUB	DR TP OR	04/29/85 to 04/29/89	Expired
	Dbilyn-Field Drilling Company	SUR SUB	DR TP OR	04/30/85 to 04/30/89	Expired
	Preston L. Moore, Incorporated	SUR SUB	DR TP OR	08/01/89	Expired
	Imco Services	SUR SUB	DR TP OR	08/31/89	Expired
	Colorado Northwestern Community College	SUR SUB	DR TP OR	09/29/89	Expired
	Northwestern Michigan College	SUR SUB	DR TP OR	09/29/89	Expired
	Diamond M. Company	SUR SUB	DR TP OR	04/17/90	Expired

Comments:
*—approval pending the results of onsite evaluation.
**—subsea approval pending the results of onsite evaluation.

ROTARY HELPER (RH)/DERRICKMAN (DM) SCHOOLS

No.	School name	Class	Approved
1	Alaska United Drilling Company	RH DM	10/29/80
2	Alaska Vocational Technical Center	RH DM	10–21–83
3	Anglo Alaska/Nabors Alaska	RH DM	01/7/82
4	Atlantic Pacific Marine Corporation	RH DM	12/11/79
5	Atwood Group, Incorporated	RH DM	08/08/79
6	Atwood Oceanics, Incorporated	RH DM	08/07/79
7	Bailey-Shannon Drilling	RH DM	11/16/81
8	Basic Research and Training, Incorporated	RH DM	08/08/82
9	Bolsenkamp Drilling Company	RH DM	08/13/79
10	Booker Drilling	RH DM	01/10/80
11	Broughton Drilling	RH DM	01/16/80
12	Cactus International	RH DM	12/10/79
13	Canadian Marine Drilling Ltd.	RH DM	08/11/86
14	Challenger Drilling	RH DM	12/14/79
15	Chilee Drilling Company	RH DM	05/14/79
16	Circle Bar Drilling	RH DM	01/24/80
17	Cyclops Drilling	RH DM	11/29/79
18	Dan-Tex International	RH DM	02/29/80
19	Diamond M. Company	RH DM	08/01/79
20	Dolphin-Titan International	RH DM	05/07/85
21	Dual Offshore Company	RH DM	12/08/79
22	Flour Drilling Services Inc., Louisiana	RH DM	02/08/80
23	Flour Drilling Services Inc., California	RH DM	05/07/84
24	Global Marine Drilling Company	RH DM	03/08/79
25	Goldrus Marine Drilling	RH DM	10/29/80
26	Griffin-Alexander Drilling	RH DM	08/29/80
27	Houston Offshore	RH DM	06/14/79
28	Houtech Energy	RH DM	05/07/85
29	Huthance Drilling Company	RH DM	03/08/79
30	J.F.P. Drilling	RH DM	07/02/80
31	Keyes Offshore	RH DM	11/01/79
32	Loffland Brothers Company	RH DM	01/24/80
33	Marine Drilling Company	RH DM	05/20/79
34	Mayronne Company	RH DM	10/05/79
35	Moran Drilling Corporation	RH DM	05/25/80
36	Mudtech	RH DM	11/07/79
37	Nicklos Drilling	RH DM	10/30/79
38	Noble Drilling	RH DM	01/27/86
39	Ocean Drilling & Exploration Company	RH DM	10/16/79
40	Oilfield Training Seminars	RH DM	03/07/85
41	Parker Drilling Company	RH DM	07/02/84
42	Penrod Drilling	RH DM	07/16/79
43	Phoenix Seadrill	RH DM	09/25/79
44	Pool Offshore Company	RH DM	11/20/79
45	Prentic Training Company	RH DM	05/29/85
46	Randy Smith Well Control Schools	RH DM	07/25/89
47	Reading & Bates Drilling Company	RH DM	05/19/79
48	Rowan Companies	RH DM	08/10/79
49	Selen Offshore Company	RH DM	09/20/79
50	Santa Fe Drilling Company	RH DM	10/17/79
51	Sevage Drilling	RH DM	11/02/82
52	Scan Drilling Company	RH DM	07/25/79
53	Sea Drilling	RH DM	11/28/79
54	See, Inc	RH DM	08/22/79
55	Sedco Forex	RH DM	06/11/82
56	Shell Oil Company	RH DM	07/07/87
57	South Texas Offshore Drilling	RH DM	01/27/82
58	The Offshore Company	RH DM	08/16/79
59	Transworld Drilling	RH DM	04/11/79
60	Ventura College	RH DM	03/06/84
61	Well Control School	RH DM	09/05/84
62	Western Oceanic, Incorporated	RH DM	05/01/79
63	Zapata Offshore Company	RH DM	09/22/78

REFRESHER SCHOOLS

No.	SCHOOL NAME	TYPE	CLASS	Approved/Expires	Comment
1	Alaska Vocational Technical Center	SUR SUB	DR TP OR	04/23/88 to 04/23/92	
2	Amoco Production Company	SUR SUB	OR	04/15/88 to 04/15/92	
3	Arco Oil and Gas Company	SUR SUB	TP OR	12/10/88 to 12/10/92*	
4	Basic Research and Training Incorporated	SUR SUB	DR TP OR	11/09/88 to 11/09/92	
5	Baroid Corporation	SUR SUB	DR TP OR	07/02/87 to 07/02/91	
6	BP Exploration Inc	SUR SUB	DR TP OR	02/10/89 to 02/10/93	
7	Chevron Services Company	SUR SUB	OR	02/10/90 to 02/10/94	
8	Cities Service Company	SUR SUB	DR TP OR	06/19/87 to 06/19/91	
9	Conoco, Incorporated	SUR SUB	OR	11/01/90 to 11/01/94*	
10	Eastern New Mexico University	SUR SUB	DR TP OR	08/19/89 to 08/19/93	

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REFRESHER SCHOOLS—Continued

No.	SCHOOL NAME	TYPE	CLASS	Approved/Expires	Comment
11	Exxon Company U.S.A	SUR SUB	DR TP OR	04/21/90 to 04/21/94	
12	Global Marine Drilling Company	SUR SUB	DR TP OR	04/21/90 to 04/21/94*	
13	Grace, Shursen, Moore and Associates	SUR SUB	DR TP OR	10/13/88 to 10/13/92	
14	Houston Community College	SUR SUB	DR TP OR	09/18/87 to 09/18/91	
15	International Drilling Schools	SUR SUB	DR TP OR	11/10/90 to 11/10/94*	
16	Loffland Brothers Company	SUR	DR TP OR	01/24/88 to 01/24/92	
17	Louisiana State University	SUR SUB	DR TP OR	11/10/86 to 11/10/90	
18	M. I. Drilling Fluids Company	SUR SUB	DR TP OR	08/23/90 to 08/23/94*	
19	Milpark Drilling Fluids	SUR SUB	DR TP OR	01/18/87 to 01/18/91	
20	Murchison Drilling Schools	SUR SUB	DR TP OR	05/29/87 to 05/29/91	
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25	Oklahoma Petroleum Training Corporation	SUR SUB	DR TP OR	07/31/88 to 07/31/92	
26	Parker Drilling Company	SUR SUB	DR TP OR	10/29/88 to 10/29/92	
27	Pennsylvania State University	SUR SUB	DR TP OR	09/03/89 to 09/03/93**	
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29	Prentice Training Company	SUR SUB	DR TP OR	01/15/89 to 01/15/93	
30	Randy Smith Well Control Schools	SUR SUB	DR TP OR	01/04/89 to 01/04/93	
31	Reading & Bates Drilling Company	SUR SUB	DR TP OR	02/05/90 to 02/05/94	
32	Rike Service, Incorporated	SUR SUB	DR TP OR	01/16/87 to 01/16/91	
33	Santa Fe Drilling Company	SUR SUB	DR TP OR	05/29/88 to 05/29/92*	
34	Sedco Forex	SUR SUB	DR TP OR	01/18/89 to 01/18/93	
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38	Triton Engineering Services	SUR SUB	OR	03/11/87 to 03/11/91	
39	University of Houston at Victoria	SUR SUB	DR TP OR	10/16/89 to 10/16/93	
40	University of Oklahoma	SUR SUB	DR TP OR	07/10/87 to 07/10/91	
41	University of Southwestern Louisiana	SUR SUB	DR TP OR	11/17/87 to 11/17/91	
42	University of Texas (Petex)	SUR SUB	DR TP OR	05/08/87 to 05/08/91	
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44	Ventura College	SUR SUB	DR TP OR	03/15/87 to 03/15/91	
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46	Westec-Taft College	SUR SUB	DR TP OR	04/12/87 to 04/12/91	
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48	Western Well Control School	SUR	DR TP OR	05/30/89 to 05/30/93*	
49	Uintah Basin Area Vocational Center	SUR SUB	DR TP OR	05/11/90 to 05/11/94*	
	The following school's Basic well-control program have expired:				
	Operations, Inc	SUR SUB	DR TP OR	03/01/89	EXPIRED
	Cudd Pressure Control, Incorporated	SUR SUB	DR TP OR	04/29/85 to 04/29/89	EXPIRED
	Didlyn-Field Drilling	SUR SUB	DR TP OR	04/30/85 to 03/30/89	EXPIRED
	Preston L. Moore, Incorporated	SUR SUB	DR TP OR	08/01/89	EXPIRED
	Imco Services	SUR SUB	DR TP OR	08/31/89	EXPIRED
	Colorado Northwestern Community College	SUR SUB	DR TP OR	09/29/89	EXPIRED
	Northwestern Michigan College	SUR SUB	DR TP OR	04/17/90	EXPIRED
	Diamond M. Company	SUR SUB	DR TP OR	04/17/90	EXPIRED

Comments:
* = approval pending the results of onsite evaluation.
** = subsea approval pending the results of onsite evaluation.

[FR Doc. 90-23511 Filed 10-3-90; 8:45 am]
BILLING CODE 4910-EM-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; U.S. v. Bohemia Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 14, 1990, a proposed Consent Decree in *United States* v. *Bohemia, Inc.*, Civil Action No. S-90-1173 LKK/GGH, was lodged with the United States District Court for the Eastern District of California. The Complaint sought penalties and injunctive relief against the Bohemia, Inc., an Oregon corporation, for violation of the Clean Air Act, 42 U.S.C. 7401, *et seq.* Specifically, Bohemia was charged with violations of both the PSD and NSPS requirements of the Act by (1) increasing the operating capacity of a wood waste-fired boiler, thereby creating a new major stationary source of air pollution and adding a second boiler which constitutes a major modification to a stationary source without the required PSD permit and, (2) commencing construction and operation of a stationary source without providing EPA the required notice and (3) failure to install certain monitoring equipment as required by NSPS. The proposed Consent Decree requires installation, on an enforcesble construction schedule, of an ammonia injection system as the best available control technology for this facility. The proposed Consent Decree also requires the payment of a $350,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. Comments should refer to *United States* v. *Bohemia, Inc.*, D.J. Ref. No. 90-5-2-1-1303.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of California, 3305 Federal Bldg., 650 Capitol Mall, Sacramento, California, at the Office of Regional Counsel, Environmental Protection Agency, 1235 Mission St., San Francisco, CA, 94103, and to the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, phone number (202) 347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center.

In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-23415 Filed 10-3-90; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree; U.S. v. Chemical Waste Management, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 26, 1990 a proposed Consent Decree in *United States* v. *Chemical Waste Management, Inc.*, Civil Action No. 88-7599, was lodged with the United States District Court for the Northern District of Ohio. The United States' Complaint in this case alleged violations of The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, from Chemical Waste Management, Inc.'s ("Chem Waste") operation of portions of a land disposal facility at Vickery, Ohio, without a permit or other legal authority and for failure to comply with regulations of RCRA for hazardous waste management and disposal facilities. The complaint also alleged violation of provisions of an EPA Consent Agreement and Final Order ("CAFO") entered under RCRA section 3008 and the Toxic Substances Control Act section 16(a) on April 5, 1985, relating to groundwater monitoring at the facility.

The proposed Consent Decree requires that Chem Waste submit closure plans for certain impoundments at the facility to the Ohio Environmental Protection Agency and then implement the plans upon their approval, and also, by declaration, modifies one subparagraph of the CAFO concerning the timing and content of groundwater monitoring reports. Chem Waste will be subject to stipulated penalties for specified failures to comply with the Decree. The proposed Decree also provides that Chem Waste will pay the United States a civil penalty of $750,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chem Waste Management, Inc.*, DOJ Ref. No. 90-7-1-447.

A permissive counterclaim Chemical Waste Management asserted against EPA with regard to disposition of a large wastepile at the same facility is resolved by separate stipulation, and is not subject to public comment, because this counterclaim is separate from the claims asserted by the United States in its Complaint. Nevertheless, copies of the pertinent documents are available as described in the following paragraph.

The proposed Consent Decree and separate stipulation may be examined at the Offices of the United States Attorney, Room 307, U.S. Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio 43624, at the Region V Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 1333 F Street NW., Suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed Consent Decree and separate stipulation may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 90-23416 Filed 10-3-90; 8:45 am]
BILLING CODE 4410-01-M

Consent Judgment in Action; U.S. and N.Y.'s Occidental Chemcial Corp. and City of Niagara Falls

In accordance with Departmental Policy (*see generally* 28 CFR 50.7, 38 FR 19029), notice is hereby given that a Supplemental Stipulation—captioned "Stipulation on Requisite Remedial Technology (RRT Program)"—in *United States and the State of New York* v. *Occidental Chemical Corporation and the City of Niagara Falls*, Civ. Action No., 79-988 (JTC) (S-Area Landfill), was lodged with the United States District Court for the Western District of New York on September 21, 1990. The complaint was filed in December 1979 under the Safe Drinking Water Act, 42 U.S.C. 3001, the Resource Conversation and Recovery Act ("RCRA"), 42 U.S.C. 6973, the Clean Water Act, 33 U.S.C. 1364, and the Rivers and Harbors Act, 33 U.S.C. 407. The Supplemental Stipulation describes the comprehensive remedy which will be implemented at the S-Area Hazardous Waste Landfill Site in Niagara Falls, New York. The S-Area Landfill is a 7-acre site bounded on the east by OCC's chemical plant on Buffalo Avenue ("Plant Site"), on the South by the Niagara River, and on the West by the City's Drinking Water Treatment Plant.

The original 1985 Stipulation and Judgment, which provided for a containment remedy and required OCC to perform additional studies and assessments to determine whether additional remedial work would be necessary was signed and filed by the parties in 1984, and was approved and entered by the Court in 1985. The public also should be aware that OCC's Plant Site is covered by RCRA Permit Number NYD000824482. This permit provides that corrective action at S-Area will be addressed pursuant to the terms of this 1985 Stipulation and Judgment. Because the instant Supplemental Stipulation will amend the 1985 Stipulation and Judgment, it accordingly will amend the S-Area corrective action referenced in the permit.

The Supplemental Stipulation is necessary because all of the facts available today, including data from OCC's field studies performed pursuant to the 1985 Stipulation and Judgment, reveal that modification and a supplementation of the original containment remedy is warranted. The remedy provided for in the Supplemental Stipulation is a containment remedy, similar to the containment remedy initially agreed upon by the parties in 1985, with hydraulic, chemical, and tracer monitoring programs. EPA estimates that this remedy to be implemented by OCC will cost roughly 25 million dollars in capital costs and 2.6 million dollars per year to operate, and that the remedy has a total present worth of 50 million dollars.

The Supplemental Stipulation also requires OCC to make payments to the City of Niagara Falls to help finance the construction of a new Drinking Water Treatment Plant.

The Department of Justice will receive for sixty (60) days from the date of publication of this notice, written comments relating to the Supplemental Stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural

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Resources Division, Department of Justice, Washington, DC 20530 and should refer to DOJ #90-7-1-41.

The Supplemental Stipulation may be examined at the Office of the United States Attorney, 502 United States Courthouse, 68 Court Street, Buffalo, New York 14202; at the Region II Office of the Environmental Protection Agency, Federal Plaza, New York, New York, 10278; EPA Public Information Office, Carborandum Center, Suite 530, 345 Third Street, Niagara Falls, New York 14303; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Supplemental Stipulation may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, Suite 600, NW. Washington, DC 20004, Telephone Number (202) 347-2072. In requesting a copy, please enclose a check in the amount of $63.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-23469 Filed 10-3-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; United States v. Simon & Sons et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 11, 1990 a proposed consent decree in *United States* v. *Simon & Sons et al.*, Civil Action No. C90-5373, was lodged with the United States District Court for the Western District of Washington at Tacoma. The proposed consent decrees concern a complaint filed by the United States under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9606, 9607. This is a civil action for recovery of response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances from the same facility, known as the "Tacoma Tar Pits Site" located in the Commercement Bay Tide Flats area of Tacoma, Washington, between the Puyallup River and the City of Tacoma waterway. The consent decrees provide that the generator defendants (six electric utilities) will pay $983,000 and the four landowner defendants will pay $218,700 to the Hazardous Substances Trust Fund for a total payment of $1,182,300. This total represents EPA's past costs in responding to the contaminated conditions at the site. In addition to the cash payment to be made pursuant to their consent decree, the landowners must also provide access to their property for remedial activities, and agree to institutional land use controls restricting future use of property contained within the site.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Joseph Simon & Sons, et al.*, D.J. Ref. 90-11-3-307.

The proposed consent decrees may be examined at the office of the United States Attorney for the Western District of Washington at Tacoma, 1145 Broadway Plaza, Tacoma, Washington, 98402 and at the Region X Office of the United States Environmental Protection Agency, Lynn M. Williams, Administrative Records Coordinator, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, WA 98101. The proposed consent decrees may be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530 and at the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Tacoma, Washington 98402. A copy of the Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, 202-347-2072. In requesting copies, please enclose a check in the amount of $13.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

The Administrative Record may be examined at the Region X Office of the United States Environmental Protection Agency, Lynn M. Williams, Administrative Records Coordinator, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, WA 98101 and at the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Tacoma, Washington 98402.

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-23467 Filed 10-3-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 90-22]

Stanley J. Dombek, Midwest City, OK;

Notice is hereby given that on February 22, 1990, the Drug Enforcement Administration, Department of Justice, issued to Stanley J. Dombek, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application, executed on April 25, 1989, for DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on October 17, 1990, commencing at 10 a.m., at the U.S. Tax Court, Main Place Building, 420 West Main Street, Courtroom 1020, Oklahoma City, Oklahoma.

Dated: September 27, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-23508 Filed 10-3-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Contractor-Subcontractor Issues in the Petrochemical Industry, Additional Surveys

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of expedited information collection clearance under the Paperwork Reduction Act.

SUMMARY: The Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320 (53 FR 16618, May 19, 1988)), is submitting a request for approval to the Office of Management and Budget for an additional two surveys and related data gathering to support an OSHA study of contractor-subcontractor issues in the petrochemical industry. OSHA is preparing a third additional survey which will be submitted to OMB under separate cover within 60 days of this submission. These will be one time only surveys. These three inter-related surveys will act to supplement the original ongoing OSHA survey of petrochemical industry managers.

DATE: OSHA has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by November 3, 1990.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the survey or reporting burden should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor 200 Constitution Avenue, NW., Room N1301, Washington, DC 20210 (202 523-6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, room 3001, Washington, DC 20503 (202 395-6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Average burden hours/minutes per response: .036 hours
Frequency of response: (one time only)
Number of respondents: 1,410
Annual burden hours: 505
Affected Public: Individual/households; Business or other for profit; small businesses or organizations
Respondents obligation to reply: (voluntary)

Signed at Washington, DC this 26th day of September 1990.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

Supporting Statement for Surveys and Related Data Gathering to Support an OSHA Study of Contractor-Subcontactor Issues in the Petrochemical Industry

1. Necessity of Data Collection

The Occupational Safety and Health Administration (OSHA) has awarded a grant to the John Gray Institute of Lamar University in Beaumont, Texas to conduct a national study of safety and health issues as they relate to contractor and direct hire employees in the petochemical industry. This study was initiated in response to the catastrophic explosion and fire at the Phillips 66 Houston Chemical Complex in Pasadena, Texas on October 23, 1989. The Phillips explosion took the lives of 23 workers and injured over 100 others. This industrial accident, one of the nation's worst, prompted Secretary of Labor Dole to promise President Bush that OHSHA would coordinate a complete federal investigation of the accident and submit a formal report to him within six months.

More recent accidents have contributed to the urgency with which OSHA continues to pursue safety and health issues in this industry. A July 5 explosion at the ARCO facility in Houston killed 17 workers and injured two more. On July 20, an explosion at BASF in Cincinnati resulted in one fatality and 72 injuries. As recent as August 24, a fire at Shell Oil Company injured 4 workers, but no fatalities were reported.

Congress has shown a great deal of interest in this issue, and accordingly convened a hearing on the ARCO explosion specifically and petrochemical facility accidents in general on July 23, 1990. An oversight hearing held on August 1 also resulted in several questions concerning OSHA's activities in the chemical and petrochemical industry.

An initial survey of petrochemical industry managers was reviewed by OMB earlier this year and the data collection process has been completed. During review of the original survey, three additional surveys were also proposed to supplement the information gathered at this time. Two of those supplemental surveys are included in this OMB submission, and the third will be submitted subsequently. Much of the justification for the additional surveys parallels that of the initial survey. Using a similarly formatted questionnaire, the proposed two surveys enclosed in this submission are targeted for petrochemical direct-hire employees, and petrochemical contractor employees. The third additional survey to be submitted at a later date is targeted at contractor employers.

One critical component of the report that will include all three surveys will be an examination of the extent to which petrochemical companies contract out hazardous work such as construction, maintenance and waste removal, and the extent to which this contracting, or its management process, affects the safety and health of workers. This will be part of an ongoing effort to determine ways to improve safety and health in the petrochemical industry. The results will be used to provide a sound basis for the best approach that employers can take in protecting workers at petrochemical plants where contractors are used and may also be used by OSHA in subsequent rulemaking.

A steering committee has been formed to provide guidance and input to the John Gray Institute on the scope and direction of the study. The committee is comprised equally of representatives of organized labor, representatives from the petrochemical industry and impartial experts from such fields as chemical engineering, occupational medicine and industrial relations.

At the time the original survey of plant managers was being proposed by the Steering Committee, it became clear that surveying other involved parties outside of plant management would add a valuable perspective that could not be gained from the original survey alone. The Steering Committee, comprised of diverse membership, deliberated that the most appropriate way to gain this perspective was to survey direct-hire and contract employees, as well as contractor management, directly. OSHA fully concurs that this tripartite is vital to the outcome of this study.

OSHA's Congressional mandate stipulates that the agency carefully design and study its regulatory proposals. Section 6(b)(5) of the OSH Act U.S.C. 655 (b)(5) mandates that regulations promulgated by the Agency shall most adequately assure worker safety and health "to the extent feasible on the basis of the best available evidence." They are to be based on "research and the latest available scientific data." Section 6(f) of the Act requires regulations to be justified by "substantial evidence in the record" and authorizes the Secretary of Labor "to enter into contracts, agreements or other arrangements with appropriate public agencies or private organizations for purposes of conducting studies related to his responsibilities under the Act." Thus OSHA is obligated to gather data on the consequences of future actions.

Executive Order 12291 reiterates this obligation by requiring the preparation of preliminary and final regulatory impact analyses. The Regulatory Flexibility Act also requires that an analysis be conducted on the impact of any proposed rules on small entities.

In order to fulfill the Congressional and Presidential mandates and to evaluate the impact of proposed recommendations on proposed rules, OSHA requires a data base that includes current industry practices and identifies situations where potential hazards exists. As discussed below, none of the available data sources are adequate for this purpose.

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Schedule for Survey Design and Completion

Submit information collection plan to OMB—September, 1990
Publish in Federal Register a notice of survey submission to OMB and survey instruments—September, 1990
Receive OMB approval (30 days after FR notice is published)
Subcontractor delivers report to Contractor (6 weeks after OMB approval)
Contractor submits final report to OSHA (6 weeks after OMB approval)

2. Use of the Information

The data collected through this effort will be used by OSHA (and its contractors) to prepare a report on the use of contractors in the petrochemical industry and their relationship, if any, to the safety and health of workers in this industry. The data may be used in the finalization of rulemaking addressing process safety management. The data will also be shared with any interested parties including the affected industry and unions.

The following issues and questions are examples of the types of information the surveys will provide:

—Description of direct-hire and contract employee training programs
—Employees' perception of management's commitment to safety and health in the workplace
—Specific safety practices for high risk activities
—Accidents and injuries among fellow direct-hire and contract employees
—Need to obtain authorization before work is initiated
—The perceived effectiveness of joint labor/management safety and health committees
—Employees' perceptions of how their suggestions for improved safety and health are received by management and the effectiveness of union representatives

The survey asks a range of factual and perceptual questions that will be compared across employee type (direct-hire versus contract) and to responses made by plant management in the previous survey conducted by OSHA. While many of the questions appear to ask respondent opinions that may or may not be based on facts, it is necessary and critical to the goals of this study to determine exactly this distinction between employees' perceptions of plant safety and health and the actual management practices. Perceptual questions will only be used to supplement factual responses from other sources including this survey and may provide indications of where management practices may need to be modified. Because OSHA views issues of safety and health in the petrochemical industry with the utmost concern, OSHA feels it critical to incorporate information from every possible source. Responses to perceptual questions are only a small segment of the information that OSHA is gathering on this issue.

The underlying universe for this survey design is all establishments in SICs 1321, 2821, 2822, 2869, and 2911. A random stratified sample design was used to choose plants from the underlying universe, and surveys were sent to 554 plants. Of these plants, 304 plants responded with a full set of survey responses. For purposes of the enclosed employee surveys, a systematic probability proportional to size design was used to select 60 establishments from among the 304 that originally participated in the plant management survey. Following a letter requesting lists of names of their direct-hire and contractor employees, follow-up phone calls will be made to these establishments if the response rate is insufficient or not within the necessary time frame.

3. Use of Technology to Reduce Burden

The effort will be in the form of a telephone interview with respondents. Respondent employees will be contacted at home. If the respondent can not be reached at home the first time, three follow-up telephone calls will be made to the respondent, attempting to vary the time and day of week the calls are made to maximize the response rate.

4. Identification and Duplication of Information

Significant effort has been expended in collecting and examining existing sources of information relating to the use of contractors in the petrochemical industry. This has been used to guide the contractor in their construction of the survey instruments. OSHA's Integrated Management Information System (IMIS) has been searched for inspection and accident histories. The data were used to provide background to the contractor. The Bureau of Labor Statistics (BLS) provided information on overall injury incidence rates, wage rates, and other associated studies in the industries of interest.

5. Inadequacy of Existing Data Sources

None of the existing data sources provides information on the number of contractors in the petrochemical industry. Specifically, BLS injury incidence rates do not reflect the degree of hazards in particular industries. As a result, the injury records of individual contract employers are not reflected in the data for the entire petrochemical industry. Therefore, these surveys will collect data on the practices of all employers at a particular petrochemical site. Data on accident and injury histories for each employer at a site will be collected to facilitate a study of both overall rates between prime employers and contractors at the same site.

6. Minimizing Burden on Small Business

This data collection effort involves the collection of information from both large and small firms, however the primary emphasis will be on the larger firms where contracting is more prevalent. Every effort has been made to minimize respondents burden. The survey instruments have been designed to allow the respondents to provide estimates and approximations rather than detailed information of the type which would lengthen response time. Respondent burden will be limited by avoiding requests which require extensive file or record review.

7. Recurrent Survey Consequences

These efforts are one-time, non-recurring surveys. The consequences associated with less frequent collection are not applicable.

8. Consistency with 5 CFR 1320.6

This request is consistent with the guidelines in 5 CFR 1320.6.

9. Expert review of the Survey Questionnaires

The steering committee has had numerous discussions with the contractor in order to assess the substance of the survey questions. The clarity of instructions and other specific survey design elements have been reviewed by the contractor's survey experts, OSHA personnel and by expert safety consultants in industry and with unions.

A. The survey instrument has been reviewed by:

Steering Committee Members

Dr. Eugene Kremer III, Steering Committee Chairman, Occupational Physicians' Service.
Mr. Dan Bennett, Vice-President, Associated Builders and Contractors.
Dr. John Hoffman, CSP, Safety Engineering Laboratories, Inc.
Dr. Thomas A. Kochan, Professor of Management, Massachusetts Institute of Technology.
Mr. Bob Wages, Vice-President, Oil, Chemical & Atomic Workers International Union.
Mr. Bob McCormick, President, National Contractors Association.
Mr. William J. Mottel, Director, Safety and Occupational Health, DuPont Co.
Mr. Don Helin, Chemical Manufacturers Association.
Mr. David Ortlieb/Mr. Walter Fluharty, Director, Health and Safety Department, International Chemical Workers Union.
Mr. S.C. Pierce, Manager, Refining & Transportation Engineering, Amoco Oil Company.
Mr. C.T. Seywer, Vice-President, American Petroleum Institute.
Mr. Jim Valenti, United Steel Workers of America.
Mr. Gale Van Hoy, Executive Secretary, Texas Building Trades.
Mr. W.G. Bell, Senior Vice-President & Director, Bechtel Group, Inc.
Mr. Joe M. Stevens, Jr., Vice President Employee Relations & Corporate Affairs, Brown & Root, Inc.

Also reviewed by:

John Wells, President, John Gray Institute.
Michal Smith, John Gray Institute.

Department of Labor Review:

Alan McMillan, Deputy Assistant Secretary, Occupational Safety and Health Administration.
Frank Frodyma, Deputy Director, Directorate of Policy, Occupational Safety and Health Administration.
Bob Casady, Office of Research and Evaluation, Bureau of Labor Statistics.

B. Problems that arose during this review were resolved by DOL, OSHA and BLS representatives.

C. Public comment will be solicited through the Federal Register notice for the study.

10. Confidentiality

Procedures have been developed to protect the confidentiality of the collected data. These measures are summarized below:

A. All OSHA contractor and subcontractor personnel will be given instructions regarding the importance of keeping all information they obtain from the respondents confidential.

B. Strict coding will be maintained during the coding procedure.

C. Diskettes containing completed survey data will be stored in locked file cabinets at the contractor's office.

D. Publication of study results will be of a statistical nature only. Respondents will never be identified in any publication or presentation, nor will their names be made available to other individuals or groups.

11. Sensitive Questions

The proposed survey instruments contain questions of a potentially sensitive nature. Respondents are asked their age, sex, and nationality. These data will permit the generation of cross-tabulations of safety training by these characteristics.

12. Costs

The total one-time cost to the government of the proposed data collection is approximately $125,000. This estimate includes costs incurred by contractors for administration and operation of the data collection, tabulation of survey results, and subsequent analyses (including benefit and cost estimates, small entity impacts, etc.).

13. Estimates of Burden

This survey was not included in the agency's ICB as the need arose as a result of the Phillips 66 catastrophe.

Every effort will be made to minimize respondent burden. All survey instruments have been designed to allow the respondent to provide reports of actual experiences. Respondents are not expected to perform new data compilation activities.

The completion time for each questionnaire will vary, depending upon the respondent. It is estimated that a fully completed survey will require not more than 20 minutes on average. The following table summarizes the burden for each group of respondents:

RESPONDENT BURDEN ESTIMATES

Type of respondent	Number of respondents	Completion time (min.)	Total burden (hrs.)
Plant manager, response	50	30	30
Contractor employer response [1]	150	30	75
Direct-hire employee	600	20	200
Contractor employee	600	20	200
Total	1,410		505

[1] Like plant managers, contract employers are contacted to obtain lists of their employees that work at the same plants.

14. Changes in Anticipated Burden

These are one-time data collection efforts and represent a program increase from that represented in the ICB.

15. Plans for Tabulation of the Data

The survey data will be analyzed and presented to OSHA in a final report by the contractors. Estimates will be derived to determine the relative hazards in the petrochemical industry. This information needed to make these estimates was determined in the first phase of the study (from the plant management survey). These derivations are a component of the final report that the contractor will be presenting OSHA after all the surveys have been completed, and are not necessarily the objective of the additional surveys enclosed here.

These additional surveys will also generate data on the use of contractors by process in the petrochemical industry data and on the injuries and illnesses associated with these processes. These data will help establish a data base on the distribution of worker hazards among industries, and within industrial facilities. The data will also be correlated with information gathered in the survey on the training and safety programs of respondents. OSHA expects to make numerous cross-tabulations to determine the relationships among these various components of worker safety conditions.

Statistical Methods Employed

1. Sample Design

OSHA has contracted for additional surveys to supplement an original survey conducted on plant management. This document serves to describe both the total universe from which the original survey was chosen, and the subpopulation (those 304 plants that responded to the first survey) from which was chosen 60 plants to conduct the direct-hire and contract employee surveys.

The first stage of the survey design calls for a probability proportional to employment size sample of 60 plants from the 304 plants whose managers were surveyed in the earlier research. The 304 plants were selected as a probability sample of the total universe. The design is intended to produce data about two categories of employees in the plants sampled as a whole.

While preliminary results of the plant management survey are a statistical representation of trends in the petrochemical industry as a whole, OSHA may draw the same kind of statistical inference from these additional surveys. Because the direct-hire and contractor surveys are conducted on a pre-selected sub-sample of the petrochemical industry, OSHA does not intend to use the results of these two surveys to be representative of the petrochemical industry as a whole. Rather, the results will be a statistically valid representation of trends only among the 304 petrochemical plants. In order to make inferences about the entire petrochemical industry as a whole,

estimates produced from the data in this survey will need to be adjusted to account for probability sampling methods used in the original survey.

The solicitation of more than 60 plants to participate in these surveys would lend greater statistical validity to the results and be a more accurate representation of the 304 plants and the underlying universe. However, appreciation must be given to the sensitive nature of eliciting such information from petrochemical companies. Various legal and administrative policies (state laws, union rules, company policies) prohibit many companies from releasing the identities of their employees. Therefore, OSHA, along with its subcontractor, have carefully balanced the need to compromise the number of companies that can be surveyed with the need to gather a statistically representative sample.

The universe which was represented by the original survey of plant management was all direct-hire and contract employees in all plants in SIC codes 2821, 2822, 2869, 2911 and 1321, which are respectively, Plastics, Rubber, Organic Chemicals, Petroleum Refining, and Gas Processing. The object of studying these plants is to determine the extent to which they use contractors and the nature of the safety and health practices of these contractors' employees compared to the plants' regular direct-hire employees. OSHA's mandate is clearly to make the workplace safe for employees, so the study is more interested in plants with more employees. A sampling design which samples plants with probability roughly proportional to the number of employees would seem to be appropriate. OSHA supports the choice of this sample design because the larger firms are more likely to hire contract employees and it is primarily the safety and health practices of these types of firms that result in catastrophic releases and explosions.

In choosing a population to give the direct-hire and contract employee surveys, a decision was made to sample from among the 304 plants that responded to the original plant management survey performed by the John Gray Institute earlier this year. The justification for this decision was that this sample represents petrochemical companies that are likely to respond to further surveys on safety and health practices (therefore securing a fairly high response rate) and that the 304 plants are a representative sample of the universe of the specified SIC codes as a whole. The use of these same 304 plants as the population for this study will enable the analysis to compare the responses of managers and employees.

Accordingly, the following tables have been compiled to depict the composition of both the underlying universe from which the original 304 plants were first chosen, and the methods that will be used to choose 60 plants from among the 304 plants used in the original study. It is expected that 50 responses will be received from the 60 plants that are sent surveys. To supplement this population, 60 additional plants will be selected in the same manner and serve as substitutes should the original survey population prove to be inadequate.

Table 1 shows the number of plants that comprise the underlying universe of the all plants in the specified SIC code as reported in the Dun and Bradstreet listing from which this information was obtained.

TABLE 1.—DUN AND BRADSTREET LISTING OF PLANTS BY SIC AND NO. OF EMPLOYEES

[Underlying Universe]

SIC	Description	1-19	20-99	100-249	250+	Total
2812	Plastics	663	482	136	90	1,371
2822	Rubber	74	71	14	19	178
2869	Organic Chemicals	631	254	79	83	1,047
2911	Petroleum Refining	618	245	102	146	1,111
1321	Gas Processing	156	74	9	1	240
	Total establishments	2,142	1,126	340	339	3,947

Table 2 shows the number of employees found in each of the cells represented in Table 1 for the "No. of Employees" groupings for the entire universe of the specified SIC codes.

TABLE 2.—ESTIMATED NUMBERS OF EMPLOYEES IN UNIVERSE PROVIDED BY DUN AND BRADSTREET LISTING

SIC	Description	1-19	20-99	100-249	250+	Total
2812	Plastics	5,079	21,912	26,009	55,900	102,900
2822	Rubber	533	3,153	2,105	11,615	17,406
2869	Organic Chemicals	3,959	11,806	11,626	87,972	115,363
2911	Petroleum Refining	3,886	10,273	16,215	141,400	171,776
1321	Gas Processing	4,540	12,600	1,575	350	19,065
	Total employment	17,999	59,744	51,530	297,237	426,510

Table 3 shows the number of plants among the 304 responding plants found in each of the specified SIC categories broken down by number of employees reported in the Dun and Bradstreet listing.

TABLE 3.—LIST OF RESPONDING PLANTS BY SIC AND NO. OF EMPLOYEES

SIC	Description	1-19	20-99	100-249	250+	Total
2812	Plastics	2	15	15	50	82
2822	Rubber	3	5	3	14	25
2869	Organic Chemicals	0	5	13	41	59

TABLE 3.—LIST OF RESPONDING PLANTS BY SIC AND NO. OF EMPLOYEES—Continued

SIC	Description	1-19	20-99	100-249	250+	Total
2911	Petroleum Refining	5	10	17	77	109
1321	Gas Processing	4	11	3	1	19
SIC	Not identified [1]	1	3	1	5	10
	Total establishments	15	49	52	188	304

[1] Several respondents turned in completed surveys without identifying their SIC codes. These responses have been included in the totals because they represent a complete set of valid responses.

Table 4 represents a breakdown of the number of employees at the 304 plants who responded to the survey. These numbers correspond to Table 3.

TABLE 4.—ESTIMATED NO. EMPLOYEES AT 304 PLANTS RESPONDING TO SURVEY

SIC	Description	1-19	20-99	100-249	250+	Total
2812	Plastics	15	664	2,126	33,517	36,222
2822	Rubber	19	251	490	9,004	9,764
2869	Organic Chemicals	0	320	2,078	48,479	50,877
2911	Petroleum Refining	25	540	2,066	69,661	73,193
1321	Gas Processing	31	422	539	909	1,900
	Total employment	90	2,197	5,195	161,510	172,092

A systematic probability proportional to size design was used to select 60 plants from among the 304 plants in the original survey. The results of this selection are found in Table 5.

TABLE 5.—SELECTION OF 60 PLANTS FOR EMPLOYEE SURVEYS

SIC Code	<20 Empls.	20-99 Empls.	100-249 Empls.	250+ Empls.	Total
2821	0	3	3	8	14
2822	0	1	0	2	3
2869	0	2	2	13	17
2911	1	2	3	20	26
1321	0	0	0	0	0
Total	1	8	8	43	60

The current design has the advantages of representing each plant in the universe with probability proportional to the number of its employees.

2. Selection of Employees

Each plant will have an average of 12 direct-hire and 12 contractor employees interviewed. To accomplish this all employees within each plant will be listed and a random start selected between 1 and the interval, and the interval applied to the list to select the individuals.

This sample design is intended to produce a minimum of 1200 valid responses (600 direct-hire and 600 contractor employees). Given the specific nature of much of the data sought, even conscientious telephone follow-up activities will likely not generate much more than a 75% response rate, though every effort will be made to do so. To assure a high response rate, a substitute list of employees will be used to randomly select substitute employees in the event that they cannot be reached by telephone.

Lists of employees names and phone numbers will be obtained from both the direct-hire and contractor employers. The tables above described the underlying universe for direct-hire employees. There is not, however, such data available for the universe of contract employees. Conclusions reached on issues relating to contract employees can therefore only be representative of the contract employees working at the 60 plants.

For both direct-hire and contract employees, respective employers will be asked to provide a list of names and phone numbers of all employees. A random stratified sample design will be used to choose 600 employes from both categories. It is estimated that there are approximately 150 contractors who have employees at the 60 plants. From the responses that are received, contract employees will be selected randomly from the entire pool of responses, and not stratified by plant. The reason for this methodology is that less is known about the underlying universe for contract employees, and a more evenly distributed sample (not based proportional to size) would more accurately reflect contractors as a whole.

The primary objective of this study is to determine whether direct-hire and contract employees operate under (a) the best health and safety practices, to the extent those are known and measurable, and (b) whether the injury rates are different for contractor and direct-hire employees. The sample size is sufficiently large to make statistically valid statements about health and safety practices in these industries. The sampling design allows one to describe both the behavior of plant managers and the environment in which the average worker in the industry operates.

Questionnaire A: Direct the Employment Survey

LOUIS HARRIS AND ASSOCIATES, INC.,
630 Fifth Avenue, New York, New York 10111

FOR OFFICE USE ONLY:

Questionnaire No.: _____
5-6-87-8-

Study No. 902039 (Direct-Hire Employees)

Hello, I'm _____ from Louis Harris & Associates, the national public opinion research firm. We're conducting a national study for OSHA on safety practices in the petrochemical industry, and would like to ask you some questions. If you don't know the answer to any question feel free to say you don't know. (INTERVIEWER: Not sure or don't know is an acceptable answer.) Your participation in this survey is completely

Avenue, NW, Washington, D.C., 20210 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C., 20503

S1. First, I just want to verify that you have recently worked for (NAME OF COMPANY FROM SAMPLE) at (SITE LOCATION FROM SAMPLE)? Are you still at that site? IF NOT CORRECT: Have you worked there as recently as (INSERT DATE)?

C2. Do you know anyone at your plant who you believe has been treated unfairly by management because he or she reported safety problems, or not?

Yes, know someone who has been treated unfairly.....(——1
No, do not know someone who has been treated unfairly..... ——2
Not sure..... ——3

C5. Are you represented by a union, or not?

Yes.....(——1
(ASK Q.C6)
No..... ——2
Not sure..... ——3
(SKIP TO Q.C8)

Only fair..... ——3
Poor..... ——4
Not sure..... ——5

C8. Is there an employee who represents the employees in working with plant management on safety issues, or not?

Yes.....(——1
(ASK Q.C9)
No..... ——2
Not sure..... ——3
((SKIP TO Q.D1)

C9. How would you rate the job done by

Questionnaire A: Direct the Employment Survey

LOUIS HARRIS AND ASSOCIATES, INC.,
630 Fifth Avenue, New York, New York 10111

FOR OFFICE USE ONLY:

Questionnaire No.: _____
5-6-87-8-

Study No. 902099 (Direct-Hire Employees)
September 24, 1990
Sample Point No.
/___/___/___/___/___/___/___/___/___/___/
10-11-12-13-14-15-16
Time Started: _____A.M./P.M.
Interviewer: _____
Date: _____
Area Code: _____
(17-19)
Telephone No.: _____
(20-20)
Respondent Name: _____
(-)
Respondent Phone Number: _____
(-)
Respondent Company: _____
(-)
Respondent Company Address: _____
(-)
City: _____
(-)
State: _____
(-)
Zip: _____
(-)
Site Location: _____
(-)

Hello, I'm _____ from Louis Harris & Associates, the national public opinion research firm. We're conducting a national study for OSHA on safety practices in the petrochemical industry, and would like to ask you some questions. If you don't know the answer to any question feel free to say you don't know. (INTERVIEWER: Not sure or don't know is an acceptable answer.) Your participation in this survey is completely voluntary.

READ IF NECESSARY

You were randomly selected to participate in this survey from a list of all employees provided by your employer. All of the information that you give will be kept completely confidential. All responses are looked at only in the aggregate. No names or addresses or people interviewed will be revealed to anyone outside of Louis Harris & Associates.

FROM OBSERVATION: Respondent Sex

Male..... ((_____-1
Female..... _____-2

We estimate that it will take and average of 20 minutes to complete this information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding these estimates or any other aspect of this survey, including suggestions for reducing this burden, send them to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Avenue, NW, Washington, D.C., 20210 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C., 20503

S1. First, I just want to verify that you have recently worked for (NAME OF COMPANY FROM SAMPLE) at (SITE LOCATION FROM SAMPLE)? Are you still at that site? IF NOT CORRECT: Have you worked there as recently as (INSERT DATE)?

Yes, still at site..... ((_____-1
Yes, worked at site recently..... _____-2
(ASK Q.S2)
No, not correct..... _____-3
Not sure..... _____-4
(SCREEN OUT Q.S1)

S2. Which of the following activities are/were you employed in at this site? READ LIST—MULTIPLE RECORD

Maintenance..... ((_____-1
Field Technical Support..... ((_____-1
Renovation or Turnaround..... ((_____-1
Specialty..... ((_____-1
Operations..... ((_____-1
(ASK Q.S3)
None..... ((_____-2
Not sure..... ((_____-3
(SCREEN OUT Q.S2)

S3. What is your job title?

A1. The next series of statements deals with the management safety program and commitment to safety. For each one please tell me whether you agree strongly, agree somewhat, disagree somewhat, or disagree strongly.

	Agree strongly	Agree somewhat	Disagree somewhat	Disagree strongly	Not sure
1. Management does frequent safety inspections of my work area	((_____-1	_____-2	_____-3	_____-4	_____-5
2. My supervisor gives safety a high priority	((_____-1	_____-2	_____-3	_____-4	_____-5
3. The company I work for places a high priority on safety and health	((_____-1	_____-2	_____-3	_____-4	_____-5

A2. How often are accidents investigated on your job—always, frequently, sometimes or never?

Always..... ((_____-1
Frequently..... _____-2
Sometimes..... _____-3
Never..... _____-4
Not sure..... _____-5

B1. The next statements deal with training and communication. For each one please tell me whether you would rate it as excellent, good, fair or poor?

	Excellent	Good	Fair	Poor	Not sure
1. How well new employees are trained in safety procedures	((_____-1	_____-2	_____-3	_____-4	_____-5
2. How well your employer has informed you about the hazards associated with the materials you work with	((_____-1	_____-2	_____-3	_____-4	_____-5
3. The ongoing training and refresher courses in safety procedures that you received at your plant	((_____-1	_____-2	_____-3	_____-4	_____-5

C1. The following statements are about communication between workers and plant management regarding safety at the plant. Please tell whether each statement is true always, sometimes, rarely, or never?

Rotate—Start at "X"

	Always true	Sometimes true	Rarely true	Never	Not sure
( ) a. Employee suggestions for improving safety are taken seriously	((_____-1	_____-2	_____-3	_____-4	_____-5
( ) b. Supervisors are receptive to reports of safety problems	((_____-1	_____-2	_____-3	_____-4	_____-5
( ) c. Employees are encouraged to report safety problems to their supervisors	((_____-1	_____-2	_____-3	_____-4	_____-5
( ) d. Employees are afraid to report safety problems to their supervisor	((_____-1	_____-2	_____-3	_____-4	_____-5
( ) e. Accidents that happen at my workplace get reported	((_____-1	_____-2	_____-3	_____-4	_____-5

C2. Do you know anyone at your plant who you believe has been treated unfairly by management because he or she reported safety problems, or not?

Yes, know someone who has been treated unfairly..... (_____-1
No, do not know someone who has been treated unfairly..... _____-2
Not sure..... _____-3

C3. Does a labor/management safety and health committee exist at this work site, or not?

Yes..... (_____-1
(ASK Q.C4)
No..... _____-2
Not sure..... _____-3
(SKIP TO Q.C5)

C4. How would you rate the job done by the labor/management committee in improving safety conditions—excellent, pretty good, only fair, or poor?

Excellent..... (_____-1
Pretty good..... _____-2
Only fair..... _____-3
Poor..... _____-4
Not sure..... _____-5
(SKIP TO Q.D1)

C5. Are you represented by a union, or not?

Yes..... (_____-1
(ASK Q.C6)
No..... _____-2
Not sure..... _____-3
(SKIP TO Q.C8)

C6. Are you a union officer, or not?

Yes..... (_____-1
No..... _____-2
Not sure..... _____-3

C7. How would you rate the job done by your union representatives in improving safety conditions—excellent, pretty good, only fair, or poor?

Excellent..... (_____-1
Pretty good..... _____-2
Only fair..... _____-3
Poor..... _____-4
Not sure..... _____-5
(SKIP TO Q.D1)

C8. Is there an employee who represents the employees in working with plant management on safety issues, or not?

Yes..... (_____-1
(ASK Q.C9)
No..... _____-2
Not sure..... _____-3
((SKIP TO Q.D1)

C9. How would you rate the job done by this employee representative in improving safety conditions—excellent, pretty good, only fair, or poor?

Excellent..... (_____-1
Pretty good..... _____-2
Only fair..... _____-3
Poor..... _____-4
Not sure..... _____-5

D1. The next questions deal with specific safety practices for high risk activities. For each one please tell me whether it happens always, usually, sometimes, rarely, or never. [If the question is not relevant to your work please state that it doesn't apply.]

	Always	Usually	Sometimes	Rarely	Never	Doesn't apply (vol.)	Not sure
1. Lock out, tag out or other proper isolating procedures are followed before opening lines	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7
2. Proper procedures are followed when starting up an operation after it has been shut down	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7
3. Emergency response procedures are tested to make sure they are in working order	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7
4. A good fire-fighting system is in place if needed	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7
5. Air quality checks are performed before a worker is allowed to enter a confined work space	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7
6. Workers are recommended when working in a confined work area	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7
7. You are informed if you are working with toxic materials	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7
8. You are informed if you are working with flammable or explosive materials	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7
9. Appropriate precautions are used when working with toxic materials	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7
10. Appropriate precautions are used when working with flammable or explosive materials	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6	_____-7

D2. Has your plant management adequately informed you about the emergency procedures to follow if a fire or other accident occurs, or not?

Yes, adequately informed..... ((_____-1
No, not adequately informed..... _____-2
Not sure..... _____-3

E1. The next questions are about accidents and injuries among your fellow employees at your plant. From your direct knowledge about how often do (READ EACH ITEM) happen at your workplace—at least once a week, at least once a month, several times a year, about once a year, or less often that that?

	Once a week	Once a month	Several times a year	Once a year	Less often than that	Not sure
1. Injuries that require first aid only	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6
2. Injuries that require medical help	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6
3. Injuries that result in lost time or light duty	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6
4. Fatalities	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6
5. Fires	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6
6. Accidents that could easily have caused injuries	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6
7. "Near misses"—that is, dangerous events that almost caused accidents	((_____-1	_____-2	_____-3	_____-4	_____-5	_____-6

E2. How many times in the past year have *you* experienced (READ EACH ITEM)?

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a. An injury that required first aid only ..... /____/ (-)

b. An injury that required medical help ..... /____/ (-)

c. An injury that resulted in lost time or light duty ..... (-)

(-)

IF "1" OR MORE IN Q.E2c, ASK Q.E3. OTHERS SKIP TO Q.G1.

E3. How many days were *you* out of work or on light duty as a resut of an injury on the job?. /____/ (-)

Not sure ..... ((____-1

Not sure ..... ((____-1

Not sure ..... ((____-1

G1. How many hours of safety-related training have you received from your employer in the past year? DO NOT READ LIST

0 ..... ((____-1
1–4 ..... ____-2
5–8 ..... ____-3
9–20 ..... ____-4
21 or more ..... ____-5
Not sure ..... ____-6

G2. How many times in the past year have you met with others on the worksite, such as supervisors, co-workers or union representatives, to discuss safety issues? IF NEVER, RECORD 000

/____/____/____/____/ (-)

Not sure ..... ((____-1

G3. Which of the following types of safety orientation did you receive in the workplace—were you (READ EACH ITEM), or not?

	Received	Did not receive	Not sure
a. Given a talk	((____-1	____-2	____-3
b. Given a tour of the work area	((____-1	____-2	____-3
c. Shown a film	((____-1	____-2	____-3
d. Given a chance to take part in an interactive discussion	((____-1	____-2	____-3
e. Tested on the safety-related materials presented to you	((____-1	____-2	____-3

G4. Are you a member of a workplace health and safety committee at this location that includes management representatives, or not?

Yes ..... ____-1
(ASK Q.G5)
No ..... ____-2
Not sure ..... ____-3
(SKIP TO Q.G6)

G5. How often has this committee met in the past year—at least weekly, monthly, quarterly, or less often than that?

At least weekly ..... ((____-1
Monthly ..... ____-2
Quarterly ..... ____-3
Less often than that ..... ____-4
Not sure ..... ____-5

G6. How many walkaround inspections were conducted by this committee during the past year?

/____/____/____/ Inspections (-)

Not sure ..... ((____-1

H1. The next series of questions deals with the need to obtain authorization before the work is done. Before performing (READ EACH ITEM) do you have to obtain written authorization, oral authorization, both, or neither?

	Written	Oral	Both	Neither	Not sure
a. Any outsite work	((____-1	____-2	____-3	____-4	____-5
b. Confined space entry	((____-1	____-2	____-3	____-4	____-5
c. Hot work	((____-1	____-2	____-3	____-4	____-5
d. Excavation	((____-1	____-2	____-3	____-4	____-5
e. Work involving process	((____-1	____-2	____-3	____-4	____-5

H1a. Does your work bring you into regular contact with contract employees?

Yes ..... ((____-1
(ASK Q. Ib)
No ..... ____-2
Not sure ..... ____-3
(SKIP TO Q. F1)

H1b. As a formal part of your job do you supervise contract employees or not?

Yes ..... ((____-1
No ..... ____-2
Not sure ..... ____-3

H1c. As an informal part of your job do you supervise contract employees, or not?

Yes ..... ((____-1
No ..... ____-2
Not sure ..... ____-3

H2. In the past year, have you seen evidence that information about hazards was not adequately shared between your companies' employees and contract workers at your plant often, sometimes, rarely, or never?

Often ..... ((____-1
Sometimes ..... ____-2
Rarely ..... ____-3
Never ..... ____-4
Not sure ..... ____-5

H3. In the past year, have you seen evidence of tension or conflict between your companies' employees and contract workers at your plant often, sometimes, rarely, or never?

Often ..... ((____-1
Sometimes ..... ____-2
Rarely ..... ____-3
Never ..... ____-4
Not sure ..... ____-5

H4. In the last year, has your work with contract employees apart from construction workers at your plant increased, decreased, or stayed the same?

Increased ..... ((____-1
Decreased ..... ____-2
Stayed the same ..... ____-3
Not sure ..... ____-4

H5. Have most of the contract employees you work with at your plant been working with you for several years on a regular basis or are most of the contract employees relatively new to (PLANT'S NAME)?

Most been there for several years ..... ((____-1
Most new ..... ____-2
Not sure ..... ____-3

H6. Do you feel the job security of direct employees of (Plant's Name) may be threatened by the use of contract workers, or not?

Yes, threatened ..... ((____-1
(ASK Q. I6)
No, not threatened ..... ____-2
Not sure ..... ____-3
(SKIP TO Q. F1)

I7. Do you feel *your* job security may be threatened by the use of contract workers, or not?

Yes, threatened ..... ((____-1
No, not threatened ..... ____-2
Not sure ..... ____-3

I8. In your experience, does the concern about job security ever hamper communication between direct hire and contract workers about safety at (Plant's Name), or not?

Yes, hampers safety communication ..... ((____-1
No, does not hamper safey communication ..... ____-2
Not sure ..... ____-3

I9. In the past year, have you seen evidence that information about hazards was not adequately shared between your companies' employees and maintenance workers at your plant often, sometimes, rarely, or never?

Often ..... ((____-1
Sometimes ..... ____-2
Rarely ..... ____-3
Never ..... ____-4
Not sure ..... ____-5

I10. In the past year, have you seen evidence of tension or conflict between your companies' operators and maintenance workers at your plant often, sometimes, rarely, or never?

Often ..... ((____-1
Sometimes ..... ____-2
Rarely ..... ____-3
Never ..... ____-4
Not sure ..... ____-5

F1. How old are you? *IF HESITANT, READ LIST*

18 to 20 ..... ((____-1
21 to 24 ..... ____-2
25 to 29 ..... ____-3
30 to 34 ..... ____-4
35 to 39 ..... ____-5
40 to 44 ..... ____-6
45 to 49 ..... ____-7
50 to 64 ..... ____-8
65 to 74 ..... ____-9
75 and over ..... ____-0
Not sure ..... ____-x

F2. What is the last year of school you have completed?

No formal schooling ..... ((____-1
First through 7th grade ..... ____-2
8th grade ..... ____-3
Some high school ..... ____-4
High school graduate ..... ____-5
Some college ..... ____-6
Two-year college graduate ..... ____-7
Four-year college graduate ..... ____-8
Postgraduate ..... ____-9
Trade/technical/vocational after high school* XXX
Not sure ..... ____-0

F3. What is your hourly rate of pay?

$/____/____/____/____/ (-)

Not sure ..... ((____-1

F4. Are you entitled to company-paid injury pay if you get injured on your job, or not?

Yes ..... ((____-1
No ..... ____-2
Not sure ..... ____-3

F5. What training did you have for your current job—did you have an apprenticeship/craft training or operator training program, or other (vocational/technical) training? *MULTIPLE RECORD*

Apprenticeship/craft training ..... ((____-1
Operator training ..... ((____-1
Other (vocational/technical) training ..... ((____-1
Not sure ..... ____-2

F6. How long have you been working in this industry?

If less than one year /____/____/ Months (-)

/____/____/ Years (-)

Not sure ..... ((____-1

F7. How long have you worked for your current employer? *DO NOT READ LIST*

If less than one year /____/____/ Months (-)

/____/____/ Years (-)

Not sure ..... ((____-1

F8. How many hours a week do you *usually* work at (Plant's Name)?

/____/____/____/____/ Hours (-)

Not sure ..... ((____-1

F9. How often do you work more than 60 hours a week at (Plant's Name)? Is it never, rarely, occasionally, or frequently?

Never ..... ((____-1
Rarely ..... ____-2
Occasionally ..... ____-3
Frequently ..... ____-4
Not sure ..... ____-5

F10. How many hours a day do you usually work?

/____/____/ Hours

Not sure ..... ((____-1

F11. How often do you work more than 12 hours a day at (Plant's Name)? Is it never, rarely, occasionally, or frequently?

Never ..... ((____-1
Rarely ..... ____-2
Occasionally ..... ____-3
Frequently ..... ____-4
Not sure ..... ____-5

F12. Are you of Hispanic origin or descent, or not?

Yes, of Hispanic origin ..... ((____-1
No, not of Hispanic origin ..... ____-2
Not sure ..... ____-3

F13. Do you consider yourself white, black, Asian, or something else?

White ..... ((____-1
Black ..... ____-2
Asian or Pacific Islander ..... ____-3
American Indian or Alaskan native ..... ____-4
Not sure ..... ____-5

That completes the interview. Thank you very much for your cooperation!

Time Ended: _____ a.m./p.m.

*Interviewer: Probe for *Last* level of formal education and code into appropriate category

Questionnaire B: Contractor Employee Survey

LOUIS HARRIS AND ASSOCIATES, INC., 630 Fifth Avenue, New York, New York 10111

FOR OFFICE USE ONLY:

Questionnaire No.: _____
5-6-7-8

Study No. 902039 (Contractor Employees)
September 24, 1990
Sample Point No.
_____
9-10-11-12-13-14-15-16

Time Started: _____ a.m./p.m.
Interviewer: _____
Date: _____
Area Code: _____ (17-19)
Telephone No.: _____ (20-26)
Respondent Name: _____ (-)
Respondent Phone Number: _____ (-)
Respondent Company: _____ (-)
Respondent Company Address: _____ (-)
City: _____ (-)
State: _____ (-)
Zip: _____ (-)
Site Location: _____ (-)

Hello, I'm _____ from Louis Harris & Associates, the national public opinion research firm. We're conducting a national study for OSHA on safety practices in the petrochemical industry, and would like to ask you some questions. If you don't know the answers please feel free to say so. (INTERVIEWERS: Not sure (or don't know) is an acceptable answer.) Your participation in this survey is completely voluntary.

READ IF NECESSARY

You were randomly selected to participate in this survey from a list of all employees provided by your employer. All of the information that you give will be kept completely confidential. All responses are looked at only in the aggregate. No names or addresses of people interviewed will be revealed to anyone outside of Louis Harris & Associates.

FROM OBSERVATION: Respondent Sex

Male ..... ((____-1
Female ..... ____-2

We estimate that it will take an average of 20 minutes to complete this information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding these estimates or any other aspect of this survey, including suggestions for reducing this burden, send them to the Office

of Information Management, Dept. of Labor, Room N-1301, 200 Constitution Ave., N.W., Washington, DC, 20210 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

S1. First, I just want to verify you have recently worked for (NAME OF COMPANY FROM SAMPLE) at (SITE LOCATION FROM SAMPLE)? Are you still at that site? If not correct: Have you worked there as recently as (INSERT DATE)?

Yes, Correct/Still at site ——1
Yes, Correct/Completed assignment ——2

(ASK Q.S2)

No, not correct ——3
Not sure ——4

(SCREEN OUT Q.S1)

S2. Which of the following activities are/were you employed in at this site? READ LIST—MULTIPLE RECORD

Maintenance ——1
Field Technical Support ——1
Renovation or Turnaround ——1
Specialty ——1
Operations ——1

(ASK Q.S3)

None ——2
Not Sure ——3

(SCREEN OUT Q.S3)

S3. What is your job title?

_____

_____

A1. The next series of statements deals with the contractor management safety program and commitment to safety. For each one please tell me whether you agree strongly, agree somewhat, disagree somewhat, or disagree strongly.

	Agree strongly	Agree somewhat	Disagree somewhat	Disagree strongly	Not sure
1. Management does frequent safety inspections of my work area	1	2	3	4	5
2. My supervisor gives safety a high priority	1	2	3	4	5
3. The company I work for places a high priority on safety and health	1	2	3	4	5

A2. How often are accidents on your job investigated by contractor management—always, frequently, sometimes or never?

Always ——1
Frequently ——2
Sometimes ——3
Never ——4
Not sure ——5

A3. When you (work/worked) at (HOST PLANT) for (CONTRACTOR NAME), who (do-did) you report (READ EACH ITEM) to—the contractor (CONTRACTOR'S NAME), the host plant (HOST PLANT'S NAME), or both?

	Contractor	Host plant	Both	Neither (Vol.)	Not sure
( ) a. Accidents	1	2	3	4	5
( ) b. Injuries	1	2	3	4	5
( ) c. Safety problems	1	2	3	4	5

B1. The next statements deal with training and communication by (NAME OF CONTRACTOR). For each one please tell me whether you would rate it as excellent, good, fair or poor?

	Excellent	Good	Fair	Poor	Not sure
1. How well new employees are trained in safety procedures	1	2	3	4	5
2. How well your employer has informed you about the hazards associated with the materials you work with	1	2	3	4	5
3. The on-going training and refresher courses in safety procedures that you received at your plant	1	2	3	4	5

C1. The folowing statements are about communication between contract workers and plant management regarding safety at the plant. Please tell me whether each statement is true always, sometimes, rarely, or never as it refers to your time working for (CONTRACTOR NAME) at (HOST PLANT).

	Always true	Sometimes true	Rarely true	Never	Not sure
( ) a. Employee suggestions for improving safety are taken seriously by plant management	1	2	3	4	5
( ) b. Employee suggestions for improving safety are taken seriously by your employer	1	2	3	4	5
( ) c. Supervisors of (CONTRACTOR'S NAME) are receptive to reports of safety problems	1	2	3	4	5
( ) d. Supervisors of (HOST PLANT) are receptive to reports of safety problems	1	2	3	4	5
( ) e. Employees are encouraged to report safety problems to their plant supervisors	1	2	3	4	5
( ) f. Employees are encouraged to report safety problems to their contractor supervisors	1	2	3	4	5
( ) g. Employees are afraid to report safety problems to their plant supervisors	1	2	3	4	5
( ) h. Employees are afraid to report safety problems to their contractor supervisors	1	2	3	4	5
( ) i. Accidents that happen at your workplace get reported	1	2	3	4	5

C2. Do you know anyone at your plant who has been treated unfairly by management because he reported a safety problem, or not?

Yes ——1
No ——2
Not sure ——3

C3. Does a labor/management safety and health committee exist at this work site, or not?

Yes ——1

(ASK Q.C4)

No ——2
Not sure ——3

(SKIP TO Q.C5)

C4. How would you rate the job done by the labor/management committee in improving safety conditions—excellent, pretty good, only fair, or poor?

Excellent ——1
Pretty good ——2
Only fair ——3
Poor ——4
Not sure ——5

C5. Are you represented by a union, or not?

Yes ——1

(ASK Q.C6)

No ——2
Not sure ——3

(SKIP TO Q.C8)

C6. Are you a union officer, or not?

Yes ——1
No ——2
Not sure ——3

C7. How would you rate the job done by your union representatives in improving safety conditions—excellent, pretty good, only fair, or poor?

Excellent ——1
Pretty good ——2
Only fair ——3
Poor ——4
Not sure ——5

C8. Is there an employee who represents your contractors' employees in working with (READ EACH ITEM) on safety issues, or not?

	Yes, employee representative	No employee representative	Not sure
( ) a. Plant management	1	2	3
( ) b. The contractor	1	2	3

IF YES TO Q.C8a OR Q.C8b ASK Q.C9. ALL OTHER SKIP TO Q.D1.

C9. How would you rate the job done by this employee representative in improving safety conditions—excellent, pretty good, only fair, or poor?

Excellent ——1
Pretty good ——2
Only fair ——3
Poor ——4
Not sure ——5

D1. The next questions deal with specific safety practices for high risk activities. For each one please tell me whether, when you worked for (CONTRACTOR'S NAME) at (HOST PLANT'S NAME) it happened always, usually, sometimes, rarely or never. [If the question is not relevant to your work, please state that it doesn't apply.]

	Always	Usually	Sometimes	Rarely	Never	Doesn't apply (Vol.)	Not sure
1. Lock out, tag out or other proper isolating procedures are followed before opening lines	1	2	3	4	5	6	7
2. Proper procedures are followed when starting up an operation after it has been shut down	1	2	3	4	5	6	7
3. Emergency response procedures are tested to make sure they are in working order	1	2	3	4	5	6	7
4. A good fire-fighting system is in place if needed	1	2	3	4	5	6	7
5. Air quality checks are performed before a worker is allowed to enter a confined work space	1	2	3	4	6	6	7
6. Workers are accompanied when working in a confined work area	1	2	3	4	5	6	7
7. You are informed if you are working with toxic materials	1	2	3	4	5	6	7
8. You are informed if you are working with flammable or explosive materials	1	2	3	4	5	6	7
9. Appropriate precautions are used when working with toxic materials	1	2	3	4	5	6	7
10. Appropriate precautions are used when working with flammable or explosive materials	1	2	3	4	5	6	7

D2. When you work(ed) for (CONTRACTOR'S NAME) at (HOST PLANT'S NAME) (are/were) you adequately informed about the emergency procedures to follow if a fire or other accident occurs, or not?

Yes, adequately informed ——1
No, not adequately informed ——2
Not sure ——3

E1. In the last year how many months did you work for a contractor at a petrochemical plant? [PROBE FOR ESTIMATE]

/_____/_____/ Months
(-)

Not sure ——1

E1a. And how many months did you work for (CONTRACTOR'S NAME) at (HOST PLANT'S NAME)? [PROBE FOR ESTIMATE]

/_____/_____/ Months
(-)

Not sure ——1

E2. The next questions are about accidents and injuries among your fellow workers for (CONTRACTOR'S NAME) working at petrochemical plants with you. *From your direct knowledge* about how often do (READ EACH ITEM) happen *at your workplace*—at least once a week, at least once a month, several times a year, at least once a year, or less often than that?

	Once a week	Once a month	Several times a year	Once a year	Less often than that	Not sure
1. Injuries that require first aid only	1	2	3	4	5	6
2. Injuries that require medical help	1	2	3	4	5	6
3. Injuries that result in lost time or light duty	1	2	3	4	5	6
4. Fatalities	1	2	3	4	5	6
5. Fires	1	2	3	4	5	6
6. Accidents that could easily have caused injuries	1	2	3	4	5	6

	Written	Oral	Both	Neither	Not sure
a. Any onsite work	1	2	3	4	5
b Confined space entry	1	2	3	4	5
c Hot work	1	2	3	4	5
d. Excavation	1	2	3	4	5
e. Work involving process	1	2	3	4	5

	Once a week	Once a month	Several times a year	Once a year	Less often than that	Not sure
1. Injuries that require first aid only	((——–1	——–2	——–3	——–4	——–5	——–6
2. Injuries that require medical help	((——–1	——–2	——–3	——–4	——–5	——–6
3. Injuries that result in lost time or light duty	((——–1	——–2	——–3	——–4	——–5	——–6
4. Fatalities	((——–1	——–2	——–3	——–4	——–5	——–6
5. Fires	((——–1	——–2	——–3	——–4	——–5	——–6
6. Accidents that could easily have caused injuries	((——–1	——–2	——–3	——–4	——–5	——–6
7. "Near misses"—that is, dangerous events that almost caused accidents	((——–1	——–2	——–3	——–4	——–5	——–6

E3. In those months this past year when you worked for a contractor at a petrochemical plant, how many times have *you* experienced (READ EACH ITEM)?

a. An injury that required first aid only ..... /——/——/ Not sure ..... ((——–:
(–)

b. An injury that required medical help ..... /——/——/ Not sure ..... ((——–
(–)

c. An injury that resulted in lost time or light duty ..... /——/——/ Not sure ..... ((——–:
(–)

IF "1" OR MORE IN Q.E3c, ASK Q.E4. OTHERS SKIP TO Q.G1.

E4. How many days were *you* out of work or on light duty as a result of an injury on the job ..... /——/——/
(–)

Not sure ..... ((——–1

G1. How many hours of safety-related training have you received from (CONTRACTOR'S NAME) in the past year? *DO NOT READ LIST*

0 ..... ((——–1
1–4 ..... ——–2
5–8 ..... ——–3
9–20 ..... ——–4
21 or more ..... ——–5
Not sure ..... ——–6

G2. How many hours of safety-related training have you received from (HOST PLANT'S NAME) in the past year? *DO NOT READ LIST*

/——/——/——/——/ Hours
(–)

Not sure ..... ((——–1

G3. How many times in the past year have you met with representatives of (CONTRACTOR'S NAME) or (HOST PLANT'S NAME) such as supervisors, co-workers or union or employee representatives, to discuss safety issues? *DO NOT READ LIST*

/——/——/——/——/ Times
(–)

Not sure ..... ((——–1

G4. Prior to going into any petrochemical plants as a contract worker for (CONTRACTOR'S NAME) did you receive off-site basic safety training or not?

Yes ..... ((——–1
No ..... ——–2
Not sure ..... ——–3

G5. Prior to going to work at (HOST PLANT'S NAME) for (CONTRACTOR'S NAME) did you receive off-site pre-employment safety training, or not?

Yes ..... ((——–1
No ..... ——–2
Not sure ..... ——–3

G6. Which of the following types of safety orientation did you receive when you worked at (HOST PLANT'S NAME)—were you (READ EACH ITEM), or not?

	Received	Did not receive	Not sure
a. Given a talk	((——–1	——–2	——–3
b. Given a tour of the work area	((——–1	——–2	——–3
c. Shown a film	((——–1	——–2	——–3
d. Given a chance to take part in an interactive discussion	((——–1	——–2	——–3
e. Tested on the safety-related materials presented to you	((——–1	——–2	——–3

G7. When you worked at (HOST PLANT'S NAME) were you a member of a workplace health and safety committee that included your company's management representatives, or not?

Yes ..... ((——–1
(ASK Q.G8)
No ..... ——–2
Not sure ..... ——–3
(SKIP TO Q.G9)

G8. How often did this committee meet in the time you worked at (HOST PLANT'S NAME)—at least weekly, monthly, quarterly, or less often than that?

At least weekly ..... ((——–1
Monthly ..... ——–2
Quarterly ..... ——–3
Less often than that ..... ——–4
Not sure ..... ——–5

G9. How many walkaround inspections were conducted by this committee during the past year?

/——/——/——/——/ Inspections
(–)

Not sure ..... ((——–1

H1. The next series of questions deals with the need to obtain authorization before work is done. Before performing (READ EACH ITEM) when you worked at (HOST COMPANY'S NAME) did you have to obtain written authorization, oral authorization, both, or neither?

	Written	Oral	Both	Neither	Not sure
a. Any confin work	[(——–1	——–2	——–3	——–4	——–5
b Confined space entry	[(——–1	——–2	——–3	——–4	——–5
c Hot work	[(——–1	——–2	——–3	——–4	——–5
d. Excavation	[(——–1	——–2	——–3	——–4	——–5
e. Work involving process	[(——–1	——–2	——–3	——–4	——–5

I1. Did your work at (HOST PLANT'S NAME) bring you into regular contact with direct-hire employees, or not?

Yes, regular contact ..... [(——–1
(ASK Q.I2)
No, not regular contact ..... ——–2
Not sure ..... ——–3(SKIP TO Q.F1)

I2. When you worked at (HOST PLANT'S NAME) did you see evidence of information about hazards being shared between (HOST PLANT'S NAME) employees and (CONTRACTOR'S NAME) employees often, sometimes, rarely, or never?

Often ..... ((——–1
Sometimes ..... ——–2
Rarely ..... ——–3
Never ..... ——–4
Not sure ..... ——–5

I3. When you worked at (HOST PLANT'S NAME), did you see evidence of tension or conflict between your company's employees and direct-hire workers at the plant often, sometimes, rarely, or never?

Often ..... ((——–1
Sometimes ..... ——–2
Rarely ..... ——–3
Never ..... ——–4
Not sure ..... ——–5

I4. Do you feel the job security of direct employees of (Plant's Name) may be threatened by the use of contract workers, or not?

Yes, threatened ..... ((——–(
(ASK Q.I5)
No, not threatened ..... ——–2
Not sure ..... ——–3
(SKIP TO Q.F1)

I5. In your experience, does the concern about job security ever hamper communication between direct hire and contract workers about safety at (Plant's Name), or not?

Yes, hampers safety communication ..... [(——–1
No, does not hamper safety communication ..... ——–2
Not sure ..... ——–3

F1. How old are you *IF HESITANT, READ LIST*

18 to 20 ..... [ ) ——–1
21 to 24 ..... ——–2
25 to 29 ..... ——–3
30 to 34 ..... ——–4
35 to 39 ..... ——–5
40 to 44 ..... ——–6
45 to 49 ..... ——–7
50 to 54 ..... ——–8
65 to 74 ..... ——–9
75 and over ..... ——–0
Not sure ..... ——–x

F2. What is the last year of school you have completed?

No formal schooling ..... [ ) ——–1
First through 7th grade ..... ——–2
8th grade ..... ——–3
Some high school ..... ——–4
High school graduate ..... ——–5
Some college ..... ——–6
Two-year college graduate ..... ——–7
Four-year college graduate ..... ——–8
Postgraduate ..... ——–9
Trade/technical/vocational after high school* XXX
Not sure ..... ——–0

F3. What is your hourly rate of pay?

$/——/——/./——/——/
(–)

Not sure ..... ( ) ——–1

F4. Are you entitled to company paid sick leave if you get injured on your job, or not?

Yes, entitled ..... ( ) ——–1
No, not entitled ..... ——–2
Not sure ..... ——–3

F5. What training did you have for your current job—did you have an apprenticeship or craft training, operator training, formalized association training, in-house company training or other (vocational/technical) training? *Multiple Record*

Apprenticeship/craft training ..... ( ) ——–1
Operator training ..... ( ) ——–1
Formalized association training ..... ( ) ——–1
In-house company training ..... ( ) ——–1
Other (vocational/technical) training ..... ( ) ——–1
Not sure ..... ——–2

F6. How long have you been working in the oil and chemical industry?

If less than one year:
/——/——/ Months
(–)

Or:
/——/——/ Years
(–)

Not sure ..... ( ) ——–1

F7. How long have you worked for you current employer?

If less than one year:
/——/——/ Months
(–)

Or:
/——/——/ Years
(–)

Not sure ..... ( ) ——–1

F8. How long did you work at (Host Plant's Name)?

6 months or less ..... ((——–1
7–12 months ..... ——–2
13 months–3 years ..... ——–3
More than 3 years ..... ——–4
Not sure ..... ——–5

F9. How many hours a week (do/did) you usually work at (Host Plant's Name)?

/——/——/——/ Hours
(–)

Not sure ..... [(——–1

*Interviewer: Probe for last level of formal education and code into appropriate category.

F10. How often (do/did) you work more than 40 hours a week at (Plant's Name)? Is it never, rarely, occasionally, or frequently?

Never ..... [(——–1
Rarely ..... ——–2
Occasionally ..... ——–3
Frequently ..... ——–4
Not sure ..... ——–5

F11. How many hours a day (do/did) you usually work at (Plant's Name)?

/——/——/——/ Hours
(–)

Not sure ..... ((——–1

F12. How often do you work more than 12 a day at (Plant's Name)? Is it never, rarely, occasionally, or frequently?

Never ..... [(——–1
Rarely ..... ——–2
Occasionally ..... ——–3
Frequently ..... ——–4
Not sure ..... ——–5

F13. How many hours a day do you usually work?

/——/——/——/——/ Hours
(–)

Not sure ..... [(——–1

F14. Are you of Hispanic origin or descent, or not?

Yes, of Hispanic origin ..... ((——–1
No, not of Hispanic origin ..... ——–2
Not sure ..... ——–9

F15. Do you consider yourself white, black, Asian, or something else?

White ..... [(——–1
Black ..... ——–2
Asian or Pacific Islander ..... ——–3
American Indian or Alaskan ..... ——–4
Not sure ..... ——–5

That completes the interview. Thank you very much for your cooperation!

Time Ended: ——a.m./p.m.

[FR Doc. 90-23182 Filed 10-3-90; 8:45 am]
BILLING CODE 4510-29-M

THE NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the nation's Governors dated July 21, 1990. The panel will determine how to measure and monitor progress toward achieving the National Education Goals and to report to the nation on progress

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toward the goals. The Panel is composed of fourteen members: four senior-level Federal Executive Branch officials; six Governors appointed by the Chairman of the National Governors' Association in consultation with the Vice-Chairman; and four Congressional leaders (Senate Majority and Minority Leaders, House Majority and Minority Leaders), who will serve as *ex officio* members. Governor Roy Romer of Colorado is the initial Chairman.

This notice of the Panel meeting is being filed under exceptional circumstances due to the need for the Panel to begin work as soon as possible and due to difficulties in scheduling for the fourteen Panel members.

TENTATIVE AGENDA ITEMS: The Panel will consider issues related to measuring and monitoring the national education goals.

DATE: The meeting is scheduled for Tuesday, October 9, 1990, from 1:30 to 4:30 p.m.

ADDRESSES: The meeting will be held at the United States Chamber of Commerce. The street address is 1615 H Street, NW., Washington, DC.

ATTENDANCE: Please contact Charles Kolb to indicate attendance or for further information. The phone number is (202) 456-6515.

Dated: October 1, 1990.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 90-23714 Filed 10-3-90; 9:09 am]

BILLING CODE 312-701-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review.

AGENCY: National Foundation on the Arts and Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 31, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Directors, Summer Seminars for College Teachers Program.

Form Number: 3136-0093.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: Humanities research institutions and their faculty.

Use: The guidelines and application instructions provide directions for preparing narrative and budgetary parts of applications for grant funds.

Estimated Number of Respondents: 587.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 3.8 per respondent.

Estimated Total Annual Reporting and Recording Burden: 2,256.5 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 90-23423 Filed 10-3-90; 8:45 am]

BILLING CODE 7536-01-M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 31, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject ot 44 U.S.C. 3504(h).

Title: NEH—Division of Fellowship and Seminars—Guidelines and Application Instructions for Participants, Summer Seminars for College Teachers Program.

Form Number: 3136-0096.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: College faculty and independent humanities scholars.

Use: The guidelines and application instructions provide directions for preparing narrative and budgetary parts of applications for grant funds.

Estimated Number of Respondents: 4,810.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 2.8 per respondent.

Estimated Total Annual Reporting and Recording Burden: 13,812 hours.

Thomas S. Kingston,

Assistant Chairman for Operation.

[FR Doc. 90-23424 Filed 10-3-90; 8:45 am]

BILLING CODE 7536-01-M

Meetings; Arts National Council

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing: Prose Fellowships Section) to the National Council on the Arts will be held on October 10-11, 1990 from 9 a.m.-6:30 p.m. and October 12 from 9 a.m.-4 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion if this meeting will be open to the public on October 12 from 1 p.m.-4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on October 10-11 from 9 a.m.-6:30 p.m. and October 12 from 9 a.m.-1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: September 14, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-23144 Filed 10-3-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 20, 1990, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued to the following individuals on September 26, 1990.

Diane McKnight
G.A. McFetters

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 90-23505 Filed 10-3-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Biochemistry; Meeting

The National Science Foundation announces the following meeting.

NAME: Advisory Panel for Biochemistry.

DATES: Monday, Tuesday and Wednesday, October 22-24, 1990, from 8:30 am to 5:30 pm.

PLACE: National Science Foundation, room 543, Washington, DC.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Marcia Steinberg, Program Director, Dr. Todd Martensen, Program Director, Biochemistry Program, room 325, Telephone (202) 357-7945.

PURPOSE OF ADVISORY PANEL: To provide advice and recommendations concerning support for Biochemistry research proposals.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-23513 Filed 10-13-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Cell Biology; Meeting

The National Science Foundation announces the following meeting.

NAME: Advisory Panel for Cell Biology Program.

DATE AND TIME: October 22-24, 1990, 8:30 a.m. to 5 p.m.

PLACE: National Science Foundation, 1800 G Street, NW., Washington, DC. Conference Room 522.

TYPE OF MEETING: Part Open—Closed 10/22—8:30 a.m. to 5 p.m.; Open—10/23—12 noon to 1:30 p.m.; Closed—10/24—8:30 a.m. to 5:00 p.m.

CONTACT PERSON: Dr. Maryanna P. Henkart, Program Director, Cell Biology Program, room 321, National Science Foundation, Washington, DC 202/357-7474.

PURPOSE OF ADVISORY PANEL: To provide advice and recommendations concerning support for research in Cell Biology.

AGENDA: Open—General discussion of the current status and future plans of the Cell Biology Program.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of Government Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-23514 Filed 10-13-90; 8:45 am]

BILLING CODE 7555-01-M

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Advisory Panel for Cellular Biochemistry; Meeting

The National Science Foundation announces the following meeting:

NAME: Advisory Panel for Cellular Biochemistry.

DATE/TIME: October 25 & 26, 1990, Thursday, 8:30 a.m. to 5: p.m., Friday, 8:30 a.m. to 4: p.m.

PLACE: Georgetown Harbor Mews, 1000 29th Street NW., Washington, DC 20007, room: The Georgetown.

TYPE OF MEETING: Closed.

CONTACT PERSON: William L. Pengelly, Cellular Biochemistry Program, rm. 321–F, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7987.

PURPOSE OF ADVISORY ADVISORY PANEL: To provide advice and recommendations concerning support for research in cellular biochemistry and metabolism.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proporietary or confidential nature, including technical information; financial data, such salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90–23515 Filed 10–3–90; 8:45 am]
BILLING CODE 7555–01–M

Equal Opportunities in Science and Engineering Committee; Meeting

NAME: Committee on Equal Opportunities in Science and Engineering.

PLACE: National Science Foundation, 1800 G Street, NW, Washington, DC 20550, Room 540.

DATES: October 25 & 26 1990.

TIMES: Thursday, October 24: 8:30 a.m.–5 p.m. Friday, October 26: 8:30 a.m.–4:30 p.m.

TYPE OF MEETING: Open.

CONTACT: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, room 639. Telephone Number: 202–357–7061.

PURPOSE OF MEETING: To provide advice to the Foundation on policies and activities to encourage full participation of groups, currently underrepresented in scientific, engineering, professional, and technical fields; to learn about effective methods, currently in place to motivate underrepresentated groups to pursue careers in the sciences and engineering.

MINUTES: May be obtained from the Executive Secretary at the above address.

AGENDA: (Tentative) *October 25:* focus on person with Disabilities, and on Women; Representatives of Federal R&D Agencies; Subgroup & Full Committee Meetings. *October 26;* Full Committee Meeting; focus on Minorities; Presentation from Acting Director, NSF.

M. Rebecca Winkler,
Committee Management Office.
[FR Doc. 90–23517 Filed 10–3–90; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Genetics Program; Meeting

The National Science Foundation announces the following meeting.

NAME: Advisory Panel for Genetics.

DATE AND TIME: Sunday, Monday, and Tuesday, October 28, 29, and 30, 1990 8:30 to 5 p.m.

PLACE: the National Science Foundation, 1800 G St., NW., room 1243.

TYPE MEETING: Closed.

CONTACT PERSON: Philip Harriman, Program Director, Genetics, room 325–I, Telephone: (202) 357–9687.

PURPOSE OF ADVISORY PANEL: To provide advice and recommendations concerning support for research.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90–23516 Filed 10–3–90; 8:45 am]
BILLING CODE 7555–01–M

Human Cognition and Perception Advisory Panel; Meeting

The National Science Foundation announces the following meeting.

NAME: Advisory Panel for Human Cognition & Perception.

DATE AND TIME: October 29–30, 1990, 9 a.m.–5 p.m.

PLACE: National Science Foundation, 1800 G Street, NW., room 1242, Washington, DC.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Joseph L. Young, Program Director, Human Cognition and Perception, room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9898.

MINUTES: May be obtained from contact person listed above.

PURPOSE OF MEETING: To provide advice and recommendations concerning support for research in human cognition and perception.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90–23519 Filed 10–3–90; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel for Materials Research; Meeting

The National Science Foundation Announces the following meeting:

NAME: Special Emphasis Panel Meeting to review the Cornell University High Energy Synchrotron Radiation Laboratory (CHESS) 3–Year Renewal Proposal.

DATE: October 24 and 25, 1990.

LOCATION: Cornell University, Ithaca, New York.

TIME: 8 a.m. to 5 p.m., both days.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Adriaan M. de Graaf, Deputy Division Director, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550 Telephone: (202) 357–9794.

PURPOSE OF MEETING: To provide advice and recommendations concerning the support for the Cornell High Energy Synchrotron Radiation Laboratory.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90–23520 Filed 10–3–90; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Social Psychology; Meeting

The National Science Foundation announces the following meeting:

NAME: Advisory Panel for Social Psychology.

DATE AND TIME: October 25–26, 1990: 9 a.m.–5 p.m. each day.

PLACE: National Science Foundation, 1800 G Street NW., room 1243. Washington, DC 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Jean B. Intermaggio, Program Director, Social Psychology, room 320, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9485.

PURPOSE OF MEETING: To provide advice and recommendations concerning support for research in social psychology.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90–23520 Filed 10–3–90; 8:45 am]
BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–17763; 812–7558]

Credit Suisse, BEA Associates; Application

September 27, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Credit Suisse, BEA Associates (together, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 9(c) from the provisions of section 9(a).

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 9(c) permanently exempting them and all persons now or hereafter affiliated with Credit Suisse from the provisions of section 9(a) of the Act.

FILING DATE: The application was filed on June 10, 1990 and amended on August 10 and September 6, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 22, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, NY 10004, Attn: Edwin Heller, P.C.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, at (202) 272–2511, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Credit Suisse is a Swiss banking corporation whose principal business consists of commerical banking finance and investment banking, and accepting customer deposits. By virtue of injunctions entered against Credit Suisse and The First Boston Corporation ("FBC") (as described more fully below), Credit Suisse and its affiliates are ineligible to serve in various capacities in the investment management business. Credit Suisse intends to succeed to the investment advisory business of BEA Associates, Inc. (the "Present Adviser"). In order to complete the transaction, Credit Suisse has requested an order by the Commission pursuant to section 9(c) exempting it from section 9(a).

2. BEA Associates (the "Partnership") was formed on June 24, 1990 as a New York general partnership for the purpose of succeeding to the investment advisory business of the Present Adviser, a registered investment adviser. The Partnership intends to register as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

3. The partners in the Partnership are Credit Suisse Capital Corporation ("CS Sub"), a New York corporation that is an indirect wholly-owned subsidiary of Credit Suisse formed for the purpose of acting as a general partner of the Partnership, and the Present Adviser, a New York corportation. Pursuant to an acquisition agreement dated June 24, 1990, subject to certain conditions precedent, CS Sub will purchase an undivided 80% interest in the investment advisory assets of the Present Adviser and will contribute such interest to the Partnership. In addition, the Present Adviser will contribute its remaining undivided 20% interest in such assets to the Partnership. At the time of the closing of the proposed transaction, it is contemplated that all the then-shareholders of the Present Adviser will be employees and officers of the Partnership.

4. The Present Adviser serves as an investment adviser under the Advisers Act and has been so registered since 1968. The Present Adviser serves as portfolio manager to the Diversified Bond Fund Series and the Fixed Income I Fund Series of Frank Russell Investment Company and investment adviser to the Portugal Fund, Inc.; The Chile Fund, Inc.; The Indonesia Fund, Inc.; Landmark Growth and Income Fund; Landmark Capital Growth Fund; the Alpha Prime Portfolio, Alpha Government Securities Portfolio and Pegasus Prime Portfolio of the Infinity Mutual Funds, Inc.; and The Latin America Investment Fund, Inc. (together, the "Funds"). Prior to executing new investment advisory contracts, the Partnership will solicit the approval of the Funds' Board of Directors and shareholders, with the exception of the Frank Russell Investment Company Funds for which the Present Adviser serves as a subadviser.[1] The Present

[1] In 1981, the Commission issued an order exempting certain Frank Russell Investment

Continued

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Adviser expects to be the investment adviser to The Israel Capital Fund, Inc., which is registered as an investment company under the Act and has filed a registration statement under the Securities Act of 1933.

5. CS Holding owns 99.9% of the voting stock of Credit Suisse and indirectly, through a wholly-owned subsidiary, owns 44.5% of the outstanding voting common stock and 44.5% of the non-voting stock of CS First Boston, Inc. ("CS First Boston"). FBC, a wholly-owned subsidiary of CS First Boston, is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and as an investment adviser under the Advisers Act. By virtue of the various relationships between CS Holding, CS First Boston, FBC and Credit Suisse, it might be alleged that Credit Suisse and the Partnership, are "affiliated persons" of FBC. Solely for purposes of the application, the Applicants assume that they are "affiliated persons" of FBC within the meaning of section 2(a) (3) of the Act.

6. On November 25, 1975, the Commission commenced an action in the United States District Court for the District of Columbia, *Securities and Exchange Commission* v. *American Institute Counselors, Inc., et al.* (75 Civ. 1965), against various defendants, including Credit Suisse (which was referred to in such action as Swiss Credit Bank), alleging violations of various provisions of the federal securities laws. Credit Suisse, without admitting or denying any of the allegations of the Complaint, consented to the entry of an injunction (the "Credit Suisse Order") terminating the action against it. The Credit Suisse Order provides, among other things, that Credit Suisse shall not be involved in the sale of various gold-backed securities and gold-related items offered for sale by American Institute Counselors and certain of its affiliates.

7. In July 1976, the SEC issued two orders permanently exempting certain affiliates of Credit Suisse from the provisions of section 9(a) with respect to the Credit Suisse Order. White, Weld & Co., Inc., Investment Company Act Release Nos. 9337A (July 12, 1976) (notice and temporary order) and 9375 (July 29, 1976) (permanent order); SoGen-Swiss International Corporation, Investment Company Act Release Nos. 9338A (July 12, 1976) (notice and temporary order) and 9376 (July 29, 1976) (permanent order).

8. In December 1982, the Commission pursuant to section 9(c) permanently exempted FBC from the prohibitions of section 9(a) of the Act with respect to the 1975 Credit Suisse Order. Investment Company Act Release Nos. 12867 (December 3, 1982) (notice and temporary order), 12938 (December 27, 1982) (permanent order).

9. On May 5, 1986, the SEC filed a Complaint in the United States District Court for the Southern District of New York in a civil action entitled *Securities and Exchange Commission* v. *The First Boston Corporation* (86 Civ. 3524). The action involved certain transactions effected on January 30, 1986 by FBC, acting for its own account, in the common stock and options thereon of CIGNA Corporation ("CIGNA"). The Complaint alleged that FBC violated section 10(b) of the Exchange Act and Rule 10b–5 thereunder by purchasing for its own account securities of the CIGNA Corporation ("CIGNA") while in possession of material nonpublic information that FBC's Corporate Finance Department had received from CIGNA's management in connection with certain investment banking advice and services CIGNA had sought from FBC. On the day the Complaint was filed, FBC consented to the entry of a permanent injunction enjoining FBC from engaging in transactions, acts, practices or courses of business that constitute or would constitute violations of section 10(b) of the Exchange Act and Rule 10b–5 thereunder (the "FBC Judgment").

10. In July 1986, the Commission permanently exempted FBC from the prohibitions of section 9(a) of the Act with respect to the FBC Judgement. Investment Company Release Nos. 15086 (May 5, 1986) (notice and temporary order), 15221 (July 24, 1986) (permanent order).

11. In July 1990, the Commission permanently exempted CS First Boston and all persons now or hereafter directly or indirectly controlled by CS First Boston from the prohibitions of section 9(a) with respect to the Credit Suisse Order and the FBC Judgment. Investment Company Act Release Nos. 17561 (July 3, 1990) (notice) and 17631 (July 31, 1990) (order).

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act provides that it is unlawful for any person to serve or act in the capacity of investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end investment company, if such person, by reason of any misconduct, is permanently or temporarily enjoined from engaging in any conduct or practice in connection with the purchase or sale of any security. Under section 9(a)(3), "a company, any affiliated person of which is ineligible" by reason of section 9(a)(2), is similarly ineligible.

2. Section 9(c) of the Act provides that, upon application, the SEC by order shall grant an exemption from the provisions of section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

3. By virtue of the 1975 Credit Suisse Order, Credit Suisse is a disqualified person under section 9(a) of the Act. Because the Partnership is an "affiliated person" of Credit Suisse as such term is defined in section 2(a)(3) of the Act, the Partnership is also disqualified from serving or acting in any of the capacities set forth in section 9(a), including acting as an investment adviser to any registered investment company. Because they are affiliated with FBC, Applicants are also disqualified under section 9(a) as a result of the 1986 FBC Judgment. The Applicants have requested the permanent order specified in the application so that (A) the Partnership can act as investment adviser to the Funds and any other registered investment company and (B) there will be no uncertainty as to the effect of the Credit Suisse Order and the FBC Judgment on Credit Suisse and persons now or hereafter affiliated with Credit Suisse.

4. Applicants submit that the prohibitions of section 9(a) of the Act, to the extent applicable by virtue of the entry of the Credit Suisse Order and the FBC Judgment, would be unduly and disproportionately severe as applied to each of the partnership, Credit Suisse, and persons now or hereafter affiliated with Credit Suisse and that the conduct of Credit Suisse and FBC has been such as not to make it against the public interest or protection of investors to grant the relief requested in the application. Applicants submit that these standards have been met for the reasons stated below.

5. The conduct leading to the Credit Suisse Order and the FBC Judgment did not in any way involve any activities of the Partnership, the Funds, or either of the Applicants acting as investment adviser or any registered investment company.

6. To the extent the Partnership is subject to the prohibitions of section 9(a), it is so subject solely because it is currently an affiliated person of Credit Suisse and an affiliated person of FBC within the meaning of the Act. At the time of the alleged violations of the federal securities laws by Credit Suisse and FBC that resulted in the Credit Suisse Order and the FBC Judgment, the Partnership was not an "affiliated person" of either Credit Suisse or FBC. None of the Partnership, the Present Adviser nor any of their officers or employees participated in the conduct resulting in the Credit Suisse Order and the FBC Judgment.

7. With respect to the Credit Suisse Order, the conduct and transactions alleged in the Complaint occurred more than 14 years ago. Since 1975, Credit Suisse has not been permanently or temporarily enjoined from engaging in any of the activities listed in section 9(a)(2) of the Act.

8. With respect to the FBC Judgment, only FBC participated in the conduct alleged to have constituted a violation of the federal securities laws that resulted in the FBC Judgment. In 1986, the SEC granted FBC an order pursuant to section 9(c) exempting FBC from the provisions of section 9(a) that might otherwise be operative as a result of such judgment.

9. As described above, on five previous occasions, the SEC has issued orders granting similar relief with respect to either the Credit Suisse Order or the FBC Judgment.

10. The Applicants represent that the ability of the Partnership to serve as the Funds' investment adviser and the ability of other persons affiliated with Credit Suisse to act as principal underwriter or investment adviser in compliance with the requirements of the Act is not in any way impaired, or even apparently impaired, by the existence of the Credit Suisse Order of the FBC Judgment.

11. The Applicants represent that they acknowledge, understand and agree that the application and the Commission's issuance of the order requested by the application shall not prejudice not limit the Commission's rights in any manner with respect to any investigation, enforcement action, or proceeding under section 9(b) of the Act, based, in whole or in part, upon conduct other than that giving rise to the application.

Order Requested by the Applicants

Based on the foregoing, Applicants request that the SEC issue an order by the Commission pursuant to section 9(c) of the Act, permanently exempting Credit Suisse and any person now or hereafter affiliated with Credit Suisse, including the Partnership from the provisions of section 9(a) of the Act operative as a result of the entry of the Credit Suisse Order and the FBC Judgment.

Applicants' Conditions

If the requested exemptive relief is granted, Applicants, agree to the conditions set forth below:

1. Neither of the Applicants, now any person now or hereafter affiliated with Credit Suisse, relying upon relief granted pursuant to the application, will employ any of the equity traders, analysts or the investment banker referred to in the Complaint filed on May 5, 1986 in *Securities and Exchange Commission* v. *The First Boston Corporation*, 86 Civ. 3524 (S.D.N.Y. May 5, 1986) in any capacity related directly to the provision of investment advisory services for registered investment companies or to acting as a principal underwriter for a registered open-end investment company or to acting as a principal underwriter or depositor for a unit investment trust without first making further application to the Commission pursuant to section 9(c).

2. Neither of the Applicants, nor any person now or hereafter affiliated with Credit Suisse, relying upon the relief granted by the application, will employ any of the individuals referred to in the Complaint filed on November 25, 1975 in *Securities and Exchange Commission* v. *American Institute Counselors, Inc.*, 75 Civ. 1965 (D.D.C. Nov. 25, 1975) in any capacity related directly to the provision of investment advisory services for registered investment companies or to acting as a principal underwriter for a registered open-end investment company or as a principal underwriter or depositor for a unit investment trust without first making further application to the Commission pursuant to section 9(c).

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23431 Filed 10–3–90; 8:45 am]

BILLING CODE 8010–01–M

Company funds from the provisions of section 15(a) of the Act requiring shareholder approval of the portfolio management contracts. *See* Frank Russell Investment Company, Investment Company Act Rel. Nos. 11264 (September 21, 1981) (notice) and 11288 (October 14, 1981) (order). The Applicants do not seek, and the Commission does not express, an opinion as to whether the Diversified Bond Fund Series may rely on this order in not seeking shareholder approval of its portfolio management contract with the Partnership.

SMALL BUSINESS ADMINISTRATION

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 9.60 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99–226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: September 26, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90–23425 Filed 10–3–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Formulation of a Strategic Plan for Aviation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of FAA Strategic Plan.

SUMMARY: This notice announces the publication and availability of the Federal Aviation Administration (FAA) Strategic Plan.

FOR FURTHER INFORMATION CONTACT: Harry C. Dennis Jr., Manager Systems Requirements Branch (202) 267–3220. Address: Federal Aviation Administration, APO–120, room 934B, 800 Independence Avenue SW., Washington, DC, 20591.

AVAILABILITY OF DOCUMENT: Copies of the Strategic Plan are available on request by writing or calling Regina Morris, Office of Aviation Policy and Plans, APO–120, room 934, 800

Independence Avenue SW., Washington, DC 20591, (202) 267–3307.

SUPPLEMENTARY INFORMATION: The Strategic Plan sets policy and direction for the Federal Aviation Administration over the next 20 years in seven areas. Linked to the National Transportation Policy recently released by the Secretary of Transportation, the Strategic Plan is the first step in a unifying theme to ensure that diverse FAA activities are moving toward common objectives. As currently done, the FAA will also prepare comprehensive individual plans for future operations and investments which include all areas of FAA responsibility.

Unit 2 would continue east from Rock Creek through two small towns to the existing interchange at Mount Hood Highway (U.S. 26) and OR 212. Three build alternatives are under consideration. Two would construct a new four-lane, grade-separated, limited access facility on new alignments

1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0200.
Form Number: 5307.
Type of Review: Extension.
Title: Application for Determination for Adopters of Master or Prototype,

Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.

who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed

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Independence Avenue SW., Washington, DC 20591, (202) 267–3307.

SUPPLEMENTARY INFORMATION: The Strategic Plan sets policy and direction for the Federal Aviation Administration over the next 20 years in seven areas. Linked to the National Transportation Policy recently released by the Secretary of Transportation, the Stragegic Plan is an outgrowth of the same formative process of outreach and analysis and plays a key role in promoting the Department's new policies in aviation.

The FAA Strategic Plan is based on an ongoing, top management process that surveyed the long-range aviation horizon, identified future issues and opportunities, and selected a direction that will achieve the agency's desired vision of the future. The Strategic Plan sets aviation policies and broad strategies for the next two decades. Each FAA organization will be expected to supplement its program plans to carry out its strategic responsibilities, increase its focus on agency goals, objectives and strategies, and coordinate shared responsibilities.

The seven areas addressed by the Strategic Plan are summarized as follows:

1. *Aviation Safety and Security:* The FAA will maintain the highest level of aviation safety and security possible consistent with human factors, technology, and economic constraints and provide leadership which anticipates and provides solutions to potential safety problems.
2. *Capacity and Access:* The FAA will vigorously pursue optimization of the airspace and airport system.
3. *Environment:* The FAA will provide strong leadership in mitigating the adverse environmental impact of aviation on the public consistent with sound energy planning and an effective national aviation system.
4. *Human Factors:* The FAA will ensure that the role of the human in both present and future aviation systems is recognized.
5. *Internationalization:* The FAA will provide leadership in achieving international standardization in aviation: Common procedures, standards, and practices; airport design and development; design, manufacture and operation of aircraft and avionics; security; and air traffic control.
6. *Management of the Agency:* The FAA will accomplish the agency's mission by effectively managing FAA's financial, material, and information resources.
7. *Twenty-First Century Aviation System:* The FAA will provide strong leadership to define, design, develop, and achieve international acceptance of a global air transportation system for the next century.

The areas listed above have been selected for special emphasis. At the same time, the agency will continue to perform all current functions. The role of the Strategic Plan is to provide a unifying theme to ensure that diverse FAA activities are moving toward common objectives. As currently done, the FAA will also prepare comprehensive individual plans for future operations and investments which include all areas of FAA responsibility.

Issued in Washington, DC on September 28, 1990.

Michael C. Moffat,

Assistant Administrator for Policy, Planning, and International Aviation.

[FR Doc. 90-23445 Filed 10-3-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project on the Clackamas Highway (OR 212/224) between Interstate 205 (I–205) and U.S. 26 in Clackamas County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, suite 100, 530 Center Street NE., Salem, Oregon 97301. Telephone: (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) for a proposal to replace or widen a 12.8-mile section of Highway 212/244 in Clackamas County, Oregon to meet growing traffic demands. The Oregon 212/Oregon 224 corridor has been designated as part of an intercity "Access Oregon Highway" intended to accommodate planned growth and economic development.

The project is divided into two units. A Notice of Intent for the first unit from Interstate 205 east to Rock Creek was prepared and published in the Federal Register dated April 27, 1989.

Unit 1 would construct a new four-line, grade-separated, limited access facililty, extending the existing Milwauke Expressway four miles eastward from I–205 to Rock Creek. The I–205 interchange would be reconstructed to accommodate this and related circulation changes. Two alternative alignments are under consideration for the segment just east of the I–205 Interchange.

Unit 2 would continue east from Rock Creek through two small towns to the existing interchange at Mount Hood Highway (U.S. 26) and OR 212. Three build alternatives are under consideration. Two would construct a new four-lane, grade-separated, limited access facility on new alignments through the entire section. Of these, one would bypass the town of Damascus to the north; the other would bypass to the south. Space would be reserved in the median for two future additional lanes. The third build alternative would upgrade the existing two-lane OR 212 to a controlled access four-lane facility. In both units the No-Build Alternative will be considered with the other alternatives.

Information describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies. Public meetings have been and will be held during project development, and a public hearing will be held. Project scoping has been a continuous process, conducted in the technical, interagency and public meetings.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on September 26, 1990.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 90-23496 Filed 10-3-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 26, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0200.
Form Number: 5307.
Type of Review: Extension.
Title: Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans.
Description: This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS Regional Office or a regional prototype plan approved by the IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue Code sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.
Respondents: Businesses or other for-profit, small businesses or organizations.
Esimated Number of Respondents: 39,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—13 hours, 52 minutes
Learning about the law or the form—5 hours, 53 minutes
Preparing the form—9 hours, 9 minutes
Copying, assembling, and sending the form to IRS—45 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 1,158,300 hours
Clearance Office: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-23470 Filed 10-3-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

September 28, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: 1991 Confidentiality and Privacy Study.
Description: The proposed 1990–1991 IRS/BLS "Confidentiality and Privacy Study" will investigate a number of dimensions of commonly used information collections, protection and disclosure terms, e.g., concepts of "confidentiality" and "privacy", and the potential impact of respondents' understanding and interpretation of those terms on participatory behavior in a survey research setting.
Respondents: Individuals or households, Federal agencies or employees.
Estimated Number of Respondents: 900.
Estimated Burden Hours Per Respondent: 1 hour and 30 minutes.
Frequency of Response: One-time study/studies.
Estimated Total Reporting Burden: 600 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-23471 Filed 10-3-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 350). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (22), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Computation of Loan Amount for Manufactured Home Unit.
3. VA Form 26–8641a.
4. The form is completed by the lender for the purpose of showing how the loan amount is computed for manufactured home units. The information is used to properly verify the computation of the loan amount upon which the amount of guaranty is based.
5. On occasion.
6. Businesses or other for-profit.
7. 600 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90-23455 Filed 10-3-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the

following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on this list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Trainee Request for Leave—Chapter 31, Title 38, U.S.C.
3. VA Form 28–1905h.
4. VA needs the information which the veteran and trainer or authorized school official provide on this from to properly evaluate a request for leave of absence from participation in the Vocational Rehabilitation Program. This collection of information assures an accurate accounting of leave taken and allows VA to monitor the veteran's progress in the planned program of training and services.
5. On occasion.
6. Individuals or households.
7. 30,000 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 90-23456 Filed 10-3-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Report of Accidental Injury in Support of Claim for Compensation or Pension.
3. VA Form 21–4176.
4. The form is used to obtain information regarding accidents resulting in the disability upon which a claim is based and to give the veteran an opportunity to provide information based on his/her own knowledge regarding the accident. The information is used in determining eligibility for benefits.
5. On occasion.
6. Individuals or households.
7. 4,400 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90-23457 Filed 10-3-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Certification of School Attendance or Termination.
3. VA Form 21–8960.

4. The form is used to verify continued school attendance in those cases where benefits are paid for dependent children based on school attendance. The information is used to determine continued eligibility based on upon school attendance.
5. On occasion.
6. Individuals or households.
7. 90,000 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90-23458 Filed 10-3-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collected and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Application for Amounts Due Estates of Persons Entitled to Benefits.
3. VA Form 21–609.
4. The form is used to gather the necessary information to determine who is the proper payee of certain accrued benefits due the veteran at the date of his or her death. The information is used to determine eligibility.
5. On occasion.
6. Individuals or households.
7. 750 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90-23459 Filed 10-3-90; 8:45 am]

BILLING CODE 8320-01-M

VOL 55 ISS 193 OCT 4 1990 UMI

Sunshine Act Meetings

Federal Register
Vol. 55, No. 193
Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., October 15, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Review of open season results.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: October 1, 1990.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 90-23587 Filed 10-2-90; 10:04 am]

BILLING CODE 6760-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: October 25, 1990, 11:15 a.m. to 4:30 p.m., October 26, 1990, 9:00 a.m. to 4:30 p.m.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Opening Remarks, Chairman Reid
Approval of June Minutes
Approval of Agenda
Guest Speaker, Patricia Breivik, Chair, National Forum on Information Literacy
Report, Hearings from Native Americans
Chairman's Report
Executive Committee Report and Recommendations
NCLIS Executive Director's Report
(October 26)
Guest Speaker, Richard Akeroyd, Connecticut State Librarian
White House Conference Activities
NCLIS Committee Reports
Long-Term NCLIS Goal Planning and Program Priorities

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Peter R. Young, Executive Director, 111 18th Street NW., (Suite 301), Washington, DC 20036, 202-254-3100.

Dated: October 1, 1990.

[FR Doc. 90-23648 Filed 10-3-90; 1:48 pm]

BILLING CODE 7527-01-M

U.S. RAILROAD/RETIREMENT BOARD

NOTICE OF PUBLIC MEETING

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 11, 1990, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) RRB Automation Plan.
(2) Congressional Reaction to the Possible Closing of the Raleigh, North Carolina, Base Point.
(3) Incentive Awards Plan.
(4) Satellite Claims Processing Demonstration Project.
(5) Proposed Occupational Disability Physical Standards.
(6) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(7) Regulations—Part 323, Nongovernmental Plans for Unemployment or Sickness Insurance.
(8) Regulations—Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations.
(9) Regulations—Parts 320 and 340, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from Such Determinations; Recovery of Benefits.
(10) Regulations—Part 330, Determination of Daily Benefit Rates.
(11) Regulations—Part 203, Employees Under the Act.
(12) Regulations—Part 216, Eligibility for an Annuity.
(13) Regulations—Part 255, Recovery of Overpayments.
(14) Regulations—Part 200, General Administration.
(15) Regulations—Parts 200, 209 and 234, Railroad Employers' Reports and Responsibilities; Lump-Sum Payments.
(16) Employee Status—DJR Inc.—Legal Opinion L-90-58.
(17) Employee Status—Art Hathaway Backhoe Service.

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, Michael L. Yankey.
(B) Appeal of Nonwaiver of Overpayment, Richard W. Hare.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: October 1, 1990.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90-23634 Filed 10-3-90; 2:43 pm]

BILLING CODE 7905-01-M

Corrections

Federal Register
Vol. 55, No. 193
Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 64 and 98

[CGD 84-043]

RIN 2115-AD59

Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel

Correction

In rule document 90-21024 beginning on page 37406, in the issue of Tuesday, September 11, 1990, make the following correction:

§ 64.11 [Corrected]

1. On page 37410, in the first column, in § 64.11(e), in the third line, "guage" should read "gauge".

§ 98.30-5 [Corrected]

2. On page 37411, in the third column, in § 98.30-5, in the sixth line, the paragraph designation (ii) was omitted, and in the seventh line, "40 CFR" should read "49 CFR".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 26324; Notice No. 90-20]

RIN 2120-AD33

Airworthiness Standards; Emergency Exit Provisions for Normal, Utility, Acrobatic and Commuter Category Airplanes

Correction

In proposed rule document 90-20372 beginning on page 35544, in the issue of Thursday, August 30, 1990, make the following corrections:

1. On page 35545, in the first column, in the sixth line, "December 8, 1990)" should read "December 8, 1980)".
2. On the same page, in the same column, in the first complete paragraph, in the 23rd line, "of" should read "on".
3. On the same page, in the same column, in the second complete paragraph, in the 11th line, "exists" should read "exits".
4. On the same page, in the second column, in the 15th line, "such" should read "each".
5. On page 35546, in the third column, in the 17th line, "exist" should read "exits" each time it appears..
6. On page 35548, in the first column, in the 12th line, after "airplane" insert "and".
7. On the same page, in the second column, in the 18th line, "§ 23.812(i)" should read "§ 25.812(i)".
8. On the same page, in the same column, in the 24th line, "§ 23.812(j)" should read "§ 25.812(j)".
9. On the same page, in the same column, in the 32nd line, "§ 23.812(k)" should read "§ 25.812(k)".
10. On the same page, in the same column, in the last line, "§ 23.813" should read "§ 25.813".
11. On the same page, in the third column, in the 20th line, "§ 23.813" should read "§ 25.813".
12. On page 35549, in the first column, in the last paragraph, in the third line, "§ 25.895," should read "§ 25.805,".
13. On page 35550, in the first column, under *Remaining Provisions of Proposed Rule*, in the second line, "exists" should read "exits".

§ 23.807 [Corrected]

14. On page 35551, in the third column, in § 23.807(d)(3), in the seventh line, "exist" should read "exits".

§ 23.812 [Corrected]

15. On page 35552, in the third column, in § 23.812(f)(3), "conditions" should read "condition".

§ 23.813 [Corrected]

16. On page 35553, in the second column, in § 23.813, in the sixth line from the bottom, "choose" should read "chooses".

§ 23.815 [Corrected]

17. On the same page, in the third column, in amendatory instruction 10, in the second line, "existing" was misspelled.

BILLING CODE 1505-01-D

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federal register

Thursday
October 4, 1990

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 93

Air Traffic Control System Emergency Operation; Final Rule

BEST COPY AVAILABLE

VOL 55 ISS 193 OCT 4 1990 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 93

[Docket No. 26351; SFAR No. 60]

Air Traffic Control System Emergency Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The Administrator of the FAA has determined that, if the sequestration provisions of the Gramm-Rudman-Hollings Act take effect on October 1, 1990, an emergency will exist requiring that immediate measures be taken in order to maintain air safety. All FAA employees, including air traffic controllers, may expect to be furloughed for a specified number of days within each pay period of work. If the furlough is implemented, such action will result in a reduction in the number of air traffic controllers available on the job and will significantly affect the FAA's ability to operate the Air Traffic Control (ATC) system and provide full ATC services. This Special Federal Aviation Regulation authorizes special provisions for the operation of the ATC system during the period that the emergency conditions exist in order to provide for the safe and orderly movement of air traffic.

EFFECTIVE DATE: September 28, 1990. The FAA will accept comments on the rule as long as it remains in force.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Broderick, Program Manager, Civil Operations, ATM–100, Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8343. Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204) Docket No. *26351*, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., or by calling (202) 267–3484. Communications must identify the amendment number of the document.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of an emergency final rule which involves immediate flight safety throughout the United States, and, thus, was not preceded by notice and public procedure, comments are invited. Comments on the rule should be submitted to the address indicated above. Comments are specifically invited on any aspect of this emergency action which identifies a need to modify the regulation should the occasion arise in the future to operate the ATC system under emergency conditions. Commenters wishing the FAA to acknowledge receipt of their comments in response to this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. *26351*." The postcard will be date/time stamped and returned to the commenter.

Air Traffic Control System Emergency Operations

Background

If necessary, the FAA will begin a furlough of its employees beginning October 1, 1990. A furlough is being considered because the agency's operating funds may be significantly reduced pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177), commonly known as the Gramm-Rudman-Hollings Act, as amended. For every nonexempted budget account in the Federal Government, the Gramm-Rudman-Hollings Act requires that agency expenditures be cut on a uniform basis. This reduction is referred to as "sequestration". The Gramm-Rudman-Hollings Act requires that the President's sequestration order apply this uniform percentage to every "program, project, and activity" (PPA) within each nonexempted budget account.

A furlough of the extent estimated to be required will result in a daily reduction of air traffic controllers operating on the job. The partial loss of the workforce will significantly affect the FAA's ability to operate the air traffic control (ATC) system and reduce the level of ATC services the FAA is capable of providing. The level of demand on the ATC system depends on several variables, including inclement weather, availability of equipment, and military priorities for national security. For example, during good weather conditions, there is less demand on the ATC system by general aviation users. As a second example, the military may be given priority for ATC services due to the current Persian Gulf crisis.

However, the FAA is assessing current policies and developing new strategies to maximize service to the greatest number of users during a period of reduced resources. For example, ATC facility staff personnel, including staff regularly assigned responsibility for training, planning and procedures, military coordination, and special programs, will be used to augment the controller workforce.

Additionally, by utilizing traffic management procedures consistent with the pro rata reduction of services to users, an orderly movement of traffic will be better maintained. Such procedures will proportionally affect all civil users. Traffic management procedures use the published, advertised air carrier schedules to the maximum extent possible and allow the air carrier operators maximum control over their individual operations. These procedures also permit normal flight planning and the use of fuel conservation techniques by the users. Traffic management procedures can be applied to a single airport or to the system as a whole and are fully coordinated in advance, and updated as conditions at each airport change. Under normal conditions, the FAA's Air Traffic Control System Command Center has the ability to maintain an efficient flow of air traffic. With reduced ATC resources, it will be necessary to activate a more restrictive plan to reduce the number of scheduled instrument flight rules (IFR) operations and to require reservations for general aviation IFR flight activity. The two parts of this plan are designated as the National Air Traffic Reduced Complement Operations Plan and the General Aviation Reservation Program.

Under the rule adopted, the Director of the Office of Air Traffic System Management (Director) is authorized, as conditions warrant, to restrict, prohibit or permit visual flight rules (VFR) and/or IFR operations at any airport, terminal control area (TCA) or other terminal and en route airspace; to give priority at any airport to flights that are of military necessity, medical emergency flights, Presidential flights, and flights transporting critical Government employees; and to implement at any airport traffic management procedures including pro rata reduction of air carrier, commercial oeprator and general aviation operations.

The National Air Traffic Reduced Complement Operations Plan

General

When necessary, the National Air Traffic Reduced Complement Operations Plan (RCOP) will be implemented by issuance of an order of the Director. The RCOP assumes that an average of 75 percent of qualified controllers will be available for work. Flights necessary for National defense purposes and emergency flights will receive priority and will be accommodated ahead of all other flights. IFR clearances will be issued only in accordance with the provisions of the RCOP. VFR in terminal control areas (TCAs) may be restricted to arrivals and departures only; i.e., VFR flight in TCAs for purposes of transiting may not be authorized. However, restrictions will be relaxed or eliminated when sufficient ATC staffing is available to provide the requested services. Orders and information necessary to maintain the integrity of the ATC system will be disseminated, in accordance with § 91.139 of the FAR, by NOTAMs.

The RCOP

The National Air Traffic Reduced Complement Operations Plan will be the means for constraining air traffic demand to meet the anticipated reduced capacity level of the air traffic system due to Gramm-Rudman-Hollings budgetary constraints.

By controlling the flow of traffic in and out of key airports, the air traffic operating in the entire en route air traffic environment can be safely controlled or restricted as needed. Key airports, listed in Appendix 1, were designated from among the nations busiest airports since operations at those airports have the greatest impact on overall system demand. Each of the ATC facilities serving key airports developed an hourly airport acceptance rate (AAR) and an hourly airport departure rate (ADR), for the reduced staffing that may be required by the furlough action. These AAR and departure rates equate to the airports' reduced hourly capacities. The figures developed are based on best-case VFR conditions. Situations involving adverse weather conditions or other capacity limiting phenomena will be controlled by the Air Traffic Control System Command Center (ATCSCC) through normal traffic management initiatives.

The facilities were given the following specific assumptions to use in the development of hourly arrival and departure rates.

- Furloughs would begin October 1.
- Each person receives 2.5 days furlough per pay period—Equates to 25 percent reduction in staffing
- No overtime
- No annual leave or administrative leave in lieu of furlough
- No compensatory time
- No work beyond normal hours permitted/suffered
- Normal sick leave
- No on-the job training
- Use of staff to supplement operation
- Reduced operational capabilities of stand alone TRACONs such as New York and Oakland Bay will influence airport AAR and ADR.

A comparison was made between the arrival and departure rates established by the air traffic facilities established at the key airports and the Official Airline Guide (OAG). The comparison was made to determine the percentage of traffic reduction required to meet the capacity level.

To implement this RCOP, each user operating at key airports will be required to reduce its scheduled arrivals and/or departures at each key airport by a percentage of its total flights in each hour. By multiplying the percentage reduction by the number of scheduled arrivals or departures at that airport during that hour, the user determines the number of flights to be cancelled to meet the requirements of the RCOP. Cancellations are to be sent to the ATCSCC Automation Staff so that the ATC data base can be updated. This method of reducing the number of flights impacts scheduled operators in proportion to the size of their operations at each airport, through a proportional reduction of each scheduled operator's normal schedule of flights. The FAA believes that this is the most equitable means of reducing demand on the ATC system.

Operational priority will be provided to flights identified by the Department of Defense (DOD) as necessary for Desert Shield and support activities. Other DOD activities will be handled on a case-by-case basis in accordance with reasonable priority identified by DOD. Flight service stations and the National Flight Data Center will handle safety-related traffic and duties and perform other services if workload and resources permit. Service within TCAs and airport radar service areas may be terminated during the period of reduced staffing. General aviation activity will be reduced as necessary through the General Aviation Reservation (GAR) Program. International flights will not be included in the initial phase of this plan. (Domestic legs of international flights will be included.)

The terms of the National Air Traffic Reduced Complement Operations Plan may be summarized as follows:

1. This plan is applied to all operations of air carriers, commuter operators, and general aviation operators at the key airports identified. The key airports initially designated under this plan are identified in Appendix 1. The Director may add or delete key airports as necessary by NOTAM.

2. The number of hourly arrivals and departures used as the basis for reductions at the key airports is determined by averaging the general aviation historical data and the OAG data for October 1, 1990 for that airport.

3. No operator may change the designated airport of intended operation for any flight contained in the October 1, 1990, OAG.

4. Unscheduled flights such as charters, training, extra sections, ferry flights, etc., to airports designated by the RCOP will be approved on an individual basis by the ATCSCC if system capacity permits.

5. Users will determine their level of operations by taking the reduction percentage, multiplied by the number of normally scheduled arrivals or departures and subtracting the result from the number normally operated. The remainder should be rounded to the nearest whole number. Point 5 should always be rounded up. When only one scheduled arrival or departure is planned for a single hour, that operation does not need to be cancelled.

The Director may make adjustments to the plan, as necessary, 2–4 weeks after implementation. The capacities of the key airports could be adjusted up or down as necessary.

Need for Immediate Action

This action is similar to the action taken in 1981 that responded to a predicted strike by air traffic controllers. However, unlike the current budget situation, the FAA had sufficient time to respond to that strike and, therefore, was able to develop and publish for public comment a draft National Air Traffic Control Contingency Plan (NATCC) (45 FR 75096; November 13, 1980). Numerous comments were received. The NATCC was revised and updated based on those comments. The contingency plan was subsequently adopted (46 FR 15402; March 5, 1981).

It is now necessary to implement similar actions and procedures for the National Air Traffic Reduced Complement Operations Plan. While there is not sufficient time to precede this emergency rule with notice and a

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public comment period, aviation industry representatives, commercial operators, and news media were invited to a meeting at FAA Headquarters in Washington, DC., on September 19, 1990, to be briefed on the plan and to provide comments to the FAA staff. A follow-up meeting of affected carriers was held on September 24, 1990, in response to a request by the Air Transport Association. The commercial entities and segments of the aviation industry impacted by this action, and the actions taken by the FAA in 1981 and being taken now are, for the most part, very similar. In adopting this plan, the FAA has considered both the comments received on the 1981 proposed plan and experience with implementation of that plan, as well as comments received at the meetings of September 19 and 24. The rule and plan adopted incorporate some of those comments. The FAA has determined that an emergency exists which is caused by the imminent action of the proposed furlough. Further, the situation dictates the immediate adoption of this regulation in the interest of safety in air commerce. Therefore, I find that further notice and public procedure are impracticable and contrary to the public interest; I further find for the same reasons that good cause exists for making this regulation effective in less than 30 days after its publication in the **Federal Register**.

Regulatory Evaluation

The FAA has determined that this rule is an emergency regulation under the provisions of Section 8 of Executive Order 12291 and paragraphs 9.k and 10.g of the Department of Transportation's Regulatory Policies and Procedures. It is impracticable for the FAA to prepare a regulatory evaluation of the rule adopted, because the safety and efficiency of the national air transportation system require immediate implementation of the rule.

Adoption of the Rule

Accordingly, the Federal Aviation Administration is amending part 91 and part 93 of the Federal Aviation Regulations, 14 CFR parts 91 and 93, by the adoption of Special Federal Aviation Regulation No. 60, as follows:

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2123; Articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

3. Special Federal Aviation Regulation No. 60 is added to parts 91 and 93 to read as follows:

Special Federal Aviation Regulation No. 60—Air Traffic Control System Emergency Operation

1. Each person shall, before conducting any operation under the Federal Aviation Regulations (14 CFR chapter I), be familiar with all available information concerning that operation, including Notices to Airmen issued under § 91.139 and, when activated, the provisions of the National Air Traffic Reduced Complement Operations Plan available for inspection at operating air traffic facilities and Regional air traffic division offices, and the General Aviation Reservation Program. No operator may change the designated airport of intended operation for any flight contained in the October 1, 1990, OAG.

2. Notwithstanding any provision of the Federal Aviation Regulations to the contrary, no person may operate an aircraft in the Air Traffic Control System:

a. Contrary to any restriction, prohibition, procedure or other action taken by the Director of the Office of Air Traffic Systems Management (Director) pursuant to paragraph 3 of this regulation and announced in a Notice to Airmen pursuant to § 91.139 of the Federal Aviation Regulations.

b. When the National Air Traffic Reduced Complement Operations Plan is activated pursuant to paragraph 4 of this regulation, except in accordance with the pertinent provisions of the National Air Traffic Reduced Complement Operations Plan.

3. Prior to or in connection with the implementation of the RCOP, and as conditions warrant, the Director is authorized to:

a. Restrict, prohibit, or permit VFR and/or IFR operations at any airport, terminal control area, airport radar service area, or other terminal and en route airspace.

b. Give priority at any airport to flights that are of military necessity, or are medical emergency flights, Presidential flights, and flights transporting critical Government employees.

c. Implement, at any airport, traffic management procedures, that may include reduction of flight operations. Reduction of flight operations will be accomplished, to the extent practical, on a pro rata basis among and between air carrier, commercial operator, and general aviation operations. Flights cancelled under this SFAR at a high density traffic airport will be considered to have been operated for purposes of part 93 of the Federal Aviation Regulations.

4. The Director may activate the National Air Traffic Reduced Complement Operations Plan at any time he finds that it is necessary for the safety and efficiency of the National Airspace System. Upon activation of the RCOP and notwithstanding any provision of the FAR to the contrary, the Director is authorized to suspend or modify any airspace designation.

5. Notice of restrictions, prohibitions, procedures and other actions taken by the Director under this regulation with respect to the operation of the Air Traffic Control system will be announced in Notices to Airmen issued pursuant to § 91.139 of the Federal Aviation Regulations.

6. The Director may delegate his authority under this regulation to the extent he considers necessary for the safe and efficient operation of the National Air Traffic Control System.

Issued in Washington, DC, on September 28, 1990.

James B. Busey,

Administrator.

[Note: This appendix will not appear in the Code of Federal Regulations.]

Appendix 1—Key Airports

ATL	Atlanta Hartsfield International.
BNA	Nashville International.
BOS	Boston Logan International.
CLT	Charlotte-Douglas International.
CVG	Greater Cincinnati International.
DAL	Dallas-Love.
DAY	Cox-Dayton International.
DCA	Washington National.
DEN	Stapleton International.
DFW	Dallas-Fort Worth International.
DTW	Detroit Metropolitan Wayne County.
EWR	Newark International.
FLL	Ft. Lauderdale-Hollywood International.
HOU	William B. Hobby.
IAD	Washington-Dulles International.
IAH	Houston Intercontinental.
IND	Indianapolis International.
JFK	John F. Kennedy International.
LAX	Los Angeles International.
LGA	La Guardia.
MCO	Orlando International.
MDW	Chicago Midway.
MEM	Memphis International.
MIA	Miami International.
ORD	Chicago-O'Hare International.
PBI	Palm Beach International.
PHL	Philadelphia International.
PHX	Phoenix Sky Harbor International.
PIT	Greater Pittsburgh International.
RDU	Raleigh-Durham International.
SAN	San Diego-Lindbergh International.
SEA	Seattle-Tacoma International.
SFO	San Francisco International.
SJC	San Jose International.
SLC	Salt Lake City International.
STL	Lambert-St. Louis International.

[FR Doc. 90-23444 Filed 10-3-90; 8:45 am]
BILLING CODE 4910-13-M

federal register

Thursday
October 4, 1990

PART III

Department of Transportation

49 CFR Parts 27 and 37

Transportation for Individuals With Disabilities; Final Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION

49 CFR Part 27

[Docket 47192; Notice 90-26]

RIN 2105-AB53

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comments.

SUMMARY: The Department is revising its regulation to implement section 504 of the Rehabilitation Act of 1973, as amended, and section 16 of the Urban Mass Transportation Act of 1964, as amended, to be consistent with a court decision invalidating a portion of that rule. This rule is also responsive to comments on a March 1990 NPRM on this subject.

DATES: This rule is effective November 19, 1990. Comments should be received by November 5, 1990. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 47192, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD). For UMTA-related questions, Susan Schruth, Office of Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, DC 20590, Room 9316, 202-366-4011. Taped copies of the NPRM are available on request.

SUPPLEMENTARY INFORMATION:

Background

Since 1977, the Department has issued a series of regulations to implement section 504 of the Rehabilitation Act of 1973, section 16 of the Urban Mass Transportation Act, and related statutes with respect to mass transit services for persons with disabilities. A 1977 Urban Mass Transportation Administration (UMTA) regulation required Federally-funded transit authorities to make "special efforts" to provide transportation services to such persons. In 1979, the Department replaced the 1977 rule with a regulation to require the purchase of accessible buses and the retrofit of rail mass transit systems for accessibility. In a suit brought by the transit industry, the courts found that the 1979 rule exceeded the Department's authority under section 504 by imposing undue financial burdens on transit authorities.

In 1981, in response to this court decision, the Department published an interim final rule that, in effect, revived the 1977 "special efforts" approach. Responding to concerns that service provided by transit authorities under this rule was inadequate, Congress added a new section 16(d) to the UMTA Act in 1983. The new section did not require equal access to transit for disabled persons or even comparable service. It did require the Department to issue a new rule containing minimum service criteria for service to disabled passengers.

The Department issued a rule to implement this statute in 1986. The rule contained six service criteria. In addition, to avoid the "undue burdens" problem that had resulted in the demise of the 1979 rule, the rule included a "cost cap". The cost cap provided that a transit authority did not have to spend more than three percent of its operating budget to comply with the rule, even if, as a result, the transit authority did not fully meet all the service criteria.

Last year, the U.S. Court of Appeals for the Third Circuit determined that, while it was appropriate for the Department to take costs into account in formulating the rule, the three percent cost cap mechanism was arbitrary. The court directed the Department to revise the rule consistent with its opinion. The rule remains in effect pending the promulgation of a new final rule. Under a court-specified schedule, the Department agreed that a final rule would be issued by September 21, 1990.

Meanwhile, consistent with the Department's commitment to implementing the policies embodied in the ADA, then under consideration by Congress, the Department proposed to replace the existing mass transit regulation with one that adopted these policies (55 FR 11120; March 26, 1990). This NPRM covered requirements for the acquisition of accessible vehicles, provision of supplemental paratransit service, alternative mechanisms for dealing with undue financial burdens of supplemental paratransit, and administrative provisions. The NPRM specifically noted that one alternative that the Department retained was to modify the existing section 504 rule simply by deleting the "cost cap" provision, which would fully meet the Department's legal obligations under the court decision.

On July 26, 1990, President Bush signed the ADA. As discussed in the preamble of the final rule establishing 49 CFR part 37, also published in today's **Federal Register**, the Department is issuing a final rule at this time to carry out the accessible vehicle acquisition requirements of the ADA and related requirements. That final rule also responds to comments on the March 1990 NPRM on these accessibility issues. Other issues on which comment was sought in the March 1990 NPRM (i.e., supplemental paratransit, undue financial burden, public participation) will be incorporated in a new NPRM, to be published subsequently, to implement the remainder of the ADA's transportation provisions.

The Final Rule

In view of these developments, the Department has decided to meet its obligation to the courts to modify its existing section 504 rule by issuing this final rule, amending 49 CFR part 27. This amendment has three major provisions.

A. The Cost Cap

This rule deletes the three percent "cost cap," the provision of the rule which the courts invalidated. The effect of this amendment will be to require any UMTA recipient electing to meet its part 27 obligations through a special service system to meet all service criteria, regardless of the cost of doing so.

Relatively few comments to the March 1990 NPRM addressed the issue of whether the option of removing the cost cap was a good one. Four transit authorities supported the idea, and one disability group opposed it (it appears that the latter commenter's objections are largely mooted by the enactment of the ADA, the promulgation of 49 CFR part 37, and the maintenance of effort provisions discussed below).

B. Maintenance of Effort

Under part 27, a recipient has the discretion, after following public participation procedures and obtaining UMTA approval of a significant program amendment, of switching its mode of compliance. For example, a recipient complying with the rule through a special service system can decide, instead, to comply through an accessible bus system. Faced with an ADA requirement to purchase accessible buses and an amended part 27 that removes the cost cap, a recipient may have considerable incentive to make just such a change.

A switch of this sort, which is permitted under part 27, could have one notable negative effect. A recipient which complies with part 27, as it stands now, through an accessible bus system need not maintain any special service system. Therefore, a recipient which made this change could abandon or severely cut back its special service system, only to have to rebuild it when the supplemental paratransit requirements of the ADA become effective in early 1992. Such a course of action would be both inefficient in terms of use of resources and very disruptive of existing service patterns in the meantime. For recipients with little current accessible bus service, it would also mean a significant service gap to disabled passengers.

To prevent this negative effect, this rule adds a "maintenance of effort" provision. This provision requires any recipient which now complies with part 27 through a special service system, and wishes to switch to an accessible bus system as its mode of compliance, to maintain at least its existing level of special service pending the effective date of ADA supplemental paratransit requirements. The same requirement would apply to the special service component of a mixed system.

C. Compliance With ADA Requirements and UMTA Policy

The Department believes that, for transit providers receiving UMTA funds, compliance with requirements under ADA is essential to compliance with nondiscrimination obligations under section 504 as well. Consequently, a provision is being added to part 27 to make compliance with the Department's ADA rule a condition of receiving UMTA financial assistance. For example, an UMTA-assisted transit authority that fails, after August 25, 1990, to issue solicitations calling for new accessible buses, would be in violation of part 27 as well as the Department's ADA rule, and would be subject to funding sanctions under part 27.

This provision also tells UMTA recipients to notify UMTA if they intend to purchase inaccessible vehicles on the basis of solicitations issued before the August 26, 1990, effective date for purchase of accessible vehicles under the ADA (e.g., a solicitation issued some years ago and under which extensions or new orders of buses may be made today). This information is required to facilitate UMTA's policy concerning the participation of UMTA financial assistance in the purchase of inaccessible vehicles. This policy, consistent with the Administration's support of the ADA bills, antedated the enactment of the ADA. UMTA has taken the position, under its discretionary grant authority, that it will no longer allow UMTA funds to participate in the acquisition of inaccessible buses and other vehicles, subject to review on a case-by-case basis.

Regulatory Process Matters

This rule is not a major rule under Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures. There are not sufficient Federalism impacts to warrant a Federalism assessment. The Department certifies that there are not significant economic effects on a substantial number of small entities.

The maintenance of effort provision and the provision linking compliance with the ADA to compliance with part 27 were not part of the March 1990 NPRM. The Department is issuing these provisions as final rules at this time. Without the maintenance of effort provision, the removal of the cost cap could result in the negative consequence outlined above. The removal of the cost cap is necessary at this time in order to comply with the mandate of the court. Without the link between part 27 and ADA compliance, UMTA would not have an effective sanction mechanism for any recipients which failed to comply with ADA requirement. These reasons satisfy the Administrative Procedure Act's provision that a rule may be issued without prior opportunity for comment if such an opportunity would be unnecessary, impracticable, or contrary to the public interest. However, the Department is requesting comment on these two provisions for 30 days. If comments provide sufficient reason for doing so, the Department will modify the provisions prior to the effective date of this amendment.

List of Subject in 49 CFR Part 27

Mass transportation, Handicapped.

Issued this 28th day of September 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR part 27 is amended as follows:

PART 27—[AMENDED]

1. The authority citation for 49 CFR part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a); sec. 165(b) of the Federal-aid Highway Act of 1973 (49 U.S.C. 142 note). Subpart E is also issued under sec. 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

2. The Table of Contents for subparts A and E of 49 CFR part 27 is revised to read as follows:

Subpart A—General

Sec.
27.1 Purpose.
27.3 Applicability.
27.5 Definitions.
27.7 Discrimination prohibited.
27.9 Assurance required.
27.11 Remedial action, voluntary action, and compliance planning.
27.13 Designation of responsible employee and adoption of grievance procedures.
27.15 Notice.
27.17 Effect of State or local law.
27.19 Compliance with Americans with Disabilities Act requirements and UMTA policy.

Subpart E—Mass Transportation Services for Individuals With Disabilities

Sec.
27.81 Program requirement.
27.83 Public participation and coordination.
27.85 Submission and review of program.
27.87 Provision of service.
27.89 Monitoring.
27.91 Requirements for small recipients.
27.93 Multi-recipient areas.
27.95 Full performance level.
27.97 Maintenance of effort.
27.99 [Reserved]
27.101 Technical exemptions.
27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs.

Appendix to Subpart E

3. By adding a new § 27.19 thereof, to read as follows:

§ 27.19 Compliance with Americans with Disabilities Act requirements and UMTA policy.

(a) Recipients subject to this Part shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (Pub. L. 101-336) and the Department's regulations implementing the ADA (49 CFR part 37). Such compliance is a condition of receiving Federal financial assistance from the Department of Transportation. Any recipient not in compliance with this requirement shall be subject to enforcement action under subpart F of this part.

(b) Consistent with UMTA policy, any recipient of Federal financial assistance from the Urban Mass Transportation Administration whose solicitation was made before August 26, 1990, and is for one or more inaccessible vehicles, shall provide written notice to the Secretary (e.g., in the case of a solicitation made in

criterion is subject to 'tradeoff' * * * " and "The service area criterion is subject to 'tradeoff' * * *" under the heading "Section 27.95 Full performance level."; the portion of the appendix entitled "Section 27.97 Limit on required expenditures;" and the portion of the appendix entitled " Section 27.99

Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD). For UMTA-related questions, Susan Schruth, Office of Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW.,

Last year, the U.S. Court of Appeals for the Third Circuit determined that, while it was appropriate for the Department to take costs into account in formulating the rule, the three percent cost cap mechanism was arbitrary. The court directed the Department to revise the rule consistent with its opinion. However, the entire rule, including the requirements concerning transportation services provided by public entities who do not receive Federal funds and by private entities, as well as requirements for light, rapid, commuter and intercity rail systems. The March 1990 NPRM did not propose requirements in these areas.

The ADA requires that public and

with the intent of publishing a final rule in the time frame called for by the ADA.

Nevertheless, the Department retains its obligation to the courts to modify its existing section 504 rule. In addition, it is necessary to provide guidance to UMTA grantees concerning their responsibilities during the period before

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(b) Consistent with UMTA policy, any recipient of Federal financial assistance from the Urban Mass Transportation Administration whose solicitation was made before August 26, 1990, and is for one or more inaccessible vehicles, shall provide written notice to the Secretary (e.g., in the case of a solicitation made in the past under which the recipient can order additional new buses after the effective date of this section). The Secretary shall review each case individually, and determine whether the Department will continue to participate in the Federal grant, consistent with the provisions in the grant agreement between the Department and the recipient.

§ 27.85 [Amended]

4. By removing paragraph (a)(3) from § 27.85.

§ 27.95 [Amended]

5. By removing the words "subject to the limit on required expenditures provided for in § 27.97 of this subpart" from the second sentence of paragraph (a) of § 27.95, and ending that sentence with a period after the word "section."

6. By revising § 27.97 to read as follows:

§ 27.97 Maintenance of effort.

(a) Any recipient which, before the effective date of this section, has complied with this Subpart through a special service system or a mixed system, may change its mode of compliance to an accessible bus system. Such a change is subject to the public participation and plan approval requirements of §§ 27.83(e) and 27.85 of this subpart.

(b) Any recipient which changes its mode of compliance with this subpart as provided in this section shall maintain at least the level of special service it is providing on the date of issuance of this section, pending the effective date of final rules implementing the requirements of section 223 of the Americans with Disabilities Act (Pub. L. 101–336), with respect to paratransit as a complement to fixed route service.

§ 27.99 [Removed and Reserved]

7. By removing and reserving § 27.99 thereof.

Appendix to Subpart E—[Amended]

8. By removing from the Appendix to Subpart E the paragraph beginning "Subparagraph (a)(3) also requires * * *" under the heading "Section 27.85 Submission and review of program;" the paragraphs beginning "Section 27.97 provides that recipients * * *," "If a recipient cannot provide service that fully meets the criteria * * *," "This criterion is subject to 'tradeoff' * * *" and "The service area criterion is subject to 'tradeoff' * * *" under the heading "Section 27.95 Full performance level."; the portion of the appendix entitled "Section 27.97 Limit on required expenditures;" and the portion of the appendix entitled " Section 27.99 Eligible expenses."

[FR Doc. 90-23438 Filed 10-3-90; 8:45 am]

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49 CFR PART 37

[Docket Number 46861; Enactment]

RIN 2105-AB53

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comments.

SUMMARY: The Department is taking regulatory action to implement those portions of the Americans with Disabilities Act of 1990 that require private and public transportation providers to acquire accessible vehicles beginning August 26, 1990. This rule also incorporates the Department's response to comments on the accessible motor vehicle provisions of a March 1990 notice of proposed rulemaking to amend the Department's rule implementing section 504 of the Rehabilitation Act of 1973.

DATES: This rule is effective October 4, 1990. Comments should be received by January 2, 1991. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 46861, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at his address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202–366–9306 (voice); 202–755–7687 (TDD). For UMTA-related questions, Susan Schruth, Office of Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington DC 20590, Room 9316. 202–366–4011. Taped copies of the final rule are available on request.

SUPPLEMENTARY INFORMATION:

Background

Since 1977, the Department has issued a series of regulations to implement section 504 of the Rehabilitation Act of 1973, section 16 of the Urban Mass Transportation Act, and related statutes with respect to mass transit services for persons with disabilities. A 1977 Urban Mass Transportation Administration (UMTA) regulation required Federally-funded transit authorities to make "special efforts" to provide transportation services to such persons. In 1979, the Department replaced the 1977 rule with a regulation to require the purchase of accessible buses and the retrofit of rail mass transit systems for accessibility. In a suit brought by the transit industry, the courts found that the 1979 rule exceeded the Department's authority under section 504 by imposing undue financial burdens on transit authorities.

In 1981, in response to this court decision, the Department published an interim final rule that, in effect, revived the 1977 "special efforts" approach. Responding to concerns that service provided by transit authorities under this rule was inadequate, Congress added a new section 16(d) to the UMTA Act in 1983. While the new section required the Department to issue a rule containing minimum service criteria for service to disabled persons, it did not require equal access to transit for disabled persons or comparable service. It did require the Department to issue a new rule containing minimum service criteria for service to disabled passengers.

The Department issued a rule to implement this statute in 1986. The rule contained six service criteria, which were used to measure adequate service to disabled passengers. In addition, to avoid the "undue burdens" problem that had resulted in the demise of the 1979 rule, the rule included a "cost cap". The cost cap provided that a transit authority did not have to spend more than three percent of its operating budget to comply with the rule, even if, as a result, the transit authority did not fully meet all the service criteria.

Last year, the U.S. Court of Appeals for the Third Circuit determined that, while it was appropriate for the Department to take costs into account in formulating the rule, the three percent cost cap mechanism was arbitrary. The court directed the Department to revise the rule consistent with its opinion. However, the entire rule, including the cost cap provision, has remained in effect pending the promulgation of a new final rule. Under a court-specified schedule, the Department agreed to issue a final rule by September 21, 1990.

Meanwhile, in connection with Congressional consideration of a bill to establish the American with Disabilities Act (ADA), the Department articulated its support of policies that would substantially improve access to mass transit services for disabled persons. These policies included requiring all new buses to be accessible, requiring supplemental paratransit service for persons who could not use the fixed route transit service that was comparable to the service for the general public, and providing a means to allow transit authorities to avoid undue financial burdens resulting from supplemental paratransit service. Given its obligation to the court, and the Department's commitment to implementing the policies embodied in the ADA, the Department published a notice of proposed rulemaking (NPRM) that proposed to replace the existing mass transit regulation with one that adopts these policies (55 FR 11120; March 26, 1990). This NPRM covered requirements for the acquisition of accessible vehicles, provision of supplemental paratransit service, alternative mechanisms for dealing with undue financial burdens of supplemental paratransit, and administrative provisions. (The NPRM did not include provisions relating to rail systems or vehicles.) The Department received 168 comments on the proposed rule, from transit providers, individuals with disabilities and groups representing them, state and local government agencies, and others.

On July 26, 1990, President Bush signed the ADA. Though the ADA, as enacted, differs in a number of details from the bills to which the Department had referred in preparing the March 1990 NPRM, the basic policy outlines of the Act are very similar to the Department's NPRM. All new vehicles must be accessible, there must be paratransit for persons who cannot use accessible mainline service, and relief may be provided where the paratransit requirement would result in undue financial burdens. There are also requirements concerning transportation services provided by public entities who do not receive Federal funds and by private entities, as well as requirements for light, rapid, commuter and intercity rail systems. The March 1990 NPRM did not propose requirements in these areas.

The ADA requires that public and private entities begin acquiring accessible vehicles after August 25, 1990. In addition, the statute requires the Department to issue final implementing regulations for all aspects of the Act for which it is responsible by July 26, 1991.

In view of these developments, the Department has decided to proceed at this time with a final rule to implement the portions of the ADA concerning the acquisition of accessible vehicles. Since covered entities must begin acquiring such vehicles after August 25, 1990, it will be useful to them and to the public to have associated regulatory requirements in place by that time. This rule also responds to comments on those portions of the March 1990 NPRM concerning the acquisition and use of accessible vehicles, since these comments are directly relevant to the provisions of the ADA which this rule implements. Although the NPRM was issued under the authority of section 504 rather than that of the ADA (which had not been enacted at the time), the NPRM's provisions paralleled the policy decisions embodied in the ADA bills. The Department believes that the comments on the March 1990 NPRM provisions are an adequate basis for making decisions on the issues involved in implementing the parallel provisions of the ADA.

The Department is not issuing a final rule at this time with respect to the supplemental paratransit and undue financial burden issues on which comment was sought in the March 1990 NPRM. In the ADA, Congress determined that a time frame of one year from the date of enactment was appropriate for the resolution of these issues, as well as on other issues related to the operation of transportation systems and the accessibility of transportation facilities. The comments to the March 1990 NPRM, in addition, indicated that, in the view of many commenters, additional work was needed to refine the supplemental paratransit proposals and to develop a workable undue burden mechanism. The ADA requires a different approach with respect to some aspects of supplemental paratransit. For these reasons, the Department intends to develop a supplemental notice of proposed rulemaking (SNPRM) on these issues, with the intent of publishing a final rule in the time frame called for by the ADA.

Nevertheless, the Department retains its obligation to the courts to modify its existing section 504 rule. In addition, it is necessary to provide guidance to UMTA grantees concerning their responsibilities during the period before the Department's final ADA regulations take effect. For these reasons, the Department is issuing a final rule amending 49 CFR part 27. This amendment will do two things. First, it will delete the three percent "cost cap," provision of the rule. Second, it will require that any UMTA grantee which changes the mode of accessible service delivery from special service to accessible bus must continue to provide special service at least at the level it now provides. This "maintenance of effort" requirement is intended to prevent a transit authority from eliminating or severely curtailing paratransit service, only to have to build it up again when the Department's rule implementing the ADA's supplemental paratransit requirement goes into effect. These amendments are discussed in greater detail in the preamble to the part 27 amendment.

In the March of 1990 NPRM, the Department noted its intention, "[b]efore publishing a final rule * * * to complete, and make available for public comment, a detailed analysis of the various options set out in this proposal." The Department commissioned a study by a consultant for this purpose. The results of that study with respect to the purchase of accessible buses are reported in this preamble. The results of the study with respect to supplemental paratransit need further refinement in light of the enactment of the ADA, which eliminated or altered some of the alternatives considered in the study. These results will be reported in conjunction with the NPRM dealing with supplemental paratransit and other ADA implementation matters.

In order to avoid confusion between the regulation implementing the ADA and the implementing regulation for section 504, the Department has decided to create a new 49 CFR part 37. We anticipate that, when part 37 is completed in 1991 with the addition of provisions concerning supplemental paratransit, undue burdens, rail service and other ADA requirements, the Department's existing section 504 rule—49 CFR part 27—will be revised to require compliance by DOT grantees with part 37's requirements.

Section-by-Section Analysis

Subpart A—General

This subpart deals with general administrative matters. When the final ADA rule is issued in 1991, this subpart will probably include additional sections on such subjects as the submission of plans and public participation. Since the ADA rule is not yet issued, however, the Department is not including these sections in this rule.

Section 37.3 Purpose

This section states the purpose of the rule.

Section 37.5 Nondiscrimination

This section implements the nondiscrimination requirements of the ADA. Paragraph (a) prohibits discrimination in the provision of transportation services. Paragraph (b) prohibits discrimination in the purchase or lease of vehicles. Paragraph (c) prohibits discrimination in the modification of existing facilities and vehicles. Paragraph (d) prohibits retaliation against individuals who exercise their rights under the rule.

Section 37.7 Standards for accessible vehicles

This section requires that vehicles purchased or leased by public entities be accessible. It also requires that vehicles purchased or leased by private entities be accessible, unless the private entity is operating a demand responsive system and can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities.

Section 37.9 Purchase or lease by public entities operating fixed route systems; general

This section requires that public entities operating fixed route systems purchase or lease accessible vehicles. It also requires that public entities operating fixed route systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles.

Section 37.11 Purchase or lease by public entities operating demand responsive systems

This section requires that public entities operating demand responsive systems purchase or lease accessible vehicles. It also requires that public entities operating demand responsive systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles.

Section 37.13 Purchase or lease by private entities

This section requires that private entities purchase or lease accessible vehicles. It also requires that private entities operating demand responsive systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles.

Section 37.15 Remanufacture of vehicles

This section requires that vehicles remanufactured by public entities be accessible. It also requires that vehicles remanufactured by private entities be accessible, unless the private entity is operating a demand responsive system and can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities.

Section 37.17 Interim requirements for used vehicles

This section requires that public entities operating fixed route systems make good faith efforts to purchase accessible used vehicles. It also requires that public entities operating demand responsive systems make good faith efforts to purchase accessible used vehicles, unless the public entity can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities.

Section 37.19 Key stations in light and rapid rail systems

This section requires that key stations in light and rapid rail systems be accessible. It also requires that public entities operating light and rapid rail systems make good faith efforts to purchase accessible used vehicles.

Section 37.21 Light and rapid rail systems

This section requires that public entities operating light and rapid rail systems make good faith efforts to purchase accessible used vehicles.

Section 37.23 Intercity rail systems

This section requires that public entities operating intercity rail systems make good faith efforts to purchase accessible used vehicles.

Section 37.25 Effective date

This section establishes the effective date of the rule.

Subpart B—Definitions

This subpart contains definitions for the rule.

Section 37.31 Definitions

This section contains definitions for the rule. Many of the definitions are taken from the ADA. Others are taken from the Department's existing section 504 rule. Some are new definitions.

The definition of "accessible" is based on the ADA definition. It is intended to be consistent with the Department's existing section 504 rule. The definition of "adequate service" is based on the Department's existing section 504 rule. The definition of "commuter rail system" is based on the ADA definition. The definition of "demand responsive system" is based on the ADA definition. The definition of "fixed route system" is based on the ADA definition. The definition of "intercity rail system" is based on the ADA definition. The definition of "light rail system" is based on the ADA definition. The definition of "rapid rail system" is based on the ADA definition. The definition of "remanufacture" is based on the ADA definition. The definition of "secretary" is based on the ADA definition. The definition of "solicitation" is based on the ADA definition. The definition of "vehicle" is based on the ADA definition.

Subpart C—Purchase or Lease by Public Entities

This subpart deals with requirements for public entities purchasing or leasing vehicles.

Section 37.41 Applicability

This section states the applicability of the subpart.

Section 37.43 Standards for accessible vehicles

This section requires that vehicles purchased or leased by public entities be accessible.

Section 37.45 Purchase or lease by public entities operating fixed route systems; general

This section requires that public entities operating fixed route systems purchase or lease accessible vehicles. It also requires that public entities operating fixed route systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles.

Section 37.47 Purchase or lease by public entities operating demand responsive systems

This section requires that public entities operating demand responsive systems purchase or lease accessible vehicles. It also requires that public entities operating demand responsive systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles.

Section 37.49 Used vehicles

This section requires that public entities operating fixed route systems make good faith efforts to purchase accessible used vehicles. It also requires that public entities operating demand responsive systems make good faith efforts to purchase accessible used vehicles, unless the public entity can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities.

Section 37.51 Key stations in light and rapid rail systems

This section requires that key stations in light and rapid rail systems be accessible. It also requires that public entities operating light and rapid rail systems make good faith efforts to purchase accessible used vehicles.

Section 37.53 Light and rapid rail systems

This section requires that public entities operating light and rapid rail systems make good faith efforts to purchase accessible used vehicles.

Section 37.55 Intercity rail systems

This section requires that public entities operating intercity rail systems make good faith efforts to purchase accessible used vehicles.

Section 37.57 Remanufacture of vehicles

This section requires that vehicles remanufactured by public entities be accessible.

Section 37.59 Effective date

This section establishes the effective date of the rule.

Subpart D—Purchase or Lease by Private Entities

This subpart deals with requirements for private entities purchasing or leasing vehicles.

Section 37.71 Applicability

This section states the applicability of the subpart.

Section 37.73 Standards for accessible vehicles

This section requires that vehicles purchased or leased by private entities be accessible, unless the private entity is operating a demand responsive system and can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities.

Section 37.75 Purchase or lease by private entities

This section requires that private entities purchase or lease accessible vehicles. It also requires that private entities operating demand responsive systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles.

Section 37.77 Remanufacture of vehicles

This section requires that vehicles remanufactured by private entities be accessible, unless the private entity is operating a demand responsive system and can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities.

Section 37.79 Effective date

This section establishes the effective date of the rule.

Subpart E—Transportation Facilities

This subpart deals with requirements for transportation facilities.

Section 37.91 Applicability

This section states the applicability of the subpart.

Section 37.93 Standards for accessible transportation facilities

This section requires that transportation facilities be accessible.

Section 37.95 Effective date

This section establishes the effective date of the rule.

Subpart F—Provision of Service

This subpart deals with requirements for the provision of service by public entities.

Section 37.101 Applicability

This section states the applicability of the subpart.

Section 37.103 Service to disabled persons

This section requires that public entities provide adequate service to disabled persons.

Section 37.105 Service to persons who cannot use accessible vehicles

This section requires that public entities provide service to persons who cannot use accessible vehicles.

Section 37.107 Service to persons who use wheelchairs

This section requires that public entities provide adequate service to persons who use wheelchairs.

Section 37.109 Service to persons who use lifts

This section requires that public entities provide adequate service to persons who use lifts.

Section 37.111 Service to persons who use ramps

This section requires that public entities provide adequate service to persons who use ramps.

Section 37.113 Service to persons who have difficulty using stairs

This section requires that public entities provide adequate service to persons who have difficulty using stairs.

Section 37.115 Service to persons who have difficulty using doorways

This section requires that public entities provide adequate service to persons who have difficulty using doorways.

Section 37.117 Service to persons who have difficulty communicating

This section requires that public entities provide adequate service to persons who have difficulty communicating.

Section 37.119 Service to persons who have difficulty reaching vehicle controls

This section requires that public entities provide adequate service to persons who have difficulty reaching vehicle controls.

Section 37.121 Service to persons who have difficulty carrying packages

This section requires that public entities provide adequate service to persons who have difficulty carrying packages.

Section 37.123 Service to persons who have difficulty with fare payment

This section requires that public entities provide adequate service to persons who have difficulty with fare payment.

Section 37.125 Service to persons who have difficulty with boarding and alighting

This section requires that public entities provide adequate service to persons who have difficulty with boarding and alighting.

Section 37.127 Service to persons who have difficulty with securement

This section requires that public entities provide adequate service to persons who have difficulty with securement.

Section 37.129 Service to persons who have difficulty with ride comfort

This section requires that public entities provide adequate service to persons who have difficulty with ride comfort.

Section 37.131 Service to persons who have difficulty with orientation

This section requires that public entities provide adequate service to persons who have difficulty with orientation.

Section 37.133 Service to persons who have difficulty with information

This section requires that public entities provide adequate service to persons who have difficulty with information.

Section 37.135 Service to persons who have difficulty with seating

This section requires that public entities provide adequate service to persons who have difficulty with seating.

Section 37.137 Service to persons who have difficulty with the environment

This section requires that public entities provide adequate service to persons who have difficulty with the environment.

Section 37.139 Service to persons who have difficulty with the service environment

This section requires that public entities provide adequate service to persons who have difficulty with the service environment.

Section 37.141 Effective date

This section establishes the effective date of the rule.

Subpart G—Miscellaneous

This subpart deals with miscellaneous requirements.

Section 37.151 Applicability

This section states the applicability of the subpart.

Section 37.153 Vehicle lifts

This section requires that vehicle lifts be maintained in operative condition.

Section 37.155 Effective date

This section establishes the effective date of the rule.

Subpart H—Enforcement

This subpart deals with enforcement of the rule.

Section 37.161 Applicability

This section states the applicability of the subpart.

Section 37.163 Complaints

This section requires that public entities receive and investigate complaints.

Section 37.165 Effective date

This section establishes the effective date of the rule.

Subpart I—Training

This subpart deals with training requirements.

Section 37.171 Applicability

This section states the applicability of the subpart.

Section 37.173 Training requirements

This section requires that public entities train their personnel to operate vehicles and equipment and to provide adequate service to disabled persons.

Section 37.175 Effective date

This section establishes the effective date of the rule.

Subpart J—Appendix

This subpart contains an appendix to the rule.

Section 37.191 Appendix

This section contains an appendix to the rule.

Comments to the March 1990 NPRM

The Department received 168 comments on the March 1990 NPRM. Commenters included transit providers, individuals with disabilities and groups representing them, state and local government agencies, and others. Many commenters addressed issues that are not addressed in this rule, such as undue burdens, supplemental paratransit, and rail service. The Department will address these issues in the SNPRM.

Many commenters addressed issues that are addressed in this rule. Many commenters supported the proposal to require that all new vehicles be accessible. Many commenters opposed the proposal to require that all new vehicles be accessible. Many commenters supported the proposal to require that public entities operating fixed route systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles. Many commenters opposed the proposal to require that public entities operating fixed route systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles. Many commenters supported the proposal to require that public entities operating demand responsive systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles. Many commenters opposed the proposal to require that public entities operating demand responsive systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles. Many commenters supported the proposal to require that private entities purchase or lease accessible vehicles. Many commenters opposed the proposal to require that private entities purchase or lease accessible vehicles. Many commenters supported the proposal to require that private entities operating demand responsive systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles. Many commenters opposed the proposal to require that private entities operating demand responsive systems certify that they have provided adequate service to disabled persons before purchasing inaccessible vehicles. Many commenters supported the proposal to require that vehicles remanufactured by public entities be accessible. Many commenters opposed the proposal to require that vehicles remanufactured by public entities be accessible. Many commenters supported the proposal to require that vehicles remanufactured by private entities be accessible, unless the private entity is operating a demand responsive system and can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities. Many commenters opposed the proposal to require that vehicles remanufactured by private entities be accessible, unless the private entity is operating a demand responsive system and can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities. Many commenters supported the proposal to require that public entities operating fixed route systems make good faith efforts to purchase accessible used vehicles. Many commenters opposed the proposal to require that public entities operating fixed route systems make good faith efforts to purchase accessible used vehicles. Many commenters supported the proposal to require that public entities operating demand responsive systems make good faith efforts to purchase accessible used vehicles, unless the public entity can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities. Many commenters opposed the proposal to require that public entities operating demand responsive systems make good faith efforts to purchase accessible used vehicles, unless the public entity can demonstrate that its system, when viewed in its entirety, provides a level of service to disabled persons equivalent to that provided to persons without disabilities. Many commenters supported the proposal to require that key stations in light and rapid rail systems be accessible. Many commenters opposed the proposal to require that key stations in light and rapid rail systems be accessible. Many commenters supported the proposal to require that public entities operating light and rapid rail systems make good faith efforts to purchase accessible used vehicles. Many commenters opposed the proposal to require that public entities operating light and rapid rail systems make good faith efforts to purchase accessible used vehicles. Many commenters supported the proposal to require that public entities operating intercity rail systems make good faith efforts to purchase accessible used vehicles. Many commenters opposed the proposal to require that public entities operating intercity rail systems make good faith efforts to purchase accessible used vehicles.

functions under this regulation. The text of the rule identifies the UMTA Administrator (who may also designate other UMTA officials to perform various functions) where functions assigned to the Secretary by the ADA have been delegated to the Administrator. Of course, any function which has been delegated in this way may be performed

to that for other persons, not just "adequate" capacity.

The Department responds to these comments as follows. In its subsequent ADA NPRM, the Department will seek comment on training requirements. The Department cannot make additional funding available for any purpose through a rulemaking proceeding. The

an accessible vehicle be capable of accommodating all types of wheelchairs in common use.

Though many comments did not mention the fact, this proposal echoed a requirement of the existing 49 CFR part 27. Section 27.87 of the existing rule, "Provision of Service," provides that

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Section-by-Section Analysis

Subpart A—General

This subpart deals with general administrative matters. When the final ADA rule is issued in 1991, this subpart will probably include additional sections on such subjects as the submission of plans and public participation.

Section 37.1 Purpose

This section states simply that the rule is intended to implement the transportation and related provisions of the ADA.

37.3 Applicability

The key point of this section is that, unlike part 27 (which is based on section 504), this rule applies to covered entities whether or not they receive Federal financial assistance. The rule applies to both public and private entities that provide transportation service, whether or not they are primarily engaged in providing such services.

Paragraph (b) clarifies the status of private entities that contract with UMT Act recipients or other public entities to provide service. This paragraph emphasizes that, in contracting for service from private entities, public entities and their contractors cannot circumvent the intent of the ADA.

In the transit area, service is provided in a variety of ways. It is not only UMTA recipients and other public entities who own and operate their own vehicles. In many cases, public entities contract for services with private entities to provide transportation services. Since this is technically neither a purchase nor a lease, the Department is concerned that entities not be confused about the necessity for compliance with ADA accessible vehicle requirements in such cases.

The definition of "operates" in the ADA makes it clear that a private entity which contracts with a public entity stands in the shoes of the public entity for purposes of determining the application of ADA requirements. This definition includes "operation of such system by a person under a contractual or other arrangement or relationship with a public entity." For example, in the absence of paragraph (b), it is possible that a public entity, instead of purchasing or leasing an accessible vehicle, could contract with a private entity, which would provide service with inaccessible vehicles. To do so would clearly conflict with the principles of the ADA. Paragraph (b) spells out that the ADA's public entity requirements for vehicle acquisition apply, as well, to private entities having a contract with a public entity to provide public transportation services.

The Department seeks additional comment on this issue, since it is possible there could be situations in which a transit operator still could avoid, through contracting out, providing accessible vehicles at the same rate it would if it were purchasing its own vehicles for the service. One option the Department is considering is to modify the definition of purchase or lease in the regulation to include contracts for services. Another option would be for the Department to establish a provision requiring that a private entity contracting to provide service for a public entity maintain at least the same ratio of accessible vehicles currently in the public entity's fleet (this ration would naturally rise as the public entity acquired more accessible vehicles).

Section 37.5 Definitions

With a few exceptions, the definitions in this section are taken directly from those in the ADA. In some cases, the ADA's definitions are elaborated. For example, the definition of "commuter authority" spells out the content of the statutory reference the ADA makes to the Rail Passenger Service Act. It should be noted that the list of entities in this definition is not exhaustive. Some entities not listed (e.g., the commuter rail operator in the Chicago area) would also be covered.

Many details in the definition of "disability" are drawn from existing regulations, such as part 27 and the Air Carrier Access Act rule (14 CFR part 382). Intercity and commuter rail cars are given simple definitions not found in, but compatible with, related definitions (e.g., of intercity and commuter rail transportation) in the Act. The term "fixed route" includes rail as well as bus vehicles or vans (UMTA program usage in the past for this term did not include rail vehicles). In addition, this definition does not include service which involves an interaction between the user and the system, beyond waiting at a stop for a bus. If, in order to receive service, a potential user must, or may, call in advance to request service, the system would be considered demand responsive rather than fixed route, even though there may be fixed starting and ending points.

For example, some systems, especially in rural areas, may operate what are sometimes called "fixed route deviation" segments, in which a vehicle begins a run at point A and ends at point B. The stops it makes in between A and B are determined by advance phone requests from users, and may cover substantial area off the most direct route between A and B. This sort of system would not be regarded as fixed route for purposes of this Part.

The definition of "solicitation" has been provided by the Department in order to clarify what actions after August 25, 1990, must result in the purchase or lease of accessible vehicles. The definition refers to the closing date for the submission of bids or offers in a procurement. Under § 37.21(a), for example, this definition requires that any new vehicles which a public entity operating a fixed route system purchases or leases for use on that system be accessible as long as the closing date for vendors to submit bids or offers to the entity for the vehicles is after August 25, 1990.

The Department has fully supported the adoption of the ADA, and DOT officials have urged transit operators to ensure that new bus orders then being developed were only for accessible buses. The Department recognizes that the definition of solicitation affects some procurements in progress. We are aware of this, but have defined the term as broadly as possible, consistent with the intent of the legislation.

The Department points out that, under an amendment to 49 CFR part 27 being issued today, any UMTA recipient procuring inaccessible vehicles in procurements not covered under this Part (e.g., under an option on a previously-awarded contract), the recipient must provide actual notice to the UMTA Administrator. MTA reserves it right under the grant agreement to terminate the grant if it determines that the purposes of the UMT Act would not be served adequately by continuing the project. UMTA will review these procurements on a case-by-case basis and determine the appropriateness of further Federal participation.

If an entity procures used or remanufactured vehicles, the applicability of ADA requirements is not keyed to solicitation dates. Rather, the ADA requires, with certain exceptions, that used or remanufactured vehicles purchases or leased after August 25, 1990, to be accessible.

Therefore, under §§ 37.23(a), 37.25(a)(2), 37.31(a)(2), 37.53(a), 37.55(a)(2), 37.83(a), and 37.85(a)(2), the Department interprets the date of the purchase or lease as the date when the entity is obligated to make the purchase or lease. This date is generally the date the entity signs the contract or is otherwise legally bound under the agreement.

The definition of Secretary includes designees: We anticipate that the UMTA Administrator will be delegated various functions under this regulation. The text of the rule identifies the UMTA Administrator (who may also designate other UMTA officials to perform various functions) where functions assigned to the Secretary by the ADA have been delegated to the Administrator. Of course, any function which has been delegated in this way may be performed by the Secretary rather than the UMTA Administrator or other officials. For example, if a statutory function is assigned to the Secretary, and the regulation assigns that function to the Administrator, the Secretary may nonetheless perform the function on a case-by-case or regular basis, at his or her discretion.

Section 37.7 Nondiscrimination; Provision of Service

Paragraphs (a) and (b) establish general nondiscrimination provision with respect to the use of transportation services provided for the general public. They are very similar to § 27.87(c) of the Department's existing section 504 rule. The proposed retention of this provision was not the subject of comment to the March 1990 NPRM.

Paragraphs (c), (d), (e), and (f) are based on paragraphs (b)(1), (b)(3), (b)(4), and (b)(5) of § 27.87 of the Department's existing section 504 rule. The proposed retention of these provisions generated little comment. Several comments, from both transit providers and disability groups, supported the section as written.

With respect to training, one disability group suggested a more extensive training program, similar to that required under the Air Carrier Access Act regulations (14 CFR part 382) the Department issued in March 1990. A transit authority asked for dedicated Federal funds for training. The same transit authority asked for additional Federal funding to maintain spare accessible vehicles, as did one other commenter. A commenter suggested, on the subject of timeliness, that if paratransit pickup time was not within 30 minutes of schedule, that the trip should be for free, with an additional free trip for each additional 15 minutes of tardiness.

Two commenters asked for accommodations at multi-route stops for persons with vision impairments. That is, a blind person at a stop served by buses from five routes needs time to determine, and a method of determining, whether a particular bus is the right one. One of these commenters also suggested requiring the announcing of stops and the use of large-print signs. With respect to communications capacity, one commenter said that there should be such capacity for disabled persons equal to that for other persons, not just "adequate" capacity.

The Department responds to these comments as follows. In its subsequent ADA NPRM, the Department will seek comment on training requirements. The Department cannot make additional funding available for any purpose through a rulemaking proceeding. The notion of a free trip if a vehicle is 30 minutes late probably is not feasible in public transportation for people with disabilities, where traffic problems and other circumstances beyond the control of the provider can result in delays.

There are some simple, low-cost means of assisting vision impaired or other passengers who may have difficulty identifying a bus at a multi-route stop. For example, some transit authorities issue numbered or color-coded cards to passengers, who hold them up when a bus approaches. The driver tells the passenger that the correct bus has arrived when the driver sees a card pertaining to his or her route. Also, the Department regards announcing bus stops as an easy, low-cost means of assisting passengers who have difficulty in knowing where to leave the bus. There is substantial merit in routinely announcing all stops (buses in some systems have automatic recording systems that do so).

Large print signs are a good idea, and can help all passengers waiting for a bus. However, not all buses or types of bus signage are designed to accommodate them. The Department encourages transit providers to take steps of this kind, and we seek further comment on whether these or similar steps should be required as part of the final ADA rule to be published in 1991.

As long as people with disabilities can get through to an information operator or a trip scheduler as quickly as a person who is not disabled (which is what we mean by "adequate" communications capability), the intent of the statute is met. It is not necessary to have as many TDDs as voice phones, for example, so long as a hearing impaired consumer can get through on a TDD in the same amount of time as another consumer can be served on the voice phones.

An issue closely related to provision of service requirements generated more comment than any other raised in the March 1990 NPRM: How should transit providers deal with so-called non-standard or non-traditional wheelchairs or mobility devices? This category includes such things as three-wheel scooters, unusually heavy electric wheelchairs, and devices with cambered or small wheels. The NPRM proposed that the lift and securement facilities on an accessible vehicle be capable of accommodating all types of wheelchairs in common use.

Though many comments did not mention the fact, this proposal echoed a requirement of the existing 49 CFR part 27. Section 27.87 of the existing rule, "Provision of Service," provides that each recipient shall, at all times, provide service to all eligible handicapped persons, including "ensuring that vehicles and equipment are capable of accommodating all the users for which the service is designed * * *." (This provision, as discussed above, is incorporated in this regulation.) The appendix to subpart E of the part 27, which sets forth the Department's controlling interpretation of the regulatory provisions, explained this provision as follows:

> * * * a recipient which chose to comply with the rule by making its bus fleet accessible would have to ensure that the lifts, securement devices, etc. on the buses could accommodate all types of wheelchairs in common use. A lift which accommodates manual wheelchairs, but fails to accommodate common models of electric wheelchairs (including, for example, the increasingly popular three-wheel designs) does not make the buses accessible. Providing only such limited-use lifts is inconsistent with this section. (Of course, if a special service component of a mixed system transported persons whose wheelchairs could not use the lifts to all destinations in the service area, and otherwise met the service criteria, the limitation on the use of the lifts would be permissible.

This requirement has been among the requirements affecting UMTA-funded transit authorities since 1986.

In addition to the comments sent to the docket on this issue, the Department obtained information from a June 1990 conference, sponsored by the Transportation Research Institute at Oregon State University, on the subject of transportation on non-standard mobility devices. DOT staff members participated in the conference, and the preliminary report of the conference has been placed in the docket for this rulemaking.

Many commenters made the point that there are lots of different kinds of mobility devices, and that the types of devices, including very specialized devices, continue to proliferate. At the conference, a presenter provided an extensive, illustrated, typology of mobility devices, many of which are far different from the standard manual or electric wheelchair with which many transit operators are familiar.

Many commenters, principally transit providers, provided a lengthy list of problems they perceived with three-

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wheel scooters. Many scooters are not readily able to be secured by some types of securement systems, and lack of attachment points to the frame to facilitate being tied down. Some models are too light-duty to stand up to stresses of the kind involved in transit accidents. Some scooters are too long for some lifts. Breakage of the seat stem and instability resulting from a high center of gravity and narrow wheelbase were mentioned by numerous commenters (presenters at the conference described the engineering basis for stability problems).

A lack of armrests to stabilize sideward motion of the occupant was another problem with some models, and other commenters mentioned a concern about injury from the non-folding steering column on some models. Some manufacturers of scooters, apparently in order to limit their liability, do not recommend or warrant their products for use on transit vehicles.

Scooters are not the only problematic type of mobility device of concern to transit providers. Device/passenger loads in the 600–700 pound weight range are too great for some lifts, and the dimensions of some devices exceed lift dimensions. Devices other than scooters lack attachment points. Some securement systems do not work well with lightweight chairs, or sports chairs with cambered wheels, power wheelchairs with four small wheels in the base, or some designs with pneumatic tires. Gurneys don't fit, and there are also problems with small stroller-type chairs used for children with disabilities.

Having to deal with the problems of all the different sorts of mobility devices created substantial concern about liability, many transit providers said. For the most part, these comments reflected fear of what could happen in the future; only two comments mentioned knowledge of actual accidents or lawsuits related to wheelchair issues. (Several commenters mentioned a lack of accident data related to the transportation of wheelchairs and wheelchair users.) On the other hand, a major transit authority that has carried three-wheel scooters for several years mentioned that it had experienced no accident or lawsuit problems, and said it was not greatly concerned about liability.

How do transit authorities now deal with the problems they see with carrying various sorts of non-standard mobility devices? First, a number of transit providers relate having found or devised securement systems that do a good job of restraining a variety of mobility devices, including scooters. These were usually four-point belt systems or combined wheel clamp and belt systems.

Second, a number of transit authorities either refuse to carry scooters and other non-standard devices or carry the devices but require the passenger to transfer out of his or her own device to a vehicle seat. This latter requirement typically is imposed when the transit provider believes it can successfully secure the mobility device but not the passenger while sitting in the device.

Based both on the comments and on a survey conducted by a presenter at the conference, it appears that a majority of transit providers (both fixed route and demand responsive) take one or another of these approaches. They do so on grounds of safety (i.e., preventing injuries to wheelchair passengers and also, to some extent, other passengers). On the other hand, a smaller number of transit providers (including some with the longest and most successful history of providing accessible bus service) said they transported scooters and other devices regularly, did not require transfer in many cases, and had not experienced the problems about which other transit agencies expressed concern.

A number of disability group commenters and individuals with disabilities argued that transit authorities should not be able to impose restrictions of this kind. (A few transit providers made similar comments as well). Such commenters supported the NPRM proposal on this point.

While not necessarily disagreeing with the idea that some devices could create problems in transit, these commenters argued that actual experience did not bear out the fears expressed by transit providers who imposed restrictions. Some commenters related personal experiences of safely riding in transit vehicles safely in "panic stop" situations while not restrained. Some commenters mentioned that there were a number of risks to passengers from transferring out of their personal devices (e.g., injury during transfer, lack of appropriate restraints in the vehicle seat, greater likelihood of injury in a vehicle seat than in a device designed for their needs). This may be particularly true for individuals who, because of the effects of their disability, have less strength or muscular control than other persons.

Other commenters, and participants in the conference, suggested that it was unreasonable, and discriminatory, to focus on risks posed by disabled passengers. For example, if a wheelchair user sitting in his wheelchair is not personally restrained, the person may be thrown about the vehicle during a rapid deceleration. A standing able-bodied passenger, who is permitted to be in the aisle without restraint, will likewise become mobile. So will large packages, infants in the arms of parents, strollers, shopping carts and other items which transit authorities do not restrict. It would be inconsistent with section 504 and the ADA, in these commenters' views, to allow transit authorities to impose restrictions on disabled passengers to reduce risks analogous to those for which no restrictions are imposed on other passengers.

Commenters had a number of suggestions on how to deal with this set of issues over the long term. Wheelchair manufacturers should be encouraged or required to work with other interested parties to create a transport-compatible wheelchair. DOT, the Department of Veterans' Affairs, the Department of Health and Human Services, the ATBCB, and other agencies should work with manufacturers, transit agencies, and consumers to develop standards for transportable wheelchairs. (For example, mobility devices could include rings or other attachment points for tie-down straps, some commenters suggested.) Ultimately, in some commenters' views, only devices meeting such standards should be required to be carried on transit vehicles. Standards for vehicles, lifts, and securement devices are needed as well, many commenters said. Additional research concerning both transportable mobility devices and vehicles and vehicle equipment is needed, commenters added.

B.C. Transit (the transit agency for Vancouver, British Columbia) videotaped eight crash test trials in which a paratransit van was run into a barrier at 20 m.p.h., carrying a scooter ridden by an anthropomorphic dummy. Briefly summarizing the results of these tests (B.C. Transit's paper on the tests is incorporated in the docket), securement systems generally prevented the scooters from leaving the securement area. However, there was substantial deformation of the scooters and considerable vertical movement of the scooters within the tie-down straps (i.e., a 10–12" rebound off the vehicle floor). Securement of the dummies was not as successful; the dummies experienced upward and rearward motion that could cause death or serious injury to human occupants.

These tests took place in relatively small, stiff (from a structural point of view) paratransit vans. Substantial deceleration forces (approximately 30–45g) were generated. It is forces of this magnitude that resulted in the observed effects. As vehicles become larger and/or more flexible, the forces from a collision at the same speed decrease. For example, in the B.C. transit crash test, one trial involved the van crashing into a parked full-size transit bus rather than into a concrete barrier. The bus absorbed the force of the collision with greater flexibility than the concrete barriers used in the other trials, resulting in lower forces in the van. More interestingly, although there was not a scooter or dummy in the bus to test the effects on them of the forces affecting the bus, forces experienced in the bus appeared to be markedly less than those experienced in the van.

A comment from the engineering professor who organized the conference underlined the distinction between the forces at work in paratransit vehicles, full-size buses, and rail cars (where securements are typically viewed as unnecessary). Generally, the smaller and lighter the vehicle, the greater the need for restraint.

Finally, a number of comments asked for clarification of the term "in common use." Some suggested clarifications, such as wheelchairs that accounted for 98 percent of use by disabled transit riders or devices that were defined as transit compatible by transit agencies. Other comments suggested phasing in the "carry all devices in common use" requirement over five years to allow lift and securement technology to catch up with the variety of devices in use by passengers.

The Department agrees with the commenters that this is a difficult set of issues, both technically and as a matter of policy. We support the call for the development of standards for vehicles, lifts, and securement devices, as well as for the transit-compatible wheelchair. A number of efforts are now underway to develop standards in this area. Such organizations as the Canadian Standards Association, International Standards Organization, Society of Automotive Engineers, and National Highway Traffic Safety Administration are at work on standards affecting one or more aspects of this problem. The standards that the ATBCB must develop under the ADA will also have to address some of these issues. Efforts are also under way or complete in Australia and a number of European countries to develop standards. The Department is actively cooperating with other bodies in the development of standards.

The ADA requires the ATBCB standards for accessible vehicles to be complete by April 1991. These standards should resolve some of the issues (e.g., by establishing requirements for the dimensions and weight bearing capacity of lifts). Other standards may not be complete for some years, however. The Department has the responsibility of addressing these issues under section 504 and the ADA, since they pertain to the actual ability of users of mobility devices to receive transportation in a nondiscriminatory way.

The comments have suggested a number of points on which the Department would like to receive additional information and comment:

1. Many comments expressed concern about possible accident and litigation risks. What evidence is there that this potential problem is real? That is, what actual accidents or injuries have happened that can be attributed to the use of non-traditional mobility devices in transit vehicles? How do the facts of these specific accidents bear on the issues discussed above? What accident statistics or studies have been done that address these issues? Do these studies, or other evidence, demonstrate actual, as opposed to speculative, risks from allowing users of non-traditional mobility devices and the devices themselves on transit vehicles?

2. Comments asserted that it was discriminatory for transit providers to insist on securement for mobility device users that was not required for other persons using transit (e.g., standees, people with large packages, people with grocery carts or infants in strollers). By what rationale do transit providers justify restrictions on one set of persons but not another? In human factors terms, are there differences in the characteristics of various passengers or what would happen to them in an accident or panic stop situation that would justify such different requirements under a nondiscrimination statute like the ADA or section 504?

3. Commenters expressed concern that requirements that a passenger transfer to a vehicle seat could pose problems for the passenger (e.g., unsuitability of a vehicle seat for a particular disabled passenger, inadequate securement in the vehicle seat, risks of injury from the transfer or from sitting in the vehicle seat). How do transit providers address such problems? Should transfer requirements be keyed to the individual passenger (e.g., based on assessment of the relative risks to the particular passenger of transfer vs. remaining in the mobility device)? Should transfer be required even if the vehicle seat does not have securement capability for the passenger?

4. Given differences in vehicle characteristics (e.g., in probable deceleration forces in larger vs. smaller vehicles), should requirements pertaining to non-traditional mobility devices differ among vehicle types? For example, should a transit provider be able to require a transfer in a small paratransit van but not in a full size transit bus?

5. Once ATBCB standards for lifts are established, should transit providers be required to transport any device which is compatible with the dimensional and weight limits of lifts meeting the Standards? Are there other definitions of mobility devices that should be required to be transported, or that should not be required to be transported? If so, should the criterion be a general one (e.g., "in common use") or should it attempt to be more specific (e.g., a list of types or models of devices). Would it be practicable for either the Department or a third party to develop and update such a list?

6. Should transit providers be required to use securement systems of the sort that have proven effective in use by other transit providers? Should such requirements apply to new vehicles only, or should a retrofit requirement be imposed on existing accessible vehicles with less adequate securement systems?

7. Should transit vehicle operators be required to assist passengers with securement of themselves and their mobility devices, whether the devices are "standard" or non-traditional in character? If not, how can the transit provider meet its obligation to provide service to users of these devices, many of whom may be unable, by reason of their disabilities, to operate the securement systems?

The Department intends to respond to the comments on this issue, and further information we receive in response to these questions, with a provision in the July 1991 final ADA rule. By this time, of course, we will be able to take into account the ATBCB standards that are relevant to these issues. Meanwhile, the provision of service section of the regulation will continue to govern the transportation of non-traditional mobility devices.

Under this provision, each covered entity must ensure that vehicles and equipment are capable of accommodating all users for which the service is designed. As noted in the portion of the 1986 appendix quoted above, this means that lifts and securement devices must accommodate all types of mobility devices in common use (specifically including electric wheelchairs and three-wheel scooters). "In common use" is meant to be a broadly inclusive term, excluding only devices that are very unusual or very

unusually configured (e.g., gurneys, highly customized devices with unusual dimensions). If a transit provider cannot or is unwilling to provide transportation to a particular type of "common use" device on the vehicles it normally uses to provide service to persons with disabilities (e.g., because of safety concerns or because the mobility device cannot be maneuvered to a securement location), then the provider has the responsibility of arranging alternative transportation.

Subpart B—Bus, Van and Other Non—Rail Transportation Systems

The provisions in this subpart concern the acquisition of buses, vans, and other non-rail vehicles for fixed route and demand responsive systems. Requirements concerning the operation of these systems are also included. These provisions are based on the ADA and on the March 1990 NPRM.

Section 37.21 Purchase or lease of new vehicles by public entities operating fixed route systems

The NPRM provided that all new purchased or leased vehicles would have to be accessible. Under certain conditions, there could be a temporary waiver of the requirement to purchase lift-equipped buses (i.e., where lifts were not available in a timely fashion). This provision would apply only to public entities.

All the disability groups that commented, and a large number of transit providers at well, supported the proposed requirement to acquire new accessible equipment. One disability group asked that the requirement also apply to buses already in a manufacturer's inventory when a purchase agreement is made after the effective date of the requirement, and that all buses delivered a certain time (e.g., 60 days) after the requirement goes into effect be required to have lifts, regardless of when the bus was ordered or manufactured.

A few transit agencies specifically asked that no retrofit of vehicles already in their fleets be required, and three suggested that less than 100 percent fleet accessibility be required. A substantial number of transit agencies noted that they already have, or plan to have, significant numbers of accessible buses in their fleets. On the other hand, a substantial number of transit agencies argued against the accessible bus requirement, saying the paratransit provided better service, that local option should be maintained as a policy matter, that accessible buses are too expensive, or that use of lifts will delay bus schedules.

With respect to the lift waiver provision, most transit agencies that commented favored the idea of a waiver. Several suggested additional concerns. One suggested the waiver should cover lengthy delays as well as unavailability. Others suggested additional grounds for waivers, such as the unavailability of maintenance facilities or the need to use narrower buses that have difficulty accepting lifts on certain routes. Another expressed concern about the timeliness of DOT responses to waiver requests.

Among disability group commenters, several expressed opposition to the idea of a waiver, some saying that the market will catch up with the demand for lifts or that even substantial delays in procurements to acquire lifts would not harm transit agencies significantly. Other suggested limitations on waivers, such as restricting their availability to "impossibility" situations, limiting the length of the delay which would be grounds for a waiver (e.g., to over 60 days), limiting the duration of a waiver (e.g., to one year), or linking the unavailability of lift equipment which is the basis for the waiver to the date of delivery of the buses, not the date of solicitation.

One commenter also said that information about waivers should be available in accessible formats. Another suggested that transit agencies should be required to dedicate funds saved through a waiver to other accessible transit purposes. A city mayor's office suggested that there be a public hearing and comments to DOT before DOT decides whether to grant a waiver. This commenter also suggested that when a waiver is granted, the transit agency be required to acquire vehicles capable of accepting a lift (which could begin service without the lift), but that a lift be installed as soon as it becomes available.

The ADA definitely resolves many of the issues raised by the commenters (*see* ADA sections 222(a) and 225). Public entities will have to purchase and lease new accessible vehicles, with respect to any vehicle for which a solicitation is made after August 25, 1990. The ADA also includes a lift waiver provision, which spells out four conditions under which DOT may temporarily relieve a transit provider from the obligation to purchase accessible vehicles. The final rule collapses these four conditions into three. The third statutory condition—that the public entity has made good faith efforts to locate a qualified manufacturer to supply the lifts—appears to assume a direct relationship between the transit provider and the lift manufacturer. In fact, it is the bus manufacturer, rather than the transit provider directly, which would have the task of looking for a supplier of lifts to meet the transit provider's specifications. The task must still be performed, and the Department will not grant a waiver in the absence of documentation that good faith efforts have been made to obtain the lifts in a timely fashion (see paragraph (e)), but the language of this section has been altered to fit better the relationship among the parties involved.

The legislative history of the ADA specifically deals with the subject matter of one of the comments. The Report of the House Committee on Public Works and Transportation made the following statement on this subject:

> The committee understands that certain fixed route operators may be restricted from using accessible, 102" wide commuter buses for various reasons. One alternative vehicle which would meet the requirements of the Act is the 96" (wide) commuter bus, which some manufacturers are apparently unwilling to fully warranty due to structural modifications necessary to accommodate a wheelchair lift. Another alternative is the 96" (wide) suburban bus, which does not have the structural difficulties in accommodating a lift that a commuter bus does. A fixed route operator would not qualify for a waiver under this section from wheelchair lift purchase requirements for a 96" commuter bus since an acceptable alternative—the 96" wide, lift-equipped suburban bus—exists. (H. Rept. 101-485, Pt. 1, at 32-33).

Consequently, the Department will not make provision in the rule for this situation. The Department will also be guided by the Committee Report in considering any waiver request that is made on this basis.

The Department needs certain information to determine whether a transit provider meets the four statutory criteria for a waiver, "to the satisfaction of the Secretary." Consequently, a waiver request must include a copy of the written solicitation (showing that it requested lift-equipped vehicles) and written responses from lift manufacturers to the vehicle manufacturer documenting their inability to provide the lifts. Since typically bus manufacturers, rather than transit agencies, contact subcomponent manufacturers, the transit agency will include with its waiver request copies of the lift manufacturers' responses to inquiries from the bus manufacturer. The information from lift manufacturers must also indicate when the lifts would be available.

In addition, the waiver request must include copies of advertisements in trade publications and inquiries to trade

associations, seeking lifts for the buses. The public entity must also include a full justification for the assertion that a delay in the bus procurement sufficient to obtain a lift-equipped bus would significantly impair transportation services in the community. The Department is not adopting any *per se* standard of how lengthy a delay in a procurement would trigger this "significant impairment" test. It will be more difficult to obtain a waiver if a relatively short rather than relatively lengthy delay is involved. A showing of disruption to planned procurement timetables, absent a showing of significant impairment of actual transit services, would not form a basis for granting a waiver.

Any waiver granted by the Department under this provision will be a conditional waiver. The conditions are intended to ensure that the waiver provision does not create a loophole in the accessible vehicle acquisition requirement that Congress intended to impose. The ADA requires a waiver to be limited in duration, and the rule will require a termination date to be included. This date will be established on the basis of the information the Department receives concerning the availability of lifts, in the waiver request and elsewhere. In addition, so that a waiver does not become open-ended, it will apply only to a particular procurement. If a transit agency wants a waiver for a subsequent procurement, it will have to make a separate waiver request.

This includes a situation in which the delivery of buses ordered as the result of a particular solicitation is phased over a period of time. For example, suppose a transit provider orders 20 buses on October 1, 1990, and wants to take delivery of the first five buses this year, with the remaining buses to be delivered in a year. If there are no lifts available this year, the transit provider could obtain a waiver (assuming all criteria are met) for the first five vehicles. The waiver would not apply to the rest of the buses, however, and a separate waiver application would have to be made for them, if the transit provider wished to obtain them without lifts.

The purpose of the waiver provision in the ADA, as the Department construes it, is to address a situation in which, because of a potentially sudden increase in demand for lifts, lift manufacturers are unable to produce enough units to meet the demand in a timely fashion. This is, as the title of the ADA provision involved suggests, a temporary situation calling for "temporary relief." A waiver should allow a transit provider meeting the statutory standards to bring vehicles into service without lifts. But there is no reason related to the purpose of this provision of the ADA why the vehicle should remain inaccessible throughout its life. We believe that there is merit to the comment that a vehicle purchased under a waiver should be capable of accepting a lift, and that a lift should be installed as soon as it becomes available. The final rule so requires.

Section 37.23 Purchase or lease of used vehicles by public entities operating a fixed route system

The NPRM proposed that, as with new vehicles, acquisitions of used vehicles would have to be for accessible vehicles. The proposal included an exception, for situations in which a transit provider made good faith efforts to obtain accessible used vehicles but did not succeed in finding them.

There were a few comments both for and against the idea of requiring the acquisition of used accessible vehicles. Several comments suggested that the good faith efforts exception was a bad idea, and that all used vehicles should be accessible. Most of the comment, however, centered on what procedures or standards should be used for determining whether the good faith efforts test has been met. Some of these comments simply asked for clarification of what the Department meant by "good faith efforts." Others suggested that the transit provider should decide, or the UMTA Regional Administrator. A few transit providers said that asking for accessible vehicles in bid solicitations should be enough. Another suggestion was to add a requirement for an active effort to solicit bids from owners of accessible vehicles. Two disability organizations emphasized that the search for accessible vehicles should be national in scope, and suggested that a transit provider wanting to avail itself of the good faith efforts exception should have to submit a waiver request to DOT with detailed documentation of its efforts. One of these comments also said that transit providers should not be able to take advantage of the exception because accessible buses were more expensive.

The ADA requires transit agencies to purchase accessible used vehicles, providing a "demonstrated good faith efforts" exception to the requirement (see ADA section 222(b)). The reports of the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor offered the following guidance on what "good faith efforts" involve:

> The phrase "demonstrated good faith efforts" is intended to require a nationwide search and not a search limited to a particular region. For instance, it would not be enough for a transit operator to contact only the manufacturer where the transit authority usually does business to see if there are accessible used buses. It involves the transit authority advertising in a trade magazine, i.e., Passenger Transport, or contacting the transit trade association, American Public Transit Association (APTA), to determine whether accessible used vehicles are available. It is the Committee's expectation that as the number of buses with lifts increases, the burden on the transit authority to demonstrate its inability to purchase accessible vehicles despite good faith efforts will become more and more difficult to satisfy. S.Rept. 101-116 at 49, H.Rept. 101-485 at 93.

Consistent with this guidance and in response to the comments, the Department is requiring that good faith efforts include specifying accessible vehicles in bid solicitations. Second, good faith efforts include a nationwide search for accessible vehicles, involving specific inquiries to other transit providers. As the report language indicates, local or regional searches for accessible used vehicles are not sufficient. Unlike the report language, the regulation will not reference contacts with manufacturers, since, typically, transit agencies obtain used vehicles from other transit agencies or used vehicle dealers, not from manufacturers. Third, good faith efforts include advertising in trade publications and contacting trade associations.

The Department considered whether a transit agency seeking to use the good faith efforts exception should have to apply to the Department for a waiver, as some comments suggested. We have decided against so requiring. First, the ADA does not mandate such a requirement, unlike the purchase of new vehicles without lifts. Second, the Department believes that requiring a DOT waiver would unnecessarily slow the procurement process. Instead, the Department will require transit agencies to retain for two years records of their good faith efforts, which must be made available to DOT and members of the public on request. This will allow the Department and interested persons to monitor the procurement activities of transit agencies. Such information could also form a basis for enforcement action.

Section 37.25 Remanufacture of vehicles and purchase or lease of remanufactured vehicles by public entities operating a fixed route system

The NPRM proposed that a vehicle remanufactured to extend its useful life

for five years or more would have to be accessible, to the maximum extent feasible. A few transit agencies opposed this requirement; a few disability groups and transit agencies supported it. One comment asked for clarification of what the term "remanufactured" meant.

Most of the comments focused on the wording modified to more closely describe the actual process involved (i.e., a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life).

With respect to the concept of "to the maximum extent feasible," the House system segment which is on the National Register of Historic Places? Does the Department have the discretion to, and should it, change the "solely" to "substantially" or a similar term which would, to some extent, broaden this provision's coverage?

During the development of final ADA

Others asked that the Department establish standards for equivalent service (e.g., in terms of service criteria). A number of transportation agencies suggested that the state agency administering the UMTA section 18 program for the state be designated to determine when the "equivalent

Comments asked for clarification of the concept of equivalent service, some suggesting the use of service criteria like those of the existing regulation (49 CFR part 27) for paratransit service. The legislative history the ADA is in accord with this suggestion. The "when viewed in its entirety/equivalent service"

With respect to program monitoring, each demand responsive provider must certify to the State agency having responsibility for the UMTA section 18 program that it meets the equivalency test of this section and therefore is eligible to purchase inaccessible vehicles. For UMT Act recipients, the

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for five years or more would have to be accessible, to the maximum extent feasible. A few transit agencies opposed this requirement; a few disability groups and transit agencies supported it. One comment asked for clarification of what the term "remanufactured" meant.

Most of the comments focused on the "to the maximum extent feasible" proviso of the proposal. One commenter opposed this proviso altogether, saying that all remanufactured buses should be accessible. Several commenters said that a structural integrity standard should be used. That is, remanufacturing a bus to be accessible should be viewed as feasible as long as accessibility modifications did not unduly weaken the frame or structure of the vehicle. Some comments suggested that this determination should be made after an engineering analysis. One disability group commented that inasmuch as all full-size transit buses meeting Advanced Design Bus standards (most buses manufactured since 1979) can accommodate lifts, a structural integrity standard would require most buses to be accessible. Two transit agencies commented that in addition to considering structural integrity, the feasibility standard should consider cost. For example, if the cost of the accessibility modification would eliminate the cost advantage of remanufacturing a bus over buying a new, accessible bus, then the accessibility modifications of the remanufactured bus should not be viewed as feasible.

The ADA (section 222(c)) requires public entities that remanufacture vehicles so as to extend their useful life for five years or more, or purchase or lease such remanufactured vehicles, to acquire accessible vehicles to the maximum extent feasible. This statutory requirement is reflected in the final rule.

In response to the comment that sought clarification about the definition of a "remanufactured" vehicle, the Department is adding a definition of the term in § 37.5. Three of the Congressional committee reports considered this issue (House Committee on Public Works and Transportation, H.Rept. 101-485, Pt. 1, at 28; House Committee on Education and Labor, H.Rept. 101-485, Pt. 2, at 90; Senate Committee on Labor and Human Resources, S.Rept. 101-116 at 50). In each report, the committee noted its understanding that a remanufactured vehicle was one that had been "stripped to its frame and is then rebuilt", as opposed, for example, to an engine overhaul. The Department's definition incorporates this concept, with the wording modified to more closely describe the actual process involved (i.e., a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life).

With respect to the concept of "to the maximum extent feasible," the House Committee on Education and Labor and Senate Committee on Labor and Human Resources reports say that the language was inserted to clarify that the statute is not intended "to require accessibility for remanufactured vehicles if it would destroy the structural integrity of the vehicle." The House Committee on Transportation and Public Works report uses similar language: "remanufactured vehicles need only be modified to make them accessible to the extent that the modifications do not affect the structural integrity of the vehicle in a significant way."

Based on these statements and on the comments to the NPRM, the final rule provides that it is considered feasible to remanufacture a vehicle to be accessible, unless an engineering analysis indicates that specified accessibility features would have a significant adverse effect on the structural integrity of the vehicle. That it may not be economically advantageous to remanufacture a bus with accessibility modifications does not mean it is unfeasible to do so, in the engineering sense which Congress intended. Accordingly, the rule does not include economic factors among those which may be considered in determining feasibility.

The ADA adds a provision concerning remanufactured vehicles which was not part of the March 1990 NPRM. This is an exception for historic vehicles. The exception applies to a vehicle if: (1) It is of historic character, (2) it operates solely on a segment of a fixed route system which is on the National Register of Historic Places, and (3) making the vehicle accessible would significantly alter its historic character. (Historic vehicles are also subject to the "maximum extent feasible" proviso applicable to all remanufactured vehicles.) The final rule incorporates these provisions of the statute.

The Department seeks comment on whether the historic vehicle exception, as written, adequately addresses the range of situations affecting historic vehicles. For example, are there systems on which arguably historic vehicles are operated partly, but not solely, on a system segment which is on the National Register of Historic Places? Does the Department have the discretion to, and should it, change the "solely" to "substantially" or a similar term which would, to some extent, broaden this provision's coverage?

During the development of final ADA rules, the Department will work on regulations to define a vehicle of historic character. The Department seeks comment on what this definition should include. The Department also seeks information on what fixed route system segments are listed on the National Register of Historic Places. Meanwhile, the Department will consider requests to designate vehicles as historic vehicles meeting the requirements of the ADA on a case-by-case basis. In doing so, the Department will consult with the National Register of Historic Places and seek guidance from the regulations implementing the National Register program. In making determinations, the Department will rely on the recommendations of the National Register of Historic Places (which is located in the Department of the Interior).

Section 37.27 Purchase or Lease of new vehicles by public entities operating a demand responsive system for the general public

The NPRM proposed that recipients operating demand responsive systems buy accessible new vehicles. However, they need not do so if their demand responsive systems, when viewed in their entirety, provide equivalent levels of service to passengers with disabilities and other passengers. A demand responsive system was defined to include, for this purpose, a small city or rural system in which a significant portion of service was provided in a demand responsive mode, even if some service is provided on fixed routes.

Several transit agencies supported the NPRM provision as written. A smaller number of commenters, mostly disability groups but including a few transit agencies, said that all buses on fixed route components of mixed fixed route/demand responsive systems should be accessible, and that supplemental paratransit service should be provided for the fixed route components, just as with other fixed route systems.

A number of commenters also focused on the "equivalent service/when viewed in its entirety" standard for allowing demand responsive systems to acquire new inaccessible vehicles. Some of these commenters, mostly disability groups, said that this provision was unnecessary or counterproductive.

Others asked that the Department establish standards for equivalent service (e.g., in terms of service criteria). A number of transportation agencies suggested that the state agency administering the UMTA section 18 program for the state be designated to determine when the "equivalent service/when viewed in its entirety" test had been met.

One comment from a disability group emphasized that it would not be appropriate for demand responsive systems for the general public to provide separate service for disabled passengers. Rather, the comment said, service should be provided in an integrated fashion. Other disability group comments suggested that the rule include a DOT prior approval procedure for demand responsive systems seeking to meet the "equivalent service/when viewed in its entirety" test and a complaint procedure for alleged violations of the requirements.

Other transit agency comments mentioned problems that would occur if accessibility requirements apply to small vans, cars, or taxis (e.g., inability to put a lift on a taxi; reduction of seating capacity of vans if lifts are installed). Not all section 18 recipients operate demand responsive systems, another commenter pointed out; the commenters said that small operators should have greater flexibility regardless of the program from which they received UMTA funds. Small rural systems should be excepted from the requirement altogether, another agency suggested.

The ADA (section 224) provides that a public entity operating a demand responsive system must purchase or lease accessible new vehicles, for which a solicitation is made after August 25, 1990, unless the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities. The final rule incorporates this requirement.

As the Department construes the ADA, a demand responsive system is one that meets the essential definition of such service—that a user must request transportation service before it is rendered (see H. Rept. 101-485, Pt. 2, at 94; S.Rept. 101-116 at 54). This section applies only to such service and vehicles used in it. A vehicle used in fixed route service (even if as part of a mixed fixed route/demand responsive system) must meet the requirements of other sections for the acquisition of fixed route vehicles.

Comments asked for clarification of the concept of equivalent service, some suggesting the use of service criteria like those of the existing regulation (49 CFR part 27) for paratransit service. The legislative history the ADA is in accord with this suggestion. The "when viewed in its entirety/equivalent service" language means that "when all aspects of a transportation system are analyzed, equal opportunities for each individual with a disability to use the transportation system must exist." (H. Rept. 101-184, Pt. 2, at 95; S.Rept. 101-116 at 54). For example, both reports said, "the time delay between a phone call to access the demand responsive system and pick up the individual is not to be greater because the individual needs a lift or ramp or other accommodation to access the vehicle." (*Id.*) The House Public Works and Transportation Committee report added that

> (t)he standard of a system viewed in its entirety providing equivalent service is met when an operator has, or has access to, a vehicle (including a vehicle operated in conjunction with a portable boarding assistance device) which is readily accessible to and usable by individuals with disabilities to meet the needs of such individuals on an "on-call" basis. Essentially, when all aspects of the system are analyzed, an individual with a disability must have an equivalent opportunity to use the system. (H.Rept. 101-56, Pt. 1, at 32).

In response to the comments and Congressional guidance, the rule sets forth several "service criteria" standards. These standards, which concern service area, response time, fares, hours and days of service, trip purpose restrictions, information and reservations capability, and other capacity constraints, are not absolute standards. For example, they do not say that anyone—with or without a disability—must be picked up a given number of hours after making a call for service. But they do require service to be equivalent for all passengers, whether or not they have a disability. If the system provides service to non-disabled passengers within four hours of a call for service, then passengers with disabilities must receive accessible service in four hours.

As suggested by another comment, this service must be integrated to the maximum extent feasible. It is not consistent with the ADA to provide separate service for disabled and non-disabled passengers, both of whom are, after all, members of the general public. Both, to the maximum extent feasible, should be served by the same vehicles, trips etc.

With respect to program monitoring, each demand responsive provider must certify to the State agency having responsibility for the UMTA section 18 program that it meets the equivalency test of this section and therefore is eligible to purchase inaccessible vehicles. For UMT Act recipients, the rule reflects present practice for certifications. The State agencies in question are a logical place for non-UMTA recipients to file their certifications as well. Despite the certification, the State office (or UMTA, which may review certifications on file with the State) may determine that the equivalency test has not been met, and that the entity may not acquire inaccessible vehicles.

A certification may be submitted in connection with a particular procurement. Alternatively, it may be submitted in advance (e.g., for UMTA section 18 recipients, at a convenient time in the grant application process). No certification is valid for more than a year, however. A valid certification must be on file before a public entity acquires an inaccessible vehicle.

The rule also states that the waiver mechanism concerning lifts (see § 37.21) will apply to demand responsive systems as well as fixed route systems. The Committee reports on this provision emphasized that this waiver provision was intended to apply to demand responsive systems (H.Rept. 101-485, Pt. 2, at 95; S.Rept. 101-116 at 54).

With respect to systems using small vehicles (e.g., taxis, small vans), the Department is aware, as commenters indicated, that there may be difficulty in obtaining small accessible vehicles. The ADA makes an exception to the accessible vehicle acquisition requirement for private entities providing specified transportation services, with respect to automobiles and vans with a seating capacity of less than eight persons (*see* Section 304(b)(3)). However, there is no such statutory exception for public entities providing either fixed route or demand responsive service. It would not be appropriate for the Department to create an exception where Congress did not. We suggest that demand responsive systems acquire sufficient accessible vehicles to meet the equivalency test, thereby allowing them to acquire additional vehicles that were not equipped with lifts or ramps.

Section 37.29 Purchase of Vehicles by Private Entities

This provision does not have a counterpart in the March 1990 NPRM, which concerned itself only with

recipients of UMTA financial assistance. The section implements Sections 302(b)(2)(B) and (C) and 304(b) and (c) of the ADA, insofar as these sections concern the acquisition of vehicles by private entities.

These provisions, address a "private

between the criteria in this section and those in § 35.29 is that, for fixed route service, schedules/headways is substituted for response time. This is because the concept of response time does not apply in the fixed route context, where the key timing factor is

mechanism (e.g., a ramp). It must also have sufficient clearances to allow a wheelchair user to reach a securement location. This point is obvious from the statute. Third, there must be at least one securement location. Some comments to the March NPRM urged that the

the development of standards based on ATBCB guidelines, light and rapid rail vehicles will be viewed as accessible if they meet existing applicable requirements of 49 CFR part 609.

This subpart will eventually include facility and other requirements of the

Regulatory Process Matters

This rule is a major rule under executive Order 12291. Cost pertaining to subpart B are estimated to be in the range of $72-78 million per year. An analysis of these costs, derived from a study prepared by the Department's

provisions of the rule. At the same time, regulated parties need definitive guidance concerning the details of implementing these requirements.

The Department is requesting comment for 90 days on the provisions of this rule. As discussed above, many

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recipients of UMTA financial assistance. The section implements Sections 302(b)(2)(B) and (C) and 304(b) and (c) of the ADA, insofar as these sections concern the acquisition of vehicles by private entities.

These provisions, address a "private entity which is not primarily engaged in the business of transporting people." The "primarily engaged" test distinguishes between entities whose principal business is providing transportation (e.g., a charter bus company) and entities whose provision of transportation is tangential to their main business (e.g., airport shuttles operated by hotels, customer and employee shuttle services operated by private companies or shopping centers, shuttle operations of recreational facilities such as stadiums, ski resorts, zoos, and amusement parks. See H.Rept. 100-485, Pt. 1, at 38). It is also likely that many social service agencies and other parties which receive UMTA section 16(b)(2) funds would fall into this category.

At various points, this section applies different requirements depending on whether vehicles with a certain seating capacity are involved. As some commenters to the March 1990 NPRM pointed out, installation of lifts and wheelchair securement positions in vehicles may affect the number of persons who can actually travel in a vehicle at the same time. When the rule refers to seating capacity (e.g., with respect to a vehicle with a seating capacity in excess of 16 passengers, including the driver), the Department construes this to mean the capacity of the vehicle for passenger seating prior to accessibility modifications. Therefore, if a van can be ordered from the manufacturer with over 16 seats, it is a vehicle with a seating capacity in excess of 16 passengers, even if, after being modified to include a lift and wheelchair securement positions, the van can carry only 10 or 12 persons at a time.

Many UMTA section 16(b)(2) recipients often seek assistance for obtaining vehicles with a 16 seat or lower capacity. To the extent that these recipients fall under this section, they would not be required to purchase accessible vehicles by the ADA.

This section requires acquisition of accessible vehicles unless the system, when viewed in its entirety, provides service to individuals with disabilities equivalent to that provided other persons. For the reasons discussed in connection with § 35.29, the Department approaches this requirement by requiring equivalent service with respect to a number of service characteristics to meet this test. The one difference between the criteria in this section and those in § 35.29 is that, for fixed route service, schedules/headways is substituted for response time. This is because the concept of response time does not apply in the fixed route context, where the key timing factor is how long a disabled passenger has to wait between vehicles, as contrasted with a non-disabled passenger.

Two provisions of this section, concerning acquisition of vans with a capacity of fewer than eight persons and the acquisition of rail passenger cars by private entities, do not begin to apply until February 25, 1992 (i.e., 19 months from the effective date of the ADA). This results from what may be an oversight in the drafting of the legislation, which failed to except the corresponding section of the ADA from the general 18 month effective date for title III of the statute. If a technical correction is passed by Congress, the Department will amend these provisions accordingly.

The provision of this section concerning remanufactured rail passenger cars, and the related provision concerning historic rail cars, are taken directly from the ADA. The feasibility language of this provision is based on the same rationale as the feasibility language of other provisions of the rule concerning historic vehicles.

Section 37.31 Interim Standards for Accessible Vehicles

The ADA requires the Department to adopt standards for accessible vehicles as part of its final ADA rules. The standards, in turn, are to be based on guidelines developed by the Architectural and Transportation Barriers Compliance Board (ATBCB), which are to be issued nine months from the statute's effective date. Pending the issuance of the final standards, this section sets forth requirements for what constitutes an accessible vehicle. This section will be replaced by the final standards as part of the projected July 1991 final ADA rule.

There are three basic requirements for vehicle accessibility. First, a long-standing UMTA regulation (49 CFR 609.15) prescribes a series of requirements for buses (e.g., concerning priority seating signs, interior handrails and stanchions, floor and step surfaces, lighting, fare collection, and destination and route signs). These requirements will apply to buses acquired by entities subject to the ADA, whether or not they receive UMTA funds. A few comments supported reference to Part 609; none opposed it.

Second, to be accessible, a vehicle needs a lift or other level change mechanism (e.g., a ramp). It must also have sufficient clearances to allow a wheelchair user to reach a securement location. This point is obvious from the statute. Third, there must be at least one securement location. Some comments to the March NPRM urged that the Department require at least two securement locations. The Department believes that, at least on full size transit buses, more than one securement location is advisable. However, the legislative history of the ADA indicates that the number of spaces made available for wheelchairs is a determination, resting on a number of factors, that should be left up to the transit provider (see H.Rept. 101-485, Pt. 2, at 86; S. Rept. 101-116 at 54).

As indicated by a large number of comments on the NPRM's "provision of service" requirements for wheelchairs in common use, there is substantial concern by interested parties about standards for wheelchair lifts and securement devices. One of these comments was a set of recommended interim standards from the ATBCB. The Department is not including any interim standards in this rule, believing that the details of these standards require additional consideration. The National Highway Traffic Safety Administration (NHTSA) and UMTA are both working on projects that bear on the development of lift and securement standards, and work on related standards by such bodies as the Canadian Standards Association and International Standards Organization is also under way. Between now and the publication of a final ADA rule, the Department will work with the ATBCB and other concerned organizations to bring this work together and develop as complete and reasonable a set of standards as possible.

Subpart C—Rapid and Light Rail Systems

The requirements for vehicle acquisition for rapid and light rail systems parallel those for buses, vans and other vehicles. The regulatory requirements closely follow the statute, with the Department exercising its discretion on such issues as good faith efforts for used vehicles, feasibility for remanufactured vehicles, and historic vehicles in a manner parallel to the way those same issues are resolved in the bus and van context. (With respect to the historic vehicles provision, please note the questions about the scope of this provision discussed under section 37.25, which may also apply in the rail context.) As an interim measure, before the development of standards based on ATBCB guidelines, light and rapid rail vehicles will be viewed as accessible if they meet existing applicable requirements of 49 CFR part 609.

This subpart will eventually include facility and other requirements of the ADA as applied to light and rapid rail systems. Provisions on these subject will be proposed in a subsequent NPRM.

Subpart D—Intercity and Commuter Rail Service

With some exceptions (e.g., the application of accessibility requirements to a remanufactured vehicle whose life is extended for ten, rather than five, years), the requirements for vehicle acquisition for intercity and commuter rail systems parallel those for buses, vans and other vehicles, as well as for rapid and light rail vehicles. The regulatory requirements closely follow the statute, with the Department exercising its discretion on such issues as good faith efforts for used vehicles and feasibility for remanufactured vehicles in a manner parallel to the way those same issues are resolved in other parts of the regulation.

Again, the rule provides interim standards for commuter and intercity rail vehicle accessibility, pending the adoption of standards based on ATBCB guidelines. These standards are derived from the Department's existing section 504 rule (49 CFR 27.73(b)(2), as suggested by the Report of the House Committee on Energy and Commerce (H.Rept. 101-485, Pt. 4, at 48, 50). These standards are modified for intercity and commuter rail cars as provided in the text of the statute, as well as incorporating guidance from the House Committee on Energy and Commerce concerning the avoidance of requirements for widening aisles (*Id.*).

In § 37.87(b), there is a reference to compliance with § 242(a)(3) of the ADA. The ADA provides that single-level intercity rail passenger cars need comply with accessibility standards (set forth in § 37.87(a) of this rule) to the extent necessary to meet the "number of wheelchair spaces in a train" requirements of the cited statutory section. The accessible rest room and boarding requirements apply only to those coaches on which the required spaces are found.

This subpart will eventually include facility and other requirements of the ADA as applied to intercity and commuter rail systems. Provisions on these subjects will be proposed in a subsequent NPRM.

Regulatory Process Matters

This rule is a major rule under executive Order 12291. Cost pertaining to subpart B are estimated to be in the range of $72-78 million per year. An analysis of these costs, derived from a study prepared by the Department's consultant for a study of the impacts of the March 1990 NPRM, has been placed in the docket. The Department has not analyzed rail vehicle acquisition costs. Rail vehicle requirements must be in this rule since the statute requires the purchase of accessible rail vehicles after August 25, 1990. There is a good chance that these costs, which are imposed by the requirements of the ADA itself, would push the total annual cost of the rule over the $100 million threshold for a major rule. The rule is also significant under the Department's Regulatory Policies and Procedures.

The rule may have a significant impact on a substantial number of small entities, both public and private transit providers who will have to begin acquiring accessible vehicles. This impact is required by statute, however, and the Department does not have the discretion under the ADA to lessen the requirements. Likewise, there is a Federalism impact, in the sense that the statute, and hence the rule, decides vehicle acquisition issues that previously could be decided at the state or local level. Because this impact is required by the statute, a Federalism assessment, like a Regulatory Flexibility Analysis, is not necessary. Information collection requirements have been submitted to OMB for clearance under the Paperwork Reduction Act.

A number of provisions of this rule (e.g., pertaining to acquisition of vehicles by entities that do not receive UMTA funds and to rail systems) were not the subject of a previous notice and opportunity for public comment. These provisions pertain to provisions in the ADA that require regulated parties to acquire accessible vehicles after August 25, 1990. The Department has determined that it would be unnecessary, impracticable, and contrary to the public interest to postpone regulatory implementation of these statutory provisions in order to issue a proposed rule on these subjects. Likewise, the Department is making the entire final rule effective immediately, without the normal 30-day delayed effective date. The good cause for this reason is the same: the rule implements statutory mandates which have effect August 25, 1990, the postponement of the effective date of the rule would not postpone the obligation of the regulated parties to comply with the basic provisions of the rule. At the same time, regulated parties need definitive guidance concerning the details of implementing these requirements.

The Department is requesting comment for 90 days on the provisions of this rule. As discussed above, many of the provisions of this rule have already been the subject of notice and comment (i.e., provisions with respect to the acquisition of vehicles, and related issues, by recipients of UMTA financial assistance). Requirements with respect to private entities and others not receiving UMTA funds and requirements pertaining to rail systems have not previously been the subject of notice and comment. For the convenience of commenters, the Department will accept comments on all provisions of the rule, though the Department's focus in reviewing the comments will be on those areas which have not previously been the subject of comment. Unless it appears that immediate changes are necessary in one or more provisions, the Department intends to respond to this round of comments in the final ADA rule scheduled to be issued in July 1991.

List of Subjects in 49 CFR Part 37

Mass transportation, Railroads, Civil rights, Handicapped.

Issued this 28th day of September 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, title 49 of the Code of Federal Regulations is amended to read as follows:

1. Part 37 of title 49, Code of Federal Regulations, is added to read as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

37.1 Purpose.
37.3 Applicability.
37.5 Definitions.
37.7 Nondiscrimination; Provision of Service.
37.9-37.19 [Reserved]

Subpart B—Bus, Van, and other Transportation Systems

37.21 Purchase or Leases of New Vehicles by Public Entities Operating Fixed Route Systems.
37.23 Purchase or Lease of Used Vehicles by Public Entities Operating a Fixed Route System.
37.25 Remanufacture of Vehicles and Purchase or Lease of Remanufactured Vehicles by Public Entities Operating Fixed Route Systems.

37.27 Purchase or Lease of New Vehicles by Public Entities Operating a Demand Responsive System for the General Public.
37.29 Purchase of Vehicles by Private Entities.
37.31 Interim Standards for Accessible Vehicles.
37.33–37.49 [Reserved]

Subpart C—Rapid and Light Rail Systems

37.51 Purchase or Lease of New Rail Vehicles by Public Entities Operating Rapid or Light Rail Systems.
37.53 Purchase or Lease of Used Rail Vehicles by Public Entities Operating Rapid or Light Rail Systems.
37.55 Remanufacture of Rail Vehicles and Purchase or Lease of Remanufactured Rail Vehicles by Public Entities Operating Rapid or Light Rail Systems.
37.57 Interim Accessibility Standards for Light and Rapid Rail Vehicles.
37.59–37.79 [Reserved]

Subpart D—Intercity and Commuter Rail Systems.

37.81 Purchase or Lease of New Intercity and Commuter Rail Cars.
37.83 Purchase or Lease of Used Intercity and Commuter Rail Cars.
37.85 Remanufacture of Intercity and Commuter Rail Cars and Purchase or Lease of Remanufactured Intercity and Commuter Rail Cars.
37.87 Interim Accessibility Standards for Intercity Rail Passenger Cars.
37.89 Interim Accessibility Standards for Commuter Rail Cars.
37.91–37.111 [Reserved]

Appendix to Part 37—Certification of Equivalent Service

Authority: Americans with Disabilities Act of 1990, Pub. L. 101–336; 49 U.S.C. 322.

Subpart A—General.

§ 37.1 Purpose.

The purpose of this part is to implement the transportation and related provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101–336).

§ 37.3 Applicability.

(a) This part applies to the following entities, whether or not they receive Federal financial assistance from the Department of Transportation:

(1) Any public entity that provides designated public transportation or intercity or commuter rail transportation;

(2) Any private entity that provides specified public transportation; and

(3) Any private entity that is not in the principal business of transporting people but operates a demand responsive or fixed route system or otherwise transports individuals.

(b) Those who contract with a UMT Act recipient or other to provide designated public transportation or intercity or commuter rail transportation service (including a private entity which might otherwise be subject to the private entity provisions of this part) are subject to the public entity provisions of this part.

(c) For entities receiving Federal financial assistance from the Department of Transportation, compliance with applicable requirements of this part is a condition of receiving the financial assistance. This obligation is enforced under the provisions of 49 CFR part 27, not under this part.

§ 37.5 Definitions.

As used in this part:

"The Act" means the Americans with Disabilities Act of 1990 (Pub. L. 101–336), as it may be amended from time to time.

"Auxiliary aids and services" includes:

(a) Qualified interpreters or other methods of making aurally delivered materials available to individuals with hearing impairments;

(b) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(c) Acquisition or modification of equipment or devices; or

(d) Other similar services or actions.

Commerce means travel, trade, transportation, or communication among the several states, between any foreign country or any territory or possession and any state, or between points in the same state but through another state or foreign country.

Commuter authority means any state, local, regional authority, corporation, or other entity established for purposes of providing commuter rail transportation (including, but not necessarily limited to, the New York Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, and any successor agencies) and any entity created by one or more such agencies for the purposes of operating, or contracting for the operation of, commuter rail transportation.

Commuter rail transportation means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride, and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation.

Commuter rail car means a rail passenger car obtained by a commuter authority for use in commuter rail transportation.

Demand responsive system means any system of transporting individuals, including but not limited to providing designated public transportation service or specified public transportation service by vehicle at the request of the user, which is not a fixed route system.

Designated public transportation means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

Disability means, with respect to an individual—

(a) A permanent or temporary physical or mental impairment that substantially limits one or more of the major life functions of such individual. For purposes of this part, a physical or mental impairment means

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, or endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction (but not including the current use of illegal drugs) and alcoholism. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; or

(b) A record of such an impairment. For purposes of this part, a record of an impairment means a history of, or classification or misclassification, as having a mental or physical impairment that substantially limits one or more major life activities; or

(c) Being regarded as having such an impairment. For purposes of this part, this term means

(1) Having a physical or mental impairment that does not substantially limit major life activities, but which is treated as constituting such a limitation;

(2) Having a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Having none of the impairments set forth in this definition but being treated as having such an impairment.

Fixed route system means a system of transporting individuals (other than by aircraft), including but not limited to providing designated or specified public transportation services, on which a vehicle (including a bus, van, rail vehicle, or other vehicle) is operated along a prescribed route according to a fixed schedule and which does not involve an advance request by a passenger to ensure that service is provided.

Intercity rail transportation means transportation provided by the National Rail Passenger Corporation (Amtrak).

Intercity rail passenger car means a rail passenger car obtained by Amtrak for use in intercity rail transportation.

New vehicle means a vehicle which is offered for sale or lease after manufacture without any prior use.

Operates includes, with respect to a fixed route or demand responsive system, the provision of transportation service by the public entity itself or by a person under a contractual or other arrangement or relationship with a public entity.

Over-the-road bus means a vehicle characterized by an elevated passenger deck located over a baggage compartment.

Private entity means any entity other than a public entity.

Public entity means:

(a) Any state or local government;

(b) Any department, agency, special purpose district, or other instrumentality of one or more state or local governments; and

(c) The National Railroad Passenger Corporation (Amtrak) and any commuter authority.

Purchase or lease with respect to vehicles, means the time at which an entity is legally obligated to obtain the vehicles, such as the time of contract execution.

Public school transportation means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids or services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Remanufactured vehicle means a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life.

Secretary means the Secretary of Transportation or his/her designee.

Solicitation means the closing date for the submission of bids or offers in a procurement.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than aircraft) provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis.

UMT Act means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. App. 1601 *et seq.*).

Used vehicle means a vehicle with prior use that was originally purchased before June 26, 1990.

Vehicle as the term is applied to private entities, does not include a rail passenger car, railroad locomotive, railroad freight car, or railroad caboose, or other rail rolling stock described in section 242 or title III of the Act.

§ 37.7 Nondiscrimination; provision of service.

(a) No public or private entity shall discriminate against an individual with disabilities in connection with the provision of its transportation service for the general public.

(b) Notwithstanding the provision of any special service to individuals with disabilities, a public or private entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation system for the general public, if the individual is capable of using that system.

(c) Each covered entity shall ensure that vehicles and equipment are capable of accommodating all the users for which the service is designed, and are maintained in proper operating condition.

(d) Each covered entity shall ensure that personnel are trained and supervised so that they operate vehicles and equipment safely and properly and treat individuals with disabilities who use the service in a courteous and respectful way.

(e) Each covered entity shall ensure that adequate assistance and information concerning the service is available to individuals with disabilities, including those with vision or hearing impairments. This obligation includes making adequate communications capacity to enable users to obtain information about and, with respect to demand responsive service, to schedule service. In the case of a fixed route system, this obligation includes providing information about bus routes and schedules and the accessibility of scheduled service.

(f) Each entity providing demand responsive service shall ensure that service is provided in a timely manner, in accordance with scheduled pickup times.

§§ 37.9–37.19 [Reserved]

Subpart B—Bus, Van, and Other Transportation Systems

§ 37.21 Purchase or lease of new vehicles by public entities operating fixed route systems.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(b) A public entity may purchase or lease a new bus that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if it applies for, and the UMTA Administrator grants, a waiver as provided for in this section.

(c) Before submitting a request for such a waiver, the public entity shall hold at least one public hearing concerning the proposed request.

(d) The UMTA Administrator may grant a request for such a waiver if the public entity demonstrates to the UMTA Administrator's satisfaction that—

(1) The initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) Hydraulic, electromechanical, or other lifts for such new buses could not be provided by any qualified lift manufacturer to the manufacturer of

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such new buses in sufficient time to comply with the solicitation; and

(3) Any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(e) The public entity shall include with its waiver request a copy of the initial vehicle shall meet the requirements of § 37.31 of this subpart.

(b) A public entity may purchase or lease a used vehicle for use on its fixed route system that is not readily accessible to and usable by individuals with disabilities if it makes demonstrated good faith efforts to obtain an accessible vehicle.

wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by § 37.31 of this subpart would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a fixed route system, any segment of which is

setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;
(2) Fares;
(3) Geographic area of service;
(4) Hours and days of service;
(5) Restrictions based on trip purpose;

use wheelchairs, and which meets the requirements of § 37.31 of this subpart, unless the system, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals with disabilities. For purposes of this paragraph, a fixed

which makes a solicitation after August 25, 1990, to purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than eight persons, including the driver, or an over-the-road bus) for use in providing specified public transportation on the system shall ensure that the vehicle is

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such new buses in sufficient time to comply with the solicitation; and

(3) Any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(e) The public entity shall include with its waiver request a copy of the initial solicitation and written documentation from the bus manufacturer of its good faith efforts to obtain lifts in time to comply with the solicitation, and a full justification for the assertion that the delay in bus procurement needed to obtain a lift-equipped bus would significantly impair transportation services in the community. This documentation shall include a specific date at which the lifts could be supplied and copies of advertisements in trade publications and inquiries to trade associations seeking lifts.

(f) Any waiver granted by the UMTA Administrator under this section shall be subject to the following conditions:

(1) The waiver shall apply only to the particular bus delivery to which the waiver request pertains;

(2) The waiver shall include a termination date, which will be based on information concerning when lifts will become available for installation on the new buses the public entity is purchasing. Buses delivered after this date, even though procured under a solicitation to which a waiver applied, shall be equipped with lifts;

(3) Any bus obtained subject to the waiver shall be capable of accepting a lift, and the public entity shall install a lift as soon as one becomes available;

(4) Such other terms and conditions as the UMTA Administrator may impose.

(g)(1) When the UMTA Administrator grants a waiver under this section, he/she shall promptly notify the appropriate committees of Congress.

(2) If the UMTA Administrator has reasonable cause to believe that a public entity fraudulently applied for a waiver under this section, the UMTA Administrator shall:

(i) Cancel the waiver if it is still in effect; and

(ii) Take other appropriate action.

§ 37.23 Purchase or lease of used vehicles by public entities operating a fixed route system.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system purchasing or leasing, after August 25, 1990, a used bus or other used vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(b) A public entity may purchase or lease a used vehicle for use on its fixed route system that is not readily accessible to and usable by individuals with disabilities if it makes demonstrated good faith efforts to obtain an accessible vehicle.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so specifying;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used vehicles that are not readily accessible to and usable by individuals with handicaps shall retain documentation of the specific good faith efforts it made for two years from the date the vehicles were purchased. These records shall be made available, on request, to the UMTA Administrator and the public.

§ 37.25 Remanufacture of vehicles and purchase or lease of remanufactured vehicles by public entities operating fixed route systems.

(a) This section applies to any public entity operating a fixed route system which takes one of the following actions:

(1) After August 25, 1990, remanufactures a bus or other vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases a bus or other vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.31 of this subpart.

(c) For purposes of this section, it shall be considered feasible to remanufacture a bus or other motor so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by § 37.31 of this subpart would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a fixed route system, any segment of which is included on the National Register of Historic Places, and if making a vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity has only to make (or purchase or lease a remanufactured vehicle with) those modifications to make the vehicle accessible which do not alter the historic character of such vehicle, in consultation with the National Register of Historic Places.

(e) Pending the issuance of regulations defining a vehicle of historic character, a public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the UMTA Administrator for a determination of the historic character of the vehicle. The UMTA Administrator shall refer such requests to the National Register of Historic Places, and shall rely on its advice in making determinations of the historic character of the vehicle.

§ 37.27 Purchase or lease of new vehicles by public entities operating a demand responsive system for the general public.

(a) Except as provided in this section, a public entity operating a demand responsive system for the general public making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;

(2) Fares;

(3) Geographic area of service;

(4) Hours and days of service;

(5) Restrictions based on trip purpose;

(6) Availability of information and reservations capability; and

(7) Any constraints on capacity or service availability.

(d) A public entity receiving UMTA funds under section 18 or 16(b)(2), or which does not receive UMTA funds, which determines that its service to individuals with disabilities is equivalent to that provided other persons, shall, prior to any procurement of an inaccessible vehicle, file with the appropriate state program office a certification that it provides equivalent service meeting the standards of paragraph (c) of this section. (Public entities operating demand responsive service receiving funds under any other section shall file the certification with the appropriate UMTA regional office.) Such a certification may be filed in connection with a particular procurement or in advance of a procurement; however, no certification shall be valid for more than one year. A copy of the required certification is found in the Appendix to this part.

(e) The waiver mechanism set forth in § 37.21 (b)–(h) of this subpart shall be available to public entities operating a demand responsive system for the general public.

§ 37.29 Purchase of Vehicles by Private Entities.

(a)(1) A private entity which is not primarily engaged in the business of transporting people, which operates a fixed route system, and which makes a solicitation after August 25, 1990, to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(2) A private entity which is not primarily engaged in the business of transporting people and which operates a fixed route system shall not purchase or lease a vehicle, after August 25, 1990, with a seating capacity of 16 passengers or less (including the driver) for use on the system that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, and which meets the requirements of § 37.31 of this subpart, unless the system, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals with disabilities. For purposes of this paragraph, a fixed route system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Schedules/headways;

(ii) Fares;

(iii) Geographic area of service;

(iv) Hours and days of service;

(v) Availability of information; and

(vi) Any constraints on capacity or service availability.

(3) A private entity which is not primarily engaged in the business of transporting people and whose operations affect commerce, and which operates a demand responsive system, shall not make a solicitation, after August 25, 1990, to purchase or lease a new vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on its system that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.31 of this Subpart, unless its system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, that is equivalent to the level of service provided to individuals without disabilities. For purposes of this paragraph, this equivalent service requirement shall be deemed to have been met if service to individuals with disabilities is provided in the most integrated setting feasible and is the same as or fully equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Response time;

(ii) Fares;

(iii) Geographic area of service;

(iv) Hours and days of service;

(v) Restrictions based on trip purpose;

(vi) Availability of information and reservations capability; and

(vii) Any constraints on capacity or service availability.

(b)(1) Except as provided in this paragraph, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which makes a solicitation after August 25, 1990, to purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than eight persons, including the driver, or an over-the-road bus) for use in providing specified public transportation on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this Subpart.

(2) The entity may purchase such a new vehicle that is not readily accessible to and usable by individuals with disabilities if the vehicle is to be used solely on a demand responsive system and the entity can demonstrate that the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities. For purposes of this paragraph, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Response time;

(ii) Fares;

(iii) Geographic area of service;

(iv) Hours and days of service;

(v) Restrictions based on trip purpose;

(vi) Availability of information and reservations capability; and

(vii) Any constraints on capacity or service availability.

(c)(1) Except as provided in this paragraph, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which makes a solicitation after February 25, 1992, to purchase or lease a new van with a seating capacity of less than eight persons, including the driver, for use in providing specified public transportation on the entity's system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this Subpart.

(2) The entity may purchase such a new van that is not readily accessible to and usable by individuals with disabilities, if the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to individuals with disabilities,

including individuals who use wheelchairs, equivalent to the level of service it provides to individuals with out disabilities. For purposes of this paragraph, the system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Response time;

(ii) Fares;

(iii) Geographic area of service;

(iv) Hours and days of service;

(v) Restrictions based on trip purpose;

(vi) Availability of information and reservations capability; and

(vii) Any constraints on capacity or service availability.

(c)(1) Except as provided in this paragraph, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which makes a solicitation after February 25, 1992, to purchase or lease a new van with a seating capacity of less than eight persons, including the driver, for use in providing specified public transportation on the entity's system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this Subpart.

(2) The entity may purchase such a new van that is not readily accessible to and usable by individuals with disabilities, if the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities. For purposes of this paragraph, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Response time;

(ii) Fares;

(iii) Geographic area of service;

(iv) Hours and days of service;

(v) Restrictions based on trip purpose;

(vi) Availability of information and reservations capability; and

(vii) Any constraints on capacity or service availability.

§ 37.31 Purchase or lease of used rail vehicles by public entities operating a rail system.

(a) Except as provided elsewhere in this section, each public entity operating a rail system which, after August 25, 1990, purchases or leases a used rail vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(b) A public entity may purchase or lease a used vehicle for use on its fixed route system that is not readily accessible to and usable by individuals with disabilities if it makes demonstrated good faith efforts to obtain an accessible vehicle.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so specifying;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used vehicles that are not readily accessible to and usable by individuals with handicaps shall retain documentation of the specific good faith efforts it made for two years from the date the vehicles were purchased. These records shall be made available, on request, to the UMTA Administrator and the public.

§ 37.33 Remanufacture of vehicles and purchase or lease of remanufactured vehicles by public entities operating rail systems.

(a) This section applies to any public entity operating a rail system which takes one of the following actions:

(1) After August 25, 1990, remanufactures a rail vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases a rail vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.31 of this subpart.

(c) For purposes of this section, it shall be considered feasible to remanufacture a rail vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by § 37.31 of this subpart would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a rail system, any segment of which is included on the National Register of Historic Places, and if making a vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity has only to make (or purchase or lease a remanufactured vehicle with) those modifications to make the vehicle accessible which do not alter the historic character of such vehicle, in consultation with the National Register of Historic Places.

(e) Pending the issuance of regulations defining a vehicle of historic character, a public entity operating a rail system as described in paragraph (d) of this section may apply in writing to the UMTA Administrator for a determination of the historic character of the vehicle. The UMTA Administrator shall refer such requests to the National Register of Historic Places, and shall rely on its advice in making determinations of the historic character of the vehicle.

§ 37.35 Purchase or lease of new vehicles by public entities operating a rail system for the general public.

(a) Except as provided in this section, a public entity operating a rail system for the general public making a solicitation after August 25, 1990, to purchase or lease a new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a rail system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;

(2) Fares;

(3) Geographic area of service;

(4) Hours and days of service;

(5) Restrictions based on trip purpose;

(6) Availability of information and reservations capability; and

(7) Any constraints on capacity or service availability.

(d) A public entity receiving UMTA funds under section 18 or 16(b)(2), or which does not receive UMTA funds, which determines that its service to individuals with disabilities is equivalent to that provided other persons, shall, prior to any procurement of an inaccessible vehicle, file with the appropriate state program office a certification that it provides equivalent service meeting the standards of paragraph (c) of this section. (Public entities operating demand responsive service receiving funds under any other section shall file the certification with the appropriate UMTA regional office.) Such a certification may be filed in connection with a particular procurement or in advance of a procurement; however, no certification shall be valid for more than one year. A copy of the required certification is found in the Appendix to this part.

(e) The waiver mechanism set forth in § 37.21 (b)–(h) of this subpart shall be available to public entities operating a rail system for the general public.

§ 37.37 Purchase or lease of used intercity or commuter rail cars.

(a) Except as provided elsewhere in this section, each public entity operating a rail system which, after August 25, 1990, purchases or leases a used intercity or commuter rail car for use on the system, shall ensure that the car is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a car shall meet the requirements of § 37.37 or § 37.39 of this subpart, as applicable.

(b) A public entity may purchase or lease a used intercity or commuter rail car that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if it makes demonstrated good faith efforts to obtain an accessible car.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used cars specifying that all used cars are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so specifying;

(2) A nationwide search for accessible cars, involving specific inquiries to used car dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used cars that are not readily accessible to and usable by individuals with handicaps shall retain documentation of the specific good faith efforts it made for two years from the date the cars were purchased. These records shall be made available, on request, to the UMTA Administrator and the public.

§ 37.39 Remanufacture of intercity or commuter rail cars and purchase or lease of remanufactured intercity or commuter rail cars by public entities operating rail systems.

(a) This section applies to any public entity operating a rail system which takes one of the following actions:

(1) After August 25, 1990, remanufactures a rail car so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases a rail car which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the car is extended.

(b) Cars acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.37 of this subpart.

(c) For purposes of this section, it shall be considered feasible to remanufacture a rail car so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by § 37.37 or § 37.39 of this subpart would have a significant adverse effect on the structural integrity of the car.

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including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities. For purposes of this paragraph, the system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is the same as or fully equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Response time (if the system is demand responsive) or schedules/headways (if the system is a fixed route system);

(ii) Fares;

(iii) Geographic area of service;

(iv) Hours and days of service;

(v) Restrictions based on trip purpose;

(vi) Availability of information and reservations capability; and

(vii) Any constraints on capacity or service availability.

(d) A private entity which is primarily engaged in transporting people and whose operations affect commerce, which makes a solicitation after February 25, 1992, to purchase or lease a new rail passenger car to be used in providing specified public transportation, shall ensure that the car is readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. The accessibility standards of either § 37.57, 37.87, or 37.89 shall apply to such a car, depending on the type of service in which the car is to be used.

(e) Except as provided paragraph (f) of this section, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which remanufactures a rail passenger car to be used in providing specified public transportation to extend its useful life for ten years or more, or purchases or leases such a remanufactured rail car, shall ensure that the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. For purposes of this paragraph, it shall be considered feasible to remanufacture a rail passenger car to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the car.

(f) Compliance with paragraph (e) of this section is not required to the extent that it would significantly alter the historic or antiquated character of a historic or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in the violation of any rule, regulation, standard or order issued by the Secretary under the Federal Railroad Safety Act of 1970. For purposes of this section, a historic or antiquated rail passenger car means a rail passenger car—

(1) Which is not less than 30 years old at the time of its use for transporting individuals;

(2) The manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(3) Which—

(i) Has a consequential association with events or persons significant to the past; or

(ii) Embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

§ 37.31 Interim standards for accessible vehicles.

(a) Pending the issuance of accessibility standards required by the Act, vehicles leased or purchased by public or private entities shall not be deemed readily accessible to and usable by individuals with disabilities, including individuals with wheelchairs, unless they meet the standards set forth in this section.

(b) The vehicle shall meet the requirements of 49 CFR 609.15(d)–(i);

(c) The vehicle shall be equipped with a lift or other level-change mechanism and shall have sufficient clearances to permit an individual using a wheelchair or other mobility device to reach a securement location;

(d) There shall be at least one securement location on the vehicle. The securement device(s) at the securement location shall be sufficient to secure any wheelchair or other mobility device which the vehicle's lift and clearances permit to enter the vehicle and proceed to the securement location.

§§ 37.33—37.49 [Reserved]

Subpart C—Rapid and Light Rail Systems

§ 37.51 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.

Each public entity operating a rapid or light rail system making a solicitation after August 25, 1990, to purchase or lease a new rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

§ 37.53 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.

(a) Except as provided elsewhere in this section, each public entity operating a rapid or light rail system which, after August 25, 1990, purchases or leases a used rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a used rapid or light rail vehicle for use on its rapid or light rail system that is not readily accessible to and usable by individuals if it makes demonstrated good faith efforts to obtain an accessible vehicle.

(c) Good faith efforts shall include at least the following steps:

(1) The initial solicitation for used vehicles made by the public entity specifying that all used vehicles were to be accessible to and usable by individuals with disabilities;

(2) A nationwide search for accessible vehicles, involving specific inquiries to manufacturers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used rapid or light rail vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for two years from the date the vehicles were purchased. These records shall be made available, on request, to the UMTA Administrator.

§ 37.55 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.

(a) This section applies to any public entity operating a rapid or light rail system which takes one of the following actions:

(1) After August 25, 1990, remanufactures a light or rapid rail vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing;

(2) Purchases or leases a light or rapid rail vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.57 of this subpart.

(c) For purposes of this section, it shall be considered feasible to remanufacture a rapid or light rail vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a rapid or light rail system any segment of which is included on the National Register of Historic Places and if making a rapid or light rail vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity need only make (or purchase or lease a remanufactured vehicle with) those modifications that do not alter the historic character of such vehicle.

(e) Pending the issuance of regulations defining a rapid or light rail vehicle of historic character, a public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the UMTA Administrator for a determination of the historic character of the vehicle. The UMTA Administrator shall make such determinations on a case by case basis, in consultation with the National Register of Historic Places.

§ 37.57 Interim accessibility standards for light and rapid rail vehicles.

Pending the issuance of accessibility standards for light and rapid rail vehicles required by the Act, light and rapid rail vehicles shall be deemed readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, for purposes of this subpart if they meet the requirements of 49 CFR 609.19 and 609.17, respectively.

§§ 37.59—37.79 [Reserved].

Subpart D—Intercity and Commuter Rail Systems

§ 37.81 Purchase or lease of new intercity and commuter rail cars.

Amtrak or a commuter authority making a solicitation after August 25, 1990, to purchase or lease a new intercity or commuter rail car for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of §§ 37.87 or 37.89 of this subpart, as applicable.

§ 37.83 Purchase or lease of used intercity and commuter rail cars.

(a) Except as provided elsewhere in this section, Amtrak or a commuter authority purchasing or leasing a used intercity or commuter rail car after August 25, 1990, shall ensure that the car is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.87 or § 37.89 of this subpart, as applicable.

(b) Amtrak or a commuter authority may purchase or lease a used intercity or commuter rail car that is not readily accessible to and usable by individuals if it makes demonstrated good faith efforts to obtain an accessible vehicle.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles accessible to and usable by individuals with disabilities;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Amtrak and commuter authorities purchasing or leasing used intercity or commuter rail cars that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts that were made for two years from the date the cars were purchased. These records shall be made available, on request, to the UMTA or FRA Administrator, as applicable.

§ 37.85 Remanufacture of intercity and commuter rail cars and purchase or lease of remanufactured intercity and commuter rail cars.

(a) This section applies to Amtrak or a commuter authority which takes one of the following actions:

(1) Remanufactures an intercity or commuter rail car so as to extend its useful life for ten years or more;

(2) Purchases or leases an intercity an intercity or commuter rail car which has been remanufactured so as to extend its useful life for ten years or more.

(b) Intercity and commuter rail cars listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.87 or § 37.89 of this subpart, as applicable.

(c) For purposes of this section, it shall be considered feasible to remanufacture an intercity or commuter rail car so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by §§ 37.87 or 37.89 of this subpart, as applicable, would have a significant adverse effect on the structural integrity of the car.

§ 37.87 Interim accessibility standards for intercity rail passenger cars.

(a) Pending the issuance of regulations under section 244 of the ADA, and except as provided in this section, intercity rail passenger cars shall meet the following standards to be considered readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs:

(1) The car shall be able to be entered from the station platform by an individual who uses a wheelchair or other mobility device;

(2) The car shall include space to park and secure one or two (but not more than two) wheelchairs to accommodate persons who wish to remain in their wheelchairs, and space to fold and store one or two (but not more than two) wheelchairs to accommodate individuals who wish to sit in coach seats;

(3) The car shall include an accessible rest room with a wide doorway, bars to assist the individual in transferring from wheelchair to toilet, low sinks, and other appropriate modifications. The rest room shall be large enough to accommodate a wheelchair (including maneuvering room);

(4) The design and construction of the car shall be accessible to individuals with disabilities, including but not limited to individuals using wheelchairs, and shall display the international accessibility symbol at each entrance;

(5) Widening of aisles or passageways in the car to accommodate wheelchairs is not required.

(b) Single-level passenger coaches (including food service cars) are required to comply with the requirements of paragraphs (a)(1)–(4) of this section only to the extent necessary to ensure compliance with the requirements of sections 242(a)(3) of the ADA.

(c) Single level dining cars shall not be required to be able to be entered from the station platform by an individual who uses a wheelchair or to have a rest

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room usable by an individual who uses a wheelchair if no rest room is provided in such car for any passenger.

(d) Bi-level dining cars shall not be required to meet the requirements of paragraphs (a)(1)–(4) of this section.

§ 37.89 Interim accessibility standards for commuter rail cars.

Pending the issuance of regulations under section 244 of the Act, and except as provided in this section, commuter rail cars shall meet the following standards in order to be considered readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs:

(a) The car shall be able to be entered from the station platform by an individual who uses a wheelchair or other mobility device;

(b) The car shall include space to park and secure one or more wheelchairs to accommodate persons who wish to remain in their wheelchairs;

(c) If a rest room is provided for passengers in the car, the car shall include an accessible rest room with a wide doorway, bars to assist the individual in transferring from wheelchair to toilet, low sinks, and other appropriate modifications. The rest room shall be large enough to accommodate wheelchairs (including maneuvering room);

(d) The design and construction of the car shall be accessible to individuals with disabilities, including but not limited to individuals using wheelchairs, and shall display the international accessibility symbol at each entrance;

(e) Widening of aisles or passageways in the car to accommodate wheelchairs is not required.

§§ 37.91–37.111 [Reserved]

Appendix to Part 37

Certification of Equivalent Service

The _____ (name of agency) certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

(1) Response time;
(2) Fares;
(3) Geographic service area;
(4) Hours and days of service;
(5) Restrictions on trip purpose;
(6) Availability of information and reservation capability; and
(7) Constraints on capacity or service availability.

In accordance with 49 CFR 37.27, public entities operating demand responsive systems for the general public which receive financial assistance under sections 16(b)(2) or 18 of the Urban Mass Transportation Act) must file this certification with the appropriate state program office before procuring any inaccessible vehicle. Such public entities not receiving UMTA funds shall also file the certification with the appropriate state program office. Such public entities receiving UMTA funds under any other section of the UMT Act must file the certification with the appropriate UMTA regional office. This certification is valid for no longer than one year from its date of filing.

(name of authorized official)

(signature)

(title)

(date)

[FR Doc. 90-23439 Filed 10-3-90; 8:45 am]
BILLING CODE 4910-62-M

federal register

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Part IV

The President

Proclamation 6192—Energy Awareness Month, 1990

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Title 3—

The President

Proclamation 6192 of October 2, 1990

Energy Awareness Month, 1990

By the President of the United States of America

A Proclamation

Each day we rely on stable and secure supplies of energy—for our homes and motor vehicles, as well as for our farms, factories, and other places of work. By supplying consumers with needed heat, light, and power, our Nation's utility companies and other energy providers enable us to enjoy an enviably high standard of living and personal mobility. However, safe, reliable, and affordable sources of energy are more than a matter of comfort and convenience. They are also vital to America's economic productivity, its technological progress, and our national security.

As current events in the Persian Gulf region have so forcefully reminded us, we must skillfully balance our determination to sustain economic growth; our need to use energy efficiently and to reduce this country's dependence on oil; and our commitment to a safer, cleaner environment. Ensuring a secure energy future for the United States will require the wise and effective development of all our Nation's energy resources, including coal, natural gas, and nuclear and hydroelectric power, and other forms of renewable energy. It will require the creation of new incentives for oil and gas exploration and the development of alternative fuels; and it will call for innovative conservation efforts.

During its observance of "Energy Awareness Month," the United States Department of Energy will be working to promote increased public understanding of our Nation's energy needs and the energy choices available to us. Through the cooperative efforts of energy providers, educators, business and community leaders, individual consumers, and public officials at all levels of government, we can develop the sound energy policies and practices that are vital to our Nation's future.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1990 as Energy Awareness Month. I urge the people of the United States to observe this month with appropriate educational programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-23758
Filed 10-3-90; 11:28 am]
Billing code 3195-01-M

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H.R. 5747/Pub. L. 101-402

To provide for the temporary extension of certain programs relating to housing and community development, and for other purposes. (Oct. 1, 1990; 104 Stat. 866; 1 page) Price: $1.00

H.J. Res. 655/Pub. L. 101-403

Making continuing appropriations for the fiscal year 1991, supplemental appropriations for "Operation Desert Shield" for the fiscal year 1990, and for other purposes. (Oct. 1, 1990; 104 Stat. 867; 8 pages) Price: $1.00

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federal register

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October 5, 1990

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Rules and Regulations

Federal Register
Vol. 55, No. 194
Friday, October 5, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 58; Docket No. 7996S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.
ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the Federal Register on Wednesday, February 28, 1990, at 55 FR 6971. The interim rule was a mandatory amendment to the General Crop Insurance Policy (7 CFR part 401). The intended effect of the interim rule was to provide that, notwithstanding the terms of the crop insurance policy and any contract for crop insurance, coverage under the terms of such endorsements will be effective subject to the availability of appropriations for the 1991 and subsequent crop years.

EFFECTIVE DATE: This rule is effective October 5, 1990.

FOR FUTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations remains as February 1, 1994.

David W. Gabriel, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmenal consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, February 28, 1990, FCIC published an interim rule in the Federal Register at 55 FR 6971, amending the General Crop Insurance Regulations (7 CFR part 401) to provide that, notwithstanding the terms of the crop insurance policy and any contract for crop insurance, coverage under the terms of such endorsements will be effective subject to the availability of appropriations for the 1991 and subsequent crop years.

Written comments were solicited for 60 days after publication in the Federal Register, and the rule was scheduled for review so that any amendment made necessary by public comment could be published in the Federal Register as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 401

Crop insurance.

Final Rule

Accordingly, the interim rule published in the Federal Register on Wednesday, February 28, 1990, at 55 FR 6971, is hereby adopted as a final rule.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on October 1, 1990.

David W. Gabriel,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-23545 Filed 10-4-90; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt No. 36; Doc. No. 7937S]

General Crop Insurance Regulations; Safflower Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.
ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, to amend the Safflower Endorsement with respect to cancellation and termination dates, and the date by which contract changes are required to be filed in the agent's office. The intended effect of this rule is to provide cancellation and termination dates more in keeping with safflower growing practices in California, and to provide a date by which program changes must be filed in the agent's office which are consistent with such new dates.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 1994.

David Gabriel, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive

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Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The current cancellation and termination dates for safflowers in California are February 15. Safflower plantings are generally completed in January or February and may be well established by February 15. FCIC herein proposes to move the California cancellation and termination dates to December 31. The effective date for the cancellation and termination dates in California is December 31, 1991. This assures California growers that these changes will not interfere with the current policy in effect and is hereby added to this final rule for clarification purposes. In order to provide that any contract changes are filed timely to be effective for California safflower growers, and allow an appropriate amount of time for applications to be accepted, it is necessary that FCIC move the contract change date from the present November 30 to August 31 prior to the cancellation date. This change will not affect present policyholders since it would place the contract change date before the cancellation date, or August 31, 1991.

Accordingly, FCIC amends the General Crop Insurance Regulations (7 CFR part 401) to provide cancellation and termination dates more in keeping with safflower growing practices in California, and to provide a date by which programs changes must be filed in the agent's office to be consistent with such new dates.

On Monday, May 21, 1990, FCIC published a notice of proposed rulemaking in the **Federal Register** at 55 FR 20798, to amend the Safflower Endorsement to provide cancellation and termination dates more in keeping with safflower growing practices in California, and to provide a date by which program changes must be filed in the agent's office which are consistent with such new dates. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, with the changes described above with respect to an effectiveness date in paragraph 8, the rule published at 55 FR 20798 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 401

Crop insurance; Safflowers.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.123 is amended by revising paragraphs 8, and 9, to read as follows:

§ 401.123 Safflower seed crop endorsement.

* * * * *

8. Cancellation and Termination Dates

The cancellation and termination dates for California are December 31, beginning December 31, 1991. For all other states, the cancellation and termination dates are April 15.

9. Contract Changes

Contract changes will be available at your service office by August 31 prior to the cancellation date for California, and by December 31 prior to the cancellation date for all other states.

* * * * *

Done in Washington, DC on September 20, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-23660 Filed 10-4-90; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 415

[Amdt. No. 1; Docket No. 7372S]

Forage Production Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Forage Production Crop Insurance Regulations (7 CFR part 415), effective for the 1991 and succeeding crop years, by: (1) Adding insurance period ending dates for additional states; and, (2) providing that the premium reduction gained by insureds through good insuring experience will extend beyond the 1989 crop year expiration. The intended effect of this rule is to provide end of insurance dates in states recently added to the forage production crop insurance program, and to allow a continuation of good insuring experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1994.

David W. Gabriel, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC published a notice of proposed rulemaking in the **Federal Register** on Tuesday, November 21, 1989, at 54 FR 48109, to amend the Forage Production Crop Insurance Regulations (7 CFR part 415), effective for the 1991 and succeeding crop years, to provide an end of insurance period for states recently added to the program, and provide that the premium reduction gained by insureds through good insuring experience will extend beyond the 1989 crop year expiration.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received, Therefore, the notice of proposed rulemaking published at 54 FR 48109 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 415

Crop insurance; Forage production.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Forage Production Crop Insurance Regulations (7 CFR part 415), effective for the 1991 and succeeding crop years, as follows:

PART 415—[AMENDED]

1. The authority citation for 7 CFR part 415 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

§ 415.7 [Amended]

2. Section 415.7(d) is amended in section 5 by revising paragraph c.(1) and in section 7 by revising and reissuing paragraphs a. and b. to read as follows:

§ 415.7 The application and policy.

* * * * *

(d) * * *

5. Annual premium.

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year.

* * * * *

7. Insurance period.

a. Insurance attaches on acreage with an adequate stand:

(1) For the calendar year following the year of seeding on:

(a) February 1 for spring-seeded forage in California;

(b) April 15 for spring-seeded forage in Colorado, Idaho, Nebraska, Nevada, Oregon, Utah, and Washington;

(c) May 22 for spring-seeded forage in Iowa, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Wyoming and all other states;

(d) October 16 for fall-seeded forage in all states except California; and

(e) December 16 for fall-seeded forage in California.

(2) For subsequent years on:

(a) October 16 in all states except California; and

(b) January 1 in California.

b. Insurance ends at the earliest of:

(1) Total destruction of the forage crop;

(2) Removal from the windrow or the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which the majority of the forage is normally harvested:

(a) All states except California.	October 15.
(b) California	December 31.

* * * * *

Done in Washington, DC, on October 1, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-23540 Filed 10-4-90; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 738]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from October 7 through October 13, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 738 (7 CFR part 910) is effective for the period from October 7, through October 13, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to rquirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the

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Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receips are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemons industry is characterized by a large number of growers located over a wide area. The Committee's most recent estimate (October 2) of the 1990–91 production is 42,140 cars (one car equals 1,000 cartons of 38 pounds net weight each), compared to 37,861 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,600 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,840 cars compared to the 9,436 cars produced last year. On October 11, 1990, the National Agricultural Statistics Service will publish an estimate of the 1990–91 lemon crop.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a prefered market for California-Arizona lemons. Based on its crop estimate of 42,140 cars, the Committee estimates as of October 2 that about 42.5 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars) compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,861 cars in 1989–90. Fresh exports are projected at 20.1 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.4 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the reason. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on October 2, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 315,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is the same as the estimated projections in the Committee's current shipping schedule.

During the week ending on September 29, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 311,000 cartons compared with 298,000 cartons shipped during the week ending on September 30, 1989. Export shipments totaled 128,000 cartons compared with 150,000 cartons shipped during the week ending on September 30, 1989. Processing and other uses accounted for 188,000 cartons compared with 170,000 cartons shipped during the week ending on September 30, 1989.

Fresh domestic shipments to date for the 1990–91 season total 2,737,000 cartons compared with 2,633,000 cartons shipped by this time during the 1989–90 season. Export shipments total 1,123,000 cartons compared with 1,247,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 990,000 cartons compared with 1,119,000 cartons shipped by this time during 1989–90.

For the week ending on September 29, 1990, regulated shipments of lemons to the fresh domestic market were 311,000 cartons on an adjusted allotment of 355,000 cartons which resulted in net undershipments of 44,000 cartons. Regulated shipments for the current week (September 30 through October 6, 1990) are estimated at 300,000 cartons on an adjusted allotment of 356,000 cartons. Thus, undershipments of 56,000 cartons could be carried over into the week ending on October 13, 1990.

The average f.o.b. shipping point price for the week ending on September 29, 1990, was $14.20 per carton based on a reported sales volume of 307,000 cartons compared with last week's average of $14.42 per carton on a reported sales volume of 307,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $13.03 per carton. The average f.o.b. shipping point price for the week ending on September 30, 1989, was $15.55 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.66 per carton.

The Department's Market News Service reported that, as of October 2, the market is "steady". Demand for size 140's choice quality fruit exceeds supplies of those lemons. Demand for fruit of all other sizes and grades is good. At the meeting, a Committee member commented that demand for lemons continues to be good for both first and second grade fruit. The member stated that District 2 is "cleaning up" its remaining small-sized fruit. Also, Committee members discussed the need to recommend regulation in order to ensure an orderly transition between districts. The Committee unanimously recommended volume regulation for the period from October 7 through October 13, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $9.54 per carton, 116 percent of the projected season average fresh on-tree parity equivalent price of $8.20 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $8.53, 114 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from October 7 through October 13, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until October 2, 1990, and this action needs to be effective for the regulatory week which begins on October 7, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

2. Section 910.1038 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.1038 Lemon Regulation 738.

The quantity of lemons grown in California and Arizona which may be handled during the period from October 7 through October 13, 1990, is established at 315,000 cartons.

Dated: October 3, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-23782 Filed 10-4-90; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Regulation J; Docket No. R-0697]

Funds Transfers Through Fedwire

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adapted a comprehensive revision of Subpart B to Regulation J to make it consistent with the new Article 4A of the Uniform Commercial Code, Funds Transfers. The revision sets out the rules governing funds transfers through Fedwire, as well as Commentary to the regulation that constitutes a Board interpretation of the regulation.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625) or Colleen McCall, Staff Attorney, (202/452–6406), Legal Division; or Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452–3874); for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: For many years, the Regulation J provisions on funds transfers handled by Federal Reserve Banks constituted the only codified body of law applicable to these payments. Although subpart B of Regulation J specified the rules applicable to the funds transfers handled by Federal Reserve Banks, there were no codified rules for the wholesale funds transfers handled by other banks, or by private funds-transfer systems.[1] Further, Regulation J did not provide comprehensive rules for the relationship between banks and their customers that were parties to fund transfers handled by Federal Reserve Banks. Although there was no comprehensive body of statutory or regulatory law on funds transfers other than consumer transactions (and only limited case law has developed in this area), the number and dollar volume of funds transfers in the United States has grown to very high levels. Approximately 400,000 funds transfers with a total value of more than $1.5 trillion are processed in the United States each day through the Fedwire system and the Clearing House Interbank Payments System (CHIPS).

To provide a legal framework for these transactions, several years ago the National Conference of Commissioners on Uniform State Laws, the sponsoring organization for the Uniform Commercial Code and other uniform state laws, undertook to develop a new Article 4A to the Uniform Commercial Code (UCC) on funds transfers. This project was completed in 1989 with the assistance of representatives of the banking and the corporate user community, as well as the Federal Reserve System. Article 4A has already been adopted in twelve states—California, Colorado, Connecticut, Illinois, Kansas, Louisiana, Minnesota, New York, Oklahoma, Utah, Virginia, and West Virginia. Article 4A will become effective in many of these states by January 1991 and will likely be adopted in most, if not all, remaining states within the next few years.

Article 4A provides comprehensive rules governing the rights and responsibilities of the parties to wholesale funds transfers.[2] These rights and responsibilities include: responsibility for unauthorized, erroneous, or erroneously executed funds transfers, risks of loss associated with the failure of a bank handling a funds transfer, responsibilities to pay for and the right to receive payment for funds transfers, and the effect of payment by funds transfer on any contractual obligation between an

[1] In 1987, Congress adopted the Electronic Fund Transfer Act to establish consumer rights in electronic funds transfers. 15 U.S.C. 1693 *et seq.* This Act does not apply, however, to that portion of a funds transfer sent through Fedwire. 15 U.S.C. 1693a(6)(B).

[2] Transactions covered by Article 4A include wire transfers sent through Fedwire or CHIPS, book transfers, and automated clearing house (ACH) credit transfers, other than transfers subject to the electronic fund Transfer Act.

originator and a beneficiary underlying a funds transfer.

Although many of the concepts embodied in the current version of subpart B of Regulation J are similar to those embodied in Article 4A, a number of the subpart B provisions are inconsistent with the structure of Article 4A and the terminology of subpart B and Article 4A are frequently different. Revised subpart B incorporates Article 4A. In the event of an inconsistency between the provisions of the sections of subpart B and the provisions of Article 4A, the provisions of the sections of subpart B will prevail. Article 4A will apply to transactions involving Federal Reserve Banks even if the state in which the Federal Reserve

cited by the commenters outweigh the benefits of the warranties, which were designed primarily to address transition problems. Accordingly, the Board has deleted the warranty provisions from the final rule.

In addition to the warranty issue, in reviewing the proposal, the Board noted two other issues concerning the

In addition to these issues, the final rule revising subpart B contains a number of technical changes to the proposal that are described in detail below. The Board believes that these issues are addressed in a manner that is consistent with provisions of Article 4A, and therefore do not represent a

Regulation CC overrids a portion of Article 4A as incorporated in subpart B.

210.25—*Authority, purpose, and scope.* The Board proposed incorporating those provisions of Article 4A of the Uniform Commercial Code into subpart B that are not inconsistent with the provisions set forth expressly in subpart B of Regulation J to provide a

the Regulation E Commentary be amended to state that Regulation E does not apply to a transfer any portion of which goes through Fedwire. The Board has amended the regulation and revised the Commentary to provide that subpart B governs a funds transfer sent through Fedwire, as provided in the scope provisions, even though a portion of

originator and a beneficiary underlying a funds transfer.

Although many of the concepts embodied in the current version of subpart B of Regulation J are similar to those embodied in Article 4A, a number of the subpart B provisions are inconsistent with the structure of Article 4A and the terminology of subpart B and Article 4A differ substantially. Accordingly, in June 1990, the Board published for comment a comprehensive revision of subpart B to incorporate Article 4A and to define further its requirements applicable to Federal Reserve Banks. The Board received 32 comments on the proposal. The Board has considered the comments and revised the proposed rule as further described below. In considering modifications to the regulation, the Board has sought to ensure (1) the continued ability of the Federal Reserve Banks to effectively carry out their central banking responsibilities, (2) the consistency of the revised regulation with the Federal Reserve's role to promote the integrity and efficiency of the payments system, and (3) the consistency of the revised regulation with the tests established in the Board's competitive impact analysis. The Board believes that revised subpart B meets these objectives.[3]

The Board has revised subpart B of Regulation J substantially as proposed in June so as to apply Article 4A to funds transfers handled by Federal Reserve Banks, subject to a limited number of modifications and clarifications.[4] This revision to subpart B: (1) Provides a more comprehensive set of rules for funds transfers involving Federal Reserve Banks than is currently provided by subpart B; (2) makes subpart B consistent with state laws applicable to funds transfers as states adopt Article 4A; and (3) helps to ensure that, subject to their central banking responsibilities, Federal Reserve Banks compete on an equitable basis with private-sector providers of funds-transfer services.

[3] It could be argued that adoption of the rules governing Fedwire as a federal regulation, rather than as a funds-transfer system rule, in itself had an adverse competitive effect due to the supremacy of federal law over funds-transfer system rules. The Board believes that adoption of these rules as federal law is necessary, in light of the national scope of the Fedwire system.

[4] Under section 4A-107, Federal Reserve regulations and operating circulars supersede inconsistent provisions of Article 4A. In addition, under the Expedited Funds Availability Act, the Board has broad authority to issue regulations concerning the payments system. Nevertheless, in developing subpart B, the Board has generally varied Article 4A only to the extent that the law could be varied by a private funds-transfer system rule.

Revised subpart B incorporates Article 4A. In the event of an inconsistency between the provisions of the sections of subpart B and the provisions of Article 4A, the provisions of the sections of subpart B will prevail. Article 4A will apply to transactions involving Federal Reserve Banks even if the state in which the Federal Reserve Bank is located had not yet adopted Article 4A. The Board believes that this incorporation is necessary to ensure that the law applicable to funds transfers involving Federal Reserve Banks is uniform for all Fedwire funds transfers, regardless of the location of the banks involved in the funds transfer.

Consistent with the provisions of Article 4A concerning the choice of law by rules of private funds-transfer systems (*see* section 4A-507), subpart B will apply to all banks sending payment orders to or receiving payment orders from Federal Reserve Banks. In addition, it will apply to any remote parties to these funds transfers that receive notice that the funds transfer might go through Fedwire and that subpart B applies to such funds transfers (*see* section 4A-507(c)). In order to encourage banks to provide these notices to their customers, the proposal included a warranty by the banks sending or receiving funds transfers through Fedwire that all remote parties to the transfer have been provided such a notice. This warranty would have extended the Article 4A limitation on consequential damages to claims against Federal Reserve Banks by originators and beneficiaries of transfers through Fedwire (*see* section 4A-305(d)), and would have helped to provide end-to-end coverage for funds transfers through Fedwire so that the scheme of rights and liabilities under Article 4A operated effectively. These benefits applied primarily to the transition period before Article 4A is adopted in all states. The Board had been advised that private funds-transfer systems were planning to require similar warranties or employ other similar means to ensure that originators and beneficiaries are notified of the use of their funds-transfer system.

Commenters argued that private banks would be unable to obtain similar warranties by agreement and that the warranties would expose them to liabilities from remote parties that they would be unable to control. Further, although the National Automated Clearing House Association (NACHA) has attempted to achieve a result similar to the proposed warranty by requiring in its rules that its participants give such notices, CHIPS has not. The Board believes that the burden and difficulties cited by the commenters outweigh the benefits of the warranties, which were designed primarily to address transition problems. Accordingly, the Board has deleted the warranty provisions from the final rule.

In addition to the warranty issue, in reviewing the proposal, the Board noted two other issues concerning the appropriate scope of subpart B. First, by its terms, Article 4A does not apply to funds transfers any part of which is subject to the Electronic Fund Transfer Act (*see* section 4A-108). The Electronic Fund Transfer Act does not apply to funds transfers sent through Fedwire (*see* 15 U.S.C. 1693a(6)(B)). One portion of a funds transfer could be sent through Fedwire and another portion could be transmitted in a way that made it subject to the Electronic Fund Transfer Act. In such a case, by its terms, Article 4A would not be applicable to any portion of the funds transfer, including the Fedwire portion. In order to ensure that the rules for all funds transfers through Fedwire are consistent, the final rule provides that subpart B, including Article 4A, applies to all funds transfers through Fedwire, even if a portion of the funds transfer is governed by the Electronic Fund Transfer Act. The portion of the funds transfer that is governed by the Electronic Fund Transfer Act would not be governed by subpart B.

Second, Article 4A specifies the time that a beneficiary's bank must provide the proceeds of a funds transfer to the beneficiary on the payment date. The Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) and Regulation CC require banks to make electronic payments available for withdrawal on the business day after the banking day on which the bank has received payment in actually and finally collected funds and information on the account and amount to be credited (*see* 12 CFR 229.10(b)). Although Article 4A would in some cases provide for prompter availability of funds transfers than would the Expedited Funds Availability Act and Regulation CC, the Board believes the Expedited Funds Availability Act and Regulation CC should control subpart B because the express provisions of the Expedited Funds Availability Act indicate clearer expression of Congressional intent on the issue of availability of funds.[5]

[5] The Expedited Funds Availability Act provides that a state law that requires prompter availability of funds can supersede the federal law only if the state law was in effect on September 1, 1989. (12 U.S.C. 4007.) Article 4A would not supersede the Expedited Funds Availability Act in any state because it was not in effect in any state on September 1, 1989.

In addition to these issues, the final rule revising subpart B contains a number of technical changes to the proposal that are described in detail below. The Board believes that these issues are addressed in a manner that is consistent with provisions of Article 4A, and therefore do not represent a competitive inequity between Federal Reserve Banks and private-sector banks and, at the same time, do not adversely affect the Federal Reserve Banks' abilities to carry out their central banking responsibilities, including providing payment services to troubled banks and administering the discount window.

Comment Summary

The Board received 32 comments on the proposed revisions to subpart B of Regulation J. Commenters comprised

Commercial Banks	10
Bank Holding Companies	8
Trade Associations	6
Federal Reserve Banks	3
Clearing House	1
Savings and Loan Institution	1
Corporation	1
Foreign Central Bank	1
U.S. Branch of a Foreign Bank	1
Total	32

While all of the commenters generally favored the proposal, some commenters raised various concerns with specific aspects of the proposed revisions. The final amendments and substantive comments are summarized below:

Supplementary Information. One commenter suggested that the Board was inconsistent in its statement in footnote 4 that the Board is not relying "extensively" on its section 4A-107 authority to supersede provisions of Article 4A, and its statement in the competitive impact analysis to § 210.25 that the Board "does not believe that the proposed subpart B supersedes or preempts any express provisions of Article 4A." The discussion of the use of the Board's preemptive authority in supplementary information for the final rule is consistent with the discussion in the competitive impact analysis. Generally, subpart B only varies Article 4A in ways that it could be varied by a funds-transfer system rule. For example, the Board has overridden Article 4A so as to apply subpart B to portions of a funds transfer through Fedwire where other portions are subject to the Electronic Fund Transfer Act. In addition, as discussed above, the Expedited Funds Availability Act and Regulation CC override a portion of Article 4A as incorporated in subpart B.

210.25—*Authority, purpose, and scope.* The Board proposed incorporating those provisions of Article 4A of the Uniform Commercial Code into subpart B that are not inconsistent with the provisions set forth expressly in subpart B of Regulation J to provide a more comprehensive set of rules for funds transfers involving Federal Reserve Banks than is currently provided by subpart B. One commenter stated that subpart B's incorporation of Article 4A will make state passage of Article 4A ministerial. The Board believes that state adoption of Article 4A is still desirable to govern the rights and obligations of parties to funds transfers that do not go through Fedwire and remote parties to Fedwire funds transfers to the extent that their rights and obligations are not governed by subpart B.

The Board was requested to clarify its intent regarding the preemptive effect of subpart B (incorporating Article 4A) on individual state laws. In the Commentary to § 210.25(a), the Board has clarified that subpart B only preempts inconsistent provisions of state laws, and that it does not affect state law governing funds transfers that does not conflict with the provisions of subpart B, such as Article 4A, as enacted in any state, as it applies to parties to funds transfers whose rights are not governed by subpart B.

The Board was asked to clarify whether the Uniform Commercial Code Article 1 provisions are also incorporated in proposed subpart B, and if so, whether subpart B would supersede state versions of Article 1. The commenter expressed concern that unless subpart B incorporated Article 1 or an explanation of the status of Article 1 was included in the Commentary, court decisions would be inconsistent in this respect. The Board has added a sentence to the Commentary to § 210.25(b) clarifying that the Article 1 definitions referred to in section 4A-105(d) are also incorporated in subpart B. The Commentary also clarifies that the version of Article 1 referred to is that approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute.

Two commenters stated that the Board should clarify the extent to which subpart B applies to those transfers not covered by Article 4A because a portion of the transfer is covered by the Electronic Fund Transfer Act ("EFT Act"), 15 U.S.C. 1693 *et seq.* and the Board's Regulation E, 12 CFR part 205. One of these commenters suggested that the Regulation E Commentary be amended to state that Regulation E does not apply to a transfer any portion of which goes through Fedwire. The Board has amended the regulation and revised the Commentary to provide that subpart B governs a funds transfer sent through Fedwire, as provided in the scope provisions, even though a portion of such funds transfer is also covered by the EFT Act, but that the portion of a funds transfer governed by the EFT Act is not governed by subpart B.

One commenter suggested that the Board may need to include Article 4A in the Federal Register notice with the final regulation to satisfy the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* The Board has included Article 4A in the Federal Register notice as appendix B to revised subpart B.

Eight commenters disagreed with the limitation of the scope of proposed subpart B to that of a funds-transfer system rule under Article 4A. These commenters suggested that the Board use its authority under section 4A-107 to apply subpart B to achieve end-to-end coverage so that subpart B would apply to all parties to a Fedwire funds transfer. Most of these commenters stated that it is not competitively inequitable for the Board to expand the scope of subpart B beyond the scope achievable through a funds-transfer system rule, and in fact, that section 4A-107 contemplates this action by the Board. Further, one commenter believed that proposed § 210.25 is ambiguous because it states that subpart B is not a funds-transfer system rule, but proposes to bind remote parties as if it were a funds-transfer system rule. However, one commenter, a foreign central bank, believed that it would be inconsistent with international payments practice for subpart B to purport to govern the relationship between foreign banks and their customers outside the United States merely because a portion of a funds transfer went through Fedwire. This commenter requested clarification that the Board does not intend to extend the scope of subpart B to govern the relationship between foreign banks and their customers.

The Board believes that subpart B should have the same scope as if it were a funds-transfer system rule under Article 4A. This, subpart B binds only parties that are direct Fedwire participants and remote parties that have received notice in accordance with section 4A-507 that Fedwire might be used in the funds transfer and that subpart B is the governing law. The Board recognizes that private-sector providers of funds transfer services

could not achieve end-to-end coverage for their funds-transfer system rules through federal regulation. In addition to considerations of competitive equity, the Board is concerned that applying subpart B to all parties to a funds transfer sent through Fedwire would govern rights between parties remote from a Federal Reserve Bank in which the Federal Reserve Bank has no

The Federal Reserve Banks cannot vary the subpart B rules in their operating circulars, because the regulation specifies that the circulars must be consistent with subpart B. Federal Reserve Bank and Board staff are currently drafting a model Fedwire operating circular, and the Board anticipates that the circulars issued by the Federal Reserve Banks will be

believe that it is appropriate to specify the means by which private parties arrive at an agreement with each other as to security procedures.

A commenter suggested that Board clarify whether subpart B covers ACH credit transfer. The proposal expressly excluded ACH transfers both from the definition of Fedwire (§ 210.26(e)) and

Article 4A, as adopted in a given state. The Board amended the proposed § 210.26(c) definition of "automated clearing house transfer" by deleting the phrase "in the rules of an automated clearing house association," because it was redundant to the first part of the definition. In addition, the Board has amended the proposed § 210.26(h)

incur daylight overdrafts. The commenter maintained that the ability to incur an overdraft is necessary to the efficient operation of the nation's payment system and is necessary to reduce systemic risk.

The Board does not believe that subpart B is inconsistent with its risk reduction policies. A bank does not

Reserve Bank that the order was unauthorized or erroneously executed, for the purpose of eligibility for interest payment. Section 210.34(b) of current subpart B gives a sender 10 calendar days from receipt of an advice of debit to report a possible error to its Federal Reserve Bank. Banks generally report discrepancies in their account very

could not achieve end-to-end coverage for their funds-transfer system rules through federal regulation. In addition to considerations of competitive equity, the Board is concerned that applying subpart B to all parties to a funds transfer sent through Fedwire would govern rights between parties remote from a Federal Reserve Bank in which the Federal Reserve Bank has no financial interest, including foreign parties. For example, if the Board applied subpart B to achieve end-to-end coverage of funds transfers that go through Fedwire, subpart B would purport to govern the rights between an originator and originator's bank located aboard that did not contemplate that Fedwire would be used to carry out the transfer. While such coverage might provide legal certainty to such transactions, the parties to these transactions may not know of or desire such certainty. Further, the Baord does not believe that there is a compelling case for achieving such added certainty for transfers through Fedwire as opposed to transfers through other funds-transfer systems or book transfers.

For these reasons, the Board has not expanded the scope of subpart B to achieve end-to-end coverage, but Fedwire participants may obtain end-to-end coverage in the same manner available to private funds-transfer systems under section 4A-507—through notice to remove parties. Consequently, the scope of proposed § 210.25 has not been changed. *See*, however, the discussion of the elimination of the warranties contained in proposed §§ 210.28(c) and 210.29(c) by direct Fedwire participants that remote parties had received notice. In addition, the Board revised proposed § 210.25(b) and the Commentary to that section for clarity.

In the proposal, the Board indicated that each Federal Reserve Bank will issue an operating circular governing the details of its funds-transfer operations and certain other matters. Two commenters expressed concern that a Federal Reserve Bank may individually vary the subpart B rules in its Fedwire operating circular. One of these commenters suggested that subpart B should expressly limit the Federal Reserve Banks' authority to vary § 210.25 because Fedwire is a national system and the Federal Reserve's policies should not fundamentally differ among districts. The other commenter suggested that the Board established an oversight committee to prevent operating circular discrepancies.

The Federal Reserve Banks cannot vary the subpart B rules in their operating circulars, because the regulation specifies that the circulars must be consistent with subpart B. Federal Reserve Bank and Board staff are currently drafting a model Fedwire operating circular, and the Board anticipates that the circulars issued by the Federal Reserve Banks will be substantially similar to the model circular. Further, the Board's general counsel will review the model circular for consistency with applicable law, including subpart B. Therefore, the Board has not changed this provision of § 210.25(c) in the final regulation. The Board has clarified in the Commentary to § 210.25(c) that Federal Reserve Bank Operating Circulars may supersede inconsistent provisions of Article 4A as set forth in Appendix B and as enacted in any state.

Article 4A allocates liability for unauthorized payment orders based on the commercial reasonableness of the security procedures that are used by the receiving bank to verify its customers' payment orders (*see* section 4A-202). In proposed § 210.25(c), the Board stated that the Federal Reserve Bank operating circulars would specify the security procedures that would be used in Fedwire transfers. Two commenters asked that subpart B explicitly address security procedures. One of these commenters believed that subpart B should provide for a course of dealing arrangement to minimize the burden of obtaining new written agreements and establishing new security procedures. The other commenter recommended that subpart B establish minimum security procedures that are deemed commercially reasonable to provided guidance for the industry.

The Board believes that the operational details of the security procedures used for Fedwire funds transfers are more appropriately addressed in the Federal Reserve Bank operating circulars, and thus has not included the specifics of the security procedures in the regulation, because the Board anticipates that the security procedures that are used will evolve over time. With respect to the comment on minimum security procedures, Article 4A contemplates that the issue of whether a particular security procedure is commercially reasonable is a question of law, to be determined by the courts under standards set forth in section 4A-202(c). For these reasons, the Board does not believe it is appropriate to prescribe by regulation what constitutes commercially reasonable security procedures. Further, the Board does not believe that it is appropriate to specify the means by which private parties arrive at an agreement with each other as to security procedures.

A commenter suggested that Board clarify whether subpart B covers ACH credit transfer. The proposal expressly excluded ACH transfers both from the definition of Fedwire (§ 210.28(e)) and from the definition of payment order (§ 210.28(i)). In addition, § 210.25(a) states that subpart B governs only funds transfers through Fedwire. Therefore, the Board believes that it is clear that subpart B does not govern ACH credit transfers.

Finally, on its own initiative, the Board added § 210.25(b)(4) to the revised regulation to clarify that the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) and Regulation CC (12 CFR part 229) control subpart B on availability of funds because the express provisions of the Expedited Funds Availability Act are a clearer expression of Congressional intent on this issue. The Board revised proposed § 210.25(d) for clarity.

210.26—Definitions. Two commenters suggested that the Board clarify whether requests for credit transfers, or drawdown requests, sent through Fedwire are considered to be payment orders under subpart B. One of these commenters noted that comment 4 to section 4A-104 states that drawdown requests in the form of a credit transfer where the same party is both originator and beneficiary are treated as payment orders under Article 4A. The same commenter did not believe that the Federal Reserve Banks should have discretion to determine in their operating circulars whether such requests are considered payment orders. The other commenter requested clarification on which rules, if any, govern drawdown requests excluded by Article 4A but sent through Fedwire.

The Board believes that requests for credit transfers sent through Fedwire should not be considered to be payment orders covered by subpart B because they are not payment orders addressed to a Federal Reserve Bank; the Federal Reserve Banks act solely as a transmission facility with respect to these messages. Therefore, the board has not expanded the definition of payment order to include these messages and has clarified that these messages are not treated as payment orders under subpart B because they are not an instruction to a Federal Reserve Bank to pay money. The exclusion of these messages from the subpart B definition of payment order does not affect whether they are subject to

Article 4A, as adopted in a given state. The Board amended the proposed § 210.26(c) definition of "automated clearing house transfer" by deleting the phrase "in the rules of an automated clearing house association," because it was redundant to the first part of the definition. In addition, the Board has amended the proposed § 210.26(h) definition of "off-line bank" for clarity. The Board has also deleted the proposed § 210.26(l) definition of "Uniform Commercial Code" and clarified in § 210.25(a) that the version of Article 4A incorporated in subpart B is that set forth in appendix B. Further, the Board revised the Commentary to § 210.26(d), "beneficiary's bank," for clarity.

210.27—Reliance on identifying number. Article 4A provides that a bank may rely on the number in the payment order identifying an intermediary bank, the beneficiary's bank or the beneficiary, even if the number is inconsistent with the name, if the bank does not know that the name and the number refer to different persons (*see* sections 4A-207 and 4A-208). Proposed § 210.27 provided notice to nonbank senders that Federal Reserve Banks may rely on numbers in the payment order identifying the intermediary bank, the beneficiary's bank, and the beneficiary. One commenter expressly agreed with this aspect of the Board's proposal. Another commenter believed that the quality of Fedwire would be reduced and risk would be increased if the Federal Reserve Banks used only the identifying numbers, and not also the names, to identify the beneficiary. This commenter recommended that the Federal Reserve use both name and account number in processing Fedwire transfers.

The Board believes that the benefits of automated processing can be fully achieved only if routing numbers or other identifying numbers can be relied upon to process Fedwire transfers. Article 4A recognizes these efficiencies by shielding banks that rely on the identifying number, as long as the bank is not aware of a discrepancy between the name and number (*see* sections 4A-207 and 4A-208). Therefore, the Board has retained this provision in the final regulation. The Board has revised the § 210.27(b) Commentary for clarity.

210.28—Agreement of sender. Section 210.28 of the proposal provided that a sender of a Fedwire funds transfer did not have a right to incur overdrafts in its account with a Federal Reserve Bank. One commenter believed that the overdraft proposal should be revised because the Board's payments system risk reduction program allows banks to incur daylight overdrafts. The commenter maintained that the ability to incur an overdraft is necessary to the efficient operation of the nation's payment system and is necessary to reduce systemic risk.

The Board does not believe that subpart B is inconsistent with its risk reduction policies. A bank does not have a right to incur an overdraft in its account at a Federal Reserve Bank, although a Federal Reserve Bank may, in certain circumstances, permit a sender to incur an overdraft. Consequently, the Board believes that the proposed provisions addressing overdrafts are appropriate and has not substantively modified this section in the final regulation; however, it has revised the Commentary to refer to the other overdraft policies and has revised proposed § 210.28(b) (3) and (4) and the accompanying Commentary for clarity.

Sections 4A-204(a) and 4A-304 provide that to receive interest compensation, a sender must notify a receiving bank of an unauthorized or erroneously executed payment order within a reasonable time not exceeding 90 days from receipt of the notice of the payment order. The Board proposed 10 funds-transfer business days as the reasonable time after the sender receives notice that the payment order was accepted or executed, or that the sender's account was debited with respect to an order, for the sender to notify its Federal Reserve Bank that the order was unauthorized and erroneously executed. This 10 funds-transfer business days was an extension of a similar period of 10 calendar days established by § 210.34(b) of current subpart B of Regulation J.

Ten commenters disagreed with the Board's proposal to allow a sender 10 funds-transfer business days to provide this notice to its Federal Reserve Bank. While one commenter believed that two funds-transfer business days should be sufficient for senders to notify Federal Reserve Banks of an improper execution, the remaining commenters believed that the time should be longer than that proposed, because senders must provide payment order information to their nonbank customers to aid in the discovery of errors. These commenters proposed time periods ranging from 30 days to 90 days as a reasonable time for a sender to notify its Federal Reserve Bank.

The Board has modified the proposal to allow senders 30 calendar days after receiving notice that the payment order was accepted or executed, or that the sender's account was debited with respect to an order, to notify the Federal Reserve Bank that the order was unauthorized or erroneously executed, for the purpose of eligibility for interest payment. Section 210.34(b) of current subpart B gives a sender 10 calendar days from receipt of an advice of debit to report a possible error to its Federal Reserve Bank. Banks generally report discrepancies in their account very promptly to their Federal Reserve Bank, and the Board is concerned that a significant relaxation of the current standards of timeliness in reporting problems could encourage banks to defer reconciling their accounts. In addition, the Board believes that senders can negotiate comparable timeframes to report possible errors with their bank customers. Therefore, the Board believes that 30 calendar days provides senders ample time to review notifications sent by a Federal Reserve Bank and other information available to the sender to determine whether an error has occurred and notify the Federal Reserve Bank of a possible error. In addition, the Board revised the § 210.28(c) Commentary for clarity.

210.28(c) and 210.29(c)—Notice by sender and receiving bank of use of Fedwire. In its proposal, the Board recognized that it would be desirable to have subpart B and Article 4A as incorporated therein govern the rights of obligations of all parties to a Fedwire funds transfer. Consistent with the Article 4A provisions concerning choice of law and the Board's competitive analysis, the Board proposed that subpart B apply to direct Fedwire participants, and to only those remote parties that receive notice that the funds transfer may be sent through Fedwire and of the governing law (*see* section 4A-507(c)). This approach would ensure that customers are aware of the rules that apply to their transactions, and would not bind remote parties to subpart B in a manner unavailable to private funds-transfer systems.

The Board proposed to require direct Fedwire participants to warrant to their Federal Reserve Bank that all remote parties to a Fedwire transfer have received notice that Fedwire may be used to effect the transfer, and of the governing law. This warranty scheme had two primary purposes: (1) To encourage banks to provide the notices to remote parties to a Fedwire transfer that are necessary to achieve end-to-end coverage by subpart B; and (2) to shield Federal Reserve Banks from potential liability for consequential damages to parties in states that have not adopted the Article 4A limitation on consequential damages.

Fourteen commenters opposed the warranty proposal. Four of these commenters were concerned that the proposal may require U.S. banks to bind foreign parties to subpart B for international transfers partially executed through Fedwire, and that foreign remote parties to the transfer may object to the application of U.S. law

competitive advantage, allowing the Federal Reserve to accomplish by regulation what private-sector banks are unlikely to receive by contract. Some commenters stated that they were not aware of any other funds-transfer system that planned to impose a similar warranty scheme. One commenter argued that if banks could obtain all

give comparable warranties to their immediate participants or modify the current warranties so that the sender warrants to all subsequent receivers and the receiving bank warrants to all previous senders. Another commenter suggested that where notification cannot be accomplished by contract, the Board should address the treatment of

intermediary bank or a beneficiary's bank "with respect to payment orders received through Fedwire" for a bank beneficiary. Therefore, the Board has not modified this provision, but has clarified this point in the Commentary to § 210.29.

210.31—Payment by a Federal Reserve Bank to a receiving bank or

proposal implies that other parties could agree with the Federal Reserve to assume liability for consequential damages. Further, this commenter noted the proposal did not state the implications of a Federal Reserve Bank exceeding its authority and agreeing to consequential damages liability.

The Board has amended § 210.32(a)

to pass along compensation at the same rate paid by the Federal Reserve Bank is applicable only where the Federal Reserve Bank is required to pay compensation to a bank's customer and the bank is merely acting as a conduit in passing along the compensation. In some cases, the Federal Reserve Bank may not be able to identify the bank's

Fourteen commenters opposed the warranty proposal. Four of these commenters were concerned that the proposal may require U.S. banks to bind foreign parties to subpart B for international transfers partially executed through Fedwire, and that foreign remote parties to the transfer may object to the application of U.S. law to the relationship between foreign banks and their foreign customers. Several commenters argued that U.S. banks would have to assume the risk of not providing notice or receiving similar warranties from foreign parties to the transfer in order to remain in the international payments business. Two commenters believed that an attempted foreign exportation of Article 4A and subpart B may be counterproductive to the United States' role in the current United Nations' efforts to develop universal rules for international payments. One of these commenters argued that the warranty scheme, if adopted, would encourage retaliation against U.S. banks through other countries enacting similar laws, thereby creating confusion and legal uncertainty for the U.S. banking community and the U.S. funds-transfer user community.

Ten commenters objected to the warranty requirements as burdensome and impractical because there may be unknown remote parties on either end of the transaction, and it would be impossible to ensure that notification had been given. In addition, one commenter believed that the presence of unknown parties makes it impossible for the warranties to be given in good faith and would force banks to provide warranties for which they have no recourse. Another commenter opined that the warranties may subject immediate Fedwire participants to strict liability to parties with whom a bank has no dealings or agreements. One commenter noted that smaller institutions may not be able to bear the financial consequences of a warranty breach, and therefore may be unable to maintain correspondent relationships with larger banks.

Five commenters believed that the warranty requirement would be particularly onerous on the receiving bank because the notice must be given before the transfer is effective and any customer may be a potential beneficiary, including individuals receiving transfers to be paid by the beneficiary's bank upon presentation of proper identification ("PUPID" transfers), but with whom the receiving bank has no account relationship.

Two commenters believed that the warranties give the Federal Reserve a competitive advantage, allowing the Federal Reserve to accomplish by regulation what private-sector banks are unlikely to receive by contract. Some commenters stated that they were not aware of any other funds-transfer system that planned to impose a similar warranty scheme. One commenter argued that if banks could obtain all terms by contract, Article 4A would be unnecessary. Another commenter noted that Federal Reserve Banks are not required to provide similar warranties to their customers.

One commenter argued that banks may lose business to other banks that are willing to assume the risks of not requiring notice or warranties. Another commenter argued that notice of the governing law is not necessary because it would not affect a customer's decision to use Fedwire to make a funds transfer. This commenter also noted that the proposal does not clarify whether notice is considered to have been given when it is received or when it is sent, and therefore receipt of notice may be a critical issue of fact in litigation.

One commenter asked how banks are expected to comply with the warranty and notification provisions. Another commenter noted that the proposal provides little guidance about how notice is to be accomplished, although it believed that Article 4A requires a separate notice for each transfer.

One commenter objected to the warranties because it believed that the Federal Reserve Banks are not likely to be exposed to the possibility of consequential damages, even in states that have not enacted Article 4A, because the Federal Reserve Banks owe a duty only to parties in privity with them, and remote parties would be third-party beneficiaries of that duty. While the sender to a Federal Reserve Bank may be liable to its customer for damages greater than that allowed by Article 4A, this commenter argued that the excess liability would not transfer to the Federal Reserve Bank.

Seven commenters suggested eliminating the warranty requirements and expanding the scope of subpart B to bind all parties to a Fedwire transfer through Regulations J's federal law status. One of these commenters suggested that this approach could be further refined to cover only domestic parties. One commenter noted that this approach would insulate all parties from consequential damages. One commenter said that under an expanded scope, consequential damages should be allowed only by agreement.

One commenter suggested that the Federal Reserve Banks be required to give comparable warranties to their immediate participants or modify the current warranties so that the sender warrants to all subsequent receivers and the receiving bank warrants to all previous senders. Another commenter suggested that where notification cannot be accomplished by contract, the Board should address the treatment of unnotified payment orders in the subpart B Commentary.

Based on an analysis of the comments, the Board has deleted the warranty provisions from the final regulation. Although the warranty would have encouraged end-to-end coverage of funds transfers and shielded Federal Reserve Banks from consequential damages, the Board believes that the complications inherent in the proposed warranty scheme and the burdens and liability the warranty would place on banks that would be subject to it outweigh these benefits. Further, the Board notes that while at least one funds-transfer system has attempted to achieve similar results by requiring notices described in section 4A-507(c), others have not, apparently for reasons cited by the commenters. *See also* the above discussion concerning scope under § 210.25. Finally, with respect to commenters' concerns that subpart B would govern the relationships between remote parties that may not wish their relationship to be governed by subpart B, the Board notes that under section 4A-507(b), even if the parties have received the notices contemplated by Article 4A, the parties may agree on an alternative law to govern the rights and obligations between them.

210.29—Agreement of receiving bank. Under section 4A-301(b), a receiving bank is obligated to transmit a payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible. To enable the Federal Reserve Banks to fulfill this duty, the Board proposed that an off-line receiving bank must either notify its Federal Reserve Bank in writing if it acts as the beneficiary's bank with respect to Fedwire payment orders for a beneficiary that is a bank, or warrant that it does not hold any such accounts.

One commenter stated that this proposed warranty off-line banks should be restricted to funds-transfer relationships with customer banks. The Board believes that § 210.29(b) already addresses this issue; the provision requires an off-line bank that does not notify the Federal Reserve Bank that it maintains an account for another bank to warrant only that it does not act as an

intermediary bank or a beneficiary's bank "with respect to payment orders received through Fedwire" for a bank beneficiary. Therefore, the Board has not modified this provision, but has clarified this point in the Commentary to § 210.29.

210.31—Payment by a Federal Reserve Bank to a receiving bank or beneficiary. In this section of the proposal, the Board specified the time when a Federal Reserve Bank satisfies its Article 4A obligation to pay the receiving bank or beneficiary the amount of the payment order issued by the Federal Reserve Bank (*see* sections 4A-402—4A-405). One commenter suggested that proposed § 210.31(b) be amended to provide that notices of credit by Federal Reserve Banks are "given" rather than "sent" to reflect telephone notice. After reviewing the UCC Article 1 definitions, the Board concluded that "sent" adequately reflects telephone notification, and therefore has not made the suggested change in the final regulation.

210.32—Federal Reserve Bank liability; payment of interest. In this section, the Board proposed that Federal Reserve Banks shall not exercise the section 4A-305(c) option of agreeing with a sender, receiving bank or other Federal Reserve Bank to be held liable for consequential damages.

One commenter believed the consequential damages limitation is crucial to protect both Federal Reserve Banks and their immediate participants and recommended that subpart B be expanded to preclude the recovery of consequential damages from other parties to a Fedwire transfer. Another commenter said that the statement in the competitive impact analysis that the Federal Reserve Banks do not agree to consequential damages liability was already a clear result under Article 4A, as incorporated into subpart B, and that the proposal should be revised to clarify that Federal Reserve Banks are forbidden from agreeing to consequential damages liability. This commenter also stated that Federal Reserve Banks should not be forbidden from agreeing to consequential damages liability or damages other than those provided for in Article 4A because other banks will likely follow the Federal Reserve's lead, rendering the Article 4A ability to agree to consequential damages useless.

Another commenter stated that the Board should deny consequential damages recovery to any party to a Fedwire funds transfer, especially since a Federal Reserve Bank could cause the error that leads to a consequential damages claim. It stated that the proposal implies that other parties could agree with the Federal Reserve to assume liability for consequential damages. Further, this commenter noted the proposal did not state the implications of a Federal Reserve Bank exceeding its authority and agreeing to consequential damages liability.

The Board has amended § 210.32(a) and the corresponding Commentary to state: (1) That a Federal Reserve Bank's assumption of consequential damages liability, except as provided in section 4A-404(b), would violate subpart B, and therefore would be ineffective, and (2) that subpart B does not affect the ability of other parties to a funds transfer to agree to consequential damages liability. The Board does not believe that it is competitively inequitable to forbid the Federal Reserve Banks from agreeing to consequential damages liability because section 4A-305 provides that banks can only be held responsible for consequential damages when they agree in writing to assume such liability. Therefore, private-sector banks could similarly refuse to assume consequential damages liability.

In § 210.32(b), the Board proposed that when a Federal Reserve Bank is required under Article 4A to pay compensation in the form of interest to another party in connection with its handling of a funds transfer, it may provide such interest compensation through an as of adjustment or through an explicit interest payment if the bank receiving the compensation cannot make use of an as of adjustment because of a low or zero reserve and/or clearing balance requirement (*see* section 4A-506). The proposal further provided that a bank must pass on the benefit of an as of adjustment to an originator or beneficiary of a funds transfer that is entitled to compensation in the form of interest from a Federal Reserve Bank under Article 4A.

One commenter believed that subpart B should not supersede 4A-506 by requiring banks to pass along the benefit of an as of adjustment or explicit interest payment at the same rate paid by the Federal Reserve, nor should they be required to pass along an explicit interest payment as explicit interest if they have agreed to another arrangement, such as compensating balances. Further, this commenter believed that the Board should clarify the meaning of "amount of error" in proposed § 210.32(b)(1).

The Board does not believe the revised regulation supersedes section 4A-506 by requiring banks to pass along as of adjustments or explicit interest payments at the same rate paid by the Federal Reserve Bank. This requirement to pass along compensation at the same rate paid by the Federal Reserve Bank is applicable only where the Federal Reserve Bank is required to pay compensation to a bank's customer and the bank is merely acting as a conduit in passing along the compensation. In some cases, the Federal Reserve Bank may not be able to identify the bank's customer that is entitled to the payment. The Commentary notes that a bank acting as a conduit for the Federal Reserve Bank's compensation to a customer may pass on the benefit of that payment either through a direct interest payment or, if the customer so agrees, through compensating balances, provided that the value is not less than that of a direct interest payment. The Board also amended the proposal to allow a Federal Reserve Bank to pay compensation directly to a remote party entitled to payment. In situations where the bank is responsible for paying compensation, subpart B does not alter a bank's ability to agree with the customer on a specified rate or method of compensation, pursuant to section 4A-506.

In addition, the Board has amended § 210.32(b)(1) in the final regulation and the accompanying Commentary to clarify the method by which a Federal Reserve Bank will calculate an as of adjustment, and to clarify that a Federal Reserve Bank may pay interest compensation directly to the party entitled to compensation. The Board has also revised proposed § 210.32(b)(2) and the accompanying Commentary for clarity.

Miscellaneous. One commenter inquired what the appropriate means of providing notification would be under section 4A-404(b) of Article 4A and subpart B. Section 4A-404(b) requires a beneficiary's bank to give notice to the beneficiary of the receipt of a payment order by midnight of the bank's next funds-transfer business day following receipt of the order unless varied by customer agreement or funds-transfer system rule. The commenter did not believe that banks should be liable for failure to provide timely notice due to circumstances beyond their control, e.g., communications failure or postal delay. Another commenter suggested that Subpart B provide that as an alternative to individual credit advises, the requirement to notify beneficiaries could be satisfied by other means, such as on-line inquiry or daily statements. This commenter stated that if a beneficiary does not choose one of these alternatives, monthly account statements should suffice to satisfy the

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section 4A-404(b) notification requirement.

On a related issue, one commenter believed that § 210.31(a) should be amended to deny consequential damages where a bank refuses to make payment upon demand from a customer, if payment was not made due to a

participants.[6] Under these procedures, the Board will assess whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or

New York law. Staff believes that this rule would be binding on CHIPS participants and on remote parties to the extent they received notice that CHIPS may be used in the transfer and of the governing law. CHIPS rules do not require direct participants in their funds-transfer systems to warrant that notice

direct senders and receiving banks would not be fully defined, because the scope of the EFT Act is limited primarily to the bank/customer relationship. The Board believes that other funds-transfer systems could achieve similar coverage by agreement or through a funds-transfer system rule.

these messages from the scope of subpart B does not effect their status as payment orders under Article 4A, as enacted in a particular state. The Board does not believe that this definition would have any adverse competitive effect.

210.27—Reliance on identifying

Reserve, and (3) a private-sector bank could impose similar requirements on its customers to which it gives overdraft privileges.

Article 4A provides that the sender must notify a receiving bank of an unauthorized or erroneously executed payment order within a reasonable time

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section 4A–404(b) notification requirement.

On a related issue, one commenter believed that § 210.31(a) should be amended to deny consequential damages where a bank refuses to make payment upon demand from a customer, if payment was not made due to a reasonable uncertainty of whether acceptance has occurred, even if acceptance occurs through credit to the bank's reserve account.

One commenter described two hypothetical cases involving PUPID transfers where the commenter believed that Article 4A may create a hardship. In the first case, if the beneficiary's bank sends notice to the beneficiary's address, but the beneficiary never collects the funds, the originator would not be entitled to reclaim the money because under section 4A–405(a), the sending of notice makes the transfer final. If, however, the beneficiary's bank did not have an address for the beneficiary, and the beneficiary failed to claim the funds within five days, the payment order would be canceled under Article 4A because it was not accepted and the funds would be returned to the originator (*see*, sections 4A–209(b)(1), 4A–209(c), and 4A–211(d)). This commenter proposed that Subpart B be amended to allow the beneficiary's bank (1) to return the funds to the originator for an accepted but unclaimed order after 21 calendar days from the date of receipt, and (2) to hold the funds for an unaccepted order for 21 calendar days before returning any unclaimed funds to the originator.

The Board believes that these comments involve interpretations of Article 4A. The Board believes that it is not appropriate for the Board to interpret Article 4A to address these issues solely for Fedwire at this time.

One commenter requested that the Board clarify its intention to delete §§ 210.33–210.38 of current Subpart B in the final regulation. Accordingly, the Board has amended the preamble to subpart B to clarify that §§ 210.33–210.38 of current subpart B are not part of the revised regulation.

Finally, one commenter requested an additional comment period if the proposed final rule materially differs from this draft. The Board does not believe that the final rule so differs from the proposal as to warrant an additional comment period.

Competitive Impact Analysis

The Board recently formalized its procedures for assessing the competitive impact of changes that have a substantial effect on payments-system participants.[4] Under these procedures, the Board will assess whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences. The following is a section-by-section competitive impact analysis of revised subpart B of Regulation J.

210.25—Authority, purpose, and scope. Article 4A provides that most, but not all, of its provisions may be varied by agreement of the affected parties, or by a funds-transfer system rule (*see* section 4A–501). A funds-transfer system rule may select the law of a particular state to govern the rights and obligations of the participants in the funds-transfer system, and to govern the rights and obligations of remote parties to the transfer to the extent they were given notice that the funds-transfer system may be used, and of the choice of law of that system (*see* section 4A–507). The Federal Reserve can supersede any portion of Article 4A by Board regulation or Federal Reserve Bank Operating Circular (*see* section 4A–107). In addition, the Board can preempt Article 4A provisions under the provisions of the Federal Reserve Act or under its authority under the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) to regulate any aspect of the payments system in order to expedite availability of funds, improve the check processing system, or otherwise carry out the provisions of that Act.

Subpart B generally varies Article 4A provisions only to the extent that such provisions could be varied by agreement or by a private-sector funds-transfer system rule. In addition, the scope of applicability of subpart B is generally equal to that of a funds-transfer system rule that adopts a choice of law provision. Specifically, subpart B governs only parties in privity with Federal Reserve Banks or remote parties that received notice the Fedwire may be used to make the funds transfer and of the law governing Fedwire transfers.

This approach is consistent with the scope adopted by other funds-transfer systems. CHIPS has adopted a rule that the rights and obligations of both direct participants and remote parties to a funds transfer, a portion of which is executed through CHIPS, is governed by New York law. Staff believes that this rule would be binding on CHIPS participants and on remote parties to the extent they received notice that CHIPS may be used in the transfer and of the governing law. CHIPS rules do not require direct participants in their funds-transfer systems to warrant that notice has been provided to remote parties or to provide such notice to remote parties.

NACHA has adopted a rule that the rights and obligations of the parties to a credit item subject to Article 4A will be governed by New York law, except to the extent that the parties to the transfer agree to be governed by another law. NACHA rules will require direct ACH participants to provide notice to remote parties (i.e., the originator and beneficiary) that credit items subject to Article 4A may be transmitted through one or more ACHs and of the governing law. (These NACHA rule changes will become effective on January 1, 1991.)

In the case of a funds transfer involving both Fedwire and another funds-transfer system, such as CHIPS, absent an agreement to the contrary, subpart B would take precedence over any inconsistent funds-transfer system rule applicable to a remote party that received notice that Fedwire may be used to make the transfer and of the governing law, because of the status of subpart B as federal law. Subpart B would not take precedence over a choice of law made by agreement under section 4A–507(b) between remote parties to a funds transfer a portion of which is sent through Fedwire. Because subpart B parallels closely the Article 4A provisions, the Board does not believe that there will be many instances where private-sector funds-transfer system rules would be inconsistent with, and thus preempted by, the provisions of subpart B.

With respect to a funds transfer, a portion of which is governed by the EFT Act or Regulation E, the scope of subpart B is broader than that of Article 4A. Section 4A–108 states that Article 4A does not apply to a funds transfer if any part of the transfer is governed by the EFT Act. In those limited circumstances where a transfer is carried out in part through Fedwire and is governed in part by the EFT Act, the Board believes it is important that the rights and obligations of the Federal Reserve Bank and banks in privity with the Federal Reserve Banks be defined by subpart B and Article 4A as incorporated therein with respect to the Fedwire portion of the transfer. If the only law governing these transfers were the EFT Act, the rights and obligations of the Federal Reserve Banks and their

[4] These procedures are described in the Board's policy statement titled "The Federal Reserve in the Payments System," which was revised in March 1990. [55 FR 11648, March 29, 1990]

direct senders and receiving banks would not be fully defined, because the scope of the EFT Act is limited primarily to the bank/customer relationship. The Board believes that other funds-transfer systems could achieve similar coverage by agreement or through a funds-transfer system rule.

The Board does not believe that the scope of revised subpart B, or the approach taken in incorporating the Article 4A provisions in this subpart, would have an adverse competitive effect.

210.26—Definitions. Revised subpart B generally incorporates the definitions set forth in Article 4A, and includes definitions of other terms not defined in Article 4A. The subpart modifies the definitions of two Article 4A terms—"beneficiary's bank" and "payment order."

The subpart B definition of "beneficiary's bank" clarifies that a Federal Reserve Bank may be a beneficiary's bank even though it is not explicitly identified as such in the payment order. This appears to be consistent with the intent of Article 4A, although the Article 4A definition (section 4A–103(a)(3)) does not contemplate a bank acting as a beneficiary's bank without being designated as such in the payment order.

Subpart B also provides that a Federal Reserve Bank that is the beneficiary of a payment order is also deemed to be the beneficiary's bank on the payment order. Under Article 4A, the bank that sends the payment order to the Federal Reserve Bank as beneficiary would be considered the beneficiary's bank. In the context of Fedwire payment orders, deeming a Federal Reserve Bank to be the beneficiary's bank as well as the beneficiary of a payment order does not have any practical operational or legal impact on the other parties to the funds transfer. The Board does not believe that these changes would have an adverse competitive effect.

The subpart B definition of payment order excludes ACH transfers, which are subject to a separate Federal Reserve Bank operating circular, and excludes certain messages, such as service messages, which are not intended to be payment orders under Article 4A. Further, under the subpart B definition of payment order, certain non-value Fedwire messages (i.e., certain messages designated as requests for credit transfers) that may be defined as payment orders under Article 4A are not treated as payment orders for the purposes of subpart B, because they are not instructions to a Federal Reserve Bank to pay money. The exclusion of these messages from the scope of subpart B does not effect their status as payment orders under Article 4A, as enacted in a particular state. The Board does not believe that this definition would have any adverse competitive effect.

210.27—Reliance on identifying number. Article 4A provides that a bank may rely on the number in the payment order identifying an intermediary bank, the beneficiary's bank, or the beneficiary, even if the number is inconsistent with the name, if the bank does not know that the name and number refer to different persons (*see* sections 4A–207 and 4A–208). The originator is obligated to pay the payment order (in the case of reliance on the number of the beneficiary) and the sender is obligated to compensate the receiving bank for any loss or expenses incurred (in the case of reliance on the number of the intermediary bank or beneficiary's bank) if the number was relied upon and the originator or sender is a bank or if the originator or sender is a nonbank that had notice of the possible reliance on the number.

Revised subpart B includes provisions providing notice to nonbank senders that Federal Reserve Banks may rely on the numbers in the payment orders identifying the intermediary bank, the beneficiary's bank, and the beneficiary. Federal Reserve Banks will provide the subpart B rules to their nonbank senders, in part, to ensure that these provisions serve as actual notice to these senders. Therefore, this notice would be provided by means similar to those that the Board presumes banks will use to give this notice to their nonbank senders, and would not have any adverse competitive effect.

210.28—Agreement of sender. This section provides that a sender authorizes its Federal Reserve Bank to obtain payment for a payment order by debiting the sender's account at the Federal Reserve Bank. In addition, this section provides that a sender does not have a right to an overdraft in its account, when overdrafts that are incurred become due and payable, and what actions a Federal Reserve Bank may take to recover the amount of an overdraft or to secure an overdraft. The Board does not believe that these provisions would have an adverse competitive effect because: (1) A sender does not have a right to overdraft its Federal Reserve account (although a Federal Reserve Bank may permit an overdraft under certain circumstances), (2) the requirements are reasonable, and are not obtainable solely due to unique bargaining position of the Federal Reserve, and (3) a private-sector bank could impose similar requirements on its customers to which it gives overdraft privileges.

Article 4A provides that the sender must notify a receiving bank of an unauthorized or erroneously executed payment order within a reasonable time not exceeding 90 days from receipt of the notice of the order (*see* sections 4A–204 and 4A–304). Subpart B currently provides that a sender is deemed to approve the accuracy of an advice of debit unless it objects in writing within 10 calendar days of receipt of the advice (*see* current § 210.34(b)). The Board had proposed that 10 funds-transfer business days be deemed the reasonable time for a sender to notify its Federal Reserve Bank; revised § 210.28(c) specifies 30 calendar days as the reasonable time within which senders must act, for the purposes of receiving interest or compensation for losses as provided in Article 4A. Similarly, under Article 4A, banks may establish by agreement with their customers what constitutes a reasonable time to provide this notice.

Several commenters had noted that the proposed 10 funds-transfer business day timeframe was unreasonably short, and that banks would not be able to obtain agreements with their nonbank customers reducing the time within which the customers must notify the bank of an improper debit to that extent. The Board believes that it is particularly important that banks reconcile their accounts on a timely basis, and believes that banks could obtain agreements, similar to the requirement in the revised regulation, with their bank customers. Therefore, the Board does not believe that this requirement results in any adverse competitive effect.

210.29—Agreement of receiving bank. This section requires an off-line bank to notify its Federal Reserve Bank if it maintains an account for another bank, so that the Federal Reserve Bank will provide telephone notice for all Fedwire funds transfers received by that bank, including settlement transfers. If an off-line bank does not provide this notice to its Federal Reserve Bank, it warrants that it does not act as an intermediary bank or a beneficiary's bank with respect to Fedwire payment orders for a beneficiary that is a bank.

The Board believes that this warranty would have no adverse competitive effect. For example, the Board believes that this action would have no adverse competitive effect on the operations of CHIPS, because all CHIPS participants are on-line to that system. Further, this warranty is a reasonable provision designed to enable Federal Reserve

Banks to fulfill their obligation under section 4A–302 to execute payment orders at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible. The ability to require this warranty is not derived from unique bargaining position on the part of the Federal Reserve Banks; correspondent banks that provide funds-transfer services to off-line respondent banks could impose a similar warranty on their respondent receivers.

210.30—Payment orders. This section sets forth the terms under which a Federal Reserve Bank will accept payment orders from a sender. The section provides: That a sender must have authorization to send Fedwire payment orders to a Federal Reserve Bank; that a Federal Reserve Bank may reject any payment order; that a Federal Reserve Bank may execute a payment order through another Federal Reserve Bank; that a sender may not instruct a Federal Reserve Bank to select an intermediary bank other than a Federal Reserve Bank unless that bank is designated in the sender's payment order; and that a sender generally may not send a value-dated payment order through Fedwire. The Board believes that these provisions are reasonable and that private-sector receiving banks may arrange similar terms with their senders; therefore, these provisions do not rely on unique bargaining power of Federal Reserve Banks. Consequently, the Board believes that these provisions do not have an adverse competitive effect.

210.31—Payment by a Federal Reserve Bank to a receiving bank or beneficiary. The primary distinguishing characteristic of Fedwire is that payment orders are final and irrevocable to the receiver when made. This section, regarding when a Federal Reserve Bank makes payment to a receiving bank or beneficiary, parallels current § 210.26(a) by providing that payments to receiving banks and beneficiaries are final at the earlier of the time when the amount of the payment order is credited to the receiving bank's or beneficiary's account, or when the payment order is sent to the receiving bank or when notice of the credit is sent to the beneficiary. Fedwire's payment finality could be viewed as a sufficiently significant benefit to participants as to have an adverse effect on competing private-sector funds-transfer systems. However, the Board believes that Fedwire payment finality is vital to the continued integrity and efficiency of the payments system. Moreover, CHIPS will soon be instituting a loss-sharing arrangement to ensure the finality of its settlement, thus increasing the certainty of final payment over that system. Correspondent banks providing funds-transfer services can provide payments finality similar to that specified in § 210.32 to their respondent banks and beneficiaries (*see* section 4A–405). For these reasons the Board believes that the benefits of Fedwire payment finality—the certainty of payment and the elimination of systemic risk—outweigh any possible adverse competitive effect.

210.32—Federal Reserve Bank liability; payment of interest. Article 4A provides that a bank is not liable for consequential damages, unless it agrees to be subject to such damages by express written agreement. This section, which states that, except as provided in section 4A–404(a), a Federal Reserve Bank shall not agree to be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank for consequential damages is consistent with the presumption in Article 4A. The Board believes that many private-sector providers of funds-transfer services similarly will not agree to be liable for consequential damages; consequently, the Board believes that this provision does not have an adverse competitive effect.

Article 4A provides that the amount of interest payable under its provisions may be determined by agreement or funds-transfer system rule (*see* section 4A–506(a)). Subpart B provides that a Federal Reserve Bank may provide interest compensation through either an as of adjustment or explicit interest payment. The Board believes that providing interest compensation in the form of as of adjustments would not have an adverse competitive effect because the Federal Reserve includes the imputed cost of as of adjustments related to Fedwire transfers (computed at the federal funds rate) in its total cost of providing the Fedwire funds-transfer service to be recovered by the fees assessed for the service. Moreover, the Board believes that banks could agree with their customers under Article 4A to similar arrangements using compensating balances, which would be analogous to an as of adjustment provided by a Federal Reserve Bank. In cases where a Federal Reserve Bank provides compensation in the form of explicit interest, interest would be calculated in accordance with the procedures specified in Article 4A (*see* section 4A–506(b)).

Final Regulatory Flexibility Act Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule, and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's impact on small entities and reasons why the alternatives were rejected. As stated in the initial regulatory flexibility analysis, the Board does not believe that there are any significant alternatives to the revision of subpart B of Regulation J that would (1) provide comprehensive rules for funds transfers involving Federal Reserve Banks, (2) make subpart B consistent with state laws applicable to funds transfers as more states adopt Article 4A, and (3) help ensure that, subject to their central banking responsibilities, Federal Reserve Banks compete on an equitable basis with private-sector providers of funds-transfer services and concurrently minimize any significant impact of the rule on small entities. The Board considered the effect of the subpart B revisions when developing them and does not believe that complying with the revised Subpart B rules will impose a significant cost on depository institutions, including small institutions.

Further, the purpose of the subpart B revisions is to provide comprehensive rules for funds transfers handled by Federal Reserve Banks. This purpose would not be achieved if the rules did not apply to small entities that send or receive funds transfers directly to or from Federal Reserve Banks. Moreover, subpart B could not address the rights and responsibilities of Federal Reserve Banks if small entities were generally excepted from its coverage. In addition, the revised Subpart B rules confer important rights upon parties to a Fedwire funds transfer, such as the right to receive interest in certain circumstances, and provide a shield from consequential damages liability if a mishap occurs. These rights would benefit small institutions as well as larger institutions. However, revised subpart B applies only to parties that are direct participants with a Federal Reserve Bank, and those other parties to a Fedwire funds transfer receiving notice that the funds transfer may go through Fedwire and that subpart B is the governing law. Therefore, it is possible that revised subpart B will not apply to remote parties to funds transfers if they are not direct participants with a Federal Reserve Bank and they do not receive the contemplated notice. These remote parties may include small entities.

List of Subject in 12 CFR Part 210

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, the Board amends 12 CFR part 210 as follows:

PART 210—[AMENDED]

1. The authority citation for part 210 is revised to read as follows:

Authority: Federal Reserve Act, sec. 13 (12 U.S.C. 342, sec. 11(i) and (j) (12 U.S.C. 248 (i) and (j)), sec. 16 (12 U.S.C. 248(o) and 360), and sec. 19(f) (12 U.S.C. 464); and the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*)

2. The heading to part 210 is revised to read as follows:

PART 210—REGULATION J (COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH FEDWIRE)

3. Subpart B is revised to read as follows:

Subpart B—Fund Transfers Through Fedwire

210.25 Authority, purpose, and scope.
210.26 Definitions.
210.27 Reliance on identifying number.
210.28 Agreement of sender.
210.29 Agreement of receiving bank.
210.30 Payment orders.
210.31 Payment by a Federal Reserve Bank to a receiving bank or beneficiary.
210.32 Federal Reserve Bank liability; payment of interest.

Appendix A to Subpart B—Commentary

Appendix B to Subpart B—Article 4A, Funds Transfers

Subpart B—Funds Transfers Through Fedwire

§ 210.25 Authority, purpose, and scope.

(a) *Authority and purpose.* This subpart provides rules to govern funds transfers through Fedwire, and has been issued pursuant to the Federal Reserve Act—section 13 (12 U.S.C. 342), paragraph (f) of section 19 (12 U.S.C. 464), paragraph 14 of section 16 (12 U.S.C. 248(o)), and paragraphs (i) and (j) of section 11 (12 U.S.C. 248(i) and (j))—and other laws and has the force and effect of federal law. This Subpart is not a funds-transfer system rule as defined in Section 4A–501(b) of Article 4A.

(b) *Scope.* (1) This subpart incorporates the provisions of Article 4A set forth in appendix B to this subpart. In the event of an inconsistency between the provisions of the sections of this subpart and appendix B, to this subpart, the provisions of the sections of this subpart shall prevail.

(2) Except as otherwise provided in paragraphs (b)(3) and (b)(4) of this section, this Subpart governs the rights and obligations of:

(i) Federal Reserve Banks sending or receiving payment orders;

(ii) Senders that send payment orders directly to a Federal Reserve Bank;

(iii) Receiving banks that receive payment orders directly from a Federal Reserve Bank;

(iv) Beneficiaries that receive payment for payment orders sent to a Federal Reserve Bank by means of credit to an account maintained or used at a Federal Reserve Bank; and

(v) Other parties to a funds transfer any part of which is carried out through Fedwire to the same extent as if this subpart were considered a funds-transfer system rule under Article 4A.

(3) This subpart governs a funds transfer that is sent through Fedwire, as provided in paragraph (b)(2) of this section, even though a portion of the funds transfer is governed by the Electronic Fund Transfer Act, but the portion of such funds tranfer that is governed by the Electronic Fund Transfer Act is not governed by this subpart.

(4) In the event that any portion of this Subpart establishes rights or obligations with respect to the availability of funds that are also governed by the Expedited Funds Availability Act or the Board's Regulation CC, Availability of Funds and Collection of Checks, those provisions of the Expedited Funds Availability Act or Regulation CC shall apply and the portion of this Subpart, including Article 4A as incorporated herein, shall not apply.

(c) *Operating Circulars.* Each Federal Reserve Bank shall issue an Operating Circular consistent with this Subpart that governs the details of its funds-transfer operations and other matters it deems appropriate. Among other things, the Operating Circular may: set cut-off hours and funds-transfer business days; address available security procedures; specify format and media requirements for payment orders; identify messages that are not payment orders; and impose charges for funds-transfer services.

(d) *Government senders, receiving banks, and beneficiaries.* Except as otherwise expressly provided by the statutes of the United States, the parties specified in paragraph (b)(2)(ii)–(v) of this section include:

(1) A department, agency, instrumentality, independent establishment, or office of the United States, or a wholly-owned or controlled Government corporation;

(2) An international organization;

(3) A foreign central bank; and

(4) A department, agency, instrumentality, independent establishment, or office of a foreign government, or a wholly-owned or controlled corporation of a foreign government.

§ 210.26 Definitions.

As used in this subpart, the following definitions apply:

(a) *Article 4A* means article 4A of the Uniform Commercial Code as set forth in appendix B of this subpart.

(b) *As of adjustment* means a debit or credit, for reserve or clearing balance maintenance purposes only, applied to the reserve or clearing balance of a bank that either sends a payment order to a Federal Reserve Bank, or that receives a payment order from a Federal Reserve Bank, in lieu of an interest charge or payment.

(c) *Automated clearing house transfer* means any transfer designated as an automated clearing house transfer in a Federal Reserve Bank Operating Circular.

(d) *Beneficiary's bank* has the same meaning as in Article 4A, except that:

(1) A Federal Reserve Bank need not be identified in the payment order in order to be the beneficiary's bank; and

(2) The term includes a Federal Reserve Bank when that Federal Reserve Bank is the beneficiary of a payment order.

(e) *Fedwire* is the funds-transfer system owned and operated by the Federal Reserve Bank that is used primarily for the transmission and settlement of payment orders governed by this Subpart. Fedwire does not include the system for making automated clearing house transfers.

(f) *Interdistrict transfer* means a funds transfer involving entries to account maintained at two Federal Reserve Banks.

(g) *Intradistrict transfer* means a funds transfer involving entries to accounts maintained at one Federal Reserve Bank.

(h) *Off-line bank* means a bank that transmits payment orders to and receives payment orders from a Federal Reserve Bank by telephone orally or by other means other than electronic data transmission.

(i) *Payment order* has the same meaning as in Article 4A, except that the term does not include automated clearing house transfers or any communication designated in a Federal Reserve Bank Operating Circular issued under this Subpart as not being a payment order.

(j) *Sender's account, receiving bank's account,* and *beneficiary's account* mean the reserve, clearing, or other funds deposit account at a Federal Reserve Bank maintained or used by the sender, receiving bank, or beneficiary, respectively.

(k) *Sender's Federal Reserve Bank* and *receiving bank's Federal Reserve Bank* mean the Federal Reserve Bank at which the sender or receiving bank, respectively, maintains or uses an account.

§ 210.27 Reliance on identifying number.

(a) *Reliance by a Federal Reserve Bank on number to identify an intermediary bank or beneficiary's bank.* A Federal Reserve Bank may rely on the number in a payment order that identifies the intermediary bank or beneficiary's bank, even if it identifies a bank different from the bank identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

(b) *Reliance by a Federal Reserve Bank on number to identify beneficiary.* A Federal Reserve Bank, acting as a beneficiary's bank, may rely on the number in a payment order that identifies the beneficiary, even if it identifies a person different from the person identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

§ 210.28 Agreement of sender.

(a) *Payment of sender's obligation to a Federal Reserve Bank.* A sender (other than a Federal Reserve Bank), by maintaining or using an account with a Federal Reserve Bank, authorizes the sender's Federal Reserve Bank to obtain payment for the sender's payment orders by debiting the amount of the payment order from the sender's account.

(b) *Overdrafts.* (1) A sender does not have the right to an overdraft in the sender's account. In the event an overdraft is created, the overdraft shall be due and payable immediately without the need for a demand by the Federal Reserve Bank, at the earliest of the following times:

(i) At the end of the funds-transfer business day;

(ii) At the time the Federal Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender; or

(iii) At the time the sender suspends payments or is closed.

(2) The sender shall have in its account, at the time the overdraft is due and payable, a balance of actually and finally collected funds sufficient to cover the aggregate amount of all its obligations to the Federal Reserve Bank, whether the obligations result from the execution of a payment order or otherwise.

(3) To secure any overdraft, as well as any other obligation due or to become due to its Federal Reserve Bank, each sender, by sending a payment order to a Federal Reserve Bank that is accepted by the Federal Reserve Bank, grants to the Federal Reserve Bank a security interest in all of the sender's assets in the possession of, or held for the account of, the Federal Reserve Bank. The security interest attaches when an overdraft, or any other obligation to the Federal Reserve Bank, becomes due and payable.

(4) A Federal Reserve Bank may take any action authorized by law to recover the amount of an overdraft that is due and payable, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

(c) *Review of payment orders.* A sender, by sending a payment order to a Federal Reserve Bank, agrees that for the purposes of sections 4A–204(a) and 4A–304 of Article 4A, a reasonable time to notify a Federal Reserve Bank of the relevant facts concerning an unauthorized or erroneously executed payment order is within 30 calendar days after the sender receives notice that the payment order was accepted or executed, or that the sender's account was debited with respect to the payment order.

§ 210.29 Agreement of receiving bank.

(a) *Payment.* A receiving bank (other than a Federal Reserve Bank) that receives a payment order from its Federal Reserve Bank authorizes that Federal Reserve Bank to pay for the payment order by crediting the amount of the payment order to the receiving bank's account.

(b) *Off-line banks.* An off-line bank that does not expressly notify its Federal Reserve Bank in writing that it maintains an account for another bank warrants to that Federal Reserve Bank that the offline bank does not act as an intermediary bank or a beneficiary's bank with respect to payment orders received through Fedwire for a beneficiary that is a bank.

§ 210.30 Payment orders.

(a) *Rejection.* A sender shall not send a payment order to a Federal Reserve Bank unless authorized to do so by the Federal Reserve Bank. A Federal Reserve Bank may reject, or impose conditions that must be satisfied before it will accept, a payment order for any reason.

(b) *Selection of an intermediary bank.* For an interdistrict transfer, a Federal Reserve Bank is authorized and directed to execute a payment order through another Federal Reserve Bank. A sender shall not send a payment order to a Federal Reserve Bank that requires the Federal Reserve Bank to issue a payment order to an intermediary bank (other than a Federal Reserve Bank) unless that intermediary bank is designated in the sender's payment order. A sender shall not send to a Federal Reserve Bank a payment order instructing use by a Federal Reserve Bank of a funds-transfer system or means of transmission other than Fedwire, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

(c) *Same-day execution.* A sender shall not issue a payment order that instructs a Federal Reserve Bank to execute the payment order on a funds-transfer business day that is later than the funds-transfer business day on which the order is received by the Federal Reserve Bank, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

§ 210.31 Payment by a Federal Reserve Bank to a receiving bank or beneficiary.

(a) *Payment to a receiving bank.* Payment of a Federal Reserve Bank's obligation to pay a receiving bank (other than a Federal Reserve Bank) occurs at the earlier of the time when the amount of the payment order is credited to the receiving bank's account or when the payment order is sent to the receiving bank.

(b) *Payment to a beneficiary.* Payment by a Federal Reserve Bank to a beneficiary of a payment order, where the Federal Reserve Bank is the beneficiary's bank, occurs at the earlier of the time when the amount of the payment order is credited to the beneficiary's account or when notice of the credit is sent to the beneficiary.

§ 210.32 Federal Reserve Bank liability; payment of interest.

(a) *Damages.* In connection with its handling of a payment order under this subpart, a Federal Reserve Bank shall not be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank, governed by this subpart, for any damages other than those payable under Article 4A. A Federal Reserve Bank shall not agree to be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank for consequential damages under section 4A–305(d) of Article 4A.

(b) *Payment of interest.* (1) A Federal Reserve Bank, in its discretion, may satisfy its obligation, or that of another Federal Reserve Bank, to pay compensation in the form of interest under Article 4A by—

(i) Providing an as of adjustment to its sender, its receiving bank, or its beneficiary, as provided in the Federal Reserve Bank's Operating Circular, in an amount equal to the amount on which interest is to be calculated multiplied by the number of days for which interest is to be calculated; or

(ii) Paying compensation in the form of interest to its sender, its receiving bank, its beneficiary, or another party to the funds transfer that is entitled to such payment, in an amount that is calculated in accordance with section 4A–506 of Article 4A.

(2) If the sender or receiving bank that is the recipient of an as of adjustment or an interest payment is not the party entitled to compensation under Article 4A, the sender or receiving bank shall pass through the benefit of the as of adjustment or interest payment by making an interest payment, as of the day the as of adjustment or interest payment is effected, to the party entitled to compensation. The interest payment that is made to the party entitled to compensation shall not be less than the value of the as of adjustment or interest payment that was provided by the Federal Reserve Bank to the sender or receiving bank. The party entitled to compensation may agree to accept compensation in a form other than a direct interest payment, provided that such an alternative form of compensation is not less than the value of the interest payment that otherwise would be made.

(c) *Nonwaiver of right of recovery.* Nothing in this subpart or any Operating Circular issued hereunder shall constitute, or be construed as constituting, a waiver by a Federal Reserve Bank of a cause of action for recovery under any applicable law of mistake and restitution.

Appendix A to Subpart B—Commentary

The Commentary provides background material to explain the intent of the Board of Governors of the Federal Reserve System (Board) in adopting a particular provision in the subpart and to help readers interpret that provision. In some comments, examples are offered. The Commentary constitutes an official Board interpretation of subpart B of this part. Commentary is not provided for every provision of subpart B of this part, as some provisions are self-explanatory.

Section 210.25—Authority, Purpose, and Scope

(a) *Authority and purpose.* Section 210.25(a) states that the purpose of subpart B of this part is to provide rules to govern funds transfers through Fedwire and recites the Board's rulemaking authority for this subpart. Subpart B of this part is federal law and is not a "funds-transfer system rule," as defined in section 4A–501(b) of Article 4A, Funds Transfers, of the Uniform Commercial Code (UCC), as set forth in appendix B of this subpart. Certain provisions of Article 4A may not be varied by a funds-transfer system rule, but under section 4A–107, regulations of the Board and Operating Circulars of the Federal Reserve Banks supersede inconsistent provisions of Article 4A to the extent of the inconsistency. In addition, regulations of the Board may preempt inconsistent provisions of state law. Accordingly, subpart B of this part supersedes or preempts inconsistent provisions of state law. It does not affect state law governing funds transfers that does not conflict with the provisions of subpart B of this part, such as Article 4A, as enacted in any state, as it applies to parties to funds transfers through Fedwire whose rights are not governed by subpart B of this part.

(b) *Scope.* (1) Subpart B of this part incorporates the provisions of Article 4A set forth in appendix B of this subpart. The provisions set forth expressly in the sections of subpart B of this part supersedes or preempt any inconsistent provisions of Article 4A as set forth in appendix B of this subpart or as enacted in any state. The official comments to Article 4A are not incorporated in subpart B of this part or this Commentary to subpart B of this part, but the official comments may be useful in interpreting Article 4A. Because section 4A–105 refers to other provisions of the Uniform Commercial Code, e.g., definitions in Article 1 of the UCC, these other provisions of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, from time to time, are also incorporated in subpart B of this part. Subpart B of this part applies to any party to a Fedwire funds transfer that is in privity with a Federal Reserve Bank. These parties include a sender (bank or nonbank) that sends a payment order directly to a Federal Reserve Bank, a receiving bank that receives a payment order directly from a Federal Reserve Bank, and a beneficiary that receives credit to an account that it uses or maintains at a Federal Reserve Bank for a payment order sent to a Federal Reserve Bank. Other parties to a funds transfer are covered by this subpart to the same extent that this subpart would apply to them if this subpart were a "funds-transfer system rule" under Article 4A that selected subpart B of this part as the governing law.

(2) The scope of the applicability of a funds-transfer system rule under Article 4A is specified in section 4A–501(b), and the scope of the choice of law provision is specified in section 4A–507(c). Under section 4A–507(c), a choice of law provision is binding on the participants in a funds-transfer system and certain other parties having notice that the funds-transfer system might be used for the funds transfer and of the choice of law provision. The Uniform Commercial Code provides that a person has notice when the person has actual knowledge, receives notification or has reason to know from all the facts and circumstances known to the person at the time in question. (*See* UCC § 1–201(25).) However, under sections 4A–507(b) and 4A–507(d), a choice of law by agreement of the parties takes precedence over a choice of law made by funds-transfer system rule.

(3) If originators, receiving banks, and beneficiaries that are not in privity with a Federal Reserve Bank have the notice contemplated by section 4A–507(c) or if those parties agree to be bound by subpart B of this part, subpart B of this part generally would apply to payment orders between those remote parties, including participants in other funds-transfer systems. For example, a funds transfer may be sent from an originator's bank through a funds-transfer system other than Fedwire to a receiving bank which, in turn, sends a payment order through Fedwire to execute the funds transfer. Similarly, a Federal Reserve Bank may execute a payment order through Fedwire to a receiving bank that sends it through a funds-transfer system other than Fedwire to a beneficiary's bank. In the first example, if the originator's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order through the other funds-transfer system to the receiving bank will be governed by subpart B of this part unless the parties to the payment order have agreed otherwise. In the second example, if the beneficiary's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order to the beneficiary's bank through the other funds-transfer system will be governed by subpart B of this part unless the parties have agreed otherwise. In both cases, the other funds-transfer system's rules would also apply to, at a minimum, the portion of these funds transfers going through that funds-transfer system. Because subpart B of this part is federal law, to the extent of any inconsistency, subpart B of this part will take precedence over any funds-transfer system rule applicable to the remote sender or receiving bank or to a Federal Reserve Bank. If remote parties to a funds transfer, a portion of which is sent through Fedwire, have expressly selected by agreement a law other than subpart B of this part under section 4A–507(b), subpart B of this part would not take precedence over the choice of law made by the agreement even though the remote parties had notice that Fedwire may be used and of the governing law. (*See* 4A–507(d)). In addition, subpart B of this part would not

apply to a funds transfer sent through another funds-transfer system where no Federal Reserve Bank handles the funds transfer, even though settlement for the funds transfer is made by means of a separate net settlement or funds transfer through Fedwire.

(4) Under section 4A–108, Article 4A does not apply to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). Fedwire

Section 210.26—Definitions

Article 4A defines many terms (e.g., "beneficiary," "intermediary bank," "receiving bank," "security procedure") used in this subpart. These terms are defined or listed in sections 4A–103 through 4A–105. These terms, such as the term "bank" (defined in section 4A–105(d)(2)), may differ from comparable terms in subpart A of this part. As subpart B of this part incorporates

(i) *Payment order.* (1) The definition of "payment order" in subpart B of this part differs from the section 4A–103(a)(1) definition. The subpart B definition clarifies that, for the purposes of subpart B of this part, automated clearing house transfers and certain messages that are transmitted through Fedwire are not payment orders. Federal Reserve Banks and banks participating in Fedwire send various types of messages,

payment order as identifying the appropriate beneficiary, even if the payment order identifies another beneficiary by name, provided that the beneficiary's bank does not know of the inconsistency. Under section 4A–207(c)(2), if the originator is not a bank, an originator is not obliged to pay for a payment order if the originator did not have notice that the beneficiary's bank might rely on the identifying number and the person paid on

the time that a bank is closed or suspends payments. For example, an overdraft becomes due and payable if a receiver is appointed for the bank or the bank is prevented from making payments by governmental order. The Federal Reserve Bank need not make demand on the sender for the overdraft to become due and payable.

(2) A sender must cover any overdraft and any other obligation of the sender to the

with the Federal Reserve Bank; therefore, payment orders or advises are transmitted either by telephone on the day the payment order is received by the receiving bank's Federal Reserve Bank, or sent by courier or mail along with the off-line bank's daily account statement, on the funds-transfer business day following the day the payment order is received by the off-line bank's Federal Reserve Bank.

apply to a funds transfer sent through another funds-transfer system where no Federal Reserve Bank handles the funds transfer, even though settlement for the funds transfer is made by means of a separate net settlement or funds transfer through Fedwire.

(4) Under section 4A–108, Article 4A does not apply to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). Fedwire funds transfers to or from consumer accounts are exempt from the Electronic Fund Transfer Act and Regulation E (12 CFR part 205). A funds transfer from a consumer originator or a funds transfer to a consumer beneficiary could be carried out in part through Fedwire and in part through an automated clearing house or other means that is subject to the Electronic Fund Transfer Act or Regulation E. In these cases, subpart B of this part would not govern the portion of the funds transfer that is governed by the Electronic Fund Transfer Act or Regulation E. (*See* Commentary to § 210.26(i) "payment order".)

(5) Finally, section 4A–404(a) provides that a beneficiary's bank is obligated to pay the amount of a payment order to the beneficiary on the payment date unless acceptance of the payment order occurs on the payment date after the close of the funds-transfer business day of the bank. The Expedited Funds Availability Act provides that funds received by a bank by wire transfer shall be available for withdrawal not later than the banking day after the business day on which such funds are received (12 U.S.C. 4002(a)). That Act also preempts any provision of state law that was not effective on September 1, 1989 that is inconsistent with that Act or its implementing Regulation CC (12 CFR part 229). Accordingly, the Expedited Funds Availability Act and Regulation CC may preempt section 4A–404(a) as enacted in any state. In order to ensure that section 4A–404(a), or other provisions of Article 4A, as incorporated in subpart B of this part, do not take precedence over provisions of the Expedited Funds Availability Act, this section provides that where subpart B of this part establishes rights or obligations that are also governed by the Expedited Funds Availability Act or Regulation CC, the Expedited Funds Availability Act or Regulation CC provision shall apply and subpart B of this part shall not apply.

(c) *Operating Circulars.* The Federal Reserve Banks issue Operating Circulars consistent with this Subpart that contain additional provisions applicable to payment orders sent through Fedwire. Under section 4A–107, these Operating Circulars supersede inconsistent provisions of Article 4A, as set forth in appendix B and as enacted in any state. These Operating Circulars are not funds-transfer system rules, but, by their terms, they are binding on all parties covered by this Subpart.

(d) *Government senders, receiving banks, and beneficiaries.* This section clarifies that unless a statute of the United States provides otherwise, subpart B of this part applies to governmental entities, domestic or foreign, including foreign central banks as specified in paragraph (b)(1) of this section.

Section 210.26—Definitions

Article 4A defines many terms (e.g., "beneficiary," "intermediary bank," "receiving bank," "security procedure") used in this subpart. These terms are defined or listed in sections 4A–103 through 4A–105. These terms, such as the term "bank" (defined in section 4A–105(d)(2)), may differ from comparable terms in subpart A of this part. As subpart B of this part incorporates consistent provisions of Article 4A, it incorporates these definitions unless these terms are expressly defined otherwise in subpart B of this part. This Subpart modifies the definitions of two Article 4A terms, "beneficiary's bank" and "payment order." This subpart also defines terms not defined in Article 4A.

(a) *Article 4A.* *Article 4A* means the version of that article of the Uniform Commercial Code set forth in appendix B of this subpart. It does not refer to the law of any particular state unless the context indicates otherwise. Subject to the express provisions of this Subpart, this version of Article 4A is incorporated into this Subpart and made federal law for transactions covered by this Subpart.

(b) *As of adjustments.* As of adjustments are memorandum items that affect a bank's reserve or clearing balance for the purpose of meeting the required balance, but do not represent funds that can be used for other purposes. As discussed in the Commentary to § 210.32(b), the Federal Reserve Banks generally provide as of adjustments as a means of effecting interest payments or charges.

(d) *Beneficiary's bank.* The definition of "beneficiary's bank" in subpart B of this part differs from the section 4A–103(a)(3) definition. The subpart B definition clarifies that where a Federal Reserve Bank functions as the beneficiary's bank, it need not be identified in the payment order as the beneficiary's bank and that a Federal Reserve Bank that receives a payment order as beneficiary is also the beneficiary's bank with respect to that payment order.

(e) *Fedwire.* Fedwire refers to the funds-transfer system owned and operated by the Federal Reserve Banks that is governed by this Subpart. The term does not refer to any particular computer, telecommunications facility, or funds transfer, but to the system as a whole, which may include transfers by telephone or by written instrument in particular circumstances. Fedwire does not include the system used for automated clearing house transfers.

(h) *Off-line bank.* Most Fedwire payment orders are transmitted electronically from a sender to a Federal Reserve Bank or from a Federal Reserve Bank to a receiving bank. Banks transmitting payment orders to Federal Reserve Banks electronically are often referred to as on-line banks. Some Fedwire participants, however, transmit payment orders to a Federal Reserve Bank or receive payment orders from a Federal Reserve Bank orally by telephone, or, in unusual circumstances, in writing. A bank that does not use either a terminal or a computer that links it electronically to a terminal or computer at its Federal Reserve Bank to send payment orders through Fedwire is an off-line bank.

(i) *Payment order.* (1) The definition of "payment order" in subpart B of this part differs from the section 4A–103(a)(1) definition. The subpart B definition clarifies that, for the purposes of subpart B of this part, automated clearing house transfers and certain messages that are transmitted through Fedwire are not payment orders. Federal Reserve Banks and banks participating in Fedwire send various types of messages, relating to payment orders or to other matters, through Fedwire that are not intended to be payment orders. Under the subpart B definition, these messages, and messages involved with automated clearing house transfers, are not "payment orders" and therefore are not governed by this Subpart. The Operating Circulars of the Federal Reserve Banks specify those messages that may be transmitted through Fedwire but that are not payment orders.

(2) In some cases, messages sent through Fedwire, such as certain requests for credit transfer, may be payment orders under Article 4A, but are not treated as payment orders under subpart B because they are not an instruction to a Federal Reserve Bank to pay money.

(3) This subpart and Article 4A govern a payment order even though the originator's or beneficiary's account may be a consumer account established primarily for personal, family, or household purposes. Under section 4A–108, Article 4A does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act. That Act, and Regulation E implementing it, do not apply to funds transfers through Fedwire (*see* 15 U.S.C. 1693a(6)(B) and 12 CFR 205.3(b)). Thus, this Subpart applies to all funds transfers through Fedwire even though some such transfers involve originators or beneficiaries that are consumers. (*See also* § 210.25(b) and accompanying Commentary.)

Section 210.27—Reliance on Identifying Number

(a) *Reliance by a Federal Reserve Bank on number to identify intermediary bank or beneficiary's bank.* Section 4A–208 provides that a receiving bank, such as a Federal Reserve Bank, may rely on the routing number of an intermediary bank or the beneficiary's bank specified in a payment order as identifying the appropriate intermediary bank or beneficiary's bank, even if the payment order identifies another bank by name, provided that the receiving bank does not know of the inconsistency. Under section 4A–208(b)(2), if the sensor of the payment order is not a bank, a receiving bank may rely on the number only if the sender had notice before the receiving bank accepted the sender's order that the receiving bank might rely on the number. This section provides this notice to entities that are not banks, such as the Department of the Treasury, that send payment orders directly to a Federal Reserve Bank.

(b) *Reliance by a Federal Reserve Bank on number to identify beneficiary.* Section 4A–207 provides that a beneficiary's bank, such as a Federal Reserve Bank, may rely on the number identifying a beneficiary, such as the beneficiary's account number, specified in a payment order as identifying the appropriate beneficiary, even if the payment order identifies another beneficiary by name, provided that the beneficiary's bank does not know of the inconsistency. Under section 4A–207(c)(2), if the originator is not a bank, an originator is not obliged to pay for a payment order if the originator did not have notice that the beneficiary's bank might rely on the identifying number and the person paid on the basis of the identifying number was not entitled to receive payment. This section of Subpart B provides this notice to entities that are not banks, such as the Department of the Treasury, that are originators of payment orders sent directly by the originators to a Federal Reserve Bank, where that Federal Reserve Bank or another Federal Reserve Bank is the beneficiary's bank (*see also* section 4A–402(b), providing that a sender must pay a beneficiary's bank for a payment order accepted by the beneficiary's bank).

Section 210.28—Agreement of Sender

(a) *Payment of sender's obligation to a Federal Reserve Bank.* When a sender issues a payment order to a Federal Reserve Bank and the Federal Reserve Bank issues a conforming order implementing the sender's payment order, under section 4A–403, the sender is indebted to the Federal Reserve Bank for the amount of the payment order. A sender, other than a Federal Reserve Bank, that maintains or uses an account at a Federal Reserve Bank authorizes the Federal Reserve Bank to debit that account so that the Federal Reserve Bank can obtain payment for the payment order.

(b) *Overdrafts.* (1) In some cases, debits to a sender's account will create an overdraft in the sender's account. The Board and the Federal Reserve Banks have established policies concerning when a Federal Reserve Bank will permit a bank to incur an overdraft in its account at a Federal Reserve Bank. These policies do not give a bank or other sender a right to an overdraft in its account. Subpart B clarifies that a sender does not have a right to such an overdraft. If an overdraft arises, it becomes immediately due and payable at the earliest of: The end of the funds-transfer business day of the Federal Reserve Bank; the time the Federal Reserve Bank in its sole discretion, deems itself insecure and gives notice to the sender; or the time that the sender suspends payments or is closed by governmental action, such as the appointment of a receiver. In some cases, a Federal Reserve Bank extends its Fedwire operations beyond its cut-off hour for that funds-transfer business day. For the purposes of this section, unless otherwise specified by the Federal Reserve Bank making such an extension, an overdraft becomes due and payable at the end of the extended operating hours. An overdraft becomes due and payable prior to a Federal Reserve Bank's cut-off hour if the Federal Reserve Bank deems itself insecure and gives notice to the sender. Notice that the Federal Reserve Bank deems itself insecure may be given in accordance with the provisions on notice in section 1–201(27) of the UCC, in accordance with any other applicable law or agreement, or by any other reasonable means. An overdraft also becomes due and payable at the time that a bank is closed or suspends payments. For example, an overdraft becomes due and payable if a receiver is appointed for the bank or the bank is prevented from making payments by governmental order. The Federal Reserve Bank need not make demand on the sender for the overdraft to become due and payable.

(2) A sender must cover any overdraft and any other obligation of the sender to the Federal Reserve Bank by the time the overdraft becomes due and payable. By sending a payment order to a Federal Reserve Bank, the sender grants a security interest to the Federal Reserve Bank in any assets of the sender held by, or for the account of, the Federal Reserve Bank in order to secure all obligations due or to become due to the Federal Reserve Bank. The security interest attaches when the overdraft, or other obligation of the sender to the Federal Reserve Bank, becomes due and payable. The Security interest does not apply to assets held by the sender as custodian or trustee for the sender's customers or third parties. Once an overdraft is due and payable, a Federal Reserve Bank may exercise its right of set off, liquidate collateral, or take other similar action to satisfy the overdrafting bank's obligation owed to the Federal Reserve Bank.

(c) *Review of payment orders.* (1) Under section 4A–204, a receiving bank is required to refund the principal amount of an unauthorized payment order that the sender was not obliged to pay, together with interest on the refundable amount calculated from the date that the receiving bank received payment to the date of the refund. The sender is not entitled to compensation in the form of interest if the sender fails to exercise ordinary care to determine that the order was not authorized and to notify the receiving bank within a reasonable period of time after the sender receives a notice that the payment order was accepted or that the sender's account was debited with respect to the order. Similarly, under section 4A–304, if a sender of a payment order that was erroneously executed does not notify the bank receiving the payment order within a reasonable time, the bank is not liable to the sender for compensation in the form of interest on any amount refundable to the sender. Section 210.28(d) establishes 30 calendar days as the reasonable period of time for the purposes of these provisions of Article 4A.

(2) Section 4A–505 provides that a customer must object to a debit to its account by a receiving bank within one year after the customer received notification reasonably identifying the payment order. Subpart B of this part does not vary this one-year period.

Section 210.29—Agreement of Receiving Bank.

(b) *Off-line banks.* (1) Generally, an on-line bank receiving payment orders or advices of credit for payment orders from a Federal Reserve Bank receives the payment orders or advices electronically a short time after the corresponding payment orders are received by the on-line bank's Federal Reserve Bank. An off-line bank receiving payment orders or advises of credit from a Federal Reserve Bank does not have an electronic connection with the Federal Reserve Bank; therefore, payment orders or advises are transmitted either by telephone on the day the payment order is received by the receiving bank's Federal Reserve Bank, or sent by courier or mail along with the off-line bank's daily account statement, on the funds-transfer business day following the day the payment order is received by the off-line bank's Federal Reserve Bank.

(2) Under section 4A–302(a)(2), a Federal Reserve Bank must transmit payment orders at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date, or as soon thereafter as is feasible. Therefore, where an off-line receiving bank is an intermediary bank or beneficiary's bank in a payment order, its Federal Reserve Bank attempts to transmit the payment order to the off-line bank by telephone on the day the payment order is received by the Federal Reserve Bank. A Federal Reserve Bank can generally identify these payment orders from the type code designated in the payment order.

(3) Under section 4A–404(b), if a payment order instructs payment to the account of the beneficiary, the beneficiary's bank must notify the beneficiary of the receipt of a payment order before midnight of the next funds-transfer business day following the payment date. Where an off-line bank is the beneficiary of a payment order, telephone notice by a Federal Reserve Bank to the off-line bank of the receipt of the order is not required by Article 4A because the Federal Reserve Bank sends notice to the off-line bank by courier or mail, along with its daily account statement, on the day after the payment order is received by its Federal Reserve Bank. Payment orders for which an off-line bank is the beneficiary of the order are generally designated as settlement transactions.

(4) If an off-line receiving bank maintains an account for another bank, the off-line bank may receive payment orders designated as settlement transactions in its capacity as beneficiary's bank or intermediary bank. A Federal Reserve Bank cannot readily distinguish these payment orders from settlement transactions for which the off-line bank is the beneficiary of the order. If an off-line bank notifies its Federal Reserve Bank that it maintains an account for another bank, the Federal Reserve Bank will attempt to telephone the off-line bank with respect to all settlement transactions received by such bank, whether the off-line bank is the beneficiary, the beneficiary's bank, or an intermediary bank in the payment order. Under this section, an off-line bank that does not expressly notify its Federal Reserve Bank in writing that it maintains an account for another bank warrants to that Federal Reserve Bank that it does not act as an intermediary bank or a beneficiary's bank for a bank beneficiary with respect to payment orders received through Fedwire.

Section 210.30—Payment Orders

(a) *Rejection.* (1) A sender must make arrangements with its Federal Reserve Bank before it can send payment orders to the Federal Reserve Bank. Federal Reserve Banks

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reserve the right to reject or impose conditions on the acceptance of payment orders for any reason. For example, a Federal Reserve Bank might reject or impose conditions on accepting a payment order where a sender does not have sufficient funds in its account with the Federal Reserve Bank to cover the amount of the sender's payment order and other obligations of the sender due or to become due to the Federal Reserve Bank. A Federal Reserve Bank may require a sender to execute a written agreement concerning security procedures or other matters before the sender may send payment orders to the Federal Reserve Bank.

(b) *Selection of an intermediary bank.* (1) Under section 4A–302, if a receiving bank (other than a beneficiary's bank), such as a Federal Reserve Bank, accepts a payment order, it must issue a payment order that complies with the sender's order. The sender's order may include instructions concerning an intermediary bank to be used that must be followed by a receiving bank (*see* section 4A–302(a)(1)). If the sender does not designate any intermediary bank in its payment order, the receiving bank may select an intermediary bank through which the sender's payment order can be expeditiously issued to the beneficiary's bank so long as the receiving bank exercises ordinary care in selecting the intermediary bank (*see* section 4A–302(b)).

(2) This section provides that in an interdistrict transfer, a Federal Reserve Bank is authorized and directed to select another Federal Reserve Bank as an intermediary bank. A sender may, however, instruct a Federal Reserve Bank to use a particular intermediary bank by designating that bank as the bank to be credited by that Federal Reserve Bank (or the second Federal Reserve Bank in the case of an interdistrict transfer) in its payment order, in which case the Federal Reserve Bank will send the payment order to that bank if that bank receives payment orders through Fedwire. A sender may not instruct a Federal Reserve Bank to use its discretion to select an intermediary bank other than a Federal Reserve Bank or an intermediary bank designated by the sender. In addition, a sender may not instruct a Federal Reserve Bank to use a funds-transfer system or means of transmission other than Fedwire unless the sender and the Federal Reserve Bank agree in writing to the use of the funds-transfer system or means of transmission.

(c) *Same-day execution.* Generally, Fedwire is a same-day value transfer system through which funds may be transferred from the originator to the beneficiary on the same funds-transfer business day. A sender may not send a payment order to a Federal Reserve Bank that specifies an execution date or payment date later than the day on which the payment order is issued, unless the sender of the order and the Federal Reserve Bank agree in writing to the arrangement.

Section 210.31—Payment by a Federal Reserve Bank to a Receiving Bank or Beneficiary

(a) *Payment to a receiving bank.* (1) Under section 4A–402, when a Federal Reserve Bank executes a sender's payment order by issuing a conforming order to a receiving bank that accepts the payment order, the Federal Reserve Bank must pay the receiving bank the amount of the payment order. Section 210.29(a) authorizes a Federal Reserve Bank to make the payment by crediting the account at the Federal Reserve Bank maintained or used by the receiving bank. Section 210.31(a) provides that the payment occurs when the receiving bank's account is credited or when the payment order is sent by the Federal Reserve Bank to the receiving bank, whichever is earlier. Ordinarily, payment will occur during the funds-transfer business day a short time after the payment order is received, even if the receiving bank is an off-line bank. This credit is final and irrevocable when made and constitutes final settlement under section 4A–403. Payment does not waive a Federal Reserve Bank's right of recovery under the applicable law of mistake and restitution (*see* § 210.32(c)), affect a Federal Reserve Bank's right to appy the funds to any obligation due or to become due to the Federal Reserve Bank, or affect legal process or claims by third parties on the funds.

(2) This section on final payment does not apply to settlement for payment orders between Federal Reserve Banks. These payment orders are settled by other means.

(b) *Payment to a beneficiary.* Section 210.31(b) specifies when a Federal Reserve Bank makes payment to a beneficiary for which it is the beneficiary's bank. As in the case of payment to a receiving bank, this payment occurs at the earlier of the time that the Federal Reserve Bank credits the beneficiary's account or sends notice of the credit to the beneficiary, and is final and irrevocable when made.

Section 210.32—Federal Reserve Bank Liability; Payment of Interest

(a) *Damages.* (1) Under section 4A–305(d), damages for failure of a receiving bank to execute a payment order that it was obligated to execute by express agreement are limited to expenses in the transaction and incidental expenses and interest and do not include additional damages, including consequential damages, unless they are provided for in an express written agreement of the receiving bank. This section clarifies that in connection with the handling of payment orders, Federal Reserve Banks may not agree to be liable for consequential damages under this provision and shall not be liable for damages other than those that may be due under Article 4A to parties governed by this subpart. Any agreement in conflict with these provisions would not be effective, because it would be in violation of subpart B.

(2) This section does not affect the ability of other parties to a funds transfer to agree to be liable for consequential damages, the liability of a Federal Reserve Bank under section 4A–404, or the liability to parties governed by subpart B for claims not based on the handling of a payment order under this subpart.

(b) *Payment of interest.* (1) Under Article 4A, a Federal Reserve Bank may be required to pay compensation in the form of interest to another party in connection with its handling of a funds transfer. For example, payment of compensation in the form of interest is required in certain situations pursuant to sections 4A–204 (relating to refund of payment and duty of customer to report with respect to unauthorized payment order), 4A–209 (relating to acceptance of payment order), 4A–210 (relating to rejection of payment order), 4A–304 (relating to duty of sender to report erroneously executed payment order), 4A–305 (relating to liability for late or improper execution or failure to execute a payment order), 4A–402 (relating to obligation of sender to pay receiving bank), and 4A–404 (relating to obligation of receiving bank's duty to pay and give notice to beneficiary). Under section 4A–506(a), the amount of such interest may be determined by agreement between the sender and receiving bank or by funds-transfer system rule. If there is no such agreement, under section 4A–506(b), the amount of interest is based on the Federal funds rate. Section 210.32(b) provides two means by which Federal Reserve Banks may provide compensation in the form of interest: through an as of adjustment or through an explicit interest payment.

(2) An as of adjustment is a memorandum credit or debit that is applied to the reserve or clearing balance of the bank that sent the payment order to, or received the payment order from, a Federal Reserve Bank. Federal Reserve Banks generally provide as of adjustments to correct errors and recover float. An as of adjustment differs from a debit or credit to an account in that it does not affect the actual balance of the account; it only affects the balance for reserve or clearing balance computation purposes. These adjustments affect the level of reserve or clearing balances that the bank must fund by other means and are therefore an effective substitute for explicit interest payments.

3. A party that sent or received a payment order from a Federal Reserve Bank may be unable to make use of an as of adjustment as compensation in lieu of explicit interest. For example, if the sender or receiving bank is not subject to reserve requirements or satisfies its reserve requirements with vault cash, the as of adjustment could not be used to free other balances for investment. A Federal Reserve Bank may, in its discretion, provide compensation by an explicit interest payment rather than through an as of adjustment. Interest would be calculated in accordance with the procedures specified in section 4A–506(b). Similarly, compensation in the form of explicit interest will be paid to Government senders, receiving banks, or beneficiaries described in § 210.25(d) if they are entitled to interest under this subpart. A Federal Reserve Bank may also, in its discretion, pay explicit interest directly to a remote party to a Fedwire funds transfer that is entitled to interest, rather than providing compensation to its direct sender or receiving bank.

(4) If a bank that received an as of adjustment or explicit interest payment is not the party entitled to interest compensation under Article 4A, the bank must pass the benefit of the as of adjustment or explicit interest payment made to it to the party that is entitled to compensation in the form of interest from a Federal Reserve Bank. The benefit may be passed on either in the form of a direct payment of interest or in the form of a compensating balance, if the party entitled to interest agrees to accept the other form of compensation, and the value of the compensating balance is at least equivalent to the value of the explicit interest that otherwise would have been provided.

(c) *Nonwaiver of right of recovery.* Several sections of Article 4A allow for a party to a funds transfer to make a claim pursuant to the applicable law of mistake and restitution. Nothing in subpart B of this part or any Operating Circular issued under subpart B of this part waives any such claim. A Federal Reserve Bank, however, may waive such a claim by express written agreement in order to settle litigation or for other purposes.

Appendix B to Subpart B—Article 4A, Funds Transfers

Part 1—Subject Matter and Definitions

Section 4A–101. Short Title

This Article may be cited as Uniform Commercial Code—Funds Transfers.

Section 4A–102. Subject Matter

Except as otherwise provided in section 4A–108, this Article applies to funds transfers defined in section 4A–104.

Section 4A–103. Payment Order—Definitions

(a) In this Article:

(1) *Payment order* means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) *Beneficiary* means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) *Receiving bank* means the bank to which the sender's instruction is addressed.

(5) *Sender* means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

Section 4A–104. Funds Transfer—Definitions

In this Article:

(a) *Funds transfer* means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) *Intermediary bank* means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) *Originator* means the sender of the first payment order in a funds transfer.

(d) *Originator's bank* means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

Section 4A–105. Other Definitions

(a) In this Article:

(1) *Authorized account* means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) *Bank* means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) *Customer* means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) *Funds-transfer business day* of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) *Funds-transfer system* means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) *Good faith* means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) *Prove* with respect to a fact means to meet the burden of establishing the fact (Section 1–201(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	Sec. 4A–209
"Beneficiary"	Sec. 4A–103
"Beneficiary's bank"	Sec. 4A–103
"Executed"	Sec. 4A–301
"Execution date"	Sec. 4A–301
"Funds transfer"	Sec. 4A–104
"Funds-transfer system rule"	Sec. 4A–501
"Intermediary bank"	Sec. 4A–104
"Originator"	Sec. 4A–104
"Originator's bank"	Sec. 4A–104
"Payment by beneficiary's bank to beneficiary"	Sec. 4A–405
"Payment by originator to beneficiary"	Sec. 4A–406
"Payment by sender to receiving bank"	Sec. 4A–403
"Payment date"	Sec. 4A–401
"Payment order"	Sec. 4A–103
"Receiving bank"	Sec. 4A–103
"Security procedure"	Sec. 4A–201
"Sender"	Sec. 4A–103

(c) The following definitions in Article 4 apply to this Article:

"Clearing house"	Sec. 4–104
"Item"	Sec. 4–104
"Suspends payments"	Sec. 4–104

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 4A–106. Time Payment Order is Received

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1–201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article.

Section 4A–107. Federal Reserve Regulations and Operating Circulars

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

Section 4A–108. Exclusion of Consumer Transactions Governed by Federal Law

This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95–630, 92 Stat. 3728, 15 U.S.C. 1693 et seq.) as amended from time to time.

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Part 3—Issue and Acceptance of Payment Order

Section 4A–201. Security Procedure

Security procedure means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

Section 4A–202. Authorized and Verified Payment Orders

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term *sender* in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in section 4A–205(a)(1), rights and obligations arising under this section or section 4A–203 may not be varied by agreement.

Section 4A–203. Unenforceability of Certain Verified Payment Orders

(a) If an accepted payment order is not, under section 4A–202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to section 4A–202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

Section 4A–204. Refund of Payment and Duty of Customer To Report with Respect to Unauthorized Payment Order

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 4A–202, or (ii) not enforceable, in whole or in part, against the customer under section 4A–203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in section 1–204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

Section 4A–205. Erroneous Payment Orders

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sendar proves that the sender or a person acting on behalf of the sender pursuant to section 4A–206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

Section 4A–206. Transmission of Payment Order Through Funds-Transfer or Other Communication System

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

Section 4A–207. Misdescription of Beneficiary

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

Section 4A–208. Misdescription of Intermediary Bank or Beneficiary's Bank

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in section 4A–302(a)(1).

Section 4A–209. Acceptance of Payment Order

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) When the bank (i) pays the beneficiary as stated in section 4A–405(a) or 4A–405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) When the bank receives payment of the entire amount of the sender's order pursuant to section 4A–403(a)(1) or 4A–403(a)(2); or

(3) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to section 4A–211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

Section 4A–210. Rejection of Payment Order

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally,

electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 4A–211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

Section 4A–211. Cancellation and Amendment of Payment Order

(a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

Section 4A–212. Liability and Duty of Receiving Bank Regarding Unaccepted Payment Order

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 4A–209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

Part 3—Execution of Sender's Payment Order by Receiving Bank

Section 4A–301. Execution and Execution Date

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) *Execution date* of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

Section 4A–302. Obligations of Receiving Bank in Execution of Payment Order

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to section 4A–209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

Section 4A–303. Erroneous Execution of Payment Order

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under section 4A–402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 4A–402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

Section 4A–304. Duty of Sender to Report Erroneously Executed Payment Order

If the sender of a payment order that is erroneously executed as stated in section 4A–303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under section 4A–402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

Section 4A–305. Liability for Late or Improper Execution or Failure To Execute Payment Order

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of section 4A–302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of section 4A–302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

Part 4—Payment

Section 4A–401. Payment Date

Payment date of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

Section 4A–402. Obligation of Sender To Pay Receiving Bank

(a) This section is subject to sections 4A–205 and 4A–207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to section 4A–308. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in sections 4A–204 and 4A–306, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a

payment order in compliance with an instruction, as stated in section 4A–302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d)

the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under section 4A–402(b) or 4A–402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

Section 4A–404. Obligation of Beneficiary's Bank To Pay and Give Notice to Beneficiary

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under section 4A–404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the

accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the

Section 4A–502. Creditor Process Served on Receiving Bank; Setoff by Beneficiary's Bank

(a) As used in this section, *creditor process* means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if

respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

Section 4A–505. Preclusion of Objection to Debit of Customer's Account

payment order in compliance with an instruction, as stated in section 4A–302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

Section 4A–403. Payment by Sender To Receiving Bank

(a) Payment of the sender's obligation under section 4A–402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 4A–402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under section 4A–402(b) or 4A–402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

Section 4A–404. Obligation of Beneficiary's Bank To Pay and Give Notice to Beneficiary

(a) Subject to sections 4A–211(e), 4A–405(d), and 4A–405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

Section 4A–405. Payment by Beneficiary's Bank To Beneficiary

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under section 4A–404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under section 4A–404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfer made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 4A–406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under section 4A–406, and (iv) subject to section 4A–402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under section 4A–402(c) because the funds transfer has not been completed.

Section 4A–406. Payment by Originator to Beneficiary; Discharge of Underlying Obligation

(a) Subject to sections 4A–211(e), 4A–405(d), and 4A–405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 4A–404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

Part 5—Miscellaneous Provisions

Section 4A–501. Variation by Agreement and Effect of Funds-Transfer System Rule

(a) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) *Funds-transfer system rule* means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in sections 4A–404(c), 4A–405(d), and 4A–507(c).

Section 4A–502. Creditor Process Served on Receiving Bank; Setoff by Beneficiary's Bank

(a) As used in this section, *creditor process* means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owned by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

Section 4A–503. Injunction or Restraining Order with Respect to Funds Transfer

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

Section 4A–504. Order In Which Items and Payment Orders May Be Charged to Account; Order of Withdrawals from Account

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

Section 4A–505. Preclusion of Objection to Debit of Customer's Account

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

Section 4A–506. Rate of Interest

(a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

Section 4A–507. Choice of Law

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern

assessment to be paid by Bank Insurance Fund ("BIF") members during calendar year 1991, and is setting forth the rate in part 327. The FDIC is also publishing, for information purposes, the rates to be paid by Savings Association Insurance Fund ("SAIF") members in 1991 and later years.

EFFECTIVE DATE: The final rule is

the underlying statute authorizing the rule."

Finally, notwithstanding the lack of any requirement imposed by the Regulatory Flexibility Act, the Board has inquired into the effects that the final rule would have on BIF members generally. The inquiry shows that the increase in the assessment rate could

information currently available with respect to BIF-insured deposits. In summary, the BIF reserve ratio has declined from 1.1 percent at year-end 1987 to .80 percent at year-end 1988, and then to .70 percent at year-end 1989. These ratios are unacceptably low, and the trend is unmistakably downward: current data indicate that the BIF

percent; the discretionary increase prescribed by the Board is an additional .045 percent.

The discretionary increase is needed to bring the reserve ratio up to 1.25 percent within a reasonable time. The rate increase will raise bank assessment revenues by roughly $1.1 billion. The

statutory target of 1.25 percent within a reasonable time.

B. Impact on the Banking Industry

The FDIC staff estimates that increasing the 1991 assessment rate from .15 percent to .195 percent will have a minimal impact on current industry capital levels. The

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(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

By order of the Board of Governors of the Federal Reserve System, September 26, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 23461 Filed 10-4-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AA86

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") is amending part 327 of its regulations, 12 CFR part 327, ("Assessments") in two ways. The FDIC is increasing the assessment to be paid by Bank Insurance Fund ("BIF") members during calendar year 1991, and is setting forth the rate in part 327. The FDIC is also publishing, for information purposes, the rates to be paid by Savings Association Insurance Fund ("SAIF") members in 1991 and later years.

EFFECTIVE DATE: The final rule is effective November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Alvin E. Kitchen, Associate Director, Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, 550 Seventeenth Street NW., Washington, DC, 20429, (202) 625-8344.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply to this proceeding. Although the Act requires a regulatory flexibility analysis when an agency publishes a rule, the term "rule" (as defined in the Regulatory Flexibility Act) excludes "a rule of particular applicability relating to rates." *Id.* 601(2). The Act's requirements regarding an initial and final regulatory flexibility analysis (*id.* 603 & 604) do not apply.

The legislative history of the Regulatory Flexibility Act indicates that the Act's requirements are inappropriate to this proceeding. The Act is intended to assure that agencies' rules do not impose disproportionate burdens on small businesses:

> Uniform regulations applicable to all entities without regard to size or capability of compliance have often had a disproportionate adverse effect on small concerns. The bill, therefore, is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule.
>
> 126 Cong. Rec. 21453 (1980) ("Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299").

The final rule does not impose a uniform cost or requirement on all BIF members regardless of size: rather it imposes a cost on each bank proportional to that bank's size. Moreover, the FDIC cannot "tailor" assessment rates to reflect the "size and nature" of banks. It is not possible to make such distinctions "consistent with the underlying statute authorizing the rule."

Finally, notwithstanding the lack of any requirement imposed by the Regulatory Flexibility Act, the Board has inquired into the effects that the final rule would have on BIF members generally. The inquiry shows that the increase in the assessment rate could cause significant harm to only a small number of banks, and that these banks are distributed by size in roughly the same way as BIF members as a whole (see n. 4 below). Accordingly, the Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

The Final Rule

Section 7 of the Federal Deposit Insurance Act requires the FDIC to assess all insured depository institutions. 12 U.S.C. 1817. The FDIC's assessment rules are set forth in part 327 of title 12 of the Code of Federal Regulations ("Assessments").

On August 20, 1990, the FDIC published a proposed amendment to part 327 and asked for comments on it. 55 FR 33918 (1990). The FDIC proposed to raise the assessment rate for BIF members from .15 percent per annum to .195 percent per annum for calendar year 1991, and to publish the rates prescribed by statute for SAIF members. The FDIC received 432 comments.

I. Increase in the BIF Assessment Rate

A. The Substance of the Rule

On and after January 1, 1991, the statutory assessment rate for BIF members is .15 percent per annum. The Board may set a higher rate if it determines:

—That the BIF reserve ratio (*i.e.*, the ratio of the value of the BIF to the estimated insured deposits held in BIF members) is expected to be less than 1.25 percent; and

—That the higher rate is appropriate to bring the reserve ratio up to 1.25 percent within a reasonable period of time

But the rate may not be raised so long as the BIF reserve ratio is increasing on a calendar year basis. Moreover, the increase in the rate in any one year may not exceed .075 percent; and in any case the assessment rate may not exceed a maximum of .325 percent. *Id.* 1817(b)(1)(C).

The Board has examined the financial condition of the BIF—its operating expenses, its case resolution expenditures, and its investment income—and has reviewed the information currently available with respect to BIF-insured deposits. In summary, the BIF reserve ratio has declined from 1.1 percent at year-end 1987 to .80 percent at year-end 1988, and then to .70 percent at year-end 1989. These ratios are unacceptably low, and the trend is unmistakably downward: current data indicate that the BIF reserve ratio will continue to decline through the end of 1990.

Accordingly, the Board is increasing the assessment rate for calendar year 1991 to .195 percent. The statute prescribes a minimum increase of .03 percent; the discretionary increase prescribed by the Board is an additional .045 percent.

The discretionary increase is needed to bring the reserve ratio up to 1.25 percent within a reasonable time. The rate increase will raise bank assessment revenues by roughly $1.1 billion. The effect on the BIF is not expected to be dramatic, when compared with the $5 billion in losses the BIF has suffered in 1988 and 1989. But it is a move in the right direction: If sustained, it will help bring the BIF reserve ratio up to the statutory target of 1.25 percent within a reasonable time.

B. Impact on the Banking Industry

The FDIC staff estimates that increasing the 1991 assessment rate from .15 percent to .195 percent will have a minimal impact on current industry capital levels. The capitalization of BIF members at year-end 1989 amounted to $224.7 billion. An assessment rate increase of .045 percentage points will raise 1991 industry assessments by an estimated $1.1 billion, or less than ⅛ of 1 percent of year-end 1989 industry equity capital:

TABLE 1.—PROJECTED DEPOSIT GROWTH AND ASSESSMENT INCOME OF BIF MEMBERS [1]

Amounts in $ billions	1991 (projected)	1990 (projected)	1989 (actual)
Total domestic deposits	$2,665.8	$2,563.3	$2,464.7
Growth rate	4.0%	4.0%	5.7%
Insured deposits	2,025.8	1,947.9	1,873.0
Growth rate	4.0%	4.0%	7.0%
Assessment base	2,446.6	2,352.5	2,262.0
Growth rate	4.0%	4.0%	6.3%
Amounts in $ millions			
Assessment rate	0.15%	0.12%	0.093%
Assessment income	3,669.9	2,823.0	1,884.2
Projected 1991			
Assessment increase	0.045%		
Additional assessment income	1,101.0		

[1] Table 1 uses the deposit figures available for 1989, which is the most recent full year for which such data are available. The deposit figures for 1990 and 1991 are projections. Deposits are presumed to grow in 1990 and 1991 at a conservative rate of 4 percent per annum.

Table 1 portrays the effect of applying the 0.093 percent insurance assessment rate that actually prevailed in 1989, the 0.15 percent assessment rate that is scheduled for 1991, and of applying an additional 4.5 basis-point increase, to 0.195 percent.

Banks can mitigate the impact on earnings and capitalization in a number of ways—*e.g.*, by lowering deposit interest rates, increasing service fees, or reducing dividends. If banks were to pass the full amount of the higher assessment on to depositors, rates paid on deposits would fall by 4.5 cents per $100 (*i.e.*, a reduction of $4.50 on a one-year time deposit of $10,000, disregarding compounding). The banking industry paid $14.6 billion in dividends on capital stock during 1989, or about 97 percent of net income for the period. A moderate decrease in dividends could absorb the increased assessment costs to the extent that the costs are not immediately passed on to depositors and other customers.[1]

The impact on industry income for 1991 and beyond is harder to evaluate. Prior-year earnings have been determined by sharply fluctuating loan-loss provisions booked by the largest money-center banks. The additional assessment premiums will boost BIF members' noninterest overhead costs by approximately .96 percent. The additional expense amounts to 4.4 percent of 1989 pre-tax operating income of $25.1 billion.

The increased assessments comprise 7.3 percent of net income after taxes and nonrecurring extraordinary gains, which amounted to $15 billion for year-end 1989. However, the after-tax impact is reduced to less than 5 percent of 1989 net income, when State and Federal income tax provisions—which amounted to $10.2 billion in 1989—are considered. For those banks that pass on the costs, the impact on pre-tax and after-tax earnings (and on dividends and capitalization) is eliminated.

C. Impact on Earnings of Individual Banks [2]

The assessment rate stood at .083 percent during 1989. That year 1,669 BIF members (assets: $751 billion) reported full-year earnings losses totalling $11.1 billion.

If 1991's statutory assessment rate (.15 percent) had been in effect, this group of banks would have lost an additional $294 million. Another 110 banks (assets: $89 billion) would have lost $13 million. In addition, 1,987 banks (assets: $500 billion) would have had earnings reduced by more than 10 percent.

If the assessment rate had included the discretionary increase in 1989—*i.e.*, if the assessment rate had been .195 percent—only 69 more banks (assets: $11 billion) would have seen their net income reduced below zero by the additional insurance assessment: [3]

[1] Most bankers who commented on this point indicated that they expected to pass the costs on to depositors and borrowers. But there were a number of bankers who indicated that competitive and other pressures could well prevent them from passing on the costs in this manner. See "Review of Comments."

[2] This analysis of the impact of higher assessment rates on bank earnings makes several simplifying assumptions, which have the effect of overstating the likely consequences of a rate increase. Estimated assessment payments are based on end-of-year total domestic deposits, which enlarges the assessment base; in practice, actual assessments would be somewhat lower than the amounts used here. In addition, the effect of higher insurance premiums represents a "worst-case" scenario, in which no tax effect or cost pass-along is assumed, where all higher payments are carried directly through to lower net income.

[3] The affected banks are not disproportionately small ones. Forty of them have assets under $50 million (58%); thirteen have assets between $50 and $100 million (19%); fifteen have assets from $100 million to $1 billion (21.5%); no affected bank has assets between $1 billion and $5 billion; and one has assets exceeding $5 billion (1.5%).

Continued

TABLE 2.—BIF MEMBERS WITH EARNINGS LOSSES UNDER DIFFERENT ASSESSMENT SCENARIOS

[Based on 1989 earnings; amounts in $ millions]

	Actual 1989 rate (0.083%)	Statutory 1991 rate (0.15%)	Amended 1991 rate (0.195%)
Number of banks with losses	1,669	1,779	1,848
Assets	$751	$840	$924
Losses	$11,100	$11,394	$11,813
Number of banks with losses greater than 10% of capital	1,987	2,097	2,166
Assets	$500	$589	$673
Losses	$10,000	$10,294	$10,713
Number of banks with losses greater than capital	69	80	91
Assets	$11	$13	$15
Losses	$1,100	$1,294	$1,513

If the assessment rate in 1989 had been .195 percent, two more banks (assets: $173 million) would have seen their equity capital eclipsed by the additional insurance fee. Another 20 banks (assets: $2.8 billion) would have had increased premiums equal to more than 10 percent of their equity capital.

Banks can mitigate the impact on earnings and capitalization in a number of ways—*e.g.*, by lowering deposit interest rates, increasing service fees, or reducing dividends. If banks were to pass the full amount of the higher assessment on to depositors, rates paid on deposits would fall by 4.5 cents per $100 (*i.e.*, a reduction of $4.50 on a one-year time deposit of $10,000, disregarding compounding). The banking industry paid $14.6 billion in dividends on capital stock during 1989, or about 97 percent of net income for the period. A moderate decrease in dividends could absorb the increased assessment costs to the extent that the costs are not immediately passed on to depositors and other customers.[4]

The impact on industry income for 1991 and beyond is harder to evaluate. Prior-year earnings have been determined by sharply fluctuating loan-loss provisions booked by the largest money-center banks. The additional assessment premiums will boost BIF members' noninterest overhead costs by approximately .96 percent. The additional expense amounts to 4.4 percent of 1989 pre-tax operating income of $25.1 billion.

The increased assessments comprise 7.3 percent of net income after taxes and nonrecurring extraordinary gains, which amounted to $15 billion for year-end 1989. However, the after-tax impact is reduced to less than 5 percent of 1989 net income, when State and Federal income tax provisions—which amounted to $10.2 billion in 1989—are considered. For those banks that pass on the costs, the impact on pre-tax and after-tax earnings (and on dividends and capitalization) is eliminated.

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The impact on industry income for 1991 and beyond is harder to evaluate. Prior-year earnings have been determined by sharply fluctuating loan-loss provisions booked by the largest money-center banks. The additional assessment premiums will boost BIF members' noninterest overhead costs by approximately .96 percent. The additional expense amounts to 4.4 percent of 1989 pre-tax operating income of $25.1 billion.

The increased assessments comprise 7.3 percent of net income after taxes and nonrecurring extraordinary gains, which amounted to $15 billion for year-end 1989. However, the after-tax impact is reduced to less than 5 percent of 1989 net income, when State and Federal income tax provisions—which amounted to $10.2 billion in 1989—are considered. For those banks that pass on the costs, the impact on pre-tax and after-tax earnings (and on dividends and capitalization) is eliminated.

also requires a single rate for all BIF members.[14]

The FDIC does have power under current law to vary the limits of the category "deposit." [15] The FDIC considers, however, that it would be premature to attempt to do so at this time. Congress has directed the Department of the Treasury to

IV. Effective Date

The final rule is made effective November 5, 1990.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 727-100 and -100C series airplanes, which requires inspection and repair, if necessary, of the fuselage crown skin at body station (BS) 1080. This amendment is prompted by reports of delamination, corrosion,

TABLE 2.—BIF MEMBERS WITH EARNINGS LOSSES UNDER DIFFERENT ASSESSMENT SCENARIOS

[Based on 1989 earnings; amounts in $ millions]

	Actual 1989 rate (0.083%)	Statutory 1991 rate (0.15%)	Amended 1991 rate (0.195%)
Number of banks with negative net income	1,669	1,779	1,848
Combined losses	$11,056	$11,373	$11,592
Total assets	$750,862	$820,048	$832,326

The number of banks with earnings reductions of more than 10 percent would have increased by 3,548 banks (assets: $562 billion). The average reduction in earnings among this group of banks attributable to the 4.5 basis-point increase in the assessment rate (from .15 percent to .195 percent) would have been approximately 15 percent.

The 1,669 banks reporting net losses in 1989 included 244 banks (assets: $131 billion) that had equity capital of less than 3 percent of assets at year-end 1989. If the assessment rate had been .15 percent, one additional thinly-capitalized bank would have reported a net loss for the year, and 19 others would have had more than 10 percent of their net income absorbed by the additional assessment payments. Raising the assessment rate a further 4.5 basis points would have resulted in one additional under-capitalized unprofitable bank, and four other banks whose earnings would be reduced by more than 10 percent.

D. Impact on Capital of Individual Banks [4]

At the end of 1989, there were 85 BIF-insured banks (assets: $18.5 billion) reporting negative equity capital.[5] The added expense of a .15 percent assessment rate in 1989 would have exceeded the total equity capital of two more banks (assets: $18 million). For another 30 banks (assets: $8.7 billion), the higher insurance premiums would have represented more than 10 percent of their equity capital.

If the assessment rate in 1989 had been .195 percent, two more banks (assets: $173 million) would have seen their equity capital eclipsed by the additional insurance fee. Another 20 banks (assets: $2.8 billion) would have had increased premiums equal to more than 10 percent of their equity capital.

E. Comments

1. In General

The FDIC received 432 comments.[6] Of these, 282 opposed the increase; [7] 150 did not oppose it, or favored it with varying degrees of enthusiasm.[8]

One hundred ninety-four comments [9] said the current assessment plan was not equitable as between smaller and larger banks. The comments averred that larger banks posed a greater threat to the BIF—either because of the so-called "Too Big To Fail" doctrine, or simply because large failures cost more than small ones [10]—yet enjoyed sources of funding that were not subject to assessment. This objection has to do with the statutory procedures for dealing with failures—and in particular, with the FDIC's obligation to minimize costs—rather than with the assessment itself. In addition, some comments made the point that larger banks, having access to non-assessed funding sources (particularly foreign deposits), can more easily absorb the impact of the higher rate. While this criticism may appear reasonable on its face, the evidence suggests that the increase is just as likely to affect large banks adversely as small ones.[11]

On hundred seventy-nine bankers—and three private citizens—said the increase would have an adverse impact on the particular banks with which they were associated. Many of the bankers described the impact that the increase would have on their banks' earnings and capital. In general, the information provided in the comments was in line with the FDIC's projections. A somewhat smaller number of comments [12] asserted that the increase would hurt banks generally, particularly smaller banks.

Comments split fairly evenly on the question whether banks would pass the increased assessment costs on to their customers. A slight majority [13] indicated that banks would have to raise interest rates paid by borrowers and cut rates paid to depositors. But almost as many comments [14] said that competitive pressures—particularly from credit unions and from money-market mutual funds—would prevent any such passing-on of costs.[15]

2. Suggested Alternative Approaches

Comments suggested three main alternatives to the uniform rate increase: Assessing foreign deposits,[16] assessing liabilities now classified as nondepository,[17] and replacing the uniform assessments with tiered rates—most notably tiering the rates based on risk.[18]

Neither the first option nor the third one is available under current law. The FDI Act explicitly forbids the FDIC to assess foreign deposits.[19] The FDI Act

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By comparison, banks with assets under $50 million comprise 58.9% of all BIF members; $50-to-$100 million banks comprise 21.5%; $100 million-to-$1 billion banks comprise 31.5%; $1-to-$5 billion comprise 2.8%; and banks with assets over $5 billion comprise the remaining 1%.

[4] It is assumed that all increased deposit insurance costs are taken directly out of retained earnings; in practice, the impact on equity capital can be minimized by tax effects, cost pass-alongs, and lower dividend payments.

[5] Sixty-eight of these banks were no longer active as of August 3, 1990.

[6] Bankers supplied 403 comments; trade groups supplied nine; and private citizens supplied the remaining 20.

[7] Those opposed included 269 bankers, 3 trade organizations, and 10 private citizens.

[8] One hundred thirty-four bankers acknowledged the need for the increase. Many said they would like other measures—*e.g.*, assessing foreign deposits and nondepository obligations—to be implemented along with the rate increase. Six trade associations and 10 private citizens also supported the increase.

[9] This group consisted of 160 bankers, six trade groups, and 2 private citizens.

[10] In fact, the FDIC's experience is just the reverse. The FDIC's losses as a percentage of bank assets decline steadily as banks increase in size. From 1985 through 1989, banks with assets of $50 million or less cost the FDIC on average 28.4 cents per dollar of assets; banks with assets of $50 million to $100 million cost 24.3 cents per dollar; banks with assets of $100 million to $500 million cost 18.1 cents per dollar; banks with assets of $500 million to $1 billion cost 14.3 cents per dollar; and banks with assets of over $1 billion cost 9.9 cents per dollar.

[11] See footnote 3.

[12] One hundred ten comments made this point. Trade groups supplied four comments; bankers supplied the other 106.

[13] Eighty-one bankers and one trade group indicated that banks would be forced to take action of this kind; five private citizens expressed the fear that banks would pass on their costs in this fashion.

[14] Sixty-six bankers, three trade groups, and two private citizens adopted this point of view.

[15] A number of comments appeared to labor under the misimpression that deposits exceeding $100,000—or the uninsured portions of deposits exceeding $100,000—are not assessed. In actuality, all domestic deposits are assessed. Other comments expressed dissatisfaction with the notion that funds contributed to the BIF might be used to assist or pay out SAIF members. The FDI Act specifically forbids any such use of BIF funds. See 12 U.S.C. 1821(a)(5).

[16] Two hundred sixty-two bankers, six trade associations, and four private citizens recommended that the FDIC assess foreign deposits. Such assessments would generate about $500 million in assessment proceeds at the statutory rate of .15 percent (assuming a growth rate of 4 percent for such deposits, as is assumed for domestic-deposit growth).

[17] One hundred fifty-one bankers and four trade groups suggested that the FDIC assess liabilities of this kind.

[18] One hundred thirty bankers, two trade associations, and eight private citizens made this point. Most comments favored tiering the rates by risk. A few suggested other methods: *e.g.*, classifying banks by deposits, by assets, or by bank capital; categorizing banks as "Too Big To Fail" or otherwise; and establishing different rates for banks in different States.

[19] Each bank's assessment base is derived from its "deposits." *See* 12 U.S.C. 1817(b)(4). The FDI Act excludes foreign deposits from the term "deposit." *Id.* 1813(l)(5)(2)(A).

also requires a single rate for all BIF members.[20]

The FDIC does have power under current law to vary the limits of the category "deposit." [21] The FDIC considers, however, that it would be premature to attempt to do so at this time. Congress has directed the Department of the Treasury to "undertake a major study of the system of Federal deposit insurance." [22] The Treasury Department will report not only on the feasibility of risk-based assessments, the assessment of foreign deposits, and the scope of insurance coverage, but on many other issues as well.[23] The Treasury Department's report is due in February, 1991. Inasmuch as its recommendations could provide a basis for a systemic reform of the assessment structure, the FDIC considers that it is not now appropriate to revise the category of liabilities subject to assessment and insurance as "deposits."

Finally, a good many comments pointed out that assessment rates had already jumped substantially from 1989 to 1990 (from .083 percent to .12 percent), and that the statutory increase for 1991 (from .12 percent to .15 percent) represents another significant rise. Twelve bankers urged the FDIC to mitigate the effects of the discretionary increase by phasing it in over time. Any such delay would only exacerbate the problem, however, and could contribute to an erosion of public confidence in the Federal deposit insurance program.

III. Publication of SAIF Assessment Rates

The FDIC is also publishing the statutorily-prescribed rate for SAIF members in part 327. The FDIC has no power to alter this rate for years prior to calendar year 1995. The publication of the SAIF assessment rate is for information purposes only.

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[20] *Id.* 1817(b)(1)(C). The House version of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 contained a provision giving the FDIC authority of this kind. *See* 135 Cong. Rec. H2800 (daily ed. June 15, 1989). But the Conference Committee declined to adopt the House provision.

A few comments suggested that the FDIC should set different assessment rates for banks of different sizes, or should base assessments on banks' assets rather than on their deposits. These options are likewise not available under current law.

[21] 12 U.S.C. 1813(l)(3). The FDIC may do so only with respect to liabilities that are "deposit liabilities by general usage." In addition, the FDIC must consult with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision before changing the usage of the term "deposit."

[22] See H.R. Rep. No. 101-222, 101st Cong., 1st Sess. 448 (1989).

[23] See 12 U.S.C. 1821 n.

IV. Effective Date

The final rule is made effective November 5, 1990.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

PART 327—[AMENDED]

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation is amending part 327 of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–19.

2. Section 327.13 is amended by adding paragraph (c) to read as follows:

§ 327.13 Payment of assessment.

* * * * *

(c) *Assessment rate.* The annual assessment rate for each BIF member during calendar year 1991 shall be 0.195 percent.

3. Section 327.23 is amended by adding paragraph (d) to read as follows:

§ 327.23 Payment of assessment.

* * * * *

(d) *Assessment rate.* The annual assessment rate for each SAIF member shall be:

(1) From January 1, 1991, through December 31, 1993, 0.23 percent;

(2) From January 1, 1994, through December 31, 1997, 0.18 percent; and

(3) On and after January 1, 1998, 0.15 percent;

By order of the Board of Directors.

Dated at Washington, DC, this 27th day of September, 1990.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-23585 Filed 10-4-90; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-47-AD; Amdt. 39-6761]

Airworthiness Directives; Boeing Model 727-100 and 727-100C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 727–100 and –100C series airplanes, which requires inspection and repair, if necessary, of the fuselage crown skin at body station (BS) 1080. This amendment is prompted by reports of delamination, corrosion, and/or cracking. This condition, if not corrected, could result in loss of cabin pressure.

EFFECTIVE DATE: November 13, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 727–100 and 727–100C series airplanes, which requires inspection and repair, if necessary, of the fuselage crown skin at body station (BS) 1080, was published in the Federal Register on April 30, 1990 (55 FR 17990).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter advised that its service history does not indicate that a cracking and corrosion problem exists in this area and requested that the proposed rule be withdrawn. The FAA does not concur. Service history of other operators does not support the commenter's position.

One commenter requested "credit" for modification in accordance with Revision 1 or 2 of the service bulletin. These revisions did not require a high frequency eddy current (HFEC) inspection prior to installation of oversize protruding fasteners. The commenter proposed to conduct a visual inspection every 15 months around the rivet head to detect cracking. The FAA concurs with this commenter that visual inspections of these modified areas provide an acceptable level of safety. The final rule has been revised accordingly by adding a new paragraph

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F. which provides for an additional optional terminating action for HFEC inspections of these areas.

Another commenter stated that Part III and IV of Boeing Service Bulletin 727–53–109 describe repairs that would be utilized in limited areas. The commenter stated that these areas would be inspected by different

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane

bulletins may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information may be examined at the Rules Docket at the address below.

Send comments on the AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention:

operational temperature before the servo is functionally tested after cold soak, and revise the applicability statement of the AD by deleting certain airplane serial numbers.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and

F. which provides for an additional optional terminating action for HFEC inspections of these areas.

Another commenter stated that Part III and IV of Boeing Service Bulletin 727-53-109 describe repairs that would be utilized in limited areas. The commenter stated that these areas would be inspected by different methods and at different intervals from areas not repaired. The commenter is correct. This has been highlighted in paragraphs E. and F. the final rule.

Two commenters requested that if corrosion is detected that is less than 10% of the skin thickness, the option should be provided to delay repair, and conduct low frequency eddy current (LFEC) inspections every 15 months in the interim to assure that the corrosion is less than 10%. The FAA concurs with this proposal, provided that the skin adjacent to the fasteners is HFEC inspected for cracking. Paragraph B. of the final rule has been expanded to allow this option.

Paragraph G. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changed described above. These changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 397 Model 727-100 and 727-100C series airplanes of the affected design in the worldwide fleet. It is estimated that 288 airplanes of U.S. registry will be affected by this AD, that it will take approximately 84 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $967,680.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-499, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727-100 and 727-100C series airplanes, listed in Boeing Service Bulletin 727-53-0109, Revision 3, dated September 28, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect delamination, cracking, and/or corrosion of fuselage crown skin circumferential joint at body station (BS) 1080 and to prevent depressurization, accomplish the following:

A. For airplanes modified in accordance with Part IV of Boeing Service Bulletin 727-53-0109, Revision 3, dated September 28, 1989: Within the next 15 months after the effective date of this AD, accomplish an internal close visual inspection in accordance with the NOTE in Part I.A of the service bulletin.

1. If no corrosion is detected, repeat the inspection at intervals not to exceed 30 months.

2. If corrosion is detected, prior to further flight, repair in accordance with Part III of the sevice bulletin.

B. For airplanes not modified in accordance with Part IV of Boeing Service Bulletin 727-53-0109, Revision 3, dated September 28, 1989, within the next 15 months after the effective date of this AD, accomplish an external visual inspection in accordance with Part II.A of the service bulletin and a LFEC inspection in accordance with Part II.B of the service bulletin. Perform an internal close visual inspection within 15 months after the external inspection, in accordance with Part II.C of the sevice bulletin.

1. If no corrosion is detected, repeat the external visual inspection at intervals not to exceed 15 months and, the LFEC inspection and internal close visual inspection at intervals not to exceed 30 months.

2. If corrosion is detected, prior to further flight, accomplish one of the following:

a. Repair in accordance with Part III of the service bulletin; or

b. Conduct a low frequency eddy current (LFEC) inspection in accordance with Part II.B of the service Bulletin.

(1) If corrosion depth is found to be less than 10% of the skin thickness, conduct a high frequency eddy current (HFEC) inspection in accordance with Part II.D of the service bulletin.

(a) If no cracking is detected repeat the HFEC and LFEC inspections at intervals not to exceed 15 months.

(b) If cracking is detected, repair prior to further flight, in accordance with Part III of the service bulletin.

(2) If corrosion depth is found to be greater than 10% of the skin thickness, repair prior to further flight, in accordance with Part III of the service bulletin.

C. Within the next 3,000 landings or 30 months after the effective date of this AD, whichever occurs first, accomplish a FHEC inspection in accordance with Part II.D of Boeing Service Bulletin 727-53-0109, Revision 3, dated September 28, 1989.

1. If no cracking is detected, repeat the inspection at intervals not to exceed 4,000 landings or 48 months, whichever occurs first.

2. If cracking is detected, prior to further flight, repair in accordance with Part III, or IV of the service bulletin.

D. Modification in accordance with Part III of Boeing Service Bulletin 727-53-0109, Revision 3, dated September 28, 1989, constitutes terminating action for the inspections required by this AD for those modified areas.

E. Modification in accordance with Part IV or Part V of Boeing Service Bulletin 727-53-0109, Revision 3, dated September 28, 1989, terminates the inspections required by paragraph C. of this AD for those modified areas.

F. Modification in accordance with Part III of Boeing Service Bulletin 727-53-0109, Revision 1, dated January 11, 1973, or Revision 2, dated June 20, 1973, constitutes terminating action for the inspections required by paragraph C. of this AD for those modified areas. Within the next 15 months after the effective date of this AD, accomplish a close external visual inspection for cracking of the skin adjacent to the fastener heads in the modified areas. If cracks are detected, repair in accordance with Part III or IV of the service bulletin. If no cracks are detected repeat the close external visual inspection at intervals not to exceed 15 months.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 13, 1990.

Issued in Renton, Washington, on September 25, 1990.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23598 Filed 10-4-90; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-CE-11-AD; Amendment 39-6675]

Airworthiness Directives; Fairchild Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, SA227-AC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment revises an existing Airworthiness Directive (AD), applicable to certain Fairchild Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, SA227-AC airplanes. This amendment will (1) provide for compensation of the elevator forces when adjusting the servo force, (2) assure that the Stall Avoidance System (SAS) servo is at an operational temperature before functional test of the servo after cold soak, and (3) delete certain airplane serial numbers from the effectivity of the AD. This amendment is needed to assure the proper setting of the servo forces, and to correctly reflect current serial numbers.

DATES: This amendment becomes effective October 19, 1990. Comments for inclusion in the Rules Docket must be received on or before November 16, 1990.

ADDRESSES: The applicable service bulletins may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 85-CE-21-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Sam Lovell, Systems Engineer, Airplane Certification Office, FAA, Forth Worth, Texas, 76193-0150; Telephone (817) 624-5159.

SUPPLEMENTARY INFORMATION: AD 85-22-06, Amendment 39-5158 (50 FR 42148, October 18, 1985), was issued to prevent an unwarranted actuation and to assure proper operation of the SAS on certain Fairchild Models SA-226 and SA-227 airplanes.

The FAA has determined that it is now necessary to revise this AD for three reasons: (1) Service Bulletins 226-27-037, SA226-27-035, and 227-27-008 have been revised to reflect electrical schematic changes, and to provide a more detailed description of procedures to be followed in recalibration of the SAS. (2) The AD did not address "cold soak" of the servo. It has been determined that the accurate adjustment of the servo force could not always be obtained when the servo has been cold soaked. This amendment to the AD will provide for a warm-up period prior to any adjustment after "cold soak." (3) Certain serial numbers have been deleted from Service Bulletin 227-27-006 and this AD because these airplanes are involved in a formalized maintenance program where the requirements of this AD are accomplished on a regular basis. The FAA has determined that the AD, as currently written, will not assure the proper operation of the SAS on the remaining affected airplanes. In addition, the information and changes, contained in this amendment, are essential for the continued safe operation of these airplanes.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an amendment to AD 85-22-06 is being issued, applicable to certain Fairchild Models SA226 and SA227 airplanes, that will provide for compensation of the elevator forces when adjusting the servo force, insure that the SAS servo is at an operational temperature before the servo is functionally tested after cold soak, and revise the applicability statement of the AD by deleting certain airplane serial numbers.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report summarizing each FAA-public contact concerned with the substance of this AD, will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

Fairchild Aircraft Corporation (formerly Swearingen Aviation Corporation): Applies to Models SA226-T (Serial Numbers (S/N) T201 thru T275, T277 thru T291); SA226-AT (S/N AT001 thru AT419, AT003E, AT038E, AT062E, AT064E); SA226-TC (S/N TC201 thru TC419, TC206E, TC211E, TC211EE, TC211EEE, TC211EEEE, TC222E, TC227E, TC228E, TC229E, TC234E, TC237E, accordance with AD85-22-06, Amendment 39-5158, and thereafter as indicated below, at the next scheduled interval.

To assure proper operation of the Stall Avoidance System (SAS), accomplish the following:

(a) Except as noted in paragraph (b) of this AD, modify and/or inspect the applicable airplanes in accordance with the manufacturer's service bulletins, at the initial

Model	Serial No.	Fairchild service bulletin	Compliance interval hrs-time in service
SA227-TT	TT421 thru TT526, TT528, TT530 thru TT535	227-A27-004	One time only.
		227-27-006	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C	2000
	TT527, TT529, TT536 thru TT541	227-27-004	One time only.
SA227-AT	AT423 thru AT526, AT528, AT530 thru AT535, AT537 thru	227-A27-004	One time only.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 85-22-06, Amendment 39-5158, to read as follows:

Fairchild Aircraft Corporation (formerly Swearingen Aviation Corporation): Applies to Models SA226-T (Serial Numbers (S/N) T201 thru T275, T277 thru T291); SA226-AT (S/N AT001 thru AT419, AT003E, AT038E, AT062E, AT064E); SA226-TC (S/N TC201 thru TC419, TC208E, TC211E, TC211EE, TC211EEE, TC211EEEE, TC222E, TC227E, TC228E, TC229E, TC234E, TC237E, TC238E, TC239E, TC331E, TC334E); SA226-T(B) (S/N T(B)276, T(B)292 thru T(B)417, T(B)303E); SA227-AC (S/N AC406, AC415, AC416, AC420 thru AC801, AC803); SA227-TT (S/N TT421 thru TT535, TT537 thru TT541); SA227-AT (S/N AT423 thru AT526, AT528, AT530 thru AT535, AT537 thru AT585) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless previously accomplished in accordance with AD85-22-06, Amendment 39-5158, and thereafter as indicated below, at the next scheduled interval.

To assure proper operation of the Stall Avoidance System (SAS), accomplish the following:

(a) Except as noted in paragraph (b) of this AD, modify and/or inspect the applicable airplanes in accordance with the manufacturer's service bulletins, at the initial and repetitive time-in-service intervals, as specified for the model and serial numbered airplanes, set forth in Table 1 below:

Table 1

When performing a functional check of the SAS Servo (Bendix only) allow the servo to run for a minimum of 5 minutes prior to accomplishing the functional check. If the temperature is below 0 °C, allow the servo (Bendix only) to run for a minimum of 10 minutes prior to accomplishing the functional check.

Model	Serial No.	Fairchild service bulletin	Compliance interval hrs-time in service
SA226-T	T201 thru T275	226-A27-024	One time only.
	T277 thru T291	226-A27-028	One time only.
		226-27-038	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	500
		Para. 2.D.	800
SA226-AT	AT001 thru AT073, AT003E, AT038E, AT062E, AT064E	226-A27-024	One time only.
		226-27-038	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	500
		Para. 2.D.	800
	AT074 thru AT419	226-27-038	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	500
		Para. 2.D.	800
SA226-TC	TC201 thru TC314, TC208E, TC211E, TC211EE, TC211EEE, TC211EEEE, TC222E, TC227E, TC228E, TC229E, TC234E, TC237E, TC238E, TC239E.	226-A27-024	200
		226-27-038	500
		Para. 2.A	500
		Para. 2.B	800
		Para. 2.C.	
		Para. 2.D.	
	TC315 thru TC419, TC331E, TC334E	226-27-038	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	500
		Para. 2.D.	800
SA226-T(B)	T(B)276, T(B)292 thru T(B)391	226-A27-028	One time only.
		226-A27-033	One time only
		226-27-037	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	2000
	T(B)392 thru T(B)417, T(B)303E	226-27-033	One time only.
		226-27-037	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	2000
SA227-AC	AC420 thru AC551	227-A27-004	One time only.
		227-27-006	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	2000
	AC406, AC415, AC416, AC552 thru AC801, AC803	227-27-006	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	2000

Model	Serial No.	Fairchild service bulletin	Compliance interval hrs-time in service
SA227-TT	TT421 thru TT526, TT528, TT530 thru TT535	227-A27-004	One time only.
		227-27-006	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	2000
	TT527, TT529, TT536 thru TT541	227-27-004	One time only.
SA227-AT	AT423 thru AT526, AT528, AT530 thru AT535, AT537 thru AT549.	227-A27-004	One time only.
		227-27-006	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	2000
	AT550 thru AT585	227-27-006	
		Para. 2.A	200
		Para. 2.B	500
		Para. 2.C.	2000

(b) Modify and/or inspect those Model SA226 and SA227 series airplanes which are equipped with the Conrac SAS system (per STC SA4725SW) in accordance with Table 2 as follows:

Table 2.

When performing a functional check of the SAS Servo (Bendix only) allow the servo to run for a minimum of 5 minutes prior to accomplishing the functional check. If the temperature is below 0 ° C, allow the servo (Bendix only) to run for a minimum of 10 minutes prior to accomplishing the functional check.

Model	Fairchild service bulletin	Compliance interval hrs-time in service
Any applicable Model SA226 and SA227 airplanes incorporating STC SA 4725SW.	226-27-037	
	Para. 2.A	200
	Para. 2.B	500
	Para. 2.C	2000

Note 1: The current issue date and subject matter of the Service Bulletins specified in Table 1 are as follows:

(1) 226-A27-024—"Flight controls—Elevator," dated 11/13/79.

(2) 226-A27-028—"Flight controls—Rudder and Elevator," dated 12/11/80.

(3) 226-A27-033—"Flight controls—Elevator," dated 12/3/82, revised 1/6/83.

(4) 227-A27-004—"Flight controls—Elevators," dated 12/3/82, revised 1/6/83.

(5) 226-27-037—"Conrac SAS System—Inspection and Recalibration," dated 2/15/85, revised 4/15/88.

(6) 226-27-038—"Rosemount SAS System—Inspection and Recalibration," dated 2/15/85, revised 1/16/90.

(7) 227-27-006—"Conrac SAS System—Inspection and Recalibrations," dated 2/15/85, revised 4/15/88.

(c) If the inspections specified in paragraphs (a) and (b) of this AD necessitate replacement of the servo pusher, assure that the replacement unit is either new, overhauled, or meets the limits of the electrical test specified in the above revised service bulletins.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, Fort Worth, Texas 76193-0150; Telephone (817) 624-5150.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Airplane Certification Office, Fort Worth, Texas.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490; or may examine these documents at the FAA, Central Region, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment revises AD 85-22-06, Amendment 39-5158.

This amendment becomes effective on October 19, 1990.

Issued in Kansas City, Missouri, on September 13, 1990.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23596 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASW-34]

Establishment of Transition Area: Hamilton, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area at Hamilton, TX. The development of a new standard instrument approach procedure (SIAP) to the Hamilton Municipal Airport, utilizing the new Hamilton Nondirectional Radio Beacon (NDB), necessitates this action. This action will provide adequate controlled airspace for all aircraft executing this new SIAP to the Hamilton Municipal Airport. The status of the Hamilton Municipal Airport is hereby changed from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On July 10, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Hamilton, TX (55 FR 28228). The proposed action would establish a transition area to accommodate a new NDB SIAP to Runway 36 at the Hamilton Municipal Airport. Subsequent to the issuance of the NPRM, it was discovered that the arrival area extension was incorrectly described as extending to the north. This action will amend the arrival area extension and provide airspace protection for the planned NDB SIAP to Runway 36.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will establish a transition area located at Hamilton, TX. The development of a new NDB Runway 36 SIAP to the Hamilton Municipal Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for all aircraft executing this new SIAP. Coincident with this action will be the changing of the status of Hamilton Municipal Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Hamilton, TX [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Hamilton Municipal Airport (latitude 31°40'15" N., longitude 98°08'45" W.), and 1.5 miles each side of the 182° bearing of the Hamilton NDB (latitude 31°37'12" N., longitude 98°08'30" W.), extending from the 6.5-mile radius area to 11 miles south of the Hamilton Municipal Airport.

Issued in Fort Worth, TX, on September 17, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-23597 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AGL-5]

Alteration to Transition Area; Rapid City, SD.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing 1200' Rapid City, SD, transition area description to improve the departure/arrival flow of traffic in the Rapid City, SD/Ellsworth Air Force Base (AFB) area. The density of traffic and the type of operations in airspace surrounding the terminal areas create a need for altering the transition area. There is an increasing number of Visual Flight Rules (VFR), Instrument Flight Rules (IFR), and military aircraft operating in the vicinity. The intended effect of this action is to segregate VFR, IFR, and military aircraft and enhance aviation safety.

EFFECTIVE DATE: 0901 utc, December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, July 23, 1990, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the 1200' transition area airspace near Rapid City, SD (55 FR 29859).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the 1200' transition area airspace near Rapid City, SD. The present 1200' transition area is being modified to improve the departure/arrival flow of traffic in the Rapid City/Ellsworth AFB area. The modification to the existing airspace will extend the existing 1200' transition area to the south starting at a point on the existing 53-mile radius circle at lat. 43°40'00" N., long. 102°16'30" W.; to lat. 43°40'00" N., long. 102°00'00" W.; to lat. 43°00'00" N., long. 102°00'00" W.; to lat. 43°00'00" N., long. 104°30'00" W.; to lat. 43°28'30" N., long. 104°30'00" W.; to a point on the 53-mile radius circle at 43°39'00" N., long. 103°55'00" W.

Altering the 1200' transition area will provide an increased capability for aircraft separation, enable air traffic control to provide IFR service to aircraft in a controlled environment for transitioning to and from the en route air traffic control system by providing expanded radar vectoring services, off-course climbs/descents, and more direct routings. In addition, the controlled airspace will reduce aircraft operating costs, fuel consumption, and will provide controlled airspace for routing aircraft around extensive military activity.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal

Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71 [AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Rapid City, SD [Amended]

Remove the words "and that airspace extending upward from 1,200 feet above the surface within a 53-mile radius of Ellsworth AFB (lat. 44°06'45" N, long. 103°06'15" W.)." Substitute with the words "and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 43°40'00" N., long. 102°16'30" W.; to lat. 43°40'00" N., long. 102°00'00" W.; to lat. 43°00'00" N, long. 102°00'00" W.; to lat. 43°00'00" N., long. 104°30'00" W.; to lat. 43°28'30" N., long. 104°30'00" W.; to lat. 43°39'00" N., long. 103°55'00" W.; thence clockwise via the 53-mile radius circle of Ellsworth AFB (lat. 44°06'42" N., long. 103°06'11" W.); to point of beginning."

Issued in Des Plaines, Illinois on September 17, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90-23598 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASO-10]

Amendment to Control Zone, Key West, FL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects a typographical error with reference to the "231° bearing from the Key West NAS UHF RBN * * *." Therefore, on page 35297 of the **Federal Register**, Document 90-ASO-10, in the issue of Wednesday, August 29, 1990, change the bearing from Key West NAS UHF RBN to read "251°."

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

Issued in East Point, Georgia, on September 14, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-23601 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770 and 771

[Docket No. 900810-0210]

Revision of General License GLV Requirements

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: Section 771.5 of the Export Administration Regulations (EAR) (15 CFR 771.5) permits the export of certain commodities of limited value to Country Groups Q, T, and V under General License GLV. This rule amends § 771.5 by permitting a shipment made under General License GLV to exceed the applicable GLV dollar value limit when the shipment is a consolidation of two or more separate orders, each of which qualifies for General License GLV.

Previously, GLV dollar value limitations applied to the shipment as a whole, instead of each individual order within a shipment. Under the previous arrangement, a single shipment could not contain commodities, controlled under the same entry on the Commodity Control List, whose net value exceeded the GLV dollar value limit for that entry. This rule applies the GLV dollar value limits to each order, separately—not to the entire shipment.

This interim rule will permit exporters to consolidate GLV-sized orders in the same shipment. Exporters will benefit from this change because the consolidation of GLV-sized orders into a single shipment will no longer make the shipment ineligible for export under General License GLV—unless the maximum allowable number of GLV orders is exceeded.

The rule creates a twelve order per year limit for GLV shipments from one exporter to the same ultimate or intermediate consignee. This limit is designed to provide exporters with adequate flexibility to make emergency or one-of-a-kind shipments to regular customers, as well as occasional shipments to infrequent customers; this is the purpose for which General License GLV was created.

Other changes made by this rule include the addition of guidelines for GLV shipments where two or more GLV dollar value limits apply and a list of criteria describing what constitutes a legitimate GLV-sized order.

These changes are designed to reduce the number of inadvertent errors that can occur when making a GLV shipment, while retaining a degree of flexibility consistent with the purpose of General License GLV.

DATES: This rule is effective October 5, 1990. Comments must be received by November 5, 1990.

ADDRESSES: Written comments (six copies) should be sent to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0607-0018.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations,

this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770 and 771 of the Export Administration Regulations (15 CFR part 768-799) are amended as follows:

the export of any commodities on the Commodity Control List (Supplement No. 1 to § 799.1 of this subchapter), as follows:

(1) To a destination in Country Group T or V, provided that the net value of the commodities included in the same order and controlled under the same

contained commodity immediately below the description of the commodity.

(3) *Single shipment.* All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or

Commodity Control List. In this case, the net value of the entire order may exceed the GLV dollar value for any single entry on the commodity Control List. However, the net value of the commodities controlled under each Commodity Control List entry shall not exceed the GLV dollar value limit

requirements on trade with the German Democratic Republic. This interim rule was designed to facilitate the transition by the Federal German Republic and the German Democratic Republic toward unification.

As a result of the political unification of the German Democratic Republic

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this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close November 5, 1990. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4518, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770 and 771 of the Export Administration Regulations (15 CFR part 768-799) are amended as follows:

PART 770—[AMENDED]

1. The authority citation for 15 CFR part 770 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985). Secs. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1628, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. In § 770.2, the definition of "single shipment" is revised to read as follows:

§ 770.2 Definitions of terms.

* * * * *

Single shipment. All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner shall be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

* * * * *

PART 771—[AMENDED]

3. The authority citation for 15 CFR part 771 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E. O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95-223, title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

4. In § 771.5, paragraphs (a), (b), and (c) are revised and a new paragraph (f) is added, as follows:

§ 771.5 General License GLV; shipments of limited value.

(a) *Scope.* A general license designated GLV is established subject to the provisions of this § 771.5, authorizing the export of any commodities on the Commodity Control List (Supplement No. 1 to § 799.1 of this subchapter), as follows:

(1) To a destination in Country Group T or V, provided that the net value of the commodities included in the same order and controlled under the same entry on the Commodity Control List does not exceed the amount specified for Country Group T or V in the "GLV $ Value Limit" paragraph for that entry;

(2) To a destination in Country Group Q, provided that the net value of the commodities included in the same order and controlled under the same entry on the Commodity Control List does not exceed the amount specified for Country Group Q in the "GLV $ Value Limit" paragraph for that entry;

(3) From the U.S. Virgin Island to the British Virgin Islands, provided that—

(i) The net value of the commodities included in the same order and controlled under the same entry on the Commodity Control List does not exceed the amount specified for Country Group T in the "GLV $ Value Limit" paragraph for that entry; or

(ii) The net value of the shipment does not exceed $500; whichever is greater.

(b) *Definitions*—(1) *Order.* The term "order" as used in this § 771.5 means a communication from a person in a foreign country or that person's communication from a person in a foreign country or that person's representative expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be presented for export under General License GLV.

(2) *Net value for GLV shipments.* The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the Commodity Control List, less shipping charges, or the current market price of the commodities to the same type of purchaser in the United States, whichever is the larger. In determining the actual selling price or the current market price of the commodity, the value of non-reusable containers in which the commodity is being exported may be excluded. Where the total value of the non-reusable containers and their contents must be shown on Shipper's Export Declarations under one Schedule B Number, the exporter, in effecting a shipment under General License GLV, shall indicate the "net value" of the contained commodity immediately below the description of the commodity.

(3) *Single shipment.* All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner shall be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

(c) *Additional eligibility requirements and restrictions*—(1) *Eligible orders.* To be eligible for inclusion in a GLV shipment, orders must meet the following criteria:

(i) *Order must not exceed the applicable GLV dollar value limits.* An order is eligible for shipment under General License GLV when the "net value" of the commodities controlled under the same entry on the Commodity Control List does not exceed the amount specified in the "GLV $ Value Limit" paragraph for that entry. A GLV shipment may include more than one eligible order because GLV eligibility is based on the "net value" of the commodities in each order, instead of the "net value" of the commodities in the shipment.

(ii) *Orders shall not be split to meet the applicable GLV dollar limits.* An order that exceeds the applicable GLV dollar value limit shall not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable GLV dollar value limit. However, an order that meet all the GLV eligibility requirements, including the applicable GLV dollar value limit, may be split among two or more shipments.

(iii) *Orders must be legitimate.* Exporters and consignees shall not, either collectively or individually, structure or adjust orders to meet the applicable GLV dollar value limits.

(2) *Restriction on number of GLV orders.* An exporter shall not ship more than twelve orders per calendar year to the same ultimate consignee or intermediate consignee pursuant to the provisions of this § 771.5. This twelve order per year limit applies to shipments to the same ultimate consignee even though the shipments are made through more than one intermediate consignee. There is no restriction on the number of orders that may be included in a shipment, except that the twelve orders per year limit must not be exceeded.

(3) *Orders where two or more GLV dollar value limits apply.* An order may include commodities that are controlled under more than one entry on the Commodity Control List. In this case, the net value of the entire order may exceed the GLV dollar value for any single entry on the commodity Control List. However, the net value of the commodities controlled under each Commodity Control List entry shall not exceed the GLV dollar value limit specified for that entry.

Example: An order includes commodities valued at $8,000. The order consists of commodities controlled under two Commodity Control List entries, 1522A and 1565A. Commodities in the order controlled under 1522A are valued at $3,000 while those controlled under 1565A are valued at $5,000. Since the net value of the commodities controlled under each entry falls within the GLV dollar value limits applicable to that entry, the order may be shipped under General License GLV.

(4) *Prohibition against evasion of validated export license requirements.* Any device involving the use of General License GLV to evade validated export license requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of orders to meet applicable GLV dollar value limits, as prohibited by paragraphs (c)(1)(ii) and (c)(1)(iii) of this section.

* * * * *

(f) *Recordkeeping requirements.* Exporters must keep records of all shipments made under General License GLV in accordance with the provisions of § 787.13 of this subchapter. These records must include sufficient information to permit the Bureau of Export Administration to verify the eligibility of each order that was shipped under General License GLV.

Dated: September 27, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90-23358 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-01-M

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15 CFR Parts 770, 771, 774, 778, 779, 785, 786, 787, 791, and 799

[Docket No. 900673-0260]

German Democratic Republic; Change in Country Group Status and Elimination of General License GDR

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On June 29, 1990 (55 FR 26652), the Bureau of Export Administration (BXA) published an interim rule establishing "General License GDR; Exports to the German Democratic Republic" reducing licensing requirements on trade with the German Democratic Republic. This interim rule was designed to facilitate the transition by the Federal German Republic and the German Democratic Republic toward unification.

As a result of the political unification of the German Democratic Republic with the Federal German Republic on October 3, 1990, BXA is amending the export Administration Regulations (EAR) (15 CFR 730-799) to remove the German Democratic Republic from the list of proscribed countries listed in Country Group Y and to eliminate General License GDR.

As of October 3, 1990, the German Democratic Republic ceases to exist. The Federal Republic of Germany as defined in the EAR contains the territories previously under the German Democratic Republic.

Exporters who have been using General License GDR will now be able to use General License GCT. The commodities eligible for export under General License GCT are all "A" level commodities that are not specifically excluded by the "*Commodities Not Eligible for GCT*" paragraphs located in certain ECCNs. The exclusion paragraphs apply to those commodities that exceed the CFW or G-COCOM eligibility levels.

In addition, all Special License procedures and General Licenses currently available to the Federal Republic of Germany will be extended to the territory previously in the German Democratic Republic and now in the Federal Republic of Germany.

EFFECTIVE DATE: This rule is effective October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Affected OMB controlled collections include 0694-0005, 0694-0007, and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for

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public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a foreign and military affairs function. The rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 774, 786, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 785

Communist countries, Exports.

15 CFR Part 787

Boycotts, Exports, Law enforcement, Penalties, Reporting and recordkeeping requirements.

15 CFR Part 791

Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, parts 770, 771, 774, 778, 779, 785, 786, 787, 791, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for parts 771, 779, 785, 786, 787, and 799 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. The authority citations for parts 770, 774, 778, and 791 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985). Secs. 203, 205, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 770—[AMENDED]

3. Section 770.9 is revised to read as follows:

§ 770.9 Shipments that transit country group Y or Z en route to any other destination.[6]

The export from the United States of commodities or technical data to be unladen from a vessel or aircraft in Country Group Y or Z, or to move in transit through Country Group Y or Z en route to Canada or a destination in Country Group Q, S, T, V, or W, is hereby prohibited unless a validated license specifically authorizes the transshipment of intransit shipment, or both except an export of technical data or a commodity not identified by the code letter "A", "B", or "M" following the Export Control Commodity Number on the Commodity Control List, to any destination not in Country Group Y or Z, provided that the shipment is exportable under a general license directly from the United States to the country of transit or unlading in Country Group Y or Z. (Transshipment authority does not relieve any person from complying with foreign laws. See § 774.9 of this subchapter.)

[6] See § 772.8(b) of this subchapter with respect to filing applications for validated licenses to export commodities that will be unladen from a vessel or aircraft in Country Group Y or Z en route to a destination in any other country group.

Supplement No. 1 to Part 770—[Amended]

4. Supplement No. 1 to part 770 is amended by removing the entry "German Democratic Republic (including East Berlin)" listed under Country Group Y.

PART 771—[AMENDED]

§ 771.26 [Removed]

5. Section 771.26 is removed.

PART 774—[AMENDED]

§ 774.2 [Amended]

6. Section 774.2(l) is removed.

PART 778—[AMENDED]

Supplement No. 2 to Part 778—[Amended]

7. Supplement No. 2 to part 778 is amended by removing the entries for Germany, East and Germany, West immediately following the reference to "Gambia, The" and by adding a new entry "Germany (Federal Republic of Germany)".

PART 779—[AMENDED]

§ 779.4 [Amended]

8. Section 779.4(f) is amended by removing the introductory text immediately following the heading of paragraph (f).

PART 785—[AMENDED]

§ 785.2—[Amended]

9. Section 785.2(a)(1) is amended in the third sentence by removing the reference "German Democratic Republic,".

PART 786—[AMENDED]

10. Section 786.6 is amended by revising paragraph (a)(1)(ii) and by revising paragraph (c)(2) to read as follows:

§ 786.6 Destination control statements.

(a) * * *

(1) * * *

(ii) General License GLV, GTF–US, GTE, GLR, GFW, G–COM, G–COCOM, GCT, or G–CEU.

* * * * *

(c) * * *

(2) *General license shipments.* For a shipment under any general license, except General Licenses G–COCOM and GCT, any of the three destination control statements in paragraph (d) of this section may be used. For shipments under General Licenses G–COCOM or GCT exporters must use Statement No. 1 or 2.

* * * * *

PART 787—[AMENDED]

§ 787.13 [Amended]

11. Section 787.13(c) is amended in the second sentence by removing "771.26," immediately following the reference "771.25,".

PART 791—[AMENDED]

§ 791.1 [Amended]

12. Section 791.1(d) is amended by removing the reference "the German Democratic Republic (including East Berlin)," listed in the definition "Controlled Countries."

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

13. In Supplement No. 1 to § 799.1 (the Commodity Control List), the entries listed below are amended by revising the phrase "*General Licenses GCT or GDR:*" to read "*General License GCT:*" in the heading of the *Commodities Not Eligible for General Licenses GCT or GDR* paragraph for each entry:

A. In Commodity Group 0, Metal-Working Machinery: ECCN 2018A;

B. In Commodity Group 1, Chemical and Petroleum Equipment: ECCN 2118A;

C. In Commodity Group 3, General Industrial Equipment: ECCNs 3336A, 1355A, 1357A, 1361A, 1362A, 1385A, and 1388A;

D. In Commodity Group 4, Transportation Equipment: ECCNs 1417A, 1418A, 1460A, and 1485A;

E. In Commodity Group 5, Electronics and Precision Instruments: ECCNs 1501A, 1510A, 1516A, 1517A, 1527A, 1529A, 1531A, 1533A, 1553A, 1564A, 1565A, 1585A, and 1595A;

F. In Commodity Group 6, Metals, Minerals, and Their Manufactures: ECCNs 3604A and 3609A; and

G. In Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials: ECCNs 1715A, 1746A, and 1763A.

Supplement No. 1 to § 799.1 [Amended]

12. In Supplement No. 1 to § 799.1 (the Commodity Control List), the entries listed below are amended by removing the "*Commodities Not Eligible for General Licenses GDR: Entire entry.*" paragraph for each entry:

A. In Commodity Group 1, Chemical and Petroleum Equipment: ECCNs 2120A and 2131A;

B. In Commodity Group 2, Electrical and Power-Generating Equipment: ECCN 3261A;

C. In Commodity Group 3, General Industrial Equipment: ECCNs 2317A, 2319A, 2362A, and 2383A;

D. In Commodity Group 4, Transportation Equipment: ECCNs 2408A, 2409A, 2410A, 2414A, 2418A, and 2460A;

E. In Commodity Group 6, Metals, Minerals, and Their Manufactures: ECCNs 2603A, 3605A, 3607A, 3608A, and 2616A;

F. In Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials: ECCNs 2708A, 3709A, and 3711A; and

G. In Commodity Group 9, Miscellaneous: ECCNs 2901A and 2913A.

Dated: October 2, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-23664 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 771

[Docket No. 90625-0225]

Removal of Controls on U.S. Aircraft on Temporary Sojourn to Country Groups W and Y Under General License GATS

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: General License GATS authorizes the departure to all destinations of foreign-registered aircraft that have been in the United States on a temporary sojourn as well as the departure to certain destinations of U.S. civil aircraft for temporary sojourn abroad. This rule amends General License GATS to permit all U.S.-registered civil aircraft to depart for Country Groups W and Y without obtaining a validated license. Previously, General License GATS authorized the departure of such aircraft to Country Groups W and Y only if the aircraft were operating under Federal Aviation Administration certificates.

Restrictions on private U.S. civil aircraft were maintained for national security reasons, primarily because of the risk of diversion of sensitive equipment. However, experience has indicated that the risk of diversion is no longer a problem. Due to the changing political-economic environment in Eastern Europe, there has been a recent increase in license applications for temporary sojourn of corporate aircraft to those countries. Eliminating restrictions on private aircraft travel to Country Groups W and Y is intended to benefit U.S. competitiveness in the evolving East European market without harming national security.

EFFECTIVE DATE: This rule is effective October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Sharon Gongwer, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–4479.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule eliminates a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection had been approved by the Office of Management and Budget under control number 0694–0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

Accordingly, 15 CFR part 771 of the Export Administration Regulations is amended as follows:

PART 771—[AMENDED]

1. The authority citation for 15 CFR part 771 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

§ 771.19 [Amended]

2. In § 771.19(b)(2), in the introductory text, the phrase "except Country Groups S, W, Y, and Z" is revised to read "except Country Groups S and Z".

Dated: September 28, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90-23410 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM90-13-000; Order No. 526-A]

Interim Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates

September 21, 1990.

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Final rule.

SUMMARY: The Commission is amending the interim rule issued on August 2, 1990, in Docket No. RM90-13-000. Order No. 526, 55 FR 33,002 (Aug. 13, 1990), 52 FERC ¶ 61,158. The amendment revises §§ 284.102(e) and 284.223(h)(1)(ii) of the regulations adopted by the interim rule to extend, from October 1, 1990, to November 1, 1990, the period for interstate pipelines to convert transportation services under section 311 of the Natural Gas Policy Act of 1978 to blanket certificate authority. The Commission has determined that the one-month extension is necessary to implement the conversion procedures in an orderly manner.

EFFECTIVE DATE: September 21, 1990.

ADDRESSES: Requests for rehearing should refer to Docket No. RM90-13-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-0847.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3308, 941 North Capitol Street NE., Washington, DC 20426

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this interim rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Order Amending Interim Rule

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its interim rule [1] which revised the regulations governing transportation by interstate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA),[2] effective August 2, 1990. The amendment to the interim rule extends, from October 1, 1990, to November 1, 1990, the date by which interstate pipelines may convert section 311 transportation services to blanket certificate authorization under the procedures adopted by the interim rule in new § 284.223(h).[3] The Commission is extending the conversion period to permit adequate time for parties to gas supply arrangements to determine whether interstate pipelines are authorized to continue transporting under NGPA section 311 under the interim rule's revised interpretation of that section's "on behalf of" standard.

II. Background

On April 6, 1990, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Associated Gas Distributors v. FERC (AGD-Hadson).*[4] *In AGD-Hadson* the Court held that the Commission's then effective interpretation of the "on behalf of" standard in NGPA section 311 was inconsistent with the NGPA and therefore invalid. Since the Court's *AGD-Hadson* decision created uncertainty as to which existing section 311 transportation services could continue and whether needed new services could commence, there was potential risk for supply disruptions and substantial hardships for natural gas producers, suppliers, and end-users. In view of these considerations, as well as the need for a timely response to the Court's decision, on August 2, 1990, the Commission issued the immediately effective interim rule in this proceeding to adopt a revised interpretation of section 311's "on behalf of" standard.

The interim rule's revised interpretation requires, in a new § 284.102(d) to the regulations, that the "on behalf of" entity for any section 311 transportation service by an interstate pipeline either: (1) Have physical custody of and transport the gas at some point, or (2) hold title to the gas at some point for a purpose related to its identity as a local distribution company (LDC) or intrastate pipeline.

Since this interpretation of the "on behalf of" standard was specifically endorsed by the Court in *AGD-Hadson,*[5] the Commission determined that it would serve as an appropriate "safe harbor" for section 311 transportation services. However, the Court recognized that the Commission may be able to fashion a broader interpretation which will ensure that an "on behalf of" entity's function in a section 311 transaction is related to its identity as an LDC or intrastate pipeline.[6] Therefore, on August 2, 1990,

[1] 55 FR 33,002 (Aug. 13, 1990), 52 FERC ¶ 61,158 (1990).

[2] 15 U.S.C. 3301–3432 (1988).

[3] To be codified at 18 CFR 284.223(h).

[4] 899 F.2d 1250 (D.C. Cir. 1990), *reh'g denied,* No. 88-1856 (D.C. Cir. June 4, 1990). The mandate of the Court issued on June 18, 1990.

[5] 899 F.2d at 1254.

[6] *Id.*

the Commission also issued a companion Notice of Proposed Rulemaking seeking comments and suggestions on how the interim rule's interpretation of section 311's "on behalf of" standard may be expanded to encompass additional transactions while satisfying the Court's concerns.[7]

As an additional "safe harbor" to prevent market disruption, the interim rule also includes procedures in new § 284.223(h) for the non-discriminatory conversion of existing section 311 transportation services to blanket certificate authorization. To ensure timely compliance with the Court's mandate, new § 284.223(h)(i)(ii) rule requires that all conversions be made effective by October 1, 1990. For the same reason, the interim rule also adopted a new § 284.102(e) [8] to require that any non-qualifying section 311 transportation service be terminated on October 1, 1990, if it has not been converted to blanket certificate authority by that date.

III. Motion for Extension of Conversion Period

On August 27, 1990, the Indicated Shippers, an *ad hoc* group of natural gas producers, filed a motion in Docket No. RM90-13-000 for amendment of the interim rule to extend, from October 1, 1990, to November 1, 1990, the deadline for the conversion of non-qualifying section 311 services to blanket certificate authority. Indicated Shippers state that it is not feasible by October 1, 1990, to review all ongoing section 311 transportation services and arrange for conversion of those services which do not qualify under the interim rule's revised "on behalf of" interpretation.

IV. Discussion

In limiting the conversion period to October 1, 1990, the Commission's purpose was to provide a timely response to the Court's opinion in *AGD-Hadson* that certain transportation services currently being provided under color of authority of NGPA section 311 are not authorized under that section. The Commission recognized that the October 1, 1990 conversion deadline might not provide sufficient time for all interstate pipelines and their shippers to thoroughly review all of their ongoing transactions to determine which ones qualify under the interim rule's revised "on behalf of" standard.

The Commission determined that the interim rule's "safe harbor" for existing transactions was appropriate and adequate to prevent disruption of ongoing supply arrangements and at the same time respond in a timely fashion to the Court's mandate in *AGD-Hadson.* However, in view of the complexities involved in the conversion process, the Commission has determined after further consideration that granting the Indicated Shipper's motion for a one-month extension of the conversion period is necessary to provide adequate time for the orderly conversion of section 311 transactions to blanket certificate authority.

V. Environmental Review

The Commission's regulations require that an Environmental Assessment or an Environmental Impact Statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[9] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[10] The one-month extension of the conversion period to November 1, 1990, is encompassed by the categorical exclusion for a procedural rule that does not substantially change the effect of a regulation.[11] In view of this consideration, an environmental assessment is unnecessary and will not be prepared for this rulemaking action to extend the conversion period.

VI. Administrative Findings and Effective Date

The Commission is adopting this amendment prior to providing notice and obtaining written comment, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553(b) and (c)(1988), for any rulemaking proceeding. Amendment of the interim rule to extend the conversion period is necessary to permit adequate time for interstate pipelines and shippers to assess whether they need to exercise the interim rule's conversion procedures to prevent supply disruptions and irreparable hardships for natural producers, suppliers, and end-users. The Commission is providing opportunity for comments by the public, as discussed below.

For the above reasons, the Commission finds good cause to issue this rule without additional prior notice and comment.[12] For the same reasons, the Commission finds good cause to make this rule effective immediately upon issuance without a thirty-day delay following publication in the **Federal Register**, as generally required by the APA.[13]

VII. Regulatory Flexibility Act Certification

When the Commission is required by section 553 of the APA to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) [14] to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies, pursuant to the RFA, that the proposed rule would not have "a significant economic impact on a substantial number of small entities." [15] The Commission has determined that this rule extending the conversion period will not have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities.

List of subjects in 18 CFR Part 284

Continental Shelf, Natural Gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 284, chapter I, title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356, as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 284.102, paragraph (e) is revised to read as follows:

§ 284.102 Transportation by interstate pipelines

* * * * *

(e) If the transportation service commenced prior to August 2, 1990, and the requirements of paragraph (d) of this

[7] 55 FR 33,017 (Aug. 13, 1990), 52 FERC ¶ 61,157 (1990).

[8] To be codified at 18 CFR 284.223(e).

[9] 18 CFR part 380 (1990).

[10] 18 CFR 380.4 (1990).

[11] 18 CFR 380.4(a)(2)(ii) (1990).

[12] 5 U.S.C. 553(b) (1988).

[13] *Id.*

[14] 5 U.S.C. 601–612 (1988).

[15] 5 U.S.C. 605(b) (1988).

section are not satisfied, transportation service is not authorized under this section after November 1, 1990.

In § 284.223, paragraph (h)(1)(ii) is revised to read as follows:

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

text, (a)(3) introductory text, (c), (d), (e)(1) and (f) are revised; and a new paragraph (a)(4) is added, to read as follows:"

Dated: October 2, 1990.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 90-23621 Filed 10-4-90; 8:45 am]

SUPPLEMENTARY INFORMATION: The Declarations of the Government of the Democratic and Popular Republic of Algeria, dated January 19, 1981 (the "Algiers Accords"), established the Tribunal to arbitrate claims of U.S. nationals against Iran and claims of Iranian nationals against the United States, as well as official claims of the

quitclaimed and transferred to Iran, with the FCSC to take into account, as appropriate, such transfers in adjudicating the claims. Settlement Agreement, Arts. V, VII, III(v).

The Tribunal's Award on Agreed Terms, Award No. 483, approving and giving effect to the Settlement

PART 535—[AMENDED]

1. The authority citation for part 535 continues to read as follows:

Authority: Secs. 201–207, 91 Stat. 1625; 50 U.S.C. 1701–1706; E.O 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 29685.

ENVIRONMENTAL PROTECTIO AGENCY

40 CFR Part 52

[FRL-3848-8]

Approval and Promulgation of State

section are not satisfied, transportation service is not authorized under this section after November 1, 1990.

In § 284.223, paragraph (h)(1)(ii) is revised to read as follows:

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

(h)(1) * * *

(ii) Conversions under this section must be made prior to November 1, 1990.

* * * * *

[FR Doc. 90-23558 Filed 10-4-90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-90-1361; FR-2456-C-04]

Single Family Mortgage Insurance Programs, Occupant and Investor Mortgagors; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects certain amendatory language contained in a final rule appearing in the Federal Register of Friday, August 24, 1990 (55 FR 34800). The rule implemented section 203(g) of the National Housing Act (NHA), as added by section 406 of the Housing and Community Development Act of 1987 and amended by section 1062 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 and by section 143 of the Department of Housing and Urban Development Reform Act of 1989.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-800, telephone: voice, (202) 708-3046; TDD (202) 708-4594. [These are not toll-free numbers.]

Accordingly, beginning on page 34800 the following correction is made to FR Doc. 90-19673 in the issue of August 24, 1990:

PART 203—[AMENDED]

On page 34803, in the second column, the amendatory instruction 2 should read:

"2. In § 203.16, paragraphs (a) introductory text, (a)(2) introductory text, (a)(3) introductory text, (c), (d), (e)(1) and (f) are revised; and a new paragraph (a)(4) is added, to read as follows:"

Dated: October 2, 1990.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 90-23621 Filed 10-4-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule, amendments.

SUMMARY: This final rule amends the Iranian Assets Control Regulations, 31 CFR part 535 (the "Regulations"), to implement the Settlement Agreement in Claims of Less than $250,000, Case No. 86 and Case No. B38, dated May 13, 1990 (the "Settlement Agreement"), in which the Governments of the United States and Iran settle certain U.S. private claims of less than $250,000, and all outstanding and potential U.S. Government claims arising in relation to case number 86 or B38. The Settlement Agreement was approved and given effect by Award No. 483 of the Iran-United States Claims Tribunal (the "Tribunal") on June 22, 1990. It operates as "a final resolution and discharge of [claims encompassed by the Settlement Agreement] for all purposes" pursuant to 31 CFR 535.222(f). Pursuant to the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. 99-93, Aug. 16, 1985, 50 U.S.C. 1701 note, the U.S. Foreign Claims Settlement Commission (the "FCSC") will determine the validity and value of the individual small claims settled *en bloc* by the Settlement Agreement and certify to the Treasury Department that payments to claimants may be made from the settlement funds.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/535-6020; David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, Department of Justice, Washington, DC 20579, tel.: 202/653-5883; Lisa Grosh, Office of the Legal Adviser, Department of State, Washington, DC 20520, tel.: 202/653-5809.

SUPPLEMENTARY INFORMATION: The Declarations of the Government of the Democratic and Popular Republic of Algeria, dated January 19, 1981 (the "Algiers Accords"), established the Tribunal to arbitrate claims of U.S. nationals against Iran and claims of Iranian nationals against the United States, as well as official claims of the United States and Iran against each other. Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims (the "Declaration Concerning Settlement of Claims"), Arts. II(1)-(2), IV. To implement the Algiers Accords, former President Reagan promulgated, *inter alia*, Executive Order 12294 of February 24, 1981, 46 FR 14111 (Feb. 26, 1981), which suspended the prosecution in any other forum of all claims which could be presented to the Tribunal under Article II of the Declaration Concerning Settlement of Claims, pending their disposition by the Tribunal. E.O. 12294, section 1. Executive Order 12294 provides that a Tribunal determination on the merits of a claim operates as a final resolution of the claim for all purposes. E.O. 12294, section 4. The provisions of the Algiers Accords and Executive Order 12294 described above were implemented in § 535.222(f) of the Regulations.

On May 13, 1990, the United States and Iran entered into the Settlement Agreement pursuant to the Algiers Accords, in particular the Declaration Concerning Settlement of Claims, to settle with prejudice all claims of United States nationals of less than $250,000 pending before the Tribunal, previously withdrawn from the Tribunal, dismissed by the Tribunal for lack of jurisdiction, or filed with the U.S. Department of State but not timely filed with the Tribunal, and all outstanding and potential claims in case numbers 86 and B38. Settlement Agreement, Arts. I(A), III(iv)-(v).

The Settlement Agreement provides that $105 million will be paid to the United States from the Security Account, an escrow account established by the Algiers Accords to pay Tribunal awards to successful U.S. claimants. The Settlement Agreement settles fully, definitively, and with prejudice all U.S. private and governmental claims it encompasses. It requires that all proceedings outside the FCSC with respect to claims settled be definitively withdrawn or dismissed with prejudice. It also provides that tangible and intangible property and assets located in Iran, to which claims have been asserted and which are encompassed by the Settlement Agreement, will be quitclaimed and transferred to Iran, with the FCSC to take into account, as appropriate, such transfers in adjudicating the claims. Settlement Agreement, Arts. V, VII, III(v).

The Tribunal's Award on Agreed Terms, Award No. 483, approving and giving effect to the Settlement Agreement, operates as the Tribunal's final determination on the merits of the claims covered therein, and as a final resolution and discharge of the claims covered by the Settlement Agreement for all purposes, within the meaning of § 535.222(f) of the Regulations. The Settlement Agreement precludes prosecution of any claim encompassed by it other than in accordance with its terms. Specifically, it limits all claimants with claims covered by the Settlement Agreement exclusively to pursuit of their claims with the FCSC, and requires that all pending litigation regarding the same claims be dismissed with prejudice. This final interpretive rule states, for purposes of the Regulations, the effect of the Tribunal's approval of the Settlement Agreement and subsequent U.S. receipt of the settlement payment on pending or prospective litigation of covered U.S. claims in forums other than the Tribunal or the FCSC. Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

The FCSC will notify the claimants covered by the Settlement Agreement of the procedures that will be applicable to the Commission's adjudication of their claims. At that time, the FCSC will provide each claimant with a copy of the Tribunal's Award on Agreed Terms, Award No. 483, including the Settlement Agreement.

List of Subjects in 31 CFR Part 535

Administrative practice and procedure, Banks, Banking, Currency, Foreign claims, Foreign investments in the United States, Iran, Penalties, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, 31 CFR part 535 is amended as follows:

PART 535—[AMENDED]

1. The authority citation for part 535 continues to read as follows:

Authority: Secs. 201-207, 91 Stat. 1626; 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685.

2. Section 535.441 is added, as follows:

§ 535.441 Settlement Agreement regarding small claims.

(a) Award No. 483 of June 22, 1990 of the Iran-United States Claims Tribunal, approving and giving effect to the Settlement Agreement in Claims of Less Than $250,000, Case No. 86 and Case No. B38, dated May 13, 1990 (the "Settlement Agreement"), constitutes a determination by the Iran-United States Claims Tribunal of all claims encompassed therein within the meaning of § 535.222(f) of this part. In accordance with § 535.222(f), upon payment from the Security Account to the United States, the Settlement Agreement shall operate as a final resolution and discharge of all claims encompassed by the Settlement Agreement for all purposes. All such claims shall be subject to the exclusive jurisdiction of the Foreign Claims Settlement Commission on the terms established in the Settlement Agreement and by the provisions of Public Law 99-93, Title V, Aug. 16, 1985, 99 Stat. 437, applicable to *en bloc* settlements of claims of U.S. nationals against Iran.

(b) Pursuant to the Settlement Agreement, the private claims subject to that agreement and this part are "* * * claims of less than $250,000 each, which have been filed with the Tribunal by the United States on behalf of U.S. nationals, which claims are included in Cases Nos. 10001 through 12785, and which are still pending, * * *," and "* * * claims of U.S. nationals for less than $250,000 which have been submitted to the United States Department of State but were not timely filed with the Tribunal, as well as claims of U.S. nationals for less than $250,000 which have been either withdrawn by the Claimants or dismissed by the Tribunal for lack of jurisdiction, * * *." Settlement Agreement, Art. I(A).

Dated: September 14, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: September 24, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-23639 Filed 10-2-90; 2:41 pm]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTIO AGENCY

40 CFR Part 52

[FRL-3848-8]

Approval and Promulgation of State Implementation Plans, South Dakota; Group II PM-10 SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the Committal State Implementation Plan (SIP) for the Rapid City, South Dakota, Group II PM_{10} area submitted by the State on July 12, 1988, as part of the South Dakota SIP. The SIP commits the State to continue monitoring for PM_{10} and to submit a full SIP if a violation of the PM_{10} National Ambient Air Quality Standards (NAAQS) is detected. It also commits the State to make several revisions related to PM_{10} to the existing SIP including revisions to the New Source Review (NSR) regulations. EPA published a direct final rule approving the submittal in the May 15, 1989, Federal Register (54 FR 20845); however, because notice was received that adverse comments would be submitted, the final rule was withdrawn in another Federal Register notice (54 FR 29554, July 13, 1989). The notice of proposed rulemaking was published in the December 15, 1989 Federal Register, which provided the opportunity for interested parties to submit comments.

DATES: The rule will become effective November 5, 1990.

ADDRESSES: Copies of the submittal are available for public inspection between 8 a.m., and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405

South Dakota Department of Water and Natural Resources, Division of Air Quality and Solid Waste, Joe Foss Building, Pierre, South Dakota 57501

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Corry, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1759, (FTS) 330-1759.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require EPA to review

periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM_{10}) on July 1, 1987 (52 51 were also revised to reflect PM_{10} concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM_{10} air monitoring networks. The revised

South Dakota Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM_{10} air quality standards.* The State has adopted ambient air quality standards for PM_{10} at Administrative Rules of South Dakota (ARSD) 74:26:02:35. EPA approved this provision

new deadline. If an acceptable timeframe for revision of the NSR cannot be agreed upon, and met, EPA will consider calling for a SIP revision pursuant to section 110 (a)(2)(H) of the Clean Air Act.

Region VIII has provided extensive comments to the State on the existing NSR Regulations. These comments were

including appendix D and E. The Nursing Home site is operated on an every-other-day schedule at the area of expected maximum concentration; the remaining sites monitor every sixth day. The monitoring network design and coverage were reviewed before the recent shutdown and approved by the

(8) *Determination of adequacy of the existing SIP.* This commitment is contained in the Committal SIP.

(9) *Submittal of a revised control strategy for PM_{10} if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

The Committal SIP also contains

periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM_{10}) on July 1, 1987 (52 FR 24634). As a result, States must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM_{10} NAAQS. Group I areas have violated the PM_{10} NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have a moderate (20%–95%) probability of violating the PM_{10} NAAQS, and must commit to monitor for PM_{10} and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%) probability of violating the PM_{10} NAAQS, and no new control strategy requirements apply.

The Rapid City, South Dakota area has been classified as a Group II area. On July 12, 1988, the State submitted a Committal SIP for this area. The requirements for Group II Committal SIPs, and the State's response to these requirements are described below.

EPA Requirements for Group II Committal SIPs

The following SIP requirements apply to all PM_{10} areas, regardless of their grouping:

(1) All SIPs should provide for the attainment and maintenance of the PM_{10} standards, and PM_{10} should be regulated as a criteria pollutant.

(2) Since the SIP must protect both the PM_{10} standard and the total suspended particulate (TSP) increment for prevention of significant deterioration (PSD), it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 CFR 51.166(b)(23)) amounts of either TSP or PM_{10}.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 ug/m^3 (averaged over 24 hours) measured as PM_{10}, and the combined sulfur dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in Appendix L of part 51 were also revised to reflect PM_{10} concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM_{10} air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with are grouping: Group I areas are required to monitor daily at least one site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data. According to 40 CFR 58.13 (c)(2), annual adjustments to the monitoring schedule must be made on the basis of an annual review. A data versus NAAQS ratio is the basis for the annual review.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(5) Gather ambient PM_{10} data, at least to an extent consistent with minimum EPA requirements and guidance.

(6) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(7) Acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office when an appropriate number of verifiable 24-hour NAAQS exceedances, not including exceptional events, becomes available or when an annual arithmetic mean above the level of the annual PM_{10} NAAQS becomes available.

(8) Within 30 days of the notification referred to in (7), above, or within 37 months of promulgation of the PM_{10} NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(9) Within 6 months of the notification referred to in (8), above, adopt and submit to EPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the Committal SIP.

(10) Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

South Dakota Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM_{10} air quality standards.* The State has adopted ambient air quality standards for PM_{10} at Administrative Rules of South Dakota (ARSD) 74:26:02:35. EPA approved this provision at 53 FR 34077, September 2, 1988.

(2) *Preconstruction review of major stationary sources of PM_{10}.* The State administers a new source review (NSR) program for non-PSD stationary sources and modifications. The State has not received delegation or SIP approval of the PSD program, and review of PSD sources is carried out by EPA. By adopting ambient air quality standards for PM_{10} the State has triggered a requirement (under the State regulations) for preconstruction review of all non-PSD sources of PM_{10}.

The Rapid City area was designated nonattainment for TSP on March 3, 1978 (43 FR 8962). This designation required the State to implement a nonattainment area NSR program under Part D of the Clean Air Act. The State developed nonattainment area NSR regulations, which were approved by EPA on November 3, 1981 (46 FR 54541). These rules were based on the EPA requirements which were in effect prior to August 1980, and contained several minor deficiencies. EPA approved the State NSR rules with the understanding that the State would revise its rules to conform to new EPA requirements promulgated on August 7, 1980 (45 FR 52676) and would correct the other existing deficiencies.

The State submitted revised rules on December 21, 1981; however, these rules also contained deficiencies. As a result, EPA proposed to disapprove the State NSR program on February 25, 1986 (51 FR 6564). No final action was taken by EPA, due to uncertainty over how promulgation of the PM_{10} NAAQS and repeal of the TSP NAAQS would affect the need for an NSR program in the existing TSP nonattainment area.

To protect the Rapid City area (and the rest of South Dakota) from violations of the PM_{10} NAAQS, the State must revise its NSR regulations to address 40 CFR 51.165(b) (NSR for attainment and unclassifiable areas). 40 CFR 51.165(b) prohibits the permitting of a source which would exceed certain ambient impact levels, and which would cause or contribute to a violation of the NAAQS, unless the source obtains offsets. In its Committal SIP, the State had committed to revise its NSR regulations by August 31, 1990. The State and EPA are currently in the process of negotiating a new deadline. If an acceptable timeframe for revision of the NSR cannot be agreed upon, and met, EPA will consider calling for a SIP revision pursuant to section 110 (a)(2)(H) of the Clean Air Act.

Region VIII has provided extensive comments to the State on the existing NSR Regulations. These comments were primarily focused toward assisting the State in revising its regulations to address 40 CFR 51.165(b), although EPA also identified several areas in the non-attainment area definitions (listed in 40 CFR 51.165(a) of the federal NSR rules) where revisions were necessary.

EPA believes that the existing State NSR regulations contain language similar in intent to 40 CFR 51.165(b), and are acceptable in the interim until the State revises its regulations to address 40 CFR 51.165(b). For example, ARSD 74:26:01:12 allows the issuance of a construction permit "only when it has been shown that the operation of the new source will not prevent or interfere with the attainment of maintenance of an applicable ambient air quality standard. In addition, the State has retained ambient TSP standards, and the NSR program for TSP (which includes offset requirements) will remain in effect until this PM_{10} Committal SIP has been fully implemented, the State-wide PM–10 SIP is approved and the Rapid City area is redesignated from nonattainment to unclassifiable for TSP. The existing TSP NSR program will provide an additional degree of protection for the PM_{10} NAAQS by requiring permits for nearly all stationary sources of particulate matter in the Rapid City area.

(3) *Revised emergency episode plans.* In its Committal SIP, the State has committed to revise its emergency episode plans by December 1988, to reflect the changes in the federal regulations due to PM_{10}. The State did not meet this deadline; EPA and the State are currently negotiating a new deadline for revision of the emergency episode plan.

(4) *PM_{10} monitoring networks.* The Rapid City PM_{10} monitoring network consists of three sites; at the Mountain View Nursing Home, Public Library, and the Bank/Johnson site. The Guard Camp site was recently shut down due to loss of use of the property upon which it was located; the State has located a replacement site, the Bank/Johnson site, across the street from the old site. This site was formally reviewed and approved by the Region VIII Environmental Services Division on January 5, 1990, based on South Dakota certification that the site meets all applicable portions of 40 CFR part 58, including appendix D and E. The Nursing Home site is operated on an every-other-day schedule at the area of expected maximum concentration; the remaining sites monitor every sixth day. The monitoring network design and coverage were reviewed before the recent shutdown and approved by the Region VIII Environmental Services Division on February 27, 1989, thus demonstrating that requirements of 40 CFR part 58 regarding PM_{10} monitoring are being met. Comments received on the proposed notice from the Pennington County Air Quality Review Board contend that every-other-day PM_{10} monitoring at the Nursing Home site is not the area of expected maximum concentration, as stipulated by 40 CFR 58.13(c)(1)(ii). The current sampling schedule meets and exceeds requirements of 40 CFR 58.13(c)(2). EPA acknowledges that the values obtained from the three sites are very similar, and any site may record the highest concentration on any given day. However, the Nursing Home site has measured the highest concentration during 1988 from the three sites. In 1989, the Nursing Home measured two concentrations in the 76–100 $\mu g/m^3$ range, while the Guard Camp measured zero concentrations in this range. Additionally, on a monthly basis during 1987 and 1988, the Nursing Home site had 12 maximum concentrations of the 24 monthly concentrations possible greater than the Guard Camp site. This was the basis for EPA's approval of the site. The Guard Camp measured only eight monthly maximum concentrations greater than the Nursing Home site. Furthermore, high concentrations of population and sensitive individuals are present in the proximity of the Nursing Home, so the network realistically represents the ambient levels of PM_{10} to which residents are exposed in the Rapid City area. The area's unique topography creates a situation whereby the majority of point sources are separated from the residential areas by a high ridge. The current monitoring network is geographically spread in order to most effectively represent ambient air quality in Rapid City.

(5) *Collection of ambient PM_{10} data.* The State began monitoring for PM_{10} in January 1985, and has committed to continue monitoring in the Committal SIP.

(6) *Reporting exceedances to EPA within 45 days.* This commitment is contained in the Committal SIP.

(7) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(8) *Determination of adequacy of the existing SIP.* This commitment is contained in the Committal SIP.

(9) *Submittal of a revised control strategy for PM_{10} if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

The Committal SIP also contains commitments to submit actual emissions of major sources of PM_{10} and TSP, and to notify EPA if a TSP monitor being used as a surrogate PM_{10} monitor records an exceedance of the PM_{10} NAAQS.

EPA requirements for administrative procedures, adequate legal authority to implement the SIP, and intergovernmental consultation have been satisfied by the State. These procedures have been approved as part of the SIP in previous Federal Register notices (44 FR 44494, July 30, 1979; 48 FR 54541, July 7, 1983; 53 FR 34077, September 2, 1988).

The State held a public hearing on the Committal SIP on June 14, 1988. A draft Committal SIP was submitted to EPA for review prior to this hearing. EPA reviewed the draft SIP and found it to meet the necessary requirements with some minor exceptions, which were corrected in the final submittal. EPA's comments on the draft SIP were the only comments received by the State.

Final action: EPA approves the Committal SIP for the Rapid City, South Dakota PM_{10} Group II area submitted by the State on July 12, 1988, as part of the South Dakota SIP. The SIP commits the State to continue monitoring for PM_{10} and to submit a full SIP if a violation of the PM_{10} National Ambient Air Quality Standards (NAAQS) is detected. It also commits the State to make several revisions related to PM_{10} to the existing SIP including revisions to the New Source Review (NSR) regulations.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EFFECTIVE DATE: Effective October 1, 1990. The requirement of subpart R of 40 CFR part 52 is suspended for these purposes, temporarily continues the existing limited compliance waiver, originally issued by the Administrator on April 10, 1990 (55 FR 13480 (April 10, 1990)), pending final action on the ongoing rulemaking proceedings, but in no event beyond June 1, 1991.

addition, it was issued in light of the scope of the simultaneously granted limited reconsideration of subpart R and in recognition that such waiver was necessary to allow time for implementation of alternative means of soil conditioning.

EPA has received well over 100

Characteristic (TC) rule indicates that immediate application of the TC could prevent continued operation of hydrocarbon recovery and remediation activities currently being conducted at a number of petroleum refineries and marketing terminals or bulk plants handling crude petroleum and immediate products of petroleum

Identification Branch, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M. Street SW. Washington DC 20460, (202) 382–4770.

SUPPLEMENTARY INFORMATION:

A. Background

On March 29, 1990 (55 FR 11798), the Environmental Protection Agency (EPA)

It is the first phase of such operations that is of immediate concern to the Agency. This phase primarily consists of pumping the free-floating hydrocarbons from the aquifer beneath the facility. Some of these operations involve two pumping systems. One pumping system is used to bring the free-floating hydrocarbons to the surface while the

request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Dated: September 25, 1990.

Kerrigan Clough,

Acting Regional Administrator.

40 CFR Part 52, Subpart QQ is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart QQ—South Dakota

2. Add a new § 52.218 to read as follows:

§ 52.2182 PM_{10} Committal SIP.

On July 12 1988, the State submitted a Committal SIP for the Rapid City Group II PM_{10} area, as required by the PM_{10} implementation policy. The SIP commits the State to continue to monitor for PM_{10} and to submit a full SIP if a violation of the PM_{10} National Ambient Air Quality Standards is detected. It also commits the State to make several revisions related to PM_{10} to the existing SIP.

[FR Doc. 90-23284 Filed 10-4-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 61

[FRL-3850-7]

National Emission Standards for Radon Emissions from Phosphogypsum Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of compliance waiver.

SUMMARY: Today's action announces the continuation of a limited compliance waiver, pending reconsideration and rulemaking, of subpart R of 40 CFR part 61 ("Subpart R"), National Emission Standards for Radon Emissions from Phosphogypsum Stacks (54 FR 51654 December 15, 1989). EPA is issuing this compliance waiver pursuant to its authority under Clean Air Act 112(c)(1)(B)(ii) and 40 CFR 60.10–60.11. Today's limited compliance waiver, which permits the distribution and use of phosphogypsum for agricultural purposes, temporarily continues the existing limited compliance waiver, originally issued by the Administrator on April 10, 1990 (55 FR 13480 (April 10, 1990)), pending final action on the ongoing rulemaking proceedings, but in no event beyond June 1, 1991.

EFFECTIVE DATE: Effective October 1, 1990, the requirement of subpart R of 40 CFR part 61 that phosphogypsum be disposed in stacks or mines is temporarily waived to permit the distribution and use of phosphogypsum for agricultural purposes, pending final action on the ongoing rulemaking proceedings (55 FR 13480 April 10, 1990)), but in no event beyond June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR–460), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (202) 475–9810.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated a final rule controlling radionuclide air emissions from several source categories, including phosphogypsum stacks (to be codified at 40 CFR part 61, subpart R ("Subpart R")). 54 FR 51653 (December 15, 1989). The standard requires, in part, the disposal of phosphogypsum in stacks or mines, thereby precluding alternative uses of the material. EPA received petitions from several parties, including The Fertilizer Institute ("TFI"), Consolidated Minerals, Inc. ("CMI"), and U.S. Gypsum Co. ("USG") that EPA reconsider this portion of the phosphogypsum NESHAP. On April 10, 1990, EPA published in the **Federal Register** a notice of limited reconsideration of subpart R, a rulemaking proposal which included several alternatives to modify or maintain subpart R, and a limited compliance waiver which waived the requirements of subpart R for those owners or operators engaged in the distribution or use of phosphogypsum for agricultural purposes during the current growing season (not to extend beyond October 1, 1990). 55 FR 13480. The waiver was issued upon the finding of the Administrator that such activity presents no imminent endangerment to public health, that the immediate prohibition of such use would cause great injury to many small farmers who rely upon phosphogypsum, and that it would be burdensome and impracticable to issue limited waivers to each affected owner or operator. In addition, it was issued in light of the scope of the simultaneously granted limited reconsideration of subpart R and in recognition that such waiver was necessary to allow time for implementation of alternative means of soil conditioning.

EPA has received well over 100 comments on the proposed rule. EPA is presently evaluating each comment and plans to issue a final rule shortly. Today's action by EPA does not, and should by no means be construed to, indicate any Agency predisposition on the pending rulemaking.

B. Issuance of Compliance Waiver

For the same reasons announced in its original limited compliance waiver, EPA today continues in place the limited compliance waiver for subpart R, as originally issued on April 10, 1990, 55 FR 13480, pending final action on the rulemaking proceeding also commenced on April 10, 1990, but in no event beyond June 1, 1991. Authority for this waiver exists in Clean Air Act section 112(C)(1)(B)(ii) and 40 CFR 61.10–61.11. EPA is accumulating and analyzing the information necessary to issue a final decision on the rulemaking proceeding, and expects to take final action shortly. Pending that final decision, the waiver bars enforcement against the use and distribution of phosphogypsum for agricultural purposes during this period.

Dated: September 28, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90-23541 Filed 10-4-90; 8:45 am]

BILING CODE 6560-50-M

40 CFR Part 261

[EPA/OSW-FR-90-FFF; SWM-FRL-3835-8]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Hydrocarbon Recovery Operations

AGENCY: EPA.

ACTION: Interim final rule with request for comments.

SUMMARY: On March 29, 1990, the Environmental Protection Agency (EPA) promulgated revisions to the toxicity characteristic, one of the tests used to determine whether particular wastes are regulated as hazardous under subtitle C of the Resource Conservation and Recovery Act (RCRA). New information acquired by the Agency since the promulgation of the Toxicity Characteristic (TC) rule indicates that immediate application of the TC could prevent continued operation of hydrocarbon recovery and remediation activities currently being conducted at a number of petroleum refineries and marketing terminals or bulk plants handling crude petroleum and immediate products of petroleum refining. The hydrocarbon recovery and remediation activities of concern are those that recover free-floating hydrocarbons from the contaminated acquifer, and include as part of the recovery, reinjection of contaminated ground water via undergound injection wells or reinfiltration via an infiltration gallery into the same aquifer from which it was withdrawn.

The Agency believes that cessation of these activities may pose a substantially greater risk to human health and the environment than their continued operation under the existing regulatory authorities. As a result of this new information, the Agency is today promulgating an interim final rule which extends the compliance date of the TC rule for petroleum refining facilities, marketing terminals and bulk plants engaged in this specific recovery and remediation operation for 120 days. The period of the extension being promulgated today will allow the Agency to solicit public comment on issues related to these facilities, and to consider all available, pertinent information, and to develop the best solution to protect human health and the environment.

EFFECTIVE DATE: September 25, 1990.

ADDRESSES: The public docket for this rulemaking is located at Room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket number assigned to this notice is F–90–PRAS–FFFFF. Persons who wish to comment on the notice should place the docket number on their comments and provide an original and two copies.

The EPA RCRA docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475–9372. A maximum of 50 pages may be copied from any regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424–9346 toll free, or (202) 382–3000 in Washington, DC metropolitan area. For information on specific aspects of this notice, contact David Topping of the Waste Identification Branch, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M. Street SW. Washington DC 20460, (202) 382–4770.

SUPPLEMENTARY INFORMATION:

A. Background

On March 29, 1990 (55 FR 11798), the Environmental Protection Agency (EPA) promulgated the Toxicity Characteristic final rule to revise the existing EP toxicity characteristic. The TC is one of several characteristic used to identify wastes which are defined as hazardous and, as a consequence, are subject to the subtitle C requirements of the Resource Conservation and Recovery Act (RCRA).

In today's notice, the Agency, invoking good cause under the Administrative Procedure Act, is promulgating an extended compliance date for the TC requirements to petroleum refining facilities, marketing terminals and bulk plants engaged in hydrocarbon recovery and remediation operations which involve the reinjection of contaminated ground water into underground injection wells or infiltration galleries for 120 days. As discussed below, EPA believes: (1) Good cause, under 5 U.S.C. 553, exists for a short change in compliance date for this narrow class of TC wastes without prior notice and comment; and (2) under 5 U.S.C. 705, justice so requires a postponement of the compliance date. During the 120 day period, these wastes will not be a Federal hazadous waste. This extended compliance date results from new information that was brought to the attention of the Agency after the promulgation of the TC final rule. The extended compliance date allows the immediate continued operation of existing activities while careful consideration is given to all pertinent information.

B. Hydrocarbon Recovery and Reinjection of Contaminated Ground Water

Subsurface investigations have revealed that large quantities of free-floating and dissolved hydrocarbons are contained in the shallow aquifers beneath a number of petroleum refineries marketing terminals and bulk plants. Many of these facilities have undertaken operations to remove the free-floating hydrocarbons and remediate the contamination. Follow-on phases of the operation may involve the remediation of contaminated subsurface soils and ground water. These recovery and remediation activities are currently being conducted under the direction of various State and local environmental and water quality authorities.

It is the first phase of such operations that is of immediate concern to the Agency. This phase primarily consists of pumping the free-floating hydrocarbons from the aquifer beneath the facility. Some of these operations involve two pumping systems. One pumping system is used to bring the free-floating hydrocarbons to the surface while the second pumping system reinjects contaminated ground water to facilitate the pumping of the free-floating hydrocarbons and prevent further migration of the contaminants in the aquifer. In two pump systems, the ground water is pumped to create a cone of depression to promote collection of free-floating hydrocarbons and thereby facilitate recovery/removal of the hydrocarbons from the aquifer. This pumped ground water, with its high saturation concentrations of dissolved hydrocarbon (particularly benzene, due to the equilibration between the free-floating hydrocarbons and the water), is returned to the aquifer via an injection well or infiltration gallery. The reinjection/infiltration establishes a hydraulic gradient that helps to contain the contamination and maintains the water table for purposes of the hydrocarbon recovery. Because of the significantly high quantities of dissolved hydrocarbons in the water that is returned to the aquifer, immediate application of the TC to this ground water may result in classification of the reinjection/infiltration as disposal of a hazardous waste. If this occurs, use of UIC Class V wells (which many of these operations currently use) would no longer be authorized. Automatic reclassification of the well as Class IV wells (injection of hazardous waste into or above an underground source of drinking water (USDW) would occur; in most cases, Class IV wells are prohibited under section 3020 of RCRA.

C. Environmental Benefits

The extended compliance date being promulgated in today's notice will allow the Agency to seek and consider all pertinent information concerning hydrocarbon recovery operations, and will provide time for the Agency to develop the best long-term solution to protect human health and the environment. The impacts that RCRA may have on these operations as a result of application of the TC (i.e., permit requirements, corrective action notices, etc.) may prohibit temporarily, if not permanently, the reinjection/infiltration of ground water which industry asserts is an integral part of the recovery phase of the operation. Reinjection of the ground water may serve two main

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purposes: it facilitates pumping, thus increasing the recovery rate for free-floating product, and lessens further migration of the contaminant plume within the aquifer. Without reinjection, industry argues that the recovery phase may take longer to complete, there is probable risk of further contamination of subsurface soils, and the plume of contaminated ground water is likely to spread. Furthermore, they argue that it is not practicable to treat the contaminated ground water to levels below those specified in the TC before its reinjection during the recovery phase since the water is returned to the aquifer mixes and equilibrates with the remaining contaminated ground water and free-floating product. Therefore, it attains the same saturation concentration of dissolved hydrocarbon as was present before pumping and treatment. The ground water will continue to attain the high saturation levels of dissolved hydrocarbon once returned to the aquifer until the source of contamination (i.e., the free-floating product) is removed. Industry argues that it is both environmentally beneficial and technically feasible to continue operation in this manner and, once recovery of free product is complete, begin ground water and soil remediation.

D. Interim Final Rule

EPA is invoking two authorities for this immediate effective interim final action. First, EPA is invoking the good cause exemptions in sections 553(b)(3) and 553(d)(3) of the Administrative Procedure Act to immediately change the compliance date with requirements imposed by the TC for wastes involved in specific product recovery activities. Second, EPA is invoking the authority in 5 U.S.C. 705. The ground water will not be a Federal hazardous waste during the period of the extension. EPA has only very recently received information regarding these operations and believes that continued operation of these actions are important for environmental protection. As discussed above, without the immediate change of the compliance date for these operations, such activities might cease. EPA believes that requiring these facilities to meet all applicable RCRA and SDWA requirements by the September 25, 1990 effective date of the TC rule is both impracticable and contrary to public interest. Therefore, at petroleum refineries and marketing terminals or bulk plants currently engaged in hydrocarbon recovery operations stemming from handling crude petroleum and immediate products of petroleum refining, the compliance date for the TC is extended until January 25, 1991. Facilities with existing contracts for construction of these operations are also included within the scope of today's notice.

EPA is today soliciting comments on regulatory approaches for issues involved in today's notice and is considering further extending the compliance requirements under a separate regulatory proposal. Until EPA evaluates fully the issues involved in activities, the Agency believes that the current State oversight of these activities and continuing Agency involvement in these issues will provide adequate assurances against development of any imminent threat to human health and the environment. As discussed above, if such a change is not made, environmentally beneficial activities would, at a minimum, be suspended for many months, possibly increasing the potential threat to human health and the environment due to futher migration of the contamination.

E. State Authority

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

2. Effect on State Authorizations

EPA will implement the provisions of today's interim final rule in authorized States until their programs are modified to adopt the final toxicity characteristic and the modification to the State's program is approved by EPA. Implementation of today's interim final rule beyond the date of a State's receiving final authorization for the toxicity characteristic depends upon actions taken by the State, as discussed below. EPA will implement the provisions of today's rule in nonauthorized States. Today's rule extends the compliance date for requirements imposed in the final Toxicity Characteristic final regulation (see 55 FR 11798, March 29, 1990) for certain hydrocarbon recovery operations.

The Toxicity Characteristic was promulgated pursuant to a HSWA provision and must be adopted by States which intend to retain final authorization. However, today's rule provides, for 120 days, a less stringent standard for certain hydrocarbon recovery and remediation operations than would be imposed in the final Toxicity Characteristic as promulgated. In order to promote environmentally beneficial hydrocarbon recovery operations, today's interim final rule provides that these wastes would not be hazardous wastes under the Federal regulations until January 25, 1991, and States would not be required to mandate their management as such in order to retain RCRA authorization. However, Section 3009 of RCRA provides that States may impose more stringent requirements than those imposed under Federal regulations. States, whether using RCRA authorities (e.g., authorities under State law where States have received final authorization to implement the toxicity characteristic provisions in lieu of their implementation by EPA), or other State authorities under other statues, may impose hazardous waste requirements on such operations, or may require other more stringent conditions upon management of these wastes.

F. Regulatory Requirements

1. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major," and therefore subject to the requirement of a Regulatory Impact Analysis. The overall effect of today's rule is to extend the compliance date for requirements imposed by the final Toxicity Characteristic rule for certain limited hydrocarbon recovery operations. No sampling or analysis requirements are imposed in today's rule. The net effect of this proposal is to extend cost savings on a temporary basis to certain segments of the regulated community. Consequently, no regulatory impact analysis is required.

2. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The extension of the compliance date for the Toxicity Characteristic requirements promulgated today for certain limited hydrocarbon recovery activities in this rule is deregulatory in nature and thus will only provide beneficial opportunities for entities that may be affected by the rule. Accordingly, I hereby certify that this regulation will not have a significant economic impact of a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

3. Paperwork Reduction Act

There are no reporting, notification, or recordkeeping (information) provisions in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 261

Hazardous waste, recycling.

Dated: September 24, 1990.

William K. Reilly,

Administrator.

For reasons set out in the preamble, chapter I of title 40 of the CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by adding paragraph (b)(11) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *.

(11) Ground water that exhibits the Toxicity Characteristic in § 261.24 of this part that is reinjected or infiltrated pursuant to existing hydrocarbon recovery operations undertaken at petroleum refineries, and marketing terminals or bulk plants handling crude petroleum and immediate products of petroleum refining until January 25, 1991.

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[FR Doc. 90-23542 Filed 10-4-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-560; RM-6852]

Radio Broadcasting Services; Dillingham, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 256A to Dillingham, Alaska, as that community's first local broadcast service, in response to a petition for rule making filed by Jackson McCormick. See 54 FR 51424, December 15, 1989. Coordinates utilized for Channel 256A at Dillingham are 59–02–30 and 158–27–30. (See Supplementary Information, *infra.*) With this action, the proceeding is terminated.

DATES: Effective November 16, 1990; the window period for filing applications on Channel 256A at Dillingham, Alaska, will open on November 17, 1990, and close on December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–560, adopted September 19, 1990, and released October 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Interested parties should note that the petition for rule making in this proceeding was filed prior to October 2, 1989, and therefore, applicants for Channel 256A at Dillingham may avail themselves of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 CFR 73.213(c).

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Alaska, by adding Dillingham, Channel 256A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23066 Filed 10-4-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-456; RM-6831]

Radio Broadcasting Services; Vero Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Media VI Florida, (formerly Treasure Coast Media, Inc.), substitutes Channel 269C3 for Channel 269A at Vero Beach, Florida, and modifies its license for Station WAVW(FM) to specify operation on the higher powered channel. *See* 54 FR 43067, October 20, 1989. Channel 269C3 can be allotted to Vero Beach in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are North Latitude 27–38–18 and West Longitude 80–23–54. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–456,

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adopted September 19, 1990, and released October 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by removing Channel 269A and adding Channel 269C3 at Vero Beach, Florida.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23665 Filed 10-4-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-562; RM-6951]

Radio Broadcasting Services; Guntersville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240C3 for Channel 240A at Guntersville, Alabama, and modifies the Class A license issued to Guntersville Broadcasting Company, Inc. for Station WTWX-FM, as requested, to specify operation on the higher power channel, thereby providing that community with its first expanded coverage FM service. See 54 FR 51424, December 15, 1989. Coordinates for Channel 240C3 at Guntersville are 34-23-03 and 86-12-57. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-562, adopted September 19, 1990, and released October 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Alabama, is amended by amending the entry for Guntersville, by removing Channel 240A and adding Channel 240C3.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23668 Filed 10-4-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-531; RM-6949]

Radio Broadcasting Services; Helena, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C3 for Channel 276A at Helena, Arkansas, and modifies the license of Delta Broadcasting, Inc. for Station KCRI-FM, as requested, to specify operation on the higher power channel, thereby providing that community with its first wide coverage area FM service. See 54 FR 50002, December 4, 1989. Coordinates used for Channel 276C3 at Helena are 34-32-50 and 90-36-40. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-531, adopted September 19, 1990, and released October 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by amending the entry for Helena, by removing Channel 276A and adding Channel 276C3.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23669 Filed 10-4-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-403; RM-6902]

Radio Broadcasting Services; Asbury, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Denise Neubauer, allots Channel 277C3 to Asbury, Iowa, as that community's first local FM service. *See* 54 FR 39212, September 25, 1989. Channel 277C3 can be allotted to Asbury in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.9 kilometers (12.4 miles) northeast to avoid a short-spacing to Station WWRW, Channel 277C1, Wisconsin Rapids, Wisconsin, and to the proposed allotment of Channel 278C2 at Waukon, Wisconsin. The coordinates for Channel 277C3 at Asbury are North Latitude 42-35-04 and West Longitude 90-31-43. With this action, this proceeding is terminated.

DATES: Effective November 16, 1990. The window period for filing applications will open on November 17, 1990, and close on December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-403, adopted September 18, 1990, and released October 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Channel 277C3 at Asbury.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23670 Filed 10-4-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-561; RM-6968]

Radio Broadcasting Services; Veedersburg, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 225A to Veedersburg, Indiana, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Christian Family Radio. See 54 FR 51425, December 15, 1989. Coordinates for Channel 225A at Veedersburg are 40-06-47 and 87-15-45. With this action, the proceeding is terminated.

DATES: Effective November 16, 1990; the window period for filing application on Channel 225A at Veedersburg, Indiana, will open on November 17, 1990, and close on December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket 89-561, adopted September 19, 1990, and released October 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Veedersburg, Chanel 225A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23667 Filed 10-4-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 900938-0238]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: The Secretary of Commerce issues this final rule to implement a technical amendment to the regulations requiring shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the southeastern United States to use measures to reduce the incidental catch and mortality of sea turtles in shrimp trawls. This rule clarifies the definition of "Atlantic Area" to more explicitly delineate the area subject to turtle excluder device (TED) and tow-time regulations. The intended effect is to clarify the regulations. This rule does not change the current agency interpretation of the definition.

EFFECTIVE DATE: October 4, 1990.

FOR FURTHER INFORMATION CONTACT: Phil Williams, 301-427-2322, or Charles A. Oravetz, 813-893-3366.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Commerce issued a final rule on June 29, 1987 (52 FR 24244) that requires shrimp trawlers 25 feet (7.6 m) and longer in length to use qualified TEDs in certain offshore waters of the southeastern United States during certain times of the year and to limit trawl tow times to 90 minutes (or use TEDs) in inshore waters during these same times. Shrimp trawlers less than 25 feet (7.6 m) in length are required to limit trawl tow times to 90 minutes in inshore and offshore waters during certain times.

Atlantic Area Definition

The preamble to the final rule clearly states that "the use of TEDs or tow time restrictions are required in all waters of the Atlantic between the North Carolina-Virginia Border and 23° 40' N and throughout the U.S. Gulf of Mexico." The preamble notes that the Atlantic and Gulf waters are divided into four areas: The Canaveral and the Atlantic, and the Southwest Florida and Gulf Areas. The preamble defines the Atlantic Area to include "all ocean and tidal waters in the Atlantic Ocean from the North Carolina-Virginia border to 23° 40' N, except for waters in the Canaveral Area." The Southwest Florida Area is defined in the preamble to include "all ocean and tidal waters within the region bounded by 23° N to 27° N between 81° W and 84° W."

In the final rule, "Atlantic Area" is defined to mean "all ocean and tidal waters off the southeast Atlantic States from 36° 33' 00.8' (*sic*) N. latitude (North Carolina or Virginia border) south and west to a line at 81° W. longitude, except for waters within the Canaveral Area, as defined in this section," and "Southwest Florida Area" was defined to mean "the ocean and tidal waters off Florida from 23° 40' N. latitude to 27° N. latitude between 81° W. longitude and 84° W. longitude." In the final rule, Maps 1 and 2 depict the offshore waters where TEDs are required, and Maps 3 and 4 depict the inshore waters where 90-minute tow times apply. The dividing

lins between the Atlantic Area and the Southwest Florida Area as depicted on the maps is 81° W. longitude as it passes through the south Florida and Florida Keys locations.

The definition of Atlantic Area in the final rule may not be explicit as to the

List of Subjects in 50 CFR Part 217

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 28, 1990.

Michael Tillman,

Acting Assistant Administrator for Fisheries

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA, 01930, (508-281-9252).

SUPPLEMENTARY INFORMATION: A final rule implementing Amendment 8 to the

Proposed Rules

Federal Register
Vol. 55, No. 194
Friday, October 5, 1990

This section of the FEDERAL REGISTER contains notices to the public of the

FOR FURTHER INFORMATION CONTACT: Peter E. Cole, Secretary, Federal Open

to have been effective for the 1990 and

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line between the Atlantic Area and the Southwest Florida Area as depicted on the maps is 81° W. longitude as it passes through the south Florida and Florida Keys locations.

The definition of Atlantic Area in the final rule may not be explicit as to the area where TEDs and limited tow times are required. If the reference to "west to 81° W. longitude" is not read as intended, i.e., as the dividing line between the Atlantic Area and the Southwest Florida Area, then an area shoreward of 81° longitude off the southeast Atlantic coast from approximately Ossabaw Sound, Georgia, to approximately Daytona Beach, Florida, would appear to be excluded from the "Atlantic Area." This misinterpretation could create confusion concerning whether TEDs and limitations on tow times are required shoreward of 81° W. longitude. The clear intention of the final rule as stated in the preamble and illustrated in the maps of the rule is that 81° W. longitude is the dividing line between the Atlantic Area and the Southwest Florida Area and does not delineate an area off Georgia and north Florida wherein TEDs or tow time requirements are inapplicable. To eliminate any ambiguity, this technical amendment deletes the reference to 81° W. longitude from the definition of Atlantic Area in the final rule. The line of 81° W. longitude that divides the Atlantic Area from the Southwest Florida Area is clearly explained in the definition of Southwest Florida Area.

Classification

This final rule, technical amendment is issued under 50 CFR Part 217. Because this rule makes only minor, non-substantive changes, it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment and there is good cause under 5 U.S.C. 553(d) not to delay for 30 days its effective date.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

This rule makes minor technical changes to a rule that has been determined not to be a major rule under Executive Order 12291, does not contain policies with federalism implications under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no change in the regulatory impacts previously reviewed and analyzed.

List of Subjects in 50 CFR Part 217

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 28, 1990.

Michael Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 217 is amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1521–1543; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. In § 217.12, the definition for "*Atlantic Area*" is revised to read as follows:

§ 217.12 Definitions.

* * * * *

Atlantic Area means all ocean and tidal waters off the southeast Atlantic States from 36°33'00.8" N. latitude (North Carolina or Virginia border) south, except for waters within the Southwest Florida Area and the Canaveral Area, as defined in this section.

* * * * *

[FR Doc. 90-23582 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 652

[Docket No. 900124-0127]

Atlantic Surf Clam and Ocean Quahog Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of suspension of surf clam minimum size limit.

SUMMARY: NOAA issues this notice to inform the public that the minimum size limit of 4.75 inches for Atlantic surf clams is suspended. This action is taken under the authority of § 652.22(a)(1), which allows for the annual suspension of minimum size limit based upon set criteria. The intended effect is to reduce a regulatory burden while allowing for more selective harvest practices. This action is taken to remove a regulatory restraint on industry determined to be unnecessary at this time in accordance with Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP).

EFFECTIVE DATES: September 30, 1990, through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA, 01930, (508-281-9252).

SUPPLEMENTARY INFORMATION: A final rule implementing Amendment 8 to the FMP was published on June 14, 1990 (55 FR 24184). Section 652.22 allows the Regional Director to suspend annually by publication in the **FEDERAL REGISTER**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent of the clams are smaller than 4.75 inches (12.065 cm) and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density dependent factors.

At its September 1990 meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Statistical and Scientific Committee and Surf Clam/Ocean Quahog Committee and voted to recommend that the Regional Director suspend the minimum size limit. This action was taken after the most recent research vessel survey data indicated that 26.97 percent of the surf clams from the Mid-Atlantic area, 17.20 percent of the surf clams from the Southern New England area, and 15.64 percent of the surf clams from the Georges Bank area, were less than 4.75 inches. Discard data from the commercial trips that were interviewed reported an average discard rate of 12.5 percent as applied to the previous minimum size limit of 5 inches.

This action is being taken to coincide with the full implementation of Amendment 8, which is September 30, 1990. Given that the Amendment is being implemented mid-year, this action will be in effect for 1990 only. The Council's request to continue the suspension in 1991 will be determined and specified by separate notice.

Classification

This action is authorized by 50 CFR part 652, and is taken in compliance with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: October 1, 1990.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23579 Filed 10-1-90; 4:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 194
Friday, October 5, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 37; Doc. No. 7565S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Additional notice of proposed rulemaking and extended comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of additional proposed rulemaking and extension of comment period with respect to a proposed amendment to the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, to: (1) Clarify the time limit for an insured producer to submit a report or a notice to FCIC; (2) allow for an extension of the sales closing date when such date falls on a weekend or Federal holiday; (3) clarify premium discount language applicable to good insuring experience and whole units; and (4) modify the restriction against insuring land which has been strip mined to provide crop insurance by written agreement between the insured and FCIC. The intent of this notice of additional proposed rulemaking is to provide that a sales closing date will be extended if the date falls on a weekend or Federal holiday and the insured's service office is not open on such date, and provide a clarification of premium discount if the insured did not select optional units and/or is eligible for good insuring experience.

COMMENT DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than November 5, 1990 to be sure of consideration.

ADDRESS: Written comments should be sent to the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

David W. Gabriel, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, mall businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, August 15, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 33559, to amend the General Crop Insurance Regulations (7 CFR part 401), to have been effective for the 1990 and succeeding crop years, to: (1) Clarify the time limit for an insured producer to submit a report or a notice to FCIC; and (2) modify the restriction against insuring land which has been strip mined. The intent of this additional notice of proposed rulemaking is to provide language allowing an extension of the sales closing date to the next business day if such date falls on a weekend or Federal holiday and the insured's service office is not open on such date, and to provide clarification of the premium discount feature applicable to good insuring experience and whole units and to make such change applicable for the 1991 and succeeding crop years.

In reviewing the proposed rule published at 54 FR 33559, FCIC determined that; (1) in addition to the proposed amendment to paragraph 20 (Notices) of the General Policy, similar clarification of the extension of sales closing dates should be added to the Manager's authority to extend such dates contained in 7 CFR 401.8(b); and (2) clarifying language should be added to the annual premium section (paragraph 5.) to provide for premium discount if the insured did not select optional units and/or is eligible for a good insuring experience discount.

Throughout the General Crop Insurance Regulations and Policy are references to important dates which must be adhered to by the insured under the policy, including required reports which must be filed to comply with insurance provisins, and special notices which must be submitted to FCIC in order to be eligible for the program's benefits.

Paragraph 20 of 7 CFR part 401, titled "Notices," provides that all notices required to be given by the insured must be in writing and received by the service office within the designated time, unless otherwise provided by the notice requirement. When immediate notice is required, it may be given by telephone or in person and confirmed in writing. The time of the notice is determined by the time of FCIC's receipt of the written notice.

Paragraph 21, titled "Dates, Reports, and Notices," cautions the insured that, in order to preserve the insured's rights under the policy, the insured is required to file a number of reports and notices to FCIC by certain dates.

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Subparagraph 2.e.(12) of the General Crop Insurance Policy provides that FCIC does not insure any acreage which has been strip mined. Some strip mined acreage has been reclaimed to agricultureal productivity. FCIC has determined that this restriction should be modified to allow crop insurance to be provided on former strip mined acreage which is now in agricultural production by written agreement between the insured and FCIC.

In addition, in the event that the final date for accepting applications for crop insurance, shown on the actuarial table on file in the service office, falls on a weekend or Federal holiday, FCIC proposes to extend such date in the same manner as other dates contained herein.

While it is common business practice to extend the date for a specific action to the next business day if such date is not a regular business day, that is not set out in the General Crop Insurance Policy.

Finally, on August 14, 1989, the Board of Directors of FCIC approved a method for discounting premium for those insureds who choose not to divide their acreage into optional units, and discountinued surcharges for optional unit divisin. Premium rates have been revised to reflect this change.

Accordingly, FCIC proposes to: (1) Allow for an extension of the sales closing date when such date falls on a weekend or Federal holiday by adding appropriate language to both paragraph 20 of the General Policy and § 401.8(b) of the General Crop Insurance Regulations; (2) clarify premium discount language applicable to good insuring experience and whole units; and (3) modify the restriction against insuring land which has been strip mined, and subsequently reclaimed, to provide crop insurance by written agreement between the insured and FCIC.

As a convenience to the reader, FCIC republishes the original notice of proposed rulemaking appearing in the **Federal Register** on Tuesday, August 15, 1989, at 54 FR 33559, to include additional provisions for the extension of a sales closing date and for premium discount, as described above.

FCIC is soliciting public comment on this additional proposed rulemaking for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All comments received pursuant to this notice will be available for public inspection and copying in the Office of the Manager at the above address, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, General crop insurance policy.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1991 and succeeding crop years, in the following instances:

PART 401—GENERAL CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.8 is amended by revising paragraph (b); paragraph (d)2.e.(12); and paragraphs 5., and 20., of the General Crop Insurance Policy to read as follows:

§ 401.8 The application and policy.

* * * * *

(b) The Corporation may reject or discontinue the acceptance of applications in any county or of any individual application upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications. If the sales closing date falls on a Saturday or Sunday or legal holiday when the service office is not open, the application must be submitted by the close of business on the next business day.

* * * * * *

(d) * * *

2. *Crop, acreage, and share insured.*

* * * * *

e. * * *

(12) Which has been strip mined unless we agree in writing to insure such acreage.

* * * * *

5. *Annual Premium*

a. The annual premium is earned and payable at the time insurance attaches. The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, and where applicable, times any applicable premium adjustment factor shown on the actuarial table.

b. If you are eligible for a premium reduction based on your experience under previous crop policies, you may retain that experience under certain conditions as set out in the crop endorsement through the 1991 crop year.

c. Your premium payment, plus any accrued interest, will be considered delinquent if any amount due us is not paid on or before the termination date specified in the crop endorsement.

* * * * *

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit an application or a report or notice falls on a Saturday, Sunday, or Federal holiday if your service office is not open for business on such date such notice or report must be submitted on the next business day.

* * * * *

Done in Washington, DC, on October 1, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-23547 Filed 10-4-90; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 433

[Amdt. 3; Docket No. 8008S]

Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1991 and succeeding crops years, to expand crop insurance coverage to all classes of dry beans. The intended effect of this proposed rule is to provide the provisions for insuring all classes of dry beans to include those classes not insurable in the past, provided the class of dry beans has been demonstrated to be adapted to the area.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than November 5, 1990, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1995.

David W. Gabriel, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR part 433), to provide the provisions for insuring all classes of dry beans adapted to the area in which they are grown.

FCIC invites written public comment on this proposed rule for 30 days after its publication in the **Federal Register**. Comments should be submitted to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC. All written comments received pursuant to this proposed rule will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR 433

Crop insurance, Dry beans.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR part 433), proposed to be effective for the 1991 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 433 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 433.7(d) is amended by revising subparagraph 2.a., to read as follows:

§ 433.7 The application and policy.

* * * * *

(d) * * *

2. *Crop Acreage, and Share Insured*

a. The crop insured will be dry beans ("beans") and will consist of:

(1) dry edible beans, planted for harvest as dry beans, of a class designated in the actuarial table; and

(2) bush varieties of garden seed beans (contract seed beans), planted for harvest as seed and grown under a contract (with a seed company executed before the acreage reporting date), which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

In addition to the classes of dry beans listed on the actuarial table for your county, we will insure other classes of beans provided:

(i) The class you intend to plant has been demonstrated to be adapted to the area. Evidence of adaptability includes results of test plots and recommendations by unversities and seed companies (two years of personal experience producing the class in your production area may be submitted for this requirement);

(ii) You submit your production report and prices received by the sales closing date, or the test plot results and price information on or before the sales closing date; and

(iii) We provide you, in writing, an approved insurance offer which you accept in writing.

* * * * *

Done in Washington, DC, on October 1, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-23548 Filed 10-4-90; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 90-19]

Capital Treatment of Intangible Assets

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this advance notice of proposed rulemaking (ANPR) to solicit public comment regarding the treatment of intangible assets held by national banks for the purposes of determining capital adequacy under the risk-based capital guidelines (54 FR 4168, January 27, 1989). These guidelines will become effective on December 31, 1990. Specifically, the OCC requests comments on two issues: (1) Whether the current capital treatment of purchased mortgage servicing rights is appropriate; and (2) whether any other intangible assets, in addition to purchased mortgage servicing rights, currently qualify for inclusion in the regulatory capital calculation.

DATES: Comments must be received on or before December 4, 1990.

ADDRESSES: Interested persons are invited to submit written comments to Docket Number (90-19), Communications Division, Fifth floor, Comptroller of the Currency, 490 L'Enfant Plaza East, Southwest, Washington, DC 20219. Attention: Karen Carter. Comments will be available for public inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Eugene Green, Deputy Chief Accountant, (202) 287-4723; Donna E. Duncan, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 447-1164; Ronald Shimabukuro, Attorney, Legal Advisory Services Division, (202) 447-1883; C. Stewart

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Goddin, Senior International Economic Advisor, Multinational and Regional Bank Analysis, (202) 447-1747; or Mark Winer, Associate Director, Economic and Policy Analysis, (202) 447-1924, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Introduction

Usually, intangible assets have little or no value that can be realized separately from the ongoing operations of a bank. Therefore, the OCC generally requires the deduction of intangible assets from equity capital and total assets for capital adequacy calculations. However, recognizing the fact that there are substantial differences among intangible assets, the OCC has historically provided for certain exceptions to this general rule.

Prior to the promulgation of the risk-based capital guidelines, the OCC specifically included purchased mortgage servicing rights in the computation of regulatory capital. Unlike other intangible assets, purchased mortgage servicing rights were permitted as capital because they possess characteristics similar to those of many tangible assets.

In the development of the risk-based capital guidelines, the OCC determined that it would be more appropriate to establish specific criteria for permissible intangible assets rather than simply listing the intangible assets acceptable as capital. This approach was intended to make the risk-based capital guidelines more responsive to future developments in the banking industry, and to provide more control over the quality of intangible assets, including purchased mortgage servicing rights, that were to be included in the capital calculation. The criteria are based on those characteristics of purchased mortgage servicing rights that are similar to marketable tangible assets; namely, the existence of a relatively well-developed market to provide liquidity and the ability to separate this asset from the remainder of the bank's operations.

The three criteria that must be satisfied if an intangible asset is to qualify as Tier 1 capital are: (1) The intangible asset must be able to be separated and sold apart from the bank or from the bulk of the assets of the bank, (2) the market value of the intangible asset must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the bank, and (3) the bank must demonstrate that a market exists which will provide liquidity for the intangible asset. 12 CFR part 3 appendix A, section (2)(c)(2).

Intangible assets that pass this three-part test are considered "qualifying intangibles". Banks must deduct from equity and total assets, any intangible asset that fails to satisfy any one of these three criteria.

To ensure an appropriate level of core capital for banks with sizeable qualifying intangible assets, the risk-based capital guidelines also limit this category of assets to no more than 25 percent of the bank's Tier 1 capital. In other words, if a bank's investment in purchased mortgage servicing rights or other qualifying intangible assets exceeds 25 percent of Tier 1 capital, the bank must deduct the excess from both total assets and Tier 1 capital.

Recent events in the industry, including the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), have heightened industry awareness of purchased mortgage servicing rights. In particular, some national banks have expressed the belief that the 25 percent limit for qualifying intangibles that will become effective on December 31, 1990 is too stringent. In light of this renewed interest, the OCC has concluded that the capital treatment of purchased mortgage servicing rights held by national banks should be reexamined to determine whether there is a more appropriate method to ensure that banks maintain sufficient capital to cover the risks inherent in this mortgage banking activity.

In the preamble to the risk-based capital guidelines, the OCC stated that banks may include intangible assets other than purchased mortgage servicing rights in capital if these assets meet the criteria. However, the OCC did not specify any other intangible assets that would be considered for capital purposes. This reflected the OCC's view that, at this time, it is less likely that any intangible asset other than purchased mortgage servicing rights could satisfy the three criteria for inclusion in capital.

In response to repeated inquiries on this subject from industry representatives and others, the OCC wishes to offer all interested parties a formal opportunity to present their comments regarding the inclusion of other intangible assets in capital. Furthermore, in light of the confusion generated by the adoption of the "criteria approach," the OCC is seeking specific comment on whether it should return to its previous practice of specifying which intangible assets qualify as capital or make changes to clarify the intent of the criteria.

Discussion

A. Purchased Mortgage Servicing Rights

Mortgage servicing rights represent the right to perform the servicing function for mortgage loans owned by others. In addition to being acquired in a purchase of all or part of another business enterprise, mortgage servicing rights can be acquired by themselves as a single asset. Accordingly, a bank can dispose of purchased mortgage servicing rights, regardless of the manner in which they were obtained, either by selling the rights by themselves or in conjunction with the sale of a segment of the bank's business.

A fairly active market exists for purchased mortgage servicing rights. This secondary market provides liquidity for purchased mortgage servicing rights since it gives servicers the opportunity to dispose of all, or a portion of, their servicing portfolios separate from the remainder of their business assets. This marketability feature represents a key characteristic necessary for qualifying intangibles under the risk-based capital guidelines.

In exchange for servicing a mortgage, the servicer receives a servicing fee. This fee generally is based on the outstanding principal amount of the mortgage. In addition to the servicing fee, a mortgage servicing right may generate other revenue such as late charges and income from escrow deposits. The relative predictability of the cash flows received by the servicer is another key characteristic of qualifying intangibles under the risk-based capital guidelines. These cash flows form the basis for valuing purchased mortgage servicing rights. The purchase price of a mortgage servicing right reflects the present value of the anticipated net servicing income stream to be generated by the mortgage servicing right. Implicit in the pricing of mortgage servicing rights are adjustments for certain associated risks. These risks include interest rate and prepayment risk, credit risk, and operational risk.

Risks Associated With Purchased Mortgage Servicing Rights

Presently, purchased mortgage servicing rights are the only class of intangible assets that the OCC recognizes for the purposes of capital adequacy. In addition, because purchased mortgage servicing rights can possess the characteristics of separability, identifiable cash flows, and marketability, they could generally be counted as qualifying intangibles under the risk-based capital guidelines. Nonetheless, purchased mortgage servicing rights do involve a number of associated risks for servicers.

a. Interest Rate and Prepayment Risk

Interest rate changes and prepayments are of particular concern with purchased mortgage servicing rights. When purchasing a mortgage servicing portfolio, a major consideration in determining the value of the portfolio is the estimated life of the mortgage loans being serviced. If unanticipated prepayments occur, the revenue generated from the mortgage servicing portfolio is less than originally assumed. In a period of declining interest rates borrowers are more likely to refinance their loans, thus decreasing the value of the asset.

On the other hand, rising interest rates reduce the prepayment rate and slow the decline in expected cash flows. While the additional income benefits the servicer, there is a negative aspect to this scenario as well. Rising interest rates also demand that a higher market discount rate be used to determine the fair value of the servicing rights. The net realized gain may be insignificant.

b. Credit Risk

1. Credit risk in all transactions

Although the extent of credit risk can vary dramatically from one servicing portfolio to the next, unexpected foreclosures will have a significant impact on almost every type of portfolio. At a minimum, such foreclosure result in additional out-of-pocket costs because the servicer usually is responsible for the foreclosure expenses as well as for covering scheduled payments to investors that are not generated by the underlying mortgage loans. Although the servicer may be entitled to reimbursement from an insurer for the advanced payments, the servicer still must absorb the carrying cost of those advances.

The second form of credit risk that exists with regard to all purchased mortgage servicing rights is that in the event of default, the servicer's stream of fee income ceases. Certain assumptions about default rates are factored into the purchase price decision to cover this loss. However, if the actual default rate on the portfolio significantly exceeds the original assumptions, the servicer's cash flow is impaired.

2. Credit risk in recourse transactions

The servicer's credit risk is increased significantly if it acquires servicing rights that require the servicer to absorb part or all of the losses on the serviced mortgages if the foreclosure sales proceeds are less than the principal amount of the mortgage. The most ready example is the servicing arrangements for mortgage loans insured by the Department of Veterans Affairs (VA). In the case of VA loans, the servicer must cover any principal loss in excess of the VA's guarantee. Effective February 1, 1988, the VA guarantees 50 percent of the balance on new loans up to $56,250 and guarantees 40 percent of the balance over $56,250, up to a maximum guarantee of $36,000. Prior to 1988, the VA guaranteed 60 percent of the loan balance, subject to a maximum based on the year the loan was originated.

In cases where the VA estimates that the principal loss will exceed the guaranteed amount, it may exercise its "no-bid" option by simply paying off on its guarantee and leaving the servicer to dispose of the property and cover any remaining shortfall. According to information published by the VA, 24 percent of VA foreclosures in 1988 were "no-bids."

This type of exposure may also occur in situations where the originator sells mortgage loans with recourse and later transfers that recourse liability along with the servicing on those loans. Some servicers are willing to assume the additional risk in exchange for a higher return on the servicing.

c. Operational Risk

Mortgage banking activities also involve substantial operational risk. One aspect of this risk is the need to project the annual servicing cost for the mortgages. If a bank underestimates the servicing costs that will be associated with the mortgage servicing portfolio over its life, then the net income generated from the portfolio will be substantially less than originally estimated. The servicing cost is estimated on a per loan basis, and depends, in part on the number of loans being serviced. If a bank subsequently decides to liquidate a large portion of its servicing portfolio, the resulting loss of efficiencies of scale and attendant increase in the individual servicing cost for the remaining loans will reduce the economic value of the bank's remaining purchased mortgage servicing rights. Generally, the longer the remaining life of the mortgage loans underlying the mortgage servicing portfolio, the less likely that the bank will be able to accurately assess the future servicing costs for those loans.

If the servicer does not properly administer foreclosure proceedings, pass through regularly scheduled principal and interest payments to investors, or comply with certain net worth tests, the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA) may "pull" the servicing rights without immediately reimbursing the servicer. While the bank ultimately may be reimbursed for the value of the mortgage servicing rights, any subsequent reimbursement probably would be delayed until the mortgage servicing portfolio is resold. Moreover, any reimbursement most likely would be limited to the proceeds received in excess of the costs incurred by the government agency in restoring the mortgage servicing portfolio to a marketable condition.

Valuation

As explained above, an essential characteristic of purchased mortgage servicing rights is the presence of a defined market to provide liquidity. A significant volume of mortgage servicing rights is sold annually. Nonetheless, while mortgage servicing rights are more marketable than most other intangible assets, the mortgage servicing rights market is not as well-developed or liquid as other markets. Sales transactions generally are negotiated between the parties and take a longer time due to necessary diligence reviews. As a result, significant time and effort may be required to market any given mortgage servicing portfolio.

The value of a particular mortgage servicing portfolio depends on the composition of the mortgage pool, as well as the purchaser's own cost structure. Therefore, a number of assumptions must be made concerning discount rates, prepayment rates, late charges, foreclosure costs, credit losses and servicing costs to determine an appropriate price for a portfolio of purchased mortgage servicing rights. As a result, the price that various potential purchasers are willing to pay for a given portfolio may differ significantly due to variances in their assumptions. A true market value cannot be established until a portfolio is actually sold.

The OCC presently adheres to generally accepted accounting principles (GAAP) which require banks to value their purchased mortgage servicing rights at the time of acquisition on the basis of the acquisition cost as long as it does not exceed the present value of the net future servicing income. Net future servicing income is the amount by which the present value of estimated future servicing revenue exceeds the present value of expected future servicing costs.

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Estimated future servicing costs include all direct costs associated with performing the servicing function and appropriate allocations of certain other indirect costs.

Banks must then review their purchased mortgage servicing rights annually to ensure that the carrying value does not exceed the undiscounted value of the future net servicing income. Therefore, if the market value of a purchased mortgage servicing rights portfolio is less than the carrying value, the bank need not make any adjustment unless it expects the future net servicing income to be less than the current amortized value of the purchased mortgage servicing rights (due to higher than anticipated defaults, prepayments, etc.). That test is unlikely to require any immediate write-down in the asset's carrying value. This is because the book value was initially based on a present value computation, while the annual review uses undiscounted income figures. However, the future amortization rate should be adjusted consistent with the change in the expected future net servicing income.

B. Other Issues for Specific Comment

The OCC would like to gather more information to determine whether there is an alternative method that might allow banks to engage in mortgage servicing activities, while providing adequate protection against the potential risks. Consequently, the OCC requests comments on all aspects of this issue. In particular, the OCC requests comment on the following:

a. Capital Limits

1. Whether capital limits on the amount of purchased mortgage servicing rights that can be recognized for capital purposes should be imposed on a case-by-case basis, across the board, or across the board with case-by-case exceptions. If a case-by-case approach is adopted, what is the proper rationale for determining the appropriate limit for an individual bank?

2. Whether limits should be based on the amount of capital; on the amount of purchased mortgage servicing rights, e.g., the haircut approach; or both.

3. Whether the 25 percent limit (based on capital) on purchased mortgage servicing rights and other qualifying intangibles should be higher or lower.

4. Whether a transition period beyond the current December 31, 1990 effective date should be provided for the 25 percent limit.

5. Whether mortgage servicing rights held by a separately capitalized subsidiary should be exempt from any limitations, and if so, under what conditions.

6. Whether risk-based capital is the proper mechanism to ensure adequate capital support for mortgage servicing activities. If so, should the risk-based framework incorporate some additional capital charge for the unique interest rate/prepayment, operational and market risks associated with purchased mortgage servicing rights?

7. Whether excess servicing fee receivables (created when a bank originates and sells a mortgage loan, but retains the servicing rights) should be treated in a manner similar to purchased mortgage servicing rights for regulatory capital purposes. Excess servicing fees currently are classified as a tangible asset and no deduction from capital is required.

b. Recourse

1. Whether the off-balance sheet risk for recourse associated with mortgage servicing should be captured for capital purposes in a manner similar to mortgage loans originated by a bank and sold with recourse, or in some other way. Mortgage loans sold with recourse are subject to a 100 percent conversion factor. Recourse associated with servicing rights currently is not subject to a capital charge.

2. How should "recourse" be defined for purposes of determining when the servicer is exposed to this risk of loss?

3. What is the appropriate treatment of VA mortgages where the mortgage servicer must absorb the loss if the VA chooses to exercise its "no-bid" option on defaulted loans?

4. In addition to the credit risk exposure generated by explicit recourse arrangements, how can the liability of mortgage servicers be eliminated or minimized with respect to loan origination representations and warranties?

c. Valuation and Accounting Standards

1. Whether purchased mortgage servicing rights can be valued with sufficient certainty to satisfy the second criterion for qualifying intangible assets, which requires the market value to be established on an annual basis.

2. Whether an industry or regulatory standard could be developed to ensure realistic and reasonably consistent valuations for purchased mortgage servicing rights. If so, how could such a standard be developed and enforced?

3. What should constitute an "independent market valuation" of purchased mortgage servicing rights? Is it possible for the industry to develop and abide by reasonable standards on this issue?

4. Whether the Uniform Single Audit Program for Mortgage Bankers provides adequate coverage of the risk associated with servicing operations. If not, what change are recommended?

5. Whether the regulatory accounting standards for purchased mortgage servicing rights and excess servicing fees are adequate to ensure that the financial statements accurately represent the condition of the mortgage servicers. For example, are any additional guidelines needed relating to foreclosure reserves, marking to market, or marking to the lesser of amortized cost or market?

d. Mortgage Servicing Standards

1. Whether FNMA, FHLMC, and GNMA can develop, implement and effectively enforce consistent mortgage servicing standards to control the risks associated with this activity.

2. What information could these agencies or others disclose to improve the discipline of the participants in the industry?

3. In what way can the concerns about mortgage servicing rights being "pulled" in the event that the mortgage servicer defaults on its servicing responsibilities be mitigated?

C. Qualifying Intangible Assets and the "Criteria Approach"

The current capital regulation requires that all intangible assets other than purchased mortgage servicing rights be deducted from capital and assets when computing the bank's primary and total capital ratios. The risk-based capital guidelines do not delineate by name particular intangible assets that need not be deducted from capital and assets in computing capital ratios. Instead, the guidelines establish criteria that intangible assets must meet to quality for inclusion.

In the preamble to the risk-based capital guidelines, the OCC specified that purchased mortgage servicing rights could meet the criteria for qualifying intangibles in most cases. The criteria approach was developed to allow for the potential that other identifiable intangibles might provide real, measurable, and stable value to the bank; even when the bank's equity is depleted. However, the preamble did not specify whether other identifiable intangibles meet the criteria. The OCC is soliciting comment on the likelihood, conditions, and process under which any other identifiable intangible asset should be considered a qualifying intangible.

Core deposit intangibles have been suggested as an intangible asset that generally would meet the conditions required of a qualifying intangible. However, in the cases that the OCC has reviewed to date, no bank has adequately demonstrated that its core deposit intangibles meet the criteria. Below are some of the major concerns that have been expressed about the ability of core deposit intangibles to meet the criteria.

Separability.—Core deposits have been sold by banks, thrifts, and the Resolution Trust Corporation. Some institutions have continued to operate after selling some or most of their core deposits. However, just because a core deposit intangible can be liquidated through the sale of core deposits, it does not automatically meet the requirement of separability. If the institution must dispose of the entire institution or some substantial part of it (i.e., one or more branch offices) or if the sale of these deposits significantly alters either the funding or liquidity structure of the bank, then the separability requirements would not be met.

Identifiable Cash Flow.—The value of a core deposit intangible arises from a forecasted stream of future income that is funded by the low-cost deposits, rather than specific revenue generated from the core deposits themselves. It is not clear whether this satisfies the identifiable cash flow requirement.

This criterion also requires a high degree of certainty that the asset will hold its market value notwithstanding the future prospects of the bank. If core deposits can be expected to leave the bank as the bank's financial condition deteriorates, then this condition is not met.

The common argument in favor of core deposit intangibles meeting this requirement is the fact that the FDIC receives deposit bids in the majority of failure situations. However, that only demonstrates that there is some value attached to the deposits of a failed bank. It does not address the relevant question of whether the value of a core deposit intangible declines as a bank's condition deteriorates and deposit run-off accelerates.

Marketability.—Clearly there is at least a minimal market for core deposits. However, because of the nature of core deposits, the market is often limited to a local area and a select number of bidders. A small number of potential purchasers makes it difficult to establish an *independent* market price for core deposit intangibles and raises questions about the ability of core deposit intangibles to satisfy this criterion.

D. Other Issues for Specific Comment

The OCC requests comments on all aspects of this issue. In particular, the OCC requests comment on the following:

1. Whether any identifiable intangible asset, other than purchased mortgage servicing rights, ordinarily meets the three criteria and should be presumed to be a qualifying intangible.

2. Whether any changes should be made to the criteria to more clearly define the intent of this three part test.

3. Whether it would be better to eliminate the criteria approach from the risk-based capital guidelines and return to the previous practice of specifying which intangibles are eligible for inclusion in capital.

4. Whether national banks should be required to obtain prior approval from the OCC before including an intangible asset, other than purchased mortgage servicing rights, in the capital computation.

5. Whether there should be some minimum amount of intangible assets, other than purchased mortgage servicing rights, that a bank could include in the computation of capital without prior OCC approval.

List of Subjects in 12 CFR Part 3

Banking, Capital.

(12 U.S.C. 93a, 161, 1818; and 12 U.S.C. 3907, 3909)

Dated: September 24, 1990.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 90-23585 Filed 10-4-90; 8:45 am]

BILLING CODE 4810-33-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AB87

Eligibility of Organizations for the Handicapped for Small Business Set-Asides

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to amend its regulations to enlarge the class of organizations eligible for award of Small Business Set-Aside contracts to include public and private organizations for the handicapped, to define the terms under which such organizations may qualify for such awards, and to provide methods to consider protests of eligibility of organizations for the handicapped or appeals of small businesses alleging prospective severe economic injury if a specific award is made to an organization for the handicapped. These proposed amendments implement section 313 of the Small Business Administration Reauthorization and Amendment Act of 1988 (Pub. L. 100-590).

DATES: Comments must be received no later than November 5, 1990.

ADDRESSES: Written comments should be addressed to: Director, Office of Procurement Policy and Liaison, Office of Procurement Assistance, Small Business Administration, 1441 L Street NW., Room 600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Catherine Thomas, Procurement Analyst, 202/653-6588.

SUPPLEMENTARY INFORMATION: This proposed regulation implements sectio 133 of the Small Business Administration Reauthorization and Amendment Act of 1988 (Public Law 100-590). Section 133 enlarged eligibility for award of Small Business Set-Aside contracts to include public and private organizations for the handicapped. Small Business Set-Asides are procurements in which competition is restricted to firms which qualify as small businesses under the definitions established by SBA. In addition to expanding eligibility for these set-asides, the law defines the terms under which the organizations may qualify for such awards; and, also establishes a right of appeal for small businesses which experience, or are likely to experience "severe economic injury" as the result of a proposed award to an organization for the handicapped. The method which has been determined by SBA to be the most suitable means for alleviating severe economic injury is to assure that the affected small business has the opportunity to win award of the contract in question. This is the method for fulfilling the statutory obligation which is least disruptive to the procurement process. It is therefore SBA policy, when severe economic injury is found, to seek award of the contract without regard to offers by organizations for the handicapped.

The Small Business Administration published an interim final rule implementing this statute on January 31, 1990, in the Federal Register (Vol. 55, No. 21, pg. 3201). However, as a result of the application of that rule, SBA determined that section 121.2008, which establishes the procedure for a small business to appeal the award of a contract to an organization for the handicapped, required a substantial revision. As currently written, any small business that was the otherwise

apparent successful offeror on a solicitation could automatically establish severe economic injury if the contract would have represented at least 25 percent of its annual receipts for the last completed fiscal year. If severe economic injury is determined, award would be made to the small business. This would most likely result in no awards being made to organizations for the handicapped. Section 133 of Public Law 100-590 clearly manifested the intent of Congress that organizations for the handicapped be eligible to receive small business set-asides. To remedy this problem, SBA has substantially revised § 121.2005. Because we have made major changes to the procedures established in the interim final rule, SBA is publishing this as a proposed rule.

SBA received four comments as a result of the interim final rule. These comments have been analyzed, and in cases where SBA is adopting the comments, the rule has been changed.

Overview of Public Comments, SBA's Responses Thereto, and a Description of Changes to the Proposed Rule

SBA received a request that we substitute the language "person with a disability" for "handicapped individual". While "person with a disability" may be the preferred way to refer to such individuals, "handicapped individual" is the language that Congress used and defined in the statute; therefore, we cannot change the terminology.

We received a request to add to § 121.2004(c)(4), in a protest of the eligibility of an organization for the handicapped, the Committee for Purchase from the Blind and Handicapped may deliver eligibility documentation in its file that the protested concern is a workshop eligible to participate udner the Jevits-Wagner-O'Day Program. This comment was adopted.

A commenter requested that in §§ 21.2004(c) (2) and (6) and 121.2005(c) (2) and (4), the rule state that the method of delivery of protests and appeals be expanded to allow telephone and FAX protests and appeals. We cannot adopt this suggestion because we have agreed with the Federal Acquisition Regulation staff that we would make this process consistent with the process for handling size protests and appeals.

A commenter requested that SBA expand the regulations to allow an organization for the handicapped to file an appeal to SBA if they have suffered or are likely to suffer severe economic injury as a result of a proposed award to another organization for the handicapped. SBA cannot adopt this comment. The statute authorizes SBA to grant relief to a small business suffering severe economic injury as a result of a proposed award to an organization for the handicapped. While organizations for the handicapped are eligible for small business set-asides, they are not small business concerns. The statute did not authorize SBA to provide such relief to organizations for the handicapped.

A commenter suggested that the rule should state the fact that an organization for the handicapped does not used to meet a small business size standard to be eligible for a small business set-aside. We feel that this is clear and that it is not necessary to specifically state this in the regulations.

A commenter stated that while we established a procedure for small businesses to protest the eligibility of an organization for the handicapped, we did not establish a procedure for an organization for the handicapped to protest the eligibility of a small business. It is unnecessary for SBA to include such procedures in this regulation. Procedures for protesting the eligibility of a small business are outlined in great detail in SBA's size regulations set forth in part 121 of title 13, Code of Federal Regulations.

It was suggested that the rule include SBA's reporting requirements under the statute. SBA is required to notify all agencies when the maximum amount that may be awarded to organizations for the handicapped under the law has been reached. However, the reporting requirements fall primarily on the procuring agencies and the Office of Federal Procurement Policy. Therefore, SBA does not believe this is necessary.

Goodwill Industries of America, Inc. commented that 121.2005 unnecessarily restricts the remedies available when SBA determines that severe economic injury has occurred or is likely to occur as the result of an award of a small business set-aside to an organization for the handicapped. They suggested that rather than awarding the contract to a small business if severe economic injury is found, the award be split between the small business and the organization for the handicapped or that a "joint venture" be formed between the two. SBA gave this considerable thought before publishing the interim final rule, and again when we analyzed the comments, and we have determined that award to the small business concern in cases where severe economic injury has been determined is the only reasonable means to assure direct alleviation of the injury. The other alternatives impose a great administrative burden on the procuring activity and interfere with prompt and efficient procurement processes.

Section by Section Review

Section 121.2001 describes the underlying policy of permitting public and private organizations for the handicapped to participate in Federal procurements which are set-aside for small business. It notes the total dollar limits on such participation. It also describes an appeal right which the SBA Reauthorization Act provides for small businesses which experience or are likely to experience severe economic injury as a result of award of set-asides to such organizations. Such small businesses may appeal the award to SBA. The final agency decision on the appeals will be made by the Associate Administrator for Procurement Assistance as the delegates of the Administrator. The section also sets forth the remedy for such severe injury: removal of the eligibility of the organizations for the handicapped for award of the contract at issue.

Section 121.2002 provides definitions of "public or private organizations for the handicapped" and "handicapped individual." Although Public Law 100-590 provided that the definition for public and private organizations for the handicapped would be as set forth in section 3(e) of the Small Business Act the definition contained in this rule omits the portion of the statutory definition found in subparagraph 3(e)(3). This omission is required because subparagraph 3(e)(3) provides limitations on the organizations in terms of financial assistance, which is not involved in contract awards. Additionally, the portion of subparagraph 3(e)(3) which requires that 75 percent of the labor be performed by handicapped individuals, is separately addressed in Public Law 100-590, and separately implemented in this proposed rule by section 121.2003.

In § 121.2003 the eligibility of sheltered workshops for Small Business Set-Asides is established, including the requirement that at least 75 percent of the direct labor performed on each item being produced, or on each type of service being performed, must be performed by handicapped individuals. This section also notes that organizations for the handicapped cease to be eligible for such set-asides when the aggregate limits for such awards during a fiscal year have been reached.

The procedure for protesting the eligibility of sheltered workshops is described in § 121.2004. These rules are modeled on long-established rules for protesting the small business status of another offeror on a Federal procurement. The essential differences are that the determinations would be made at the Central Office of the SBA, rather than at a regional office; the Committee for the Blind and Other Severely Handicapped would be consulted; and, the determination would be the final administrative remedy. The section also describes the documentation which will establish the eligibility of an organization for the handicapped.

The provisions of § 121.2005 describe the process for appeal of awards to organizations for the handicapped by small businesses who allege severe economic injury has been or will be suffered as a result of award of a contract to an organization for the handicapped. Other than the revisions to § 121.2005 discussed above, this section remains unchanged from the interim final rule of January 31, 1990, (Federal Register volume 55, No. 21, pg. 3201). Reasonable grounds for appeal are described and a presumption is established that 25 percent or more of a small business' annual receipts is "severe". The level of 25 percent has been selected because, in the absence of other persuasive data, it conforms to the level selected for SBA's "8(a)" program which also conducts reviews of economic impact upon competing candidates for contracts. The procedure for appeal is again modeled on the process for protesting small business status but would include a 10-day period for filing appeals, as set forth in the law. The remedy provided is the only reasonable means to assure direct alleviation consistent with the reasonable needs for prompt and efficient Federal procurement processes. Here, also, determinations will be made at the Central Office of the SBA and will be the final administrative remedy.

Compliance With Executive Orders 12291 and 12612, the Administrative Procedure Act (5 U.S.C. 551 et. seq.), the Regulatory Flexibility Act (5 U.S.C. 601, 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Chap. 35).

SBA has determined that this proposed rule does not constitute a major rule for purposes of Executive Order 12291 because the annual effect on the economy will not exceed $100 million. The statutory limit on the program does not exceed $50 million in any one year and SBA's previous experience with a similar program showed less than $10 million to be involved.

SBA certifies that this proposed rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of compliance with the Regulatory Flexibility Act, 5 USC 601 *et seq.*, SBA certifies that this proposed rule will not have a significant effect on a substantial number of small entities. While it is possible that 10 or more small entities might use these appeal procedures, such a contingency is not anticipated.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule will impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Handicapped, Loan programs-business, Reporting and recordkeeping requirements, Small businesses, standard industrial classification codes.

For the reasons set forth above, part 121 of title 13, Code of Federal Regulations (CFR) is amended as set forth below:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 is proposed to be revised as follows:

Authority: Sections 3(a), 8(b)(6), and 15(c) of the Small Business Act, as amended (15 U.S.C. 632(a), 634(b)(6) and 644(c)), and Public Law 100-656, 102 Stat. 3853 (1988).

2. It is proposed to revise subpart B of part 121 to read as follows:

Subpart B—Other Eligibility Provisions

121.2001 Statutory basis.
121.2002 Definitions.
121.2003 Eligibility.
121.2004 Protest of eligibility.
121.2005 Appeal of economic impact.

Subpart B—Other Eligibility Provisions

Eligibility of Organizations for the Handicapped for Small Business Set-Asides

§ 121.2001 Statutory basis.

(a) The Small Business Act as amended by Public Law 100-590 provides that pubic or private organizations for the handicapped shall be eligible to participate in Federal procurements which are set aside for small business, during fiscal years 1989 through 1993, in aggregate amounts of not more than $30,000,000 in 1989; $40,000,000 in 1990; and $50,000,000 each year in 1991 through 1993.

(b) That law further provides for appeal to SBA of such an award when a small business experiences or is likely to experience severe economic injury as a result of the proposed award to an organization for the handicapped. Any eligible concern wishing to appeal must file its appeal with the SBA within 30 days after the announcement of the proposed award to which the appeal relates. SBA is afforded 30 days from the date the appeal is filed to consult with the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped.

§ 121.2002 Definitions.

(a) *Organization for the handicapped* means a public or private entity:

(1) Which is organized under the laws of the United States or any state, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; and,

(2) Which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor.

(b) *Handicapped individual* means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

§ 121.2003 Eligibility.

Organizations for the handicapped shall be eligible for award of contracts set aside for small business provided that:

(a) The workshop meets the definition in § 121.2002(a);

(b) At least 75 per centum of the direct labor performed on each item being produced by the organization for the handcapped under the contract or performed in providing each type of service under the contract is performed by handicapped individuals; and,

(c) The maximum allowable amount of such awards for the applicable fiscal years has not been reached.

§ 121.2004 Protest of eligibility.

(a) *Who may protest.* A responsive offeror, the affected contracting officer, or the Small Business Administration may protest the status of an offeror as an organization for the handicapped eligible for participation in small business set-asides.

(b) *Grounds for protests.* Protests must include specific information which tends to show that the protested organization does not meet the eligibility criteria set forth in § 121.2003.

(c) *Procedure for protest.* (1) Protests shall be submitted to the contracting officer who shall promptly forward them to the Associate Administrator for Procurement Assistance, Small Business Administration, 1441 L Street, NW., Washington DC 20416. The Associate Administrator shall be the deciding official for purposes of protests under this section.

(2) Protests must be received within 5 business days after the date of the offer of the apparent successful offeror.

(3) The protest must be in writing and must state fully and specifically the grounds for the protest.

(4) The protest must be received by the Associate Administrator before award is made by the contracting officer. Protests received after award will not be considered.

(5) The Associate Administrator may dismiss a protest which is frivolous or untimely.

(6) The Associate Administrator will request the Committee for Purchase from the Blind and Other Severely Handicapped to provide a written recommendation on the protest.

(7) The Associate Administrator will request the protested organization to demonstrate the eligibility of an organization:

(i) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

(ii) A copy of the bylaws certified by an officer of the corporation.

(iii) A statement identifying the principal officers and members of the governing board.

(iv) A statement identifying the nonprofit organization or other tax exemption under the Internal Revenue Code.

(v) A statement identifying any profits which inure to the benefit of any shareholder or individual.

(vi) A statement identifying the State and local health and safety standards applicable to the workshop.

(vii) A statement identifying a prior small business set-aside contract that was awarded to an organization for the handicapped.

(b) *Grounds for appeal.* (1) An incumbent contractor must show, absent competition by organizations for the handicapped, the incumbent contractor is likely to receive the instant award, a prior small business set-aside contract that was awarded to an organization for the handicapped.

(b) *Grounds for appeal.* (1) An incumbent contractor must show, absent competition by organizations for the handicapped, the incumbent contractor is likely to receive the instant award, a prior small business set-aside contract that was awarded to an organization for the handicapped.

proceed with award or to make an award without regard to offers by organizations for the handicapped. Notice shall be complete upon hand delivery, delivery by telegram or placement in the U.S. mail.

(5) The decision by the Associate Administrator shall be the final agency action with respect to such appeals.

Administration, Room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5660.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the development of these special conditions by submitting such

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(c) *Procedure for protest.* (1) Protests shall be submitted to the contracting officer who shall promptly forward them to the Associate Administrator for Procurement Assistance, Small Business Administration, 1441 L Street, NW., Washington DC 20416. The Associate Administrator shall be the deciding official for purposes of protests under this section.

(2) Protests, including copies, shall be delivered by hand, telegram or be placed in the U.S. mail prior to the close of business on the fifth working day after bid opening or, in the case of a negotiated procurement, the fifth working day after receipt of notification of the identity of the apparent successful offeror.

(3) The Associate Administrator for Procurement Assistance shall notify the protested organization in writing that a protest concerning its eligibility for small business set-asides has been presented.

(4) The protested organization shall deliver required documentation, with any other documentation or information it wishes SBA to consider within three business days of receipt of written notification of the protest. See paragraphs (d) and (e) of this section. If the protected organization is a workshop participating under the Javits-Wagner-O'Day Program, the required documentation may be delivered by the Committee for Purchase from the Blind and Other Severely Handicapped which maintains workshop eligibility documentation on file in its offices. Delivery may be made by hand, telegram or placement in the U.S. mail.

(5) The Associate Administrator for Procurement Assistance shall consult with the Executive Director of the Committee for Purchase from the Blind and other Severely Handicapped before rendering a determination.

(6) SBA shall, within ten business days of receipt of a protest, notify parties, including the contracting officer, of its decision. Notification will be considered complete upon hand delivery, receipt of a telegram, or placement in the U.S. mail.

(7) The eligibility determination by the Associate Administrator shall be the final Agency action with respect to such protests.

(8) Failure to submit any documentation required to resolve a protest may be grounds for resolution of the protest against the non-submitting party.

(d) *Required documentation to demonstrate eligibility.* Except as provided in paragraph (e) of this section, the following documentation, where applicable, will be required to demonstrate the eligibility of an organization:

(1) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

(2) A copy of the bylaws certified by an officer of the corporation.

(3) If the articles of incorporation or bylaws do not include a statement to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual, one of the following documents:

(i) A certified copy of the State statute under which the workshop was incorporated which includes wording to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual.

(ii) A copy of a resolution approved by the governing body of the corporation, certified by an officer of the corporation to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual.

(iii) A copy of the Internal Revenue Service certificate, duly executed during the prior twelve months, indicating that the corporation has been accepted as a non-profit agency for taxation purposes.

(e) A State-owned or State-operated workshop for the blind or other severely handicapped shall demonstrate its eligibility by submitting the following documents:

(1) A certified copy of the State statute establishing or authorizing the establishment of workshop(s) for the handicapped.

(2) In the case of a wholly-owned State corporation, a certified copy of the corporation bylaws; and, in the case of a State agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the workshop, or other similar documents.

§ 21.2005 Appeal of economic impact.

A proposed award of a small business set-aside to an organization for the handicapped may be appealed to SBA if a small business concern has experienced or is likely to experience severe economic injury as the result of the proposed award.

(a) *Who may appeal.* Those eligible to appeal are:

(1) A small business concern making an offer on the solicitation which is or was the incumbent contractor on a predecessor contract for the services or products being solicited; or,

(2) A small business concern offering on the solicitation which was the otherwise apparent successful offeror on a prior small business set-aside contract that was awarded to an organization for the handicapped.

(b) *Grounds for appeal.* (1) An incumbent contractor must show, absent competition by organizations for the handicapped, the incumbent contractor is likely to receive the instant award, and

(i) That the dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year.

(2) Offerors appealing on the grounds of prior small business set-aside contract awards to organizations for the handicapped must show, absent competition by organization for the handicapped, such offeror is likely to receive the instant award; and

(i) The dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year, and

(ii) The dollar amount of the prior small business set-aside contract awarded to an organization for the handicapped for which the concern was the otherwise apparent successful offeror represented at least 25 percent of its annual receipts for the fiscal year in which the contract was awarded. If the fiscal year in which the prior contract awarded to an organization for the handicapped is not yet completed, the award must represent at least 25 percent of the small business concern's most recently completed fiscal year.

(c) *Procedure for appeal.* (1) Appeals shall be submitted to the contracting officer who shall promptly forward them to the Associated Administrator for Procurement Assistance, Small Business Administration, 1441 L Street NW., Room 600, Washington, DC 20416. The Associate Administrator shall be the deciding official for purposes of appeals under this section.

(2) Appeals including copies, shall be delivered by hand, telegraph, or placed in the U.S. mail, by the close of business of the tenth calendar day after opening of bids or, in the case of negotiated procurements, after receipt of notification of the identity of the apparent successful offeror.

(3) The Associate Administrator shall consult with the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped and shall resolve the appeal within ten working days after its receipt.

(4) The Associate Administrator shall, within ten working days of receipt of an appeal, notify appellants and affected contracting officers of SBA's decision and require the contracting officer to proceed with award or to make an award without regard to offers by organizations for the handicapped. Notice shall be complete upon hand delivery, delivery by telegram or placement in the U.S. mail.

(5) The decision by the Associate Administrator shall be the final agency action with respect to such appeals.

Dated: August 2, 1990.

Susan S. Engeleiter,

Administrator.

[FR Doc. 90-23426 Filed 10-4-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 089CE, Notice No. 23-ACE-56]

Special Conditions; Grob EGRETT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Grob EGRETT. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of 14 CFR part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of composite materials for primary flight structure and evacuation of fumes from pressurized airplanes for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 23.

DATES: Comments must be received on or before November 5, 1990.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 089CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 089CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: C. Sumner, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the development of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 089CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Grob EGRETT-airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; part 23 of the FAR, effective February 1, 1965, as amended by amendments 23-1 through 23-34; Special Federal Aviation Regulation (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27-1 through 27-6; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any; and any special conditions resulting from this notice.

Background

On February 1, 1988, Grob made application for a type certificate through the Luftfahrt Bundesamt (LBA) to the FAA Brussels Office for the EGRETT airplane. The Grob EGRETT is a single seat, high aspect ratio, pressurized, mid-wing monoplane with tricycle landing gear. The EGRETT utilizes composite material for its structure, powered by a turbopropeller engine. The maximum gross weight is 8,950 pounds.

The Grob EGRETT is made of composites assembled mainly by bonding. Since the early 1940's, airframes have predominantly been composed of semi-monocoque aluminum. Composite material of the type used on the Grob EGRETT is generally not susceptible to the initiation of fatigue cracks by the application of repetitive loads, like that of semi-monocoque aluminum. The composite material is, however, susceptible to damage in the form of cracks, breaks, and delaminations. Because of this and other factors, the FAA has determined that the wing fatigue requirements of § 23.572 are inadequate to assure that the composite material structure can withstand the repeated loads of variable magnitude expected in service.

Part 23 does not require that non-commuter airplanes have the capability to evacuate smoke from the cockpit area. There have been numerous instances where faults/failures of an airplane's systems/components (electrical/heating/cooling, etc.) have caused significant amounts of smoke in the cockpit of CAR 3/FAR part 23 airplanes. These failures substantiate the need for a requirement to demonstrate that the current generation of part 23 airplanes have the capability to evacuate smoke from the cockpit area.

Because the requirements of part 23 do not address the level of substantiation necessary for composite material structure, or the capability to remove smoke from the cockpit area, special conditions are proposed to include the necessary airworthiness standards as a part of type certification basis for the Grob EGRETT airplane.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, in accordance with § 21.17(a)(2).

The proposed type design of the Grob EGRETT airplane contains a number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary

because the airworthiness requirements of part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the Grob EGRETT airplane.

Composite Structure

All safety of flight structure is to be constructed of composite materials, which require damage tolerance evaluations. This action is not a rule of general applicability and affects only the model/series of airplane indentified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety.

consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations, must be

2. Cockpit Smoke Evacuation

In the absence of specific requirements for evacuation of smoke from the cockpit, the following applies:

The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of reasonably probable failures or

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Since issuance of those AD's, there have been numerous reports of cracking in all of the lap joints. Based upon these reports, the FAA has determined that it is necessary to require additional repetitive inspections to detect cracking in a more timely manner; repair, if necessary; and eventual modification of

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because the airworthiness requirements of part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the Grob EGRETT airplane.

Composite Structure

All safety of flight structure is to be constructed of composite materials, which require damage tolerance methods for a thorough evaluation. Composite materials in existence, and in commonly used aircraft airframes at this time, are typically more susceptible than commonly used aluminum structure to damage from intrinsic and discrete sources that might adversely influence strength properties. It is generally agreed that damage tolerance criteria should be used to show that composite material structure can withstand the repeated loads of variable magnitude expected in service. Because of the lack of a service experience base for these new materials and their mechanical properties characteristics, there is a need to apply special requirements such as residual strength load with large area manufacturing defects (*e.g.*, understrength bonds) and impact damage from discrete sources, and ability to carry ultimate load with realistic impact damage below the threshold of detectability and material environmental exposure effects.

Cockpit Smoke Evacuation

Small airplanes have typically been unpressurized where smoke could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be depressurized readily to evacuate smoke without creating an unsafe condition. Applicable airworthiness standards do not require that the Grob EGRETT airplane have smoke evacuation provisions. Such provisions must be incorporated for the safety of the pilot because of the high operating altitude. This notice proposes special conditions to require the capability to evacuate smoke from the cockpit and to require the ventilation air for normal operations to be free of harmful or hazardous concentrations of gases and vapors in order to maintain an acceptable environment at the maximum operating altitudes of this airplane.

Conclusion

In view of the design features discussed above, the following special conditions are proposed for the Grob EGRETT airplanes under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane indentified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secretary 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration proposes the following special condition as part of the type certification basis for the Grob EGRETT airplane by adding the following:

1. Evaluation of Composite Structure

Instead of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of airplane, the wing, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structure, fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces another attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; *e.g.*, bond defects, or damage from discrete sources under repeated loads expected in service; *i.e.*, between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations, must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) The wing, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structure, fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces, and their attaching structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a non-destructive inspection technique that ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint, consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition, must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof-testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; *e.g.*, exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials, must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon tests must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

2. Cockpit Smoke Evacuation

In the absence of specific requirements for evacuation of smoke from the cockpit, the following applies:

The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of reasonably probable failures or malfunctioning of the ventilating, heating, pressurization, or other systems and equipment. If accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, smoke evacuation must be readily accomplished, starting with full cockpit pressurization and without depressurizing beyond safe limits.

Issued in Kansas City, Missouri on September 24, 1990.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23599 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-176-AD]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing airworthiness directives (AD), applicable to certain Boeing Model 727 series airplanes, that currently require inspection of the fuselage lap joints for cracks, corrosion, and/or delamination, and repair, if necessary; and modifications of certain lap joints. This action would require additional inspections of certain lap joints and the modification of those lap joints. This proposal is prompted by reports of cracking in these joints. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than November 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-176-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to paticipate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-176-AD." The post card will be date/time stamped and returned to the commenter.

Discussion:

On July 3, 1989, the FAA issued AD 89-15-06, Amendment 39-6282 (54 FR 29530, dated July 13, 1989), to require inspection of the fuselage lap joints for cracks, corrosion, and/or delaminations, and repair, if necesary; and modifications of certain lap joints from Body Station (BS) 259 to BS 1183.

On January 8, 1990, the FAA issued AD 90-02-10, Amendment 39-6461 (55 FR 603, dated January 8, 1990), to require a one-time inspection; repair, if necessary; and reporting of cracks found on additional lap joints from BS 259 to BS 1183.

Those actions were prompted by reports of cracks and/or corrosion along the upper fastener row of certain longitudinal lap joints that incorporate a cold metal bonding process. This condition, if not corrected, could result in rapid decompression of the airplane.

Since issuance of those AD's, there have been numerous reports of cracking in all of the lap joints. Based upon these reports, the FAA has determined that it is necessary to require additional repetitive inspections to detect cracking in a more timely manner; repair, if necessary; and eventual modification of additional lap joints.

The FAA has reviewed an approved Boeing Service Bulletin 727-53-0072, Revision 5, datd June 1, 1989, which describes procedures for the inspection for delamination, corrosion, or cracking; repair; and modification of all fuselage lap joints between BS 259 and BS 1183.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD's 89-15-06 and 90-02-10 with a new airworthiness directive that would require inspection and eventual modification of certain lap joints, in accordance with the service bulletin previously described. The required modification consists of replacement of the upper row of fasteners with protruding head fasteners.

There are approximately 813 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1,700 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,364,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsbilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

the service bulletin. Inspection is not required adjacent to protruding head fasteners located under fairings. If any cracks are detected, repair prior to further flight, in accordance with part III of the Accomplishment Instructions of the service bulletin.

C. 1. Within the next 6 months after August 21, 1989, unless accomplished within the last 9 months, or prior to the accumulation of

part II, Paragraph B.2., of the Accomplishment Instructions of the service bulletin. If corrosion exceeds 10% of skin thickness, prior to further flight, repair in accordance with part II, Paragraph C.1., of the Accomplishmeat Instructions of the service bulletin.

E. To conduct the inspections required by this AD:

I. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-116-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained

fuselage skin; high frequency eddy current (HFEC) inspection of the skin for cracking; repair, if necessary; and reporting of inspection findings. That action was prompted by reports of fatigue cracking in the skin in the window belt area. This condition, if not corrected, could result in rapid decompression of the airplane

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by superseding Amendment 39-6262 (54 FR 29530, July 13, 1989), AD 89-15-05 and Amendment 39-6461 (55 FR 668, January 8, 1990), AD 90-02-10, with the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-0072, Revision 5, dated June 1, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Within the next 2,500 landings or 1 year after August 21, 1989 (the effective date of Amendment 39-6262, AD 89-15-05), whichever occurs first, or prior to the accumulation of 28,000 landings, whichever occurs later, unless previously accomplished within the last 2,000 landings or 2 years; and thereafter at intervals not to exceed 4,500 landings or 3 years, whichever occurs sooner; perform a high frequency eddy current (HFEC) inspection for cracks of the skin at fuselage lap joints S-4 and S-10 where the upper skin is less than 0.056 inch thick, from body station (BS) 259 to BS 1183, in accordance with Paragraph A. of part I of the Accomplishment Instructions of Boeing Service Bulletin 727-53-0072, Revision 5, dated June 1, 1989 (hereinafter referred to as "the service bulletin"). If any cracks are detected, prior to further flight, repair in accordance with part III of the Accomplishment Instructions of the service bulletin.

B. Within the next 2,500 landings or 18 months after February 12, 1990 (the effective date of Amendment 39-6461, Ad 90-02-10), whichever occurs first, or prior to the accumulation of 28,000 landings, whichever occurs later, unless previously accomplished within the last 18 months; and thereafter at intervals not to exceed 4,500 landings or 3 years, whichever occurs sooner; perform a high frequency eddy current (HFEC) inspection for cracks of the fuselage skin at lap joints, S-14, S-19, S-20, and S-23 at locations where the upper skin is less than 0.056 inch thick from body station (BS) 259 to BS 1183, in accordance with Paragraph A. of part I of the Accomplishment Instructions of the service bulletin. Inspection is not required adjacent to protruding head fasteners located under fairings. If any cracks are detected, repair prior to further flight, in accordance with part III of the Accomplishment Instructions of the service bulletin.

C. 1. Within the next 6 months after August 21, 1989, unless accomplished within the last 9 months, or prior to the accumulation of 28,000 landings, whichever occurs later; and thereafter at intervals not to exceed 15 months; perform a detailed external visual inspection for cracks and for corrosion of fuselage lap joints (including S-4 and S-10) between BS 259 and BS 1183, except for S-14 (between BS 360 and BS 1183) on those airplane identified in the service bulletin as Group I airplanes, in accordance with Paragraph B.1. and B.2. in part I of the Accomplishment Instructions of the service bulletin. Adequate lighting must be used for this inspection and, if necessary, inspection aids such as a mirror and 10X glass. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, loose fasteners, and delamination. Repair cracks, corrosion, and delamination in accordance with paragraph D. of this AD.

2. The repetitive inspection required by paragraph C.1. of this AD, may be conducted at intervals not to exceed 30 months in lieu of the 15 month interval for lap splices that have protruding head fasteners and are located under airplane fairings. Fasteners under the edge of the fairing also may be visually inspected at 30-month intervals, provided there is no evidence of cracking or corrosion of the lap joint from the edge of the fairing forward two frame stations for the leading edge of the fairing and aft two frame stations for the trailing edge of the fairing.

D. 1. If cracks, delamination, or corrosion are detected at lap splices, prior to further flight, perform a HFEC inspection for cracks in the affected lap joint along the complete panel length in accordance with paragraph A. or B. of this AD, except for areas under fairings as described in paragraph C.2. of this AD. Repair cracks prior to further flight, in accordance with part III of the service bulletin. If corrosion or delamination is found at any lap joint, repeat the HFEC inspection at intervals not to exceed 15 months or 3,000 landings, whichever occurs first; or repair the delamination prior to further flight, in accordance with part II of the Accomplishment Instructions of the service bulletin. Repair the corrosion in accordance with paragraph D.2. of this AD. Where a panel is interrupted by a major cutout, such as an entry door or cargo door, the panel is considered to end at the cutout.

2. If corrosion or delamination is found, prior to further flight, conduct a low frequency eddy current (LFEC) inspection, in accordance with part II of the Accomplishment Instructions of the service bulletin, of the lap joint along the complete panel length, except for areas under fairings as described in paragraph C.2. of this AD, to determine corrosion depth. If corrosion does not exceed 10% of the skin thickness, repeat the LFEC inspection at intervals not to exceed 2,000 landings or 8 months, whichever occurs first, until repaired in accordance with part II, Paragraph B.2., of the Accomplishment Instructions of the service bulletin. If corrosion exceeds 10% of skin thickness, prior to further flight, repair in accordance with part II, Paragraph C.1., of the Accomplishment Instructions of the service bulletin.

E. To conduct the inspections required by this AD:

1. Remove the paint, using an approved chemical stripper; or

2. Ensure that the fastener head is clearly visible.

F. Modify fuselage skin lap joints where the upper skin is less than 0.056 inch thick by replacing the upper row of fasteners with protruding head fasteners, in accordance with part IV of the Accomplishment Instructions of the service bulletin, in accordance with the following schedule:

No. of landings on August 21, 1989 (the effective date of Amendment 39-6262)	Modify within the next
45,000 or more	4 years after August 21, 1989.
Less than 45,000	6 years after August 21, 1989, or prior to the accumulation of 28,000 landings, whichever occurs later.

1. Before oversizing holes, perform a HFEC inspection of the hole to ensure it is crack-free. If cracking is detected, prior to further flight, repair in accordance with the service bulletin.

2. If the hole was not HFEC inspected prior to fastener installation, the skin must be visually inspected in accordance with paragraph C.1. of this AD within 1 year after August 21, 1989, or 4 years after the fastener installation, whichever occurs later, and reinspected thereafter at intervals not to exceed 15 months.

3. Replacement with protruding head fasteners constitutes terminating action for the repetitive HFEC inspections required by paragraphs A. or B. of this AD. The inspections required by paragraph C. of this AD are to continue.

G. Modification in accordance with Figure 4 of the service bulletin constitutes terminating action for the inspections required by paragraphs A., B., and C. of this AD for the modified area.

H. Blind fasteners installed in the lap joints are to be used as an interim repair only. The blind fasteners specified in the service bulletin have a life of 10,000 landings and all other blind fasteners have a life of 3,000 landings before they must be replaced with protruding head solid fasteners. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or 1,000 landings after the effective date of the AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings. Blind fasteners installed prior to August 21, 1989, must be replaced prior to the threshold specified in this paragraph or within 3,000 landings after August 21, 1989, whichever occurs later.

I. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

J. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 25, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23602 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-116-AD]

Airworthiness Directives; Boeing Model 737 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires a one-time ultrasonic inspection for delamination of the window belt skin doubler from the fuselage skin; high frequency eddy current (HFEC) inspection of the skin for cracking; repair, if necessary; and reporting of inspection findings. This action would require repetitive inspection until the terminating modification has been accomplished. This proposal is prompted by reports, submitted as a result of the existing AD, which indicated that approximately one-third of the airplanes inspected had disbonding. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than November 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-116-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-116-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 13, 1989, the FAA issued AD 89-15-05, Amendment 39-6264 (54 FR 29529, July 13, 1989), to require ultrasonic inspection of Boeing Model 737 series airplanes for delamination of the window belt skin doubler from the fuselage skin; high frequency eddy current (HFEC) inspection of the skin for cracking; repair, if necessary; and reporting of inspection findings. That action was prompted by reports of fatigue cracking in the skin in the window belt area. This condition, if not corrected, could result in rapid decompression of the airplane.

Since issuance of that AD, the FAA has received inspection reports, applicable to airplane line numbers 001 to 610, which indicate that approximately one-third of the inspected fleet has experienced disbonding of the window belt doublers from the fuselage skin. These reports also indicated that four airplanes experienced some small fatigue cracking. Fatigue cracking is attributed to delamination of the doubler, which results in knife-edged rivet holes. Failure to detect and repair cracks could lead to rapid decompression of the airplane.

Airplane line numbers 520 to 610 were produced with a different fuselage skin bonding process. Since the reports required by AD 89-15-05 indicated that no delamination was found on these airplanes, the FAA has determined that no additional action is warranted for these airplanes under this AD action.

The FAA has reviewed and approved Boeing Service Bulletin 737-53-1078, Revision 1, dated September 25, 1990, which describes procedures for inspection for delamination and cracking of the fuselage window belt skin, and procedures for repair (modification).

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 89-15-05 with a new airworthiness directive that would require repetitive ultrasonic inspection for delamination of the window belt skin doubler from the fuselage skin. If delamination is detected, (1) an HFEC inspection would be required to be accomplished to detect cracking, and any cracks repaired prior to further flight, and (2) a modification would be required to be accomplished within a certain time period and would constitute terminating action for the inspection requirements of this AD. Additionally, as discussed above, this action would exclude airplanes, line numbers 520 through 610, from the applicability of the AD.

There are approximately 519 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 164 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the

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required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,240.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulatioins as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 89-15-05 Amendment 39-6294 (54 FR 29529, July 13, 1989), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 001 through 510, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Within the next 3,000 cycles after the effective date of this AD, unless previously accomplished within the last 3,000 cycles, and thereafter at intervals not to exceed 6,000 cycles, perform an ultrasonic inspection for delamination of the window belt skin doubler from the fuselage skin, in accordance with Boeing Service Bulletin 737-53-1078, Revision 1, dated September 25, 1986.

B. If delamination is found as a result of the inspections required by paragraph A. of this AD, prior to further flight, conduct a high frequency eddy current (HFEC) inspection for cracks of the skin around the countersunk fasteners in the area of delamination and common to the window forging, in accordance with Boeing Model 737 Non-destructive Test (NDT) Manual Document D6-37239, Part 6, Subject 53-30-05. If cracks are detected, prior to further flight, repair cracking and delamination in accordance with Boeing Service Bulletin 737-53-1078, Revision 1, dated September 25, 1986.

C. If delamination is found as a result of the inspection required by paragraph A. of this AD, perform the terminating modification in accordance with Boeing Service Bulletin 737-53-1076, Revision 1, dated September 25, 1986, prior to the accumulation of 40,000 cycles or within the next 24 months, whichever occurs later after discovery of the delamination. Accomplishment of the terminating modification defined in Boeing Service Bulletin 737-53-1078, Revision 1, dated September 25, 1986, constitutes terminating action for the inspections required by paragraph A. and B. of this AD.

D. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle Aircraft Certification Office, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commerical Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 25, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23609 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its requirements under the Poison Prevention Packaging Act of 1970, as amended, for child-resistant packaging of certain household substances. The current regulations provide that a package design must be capable of resisting opening by 85 percent of a panel of 200 children after a 5-minute test and by 80 percent of the panel after an additional 5-minute test. The package must also be able to be opened and, if appropriate, properly closed within 5 minutes by 90 percent of a panel of 100 persons of ages from 16–45 years.

Because some persons, especially older persons, find certain types of child-resistant packaging difficult to open and resecure properly, a number of people either purposely purchase products in packages that are not child-resistant or do not properly resecure the package after opening it initially. The Commission concludes that if these difficult-to-use packages were replaced with packages that are easier to use, more people would purchase and properly use child-resistant packaging, with a reduction in the number of poisonings of children. In order to accomplish this goal, the Commission proposes to substitute a panel of 100 older adults, ages from 60–75 years, for the current panel of 18–45 year-olds. The Commission believes that substituting a panel of older adults, who as a group are less able to open child-resistant packaging, will exclude the more difficult-to-use designs that now can pass the test with the younger panel. In addition, the Commission proposes to reduce the time provided for the adults to open and, if appropriate, properly resecure the packages from 5 minutes to 1 minute. In order to allow the use of new packaging designs that are unfamiliar, the proposed 1-minute opening/resecuring test would be preceded by a 30-second period that the test subject can use to become familiar with how the package operates. In the event the Commission concludes that it is not feasible to substitute a panel of 60–75 year-olds for the present panel of 18–45 year-olds, the Commission proposes to reduce the time allowed for the 18–45 year-olds to 30 seconds, preceded by a 30-second familiarization period.

Other proposed amendments are intended to simplify the current test procedures, without reducing the ability of the test to determine child-resistance. These amendments include testing for child resistance by using sequential groups of 50 children, until a statistically valid determination of whether the package is child-resistant is obtained, or until the current number of children tested, 200, is reached. Also, the Commission proposes to use 3 age groups, of 42–44, 45–48, and 49–51 months, with 30, 40, and 30 percent of the children in each age group, respectively, instead of the current 10 age groups between 42 and 51 months.

The remaining proposed amendments are intended to ensure that the test protocol produces more consistent results. These amendments are: to add a procedure for determining whether the package has been secured adequately by the adults; to limit the number of subjects that could be tested by any one tester to no more than 30 percent of the children or 35 percent of the adults; to limit the number of subjects that could be tested at any one site to 20 percent of the children and 35 percent of the adults; and to issue guidelines for standardized instructions to be used when testing.

DATES: Written comments are due no later than January 3, 1991. An opportunity for the presentation of oral comments will be provided at 10 a.m. on December 5, 1990.

ADDRESSES: Written comments and data should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207 or delivered to Room 528, 5401 Westbard Avenue, Bethesda, MD 20816. Persons who wish to present oral comments to the Commission on this proposal must contact Sheldon Butts in the Office of the Secretary at (301) 492-6800 on or before November 21, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia White, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

I. Introduction and Purpose

The Poison Prevention Packaging Act of 1970 (PPPA), 15 U.S.C. 1471–1476, authorizes the Consumer Product Safety Commission to issue requirements that certain household substances be sold in child-resistant packaging. Under the PPPA, the Commission has defined and established standards for such "special" packaging. 16 CFR 1700.1(b)(4), 1700.3, 1700.15 and 1700.20. The Commission has also determined which household substances are required to have the special packaging. 16 CFR 1700.14.

To comply with the special packaging requirements, a package must resist entry by most young children and must not be difficult for most adults to open and properly resecure, within specified time periods. The existing requirements were developed before the widespread use of child-resistant packaging and, therefore, without the benefit of the actual use experience and test data that have since become available.

Many consumers find child-resistant packaging to be either too difficult or too inconvenient to use. When given the choice, therefore, many consumers purchase products in conventional packaging rather than child-resistant packaging. [3] [1] Consumers are also making a substantial number of child-resistant packages ineffective after bringing them home, such as by leaving the package cap off or loose or by placing the package's contents in a non-child-resistant container. [3]

On January 19, 1983, the Commission published an advance notice of proposed rulemaking ("ANPR") outlining its concerns in this area and explaining possible actions to increase the proper use of child-resistant packaging, simplify the test procedures, and make the test procedures less affected by possible variables. 48 FR 2389. After considering comments on the ANPR and other available information, the Commission decided to propose the amendments described below. The Commission believes these proposed amendments will make the special packaging requirements more effective, by increasing the number of adults who, when purchasing hazardous household products, will purchase child-resistant packaging and use it properly, thereby reducing ingestions by children.

II. Current Special Packaging Requirements

A. Child Test and Criteria

The current child-test protocol (16 CFR 1700.20(a)(1), (2), and (3)) specifies the use of 200 children, ages 42 through 51 months, distributed in ten groups by specific ages. Each age group consists of approximately one-half boys and one-half girls. The test period is ten minutes. The children are given test packages and asked to open them. After the first five minutes, the opening test is stopped while the children are given a single visual demonstration of the method of opening the package. At this time, the children also are told that they may use their teeth to open the package, if they wish. Then, the opening test is started again and continues for another five minutes.

For a package to meet the PPPA effectiveness criteria, at least 85 percent of the children must be unable to open the package within the first five minutes, and at least 80 percent of the children must be unable to open the package by the end of the second five-minute period. 16 CFR 1700.15(b)(1).

B. Adult Test and Criteria

The current adult test protocol, 16 CFR 1700.20(a)(4) and (5), specifies a panel of 100 adults, ages 18 through 45 years. Seventy percent of the adults must be females and 30 percent must be males. The test period is five minutes. The adults are given the test package and asked to open and then properly close the package. For a package to meet the PPPA effectiveness criteria, at least 90 percent of the adults must be able to open and, if appropriate, properly close the package within the five-minute test period. 16 CFR 1700.15(b)(2). The present PPPA regulations contain no specific procedure to determine whether or not a package has been properly resecured.

C. Noncomplying Packaging

The Congress was concerned that elderly or handicapped persons would be unable to open child-resistant packaging. Therefore, the PPPA was drafted to permit substances subject to child-resistant packaging requirements to be marketed in non-child-resistant packages in certain circumstances. Except for a substance that is dispensed pursuant to a prescription by a physician, dentist, or other licensed medical practitioner, the manufacturer or packer of a substance subject to a child-resistant packaging standard may package the substance in one size of a package that does not comply with the standard if the manufacturer or packer also supplies such substance in packages that comply with the standard and the noncomplying packages bear labeling stating "This package for households without young children." Substances dispensed subject to a prescription that are subject to a child-resistant packaging standard may be dispensed in non-child-resistant packaging only when directed by the prescriber or requested by the purchaser. Thus, persons who find child-

[1] Numbers in brackets indicate the number of a relevant supporting document in the "List of Relevant Documents" in Appendix 1 to this notice.

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resistant packaging unduly difficult to use may purchase the single size of a product that may be provided in noncomplying packaging or may request that his or her prescriptions be supplied in noncomplying packaging, thereby eliminating the protection that child-resistant packaging provides against poisoning.

III. Issuing Child-Resistant Packaging Standards

A. Action by CPSC under the PPPA

Section 3(a)(1) of the PPPA, 15 U.S.C. 1472(a)(1), authorizes the Commission to issue standards for the special packaging of any household substance if it finds that "the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance." The Commisison previously made these findings for the substances listed in 16 CFR 1700.14 when it required those substances to meet the standards and testing procedure specified in 16 CFR 1700.15 and 1700.20. These previous findings will not be affected by the proposed amendments to § 1700.20.

Section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), requires the Commission to find that the amended standard "is technically feasible, practicable, and appropriate for (the substances to which it will apply)." "Technically feasible" means that package designs that would meet the requirements of 16 CFR 1700.15(b), and that would be suitable for use with the products subject to the rule, are or can be available. S. Rep. No. 91–845, 91st Cong. 2d Sess. 10 (1970). A standard is "practicable" when special packaging for the products covered by the rule is adaptable to modern mass production and assembly line techniques. *Id.* That special packaging is "appropriate" is established by showing that special packaging can be available in forms that are not detrimental to the integrity of the substance and do not interfere with its storage or use. *Id.*

Under 3(b) of the PPPA, 15 U.S.C. 1472(b), the Commission, in issuing a PPPA standard, also is required to consider (a) the reasonableness of the standard, (b) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances, (c) the manufacturing practices of industries affected by the PPPA, and (d) the nature and use of the household substance. In issuing this proposal, the Commission has considered these factors.

With regard to the findings relating to the nature, toxicity, and use of, and access to, the household substance, the previous Commission findings as to each substance covered by a special packaging standard are unaffected by the proposal to revise the test protocol.

B. Action by EPA under FIFRA

The Environmental Protection Agency ("EPA") is responsible for enforcing the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), as amended (7 U.S.C. 136–136y). Under this Act, EPA has the authority to protect man and the environment from the adverse effects of pesticides by ensuring that pesticide products are applied, stored, and disposed of in a manner consistent with the product registration. The Administrator of EPA is authorized to establish standards with respect to the package, container, or wrapper in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by FIFRA. FIFRA specifies that the standards established by EPA must be consistent with those established under the authority of the PPPA. Thus, packages that comply with the PPPA regulations would also comply with the standards established by EPA for products regulated under FIFRA. However, EPA would retain the authority to exempt products, either completely or under stated conditions, from the requirement that products regulated under FIFRA have child-resistant packaging.

If the Commission amends its regulations under the PPPA in accordance with the proposal set forth below, EPA could be expected to make any necessary amendments to its regulations for packaging so that EPA's regulations will be consistent wtith those established by the Commission. However, the Commission is not in a position to fully assess how the proposed changes may affect all the products subject to regulation by EPA under FIFRA. For example, some of the containers subject to FIFRA are much larger, and have much larger and more massive closures, than do the household products regulated by CPSC under the PPPA. Such products, that comply with the present PPPA requirements, may not be able to comply with the older-adult test panel or reduced testing times being proposed for products subject to the PPPA.

Accordingly, although the Commission proposes to apply the requirement for an older adult panel, with a 1-minute test time preceded by a 30-second familiarization period, to all products subject to child-resistant packaging requirements under the PPPA, it also proposes to retain descriptions of the 18–45 age panel and the 5-minute adult test time in its regulations. In this way, EPA would have the option of allowing certain containers to comply with a standard incorporating a 5-minute test of the 18–45 age group, if necessary, by continuing to refer to the Commission's regulations rather than by issuing regulations under FIFRA to provide for such options. However, the Commission is not aware of any products regulated under the PPPA that could not be made to meet the older-adult panel and shorter testing times addressed by this proposal, with the proposed effective date, and the Commission does not anticipate that any products currently subject to the PPPA would be allowed to remain subject only to the present requirements for child-resistance.

IV. The Proposed Amendments

The amendments to 16 CFR 1700.20 that the Commission is proposing in this notice are discussed separately below.

A. Sequential Testing of Smaller Groups of Children

The Commission has determined that, in many cases, the time it takes to determine whether a package meets the child-resistant ("CR") effectiveness criteria can be shortened by reducing the number of children tested. The proposed testing of sequential groups of 50 children, instead of a single group of 200, has proven to be a reliable means of determining compliance with the PPPA regulations, while reducing the cost and time associate with the tests.

Statistical theory shows that a package that more than 25 percent of the 50 children tested in the first panel could open (i.e. that fails after the first panel in sequential testing) would be expected to fail 95 percent of the time if tested with 200 children. A package that less than 15 percent of the children tested could open (i.e. that passes in sequential testing) would be expected to pass 95 percent of the time if tested with 200 children.

Therefore, the sequential test is conducted using 50 children initially, and, depending on the results, it would be determined that the package is either child-resistant or not child-resistant or that further testing is required. Further testing would be required if the results from the first group are inconclusive, and would involve the use of one or more additional groups of 50 children each, up to a maximum of the 200 children presently used for the entire test.

For example, if no more than 3 packages are opened in the first five minutes *and* no more than 5 packages are opened during the full 10-minute test period after the first 50-child panel is tested, the package would pass the child-resistant effectiveness ("CRE") requirement and the proposed sequential test would be stopped. On the other hand, the package would fail the child-resistant effectiveness requirement after testing by the first 50-child panel, and the test would be stopped, if 11 or more packages are opened in the first five minutes *or* if 15 or more packages are opened during the full 10-minute test period. The test would continue with a second panel of 50 children if 4 through 10 packages are opened by the first panel in the first five minutes *and* 6 through 14 packages are opened during the full 10-minute test period.

Table 1 gives the acceptance (pass), continue testing, and rejection (fail) criteria to be used for the first 5 minutes and the full 10 minutes of the children's test. If the test continues past the initial 50-child panel, the package openings shown in Table 1 are cumulative.

TABLE 1.—NUMBER OF OPENINGS, ACCEPTANCE (PASS), CONTINUING TESTING AND REJECTION (FAIL) CRITERIA TO BE USED FOR THE FIRST 5 MINUTES AND THE FULL 10 MINUTES OF THE CHILDREN'S PROTOCOL TEST

Test panel	Cumulative children	Package openings					
		First 5 minutes			Full 10 minutes		
		Pass	Continue	Fail	Pass	Continue	Fail
1	50	0–3	4–10	11+	0–5	6–14	15+
2	100	4–10	11–18	19+	6–15	16–24	25+
3	150	11–18	19–25	26+	16–25	26–34	35+
4	200	19–30		31+	26–40		41+

Commission tests [10] of various levels of failing packages with groups of 50 children resulted in statistically predictable results that agreed in general with 200-child protocol results, even for borderline samples. Results of at least 225 tests indicate that the sequential test method provided results comparable to the 200-child test for borderline and passing packages as well as for failing packages.

The estimated number of children to be tested will drop from 200 to 50 in most cases. Based upon CPSC protocol testing costs for FY 88 and FY 89, a 200-child test costs $8,612, while a sequential test of 50 children costs $2,040, a potential savings of $4,572. (CPSC–88–1232, CPSC–89–565300.) Furthermore, the actual time required for testing is substantially reduced.

Since this is a procedural change that is not expected to change the test results, this proposed revision will have no effect on the ability of currently-available child-resistant packaging to meet the effectiveness criteria.

B. Child Test—Reduce 10 Age Groups to 3

The Commission proposes to replace the 10-age-group requirement with a 3-age-group requirement of 42–44, 45–48, and 49–51 months, with 30, 40, and 30 percent of the children in each age group, respectively.

The reduction from 10 age groups to 3 has been proven feasible by Commission comparison testing, which established that the results are comparable and that the time required to test children is lessened. The actual test time required for testing 50 children in 3 age groups is less than that required for testing with 10 age groups; one 3-age-group test required 9 days of actual testing, during an elapsed time of less than one month. Ten-age-group testing of the same package took 14 days of testing during an elapsed time of 2.5 months. (CPSC Contract-CPSC–C–83–1339.)

The Commission proposes the following modification to the child test protocol so that the number of age groups for testing may be reduced to three, provided the children are selected at random and 30 percent of the children are between 42–44 months, 40 percent between 45–48 months, and 30 percent between 49–51 months and that the difference between the number of boys and the number of girls in each age group shall not exceed 10 percent of the number of children in that group.

Even though it is generally important in all testing that test subjects be selected at random, it is especially essential in the 3-age-group testing because of the correlation between the ability of children to open child-resistant packaging and their age. Therefore, a bias could be introduced by selection of children with a disproportionate number of older (or younger) children in the age groupings.

Since this is a procedural change that is not expected to affect the test results, the proposed revision will have no effect on the ability of currently available child-resistant packaging to meet the effectiveness criteria.

C. Site and Tester Requirements

The Commission proposes requirements to prevent variability in the child and adult protocol testing due to differences in sites and testers. The requirements will eliminate bias and the effects it might have on the passing or failing of a particular type of child-resistant package. The Commission has been successfully using the site and tester requirements described below in its protocol testing of child-resistant packaging since 1979.

1. Limit any one tester to testing no more than 30 percent of the children tested.

2. Limit the number of children tested at any one site to no more than 20 percent of the total number of children tested.

3. Limit any one tester to testing no more than 35 percent of the total adults tested.

4. Limit the number of adults tested at any one site to no more than 35 percent of the total number of adults tested.

The site and tester requirements were instituted because Commission protocol test results showed bias with certain testers and sites. A significant difference was found between two failing 50-child test results, which was attributed to site and tester biases [1, 10, 11]. A verification test was conducted, which used multiple sites and testers [1, 10, 11]. Tests conducted in this fashion showed no statistically significant differences. These findings substantiate the need for site and interviewer requirements.

The Commission also has analyzed all usable previous protocol test data that reveal differences in test results due to tester and site bias. While the studies showed no significant difference for the lug type of child-resistant packaging, the

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snap and continuous-threaded ("CT") (screw) type of child-resistant packaging did show differences. [11]

D. Adult Resecuring Test

In order for a package to pass the adult-use effectiveness specifications at 16 CFR 1700.15(b)(2), at least 90 percent of the adult test panel (now 100 adults, age 18–45) must be able to open the package and, where appropriate, resecure it to a child-resistant state during the 5-minute test period. Products that are packaged so that no more of the product than is needed for one use (unit-dose packaging) need not be resecured.

However, some types of child-resistant packaging do not lend themselves to a visual or mechanical determination of whether the package has been returned to the child-resistant state after normal closing by adults. To address this problem, the Commission's staff devised a procedure to determine whether the package has been resecured (closed) to a child-resistant state. The Commission proposes that the adult test procedure incorporate the procedure used by the staff for determining whether adults have properly resecured the package after opening it, as a suggested way to determine whether the adults properly resecured the package and with the explanation that this method will be used, when appropriate, by the Commission in determining compliance with the adult resecuring provisions at 16 CFR 1700.20(a)(5). Other ways to determine whether the packages have been adequately secured would also be allowable, where appropriate.

In the proposed method for determining whether a package has been properly resecured, each package that has been opened and apparently resecured in the adult test is given to a child, who tries to open the package in accordance with the child test procedure to see if the package remains child-resistant after being resecured in the adult test. Since a package can be child resistant even if up to 15 percent of the children in the child test can open the package in the first 5-minute test or up to 20 percent of the children can open the package in the full 10-minute test, only the child openings in excess of these percentages of the packages tested in the resecuring test are counted as failures in the adult-effectiveness test. Therefore, the total failures in the adult-effectiveness test equals the sum of (1) the number of packages that were not opened by the adults plus (2) the number of packages that were opened by the adults but not even apparently resecured plus (3), with respect to the packages that were apparently resecured by the adults and were then tested by children, the larger of (a) the number of packages that were opened by the children during the first 5-minute test in excess of 15 percent of the apparently-resecured packages or (b) the number opened during the full 10-minute test that exceeds 20 percent of the apparently-resecured packages. In other words, where:

a = the number of packages not opened by the adults
b = the number of packages clearly not resecured by the adults
c = the number of apparently closed packages opened by children in the first 5 minutes
d = the number of packages opened by children in the full 10 minutes
e = c − 0.15[100 − (a + b)] (disregard if less than zero)
f = d − 0.2[100 − (a + b)] (disregard is less than zero) the total number of failed packages in the 100-package adult opening/resecuring test is the sum oif a + b + (e or f, whichever is greater).

E. Standardized Test Instructions

Although the Commission is not able to quantify the effect of using differently worded instructions for the adult and child tests, it is generally agreed that standardized tester instructions would be helpful in preventing tester bias. Since 1979, the Commission's staff has used a particular standardized guideline in its compliance testing without any problems attributed to bias. In order to help minimize the effect of tester bias, the Commission proposes to issue suggested guidelines (not requirements) that would supplement the existing test protocols at 16 CFR 1700.20 by stating the guidelines that are used by the Commission's staff.

F. An Older-Adult Test Panel, and Shortened Test Times

1. *The Need For Packaging That Is Easier To Open and, If Appropriate, Resecure.* The noncomplying provision of the PPPA, 15 U.S.C. 1473(a), specifically allows consumers to obtain regulated products in conventional packaging. 16 CFR 1700.5. In addition, 15 U.S.C. 1473(b) allows regulated prescription products to be provided in non-child-resistant packages when requested by the purchaser or directed by the prescriber. Many persons exercise these options to obtain packaging that is not child-resistant, and this exposes a significant number of young childern to toxic products.

A 1989 CPSC study [18] of a statistical sample of ingestions of medications by children under age 5 that were treated by hospital emergency rooms reporting to the National Electronic Injury Surveillance System (NEISS) showed that 44 percent of the prescription medicines in the study were not dispensed in a child-resistant package. This study also showed that about 40 percent of the medications (prescription or non-prescription) in the study were not originally packaged in a child-resistant container at the time of purchase and that about 17 percent of the medications were originally packaged in a child-resistant package ("CRP") but were not in a secured (returned to the child-resistant mode) child-resistant package at the time of the ingestion. The 17 percent tha were no longer in secured child-resistant packaging consisted of cases where the medication had been removed from the container prior to the ingestion (about 9 percent), cases where the medication was in a child-resistant package but the top was left open (about 6 percent), or cases where the medication was in a container with a different top (about 2 percent). Further, a 1986 study of prescription drug ingestions reported by poison control centers [3] showed that, for all medicines in prescription containers other than a unit-dose package, 18 percent (n=234) had a cap that was loose or off prior to the ingestion.

However, if child-resistant packaging were easier to use, there would be less motivation to seek out packaging that is not child-resistant. Thus, fewer conventional packages would be available to young children who live with or are otherwise exposed to the purchasers. In addition, if complying packages are easier to open and resecure, it is more likely that the packages will be properly resecured after use.

The problem of child-resistant packages that are too difficult to operate properly has a special impact on older consumers, who as a group have more difficulty opening child-resistant packages. A survey of 120 non-institutionalized older persons showed that 60 percent acknowledged having difficulty opening or closing child-resistant medication containers. [4] Sixty-four percent of the women (average age, 70 years) and 36 percent of the men (average age, 67 years) admitted to having difficulty.

The difficulties experienced by older persons in using child-resistant packaging, and the resultant tendency to avoid using such packaging, also exposes children to risk. When the 18-45 age panel requirement was established, the preamble to the rule stated that this

age range was chosen because it represented the age range to which young children typically were exposed. However, data acquired since then have shown that there is substantial exposure of young childern to adults older than age 60. In the 1989 CPSC NEISS study [18], 16 percent of the prescription medicines ingested were medicines belonging to a grandparent. The percentage of the prescription drugs ingested that belonged to persons age 60 or above was also 16 percent. (Some grandparents were younger than age 60, while some medicine owners age 60 or older were other relatives or family friends.) Adding a panel of older persons would help ensure that the child-resistant packaging on the market can be used by the older persons who come into contact with children.

Commission tests [13] show that the inclusion of an older-adult test as part of the PPPA human performance test protocol also will improve the ability of all adults to use child-resistant packaging. Therefore, adding a panel of older adults would serve the purpose discussed above of making packaging easier for all adults to use, thereby increasing consumer willingness to use child-resistant packaging and to keep the package properly resecured. The Commission has received at least 76 form letters stating that the sender has trouble with child-resistant packaging, supporting the 60-75 age panel requirement, and pledging that the writer would use child-resistant packaging if it were inexpensive and easy to use. The Commission is aware of one study showing that easy-to-use child-resistant packaging would result in increased proper resecuring of caps. [13,14]

The available information indicates that consumers view the packages that pass a panel of older persons as relatively easy to use. A child-resistant design that passed a panel of persons of ages 60-75 with a 5-minute test period was rated "easy to use" or "very easy to use" by 77 percent of the test subjects and by 80 percent of the test subjects who were successful in opening the package. Thus, the data support the idea that a panel of older persons is an appropriate mechanism for making child-resistant packaging easier to use and that this will result in more persons buying child-resistant packaging and using it properly. The proposal to substitute an older panel for the current panel of 18-45 year-olds is discussed in Section IV.F(3) of this notice.

Another aspect of the current child-resistant packaging regulation is that the 5-minute test time provided for the adult test probably exceeds greatly the time that consumers would be willing to spend attempting to open a child-resistant package. Thus, shortening the test time should help ensure that child-resistant packaging is acceptable to users and will therefore be used properly. The proposal to shorten the test times for the adult panels) is discussed in Sections IV.F (2) and (3) of this notice.

The major types of reclosable child-resistant packaging in current use are the snap, lug, and continous threaded (CT), or screw, types. The major types of nonreclosable child-resistant packages are the blister type and the pouch. In addition, there are other multiple-use child-resistant packages, such as pumps, nozzels, and aerosols. In the discussion below, the Commission shows why it has concluded preliminarily that these changes to the regulations are technically feasible, practicable, and appropriate for the snap, lug, and continuous threaded types of packages. [29] Although the Commission does not have data that would allow it to make these findings specifically for other types of closures, such as blister, pouches, nozzels, pumps, and aerosols, it has no reason to belive that child-resistant designs for other types of closures that will meet the proposed requirements do not exist or cannot be developed. Even if they cannot, however, the substances that are used with these other types of closures can be packaged in one or more of the major design types for which the Commission does have data establishing technical feasibility, practicability, and appropriateness. In addition, features such as nozzles can themselves be covered by one of the other child-resistant closures that are technically feasible.

2. *Shortened Adult-Test Time.* The consideration in establishing a time period for testing by a panel of adults are:

1. Time is required to read the instructions necessary to find out how to open and close the package.

2. Time is required to perform the manipulations necessary to open and properly resecure the package.

3. Additionally, time may be required to allow for the introduction of new concepts of child-resistant packaging that are not familiar to the consumer. (Consumers faced with new packaging designs may initially require more time to familiarize themselves with it.)

Presently, at a 90 percent adult-use effectiveness, the protocol specified a five-minute adult test time for the 18–45 age group. The 5-minute test period allows sufficient time for reading instructions and performing the motions required to open and close new child-resistant packaging concepts. However, this time period also may provide for more time than an adult could reasonably be expected to spend attempting to open and close a child-resistant package in the home. The frustration level experienced by persons trying to open a package depends on both the effort and time required to open the package. [26] The effort required to open and, if appropriate, secure child-resistant packaging should be reduced by requiring that closures can be opened and, if appropriate, resecured by the 60–75 age group. In order to ensure that child-resistant packaging is not so difficult to use that adults must spend an unreasonable amount of time trying to open and close the packaging, at a 90 percent adult-use effectiveness, the Commission is proposing to reduce the time period to 1 minute for the 60–75 age group. At the present time, it does not appear that any purpose would be served by retaining a requirement for a 18–45 age group if the 60–75 age group is established. However, if it is ultimately deemed necessary to retain the 18–45 age group, either alone or in addition to the 60–75 age group, the Commission is proposing a 30-second test time for the 18–45 age group.

The Commission concludes that snaplug, and CT packages that comply with the 1-minute test time for the 60–75 age panel are technically feasible, practicable, and appropriate, as those terms are defined in Section III.A of this notice, because some complying designs are already on the market for snap, lug, and CT packages (see Table 2 below). [29] Any additional designs that exist or that will be developed should be practicable and appropriate since they are expected to use the same or very similar materials as existing packaging and since they are not expected to require any manfacturing techniques that are not now readily available.

Commission data and information submitted by manufacturers indicate that snap, lug, and continuous-threaded types of child-resistant packaging can be produced that 90 percent of 18–45 year-old adults are able to open and secure within a 30-second test period. Therefore, it is technically feasible, practicable, and appropriate to produce child-resistant packaging that will meet the requirements of these proposed revisions for a 30-second test period with a panel of 18–45 year-old adults. These findings do not apply to unit-dose packaging, such as blisters and pouches.

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Since the test data showing technical feasibility of a 1-minute test time for the snap, lug, and CT packages involved designs that use a mode of operation with which many persons may already be familiar, a 1-minute test time may not provide an adequate period for becoming familiar with a new design. In

threaded (CT) plastic closures having a diameter of 28 mm ± 10%, the CT closures having been resecured 72 hours before testing at 10 torque-inch-pounds, and round plastic containers, in sizes of 2 ounce ± 1/2 ounce for the CT type closure and 8 drams ± 4 drams for the snap type closure. Comment is solicited

packaging easier to use. Under this standard, existing packaging would have to be improved in some instances and new packaging developed in others. The new designs are expected to be practicable and appropriate, as those terms are defined in Section III.A of this notice, since the new designs are

A study [8] by a product manufacturer with child-resistant blister packaging showed that 100 percent of the 46–70 age group tested opened the child-resistant blister package, with an average opening time of 50 seconds. This child-resistant blister packaging type, with approximately half of the adults taking more than 50 seconds to open, would

minor reduction in child-resistance attributable to use of the older-adult panel.

G. Effective Dates

As discussed above, there are at least some designs of snap, lug, and continuous threaded packages that already comply with the proposed 1-

limitations on sites and testers would become effective 180 days after publication of the final rule in the Federal Register.

The amendments to publish the suggested guidelines for standardized instructions and for an appropriate resecuring test are proposed to become

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Since the test data showing technical feasibility of a 1-minute test time for the snap, lug, and CT packages involved designs that use a mode of operation with which many persons may already be familiar, a 1-minute test time may not provide an adequate period for becoming familiar with a new design. In order that the introduction of new types of package designs not be discouraged, the Commission is also proposing that the test include a 30-second period that would precede the actual test so the test subject would have an opportunity to become familiar with the operation of the package before the timed portion of the test begins. However, if after considering the comments on the proposal the Commission concludes that a familiarization period is not appropriate, it could issue a final rule for a 1-minute test time without a familiarization period.

3. *Older Adult Test.*

a. *Description of the Test.* The Commission proposes to substitute a panel of 100 adults, between the ages of 60–75 years, for the present adult panel of 18–45 years, in order to test the ability of people in this age group to open and, where appropriate, reseccure child-resistant packaging.

The older adult panel test would be as follows:

i. The test panel would be composed of 100 adults between the ages of 60–75, selected at random, who have successfully passed a one-minute screening test using packaging with conventional (not child-resistant) packages. The screening tests for this purpose shall use snap and continuous-threaded (CT) plastic closures having a diameter of 28 mm ± 10%, the CT closures having been resecured 72 hours before testing at 10 torque-inch-pounds, and round plastic containers, in sizes of 2 ounce ± 1/2 ounce for the CT type closure and 6 drams ± 4 drams for the snap type closure. Comment is solicited on this screening test and other possible alternative screening tests.

ii. The panel would consist of 70 percent female and 30 percent male participants randomly selected from the established age range.

iii. Ninety percent of the panel must be able to open and, if applicable, reseccure the test package within the 1-minute test period.

The 60- to 75-year-old age range was chosen because Commission studies [2] show there is only a gradual reduction in the ability of adults 18–60 years of age to open and close child-resistant packaging, whereas there is a pronounced decrease in ability after age 60. Consequently a standard based upon the 18–60 age range would not result in the needed improvement.

The 30/70 male-to-female ratio was chosen to provide consistency with the 18–45 year-old adult panel and reflects the more frequent ingestions related to grandmothers' medications, 64 percent (n = 218), compared to 26 percent (n = 88) for grandfathers', as found in the 1986 Posion Control Center Study [3].

b. *Technical feasibility, practicability, and appropriateness.* The 90 percent older-adult use-effectiveness standard was chosen by the Commission as a means of making the more difficult types of child-resistant packaging easier to use. Under this standard, existing packaging would have to be improved in some instances and new packaging developed in others. The new designs are expected to be practicable and appropriate, as those terms are defined in Section III.A of this notice, since the new designs are expected to use the same or very similar materials as existing packaging and since they are not expected to require any manufacturing techniques that are not now readily available.

Technical feasibility, practicability, and appropriateness have been established for the snap- and lug-types of child-resistant packaging. Commission studies show that the two major designs of the snap-type child-resistant packaging presently on the market comply with the proposed standard (1-minute test) with 92 percent and 90 percent older-adult use-effectiveness (Table 2). In the case of the lug-type child-resistant packaging, one lug design presently complies; i.e., 91 percent older-adult use-effectiveness (Table 2), while the other design, with 76 percent older-adult use-effectiveness (Table 2), would need to be upgraded.

Available data indicate that most of the 39 continuous-threaded (screw) type child-resistant packages on the market today will not meet the proposed 90 percent older-adult use-effectiveness standard (Table 2). However, one major child-resistant manufacturer submitted data showing that one size of its continuous-threaded child-resistant package would meet the proposed older-adult use-effectiveness criterion with a 1-minute test period.

TABLE 2.—EFFECTIVENESS OF 90 PERCENT OAUE PROPOSED STANDARD ON BASIC TYPES OF CR PACKAGING ON THE MARKET; WITH 5-, 1-, AND ½-MINUTE TEST PERIODS

CR PKG type	Design	Opening/closing percentage Ages—60–75 (OAUE)		
		5 minutes	1 minute	½ minute
SNAP	1	96	92	92
	2	91	90	73
LUG	1	93	91	84
	2	77	76	70
CT–10(a)	1	85	80	72
	2	75	74	67
CT–20(b)	1	55	51	47
	2	54	53	47
CT–20mm		100	96	96
CT–22mm		90	84	80
WMU (50 w/tool, 50 w/o)		95	90	
with tool		100	74	
without tool		90	86	
Pouch		>90	<90	
Blister		>90	<90	

CT = Continuous Threaded (Screw).
(a) = Resecured (closed) at 10 torque-inch-pounds of rotational force.
(b) = Resecured (closed) at 20 torque-inch-pounds of force.
WMU = Western Michigan University Innovative Package.

For the reasons discussed above, technical feasibility, practicability, and appropriateness have been established for the one-minute test period for the 60–75 age range for the major recloseable child-resistant packaging types now on the market.

A study [8] by a product manufacturer with child-resistant blister packaging showed that 100 percent of the 46–70 age group tested opened the child-resistant blister package, with an average opening time of 50 seconds. This child-resistant blister packaging type, with approximately half of the adults taking more than 50 seconds to open, would not comply with the 1-minute standard and would need to be redesigned or a new concept would need to be developed.

c. *Older-Adult Use-Effectiveness Standard's Influence on Child-resistant Effectiveness.* Child-resistant lug- and snap-type design packaging need not exhibit any appreciable loss in child-resistance with the institution of an age 60–75 test because designs are presently on the market that comply with the child-resistant effectiveness standards and with the proposed test requirements for older adults. In the case of the continuous-threaded child-resistant package that complies with the 90 percent older-adult use-effectiveness for the 60–75 age group at the 1-minute test time, the child test results show 97 percent child-resistance effectiveness. This indicates that there need be only a minimal reduction in child-resistance effectiveness, if any, when the appropriate design changes are made. This result can be achieved by selecting designs that utilize the cognitive abilities of older adults, which are superior to the cognitive abilities of children of the ages involving the highest risk of poisonings, rather than simply selecting designs that depend on the degree of strength required to open the package. In addition, testing of one of the continuous-threaded designs developed under a Commission grant showed that the design can be opened and resecured by almost all the older adult panel members, of whom 78 percent (with a tool) and 60 percent (without a tool) indicated the package was easy to use, yet it maintained a child-resistance effectiveness of 99.5 percent. While this particular design does not comply with the 1-minute test time with the older-adult panel, it does show that there is no inherent conflict between making packages that are much easier to use and packages that have very high child-resistance effectiveness [13].

In addition, it must be kept in mind that 92 percent of the children can open non-child-resistant screw-type packaging. Thus, even a modest reduction in the use of non-child-resistant packages caused by making child-resistant packages easier to use would more than offset any potential minor reduction in child-resistance attributable to use of the older-adult panel.

G. Effective Dates

As discussed above, there are at least some designs of snap, lug, and continuous threaded packages that already comply with the proposed 1-minute test time for the age 60–75 panel and the 30-second test time for the age 18–45 test panel.

In addition, in the past several years, the industry has proceeded with work on packages that would pass the older-adult panel with a 5-minute or considerably less test time, as evidenced by the number of new and revised designs that have become available during this period. Work is expected to continue, and in fact accelerate, during the period between this proposal and consideration of a final rule.

Section 8 of the PPPA, 15 U.S.C. 1471n, requires that the effective date of a special packaging standard "shall not be sooner than one hundred and eighty days or later than one year from the date such regulation is final, unless the [Commission], for good cause found, determines that an earlier effective date is in the public interest and publishes in the **Federal Register** [the] reason for such finding, in which case such earlier date shall apply."

Because of the statutory limitation on the length of the effective date, the Commission proposes that the effective date for the proposed requirements for an older-adult test panel and for a shorter test time shall be one year after the final rule is published in the **Federal Register** and that these amended requirements will apply to all products subject to child-resistant packaging requirements under the PPPA that are packaged after the effective date. The Commission seeks comment on the economic effects of this effective date. Information that would be helpful in this regard would include:

1. What steps are required to design and develop a new child-resistant package and bring it into production?

2. What is the time needed for each step, and what costs are incurred?

3. What is the rate of production from one mold, and what is the length of the mold replacement cycle, the cost of replacing molds, and the time to fabricate new molds?

4. What time is required from the start of new mold fabrication to obtaining volume production (at what volume)?

In order to allow time for companies to complete ongoing studies plan future studies, the amendments concerning sequential testing, three age groups, and limitations on sites and testers would become effective 180 days after publication of the final rule in the **Federal Register.**

The amendments to publish the suggested guidelines for standardized instructions and for an appropriate resecuring test are proposed to become effective 30 days after publication of the final rule in the **Federal Register.** The Commission proposes to find that this effective date is in the public interest because the guidelines provide additional options for achieving reliable test results, yet, since they are not mandatory, they do not require that changes be made by any persons who already are using adequate instructions, recordkeeping procedures, or means to determine whether containers used in the adult tests have been adequately resecured. Therefore, there is no reason why these guidelines should not become effective as quickly as possible.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires agencies to prepare and make available for public comment in initial regulatory flexibility analysis when a general notice of proposed rulemaking is published in the **Federal Register** if the proposed rule would have a significant impact on a substantial number of small businesses, small organizations, and small government jurisdictions. The Commission's proposed revised protocols for testing child-resistant packages may have an effect on some small firms in the child-resistant segment of the closure and packaging industry and may also affect contract packagers, repackagers, and manufacturers who package household chemical products subject to special packaging. The proposed rule applies to substances which must meet the packaging requirements of the Poison Prevention Packaging Act and therefore affects all companies packaging these substances or manufacturing child-resistant packages for such substances. A summary of the Commission's Initial Regulatory Flexibility Analysis [20] is given below.

In accordance with the Regulatory Flexibility Act, the Commission has considered the effect the proposed revised protocols for testing child-resistant packaging would have on small entities. Of these entities, only small businesses would be affected; small organizations and small government jurisdictions would not be affected.

The proposal will affect various categories of businesses, including packaging and closure manufacturers, pharmaceutical repackagers, contract packagers, and manufacturers who produce and package their own household chemical products. Manufacturers of child-resistant packaging or closures may also manufacture other products that are not subject to the proposed regulation.

Manufacturers of products that "fail" the older-adult use-effectiveness standard can modify the existing design, adopt a new product design, or eliminate child-resistant products from their product line, depending on the nature of the failure. At this time, the Commission cannot estimate the cost of

could require amendments to and approval of New Drug Applications on file with the Food and Drug Administration. At present, the cost effect if this situation arises is unknown.

It is expected that a child-resistant package that is easy for adults to open and to reseccure will gain consumer

List of Subjects in 16 CFR Part 1700

Consumer protection, drug—infants and children, Packaging and containers, Poison prevention—toxic substances.

G. Conclusion

For the reason given above, the Commission proposes to amend 16 CFR

(2) Adult-use effectiveness of not less than 90 percent for both the younger adult panel (§ 1700.20(a)(4)(i)) and the older adult panel (§ 1700.20(a)(4)(ii)).

* * * * *

§ 1700.20 [Amended]

3. Section 1700.20(a)(1) is revised to read as follows:

girls in each age range shall not exceed 10 percent of the number of children in that range. The children selected should have no obvious or overt physical or mental handicap. The sequential test is initially conducted using 50 children, and, depending on the results, the criteria in Table 1 determine whether

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pharmaceutical repackagers, contract packagers, and manufacturers who produce and package their own household chemical products. Manufacturers of child-resistant packaging or closures may also manufacture other products that are not subject to the proposed regulation.

The Commission's staff has identified 21 companies with Standard Industrial Classification (SIC) code 3089 (Plastic Products, Not Elsewhere Classified) or code 3466 (Crowns and Closures) having fewer than 500 employees, a size standard used by the Small Business Administration to describe small businesses. SIC codes 3089 and 3466 encompass plastic and metal child-resistant closures, respectively. SIC 3089 includes molded plastics and an extensive variety of fabricated finished plastic products. SIC 3466 includes various stamped metal jar and bottle crowns and tops. Within this group of 21 companies, secondary SIC codes indicate that 10 companies are actively manufacturing products other than child-resistant closures. The percentage of their revenues attributable solely to child-resistant closures is unknown. There may be additional manufacturers of child-resistant closures with fewer than 500 employees that are not classified in SIC 3089 or 3466, indicating their major revenues are from production other than child-resistant packaging or closures.

The Bureau of Census reported that there were shipments of 37.0 billion closures in 1988, of which approximately 8 percent were plastic child-resistant closures used for prescription and nonprescription drugs and other purposes and less than 3 percent were estimated to be metal closures used for medicinal purposes. Child-resistant closures make up a relatively small portion of the closures market, and a substantial number of manufacturers of child-resistant closures also manufacture closures that are not child-resistant, or other products.

An aspect of the test protocol revisions that could affect small business relates to the amount of package testing needed. Manufacturers whose packages already meet the child use-effectiveness requirements will incur expense to test their products for older-adult use-effectiveness ("OAUE"). Certain child-resistant packages tested by the Commission have met both the older-adult use-effectiveness standard and the child-resistant effectiveness standard. Manufacturers of products that already "pass" the older-adult use-effectiveness standard should incur no additional costs.

Manufacturers of products that "fail" the older-adult use-effectiveness standard can modify the existing design, adopt a new product design, or eliminate child-resistant products from their product line, depending on the nature of the failure. At this time, the Commission cannot estimate the cost of research and development to modify existing designs or create a new product design, or the cost of modifying equipment (such as changing molds) to enable packages to meet the revised test protocol since the nature of the modification is unknown. Similarly, the research and development costs to modify existing designs or to create a new product design are also unknown. Packaging prototypes developed under a Commission grant may be in the public domain. If so, companies who choose to adopt these new designs could avoid research and development costs. CPSC encourages submission of cost and lead time information from manufacturers in their comments on the proposed rule.

Some manufacturers of closures or packages that do not meet the new requirements may drop child-resistant products from their line rather than incur the costs of equipment modification and product testing. Manufacturers whose only products are child-resistant closures or packages that do not meet the proposed use-effectiveness standard, and whose share of the market is small, may find that these costs are prohibitive. If such manufacturers leave the market, manufacturers of products that comply with the revised protocol could gain market share.

Entities that package products subject to PPPA requirements, but that do not themselves manufacture the packages, may not be significantly impacted by the proposed test protocol revisions. However, such packagers may need to change suppliers to obtain packages that comply with both the child and adult use-effectiveness requirements. If the supplier certifies compliance with PPPA requirements, the packager may not need to test the packages beyond current quality control procedures.

The continuing high number of accidental ingestions of prescription drug products by children under age five has resulted in specific attention to packagers of prescription drugs. Packagers whose products are dispensed in their original containers may be required to deal with federal agency regulatory requirements in addition to those associated with the PPPA. This is a more probable situation for packagers of liquid pharmaceuticals, for which closure or packaging changes could require amendments to and approval of New Drug Applications on file with the Food and Drug Administration. At present, the cost effect if this situation arises is unknown.

It is expected that a child-resistant package that is easy for adults to open and to resecure will gain consumer acceptance and use. If child-resistant packages were being properly used on dangerous household chemicals and prescription oral drugs, exposure of young children to these substances would decrease, and decreased exposures should result in decreased ingestions and death.

There are no significant alternatives to the proposed revised protocols for testing child-resistant packages. The proposed rule is a refinement of an existing rule and, as such, will impose no new recordkeeping requirement on manufacturers. Also, it is a performance requirement which does not impose any specific design on manufacturers but, rather, encourages the development of new, more effective, package designs.

VI. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed revisions to the PPPA protocols.

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Analysis of the impact of this proposed rule indicated that it should have no significant effects on the environment. This is because manufacturers of affected products will replace present packages that will not comply with the proposed amendments to the protocol with packages made of basically the same materials and made in basically the same way and that present basically the same problems in disposal of the packages after use. The effective date is sufficiently long that noncomplying inventories will be depleted by the time the rule becomes effective and will not need to be disposed of in bulk. The rule will not significantly increase the number of child-resistant packages in use. Therefore, because this proposed rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required. [21]

List of Subjects in 16 CFR Part 1700

Consumer protection, drug—infants and children, Packaging and containers, Poison prevention—toxic substances.

G. Conclusion

For the reason given above, the Commission proposes to amend 16 CFR 1700.20 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a).

§ 1700.15 [Amended]

2. Section 1700.15(b)(2) is revised to read as follows:

(b) * * *

(2) Adult-use effectiveness of not less than 90 percent for both the younger adult panel (§ 1700.20(a)(4)(i)) and the older adult panel (§ 1700.20(a)(4)(ii)).

* * * * *

§ 1700.20 [Amended]

3. Section 1700.20(a)(1) is revised to read as follows:

(a) * * *

(1) Use from 1 to 4 groups of 50 children, as required under the sequential testing criteria in Table 1. Each group of children shall be randomly selected as to age, subject to the limitations set forth below. Thirty percent of the children in each group shall be of age 42–44 months, 40 percent of the children in each group shall be of age 45–48 months, and 30 percent of the children in each group shall be of age 49–51 months. The difference between the number of boys and the number of girls in each age range shall not exceed 10 percent of the number of children in that range. The children selected should have no obvious or overt physical or mental handicap. The sequential test is initially conducted using 50 children, and, depending on the results, the criteria in Table 1 determine whether the package in either child-resistant or not child-resistant or whether further testing is required. Further testing is required if the results are inconclusive and would involve the use of one or more additional groups of 50 children each, up to a maximum of 200 children. Table 1 gives the acceptance (pass), continue testing, and rejection (fail) criteria to be used for the first 5 minutes and the full 10 minutes of the children's test. If the test continues past the initial 50-child panel, the package openings shown in Table 1 are cumulative.

TABLE 1.—NUMBER OF OPENINGS, ACCEPTANCE (PASS), CONTINUING TESTING AND REJECTION (FAIL) CRITERIA FOR THE FIRST 5 MINUTES AND THE FULL 10 MINUTES OF THE CHILDREN'S PROTOCOL TEST

Test panel	Cumulative children	Package Openings: First 5 minutes			Package Openings: Full 10 minutes		
		Pass	Continue	Fail	Pass	Continue	Fail
1	50	0–3	4–10	11+	0–5	6–14	15+
2	100	4–10	11–18	19+	6–15	16–24	25+
3	150	11–18	19–25	26+	16–25	26–34	35+
4	200	19–30	.....	31+	26–40	.....	41+

* * * * *

§ 1700.20 [Amended]

4. Section 1700.20(a)(4) is revised to read as follows:

(a) * * *

(4)(i) *Younger adult panel.* One hundred adults, age 18 to 45 years inclusive, with no overt physical or mental handicaps, and 70 percent of whom are female, shall comprise the test panel for younger adults.

(ii) *Older adult panel.* One hundred adults, age 60 to 75 years inclusive, with no overt physical or mental handicaps, and 70 percent of whom are female, shall comprise the test panel for older adults. Only persons who can open conventional (not child-resistant) snap and continuous-threaded type plastic closures in a 1-minute screening test shall be selected for the older adult panel. The screening tests for this purpose shall use snap and continuous-threaded (CT) plastic closures having a diameter of 28 mm ± 16%, the CT closures having been resecured 72 hours before testing at 10 torque-inch-pounds, and round plastic containers, in sizes of 2 ounce ± ½ ounce for the CT type closure and 8 drams ± 4 drams for the snap type closure.

(iii) *Test procedures.* The adults shall be tested individually, rather than in groups of two or more. The adults shall receive only such printed instructions on how to open and properly secure the special packaging as will appear on the package as it is delivered to the consumer. Prior to the timed test, the adults shall be given a 30-second period to attempt to become familiar with how the package works, during which time they may read the instructions and attempt to open the package. The regulations establishing child-resistant standards for particular substances shall specify which of the following times shall be allowed to complete the opening and, if appropriate, the resecuring process.

(A) For the younger adult panel (§ 1700.20(a)(4)(i)), 30 seconds.

(B) For the younger adult panel (§ 1700.20(a)(4)(i)), 5 minutes.

(C) For the older adult panel (§ 1700.20(a)(4)(ii)), 1 minute.

(D) For the older adult panel (§ 1700.20(a)(4)(ii)), 5 minutes.

§ 1700.20 [Amended]

5. Redesignate § 1700.20 (b) and (c) as § 1700.20 (c) and (d).

§ 1700.20 [Amended]

6. Add a new § 1700.20(b), reading as follows:

* * * * *

(b) The following limitations on test sites and testers will be observed.

(1) No individual shall administer the test to more than 30% of the children tested in each group.

(2) No more than 20% of the children in each group shall be tested at or obtained from any given site.

(3) No individual shall administer the test to more than 35% of the total number of adults tested.

(4) Not more than 35% of the total number of adults tested shall be tested at or obtained from any given site.

* * * * *

§ 1700.20 [Amended]

7. Add a new § 1700.20(e), reading as follows.

* * * * *

(e) *Recommendations.* The following instructions and procedures, while not required, are used by the Commission's staff and are recommended for use where appropriate.

(1) Standardized Child Test Instructions

1. Reclosable packages with closure liners shall be properly resecured at least 72 hours prior to beginning the test to allow the liner to "take a set."

2. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

3. The children shall have no overt physical or mental handicaps. No child with a permanent or temporary illness, injury, or handicap that would interfere with his/her effective participation shall be included in the test.

4. The testing shall take place in a well-lighted location that is familiar to the children and that is isolated from all distractions.

5. Reclosable packages shall be opened and properly resecured one time by the tester who will be conducting the test. The opening and resecuring shall not be done in the presence of the children. (In the case of the adult-resecuring test, it is not appropriate for the tester to open and resecure the package prior to the test.)

6. The tester, or another adult, shall escort a pair of children to the test area. The tester shall ask the two children to sit down in chairs that are positioned so that there is no visual barrier between the children and the tester.

7. The tester shall talk to the children to make them feel at ease.

8. The children shall not be given the impression that they are in a race or contest. They are not to be told that the test is a game or that it is fun. They are not to be offered a reward.

9. The tester shall record all data prior to, or after, the test so that full attention can be on the children during the test period.

10. The tester shall use a stopwatch(s) to record the number of seconds it takes the child to open the package and to time the 5-minute test periods.

11. To begin the test, the tester shall hand the children indentical packages and say "PLEASE TRY TO OPEN THIS POR ME."

12. If a child refuses to participate after the test has started, the tester shall reassure the child and gently encourage the child to try. If the child continues to refuse, the tester shall ask the child to hold the package in his/her lap until the other child is finished. This pair of children shall not be eliminated from the results unless the refusing child disrupts the participation of the other child.

13. Each child shall be given up to five minutes to open his/her package. The tester shall watch the children at all times during the test. The tester shall minimize conversation with the children as long as they continue to attempt to open their packages. The tester shall not discourage the children verbally or with facial expressions. If a child gets frustrated or bored and stops trying to open his/her package, the tester shall reassure the child and gently encourage the child to keep trying.

14. The children shall be allowed freedom of movement to work on their packages as long as the tester can watch both children (e.g., they can stand up, get down on the floor, bang or pry the package).

15. If a child is endangering himself or others at any time, the test shall be stopped and the pair of children eliminated from the final results.

16. The children shall be allowed to talk to each other about opening the packages and shall be allowed to watch each other try to open the packages.

17. A child shall not be allowed to try to open the other child's package.

18. If a child opens his/her package, the tester shall say "THANK YOU", take the package from the child and put it out of the child's reach. The child shall not be asked to open the package a second time.

19. At the end of the 5-minute period, the tester shall demonstrate how to open the package if either child has not opened his or her package. A separate "demo" package shall be used for the demonstration.

20. Prior to beginning the demonstration, the tester shall ask the children to hold their packages still or set the packages aside. The children shall not be allowed to continue to try to open their packages during the demonstration period.

21. The tester shall say "WATCH ME OPEN MY PACKAGE."

22. Once the tester secures the children's full attention, he/she shall hold the demo package approximately two feet from the children and open the package at a normal speed as if he/she were going to be using the contents. There shall be no exaggerated opening movements.

23. The tester shall not discuss or describe how to open the package.

24. To begin the second 5-minute period, the tester shall say "NOW YOU TRY TO OPEN YOUR PACKAGES."

25. If one or both children have not used their teeth to try to open their packages during the first five minutes, the tester shall say "YOU CAN USE YOUR TEETH IF YOU WANT TO." This is the only statement that the tester shall make about using teeth.

26. The test shall continue for an additional five minutes or until both children have opened their packages, whichever comes first.

27. At the end of the test period, the tester shall say "THANK YOU FOR HELPING." In addition, the tester shall say "NEVER OPEN PACKAGES LIKE THIS WHEN YOU ARE BY YOURSELF. THIS KIND OF PACKAGE MIGHT HAVE SOMETHING IN IT THAT WOULD MAKE YOU SICK IF YOU ATE IT."

28. The children shall be escorted back to their classroom or other supervised area by the tester or another adult.

29. If the children are to participate in a second test, the tester shall have them stand up and stretch for a short time before beginning the second test. The tester shall take care that the children do not disrupt other tests in progress.

(2) Report Format for Child Test

A. Identification

1. Close-up color photographs(s) clearly identifying the package and showing the opening instructions on the closure.
2. Product Name & (number of tablets/capsules in package)
3. Product Manufacturer
4. Closure Model (trade name—e.g., "KLIK & SNAP")
5. Closure size (e.g., 28 mm)
6. Closure Manufacturer
7. Closure Material and color(s) (e.g., white polypropylene)
8. Closure Liner Material
9. TAC Seal Material
10. Opening Instructions (Quote exactly, e.g., "WHILE PUSHING, DOWN, TURN RIGHT") Use commas to separate words that are on different lines. Symbols, numbers, and letters found inside the closure.
11. Package Model
12. Package Material and color
13. Net Contents
14. Symbols, numbers, and letters on the bottom of the package
15. Product Identification, e.g., EPA Registration Number.

B. Procedures

1. Describe all procedures for preparing the test packages.
2. Describe the testing procedures.
3. Describe all instructions given to the children.
4. Define an individual package failure.

C. Results

1. Openings in each 5-minute period and total openings for males and females in each age group.
2. Opening Methods (e.g., normal opening, teeth, etc.).
3. Mean opening times and standard deviation for each 5-minute test period.
4. The percentage of packages tested at each site as a percentage of total packages.
5. The percentage of packages tested by each tester as a percentage of total packages.
6. Child-resistant effectiveness for the first 5-minute period and for the total test period.

(3) Standardized Adult Test Instructions

1. Reclosable packages with closure liners shall be properly secured at least 72 hours prior to beginning the test to allow the liner to "set". Torque-dependent closures shall be secured at the same on-torque as applied on the packaging line.

2. All packages shall be handled so that no damage or jarring will occur during storage or transportaiton. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

3. The adults shall have no overt physical or mental handicaps. No adults with a permanent or temporary illness, injury, or handicap that would interfere with his/her effective participation shall be included in the test. (For the older adult test, physical and mental capability is determined by the adult's ability to open and resecure the screening package.)

4. Each adult shall participate individually and not in the presence of other participants or onlookers.

5. The test area shall be well-lighted and free from distraction.

6. Prior to the test, the adult participant shall be given a period of 30 seconds to read the opening instructions and become familiar with how the package operates. The adult shall be provided with a package identical to the test package and any written opening instructions that accompany the retail package. The tester shall give the participant the package and accompanying instructions and say "TAKE SOME TIME TO BECOME FAMILIAR WITH HOW THE PACKAGE WORKS."

7. Prior to the test, no instruction shall be given that would influence how tightly the participant will close the package.

8. Records shall be completed prior to, or after, the test so that the tester's full attention is on the participant during the test period.

9. To begin the test, the tester shall give the participant a package and say "PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instruction locations if appropriate.)

10. The participant shall be allowed up to the full test period to open and resecure the package. Any participant who gives up after the test begins shall be counted as an opening failure. The elapsed participation time should be noted. The tester shall not talk to the participant during the test. The tester shall not remind the participant to close the package unless he/she makes no attempt to resecure the cap on his/her own. In this case, the tester shall say "YOU MAY PROPERLY CLOSE THE PACKAGE NOW."

11. The tester shall use a stopwatch(s) to record the number of seconds it takes the participant to open the package AND the number of seconds it takes the adult to resecure the package.

12. After the participant has resecured the package, or at the end of the test period (whichever comes first), the tester shall take the package and place it out of reach. The adult shall not be allowed to handle the package again. (It is acceptable for the adult to remove and replace the closure more than once IF THE PARTICIPANT INITIATES THESE ACTIONS ON HIS/HER OWN.)

(4) Report Format for Adult Test

A. Identification.

Record the following items:

1. Close-up color photograph(s) clearly identifying the package and showing the top of closure.
2. Product Name and the number of tablets or capsules in the package)
3. Product Manufacturer
4. Closure Model (trade name—e.g., "KLIK & SNAP")
5. Closure Size (e.g., 28 mm)
6. Closure Manufacturer
7. Closure Material and Color(s) (e.g., white polypropylene)
8. Closure Liner Material
9. Symbols, numbers and letters found inside the closure.
10. TAC Seal Material
11. Opening Instructions (quote exactly, e.g., "WHILE PUSHING, DOWN, TURN RIGHT"). Use commas to separate words that are on different lines.
12. Package Model
13. Package Material and color
14. Net Contents
15. Symbols, numbers, and letters on the bottom of the package.
16. Product Identification, e.g., EPA Registration Number

B. Procedures

1. Describe all procedures for preparing the test packages.
2. Describe the testing procedures in detail.
3. Describe all instructions given to participants.
4. Define an individual package failure and the procedures for determining a failure.

C. Results

1. Total packages opened, total packages resecured; packages opened by males and females, respectively; packages resecured by males and females, respectively.
2. Mean opening times and standard deviation for total openings, total openings by females and total openings by males.
3. Mean resecuring times and standard deviation for total resecurings, total resecurings by females and total resecurings by males.
4. The percentage of packages tested at each site as a percentage of total packages.
5. The percentage of packages tested by each tester as a percentage of total packages.
6. Methods of opening (e.g., normal opening, pried closure off, etc.)
7. Calculation of adult-use effectiveness.

(5) Standardized Adult-Resecuring Test Instructions

The adult-resecuring test is used by the CPSC to determine if torque-dependent continuous-threaded packages have been properly resecured. It may be appropriate for other package designs where an objective determination of resecuring is not easily made.

1. Reclosable packages with closure liners shall be properly secured at least 72 hours prior to beginning the test to allow the liner to "set". Torque-dependent closures shall be secured at the same on-torque as applied on the packaging line.

2. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

3. The adults shall have no overt physcial or mental handicaps. No adult with a permanent or temporary illness, injury, or handicap that would interfere with his/her effective participation shall be included in the test. (For the older adult test, physical and mental capability is determined by the adult's ability to open and resecure the screening package.)

4. Each adult shall participate individually and not in the presence of other participants or onlookers.

5. The test area shall be well-lighted and free from any distraction.

6. Prior to the test, the adult participant shall be given a period of 30 seconds to read the opening instructions and become familiar with how the package operates. The adult shall be provided with a package identical to the test package and any written opening instructions that accompany the retail package. The tester shall give the participan' the package and accompanying instructions and say "TAKE SOME TIME TO BECOME FAMILIAR WITH HOW THE PACKAGE WORKS."

7. Prior to the test, no instructions shall be given that would influence how tightly the participant will close the package.

8. Records shall be completed either prior to or after the test, so that the tester's full attention is on the participant during the test period.

9. To begin the test, the tester shall give the participant a package and say "PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instructions locations if appropriate.)

10. The participant shall be allowed up to the full test period to open and resecure the package. Any participant that gives up after the test begins shall be counted as an opening failure. The elapsed participation time should be noted. The tester shall not talk to the participant during the test. The tester shall not remind the participant to close the package unless he/she makes no attempt to resecure the cap on his/her own. In this case the tester may say "YOU MAY PROPERLY CLOSE THE PACKAGE NOW."

11. The tester shall use a stopwatch(s) to record the number of seconds it takes the participant to open AND the number of seconds it takes the adult to resecure the package.

12. After the participant has resecured the package, or at the end of the test period (whichever comes first), the tester shall take the package and place it out of reach. The adult shall not be allowed to handle the package again. (It is acceptable for the adult to remove and replace the closure more than once IF THE PARTICIPANT INITIATES THESE ACTIONS ON HIS/HER OWN.)

13. The packages that have been opened and appear to be resecured by adults shall be given to a panel of children to determine if they have been properly resecured. The packages are given to the children without being opened and resecured again for any purpose.

14. The children shall have no overt physical or mental handicaps. No child with a permanent or temporary illness, injury, or handicap that would interfere with his/her effective participation shall be included in the test.

15. The testing shall take place in a well-lighted location that is familiar to the children and that is isolated from all distractions.

16. The tester, or another adult, shall escort a pair of children from their classroom to the test area. The tester shall ask the two children to sit down in chairs that are positioned so that there is no visual barrier between the children and the tester. In the event that an uneven number of packages were opened and resecured by the adults, a

"dummy" package shall be tested by the second child and excluded from the final results.

17. The tester shall talk to the children to make them feel at ease.

18. The children shall not be given the impression that they are in a race or contest. They are not to be told that the test is a game or that it is fun. They are not to be offered a reward.

19. The tester shall record all data prior to, or after, the test so that their full attention is on the children during the test period.

20. The tester shall use a stopwatch(s) to record the number of seconds it takes the child to open the package and to time the 5-minute test periods.

21. To begin the test, the tester shall hand the children identical packages and say "PLEASE TRY TO OPEN THIS FOR ME."

22. If a child refuses to participate after the test has started, the tester shall reassure the child and gently encourage the child to try. If the child continues to refuse, the tester shall ask the child to hold the package in his/her lap until the other child is finished. This pair of children shall not be eliminated from the results unless the refusing child disrupts the participation of the other child.

23. Each child shall be given up to five minutes to open his/her package. The tester shall watch the children at all times during the test. The tester shall minimize conversation with the children as long as they continue to attempt to open their packages. The tester shall not discourage the children verbally or with facial expressions. If a child gets frustrated or bored and stops trying to open his/her package, the tester shall reassure the child and gently encourage the child to keep trying.

24. The children shall be allowed freedom of movement to work on their packages as long as the tester can watch both children (e.g., they can stand up, get down on the floor, bang or pry the package).

25. If a child is endangering himself or others at any time, the test shall be stopped and the pair of children eliminated from the final results.

26. The children shall be allowed to talk to each other about opening the packages and shall be allowed to watch each other try to open the packages.

27. A child shall not be allowed to try to open the other child's package.

28. If a child opens his/her package, the tester shall say "THANK YOU", take the package from the child, and put it out of the child's reach. The child shall not be asked to open the package a second time.

29. At the end of the 5-minute period, the tester shall demonstrate how to open the package if either child has not opened their package. A separate "demo" package shall be used for the demonstration.

30. Before beginning the demonstration, the tester shall ask the children to hold their packages still or set the packages aside. The children shall not be allowed to continue to try to open their packages during the demonstration period.

31. The tester shall say "WATCH ME OPEN MY PACKAGE."

32. Once the tester secures the children's full attention he/she shall hold the demo package approximately two feet from the children and open the package at a normal speed as if he/she were going to be using the contents. There shall be no exaggerated opening movements.

33. The tester shall not discuss or describe how to open the package.

34. To begin the second 5-minute period, the tester shall say "NOW YOU TRY TO OPEN YOUR PACKAGES."

35. If one or both children have not used their teeth to try to open their packages during the first five minutes, the tester shall say "YOU CAN USE YOUR TEETH IF YOU WANT TO." This is the only statement that the tester shall make about using teeth.

36. The test shall continue for an additional five minutes or until both children have opened their packages, whichever comes first.

37. At the end of the test period, the tester shall say "THANK YOU FOR HELPING." In addition, the tester shall say "NEVER OPEN PACKAGES LIKE THIS WHEN YOU ARE BY YOURSELF. THIS KIND OF PACKAGE MIGHT HAVE SOMETHING IN IT THAT WOULD MAKE YOU SICK IF YOU ATE IT."

38. The children shall be escorted back to their classroom or other supervised areas by the tester or another adult.

39. If the children are to participate in a second test, the tester shall have them stand up and stretch for a short time before beginning the second test. The tester shall take care that the children do not disrupt other tests in progress.

(6) Report Format for Adult-Resecuring Test:

A. Identification.

Record the following items:

1. Close-up color photograph(s) clearly identifying the package and showing the top of the closure
2. Product Name and the number of tablets or capsules in the package
3. Product Manufacturer
4. Closure Model (trade name)
5. Closure Size (e.g., 28 mm)
6. Closure Manufacturer
7. Closure Material and Color(s) (e.g., white polypropylene)
8. Closure Liner Material
9. Symbols, numbers and letters found inside the closure.
10. TAC Seal Material
11. Opening Instructions (Quote exactly, e.g., "WHILE PUSHING DOWN, TURN RIGHT"). Use commas to separate words that are on different lines.
12. Package Model
13. Package Material and Color
14. Net Contents
15. Symbols, numbers, and letters on the bottom of the package
16. Product Identification, e.g., EPA Registration Number

B. Procedures

1. Describe all procedures for preparing the test packages.
2. Describe the testing procedures in detail.
3. Describe all instructions given to participants.
4. Define an individual package failure and the procedures for determining a failure.

C. Results

Adult Test

1. Total packages opened, total packages resecured; packages opened by males and females, packages resecured by males and females.
2. Mean opening times and standard deviation for total openings, total openings by females and total openings by males.
3. Mean resecuring times and standard deviation for total resecurings, total resecurings by females and total resecurings by males.
4. The percentage of packages tested at each site as a percentage of total packages.
5. The percentage of packages tested by each tester as a percentage of total packages.
6. Methods of opening (e.g., normal opening, pried closure off, etc.)

Child Test

1. Openings in each 5-minute period and total openings for males and females in each age group.
2. Opening Methods.
3. Mean opening times and standard deviation for each 5-minute test period.
4. The percentage of packages tested at each site as a percentage of total packages.
5. The percentage of packages tested by each tester as a percentage of total packages.

Adult-use effectiveness, calculated as follows:

1. Adult opening and resecuring failures + the larger of (a) the number of packages that were opened by the children during the first 5-minute test in excess of 15 percent of the apparently-resecured packages or (b) the number opened during the full 10-minute test that exceeds 20 percent of the apparently-resecured packages = total failures
2. Total packages tested by adults (which is 100)—total failures = percent adult-use effectiveness.

§ 1700.14 [Amended]

8. Section 1700.14(a) is amended by inserting "meeting the requirements of § 1700.20(a)(4)(iii)(C)" after "is such that special packaging".

Dated: October 2, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of References

(This Appendix will not be printed in the Code of Federal Regulations.)

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[FR Doc. 90-23038 Filed 10-4-90; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-4-73]

RIN 1545-AC37

One Class of Stock Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirement that a small business corporation have only one class of stock. Changes to the applicable law were made by the subchapter S Revision Act of 1982. These regulations affect corporations and their shareholders, and are necessary to provide them with guidance needed to comply with the applicable tax law.

DATES: Written comments and requests for a public hearing must be received by January 3, 1991.

ADDRESSES: Send comments and request for a public hearing to: Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, Attn: CC:CORP:T:R (PS–4–73), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: David R. Haglund, 202–343–8459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code. These amendments are proposed to implement section 1361

(b)(1)(D) and (c) (4) and (5) as added by the Subchapter S Revision Act of 1982.

Only a small business corporation is eligible to elect subchapter S status. Section 1361(b) defines a small business corporation as a domestic corporation that is not an ineligible corporation and that does not have—(i) more than 35 shareholders, (ii) as a shareholder a person (other than an estate and certain types of trusts) who is not an individual, (iii) a nonresident alien as a shareholder, and (iv) more than one class of stock.

Proposed regulations relating to the definition of an S corporation under section 1361 were published in the **Federal Register** (51 FR 35659) on October 7, 1986. The paragraph relating to the one class of stock requirement was reserved in that document. This document contains proposed regulations relating to the one class of stock requirement. Provisions relating to the other requirements under section 1361 are generally reserved in this document. See the notice of proposed rulemaking published on October 7, 1986, with respect to those provisions.

Explanation of Provisions

The proposed regulations relate to the one class of stock requirement for S corporations provided in section 1361(b)(1)(D) of the Code. The proposed regulations provide that a corporation has more than one class of stock if the outstanding shares of stock do not confer identical rights to distributions and liquidation proceeds, regardless of whether the difference in rights occurs pursuant to the corporate charter, articles of incorporation, the corporate bylaws, by operation of state law, by administrative action, or by agreement. Distributions that are made by a corporation with respect to its outstanding shares of stock and that vary with respect to timing or amount are considered non-conforming distributions and generally result in a second class of stock. However, differences in voting rights, rights that arise out of buy-sell agreements among shareholders, and restrictions on the transferability of stock are disregarded in determining whether a corporation has more than one class of stock. Transfers made by a corporation to a shareholder that are characterized as distributions under the Code (*e.g.*, under section 7872) or under general principles of Federal tax law are considered distributions with respect to stock for purposes of these regulations.

All outstanding shares of stock are taken into account in determining whether a corporation has a second class of stock. The proposed regulations provide that, solely for purposes of subchapter S, stock that is substantially nonvested within the meaning of § 1.83–3(b) is not treated as outstanding stock unless the holder makes an election under section 83(b). The proposed regulations also provide that most types of deferred compensation arrangements that do not involve property subject to section 83 are not treated as outstanding stock for purposes of subchapter S.

Any instrument, obligation, or arrangement, regardless of whether designated as debt, which constitutes equity or otherwise results in the holder being treated as the owner of stock under general principles of Federal tax law is treated as a second class of stock of the corporation. See Rev. Rul. 60–236, 1960–2 C.B. 96, Rev. Rul. 82–150, 1982–2 C.B. 110, and Rev. Rul. 85–67, 1985–1 C.B. 268, for examples of the application of general principles to treat an option to acquire stock of a corporation as a present stock interest. In addition, the proposed regulations provide that options that are substantially certain to be exercised are treated as a second class of stock for purposes of subchapter S regardless of whether they would be treated as stock under general principles of Federal tax law.

Prior to the amendment of subchapter S by the Subchapter S Revision Act of 1982, some courts had held that the general principles of Federal tax law under which purported debt would oridnarily be recharacterized as equity did not necessarily require purported debt to be treated as a second class of stock for purposes of subchapter S. *See, e.g., Portage Plastics Co.* v. *United States*, 486 F.2d 632 (7th Cir. 1973) (en banc). The legislative history of the Subchapter S Revision Act of 1982, however, indicates that Congress intended to supplant this case law with the straight debt safe harbor of section 1361 (c)(5) of the Code. Thus, consistent with Congressional intent, this pre-1982 case law is not reflected in these proposed regulations, and a purported debt instrument that is outside the safe harbor rules will be treated as a second class of stock for subchapter S purposes if it constitutes equity under general principles of Federal tax law. *See* H.R. Rep. No. 826, 97th Cong., 2d Sess. 6 (1982); S. Rep. No. 640, 97th Cong., 2d Sess. 8 (1982).

Section 1361 (c)(5) and the proposed regulations provide that straight debt is not treated as a second class of stock even if it would otherwise be treated as equity under general principles of Federal tax law. Section 1361 (c)(5)(B) defines straight debt as a written unconditional promise to pay on demand or on a specified date a sum certain in money if (i) the interest rate and interest payment dates are not contingent on profits, the corporation' discretion, or similar factors, (ii) there is no covertibility (directly or indirectly) into stock, and (iii) the creditor is an individual (other than a nonresident alien), an estate, or a trust described in section 1361 (c)(2).

The proposed regulations provide that, to qualify as straight debt, the obligation must bear in reasonable rate of interest. The determination of whether an obligation bears a reasonable rate of interest is made based on all the facts and circumstances, including the amount borrowed and the timing and amount of the payments due under the obligation. An obligation may provide for a variable interest rate that is based on a current objective interest index, if the interest rate meets the reasonable interest rate requirement. An "objective interest index" is an interest rate that is made known publicly and offered contemporaneously to unrelated borrowers in private lending transactions by a financial institution or that is based on a similar objective interest rate index which is regularly published. Examples of an objective interest index include the prime rate of a designated financial institution, LIBOR (London Interbank Offered Rate), or the applicable Federal rate under section 1274 (d). The proposed regulations set forth two safe harbors for satisfying the reasonable interest rate requirement. An obligation is treated as bearing a reasonable interest rate if the obligation has a yield to maturity that is at least equal to the applicable Federal rate, but not more than five points above the applicable Federal rate (determined as of the date that the obligation is issued). Similarly, an obligation bearing a variable interest rate is treated as bearing a reasonable interest rate if (A) the issue price of the obligation equals the obligation's stated redemption price at maturity, (B) the obligation's interest rate is expressed as a fixed multiple of a current objective interest index or as a constant number of percentage points or basis points more or less than a current objective interest index, and (C) the rate resulting from the formula at the time of issuance of the obligation is at least equal to the applicable Federal rate at that time and is no greater than five percentage points above the applicable Federal rate at that time.

The Service invites public comment on alternative rules or safe harbors relating to whether an instrument, obligation, or arrangement should be treated as a second class of stock. In

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particular, the Service invites public comment on whether a safe harbor should be created for obligations held by financial institutions.

The regulations are proposed to be effective for taxable years beginning after December 31, 1982. However, in the case of an instrument or obligation designated as debt that was in existence on or before October 5, 1990 and was held solely by the owners of, and in substantially the same proporation as, the nominal stock of the corporation, § 1.1361–1(l)(3)(ii) will apply to taxable years beginning on or after January 3, 1991 with respect to the purported debt. In addition, in the case of an instrument or obligation that met the straight debt safe harbor described in section 1361(c)(5) of the Code and that was in existence on or before October 5, 1990, the reasonable interest rate requirement of § 1.1361–1(l)(4)(i)(B) will apply to taxable years beginning on or after January 3, 1991, with respect to that instrument or obligation. Finally, in the case of an option, warrant, or similar instrument that was in existence on or before October 5, 1990, § 1.1361–1(l)(3)(iii) will apply to taxable years beginning on or after January 3, 1991 with respect to the option, warrant, or similar instrument.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits timely written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is David R. Haglund of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1361–0A through 1.1388–1

Cooperatives, Income taxes, Small business, Reporting and recordkeeping requirements

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * § 1.1361–1(l) also issued under 26 U.S.C. 1361(c)(5)(C).

Par. 2. The following new section is added to read as follows:

(a) [Reserved]

(b) *Small business corporation defined*—(1) *In general.* For purposes of subchapter S, chapter 1 of the Code and the regulations thereunder, the term "small business corporation" means a domestic corporation that is not an ineligible corporation (as defined in paragraph (d) of this section) and that does not have—

(i) More than 35 shareholders,

(ii) As a shareholder, a person (other than an estate and other than certain trusts described in paragraph (h)(1) of this section) who is not an individual,

(iii) A nonresident alien as a shareholder, or

(iv) More than one class of stock.

(2) *Estate in bankruptcy.* The term "estate" for purposes of this paragraph, includes the estate of an individual in a case under title 11 of the United States Code.

(3) *Treatment of restricted stock.* Solely for purposes of subchapter S, stock that is substantially nonvested (within the meaning of § 1.83–3(b)) is not treated as outstanding stock of the corporation, and the holder of such stock is not treated as a shareholder solely by reason of holding such stock, unless the holder makes an election under section 83(b). In the event of such an election, the stock is treated as outstanding stock of the corporation and the holder of the stock is treated as a shareholder for purposes of subchapter S. See paragraph(l)(2) of this section for rules for determining whether substantially nonvested stock with respect to which an election under section 83(b) has been made is treated as a second class of stock.

(4) *Treatment of deferred compensation plans.* For purposes of subchapter S, an instrument, obligation, or arrangement that does not convey the right to vote, that is not property under § 1.83–3 of the regulations, and that is issued to an employee by a corporation in connection with the performance of services under a plan with respect to which an employee is not taxed currently on income, is not treated as outstanding stock.

(5) *Straight debt.* For purposes of subchapter S, an instrument or obligation that satisfies the definition of straight debt in paragraph(l)(4) of this section is not treated as outstanding stock.

(c)—(k) [Reserved]

(l) *Classes of stock*—(1) *General rule.* A corporation that has more than one class of stock does not qualify as a small business corporation.

(2) *Outstanding shares of stock treated as a second class of stock*—(i) *In general.* A corporation has more than one class of stock for purposes of this paragraph if all of the outstanding shares of stock of the corporation do not confer identical rights to distribution and liquidation proceeds, regardless of whether any differences in rights occur pursuant to the corporate charter, articles or bylaws, by operation of state law, by administrative action, or by agreement. Thus, for example, substantially nonvested stock with respect to which an election under section 83(b) has been made is treated as a second class of stock, unless such stock confers rights to distribution and liquidation proceeds that are identical to those rights conferred by the other outstanding shares of stock. Differences in voting rights among shares of stock of a corporation are disregarded in determining whether a corporation has more than one class of stock. Thus, for example, if all shares have identical rights to distribution and liquidation proceeds, an S corporation may have voting and nonvoting common stock, a "class" of stock that may vote only on certain issues, irrevocable proxy agreements, or groups of shares that differ with respect to rights to elect members of the board of directors. Buy-sell agreements among shareholders and restrictions on the transferability of stock are disregarded in determining whether a corporation has more than one class of stock. Agreements to redeem shares of stock of a corporation are disregarded in determining whether a corporation has more than one class of stock unless the agreement—

(A) Restricts the right of the holders of the subject stock to share in liquidation proceeds, or

(B) Provides for distributions that would be treated as non-conforming distributions under paragraph(l)(2)(ii)(C) of this section.

(ii) *Non-conforming distributions*—(A) *In general.* Notwithstanding that all outstanding shares of stock confer identical rights to distribution and liquidation proceeds, a corporation has more than one class of stock if the corporation makes non-conforming distributions (*i.e.*, distributions that differ with respect to timing or amount with respect to each outstanding share of stock), unless the distribution is described in paragraph(l)(2)(ii) (B) or (C) of this section.

(B) *Pro rata distributions.* Distributions that differ with respect to timing but are pro rata with respect to all outstanding shares of stock, taking into account the entire taxable year of the S corporation (or the deemed taxable year if an election under section 1377(a)(2) is made), are not treated as non-conforming distributions if the differences in timing of the distributions were unintentional or if the distributions that differ with respect to timing are made within a three-month period (provided the aggregate distributions during the three-month period are pro rata with respect to all outstanding shares of stock).

(C) *Redemptions.* A distribution that is treated as a distribution in part or full payment in exchange for stock under sections 302(a) or 303(a) is not treated as a non-conforming distribution. A distribution that is treated as a distribution under section 301 pursuant to section 302(d) is not treated as a non-conforming distribution unless the distribution is made pursuant to a plan that provides for a series of distributions to the shareholders of the S corporation that would result in the shareholders owning substantially the same proportionate interest in the corporation that they had before the series of distributions.

(iii) *Stock taken into account.* Except as provided in paragraphs (b)(3) and (b)(4) of this section (relating to restricted stock and to deferred compensation plans), and paragraph (l)(4) of this section (relating to the safe harbor for straight debt), all outstanding shares of stock of a corporation are taken into account in determining whether the corporation has a second class of stock.

(3) *Other instruments, obligations, or arrangements treated as a second class of stock*—(i) *In general.* Except as provided in paragraph (b)(4) of this section (relating to deferred compensation plans) and paragraph (l)(4) of this section (relating to the safe harbor for straight debt), any instrument, obligation, or arrangement described in paragraph (l)(3) (ii) or (iii) is treated as a second class of stock for purposes of this paragraph (l).

(ii) *Instruments, obligations, or arrangements treated as equity under general principles.* Any instrument, obligation, or arrangement issued by a corporation (other than outstanding shares of stock described in paragraph (l)(2)(iii) of this section), regardless of whether designated as debt, is treated as a second class of stock of the corporation if the instrument, obligation, or arrangement constitutes equity or otherwise results in the holder being treated as the owner of stock under general principles of Federal tax law.

(iii) *Certain call options, warrants or similar instruments*—(A) *In general.* Except as otherwise provided in this paragraph (l)(3)(iii), a call option, warrant, or similar instrument (collectively "call option") issued by a corporation is treated as a second class of stock of the corporation if the call option is substantially certain to be exercised by the holder. This rule applies regardless of whether the owner of the call option is treated as the owner of the underlying stock under general principles of Federal tax law. The determination of whether a call option is substantially certain to be exercised is made at the time of issuance and, in the event of a material modification by the corporation or subsequent transfer to another holder (other than by gift or transfer at death subject to chapter 11 or 12, or a transfer between spouses or former spouses subject to section 1041), at the time of such material modification or transfer. Thus, for example, a corporation that issues or has outstanding a call option with a strike price substantially below the market price of the underlying stock on the date that the call option is issued, transferred, or materially modified is treated as having more than one class of stock.

(B) *Certain exceptions.* (*1*) A call option that is issued by a corporation to a qualified person in connection with a loan to the corporation is not treated as a second class of stock for purposes of this paragraph (l) if the call option is exercisable only if the corporation defaults on the repayment of the loan. For this purpose, a "qualified person" means any person that

(*i*) Is actively and regularly engaged in the business of lending, and

(*ii*) Is not a related person with respect to the corporation within the meaning of section 465(b)(3)(C), or if such person is a related person with respect to the corporation, the financing from the related person is commercially reasonable and on substantially the same terms as loans involving unrelated persons.

(*2*) A call option that is issued to an employee in connection with the performance of services is not treated as a second class of stock if

(*i*) the call option is nontransferable within the meaning of § 1.83–3(d) and

(*ii*) the call option does not have a readily ascertainable fair market value as defined in § 1.83–7(b) at the time the option is granted.

If the call option becomes transferable, this paragraph (l)(3)(iii)(B)(*2*) will cease to apply.

(C) *Safe harbor for certain options.* A call option that conveys the right to acquire stock of the corporation at a specified strike price is not treated as substantially certain to be exercised at the time of issuance or material modification by the corporation (including a material modification of the strike price pursuant to the terms of the instrument) or subsequent transfer to another holder, if the strike price of the call option at such time is at least 90 percent of the fair market value of the stock with respect to which the call option may be exercised.

(4) *Straight debt safe harbor*—(i) *In general.* Notwithstanding paragraph (l)(3) of this section, straight debt is not treated as a second class of stock. For purposes of section 1361(c)(5) and this section, the term "straight debt" means a written unconditional obligation, regardless of whether embodied in a formal note, to pay a sum certain on demand, or on a specified due date, which—

(A) Does not provide for an interest rate or payment dates that are contingent on profits, the borrower's discretion, the payment of dividends with respect to common stock, or similar factors;

(B) Bears a reasonable interest rate;

(C) Is not convertible (directly or indirectly) into stock or any other equity interest of the S corporation; and

(D) Is held by an individual (other than a nonresident alien), an estate, or a trust described in section 1361(c)(2).

For purposes of paragraph (l)(4)(i)(B) of this section, an obligation may have less than a reasonable interest rate or

may bear no interest if the term of the obligation is one year or less and the obligation is not part of a series of obligations designed to avoid the requirement that an obligation bear a reasonable interest rate.

(ii) *Interest Rate*—(A) *Reasonable interest rate in general.* For purposes of paragraph (l)(4)(i)(B) of this section, the determination of whether an obligation bears a reasonable interest rate is made taking into account all of the facts and circumstances, including the amount borrowed and the timing and amount of payments due under the obligation (whether characterized as interest or principal).

(B) *Variable interest rate.* An obligation may provide for a variable interest rate that is based on a current objective interest index, if the interest rate meets the reasonable interest rate requirement of paragraph (l)(4)(i)(B) of this section. An "objective interest index" is a rate that is made known publicly and offered contemporaneously to unrelated borrowers in private lending transactions by a financial institution or that is based on a similar objective interest rate index which is regularly published. Examples of an objective interest index include the prime rate of a designated financial institution, LIBOR (London Interbank Offered Rate), or the applicable Federal rate under section 1274(d).

(c) *Reasonable interest rate safe harbors.* For purposes of paragraph (l)(4)(i)(B) of this section, an obligation is treated as bearing a reasonable interest rate if the obligation has a yield to maturity that is at least equal to the applicable Federal rate, but not more than five percentage points above the applicable Federal rate (determined as of the date that the obligation is issued). Similarly, for purposes of paragraph (l)(4)(i)(B) of this section, an obligation bearing a variable interest rate is treated as bearing a reasonable interest rate if—

(*1*) The issue price of the obligation equals the obligation's stated redemption price at maturity;

(*2*) The obligation's interest rate is expressed as a fixed multiple of a current objective interest index or as a constant number of percentage or basis points more or less than a current objective interest index; and

(*3*) The rate resulting from the formula described in paragraph (l)(4)(ii)(C)(*2*) of this section at the time of issuance of the obligation is at least equal to the applicable Federal rate at that time and is no greater than five percentage points above the applicable Federal rate at that time.

See paragraph (l)(4)(ii)(B) of this section for the meaning of the term "objective interest index."

Notwithstanding that an obligation has a yield to maturity or a variable interest rate that is not within the range described in the preceding sentences, the obligation may be considered to bear a reasonable rate of interest taking into account the facts and circumstances of the transaction.

(iii) *Subordination.* The fact that an obligation is subordinated to other debt of the corporation will not prevent the obligation from qualifying as straight debt.

(iv) *Modification or transfer.* An obligation that originally qualifies as straight debt ceases to so qualify if the obligation

(A) Is materially modified so that the definition of straight debt is no longer satisfied, or

(B) Is transferred to a third party who would not be eligible to be a shareholder in an S corporation (without regard to the 35 shareholder requirement of section 1361(b)(1)(A)).

(v) *Treatment of straight debt for other purposes.* An obligation of an S corporation that satisfies the definition of straight debt in paragraph (l)(4)(i) of this section is not treated as a second class of stock. Such an obligation is treated as debt and is subject to the applicable rules governing indebtedness for other purposes of the Code unless the Commissioner determines that a principal purpose for issuing the obligation is tax avoidance. Accordingly, interest paid or accrued with respect to a straight debt obligation is generally treated as interest by the corporation and the recipient and does not constitute a distribution to which section 1368 applies.

(vi) *Treatment of C corporation "debt" upon conversion to S status.* If a C corporation has outstanding an obligation that satisfies the definition of straight debt in paragraph (l)(4)(i) of this section, but that may be considered equity under general principles of Federal tax law, the obligation is not treated as a second class of stock for purposes of this section if the C corporation converts to S status. In addition, the conversion from C corporation status to S corporation status will not be treated as an exchange of debt for stock with respect to such an instrument.

(5) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example 1. The law of State A requires that permission be obtained from the State Commissioner of Corporations before stock may be issued by a corporation. The Commissioner grants permission to M, a corporation, to issue its stock subject to the restriction that any person who is issued stock in exchange for property, and not cash, must waive all rights to receive distributions until the shareholders who contributed cash for stock have received a stated amount of distributions per share. The shareholders who are issued stock for property execute an agreement with M based on the aforementioned condition. The condition placed by the Commissioner pursuant to State law upon the prospective holders of stock to be issued for property results in a difference as to the rights to distributions among shares. Accordingly, M is considered to have more than one class of stock and does not qualify as a small business corporation.

Example 2. Corporation N issues a debt instrument to another corporation that is convertible into stock of N corporation. The debt instrument does not satisfy the straight debt safe harbor both because it is convertible into stock of the issuing corporation and because it is held by a corporation. However, the instrument is considered a second class of stock only if it is treated as equity under the general principles of Federal tax law governing the distinction between debt and equity, or if it is a call option that is substantially certain to be exercised.

Example 3. Corporation Q has 500 shares of issued and outstanding common stock. A and B each own 250 shares of the stock. In addition, A and B each hold equal amounts of debt issued by Q that does not constitute straight debt and that is treated as equity under the general principles of Federal tax law governing the distinction between debt and equity. The debt, although held proportionately by the shareholders, is treated as a second class of stock.

Example 4. Corporation R, an S corporation, executes an agreement with its shareholders to modify its normal distribution policy by making upward adjustments of its distributions to those shareholders who bear heavier state tax burdens based on a formula to give the shareholders the same after tax results. The agreement causes the stock of Corporation R to have different rights to distributions. Therefore, Corporation R is considered to have a second class of stock.

Example 5. Corporation T, an S corporation with a calendar taxable year, has two shareholders, A and B, each owning 50 percent of the stock of the corporation. The corporate bylaws require that A and B receive equal distributions with respect to their stock. A $100 distribution is made to A on March 1, but because the corporation's bookkeeper inadvertently field B's check instead of mailing it, a $100 distribution is not made to B until June 1 of the same taxable year. Because the distributions were not intentionally nonconforming and the distributions would be pro rata if the entire taxable year were taken into account, the distributions will not result in a second class of stock.

(6) *Inadvertent terminations.* See section 1362(f) and the regulations thereunder for rules relating to inadvertent terminations in cases where the one class of stock requirement has been inadvertently breached.

(7) *Effective date.* Section 1.1361–1(l) generally applies to taxable years beginning on or after January 1, 1983. However, in the case of an instrument or obligation designated as debt that was in existence on or before October 5, 1990 and was held solely by the owners of, and in substantially by the same proportion as, the nominal stock of the corporation, § 1.1361–1(l)(3)(ii) will apply to taxable years beginning on or after January 3, 1991 with respect to the purported debt. In addition, in the case of an instrument or obligation that met the straight debt safe harbor described in section 1361(c)(5) of the Code and that was in existence on or before October 5, 1990, the reasonable interest rate requirement of § 1.1361–1(l)(4)(i)(B) will apply to taxable years beginning on or after January 3, 1991, with respect to that instrument or obligation. Finally, in the case of an option, warrant, or similar instrument that was in existence on or before October 5, 1990, § 1.1361–1(l)(3)(iii) will apply to taxable years beginning on or after January 3, 1991 with respect to the option, warrant, or similar instrument.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-23833 Filed 10-4-90; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[IL–660–89]

RIN 1545–AN76

Withholding of Tax on Nonresident Aliens; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of the date and location of a public hearing on proposed regulations.

SUMMARY: This document provides notice of a change of the date and location of a public hearing on proposed regulations relating to withholding of tax on nonresident aliens.

DATES: The public hearing will be held on Monday, November 5, 1990, beginning at 10 a.m. Outlines of oral comments must be received by Friday, October 5, 1990.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [IL–660–89], room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the Federal Register for Friday, July 20, 1990 (55 FR 29636), announced, among other things, that a public hearing relating to withholding of tax on nonresident aliens would be held on Friday, October 26, 1990, beginning at 10 a.m. in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The proposed regulations were published in the Federal Register for Monday, February 5, 1990 (55 FR 3750).

The date and location for the public hearing has changed, and will be held on Monday, November 5, 1990, in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

In all other respects the details regarding the hearing will remain the same.

By direction of the Commissoner of Internal Revenue:

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-23675 Filed 10-4-90; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM003PA; FRL–3850–4]

Approval and Promulgation of Implementation Plans; Revision to the Commonwealth of Pennsylvania Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing that it is proposing to approve a request by the Commonwealth of Pennsylvania to revise its State Implementation Plan (SIP) for attainment of the ozone standard. This revision will reduce emissions of volatile organic compounds from gasoline by reducing the Reid Vapor Pressure (RVP) of gasoline. This action will contribute to progress towards attainment of the ozone standard and is therefore appropriate for approval under section 110 of the Clean Air Act. Furthermore, the EPA is proposing to find that this control is necessary for progress towards achieving the ozone National Ambient Air Quality Standard (NAAQS) in Pennsylvania as set forth in section 221(c)(4)(C) of the Clean Air Act.

EFFECTIVE DATE: Comments must be received by November 5, 1990.

ADDRESSES: Copies of the proposed regulations and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Program Planning Section, Air, Toxics & Radiation Management Division, 841 Chestnut Building, 6th Floor, Philadelphia, Pennsylvania 19107, Attn: David L. Arnold.

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 2063, Harrisburg, Pennsylvania 17120, Attn: William H. Thompson.

All comments submitted on the proposed revision within 30 days of this Notice will be considered and should be addressed to Mr. David L. Arnold, Chief, Program Planning Section, at the EPA Region III address above. Please reference the EPA docket number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond K. Forde, (215) 597–8239, at the EPA Region III address above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION: On November 30, 1989, the Secretary of the Pennsylvania Department of Environmental Resources (DER) submitted a SIP revision to EPA. This SIP revision would amend 25 PA Code—chapter 121.1 (relating to general provisions), chapter 139.4 and .14 (relating to sampling and testing), and add a new section .73 under chapter 129 entitled "Gasoline Volatility Requirements", which would prohibit persons from selling or supplying gasoline from a bulk plant, terminal or gas station having a Reid Vapor Pressure (RVP) greater than 9.0 pounds per square inch (psi) from May 16 through September 15 beginning in 1990 and continuing each year thereafter. In accordance with the requirements of

section 110(a)(2) of the Act and 40 CFR 51.102, public hearings concerning the SIP revision were held on November 14, 1988 in Coraopolis, Pennsylvania; November 15, 1988 in Harisburg, Pennsylvania and November 16, 1988 in King of Prussia, Pennsylvania.

This revision is being proposed under a procedure called "parallel processing" because DER has not yet adopted the regulation. Parallel processing allows EPA to propose action on a SIP revision before the State has adopted the regulation. The final EPA action will not occur until DER has submitted the adopted regulation to EPA.

Background

Ozone is a photochemical oxidant which is formed by complex chemical reactions between volatile organic compounds (VOC) and oxides of nitrogen in the presence of sunlight. Ozone is the predominant component of photochemical oxidants and is the most widespread of the pollutants for which National Ambient Air Quality Standards (NAAQS) have been established. Ozone is a respiratory irritant and has been shown to cause damage to vegetation and other materials. Ozone is also a major component of smog.

Section 182(a)(2)(A) of the Clean Air Act Amendments of 1990 (CAA) requires that areas designated nonattainment for ozone and classified as marginal or above must submit a revision to the SIP by November 15, 1992 which requires all reasonably available control measures (RACM) to be implemented as expeditiously as practicable. Section 182(b)(2) requires that for areas classified as moderate or above, the SIP revision must require reasonably available control technology (RACT) for all major VOC sources and for all sources covered by a control technique guideline (CTG) issued before the date of enactment of the CAA. Section 182(b)(1) requires that for areas classified as moderate or above, the SIP revision must require a 15% reduction in VOC emissions during the first six years after enactment of the CAA. Section 182(b)(1) also requires that for areas classified as moderate or above, the SIP revision must require a 3% per year reduction in VOC emissions during each three year period after the first six years after enactment of the CAA, until the area's attainment date. Section 182(c)(2)(B) requires that for areas classified as serious or above, the SIP revision must require implementation of enhanced monitoring of ozone, VOC and oxides of nitrogen (NO$_x$) by November 15, 1992. Section 182(c)(3) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from consumer products by November 15, 1992. Section 182(c)(4) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain commercial and industrial facilities by November 15, 1992. Section 182(c)(5) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(6) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from aerosol paints by November 15, 1992. Section 182(c)(7) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain portable fuel containers by November 15, 1992. Section 182(c)(8) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from motor vehicle refueling by November 15, 1992. Section 182(c)(9) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(10) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from motor vehicles by November 15, 1992. Section 182(c)(10) also requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from motor vehicles to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(11) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(12) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(13) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(14) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(15) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(16) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(17) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(18) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(19) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(20) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(21) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(22) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(23) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(24) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(25) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(26) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(27) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(28) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(29) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(30) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(31) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(32) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(33) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(34) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(35) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(36) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(37) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(38) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(39) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(40) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(41) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(42) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(43) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(44) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(45) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(46) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(47) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(48) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(49) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(50) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(51) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(52) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(53) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. 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Section 182(c)(57) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(58) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(59) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(60) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(61) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(62) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(63) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(64) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(65) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(66) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(67) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(68) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(69) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(70) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(71) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(72) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(73) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(74) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(75) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(76) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(77) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(78) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(79) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(80) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(81) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(82) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(83) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(84) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(85) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(86) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(87) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(88) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(89) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(90) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(91) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(92) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(93) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(94) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(95) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(96) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(97) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(98) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(99) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994. Section 182(c)(100) requires that for areas classified as serious or above, the SIP revision must require implementation of a program to control VOC emissions from certain sources to the extent necessary to attain the ozone NAAQS by November 15, 1994.

Criteria for Approval:

Section 211(c)(4)(A) of the Act, in describing Federal preemption authority, states: "Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission

of each year [1] (Maryland's waiver request is currently under review). EPA's decision on the final approval of these six federal preemption waivers was based on the recognition that they were necessary to achieve the ozone standard. In the Federal Register (54 FR 19173; May 4, 1989) discussion of EPA's approval of limiting the RVP of gasoline

VOC emission reduction required by the SIP were met (See 54 FR 13682). VOC emissions have increased (from 1980 levels) in the Philadelphia AQCR, Southeastern Pennsylvania and Lehigh-Northampton regions, respectively. The reasons for these increases in VOC emissions are varied and include substantial growth in vehicle miles

through use of updated computer modeling is performed, it is likely that additional VOC reduction will be necessary beyond those required by the 1982 SIP. EPA believes that 9.0 RVP regulation will result in significant and expeditious reduction of VOC emissions, but will not make up the entire VOC reduction necessary to move

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section 110(a)(2) of the Act and 40 CFR 51.102, public hearings concerning the SIP revision were held on November 14, 1988 in Coraopolis, Pennsylvania; November 15, 1988 in Harisburg, Pennsylvania and November 16, 1988 in King of Prussia, Pennsylvania.

This revision is being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking. If no substantial changes are made EPA will publish a Final Rulemaking Notice on these revisions. The final rulemaking action by EPA will occur only after the regulations have been officially adopted by Pennsylvania and submitted to EPA. Parallel processing may reduce the time necessary for final approval of these plan revisions by three to four months. EPA is soliciting public comments on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the address noted at the beginning of today's notice.

Background:

Beginning in January 1988, six of the states comprising the Northeast States for Coordinated Air Use Management (NESCAUM) held public hearings and adopted regulations to control RVP to 9.0 psi between May 1 and September 15 of each year, beginning in 1989. As of July 1990, those six NESCAUM states had submitted requests to the EPA to obtain a federal preemption waiver so that they may regulate gasoline RVP as provided in section 211(c)(4)(C) of the Federal Clean Air Act. EPA has taken final action and approved those requests. Several Mid-Atlantic States are also proceeding to adopt regulations to control RVP to 9.0 psi. Pennsylvania proposes to limit RVP to 9.0 psi from May 16 to September 15, starting in 1990 and continuing each year thereafter. EPA has received notice that the Commonwealth of Pennsylvania has not finalized its official adoption of the RVP rule. According to public records, the executive branch of the Commonwealth of Pennsylvania issued an executive order to approve the proposed State regulation. However, on April 12, 1989, the State Senate voted to delay the implementation of the new gasoline volatility rule by one year. The State Executive Branch filed a suit in Commonwealth Court against the Senate. The State Executive Branch indicated that it was unconstitutional for the Senate alone to block an executive order which approved State enforcement of 9.0 RVP gasoline starting in May 1990. On December 7, 1989, Commonwealth Court overturned the Senate decision to postpone enforcement of the gasoline volatility regulation for twelve months. The Senate appealed to the Pennsylvania Supreme Court to suspend the Commonwealth Court ruling on December 7, 1989. On December 16, 1989, the Supreme Court issued a stay of the Commonwealth Court order. The final decision is still pending. It should be noted that EPA cannot issue final approval of the Pennsylvania SIP revision until the RVP regulation is officially adopted, published in the Pennsylvania Bulletin and formally resubmitted as a SIP revision. As discussed below, the Pennsylvania DER has requested that EPA proceed to propose approval of this revision as a means of expediting the prospect of final EPA approval.

On March 22, 1989, EPA published a notice of final rulemaking for Phase I of the nationwide volatility program (54 FR 11868) which also requires the control of RVP. The EPA rule calls for the control of gasoline volatility nationally. Beginning in 1989, that rule requires that in the Mid-Atlantic area, the standard is 10.5 psi. The Federal standard applies each year beginning June 1 for retail stations and other end users of gasoline and May 1 for all other points in the distribution system, including refiners and importers, pipelines and terminals. The requirement that RVP not exceed 10.5 psi ends at all points in the system on September 16 of each year. EPA also published a notice of final rulemaking for Phase II of the nationwide regulation in the **FEDERAL REGISTER** (June 11, 1990, pp. 23658–23667). Beginning in 1992, and continuing every year thereafter, Phase II RVP regulation will take effect and reduce the RVP in gasoline from 10.5 to 9.0 in Pennsylvania. The Phase II standard will apply each year beginning June 1 for retail stations and other end users of gasoline and May 1 for all other points in the distribution systems, including refiners and importers, pipelines and terminals. The EPA regulation would normally preempt the state provision in accordance with section 211(c)(4)(A) of the Clean Air Act. However, section 211(c)(4)(C) of the Act provides for approval of the State control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary National Ambient Air Quality Standard (NAAQS) for which the plan is in effect.

Criteria for Approval:

Section 211(c)(4)(A) of the Act, in describing Federal preemption authority, states: "Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published such a finding in the **Federal Register**, or (ii) if the Administrator has prescribed under paragraph [211(c)](1) a control or prohibition applicable to such fuel or fuel additive, unless the State prohibition or control is identical to the prohibition or control prescribed by the Administrator." Thus in light of the new Federal volatility rule, the State control would normally be preempted.

However, even though federal preemption has occurred, EPA may still approve certain state provisions for limits on RVP of fuel where a finding under Section 211(c)(4)(C) is made which would authorize EPA approval and, thus, eliminate the preemption problem.

Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which an exception to Federal preemption of State regulations may occur, states: "A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under Section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements". Because of this federal regulatory provision, Pennsylvania will have legal authorization to enforce the 9.0 RVP regulation in 1991 and concurrent authority to ensure continued enforcement of the RVP requirements during most of the ozone season in 1992 and every year thereafter.

EPA has issued final approval of the Massachusetts, Maine, Connecticut, Rhode Island, New York and New Jersey federal preemption waiver requests which included regulations to prohibit the sale of gasoline greater than 9.0 psi between May 1 and September 15

of each year [1] (Maryland's waiver request is currently under review). EPA's decision on the final approval of these six federal preemption waivers was based on the recognition that they were necessary to achieve the ozone standard. In the Federal Register (54 FR 19173; May 4, 1989) discussion of EPA's approval of limiting the RVP of gasoline in the Massachusetts SIP, EPA interpreted the language in section 211(c)(4)(C) of the Act as requiring the Agency to find that a fuel control requirement was essential to achieve timely attainment of the primary standard for ozone. EPA stated that even though the "State's (Massachusetts) RVP regulation might not by itself * * * achieve the standard, that fact does not mean the rule would not be 'necessary' to achieve the standard within the meaning of section 211(c)(4)(C)".[2] EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels (thus bringing the area closer to achieving the NAAQS) when no other reasonable measures taken together would be sufficient to achieve necessary VOC reductions.

Evaluation of How the Pennsylvania Revision Satisfies the "Necessary" Criterion:

In its 1982 SIP, Pennsylvania estimated that emissions of volatile organic compounds (VOCs) would need to be reduced by 44 percent in the Philadelphia AQCR, 35.2 percent in the Southwestern Pennsylvania region and 27.5 percent in the Lehigh-Northampton region from 1980 levels in order to attain the ozone standard by December 31, 1987. The percent reduction necessary was estimated to be equivalent to 197 tons per day (tpd) in the Philadelphia AQCR, 144 tpd in the Southwestern Pennsylvania region and 18 tpd in the Lehigh-Northampton region. EPA has reviewed the progress the State has made in achieving these emissions reductions and determined Pennsylvania has not implemented sufficient control measures to ensure that the permanent and enforceable VOC emission reduction required by the SIP were met (See 54 FR 13682). VOC emissions have increased (from 1980 levels) in the Philadelphia AQCR, Southeastern Pennsylvania and Lehigh-Northampton regions, respectively. The reasons for these increases in VOC emissions are varied and include substantial growth in vehicle miles traveled, increase in vehicle population in certain areas, unanticipated growth in emissions due to increase in gasoline RVP in recent years and the fact that other measures identified in the 1982 SIP do not appear to provide sufficient controls in light of all these circumstances.

Using information available in the Pennsylvania SIP, along with supplemental information submitted by the State, it now appears that 1988 emissions would need to be reduced by 58.6 percent in the Philadelphia AQCR, 37.8 percent in the Southwestern Pennsylvania region and 50 percent in the Lehigh-Northampton regions in order to achieve attainment of the ozone standard. The percent reductions necessary were estimated to be equivalent to 355 tpd in the Philadelphia AQCR, 161.9 tpd in the Southwestern Pennsylvania region, and 48 tpd in the Lehigh-Northampton region.

On May 25, 1988, EPA issued a notification pursuant to section 110(a)(2) of the Act (known as a SIP call) to Pennsylvania that it must revise its SIP because of the State's failure to attain the National Ambient Air Quality Standard (NAAQS) for ozone in the Philadelphia AQCR, Southwestern Pennsylvania and Leghigh-Northampton regions. This notification stated that the State must update its emission inventory for the areas mentioned above. On November 8, 1989, EPA issued SIP calls for additional ozone nonattainment areas including the Harrisburg, Lancaster, York, Reading, Erie, Altoona, Johnstown and Wilkes-Barre/Scranton Metropolitan Statistical Areas (MSAs). The SIP calls were based on ozone exceedances monitored during 1988. Overall, 45 of the State's 67 counties are currently monitoring exceedances of the NAAQS for ozone.

It should be recognized that once the revised emission inventory is completed and a new attainment demonstration through use of updated computer modeling is performed, it is likely that additional VOC reduction will be necessary beyond those required by the 1982 SIP. EPA believes that 9.0 RVP regulation will result in significant and expeditious reduction of VOC emissions, but will not make up the entire VOC reduction necessary to move the Philadephia AQCR, Southwestern Pennsylvania and Lehigh-Northampton regions into attainment. This control measure will thus tend to move Pennsylvania air quality towards attainment of the ozone NAAQS in the three areas mentioned above. For the reasons set forth below, RVP control is an essential control measure for Pennsylvania's current and future VOC control plans intended to reduce ozone in nonattainment areas.

It is important to note that while the proposed State limit of 9.0 psi in gasoline will result in real VOC emission reductions, Pennsylvania cannot claim full emission reduction credit for purposes of determining VOC reductions achieved with respect to the 1982 SIP. The reason the State cannot claim full credit is because the 1982 SIP used a 1980 base year emission inventory which was developed using the MOBILE2 emission factor model which assumed that the RVP of gasoline was 9.0 psi for purposes of estimating certain emissions from operating motor vehicles. Therefore, since the emission baseline assumed a 9.0 RVP from those sources, the corresponding reductions in VOC emissions have already been credited for purposes of the 1982 SIP.

The Pennsylvania submittal concludes that by lowering RVP to 9.0 psi VOC emission reductions of approximately 600 tpd would be obtained state-wide, with 162.8 tpd occurring in the Philadelphia AQCR, 126 tpd in the Southwestern Pennsylvania region and 27.5 tpd in the Lehigh-Northampton region. The quantity of this reduction was calculated using the AP-42 emission factors for storage and transfer of gasoline and the new EPA MOBILE4 emission factor model for motor vehicle emissions.

The VOC strategies identified by Pennsylvania as having the greatest potential for significant future VOC reductions are:

[1] 54 FR 19173 (May 4, 1989), 54 FR 23650 (June 2, 1989), 54 FR 28030 (June 21, 1989), 54 FR 25572 (June 16, 1989), 55 FR 20001 (May 17, 1990).

[2] 54 FR 19174; May 4, 1989.

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TABLE I

Measure	Phila AQCR 1988 Reduction, (Tons/Day)	Phila AQCR 1988 (Percent of Inventory)	SW PA 1988 Reduction (Tons/Day)	SW PA 1988 (Percent of Inventory)
Reducing RVP from 11.5 to 9.0 psi	162.8	26.91	126.1	29.5
State II Controls	17.6	2.91	1.4	.33
Barge/Tanker Loading	9.1	1.51	N.A.	N.A.

Measure	LEH-North 1988 Reduction (Tons/Day)	LEH-North 1988 (Percent of Inventory)
Reducing RVP from 11.5 to 9.0 psi	27.52	29.76
State II Controls	.21	.22
Barge/tanker Loading	N.A.	N.A.

N.A.—Not Available. Emission reductions projected from Barge/Tanker loading VOC controls in the S.W. Pennsylvania and Lehigh-Northampton regions were not available at the time of publication of this notice.

The potential combined reductions from the categories mentioned above, if found practicable, would provide emission reductions (from 1988 levels) of 31.32 percent of the Philadelphia AQCR, 29.83 percent in the Southwestern Pennsylvania region and 20.92 percent in the Lehigh-Northampton region, if all control measures are 100 percent effective. This still leaves 27.28, 7.97 and 21.08 percent shortfalls in the Philadelphia AQCR, Southwestern Pennsylvania and Lehigh-Northampton regions, respectively.

TABLE II.—ADDITIONAL CONTROL STRATEGIES

Measure	Phila AQCR 1988 reduction, (tons/day)	Phila AQCR 1988 (percent of inventory)	SW PA 1988 reduction (tons/day)	SW PA 1988 (percent of inventory)
Enhanced I/M	8.0	1.32	5.0	1.17
Architectural Coatings	5.0	.8	3.0	.7
Auto Refinishing	4.6	.75	3.0	.7
Consumer Solvents	14.6	2.4	9.0	2.1

Measure	LEH-North 1988 reduction (tons/day)	LEH-North 1988 (percent of inventory)
Enhanced I/M	1.1	1.15
Architectural Coatings	2.0	2.09
Auto Refinishing	.7	.7
Consumer Solvents	2.24	2.34

In order to make up for these shortfalls the State is examining other control strategies such as those listed in Table 2. No other categories of available controls would individually yield reductions of more than .2% of the 1988 inventory. The additional control strategies would provide emission reductions of 5.27, 4.67, 6.28 percent reductions in the Philadelphia AQCR, Southern Pennsylvania and Lehigh-Northampton regions, respectively (assuming all controls were 100% effective). This still leaves a 28.7, 3.3, and 14.74 percent shortfalls in the Philadelphia AQCR, Southwestern Pennsylvania and Lehigh-Northampton regions. Thus, even if all these available control strategies are implemented, a shortfall will still exist necessitating the implementation of other control measures to achieve attainment. Even though EPA's March 22, 1989 RVP regulation presently requires control to 10.5 psi, the State RVP program, comparatively, will provide more reductions. No other control measures that are currently available that are clearly reasonable [8] for implementation in Pennsylvania could provide sufficient reductions to achieve attainment without the State RVP control.

By reducing RVP to 9.0 psi instead of 10.5 psi, Pennsylvania would be able to obtain additional reductions of approximately 73.58 tpd in the Philadelphia AQCR, 58.9 tpd in the Southwestern Pennsylvania region and 13.4 tpd in the Lehigh-Northampton region. Thus, even with EPA's 10.5 RVP regulation, the State control will still have significant impact. Therefore, Pennsylvania's RVP program appears to meet the test of being "necessary" to achieve attainment of the ozone standard. Even with the reduction in RVP to 9.0 psi the Philadelphia AQCR, Southwestern Pennsylvania and Lehigh-Northampton regions still will have not reduced VOC emissions sufficiently to attain the NAAQS, nor to comply with the commitment in its 1982 SIP. However, the short-falls will be substantially reduced by approving the 9.0 RVP regulation. Consequently, EPA believes that approving this Pennsylvania proposal is "necessary to achieve" the NAAQS, even though Pennsylvania will need to take further steps to fully achieve the standard. Without approval of the RVP SIP revision, Pennsylvania would be substantially impeded in its attempt to achieve the ozone standard. Therefore, EPA is proposing to approve the Pennsylvania SIP revision and to find, pursuant to section 211(c)(4)(C) of the Act, that this revision is necessary to achieve the ozone NAAQS.

[8] Rejection of control measures as not reasonable was based on the following criteria: high cost of control, delay of expeditious attainment, small VOC reduction, difficulty of enforcement, and public acceptance.

Necessity of State-wide Regulation:

Pennsylvania's submittal demonstrated that the State must apply the RVP rule on a state-wide basis for several reasons. Two-thirds of the State is now classified as nonattainment. It appears that since the nonattainment areas are located geographically all over the state, Pennsylvania logistically had to make the rule apply on a state-wide basis in order to maximize the use of 9.0 RVP gasoline and insure compliance in the nonattainment areas without producing supply and distribution problems throughout the State.

While the benefits associated with controlling VOC emissions in nonattainment areas are apperent, reducing these emissions in attainment areas are also beneficial. Ozone is a regional concern because VOC emissions originating in one area may be transported through the atmosphere and adversely affect air quality in another area. This phenomenon may cause VOC emissions in attainment areas to increase ozone levels in nonattainment areas—such as the Philadelphia AQCR, Southwestern Pennsylvania and Lehigh-Northhampton regions. Thus, reducing VOC emissions in attainment areas may help reduce ozone levels in nonattainment areas. The fact that Pennsylvania has adopted regulations similar to those in the NESCAUM states is an important step in expanding the regional application of gasoline volatility restrictions which will also reduce interstate transport of ozone and ozone precursors. EPA's evaluation of this SIP is presented in the Technical Support Documents (TSD) that is available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this document.

Enforceability:

EPA's review for the enforceability of Pennsylvania's RVP regulation raised an issue regarding the test and sampling methods (25 PA Code chapters 139.14 and 139.4). The State's regulation requires that fuel testing and sampling shall be conducted in accordance with ASTM methods D–323 and D–4057. EPA has adopted a final volatility rule which includes a test method based upon a modification to method D–323 known as The Dry RVP Measurement Method. EPA's test and sampling methods are found at 40 CFR part 80, appendices D and E (54 FR 11868–11903, March 22, 1989). The State has committed to revise its regulation to resolve this issue. EPA is proposing to approve the State's RVP regulation with the understanding that the State must revise the test and sampling chapters to include the EPA recognized methods. EPA is confident that the State will pursue this course of action.

Proposed Action: EPA is proposing to approve this revision to the Pennsylvania Ozone State Implementation Plan which amends 25 PA CODE—chapter 121.1, chapter 139.4 and .14 and adds a new section .73 under chapter 129 with the understanding that the State will revise the test and sampling method section of the regulation. EPA's final approval will be contingent upon the receipt of an amended formal submittal from Pennsylvania. EPA is also proposing to make a finding that the SIP revision meets the requirements of section 211(c)(4)(C) of the Clean Air Act for an exception to federal preemption. This finding is required since EPA has adopted national volatility standards.

EPA received notice from the DER which indicated that the Commonwealth of Pennsylvania has not finalized its official adoption of the RVP rule. As of today, the State regulation has not been officially adopted. EPA cannot issue final approval of the Pennsylvania RVP regulation until it is officially adopted, published in the Pennsylvania Bulletin, and resubmitted as a formal SIP revision.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR part 51.

Under 5 U.S.C. section 605(b), I certify that this SIP revision, regarding the proposed approval of the Pennsylvania RVP regulation, will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget as exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR part 52

Air Pollution Control, Hydrocarbons, Intergovernmental relations, ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7402.

Dated: July 23, 1990.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 90-23543 Filed 10-4-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-3848-7]

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental information on mercury emissions.

SUMMARY: Standards of performance (i.e., new source performance standards) for new, modified, and reconstructed municipal waste combustors (MWC's) and emission guidelines for existing MWC's were proposed in the Federal Register on December 20, 1989 (54 FR 52209). This notice announces the availability of supplemental information on mercury emissions from MWC's for review and comment.

DATES: *Comments:* Written comments must be received by Friday, October 19, 1990.

Public Meeting: A public meeting to discuss what limits on mercury emissions from MWC's to include in new source performance standards (NSPS) and emission guidelines (EG) based on the supplemental information now available will be held in the General Services Administration (GSA) auditorium located on the first floor of the GSA building at 7th and D Streets, SW., in Washington, D.C. on Monday, October 15, 1990 from 9 am to 5 pm. There is a possibility that EPA employees will be furloughed on October 15, 1990. If this occurs, the meeting will be held on Tuesday, October 16, 1990 from 9 am to 5 pm in the EPA Environmental Research Center auditorium located at Alexander Drive and Highway 54 in the Research Triangle Park, North Carolina.

MWC's, EPA indicated that mercury emissions from MWC's varied widely (54 FR 52233; 54 FR 52274; December 20, 1989). A provision requiring development of a program to remove household batteries from municipal waste prior to combustion was included as part of the materials separation provisions of the proposed NSPS and EG. Household batteries were thought to be the major source of mercury in municipal waste. However, EPA indicated that it was not proposing any mercury emission limits because sufficient information was not available to establish limits. EPA requested information about the performance and costs of mercury emission control techniques, such as sodium sulfide and activated carbon injection systems.

Gathering, organizing and compiling the supplemental data and information on mercury emissions and the performance of various control techniques for reducing mercury

This tight schedule requires that the review of mercury emissions and mercury emission control techniques be done as rapidly as possible, and will not allow for a longer comment period. However, it should be noted that the focus of the public comments requested is narrow and the EPA believes the material in category IV-M of the Docket

questions such as: Do the RCRA regulations contain impediments to waste minimization? If so, what are they, and how should they be eliminated? Are the potential incentives or ideas contained in this notice feasible and desirable approaches? Are there other regulatory and nonregulatory incentives that should be considered?

II. Introduction

The Agency recognizes that industry managers cannot do a good job of preventing pollution without looking at opportunities across all media. However, to facilitate an effective multi-media pollution prevention framework, the Agency must correct any pollution prevention impediments inherent in our

October 15, 1990 from 9 am to 5 pm. There is a possibility that EPA employees will be furloughed on October 15, 1990. If this occurs, the meeting will be held on Tuesday, October 16, 1990 from 9 am to 5 pm in the EPA Environmental Research Center auditorium located at Alexander Drive and Highway 54 in the Research Triangle Park, North Carolina. Individuals wishing to speak at the meeting or who have questions on the status of an EPA furlough should call Julia Stevens, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 6541–5578.

ADDRESSES: *Comments:* Written comments should be submitted (in duplicate if possible) to: Air Docket (LE–131), Attention Docket No. A–89–08, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: A special docket category, Docket Number A–89–08, Category IV–M, containing information and data about mercury emissions and control techniques for mercury emissions collected by EPA since proposal of the NSPS and EG, is available for public inspection between 8:30 am and 3:30 pm, Monday through Friday, at the EPA's Air Docket, at the address above. A reasonable fee may be charged for copying.

Public Meeting: A Public meeting will be held in the GSA auditorium located on the first floor of the GSA building at 7th and D Street, SW. in Washington, DC on Monday, October 15, 1990 from 9 am to 5 pm. There is a possibility that EPA employees will be furloughed on October 15, 1990. If this occurs, the meeting will be held on Tuesday, October 16, 1990 from 9 am to 5 pm in the EPA Environmental Research Center auditorium located at Alexander Drive and Highway 54 in the Research Triangle Park, North Carolina. Individuals wishing to speak at the meeting or who have questions on the status of an EPA furlough should call Julia Stevens, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5578 on or before October 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Walter H. Stevenson at (919) 541–5264 or Mr. Fred L. Porter at (919) 541–5251, Standards Development Branch, Emission Standards Division (MD–13), U.S. EPA Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: At proposal of the NSPS and EG for MWC's, EPA indicated that mercury emissions from MWC's varied widely (54 FR 52233; 54 FR 52274; December 20, 1989). A provision requiring development of a program to remove household batteries from municipal waste prior to combustion was included as part of the materials separation provisions of the proposed NSPS and EG. Household batteries were thought to be the major source of mercury in municipal waste and it was believed that removal of batteries from municipal waste prior to combustion would reduce mercury emissions. The proposal notices also stated that EPA considered establishing an emission level limiting mercury emissions from MWC's, but decided not to specify one at that time because the reasons for the variability and the mechanisms affecting mercury emissions and mercury control were not understood. The proposal also announced that a joint EPA and industry task force would be formed to investigate mercury emissions and control prior to promulgation. The proposal notices stated that the results of this investigation would be used by EPA to determine what action with regard to mercury emissions was appropriate and, more specifically, whether to include mercury emission limits in the NSPS and EG at promulgation of these regulations (54 FR 52233; 54 FR 52274; December 20, 1989).

Subsequent to proposal, a task force meeting on mercury emissions from MWC's was held at Research Triangle Park, North Carolina on February 7 and 8, 1990. The meeting include EPA personnel, MWC owners and operators, industry vendor developing or marketing mercury emission control technologies, and representatives of State and local regulatory Agencies, trade associations, public interest groups and waste separation programs. The first day of the meeting focused on mercury emission levels, and air pollution control devices presently in use for controlling mercury emission from MWC's, as well as control devices under development. Household battery separation and collection were considered on the second day. Following the meeting, additional data and information regarding mercury emissions and the performance of mercury emission control techniques were collected from sources identified at the meeting as well as from other sources.

The meeting notes, as well as additional new data gathered since proposal, have been included in Docket A–89–08, in Docket Section IV–M. This section includes new data and information about mercury emissions from MWC's as well as data and information about the performance and costs of mercury emission control techniques, such as sodium sulfide and activated carbon injection systems.

Gathering, organizing and compiling the supplemental data and information on mercury emissions and the performance of various control techniques for reducing mercury emissions from MWC's has taken considerable time. The supplemental information on mercury emissions includes data on mercury emissions from approximately 30 MWC's. Some of the test data were not available until very recently. In addition, the data on the performance of various control techniques for reducing mercury emissions from MWC's comes from a broad spectrum of sources, including European countries and Canada.

As indicated at proposal, the EPA will use this information in deciding what, if any, emission limits for mercury emissions are appropriate to include in the NSPS and EG (54 FR 52233; 54 FR 52274; December 20, 1989). The EPA is requesting comment at this time from interested parties specifically on what emission limits, if any, for mercury emissions to include in the NSPS and EG based on the supplemental data and information collected since proposal. Written comments should be submitted to the docket at the address provided under **ADDRESS** above, by the date provided under **DATES** above.

In addition the requesting written comments, the EPA has also scheduled a public meeting to solicit oral comments on what emission limits for mercury emissions to include in the NSPS and EG based on the supplemental data and information gathered since proposal. This pulbic meeting does not constitute a public hearing for purposes of section 307 (d)(5). Public hearings were held on January 22 and 23 in Boston, Mass., January 25 and 26 in Detroit, Mich., and January 30 and 31 in Seattle, Wash. Therefore, the comment period will not remain open for 30 days following the public meeting. Nevertheless, because some parties may want to rebut or provide supplementary information based on what is said at the meeting, the comment period will remain open for four days following the public meeting. The time, date and location of the public meeting is provided under **ADDRESSES** above.

The EPA recognizes that the brief period provided for comment is shorter than normal. However, the EPA is bound by a consent decree with the U.S. Court of Appeals for the District of Columbia to promulgate the NSPS and EG for MWC's by December 31, 1990. This tight schedule requires that the review of mercury emissions and mercury emission control techniques be done as rapidly as possible, and will not allow for a longer comment period. However, it should be noted that the focus of the public comments requested is narrow and the EPA believes the material in category IV-M of the Docket A–89–08 can be adequately reviewed within this time period. In addition, the comment period on other issues is not being reopened. Only comments pertaining to the specific issue of a mercury emission limit will be accepted.

Dated: September 25, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 90-23178 Filed 10-4-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 260–266, 268, 270, and 271

[FRL–3835–6]

Waste Minimization Incentives

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for comment on desirable and feasible incentives to reduce or eliminate the generation of hazardous waste.

SUMMARY: Section 1003(b) of the Resource Conservation and Recovery Act (RCRA) establishes a National Policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. EPA is therefore committed to a National Policy that places the highest priority on waste minimization. EPA has implemented a variety of measures directed at minimizing waste generation since 1986. However, EPA is considering the feasibility and desirability of putting in place additional incentives that promote reductions in the volume and toxicity of hazardous waste generation. The Agency is today requesting comment to: (1) Learn whether the regulatory and nonregulatory incentives for waste minimization that have been put in place to date are effective, and (2) find out whether commenters believe additional approaches are feasible and desirable to further national progress in waste minimization. To foster full exploration of potential avenues for waste minimization, this notice summarizes the current incentive programs and outlines others that have been suggested to EPA for consideration. This notice is intended to prompt public discussion on questions such as: Do the RCRA regulations contain impediments to waste minimization? If so, what are they, and how should they be eliminated? Are the potential incentives or ideas contained in this notice feasible and desirable approaches? Are there other regulatory and nonregulatory incentives that should be considered? How can other incentives be promoted? EPA will use the comments received in response to this notice, along with other information, to consider, evaluate and establish priorities for hazardous waste minimization program elements.

DATES: EPA urges interested parties to comment on this notice in writing. Comments must be submitted on or before December 4, 1990.

ADDRESSES: All comments must be submitted in triplicate (original and two copies) to: EPA RCRA Docket (room SE 201, Mail Code OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket number F–90–IRGP–FFFFF on your documents.

FOR FURTHER INFORMATION CONTACT: Contact: Manik Roy (202) 245–3737 or the RCRA Hotline, toll free, at (800) 424–9346, or at (202) 382–3000.

Additional information on waste minimization is available for inspection in the RCRA docket at the address indicated above. EPA's 1986 Report to Congress on Hazardous Waste Minimization (EPA Document No. EPA/530–SW–86–043) can be found in the RCRA docket. The five-volume report is also available for purchase in hardcopy and microfiche from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia (703) 487–4600. Requestors should cite title and document number (See, NTIS No. PB–87–114–328) when ordering. Information on State and Federal legislation and current information on the RCRA program can also be found in the RCRA docket.

SUPPLEMENTARY INFORMATION:

I. Authority
II. Introduction
III. Background
IV. Are the Non-Regulatory Waste Minimization Incentives that Have Been Put in Place by EPA and the States Effective?
V. Which Long Term approaches Will Speed Industry Progress in Waste Minimization?

I. Authority

This notice is issued under the authority of section 2002 of the Solid Waste Disposal Act of 1970, as amended, 42 U.S.C. 6912.

II. Introduction

The Agency recognizes that industry managers cannot do a good job of preventing pollution without looking at opportunities across all media. However, to facilitate an effective multi-media pollution prevention framework, the Agency must correct any pollution prevention impediments inherent in our medium-specific programs; to this end, we want to assure that our hazardous waste minimization efforts are focused on the most important priorities. This notice, therefore, seeks to promote the identification of hazardous waste minimization incentives that will help the Nation's focus on multi-media pollution prevention work more effectively.

The Agency plans to use the comments received in response to today's notice in five ways:

1. To assess whether existing regulations should be modified to better encourage source reduction and environmentally sound recycling;
2. To develop information that will be used as the Agency develops new regulations and to incorporate waste minimization incentives in those regulations;
3. To promote better information exchange between EPA and the regulated community on waste minimization issues and to gain a better understanding of industry waste minimization program;
4. To serve as a source of information for reporting to Congress and for responding to questions from the Congress and the public on future regulatory and legislative direction, and
5. To better understand State waste minimization programs and to promote more effective Federal and State government program planning and implementation.

III. Background: How do the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 Address Waste Minimization?

A. The Resource Conservation and Recovery Act (RCRA)

The United States has made substantial progress over the last 18 years in improving the quality of the environment through implementation of medium-specific pollution control programs administered by EPA and the States. Even so, economic, technological, and institutional factors limit how much improvement can be achieved under programs that emphasize management of pollutants after they have been generated ("end-of-pipe" control). As early as 1976, EPA published an environmental auditing policy (41 FR 3505, August 18, 1976) that recognized the limits to reducing threats to human health and the environment if

we depend only on better methods of control, treatment and disposal.

Also in 1976, Congress enacted the Resource Conservation and Recovery Act (RCA) with the intent of ensuring that hazardous wastes were managed and disposed of safely. As a result, EPA established the Nation's first "cradle to grave" hazardous waste identification, storage and disposal (TDS) facilities must annually certify that they have a waste minimization program. These provisions require affirmative action by facility owners and operators, but allow great flexibility on what specific waste minimization actions a generator or TSD facility must take. That is, Congress did not dicate to generators or facility requirements, particularly the land disposal restrictions program, would be.

C. Post-HSWA Developments

In its 1986 RTC, EPA could not make definitive conclusions about the need for additional hazardous waste minimization requirements until: (1) The land disposal restrictions program

impediments are not apparent. These impediments and opportunities are the focus of this notice.

The identification of potential impediments and opportunities stem from analyses in a variety of areas, including: A review of RCRA survey data that contained questions on waste minimization (including the 1986

(3) Should other technical assistance approaches be considered?

(4) How can EPA and the States better measure the results of technical assistance programs?

(5) Are there other incentives associated with technical assistance programs that should be considered?

EPA has developed several sources

and production processes from different manufacturing sectors, and often among facilities within the same sector. The Agency solicits comment on a variety of questions concerning the approaches that are summarized in this section and other approaches that may be feasible. Among these are:

we depend only on better methods of control, treatment and disposal.

Also in 1976, Congress enacted the Resource Conservation and Recovery Act (RCA) with the intent of ensuring that hazardous wastes were managed and disposed of safely. As a result, EPA established the Nation's first "cradle to grave" hazardous waste identification, tracking and management system. The first major body of RCRA regulations was promulgated May 19, 1980 (45 FR 33073).

B. The Hazardous and Solid Waste Amendments of 1984 (HSWA)

In the late 1970's and early 1980's, continued discoveries of ground water contamination and other problems that resulted from pre-RCRA land disposal practices heightened public concern, and resulted in enactment of the multi-billion dollar Superfund waste cleanup program and later the amendment of RCRA by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

HSWA made two important changes to spur the Nation's progress in waste minimization. First, HSWA prohibited land disposal of hazardous wastes that do not meet a specified treatment standard using the best demonstrated available technology (BDAT). These tough "end-of-pipe" restrictions, in combination with the effects of other hazardous waste management requirements that were tightened in HSWA, were intended to increase the level of human health and environmental protection required before wastes could be land disposed. However, the stringency of the land disposal restrictions (LDR) program had a secondary effect of causing generators to look for ways to reduce the volume and/or toxicity of hazardous waste they generated in the first place.

Second, and more important over the long term, HSWA a national policy that makes waste minimization a higher priority than treatment and disposal in managing hazardous wastes. Taken together, these new policy directions reflect Congress' concern about long term reliance on end-of-pipe treatment and land disposal standards as the primary means to protect public health and the environment.

HSWA directed industry and government to implement the national waste minimization policy in several direct, but limited, ways. Hazardous waste generators must certify on all hazardous waste mainfests that they have a waste minimization program in place and must report their waste minimization activities every two years in the RCRA Biennial Report. Similarly, permitted hazardous waste treatment, storage and disposal (TDS) facilities must annually certify that they have a waste minimization program. These provisions require affirmative action by facility owners and operators, but allow great flexibility on what specific waste minimization actions a generator or TSD facility must take. That is, Congress did not dicate to generators or facility owners and operators exactly how individual waste minimization programs must function.

EPA has stepped in to take a leadership role in pursuing hazardous waste minimization as a primary national strategy for pollution prevention. To provide guidance to the regulated community, EPA proposed "Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program" in the **Federal Register** (June 12, 1989) that: (1) Defines activities included in the definition of waste minimization, and (2) describes several basic waste minimization program elements that EPA believes should be included in a facility's waste minimization program as part of HSWA's certification requirements. A broad range of source reduction techniques (e.g., equipment modification, raw material substitution, better management practices and other process related changes) and environmentally sound recycling (e.g., reuse, recycling, reclamation) activities are included in EPA's definition of waste minimization. In addition, the guidance provides broad flexibility to hazardous waste generators and facility owners and operators on how to implement several key program elements in a way that fits the technical and management needs of individual facilities.

HSWA also required EPA to study the issue of whether "standards of performance or other additional actions" for reducing hazardous waste generation are "feasible and desirable," and to submit a Report to Congress (RTC) in 1986 that discusses the Agency's recommendations, if any, for further action. In preparing the 1986 RTC, EPA found that, while some companies have implemented waste minimization efforts, only limited anecdotal information was available to measure how much waste minimization was occurring, or the potential reductions that could be expected. At that time, neither the Federal government nor the States had much information or experience in designing, implementing, enforcing or measuring the effectiveness of government-required waste minimization programs, nor did the States or EPA know what the impact of the other HSWA requirements, particularly the land disposal restrictions program, would be.

C. Post-HSWA Developments

In its 1986 RTC, EPA could not make definitive conclusions about the need for additional hazardous waste minimization requirements until: (1) The land disposal restrictions program, which was expected to affect a reduction in waste generation and/or toxicity, was fully implemented, and (2) EPA could measure progress already underway by industry. The earliest that EPA projected it would be able to gauge the effectiveness of the LDR program and voluntary industry actions would be 1990. In the interim, EPA committed to follow up in three areas by: (1) Developing a core technial assistance program that encourages industry to initiate source reduction and recycling activities, (2) measuring and reporting progress to Congress and the public, and (3) assessing longer term options, including regulatory and other incentives for waste minimization.

EPA has put in place ongoing programs for the first two areas, providing technical assistance to industry and measuring and reporting progress to the Congress and public. EPA's efforts in these areas are summarized briefly in the next section.

With regard to the third area, long term options, a variety of approaches to prevent pollution have been suggested since 1986. Some are already in the early stages of implementation. For example, about 10 States have recently enacted legislation containing various forms of long term pollution prevention incentives which are beginning to be implemented. The U.S. Congress has also proposed several other approaches in pollution prevention bills. These approaches are clearly directed at reducing multi-media releases of pollutants to the air, water and land. (Copies of selected State laws and Congressional bills are available for inspection in the RCRA docket.)

EPA is assessing the feasibility and desirability of these long term incentives and others for reducing hazardous waste generation. In addition, many different organizations have pointed out that the RCRA regulations contain inherent impediments to waste minimization. Consequently, in addition to studying long term multi-media pollution prevention incentives, EPA has identified: (1) Potential impediments in the RCRA regulatory structure that may need to be corrected, and (2) opportunities to create waste minimization incentives within specific RCRA regulations, even where impediments are not apparent. These impediments and opportunities are the focus of this notice.

The identification of potential impediments and opportunities stem from analyses in a variety of areas, including: A review of RCRA survey data that contained questions on waste minimization (including the 1986 Hazardous Waste Generator Survey, the 1986 Treatment, Storage, Disposal and Recycling Facility Survey, and the 1987 RCRA Biennial Report); a review of regulation development efforts in each of the major RCRA program areas; pilot projects directed at studying how particular long term regulatory or other incentives might work; and workshops and inteviews with companies to imporve EPA's understanding of facility-specific examples of waste minimization impediments.

The Agency is today requesting comments on these ideas and any others that would further the goal of reducing the volume and/or toxicity of hazardous waste generation. EPA's commitment to this goal constitutes one of the primary objectives within the Agency's RCRA program today, and will remain so. We urge members of the public to devote substantial time and effort in responding to this notice and, in particular to present in detail their analyses of the ideas and issues presented.

IV. Are the Non-Regulatory Incentive Programs That Have Been Put in Place by EPA and States Effective?

EPA and many States have put in place two types of nonregulatory programs: (1) Technical assistance to industry and (2) tracking and reporting industry progress to Congress and public. Summaries of these approaches are provided below. EPA solicits comments on the effectiveness of these approaches and suggestions of other non-regulatory approaches that may prove useful.

A. Technical Assistance Programs

EPA and the States have worked cooperatively to put in place a variety of technical information and assistance programs that make information on source reduction and recycling techniques available directly to industry and the public. Many of these programs are summarized below. EPA would like to receive public comment on a variety of questions concerning whether these programs are appropriate or whether they should be modified. In particular:

(1) Is technical information easily accessible to industry and the public?

(2) Is information from government technical assistance programs useful?

(3) Should other technical assistance approaches be considered?

(4) How can EPA and the States better measure the results of technical assistance programs?

(5) Are there other incentives associated with technical assistance programs that should be considered?

EPA has developed several sources that can be used to provide information directly to industry, or through State technical assistance programs. EPA maintains a Pollution Prevention Clearinghouse which contains technical information on source reduction and recycling technologies, relevant publications and expert contacts, a calendar of training courses and conferences, State technical assistance services and industry success stories in waste minimization. The Clearinghouse can be accessed using a compatible personal computer/modem system or by using a toll-free EPA hotline ((800) 424-9346). EPA also publishes a pollution prevention newsletter, produces videos and brochures on waste minimization that are available to the public, and sponsors workshops and conferences.

EPA also promotes technical assistance to industry indirectly by supporting the development of State technical assistance programs. State personnel often have the primary day-to-day contacts with industry for many RCRA program matters. Over 35 States have some form of technical assistance program to help companies explore waste minimization technologies. EPA has provided partial funding to over 30 State programs through competitive grants. Many of these grants are used to fund innovative cooperative projects with industry. EPA also provides partial funding for the National Roundtable of State Waste Reduction Programs, an organization of State technical assistance and regulatory program representatives that meets regularly to discuss technical and programmatic waste minimization issues. The Roundtable uses the EPA Clearinghouse as a central repository for technical information exchange and publishes proceedings on state waste minimization activities. EPA's research office also funds several different types of waste minimization research and demonstration projects in a variety of joint ventures with States and industry.

B. Measuring Progress in Waste Minimization

Measuring progress in waste minimization has proved to be a challenging task. EPA and the States have found it difficult to assess and compare waste generation and waste minimization efforts among facilities and production processes from different manufacturing sectors, and often among facilities within the same sector. The Agency solicits comment on a variety of questions concerning the approaches that are summarized in this section and other approaches that may be feasible. Among these are:

(1) What are appropriate data for the Federal government to collect in order to gauge industry's progress in reducing waste generation?

(2) Should this data be production process specific?

(3) Should EPA collect data directly from individual facilities or should EPA work with the States to collect this data?

(4) With what frequency should this data be collected and evaluated?

EPA and the States have used the RCRA Biennial Report and several specialized surveys to measure waste generation and minimization across a board spectrum of facilities. Both government and industry have historically characterized hazardous wastes in terms of what is in the waste just before it is treated, often without regard to the production processes from which the waste emanates. In many cases, facilities mix waste streams from different processes without characterizing individual process/waste relationships. One of the keys to identifying source reduction and recycling opportunities and tracking progress lies in developing data that better relates production processes and waste stream characteristics. Industry representatives have pointed out that the data collection method used by EPA in the 1986 Generator Survey and the 1987 RCRA Biennial report, which allows facilities to report the ratio of the total volume of waste that goes to treatment to units of production, does not accurately reflect process specific waste minimization changes, and could lead to misleading results. An alternative method could require collecting process-specific waste data. However, this method might require significantly more data, some of which may be proprietary in nature. Is process specific waste data more appropriate for measuring progress?

C. Awards to Industry

In certain states, facilities receive environmental awards for their pollution prevention efforts. This practice is not utilized on a national scale. The Agency has several questions concerning an awards-based approach:

(1) Do awards or some other form of recognition provide an incentive for waste minimization?

(2) Should EPA institute awards at the regional, national or state level?

(3) Are there other award-based incentives that would be appropriate at the Federal level?

D. Research

Well known source reduction and recycling technologies exist for some industry and the public also have a better understanding of potential long term incentives to preventing pollution now than in 1986.

A discussion of incentives within each of these areas follows. Specific ideas are provide strictly as a basis for discussion. They do not necessarily represent EPA's current preferences, statutory authority commonly referred to as "the definition of solid waste." Over the course of several rulemakings, EPA has solicited comment on its jurisdiction over hazardous waste recycling. During this public dialogue and on other occasions, many commenters have provided their views on how the RCRA regulations

B. Should EPA Consider Marketable Waste Generation Trading Rights or Other Long Term Economic Incentives To Reduce Waste Generation?

Many of the ideas that have been suggested to the Agency regarding waste minimization function as extensions to the current waste management programs. Are there other undesirable wastes. Provisions may also be necessary to deal appropriately with recycling.

Certain issues would need to be resolved before adopting such an approach. For instance:

(1) Should all hazardous waste be included under this scheme or should certain classes, such as waste from corrective action

(1) Would collection and dissemination of information on source reduction and recycling technologies by EPA, as an early part of the listing regulation development process, provide an incentive for the regulated community to implement source reduction and recycling technologies and reduce hazardous waste generation?

(2) Are there other incentives that would encourage upfront technical information

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(2) Should EPA institute awards at the regional, national or state level?

(3) Are there other award-based incentives that would be appropriate at the Federal level?

D. Research

Well known source reduction and recycling technologies exist for some production processes. However, for other production processes, little information is available in the public domain because some technologies are considered to be proprietary information or, in other cases, technologies have not yet been developed. EPA explored several routes for expanding hazardous waste minimization and multi-media pollution prevention research in a Report to Congress entitled, "Pollution Prevention Research Plan," (March 1990, document number EPA–600–9–90–015). A copy of that report is available for inspection in the RCRA docket. This notice does not duplicate the issues raised in that report, but instead asks readers to comment on incentives research provides as compared to those provided by other potential regulatory or nonregulatory incentives. Among the subjects commenters should address are:

(1) Would government-sponsored research on source reduction and recycling technologies, as a means to transfer more technologies to the public domain, provide an incentive for some companies to participate in the research, and for other companies to implement technologies that are developed?

(2) Are there other research-related incentives that should be considered?

V. Which Long Term Options Will Speed Industry Progress in Waste Minimization?

In its 1986 RTC, EPA deferred final conclusions on whether it was feasible and desirable to adopt long-term regulatory and nonregulatory options for two principal reasons. First, EPA believed it was necessary to allow the Land Disposal Restrictions Program and other requirements of HSWA to take effect. Second, neither the Agency, the States nor industry had sufficient experience or information at that time to design, implement, track or enforce additional incentives.

Since 1986, EPA has learned a great deal about the effects of the LDR and other HSWA program requirements, even through some aspects of HSWA are not completely in place (for example, the last phase of the regulatory requirements for the LDR program did not become effective until August, 1990, except or some categories of waste that were given further extensions for compliance. Furthermore, EPA believes the States, environmental groups, industry and the public also have a better understanding of potential long term incentives to preventing pollution now than in 1986.

A discussion of incentives within each of these areas follows. Specific ideas are provide strictly as a basis for discussion. They do not necessarily represent EPA's current preferences, statutory authority, or policy commitments. Thus, commenters should not feel constrained by these specific approaches. The Agency wishes to explore any other incentives that commenters believe should be considered. Once all ideas have been thoroughly examined, EPA will be in a position to implement the best ones as part of its ongoing waste minimization commitment.

A. Should EPA Consider Changing the Definition of Solid Waste in Its Regulations To Promote Additional Source Reduction and Environmentally Sound Recycling?

Many have indicated that RCRA and subsequent EPA regulations regarding the definition of "solid waste", a key jurisdictional term for EPA's RCRA authority, actually contain impediments to source reduction and recycling. The focus of RCRA and subsequent regulations was not always on minimizing the amount or toxicity or waste generated at the outset.

EPA is currently addressing many comments received in response to prior rulemakings on this issue (see 52 FR 519, January 6, 1988). The key issues raised by previous commenters are summarized below. However, EPA would like commenters not to repeat points already made to us. Rather, the Agency requests comments on broader questions, such as:

(1) What are specific examples of public benefit from recycling? How can we ensure that recycled materials will be safely managed? Are the benefits to recycling sufficient to justify less restrictive regulatory requirements for certain recycling activities compared to the requirements for treatment and disposal?

(2) Do incentives that encourage recycling discourage source reduction?

To craft a regulatory program for proper management of hazardous waste, EPA faced many difficult decisions regarding the appropriate place to draw the line between recycling practices that are more production-oriented (and, therefore, arguably outside the primary aim of RCRA), and recycling practices which more closely resemble waste management and require waste management-type regulation. Regulations defining whether recycling activities are regulated or not are found in 40 CFR parts 261 and 266, and are commonly referred to as "the definition of solid waste." Over the course of several rulemakings, EPA has solicited comment on its jurisdiction over hazardous waste recycling. During this public dialogue and on other occasions, many commenters have provided their views on how the RCRA regulations may impede hazardous waste recycling activities.

These views on impediments to recycling fall into several major categories:

—Some commenters claim that the Federal definition of solid waste is complicated. The complicated nature of the definition and EPA's implementing regulations has caused uncertainty for some generators in understanding precisely what substances are hazardous wastes and must be managed as such, and which are not because they are reused in a way that is outside RCRA jurisdiction. Commenters claim that without better clarification, the uncertainty impedes environmentally sound recycling, and may encourage additional "sham" recycling.

—Commenters claim that the current permitting process is cumbersome, time-consuming and carries associated regulatory costs and liabilities. These impede business entry into recycling operations. Further, permitting brings with it the responsibility to clean up hazardous waste or constituent releases from solid waste management units on the facility, regardless of when the release occurred. For some potential recyclers, the potential cost of facility-wide cleanup can be a strong disincentive to any recycling activity that might require a RCRA permit.

—Commenters claim that the "mixture" and "derived from" rules in the RCRA hazardous waste regulations can cause large volumes of residuals from recycling operations to be pulled into the hazardous waste management system. They claim that added costs of managing these materials as hazardous wastes may discourage recycling activities.

—Waste-To-energy conversion in incinerators, furnaces and boilers should be recycling activity.

EPA is continuing to evaluate the comments received to date as they relate to possible impediments to waste minimization. However, EPA requests any additional comments that discuss other ways the definition of solid waste may inhibit waste minimization.

B. Should EPA Consider Marketable Waste Generation Trading Rights or Other Long Term Economic Incentives To Reduce Waste Generation?

Many of the ideas that have been suggested to the Agency regarding waste minimization function as extensions to the current waste management programs. Are there other approaches that should be considered? Can long terms incentives that have been put in place for other medium programs, such as marketable rights for air emissions, be modified in a way that provides incentives for hazardous waste reduction?

For example, under this type of approach, the government could issue rights to generate a limited quantity or toxicity of hazardous waste. By establishing overall limits, and by progressively reducing the total amount of waste that can be generated in successive years, this approach could promote the Congressional goal of reducing or eliminating the generation of hazardous waste. Under one variation of this approach, a facility, in the first year, would receive transferrable rights for the quantity of waste it generated during a base period. The next year the facility would receive rights to generate a smaller percentage (such as 5% less), and so on over time. If a facility implemented waste minimization efforts which reduced its need for these rights, it could sell them to other firms.

Alternatively, the government could allocate waste generation rights without respect to facilities' individual current waste generation rates. The amount and/or toxicity of hazardous waste which could be generated would decline over time as the government issues fewer rights. To allocate these rights, the government could for instance hold auctions (perhaps with restrictions on the amount which could be sold to a single buyer) with firms which have bought the rights being able to trade them to others if they did not need them. Small quantity generators might, for instance, purchase them from commercial waste firms if they did not wish to participate in the auction.

Under either approach to waste minimization, EPA would expect that firms that can reduce waste least expensively would do so, and then either buy fewer rights or sell their excess to other firms. Generators of hazardous waste would have a direct financial incentive in reducing their waste and would weigh the costs of current operations against the cost of generator rights. Waste generation rights could be specific to different types of waste to discourage particularly undesirable wastes. Provisions may also be necessary to deal appropriately with recycling.

Certain issues would need to be resolved before adopting such an approach. For instance:

(1) Should all hazardous waste be included under this scheme or should certain classes, such as waste from corrective action cleanups, be exempt?

(2) What are appropriate reduction restructions?

(3) Would these rights follow the waste as part of the manifest?

(4) Should hazardous waste be treated homogeneously, or should certain hard-to-treat wastes be a separate and more restricted class?

(5) Would such a scheme create a undesirable new incentive for cross-media transfer of pollutant generation?

(6) How would the government implement this approach? Is privatization a workable option for implementation?

(7) What other long term economic incentives are appropriate?

C. Should EPA Consider Waste Characterization, Assessment and Listing Incentives?

EPA would like to know whether commenters believe it is appropriate to incorporate waste minimization incentives in the RCRA/HSWA hazardous waste identification and listing regulatory process in a way that causes generators to reduce or eliminate the generation of certain waste streams that are to be regulated under RCRA. Two long-term incentive approaches are summarized below. Are these and/or other approaches appropriate?

A solid waste is hazardous if EPA either "lists" the waste through rulemaking (listing is based on the results of exposure and risk assessment analyses), or if the waste exhibits any hazardous characteristics (e.g., ignitability, corresovity, reactivity and toxicity).

One potential long term option focuses on expanding the data collection and analysis portion of the listing process (an initial step in the regulatory development process that is needed to support waste characterization and risk assessment analyses) to require collection and dissemination of source reduction and recycling information for processes that generate the waste. Listing decisions would still be based on risk, but during the listing process, generators would have an upfront opportunity to reduce or eliminate facility waste streams to avoid or minimize the volume of waste subject to RCRA regulation once the listing is finally adopted. Specific questions relating to this potential approach include:

(1) Would collection and dissemination of information on source reduction and recycling technologies by EPA, as an early part of the listing regulation development process, provide an incentive for the regulated community to implement source reduction and recycling technologies and reduce hazardous waste generation?

(2) Are there other incentives that would encourage upfront technical information exchange and implementation of source reduction and recycling technologies by generators?

Another suggested approach would allow generators that become subject either to a new listing requirement or the toxicity characteristic rule to enter into an agreement with EPA in a way that provides time for the generator to identify, design and install source reduction and recycling technologies that will either significantly reduce or eliminate hazardous waste generation. Many facilities have claimed that once they become subject to the RCRA regulations, the statutorily-based effective dates for the RCRA waste management requirements is too short; i.e., that time is insufficient to put waste minimization technologies in place. Some commenters say that the result is to limit the options available to the facility—mainly seeking available (and costly) treatment and disposal capacity for wastes that have become RCRA regulated (i.e., and end-of-pipe situation). Consequently, capital spent on mandatory treatment may significantly decrease capital available for making waste minimization process changes, which perpetuates waste generation instead of minimizing it. Questions that arise concerning an approach such as this one include:

(3) Would this approach be appropriate if it were limited to selected waste streams?

(4) If so, what are appropriate criteria for selecting waste streams subject to this approach?

(5) Does this approach provide a better incentive for some generators than others (i.e., for new sources versus existing sources, since new generators coming on line may have more flexibility to consider source reduction and recycling technologies in process design)?

EPA would like commenters to describe other waste minimization related incentives that could be incorporated in the listing or characteristic process.

D. How Can EPA Consider Modifying Current Performance Standards for Best Demonstrated Available Treatment (BDAT) Technologies To Include Waste Minimization Technologies?

EPA's 1986 RTC looked at the issue of waste minimization performance

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standards in some detail, but deferred final conclusions until additional information became available on the effectiveness of the land disposal restrictions program. EPA now has more information available on the effectiveness of the LDR and other HSWA requirements. EPA requests comment on whether it should consider waste minimization technologies in certain situations as a method to improve control of hazardous constituents in waste streams. Is the approach summarized below appropriate? Are there other approaches commenters believe should be considered?

In the course of putting the LDR program in place, EPA identified some situations in which certain constituents (e.g., heavy metals) that, once in a waste stream, cannot be destroyed, and must either be recovered (if a technology exists), or must be treated through stabilization methods that, at best, reduce the mobility of the hazardous constituents in the waste. The toxicity and volume of the hazardous constituents in the waste. The toxicity and volume of the hazardous constituents in the waste are not reduced or eliminated. EPA has collected and analyzed available technical information that demonstrates the availability and effectiveness of proven source reduction and recycling technologies for some production processes and waste streams. Some of these technologies have been shown to provide a net cost savings to facilities compared to the costs of managing hazardous wastes that would otherwise be treated and disposed. For example, the BDAT technology specified for F006 wastes (electroplating wastewater treatment sludge) is stabilization. Stabilization immobilizes constituents and therefore reduces exposure and risk. However, stabilization does not destroy hazardous constituents and therefore requires long-term management. In addition, stabilization increase the volume of wastes ultimately disposed of in the land. Some F006 generators have installed source reduction and recycling technologies that have reduced waste generation significantly (often resulting in a net savings to the facility). However, many generators have not yet installed source reduction and recycling technologies. Once the constituents and up in the wastewater treatment sludge, they cannot be easily recovered. In contrast, the BDAT standard for K061 wastes (electric arc furnace dust), which generally contain high levels of zinc, requires recovery of heavy metals from the waste. In this case, the K061 waste is amenable to recovery because of the nature of the waste.

In appropriate situations, a waste minimization performance standard incentive approach might be devised that provides more effective protection than treatment alone. This approach would set limits for the constituents remaining in the waste treatment residuals (per unit of production or some other measure) after application of best available source reduction and recycling techniques. For example, electroplating wastewater treatment sludge contains much lower levels of heavy metals if several proven and effective source reduction and recycling techniques are in place, rather than if wastewater treatment alone is the only method used to control constituents in wastewaters. Under this approach, LDR treatment standards could be written based on waste characteristics from processes using source reduction and recycling technologies as a method for controlling constituent levels in the waste.

To set standards of this nature, the Agency would have to study waste minimization practices within well-defined, relatively narrow generator categories rather than the broader categories now used. This type of standard setting requires significantly more data than setting performance standards based on treatment technologies alone, and it may not make sense for all waste streams. Questions that relate to this specific approach include:

(1) Should EPA consider waste minimization-based performance standards as a more preventive approach for setting waste management standards for selected waste streams?

(2) Should specific criteria be used to select waste streams for which waste minimization performance standards should be set? If so, what are these criteria? Among the associated questions are:

—Do treatment methods alone effectively minimize long term risk?

—Are source reduction and recycling technologies readily available? Is the information proprietary?

—Is the process that generates the waste widely used?

—Is it a relatively simple process that generates the waste, or is it highly complex or highly variable from one plant to another?

—Is adequate treatment capacity available?

—Is the waste highly toxic, highly mobile, and/or ubiquitous?

(3) Should recycling technologies in this approach be considered for those cases where recycling may be less effective than treatment in reducing releases to the environment?

E. Should EPA Consider Waste Minimization Incentives in the RCRA Treatment, Storage and Disposal (TSD) Permit Process?

Two major issues arise at the outset. First, is it appropriate to modify the RCRA TSD permit process to include waste minimization commitments as a condition of permit approval? Several variations of this approach are summarized below. Second, do any of the approaches described here provide stronger incentives than others? Also, are other approaches appropriate or can additional incentives be added to one of those discussed?

One incentive approach would require permittees to submit a waste minimization facility plan (or waste reduction impact statement) either as a condition for issuing the permit or as supplemental information that must be submitted within a certain period of time (such as 150 days) following the issuance of a permit. Within the facility plan, the permittee must include information on the amount and type of hazardous waste generated, identification of the source of waste by waste stream, an analysis of technically and economically feasible hazardous waste reduction techniques, and a program and schedule for implementing the feasible reduction techniques. The facility's waste minimization plan also serves to verify the elements of the waste minimization program in place, as certified on manifests and any previous permit operating records. This information would be included as part of the public information for review during the permitting process. This information could be inlcuded in the public hearing process and may increase public awareness of efforts facilities are (or are not) making to reduce their waste generation. Waste minimization commitments made by the companies, such as testing of new production technologies to reduce waste generation, could also become enforceable permit conditions.

At least six States have enacted legislation that requires some form of facility planning. Information on specific State programs can be found in the RCRA docket. EPA asks commenters to address:

(1) Should EPA impose waste minimization facility planning requirements through the permit process? If so, what type of requirement should be imposed?

(2) Will this approach increase local public attention and awarness of facility specific waste minimization plans during the public comment and public hearing portions of the permit review and approval process? Will this process improve communications between government, industry and the public?

(3) What should the Federal and State roles be in states that have passed such legislation, and in States without such legislation?

(4) In setting priorities in the permitting program, should EPA give a higher priority to generators who are committed to implementing measures that minimize waste over facilities who do not make such commitments?

Another approach looks at the impacts of multi-media reductions on the RCRA permit process. EPA has initiated a pilot project that examines whether additional time should be granted to facilities in their permit revision schedules and/or whether quantitative requirements should be changed in RCRA or other media specific permits in cases where implementation of source reduction and recycling process changes would reduce or eliminate releases to all media (air, water and land), and possibly eliminate the need to add restrictions to end-of-pipe treatment technologies. In cases where additional time may be needed for making revisions on one medium permit (e.g. for a RCRA permit), permit revision dates could move ahead for other medium, so that all permits could be issued or modified at the same time. Is this an appropriate approach for considering multi-media emissions reductions in the RCRA permit issuance process? Are there other incentives that should be considered? Information on this pilot project is in the RCRA docket.

F. Should EPA Consider Waste Minimization Requirements in the Hazardous Waste Treatment Capacity Planning Requirements of Superfund Amendments and Reauthorization Act of 1986 (SARA)?

Ensuring adequate capacity for hazardous waste treatment storage and disposal is a primary focus on the RCRA Program. Should EPA consider shifting the focus of the SARA capacity assurance planning process to emphasize additional waste minimization incentives? Would placing greater emphasis on waste minimization by EPA in hazardous waste planning result in greater reductions in waste generation and/or toxicity? Additional information on this approach is discussed below. Are other approaches such as facility planning appropriate?

A secondary impact of the LDR program was the creation of treatment capacity shortfalls of varying degrees for certain wastestreams at the national, regional and state levels. While the shortfalls are expected to decrease over time, facility owners and operators and government officials are nevertheless looking more aggressively toward waste minimization as a partial solution to capacity shortfalls.

In EPA's guidance manual to the States for the preparation of their SARA Capacity Assurance Plans, the Agency stated its preference for plans that included "sound analyses of and provisions for waste minimization." At the same time, several states have put legislative or other requirements in place that require generators to submit waste minimization plans that identify specific past and future reductions. EPA is interested in exploring the potential usefulness of this and other approaches. Questions of interest to the Agency include:

(1) Should States be required to include waste minimization in their capacity assurance plans?

(2) Should States be required to request facility specific waste minimization plans?

(3) Should States include summaries of their facility specific plans in their submissions to EPA?

(4) What approach should EPA take in working with States that have authorities for multi media facility planning?

G. Should Compliance Monitoring and Enforcement Play a Greater Role in Promoting Waste Minimization?

What innovative approaches could be used to incorporate waste minimization into compliance and enforcement activities? Broadened enforcement, particularly to non-notifiers, will promote pollution prevention beyond that achieved by market forces. RCRA inspectors have frequent contact with the regulated community and thus are in an excellent position to offer information and encouragement on incorporating waste minimization into production processes. However, inspectors providing information or advice on incorporating waste minimization into production process must avoid jeopardizing their position as enforcement officials. How can this information source best be used?

The enforcement settlement process could also be used to implement pollution prevention strategies by incorporating them into settlement agreements. For example, settlements could require a company to conduct periodic waste audits or to submit a comprehensive analysis of the effect of waste minimization on its operations, or make specific process changes to minimize waste generation. Are these or other compliance monitoring incentives appropriate to consider?

H. Should EPA Consider Long Term Incentives for Minimizing Hazardous Wastes That Are Managed in RCRA-Exempt Treatment Facilities?

Under RCRA regulations, certain RCRA hazardous wastes are exempt from the RCRA waste management requirements, such as wastes that are managed in certain units controlled under the Clean Water Act. EPA estimates that more than half of the RCRA hazardous wastes that are generated annually are exempt from the RCRA hazardous waste regulations by this route.

Considering the magnitude of this universe, is it appropriate to place less emphasis on putting waste minimization incentives in RCRA waste treatment, storage and disposal regulations which have no impact on wastes managed in exempt units, and instead expand the generator regulations to include incentives that focus on minimizing waste volume and toxicity, regardless of what sort of units are used for management of the wastes? EPA's current generator regulations do not consider waste minimization incentives. Are other incentives appropriate to consider?

Final Note to Commenters:

EPA is at an important juncture in determining how to implement its overall goal of pollution prevention, with waste minimization being one the key elements of this goal. To assist the Agency in charting the future course of waste minimization in the RCRA program, EPA wishes to receive comments on the broad range of specific incentive questions that are presented in this notice and any other incentives believed to be appropriate for Federal implementation. The comments received will provide important information for program development and the setting of priorities, and should also lead to insight into the issues that lie ahead. (For additional information, the reader may refer to "The Nation's Hazardous Waste Management Program: the RCRA Implementation Study" (EPA document 20S–0001, July, 1990. This comprehensive review of RCRA implementation issues is available for inspection in the RCRA docket).

Dated: September 20, 1990.

Mary A. Gade,

Acting Assistant Administrator.

[FR Doc. 90–23262 Filed 10–4–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket No. 89–554; FCC 90–316]

An Inquiry Relating to Preparation for the International Telecommunication

the 500–3000 MHz range, high quality audio or High Definition Television (HDTV) delivered by Broadcasting-Satellite Services (BSS), and new space services above 20 GHz, as well as Articles 55 (Rev.) and 56 (Rev.) of the international Radio Regulations, which concern requirements for on-board

would be relocated to other bands by July 1, 2007, and these users would be permitted to remain in their present bands on a secondary basis to the HF broadcasting service.

5. The second major issue concerns an allocation of spectrum for new mobile services in the 1700–2500 MHz band.

reallocation of the 1525–1530 MHz band to MSS on shared basis with space operations. The latter proposal would require Regions 1's and 3's existing terrestial-fixed users to be accommodated on a secondary basis and U.S. flight test and telemetry operations to vacate the 1525–1530 MHz band upon implementation of MSS. The

support for an allocation for BSS (Sound) in the 500–3000 MHz range, while some broadcast and mobile radio interests oppose such an allocation, contending that there is no proven demand for the service and expressing concern that their services might have to be relocated. The Commission finds that

implement HDTV BSS and that new digital modulation techniques emphasizing reduced transmission bandwidth may allow all countries to utilize the 12 GHz band for HDTV. However, the Commission also believes that the 17.3–17.7 GHz band, which is currently allocated for feederlinks for

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket No. 89-554; FCC 90-316]

An Inquiry Relating to Preparation for the International Telecommunication Union World Administrative Radio Conference for Dealing With Frequency Allocation in Certain Parts of the Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: This action summarizes comments and reply comments received in response to the Commission's initial Notice of Inquiry in this proceeding (54 FR 53341; December 28, 1989) and solicits comments on tentative Commission proposals and policies for the World Administrative Radio Conference scheduled for February 3-March 5, 1992 (WARC-92) in Spain. The objective of this action is to develop proposals and policies for WARC-92.

DATES: Comments are due December 3, 1990. Reply comments are due January 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Torak, telephone (202) 632-7025.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Notice of Inquiry in General Docket 89-554, FCC 90-316, Adopted September 19, 1990, and Released October 1, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, suite 140, Washington DC 20037.

Summary of Second Notice of Inquiry

1. The 19th Plenipotentiary Conference (Plenipot), held during May-June, 1989, determined that a World Administrative Radio Conference should be convened in 1992 to address frequency allocations in certain parts of the spectrum. In November 1989, the Commission adopted a Notice of Inquiry (NOI) in this proceeding that sought comment on the several topics identified by the Plenipot. Specifically, the NOI solicited comment on the projected frequency needs of the HF (3-30 MHz) broadcasting service, mobile services in the 500-3000 MHz range, high quality audio or High Definition Television (HDTV) delivered by Broadcasting-Satellite Services (BSS), and new space services above 20 GHz, as well as Articles 55 (Rev.) and 56 (Rev.) of the international Radio Regulations, which concern requirements for on-board maintenance of shipborne radio and electronic equipment.

2. Approximately 90 individuals, businesses, and organizations, representing most of the various services that could be affected by WARC-92, commented on the NOI. A wide divergence of opinions was offered regarding the issues noted above. Additionally, on June 21, 1990, the International Telecommunications Union (ITU) Administrative Council agreed to expand the WARC-92 agenda to include issues, such as an allocation for low-earth orbiting satellites, related to those recommended by the Plenipot. The most significant issues are summarized and discussed below.

3. The Commission also notes that the Steering Committee of the Industry Advisory Committee (IAC) to WARC-92 submitted a detailed report, based upon information received from its various Informal Working Groups, that offered input to the Second Notice of Inquiry. However, due to time constraints, this report was not submitted to the IAC for formal endorsement. Because the Commission believes that this report offers an important private sector contribution to this proceeding, it is being inserted into the docket file and comment is requested on it.

4. The first major issue concerns the HF (3-30 MHz) frequency band. A majority of commenters support increasing the HF broadcasting allocation by approximately 1500 kilohertz. However, a few existing fixed and mobile users of HF spectrum question the need for additional HF broadcast spectrum, contending that decreases in HF broadcasting jamming due to political changes in the Soviet bloc lessens the need for such an allocation, and also maintaining that spectrum efficiency can be increased via techniques such as single sideband. The Commission finds that substantial growth in HF broadcasting has occurred since WARC-79 and that suspension of jamming has had little effect on Commission-licensed stations, none of which have ever been jammed. Accordingly, the Second Notice of Inquiry proposes to reallocate 1325 kilohertz of spectrum to HF broadcasting and require use of reduced carrier single sideband technology to satisfy the increased HF broadcasting need. Existing fixed and mobile users would be relocated to other bands by July 1, 2007, and these users would be permitted to remain in their present bands on a secondary basis to the HF broadcasting service.

5. The second major issue concerns an allocation of spectrum for new mobile services in the 1700-2500 MHz band. Proponents of new mobile services such as personal communications networks, Digital European Cordless Telephone, and Future Public Land Mobile Telecommunications Services favor an allocation of additional mobile spectrum in this band. However, parties representing various fixed and broadcasting services oppose additional mobile allocations in the 1700-2500 MHz band in the belief that their services could be displaced. The Commission notes that the international Table of Frequency Allocations for Region 2 has a mobile allocation from 1710-2500 MHz on co-primary basis with fixed, space research, radiolocation, and radiodetermination-satellite services. Therefore, the Commission believes that there is no need to make a specific proposal for an international mobile allocation in order to implement new technology mobile services in the United States. Furthermore, an exclusive international allocation for land mobile services could limit the Commission's flexibility to make domestic allocations. Therefore, the Commission proposes to maintain the shared, co-primary allocation for mobile services at 1710-2500 MHz in the international Table of Frequency Allocations for Region 2.

6. The third major issue concerns an additional allocation of spectrum for mobile satellite service (MSS). Several commenters maintain that additional MSS allocations should be provided near the current allocations at 1530-1544 MHz, 1555-1559 MHz, and 1626.5-1645.5 MHz, and one proposes that Radio Determination Satellite Service (RDSS) spectrum at 1610-1626.5/2483.5-2500 MHz and Instructional Television Fixed/Multichannel Multipoint Distribution Service (MDS) spectrum at 2500-2535 MHz and 2655-2690 MHz be shared with MSS. The Commission believes that demand for MSS is beginning to grow, especially for land and aeronautical MSS and that the proliferation of MSS systems being developed by various countries indicates that there will be increasing pressure to accommodate more and more systems within limited spectrum. Therefore, the Commission proposes to pursue the generic MSS allocation in the 1530-1559/1626.5-1660.5 MHz bands that was proposed at the 1987 WARC for Mobile Services and also proposes reallocation of the 1525-1530 MHz band to MSS on shared basis with space operations. The latter proposal would require Regions 1's and 3's existing terrestial-fixed users to be accommodated on a secondary basis and U.S. flight test and telemetry operations to vacate the 1525-1530 MHz band upon implementation of MSS. The Commission is further proposing to reallocate the 1610-1626.5/2483.5-2500 MHz bands to the MSS on shared basis with the RDSS. Regarding the proposal to share the 2500-2535/2655-2690 MHz bands with ITFS/MDS, the Commission seeks additional technical information on the feasibility of this proposal.

7. The fourth major issue to be addressed is an allocation of spectrum for low-Earth orbiting (LEO) satellites. The Commission notes that three proposals have been made for LEO satellite service using spectrum below 800 MHz including, specifically, the 137-138/148-149.9 MHz bands. The Commission believes that such a service offers substantial potential, but that its spectrum requirements need to be balanced against the needs of current users of proposed LEO bands. The Commission also believes that a primary allocation is necessary to meet financial and other requirements associated with construction and implementation of a necessarily extensive LEO service. In the Commission's view, the most logical bands for such a service are the 420-421/930-931 MHz bands. The 137-138/148-149.9 MHz bands do not appear feasible for LEO satellite use on a primary basis due to heavy use of both bands by other satellite services and heavy use of the 148-149.9 MHz band by high power fixed and mobile services. The 420-430 MHz band is currently being used by fixed, mobile, and radiolocation services, but these users could probably all be accommodated in the 421-430 MHz band, thus freeing up the 420-421 MHz band for LEO satellite use on a primary basis. The 930-931 MHz band is currently reserved for advanced technology paging services, but it is unclear whether the band will be needed for these services. The Commission therefore proposes that the 420-421/930-931 MHz bands be allocated for LEO satellite use on a primary basis and that secondary LEO use be permitted in the 137-138/148-149.9 MHz bands.

8. The fifth major issue to be considered is an allocation of spectrum for a broadcast satellite sound service (BSS (Sound)). Several parties express support for an allocation for BSS (Sound) in the 500-3000 MHz range, while some broadcast and mobile radio interests oppose such an allocation, contending that there is no proven demand for the service and expressing concern that their services might have to be relocated. The Commission finds that the service appears to require 20 megahertz of spectrum in each geographic area with additional spectrum necessary for a complementary terrestial broadcasting service. However, there is no obvious band in which to provide the service, as all spectrum options have drawbacks. Accordingly, the Commission solicits comment on the following three options:

(1) Add a footnote to the international Table of Frequency Allocations to provide BSS (Sound) in the 728-788 MHz terrestial broadcasting bands (UHF television channels 57-66) on a shared basis, subject to agreements of affected administrations. This option may not be viable domestically unless two UHF TV channels are vacated throughout the United States as well as one or more other TV channels in part of the United States to accommodate BSS (Sound) in neighboring countries.

(2) Allocate the 1493-1525 MHz band to BSS (Sound) with a complementary terrestial broadcasting service. This option would require relocation of affected Aeronautical Mobile Telemetering Service users to the 2390-2420 MHz band, displacement of fixed, radiolocation, amateur, and amateur satellite services from the 2400-2420 MHz band to above 2420 MHz, and reduction of the Industrial, Scientific, and Medical (ISM) band at 2400-2500 MHz by 40 percent, to 2420-2480 MHz.

(3) Allocate the 2390-2450 MHz band to BSS (Sound) with a complementary terrestial broadcast service. This option would also require vacating the 2400-2420 MHz band of all services other than ISM, and would require reducing ISM bandwidth by 40 percent.

9. The sixth major issue to be addressed is an allocation of spectrum for High Definition Television to be provided by BSS. Commenting parties expressed mixed opinions on the need for HDTV via satellite, with one party suggesting that since 500 megahertz of unused BSS spectrum is available in the 12.2-12.7 GHz Direct Broadcast Satellite (DBS) band, any HDTV requirement could be accommodated there. The Commission finds that the existing 12 GHz BSS allocation and Region 2 channeling plan to provide the United States with sufficient flexibility to implement HDTV BSS and that new digital modulation techniques emphasizing reduced transmission bandwidth may allow all countries to utilize the 12 GHz band for HDTV. However, the Commission also believes that the 17.3-17.7 GHz band, which is currently allocated for feederlinks for the 12 GHz BSS satellites, should be considered as an alternative allocation for the provision of HDTV, if bandwidths are not adequate at 12 GHz. Therefore, the Commission is proposing to modify the international Table of Frequency Allocations at 12.2-12.7/17.3-17.7 GHz to recognize these bands as potential homes for HDTV BSS.

10. The final major issue to be addressed concerns articles 55 and 56 of the International Radio Regulations. Three parties express sharply divergent viewpoints regarding the appropriate United States position on these articles, which were revised at the WARC for the Mobile Services in 1987 to require carriage of personnel certified to service and repair shipborne radio and electronic equipment, to the exclusion of other possible alternatives. The Commission notes that the U.S. position at the 1987 Mobile WARC was that the revised articles are too restrictive, since they exclude the possibility of a ship carrying duplicative equipment. The Commission also notes that several other countries, both at the 1987 Mobile WARC and subsequently, have taken reservations to the revised articles. Therefore, the Commission is proposing to revise further articles 55 and 56 to eliminate the requirement for mandated carriage of certified personnel to maintain shipborne equipment.

11. This action is taken pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403. Pursuant to § 1.1204(a)(4) of the Commission's Rules, 47 CFR 1.1204(a)(4), no ex parte restrictions apply to this proceeding.

List of Subjects in 47 CFR Part 2

Frequency allocations and Radio treaty matters, General rules and regulations, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-23676 Filed 10-4-90; 8:45 am]

BILLING CODE 6712-01-M

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 466]

Review of Railroad Depreciation Studies by Independent Public Accountants

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; discontinuance.

SUMMARY: The Interstate Commerce Commission is discontinuing this rulemaking proceeding (53 FR 15579, May 2, 1988) which proposed shifting initial responsibility for review of rail depreciation studies from the Commission to private accounting firms. This action is taken because the proposal would impose unnecessary burdens on the railroad industry without producing material benefit for the Commission or the public.

DATES: This decision is effective November 5, 1990.

FOR FURTHER INFORMATION CONTACT: William F. Moss III, (202) 275-7510. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: On February 25, 1987, the Commission served an Advance Notice of Proposed Rulemaking (ANPR) (52 FR 5791, February 26, 1987) proposing to shift the burden of reviewing a railroad's depreciation studies primarily to Independent Public Accountants (IPA's). The purpose of the Commission's proposal was to provide for a more rapid completion of the depreciation study process and the prescription of depreciation rates.

Responses to the ANPR were received from: The American Institute of Certified Public Accountants (AICPA), Association of American Railroads (AAR), W. Chester Fitch, Ph.D., P.E. Harold T. Waddington, P.E., and Ira Bruce Winthrop. All respondents contend that the depreciation study review should continue to be performed by the Commission's staff. Specifically, the AAR notes that there is no need for the railroads to retain independent public accountants to review depreciation studies because independent public accountants now review the depreciation calculations when auditing the railroad's annual financial statements. AAR contends that the annual audit is fully sufficient to provide the Commission with an assurance that property, accumulated depreciation and depreciation expense are fairly stated by each railroad. Therefore, AAR argues, further review of the depreciation study would be unnecessary, costly and a duplicative expense to the railroad.

On April 29, 1988, after consideration of the ANPR comments, the Commission served the Notice of Proposed Rulemaking (NPR) (53 FR 15579, May 2, 1988). The NPR reiterated the ANPR proposals and also proposed two additional alternative approaches with respect to the preparation and review of depreciation studies: (1) That, instead of an IPA, an independent contractor review the railroad's depreciation study, or (2) that an independent contractor actually prepare the depreciation study.

Responses to the NPR were received from the AICPA, AAR, W. Chester Fitch, Ph. D., P.E., the Board of Trade of the City of Chicago and IMC Fertilizer, Inc., and Patrick W. Simmons. Again all respondents oppose the proposal. They contend that the proposed review procedure is impractical and unnecessary and would impose unwaranted and costly reporting burdens on the industry. Further, they suggest that the additional options proposed in the NPR would further compound the deficiencies in the original ANPR by making the depreciation study process more costly to the railroad industry. Finally, they believe that the proposal constitutes unlawful delegations to private parties of Commission duties under 49 U.S.C. 11143.

By statute (49 U.S.C. 11143) the Commission is charged with the responsibility of prescribing depreciation rates for rail properties. The Commission's general regulations governing depreciation studies are set forth at 49 CFR 1201, Instruction 4. Under current procedures the railroads submit their depreciation studies directly to the Commission for review and approval and a separate report by an IPA is not required.

Through changes in internal operating procedures, the Commission has eliminated the backlog of unreviewed depreciation studies that existed when this rulemaking was instituted. In addition, current railroad studies are being reviewed on a timely basis. Thus, up-to-date approved information on depreciation rates is available to the Commission, the carriers, and the public.

Even if IPAs prepared or reviewed the carriers' depreciation studies, the Commission would still have to approve the results which requires that the studies be reviewed by the agency's staff. Thus, as the parties point out, the proposal will not result in significant savings for the agency but could result in significant increased expense for the railroads.

In light of the unanimous opposition to the proposal, the fact that adoption of the proposal would increase the burden on the carriers' while not producing significant gains for the agency, and the fact that current procedures are now allowing for timely processing of the carriers' studies, we see no need to adopt new rules. Accordingly, this rulemaking proceeding is discontinued.

Energy and Environmental

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility

This decision will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321, 11143.

Decided: September 28, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-23643 Filed 10-4-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Argali

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to change and expand its classification of the argali (*Ovis ammon*) a wild sheep of Asia. Instead of one subspecies (*O. a. hodgsoni*) being listed as endangered, as at present, the entire species, which occurs in the Soviet Union, Mongolia, China, and the Himalayan region, would be classified as threatened. This species has declined seriously. This proposal, if made final would implement the protection of the Endangered Species Act of 1973, as amended, for this species. The Service seeks relevant data and comments from the public. The comments and other available information will be evaluated, and it is emphasized that such review may lead to a final rule that differs substantially from this proposal. The final rule may designate the entire species, or any subspecies or population thereof, as endangered, or may exclude certain populations from any classification. The final rule also may incorporate a special rule covering importation of tropies from any argali populations designated as threatened.

DATES: Comments must be received by February 4, 1991. Public hearing requests must be received by November 19, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, Room 725; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (703-358-1708 or FTS 921-1708).

SUPPLEMENTARY INFORMATION:

Background

The argali (*Ovis ammon*) is an Asian relative of the North American bighorn sheep (*Ovis canadensis*), but averages somewhat larger in size, and, indeed, is the largest species of wild sheep. In adult males, length is about 70-80 inches (180-200 centimeters), height is 43-49 inches (110-125 centimeters), and weight is 210-310 pounds (95-140 kilograms). The massive spiral horns are up to 75 inches (190 centimeters) long and 20 inches (50 centimeters) in circumference. The general coloration is light brown, with a large white rump patch and white legs (Geist 1984).

The over-all range of the argali includes Soviet Central Asia, southern Siberia, Mongolia, north central and western China including Tibet, Nepal, and the Himalayan portions of Afghanistan, Pakistan, and India. The species generally forages in broad valleys, high pastures, or cold deserts, and may seek refuge in adjacent mountains (Valdez 1982).

There is considerable disagreement regarding the subspecific division of *O ammon*. Nadler *et al.* (1973) listed 17 subspecies that had been named by various authorities. In a recent revision, Geist (1988) recognized only seven, including *O. a. hodgsoni*, which he considered to occupy the Himalayas, the Tibetan Plateau, and adjacent areas from nothern India and Nepal to Gansu Province of north-central China. Much controversy centers on the distribution of *O. a. hodgsoni*. Some authorities, including Pfeffer (1967) and Valdez (1982), give basically, though not always precisely, the same range accepted by Geist. Others, such as Ellerman and Morrison-Scott (1966) and Sopin (1982) restrict its range to the Himalayan region and Tibet. They recognize another subspecies, *O. a. dalailamae*, in the Kun Lun Shan Mountains and other parts of the northern Tibetan Plateau. Then, according to these writers, farther north in parts of Gansu Province and areas north and east, the subspecies present would be *O. a. jubata* and/or *O. a. darwini*. Still other authorities, including Clark (1964) consider the range of *Hodgsoni* to indeed extend all the way from the Himalayas to the Gobi, but also recognize the presence of *dalailamae* in a limited area to the west.

In the Federal Register of June 14, 1976 (41 FR 24064), the U.S. Fish and Wildlife Service (Service) classified *O. a. hodgsoni* as endangered in Tibet, which later became a province of China. This listing was in response to a petition requesting endangered classification for all taxa that already were on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES], but that then were not on the U.S. Lists of Endangered and Threatened Wildlife and Plants. No analysis of the differing views on the distribution of *hodgsoni* was presented in the listing notice. However, recent editions of the List of Endangered and Threatened Wildlife have modified the list for purposes of clarity, not rulemaking listing, to show the range of the subspecies as "China (Tibet, Himalayas)."

In 1988 a legal action developed relative to the importation of trophies of argali killed in Gansu Province of China (see Marshall 1990). In the course of this action, a dispute arose as to whether the trophies represented protected species. As pointed out in a notice issued by the Service's Division of Law Enforcement in the Federal Register of November 24, 1989 (54 FR 48722), it was eventually concluded that the tropies were properly identified as *hodgsoni*. However, at the same time the Service issued another notice (54 FR 48723) stating that it was considering changes to the List of Endangered and Threatened Wildlife so that the range of *hodgsoni* would be fully and accurately delineated. The Service also stated that it had received information suggesting that additional subspecies of *O. ammon* were of serious conservation concern and might warrant classification as endangered or threatened. The notice also initiated a status review which solicited comments and data relative to the taxonomy, distribution, and bioconservation status of all subspecies of *O. ammon*.

A total of 15 comments was received, including cables providing information from the governments of four nations. Some comments dealt with taxonomy, some with bioconservation, and some with both matters. Richard M. Mitchell, a mammalogist who has traveled extensively in China and made numerous observations of argali there, supported the view that *hodgsoni* is restricted to the Himalayan region and Tibet, that *dalailamae* is a valid subspecies, and that *jubata* occurs in Gansu. San Stiver, a biologist with the Nevada Department of Wildlife who also has worked in China, considered *dalailamae* valid and suggested that the subspecies in Gansu is *darwini*. The government of the People's Republic of China indicated that it regards *dalailamae* as a separate subspecies. Ron Sommerville of the Wildlife Legislative Fund of America, Daryl P. Domning, Chairman of the Nomenclature Committee of the American Society of Mammalogists, John G. Mendoza and Earl B. Baysinger presented comments on the original intent of the U.S. listing of *Ovis ammon hodgsoni*. Additionally, Valerius Geist of the University of Alberta wrote that his studies indicate that *dalailamae* is a synonym of *hodgsoni*, that the range of the latter extends to Gansu, and that *jubata* occurs farther to the east.

Comments dealing with bioconservation status are covered in the "Summary of Factors Affecting the Species," as set forth below. Although there was some disagreement, most comments, as well as available literature, indicate that the species *O. ammon* has undergone a general decline, that certain, if not all, of its populations are in serious jeopardy, and that it is vulnerable to a number of problems, notably hunting and competition for forage and water with expanding herds of domestic livestock. There long has been recognition that the species has disappeared from or become rare in much of the periphery of its historical range—northeastern China, eastern Mongolia, southern Siberia, central Kazakhstan, Afghanistan, Pakistan, India, and Nepal (Harper 1945; Schaller 1977; Union of Soviet Socialist Republics Ministry of Agriculture 1978). However, there had been a general view that the argali remained relatively common and well protected in the heart of its range,

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particularly the Tibetan Plateau and Gobi Desert (Cai 1985; Mallon 1985). Now there is evidence of a serious deterioration of status even in those regions.

In the **Federal Register** of May 23, 1990 (55 FR 21207), the Service announced completion of its status review and its intentions for a proposed rulemaking. Many questions remain both with respect to taxonomy and bioconservation, but a solution for purposes of this proposal is to deal with the entire species as a single entity and to apply an appropriate classification based on over-all status. Pursuant to the Endangered Species Act of 1973 (Act), such a classification would be threatened. However, the Service emphasizes that it will be actively seeking additional information during the comment period, that all available data and opinions will be reviewed, and that such evaluation may lead to a final rule that takes a substantially different form than this proposal. In particular, the final rule may designate the entire species *Q. ammon*, or any subspecies or populations thereof, as endangered, or the rule may exclude certain subspecies or populations from any classification pursuant to the Act. Therefore, all interested parties are requested to consider such alternatives when examining the proposal and preparing their comments.

The Service recognizes that there is a reasonable argument for the proposition that controlled sport (i.e., noncommercial) hunting may provide economic incentives that contribute to the conservation of certain wildlife populations. These incentives may be direct, by generating funding for essential conservation measures through licensing fees. They may also be indirect, by focusing government attention to the need to protect species of economic value. The Service desires to receive documentation establishing the effect of each sum managed hunting program or proposed program upon species conservation. In particular, the Service seeks information relating to (1) the capacity of the regulating authority to obtain sound data on the populations at issue; (2) legal and practical capacity of the regulating authority to manage the species as a valuable natural resource; (3) recognition that the population concerned is in fact recognized as a valuable resource; (4) the capacity of the population to be maintained at a reasonable population management level concurrent with the controlled harvest; (5) security of the population's habitat; and (6) degree to which funds derived from the hunting are directly used or earmarked for its conservation.

In connection with these concerns, the Service moreover notes that the argali (exclusive of the subspecies *O. a. hodgsoni*) is listed on Appendix II of CITES and thus, if also listed as threatened, would be covered by section 9(c)(2) of the Act, which indicates that the otherwise-lawful importation of an Appendix II threatened species shall be presumed to be in compliance with provisions of the Act and implementing regulations. However, it is not clear whether importation of such argali as may be listed as threatened would be allowed under section 9(c)(2) even if a more restrictive special rule were issued. The Service seeks public comment at this time relating to the necessity for, enforceability of, appropriateness of, and format of, a special rule expressly providing for importation of such argali subspecies or populations listed as threatened, with such a rule allowing for consideration of the points in the preceding paragraph with regard to the validity of biological information on hunted populations, ability to control harvest, security of the habitat, and benefit to the species as a result of the sport-hunting program. If such a special rule is found necessary, the Service may promulgate it as part of any final rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the argali (*Ovis ammon*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Concern for the argali is not new. Based largely on reports from the 1920s and 1930s, Harper (1945) provided a generally pessimistic review of the status of *O. ammon* and other wild sheep. He indicated that the argali once had occurred all across northeasten China to just north and west of Beijing, but had disappeared from most of the region because of agricultural usurpation of its habitat and excessive hunting by Western sportsmen. *O. ammon* also orignally had been present in Siberia, but had been extirpated to the south and the east of Lake Baikal by hunters in the 19th century and had declined in the Altai Mountains to the west. According to Mallon (1985), the species disappeared from northeastern Mongolia in the early 20th century. Cai (1985) noted that the argali still occurred in northeastern China, but gave no recent records. In his response to the Service's status review, Valerius Geist (University of Calgary) stated that the population of northeastern China, east of Gansu Province, is possibly extinct.

The Union of Soviet Socialist Republics Ministry of Agriculture (1978) recognized the argali populations in most of Soviet Central Asia as "rare" and indicated that they had disappeared from much of their former range. More recently, Fedosenko (1985) provided an even more depressing review of the status of *O. ammon* in the Soviet Union. The main reason for the declines, and the complete elimination in some areas, is competition with livestock. The great majority of habitats, presently or previously used by the argali, are now occupied by domestic sheep or other livestock. The most intensive competition is for winter range. At that time the argali is forced to feed in areas above the domestic sheep herds, where the snow is very deep. On the Pamir Plateau the argali herds attempt to descend to intermountain valleys for the winter, but may find that the habitat has been overgrazed by domestic animals.

Fedosenko (1985) indicated that the historical decline of *O. ammon* is continuing in the Altai region west of Lake Baikal. The population there was considered common in the 19th century, but now there are only a few scattered populations that together total about 600 animals. The argali also occurs in adjacent parts of Mongolia (see Schaller's comments below) and possibly China. To the southwest, the population of the Tian Shan region and eastern Kazakhstan has undergone a disastrous decline since the later 19th and early 20th centuries. In many places where it was numerous even in the 1940s the argali is now gone or rare, and remnant groups are fragmented. As many as 13,000 are individuals scattered over a vast part of the Tian Shan, but the largest and densest population, about 2,000 animals, is found in the cold deserts of the northern part of the Kokshaaltau Mountain ridge where there is no pasture for domestic sheep. The most seriously jeopardized population in the Soviet Union is restricted to a small, isolated section of the Kara Tau Mountains in southern Kazakhstan. Although its numbers were high as late as the 1950s, there now are no more than 250 animals. The most numerous population in the Soviet Union is found on the Pamir Plateau, but even it has declined. Numbers were estimated at 33,000 in the 1960s and 20,000 in the 1970s.

The argali also occurs in Xinjiang, but information on its status there is limited. Based on historical accounts and recent surveys, Schaller *et al.* (1988) concluded that the argali once was abundant in Xinjiang, but now has declined and had vanished from vast tracts. In his response to the Service review, Schaller added: "Argali in the Tian Shan of China have seen a drastic decline in recent decades. The animals are either absent from or rare in most areas. Viable populations can be found in only a few spots."

The southwestern range of the argali extends from the Pamirs of Russia into nearby parts of Xinjiang, Afghanistan, and Pakistan. Schaller *et al.* (1987) recently found that it had disappeared from most of the Chinese portions of its range and that the last viable population there, consisting of fewer than 150 animals, was confined to the western part of the Chalachigu Valley, a finger of land extending between Afghanistan on the north and Pakistan to the south. In adjacent northern Afghanistan there were estimated to be at least 2,500 in 1973. Habibi (1985) indicated that up until 1979 the argali and its habitat were well protected in Afghanistan. However, that was before the recent political upheavals and civil war, and current status of the sheep is unknown. A small population is present in extreme northern Pakistan, but it moves seasonally across the border into China. Recent construction of a highway there has disrupted its habitat and made it accessible to hunters (Geist 1988; Schaller 1977; Schaller et al. 1987). In its response to the Service review, the government of Pakistan indicated that this population had fallen from 300 individuals in the 1970s to a few dozen today.

The argali also appears to have declined farther to the southeast along the Himalayas. The range begins in the Indian state of Jammu and Kashmir and extends into Himachal Pradesh and Sikkim. In a reponse to the Service review, S.K. Mukherjee, Professor and Additional Director of the Wildlife Institute of India, stated that the species is distributed in very small, patchy units. The largest population, fewer than 500 animals, is found in the Ladakh region of Jammu and Kashmir. In a separate response, M.K. Ranjitsinh, Additional Secretary of the Ministry of Environment and Forests, stated that the argali has decreased in numbers throughout its range, both in India and Tibet, and that populations are becoming isolated. However, in his comment, Richard M. Mitchell wrote that he had received a report from an official of the state government of Jammu and Kashmir, indicating a significant recovery of the argali and a current population of 5,000–6,000 individuals. Wilson (1985) noted that the argali once had been fairly common in Nepal, but had declined drastically, with no confirmed sightings since 1965.

The above account generally suggests a serious curtailment of the argali's habitat and range in a great arc from northeastern China, through southern Siberia and Soviet Central Asia, to Xinjiang and the Himalayas. However, there long was a prevalent view that the species still occurred in great numbers throughout the vast heartland in the remote Gobi Desert, Tibetan Plateau, and adjacent parts of Mongolia and China. Now, however, there are growing doubts about whether and how long substantial argali populations will persist in any region. The situation in Mongolia actually has fluctuated. Harper (1945) reported that the numbers in the Gobi "appear to be rather limited." Mallon (1985) stated that there had been a marked decline in Mongolia from 1940 to 1950, but that there was a recovery after protection was established in 1953. Both he and des Clers (1985) indicated that, while competition for habitat with domestic livestock and human disturbance were problems for the argali, the latter was relatively high in numbers and well managed.

In contrast, Schaller, responding to the Service review, wrote: "I assumed that argali in Mongolia were abundant and well-protected. That may have been true a decade ago but not now. I just spent 3 months in Mongolia, in the Gobi and Altai, to check on the status of wildlife, including argali. As in China, animals are rare or absent in most areas of suitable habitat. Both sheep can still be found in moderate numbers in remote or uninhabited areas, places perhaps suboptimal because livestock can only subsist there seasonally or not at all. Illegal hunting is a serious problem. Mongolia has had to close a number of hunting camps for foreigners recently because of lack of sheep. Unfortunately, no detailed status survey has been made. However, everyone with whom I talked commented on the general decline of the argali, especially in the Gobi where a drought during the 1980s has eliminated many critical water sources."

As with Mongolia, there is considerable disagreement regarding the status of the argali on the Tibetan Plateau and adjacent north-central China—the provinces of Xizang (Tibet), Qinghai, and Gansu, and parts of Xinjinang, and Sichuan. In his response to the Service review, Mitchell reported that based on his work in the region the argali still is widespread, numerous, and secure. The remoteness of the habitat, the extremely rugged terrain, and the relatively low number of people are conditions that help to ensure the safety of the argali populations. Moreover, the people generally lack suitable hunting weapons and the animals are difficult to approach. Competition with domestic stock is a major threat, but is limited to accessible areas along roads and near communes. Over 350 argali were seen during a 7-day hunt in April 1988 in Gansu. Mitchell stated that he had seen a total of over 500 argali in the wild and that based on the density of these sightings, he would conservatively estimate the number of argali in China as being well over 100,000. In another response to the review, Bart O'Gara (University of Montana) wrote that his experience in ginghai Province indicates that argali there are "as plentiful as bighorns (*Ovis canadensis*) in Montana," but this assessment was based on observations at only a couple of locations. According to Thorne, Hickey, and Stewart (1985), Montana, which is about half the size of Qinghai, has approximately 4,600 bighorn sheep.

The view that the argali has declined drastically on the Tibetian Plateau is based on observations by several authorities and on socioeconomic developments in the region. Galen Rowell (1990) in a recent article and in his response to the Service review explained that since the Chinese occupation of Tibet in the 1950s, there have been major increases in human population, military and industrial activity, and environmental disturbance. The replacement of a nomadic subsistence economy by communes geared toward agricultural exportation has led to a tenfold rise in the amount of domestic livestock and to massive destruction of the fragile habitat through overgrazing. The loss of forage, together with uncontrolled hunting by military forces, has resulted in the disappearance of the former large herds of argali, wild yak, gazelle, and antelope. Rowell and others that he cited found that they could walk, ride, or drive for weeks, through regions that historically supported vast numbers of wildlife, without seeing a single large wild animal. In his comment, Schaller wrote with respect to argali in Tibet: "They are rare, most populations small, localized, and isolated; they are now gone from vast tracts. He added that the decline of wildlife has been general, not just in the most accessible areas, and that the herds remain moderately abundant only in northwestern Tibet, where there has not yet been extensive hunting. The argali has been the species hardest hit by recent developments and

species of wildlife in Tibet. In his 1990 article, he stated that military forces have hunted for sport and, using machine guns, have made organized hunts for commercial purposes. Schaller (1988) wrote that on the Tibetan Plateau "there once lived great wild herds that rivaled those on the plains of North America. . . . Such herds are now making it difficult for herbivorous animals to find food and resulting in the death of thousands (Schaller 1988). Such problems always are of great concern if populations already have been reduced by human activity.

The decision to propose threatened status for the argali was based on an assessment of the best available

responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this proposal.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the

scientific community, industry, private interests, and other parties. Comments particularly are sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional

Clark, J.L. 1984. The great arc of the wild sheep. Univ. Oklahoma Press, Norman, xxxvi + 247 pp.

Des Clers, B. 1985. Conservation and utilization of the Mongolian argali (*Ovis ammon ammon*)—a socio-economic success. In Hoefs (1985), pp. 186–197.

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localized, and isolated; they are now gone from vast tracts. He added that the decline of wildlife has been general, not just in the most accessible areas, and that the herds remain moderately abundant only in northwestern Tibet, where there has not yet been extensive hunting. The argali has been the species hardest hit by recent developments and now is the rarest ungulate in the involved region.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Writing of the general decline of wild sheep and goats in the Himalayas, Schaller (1977) was critical of unscrupulous sportsmen, but noted: "Far more detrimental to wildlife than trophy hunting has been meat-hunting by local people . . . hunting has reduced most populations to a point where it is difficult to find localities with animals still living at natural densities and pursuing their existence in a normal social milieu."

Excessive hunting was a major factor in the historical disappearance of the argali from Siberia and northeastern China, and in its decline in other regions (Harper 1945). It also caused at least a temporary depression of the populations in Mongolia during the 1940s (Mallon 1985), and, according to Schaller in his comments, is a serious problem there today (see above discussion of factor "A"). In Soviet Central Asia, poorly controlled hunting has been blamed in part for declining numbers of argali, both directly and through adverse alteration of the sex ratio and age composition of the herds, thereby reducing productivity (Fedosenko 1985). Intensive hunting, facilitated by construction of a highway, has led to the near extermination of the argali population that migrates between Pakistan and China (Schaller *et al.* 1987). Commercial hunting in Xinjiang during the 1970s resulted in trainloads of argali and other ungulate meat being shipped eastward from the Tian Shan Mountains and contributed to the large-scale eradication of the species from that region (Schaller *et al.* 1988).

Again, there is disagreement regarding the effects of hunting on the Tibetan Plateau. In his comments, Mitchell argued that there has been no sport hunting in the region, and that the local people lack adequate firearms, ammunition, and transportation. Of over 100 argali skulls that he found in the field, all but one came from animals that had died naturally. In contrast, Rowell indicated that indiscriminate hunting by Chinese soldiers and armed civilians has contributed to the decline of the argali and other formerly abundant species of wildlife in Tibet. In his 1990 article, he stated that military forces have hunted for sport and, using machine guns, have made organized hunts for commercial purposes. Schaller (1988) wrote that on the Tibetan Plateau "there once lived great wild herds that rivaled those on the plains of North America. . . . Such herds are now almost gone. In recent decades, roads, mining camps, and herdsmen with livestock have penetrated even remote parts of the vast plateau. . . . Hunters have eliminated or reduced the numbers of wild aminals over huge tracts."

In his comments, O'Gara expressed concern that argali meat might be exported from China as is that of blue sheep (*Pseudois nayaur*) at present. He indicated, however, that such could be avoided by encouraging a properly managed sport hunting program that would provide an economic incentive to preserve argali populations. Warren Parker, President-elect of Safari Club International, wrote in his response to the Service review: "We believe that in many cases, controlled sport hunting is the only feasible way to give these animals sufficient value to serve as an incentive for their conservation. Without such an incentive, the growing human populations, even in these remote areas, will inevitably lead to the decline of many of these species."

C. *Disease or predation.* Various diseases and predation by wolves have been considered problems for some argali populations (Fedosenko 1985; Harper 1945). However, these and other natural difficulties are to be expected and usually only become of serious conservation concern when populations already have been severely reduced or fragmented through human disturbance.

D. *The inadequacy of existing regulatory mechanisms.* The subspecies *O. ammon hodgsoni* is on appendix I of CITES and all other subspecies are on appendix II. While such designations may assist in controlling international movement of parts and products, they have a negligible effect on the habitat disturbances and local hunting which are the main problems confronting the argali. Although the species is legally protected in the countries it occupies, a general view expressed in the sources cited in the above discussion is that enforcement is very difficult in the remote areas involved.

E. *Other natural or manmade factors affecting its continued existence.* Severe winter weather has been blamed for the loss or decline of some argali populations (Fedosenko 1985; Mallon 1985). In 1985, the most severe blizzard in 30 years struck the Tibetan Plateau, making it difficult for herbivorous animals to find food and resulting in the death of thousands (Schaller 1988). Such problems always are of great concern if populations already have been reduced by human activity.

The decision to propose threatened status for the argali was based on an assessment of the best available scientific information, and of past, present, and probable futures threat to the entire species. There is no question that many populations have disappeared or declined seriously through human activity and that at least some of the current populations are highly vulnerable to habitat destruction and excessive hunting. The species still has a vast range, however, and it is possible that large numbers still are present in some remote regions. Therefore, a classification of endangered might not be appropriate when considering the status of the species as a whole. Many questions remain and the Service will endeavor to obtain and evaluate all available information during the comment period. Such a review may lead to a final rule that differs substantially from this proposal, particularly to the classification of the entire species, or any subspecies or population thereof, as endangered, or to the exclusion of certain populations from any classification. Critical habitat is not being proposed, as its designation is not applicable outside of the United States.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this proposal.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any threatened wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. The importation of a personal trophy, taken through a carefully managed sport hunting program that provides an economic incentive for the general conservation of the involved species, may in some case be considered to enhance the survival of that species. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments particularly are sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution and taxonomy of this species;

(4) Current or planned activities in the involved areas, and their possible effect on the subject species; and

(5) Details on the laws, regulations, and management programs covering each population of this species, particularly with regard to their adequacy in providing for sport-hunting that enhances the survival of the involved population.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ substantially from this proposal. The Service again emphasizes that it will be actively seeking and evaluating information on the argali during the comment period, and that this review may result in classification of the entire species *Ovis ammon*, or any subspecies or population thereof, as endangerd, rather as threatened as here proposed. On the other hand, the final rule may exclude certain subspecies or populations from any classification. Interested parties are urged to consider such alternatives when examining the proposal and preparing their comments.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above "**ADDRESSES**" section.

National Environmental Policy Act

The Service has determined that an Envionmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

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Union of Soviet Socialist Republics Ministry of Agriculture. 1978. Red data book of USSR. Lesnaya Promyshelennost Publishers, Moscow, 480 pp.

Valdez, R. 1982. The wild sheep of the world. Wild Sheep and Goat International.

Wildlife Service, Washington, DC 20204 (703–358–1708 of FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry under MAMMALS

Notices

Federal Register
Vol. 55, No. 194
Friday, October 5, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the

Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC, 202–786–0503, at least seven (7) days prior to the meeting.

DC 20250–2200; Telephone (202) 447–3684.

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Thorne, E.T., W.O. Hickey, and S.T. Stewart. 1985. Status of California and Rocky Mountain bighorn sheep in the United States. *In* Hoefs (1985), pp. 56–81.
Union of Soviet Socialist Republics Ministry of Agriculture. 1978. Red data book of USSR. Lesnaya Promyshelenmost Publishers, Moscow, 460 pp.
Valdez, R. 1982. The wild sheep of the world. Wild Sheep and Goat International, Mesilla, New Mexico, 186 pp.
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Author

The primary author of this proposed rule is Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20204 (703–358–1708 of FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry under MAMMALS for the "Argali *Ovis ammon hodgsoni*" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Argali	*Ovis ammon*	Afghanistan, China, India, Mongolia, Nepal, Pakistan, U.S.S.R.	Entire	T	15, —	NA	NA
*	*	*	*	*	*	*	

Dated: September 17, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–23637 Filed 10–4–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 194
Friday, October 5, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Wednesday, October 17, 1990. The meeting will be held in the Rutledge and Heyward Rooms at the Mills House, 115 Meeting Street, Charleston, South Carolina, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Council Business
III. Executive Director's Report
IV. Section 106 Cases
V. New Business
VI. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC, 202–786–0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: October 2, 1990.

Robert D. Bush,

Executive Director.

[FR Doc. 90–23627 Filed 10–4–90; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

NAME: National Agricultural Research and Extension Users Advisory Board.

DATE: November 7–10, 1990.

TIME: 1 p.m.–5 p.m., November 7, 1990; 8 a.m.–5 p.m., November 8, 1990; 8 a.m.–5 p.m., November 9, 1990; 8 a.m.–12 noon, November 10, 1990.

PLACE: Center for Disease Control, Atlanta, GA, November 7th, University of Georgia, Athens, GA, November 8th and 9th, Ramada Renaissance, Atlanta, GA, November 10th.

TYPE OF MEETING: Open to the public. Persons may participate in the meeting as time and space permit.

COMMENTS: The public may file written comments before or after the meeting with the contact person below.

PURPOSE: To review food safety programs at CDC, and food, fiber, and veterinary medicine programs at the Univerity of Georgia and Agricultural Research Service regional laboratory.

CONTACT PERSON FOR AGENDA AND MORE INFORMATION: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board, room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 447–3684.

Done in Washington, DC this 28th day of September 1990.

John Patrick Jordan,

Administrator.

[FR Doc. 90–23636 Filed 10–4–90; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Solicit Comments on Matters Relating to Subsistence Take of Fish and Wildlife on Public Lands in Alaska: Rural and Non-Rural Determinations

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Request for public comments.

SUMMARY: The Federal Subsistence Board (Board), on behalf of the Department of Agriculture and Department of the Interior land managing agencies in Alaska, announces that it will be conducting meetings and is soliciting comments on the preliminary determinations of "rural" and "nonrural" under the process described in "Temporary Subsistence Management Regulations for Public Lands in Alaska" published in the Federal Register (55 FR 20114) on June 29, 1990.

DATES: Written comments should be received by December 10, 1990. Public meetings to receive comments will be held throughout Alaska during October and November. Widespread local announcement of these meetings will be provided as soon as possible.

ADDRESSES: Comments should be addressed to the Chairman of the Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, ATTN: Richard Pospahala, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Richard Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447.

SUPPLEMENTARY INFORMATION: Title VIII of ANILCA (16 U.S.C. 3111–3126) requires the Secretaries of Agriculture and the Interior to implement a program

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to grant preference in favor of subsistence uses of fish and wildlife on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska had such a program that was found by the Department of the Interior to be consistent with ANILCA. In December 1989, however, the Alaska

rural communities. It further states that the rural nature of such communities is not a static condition and can change.

The Federal government recognizes that communities of the same size may vary greatly in character for a variety of reasons. Therefore, no single population number adequately serves as a dividing line between rural and non-rural

31, 1990 after evaluating all public comments.

Tentatively Proposed Nonrural Communities/Areas in Alaska for the Determination of Subsistence Priorities

Municipality of Anchorage
Kenai Area .... (including Kenia, Soldotna, Sterling

period and the acceptance of written and verbal comments throughout the process.

Walter O. Stieglitz,

Chairman, Federal Subsistence Board, Regional Director, U.S. Fish and Wildlife Service, For the Secretary of the Interior.

Michael A. Barton,

Regional Forester, USDA—Forest Service, For

rural Alaska residents with customary and traditional use of the resource—namely, residents of Yakutat.

Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture grant a preference in favor of subsistence uses

Agriculture signed an interim rule amending the administrative appeal procedures 36 CFR 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have

to grant preference in favor of subsistence uses of fish and wildlife on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska had such a program that was found by the Department of the Interior to be consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of the decision, the Departments of Agriculture and the Interior were required to take over implementation of Title VIII of ANILCA on public lands on July 1, 1990. The Federal Subsistence Board, as the managing entity, is starting the process of collecting public comments relating to a number of issues on subsistence management on public lands. Federal subsistence management would impact the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Air Force, Army and possibly other Federal land managing agencies. Coupled with the rural determinations process, special efforts will be made to collect comments on environmental effects, effects on subsistence users and resources, proposed "customary and traditional" determinations and comments on the adequacy of the present local advisory committee/regional council system as it relates to subsistence users. Comments will also be accepted on the existing Temporary Subsistence Management Regulations in order that the Board may begin drafting a set of proposed regulations to be published for public review at a later date.

Rural and Non-Rural Determinations

The definition of rural is a key element in the regulations. ANILCA did not define rural. The State has been struggling with the rural definition since passage of ANILCA. The Ninth Circuit Court of Appeals ruled in 1988 that the rural definition in the State's 1986 subsistence law is not consistent with ANILCA and the common meaning of the term rural. The legislative history of ANILCA provides some insight. Senate Report 96-413 identified Anchorage, Juneau, Fairbanks and Ketchikan as examples of non-rural communities in 1980 and Barrow, Kotzebue, Nome, Bethel and Dillingham as examples of rural communities. It further states that the rural nature of such communities is not a static condition and can change.

The Federal government recognizes that communities of the same size may vary greatly in character for a variety of reasons. Therefore, no single population number adequately serves as a dividing line between rural and non-rural communities.

The process to determine rural is designed to incorporate the common meaning of rural and is based on two rebuttable presumptions.

A community or area of less than 2,500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or is part of an urbanized area. The number 2,500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from non-rural. A community between 2,500 and 7,000 bears no presumption as to its rural or non-rural status. Some communities that fall in this population range may have rural characteristics.

Communities 7,000 or greater in population are presumed to be non-rural. The 7,000 population level was chosen because Ketchikan, the smallest of the non-rural communities mentioned in the Senate report, was approximately that size when ANILCA was passed and consequently is an indicator of Congressional intent. Communities in Aaska can approach and may exceed a population level of 7,000 and still be rural in character.

This definition and process recognizes that population alone is not the sole indicator of a rural or non-rural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural. Indicators which the Federal Subsistence Board will tentatively evaluate to decide if a community is rural or non-rural in character are: Fish and game use; development and diversity of the economy, demographics, transportation, communication, infrastructure, and educational and cultural institutions.

The following communities/areas are tentatively proposed as *nonrural*. Communities which are grouped (below) are considered to be socially and economically inategrated. All communities or areas not listed are tentatively proposed as rural. Individuals, communities or organizations desiring to comment on the status of any community or area should provide data related to the indicators cited above. The Federal Subsistence Board will make their final determination on rural/nonrural status of communities and areas by December 31, 1990 after evaluating all public comments.

Tentatively Proposed Nonrural Communities/Areas in Alaska for the Determination of Subsistence Priorities

Municipality of Anchorage	
Kenai Area	(including Kenia, Soldotna, Sterling, Nikiski, Salamatof, Kalifonsky, Kastlof and Clam Gulch)
Wasilla Area	(including Palmer, Wasilla, Sutton, Big Lake, Houston and Bodenberg Butte)
Fairbanks North Star Borough	
Juneau Area	(including Juneau, West Juneau and Douglas)
Ketchikan Area.	(including Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman, Saxman East, and parts of Pennock Island)
Kodiak Area	(including Kodiak city, the Coast Guard Base and Chiniak)
City of Sitka	the contiguous developed area, the maintained road system and the inhabited islands in Sitka Sound.
Homer Area	(including Homer, Anchor Point, Kachemak City and Fritz Creek)
Seward Area	(including Seward and Moose Pass)
Valdez Area	Valdez
Adak	

This Request solicits comments specifically on the proposed "rural/nonrural" determination. Comments should delineate where concerns exist, provide information and data to support any comment and suggest proposed changes.

It remains the Federal government's intention to work in close cooperation with the State. Title VIII allows reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources on public lands by rural Alaskan residents for subsistence purposes are of paramount importance to the Federal government and to the public as a whole.

Extensive public involvement will also be included in the development of the permanent regulations and annual setting of seasons and bag limits. The regulation writing effort will include a Request for Public Comment Announcement, a public comment period and the acceptance of written and verbal comments throughout the process.

Walter O. Stieglitz,

Chairman, Federal Subsistence Board, Regional Director, U.S. Fish and Wildlife Service, For the Secretary of the Interior.

Michael A. Barton,

Regional Forester, USDA—Firest Service, For the Secretary of Agriculture.

[FR Doc. 90-23604 Filed 10-4-90; 8:45 am]

BILLING CODE 4310-55-M

Southeast Alaska Federal Lands Hunting Closure

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: By emergency order of the Federal Subsistence Management Board, moose hunting on Federal public lands within Alaska State Game Management Unit 5A is closed to all individuals except residents of Yakutat, Alaska from October 15—21, 1990, to ensure a preferential opportunity for subsistence users.

DATES: The emergency closure is effective from October 15—21, 1990.

FOR FURTHER INFORMATION CONTACT: National Park Service, Yakutat Ranger Station, P.O. Box 137, Yakutat, AK 99689, telephone (907) 784-3295; or, USDA-Forest Service, Yakutat Ranger District, P.O. Box 327, Yakutat, AK 99689, telephone (907) 784-3359.

SUPPLEMENTARY INFORMATION: As empowered by 50 CFR 100.17(b), and 36 CFR 242.17(b), the Federal Subsistence Management Board has closed Federal public lands in Game Management Unit 5A to the hunting of moose from October 15-21, 1990, by all individuals except residents of Yakutat. Other individuals are prohibited from hunting moose on said lands during the designated seven day period. On September 19, 1990, the Federal Subsistence Management Board took emergency action to amend the Federal subsistence season and bag limit restrictions for moose in Game Managemnt Unit 5A. The changes incorporated quotas of the concurrent Alaska State general hunting season in order to ensure the biological integrity of moose populations in the area. Because of the existence of an overall quota on the number of moose which could be taken in the unit, it also became critical that the Federal Board assure a preferential subsistence opportunity for rural Alaska residents with customary and traditional use of the resource—namely, residents of Yakutat.

Title VIII of the Alaska National Interest Lands Conservation Act [16 U.S.C. 3111-3126) requires that the Secretary of the Interior and the Secretary of Agriculture grant a preference in favor of subsistence uses of fish and wildlife resource on public lands. This action implements that requirement.

Walter O. Stieglitz,

Chairman, Federal Subsistence Management Board; Regional Director, U.S. Fish and Wildlife Services.

Michael A. Barton,

Regional Forester, USDA-Forest Service.

[FR Doc. 90-23605 Filed 10-4-90; 8:45 am]

BILLING CODE 4310-55-M

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 217. This action is necessary to implement the Secretary of Agriculture's interim rule amending the Forest Service administrative appeal procedures, which was signed on February 28, 1990, and was published in the **Federal Register** on March 6, 1990. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 5, 1990. The list of newspapers will remain in effect until October 1990 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: K. Dale Torgerson, Regional Appeals and Litigation Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625-5279.

SUPPLEMENTARY INFORMATION: On February 28, 1990, the Secretary of Agriculture signed an interim rule amending the administrative appeal procedures 36 CFR 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:
The Idaho Statesman, Boise, Idaho

For decisions made by the Regional Forester affecting National Forests in Nevada:
The Reno Gazette-Journal, Reno, Nevada

For decisions made by the Regional Forester affecting National Forests in Wyoming:
Casper Star-Tribune, Casper, Wyoming

For decisions made by the Regional Forester affecting National Forests in Utah:
Standard-Examiner, Ogden, Utah

For decisions made by the Regional Forester affecting all National Forests in the Intermountain Region, it will appear in:
Standard-Examiner, Ogden, Utah

Ashley National Forest

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah

Vernal District Ranger decisions:
Vernal Express, Vernal, Utah

Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming

Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah

Roosevelt and Duchesne District Ranger decisions:

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Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
Mountain Home News, Mountain Home, Idaho
Boise District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Cascade District Ranger decisions:
The Advocate, Cascade, Idaho
Lowman District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

Caribou National Forest

Caribou Forest Supervisor decisions:
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Malad District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Pocatello District Ranger decisions:
Idaho State Journal, Pocatello, Idaho

Challis National Forest

Challis Forest Supervisor decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Ford District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Beaver Press, Beaver, Utah
Fillmore District Ranger decisions:
Millard County Chronicle-Progress, Fillmore, Utah

Humboldt National Forest

Humboldt Forest Supervisor decisions:
Elko Daily Free Press, Elko, Nevada
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge and Ruby Mountain District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ely District District Ranger decisions:
Ely Daily Times, Ely, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada
Jarbidge District Ranger decisions:
Twin Falls Times News, Twin Falls, Idaho

Manti-Lasal National Forest

Manti-Lasal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
Mt. Pleasant Pyramind, Mt. Pleasant, Utah
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon National Forest

Salmon Forest Supervisor decisions:
The Recorder-Hearld, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Ferron District Ranger decisions:
Emergy County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon National Forest

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Noth Fork District Ranger decisions:
The Recorder-Hearald, Salmon, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Toiyabe National Forest

Toiyabe Forest Supervisor decisions:
Reno Gazette-Journal, Reno, Nevada
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger decisions:
Mono County Review, Bridgeport, California
Tonopah District Ranger decisions:
Tonopah Times/Bonanza, Tonopah, Nevada
Las Vegas District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada

Unita National Forest

Unita Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Wasatch Wave, Heber City, Utah
Spanish Fork District Ranger decisions:
Payson Chronicle, Payson, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Mountain View District Ranger decisions:
Bridger Valley Pioneer, Mt. View, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah

Dated: September 27, 1990.

Robert C. Joslin,

Deputy Regional Forester.

[FR Doc. 90-23523 Filed 10-4-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Uinta Basin Salinity Control Unit Expansion, Utah

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Uinta Basin Salinity Control Unit Expansion, Duchesne, Uinta, and Wasatch Counties, Utah.

FOR FURTHER INFORMATION CONTACT: Frank Holt, State Conservationist, Soil Conservation Service, P.O. Box 11350, Salt Lake City, Utah 84147-0350, telephone (801) 524-5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Frank Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan to improve water quality in the Colorado River system. Alternatives under consideration to reach this objective include improved sprinkler irrigation systems, improved surface irrigation systems, and improved irrigation water management.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings were held in Duchesne, Utah, in the Bureau of Reclamation conference room on Tuesday, March 27, 1990, at 2 p.m. and 7 p.m. and in Tabiona, Utah, at the town office on June 21, 1990, at 7:30 p.m. to determine the scope of the evaluation of the proposed action. Further information on the proposed action, may be obtained from Frank Holt, State Conservationist, at the above address or telephone (801) 524-5054.

Dated: September 25, 1990.

Norm Priest,

Deputy State Conservationist.

[FR Doc. 90-23551 Filed 10-4-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigatiion.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than October 31, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

Antidumping Duty Proceedings	Period
Italy: Pressure Sensitive Plastic Tape (A-475-059)	10/01/89-09/30/90
Japan: Steel Wire Rope (A-588-045)	10/01/89-09/30/90
Japan: Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, Over 4 Inches (A-588-604)	10/01/89-09/30/90
The People's Republic of China: Barium Chloride (A-570-007)	10/01/89-09/30/90
The People's Republic of China: Shop Towels of Cotton (A-570-003)	10/01/89-09/30/90
Countervailing Duty Proceedings:	
Brazil: Certain Agricultural Tillage Tools (C-351-406)	01/01/89-12/31/89
India: Certain Iron-Metal Castings (C-533-063)	01/01/89-12/31/89
Iran: Roasted In-Shell Pistachios (C-507-601)	01/01/89-12/31/89
New Zealand: Certain Steel Wire Nails (C-614-701)	01/01/89-12/31/89
Sweden: Certain Carbon Steel Products (C-401-401)	01/01/89-12/31/89
Thailand: Certain Steel Wire Nails (C-549-701)	01/01/89-12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by October 31, 1990.

If the Department does not receive by October 31, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of

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entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: October 1, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-23674 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-814 and A-580-807]

Postponement of Preliminary Antidumping Duty Determinations: Polyethylene Terephthalate ("PET") Film from Japan and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)), we are postponing our preliminary determinations as to whether sales of polyethylene terephthalate (PET) film from Japan and the Republic of Korea have been made at less than fair value until not later than November 23, 1990.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Bradford Ward at (202) 377-5288, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On September 24, 1990, counsel for the petitioners requested that the Department postpone the preliminary determinations 20 days, in accordance with section 733(c)(1)(A) of the Act.

Accordingly, we are postponing the date of the preliminary determinations until not later than November 23, 1990. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: September 27, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23673 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-601]

Steel Wire From New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 16, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on steel wire from New Zealand. We have now completed that review and determine the total bounty or grant to be zero for the period July 1, 1987 through June 30, 1988.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 33548) the preliminary results of its administrative review of the countervailing duty order on steel wire from New Zealand (51 FR 31156; September 2, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of New Zealand galvanized carbon steel wire, which is a round carbon steel wire coated or plated with zinc and 0.06 inch or more in diameter. During the review period, such merchandise was classifiable under items 609.4135 and 609.4325 of the *Tariff Schedules of the United States Annotated* (TSUSA). Such merchandise is currently classifiable under items 7217.12.50, 7217.22.10 and 7217.32.10 of the *Harmonized Tariff Schedule* (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period July 1, 1987 through June 30, 1988 and nine programs: (1) Export Performance Taxation Incentive; (2) Export Market Development Taxation Incentive; (3) South Island Electricity Concession Scheme; (4) export marketing assistance; (5) preferential treatment of exporters in granting import licenses; (6) research and development investment incentives; (7) regional development incentives; (8) special industrial development allowances; and (9) export and development financing from the Development Finance Corporation.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be zero during the period July 1, 1987 through June 30, 1988.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after July 1, 1987 and on or before June 30, 1988. The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751 (a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 27, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23672 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 90-00010]

Issuance of Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Georgia Wood Export Marketing Co-op, Inc ("GACO"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade Products

Forest Products, including, but not limited to, wood and wood products, and excluding paper, cardboard, containerboard, and similar products.

Export Trade Facilitation Services (as they relate to the export of Products)

Marketing, selling, brokering, shipping, handling, common marketing and identification, consulting, international market research, advertising and sales promotion, trade show participation, insurance, product research and design, legal assistance, services related to compliance with customs requirements, transportation, trade documentation and freight forwarding, communication and processing of sales lead and export orders, warehousing, foreign exchange, financing, taking title to goods, and liaison with foreign government agencies, trade associations and banking institutions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in Addition to Applicant)

Keadle Lumber Enterprises, Inc.; Langdale Forest Products Co.; Balfour Lumber Company, Inc.; Griffin Lumber Company, Inc.; Burgin Lumber Company, Ltd.; Collum's Lumber Mill, Inc.; Southern Forest Industries, Inc.; Metcalf Lumber Company, Inc.; Claude Howard Lumber Company, Inc.; Richmond Lumber, Inc.; Evans Lumber Company, Inc.; Elliott Sawmilling Company, Inc.; T&S Hardwoods, Inc.

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, GACO and its Members are certified to engage in the following Export Trade Activities and Methods of Operation:

1. GACO and its Members may enter into exclusive or non-exclusive agreements wherein GACO agrees to act as the Members' Export Intermediary. Exclusive agreements are those wherein GACO agrees not to represent entities other than the Members in the sale of Products and provision of Export Trade Facilitation Services in any Export Market.

2. GACO and its Members may meet to negotiate and agree on the terms of participation in each bid, invitation, or request to bid, or other sales opportunity in any Export Market, including, but not limited to, the price at which a Member will sell its Products for export, and the quantity of Products each Member will commit to the foreign sale or bid opportunity. During the course of such meetings, the following information may be exchanged:

a. Information that is already generally available to the public.

b. Information that is specific to a particular Export Market, including but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies and product specifications by geographic area, and by individual customers within the Export Market.

c. Information on expenses specific to exporting to a particular Export Market, including, but not limited to, ocean freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing.

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market.

e. Information on GACO's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, visits by customers located in the Export Markets, and reports by foreign sales representatives.

f. Information on supply and demand for Products in the Export Markets, including, but not limited to, the quantities of particular Products desired by export customers, the supply of such Products (based on domestic supply and demand) available for export trade, anticipated export prices, quality standards, packaging standards, and primary production schedules.

g. Information on specific prices and quantities involved in specific domestic transactions furnished by each Member individually, on a confidential basis, to an independent entity not affiliated with any Member, who will use such information to compute averages and trends regarding domestic prices and quantities for disclosure to the Members in aggregated form. This independent entity shall not disclose to any Member the specific information furnished by any other Member.

3. GACO may enter into exclusive or non-exclusive agreements with other Export Intermediaries for the sale of Products in the Export Markets. Exclusive agreements are those wherein the Export Intermediary agrees not ot represent entities other than GACO in the sale of Products and provision of Export Trade Facilitation Services in any Export market.

4. GACO may enter into exlusive agreements with foreign customers of Products offered by GACO whereby the customer agrees not to purchase Products from entities other than GACO.

5. GACO may discuss and agree on with its Members and/or Export Intermediary the export prices to be charged by GACO, its Export Intermediary or its Members for the sale of Products or Export Trade Facilitation Services directed to an Export Market or to a domestic or foreign exporter for ultimate sale in an Export Market.

6. GACO may limit its membership.

7. GACO may publish and distribute a list of export prices to be charged by GACO, its Export Intermediary or its Members.

8. GACO may allocate orders for export sales, and divide profits form such sales, among its Members as provided in the membership agreement between GACO and its Members.

9. GACO may purchase Products from its Members and non-Members for export to an Export Market or for sale to a domestic or foreign exporter for ultimate sale in an Export Market.

10. GACO may provide Export Trade Facilitation Services to its Members of non-Members to facilitate the export of Products to Export Markets. This may be accomplished by GACO itself, or by agreement with Members or other parties.

11. GACO and/or its Members may be forwarded to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to

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respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

12. GACO and/or its Members may refuse to provide Export Trade Facilitation Services or participation in the other activities described in the paragraphs above to non-Members.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 10230.

Dated: October 1, 1990.

George Muller, Director,

Office of Export Trading Company Affairs.

[FR Doc. 90-23671 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Modification No. 4 to Permit No. 496]

Marine Mammals; Permit Modification: Dr. Daniel P. Costa (78D)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 496 issued to the Center for Marine Studies, University of California, Santa Cruz, California 95064, on April 8, 1985 (as modified) is further modified as follows:

Section B.9 is changed to read:

"B.9 The authority to "take" the marine mammals authorized herein shall extend from the date of issuance through June 30, 1992. The terms and conditions of the Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder."

This modification becomes effective upon publication in the Federal Register.

Documents pertaining to the Permit and modification are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: September 28, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-23665 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Meeting of Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATE: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on November 13, 1990.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is the Madrid Protocol.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Room CPK2-910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557-7464.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90-23633 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 a commodity and military resale commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 5, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 29, July 20, and August 17, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 26738, 29647 and 33746) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity, military resale commodities and provide the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity, military resale commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity, military resale commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodity, military resale commodities and provide the service produced by the Government.

Accordingly, the following commodity, military resale commodities and service are hereby added to Procurement List 1990:

Commodity

Mask, Surgical
6515-00-882-7493

Military Resale Item No. and Name

760 Apron, Child, Printed Design
935 Ensembles, Christmas, Potholder and Towel

Service

Janitorial-Custodial (SH)
U.S. Army Reserve Center
Los Alamitos, California

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-23640 Filed 10-4-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 a commodity to be produced and a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 5, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodity

Curtain Assembly
2540-00-741-8339

Service

Food Service Attendant
Kirtland Air Force Base, New Mexico

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-23641 Filed 10-4-90; 8:45 am]

BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 89-3-89JD]

1989 Jukebox Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of no controversy; Notice of full distribution.

SUMMARY: The Tribunal announces that no controversies exist concerning the distribution of the 1989 jukebox copyright royalty fund and orders a full distribution of the fund.

DATES: Full distribution of the 1989 jukebox fund shall take place October 11, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., suite 450, Washington, DC 20036 (202-653-5175).

SUPPLEMENTARY INFORMATION: During the month of January 1990, six parties filed timely claims to the 1989 jukebox royalty fund: ACEMLA, ASCAP, BMI, Carl DeMonbrun, IBC, and SESAC.

ASCAP, BMI and SESAC, the three performing rights societies have agreed upon the distribution of the fund among themselves. On August 8, 1990, ACEMLA informed the Tribunal that it had reached a settlement with ASCAP, BMI and SESAC, and was withdrawing its claim. On August 23, 1990, IBC informed the Tribunal that it had reached a settlement with ASCAP, BMI and SESAC, and was withdrawing its claim.

By Motion, dated September 10, 1990, ASCAP requested the Tribunal to dismiss Carl DeMonbrun's claim as duplicative of ASCAP's claim, because it was asserted by sworn statement that Mr. DeMonbrun was a member of ASCAP during 1989. Mr. DeMonbrun has not answered ASCAP's motion, nor has the Tribunal, through its owns efforts, been able to contact Mr. DeMonbrun. Accordingly, the Tribunal accepts ASCAP's assertion that Mr. DeMonbrun was an ASCAP member during 1989 and orders that Mr. DeMonbrun's claim be dismissed.

Accordingly, no controversies exist concerning the distribution of the 1989 jukebox copyright royalty fund and a full distribution of the fund is ordered for October 11, 1990.

Dated: October 2, 1990.

J.C. Argetsinger,

Chairman.

[FR Doc. 90-23613 Filed 10-4-90; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Army

Closed Meeting

October 1, 1990.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following committee meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 23-25 October 1990.

Time: 0800-1730.

Place: Rancho Cucamonga, CA.

Agenda: The Army Science Board study on "STINGER Reprogrammable Microprocessor (RMP)," will meet to review the program. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically paragraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and propriety information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-23606 Filed 10-4-90; 8:45 am]

BILLING CODE 3710-08-M

Meeting of the National Advisory Panel on the Education of Handicapped Dependents

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Assistant Secretary of Defense (Force Management & Personnel).

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice also describes the functions of the Panel. Notice of this meeting is required under the National Advisory Act. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the Office of Dependents Schools (ODS) special education coordinator.

DATES: November 1-2, 1990.

ADDRESSES: Compri Hotel, 2700 Eisenhower Avenue, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Mrs. Trudy Paul, Special Education Coordinator, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia 22331-1100 (202/325-7610).

SUPPLEMENTARY INFORMATION: The National Advisory Panel on the Education of Handicapped Dependents is established under section 613 of the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401, Public Law

94–142). The Panel is directed to: (1) Review information regarding improvements in services provided to handicapped students in DoDDS; (2) receive and consider the views of various parents, students, handicapped individuals, and professional groups; (3) review the findings of fact and decision of each impartial due process hearing; (4) assist in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties; (5) make recommendations based on program and operational information for changes in the budget, organization, and general management of the special education program, and in policy and procedure; (6) comment publicly on rules or standards regarding the education of handicapped children; and (7) submit an annual report of its activities and suggestions to the Director, DoDDS, by July 31 of each year. The Panel will review the following areas: Quality Indicators for special education program, staff development, administration, and budget.

Dated: October 1, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–23624 Filed 10–4–90; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

DIA Advisory Board, Closed Meeting

AGENCY: Defense Intelligencee Agrency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATE: Tuesday, 13 November 1990 (8:30 a.m. to 5 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Counternarcotics.

Dated: October 1, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–23625 Filed 10–4–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 1, 1990.

The USAF Scientific Advisory Board Extension of Dormant Munitions Storage Life and Insensitive High Explosives Research and Development meeting previously scheduled for 16 & 17 October 1990, from 8 a.m. to 5 p.m., at the Eglin and Tyndall AFBs FL (55 FR 40003, October 1, 1990), is rescheduled for 18 & 19 October 1990, respectively. The request for the closed meeting is based on the fact that discussions on classified defense matters listed in section 552(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Grace T. Rowe,

Alternate Air Force Federal Register, Liaison Officer.

[FR Doc. 90–23631 Filed 10–4–90; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Science Board, Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 22–24 October 1990.

Time: 0900–1730 hours each day.

Place: US Army ARDEC, Picatinny Arsenal, NJ.

Agenda: The Army Science Board Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will meet for updated briefings on the progress and changes to the program since November 1989. The meetings will include the finding profile and a working session to lay the groundwork for the final report to Congress. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discuserd are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–23530 Filed 10–4–90; 8:45 am]

BILLING CODE 3710–8–M

Corps of Engineers, Department of the Army

Deauthorization of Water Resources Projects

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of project deauthorizations.

SUMMARY: The Corps of Engineers is publishing the lists of water resources projects and separable elements of projects deauthorized on January 1, 1990, and projects/separable elements removed from the deauthorization listr due to obligations of funds, continuations of authorization, or prior deauthorizations.

FOR FURTHER INFORMATION CONTACT: Mr. John Micik, Headquarters, U.S. Army Corps of Engineers, Attention: CECW–BA, Washington, DC 20314–1000. Tel. (202) 272–0705.

SUPPLEMENTARY INFORMATION: The Water Resources Development Act of 1986, Public Law 99–662, section 1001(b)(1), 33 U.S.A.C. 579(b)(1), required the Secretary of the Army to submit to the Congress by no later than November 17, 1987, a list of unconstructed water resources projects or separable elements of projects which had no obligations of funds for planning, design or construction during the prior ten full fiscal years. Unless funds were obligated by December 31, 1989, the project/separable element would be deauthorized on January 1, 1990. Notwithstanding this provision, the authorizations for four projects were specifically continued by the Water Resources Development Act of 1988, Public Law 100–676, 52(d), 102 Stat. 4045. Of the 360 projects/separable elements reported to Congress on November 16, 1987, 303 were deauthorized on January 1, 1990. However, two of the 360 reported had been specifically deauthorized on November 18, 1986, by the Water Resources Development Act of 1986, Pub. L. 99–662, 1002, 100 Stat. 4204 et seq., and, therfore, required no action under sectiopn 1001(b)(1).

Authority: This notice is required by the Water Resources Development Act of 1986, Pub. L. 99–662,. § 1001(c), 33 U.S.C. 579a(c), and the Water Resources Development Act of 1986, Pub. L. 100–676, section 52(e), 102 Stat. 4045.

Dated: September 18, 1990.

Approved.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON 1 JAN 90

	District project name	Prim. State	Purpose
NPA	Little China River Dam	AK	FC
SAM	Gadsden to Rome Coosa River Channel 1945 Act	AL	N
SAM	Sipsey	AL	FC
LMK	Bayour Bartholomew AR and LA 1950 1968 Acts	AR	FC
SWL	Crooked Creek Lake Levee, AR	AR	FC
LMK	Grand Prairie-Bayou Meto, AR	AR	FC
LMK	Lower Arkansas River, AR South Bank	AR	FC
LMK	Poston Bayou AR sec. 201 auth. 1970 and 1976 Acts	AR	FC
SPL	Gila and Salt Rivers, Gillespie Dam to McDowell Dam	AZ	FC
SPL	Gila River-Camelaback Damsite to Salt River, AZ	AZ	FC
SPL	Pinal Creek, Gila County, 1962 Act	AZ	FC
SPL	Winslow and Vincinity, AZ	AZ	FC
SPN	Humboldt Bay, Buhne Point	CA	BE
SPN	Lower San Francisco Bay	CA	N
SPL	Newport Bay Harbor Orange Co. (uncomplete portion)	CA	N
SPK	Pajaro River FC 1966 Act, Santa Cruz	CA	FC
SPL	Point Mugu to San Pedro inactive portion	CA	BE
SPK	Salinas 1944 Act Monterey, CA	CA	FC
SPN	Santa Cruz County, Shoreline Protection	CA	BE
SPK	Sonoma Creek 1965 Act Sonoma Co. Levees	CA	FC
SPL	Tahquitz Creek, CA	CA	FC
SPL	Ventura Pierpont Grns-Sch. Repl. Ventura Co.	CA	BE
MRO	South Platte River, Denver-Fort Lupton-Fort Morgan, Co.	CO	FC
NED	Connecticut River above Hartford, 1930 ACt	CT	N
NED	Stamford Harbor, CT	CT	N
NAP	hvw Del. River to Chesapeake Bay New Castle, and Cecil County	DE	N
NAP	Murderkill River Kent Co. 7 Fort Channel	DE	N
NAP	Rehoboth Bay to Delaware Bay, Sussex Co, 1945 Act	DE	N
NAP	Rehoboth Beach Indian River Inlet 1958 & 1962	DE	BE
NAP	St. Jones River Kent Co. 1937 Act	DE	N
SAJ	Central and S. Fl. (SW Dade Co., Area)	FL	FC
SAJ	Central and S. Fl. (Boggy Cr. Basin)	FL	FC
SAJ	Central and S. Fl. (Small Boat Harbor)	FL	N
SAJ	Four R. B. (Arcilote River C–532, S–552)	FL	FC
SAJ	GIWW St Marks to Tampa Bay, FL	FL	N
SAJ	Hillsboro Inlet (Broward County) FL	FL	N
SAJ	Key West	FL	BE
SAJ	Lido Key	FL	BE
SAJ	Mullet Key	FL	BE
SAJ	Virginia Key and Key Biscayne,	FL	BE
SAS	Savannah Harbor, Chatham County, GA	GA	N
POD	Hesia-Kea Small, Boat Hbr, Oahu, HI	HI	N
POD	Kailua Small Boat Hbr, Oahu, HI	HI	N
POD	Kaunakakai Deep Draft Hbr, Molokai, HI	HI	N
POD	Kaunakakai Small Boat Hbr, Molokai, HI	HI	N
POD	Lahaina Small Boat Hbr, Maui, HI	HI	N
POD	Maunalua Bay Small Boat Hbr, Oahu, HI	HI	N
POD	Nawiliwili Deep Draft Hbr, Kauai, HI	HI	N
POD	Reeds Bay Small Boat Hbr, Hawaii, HI	HI	N
MRO	Lower Big Sioux River, IA and SD	IA	FC
NPW	Devorshak added units 5 and 6, ID	ID	MP
NPW	Heise-Roberts Extension, Henrys Fork Unit	ID	FC
NPW	Lucky Peak Second Outlet	ID	MP
NPW	Mud Lake Area, ID	ID	FC
NPW	South Fork Clearwater River, ID	ID	FC
NPW	Weiser River, Weiser Area, ID	ID	FC
NCC	Calumet Harbor and River, 62 Act (uncomplete portion)	IL	N
NCC	Calumet Harbor and River, 60 Act (uncomplete portion)	IL	N
NCC	Calumet Hbr and Ri. 65 Act (uncomplete protion)	IL	N
LMS	Clear Creek D&LD, Illinois	IL	FC
LMS	East Cape Girardeau and Clear Creek, Illinois	IL	FC
NCR	Illinois Waterway, Marseilles Canal	IL	N
NCR	Mississippi River uncompleted units 9-Ft. Channel	IL	N
NCR	New Boston Small Boat Harbor, Mississippi River	IL	N
NCR	Peoria County Levees	IL	FC
LMS	Preston D&LD, Union County, Illinois	IL	FC
MRK	Melvern and Pomona Lakes Rd Impr, KS 1974 Act	KS	FC
MRK	Tuttle Creek Lake Road and Bridge, KS 1976 Act	KS	FC
ORH	Dover, KY LPP	KY	FC
ORH	Fullerton, KY LPP	KY	FC
ORH	Greenup, KY LPP	KY	FC
ORL	Lewisport 1936 Act Hancock Co Levee and Wall	KY	FC

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PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON 1 JAN 90—Continued

	District project name	Prim. State	Purpose
ORL	Newport-Wilders, KY 1936 Act	KY	FC
ORH	Normal, KY LPP	KY	FC
ORL	Owensboro 1938 Act Daviess Co	KY	FC
ORL	Smithland 1938 Act Livingston Co Lev and Wall	KY	FC
ORH	South Portsmouth, KY LPP	KY	FC
LMK	Bayou Bartholomew, AR and LA 1950 Act	LA	FC
LMN	Bayou Lafourche and LaFourche Jump, LA Auxiliary Chl	LA	N
LMN	Bayou LaFourche and LaFourche Jump, LA Mi 0 to 14.6	LA	N
LMN	Bayou Segnette Jefferson Parish, LA 9ft Channel	LA	N
LMN	Bayou Teche, LA	LA	N
NED	Boston Harbor, MA 1945 Act, Suffolk Co	MA	N
NED	Dorchester Bay and Neponset River, MA	MA	N
NED	Nantasket Beach, MA sec 201 auth 1970	MA	BE
NED	Nantucket West Jetty, MA 1960 Act	MA	N
NED	Plymouthtown Beach, MA 1960 Act (reimb)	MA	BE
NED	Taunton River, MA 1948 Act, Anchorage	MA	N
NED	Taunton River, MA 1930 Act, 12 ft Channel	MA	N
NED	Wareham Harbor, Plymouth Co 1988 Act	MA	N
NED	Westport River, Bristol Co, MA	MA	N
NAB	Betterton Harbor, Kent Co, 1958 Act	MD	N
NAB	Breton Bay, St Marys Co, 1902 Act	MD	N
NAB	Cambridge Harbor, Dorchester Co, 1948 Act	MD	N
NAB	Chester River, Queen Annes Co, 1873 Act	MD	N
NAB	Ocean City Harbor, Inlet and Sinepuxent Bay	MD	N
NAB	Pocomoke River, Somerset and Worchester, 1954 Act	MD	N
NAB	Pocomoke River, Worchester Co, 1945 Act	MD	N
NCE	Battle Creek, Kalamazoo River AT	MI	FC
NCE	Black River Harbor, Alcona Co	MI	N
NCE	Detroit River Trenton Channel	MI	N
NCE	Great Lakes Connecting Channels, uncomplete portion	MI	N
NCE	Holland Hbr Entrance Channel (uncomplete portion)	MI	N
NCE	Kalamazoo River, at Kalamazoo	MI	FC
NCE	Ontonagon Harbor, Ontonagon County	MI	N
NCE	Duluth-Superior Inner harbor	MN	N
NCS	Harriet Island Harbor, MN	MN	N
MRK	Charlton-Little Charlton Basins, MO inactive units	MO	FC
MRK	Dry Fork and East Fork Lakes, Fishing River	MO	FC
MRK	Gasconade River Navigation, MO	MO	N
LMS	I-38 Lake, Missouri	MO	FC
LMS	Irondale Lake, Missouri	MO	FC
MRK	Missouri River Levee system unit L-103	MO	FC
MRK	Missouri River Levee system unit L-117	MO	FC
MRK	Missouri River Levee system unit L-121	MO	FC
MRK	Missouri River Levee system unit L-124	MO	FC
MRK	Missouri River Levee system unit L-129	MO	FC
MRK	Missouri River Levee system unit L-134	MO	FC
MRK	Missouri River Levee system unit L-137-139	MO	FC
MRK	Missouri River Levee system unit L-145	MO	FC
MRK	Missouri River Levee system unit L-154	MO	FC
MRK	Missouri River Levee system unit L-157	MO	FC
MRK	Missouri River Levee system unit L-164	MO	FC
MRK	Missouri River Levee system unit L-175	MO	FC
MRK	Missouri River Levee system unit L-191-196	MO	FC
MRK	Missouri River Levee system unit L-205	MO	FC
MRK	Missouri River Levee system unit L-217	MO	FC
MRK	Missouri River Levee system unit L-256	MO	FC
MRK	Missouri River Levee system unit L-353	MO	FC
MRK	Missouri River Levee system unit L-357	MO	FC
MRK	Missouri River Levee system unit L-36	MO	FC
MRK	Missouri River Levee system unit L-362	MO	FC
MRK	Missouri River Levee system unit L-392	MO	FC
MRK	Missouri River Levee system unit L-419-426	MO	FC
MRK	Missouri River Levee system unit L-435	MO	FC
MRK	Missouri River Levee system unit L-61	MO	FC
MRK	Missouri River Levee system unit L-66-92	MO	FC
MRK	Missouri River Levee system unit L-78	MO	FC
MRK	Missouri River Levee system unit L-94	MO	FC
MRK	Missouri River Levee system unit L-99	MO	FC
MRK	Missouri River Levee system unit L-104	MO	FC
MRK	Missouri River Levee system unit L-107	MO	FC
MRK	Missouri River Levee system unit R-112	MO	FC
MRK	Missouri River Levee system unit R-150	MO	FC
MRK	Missouri River Levee system unit R-161	MO	FC
MRK	Missouri River Levee system unit R-169	MO	FC
MRK	Missouri River Levee system unit R-179-184	MO	FC
MRK	Missouri River Levee system unit R-226	MO	FC
MRK	Missouri River Levee system unit R-240	MO	FC
MRK	Missouri River Levee system unit R-251	MO	FC
MRK	Missouri River Levee system unit R-259	MO	FC

PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON 1 JAN 90—Continued

	District project name	Prim. State	Purpose
MRK	Missouri River Levee system unit R-263-270	MO	FC
MRK	Missouri River Levee system unit R-272	MO	FC
MRK	Missouri River Levee system unit R-284	MO	FC
MRK	Missouri River Levee system unit R-302	MO	FC
MRK	Missouri River Levee system unit R-336	MO	FC
MRK	Missouri River Levee system unit R-361	MO	FC
MRK	Missouri River Levee system unit R-42	MO	FC
MRK	Missouri River Levee system unit R-512-513	MO	FC
MRK	Missouri River Levee system unit R-55-59-61	MO	FC
MRK	Missouri River Levee system unit R-70	MO	FC
MRK	Missouri River Levee system unit R-87	MO	FC
MRK	Osage River Navigation, MO	MO	N
MRK	Pattonsburg Lake, MO I-35 highway relocation	MO	FC
MRK	Pattonsburg Lake, MO town relocation	MO	FC
LMS	Union Lake, Missouri	MO	FC
SAM	Noxubee	MS	FC
LMK	Pearl River, MS and LA (1986 MOD)	MS	N
SAM	Tombigbee River AL and MS 1941 Act	MS	FC
SAM	Westfork	MS	FC
SAW	AIWW-New River Onslow Co, NC	NC	N
SAW	Wilmington Harbor Widening and Deepening, NC	NC	N
MRO	Eagle Bay Highway Bridge, Missouri River Basin, ND	ND	FC
NCS	Pembina River Lake, Cavalier Co., ND	ND	FC
NCS	Tongue River Lake, Pembina Co., ND	ND	FC
MRO	Missouri River Levee syst unit R531	NE	FC
MRO	Missouri River Levee syst unit R540	NE	FC
MRO	Missouri River Levee syst unit R553	NE	FC
MRO	Missouri River Levee syst unit R555	NE	FC
MRO	Missouri River Levee syst unit R577	NE	FC
MRO	Missouri River Levee syst unit R589	NE	FC
MRO	Missouri River Levee syst unit R603	NE	FC
MRO	Missouri River Levee syst unit R610	NE	FC
MRO	Missouri River Levee syst unit R623	NE	FC
MRO	Missouri River Levee syst unit R644	NE	FC
MRO	Missouri River Levee syst unit R645	NE	FC
MRO	Missouri River Levee syst unit R652	NE	FC
MRO	Missouri River Levee syst unit R661	NE	FC
MRO	Missouri River Levee syst unit R669	NE	FC
MRO	Missouri River Levee syst unit R676	NE	FC
MRO	Missouri River Levee syst unit R682	NE	FC
MRO	Missouri River Levee syst unit R686	NE	FC
MRO	Missouri River Levee syst unit R703	NE	FC
MRO	Missouri River Levee syst unit R717	NE	FC
MRO	Missouri River Levee syst unit R719	NE	FC
MRO	Missouri River Levee syst unit R725	NE	FC
MRO	Missouri River Levee syst unit R728	NE	FC
MRO	Missouri River Levee syst unit R742	NE	FC
MRO	Missouri River Levee syst unit R750	NE	FC
NAP	Atlantic City 1954, 65 Acts—reimb	NJ	BE
NAP	Barnegat Light Beach restor, 1960 Act	NJ	BE
NAP	Cape May City, Cape May County, 1960 Act	NJ	BE
NAP	Delaware Riv Phila to sea, 1945 Act	NJ	N
NAP	Long Beach Island Beach restoration, 1960 Act	NJ	BE
NAP	Manasquan River, 1945 Act	NJ	N
NAN	Matawan CR Monmouth Co, 1961 Act	NJ	N
NAP	Maurice River, Cumberland Co, 8 Ft., 1935 Act	NJ	N
NAP	New Jersey Intracoastal Waterway	NJ	N
NAN	Newark Bay Hackensack and Passaic	NJ	N
NAP	North Wildwood, Cape May Co., 1960 Act	NJ	BE
NAP	Ocean City Beach restor, 1954 and 1960 Acts	NJ	BE
NAN	Perth Amboy, 1965 Act	NJ	BE
NAP	Pt. Pleasant Beach to Seaside Park, 1958 Act	NJ	BE
NAN	Rahway River, Middlesex and Union Counties	NJ	N
NAN	Raritan and Sandy Hook Bay 1962 Act	NJ	FC
NAP	Salem River, Salem Co 1925 Act	NJ	N
NAN	Shoal Harbor and Compton Creek	NJ	N
NAN	Shrewsbury Monmouth Co 1950 Act	NJ	N
NAN	Shrewsbury River Monmouth Co 1965 Act	NJ	N
NAP	Stone Harbor, 1960 Act reimb	NJ	BE
NAP	Ventnor, Margate and Longport 1960 Act	NJ	BE
NAN	Way Cake Creek Monmouth Co	NJ	N
SWA	Rio Grande, Espanola Valley unit	NM	FC
NCB	Caledonia Genesee River 1950 FC Act	NY	FC
NCB	Chittenango Creek and Tributaries 1944 FC Act	NY	FC
NAN	East Rockaway Inlet-Rock Inlet part 2	NY	FC
NCB	Fairhaven Beach State Park 1956 R&H Act	NY	BE
NCB	Fort Niagara State Park sec 201, 1965 FC Act	NY	BE
NCB	Hamlin Beach Harbor 1966 Act	NY	N
NAN	Hempstead Harbor 1968 Act	NY	N
NAN	Hudson River NYC to Albany 12 ft	NY	N
NAN	Hudson River NYC to Albany 27 ft	NY	N

PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON 1 JAN 90—Continued

	District project name	Prim. State	Purpose
NAN	Lemon Creek Richmond Co	NY	N
NAN	Manhasset Bay Nassau Co	NY	N
NAN	North Shore of Long Island	NY	BE
NAN	Orowoc Creek, Suffolk Co	NY	N
NCB	Oswego Harbor 1930 Act deepen East Outer Hbr	NY	N
NCB	Port Bay 1950 R&H Act	NY	N
NAN	Port Jefferson Harbor 1958 Act	NY	N
NAN	Port Jefferson Hbr Suffolk Co 1890 & 1930	NY	N
NCB	Sellirk Shores St. Pk. (uncomplete portion) 54 Act	NY	BE
NAN	South Ellenville	NY	FC
NAN	Staten Island, Ft Wadsworth	NY	FC
ORH	Coal Grove Ohio LPP	OH	FC
NCB	Conneaut Hbr 1966 R&H Act 6 ft Channel and Bkw	OH	N
ORP	Eagle Creek Lake	OH	FC
NCB	Eastlake-Chagrin River 1965 FC Act	OH	FC
NCB	Edgewater Park 1954 R&H Act	OH	BE
NCB	Fairport Harbor 1960 R&H Act	OH	N
NCB	Fairport Harbor, OH (SEC 201) 1965 FC Act	OH	N
NCB	Huron Harbor 1962 Act Erie Co (breakwater)	OH	N
NCB	Lorain Harbor 1960, 65 R&H Acts uncompleted portion	OH	N
NCB	Ottawa River Harbor, OH sec 201, 1965 FC Act	OH	N
ORH	Utica Lake, OH	OH	FC
NCB	White City Park 1954 R&H Act	OH	BE
NPW	Catharine Creek Lake, OR	OR	FC
NPP	Hayden Island Multnomah Co Levees	OR	FC
NPP	John Day Additional Units OR & WA	OR	MP
NPP	Peninsular Drainage Dist 2, Levee extension and raise	OR	FC
NPP	Siuslaw River—North Jetty 600 feet extension	OR	N
NPP	Tillamook Bay and Bar Hobsonville	OR	N
NPP	Umpqua River-Schofield River	OR	N
NPP	Willamette River Basin Channel clearing	OR	FC
NAP	Bethlehem, Northampton County	PA	FC
NAP	Delaware River Phila to Trenton, 1954 Act	PA	N
NAP	Delaware River, Phila-to-Sea Anchor., 1958 Act	PA	N
ORP	Uniontown Fayette County Channel	PA	FC
SAJ	San Juan and vicinity	PR	BE
SAS	Broadway Lake, SC	SC	FC
SWA	Alpine, Texas sec 201, auth 1974	TX	FC
SWG	Corpus Christi Ship Channel 1913 Act Jetty	TX	N
SWF	Dam A—Jasper County, Neches	TX	N
SWF	East Fork Channel Improvement, Increment No. 2	TX	FC
SWF	Elm Fork Floodway, Texas 1965 Act	TX	FC
SWG	Mill Creek Brazos River Austin Co 1946 Act	TX	FC
SWF	Navarro Mills Lake, TX—Road Relocation 1970 Act	TX	FC
SWG	Navidad and Lavaca Rivers Jackson and Lavaca Cos	TX	FC
SWA	Pecos, Texas 1954 Act	TX	FC
NAB	Nassaco Creek Prince William Co 1981 Act	VA	N
NAO	Salem Church Lake 1966 Act	VA	FC
NAN	Bennington 1938 and 1941 Act	VT	FC
NAN	Otter Creek, Addison Co	VT	N
NAN	Rutland Otter Creek	VT	FC
NPP	Columbia River at Mouth—Spur Jetty B	WA	N
NPS	Everett Harbor and Snohomish River, WA	WA	N
NPS	Grays Harbor and Chehalis River, WA	WA	N
NPS	Grays Harbor and Chehalis River, WA	WA	N
NPS	Olympia Harbor WA, Thurston County	WA	N
NPS	Skagit River WA Avon Bypass	WA	FC
NPP	Wahkiakum Co dld No. 4, Levee ext. and raise	WA	FC
NPS	Wenatchee Canyons 1 and 2, WA	WA	FC
NCR	Caseville Small Boat Harbor, Grant County	WI	N
NCE	Harbors of Washington Island	WI	N
NCE	Kenosha Harbor (uncomplete portion)	WI	N
NCE	Lower Fox River, (uncomplete portion)	WI	N
NCE	Manitowoc Harbor 1962 Act	WI	N
NCE	Milwaukee Outer Harbor (uncomplete portion)	WI	N
NCE	Northport Harbor	WI	N
NCE	Two Rivers Harbor, (uncomplete portion)	WI	N
ORH	Leading Creek Lake, WV	WV	FC
ORH	West Fork Lake, WV	WV	FC
MRO	Buffalo, WY	WY	FC
MRO	Sheridan, WY (Stage III)	WY	FC
	Total: 303		

PROJECTS/SEPARABLE ELEMENTS REMOVED FROM DEAUTHORIZATION LIST DUE TO OBLIGATIONS OF FUNDS FOR PLANNING, DESIGN OR CONSTRUCTION—Continued

	District project name	Prim. State	Purpose
NPA	Long Lake Dam	AK	MP
LMM	Augusta—Clarendon, Arkansas	AR	FC
SWL	Bell Foley Lake, Ark, 1938 Act	AR	FC
LMM	Clarendon Levee, Arkansas	AR	FC
LMM	Section 6 Levees, AR, LA, IL, MS, MO	AR	FC
SWL	Village Creek, Ark, 1962 Act	AR	FC
SWL	White River Fish Hatchery, AR 1976 Act	AR	MP
NED	Trumbull Lake, CT 1966 Act Pequonnock River	CT	FC
SAM	Panama City Harbor FL. sec 201 auth 1972	FL	N
NCC	Waukegan Harbor (section 201 auth)	IL	N
ORL	Big Pine Lake, IN 1965 Act	IN	FC
ORL	Big Walnut Lake, IN 1966 Act	IN	FC
ORL	Greenfield Bayou, IN 1946 Act	IN	FC
ORL	Island Levee, IN 1946 Act	IN	FC
ORL	Lafayette Lake, IN 1965 Act	IN	FC
ORL	Booneville Lake 1938 and 1944 Acts	KY	FC
ORL	Eagle Creek Lake 1962 Act	KY	FC
ORL	Mcalpine L&D–Lou KY and Ind Alter RR bridge	KY	N
ORL	Mining City Lake 1938 Act Muhlenberg	KY	FC
ORL	Red River Lake 1962 Act Powell Wolfe	KY	FC
ORL	West Point 1938 Act Hardin CO	KY	FC
LMK	Red R Waterway, Shreveport, LA to Daingerfield, TX	LA	N
NED	Whitmanville Lake, MA 1966 Act	MA	FC
NCE	Menominee River and Harbor	MI	N
MRK	Braymer Lake, Shoal Creek, MO	MO	FC
MRK	Brookfield Lake, Yellow Creek, MO	MO	FC
MRK	East Muddy Creek, MO	MO	FC
MRK	Lower Grand River, MO 1955 Act	MO	FC
MRK	Mercer Lake 1965 Act	MO	FC
MRK	Missouri River Levee system unit L-100	MO	FC
MRK	Missouri River Levee system unit L-142	MO	FC
MRK	Missouri River Levee system unit L-294	MO	FC
MRK	Missouri River Levee system unit R-30	MO	FC
MRK	Missouri River Levee system unit R-326	MO	FC
MRK	Missouri River Levee system unit R-331	MO	FC
MRK	Pattonsburg Lake 1965 Act	MO	FC
MRK	Trenton Lake 1965 Act Grundy Harrison Daviess	MO	FC
MRK	Upper Grand River 1965 Act	MO	FC
SAW	Brunswick CO Bche-Long Bch Portion-Berm	NC	FC
NCS	Boise de Sioux and Red R. Wahpington and Breckenridge	ND	FC
NAP	De River Phila PA-Trenton, sec 201, Tioga Marina	NJ	N
NCB	Cleveland Harbor 1946 R&H Act	OH	N
NCB	Cleveland Harbor, OH 1958 Act	OH	N
SWT	Boswell Lake, OK 1946 Act	OK	FC
SWT	Crutcho Creek Oklahoma Co	OK	FC
SWT	Denison Dam Pwr unit 3, 4, 5, OK, TX, 1938 Act	OK	MP
SWT	Sand Lake, OK 1962 Act	OK	FC
NPW	Malheur River, Willow Creek Unit, OR	OR	FC
SWG	Glwv-Sabine Riv-Houston Ship Channel, TX	TX	N
SWF	Pecan Bayou Lake, Texas—1968 Act	TX	FC
NAO	Hampton Roads 1965 Act	VA	N
	Total: 51		

PROJECTS/SEPARABLE ELEMENTS REMOVED FROM DEAUTHORIZATION LIST DUE TO CONTINUATION OF AUTHORIZATION BY LAW

	District project name	Prim. State	Purpose
SPN	Monterey Harbor	CA	N
NCC	Chicago River 1946 Act	IL	N
MRO	Ft Yates Highway Bridge, Missouri River Basin, ND	ND	FC
NAO	James River 35-ft Chan 1962 Act	VA	N
	Total: 4		

PROJECTS/SEPARABLE ELEMENTS ON DEAUTHORIZATION LIST WHICH WERE DEAUTHORIZED ON 18 NOV. 86

	District project name	Prim. State	Purpose
NAO	Pamunkey River 1945 Hanover and King	VA	N
NAO	Thimble Shoal Channel 1954 Act Chesapeake	VA	N
	Total: 2		

Key to Abbreviations

LMV *Lower Mississippi Valley Division*
LMM Memphis District
LMN New Orleans District
LMS St. Louis District
LMK Vicksburg District
MRD *Missouri River Division*
MRK Kansas City District

MRO	Omaha District
NED	*New England Division*
NAD	*North Atlantic Division*
NAB	Baltimore District
NAN	New York District
NAO	Norfolk District
NAP	Philadelphia District
NCD	*North Central Division*
NCB	Buffalo District
NCC	Chicago District
NCE	Detroit District
NCR	Rock Island District
NCS	St. Paul District
NPD	*North Pacific Division*
NPA	Alaska District
NPP	Portland District
NPS	Seattle District
NPW	Walla Walla District
ORD	*Ohio River Division*
ORH	Huntington District
ORL	Louisville District
ORN	Nashville District
ORP	Pittsburgh District
POD	*Pacific Ocean Division*
SAD	*South Atlantic Division*
SAC	Charleston District
SAJ	Jacksonville District
SAM	Mobile District
SAS	Savannah District
SAW	Wilmington District
SPD	*South Pacific Division*
SPL	Los Angeles District
SPK	Sacramento District
SPN	San Francisco District
SWD	*Southwestern Division*
SWA	Albuquerque District
SWF	Fort Worth District
SWG	Galveston District
SWL	Little Rock District
SWT	Tulsa District

Purpose

N	Navigation
BE	Beach Erosion Control
FC	Flood Control
MP	Multiple Purpose Power

[FR Doc. 90-23632 Filed 10-4-90; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings for the Proposed Healy Clean Coal Project

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Intent (NOI) to prepare and Environmental Impact Statement (EIS), and to conduct three public scoping meetings to assess the environmental effects of the construction and operation of a proposed new 50-megawatt coal-fired power generating facility known as the Healy (Alaska) Clean Coal Project.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed construction and operation of a new coal-fired power plane in Healy, Alaska. As one of the proposals selected under Round III of the Clean Coal Technology (CCT) Program, the Healy Clean Coal Project would demonstrate the combined removal of sulfur dioxide, oxides of nitrogen, and particulate matter from a 50-megawatt electric power plant using innovative integration of advanced combustion and flue gas cleanup technologies. The proposed action is the cost-shared Federal funding of the project by DOE to demonstrate the economic viability and environmental acceptability of the technologies. The EIS will consider reasonable alternatives to the proposed action, as well as the no-action alternative and the proposed project. Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE NEPA guidelines (52 FR 47662). The purpose of this NOI is to invite public participation in the process that DOE will follow to comply with NEPA and to solicit public comments on the proposed scope and content of the EIS.

INVITATION TO COMMENT: To ensure that the full range of issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the draft EIS and should be postmarked by November 5, 1990, to Dr. Earl W. Evans, Environmental Project Manager, Pittsburgh Energy Technology Center, U.S. Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236, Tel. (412) 892–5709. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold public scoping meetings in which agencies, organizations, and the general public are invited to present oral comments or suggestions. Locations, dates, and times for the scoping meetings are provided in the section of this notice entitled "**SCOPING MEETINGS.**" Written and oral comments will be given equal weight and will be considered in determining the scope of the draft EIS. The draft EIS is expected to be completed in July 1991, at which time its availability will be announced in the **Federal Register**, and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Dr. Earl W. Evans at the above address. For general inforamtion on the EIS process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Tel. (202) 586–4600.

BACKGROUND AND NEED FOR THE PROPOSED ACTION: On September 27, 1988, Public Law No. 100–446, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1989, and for Other Purposes," was signed into law. Among other things, the Act provided funding to DOE to cost-share the design, construction, and operation of CCT projects that demonstrate the feasibility of technologies capable of achieving significant reductions in the emissions of sulfur dioxide and/or the oxides of nitrogen from existing facilities to minimize environmental impacts such as transboundary and interstate pollution, and/or providing for future energy needs in an environmentally acceptable manner.

On May 1, 1989, DOE issued Program Opportunity Notice (PON), Number DE–PS01–89FE61825 for Round III of the CCT program, soliciting proposals to conduct cost-shared CCT projects to demonstrate innovative, energy-efficient, clean coal technologies that are capable of being commercialized in the 1990s. The Healy Clean Coal Project was one of 13 projects selected from among the 48 proposals received.

Proposed Action: The Healy Clean Coal Project is a new 50-megawatt coal-fired power generating facility being proposed for construction and operation at Healy, Alaska, by the Alaska Industrial Development and Export Authority (AIDEA) in cooperation with DOE under the CCT program. AIDEA has assembled a team comprised of the following: Golden Valley Electric Association, Inc. (GVEA); the Alaska Energy Authority; Usibelli Coal Mine, Inc.; Stone & Webster Engineering Corporation; TRW, Inc.; and Joy Technologies, Inc., to design, build, and operate the power plant. The plant is proposed to be located adjacent to an existing 25-megawatt conventional pulverized coal unit owned and operated by GVEA in a rural area along the Nenana River at Healy. Coal will be supplied by the Usibelli Coal Mine located about 4 miles north of the proposed site. This site is located approximately 4 miles to the north of a border with Denali National Park.

The new facility would be based on an innovative power plant design which features integration of an advanced combustor and heat recovery system coupled with both high and low temperature emission control processes. The combustion technology to be demonstrated is TRW's entrained combustion system with limestone injection, providing capture of a substantial quantity of the sulfur dioxide in the flue gas. Flue gas from the TRW entrained combustor is expected to contain lower concentrations of sulfur dioxide and oxides of nitrogen than flue gas from conventional combustion. The post-combustion technology to be integrated with the advanced combustor is the Joy Technologies, Inc., spray dryer absorber for a second stage of sulfur dioxide removal.

Alternatives: Under its authority pursuant to Public Law 100–446, DOE is presented with only two alternatives: (1) to cooperatively fund the proposed project; and (2) to decline to fund it (the "no action" alternative). In the latter case, the project would not contribute to the objective of the CCT program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable, coal technologies. Under the "no action" alternative, the facility probably would not be constructed and operated; therefore, potential environmental impacts resulting from the project would not occur.

DOE acknowledges the obligation to examine reasonable alternatives which are beyond its immediate authority to implement, but which could also meet the objectives of the CCT Program. DOE is requesting public comment on reasonable alternatives to the Healy Clean Coal Project.

A Final Programmatic Environmental Impact Statement (PEIS) for the CCT Program was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) The "no action" alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and NO_x controls to meet New Source Performance Standards would continue to be used; and (2) the proposed action, which assumed that CCT projects were selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

IDENTIFICATION OF ENVIRONMENTAL ISSUES: The following issues associated with the construction and operation of the Healy Clean Coal Project will be considered in detail by DOE during its evaluation. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) Air Quality (including potential visibility impairment at Denali National Park)
(2) Surface Water Quality
(3) Groundwater Quality
(4) Waste Management
(5) Ecological Habitat
(6) Noise
(7) Socioeconomic Impacts

Issues that are not considered significant will be discussed in less detail, or as appropriate to clarify and distinguish impacts among alternatives.

SCOPING MEETINGS: In addition to receiving written comments, DOE will conduct public scoping meetings to assist DOE in determining the appropriate scope of the EIS and the significant environmental issues to be addressed. Three meetings are scheduled, as follows:

(1) Tri-Valley Community Center Auditorium, Mile 249 Parks Highway, P.O. Box 146, Healy, Alaska 99743, Date: October 22, 1990, Time: 7:00 p.m. to 11:00 p.m.,
(2) Noel Wien Public Library, 1215 Cowles Street, Fairbanks, Alaska 99701, Date: October 23, 1990, Time: 7:00 p.m. to 11:00 p.m.
(3) Service High School, Little Theater, 5577 Abbott Road, Anchorage, Alaska 99507, Date: October 24, 1990, Time: 7:00 p.m. to 11:00 p.m.

The purpose of the scoping meetings is to offer all interested persons the opportunity to comment orally on the proposed content and scope of the EIS. Requests to speak at the scoping meetings should be addressed to Dr. Earl W. Evans at the address listed in the section of this notice entitled "**INVITATION TO COMMENT,**" postmarked no later than October 15, 1990.

DOE will designate a presiding officer to chair the meeting. The meetings will not be conducted as evidentiary hearings, and there will be no questioning of the speakers; however, the presiding officer may ask for clarification of statements made to ensure that DOE fully understands the comments and suggestions. The presiding officer will establish the order of speakers and provide any additional procedures necessary for conduct of the meetings. To ensure that all persons wishing to make presentations may be heard, a five minute limit has been established for each speaker, with 10 minutes permitted for those representing groups. Speakers who wish to provide further information for the record should submit such information to the address listed in the section of this notice entitled "**INVITATION TO COMMENT,**" postmarked no later than November 5, 1990. Comments postmarked after that date will be considered to be degree practicable. Individuals who do not make an advance arrangement to speak may register and request to speak at the time of the meetings. After all previously scheduled speakers have been given an opportunity to make their presentations, an opportunity will be provided to the new registrants to speak, as time permits. DOE reserves the right to change the dates, times, and locations of the meetings and the procedures for the conduct of the meetings, if necessary. Notification of changes in dates, times, and locations will be announced by advertisements placed in the appropriate news media.

DOE will prepare transcripts of the scoping meetings. The public may review the transcripts and related reference material on this project at the DOE Public Reading Rooms and local libraries during normal business hours. The locations where Healy Clean Coal Project documents are available are as follows:

U.S. Department of Energy, Freedom of Information Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Tel. No. (202) 586–6020
Rocky Flats Area Office, c/o Front Range Community College, 3645 West 112th Avenue, Westminster, CO 80030, Tel. No. (303) 469–4435
The Federal Building, room No. 825, P.O. Box 020050, Juneau, AK 99802–0050, Tel. No. (907) 586–7405
Tri-Valley Community School Library, P.O. Box 400, Healy, AK 99743, Tel. No. (907) 683–2507
Z.J. Loussac Library, 3600 Denali Street, Anchorage, AK 99503, Tel. No. (907) 261–2575
Fairbanks North Star Borough Library, 1215 Cowles Street, Fairbanks, AK 99701, Tel. No. (907) 452–5177

Signed in Washington, DC, this 3rd day of October 1990, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-23789 Filed 10-4-90; 8:45 am]

BILLING CODE 6450-01-M

oversight organization with respect to its operating contractors. In keeping with this management approach, individual contractors at defense programs facilities were responsible for formulating, selecting, and administering standards controlling design, construction, and conduct of operations. Due to the dearth of nuclear industry programs at both Savannah River and Rocky Flats; and comprehensive readiness reviews planned or underway at K, L, and P Reactors, Rocky Flats, and WIPP.

2.0 Program Description

The above information will be

2.2 Standards That Apply to Savannah River K, L, and P Reactors

The second report will identify and assess the standards that apply to the design, construction, operation, or decommissioning of K, L, and P reactors at Savannah River. Initially, this list will be generated from DOE orders,

2.4 Standards That Apply to WIPP

The fourth DOE report will address codes and standards (for the WIPP facility. As noted in the Department's June 8, 1990, response, the WIPP project is in the process of developing a data base to identify the specific standards that apply to WIPP. (Note: The use of

and external to the Department. These organizations include DOE-EH (HQ), DOE-Nuclear Safety (HQ), DOE-AL, the Advisory Committee for Nuclear Facility Safety, and the Environmental Evaluation Group. Each of these reviews are expected to produce a review document that will delineate that

Signed in Washington, DC, this 3rd day of October 1990, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-23789 Filed 10-4-90; 8:45 am]

BILLING CODE 6450-01-M

DOE High Priority Defense Nuclear Facilities; Design, Construction, Operation and Decommissioning Standards; Supplemental Response to Recommendation 90-2 of the Defense Nuclear Safety Board; Correction

On Thursday, September 27, 1990 (55 FR 39500), The Department of Energy published a notice of a supplemental response of the Secretary of Energy to Recommendation 90-2 of the Defense Nuclear Facilities Safety Board. An attachment to the document setting forth the Departments response was inadvertently omitted. This document corrects that omission.

Dated: October 1, 1990.

Steven M. Blush,

Director, Office of Nuclear Safety.

Codes and Standards Identification, Adequacy, and Implementation Supplemental Response and Implementation Plan

1.0 Introduction

1.1 Supplemental Response to Recommendation 90-2

In supplemental response to Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 90-2, the Department of Energy (DOE) will:

(1) Identify the specific standards which the DOE considers apply to the design, construction, operation and decommissioning of defense nuclear facilities of DOE (including all applicable Departmental orders, regulations, and requirements) at the following defense nuclear facilities:

- *Savannah River Site:* K, L, and P Reactors;
- *Rocky Flats Plant:* Buildings 371, 374, 559, 707, 771, 774, 776, 777, and 779;
- *Hanford Site:* Plutonium Finishing Plant; PUREX Facility, together with associated waste processing and storage facilities; N Reactor (including decommissioning); and K Reactor Storage Basins; and
- Waste Isolation Pilot Plant (WIPP).

(2) Provide DOE's views on the adequacy of the standards identified in the above process for protecting the public health and safety at the defense nuclear facilities referred to, and determine the extent to which the standards have been implemented at these facilities.

1.2 Background

In prior years, DOE conducted its defense related nuclear operations as an oversight organization with respect to its operating contractors. In keeping with this management approach, individual contractors at defense programs facilities were responsible for formulating, selecting, and administering standards controlling design, construction, and conduct of operations. Due to the dearth of nuclear industry standards when these facilities were constructed and first operated, these contractors had to knowledgeably apply non-nuclear industry standards and, in many cases, formulate appropriate detailed technical standards to address their unique applications. As a result of isolation from commercial nuclear power and other industries, modern practices and standards were often not assessed or adopted as they became available. These are some of the reasons a well-documented body of codes and standards has not been maintained for DOE's defense nuclear facilities.

Recently, DOE transitioned to a more assertive management organization. Consistent with this approach, facility operations have become the subject of DOE orders controlling their design, construction, operation, and decommissioning. In recognition of the excellent resources available, DOE is attempting to utilize nationally available consensus codes and standards as aids in achieving its mission. These DOE orders have not achieved the level of completeness, organization, and cohesiveness commensurate with the safe operation of nuclear facilities. DOE is currently drafting a set of rules to correct this situation.

1.3 Purpose

A complete, cohesive, and organized body of standards is necessary for ensuring that the safety and health of the public are being adequately protected at DOE defense nuclear facilities. As a significant intermediate and practical step in creating this body of standards, DOE will prepare an organized tabulation of the codes and standards DOE considers to apply to the named facilities, determine the extent of current compliance at the facilities, and make a comprehensive review of adequacy for protection of public health and safety. The full range of activities necessary to finalize these tasks may not be completed prior to or during operation of some of the named facilities. However, there is substantial activity currently underway to ensure that the health and safety of the public is adequately protected during facility operation. Examples of these activities include the ongoing seismic and thermal-hydraulic analyses for K, L, and P Reactors; revised operator training programs at both Savannah River and Rocky Flats; and comprehensive readiness reviews planned or underway at K, L, and P Reactors, Rocky Flats, and WIPP.

2.0 Program Description

The above information will be provided to the Board in five major reports:

(1) DOE Order Compliance Programs at Savannah River and Rocky Flats.

(2) Standards that apply to Savannah River K, L, and P reactors.

(3) Standards that apply to Rocky Flats Buildings 371, 374, 559, 707, 771, 774, 776, 777, and 779.

(4) DOE orders and other standards that apply to WIPP.

(5) DOE orders and other standards that apply to Hanford.

These reports will be in a stand-alone format specifically directed at meeting DOE and the Board's needs. The codes and standards identified and assessed in these reports will consist of the following, to the extent that they concern the health and safety of the public:

(1) Codes and standards that were specifically invoked on the design, construction, and modification of the facility;

(2) Codes and standards that are currently explicitly invoked on the design, construction, modification, maintenance, operation, and, as applicable, decommissioning of the facility; and

(3) Other codes and standards that DOE considers apply, examples of which may include industry consensus standards, Federal, state, and local statutes, and Nuclear Regulatory Commission requirements.

2.1 Order Compliance Programs at the Savannah River and Rocky Flats Sites

The first report will document the completion of the ongoing order compliance programs at the Savannah River and Rocky Flats sites. This order compliance report will provide a final listing of the DOE orders that the Department applies to ensure the health and safety of the public, the extent of compliance as determined by the compliance teams, and the disposition of identified areas of noncompliance. The order compliance report will also provide the Department's initial assessment of the adequacy of the body of requirements represented by the identified orders. This assessment will specifically consider the body of guidance represented by comparable commercial nuclear standards.

2.2 Standards That Apply to Savannah River K, L, and P Reactors

The second report will identify and assess the standards that apply to the design, construction, operation, or decommissioning of K, L, and P reactors at Savannah River. Initially, this list will be generated from DOE orders, regulations, and requirements; site documentation including construction and equipment specifications; procedures; manuals; and plans. The identification will be presented in an organized and stand-alone format to facilitate the Board's review and evaluation of the content of the standards. DOE's views on the adequacy of this body of standards to ensure public health and safety and the extent to which these standards are implemented at the site will be comprehensively addressed in the second part of this report.

For the second part of this report for Savannah River, DOE will continue to assess the adequacy of the standards identified for protecting the public's safety and health. The assessment will cover all safety topics, including systems, structures, operations, etc. During this phase, DOE will also identify any plant features or aspects of operation that are inadequately controlled by currently invoked standards and areas where another standard may be preferred. The report to the Board will provide DOE's views on the adequacy of the codes and standards applied to the Savannah River reactors based on this detailed assessment and any corrective actions undertaken. The effort for this phase began with the development of the Safety Evaluation Report which has already been drafted.

2.3 Standards That Apply to Rocky Flats Plant

The third report will cover nine buildings at the Rocky Flats Plant and will be similar in approach and content to the second report discussed above. Initial identification and assessment of standards will be based on existing site documentation and applicable DOE orders. DOE will provide the Board with periodic updates to keep the report current during this effort.

Concurrent with the identification of standards applicable to Rocky Flats, DOE will continue the development of its Systematic Evaluation Program (SEP), consistent with Board Recommendation 90-5. The acceptance criteria and evaluations developed in the SEP and subsequently reported to the Board will be utilized as a major input to the second phase of this effort.

2.4 Standards That Apply to WIPP

The fourth DOE report will address codes and standards (for the WIPP facility. As noted in the Department's June 8, 1990, response, the WIPP project is in the process of developing a data base to identify the specific standards that apply to WIPP. (Note: The use of the word "standards" in this implementation plan refers to DOE-Headquarters (HQ) orders, DOE-Albuquerque Operations Office (AL) (implementing) Orders, Management and Operating Contractor (MOC)-Westinghouse) procedures and directives, and national codes and standards.) While the applicable DOE orders and many of the higher level standards are identified in the WIPP Final Safety Analysis Report (FSAR) and in the Final Supplemental Environmental Impact Statement, MOC directives and applicable industry codes are not identified and will require additional effor to identify. This effort includes researching on-site construction records (e.g., specifications) and organizing the data into a single base. Because of the amount of time needed to complete this additional efort, the Department must revise its proposed submission of the data base from October to December 1990.

The effort discussed above will culminate in the identification of the standards for the design and construction phases, the operations phase, and the decommissioning phase at WIPP. For the design and construction phases, the data base will identify the applicable standards for 19 systems within the facility. These 19 systems are discrete packages utilized during the design and construction phases at WIPP such as Effluent and Environmental Monitoring, Radiation Monitoring System, and security systems. For the operations and decommissioning phases the identified standards will be organized into functional areas. These areas include, for example, engineering, quality assurance, training, operations, and maintenance.

With respect to the adequacy of the standards applied to WIPP to protect public health and safety, we propose to utilize documentation that has been, and will be, generated during the reviews of the WIPP FSAR and the Operational Readiness Reviews (ORRs) to assist in the formulation of our response. The WIPP FSAR defines the envelope within which WIPP must operate to ensure the public's health and safety and is subject to ongoing reviews by numerous independent organizations both internal and external to the Department. These organizations include DOE-EH (HQ), DOE-Nuclear Safety (HQ), DOE-AL, the Advisory Committee for Nuclear Facility Safety, and the Environmental Evaluation Group. Each of these reviews are expected to produce a review document that will delineate that organization's assessment of the FSAR with regard to completeness, accuracy, and compliance with the requirements of the DOE safety directives.

The second set of documents that will be utilized to assess the adequacy of the codes and standards are the ORR reports. Again, numerous organizations both within and external to the Department have, and will continue, to participate in ORRs to determine the facility's and operating staff's state of readiness to begin operations. ORRs for the disposal operations have been going on for some time; readiness reviews for those activities specific to the test phase are expected to begin later this year.

Together, the FSAR review documentation and the ORR documentation provide DOE management an assessment of the acceptability of the risk presented by the operation of WIPP and allow DOE management to make an informed decision on startup. The Department will utilize this documentation as a basis for the preparation of its report to the Board on adequacy of the standards applied to WIPP.

Finally, with regard to determining the extent to which the standards have been implemented at WIPP, the following approach is being taken. Since WIPP is not yet operational and ORRs are continuing, a formal DOE Order Compliance Review, as some of the other sites are conducting, does not seem warranted. Instead, the Department will utilize the results of the ORRs since a major element of the ORR is to assess whether the facility and its proposed operations comply with applicable DOE orders, codes, and standards. As stated previously, these ORRs are ongoing for disposal phase operations, but have not yet begun for test phase activities. Upon closure of the ongoing ORR items and upon completion of the upcoming test phase ORR, which must be completed prior to the initiation of the test phase (i.e., prior to waste receipt), the Department will prepare an implementation assessment report for the Board.

2.5 Standards That Apply to Hanford

The fifth DOE report to the Board will provide the information for high priority facilities at the hanford site. This will include certain facilities in active

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service or proceeding towards near-term operation, that is, the Plutonium Finishing Plant (PFP) and all active high-level waste tanks and associated Safety Class 1 systems. Due to the current mission status of several of the other facilities at Hanford, the Department suggests some alternatives to the Board's recommendation with regard to those facilities. DOE agrees that a standard review for these facilities should be conducted, and suggests it be based on currently established missions and priorities. The missions of the PUREX Plant and N Reactor are currently being reevaluated and these plants are presently in a long-term outage and dry layup, respectively. Similarly, the mission for the fuel stored in the K Reactor Storage Basins is being reevaluated. The Department believes that significant effort to identify and assess all applicable codes and standards would be of limited value at this time. DOE agrees to provide the Board with assessment of standards applicable to any future missions when those decisions are made.

A phased response is planned for the report. Phase 1 will identify the codes and standards applicable to the respective facilities. Phase 2 will provide the Department's view of the adequacy of the various codes and standards to ensure the public health and safety during facility operations. Phase 3 will provide an evaluation of the assembled data against the in situ facility and Safety Class 1 systems configurations. These results will be used as a basis to ensure accurate data, support FSAR reviews and recommended component upgrades, as appropriate.

Implementation of Phase 1 will be accomplished in several steps. First, DOE will conduct a review of the readily available FSAR's and other documentation which contain references to codes, standards, and orders. The scope will be limited to confinement barriers and associated Safety Class 1 systems. Second, archives will be searched to compile information not found in the preceding step, and a facility file will be assembled for future use during review activities.

Interim reports will be provided upon completion of each phase, showing the results of the activity and projected scope of work required for the following phase. In addition, the timing of the interim reports will be linked to facility status, in that reports for the newer facilities, or those with recently updated FSAR's will be provided first. The reports for these facilities will not be delayed until the older facilities, which are expected to be more difficult to research, are completed. The reports will be provided to the Board in a stand-alone format specifically directed at meeting the Board's needs.

3.0 Administration of plan

3.1 Schedule

As noted above, our plan to comply with the Board's Recommendation 90-2 provides for the development of five reports. Each of these reports will be structured/maintained as a living document. Following the initial issuance of each of the five reports, bimonthly updates will be provided to the Board. Our schedule for providing these reports is as follows:

Initial Report on Standards for Savannah River Reactors providing identification of codes and standards	10/30/90
Initial report on Order Compliance for Savannah River and Rocky Flats	11/15/90
Initial report on Rocky Flats Buildings	12/15/90
Initial Report on WIPP	12/90
Initial Report on Hanford Covering PFP	2/91
Addendum to Hanford Report Covering Double Shell Tanks	9/91
Addendum to Hanford Report Covering Single Shell Tanks	9/91

DOE staff will keep the Board apprised of the status of progress being made toward completion of the five reports. In the event that additional time is necessary to complete a given report, or in the event that changes or supplements are required for already issued reports, DOE will immediately inform the Board and indicate the reasons justifying the change in the schedule or report content.

3.2 Report Modification and Revision Prior to Completion of Implementation Plan

Information obtained by DOE while completing the Implementation Plan may bear upon previously issued, or to be issued, reports scheduled in section 3.1, above. Until all five reports are completed and issued, DOE may use any relevant information and data obtained to revise or supplement the reports in a manner that makes such reports more comprehensive and protective of public health and safety.

4.0 Administration of the Program

4.1 Project Management Plan

A Project Management Plan (PMP) will be developed for this Defense Nuclear Facilities Standards Review Program in accordance with the requirements of DOE 4700.1, "Project Management System." The PMP is to document the plans, schedules, and systems that those responsible for managing the project are to use.

4.2 Quality Assurance Plan

A Quality Assurance Plan (QAP) will be developed for the Defense Nuclear Facilities Standards Review Program in accordance with the requirements of DOE 4700.1, "Project Management System," DOE 5700.6B, "Quality Assurance," and ANSI/ASME NQA-1. NQA-1 has been chosen as the basic document since it is endorsed by DOE 5700.6B as the preferred standard for nuclear facilities. The purpose of the QAP is to provide adequate confidence that the standards program objectives are accomplished and that activities are performed in a controlled manner to meet technical and documentation requirements.

Both of these plans will be provided to the Board.

[FR Doc. 90-23652 Filed 10-4-90; 8:45 am]

BILLING CODE 6450-01-M

Alaska Power Administration

Eklutna Project—Order Confirming and Approving Adjustment of Power Rates on Interim Basis

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of adjustment of power rates—Eklutna Project, rate schedules A-F10, A-N11, and A-W2.

SUMMARY: Notice is hereby given that the Deputy Secretary approved on September 28, 1990, Rate Order No. 10 which adjusts the present power rates for the Eklutna Project. These rates are subject to final confirmation and approval by the Federal Energy Regulatory Commission (FERC) for a period of up to four years.

EFFECTIVE DATES: These rate schedules shall remain in effect on an interim basis for a period of 12 months, beginning October 1, 1990, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon J. Hallum, Chief, Power Division, Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802-0050, (907) 586-7405.

SUPPLEMENTARY INFORMATION: On July 3, 1990, the Alaska Power Administration (APA) published a Federal Register notice of its intention to adjust current power rates for the Eklutna Project for a period of up to three years. The present rates are 19 mills per kilowatt-hour for firm energy, 10 mills per kilowatt-hour for firm energy, 10 mills per kilowatt-hour for nonfirm energy, and 0.3 mill per kilowatt-hour for wheeling. These rates were approved by FERC Order, Docket No. EF84-1011-000 issued December 27, 1984, for the period October 1, 1984, through September 30, 1989. The rates were extended for a 12-month period by the Deputy Secretary of Energy on a temporary basis on September 28, 1989.

Based on comments received during the public information process, APA now proposes that rates be adjusted beginning October 1, 1990 for a period of up to four years. The new rates would be 17 mills per kilowatt-hour for firm energy, 10 mills per kilowatt-hour for nonfirm energy, and 0.3 mill per kilowatt-hour for wheeling. The Federal Register notice also indicated APA's intention to seek interim approval of the proposed rates by the Deputy Secretary of Energy pending final confirmation and approval of the rates by FERC.

Following review of APA's proposal within the Department of Energy, on September 28, 1990, I approved on an interim basis Rate Order No. APA-10 which adjusts the present Eklutna Rates for a period of up to four years beginning October 1, 1990, subject to final confirmation and approval by FERC.

Issued at Washington, DC, September 28, 1990.

W. Henson Moore,

Deputy Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

[Rate Order No. APA-10]

In the Matter of Alaska Power Administration—Eklutna Project Power Rates

This is an interim rate action subject to review and approval of the Federal Energy Regulatory Commission. It is made pursuant to the authorities delegated in DOE Delegation Order No. 0204-108, Amendment No. 1 to that Order, and Notice SEN-10D-90, dated August 3, 1990. Notice SEN-10D-90 is attached hereto.

Background

The Eklutna Project was completed by the U.S. Bureau of Reclamation in 1955. The Alaska Power Administration has operated and maintained the project since 1967. The Eklutna Project is a single-purpose project comprised of a dam, reservoir, 30,000-kw hydroelectric plant, 45 miles of 115-kV transmission lines, and three substances serving the Anchorage and Palmer areas. All project costs are allocated to power. The entire output of the project is under contract to three preference customers in the Anchorage-Palmer area on a take-or-pay basis.

Rate Schedules A-F9, A-N10 and A-W1 now in effect for the Eklutna Project were confirmed and approved by order of the Federal Energy Regulatory Commission, Docket No. EF84-1011-000 issued December 27, 1984 for a period ending September 30, 1989. The rates were extended temporarily by the Deputy Secretary of Energy under provisions of 10 CFR 903.23(3)(b) for a period not to exceed 12 months, on September 28, 1989.

Discussion

System Repayment

Studies prepared by the Alaska Power Administration, as required by DOE Order No. RA 6120.2, demonstrate that the present firm rate can be lowered and still provide sufficient revenue to meet requirements for the rate period and meet project repayment criteria by the end of the repayment period. On that basis, APA proposes an adjustment of the firm rate for a period not to exceed four years. The Administrator of Alaska Power Administration has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environment Impact

Alaska Power Administration has concluded with Departmental concurrence that this rate action will have no significant environmental impact within the meaning of the Environmental Policy Act of 1969. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding this rate action, including studies and other supporting material, is available for public review in the offices of the Alaska Power Administration, Federal Building, Juneau, Alaska.

Public Notice and Comment

Opportunity for public review and comment on the rate action was announced by notice in the Federal Register on July 3, 1990. The notice provided for a comment period of 45 days following publication in the Federal Register. A public information and comment forum was held in Anchorage, Alaska on August 9, 1990. These comments are part of the record of decision and were considered in the final proposal.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, as well as the temporary extension in effect from October 1, 1989 through September 30, 1990, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1990, attached Wholesale Power Rate Schedules A-F10, A-N11, and A-W2. These rate schedules shall remain in effect on an inerim basis for a period of 12 months unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, DC, this 28th day of September 1990.

W. Henson Moore,

Deputy Secretary.

Schedule of Rates for Wholesale Firm Power Service

Effective

October 1, 1990 for a maximum of four years.

Available

In the area served by the Eklutna Project, Alaska

Character and Conditions of Service

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate

Capacity charge: None.

Energy charge: All energy at 17.0 mills per kilowatt-hour.

Minimum Annual Capacity Charge

None.

Billing Demand

Not applicable.

Adjustments

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will

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be increased 2 percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain power factor at the point of delivery of between 90 percent lagging and 90 percent leading.

For auxiliary power service: Auxiliary power supplies may be used in conjunction with the service hereunder if the parties hereto, prior to the Contractor's utilization of any such auxiliary power supply, have entered into a written operating agreement defining the procedure by which the amount of power and energy will be determined.

Schedule of Rates for Wholesale Nonfirm Power Service

Effective

October 1, 1990 for a maximum of four years.

Available

In the area served by the Eklutna Project, Alaska.

Applicable

To firm power customers normally maintaining generating facilities or other sources of energy sufficient to supply their requirements.

Character and Conditions of Service

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly rate

Capacity charge: None.
Energy Charge: All energy at 10.0 mills per kilowatt-hour.

Minimum Charge

None.

Billing Demand

Not applicable.

Adjustments

For character and conditions of service: none.
For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

Schedule of Rates for Wholesale Wheeling Service

Effective

October 1, 1990 for a maximum of four years.

Available

In the area served by the Eklutna Project, Alaska.

Applicable

To all non-federal power transmitted over Eklutna Project transmission facilities for the benefit of Project customers.

Character and Conditions of Service

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate

Capacity charge: None.
Energy Charge: All energy wheeled for others at .3 mills per kilowatt-hour.

Minimum charge

None.

Billing Demand

Not applicable.

Adjustments

For character and conditions of service: None.
For transformer and transmission losses: As specified in wheeling contracts.

[FR Doc. 90-23049 Filed 10-4-90; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. FA87-87-001, et al.]

South Carolina Electric & Gas Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. South Carolina Electric & Gas Co.

[Docket No. FA87-87-001]
September 28, 1990.

Take notice that on August 6, 1990, South Carolina Electric & Gas Company tendered for filing its refund report in the above referenced school.

Comment date: October 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Dayton Power & Light Co.

[Docket Nos. ER90-464-000, ER90-485-000, and 486-000]
September 28, 1990.

Take notice that on September 14, 1990, Dayton Power & Light Company (Dayton) tendered for filing amended Rate Schedules to the Interconnection Agreements between Dayton and the Ohio Edison Company, The Ohio Power Company and the Cincinnati Gas and Electric Company.

Comment date: October 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Municipal Electric Assoc. No. 1 v. Virginia Electric and Power Co.

[Docket No. EL90-61-000]
September 28, 1990.

Take notice that on September 17, 1990 Virginia Municipal Electric Association No. 1 (VMEA) tendered for filing a complaint against Virginia Electric and Power Company (VEPCO) requesting the initiation of an investigation to determine whether VEPCO's present rates for wholesale firm power under FERC Rate Schedule VMEA-RS, as well as the increased rates VEPCO has sought in its filing in Docket No. ER90-540-000, are unjust, unreasonable and unduly discriminatory and, if so, to decrease those rates to a just, reasonable and non-discriminatory level. VMEA also requests the Commission to set a refund effective date of not more than 60 days after the filing of the complaint or at the end of any suspension period ordered in Docket No. ER90-540-000 whichever is later, and to consolidate this docket with Docket No. ER90-540-000.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Sargent Canyon Cogeneration Co.

[Docket No. QF87-486-001]
September 28, 1990.

On September 24, 1990, Sargent Canyon Cogeneration Company (Applicant), of P.O. Box 81018, Bakersfield, CA 93380, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the San Ardo Field, Monterey County, California. The facility will now consist of one combustion turbine-generator and one heat recovery boiler. Steam produced by the facility will be used for enhanced oil recovery. The primary energy source for the facility will be natural gas. The facility is scheduled for start-up on October 1, 1991.

The original certification was issued to Texaco Producing Inc. on April 30, 1987 (39 FERC ¶ 62,107). The instant recertification is requested due to changes in ownership, design and configuration, and electric power production capacity. The number of combustion turbine-generators and associated heat recovery boilers has

been decreased from two to one. The facility will be owned by a general partnership consisting of Texaco San Ardo Energy Company, a wholly-owned subsidiary of Texaco Producing, Inc. and Viejo Energy Company, a wholly-owned subsidiary of Mission Energy Company, whose ultimate parent is SCECorp, an electric utility holding company. The net electric power production capacity has decreased from 46.78 MW to 34.89 MW.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

5. Salinas River Cogeneration Co.

[Docket No. QF86-1066-001]

September 28, 1990.

On September 24, 1990, Salinas River Cogeneration Company (Applicant), of P.O. Box 80778, Bakersfield, CA 93380, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the San Ardo Field, Monterey County, California. The facility will now consist of one combustion turbine-generator and one heat recovery boiler. Steam produced by the facility will be used for enhanced oil recovery. The primary energy source for the facility will be natural gas. The facility is scheduled for start-up on October 1, 1991.

The original certification was issued to Texaco USA, on April 2, 1987 (39 FERC ¶ 62,008). The instant recertification is requested due to changes in ownership, design and configuration, and electric power production capacity. The number of combustion turbine-generators and associated heat recovery boilers has decreased from two to one. The facility will be owned by a general partnership consisting of Texaco Yoakum Energy Company, a wholly-owned subsidiary of Texaco Producing, Inc. and Anacapa Energy Company, a wholly-owned subsidiary of Mission Energy Company, whose ultimate parent is SCECorp, an electric utility holding company. The net electric power production capacity has decreased from 45.30 MW to 35.50 MW.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

6. South Carolina Public Service Authority

[Docket No. ES90-55-000]

September 28, 1990.

Take notice that on September 24, 1990, the South Carolina Public Service Authority ("Authority") file an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to Section 204 of the Federal Power Act, seeking authority to issue not more than $250 million in Tax-exempt Revenue Bonds. The Authority asks, in the alternative, an order dismissing the application for lack of jurisdiction.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Electric Power Co. and Chester SVC Partnership

[Docket No. ER90-582-000]

September 28, 1990.

Take notice that on September 26, 1990, Maine Electric Power Company and Chester SVC Partnership (the Companies) submitted a filing to establish the rate of return on common equity pursuant to the Phase II Maine Electric Power SVC Facilities Support Agreement between MEPCO and New England Hydro Transmission Corporation (New Hampshire Hydro). The rate change is proposed to take effect on the commencement of commercial operation of the Phase II New England-Quebec interconnection expansion owned and operated by New Hampshire Hydro. The Companies seek a rate of return on common equity of 14.24%, to be included in the support charges under the SVC Facilities Support Agreement.

According to the Companies, the Phase II New England-Quebec interconnection is expected to commence commercial operation in November of 1990. The Companies therefore request a waiver of the notice and filing requirements set forth in 18 CFR 35.3. The Companies further request that the proposed return on equity be accepted for filing by October 15, 1990, or that, in the alternative, the Commission clarify its order dated June 15, 1990, in Docket No. ER90-394-000 so as to confirm that the Companies may bill all support charges except for return on equity as the Phase II date of commercial operation.

Comment date: October 10, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Co.

[Docket No. ER78-205-000]

September 28, 1990.

Take notice that on September 21, 1990, Southern California Edison Company tendered for filing its refund report in compliance with the Commission's order issued on August 13, 1990.

Comment date: October 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services

[Docket Nos. ER90-402-000 through ER90-406-000, ER90-407-000 through ER90-410-000, ER90-414-000 through ER90-436-000 and ER90-440-000]

September 28, 1990.

Take notice that on September 14, 1990, Southern Company Services tendered for filing an amended filing, in the above referenced dockets in response to Staff's letter dated July 20, 1990 requesting additional information.

Comment date: October 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Milton W. Hudson

[Docket No. ID-2485-000]

September 28, 1990.

Take notice that on September 20, 1990, Milton W. Hudson (Applicant) tendered for filing under section 305(b) of the Federal Power Act to hold the following positions:

Director—Kentucky Utilities Company; Morgan Guaranty Trust Company of New York.

Comment date: October 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. Detroit Edison Co.

[Docket No. FA89-42-001]

September 28, 1990.

Take notice that on September 14, 1990, Detroit Edison Company tendered for filing its refund report in the above referenced docket.

Comment date: October 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23557 Filed 10-4-90; 8:45 am]

BILLING 6717-01-M

[Docket Nos. CP90-2307-000 et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

September 28, 1990.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP90-2307-000]

Take notice that on September 26, 1990, K N Energy, Inc. (K N), Post Office Box 150265, Lakewood, Colorado 80215, filed in Docket No. CP90-2307-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate 8 a delivery points for service to various end users, under K N's blanket certificate issued in Docket No. CP83-140-000, as amended in Docket Nos. CP83-140-001 and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N requests authorization to construct and operate 8 sales taps for the end users listed below.

Customer/location	Approximate volume (Mcf)		End use	Cost to facilities
	Peak day	Annual		
Rupert Bock, Buffalo Co., NE	200	4,000	Grain drying	$2,700
Peter Meyer, Kearney Co., NE	2	120	Domestic	850
Tripleseons/Shattick Farms, Finney Co., KS	900	18,000	Grain drying	5,000
Dean Brehm, York Co., NE	2	120	Domestic	850
Jim Lovegrove, Fillmore Co., NE	2	120	Domestic	850
John Mann, , York Co., NE	2	120	Domestic	850
Brenda Riley	2	120	Domestic	850
Nebraska Nutrients, Lincoln Co., NE	3,000	250,000	Commercial	3,000

K N indicates that all of the above end users are located on K N 's existing jurisdictional pipeline and would be served directly from K N's general system supply. It is stated that the proposed taps are not prohibited by K N's existing FERC Gas Tariff and that the addition of the taps would have no significant impact on K N's peak day and annual deliveries. K N states that the gas delivered and sold by K N to the various end users would be priced in accordance with the currently filed rate schedules authorized by the applicable state and local regulatory bodies having jurisdiction over the sales.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP90-2284-000]

Take notice that on September 21, 1990, Arkla Energy Resources, a division of Arkla, Inc. (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP90-2284-000 a request pursuant to §§ 157.205, 157.211, 157.212 and 157.216 of the Commission's Regulations for authorization to construct and operate certain facilities in Arkansas and to abandon certain facilities in Oklahoma, under AER's blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to construct and operate two sales taps and related facilities in Arkansas, all for the delivery of gas to Arkansas Louisiana Gas Company (ALG) for resale to commercial and domestic customers. AER states that one of the sales tap would be a one-inch tap on its Line K in Ouachita County, Arkansas for service to a commercial customer, Berg, Laney and Brown. AER states that it would deliver at the proposed tap approximately 8,918 Mcf annually and 25 Mcf on a peak day. It is estimated that the sales tap would cost $2,399.

AER states that the other sales tap would be a one-inch tap on its Line JM-8 in White County, Arkansas for service to domestic customers served through ALG's master meter. AER indicates that ALG would serve approximately 50 customers in a trailer park from this master meter and that to supply gas for each trailer, the owner of the trailer park would construct the appropriate facilities to interconnect with ALG's meter. It is indicated that AER would deliver at this sales tap approximately 2,500 Mcf annually and 7 Mcf on a peak day. It is estimated that the sales tap would cost approximately $4,095.

AER states that the gas required for the performance of the above services would be delivered from AER's general system supply, whih is adequate to provide the service. It is further stated that the cost of the proposed facilities would be financed with internally generated capital.

AER also proposes to abandon the one-inch meter station serving ALG's Oakman Town Border Station on AER's Line 632 in Pontotoc County, Oklahoma. It is stated that such meter station was used for delivery of gas to ALG's rural extension no. 373. AER indicates that ALG is in agreement and has consented to retire this meter station. It is stated that the proposed abandonment would not result in the abandonment of any existing customers since customers previously receiving service from the rural extension are now being served by other piping. AER indicates that the facilities proposed to be abandoned were authorized in Docket No. CP64-78.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP90-2306-000]

Take notice that on September 26, 1990, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP90-2306-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88-686-000 pursuant to Section 7 of the Natural Gas Act, and a request pursuant to § 157.208 of the Commission's Regulations for authorization to operate a delivery point which was originally installed under section 311 of the Natural Gas Policy Act under its authorization issued in Docket No. CP pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern proposes to transport natural gas on an interruptible basis for Enermark Gas Gathering Corporation (Enermark). Texas Eastern explains that the service commenced July 20, 1990, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-4218. Texas Eastern proposes to transport on a peak day up to 10,000 MMBtu; on an average day up to 10,000 MMBtu; and on an annual basis up to 3,650,000 MMBtu. Texas Eastern proposes to receive the subject gas from various points of receipt on its system and redeliver the gas to various delivery points on its system.

Texas Eastern also proposes to operate a delivery point to deliver natural gas to Enermark which originally was installed under Section 311 of the Natural Gas Policy Act.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Mississippi River Transmission Corp.

[Docket No. CP90-2311-000, CP90-2312-000] [1]

Take notice that on September 28, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton, St. Louis, Missouri 63124, filed in the above referenced dockets, prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by MRT and is included in the attached appendix.

MRT also states that each would provide the service for each shipper under an executed transportation agreement, and that MRT would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number	Applicant	Shipper name	Peak day [1] avg. annual	Points of—		Start up date rate schedule service type	related dockets [2]
				Receipt	Delivery		
CP90-2311-000	MRT	Bishop Pipeline Corp.	20,000 20,000 10,220,000	Various	Various	8-1-90 ITS Interruptible	CP88-1121-000 ST90-4453-000
CP90-2312-000	MRT	AmGas, Inc	340 27 10,000	Various	Illinois	8-10-90 ITS Interruptible	CP89-1121-000 ST90-4454-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. ANR Pipeline Co.

[Docket No. CP90-2275-000]

Take notice that on September 21, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit Michigan 48243, filed in Docket No. CP90-2275-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas, and for permission and approval to abandon such sales upon termination of the underlying service agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests a blanket certificate with pre-granted abandonment authority to offer a new sales service under Rate Schedule ISS on a non-discriminatory basis to any purchaser of gas, including interstate pipelines, local distribution companies, Hinshaw pipelines, marketers and end users. ANR proposes to sell gas at any point mutually agreed to between ANR and the purchaser.

ANR states that service under Rate Schedule ISS would be offered to market system supply gas to the extent that ANR determines it has gas supply in excess of its firm sales obligations.

ANR proposes to charge a negotiated rate for the interruptible sales service which would fall between a stated maximum and minimum rate. ANR explains that the maximum rate would equal ANR's 100 percent load factor rate pursuant to Rate Schedule CD-1, including the ACA, GRI and Order No. 500 buyout buydown surcharges. ANR further explains that in those instances where the point of sale occurs at the wellhead, the minimum rate would consist of the sum of ANR's actual weighted average cost of gas during the month in which the gas is sold, as adjusted for a representative amount for out-of-period adjustments. ANR states that if the sale occurs at delivery points on its system, the minimum rate would also include the non-gas variable commodity rate pursuant to Rate Schedule CD-1, an allowance for fuel and lost-and-unaccounted for gas, and the ACA and GRI surcharges.

ANR requests authority to provide the ISS service on a selective discount basis and would only offer to discount the non-gas transportation component of the ISS rate to make a sale at point of delivery. ANR states that it would offer correlative discount under Rate Schedule ITS.

Comment date: October 19, 1990, in accordance with Standard Paragraph F at the end of this notice.

6. National Fuel Gas Supply Corp.

[Docket No. CP90-2221-000]

Take notice that on September 17, 1990, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203 filed an application with the Commission in Docket No. CP90-2221-000 pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate

[1] These prior notice requests are not consolidated.

fifteen residential and commercial sales taps, relocate two delivery points, and retire eleven delivery points in New York and Pennsylvania, all as more fully set forth in the application which is open to public inspection.

National Fuel proposes to construct and operate fifteen residential and commercial natural gas sales taps in

APPENDIX A.—PROPOSED SALES TAPS—Continued

Name	Location
7. Larry J. Rose	Erie County, PA.
8. Clifford P. McGrancr	Erie County, PA.
9. Timothy S. Young	Jefferson County, PA.
10. David R. Murphy	Jefferson County, PA.
11. Daniel J. O'Connor	Erie County, PA.

APPENDIX C.—PROPOSED RETIRED SALES POINTS FOR NFGDC—Continued

Location	Present deliveries Mcf/day	Proposed deliveries Mcf/day
Erie County, NY	75	0
Venango County, PA	600	0
Venango County, PA	100	0

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, a motion to intervene or a protest authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23558 Filed 10-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-190-000]

211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this

fifteen residential and commercial sales taps, relocate two delivery points, and retire eleven delivery points in New York and Pennsylvania, all as more fully set forth in the application which is open to public inspection.

National Fuel proposes to construct and operate fifteen residential and commercial natural gas sales taps in order to serve additional customers of National Fuel Gas Distribution Corporation (Distribution) in Pennsylvania.[2] National Fuel's total peak day and annual deliveries for these sales taps would amount to 24 Mcf and 22,500 Mcf, respectively. National Fuel also proposes to relocate two delivery points in Elk and Venango Counties, Pennsylvania, in order to deliver a total of 31,200 Mcf on peak days and 11,388,000 Mcf annually for Distribution's account. National Fuel states that these proposed deliveries would have a minimal impact upon its peak day and annual deliveries. Finally, National Fuel proposes to retire eleven delivery points no longer needed by Distribution in Erie County, New York, and Elk and Venango Counties, Pennsylvania.

Comment date: October 19, 1990, in accordance with Standard Paragraph F at the end of the notice.

[Docket No. CP90-2221-000]

APPENDIX A—PROPOSED SALES TAPS

Name	Location
1. Louis F. Magnani	Clarion County, PA.
2. Rita A. Horvath	Elk County, PA.
3. Timothy S. Burns	Mercer County, PA.
4. Richard J. McGinnis	Clarion County, PA.
5. Sigel Sportsmen Club Inc.	Jefferson County, PA.
6. Steven J. Waible	Erie County, PA.

APPENDIX A—PROPOSED SALES TAPS—Continued

Name	Location
7. Larry J. Rose	Erie County, PA.
8. Clifford P. McGrancr	Erie County, PA.
9. Timothy S. Young	Jefferson County, PA.
10. David R. Murphy	Jefferson County, PA.
11. Daniel J. O'Connor	Erie County, PA.
12. Serena M. Showman	Erie County, PA.
13. Donald G. Lorenzi	Clarion County, PA.
14. Philip W. Zuschlag	Mercer County, PA.
15. George E. Hager	Elk County, PA.

[Docket No. CP90-2221-000]

APPENDIX B.—PROPOSED NEW SALES POINTS

Customer	Location	Proposed deliveries Mcf/day	End-use
National Fuel Gas Distribution Corporation (NFGDC).	Venango County, PA.	30,000	System supply.
NFGDC	Elk County, PA.	1,200	System supply.

[Docket No. CP90-2221-000]

APPENDIX C.—PROPOSED RETIRED SALES POINTS FOR NFGDC

Location	Present deliveries Mcf/day	Proposed deliveries Mcf/day
Elk County, PA	500	0
Venango County, PA	30,000	0
Erie County, NY	75	0
Erie County, NY	2,500	0
Erie County, NY	250	0
Erie County, NY	150	0
Erie County, NY	75	0

APPENDIX C.—PROPOSED RETIRED SALES POINTS FOR NFGDC—Continued

Location	Present deliveries Mcf/day	Proposed deliveries Mcf/day
Erie County, NY	75	0
Venango County, PA	600	0
Venango County, PA	100	0
Venango County, PA	60	0
Venango County, PA	500	0
Venango County, PA	20	0

7. Stingray Pipeline Co., Northern Natural Gas Co.

[Docket Nos. CP90-2199-000, CP90-2202-000, CP90-2203-000, CP90-2204-000]

Take notice that on September 14, 1990, the above listed companies filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Applicant	Shipper name	Peak day[1] avg., annual	Points of— Receipt	Points of— Delivery	Start up date, rate schedule	Related[2] dockets
CP90-2199-000 (9-14-90)	Stingray Pipeline Company.	Mobil Natural Gas, Inc.	100,000 50,000 18,250,000	Offshore LA and TX	LA	7-14-90, ITS	Commission's order No. 509.[3] ST90-4248-000.
CP90-2202-000 (9-14-90)	Northern Natural Gas Company.	Phillips Petroleum Company.	100,000 75,000 36,500,000	KS, OK, NE TX, NM, WI IA, SD, MN	OK, MI, IL KS, NM, TX WI, MN, IA	7-18-90, IT-1	CP86-435-000. ST90-4130-000.
CP90-2203-000 (9-14-90)	Northern Natural Gas Company.	Phillips 66 Natural Gas Company.	200,000 150,000 73,000,000	KS, OK, NE TX, NM, WI IA, SD, MN	OK, MI, IL KS, NM, TX WI, MN, IA	7-18-90, IT-1	CP86-435-000. ST90-4132-000.
CP90-2204-000 (9-14-90)	Northern Natural Gas Company.	Phillips Gas Marketing Company.	100,000 75,000 63,500,000	KS, OK, NE TX, NM, WI IA, SD, MN	OK, MI, IL KS, NM, TX WI, MN, IA	7-18-90, IT-1	CP86-435-000. ST90-4131-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] Stingray Pipeline Company states that its blanket transportation certificate was issued by the Commission's Order No. 509.

[2] See appendix for customer list.

[3] These prior notice requests are not consolidated.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federally Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23558 Filed 10-4-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-156-000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1990.

Take notice that on September 28, 1990, Columbia Gas Transmission Corporation (Columbia) filed a revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on October 1, 1990.

Columbia states that the instant filing removes from section 8 of the WS Rate Schedule the limitation that nominations of gas to be available during the next winter (WCQ) must be made "out of the monthly quantities of gas available from Buyer's Contract Demand" in order to eliminate a problem that has arisen as a result of implementing revised service levels and a Gas Inventory Charge (GIC) on Columbia's system. Under the provisions of the GIC, contained in section 28 of the General Terms and Conditions of Columbia's Tariff, a customer must take physical delivery of gas at a threshold level of 8% of its Annual Entitlement Nomination (AEN) during the Summer Season in order to avoid the possibility of incurring a GIC. However, some customers are unable to take gas at or above the threshold level and still nominate their full WCQ level within their remaining Contract Demand. The Contract Demand limitation is being removed to remedy this problem.

Columbia further states that the proposal will have no impact on Columbia's operations or its ability to meet its service obligations since storage is filled on a schedule during the summer months without regard to when WCQs are nominated by WS customers, and that no detriment can occur to any sales, transportation or storage customers as a result of the proposed tariff change.

Columbia states that copies of the filing were served upon its jurisdictional customers, interested state regulatory commissions, and all parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 5, 1990. Protests should be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23559 Filed 10-4-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA91-1-45-001]

Inter-City Minnesota Pipelines Ltd., Inc.; Notice of Tariff Filing

September 28, 1990.

Take notice that on September 28, 1990, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 345 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing the following substitute revised tariff sheets to Original Volume 1 of its FERC Gas Tariff to be effective November 1, 1990:

Original Volume No. 1

Substitute Forty-Second Revised Sheet No. 4
Substitute Alternate Forty-Second Revised Sheet No. 4

On September 4, 1990, Inter-City filed its Forty-Second Revised Sheet No. 4 and Alternate Forty-Second Revised Sheet No. 4 as its annual PGA effective November 1, 1990. Inter-City states that on subsequent review it determined that the filed tariff sheets incorrectly state the demand and commodity surcharge. Inter-City files the Substitute tariff sheets to reflect the correct surcharge.

Inter-City makes this filing in hard copy and in electronic format in compliance with the Letter Order issued August 24, 1990 in Docket No. RP90-154-000 as extended by Notice dated September 13, 1990.

Inter-City states that copies of the filing have been mailed to all of its customers and the affected state regulatory commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 5, 1990. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23560 Filed 10-4-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA91-1-2-000]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 28, 1990.

Take notice that Tennessee Gas Pipeline Company ("Tennessee") on September 27, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Twenty-Fifth Revised Sheet No. 4
Twenty-Fifth Revised Sheet No. 5

Tennessee states that the purpose of this filing is to reflect a decrease in the commodity charge applicable to Rate Schedule CD-1 and a decrease in the demand charge applicable to Rate Schedule SS-1 effective October 1, 1990. Tennessee further states that it has filed in Docket No. TF90-5-0, to be effective September 1, 1990, an interim purchased gas cost adjustment to reflect lower gas costs associated with Tennessee's projected increased sales to certain SS customers.

Tennessee states that copies of the filing were served upon its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before October 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23561 Filed 10-4-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA91-1-2-000]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 28, 1990.

Take notice that Tennessee Gas Pipeline Company ("Tennessee") on September 27, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Twenty-Fifth Revised Sheet No. 4
Twenty-Fifth Revised Sheet No. 5

Tennessee states that the purpose of this filing is to reflect a decrease in the commodity charge applicable to Rate Schedule CD-1 and a decrease in the demand charge applicable to Rate Schedule SS-1 effective October 1, 1990. Tennessee further states that it has filed in Docket No. TF90-5-0, to be effective September 1, 1990, an interim purchased gas cost adjustment to reflect lower gas costs associated with Tennessee's projected increased sales to certain SS customers.

Tennessee states that copies of the filing were served upon its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before October 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23562 Filed 10-4-90; 8:45 am]
BILLING CODE 6717-01-M

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commisson's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests should be filed on or before October 9, 1990. Protests will be considered by the Commission in

address listed below no later than 4:30 p.m., e.s.t., November 5, 1990.

ADDRESSES:

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

September, adjustment under certain circumstances); and

(4) 25 percent of the price for spot market gas delivered into Northwest's system in the Rocky Mountains. The formula for determining the commodity charge may be renegotiated annually, with arbitration if the parties cannot agree on a new formula.

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will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23560 Filed 10-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA89-31-001]

Metropolitan Edison Company; Notice of Filing

September 28, 1990.

Take notice that on August 7, 1990, Metropolitan Edison Company tendered for filing its refund report in the above referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with ruels 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23561 Filed 10-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-169-001]

Tennessee Gas Pipeline Co.; Tariff Filing

September 28, 1990.

Take notice that on September 26, 1990, Tennessee Gas Pipeline Company (Tennessee) filed Substitute Seventeenth Revised Sheet No. 20A and Eighteenth Revised Sheet No. 20A to Second Revised Volume No. 1 of its FERC Gas Tariff.

Tennessee states that the purpose of the filing is to comply with the Commission's Letter Order dated September 21, 1990, in *Tennessee Gas Pipeline Company*, Docket No. RP90-169. The tariff sheets set forth the Rate Schedule R rates to be effective September 1, 1990, and October 1, 1990, respectively. Tennessee further states that it has filed in Docket No. TF90-5-9, to be effective September 1, 1990, an interim purchased gas cost adjustment to reflect lower gas costs associated with Tennessee's projected increased sales to certain SS customers.

Tennessee states that copies of the filing have been mailed to all affected customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23562 Filed 10-4-90; 8:45 am]

BILLING CODE 6717-01-M

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. RP90-191-000]

September 28, 1990.

Take notice that Transwestern Pipeline Company (Transwestern) on September 27, 1990, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

1st Revised Sheet No. 29G
8th Revised Sheet No. 30
3rd Revised Sheet No. 33A
Original Sheet No. 33A.1
1st Revised Sheet No. 33B

The above referenced tariff sheets reflect Transwestern's filing to modify the terms of its transportation Rate Schedules FTS-1 and ITS-1 to include the additional ability to construct facilities for delivery points either entireley at its own expense or by requiring the shipper to pay for a portion of the cost of the facilities. Such tariff modifications would give Transwestern the added flexibility to assist in maintaining throughput on its system, as well as providing incremental transportation service to delivery point customers which, under the present tariff provisions, would not be connected. Transwestern proposes to construct or modify facilities on a nondiscriminatory basis and will not pay for facilities unless they are economically beneficial to Transwestern. The proposed effective date is November 1, 1990.

Transwestern states that copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure. All such motions or protests should be filed on or before October 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23563 Filed 10-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-189-000]

Williston Basin Interstate Pipeline Co.; Notice of Proposed Change in FERC Gas Tariffs

September 28, 1990.

Take notice that on September 26, 1990, Willison Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff. These tariff sheets reflect the restatement of rates to incorporate an additional conversion of firm sales service to firm transportation service by certain of Williston Basin's sales customers. Williston Basin has requested a November 1, 1990 effective date for the revised tariff sheets.

Williston Basin notes that copies of the filing were served on Williston Basin's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commisson's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests should be filed on or before October 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23564 Filed 10-4-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-76-NG]

Cascade Natural Gas Corp.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Cascade Natural Gas Corporation (Cascade) on August 30, 1990, as supplemented September 6, 1990, for authorization to import natural gas from Canada over a period of ten years. Cascade proposes to import up to 12,000 MMBtu of gas per day, not to exceed a total of 42.2 Bcf, commencing either November 1, 1990, or alternatively, the date of first delivery, and terminating on October 31, 2000. The volumes imported would enter the United States near Sumas, Washington and be transported from that point through the existing pipeline facilities of Northwest Pipeline Corporation (Northwest). No new construction or new pipeline facilities would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 5, 1990.

ADDRESSES:

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

P. J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4519.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Cascade, a public utility that serves customers in Washington and Oregon, would purchase this gas from Mobil Oil Canada, Ltd. (Mobil Canada) for its system supply. Under the gas sale contract between Cascade and Mobil Canada accompanying the application, sales would be arranged on a monthly basis, with Cascade notifying Mobil Canada of the amount it desires to purchase up to a daily maximum of 12,000 MMBtu (one MMBtu equates to approximately one Mcf). The contract has a term extending to October 31, 2000, with provision for automatic extension for subsequent periods of two years.

The price that Cascade would pay Mobil Canada for the gas would be calculated monthly and is comprised of three elements; specifically, a demand charge, a commodity charge, and a gas reservation fee.

Demand charge. The demand charge covers the toll charges of Westcoast Energy Inc. for gathering, processing and transporting the gas from the producing fields in the Province of British Columbia to the U.S./Canada border.

Commodity charge. The commodity charge is established initially as the weighted sum of the following four factors:

(1) 25 percent the B.C. Gas Inc. (a British Columbia local distribution company) residental gas price at the wellhead for the prior month;

(2) 25 percent of the arithmetic average of the weekly high and low prices for Number 6 fuel oil (Bunker C) in Seattle, Washington for the delivery month;

(3) 25 percent the price for spot market gas delivered into Northwest's system at Sumas, Washington for the prior month (subject to a summer season, April-September, adjustment under certain circumstances); and

(4) 25 percent of the price for spot market gas delivered into Northwest's system in the Rocky Mountains. The formula for determining the commodity charge may be renegotiated annually, with arbitration if the parties cannot agree on a new formula.

Reservation fee. The last element of the three-part rate, the gas reservation fee, is intended to compensate Mobil Canada for holding dedicated reserves available for Cascade. It is equal to the greater of (a) 18 percent of the commodity price applied to the deficient volumes in any month which Cascade does not take the full contract quantity or (b) nine percent of the commodity price applied to the daily contract quantity on a monthly basis.

There is no requirement for Cascade to purchase a minimum quantity of gas. However, if Cascade nominates volumes but they are not actually taken, it must pay the demand charge and reservation fee on the deficiency.

Under the pricing scheme, Cascade estimated that the border price for deliveries in August 1990, if deliveries has then taken place, would have been $1.86 (U.S.) per MMBtu at 100 percent load factor. Cascade provided the following breakdown of the price: demand charge of $0.65 per MMBtu, commodity charge of $1.11 per MMBtu, and reservation charge of $0.10.

On July 31, 1990, Mobil Canada received a permit from Provincial authorities to remove this natural gas from British Columbia to the United States. The project also requires an authorization from the National Energy Board of Canada, and it has not yet acted on Mobil Canada's application for an export license.

The decision on Cascade's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas, and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas

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source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Cascade's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 1, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-26351 Filed 10-4-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket Nos. 89-15-NG, et al.]

Great Lakes Gas Transmission Limited Partnership, et al. Order Granting Authorizations To Export and Import Natural Gas and Record of Decision

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting authorizations to export and import natural gas from and to Canada and record of decision.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued orders on September 29, 1990, granting applications by National Fuel Gas Supply Corporation (ERA Docket No. 86-48-NG), Project Orange Associates, L.P. (ERA Docket No. 88-01-NG), Indeck-Yerkes Energy Services, Inc. (FE Docket No. 89-21-NG), Indeck Energy Services of Oswego, Inc. (FE Docket No. 89-22-NG), Consolidated Edison Company of New York, Inc. (FE Docket No. 89-24-NG), Texas Eastern Transmission Corporation, Northeast Energy Associates, and North Jersey Energy (jointly) (FE Docket No. 89-26-NG), Salmon Resources Ltd. (FE Docket No. 89-69-NG), Long Island Cogeneration Limited Partnership (FE Docket No. 89-73-NG), Transco Energy Marketing Company (FE Docket No. 89-75-NG), Energy Marketing Exchange, Inc. (FE Docket No. 89-88-NG), and Elizabethtown Gas Company (FE Docket No. 90-25-NG) to import natural gas from Canada into the United States and in the case of the application filed by Great Lakes Gas Transmission Limited Partnership (FE Docket No. 89-15-NG), to import natural gas from Canada, then export this gas back to Canada. All of the applications are part of the proposed Niagara Import Point Project to transport natural gas from Canada and domestic sources for use in the U.S. Northeast. The imported gas would be delivered into the region at the international boundary near Niagara Falls, New York through the pipeline system of Tennessee Gas Pipeline Company.

In conjunction with these orders, FE is hereby issuing a Record of Decision pursuant to the regulations of the Council on Environmental Quality (40 CFR part 1505) and the DOE's guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA).

Copies of the orders are available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4819.

Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, Forrestal Building, Room 3E-060, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA [1] and DOE's guidelines [2] for compliance with NEPA, FE is issuing this Record of Decision (ROD) on the following applications:

National Fuel Gas Supply Corporation (National Fuel) (ERA Docket No. 86-48-NG) proposes to import at Niagara Falls, New York up to 10,000 Mcf per day of Canadian natural gas for 13 years to supplement its system supply.

Project Orange Associates, L.P. (Project Orange) (ERA Docket No. 88-01-NG) proposes to import at Niagara Falls, New York up to 120 Bcf of Canadian natural gas over 20 years to fuel a new 90-megawatt (MW) cogeneration facility in Syracuse, New York.[3]

Indeck-Yerkes Energy Services, Inc. (Indeck-Yerkes) (FE Docket No. 89-21-NG) and Indeck Energy Services of Oswego, Inc. (Indeck-Oswego) (FE Docket No. 89-22-NG) each propose to import at Niagara Falls, New York, up to 4.5 Bcf of Canadian natural gas annually over 15 years to fuel cogeneration facilities under construction near Tonawanda, New York (53-MW) and Oswego, New York (50-MW).

Consolidated Edison Company of New York, Inc. [Con Edison) (FE Docket No. 89-22-NG) proposes to import at Niagara Falls, New York up to 30,600 Mcf per day of Canadian natural gas for 15 years to supplement its system supply.

Texas Eastern Transmission Corporation (Texas Eastern), Northeast Energy Associates (Northeast), and North Jersey Energy Associates (North Jersey) (FE Docket No. 89-26-NG) propose to import at Niagara Falls, New York, for 15 years up to a combined average of 101,000 Mcf of Canadian natural gas per day. Northeast and North Jersey also propose to import on an interruptible basis up to an additional 50,000 Mcf per day over a two-year period. Texas Eastern would use the gas for system supply, while Northeast and North Jersey need fuel for 300-MW cogeneration facilities to be constructed at Bellingham, Massachusetts and Sayreville, New Jersey, respectively.

Salmon Resources Ltd. (Salmon) (FE Docket No. 89-69-NG) proposes to import at Niagara Falls, New York up to 15,700 Mcf per day of Canadian natural gas for 21 years. The gas would be resold to Cogen Energy Technology Inc. to fuel a new 60-MW cogeneration facility being constructed in Castleton-on-Hudson, New York.

Long Island Cogeneration Limited Partnership (Long Island Cogen) (FE Docket No. 89-73-NG) proposes to import at Niagara Falls, New York up to 15,300 Mcf per day and a total volume of up to 105 Bcf of Canadian natural gas for 20 years to fuel a 79-MW cogeneration facility to be constructed in Oyster Bay, New York. Long Island Cogen also proposes to import on an interruptible basis up to an additional 2,000 Mcf per day over a two-year period.

Transco Energy Marketing Company (TEMCO) (FE Docket No. 89-75-NG) proposes to import at Niagara Falls, New York for 15 years up to 48,400 Mcf per day of Canadian natural gas for resale to Hopewell Cogeneration Limited Partnership to fuel a 356-MW cogeneration facility under construction in Hopewell, Virginia.

Energy Marketing Exchange, Inc. (EME) (FE Docket No. 89-88-NG) proposes to import at Niagara Falls, New York, for 20 years up to 5,976 Mcf per day of Canadian natural gas to fuel a 35-MW cogeneration facility in Milford, New York.

Elizabethtown Gas Company (Elizabethtown) (FE Docket No. 90-25-NG) proposes to import at Niagara Falls, New York, for 15 years up to 15,000 Mcf per day to supplement its system supply.

Great Lakes Gas Transmission Limited Partnership (Great Lakes) (FE Docket No. 89-15-NG) proposes to add 417,500 Mcf per day to the volumes of Canadian natural gas it is presently importing and exporting under a transportation service arrangement.[4] This gas, together with all previously approved volumes, would increase to 1,405,000 Mcf per day the total amount authorized for import at Emerson, Manitoba and subsequent export at St. Clair and Sault Ste. Marie, Michigan. Most of the additional gas would be destined for consumption in the U.S. Northeast, while the remainder would be sold in eastern Canada.

II. Decision

On September 29, 1990, FE issued orders, under section 3 of the Natural Gas Act (NGA),[5] granting all of the applications described above.[6] To transport and deliver those imports and exports would require construction of the pipeline facilities comprising the Niagara Import Point (NIP) Project.

The DOE participated as a cooperating agency during the preparation of and has adopted as DOE/EIS-0153 the *Niagara Import Point Project Final Environmental Impact Statement* (FEIS), issued by the Federal Energy Regulatory Commission (FERC) on June 15, 1990.[7] The U.S. Department of Agriculture, Forest Service and the U.S. Department of the Interior, Fish and Wildlife Service were also cooperating Federal agencies for the NIP Project. FE relied on the FEIS and conducted an independent review to assess the environmental effects of granting the imports and exports.

On September 28, 1990, the U.S. Environmental Protection Agency (EPA) published a notice in the **Federal Register** that DOE adopted the NIP Project FEIS. The CEQ regulations establish a thirty-day waiting period for decisions on the proposed action based upon such an FEIS.[8] This waiting period begins upon publication by the EPA. An exception to the rules on timing for an agency decision is made in the case where such decision is subject to a formal internal appeal. In such a case, the period for appeal of the decision and the thirty-day waiting period may run concurrently. Section 19(a) of the NGA provides that any person, State, municipality, or State Commission aggrieved by order issued in a proceeding under the NGA in which they are a party may apply for a rehearing of the decision within thirty days after the issuance of the order. 10 CFR part 590, subpart E provides the guidance for making such a request for rehearing of any of the final orders issued in conjunction with this ROD.

Immediate construction of the upstream facilities is necessary to provide transportation of gas associated with the authorizations discussed in this ROD during the upcoming heating season. Therefore, DOE has determined, after consultation with the CEQ, to apply the exception described above in this case and thus issue the ROD and the final orders simultaneously with the EPA's publication of the adoption of the FEIS.

III. NIP Project Description

The NIP Project involves the construction of interstate natural gas pipelines and associated facilities by Great Lakes Gas Transmission Company (Great Lakes), Tennessee Gas Pipeline Company (Tennessee), Algonquin Gas Transmission Company (Algonquin), Transcontinental Gas Pipe Line Corporation (Transco), Texas Eastern Transmission Corporation (Texas Eastern), CNG Transmission Company (CNG), and National Fuel Gas Supply Corporation and Penn-York Energy Corporation (National Fuel/Penn-York) (hereafter referred to collectively as the project sponsors). The largest portion of the project facilities is the approximately 460 miles of pipeline loop proposed by Great Lakes in Minnesota (77 miles), Wisconsin (43 miles), and Michigan (340 miles). The remaining facilities to be constructed in New York, Pennsylvania,

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[1] 42 U.S.C. 4321, *et seq.*

[2] 52 FR 47662, December 15, 1987.

[3] G.A.S. Orange Development, Inc. was the original applicant.

[4] Great Lakes Gas Transmission Company was the original applicant and holder of the import and export authorization. FE transferred the authorization to Great Lakes Gas Transmission Limited Partnership in Opinion and Order No. 424 issued September 24, 1990.

[5] 15 U.S.C. Sec. 717b.

[6] On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the Economic Regulatory Administration to the Assistant Secretary for Fossil Energy. DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

[7] FERC/EIS-0057.

[8] 40 CFR 1506.10(b).

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New Jersey, Connecticut, Massachusetts, and Rhode Island by the other NIP Project sponsors include approximately 66 miles of pipeline loops, 12 miles of replacement pipeline, 5 miles of new pipeline, 61,800 horsepower of compression, and additions and modifications to metering facilities.

The purpose of the project would be to transport natural gas from Canada and domestic sources to markets in the northeastern U.S., including the residential, commercial, industrial, and electric utility sectors. New York, Connecticut, Massachusetts, Rhode Island, New Jersey, and Pennsylvania would receive about 80 percent of the project quantities, with 20 percent available to other regional markets. The electric utility sector would be the major user, with the balance spread across the remaining sectors. The project sponsors indicated that the proposed pipeline facilities are required to service these markets in 1990 and 1991.

IV. Governmental Responsibilities

The shippers that would use the pipeline facilities require authorization from FE under section 3 of the NGA for their proposed imports or exports. Other Federal, State, and local agencies also have permit or approval authority over portions of the proposed NIP Project. In particular, the FERC has the responsibility under sections 3 and 7 of the NGA, respectively, to approve the place of entry for imports and exit for exports whenever the import or export involves the construction of new domestic facilities and to certificate construction and operation of the pipeline facilities supplying the gas.[9] A permit is required from the U.S. Army Corps of Engineers (USACE) for all stream and wetlands crossings, except in Michigan where the responsibility has been delegated to the State, and for construction in navigable waters. Water quality certification has been delegated to the jurisdiction of the individual state agencies or would be reviewed by the EPA.

Permits from state and local agencies would be needed for road and highway crossings, building construction, and individual septic systems at compressor stations. New York has established coastal zone management policies regarding the use of land and water within designated coastal zones. Since Tennessee's proposed Niagara River crossing and CNG's Hudson River crossing would be within New York's coastal zone management area, they must file certificates with the New York Department of State demonstrating that their projects are consistent with State management objectives. Algonquin has filed for approval of its consistency determination with the Massachusetts Coastal Zone Management Office. In addition Great Lakes' proposed facilities in Michigan may require a consistency determination.

V. Description of Alternatives

FE had two alternative courses of action in processing the individual applications to import or export natural gas. It could grant an application (with or without conditions) or deny an application (no-action). If FE granted all of the applications, the NIP Project sponsors would proceed, subject to the necessary approvals, with construction of facilities to transport natural gas for use in the Northeast market. If FE denied all of the applications, the NIP Project pipeline facilities would not be constructed and the impacts to the existing environment associated with the project would not occur. Absent the NIP Project facilities, potential users would need to find natural gas from other pipelines or increase usage of fuel oil, coal, and other alternative fuels which are more polluting than natural gas.

It is significant that only if FE denied the Great Lakes application or a majority of the shipper applications would the NIP Projects pipeline facilities not be constructed.

VI. Basis for Decision

The principal criterion in choosing whether to approve or disapprove natural gas import and export arrangements is the requirement under section 3 of the NGA that an application must be approved unless, after opportunity for hearing, it is determined that the import or export is not consistent with the public interest. With respect to imports, decisions are made consistent with DOE's gas import policy guidelines, under which the competitiveness of an arrangement in the markets served is the primary factor in determining whether it is in the public interest.[10] In the case of long-term imports such as these, need for the gas and security of the supply are also important considerations. In making a public interest determination on export applications, FE considers the domestic need for the gas and any other issues that are appropriate in a particular case. Additionally, the environmental implications of granting or denying an import or export application must be evaluated pursuant to NEPA.

A. General Conclusions

With respect to Great Lakes' import and export proposal involving only the transportation of Canadian gas through the U.S., FE decided that the normal review criteria was irrelevant because the volumes would not be from domestic reserves or sold by Great Lakes on the U.S. market. Rather, Fe examined the potential impact of the transportation on Great Lakes and its customers and found that the gas shipments would be beneficial and not inconsistent with the public interest requirements of section 3 of the NGA.

The question of whether it is in the public interest to reimport into the U.S. Northeast the majority of the gas that Great Lakes exports back into Canada was dealt with in the disposition of the separate import applications filed by the other NIP Project shippers. Upon review, FE concluded that each proposed import would not be inconsistent with the public interest. In particular, it was determined that they meet the DOE guidelines concerning competitiveness, need for the gas, and security of supply.

B. Environmental Determination

The FERC was the lead agency in conducting an examination of the environmental effects of constructing the new pipeline, pipeline loops and replacement, new and modified metering facilities, new compressor stations, and addition of horsepower at existing compressor stations, as well as constructing and operating the new cogeneration facilities. The FEIS evaluated the environmental impact that the NIP Project would have on residential areas, geology, soil, water, biology, agriculture, cultural resources, public interest areas, wetlands, and the air and noise environment.

Alternatives to the NIP Project included various alternative energy sources and energy conservation, alternative pipeline systems, alternative pipeline routes and sites for compressor stations, and a no-project alternative. As stated above, the DOE participated as a cooperating agency during the preparation of the FEIS, and the DOE utilized the FEIS, as well as an independent analysis, to assess the environmental effects of granting or denying the import and export authorizations.

1. Alternative Energy Sources and Conservation

Presently, natural gas reaches the Northeast from domestic and Canadian sources. Several major gas pipelines flow to or near underground storage fields in western Pennsylvania, New York, and Maryland. However, capacity of existing transmission systems between the storage reservoirs and proposed delivery points of the NIP Project is not adequate to meet peak demand during the winter months. Expanding existing Gulf Coast systems to deliver gas to the Northeast was unreasonable due largely to cost considerations. While construction could eliminate the potential supply constraints to specific demand locations, other locations would still be subject to supply constraints which potentially could force curtailments, as occurred in the Northeast in December 1989.

The FEIS considered whether oil, coal, electricity and other conventional energy sources could be used to offset the NIP Project energy supply. Much of the natural gas from the NIP Project would be used for generating electricity. Expansion of existing or construction of major new oil-fired and coal-fired plants would require a long lead-time because of the number of issues that must be resolved before approval; therefore they may not be a realistic alternative to the gas-fired facilities proposed by the shippers.

To the extent gas is not available to generate increased electricity, the substitute fuels are coal or one of the fuel oils. Although coal is abundant and available domestically in sufficient quantities to supply the projected energy needs, transportation from the coal fields would be difficult and costly if a plant is not adjacent to an existing rail corridor. Much of the residual and No. 2 fuel oil used in the Northeast is imported. The increased fuel demand would require a greater dependence on foreign crude petroleum and petroleum products from unstable oil producing regions and the additional shiploads of oil would increase the risk of spills. Both oil and coal are not as clean as natural gas when combusted.

Other conventional energy sources (e.g., propane, wood, and synthetic fuels) are not viable alternatives to the proposed NIP project for a reliable, long-term energy supply to the Northeast.

Although conservation programs are a significant component in efforts to address existing and future energy supply constraints in the Northeast, regional growth is still expected to outstrip supply and require the continued upgrading and expansion of fuel delivery systems.

2. Project System Alternatives

The FEIS concluded that no other existing delivery system in the U.S. could be used to transport the volumes of gas that Great Lakes would make available for import at Niagara Falls, New York. Because the other NIP Project sponsors have primarily proposed looping, pipeline replacement, and new and additional compression facilities at various points along their existing systems, no alternative systems exist that would service the diverse geographic locations of the users of the NIP Project.

Major route alternatives, following routes significantly different from those proposed, were not considered because site-specific problems along the proposed rights-of-way are not significant enough to warrant consideration of significantly different routes.

3. Route Variations

Although it was determined that the NIP Project sponsors should construct their facilities as proposed, route variations were identified and assessed to avoid or reduce impacts associated with pipeline construction and operation on various resources, including residential areas, sensitive or significant habitats or water crossings, recreational areas, and wetlands. A total of 18 variations were considered. Of those considered, five were recommended for adoption. No sensitive resource issues that warranted analysis of variations were identified in connection with the pipelines proposed by Transco, Texas Eastern, National Fuel/Penn-York, and CNG/Texas Eastern.

The Clearbrook Wetland Variation, in Clearwater County, Minnesota and the McIntyer Lake Wetland Variation in Schoolcraft County, Michigan were recommended as alternatives to the route proposed by Great Lakes to minimize impact on forested wetland.

The FEIS also recommends the Wawecus Hill Road Variation in Norwich, Connecticut and the Medfield Loop Modification in Medway, Massachusetts because they would reduce or eliminate impact to several residences along the construction route proposed by Algonquin. The Tiverton Loop Variation in Newport County, Rhode Island would avoid crossing forested wetland.

4. Compressor Station Alternatives

Review of the compressor stations where expansion is proposed identified no additional environmental impact. In assessing whether alternative sites should be selected for the three new compressor stations proposed by Transco and National Fuel/Penn York, factors that were considered included proximity to noise-sensitive areas, loss of primary farmland, land use compatibility, wetland disturbance, and presence of endangered or threatened species. None of these problems were identified as significant enough to warrant selecting alternative sites.

5. No-Action Alternative

The no-action alternative would consist of the denial of any of the permits required for construction and operation of the NIP Project facilities or denial of the DOE import and export authorizations. Under this alternative no construction would take place and the impacts to the natural environment associated with the project would not occur. If the NIP Project pipeline facilities are not constructed, potential users will need to seek natural gas from other systems or increase usage of fuel oil, coal, and other alternative fuels that would increase emissions of air pollutants.

VII. Considerations in Implementing the Decision

FE has determined that the no-action alternative is the environmentally preferred alternative, because none of the physical impacts to the natural environment identified in the FEIS associated with the NIP Project would occur. However, FE has concluded that these impacts would be minimal and are acceptable when compared to the substantial benefits to be derived from the project in meeting current and future energy demand in the Northeast.

In weighing the no-action alternative against the benefits associated with the NIP Project, FE determined that the project would (1) Provide additional pipeline capacity to transport natural gas to a rapidly expanding market region, (2) introduce a new price-competitive source of natural gas from Western Canada, and (3) enhance air quality in the region by allowing increased use of clean burning natural gas rather than coal or oil in electric generation plants. In addition, FE took note of the project's extensive use of existing pipeline rights-of-way, a factor which generally minimizes environmental impact. The proposed NIP Project consists almost entirely of pipeline looping or replacement. Of the

[9] Each of the U.S. pipeline company sponsors of the NIP Project filed applications with the FERC to construct and operate their respective facilities. *See* Tennessee (Docket No. CP89-171-001), Great Lakes (Docket No. CP89-882-000), Algonquin (Docket No. CP89-187-000), CNG and Texas Eastern (Docket No. CP89-188-000), CNG (Docket No. CP89-712-000), National Fuel/Penn-York (Docket No. CP89-194-001), Texas Eastern (Docket No. CP89-711-000), and Transco (Docket Nos. CP89-7-001, CP89-710-000, and CP89-2286-000).

[10] 49 FR 6684, February 22, 1984.

545 miles of proposed pipeline, 542 miles would be on or adjacent to existing cleared pipeline rights-of-way. Another consideration was the extent to which mitigative construction techniques could be recommended. In some instances, alternative routes for the proposed pipelines were recommended to avoid impact on wetlands, residential areas, and other areas of concern. FE believes that the mitigative construction procedures developed by the FERC, in conjunction with other Federal cooperating agencies, would significantly reduce the impact of pipeline construction on stream and wetland crossings. Finally, specific erosion control, revegetation, and right-of-way maintenance procedures recommended by the FEIS would further mitigate the negative environmental impacts.

On September 13, 1990, the FERC issued certificates to the NIP Project sponsors under section 7 of the NGA to construct and operate their facilities and issued Tennessee a Presidential permit authorizing the construction and connection of facilities at the international border near Niagara Falls, New York to receive the gas imported from Canada into the Northeast. The grant was contingent upon issuance by DOE of natural gas import and export authorizations to Great Lakes and the shippers that would use the facilities. In granting the certificates, the FERC concluded that if its required mitigation measures are followed, the construction and operation of the NIP Project facilities would have a limited, adverse environmental impact.

FE notes that the FERC, USACE, EPA, and the environmental regulatory agencies of the States of Minnesota, Wisconsin, Michigan, New York, New Jersey, Pennsylvania, Massachusetts, Connecticut, and Rhode Island have principal authority and direct responsibility to impose and monitor mitigation measures and conditions relative to the construction and operation of the proposed NIP Project facilities through their various authorizations and permits. In issuing its certificates, the FERC required the NIP Project sponsors to implement for all disturbed areas an "Erosion Control, Revegetation, and Maintenance Plan" (ECR&MP) contained in appendix C of the FEIS. By implementing the ECR&MP, impacts on soil resources, including agricultural lands, from erosion, soil structure damage, compaction and drainage alterations would be minimized. The authorized pipeline routes included the five variations recommended in the FEIS for the Great Lakes and Algonquin facilities. The FERC certificates also required that the sponsors incorporate the "Stream and Wetland Construction and Mitigation Procedures" (Procedures) contained in appendix D of the FEIS when constructing across flowing streams, rivers, and wetlands. By implementing the Procedures, impact on aquatic resources would be reduced to acceptable levels. Many additional mitigation conditions were required to further reduce the anticipated environmental impacts. Finally, to insure compliance with all mitigation measures imposed as certificate conditions, there is a requirement that the sponsors provide one environmental inspector per construction spread.

VIII. Conclusion

The decision whether to authorize each natural gas import and export application has been evaluated against the potential environmental impacts. Implementing the specific mitigation measures identified in the FEIS, together with the stipulations required by the FERC, would minimize the negative environmental effects and promote the positive effects of the proposed NIP Project. Accordingly, DOE has decided to grant the applications filed by Great Lakes, National Fuel, Project Orange, Indeck-Yerkes, Indeck-Oswego, Con Edison, Texas Eastern, Northeast, North Jersey, Salmon, Long Island Cogen, TEMCO, EME, and Elizabethtown and determined that this decision is not inconsistent with the public interest under section 3 of the NGA.

Issued in Washington, DC, on September 29, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23650 Filed 10-4-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of August 24 Through August 31, 1990

During the Week of August 24 through August 31, 1990, the appeals and other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 1, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 24 through August 31, 1990]

Date	Name and location of applicant	Case no.	Type of submission
August 27, 1990	Dale R. Callaghan, Mount Pleasant, PA	LFA-0057	Appeal of an information request denial. If granted: The July 16, 1990 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Dale R. Callaghan would receive access to deleted information from his Case Evaluation for Security Clearance Document.
August 27, 1990	National Security Archive, Washington, DC	LFA-0058	Appeal of an information request denial. If granted: The July 31, 1990 Freedom of Information Request Denial issued by the Office of Policy, Planning and Analysis would be rescinded, and a new search would be ordered for documents responsive to the National Security Archive's request for documents relating to a report on nuclear power by the Ford Foundation's Nuclear Policy Study Group.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 24 through August 31, 1990]

Date	Name and location of applicant	Case no.	Type of submission
August 30, 1990	Rockwell International, Washington, DC	LFA-0069	Appeal of an information request denial. If granted: The January 5, 1990 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Rockwell International would receive access to DOE information.
August 31, 1990	Donald J. Anderson, Idaho Falls, ID	LFA-0071	Appeal of an information request denial. If granted: The August 14, 1990 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Donald J. Anderson would receive requested release of the name of the employee withheld from a document provided in response to the March 30, 1990 FOIA request.
August 31, 1990	Jim Cooper, Albuquerque, NM	LFA-0070	Appeal of an information request denial. If granted: The August 13, 1990 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Jim Cooper would receive access to information pertaining to Alvin J. Campbell, Sheriff of Bernalillo County, New Mexico.
August 31, 1990	Standard Oil Co. (Indiana)/South Dakota, Standard Oil Co. (Indiana)/South Dakota, Pierre, SD.	RM21-222; RM251-223	Modification/Rescission in the Standard Oil Co. (Indiana) second stage refund proceeding. If granted: South Dakota's application for refund submitted in the Standard Oil Co. (Indiana) second stage refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case number
8/24/90 thru 8/31/90	Crude oil refund, applications received	RF272-80895 thru RF272-81202
8/24/90 thru 8/31/90	Texaco Oil refund, applications received	RF321-9210 thru RF321-9523
8/24/90 thru 8/31/90	Gulf Oil refund, applications received	RF300-11705 thru RF300-11784
8/27/90	William F. Galik	RF304-11959
8/27/90	Negaunee Spur	RF309-1414
8/27/90	Charles H. Vaseur	RF315-10037
8/28/90	Anglen Food Service, Inc	RC272-98
8/29/90	Westfield Fuel Co., Inc	RF315-10038
8/29/90	Roy Bros. Oil Co., Inc	RF323-10

[FR Doc. 90-23688 Filed 10-4-90; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Order Confirming, Approving and Placing Integrated System Power Rates in Effect on an Interim Basis

AGENCY: Southwestern Power Administration (Southwestern), Department of Energy.

ACTION: Notice of power rate order.

SUMMARY: The Deputy Secretary of Energy, acting under Delegation Order No. 0204-108, as amended, 51 FR 19744 (May 30, 1986), including Secretary of Energy Notice SEN-10D-90 dated 8-3-90, has confirmed, approved and placed in effect on an interim basis the following Southwestern Power Administration System Rate Schedules:

Rate Schedule P-90A, Peaking Power
Rate Schedule P-90B, Peaking Power through Oklahoma Utility Companies and/or Oklahoma Municipal Power Authority
Rate Schedule F-90B, Firm Power through Oklahoma Utility Companies
Rate Schedule TDC-90, Transmission Service
Rate Schedule IC-90, Interruptible Capacity
Rate Schedule EE-90, Excess Energy

The rate schedules supersede the existing rate schedules shown below:

Rate Schedule P-87A, Peaking Power
Rate Schedule P-87B, Peaking Power through Oklahoma Utility Companies and/or Oklahoma Municipal Power Authority
Rate Schedule F-87B, Firm Power through Oklahoma Utility Companies
Rate Schedule TDC-87, Transmission Service
Rate Schedule IC-87, Interruptible Capacity
Rate Schedule EE-87, Excess Energy

EFFECTIVE DATES: Rate Order No. SWPA-23 specifies October 1, 1990, through September 30, 1994, as the effective period for the rate schedules.

FOR FURTHER INFORMATION CONTACT: Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7529.

SUPPLEMENTARY INFORMATION: The Southwestern Administrator has determined, based on the August 1990 Integrated System Current Power Repayment Study, that existing System rates will not satisfy cost recovery criteria specified in Department of Energy Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The Administrator prepared an August 1990 Integrated System Revised Power Repayment Study based on additional annual revenue of $7,419,000 beginning October 1, 1990, and $12,365,000 beginning April 1, 1992, which increases ultimate annual revenues from $86,216,200 to $98,581,200, primarily to recover projected increases in annual operating expenses for the generation and transmission facilities.

The first step of the increased annual revenues will be implemented primarily through an increase in the basic monthly demand charges for sales of Federal hydroelectric power and energy, although a slight increase in the base energy charge and decreases in the conditions of service charges for both 69 kV and load center, or below 69 kV, deliveries affect revenues as well. The second step, which will increase annual revenues by an additional $4,946,000, will be accomplished through further increase in the base energy charge. Also, a credit, specifically designed for each customer, will apply against the purchased power adder component of the rate schedules to refund both excess revenues and interest accrued on such revenues, collected in the purchased power deferral account during recent years of favorable water conditions. This credit is intended to effectively equalize the customers' average

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purchased power adder cost and should reduce the deferral account balance to a level needed both to cover system purchases under one year of critical water conditions and to allow the account to be essentially self-sustaining by accruing annual interest approximately equal to average annual purchase costs. The credit will offset much, and in some cases all, of the immediate effect of the rate increase for the majority of customers, except those to which the purchased power adder does not apply who will experience an initial increase of about 12 percent followed by about a four percent additional increase (upon implementation of the second step of the rate) in their basic 1200 hour peaking service. The total increase is derived about 78 percent from the basic peaking and firm service (54 percent demand and 24 percent energy) and about 22 percent from non-firm energy sales.

During the 36-month effective period of the credit (October 1, 1990–September 30, 1993), customers affected by the purchased power adders, under basic peaking or the remaining borderline firm service contracts, will experience a wide range of rate increases or decreases dependent upon the impact of the stepped rates, and their previous statuses as either peaking or firm customers, or both, the duration of their previous firm contracts, if applicable, and whether they had collateral peaking arrangements or merely converted a firm contract directly to peaking. In addition, under the previous rates the Administrator's discretionary $0.0005 purchased power credit would have continued through September 30, 1994, and the resulting net purchased power adder would have remained at $.0008 ($.0013 less $.0005) with no credit applicable. Consequently, with the purchased power adder reduced to zero in FY 1994, rate increases for basic 1200 hour peaking and firm services ranging from six to just over 12 percent (most at the 12 percent level) for these customers is expected after the new specific credits terminate, with the smaller increases occurring for those customers receiving power at both 69kV and less than 69 kV whose conditions of service charges decrease. The new System rate schedules also provide for the continuation of the provision for Southwestern's Administrator, at his discretion, to adjust the purchased power adder annually, under a formula-type rate, up to $0.0005 per kilowatthour as necessary, without the need to submit a formal rate request, but only requiring notification of the Federal Energy Regulatory Commission (FERC). The System rate schedules will be in effect on an interim basis through September 30, 1994, or until confirmed and approved on a final basis by the FERC.

Issued in Washington, DC, this 28th day of September, 1990.

W. Henson Moore,

Deputy Secretary.

Rate Order No. SWPA-23

ORDER CONFIRMING, APPROVING AND PLACING INCREASED POWER RATES IN EFFECT ON AN INTERIM BASIS

September 28, 1990.

Pursuant to sections 302 (a) and 301 (b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve and place into effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the Delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204-33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. By Delegation Order No. 0204-108, effective December 14, 1983, 48 FR 55604 (December 14, 1983) the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. On August 3, 1990, the Secretary of Energy issued Notice SEN-10D-90 which has the effect of amending Delegation Order No. 0204-108 by granting the Deputy Secretary sign off authority respecting matters for which the Assistant Secretary, Conservation and Renewable Energy is responsible. The Southwestern Power Administration organizationally reports to the Assistant Secretary, Conservation and Renewable Energy. This rate order is issued by the Deputy Secretary pursuant to said Notice.

Background

Federal Energy Regulatory Commission (FERC) confirmation and approval of the following system rate schedules was provided in FERC Docket No. EF88-4011-000 issued March 3, 1989, for the period July 1, 1988, through September 30, 1991:

Rate Schedule P-87A, Peaking Power
Rate Schedule P-87B, Peaking Power through Oklahoma Utility Companies and/or Oklahoma Municipal Power Authority
Rate Schedule F-87B, Firm Power through Oklahoma Utility Companies
Rate Schedule TDC-87 (Revised), Transmission Service
Rate Schedule IC-87, Interruptible Capacity
Rate Schedule EE-87, Excess Energy

Southwestern's May 1990 Current Power Repayment Study indicated that the existing rates would not satisfy present financial criteria regarding repayment of investment in a 50-year period primarily because of projected increases in annual operating expenses for the generation and transmission facilities. The May 1990 Revised Power Repayment Study indicated that an increase in average annual revenue from Southwestern's Integrated System (System) of $12,355,000 was necessary beginning in FY 1991 to accomplish System repayment in the required number of years. Accordingly, Southwestern developed proposed System rate schedules in the May 1990 Rate Design Study based on that additional revenue requirement.

Title 10, Part 903, Subpart A of the Code of Federal Regulations, "Procedures for Public Participation in Power and Transmission Rate Adjustments," has been followed in connection with the proposed rate adjustments. More specifically, opportunities for public review and comment on proposed system power rates during a 90-day period were announced by notice published in the Federal Register May 23, 1990 (55 FR 21232). A Public Information Forum was held June 7, 1990, in Tulsa, Oklahoma, and a Public Comment Forum was held July 12, 1990, also in Tulsa. Written

comments were due by August 21, 1990. On May 15, 1990, Southwestern mailed a pre-publication copy of the Federal Register Notice making copies of the proposed rate schedules and supporting data for the 1990 Power Repayment Studies available to customers and interested parties. During the comment period, interested parties reviewed Southwestern's studies that were designed to produce an annual revenue increase of $12,355,000, or 14.4 percent, to begin October 1, 1990. In addition, and prior to the formal 90-day public participation process, Southwestern held a number of informal meetings with customer representatives during preparation of the May 1990 Current and Revised Power Repayment Studies and Rate Design Study. Southwestern personnel met informally with the Rates Subcommittee (Subcommittee) of the Federal Power Marketing Committe of the Southwestern Power Resources Association on four occasions to explain the studies, answer questions, and consider comments and suggestions concerning development of the proposed System rates. At one of these meetings, representatives of the Corps of Engineers' (Corps) Southwestern Division and Tulsa District Offices were present to discuss Corps Operation and Maintenance (O&M) expense projections, estimates of major project replacement costs, and cost allocations to hydropower. Further, Southwestern staff met with the Subcommittee again following the Public Information Forum to discuss the results of the May 1990 Current and Revised Power Repayment Studies and Rate Design Study.

Following the conclusion of the comment period in August 1990, modifications to the May 1990 Power Repayment and Rate Design Studies and the proposed Rate Schedules were completed based on formal comments received. The numerous comments presented during the formal public participation process were considered, responses developed and, where deemed appropriate, incorporated into the studies. Once all comments had been carefully considered, the Administrator made the decision to submit the revised (August 1990) rate proposal for interim approval and implementation. Responses to major comments are contained herein. The proposed rate schedules resulting from these changes are designed to increase total annual revenues over fiscal years 1991, 1992 and 1993 by $7,419,000, $10,139,300 and $12,365,000, respectively, above the revenue produced by the existing rates.

Discussion

General

The rate schedules proposed by Southwestern for implementation increase ultimate annual revenue from $86,216,200 to $98,581,200, or 14.3 percent, which will satisfy cost recovery criteria outlined in Department of Energy (DOE) Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944, by increasing annual net revenues in two steps of $7,419,000, or 8.6 percent, beginning October 1, 1990, and an additional $4,946,000, or 5.7 percent, for a total of $12,365,000 beginning April 1, 1992. These amounts changed from those intially proposed in May 1990, primarily as a result of Southwestern's consideration of customer comments and requests regarding a phase-in of the rate increase and a number of minor corrections and adjustments were made in response to customer comments and Southwestern staff review. The following adjustments or corrections have been incorporated into the August 1990 studies, which altered the May 1990 studies, and caused changes in the level of increase needed:

1. Developed a rate adjustment plan which increases annual revenues over three years by phasing-in the rate increase in two steps, 60 percent upon implementation and 40 percent 18 months later, rather than implementating the entire rate increase immediately. This one-time phase-in is proposed in consideration of customer concerns regarding the present level and estimates of Corps O&M costs and will allow time to assess the impacts of recent potential policy changes and funding restrictions on both actual and estimated Corps O&M expenditures. The first step of the rate proposal will protect Southwestern's net revenues for repayment by developing increased revenues through implementation of the entire demand component of the designed rate and only a small increase in the energy component. The second step will implement the remaining portion of the energy component.

2. Reduced the level of bank balance for FY 1994 and future years from 754.8 GWh to 740.8 GWh to more accurately reflect the value of banked energy to the system. Prior to implementation of the Purchased Power Deferral Account (PPDA), which now accounts for the value of banking energy flowing to and from the account as it occurs, the value of banking energy was credited to annual system revenues or expenses depending on whether such banking energy was delivered, thereby foregoing excess sales, or was received to offset purchases, causing a distortion of annual net revenues available for repayment of investment. The PPDA eliminated the previous practice of impacting net revenues with banking revenues or expenses (non-cash receipts or expenditures). However, the value of 740.8 GWh was credited directly to System revenues in FY 1983. When the PPDA was implemented in FY 1983, it was only applied prospectively, leaving the value of the 740.8 GWh on Southwestern's books to be offset when the bank balance was utilized instead of making future purchases. The impact of this projected reduction in long-term bank balance on the power repayment studies is a short-term increase in excess energy sales and revenues (under average conditions) instead of foregoing such revenues by delivering the energy to the banks.

3. Minor corrections and revision to: (1) annual joint O&M costs estimated by the Corps for the Harry S Truman (Truman) and Stockton projects, including post-1994 major maintenance; (2) full repayment of high interest-bearing investment at the Truman project; and, (3) revenues estimates from facilities charges based on recently updated customer usage.

Included in the above adjustments is one issue, the phase-in of the rate increase, which sets this rate proposal apart from the normal.

Rate Increase Phase-In

The present uncertainly regarding the Corps' O&M costs provides the primary justification for a one-time phase-in of this rate increase. O&M costs at Corps projects have escalated dramatically over the past decade.

That escalation overall, and at many of the Corps projects individually, has been well in excess of inflation. The O&M cost escalation is a result of aging power plants, design problems at newer plants, significant increases in power plant operators' pay and unexpectedly high funding levels available to the Corps' hydropower function through internal reprogramming actions. When such funding becomes available, many lower priority, but needed maintenance jobs, which would otherwise have been deferred or delayed, are performed to ensure high reliability of the units. While the Corps' previous projections of their annual O&M costs (utilized by Southwestern in its annual Power Repayment Studies to test the adequacy of its rates) had reflected eventual moderation of the rate of increase in their costs, their most recent estimates showed no such moderation, but indicated continuing significant

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increases. The Corps' current estimates of their O&M activity and costs were developed during a period which reflected a continuation of the relatively high levels of funding assumed to continue to be available and incorporated the long-standing preventive maintenance policy practiced by the Corps. However, recently a number of conflicting and confusing statements have been received from the Corps regarding the possibility of the Corps performing breakdown maintenance instead of preventive maintenance. The uncertainty is seemingly driven by anticipated funding restrictions for Corps hydropower O&M caused by Federal budget deficit reduction actions and changing priorities among multipurpose project uses. This change in policy, if implemented, would be expected to reduce O&M costs in the near-term, but may increase costs and decrease reliability in the long-term. Consequently, the Corps' O&M cost estimates are highly questionable regarding their ability to reflect actual future expenditures, particularly the expenditures for the latter years of the cost evaluation period, given the present uncertainty regarding Corps O&M policy and the impacts of restricted funding on future O&M costs.

In consideration of customer comments, concerns and requests for a phase-in of Southwestern's rate increase and to allow time to: (1) Confirm Corps O&M policy; (2) assess the impacts of Corps funding restrictions on the level of future O&M costs; (3) continue Southwestern and Corps coordination with customers to improve O&M cost justification, both actual and estimates; and, (4) pursue avenues to improve Corps funding availability, the Administrator is proposing, on a one-time basis only, to implement this rate increase in two steps of 60 percent and 40 percent of the total revenue increase, respectively. The first step, to be effective October 1, 1990, would increase annual revenues by $7,419,000, or 8.6 percent, while the second step, to be effective April 1, 1992, would increase annual revenues by an additional $4,946,000, or 5.7 percent. The revenues created by the two-step rate increase would increase total annual revenues over fiscal years 1991, 1992 and 1993 by $7,419,000, $10,138,300 and $12,365,000, respectively, and would meet cost recovery criteria of DOE Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. To ensure the continued financial integrity and stability of Southwestern's system, the first step of the increase is proposed to be applied by implementing the entire capacity charge (including adjustments to the conditions of service charges) as developed in the Rate Design Study and supplementing the revenues created thereby with a small increase in the energy charge. The second step would then be implemented through the increase in the energy charge only. This approach will ensure that Southwestern's net revenues for repayment of investment are protected, during the period of the phase-in, from the revenue-reducing impacts of potentially poor or critical water conditions. Further protection for the System's financial condition is assured through the performance of annual Power Repayment Studies and Southwestern's ability to adjust rates as often as necessary to ensure its repayment obligations are met. This one-time phase-in approach is intended only as a reasonable accommodation to customer concerns regarding a single 14.4 percent increase and the unique situation presently existent regarding Corps O&M costs. This situation involves Corps policy confusion between preventive and breakdown maintenance, and inconsistency in anticipated funding level restrictions and cost estimates, and will allow time to assess the impacts of such issues on Corps O&M expenditures and to pursue avenues to improve O&M funding methods. Consequently, in future rate proposals Southwestern will return to its historically practiced repayment procedures.

Southwestern's 1988 Rate Proposal included two noteworthy issues, which the FERC approved as acceptable and equitable. The two issues were (1) the treatment of a portion of the Truman project investment as not currently repayable, and (2) the development of customer-specific credits to the purchased power adder to refund excess revenues collected under Southwestern's purchased power rate component and accounted for in the PPDA.

Harry S Truman Project

The Truman issue arose out of the limitations placed on the project's operations by the Corps. The project was designed and constructed to have 160 MW of dependable (marketable) capacity through the use of six reversible pump turbine generating units which could return water to the reservoir following normal generation, to mitigate extreme variations in water available for generation and the lack of storage capacity in the project (only two feet). Pumping ensures project dependable capacity and allows marketing of all six units. A substantial fish kill during testing of the units and considerable opposition to the project's operation, both in the pumping mode and the full six-unit generation mode, led the Corps to significantly restrict the project's operation. In particular, the project's pumps may not be used and only a limited number of units may be utilized simultaneously. Consequently, Southwestern is unable to market full capacity from the project and has declared only two units in commercial operation. Southwestern proposed to the FERC in the 1988 rate filing, that since the entire project was neither revenue-producing, declared in commercial operation, nor expected to be in service within the then-existing cost evaluation period, the total investment allocated to power was not repayable under DOE or FERC regulations. Southwestern further proposed an adjustment to Truman's allocated costs and reduced the repayable investment to an amount equal to approximately 44 percent of then-allocated costs, with the remaining amount to be deferred until the project is placed in full commercial operation. The FERC approved this proposal as an acceptable interim measure while the Corps developed a cost allocation for Truman based on actual operating conditions. Southwestern also proposed this concept to the Corps and the Corps agreed to consider it as an option in developing the cost allocation for the project. Subsequently, the Corps has completed a major revision to the Truman project cost allocation and has utilized Southwestern's proposed concept for determining repayable investment at the project during the interim period until the project becomes fully operational. Although not yet approved on a final basis, the Interim Cost Allocation proposed by the Corps for the Truman project has been utilized in the development of the 1990 Power Repayment Studies in support of the revenue requirements of Southwestern's System and the rate proposal, as the most recent cost allocation available which reasonably reflects the level of costs expected to be repayable at the Truman project during the cost evaluation period.

Purchased Power Deferral Account (Credits and Adders)

The customer-specific purchased power credits implemented under the 1988 Rate Proposal were intended to flow back, over a fixed 27-month period from July 1, 1988, to September 30, 1990, excess purchase power-related revenues which had accumulated in the PPDA since August 1983, when it was

established. The PPDA was developed to track purchased power revenues, derived from the purchased power adder component under certain System rate schedules, to meet actual purchased power expenses. Over the period since 1983, the PPDA had grown substantially, in spite of a previously-implemented credit, due to continued favorable water conditions and reductions in Southwestern's overall system purchased power requirements through the conversion of full load factor contracts to 1200 hour peaking (limited energy) contracts. The credits were designed to reduce the PPDA to an amount adequate to meet critical water year purchased power needs and to flow back deferred revenues to customers in such a way as to equalize the average purchased power adder per kilowatthour paid by each customer to place all customers on an equal footing with regard to the need for future purchases of energy by Southwestern. These customer-specific credits have accomplished their intended purpose by flowing back a substantial amount of deferred revenues to Southwestern's customers. However, subsequent to approval of the 1988 rate filing, Southwestern's financial audit firm determined it appropriate to accrue interest on the deferred revenues in the PPDA which had previously not been accrued. As a result, some $12 million was credited to the PPDA. This credit, coupled with continued good water conditions which has limited purchased power expenses since July 1988, has increased the PPDA balance to approximately $34.2 million as of July 31, 1990.

The interest that has accrued to the PPDA for the period since August 1983, poses a virtually identical situation for Southwestern which justified the previous customer-specific purchased power credits, except that now interest is an element which should be flowed back as well as excess deferred revenues. Had interest been a factor in determining the previous credits, each customer's credit would have been somewhat greater and probably the period over which they applied would have, of necessity, been longer. Consequently, a new purchased power credit has been specifically designed for each applicable customer to flow back deferred revenues and interest accrued on such revenues during the period since August 1983, again in such a way as to equalize the average purchased power adder rate per kilowatthour paid by each customer. The credits would remain in effect for the 36-month period October 1, 1990, through September 30, 1993, to balance each customer's average cost irrespective of the condition or balance of the deferral account, or the need for rate adjustment in the meantime.

This method, like the previous, is intended to place all customers on an equal footing with regard to the need for future Southwestern purchases of energy, by refunding amounts to each customer which will bring their average purchased power adder paid on all energy received to 0.9 mills per kilowatthour, Southwestern's current average long-term purchased power rate requirement. As before, it also eliminates the differential created by the earlier risk factor applied to firm power customers and automatically corrects for those situations where differing contract terms and changing or new peaking capacity allocations have occurred. It is based on each customer's maximum guaranteed level of 1200 hour peaking power purchases over the period October 1, 1990, through September 30, 1993. This period was chosen to enable Southwestern to flow back the significant excess deferred purchased power revenues collected with accrued interest over the period August 1983 through September 1990 in as short a time period as possible to avoid exposing the PPDA to a precipitous drop in case of an unexpected downturn in water conditions, to be able to offset much of the proposed rate increase in most customer situations, and to avoid having to make net cash payments to customers in excess of charges in months of high energy usage. However, in case such a condition may occur, the rate schedules again limit the amount of applicable credit in any month to the level of total charges for Southwestern's services rendered and allow for any excess credit to be used in future billing periods. These credits are also proposed for application over the 36-month period October 1, 1990, through September 30, 1993, without revocation, to insure a reasonable equalization of each customer's purchased power adder and to avoid the need for a continuous accounting of individual customer contributions to the PPDA. Amounts of revenue and interest in the PPDA at any time are System revenues, entirely within the purview of Southwestern. No customer is considered to have escrowed these funds, nor have any specific entitlement or ownership right in contributions to the PPDA or accrued interest, although Southwestern will attempt to apply purchased power adders, and credits, on a basis reasonably proportional to customer purchases of peaking power and energy. While application of this credit is assured through September 30, 1993, below average water conditions during the intervening time period may dictate an increase in the adder, but such an increase would be based on the assumption that all customers are on an equal footing and would all participate in required system purchases proportionate to their purchases of peaking power.

During the time the purchased power adders and the accounting mechanism have been in place, they have proven to be effective in assuring that purchased power revenues equal purchased power costs. The financial interests of the Government have been protected in this endeavor and the rate component has been adjusted as necessary. In the 1988 Rate Proposal, Southwestern also requested approval for the Administrator to have authority to adjust the purchased power rate component annually, based on a formula-type rate included in the rate schedules, by up to $0.0005 (½ mill) per kilowatthour at his discretion. The flexibility derived from this authority enables Southwestern to react quickly to significant changes in water conditions which may have occurred during the preceding year or simply to exercise better control on the amount of over or under recoveries of revenue in the PPDA. The Administrator utilized this authority in December 1988, to implement a $0.0005 additional credit to help reduce further, excess revenues collected in the account during the previous year of good water conditions and the corresponding reduced need for purchased power. We believe this authority remains appropriate, particularly since the PPDA has no effect on System repayment requirements and the separate rate component serves to provide revenues to meet perceived costs which, if they do not come to pass, are either held to meet future costs or are refunded to customers.

Therefore, we are proposing that Southwestern's Administrator continue to be authorized to adjust the purchased power rate component annually based ona formula-type rate included in the rate schedules, by up to $0.0005 per kilowatthour as he determines necessary. The Administrator will advise the FERC of any such adjustments in the purchased power adder component of Southwestern's rate schedules.

An element directly related to the PPDA and accrual of interest thereto is the determination of the purchased

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power adder itself. We are proposing, as we have in all previous proposals beginning with the 1983 implementaiton of the purchased power rate component, that the adder be set equal to the current average long-term purchased power rate requirement. As shown in the Rate Design Study, the amount is determined by dividing the total average direct purchased power cost by Southwestern's total annual contractual 1200 hour peaking energy commitment to its customers (exclusive of contract support arrangements). In this rate proposal, the resulting purchased power adder is $0.0000 per kilowatthour of peaking energy. The total revenue created through application of this adder would enable Southwestern to cover its average annual purchased power costs. However, since interest is now accruing at current interest rates to the PPDA based on the balance in the account, beginning in FY 1994 there would be no need to continue the purchased power adder since interest (at current rates) on the balance in the account would be adequate to meet average annual purchased power costs, making it essentially self-sustaining. Therefore, Southwestern is also proposing to set the purchased power adder equal to zero beginning October 1, 1993.

Comments and Responses

Southwestern received numerous comments from customers and interested parties resulting from the public participation process. The issues identified in these comments were given careful and thorough consideration and, where deemed appropriate, solutions were developed and incorporated into Southwestern's final rate proposal, as noted in the earlier General Discussion section. A summary of the major comments and Southwestern's responses to the issues raised in those comments follows:

Corps O&M Expenses

Comment: Corps projections of O&M expenses and replacements are excessive, unsupportable, unjustified, inconsistent, and such costs should be prudently and timely incurred at a reasonable level, and reduced and/or deferred. Lack of an effective means of oversight of these costs coupled with the Corps' insulation from customer scrutiny is frustrating and a serious weakness in Southwestern's rate making process, leaving customers unable to question such projections, or quantify an appropriate adjustment. The Corps has not been responsive to customers' questions regarding the projections and support for substantially higher O&M projections has not been provided. Corps O&M has been escalating much faster than the rate of inflation without an adequate accounting for the causes. The Corps' O&M "age factors" are not appropriate and appear to have no factual basis. Information regarding Corps policies related to its plans and potentially limited funding levels for future O&M work conflicts with the O&M projections provided by the Corps and used in the repayment study.

Response: Corps projections of future O&M and replacement costs used in recent Power Repayment Studies have received wide criticism, since these elements of cost contribute significantly (over 35 percent) to Southwestern's total revenue requirements. In this particular rate proposal, Corps O&M costs represent over 70 percent ($8.8 million) of the need for increased annual revenues. Southwestern agrees that such costs should be prudently and timely incurred at reasonable levels consistent with maintaining the high level of reliability required in the utility industry. However, the perception exists among the customers that there is no exercise of restraint or control over Corps O&M costs. The Corps, however, believes that its internal controls, accounting system reviews and funding procedures effectively provide the needed level of justification, consistency and control of its O&M expenditures. Southwestern is required to repay costs as experienced and reported by the Corps, and does not exercise oversight or other authority over Corps appropriations or expenses. Such authority is exercised internally by the Corps and by the Congress and its agents. This condition does not relieve Southwestern of the responsibility to review such costs for reasonableness and to keep customers well-informed by providing opportunities to meet with Corps representatives to review projections, methodology, back-up data and other information which may be of help in understanding the level of costs being experienced and projected. In this regard, Southwestern has contacted the Corps on behalf of the customers' organization, the Southwestern Power Resources Association (SPRA), to enable such interchange of information. Southwestern has also strongly expressed both Southwestern and customer concern to the Corps over rapidly increasing O&M costs and the common customer perception of lack of oversight of O&M and replacement costs. Over the past two years since the 1988 Rate Proposal, Southwestern has encouraged and coordinated communication, regarding Corps operation, maintenance, and replacement costs, between the Corps and the customers, as represented by the SPRA. Southwestern also provided substantial technical support to the customer's efforts in a detailed analysis of historical Corps O&M costs. A series of meetings were held between the customers and representatives of all three Corps districts. Southwestern has made every effort to meet customer needs for access to information and open communication with the Corps. As indicated, Southwestern has no oversight authority with regard to Corps funding or expenditures for O&M activity. Consequently, Southwestern's effectiveness in these areas is extremely limited and greater influence could only be attained through a different approach to funding, with accompanying mutual spending decisions, than presently exists.

In summary, while all Corps O&M cost projections will continue to be reviewed and revised as necessary, the Corps believes its current projections of future O&M and replacement expenses reflect its best estimates of the actual costs to be incurred over the period 1990–1994 and beyond—if the O&M work is funded and performed in the same manner as has been done in the recent past—and we have no basis upon which to modify or adjust the estimates. The manner in which the Corps plans to maintain its hydroelectric projects has recently become confused, because of restricted funding and changing priorities at multipurpose projects, and it could have a significant effect on the Corps O&M and replacement estimates used in the repayment study. Whether the Corps will maintain its projects as it has historically or whether it will move to performing maintenance under a "break-down" mode remains uncertain and further clouds the reliability of the Corps' estimates used in this particular repayment study. The O&M "age-factors" included in the Corps' O&M estimates, which are intended to reflect increased costs incurred at older projects, do not appear to be supported by historical expenditures and will be reviewed and analyzed by the Corps for the appropriateness of their use in future Corps' O&M projections. These questions relating to the validity of the projections used in the 1990 Power Repayment Study have persuaded Southwestern to propose implementation of the rate under a phased-in approach to allow time for the potential impacts of these unique issues to be assessed.

Rate Increase Phase-In

Comment: Southwestern's proposed rate increase is not sufficiently justified and is opposed by the customers. However, if any rate increase must be implemented it should be phased-in over a period of years. Major reasons given in support of this position are: (1) economically depressed conditions currently exist in Southwestern's marketing area and a rate increase would worsen those conditions; (2) the proposed 14.4 percent single rate increase is an excessive large increase for the customers to absorb at one time; (3) the real rate impact of the proposed 14.4 percent revenue increase being borne by the customers in on the order of 17 percent; (4) Southwestern's first year requirements amount to slightly over eight percent rather than the proposed 14.4 percent; (5) the adverse economic effect on Southwestern's service area could be mitigated by using a phased-in approach; (6) long range forecasts are unreliable; (7) a rate phased-in would not adversely affect Southwestern's financial stability; and, (8) a phased-in rate would provide the customers time to analyze the conflicting O&M information that has been disseminated by the Corps.

Response: Southwestern's customers' concerns about issues which would warrant pursuing a phased-in rate increase at this time have been carefully considered. Southwestern recognizes that while economic conditions in its region have been difficult in recent years, Southwestern is faced with certain statutory (Section 5 of the Flood Control Act of 1944) and regulatory (DOE Order No. RA 6120.2) requirements which limit the latitude the Administrator can exercise in setting the cost-based rates. Southwestern remains committed to the continued financial integrity and stability of its system through the development of regular annual power repayment studies based upon average water year conditions and the implemention of needed rate increases, preferably smaller and more frequent, in accordance with such legal and regulatory requirements. This process has been strongly supported in recent years by customers and customer organizations.

Upon review of the unique circumstances surrounding the confusing information received from the Corps regarding breakdown maintenance policy and anticipated funding level restrictions which conflict with O&M cost estimates based on a preventive maintenance policy and continued availability of high funding levels, and which would ultimately have an impact on the level of revenues to be recovered through Southwestern's rates, it appears appropriate to develop and implement phased-in rates for the 1990 Rate Proposal. Therefore, Southwestern, in consideration of customer comments, is proposing to phase-in rates in two steps for this particular rate filing. This one-time phase-in approach is intended only as a reasonable accommodation to customer concerns regarding a single 14.4 percent increase and the unique situation presently existent regarding Corps O&M costs. This situation involves the Corps' policy confusion between preventive and breakdown maintenance, and inconsistency in the Corps' anticipated funding level restrictions and cost estimates, and will allow time to assess the impact of such issues on Corps O&M expenditures and to pursue avenues to improve O&M funding methods. Consequently, in future rate proposals Southwestern will return to its historically practiced repayment procedures.

Southwestern O&M Expenses

Comment: Southwestern's use of contract labor, for work that could be done in-house, is increasing its O&M costs which circumvents DOE's attempts to control costs. On an average expense-per-mile basis, Southwestern's transmission O&M expenses are almost twice the average level for similar utilities.

Response: Southwestern's use of contract labor under support services arrangements has increased over the past few years and represents its commitment to accomplish the significantly increasing workload primarily associated with operation, maintenance, and replacements on the aging transmission system, which had been deferred in the 1970's and early 1980's, and to maintain System reliability within imposed manpower restrictions. Due to its quantity, this work simply cannot be accomplished with available in-house staff. DOE has approved Southwestern's use of support services contractors for these purposes, among others, and Southwestern subjects current usage of contractors to a determination of need prior to any contract being awarded.

From the information received during the public participation period, Southwestern's transmission O&M expenses appear to be higher than the industry's per mile-of-line average. However, the transmission O&M data source used (U.S. Department of Agriculture's *USDA 1988 Statistical Report, Rural Electric Borrowers*) reflects a wide variance in the O&M costs ranging from $464 to $563,629 per mile-of-line for 1988 ($4,873 for Southwestern) which seems to represent the peculiarities of other utilities' accounting systems. A comparison of the data from these other accounting systems with Southwestern's cost accounting system does not necessarily reflect the same O&M cost components. For example, the O&M costs of some of the utilities listed appear to include wheeling charges while other utilities' O&M costs and Southwestern's O&M costs do not. On the other hand, general administration and overhead (GA&O) costs appear to be segregated for the other utilities listed while Southwestern's O&M costs include the assignment of both direct cost overhead, and a proportionate share of general administrative expenses, leaving only appropriate "marketing costs" in Southwestern's category labeled GA&O in its power repayment study. FERC accounting guidelines allow for significant variation among utility accounting systems and the interpretation and application of the guidelines is also subject to wide variances. The interpretation of whether a specific work item is to be classified and subsequently booked as a maintenance (within the O&M account) or construction (capitalized) item is an example of one area that may be affecting the account balances. These inconsistencies make the reliability of such a simple ratio, given the data upon which it is based, highly questionable. Although Southwestern's O&M cost per mile appears high compared to the average presented, the data of another major area utility (a customer of Southwestern) with a somewhat higher cost per mile ($5,622) suggests that Southwestern may not be entirely out of line, assuming the ratios are appropriately calculated and comparable. Southwestern believes that its actual transmission expenses are generally in line with other area utilities which perform similar work. Southwestern's O&M, GA&O, and replacement costs have been, and will continue to be, the subject of internal review to ensure that such costs are appropriate and held to a minimum consistent with reliability goals, considering the age of Southwestern's transmission system.

Repayment Methodology

Comment: If the repayment study were done on a one-year basis it would indicate a need for a revenue increase approximately eight percent, and any amount above that is purely based on speculation of costs beyond FY 1990. Use of a one-year forecast is encouraged

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because other utilities use a one-year cost of service study period and, in addition, long range forecasts are typically inaccurate. DOE Order RA 6120.2 encourages the use of a five year repayment period but it does not prohibit a shorter one. All expenses and revenues in the repayment study are held constant after the five year cost evaluation period with the exception of new investment. The new investment continues to accumulate over the entire repayment period which means that today's customers are paying a higher rate for a future, speculative investment that does not benefit today's customers.

Response: The existing repayment study methodology prescribed by DOE Order No. RA 6120.2 advocates a cost evaluation period (CEP) that is "normally 5 years" to project future costs and revenues to reflect changing conditions. That methdology was established, at least in part, to provide some protection for the financial integrity and stability of the Power Marketing Administration (PMA), including Southwestern, which must assure recovery of all annual costs and repayment of investment from revenues based on hydroelectric power generation under highly variable water conditions, and to provide a stabilizing effect on hydroelectric power rates to minimize the need for more numerous and potentially larger increases caused by a single year or event. While it is true that a five year cost evaluation period is not required, Southwestern has utilized it consistently (even in the 1988 Rate Proposal which replaced the first year of the 5-year CEP with "actual" data prior to filing, due to the length of the public participation process), and it serves as a "reasonable" period over which Southwestern can project future events and costs.

The new investments forecasted in the power repayment studies are "Replacements" which are required by paragraph 10 of RA 6120.2 to be "included in repayment studies by adding the estimated capital cost of (the) replacement to the unpaid Federal investment in the year each replacement is estimated to go into service." The primary reason for forecasting replacements throughout the repayment period of the power system is to recognize that the system must be satisfactorily maintained throughout that period in order to ensure meeting statutory repayment requirements (amortization of investment).

Rate Structure

Comment: Southwestern's rate formula generating its revenue requirements places an undue burden on capacity charges as compared to the energy charges to protect against higher than predicted Corps O&M expenditures. There are no cost-of-service data which support the large departure from historic allocations of costs between demand and energy. Non base-load peaking capacity resources, like Southwestern's hydroelectric system, should carry minimum demand charges with proportionately higher energy charges. The proposed rate increase is based inappropriately on cost estimates alone. There is no evidence in the studies that either Southwestern or the Corps is in dire financial straits because of current rates.

Response: Southwestern's Rate Design Study methdology, which functionalizes, classifies and allocates all the cost elements, used in the 1990 Rate Proposal is essentially the same methdology as has historically been used in previous rate proposals. In a strict public utility cost analysis, the classification of costs of producing and transmitting hydroelectric generated energy between "fixed" and "variable" elements would come closer to having no variable cost, indicating that capacity should provide the majority of the revenues. As expressed in the comment, the proposed rates place a higher per kilwatthour increase on capacity (2.9 mills/kWh) then energy (1.2 mills/kWh) based on 1200 hour peaking sales. However, this condition was a direct result of Southwestern's normal rate design methdology, and, based on average year conditions, sales of an estimated additional 1200 hours of supplemental reduces the seeming disparity significantly to 1.45 mills/kWh for capacity as compared to 1.2 mills/kWh for energy. This represents a split of about 55 percent of the need for increased revenues to capacity and 45 percent to energy under average conditions. Overall, the ratio of capacity and energy to the total revenue requirement is in line with results of the historical methdology used. Power repayment studies are prepared annually. If the current repayment study reveals that repayment through the end of the repayment period cannot be met, a revised repayment study is prepared which incorporates additional revenue sufficient to meet repayment criteria. In accordance with DOE Order No. RA 6120.2, rates must be set to recover costs estimated over the CEP with revenue levels determined to be needed in the revised repayment study. These studies are designed to prove the need for revenues to meet the financial requirements of the PMAs and ensure their compliance with the statutory objectives established in Section 5 of the 1944 Flood Control Act and implementing regulations (RA 6120.2). To accomplish this, Southwestern's rates are designed based on the final year of the CEP.

This base year is used since costs are assumed to remain constant from this point through the end of the repayment period and because costs in this year represent a reasonable average of future repayment requirements. In accordance with statutory and regulatory requirements, Southwestern must set rates to meet cost recovery criteria throughout the repayment period. Public utility cost-of-service procedures are adapted and used as applicable to hydropower facilities and the particular problems facing Southwestern. During the public participation process, Southwestern received only limited customer support for a higher energy rate component while the majority of customers favored or expressed no concern regarding the proposed ratio of capacity to energy. In addition, when rates were being developed and analyzed during the informal public participation process, a higher energy rate was generally opposed by the customers due to the financial difficulties it could create for Southwestern under critical water conditions. A lower energy rate was subsequently proposed to mitigate those expressed concerns.

Other Issues

Other issues are discussed in the Administrator's Record of Decision.

Availability of Information

Information regarding this rate proposal including studies, comments and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101.

Administrator's Certification

The Augusts 1990 Revised System Power Repayment Study indicates that the increased power rates will repay all costs of the Integrated System including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204-106, the Administrator has determined that the proposed System rates are consistent with applicable law and the lowest possible rates consistent with sound business principles in accordance with Section 5 of the Flood Control Act of 1944.

Environment

The environmental impact of the proposed System rates has been analyzed in consideration of the Department of Energy "Environmental Compliance Guide." The amounts of the proposed increases do not warrant an Environmental Assessment or an Environmental Impact Statement in accordance with these regulations.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective October 1, 1990, the following Southwestern System Rate Schedules which shall remain in effect on an interim basis through September 30, 1994, or until the FERC confirms and approves the rates on a final basis, to supersede the rate schedules named:

Service	Rate	Superseded rate
Peaking power	P-90A	P-87A
Peaking Power through Oklahoma Utility Companies and/or Municipal Power Authority.	P-90B	P-87B
Firm Power through Oklahoma Utility Companies.	F-90B	F-87B
Transmission service	TDC-90	TDC-87
Interruptible capacity	IC-90	IC-87
Excess energy	EE-90	EE-87

Issued at Washington, DC, this 28th day of September 1990.

W. Henson Moore,

Deputy Secretary.

[FR Doc. 90-23654 Filed 10-4-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3850-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 17, 12990 Through September 21, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-AFS-J65161-CO Rating EC2, Elkhead Creek/Slater Creek Vegetation Management Plan, Implementation, Routt National Forest, Bears Ears Ranger District, Routt County, CO.

Summary: EPA expressed environmental concerns regarding the project's potential to impact water quality and beneficial uses. EPA requested additional information on water quality/quantity and on planned monitoring activities.

ERP No. D-AFS-L61188-WA Rating LO, Lower White Salmon River Wild and Scenic River Management Plan, Columbia River Gorge National Scenic Area Wild and Scenic River System, Implementation, Klickitat County, WA.

Summary: EPA has no objections to the proposed project. The five alternatives will provide varying degrees of protection to the resources in the lower White Salmon River corridor.

ERP No. D-AFS-L61189-WA Rating LO, Lower Klickitat River Wild and Scenic River Management Plan, National Wild and Scenic Rivers System, Implementation, Columbia River Gorge National Scenic Area, Klickitat County, WA.

Summary: EPA has no objections to the proposed project. The four action alternatives will provide varying degrees of protection to the resources in the lower Klickitat River corridor.

ERP No. D-AFS-L65140-ID Rating LO, Horizon Forest Resource Area, Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forests, Fernan Ranger District, Kootenai County, ID.

Summary: EPA has no objections to the proposed project. The draft EIS identifies no adverse environmental effects for the Horizon Forest Resources Area.

ERP No. D-CDB-C82029-NY Rating EC2, Marina Redevelopment Project Area, Development and Construction, Urban Development Action Grant (UDAG) and COE Nationwide Permit, Village of Port Chester, Westchester County, NY.

Summary: EPA expressed environmental concerns about the potential impacts resulting form disturbing contaminated soil/fill, use of rodent control measures, lack of detailed information regarding the marine and esplanade design. EPA requested that additional information be presented in the final EIS to address these issues.

ERP No. D-FHW-K40177-CA Rating EC2, CA-198 Freeway Improvements, Plaza Road to Mooney Boulevard, Funding, City of Visalia, Tulare County, CA.

Summary: EPA expressed concerns that the project may delay attainment of Federal air quality standards or cause additional air quality violations. EPA requested that FHWA analyze mitigation to avoid potential adverse air quality impacts. EPA requested the avoidance of adverse impacts to waters of the U.S. under section 404 of the Clean Water Act and a commitment to implement mitigation to minimize water pollution from nonpoint sources.

Final EISs

ERP No. F-AFS-J65159-UT, Strawberry Valley Management Area Management Plan, Implementation, section 404 Permit, Uinta National Forest, Wasatch County, UT.

Summary: EPA supports the recommendation of the Forest Service interdisciplinary team that Alternative D be selected as the preferred alternative.

ERP No. F-AFS-K65123-CA, Baldy Fire Recovery Project, Implementation, Klamath National Forest, Happy Camp Ranger District, Siskiyou County, CA.

Summary: Review of the final EIS was not deemed necessarey. No formal letter was sent to the agency.

ERP No. F-FHW-D40237-VA, George P. Colemen Bridge Traffic Congestion Alleviation, York River Crossing Study, section 10 and 404 Permits, Coast Guard Permits and Funding, York and Glocester Counties, VA.

Summary: EPA expressed concerns regarding the adequacy of the selected alternatives to meet traffic projections.

ERP No. F-UAF-K11035-CA, Norton Air Force Base (AFB) Closure, 63rd Military Airlift Wing, Relocation to March AFB, Implementation, San Bernardino County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-USN-K11038-HI, Pearl Harbor Naval Base Development, Access Improvements and Further Development of Ford Island and Construction of Facilities to Implement the Relocation of Battleship and Cruisers, Implementation, Oahu, HI.

Summary: EPA requested that the Navy collect and analyze additional sediment samples in the proposed dredging areas in order to better characterize the potential effects of dredging and ocean disposal actions on water quality and marine biota. EPA also requested that the Navy participate in the Army Corps' long-term monitoring

program on the effects of ocean disposal of dredged materials. EPA expressed concerns that the final EIS did not fully disclose all known hazardous waste contamination sites at Pearl Harbor.

ERP No. FS-COE-L36007-00, McNary Lock and Dam Project, Juvenile Fish Loading and Holding Facility Expansion, Implementation, Umatilla County, OR and Benton County, WA.

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

Dated: October 2, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-23659 Filed 10-4-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3699-8]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed September 24, 1990 Through September 28, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900364, Draft EIS, BLM, KS, Kansas Comprehensive Resource Management Plan (RMP), Oil and Gas Leasing and Development, Implementation, Several Counties, KS, *Due:* January 7, 1991, *Contact:* Paul Tanner (406) 231-5491.

EIS No. 900365, Final EIS, REA, VA, Clover Units 1 and 2, Coal-Fired Generating Station and Related Transmission Facilities, Construction and Operation, Licensing and Approval, Halifax County, Va, *Due:* November 5, 1990, *Contact:* Larry A. Belluzzo (202) 382-1420.

EIS No. 900366, Draft EIS, FHW, NC, NC-64/Pittsboro Bypass Construction, NC-1514 to NC-86 near B. Everett Jordan Lake, Funding, Possible COE 404 Permit, Town of Pittsboro, Chatham County, NC, *Due:* November 19, 1990, *Contact:* Nicholas L. Graf (919) 790-2859.

EIS No. 900367, Draft Supplement, FHW, NM, NM-518/Santa Fe-Los Alamos Corridor Study-Phase C, Additional Information, Funding, Possible COE 404 Permit, Santa Fe, Los Alamos and Sandoval Counties, NM, *Due:* November 19, 1990, *Contact:* Gerald L. Eller (505) 988-6630.

EIS No. 900368, Draft Supplement, COE, GA, SC, Richard B. Russell Dam and Lake Project, Implementation, Updated Information on Pumped Storage Operations, Fish Protection Alternatives, section 404 Permit, Savannah District, Several Counties, GA and Several Counties SC, *Due:* November 19, 1990, *Contact:* David Coleman (912) 944-5792.

EIS No. 900369, Final EIS, AFS, OR, Winema National Forest, Land and Resource Management Plan, Implementation, Klamath County, OR, *Due:* November 5, 1990, *Contact:* J. L. Christensen (503) 883-6714.

Amended Notices

EIS No. 900300, Draft EIS, USA, CA, GA, KY, MD, NC, CO, HI, MO, PA, SC, TX, WA, DC, Presidio of San Francisco Army Base, Closure and Relocation to other Facilities, Implementation, Alternates are in CA, CO, GA, HI, KY, MD, MO, NC, PA, SC, TX, WA and DC, *Due:* October 15, 1990, *Contact:* Bob Verkade (916) 551-2251. Published FR 8-17-90—Review period extended.

EIS No. 900330, Draft EIS, FAA, NY, Stewart International Airport Properties Improvement, Orange County, NY, *Due:* November 26, 1990, *Contact:* Frank Squeglia (718) 917-0002. Published FR 9-07-90—Review period extended.

Dated: October 2, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-23658 Filed 10-4-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3850-5]

Proposed Administrative Penalty Assessment and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. section 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. section 1319(g)(4)(a).

Class I proceedings are conducted under EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures. The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Guidance. The deadline for submitting public comment on a proposed Class I order is thirty (30) days after issuance of public notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of the Masonite Corporation—Ukiah mill, located at 300 Ford Road, Ukiah, California; EPA Docket No. CWA-IX-FY90-36; filed on 21 September 1990, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 1235 Mission St., San Francisco, California 94103, (415) 556-3967; proposed penalty of $25,000 for bypass of its wastewater treatment system and failure to report said bypass in violation of NPDES Permit No. CA0005606.

FOR FURTHER INFORMATION:

Persons wishing to receive a copy of EPA's Guidance, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: September 21, 1990.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 90-23644 Filed 10-4-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request to review and approve changes to the information collection identified below.

Type of review: Revision of a currently approved collection.

Title: Foreign Branch Report of Condition.

Form Number: FFIEC 030.

OMB Number: 3064-0011.

Expiration date of OMB clearance: June 30, 1993.

Frequency of response: Annually.

Respondents: Foreign branches of insured state nonmember banks.

Number of respondents: 55.

Number of responses per respondent: 1.

Total annual responses: 55.

Average number of hours per response: 3.25.

Total annual burden hours: 179.

OMB reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project (3064-0011), Washington, DC 20503.

FDIC contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted before October 22, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Form FFIEC 030 contains asset and liability information for foreign branches of insured banks. Two types of changes are proposed to this form: (1) A modest number of new items would be added, particularly in the area of off-balance sheet activity; and (2) branches with at least $2 billion in total assets or $5 billion in commitments to purchase foreign currencies or U.S. dollar exchange would report quarterly instead of annually. Other branches with significant risk may be required, on a case by case basis, to report quarterly as well. However, this change in reporting frequency for "significant branches" is not expected to affect any foreign branches of state nonmember banks at present.

Dated: October 2, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-23657 Filed 10-4-90; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed; Marine Terminals Corporation

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-010627-001.

Title: The City of Los Angeles/Marine Terminals Corporation (of Los Angeles) Marine Terminal Agreement.

Parties: The City of Los Angeles (City), Marine Terminals Corporation (of Los Angeles) (MTC).

Filing Party: Mr. Raymond P. Bender, Assistant City Attorney, City of Los Angeles, 425 S. Palos Verdes St., P.O. Box 151, San Pedro, CA 90733-0151.

Synopsis: The Agreement sets forth compensation adjustments in accordance with procedures prescribed in the basic agreement. The Agreement increases the minimum annual guarantee to $830,875. MTC will pay 100% of all tariff charges to the City and is entitled to share wharfage and dockage charges on a 50%/50% basis after the City has been paid the minimum annual guarantee.

By Order of the Federal Maritime Commission.

Dated: October 1, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-23549 Filed 10-4-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.02 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-003565-004.

Title: Puerto Rico Ports Authority/Sea-Land Service, Inc. Terminal Agreement.

Parties: Puerto Rico Ports Authority (PRPA), Sea-Land Service, Inc. (Sea-Land).

Filing Party: Ms. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936-2829.

Synopsis: The Agreement amends the basic agreement to provide Sea-Land the right to construct and use a one-story building on "Area C" at Puerto Nuevo, San Juan, Puerto Rico. The Agreement also revises the annual fee payable to PRPA for the right of preference in certain berthing, apron and cargo-in-transit areas.

By order of the Federal Maritime Commission.

Dated: October 2, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-23661 Filed 10-4-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to

the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-010626.

Title: The City of Los Angeles/Marine Terminals Corporation (of Los Angeles) Marine Terminal Agreement.

Parties: The City of Los Angeles (City), Marine Terminals Corporation (of Los Angeles) (MTC).

Filing Party: Mr. Raymond P. Bender, Assistant City Attorney, City of Los Angeles, 425 S. Palos Verdes St., P.O. Box 151, San Pedro, CA 90733-0151.

Synopsis: The Agreement sets forth compensation adjustments in accordance with procedures prescribed in the basic agreement. The Agreement increases the minimum annual guarantee to $830,875. MTC will pay 100% of all tariff charges to the City and is entitled to share wharfage and dockage charges on a 50%/50% basis after the City has been paid the minimum annual guarantee.

By Order of the Federal Maritime Commission.

Dated: October 1, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-23548 Filed 10-4-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-003565-003.

Title: Puerto Rico Ports Authority/Sea-Land Service, Inc. Terminal Agreement.

Parties: Puerto Rico Ports Authority (PRPA), Sea-Land Service, Inc. (Sea-Land).

Filing Party: Ms. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936-2829.

Synopsis: The Agreement amends the basic agreement to provide Sea-Land the right to construct and use a one-story building on "Area C" at Puerto Nuevo, San Juan, Puerto Rico. The Agreement also revises the annual fee payable to PRPA for the right of preference in certain berthing, apron and cargo-in-transit areas.

By order of the Federal Maritime Commission.

Dated: October 2, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-23660 Filed 10-4-90; 8:45 am]

BILLING CODE 6730-01-M

commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1990.

Board of Governors of the Federal Reserve System, October 1, 1990.

Jennifer J. Johnson,

Associated Secretary of the Board.

[FR Doc. 90-23589 Filed 10-4-90; 8:45 am]

BILLING CODE 6210-01-M

Farmers Loan and Trust, Columbia City, Indiana.

3. *WCN Bancorp,* Wisconsin Rapids, Wisconsin; to acquire 51 percent of the voting shares of Community State Bancshares, Wisconsin Rapids, Wisconsin, and thereby indirectly

the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200423.

Title: Maryland Port Administration/Hale Container Line, Inc. Terminal Agreement.

Parties: Maryland Port Administration (MPA), Hale Container Line, Inc. (Hale).

Synopsis: The Agreement provides for Hale's lease of 2.5 acres at MPA's Dundalk Marine Terminal. MPA will provide Hale one container crane upon 24 hours' notice. The Agreement sets forth the charges Hale will pay MPA, and it has a 1-year term beginning October 1, 1990.

Agreement No.: 224–200421.

Title: Georgia Ports Authority/Polish Ocean Line Terminal Agreement.

Parties: Georgia Ports Authority (GPA), Polish Ocean Line (POL).

Synopsis: The Agreement provides for POL's 10-year non-exclusive use of GPA's Garden City Terminal for conducting cargo service through the Port of Savannah, Georgia. All cargo moving in POL's operation and all other services provided by GPA will be governed by GPA's Terminal Tariff No. 1–F, subject to a sliding wharfage rate schedule and other charges as agreed to by the parties.

By Order of the Federal Maritime Commission.

Dated: October 2, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90–23662 Filed 10–4–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bankers Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Corp.*, Perth Amboy, New Jersey; to engage *de novo* through its subsidiary, Interim Federal Savings Bank, Perth Amboy, New Jersey, in the acquisition of certain branches of Carteret Savings Bank, FA, Morristown, New Jersey, and thereby engage in operating a savings and loan institution pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to engage *de novo* through its subsidiary, NBD Financial Services of Michigan, Inc., Detroit, Michigan, in acting as investment or financial advisor to the extent of providing portfolio investment advice to institutional investors pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mid-America Bancorp*, Louisville, Kentucky; to engage *de novo* through its subsidiary, MABC Leasing Company, Louisville, Kentucky, in originating commercial equipment leases through relationships with equipment vendors, various end-users requesting lease services, and from lease broker referrals, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lamar Trust Bancshares, Inc.*, Lamar, Missouri; to engage *de novo* in providing data processing services to financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–23568 Filed 10–4–90; 8:45 am]

BILLING CODE 6210–01–M

Credit Lyonnais, et al.; Acquisitions of Companies Engaged in Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Credit Lyonnais*, Paris, France; to engage *de novo* through its subsidiary, International Advisors & Co., New York, New York, in acting as financial advisor to provide corporate finance advisory services to institutional customers, including advice with respect to structuring, financing and negotiating domestic and international mergers, acquisitions, joint ventures, divestitures, leveraged buyouts, capital-raising vehicles, interest rate and currency swaps and similar hedging devices, and other corporate transactions, and to provide ancillary services or functions incidental to the foregoing activities; performing feasibility studies for institutional customers, principally in the context of determining the financial attractiveness and feasibility of particular corporate transactions; providing valuation services in connection with the foregoing; and rendering fairness opinions in connection with corporation transactions. *The Fuji Bank Ltd.*, 75 Federal Reserve Bulletin 577 (1989) and *Signet Banking Corp.*, 73 Federal Reserve Bulletin 59 (1987).

2. *The Long-Term Credit Bank of Japan, Ltd.*, Tokyo, Japan; to engage *de novo* through its subsidiary, Greenwich Capital Markets, Inc., Greenwich, Connecticut, in providing advice regarding the structuring of and arranging for, loan syndications, interest rate "swaps", interest rate "caps" and similar transactions; providing advice in connection with financing transactions for nonaffiliated financial and nonfinancial institutions; providing valuation services for nonaffiliated financial and nonfinancial institutions; advising nonaffiliated financial and nonfinancial institutions in connection with merger, acquisition, and divestiture considerations; rendering fairness opinions in connection with merger, acquisition, and similar transactions for nonaffiliated financial and nonfinancial institutions; and conducting feasibility studies for corporations. *Sun Trust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988).

Board of Governors of the Federal Reserve System, October 1, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–23569 Filed 10–4–90; 8:45 am]

BILLING CODE 6210–01–M

Grove Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 25, 1990.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Grove Bancorp, Inc.*, Brighton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Grove Bank for Savings, Brighton, Massachusetts, which engages in the sale and underwriting of Massachusetts Savings Bank Life Insurance activities.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First National Bancorp, Inc.*, Joliet, Illinois; to acquire 100 percent of the voting shares of Bank of Lockport, Lockport, Illinois.

2. *INB Financial Corporation*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of F L & T Financial Corporation, Columbia City, Indiana, and thereby indirectly acquire Farmers Loan and Trust, Columbia City, Indiana.

3. *WCN Bancorp*, Wisconsin Rapids, Wisconsin; to acquire 51 percent of the voting shares of Community State Bancshares, Wisconsin Rapids, Wisconsin, and thereby indirectly acquire Community State Bank, Wisconsin Rapids, Wisconsin.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *CN Bancorp, Ltd.*, Taipei, Taiwan, and CNB Bancorp, San Francisco, California; to acquire 80 percent of the voting shares of Alvarado Bank, Richmond, California.

Board of Governors of the Federal Reserve System, October 1, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–23560 Filed 10–4–90; 8:45 am]

BILLING CODE 6210–01–M

Michael Gordon Murphy, et al.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Michael Gordon Murphy*, Houston, Texas; to acquire 5.17 percent; Fred Dean Herring, Houston, Texas, to acquire 5.17 percent; and Carl Fred Allen, Houston, Texas, to acquire 5.17 percent of the voting shares of Foremost Bancshares, Inc., Houston, Texas, and thereby indirectly acquire South Main Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, October 1, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–23591 Filed 10–4–90; 8:45 am]

BILLING CODE 6210–01–M

Wayland, Michigan, and thereby engage in the sale of general insurance pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Wayland, Michigan.

Board of Governors of the Federal Reserve System, October 1, 1990.

Comments were filed and considered by the Commission. The Commission modified the consent order in three respects. Under the first modification, AICPA can prohibit CPAs from providing audit and other attest services for a contingent fee or commission to

and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Copies of the report may be obtained from National Academy Press (NAP), 2101 Constitution Ave. NW., Washington, DC

Dated: September 28, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–23524 Filed 10–4–90; 8:45 am]

BILLING CODE 4160–01–M

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance

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Board of Governors of the Federal Reserve System, October 1, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-23591 Filed 10-4-90; 8:45 am]
BILLING CODE 6210-01-M

United Community Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throught the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *United Community Financial Corporation*, Wayland, Michigan; to acquire LaValley Associates, Inc., Wayland, Michigan, and thereby engage in the sale of general insurance pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Wayland, Michigan.

Board of Governors of the Federal Reserve System, October 1, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-23592 Filed 10-4-90; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. C-3297]

American Institute of Certified Public Accountants; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Consent Order.

SUMMARY: The consent order in this matter settles alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition. It prohibits, among other things, the American Institute of Certified Public Accountants (AICPA) from restricting CPAs from providing professional services for a contingent fee or a disclosed commission to any person for whom the CPA involved in any particular situation is not also performing an attest service. Respondent also is prohibited from restricting CPAs' use of referral fees that are disclosed, and from preventing CPAs' use of truthful, non-deceptive advertising, solicitation, or trade names. In addition, AICPA is required to distribute a copy of the order and any revised ethics rules to its members.

DATES: Complaint and Order issued July 28, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Seth Zimmerman, FTC/S-3308, Washington, DC 20580. (202) 326-2914.

SUPPLEMENTARY INFORMATION: On Tuesday, April 4, 1989, there was published in the **Federal Register**, 54 FR 13529, a proposed consent agreement with analysis In the Matter of American Institute of Certified Public Accountants, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission modified the consent order in three respects. Under the first modification, AICPA can prohibit CPAs from providing audit and other attest services for a contingent fee or commission to clients for whom they have provided—rather than just offered to provide—non-attest services. The second modification clarifies that AICPA can prohibit CPAs from receiving commissions from their audit or other attest clients. Under the third modification, AICPA can prohibit CPAs from accepting contingent fees for preparing tax returns or tax-refund claims. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings, and entered a revised order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,
Secretary.
[FR Doc. 90-23612 Filed 10-4-90; 8:45 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint, the Decision and Order, and the separate statements of Commissioner Azcuenaga and Commissioner Owen are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0135]

National Academy of Sciences, Institute of Medicine Report on Nutrition Labeling; Availability

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the public availability of a report of the National Academy of Sciences, Institute of Medicine (IOM), entitled "Nutrition Labeling: Issues and Directions for the 1990's." As part of its overall effort to reform the food label, and in conjunction with its recently published proposal on nutrition labeling, FDA is inviting comments on this report.

DATES: Comments by November 16, 1990.

ADDRESSES: Submit written comments on "Nutrition Labeling: Issues and Directions for the 1990's" to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Comments should be idenfitied with the docket number found in brackets in the heading of this document. The report and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Copies of the report may be obtained from National Academy Press (NAP), 2101 Constitution Ave. NW., Washington, DC 20418. Orders must reference order number ISBN 4326 and include payment of $24.95 for each copy of the document. A discount is available on orders of five or more copies. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or billing arrangements made with NAP. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NAP at 1-800-624-6242.

FOR FURTHER INFORMATION CONTACT: John Vanderveen, Center for Food Safety and Applied Nutrition (HFF-260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1064.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 19, 1990 (55 FR 29487), FDA proposed to amend its food labeling regulations to require nutrition labeling on most food products that are meaningful sources of nutrition and to revise the list of required nutrients and the conditions for listing nutrients in nutrition labeling. In that document, FDA pointed to the fact that the IOM was developing a report, under contract with the Public Health Service, Department of Health and Human Services and the Food Safety and Inspection Services, United States Department of Agriculture, on options for changes in food labeling that will assist consumers in implementing the recommendations of the Surgeon General's Report on Nutrition and Health (55 FR 29487 at 29508). The agency noted that the report was due in September of 1990, and that FDA would consider that report in formulating the final rule based on the mandatory nutrition labeling proposal.

The agency is now announcing its receipt, and the availability of the report. It is providing an opportunity for interested persons to comment on the implicationss of the IOM report for the mandatory nutrition labeling proposal and on the other proposals that the agency has issued or will issue on food labeling. The agency will consider these comments, as well as the report, in formulating its final rule. All comments must be received by November 16, 1990, the date that the comment period on the mandatory nutrition labeling proposal closes.

Dated: September 28, 1990.
Ronald G. Chesemore,
Associate Commissioner for Regulatory Affairs.
[FR Doc. 90-23524 Filed 10-4-90; 8:45 am]
BILLING CODE 4160-01-M

National Institutes of Health

Establishment of Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L 92-463, 86 Stat. 770-776) and section 413(b)(7) of the Public Health Service Act, as amended (42 U.S.C. Code 285a-2) the Acting Director, National Institutes of Health, announced the establishment by the Director, National Cancer Institute, of The American Stop Smoking Intervention Study (ASSIST) Committee.

The American Stop Smoking Intervention Study will assist and advise the Director, National Cancer Institute, through the Director, Division of Cancer Prevention and Control concerning the scientific conduct of the ASSIST demonstration project.

Unless renewed by appropriate action, The American Stop Smoking Intervention Study shall terminate two years from the date of establishment.

Dated: September 27, 1990.
William F. Raub,
Acting Director, National Institutes of Health.
[FR Doc. 90-23609 Filed 10-4-90; 8:45 am]
BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, October 31, 1990. The meeting will be held at the National Institutes of Health, 7550 Wisconsin Avenue, Federal Building, Conference room B1-19, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institutes of Health, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: September 28, 1990.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 90-23607 Filed 10-4-90; 8:45 am]
BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, October 5, 1990, Building 31, Conference Room 7, C-Wing, Bethesda, Maryland, which was published in the **Federal Register** on September 18, (48 FR 38398-7).

The meeting was cancelled and will be rescheduled at a later date in order to coordinate travel of members in conjunction with other meetings being held in the Washington metropolitan area.

Dated: September 28, 1990.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 90-23608 Filed 10-4-90; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, September 21, 1990.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Monthly Vital Statistics—0920-0213—Monthly vital statistics at the State and national level are required by the Bureau of the Census in the preparation of population estimates and projections. They are widely used by the health community in tracking trends, and by the public sector for marketing

and research purposes. Respondents: State or local governments; Number of Respondents: 164; Number of Responses per Respondent: 12; Average Burden per Response: .1 hour; Estimated Annual Burden: 197 hours.

2. Piedmont Health Survey of the Elderly—0925-0044—This survey will collect information on the health status of elderly persons in the Piedmont region of North Carolina. Respondents: Individuals or households; Number of Respondents: 2,256; Number of Responses per Respondent: 1; Average Burden per Response: .193 hours; Estimated Annual Burden: 440 hours.

3. Print and Broadcast Media Pretesting—0925-0046—To help ensure that print and broadcast health communications are effective, they must be pretested with the audiences for which they are intended. Respondents: Individuals or households; Number of Respondents: 1; Average Burden per Response: .50 hour; Estimated Annual Burden: 1,400 hours.

4. AIDS Cost and Services Utilization Survey—NEW—This survey will obtain health care resources utilization, cost and insurance information from patients

The Sloan area, T. 23 S., R. 61 E., all of sections 29, 30, 31, and 32. T. 23 S., R. 60 E., all of sections 25, 35, and 36. The Hidden Valley area, T. 24 S., R. 61 E., all of sections 1 through 36. T. 24 S., R. 60 E., all of sections 1 through 36. The Jean, Nevada and the Jean Dry Lake areas, T. 25 S., R. 60 E., all of sections 1 through 36. T. 25 S., R. 59 E., all of sections 1 through 36. The McCullough

number of horses expected to be gathered will be between 1,000 and 1,250 depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to

T. 8 S., R. 44 E.,
Sec. 19, lots 5 and 6;
Sec. 30, lots 19 and 20;
Sec. 31, lots 5, 6, 15 and 16
T. 9 S., R. 44 E.,
Sec. 2, NE¼SE¼;
Sec. 6, lots 1, 2, 8-16, W½SE¼;
Sec. 7, lots 8, 15, 16, 19, 20, S½SE¼;
Sec. 8, SW¼;

and research purposes. Respondents: State or local governments; Number of Respondents: 164; Number of Responses per Respondent: 12; Average Burden per Response: .1 hour; Estimated Annual Burden: 197 hours.

2. Piedmont Health Survey of the Elderly—0925-0297—This is a request for approval of the fourth telephone followup interview with study participants. This prospective epidemiologic study is comparing and contrasting the influence of physiological, behavioral, social and environmental forces on mortality, morbidity and health services utilization of the elderly in five North Carolina counties. Respondents: Individuals or households; Number of Respondents: 2,256; Number of Responses per Respondent: 1; Average Burden per Response: .193 hours; Estimated Annual Burden: 440 hours.

3. Print and Broadcast Media Pretesting—0925-0046—To help ensure that print and broadcast health messages produced by the Office of Cancer Communications (OCC) have the potential of being received, understood, and accepted by their target audiences, OCC will pretest messages while they are in draft stages. Approximately 2,800 respondents will be interviewed per year in the pretests of four public service announcements and ten print messages. Respondents: Individuals or households; Number of Respondents: 2,800; Number of Responses per Respondent: 1; Average Burden per Response: .50 hour; Estimated Annual Burden: 1,400 hours.

4. AIDS Cost and Services Utilization Survey—NEW—This survey will obtain health care resources utilization, cost and insurance information from patients with AIDS and other HIV-related illnesses across the country and from their providers. Data will be used to estimate total resources used by patients and variations in patterns of use in order to guide policymakers in decisions regarding allocations of resources. Respondents: Individuals or households, businesses or other for-profit, nonprofit institutions, small businesses or organizations.

	No. of Respondents	No. of Hours Per Response	No. of Responses Per Respondent
Patient Survey	2,067	.55 hrs.	3
Provider Survey	945	2.5 hrs.	1.5

Estimated Annual Burden: 6,980 hours

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3002, Washington, DC 20503

Date: September 28, 1990.

James M. Friedman,
Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-23510 Filed 10-4-90; 8:45 am]
BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-02]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: October 5, 1990.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: September 27, 1990.

Paul Roitman Bardack,
Deputy Assistant Secretary for Economic Development.

[FR Doc. 90-23429 Filed 10-4-90; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-08-4333-11; NVS-90-27]

Nevada; Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the 1990 Gold Coast 300 Off-Highway Vehicle (OHV) Race

ACTION: Certain public lands in the Las Vegas District, Clark County, Nevada, on and adjacent to the 1990 Gold Coast 300 race course on October 13, 1990. Access will be limited to race officials, permittee(s) and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada will be temporarily closed to public access from 0001 hours, October 13, 1990, to 2400 hours, October 13, 1990, to protect persons, property, and public land resources on and adjacent to the 1990 Gold Coast 300 OHV race course. Spectators are restricted to the Start/Finish, and the high speed test section, miles 55.0 to 59.3 along the paved frontage road only. These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1990 Gold Coast 300 OHV race course.

The following public lands restricted or closed are described as:

The Sloan area, T. 23 S., R. 61 E., all of sections 29, 30, 31, and 32. T. 23 S., R. 60 E., all of sections 25, 35, and 36. The Hidden Valley area, T. 24 S., R. 61 E., all of sections 1 through 36. T. 24 S., R. 60 E., all of sections 1 through 36. The Jean, Nevada and the Jean Dry Lake areas, T. 25 S., R. 60 E., all of sections 1 through 36. T. 25 S., R. 59 E., all of sections 1 through 36. The McCullough Mountain area, T. 25 S., R. 61 E., all of sections 1 through 36. T. 25 S., R. 62 E., all of section 18. T. 26 S., R. 60 E., all of sections 1 through 36. The Roach Dry Lake area, T. 26 S., R. 59 E., all of sections 1 through 36.

The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM office: the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646-5000. Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated: September 27, 1990.

Ben F. Collins,
District Manager, Las Vegas, NV.

[FR Doc. 90-23531 Filed 10-4-90; 8:45 am]
BILLING CODE 4310-HC-M

[OR-020-00-4370-12; GPO-411]

Oregon Wild Horse Gathering Schedule; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Burns District Office: Statewide wild horse gathering schedule public meeting.

SUMMARY: In accordance with Public Law 92-195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horses and the proposed gathering schedule in Oregon for FY 91 and 92.

DATES: October 15, 1990, 3 p.m. to 4:30 p.m.

ADDRESSES: The meeting will take place at the BLM Burns District Office in Hines, Oregon.

FOR FURTHER INFORMATION CONTACT: Donald R. Cain, Acting District Manager, Burns District, Bureau of Land Management, HC 74-12533 Hwy. 20 West, Hines, Oregon 97738—Telephone (503) 573-5241.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout southeastern Oregon in Fiscal Year 1991 and 1992 will be discussed along with other aspects of the program and adoption process. Information concerning the gathering of all Oregon wild horse herds will be presented at the meeting. The total number of horses expected to be gathered will be between 1,000 and 1,250 depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, HC 74-12533 Hwy. 20 West, Hines, Oregon 97738 by October 8, 1990. Written statements must be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: September 19, 1990.

Donald R. Cain,
Acting District Manager.

[FR Doc. 90-23552 Filed 10-4-90; 8:45 am]
BILLING CODE 4310-33-M

[MT-930-00-4212-12; MTM 78518]

Notice of Conveyance and Order Providing for Opening of Public Land in Big Horn County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

Since scattered federal parcels were transferred and wildlife habitat, recreation lands, and public access were acquired, the public interest was well served through completion of this exchange.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to Sec. 206 of FLPMA, the following described lands were transferred to Charles F. Conley:

Principal Meridian, Montana

T. 8 S., R. 43 E.,
Sec. 17, N½SW¼;
Sec. 25, S½N½;
Sec. 26, SE¼NE¼;
Sec. 28, NW¼NE¼, SW¼NW¼, NW¼SW¼;
Sec.29, N½NE¼, SE¼NE¼;
Sec. 33, SW¼NE¼.

T. 8 S., R. 44 E.,
Sec. 19, lots 5 and 8;
Sec. 30, lots 19 and 20;
Sec. 31, lots 5, 6, 15 and 16

T. 9 S., R. 44 E.,
Sec. 2, NE¼SE¼;
Sec. 6, lots 1, 2, 8-18, W½SE¼;
Sec. 7, lots 6, 15, 16, 19, 20, S½SE¼;
Sec. 8, SW¼;
Sec. 9, S½SE¼;
Sec. 18, NE¼NE¼.

Aggregating 1,678.12 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate from Mr. Conley:

Principal Meridian, Montana

T. 9 S., R. 44 E.,
Sec. 11, W½SW¼;
Sec. 13, W½E½, W½;
Sec. 14, W½, SE¼;
Sec. 15, N½, SE¼;
Sec. 22, N½NE¼
Sec. 22, N½N½;
Sec. 24, NW¼NW¼.

Aggregating 1,800 acres.

3. The values of the Federal public land were appraised at $50,000 and the values of the private land were appraised at $50,400. The $400 difference in value was applied to the acquisition of two road easements from Mr. Conley and Lewie Fowler.

4. At 9 a.m. on December 5, 1990, the lands described in paragraph 2 above that were conveyed to the United States will be opened only to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 5, 1990 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 20, 1990.

James Binando,
Chief, Branch of Land Resources.

[FR Doc. 90-23483 Filed 10-4-90; 8:45 am]
BILLING CODE 4310-DN-M

[WAOR 45223]

Realty Action; Lease of Public Lands for Recreation and Public Purposes Ferry County, WA

AGENCY: Bureau of Land Management, Interior. (OR-130-01-4212-11; GP1-004)

SUMMARY: The following described lands have been examined and found suitable for classification for lease to the Ferry County Parks and Recreation District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Ferry

County proposes to use the lands for an ORV use area.

Willamette Meridian

T. 36 N., R. 33 E., Sec. 7, Lots 5, 11, 26, 28, 29 and 30 Sec. 18, Lot 15

Containing 52.72 acres more or less.

Lease of the land is consistent with current BLM land use planning and

States mining laws, but not from leasing under the mineral leasing laws. The Forest Service has requested cancellation of withdrawal application CACA 167 and further requested that the temporary segregation imposed by that application be terminated and the lands opened.

Minerals Management Service

[FES 90-29]

Alaska Region; Notice of Availability of the Final Environmental Impact Statement for Proposed Beaufort Sea Lease Sale 124

Learning Center, Gambell, Alaska; Golovin Community Library, Golovin, Alaska; Kavealock School Library, Kaktovik, Alaska; Kiana Elementary School Library, Kiana, Alaska; McQueen School Library, Kivalina, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Koyuk City Library, Koyuk, Alaska; Kegoayah

report. The Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control activities and the content of their annual report.

(9) Beatrice Foods Co. (a Delaware corporation)
(10) Beatrice Meats, Inc. (a Delaware corporation)
(11) Berger and Company (a California corporation)
(12) Berliner & Marx, Inc. (a Delaware corporation)
(13) Blue Coach Foods, Inc. (a Delaware

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County proposes to use the lands for an ORV use area.

Willamette Meridian

T. 36 N., R. 33 E., Sec. 7, Lots 5, 11, 26, 28, 29 and 30 Sec. 18, Lot 15

Containing 82.72 acres more or less.

Lease of the land is consistent with current BLM land use planning and would be in the public interest.

The lease, when issued, will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights, including but not limited to any mining claims, right-of-way, permit or lease of record.

Detailed information concerning this action is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington, 99202.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Spokane District Office, East 4217 Main Avenue, Spokane, Washington, 99202. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Date of Issue: September 28, 1990.

Joseph K. Bussing,

District Manager.

[FR Doc. 90-23328 Filed 10-4-90; 8:45 am]

BILLING CODE 4310-03-M

[CA-940-00-4214-10; CACA 167]

California; Notice of Termination of Segregation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect imposed by notation to the official records of application CACA 167 filed on February 6, 1973, by the Forest Service, U.S. Department of Agriculture, for the withdrawal of certain National forest system lands from appropriation under the United States mining laws, but not from leasing under the mineral leasing laws. The Forest Service has requested cancellation of withdrawal application CACA 167 and further requested that the temporary segregation imposed by that application be terminated and the lands opened.

EFFECTIVE DATE: October 26, 1990.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, Federal Office Building, 2800 Cottage Way, room E-2841, Sacramento, California 95825, (916) 978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The segregative effect imposed by withdrawal application CACA 167, filed February 6, 1973, which segregated the following lands within the Shasta-Trinity National Forest from appropriation under the United States mining laws is hereby terminated.

Mount Diablo Meridian

T. 29 N., R. 10 W.,
Sec. 11, SW¼SW¼SW¼;
Sec. 14, S½SE¼, NW¼SE¼, S½NE¼SE¼;
Sec. 23, N½N½NE¼.

The areas described contain 190 acres in Shasta and Trinity Counties.

2. At 10 a.m. on November 3, 1990, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 24, 1990.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 90-23484 Filed 10-4-90; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

[FES 90-29]

Alaska Region; Notice of Availability of the Final Environmental Impact Statement for Proposed Beaufort Sea Lease Sale 124

The Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to the proposed 1991 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Beaufort Sea. The proposed Beaufort Sea Sale 124 will offer for lease approximately 22.1 million acres.

Single copies of the final EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503-4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261-4435.

Copies of the final EIS will also be available for inspection in the following public libraries: Arctic Environmental Information and Data Center, University of Alaska, 707 A Street, Anchorage, Alaska; Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska; Alaska Resources Library, U.S. Department of the Interior, Anchorage, Alaska; University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska; Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska; Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska; Alaska State Library, Juneau, Alaska; Alaska Field Operation Center Library, U.S. Department of Interior, Bureau of Mines, Juneau, Alaska; Juneau Memorial Library, 114-4th Street, Anchorage, Alaska; Kenai Community Library, 163 Main Street Loop, Kenai, Alaska; University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, Alaska; Kettleson Memorial Library, Sitka, Alaska; Soldotna Public Library, 235 Binkley Street, Soldotna, Alaska; Alakanuk Public Library, Alakanuk, Alaska; North Slope Borough School District Library/Media Center, Barrow, Alaska; Brevig Mission Community Library, Brevig Mission, Alaska; Buckland Public Library, Buckland, Alaska; Davis Menadelook Memorial H.S. Library, Diomede, Alaska; Elim Community Library, Elim, Alaska; Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska; university of Alaska, Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska; Gambell Community Library/

Learning Center, Gambell, Alaska; Golovin Community Library, Golovin, Alaska; Kaveolook School Library, Kaktovik, Alaska; Kiana Elementary School Library, Kiana, Alaska; McQueen School Library, Kivalina, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Koyuk City Library, Koyuk, Alaska; Kegoayah Kozga Public Library, Nome, Alaska; Noorvik Elementary/High School Library, Noorvik, Alaska; Tikigaq Library, Point Hope, Alaska; Savoonga Community Library, Savoonga, Alaska; Shaktoolik School Library, Shaktoolik, Alaska; Nellie Weyiouanna Ilisaavik Library, Shishmaref, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Kingikme Public Library, Wales, Alaska; Nuiqsut Library, Nuiqsut, Alaska; Northwest College Library, Nome, Alaska; and Z. J. Loussac Public Library, 3600 Denali, Anchorage, Alaska.

Dated: October 2, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 90-23642 Filed 10-4-90; 8:45am]

BILLING CODE 4310-MR-M

Colorado River Basin Salinity Control Advisory Council, Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council.

DATES: The meeting begins on Tuesday, October 23, 1990, at 1 p.m. and reconvenes on Wednesday, October 24, 1990, following the Colorado River Basin Salinity Control Forum meeting.

ADDRESSES: The meeting will be held at the Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, California 92109.

FOR FURTHER INFORMATION CONTACT: Mr. Stan W. Gappa, Colorado River Salinity Program Coordinator, Bureau of Reclamation, D-5090, P.O. Box 25007, Denver, CO 80225; telephone: (303) 236-6782.

SUPPLEMENTARY INFORMATION: Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control activities and the content of their annual report.

The meeting of the Advisory Council is open to the public. Any member of the public may file a written statement with the Council before, during, or after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

Dated: October 3, 1990.

Dennis B. Underwood,

Commissioner.

[FR Doc. 90-23640 Filed 10-4-90; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: Bucyrus-Erie Company, P.O. Box 500, 1100 Milwaukee Avenue, South Milwaukee, WI 53172.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Boonville Mining Services, Inc.—Delaware.
(ii) Minserco, Inc.—Delaware.

B.1. Parent corporation, address of principal office and state of incorporation: ConAgra, Inc., One ConAgra Drive, Omaha, NE 68102-5001 (a Delaware corporation).

2. Wholly owned subsidiaries which will participate in the operations, and state of incorporation:

(1) Ag-chem, Inc. (a Maryland corporation)
(2) Armour Food Express Company (a Delaware corporation)
(3) Atwood-Larson Company (a Minnesota corporation)
(4) Balcom Chemicals, Inc. (a Colorado corporation)
(5) BCF, Inc. (a Texas Corporation)
(6) Beatrice Cheese, Inc. (a Delaware corporation)
(7) Beatrice Cheese Trucking, Inc. (a Delaware corporation)
(8) Beatrice Company (a Delaware corporation)
(9) Beatrice Foods Co. (a Delaware corporation)
(10) Beatrice Meats, Inc. (a Delaware corporation)
(11) Berger and Company (a California corporation)
(12) Berliner & Marx, Inc. (a Delaware corporation)
(13) Blue Coach Foods, Inc. (a Delaware corporation)
(14) Blue Star Foods, Inc. (a Nebraska corporation)
(15) Caribbean Basic Foods Company (a Nebraska corporation)
(16) Central Valley Chemicals, Inc. (a Texas corporation)
(17) ConAgra Fertilizer Company (a Nebraska corporation)
(18) ConAgra International Fertilizer Company (a Delaware corporation)
(19) ConAgra International, Inc. (a Delaware corporation)
(20) ConAgra Pet Products Company (a Delaware corporation)
(21) ConAgra Poultry Company (a Delaware corporation)
(22) ConAgra Transportation, Inc. (an Oklahoma corporation)
(23) Cook Family Foods, Ltd. (a Pennsylvania corporation)
(24) Cook Family Foods, Ltd. of Kentucky (a Kentucky corporation)
(25) County Line Cheese Co., Inc. (an Indiana corporation)
(26) CTC North America, Inc. (a Delaware corporation)
(27) Dixie Ag Supply, Inc. (an Alabama corporation)
(28) E.A. Miller, Inc. (a Utah corporation)
(29) Enterprise, Inc. (a Texas corporation)
(30) General Spice, Inc. (a New Jersey corporation)
(31) General Spice, Inc. (a Massachusetts corporation)
(32) General Spice, Inc. (a Michigan corporation)
(33) Grower Service Corporation (a New York corporation)
(34) HACO, Inc. (an Illinois corporation)
(35) HACCO, Inc. (a Wisconsin corporation)
(36) Hess & Clark, Inc. (an Ohio corporation)
(37) Hunt Foods and Industries, Inc. (a Delaware corporation)
(38) Hunt-Wesson Foods International, Ltd. (a Delaware corporation)
(39) Interstate Feeders, Inc. (a Utah corporation)
(40) L.L. Cheese Co., Inc. (a Delaware corporation)
(41) Lauridsen Foods, Inc. (an Iowa corporation)
(42) Longmont Transportation Co., Inc. (a Colorado corporation)
(43) Loveland Industries, Inc. (a Colorado corporation)
(44) Lynn Transportation Company, Inc. (an Iowa corporation)
(45) M-ROC, Inc. (a Delaware corporation)
(46) M & R Distributing Company (a Minnesota corporation)
(47) Mid Valley Chemicals, Inc. (a Texas corporation)
(48) Midwest Agriculture Warehouse Co. (a Nebraska corporation)
(49) Miller Bros. Co. (a Utah corporation)

(50) Molinos de Puerto Rico, Inc. (a Nebraska corporation)
(51) Monfort Energy Resources, Inc. (a Colorado corporation)
(52) Monfort Food Distributing Company (a Colorado corporation)
(53) Monfort International Sales Corporation (a Colorado corporation)
(54) Monfort Lamb Company (a Delaware corporation)
(55) Monfort, Inc. (a Delaware corporation)
(56) Monfort Transportation Company (a Colorado corporation)
(57) Northwest Chemical Corporation (an Oregon corporation)
(58) O'Donnell-Usen Fisheries Corporation (a Massachusetts corporation)
(59) Omaha Vaccine Co., Inc. (a Nebraska corporation)
(60) Ostlund Chemical Company (a North Dakota corporation)
(61) Peavey Marts, Incorporated (a Minnesota corporation)
(62) Platte Chemical Co. (a Nebraska corporation)
(63) PRO-Vet Companies, Inc. (a Delaware corporation)
(64) Public Grain Elevator of New Orleans, Inc. (a Louisiana corporation)
(65) Pueblo Chemical & Supply Co. (a Colorado corporation)
(66) Scentry, Inc. (a Delaware corporation)
(67) Sheepskin Products, Inc. (a Colorado corporation)
(68) SIPCO, Inc. (a Delaware corporation)
(69) Snake River Chemicals, Inc. (an Idaho corpuration)
(70) Spencer Beef Corporation (a Utah corporation)
(71) Swift & Company (a Delaware corporation)
(72) Swift & Company (KY) (a Kentucky corporation)
(73) Swift & Company (NJ) (a New Jersey corporation)
(74) Swift & Company Packers (a Nevada corporation)
(75) Swift-Eckrich, Inc. (a Delaware corporation)
(76) Swift Independent Corporation (a Delaware corporation)
(77) Swissrose International, Inc. (a New Jersey corporation)
(78) To-Ricos, Inc. (a Nebraska corporation)
(79) Trans-Agra International, Inc. (a Wyoming corporation)
(80) Transbas, Inc. (a Tennessee corporation)
(81) Tri River Chemical Company, Inc. (a Washington corporation)
(82) Tri State Chemicals, Inc. (a Texas corporation)
(83) Tri State Delta Chemicals, Inc. (a Mississippi corporation)
(84) Tropmi Import Co. (a Florida corporation)
(85) UAP/GA AG CHEM, Inc. (a Georgia corporation)
(86) UAP Special Products, Inc. (a Nebraska corporation)
(87) United Agri Products, Inc. (a Delaware corporation)
(88) United Agri Products-Florida, Inc. (a Florida corporation)
(89) Val-Agri, Inc. (a Texas corporation)
(90) Westchem Agricultural Chemicals, Inc. (a Colorado corporation)
(91) Willow Creek Talc, Inc. (a Montana corporation)
(92) Winters Canning Co. (a California corporation)
(93) Woodward & Dickerson Japan, Ltd. (a Pennsylvania corporation)
(94) Yellowstone Valley Chemicals, Inc. (a Montana corporation)

C.1. Parent: Mallard Coach Company, Inc. (IN Corporation), 2404 E. Market, Nappanee, IN 46550.

2. 100% Wholly-owned Subsidiaries:

MDT, Inc. also d/b/a (IN Corporation)
"Hoosier Driver"
Overland Industries, Inc. (CA Corporation)
Real-Lite, Inc. (MI Corporation)
Sprinter Recreational Vehicles, Inc. (IN Corporation)

D. 1. Parent corporation and address of principal office: Schepps-Foremost, Inc., 3114 South Haskell, Dallas, Texas 75223.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Oak Farms Inc. (incorporated in Delaware)
(ii) Dairy Transport, Inc. (incorporated in Delaware)

E. 1. Parent corporation and address of principal office: Sara Lee Corporation, Three First National Plaza, Chicago, Illinois 60602–4260.

2. Wholly-owned subsidiaries which will participate in the operations, the address of their respective principal offices and their states of incorporation:

Name	State of incorporation
Adams-Millis Corporation	North Carolina.
Bali Company	Delaware.
Bil Mar Foods, Inc	Delaware.
Bil Mar Farms, Inc	Delaware.
Booth Fisheries Corporation	Delaware.
Bryan Foods, Inc	Mississippi.
Champion Products Inc	New York.
Circle T Foods Company, Inc	Texas.
Coach Leatherware Company, Inc.	New Jersey.
Coach Leatherware New York, Inc.	New York.
Coach Stores, Inc	Delaware.
Droste U.S.A. Limited	Delaware.
Epic Company, Inc	Illinois.
The Fuller Brush Company	Connecticut.
Gibbon Packing, Inc	Nebraska.
Gordon County Farm Company	Delaware.
Hanes Her Way, Inc	North Carolina.
Hanes Menswear, Inc	Delaware.
Hanes Puerto Rico, Inc	Delaware.
Henson-Kickernick, Inc	Delaware.
Hygrade Food Products Corporation.	New York.
Jimmy Dean Manufacturing Company.	Delaware.
Kiwi Brands Inc	Delaware.
L'eggs Brands, Inc	North Carolina.
L'eggs Clarksville Manufacturing, Inc.	Delaware.
Ozark Salad Company, Inc	Delaware.
Pannill Knitting Company, Incorporated.	Delaware.
Pannill Marketing & Manufacturing, Inc.	Delaware.
PYA/Monarch, Inc	Delaware.
Rice Hosiery Corporation	North Carolina.
Sara Lee Knit Products, Inc	Delaware.
Saramar Corporation	Delaware.
Schloss & Kahn, Inc	Delaware.
Seitz Foods, Inc	Delaware.
SLKP Sales, Inc	Delaware.
Smoky Hollow Foods, Inc	Delaware.
Sox International, Inc	California.
Super Products, Inc	Delaware.
Sweet Sue Kitchens, Inc	Delaware.
Synergy Enterprises, Inc	Tennessee.
Wolfermen's Inc	Delaware.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 90–23644 Filed 10–4–90; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31737]

Indiana Rail Road Co.; Trackage Rights Exemption; Indiana Hi-Rail Corp.

Indiana Hi-Rail Corporation (IHR) has agreed to grant local and overhead trackage rights to Indiana Rail Road Company (IRR) over 54 miles of rail line between milepost 161.5, at Newton, IL, and milepost 215.5, at Grayville, IL. IRR currently owns and operates a 42.6-mile portion of this line (between milepost 161.5, at Newton and milepost 204.3, at Browns, IL), but has agreed to sell it to IHR.[1] The parties intend to consummate their trackage rights agreement on the same date IRR's line sale to IHR is consummated. To effect the line sale, IHR has filed a petition for exemption in Finance Docket No. 31593, *Garden Spot And Northern Limited Partnership and Indiana Hi-Rail Corporation—Purchase and Operate—Indiana Rail Road Company Line Between Newton and Browns, IL.*

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John H. Broadley, Jenner & Block, 21 Dupont Circle NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—T3BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

[1] Pending its purchase from IRR, IHR acquired interim trackage rights over IRR's line from Newton to Browns (an intermediate point on the Newton to Grayville line) in Finance Docket No. 31594, *Indiana Hi-Rail Corp.—Track. Rights Exemp.—Indiana R.R. Co.* (not printed), served August 21, 1990.

*"ERR13"Dated: October 1, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 90–23645 Filed 10–4–90; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31727]

Maine Coast Railroad Corp.; Modified Rail Certificate

On September 5, 1990, Maine Coast Railroad Corporation (MECO) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23. [1] The line involved was authorized for abandonment in Docket No. AB–83 (Sub-No. 8), *Maine Central Railroad Company-Abandonment-In Cumberland, Sagadahoc, Lincoln and Knox Counties, ME* (not printed), served October 10, 1985. It was subsequently acquired by the State of Maine.

On May 18, 1990, MECO entered into a 5-year renewable lease with the State, acting through its Department of Transportation (MDOT). Under which MECO would rehabilitate and operate the line between Brunswick (milepost 33.79) and Rockland, ME (milepost 85.55), a distance of 51.76 miles. MECO is currently rehabilitating the line and intends to interline with the Maine Central Railroad Company (MEC) at milepost 33.79 (Brunswick).

This notice involves the lease of property, which is defined by the regulations of the Advisory Council on Historic Preservation as potentially having an adverse effect on properties. MECO shall maintain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: September 21, 1990.

[1] This proceeding is related to a notice of exemption, filed September 5, 1990, in Finance Docket No. 31728, *W. Robert Bentley, George M. Kloster, Daniel P. Moscato, and James T. Moore-Continuance in Control Exemption-Massachusetts Central Railroad Corporation and Maine Coast Railroad Corporation.*

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 90–23187 Filed 10–4–90; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31680]

Mokena Illinois Railroad Co.; Construction Exemption in Will County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts, under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10901, the construction and operation by the Mokena Illinois Railroad Company of approximately 3,250 feet of main line and branch line track in Will County, IL.

DATES: The exemption will not be effective until completion of the Commission's environmental review and further decision. Petitions for reconsideration must be filed by October 22, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31680 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Andrew P. Goldstein, 703 Ring Bldg., 1200 Eighteenth Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: September 19, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 90–23646 Filed 10–4–90; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Dale Dudley, M.D.; Revocation of Registration

On March 8, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Dale Dudley, M.D. of 18254 Livernois, Detroit, Michigan 48221, proposing to revoke his DEA Certificate of Registration, AD2118330, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Dudley's continued registration is inconsistent witht the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was sent to Dr. Dudley by registered mail and it was returned to DEA unclaimed. On April 7, 1990, an attorney who represents Dr. Dudley accepted service of the Order to Show Cause on his behalf. More than thirty days have passed since the Order to Show Cause was received and DEA has received no response thereto. Therefore, the Administrator concludes that Dr. Dudley has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters his final order based on the investigative file.

The Administrator finds that on or about February 6, 1987, twenty-four defendants, including Dr. Dudley, were indicted by a Federal grand jury in the Eastern District of Michigan for mail fraud (18 U.S.C. 1341); illegal drug distribution (21 U.S.C. 841 (a)(1) and 846); illegal use of a telephone (21 U.S.C. 843(b)); violation of the Racketeer Influenced and Corrupt Organization (RICO) Act and Conspiracy to violate RICO (18 U.S.C. 1962(c) and (d)). The charges arose out of the fact that the defendants operated a sham medical clinic between September and December 1985. The clinic operated for the sole purpose of defrauding both Blue Cross/Blue Shield of Michigan and the medicaid program by performing medically unnecessary blood tests and by dispensing drug and then billing the insurance carriers.

The Administrator further finds that the illegal practices were done under the supervision of Dr. Dudley and another physician. Dr. Dudley allowed the clinic to use his DEA registration number and billing numbers and was paid $600.00 a week. Dr. Dudley provided no services to the clinic. He was employed full-time

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in his own practice as another location. Dr. Dudley visited the sham clinic on only two or three occasions. He reviewed and signed approximately 35 patient files, and did not change the illegal pattern of prescribing and blood testing noted in the files.

The investigative file further indicates that the sham clinic was staffed with two unlicensed physician's assistants. Dr. Dudley allowed them to order blood tests and prescribe controlled substances in violation of Federal and state law. The physician's assistants testified that the blood tests were unnecessary and that a high percentage of the patients were intravenous drug addicts. They further testified that Dr. Dudley knew that blood was being drawn in exchange for Tylenol with codeine prescriptions. In fact, Dr. Dudley encouraged them to give the patients Tylenol with codeine prescriptions, even when the physician's assistants wanted to prescribe motrin, a noncontrolled substance.

The Administrator further notes that the clinic's sole income was from kickbacks generated from the blood for pills conspiracy. Without Dr. Dudley's DEA registration and billing numbers, none of the illegally obtained insurance payments would have been received by the clinic. It is estimated that in excess of 200,000 dosage units of controlled substances were illegally distributed by the various co-conspirators.

As a result of the foregoing activities, on May 10, 1988, Dr. Dudley was convicted in the United States District Court for the Eastern District of Michigan of unlawful distribution of Tylenol with codeine in violation of 21 U.S.C. 841(a)(1), a felony offense relating to controlled substances; conspiracy to violate 18 U.S.C. 1962(d); mail fraud in violation of 18 U.S.C. 1341; and aiding and abetting in violation of 18 U.S.C. 2.

On May 17, 1990, the Michigan Department of Licensing and Regulation, Board of Medicine, revoked Dr. Dudley's license to practice medicine in the State of Michigan, effective June 16, 1990. The Board also assessed a fine in the amount of $50,000.00.

Based upon his felony conviction relating to controlled substances, the Administrator concludes that a lawful basis exists for the revocation of Dr. Dudley's registration, and for the denial of any pending applications for renewal. 21 U.S.C. 824(a)(2). No evidence of explanation or mitigating circumstances has been offered on Dr. Dudley's behalf. The Administrator cannot conceive of any explanation which would excuse Dr. Dudley's criminal and unprofessional conduct. Therefore, the Administrator has no choice but to revoke Dr. Dudley's DEA Certificate of Registration and to deny any pending applications for registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AD2118330, previously issued to Dale Dudley, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied.

This order is effective November 5, 1990.

Dated: September 28, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90-23620 Filed 10-4-90; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances Notice of Registration

By notice dated August 20, 1990, and published in the **Federal Register** on August 29, 1990, (55FR35376), Mallinckrodt Specialty Chemicals Company, Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Opium poppy (9650)	II
Concentrate of Poppy Straw (9670)	II
Coca leaves (9040)	II

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substance Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23617 Filed 10-4-90; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Notice of Registration

By notice dated August 6, 1990, and published in the **Federal Register** on August 14, 1990, (55 FR 33163), Research Biochemicals Incorporated, 9 Erie Drive, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Bufotenine (7433)	I
Etorphine (except HCl) (9056)	I
Normorphine (9313)	I
Codeine (9050)	II
Metazocine (9240)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substance Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administraiton.

[FR Doc. 90-23615 Filed 10-4-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Notice of Registration

By notice dated July 23, 1990, and published in the **Federal Register** on August 1, 1990 (55 FR 31240), Radian Corporation, P.O. Box 201088, 8501 Mopac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-methylenedioxyamphetamine (MDMA) (7400).	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Phencyclidine (7471)	II
Methadone (9250)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention Act and Control Act of 1970

and title 21, Code of Federal Regulations, 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23619 Filed 10-4-90; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration Importer of Controlled Substances; Notice of Registration

By notice dated July 2, 1990, and published in the **Federal Register** on July 18, 1990, (55FR29282), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
1-phenylcyclohexylamine (7460)	II
Meperidine (pethidine) (9230)	II

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substance Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 90-23616 Filed 10-4-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Registration

By notice dated July 25, 1990, and published in the **Federal Register** on August 1, 1990 (55FR312400, Sterling Drug Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of pethidine (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 90-23618 Filed 10-4-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement. The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Bureau of Labor Statistics, Report on Occupational Employment, 1220-0042; BLS-2877, Annually.

State of Local Governments: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations 216,825 respondents; 121,422 hours; 1 form.

The OES survey program is a Federal/State sample survey of employment by occupation in non-farm establishments that is used to produce data on current occupational employment and is a component in the development of employment and training programs and occupational information systems.

Employment and Training Administration; Claims and Payments Activities, 1205-0010; ETA 5159.

	Form #	Affected public	Respondents	Frequency	Average time per response
ETA 5159		States (Reg)	53	Monthly	2 hrs. 45 min.
ETA 5159		States (EB)	2		1 hr. 45 min.
ETA 5159		States (STC)	11		1 hr.

Form #	Affected public	Respondents	Frequency	Average time per response
1,836 total hours.				

Measures workload and provides quantitative measurement for budget estimates, administrative planning and program evaluation; main vehicle for accounting to public.

Employment and Training Administration, Title 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training, 1205-0224, On occasion.

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Reg section	Affected public	Respondents	Frequency	Average time per response
30.3	Apprentices	2,700	One-time	30 minutes.
30.4	Apprentices	200	One-time	1 hour.
30.5	Apprentices	5,000	One-time	30 minutes.
30.6	Apprentices	50	One-time	5 hours.
30.8	Apprentices	50,000	One-time	1 minute.
30.8	State agencies	30	One-time	5 minutes.
7,316 total hours.				

This information is required to promote and ensure equality of opportunity with sponsors of apprenticeship programs registered with recognized State Apprenticeship Agencies.

Signed at Washington, DC this 2nd day of October, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-23630 Filed 10-4-90; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

District of Columbia, DC90-1 (Jan. 5, 1990). p. 79. pp. 80, 84, 86.

Florida:
- FL90-17 (Jan. 5, 1990) ..... p. 143. p. 144.
- FL90-18 (Jan. 5, 1990) ..... p. 147. p. 148.

New York:
- NY90-9 (Jan. 5, 1990) ..... p. 827. p. 828.
- NY-90-10 (Jan. 5, 1990) ..... p. 829. pp. 832-839.

Pennsylvania:
- PA90-5 (Jan. 5, 1990) ..... p. 951. p. 955.
- PA90-8 (Jan. 5, 1990) ..... p. 965. p. 966.
- PA90-9 (Jan. 5, 1990) ..... p. 997. pp. 998, 1001.
- Virginia, VA90-4 (Jan. 5, 1990). p. 1325. p. 1326.

Volume II:

Iowa:
- IA90-3 (Jan. 5, 1990) ..... p. 29. p. 30.
- IA90-5 (Jan. 5, 1990) ..... p. 37. p. 40.
- Michigan, MI90-5 (Jan. 5, 1990). p. 479. p. 480.

Missouri:
- MO90-1 (Jan. 5, 1990) ..... p. 627. pp. 631-632. pp. 641-642.
- MO90-2 (Jan. 5, 1990) ..... p. 647. pp. 648, 651.

Texas:
- TX90-3 (Jan. 5, 1990) ..... p. 987. p. 988.
- TX90-5 (Jan. 5, 1990) ..... p. 993. p. 994.
- TX90-6 (Jan. 5, 1990) ..... p. 1007. p. 1008.
- TX90-10 (Jan. 5, 1990) ..... p. 1011. p. 1012.
- TX90-18 (Jan. 5, 1990) ..... p. 1029. pp. 1030-1031.
- INDEX902 ..... pp. xxxi-xxxii.

Volume III:

California, CA90-4 (Jan. 5, 1990). p. 71. pp. 91-100.

Utah, UT90-1 (Jan. 5, 1990) ..... p. 343. pp. 344-356.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 28th day of September 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-23423 Filed 10-4-90; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. Background—Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the Federal Register (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated August 23, 1990, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) 29 CFR 1910.251 pertaining to an amendment to the Standard on Welding, Cutting and Brazing for General Industry as published in the Federal Register of April 11, 1990, (55 FR 13696); and (2) 29 CFR 1910.120 and appendices A-D, pertaining to amendments to the Hazardous Waste Operation and Emergency Response Standard for General Industry as published in the Federal Register of April 13, 1989, (55 FR 14037). These standards are contained in COMAR 09.12.30. Maryland Occupational Safety and Health Standards were promulgated after a public hearing on June 15, 1989. This standard was effective on August 20, 1990.

2. Decision—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. Location of the Supplements for Inspection and Copying—A copy of the standards supplements, along with the approved plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, 3535 Market Street, suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, room N-3700, Third Street and Constitution Avenue NW., Washington, DC 20210.

4. Public Participation—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective October 5, 1990.

Authority: (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Philadelphia, Pennsylvania, this 5th day of September 1990.

Linda R. Anku,

Regional Administrator.

[FR Doc. 90-23628 Filed 10-4-90; 8:45 am]

BILLING CODE 4510-26-M

Wyoming State Standards; Approval

1. Background. Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant

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Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On May 3, 1974, notice was published in the Federal Register (39 FR 15294) of the approval of the Wyoming Plan and adoption of subpart BB to part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee coordination.
2. Publication in newspaper of general/major circulation with a 45-day waiting period for public comment and hearings.
3. Adopting by the Wyoming Health and Safety Commission.
4. Review and approval by the Governor.
5. Filing with Secretary of State and designation of an effective date.

OSH regulations (29 CFR 1953 .22 and .23) requires that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to Standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the state prior to federal review and approval.

By letters dated January 18 and May 1, 1990 from Sephan R. Foster, OSHA Program Manager, Wyoming Department of Employment, Division of Employment Affairs—OSHA, to Byron R. Chadwick, OSHA Regional Administrator, the States submitted rules and regulations in response to the following Federal OSHA Construction Standards (29 CFR 1926.650, .651, .652: Excavations 54 FR 53055, 12–27–89; Concrete and Masonry Construction Safety Standards, 53 FR 22812, 6–16–88; 29 CFR 1926.800: Underground Construction, 54 FR 23824, 6–02–89).

The above adoptions of Federal Standards have been incorporated in the State Plan and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for Construction, as required by Wyoming Statute 1977, section 27–11–105(a)(viii).

State Standards for 29 CFR 1926.650, 651 and 652: Excavations were adopted by the Health and Safety Commission of Wyoming on February 23, 1990 (effective April 13, 1990); State Standards for 29 CFR 1926.706: Requirements for lift-slab operations were adopted by the Health and Safety Commission of Wyoming on February 23, 1990 (effective April 13, 1990); State Standards for 29 CFR 1926.800: Underground Construction were adopted by the Health and Safety Commission of Wyoming on February 23, 1990 (effective April 13, 1990). Adoption of all these Standards was pursuant to Wyoming Statute 1977, section 27–11–105. The State standards on Excavation; Requirements for Precast Concrete; Underground Construction are all substantially identical to the Federal Standards action, with the only exceptions being paragraph numbering and minor wordage appropriate to the Wyoming statutes.

2. *Decision.* The above State Standards have been reviewed and compared with the relevant Federal Standards, and OSHA has determined that the State Standards are at least as effective as the comparable Federal Standards, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences betweeen the State and Federal Standards are minimal and that the Standards are thus substantially identical. OSHA therefore approves these standards. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards Supplements, along with the approved Plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, room 1576 Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Department of Employment, Division of Employment Affairs—OSHA, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, room N–3700, 200 Constitution Avenue, NW., Washington,DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with apicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming Sate Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further public participation would be repetitious. This decision is effective October 5, 1990. (Sec. 18, Public Law 91–596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Denver, Colorado, this 30th day of July, 1990.

Byron R. Chadwick,
Regional Administrator, VIII.

[FR Doc. 90–23629 Filed 10–4–90; 8:45 am]
BILLING CODE 4510–26–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Hearings; Committee on Library and Information Services for Native Americans

DATE AND TIME: October 24, 1990, 8:30 a.m. to 4:30 p.m.

PLACE: State of Connecticut Legislative Offfice Building, 210 Capitol Avenue, room 1A, Hartford, Connecticut.

STATUS: Open.

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Peter R. Young, Executive Director, 1111 18th Street NW. (suite 301), Washington, DC 20036, 202–254–3100.

Dated: October 1, 1990.

[FR Doc. 90–23647 Filed 10–4–90; 8:45 am]
BILLING CODE 7527–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Arts National Council: Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committe Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Challenge III Review Committee to the National Council on the Arts will be held on October 24, 1990, from 9 a.m.–5:30 p.m. in room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United State Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: September 28, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–23527 Filed 10–4–90; 8:45 am]
BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision

2. The title of the information collection: Requirement for Emergency Response Data System (ERDS)—10 CFR 50.72a and 10 CFR 50, appendix E, section VI.

3. The form number if applicable: Not Applicable.

4. How often is the collection required: Collection is immediate when ERDS is activated for conditions that require declaring an emergency class of alert, site emergency, or general emergency at the time that NRC Operations Center is notified of the emergency class declaration. Any computer hardware or software changes affecting transmitted data must be reported within 30 days after changes are completed. In addition, changes affecting transmission format and communication protocol will be reported to the NRC 30 days prior to the modification. The licensee is required to submit an ERDS implementation program plan 75 days after publication of the final rule.

5. Who will be required or asked to report: Licensees with operating licenses.

6. An estimate of the number of responses: 93 responses the first year (includes 59 first year responses for ERDS implementation), and 34 responses annually thereafter.

7. An estimate of the number of hours annually needed to complete the requirement or request: 10,729 hours the first year or 135 hours per response (includes 9440 hours for ERDS implementation or 160 hours per response); and 1229 hours thereafter or 36 hours per response.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: The proposed rule would require a licensee to provide means via their in-plant computer system to connect to the NRC ERDS. The ERDS will be activated by a licensee to transmit critical plant data to the NRC after declaring an emergency class of alert, site emergency, or general emergency at a nuclear power facility. This proposed rule would require the licensee to provide NRC with information of any hardware or software changes that affect transmission of data to the NRC. The licensee would be required to develop and submit an ERDS implementation program plan within 75 days after publication of the final rule.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0011), Office of Information and Regulatory Affairs, NEOB–3169, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 28th day of September, 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,
Designated Senior, Official for Information Resources Management.

[FR Doc. 90–23535 Filed 10–4–90; 8:45 am]
BILLING CODE 7590–01–M

Meeting of the MELCOR Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The MELCOR Peer Review Committee will meet to review the technical adequacy of the MELCOR code.

DATE: November 5–7, 1990.

TIME: 8:30 am.

ADDRESS: Sandia National Laboratory, Building 822, room A, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: R.B. Foulds, Office of Nuclear Regulatory Research, U.S. Nuclear Commission, Washington, DC 20555. Telephone (301) 492–3833.

SUPPLEMENTARY INFORMATION: MELCOR is a fully integrated severe accident analysis code that has been developed for the U.S. Nuclear Regulatory Commission by Sandia National Laboratories. Among the targeted applications of the code are its use in probabilistic risk assessment studies to address the perceived risk from a nuclear plant and evaluation of accident management strategies. MELCOR development activities have focused on improving physical models beyond those in precursor codes, flexibility for future modification, and ease of use. MELCOR is capable of treating the complete accident sequence from the initiating event to the fission product release.

The newest version of MELCOR, MELCOR 1.8, was released in March 1989. This version has the capabilities for modeling both boiling and pressurized water reactor plants. The code has now reached sufficient maturity that a number of organizations in the U.S.A. and abroad are planning to use the current version. Although the quality control and validation efforts are seen to be proceeding there is a need to have a broad technical review by recognized experts to determine or confirm the technical adequacy of the code for the serious and complex analyses it is expected to perform.

A peer review committee has been organized using recognized experts from the national laboratories, universities, MELCOR user community, and independent contractors. Meetings are held to discuss and evaluate the applicability and state of validation of the various MELCOR phenomenological models. The meeting scheduled for November 5–7, 1990 is the second meeting of the MELCOR Peer Review Committee. The Committee will review the following MELCOR phenomenological packages during the course of the meeting: (1) Hydrodynamic behavior, (2) Heat structure thermal response, (3) Core heatup and degradation, (4) Fission product and aerosol transport, (5) Fuel-coolant degradation, (6) Core-concrete interactions, (7) Gas combustion, (8) Engineered safety features, and (9) Properties.

BEST COPY AVAILABLE

Dated at Rockville, Maryland, this 28th day of September, 1990.

For the U.S. Nuclear Regulatory Commission.

F. Eltawila,
Branch Chief, Accident Evaluation Branch, Division of Systems Research, Office of

and will achieve the goals of the requalification examinations.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant

The agenda for the subject meeting shall be as follows:

Friday, October 26, 1990—8:30 a.m. until the conclusion of business

The Working Group will hold an

Advisory Committee on Nuclear Waste Working Group on Consequences of Human Intrusion into a HLW Repository; Meeting

The working Group on Human Intrusion will hold a meeting on October

advised of any changes in schedule, etc., which may have occurred.

Dated: September 27, 1990.

R. K. Major,
Chief, Nuclear Waste Branch.

[FR Doc. 90–23538 Filed 10–4–90; 8:45 am]

and (4) the Environmental Assessment dated September 20, 1990. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building 2120 L Street NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry,

Dated at Rockville, Maryland, this 26th day of September, 1990.

For the U.S. Nuclear Regulatory Commission.

F. Eltawila,

Branch Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 90-23636 Filed 10-4-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co.; the Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.59(a)(2) to Toledo Edison Company and the Cleveland Electric Illuminating Company (the licensees), for the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow, for those reactor operators and senior reactor operators who have successfully passed the May 1990 NRC Requalification Examination, a 6-month, one-time extension to the scheduled requalification examinations administered by Toledo Edison, in accordance with 10 CFR 55.59(a)(2). These operators will continue to attend scheduled training and meet all other requirements for satisfactory completion of the requalification programs.

Those reactor operators and senior reactor operators who failed the May 1990 NRC Requalification Examination are not included in the exemption.

The proposed action is in accordance with 10 CFR 55.11, Specific Exemptions, and is based upon the information provided to the NRC in the licensee's request dated April 20, 1990.

The Need for the Proposed Action

The proposed exemption is needed to avoid operators' duplicate effort because of the misaligned schedules between the NRC/administered and Toledo Edison-administered requalification examinations.

Environmental Impacts of the Proposed Action

The proposed action will have no incremental impact relative to current practice because the exemption will avoid duplicate effort from the operators and will achieve the goals of the requalification examinations.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributable to this facility and would result in operators taking requalification examinations in May and November of 1990.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated April 20, 1990 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 27th day of September 1990.

For the Nuclear Regulatory Commission,

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 90-23537 Filed 10-4-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste Working Group on Carbon-14; Meeting

The Working Group on Carbon 14 will hold a meeting on October 26, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, October 26, 1990—8:30 a.m. until the conclusion of business

The Working Group will hold an information gathering session on the potential impact of Carbon 14 on the performance of a high-level waste repository. Regulatory concerns and the basis for regulatory requirements will also be discussed. Following the presentations, the Working Group intends to develop its future strategy.

Oral statements may be presented by members of the public with the concurrence of the Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultations, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Working Group will then hear presentations by and hold discussions with representatives of the EPA staff, the DOE staff, the staffs from national laboratories, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Mr. Howard J. Larson, (telephone 301/492-7707 between 7:30 a.m. and 5 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, *etc.*, which may have occurred.

Dated: September 27, 1990.

R. K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 90-23534 Filed 10-4-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste Working Group on Consequences of Human Intrusion into a HLW Repository; Meeting

The working Group on Human Intrusion will hold a meeting on October 23, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 23, 1990—8:30 a.m. until the conclusion of business

The Working Group will discuss potential problems of human intrusion at a HLW repository and how guidance in 40 CFR part 191, appendix B will be applied. Discussions will include examples from the WIPP experience. Upon completion of the meeting, the Working Group plans to discuss development of a strategy for future commend on the EPA 40 CFR part 191, appendix B guidance on human intrusion.

Oral statements may be presented by members of the public with the concurrence of the Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Working Group will then hear presentations by and hold discussions with invited speakers from EPA, National Laboratories, and other interested persons regarding this review.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Ms. Charlotte Abrams, (telephone 301/492-8371 between 7:45 a.m. and 5:30 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 27, 1990.

R. K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 90-23535 Filed 10-4-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

The Cleveland Electrical Illuminating Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 35 to Facility Operating License No. NPF-58, issued to The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), which revised the Technical Specifications for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specifications to allow opening of up to six ¾-inch vent and drain lines for Type C local leak rate testing during refueling activities, after the reactor has been subcritical for at least 7 days.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 5, 1990 (55 FR 12756). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 16, 1990, (2) Amendment No. 35 to License No. NPF-58, (3) the Commission's related Safety Evaluation dated September 28, 1990 and (4) the Environmental Assessment dated September 20, 1990. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building 2120 L Street NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 26th day of September 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-23539 Filed 10-4-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-08027 License No. SUB-1010; EA 90-162]

Sequoyah Fuels Corp.; Sequoyah Facility, I-40 and Hwy. 10, Gore, OK; Order Modifying License

I

Sequoyah Fuels Corporation (SFC or Licensee) is the holder of Source Material License No. SUB-1010 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 40. The license authorizes the Licensee to possess and use source material for the purpose of refining uranium from uranium ore concentrates and converting this uranium to uranium hexaflouride (UF6) for use by enrichment facilities. The license was most recently renewed on September 20, 1985, and will expire on September 30, 1990, and the licensee has submitted an application for timely renewal.

II

On August 22, 1990, the Licensee notified the NRC that uranium contaminated water had been discovered seeping from under the solvent extraction building into a nearby excavation. The excavation had been dug around two hexane tanks in preparation for enclosing the tanks in a concrete vault. The floor and walks of the vault had been installed and the seepage was discoved in the soil to the south and west sides of the newly constructed vault.

By letter dated August 30, 1990, the Licensee committed to take the

following actions prior to the restart of the solvent extraction process:

1. SFC will provide NRC with sufficient information relating to assuring the integrity of the floor and sump of the Solvent Extraction Building to demonstrate that current operations are not contributing to the seepage of uranium contaminated water from under the main process building and its environs.

IV

obtain information and develop characterization studies regarding the seepage of uranium contaminated water from under the main process building and its environs.

compliance with regulatory requirements.

The Licensee or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within 20 days of the date of this Order. The

Permits Nos. CPPR-91 and CPPR-92 issued by the Nuclear Regulatory Commission (NRC or Commission) on January 23, 1973. The Construction Permits authorize the Licensee to construct the Watts Bar Nuclear Plant facility in accordance with the conditions specified therein.

Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Secretary, U.S. Nuclear Regulatory Commission and the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC

On December 19, 1985, a Commissioner of the Nuclear Regulatory Commission and members of the NRC staff were briefed by members of the TVA NSRS staff including Jerry D. Smith, Phillip Washer, and Robert C. Sauer, regarding their perceptions of noncompliance with the Commission's

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following actions prior to the restart of the solvent extraction process:

1. SFC will provide NRC with sufficient information relating to assuring the integrity of the floor and sump of the Solvent Extraction Building to demonstrate that current operations are not contributing to the inventory of licensed material that may have seeped beneath the building.

2. SFC will complete such actions as are necessary to adequately characterize the quantity and location of the pockets of licensed material under or around the Solvent Extraction Building.

3. SFC will identify and check all potential pathways that could contribute to migration of licensed material away from the Solvent Extraction Building.

4. SFC will properly control and maintain contaminated soil and water removed from the excavation north of the Solvent Extraction Building.

In addition, SFC committed that in the very near future, SFC will have an independent party review SFC's entire response to this situation, and a written report of this review and SFC's response to it will be made available for NRC's review. In addition, further commitments establishing a temporary oversight group, additional staff in the health, safety and environment functions, and attention for organizational deficiencies, were made. On September 14, 1990, based on these commitments, the NRC approved SFC's restart of the solvent extraction process. Subsequent to the above, on September 14, 1990, SFC reported another discovery of uranium-contaminated water seeping from under the Main Process Building within approximately fifty (50) yards or less of an unrestricted area. The Licensee cannot assure the NRC that all migration pathways to the unrestricted area are known or that the groundwater has not been contaminated through seepage under or around the building.

III

Based on the above, the NRC is concerned that the ground water and environment in the plant's unrestricted area could be contaminated with uranium contaminated water seeping from underneath the main process building or its environs. Consequently, the public health and safety require that the site be characterized, action be taken to prevent further releases of contaminated water, and appropriate monitoring of ground water be conducted. Therefore, because of such concerns and because of the need to have completed and accurate information, License SUB-1010 is being modified to require the Licensee to obtain information and develop characterization studies regarding the seepage of uranium contaminated water from under the main process building and its environs.

IV

Accordingly, pursuant to sections 62, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, 10 CFR part 20, and 10 CFR part 40, *it is hereby ordered, that license No. sub-1010 is modified as follows:*

The Licensee shall within seven (7) calendar days from the effective date of this order:

1. Obtain sufficient information to ensure the integrity of the floor of the Main Process Building and repair the floor as necessary. Minimize process liquids in sumps and on floors. Stop all activities that intentionally place liquids in sumps and on floors until the integrity of sumps and floors has been ensured.

2. Characterize the quantity (volume and activity) and location of licensed material under the Main Process Building floor and outside the Main Process Building, and obtaining, as necessary, soil borings and corings and digging intercept trenches to determine the direction and extent of underground migration.

3. Identify all potential pathways for migration beneath and beyond the Main Process Building, considering the effect of building structures and utilities, the nature and extent of underground shale and other formations, and construction activities that could have affected the integrity of groundwater barriers.

4. Examine present and past monitoring well data for evidence of licensed material attributable to Main Process Building activities, determining whether the present and past monitoring well program has been adequate, in terms of well location, depth, and sampling, to identify migration from the Main Process Building.

5. Determine whether licensed material is being or has been released beyond the restricted area by migration from the Main Process Building.

6. Develop a plan to identify and characterize other locations on SFC property where past or present operations could have resulted in contaminating the environment.

The Regional Administrator, NRC Region IV, may, in writing, relax or terminate any of the above conditions upon demonstration by the Licensee of good cause.

After reviewing the Licensee's response, the NRC will determine what further action is necessary to ensure compliance with regulatory requirements.

The Licensee or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within 20 days of the date of this Order. The answer shall set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons why this Order should not have been issued. Any answer filed within 20 days of the date of this Order may include a request for a hearing.

Any answer or request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, USNRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

If no hearing is requested, this Order shall become effective upon the Licensee's consent or upon expiration of the time within which a hearing may be requested.

Dated at Rockville, Maryland, this 19 day of September 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 90-23538 Filed 10-4-90; 8:45 am]

BILLING CODE 7590-01-M

Tennessee Valley Authority; Watts Bar Nuclear Plant; Order Imposing Civil Monetary Penalty

[Docket Nos. 50-390 and 50-391 Construction Permit Nos. CPPR-91 and CPPR-92; EA 90-201]

I

Tennessee Valley Authority (Licensee) is the holder of Construction Permits Nos. CPPR-91 and CPPR-92 issued by the Nuclear Regulatory Commission (NRC or Commission) on January 23, 1973. The Construction Permits authorize the Licensee to construct the Watts Bar Nuclear Plant facility in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was conducted between October 7, 1985 and August 29, 1988, by the NRC's Office of Investigations. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated April 12, 1990. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations. The Licensee responded to the Notice by letters dated May 14, 1990 and July 20, 1990. In its response, the Licensee did not contest or challenge the violations in the Notice, but requested that the proposed civil penalty be mitigated in its entirety.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained herein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay civil penalties in the amount of $240,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Secretary, U.S. Nuclear Regulatory Commission and the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Atlanta, GA 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at the hearing shall be:

Whether, on the basis of the violations not contested by the Licensee, this Order should be sustained.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research.

Dated at Rockville, Maryland, this 20th day of September 1990.

Appendix—

Evaluations and Conclusion

On April 12, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Tennessee Valley Authority (TVA or licensee) for violations identified as a result of allegations received by the NRC's Office of Investigations. TVA responded to the Notice by letters dated May 14, 1990 and July 20, 1990. The licensee did not contest nor challenge the violations in the Notice, but requested that the proposed civil penalty be mitigated in its entirety. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Restatement of the Violations

10 CFR 50.7 prohibits discrimination by a Commission licensee, or a contractor or subcontractor of a licensee, against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities include providing information to the Commission about possible violations of requirements imposed under the Atomic Energy Act of 1954, as amended.

On December 19, 1985, a Commissioner of the Nuclear Regulatory Commission and members of the NRC staff were briefed by members of the TVA NSRS staff including Jerry D. Smith, Phillip Washer, and Robert C. Sauer, regarding their perceptions of noncompliance with the Commission's regulations, specifically 10 CFR part 50, appendix B, in the construction of Watts Bar.

A. Contrary to the above, in February 1986, NSRS was reorganized and, in the reorganization, the supervisory duties of Jerry D. Smith, who had participated in the preparation of delivery of the December 19, 1985 briefing, were eliminated. He was assigned to a newly created leaderless section. This action constituted discrimination in retaliation for his participation on the briefing of the Commissioner.

This is a Severity Level II violation (Supplement VII). Civil Penalty—$50,000.

B. Contrary to the above, in February 1986, NSRS was reorganized and, in the reorganization, the supervisory duties of Phillip Washer, who had participated in the preparation or delivery of the December 19, 1985 briefing, were eliminated. He was assigned to a newly created, leaderless section. This action constituted discrimination in retaliation for his participation in the briefing of the Commissioner.

This is a Severity Level II violation (Supplement VII). Civil Penalty—$80,000.

C. Contrary to the above, in February 1986, NSRS was reorganized and, in the reorganization, the supervisory duties of Robert C. Sauer, who had participated in the preparation or delivery of the December 19, 1985 briefing, were eliminated. He was assigned to a newly created, leaderless section. This action constituted discrimination in retaliation for his participation in the briefing of the Commissioner.

This is a Severity Level II violation (Supplement VII). Civil Penalty—$80,000.

Summary of Licensee's Request for Mitigation

TVA contends that a civil penalty is inappropriate and no regulatory purpose is served because the events giving rise to the Notice occurred over four years ago. The licensee states that, in view of the length of time that has passed since the alleged violations occurred, imposition of a civil penalty appears to be punitive, and not in furtherance of the stated purpose of monetary penalties set out in the NRC Enforcement Policy which include emphasizing the need for

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lasting remedial action and deterring future violations. The licensee further contends that imposition of a civil penalty for events dating back four years creates the impression, with TVA's employees and the public, that employees may still have reason to be fearful if they raise safety concerns.

The licensee states that, in view of TVA's extensive corrective action, which it argues the NRC acknowledges, no regulatory purpose is served by imposing a civil penalty. The licensee notes that the events which forms the basis for this enforcement action occurred at the time TVA's entire nuclear program was being examined to determine what corrective action was necessary to address the many safety concerns raised by the NRC, TVA management, and TVA employees. This led to reactor shutdowns and an extensive four-year recovery effort which has included extensive efforts to ensure TVA employees feel free to express concerns without fear of discrimination. TVA believes the corrective actions to avoid discrimination to be timely, self-initiated, and comprehensive in scope, thus meeting the criteria for mitigation. The licensee cites the results of the NRC's January 1990 inspection of the Employee Concerns Program at Watts Bar as additional evidence that the present situation is sufficiently different from that of February 1986 to raise substantial question as to whether imposition of a civil penalty now furthers any regulatory purpose.

The licensee states that NRC declined to mitigate the proposed civil penalty because TVA's extensive corrective action was offset by the prior notice accorded TVA by a Notice of Violation issued in 1986. TVA believes the prior notice factor was inappropriately applied in this case. TVA questions whether incidents of discrimination are the type of situations for which that factor was intended, and also questions how the violations identified as providing prior notice gave TVA any information regarding the likelihood of discrimination in the NSRS organization, or would have caused TVA to take additional corrective actions beyond those that were already being implemented.

Finally, the licensee refers to the existence of information, i.e., the TVA Inspector General's investigatory report, which, it argues, casts substantial doubt on whether discrimination occurred, and causes TVA to question the appropriateness of the civil penalty.

NRC Evaluation of Licensee's Request for Mitigation

Although NRC regrets the long elapsed time between the events described in the Notice and the enforcement action, the staff believes that imposition of the civil penalty does further the purposes of the Enforcement Policy. Employee discrimination is viewed as a willful violation of regulatory requirements, and the Enforcement Policy states that civil penalties will normally be assessed for any willful violation. Civil penalties for such violations aid in assuring compliance with NRC requirements and deterring future violations. Civil penalties are particularly appropriate in light of your poor history in this area. The imposition of the civil penalty does not, in the view of the staff, create the impression that employees still have reason to be fearful if they raise safety concerns; rather, it signals to TVA employees, as well as employees and management of other utilities, that NRC seriously and vigorously enforces the prohibition of discrimination.

The licensee has correctly stated NRC's acknowledgement of of TVA's extensive corrective actions relative to the freedom to express safety concerns without fear of reprisal. We have recognized that substantial efforts have been made by senior TVA management to change the atmosphere within the organization that seemingly fostered discriminatory practices in the past. The successful enhancement of the Employee Concerns Program, and the prompt involvement of TVA's OIG in investigating all potential discrimination cases are examples. On the other hand, both NRC and TVA recognize that there are continuing problems that have not yet been fully resolved. This is evidenced by the findings and recommendations of Mr. Cobean's report, dated July 9, 1990, to the TVA Board of Directors, as well as TVA OIG's substantiation of misconduct in at least one discrimination case investigated this year.

The licensee also correctly stated that NRC declined to mitigate the proposed civil penalty because the extensive corrective actions were offset by prior notice of similar events. Regarding TVA's question of whether the prior notice factor was intended to be applied to incidents of discrimination, the staff considers the factor applicable to any violation where a licensee had prior knowledge of a potential problem. As stated in the NRC's April 12, 1990 letter transmitting the Notice, the cited violations were similar in type to violations in a Notice of Violation issued on July 10, 1986, based on events that occurred in 1982 through 1985. Those earlier events had been investigated by TVA, found to be discriminatory by DOL, and settled by TVA. TVA's response to that earlier Notice cited an October 15, 1985 report by TVA's Office of General Counsel that addressed the discrimination cases and concluded, in part, that there was evidence of management performance weaknesses, including failure to make personnel decisions in a defensible way. The staff finds nothing in the licensee's arguments to warrant a conclusion that the factor of prior notice was not appropriately applied.

The licensee's reference to the IG's report casting doubt on whether discrimination occurred is not addressed further because TVA's initial response stated that the violations were not contested or challenged.

NRC Conclusion

In sum, NRC considers these violations a very significant regulatory concern. In view of the circumstances of this case and the history of past discrimination at TVA, the exercise of discretion to mitigate this civil penalty is not warranted. Therefore, it is appropriate to impose a civil penalty, to again emphasize to TVA, as well as to other licensees, NRC's concerns, notwithstanding the considerable efforts that TVA has taken and continues to take in this area. Consequently, the proposed civil penalty in the amount of $240,000 is being imposed.

[FR Doc. 90-23536 Filed 10-4-90; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corp. Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 40 to Operating License No. NPF-42 issued to Wolf Creek Nuclear Operating Corporation, which revised the Technical Specifications for operation of the Wolf Creek Generating Station, located in Coffey County, Kansas.

The amendment is effective as of the date of issuance.

The amendment revised the heatup, cooldown and cold overpressure mitigation system power-operated relief valve setpoint pressure/temperature (P/T) limits as required by 10 CFR part 50, Appendix H and Technical Specification 4.4.9.1.2.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 19, 1988 (53 FR 31777). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see (1) the application for amendment dated June 20, 1988, as supplemented on May 22, June 8 and August 1, 1990, (2) Amendment No. 40 to License No. NPF-42, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn Unviersity School of Law Library, Topeka, Kansas 66621. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 27th day of September 1990.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Project Manager, Project Directorate IV-2 Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-23540 Filed 10-4-90; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care and Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of Public Law 87-693 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 Federal Register 10737), the three sets of rates outlined below are hereby established. These rates are for use in connection with the recovery, from tortiously liable third persons, of the cost of hospital and medical care and treatment furnished by the United States (part 43, chapter I, title 28, Code of Federal Regulation) through three separate Federal agencies. The rates have been established in accordance with the requirements of OMB Circular A-25, requiring reimbursement of the full cost of all services provided. The rates are established as follows:

(1) *Department of Defense.* Historical costs and workload data developed through the Medical Expense and Performance Reporting System (MEPR) provide an operating cost base to which are added non-allocable costs and allowances for actual inflation and pay raises to obtain the estimates for the fiscal year under review. Costs were also added for retirement for civilian personnel and for an asset charge in lieu of a specific depreciation cost of fixed assets.

(2) *Department of Veterans Affairs.* The actual costs and per diem rates by type of care for the previous year are added to the estimated costs for depreciation of buildings and equipment, administrative overhead, interest on capital investment, and Government employee retirement and disability charges. These computed rates are then adjusted by the budgeted percentage change to arrive at the estimated rates for the fiscal year under review.

(3) *Department of Health and Human Services.* The sum of obligations for each cost center providing medical service is broken down into amounts attributable to inpatient care on the basis of the proportion of staff devoted to each cost center. Total inpatient costs and outpatient costs thus determined are divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In the calculation of the rates, the Department's unfunded retirement liability cost and capital and equipment depreciation cost were incorporated to conform to requirements set forth in OMB Circular A-25. In addition, each cost center's obligations include all costs for accounts, such as Medicare and Medicaid collections and Contract Health funds used to support direct program operation. Inclusion of these funds yields a more accurate indication of the cost of care in HHS facilities.

These rates represent the reasonable cost of hospital, nursing home, medical surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished by the United States in Federal hospitals, nursing homes, and outpatient clinics administered by the Department of Defense, the Department of Veterans Affairs, or the Department of Health and Human Services.

For such care and treatment furnished at the expense of the United States in a facility not operated by the United States, the rates shall be the amounts expended for such care and treatment.

	Effective Oct. 1, 1990, and thereafter		
	DOD	VA	HHS
Hospital care inpatient day:			
General medical care	605	642	994
Surgical care		974	
Psychiatric care		391	
Intermediate care		339	
Neurology		564	
Rehabilitation medicine		461	
Blind rehabilitation		541	
Alcohol and drug treatment		330	
Prescription		19	
Nursing home care		165	
Spinal cord injury care		609	
Burn Center, U.S. Army Institute of Surgical Research, Brooke Army Medical Center, Fort Sam Houston, Tex	2,176		
Outpatient medical and dental treatment:			
Outpatient visit	71	130	122
Dental outpatient visit		84	

For the period beginning October 1, 1990, the rates prescribed herein supersede those established by the Director of the Office of Management and Budget on January 10, 1990 (55 CFR 949).

Dated: September 28, 1990.

Richard G. Darman,

Director, Office of Management and Budget.

[FR Doc 90-23560 Filed 10-4-90 8:45 am]
BILLING CODE 3110-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the National Critical Technologies Panel

The National Critical Technologies Panel (NCTP) will meet on October 22, 1990. This meeting will be held at the offices of The Analytic Sciences

FOR FURTHER INFORMATION CONTACT: Timothy M. Reif, (202) 395-6800, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Under section 1-103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the

may be the subject of negotiations between the United States and Canada for accelerated tariff elimination.

DATES: Public comments are due November 20, 1990.

ADDITIONAL INFORMATION: Further information on this subject may be found in the **Federal Register** notices of

subheading to which the comments refer, (2) the name, address, and telephone number of the person, firm, or organization making the comments, and (3) an indication as to whether the writer represents a:

—Producer in the United States
—Importer in the United States
—Exporter in the United States

the probable economic effect of accelerated elimination of United States duties on industries producing like or directly competitive articles and on consumers.

Advice of the Private Sector Advisory Committees

Pursuant to section 103(a)(1) of the

accelerated duty elimination. A description of the articles provided for in the tariff subheadings listed in Annex I can be obtained by consulting the "Harmonized Tariff Schedule of the United States (1990)," U.S. International Trade Commission Publication 2232. The "Customs Tariff/Tariff des douanes" of

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OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the National Critical Technologies Panel

The National Critical Technologies Panel (NCTP) will meet on October 22, 1990. This meeting will be held at the offices of The Analytic Sciences Corporation (TASC), located at 1101 Wilson Blvd., suite 1500, Arlington, Virginia. The Panel will start its deliberations at 8 a.m., and will conclude around 5 p.m.

The purpose of this Panel is to prepare and submit to the President a biennial report on national critical technologies on even-numbered years. These are to be the product and process technologies the Panel deems most critical to the U.S., and shall not exceed 30 in number in any one year.

This meeting will be closed to the public, since discussions will take place in matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive order, according to 5 USC 522b.(c)(1).

For further information please, contact Joe Christian, or Tom Russell, at the Office of Science and Technology Policy, Executive Office of the President, (202) 395–5736.

Dated: October 2, 1990.

Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 90–23655 Filed 10–4–90; 8:45 am]

BILLING CODE 3195–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of International Trade Agreements; New Zealand

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination regarding the application of certain International Agreements.

SUMMARY: This notice modifies the determination published in the **Federal Register** on January 4, 1980 (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624, 46 FR 46263, 46 FR 48391, 46 FR 48807, 47 FR 18697, 49 FR 47467, 50 FR 8428, 50 FR 9342, 50 FR 11471, 50 FR 13111, 50 FR 18335, and 50 FR 38731.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Timothy M. Reif, (202) 395–6800, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Under section 1–103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the Tariff Act of 1930, as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, Carla A. Hills, United States Trade Representative, in conformance with the provisions of section 2(b) of the Act, section 701(b) of the Tariff Act of 1930, as amended, and section 1–103(b) of Executive Order 12188, does hereby determine, effective on the date of signature of this Notice that:

With respect to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), New Zealand has accepted the obligations of the Agreement and should not otherwise be denied the benefits of the Agreement.

In accordance with section 702(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), as of October 1,1990, New Zealand is a "country under the Agreement."

Carla A. Hills,

United States Trade Representative.

[FR Doc. 90–23677 Filed 10–4–90; 8:45 am]

BILLING CODE 3190–01–M

Implementation of the Accelerated Tariff Elimination Provision of the United States—Canada Free-Trade Agreement

AGENCY: Office of the U.S. Trade Representative.

ACTION: Notice of and request for comments on articles under consideration for negotiations with the Canadian Government for accelerated tariff elimination.

SUMMARY: Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to consultation and layover requirements of section 103 of that Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). This notice is intended to inform the public of those articles that may be the subject of negotiations between the United States and Canada for accelerated tariff elimination.

DATES: Public comments are due November 20, 1990.

ADDITIONAL INFORMATION: Further information on this subject may be found in the **Federal Register** notices of January 23, 1989, Volume 54, Number 13, at pages 3175 and 3176, July 7, 1989, Volume 54, Number 135, at pages 29959 through 29972; February 8, 1990, Volume 55, Number 27, at pages 4501 through 4503; and May 30, 1990, Volume 55, Number 104, at pages 21835 through 21844. Copies of a listing of specific products to be considered for accelerated tariff elimination, where the subheading is listed in Annexes I and II with an asterisk, may be obtained from one of the following agencies:

Agriculture Items (*Chapters 1–24*): U.S. Department of Agriculture, Foreign Agricultural Service, FAS Publications, Room 5910–S, Washington, DC 20250–1000, Telephone (202) 447–7937.

Commercial Items (*Chapters 24–99*): U.S. Department of Commerce, International Trade Administration, Office of Canada, Room 3033, 14th & Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 377–3101

or

Office of the U.S. Trade Representative, Office of Public Affairs, 600 17th Street, NW., Room 103 Washington, DC 20506

Inquiries regarding other aspects of this notice or relating to the implementation of accelerated tariff elimination under the FTA should be directed to James H. Grossman, Director of Tariff Negotiations, Office of North American Affairs, Office of the U.S. Trade Representative, Room 501, 600 17th Street, NW., Washington, DC 20506, telephone (202) 395–5663.

Requests for Comments

Comments supporting or opposing accelerated U.S. or Canadian duty elimination on articles provided for in the tariff chapters, headings and subheadings listed in Annex I or Annex II will be accepted until November 20, 1990, if submitted in accordance with 15 CFR part 2003. Comments should be type-written and submitted in twenty copies to Carolyn Frank, Secretary, Trade Policy Staff Committee, Room 517, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. All submissions must specify: (1) The United States and/or Canadian tariff chapter, heading, or subheading to which the comments refer, (2) the name, address, and telephone number of the person, firm, or organization making the comments, and (3) an indication as to whether the writer represents a:

—Producer in the United States
—Importer in the United States
—Exporter in the United States
—Consumer in the United States
—Other, in the United States (Specify)
—Producer in Canada
—Importer in Canada
—Exporter in Canada
—Consumer in Canada
—Other, in Canada (Specify)

Advice of the United States International Trade Commission

The United States International Trade Commission is being furnished with the list of articles published in Annex I of this notice for the purpose of securing from the Commission its judgment as to the probable economic effect of accelerated elimination of United States duties on industries producing like or directly competitive articles and on consumers.

Advice of the Private Sector Advisory Committees

Pursuant to section 103(a)(1) of the FTA Implementation Act, private sector advisory committees are being furnished with the list of articles published in Annexes I and II of this notice for the purpose of securing their advice.

Articles That May Be Considered in Negotiations

Except as noted, all articles provided for in the subheadings of the Harmonized Tariff Schedule of the United State that are listed in Annex I to this notice, and in the subheadings of the Customs Tariff of Canada that are listed in Annex II, may be subject to negotiations with Canada for accelerated duty elimination. A description of the articles provided for in the tariff subheadings listed in Annex I can be obtained by consulting the "Harmonized Tariff Schedule of the United States (1990)," U.S. International Trade Commission Publication 2232. The "Customs Tariff/Tariff des douanes" of Canada should be consulted for the description of the articles provided for in the tariff subheadings listed in Annex II.

For subheadings listed in Annexes I and II with an asterisk, only certain products covered by the subheadings may be considered for accelerated tariff elimination. A list of the specific products which may be considered is available (see **ADDITIONAL INFORMATION** above).

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

BILLING CODE 3190–01–M

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Annex I

Subheadings in the Harmonized Tariff Schedule of the United States containing products to be considered for accelerated removal of the duty.

[Except as noted, all products provided for in the subheadings listed below which are currently dutiable on importation into the United States from Canada under the U.S.-Canada Free Trade Agreement will be considered for accelerated removal of the duty. For the subheadings with an asterisk, only certain specified products will be considered for accelerated removal of the duty. Information on obtaining a list of such products is contained in the body of this notice.]

0102.90.40	0709.40	1510.00.60	1605.30.05	2825.30.00	2916.31
0201.20	0710.22	1512.11.00	1605.90.05	2825.70.00	2916.39.50*
0201.30	0710.40.00	1512.19.00	1605.90.06	2826.90.00*	2917.11.00
0202.10.00	0710.80.70*	1514.10.90	1605.90.10	2827.39.10	2917.12
0202.20	0710.80.95*	1514.90	1605.90.20	2827.49.10*	2917.13.00
0202.30	0712.20	1515.11.00	1605.90.30	2828.90.00	2917.32.00
0203.12.10	0712.90.40	1515.19.00	1703.10	2833.11.50	2917.33.00
0203.19.20	0713.10	1515.21.00	1901.90.90*	2833.29.30	2917.34.00
0203.22.10	0713.20	1515.29.00	1902.30.00*	2834.29.50*	2917.35.00
0203.29.20	0713.31	1515.30	1904.90.00*	2835.22.00	2918.90.30*
0204.22	0713.32	1515.50.00	1905.90.90*	2835.23.00	2918.90.45*
0204.23	0713.33	1515.60.00	2001.90.39*	2835.24.00	2920.90.50*
0204.30.00	0713.39	1515.90.40	2002.90.00	2835.29.50	2921.11.00
0204.41.00	0713.40	1516.20	2005.10.00*	2835.31.00	2921.19.50*
0204.42	0713.50	1517.10.00	2005.51	2835.39	2921.22.10*
0204.43	0713.90	1517.90	2007.10.00*	2836.20.00	2921.30.50*
0209.00.00	0813.30.00	1518.00	2007.91	2836.91.00	2921.43
0304.10.10	1001.10.00	1519.30	2007.99.65*	2839.11.00*	2921.45*
0304.10.30	1001.90	1521.90.20	2008.40.00	2839.19.00*	2922.50*
0304.20.30	1003.00	1602.20	2008.92*	2841.70	2923.10.00
0304.20.50	1101.00.00	1602.39.00*	2008.99.20*	2841.90	2924.10
0305.30.20	1102.10.00	1602.41	2009.11.00	2851.00.00*	2925.20
0305.41.00	1102.20.00*	1602.42	2009.19	2902.11.00	2926.90.50*
0305.61.20	1103.11.00	1602.49.40*	2009.20	2902.50.00	2930.90.50*
0305.69.40	1103.19.00	1602.49.90*	2009.80.60*	2903.13.00	2931.00.50*
0305.69.50	1104.11.00	1602.50.90*	2009.90.40	2903.19.50*	2933.21.00
0306.14.20	1104.21.00	1602.90*	2103.90	2903.40.00*	2933.39.35*
0306.24.20	1106.10.00*	1603.00.10	2106.90.60*	2903.69.50*	2933.69.00*
0407.00.00*	1107.10.00	1604.12.20	2204.29.20	2904.20.35*	2933.90.28*
0408.11.00	1107.20.00	1604.13	2204.29.60	2907.29.30*	2933.90.30*
0408.19.00	1108.11.00	1604.14.10	2304.00.00	2909.19.10*	2933.90.31*
0408.91.00*	1109.00	1604.14.20	2306.20.00	2909.42.00	2933.90.33*
0702.00.20*	1204.00.00	1604.14.30	2306.40.00	2909.43.00	2933.90.37*
0704.10*	1205.00.00	1604.14.40	2525.20.00	2909.44.00	2933.90.50*
0704.20.00	1507.10.00	1604.14.50	2526.10.00*	2910.20.00	2934.10*
0704.90	1507.90	1604.14.80	2526.20.00*	2912.21.00	2934.90.25*
0706.10	1508.10.00	1604.19	2709.00	2912.49.20*	2935.00.39*
0706.90.40*	1508.90.00	1604.20	2710.00*	2915.12.00	2935.00.43*
0708.10	1509.10.40	1605.10	2812.10.50*	2915.70.00	2935.00.46*
0708.90	1509.90.40	1605.20.05	2819.10.00	2915.90.20*	2941.10

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2942.00	3701.99	3916.90*	4820.10.20*	5404.90.00*	5607.41
3004.10.50*	3702.31.00	3917.10	4820.30.00*	5407.10.00	5607.49
3004.20.00*	3702.39.00	3917.31.00	4820.40.00	5407.53	5607.50
3004.32.00*	3702.43.00	3917.32.00	4823.59*	5407.60.20*	5609.00
3004.39.00*	3702.44.00	3917.39.00	4823.90.65*	5407.71.00*	5705.00.20*
3004.40.00*	3702.53.00	3917.40.00	4823.90.65*	5407.73.20*	5804.21.00
3004.50	3702.54.00	3918.10.31*	4911.91*	5407.92	5806.20.00
3004.90.60*	3702.91.00	3918.10.32*	5111.11	5407.93	5806.31.00
3005.10.10*	3702.93.00	3918.10.40*	5111.19	5407.94*	5806.32
3005.10.50*	3702.95.00	3919.10.20*	5111.20	5503.10.00	5808.10
3005.90.10*	3703.90	3920.10.00*	5111.30	5503.30.00*	5808.90.00
3005.90.50*	3808.10	3920.20.00*	5111.90	5505.10.00	5902.10.00*
3006.40.00	3808.20*	3920.42*	5112.11.00	5508.10.00	5902.20.00
3204.17	3808.40	3920.71.00*	5112.19	5508.20.00	5903.10.20*
3205.00	3809.91.00*	3920.92.00*	5112.20.00	5509.11.00	5909.00.20*
3206.49*	3809.92	3921.90*	5112.30.00	5509.12.00	5911.90.00*
3208.20.00*	3809.99	3923.10.00*	5112.90	5509.21.00	6002.10
3208.90.00*	3811.90.00*	3923.21.00*	5204.11.00	5509.22.00	6002.20
3209.10.00*	3820.00.00	3924.10.50*	5204.19.00	5509.31.00*	6002.30
3209.90.00*	3823.20.00	3925.90.00*	5204.20.00	5511.10.00*	6002.43.00
3212.10.00	3823.90.29*	3926.20	5205.24.00	5512.11.00	6002.92.00
3212.90.00	3823.90.36*	3926.30*	5205.25.00	5512.19.00	6002.93.00
3213.90.00	3823.90.40*	3926.90.90*	5205.31.00*	5512.29.00*	6103.42.10*
3214.10.00*	3823.90.50*	4008.11*	5205.41.00*	5513.39.00*	6103.43.15*
3214.90.50	3901.10.00	4008.21.00*	5205.42.00*	5515.12.00*	6104.62.20*
3301.24.00	3901.20.00	4009.10.00*	5205.43.00	5515.13.05	6104.63.20*
3304.99.00*	3901.90.50	4009.20.00*	5205.44.00	5515.19.00	6105.10.00
3306.10.00	3902.10.00*	4009.30.00*	5205.45.00	5515.21.00	6105.20.20
3307.30*	3903.11.00	4009.40.00*	5206.24.00	5515.22.05	6106.10.00
3401.20.00	3903.19.00	4015.19.10*	5206.25.00	5515.92.05	6106.20.20
3402.19*	3903.90.50*	4016.93.00*	5206.44.00	5515.99.00*	6107.11.00
3402.90*	3904.10.00	4202.91.00*	5206.45.00	5516.31.05	6107.12.00
3403.11	3905.19.00*	4202.92.45*	5208.59	5516.32.05	6108.21.00
3403.19	3907.20.00	4202.92.50*	5209.51.60*	5516.33.05	6108.22.00
3403.99.00*	3907.30.00	4203.21.80*	5211.21.00	5516.34.05	6109.10.00*
3404.20.00	3907.50.00	4411.11.00	5212.15	5516.44.00*	6109.90.10*
3404.90.10	3907.99.00	4411.29*	5306.10.00	5601.10	6110.20.20*
3405.20.00	3909.10.00*	4414.00.00*	5306.20.00	5601.21.00	6110.30.30*
3407.00	3909.50.50*	4415.20.80*	5307.10.00	5601.22.00*	6111.20
3503.00*	3910.00.00	4420.10.00*	5307.20.00	5602.10*	6111.30
3504.00	3911.90.30*	4420.90.80*	5401.10.00*	5603.00*	6111.90
3506.10	3912.39.00	4421.90.90*	5402.20.60*	5604.10.00	6115.12.00*
3506.91.00*	3912.90.00	4817.20.40*	5402.31*	5606.00.00*	6115.20.00*
3603.00.30*	3914.00.00	4819.10.00*	5402.33	5607.10.00	6115.91.00*
3701.30.00	3916.10.00*	4819.30.00*	5402.49.00*	5607.29.00	6115.92*
3701.91.00	3916.20.00*	4819.60.00*	5404.10	5607.30.20	6115.93*

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6116.10*	7002.31.00	7220.11.00*	7308.90.90*	7608.20.00*	8415.90.00
6117.80.00*	7005.10.00	7220.12*	7317.00	7610.90.00*	8418.10.00
6201.91.20	7005.21*	7220.20	7318.12.00	7612.10.00	8418.21.00
6201.92*	7005.29*	7220.90.00*	7318.15*	7612.90.10	8418.91.00
6201.93*	7006.00	7222.20.00	7318.16.00*	7616.10.30*	8418.99.00
6202.93*	7007.11.00	7223.00	7318.29.00	7806.00.00	8419.39.00
6203.42.40*	7007.21	7224.90.00	7320.20	7907.90	8419.81.90*
6203.43*	7008.00.00	7225.10.00	7320.90	8104.11.00	8419.90
6204.63*	7009.92.10*	7225.20*	7321.11	8104.19.00	8421.21.00
6205.30.20*	7010.90.20	7225.30*	7321.90.60	8104.30.00	8421.23.00*
6207.11.00*	7010.90.30	7225.40*	7322.90.00	8104.90.00	8421.99.00*
6207.19.00*	7013.21	7225.50*	7324.21.50	8108.90*	8422.11.00
6209.20	7013.31	7225.90.00*	7324.90.00	8109.90.00*	8422.90.05
6209.30	7013.39.10*	7226.10	7326.20.00	8201.10.00	8423.10.00
6209.90	7013.91	7226.20.00*	7326.90*	8201.20.00	8423.81.00
6211.20*	7017.90.00	7226.91*	7403.12.00	8201.30.00	8423.90.00
6211.43.00*	7019.10.30	7226.92*	7403.13.00	8205.59	8424.20*
6212.10	7019.20*	7226.99.00*	7406.20.00	8211.10.00	8424.89.00*
6217.90.00*	7019.31.00	7228.50	7407.10	8211.91	8424.90*
6301.30.00	7108.12.50	7303.00.00	7407.21	8211.92	8425.11.00
6301.40.00	7108.13	7304.10*	7407.22	8211.93.00	8425.39.00
6305.31.00*	7113.11	7304.20*	7408.11	8211.94	8426.41.00
6307.90.95*	7113.19	7304.31*	7408.19.00	8214.90	8428.39.00
6401.99	7113.20	7304.39.00*	7408.29	8302.10	8428.90.00
6402.91	7116.10	7304.41.00	7409.11	8302.20.00	8429.51
6403.99*	7116.20	7304.49.00*	7409.19	8302.42	8429.59
6404.19*	7117.19	7304.51	7409.21.00	8302.49*	8430.20.00
6406.99*	7202.92.00	7304.59*	7409.29.00	8302.50.00*	8430.49.40
6505.90*	7205.10.00	7304.90*	7409.40.00	8302.60	8431.10.00*
6802.99.00*	7208*	7306.10*	7409.90	8306.30.00	8431.31.00*
6805.10.00	7209*	7306.20*	7410.11.00	8309.90.00*	8431.39.00
6805.20.00	7210*	7306.30*	7410.21	8404.10.00*	8431.41.00
6805.30.10	7211.49	7306.40	7410.22.00	8404.90.00*	8431.42.00
6806.10.00*	7215.90*	7306.50*	7411.10	8412.21.00	8431.43.40
6806.20.00*	7216.10.00	7306.60*	7411.21*	8412.29	8431.49
6807.10.00*	7216.21.00	7306.90*	7411.22.00*	8412.90	8433.11.00*
6807.90.00*	7216.31.00	7307.11.00	7411.29*	8413.50.00	8433.90.10*
6810.91.00*	7216.32.00	7307.19	7412.10.00	8413.91*	8462.99.00
6815.10.00*	7216.33.00	7307.21*	7412.20.00	8414.30	8465.99.00
6815.99.40*	7216.40.00	7307.22*	7415.10.00*	8414.51.00	8466.10.00
6909.19.50*	7216.50.00	7307.23.00*	7419.99*	8414.59.80*	8466.20
6911.10	7217.31	7307.29.00*	7604.29.30*	8414.80.10*	8466.30
6911.90.00	7217.32	7307.91	7604.29.50*	8414.90*	8466.92
6913.10	7217.33	7307.92*	7607.11.30*	8415.81.00	8466.94.50
6914.10.00	7218.90.00	7307.93*	7607.11.60*	8415.82.00	8468.10.00
6914.90.00*	7219*	7307.99	7608.10.00*	8415.83.00*	8468.90.10*

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8477.10.60	8516.29.00*	8607.30	9402.90.00
8477.90.00*	8516.31.00	8607.99	9403.90
8479.81.00	8516.32.00	8716.90.50*	9404.29.90
8479.89.10	8516.40	8903.99.90*	9404.90.20*
8479.89.60*	8516.60.60	9001.10.00	9405.91.60*
8479.89.90*	8516.71.00*	9002.11.80	9406.00
8479.90.40*	8516.79.00	9003.11.00	9503.49.00*
8479.90.80*	8516.90	9003.90.00*	9503.90.50*
8480.71.90	8517.30.30	9004.10.00	9504.90.40*
8481.20.00	8517.30.50*	9006.20.00	9504.90.90*
8481.90.90*	8521.10.00	9006.53.00	9506.39.00*
8482.10	8521.90.00	9006.62.00	9506.91.00*
8482.20.00	8522.90	9006.91.00*	9506.99.15*
8482.50.00	8530.10.00	9006.99.00*	9506.99.60*
8482.80.00	8530.80.00	9008.10.00	9507.10.00
8482.91.00	8530.90.00	9008.90	9507.90
8482.99	8532.23.00*	9015.30	9603.40
8483.20	8535.90.00*	9015.90.00*	9606.29*
8483.40	8536.10.00	9017.20	9606.30.80*
8483.90	8536.20.00	9017.80.00*	9608.20.00*
8501.10*	8536.30.00	9017.90.00	9608.60.00
8501.20*	8536.49.00*	9018.19	9608.99
8501.52.40*	8536.50.00	9018.49.40	9612.10*
8501.64.00*	8536.90.00	9019.10.20*	9999.00.15
8502.30.00*	8537.10.00*	9021.19	
8503.00	8537.20.00*	9026.90	
8504.31*	8538.10.00	9027.10.20	
8504.32.00	8538.90.00	9027.20.40	
8504.33.00	8539.22.80*	9027.30	
8504.40.00	8539.39.00	9027.50.40	
8504.90.00*	8543.80.90*	9027.90.20	
8506.11.00*	8543.90.80*	9027.90.40	
8506.19.00*	8544.59*	9027.90.60*	
8506.90.00	8546.20.00	9027.90.80*	
8507.20.00*	8546.90.00	9032.89.60*	
8507.90*	8603.10.00	9032.90*	
8509.40.00*	8604.00.00	9106.90	
8509.80.00*	8605.00.00	9113.10.00	
8509.90.40	8606.10.00	9205.90.40*	
8510.20.00	8606.20.00	9209.99.40*	
8510.90.30	8606.30.00	9306.10.00	
8511.50.00*	8606.91.00	9401.20.00*	
8511.90.60*	8606.92.00	9401.30*	
8514.10.00*	8606.99.00	9401.80.20*	
8514.90.00*	8607.12.00	9401.80.40*	
8515.90*	8607.19	9401.90*	

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Annex II

Subheadings in the Customs Tariff of Canada containing products to be considered for accelerated removal of the duty.

[Except as noted, all products provided for in the subheadings listed below which are currently dutiable on importation into Canada from the United States under the U.S.-Canada Free Trade Agreement will be considered for accelerated removal of the duty. For the subheadings with an asterisk, only certain specified products will be considered for accelerated removal of the duty. Information on obtaining a list of such products is contained in the body of this notice.]

0102.90.90	0713.90.90	1517.10.00	2009.70.99*	2839.11.00*	2921.43.00
0201.20.00	0813.30.00	1517.90	2009.80.19*	2839.19.00*	2921.45.00*
0201.30.00	1001.10.00	1518.00	2009.90.20	2841.70.00	2922.50.00*
0202.10.00	1001.90.00	1519.30.90	2009.90.30	2841.90.00	2923.10.00
0202.20.00	1003.00.00	1521.90	2103.90	2851.00.00*	2924.10.00
0202.30.00	1101.00.00	1602.20.10	2106.90.20	2902.11.00	2925.20.90
0204.22	1102.10.00	1602.39*	2106.90.90*	2902.50.00	2926.90.90*
0204.23	1102.20.00*	1602.41	2204.29.10	2903.13.00	2930.90.00*
0204.30.00	1103.11.00	1602.42	2525.20	2903.19.00*	2931.00.90*
0204.41.00	1103.19.90	1602.50.10*	2526.10.00*	2903.40.00*	2933.21.00
0204.42	1104.11.00	1602.90.91	2526.20*	2903.69.00*	2933.31.00
0204.43	1104.21.00	1602.90.99	2709.00.90	2904.20.00*	2933.39.00*
0209.00.20	1106.10.90*	1603.00.21	2710.00.10*	2905.50.00*	2933.69.00*
0305.69.00	1107.10	1604.12.91	2710.00.20*	2907.29.00*	2933.90.00*
0306.14.00	1107.20	1604.13	2711.12.10	2909.19.00*	2934.10.00*
0306.24.00	1108.11.00	1604.14.11	2712.90.20	2909.42.00	2934.90.90*
0407.00.00*	1109.00.00	1604.14.90	2712.90.90*	2909.43.00	2935.00.00*
0408.11.00	1507.10.00	1604.19	2714.10.00	2909.44.00	2941.10.00
0408.19.00	1507.90.90	1604.20	2809.20.00	2910.20.00	2941.90.00
0408.91.00*	1508.10.00	1605.10.00	2812.10.90*	2912.21.00	2942.00.00
0702.00.91*	1508.90.00	1605.30.10	2817.00.00	2912.49.00*	3004.10.00*
0704.10*	1511.10.00	1605.90.10	2819.10.00	2915.12.00	3004.20.00*
0704.20	1511.90.00	1605.90.94	2825.70.10	2915.70.00	3004.32.90*
0704.90	1512.11	1703.10	2826.90.00*	2915.90.00*	3004.39.99*
0706.10	1512.19	1901.90.21*	2827.20.00	2916.31.00	3004.40.90*
0708.10	1513.11.00	1902.30.10*	2827.39.00*	2916.39.00*	3004.50
0708.90	1513.19.00	1905.90.31*	2827.49.00*	2917.11.00	3004.90.99*
0709.40	1513.21.00	2001.90.90*	2828.90.10	2917.12.00	3005.10*
0710.22.00	1513.29.00	2002.90.00	2833.11.00	2917.13.00	3005.90.20*
0710.40.00	1514.10.00	2005.10.00*	2833.29.00*	2917.32.00	3005.90.30*
0710.80.41	1514.90.00	2005.51	2834.29.90*	2917.33.00	3006.40
0710.80.49	1515.11.00	2007.10.00*	2835.22.00	2917.34.00	3204.17
0712.20.00	1515.19.00	2007.91.00	2835.23.00	2917.35.00	3205.00.00
0712.90.90*	1515.21.00	2007.99.90*	2835.24.00	2917.39.00*	3206.49.80*
0713.10	1515.29.00	2008.40	2835.26.00	2918.90.00*	3208.20.00*
0713.31.00	1515.30.90	2008.92.90*	2835.29.00	2920.90.90*	3208.90.00*
0713.32.00	1515.50	2008.99.99*	2835.31.00	2921.11.00	3209.10.00*
0713.33	1515.60	2009.11.90	2835.39.00	2921.19.00*	3209.90.00*
0713.39	1515.90	2009.19.90	2836.20.00	2921.22.00*	3212.10.00
0713.50.90	1516.20.00	2009.20.90	2836.91.00	2921.30.00*	3212.90.00

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3213.90	3811.90.00*	3923.10.00*	5112.11	5508.10.00	5902.20.00
3214.10.00*	3815.12.00	3924.10.90*	5112.19	5508.20.00	5903.10.20*
3214.90.00	3815.19.00	3925.90.00*	5112.20	5509.11.00	5909.00.10*
3301.24.00	3820.00.00	3926.20.11	5112.30	5509.12.00	5911.90.90*
3301.25.00*	3823.20.00	3926.20.19	5112.90	5509.21.00	6002.10
3304.99.00*	3823.90.90*	3926.20.90*	5204.11.00	5509.22	6002.20
3306.10.00	3901.10.00	3926.90.40*	5204.19.00	5509.31.00*	6002.30
3307.30.00*	3901.20.00	3926.90.90*	5204.20.00	5511.10.00*	6002.43
3401.20	3901.90.00	4008.11.00*	5205.24.00	5512.11.00	6002.92.00
3402.19.00*	3902.10.00*	4008.21.90*	5205.25.00	5512.19.00	6002.93.00
3402.90.00*	3903.11.00	4009.10.00*	5205.31.00*	5512.29.00*	6103.42.00*
3403.11	3903.19	4009.20.00*	5205.41.00*	5513.39.00*	6103.43.00*
3403.19	3903.90.00*	4009.30.00*	5205.42.00*	5515.12.00*	6104.62.00*
3403.99.00*	3904.10.00	4009.40.00*	5205.43.00	5515.13.00*	6104.63.00*
3404.10.00	3905.19.00*	4015.19.00*	5205.44.00	5515.19.00	6105.10.00
3404.20.00	3905.90.00*	4016.93.00*	5205.45.90	5515.21.00	6105.20.00*
3404.90	3907.20	4202.91.90*	5206.24.00	5515.22.00*	6106.10.00
3405.20.00	3907.30.00	4202.92.90*	5206.25.00	5515.92.00*	6106.20.00*
3407.00.10	3907.50.00	4203.21.90*	5206.44.00	5515.99.00*	6107.11.00
3407.00.20	3907.99.00	4410.10.10*	5206.45.00	5516.31.00*	6107.12.00
3503.00.90*	3909.10.10*	4410.10.91	5208.59.00	5516.32.00*	6108.21.00
3504.00.00	3909.50.90*	4410.10.99	5209.51.00*	5516.33.00*	6108.22.00
3506.10.00	3910.00.00	4411.11.00	5211.21.00	5516.34.00*	6109.10.00*
3506.91.90*	3911.90.00*	4411.29.00*	5212.15	5516.44.00*	6109.90.00*
3603.00.00*	3912.39.90	4414.00.00*	5306.10.20	5601.10	6110.20.00*
3701.30	3912.90.90	4415.20.00*	5306.20.20	5601.21	6110.30.00*
3701.91	3914.00	4420.10.00*	5307.10.00	5601.22.10*	6111.20.00
3701.99	3915.10.00	4421.90.90*	5307.20.00	5602.10.10*	6111.30.00
3702.31.00	3915.20.00	4811.39.00*	5401.10.00*	5602.10.99*	6111.90.00
3702.39	3915.30.00	4817.20.00*	5402.20.00*	5603.00*	6115.12.00*
3702.43.00	3915.90	4819.10.00*	5402.31.00*	5604.10.00	6115.20.00*
3702.44	3916.20.00*	4819.30.00*	5402.33.00	5606.00*	6115.91.00*
3702.53.00	3917.10	4819.60.00*	5402.49.00*	5607.10	6115.92.00*
3702.54.00	3917.31.00	4820.10.00*	5404.10.00	5607.29	6115.93.00*
3702.56	3917.32.00	4820.30.00*	5404.90.00*	5607.30	6116.10.00*
3702.91	3917.39.00	4820.40.00	5407.10.00	5607.49	6117.80.90*
3702.93	3917.40.00	4823.59.00*	5407.53.00	5607.50	6201.91.00*
3702.95	3918.10.11*	4823.90.91	5407.60.00*	5609.00.00	6201.92*
3703.90.00	3918.10.19*	4823.90.99*	5407.71.00*	5705.00.00*	6201.93.00*
3705.90.90	3920.10.00*	4911.10.99*	5407.73.00*	5804.21.00	6202.93.00*
3808.10.10	3920.20.00*	4911.91.90*	5407.92.00	5806.20.00	6203.42.00*
3808.20.10*	3920.42.00*	5111.11	5407.93.00	5806.31	6203.43.00*
3808.40	3920.71.00*	5111.19.00	5407.94.00*	5806.32.00	6204.63.00*
3809.91.90*	3920.92.00*	5111.20	5503.10.00	5808.10.00	6205.30.00*
3809.92	3921.90.11*	5111.30	5503.30.00*	5808.90.00	6207.11.00*
3809.99.00*	3921.90.90*	5111.90	5505.10.00	5902.10.00*	6207.19.00*

3

6209.20.00	7010.90.90*	7307.99	7608.20.00*	8415.82.90	8465.99.10
6209.30.00	7013.21.00	7308.90.90*	7610.90.00*	8415.83.00*	8465.99.90
6209.90.00	7013.31.00	7310.10	7612.10.00	8415.90.30*	8466.10.20*
6211.20.00*	7013.39.90*	7310.21.00	7612.90.00	8415.90.40*	8466.10.90*
6211.43.90*	7013.91	7310.29.10*	7616.10.00*	8418.10	8466.20.20*

4

8504.40	8537.10.99*	8901.30.00*	9402.90.90
8504.90.30*	8537.20.90*	8901.90.10*	9403.90
8504.90.40	8538.10.20	8901.90.90*	9404.29.00*
8504.90.50	8538.10.30	8902.00.10*	9404.90.90*

3

6209.20.00	7010.90.90*	7307.99	7608.20.00*	8415.82.90	8465.99.10
6209.30.00	7013.21.00	7308.90.90*	7610.90.00*	8415.83.00*	8465.99.90
6209.90.00	7013.31.00	7310.10	7612.10.00	8415.90.30*	8466.10.20*
6211.20.00*	7013.39.90*	7310.21.00	7612.90.00	8415.90.40*	8466.10.90*
6211.43.90*	7013.91	7310.29.10*	7616.10.00*	8418.10	8466.20.20*
6212.10.00	7017.90	7310.29.99*	7806.00.00	8418.21	8466.20.90*
6217.90.00*	7019.10.10*	7317.00	7907.90	8418.91.10*	8466.30.20*
6301.30.00	7019.10.29*	7318.12.00	8104.11.00	8418.99.10*	8466.30.90*
6301.40.00	7019.20.90*	7318.15.00*	8104.19.00	8419.39.90	8466.92.10*
6305.31.00*	7019.31	7318.16.00*	8104.30	8419.81.90*	8466.94.90
6307.90.92*	7108.13.20	7318.22.00*	8104.90	8419.90.10*	8468.10.00
6307.90.99*	7113.11.00	7318.29.00	8108.90.00*	8419.90.80*	8468.90.20
6401.99.00	7113.19.00	7320.20	8109.90.00*	8421.21.00	8477.10
6402.91.00	7113.20.00	7320.90	8201.10.00	8421.23.00*	8477.90*
6403.99.00*	7116.10.00	7321.11.90	8201.20.00	8421.99.20*	8479.81.90
6404.19.90*	7116.20.00	7321.90	8201.30.00	8421.99.30*	8479.89.20
6406.99.20	7117.19.00	7322.90	8205.59	8422.11	8479.89.90*
6406.99.90*	7202.92.00	7324.21.00	8211.10	8422.90.91*	8479.90.10
6505.90*	7205.10	7324.90	8211.91	8423.10.00	8479.90.60*
6802.99.00*	7211.49.00	7325.10.90*	8211.92.00	8423.81.00	8480.71.00
6805.10.00	7216.10.00	7326.20.00	8211.93.00	8423.90.00	8481.20.00
6805.20.00	7216.21.00	7326.90.99*	8211.94.00	8424.20.90*	8481.90.10*
6805.30.00	7216.31.00	7403.12.00	8214.90	8424.89.00*	8482.10.10
6806.10.90*	7216.32.00	7406.20	8302.10.00	8424.90.30	8482.20.10
6806.20.00*	7216.33.00	7407.10	8302.20.00	8424.90.40*	8482.80.10
6807.10.00*	7216.40.00	7407.21	8302.42.00	8425.11.00	8482.91
6807.90.00*	7216.50.00	7407.22	8302.49.90	8425.39.90	8482.99.10
6808.00	7217.31.00	7408.11	8302.60.00	8426.41.00	8483.20.00
6810.91*	7217.32.00	7408.19	8306.30.00	8427.20	8483.40.00
6815.10.90*	7217.33.00	7408.29	8309.90.00*	8428.39.90	8483.90.10*
6815.99.99*	7218.90	7409.11	8404.10*	8428.90.90	8483.90.50*
6904.10.00	7220.20	7409.19	8404.90*	8429.51.20	8501.10*
6909.19.00*	7222.20.00	7409.21	8412.21.00	8429.59.90	8501.52.90*
6911.10.00	7223.00	7409.29	8412.29.90	8430.20.00	8501.64.10*
6911.90.00	7224.90	7409.40	8412.90.30	8430.49.60	8501.64.90*
6913.10	7225.10	7409.90	8413.50.90	8431.10.20*	8502.30.00*
6914.10.00	7226.10	7410.11	8413.91.10	8431.20.00*	8503.00.12*
6914.90.00*	7228.50.00	7410.21	8413.91.99*	8431.31.00*	8503.00.13*
7005.10	7303.00	7410.22	8414.30	8431.39.20	8503.00.14*
7005.21.00*	7304.31.00*	7411.10	8414.51.00	8431.41.90	8503.00.15*
7005.29.00*	7304.41.00	7412.10.00	8414.59.00*	8431.43.40	8503.00.16*
7006.00	7304.51.00	7412.20.00	8414.80.00*	8431.49.30	8503.00.17*
7007.11	7306.40.00	7419.99.90	8414.90.20	8431.49.90	8503.00.20*
7007.21	7307.11	7604.29.11*	8414.90.30	8433.11.00*	8504.31.00*
7008.00.00	7307.19	7604.29.12*	8414.90.50*	8433.90.10*	8504.32.00
7009.92.00*	7307.91	7607.11.20*	8415.81.00	8462.99.00	8504.33.00

4

8504.40	8537.10.99*	8901.30.00*	9402.90.90
8504.90.30*	8537.20.90*	8901.90.10*	9403.90
8504.90.40	8538.10.20	8901.90.90*	9404.29.00*
8504.90.50	8538.10.30	8902.00.10*	9404.90.90*
8506.11.00	8538.90.20	8903.99.91*	9405.91.99*
8506.19.00*	8538.90.30	8904.00.00*	9406.00
8506.90.90	8538.90.90	8905.10.00*	9503.49.00*
8507.20.00*	8539.39.90	8905.20*	9503.90.00*
8507.90*	8539.40.20	8905.90*	9504.90.90*
8509.40.90*	8543.80.90*	8906.00*	9506.39.90*
8509.80.00*	8543.90.40*	9001.10.00	9506.91.90*
8509.90.30	8544.59.00*	9002.11	9506.99.90*
8510.20.90	8546.20.00	9003.11.20	9507.10.00
8510.90.20	8546.90.00	9003.90.22*	9507.90.10
8511.50.00*	8603.10.00	9004.10.00	9507.90.90*
8511.90.20*	8604.00.90	9006.20.20	9603.40
8514.10*	8605.00.00	9006.53.00	9608.20.00*
8514.90*	8606.10.00	9006.62.00	9608.60.00
8515.90.90*	8606.20.00	9006.91.99*	9608.91.00
8516.29.19*	8606.30.00	9006.99.90*	9608.99.00
8516.31	8606.91.00	9008.10.00	9612.10*
8516.32.00	8606.92.00	9008.90	
8516.40.00*	8606.99.00	9015.30.00	
8516.60.00*	8607.12.10	9015.90.30*	
8516.71.10*	8607.12.20*	9017.20.00	
8516.79.00*	8607.12.90*	9017.80*	
8516.90.10	8607.19.10*	9017.90	
8516.90.30*	8607.19.91	9019.10*	
8516.90.49*	8607.19.92*	9021.19	
8516.90.90*	8607.19.93*	9026.90	
8517.30.19	8607.30.00*	9027.30	
8517.30.20*	8607.91.00	9027.90.19	
8521.10.00	8607.99.12	9027.90.20	
8521.90.00	8607.99.19*	9027.90.92	
8522.90	8607.99.20*	9027.90.93*	
8530.80.00	8609.00	9029.90.93*	
8530.90.20	8701.90.11	9032.89.90*	
8535.90.90*	8703.10.90*	9032.90.30*	
8536.10.00	8703.21.90*	9106.90.90	
8536.20.00	8704.22.00*	9113.10.00	
8536.30	8709.11.00	9306.10.00	
8536.49.00*	8709.19	9401.20.00*	
8536.50*	8709.90	9401.30.10*	
8536.90.30	8716.90.90*	9401.80.00*	
8536.90.90	8901.10.00*	9401.90.10*	
8537.10.91*	8901.20.00*	9401.90.90*	

[FR Doc. 90-23662 Filed 10-4-90; 8:45 am]
BILLING CODE 3510-01-C

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RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSALS(S):

(1) *Collection title:* Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings

(2) *Form(s) submitted:*: R1-231-F

(3) *OMB Number:* 3220-0107

(4) *Expiration date of current OMB clearance:* Three years from date of approval

(5) *Type of request:* Revision of a currently approved collection

(6) *Frequency of response:* On occasion

(7) *Respondents:* Businesses of other for-profit

(8) *Estimated annual number of respondents:* See justification statement

(9) *Total annual responses:* 600

(10) *Average time per response:* .125 hours

(11) *Total annual reporting hours:* 75

(12) *Collection description:* Under the Railroad Retirement Act, benefits are not payable if an annuitant works for an employer covered under the Act or last non-railroad employer. The request will obtain information on an annuitant's work and earnings from a non-railroad employer. The information will be used for determining whether benefits should be withheld.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 90-23529 Filed 10-4-90; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 28, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47188

Date filed: September 25, 1990

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 27, 1990

Description: Application of Continental Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between Houston, Texas and Ecuador via intermediate points in Central America.

Docket Number: 47190

Date filed: September 27, 1990

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 25, 1990

Description: Application of Alaska Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests a certificate of public convenience and necessity to operate scheduled service in foreign air transportation of persons, property and mail between Los Angeles, California and Mexico City, Mexico.

Docket Number: 46793

Date filed: September 24, 1990

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 22, 1990

Description: Amendment to Application for Amendment of the foreign air carrier permit of Aerovias, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, requested permission to amend its foreign air carrier permit to engage in air transportation of persons, property and mail. The Application, in part, reads as follows:

(1) Between Guatemala City, on the one hand and Miami, Florida, on the other via the intermediate point Merida, Mexico.

Applicant hereby requests that the above reference language be amended to read as follows:

(1) Between Guatemala City, on the one hand and Miami, Florida on the other.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-23623 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Privacy Act of 1974; Systems of Records

The Department of Transportation (DOT) herewith publishes a notice to delete four systems of records. The system of records are no longer being maintained by the Federal Aviation Administration (FAA), and have consequently been destroyed. The systems of records are: (1) DOT/FAA 824 Medical Exemptions—Public dockets; (2) DOT/FAA 834 Commissary Billing; (3) DOT/FAA 844 FAA Airplane Noise Complaint System; and (4) DOT/FAA 846 Airport Solicitation Permit application File.

Issued in Washington, DC September 25, 1990.

Paul T. Weiss,

Deputy Assistant Secretary for Administration.

[FR Doc. 90-23622 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Pago Pago, American Samoa

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Pago Pago, American Samoa.

FOR FURTHER INFORMATION, CONTACT: Mr. Dave Reilly, Territorial Representative, Federal Highway Administration, 300 Ala Moana Blvd. POB 50206, Honolulu Hawaii 96850, Telephone: (808) 541-2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the American Samoa Government, Department of Public Works, will prepare an environment impact statement (EIS) on a proposal to improve the main road (Route 1) through Pago Pago, American Samoa. The proposed improvement would involve relocating Route 1 through Pago Park.

Improvements to Route 1 are considered necessary to provide access to Pago Park and to bypass congested areas of Pago Pago. Alternatives under consideration include: (1) Taking no action; (2) widening the present road; (3) relocating Route 1 so that it passes near the center of Park; and (4) relocating Route 1 so that it runs along the harbor edge of Pago Park. Alternatives numbered 3 and 4, and possibly alternative number 2 will involve the use of parkland from Pago Park. Alternatives numbered 3 and 4 will include bridge construction over Vaipito Stream. Alternative number 3 will include stream relocations for Laolao and Vaipito Streams.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal and Territorial agencies and to private organizations and citizens who have previously expressed or were known to have an interest in this proposal. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 28, 1990.

Dave Reilly,

Territorial Representative, Honolulu, Hawaii.

[FR Doc. 90-23526 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Nassau County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Nassau County, New York.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616, or Robert J. Lambert, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457-6452.

SUPPLEMENTARY INFORMATION: The New York State Department of Transportation, in cooperation with the Federal Highway Administration, will be preparing an Environmental Impact Statement (EIS) on the proposed project to widen the Northern State Parkway in Nassau County from the Meadowbrook State Parkway to the Wantagh State Parkway. This widening is necessary to accommodate existing and projected traffic demand.

Alternatives to be considered include 4 lanes (no build), 6 lanes, 7 lanes, and 8 lanes.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this project. A scoping center has been scheduled for October 22 and 23, 1990 from 3 to 8 p.m. at the Westbury Junior High School. Information on the project will be available and engineers will be present to answer questions.

After the Draft Environmental Impact Statement is prepared, it will be available for public and agency review and comment. This will be followed by a Public Hearing. A public notice will be issued announcing the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 28, 1990.

Harold J. Brown,

Division Administrator, New York.

[FR Doc. 90-23532 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Federal Highway Administration

[NHTSA Docket No. 81-12; Notice 06]

State Matching of Planning and Administration Costs; School Bus Safety Grants

AGENCY: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice.

SUMMARY: In this notice, the agencies grant an exemption in fiscal year 1991 to the Federal contribution limitation for planning and administration activities in support of State highway safety programs conducted with Federal grant funds. The exemption is being allowed during this fiscal year to grant States maximum flexibility in planning and administering their programs in anticipation of the imposition of a sequestration of section 402 grant funds by operation of the Gramm-Rudman-Hollings Act. This action is being taken to prevent a slowdown in planning and implementation activities and a decline in program quality in highway safety programs at the State and local level. It is hoped that it may also stem the States' need to lay off experienced highway safety staff during the immediate period of fiscal crisis, and

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risk losing valuable personnel permanently.

NHTSA also announces, in this notice, that it will not set-aside as earmark any section 402 funds in fiscal year 1991 for school bus safety implementation projects. However, in the event that a sequestration is imposed and then lifted, or if more funding for the section 402 program otherwise becomes available, the agency may issue a subsequent Federal Register notice to reestablish the set-aside for school bus safety projects.

DATES: The actions taken in this notice are effective on October 1, 1990.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Brian McLaughlin, Regional Coordinator, NOA-02.1, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-2123. In FHWA: Mr. R. Clarke Bennett, Director, Office of Highway Safety, HHS-01, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-1153.

SUPPLEMENTARY INFORMATION: Under the Highway Safety Act of 1966, as amended, States are required to match Federal contributions to their highway safety programs with their own funds. Before passage of the Surface Transportation Act of 1978 (Pub. L. 95-599, 92 Stat. 2689), it was possible for States to meet their matching obligation on the basis of total expenditures. Thus it was possible for Federal participation in some program areas to be as much as 100 percent as long as State participation in other program areas brought total non-Federal expenditures up to the required level.

The Surface Transportation Assistance Act of 1978 prohibits a State from including planning and administration costs with total highway safety expenditures for matching purposes (section 207(d), Pub. L. 95-599), amending 23 U.S.C. 402(d)). It requires that planning and administration costs be specifically matched by the States.

On July 14, 1980, the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) issued a joint final rule (45 FR 47144) establishing policy on State matching requirements for planning and administration costs associated with the implementation of a State highway safety program under the Highway Safety Act of 1966 (Pub. L. 89-564, as amended; 23 U.S.C. 401, *et seq.*).

In a subsequent joint final rule, dated April 8, 1982 (47 FR 15318), NHTSA and FHWA amended this regulation to require that the Federal share for planning and administration costs of the State highway safety agencies be set at 50 percent, with a maximum Federal contribution for planning and administration activities of not more than 10 percent of each State's section 402 funds. These limitations were established to ensure that sufficient funds are put into safety programs, rather than being absorbed by administrative overhead. The preamble to that final rule stated that, "[t]hese requirements will, therefore, be incorporated into the funding guidelines for 402 programs to become applicable beginning with Fiscal Year 1984."

The funding guidelines, which are contained in NHTSA Order 462-13A, were amended on September 16, 1982, in a notice that was published in the Federal Register (47 FR 40791). (Portions, not relevent to this discussion, were updated on May 23, 1983.) The guidelines consist of two parts: Part I identifies requirements of general applicability and Part II identifies limitations or conditions addressing six specific areas, one of which is program management.

The 10 percent cap is included in the section on program management in Part II of the funding criteria. With regard to the application of Part II, the guidelines state:

> The provisions in this part are not intended to deny the State flexibility in supporting potential accident and injury reduction activities. Accordingly, on a case-by-case basis (except where legislatively prohibited), costs can be approved for 402 funding which are otherwise indicated as not allowable. Approval of such funding, however, must meet all the provision of Part I, above.

The 10 percent cap appears in Part II, not Part I of the funding guidelines, and the limitation is not statutory in nature. Accordingly, the agencies have the discretion to grant an exemption to the cap to provide the States with increased flexibility in support of their highway safety activities, provided steps are taken to ensure that sufficient funds are put into safety programs.

Currently, the agencies are under an initial sequestration order pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177) (commonly known as the Gramm-Rudman-Hollings Act), as amended. For every nonexempted budget account in the Federal Government, the Gramm-Rudman-Hollings Act requires that agency expenditures be cut on a uniform percentage basis. This reduction is referred to as "sequestration." Also, the Gramm-Rudman-Hollings Act requires that the President's sequestration order apply this uniform percentage to every "program, project, and activity" (PPA) within each nonexempt budget account.

In a letter to NHTSA Administrator Jerry Ralph Curry, the National Association of Governors' Highway Safety Representatives (NAGHSR) indicates that it is preparing for a sequestration of 32 percent and states that, "[a] reduction of this magnitude will very adversely affect the ability of state governments to prepare and implement state highway safety plans and programs in FY 91." To minimize the adverse impacts, NAGHSR strongly urges the agencies to:

> raise the 10% ceiling on Planning and Administrative expenses. * * * Although 402 funding will be reduced, administrative requirements will not be. If states had the flexibility to use more of their 402 allocation for planning and administrative purposes, then state highway programs would not experience a slow down in planning and implementation, and program quality would not have to suffer.

NHTSA and FHWA agree with NAGHSR that the 10 percent ceiling, if applied to a baseline reduced by 32 percent, could pose very serious consequences to state highway safety programs nationwide. Accordingly, the agencies are relaxing this limitation in fiscal year 1991. For FY 91, we will permit States to apply the 10 percent ceiling against either the amount of section 402 grant funds received in that fiscal year, or in fiscal year 1990. This action is being taken to prevent a slowdown in planning and implementation activities and a decline in program quality in highway safety programs at the State and local level. It is hoped that it may also stem the States' need to lay off experienced highway safety staff during the immediate period of fiscal crisis, and risk losing such valuable personnel permanently.

NAGHSR also requests that NHTSA "eliminate the 5% set-aside for school bus safety implementation projects." NAGHSR argues:

> [A]lthough school bus safety is a continuing concern, neither NHTSA nor the states have in the past viewed it as a safety priority. States would continue to be able to fund school bus safety projects on an as-needed basis through the current 402 planning and programming process. Given the magnitude of the proposed program reduction, NAGHSR believes that all available 402 funds should be targeted to highway safety programs that address critical needs.

The set-aside for FY 91 was announced in a Federal Register notice dated August 9, 1990 (55 FR 32554), which stated that, "[f]unding will be set aside [for school bus safety projects] from the 'Section 402' program and each State will be eligible for a proportionate share of that funding." NHTSA expressed, in that notice, its reservations about the establishment of set-aside programs. Such programs can interfere with State decisions on how to use grant funds most effectively, and may divert funding away from projects which have greater potential safety benefits.

Nevertheless, this agency, Congress and others all share a concern in enhancing safe transportation for school children. For this reason, even though the safety record for school buses is already quite positive, the agency indicated, in August of this year, that it intended to continue this short-term set-aside program. At this time, however, in anticipation of the imposition of a sequestration of section 402 grant funds by operation of the Gramm-Rudman-Hollings Act, NHTSA has decided to accept NAGHSR's proposal. This action is being taken to provide States with maximum flexibility in administering their highway safety programs, particularly during this period of fiscal austerity. As NAGHSR indicates, this action will not prevent States from choosing to fund school bus safety projects. School bus safety projects may continue to be funded in accordance with the current 402 planning and programming process.

In the event that a sequestration is imposed and then lifted, or if more funding for the Section 402 program otherwise becomes available, the agency may issue a subsequent Federal Register notice to reestablish the section 402 set-aside for school bus safety implementation projects in fiscal year 1991.

Issued on: October 1, 1990.

Thomas D. Larson,

Federal Highway Administrator.

Jerry R. Curry,

National Highway Traffic Safety Administrator.

[FR Doc. 90-23668 Filed 10-2-90; 2:49 pm]

BILLING CODE 4910-59-M

Meeting To Discuss Rulemaking, Research and Enforcement Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

This notice also announces an additional meeting to be held on child safety seats.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on November 15, 1990, beginning at 10:15 a.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by November 6, 1990. If sufficient time is available, questions received after the November 6, date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by November 6, 1990, and the issues to be discussed will be mailed to interested persons by November 9, 1990, and will also be available at the meeting.

The meeting on child safety seats will also be held on November 15, 1990, beginning at approximately 1:30 p.m. Anyone interested in making a presentation at this session must submit a request in writing, stating the nature of the presentation, to the address shown below.

ADDRESSES: Questions for the November 15 meeting relating to the agency's rulemaking, research and enforcement programs or requests to make presentations at the Child Safety Seat meeting should be submitted by November 6, 1990, to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 7th Street SW, Washington, DC 20590. Both meetings will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on November 15, 1990. The meeting will begin at 10:15 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative, or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street SW., Washington, DC 20590.

The agency also wishes to announce a meeting to be held on child safety seats. The purpose of this session is to provide a forum for the discussion of child passenger safety issues as they relate to NHTSA Rulemaking and Enforcement activities. Agency representatives will review current rulemaking projects that have child passenger safety implications and provide responses to related questions that have been submitted in advance. A spokesperson from the Office of Vehicle Safety Compliance will discuss the procedures followed by NHTSA's Enforcement program in verifying compliance of child safety seats and in investingating potential safety-related defects.

Also planned is a presentation concerning techniques for effectively communicating technical concepts in product packaging, labeling and user instructions. A noted authority in the field of technical communications will discuss methods of presenting complex technical messages to optimize consumer attention and comprehension.

The agency will also entertain additional presentations from the public, should time permit. Requests to make presentations, with a synopsis of the subject matter, should be sent to the address shown above.

Issued on: October 1, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-23553 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 90-23-IP-NO. 1]

General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corporation (GM), of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other

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exercise of judgement concerning the merits of the petition.

Paragraph S5.3.3(b)(1) of Standard No. 101 specifies that the means used to make controls, gauges, and the identification of these items visible to the driver shall be adjustable, except as provided in S5.3.3(d), to provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark ambient roadway conditions. GM produced 127 1990 Oldsmobile Eighty-eight Broughams equipped with digital (electronic) instrument clusters which fail to provide at least two levels of lighting as required by section 5.3.3(b)(1) of Standard No. 101.

GM supports its petition for inconsequential noncompliance with the following:

1. The single level of illumination provided in the vehicles is sufficient to allow the instruments to be clearly discernible in bright sunlight.

2. GM has reconfigured a vehicle to exhibit this condition and has determined that the intensity level is not sufficient to distract the driver whose eyes have adjusted to dark ambient conditions. These findings are supported by GM field data.

3. An examination of GM field complaints and warranty information did not indicate any concerns with the light intensity.

4. GM is planning to inform the owners of the affected vehicles about the condition and authorize modification of the illumination control free of charge for any customer who so desires.

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comment should refer to the Docket Number and be sumbitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and suporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 5, 1990.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on October 1, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-23554 Filed 10-4-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 1, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0099
Form Number: FFIEC 030
Type of Review: Revision
Title: Foreign Branch Report of Condition
Description: This report is the only report collected from all foreign branches of U.S. commercial banks. It provides information on the structure and geographic distribution of foreign branch assets and liabilities. The information is used to analyze foreign operations of U.S. banks and to plan examinations. Aggregate data are available to the public.
Respondents: Businesses and other for-profit
Estimated Number of Respondents: 770
Estimated Burden Hours Per Response: 3 hours
Frequency of Response: Quarterly and Annually
Estimated Total Reporting Burden: 2,553 hours
Clearance Officer: John Ference, (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-23610 Filed 10-4-90; 8:45 am]

BILLING CODE 4810-33-M

Public Information Collection Requirements Submitted to OMB for Review

October 1, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0172
Form Number: None
Type of Review: Extension
Title: Enforcement of Protection of Semiconductor Chip Products; Patent Surveys
Description: Persons seeking protection from infringing semiconductor chip mask works would be able to obtain Customs assistance in preventing pirated chips from being imported into the United States.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 50
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 25 hours
Clearance Officer: Dennis Dore, (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229,
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-23611 Filed 10-4-90; 8:45 am]

BILLING CODE 4820-02-M

[150-02]

Establishment of Certain Offices in the National Office of the Internal Revenue Service

September 28, 1990.

1. By the authority vested in me as Secretary of the Treasury by 31 U.S.C. 321(b); sections 7801(a), 7802 and 7803 of the Internal Revenue Code of 1986; and Reorganization Plan No. 1 of 1952, pursuant to section 7804(a) of the Internal Revenue Code, all offices in the National Office of the Internal Revenue Service (IRS) continue uninterrupted, except as follows:

a. The Assistant Chief Information Officer (Systems Design and Development) is retitled Assistant Chief Information Officer (Information Systems Development), and the Assistant Chief Information Officer (Systems and Applications Management) is retitled Assistant Chief Information Officer (Information Systems Management);

b. The Assistant Commissioner (inspection) is retitled Chief Inspector;

c. The Telecommunications Division is transferred from the Assistant Chief Information Officer (Information Systems Management) to the Assistant Chief Information Officer (Information Systems Development);

d. The positions of Assistant Commissioner (Human Resources Management and Support), Deputy Assistant Commissioner (Human Resources Management and Support) and Director, Contracts and Acquisition Division, are abolished; and

e. The following four new positions are established under the Deputy Commissioner (Planning and Resources)/Chief Financial Officer: Assistant Commissioner (Human Resources and Support), Deputy Assistant Commissioner (Human Resources and Support), Assistant Commissioner (Procurement), and Deputy Assistant Commissioner (Procurement).

2. Except for the specific positions and titles in paragraph 1. through 8. of this Order, the Commissioner may create, abolish, or modify offices and positions within the Internal Revenue Service as may be necessary to effectively and efficiently administer the tax laws or other responsibilities assigned to the Internal Revenue Service. The authority of the Commissioner to create, abolish, or modify offices under this delegation is subject only to limitations that exist by law or Department of the Treasury rules and regulations.

3. *Office of Commissioner of Internal Revenue.* The Office of the Commissioner shall consist of the Commissioner, Senior Deputy Commissioner, Deputy Commissioner (Operations), Deputy Commissioner (Planning and Resources)/Chief Financial Officer, Chief Information Officer, Chief Inspector, and Assistants to the Commissioner and Senior Deputy Commissioner.

4. *Senior Deputy Commissioner.* The Senior Deputy Commissioner serves as chief operating officer of the Service. This official is the highest career official in the Service and has line authority over all IRS officials and operations, except the Chief Inspector. The Senior Deputy Commissioner is responsible for the following activities.

a. Assists and acts for the Commissioner in planning, directing, coordinating and controlling the policies, programs and other activities of the Internal Revenue Service.

b. Assists the Commissioner in establishing tax administration policy and developing strategic issues and objectives as a basis for strategic management of the Service.

c. Supervises the Deputy Commissioners, Chief Information Officer, and Assistants to the Commissioner and Senior Deputy Commissioner.

5. *Deputy Commissioner (Operations).* the Deputy Commissioner (Operations) is the principal advisor to the Commissioner and Senior Deputy Commissioner on policy and operational matters affecting field functions. The Deputy Commissioner is responsible for the following activities.

a. Serves as national spokesperson for the field operations functions, which include:

(1) Assisting taxpayers in complying with the tax laws;
(2) Processing tax returns and information documents;
(3) Accounting for revenue collected by the Service;
(4) Collecting delinquent accounts;
(5) Investigating delinquent taxpayers;
(6) Investigating criminal tax fraud;
(7) Examining tax returns;
(8) Approving and examining employee plans and exempt organizations;
(9) Tax treaty administration; and
(10) Foreign tax administration assistance and disclosure.

b. Supervises the Regional Commissioners and the following Assistant Commissioners: Collection, Criminal Investigation, Employee Plans and Exempt Organizations, Examination, International, Returns Processing, and Taxpayer Services.

c. As designated by the Commissioner or Senior Deputy Commissioner, represents the Service to other executive branch agencies, the Congress, other tax authorities and the public on field operations and major cross-functional issues.

6. *Deputy Commissioner (Planning and Resources)/Chief Financial Officer.* The Deputy Commissioner (Planning and Resources)/Chief Financial Officer is the principal advisor to the Commissioner and Senior Deputy Commissioner on Servicewide planning, management of resources, and major cross-functional issues. The Deputy Commissioner (Planning and Resources)/Chief Financial Officer is responsible for the following activities.

a. Serves as national spokesperson for the planning and management of resources functions, which include:

(1) Administering the Strategic Management System;
(2) Conducting research;
(3) Formulating budgets and controlling their execution;
(4) Administering human resource policies, facilities and logistical support; and
(5) Contracting.

b. Serves as the Service's Chief Financial Officer, and in that capacity establishes practices, procedures, standards, and controls for the Service's financial systems.

c. Supervises the following Assistant Commissioners: Finance/Controller, Planning and Research, Procurement, and Human Resources and Support.

d. As designated by the Commissioner or Senior Deputy Commissioner, represents the Service to other executive branch agencies, the Congress, other tax authorities, and the public on Servicewide planning, management of resources, and major cross-functional issues.

7. *Chief Information Officer.* The Chief Information Officer is the principal advisor to the Commissoner and Senior Deputy Commissioner on Servicewide information resources and technology management. The Chief Information Officer is responsible for the following activities.

a. Serves as the Service's main spokesperson on the planning and management of information resources, including:

(1) Strategic technology planning;
(2) Data administration;
(3) Technology standards; and
(4) Telecommunications.

b. Establishes policies and standards affecting these functions and the development and acquisition of computer hardward and software.

c. Provides the focus for technology management within the Service and plays an essential role in shaping technology goals and programs and fostering a shared commitment to them.

d. Supervises the Assistant Chief Information Officer (Information Systems Development) and the Assistant Chief Information Officer (Information Systems Management).

e. As designated by the Commissioner, represents the Service to

other executive branch agencies, the Congress, other tax authorities, and the public on Servicewide information resources and technology management and major cross-functional issues.

8. *Chief Inspector.* The Chief Inspector shall, to ensure objectivity and integrity, report directly to the Commissioner.

9. The above changes shall be implemented at a date determined by the Commissioner of Internal Revenue. Effective immediately, the Commissioner of Internal Revenue is authorized to effect, at appropriate times and in an orderly manner, such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this Order.

10. *Chief Counsel.* The Office of Chief Counsel is an office within the Department of the Treasury Legal Division. The Chief Counsel, pursuant to delegated authority from the General Counsel, is authorized to take necessary action on all personnel and administrative matters pertaining to the Office of Chief Counsel, including but not limited to those for the appointment, classification, promotion, demotion, reassignment, transfer or separation of officers or employees; however, all personnel and administrative matters concerning Senior Executive Service or Performance Management Recognition System employees in the Offices of Associate Chief Counsels (International) and (Technical) whose primary duties do not involve litigation, and the Office of the National Director of Appeals, shall be approved by the Commissioner of Internal Revenue prior to implementation.

a. The National Director of Appeals is supervised by the Chief Counsel. The Commissioner of Internal Revenue exercises line supervision over the Chief Counsel for this function.

b. The Commissioner of Internal Revenue will exercise the Service's final authority concerning substantive interpretation of the tax laws as reflected in legislative and regulatory proposals, revenue rulings, letter rulings, and technical advice memoranda.

11. *Cancellation.* This Order supersedes Treasury Order 150–02, "Establishment of Certain Offices in the National Office of the Internal Revenue Service," dated October 12, 1989.

Nicholas F. Brady,

Secretary of the Treasury.

BILLING CODE 4830-01-M

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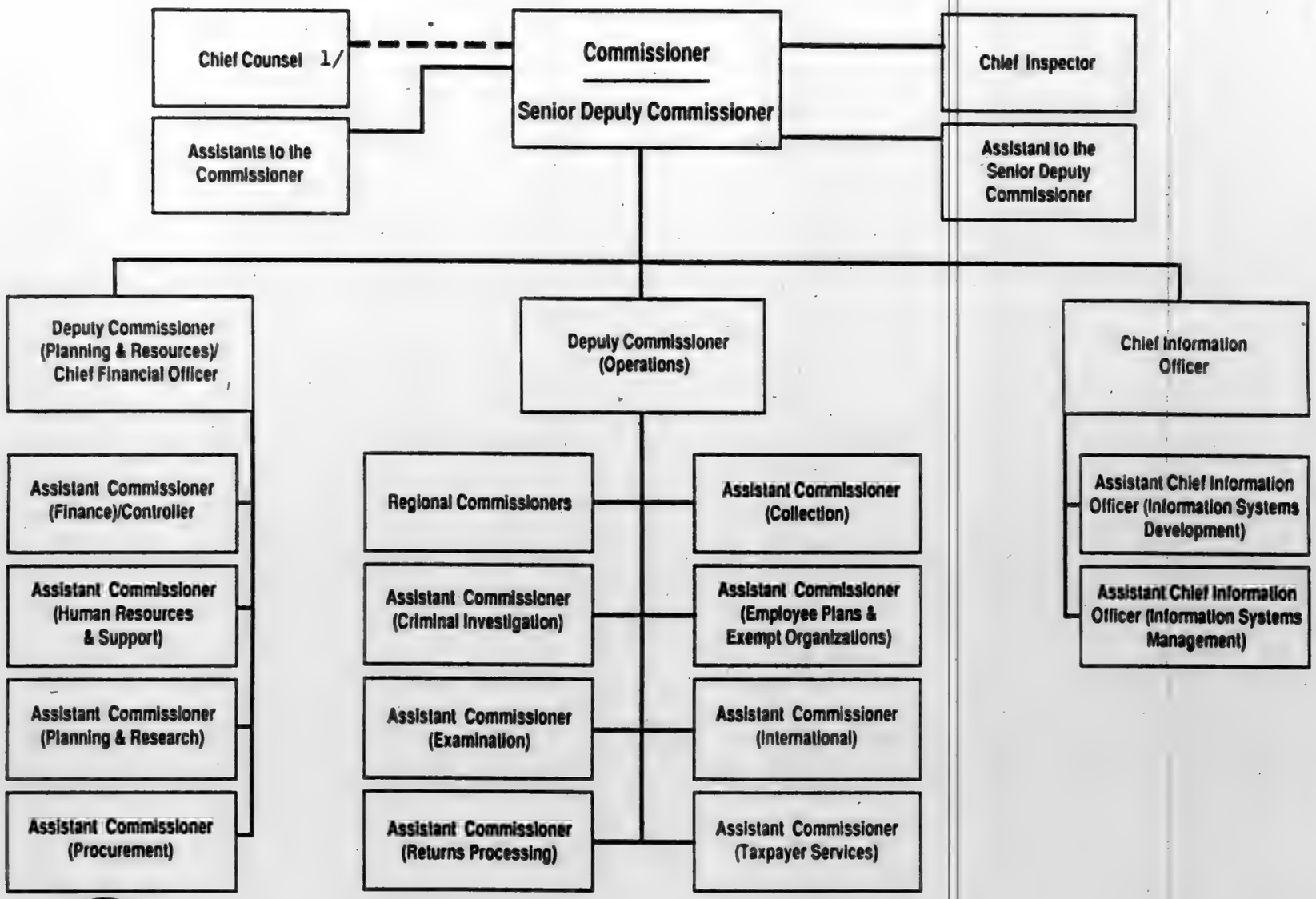
TO 150-02
09-28-90

The Internal Revenue Service



DEPARTMENT OF THE TREASURY

1/ Chief Counsel is part of the Legal Division, Department of the Treasury

Attachment

APPROVED SEP 28 1990

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Office of Thrift Supervision

[LN-4/1]

American Savings and Loan Association of Brazoria County; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for American Savings and Loan Association of Brazoria County, Lake Jackson, Texas, with the Resolution Trust Corporation as sole Receiver for the Association on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23566 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

Banner Banc Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Banner Banc Federal Savings and Loan Association, Garland, Texas, Docket No. 8713, on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23567 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

Central Savings Bank; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Central Savings Bank, Jackson, Mississippi, with the Resolution Trust Corporation as sole Receiver for the Association on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23569 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

Delta Savings and Loan Association, F.A.; Notice Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Delta Savings and Loan Association, F.A., Kenner, Louisiana, Docket No. 8621, on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23569 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

Empire Federal Savings Bank of America; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Empire Federal Savings Bank of America, Buffalo, New York, Docket No. 8790, on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23570 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

Notice of Replacement of Conservator with a Receiver; First Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings and Loan Association, New Iberia, Louisiana, with the Resolution Trust Corporation as sole Receiver for the Association on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23571 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

Metropolitan Federal Savings and Loan Association; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Metropolitan Federal Savings and Loan Association, Denville, New Jersey, Docket No. 5248, on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23572 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1]

Savings of Texas Association; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Savings of Texas Association, Jacksonville, Texas, Docket No. 7456, on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23573 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

Notice of Replacement of Conservator with a Receiver; Seasons Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Seasons Federal Savings Bank, Richmond, Virginia, with the Resolution Trust Corporation as sole Receiver for the Association on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23574 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

Security Federal Savings Association; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Security Federal Savings Association, Richmond, Virginia, Docket No. 8768, on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23575 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

United Federal Savings, F.A.; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for United Federal Savings, F.A., New Orleans, Louisiana, Docket No. 8796, on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23576 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

Notice of Replacement of Conservator with a Receiver; Yorkridge-Calvert Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Yorkridge-Calvert Federal Savings Association, Pikesville, Maryland, with the Resolution Trust Corporation as sole Receiver for the Association on September 28, 1990.

Dated: October 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23577 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-57; OTS No. 3545]

First Federal Savings and Loan Association of Hazleton; Final Action; Approval of Conversion Application

Date: September 28, 1990.

Notice is hereby given that on September 24, 1990, the office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the delegated authority approved the application of First Federal Savings and Loan Association of Hazleton, Hazleton, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-23578 Filed 10-4-90; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "The Romantic Vision of Caspar David Friedrich: Paintings and Drawings from the U.S.S.R." (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Art Institute of Chicago, Chicago, Illinois, beginning on or about November 3, 1990, to on or about January 6, 1991 and at the Metropolitan Museum of Art, New York, New York, beginning on or about January 21, 1991, to on or about March 31, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: October 2, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-23704 Filed 10-4-90; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 25-90, "Active Duty" For VA Benefits' Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Did service performed by this individual [illegible]

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21440 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the

being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Are the respective two-year time limits, established by VA regulations for the filing of claims for entitlement to the following benefits, valid: (a) Plot

impose a limitation period on such claims, are invalid. Consequently, there is no limitation period applicable to claims for the section-038 or section-906(d) benefit. With respect to claims for the plot allowance established by section-903(b) of title 38, U.S. Code, the VA regulations, 38 CFR 3.1601(a), applying a [illegible]

conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulations or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public

is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Did service performed by this individual, a member of the Air National Guard who was called to duty as an instructor at an Air Force NCO school, constitute "active duty" for purposes of chapter 34 eligibility?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under law administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 32-79, dated August 3, 1979, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 25-90, "Active Duty" for VA Benefits' Purposes, requested by District Counsel, Nashville, TN, is as follows: HELD: The foregoing compels the conclusion that the military service performed by this individual July 1, 1973 to June 29, 1975, inclusive, was "active duty" under 38 U.S.C. 101(21)(A) and 1652(a).

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21440 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel; Precedent Opinion 27-90, Determination of Basic Entitlement

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—a. Should computation of the period, for which the education allowance is to be granted under title 38, section 1661(a), be based upon actual calendar months or, upon the months as defined by "corresponding days" (from any given day of one calendar month to the corresponding day of the next)? b. Should such computation for multiple periods of noncontinuous service be accomplished by combining the periods of service so as to make them continuous for computation purposes, and thus to eliminate intermediate fractions of months; or should periods of service remain discontinuous for computation purposes so that the intermediate fractional months may be counted as whole months for the purpose of computing the period of education allowance to be credited under title 38, section 1661(a) of the United States Code?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: [This, opinion, previously issued as General Counsel Opinion 18-79, dated February 8, 1979, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.) VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 28-90, Determination of Basic Entitlement, requested by Chairman, Board of Veterans Appeals, is as follows:

Held: a. The corresponding days method of defining calendar month, rather than the actual calendar month method, shall continue to be applied in administering 38 U.S.C. 1661. b. All includable periods of active duty should be combined and then the months of service computed as is done by DVB.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21424 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 17-90, Time Period for Filing Claims for Reimbursement of Plot, Transportation, and Headstone Expenses

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Are the respective two-year time limits, established by VA regulations for the filing of claims for entitlement to the following benefits, valid: (a) Plot allowance under 38 U.S.C. 903(b); (b) monetary allowance in lieu of a headstone or grave marker under 38 U.S.C. 906(d); and, (c) allowance for transportation of a deceased veteran to a national cemetery under 38 U.S.C. 908?

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (Originally issued as O.G.C. Conclusive 7-89, July 31, 1989).

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 17-90, Time Period for Filing Claims for Reimbursement of Plot, Transportation, and Headstone Expenses (Originally issued as O.G.C. Conclusive 7-89, July 31, 1989), requested by Chief Benefits Director (20), is as follows:

Held: The two-year limitation in section 904, title 38, U.S. Code, does not apply to claims under section 908 of that title for transportation of a deceased veteran to a national cemetery or under section 906(d) for the monetary allowance paid in lieu of a government-provided headstone or grave marker. VA regulations at 38 CFR 3.1601(a) and 3.1612(g), to the extent they purport to impose a limitation period on such claims, are invalid. Consequently, there is no limitation period applicable to claims for the section-908 or section-906(d) benefit. With respect to claims for the plot allowance established by section-903(b) of title 38, U.S. Code, the VA regulations, 38 CFR 3.1601(a), applying a two-year filing limit, is consistent with congressional intent. Accordingly, to the extent VA regulations establish a limitation period of two years applicable to the section-903(b) benefit, those regulations are valid.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21432 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 20-90, Deemed-Valid Marriage

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May a claimant be recognized as the "deemed-valid" widow or widower of a veteran for purposes of survivors' pension, when another claimant has been recognized by VA as the legal surviving spouse of the veteran but has been denied pension due to excessive income?

EFFECTIVE DATE: June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under law administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 20-90, Deemed-Valid Marriage; 38 U.S.C. 103(a), requested by, VA District Counsel (309/02), New York, is as follows:

Held: Pursuant to the provisions of 38 U.S.C. 103(a), VA may deem a purported marriage to a veteran valid for purposes of a claim for gratuitous death benefits by a widow or widower of the veteran, if the claimant entered the marriage without knowledge of a legal impediment to the marriage and thereafter cohabited with the veteran for one year or more immediately prior to the veteran's death, but only if no claim has been filed by a legal widow or widower of the veteran who is found to be entitled to such benefits. A claimant who is recognized as the "deemed-valid" widow or widower of a veteran will not be precluded from receiving survivors' pension by the fact that another individual has sought such benefits and has been recognized by VA as the veteran's surviving spouse, if the surviving spouse was never found entitled to receive the benefits due to excessive income.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21435 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 31-90, Preservation of Disability Ratings

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving

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veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does section 110 of title 38, United States Code, operate to protect for compensatioin purposes the 100% temporary convalescent disability rating assigned a veteran?

EFFECTIVE DATE: June 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel 8–79, dated October 2, 1978, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioined regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 31–90, Preservation of Disability Ratings, requested by Chairman, Board of Veterans Appeals, is as follows:

Held: This office is now of the opinion that section 110 of title 38 protects against reduction only those ratings for compensation purposes which have been the foundation for the payment of awards for a period of at least 20 years, such that recipients have grown to rely upon the payments and the rating authorities have had reason to monitor the level of disability for possible changes. To interpret the language requiring that ratings be "continuously in force" or that disabilities be "continuously rated" to include other than "live" disability awards for which benefits are being paid was not the intention of Congress. Congress clearly would not have countenanced the absurd results which can and have flowed from a strictly literal interpretation of § 110, and such constructions are not favored when they lead to absurd results. *United States* v. *Bryan*, 339 U.S. 323 (1950); *United States* v. *Second National Bank of North Miami*, 502 F.2d 535 (5th Cir., 1974). Also, in the instant case, there is an additional factor which operates to compel the conclusion that protection of the rating is not afforded under section 110. The total convalescent rating assigned effective in December 1952 was limited by law to an effective duration of one year. Hence, by law, the rating assigned could not have been continuously in force, nor the disability continuously so rated, for a period of 20 years as required.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–21428 Filed 10–4–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel; Precedent Opinion 26–90, Concurrent Notice of Termination or Suspension of Education Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—a. Does 38 U.S.C. 1790(b)(2) require that benefits be paid for the period following a defective notice to the veteran or eligible person of his or her rights until a proper notice can be granted? b. Do the terms of 38 U.S.C. 1790(b)(2) requiring "concurrent" notice to the veteran of his or her rights require that the notice be given before the effective date of suspension of benefits or may it be given at the time the suspension is processed, even though the suspension is back-dated to the date of last payment of benefits.

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 24–79, dated May 16, 1979, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 26–90, Concurrent Notice of Termination or Suspension of Educational Benefits, requested by Chief Benefits Director, is as follows:

Held: a. The notice of the veteran's rights required by 38 U.S.C. 1790(b)(2) may not be given to him or her on a date later than the effective date of the suspension. Thus, the effective date of the suspension could not precede the date that notice is being given to the veteran. The earlier "date of last payment" would be inappropriate and unfair to the veteran, since this means

that potentially, under a more extreme example, the veteran would not know for as much as a month that payment was not going to be made or of his or her right to contest the action. b. In light of our first holding above, it is apparent that the veteran must be paid for the period between a defective notice and the issuance of a proper notice of his or her rights.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–21423 Filed 10–4–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel; Precedent Opinion 28–90, Qualifying Service Necessary for Obtaining Maximum Educational Assistance Entitlement

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their respesentatives, with notice of VA's interpretation regarding the legal matter at issue—(a) If a veteran has two periods of active duty for training pursuant to 10 U.S.C. 511(d) followed by a period of active duty of 1 year or more, may both periods of active duty for training be combined in determining the veteran's total entitlement? (b) Is a veteran entitled to 45 months of educational assistance allowance pursuant to chapter 34, title 38, United States Code, if he or she has less than 18 continuous months of active duty service and less than 30 months of active duty overall (provided the issue is determined under the law prior to the enactment of Public Law 94–502)? (c) If the answer to question two is yes, did the enactment of Public Law 94–502 require a reduction of entitlement for these veterans?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 17–79, dated April 25, 1979, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 28–90, Qualifying Service Necessary for Obtaining Maximum Educational Assistance Entitlement, requested by Chief Benefits Director, is as follows:

HELD: (a) If a veteran has two periods of active duty for training pursuant to 10 U.S.C. 511(d) followed by a period of active duty of 1 year or more, only the "initial" period of active duty for training may be used in determining the veteran's entitlement. (b) Under the law prior to Public Law 94–502, a veteran with less than 30 months of active duty service and with less than 18 continuous months of such service is only entitled to 1½ times the number of months of active duty service up to a maximum of 36 months. (c) The response given to question two (see holding (b) above) renders the third question moot and no holding is required as to that question.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–21425 Filed 10–4–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel; Precedent Opinion 29–90, Request for Waiver—Education Loan

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does the Administrator's waiver authority include an indebtedness to the VA as a result of default in repayment of an education loan?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 12–79, dated October 5, 1977, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers

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deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 29-90, Request for Waiver—Education Loan, requested by Controller, is as follows:

Held: The Administrator's waiver authority under 38 U.S.C. 3102 applies uniformly to overpayments of any VA benefits, and this includes education loan default indebtedness.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21428 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 33-90, Education Loan

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administrated by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Is it proper to authorize an education loan to a veteran who, at the time of application, is permanently and totally disabled if all requirements of section 1798(c) of title 38, United States Code, are met and can such a loan subsequently be written off under section 1798(e)(2) of title 38 because of the borrower's permanent and total disability which existed at the time the loan was made?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorizes the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretation on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 2-79, dated April 18, 1977, is reissued as a President Opinion pursuant to 38 CFR 2.6(e)((9) and 14.9.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 33-90, Education Loan, requested by Controller, is as follows:

Held: In determining eligibility for an educational loan to a veteran who is permanently and totally disabled at the time of application we find that, if the individual meets the criteria of 38 U.S.C. 1798(c), that individual is entitled to a loan and we fail to find any restriction in that section on making an educational loan to a veteran who happens at the time to be rated permanently and totally disabled.

However, the provisions of section 1798, which permit the Administrator to discharge a veteran's educational debt where he has received a loan and dies or "becomes" permanently and totally disabled, make clear from the statutory language that this provision is to have prospective effect. We believe that, in view of the prospective effect of the language of the statute, namely the word "becomes," it must be interpreted as applying to anyone who "becomes" permanently and totally disabled after the making of the loan to such individual and not to an individual permanently and totally disabled at the time the loan is made. Thus, the granting of a loan to an individual already permanently and totally disabled would not authorize the Administrator to subsequently write the loan off on that basis.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21430 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 21-90, Effective Date for Adjustment of Improved Pension Benefits Based on Change of Income Due to Social Security COLA

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—A. Is a Social Security cost-of-living adjustment (COLA) distinguishable from other types of income for purposes of rate computation in the improved pension program? In other words, is there any basis for counting Social Security COLA income from the statutory effective date of the increased entitlement rather than from the date of actual receipt by the pensioner? B. If Social Security COLA adjustments are not distinguishable from other income, what date does 38 CFR 3.660(a)(2) require as the effective date of a change in a VA pension due to a Social Security COLA?

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 21-90, Effective Date for Adjustment of Improved Pension Benefits Based on Change of Income Due to Social Security COLA, requested by Chairman, Board of Veterans Appeals (011L), is as follows:

Held: A Social Security COLA is distinguishable from other types of income changes for improved pension rate computation purposes under the provisions of 38 U.S.C. 3012(b)(4) which expressly exclude such changes to income from the treatment mandated for all other types of income. Under 38 U.S.C. 3112(a) and its implementing regulation, 38 CFR 3.273(b)(1), the effective date of a pension rate reduction occasioned by a Social Security COLA is not the date the increased Security Benefits are actually received, but the date of the increase, i.e., the same date as pension rate increase mandated under section 3112.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21436 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 18-90, Line-of-Duty Determination—Unauthorized Absence

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be allowed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—A. If it should be established that the veteran was insane at the time of the veterans' unauthorized absence from service, is this a legal defense to an unfavorable line-of-duty determination under 38 CFR 3.1(m)(1) and 38 U.S.C. 105(b)? B. If so, (a) must the criteria governing insanity determinations under 38 CFR 3.354 be satisfied, or (b). Is a service department finding that a veteran could not be charged under the Uniform Code of Military justice, based on lack of substantial capacity, sufficient to bind VA under 38 CFR 3.1(m) unless patently inconsistent with applicable laws?

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 18-90, Line-of-Duty Determination—Unauthorized Absence, requested by Chairman, Board of Veterans Appeals (01), is as follows: Held: A. If it should be established that the veteran was insane at the time of the unathorized absence, you may conclude that, despite the veteran being in deserter or AWOL status at the time injury was incurred, the injury may be considered to have been incurred in line of duty under 38 CFR 3.1(m)(1) and 38 U.S.C. 105. B. (a) The criteria under 38 CFR 3.354(a) pertaining to insanity are appropriate for consideration in making a determination of insanity for line-of-duty purposes. (b) A service department finding that a veteran would not be charged under the UCMJ, based on lack of substantial capacity, is not binding on VA in determining whether injury was incurred in line of duty under 38 CFR 3.1(m)(1).

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21433 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 32-90, Clarification of Work-Study Supervision for Outreach Activities

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—The General Counsel wanted this circular (DVB Circular 20-78-26) brought to the attention of attorneys researching the subject. To that extent this DVB Circular represents the Opinion of the General Counsel on this subject.

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3-79, dated May 5, 1978, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aformentioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is

U.S.C. 3203(a) to liberalize the laws governing reduction of pension payable to institutionalized veterans without dependents, do not apply to veterans receiving section-306 pension, i.e., pension payable under laws in effect on December 31, 1978, which arose out of the 1960 revisions to the pension laws pursuant to Public Law No. 86-211, or to

General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretatrions on legal matters, contained in such opinions, are conclusive as to all VA officials and

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 22-90, Reconsideration of Final Waiver Decisions in Light of Public Law 101-237

AGENCY: Department of Veterans Affairs.

A summary of the General Counsel's opinion designated O.G.C. Prec. 22-90, Reconsideration of Final Waiver Decisions in Light of Public Law 101-237, requested by Assistant Secretary for Finance and Planning (004), is as follows:

HELD: a. (i) Under 38 CFR 1.969, a

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VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 32-90, Clarification of Work-Study Supervision for Outreach Activities, requested by Regional Offices, is as follows:

HELD: DVB Circular 20-78-26 (May 5, 1978) outlines a procedure that should clarify the rules for supervision of work study students engaged in outreach activities by permitting a cooperative supervisory effort by a VA employee and officials of the non-VA organization. On at least a weekly basis the VA employee should review the hours worked by the VA work-study student—this review can be done either by phone or in person. The nature of the work must be described in writing and approved by the VA employee. The quality of the work shall be reviewed weekly by the VA employee and be submitted in written summary form by the VA work study student. The VA employee will maintain an active file containing the required documentation, records, and reports for each veteran work-study student.

Some of the required supervision can be accomplished by telephone and mail but personal contact desirable where distance and travel funds permit.

Where non-VA offices did not permit the VA to supervise VA work-study students engaged in outreach activities, such work-study support shall be withdrawn after prior written notice of at least two (2) working days. The work-study students in question shall be permitted to complete their contracts at the VA Regional Office or Center, or at another location approved by the VA.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21429 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 19-90; Section-306 Pension

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—A. Do the liberalizing provisions of section 111 of Public Law No. 101-237, amending 38 U.S.C. 3203(a)(1), which limits the amount of VA pension an institutionalized veteran having neither spouse nor child may be paid, apply to veterans receiving section-306 pension? B. Was VA correct in applying section 307 of Public Law No. 95-588, which previously raised the aforementioned limit, to recipients of section-306 pension?

EFFECTIVE DATE: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 19-90, Applicability of Public Law No. 101-237, Section 111 to section-306 Pension, requested by Chief Benefits Director (20), is as follows:

HELD: A. The provisions of section 111 of Public Law No. 101-237, which amend 38 U.S.C. 3203(a) to liberalize the laws governing reduction of pension payable to institutionalized veterans without dependents, do not apply to veterans receiving section-306 pension, i.e., pension payable under laws in effect on December 31, 1978, which arose out of the 1960 revisions to the pension laws pursuant to Public Law No. 86-211, or to veterans receiving old-law pension, i.e., pension payable under laws in effect on June 30, 1960, and protected after enactment of Public Law No. 86-211. B. The increase in the amount payable to institutionalized pensioners without dependents provided for in section 307 of Public Law No. 95-588 should not have been applied to veterans receiving section-306 pension.

Dated: August 2, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21434 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 30-90, Correct Interpretation

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Do the provisions of section 1673(c), title 38, United States Code, and VAR 14233(C)(1) prevent us from paying a veteran for any open circuit television courses whatsoever if a majority of the subjects are being pursued by open circuit television, or may we pay for some of these courses?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2150.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's

General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretatrions on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. [This, opinion, previously issued as General Counsel Opinion 11-79, dated July 11, 1978, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.).

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 30-90, Correct Interpretation of 38 U.S.C. 1673(c) and VAR 14233(C)(1), requested by Chief Benefits Director, is as follows: HELD: The intent of Congress was not to bar all payments for the course or even for the open circuit television portion when that portion constitutes a majority of the subjects being pursued, but was to insure that payment for the open circuit television portion would not be the equivalent of the residence portion. Thus, if a school certifies the enrollment as consisting of 6 hours of residence training and 6 or more hours of open circuit television training, for measurement purposes it would be proper for the VA to reduce the open circuit television training to one less credit hour than the residence training (in our example, 5 credit hours—resulting in payment of three-fourths time benefits).

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-01427 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 22-90, Reconsideration of Final Waiver Decisions in Light of Public Law 101-237

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issues by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefits claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—a. May final waiver decisions made before December 18, 1989, be reconsidered in light of the changes to the criteria for waiver contained in Public Law 101-237, section 311? b. If question (a) is answered in the affirmative, and the decision being reconsidered has already been affirmed by the Board of Veterans Appeals (BVA), who has jurisdiction to reconsider the waiver?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 22-90, Reconsideration of Final Waiver Decisions in Light of Public Law 101-237, requested by Assistant Secretary for Finance and Planning (004), is as follows:

HELD: a. (i) Under 38 CFR 1.969, a veteran whose request for waiver of a VA benefit overpayment or loan guaranty indebtedness was denied before December 18, 1989, may request reconsideration in view of the amendments to 38 U.S.C. 3102 made by section 311 of Public Law 101-237. Reconsideration may be undertaken by the regional office Committee on Waivers and Compromises, even if the prior waiver decision had been considered and denied by BVA. (ii) If waiver is granted under the amended statute, only moneys collected by VA on such debt on or after December 18, 1989, should be refunded to the veteran. Moneys collected before that date may be retained by the Government. b. We express no opinion on whether a request for reconsideration filed directly with BVA would be entertained by that body.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21437 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel, Precedent Opinion 23-90, Income for Imporved Pension Purposes.

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, the particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Under section 503 of title 38, United States Code, should a payment received as a result of a pensioner's withdrawal of his or her contributions to a retirement fund be considered as income?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 18-90, Active Duty Service Eligibility for the Work-Study Allowance Program

AGENCY: Department of Veterans Affairs.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Held: section 1685, title 38, United States Code, providing a work-study allowance for persons eligible to receive benefits under chapter 30 of title 38, United States Code, is not limited to persons discharged or released from active duty, but is available for otherwise qualified servicemembers pursuing training under

Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 26, 1990.

By Direction of the Secretary.

Sylvia Chaves Long,

Committee Management Officer.

[FR DOC. 90-23584 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

veteran under 38 U.S.C. 1652(a), where the service department has voided the entire period of service while granting a discharge under honorable conditions?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC

with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

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FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations of legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written leghal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 1-82, dated November 23, 1981, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.).

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The tull text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 23-90, Income For Improved Pension Purposes, requested by Chairman, Board of Veterans Appeals, is as follows:

HELD: A payment received as a result of a pensioner's withdrawal of his or her contributions to a retirement fund should be considered as income in the year received for purposes of the improved pension program regardless of whether interest is included or the payment is received in a lump sum or in installments

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21438 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 16-90, Active Duty Service Eligibility for the Work-Study Allowance Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May an individual serving on active duty in the Armed Forces participate in the work-study program under 38 U.S.C. 1685?

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 16-90, Active Duty Service Eligibility for the Work-Study Allowance Program, requested by Director, Veterans Assistance Service (27), is as follows:

HELD: section 1685, title 38, United States Code, providing a work-study allowance for persons eligible to receive benefits under chapter 30 of title 38, United States Code, is not limited to persons discharged or released from active duty, but is available for otherwise qualified servicemembers pursuing training under that chapter.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21431 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Wage Committee

The Department of Veterans Affairs (VA) in accordance with Public Law 92-463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, October 24, 1990, at 2 p.m.
Wednesday, October 31, 1990, at 2 p.m.
Wednesday, November 14, 1990, at 2 p.m.
Wednesday, November 28, 1990, at 2 p.m.
Wednesday, December 12, 1990, at 2 p.m.
Wednesday, December 26, 1990, at 2 p.m.

The meetings will be held in Room 300, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 28, 1990.

By Direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR DOC. 90-23564 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 24-90, Validity of Military Enlistment; Discharge Under Honorable Conditions With Active Duty shown as Zero Days

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May an individuaul's military service be considered valid and honorable, for purposes of qualifying as an eligible veteran under 38 U.S.C. 1652(a), where the service department has voided the entire period of service while granting a discharge under honorable conditions?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 2-80, dated March 29, 1979, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 24-90, Validity of Military Enlistment—Discharge Under Honorable Conditions With Active Duty shown as Zero Days, requested by Chief Benefits Director, is as follows:

HELD: (1) It is clear that the claimant had no statutory impediment to enlistment in the Army, being *sui juris* and having never been convicted of a felony, although so charged. It follows that VAR 1014(A) is for application in this case. Accordingly, the law and regulations qualify the claimant as basically eligible for education assistance benefits. (2) In view of the foregoing, an individual's military service may be considered valid and honorable, for purposes of qualifying as an eligible veteran under 38 U.S.C. 1652(a), where the service department has voided the entire period of service while granting a discharge under honorable conditions.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-21439 Filed 10-4-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 194
Friday, October 5, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 10, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23743 Filed 10-3-90; 1:32 pm]

BILLING CODE 6210-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on October 1, 1990, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for November 5, 1990, in Washington, D.C. The members will discuss possible strategies in collective bargaining negotiations.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) and (9) of Title 5, United States Code, and section 7.3(b) and (c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under Chapter 12 of Title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of Title 39, United States Code.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (9) of title 5, United States Code; section 410(c)(3) of title 39, United States Code; and section 7.3(b), (c) and (i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

Nova R. Watson,

Alternate Certifying Officer.

[FR Doc. 90-23801 Filed 10-3-90; 3:23 p.m.]

BILLING CODE 7710-12-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:40 p.m. on Tuesday, October 2, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of a failed thrift institution.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Mr. John F. Downey, acting in the place and stead of Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: October 3, 1990.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 90-23778 Filed 10-3-90; 1:33 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 8, 1990.

A closed meeting will be held on Tuesday, October 9, 1990, at 2:30 p.m. An open meeting will be held on Wednesday, October 10, 1990, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 9, 1990, at 2:30 p.m., will be:

Settlement of injunctive action.
Litigation matters.
Regulatory matter regarding financial institutions.

The subject matter of the open meeting scheduled for Wednesday, October 10, 1990, at 10:00 a.m., will be:

Consideration of whether to repropose for comment certain rules, forms and schedules that would permit specified offerings of Canadian issuers to be registered with the Commission under the Securities Act of 1933 using Canadian disclosure documents, to permit compliance with Canadian takeover law to satisfy the Williams Act requirements for certain limited tender offers in the United States, and to permit use of Canadian periodic disclosure documents by certain Canadian issuers to satisfy registration and reporting requirements under the Securities Exchange Act of 1934.

In conjunction with this reproposal, the Commission will consider whether to propose for comment revisions to certain rules and forms under the Exchange Act and certain forms under the Securities Act to permit Canadian foreign private issuers to register securities and report under such Acts on the same basis as other foreign private issuers. For further information, please contact Anita Klein at (202) 272-3246.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jonathan Gottlieb at (202) 272-2200.

Dated: October 2, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-23814 Filed 10-3-90; 3:57 pm]

BILLING CODE 8010-01-M

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Corrections

Federal Register
Vol. 55, No. 194
Friday, October 5, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 90-173]

Tuberculosis in Cattle and Bison; State Designation

Correction

In rule document 90-22665 beginning on page 39134 in the issue of Tuesday, September 25, 1990, under the "DATES" paragraph, "November 24, 1990" should read "November 26, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Short Supply Review: Certain Continuous Cast Steel Slabs

Correction

In notice document 90-22335 beginning on page 38733 in the issue of Thursday, September 20, 1990, make the following correction:

On page 38733, in the third column, in the listing under "*Tolerances*" the fifth line should read: "*Camber:* ≤0.2% length maximum."

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3829-9]

Approval and Promulgation of Implementation Plans; Indiana

Correction

In rule document 90-22676 beginning on page 39149 in the issue of Tuesday, September 25, 1990, under the "DATES" paragraph, "November 24, 1990"should read "November 26, 1990".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3832-9]

Disapproval of State Implementation Plans; Colorado Carbon Monoxide Plan for the Denver Area

Correction

In rule document 90-22678 beginning on page 39148 in the issue of Tuesday, September 25, 1990, under the "DATES" paragraph, "November 24, 1990"should read "November 26, 1990".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 90-25]

Publication and Filing of Payments Made by Common Carriers to Foreign Freight Forwarders and Ocean Freight Brokers in Tariffs and Service Contracts

Correction

In proposed rule document 90-22339 beginning on page 39161 in the issue of Tuesday, September 25, 1990, under the "DATES" paragraph, "November 24, 1990"should read "November 26, 1990".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 88-19]

Rule on Effective Date of Tariff Changes

Correction

In rule document 90-20084 beginning on page 34929 in the issue of Monday, August 27, 1990, make the following correction:

On page 34931, in the third column, in the last line, "October 20,1990." should read "October 26, 1990."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6766

[AK-932-00-4214-10; F-035286]

Partial Revocation of Public Land Order No. 4176 for Selection of Lands by the State of Alaska

Correction

In the correction to rule document 90-15619 appearing on page 30796 in the issue of Friday, July 27, 1990, in the heading of the document the public land order number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

RIN 1029-AB30

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

Correction

In proposed rule document 90-22664 beginning on page 39240 in the issue of Tuesday, September 25, 1990, make the following corrections:

1. On page 39240, in the first column, under the "DATES" paragraph, in the fourth line "November 24, 1990" should read "November 26, 1990".

2. On the same page, in the second column, in the next to last paragraph, in the sixth line "1and" should read "and".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55; Sub-No. 361X]

CSX Transportation, Inc.; Abandonment Exemption in Orange County, IN

Correction

In notice document 90-22697 appearing on page 39328 in the issue of Wednesday, September 26, 1990, the docket line should read as set forth above.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 13

RIN 3150-AD71

Program Fraud Civil Remedies Act, Implementation

Correction

In proposed rule document 90-22677 beginning on page 39158 in the issue of Tuesday, September 25, 1990, under the "DATES" paragraph, "November 24, 1990"should read "November 26, 1990".

BILLING CODE 1505-01-D

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federal register

Friday
October 5, 1990

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Airworthiness Standards; Crash Resistant Fuel Systems in Normal and Transport Category Rotorcraft; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 26352; Notice No. 90-24]

RIN 2120-AC68

Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address specified above. All communications received on or before the closing date for comments

ignition sources during or after impact. Current FAA rotorcraft airworthiness standards do not comprehensively address minimizing fuel leaks and potential fuel ignition sources in order to maximize occupant escape time in a survivable crash. The fuel containment

5 percent of the occupants are killed or injured by a PCF.

In addition, studies have shown that several other accidents (over and above the 5 percent that involved PCF-induced injuries or fatalities) resulted in fuel leaks that either did not ignite or were

in logging or emergency medical service (EMS) operations. These specialized uses are expanding rapidly. In addition, the use of rotorcraft, especially EMS and transport category rotorcraft, has increased dramatically in congested urban areas, and this usage is expected

state of the art defined essentially by military requirements?

(3) How successful are military CRFS programs, how easily are their safety features adapted, and how are their safety improvements related to similar civil rules?

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 26352; Notice No. 90-24]

RIN 2120-AC68

Airworthiness Standards; Crash Resistant Fuel Systems in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to add comprehensive crash resistant fuel system (CRFS) design and test criteria to the airworthiness standards for normal and transport category rotorcraft. The proposed standards would minimize fuel (and other flammable fluid) spillage near ignition sources, minimize potential ignition sources and, therefore, improve the evacuation time needed for crew and passengers to escape a postcrash fire (PCF). These proposals, if adopted, would minimize the PCF hazard, save lives, and substantially reduce the severe physiological and psychological injuries sustained from postcrash fires in otherwise survivable accidents.

DATES: Comments must be submitted on or before April 3, 1991.

ADDRESSES: Comments on the proposals should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26352, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to room 915G, 800 Independence Avenue SW., Washington, DC. All comments must be marked: Docket No. 26352. Comments may be examined in room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathais, Regulations Group, ASW-111, Rotorcraft Directorate, Aircraft Certification Service, FAA, Fort Worth, Texas 76193-0111, telephone number (817) 624-5123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adoption of the proposals contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26352." The postcard will be date stamped and returned to the commenter.

For convenience, each proposal in this notice is numbered separately. When submitting comments, please refer to the proposals by the proposal number and by the section of the FAR to which they relate.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attn: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Statement of Issue

A postcrash fire (PCF) is the number one cause of fatalities and injuries in an otherwise survivable impact resulting from a rotorcraft accident. It is estimated that annually 5 percent of the occupants in survivable rotorcraft accidents are killed or injured by a PCF. These types of fatalities and traumatic injuries would be substantially reduced by adopting the design and test criteria proposed in this notice. Nearly all PCF's are caused by crash-induced fuel leaks that quickly come in contact with ignition sources during or after impact. Current FAA rotorcraft airworthiness standards do not comprehensively address minimizing fuel leaks and potential fuel ignition sources in order to maximize occupant escape time in a survivable crash. The fuel containment and hazard elimination provisions contained in these proposals would, in the majority of cases, give occupants the time necessary to escape a survivable crash before a PCF could become critical. (A crash resistant fuel system, CRFS, would not be expected to prevent all fires; however, a CRFS would, in the majority of impact survivable cases, either prevent a PCF or delay the sudden massive fire, or fireball, long enough to allow the occupants to escape.) These proposed standards have been validated by military safety statistics and their adoption would significantly minimize the PCF hazard and its associated fatalities and injuries.

History

The FAA held its Rotorcraft Regulatory Review Conference in New Orleans, Louisiana, December 10-14, 1979, and invited all interested persons to submit proposals for consideration pursuant to Notice 79-1 (44 FR 3250; January 15, 1979). Several limited-scope CRFS proposals were received at that time and placed on the agenda.

Those original CRFS proposals were based on special provisions from past helicopter certification programs and proposed changes developed within the FAA since formalization of the proposals presented at the Rotorcraft Regulatory Review Conference. This effort was partially incorporated in Amendment 27-23 (53 FR 34198; September 2, 1988). However, due to the potential impact on the regulatory schedule, and the need for further research to foster a comprehensive CRFS rule and associated cost-benefit analysis, the FAA decided to pursue the remaining portions of the original proposals and new, post-conference, CRFS proposals separately. This notice is the result of that decision.

Since no comprehensive requirements for CRFS postcrash fire protection are currently contained in parts 27 and 29, research was conducted (including a survey of historical safety data) to determine the necessity for new CRFS standards. Rotorcraft accidents and incidents that resulted in a PCF were studied to define the statistical nature and magnitude of the hazards. As a result, it was found that nearly 545 occupants per year are involved in survivable rotorcraft accidents, and that

5 percent of the occupants are killed or injured by a PCF.

In addition, studies have shown that several other accidents (over and above the 5 percent that involved PCF-induced injuries or fatalities) resulted in fuel leaks that either did not ignite or were kept from igniting because fire prevention facilities were immediately available.

All of these accidents either had the potential for, or resulted in, burn victims. Typically, survivors of the accidents that involved a PCF experienced immediate severe pain and suffering as well as permanently crippling physiological and psychological injuries from their burns, in addition to impact injuries.

This historical research has shown that the more severe the otherwise survivable accident, the more likely the occurrence of a thermal injury or fatality from PCF. For example, approximately one-half of the severe but partially survivable accidents result in a PCF. This increases the odds of thermal injury or fatality (relative to those of a less severe survivable accident) by a factor of nearly 4 to 1.

Studies have also shown that typical occupant crash survivability factors (e.g., escape time, smoke inhalation and toxic gas exposure time, heat exposure, exit visibility, tolerance to pain, and mental ability) are rapidly and severely reduced by a PCF. As a result, an occupant's ability to escape rapidly diminishes to the point of incapacitation (sometimes termed the escape limit).

Rotorcraft designed to the current regulations may provide an escape time from a PCF of less than 20 seconds. The goal of this proposed rulemaking, for an otherwise survivable crash, is to either prevent a PCF from occurring or, in the most critical survivable case, provide an occupant escape or rescue time of at least 90 seconds. On the average, it is anticipated that several minutes of escape or rescue time from a PCF would be provided.

Based on the preceding information, it is readily apparent why many researchers consider a PCF the number one rotorcraft crash hazard. Clearly, a significant PCF hazard exists that is not comprehensively addressed in either part 27 or 29. This proposal would provide a methodology for minimizing the PCF hazard by adding new CRFS design and test safety criteria to parts 27 and 29.

Further, in the last 10 years, the use of rotorcraft has changed significantly. Many types of small and large rotorcraft are now used in flight operations near potential fuel ignition sources (such as transformers and electrical cables) and in logging or emergency medical service (EMS) operations. These specialized uses are expanding rapidly. In addition, the use of rotorcraft, especially EMS and transport category rotorcraft, has increased dramatically in congested urban areas, and this usage is expected to increase even more sharply in the future. This increased usage adds significantly to the PCF safety concern, because, in congested urban areas, the potential for property damage and loss of life on the ground must be considered in addition to aircraft and occupant losses.

National Transportation Safety Board (NTSB) and other Safety Recommendations

Industry and government safety groups, such as the General Aviation Safety Panel (GASP), the Rotorcraft Airworthiness Project Group (RAPG), and the NTSB, have been advocating CRFS airworthiness standards. Their written recommendations and safety findings have been considered in drafting these proposals.

The GASP panel was formed in 1982 to address areas of concern in aviation safety. One of the areas selected was CRFS. The panel's recommendations (document 18 on the list in the Technical Research section of this preamble) strongly support these proposals.

The major NTSB recommendations (available in the docket for this notice) that have been considered are A-80-90 through A-80-95, dated September 9, 1980, and A-85-69 through A-85-72, dated October 1, 1985. In addition, the NTSB has issued a report titled, "General Aviation Accidents: Postcrash Fires and How to Prevent or Control Them," dated August 26, 1980. All of the information in the NTSB documents strongly supports these proposals.

Technical Research

Because of forecasts for previously unforeseen, increased special use of rotorcraft in hazardous, congested environments and safety group recommendations for creation of CRFS safety regulations, the FAA conducted new technical research. This new research was required to determine the technical feasibility (relative to the current state of the art) for the CRFS level of safety necessary for civil rotorcraft and its technical and economic impact on the public.

This CRFS research centered on the resolution of three major questions:

(1) What is the current state of the art?

(2) Where should the proposed airworthiness standard fall within a state of the art defined essentially by military requirements?

(3) How successful are military CRFS programs, how easily are their safety features adapted, and how are their safety improvements related to similar civil rules?

To resolve these concerns, the following types of documents were reviewed: FAA advisory circulars (AC), military standards, similar foreign airworthiness certification studies, U.S. military survival documentation, FAA research reports, private sector research reports, safety group recommendations, and technical symposium reports and presentation material.

A list of the specific documents, which are available in the document for this notice, follows:

1. AC 21-22, "Injury Criteria for Human Exposure to Impact," dated June 20, 1985.

2. Draft AC 27.562-X, "Dynamic Evaluation of Normal Category Rotorcraft Seats," undated.

3. AC 25.994-1, "Design Considerations to Protect Fuel Systems During A Wheels-Up Landing," dated July 24, 1986.

4. MIL-STD-1290(AV), "Light Fixed-and-Rotary-Wing Aircraft Crashworthiness," dated January 25, 1974.

5. MIL-V-27383 (USAF), "Valve, Safety, Fuel Cell Fitting, Crash Resistant, General Specification For," dated July 12, 1960.

6. MIL-T-27422B, "Military Specification, Tank, Fuel Crash-Resistant, Aircraft," Thru Amendment 1, dated April 13, 1971.

7. British Civil Airworthiness Requirements Paper No. G605, "Crash Landing—Protection of Occupants," Issue 1, dated March 5, 1980.

8. U.S. Army Publication USARTL-TR-79-22A, "Aircraft Crash Survival Design Guide, Volume I—Design Criteria and Checklists," dated December 1980.

9. U.S. Army Publication USARTL-TR-79-22E, "Aircraft Crash Survival Design Guide, Volume V—Aircraft Postcrash Survival," dated January 1980.

10. U.S. Army Publication USAARL Report No. 81-4, "Helicopter Crashworthy Fuel Systems and Their Effectiveness in Preventing Thermal Injury," dated July 1981.

11. FAA Report No. DOT/FAA/CT/85-11, "Analysis of Rotorcraft Crash Dynamics for Development of Improved Crashworthiness Design Criteria," FAA Technical Center Report, dated June 1985.

12. Report No. FAA-ADS-27, "Design, Development and Evaluation of a Crash-

Resistant Fuel System Installation," dated December 1965.

13. American Helicopter Society and Gerogia Institute of Technology National Specialists Meeting Minutes titled, "Crashworthy Design of Rotorcraft," Atlanta Chapter, date April 7–9, 1965.

14. NTSB Special Study, NTSB–AAS–80–2, "General Aviation Accidents; Postcrash Fires and How To Prevent or Control Them," dated August 28, 1980.

15. FAA TSO–C80, "Flexible Fuel and Oil Cell Material," dated August 1, 1963.

16. SAE, Vol. SP–716, Technical Paper 871008, "A Retrofit Crash Protection Installation in Two Models of General Aviation Airplanes," presented at the General Aviation Aircraft Meeting and Exposition, Wichita, Kansas, April 2–30, 1987.

17. Technical Paper, "The Influence of Airplane Size on Crash Design Criteria," presented by Mr. G. Wittlin at the Flight Safety Foundation, Inc. Conference and Workshop on Occupant Safety, October 31–November 3, 1988, in Arlington, VA.

18. GASP report to the Administrator on CRFS, dated December 31, 1967, "Recommendations of the General Aviation Safety Panel Relating to Fire-Resistant Fuel Systems for Small, General Aviation Airplanes with Less than 10 Passenger Seats."

19. FAA–P–8110.3, Report to Congress, "Systems and Techniques for Reducing he Incidence of Post-Crash Fuel System Fires and Explosions," dated December 1966.

20. Amendments 27–25 and 29–29, Occupant Restraint in Normal and Transport Category Rotorcraft (54 FR 47310; November 13, 1989).

As a result of CRFS research, the FAA has concluded that the U.S. military is the pacing activity for CRFS design and test state of the art, that the current state of the art is applicable to civil design, and that current military specifications for CRFS design and test (with some modification of criteria based on FAA-sponsored research results) form a valid basis for these proposals.

Finally, the results of U.S. military CRFS programs were analyzed to determine their success in reducing thermal injuries and deaths and to determine if safety improvement statistics from military programs can be used to predict the success of these proposed civil requirements. A large data base compiled for the U.S. Army PCF Hazard Program (consisting of noncombat and combat data compiled before uniform CRFS fuel system design and test standards existed) was reviewed and compared with a similar military data base accumulated after CRFS standards were generically required by new procurements in 1970.

The noncombat portion of the Army data base was compared with the civil accident data base. Out of 1,000 noncombat survivable rotorcraft accidents without the Army CRFS safety standards employed, there were 133 PCF's. In other words, 13.3 percent of the accidents resulted in a PCF. This is nearly identical to the civil research that showed a PCF in 13.8 percent of all rotorcraft accidents. Therefore, the noncombat military and civil safety data results are comparable.

All Army rotorcraft procured after 1970 incorporate essentially generic CRFS design and test safety standards. Using these generic standards, the Army data base, from 1970 until 1976, accumulated records of 1,258 noncombat accidents in rotorcraft with a CRFS. Also, during this period data were accumulated on 1,160 rotorcraft without a CRFS. These data are statistically sufficient to measure the effect of a generic CRFS design and test standard. Comparison of the statistics for Army rotorcraft with and without a CRFS during this 6-year period shows that thermal fatalities in survivable accidents dropped from 34 for rotorcraft without a CRFS to zero for rotorcraft with a CRFS, and that thermal injuries dropped from 20 for rotorcraft without a CRFS to 5 for rotorcraft with a CRFS. These numbers indicate that military-based CRFS safety provisions are extremely effective in saving lives and substantially minimizing injuries from PCF.

Related Regulatory/Technical Activity

Similar CRFS rulemaking and advisory material are being developed for part 25 and have been published for part 23 (55 FR 7280; February 28, 1990).

Several civil rotorcraft manufacturers have independently recognized the need for a CRFS and offer such systems either as standard equipment or as options, even though not required by regulation. These systems typically employ military-based CRFS designs.

Current Requirements

Parts 27 and 29 do not contain explicit requirements for PCF protection after crashes that result in otherwise survivable impacts. The current regulations do not comprehensively address minimizing fuel leaks and potential fuel ignition sources. Thus, escape time is not now maximized in otherwise survivable impacts. A comprehensive set of CRFS regulations, such as those proposed herein, would substantially minimize the traumatic injuries and fatalities that result from a PCF.

General Discussion of the Proposals

These proposals are derived, in part, from relevant portions of Army CRFS Design and Test Standards and, in part, from new civil aviation research. However, these proposals differ from analogous Army requirements based on FAA and industry research and engineering experience considering differences in combat and civil crash environments, and other differences such as the wide range of hardware configurations that may be proposed by applicants in the civil environment. For example, use of a flexible liner or bladder as required by the military, though desirable, would not be mandated for civil rotorcraft. Use of spray-on liners, unlined metal, unlined composite, unlined metal-composite combination designs, or any other design would be allowed (in lieu of the military required fuel bladder) if the proposed substantiation criteria were met. Similarly, other military design requirements would be mandated, if it could be shown that the probability of occurrence of the individual failure related to the design requirement in an otherwise survivable crash is extremely improbable or that an equivalent level of safety can be obtained by another acceptable approach.

An otherwise survivable crash, as used in this rulemaking, is defined as one where the survivable human tolerance acceleration limit has not been exceeded in any of the principal rotorcraft axes, where the structure and structural volume surrounding occupants remain sufficiently intact during and after impact to permit survival, and where an item of mass does not become unrestrained and create a hazard to occupants. The term survivable impact has a similar meaning.

Also, it should be noted that some similarities exist between the requirements of §§ 27.863 and 29.863 and proposed new §§ 27.952 and 29.952. Current §§ 27.863 and 29.863 address operational fires (ground and in-flight), and proposed new §§ 27.952 and 29.952 would address PCF's. The same comparison can be made between §§ 27.1337(a)(2) and 29.1337(a)(2) and proposed §§ 29.,952(f)(8) and 29.952(f)(8). The requirements for fire prevention in each area are not entirely, mutually exclusive, and any overlapping requirements may be satisfied simultaneously.

These proposals would apply to all rotocraft fuel systems, including

auxiliary propulsion unit (APU) fuel systems, incorporated in a given design.

In general, this notice proposes: (1) explicit design criteria to minimize fuel and flammable fluid spillage and ignition sources; (2) increased crash load factors for fuel cells in and behind occupied areas that are necessary to ensure the static ultimate strength to accommodate both horizontal and vertical impact energy absorption requirements and maintain the basic structural and fuel containment integrity required for survivability; (3) retention of the emergency load factors of § 29.561 and the addition of such factors for § 27.561 for fuel cells in other areas (particularly underfloor fuel cells which, along with the underfloor structure, must absorb the vertical impact energy induced by a survivable crash without leaking fuel and without unduly crushing the occupied cabin volume); and (4) a dynamic vertical impact test to ensure fuel tank vertical energy absorption capability, structural integrity, and fuel containment integrity.

Accordingly, the FAA proposes to add to parts 27 and 29 a set of design and test standards for a CRFS and, thus, minimize the PCF hazard. This is part of an ongoing regulatory program of the FAA to upgrade, improve, and clarify certification standards for rotorcraft. A specific discussion of each proposal follows.

Section 27.561

Section 27.561 would be amended by adding a new paragraph (d) that would require fuselage structure in the area of internal fuel tanks below the passenger floor level to be designed to resist a specific set of load factors identical to those proposed herein for underfloor fuel cells and their attachments in § 27.952(b)(3). This would protect the fuel tanks from ruptures caused by deformation of underfloor structural elements in an otherwise survivable impact. The load factors proposed for § 27.561(d) would be parallel to those in current § 29.561(d).

New § 27.952/§ 29.952

Research has shown that for any rotorcraft crash, civil or military, the primary CRFS safety requirements are proper design standards, vertical velocity energy absorption capability, and horizontal velocity energy absorption capability.

Primary design standard requirements of this rulemaking would be elimination of: (1) fuel and other flammable fluid spillage; and (2) fuel or fuel vapor ignition sources.

The vertical velocity energy absorption capability is the most important dynamic consideration, because energy must typically be absorbed by rotorcraft structure in a short, vertical crushing distance that includes fuel cells typically located beneath the cockpit and passenger compartments. Misting and spilling of fuel from underfloor fuel cells into the cabin volume caused by vertical impact crash loading are common in current designs that are not crash resistant.

Horizontal impact velocities may be relatively high, but typically the energy absorption problem is less severe because of more energy absorbing structure and longer, energy-dissipating skidding distances.

Therefore, paragraph (a) proposes a vertical drop test that would measure vertical impact crash resistance and that would require each fuel cell (or the most critical fuel cell regardless of its construction) to be dropped from a height of 50 feet. This would provide a free-fall impact velocity of approximately 56 ft/s. The proposed 56 ft/s velocity would exceed the 99-percentile survivable impact velocity envelope and would ensure that fuel cell leakage (which could create a PCF) within the envelope is very unlikely. The proposed impact velocity of 56 ft/s (which would result from a 50-foot drop height) has been reduced from the standard military requirement of 65 ft/s based on civil sector studies, civil experience and the recommendation of the GASP committee. Although lesser drop heights have been proposed, the 50-foot drop height has been successfully used for years in substantiating optional CRFS installations. Also, lesser drop heights do not fully account for the range of PCF's involving non-ambulatory occupants seriously injured by the crash impact. The proposed vertical drop test is a simply constructed dynamic test that would require lifting a fuel tank 80 percent full of water (which is equivalent by weight to 100-percent full of fuel), installed in its surrounding fuselage structure (either actual or simulated), to a height of 50 feet and releasing it to freefall on a nondeforming surface such as concrete. This would allow the leak-free integrity and puncture resistance characteristics of the entire assembly to be evaluated as a system. This approach would also allow utilization of any available natural load alleviation credit present in a given design due to the energy absorption of the airframe structure surrounding the fuel cell when that structure is crushed by impact. In addition, this approach would provide realistic testing of potential fuel cell rupture points caused by inherent design features (such as projections), excessive deformations, or local tearout of fittings, joints, or lacings. In some cases, it may be possible to show clearly and conservatively that the surrounding structure (or part of the surrounding structure) would not become a fuel leakage hazard to the fuel cell, itself, during and immediately after a survivable impact. In these cases, any nonhazardous structure may be removed from the drop test configuration. In some cases, only the most critical fuel tank would need to be dropped, thus minimizing the certification burden. This approach would allow flexibility and encourage future designs that minimize survivable impact-induced puncture hazards from the structure that surrounds a fuel cell. The amount of actual and simulated structure to be used in the test (for realism) requires engineering evaluation, hazard analysis, risk assessment, basic engineering analysis, and may also require component or subassembly tests for a proper determination.

Paragraph (b) would provide static load factors for design and stress analysis of fuel tanks and their installations to ensure retention and leak-free structural integrity. The proposed static load factors are necessary because the date defining the crash acceleration pulse are unique for each rotorcraft design. Use of static load factors instead of dynamic acceleration pulses would provide a generic, practical substantiation method that is adequate for simple, concentrated mass retention purposes. All tanks and their installations would be designed and statically analyzed to these load factors.

The proposed fuel cell load factors in paragraph (b)(1) would be identical to the occupant restraint load factors adopted in Amendments 27–25 and 29–29 (54 FR 47310; November 13, 1989) for §§ 27.561(b)(3) and 29.561(b)(3). These increased load factors have been proposed for fuel cells inside the cabin volume to prevent crash-induced fuel cell ballistic hazards and fuel spills (which may cause a PCF) directly on occupants from local structural failures such as rupture or tearouts.

Similarly, a second set of fuel cell load factors are proposed in paragraph (b)(2), which would be identical to the load factors adopted in Amendments 27–25 and 29–29 for §§ 27.561(c) and 29.561(c). These load factors are proposed for fuel tanks mounted above or behind the passenger cabin. These load factors would provide the structural integrity necessary to prevent crash-induced injuries to occupants and to prevent fuel spills.

Finally, the load factors in paragraph (b)(3) are proposed for fuel tanks in areas other than inside, behind, or above the cabin volume. Since many rotorcraft have fuel cells under the cabin floor, these proposed load factors would provide structural protection for underfloor fuel tanks. In addition, the

other means that provide an equivalent level of safety are employed such as provision of shielded extensible lines (soft hoses covered with braided shielding that have enough slack or stretch built in to absorb relative motion without fuel leakage), provision of motion-absorbing fittings (rotational ball

parallel feed lines each with a single coupling, or of more complex, multitank crossfeed systems that include breakaway couplings), or other equivalent means (stretch hoses, motion absorbing fittings, etc.) be designed, tested, installed, and maintained so that the probability of inadvertent fuel

Paragraph (d)(2) would require that a frangible or locally deformable attachment perform its intended function when the minimum breakaway or deformation load (as defined in paragraph (d)(1)) is met or exceeded in the local failure modes most likely to occur during an otherwise survivable impact. The primary loading modes

relate to a given design or which may be created during impact) be identified and designed out of the system to the maximum practicable extent.

Paragraph (e)(4) would require that, as far as practicable, flammable fluid tanks be separated from occupiable areas.

Paragraph (e)(5) would require that, unless the probability of a fuel leak or

only pure tension loads acting as a membrane (i.e., it has negligible bending strength). The rigid shell structure that would be required by proposed § 27.967(a)(3), and that is currently required by § 29.967(a)(3), would surround the flexible liner (membrane) and would carry the crash-induced

Finally, the load factors in paragraph (b)(3) are proposed for fuel tanks in areas other than inside, behind, or above the cabin volume. Since many rotorcraft have fuel cells under the cabin floor, these proposed load factors would provide structural protection for underfloor fuel tanks. In addition, the proposed load factors would be identical to the current § 29.561(d) load factors, which have proven to be structurally adequate. The proposal would require standard application of each proposed principal load factor to any type of fuel cell construction and its installation (including attachments).

For some crash resistant, semirigid bladder and flexible liner fuel cell installations, the proposed 50-foot drop test can (when supported by analysis) simultaneously satisfy both the proposed drop test and the downward vertical ($-N_z$) load factor requirement proposed in paragraph (b)(3) for the fuel cell and its installation. Use of the simultaneous substantiation approach would reduce the certification burden. This approach would also allow significant energy-absorbing structural deformation to occur without adversely crushing the cabin volume or spilling fuel into the occupied cabin.

For applications that seek simultaneous substantiation of the proposed $-N_z$ load factor requirement of paragraph (b)(3) using the proposed drop test, substantiation would still be required (as is currently practiced) for the fuel cell under the loading of the remaining three principal load factors and for the remaining rotorcraft structure under the loading of all four principal load factors. However, structural substantiation could be further simplified by the results of the proposed drop test based on the fuel cell's configuration. For example, a symmetric fuel cell, structurally equivalent in all four directions, could be substantiated to all of the principal load factors proposed in § 29.952(b)(3) by rational analysis based on one successful drop test.

Paragraph (c) would require the use of self-sealing breakaway fuel fittings at all fuel tank-to-fuel line connections, tank-to-tank interconnects, and at other points or junctions where a reasonable probability (as determined by engineering judgment, analysis, or test) of crash-induced hazardous relative motion exists that may cause fuel leakage to an ignition source and create a PCF during an otherwise survivable impact (this relates to a similar requirement in MIL-STD-1290). The only exceptions to the use of self-sealing breakaway couplings would be where other means that provide an equivalent level of safety are employed such as provision of shielded extensible lines (soft hoses covered with braided shielding that have enough slack or stretch built in to absorb relative motion without fuel leakage), provision of motion-absorbing fittings (rotational ball joints or linearly extensible slip joints), or where it can be conclusively shown by a combination of experience, tests, and analysis that the probability of fuel loss to an ignition source in an otherwise survivable crash would be extremely improbable; i.e., 1×10^{-9} or less.

Paragraph (c)(1) would contain the requirement for design features of self-sealing breakaway couplings.

Paragraph (c)(1)(i) would contain the proposed design load conditions necessary to separate a breakaway coupling. These loads would be determined from analysis and tests.

Paragraph (c)(1)(ii) would require that a self-sealing breakaway coupling separate when the minimum breakaway load defined in proposed paragraph (c)(1)(i) is met or exceeded in the local failure modes most likely to occur during an otherwise survivable impact. The primary loading modes (each of which will produce a breakaway load) are determined by analyzing and testing the surrounding structure to determine the probable impact forces, their directions, and the resulting deformations.

Paragraph (c)(1)(iii) would require that all breakaway couplings have a design provision allowing visual inspection by inspectors (or checks by pilots) to determine that the coupling is locked together (leak-free) and remains open such that fuel flow is not shut off during normal operations.

Paragraph (c)(1)(iv) would require that design provisions be present to prevent uncoupling or inadvertent closing due to operational shocks, vibrations, or accelerations. These provisions would depend on the inherent design of the coupling and its installation location.

Paragraph (c)(1)(v) would require that a coupling design not release fuel when the coupling has separated and each end seals off. The amount of fuel spilled is determined by the coupling design and is essentially what is trapped between the seals (in each half of the coupling) after the coupling separates. In most designs this will be less than 8 ounces of fuel per coupling.

Paragraph (c)(2) would require that an individual breakaway coupling (in the case of a single fuel feed line), or a coupling fuel feed system incorporating several couplings (in the case of multiple parallel feed lines each with a single coupling, or of more complex, multitank crossfeed systems that include breakaway couplings), or other equivalent means (stretch hoses, motion absorbing fittings, etc.) be designed, tested, installed, and maintained so that the probability of inadvertent fuel shutoff in flight is 1×10^{-9} or less, as required by current §§ 27.955(a) and 29.955(a). This paragraph would further require that each coupling design meet the requirements of the appropriate fatigue evaluation requirements (including continuing airworthiness requirements) of either § 27.571 or § 29.571 without leaking. The proposed fatigue requirements would not add significantly to the certification burden since the low ratio of working load to crash load would typically result in designs that automatically meet these proposed standards.

Paragraph (c)(3) would require that any equivalent means used in lieu of a breakaway coupling not create an impact-induced load on the fuel line to which it is installed that is greater than 25 to 50 percent of the ultimate load (strength) of the weakest component in the line (load path). This would minimize the occurrence of a line rupture. This paragraph includes a fatigue evaluation requirement similar to that of paragraph (c)(2).

Paragraph (d) would require design and use of frangible or deformable structural attachments for the installation of major fuel system components to other rotorcraft structure where a crash-induced hazardous relative motion may cause rupture and local tearout. The loads proposed in paragraph (d)(1) would be used in conjunction with analysis and tests to determine the maximum amount of deformation required or the local breakaway loads for the attachments. If it can be conclusively determined for an individual component by analysis and test that fuel spillage due to a local structural attachment failure is extremely improbable (1×10^{-6} or less), no further action would be required.

Paragraph (d)(1) would define the impact-induced design load conditions necessary to deform a deformable attachment or to separate a frangible attachment. These loads would be determined from analysis and tests. All possible loading modes (e.g., tension, bending, compression, shear, and combinations thereof) must be considered, and the minimum critical ultimate load (based on the ultimate strength of the weakest component) determined.

Paragraph (d)(2) would require that a frangible or locally deformable attachment perform its intended function when the minimum breakaway or deformation load (as defined in paragraph (d)(1)) is met or exceeded in the local failure modes most likely to occur during an otherwise survivable impact. The primary loading modes (each of which will produce a breakaway or deformation load) that must be considered are determined by analyzing and testing the surrounding structure to determine the probable impact forces and directions. The attachment would be designed to break or deform at the lowest ultimate load determined under paragraph (d)(1).

Paragraph (d)(3) would require that each frangible or locally deformable attachment meet the fatigue requirements of either § 27.571 or § 29.571, as previously discussed for paragraph (c)(2).

Paragraph (e) would require that, as far as practicable, flammable fluids and potential ignition sources be adequately separated and would define several generic types of common ignition sources and potential PCF-producing contact scenarios. The phrase "as far as practicable" means that within the major constraints of the applicant's design (e.g., aerodynamic shape, space, volume, major structural relocation, etc.) the criteria of proposed paragraph (e) must be met to the maximum possible extent (i.e., without causing major redesign). Obviously, the level of practicability would be higher during a new design project than it would be during a project that involves modification of an existing design. This criterion would be accomplished by a thorough design review, by a potential PCF hazard analysis, and by trade studies. The findings would be documented and approved during certification. Any hazardous areas indentified that are not explicitly specified by paragraph (e) must be included and addressed in an equal manner during certification. Engineering evaluation, analysis, and tests would all be required to determine the maximum level of practicability.

Paragraphs (e)(1) and (e)(2) would add design criteria necessary to prevent a PCF by separating flammable fluids from high temperature ignition sources and electrical ignition sources, respectively. Also, any additional PCF hazards identified in a particular design would be documented, addressed equally, and eliminated to the maximum practicable extent during certification.

Paragraph (e)(3) would require that all friction spark, chemical, and electrostatic PCF ignition sources (which relate to a given design or which may be created during impact) be identified and designed out of the system to the maximum practicable extent.

Paragraph (e)(4) would require that, as far as practicable, flammable fluid tanks be separated from occupiable areas.

Paragraph (e)(5) would require that, unless the probability of a fuel leak or spill reaching a potential ignition source or an occupiable area is 1×10^{-9} less in an otherwise survivable impact, a fuel or flammable fluid line be shielded with a drainable fireproof shroud.

Paragraph (e)(6) would require that all firewalls be designed to withstand a survivable impact without losing their sealing ability. Firewall deformation would be allowed, but firewall tear or rupture would not. A survivable impact (unless a better definition is otherwise available from rational analysis with test verification) is defined by the crash load factors of paragraph (b)(1) of this section.

Paragraph (e)(7) would require that drainage holes be located in all flammable fluid tank compartments to prevent accumulation of spilled flammable fluids. Drip fences and troughs would also be required to route spilled fluids away from ignition sources to drainage holes so that accumulation is prevented.

Paragraph (f) would summarize other generic mechanical design criteria. Within the major constraints of the applicant's design (e.g., aerodynamic shape, space, volume, major structural relocation, etc.), the criteria of paragraph (f) would be met to the maximum practicable extent (e.g., without causing a major redesign). This would be accomplished by a thorough design review and potential PCF hazard analysis. The findings would be documented during certification, and PCF hazards of this type that are not specified by this paragraph would be included, addressed equally, and documented during certification. Engineering evaluation, analysis, and tests may all be required to determine the maximum level of practicability.

Paragraph (g) would require rigid or semirigid fuel tank or bladder walls to be both impact and tear resistant. This would prevent a PCF caused by impact-induced rupture and, thus, provide crash resistance. For the purposes of this proposal, a rigid tank or bladder is one that can resist fluid pressure loads as a flat plate in bending. A semirigid tank is one that can resist fluid pressure loads partially as a flat plate in bending and partially as a membrane in tension.

Flexible liners would be exempt from the requirements of paragraph (g) since a flexible liner, unsupported, can resist only pure tension loads acting as a membrane (i.e., it has negligible bending strength). The rigid shell structure that would be required by proposed § 27.967(a)(3), and that is currently required by § 29.967(a)(3), would surround the flexible liner (membrane) and would carry the crash-induced impact and tear loads; however, the flexible liner, in a survivable impact, would only be significantly loaded in tension when the shell structure is penetrated by a sharp object.

Paragraph (h) would state the puncture resistance requirements necessary for puncture resistant flexible liners.

For rigid or semirigid metal tanks, composite tanks (resin matrix), semirigid bladder designs (rubber matrix), metal-composite hybrid designs, and all other tank designs to comply with proposed paragraph (g), analysis, when used, would be supplemented by tests to demonstrate impact and tear resistance. Impact and tear resistance test criteria are included in such documents as MIL-T-27422B. Advisory material would supplement MIL-T-27422B to account for differences in military and civil operations.

Paragraph (h) would require that any type of flexible liner or bladder used in any type of tank construction (integral, hard shell, etc.) meet the strength and puncture resistance requirements of either § 27.963(g) or § 29.963(b), which would include new puncture resistance (strength and penetration energy) requirements. The new puncture resistance requirements would be necessary to meet existing TSO-C80, paragraph 16.0 requirements, using an increased minimum acceptable puncture force of 370 pounds.

Sections 27.963/29.963

Paragraph (f) of § 27.963 would be revised and a new paragraph (e) would be added to § 29.963 to reference the crash resistance requirements of § 27.952 or § 29.952, repectively.

A new paragraph (g) to § 27.963 and a revised paragraph (b) to § 29.963 would require that each flexible fuel tank bladder or liner be approved or shown to be suitable for the particular application and that the liner be certificated to a new puncture resistance standard. Liner or bladder material approval can be an integral part of the certification process or can be shown by the material's prior inclusion in TSO-C80, "Flexible Fuel and Oil Cell Material." Suitability of the installation of the liner or bladder material would be shown on a case-by-case basis as part of each certification application. The

proposed new puncture resistance requirement would be a part of the liner or bladder material approval process.

As previously discussed under proposed § 29.952(h), the new puncture resistance requirement would increase the TSO–C80, paragraph 16.0, puncture force minimum value to 370 pounds (current TSO–C80 requirement is 15 pounds) for fuel cell material only. This proposed change would significantly minimize the occurrence of a PCF from fuel spills caused by impact-induced liner or bladder punctures.

New paragraph (h) to § 27.963 would require each integral fuel tank to be inspectable and repairable so that if minor, chronic fuel seepage and weak areas are found, they would be properly maintained and repaired and would not become unintended major fuel spills during a survivable impact. Also, since current § 29.963(d) is identical to proposed § 27.963(h), the proposed change would make parts 27 and 29 parallel.

New § 27.967/Revised § 29.967

A proposed new § 27.967 would be added and would be parallel to the proposed revision to § 29.967. These basic design requirements would ensure that a crash resistant fuel tank installation includes features such as support pads, properly supported liners, protection against minor fuel leakage and fume buildup, and protection against liner wear.

Paragraph (e) of § 29.967 would removed and the requirement would be placed in a proposed paragraph (e) to § 29.963. These changes would make §§ 29.963 and 29.967 parallel with §§ 27.963 and 27.967 and, thus, provide increased standardization.

Sections 27.973/29.973

The proposed revisions to § 27.973 would be parallel with the proposed revisions to § 29.973 that would minimize potential PCF hazards by ensuring that proper crash resistance design requirements are present for fuel tank filler connections and filler caps. Adoption of these proposals would significantly minimize fuel leakage during normal operations and during a survivable impact.

Paragraph (a) of § 29.973 would be revised to include a requirement that all fuel tank filler connections be made crash resistant in accordance with § 29.952(c). Paragraph (a)(3) would be revised to require that all filler caps remain fuel-tight under fuel pressures induced during a survivable impact.

Paragraph (b) of § 29.973 would be revised to require that all transport category rotorcraft (not just Category A as currently required) have a filler cap cover or filler cap that warns when the cap is not fully locked or seated on the filler connection. This change would ensure that a loose filler cap will not allow spilled fuel and cause a PCF in an otherwise survivable impact.

Sections 27.975/29.975

Paragraph (b) of § 27.975 and paragraph (a)(7) of § 29.975 would be revised to require the venting system to be designed to minimize fuel spillage through the vents to an ignition source in the event of a fully or partially inverted attitude following a survivable impact unless the probability of such spillage is $1x10^{-6}$ or less. Since rotor action on impact and other impact dynamics have been found in numerous cases to cause rollovers or other unusual postcrash attitudes, this proposed change would significantly minimize a PCF by minimizing fuel spills through vents to ignition sources when the postcrash attitude of the rotorcraft would allow gravity-induced spills.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify costs and benefits, to the extent practicable, to the private sector, consumers, Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposal is not "major" as defined in the executive order. Therefore, a full regulatory *analysis*, that includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory *evaluation* that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the Regulatory Flexibility Act of 1980 (P.L. 96–354) and an international trade impact assessment. If more detailed economic information is desired, the full regulatory evaluation, contained in the docket, can be reviewed.

Evaluation of Benefits

The purpose of this proposed rule is to reduce and eliminate, if possible, thermal fatalities and injuries resulting from postcrash fires. The effect of the proposed rule would be to reduce the overall percentage of fatalities and serious injuries in rotorcraft accidents to approximately the same percentage of fatalities and serious injuries in rotorcraft accidents without postcrash fires.

To evaluate this proposed rule, NTSB accident data from January 1, 1983, to December 31, 1987, were used provided a passenger or a crewmember was seriously injured or killed as a result of the accident, and provided the rotorcraft accident was a crash landing or a collision with an object. These two data filters were used because the proposed rule is primarily intended to reduce or prevent burn injuries and fatalities in severe but survivable accidents. During this 5-year period, there were 295 severe rotorcraft accidents that resulted from crash landings or from collisions with an object. In 143 of these accidents (44 of which involved postcrash fires), none of the occupants survived. There was at least one survivor in the other 152 accidents (19 of which involved postcrash fires).

There was a high fatality rate (77 percent) in accidents that had a postcrash fire which provides strong support for considering the adoption of these proposals. In addition, the percentage of occupants killed or seriously injured was higher in survivable accidents that had a postcrash fire than in survivable accidents that did not have a postcrash fire. In the survivable accidents involving postcrash fires, 23.4 percent of the occupants were killed and 63.0 percent were seriously injured. In survivable accidents without postcrash fires, 15.7 percent of the occupants were killed and 47.8 percent were seriously injured. An effective CRFS would reduce the fatality rate from 23.4 percent to about 15.7 percent and the serious injury rate from 63.0 percent to about 47.8 percent.

There was a noticeable difference between normal (part 27) and transport category (part 29) rotorcraft in the proportion of accidents with postcrash

fires and casualties. There seems to be less chance that a severe accident involving part 27 rotorcraft will involve a postcrash fire (19.7 percent ± 4.8 percent, at the 95 percent confidence level) than a severe accident involving a part 29 rotorcraft (35.5 percent ± 17.2 percent, at the 95 percent confidence level). The percentage of fatalities and serious injuries is higher in survivable accidents involving part 27 rotorcraft (71.9 percent ± 4.9 percent, at the 95 percent confidence level) than in survivable accidents involving part 29 rotorcraft (39.5 percent ± 11.0 percent, at the 95 percent level). Because of these two differences, serious rotorcraft accidents were divided into two groups—accidents involving part 27 rotorcraft and accidents involving part 29 rotorcraft.

Most of the accidents involve part 27 rotorcraft. These accidents account for 264 rotorcraft accidents (89.5 percent of the accidents used in this evaluation) and for 553 passengers and crewmembers (83 percent of the people involved in these accidents).

Only a few of the accidents used in this evaluation involve part 29 rotorcraft. These accidents account for 34 (11.5 percent) of the accidents used in this evaluation and for 113 passengers and crewmembers (17 percent of the people involved in these accidents).

Some of the accidents involving postcrash fires in which there were no survivors could have been survivable on impact if there had been no postcrash fire. An effective CRFS would have prevented most of the fatalities in the accidents that were survivable on impact. To properly evaluate the benefits of a CRFS, the number of rotorcraft accidents that were survivable on impact but in which the postcrash fire killed those who survived the impact needs to be estimated. Next, the estimated number of these accidents (and the victims of the accidents) has to be added to the survivable accident category.

A review of a crashworthiness study done for the U.S. Army showed that 50 percent of all rotorcraft accidents with postcrash fires were survivable on impact. This suggests that some of the civilian rotorcraft accidents in which there were no survivors were also survivable on impact. Since there were no survivors in more than 50 percent of the accidents in which there was a postcrash fire, it can be assumed that some of these fatalities might not have occurred had there been no postcrash fire. For part 27 rotorcraft, there were 52 accidents that had a postcrash fire. According to the Army study, 26 of these accidents would have been survivable on impact. Therefore, 10 (36 minus 26) of the 36 postcrash fire accidents in which there were no survivors could have had survivors if there had been no postcrash fire resulting in 20.3 more survivors. Similarly, 5 of the 11 part 29 rotorcraft accidents would have been survivable on impact resulting in 7.5 more survivors.

A second adjustment was also made before the revised postcrash fire casualties were recalculated to reflect the casualty distribution of accidents without postcrash fires. According to the U.S. Army analysis of Army helicopter accidents, crashworthy fuel systems eliminated all burn fatalities and reduced serious burn injuries by 75 percent. Applying this information to civilian rotorcraft accidents, 25 percent of the serious injuries in rotorcraft accidents with postcrash fires would remain as serious burn injuries. Thus, serious burn injuries were reduced by 75 percent. The 25 percent that remain as serious burn injuries have to be netted out to revise the postcrash fire casualty statistics to reflect the casualty distribution of accidents without postcrash fires. In survivable accidents without any postcrash fires involving part 27 rotorcraft, 17.5 percent of the occupants were killed. If crash resistant fuel systems eliminate postcrash fires, then only 17.5 percent of the statistical nonburn casualties (42.8) in survivable accidents that had postcrash fires would have died on impact. Thus, there would have been only 7.5 statistical fatalities (42.8×0.175) in these accidents if postcrash fires could be eliminated. The same procedure can be used to estimate serious nonburn injuries, minor injuries, and no injuries. The results of this analysis are shown in the following table.

REDUCTIONS OF CASUALTIES IN SEVERE ROTORCRAFT ACCIDENTS INVOLVING POSTCRASH FIRES

Casualties	Part 27—Rotorcraft			Part 29—Rotorcraft		
	Without CRFS	With CRFS	Difference	Without CRFS	With CRFS	Difference
Fatalities	27.3	7.5	19.8	10.5	1.4	9.1
Serious	16.0	27.0	(9.0)	9.0	7.2	1.8
Minor	1.0	9.4	(8.4)	4.0	11.0	(7.0)
None	1.0	3.4	(2.4)	0.0	3.9	(3.9)
	47.3	47.3		23.5	23.5	

This evaluation shows that a CRFS in civilian rotorcraft would reduce the number of deaths in serious but survivable rotorcraft accidents and increase the number of minor injuries and occupants with no injuries. Serious injuries would increase in accidents involving part 27 rotorcraft, but serious injuries would be reduced in accidents involving part 29 rotorcraft.

To provide the public and government officials with a benchmark comparison of the expected safety benefits of rulemaking actions over an extended period of time with estimated costs in dollars, the FAA currently uses a minimum value of $1.5 million to statistically represent a human fatality avoided. (This is in accordance with guidelines issued by the Office of the Secretary of Transportation.) Serious injuries were estimated to cost $640,000 while minor injuries are estimated to cost $2,300.

Between January 1, 1983, and December 31, 1987, there were an estimated 26 survivable accidents involving part 27 rotorcraft in which there was a postcrash fire, and there were an estimated 7 similar types of accidents involving part 29 rotorcraft. If these rotorcraft had a CRFS installed, the average benefit (reduced costs of casualties per accident) would have been $920,000 per accident involving a normal category rotorcraft and $2,112,000 per accident involving a transport category rotorcraft.

During this 5-year period, there were an average of 9,146 part 27 rotorcraft and 1,238 part 29 rotorcraft in operation in the United States. The probability that a part 27 rotorcraft would be involved in serious (but survivable) accident in which there was a postcrash

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fire in any given year during that time was estimated to be 0.000569±0.000219 at the 95 percent confidence level. The probability that a part 29 rotorcraft would be involved in a serious (but survivable) accident in which there was a postcrash fire in any given year was estimated to be 0.001131±0.000837 at the 95 percent confidence level. To be conservative, the FAA used 0.000788 (0.000569+0.000219) as its estimate of the annual probability that a part 27 rotorcraft would be in a serious, survivable accident in which there was a postcrash fire. The annual benefits of requiring a CRFS were estimated by multiplying these probabilities by the average reduction in casualty costs resulting from a CRFS. For part 27 rotorcraft, the annual benefits were estimated to be $725 per rotorcraft. For part 29 rotorcraft, these annual benefits were estimated to be $4,157 per rotorcraft.

To compare the annual flow of dollar benefits from a CRFS to its costs, the present value of both the costs and the benefits has to be computed. The present value of the benefits was calculated by first estimating the future annual benefits per rotorcraft per year. This was done by multiplying the estimated reduction in casualty costs per accident (in which there was a postcrash fire) by the probability that the rotorcraft will be involved in a survivable, but severe, accident (in which there was a postcrash fire) in each of the 15 years out in the future. This flow of benefits was then discounted to calculate the present value of these benefits. In this evaluation, a discount rate of 10 percent, as required by Office of Management and Budget (OMB) Circular 94 was used. For part 27 rotorcraft, the estimated present value of the benefits from a CRFS was $5,500. For part 29 rotorcraft, the estimated present value of these benefits was $31,300. A more detailed discussion of the estimation of benefits can be found in the Regulatory Evaluation included in the docket. The FAA believes these estimated benefits are accurate, but the FAA requests comments on these benefit estimates.

Costs

These proposals are likely to cause changes in the design of current fuel systems to make them more crash resistant. The cost of a new fuel system will be dependent on the type of rotorcraft. Generally, costs will be higher for larger rotorcraft than for smaller ones. However, even among rotorcraft of the same size, costs may vary.

There are two basic components to the costs of rotorcraft fuel systems: production costs and operating costs. Production costs include engineering design and development costs, testing and certificating costs, tooling and training costs, and manufacturing costs. The operating costs of the new fuel system are the costs of the additional fuel burned due to the added weight of the improved fuel system plus added maintenance cost, if any.

The engineering design and development costs, the testing and certificating costs, and the tooling and training costs were estimated to be $36,000. These are the costs that would be in addition to those costs associated with the normal process of developing a new rotorcraft based on current regulations. The fuel system is already a major component of rotorcraft design and numerous airworthiness standards are already applicable to its certification. Also, the proposed requirements for a fuel system can be integrated into the overall certification program for a new rotorcraft. Since rotorcraft designers are well aware of the elements of crash resistant design, the incremental design costs of a crash resistant fuel system for a newly designed rotorcraft should not be great. Testing costs cover actual testing and the analysis of test results to satisfy FAA certification requirements. Most of these costs are expected to be for analysis and documentation rather than for actual testing. The only testing required by these proposals is a drop test of each fuel cell to show no loss of a hazardous quantity of fuel under certain crash conditions. Tooling and training costs include expenses for fixtures, tools, and devices to manufacture the fuel system, and the cost of training workers. Each rotorcraft is expected to be in production for 15 years or more, and at least 10 rotorcraft are exepcted to be produced each year. Using 10 percent as the discount rate, the amortized development and certification costs are estimated to be $474 per unit (assuming only 10 rotorcraft are produced each year).

An important element in crash resistant fuel systems is the installation of frangible, self-sealing fittings at key places in the fuel lines. These fittings break away at designed points and at specific stresses, such as those that occur during a survivable crash. The fittings are not intended to break away in hard landings. The FAA estimates that the incremental cost of such fittings is $60 each. The number of fittings will vary from one type of rotorcraft to another. The FAA estimates that a part 27 rotorcraft will use 8 of these fititngs in its fuel system and that a part 29 rotorcraft will use 10 of these fittings. These fittings are estimated to cost $480 for part 27 rotorcraft and $600 for part 29 rotorcraft.

Another element in a crash resistant fuel system is the installation of flexible sections in the fuel lines. These sections are designed to allow the fuel lines to give and to stretch under stress loads caused by survivable crashes. Flexible sections of fuel line are expected to add about $100 to the cost of a fuel system for part 27 rotorcraft and about $150 to the cost of a fuel system for part 29 rotorcraft.

A third major element in a crash resistant fuel system is a strong fuel tank. The costs of this fuel tank are dependent on its design, size, and the number of rotorcraft produced. The average cost of a fuel tank meeting the requirements of this proposal, including installation, is estimated to be $10 per gallon of tank capacity. In this evaluation, part 27 rotorcraft are assumed to have 50-gallon fuel tanks, which would be $500 more expensive as a result of this proposed rule. Part 29 rotorcraft are assumed to have 200-gallon fuel tanks, which would be $2,000 more expensive as a result of this proposed rule.

This proposed rule would increase the acquisition cost of newly certificated part 27 rotorcraft by $1,600 and the acquisition cost of newly certificated part 29 rotorcraft by $3,200. Not only would the proposed rule increase the acquisition costs of newly certificated rotorcraft, it would also increase the operating costs as a result of the increased weight of the fuel system.

The fuel tank accounts for most of the added weight. The FAA estimates that there will be 0.15-pound per gallon weight penalty as a result of fuel tank that is crash resistant. The weight penalty for part 27 rotorcraft is estimated to be 7.5 pounds (50 gal × 0.15 lb/gal) and the weight penalty for part 29 rotorcraft is estimated to be 30 pounds (200 gal × 0.15 lb/gal). The frangible fittings and flexible fuel line section will add an estimated 2 pounds of weight to part 27 rotorcraft and 3 pounds of weight to part 29 rotorcraft. As a result, adopting these proposals would increase the weight of newly certificated part 27 rotorcraft by 9.5 pounds and the weight of newly certificated part 29 rotorcraft by 33 pounds. For part 27 rotorcraft, each extra pound of weight increases annual operating costs by $30.34, and for part 29 rotorcraft, the increase in annual operating costs is $34.58 per extra pound. The estimated increase in annual operating costs of the proposed rule would be $288 for part 27 rotorcraft and $1,141 for part 29 rotorcraft. Over the 15-year expected operating life of a rotorcraft, the present value of this incease in operating costs would be $2,200 for part 27 rotorcraft and $8,700 for part 29 rotorcraft.

The present value of the total cost of this proposed rule for crash resistant fuel systems in newly certificated rotorcraft is $3,700 for part 27 rotorcraft and $11,900 for part 29 rotorcraft. These costs include both the increase in production costs and the increase in operating costs of newly certificated rotorcraft. A more detailed discussion of the cost estimation procedures can be found in the Regulatory Evaluation included in the docket. The FAA believes these estimated costs to be accurate, but the FAA requests comments on the accuracy of these cost estimates.

Benefit-Cost Comparison

The present value of the benefits exceeds the present value of the costs for both part 27 rotorcraft and part 29 rotorcraft. The net benefits per rotorcraft (benefits minus costs) are $1,800 for part 27 rotorcraft and $19,400 for part 29 rotorcraft. This proposed rule would still be cost-beneficial for part 27 rotorcraft even if it is only 67 percent as effective as the U.S. Army's crashworthy fuel systems for rotorcraft. For part 29 rotorcraft, the proposed crash resistant fuel system has to be only 38 percent as effective as the U.S. Army's crashworthy fuel system to be cost-beneficial. The FAA expects that the proposed crash resistant fuel system that would be required by this proposed rule will be more than 67 percent as effective as the U.S. Army's crashworthy fuel system. Therefore, the FAA has determined that these proposals are cost-beneficial.

Trade Impact Statement

The costs imposed by these proposals will not result in a competitive trade disadvantage for U.S. manufacturers in the U.S. market. Foreign manufacturers would have to comply with these proposed regulations as a condition for selling their rotorcraft in the United States and probably will comply with these proposed regulations since the United States is their largest market. In foreign markets, neither U.S. manufacturers nor foreign manufacturers can be required to comply with these proposed standards; therefore, U.S. manufacturers will not be a competitive disadvantage in foreign markets.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining if a proposed or existing rule has any significant economic impact on a substantial number of small entities.

The FAA small entity standards define a small rotorcraft manufacturer as an independently owned and managed firm having fewer than 75 employees. A substantial number of small entities is one-third of the small entities, provided 11 or more small entities are substantially impacted. There is only one small part 27 rotorcraft manufacturer (Brantly-Hynes Helicopter Inc.) and no small part 29 rotorcraft manufacturers. Accordingly, the proposed regulations would not impact a substantial number of small rotorcraft manufacturers. Small rotorcraft operators are not necessarily impacted by these proposed regulations since they will not be required to purchase rotorcraft certificated under these proposals. They may continue to purchase rotorcraft, either used or new, that were type certificated before these proposals would go into effect.

Accordingly, the FAA has determined that these proposals would not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under the section entitled "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Proposed Amendments

In consideration of the foregoing, the FAA proposes to amend parts 27 and 29 of the Federal Aviation Regulations (14 CFR parts 27 and 29) as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 27.561 is amended by adding a new paragraph (d) to read as follows:

§ 27.561 General.

* * * * *

(d) Any fuselage structure in the area of internal fuel tanks below the passenger floor level must be designed to resist the following ultimate inertial factors and loads and to protect the fuel tanks from rupture when those loads are applied to that area:

(i) Upward—1.5g.

(ii) Forward—4.0g.

(iii) Sideward—2.0g.

(iv) Downward—4.0g.

3. A new § 27.952 is added after § 27.951 to read as follows:

§ 27.952 Fuel system crash resistance.

Unless other means acceptable to the Administrator are employed to minimize the hazard of fuel fires to occupants following an otherwise survivable impact (crash landing), the fuel systems must incorporate the design features of this section. These systems must be shown to be capable of sustaining the static and dynamic deceleration loads of this section, considered as ultimate loads acting alone, measured at the system component's center of gravity, without structural damage to system components, fuel tanks, or their

attachments that would leak fuel to an ignition source.

(a) *Drop test requirements.* Each tank, or the most critical tank, must be drop-tested as follows:

(1) The drop height must be at least 50 feet.

(2) The drop impact surface must be nondeforming.

(3) The tank must be filled with water

(i) The load required to separate a breakaway coupling must be between 25 to 50 percent of the minimum ultimate failure load (ultimate strength) of the weakest component in the fluid-carrying line. The separation load must in no case be less than 300 pounds, regardless of the fluid line size.

(ii) A breakaway coupling must

support structure, must be between 25 and 50 percent of the minimum ultimate load (ultimate strength) of the weakest component in the attached system. To prevent inadvertent separation or deformation, the load must be greater than 10 times the normal service loads at the frangible or deformable attachment location. In no case may the

lines and kept to a minimum in Flammable fluid tank areas.

(iii) Electrical components and wiring must not be located or routed immediately adjacent to flammable fluid lines and vent openings.

(iv) Electrical wiring and equipment that are mandatory in areas where they are immersed in or otherwise directly

(7) *Flow diverters.* (i) Drainage holes must be located in all flammable fluid tank compartments to prevent the accumulation of spilled flammable fluids within the aircraft.

(ii) Drip fences and drainage troughs must be used to prevent gravity-induced flow of spilled fuels from reaching any ignition sources such as hot engine

designed with sufficient local slack and locally routed in the least probable damage direction and zone, or otherwise protected to minimize the probability of damage-induced arcing.

(9) Fuel lines routed directly into fuel tanks or other fuel system components must be locally routed in the least probable damage direction and zone, of

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attachments that would leak fuel to an ignition source.

(a) *Drop test requirements.* Each tank, or the most critical tank, must be drop-tested as follows:

(1) The drop height must be at least 50 feet.

(2) The drop impact surface must be nondeforming.

(3) The tank must be filled with water to 80 percent of the normal, full capacity.

(4) The tank must be enclosed in a surrounding structure representative of the installation unless it can be established that the surrounding structure is free of projections or other design features likely to contribute to rupture of the tank.

(5) The tank must drop freely and impact in a horizontal position ±10°.

(6) After the drop test, there must be no leakage.

(b) *Fuel tank load factors.* Except for fuel tanks located so that tank rupture with fuel release to either significant ignition sources, such as engines, heaters, and auxiliary power units, or occupants is extremely remote, each fuel tank must be designed and installed to retain its contents under the following ultimate inertial load factors, acting alone.

(1) For fuel tanks in the cabin:
(i) Upward—4g.
(ii) Forward—16g.
(iii) Sideward—8g.
(iv) Downward—20g.

(2) For fuel tanks located above or behind the crew or passenger compartment that, if lossened, could injure an occupant in an emergency landing:
(i) Upward—1.5g.
(ii) Forward—8g.
(iii) Sideward—2g.
(iv) Downward—4g.

(3) For fuel tanks in other areas:
(i) Upward—1.5g.
(ii) Forward—4g.
(iii) Sideward—2g.
(iv) Downward—4g.

(c) *Fuel line self-sealing breakaway couplings.* Self-sealing breakaway couplings must be installed unless hazardous relative motion of fuel system components to each other or to local rotorcraft structure is demonstrated to be extremely improbable or unless other means are provided. The couplings or equivalent devices must be installed at all fuel tank-to-fuel line connections, tank-to-tank interconnects, and at other points in the fuel system where local structural deformation could lead to release to fuel.

(1) The design and construction of self-sealing breakaway couplings must incorporate the following design features:

(i) The load required to separate a breakaway coupling must be between 25 to 50 percent of the minimum ultimate failure load (ultimate strength) of the weakest component in the fluid-carrying line. The separation load must in no case be less than 300 pounds, regardless of the fluid line size.

(ii) A breakaway coupling must separate whenever its ultimate load (as defined in paragraph (c)(1)(i) of this section) is applied in the failure modes most likely to occur.

(iii) All breakaway couplings must incorporate design provisions to visually ascertain that the coupling is locked together (leak-free) and is open during normal installation and service.

(iv) All breakaway couplings must incorporate design provisions to prevent uncoupling or unintended closing due to operational shocks, vibrations, or accelerations.

(v) No breakaway coupling design may allow the release of fuel once the coupling has performed its intended function.

(2) All individual breakaway couplings, coupling fuel feed systems, or equivalent means must be designed, tested, installed, and maintained so that inadvertent fuel shutoff in flight is improbable in accordance with § 27.955(a) and must comply with the fatigue evalution requirements of § 27.571 without leaking.

(3) Alternate, equivalent means to the use of breakaway couplings must not create a survivable impact-induced load on the fuel line to which it is installed greater than 25 to 50 percent of the ultimate load (strength) of the weakest component of the line and must comply with the fatigue requirements of § 27.571 without leaking.

(d) *Frangible or deformable structural attachments.* Unless hazardous relative motion of fuel tanks and fuel system components to local rotorcraft structure is demonstrated to be extremely improbable in an otherwise survivable impact, frangible or locally deformable attachments of fuel tanks and fuel systems components to local rotorcraft structure must be used. The attachment of fuel tanks and fuel systems components to local rotorcraft structure, whether frangible or locally deformable, must be designed such that its separation or relative local deformation will occur without rupture or local tearout of the fuel tank and fuel systems component that will cause fuel leakage. The ultimate strength of frangible or deformable attachments must be as follows:

(1) The load required to separate a frangible attachment from its support structure, or deform a locally deformable attachment relative to its support structure, must be between 25 and 50 percent of the minimum ultimate load (ultimate strength) of the weakest component in the attached system. To prevent inadvertent separation or deformation, the load must be greater than 10 times the normal service loads at the frangible or deformable attachment location. In no case may the load be less than 300 pounds.

(2) A frangible or locally deformable attachment must separate or locally deform as intended whenever its ultimate load (as defined in paragraph (d)(1) of this section) is applied in the modes most likely to occur.

(3) All frangible or locally deformable attachments must comply with the fatigue requirements of § 27.571.

(e) *Separation of flammable fluids and ignition sources.* Flammable fluids must be located as far as practicable from all potential ignition sources. Locations to be avoided must include, but are not limited to, the following:

(1) *High temperature ignition sources.*

(i) Tank fillers or overboard fuel drains must not be located adjacent to engine intakes or exhausts so that flammable vapors could be ingested and ignited.

(ii) Airframe-mounted fuel filters and valves must not be located within the engine compartment or adjacent to engine intakes or exhausts.

(iii) Flammable fluid lines must not be located in any occupiable area unless they are shrouded or otherwise designed to prevent spillage and subsequent ignition during and immediately following a survivable impact.

(iv) Flammable fluid tanks must not be located in or immediately adjacent to engine compartments, engine induction or exhaust areas, heaters, bleed air ducts, hot air-conditioning ducts, or any other hot surface.

(v) Flammable fluid lines must be kept to a minimum in the engine compartment. Fluid lines must be located immediately adjacent to engine exhaust areas, heaters, bleed air ducts, hot air-conditioning ducts, or any other hot surface.

(vi) Flammable fluid lines must not be located where they can readily spill, spray, or mist onto hot surfaces or into engine induction or exhaust areas. These locations must be determined for each aircraft design by considering probable structural deformation hazards in relation to the flammable fluid systems.

(2) *Electrical ignition sources.* (i) Flammable fluid tanks and lines must not be located in electrical compartments.

(ii) Electrical components and wiring must be separated from flammable fluid lines and kept to a minimum in Flammable fluid tank areas.

(iii) Electrical components and wiring must not be located or routed immediately adjacent to flammable fluid lines and vent openings.

(iv) Electrical wiring and equipment that are mandatory in areas where they are immersed in or otherwise directly subjected to flammable fluids and vapors must be hermetically sealed, tested in accordance with § 27.1309, or otherwise protected such that ignition is extremely improbable.

(v) Electrical sensor lines that penetrate fuel tank walls must be protected from abrasion or guillotine cutting during a survivable impact by use of potting, rubber plugs or grommets, or other equivalent means, and must be designed with sufficient local slack, or equivalent means, to prevent both the wires and their protective mountings from being cut by or torn from fuel tank walls by local deformation.

(vi) Electrical wires must be designed with sufficient slack or equivalent means to accommodate structural deformation without creating an ignition source.

(vii) Electrical wires that are subjected to severe local abrasion, cutting, or other damage during a survivable impact must be protected locally by nonconductive shields or shrouds.

(viii) Electrical wires that are not sufficiently separated from heat or ignition sources to avoid potential contact during a survivable impact must be locally shrouded with a nonconductive fireproof shroud.

(3) *Friction spark, chemical, and electrostatic ignition sources.* Flammable fluid lines and tanks must be designed and located to eliminate fuel or fuel vapor ignition from potential mechanical friction spark ignition sources, chemical ignition sources, and electrostatic ignition sources having a high probability of being activated or created during a survivable impact.

(4) *Separation of flammable fluids and occupiable areas.* Flammable fluid tanks must be located as far as practicable from all occupiable areas.

(5) *Fuel line shielding.* Areas of the fuel line system where the probability of spilled flammable fluids reaching potential ignition sources or occupiable areas is greater than extremely improbable (as defined by paragraph (b) of this section) must be shielded with drainable fireproof shrouds.

(6) *Firewalls.* Firewalls must be designed to withstand the load factor requirements of paragraph (b)(1) of this section without losing their sealing ability.

(7) *Flow diverters.* (i) Drainage holes must be located in all flammable fluid tank compartments to prevent the accumulation of spilled flammable fluids within the aircraft.

(ii) Drip fences and drainage troughs must be used to prevent gravity-induced flow of spilled fuels from reaching any ignition sources such as hot engine areas, electrical compartments, or other potential hot spots.

(8) *Fuel drain system.* The fuel drain system and its attachments to the airframe must be designed and constructed, as far as practicable, to be crash resistant.

(f) *Other basic mechanical design criteria.* Fuel tanks, fuel lines, electrical wires, and electrical devices must be designed and constructed, as far as practicable, as follows:

(1) They must be able to withstand a survivable impact.

(2) Fuel and electrical lines and components must be located away from each other, away from probable crash impact areas, and away from areas where structural deformation or large objects (such as engines or transmissions) may, by crushing or penetration, cause fuel spillage or create an electrical ignition source, or both.

(3) Fuel and electrical lines and components must be located separately and away from areas where impact and severing by rotor blades during a survivable impact is probable.

(4) Fuel and electrical lines and components must be in no danger of being punctured or severed during a survivable impact by locally stiff vertical understructure such as a collapsed landing gear strut.

(5) Fuel and electrical lines and components must be routed separately in areas of maximum protection, such as along heavier structural members, and away from areas where significant damage is probable.

(6) Fuel and electrical lines and components running through hazardous areas or directly through structure, such as a bulkhead, must be locally separated and protected from over-extension, severe abrasion and guillotine cutting by frangible panels, suitable clearance, rubber grommets, braided armor shielding (which must be nonconductive for electrical lines), or other equivalent means.

(7) Flammable fluid lines routed directly to instruments, transducers, or other equivalent devices must be crash resistant, in accordance with § 27.1337(a)(2), to minimize leakage in case of line rupture induced during a survivable impact.

(8) Electrical wires routed directly into electrical boxes or instruments must be designed with sufficient local slack and locally routed in the least probable damage direction and zone, or otherwise protected to minimize the probability of damage-induced arcing.

(9) Fuel lines routed directly into fuel tanks or other fuel system components must be locally routed in the least probable damage direction and zone, or otherwise protected, to minimize the probability of damage-induced fuel leaks.

(g) *Rigid or semirigid fuel tanks.* Rigid or semirigid fuel tank or bladder walls must be impact and tear resistant.

(h) *Flexible fuel tank bladders or liners.* If a flexible bladder or liner of any type is employed in any type of fuel tank construction, the bladder or liner must meet the strength and puncture resistance requirements of § 27.963(g).

4. Section 27.963 is amended by revising paragraph (f) and by adding new paragraphs (g) and (h) to read as follows:

§ 27.963. Fuel tanks: general.

* * * * *

(f) Each fuel tank installed in personnel compartments must be isolated by fumeproof and fuelproof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosures must provide necessary protection for the tank, must be crash resistant during a survivable impact in accordance with § 27.952, and must be adequate to withstand loads and abrasions to be expected in personnel compartments.

(g) Each flexible fuel tank bladder or liner must be approved or shown to be suitable for the particular application and must be puncture resistant. Puncture resistance must be shown by meeting the TSO–C80, paragraph 16.0, requirements using a minimum puncture force of 370 pounds.

(h) Each integral fuel tank must have provisions for inspection and repair of its interior.

5. A new § 27.967 is added to read as follows:

§ 27.967 Fuel tank installation

(a) Each fuel tank must be supported so that tank loads are not concentrated on unsupported tank surfaces. In addition—

(1) There must be pads, if necesary, to prevent chafing between each tank and its supports;

(2) The padding must be nonabsorbent or treated to prevent the absorption of fuel;

(3) If flexible tank liners are used, they must be supported so that they are

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not required to withstand fluid loads; and

(4) Each interior surface of tank compartments must be smooth and free of projections that could cause wear of the liner unless—

(i) There are means for protection of the liner at those points; or

(ii) The construction of the liner itself provides such protection.

(b) Any spaces adjacent to tank surfaces must be adequately ventilated to avoid accumulation of fuel or fumes in those spaces due to minor leakage. If the tank is in a sealed compartment, ventilation may be limited to drain holes that prevent clogging and excessive pressure resulting from altitude changes. If flexible tank liners are installed, the venting arrangement for the spaces between the liner and its container must maintain the proper relationship to tank vent pressures for any expected flight condition.

(c) The location of each tank must meet the requirements of § 27.1185 (a) and (c).

(d) No rotorcraft skin immediately adjacent to a major air outlet from the engine compartment may act as the wall of the integral tank.

6. Section 27.973 is revised to read as follows:

§ 27.973 Fuel tank filler connection.

(a) Each fuel tank filler connection must prevent the entrance of fuel into any part of the rotorcraft other than the tank itself during normal operations and must be crash resistant during a survivable impact in accordance with § 27.952(c). In addition—

(1) Each filler must be marked as prescribed in § 27.1557(c)(1);

(2) Each recessed filler connection that can retain any appreciable quantity of fuel must have a drain that discharges clear of the entire rotorcraft; and

(3) Each filler cap must provide a fuel-tight seal under the fluid pressure expected in normal operation and in a survivable impact.

(b) Each filler cap or filler cap cover must warn when the cap is not fully locked or seated on the filler connection.

7. Section 27.975 is amended by revising paragraph (b) to read as follows:

§ 27.975 Fuel tank vents.

* * * * *

(b) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing, ground operation, or a survivable impact, unless a rollover is shown to be extremely improbable.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

8. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983).

9. A new § 29.952 is added to read as follows:

§ 29.952 Fuel system crash resistance.

Unless other means acceptable to the Administrator are employed to minimize the hazard of fuel fires to occupants following an otherwise survivable impact (crash landing), the fuel systems must incorporate the design features of this section. These systems must be shown to be capable of sustaining the static and dynamic deceleration loads of this section, considered as ultimate loads acting alone, measured at the system component's center of gravity without structural damage to the system components, fuel tanks, or their attachments that would leak fuel to an ignition source.

(a) *Drop test requirements.* Each tank, or the most critical tank, must be drop-tested as follows:

(1) The drop height must be at least 50 feet.

(2) The drop impact surface must be nondeforming.

(3) The tanks must be filled with water to 80 percent of the normal, full capacity.

(4) The tank must be enclosed in a surrounding structure representative of the installation unless it can be established that the surrounding structure is free of projections or other design features likely to contribute to rupture of the tank.

(5) The tank must drop freely and impact in a horizontal position ±10°.

(6) After the drop test, there must be no leakage.

(b) *Fuel tank load factors.* Except for fuel tanks located so that tank rupture with fuel release to either significant ignition sources, such as engines, heaters, and auxiliary power units, or occupants is extremely remote, each fuel tank must be designed and installed to retain its contents under the following ultimate inertial load factors, acting alone.

(1) For fuel tanks in the cabin:
(i) Upward—4g.
(ii) Forward—16g.
(iii) Sideward—8g.
(iv) Downward—20g.

(2) For fuel tank located above or behind the crew or passenger compartment that, if loosened, could injure an occupant in an emergency landing:
(i) Upward—1.5g.
(ii) Forward—8g.
(iii) Sideward—2g.
(iv) Downward—4g.

(3) For fuel tanks in other areas:
(i) Upward—1.5g.
(ii) Forward—4g.
(iii) Sideward—2g.
(iv) Downward—4g.

(c) *Fuel line self-sealing breakaway couplings.* Self-sealing breakaway couplings must be installed unless hazardous relative motion of fuel system components to each other or to local rotorcraft structure is demonstrated to be extremely improbable or unless other means are provided. The couplings or equivalent devices must be installed at all fuel tank-to-fuel line connections, tank-to-tank interconnects, and at other points in the fuel system where local structural deformation could lead to release of fuel.

(1) The design and construction of self-sealing breakaway couplings must incorporate the following design features:

(i) The load required to separate a breakaway coupling must be between 25 and 50 percent of the minimum ultimate failure load (ultimate strength) of the weakest component in the fluid-carrying line. The separation load must in no case be less than 300 pounds, regardless of the fluid line size.

(ii) A breakaway coupling must separate whenever its ultimate load (as defined in paragraph (c)(1)(i) of this section) is applied in the failure modes most likely to occur.

(iii) All breakaway couplings must incorporate design provisions to visually ascertain that the coupling is locked together (leak-free) and is open during normal installation and service.

(iv) All breakaway couplings must incorporate design provisions to prevent uncoupling or unintended closing due to operational shocks, vibrations, or accelerations.

(v) No breakaway coupling design may allow the release of fuel once the coupling has performed its intended function.

(2) All individual breakaway couplings, coupling fuel feed systems, or equivalent means must be designed, tested, installed, and maintained so inadvertent fuel shutoff in flight is improbable in accordance with § 29.955(a) and must comply with the fatigue evaluation requirements of § 29.571 without leaking.

(3) Alternate, equivalent means to the use of breakaway couplings must not create a survivable impact-induced load on the fuel line to which it is installed greater than 25 to 50 percent of the ultimate load (strength) of the weakest component in the line and must comply with the fatigue requirements of § 29.571 without leaking.

(d) *Frangible or deformable structural attachments.* Unless hazardous relative motion of fuel tanks and fuel system components to local rotorcraft structure is demonstrated to be extremely improbable in an otherwise survivable impact, frangible or locally deformable attachments of fuel tanks and fuel system components to local rotorcraft structure must be used. The attachment of fuel tanks and fuel system components to local rotorcraft structure, whether frangible or locally deformable, must be designed such that its separation or relative local deformation will occur without rupture or local tearout of the fuel tank or fuel system component that will cause fuel leakage. The ultimate strength of frangible or deformable attachments must be as follows:

(1) The load required to separate a frangible attachment from its support structure, or deform a locally deformable attachment relative to its support structure, must be between 25 and 50 percent of the minimum ultimate load (ultimate strength) of the weakest component in the attached system. To prevent inadvertent separation or deformation, the load must be greater than 10 times the normal service loads at the frangible or deformable attachment location. In no case may the load be less than 300 pounds.

(2) A frangible or locally deformable attachment must separate or locally deform as intended whenever its ultimate load (as defined in paragraph (d)(1) of this section) is applied in the modes most likely to occur.

(3) All frangible or locally deformable attachments must comply with the fatigue requirements of § 29.571.

(e) *Separation of flammable fluids and ignition sources.* Flammable fluids must be located as far as practicable from all potential ignition sources. Locations to be avoided must include, but are not limited to, the following:

(1) *High temperature ignition sources.*
(i) Tank fillers or overboard fuel drains must not be located adjacent to engine intakes or exhausts so that flammable vapors could be ingested and ignited.

(ii) Airframe-mounted fuel filters and valves must not be located within the engine compartment or adjacent to engine intakes or exhausts.

(iii) Flammable fluid lines must not be located in any occupiable area unless they are shrouded or otherwise designed to prevent spillage and subsequent ignition during and immediately following a survivable impact.

(iv) Flammable fluid tanks must not be located in or immediately adjacent to engine compartments, engine induction or exhaust areas, heaters, bleed air ducts, hot air-conditioning ducts, or any other hot surface.

(v) Flammable fluid lines must be kept to a minimum in the engine compartment. Fluid lines must not be located immediately adjacent to engine exhaust areas, heaters, bleed air ducts, hot air-conditioning ducts, or any other hot surface.

(vi) Flammable fluids must not be located where they can readily spill, spray, or mist onto hot surfaces or into engine induction or exhaust areas. These locations must be determined for each aircraft design by considering probable structural deformation hazards in relation to the flammable fluid systems.

(2) *Electrical ignition sources.* (i) Flammable fluid tanks and lines must not be located in electrical compartments.

(ii) Electrical components and wiring must be separated from flammable fluid lines and kept to a minimum in flammable fluid tank areas.

(iii) Electrical components and wiring must not be located or routed immediately adjacent to flammable fluid lines and vent openings.

(iv) Electrical wiring and equipment that are mandatory in areas where they are immersed in or otherwise directly subjected to flammable fluids and vapors must be hermetically sealed, tested in accordance with § 29.1309, or otherwise protected such that ignition is extremely improbable.

(v) Electrical sensor lines that penetrate fuel tank walls must be protected from abrasion or guillotine cutting during a survivable impact by use of potting, rubber plugs or grommets, or other equivalent means, and must be designed with sufficient local slack, or equivalent means, to prevent both the wires and their protective mountings from being cut by or torn from fuel tank walls by local deformation.

(vi) Electrical wires must be designed with sufficient slack or equivalent means to accommodate structural deformation without creating an ignition source.

(vii) Electrical wires that are subjected to severe local abrasion, cutting or other damage during a survivable impact must be protected locally by nonconductive shields or shrouds.

(viii) Electrical wires that are not sufficiently separated from heat or ignition sources to avoid potential contact during a survivable impact must be locally shrouded with a nonconductive fireproof shroud.

(3) *Friction spark, chemical, and electrostatic ignition sources.* Flammable fluid lines and tanks must be designed and located to eliminate fuel or fuel vapor ignition from potential mechanical friction spark ignition sources, chemical ignition sources, and electrostatic ignition sources having a high probability of being activated or created during a survivable impact.

(4) *Separation of flammable fluids and occupiable areas.* Flammable fluid tanks must be located as far as practicable from all occupiable areas.

(5) *Fuel line shielding.* Areas of the fuel line system where the probability of spilled flammable fluids reaching potential ignition sources or occupiable areas is greater than extremely improbable (as defined by paragraph (b) of this section) must be shielded with drainable fireproof shrouds.

(6) *Firewalls.* Firewalls must be designed to the load factor requirements of paragraph (b)(1) of this section without losing their sealing ability.

(7) *Flow diverters.* (i) Drainage holes must be located in all flammable fluid tank compartments to prevent the accumulation of spilled flammable fluids within the aircraft.

(ii) Drip fences and drainage troughs must be used to prevent gravity-induced flow of spilled fuels from reaching any ignition sources such as hot engine areas, electrical compartments, or other potential hot spots.

(8) *Fuel drain system.* The fuel drain system and its attachments to the airframe must be designed and constructed, as far as practicable, to be crash resistant.

(f) *Other basic mechanical design criteria.* Fuel tanks, fuel lines, electrical wires, and electrical devices must be designed and constructed, as far as practicable, as follows:

(1) They must be able to withstand a survivable impact.

(2) Fuel and electrical lines and components must be located away from each other, away from probable crash impact areas, and away from areas where structural deformation or large objects (such as engines or transmissions) may, by crushing or penetration, cause fuel spillage, create an electrical ignition source, or both.

(3) Fuel and electrical lines and components must be located separately and away from areas where impact and severing by rotor blades during a survivable impact is probable.

(4) Fuel and electrical lines and components must be in no danger of

being punctured or severed during a survivable impact by locally stiff understructure such as a collapsed landing gear strut.

(5) Fuel and electrical lines and components must be routed separately in areas of maximum protection, such as long heavier structural members, and

(h) *Flexible fuel tank bladders or liners.* If a flexible bladder or liner of any type is employed in any type of fuel tank construction, the bladder or liner must meet the strength and puncture resistance requirements of § 29.963(b).

10. Section 29.963 is amended by removing paragraph (b); by

§ 29.973 Fuel tank filler connection.

(a) Each fuel tank filler connection must prevent the entrance of fuel into any part of the rotorcraft other than the tank itself during normal operations and must be crash resistant during a survivable impact in accordance with § 29.952(c). In addition—

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being punctured or severed during a survivable impact by locally stiff understructure such as a collapsed landing gear strut.

(5) Fuel and electrical lines and components must be routed separately in areas of maximum protection, such as long heavier structural members, and routed away from areas where significant damage is probable.

(6) Fuel and electrical lines and components running through hazardous areas or directly through structure, such as a bulkhead, must be locally separated or protected from overextension, severe abrasion and guillotine cutting by frangible panels, suitable clearance, rubber grommets, braided armor shielding (which must be nonconductive for electrical lines), or other equivalent means.

(7) Flammable fluid lines routed directly to instruments, transducers, or other equivalent devices must be crash resistant, in accordance with § 29.1337(a)(2), to minimize leakage in case of line rupture induced during a survivable impact.

(8) Electrical wires routed directly into electrical boxes or instruments must be designed with sufficient local slack and locally routed in the least probable damage direction and zone, or otherwise protected to minimize the probability of damage-induced arcing.

(9) Fuel lines routed directly into fuel tanks or other fuel system components must be locally routed in the least probable damage direction and zone, or otherwise protected, to minimize the probability of damage-induced fuel leaks.

(g) *Rigid or semirigid fuel tanks.* Rigid or semirigid fuel tank or bladder walls must be impact and tear resistant.

(h) *Flexible fuel tank bladders or liners.* If a flexible bladder or liner of any type is employed in any type of fuel tank construction, the bladder or liner must meet the strength and puncture resistance requirements of § 29.963(b).

10. Section 29.963 is amended by removing paragraph (b); by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d) respectively; by revising redesignated paragraph (b); and by adding a new paragraph (e) to read as follows:

§ 29.963 Fuel tanks: general.

* * * * *

(b) Each flexible fuel tank bladder or liner must be approved or shown to be suitable for the particular application and must be puncture resistant. Puncture resistance must be shown by meeting the TSO–C80, paragraph 16.0, requirements using a minimum puncture force of 370 pounds.

* * * * *

(e) Each fuel tank installed in personnel compartments must be isolated by fumeproof and fuelproof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosures must provide necessary protection for the tank, must be crash resistant during a survivable impact in accordance with § 29.952, and must be adequate to withstand loads and abrasions to be expected in personnel compartments.

§ 29.967 [Amended]

11. Section 29.967 is amended by removing paragraph (e).

12. Section 29.973 is revised to read as follows:

§ 29.973 Fuel tank filler connection.

(a) Each fuel tank filler connection must prevent the entrance of fuel into any part of the rotorcraft other than the tank itself during normal operations and must be crash resistant during a survivable impact in accordance with § 29.952(c). In addition—

(1) Each filler must be marked as prescribed in § 29.1557(c)(1);

(2) Each recessed filler connection that can retain any appreciable quantity of fuel must have a drain that discharges clear of the entire rotorcraft; and

(3) Each filler cap must provide a fuel-tight seal under the fluid pressure expected in normal operation and in a survivable impact.

(b) Each filler cap or filler cap cover must warn when the cap is not fully locked or seated on the filler connection.

13. Section 29.975 is amended by revising paragraph (a)(7) to read as follows:

§ 29.975 Fuel tank vents and carburetor vapor vents.

(a) * * *

(7) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing, ground operations, or a survivable impact, unless a rollover is shown to be extremely improbable.

* * * * *

Issued in Washington, DC, on September 27, 1990.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 90–23594 Filed 10–4–90; 8:45 am]

BILLING CODE 4910–13–M

federal register

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, et al.

Single Family Mortgage Insurance Programs—Criteria for Acceptability of Insured 10-Year Protection Plans; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 221, 222, 226, 234, and 235

[Docket No. R-90-1472; FR-2036-F-03]

RIN 2502-AD65

Single Family Mortgage Insurance Programs—Criteria for Acceptability of Insured 10-Year Protection Plans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the existing administrative criteria for acceptability of insured 10-year protection Plans (Plans) covering dwellings and condominium units with mortgages insured under the Department's single family mortgage insurance programs. HUD acceptance of these Plans is a prerequisite to reduced inspection requirements on a property accepted for mortgage insurance before the commencement of construction. It is also a prerequisite to high loan-to-value insured financing for existing one- to four-family dwellings that are less than one year old and that were not approved before the start of construction and inspected by HUD or the Department of Veterans Affairs.

This final rule follows a Notice and a proposed rule that described, among other things, the intended revision to the criteria related to Plan acceptability, requirements and limitations of a Plan, Plan coverage, insurance backing criteria, financial strength criteria and methods for determining a Plan's obligations. (The latter two sections have now been removed.)

EFFECTIVE DATE: November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Single Family Development Division, room 9270, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 708-2700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 through August 31, 1993, and have been assigned OMB control number 2502-0343. Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410, and to the Office of Management and Budget, Paperwork Reduction Project (2502-0343) Washington, DC 20503.

Statutory Background

Section 310 of the Housing and Community Development Amendments of 1979 (Pub. L. 96-153) amended section 203(b)(2) of the National Housing Act (NHA) to permit HUD to insure a mortgage with a higher loan-to-value ratio (*i.e.*, in excess of 90 percent of the appraised property value) for existing single family homes less than one year old, where the dwelling was not approved for mortgage insurance before the beginning of construction, provided that "the dwelling is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance prior to the beginning of construction."

Statutory Implementation

The Department implemented this amendment in regulations at 24 CFR 203.18(a)(2)(iii) and in HUD Handbook 4145.1 REV-1, Architectural Processing and Inspections for Home Mortgage Insurance. Paragraph 6-1 of the Handbook states that only the final inspection of a property is required (usually the property is inspected at three separate stages of construction) if the HUD field office determines that the property will be covered by an acceptable Plan.

Prior Proceedings

The predecessors to this final rule were a Notice of Solicitation of Public Comments and a proposed rule (see 49 FR 45075, November 14, 1984 and 52 FR 21961, June 10, 1987, respectively). The Notice elicited eighty-four public comments, some of which formed the basis for the revisions incorporated in the proposed rule. The proposed rule itself drew twenty-four comments. These comments are summarized by subject matter below, and are followed by the Department's response.

Public Comments

Warranty Coverage of Basement Slabs

Several commenters objected to the proposed rule's inclusion of basement concrete slabs as a warranted component in a Plan. The objectors pointed out, among other things, that because of the uniqueness of Colorado soil, extending coverage to basement slabs in a structural warranty would make these warranties prohibitively expensive. Revised § 203.205(d) now provides that basement slabs will be covered against damage from the first through the fourth year of a Plan.

In reducing warranty coverage of basement slabs from ten to four years, the Department recognizes that Colorado soil conditions present a peculiar problem, because of the soil's expansiveness, for both builders and homeowners. While, as the comments argued, full-term (*i.e.*, 10 years) coverage would make warranty plans in Colorado excessively expensive, the Department believes that homeowners, nonetheless, must be afforded some coverage with respect to construction using basement slabs. Plan coverage for four years on basement slabs in designated areas would, in the Department's view, give homeowners a fair measure of protection against defective construction, and at a reasonable cost. Moreover, a minimum coverage period of four years is consistent with the four-year period provided in section 518(a) of the National Housing Act during which the Secretary may, with respect to an insured dwelling that he "finds to have structural defects . . . make expenditures for (1) correcting such defects, (2) paying the claims of the owner of the property arising from such defects, or (3) acquiring title to the property."

A new § 203.207, "Designated area", identifies the state of Colorado currently as the only "high risk area", *i.e.*, an area "where construction practices allow basement slabs to be placed on expansive or collapsible soil." This section also indicates that the Secretary may designate any area as a "high risk area."

Financial Strength and Insurance Backing Criteria

This final rule also removes proposed § 203.207 "Financial strength criteria", § 203.208 "Potential plan obligations",

and paragraphs (b) through (e) of § 203.209 "Insurance backing criteria." Commenters contended that these sections, collectively would result in HUD's supplanting state insurance commissions as the regulators of insurance companies as well as duplicating A.M. Best's rating efforts. Further, that § 203.208, as proposed, was not actuarially sound, and that the financial requirements and insurance backing mandated by these sections would eliminate small Plans and reduce competition in the insured warranty industry. Some commenters also argued that if all of proposed § 203.209 became effective, it would defeat the "Federal statutory right" of Risk Retention Groups to operate without "onerous regulation" by state insurance departments.

The Department has reconsidered its position in light of these and similar comments and has determined to continue the existing system of accepting Plans that have State approval. This means that Plans will not, as a separate matter, have to satisfy the independent criteria formerly proposed in the sections referenced above. State approval serves the purpose of these now abandoned sections—ensuring that Plans have adequate financial and insurance backing. Removal of these sections also has the incidental benefit of eliminating a potential administrative burden on both HUD and Plan issuers. This action means that Plan issuers will not have to furnish the information that would have been required under these now-removed sections and, consequently, HUD will not have to evaluate each submission to ensure compliance with the regulatory criteria. HUD, along with homeowners, is still assured of the financial soundness of a Plan, since Plans backed by insurance companies must demonstrate their acceptance in each State in which they are doing business. In the case of Risk Retention Groups, homeowners similarly are assured of their soundness because these groups also must meet specific requirements to be licensed by a State to do business before being accepted by HUD.

Arbitration

The argument was advanced by some commenters that the National Association of Conciliators (NAC) should be one of the recognized arbiters under the rule. The Department has amended the rule to provide in § 203.204(g) that arbitration is to be arranged through "a national recognized dispute settlement organization", removing the specific reference to the 'American Arbitration Association or a similar body." Under the revised language, NAC may serve as an arbitrator in a dispute between a homeowner and a builder.

Two commenters sought clarification of the relationship between the rule's provision for binding arbitration in 203.204(g) that "warranties set forth in a Plan must comply with the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301-2312) (Act)," and the actual provision in the Act regarding arbitration. The point of the comments was that the regulations implementing the Act provide, among other things, that "Decisions of the Mechanism (*i.e.*, the informal dispute settlement procedure authorized by the Act) shall not be legally binding on any person." See 16 CFR 703.5(j).

The reference to the Act in proposed § 203.204(a) was not intended to make all its provisions applicable. By its terms, the Act speaks to warranties for "consumer products" defined, in part, as "tangible personal property." See 15 U.S.C. 2301(1). This final rule, on the other hand, describes warranties on real property. See § 203.200 (definition of "Insured ten-year protection plan"). The Department, nevertheless, has retained the reference to the Act in § 203.204(a) of this final rule, revising the paragraph to make clear that warranties set forth in a Plan need comply with section 2302(a)(1) through (13) of the Act. The Department's aim in adopting the cited subsections of section 2302 is to ensure that a Plan issuer would, as enunciated in section 2302(a), "fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty" under its Plan.

In this regard, a commenter sought HUD assurance that, where a homeowner chooses first to litigate a warranty dispute and receives an unfavorable verdict, the homeowner has foreclosed his or her right to arbitration of the same dispute. Another comment would avoid this problem by having HUD require a homeowner to agree in writing, at the time of closing, that the homeowner first would seek settlement for any claim covered under the Plan before resorting to litigation.

In HUD's view, settled legal doctrine would appear to prevent an unsuccessful litigant/homeowner from pursuing arbitration of the same dispute that had been the subject of an unfavorable court decision. With respect to the recommended means of avoiding this problem, because of legal and constitutional constraints, the Department may not be able to *require* a homeowner to seek settlement of a claim before litigating. The Department, nonetheless, encourages settlement and conciliation of disputes (and the rule does provide for arbitration). For the reason stated, the Department will not adopt the commenter's recommendation.

A commenter sought confirmation that Plans could continue providing for arbitration which may result in decisions that are binding on the builder but not on the homeowner, unless the homeowner elects to accept the arbitrator's decision. Insofar as the Department is concerned, nothing in § 203.204(g) prevents this result: a Plan may provide that the arbitrator's award is binding on the builder. But as already noted, for constitutional and other legal reasons, in some jurisdictions a Plan may not be able to impose the same requirement on a homeowner, and thus this rule imposes no such requirement.

The Department will not adopt this commenter's suggestion that settlement of disputes through arbitration with respect to structural defects claims not be extended past the builder's warranty (*i.e.*, the first two years of a Plan). Arbitration of disputes must be an available recourse for the life of the Plan (i.e., 10 years) or, in the case of basement slabs in designated areas, for at least the life of the coverage mandated by this rule.

Requirements and Limitations of a Plan (§ 203.204)

In § 203.204, paragraph (f) is revised in the final rule to state that with respect to claims filed by a condominium association, the deductible is limited to $250.00 per claim for each affected unit in the structure, not to exceed a maximum of $5,000.00 where the claim relates to the same event that affected several units. In addition, § 203.204(f) (now subdivided into three paragraphs) states in paragraph (f)(2) that a Plan covering a condominium must provide the condominium association with an additional warranty that allows for claims by homeowners involving the common elements. (This change accords with the advisory to Field offices in a memo dated July 8, 1987, under the subject "Single Family Development-Processing Directive #48.")

A commenter suggested that in § 203.204, paragraph (i) should be amended to read "an executed coverage contract or *certificate*" since not all Plans use a contract. The Department will not follow this suggestion because the definition of "coverage contract" in § 203.200 is broad enough to include "certificate", or any "other document of similar purpose." The Department would

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add here that, irrespective of the name used to describe the document that is the "coverage contract," it does not diminish a Plan issuer's responsibility to issue a document that incorporates the requirements of paragraphs (i) (1) to (11), inclusive. The Department is less concerned with nomenclature in this regard than with the substance of the coverage under a Plan.

occurs first)." (Emphasis added.) To the extent an "occupant" does not have title to the property, the coverage contract should not go into effect. Coverage, in HUD's view, should begin only at the time of settlement. Similarly, HUD rejects the suggestion that coverage should begin from the date of settlement in those cases where settlement occurs before construction is complete. There is

This substitution clarifies that it is only defects that can result in the "impaired functioning of [a] dwelling" that will be considered "construction deficiencies."

With the removal of proposed §§ 203.207 and .208, and § 203.209(b) through (e), certain defined terms in § 203.200 are now redundant and have been removed. No longer defined in the final rule are "multiple-line" and

commenter's recommendation, since it may open the door to unauthorized changes that could result in the diminution of a homeowner's coverage.

A commenter urged that the grace period under § 203.202(f) be increased from the proposed six months to twelve months, because of possible problems associated with a Plan issuer's finding a

notwithstanding that they may not be in "actual receipt of Federal funds."

A commenter advised that not all Plan issuers have a "third-party responsibility", *i.e.*, builder fails, Plan fails, then insurer responsibility is triggered. According to the comment,

"Coverage contract" in § 203.300. Paragraph (b) now states that a Plan must provide for a warranty, during the first year of coverage, against defects in workmanship and materials because of non-compliance "with standards of quality, as measured by acceptable trade practices." Coverage against defects in systems such as electrical,

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add here that, irrespective of the name used to describe the document that is the "coverage contract," it does not diminish a Plan issuer's responsibility to issue a document that incorporates the requirements of paragraphs (i) (1) to (11), inclusive. The Department is less concerned with nomenclature in this regard than with the substance of the coverage under a Plan.

Because of a typographical error, the last sentence in § 203.204(f) was rendered almost unintelligible. The clause "when the builder performs corrections under the builder's warranty," inadvertently omitted from the proposed rule, is now included in the last sentence. That sentence now reads:

> A homeowner shall be liable for a deductible only if a builder defaults on warranty performance and the Plan issuer has to make the covered corrections. When the builder performs corrections under the builder's warranty, no deductible that may be included in the Plan is applicable.

A commenter argued that the language of § 203.204(e), "Exclusions from plan coverage must not defeat coverage objectives," needs clarification, because it suggests that "exclusions shall not be literally enforced in accordance with their plain meanings." The cited language simply means that HUD will not accept a Plan with exclusions that have the effect of swallowing up a Plan's ostensible coverage, so that a homeowner is left with, at best, an illusory "coverage contract."

Also, proposed paragraph (j) has been removed from § 203.204 as a consequence of the decision not to include the financial strength and insurance backing criteria that were part of the proposed rule. This change means that proposed § 203.204(k) is redesignated § 203.204(j) in this final rule.

The revision to paragraph (b) of § 203.204, adding "the Plan issuer must give irrevocable coverage," is intended to insure that if the builder is unable, at the time of settlement, to provide Plan coverage (e.g., the builder may be unable to meet its financial obligations to the Plan issuer and, thus, the Plan issuer refuses to issue Plan coverage through the builder), that the Plan issuer, nonetheless, still must provide Plan coverage to the homeowner.

Definitions

The Department declines to adopt the suggestion of a few commenters to revise the definition of "Coverage contract" in § 203.200, to state that coverage under a Plan may commence "at the time of closing/final settlement or *occupancy* by the owner (whichever occurs first)." (Emphasis added.) To the extent an "occupant" does not have title to the property, the coverage contract should not go into effect. Coverage, in HUD's view, should begin only at the time of settlement. Similarly, HUD rejects the suggestion that coverage should begin from the date of settlement in those cases where settlement occurs before construction is complete. There is the question of the potential for disagreement among the interested parties for determining responsibility for problems that may arise in those areas of the home that were built after Plan coverage began. Arguably, § 203.202(a) may make this possibility moot. However, the Department sees little reason for introducing a provision in the rule that may unnecessarily implicate § 203.202(a).

A commenter urged HUD to adopt the commenter's definition of 'structural defect." The Department has revised the definition (see § 203.200), incorporating some of the recommended language of the comment. In seeking a redefinition of the term "structural defect", the commenter also pressed the Department to delete the proposed rule's exclusionary language because it refers to "documents which are ourside the proposed rule [*i.e.*, the reference to 'homeowner's casualty insurance policy']." Instead, the commenter would have HUD substitute exclusionary langage that purports to identify every possible casualty that may be covered under a homeowner's casualty insurance policy. In the commenter's view, such a substitution "sets out more specifically those exclusions typically mentioned in homeowners' policies and, at the same time, is consistent with the specific exclusions listed in [its] Plan and others[']."

The Department is not persuaded that a putatively exhaustive listing (which may be unfairly construed as exclusive) would improve the soundness of the definition. For this reason, the revised definition in this final rule states only that the term "structural defect" "excludes damage covered by a homeowner's casualty insurance policy."

In the definition of "construction deficiencies," the word "unsightliness" has been deleted, at the urging of a few commenters. The Department agrees that the use of the word "unsightliness" may have introduced a level of subjectivity that could have generated unwelcome disputes between a homeowner and a Plan. The Department will follow a commenter's recommendation to substitute "which" for "or that" in the first sentence of the definition of "construction deficiencies." This substitution clarifies that it is only defects that can result in the "imparied functioning of [a] dwelling" that will be considered "construction deficiencies."

With the removal of proposed §§ 203.207 and .208, and § 203.209(b) through (e), certain defined terms in § 203.200 are now redundant and have been removed. No longer defined in the final rule are "multiple-line" and "single-line insurance company", "policy year", and "unencumbered financial resources". The definition of "Risk Retention Group" has been removed, but the statutory citation to the definition is retained in the defined term, "insured ten-year protection plan". See § 203.200.

State Insurance Guaranty Funds

Two commenters took issue with the provision in § 203.203(c)(2) with respect to State Insurance Guaranty Funds. These commenters urged HUD to recognize such Funds. Nothing in § 203.203(c)(2) disqualifies a State Insurance Guaranty Fund. This provision is intended to ensure that such a Fund, acting as an insurer or guarantor of a Plan, is held to the same standards of responsibility and liability as a private insurer backing a Plan.

Plan Acceptability (§ 203.202)

With respect to § 203.202(d), HUD agrees with the comment that mandatory changes required by other laws (*e.g.*, the Liability Risk Retention Act) should not require HUD's preapproval before adoption by a Plan. Appropriate language has been added to § 203.202(d) of this final rule to reflect this position.

In this connection, another commenter urged HUD that with respect to § 203.202(d), prior approval of Plan provisions should be limited to material or substantive changes, not to *any* change (including "housekeeping" revisions), to avoid the "substantial administrative burden" on both Plans and HUD that such a "literal interpretation" may cause.

The Department believes that the potential administrative burden feared by the commenter has been virtually eliminated by the removal of proposed §§ 203.207 and 203.208, and § 203.209(b) through (e). These sections had contained fairly detailed and fixed evaluative criteria, and it was here that the Department was particularly concerned that it be apprised of any changes. Arguably, § 203.202(d) still may require prior notification to HUD of what the commenter may consider insubstantial changes. Nonetheless, the Department will not adopt the commenter's recommendation, since it may open the door to unauthorized changes that could result in the diminution of a homeowner's coverage.

A commenter urged that the grace period under § 203.202(f) be increased from the proposed six months to twelve months, because of possible problems associated with a Plan issuer's finding a willing insurance company to back the Plan under the proposed provisions. The final rule extends the grace period to nine months. HUD believes this period to be fair and adequate, particularly since the removal of proposed § 203.207, § 203.208, and most of § 203.209 has eliminated the possible time-consuming requirements alluded to by the commenter.

Section 203.202(e) now provides that an applicant may appeal an adverse determination to the Assistant Secretary for Housing. This responds to a commenter's call for a "review board in the event a Plan takes exception with HUD's position."

A commenter asked whose regulations (*i.e.*, the State's or HUD's) would prevail in a jurisdiction that regulates the operation of warranty companies where a "HUD-sponsored [sic] home is built." Typically, HUD regulations would prevail because the mortgage on the home would be insured by HUD. However, if a State's requirements were more stringent that HUD's, the Plan would be obligated to comply with the State's requirements because, in the first instance, the Plan could not get HUD recognition if it was not approved by a State.

A commenter questioned the need for sanctions in § 203.202(b) beyond HUD's right to terminate its acceptance of a Plan. The Department reserves the right to take such action as is provided for in 24 CFR Part 24 "for the protection of the public interest, including the deterrence of irresponsible conduct in Department programs, . . . [thus] entities may be excluded from participation in HUD programs, and from contracts and subcontracts throughout the Executive Branch, * * *" See 24 CFR 24.1. The Department also notes that under 24 CFR 24.3(a)(2) "[P]articipants in the loan, loan guarantee, or coinsurance programs * * * and those in business relationships with such participants in connection with such programs are also subject to the provisions of [part 24], whether or not their participation involves the actual receipt of Federal funds." (Emphasis added.) Clearly, Plan issuers have a "business relationship" with builders who are "participants in connection with" the insurance programs, thus making Plan issuers "subject to the provisions of Part 24, notwithstanding that they may not be in "actual receipt of Federal funds."

A commenter advised that not all Plan issuers have a "third-party responsibility", *i.e.*, builder fails, Plan fails, then insurer responsibility is triggered. According to the comment, some Plans insure homeowners directly, so that if the builder fails then the insurer responds immediately. Nothing in the rule prevents the described type of arrangement. If a Plan issuer is an insurance company (*i.e.*, the company is not merely the insurance backer with secondary liability, but is the principal with primary liability), on the builder's failure to honor the "coverage contract", the insurance company is obligated under this rule to step in and make the homeowner whole, or satisfactorily resolve the homeowner's claim in accordance with the terms of the Plan.

A few commenters suggested removing the phrase "for any reason" in § 203.202(a) and, as proposed by one of the commenters, substituting "unwilling and unable". The Department believes that the rule should retain this phrase, as it argued previously, to ensure that homeowners receive prompt service under the Plan. Homeowners should not suffer undue delay in having a problem corrected—a possibility that is always present in the use of less categorical language, with its implication of less than absolute responsibility by the builder or Plan issuer for correcting covered deficiencies or defects. In short, this phrase is intended to ensure that among the four possible parties that may be affected by a claim under a Plan, *i.e.*, homeowner, builder, Plan issuer, and insurance backer, the homeowner should be the last affected. The Department would add that this language is not to be interpreted as giving a homeowner license to make irresponsible or unjust demands, since it may properly be invoked only for failure to correct deficiencies or defects, as defined in the rule. See § 203.200.

A new paragraph (g) is added to § 203.202, requiring annual recertification by a Plan issuer that its insurance backer is still approved by the state insurance commisssion in each state in which the Plan is offered. The Department has added this requirement to ensure the financial integrity of Plans during their "off-year" before they apply for acceptance renewal.

Plan Coverage (§ 203.205)

Section 203.205 has been revised to accommodate changes made in other sections. Paragraph (a) now indicates that Plan coverage must take effect at the time of closing or settlement, reflecting the changed definition of "Coverage contract" in § 203.200. Paragraph (b) now states that a Plan must provide for a warranty, during the first year of coverage, against defects in workmanship and materials because of non-compliance "with standards of quality, as measured by acceptable trade practices." Coverage against defects in systems such as electrical, mechanical, etc. now must extend through the second year, not terminate after one year.

Paragraph (e) specifies that structural defects must be covered for the life of the Plan, except that as provided in paragraph (d) (and discussed earlier) basement slabs may be covered for no fewer than four years in designated areas.

New paragraph (f) reaffirms the requirement in the proposed rule that a "Plan must provide insurance coverage for builder default on any warranty obligation."

Performance Standards (§ 203.206)

The Department was asked in a comment to elaborate on the standards that it would use to determine the acceptability of minimum quality and performance standards, since § 203.206 was not specific enough. Section 203.206 states that "A Plan may contain housing performance standards * * * If a Plan contains such standards, they must be acceptable to the Secretary." This section is deliberately drawn in a non-prescriptive fashion to allow Plans maximum freedom in setting standards. HUD, however, consistent with its oversight functions and responsibility to protect the HUD insurance funds, reserves the right, after examining such standards, to declare them not "fair, reasonable, and consistent with the intent of the Plan, including Plan coverage under § 203.205." This requires an objective determination on the part of the Secretary, based on the standards or criteria to be found in the Plan itself, not, to repeat, prescribed by HUD. In short, in response to this and similar comments, the Department will allow Plans the freedom to set "standards"; it is HUD's responsibility, however, to ensure the fairness of these standards and that Plans comply with them.

Miscellaneous

Proposed § 203.209 "Insurance backing criteria" is now redesignated § 203.208, with the removal of the section on "Potential plan obligations" (formerly § 203.208). And, as indicated above, new § 203.207, "Designated area", replaces proposed § 203.207, "Financial strength criteria".

A new § 203.209, "Payments under a Plan", is added to provide that when a Plan issuer or insurance backer elects to compensate a homeowner for damage suffered by the homeowner's property in lieu of the Plan issuer's making the repairs, such compensation must be made jointly to the mortgagee and the homeowner. If the homeowner elects not that any payments made under a Plan benefit the covered property either by reduction of the mortgage debt or by repair to the damaged portion of the property.

Section 200.163(b)(5)(x) and § 200.164(d) have been revised by removing the language "the mortgagee See Handbook 4145.1 REV–1, Para. 6–3.A.5.

Other Matters

The collection of information requirements contained in this rule have been approved by OMB under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 203.202 and 203.208

24 CFR Part 226

Government employees; Mortgage insurance; Single family housing.

24 CFR Part 234

Condominiums; Mortgage insurance; Homeownership; Projects; Unit.

24 CFR Part 235

Direct Endorsement program (including appraisers, construction analysts, inspectors, mortgage credit examiners, architects, and engineers) must also be approved by the Department. The technical staff may be employees of the mortgagee or may be hired on a fee basis from a HUD panel. A mortgagee that has a financial interest in, owns, is

Insured Ten-Year Protection Plans (Plan)

§ 203.200 Definitions.

As used in § 203.201 through § 203.209, the following terms shall have the meaning indicated:

Coverage contract means a warranty certificate, insurance policy, or other

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A new § 203.209, "Payments under a Plan", is added to provide that when a Plan issuer or insurance backer elects to compensate a homeowner for damage suffered by the homeowner's property in lieu of the Plan issuer's making the repairs, such compensation must be made jointly to the mortgagee and the homeowner. If the homeowner elects not to repair the damaged property, the mortgagee is obligated to apply the compensation to reduce the mortgage debt.

This provision is intended to ensure that any payments made under a Plan benefit the covered property either by reduction of the mortgage debt or by repair to the damaged portion of the property.

Section 200.163(b)(5)(x) and § 200.164(d) have been revised by removing the language "the mortgagee must use a HUD-approved architect, engineer, or construction analyst to certify" and substituting therefor "a builder certification is required." This change accords with present practice. See Handbook 4145.1 REV–1, Para. 6–3.A.5.

Other Matters

The collection of information requirements contained in this rule have been approved by OMB under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 203.202 and 203.206 have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Plan Acceptability Submission Requirements	203.202	2	1	2	100	200
Plan Acceptance Renewal Requirements	203.202(c)	8	1	8	4	32
State Acceptance Submission Requirements	203.206(a)	25	1	25	4	100
Total Annual Burden Hours						332

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule protects homeowners who receive Plan coverage that guarantees correction of construction problems, but it imposes no financial requirement that qualified and reputable Plan providers are not already meeting.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, therefore, is not subject to review under the Order. The rule ensures that owners of certain HUD-insured homes are protected in the event that their homes are damaged.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have substantial, direct effects on states, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The rule merely codifies and updates provisions relating to 10-year protection plans, it has no effect on the relationships among different governments. Indeed, insofar as there is State regulation of certain functions or entities (*e.g.*, insurance companies, Plans), this rule defers to the State authority responsible for the regulatory function or for enforcement of the State law. In some circumstances, HUD-imposed warranty requirements might be more stringent than those imposed by State law. However, no preemption of State law is suggested by such a circumstance.

This rule was listed as item number 1171 in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16226, 16246) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, 14.120, 14.133, 14.146, 14.165, 14.166.

List of Subjects

24 CFR Part 200

Administrative practice and procedure; Claims; Equal employment opportunity; Fair housing; Housing standards; Loan programs—housing and community development; Mortgage insurance; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Minimum property standards; Incorporation by reference.

24 CFR Part 203

Home improvement; Loan programs—housing and community development; Mortgage insurance; Solar energy.

24 CFR Part 221

Condominiums; Low and moderate income housing; Mortgage insurance; Displaced families; Single family housing; Projects; Cooperatives.

24 CFR Part 222

Condominiums; Military personnel; Mortgage insurance.

24 CFR Part 226

Government employees; Mortgage insurance; Single family housing.

24 CFR Part 234

Condominiums; Mortgage insurance; Homeownership; Projects; Unit.

24 CFR Part 235

Condominiums; Cooperatives; Low and moderate income housing; Mortgage insurance; Homeownership; Grant programs—housing and community development.

Accordingly, the Department amends 24 CFR parts 200, 203, 221, 222, 226, 234, and 235 as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 continues to read as follows:

Authority: Secs. 2, 211, and 807, National Housing Act (12 U.S.C. 1703, 1715b and 1748f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); subpart G is also issued under sec. 214, Housing and Community Development Act of 1980, as amended by sec. 329, Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a).

2. In § 200.163, paragraph (b)(5)(x) is revised to read as follows:

§ 200.163 Direct endorsement.

* * * * *

(b) * * *

(5) * * *

(x) For proposed construction, where the mortgagee does not obtain a VA CRV, VA MCRV, HUD conditional commitment, HUD master conditional commitment, or have evidence that the property is covered by a consumer protection or warranty plan, or the plans and specifications are not submitted for HUD's prior approval, a builder certification is required that the plans and specifications comply with the applicable property standards. After August 6, 1991, if the builder obtains a consumer protection or warranty plan, the Plan must meet the requirements of §§ 203.200—203.209 of this chapter.

3. In § 200.164, paragraph (d) is revised to read as follows:

§ 200.164 Approval of direct endorsement mortgagees.

* * * * *

(d) To be approved for participation in the Direct Endorsement program, the mortgagee must have on its permanent staff an underwriter approved by the Department for participation in the program and authorized by the mortgagee to bind it on matters involving the origination of mortgage loans under the program. The technical staff that the mortgagee uses in the Direct Endorsement program (including appraisers, construction analysts, inspectors, mortgage credit examiners, architects, and engineers) must also be approved by the Department. The technical staff may be employees of the mortgagee or may be hired on a fee basis from a HUD panel. A mortgagee that has a financial interest in, owns, is owned by, or is affiliated with a building/selling entity, may originate and process mortgages for this entity under the Direct Endorsement program, only if the property appraisals and inspections are done by independent appraisers and inspectors approved and assigned by the Department, rather than by appraisers or inspectors on the staff of the mortgagee. For proposed construction, where the mortgagee does not obtain a VA CRV, VA MCRV, HUD conditional commitment, HUD master conditional commitment, or have evidence that the property is covered by a consumer protection or warranty plan, or the plans and specifications are not submitted for HUD's prior approval, a builder certification is required that the plans and specifications meet the applicable standards. After August 6, 1991, if the mortgagee obtains a warranty plan, the Plan must meet the requirements of §§ 203.200—203.209 of this chapter.

PART 203—MUTUAL MORTGAGEE INSURANCE AND REHABILITATION LOANS

4. The authority citation for part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C also is issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

5. In § 203.18, paragraph (a)(2)(iii) is revised to read as follows:

§ 203.18 Maximum mortgage amounts.

(a) * * *

(2) * * *

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements that would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction. After August 6, 1991, any consumer protection or warranty plan must meet the requirements of §§ 203.200—203.209 of this chapter.

* * * * *

6. Part 203, subpart A, is amended by adding a new undesignated center heading and by adding new §§ 203.200 through 203.209, to read as follows:

Insured Ten-Year Protection Plans (Plan)

§ 203.200 Definitions.

As used in § 203.201 through § 203.209, the following terms shall have the meaning indicated:

Coverage contract means a warranty certificate, insurance policy, or other document of similar purpose (including any endorsements), delivered to the homeowner at the time of closing or settlement which is issued by a State, a builder, a warranty company, or an insurance company and which defines the terms and conditions under which a Plan will provide warranty coverage of the covered property.

Construction deficiencies are defects (not of a structural nature) in a dwelling covered by an insured ten-year protection plan that are attributable to poor workmanship or to the use of inferior materials which result in the impaired functioning of the dwelling or some part thereof. Defects resulting from homeowner abuse or from normal wear and tear are not considered construction deficiencies.

Insurance backing (or *insurance backer*) means the direct insurance or reinsurance of potential Plan obligations by one or more insurance companies.

Insured ten-year protection plan or *Plan* means an agreement between a homeowner and a Plan issuer which, among other things, contains warranties regarding the construction and structural integrity of the homeowner's one- to four-family dwelling covered by an FHA-insured mortgage. A Plan issuer may be a State, an insurance company, a warranty company, a Risk Retention Group as defined in 15 U.S.C. 3901a(4)(A)–(H) (Supp. IV 1986), a builder, or by any other HUD-approved entity with the required insurance backing. A Plan must specify in its coverage contract the obligations and duties of the Plan issuer to the homeowner (or to the homeowner's successor in interest) with respect to the warranties covering the dwelling.

Plumbing means all components of piped on-site gas, fluid, or fluid-based systems that are not separately covered by manufacturers' warranties, and includes any on-site water supply or sewage disposal systems.

State includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

Structural defect is actual physical damage to the designated load-bearing portions of a home caused by failure of such load-bearing portions that affects

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their load-bearing functions to the extent that the home becomes unsafe, unsanitary, or otherwise unlivable. Load-bearing components for the purpose of defining structural defects are defined as follows: Footing and foundation systems; beams; girders; lintels; columns; load-bearing walls and partitions; roof framing systems; and floor systems, including basement slabs in homes constructed in designated areas (see § 203.207) containing expansive or collapsible soils. Damage to the following nonload-bearing portions of the home is not considered a structural defect: Roofing; drywall and plaster; exterior siding; brick, stone, or stucco veneer; floor covering material; wall tile and other wall coverings; nonload-bearing walls and partitions; concrete floors in attached garages; electrical; plumbing, heating, cooling and ventilation systems; appliances, fixtures and items of equipment; paint; doors and windows; trim, cabinets, hardware, and insulation. Repair of a structural defect is limited to:

(1) The repair of damage to designated load-bearing portions of the home which is necessary to restore their load-bearing ability;

(2) The repair of designated non-load-bearing portions, items or systems of the home, damaged by the structural defect, which make the home unsafe, unsanitary or otherwise unlivable (such as the repair of inoperable windows, doors and the restoration of functionality of damaged electrical, plumbing, heating, cooling, and ventilating systems); and

(3) The repair and cosmetic correction of only those surfaces, finishes and coverings, original with the home, damaged by the structural defect, or which require removal and replacement attendant to repair of the structural defect, or to repair other damage directly attributable to the structural defect. It is the intent of this section to ensure the repair of a covered home to a condition approximately the condition just prior to the defect, not to a like new condition. It does not require refinishing of all interior or exterior surfaces if only one or two surfaces are damaged. It does not cover personal property items, not a part of the structure, which are damaged by the defect or as a result of the defect. It excludes damage covered by a homeowner's casualty insurance policy.

Warranty company is an insurance company or other entity that provides insurance backing for an insured ten-year protection plan which, if the Plan issuer fails to meet its obligations to a covered homeowner, will assume the obligations and perform in accordance with the Plan's coverage contract with the homeowner.

§ 203.201 Scope.

Effective August 6, 1991, the provisions and requirements set forth in § 203.202 through § 203.209 apply to one-to four-family dwellings covered by HUD mortgage insurance (including family units in a condominium where the units are insured under subpart A of part 234 of this chapter).

§ 203.202 Plan acceptability and acceptance renewal criteria—general.

(a) For a Plan to be acceptable to HUD, it must assure that:

(1) If a builder, for any reason, fails to correct structural defects or construction deficiencies in a property covered by an insured 10-year protection Plan during the term of any warranty offered by the builder on the property, the Plan issuer will effect the corrections in accordance with the terms of the Plan; and

(2) If a Plan issuer, for any reason, fails to effect correction of these deficiencies or defects, or otherwise fails to honor the terms of its coverage, its insurance backer or, if the Plan issuer is an insurance company, the insurance company itself, will effect the corrections or otherwise honor the terms of the Plan.

(b) In evaluating applications for renewal of Plan acceptance, HUD will take into consideration such reliable evidence as is made available to the Department of a Plan issuer's failure to fulfill its obligations. Where HUD has credible evidence of a Plan issuer's failure to correct covered homeowner problems, or there are justifiable homeowner complaints about untimely problem resolution by a Plan issuer, HUD will consider this as cause for termination of a Plan's acceptance and as grounds for initiation of sanctions against a Plan issuer or insurance backer in accordance with 24 CFR part 24. If HUD proposes to terminate a Plan's acceptance, the issuer of the Plan will be advised of the reason therefor, and the procedural safeguards of 24 CFR part 24 will apply.

(c) Unless renewed, Plan acceptance by HUD expires automatically on the second anniversary date of acceptance. The Plan issuer must apply for acceptance renewal at least two months, but no more than three months, in advance of expiration to avoid automatic acceptance termination. Prior acceptance of a Plan will be continued beyond the date of automatic acceptance termination only by a written notification to the Plan issuer and only if the delay is caused by a lack of timely HUD processing of a renewal application. HUD will not extend the expiration date of a prior Plan acceptance if the Plan issuer has negligently provided incomplete information with its renewal application.

(d) After a Plan has been accepted by HUD, there shall be no change in, or modification to, its provisions, or in its insurance backers or insurance contract(s), without prior written HUD acceptance of such change or modification, except that changes mandated by other applicable laws may not require HUD's prior approval. A violation of this condition may be cause for termination of a Plan's acceptance, and may be grounds for initiation of sanctions against the Plan issuer in accordance with 24 CFR part 24. Insofar as practicable, HUD will respond to a Plan issuer's request for acceptance of a change within 30 days of receipt of the request. Plan acceptance by HUD will be for a two-year period.

(e) Requests for initial HUD acceptance or renewal of acceptance of a Plan should be made to the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Requests must be accompanied by information and documentation evidencing Plan compliance with § 203.204. Acceptability of Plans will be determined by the Deputy Assistant Secretary for Single Family Housing who will notify applicants of his or her determination. If a Plan is rejected, the applicant will be advised of the reason for rejection. The applicant may appeal the rejection to the Assistant Secretary for Housing, at the above address, stating specifically why the Plan should be approved. The Assistant Secretary (whose decision is final) will, within a reasonable time, advise the applicant whether the rejection will be upheld or reversed. Each HUD field office will be advised of Plans determined to be acceptable, or Plans that have been rejected.

(f) Existing Plans will be allowed a grace period of 9 months commencing from November 6, 1990 to make the necessary adjustments to comply with the provisions and requirements of § 203.200 to § 203.209.

(g) Each Plan issuer must submit a written certification addressed to the Deputy Assistant Secretary for Single Family Housing, 451 Seventh Street, SW., Washington, DC 20410, no later than three weeks before the anniversary date of the Plan's acceptance by HUD, that the insurance company backing its Plan is still an insurance carrier approved by the State insurance commission (or the equivalent entity) in each jurisdiction in which the Plan is offered, or is still a Risk Retention Group meeting the criteria of § 203.206 of this part.

(The information collection requirements were approved by the Office of Management and Budget under control number 2502-0343)

§ 203.203 Issuance and nature of insured 10-year protection plans.

(a) Plans may be issued:

(1) By a builder, warranty company, insurance company, or Risk Retention Group (see 15 U.S.C. 3901a(4)(A)–(H) (Supp. IV 1986); or

(2) By a State that guarantees the builder's performance and the State's continuing financial backing throughout the Plan's coverage period.

(b) All Plans must have insurance backing unless backed by the full faith and credit of a State.

(c)(1) Plans backed by the full faith and credit of a State must be in compliance with § 203.200 through § 203.202, § 203.204 through § 203.206, and § 203.209 to be acceptable to HUD. HUD will evaluate these Plans to ensure their compliance with these sections.

(2) HUD will not accept Plans backed by a State agency or a State insurance guaranty fund unless HUD is assured that the full faith and credit of the State is pledged to satisfy any and all obligations of the State agency or guaranty fund that may arise in connection with its financial backing of a Plan.

(d) The functions of a Plan issuer and an insurance backer may be performed by a single corporate entity.

§ 203.204 Requirements and limitations of a plan.

In addition to complying with the criteria set out in § 203.202 and § 203.205, for a Plan to be acceptable to HUD, it must meet the following requirements:

(a) A Plan must assure timely resolution of homeowners' complaints or claims covered under § 203.205. Warranties set forth in a Plan must comply with section 2301(a)(1)–(13) of the Magnuson-Mass Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301–2312) along with the requirements and criteria set out in this section.

(b) The entire cost to the homeowner for Plan coverage must be prepaid by the builder, or the Plan issuer must give irrevocable coverage, at the time of settlement. In the case of optional coverage beyond the coverage required under § 203.205, the cost for the optional coverage may be paid by either the builder or the homeowner.

(c) Unexpired Plan coverage must be automatically transferred, without additional cost, to subsequent homeowners.

(d) Issued Plan coverage must be noncancellable by a Plan issuer or by its insurance backer(s).

(e) Exclusions from Plan coverage must not defeat coverage objectives stated in § 203.202 and § 203.205 and must permit normal homeowner use of the covered property, including normal maintenance and emergency property protection measures.

(f) Unless prohibited by applicable law, Plans must, at a minimum, stipulate that all homeowner complaints covered by a Plan, including those regarding construction deficiencies and structural defects claims, will be settled in the amount of their actual cost to correct or for the original sales price of the property, whichever is the lesser, subject to a deductible not to exceed a total of $250 for all claims filed by a homeowner during the first two years of coverage and not to exceed a maximum of $250 per claim during the third through the tenth year of coverage.

(1) In the case of claims filed by a condominium association, the deductible is limited to $250.00 per claim for each affected unit in the structure, not to exceed a maximum of $5,000.00 where the claim relates to the same event that affected several units. Recurrent claims for structural defects occasioned by a common cause shall be subject to the payment of no more than one deductible. In addition, a Plan covering a condominium must provide the condominium association with an additional warranty that allows for claims by homeowners involving the common elements of the building.

(2) A homeowner shall be liable for a deductible only if a builder defaults on warranty performance and the Plan issuer has to make the covered corrections. When the builder performs corrections under the builder's warranty, no deductible that may be included in the Plan is applicable.

(g) In the event of any dispute regarding a homeowner complaint or structural defect claim, Plans must, unless prohibited by applicable law, provide for binding arbitration proceedings arranged through a nationally recognized dispute settlement organization. The sharing of arbitration charges shall be as determined by the Plan. A Plan must contain prearbitration conciliation provisions at no cost to the homeowner, or provision for judicial resolution of disputes, but arbitration, which must be available to a homeowner during the entire term of the coverage contract, must be an assured recourse for a dissatisfied homeowner.

(h) Where a State has a home protection act or other statutes or regulations that require its approval of Plans, a Plan issuer must demonstrate such approval to HUD as an additional prerequisite to HUD acceptance.

(i) A Plan issuer must provide homeowners an executed coverage contract clearly describing—

(1) The identity of the property covered;

(2) The time at which coverage begins;

(3) The maximum amount of Plan liability;

(4) Noncancellability of the coverage contract by the Plan or its insurance backers;

(5) No-cost transferability of unexpired coverage to successors in title;

(6) The property coverage provided;

(7) Any exclusions from coverage;

(8) Performance standards for resolving homeowner complaints and claims (if standards for complaint and claim adjustment are promulgated as part of a Plan);

(9) Dispute settlement procedures;

(10) The names, addresses, and telephone numbers of the Plan issuer and its insurance backers; and

(11) When, to whom, under what conditions, and to what address homeowners should submit any construction deficiency complaints or structural defects claims.

(j) Plans will not be required to warrant that a covered property complies with:

(1) Original dwelling plans and specifications;

(2) Applicable building codes; or

(3) Specific terms of a homeowner's contract to purchase a property.

§ 203.205 Plan coverage.

(a) Plan coverage must take effect at closing or settlement following the initial sale of the property to the homeowner.

(b) During the first year of coverage, a Plan must provide for a warranty against defects in workmanship and materials resulting from the failure of the covered property to comply with standards of quality as measured by acceptable trade practices, as well as correct the problems with, or restore the reliable function of, appliances and equipment damaged during installation or improperly installed by the builder. The plan must also cover structural defects as defined in § 203.200.

(c) During the first and second year of coverage, a Plan must provide a warranty against defects in the wiring,

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piping and ductwork in the electrical, plumbing, heating, cooling, ventilating, and mechanical systems.

(d) Basement slabs in designated areas must be covered by a warranty in the Plan against damage from the first through the fourth year.

(e) From the first through the tenth year, structural defect (as defined in § 203.200), except as provided in paragraph (d) of this section, must be covered by a warranty in the Plan.

(f) A Plan must provide insurance coverage for builder default on any warranty obligation.

The coverage described in paragraph (b) through (f) of this section is the minimum level of coverage that HUD will find acceptable in a Plan.

§ 203.206 Housing performance standards or criteria.

A Plan may contain housing performance standards or criteria for resolution of homeowner claims or complaints that are fair, reasonable, and consistent with the intent of the Plan, including Plan coverage under § 203.205. If a Plan contains such criteria or standards, they must be acceptable to the Secretary.

§ 203.207 Designated area.

The Secretary may designate any part of the country as a "high risk area" where construction practices allow basement slabs to be placed on expansive or collapsible soil. By virtue of this authority, the Secretary has designated the State of Colorado as a "high risk area."

§ 203.208 Insurance backing criteria.

An insurance company backing or operating a Plan must be duly licensed or approved (and with the Plan filed and approved where appropriate) to market such insurance coverage by the proper regulatory agency in each State in which the Plan will operate. Any company operating under the Product Liability Risk Retention Act of 1981, as amended, will be regarded as having met licensing, filing, and approval requirements of all States, but must first demonstrate that it—

(1) Meets licensing, filing and approval requirements in its domiciliary State; and

(2) Meets each of the requirements of paragraphs (A) through (H) of section (a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4) (A) through (H), (Supp. IV 1986).

(The information collection requirements were approved by the Office of Management and Budget under control number 2502-0343)

§ 203.209 Payments under a plan.

(a) If a Plan issuer or insurance backer elects to compensate a homeowner for damage suffered by the homeowner's property that is covered under a Plan in lieu of the Plan issuer's making repairs such compensation must be made jointly to the mortgagee and the homeowner.

(b) If payment is to be made to the mortgagee and homeowner, the Plan issuer first must receive the mortgagee's assurance in witing that the mortgagee is satiafied, based on a showing by the homeowner, that the homeowner has made a binding commitment to have the necessary repairs made to restore the damaged property. It a homeowner elects not to repair his or her damaged property, then the mortgagee must apply the compensation in reduction of the outstanding indebtedness of the mortgage.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

8. The authority citation for part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715l); sec. 7 (d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. In § 221.20, paragraph (a)(2)(iv) is revised to read as follows:

§ 221.20 Maximum mortgage amount—loan-to-value limitation.

* * * * *

(a) * * *

(2) * * *

(iv) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements that would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction. After August 6, 1991, any consumer protection or warranty plan must meet the requirements of §§ 203.200–203.209 of this chapter.

* * * * *

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

10. The authority citation for part 222 continues to read as follows:

Authority: Secs. 211, 222, National Housing Act (12 U.S.C. 1715b, 1715m); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. In § 222.4, paragraph (a)(4) is revised to read as follows:

§ 222.4 Maximum mortgage amount; ratio of loan-to-value limitation.

* * * * *

(a) * * *

(4) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements that would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction. After August 6, 1991, any consumer protection or warranty plan must meet the requirements of §§ 203.200–203.209 of this chapter.

* * * * *

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES [SEC. 809]

12. The authority citation for part 226 continues to read as follows:

Authority: Secs. 807, 809, National Housing Act (12 U.S.C. 1748f, 1748h–1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. In § 226.5, paragraph (a)(1)(iii) is revised to read as follows:

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

(a) * * *

(1) * * *

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements that would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction. After August 6, 1991, any consumer protection or warranty plan must meet the requirements of §§ 203.200–203.209 of this chapter.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

14. The authority citation for part 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. In § 234.27, paragraph (a)(2)(iii) is revised to read as follows:

§ 234.27 Maximum mortgage amounts.

(a) * * *

(2) * * *

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements that would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction. After August 6, 1991, any consumer protection or warranty plan must meet the

requirements of §§ 203.200–203.209 of this chapter.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

16. The authority citation for part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

17. In § 235.15, paragraph (a)(2) is revised to read as follows:

§ 235.15 Eligible types of dwellings.

(a) * * *

(2) A single family dwelling which has never been previously occupied and is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements that would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction. After August 6, 1991, any consumer protection or warranty plan must meet the requirements of §§ 203.200–203.209 of this chapter.

* * * * *

Dated: September 28, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 90-23428 Filed 10-4-90; 8:45 am]

BILLING CODE 4210-27-M

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federal register

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Part IV

Department of Transportation

Federal Highway Administration

49 CFR Part 391
Qualification of Drivers; Diabetes; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC-87-17]

RIN 2125-AB91

Qualifications of Drivers; Diabetes

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to revise its driver qualification requirements to allow certain insulin-using diabetics to operate commercial motor vehicles (CMVs) in interstate commerce. This proposal would eliminate the blanket prohibition against insulin-using diabetics driving CMVs in interstate commerce. It outlines a process by which a determination of a person's qualification to drive could be made by an examining physician in consultation with a board-certified endocrinologist. Certain restrictions on the operation of CMVs would be imposed upon insulin-using diabetics.

DATES: Written comments concerning this rule must be received on or before December 4, 1990.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC 87-17, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with the word processing programs, "Word Perfect," "WordStar," Word," or MacWrite." All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

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I. Background—Authority

The FHWA is authorized by statute to establish minimum driver qualification requirements for drivers of commercial motor vehicles engaged in interstate commerce. This authority was originally granted to the Interstate Commerce Commission (ICC) in the Motor Carrier Act of 1935 (also known as Title II of the Interstate Commerce Act, now codified, in relevant part, at 49 U.S.C. 3102 (1982 & Supp. V 1987)). The authority was transferred to the DOT in 1966 with enactment of the Department of Transportation Act which created the DOT. *See* 49 U.S.C. App. 1655(e)(6)(C), repealed by Pub. L. 97-449, 96 Stat. 2413, 2443, Section 7(b) (1983) (an act to recodify without substantive change).

In 1984, the Congress provided the DOT with alternative regulatory authority with the enactment of the Motor Carrier Safety Act of 1984 (49 U.S.C. App. 2501-2520 (Supp. III 1985)). This Act directed the Secretary to establish minimum safety standards to ensure that, "the physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely * * *" 49 U.S.C. App. 2505(a)(3)).

While most of the minimum driver medical and physical qualification standards adopted by the FHWA permit individual determinations of a person's qualification to drive a CMV in interstate commerce, some do not. For example, as explained more fully below, the FHWA adopted a standard which prohibits all insulin-using diabetics from driving commercial motor vehicles in interstate commerce. 49 CFR 391.41(b)(3). This rule is based on a belief that persons using insulin to control their diabetes present an increased risk to public safety, and that individual determinations of the risks posed by such persons cannot be made reliably. Indeed, the FHWA continues to receive anecdotal information of fatal accidents in which a driver's diabetes is suggested as a causative factor in the accident (e.g., Albuquerque Journal, June 15, 1989, p. 1).

The FHWA seeks to balance this risk to public safety without unreasonably restricting the employment opportunities of those it regulates. The FHWA has attempted to evaluate the incremental increase in risk, if any, of permitting certain persons to drive commercial motor vehicles in interstate commerce who were not heretofore permitted to so drive. Recognizing that substantial advances have been made in the treatment and management of diabetes, the FHWA believes that reliable case-by-case assessments of an insulin-using individual's physical ability to safely operate a CMV may now be made by medical specialists. In order to address its public safety concern, the FHWA is proposing that insulin-using diabetics be qualified to drive in interstate commerce only after a medical evaluation has been completed in accordance with agency-developed minimum procedures, and that such drivers be subject to certain restrictions until such time as experience and data show such restrictions are not needed to ensure public safety. The FHWA believes that the proposed evaluation procedures and restrictions will minimize the risk posed by those permitted to drive under this rule.

This proposal places a significant responsibility on examining physicians and the medical specialists with whom they consult. Moreover, the success of this approach is dependent on a diabetic person's ability, willingness, and commitment to self-monitoring and control of his or her disease.

II. Diabetes—Regulatory History

Diabetes was not specifically addressed in the FMCSRs until April 22, 1970 (35 FR 6458). However, as early as 1939 the Interstate Commerce Commission (ICC) required a urine glucose test as part of the medical examination to determine whether a person was physically qualified to drive a CMV in interstate or foreign commerce. The standard in 1939 provided that a person was qualified to drive if that person had, "No mental, nervous, organic, or functional disease, likely to interfere with safe driving." [Ex Parte No. MC-4, Motor Carrier Safety Regulations Revised, 14 M.C.C. 669, 683 (1939)]

The FHWA established the current standard for diabetes in 1970. This standard provides that a person is physically qualified to drive a motor vehicle if the person "has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control." 49 CFR 391.41(b)(3). The FHWA established the standard because the results of several accident studies, e.g., "Accident and Violation Rates of Washington's Medically Restricted Drivers" by A. Crancer and L. McMurray (December 1967), indicated that diabetic drivers have a higher rate

of accident involvement than do members of the general driving population.

On March 28, 1977, the FHWA published an ANPRM (Docket No. MC-76) to solicit comments on the driver qualification standard pertaining to insulin-using diabetics (42 FR 16452). Sixty-eight comments were received to the ANPRM. Many of the commenters, including the American Diabetes Association, supported the prohibition against driving for insulin-using diabetics. On November 3, 1977, the FHWA terminated this rulemaking without amending the diabetes standard because it was determined, among other things, that the weight of available medical evidence supported prohibiting insulin-using diabetics from driving CMV's in interstate commerce. (42 FR 57488).

Rulemaking petitions have been accepted from two individuals, Mr. Troy Fuson of Livingston, Montana, in May of 1986 and Mr. David L. Kendall of Madrid, Iowa, in October 1986, and from the American Diabetes Association (ADA) on October 7, 1986. These petitioners requested that the FHWA initiate a rulemaking action to eliminate the "blanket prohibition" against insulin-using diabetics to allow such drivers to obtain a waiver on a case-by-case basis. The ADA petition requested that the FHWA develop a waiver program whereby physicians would make individual determinations of medical qualifications and the FHWA would consider these medical evaluations to grant waivers to qualified individuals on a case-by-case basis. On November 25, 1987, the FHWA published an ANPRM requesting comments from interested parties on the ADA petition. The comment period closed on February 1, 1988. See 53 FR 42.

III. Summary of ADA Petition

The ADA petition is set forth in Appendix A to the FHWA's ANPRM published on November 25, 1987. 52 FR 45204, at 45207. A copy of the ADA petition is in the public docket for this rulemaking action (FHWA Docket No. MC87-17). A summary of the petition is set forth here for the convenience of the reader.

The ADA recommended a 3-step process for petitioning the FHWA for a waiver by a person (applicant) with an insulin-controlled diabetic condition.

The applicant would undergo a complete physical examination (including all relevant laboratory testing) performed by his/her personal physician and, if the physician is not a diabetologist, a consultation with a specialist in endocrinology would be required. The ADA proposed that the medical evaluation include thorough, detailed blood tests and related examinations to detect the effects of diabetes. An applicant over 40 years of age would be required to provide the results of a "maximal exercise stress test."

The applicant would submit the examination results to an FHWA physician for review and assessment of the driver's physical qualifications in accordance with the Federal medical standards. The ADA proposed that an applicant for a waiver provide the following information to the FHWA designated physician:

1. Complete medical history (including hospitalization reports);

2. Motor vehicle accident history, with an explanation of those incidents related to illness or incapacitation;

3. A signed release form to allow the FHWA to obtain confidential information from employers, work associates, physicians, or other health care and diabetes support personnel indicating the absence of incapacitation or mental confusion due to "insulin reaction and/or diabetic acidosis, etc.;" and

4. A complete medical evaluation performed by the applicant's personal physician and/or a specialist in endocrinology and a prognosis for both short term (2 to 5 years) and long term (10 to 20 years).

Based on its physician's review and recommendation, the FHWA would determine whether to grant or deny a waiver. The ADA stated that an insulin-using diabetic should be considered for a waiver if the individual has "no otherwise disqualifying disease, especially significant complications of diabetes such as arteriosclerotic coronary or cerebral disease, other cardiac, renal, or eye disease."

The ADA also proposed the following monitoring and reevaluation procedures for a person with an insulin-controlled diabetic condition who drives a commercial motor vehicle in interstate commerce;

1. Twice daily—logs of whole blood glucose concentrations to be kept continuously and provided to the specialist upon reevaluation;

2. Every 6 months—a complete medical reevaluation by a specialist (diabetologist or endocrinologist);

3. Annually—confirmation by a specialist (diabetologist or endocrinologist) that the person with an insulin-controlled diabetic condition can demonstrate the accuracy of blood glucose concentrations; and

4. Annually—ophthalmological confirmation of the absence of retinal disease.

The ADA further proposed that the driver carry a monitoring device on-board the vehicle to test his/her "blood glucose concentration" within an hour before driving and approximately every 4 hours while driving.

IV. Comments to the ADA Proposal and ANPRM

The FHWA received 481 comments on the issues raised in the ANPRM. Four hundred twenty eight comments were from individuals and 41 were from the medical community and professional organizations supporting the ADA proposal. The individual supporters of the ADA proposal primarily cited either personal knowledge of individual diabetics who have good control of their disease and/or recent medical advances that permit insulin-treated diabetics to adequately control their disease. The medical advances cited were improvements in diet and self-monitoring blood glucose concentration devices that allows better self-management of insulin dosage. Supporters of the ADA proposal also argue that the current rule is discriminatory in that it treats insulin-using diabetics more harshly than individual's with other medical conditions. They argue that the rule adversely affects the employment opportunities of insulin-using diabetics.

The 41 commenters from the medical community and professional organizations that support the ADA proposal also believe that the FHWA significantly overestimated the incidence of accidents due to the proposed waiver program in its initial risk assessment.

One individual and eleven industry groups opposed the ADA proposal. These commenters included the American Trucking Association, Inc., the Insurance Institute for Highway Safety, National L-P Gas Association, National Railroad Contractors Association, Frankfort Bottle Gas, Arizona Public Service Company, United Parcel Service, Inc., Complete Auto Transit Company, American Bus Association, Schanno Transportation, Inc., and Texas, New Mexico and Oklahoma Coaches, Inc. The opponents of the proposal asserted that the potential safety risks posed by insulin-using diabetics warrant retention of the current rule. They believe diabetes cannot be controlled well enough to eliminate the increased risks to public safety presented by insulin-using diabetics. These commenters stated that

several studies of general motor vehicle drivers conclude that, on average, diabetic drivers have more accidents than nondiabetic drivers. However, they failed to specifically cite these studies.

These commenters also stated that the need to meet shipper schedules has been ignored by the ADA. They asserted that any episode of hypoglycemia poses

those who developed diabetes in childhood or early adulthood had little if any hope of living more than a year or two after diagnosis. "Diabetes mellitus is a metabolic disorder that results in persistent hyperglycemia, an abnormally high amount of glucose in the blood.[1] Scientists now believe diabetes is actually several different diseases with

When the cells are starved of their fuel, the body recognizes that not enough food has been eaten and triggers a sense of extreme hunger, called polyphagia. The glucose level in the blood rises because it is not used. At the same time, out of desperation, the body turns to stored fuels, i.e., glycogen, fat, and protein, to try to meet its energy needs. The level of glucose in the blood continues to rise, as does the blood level of fats. The huge

diabetes," while type II was known as "adult-onset diabetes." Age is not necessarily a factor however. Both of these occur in various age groups. Diabetes is now labeled by the mechanisms that caused the diabetes to occur: "insulin-dependent" (IDDM), due to a lack of insulin, and "noninsulin-dependent" (NIDDM), due to a relative

diabetes), it may be necessary to use insulin. Since it was discovered, insulin is still the backbone of all diabetes treatment whether the body makes its own or it is injected.[4]

Another treatise by Mirsky & Heilman, cited above, describes the incidence of diabetes as follows:

In its most serious form, diabetes requires

Self monitoring of blood glucose (SMBG) concentrations is vitally important. Previously, the only way to get serial readings, or a profile of daily blood glucose patterns, was to hospitalize the person being tested. Of course, the routine of the person differed from normal home and work routines.

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several studies of general motor vehicle drivers conclude that, on average, diabetic drivers have more accidents than nondiabetic drivers. However, they failed to specifically cite these studies.

These commenters also stated that the need to meet shipper schedules has been ignored by the ADA. They asserted that any episode of hypoglycemia poses a threat of increased accidents and that bus passengers in particular are entitled to a driver who is less likely to cause accidents. They argue that considerable increased risk outweighs the social benefits of the proposed waiver program.

In addition to these comments on the ADA proposal, three commenters, the ADA, the U.S. Department of Justice, and the International Brotherhood of Teamsters submitted information or analyses that pointed to specific aspects of the FHWA's initial risk analysis that, in their view, led to an overestimation of accident rates which would result from the ADA's proposed waiver program.

In response to these comments, the FHWA contracted with ASW Associates for the preparation of a "Regulatory Evaluation for Rulemaking Action: Insulin-Treated Commercial Motor Vehicle Drivers." ASW Associates submitted its report to the FHWA in January 1989. A copy of this report has been placed in the docket.

V. FHWA 1987 Medical Conference on Diabetes

The FHWA sponsored a medical conference on diabetes September 9 and 10, 1987. A report of this conference was published in July 1988. The conference recommended that (1) all drivers with diabetes should have annual examinations for visual impairment, neurological function, and cardiovascular disease (including hypertension). (2) if poor control of the diabetic state based on the suggested guidelines of the ADA exists, certification should be deferred until control is improved, and (3) drivers taking oral agents should be informed about possible interactions of these drugs with other medications they may be taking and about possible hypoglycemic risk associated with missed meals. A copy of the conference report has been placed in the docket.

VI. Discussion of Diabetes

General

Diabetes, generally, is a disease in which the body does not produce or properly use insulin which is needed to convert glucose and starches into energy needed to sustain daily life. Prior to the discovery of man-made insulin in 1921, those who developed diabetes in childhood or early adulthood had little if any hope of living more than a year or two after diagnosis. "Diabetes mellitus is a metabolic disorder that results in persistent hyperglycemia, an abnormally high amount of glucose in the blood.[1] Scientists now believe diabetes is actually several different diseases with different causes, all with the same result, the body cannot efficiently utilize carbohydrates. Glucose is the end product of carbohydrate metabolism which is then used as the body's primary fuel. The glucose enters the body's cells with the help of insulin and is used for energy by the muscles. Excess glucose is stored in the liver in the form of glycogen to be used later when the blood glucose level becomes too low. However, if the pancreas fails to secrete insulin or secretes an inadequate amount of insulin, then the glucose cannot permeate the cells. Thus, the glucose accumulates in the blood. Though there is plenty of glucose available, it is not used efficiently. The following information is quoted from the "Joslin Diabetes Manual" at pp. 2 to 4.[2]

Glucose cannot just flow into the cells. Cells are enclosed in membranes that separate what is inside the cell from what is outside. Somehow, the cell must be told that the glucose waiting outside the cell should be allowed in. That is what insulin does. Insulin is a substance, called a hormone, that is made in a gland called the pancreas. The pancreas is located deep within the middle of the abdominal cavity, just below and behind the stomach. Insulin is needed to signal the cells that they should allow the glucose that normally is in the blood to penetrate their outer layer.

If the glucose cannot get into the cells, it "backs up" in the blood. As the level of glucose in the blood increases, a state of diabetes is produced. Such a condition occurs if there is a lack of insulin for whatever reason. Recent research has shown that the condition is really much more complex than that and that there are other reasons glucose does not get into the cells of the body properly.

Further relevant information is found at pp. 13 to 14, as follows:

Diabetes occurs when the blood glucose is too high as a result of a deficiency of available, effective insulin. This lack can be absolute when the pancreas does not produce enough insulin or produces none at all. As a result of this deficiency, the cells lack fuel, and the body suffers from a lack of energy. People with diabetes complain of weakness and tiredness, and a usually active young child may be tired or listless.

When the cells are starved of their fuel, the body recognizes that not enough food has been eaten and triggers a sense of extreme hunger, called polyphagia. The glucose level in the blood rises because it is not used. At the same time, out of desperation, the body turns to stored fuels, i.e., glycogen, fat, and protein, to try to meet its energy needs. The level of glucose in the blood continues to rise, as does the blood level of fats. The huge excess of unused glucose circulates through the kidney, which normally rescues useful glucose from the filtered fluid to keep it from being lost in the urine. There is a level of blood glucose, however, known as the renal threshold, above which the kidneys cannot keep up with the job of retrieving glucose, and it escapes into the urine. Once this level is passed, glucose spills into the urine as from an overflowing dam. As the blood sugar rises, excess glucose appears in the urine. When diabetes is severe, a large proportion of the body's energy needs are lost into the urine in the form of glucose. Enormous amounts, as much as 200 grams (800 calories) daily, can be lost this way.

The body knows when the urine is too loaded with sugar and is too concentrated and tries to dilute it by allowing more and more fluid to flow through the kidneys. Hence, the person with high blood glucose levels and glycosuria (too much urine sugar) experiences frequent urination of large amounts of fluid, known as polyuria (excessive urine). With the fluid loss, the body senses increasing dehydration, and the thirst center is triggered, making the individual drink more fluid. This increased thirst is known as polydipsia.

This vicious cycle of glucose and water loss, and the attempts to correct this loss, lead to the classic symptoms of diabetes. All of these are due to the body's inability to use glucose properly as the body fuel. When a person has the type of diabetes associated with a severe lack of insulin, this absence allows the fat cells to release fats, which are converted by the liver into ketones. These ketones are acidic. If this process proceeds rapidly or for an extended period of time, blood ketones rise to high levels and become ketoacidosis, which is indeed quite dangerous.

Diabetes has been classified into two major types. These have been designated type I and type II. The two types of diabetes occur by two different mechanisms. Diabetes can be due to a shortage or lack of insulin. This is called type I diabetes, or insulin-dependent diabetes mellitus (IDDM). Insulin injections are mandatory because the person's own production is reduced or absent.

Type II, noninsulin-dependent diabetes mellitus (NIDDM), has only a "relative" insulin deficiency. The body does produce some insulin, sometimes quite a bit, but the need for insulin is so increased that production cannot keep up with this need.

Type I diabetes was formerly called "juvenile diabetes" or "juvenile-onset diabetes," while type II was known as "adult-onset diabetes." Age is not necessarily a factor however. Both of these occur in various age groups. Diabetes is now labeled by the mechanisms that caused the diabetes to occur: "insulin-dependent" (IDDM), due to a lack of insulin, and "noninsulin-dependent" (NIDDM), due to a relative insufficiency of insulin supply.[3]

The Joslin Diabetes Manual goes on to describe the treatments of diabetes as follows:

> The chief tools in the treatment of diabetes are education, exercise, diet, oral medications, and insulin—no more, no less—There are no other. Most people need at least two of these.
>
> *Education.* Although education has been a vital part of diabetes care for many decades, it is only recently that the absolute importance of education has been recognized. It has been determined by the medical community that it is important to know what diet to follow; what insulin does to administer; how often the insulin should be administered. Without education this information would be generally unavailable to the public. Education is the first and probably the most important item, because without it, some of the others will not be possible.
>
> *Activity.* Exercise is one of the original ways of controlling diabetes. Perhaps not by itself, but exercise improves the effect of the other treatments. It is important because it not only improves general health, but it may reduce insulin requirements by making the insulin more effective, probably by improving the function of the insulin receptors. The required level of activity of each individual is important in designing a diabetes treatment plan. Exercise, to the extent that it is suitable to a person, may be very desirable.
>
> *Diet.* Control of the type and amount of food ingested is still the basis for all treatment of diabetes. Many patients who develop type II diabetes retain the ability to make some insulin, and proper diet makes it easier for the insulin to be effective. For the person with type I diabetes, the eating plan is also important. While it is often less restrictive than the program for those with type II, it provides guidelines for wider and more intelligent food choices. It is a plan for healthy eating that is coordinated with insulin and activity.
>
> *Oral medication.* Oral hypoglycemic agents are pills taken by mouth which lower blood glucose levels. They can actually stimulate the release of more insulin and help reduce resistance to whatever insulin is available. They are used by perhaps 30% to 40% of those with diabetes in the United States and perhaps as many as half the people with diabetes worldwide. Unfortunately, they are not effective for everyone with diabetes. They are effective only when the pancreas itself can make insulin.
>
> *Insulin.* If the available body insulin is not adequate (type I diabetes), or if more insulin is needed despite proper diet (type II diabetes), it may be necessary to use insulin. Since it was discovered, insulin is still the backbone of all diabetes treatment whether the body makes its own or it is injected.[4]

Another treatise by Mirsky & Heilman, cited above, describes the incidence of diabetes as follows:

> In its most serious form, diabetes requires insulin. Less than fifteen percent of the total number of people with diabetes mellitus require insulin. For these people, the pancreas' production of insulin is so low or nonexistent that they must take insulin injections to compensate. Nevertheless, with supplementary insulin, aided by diet and exercise, the blood glucose of a person requiring insulin can be kept relatively normal.

The treatment of diabetes is a system of balances. The triad of variables—insulin or oral agents, eating, and activity—can be manipulated by the individual. There are also other factors, the "intangibles" that affect any treatment program. These intangibles are minor, often imperceptible, daily variations in various factors—stress, timing, food absorption, etc.—that can also affect the diabetes.[6]

The most serious medically related safety concern the FHWA has regarding insulin-using diabetic drivers is that they are subject to hypoglycemia. Hypoglycemic episodes increase a driver's potential for accident involvement.[7] This condition can occur suddenly when carbohydrate intake does not balance insulin availability. This imbalance can result from a missed meal, uncommonly high levels of exercise, or the intake of excessive amounts of insulin or other drugs. Hypoglycemia symptoms may include sweating, nervousness, rapid heart beat, lethargy, decreased conversational ability, diminished short-term memory, mental confusion, loss of consciousness, coma or convulsions. In some episodes of hypoglycemia, early symptoms are clear and serve as a signal for the patient to ingest a concentrated sweet which will eliminate the reaction. In other situations, the early, mild symptoms are missed or are not noticed, so that a severe episode may result.

Mild hypoglycemia can be a safety hazard if it occurs during a critical phase of driving or while other safety problems exist. Severe hypoglycemia, when assistance of another person is required to take corrective action, poses a very high risk for accident involvement if it occurs while the diabetic driver is operating a commercial motor vehicle.

Self monitoring of blood glucose (SMBG) concentrations is vitally important. Previously, the only way to get serial readings, or a profile of daily blood glucose patterns, was to hospitalize the person being tested. Of course, the routine of the person differed from normal home and work routines. Now a more accurate picture of the patient in normal life-styles, a picture that can better target treatment needs, can be obtained through self monitoring blood glucose (SMBG).[9]

Developments in SMBG, diet, exercise, and insulin delivery (e.g., pre-measured syringes and insulin infusion pumps) have become the key to the successful self-management of insulin-requiring diabetes mellitus.[9] While good medical care remains necessary, in the final analysis individuals with diabetes can now take an active day-to-day role in the management of their disease.[9] The new self-monitoring techniques allow people with diabetes to learn to adjust their own insulin dose and allow greater flexibility in their lives. After being taught the basic physiology and approach to the management of diabetes, these people develop a vast amount of practical knowledge which makes them virtual experts in the management of the disease.[10]

One of the most important goals of diabetes self-management is the maintenance of blood glucose concentrations within normal body ranges, thus preventing symptoms of either high or low blood glucose. In the past, it was difficult to assess blood glucose control because of the reliance primarily on urine testing. Urine testing is only a reflection of blood glucose, and does not measure the actual glucose concentration.[11] By the time glucose appears in the urine, it usually means that blood glucose has been high for some time.[12] Laboratory tests could be

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[1] S. Mirsky M.D. & J. Heilman, *Controlling Diabetes the Easy Way*, at 5–8 (1981) (hereinafter cited as Mirsky & Heilman).

[2] L. Krall, M.D. & R. Beaser, M.D., *Joslin Diabetes Manual* 12th ed., (Philadelphia, PA: Lea & Febiger, 1986).

[3] Id., at 15–18.

[4] Id., at 34–37.

[5] Mirsky & Heilman, at 10–11.

[6] U.S. Department of Transportation, "The Insulin-dependent Driver Research Report," April 1988.

[7] Krall & Beaser, at 139.

[8] J. Aloia, M.D., P. Donohue-Porter, " N., L. Schlussel, R.D., *Diabetes: The Comprehensive Self-Management Handbook*, (1984) at 177 (hereinafter cited as Aloia, Donohue-Porter & Schlusse)

[9] Mirsky & Heilman, at 22.

[10] J. Solowiejesk & L. Baker, "Physician-Patient Communication in Chronic Illness," 4 *Diabetes Care* 427 (May-June 1981). Diabetes Care is a peer-reviewed journal with all articles judged solely on the basis of scientific merit.

[11] Mirsky & Heilman, at 21.

[12] R. Clements, Jr., N. Keane, K. Kirk, & B. Boshell, "Comparison of Various Methods for Rapid Glucose Estimation," 4 *Diabetes Care* 302, 304 (May-June 1981).

performed but they were not of much use to someone who wished to monitor their glucose concentration on a consistent basis at home. Today, there are simple, practical, and convenient test methods available to measure one's blood glucose concentration. Since these tests may be used anywhere, the term "home blood glucose monitoring" has

self monitoring gives instant feed back so that persons with diabetes can know their blood glucose concentration immediately at any time or place. All meters available today weigh less than one pound, are portable, and take between 30 seconds and 2 minutes to use.

Another tremendous innovation in the monitoring of blood glucose was the development of the glycosylated hemoglobin ($Hb A_{1c}$) test. This test is a measure of the mean blood glucose concentration over a period of weeks to months. The glycosylation of hemoglobin is continuous throughout the life span of the red blood cell, so

Ratings requiring a physical examination. Applicants with diabetes which is controlled by diet and/or oral medication are considered physically eligible provided their condition is stable.

The Maryland National Capital Park and Planning Commission's standard for Park Police on diabetes mellitus is

passengers, and a trailer of any mass; Class 2 permits the operation of a motor vehicle of any type or mass with or without passengers, and a trailer not exceeding 4,600kg gross mass, does not permit pulling a semi-trailer; Class 3 permits the operation of a motor vehicle of any mass and a trailer not exceeding 4,600kg gross mass, does not permit

resting in a sleeper berth while the vehicle is in motion. Drivers may be subject to abrupt duty hour changes, sleep deprivation, irregular work/rest cycles, temperature and weather extremes, long trips without regular meals, short notice for assignment of a trip, tight delivery schedules, delays enroute and other stresses and fatigue

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performed but they were not of much use to someone who wished to monitor their glucose concentration on a consistent basis at home. Today, there are simple, practical, and convenient test methods available to measure one's blood glucose concentration. Since these tests may be used anywhere, the term "home blood glucose monitoring" has been replaced by "self monitoring."

Self-monitoring refers to the measurement of blood glucose by the individual, and is accomplished by taking a drop of blood from a finger, developing a color on a reagent strip, and subsequently measuring the reaction.[13] The easiest method of measurement is done by using chemically treated paper strips.[14] The results of the sample are measured by comparing the strip with a color chart on the container. This is a simple and inexpensive method. Medical studies have indicated that strip techniques provided estimates of the glucose concentration that are in sufficient agreement with the laboratory determinations to suggest that they could be of use in self-blood glucose monitoring.[15] Further, studies have indicated that reagent strips not requiring the use of a reflectance meter provide a technique of self-blood glucose monitoring similar in performance to those using reflectance meters.[16] A more sophisticated tool is the reflectance color meter which contains a microcomputer that reads and displays the blood glucose concentration.

With time, persons with diabetes who practice self-monitoring develop a sense of control over their diabetes and have the capability of judging the effect of many factors of their condition. Ultimately they learn how to make appropriate adjustments in diet or insulin, or both, depending on the circumstances.[17] Not only is it simple to determine blood glucose levels during any 24-hour period, but persons with diabetes can now monitor blood glucose levels in a specific instance.[18] In sum, self monitoring gives instant feed back so that persons with diabetes can know their blood glucose concentration immediately at any time or place. All meters available today weigh less than one pound, are portable, and take between 30 seconds and 2 minutes to use.

As a result of the advent of these new monitoring techniques, increased medical emphasis is being placed on self-management of diabetes.[19] Self-monitoring of blood glucose is gaining increasing acceptance as a tool in assessing diabetes management such that self-monitoring of blood glucose concentrations by individuals has become an indispensable requisite for the achievement of physiologic blood glucose control in insulin-requiring diabetes mellitus.

A number of clinical studies have been conducted to verify the relationship between self-monitoring and the improved control of glucose concentrations.[20] Glucose determinations by individuals with diabetes were found to be as reliable as those performed in a laboratory.[21] These individuals were able to learn the skills to cope with managing their own disease. A high degree of patient compliance was found; thus, a program of self-management for people with diabetes requiring insulin was deemed feasible.[22]

Self-monitoring is the key to achieving excellent control of blood glucose levels in a safe and effective manner, allowing careful tailoring of dosages of insulin or oral agents to the needs of each person. It is especially useful when insulin therapy is used. A proper self-monitoring program combined with a thoughtfully designed treatment plan can eliminate the frequent, severe hypoglycemia of years past while achieving excellent control. The old fear that "tight control means lots of hypoglycemic reactions" is no longer valid if self-monitoring is used. The success of a self-monitoring program is dependent primarily upon the motivation of the self-tester. Better, safer diabetes control is the reward for these efforts. Any unanticipated change in diet, exercise, or stress can be immediately compensated for by an increase in insulin or glucose depending upon the circumstances.[23]

Another tremendous innovation in the monitoring of blood glucose was the development of the glycosylated hemoglobin ($Hb A_{1c}$) test. This test is a measure of the mean blood glucose concentration over a period of weeks to months. The glycosylation of hemoglobin is continuous throughout the life span of the red blood cell, so measurements such as hemoglobin $Hb A_{1c}$ provide an integrated value of the blood glucose concentration over time and can be used to determine the existence of irregular glucose concentration. The life span in the red blood cell is 100 to 120 days. Thus, the $Hb A_{1c}$ test is an excellent marker of control.[24]

The secret of diabetes control is mastering the technique of matching insulin and food, which is why diet is also so important. Self-monitoring enables the individual to tell almost immediately whether the insulin and food intake are in balance and to take the proper corrective steps if they are not.[25]

These recent advances in diabetes self-management provide strong support for a reexamination of existing regulations which prohibit the medical certification of interstate motor carrier operators who use insulin.

Other Agencies, State and Canadian Policy on Diabetics

The Federal Aviation Administration (FAA), in 14 CFR 66.13 through 67.17, regulates physical qualification regarding diabetes and we have been informed that the Federal Air Surgeon's policy is to continue to deny certification to individuals who have an established medical history or clinical diagnosis of diabetes that is controlled by use of insulin or another hypoglycemic drug. However, special issuances have been issued for some oral hypoglycemic using diabetic pilots.

The Federal Railroad Administration (FRA) has no prohibition applicable to diabetics. If an examining physician deems the person qualified, that person may operate a locomotive.

The United States Coast Guard (USCG) regulates merchant mariner licenses and has a waiver system for license renewals of insulin-using diabetics on a case by case basis. Insulin-dependent Type I diabetes is disqualifying for original applicants and qualified Merchant Marine Document

[13] Aloia, Donohue-Porter & Schlussel, at 48-50.

[14] B. Shapiro, P. Savage, D. Lomatch, T. Gaisdek, R. Forbes, R. Mitchell, K. Hein, R. Starr, M. Nutter, & B. Scherdt, "A comparison of Accuracy and Estimated Cost of Methods for Home Blood Glucose Monitoring," 4 *Diabetes Care* 398, 402 (May-June 1981).

[15] D. Schnatz, M.D., & O. Crofford, M.D., *Diabetes Mellitus: Problems in Management.* (1982) at 51-55. (hereinafter cited as Schnatz & Crofford).

[16] Aloia, Donohue-Porter & Schlussell, at 51-54.

[17] Schnatz & Crofford, at 55.

[18] Aloia, Donohue-Porter & Schlussel, at 47.

[19] Solowiejczyk & Baker, at 428.

[20] Id., at 428.

[21] M. Reeves, S. Fortham, J. Skyler, & C. Peterson, "Comparison of Methods for Blood Glucose Monitoring," 4 *Diabetes Care* 406 (May-June 1981).

[22] Krall & Beeser, at 139-153.

[23] Id., at 139-153.

[24] C. Peterson, S. Parham & R. Jones, "Self Management: an approach to people with Insulin-Dependent Diabetes Mellitus," 3 *Diabetes Care* 82, 88 (Jan.-Feb. 1980).

[25] Mirsky & Heilman, at 121.

Ratings requiring a physical examination. Applicants with diabetes which is controlled by diet and/or oral medication are considered physically eligible provided their condition is stable.

The Maryland National Capital Park and Planning Commission's standard for Park Police on diabetes mellitus is disqualifying for applicants with type I diabetes. Applicants with type II diabetes, whether using insulin or oral hypoglycemic drugs, and who demonstrably do not have evidence of cardiovascular, opthalmological, renal, or neurological complications, may be considered for employment on an individual basis. Officers who develop diabetes, whether type I or type II, and who demonstrably do not have evidence of cardiovascular, opthalmological, renal, or neurological complications, may continue on duty provided they meet criteria that is the same as the ADA's waiver proposal submitted to the FHWA.

Virtually every Canadian Province follows either the Canadian Medical Association's Physicians Guide to Driver's Examination (CMA Guide) or the National Safety Code. Both the CMA Guide and the National Safety Code prohibit insulin-using diabetics to drive taxis, buses, ambulances and heavy commercial motor vehicles. Article 9.1 of the CMA Guide states that, "Applicants with diabetes mellitus that can be controlled by diet alone or by diet and oral medication can drive any type of motor vehicle safely, provided they are under regular medical supervision to ensure the condition does not deteriorate without warning. Applicants who require insulin, but are under good control and not subject to hypoglycemic reactions, can usually drive private or light commercial vehicles without difficulty (class 5 or 6 license). Such applicants should not drive passenger transport or heavier commercial vehicles (class 1, 2, 3 or 4 license) because their work may require unexpected exertion or may prevent them from following their diet or taking insulin at required intervals. All diabetics on insulin who drive should be under regular medical supervision."

The Canadian National Safety Code, closely follows the recommendations set out in the CMA Guide. Type I diabetics who are not permitted to operate class 1, 2, 3 or 4 motor vehicle, and Type II diabetics are not permitted a class 1, 2 or 4 license, but are allowed to operate Class 3 motor vehicles under exceptional circumstances (Class 1 permits the operation of a motor vehicle of any type of mass with or without passengers, and a trailer of any mass; Class 2 permits the operation of a motor vehicle of any type or mass with or without passengers, and a trailer not exceeding 4,600kg gross mass, does not permit pulling a semi-trailer; Class 3 permits the operation of a motor vehicle of any mass and a trailer not exceeding 4,600kg gross mass, does not permit driving a taxi or bus or pulling a semi-trailer; Class 4 permits the operation of a motor vehicle not exceeding 11,000kg gross mass and a trailer not exceeding 4,600kg gross mass, weight of vehicle and trailer together may not exceed 11,000kg, also permits the operation of a taxicab, a bus carrying more than 24 passengers, and emergency response vehicles). The Canadian government has been petitioned, by the Canadian Diabetes Association (CDA), to allow for waivers for insulin-using diabetics to become CMV drivers based on individual medical evaluations.

CMV Driver Job Description

Few people outside the motor carrier industry fully appreciate the physical and mental demands placed on CMV drivers.

The safe operation of commercial motor vehicles consists of many types of driving and diverse nondriving activities. There are long-haul, truck-load movements; long-haul, less-than-truck-load movements which require drivers to unload or load several times; pick up and delivery movements; special commodity deliveries such as gasoline, cement in bulk or new motor vehicles; small and large package delivery; household goods transportation; intercity passenger transportation; and many others. Regardless of the type of driving involved, the majority of the drivers will drive, in the aggregate, up to 10 hours following an off duty period of time consisting of at least 8 consecutive hours. This means that a very large percentage of the driver population may be actually on duty up to 15 hours during any given calendar day.

The vehicles driven range from a 10,000 pound GVWR to a large heavy straight truck to even larger and heavier tractor trailer combinations (e.g., 60 foot tractor/semi-trailer combinations to 100 foot tractor/semi-trailer/trailer combinations).

The physical demands of commercial motor vehicle driving and related tasks vary considerably with type of vehicle and duties involved. A driver's job may include: loading and unloading the vehicle, securing the load, driving, completing paperwork (keeping log of time, miles, expenses, etc.), fueling, hooking up the electrical system, performing maintenance functions, and resting in a sleeper berth while the vehicle is in motion. Drivers may be subject to abrupt duty hour changes, sleep deprivation, irregular work/rest cycles, temperature and weather extremes, long trips without regular meals, short notice for assignment of a trip, tight delivery schedules, delays enroute and other stresses and fatigue related to driving a large commercial motor vehicle on crowded streets and highways.

A driver typically spends 70–80% of the driver's on-duty time in the vehicle. While driving, operators are exposed to noise and vibration caused by the engine, tires, exhaust system, CBs and radios. Twenty to 30% of a driver's time is spent our of doors, exposed to dust, diesel exhaust fumes, and the weather.

Generally, drivers must be available around the clock for trips to accommodate freight movements. A trip may require a driver to be away from home for as few as 8 hours or as long as one month. During these trips, a driver is allowed to drive a maximum of 10 hours following 8 consecutive hours off duty. Some trips require continuous operation of the vehicle by a two person team in order to meet customer or consumer demands. This is generally accomplished by having one driver rest in the sleeper berth while the other drives.

Drivers are required to handle straight trucks, tractor/trailer combinations or buses under all types of circumstances, including intercity travel, intracity travel, and maneuvering in the close confines of customer facilities. This activity involves booking and unbooking the various tractor/trailer combinations, manually lowering and raising landing gear (gear capable of supporting trailers laden with 50,000 pounds or more), opening and closing cargo doors, climbing onto and off vehicles, fueling vehicles, and checking lubrication and coolant levels. While performing these duties, a driver repeatedly bends at the waist, neck, wrist and shoulders; twists his/her hands; twists and rotates forearms and elbows. The driver may use tools while securing the load or while performing maintenance work.

Drivers sometimes load and unload full trailers of freight weighing as much as 50,000 pounds. This could involve moving 100 pound containers to and from floor level to carts, stacks or platforms over four feet high, balancing 600 pound drums on their rims and rolling them into position, or stowing cartons or other merchandise overhead that weigh as much as 60 pounds each. This type of activity could precede or continue for hours after the driver has

completed 10 hours of driving. A driver could typically spend 10% of the day standing and 30% walking on surfaces of concrete, wood and metal.

Drivers are required to secure freight in or on all types of vehicles. Securement may involve pounding nails and using straps and heavy chains while manipulating heavy freight. Drivers may

history or clinical diagnosis of diabetes mellitus likely to interfere with his or her ability to safely operate a commercial motor vehicle. This proposal is intended to make the diabetes standard more like the standards now used in determining whether persons with established medical histories or clinical diagnoses of cardiovascular

2. As complete driver's record as reported by the State licensing agency which issued the person a driving license and all information regarding any motor vehicle accidents resulting in personal injury or property damage. Such information would potentially give the examining physician and/or endocrinologist an insight into what

will adversely affect the person's ability to safely operate a CMV.

Following the findings and determination concerning an insulin-using driver applicant's qualifications to operate a commercial motor vehicle in interstate commerce by a board-certified endocrinologist, the endocrinologist must complete a report to the examining

available to Federal or State enforcement personnel upon request.

4. Carry and use insulin whenever necessary. The driver must also have available in the vehicle syringes (including needles) or a pump, as appropriate.

5. Carry and use, as necessary, a source of rapidly absorbable glucose

medical examiner who is familiar with the Federal Motor Carrier Safety Regulations and the nature of the functions performed by a commercial motor vehicle driver is best qualified to determine whether a person is medically fit to operate a commercial motor vehicle * * *" 55 FR 2546, at 3551 (1990)

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completed 10 hours of driving. A driver could typically spend 10% of the day standing and 30% walking on surfaces of concrete, wood and metal.

Drivers are required to secure freight in or on all types of vehicles. Securement may involve pounding nails and using straps and heavy chains while manipulating heavy freight. Drivers may be required to cover open-top trailers. This activity involves climbing to a height of 4 to 10 feet, balancing, and accelerated physical activity in awkward positions. Trailer tarpaulins may be 48 feet long, 10 feet wide, and weigh in excess of 100 pounds each.

A driver may enter and exit the vehicle's cab 6 to 10 times a day. Cab level is generally from 36 to 66 inches from ground level, with entry and exit achieved with the assistance of one or two steps and hand-holds.

VII. FHWA's Proposal

The FHWA is proposing to revise 49 CFR 391.41(b)(3) by eliminating the blanket prohibition against insulin-using diabetics driving CMVs in interstate commerce. Insulin-using diabetics who have had no severe hypoglycemic reaction resulting in loss of consciousness or seizure during the last five years could be found to be qualified to operate a CMV in interstate commerce. These insulin-using diabetics, if found to be qualified, would be permitted to operate CMVs, other than passenger carrying CMVs and CMVs laden with hazardous materials that require placarding, provided certain medical and operational conditions are met.

Those insulin-using drivers found to be qualified to operate a CMV would, among other things, be required to return to the driver's normal work reporting location at the end of each work day. Careful glucose monitoring, proper nutrition (i.e., types of food, quantities, and timing of eating), exercise, managing stress, and obtaining adequate rest are important factors in managing a diabetic condition. Establishing a daily routine with these factors in mind facilitates successful management of diabetes. The FHWA believes that insulin-using drivers can better establish a daily routine and thus more successfully manage their disease if they return home each day.

The FHWA has incorporated much of the ADA's proposal discussed above. In addition, the FHWA drew upon the recommendations of the participants of the 1988 Diabetes Conference. Section 391.41(b)(3) of the FMCSRs would provide that a person is medically qualified to drive certain CMVs if that person has no established medical history or clinical diagnosis of diabetes mellitus likely to interfere with his or her ability to safely operate a commercial motor vehicle. This proposal is intended to make the diabetes standard more like the standards now used in determining whether persons with established medical histories or clinical diagnoses of cardiovascular disease (§ 391.41(b)(4)), respiratory dysfunction (§ 391.41(b)(5)), high blood pressure (§ 391.41(b)(6)), or rheumatic, arthritic, or vascular diseases (§ 391.41(b)(7)) are qualified to drive a CMV.

The proposal is structured in three distinct steps. They are (1) prequalification, (2) medical evaluation, and (3) operational conditions. The FHWA believes these steps will provide a procedure for individual medical assessments of an insulin-using person's ability to safely operate a CMV while ensuring such drivers do not pose any greater safety risk than does the general driving population.

Under this proposal, a driver with an established medical history or clinical diagnosis of diabetes mellitus requiring insulin for control would have to be evaluated by a board-certified endocrinologist to determine whether a person's medical condition would likely interfere with the person's ability to safety operate a CMV. The FHWA is not proposing at this time to require a board-certified endocrinologist to physically examine an insulin-using driver applicant in all cases. A driver applicant who is examined by a physician who is not a board-certified endocrinologist and who determines that the applicant has diabetes requiring insulin for control must consult with a board-certified endocrinologist. In such a case, the insulin-using driver applicant could be certified as medically fit by the examining physician, but only after documented consultation with a board-certified endocrinologist. In order to provide an adequate basis for an individual medical determination, an insulin-using driver applicant would be required to submit the following information to the examining physician and/or an endocrinologist (through an examining physician, if the examining physician is not a board-certified endocrinologist):

1. A complete medical history, including all hospitalization reports, consultation notes for diagnostic examinations, special studies, followup reports, family history of diabetes, etc. This information will aid the examining physician and/or endocrinologist in determining the person's prognosis and to determine whether the person is qualified.

2. As complete driver's record as reported by the State licensing agency which issued the person a driving license and all information regarding any motor vehicle accidents resulting in personal injury or property damage. Such information would potentially give the examining physician and/or endocrinologist an insight into what effect, if any, the disease has had on the person's operation of a motor vehicle.

3. Written authorization to permit an examining physician, board-certified endocrinologist and the FHWA to obtain relevant information from third parties.

4. Provide any additional information requested by the examining physician and/or endocrinologist and submit to any relevant medical diagnostic examinations.

The proposed diabetes standard would expressly provide a basis for a detailed evaluation process which must be utilized by an examining physician and/or endocrinologist to determine the person's qualifications using the above-reference information. The examining physician and/or endocrinologist would consider, as a minimum, the results of the below listed five requirements before certifying that a person is medically qualified:

1. Fasting blood/serum studies, complete blood count and urinalysis, three readings of glycosiated hemoglobin Hb A_{1c} concentration during the last 6 months, resting electrocardiogram, elevated blood pressure, medication for hypertension, any evidence of cardiovascular abnormality and possibly a stress test.

2. Opthalmological confirmation of absence of retinal disease, preferably by a retinal specialist performing a dilated eye examination.

3. Examinations and tests to detect any peripheral neuropathy or circulatory deficiencies of the extremities, when symptomatic.

4. A detailed report of insulin dosages and types, diet utilized for control and any significant life-style factors such as smoking, alcohol use, and other medications or drugs taken.

5. Results of a maximal exercise stress test for all persons over the age of 40.

A board-certified endocrinologist shall (1) verify that the person has been educated in diabetes and its control and has been thoroughly informed of and understands the disease monitoring and management procedures and what actions should be followed if complications arise; (2) evaluate whether the person has the ability and willingness to properly monitor and manage their diabetes; and (3) determine whether the person's diabetes will adversely affect the person's ability to safely operate a CMV.

Following the findings and determination concerning an insulin-using driver applicant's qualifications to operate a commercial motor vehicle in interstate commerce by a board-certified endocrinologist, the endocrinologist must complete a report to the examining physician. The examining physician would then determine whether the applicant is qualified under all the requirements of § 391.41(b).

Finally, it will be incumbent upon the driver to ensure that the examining physician who certifies that the driver is qualified under the rules, forwards a copy of that certification (including the examining physician's address) and supporting documents (e.g., completed and signed physical examination form, endocrinologist's consultation report, etc.) to the FHWA's Office of Motor Carrier Standards, Washington, D.C. This information will enable the agency to determine the exact insulin-using driver population operating CMV's. Further, the FHWA will be able to obtain data about this population that could be used as a basis for future rulemaking action.

Section 391.43, Medical examination; certificate of physical examination, would be amended to require an examining physician to indicate on the physical examination form and medical examiner's certificate that the driver is an insulin-using diabetic, if such is the case.

Individuals found qualified to drive under this new standard, would be required to:

1. Submit copies of properly completed medical certificates to the FHWA.

2. Undergo a complete medical reevaluation every six months. This would require the driver to submit any new data on the driver's medical condition, driving record and accident involvement to the examining physician and the endocrinologist who originally made the determination that the driver was qualified to drive a commercial motor vehicle in interstate commerce. Use of a new examining physician or new endocrinologist would require the insulin-using driver to follow the procedures set forth for a new applicant.

3. Carry, use and record the readings from a portable blood glucose monitoring device (one hour prior to and approximately every four hours while driving). Such monitoring is necessary to aid the driver in detecting changes in blood-glucose levels so that the driver can take corrective action. Make records of whole blood glucose concentrations available to Federal or State enforcement personnel upon request.

4. Carry and use insulin whenever necessary. The driver must also have available in the vehicle syringes (including needles) or a pump, as appropriate.

5. Carry and use, as necessary, a source of rapidly absorbable glucose.

6. The driver's authorization to drive would be limited to exclude the driving of passenger carrying and hazardous materials laden vehicles.

7. Return to the driver's normal work reporting location each work day.

The FHWA requests comments that specifically address the conditions set forth above. Further, we are praticularly interested in receiving responses to the following questions.

(1) How may an examining physician be assured that an insulin-using diabetic driver applicant, who has had a severe hypoglycemic reaction or seizure during the last five years, is identified?

(2) Could this information be obtained through a reliable third party?

(3) Is there a medical procedure to identify such a person?

(4) Are the proposed conditions too stringent or not stringent enough?

(5) Will the proposed conditions result in an undue hardship to any individual?

(6) Should other conditions be added?

While the FHWA believes that a person found qualified in accordance with the procedures spelled out in this proposal will not pose an unacceptable risk to public safety, certain limitations are proposed until more experience is obtained with these drivers. These drivers will not be permitted to operate passenger carrying or hazardous materials laden vehicles. These limitations are the same as those originally imposed on limb-handicapped drivers. While these limitations were eventually deleted from the limb-handicapped driver waiver program based on experience, the FHWA believes that the additional risks involved in passenger and hazardous materials transportation should be avoided by insulin-using diabetics at this time.

VIII. Role of the Examining Physician

The FHWA's proposal highlights the role of the examining physician in determining a person's medical qualifications to safely operate a CMV. The success of this proposal, should it be adopted, will depend in large measure on individual determinations made by examining physicians, in consultation with board-certified endocrinologists.

As the FHWA has noted in another context, "The FHWA believes that a medical examiner who is familiar with the Federal Motor Carrier Safety Regulations and the nature of the functions performed by a commercial motor vehicle driver is best qualified to determine whether a person is medically fit to operate a commercial motor vehicle * * *" 55 FR 3546, at 3551 (1990) (controlled substances testing; interim final rule). The FHWA has also stated that an examining physician "may select the diagnostic tests which will, in the doctor's opinion, enable the doctor to make an informed judgment regarding the driver's qualifications * * *" 53 FR 7200 (1988) (NPRM). Finally, the FHWA's regulations provide that if there is a conflict in the opinion of two or more physicians as to a person's qualification to drive, the person or a motor carrier may seek a resolution of that conflict and a determination of the person's qualification to drive a commercial motor vehicle by the FHWA under the procedure set forth in 49 CFR 391.47.

This proposal further builds on the historic role of examining physicians in determining driver's qualifications. In doing so, the FHWA has attempted to set forth more detailed guidelines which examining physicians will be required to follow. The agency believes that these more detailed guidelines are particularly warranted because of the safety sensitive nature of this issue (i.e., the ability of diabetic persons, especially those requiring the use of insulin to control their disease, to safely operate commercial motor vehicles) and its complexity.

The FHWA has been concerned for some time about the medical standards it has adopted and from which the FHWA has not granted individual waivers. These standards have been adopted primarily to enhance the safety of the traveling public. This remains the FHWA's paramount concern. However, the FHWA is also keenly aware of the hardship such rules impose on individuals who fall into such a class. The FHWA believes that it is responsible for assuring itself that its standards are soundly based on current medical and technical knowledge, and that no person is deprived of an opportunity to choose a certain kind of work unless that person is individually unqualified or belongs to a group which demonstrably poses an adverse risk to public safety and who cannot be evaluated individually.

The FHWA has rejected the ADA's proposal for agency granted waivers because of it's limited resources. The agency proposes to continue to rely on examining physicians selected by motor

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carriers or by drivers or driver-applicants. However, the FHWA is well aware of the problem of drivers being certified as qualified to drive by physicians who are unaware of the driver's complete medical histories, the physical and mental demands of the driving positions which the drivers seek, or the regulatory standards adopted by the FHWA and applicable to the drivers. In its administration of the motor carrier safety program, the FHWA has encountered numerous instances of each of these problems. For clarity and uniformity, the FHWA is considering developing and requiring strict adherence by examining physicians to such detailed examination guidelines. The FHWA intends to issue a separate rulemaking document which will address, among other things, the medical criteria which should or must be followed by examining physicians in determining driver qualifications, the taking and recording of more detailed medical histories, more complete documentation of the driver's medical condition and the demands of the particular driving position sought, recommended or mandatory consultation with medical specialists, and possible limitations on a driver's privilege to operate a commercial motor vehicle (e.g., further time or distance limitations). Since each of these issues is implicated in the current rulemaking, commenters are invited to address these issues generally at this time, as well as specifically as herein proposed.

IX. Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant action under the Department of Transportation's regulatory policies and procedures. Based on the information available to the FHWA at this time, this action, if promulgated, will not have a significant economic impact on a substantial number of small entities. It is anticipated that the regulatory impact of this rulemaking, if any, will be minimal since we are dealing with a relatively small population of approximately 25,000 insulin-using diabetics. Accordingly, a full regulatory evaluation has not been prepared.

For the foregoing reasons, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Information collection requirements contained in this proposal (Secs. 391.41 and 391.43) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2125-0080.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 391

Driver qualifications—diabetic standard, Highway safety, Highways and roads, Motor carriers, Reporting and Recordkeeping Requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety)

Issued on: September 28, 1990.

T.D. Larson,

Administrator.

PART 391—[AMENDED]

In view of the foregoing the FHWA proposes to amend chapter III, subchapter B of title 49 of the Code of Federal Regulations as follows:

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504 and 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. In § 391.41, paragraph (b) is amended by revising the introductory text, and by revising paragraph (b)(3) to read as follows:

§ 391.41 Physical Qualifications for Drivers.

* * * * *

(b) A person is physically qualified to drive a commercial motor vehicle if that person—

* * * * *

(3)(i) Has no established medical history or clinical diagnosis of diabetes mellitus likely to interfere with that person's ability to safely operate a commercial motor vehicle and provided a person who requires insulin for control of the disease—

(A) Has been examined by a board-certified endocrinologist under the medical evaluation procedures in paragraph (b)(3)(ii) of this section;

(B) Has within the last five years:

(*1*) An absence of a hypoglycemic reaction that resulted in loss of consciousness or seizure;

(*2*) An absence of seizure or coma without antecedent prodromal symptoms of hypoglycemia; and

(*3*) An absence of recurrent diabetic ketoacidosis or hyperosmolar nonketotic coma;

(C) May not operate a commercial motor vehicle designed to transport more than 15 passengers, including the driver, or a commercial motor vehicle transporting hazardous materials in a quantity requiring placarding under the Hazardous Materials Regulations, 49 CFR parts 171-179.

(D) Returns to the driver's normal work reporting location each work day; and

(E) Complies with the conditions set forth in paragraph (b)(3)(iii) of this section.

(ii)(A) Provides the following information, as a minimum, to the examining physician performing that person's medical examination in accordance with § 391.43 of this part and to a board-certified endocrinologist, if the examining physician is not a board-certified endocrinologist:

(*1*) A complete medical history (including all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, family history of diabetes, etc);

(*2*) A complete driver's record as reported by the state licensing agency which issued the person a driving license;

(*3*) Complete information regarding any automobile or other accidents whether resulting in personal injury or property damage; and

(*4*) A written, signed authorization to permit an examining physician and a board-certified endocrinologist and the FHWA to obtain information from employers, work associates, physicians, or other health care and diabetes support personnel relevant to the person's medical condition.

(B) A complete medical evaluation by a physician and a board-certified endocrinologist, if the examining physician is not a board-certified endocrinologist, concerning the applicant's medical history, current status and prognosis both short (2 to 5 years) and long term (10 to 20 years). A board-certified endocrinologist shall assess the results of the following procedures prior to determining whether the person is qualified to operate a commercial motor vehicle:

(*1*) Fasting blood/serum studies (glucose, cholesterol, HDL, triglycerides), complete blood count and urinalysis and three readings of glycosolated hemoglobin Hb A_{1c} concentration (and lab reference confirmation) during the last six months (six months prior and current); resting electrocardiogram (ECG); blood pressure reading (sitting) at rest on at least two occasions, a.m. and p.m., approximately one week apart. Elevated blood pressure, medication for hypertension, or other evidence of any cardiovascular abnormality will require a maximal concentration stress test ECG study.

(*2*) Ophthalmological confirmation of absence of retinal disease, preferably by a retinal specialist performing a dilated eye examination.

(*3*) Examination and tests to detect any peripheral neuropathy, or circulatory deficiencies of the extremities, when symptomatic.

(*4*) A detailed report of insulin dosages and types, diet utilized for control and any significant life-style factors such as smoking, alcohol use, and other medications or drugs taken.

(*5*) The results of a maximal exercise stress test for all persons over the age of 40.

(C) The board-certified endocrinologist shall:

(*1*) Certify that the person has been educated in diabetes and its control and thoroughly informed of and understands the procedures which must be followed to monitor and manage his/her diabetes and what actions should be followed if complications arise.

(*2*) Ascertain that the person has the ability and willingness to properly monitor and manage his/her diabetes, including adhering to the provision of paragraph (b)(3)(iii) of this section.

(*3*) Determine that the person's diabetes will not adversely affect the person's ability to safely operate a commercial motor vehicle.

(D) The examining physician's determination of whether the person is medically qualified to operate a commercial motor vehicle shall be based on the physician's personal examination of the individual and in consultation with a board-certified endocrinologist.

(E) The driver shall ensure that the examining physician who certifies the driver is qualified under the rules of this part forwards a copy of the examining physician's certification (including the examining physician's address) and copies of the documents specified in paragraph (b)(3)(ii) of this section to the FHWA, Office of Motor Carrier Standards, 400 Seventh Street, SW., Washington, DC 20590 as soon as possible upon receipt of this document. A copy of the certification shall be carried with the driver at all times while operating a commercial motor vehicle.

(iii) The following monitoring and reevaluation procedures shall be performed as a minimum by an insulin-using diabetic who drives a commercial motor vehicle. These procedures may be supplemented with additional procedures and/or operational conditions by the examining physician.

(A) *One hour prior to driving and approximately every four hours while driving*—Monitor (test) driver's blood glucose concentration and record those concentrations by hand or electronically;

(B) *Upon request*—make records of whole blood glucose concentrations available to Federal or State enforcement personnel;

(C) *Every 6 months*—Submit to a complete medical reevaluation, including readings of glycosolated hemoglobin Hb A_{1c} by the examining physician and/or the specialist in endocrinology who originally made the determination that the driver was qualified to drive a commercial motor vehicle in interstate commerce. This requires the driver to submit any new data on the driver's medical condition, driving record and accident involvement. Use of a new examining physician or new endocrinologist will require the insulin-using driver to follow the procedures set forth for a new applicant;

(D) *Annually*—confirmation by a specialist in endocrinology that the insulin-using diabetic can demonstrate the accuracy of blood glucose concentrations, i.e., within 25 percent of actual concentration; and

(E) *Annually*—Ophthalmological confirmation of absence of retinal disease.

(F) The driver must carry necessary supplies and materials on board the vehicle and test his/her "blood glucose concentration" within an hour before driving and approximately every 4 hours while driving and take appropriate self-treatment measures when necessary. While driving, should circumstances preclude a particular test, intake of an appropriate snack or other source of glucose is an acceptable alternative. However, no two consecutive tests may be replaced by the ingestion of glucose.

(G) Supplies required include as a minimum: Blood sampling lancet: personal blood glucose monitor and strips; a source of rapidly absorbable glucose; insulin; and syringes or pump, as appropriate. All disposable materials must be within their expiration dates.

3. In § 391.43, paragraph (d) is amended by modifying the medical examination form to add a new item "Diabetes" between the lines beginning with "[ ] Controlled substances test NOT performed" and "General comments;" and paragraph (f), Medical Examiner's Certificate, is amended by adding a new item "Insulin-using diabetic" immediately following the line "[ ] Qualified only when wearing corrective lenses." The amendments read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(d) * * *

Examination to Determine Physical Condition of Drivers

* * * * *

Physical examination

* * * * *

Diabetes

[ ] Insulin-using diabetic.

* * * * *

(f) * * *

Medical Examiner's Certificate

* * * * *

[ ] Insulin-using diabetic.

* * * * *

[FR Doc. 90-23593 Filed 10-4-90; 8:45 am]

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Part V

The President

Proclamation 6193—Atlanta: Olympic Host City Day, 1990

Proclamation 6194—German-American Day, 1990

Proclamation 6195—Columbus Day, 1990

Federal Register
Vol. 55, No. 194
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Presidential Documents

Title 3—

Proclamation 6193 of October 3, 1990

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Federal Register
Vol. 55, No. 194
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Presidential Documents

Title 3—

The President

Proclamation 6193 of October 3, 1990

Atlanta: Olympic Host City Day, 1990

By the President of the United States of America

A Proclamation

The selection of the City of Atlanta, Georgia, as host city for the Games of the XXVIth Olympiad in 1996 gives all Americans reason to celebrate. More than a tribute to this beautiful, historic city and the hospitality of its people, the International Olympic Committee's decision to award the 1996 Games to Atlanta is a resounding vote of confidence in the United States and the future of the modern Olympic Games.

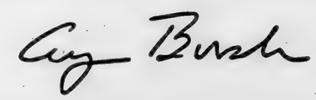
The 1996 Games will mark the 100th anniversary of the beginning of the modern Olympic era in Athens, where Baron Pierre de Coubertin organized the first modern Games. Hosting these historic contests is, therefore, a very great honor. It is also a singularly important responsibility. Nevertheless, the people of Atlanta and their fellow citizens throughout Georgia are certain to prove more than equal to the task.

Competing against other impressive candidate cities for the privilege of hosting the 1996 Games, the people of Atlanta and their elected representatives have worked together with remarkable unity and enthusiasm. In so doing, they have successfully highlighted the many amenities Atlanta has to offer Olympic athlete, official, and spectator alike. They have also demonstrated the vitality and warmth that are hallmarks of this fine southern American city. Most important, however, by celebrating our Nation's rich ethnic diversity and the racial harmony that has been achieved in the birthplace of the American civil rights movement and the home of the late Reverend Dr. Martin Luther King, Jr., the people of Atlanta have provided a superlative example of the Olympic spirit at work.

In 1996, as we commemorate the 100th anniversary of the first modern Olympic Games, we will also look forward to the continued advancement of international understanding and goodwill through world sporting competition. The thriving capital of Georgia is a most fitting host for the centennial Games of the modern Olympic era, and all Americans take pride in the honor that has been rightfully bestowed upon our fellow citizens in Atlanta.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Wednesday, October 3, 1990, as "Atlanta: Olympic Host City Day." I invite all Americans to observe this day by rededicating themselves to the Olympic ideal.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-23838
Filed 10-03-90; 4:40 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Oct. 3, 1990, on signing Proclamation 6193. see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 40).

Presidential Documents

Proclamation 6194 of October 3, 1990

German-American Day, 1990

By the President of the United States of America

A Proclamation

On October 6, 1683, the first German immigrants to America landed near Philadelphia. This small group of men, women, and children had sailed across the vast, treacherous waters of the Atlantic in search of religious freedom and a more prosperous future in the New World. Seven million other Germans eventually followed in their wake. These courageous, hardworking individuals and their descendants have helped to write the story of the United States.

The rich heritage we celebrate each year on German-American Day consists of more than cultural, familial, and historic ties, however; it is also rooted in shared values and aspirations. Ever since General Friedrich von Steuben stood on the front lines in this Nation's struggle for liberty and independence, German immigrants and their descendants have demonstrated—through word, deed, and sacrifice—their strong devotion to democratic ideals.

German-American Day, 1990, is like none before it, for this year's commemoration coincides with the achievement of the goal Americans and Germans have long shared: a united, democratic, and sovereign Germany. During the past year, the German people have torn down the artificial barriers that, for too long, cruelly divided their country. The Berlin Wall, which once stood as a bleak and even deadly symbol of division, now lays in ruin—a fitting reminder of the discredited regime that had directed its construction 29 years ago. Today Germany is at peace with its neighbors and, on this day of German unity, at peace with itself.

The achievement of German unity will also give hope to others, particularly the Baltic peoples, that a peaceful but determined struggle for national self-determination can succeed even over seemingly insurmountable obstacles. The United States remains true to its policy of nonrecognition of the annexation of the Baltic states, just as we never wavered in our support for German unity even through the darkest hours of the Cold War.

Since the end of World War II, the American people have stood shoulder to shoulder with the people of the Federal Republic of Germany (FRG) in efforts to secure our freedom and to advance our common interests. The spirit of friendship and cooperation between the people of the United States and the FRG is reflected in the wide range of exchange programs and other contacts we have developed over the years.

Now, from this day forward, a new, united Germany will be our partner in leadership. We Americans, and above all, those of German descent, are proud of the role we have played in support of German unity. We rejoice with the German people on this day and celebrate the centuries-old relationship between the German and American peoples.

The Congress, by House Joint Resolution 469, has designated October 6, 1990, as "German-American Day" and has authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 6, 1990, as German-American Day. I call upon the people of the United States to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of

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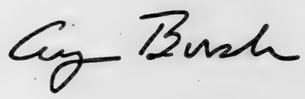
NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 6, 1990, as German-American Day. I call upon the people of the United States to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-23830
Filed 10-03-90; 4:45 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Oct. 3, 1990, on signing Proclamation 6194, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 40).

Presidential Documents

Proclamation 6195 of October 4, 1990

Columbus Day, 1990

By the President of the United States of America

A Proclamation

Christopher Columbus' epic voyage nearly half a millennium ago marked more than the triumph of a daring and determined navigator over skeptics and naysayers. It also marked a turning point in human history.

In 1492, when the crews of the *Niña*, *Pinta*, and *Santa Maria* raised sail and set out toward the western horizon, few of their fellow Europeans saw anything but folly in the plans of Columbus. Still fewer could have envisioned the magnificent New World that he would soon discover across the vast, uncharted waters of the Atlantic. Seizing an opportunity to pursue his dreams and theories and to expand the realm of the known, Christopher Columbus not only introduced European culture and technology to the native peoples of the Western Hemisphere but also obtained for his countrymen an alluring glimpse of their rich lands and exotic customs. In so doing, he began a long, fruitful exchange of knowledge, resources, and traditions between the Old World and the New. Through his difficult yet fateful journey across the Atlantic, the bold Admiral of the Ocean Seas also demonstrated for all posterity the power of faith, courage, and individual initiative.

The annual observance of Columbus Day is a time of celebration for all those who treasure the spirit of learning and discovery. However, this occasion holds special meaning for Americans of Italian and Spanish descent. Christopher Columbus was the first of many Italians to chart a course for the New World and to exchange with its peoples a wealth of skills and experience. As we commemorate the seminal journey of this brave son of Genoa, a journey made possible by the generous support of the Spanish monarchs Ferdinand V and Isabella I, we are also mindful of the many contributions that men and women of Spanish descent have made to the social, cultural, and economic development of the Americas.

In just 2 years we will mark the 500th anniversary of Christopher Columbus' arrival in the New World. Members of the Christopher Columbus Quincentenary Jubilee Commission—a body established by the Congress in 1984 and assisted by representatives from Spain, Italy, and many nations of this hemisphere—are planning an exciting series of educational and commemorative events to celebrate this milestone. These events, to be held throughout the United States and around the world, will enable participants to learn more about the master mariner who defied the odds and opened a new chapter in the history of mankind. On this Columbus Day, as we look forward to the Quincentenary Jubilee, let us also celebrate the timeless spirit of learning, exploration, and discovery that has so enriched us all.

In tribute to Christopher Columbus, the Congress of the United States, by joint resolution of April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

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NOW THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 8, 1990, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-23679
Filed 10-4-90; 11:08 am]
Billing code 3195-01-M

federal register

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October 5, 1990

Part VI

Department of Energy

Environmental Impact Statement and Public Scoping Meetings; Lawrence Livermore and Sandia National Laboratories, CA; Notice of Intent

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and To Conduct Public Scoping Meetings; Lawrence Livermore National Laboratory and Sandia National Laboratory, Livermore, CA

AGENCY: Department of Energy (DOE)

Susan Brechbill, Acting Special Assistant to the Manager for EIS, San Francisco Operations Office, U.S. Department of Energy, 1333 Broadway, Oakland, CA 94612, (415) 273-4359.

Requests to speak at the scoping meetings and requests for further information should be addressed to:

decision on renewal of the contract between the University and DOE for operation of LLNL. DOE, in coordination with UC, has decided that, consistent with the provisions of the Council on Environmental Quality's regulations regarding elimination of duplication with state and local procedures (40 CFR 1506.2), its EIS will be prepared in

3. Shutdown and decommissioning.

4. Scaling down those operations having the greatest environmental impact.

5. Use of alternative technologies or management strategies having reduced environmental impacts.

The potential for eventual total or

9. Impacts to threatened or endangered species.

10. Impacts to historic and

chemical wastes; excess property disposition; salvage and reclamation; waste disposal; and permitted releases to municipal sewage facilities, surface water, and air.

Written comments will be considered and given equal weight with oral comments. Written comments, or documents submitted in support of or in place of oral statements presented at the public scoping meeting, should be postmarked by November 30, 1990, to assure consideration in the preparation of the EIS/EIR. Comments postmarked

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DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and To Conduct Public Scoping Meetings; Lawrence Livermore National Laboratory and Sandia National Laboratory, Livermore, CA

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) and to hold public scoping meetings.

SUMMARY: In accordance with the regulations of the Council on Environmental Quality at 40 CFR 1501.7, DOE announces its intent to prepare an EIS and to conduct public scoping meetings. The proposed action is the continued operation, including near-term proposed projects, of Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratory, Livermore (SNLL), in the vicinity of Livermore in Alameda County, and LLNL's Site 300, between Livermore and Tracy in Alameda and San Joaquin Counties, California. This EIS will be prepared in conjunction with the preparation of an Environmental Impact Report (EIR) by the University of California (UC) under provisions of the California Environmental Quality Act (CEQA), resulting in one document entitled an EIS/EIR.

DATES: The public scoping meetings will be held at 10 a.m. and again at 7 p.m. on Thursday, November 15, 1990, at the Holiday Inn, 720 Las Flores Road, Livermore, California.

Requests to present oral comments at the public scoping meetings should be received by Carol Powell at the address below by the close of business on Monday, November 12, 1990. Requests to speak may also be made during registration for the meetings.

Written comments, or documents submitted in support of or in place of oral statements presented at the public scoping meetings, should be postmarked by November 30, 1990, to assure consideration in the preparation of the EIS/EIR. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Written comments should be addressed to:

Capt. Jay G. MacDonald, Deputy Director, Office of the Associate Deputy Assistant Secretary for Safety and Facility Operations (DP-20.2), Office of Defense Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 353-5277, or

Susan Brechbill, Acting Special Assistant to the Manager for EIS, San Francisco Operations Office, U.S. Department of Energy, 1333 Broadway, Oakland, CA 94612, (415) 273-4359.

Requests to speak at the scoping meetings and requests for further information should be addressed to: Carol Powell, Public Information Officer, San Francisco Operations Office, U.S. Department of Energy, 1333 Broadway, Oakland, CA 94612, (415) 273-6398.

For general information on the NEPA process contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600.

SUPPLEMENTARY INFORMATION:

Background: On February 5, 1990, the Secretary of Energy issued Secretary of Energy Notice 15-90, which directed the development of an agency policy for preparation and updating of site-wide EISs. This EIS is being prepared in response to that policy and to the recent findings from DOE's independent environmental compliance assessment ("tiger team") that the existing 1982 site-wide EIS should be updated. This EIS will cover all current operations, including anticipated near-term (i.e., within 5 to 10 years) proposed projects, at LLNL and SNLL in Alameda County and LLNL's Site 300 in Alameda and San Joaquin Counties, California.

LLNL and SNLL have been in operation for over 30 years conducting nuclear weapons design, research and development. Research and development is also conducted in a number of other areas including magnetic fusion, biomedical studies, laser fusion, laser isotope separation, conventional munitions, energy technologies, strategic defense, and material development.

LLNL and SNLL are adjacent sites about 40 miles (65 kilometers) east of San Francisco in the Livermore Valley, adjacent to the city of Livermore. The sites occupy a combined area of 1,235 acres. LLNL's Site 300 is a nonnuclear high-explosive test site located about 12 miles (20 km) southeast of Livermore between Livermore and Tracy, California.

The site-wide EIS for operations at these facilities was published in 1982. Advances in the technologies employed at the laboratories, changes in environmental standards, and increased public expectations regarding environmental compliance indicate the need to review the environmental impacts of operations.

UC, operator of LLNL, will prepare an EIR under provisions of CEQA prior to a decision on renewal of the contract between the University and DOE for operation of LLNL. DOE, in coordination with UC, has decided that, consistent with the provisions of the Council on Environmental Quality's regulations regarding elimination of duplication with state and local procedures (40 CFR 1506.2), its EIS will be prepared in conjunction with the preparation of the EIR, resulting in one document entitled an EIS/EIR. Public involvement in the scoping, review, and comment process will be handled as one process serving both statutes. DOE and UC will jointly hold the public meetings.

DOE and UC intend to competitively select a contractor to assist in public hearings, literature review, analysis and the preparation of the draft and final EIS/EIR. The contractor will be jointly selected and managed by the DOE and UC. The contractual document will be a contract between UC and the competitively selected contractor. Contractor selection is planned for the fall of 1990.

Interested agencies, organizations, and members of the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of this EIS/EIR are invited to do so and are encouraged to attend the public scoping meetings which will be held on November 15, 1990, at the Holiday Inn in Livermore, California.

Parties who desire to present oral comments at the scoping meetings should provide advance notice if possible to the DOE as described below under "Comments and Scoping Meetings." Upon completion of the draft EIS/EIR, its availability will be announced in the **Federal Register** and local media, at which time public comments will be solicited on the draft EIS/EIR.

Preliminary Definition of Alternatives: The EIS/EIR will identify reasonable alternatives to the proposed action and evaluate and compare the environmental impacts to be expected from each reasonable alternative. As background for public comments and suggestions concerning reasonable alternatives to be considered, preliminary alternatives have been identified as follows.

1. *No action:* Continued operation with no new proposed projects.

2. *Proposed action:* Continued operation and near-term (within 5 to 10 years) proposed projects (i.e., those proposed projects that can be described with sufficient specificity that their potential environmental impacts can be addressed in the EIS/EIR).

3. Shutdown and decommissioning.

4. Scaling down those operations having the greatest environmental impact.

5. Use of alternative technologies or management strategies having reduced environmental impacts.

The potential for eventual total or partial relocation of weapons functions now performed at LLNL and SNLL will be examined in a DOE programmatic EIS covering reconfiguration (modernization) of the DOE nuclear weapons complex and will not be included in this EIS/EIR; the Notice of Intent to prepare the programmatic EIS is scheduled to be issued in late 1990. Issues concerning Department-wide long-term environmental restoration and waste management will be examined in a separate DOE programmatic EIS and will not be included in this EIS/EIR; the Notice of Intent for that programmatic EIS is scheduled to be issued shortly. Additional NEPA reviews for discrete projects at LLNL and SNLL may be tiered from this site-wide EIS/EIR.

Preliminary Identification of Environmental Issues: The purpose of this notice is to solicit comments and suggestions for consideration in preparation of the EIS/EIR. As background for public comment and suggestions, it is useful to list some of the environmental issues identified in he 1982 EIS and through subsequent activities. This list is not intended to be all inclusive nor to imply any predetermination of impacts or significant issues. Additional issues for analysis may be indentified as a result of public comment.

1. Loss of potential agricultural use of land and the increasing urbanization of the local area.

2. Sociological impacts on the local communities, such as demands for housing, schools and local businesses.

3. Consumption of natural resources and energy including water, natural gas, and electrical power.

4. Radiological impacts from operations, including radiation exposures from radiation-producing equipment and radioactive materials.

5. Risks to employees from long-term exposure to radioactivity and hazardous chemicals.

6. Impacts from releases to air, water, and soil.

7. Impact from environmental restoration efforts to correct problems created by past releases to the environment, including groundwater and soil contamination.

8. Impacts from waste management, including radioactive, sanitary, and chemical wastes; excess property disposition; salvage and reclamation; waste disposal; and permitted releases to municipal sewage facilities, surface water, and air.

9. Impacts to threatened or endangered species.

10. Impacts to historic and archaeological sites.

11. Analyses of maximum credible accidents, including tritium releases, nuclear criticality accidents, spills of radioactive materials, fire, and chemical releases.

12. Impacts of potential releases from seismic, climatological or other natural disasters.

13. Impacts from transportation of radioactive materials to and from the laboratories.

14. Impacts from traffic flow in the vicinity of the laboratories.

Mitigation Measures: The environmental impacts that result from the continued operation of the laboratories will depend on the level of operations and the mitigation activities applied to each source of impacts. Mitigation measures will be discussed in the EIS/EIR and will relate to the potential impacts identified.

Comments and Scoping Meetings: The purpose of the scoping period and meetings is to obtain information from interested parties on the issues that the EIS/EIR should address. The scoping meetings will be conducted informally; however, a transcript of the meetings will be prepared. Parties who desire to present oral comments at the meetings should provide advance notice to Carol Powell at the above address by the close of business on Monday, November 12, 1990, if possible.

The DOE and UC will designate an individual to preside over these meetings. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meetings. Persons who have not submitted a request to speak in advance may register to speak at the scoping meetings, and they will be called on to speak as time permits.

Meetings will begin at the times specified above and will continue until all those present who wish to speak have had an opportunity to do so. Speakers will be allotted time for their oral statements by the presiding officer based on the number of people desiring to make presentations. Speakers may provide in writing for the record further information that cannot be presented within the designated time.

Written comments will be considered and given equal weight with oral comments. Written comments, or documents submitted in support of or in place of oral statements presented at the public scoping meeting, should be postmarked by November 30, 1990, to assure consideration in the preparation of the EIS/EIR. Comments postmarked after the date will be considered to the extent practicable.

To provide the public with background information concerning LLNL and SNLL and the proposed EIS/EIR, collections of appropriate documents will be made available for public review beginning October 5, 1990, during business hours, Monday through Friday, at the DOE Reading Room, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612; at the Livermore Public Library, 1000 S. Livermore Avenue, Livermore, CA 94550; at the Lawrence Livermore National Laboratory Visitor Center, East Entrance, Greenville Road, Livermore, CA 94550; and at the Tracy Public Library, 20 East Eaton Avenue, Tracy, CA 95376. Comments from the scoping meetings and other documents pertinent to the EIS/EIR process will be added from time to time to these collections.

A transcript of the scoping meetings will be made available for inspection and copying, upon request, at the above locations and also at the DOE Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, during business hours, Monday through Friday. Comments will be incorporated into an Implementation Plan for preparation of the EIS/EIR. The Implementation Plan will be a publicly available document.

Draft EIS/EIR Schedule and Availability: The draft EIS/EIR is scheduled for completion by December 1991, at which time its availability will be announced in the **Federal Register** and in local media and public comments will again be solicited.

Those individuals who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the draft EIS/EIR for review and comment when it is issued, should notify the Special Assistant for EIS, San Francisco Operations, Department of Energy, 1333 Broadway, Oakland, CA 94612.

Dated at Washington, DC, this 3rd day of October, 1990.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-23865 Filed 10-4-90; 10:47 am]

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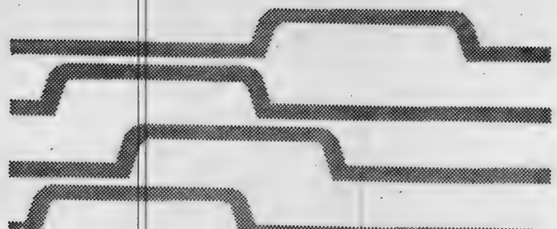

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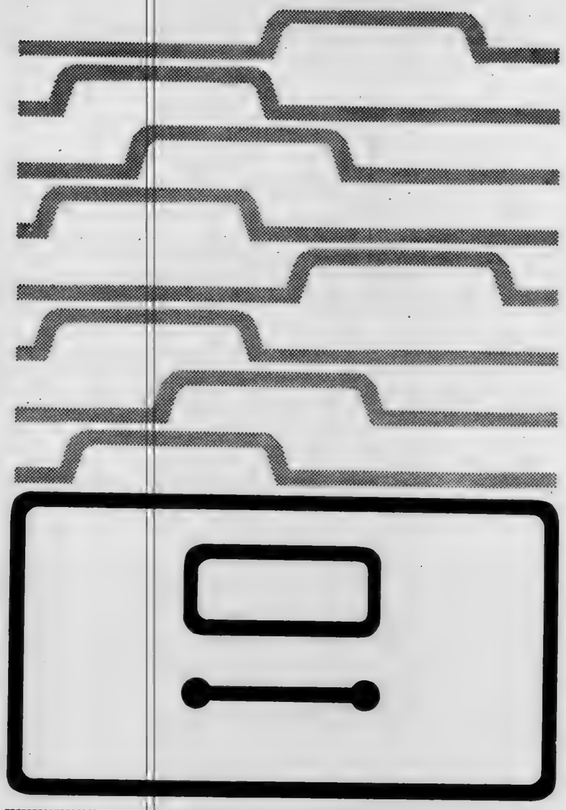
H.R. 2761/Pub. L. 101-404
United Services Organization's 50th Anniversary Commemorative Coin Act. (Oct. 2, 1990; 104 Stat. 875; 3 pages) Price: $1.00

H.R. 5755/Pub. L. 101-405
To extend the temporary increase in the public debt limit. (Oct. 2, 1990; 104 Stat. 878; 1 page) Price: $1.00



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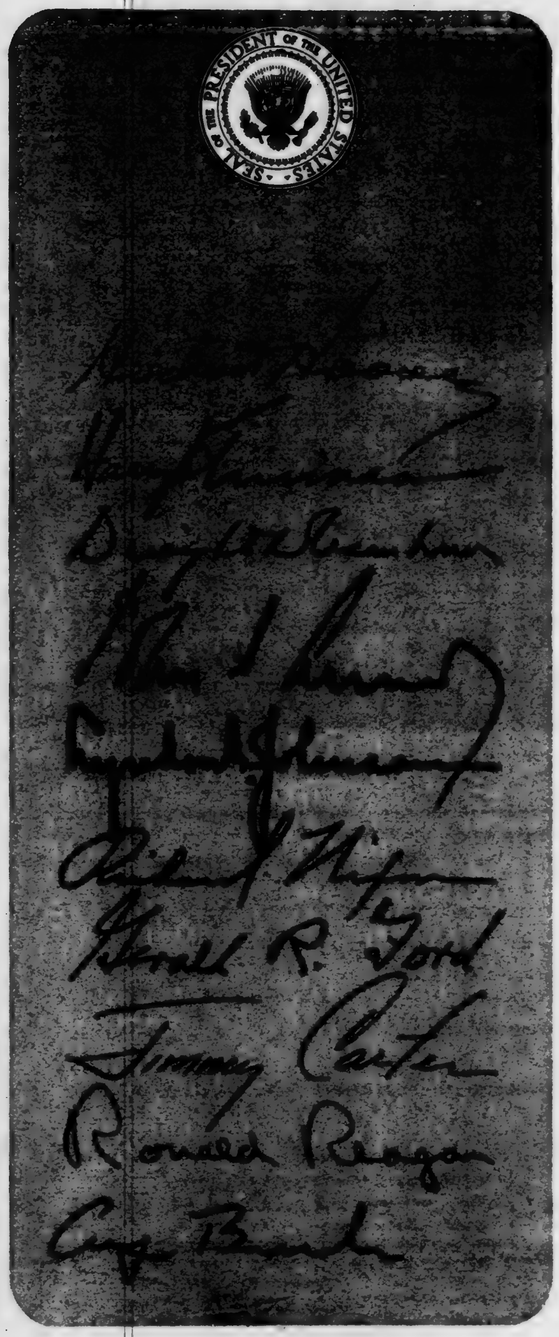

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Rules and Regulations

Federal Register
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Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1631

Disclosure of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Board is issuing final regulations which implement the public information provisions of the Freedom of Information Act, as well as providing procedures for access to information and records under other authorities.

DATES: Final rule effective October 9, 1990.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523-6367, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (the Board) was established by Public Law 99-335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986, 1986 U.S. Code Cong. & Ad. News (100 Stat. 514) (codified principally at 5 U.S.C. 8401 through 8479), as amended by Public Law 99-509, the Omnibus Budget Reconciliation Act of 1986; Public Law 99-556, the Federal Employees' Retirement System Technical Corrections Act of 1986; Public Laws 100-20, 100-43 and 100-202; and Public Law 100-238, the Federal Employees' Retirement System Technical Corrections Act of 1988, to administer the Thrift Savings Plan (TSP) for Federal employees. Regulations of the Board are contained in title 5, CFR chapter VI, parts 1600 through 1699.

The Executive Director of the Board is publishing in part 1631 final regulations governing procedures for processing requests for records under the Freedom of Information Act (5 U.S.C. 552) and other authorities. Initial, interim disclosure regulations were published for comment at 52 FR 17922 (May 13, 1987).

The Board is an independent establishment of the Federal Government located in Washington, DC, and it has no field offices. However, for TSP records the Board does have a recordkeeping responsibility which is performed by interagency agreement or contract and the Federal agency/private contractor may be located outside of the Washington, DC area. The TSP records maintained for the Board by its contractor are subject to these disclosure regulations. At this time, the Board has an interagency agreement for its recordkeeping responsibility with the National Finance Center, Department of Agriculture, New Orleans, Louisiana 70161-1500. Board records which are not TSP account records are housed at the Board's Washington, DC, location.

Comments were received from one Federal agency and one public interest group.

The Federal agency suggested that the Board should define which TSP records are maintained by the Board and which by the employing agency. This definition is more appropriately part of the Privacy Act regulations as TSP participants who need to correct records must know from whom to seek access or correction of specific records. See Board Privacy Act regulation § 1630.11 published elsewhere in today's **Federal Register**. Third party FOIA requests may be made to the Board and are generally resolvable on a generic basis.

The public interest group raised a number of issues. The group noted that interim regulation § 1631.5 (which required that all records originating at another agency would be referred to the originating agency) might be too broad. The regulation has been modified accordingly. The group also noted that § 1631.15 gives non-government submitters an opportunity to comment on release of records they submitted even though no exemption might apply. The regulation has been modified accordingly. In addition, the group perceived that § 1631.16(b) appeared to create an exemption under FOIA for the Privacy Act. This was not intended and § 1631.16(b) has been deleted to avoid such perception. The group further argued that § 1631.11(a)(2) would require Board employees to make determinations as to what is "news," "current events," or "of current interest to the public" in deciding whether a requester is entitled to the benefits enjoyed by a representative of the news media. The Board does not desire to affect any entity's rights; however, the Board has tracked the language adopted by OMB in its definition of the term "representative of the news media" as set forth in its Freedom of Information Act of 1986 Uniform FOIA Fee Schedule and Guidelines at paragraph 6j and the accompanying **"SUPPLEMENTARY INFORMATION"** (52 FR 10012, March 27, 1987). The public interest group's final suggestion was that § 1631.12 appeared to be outdated in light of the 1986 FOIA amendments. The Board has amended the section to accommodate the suggestion.

Other changes to the interim FOIA regulations have been made by the Board.

Section 1631.3 was revised to conform to the Board's current organization of its offices.

Section 1631.4 was revised to clarify that the index to be kept is of the FOIA requests, appeals filed and decided, and Board procedures.

Section 1631.8 was revised to add the statutory authorization to extend the response time beyond 10 workdays provided by 5 U.S.C. 552(a)(B)(i) since the Board utilizes an off-site contractor as recordkeeper.

Section 1631.9(c) was added to set forth that a subsequent letter will be sent to the requester stating that records cannot be found when a preliminary letter to the same effect had earlier been sent.

Section 1631.15 was revised to implement E.O. 12600, which promulgated procedures to notify submitters of records containing commercial information when FOIA requests for those records are received by Federal agencies. The interim FOIA regulations were issued prior to publication of E.O. 12600. Concomitantly, a definition of "submitter" was added as § 1631.1(l).

Finally, there was a fee change in § 1631.11(c). The first $25.00 rather than the first $30.00 will be excused in compliance with 5 U.S.C. 552(a)(4)(A)(iv)(I) (costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee). The change was made because

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the fee excuse was intended to be consistent. See § 1631.14(c).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures relating to the disclosure of records.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1631

Administrative practice and procedure, Freedom of information, and Records.

Dated: September 6, 1990.

Francis X. Cavanaugh,

Executive Director.

Title 5 CFR is amended by revising part 1631 to chapter VI to read as follows:

PART 1631—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

Sec.

1631.1 Definitions.
1631.2 Purpose and scope.
1631.3 Organization and functions.
1631.4 Public reference facilities and current index.
1631.5 Records of other agencies.
1631.6 How to request records—form and content.
1631.7 Initial determination.
1631.8 Prompt response.
1631.9 Responses—form and content.
1631.10 Appeals to the General Counsel from initial denials.
1631.11 Fees to be charged—categories of requesters.
1631.12 Waiver or reduction of fees.
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1631.14 Fee schedule.
1631.15 Information to be disclosed.
1631.16 Exemptions.
1631.17 Deletion of exempted information.
1631.18 Annual report.

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

1631.30 Purpose and scope.
1631.31 Production prohibited unless approved by the Executive Director.
1631.32 Procedure in the event of a demand for disclosure.
1631.33 Procedure in the event of an adverse ruling.

Authority: 5 U.S.C. 552, as amended by Pub. L. 99-502 and Pub. L. 99-570.

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

§ 1631.1 Definitions.

(a) *Board* means the Federal Retirement Thrift Investment Board.

(b) *Agency* means agency as defined in 5 U.S.C. 552(e).

(c) *Executive Director* means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

(d) *FOIA* means Freedom of Information Act, 5 U.S.C. 552, as amended.

(e) *FOIA Officer* means the Board's Director of Administration or his or her designee.

(f) *General Counsel* means the General Counsel of the Federal Retirement Thrift Investment Board.

(g) *Working days* or *workdays* means those days when the Board is open for the conduct of Government business, and does not include Saturdays, Sundays, and Federal holidays.

(h) *Requester* means a person making a FOIA request.

(i) *Submitter* means any person or entity which provides confidential commercial information to the Board. The term includes, but is not limited to, corporations, state governments, and foreign governments.

§ 1631.2 Purpose and scope.

This subpart contains the regulations of the Federal Retirement Thrift Investment Board, implementing 5 U.S.C. 552. The regulations of this subpart describe the procedures by which records may be obtained from all organizational units within the Board and from its recordkeeper. Official records of the Board, except those already published in bulk by the Board, available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. To the extent that it is not prohibited by other laws the Board also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the interest of the Thrift Savings Plan.

§ 1631.3 Organization and functions.

(a) The Federal Retirement Thrift Investment Board was established by the Federal Employees' Retirement System Act of 1986 (Pub. L. 99-335, 5 U.S.C. 8401 *et seq.*). Its primary function is to manage and invest the Thrift Savings Fund for the exclusive benefit of its participants (*e.g.*, participating Federal employees, Federal judges, and Members of Congress). The Board is responsible for investment of the assets of the Thrift Savings Fund and the management of the Thrift Savings Plan. The Board consists of:

(1) The five part-time members who serve on the Board;
(2) The Office of the Executive Director;
(3) The Office of Investments;
(4) The Office of the General Counsel;
(5) The Office of Benefits and Program Analysis;
(6) The Office of Accounting;
(7) The Office of Administration;
(8) The Office of External Affairs;
(9) The Office of Automated Systems; and
(10) The Office of Communications.

(b) The Board has no field organization; however, it provides for its recordkeeping responsibility by contract or interagency agreement. The recordkeeper may be located outside of the Washington, DC area. Thrift Savings Plan records maintained for the Board by its recordkeeper are Board records subject to these regulations. Board offices are presently located at 805 Fifteenth Street, NW., Washington, DC 20005.

§ 1631.4 Public reference facilities and current index.

(a) The Board maintains a public reading area located in Suite 500, 805 Fifteenth Street, NW., Washington, DC. Reading area office hours are from 9:00 A.M. to 5:00 P.M., Monday through Friday. In the reading area, the Board makes available for public inspection and copying all of the material required by 5 U.S.C. 552(a)(2), including all documents published by the Board in the **Federal Register** which are currently in effect.

(b) The FOIA Officer shall maintain an index of Board regulations, directives, bulletins, and published materials.

(c) The FOIA officer shall also maintain a file open to the public, which shall contain copies of all grants or denials of FOIA requests, appeals, and appeal decisions by the General Counsel. The materials shall be filed by chronological number of request within each calendar year, indexed according to the exceptions asserted, and, to the extent feasible, indexed according to the type of records requested.

§ 1631.5 Records of other agencies.

Requests for records that originated in another agency and that are in the custody of the Board may, in appropriate circumstances, be referred to that agency for consultation or

processing, and the person submitting the request shall be so notified.

§ 1631.6 How to request records—form and content.

(a) A request made under the FOIA must be submitted in writing, addressed to: FOIA Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The words "FOIA Request" should be clearly marked on both the letter and the envelope.

(b) Each request must reasonably describe the record(s) sought, including, when known: Entity/individual originating the record, date, subject matter, type of document, location, and any other pertinent information which would assist in promptly locating the record(s). Each request should also describe the type of entity the requester is for fee purposes. See § 1631.11.

(c) When a request is not considered reasonably descriptive, or requires the production of voluminous records, or places an extraordinary burden on the Board, seriously interfering with its normal functioning to the detriment of the Thrift Savings Plan, the Board may require the person or agent making the FOIA request to confer with a Board representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(d) Upon initial receipt of the FOIA request, the FOIA Officer will determine which official or officials within the Board shall have the primary responsibility for collecting and reviewing the requested information and drafting a proposed response.

(e) Any Board employee or official who receives a FOIA request shall promptly forward it to the FOIA Officer, at the above address. Any Board employee or official who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this subpart requiring a written request according to the procedures set out herein.

§ 1631.7 Initial determination.

The FOIA Officer shall have the authority to approve or deny requests received pursuant to these regulations. The decision of the FOIA Officer shall be final, subject only to administrative review as provided in § 1631.10.

§ 1631.8 Prompt response.

(a) When the FOIA Officer receives a request which he or she, in good faith, believes is not reasonably descriptive, he or she will so advise the requester within five workdays. The time limit for processing such a request will not begin until receipt of a request which reasonably describes the records being sought.

(b) The FOIA Officer shall either approve or deny a reasonably descriptive request for records within 10 working days after receipt of the request unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from other establishments that are separate from the office processing the request (*e.g.*, the recordkeeper);

(2) It is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or to consult with two or more components of the Board having a substantial subject matter interest therein.

(c) When additional time is required for one of the reasons stated in paragraph (b) of this section, the FOIA Officer shall acknowledge receipt of the request within the 10 workday period and include a brief explanation of the reason for the delay, indicating the date by which a determination will be forthcoming. An extended deadline adopted for one of the reasons set forth above may not exceed 10 additional workdays.

§ 1631.9 Responses—form and content.

(a) When a requested record has been identified and is available, the FOIA officer shall notify the person making the request as to where and when the record is available for inspection or that copies will be made available. The notification shall also advise the person making the request of any fees assessed under § 1631.13 of this part.

(b) A denial or partial denial of a request for a record shall be in writing signed by the FOIA Officer and shall include:

(1) The name and title of the person making the determination;

(2) A statement of fees assessed, if any; and

(3) A reference to the specific exemption under the FOIA authorizing the withholding of the record, and a brief explanation of how the exemption applies to the record withheld; or

(4) If appropriate, a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by § 1631.8, and that the denial will be reconsidered as soon as the search or examination is complete; and

(5) A statement that the denial may be appealed to the General Counsel within 30 calendar days of receipt of the denial or partial denial.

(c) If, after diligent effort, existing requested records have not been found, or are known to have been destroyed or otherwise disposed of, the FOIA Officer shall so notify the requester.

§ 1631.10 Appeals to the General Counsel from initial denials.

(a) When the FOIA Officer has denied a request for records in whole or in part, the person making the request may, within 30 calendar days of receipt of the response of the FOIA Officer, appeal the denial to the General Counsel. The appeal must be in writing, addressed to the General Counsel, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005 and clearly labeled as a "Freedom of Information Act Appeal."

(b) The General Counsel will act upon the appeal within 20 workdays of its receipts. The General Counsel may extend the 20 workday period of time by any number of workdays which could have been claimed and consumed by the FOIA Officer under § 1631.8 but which were not claimed or consumed in making the initial determination.

(c) The General Counsel shall decide the appeal in writing and send it to the requester.

(d) If the decision is in favor of the person making the request, the General Counsel shall order the subject records be promptly made available to the person making the request.

(e) A denial in whole or in part of a request on appeal shall set forth the exemption relied on and a brief explanation of how the exemption applies to the records withheld and the reasons for asserting it, if different from that described by the FOIA Officer under § 1631.9. The denial shall state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in Federal court in the district in which the person resides or has his principal place of business, in the district where the records are located, or in the District of Columbia.

(f) No personal appearance, oral argument, or hearing will ordinarily be permitted in connection with an appeal to the Board.

(g) On appeal, the General Counsel may reduce any fees previously assessed.

§ 1631.11 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters: commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of the Board is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents, nor waiver or reduction of fees, based on an assertion that disclosure would be in the public interest. The full allowable direct cost of searching for, and reviewing, records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, the Board will look to the use to which a requester will put the documents requested.

(2) When records are being requested by representatives of the news media, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. The phrase "representatives of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (*e.g.* electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(4) For any other request which does not meet the criteria contained in paragraphs (a) (1) through (3) of this section, the fee policy of the Board is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. If computer search time is required, the first two hours of computer search time will be based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, the Board shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in the Board's systems of records shall continue to be treated under the provisions of the Privacy Act of 1974, which permit fees only for reproduction. The Board's fee schedule is set out in § 1631.14 of this part.

(b) Except for requests that are for a commercial use, the Board may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requestor may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30 calendar day period had been made to avoid fees. For requests made over a long period, however, the Board must have a reasonable basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, the Board must have a reasonable basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may the Board aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, the Board shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed $25, the Board shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and noncommercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed $25, the Board shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed $25, the Board shall not charge the requester any costs.

§ 1631.12 Waiver or reduction of fees.

(a) The Board may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Board or Federal Government and is not primarily in the commercial interest of the requester. In making its decision on waiving or reducing fees, the Board will consider the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the Board or the Government,

(2) Whether the disclosure is likely to contribute to an understanding of Government operations or activities (including those of the Board),

(3) Whether the disclosure is likely to contribute significantly to public understanding of TSP or Government operations or activities,

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and

(5) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) A fee waiver request must indicate the existence and magnitude of any commercial interest that the requester has in the records that are the subject of the request.

§ 1631.13 Prepayment of fees over $250.

(a) When the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Board may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 calendar days of the date of the billing), the Board may require the requester to pay the full amount owed plus any applicable interest as provided in § 1631.14(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When the Board acts under paragraph (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Board has received fee payments under paragraph (a) or (b) of this section.

§ 1631.14 Fee schedule.

(a) *Manual searches for records.* The Board will charge at the salary rate(s) plus 16 percent (to cover benefits) of the employee(s) conducting the search. The Board may assess charges for time spend searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure.

(b) *Computer searches for records.* The Board will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary, plus 16 percent, apportionable to the search. The Board may assess charges for time spent searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ × 14 inches, the charge will be $.15 per page.

(2) The fee for reproducing copies of records over 8½ × 14 inches, or whose physical characteristics do not permit reproduction by routine electrostatic copying, shall be the direct cost of reproducing the records through Government or commercial sources. If the Board estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester had indicated in advance his/her willingness to pay fees as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, the Board shall charge the actual cost, including operator time, of producing the tape or printout. If the Board estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, the Board shall charge the actual direct costs of producing the document(s). If the Board estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. The Board may begin assessing interest charges on the amount billed starting on the 31st calendar day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code, and it will accrue from the date of the billing.

(e) The Board shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Board may choose to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, the Board will inform requesters of the steps necessary to obtain records from those sources.

§ 1631.15 Information to be disclosed.

(a) In general, all records of the Board are available to the public, as required by the Freedom of Information Act. However, the Board claims the right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(b) *Records from non-U.S. Government source.* (1) Board personnel will generally consider two exemptions in the FOIA in deciding whether to withhold from disclosure material from a non-U.S. Government source.

Exemption 4 permits withholding of "trade secrets and commercial or financial information obtained from a person as privileged or confidential." Exemption 6 permits withholding certain information, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy."

(2)(i) *Exemption 4.* Commencing January 1, 1988, the submitter of confidential commercial information

must, at the time the information is submitted to the Board or within 30 calendar days of such submission, designate any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. The submitter as part of its submission, must

(6) Should the Board determine to disclose the requested records, it shall provide written notice to the submitter, explaining briefly why the submitter's objections were not sustained and setting forth the date for disclosure, which date may be less than 10 calendar days after the date of the letter to the

deleted and offerors are urged to point out such material for guidance. Any information in the proposal, such as the names of staff persons, which might, if released, constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to

her official duties or because of his or her official status.

§ 1631.31 Production prohibited unless approved by the Executive Director.

No employee or former employee of the Board shall, in response to a demand of a court or other authority, produce

demand. [*United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951)].

[FR Doc. 90-23560 Filed 10-5-90; 8:45 am]
BILLING CODE 6700-01-M

DEPARTMENT OF AGRICULTURE

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.1 and 9 CFR 97.1 (referred to below as "the regulations") provide a system for obtaining inspection, laboratory testing, certification, and quarantine services

must, at the time the information is submitted to the Board or within 30 calendar days of such submission, designate any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. The submitter as part of its submission, must explain the rationale for the designation of the information as commercial and confidential.

(ii) Confidential commercial information means records provided to the Board by a submitter that arguably contains material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(iii) After January 1, 1988, a submitter who does not designate portions of a submission as confidential commercial information waives that basis for nondisclosure unless the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial harm to the competitive position of the submitter.

(3) When the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial competitive harm to the submitter, and has no designation from the submitter, it shall notify the submitter of the following:

(i) That a FOIA request has been received seeking the record,

(ii) That disclosure of the record may be required,

(iii) That disclosure of the record could result in competitive harm to the submitter,

(iv) That the submitter has a period of seven workdays from date of notice within which it or a designee may object to the disclosure its records, and

(v) That a detailed explanation should be submitted setting forth all grounds as to why the disclosure would result in substantial competitive harm, such as, the general custom or usage in the business of the information in the record, the number and situation of the persons who have access to the record, the type and degree of risk of financial injury that release would cause, and the length of time the record needs to be kept confidential.

(4) In exceptional circumstances, the Board may extend by seven workdays the time for a submitter's response for good cause.

(5) The Board shall give careful consideration to all specified grounds for nondisclosure prior to making an administrative determination on the issue of competitive harm.

(6) Should the Board determine to disclose the requested records, it shall provide written notice to the submitter, explaining briefly why the submitter's objections were not sustained and setting forth the date for disclosure, which date may be less than 10 calendar days after the date of the letter to the submitter.

(7) A submitter who provided records to the Board prior to January 1, 1988, and did not designate which records contain confidential commercial information, shall be notified as provided in § 1631.15(b)(3). After making such notification, the Board will follow the procedures set forth in §§ 1631.15(b)(4)–(6).

(8) The Board will, as a general rule, look favorably upon recommendations for withholding information about ideas, methods, and processes that are unique; about equipment, materials, or systems that are potentially patentable; or about a unique use of equipment which is specifically outlined.

(9) The Board will not withhold information that is known through custom or usage in the relevant trade, business, or profession, or information that is generally known to any reasonably educated person. Self-evident statements or reviews of the general state of the art will not ordinarily be withheld.

(10) The Board will withhold all cost data submitted, except the total estimated costs from each year of a contract. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figures themselves. If a contractor believes that some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

(11) *Exemption 6.* This exemption is not a blanket exemption for all personal information submitted by a non-U.S. Government source. The Board will balance the need to keep a person's private affairs from unnecessary public scrutiny with the public's right to information on Board records. As a general practice, the Board will release information about any person named in a contract itself or about any person who signed a contract as well as information given in a proposal about any officer of a corporation submitting that proposal. Depending upon the circumstances, the Board may release most information in resumes concerning employees, including education and experience. Efforts will be made to identify information that should be deleted and offerors are urged to point out such material for guidance. Any information in the proposal, such as the names of staff persons, which might, if released, constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to receive proper consideration.

§ 1631.16 Exemptions.

The Freedom of Information Act exempts from all of its publication and disclosure requirements nine categories of records which are described in 5 U.S.C. 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence and matters involving personal privacy.

§ 1631.17 Deletion of exempted information.

Where requested records contain matters which are exempted under 5 U.S.C. 552(b) but which matters are reasonably segregable from the remainder of the records, they shall be disclosed by the Board with deletions. To each such record, the Board shall attach a written justification for making deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

§ 1631.18 Annual report.

The Executive Director shall submit annually, on or before March 1, a Freedom of Information report covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate. The report shall include those matters required by 5 U.S.C. 552(d).

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

§ 1631.30 Purpose and scope.

This subpart contains the regulations of the Board concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of:

(a) Any material contained in the files of the Board;

(b) Any information relating to materials contained in the files of the Board; or

(c) Any information or material acquired by an employee of the Board as a part of the performance of his or her official duties or because of his or her official status.

§ 1631.31 Production prohibited unless approved by the Executive Director.

No employee or former employee of the Board shall, in response to a demand of a court or other authority, produce any material contained in the files of the Board or disclose any information or produce any material acquired as part of the performance of his or her official status without the prior approval of the Executive Director or his or her designee.

§ 1631.32 Procedure in the event of a demand for disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Board for the production of material or the disclosure of information described in § 1631.31, he or she shall immediately notify the Executive Director or his or her designee. If possible, the Executive Director or his or her designee shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Executive Director or his or her designee are received, an attorney designated for that purpose by the Board shall appear with the employee or former employee upon whom the demand has been made and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Executive Director or his or her designee. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Executive Director.

§ 1631.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 1631.32(b) pending receipt of instructions from the Executive Director, or his or her designee, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Executive Director not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. [*United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951)].

[FR Doc. 90-23580 Filed 10-5-90; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 97

[Docket No. 89-036]

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that establish charges for Sunday, holiday, or overtime work performed by inspectors of the Animal and Plant Health Inspection Service of the United States Department of Agriculture at laboratories, border ports, ocean ports, and airports. We are amending the regulations by: (1) Requiring agents, brokers, or principals who have not previously requested Sunday, holiday, or overtime inspection services from the Animal and Plant Health Inspection Service to make payment before these services are provided, and to continue paying in this manner until further notice from the Animal and Plant Health Inspection Service; (2) requiring certain delinquent debtors to make payment before Sunday, holiday, or overtime inspection services are provided; and (3) suspending Sunday, holiday, or overtime inspection services for those debtors with prolonged delinquencies. These changes will assist us in collecting debts, and will reduce the financial loss we are incurring because of unpaid debts.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Director, Resource Management Support Staff, PPQ, APHIS, USDA, Room 621, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7764; Louise Lothery, Director, Resource Management Staff, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7517; or Charles Gernert, Supervisory Accountant, Budget and Accounting, APHIS, USDA, Room 245, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.1 and 9 CFR 97.1 (referred to below as "the regulations") provide a system for obtaining inspection, laboratory testing, certification, and quarantine services pertaining to the importation and exportation of plants, plant products, animals, animal byproducts, or other commodities during Sundays, holidays, or other times outside the established hours of service.

On February 17, 1988, we published in the **Federal Register** (53 FR 7166–7168, Docket No. 88-007), a document proposing to amend 7 CFR 354.1 and 9 CFR 97.1 by: (1) Requiring the name, address, and telephone number of principals when they request Sunday, holiday, or overtime inspection services through authorized agents or brokers; (2) requiring certain delinquent debtors to pay immediately when Sunday, holiday, or overtime inspection services are provided; and (3) suspending Sunday, holiday, or overtime inspection services for those debtors with prolonged delinquencies.

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before April 18, 1988. We received three comments, two from Animal and Plant Health Inspection Service (APHIS) field personnel and one from a livestock shipping agency. All three commenters either opposed the proposed rule or expressed reservations concerning it. the comments are discussed below.

Comments

As proposed, paragraph (d) of §§ 354.1 and 97.1 would require agents or brokers to provide us with the name, address, and telephone number of their principals when requesting Sunday, holiday, or overtime services. One commenter stated that this requirement would greatly increase the information gathering burden on shipping companies; that it is inappropriate to place this burden on all agents or brokers because of the irresponsible behavior of a few; and that we should implement a credit approval system for brokers or agents instead of implementing the debt management program described in the proposed rule. Another commenter stated that determining the owner (principal) of a given animal within a shipment can sometimes be difficult and enormously time-consuming, since one shipment may contain 40 to 70 individually-owned animals. The commenter also stated that some shipments involve multiple-

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ownership situations, such as when an animal is owned by a partnership, consortium, or other business group. This commenter stated that clarifying ownership in such situations could create considerable delays, and that such a situation would be undesirable when live animals are involved.

Both of the above commenters also stated that the process of clarifying ownership or collecting payment is further complicated by the fact that many principals are residents of foreign countries.

We agree that the proposed requirement could place unrealistic information-gathering responsibilities on agents or brokers, and that collecting debts directly from principals may not be a practical, productive, or feasible approach to debt management. We are therefore eliminating from our final rule any information-gathering requirements on the part of the agent or broker, and are instead implementing a credit approval system as suggested by one of the commenters.

To this end, we will amend the regulations to require an agent, broker, or principal who has not previously requested Sunday, holiday, or overtime work from us—that is, an agent, broker, or principal with whom we have not previously worked and whose degree of financial stability or credit worthiness is unknown to us—to pay us before service is provided. The prepayment figure will be based on the inspector's estimate of the cost of providing service. Any difference between the inspector's estimate and the actual amount owed APHIS will be resolved later, with APHIS either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

We will continue to require prepayment from the agent, broker, or principal until we have determined that the agent, broker, or principal has established an acceptable credit history with us. We will reserve the right to continue requiring prepayment from an agent, broker, or principal indefinitely.

The third comment we received expressed reservations concerning proposed paragraph (e) of §§ 354.1 and 97.1, which would require agents or brokers who are in excess of 60 days' delinquent in paying for services, to pay the APHIS inspector at the time Sunday, holiday, or overtime services are provided.

The commenter stated: "Trying to come up with a fair amount to collect from the exporter or his agent at the time of loading would be very difficult. The exporter and his agent depart at the time the initial loading and paperwork is completed. The overtime sheet is not completed until after the flight has left. The reason for this is that we cannot be certain of [the] time of [the flight's] departure, and the quitting time of the [APHIS inspector] involved . . ."

We agree. To deal with this situation, we are amending the regulations to require that inspectors estimate the amount of the overtime service fee to be charged, and collect that amount from the agent, broker, or principal before the loading operation begins. Any difference between the inspector's estimate and the actual amount owed APHIS will be resolved later, with APHIS either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

The commenter also expressed concern about the potential security risks involved if an APHIS inspector is required to accept large sums of cash from an agent or broker during late night hours, when many export shipments are handled.

We agree that this presents a potential security risk, and are changing the final rule to state that inspectors will accept cash only between the hours of 7 a.m. to 5 p.m. and only at a location designated by the APHIS inspector.

Miscellaneous

Since we published our proposed rule on February 17, 1989, we have made certain nonsubstantive changes in the regulations. In documents published in the **Federal Register** on April 4, 1989 (54 FR 13506, and 13515–13516) we amended parts 354 and 97 by removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing all references to "Plant Protection and Quarantine" and "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." This final rule reflects these amendments made since our February 17, 1989, proposal.

We have also made other nonsubstantive changes in the final rule for purposes of clarity.

Based on the rationale set forth in the proposal and in this document, we are adopting the proposed rule as a final rule, with the changes noted.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will have no economic impact on small entities, since it will not increase or decrease the amount of money they owe us. It will, however, require these entities to pay us promptly. We do not believe that making prompt payments will impose a financial burden on these small entities.

In addition, paying us for debts already accumulated for services rendered will impose no additional financial burden on those small entities requesting Sunday, holiday, or overtime inspection services from us. The entities currently in debt to us owe only small amounts—on the average, less than $1,000 each.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0055.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants, (Agriculture), Quarantine, Transportation.

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 7 CFR part 354 and 9 CFR part 97 are amended as follows:

Title 7

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for 7 CFR part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.1 is amended by adding paragraphs (d), (e), and (f) to read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

* * * * *

(d)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity acting as an agent or broker by requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector on behalf of any other person, firm, partnership, corporation, or other legal entity (principal), and who has not previously requested such service from an Animal and Plant Health Inspection Service inspector, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the Animal and Plant Health Inspection Service determines that the agent, broker, or principal has established an acceptable credit history.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(e)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector, and who has a debt to the Animal and Plant Health Inspection Service more than 60 days delinquent, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(f) Reimbursable Sunday, holiday, or overtime services will be denied to any principal, or any person, firm, partnership, corporation, or other legal entity who has a debt to the Animal and Plant Health Inspection Service more than 90 days delinquent. Services will be denied until the delinquent debt is paid.

Title 9

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

3. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 97.1 is amended by adding paragraphs (d), (e), and (f) to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.

* * * * *

(d)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity acting as an agent or broker by requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector on behalf of any other person, firm, partnership, corporation, or other legal entity (principal), and who has not previously requested such service from an Animal and Plant Health Inspection Service inspector, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(e)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector, and who has a debt to the Animal and Plant Health Inspection Service more than 60 days delinquent, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(f) Reimbursable Sunday, holiday, or overtime services will be denied to any principal, or any person, firm, partnership, corporation, or other legal entity who has a debt to the Animal and Plant Health Inspection Service more than 90 days delinquent. Services will be denied until the delinquent debt is paid.

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Done in Washington, DC, this 3rd day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-23765 Filed 10-5-90; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 1137

[DA-90-038]

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues the suspension of certain provisions of the Eastern Colorado milk order. These pooling standards have been suspended during the past four years. This action again suspends for the months of September 1990–February 1991 the limit on the period of automatic pool plant status for supply plants that met the shipping standards during a prior shipping season. It also extends for the months of September 1990 through August 1991 the suspension of the "touch-base" requirement which provides that a member-producer's milk be received at least three times each month at a pool distributing plant to qualify the dairy farmer's milk for diversion and the percentage limits on the amount of milk that a cooperative may deliver directly to manufacturing plants and remain pooled and priced under the order. These actions were requested by a cooperative association representing producers supplying the market. The changes were not opposed and are needed to prevent uneconomic milk movements.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 23, 1990; published August 29, 1990 (55 FR 35321).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 29, 1990 (55 FR 35321) concerning a proposed suspension of certain provisions of the order. Interested persons were given an opportunity to file written data, views, and arguments thereon. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1990 through February 1991:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1990 through August 1991:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence the words "30 percent in the months of March, April, June, July, and December, and 20 percent in other months of" and the word "distributing".

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested a continuation of the suspension of the aforementioned provisions to prevent the uneconomical movement of milk for the sole purpose of pooling the milk of cooperative association producers who have been historically associated with the Eastern Colorado market. For the months of September 1990 through February 1991, the suspension again removes the limit on the period of automatic pool plant status for supply plants which met the pool shipping standards during a previous September through February shipping season. For the months of September 1990 through August 1991, the suspension continues to remove the requirement that three deliveries of a member-producer's milk be received at a pool distributing plant each month to qualify the dairy farmer's milk for diversion and the percentage limits on the aggregate amount of milk that a cooperative may divert to nonpool plants for its account. These pooling provisions have been suspended during the past four years.

Statistical data for the Eastern and Western Colorado markets [1] show that a lower percentage of the producer milk supply is needed now to fulfill the fluid needs of handlers than when these provisions were suspended initially four years ago. For instance, in 1989, only about 53 percent of the markets' producer milk deliveries was used for fluid purposes compared with almost 62 percent in 1986. Since there is plenty of milk available now to supply distributing plants, the primary concern of Eastern Colorado supply organizations is the orderly disposition of the milk that exceeds the needs of fluid plants. This and the prior suspension actions were taken in recognition of that concern.

It is evident from the foregoing that there will be ample supplies of locally produced milk available to meet the fluid needs of Eastern Colorado distributing plants on a direct-ship basis, as Mid-Am states, without requiring supply plants to make qualifying shipments during the current September–February shipping season. Additionally, there is no need to require that a member-producer's milk be received at least three times each month at a pool distributing plant or that the percentage restrictions on diversions to nonpool plants by cooperatives apply during September 1990 through August 1991.

Suspension of these performance standards will continue to give cooperatives additional flexibility in handling the market's reserve milk and thereby will promote the orderly disposition of the milk that is not needed at Eastern Colorado distributing plants.

[1] Data for the two markets are combined to avoid revealing confidential information (there are less than three handlers regulated under the Western Colorado order).

Interested parties were given an opportunity to comment on this proposed action. No opposing views were received. Comments supporting the proposed action were filed by Western Dairymen Cooperative, Inc., a cooperative association representing dairy farmers throughout the Intermountain region. Mid-Am also filed views in support of its request.

Without this action, to maintain pool status under the order for distant producers who have been associated with this market for several years, Mid-Am would have to ship milk from farms located in western Nebraska and western Kansas to Denver-area distributing plants. The distant milk would displace locally produced milk and would result in increased shipments from the Denver area to manufacturing plants many of which would be located in the areas where the distant milk was produced.

In view of the foregoing, it is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive hauling and handling substantial amounts of milk from producers who have regularly supplied this market would be excluded from the marketwide pool thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1137.7(b) of the Eastern Colorado order are hereby suspended for the months of September 1990–February 1991 and the following provisions in § 1137.12(a)(1) of Eastern Colorado order are hereby suspended for the months of September 1990–August 1991.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.7 [Temporarily Suspended in Part]

2. In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August" are suspended.

§ 1137.12 [Temporarily Suspended in Part]

3. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and the word "distributing" are suspended.

Signed at Washington, DC, on: October 2, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90-23770 Filed 10-5-90; 8:45 am]

BILLING CODE 3410-02-M

COMMODITY FUTURE TRADING COMMISSION

17 CFR Parts 3 and 171

Commission Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration and Membership Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted rules establishing standards and procedures for Commission review of decisions of registered futures associations such as the National Futures Association ("NFA"). The Commission rules cover review of NFA decisions in four types of actions: Disciplinary actions, membership denial actions, registration actions and member responsibility actions. The rules establish a common procedure for seeking review and a stay of a final decision by NFA in disciplinary, membership denial and registration actions, and separate procedures for seeking review and a stay of NFA decisions in member responsibility actions. In adopting these rules, the Commission has promulgated standards for review that will permit NFA to exercise its expertise and independent judgment in proceedings subject to these rules while providing a person aggrieved by the result of NFA's action an effective means to obtain relief from prejudicial errors. These rules shall apply in their entirety to all requests for Commission review of NFA actions, and matters relating thereto, filed on or after October 31, 1990.

EFFECTIVE DATES: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 1990 the Commission published proposed rules establishing standards and procedures for its review of decisions of registered futures associations such as NFA in disciplinary actions, membership denial actions, registration actions and member responsibility actions. 55 FR 24254. In proposing these rules the Commission sought to promulgate standards for review that will permit NFA to exercise its expertise and independent judgment in proceedings subject to these rules and to establish an appellate process that is comprehensive, balanced, efficient and consistent with principles of fundamental fairness.

In response to its request for public comment the Commission received letters from NFA and from members of the Futures Regulation Committee ("Committee") of the Section of Business Law of the American Bar Association. Both comment letters generally were supportive of the proposed rules. The Commission has carefully considered the comments in those letters and has determined that the rules should be adopted with certain modifications and clarifications. Among these are changes to clarify the Commission's review role, expansion of those matters excluded from Commission review, and the addition of a definition of "interested persons" who may intervene in a proceeding. A discussion of the comments and of the substantive revisions to the rules is included below.

Comments on and Revisions to the Standards for Review

NFA's comments reflect a general concern that in formulating these rules the Commission did not simply parallel the existing part 9 regulations governing

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its review of exchange disciplinary actions. While the Commission has noted that the standards and procedural protections available in NFA disciplinary, membership denial and registration actions should generally be similar to those provided by parts 8 and 9 of its regulations,[1] the Commission also recognizes that its standards of review for NFA actions derive from different statutory provisions and reflect difference between NFA and exchanges. Unlike exchanges whose contracts are approved by the Commission pursuant to its statutory authority under Section 5 of the Commodity Exchange Act ("Act"), NFA is not a voluntary membership organization. With a few narrow exceptions, persons who wish to conduct business in the futures industry must be members of a registered futures association like NFA. In recognition of the significant impact of the membership criteria and disciplinary determinations of a registered futures association with mandatory membership, Congress has established in section 17 of the Act specific requirements for its membership standards, disciplinary rules and procedural standards. In addition to the authority specifically granted by Congress to all futures associations registered under the Act, NFA has authority specifically delegated to it by the Commission to make registration determinations for most of the categories of registration contemplated by the Act.

Among other comments, the Committee letter noted with approval the Commission's recognition of the need for separation between those agency employees who are or have been engaged in an investigative or prosecuting function related to a proceeding and those employees who give advice to Commissioners and members of their staffs concerning the merits of a decision. In this context, the Committee urged that the Commission codify its procedures to insure separation of functions as part of these final rules. In the Commission's view, its internal procedures have proven adequate and need not be codified in these rules.

A. Appellate Standards For Final Decisions in Disciplinary, Membership Denial and Registration Actions

The standards set forth in rule 171.34 are applicable to appeals from final decisions by NFA in disciplinary, membership denial and registration actions. While the standards for disciplinary actions differ slightly from those for membership denial or registration actions, each set of standards shares the following characteristics: (1) NFA's procedural conduct in the proceeding is reviewed for consistency with both relevant NFA rules and applicable principles of fundamental fairness; (2) NFA's factual findings are evaluated for consistency with the "weight of the evidence" standard; and (3) NFA's conclusion is examined for consistency with the purposes of the Commodity Exchange Act.[2]

The differences in the standards correspond to distinctions in the description of the factors NFA is expected to apply in reaching its decision in each type of action. These distinctions are reflected in the Act, the Commission's regulations and in the rules promulgated by NFA. The specific formulation of each review standard should help parties to Commission appellate proceedings focus their arguments on the standards applied by NFA and the issues that are of primary concern to the Commission. For this reason, these standards should serve as a guide both to NFA in making its determinations and to the parties involved in an appeal from NFA's decision.

NFA's comment letter observes that rule 171.34 deviates from the standards established in 17 CFR 9.33 for review of exchange actions both in requiring a "weight of the evidence" standard and a determination that the sanction imposed be not excessive or oppressive. The Commission wishes to point out that the latter standard is set forth expressly in section 17 of the Act, and that the Act does not impose parallel requirements for Commission review of exchange actions. NFA also suggests that the language in Rule 171.34 requiring the Commission to "consider whether" NFA decisions were made in accordance with the stated requirements be modified, consistent with 17 CFR 3.87 (which is being repealed along with other portions of part 3) to require the Commission to affirm NFA's decision unless it finds that the decision is not in accordance with the requirements. The Commission has determined that such a modification is consistent with the purposes of these regulations, and has modified the rule accordingly.

The Committee noted that § 171.34 (as well as § 171.46, which sets forth standards of Commission review of NFA member responsibility actions) does not require that persons subject to disqualification under section 8a(2) of the Act be afforded an opportunity to present evidence of mitigation or rehabilitation. The Committee suggested that, consistent with the Commission's recent decisions in *In the Matter of Kangles*, CFTC Docket No. SD–88–4 (CFTC June 6, 1990), and *In the Matter of Chamberlain*, CFTC Docket No. SD–88–6 (CFTC June 6, 1990), action on this section should be deferred and considered in the context of the rulemaking announced in footnote 33 of the *Kangles* and *Chamberlain* decisions. Alternatively, the Committee proposes that NFA be directed to permit applicants an opportunity to present evidence of mitigation or rehabilitation. *Kangles* and *Chamberlain*, as well as *In re Horn, supra*, establish that an applicant may be afforded an opportunity to show mitigation or rehabilitation. These decisions, like all Commission decisions regarding the proper application of the Act's registration provisions are already binding on NFA. It is therefore the Commission's view that codification of this standard is unnecessary.

B. Standards Applicable to Requests for Relief Relating to the Effective Date of a Final Decision by NFA in a Disciplinary, Membership Denial and Registration Action

Under the rules NFA must promptly mail a notice to all parties after it issues a final decision in a disciplinary, membership denial or registration action (rule 171.21). NFA's decision (and any relief ordered therein) will be effective thirty days after NFA mails the required notice (rule 171.22). An aggrieved party similarly has a thirty day period to mail to the Commission a notice of appeal from NFA's decision (rule 171.23). Thus, as a general rule, there will be a thirty day delay between the mailing of the notice of NFA's decision and the date the decision goes into effect. During that period, an aggrieved individual may file a notice of appeal with the Commission. The filing of a notice of appeal will not stay the effective date of an NFA decision. Thus, as a general rule, NFA's decision will be effective while the Commission reviews the merits of the appeal and the parties will be bound by that decision until the Commission or a court rules otherwise.

Rule 171.22(b) provides an avenue for NFA to seek an earlier effective date for its decision and provides a similar avenue for an aggrieved party to seek to stay the effective date of NFA's decision beyond the thirtieth day. In either case, the petition for relief must be mailed within ten days of the date NFA mails the notice of its decision. Any party opposing the request for relief may respond within five days of the date the petition for relief was mailed. If the Commission believes that it is necessary to the meaningful consideration of the petition, it need not await that response to act. If the Commission does not affirmatively act on the request prior to the decision's effective date under the general rule, the request will be deemed denied.

The Commission will review either type of request for relief under the standards set out in rule 171.22(c). In general, these are the standards applied by the Commission in determining whether a stay pending judicial review is appropriate in a Commission enforcement case.[3] In interpreting these standards, the Commission employs the same mode of analysis used by courts in determining whether extraordinary injunctive relief is appropriate.[4] The burden is on the petitioning party to justify a departure from the general rule. The Commission has rarely granted such motions in the context of its other appellate programs, and while the specific outcome in any case will turn on the particular facts and circumstances, the Commission does not anticipate that such petitions will be successful with any great frequency in the context of decisions by NFA.

The Committee commented that the use of the conjunction "and" at the end of each standard for a stay in § 171.22(c) (and in the similar standards in § 171.43(d) applicable to member responsibility actions) suggests that a party would be required to meet each and every standard to obtain a stay. The Committee suggested that the Commission retain the flexibility to balance the relative weight to be accorded each of the standards by deleting the conjunction "and." The Commission does not believe the change is necessary. As noted above, the Commission uses the same method of analysis as courts in considering petitions for stay—that is, to weigh the standards to achieve a fair and equitable result. This approach has been followed by the Commission in considering requests for stays of exchange final decisions under the part 9 Rules, which similarly use the conjunction "and" following each standard. *Karkazis* v. *CME*, CFTC Docket No. 90–E–7 (CFTC September 14, 1990).

In its comment letter, NFA proposed that the separate provisions governing stays from NFA final decisions in disciplinary, membership and registration actions and member responsibility actions be incorporated into one section. The Commission has considered this proposal and has determined for purposes of clarity and ease of reference to the relevant provisions to retain the separate structure.

C. Review Standards Applicable to Final Decisions of NFA in Member Responsibility Actions

A member responsibility action is an extraordinary procedure that is commenced when NFA has reason to believe that summary and expeditious action against a member is necessary to protect the commodity futures markets, customers or other NFA members. In making its Report to Congress regarding NFA in 1986, the Commission noted that it generally regarded the member responsibility action as a "powerful and appropriate tool for self regulatory bodies such as NFA to obtain immediate compliance." A member responsibility action is a type of disciplinary action, and is thus subject to the standards set forth in section 17(b)(9), (i)(1) and (l)(2) of the Act and § 170.6 of the regulations. However, because of the distinct remedial focus of these actions, the Commission is proposing specific standards to guide its consideration of appeals from final decisions in member responsibility actions.

Under the adopted rules, final decisions of NFA in member responsibility actions will be reviewed under the standards of rule 171.46. These standards are similar in many respects to those the Commission will apply in the review of other disciplinary actions under rule 171.34(a). The primary difference between the review standard for final decisions in member responsibility actions and those for final decisions in other disciplinary actions is in the focus of the factual element of the review standard. In the typical disciplinary action, the primary purpose of the proceeding is to evaluate past conduct in terms of NFA's rules so that violations of those rules may be sanctioned. The goal of a membership responsibility action, however, is to prevent future harm to the commodity futures markets, customers or members of NFA, rather than to sanction past wrongdoing.[5] In view of this remedial focus and the strict limitation of these proceedings to situations where immediate intervention is imperative, the factual review should not be limited to appellant's alleged wrongful conduct but should include all factual matters relating to NFA's conclusion that resort to a summary procedure was necessary. The nature and extent of the threat to the commodity futures markets, customers and members of NFA, as well as the likelihood the threat will continue, diminish or grow, are all factual issues that may affect NFA's reason for commencing a member responsibility action even if the factual record is not completely developed on the precise nature of appellant's violative conduct. In recognition of this important distinction, the Commission has adopted the standard set forth in rule 171.46 for review of NFA's factual determinations in member responsibility actions.

D. Standards Applicable to Requests for a Stay of the Effective Date of a Member Responsibility Action

In 1986, the Commission asked Congress to amend the automatic stay provision of section 17(h) of the Act in order to remove it as an impediment to NFA's effective use of member responsibility actions. In response, Congress enacted the current section 17(h)(3)(A) of the Act. Congress also enacted a requirement that the Commission establish standards for expedited procedures to be used in the consideration of a request for a stay. *See* section 17(h)(3)(B). Accordingly, the Commission had adopted two rules that will permit NFA members that are the subject of a member responsibility action to seek an immediate stay from the Commission when they are notified that the suspension, restriction or remedial action ordered in a member responsibility action has become or will be effective. The standards to be applied under rules 171.41 and 171.43 are consistent with recent court precedent and are similar to the standards set forth in rule 171.22(c). Consistent with the approach generally reflected in these rules, the distinctions in the language of each rule reflect the particular context

[1] *In re Application of the National Futures Association*, Order Granting Registration and Approving Rules (CFTC Sept. 22, 1981).

[2] The standards for membership and registration actions are to be read consistently with prior case law, *e.g.*, *In re Horn* and *Grabarnick*, *supra*. *See also In re Weber*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,215 (CFTC Apr. 14, 1988).

[3] *See, e.g., In re Sanchez*, [1982–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,056 (CFTC March 23, 1984); *In re Gimbel*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,241 (CFTC May 17, 1988). The factors considered include the likelihood of success on the merits, the evidence that denial of the motion will result in irreparable harm, the effect on the party opposing the grant of relief and the effect on the public interest.

[4] *See, e.g., Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F.2d 842 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association* v. *Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958).

[5] Pursuant to NFA Rule 3–13, a member responsibility action does not preclude a disciplinary action based on the same facts.

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in which the general standard is likely to be called into play.

Rule 171.41(d) applies to a request that the effective date of a member responsibility action brought by NFA be stayed while NFA conducts further proceedings under its rules. This rule will apply only in those cases in which NFA determines that the suspension, restriction or remedial action ordered in the member reponsibility action will be effective prior to the time the member who is the subject of the action is accorded an opportunity for a hearing. In this situation, the likelihood of petitioner's success on the merits of his challenge to NFA's action generally turns on whether, under the cirumstances, NFA's action was inconsistent with fundamental fairness—deprived the member of the right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner. That determination, in turn, requires a balancing of factors. *Woods* v. *Federal Home Loan Bank Board*, 826 F.2d 1400, 1411 (5th Cir. 1987).[6] Even if this balancing process does not fall in favor of NFA's decision to take summary action, however, the petitioner will not be entitled to a stay pursuant to rule 171.41(d) absent a showing that denial of the stay would result in irreparable harm.

Under rule 171.41, if a petition for stay is denied, NFA shall continue its action in accordance with the applicable rules of the association. If a stay is granted by the Commission, the action will be remanded to NFA for further proceedings as provided in the Commissioner's Opinion and Order. Unless specifically ordered by the Commission, NFA shall remain free to make the suspension, restriction or remedial action ordered in the member responsibility action effective at the time a final decision in the action is issued (rule 171.41(f)).

Rule 171.43(d) defines standards applicable to petitions for a stay of the effective date of NFA's final decision in a member responsibility action. A decision will be considered final for purposes of this rule when the member has not right to additional procedure from NFA relating to the member responsibility action.[7] The standards are substantively equivalent to the standards applicable to final decisions in other disciplinary actions under rule 171.22(c). Because NFA is authorized to make effective the suspension, restriction or remedial action ordered in the member responsibility action at the time it issues its decision, however, the Commission may not receive a petition for a stay under rule 171.43 until after NFA's action is effective. In these circumstances, the rule provides that the Commission will not delay its decision on the petition to await receipt of NFA's response.[8]

II. General Appellate Procedure

A. Scope

The Commission intends to accept appeals from almost all NFA final decisions in disciplinary,[9] membership denial, registration and member responsibility actions.[10] Excluded from the scope of these rules are decisions by NFA in disciplinary actions when the member seeking to appeal to the Commission has knowingly failed to pursue his right to appeal an adverse decision to the NFA Appeals Committee in accordance with NFA rules. In adopting such an exclusion, the Commission does not intend to discourage appeals from such disciplinary actions but rather to encourage NFA members to comply with reasonable procedural rules that allow NFA to consider in the first instance problems arising in decisions by its regional Business Conduct Committees. In order to assure that this exclusion does not result in any undue limitation on the right to appeal granted by section 17(h)(2) of the Act, rule 171.1(b) indicates that an appeal of a matter subject to the exclusion will not be dismissed if extraordinary circumstances otherwise warrant consideration of the appeal.

NFA in its comments proposed that the Commission also exclude from the scope of these rules NFA decisions which result in the suspension of a member based solely on that member's failure to pay NFA dues or arbitration awards. The Commission agrees that suspension for non-payment of dues should not generally be considered a disciplinary action subject to Commission review,[11] and accordingly has amended § 171.1(b) to exclude such NFA actions from the scope of these rules. The Commission is reluctant at this time, however, to exclude suspension of a member for failing to pay arbitration awards. When the Commission has excluded NFA arbitration decisions themselves from its review, one of the reasons it has done so is that these decisions can be reversed in the court system. In contrast, membership suspension raises somewhat different issues which generally go to the core of the Commission's role in reviewing NFA actions affecting membership status. Pending additional experience on the issue the Commission has determined not to exclude such NFA action from its appellate jurisdiction.

NFA also noted, citing new Commission rule 1.63, that it has adopted standards for service on NFA's Board of Directors, Business Conduct Committees and arbitration panels. NFA suggested that its actions disqualifying individuals for service based on certain disciplinary sanctions should be excluded from Commission review under § 171.1(b). The Commission concurs with this suggestion and has amended that section to exclude disqualification from service for these reasons from the scope of these rules. Finally, NFA suggested that removal of a director by a two-thirds vote of the Board of Directors if it is deemed in the best intereat of NFA should not be deemed a disciplinary action within the scope of Commission review. The Commission also agrees that removal of a director generally would not be subject to its review. However, if the director is also a member or associate of a member of NFA, his or her removal may in unusual circumstances raise reviewable issues. For example, the Commission might wish to review removal if the member raised a colorable claim that removal was based on the fact that he or she had provided evidence of wrongdoing contrary to the interests of other NFA members.[12] Accordingly, the Commission does not believe removal actions should be excluded entirely from the scope of these rules.

Also excluded are decisions by NFA in arbitration actions. The Commission believes that NFA performs an important role as a self-regulatory organization through its arbitration program and should be responsible for the fairness and accuracy of the results reached in arbitration actions. The Commission also believes that creation of a formal system for Commission review of NFA arbitration actions would interfere with the simplicity and efficiency of that system of dispute resolution. Decisions in arbitration actions already are subject to court review in certain narrow circumstances. Moreover, in most cases, participants in NFA arbitration have had a prior opportunity to seek resolution of their dispute in a reparations proceeding where they would be entitled to seek review by the Commission. In choosing to forego a reparations proceeding by selecting an arbitration proceeding, parties may make a conscious evaluation of the procedural and substantive protections they prefer. In these circumstances, it is not inappropriate to limit the right to appeal in order to preserve the resources of the parties, NFA and the Commission.

B. General Procedural Requirements

Many of the general procedural requirements included in the Commission's rules are variants of provisions in the Commission's part 9, part 10 or part 12 Rules. These include rules: (i) Establishing the requirements for an acceptable method for filing and serving relevant appeal documents (rules 171.8, 171.9); (ii) designating the Commission's business address for filing purposes (rule 171.3); (iii) explaining the computation of time periods under the rules and how to request extensions of such periods (rules 171.4, 171.5); (iv) permitting the filing of motions and settlements (rules 171.10, 171.12); (v) establishing the criteria for practice before the Commission in proceedings under the rules (rule 171.13); and (vi) describing the Commission's authority to sanction those who fail to follow the rules and to waive the rules in the interest of justice (rules 171.11, 171.14). Definitions of many of the terms used in the rules are provided in rule 171.2.

Parties should note that, in general, documents are considered filed and served on the date they are mailed rather than the date they are received. Because delays in the mail are common, the Commission's rule increases a party's time to respond by five days when the document the party is responding to is served by mail. *See* rule 171.9(b).

C. Commencement of an Appeal Procedure: NFA's Notice

Section 17(h)(1) of the Act authorizes the Commission to prescribe the type of notice NFA must provide to parties in disciplinary and membership denial actions.[13] The Commission has exercised this authority by enacting rules 171.21 and 171.42. The latter rule applies solely to final decisions in member responsibility actions while the former applies to final decisions in all other disciplinary actions as well as final decisions in membership denial and registration actions. Under rule 171.21, there are requirements that are common to the three types of actions covered by the rule, and those that differ according to the particular type of NFA action at issue. All notices under either Rule include a statement acknowledging a party's right (1) to appeal NFA's decision to the Commission and (2) to seek a stay of the decision's effective date. All notices also include information central to the timely exercise of a party's statutory right to seek review or a stay—the date of service of the notice (the beginning of the thirty day appeal period) and the effective date of NFA's decision.

The portion of the notice that varies with the type of action relates to both the standards applicable in that particular type of action under NFA's rules and NFA's substantive explanation for the particular result reached in the case. These standards are intended to allow NFA to fulfill the notice requirements of rules 171.21 and 171.42 by providing the parties with a copy of its written decision. By addressing the minimal standards set forth in these rules in its written decisions, NFA will both provide parties with the type of meaningful notice contemplated by section 17(h)(1) of the Act and supply the Commission with the type of explanation of its reasoning necessary to the effective implementation of the Commission's deferential approach to review.

Fulfillment of the notice requirement is a condition for the effectiveness of NFA's decision in a disciplinary, membership denial or registration action. Under proposed rule 171.21(7), any party to the NFA action may request that NFA's notice be stricken if it is defective in any material respect. The Commission also may take such action on its own motion. When a notice is struck, NFA's decision will not be effective until a proper notice is served. In light of the unique importance of the effective date to the successful implementation of a member responsibility action, however, the Commission does not believe it is appropriate to like the effective date of such decisions to the notice requirement of rule 171.42.

D. Procedure for Obtaining Review

The time for filing a notice of appeal commences when an effective notice has been served by NFA. Under rules 171.44 (for member responsibility actions) and 171.23 (all other actions), a notice of appeal need only include the basic information necessary to identify the party filing the appeal and the NFA decision that is the subject of the appeal. A filing fee of $100 must be included. Within 30 days of the mailing of a notice of appeal, NFA will file two copies of the record of the decision with the Commission's Proceedings Clerk (rule 171.24). At that time, NFA will serve the appealing party with a copy of the index of the record it submitted to the Commission as well as a copy of any document included in that record that was not previously served on that party. If the appealing party has any objections to the content of the record, he may raise his objections at the time he files his appeal brief.[14]

Under rule 171.25, the appealing party must submit an appeal brief within 30 days of the date NFA mailed the record of its decision. If no brief is submitted within the thirty day period, the Commission may dismiss the appeal as unperfected. NFA may file an answering brief within 30 days of the date the appealing party files his brief (rule 171.26). Either party may request the Commission to hear oral argument by filing a request at the time its brief is submitted (rule 171.32).

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[6] The factors include: the regulatory interest that justifies summary action, the nature of the private interests of those effected by the summary action, the risk of erroneous deprivation through the challenged procedures and the probable value of additional or substitute procedural safeguards. *Id.* at 1411, *citing Brock* v. *Roadway Express Inc.*, 107 S. Ct. 1740, 1747 (1987), 481 U.S. 252, 283. *See also, Morton* v. *Beyer*, 822 F.2d 364, 367–71 (3d Cir. 1987).

[7] A member has no general right to appeal the decision in a member responsibility action within NFA, but NFA rules do permit an Appeals Committee to take review of a decision on its own motion within 15 days of the date of the decision. If the Appeals Committee chooses to take review of a matter, the Commission would likely stay its own proceedings on any appeal to the Commission pending completion of the Appeals Committee determination. If the suspension, restriction or remedial action ordered in the decision are effective pending the Appeals Committee review, however, fundamental fairness requires that the Commission consider a petition for a stay of the effective date of the decision filed by an aggrieved party without regard to the possibility of *sua sponte* review by NFA's Appeals Committee.

[8] In light of the importance of expedited action in such a situation, rule 171.42 requires that NFA give the affected party and the Commission telephonic notice, in addition to written notice, when it makes its decision in a member responsibility action effective at the time of issuance.

[9] The definition of disciplinary action under rule 171.2(b) includes all proceedings brought by NFA to enforce its rules that may result in suspension, censure, bar from association with a member or a fine in excess of $100. The latter limitation reflects the amount of the appellate filing fee.

[10] The Commission notes that interim notices issued in NFA membership and registration actions do not constitute "final decisions" of NFA.

[11] *Cf. Davis and Partners, Ltd.* v. *NYFE*, CFTC Docket No. 90–E–4 (CFTC March 22, 1990).

[12] *Cf. Wallace Conrad* v. *Chicago Board of Trade*, CFTC Docket No. 89–E–6 (CFTC) March 22, 1990), personnel decision may not in all cases be actions solely involving an exchange's internal affairs which properly are excluded from Commission review.

[13] The Commission has similar authority under section 17(o)(1) relating to NFA determinations in registration actions.

[14] Once a notice of appeal has been filed pursuant to rule 171.44, the procedures applied in an appeal from a decision in a member responsibility action are the same as those that apply to appeals in other types of actions (rule 171.45).

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As a general rule, once a case is fully briefed, it will be decided by the Commission. In those cases in which the Commission believes that the result reached in NFA's decision is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may issue an order of summary affirmance as described in rule 171.33(b). In appropriate cases, however, the Commission may affirm NFA's decision by Opinion and Order. The Commission may also set aside or modify NFA's decision, or remand for further proceedings (rule 171.32).

III. Participation by Individuals That Are Not Parties to the Proceeding

A. Participation by Interested Persons Outside the Commission

In rare instances, decisions made by NFA in disciplinary, membership denial, registration and member responsibility actions will involve broad legal and policy issues that have significance for the futures industry in general. If these issues are raised on appeal to the Commission, they may take on an added significance. In such a situation, individuals or organizations outside the Commission may have an interest in presenting to the Commission their views concerning the proper resolution of the issues raised in the appeal. The Commission has adopted rule 171.27 to govern participation in proceedings subject to these rules by interested persons outside the Commission. Under this rule, such persons may file a motion that establishes their direct and substantial interest in the outcome of the proceeding. In order to avoid delay in the resolution of the proceeding, the motion must be filed promptly. In response to NFA's comments, the Commission has determined to include in § 171.27 the definition of the term "interested person" provided in its rule of practice, 17 CFR 10.10(a)(3).

B. Participation by Interested Persons on the Commission Staff

As a general matter, members of the Commission staff are free to advise the Commission on legal and policy matters that may affect their regulatory responsibilities. The Commission is also generally free to consult with any member of the Commission staff who has experience or expertise in a matter being considered by the Commission. In the context of its adjudicatory programs, however, applicable statutory provisions and principles of fundamental fairness sometimes require that the Commission limit the scope of its contact with certain members of its staff.[15] As discussed *infra*, the Commission is adopting rule 171.6 to assure that its decisionmaking process not only operates in a fair, balanced and impartial manner, but also avoids any undue appearance of bias or improper influence. Rules 171.28 and 171.31 are designed to provide an additional method consistent with principles of fundamental fairness for members of the Commission staff to communicate with the Commission concerning the merits of an appeal subject to these rules.

Rule 171.28 grants members of the Commission staff a right to make a written submission of their views concerning the appropriate result in an appeal from a decision of NFA subject to these rules. Members of the Commission staff may indicate their intention to participate in an appellate procedure under these rules by filing a notice of appearance on or before the twentieth day following the date of service of NFA's responsive brief. The Commission will generally issue an order after such a notice of appearance is received granting the staff a reasonable period of time to submit a brief and the party with the position opposed to the staff a reasonable period to reply to the staff's arguments. In those rare circumstances when the record establishes that the public interest will not be served by staff participation, the Commission will issue an order prohibiting it. The Commission will not consider, however, submissions from parties to the proceeding that staff participation be denied.

Because members of the Commission staff are not parties to proceedings brought by NFA, they are not in a position to appeal directly a determination by NFA that they believe contravenes fundamental fairness, the purposes of the Act or NFA's own rules. Because of the parallel nature of some of the responsibilities of NFA's staff and the Commission staff, a decision by NFA applying the Act or Commission regulations, or even one interpreting requirements of NFA Rules that correspond to Commission regulations, may raise significant concerns about the effect of that decision on Commission programs administered by the staff. In these circumstances, operating Divisions should have an opportunity to make these concerns known to the Commission by requesting the Commission to consider the issue despite the absence of an appeal.

Rule 171.31(a) permits members of the Commission Divisions to request that the Commission institute review of a decision by NFA in a disciplinary, membership denial or registration action by filing and serving a memorandum regarding its requests prior to the effective date of NFA's decision. The filing of such a memorandum shall automatically stay the effective date of NFA's decision for twenty days. Within fifteen days of the service of the staff's memorandum, NFA may file a response to the staff's request that review be instituted. Pursuant to rule 171.31(c), the Commission may extend the stay of the effective date of NFA's decision for an additional thirty days while it considers the submission of the staff and NFA. If the Commission decides to grant the request that review be instituted, it will issue an order to establish a procedure for submission of the record and argument by the parties. The effective date of NFA's decision would remain stayed pending the issuance of a decision on the merits by the Commission.[16]

IV. Rules Limiting Contacts With Decisional Officials and Prohibiting Non-Public Participation of Members of the Commission Staff When Such Participation Creates an Appearance of Improper Influence

Principles of fundamental fairness applicable to administrative adjudications require that the appearance of fairness and the absence of a probability of outside influences on the adjudicator be maintained. Under the Administrative Procedure Act ("APA"), such concerns about the appearance of fairness and the absence of outside influences generally are addressed by rules prohibiting *ex parte* contacts between Commission decisionmaking officials [17] and persons outside the agency interested in the results of the decision and by maintaining a separation between those agency employees who are or have been engaged in an investigative or prosecuting function related to the proceeding and those agency employees who give advice to Commissioners and the members of their staff concerning the merits of a decision.

Rule 171.6 restricts the contacts Commission decisionmaking officials may have with (1) NFA, (2) NFA members that are opposing NFA in its action and (3) any other person outside the Commission who has an interest in NFA's action. If a Commission decisional official is aware that a notice of appeal has been filed in accordance with § 171.23 or § 171.44 of these rules, or that a petition for stay or for an emergency effective date has been filed in accordance with § 171.22, § 171.41 or § 171.43 of these rules, he may not communicate with any of the individuals included in the three categories listed above about the merits of NFA's action unless the communication is preceded by reasonable notice to all parties to the action and is made on the public record.

In its comments NFA expressed its concern that limiting its communication with CFTC staff at all stages of an NFA action may unduly restrict the transmission of new regulatory information which may be relevant to the merits of the proceeding, frustrating both the Commission's and NFA's regulatory mandates. NFA urged that rule 171.6 be adopted as proposed to prohibit *ex parte* communications upon the filing of an appeal with the Commission rather than from the time an NFA action is commenced. After careful consideration, the Commission has determined to adopt § 171.6 is the prevention of *ex parte* communication. Information relevant to the merits of the proceeding may be communicated on the record upon written notice to the parties.

A decisionmaking official who violates this prohibition may be subject to sanction under rule 171.6(c)(2). A party who knowingly makes an *ex parte* contact with a Commission decisionmaking official also may be subject to sanction under the rule.

V. Delegation of Authority

In the Commission's experience delegation of authority is a practical necessity in light of the rapid growth in the Commission's appellate jurisdiction. Personal involvement by members of the Commission in the many decisions that must be made in the various cases pending on its appellate docket is possible, but only at a significant cost in both time and resources. The Commission's experience with the exercise of the delegations of authority made in the part 10 and part 12 rules [18] have convinced it that significant authority may be safely delegated as long as parties are free to challenge the staff's decisions in a timely manner. For this reason, the Commission has adopted rule 171.50, delegating authority to the Deputy General Counsel for Opinions to rule on certain limited matters. Decisions made pursuant to delegation are subject to reconsideration by the Commission if a motion is filed within seven days of the service of the ruling. The delegee may refer any matter to the Commission for its determination in the first instance and the Commission also may instruct the delegee to submit a matter for its consideration.

VI. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring of any collection of information as defined by that Act. In compliance with those requirements, the Commission previously submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget on June 13, 1990. The Office of Management and Budget approved the collection of information associated with this rule on September 10, 1990 and assigned OMB control number 3038–0043 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response: 1.6
Number of respondents: 105
Frequency of response: 1–150

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7430.

Public reporting burden for this collection of information is estimated to average 1.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project 3038, Washington, DC 20503.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies that propose rules to consider the impact those rules will have on small businesses. With respect to persons seeking Commission review of NFA adjudicatory decisions, the final regulation would impose no additional regulatory burden. Commission review of NFA disciplinary and membership denial actions are presently carried out by the Commission pursuant to generally comparable procedures adopted on a case-by-case basis. Commission review of NFA registration actions is presently governed by comparable procedures under the provisions of subpart F of part 3. The final revisions would, in fact, ease the regulatory burden to some extent by providing greater certainty and predictability concerning the standards and procedures governing such review.

Accordingly, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chariman of the Commission hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

C. Effective Date

These rules will apply in their entirety to all appeals and matters relating thereto filed on or after October 31, 1990.

List of Subjects in 17 CFR Part 171

Administrative practice and procedure, Commodity exchanges, Commodity futures.

PART 3—[AMENDED]

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a), 8a, 17(h), 17(i) and 17(o) thereof, 7 U.S.C. 4a, 12a, 21(h), 21(i) and 21(o), the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

§§ 3.75, 3.80–3.91 [Removed]

1. 17 CFR part 3 Subpart E (§ 3.75) and Subpart F (§§ 3.80 to 3.91 inclusive) are removed.

2. 17 CFR part 171, is added to read as follows:

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[15] *Amos Treat & Co. v. Securities and Exchange Commission*, 306 F.2d 260 (D.C. Cir. 1962). More recently, the Court of Appeals for the Sixth Circuit described the requirements of fundamental fairness in an administrative adjudicatory setting as follows: This concept requires the appearance of fairness and the absence of any probability of outside influences in the adjudicator; it does not require proof of actual partiality. *Utica Packing Co. v. Block*, 781 F.2d 71, 77 (6th Cir. 1986).

[16] Pursuant to rule 171.31(d), the Commission has also retained authority to initiate review of a decision by NFA on its own motion.

[17] As a general matter, the decisionmaking officials for Commission adjudicatory appeals include Commissioners, members of the Commissioners' personal staffs and attorneys in the Office of General Counsel who work on particular opinions matters.

[18] There is a similar delegation of authority included in the recently amended part 9 rules. Because of the limited number of cases filed under these rules, the Commission's experience with this delegation has been limited.

PART 171—RULES RELATING TO REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION AND MEMBER RESPONSIBILITY ACTIONS

Subpart A—General Provisions

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171.2 Definitions.
171.3 Business address; hours.
171.4 Computation of time.
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171.6 Ex parte communications.
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171.26 Answering brief.
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Subpart C—Commission Review of Final Decisions in Disciplinary, Membership Denial and Registration Actions

171.30 Scope of review.
171.31 Commission review in the absence of an appeal.
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Subpart D—Commission Review of Decisions by the National Futures Association in Member Responsibility Actions

171.40 Notice of the commencement of a member responsibility action.
171.41 Petition for a stay of effective date of a member responsibility action pending a hearing by the National Futures Association.
171.42 Notice of a final decision of the National Futures Association in a member responsibility action.
171.43 Petition for a stay of the effective date of a final decision of the National Futures Association in a member responsibility action.
171.44 Notice of appeal.
171.45 General procedures.
171.46 Standards of review.

Subpart E—Delegation of Functions

171.50 Delegation to the Deputy General Counsel for opinions.

Authority: 7 U.S.C. 4a, 12a and 21.

Subpart A—General Provisions

§ 171.1 Scope of rules.

(a) *Matters included.* Unless specifically excluded by subsection (b), this part governs review by the Commission, pursuant to sections 17(h), (i) and (o) of the Commodity Exchange Act ("Act"), as amended, of any disciplinary action, membership denial action, registration action or member responsibility action taken by the National Futures Association or any registered futures association. Unless specifically indicated, references in this part to the National Futures Association shall also include any other registered futures association.

(b) *Matters excluded.* The Commission will not review under these rules the following decisions by the National Futures Association:

(1) A decision in a disciplinary action if the party aggrieved by the decision knowingly failed to pursue the right to appeal an adverse decision to the Appeals Committee of the National Futures Association and there are no extraordinary circumstances that otherwise warrant Commission consideration of the aggrieved party's appeal;

(2) A decision in an arbitration action brought pursuant to section 17(b)(10) of the Act or any rule of the National Futures Association;

(3) Suspension of a member based solely on that member's failure to pay National Futures Association dues;

(4) A decision to disqualify any member for service on the National Futures Association Board of Directors, Business Conduct Committees or arbitration panels pursuant to the standards for service adopted by the National Futures Association to implement Commission rule 1.63.

(c) *Appeals from excluded decisions.* If the Deputy General Counsel for Opinions or his delegee determines that a notice of appeal submitted to the Commission is from a decision that is excluded from review under this part, he may strike it and order it returned to the aggrieved party who submitted it.

(d) *Applicability of these part 171 rules.* Unless otherwise ordered, these rules will apply in their entirety to all appeals and matters relating thereto filed on or after October 31, 1990. Any part 171 proceeding commenced prior to October 31, 1990 continues to be governed by the procedures established in former subpart F of part 3 of the Commission's regulations, if applicable, or by the procedures established for that proceeding by Commission order. Parties to any proceeding pending on October 31, 1990 may, within 30 days after October 31, 1990 by written stipulation executed by all parties, and filed with the Proceedings Clerk before the Commission's final decision is rendered, elect to have the matter governed by the provisions of these part 171 rules.

§ 171.2 Definitions.

For purposes of this part:

(a) *Commission decisional employee* includes any member of the Commission staff who participates in, or may be reasonably expected to participate in, the decisionmaking process in any proceeding under this part. It does not include Commissioners or members of their personal staff.

(b) *Disciplinary action* includes any proceeding brought by the National Futures Association to enforce its rules that may result in expulsion, suspension, censure, bar from association with a member, fine in excess of $100 or any comparable sanction being imposed on a member or a person associated with a member.

(c) *Ex parte communication* shall include any communication, whether written or oral, which is both (1) not preceded by reasonable notice to all parties to a proceeding, and (2) not made on the public record. It shall not include requests made to the Commission's Opinions Section or Office of Proceedings for status reports or for an interpretation of these rules.

(d) *Final Decision* means the decision that terminates the proceeding before the National Futures Association on the action that is the subject of the notice of appeal filed with the Commission.

(e) To *mail* means to place in the United States mail (or to deliver to an overnight delivery service of established reliability) a properly addressed and post-paid document. Unless otherwise provided, documents filed and served by mail must be sent by no less expeditious means than first class United States mail.

(f) *Member* includes any person admitted to membership by the National Futures Association.

(g) *Member Responsibility Action* includes any action in which, based on a finding by the National Futures Association that there is reason to believe that summary action is necessary to protect the commodity futures markets, customers or other members of the association, a member or person associated with a member may be summarily suspended from membership or association with a member, required to restrict operations or otherwise directed to take remedial action.

(h) *Membership denial action* includes any proceeding brought by the National Futures Association to (1) determine whether an applicant should be admitted to membership or be permitted to be associated with a member, (2) determine whether an applicant should be admitted to membership or be permitted to be associated with a member on a conditional basis, or (3) determine whether to revoke or restrict the membership or association status of any person who is a member or is associated with a member.

(i) *Party* includes any person who has been the subject of a disciplinary action, membership denial action, or registration action by the National Futures Association; the National Futures Association itself; any person granted permission to participate as a party pursuant to § 171.27 of these rules; and any Division of the Commission that files a Notice of Appearance pursuant to § 171.28 of these rules.

(j) *Person associated with a member* includes any person permitted to register as an associate of a member by the National Futures Association.

(k) *Record of the proceeding* shall include the order appealed from, the findings or report on which the order is based, the pleadings, evidence and proceedings before the National Futures Association decisionmaker and a copy of any rule of the National Futures Association that is material to the order.

(l) *Registration action* includes any proceeding brought by the National Futures Association, pursuant to authority delegated by the Commission, to grant, condition, deny, suspend, restrict, or revoke the registration of any person.

(m) *Rule of the National Futures Association* includes any article of incorporation, bylaw, rule, regulation, resolution or written interpretation of stated policy of the National Futures Association.

§ 171.3 Business address; hours.

The principal office of the Commission is located at 2033 K Street NW., Washington, DC 20581. It is open each day, except Saturdays, Sundays, and legal public holidays, from 8:15 a.m. until 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC.

§ 171.4 Computation of time.

(a) *In general.* In computing any period of time prescribed by these rules or allowed by the Commission, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday. In the latter circumstances, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the period of time prescribed or allowed is less than seven (7) days.

(b) *Date of service of orders.* In computing any period of time involving the date of service of an order, the date of service shall be the date the order is mailed or hand delivered by the Proceedings Clerk, which, unless otherwise indicated, shall be the date stamped on the order by the Proceedings Clerk.

§ 171.5 Extension of time.

(a) *In general.* Except as otherwise provided by these rules, for good cause shown, on its own motion or the motion of a party, the Commission may at any time extend or shorten the time prescribed by the rules for filing any document. In any instance in which a specific time period is not prescribed in this part for an action to be taken concerning any matter, the Commission may establish a time for that action.

(b) *Filing of motion.* Absent extraordinary circumstances, when the time period that has been prescribed for an action to be taken concerning any matter exceeds seven days, requests for extension of that time period shall be filed at least five days prior to the expiration of the time period provided and shall include an explanation of the facts and circumstances that justify the extension.

§ 171.6 Ex parte communications.

(a) *Prohibition of ex parte communications.* (1) No party to a proceeding before the Commission under these rules and no person outside the Commission who has a direct or indirect interest (pecuniary or otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding shall make or knowingly cause to be made an *ex parte* communication relevant to the merits of the proceeding subject to these rules to a Commissioner, member of the personal staff of a Commissioner or Commission decisional employee.

(2) No Commissioner, member of the personal staff of a Commissioner or Commission decisional employee shall make or knowingly cause to be made to a party to a proceeding subject to these rules or to any person outside the Commission who has a direct or indirect interest (pecuniary or otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding, an *ex parte* communication relevant to the merits of the proceeding subject to these rules.

(b) *Procedure for handling.* Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who receives, or who makes or knowingly causes to be made, an *ex parte* communication prohibited by paragraph (a) of this section shall:

(1) Place on the public record of the proceeding:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(2) Promptly give written notice of such communications and responses thereto to all parties to the proceedings to which the communication or responses relate.

(c) *Sanctions.* (1) Upon receipt of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of the prohibition contained in paragraph (a)(1) of this section, the Commission may, to the extent consistent with the interests of justice and the policies of the Act, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who knowingly makes or knowingly causes to be made, or who knowingly solicits or knowingly causes the solicitation of, an *ex parte* communication which violates the prohibitions contained in paragraph (a)(2) of this section may be deemed to have engaged in conduct of the type proscribed by 17 CFR 140.735–3(b)(3).

(d) *Applicability of prohibitions and sanctions against ex parte communications.* (1)(i) The prohibitions of this section shall begin to apply at the time that a copy of a notice of appeal has been filed with the Proceedings Clerk in accordance with § 171.23 or § 171.44 of this part; or a petition for stay or for an emergency effective date has been filed in accordance with § 171.22, § 171.41 or § 171.43 of this part. The prohibitions of this section shall remain in effect until a final order has been entered in the proceeding which is no longer subject to review by the Commission or to review by any court.

(ii) The Commission may, by specific order entered in a particular proceeding, determine that these prohibitions shall commence from some date prior, or shall continue until a date subsequent, to the

times specified in paragraph (d)(1)(i) of this section.

(2) The sanctions in paragraph (c)(1) of this section shall not apply to a person making a prohibited communication (or causing it to be made) absent evidence that the person acted with actual or constructive

top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) *Signature*—(i) *By whom.* All documents filed with the Proceedings Clerk shall be signed personally in ink:

(A) By the person or persons on

person authorized unless service on a different authorized person or on the party himself is authorized by the Commission, or unless pursuant to § 171.8 the person authorized is changed by the party upon due notice to all other parties. Parties shall file and serve notification of any changes in the

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with the provisions of part 14 of this chapter may

registration action subject to these rules. The notice may be contained in the written decision issued by the National Futures Association.

(b) *Content of the notice.* At a minimum, the notice shall provide the following information:

(1) The names of the parties to the

effective thirty days after service of the notice described in § 171.21.

(b) *Petitions for stay pending review or for an emergency effective date.*—(1) *Stay pending review.* Within ten days of service of the notice described in § 171.21, any aggrieved party may seek from the Commission a stay pending

times specified in paragraph (d)(1)(i) of this section.

(2) The sanctions in paragraph (c)(1) of this section shall not apply to a person making a prohibited communication (or causing it to be made) absent evidence that the person acted with actual or constructive knowledge that the person receiving the communication was a Commissioner, member of the personal staff of a Commissioner or a Commission decisional employee.

§ 171.1 [Reserved]

§ 171.8 Filing with the Proceedings Clerk.

(a) *How to file.* Any document that is required by this part to be filed with the Proceedings Clerk shall be filed by delivering it in person or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2000 L Street NW., Washington, DC 20581. To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing.

(b) *Proof of filing.* Proof of filing shall be made by attaching to the document for filing an affidavit of filing executed by any person 18 years of age or older or a proof of filing executed by an attorney-at-law qualified for practice before the Commission. The proof of filing shall certify that the attached document was delivered by hand to the Proceedings Clerk or deposited in the United States mail, with first-class postage prepaid (or delivered to an overnight delivery service of established reliability), addressed to the Proceedings Clerk, Office of Proceedings, 2000 L Street NW., Washington, DC 20581, on the date specified in the affidavit.

(c) *Formalities of filing*—(1) *Number of copies.* Unless otherwise provided, any person filing a document with the Proceedings Clerk shall provide two conformed copies in addition to the original.

(2) *Title page.* All documents filed with the Proceedings Clerk shall include, at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed.

(3) *Paper, spacing, type.* All documents filed with the Proceedings Clerk shall be typewritten, must be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long, and must be bound on the top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) *Signature*—(i) *By whom.* All documents filed with the Proceedings Clerk shall be signed personally in ink:

(A) By the person or persons on whose behalf they are tendered for filing;

(B) By a general partner, officer or director of a partnership, corporation, association, or other legal entity; or

(C) By an attorney-at-law having authority with respect thereto. The Proceedings Clerk may require appropriate evidence of the authority of a person subscribing a document on behalf of another person.

(ii) *Effect.* The signature on any document of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(A) He has read the document subscribed and knows the contents thereof;

(B) If executed in any representative capacity, it was done with full power and authority to do so;

(C) To the best of his knowledge, information, and belief, every statement contained in the document is true and not misleading; and

(D) The document is not being interposed for delay.

§ 171.9 Service.

(a) *General requirements.* Unless otherwise provided, all documents filed with the Proceedings Clerk must be served upon all parties on the same day.

(b) *Manner of service.* Service may be made by personal delivery (effective upon receipt) or by mail (effective upon deposit). When service is effected by mail, the time within which the person served may respond thereto shall be increased by five days.

(c) *Proof of service.* Proof of service shall be made by filing with the Proceedings Clerk, at the same time as the relevant document is filed, an affidavit of service executed by a person 18 years of age or older or a certificate of service executed by an attorney qualified to practice before the Commission. The proof of service shall state that service has been made and identify the person served, the date of service and the manner of service.

(d) *Designation of person to receive service.* The first document filed in a proceeding by or on behalf of any party must state on the first page the name, postal address and telephone number of the person authorized to receive service for the party of all documents filed in the proceeding. Thereafter, service of documents shall be made upon the person authorized unless service on a different authorized person or on the party himself is authorized by the Commission, or unless pursuant to § 171.8 the person authorized is changed by the party upon due notice to all other parties. Parties shall file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

(e) *Service of orders and decisions.* A copy of all notices, rulings, opinions and orders of the Commission shall be served on each of the parties by the Proceedings Clerk. Service will be deemed complete upon deposit in the mail.

§ 171.10 Motions.

(a) *In general.* An application for a form of relief not otherwise specifically provided for in this part shall be made by a written motion, filed with the Proceedings Clerk. The motion shall state the relief sought, basis for the relief and the authority relied upon.

(b) *Answers to motions.* Unless otherwise provided, a party may file a written response to a motion within five days after service of the motion.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of the action.

(d) *Dilatory motions.* Frivolous or repetitive motions dealing with the same subject matter shall not be permitted.

§ 171.11 Sanctions.

In the event a party fails to fulfill his obligations under these Rules, the Commission may impose appropriate sanctions including dismissal of the appeal or summary reversal of the decision under appeal. Sanctions may be imposed on the motion of a party or on the Commission's own motion.

§ 171.12 Settlement.

At any time before the Commission has reached a final determination in a proceeding, the parties may request dismissal of the appeal based on a settlement agreement. If, in its view, the settlement is consistent with the public interest, the Commission will dismiss the proceeding.

§ 171.13 Practice before the Commission.

(a) *Practice.*—(1) *By non-attorneys.* An individual may appear *pro se* (on his own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with the provisions of part 14 of this chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding.* Whenever, while a proceeding is pending before the Commission, the Commission finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Commission may order that such person be precluded from further acting as counsel or representative in a proceeding subject to these rules. The Commission may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(c) *Withdrawal from representation.* Withdrawal from representation of a party will be only by leave of the Commission. Such leave to withdraw may be subject to conditions including submission of an affidavit averring that the party represented has actual knowledge of the withdrawal and providing the name and address of a successor counsel (or representative) or a statement that the represented party has determined to proceed *pro se*. If the party proceeds *pro se*, the statement shall include the address where the party can thereafter be served.

§ 171.14 Waiver of rules.

To prevent undue hardship on any party or for other good cause shown, the Commission may waive any rule in this part in a particular case and may order proceedings in accordance with its direction. Such an order shall be based upon a determination that no party will be prejudiced thereby and that the ends of justice will be served. Reasonable notice will be given to all parties of any action taken pursuant to this paragraph.

Subpart B—Notice and Effective Date of Final Decisions in Disciplinary, Membership Denial and Registration Actions

§ 171.20 [Reserved]

§ 171.21 Notice of final decision.

(a) *When required.* The National Futures Association shall promptly serve all parties, as well as the Proceedings Clerk and the Secretary of the Commission, with a written notice of any final decision in a disciplinary action, membership denial action or registration action subject to these rules. The notice may be contained in the written decision issued by the National Futures Association.

(b) *Content of the notice.* At a minimum, the notice shall provide the following information:

(1) The names of the parties to the proceeding;

(2) The date the notice was served and the effective date of the decision;

(3) A statement informing the parties of their right to appeal the decision to the Commission pursuant to § 171.28 as well as their right to seek a stay of the effective date of the decision pursuant to § 171.27.

(4) For a disciplinary action:

(i) A statement setting forth the relevant acts of practices engaged in or omitted by the parties to the proceeding;

(ii) A statement setting forth the specific rule or rules of the association violated by the relevant acts or practices or omissions to act of the parties to the proceeding;

(iii) A statement setting forth the penalty imposed and the basis for its imposition.

(5) For a membership action:

(i) The specific grounds for the denial, bar, expulsion, or restriction;

(ii) The findings made concerning those grounds;

(iii) An explanation of the result reached in light of the grounds for ineligibility found and the findings made.

(6) For a registration action:

(i) The statutory disqualification at issue;

(ii) The findings made concerning the statutory disqualification;

(iii) An explanation of the result reached in light of the statutory disqualification shown and the findings made.

(c) *Effect of inadequate notice.* (1) If the National Futures Association issues a notice of a final decision subject to these rules that is not substantially consistent with the requirements of this section, and the record does not establish that the errors therein are harmless, the notice may be stricken. The Commission may act on its own motion or on the motion of a party.

(2) When a notice is struck, the final decision of the National Futures Association shall not be effective until a proper notice is served.

§ 171.22 Effective date of final decisions in disciplinary, membership denial and registration actions.

(a) *General rule.* A final decision of the National Futures Association in a disciplinary action, membership denial action or registration action shall be effective thirty days after service of the notice described in § 171.21.

(b) *Petitions for stay pending review or for an emergency effective date.*—(1) *Stay pending review.* Within ten days of service of the notice described in § 171.21, any aggrieved party may seek from the Commission a stay pending consideration of the merits of an appeal by filing and serving an appropriate petition. The mere filing of such a petition shall not stay the effective date of the decision. The burden of persuasion shall rest with the party seeking the stay. If the Commission does not grant the petition prior to the effective date of the decision under review, it shall be deemed denied. All petitions for stay must be accompanied by a notice of appeal.

(2) *Emergency effective date.* Within ten days of service of the notice described in § 171.21, the National Futures Association may seek from the Commission an order establishing an emergency effective date for the decision by filing and serving an appropriate petition. The mere filing of such a petition shall not alter the effective date of the decision. The burden of persuasion rests with the National Futures Association. If the Commission does not grant the petition by the date specified as the emergency effective date, it shall be deemed denied.

(3) *Contents of petition for stay and petition for an emergency effective date.* A petition for stay or for an emergency effective date shall be in writing. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(4) *Response.* Within five days of the service of the petition, a party may file in opposition to the petition. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(c) *Standards for determining petitions for a stay or an emergency effective date petition.* In reviewing petitions filed under this seciton, the Comission shall consider:

(1) The likelihood that a challenge to the merits of the decision will be successful; and

(2) The likelihood that the denial of the petition would result in irreparable harm to the petitioner; and

(3) The effect a grant of the petition would have on the opposing party; and

(4) The effect a grant or denial of the petition would have on the public interest.

(d) *Expedited consideration.* If, in its view, it is necessary to protect the petitioner's right to a meaningful determination of the issues raised in the petition, the Commission may act upon a petition for a stay or for an emergency effective date prior to its receipt of an opposing party's response. Any party aggrieved by such expedited

to the materials included or excluded in preparing the record, he shall file his objections with his brief on appeal. The Commission may, at any time, direct that an omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

(c) *Length of the answering brief.* Without prior leave of the Commission, the answering brief may not exceed thirty five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

may base its determination thereon. The Commission may also limit its consideration to those issues specifically raised in the parties' briefs, treating all other issues as waived.

§ 171.31 Commission review in the absence of an appeal.

(a) *Request by Commission staff.* At

request under this paragraph must be filed concurrently with the party's brief.

(c) *Reporting and transcription.* Oral argument before the Commission will be recorded and transcribed unless the Commission directs otherwise. In the event the Commission affords the parties the opportunity to present oral

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does

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(d) *Expedited consideration.* If, in its view, it is necessary to protect the petitioner's right to a meaningful determination of the issues raised in the petition, the Commission may act upon a petition for a stay or for an emergency effective date prior to its receipt of an opposing party's response. Any party aggrieved by such expedited consideration may seek reconsideration within seven days of service of the decision.

§ 171.23 Notice of appeal.

(a) *Time to file.* Any party aggrieved by the final decision of the National Futures Association in a disciplinary, membership denial or registration action may, within thirty days of the National Futures Association's service of the notice described in § 171.21, file a notice of appeal with the Proceedings Clerk. The filing of such a notice shall not stay the effective date of the decision.

(b) *Contents.* The notice of appeal shall consist of a brief statement indicating that the party is requesting Commission review of an action of the National Futures Association. It should identify:

(1) The name and address of the person appealing and, if represented, the name and address of his representative;

(2) The case name and docket number of the National Futures Association proceeding; and

(3) The date of the decision.

(c) *Filing fee.* Each notice of appeal must be accompanied by a nonrefundable filing fee of $100. This amount may be paid by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

(d) *Defective notices of appeal.* Notices of appeal that are untimely or not accompanied by the filing fee shall not be accepted by the Proceedings Clerk absent a showing, by motion, of excusable neglect.

§ 171.24 Submission of the record.

Within thirty days after service of a notice of appeal, the National Futures Association shall file with the Proceedings Clerk two copies of the record of the proceeding (as defined by § 171.2(k)). The record shall be bound as a unit, chronologically indexed and tabbed, and certified as correct by a duly authorized official, agent or employee of the National Futures Association. The National Futures Association shall serve on the party appealing, in lieu of the record, a copy of the index of the record and a copy of any document in the record not previously served on the party appealing. If the party appealing objects to the materials included or excluded in preparing the record, he shall file his objections with his brief on appeal. The Commission may, at any time, direct that an omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

§ 171.25 Appeal brief.

(a) *Time to file.* Any person who has filed a notice of appeal in accordance with the provisions of § 171.23, shall perfect the appeal by filing an appeal brief with the Proceedings Clerk within thirty days after service of the record by the National Futures Association. The Commission may dismiss any appeal for which an appeal brief is not timely filed.

(b) *Contents.* Each appeal brief submitted to the Commission pursuant to this section shall include, in the order indicated:

(1) A statement of the issues presented for review;

(2) A statement of the case. The statement shall indicate briefly the nature of the case and include a full description of the action being challenged. There shall follow a clear and concise statement of all facts relevant to the consideration of the appeal with appropriate citations to the record;

(3) An argument. The argument shall contain the contentions of the appellant with respect to the issues presented and the reasons supporting those contentions. It shall cite specifically to the relevant authorities and to those parts of the record that support appellant's contentions; and

(4) A conclusion stating the precise relief sought.

(c) *Length of appeal brief.* Without prior leave of the Commission, the appeal brief may not exceed thirty five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, rules, regulations or similar materials.

§ 171.26 Answering brief.

(a) *Time for filing answering brief.* Within thirty days after service of the apeal brief, the National Futures Association shall file with the Proceedings Clerk an answering brief.

(b) *Contents of answering brief.* The contents of the answering brief generally shall be consistent with those set forth in § 171.25(b) but may omit a statement of the issues and a statement of the case if the National Futures Association does not dispute the issues or the statement of the case contained in the appeal brief.

(c) *Length of the answering brief.* Without prior leave of the Commission, the answering brief may not exceed thirty five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

§ 171.27 Limited participation by interested persons.

(a) Upon motion of any interested person or, on its own motion, the Commission may permit, or solicit, limited participation in the proceeding by such interested person. A motion for leave to participate in the proceeding shall be filed promptly, shall identify the interest of that person and shall show why participation in the proceeding by that person would serve the public interest. If the Commission determines that participation would serve the public interest, it shall by order establish a supplementary briefing schedule for the interested person and the parties to the proceeding.

(b) For purposes of this subsection, *interested person* shall include parties and any other persons who might be adversely affected or aggrieved by the outcome of a proceeding; their officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives; and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding.

§ 171.28 Participation by Commission staff.

The Division of Enforcement, the Division of Trading and Markets or the Division of Economic Analysis may participate in any proceeding by filing a notice of appearance. Such a notice shall be filed and served on or before the twentieth day following the date of service of its brief by the National Futures Association. The Commission shall by order establish a supplementary briefing schedule for the Commission staff and other parties to the proceeding. If it concludes that participation of the Commission staff will not serve the public interest, the Commission shall prohibit further participation.

Subpart C—Commission Review of Final Decisions in Disciplinary, Membership Denial and Registration Actions

§ 171.30 Scope of review.

On review, the Commission may, in its discretion and after appropriate consideration of the notice given to the parties, consider *sua sponte* any issues arising from the record before it and

may base its determination thereon. The Commission may also limit its consideration to those issues specifically raised in the parties' briefs, treating all other issues as waived.

§ 171.31 Commission review in the absence of an appeal.

(a) *Request by Commission staff.* At any time prior to the effective date of a final decision of the National Futures Association in a disciplinary, membership denial or registration action, the Division of Enforcement, the Division of Trading and Markets or the Division of Economic Analysis may file and serve a memorandum requesting the Commission to institute review of the National Futures Association proceeding. The filing of such a memorandum shall stay the effective date of the decision at issue for twenty days.

(b) *Response by the National Futures Association.* The National Futures Association may file a response to the memorandum of the Commission staff within fifteen days of the service of the memorandum.

(c) *Commission determination of staff request.* To preserve the status quo while it determines whether review is apropriate, the Commission may extend the stay of the effective date of the decision at issue for an additional 30 days. If the Commission decides to take review, the effective date of the decision at issue shall be stayed pending the decision of the Commission, unless otherwise ordered. The Commission shall by order establish the procedure for submission of both the record of the proceeding and the briefs of the parties to the proceeding.

(d) *Commission review on its own motion.* At any time prior to the effective date of a final decision of the National Futures Association in a disciplinary, membership denial or registration action, the Commission may take review of a decision by issuing an appropriate order. If the Commission determines that it is appropriate to take review on its own motion, it shall by order establish the procedure for submission of both the record of the proceeding and the briefs of the parties.

§ 171.32 Oral argument.

(a) *On motion of Commission.* On its own motion, the Commission may, in its discretion, hear oral argument in a proceeding.

(b) *On request of party.* Any party may file with the Proceedings Clerk a request in writing for the opportunity to present oral argument before the Commission, which the Commission may, in its discretion, grant or deny. A request under this paragraph must be filed concurrently with the party's brief.

(c) *Reporting and transcription.* Oral argument before the Commission will be recorded and transcribed unless the Commission directs otherwise. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument will proceed in accordance with the provisions of § 10.103(b) of this chapter.

§ 171.33 Final decision by the Commission.

(a) *Opinion and order.* Upon review, the Commission may affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the National Futures Association. The Commission's decision will be contained in its opinion and order which will be based upon the record before it, including the record of the registered futures association proceeding, briefs submitted to the Commission by the parties and any oral argument made in accordance with § 171.32. Except as provided in paragraph (b) of this section, the opinion and order will constitute the final decision of the Commission, effective upon service on the parties. In the event the Commission is equally divided as to its decision, the decision of the National Futures Association shall be affirmed without a Commission opinion.

(b) *Order of summary affirmance.* If the Commission finds that the result reached in the decision of the National Futures Association is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may, by appropriate order, summarily affirm the decision without opinion. The decision of the National Futures Association shall constitute the Commission's final decision, effective upon service. Unless the Commission expressly indicates otherwise in its order, an order of summary affirmance does not reflect a Commission determination to adopt the rationale of the National Futures Association, and neither the order of summary affirmance nor the underlying order shall serve as Commission precedent in other proceedings.

§ 171.34 Standards of review.

(a) *Disciplinary actions.* In reviewing a final decision of the National Futures Association in a disciplinary action, the Commission shall affirm the order of the National Futures Association, unless the Commission finds that:

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does not support the findings of the National Futures Association concerning the relevant acts or practices engaged in or omitted;

(4) The determination that the acts or practices engaged in or omitted violated rules of the National Futures Association does not rest on a reasonable interpretation of the rules at issue;

(5) The National Futures Association's application of its rules is not consistent with the purposes of the Act;

(6) The National Futures Association's choice of sanction is excessive or oppressive in light of the violations found having due regard for the public interest.

(b) *Membership denial actions.* In reviewing a final decision of the National Futures Association in a membership denial action, the Commission shall affirm the order of the National Futures Association, unless the Commission finds that:

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does not support the findings made or adopted in the final decision;

(4) The conclusion of the National Futures Association is not consistent with the purposes of the Act.

(c) *Registration actions.* In reviewing a decision of the National Futures Association in a registration action, the Commission shall affirm the order of the National Futures Association unless the Commission finds that:

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does not support the findings made or adopted in the final decision;

(4) The conclusion of the National Futures Association is not consistent with the purposes of the Act.

Subpart D—Commission Review of Decisions by the National Futures Association in Member Responsibility Actions

§ 171.40 Notice of the commencement of a member responsibility action.

The notice of a Member Responsibility Action provided by the National Futures Association pursuant to its rules shall advise the affected parties of their right to petition the Commission pursuant to § 171.41 to stay the effective date of the action pending a hearing before the National Futures Association on the factual issues relevant to the suspension, restriction or remedial action ordered.

§ 171.41 Petition for a Stay of effective date of a member responsibility action pending a hearing by the National Futures Association.

(a) *Time to file.* Within ten days after the National Futures Association serves the notice required by § 171.40, any party aggrieved by the National Futures Association's determination that the member responsibility action should be effective prior to the opportunity for a hearing on the factual issues relevant to the suspension, restriction or remedial action imposed may petition the Commission to stay its effectiveness pending completion of further proceedings by the National Futures Association. The burden of persuasion shall rest with the party seeking the stay.

(b) *Content.* A petition for stay shall meet the content requirements set forth in § 171.22(b)(3).

(c) *Response.* A response may be filed by the National Futures Association in accordance with § 171.22(b)(4).

(d) *Standards for granting petition for stay.* In reviewing petitions to stay the effectiveness of the member responsibility action pending completion of further proceedings, the Commission shall consider:

(1) Whether, in the circumstances presented, the notice and opportunity for a hearing provided by the National Futures Association are consistent with principles of fundamental fairness; and

(2) The likelihood that the denial of the petition would result in irreparable harm to petitioner; and

(3) The effect a grant of the petition would have on the interests of the National Futures Association; and

(4) The effect a grant or denial of the petition would have on the public interest.

(e) If the suspension, restriction or remedial action imposed by the National Futures Association in a member responsibility action is effective at the time a petition for a stay is filed with the Commission, the Commission shall not delay its decision on the petition to await the receipt of the National Futures Association's response. If the action is not effective at the time the petition is filed, the Commission will not act upon the petition prior to the receipt of a response from the National Futures Association unless, in its view, expedited action on the petition is necessary to protect petitioner's right to a meaningful determination of the right to a stay. If the Commission grants the petition prior to the receipt of the response of the National Futures Association, the association may seek reconsideration of the Commission's action within seven days of service of the decision.

(f) *Proceedings following Commission disposition.* If the petition for a stay is denied, the National Futures Association shall continue its action in accordance with the applicable rules of the association. If the petition for a stay is granted, the action shall be remanded to the National Futures Association for further proceedings as provided in the Commission's decision. Unless otherwise ordered by the Commission, a stay issued pursuant to this section shall not deprive the National Futures Association of the authority, after conducting a hearing under the appropriate rules of the association, to make the suspension, restriction or remedial action ordered in the member responsibility action immediately effective at the time a final decision is issued.

§ 171.42 Notice of a final decision of the National Futures Association in a member responsibility action.

(a) *When required.* The National Futures Association shall promptly serve all parties, as well as the Proceeding Clerk and Secretary of the Commission, with a written notice of any final decision in a member responsibility action. The notice may be contained in the written decision issued by the National Futures Association. If the National Futures Association determines that the decision shall be effective upon issuance, in addition to serving a written notice, it shall also contact the parties and the Proceedings Clerk by telephone to inform them of its determination.

(b) *Contents of the written notice.* At a minimum, the notice shall provide the following information:

(1) The name of the parties to the proceeding;

(2) The date the notice was served and the effective date of the decision;

(3) A statement informing the parties of their right to appeal the decision to the Commission pursuant to § 171.44 as well as their right to seek a stay of the decision pending Commission consideration of their appeal pursuant to § 171.43;

(4) A description of the action taken and the reasons for the action;

(5) Findings of fact and conclusions of law on all issues relevant to its decision;

(6) A determination of the appropriate relief based on the findings and conclusions.

§ 171.43 Petition for a stay of the effective date of a final decision of the National Futures Association in a member responsibility action.

(a) *Filing the petition.* Within ten days of the service of the notice described in § 171.42, any aggrived party may seek from the Commission a stay of the effective date of the decision of the National Futures Association pending consideration of the merits of an appeal by filing and serving an appropriate petition. The mere filing of such a petition shall not stay the effective date of the decision. The burden of persuasion shall rest with the party seeking the stay.

(b) *Contents.* A petition for a stay shall be in writing. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(c) *Response.* Within five days of the service of the petition, the National Futures Association may file an opposition to the petition. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(d) *Standards for determining petitions for a stay.* In reviewing petitions filed under this section, the Commission shall consider:

(1) The likelihood that petitioner's challenge to the merits of the decision will be successful; and

(2) The likelihood that the denial of the petition would result in irreparable harm to the petitioner; and

(3) The effect a grant of the petition would have on the National Futures Association; and

(4) The effect a grant or denial of the petition would have on the public interest.

(e) *Expedited consideration.* If the suspension, restriction or remedial action imposed by the National Futures Association in a member responsibility action is effective at the time a petition for a stay is filed with the Commission, the Commission shall not delay its decision on the petition to await the receipt of the National Futures Association's response. If the decision is not effective at the time the petition is filed, the Commission will not act upon the petition prior to the receipt of a response from the National Futures Association unless, in its view, expedited action on the petition is necessary to protect petitioner's right to a meaningful determination of the right to a stay. If the Commission grants the petition prior to the receipt of the response of the National Futures Association, the association may seek reconsideration of the Commission's action within seven days of service of the decision.

§ 171.44 Notice of appeal.

(a) *Time to file.* Any party aggrieved by a final decision of the National Futures Association in a member responsibility action may, within thirty days of the service of the notice described in § 171.42, file with the Proceedings Clerk and serve on the National Futures Association a notice of appeal. The filing of such a notice shall not stay the effective date of the decision.

(b) *Contents.* The notice of appeal shall meet the content requirements of § 171.23(b).

(c) *Filing fee.* Each notice of appeal must be accompanied by a nonrefundable filing fee of $100. This amount may be paid by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

(d) *Defective notices of appeal.* Notices of appeal that are untimely or not accompanied by the filing fee shall not be accepted by the Proceedings Clerk absent a showing, by motion, of excusable neglect.

§ 171.45 General procedures.

The following procedural rules applicable to review of decisions of the National Futures Association in disciplinary, membership denial and registration actions shall also apply to the review of decisions of the National Futures Association in member responsibility actions:

(a) Section 171.24 Submission of the Record.

(b) Section 171.25 Appeal Brief.

(c) Section 171.26 Answering Brief.

(d) Section 171.27 Limited Participation By Interested Persons.

(e) Section 171.28 Participation By Commission Staff.

(f) Section 171.30 Scope of Review.

(g) Section 171.31 Commission Review In the Absence of An Appeal.

(h) Section 171.32 Oral Argument.

(i) Section 171.33 Final Decision By the Commission.

§ 171.46 Standards of review.

In reviewing the decision of the National Futures Association in a member responsibility action, the Commission shall consider whether:

(a) The proceedings were conducted in a manner consistent with fundamental fairness;

(b) The proceedings were conducted in a manner consistent with the rules of the National Futures Association;

(c) The weight of the evidence supports the findings of the National Futures Association concerning the reasons for the action;

(d) The determination that summary action is necessary to protect the commodity futures markets, customers, or members of the National Futures Association rests on a reasonable interpretation of the NFA rules at issue;

(e) The National Futures Association's application of its rules is consistent with the purposes of the Act;

(f) In light of the findings of the National Futures Association concerning the reasons for the action and the public interest, the suspension, restriction or remedial action imposed by the National Futures Association is not excessive, oppressive or an abuse of discretion.

Subpart E—Delegation of Functions

§ 171.50 Delegation to the Deputy General Counsel for opinions.

(a) The Commission hereby delegates, until it orders otherwise, to the Deputy General Counsel for Opinions, or the Deputy General Counsel's designee, the authority:

(1) To waive or modify any of the requirements of §§ 171.25, 171.26, 171.27 and to waive or modify any requirement of the Part 171 Rules insofar as it pertains to changes in the time permitted for filing, or the form, execution, service and filing of documents;

(2) To enter orders under §§ 171.10, 171.12, 171.21 and 171.31(c);

(3) To decline to accept any notice of appeal, or petition for stay pending review, of matters specified in § 171.1(b) and to so notify the appellant and the registered futures association;

(4) To stay the effective date of a decision of the National Futures Association in a disciplinary, membership denial or registration action, or a decision relating to such actions issued by the Commission pursuant to these rules, for a reasonable period of time, not to exceed 10 days, when such a stay is necessary to allow the Commission to consider a petition to stay the effective date of such a decision or a motion for similar relief;

(5) To decline to accept any document which has not been filed or perfected as specified in these rules;

(6) To determine motions seeking permission to participate in a proceeding under § 171.27 and to establish the related briefing schedule;

(7) To establish briefing schedules under § 171.28; and

(8) To enter any order which, in his judgment, will facilitate or expedite Commission review of a decision by the National Futures Association in a disciplinary, membership denial or registration action.

(b) Within seven days after service of a ruling issued pursuant to paragraph (a) of this section, a party may file with the Proceedings Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration will not operate to stay the effective date of such ruling.

(c) The Deputy General Counsel for Opinions may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(d) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Deputy General Counsel for Opinions under this section.

Issued in Washington, DC, on Monday, October 1, 1990.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 90-23750 Filed 10-5-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 90-88]

Special Local Regulations: City of Miami

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the 1990 Columbus Day Cruising Regatta. The event will be held on October 6–7, 1990, from 9 a.m. EDT until 6 p.m. EDT on the sixth and from 10 a.m. EDT until 6 p.m. EDT on the seventh. October 13 and 14, 1990, from 9 a.m. EDT until 6 p.m. EDT on the

thirteenth and from 10 a.m. EDT until 6 p.m. EDT on the fourteenth, have been established as alternate dates in case of severe weather. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on October 6, 1990, at

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T07–88 is added as follows:

§ 100.35T07–88 City of Miami.

(a) *Regulated Area.* The regulated area will be all navigable waters on

property on the navigable waters during the event.

EFFECTIVE DATE: The regulations, 33 CFR 100.105, are effective from 9 a.m. to 6 p.m. on Sunday, October 7, 1990 and will be in effect each year thereafter during the same period on the second Saturday of October or as published in a Federal

has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety

between the hours of 8 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and

However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent

thirteenth and from 10 a.m. EDT until 6 p.m. EDT on the fourteenth, have been established as alternate dates in case of severe weather. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on October 6, 1990, at 8:30 a.m. EDT and terminate on October 7, 1990, at 6:30 p.m. EDT. In case of severe weather, these regulations will become effective on October 13, 1990, at 8:30 a.m. EDT and terminate on October 14, 1990, at 6:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: ENS A.M. Palermo, (305) 535–4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT G. G. Tanos, Project Attorney, Seventh Coast Guard District Legal Office, and ENS Andrea Palermo, Project Officer, USCG Group Miami.

Discussion of Regulations

The 1990 Columbus Day Cruising Regatta is a sailboat race taking place on Biscayne Bay in the vicinity of Dinner Key Channel to the East Featherbed Bank. The event is a two-day race involving approximately six hundred 18 to 65 foot single and multi-hull sailing vessels with an additional 500 spectator crafts expected to view the race.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been demonstrated that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T07–88 is added as follows:

§ 100.35T07–88 City of Miami.

(a) *Regulated Area.* The regulated area will be all navigable waters on Biscayne Bay in the vicinity of Dinner Key Channel on the North end of the course extending to East Featherbed Band on the South end of the course.

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander.

(2) All vessels in the regulated area will follow the directions of the Patrol Commander and will proceed at no more than 5 MPH when passing the regulated area.

(3) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date.* These regulations become effective on October 6, 1990, from 8:30 a.m. EDT and terminate on October 7, 1990, at 6:30 p.m. EDT. In case of severe weather, these regulations will become effective on October 13, 1990, at 8:30 a.m. EDT and terminate on October 14, 1990, at 6:30 p.m. EDT.

Dated: September 20, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90–23750 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD1 90–167]

Head of the Connecticut Regatta, Middletown, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.105, for the Head of the Connecticut Regatta to be held on Sunday, October 7, 1990 from 9 a.m. to 6 p.m. The regulations in 33 CFR 100.105 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations, 33 CFR 100.105, are effective from 9 a.m. to 6 p.m. on Sunday, October 7, 1990 and will be in effect each year thereafter during the same period on the second Saturday of October or as published in a **Federal Register** notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, (617) 223–8310.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Ens. L. J. Penney, project officer, First Coast Guard District Boating Safety Division, and Lt. R. E. Korroch, project attorney, First Coast Guard District Legal Division.

This notice provides the effective period for the permanent regulation governing the 1990 running of the Head of the Connecticut Regatta in Middletown, Connecticut. The regulations, 33 CFR 100.105, will be in effect from 9 a.m. on October 7, 1990 through 6 p.m. on October 7, 1990. A portion of the Connecticut River will be closed off during this time to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area off the towns of Cromwell, Portland, and Middletown, CT, between the southern tip of Gildersleeve Island and Light No. 67. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners.

Dated: September 24, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 90–23751 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Parts 100 and 165

[CGD 90–059]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between July 1, 1990 and September 30, 1990 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA–2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267–1477

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect.

However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations, and security zones have been exempted from review under Executive Order 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1990 through September 30, 1990 unless otherwise indicated.

Docket No.	Location	Type	Effective Date
CGD1–90–118	Hudson River, NY	Safety	01 July 90.
CGD1–90–079	East River, NY	Safety	03 July 90.
CGD1–90–119	Lake Champlain, VT	Safety	03 July 90.
CGD1–90–115	Raritan Bay, NJ	Safety	04 July 90.
CGD1–90–120	Hudson River, Kingston	Safety	04 July 90.
CGD1–90–126	Colt State Park, RI	Safety	05 July 90.
CGD1–90–122	Lake Champlain, VT	Security	06 July 90.
CGD1–90–127	Greenport Firework	Safety	22 July 90.
CGD1–90–132	New York Harbor	Security	24 July 90.
CGD1–90–129	Long Island Sound	Safety	25 July 90.
CGD1–90–133	East Passage	Safety	28 July 90.
CGD1–90–136	Mount Hope Bay, RI	Safety	03 August 90.
CGD1–90–134	Connecticut River	Final Rule	04 August 90.
CGD1–90–141	Taunton River, MA	Safety	04 August 90.
CGD1–90–140	Battleship Cove	Safety	04 August 90.
CGD1–90–148	Harlem River, New York	Safety	07 August 90.
CGD1–90–146	Lower East Passage	Safety	09 August 90.
CGD1–90–147	Lower East Passage	Safety	11 August 90.
CGD1–90–150	M. Tisch Firework Display	Safety	11 August 90.
CGD1–90–145	Quonset Point, RI	Safety	16 August 90.
CGD1–90–131	Hudson River, Peekskill	Safety	18 August 90.
CGD1–90–019	Lower East Passage	Safety	25 August 90.
CGD1–90–149	Lower East Passage	Safety	25 August 90.
CGD1–90–128	East River	Safety	02 Sep 90.
CGD1–90–160	Lower Hudson River	Safety	02 Sep 90.
CGD1–90–158	Hewlett Bay Firework	Safety	03 Sep 90.
CGD1–90–159	Restoration of Bug Lighthouse Fireworks	Safety	05 Sep 90.
CGD1–90–165	New York Harbor	Security	07 Sep 90.
CGD1–90–164	Ellis Island	Security	09 Sep 90.
CGD2–90–85	Portsmouth Riverdays	Special	02 Sep 90.
CGD5–90–48	Chesapeake Bay	Security	10 July 90.
CGD5–90–53	Chesapeake Bay	Security	21 July 90.
CGD5–90–61	Chesapeake Bay	Safety	13 August 90.
CGD5–90–83	Cape Fear River	Safety	15 August 90.
CGD5–90–68	Cape Fear River	Safety	15 August 90.
CGD5–90–66	Bogue Sound	Safety	20 August 90.
CGD5–90–67	Bogue Sound	Safety	21 August 90.
CGD5–90–86	Bogue Sound	Safety	22 August 90.
CGD5–90–73	New Jersey Dragboat	Special	30 Sep 90.
CGD7–90–66	City of Charleston, SC	Special	04 July 90.
CGD7–90–67	City of Beaufort, SC	Special	14 July 90.
CGD7–90–75	City of Augusta, GA	Special	20 July 90.
CGD7–90–85	Ponce De Leon Inlet, FL	Special	26 August 90.
CGD8–90–18	Budweiser Jet Ski Classic	Special	12 August 90.
COTP Boston 90–092	Boston Harbor, MA	Safety	06 July 90.
COTP Boston 90–155	Boston Inner Harbor	Safety	06 July 90.
COTP Boston 90–093	Boston Harbor,, MA	Safety	09 July 90.
COTP Boston 90–151	Dorechester Bay	Safety	01 Sep 90.

Docket No.	Location	Type	Effective Date
COTP Boston 90-161	Boston Harbor, MA	Safety	04 Sep 90.
COTP Boston 90-162	Boston Harbor, MA	Safety	04 July 90.
COTP Charleston 90-56	Cooper River	Security	30 August 90.
COTP CorpChristi 90-04	Brownsville Ship Channel	Safety	18 August 90
COTP Detroit 90-61	Saginaw River	Safety	19 Sep 90.
COTP Huntington 90-03	Ohio River	Safety	04 July 90.
COTP Huntington 90-04	Ohio River	Safety	04 July 90.
COTP Huntington 90-05	Ohio River	Safety	04 July 90.
COTP Huntington 90-06	Kanawha River	Safety	04 July 90.
COTP Huntington 90-08	Ohio River	Safety	21 July 90.
COTP Huntington 90-09	Ohio River	Safety	23 July 90.
COTP Huntington 90-11	Elk River	Safety	25 July 90
COTP Jacksville 90-68	St. Johns River	Safety	04 July 90.
COTP Jacksville 90-69	St. Johns River	Safety	04 July 90.
COTP Jacksville 90-70	Amelia River	Safety	04 July 90.
COTP Jacksville 90-71	Intracoastal Waterway	Safety	04 July 90.
COTP Jacksville 90-82	St. Johns River	Safety	15 August 90.
COTP Jacksville 90-83	St. Johns River	Safety	18 August 90.
COTP Jacksville 90-93	St. Johns River	Safety	15 Sep 90.
COTP LA/LB 90-69	Ports of LA/LB	Safety	24 July 90.
COTP LA/LB 90-08	Ports of LA/LB	Safety	30 August 90.
COTP LA/LB 90-09	Port Hueneme, CA	Safety	14 Sep 90.
COTP LA/LB 90-09	Port Long Beach, CA	Safety	19 Sep 90.
COTP Louisville 90-10	Louisville, KY	Safety	04 July 90.
COTP Louisville 90-11	Louisville, KY	Safety	25 July 90.
COTP Louisville 90-14	Louisville, KY	Safety	07 Sep 90.
COTP Louisville 90-16	Louisville, KY	Safety	08 Sep 90.
COTP Memphis 90-06	Lower Mississippi River	Safety	04 July 90.
COTP Memphis 90-07	Lower Mississippi River	Safety	09 August 90.
COTP Memphis 90-09	Lower Mississippi River	Safety	21 August 90.
COTP Memphis 90-06	Lower Mississippi River	Safety	22 August 90.
COTP Philadelphia 90-05	Cape May Harbor	Safety	25 July 90.
COTP Pittsburgh 90-06	Ohio River	Safety	03 July 90.
COTP Portland 90-121	USCGC Eagle	Safety	03 July 90.
COTP Portland 90-05	Columbia River Entrance	Safety	05 Sep 90.
COTP Puget Sound 90-07	Indian Island	Safety	05 July 90.
COTP Puget Sound 90-08	West Point in Puget Sound	Safety	31 July 90.
COTP Puget Sound 90-09	West Point in Puget Sound	Safety	01 August 90.
COTP Puget Sound 90-10	West Point in Puget Sound	Safety	06 August 90.
COTP Puget Sound 90-11	West Point in Puget Sound	Safety	07 August 90.
COTP San Diego 89-04	San Diego, CA	Safety	04 Aug 90.
COTP San Diego 89-06	San Diego, CA	Safety	12 Sep 90.
COTP Savannah 90-055	Skull Creek	Safety	04 July 90.
COTP Savannah 90-061	Savannah River	Safety	10 August 90.
COTP St. Louis 90-29	Upper Mississippi River	Safety	17 June 90.
COTP St. Louis 90-27	Upper Mississippi River	Safety	25 June 90.
COTP St. Louis 90-28	Upper Mississippi River	Safety	27 June 90.
COTP St. Louis 90-31	Upper Mississippi River	Safety	01 July 90.
COTP St. Louis 90-32	Upper Mississippi River	Safety	03 July 90.
COTP St. Louis 90-33	Illinois River	Safety	03 July 90.
COTP St. Louis 90-34	Upper Mississippi River	Safety	03 July 90.
COTP St. Louis 90-35	Upper Mississippi River	Safety	04 July 90.
COTP St. Louis 90-36	Illinois River	Safety	04 July 90.
COTP St. Louis 90-38	Upper Mississippi River	Safety	04 July 90.
COTP St. Louis 90-39	Upper Mississippi River	Safety	22 July 90.
COTP St. Louis 90-40	Upper Mississippi River	Safety	03 August 90.
COTP St. Louis 90-41	Upper Mississippi River	Safety	11 August 90.
COTP St. Louis 90-43	Illinois River	Safety	16 August 90.
COTP St. Louis 90-42	Upper Mississippi River	Safety	17 August 90.

Dated: October 1, 1990.

Bruce Novak,

Executive Secretary, Marine Safety Council.

[FR Doc. 90-23752 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Detroit Reg. 90-02]

Safety Zone Regulations; Saginaw River

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Saginaw River in order to protect safety of life and property on the water during the ongoing pollution cleanup and salvage operations for the Tank Vessel Jupiter at the total Petroleum Wharf, Bay City, MI.

EFFECTIVE DATE: This regulation will be in effect from 12:00 pm October 1, 1990 to 12:00 pm October 31, 1990, unless otherwise terminated by the Captain of the Port, Detroit, MI.

FOR FURTHER INFORMATION CONTACT: Commander Thomas M. Daley, captain of the Port, Detroit, MI (313-568-9560).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to preclude damage to vessels or injury to people in the vicinity.

Drafting Information

Thomas M. Daley, Captain of the Port, Detroit, MI. and Lieutenant M. Eric Reeves, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the ongoing pollution cleanup and salvage operation on the T/V JUPITER at the Total Petroleum Wharf Bay City, MI. The zone is needed to insure the protection of property and workers during the operations. This follows up a Captain of the Port order restricting traffic in the area.

The regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities. This section is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165 [AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-6 and 160.5.

2. A new § 165.T0922 is added to read as follows:

§ 165.T0922 Safety Zone: Saginaw River.

(a) *Location.* The following area is a safety zone: The waters of the Saginaw River from 500 yards upstream of the Independence Bridge to 500 yards downstream of the Detroit and Macknaw Railroad Bridge.

(b) *Effective date.* This regulation is effective from 12:00 pm on October 1, 1990 to 1200 pm on October 31, 1990 unless otherwise terminated by the Captain of the Port, Detroit, MI.

(c) *Regulations.* In accordance with the general regulations in § 165.23, no person or vessel may enter into this zone unless authorized by the Captain of the Port, Detroit, MI.

Dated: September 28, 1990.

Thomas M. Daley,

Captain of the Port, Detroit, Michigan.

[FR Doc. 90-23678 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6891]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Floor Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

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Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certified that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region III—Regular Program Conversions				
Pennsylvania:				
Donegal, Township of, Westmoreland County	422187	Jan. 2, 1981, Emerg.; Oct. 16, 1990, Reg.; Oct. 16, 1990, Susp.	10-16-90	Oct. 16, 1990.
Rockland, Township of, Venango County	422113	Mar. 3, 1977, Emerg.; Oct. 16, 1990, Reg.; Oct. 16, 1990, Susp.	10-16-90	Do.
Sandycreek, Township of, Venango County	422541	June 23, 1975, Emerg.; Oct. 16, 1990, Reg.; Oct. 16, 1990, Susp.	10-16-90	Do.
Region V—Minimal Conversion				
Illinois: Dwight, Village of, Livingston County	170423	Aug. 9, 1974, Emerg.; Nov. 1, 1990, Reg.; Nov. 1, 1990, Susp.	11-1-90	Nov. 1, 1990.
Region I—Regular Program Conversions				
Massachusetts: Boston, City of, Suffolk County	250286	July 7, 1975, Emerg.; Apr. 1, 1982, Reg.; Nov. 2, 1990, Susp.	11-2-90	Nov. 2, 1990.
Maine: Cushing, Town of, Knox County	230224	May 7, 1976, Emerg.; July 16, 1990, Reg.; Nov. 2, 1990, Susp.	7-16-90	July 16, 1990.
Region II				
Pennsylvania:				
Benzinger, Township of, Elk County	421607	Apr. 8, 1976, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Nov. 2, 1990.
Chester Hill, Borough of, Clearfield County	420299	July 31, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Elkland, Township of, Tioga County	422096	June 30, 1976, Emerg.; Mar. 1, 1987, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Forks, Township of, Sullivan County	422062	Aug. 25, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Fox, Township of, Elk County	421608	Dec. 19, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Glenburn, Township of, Lackawanna County	421754	Mar. 10, 1976, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Greene, Township of, Franklin County	421649	June 18, 1974, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Hillsgrove, Township of, Sullivan county	422064	Dec. 8, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Virginia:				
Claremont, Town of, Surry County	510156	Dec. 26, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Surry County, Unincorporated Areas	510157	Mar. 25, 1974, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Region IV				
Tennessee: Jefferson County, Unincorporated Areas	470097	Mar. 29, 1982, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Region V				
Ohio:				
Belle Valley, Village of, Noble County	390429	Sept. 22, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Morgan County, Unincorporated Areas		Feb. 24, 1977, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Rutland, Village of, Meigs County	390670	Sept. 3, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Region VII				
Missouri: Portageville, City of, New Madrid County	290259	May 17, 1974, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Region X				
Nevada: Nye County, Unincorporated Areas	320018	Jan. 15, 1976, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Region I				
Connecticut: Goshen, Town of, Litchfield County	090177	Aug. 25, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Nov. 16, 1990.
Region III				
Pennsylvania:				
Bigler, Township of, Clearfield County	421514	Jan 22, 1976, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Butler, Township of, Schuylkill County	421999	Sept. 15, 1975 Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Decatur, Township of Clearfield County	421189	Mar. 16, 1977, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Everett, Borough of, Bedford County	420119	Jan. 13, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Gulich, Township of, Clearfield County	421524	Jan. 21, 1976, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Osceola Mills, Borough of, Clearfield County	420313	Feb. 22, 1977, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Rush, Township of, Centre County	421468	Feb. 11, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Virginia: Suffolk, City of, Independent City	510156	Jan. 22, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Region V				
Michigan:				
Adrian, Township of, Lenawee County	260635	Sept. 5, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Northfield, Township of, Washtenaw County	260732	Oct. 20, 1982, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Ohio: Hocking County, Unincorporated Areas	390272	Apr. 18, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Wisconsin:				
Adams County, Unincorporated Areas	550001	May 31, 1974, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Blair, City of, Trempealeau County	550440	Feb. 27, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Friendship, Village of, Adams County	481209	Jan. 12, 1982, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
La Farge, Village of, Vernon County	550456	May 8, 1975, Emerg.; Nov. 16, 1990, Reg., Nov. 16, 1990, Susp.	11-16-90	Do.
Montello, City of, Marquette County	550295	June 5, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Whitehall, City of, Trempealeau County	550449	Feb. 7, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Readstown, Village of, Vernon County	550458	Apr. 30, 1971, Emerg.; Mar. 16, 1978, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Vernon County, Unincorporated Areas	550450	Sept. 1, 1972, Emerg.; Sept. 29, 1978, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Region VI				
Texas:				
Alpine, City of, Brewster County	480085	Feb. 5, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Burnet County, Unincorporated Areas	481209	Jan. 12, 1982, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Granite Shoals, City of, Burnet County	481149	Sept. 22, 1976, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Marble Falls, City of, Burnet County	480093	Apr. 16, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Meadowlakes, City of, Burnet County	481613	Apr. 13, 1989, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.

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State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Data certain federal assistance no longer available in special flood hazard areas
Region VIII				
Nebraska: Indianola, City of, Red Willow County	310382	Oct. 20, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
All Zone D Conversions				
Region VIII				
Utah: Tooele County, Unincorporated Areas	490140	June 7, 1976, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: October 2, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23760 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 65

[Docket No. FEMA-7002]

Changes in Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California	Sonoma	City of Santa Rosa	*Press Democrat*, September 21, 1990 and September 28, 1990.	The Honorable John Healy, Mayor, City of Santa Rosa, City Hall, P.O. Box 1678, Santa Rosa, California 95402.	September 5, 1990	060381
Colorado	Jefferson	Unincorporated Areas	October 2, 1990, October 9, 1990, *Lakewood Sentinel*.	The Honorable Rich Ferdinandsen, Chairman, Jefferson County Board of County Commissioners, Courthouse, 1700 Arapahoe, Golden, Colorado 80419-0001.	September 20, 1990	080087
Georgia	Liberty	City of Hinesville	September 21, 1990, September 28, 1990, *Hinesville Coastal Courier*.	The Honorable Buddy DeLoach, Mayor, City of Hinesville, 115 East Martin Luther King Jr. Drive, Hinesville, Georgia 31313-3699.	September 7, 1990	130125
Illinois	McLean	Town of Normal	September 6, 1990, September 13, 1990, *Normalite Newspaper*.	The Honorable Dave Anderson, City Manager, 100 E. Phoenix, Normal, Illinois 61761-0589.	August 27, 1990	170502
Louisiana	St. John the Baptist Parish.	Unincorporated areas	August 30, 1990, September 6, 1990, *LaPlace L'Observateur*.	The Honorable Lester J. Millet, Jr., Parish President, St. John the Baptist Parish, 1801 West Airline Highway, LaPlace, Louisiana 70068.	August 24, 1990	220184 C
Minnesota	Olmsted	City of Rochester	September 21, 1990, September 28, 1990, *Rochester Post Bulletin*.	The Honorable Chuck Hazama, Mayor, City of Rochester, 224 1st Avenue S.W., Rochester, Minnesota 55902.	September 7, 1990	275246

Issued: September 21, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23761 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Iowa et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participating in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change requirements. The community may at any time enact stricter requirements of its own, or

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pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Iowa	Dubuque (Docket No. FEMA-6965).	City of Sageville	June 15, 1990, June 22, 1990, *Dubuque Telegraph Herald.*	The Honorable Ralph Dean, Mayor, City of Sageville, 11948 Sherrill Road, Dubuque, Iowa 52001.	June 4, 1990	190122
Maryland	Anne Arundel (FEMA Docket No. 6968).	Unincorporated areas	April 5, 1990, April 12, 1990, *The Capital.*	Mr. O. James Lighthizer, Anne Arundel County Executive, 44 Calvert Street, Annapolis, Maryland 21401.	March 7, 1990	240008
Maryland	Queen Annes (FEMA Docket No. 6986).	Unincorporated area	March 7, 1990, March 14, 1990, *Queen Annes County Record-Observer.*	Mr. Robert Sallitt, Queen Annes County Administrator, 208 North Commerce Street, Centreville, Maryland 21617.	February 28, 1990	240054
Oklahoma	Cleveland (FEMA Docket No. 6999).	City of Norman	January 30, 1990, February 5, 1990, *The Norman Transcript.*	The Honorable Dick Reynolds, Mayor of the City of Norman, Cleveland County, P.O. Box 370, Norman, Oklahoma 73070.	January 19, 1990	40006 C
South Carolina	Richland (Docket No. FEMA-6993).	City of Columbia	May 31, 1990, June 7, 1990, *The State.*	The Honorable Miles Hadley, City Manager, City of Columbia, P.O. Box 147, Columbia, South Carolina 29217.	May 24, 1990	450172
South Carolina	Richland (Docket No. FEMA-6993).	City of Forest Acres	May 31, 1990, June 7, 1990, *The State.*	The Honorable Royce G. Walters, Mayor, City of Forest Acres, 5205 Trenholm Road, Forest Acres, South Carolina 29206.	May 24, 1990	450174
South Carolina	Richland (Docket No. FEMA-6993).	Unincorporated areas	May 31, 1990, June 7, 1990, *The State.*	The Honorable George Kreusz, County Administrator, Richland County, 1701 Main Street, P.O. Box 192, Columbia, South Carolina 29202.	May 24, 1990	450179

Issued: September 21, 1990.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23750 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

Final Flood Elevation Determination; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Action 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so not regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State, city/town/county, source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
ALABAMA	
Lauderdale County (unincorporated areas) (FEMA Docket No. 6992)	
Bluewater Creek:	
At mouth	*506
About 2400 feet upstream of Lee Highway	*531
Indiancamp Creek:	
At mouth	*519
About 1400 feet downstream of County Road	*519
Shoal Creek:	
At mouth	*508
About 3.6 miles upstream of County Highway 47	*526
Tennessee River:	
Just upstream of Wilson Dam	*508
About 15.5 miles upstream of Wilson Dam	*511
Maps available for inspection at the County Courthouse, 200 South Court Street, Room 303, Florence, Alabama 35630.	
ARKANSAS	
Hot Springs (city), Garland County (FEMA Docket No. 6969)	
Spencer Bay: Entire shoreline within community	*316
Ouachita River (Lake Hamilton): Entire shoreline within community	*404
Maps available for inspection at the City Hall, 133 Convention Street, Hot Springs, Arkansas.	
COLORADO	
Englewood (city), Arapahoe County (FEMA Docket No. 6996)	
Little Dry Creek:	
At South Platte River Drive	*5,267
Approximately 200 feet downstream of South Santa Fe Drive	*5,271
Approximately 140 feet upstream of South Santa Fe Drive	*5,273
Approximately 760 feet upstream of South Santa Fe Drive	*5,281
Approximately 160 feet downstream of South Broadway	*5,310
Approximately 50 feet upstream of Lincoln Street	*5,319
Approximately 80 feet upstream of Sherman Street	*5,320
Approximately 100 feet upstream of Highway 285	*5,322
At Logan Street	*5,324
Maps available for review at City Hall, 3400 South Elati Street, Englewood, Colorado.	
IOWA	
Cedar Rapids (city), Linn County (FEMA Docket No. 6992)	
Vinton Ditch:	
Just upstream of 15th Street	*740
Just downstream of 19th Street NW	*744
Just upstream of 19th Street NW	*754
Just downstream of Shalley Lane	*762
Maps available for inspection at City Hall, Planning & Zoning Department, Second Avenue, Cedar Rapids, Iowa.	
MISSOURI	
Herculaneum (city), Jefferson County (FEMA Docket No. 6982)	
Boroscher Creek:	
At mouth	*412
Just downstream of Coachman Drive	*419
Just upstream of Coachman Drive	*429
Just downstream of upstream crossing of McNutt Street	*448
Just upstream of upstream crossing of McNutt Street	*455
Maps available for inspection at the Building Inspector Department, No. 1 Parkway Court, Herculaneum, Missouri. Attention: Mr. Ralph Williams.	

State, city/town/county, source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
Ladue (city), St. Louis County (FEMA Docket No. 6977)	
Deer Creek:	
About 350 feet downstream of Rock Hill Road	*471
Just downstream of Log Cabin Lane	*497
Just downstream of Lindberg Boulevard	*518
Two Mile Creek:	
At confluence with Deer Creek	*475
About 3,700 feet upstream of Warson Road	*514
Black Creek:	
About 800 feet downstream of Wenlou Drive	*489
About 800 feet upstream of confluence of Country Club Drainage	*507
Sebago Drainage:	
At confluence with Deer Creek	*472
Just downstream of Old Warson Road	*474
Just upstream of Old Warson Road	*480
About 700 feet upstream of Old Warson Road	*484
Maps available for inspection at the Building Department, 9345 Clayton Road, Ladue, Missouri.	
Richmond Heights (city), St. Louis County (FEMA Docket No. 6977)	
Black Creek:	
About 3,000 feet downstream of Clayton Road	*472
Just downstream of Clayton Road	*485
Maps available for inspection at the Building Department, 1230 South Big Bend, Richmond Heights, Missouri.	
Rock Hill (city), St. Louis County (FEMA Docket No. 6977)	
Deer Creek:	
About 850 feet downstream of Manchester Road	*460
About 1050 feet upstream of Manchester Road	*466
Just upstream of McKnight Road	*471
Sebago Drainage:	
Just downstream of confluence of Warson Woods Creek	483
At confluence of Warson Woods Creek	*484
Maps available for inspection at the City Hall, 9520 Manchester Road, Rock Hill, Missouri	
Webster Groves (city), St. Louis County (FEMA Docket No. 6977)	
Deer Creek:	
Just upstream of Big Bend Boulevard	*445
About 1600 feet upstream of confluence of Shady Grove Creek	*459
About 2700 feet upstream of confluence of Shady Grove Creek	*460
Shady Grove Creek:	
At confluence with Deer Creek	*455
Just upstream of Kirkham Avenue	*463
Just downstream of North Rock Hills Road	*505
Maps available for inspection at the Office of Public Works, City Hall, 4 E. Blackwood, Webster Groves, Missouri.	
OHIO	
Bremen (village), Fairfield County (FEMA Docket No. 6992)	
Little Rush Creek:	
At mouth	*786
Just downstream of Conrail	*788
Just upstream of Conrail	*788
Maps available for inspection at the Village Hall, 132 Mulberry Street, P.O. Box 127, Bremen, Ohio.	
OKLAHOMA	
Muskogee (city), Muskogee County (FEMA Docket No. 6988)	
Sam Creek:	
At State Route 16 (York Street) downstream corporate limits	*529

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Approximately .3 mile downstream of Gulick Avenue	*389
Sam Creek Tributary B:	
At confluence with Sam Creek	*536
Approximately .56 mile upstream of confluence with Sam Creek	*549
Coody Creek:	
Approximately 650 feet upstream of Hancock Street	*513
Approximately 250 feet downstream of Union Pacific Railroad	*529
Cole Creek:	
Approximately .2 mile downstream of Gulick Street	*530
Approximately .5 mile downstream of Cherokee Drive	*541
Maps available for inspection at the City Hall, 3rd & Okmulgee, Muskogee, Oklahoma.	
Perum (town), Muskogee County (FEMA Docket No. 6999)	
Perum Creek Tributary A:	
At Delaware Avenue	*582
Approximately 1,690 feet upstream of Cherokee Avenue	*589
Maps available for inspection at the City Hall, 2nd & Seminole, Perum, Oklahoma.	
SOUTH CAROLINA	
York County (unincorporated areas) (FEMA Docket No. 6992)	
Catawba River:	
At confluence of Sugar Creek	*493
Just downstream of Wylie Dam	*524
Sugar Creek:	
At mouth	*493
About 1.1 miles upstream of Dobys Bridge Road	*493
Manchester Creek:	
At mouth	*502
About 3550 feet upstream of mouth	*502
Jakeystown Branch:	
At mouth	*522
About 1509 feet upstream of State Route 251	*523
Little Dutchman Creek:	
At mouth	*516
Just upstream of mouth	*516
Big Dutchman Creek:	
At mouth	*516
About 3480 feet upstream of Mt. Gallant Road	*518
Maps available for inspection at the Planning Department, 1070 Heckle Boulevard, Rock Hill, South Carolina 29730.	
Texas	
Bandera County (unincorporated areas) (Docket No. 6999)	
Medina River:	
Approximately 80 mile upstream of confluence of San Julian Creek	*1,201
Approximately .4 mile upstream of the Mayan Ranch Road	*1,252
Maps available for inspection at the County Courthouse, 500 Main Street, Bandera, Texas.	
Dickinson (city), Galveston County (FEMA Docket No. 6998)	
Magnolia Bayou:	
At confluence with Dickinson Bayou	*12
Upstream corporate limits	*14
Gordons Gully:	
Approximately 150 feet upstream of Spruce Drive	*12
Approximately 100 feet upstream of Deats Road	*19
Maps available for inspection at the Building Department, 3716 Main, Dickinson, Texas.	
Galveston County (unincorporated areas) (FEMA Docket No. 6998)	
Magnolia Bayou: Approximately 1.53 miles upstream of confluence with Dickinson Bayou	*14
Maps available for inspection at the County Engineer's Office, 123 Rosenberg, Galveston, Texas.	
Lockhart (city), Caldwell County (FEMA Docket No. 6999)	
Town Branch:	
At downstream corporate limits	*441
At a point approximately 920 feet downstream of Stueve Road	*533
T-PT:	
At confluence with Town Branch	*522
At MKAT Railroad	*531
Mahone Creek:	
Approximately .39 mile downstream of State Highway 20	*512
Approximately 85 feet upstream of Clear Fork Road	*536
Maps available for inspection at the Municipal Building, 308 West San Antonio, Lockhart, Texas.	
VIRGINIA	
Tazewell County (Unincorporated Areas) (FEMA Docket No. 6999)	
Clinch River:	
Approximately .15 mile downstream of Jenkins Road	*1,912
Approximately .8 mile upstream of Jenkins Road	*1,916
Maps available for inspection at the Tazewell County Offices, 315 School Street, Tazewell, Virginia.	

Issued: September 21, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23762 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-420; RM-6845]

Radio Broadcasting Services; Brockport, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John Rosenkrans, allots Channel 288A to Brockport, New York, as the community's first local commercial FM service. *See* 54 FR 41128, October 5, 1989. Channel 288A can be allotted to Brockport in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 288A at Brockport are North Latitude 43-12-48 and West Longitude 77-56-24. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective November 19, 1990. The window period for filing applications will open on November 20, 1990, and close on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Medin Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-420, adopted September 19, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.Cc. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under New York, is amended by adding Brockport, Channel 288A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23736 Filed 10-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFC Part 73

[MM Docket No. 89-433; RM-6833]

Radio Broadcasting Services; Arthur, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Regina Timmerman and Valotta Hazel Seibel, allots Channel 244A to Arthur, North Dakota, as that community's first local FM service. *See* 54 FR 41466, October 10, 1989. Channel 244A can be allotted to Arthur in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 244A at Arthur are North Latitude 47-06-24 and West Longitude 97-13-06. Canadian concurrences has been obtained since Arthur is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective November 19, 1990. The window period for filing applications will open on November 20, 1990, and close on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-433, adopted September 19, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Channel 244A to Arthur.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23737 Filed 10-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-472; RM-6919]

Radio Broadcasting Services; Lincoln City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of FLS Radio Enterprises, allots Channel 236C2 to Lincoln City, Oregon, as that community's second local FM service. *See* 54 FR 47797, November 17, 1989. Channel 236C2 can be allotted to Lincoln City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 236C2 are North Latitude 44-57-06 and West Longitude 124-00-54. With this action, this proceeding is terminated.

DATES: Effective November 19, 1990. The window period for filing applications will open on November 20, 1990, and close on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-472, adopted September 19, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 236C2 at Lincoln City.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23738 Filed 10-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-466; RM-6908]

Radio Broadcasting Services; Oil City, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stephen M. Olszowka, allots Channel 242A to Oil City, Pennsylvania, as that community's second local FM service. *See* 54 FR 46633, November 6, 1989. Channel 242A can be allotted to Oil City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 242A at Oil City are North Latitude 41-25-30 and West Longitude 79-42-24. Canadian concurrence has been received since Oil City is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective November 19, 1990. The window period for filing applications will open on November 20, 1990, and close on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-466, adopted September 19, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 242A at Oil City.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23739 Filed 10-5-90; 8:45 am]

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47 CFR Part 73

[MM Docket No. 89-445; RM-6820]

Radio Broadcasting Services; Athens, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 269C3 for Channel 269A at Athens, Tennessee, and modifies the license of Station WJSQ-FM to specify operation on the higher class co-channel, at the request of James C. Sliger. *See* 54 FR 42523, October 17, 1989. The coordinates for Channel 269C3 at Athens are 35-28-31 and 84-23-59. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-445, adopted September 18, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Tennessee by removing Channel 269A and adding Channel 269C3 at Athens.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23740 Filed 10-5-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 900937-0237]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: The Secretary of Commerce issues this final rule to amend the regulations requiring shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the southeastern United States to use Turtle Excluder Devices (TEDs) to reduce incidental captures of endangered and threatened sea turtles during shrimp fishing operations. This rule recognizes that an additional "soft" TED (the Andrews TED) has been certified as an approved TED and recognizes that an alternate scientific protocol for certifying TEDs has been established. The alternate scientific protocol appears elsewhere in this issue of the **Federal Register**. The intended effect is to increase the options of fishermen required to use TEDs.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Phil Williams, (301) 427-2322 or Charles A. Oravetz, (813) 893-3366.

SUPPLEMENTARY INFORMATION:

a. Background

The Secretary of Commerce issued a final rule on June 29, 1987 (52 FR 24244) which requires shrimp trawlers 25 feet or more in length to use qualified TEDs in certain offshore waters of the southeastern United States during certain times of the year and to limit trawl tow times to 90 minutes (or use TEDs) in inshore waters during these same times. Shrimp trawlers less than 25 feet in length are required to limit trawl tow times to 90 minutes in inshore and offshore waters during certain times.

The final rule was designed to reduce the incidental catch and mortality of sea turtles in shrimp trawls. The rule initially allowed the use of four types of TEDs. It has since been amended to allow the use of two additional TEDs, the Morrison and Parrish. It also contains a provision for qualification of new TEDs if these TEDs are tested according to procedures specified in an appendix to the rule and found to be 97 percent effective in releasing sea turtles from trawls.

b. Andrews TED Testing

The Andrews TED was tested by NMFS at Panama City, Florida, in May 1989 in trials using an alternative certification protocol. The trials consisted of two parts, (1) an evaluation of actual turtle release from TED equipped nets by NMFS scuba divers who video taped the tests and (2) an evaluation of test results by a panel of industry, Sea Grant, and environmental representatives, and NMFS scientists and gear specialists. The NMFS TED previously certified and found to be 97 percent effective in releasing sea turtles was used as the control; i.e., the Andrews TED design tested had to meet the same turtle exclusion rate as the NMFS TED. In initial testing, the NMFS TED-equipped control net caught 4 turtles out of 25 introduced. This then became the standard for certification.

The Andrews TED, constructed of 8 inch stretch poly webbing failed the test. Nine turtles were captured out of seventeen turtles introduced into the net equipped with the Andrews TED indicating it would fail even if additional turtles were introduced into the net.

The manufacturer of the Andrews TED was then given an opportunity to reduce the mesh size in its TED. Most of the captured turtles were being entangled in the 8 inch webbing which appeared to be too large. The maker of the Andrews TED secured 5 inch stretch mesh webbing and installed this modified TED in the test net for retesting.

In final testing, the Andrews TED constructed of 5 inch stretch mesh passed the diver observed test. Only one turtle was captured in the 5 inch Andrews TED out of 25 introduced.

During the second phase of the certification process, the panel reviewed videos of the turtle releases and evaluated the catch and release data. The panel scoring of the NMFS TED was 23 releases out of 25 turtles introduced in the trawl. The panel scoring of the 5 inch Andrews TED was 25 escapes out of 25 introduced.

c. TED Certification

The Andrews TED constructed of 5 inch poly webbing is certified for use wherever a TED is required. This certification is based on the results of actual at-sea testing of the Andrews TED and the review panel's evaluation. The Andrews TED with the 5 inch webbing exceeded the standard established by the NMFS TED control trawl and its catch rate satisfied the 97 percent turtle exclusion rate.

d. Classification

This action is in compliance with Executive Order 12291. Notice and comment on this final rule are unnecessary and contrary to the public interest because it merely gives the public notice that the Andrews TED has passed the test and may be used lawfully. Delayed effectiveness is not required because this technical amendment relieves a restriction.

As no statute requires notice and comment on this final rule, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to a rule that has been determined not to be a major rule under Executive Order 12291, does not contain policies with federalism implications requiring assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no change in the regulatory impacts previously reviewed and analyzed.

List of Subjects in 50 CFR Part 227

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 28, 1990.

Michael Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, a new paragraph (e)(4)(ii)(G) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(G) *Andrews TED* (Figures 8a and 8b). The Andrews TED is constructed of 5 inch stretch mesh polyethylene or polypropylene webbing that is sewn around its entire perimeter inside a shrimp trawl. It is a trawl within a trawl. The leading edge of the Andrews TED is sewn to the top of the outer trawl at a point corresponding to the full circumference of meshes, 20 meshes behind the center of the footrope. Lacing with rope is not allowed. The TED tapers to an exit hole in the bottom of the trawl. The rear edge of the hole is located no more than 20 inches ahead of the intermediate (extension). The trailing edge of the TED is sewn at all points around the circumference of the exit hole. The exit hole is 96 inches in circumference.

BILLING CODE 3510-22-M

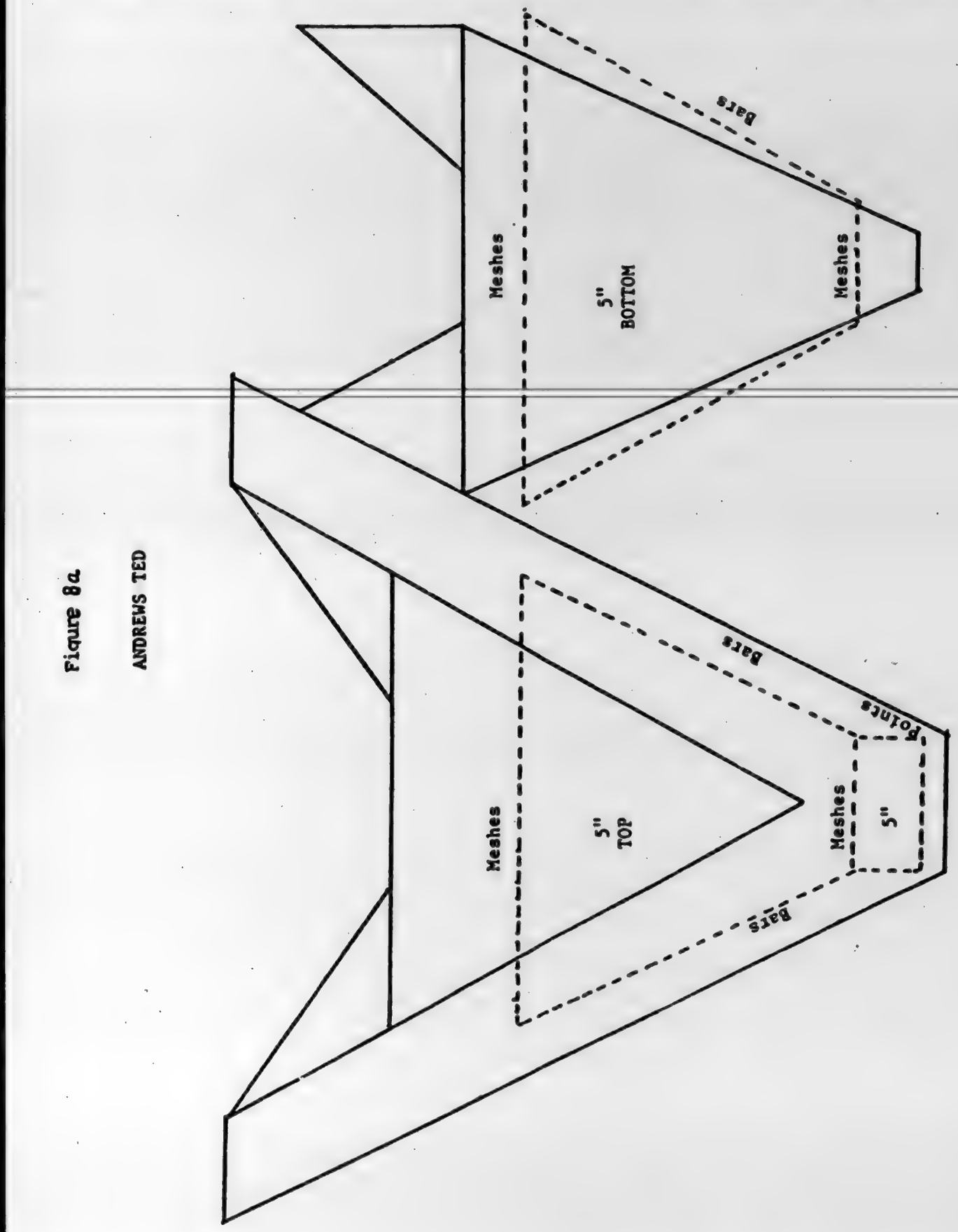

Figure 8a

ANDREWS TED

Figure 8 b

ANDREWS TED

[FR Doc. 90-23581 Filed 10-5-90; 8:45 am]
BILLING CODE 3510-22-C

50 CFR Part 227

Turtle Excluder Devices; Adoption of Alternative Scientific Testing Protocol for Evaluation

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of adoption of alternative scientific testing protocol for evaluating turtle excluder devices (TEDs).

SUMMARY: Notice is hereby given that NMFS approves an alternate scientific protocol for evaluating TEDs using headstarted juvenile turtles and diver and expert panel evaluations. The intended effect is to provide an optional testing procedure for certifying TEDs. This alternative protocol will supplement, rather than replace, the original protocol published as an appendix to the final rule that implemented the TED requirements.

DATES: The alternate scientific protocol is adopted upon publication in the Federal Register. Comments must be received by November 8, 1990.

ADDRESSES: Comments should be submitted to Nancy Foster, Ph.D., National Sea Turtle Coordinator, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, (301) 427-2322, Wilber R. Seidell, (601) 762-4591, or Charles A. Oravetz, (813) 893-3366.

SUPPLEMENTARY INFORMATION:

a. Background

The Sea Turtle Conservation regulations, issued on June 29, 1987 (52 FR 24244) require shrimp trawlers 25 feet or more in length to use qualified TEDs in certain offshore waters of the southeastern United States during certain times of the year and to limit trawl tow times to 90 minutes (or use TEDs) in inshore waters during these same times. Shrimp trawlers less than 25 feet in length are required to limit trawl tow times to 90 minutes in inshore and offshore waters during certain times.

The final rule was designed to reduce the incidental catch and mortality and sea turtles in shrimp trawls. The rule initially allowed the use of four types of TEDs. It has since been amended to allow the use of three additional TEDs, the Morrison, Parrish and Andrews. The Andrews TED has been certified using the alternative testing procedure described in this notice. An amendment to the final rule certifying the Andrews TED is being published elsewhere in this issue of the Federal Register. The final rule adopts the alternative testing procedure.

The final rule contains a provision for qualification of new TEDs if they are tested according to procedures specified in an appendix to the rule published on June 29, 1987, and found to be 97 percent effective in releasing sea turtles from trawls. The appendix does not appear in the code of Federal Regulations. The original procedure for certifying TEDs was to conduct comparison testing of a TED-equipped trawl against a standard trawl in the Cape Canaveral, Florida navigational channel. The channel is known for its historical high abundance of loggerhead sea turtles. However, in March 1989, there were not enough turtles at Canaveral to conduct TED testing.

Because of small numbers of turtles at Canaveral, NMFS developed an alternate testing protocol using juvenile captive reared turtles. Each year NMFS raises about 2,000 Kemp's ridley turtles for 9 months and releases these turtles into the Gulf of Mexico as part of a cooperative experiment with the Mexican Government, U.S. Fish and Wildlife Service, and the National Park Service. This project is commonly referred to as the headstart project. The turtles used for TED testing represented the size classes of Kemp's ridley turtle most frequently found in the wild. In contrast, sea turtles found in the Cape Canaveral Channel are usually older and much larger.

NMFS used a shrimp trawler and 90 juvenile Kemp's ridley headstarted turtles to test several TED designs off Panama City, Florida. Scuba divers released the turtles into the trawls. After the turtles were passed through the trawl they were released alive into their natural habitat. NMFS also had experimented with alternate methods of certifying TEDs in August 1988, using headstarted green turtles obtained from Florida.

The NMFS certification trials using the headstarted juvenile sea turtles consist of two parts, (1) an evaluation of actual turtle release from TED equipped nets by NMFS scuba divers who videotape the tests and (2) an evaluation of test results by a panel of industry, Sea Grant, environmental, and NMFS scientists and gear specialists. The NMFS TED, previously certified and found to be 97 percent effective in releasing sea turtles, is used as the control; i.e., new TED designs must meet the same turtle exclusion rate as the NMFS TED under the same test conditions.

b. Alternate Scientific Protocol for Evaluating Candidate Turtle Excluder Devices

Description of Methods

Methods used for this testing procedure rely on evaluation by an experienced team of NMFS divers familiar with working in and around operating trawls. Testing is conducted in clear shallow waters offshore of Shell Island near Panama City, Florida, or an alternate site if conditions are deemed suitable.

Scuba divers conduct preliminary observations and make underwater video recordings of candidate TED designs. Videotapes are then reviewed by the participating TED designer or representative in order to determine if tuning or modifications are necessary prior to testing. When the designer is satisfied with the configuration of the candidate TED, testing is initiated. No further changes to the TED design are allowed once the test has started.

The TED equipped trawl is single rigged and towed directly astern of a vessel at 2.5 knots. A messenger wire is incorporated into the trawl bridle and attached from the towing vessel to the center of the trawl headrope. Turtles are transported from the towing vessel to the trawl headrope inside a herculite bag which is attached to and slides along the messenger wire.

Three scuba divers are used to conduct the test. Diver No. 1 releases each turtle under and behind the trawl headrope. Diver No. 2 records elapsed time and removes the turtle from the trawl if escape through the candidate TED has not occurred within the prescribed time limit after release. Diver No. 3 records the entire sequence with a video camera.

Once released into the trawl, a turtle is given a total of 5 minutes in which to escape through the candidate TED. This time limitation is designed to minimize submergence related stress to the test turtle. At the end of the 5 minute period, the turtle is scored either as an escape (having successfully exited the trawl through the TED) or a capture (the turtle did not exit the trawl through the TED within 5 minutes). Previous testing using this method in the 1988 and 1989 studies indicated that 87 percent of the turtles scored as escapes did so within the first 2 minutes after being released into the trawl. The 5 minute time limit, therefore, has been determined to be a sufficient period in which to identify technical problems associated with a turtle's escape through a test TED.

Turtles may be removed from the test before the 5 minute time limit has expired if the health of the turtle is at risk. In this case, the turtle would not be included in the test sample set. Another trial release would be conducted and substituted for the omitted trial.

Turtle Acquisition

This alternate test protocol for TED qualifications requires an adequate supply of 2 to 3 year old sea turtles. Presently, these need to be supplied through the sea turtle headstarting program at the NMFS Galveston, Texas laboratory. Each year a quantity of turtles will be held back from the normal release program for use in TED qualification tests. Turtles used for the tests will be of a size no smaller than that of the average 2 year class Kemp's ridley sea turtle. Species of sea turtles which may be used for the qualification test include, loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempi*).

Sampling Procedure.

The effectiveness of each candidate TED in releasing turtles will be compared to the performance of a control TED under the same test conditions in order to adjust for variability within the TED procedure. The NMFS TED has been selected as the control TED based on its documented exclusion abilities during previous controlled testing and during commercial vessel trials. The NMFS TED is currently the only TED which has been tested using both certification techniques on green, ridley, and loggerhead turtles, and the exclusion rates have been confirmed during commercial fishing operations.

The qualification test for each candidate TED will be comprised of 25 turtle releases. A candidate TED may be declared as having failed to pass the test before a complete sample set of 25 turtles has been used if the TED has reached a maximum number of captures based on the performance of the control TED (see Examples).

Statistical Approach

The statistical approach to compare performance of candidate TEDs to the performance of a control TED is to test for quality of proportions. The null hypothesis is: $H_0 : P_1 < P_2$ or the exclusion rate of the candidate TED (P_2) is equal to or higher than that of the control TED (P_1).

versus the alternative hypothesis.

$H_1 : P_1 > P_2$ or the exclusion rate of the candidate TED (P_2) is lower than that of the control TED (P_1) That is, the null hypothesis will be that the candidate TED releases at least as many turtles as the control TED versus the alternative, that the candidate TED releases fewer turtles than the control TED. The test statistic is:

$$Z = \hat{P}_1 - \hat{P}_2 \,/\, ([\hat{p}_1\hat{q}_1 \,/\, n_1] + [\hat{p}_2\hat{q}_2 \,/\, n_2])^{1/2}$$

where

$\hat{P}_1$ = the observed proportion excluded by the control

$\hat{P}_2$ = the observed proportion excluded by the candidate

$\hat{q}_1 = 1 - \hat{p}_1$, and

$\hat{q}_2 = 1 - \hat{p}_2$.

n_1 = the number of turtles introduced through the control

n_2 = the number of turtles introduced through the candidate

Then, the calculated Z score is compared to the appropriate percentile Z score to make a decision.

In any hypothesis testing situation two types of error are involved. In the present situation, a Type I error is committed if an acceptable candidate TED is rejected. A Type II error is committed if a poorly performing candidate TED is accepted. The probability of committing a Type I and a Type II error is denoted by α and β, respectively. The chances of committing these errors (α and β) are inversely related to fixed sample sizes.

Depending upon the acceptable level of α and β), and the results of the control TED, the maximum number of captures for the candidate TED can be determined which will lead to the rejection of the null hypotheses. These computations will allow the TED qualification tests to be terminated earlier if the number of captures for these candidate TEDs exceeds this predetermined number. Some examples comparing the performance of candidate TEDs to the performance of the control TED follow:

Example 1. Testing of the control TED resulted in 21 turtle exclusions and 4 captures within the prescribed 5 minute time interval. Based on these results, the risk of rejecting an acceptable candidate TED (α) is calculated for various capture rates.

Candidate TED turtle captures	Risk [1]
6	0.25
7	0.15
8	0.10
9	0.06
10	0.03

[1] Risk of rejecting an acceptable TED (α).

Testing of candidate TED *A* resulted in 9 turtles captures out of 17 introduced into the net. The test was terminated after nine captures to reserve turtles for additional testing. This decision was possible because even if it was assumed that the additional 8 turtles (all remaining to complete the sample of 25) would have been released from the TED (i.e., 9 captures out of 25 turtles tested), the probability of falsely rejecting this TED would be less than 5 percent.

Testing of candidate TED *B* resulted in 7 captures out of 18 introduced into the net. Assuming an additional 7 turtles (all remaining) would have been released from the TED and escaped, (i.e., 7 retentions out of 25 turtles tested), the probability of falsely rejecting this TED will be about 15%.

Example 2. Testing of the control TED resulted in 23 escapes and 2 captures out of 25 turtles released within the prescribed 5 minute time interval. Based on these results the risk of rejecting an acceptable candidate TED is calculated for various capture rates.

Candidate TED turtle captures	Risk [1]
4	0.20
5	0.11
6	0.06
7	0.03
8	0.014

[1] Risk of rejecting an acceptable TED (α).

Candidate TED *C* resulted in 5 captures out of 25 turtles introduced into the net. Given this, the probability of falsely rejecting this TED will be 11%.

Candidate TED *D* resulted in 8 captures out of 17 turtles introduced into the net. If testing is terminated after 17 trials, and if it is assumed that the remaining 8 turtles would have escaped (i.e., 8 captures out of 15 turtles tested) then the probability of falsely rejecting this TED will be 1.4%.

Thus the acceptance or rejection of the candidate TED will be based on α. (A predetermined risk for rejection of an acceptable TED).

Review Committee

Upon completion of the qualification tests, a technical review committee may be convened to review all test results. The committee will be comprised of industry, conservation and government representatives. The committee will review and confirm the results of the qualification tests, and make a recommendation to the NMFS Southeast Regional Director as to which candidate TEDs passed the certification test.

Conclusion

NMFS has concluded that a TED that passes the certification tests specified in the Alternative Scientific Protocol will have a turtle exclusion rate of 97 percent or more.

Authority: 16 U.S.C. 1531 et seq.

Dated: September 28, 1990.

Michael Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-23563 Filed 10-5-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 195
Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and

Pursuant to regulations set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of

requirement when a complainant's country provided a comparable, e.g., administrative, forum to consider claims

money without the necessity of a formal hearing or hiring counsel, utilizes relaxed rules of evidence, and provides for suspension of the license of the offending party for noncompliance with an award. Under the terms of the proposed amendment, residents of countries which have administrative forums or their equivalent which are

to protect the interests of the businesses concerned.

* * * * *

Dated: October 2, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-23705 Filed 10-5-90; 8:45 am]

BILLING CODE 3510-02-M

authorized only for fuel loading and low power operations are required to report under ERDS. Big Rock Point is exempt because the configuration of the facility is such that the number of parameters available are not sufficient for effective participation in the ERDS program.

DATES: Comment period expires December 24, 1990. Comments received

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Proposed Rules

Federal Register
Vol. 55, No. 195
Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 47

[Docket No. FV-89-205]

Amendment to Rule of Practice

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This Action proposes to amend § 47.6(b) of the Rule of Practice under the Perishable Agricultural Commodities Act (PACA). This amendment would modify the exemption for nonresident complainants in reparation actions to make it clear that the Secretary has discretionary authority under 7 U.S.C. 499f(e) to waive the furnishing of a bond by a foreign complainant. The amendment explains discretion of the Secretary to waive the bond in those instances when the complainant's country provides an administrative forum similar to that available under PACA to receive produce related claims by residents of the United States.

DATES: Written comments must be postmarked on or before November 8, 1990.

ADDRESSES: Written comments should be sent in duplicate to: James R. Frazier, Assistant Chief, PACA Branch, room 2095 So., Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, CD 20090-6456. Comments should make reference to the date and page numbers of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Frazier, (202) 447-3212.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "non major" under the criteria therein.

Pursuant to regulations set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of Agricultural Marketing Service (AMS) has considered the economic impact of this section on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be disproportinately burdened. This proposed amendment will affect only nonresident businesses in the manner set forth below. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revisioin of the rules of practices under the PACA will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

This proposed amendment would modify the regulatory exemption for nonresident complainants in reparation proceedings to make it consistent with 7 U.S.C. 499f(e) which provides that the Secretary has discretionary authority to waive the furnishing of a bond. The law provides:

> In case a complaint is made by a nonresident of the United States, or by a resident of the United States to whom the claim of a nonresident of the United States has been assigned, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Secretary of Agriculture against the complainant or any counter claim by respondent: *Provided,* That the Secretary shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the funrishing of a bond.

The authority of waive the bond requirement was added in 1937 in response to complaints by Canadian interests. Ch. 719 Section 9, 50 Stat. 728, August 20, 1937. It was recognized at that time that Canada provided an administrative forum in which residents of the United States could sue without posting a bond. The law was amended, therefore, to provide the Secretary discretion to waive the bond requirement when a complainant's country provided a comparable, e.g., administrative, forum to consider claims by citizens of the United States.

7 CFR 47.6(b) of the "Rules of Practice Under the Perishable Agricultural Commodities Act, 1930" stated:

> (b) Bond required if complainant is nonresident. If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fee, for the respondent if the respondent shall prevail, and of any reparation award that may be issued by the Secretary against the complainant on any counterclaim asserted by respondent: *Provided,* That the furnishing of a bond shall be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

The regulation makes no mention of the criteria that there exist a comparable administrative forum in the complainant's country. Rather, it permits a waiver if the country of a nonresident which files a complaint permits citizens of the United States to file complaints without furnishing a bond, without specifying the type of forum.

Since the publication of § 47.6(6) in its current form, commerce involving perishable agricultural commodities has changed dramatically. Businesses in many countries now buy from and sell produce to the United States. If a foreign complainant is not required to post a bond, a citizen of the United States who prevails in a PACA reparation proceeding may not be able to collect any judgment to which it is entitled since there would be no bond to protect it. It could be forced to bring another lawsuit in a judicial forum in the country of the non-citizen, where it might find it necessary to incur the expense of employing foreign legal counsel and encounter significant delays. This would be inequitable and contrary to the intent of the PACA.

PACA provides an administrative forum which allows the resolution of disputes involving small amounts of money without the necessity of a formal hearing or hiring counsel, utilizes relaxed rules of evidence, and provides for suspension of the license of the offending party for noncompliance with an award. Under the terms of the proposed amendment, residents of countries which have administrative forums or their equivalent which are substantially similar to that provided under PACA may apply to the Secretary for a waiver of the bond requirement.

List of Subjects in 7 CFR Part 47

Administrative practices and procedure, Agricultural Commodities, Brokers.

For the reasons set forth in the preamble, 7 CFR part 47 is proposed to be amended as follows.

PART 47—[AMENDED]

1. The authority citation for part 47 continues to read as follows:

Authority: 7 U.S.C. 499f(e).

2. Section 47.6, paragraph (b) is revised to read as follows:

§ 47.6 Formal complaints.

* * * * *

(b) *Bond required if complainant is nonresident.* If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail, and of any reparation award that may be issued by the Secretary against the complainant on any counterclaim asserted by respondent: *Provided,* That the furnishing of a bond may be waived at the discretion of the Secretary if the complainant is a resident of a country which permits the filing of a complaint in an administrative forum or its equivalent which is substantially similar to that provided under the Perishable Agricultural Commodities Act by a resident of the United States against a citizen of that country without the furnishing of a bond. Nothing in this section shall limit the discretion of the Secretary to deny such a waiver in order to effectuate the purposes of the Act or to protect the interests of the businesses concerned.

* * * * *

Dated: October 2, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-23705 Filed 10-5-90; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AD32

Emergency Response Data System

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend 10 CFR part 50 of its regulations to require licensees to participate in the Emergency Response Data System (ERDS) program and to set a definite schedule for its implementation. The ERDS is a direct electronic data link between computer data systems used by licensees and the NRC Operations Center. The ERDS would supplement the voice transmission over currently installed Emergency Notification System (ENS). The ERDS would provide the NRC Operations Center with timely and accurate values of a limited set of parameters that describe selected plant conditions. The parameter values would be taken directly from data systems existing on a licensee's onsite computer. The ERDS would be activated by a licensee during the declaration of an alert or higher emergency classification at a licensed nuclear power facility. The NRC's response role in the event of an emergency at a licensed nuclear facility is primarily to monitor the licensee to ensure that appropriate recommendations are made by the licensee regarding off-site protective actions. The proposed rule is needed to improve the NRC's capability to fulfill its response role during an emergency by better assuring that it will receive accurate and timely information on plant conditions. This action will also allow the licensee to more effectively and efficiently utilise its time and resources in collecting and transferring data to the NRC. The proposed requirement would apply to all operating nuclear power reactor facilities except Big Rock Point and those that are permanently or indefinitely shut down. However, units shut down for maintenance, or authorized only for fuel loading and low power operations are required to report under ERDS. Big Rock Point is exempt because the configuration of the facility is such that the number of parameters available are not sufficient for effective participation in the ERDS program.

DATES: Comment period expires December 24, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of regulatory analysis, the environmental assessment and finding of no significant impact, the supporting statement submitted to OMB, and comments received may be examined at: The NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: M. L. Au, P.E., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3749.

SUPPLEMENTARY INFORMATION:

Background

As a result of the accident at Three Mile Island, Unit 2, on March 28, 1979, the Nuclear Regulatory Commission (NRC) and others recognized a need to substantially improve the NRC's ability to acquire accurate and timely data on plant conditions during emergencies. Before designing a system to accomplish this task, the NRC addressed several background issues dealing with its role during an accident, any changes necessary to enhance the response role to nuclear emergencies, and the information needed to support this role.

The NRC's role in the event of an emergency is primarily to monitor the licensee to ensure that appropriate recommendations are made with respect to offsite protective actions. Other aspects of the NRC's role include providing the licensee with technical analysis and logistic support, supporting offsite authorities (including confirming the licensee's recommendations to offsite authorities), keeping other Federal agencies and entities informed of the status of the incident, keeping the media informed of the NRC's knowledge of the status of the incident, and

coordinating with other public affairs groups. Detailed study has determined that the Commission's statutory authority provides a sufficient basis for carrying out this defined emergency response role.

To fulfill this emergency response role, the NRC requires reliable real-time (actual time in which a process takes place) data on four types of selected plant conditions. These conditions are:

(1) Core and coolant system conditions -- needed to assess the extent or likelihood of core damage;

(2) Conditions inside the containment building -- needed to assess the likelihood and consequence of its failure;

(3) Radioactivity release rates -- needed to assess the immediacy and degree of public danger; and

(4) Data from the plant's meteorological tower -- needed to assess the likely patterns of potential or actual impact on the public.

Site surveys, conducted by the NRC in 1986, have shown that data relevant to these conditions are maintained in the plant computer systems by a majority of the licensees. Currently during an emergency, data on these conditions is transmitted to the NRC Operations Center by the licensee through the Emergency Notification System (ENS) via voice communication by telephone.

In SECY-84-481, "Upgrading the NRC Operations Center's Emergency Data Acquisition Capability," dated December 26, 1984, it was noted that experience with the ENS voice-only emergency communications link currently addressed in 10 CFR 50.72(a) demonstrated that excessive amounts of time are needed for routine transmission of data and for verification or correction of data that appears questionable. Errors were also attributed to transcribing and interpreting voice-transmitted data. This resulted in the NRC exploring improved methods to receive accurate and timely information it requires to perform its role during an alert or higher emergency.

After evaluating several options, the NRC selected the Emergency Response Data System (ERDS) as the most appropriate option to supplement the ENS. The staff conducted prototype ERDS testing with Duke Power and Commonwealth Edison reactor units. For example, data was transmitted and beneficially used via an ERDS prototype during the Zion Full Federal Exercise in June 1987. These tests demonstrated that there was great value in using electronic data transmission for obtaining a limited set of reliable, time tagged data. With this better and more timely data, the NRC response team functioned more efficiently and their assessments were more timely. Major improvements in the ability to focus on significant factors and to predict the course of events were noted. The questions directed from the NRC Operations Center to the licensee were focused on the overall event status and corrective actions being considered, rather than simple data requests, thereby reducing the volume of voice communications.

The NRC decided to implement the ERDS initially on a voluntary basis through the issuance of a generic letter while at the same time developing a rulemaking. On August 21, 1989, the NRC issued Generic Letter 89-15 to request the voluntary cooperation of each nuclear power reactor licensee in implementing an ERDS program at each of its operational nuclear power units. However, to date only about half of the operating nuclear power units have volunteered to participate in ERDS. The NRC recognizes the importance of the ERDS in enhancing its ability to fulfill its role in the event of an emergency and has placed a high priority on the implementation of the ERDS program by all operational nuclear power units. The staff has, therefore, developed the proposed rule that would amend part 50 to require participation in the ERDS program and to set a definite schedule for its implementation.

Discussion

The ERDS would supplement the currently installed voice transmission ENS. The system will provide the NRC Operations Center with a timely and accurate limited set of parameters from the installed onsite computer systems in the event of an emergency at a nuclear power plant. Implementation of the ERDS would require each licensee to establish and maintain a computer information system which is designed to transmit a set of approximately 30 selected critical plant parameters. The ERDS would be activated by the licensee upon declaration of an alert or higher emergency condition at a licensed nuclear power reactor facility. Tests with the ERDS indicate that a computer-based transmission system is far more accurate and timely than the current practice of relaying information on plant conditions via telephone voice communication. Moreover, by automatically collecting and transmitting selected critical parameters to the NRC Operations Center, the ERDS would allow the licensee to redirect resources that now are required for voice communication of plant conditions to managing the emergency. Of course, the voice communication channel would remain available to permit needed dialogue between the licensee's facility and the NRC Operations Center during the emergency.

The proposed ERDS requirement would apply to all nuclear power reactor facilities except Big Rock Point and those that are permanently or indefinitely shut down. Big Rock Point is exempt because the facility has only five data points available for the ERDS program. Those units shut down for maintenance or authorized only for fuel loading and low power operations are required to report under ERDS.

The ERDS would become operational during (1) emergencies at the licensee's facilities and (2) emergency training exercises if the licensee's computer system has the capability to transmit the exercise data. The licensee would activate the ERDS to begin data transmission to the NRC Operations Center immediately after declaring an alert or a higher emergency classification.

The licensee would be required to provide the necessary software to assemble the data and an output communications port for each reactor unit in its in-plant computer system. The required emergency data would be transmitted to the NRC via NRC-furnished communication link hardware. The acquisition and transmission of data would not require human intervention after the system is activated, thereby ensuring uninterrupted transmission of real-time data. The data would be transmitted in a format compatible with the system at the NRC Operations Center. Guidance for format compatibility with the NRC receiving system is provided in NUREG-1394.

The two main features of the ERDS are:

- The software link, which will extract and format the requisite data to be transmitted to the NRC Operations Center; and
- The hardware link, which will connect the onsite data acquisition system of the licensee with the data transmission unit supplied by the NRC. In most cases, implementing ERDS can be accomplished with already installed equipment at the licensee's facility.

The parameters to be included in the transmission are those that, to the greatest extent possible, describe the four selected plant conditions previously mentioned. The specific parameters desired by the NRC during an emergency are given in the proposed amendment to 10 CFR part 50, appendix E, section VI, paragraph 2. The units of these parameters are pre-established for each site and will be transmitted to the NRC Operations Center without any change. If the data for a selected plant condition parameter exists, but cannot be transmitted electronically from a licensee's system, then the licensee will continue to provide that data via the existing ENS.

With regard to the capability of the current hardware at the sites to support the generation of data required as input to ERDS, approximately 5 to 10 percent of the licensee computer systems are currently running at close to 100 percent processing capability in the post-trip or post-incident environment. Approximately 10 to 15 percent of the licensee systems are hardware limited (*i.e.*, no available output port for an ERDS connection exists). However, in many of these cases, the licensees with hardware limitations were planning to upgrade their systems in the near future for reasons other than supporting ERDS.

Each licensee would establish and maintain an ERDS configuration control program which would ensure that the NRC is notified of any changes to the ERDS on-site hardware or software. Any hardware and software changes that affect the transmitted data points identified in the ERDS Data Point Library (data base) must be reported to the NRC within 30 days after changes are completed. Any changes that could affect the transmission format and communication protocol to the ERDS must be provided to the NRC, as soon as practicable, at least 30 days prior to the modification.

Other computer systems, such as the Nuclear Data Link (NDL) were considered; however, these would require new hardware and software as well as additional personnel for both licensees and the NRC.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The regulatory analysis estimates an annual per reactor level of effort of 5 days for licensee staff and 3 days for NRC staff for the maintenance of the on-site ERDS configuration control program. An integral part of this activity is the preparation of configuration control reports by the licensee and their review by the NRC. This paperwork effort is estimated at less than one-third the overall configuration control level of effort. Thus, the reporting burden per reactor is estimated at less than 2 days per year, and the NRC's review effort is estimated at less than 1 day per reactor year. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to the Paperwork Reduction Project (3150-0011), Office of Information and Regulatory Affairs (NEOB-3019), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The draft regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from M. L. Au, P.E., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3749.

The NRC requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed a backfit analysis for this proposed rule. The Commission concluded that the proposed rule will provide substantial increase in the overall protection of the public health and safety by ensuring far more accurate and timely flow of data for the NRC to fulfill its role during an alert or higher emergency. The direct and indirect costs estimated for the implementation of this rule are justified in view of this increased protection. Further, the implementation and maintenance requirements of the proposed rule will have no effect on occupational radiological exposure. The backfit analysis on which this determination is based is as follows:

Item 1: Statement of the specific objective that the proposed backfit is designed to achieve.

Response: The objective of the proposed ERDS rulemaking effort is to achieve a high degree of assurance that accurate real-time data is made available to the NRC to evaluate critical parameters at any operating reactor facility during an alert or higher emergency. This in turn would improve the NRC's understanding of an event and allow the NRC to perform its role more effectively and efficiently which includes: (i) monitoring the licensee to ensure that appropriate recommendations are being made with respect to offsite protective actions; (ii) providing the licensee with technical analysis and logistic support; (iii) supporting offsite authorities; (iv) keeping other Federal agencies and entities informed of the status of the incident; and (v) keeping the media informed of the NRC's knowledge of the status of the incident.

In addition, the implementation of the ERDS would enable the licensee to better use its time and resources to effectively and efficiently deal with the emergency. The combination of better and more timely assessments of licensee actions by the NRC and the focusing of the licensee's resources to better deal with the emergency at hand together will reduce the overall risk to the public health and safety from an emergency.

Item 2: General description of the activity that would be required of the licensee or applicant in order to complete the backfit.

Response: All licensees or applicants would be required to install an NRC-supplied communication link, provide the software necessary to format available selected critical plant condition data for NRC use, provide the necessary hardware from the in-plant computer to interface with the NRC-supplied communication link, provide support for periodic testing of the ERDS, and report any configuration changes to the licensee's ERDS-related hardware and software. Initially, the ERDS will be

tested quarterly, unless otherwise determined by NRC based on demonstrated system performance.

Item 3: Potential change in the risk to the public from the accidental offsite release of radioactive material.

Response: The implementation of the ERDS in all operating nuclear power reactors would provide the NRC with

worth of installing and operating ERDS for 30 years using a 5 percent discount rate. The overall industry cost of implementing the rule for 118 nuclear power reactor units was estimated at approximately $18 million. No downtime costs were considered in the cost impact estimates because the installation and operation of the ERDS should have no

licensees monitor more parameters than are presently monitored at each facility.

Item 3: Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

Response: Implementation of the ERDS in accordance with the proposed

under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 209, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

existing voice transmission over the Emergency Notification System (ENS) by providing the NRC Operations Center with timely and accurate updates of a limited set of parameters from the licensee's installed onsite computer system in the event of an emergency. When selected plant data are not available on the licensee's onsite computer system, retrofitting of data points is not required. The licensee shall test the ERDS

radioactivity level, primary containment radiation level, condenser off-gas radiation level, effluent radiation monitor, and process radiation levels; and (5) Meteorological data: wind speed, wind direction, and atmospheric stability.

b. The above selected parameter sets must be transmitted at time intervals not less than 15 seconds or more than 60 seconds.

c. All link control and data transmission

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tested quarterly, unless otherwise determined by NRC based on demonstrated system performance.

Item 3: Potential change in the risk to the public from the accidental offsite release of radioactive material.

Response: The implementation of the ERDS in all operating nuclear power reactors would provide the NRC with more accurate and timely data to fulfill its major role during an alert or higher emergency. The major role, as defined in the 1987 revision to NUREG-0728, is to monitor the licensee to ensure that appropriate recommendations are being made with respect to offsite protective actions. Currently, the NRC relies on data verbally transmitted through the Emergency Notification System (ENS) during an emergency. Although deemed adequate, this method of transmission has, on occasion, proven to be unreliable. In addition, data collection is time consuming since various instruments are read and their indications logged on a periodic basis for verbal communication via ENS. The implementation of the ERDS would improve the reliability and timeliness of data transmission and help ensure that any reactor unit in distress can be suitably monitored. Therefore, the NRC would be able to make better and more timely assessments of the licensee's actions regarding management of both emergency and protective actions. Although licensees will be required to maintain voice communication via the Emergency Notification System (ENS) with ERDS, the licensee resources that now are required to collect and relay data and information to the NRC will be available to deal with the emergency. The combination of better and more timely assessments of licensee actions by the NRC, and the focusing of licensee resources to better deal with the emergency at hand together will reduce the overall risk to the public health and safety from an emergency.

Item 4: Potential impact on radiological exposure of facility employees.

Response: The implementation of the proposed ERDS rule would have no effect on routine occupational radiological exposure and would not result in increased radiological exposure of facility employees.

Item 5: Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay.

Response: The cost impact of the rule was estimated to be approximately $158,000 for one nuclear power reactor (one unit). This figure, expressed in 1990 dollars, represents the incremental worth of installing and operating ERDS for 30 years using a 5 percent discount rate. The overall industry cost of implementing the rule for 116 nuclear power reactor units was estimated at approximately $18 million. No downtime costs were considered in the cost impact estimates because the installation and operation of the ERDS should have no impact on the operation of a nuclear power plant.

Item 6: The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements.

Response: The proposed ERDS rule should have little or no impact on the operational complexity of the nuclear power reactor units since the required modifications to the hardware and software are minor. The redirection in the labor burden provided by the automatic collection and transmission of selected reactor data would increase the efficiency and effectiveness of nuclear power plant operating personnel during an emergency. The proposed rule is closely associated with Generic Letter 89-15 and complements the ENS that exists at every nuclear power reactor.

Item 7: The estimated resource burden on the NRC associated with the proposed backfit and availability of such resources.

Response: The impact on the NRC resulting from the implementation of the proposed ERDS rule is anticipated to be a one-time cost of about $290,000 for the current population of operational/licensed nuclear reactor units. This figure provides for initial reviews of licensees' implementation plan submittals. After implementation, the NRC cost is estimated to be approximately $4.3 million for 116 nuclear power reactor units. This figure represents the costs for periodic testing and configuration control expressed as the present worth in 1990 dollars and uses a 5 percent discount rate over 30 years.

Item 8: The potential impact of the differences in facility type, design, or age on the relevancy and practicality of the proposed backfit.

Response: The proposed rule is independent of the facility's type, design, or age. There are considerable variations in the instrumentation systems of the nuclear power plants, and the estimated cost impacts were based on an average value for current nuclear power plants to implement the ERDS. There will be no differences, however, in potential impacts between the various facilities on a yearly basis. The proposed rule does not require that licensees monitor more parameters than are presently monitored at each facility.

Item 9: Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

Response: Implementation of the ERDS in accordance with the proposed rule will require that all licensees develop and submit an ERDS implementation plan to the NRC within 60 days of the publication of the final rule in the Federal Register. The implementation plan should provide a schedule which identifies the earliest possible time frame for ERDS implementation by the licensee as well as proposed alternate implementation dates. The NRC will establish an industry wide ERDS implementation schedule which will take into account such factors as planned computer modifications and scheduled outages. The ERDS must be implemented within 18 months of the publication of the final rule in the Federal Register.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR part 50.

PART 50 — DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 112, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), § 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (2 U.S.C. 2201(b)); § 50.7(a), 50.10(a)-(c), 50.34(a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and § 50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.72, paragraph (a)(4) is redesignated as paragraph (a)(5) and a new paragraph (a)(4) is added to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

(a) * * *

(4) The licensee shall activate the Emergency Response Data System (ERDS)[5] for any condition that requires the declaration of an emergency class of alert, site area emergency, or general emergency at the time that the NRC Operations Center is notified of the emergency class declaration.

* * * * *

3. Appendix E is amended by adding a new Section VI, Emergency Response Data System, to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

VI. Emergency Response Data System

1. The Emergency Response Data System (ERDS) is a direct real-time electronic data link between the licensee's onsite computer system and the NRC Operations Center which provides for the automated transmission of a limited data set of selected parameters. The ERDS supplements the existing voice transmission over the Emergency Notification System (ENS) by providing the NRC Operations Center with timely and accurate updates of a limited set of parameters from the licensee's installed onsite computer system in the event of an emergency. When selected plant data are not available on the licensee's onsite computer system, retrofitting of data points is not required. The licensee shall test the ERDS periodically to verify system availability and operability. The frequency of ERDS testing will be quarterly unless otherwise set by NRC based on demonstrated system performance.

2. Except for Big Rock Point and all nuclear power facilities that are shut down permanently or indefinitely, onsite hardware and software shall be provided at each unit by the licensee to interface with the NRC receiving system. The hardware and software must have the following characteristics:

a. Data points, if resident in the in-plant computer systems, must be transmitted for four selected types of plant conditions: reactor core and coolant system conditions; reactor containment conditions; radioactivity release rates; and plant meteorological tower data. A separate data feed is required for each reactor unit. While it is recognized that ERDS is not a safety system, it is conceivable that a licensee's ERDS interface could communicate with a safety system. In this case, appropriate isolation devices would be required at these interfaces. The data points, identified in the following parameters will be transmitted:[6]

(i) For pressurized water reactors (PWRs), the selected plant parameters are: (1) Primary coolant system: pressure, temperatures (hot leg, cold leg, and core exit thermocouples), subcooling margin, pressurizer level, reactor coolant charging/makeup flow, reactor vessel level (when available), reactor coolant flow, and reactor power; (2) Secondary coolant system: steam generator levels and pressures, main feedwater flows, and auxiliary and emergency feedwater flows; (3) Safety injection: high- and low-pressure safety injection flows, safety injection flows (Westinghouse), and borated water storage tank level; (4) Containment: pressure, temperatures, hydrogen concentration, and sump levels; (5) Radiation monitoring system: reactor coolant radioactivity, containment radiation level, condenser air removal radiation level, effluent radiation monitors, and process radiation monitor levels; and (6) Meteorological data: wind speed, wind direction, and atmospheric stability.

(ii) For boiling water reactors (BWRs), the selected parameters are: (1) Reactor coolant system: reactor pressure, reactor vessel level, feedwater flow, and reactor power; (2) Safety injection: reactor core isolation cooling flow, high-pressure coolant injection/high-pressure core spray flow, core spray flow, low-pressure coolant injection flow, and condensate storage tank level; (3) Containment: drywell pressure, drywell temperatures, drywell sump levels, hydrogen and oxygen concentrations, suppression pool temperature, and suppression pool level; (4) Radiation monitoring system: reactor coolant radioactivity level, primary containment radiation level, condenser off-gas radiation level, effluent radiation monitor, and process radiation levels; and (5) Meteorological data: wind speed, wind direction, and atmospheric stability.

b. The above selected parameter sets must be transmitted at time intervals not less than 15 seconds or more than 60 seconds.

c. All link control and data transmission must be established in a format compatible with the NRC receiving system.[7]

3. Maintaining Emergency Response Data System

a. Any hardware or software changes that affect the transmitted data points identified in the Emergency Response Data System Data Point Library (data base) must be submitted to the NRC within 30 days after changes are completed.

b. Hardware and software changes, with the exception of data point modifications, that could affect the transmission format and computer communication protocol to the ERDS must be provided to the NRC, as soon as practicable, at least 30 days prior to the modification.

4. Implementing Procedures for Emergency Response Data System

a. Each licensee shall develop and submit an ERDS implementation program plan to the NRC by [insert a date 75 days after publication of the final rule]. To ensure compatibility with the guidance provided for the Emergency Response Data System (ERDS), the ERDS implementation program plan must include, but not be limited to, information on the licensee's computer system configuration (i.e., hardware and software), interface, and procedures. Applicants for an operating license must comply with appendix E, section V of this part.

b. Each licensee shall complete implementation of the Emergency Response Data System by [insert a date eighteen months after the effective date of the final rule] or before initial escalation to full power, whichever comes later. Licensees with currently operational ERDS interfaces approved under the voluntary ERDS implementation program[8] will be considered to have met the requirements for ERDS under appendix E, sections VI.1, and 2 of this part.

Dated at Rockville, Maryland, this 2nd day of October, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-23767 Filed 10-5-90; 8:45 am]

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[5] Requirements for ERDS are addressed in appendix E.

[6] See 10 CFR 50.55a(h) Protection Systems.

[7] Guidance is provided in NUREG-1394.

[8] See, NUREG-1394.

FEDERAL ELECTION COMMISSION

[Notice 1990-17]

11 CFR Part 110

Domestic Subsidiaries of Foreign Nationals

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-17769; Int'l Series Rel. No. 160; File No. S7-16-90]

RIN 3235-AD66

Books and Records of Registered

broker, dealer, depositor, and underwriter, must maintain and preserve certain books and records for such periods of time as the Commission may prescribe. Section 31(b) of the Act (15 U.S.C. 80a-30(b)) authorizes the Commission to examine all books and records that are required to be maintained and preserved by any

same time, the proposed amendment is intended to accommodate the business practices of such investment companies whenever possible, consistent with investor protection and the Commission's responsibilities under the Act.

Proposed paragraph (g)(1) would require expressly a United States investment company to preserve in the

The Commission recognizes the need for flexibility when international markets are involved, and the need to balance its regulatory requirements with the realities of the global marketplace. This proposal is an attempt to permit Commission examiners to conduct adequate examinations of United States investment companies that invest in

Finally, the release requests comment on whether the Commission should reexamine its recordkeeping requirements for United States investment companies under rule 31a–1.

Background

Section 31(a) of the Act provides that "[e]very registered investment company, and every underwriter, broker, dealer, or

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FEDERAL ELECTION COMMISSION

[Notice 1990-17]

11 CFR Part 110

Domestic Subsidiaries of Foreign Nationals

AGENCY: Federal Election Commission.

ACTION: Announcement of additional public hearing date.

SUMMARY: On August 22, 1990, the Commission published a notice that it was considering amending 11 CFR 110.4(a) by adding a new paragraph 110.4(a)(4)(iii). This proposal would include a domestic subsidiary of a foreign national within the definition of "foreign national" if the foreign ownership of the subsidiary exceeds fifty percent. *See* 55 FR 34260. The notice announced that a public hearing would be held on October 31, 1990 at 10:00 a.m. The Commission has decided to schedule an additional date for further testimony, if necessary, on the issues presented in the rulemaking. As indicated in the August notice, all requests to testify at this hearing must be made in writing as part of the requester's written comments, and must be submitted no later than October 12, 1990.

DATES: The Commission will hold the hearings on October 30, 1990 at 2 p.m., and October 31, 1990 at 10 a.m. Written comments and requests to appear must be submitted no later than October 12, 1990.

ADDRESSES: The hearing will be held at the Federal Election Commission, Ninth Floor Hearing Room, 999 E Street NW., Washington, DC. Written comments, including requests to appear, must be directed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

Dated: October 2, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-23661 Filed 10-5-90; 8:45 am]

BILLING CODE 6715-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-17769; Int'l Series Rel. No. 160; File No. S7-16-90]

RIN 3235-AD66

Books and Records of Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and request for comment.

SUMMARY: The Commission is publishing for public comment a proposed amendment to an existing rule that requires a registered investment company to preserve certain books and records related to its operations. The amendment is being proposed to remove uncertainty regarding the location and language aspects of the recordkeeping requirements for registered investment companies, particularly investment companies investing in foreign securities. The proposed amendment is intended to clarify the recordkeeping requirements for such investment companies.

DATES: Comments must be received on or before December 10, 1990.

ADDRESSES: Send comments in triplicate to: Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-16-90. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Diane C. Blizzard, Special Counsel, (202) 272-2048, or Rochelle G. Kauffman, Senior Attorney, (202) 272-2038, Office of Regulatory Policy, Division of Investment Management ("Division"), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is asking for public comment on a proposed amendment to rule 31a-2 [17 CFR 270.31a-2] under section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Act").

Executive Summary

Section 31(a) of the Act (15 U.S.C. 80a-30(a)) provides that every investment company registered in the United States ("United States investment company" or "investment company") and its investment adviser, broker, dealer, depositor, and underwriter, must maintain and preserve certain books and records for such periods of time as the Commission may prescribe. Section 31(b) of the Act (15 U.S.C. 80a-30(b)) authorizes the Commission to examine all books and records that are required to be maintained and preserved by any person under section 31(a). Section 31(b) also requires any such person to furnish to the Commission, within a reasonable time as the Commission may prescribe, copies of or extracts from books and records that the Commission may by order require. Generally, rule 31a-1 under the Act (17 CFR 270.31a-1) specifies certain books and records that must be maintained, and rule 31a-2 specifies where and for how long these books and records must be preserved.

United States investment companies have increased dramatically their holdings of foreign securities during the past several years.[1] In the course of business, some of the books and records (that are required to be maintained and kept current under rule 31a-1) of these investment companies may originate overseas and may be in a language other than English. However, preserving these books and records outside the United States may undermine section 31(b) by making examination by the Commission's staff difficult, in part because of foreign sovereignty considerations which may limit the Commission's ability to carry out its regulatory functions outside of the United States.[2] In addition, preserving the required records in a language other than English could impede the examination process. Accordingly, the Commission is proposing to amend rule 31a-2 to clarify that the rule requires United States investment companies to preserve specified books and records in a manner that makes them accessible for Commission examination. At the same time, the proposed amendment is intended to accommodate the business practices of such investment companies whenever possible, consistent with investor protection and the Commission's responsibilities under the Act.

Proposed paragraph (g)(1) would require expressly a United States investment company to preserve in the United States, for such periods of time as set forth in paragraphs (a)(1) and (a)(2) of rule 31a-2,[3] a set of those books and records required to be maintained and kept current under paragraphs (a) and (b) of rule 31a-1.[4] For the first two years the books and records would be required to be maintained and preserved at an office by a person or persons familiar with the operations of the investment company (and with the books and records in particular) [5] in the manner in which they are kept in the usual course of business.[6]

Proposed paragraph (g)(2) would provide that all books and records created by a United States investment company, that are required to be maintained and kept current under paragraphs (a) and (b) of rule 31a-1, must be preserved in the English language.

The internationalization of the securities markets presents numerous challenges, both for "home country" regulation of domestic enterprises, and for "host country" regulation of foreign issuers selling securities within the host country's borders. This proposal relates solely to home country oversight of United States investment companies.[7] As such, the proposal goes toward fulfilling the reasonable expectation of market participants that each country's regulators are able to enforce effectively their securities laws.[8]

The Commission recognizes the need for flexibility when international markets are involved, and the need to balance its regulatory requirements with the realities of the global marketplace. This proposal is an attempt to permit Commission examiners to conduct adequate examinations of United States investment companies that invest in foreign securities without imposing unnecessary costs on these investment companies. However, the Commission specifically seeks comment on whether the proposed requirements would in any way impeded United States investment companies from participating in foreign markets, now or in the future, and, if so, how. Commenters are also encouraged to suggest alternative approaches that are consistent with the investor protection purposes of the Act. [9] In addition, the Commission specifically invites comment from foreign securities regulators as to what records their respective countries require investment companies organized in that country to maintain, whether such records must be preserved in that country, whether the records must be maintained in a particular language, and if so, what language, and, in general, as to their experience with such recordkeeping issues.[10]

Finally, the release requests comment on whether the Commission should reexamine its recordkeeping requirements for United States investment companies under rule 31a-1.

Background

Section 31(a) of the Act provides that "[e]very registered investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and preserve for such period or periods as the Commission may prescribe by rules and regulations, such accounts, books, and other documents" that form the basis for financial statements required to be filed under section 30 of the Act. Section 31(a) also provides that—

> [e]very investment adviser not a majority-owned subsidiary of, and every depositor of any registered investment company, and every principal underwriter for any * * * [such] company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such accounts, books, and other documents as are necessary or appropriate to record such person's transactions with such registered company.

Section 31(b) of the Act provides that all accounts, books and records that section 31(a) requires any person to maintain and preserve, "shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe." Section 31(b) also requires any person required to maintain and preserve books and records under section 31(a) to "furnish to the Commission, within such reasonable time as the Commission may prescribe, copies of or extracts from such books and records which may be prepared without undue effort, expense, or delay, as the Commission may by order require."

The legislative history of section 31 notes that the "accounts and accounting of * * * companies is an extremely important matter and lies close to the heart of a great many of the difficulties [that prompted the consideration of legislation to regulate investment companies]." [11] The legislative history further suggests that the purpose of the section was to require the keeping of certain books and records that would be

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[1] *See infra* notes 21-29 and accompanying text.

[2] The Commission recognizes that Memoranda of Understanding ("MOUs") with other countries provide an excellent means for assisting in the enforcement of the securities laws in an era when the securities markets are becoming increasingly internationalized. *See, e.g.*, with respect to Brazil, International Series Release No. 7 (July 1, 1988) [43 SEC Docket 206, Mar. 28, 1989]. MOUs are useful in this context because they may facilitate access to books and records that are not required to be preserved in the United States under the rule proposal, and the Commission anticipates negotiating MOUs with other securities regulators and amending existing MOUs where necessary to address issues pertaining to the accessibility of these books and records. Clarification of rule 31a-2, however, is necessary to assure that the books and records required to be maintained under rule 31a-1 are accessible to Commission examiners in the United States in compliance with section 31 of the Act.

[3] *See infra* note 32.

[4] These documents constitute the record forming the basis for financial statements required to be filed under section 30 of the Act (15 U.S.C. 80a-29).

[5] Of course, the person or persons who maintain and preserve the requisite books and records would not be required to store the books and records in their individual offices, and may instead choose to store them in another area (*e.g.*, a file area or conference room) at their place of business. *See infra* text following note 35.

[6] The proposed amendment would not require an investment company to maintain its principal office within the United States or have the books and records located at such principal office. *Id.*

[7] The Commission anticipates that a different regulatory approach would be necessary if the United States were to impose recordkeeping requirements as a host country with respect to sales in the United States of securities of foreign investment companies. *See infra* note 31 regarding section 7(d) of the Act [15 U.S.C. 80a-7(d)].

[8] In its recent adoption of Regulation S regarding offshore offers and sales, the Commission articulated a territorial approach to securities regulation emphasizing the primacy of the laws in which a market is located, recognizing that, as investors choose their markets, they also choose the laws and regulations applicable to such markets. *See* Securities Act Release No. 33-6863 (Apr. 24, 1990) [55 FR 18306, May 2, 1990.]

[9] *See* section 1(b) of the Act [15 U.S.C. 80a-1(b)]. *See also infra* the Background section for a general discussion of the purposes behind section 31 of the Act.

[10] For example, Luxembourg requires all investment companies organized in Luxembourg with Luxembourg as their home country to locate their central administration in Luxembourg. *See* Bourse de Luxembourg (The Investment Fund Law 1988), arts. 3, 59 (1988). From informal contacts with Luxembourg regulators, the Commission staff learned that such companies are limited in maintaining their records to one of the four specified languages that are commonly used in Luxembourg (the English, French, German or Luxembourg language). Similarly, informal contacts with Japanese regulators indicate that Japanese investment trust management companies, although not specifically mandated by law, do as a matter of course maintain their records in Japanese and preserve them in Japan. In addition, the Commission staff has been informed by Irish regulators that, under their regulations, Undertakings for Collective Investment in Transferable Securities (UCITS) that are organized in Ireland must maintain certain records in Ireland. Finally, preliminary research indicates that the United Kingdom requires records of collective investment schemes to be in English, but such records may be in another language provided that the firm operating the collective investment scheme has facilities for producing a translation of the record into English upon request within a reasonable time. *See* Securities and Investments Board (United Kingdom), The Financial Services (Financial Records) Rules 1987, rule 11(3).

[11] *See* Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess. 304 (1940) (Statement of Commissioner Robert E. Healy).

subject to the Commission's inspection at any time.[12]

In 1944, the Commission adopted rules N-31A-1 and N-31A-2 under section 31(a) of the Act, both of which prescribed in general terms the books and records (forming the basis for financial statements to be filed under section 30 of the Act) to be maintained and preserved by registered investment companies. The Commission adopted the 1962 amendments after concluding, based on experience gained in the administration and enforcement of the Act (including experience derived from staff inspections of investment companies and certain affiliated persons), that both rules 31a-1 and 31a-2 as initially adopted lacked "sufficient specificity

portfolios consisted almost exclusively of domestic securities and their operations were located in the United States. Therefore, such investment companies, as a matter of course, preserved their books and records in the English language in the United States. Accordingly, questions have rarely arisen regarding the requirement of rule

foreign investment as of December 31, 1989.[27] In addition, as of December 31, 1989, approximately 37 closed-end funds were participating actively in foreign markets,[28] with many of them investing in the securities of a single country ("single country funds").[29]

As more United States investment companies invest in foreign securities,

Discussion

In order to clarify the proper location and form of the books and records that are required to be maintained by a United States investment company under rule 31a-1, the Commission is proposing to amend rule 31a-2 by adding paragraph (g) to the rule.

The Commission understands that currently virtually all United States investment companies that invest in foreign securities do preserve their books and records in the United States, as contemplated by section 31(b) and rule 31a-2. Accordingly, this aspect of proposed paragraph (g)(1) reflects present industry practice.

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subject to the Commission's inspection at any time.[13]

In 1944, the Commission adopted rules N-31A-1 and N-31A-2 under section 31(a) of the Act, both of which prescribed in general terms the books and records (forming the basis for financial statements to be filed under section 30 of the Act) to be maintained by a registered investment company and other persons, and the periods of time such records must be preserved.[14]

In 1962, following an extensive reevaluation of the recordkeeping requirements under rules 31a-1 and 31a-2,[15] the Commission substantially amended both rules. Rule 31a-1 was amended to required that investment companies, certain of their majority-owned subsidiaries, and certain other persons having transactions with investment companies,[16] maintain and keep current specified books and records, including certain memoranda and documents not previously required. At the same time, the Commission amended rule 31a-2 to require every investment company to preserve all books and records required to be maintained and kept current under paragraphs (a) and (b) of rule 31a-1, for a specified period of time, depending on the document, but with all such documents being preserved for the first two years "in an easily accessible place." In addition, rule 31a-2 was amended to cover the preservation of books and records that are maintained and kept current by certain majority-owned subsidiaries of investment companies and other persons, under rule 31a-1.[16]

The Commission adopted the 1962 amendments after concluding, based on experience gained in the administration and enforcement of the Act (including experience derived from staff inspections of investment companies and certain affiliated persons), that both rules 31a-1 and 31a-2 as initially adopted lacked "sufficient specificity and detail."[17] The amendments were adopted after a series of meetings between the Commission staff and representatives of the investment company industry and accounting professions, including visits by the Commission staff to several United States investment companies and investment advisers to study their recordkeeping procedures.[18]

Since 1962, the Commission has twice amended paragraph (f) of rule 31a-2 to permit certain books and records to be maintained and preserved on photographic film or on magnetic tape, disk, or other computer storage medium. In 1973, the Commission amended the paragraph to permit these books and records to be maintained and preserved on microfilm.[19] In 1986, the Commission enlarged the range of acceptable storage media to include a computer storage medium.[20]

Commission examiners inspect the books and records of hundreds of United States investment companies every year. Typically, such examinations occur, either on a surprise basis or with little advance notice, at the investment company's principal office in the United States. Because the investment company usually maintains and preserves most of its books and records at that office, Commission examiners have ready access to most information needed to conduct an adequate inspection.

Until recently, the great majority of United States investment companies' portfolios consisted almost exclusively of domestic securities and their operations were located in the United States. Therefore, such investment companies, as a matter of course, preserved their books and records in the English language in the United States. Accordingly, questions have rarely arisen regarding the requirement of rule 31a-2 that an investment company preserve the books and records for the first two years "in an easily accessible place."

In the past decade, however, United States investors have increased dramatically their participation in foreign securities markets. A significant portion of this increase can be attributed to the growth in the number and assets of United States investment companies, both open-end ("mutual funds" or "funds") and closed-end ("closed-end funds"), that invest in foreign securities.[21] A year-end 1989 compilation revealed that approximately 200 registered mutual funds, with assets totalling over $29 billion, invested in foreign securities.[22] Specifically, the report found that 36 global funds,[23] 14 global flexible portfolio funds,[24] 39 world income funds,[25] and 76 international funds [26] were engaged in

[13] *See id. See also* S. Rep. No. 1775, 76th Cong., 3d Sess. 18 (1940); H.R. Rep. No. 2639, 76th Cong., 3d Sess. 24 (1940).

[14] Specifically, rule N-31A-1 prescribed the period of time for which every investment company, and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of the investment company, must preserve the books and records that form the basis for financial statements required to be filed under section 30 of the Act. Rule N-31A-2 prescribed the periods of time for which every investment adviser that is not a majority-owned subsidiary of an investment company, every depositor of any investment company, and every principal underwriter for any investment company other than a closed-end investment company, must preserve books and records that are necessary and appropriate to record its transactions with an investment company. *See* Investment Company Act Release No. 865 (Apr. 17, 1944) [9 FR 4170, Apr. 20, 1944] (adopting rules N-31A-1 and N-31A-2).

[15] The Commission had previously dropped the letter "N" as a prefix to rules adopted under the Act.

[16] Rule 31a-1, as amended, governs those persons covered by rule N-31A-2. *See supra* note 13.

[17] The Commission at that time also adopted rule 31a-3 under the Act [17 CFR 270.31a-3], which sets forth certain requirements where the books and records required to be maintained and preserved pursuant to the provisions of rule 31a-1 and 31a-2 are prepared or maintained by others on behalf of the person required to maintain and preserve them. *See* Investment Company Act Release No. 3578 (Nov. 28, 1962) [27 FR 11999, Dec. 5, 1962] (adopting amendments to rules 31a-1 and 31a-2 and new rule 31a-3).

[18] *See id.*

[19] As will be discussed later, the Commission is once again considering whether to reexamine generally the recordkeeping requirements under the Act, and comment is requested on this issue. *See infra* section C of the Discussion.

[20] The 1962 amendments had required that the books and records be maintained and preserved in hard copy, although microfilm could be substituted for the hard copy after a period of three years following the creation of the hard copy record. *See* Investment Company Act Release No. 7726 (Mar. 18, 1973) [38 FR 7726, Mar. 23, 1973] (adopting amendment to paragraph (f) of rule 31a-2).

[21] *See* Investment Company Act Release No. 15410 (Nov. 23, 1986) [51 FR 42267, Nov. 26, 1986] (adopting amendment to paragraph (f) of rule 31a-2).

[21] *See* Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Comm. on Banking, Housing and Urban Affairs and the House Comm. on Energy and Commerce, Internationalization of the Securities Markets, H-3-3, VI-1 (July 27, 1987). *See also* Report of the Office of Economic Analysis to the Commission, The Securities Markets in the 1980s: A Global Perspective, 69 [January 28, 1988] ("OEA Report").

[22] *See* Lipper Directors' Analytical Data, Vol. 1, Tables I, VII, VIII, X, XXVII, Lipper Analytical Securities Inc. (First Edition, 1990) ("Lipper").

[23] Lipper defines a "global fund" as a fund that invests at least 25% of its portfolio in securities traded outside of the United States and may own United States securities as well. *See id.* at Key (Equity Funds). Lipper noted that the global funds represented 1.32% of all mutual funds, with assets totalling $12,947.1 million as of December 31, 1989.

[24] Lipper defines a "global flexible portfolio fund" as a fund that is managed to achieve high total return by allocating its investments across various asset classes, including both domestic and foreign stocks, bonds and money market instruments. At least 25 percent of its portfolio is invested in securities traded outside of the United States. *See id.* Lipper determined that global flexibility portfolio funds represented approximately .23% of all mutual funds, with assets totalling $2,244.0 million as of December 31, 1989.

[25] Lipper defines a "world income fund" as a fund that invests its portfolio primarily in both United States dollar and non-United States dollar debt instruments. The fund also may invest in common and preferred stocks. *See id.* at Key (Fixed Income Funds). Lipper determined that these funds represented .36% of all mutual funds, with assets totalling $3,549.3 million as of December 31, 1989.

[26] Lipper defines an "international fund" as a fund that invests its assets in securities whose primary trading markets are outside of the United

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foreign investment as of December 31, 1989.[27] In addition, as of December 31, 1989, approximately 37 closed-end funds were participating actively in foreign markets,[28] with many of them investing in the securities of a single country ("single country funds").[29]

As more United States investment companies invest in foreign securities, the location and form of such investment companies' books and records may become more variable. Maintenance of a United States investment company's books and records outside of the United States makes a review of such records more difficult because of foreign sovereignty considerations, and increased cost to the Commission of sending its examiners on international travel.[30] The practice thus raises questions of compliance with section 31(b) and rule 31a-2.[31]

Discussion

In order to clarify the proper location and form of the books and records that are required to be maintained by a United States investment company under rule 31a-1, the Commission is proposing to amend rule 31a-2 by adding paragraph (g) to the rule.

A. Books and Records Must Be Preserved at an Office in the United States

Proposed paragraphs (g)(1) of rule 31a-2 would provide that, pursuant to paragraphs (a)(1) and (a)(2),[32] any United States investment company must preserve a set of its books and records, required to be maintained and kept current pursuant to paragraphs (a) and (b) of rule 31a-1,[33] in the United States.

[27] In addition, Lipper determined that 36 gold oriented funds with assets totalling $4,184.0 million, were active as of December 31, 1989. Lipper defines a gold oriented fund as a fund which has at least 65% of its equity portfolio in shares of gold producers, gold oriented mining finance houses, gold coins, or bullion. *See id.* Many gold oriented funds may be considered to be investing in foreign securities because most gold is mined outside the United States.

[28] *See* Lipper Annuity & Closed-End Survey, pp. 3-12, Lipper Analytical Securities Inc. (Jan. 31, 1990).

[29] The OEA Report, *supra* note 21, commented that single country funds are a relatively new investment vehicle, with only two being listed on United States exchanges prior to 1983. However, the OEA Report stated that as of the end of 1986, approximately 15 registered single country funds were listed on United States exchanges. *See id.* at 90.

[30] In one instance, the Division staff denied, and later provided no-action relief to a stock life insurance company and its investment company affiliates, each of whom wanted to maintain its books and records in Toronto, Canada. The staff took the no-action position only after receiving written assurances from the Ontario Securities Commission and the Canada Employment and Immigration Commission that Commission personnel could enter Canada to conduct inspections of the books and records and an undertaking by the insurance company's parent and the investment company's adviser to provide the Commission at its Washington, D.C. office or at any of its regional offices with copies of such books and records. *See* Manufacturers Life Insurance Company of America (pub. avail. Oct. 10, 1985) (denying the original request); Manufacturers Life Insurance Company (pub. avail. Mar. 17, 1986) (providing no-action relief to the insurance company, the investment company and Separate Account One); Manufacturers Life Insurance Company (pub. avail. Dec. 5, 1988) (providing no-action relief to the insurance company and Separate Accounts Two, Three and Four).

[31] There is an analogous provision in the Act, section 7(d), that illustrates the policy that registration must be accompanied by effective inspection. That section prohibits a foreign investment company from offering or selling securities in the United States unless the Commission issues an order based, in part, on a finding that it is both legally and practically able to enforce the provisions of the Act. All of the foreign investment companies that have received orders under section 7(d) represented that they would comply substantially with the substantive provisions of rule 7d-1 [17 CFR 270.7d-1], which includes a requirement that the foreign investment company maintain original or duplicate copies of its books and records at the office of its custodian (or other office) located within the United States. Although rule 7d-1 pertains only to Canadian investment companies, it has been used more generally as a model of the minimum requirements for granting an order under section 7(d) permitting registration. *See, e.g.*, Pan Australian Fund Ltd., Investment Company Act Release Nos. 7795 (Apr. 30, 1973) [38 FR 11141, May 4, 1973] (notice of application) and 8028 (Oct. 10, 1973) (order). *But see* Great-West Variable Annuity Account A, Investment Company Act Release Nos. 5488 (Sept. 5, 1968) [33 FR 12870, Sept. 11, 1968] (notice of application) and 5506 (Oct. 2, 1968) (order) (A condition of the order requires a stock life insurance company merely to furnish copies of the separate account's books and records to the Commission, upon request, in the United States, and to give Commission examiners free access to such books and records at the investment company's principal office in Canada.).

[32] Paragraph (a)(1) of rule 31a-2 requires an investment company to preserve permanently, the first two years in an easily accessible place, all books and records required to be made under paragraphs 1 through 4 of rule 31a-1(b). These books and records include the general ledger and supporting journals forming the basis of the investment company's computation of net asset value and corporate records such as the articles of incorporation and minute books.

Paragraph (a)(2) of rule 31a-2 requires an investment company to preserve for a period not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, certain books and records required to be maintained under rule 31a-1(a) and all books and records required to be made under paragraphs 5 through 12 of rule 31a-1(b). These books and records consist mostly of supporting records which provide back-up documentation for the financial statements.

[33] The proposed amendment to rule 31a-2 would govern only those books and records that are required to be maintained and kept current by an investment company under paragraphs (a) and (b) of rule 31a-1. The recordkeeping requirements for other entities that are set forth in rule 31a-2 are unaffected.

The Commission understands that currently virtually all United States investment companies that invest in foreign securities do preserve their books and records in the United States, as contemplated by section 31(b) and rule 31a-2. Accordingly, this aspect of proposed paragraph (g)(1) reflects present industry practice.

Proposed paragraph (g)(1) would require further that the United States investment company preserve these books and records, for the first two years, at an office [34] where a person or persons familiar with the operations of the investment company (and the books and records in particular) would maintain and keep current such books and records in the manner in which they are kept in the usual course of business.[35] Mere storage of the books and records in an off-site storage facility would not be enough to satisfy the proposed requirement. A United States investment company would not need to maintain its principal office within the United States or have the books and records located at its principal office. Rather, a United States investment company may preserve the required books and records, for example, with a transfer agent or administrator that is located in the United States.

In addition to being kept at an office, the prescribed books and records would be required to be arranged and maintained in the manner in which they are kept in the usual course of business. In order to meet this requirement, the books and records should be organized in a way that reasonably reflects a replication of the company's recordkeeping system. This aspect of the proposal is intended to avoid Commission examiners having to reconstruct the books and records

[34] the proposed amendment would not require the investment company to preserve the required books and records at a single office. Some investment companies currently preserve their books and records at more than one location in the usual course of business, *e.g.*, certain related records at the offices of their transfer agent and the remainder at their principal office. The proposal is intended to codify current industry practice. Of course, scattering books and records among several office sites in a manner which would effectively impede the inspection process would not be consistent with the purposes of proposed paragraph (g)(1).

[35] *Cf.* Federal Rules of Civil Procedure § 34(b), which requires any party who produces documents for purposes of discovery to produce the requested documents as "they are kept in the usual course of business ° ° °." The purpose of this aspect of rule 34(b) of the civil procedure rules is to prevent parties from mixing critical documents with others in the hope of obscuring their significance. *See* Advisory Committee Note to Amended Rule 34(b), reprinted in 4A Moore & Lucas, Moore's Federal Practice 34-11 (2d ed. 1990).

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before an inspection could be conducted.

The Commission is not aware of any difficulties experienced by United States investment companies investing in foreign securities in keeping their books and records "current" as required under paragraphs (a) and (b) of rule 31a–1.[38] Under the proposed amendment to rule 31a–2, the "usual course of business" standard would apply both to how the records are arranged and how they are kept current. However, comment is requested whether this standard is sufficient or whether the rule should attempt to specify time frames for the different types of records.

Finally, while proposed paragraph (g)(1) would require that the books and records be preserved in the United States for such periods of time as prescribed in paragraphs (a)(1) and (a)(2) of rule 31a–2, such books and records need only be kept at an office in the prescribed manner for the first two years.[37]

Proposed paragraph (g)(1) does not require a United States investment company to preserve its original books and records in the United States, merely a "set of its books and records."[38] The Commission understands that most United States investment companies that invest in foreign securities use a facsimile machine or computer medium to send records to the United States. Duplicate records derived in this fashion would be acceptable for purposes of the proposal.[39] Similarly, copies produced by the same impression as the original (*e.g.*, carbon) or by means of photography (*e.g.*, photocopies) are also acceptable.

Proposed paragraph (g)(1) is intended to enable Commission examiners to inspect the books and records that are required to be maintained and kept current under paragraphs (a) and (b) of rule 31a–1. Minimizing difficulties and delays during the examination process is necessary to maintaining an effective and efficient examination program, benefiting both United States investment companies and the Commission.[40] By clarifying that a set of the required books and records must be preserved in the United States, the proposal would allow most of the information generally reviewed during the course of an inspection to be readily available to Commission examiners. In addition, as previously noted, by requiring that the books and records be arranged and maintained in the manner in which they are kept "in the usual course of business," Commission examiners would be able to inspect the records as quickly as possible without undue difficulty or delay. Finally, the proposal would eliminate any potential foreign sovereignty considerations that could arise if Commission personnel sought to enter the foreign countries where records were preserved in order to conduct examinations.

B. Certain Books and Records Must Be Preserved in the English Language

Proposed paragraph (g)(2) would clarify that all books and records created by a United States investment company, that are required to be maintained and kept current under paragraphs (a) and (b) of rule 31a–1, must be preserved in the English language. Such books and records would include, for example, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, minute books, and journals reflecting itemized daily records of all purchases and sales of securities.[41] Documents not created by the United States investment company, such as files of advisory material received from the investment adviser, would not be required to be preserved in the English language.[42] In addition, documents created by the United States investment company, but which are not listed in paragraphs (a) and (b) of rule 31a–1, such as sales literature, most internal memoranda,[43] and general correspondence, need not be preserved in the English language.[44]

The English language requirement of proposed paragraph (g)(2) would mean that the requisite books and records must be preserved in the words and figures of the English language.[45] Thus, the proposal would require the use of Arabic numerals. Of course, proper names, foreign currency names, and other information easily understandable to a person who speaks only English need not be preserved in the English language.

The Commission understands that United States investment companies that invest in foreign securities typically do preserve the required books and records in the English language. However, compliance with the proposed English language requirement is not intended to be burdensome for those United States investment companies that would not preserve the required books and records in the English language as a matter of course. Such investment companies could comply with this aspect of the proposal using a variety of methods, depending on the document. For example, most of the documents required to be maintained and preserved under paragraphs (a) and (b) of rule 31a–1 are columnar in nature. United States investment companies could comply with the proposed English language requirement for these types of documents merely by including English language subheadings within the document. Alternatively, a template in the English language could be made part of the record that, when superimposed over the document, creates an English language original (where, of course, the document contains Arabic numerals).

United States investment companies may also comply with the proposed English language requirement through contemporaneous translations. English translations prepared as a matter of course and as soon as practicable would be regarded as being contemporaneous.

[38] What would be considered "kept current" for purposes of rule 31a–1 would depend on the document. For example, paragraph (b)(9) of rule 31a–1 requires a record for each fiscal quarter, to be completed within 10 days after the end of such quarter, showing the basis for brokerage allocations made during that quarter. On the other hand, because of its more critical nature, all ledgers forming the basis for the daily computation of net asset value must be updated daily under rule 2a–4 under the Act [17 CFR 270.2a–4]. The proposed amendment clarifies that United States investment companies that invest in foreign securities are required to comply with these requirements by updating books and records preserved in the United States. Of course, if books and records are updated in the usual course of business with information transmitted from foreign countries, any incidental time delays would not, in and of themselves, jeopardize compliance with the Act.

[37] *See supra* note 32. The time periods range from "permanently" to "not less than 6 years" but in all cases, "the first two years in an easily accessible place."

[38] *Accord* rule 7d–1(b)(6)(iii) under the Act, discussed *supra* note 31.

[39] Of course, such books and records may be maintained and preserved on magnetic tape, disk, or other computer storage medium in accordance with paragraph (f) of rule 31a–2.

[40] Minimizing delays in the inspection process also is important in light of the Division's policy that inspections of investment companies may be conducted on a surprise basis or with little notice.

[41] *See, e.g.*, paragraphs (b)(1), (b)(2), and (b)(4) of rule 31a–1.

[42] *See, e.g.*, paragraph (b)(11) of rule 31a–1. On the other hand, records prepared by persons other than the investment company but on behalf of the investment company, in accordance with rule 31a–3 under the Act, would be required to be preserved in the English language. *See supra* note 18.

[43] *But see* paragraph (b)(1) of rule 31a–1.

[44] *But see* rule 8b–12 under the Act [17 CFR 270.8b–12], which requires registration statements and reports to be in the English language.

[45] *See also* 12 CFR 349.18 (requiring each United States branch of a foreign bank that is insured by the Federal Deposit Insurance Corporation to keep a set of its records and accounts in the "words and figures of the English language which accurately reflect the business transactions of the branch on a daily basis").

Thus, for example, minutes of directors meetings may be first prepared in the language that was spoken at the meeting and then, shortly thereafter, translated into the English language.

Documents maintained in a language other than English and not contemporaneously translated into the English language would not satisfy this requirement.[46] The Commission is concerned that allowing United States investment companies to translate a document into the English language at a significantly later date than when the non-English version was first prepared may not provide for an adequate inspection due, in part, to the potential for delay in obtaining the translations during the course of an inspection.[47] In addition, proposed paragraph (g)(2) is intended to enable Commission examiners to conduct inspections without any dependency on the availability or cost to the Commission of obtaining a translator. Finally, this aspect of the proposal is also intended to reduce possible mistakes in translation and to remove the potential for altering records that could arise if the books and records are not preserved in the English language and are only translated by the investment company at the Commission's request at the time of examination. Comment is requested, however, on whether United States investment companies should be permitted to provide translations upon request by the Commission and, if so, how the Commission's concerns discussed above with respect to delays and the potential for altering records could be alleviated.

Inspection of the books and records that are required to be maintained by United States investment companies under rule 31a–1 would, of course, be easier if all of the required books and records were preserved in the English language. However, such a requirement may restrict unnecessarily the business practices of United States investment companies that invest in foreign securities, and accordingly is not being proposed. The proposed requirement that only the books and records created by the investment company be preserved in the English language represents a balancing and is intended to permit Commission examiners to conduct adequate examinations of United States investment companies without imposing unnecessary costs on these investment companies.[48] As earlier noted, most of the books and records that would be subject to the English language requirement are numerical and columnar in nature and therefore more easily preserved in English. However, comment is requested on whether certain documents that the investment company creates should be exempted from the English language requirement, and, if so, how the Commission staff could examine such documents. In responding to the request for comment, commenters should specifically list the types of documents that should be exempted from the English language requirement.

Comment is also requested on whether the proposed English language requirement would place undue burdens on United States investment companies, and, if so, whether there are reasonable alternatives to the English language requirement that would not compromise the investor protection purposes of the Act, as promoted by the Commission's inspection and enforcement program. For example, should the rule specify a limited number of other languages in addition to English that would be permissible and, if so, what should those languages be? In responding to the language question, commenters are requested to address with specificity the possible need the United States investment companies that invest in foreign securities to keep books and records in languages other than English, and how the Commission staff would readily conduct timely examinations of such investment companies consistent with the Commission's resources.

C. Request for Comment on Need for Reexamination of Recordkeeping Requirements Under Rule 31a–1

The dramatic increase in the number of United States investment companies participating in foreign securities markets has also raised questions as to whether the categories of books and records required to be maintained and kept current under rule 31a–1 should be reevaluated. As mentioned previously, in 1962, the Commission amended rule 31a–1 to specify in detail the types of books and records required to be maintained. The amendment was adopted after members of the Commission staff held meetings with members of the investment company industry and accounting profession to discuss appropriate recordkeeping requirements.[49] Due to the cooperative nature of this effort, relatively few objections were raised as to the specific types of records included in the recordkeeping requirements.[50]

One way to accommodate United States investment companies with foreign portfolios may be to require them to maintain and keep current fewer categories of documents than are currently listed in rule 31a–1, provided that narrowing the scope of the recordkeeping requirements for these investment companies would not jeopardize investor protection or the ability of the Commission's staff to conduct an effective inspection. Comment is specifically requested as to whether the Commission should reexamine its recordkeeping requirements under rule 31a–1 for United States investment companies that participate in foreign markets. In addition, commenters are invited to comment whether there is a need to reexamine generally the recordkeeping requirements under the Act for all United States investment companies, whether or not they hold foreign securities in their portfolios. With respect to these requests for comments, commenters should specifically list what records should be eliminated from the recordkeeping requirements and why eliminating these records would not compromise investor protection. Finally, commenters should also consider whether there are records that should be required to be kept by United States investment companies, either in general or only by those participating in foreign markets, under rule 31a–1 that are currently not part of the recordkeeping requirements.

Cost/Benefit of Proposed Action

The proposed amendment to rule 31a–2 would better enable the Commission to fulfill its inspection and enforcement duties under the Act. The proposed amendment also would benefit both investment companies and the Commission by minimizing possible difficulties and delays of Commission examinations.

The Commission anticipates that for most investment companies any

[46] *But see supra* note 10 (United Kingdom's requirement that records may be kept in a language other than English provided that the firm be able to translate the records into English upon request within a reasonable time).

[47] *See supra* note 40.

[48] The books and records that would be subject to the proposed English language requirement are effectively a subset of those books and records that would be required to be maintained and preserved in the United States under the proposal. Documents not created by the investment company, but required to be maintained and preserved in the United States in the manner set forth in proposed paragraph (g)(1), would still be important to review during an examination to determine the company's compliance with regulatory requirements and its disclosures to investors.

[49] *See supra* note 18 and accompanying text.

[50] At that time, two areas identified as potentially burdensome were records of transactions with broker-dealers and records documenting and authorizing portfolio decisions.

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increased costs of compliance with proposed amended rule 31a–2 would be minimal because the proposed amendment essentially would codify industry practice. The Commission recognizes that the proposed amendment may be more costly for very small investment companies that seek to invest in foreign markets. However, the Commission understands that as the popularity of Foreign investment has increased, the costs of setting up a system to transport relevant information to the United States have decreased dramatically. In addition, any increased compliance costs would be outweighed by the benefits of the proposed amendment. Comments are requested, however, on the above assessment of the costs and benefits associated with the proposed amendment to rule 31a–2. commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical evidence available.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendment to rule 31a-2. The Analysis explains that the proposed amendment is intended to clarify the recordkeeping requirements for United States investment companies, including investment companies that invest in foreign securities. It states that in the course of business, some of the books and records of United States investment companies (that are required to be maintained and kept current under rule 31a-1) may originate overseas and may be in a language other than English. The Analysis explains that preserving books and records outside the United States may undermine section 31 of the Act by making examination by Commission staff difficult. In addition, preserving records in a language other than English could also impede the examination process. The Analysis also states that any increased costs of compliance with rule 31a-2, as amended, would be minimal because the proposal essentially would codify current industry practice. The Analysis notes that the proposal may be more costly for very small investment companies that seek to invest in foreign markets. However, the Analysis concludes that such costs would be greatly outweighed by the benefits of the proposed amendment. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Rochelle G. Kauffman, Esq., Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendment

For the reasons set out in the preamble, part 270 of chapter II of title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 is amended by adding the following citation:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80c–89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *e seq.*; unless otherwise noted; * * * Section 270.31a-2 is also issued under sec. 31 (15 U.S.C. 80a-30).

§ 270.31a-2 [Amended]

2. The authority citation following § 270.31a–2 is removed.

3. § 270.31a–2 is amended by adding paragraph (g) to read as follows:

§ 270.31a–2. Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(g) Pursuant to the requirements of paragraphs (a)(1) and (a)(2) of this section, any registered investment company shall, (1) Preserve a set of its books and records required to be maintained and kept current pursuant to paragraphs (a) and (b) of § 270.31a–1 in the United States, the first 2 years at an office where a person or persons familiar with the operations of the investment company (and the books and records in particular) maintains and keeps current such books and records in the manner in which they are kept in the usual course of business; and (2) Preserve in the English language all books and records created by the investment company that are required to be maintained and kept current pursuant to paragraphs (a) and (b) of § 270.31a–1.

By the Commission.

Dated: October 1, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23699 Filed 10–5–90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 90N–0165]

RIN 0905–AD08

Food Labeling; Serving Sizes; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule to amend its nutrition labeling regulations that published in the **Federal Register** of July 19, 1990, (55 FR 29517), that: (1) Defined serving and portion size on the basis of the amount of food commonly consumed per eating occasion; (2) required the use of both U.S. and metric measures to declare serving size; (3) permitted the declaration of serving (portion size in familiar household measures; (4) permitted the optional declaration of nutrient content per 100 grams (or 100 milliliters); and (5) defined a "single serving container" as that which contains 150 percent or less of the standard serving size for the food product. In this document, FDA also proposed to establish 159 food product categories to assure reasonable and uniform serving sizes upon which consumers can make nutrition comparisons among food products.

FOR FURTHER INFORMATION CONTACT: Youngmee K. Park, Center for Food Safety and Applied Nutrition (HFF–265), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0069.

In FR Doc. 90–16729, appearing at page 29517 of the **Federal Register** of Thursday, July 19, 1990, the following corrections are made:

1. On page 29530, at the bottom of Table 2 under "Cereals and other grain products:" the third entry for "Breakfast cereals, ready to eat (weigh > 1 oz but < 2 oz per cup)" and the fourth entry for "Breakfast cereals, ready to eat (weigh > 2 but < 3 oz per cup)" are corrected to read "Breakfast cereals, ready to eat (weigh > 1 oz but < 2 oz per cup)" and "Breakfast cereals, ready to eat (weigh > 2 but < 3 oz per cup)", respectively.

2. On page 29531, the first entry appearing under the heading "Product category" "Breakfast cereals, ready to eat (weigh > 3 oz per cup)" is corrected to read "Breakfast cereals, ready to eat (weigh > 3 oz per cup)". On the same page, the last entry under the heading "Product category" "All other fruits, fresh, weighing < 50 percent but > 150 percent of the standard serving size per piece" is corrected to read "All other fruits, fresh, weighing > 50 percent but < 150 percent of the standard serving size per piece".

3. On page 29532, in the first entry appearing under the heading "Product category" "All other fruits, fresh, weighing < 50 percent of the standard serving size per piece is corrected to read "All other fruits, fresh, weighing < 50 percent of the standard serving size per piece". On the same page, appearing under the heading "Product category" for "Meal type trays: [6]", the entries "Cracker and cheese trays" through "Sandwich and soup" should be indented two spaces under "Lunch or dinner trays". The "5 oz" appearing under the "Standard serving size [2]" column for "Lunch or dinner trays" should be removed and "5 oz" should be placed in the "Standard serving size [2]" column for "Cracker and cheese trays".

Dated: October 1, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–23742 Filed 10–5–90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revision to the Requirement for a Nonavailability Statement to Include Selected Outpatient Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the CHAMPUS program to require the issuance of a nonavailability statement for selected outpatient procedures determined by the Assistant Secretary of Defense (Health Affairs). Currently, as a condition for reliance on CHAMPUS for primary payment, a nonavailability statement (DD Form 1251) is required for nonemergency inpatient care provided at civilian facilities to CHAMPUS beneficiaries who reside within the inpatient catchment areas of military medical treatment facilities (MTFs). The purpose of the nonavailability statement policy is to encourage maximum cost-effective use of MTFs.

DATES: Written public comments must be received on or before November 8, 1990.

ADDRESSES: Comments should be sent to Office of the Assistant Secretary of Defense (Health Affairs); Attention: Mrs. Marcia Bonifas, Room 1B657, The Pentagon; Washington, DC 20301–1200.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Bonifas, (703) 695–3331.

SUPPLEMENTARY INFORMATION:

I. Background

In FY 89, CHAMPUS costs were up approximately 15 percent over FY 88, $200 million more than planned. In response, the Assistant Secretary of Defense (Health Affairs) directed several new cost containment initiatives as part of a CHAMPUS Management Improvement Program (CMIP). Part of the CMIP is the implementation of the requirement for the issuance of a nonavailability statement (NAS) for selected outpatient procedures determined by the Assistant Secretary of Defense (Health Affairs). Currently, as stated in paragraph 199.4(a)(9)(i)(B), a nonavailability statement (DD Form 1251) is required only for nonemergency inpatient care provided at civilian facilities to CHAMPUS beneficiaries who reside within the inpatient catchment areas (usually a 40 mile radius) of military medical treatment facilities (MTF) when CHAMPUS is intended as the primary payer.

Fast-moving trends over the past several years highlight the appropriateness of expanding NAS requirements to selected outpatient procedures. Throughout the United States, many medical procedures previously provided only on an inpatient basis are being routinely handled on an outpatient basis. This has reduced inpatient costs, but significantly increased costs in many outpatient settings. In response, managed care programs in the civilian sector now typically require precertification or other review of ambulatory surgery and other selected procedures. It is anticipated that these trends of more and more services shifting from an inpatient to an outpatient setting will continue, as will health care management efforts to maximize cost efficiencies concerning outpatient services.

II. Proposal

It is in the nature of catching up with these general trends that we propose to have our NAS requirements follow selected procedures out of their inpatient hospital setting and into their current outpatient hospital setting and into their current outpatient settings. Thus, under the proposed rule, we would expand the nonavailability statement requirement to selected outpatient procedures, with the principal focus on high cost procedures for which a shift in location of care from the civilian community to the military facility would appear to be more economical. The proposed rule is pursuant to our authority under 10 U.S.C. 1079, 1080 and 1086(e).

Under the proposed rule, we would not require nonavailability statements for all outpatient services; rather, we foresee the requirement pertaining to relatively few procedures. The proposed rule identifies two categories of procedures which would set the parameters for the particular outpatient procedures for which nonavailability statements will be required. The two categories are: (1) outpatient surgery procedures and (2) other selected outpatient procedures which have high unit costs and for which care may be available in military treatment facilities generally. The requirement for a NAS for selected outpatient services will be effective on 1 July 1991 for services received on or after that date. The list of selected outpatient procedures requiring an NAS will be published in the **Federal Register** and any changes will be published in the **Federal Register** at least 30 days prior to the effective date of the change. This will allow us to make necessary adjustments within the established parameters as we gain experience with the program.

In developing this program, we are very mindful of the need to minimize administrative hassles and avoid unnecessary paperwork. Therefore, we intend to keep the number of procedures covered relatively few. Also, the requirement only applies with respect to beneficiaries who reside in military hospital catchment areas; it will not apply with respect to free-standing military clinics which do not have any inpatient capability. Such clinics are much less likely to be able to handle the types of outpatient procedures targeted by this proposed rule. Further, the list of procedures will be uniform for all beneficiaries in all catchment areas. This will avoid the confusion that would occur if the procedures covered varied by catchment area or by military service. It is the intent of the Department to later transition to a system of catchment area specific lists of procedures.

In addition, issuance of a NAS for an outpatient procedure will be conducted

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in the same manner as is currently performed for the issuance of a NAS for nonemergency inpatient care. These procedures are specified in DoD Instruction 6015.19, "Issuance of Nonavailability Statements (NAS)".

We are also aware of the need to assure that beneficiaries understand the procedures involved. Everyday common usage descriptions which are easily recognizable and distinct will be provided along with the appropriate medical terminology.

With respect to regulatory procedures, the proposed rule is not a major rule within the scope of Executive Order 12291. In addition, we certify that the rule will not have a significant impact on small entities within the scope of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Military personnel.

For the reasons set forth in the preamble, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 1086, 5 U.S.C. 301.

2. Section 199.4 is proposed to be amended by adding new paragraph (a)(9)(i)(C) before the "Note" to read as follows:

§ 199.4 Basic program benefits.

(a) * * *
(9) * * *
(i) * * *

(C) An NAS is also required for selected outpatient procedures if such services are not available at a facility of the Uniformed Services (excluding facilities which are exclusively outpatient clinics) located within a 40-mile radius (catchment area) of the residence of the beneficiary. This does not apply to emergency services or for services for which another insurance plan or program provides the beneficiary primary coverage. Any changes to the selected outpatient procedures will be published in the Federal Register at least 30 days before the effective date of the change by the ASD(HA) and will be limited to the following categories: outpatient surgery and other selected outpatient procedures which have high unit costs and for which care may be available in military treatment facilities generally. The selected outpatient procedures will be uniform for all CHAMPUS beneficiaries.

* * * * *

Dated: October 2, 1990.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-23686 Filed 10-5-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 90-14]

Marine Event; Lake Union, Seattle, Washington

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish an area of controlled navigation upon the waters of Lake Union, Seattle, Washington, during the Fratelli's Fireworks Display which is held annually on every July 4th from 9:30 p.m. p.d.t. until 11:00 p.m. p.d.t. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event by establishing a 660 yard by 660 yard exclusionary area around the fireworks display barge.

DATES: Comments must be received on or before November 23, 1990.

ADDRESSES: Comments and other materials referenced in this notice will be available for inspection and copying at USCG Group Seattle, 1519 Alaskan Way South, Seattle, Washington 98134. Normal Office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D.A. Kearns, Assistant Operations Officer, Coast Guard Group Seattle, Tel: 206-286-5412.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 90-14) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG D.A. Kearns, project officer, and LT D.K. Schram, project attorney, Coast Guard District Thirteen Legal Office.

Discussion of Proposed Regulations

The Fratelli's Fireworks Display is held annually as part of the celebration for the Fourth of July Independence Day in Seattle, Washington. This event is sponsored by Fratelli's Ice Cream Company in cooperation with the city of Seattle. The fireworks display is conducted from a barge located on the waters of Lake Union, Seattle, Washington. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. To promote the safety of both the spectators and participants, this proposed permanent regulation is required to keep spectators away from the explosive fireworks barge during the fireworks display. The exclusionary area is designed to keep all spectators at least 340 yards away from the fireworks barge.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it appears that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, comments regarding possible impact this proposed rule may have on federalism concerns are requested. This assessment may be changed in light of comments received.

Environmental Assessment

The proposed rule affects only a small portion of Lake Union during the annual fireworks display and appears to be categorically excluded from environmental assessment requirements. However, comments addressing possible impact this proposed change may have on the human environment or potential inconsistencies with any Federal, state, or local law or administrative determination relating to the environment are solicited. A final determination regarding the possible need for an environmental assessment will be made after receipt of written comments.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, as it affects a small section of Lake Union and will be in effect for less than three hours during the Fourth of July Independence Day national holiday. A full regulatory evaluation is unnecessary. The permanent regulation will provide improved public notice of the event and promote safety. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine event, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Section 100.1306 is added to read as follows:

§ 100.1306 Fratelli's fireworks display

(a) *Regulated area:* By this regulation, the Coast Guard will restrict general navigation and anchorage, and prohibit entry by persons, on the waters of Lake Union in an area bounded by the following points:

Latitude	*Longitude*
47°38'36" N	122°20'31" W
47°38'36" N	122°19'55" W
47°38'12" N	122°19'55" W
47°38'12" N	122°20'19" W

This restricted area is rectangular, measuring approximately 680 yards on each side. This distance will keep all spectators at least 340 yards from the fireworks barge.

(b) *Special local regulations.* (1) This event will take place annually from 9:30 p.m. P.D.T. to approximately 11:30 p.m. P.D.T. on each July 4, in the described waters of Lake Union, Seattle, Washington.

(2) Persons or vessels, other than official vessels, shall not enter or remain in the area described in paragraph (a) of this section during the hours this regulation is in effect.

(3) Patrol of the described area will be under the direction of a designated Coast Guard Patrol Commander. The Seattle Harbor Patrol may also participate in the enforcement of this exclusionary area. The Patrol Commander is empowered to forbid vessels or persons from entering the area described in paragraph (a) of this section during the hours this regulation is in effect.

(4) A succession of sharp, short signals by whistle, siren, or horn, from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled shall stop and comply with the orders of the patrol vessels: failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: September 29, 1990.

Rudy K. Peschel,

Acting Commander, Thirteenth Coast Guard District, DOT-U.S. Coast Guard.

[FR Doc. 90-23680 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD1-90-064]

Anchorage Grounds; Burlington Harbor, VT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish anchorage grounds in Lake Champlain. This anchorage is located in the waters contiguous to Burlington, Vermont. The Harbormaster for the Department of Parks and Recreation, City of Burlington, Vermont requested this area be designated to facilitate the growing number of transient pleasure craft needing mooring space in the area. This regulation will provide a safe anchorage well away from fairways where transient vessels may moor. There are no such anchorages available in the immediate area.

DATES: Comments must be received on or before November 23, 1990.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 109, Governors Island, New York, N.Y. 10004-5098. The comments and other materials referenced in this notice will be available for inspection and copying at the Waterways Management Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8 a.m. and 4:30 pm., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade C. W. Jennings, Waterways Management Officer, Commander, Coast Guard Group New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1-90-064) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG C. W. Jennings, Project Officer, Coast Guard Group New York and LT J. B. Gately, Project Attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulations

The area proposed for designation as anchorage grounds is located in the waters contiguous to Burlington, VT in Lake Champlain known as the Inner Harbor. The Captain of the Port, New York was contacted by Mr. Donald Bessler, Harbormaster for the City of Burlington, Vermont regarding the establishment of these anchorage grounds. The principal reason for the request is to provide a clearly defined area for transient recreational vessels to moor. Increased recreational vessel traffic in the Burlington area has prompted a need to specify exactly where transient vessels may moor to keep them from anchoring in commonly used vessel traffic lanes. The City of Burlington has indicated that it is willing to manage and administer this mooring area. The area will be available to the general public. There are no anchorage grounds designated in this area at this time.

This rule would allows transient vessels, not greater than 35 feet in length, to moor for periods not to exceed 7 days in any 30-day period. The area

will not affect navigable channels and is located where general navigation will not endanger or be endangered by anchored vessels. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110.

PART 110—[AMENDED]

1. The authority citation for 33 CFR part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Subpart B is amended by adding § 110.133 to read as follows:

§ 110.133 Lake Champlain, NY and VT

(a) *Burlington Harbor, Vt.* (1) The waters bounded by a line connecting the following points:

Latitude	Longitude
44°28'39.7" N	73°12'38.4" W
44°28'28.2" N	73°13'27.1" W
44°28'21.8" N	73°13'28.1" W
44°28'11.8" N	73°13'34.0" W

and thence along the breakwater to the point of the beginning.

No vessel greater than 35 feet in length may use this anchorage and no vessel may remain at anchor longer than 7 days in any 30-day period unless specifically permitted to do so by the City of Burlington, Harbormaster.

(b) [Reserved]

Dated: August 29, 1990.

R. I. Rybecki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 90–23753 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–90–22]

Drawbridge Operation Regulations; Okeechobee Waterway, Caloosahatchee River, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule: extension of comment period.

SUMMARY: This notice extends the comment period of the proposed rule to change drawbridge operating regulations for the Edison Memorial drawbridge, mile 134.5 at Fort Myers, Florida. Due to summer vacations and seasonal resident absences, numerous interested parties have been unable to provide meaningful response within the original 45 day comment period. In order to ensure all persons are afforded adequate time to comment on the proposed rule, the deadline for receipt of comments is extended.

DATES: The comment period on the notice of proposed rule making is extended to October 15, 1990.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, FL 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, Room 406, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney (305) 536–4103.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking was published on May 30, 1990, in the **Federal Register** (55 FR 21886).

Dated: September 28, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90–23679 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 89–065]

Regulated Navigation Area; Kill Van Kull, New York-New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard intends to adopt rules to make the waters of the Kill Van Kull, New York and New Jersey from Constable Hook to Bergen Point West Reach a Regulated Navigation Area (RNA). This action is necessary because of the extensive channel deepening project being undertaken jointly by the Army Corps of Engineers and the Port Authority of New York and New Jersey. The project is scheduled to begin in January 1991 and terminate late in CY 1995. A Regulated Navigation Area is necessary to insure the safety of vessels transiting the restricted channel during blasting and dredging operations.

DATES: Comments must be received on or before November 23, 1990.

ADDRESSES: Comments should be mailed to Captain of the Port, Bldg. 109, Governors Island, NY 10004–5098, Attention to: Waterways Management Office. The comments and other materials referenced in this notice will be available for inspection and copying at the Waterways Management Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to that address. Persons wishing to visit the Waterways Management Office must make an appointment so that clearance onto Governors Island (a military installation) can be arranged.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C.W. Jennings, Waterways Management Officer, Captain of the Port, New York at (212) 668–7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 89–065) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG C.W. Jennings, project officer, Captain of the Port, New York and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Kill Van Kull Channel is the area proposed for designation as a regulated navigation area. It is the channel located in the waters between Bayonne, New Jersey and Staten Island, New York. The U.S. Coast Guard is requesting this designation to enhance vessel safety during the extensive deepening project, which involves dredging and blasting, is being undertaken jointly by the U.S. Army Corps of Engineers and the Port Authority of New York and New Jersey. The Kill Van Kull Channel connects the deepwater ports of the New York Harbor but present channel depths restrict the full economy of existing and future generations of deep draft vessels. Tankships arriving in the port with drafts approaching the forty-five (45) foot controlling depths of the Ambrose and Anchorage Channels must lighter some of their cargo to barges in the deep New York Harbor anchorages in order to reduce their drafts enough to safely transit the thirty-five (35) foot channel depths. This results in substantial lightering and delay costs. Container vessels cannot lighter in the anchorages and therefore must load to less than full drafts. This project, which is expected to last approximately five (5) years, will deepen the existing thirty-five (35) foot channel to forty (40) feet to accommodate the deeper draft vessels. During the project these channel restrictions and regulations will be imposed to facilitate the operations and enhance navigation safety. The area has been and will continue to be available for use by the general public. The users of this area, the marine industry, have been addressed formally and informally by the U.S. Coast Guard and the U.S. Army Corps of Engineers at various forums during the past three years. The parameters of these regulations are a direct result of the comments received, from the users, during those meetings and information obtained from the Computer Aided Operations Research Facility (CAORF) at the U.S. Merchant Marine Academy, Kings Point, N.Y.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Establishment of this proposed regulated navigation area will assure a navigable channel remains open for normal traffic thereby minimizing the economic impact to any segment of the public. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

PART 165 [AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1223 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.065 is added to read as follows:

§ 165.065 Kill Van Kull, New York and New Jersey—regulated navigation area.

(a) *Description of the Regulated Navigation Area (RNA).* (1) The RNA encompasses all of the water in or adjacent to the Kill Van Kull (KVK) east of the KVK Light 16A (LLN 34585) in North of Shooters Island Reach, east of Shooters Island Light 2 (LLN 34620) in South of Shooters Island Reach, south of Newark Bay Channel Buoy 3 (LLN 34650) in Newark Bay South Reach, south of South Entrance Lighted Buoy 5 (LLN 34285) in the New Jersey Pierhead Channel, and west of Channel Junction Lighted Bell Buoy "KV" (LLN 34505) in Constable Hook Reach.

(2) Work within the RNA will be conducted under three separate contracts; 4A, 4B and 4C. Contract 4A encompasses the northern half of the Kill Van Kull and will be accomplished in two separate phases. Contract B will be confined to Bergen Point West Reach in the Kill Van Kull, west of the Bayonne Bridge and will be concluded in one phase. Contract 4C encompasses the southern half of the Kill Van Kull and will be accomplished in two separate phases.

(3) The entire project is expected to take approximately fifty seven (57) months with respective contracts lasting about nineteen (19) months each. Dredging of soft materials and limited blasting operations shall occur between the work areas, during both phases of contracts 4A and 4C, to remove high spots. The dredges shall operate on the same side of the channel as the work area during the respective contract phase.

(b) *Definitions of Terms Used in This Part.* (1) *COTP* means the Captain of the Port, New York.

(2) *District Commander* means the officer of the Coast Guard designated to command the First Coast Guard District.

(3) *Regulated vessels* means all self-propelled vessels greater than 1000 gross tons and all tugs with tows.

(4) *RNA* means regulated navigation area.

(5) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(6) *Work area* means those places within the RNA where concentrated blasting and dredging shall be conducted.

(c) *Description of Work Areas in the RNA.* (1) Contract 4A, Phase I:

(i) *Bergen Point West Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38'32.2" N	074°08'33.4" W
40°38'36.5" N	074°08'58.2" W
40°38'40.2" N	074°09'02.5" W
40°38'40.0" N	074°09'00.6" W
40°38'35.3" N	074°08'00.1" W

and thence to the point of beginning.

(ii) *Constable Hook Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40°39'05.2" N	074°04'29.2" W
40°39'05.8" N	074°04'27.4" W
40°39'02.8" N	074°04'13.7" W
40°38'58.0" N	074°04'18.1" W

and thence to the point of beginning and the waters bounded by a line connecting the following points:

Latitude	Longitude
40°39'04.3" N	074°05'09.0" W
40°39'05.1" N	074°05'08.0" W
40°39'07.7" N	074°05'08.0" W
40°39'07.3" N	074°04'51.0" W
40°39'03.8" N	074°04'51.0" W

and thence to the point of the beginning.

(iii) *South of Shooters Island Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38'32.6" N	074°09'10.0" W
40°38'29.6" N	074°09'13.1" W
40°38'33.1" N	074°09'21.1" W
40°38'36.0" N	074°09'22.5" W

and thence to the point of beginning.

(2) Contract 4A, Phase II:

(i) *Bergen Point West Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38'29.2" N	074°08'40.5" W
40°38'23.6" N	074°08'43.0" W
40°38'30.6" N	074°08'54.3" W
40°38'32.0" N	074°08'53.0" W

and thence to the point of beginning.

(ii) *Constable Hook Reach.* Same as 33 CFR 165.065(b)(1)(ii).

(iii) *South of Shooters Island Reach.* Same as 33 CFR 165.065(b)(1)(iii).

(3) [Reserved]

(4) [Reserved]

(5) [Reserved]

(d) *Regulations.* (1) Meeting or overtaking situations between regulated vessels in the RNA will not be permitted adjacent to work areas.

(2) Tugboats will not be permitted to transit the RNA with tows on a hawser.

(3) Liquefied Petroleum Gas (LPG) ships shall not be permitted to transit the RNA unless they are certified gas free.

(4) Vessels, including tow length, in excess of 300 feet will be required to have sufficient tugs alongside to maneuver the vessel under the prevailing conditions. Vessels with an operational thruster or thrusters shall not be exempt from the conditions of this paragraph.

(5) Vessels, including tow length, greater than 600 feet shall not be permitted to transit the RNA when sustained winds in the area are 20 knots or greater or when wind gusts exceed 35 knots.

(6) The decision to maneuver through the RNA during conditions of reduced visibility shall be with the concurrence of the vessels' master and pilot.

(7) Regulated vessels transiting with the prevailing current shall be regarded as the stand-on vessel.

(8) Any vessel enroute/intending to transit the RNA shall be required to take whatever steps are feasible to stay out of the RNA should they be advised by the drilling barge that a misfire or hangfire has occurred.

(9) All vessels transiting in the vicinity of the work areas where drill barges are operating shall be required to do so at no wake speed.

(10) All vessels shall initiate security calls at standard calling points prior to entering the RNA. The following is a list of entry areas and their respective calling points:

(i) Newark Bay—Port Elizabeth Marine Terminal, north side.

(ii) Elizabethport Reach—Howland Hook.

(iii) Upper Bay—Gowanus Flats Lighted Bell Buoy 22 (LLN 32255) when northbound and Gowanus Flats Lighted Bell Buoy 26 (LLN 32290) when southbound.

(iv) Pierhead Channel—Military Ocean Terminal, Bayonne.

(11) While transiting the RNA mariners shall make every effort to make their position known as well as be aware of the positions of other traffic.

(12) Due to this entire project being undertaken in separate contracts which are then divided into phases the exact time frames for each operation, the specific work areas for contracts 4B and 4C, and related Aids to Navigation information shall be published separately via a Local Notice to Mariners well in advance of any changes.

(13) Nothing contained in this regulation shall be construed as overriding any regulation or procedure which may be developed for the New York Vessel Traffic Service (VTS).

(14) The District Commander reserves the right to modify or delete any of the regulations contained in this section as deemed necessary. Notice shall be given for any modifications or deletions, which affect these regulations, occuring after the publication of this rulemaking.

(15) Waiver. The Captain of the Port, New York may, upon request, waive any regulation in this section if it is found that the proposed operations can be done safely. An application for waiver must be submitted not less than 24 hours before the intended operation and must state the need and describe the proposal.

Dated September 11, 1990.

R.I. Rybacki,

Commander, First Coast Guard District.

[FR Doc. 90-23754 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 200

Chapter 1 Program in Local Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of intent to regulate.

SUMMARY: The Secretary of Education (Secretary) intends to amend the regulations implementing part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to clarify certain program requirements in the provision of chapter 1 services to children in institutions for neglected or delinquent (N or D) children that are not operated with Federal or State funds and children in local adult correctional institutions.

DATES: All comments, suggestions, or recommendations in response to this notice must be received on or before December 10, 1990.

ADDRESSES: All comments concerning this notice should be addressed to Mrs. Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 2043), Washington, DC 20202-6132.

FOR FURTHER INFORMATION CONTACT: Mrs. Wendy Jo New, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 2043), Washington, DC 20202-6132. Telephone: (202) 401-0701.

SUPPLEMENTARY INFORMATION: Part A of chapter 1 of title I of the ESEA provides financial assistance through State educational agencies to local educational agencies (LEAs) for projects designed to meet the special educational needs of educationally deprived children, including children in institutions for N or D children that are not operated with Federal or State funds and children in local adult correctional institutions ("local institutions"). Final regulations for this program were published in the **Federal Register** (54 FR 21752-809) on May 19, 1989.

Historically, the chapter 1 LEA regulations have addressed only definitions of local institutions and the count of local N or D children for allocating chapter 1 funds to counties and LEAs. The regulations have never dealt with how program requirements are implemented for N or D children. The structure of chapter 1 programs for N or D children in local institutions, as well as the operation of those institutions and needs of N or D children in those institutions, may differ considerably from chapter 1 programs for children enrolled in public and private schools in an LEA. As a result, there may be a need for regulations that take these variances into consideration and focus specifically on the provision of chapter 1 services to N or D children in local institutions. The Secretary seeks comments and recommendations on LEAs' need for further clarification and implications of that clarification, including any cost implications, on the following issues related to the provision of chapter 1 services for N or D children in local institutions and any other issues concerning these services:

1. Whether all N or D children are eligible for chapter 1 services or whether services may be provided only to educationally deprived N or D children; whether an LEA is required to identify N or D children who are in greatest need and, if so, how greatest need should be determined.

2. Whether any additional eligibility requirements such as length of stay should apply.

3. How the provisions in section 1013(c) of chapter 1 governing allocation of resources on the basis of the number and needs of children to be served apply to services for N or D children.

4. How the parental involvement provisions apply to N or D children if there is no parental contact.

5. How certain requirements, such as those related to size, scope, and quality and schoolwide projects, apply to chapter 1 programs in local institutions.

6. How program improvement and evaluation requirements apply, given that the N or D population may be transient and the services provided may differ significantly from those provided to other children.

7. The extent to which the application of the supplement, not supplant and comparability requirements is feasible for local N or D services.

8. The extent to which LEAs are responsible for serving N or D children.

9. Whether a local institution must be a residential facility in order for its children to be eligible for chapter 1 services.

10. The extent to which an LEA may contract with a local institution to provide chapter 1 services.

Invitation to Comment:

Interested persons are invited to submit comments regarding the above and any other issues pertaining to the provision of chapter 1 services to N or D children in local institutions. The Secretary specifically requests comments on (1) whether Federal regulations are needed respecting chapter 1 services to N or D children in local institutions; and (2) if so, what specific regulations are needed. If specific regulations are recommended, please include a brief statement of how those regulations would assist in addressing the needs of N or D children in local institutions under chapter 1. All comments submitted in response to this notice of intent to regulate will be available for public inspection, during and after the comment period in room 2043, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Dated: October 2, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-23707 Filed 10-5-90; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7001]

Proposed Flood Elevation Determinations; Al et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measure that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modifed base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calcuate the approriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determination, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern further construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; or itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	Town of Odenville, St. Clair County.	Beaver Creek	About 1600 feet upstream of Maddox Road	None	*696
			About 900 feet upstream of U.S. Highway 411	None	*729
Maps available for inspection at the Town Hall, P.O. Box 113, Odenville, Alabama.					
Send comments to The Honorable James Banks, Mayor, Town of Odenville, Town Hall, P.O. Box 113, Odenville, Alabama 35120					
Arkansas	Fort Smith, City Sebastian County.	Arkansas River	Downstream corporate limits	*408	*405

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Massard Creek	Upstream corporate limits	*417	*419
			At confluence with Arkansas River	*406	*405
			Approximately 3 river miles upstream of State Highway 22	*406	*405

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Perry County Courthouse, Board of Supervisors Office, New Augusta, Mississippi.					
Send comments to The Honorable John H. Garner, President, Perry County Board of Supervisors, Perry County Courthouse, P.O. Box 198, New Augusta, Mississippi 39462.					

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
		Mazzard Creek	Upstream corporate limits	*417	*419
			At confluence with Arkansas River	*406	*405
			Approximately .3 river mile upstream of State Route 22.	*406	*405
		Little Mazzard Creek	At confluence with Mazzard Creek	*406	*405
			Approximately .2 river mile upstream of Meandering Way.	*406	*405
		Sunnymede Creek	At confluence with Arkansas River	*409	*407
			At downstream side of Interstate 540	*409	*408
		No Name Creek	At confluence with Sunnymede Creek	*409	*407
			Approximately .15 river mile upstream of Cliff Drive.	*409	*408
		Oak Park Tributary	At confluence with Arkansas River	*412	*413
			At upstream side of State Route 255	*412	*413
		May Branch	At confluence with Arkansas River	*417	*418
			At downstream side of Fort Smith Levee & Floodwall.	*417	*418
		Poteau River	At confluence with Arkansas River	*417	*420
			At confluence of Mill Creek	*417	*420
		Mill Creek	At confluence with Poteau River	*418	*420
			Approximately .9 river mile upstream of Jenny Lind Road.	*516	*518

Maps available for inspection at the Engineering Department, 623 Garrison Avenue, Room 409, Fort Smith, Arkansas.
Send comments to The Honorable William Vines, Mayor of the City of Fort Smith, Sebastian County, P.O. Box 1908, Fort Smith, Arkansas 72902.

California	City of Alameda, Alameda County.	San Francisco Bay	About 3,000 feet north of intersection of Atlantic Avenue and Main Street.	None	*7
			Intersection of Mariner Village Parkway	None	*7
			Approximately 2,000 feet east of intersection of Maitland Drive and Clubhouse Memorial Drive.	None	*1

Maps are available for review at City Hall, 2263 Santa Clara Avenue, Room 204, Alameda, California.
Send comments to The Honorable Chuck Corica, Mayor, City of Alameda, City Hall, 2263 Santa Clara Avenue, Alameda, California 94501.

Georgia	City of Toccoa, Stephens County.	Eastanollee Creek	About 600 feet downstream of Collins Road	*925	*925
			Just downstream of Collins Road	*930	*927
			Just upstream of Collins Road	*931	*934
			About 275 feet downstream of Davis Avenue	*937	*943
			Just upstream of Davis Avenue	None	*945
		Eastanollee Creek Tributary A	At mouth	*929	*927
			Just downstream of Collins Road	*931	*927
			Just upstream of Collins Road	*931	*934
			Just downstream of Morgan Street	*932	*936

Maps available for inspection at the City of Toccoa, Community Development Building, Toccoa, Georgia.
Send comments to The Honorable Jim Calvin, City Manager, City of Toccoa, P.O. Box 579, Toccoa, Georgia 30577

Mississippi	City of New Augusta, Perry County.	Leaf River	About 1,050 feet downstream of confluence of Gum Branch.	None	*103
			About 1.7 miles upstream of State Highway 29	None	*111

Maps available for inspection at the City Hall, City Clerk's Office, New Augusta, Mississippi.
Send comments to The Honorable Robert J. McSwain, Sr., Mayor, City of New Augusta, City Hall, Main Street, P.O. Box 401, New Augusta, Mississippi 39462

Mississippi	Town of Sumrall, Lamar County.	Mill Creek	About 1,000 feet upstream of mouth	None	*264
			About 0.51 mile upstream of State Highway 42	None	*289

Maps available for inspection at the Town Hall, P.O. Box 247, Sumrall, Mississippi.
Send comments to The Honorable E. Darwin Graham, Mayor, Town of Sumrall, P.O. Box 247, Sumrall, Mississippi 39482

Mississippi	Unincorporated Areas of Lamar County.	Mill Creek	Within community	None	*289

Maps available for inspection at the Lamar County Courthouse, County Administrator's Office, Purvis, Mississippi.
Send comments to The Honorable V.E. Douglas, President, Lamar County Board of Supervisors, P.O. Box 1240, Purvis, Mississippi 39475

Mississippi	Unincorporated Areas of Perry County.	Leaf River	About .76 mile downstream of confluence of Gum Branch.	None	*102
			About 1.66 miles upstream of confluence of Milky Creek.	None	*113

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified

Maps available for inspection at the Perry County Courthouse, Board of Supervisors Office, New Augusta, Mississippi.
Send comments to The Honorable John H. Garner, President, Perry County Board of Supervisors, Perry County Courthouse, P.O. Box 198, New Augusta, Mississippi 39462.

Nevada	City of Wells, Elko County	Woodhills Drain	At Tenth Street Extension	None	*5,626
			Approximately 200 feet upstream of Southern Pacific Railroad.	None	*5,631
			Just upstream of U.S. Highway 40	None	*5,640
			Just upstream of U.S. Highway 93	None	*5,646

Maps are available for review at the City Clerk's Office, 279 Clover Avenue, Wells, Nevada.
Send comments to The Honorable George SH Yan, Mayor, City of Wells, P.O. Box 366, Wells, Nevada 89835.

Oklahoma	Comanche, City Stephens County.	Cow Creek (Lower Reach)	Approximately 1,400 feet upstream of Oklahoma, Kansas, Texas Railroad.	None	*977
			Approximately 1.1 miles upstream of confluence of Salt Creek.	None	*993

Maps available for inspection at the City Hall, 115 North 2nd Street, Comanche, Oklahoma
Send comments to The Honorable Raymond Morshead, Mayor of the City of Comanche, Stephens County, 115 North 2nd Street, Comanche, Oklahoma, 73529

Oklahoma	Stephens County, Unincorporated Areas.	Cow Creek	Approximately 400 feet downstream of Oklahoma, Kansas, Texas Railroad.	None	*971
			Approximately 1.1 miles upstream of confluence of Salt Creek.	None	*993
		Salt Creek	Approximately 1,200 feet upstream of Church Avenue.	None	*1,000
			Approximately 1,550 feet upstream of Church Avenue.	None	*1,002

Maps available for inspection at the Stephens County Courthouse, Duncan, Oklahoma.
Send comments to The Honorable Gary Ledford, Chairman of the Stephens County Board of Commissioners. Stephens County Courthouse, Duncan, Oklahoma 73533

Oklahoma	Vinita, City, Craig County	Elm Creek Tributary	Approximately 2,000 feet upstream of its confluence with Elm Creek.	None	*688
			At upstream side of Adair Street	None	*695

Maps available for inspection at the City Hall, 104 East Illinois, Vinita, Oklahoma.
Send comments to The Honorable Jo Montana, Mayor of the City of Vinita, Craig County, P.O. Box 329, Vinita, Oklahoma 74301.

Oregon	City of Fairview, Multnomah County.	Fairview Creek	At the confluence of the overflow from Northeast Glisan Street.	*184	*184
			Approximately 675 feet downstream of Northeast Glisan Street.	*203	*202
			Just downstream of Northeast Glisan Street	*209	*207
		Columbia River	At the northern corporate limits	None	*31
		Fairview Lake	Along the southern shoreline	*14	*14

Maps available for review at the Department of Planning, 300 Harrison Street, Fairview, Oregon.
Send comments to The Honorable Fred Carlson, Mayor, City of Fairview, P.O. Box 337, 300 Harrison Street, Fairview, Oregon 97024

Pennsylvania	Douglass, Township Montgomery County.	Swamp Creek	Approximately 1,450 feet upstream of Detar Road.	*281	*280
			Approximately 0.8 mile upstream of Swamp Creek Road	*301	*302

Maps available for inspection at the Township Building, 1320 East Philadelphia Avenue, Gilbertsville, Pennsylvania.
Send comments to The Honorable Walter Hiriak, Chairman of the Township of Douglass Board of Supervisors, Montgomery County, 1320 East Philadelphia Avenue, Gilbertsville, Pennsylvania 19525.

Texas	Dallas, City, Dallas, Denton, Collin, Rockwall, Kaufman Counties.	Elm Fork of Trinity River	At Missouri-Kansas—Texas Railroad	*423	*424
			Approximately 700 feet upstream of Sandy Lake Road.	*444	*445
		Mountain Creek	Approximately 350 upstream of Singleton Boulevard.	*427	*426
			At the Camp Wisdom Road	*476	*466
		Bachman Branch	At the confluence with Elm Fork of Trinity River.	*424	*426
			Approximately 200 feet upstream of Harry Hines Boulevard.	*425	*426
		Joe's Creek	At the confluence with Elm Fork of Trinity River.	*424	*426
			Approximately 150 feet downstream of Interstate Route 35E.	*425	*426

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
		Grapevine Creek	At the confluence with Elm Fork of Trinity River.	*437	*439
			Approximately .4 mile upstream of Ledbetter Road.	*438	*439
		Farmers Branch Creek	Approximately 170 feet upstream of St. Louis-San Francisco Railroad.	*439	*441
			Approximately 420 feet upstream of St. Louis-San Francisco Railroad.	*439	*443
			Approximately 670 feet downstream of Rawhide Creek.	None	*456
			Approximately 370 feet downstream of Denton Road.	None	*456
			Approximately 100 feet downstream of Ford Road.	None	*466
		Woody Branch	Approximately 150 feet upstream of confluence with Fivemile Creek.	*478	*479
			Approximately 100 feet upstream of Interstate Route 35E.	*485	*486
		Fivemile Creek	Approximately 750 feet downstream of the confluence of Alice Branch.	*472	*471
			Approximately 200 feet downstream of Rockport Drive.	*482	*485
		Stream 8C1	At confluence with Mountain Creek	*435	*434
			Approximately .4 mile upstream with Mountain Creek.	*435	*434
		West Fork of Joe's Creek	At the confluence with Joe's Creek	*424	*426
			Approximately 750 feet downstream of Manana Drive.	*429	*430

Maps available for inspection at the City Hall, 1500 Marilla, Dallas, Texas.
Send comments to The Honorable Annette Strauss, Mayor of the City of Dallas, Dallas, Denton, Collin, Rockwall, and Kaufman Counties, City Hall, 1500 Marilla, Dallas, Texas 75201.

Texas	Double Oak, Town, Denton County.	Timber Creek	Approximately 100 feet upstream of Forest Lane.	*626	*625
			At upstream corporate limits	*629	*628

Maps available for inspection at the Town Hall, 1100 Cross Timbers Drive, Double Oak, Texas.
Send comments to The Honorable Jim Handsel, Mayor of the Town of Double Oak, Denton County, Town Hall, 1100 Cross Timbers Drive, Double Oak, Texas 75067.

Texas	Irving, City, Dallas County	Bear Creek	Approximately 200 feet downstream of Missouri-Kansas-Texas railroad.	*465	*459
			Approximately 1,300 feet upstream of County Line Road.	*481	*479
		Estelle Creek	At the confluence with Bear Creek	*473	*470
			At approximately 1,100 feet downstream of Pioneer Drive.	*475	*474

Maps available for inspection at the City Hall, 825 West Irving Boulevard, Irving, Texas.
Send comments to The Honorable Bob Pierce, M.D., Mayor of the City of Irving, Dallas County, 825 West Irving Boulevard, Irving, Texas 75060.

Texas	Montgomery County, Unincorporated Areas.	Mill Creek	Approximately 500 feet upstream of FM 1488	*201	*200
			Approximately 700 feet upstream of County boundary.	*249	*248
		Mill Creek Tributary No. 5	At confluence with Mill Creek	*209	*207
			Approximately 2.2 miles downstream of FM 1486.	*221	*220

Maps available for inspection at the County Courthouse, Conroe, Texas.
Send comments to The Honorable Al Stahl, Montgomery County Judge, County Courthouse, Conroe, Texas 77301.

Texas	Stephenville, City, Erath County.	Tributary to Bosque River	Approximately 80 feet downstream of the Prairie Wind Street Bridge.	None	*1,283
			At State Highway 8 Bridge	None	*1,310

Maps available for inspection at the City Hall, 354 North Bellnap, Stephenville, Texas.
Send comments to The Honorable George Sweeringen, Mayor of the City of Stephenville, Erath County, 354 North Bellnap, Stephenville, Texas 76401.

Texas	Waxahachie, City, Ellis County.	Mustang Creek	Approximately 50 feet downstream of FM 878	*556	*557
			Approximately 1,000 feet upstream of U.S. Route 77.	None	*622

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified

Maps available for inspection at the City Hall, City Engineer's Office, 401 South Rogers, Waxahachie, Texas.
Send comments to The Honorable Joe Grubbs, Mayor of the City of Waxahachie, Ellis County, 401 South Rogers, P.O. Box 757, Waxahachie, Texas 75165.

West Virginia	Lincoln County, Unincorporated Areas.	Little Coal River	At a point approximately 850 feet upstream of the confluence of Ivy Creek.	None	*660
			At the upstream County boundary	None	*670

Maps available for inspection at the County Courthouse, 8000 Court Street, Hamlin, West Virginia.
Send comments to The Honorable Vernon McCoy, President of the Lincoln County Commissioners, County Courthouse, 8000 Court Street, Hamlin, West Virginia 25523.

Issued: September 21, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23763 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 89-88, DA 90-1278]

Discrimination in Provision of Satellite Delivered Superstation and Network Station Programming

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule; extension of time.

SUMMARY: This order, granting a Motion for Extension of Time filed by the National Telecommunications Cooperative (NRTC), extends the time to file reply comments in this proceeding, (55 FR 27478, July 3, 1990) until October 23, 1990. The additional time is granted pending action by the Common Carrier Bureau on NRTC's Freedom of Information Act request for certain costing information filed by two satellite carriers.

DATES: Reply comments must be submitted on or before October 23, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara at (202) 634-1624.

SUPPLEMENTARY INFORMATION:

In the Matter of Inquiry Into the Existence of Discrimination in the Provision of Superstation and Network Station Programming.

Adopted September 25, 1990.

Released September 28, 1990.

By the Common Carrier Bureau.

1. The National Rural Telecommunications Cooperative (NRTC) has filed a motion to extend the time in which to file reply comments in the above-captioned proceeding. As discussed below, NRTC's motion is granted in part.

2. On June 21, 1990 the Commission issued a *Further Notice of Inquiry* (*Further Notice*) in this proceeding in order to determine whether satellite carriers are discriminating against distributors to home earth stations in favor of cable operators in the provision of superstation and network station programming. In connection with this *Further Notice*, satellite carriers were directed to provide the Commission with certain contracts as well as information on the comparative costs of serving home dish distributors versus cable operators, SMATV systems and wireless cable systems. Two satellite carriers, Eastern Microwave, Inc. (Eastern) and United Video, Inc. (United), requested confidential treatment for this cost information.

3. On September 20, 1990, NRTC filed a request pursuant to the Freedom of Information Act (FOIA) and section 0.461 of the Commission's rules to obtain copies of the cost information exhibits filed by Eastern and United. NRTC also filed a motion to extend the time to file reply comments, currently scheduled to be filed on September 28, 1990, "until thirty days after the Commission releases the requested costing information or otherwise disposes of NRTC's FOIA request by final Order." NRTC asserts that it needs to review the cost information in order to prepare meaningful reply comments.

4. Although it appears appropriate to allow some additional filing time while the Common Carrier Bureau is making a determination on NRTC's FOIA request, the amount of time requested by NRTC is excessive and, if granted, would unduly delay Commission action in this proceeding. Therefore, the date for filing Reply Comments is extended until October 23, 1990. Such an extension will afford the Bureau sufficient time to consider and rule on the FOIA request as well as give all parties the opportunity to determine the course of action they will take as a result of the Bureau's action.[1] Of course, if additional information is included in the public record of this proceeding as a result of the FOIA action, parties will be given additional time to review and comment on this information.

5. Accordingly, it is ordered that the deadline for filing reply comments in the above-captioned proceeding is extended until October 23, 1990.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 90-23766 Filed 10-5-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition submitted by Mr. Dennis Furr asking the agency to revise Federal Motor Vehicle Safety Standard No. 222: *School Bus Seating and Crash Protection*. Mr. Furr sought revisions to the Standard regarding how the number of seating positions on a school bus are determined. Additionally, he requested that new provisions be added which would specify the seating capacity of school bus seats. The petition is denied, because changes in determining the number of seating positions on a school bus could permit a lessening of the

[1] *See* procedures in § 0.461 of the Commission's rules, 47 CFR 0.461.

occupant protection capabilities of a school bus.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4799.

SUPPLEMENTARY INFORMATION: NHTSA

purposes of determining loading to which a bench seat is subjected during the testing. S4.1 of Standard No. 222 specifies that the width of a bus seat in inches, is divided by 15 and rounded to the nearest whole number, which is the number of seating positions. For example, a seat 39 inches wide divided by 15 would yield 2.6, which is rounded

school bus seat that would easily accommodate three small children may only be able to accommodate two high school seniors.

The agency emphasizes that it is not the intention or design of Standard No. 222 to require or suggest that a school bus seat should be occupied by the maximum number of persons as

Notices

Federal Register
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Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the

DEPARTMENT OF AGRICULTURE

Forest Service

Wisconsin, for decisions affecting National Forest System lands in the

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occupant protection capabilities of a school bus.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4799.

SUPPLEMENTARY INFORMATION: NHTSA has promulgated two sets of "regulations" affecting school buses. The first set, issued under the authority of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*), applies to the manufacture and sale of new motor vehicles and includes the motor vehicle safety standards applicable to the manufacture and sale of new school buses. Compliance with these standards is mandatory for new vehicle manufacturers.

NHTSA has issued the second set of "regulations," or guidelines, for school buses under the Highway Safety Act (23 U.S.C. 401 *et seq.*). Guidelines issued under this Act are not mandatory requirements; rather, they are recommendations from NHTSA to the States for developing their highway safety programs. Individual States have chosen to adopt some or all of the guidelines as policies governing their highway safety programs. Among these guidelines is Highway Safety Program Guideline No. 17, *Pupil Transportation Safety*. Guideline No. 17 includes recommendations for the operational aspects of State pupil transportation programs, such as school bus identification, maintenance, driver training and other matters related to the use and operation of school buses.

Federal Motor Vehicle Safety Standard No. 222, *School Bus Seating and Occupant Protection* specifies occupant protection requirements for school bus passenger seating and restraining barriers. The Standard is written in terms of performance requirements for the seats and restraining barriers. The requirements are designed to ensure that the seats and restraining barriers used in school buses are capable of providing acceptable levels of crash protection to seated occupants of school buses who may impact structures within the bus during a crash or sudden driving maneuver.

The performance requirements contained in S4 of the Standard must be satisfied by school bus bench seats during the specified tests. For the purposes of determining loading to which a bench seat is subjected during the testing, S4.1 of Standard No. 222 specifies that the width of a bus seat in inches, is divided by 15 and rounded to the nearest whole number, which is the number of seating positions. For example, a seat 39 inches wide divided by 15 would yield 2.6, which is rounded to three. The loading to which the seat is subjected for the performance tests is then the specified loading multiplied by three.

The test conditions in Standard No. 222 are intended to expose the passenger seats and restraining barriers to force levels that are sufficiently high that one can reasonably conclude that the equipment is unlikely to fail as a result of exposure to even severe crash conditions. The force derived in the above example by rounding 2.6 up to three for a 39 inch seat is necessarily a greater force than would be exerted if only two occupants are in the seat. Subjecting seats to this increased loading ensures a margin of safety for school bus seats so that one can confidently predict they will withstand even severe crash conditions.

In a petition dated April 21, 1990, Mr. Dennis Furr (also referred to below as "petitioner") asked NHTSA to revise the method for calculating the capacity of a bench seat in Standard No. 222. Mr. Furr sought to have the agency revise the formula discussed above by dividing the seat width by 15 and ignoring any remainder. Thus, a 39 inch wide seat would be considered as having two seating positions. The petitioner asserted that this change is needed to avoid overcrowding on school buses.

Mr. Furr's petition appears to be based upon the misconception that the passenger capacity for school buses is based on the formula in the standard for determining the test loading for seats and that school bus users are somehow required by Federal law to obey the capacity limit so determined. That is not the case. In the first place, the agency does not have any authority to impose operational requirements under either Act. Further, even if the agency possessed the requisite authority, it is not clear, given the wide range of ages and sizes of students carried on school buses (from pre-primary through high school football teams), how NHTSA could impose a meaningful requirement for passenger seating capacity on school buses in operation. For example, a school bus seat that would easily accommodate three small children may only be able to accommodate two high school seniors.

The agency emphasizes that it is not the intention or design of Standard No. 222 to require or suggest that a school bus seat should be occupied by the maximum number of persons as determined by S4.1 of the Standard for purposes of crash testing. Instead, the Standard is intended to ensure that school bus seats and restraining barriers will perform safely and effectively by imposing loads during testing that are representative of severe crash conditions. This is the safety margin discussed above. Standard No. 222 addresses the issue of potential overcrowding by including this safety margin. NHTSA is unaware of any crash data that indicate school bus seats and restraining barriers as required by Standard No. 222 are not providing effective crash protection. Since Standard No. 222 already includes measures to address the issue of potential overcrowding, and those measures have been effective, the agency concludes that there is no reason to adopt Mr. Furr's suggested means of addressing the same problem.

In addition to his suggested changes to Standard No. 222, the petitioner also requested changes to Highway Safety Program Guideline No. 17 to address his concerns about school bus overcrowding. As mentioned above, requirements for use and operation of school buses are primarily a matter of State law, and the adoption of Highway Safety Program Guidelines is optional for States. However, NHTSA is currently seeking comments on proposed revisions to Guideline 17 (see 55 FR 20471, May 17, 1990). The agency is treating Mr. Furr's requests about overcrowding as comments on the proposed revision, and will address them in issuing final revisions to the Guideline.

For the preceding reasons, NHTSA denies Mr. Furr's petition.

Authority: Secs. 103, 199, Pub. L. 89–563, 80 Stat. 718, (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50.

Issued: October 2, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–23772 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register

Vol. 55, No. 195

Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Members of Performance Review Board; Revision of List of Performance Review Board Positions

AGENCY: ACTION.

ACTION: Revision of list of Performance Review Board positions.

SUMMARY: ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, ACTION, 1100 Vermont Avenue, NW., room 5101, Washington, DC 20525, (202) 634–9263.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more Performance Review Boards to review and evaluate the initial appraisal of a senior executive's performance and to make recommendations to the appointing authority concerning the performance of the senior executive as well as recommendations for bonuses.

The incumbents of the following positions will serve as members of the ACTION Performance Review Board:

1. Associate Director for Management and Budget—Chairman
2. Executive Officer—Office of the Director
3. Comptroller
4. Associate Director for Domestic and Anti-Poverty Operations
5. Deputy General Counsel
6. Deputy Assistant Secretary for Administration, Department of Transportation

Issued in Washington, DC, on September 28, 1990.

Jane A. Kenny,

Director.

[FR Doc. 90–23757 Filed 10–5–90; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Region; Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin; Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Eastern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal notices of decision subject to appeal under 36 CFR part 217 shall begin October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Joni Sue Hanson, Regional Appeals Coordinator, Eastern Region, Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, Area Code 414–297–3661.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. As provided in 36 CFR 217.5(d), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Decisions by the Regional Forester

Milwaukee Journal, published daily in Milwaukee, Milwaukee County, Wisconsin, for decisions affecting National Forest System lands in the States of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, Wisconsin and for any decision of Region-wide impact.

Allegheny National Forest, PA

Forest Supervisor Decisions

Warren Times Observer, Warren, Warren County, Pennsylvania.

District Rangers Decisions

Sheffield District: Warren Times Observer, Warren, Warren County, Pennsylvania.

Bradford District: Bradford Era, Bradford, McKean County, Pennsylvania.

Marienville District: Warren Times Observer, Warren, Warren County, Pennsylvania.

Oil City Derrick, Oil City, Venango County, Pennsylvania Ridgway District: Ridgway Record, Elk County, Pennsylvania.

Chequamegon National Forest, WI

Forest Supervisor Decisions

Milwaukee Sentinel, published daily in Milwaukee, Milwaukee County, Wisconsin.

District Rangers Decisions

Park Falls District: Park Falls Herald, published weekly in Park Falls, Price County, Wisconsin.

Glidden District: Glidden Enterprise, published weekly in Glidden, Ashland, County, Wisconsin.

Washburn District: The Daily Press, published daily in Ashland, Ashland County, Wisconsin.

Hayward District: Sawyer County Record, published weekly in Hayward, Sawyer County, Wisconsin.

Medford District: The Star News, published weekly in Medford, Taylor County, Wisconsin.

Chippewa National Forest, MN

Forest Supervisor Decisions

Bemidji Pioneer, published daily in Bemidji, Beltrami County, Minnesota.

District Ranger Decisions

Blackduck District: Blackduck American, published weekly in Blackduck, Beltrami County, Minnesota.

Cass Lake District: Cass Lake Times, published weekly in Cass Lake, Cass County, Minnesota.

Deer River District: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota.

Marcell District: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota.

Munising: Mining Journal, published daily in Munising, Alger County, Michigan.

Munising News, published weekly in Munising, Alger County, Michigan.

Sault Ste. Marie: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace: Evening News, published

Manistee District: Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Mio District: Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan.

Crawford County Avalanche, published weekly in Grayling, Crawford

District Ranger Decisions

Cheat District: The Parsons Advocate, published weekly in Parsons, Tucker County, West Virginia.

Gauley District: The News Leader, published weekly in Richwood, Nicholas County, West Virginia.

Greenbrier District: The Pocahontas

District Rangers Decisions

Gunflint Ranger District: Cook County News-Herald, published weekly in Grand Marias, Cook County, Minnesota.

Kawishiwi Ranger District: Ely Echo, published weekly in Ely, St. Louis County, Minnesota.

LaCroix Ranger District: Mesabi Daily News, published daily in Virginia,

Pemigewasset Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Saco Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Cass Lake District: Cass Lake Times, published weekly in Cass Lake, Cass County, Minnesota.

Deer River District: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota.

Marcell District: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota.

Walker District: Walker Pilot Independent, published weekly in Walker, Cass County, Minnesota.

Green Mountain National Forest, VT

Forest Supervisor Decisions

Rutland Herald, published daily in Rutland, Rutland County, Vermont.

District Rangers Decisions

Manchester District: Rutland Herald, published daily in Rutland, Rutland County, Vermont.

Bennington Banner, published daily in Bennington, Bennington County, Vermont.

Brattleboro Reformer, published daily in Brattleboro, Windham County, Vermont.

Rochester District: Rutland Herald, published daily in Rutland, Rutland County, Vermont.

Burlington Free Press, published daily in Burlington Chittenden County, Vermont.

Middlebury District: Rutland Herald, published daily in Rutland, Rutland County, Vermont.

Addison County Independent, published twice a week in Middlebury, Addison County, Vermont.

Finger Lakes National Forest, NY

Forest Supervisors & District Rangers (Hector District) Decisions

Ithaca Journal, published daily in Ithaca, Tempkins County, New York.

Hiawatha National Forest, MI

Forest Supervisor Decisions

Daily Press, published daily in Escanaba, Delta County, Michigan.

Mining Journal, published daily in Munising, Alger County, Michigan.

Munising News, published weekly in Munising, Alger County, Michigan.

Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace News, published weekly in St. Ignace, Mackinac County, Michigan.

District Rangers Decisions

Rapid River: Daily Press, published daily in Escanaba, Delta County, Michigan.

Manistique: Daily Press, published daily in Escanaba, Delta County, Michigan.

Munising: Mining Journal, published daily in Munising, Alger County, Michigan.

Munising News, published weekly in Munising, Alger County, Michigan.

Sault Ste. Marie: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace news, published weekly in St. Ignace, Mackinac County, Michigan.

Huron-Manistee National Forests, MI

Forest Supervisor Decisions

Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan.

Lake County Star, published weekly in Baldwin, Lake County, Michigan.

Ludington Daily News, published daily in Ludington, Mason County, Michigan.

Alcona County Review, published weekly in Harrisville, Alcona County, Michigan.

Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan.

Crawford County Avalanche, published weekly in Grayling, Crawford County, Michigan.

Iosco County News Herald, published weekly in East Tawas, Iosco County, Michigan.

Fremont Times-Indicator, published weekly in Fremont, Newaygo County, Michigan.

Muskegon Chronicle, published daily in Muskegon, Muskegon County, Michigan.

Grand Rapids Press, published daily in Grand Rapids, Kent County, Michigan.

Big Rapids Pioneer, published daily in Big Rapids, Mecosta County, Michigan.

District Rangers Decisions

Baldwin District: Lake County Star, published weekly in Baldwin, Lake County, Michigan.

Ludington Daily News, published daily in Ludington, Mason County, Michigan.

Cadillac District: Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan.

Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Lake County Star, published weekly in Baldwin, Lake County, Michigan.

Harrisville District: Alcona County Review, published weekly in Harrisville, Alcona County, Michigan.

Manistee District: Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Mio District: Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan.

Crawford County Avalanche, published weekly in Grayling, Crawford County, Michigan.

Tawas District: Iosco County News Herald, published weekly in East Tawas, Iosco County, Michigan.

White Cloud District: Fremont Times-Indicator, published weekly in Fremont, Newaygo County, Michigan.

Muskegon Chronicle, published daily in Muskegon, Muskegon County, Michigan.

Grand Rapids Press, published daily in Grand Rapids, Kent County, Michigan.

Big Rapids Pioneer, published daily in Big Rapids, Mecosta County, Michigan.

Mark Twain National Forest, MO

Forest Supervisor Decisions

Rolla Daily News, published in Rolla, Phelps County, Missouri.

District Ranger Decisions

Ava-Cassville District: Springfield News Leader, published daily in Springfield, Greene County, Missouri.

Cedar Creek District: Fulton Sun, published daily in Fulton, Callaway County, Missouri.

Doniphan District: Prospect News, published weekly in Doniphan, Ripley County, Missouri.

Eleven Point District: Current Wave, published weekly in Eminence, Shannon County, Missouri.

Rolla District: Rolla Daily News, published daily in Rolla, Phelps County, Missouri.

Houston District: Houston Herald, published weekly (Thursdays) in Houston, Texas County, Missouri.

Poplar Bluff District: Daily American Republic, published daily in Poplar Bluff, Butler County, Missouri.

Potosi/Fredericktown District: St. Louis Post-Dispatch, published daily in St. Louis, St. Louis County, Missouri.

Salem District: The Salem News, published Tuesday and Thursday in Salem, Dent County, Missouri.

Willow Springs District: West Plains Daily Quill, published daily in West Plains, Howell County, Missouri.

Monongahela National Forest, WV

Forest Supervisor Decisions

The Intermountain, published daily in Elkins, Randolph County, West Virginia.

District Ranger Decisions

Cheat District: The Parsons Advocate, published weekly in Parsons, Tucker County, West Virginia.

Cauley District: The News Leader, published weekly in Richwood, Nicholas County, West Virginia.

Greenbrier District: The Pocahontas Times, published weekly in Marlington, Pocahontas County, West Virginia.

Marlinton District: The Pocahontas Times, published weekly in Marlinton, Pocahontas County, West Virginia.

Potomac District: The Grant County Press, published weekly in Petersburg, Grant County, West Virginia.

White Sulphur Springs District: The Register/Herald, published daily in Beckley, Raleigh County, West Virginia.

Nicolet National Forest, WI

Forest Supervisor Decisions

Rhinelander Daily News published daily Sunday through Friday in Rhinelander, Onieda County, Wisconsin.

District Ranger Decisions

Eagle River District, Florence District, Lakewood District and Laona District: Rhinelander Daily News published daily Sunday through Friday in Rhinelander, Onieda County, Wisconsin.

Ottawa National Forest, MI

Forest Supervisor Decisions

Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan.

District Ranger Decisions

Bergland District, Bessemer District, Iron River District, Kenton District, Ontonagon District, and Watersmeet District:

Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan.

Shawnee National Forest, IL

Forest Supervisor Decisions

Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois.

District Ranger Decisions

Elizabethtown District, Jonesboro District, Murphysboro District, and Vienna District: Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois.

Superior National Forest, MN

Forest Supervisor Decisions

Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota.

District Rangers Decisions

Gunflint Ranger District: Cook County News-Herald, published weekly in Grand Marias, Cook County, Minnesota.

Kawishiwi Ranger District: Ely Echo, published weekly in Ely, St. Louis County, Minnesota.

LaCroix Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota.

Laurentian Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota; and Lake County News-Chronicle, published weekly in Two Harbors, Lake County, Minnesota.

Tofte Ranger District: Duluth News-Tribune published daily in Duluth, St. Louis County, Minnesota.

Hoosier National Forest, IN

Forest Supervisor Decisions

Sunday Herald Times, published in Bloomington, Monroe County, Indiana.

District Ranger Decisions

Brownstown District: Sunday Herald Times, published in Bloomington, Monroe County, Indiana.

Tell City District: The News, published in Tell City, Perry County, Indiana.

Wayne National Forest, OH

Forest Supervisor Decisions

The Athens Messenger, published in Athens, Athens County, Ohio.

District Ranger Decisions

Athens District: The Athens Messenger, published in Athens, Athens County, Ohio.

Ironton District: The Ironton Tribune, published in Ironton, Lawrence County, Ohio.

White Mountain National Forest, NH and ME

Forest Supervisor Decisions

The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

District Ranger Decisions

Ammonoosuc Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Androscoggin Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Evans Notch Ranger District: The Lewiston Sun, published daily in Lewiston, County of Androscoggin, Maine.

Pemigewasset Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Saco Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Dated: October, 1, 1990.

Larry Payne

Deputy Regional Forester.

[FR Doc. 90-23698 Filed 10-5-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing on draft amendments to the Fishery Management Plans for the Stone Crab Fishery and Spiny Lobster Fishery of the Gulf of Mexico to address overfishing and possible management actions to arrest overfishing. Individuals and organizations may comment in writing to the Council at the address given below if they are unable to attend the hearing.

DATES: Comments must be received by November 9, 1990. The hearing is scheduled for Thursday, October 25, 1990, from 6 p.m. to 10 p.m.

ADDRESSES: Comments may be mailed to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida, 33609. The hearing will be held at the Marathon High School Cafeteria, 350 Sombrero Beach Road, Marathon, Florida.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 813-228-2815.

Dated: October 2, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23748 Filed 10-5-90; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public meeting of its Groundfish Management Team (GMT), on October 17-19, 1990, at the Oregon Department of Fish and Wildlife

snapper/grouper, wreckfish, limited entry, billfish, flounder and other fishery management business. On October 31, 1990, at 1:30 p.m., the Billfish Committee will hold a public hearing on the proposed definition of overfishing for billfish.

A detailed agenda will be available to the public on or about October 15, 1990.

or the MCE U.S. Treasury bond option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, at (202) 254-7303.

Any person interested in submitting written data, views or argument on the terms and conditions of he proposed contracts, or with respect to other materials submitted by the CBT or MCE in support of the applications, should

Secretariat at the Commissions headquarters in accordance with 17 CFR 145.7 and 145.8.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 182. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on Draft Amendment 5 to the Shrimp Fishery of the Gulf of Mexico Fishery Management Plan that specifies a definition of overfishing for the Gulf shrimp fisheries and possible management actions to prevent overfishing. The amendment would also set the cooperative seasonal closure of the exclusive economic zone off Texas to conform with a recent change in the closure of state waters. Individuals and organizations may comment in writing to the Council at the address given below if they are unable to attend the hearings.

DATES: Written comments will be accepted until November 14, 1990. The hearings are scheduled as follows:

1. Monday, October 22, 1990, 7 p.m. to 10 p.m., Corpus Christi, Texas.
2. Tuesday, October 23, 1990, 7 p.m. to 10 p.m., Kenner, Louisiana.
3. Wednesday, October 24, 1990, 7 p.m. to 10 p.m., Mobile, Alabama.
4. Wednesday, November 14, 1990, 9 a.m. to 10:30 a.m., Tampa, Florida.

ADDRESSES: Comments may be mailed to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida 33609. The hearings will be held at the following locations:

1. Corpus Christi—Holiday airport, 5549 Leopard street, Corpus Christi, Texas.
2. Kenner—New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, Louisiana.
3. Mobile—Mobile Hilton, 3101 Airport Boulevard, Mobile, Alabama.
4. Tampa—Omni Tampa Hotel at Westshore, 700 North Westshore Boulevard, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Gulf of Mexico Fishery Management Council, 813-228-2815.

Dated: October 2, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23749 Filed 10-5-90; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public meeting of its Groundfish Management Team (GMT), on October 17-19, 1990, at the Oregon Department of Fish and Wildlife Building, Director's Conference room (Fourth floor), 2501 SW. First Avenue, Portland, Oregon. The meeting will begin on October 17 at 8 a.m., and will end on October 19 at 5 p.m.

The GMT will prepare final recommendations for harvest guidelines and quotas for several important groundfish species and develop recommendatons for management measures to achieve the quotas. Additionally the GMT will discuss proposals for managing the 1991 fisheries, including the opening date for the nontrawl sablefish fishery, management of the deepwater complex (Dover sole, sablefish and thornyhead), and measures to manage the Pacific whiting fishery and allocate the whiting harvest among fishermen. The annual status of stocks document, which is a compilation of resource, fishery, economic and management information, will also be prepared at this meeting.

The GMT may also discuss other issues relating to management of the Pacific coast groundfish fisheries. Recommendations and information developed at this meeting will be presented to the Council at its November 14-16, 1990 meeting in Seattle, Washington.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: October 2, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23706 Filed 10-5-90; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council Public Meetings & Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will meet on October 29 through November 2, 1990, at the Shell Island Resort Hotel; 2700 Lumina Blvd.; Wrightsville Beach, NC; telephone: (919) 256-5050. The Council will discuss snapper/grouper, wreckfish, limited entry, billfish, flounder and other fishery management business. On October 31, 1990, at 1:30 p.m., the Billfish Committee will hold a public hearing on the proposed definition of overfishing for billfish.

A detailed agenda will be available to the public on or about October 15, 1990. For more information contact Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Dated: October 2, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23709 Filed 10-5-90; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade and MidAmerica Commodity Exchange Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contracts.

SUMMARY: The Chicago Board of Trade (CBT) for applied for designation as a contract market in options on short-term U.S. Treasury note futures. The MidAmerica Commodity Exchange (MCE) has applied for designation as a contract market in options on corn futures and options on U.S. Treasury bond futures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before November 8, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT short-term U.S. Treasury note option contract, the MCE corn option contract or the MCE U.S. Treasury bond option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, at (202) 254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT or MCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commissions headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of he proposed contracts, or with respect to other materials submitted by the CBT or MCE in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on September 28, 1990.

Blake Imel,

Acting Director.

[FR Doc. 90-23683 Filed 10-5-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 152. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 152 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATES: October 1, 1990.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

BEST COPY AVAILABLE

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

EFFECTIVE

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

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MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA:		
ADAK 5/	$ 77	08-01-90
ANAKTUVUK PASS	140	08-01-90
ANCHORAGE		
05-16--09-15	141	05-16-90
09-16--05-15	130	03-01-90
ATQASUK	215	08-01-90
BARROW	148	08-01-90
BETHEL	143	03-01-90
BETTLES	110	08-01-90
COLD BAY	125	08-01-90
COLDFOOT	122	08-01-90
CORDOVA	150	03-01-90
DILLINGHAM	114	08-01-90
DUTCH HARBOR-UNALASKA	145	08-01-90
EIELSON AFB		
05-15--09-15	124	05-15-90
09-16--05-14	109	03-01-90
ELMENDORF AFB		
05-16--09-15	141	05-16-90
09-16--05-15	130	03-01-90
FAIRBANKS		
05-15--09-15	124	05-15-90
09-16--05-14	109	03-01-90
FT. RICHARDSON		
05-16--09-15	141	05-16-90
09-16--05-15	130	03-01-90
FT. WAINWRIGHT		
05-15--09-15	124	05-15-90
09-16--05-14	109	03-01-90
HOMER	130	03-01-90
JUNEAU	123	03-01-90
KATMAI NATIONAL PARK	148	08-01-90
KENAI		
05-01--09-30	149	05-01-90
10-01--04-30	127	03-01-90
KETCHIKAN	127	03-01-90
KING SALMON 3/	134	08-01-90
KODIAK	118	03-01-90
KOTZEBUE	153	03-01-90
KUPARUK OILFIELD	127	08-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA: (CONT'D)		
MURPHY DOME		
05-15--09-15	$124	05-15-90
09-16--05-14	109	03-01-90
NOATAK	143	04-01-88
NOME	129	03-01-90
NOORVIK	143	04-01-88
PETERSBURG	127	03-01-90
POINT HOPE	160	08-01-90
POINT LAY	179	08-01-90
PRUDHOE BAY-DEADHORSE	121	08-01-90
SAND POINT	103	08-01-90
SEWARD	102	03-01-90
SHUNGNAK	143	03-01-90
SITKA-MT. EDGECOMBE	127	03-01-90
SKAGWAY	127	03-01-90
SPRUCE CAPE	118	03-01-90
ST. MARY'S	100	08-01-90
ST. PAUL ISLAND	115	08-01-90
TANANA	129	03-01-90
TOK	112	03-01-90
UMIAT	160	08-01-90
UNALAKLEET	105	01-01-88
VALDEZ		
05-01--10-31	169	05-01-90
11-01--04-30	128	03-01-90
WAINWRIGHT	165	01-01-88
WALKER LAKE	136	08-01-90
WRANGELL	127	03-01-90
YAKUTAT	110	08-01-90
OTHER 3, 4/	94	08-01-90
AMERICAN SAMOA	102	05-01-89
GUAM	158	10-01-90
HAWAII:		
ISLAND OF HAWAII: HILO	95	08-01-90
ISLAND OF HAWAII: OTHER	106	08-01-90
ISLAND OF KAUAI	158	10-01-90
ISLAND OF KURE 1/	13	05-01-89
ISLAND OF MAUI: KIHEI		
04-01--12-19	135	05-01-89
12-20--03-31	147	12-20-89
ISLAND OF MAUI: OTHER	106	08-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE

Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees

Footnotes

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional

information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 8, 1990.

ADDRESSES: Written comments should be addressed to the Office of

Frequency: Annually.

Affected Public: States or local governments.

Reporting Burden: Responses—57; Burden Hours—570.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours*.—0.

Abstract: This form will be used by

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MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
HAWAII: (CONT'D)		
ISLAND OF OAHU	$126	05-01-89
OTHER	106	08-01-90
JOHNSTON ATOLL 2/	35	02-01-89
MIDWAY ISLANDS 1/	13	01-01-88
NORTHERN MARIANA ISLANDS:		
ROTA	76	08-01-90
SAIPAN	115	08-01-90
TINIAN	68	08-01-90
OTHER	20	01-01-88
PUERTO RICO:		
BAYAMON		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
CAROLINA		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
FAJARDO (INCLUDING LUQUILLO)		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
MAYAGUEZ	167	08-01-90
PONCE	167	08-01-90
ROOSEVELT ROADS		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
SABANA SECA		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
OTHER	96	08-01-90
VIRGIN ISLANDS OF THE U.S.		
05-01--11-30	158	05-01-90
12-01--04-30	194	03-01-90
WAKE ISLAND 2/	21	04-01-89
ALL OTHER LOCALITIES	20	01-01-88

BILLING CODE 3910-01-C

Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees

Footnotes

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a per diem rate of $25 is prescribed instead of the rate prescribed in the table.

Dated: October 2, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-23685 Filed 10-5-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 8, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James O'Donnell, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State and Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Recordkeeping burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: October 2, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Application—Preschool Grants Program under the Education of the Handicapped Act.

Frequency: Annually.

Affected Public: States or local governments.

Reporting Burden: Responses—57; Burden Hours—570.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours.*—0.

Abstract: This form will be used by State agencies to apply for funding under the Preschool Grant Program. The Department will use this information to make grant awards.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Descriptive Study of the Family English Literacy Programs.

Frequency: One time.

Affected Public: Individuals or households.

Reporting Burden: Responses—276; *Burden Hours*—154.

Recordkeeping Burden: Recordkeepers—0, *Burden Hours*—0.

Abstract: The study will describe the characteristics of the Family English Literacy Program which lead to increased English language proficiency of parents and the improved academic achievement of children.

[FR Doc. 90-23706 Filed 10-5-90; 8:45 am]

BILLING CODE 4000-1-M

School Dropout Demonstration Assistance Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year (FY) 1991.

SUMMARY: The Secretary of Education proposes to establish absolute priorities for the grant competition to be held in FY 1991 under the School Dropout Demonstration Assistance Program contained in part A of title VI of the Elementary and Secondary Education Act of 1965, as amended. Under the priorities, the appropriated funds would be reserved for two types of broad approaches. Approximately one half of the funds would support projects that focus on restructuring and reform within school clusters. The remaining funds would support projects that focus on targeted programs for at-risk youth. These projects would be coordinated with a Federal evaluation of the program, including an in-depth evaluation of selected projects.

DATES: Comments must be received on or before November 8, 1990.

ADDRESSES: Comments should be addressed to Alicia Coro, Office of Elementary and Secondary Education, room 2071, 400 Maryland Avenue SW.,

Washington, DC 20202-6439; (202) 401-0857.

SUPPLEMENTARY INFORMATION: Programs to reduce the number of students who do not complete their elementary and secondary education have been many and varied. During the past decade, State and local communities have implemented many efforts to improve their schools and reduce the number of school dropouts, and the Department of Education also started two dropout prevention demonstration programs focused on at-risk youth.

Notwithstanding the considerable activity undertaken—

(a) The national dropout rate has improved only marginally over the past decade; and dropout rates, particularly for Hispanic youth, remain stubbornly high;

(b) A comprehensive model for effective dropout prevention has not been validated on a national scale, yet research strongly suggests the need for a comprehensive approach; and

(c) Programs tailored to specific problems and needs of drop-out prone students or students who have already dropped out may not be enough when a high school has an extremely high dropout rate. The entire cluster of schools—elementary and middle schools as well as the high school into which they feed—must restructure and reform its operations and raise the expectations for all students before dropout rates will be affected significantly.

The Secretary believes that reserving funds appropriated under the School Dropout Demonstration Assistance Program for projects which focus on the two broad approaches described in this notice will provide important information on their relative effectiveness and provide the opportunity to compare various promising components within the two approaches. Solid, national-level evaluation evidence that comprehensive programs work can provide reliable guidance to States and local communities in designing education programs to help at-risk youth.

Proposed Absolute Priorities

The Secretary proposes to give absolute preference to applications that focus on either one of the following approaches:

(a) Restructuring and reform within school clusters.

Under this priority, applicants may apply for a school cluster—that is, a high school and its feeder elementary and middle schools. Restructuring will require schoolwide change and a proposed project must include at least the following components:

(1) Autonomy for both principals and teachers to determine curriculum and instruction strategies. (This may include activities such as the following: Setting school performance goals, restructuring schedules and patterns for daily instruction, initiating new programs and activities, or evaluating achievement.)

(2) Interesting and challenging curricula that move students along as fast as the capabilities allow. The curricula must introduce instruction in higher order skills as early as possible and provide context for learning, not merely teach discrete skills with inadequate attention to context or meaning.

(3) A school climate where students are made to feel that they are an important and integral part of the school and interaction between students and adults is encouraged. (Implementation strategies may include counseling, mentoring, team teaching, dividing schools into smaller entities, and recognition of students' cultural heritage.)

(4) Systematic monitoring of attendance and follow-up of absences with students and parents.

(5) Alternatives to standard retention practices (such as promotion with special assistance).

(6) Coordination of services to meet at-risk students' multiple needs (through such approaches as case management).

(7) Policies and procedures to ensure communication among schools in the cluster and to facilitate a student's transition from elementary to middle to high schools.

(8) Parent and community involvement (using means such as parent advisory councils, volunteer groups, or school-based management teams).

(9) Staff training to provide for effective operation of the program.

(b) Targeted programs for at-risk youth.

Under this priority, applicants may apply for grants to support projects that involve comprehensive targeted services for at-risk youth. These projects may include such approaches as special programs for at-risk youth in regular schools, a "school within a school," alternative schools that serve only at-risk youth, or other similar arrangements. In order to qualify for funding under this priority a proposed project must include at least the following components:

(1) Accelerated learning strategies for improving academic performance and interesting and challenging curricula that move students along as fast as their capabilities allow. The curricula must introduce instruction in higher order skills as early as possible and provide context for learning, not merely teach discrete skills with inadequate attention to context or meaning.

(2) Systematic monitoring of attendance and follow-up of absences with parents.

(3) Family outreach that is culturally sensitive and provides information and training to parents on how to support their child's learning both at home and in school.

(4) Counseling services (which may include individual, group, or family counseling).

(5) Career awareness and preparation services (such as career guidance, vocational training, enhancement of employability skills, job internship, and job placement services).

(6) Social support services (such as child care, health services, transportation, and legal aid).

(7) Linkages among feeder elementary, middle schools, and the high school; involvement of business and community groups; and coordination of project activities with those supported by other Federal, State, and local programs.

A proposed project for either approach (i.e., restructuring within school clusters or a targeted program for at-risk youth) must include all of the components identified for that approach. An applicant may, however, propose to give more or less emphasis to individual components, and it is not necessary that all of the identified components be supported with funds under this program. Portions of the proposed project may be supported with other Federal, State, or local funds.

Federal Evaluation

The Department of Education intends to conduct a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. A contract will be competitively awarded to conduct the evaluation. The evaluation will assess all components of the project, including those paid for with other Federal, State, or local funds. All grantees will be required to cooperate with the national evaluation, which will consist of two parts.

The first part of the evaluation will be a descriptive evaluation that involves collection of data on: (1) The students being served, including socioeconomic background and attendance, achievement, and retention data; (2) the services provided; (3) extent of involvement of parents, business, and community groups; (4) coordination with other agencies; (5) staff training and qualifications; and (6) status of program implementation. All projects will be required to collect and report data for the descriptive evaluation in collaboration with the national contractor.

The second part will be an outcome evaluation that assesses the effects of the program. Methodology for the outcome evaluation will vary depending on the type of project. Projects that target services on at-risk youth will be evaluated through the establishment of control groups using random assignment or the selection of matched comparison groups. Projects that restructure a cluster of elementary and middle schools and a high school will use a trend analysis methodology, such as interrupted time-series analysis, which will require assemply of data from administrative records for at least five years prior to the project as well as during the project. The data will be collected from both the project schools and either all other schools in the district (for small districts) or a set of similar schools (in large districts). The contractor will start working with projects in preparation for the outcome evaluation as soon as grants are awarded. Implementation of the outcome evaluation will take place in the second year of the program after selection of projects and the establishment of appropriate control/comparison groups.

For the outcome evaluation, the Department will select a number of sites for in-depth study. For those sites, the national evaluator will, as appropriate, establish control/comparison groups or arrange for collection of prior and current administrative records. The National evaluator will also survey student attitudes and teacher attitudes, perceptions, and knowledge in those sites.

Each remaining site will itself contract with local evaluators or use district evaluation staff to conduct an outcome evaluation. The local evaluators will establish control or comparison groups or collect prior and current administrative records. Each site will provide outcome data and summaries to the national evaluation contractor for inclusion in national analyses and reports. Technical assistance will be available from the national contractors to local project directors and evaluators.

In the application, each applicant shall sbmit an assurance that it will collaborate with the national evaluation in collection of descriptive and outcome data. Applicants proposing a program targeted on at-risk students must also indicate their willingness to participate in a random assignment evaluation model, as described below. Applicants proposing to restructure a cluster of schools must indicate their willingness to cooperate with a national or local evaluator in assembly of administrative records on student characteristics such as attendance, retention, and achievement and on school characteristics such as school lunch rates. The records will be needed from project schools and either all other schools in the district if the district is small or a comparable set of schools if the district is large.

Random assignment

The evaluation of targeted projects for at-risk youth will involve the establishment of control groups through random assignment or the selection of matched comparison groups. The appropriate method of selecting a control or matched comparison group for the evaluation of targeted projects for at-risk youth will be determined by the Department based on program characteristics.

Random assignment of potentially eligible participants to the program and the control group will be the preferred method of evaluation for projects in which it is appropriate and feasible. Random assignment must not affect the total number of students served by the project, only the method by which eligible applicants are accepted into the program. In particular, it will not be appropriate in sites where all eligible students can be served. Random assignment will take place after potentially eligible participants have been identified and recruited. Individuals in the control group will receive no services from the project funded under this program, but will be free to receive other available services. If the Department of Education decides that random assignment is not appropriate for a project, matched comparison groups will be selected by identifying nonparticipants who have characteristics that are similar to those of the program participants.

The independent evaluator under contract to the Department will work closely with grantees in gaining their cooperation, choosing the control or comparison groups, and providing assistance in conducting the activities associated with the evaluation.

Evaluation by the Grantee

The Secretary reminds prospective applicants that the requirements for self-evaluation in 34 CFR 75.590 apply to this program. An applicant must submit an evaluation plan to address these requirements as part of its application, which will compliment the activities conducted through the national evaluation. An applicant may propose additional local evaluation activities to meet local information needs as well. These evaluation plans will only be implemented upon review and approval by the Department of Education. Once a grant is awarded, the grantee will be expected to submit to the Department a copy of the report from any local evaluation implemented as part of the dropout demonstration.

Invitation to Comment

The Secretary invites public comment on the merits of the proposed priorities and the Federal evaluation, including suggested modifications. Final priorities and evaluation will be established on the basis of public comment and other relevant Departmental considerations, and will be announced in a notice in the Federal Register. This notice of proposed priorities does not solicit applications, and Department of Education staff will not review concept papers or preapplications. The publication of the proposed priorities does not bind the Federal government to fund projects in these areas, except as otherwise directed by statute. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of applications.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in room 2049, FOB #6, 400 Maryland Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 3241.

(Catalog of Federal Domestic Assistance Number 84.201, School Dropout Demonstration Assistance Program)

Dated: October 2, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-23705 Filed 10-5-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Carnegie Natural Gas Co., Proposed Changes in FERC Gas Tariff

October 1, 1990.

Take notice that on September 27, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following substitute revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Tenth Revised Sheet No. 8
Substitute Tenth Revised Sheet No. 9
Substitute First Revised Sheet No. 10
Substitute First Revised Sheet No. 23

Carnegie states that, pursuant to §154.308 of the Commission's

[Docket No. TM91-1-24-001]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

October 1, 1990.

Take notice that Equitrans, Inc. (Equitrans) on September 28, 1990, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of September 1, 1990 subject to refund:

Substitute Sixteenth Revised Sheet No. 10

on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

[Docket No. TM91-2-15-000]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

October 1, 1990.

Take notice that on September 28, 1990, Texas Gas Transmission

North Capital Street, NE., Washington, DC 20426, in accordance with Secs. 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in

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to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Tenth Revised Sheet No. 8
Substitute Tenth Revised Sheet No. 9
Substitute First Revised Sheet No. 10
Substitute First Revised Sheet No. 23

Carnegie states that, pursuant to §154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483–A, it is proposing an Out-of-Cycle PGA primarily to reflect recent significant rate changes in the cost of spot gas supplies. The revision also reflects the ACA surcharge rate proposed by Carnegie's pipeline supplier to become effective on October 1, 1990. The revised rates are proposed to become effective October 1, 1990, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ90–8–63–000: a $.1558 per Dth increase in the commodity components of its LVWS, CDS, and LVIS Rate Schedules; no change in the demand charges; and no change in the DCA component. Carnegie's Standby Adjustment stated in this filing is $.1220 per Dth.

Carnegie is also including in this filing the revisions to its ACA surcharge rates in accordance with the Commission's September 28, 1990 order in Docket No. RM87–3–000, *et al.* (including Carnegie's filing in Docket No. TM91–1–63–000). These sheets reflect an ACA surcharge rate of $.0022 per Mcf in accordance with the September 28, 1990 order.

Carnegie states that copies of its filing were served on all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–23691 Filed 10–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–24–001]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

October 1, 1990.

Take notice that Equitrans, Inc. (Equitrans) on September 28, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, effective October 1, 1990:

Substitute Seventeenth Revised Sheet No. 10

Equitrans states that the foregoing tariff sheets are being filed in accordance with the Commission's Order and Staff request the rates filed in Docket No. TM91–1–24–000 have been revised to comply with the conditions of the August 31, 1990 Order. The Order directed Equitrans to refile its tariff sheets to reflect back to the commodity portion of its rates the portion of affiliated producer-marketer demand charges in excess of that permitted under the test described in the Commission's Order and to recalculate its surcharge rates using the correct monthly interest rates factors.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–23692 Filed 10–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA90–1–24–003, RP90–162–001]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

October 1, 1990.

Take notice that on September 28, 1990, Equitrans, Inc. ("Equitrans") tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of September 1, 1990 subject to refund:

Substitute Sixteenth Revised Sheet No. 10
Substitute Eighth Revised Sheet No. 34
Substitute Fourth Revised Sheet No. 177C

Equitrans states that the foregoing tariff sheets are being filed in compliance with the Commission's "Order Accepting And Suspending Tariff Sheets Subject To Refund And Conditions And Convening A Technical Conference" ("Order") issued herein on August 31, 1990. Also contained in the compliance filing are revised Schedules G1, A1, C1, C2 and D1, which correct errors discussed in appendix A of the Order. A new magnetic tape reflecting these corrections was also filed. Working papers reflecting back to the commodity portion of Equitrans' rates the portion of affiliated producer-marketer demand charges in excess of that permitted under the Order were also filed, as well as a report reflecting Equitrans' purchasing practices for producer demand charges, including the treatment of affiliates. Equitrans also filed supporting working papers showing the impact on costs of using standby service in lieu of Texas Eastern Transmission Corporation's system supply. It filed an explanation regarding the absence from the PGA filing of out-of-period billing adjustments. Equitrans corrected Schedule A1 to reflect both a demand and a commodity rate for producer purchases. It corrected problems on Fourth Revised Sheet No. 177C concerning the vagueness of the phrase "projecting the deficiency" and an incorrect reference to the Commission's Regulations concerning carrying costs. It also corrected the calculation of it's Adjustment Rate Change tariff sheet to include the Cumulative Adjustment column in its Total Effective Rate column.

Equitrans states that a copy of its compliance filing has been served upon its purchasers, interested state commissions, and the parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–23693 Filed 10–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–65–000]

Pacific Gas Transmission Co., Annual Charge Adjustment

October 1, 1990.

Take notice that on September 28, 1990, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance certain tariff sheets to be included in its Substitute First Revised Volume No. 1, and Original Volume No. 1–A of its FERC Gas Tariff.

The above tariff sheets have been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's order of September 28, 1990 in Docket No. RM87–3–000 et al. PGT has requested waiver of the Commission's regulations to permit it to adopt the changes in the ACA rate on October 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–23694 Filed 10–5–90; 8:45 am]

BILLING CODE 6717–01–M

on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–23693 Filed 10–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–2–18–000]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

October 1, 1990.

Take notice that on September 28, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Sixth Revised Twenty-eighth Revised Sheet No. 10
Sixth Revised Twenty-eighth Revised Sheet No. 10A
Fourth Revised Ninth Revised Sheet No. 11
Fourth Revised Original Sheet No. 11A
Fourth Revised Original Sheet No. 11B

Original Volume No. 2–A

Fifth Revised Sheet No. 14

The proposed tariff sheets are being filed to restate the Commodity Take-or-Pay (TOP) Surcharge for the remaining six months (November 1, 1990, through April 31, 1991) in Texas Gas's Second Annual Recovery Period. The new Commodity TOP Surcharges are calculated using the cost and volumetric determinants reflected in the filed base tariff rates effective November 1, 1990, in Texas Gas's filing in Docket No. RP90–104, as stated in §§ 23.4(c) and 23.4(c) of the General Terms and Conditions in Texas Gas's Original Volume No. 1 and Original Volume No. 2–A, respectively.

Texas Gas reserves the right to revise this filing due to any change in Order No. 500 implemented by the Commission or any Court decision. Additionally, Texas Gas agrees to supplement this filing as necessary to reflect any Commission or Court final decisions on any outstanding issues in the original TOP dockets. Likewise, Texas Gas will subsequently adjust all TOP commodity surcharge collections during this period to reflect any differences in the TOP surcharge that may result from the final resolution of the cost and volumetric issues in Docket No. RP90–104.

Texas Gas requests an effective date of November 1, 1990, for the proposed tariff sheets. Texas Gas further states that it has served copies of this filing upon the company's sales and transportation customers and interested state commissions.

Texas Gas will maintain copies of this filing at its Owensboro, Kentucky, offices for public inspection during regular business hours.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Secs. 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell

Secretary.

[FR Doc. 90–23695 Filed 10–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–18–000]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

October 1, 1990.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on September 28, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Twenty-eighth Revised Sheet No. 10
Fifth Revised Twenty-eighth Revised Sheet No. 10A
Third Revised Ninth Revised Sheet No. 11
Third Revised Original Sheet No. 11A
Third Revised Original Sheet No. 11B

Texas Gas states that these tariff sheets reflects changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective November 1, 1990. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.4097 per MMBtu, a D–1 demand rate decrease of $.(44) per MMBtu, and a D–2 demand rate decrease of $(.0099) per MMBtu from the rates set forth in the quarterly PGA filed July 20, 1990 (Docket No. TQ90–3–18–001). The instant filing reflects a $.5104 per MMBtu commodity rate increase from the proposed rates effective August 1, 1990 (Docket No. TF90–10–18).

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20428, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23698 Filed 10-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Admustment Filing

October 1, 1990.

Take notice that on September 28, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Twenty-ninth Revised Sheet No. 10

Original Volume No. 1-A

Twenty-second Revised Sheet No. 11
Twenty-eighth Revised Sheet No. 12
Fourteenth Revised Sheet No. 97A
Eighth Revised Sheet No. 275
Seventh Revised Sheet No. 275A
Seventh Revised Sheet No. 276
Seventh Revised Sheet No. 277

Original Volume No. 1-B

Seventeenth Revised Sheet No. 10
Seventeenth Revised Sheet No. 11

Original Volume No. 2

Thirty-first Revised Sheet No. 10
Second Revised Sheet No. 10A
Twenty-third Revised Sheet No. 11B

The proposed effective date of the tariff sheets is November 1, 1990.

Williston Basin states that Twenty-ninth Revised Sheet No. 10 (First Revised Volume No. 1) and Thirty-first Revised Sheet No. 10 (Original Volume No. 2) reflect an increase in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1, E-1 and X-1 of 12.621 cents per dkt as compared to that contained in the Company's June 1, 1990 PGA filing in Docket No. TA90-1-49-000, which became effective August 1, 1990.

Williston Basin Further states that Twenty-second Revised Sheet No. 11, Twenty-eighth Revised Sheet No. 12 and Fourteenth Revised Sheet No. 97A (Original Volume 1-A), Seventeenth Revised Sheet Nos. 10 and 11 (Original Volume No. 1-B), Thirty-first Revised Sheet No. 10 and Twenty-third Revised Sheet No. 11B (Original Volume No. 2) reflect an increase of 0.274 cents per dkt in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's June 1, 1990 filing in Docket No. TA90-1-49-000. Such increase in the fuel reimbursement charge is a result of the changes in Williston Basin's average cost of purchased gas.

In addition, Williston Basin states that Eighth Revised Sheet No. 275 and Seventh Revised Sheet Nos. 275A, 276 and 277 (Original Volume No. 1-A) have been submited to update the "Index of Purchasers". Second Revised Sheet No. 10A (Original Volume No. 2) has been submitted to cancel the Interim Billing Determinants applicable to Rate Schedule X-3 consistent with a Commission Order issued August 17, 1990 in Docket No. RP90-148-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 90-23607 Filed 10-5-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: Wednesday, October 24, 1990, from 9:30 a.m. to 5:30 p.m.

Place: Holiday Inn, International Ball Room O'Hare IV, 5440 North River Road, Rosemont, Illinois.

Contact: Cathy Hanlin, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20585, (301) 353-3613.

Purpose of Committee: To advise the Department of Energy and the National Science Foundation on the scientific priorities within the field of basic nuclear science research.

Tentative Agenda:

- Discussions of the NSAC Subcommittee Reports and NSAC Recommendations on Low Energy Heavy Ion Facilities.
- Public comment.
- Other business.

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact Cathy Hanlin at the address or telephone number listed above.

Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 3, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90-23777 Filed 10-5-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-77-NG]

ICG Energy Marketing, Inc.; Application for Blanket Authorization To Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 31, 1990, of an application filed by ICG Energy Marketing, Inc. ("ICG Energy Marketing") for blanket authorization to export 2 Bcf of natural gas to Canada over a two-year term beginning on the date of first export.

ICG Energy Marketing intends to use existing facilities of U.S. pipelines for the transportation of the gas supplies to be exported. The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., November 9, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestral Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7249.

Dianne Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: ICG Energy Marketing, a corporation organized and existing under the laws of the State of Delaware, is a wholly owned subsidiary of Canadian Hydrocarbons Marketing, Inc., which in turn is a subsidiary of ICG Utilities (Canada) Ltd. Its ultimate parent corporation is Westcoast Energy Inc., a company incorporated pursuant to the laws of Canada. The company's principal place of business is in Calgary, Alberta, Canada.

ICG Energy Marketing was formed for the purpose of marketing natural gas in Canada and the United States. The company intends to export natural gas, for its own account or as agent for suppliers or purchasers, for spot or short-term sales to Canadian purchasers including, but not limited to, commercial and industrial end-users and local distribution companies, or for re-import under the applicant's existing blanket import authority for sale to U.S. purchasers. The terms of each transaction, including price and volume, will depend on the market demand for natural gas and will be structured to meet competition in the market place.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed export authority will advance U.S. goals to reduce trade barriers and to encourage the operation of market forces to achieve a more competitive and efficient distribution of goods between the United States and Canada. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import/export is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and exported and the purchase price in order to facilitate monitoring of the operation of DOE's natural gas import program.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ICG Energy Marketing's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 28, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23775 Filed 10-5-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-85-NG]

United Mineral Resources, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting United Mineral Resources, Inc. (United) blanket authorization to export up to 73 Bcf of natural gas to Mexico over a two year period commencing on the date of first delivery.

A copy of this order is available for

Wisconsin Broadcast Communications Foundation et al; Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for five new FM stations:

Applicant City/State	File No.	M Docket No.
1. Air Hazard, D 2. Comparative, A through D 3. Ultimate, A through D		

review have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief Audio Services Division.

Appendix (Walpole, New Hampshire)

1. To determine whether B (Lyons) was an undisclosed party-in-interest in Maxine Snow's Lebanon, New Hampshire application

1. *Expedited Funds Availability.* Discussion led by the Depository and Delivery Systems Committee on the experience of financial institutions in implementing the permanent funds availability schedule, and the effect on consumers.

2. *Affordable Housing.* Briefings on the status of the affordable housing programs administered by the Federal Housing Finance

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting United Mineral Resources, Inc. (United) blanket authorization to export up to 73 Bcf of natural gas to Mexico over a two year period commencing on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 29, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–23776 Filed 10–5–90; 8:45 am]

BILLING CODE 6450–01–M

FARM CREDIT ADMINISTRATION

Performance Review Board; Designation of Members

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: In accordance with the provisions in title 5, U.S.C. 4314(c)(4), the Farm Credit Administration hereby publishes a roster of the names of the executives who may be designated as members of the Agency's Performance Review Board(s). The roster is as follows:

1. Mary Kay Thatcher;
2. David C.Baer;
3. Anne E. Dewey;
4. Michael A. Bronson; and
5. William L. Robertson.

Dated October 1, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 90–23702 Filed 10–5–90; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1826]

Petitions For Reconsideration and Clarification and Application for Review of Actions in Rule Making Proceedings

October 4, 1990.

Petitions for reconsideration and clarification and an application for review have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions and the application must be filed on or before October 25, 1990. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Formulation of Policies And Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process. (BC Docket No. 81–742). *Number of petitions filed:* 1.

Subject: Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons. (CC Docket No. 87–124). *Number of petitions filed:* 1.

Subject: Amendment of §§ 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of Commission's Processes. (MM Docket No. 87–314). *Number of petitions filed:* 1.

Subject: Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network * * *. (CC Docket No. 88–57, RM–5643). *Number of petitions filed:* 9

Subject: Amendment of parts 2 & 87 of the Commission's Rules to Permit the Aviation Services to Use Frequencies in the 136–137 MHz Band. (Gen. Docket No. 89–295, RM's 6620 & 6649). *Number of petitions filed:* 1.

Subject: Regulations Concerning Indecent Communications by Telephone. (Gen. Docket No. 90–64). *Number of petitions filed:* 1.

Application for Review

Subject: Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network * * *. (CC Docket No. 88–57, RM–5643). *Number of petitions filed:* 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–23787 Filed 10–5–90; 8:45am]

BILLING CODE 6712–01–M

Wisconsin Broadcast Communications Foundation et al; Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for five new FM stations:

Applicant City/State	File No.	M Docket No.
A. Wisconsin Broadcast Communications Foundation, Inc.; Verona, WI.	BPED–881214MD.	90–428
B. Janice and Ronald Fedler, General Partners; Verona, WI.	BPH–881214MK.	
C. Verona Parque Broadcasting Co.; Verona, WI.	BPH–881215MC.	
D. Soncomm, Inc.; Verona, WI.	BPH–881215ND.	
E. Skywave Communications Corporation; Verona, WI.	BPH–881215NF.	
F. Key Communications, Inc.; Verona, WI.	BPH–881215NH.	
G. Roger Kluge; Verona, WI.	BPH–881215NH.	
Issue Heading and Applicants 1. Noncommercial Educational Qualificaiions A 2. Air Hazard, B 3. Comparative, A11 4. Ultimate, A11		
	II.	
A. Gary P. Savoie; Walpole, New Hampshire.	BPH–881215NB.	90–421
B. Bruce M. Lyons; Walpole, New Hampshire.	BPH–881216NT.	
Issue Heading and Applicants 1. See Appendix, B 2. See Appendix, B 3. Air Hazard, B 4. Comparative, A, B 5. Ultimate, A, B		
	III.	
A. Daniel Cunningham; Wauseon, OH.	BPH–880914MI	90–420
B. Steamboat Radio Partners; Wauseon, OH.	BPH–880914MK.	
C. PRYD Limited Partnership; Wauseon, OH.	BPH–880915MW.	
D. Conquest Broadcasting, Inc.; Wauseon, OH.	BPH–880916ML.	
Issue heading and applicants		

Applicant City/State	File No.	M Docket No.
1. Air Hazard, D 2. Comparative, A through D 3. Ultimate, A through D		
	IV.	
A. Family Communications, Inc.; Roland, OK.	BPH–880727MA.	90–426
B. Sequoyah Communications Corporation; Roland, OK.	BPH–880727MD.	
C. Linda Blair; Roland, OK.	BPH–880727NG.	
Issue heading and applicants 1. Comparative, A–C 2. Ultimate, A–C		
	V.	
A. Ohana Broadcasting; Kahalu'u, HI.	BPH–890503MK.	90–427
B. Shaka Broadcasting, Limited Partnership; Kahalu'u, HI.	BPH–890504MG.	
Issue heading and applicant 1. See Appendix, A 2. Comparative, Both applicants 3. Ultimate, Both applicants		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief Audio Services Division.

Appendix (Walpole, New Hampshire)

1. To determine whether B (Lyons) was an undisclosed party-in-interest in Maxine Snow's Lebanon, New Hampshire application (File No. BPH–880128NX) in comparative proceeding MM Docket 90–73.

2. To determine, from the evidence adduced pursuant to Issue 1 above, whether B (Lyons) possesses the basis qualifications to be a licensee of the facilities sought herein.

Appendix (Kahalu 'u, Hawaii)

1. In regard to Linda Dee Anderson Manown and Austin S. Vali, both of whom are principals of Ohana Broadcasting and were principals of The Pleiades Group, a dismissed applicant for a new FM station at Pearl City, Hawaii, MM Docket No. 87–516:

(a) To determine, in light of the facts and circumstances surrounding the issues raised in the Pearl City, Hawaii, proceeding, whether The Pleiades Group willfully and repeatedly failed to report in its application and other filings facts of decisional significance.

(b) To determine whether The Pleiades Group falsely certified the information in its Pearl City application with regard to its principals and its financial support to build and operate the station.

(c) To determine whether The Pleiades Group was financially qualified to build and operate the Pearl City facilities.

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Linda Dee Anderson Manown and Austin S. Vali and thus Ohana Broadcasting possess the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90–23788 Filed 10–5–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thrusday, October 25. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 5 p.m., with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Expedited Funds Availability.* Discussion led by the Depository and Delivery Systems Committee on the experience of financial institutions in implementing the permanent funds availability schedule, and the effect on consumers.

2. *Affordable Housing.* Briefings on the status of the affordable housing programs administered by the Federal Housing Finance Board and the Resolution Trust Corporation.

3. *New CRA Process.* Discussion led by the Community Reinvestment Act Committee on members' experiences with and impressions of the new CRA process; and on the committee's review of a sample of the publicly available CRA performance evaluations prepared by examiners since July 1, 1990.

4. *Proposal on Electronic Benefits Transfer.* Briefing on a staff proposal being developed to address issues regarding electronic benefits transfer (EBT) systems using the existing framework of Regulation E (Electronic Fund Transfers), with a presentation by an agency representative from Maryland regarding that state's pilot program for EBT. (Under EBT systems, government agencies use electronic, rather than paper-based, systems to disburse benefits, such as cash or food stamps, to recipients.)

5. *Mortgage Lending Patterns.* Discussion led by the Community Affairs and Housing Committee on the possible use of testers by the federal financial regulators as a means of detecting illegal discrimination.

6. *Members Forum.* Presentation of individual Council members' views regarding the current availability of commercial and real estate credit in their local markets.

7. *Departing Remarks.* Remarks by Council members whose terms expire at year-end concerning their experience on the Council and suggestions for its future operation.

8. *Committee Reports.* Progress reports from Council Committees on their work and plans for 1991.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Monday, October 22, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Wahington, DC 20551, 202–452–2412. Telecommunications Device for the Deaf (TDD) users may contact Earnestine Hill or Dorothea Thompson, 202–452–3544.

Board of Governors of the Federal Reserve System, October 2, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–23745 Filed 10–5–90; 8:45 am]

BILLING CODE 6210–01–M

indicated or the offices of the Board of Governors not later than October 30, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Guaranty Bancshares, Inc.*, Mount Pleasant, Texas; to become a bank holding company by acquiring Guaranty Bank & Trust Company, Mount Pleasant, Texas.

Board of Governors of the Federal Reserve System, October 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–23746 Filed 10–5–90; 8:45 am]

BILLING CODE 6210–01–M

Dated: October 1, 1990

Sharon A. Kiser,

FAR Secretariat.

Customer Survey—Federal Acquisition Regulation (FAR)

GSA, U.S. General Services Administration, Office of Acquisition Policy

Dear Participant:

a. [ ] Extensively.
b. [ ] Moderately.
c. [ ] Rarely.
d. [ ] Not At All.

2. For what purposes do you use the FAR?

a. [ ] Acquisition policies applicable to Government.
b. [ ] Acquisition policies applicable to Government contractors.
c. [ ] Compilation of solicitation

Governmentwide policy before I select a course of action; or

b. [ ] After reading the FAR, I must seek the advice of others to determine what the Governmentwide policy is before I select a course of action.

7. To what extent do you believe the FAR is ambiguous or confusing?

a. [ ] Never.

Earnestine Hill or Dorothea Thompson, 202-452-3544.

Board of Governors of the Federal Reserve System, October 2, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-23745 Filed 10-5-90; 8:45 am]

BILLING CODE 6210-01-M

Guaranty Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The Company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question of whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 1990.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Guaranty Bancshares, Inc.*, Mount Pleasant, Texas; to become a bank holding company by acquiring Guaranty Financial Corp., Wilmington, Delaware, and Guaranty Bancshares, Inc., Mount Pleasant, Texas (Going Concern), and thereby indirectly acquire Guaranty Bank, Mount Pleasant, Texas, and The Talco State Bank, Talco, Texas. In connection with this application, Guaranty Financial Corp. has also applied to become a bank holding company.

Guaranty Bancshares, Inc. and Guaranty Financial Corp. have also applied to acquire Guaranty Leasing Company, Inc., Mount Pleasant, Texas, and thereby engage in full pay-out personal leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in East Texas.

Board of Governors of the Federal Reserve System, October 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23744 Filed 10-5-90; 8:45 am]

BILLING CODE 6210-01-M

Gary M. Traughber, et al., Change in Bank Control Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous Federal Register Notice (FR Doc. 90-20326) published at page 35359 of the issue for Wednesday, August 29, 1990.

Under the Federal Reserve Bank of St. Louis, the entry for Gary M. and Frances S. Traughber is amended to read as follows:

A. **Federal Reserve Bank of St. Louis,** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri, 63166):

1. *Gary M. and Frances S. Traughber,* Elkton, Kentucky; Evelvyn H. Traughber, Elkton, Kentucky; Brent Hill Traughber, Elkton, Kentucky; and Edwing Berkley Traughber, Metairie, Louisiana, to acquire an additional 4.63 percent of the voting shares of Elkton Bancorp, Inc., Elkton, Kentucky, for a total of 20.30 percent, and thereby indirectly acquire Elkton Bank & Trust Company, Elkton, Kentucky.

Comments on this application must be received by October 29, 1990.

Board of Governors of the Federal Reserve System, October 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23746 Filed 10-5-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the General Services Administration Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for expedited review and approval pursuant to 5 CFR 1320.18 of a new information collection requirement concerning customer views of the FAR. OMB approval is requested within 20 days.

ADDRESS: Send comments to Mr. Stephen Holden, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, (202) 501-4547.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The proposed survey is intended to solicit input from a samplying of diverse users of the FAR concerning how well the FAR meets their needs as well as identify approaches for improving the FAR.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1000*; responses per respondent, *1*; total annual responses, *1000*; preparation hours per response, *.5*; and total response burden hours, *500*.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-00XX, Customer Survey Concerning the Federal Acquisition Regulation.

Dated: October 1, 1990

Sharon A. Kiser,

FAR Secretariat.

Customer Survey—Federal Acquisition Regulation (FAR)

GSA, U.S. General Services Administration, Office of Acquisition Policy

Dear Participant:

The Federal Acquisition Regulation (FAR), published in 1984, continues to evolve as a result of new legislation, Executive Branch initiatives, and requests from participants in the Federal acquisition process. The U.S. General Services Administration (GSA) believes that this is an appropriate time to consider how the FAR may more efficiently and effectively serve our customers in Government and industry.

To determine if improvements are needed in the FAR, GSA—together with the Civilian Agency Acquisition Council (CAAC)—is conducting a survey of FAR customers. In order to evaluate the FAR's effectiveness, we need to know whether our customers are satisfied, and if they are not, what aspects of the FAR need improvement.

You can assist us in evaluating the FAR by completing the enclosed survey, which we anticipate will take about 30 minutes. We would appreciate the return of the completed survey within three weeks of your receipt.

The responses to the survey will be reviewed to evaluate the need for any major or specialized revisions to the FAR. Your response us confidential and will not be shared with your supervisor. In order to allow for follow-up on comments on the survey, it would be helpful if you furnished your name and telephone number. However, that information is purely voluntary.

Comments

Comments are encouraged whenever appropriate, and space has been provided within certain answer blocks for narrative responses. Other comments, recommendations or suggestions are welcome and should be included at the end of the survey.

Returning Survey

Once you have completed the survey, simply staple, and mail the entire package back to us. It is self-addressed and postage paid.

Meetings

GSA, in conjunction with the National Contract Management Association (NCMA) and Federal agencies, will be conducting a series of meetings with industry and Government representatives for the purpose of discussing FAR improvement. We welcome your participation at such meetings.

We appreciate your interest and participation in improving the FAR.

Richard H. Hopf III,

Associated Administrator for Acquisition Policy.

General

1. To what extend do you use the FAR?

a. [ ] Extensively.
b. [ ] Moderately.
c. [ ] Rarely.
d. [ ] Not At All.

2. For what purposes do you use the FAR?

a. [ ] Acquisition policies applicable to Government.
b. [ ] Acquisition policies applicable to Government contractors.
c. [ ] Compilation of solicitation provisions and contract clauses.
d. [ ] Procedural guidance.
e. [ ] Easy reference to other relevant regulations (e.g., labor regulations, SBA size standards).
f. [ ] An educational tool.
g. [ ] Other. (please specify.)

_____

_____

3. Please identify the tasks you perform which require you to use the FAR: (check all that apply.)

a. [ ] Procurement request preparation.
b. [ ] Solicitation preparation.
c. [ ] Evaluation of bids/offers.
d. [ ] Price/cost analysis.
e. [ ] Small purchases.
f. [ ] Contract administration.
g. [ ] Review of acquisition regulatory issues.
h. [ ] Furnishing advice on acquisition issues.
i. [ ] Preparation of proposals.
j. [ ] Preparation for contract negotiations.
k. [ ] Termination procedures.
l. [ ] Consideration of protest, dispute and appeal issues.
m. [ ] Other. (please specify.)

_____

_____

4. Does the FAR meet your needs?

a. [ ] All of the time.
b. [ ] Generally.
c. [ ] Occasionally.
d. [ ] Seldom.
e. [ ] Never.
f. [ ] No opinion.

5. How could the FAR better serve your needs? (check all that apply.)

a. [ ] Be more clearly written
b. [ ] Be less complex.
c. [ ] Provide more guidance.
d. [ ] Permit more discretion.
e. [ ] Be Less ambiguous.
f. [ ] Be less legalistic.
g. [ ] Be better organized.
h. [ ] Provide more examples or illustrations.
i. [ ] Provide a more streamlined method for disseminating FAR changes.
j. [ ] No changes needed.
k. [ ] Other. (please specify.)

_____

_____

6. Which statement is most often true?

a. [ ] After reading the FAR, I have a high level of confidence that I know the Governmentwide policy before I select a course of action; or

b. [ ] After reading the FAR, I must seek the advice of others to determine what the Governmentwide policy is before I select a course of action.

7. To what extent do you believe the FAR is ambiguous or confusing?

a. [ ] Never.
b. [ ] Rarely.
c. [ ] Occasionally.
d. [ ] Generally.
e. [ ] Totally.
f. [ ] No opinion.

8. Please identify any FAR coverage (e.g., Subpart 25.2) which you believe is ambiguous or confusing.

_____

_____

9. To what extent do you believe the FAR is overly detailed?

a. [ ] Never.
b. [ ] Rarely.
c. [ ] Occasionally.
d. [ ] Generally.
e. [ ] Almost always.
f. [ ] No opinion.

10. Please identify any FAR coverage (e.g., Subpart 25.2) which you believe is overly detailed.

_____

_____

11. To what extent do you believe the FAR provides insufficient coverage?

a. [ ] Never.
b. [ ] Rarely.
c. [ ] Occasionally.
d. [ ] Generally.
e. [ ] Almost always.
f. [ ] No opinion.

12. Please identify any FAR coverage (e.g., Subpart 25.2) which you believe is insufficient.

_____

_____

13. To what extent does the FAR provide flexibility to apply sound business judgment in the award and administration of contracts?

a. [ ] Too much.
b. [ ] About right.
c. [ ] Too little.
d. [ ] No opinion.

14. If your answer to question 13 is that the FAR provides too little flexibility, please identify whether you believe this results from statutory or regulatory requirements.

a. [ ] Statutory.
b. [ ] Regulatory.
c. [ ] Both statutory and regulatory.
d. [ ] No opinion.

15. How would you characterize the authority levels in the FAR for review or approval of specified actions?

		Generally too high a.	About right b.	Generally too low c.	No opinion d.
15.1	Dollar level	[ ]	[ ]	[ ]	[ ]
15.2	Organizational level	[ ]	[ ]	[ ]	[ ]

16. Please cite any examples where you believe the authority level is:

16.1 Too high_____.

16.2 Too low_____.

Structure

17. Which most accurately reflects your view with respect to the current FAR structure and organization?

a. [ ] Should be retained so familiarity with locations is not lost.

b. [ ] Should be modified as needed to improve the utility of the FAR.

c. [ ] No opinion.

18. Do you favor reorganizing the FAR to separate policy from procedural guidance?

a. [ ] Yes.

b. [ ] No.

c. [ ] No opinion.

19. Is the FAR easy or difficult to use?

a. [ ] Very easy.

b. [ ] Easy.

c. [ ] Difficult.

d. [ ] Very difficult.

e. [ ] No opinion.

20. When you need to locate FAR coverage on a specific topic, are you able to locate the desired material in a reasonable amount of time?

a. [ ] Yes.

b. [ ] Generally.

c. [ ] Occasionally.

d. [ ] Seldom.

e. [ ] No.

f. [ ] No opinion.

21. Does the topic generally appear in the locations at which you expect to find them?

a. [ ] Always.

b. [ ] Usually.

c. [ ] Sometimes.

d. [ ] Rarely.

e. [ ] Never.

f. [ ] No opinion.

22. How would you characterize the newly formulated FAR index in terms of assisting you in locating material in the FAR?

a. [ ] Very useful.

b. [ ] Useful.

c. [ ] Adequate.

d. [ ] Not useful.

e. [ ] Do not use.

23. How could the FAR index be made more useful?

a. [ ] Include more topics in the index.

b. [ ] Include fewer topics in the index.

c. [ ] Include page references.

d. [ ] Provide access to a computerized search capability for locating topics.

e. [ ] Adequate as written.

f. [ ] Other (please specify) _____.

24. When you need to determine which provisions or clauses are applicable to a particular acquisition, do you use the FAR provision and clause matrix?

a. [ ] Very often.

b. [ ] Often.

c. [ ] Occasionally.

d. [ ] Seldom.

e. [ ] Never.

f. [ ] Do not use.

25. Using the FAR provision and clause matrix, can you readily identify the applicable provisions/clauses for specific types of contracts and methods of contracting?

a. [ ] Yes.

b. [ ] No.

c. [ ] Do not use.

26. Do you consider the new FAR matrix to be:

a. [ ] Very useful.

b. [ ] Useful.

c. [ ] Of little value.

d. [ ] Of no value.

e. [ ] Do not use.

27. In the 1984 edition of the FAR each provision/clause in part 52 was preceded by a "preface" that indicated when the provision/clause was to be used. An editorial decision was made to eliminate such prefaces in order to streamline the FAR. The original and current approach may be compared by referring to the prefaces at FAR 52.207–2 and 52.207–3. Do you believe that the elimination of such information:

a. [ ] Streamlines the coverage, thus making the FAR easier to use.

b. [ ] Requires the FAR user to repeatedly research the provision/clause prescriptions in the FAR text, thus making the FAR more difficult to use.

c. [ ] Is desirable because the original prescriptions which were located with the provisions and clauses in FAR part 52 were not all inclusive.

d. [ ] No opinion.

Content

28. Currently, the FAR includes coverage of a topic if it is applicable to more than one agency. This practice:

a. [ ] Makes the FAR more useful.

b. [ ] Unnecessarily clutters the FAR.

c. [ ] No opinion.

29. Currently the FAR includes the substance of statutory requirements and agency regulations pertaining to contracting (e.g., labor regulations, SBA size standards). Would you prefer that such substance be included in future editions of the FAR or that reference to the statutes and regulations be substituted?

a. [ ] Continue substance.

b. [ ] Include references only.

c. [ ] No opinion.

30. Please characterize the usefulness of FAR coverage when you:

		Very useful a.	Useful b.	Adequate c.	Not useful d.	I do not perform e.
30.1	Plan acquisitions	[ ]	[ ]	[ ]	[ ]	[ ]
30.2	Determine method of acquisition	[ ]	[ ]	[ ]	[ ]	[ ]
30.3	Determine contract type	[ ]	[ ]	[ ]	[ ]	[ ]
30.4	Prepare solicitations	[ ]	[ ]	[ ]	[ ]	[ ]
30.5	Evaluate bids/offers	[ ]	[ ]	[ ]	[ ]	[ ]
30.6	Select sources	[ ]	[ ]	[ ]	[ ]	[ ]
30.7	Perform price/cost analyses	[ ]	[ ]	[ ]	[ ]	[ ]
30.8	Negotiate prices	[ ]	[ ]	[ ]	[ ]	[ ]
30.9	Administer contracts	[ ]	[ ]	[ ]	[ ]	[ ]
30.10	Other (specify)	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]

31. How would you rate coverage in the FAR as guidance for acquiring:

		Very useful a.	Useful b.	Adequate c.	Not useful d.	I do not perform e.
31.1	Supplies	[ ]	[ ]	[ ]	[ ]	[ ]
31.2	Services	[ ]	[ ]	[ ]	[ ]	[ ]
31.3	Construction	[ ]	[ ]	[ ]	[ ]	[ ]
31.4	Architect-engineering	[ ]	[ ]	[ ]	[ ]	[ ]
31.5	Research and development	[ ]	[ ]	[ ]	[ ]	[ ]
31.6	Small purchases	[ ]	[ ]	[ ]	[ ]	[ ]
31.7	Utilities	[ ]	[ ]	[ ]	[ ]	[ ]
31.8	Other (specify)	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]

32. Does the FAR provide adequate coverage of socio-economic requirements (e.g., small business set-asides, subcontracting with small and disadvantaged businesses, contracting with the Small Business Administration under the 8(a) program)?

a. [ ] Yes.

b. [ ] No.

c. [ ] No opinion.

33. Please cite any examples where you believe the coverage of socio-economic programs is inadequate.

_____

_____

34. Are there any additional subjects that should be covered in the FAR?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

35. If yes to question 34, please specify subjects:

_____

_____

_____

Changes

36. Are Federal Acquisition Circulars (FACs), changes to the FAR, issued too frequently?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

37. Future FACs are expected to be issued on a quarterly basis in order to assist the contracting community by reducing the need to frequently implement regulatory changes. An exception to the schedule would be statutory changes with short leadtimes. Fewer FACs will be issued each year, but each one is apt to be more voluminous. Are you in favor of this approach?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

38. FACs are generally effective 30 days after publication. Do you usually receive your copy of a FAC:

a. [ ] In a timely manner

b. [ ] Right before it becomes effective.

c. [ ] Shortly after it becomes effective.

d. [ ] 30 days or more after it becomes effective.

e. [ ] Do not have a personal copy.

f. [ ] Not aware of how to obtain a personal copy.

39. At the beginning of each FAC there is a brief synopsis of each subject covered in the FAC. Do you believe that these explanations are:

a. [ ] Useful and informative

b. [ ] Too brief to be of real benefit

c. [ ] Unnecessary material.

40. Should the FACs specifically state how each change should be implemented with respect to solicitations and contracts (i.e., does it apply to solicitations issued or contracts awarded)?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

41. Do you believe that publishing instructional material (e.g., training materials) with the FAC would be useful?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

42. Do you believe that including illustrations, examples, tables, charts, etc. would make the FAR more readily understandable?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

43. Do the existing standard and optional forms prescribed in FAR Part 53 meet your needs?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

44. If your answer is no to question 43, please provide specifics.

_____

_____

Automation

45. In what form do you use the FAR?

[ ] a. Hard copy test only

[ ] b. Computerized version only

[ ] c. Both hard copy text and computerized version

[ ] d. No opinion.

46. Are you interested in using a computerized version of the FAR?

[ ] a. Yes

[ ] b. No

[ ] c. Do not know

47. How often would you use a computerized version of the FAR?

[ ] a. Very often

[ ] b. Often

[ ] c. Occasionally

[ ] d. Seldom

[ ] e. Never

48. Would you utilize a key word computerized search capability to locate subjects in the FAR?

a. [ ] Yes.

b. [ ] No.

c. [ ] Not sure.

49. If you were able to electronically access the text of the recent FAR changes, would you find this useful?

a. [ ] Yes.

b. [ ] No.

c. [ ] Not sure.

50. If you responded yes to question 49, what means of accessing FAR changes would be most utilized?

a. [ ] An electronic bulletin board.

b. [ ] CD ROM.

c. [ ] Magnetic tape.

d. [ ] A floppy disk.

e. [ ] Do not know.

f. [ ] Other. _____

User Data

51. I am employed by:

a. [ ] A civilian department of the Federal Government.

b. [ ] A military department.

c. [ ] Private industry.

d. [ ] Other (please specify) _____

52. My position is:

a. [ ] Purchasing or procurement agent.

b. [ ] Contract specialist.

c. [ ] Contracting officer.

d. [ ] Procurement analyst.

e. [ ] Contract negotiator.

f. [ ] Cost/price analyst.

g. [ ] Auditor.

h. [ ] Contract Administrator.

i. [ ] Attorney.

j. [ ] Other (please specify) _____

53. Mark your highest education level attained.

a. [ ] Did not complete high school.

b. [ ] High school diploma.

c. [ ] Less than four years of college.

d. [ ] Bachelor's degree.

e. [ ] Law degree.

f. [ ] Master's degree.

g. [ ] Doctorate degree.

54. My experience in Federal contracting is:

a. [ ] Less than 1 year.

b. [ ] 1 to 3 years.

c. [ ] 4 to 6 years.

d. [ ] 7 to 10 years.

e. [ ] More than 10 years.

55. To what extent have you received, within the past 5 years, formal training in:

		Little or no extent a.	Some extent b.	Great extent c.	Very great extent d.	Not applicable e.
55.1	Dollar level	[ ]	[ ]	[ ]	[ ]	[ ]
55.2	Organizational level	[ ]	[ ]	[ ]	[ ]	[ ]

16. Please cite any examples where you believe the authority level is:

16.1 Too high_____.

16.2 Too low_____.

Structure

17. Which most accurately reflects your view with respect to the current FAR structure and organization?

a. [ ] Should be retained so familiarity with locations is not lost.

b. [ ] Should be modified as needed to improve the utility of the FAR.

c. [ ] No opinion.

18. Do you favor reorganizing the FAR to separate policy from procedural guidance?

a. [ ] Yes.

b. [ ] No.

c. [ ] No opinion.

19. Is the FAR easy or difficult to use?

a. [ ] Very easy.

b. [ ] Easy.

c. [ ] Difficult.

d. [ ] Very difficult.

e. [ ] No opinion.

20. When you need to locate FAR coverage on a specific topic, are you able to locate the desired material in a reasonable amount of time?

a. [ ] Yes.

b. [ ] Generally.

c. [ ] Occasionally.

d. [ ] Seldom.

e. [ ] No.

f. [ ] No opinion.

21. Does the topic generally appear in the locations at which you expect to find them?

a. [ ] Always.

b. [ ] Usually.

c. [ ] Sometimes.

d. [ ] Rarely.

e. [ ] Never.

f. [ ] No opinion.

22. How would you characterize the newly formulated FAR index in terms of assisting you in locating material in the FAR?

a. [ ] Very useful.

b. [ ] Useful.

c. [ ] Adequate.

d. [ ] Not useful.

e. [ ] Do not use.

23. How could the FAR index be made more useful?

a. [ ] Include more topics in the index.

b. [ ] Include fewer topics in the index.

c. [ ] Include page references.

d. [ ] Provide access to a computerized search capability for locating topics.

e. [ ] Adequate as written.

f. [ ] Other (please specify) _____.

24. When you need to determine which provisions or clauses are applicable to a particular acquisition, do you use the FAR provision and clause matrix?

a. [ ] Very often.

b. [ ] Often.

c. [ ] Occasionally.

d. [ ] Seldom.

e. [ ] Never.

f. [ ] Do not use.

25. Using the FAR provision and clause matrix, can you readily identify the applicable provisions/clauses for specific types of contracts and methods of contracting?

a. [ ] Yes.

b. [ ] No.

c. [ ] Do not use.

26. Do you consider the new FAR matrix to be:

a. [ ] Very useful.

b. [ ] Useful.

c. [ ] Of little value.

d. [ ] Of no value.

e. [ ] Do not use.

27. In the 1984 edition of the FAR each provision/clause in part 52 was preceded by a "preface" that indicated when the provision/clause was to be used. An editorial decision was made to eliminate such prefaces in order to streamline the FAR. The original and current approach may be compared by referring to the prefaces at FAR 52.207–2 and 52.207–3. Do you believe that the elimination of such information:

a. [ ] Streamlines the coverage, thus making the FAR easier to use.

b. [ ] Requires the FAR user to repeatedly research the provision/clause prescriptions in the FAR text, thus making the FAR more difficult to use.

c. [ ] Is desirable because the original prescriptions which were located with the provisions and clauses in FAR part 52 were not all inclusive.

d. [ ] No opinion.

Content

28. Currently, the FAR includes coverage of a topic if it is applicable to more than one agency. This practice:

a. [ ] Makes the FAR more useful.

b. [ ] Unnecessarily clutters the FAR.

c. [ ] No opinion.

29. Currently the FAR includes the substance of statutory requirements and agency regulations pertaining to contracting (e.g., labor regulations, SBA size standards). Would you prefer that such substance be included in future editions of the FAR or that reference to the statutes and regulations be substituted?

a. [ ] Continue substance.

b. [ ] Include references only.

c. [ ] No opinion.

30. Please characterize the usefulness of FAR coverage when you:

		Very useful a.	Useful b.	Adequate c.	Not useful d.	I do not perform e.
30.1	Plan acquisitions	[ ]	[ ]	[ ]	[ ]	[ ]
30.2	Determine method of acquisition	[ ]	[ ]	[ ]	[ ]	[ ]
30.3	Determine contract type	[ ]	[ ]	[ ]	[ ]	[ ]
30.4	Prepare solicitations	[ ]	[ ]	[ ]	[ ]	[ ]
30.5	Evaluate bids/offers	[ ]	[ ]	[ ]	[ ]	[ ]
30.6	Select sources	[ ]	[ ]	[ ]	[ ]	[ ]
30.7	Perform price/cost analyses	[ ]	[ ]	[ ]	[ ]	[ ]
30.8	Negotiate prices	[ ]	[ ]	[ ]	[ ]	[ ]
30.9	Administer contracts	[ ]	[ ]	[ ]	[ ]	[ ]
30.10	Other (specify)	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]

31. How would you rate coverage in the FAR as guidance for acquiring:

		Very useful a.	Useful b.	Adequate c.	Not useful d.	I do not perform e.
31.1	Supplies	[ ]	[ ]	[ ]	[ ]	[ ]
31.2	Services	[ ]	[ ]	[ ]	[ ]	[ ]
31.3	Construction	[ ]	[ ]	[ ]	[ ]	[ ]
31.4	Architect-engineering	[ ]	[ ]	[ ]	[ ]	[ ]
31.5	Research and development	[ ]	[ ]	[ ]	[ ]	[ ]
31.6	Small purchases	[ ]	[ ]	[ ]	[ ]	[ ]
31.7	Utilities	[ ]	[ ]	[ ]	[ ]	[ ]
31.8	Other (specify)	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]

32. Does the FAR provide adequate coverage of socio-economic requirements (e.g., small business set-asides, subcontracting with small and disadvantaged businesses, contracting with the Small Business Administration under the 8(a) program)?

a. [ ] Yes.

b. [ ] No.

c. [ ] No opinion.

33. Please cite any examples where you believe the coverage of socio-economic programs is inadequate.

_____

_____

34. Are there any additional subjects that should be covered in the FAR?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

35. If yes to question 34, please specify subjects:

_____

_____

_____

Changes

36. Are Federal Acquisition Circulars (FACs), changes to the FAR, issued too frequently?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

37. Future FACs are expected to be issued on a quarterly basis in order to assist the contracting community by reducing the need to frequently implement regulatory changes. An exception to the schedule would be statutory changes with short leadtimes. Fewer FACs will be issued each year, but each one is apt to be more voluminous. Are you in favor of this approach?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

38. FACs are generally effective 30 days after publication. Do you usually receive your copy of a FAC:

a. [ ] In a timely manner

b. [ ] Right before it becomes effective.

c. [ ] Shortly after it becomes effective.

d. [ ] 30 days or more after it becomes effective.

e. [ ] Do not have a personal copy.

f. [ ] Not aware of how to obtain a personal copy.

39. At the beginning of each FAC there is a brief synopsis of each subject covered in the FAC. Do you believe that these explanations are:

a. [ ] Useful and informative

b. [ ] Too brief to be of real benefit

c. [ ] Unnecessary material.

40. Should the FACs specifically state how each change should be implemented with respect to solicitations and contracts (i.e., does it apply to solicitations issued or contracts awarded)?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

41. Do you believe that publishing instructional material (e.g., training materials) with the FAC would be useful?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

42. Do you believe that including illustrations, examples, tables, charts, etc. would make the FAR more readily understandable?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

43. Do the existing standard and optional forms prescribed in FAR Part 53 meet your needs?

[ ] a. Yes

[ ] b. No

[ ] c. No opinion

44. If your answer is no to question 43, please provide specifics.

_____

_____

Automation

45. In what form do you use the FAR?

[ ] a.

[ ] b.

[ ] c.

[ ] d.

Hard copy test only

Computerized version only

Both hard copy text and computerized version

No opinion.

46. Are you interested in using a computerized version of the FAR?

[ ] a. Yes

[ ] b. No

[ ] c. Do not know

47. How often would you use a computerized version of the FAR?

[ ] a.

[ ] b.

[ ] c.

[ ] d.

[ ] e.

Very often

Often

Occasionally

Seldom

Never

48. Would you utilize a key word computerized search capability to locate subjects in the FAR?

a. [ ] Yes.

b. [ ] No.

c. [ ] Not sure.

49. If you were able to electronically access the text of the recent FAR changes, would you find this useful?

a. [ ] Yes.

b. [ ] No.

c. [ ] Not sure.

50. If you responded yes to question 49, what means of accessing FAR changes would be most utilized?

a. [ ] An electronic bulletin board.

b. [ ] CD ROM.

c. [ ] Magnetic tape.

d. [ ] A floppy disk.

e. [ ] Do not know.

f. [ ] Other. _____

User Data

51. I am employed by:

a. [ ] A civilian department of the Federal Government.

b. [ ] A military department.

c. [ ] Private industry.

d. [ ] Other (please specify) _____

52. My position is:

a. [ ] Purchasing or procurement agent.

b. [ ] Contract specialist.

c. [ ] Contracting officer.

d. [ ] Procurement analyst.

e. [ ] Contract negotiator.

f. [ ] Cost/price analyst.

g. [ ] Auditor.

h. [ ] Contract Administrator.

i. [ ] Attorney.

FOR FURTHER INFORMATION CONTACT: Sam Della Vecchia, (301) 966-5660.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Administration of the Medicare program is governed by the Medicare statute, which is found in title XVIII of the Social Security Act (the Act). Section 1862(a)(1) of the Act provides that Medicare will not pay for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

We have interpreted this statutory provision to exclude from Medicare coverage those medical and other health services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. Section 1862(a)(1) of the Act gives us the flexibility to cover new technologies and procedures on a timely basis, provided they are safe and effective and not experimental or investigational.

Section 1862(a)(1) of the Act also gives us the flexibility to refine our coverage policies as we learn more about the utility of particular services. Accordingly, we have developed, through regulations, manuals, and other guidelines, specific coverage provisions that describe the circumstances under which we will pay for particular services. Our coverage provisions are designed to ensure that Medicare beneficiaries have access to all services that can be appropriately and effectively used for the diagnosis or treatment of their illnesses or injuries.

B. Statutory Basis for Coverage of Cervical Thermography

Section 1862(a)(1) of the Act requires us to determine whether cervical thermography is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. Cervical thermography is a procedure that uses infrared photography to detect and measure surface temperature variations of the skin of the neck. The procedure is performed by placing the patient in a room with a controlled temperature and humidity. The patient's head is tilted back and the neck is photographed with a camera that is positioned above the patient's head. The photographs are then interpreted by a physician.

Cervical thermography is used to detect abnormalities in the cervical region of the spine. Abnormalities are detected by identifying areas of increased or decreased temperature. Increased temperature is associated with inflammatory processes, while decreased temperature is associated with ischemia. Cervical thermography is used to detect a variety of conditions, including cervical disc disease, cervical arthritis, cervical spondylosis, and cervical radiculopathy.

C. Medicare Coverage Issues Process

Our coverage policies are developed through a variety of mechanisms. Frequently, we develop policies in response to requests from carriers, beneficiaries, physicians, or other interested parties. We also develop policies in response to changes in the Medicare statute that require us to cover new services or to modify our coverage of existing services.

Our Medicare Coverage Issues Manual (MCIM) contains our policies for determining whether certain services are reasonable and necessary. The MCIM is available to the public for a fee through the Government Printing Office. Carriers, fiscal intermediaries, and peer review organizations also have access to the MCIM.

Before we make a decision to cover a new service or to change our coverage of an existing service, we usually publish a notice in the Federal Register announcing our proposed coverage decision and inviting public comment. We then publish a notice in the Federal Register announcing our final coverage decision. We also publish instructions to our carriers and intermediaries to implement the coverage decision.

D. Evaluation of Cervical Thermography

We have received requests from carriers and beneficiaries to cover cervical thermography. We have also received requests to cover the procedure from manufacturers of cervical thermography equipment. We have evaluated the available medical literature concerning cervical thermography and have determined that the procedure is not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. Therefore, we have decided to exclude cervical thermography from coverage under Medicare.

We have reviewed the medical literature concerning cervical thermography and have found no evidence that the procedure is effective in detecting any of the conditions for which it is used. Specifically, we have found no evidence that cervical thermography is effective in detecting cervical disc disease, cervical arthritis, cervical spondylosis, or cervical radiculopathy. We have found no evidence that cervical thermography is effective in detecting inflammatory lesions, soft tissue injury, foreign bodies, or hyperplastic lesions. The following are some examples, by category, of the use of cervical thermography in diagnosing lesions:

a. Inflammatory lesions:

i. Soft tissue injury (for example, whiplash).

ii. Presence of a foreign body (for

j. [ ] Other (please specify) _____

53. Mark your highest education level attained.
a. [ ] Did not complete high school.
b. [ ] High school diploma.
c. [ ] Less than four years of college.
d. [ ] Bachelor's degree.
e. [ ] Law degree.
f. [ ] Master's degree.
g. [ ] Doctorate degree.

54. My experience in Federal contracting is:
a. [ ] Less than 1 year.
b. [ ] 1 to 3 years.
c. [ ] 4 to 6 years.
d. [ ] 7 to 10 years.
e. [ ] More than 10 years.

55. To what extent have you received, within the past 5 years, formal training in:

		Little or no extent	Some extent	Great extent	Very great extent	Not applicable to job
		a.	b.	c.	d.	e.
55.1	Use of the FAR	[ ]	[ ]	[ ]	[ ]	[ ]
55.2	Contract pricing/negotiation skills	[ ]	[ ]	[ ]	[ ]	[ ]
55.3	Understanding contract administration responsibilities	[ ]	[ ]	[ ]	[ ]	[ ]
55.4	Sealed bid acquisitions	[ ]	[ ]	[ ]	[ ]	[ ]
55.5	Negotiated acquisitions	[ ]	[ ]	[ ]	[ ]	[ ]
55.6	Small purchase	[ ]	[ ]	[ ]	[ ]	[ ]
55.7	Contract terminations	[ ]	[ ]	[ ]	[ ]	[ ]
55.8	Contract law	[ ]	[ ]	[ ]	[ ]	[ ]

56. The dollar limit of my contracting authority is:
a. [ ] No contracting authority.
b. [ ] $2,000.
c. [ ] $25,000.
d. [ ] $100,000.
e. [ ] $1,000,000.
f. [ ] $10,000,000.
g. [ ] $50,000,000.
h. [ ] More than $50,000,000.

Follow-up:

57. If you wish, provide your name and telephone number so that we may contact you for more information and recommendations.

Name

Telephone number including area code

Comments/Suggestions

58.

Thank you for taking the time to respond to this survey. Just staple the booklet and drop it in any mailbox.

[FR DOC. 90-23550 Filed 10-5-90; 8:45 am]
BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mine Health Research Advisory Committee (MHRAC): Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting.

Federal Register Citation of Previous Announcement: September 20, 55 FR 38752.

Previously Announced Time and Date: 12:30 p.m.—5 p.m., October 10, 1990, 9 a.m.—12:30 p.m., October 11, 1990.

Change in the Meeting: This meeting has been cancelled.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Melvin L. Myers, Executive Secretary, MHRAC, NIOSH, CDC, 1600 Clifton Road, NE., D37, Atlanta, Georgia 30333, telephone 404/639-2376 or FTS 236-2376.

Dated: October 3, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-23886 Filed 10-5-90; 8:45 am]
BILLING CODE 4160-18-M

Health Care Financing Administration

[BPD-645-PN]

RIN: 0938-AF18

Medicare Program; Withdrawal of Coverage of Thermography

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces the Medicare program's proposal to withdraw Medicare coverage of thermography for all indications. Evidence suggests that thermography is not a useful diagnostic modality. Therefore, it does not meet HCFA's criteria for effectiveness.

DATES: To assure consideration, comments must be received at the appropriate address, as provided below, no later than 5 p.m. on December 10, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-645-PN, Baltimore, Maryland 21207.

If you prefer, you many deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD-645-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Sam Della Vecchia, (301) 966-5366.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Administration of the Medicare program is governed by the Medicare statute, title XVIII of the Social Security Act (the Act). The Medicare law provides coverage for broad categories of benefits, including inpatient and outpatient hospital care, skilled nursing facility (SNF) care, home health care, and physicians' services. It places general and categorical limitations on the coverage of the services furnished by certain health care practitioners, such as dentists, chiropractors and podiatrists, and it specifically excludes some categories of services from coverage, such as cosmetic surgery, personal comfort items, custodial care, routine physical checkups, and procedures that are not reasonable and necessary for diagnosis or treatment of an illness or injury. The statute also provides direction as to the manner in which payment is made for Medicare services, the rules governing eligibility for services, and the health, safety and quality standards to be met by institutions furnishing services to Medicare beneficiaries.

The Medicare law does not, however, provide an all-inclusive list of specific items, services, treatments, procedures, or technologies covered by Medicare. Thus, except for the examples of durable medical equipment in section 1861(n) of the Act, some of the medical and other health services listed in section 1861(s) of the Act, and exclusions from coverage listed in section 1862(a) of the Act, the statute does not specify medical devices, surgical procedures, or diagnostic or therapeutic services that should be covered or excluded from coverage.

The intention of Congress, at the time the Medicare Act was enacted in 1965, was that Medicare would provide health insurance to protect the elderly or disabled from the substantial costs of health care services. The program was designed generally to cover services ordinarily furnished by hospitals, SNF's, and physicians licensed to practice medicine. Congress understood that questions as to coverage of specific services would invariably arise and would require a specific decision of coverage by those administering the program. Thus, it vested in the Secretary the authority to make these decisions. Among the provisions relevant to the determination of coverage is section 1862(a)(1)(A) of the Act, which prohibits payment for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

We have interpreted this statutory provision to exclude from Medicare coverage those medical and other health care services that are not demonstrated to be safe and effective by acceptable clinical evidence. Effectiveness in this context is considered to be the probability of benefit to individuals from a medical item, service, or procedure for a given medical problem under average conditions of use; that is, day-to-day medical practice. In day-to-day medical practice, physicians diagnose and treat clinical conditions following inquiry into an individual's medical history, performance of a physical examination, and interpretations of a variety of diagnostic tests and procedures. To be of value to the physician, the information obtained from any diagnostic test or procedure must be sufficiently accurate to establish or rule out the presence of a given disease. Payment may not be made under Medicare for any diagnostic test or procedure that does not produce accurate results when properly performed, since that test cannot be considered "reasonable and necessary for the diagnosis or treatment of illness or injury."

B. Medicare Coverage of Thermography

Thermography is the measurement of self-emanating infrared radiation that reveals temperature variation at the surface of the body. The thermographic device senses body temperature and demonstrates areas of differing heat emission by producing brightly colored patterns. Each color represents a specific temperature level. Proponents of the device believe that interpretations of the color patterns according to designated anatomic distributions are a useful aid in diagnosing a vast array of diseases.

Currently, thermography may be covered under Medicare for the following indications when disease or injury is suspected:

1. Peripheral vascular disease (for example, thrombophlebitis, arterial insufficiency).

2. Musculoskeletal injury (for example, low back injury involving musculoligamentous soft tissue or herniated disc).

3. Cervical thermography for diagnosis of extra-cranial vessel disease causing carotid insufficiency (CNS) symptoms, and for diagnosis of inflammatory, neoplastic, and hyperplastic lesions. The following are some examples, by category, of the use of cervical thermography in diagnosing lesions:

a. Inflammatory lesions:

i. Soft tissue injury (for example, whiplash).

ii. Presence of a foreign body (for example, lox loa, a filarial roundworm infection).

b. Neoplastic lesions:

i. Parathyroid adenoma.

ii. Isotopically cold thyroid nodule.

iii. Tumor of the larynx with metastases to neck lymph nodes.

c. Hyperplastic lesions:

i. Parathyroid adenoma.

ii. Isotopically hot thyroid nodule.

C. Recommendations To Withdraw Coverage of Thermography

Early in 1982, contractors who process Medicare claims recommended that HCFA limit coverage of thermography. Their recommendation was based on the belief that more precise techniques have been developed, since the advent of thermography, for diagnosing disease. Moreover, the contractors believed that thermography was ineffective as a diagnostic technique. As a result of the contractors' recommendation, a compilation of the latest medical and scientific evidence was presented to the HCFA Physicians Panel. The HCFA Physicians Panel, which meets approximately once every six to eight weeks, is composed of physicians and other health professionals in HCFA's Central Office and their counterparts from the Public Health Service (PHS). The Panel recommended that PHS's Office of Health Technology Assessment (OHTA) conduct an assessment of the safety and effectiveness of thermography as a diagnostic technique in accordance with HCFA's longstanding policy, discussed in the proposed rule published on January 30, 1968 in the Federal Register (54 FR 4302)—"Medicare Program Criteria and Procedures for Making Medical Services Coverage Decisions that Relate to Health Care Technology." That proposed rule would establish in regulations the criteria for and procedures used in making coverage decisions and in re-evaluating established coverage decisions. HCFA and OHTA agreed that two separate assessments be conducted, the first assessment on thermography for use in detecting breast disease, and the other on thermography for indications other than breast disease. HCFA forwarded this request for assessment to the PHS on May 27, 1982.

We received the OHTA assessment on thermography for use in detecting breast disease early in 1984 (assessment report dated December 21, 1983). The assessment was entitled "Public Health Service Medical and Scientific Evaluation—Thermography for Breast Cancer Detection (1983)" and included a bibliography of studies evaluating

notice, OHTA announced that it was conducting an assessment of diagnostic thermography for all indications other than breast lesions. Finally, OHTA researched and analyzed published medical and scientific literature and relevant studies and reports.

According to the OHTA appraisal, the weight of available evidence does not

proposed rule that describes the process for making coverage decisions that states that the process for withdrawal of coverage of services would include the publication of a proposed notice of that withdrawal in the Federal Register.

The provisions of this notice would not affect any existing Medicare

conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Social Security Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area and with fewer than 50 beds.

We are not preparing a rural impact statement since we have determined,

in Building 31, C Wing, Conference room 10. The meeting will be open to the public.

The purpose of the meeting will be to examine priorities in the NIH AIDS research program in light of recent budgetary constraints. In addition, we will address the Report of the National Commission on AIDS as it relates to the

programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which

We received the OHTA assessment on thermography for use in detecting breast disease early in 1984 (assessment report dated December 21, 1983). The assessment was entitled "Public Health Service Medical and Scientific Evaluation—Thermography for Breast Cancer Detection (1983)" and included a bibliography of studies evaluating thermography's effectiveness in breast cancer detection. Based on the recommendation of OHTA, we revised our policy to exclude coverage of this particular use of thermography, effective July 20, 1984. However, coverage of thermography continues for the diagnoses of conditions in anatomic areas other than the breast. (Thermography, when used for diagnosing conditions in anatomic areas other than the breast, is listed as a covered technology in the Medicare Coverage Issues Manual (HCFA Pub. 6)—Section 50–5, "Thermography," and in the notice "National Coverage Decisions," published in the Federal Register on August 21, 1989 (54 FR 34555).)

On March 21, 1985, OHTA issued an assessment on thermography for indications other than breast disease. On August 5, 1985, OHTA withdrew this assessment in order to review additional, recently submitted information. After reviewing the latest scientific data, OHTA issued its assessment on January 26, 1989 on Thermography for diagnosing indications other than breast disease. The assessment was entitled "Public Health Service Assessment—Thermography for Indications Other than Breast Lesions (1988)" and included a bibliography of studies evaluating thermography's effectiveness for non-breast indications. (Copies of this assessment may be obtained from the Publications and Information Branch, Agency for Health Care Policy and Research, 5600 Fishers Lane, Parklawn Building, Room 18–12, Rockville, Maryland 20857. Note: The reference on page 74 of the assessment to the "1987 assessment" is a typographical error. The correct date is 1988.) OHTA recommended that we discontinue coverage of thermography for the diagnosis of conditions in anatomic areas other than the breast. During its assessment, OHTA solicited information and advice from other PHS components including the Food and Drug Administration (FDA) and the National Institutes of Health (NIH). It also evaluated the information from medical specialty groups and respondents to a Federal Register notice published on March 16, 1984 (49 FR 9961). In that notice, OHTA announced that it was conducting an assessment of diagnostic thermography for all indications other than breast lesions. Finally, OHTA researched and analyzed published medical and scientific literature and relevant studies and reports.

According to the OHTA appraisal, the weight of available evidence does not indicate that thermography is a clinically effective diagnostic procedure for non-breast indications. The issues related to the clinical use of thermography are its sensitivity, specificity, and predictive value as a means of arriving at specific diagnoses. The evidence points out that thermography does not assist in accurately diagnosing an illness. Moreover, there is no evidence to indicate that thermography provides a useful guide in monitoring the effect of treatment of any disease entity. In seeking advice from NIH, OHTA was advised that while thermography might confirm the presence of temperature differences, temperature differences in themselves add very little to a physician's assessment based on the patient's history, physical examination, and other studies, thereby necessitating the use of other procedures to reach a specific diagnosis.

To date, there have been no controlled clinical trails that provide conclusive evidence establishing the usefulness of thermography as a primary diagnostic guide. In other words, this procedure only confirms the presence of temperature differences, which, in themselves, do not indicate a specific diagnosis. NIH concluded that the diagnostic efficacy of thermography cannot be resolved in the absence of additional experimental research and that there is a need for well-designed studies to validate its usefulness. Futhermore, FDA in its advice to OHTA supports the conclusion that thermography is an adjunct to other clinical diagnostic procedures and that it neither detects any conditions nor provides diagnoses of those conditions. FDA currently requires that labeling for thermography instrumentation specify only adjunctive use, since, in the agency's view, the clinical implications of anomalous temperature patterns can be ascertained only by other diagnostic means.

II. Provisions of the Proposed Notice

Based on OHTA's conclusion that the available scientific evidence does not substantiate the effectiveness of thermography, we proposed to exclude thermography for all indications. Issuance of this notice is consistent with the January 30, 1989 Federal Register proposed rule that describes the process for making coverage decisions that states that the process for withdrawal of coverage of services would include the publication of a proposed notice of that withdrawal in the Federal Register.

The provisions of this notice would not affect any existing Medicare regulations. However, they would affect the following manual instruction:

Medicare Coverage Issues Manual (HCFA Pub. 6)—Section 50–5, Thermography

III. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. 12291 criteria for a "major rule:" that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all physicians and facilities that are providing this diagnostic technique to be small entities.

In 1987, the total Medicare charges for thermography were significantly less than $500,000. Thus, this proposed notice does not meet the $100 million criterion; nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this proposed notice is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required. Further, we have determined and the Secretary certifies that this proposed notice would not have a substantial impact on a substantial number of small entities, and we have, therefore, not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Social Security Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area and with fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies that this proposed notice would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on proposed notices, we are not able to acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments that we receive by the date and time specified in the "DATE" section of this preamble, and if we proceed with a final notice, we will respond to the major issues in the preamble of that notice.

V. Collection of Information Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

(Sections 1861 and 1862 of the Social Security Act (42 U.S.C 1395x and 1395y.)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare Supplementary Medical Insurance.)

Dated: June 7, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: August 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–23690 Filed 10–5–90; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Notice of Meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee, NIH

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Acquired Immunodeficiency Syndrome (AIDS) Program Advisory Committee, NIH on November 19–20, 1990 at the National Institutes of Health, Bethesda, MD. The meeting will take place on November 19 from 9 a.m. to 5 p.m., and on November 20 from 9 a.m. to 12 p.m., in Building 31, C Wing, Conference room 10. The meeting will be open to the public.

The purpose of the meeting will be to examine priorities in the NIH AIDS research program in light of recent budgetary constraints. In addition, we will address the Report of the National Commission on AIDS as it relates to the NIH. Anthony S. Fauci, Associate Director for AIDS Research, National Institutes of Health, Shannon Building, room 201, Bethesda, MD 20892, (301) 496–0357, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: October 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23710 Filed 10–5–90; 8:45 am]

BILLING CODE 4140–01–M

National Biotechnology Policy Board; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Biotechnology Policy Board on October 29, 1990. The meeting will be held at the National Institutes of Health (NIH), Building 31C, Conference room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public, the Board will discuss the various programs of the Federal government relating to biotechnology including the type of biotechnology-related research, research training, and career development activities. The Board may consider nonconfidential, privately-funded biotechnology activities including both basic and applied research and the development of commercial biotechnology-related industries and products.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, fax (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which biotechnology could be included, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: October 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23711 Filed 10–5–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Asthma Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Friday, November 2, 1990, from 8:30 a.m. to 3 p.m., at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, 20814, (301) 897–9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Asthma Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Mr. Robinson Fulwood, Coordinator, National Asthma Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A18, Bethesda, Maryland 20892, (301) 496–1061.

Dated: October 2, 1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90–23712 Filed 10–5–90; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the Division of Research Grants Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the

BEST COPY AVAILABLE

Division of Research Grants Advisory Committee, November 19, 1990, Conference room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to 4:30 p.m. The one-day meeting will include a discussion of the procedures and quality of peer review. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–7534, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Westwood Building, room 449, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–7441, will provide substantive program information upon request.

Dated: October 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23713 Filed 10–5–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 29, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 24, 1990.

Carol D. Shull,

Chief of Registration, National Register.

KANSAS

Butler County

Augusta Theater, 525 State St., Augusta, 90001577

Franklin County

Tauy Creek Bridge (Metal Truss Bridges in Kansas MPS), Over Tauy Cr. N of I–35, Ottawa vicinity, 90001587

Leavenworth County

Hollywood Theater, 401 Delaware St., Leavenworth, 90001575

Morris County

Big John Farm Limestone Bank Barn, N of US 56, E of Big John Cr., Council Grove vicinity, 90001576

MARYLAND

Harford County

Heighe House, Jct. of Southhampton and Moores Mill Rds., Bel Air vicinity, 90001568

Woodview, 1236 Somerville Rd., Bel Air vicinity, 90001574

Somerset County

St. Mark's Episcopal Church, Jct. of Westover—Marion and Charles Barnes Rds., Kingston vicinity, 90001569

MICHIGAN

Ingham County

Penfil Apartments, 106–110 S. Hosmer St., Lansing, 90001654

NEW MEXICO

Los Alamos County

Chupaderos Canyon Small Structural Site (Cultural Developments on the Pajarito Plateau MPS), Address Restricted, Espanola vicinity, 90001585

Chupaderos Mesa Village (Cultural Developments on the Parjarito Plateau MPS), Address Restricted, Espanola vicinity, 90001583

Cuaja Water/Soil Control Site (Cultural Developments on the Pajarito Plateau MPS), Address Restricted, Espanola vicinity, 90001582

Rio Arriba County

Corral Canyon Pueblo Site (Cultural Developments on the Pajarito Plateau MPS), Address Restricted, Espanola vicinity, 90001581

Corral Mesa Covate Pueblo Site (Cultural Developments on the Pajarito Plateau MPS), Address Restricted, Espanola vicinity, 90001584

NORTH CAROLINA

Wake County

Dix Hill, Roughly bounded by Dorothea Dr., Lake Wheeler Rd. and the Norfolk Southern RR tracks, Raleigh, 90001638

OHIO

Cuyahoga County

Magnolia—Wade Park Historic District, Roughly bounded by Asbury Ave., E. 118th St., Wade Park Ave., Mistletoe Dr., Magnolia Dr., and E. 105th St., Cleveland, 90001566

OREGON

Clackamas County

Clark, Elizabeth, House, 812 John Adams St., Oregon City, 90001590

Coos County

Block, A.H. and Company, Building, 531 Spruce St., Myrtle Point, 90001586

Hood River County

IOOF—Paris Fair Building, 315 Oak St., Hood River, 90001598

Loomis, Robert and Mabel, House, 1100 State St., Hood River, 90001599

Murphy, Lester and Hazel, House, 1009 Sherman St., Hood River, 90001600

Shaw—Dumble House, 318 Ninth St., Hood River, 90001601

Jackson County

Colver, Samuel, House, 150 Main St., Phoenix, 90001596

Josephine County

Fetzner, Joseph, House, 214 NE. Fetzner St., Grants Pass, 90001595

Hugo Community Baptist Church, 6501 Hugo Rd., Grants Pass vicinity, 90001597

Lane County

Peters, A. V., House, 1611 Lincoln St., Eugene, 90001597

Wilson, Woodrow, Junior High School, 850 W. Twelfth Ave., Eugene, 90001602

Linn County

Cascadia Cave, Address Restricted, Cascadia vicinity, 90001589

Crandall, Louis A., House, 660 Main St., Lebanon, 90001585

Multnomah County

Buck Apartment Building, 415 NW. Twenty-first Ave., Portland, 90001594

Burrell, Walter F., House, 2610 SE. Hawthorne, Portland, 90001593

Morgan, Melinda E., House, 3115 NW. Thurman St., Portland, 90001592

Wheeldon Apartment Building, 910 SW. Park Ave., Portland, 90001591

PENNSYLVANIA

Berks County

Bahr Mill Complex (Gristmills in Berks County MPS), Ironstone Dr., Colebrookdale Township, Gabelsville, 90001611

Borneman Mill (Gristmills in Berks County MPS), Off PA 100 SW of Clayton, Washington Township, Bally vicinity, 90001612

Brobst Mill (Gristmills in Berks County MPS), Off T 814 on Pine Cr., Albany Township, Lenhartsville vicinity, 90001613

Dreibelbis Mill (Gristmills in Berks County MPS), Jct. of Dreibelbis Mill and Bellevue Rds., Perry Township, Shoemakersville vicinity, 90001614

Geiger Mill (Gristmills in Berks County MPS), Jct. of Mill Rd. and PA 82, Robeson Township, Geigertown, 90001615

Griesemer—Brown Mill Complex (Gristmills in Berks County MPS), Brown's Mill Rd. at Monocacy Cr., Amity Township, Birdsboro vicinity, 90001616

Guldin Mill (Gristmills in Berks County MPS), Off PA 73 SE of jct. with US 222, Maiden Creek Township, Blandon, 90001617

Main Mill (Gristmills in Berks County MPS), Jct. of Hain Mill Rd. and T 495, Lower Heidelberg Township, Wernersville vicinity, 90001618

Johnson, Nicholas, Mill (Gristmills in Berks County MPS), Mill Crest Rd., Colebrookdale Township, New Berlinville, 90001619

Kauffman Mill (Gristmills in Berks County MPS), Jct. of Mill and Mill Hill Rds., Upper Bern Township, Shartlesville, 90001620

Knabb—Bieber Mill (Gristmills in Berks County MPS), Bieber Mill Rd. at Monocacy Ct., Oley Township, Stony Creek Mills vicinity, 90001621

Kutz Mill (Gristmills in Berks County MPS), Kutz Mill Rd. at Sacony Cr., Greenwich Township, Kutztown vicinity, 90001622

Long—Hawerter Mill (Gristmills in Berks County MPS), Longsdale Rd. at Little Lehigh Cr., Longswamp Township, Topton vicinity, 90001623

Merkel Mill (Gristmills in Berks County MPS), Dreibelbis Station Rd. at Maiden Cr., Greenwich Township, Lenhartsville vicinity, 90001625

Merkel Mill Complex (Gristmills in Berks County MPS), Jct. of PA 662 and PA 143, Richmond Township, Virginville vicinity, 90001626

Mill at Lobachsville (Gristmills in Berks County MPS), Mill Rd. at Pine Cr., Pike Township, Lobachsville, 90001624

Moselem Farms Mill (Gristmills in Berks County MPS), Jct. of PA 662 and Forge Rd., Richmond Township, Moselem, 90001627

Rieser Mill (Gristmills in Berks County MPS), Jct. of Grange and Cross Keys Rds., Bern Township, Leesport vicinity, 90001628

Seyfert Mill (Gristmills in Berks County MPS), Jct. of Old US 22 and Campsite Rd., Upper Tulpehocken Township, Strausstown vicinity, 90001629

Snyder Mill (Gristmills in Berks County MPS), Oley Line Rd. at Monocacy Cr., Exeter Township, Limekiln vicinity, 90001630

Spannuth Mill (Gristmills in Berks County MPS), Jct. of Frystown and Crosskill Creek Rds., Bethel Township, Frystown vicinity, 90001631

Stein Mill (Gristmills in Berks County MPS), PA 737 at Mill Cr., Greenwich Township, Kutztown vicinity, 90001632

Thompson Mill (Gristmills in Berks County MPS), Golf Course Rd. at Seidel Cr., Robeson Township, Gibraltar vicinity, 90001633

Weidner Mill (Gristmills in Berks County MPS), Blacksmith Rd. at Manatawny Cr., Amity Township, Earlville vicinity, 90001634

Hertz Mill (Gristmills in Berks County MPS), 60 Erner St., Wernersville, 90001635

Yoder Mill (Gristmills in Berks County MPS), Yoder Rd. at Oysterville Cr., Pike Township, Pikeville, 90001636

Chester County

Brinton, George, House, PA 100, 1 mi. N of jct. with US 1, Birmingham Township, Chadds Ford, 90001608

Fayette County

Nutt, Adam Clarke, Mansion, 28 Nutt Ave., Uniontown, 90001607

Montomery County

Elkins Railrood Station, Philadephia and Reading Railrood, Jct. of Spring and Park Avee., Cheltenhan Township, Elkins Park, 90001609

Northamptoo County

Easton Cemetery, 401 N. Seventh St., Easton, 90001610

SOUTH DAKOTA

Beadle County

Dairy Building, Off Third St. near the South Dakota State Fair Grounds, Huron, 90001642

Day County

Zoar Norwegian Lutheran Church, 7 mi. E, 5 mi. N of Grenville, Grenville vicinity, 90001644

Jackson County

Jones, Tom, Ranch, 5½ mi. S of Midland, Midland vicinity, 90001653

Lawrence County

Ainsworth, Oliver N., House, 340 Kansas, Spearfish, 90001646

Corbin, James A., House, 345 Main St., Spearfish, 90001651

Court, Henry, House, 329 Main St., Spearfish, 90001652

Hewes, Arthur, House, 611 St. Joe, Spearfish, 90001650

Spearfish City Hall, 722 Main St., Spearfish, 90001649

Sunderland, James, House, 711 Canyon, Spearfish, 90001648

Whitney, Mary, House, 704 Eighth St., Spearfish, 90001647

McPherson County

Eureka Lutheran College, 301 Fourth St., Eureka, 90001642

Yankton County

Doyle, Harold R. (H. A.), House, 712 W. Third St., Yankton, 90001645

TENNESSEE

Bedford County

Farrar Homeplace, 170 Ike Farrar Rd., Shelbyville vicinity, 90001657

Davidson County

Dozier Farm, 8451 River Rd. Pike, Nashville vicinity, 90001580

Dyer County

King, Edward Moody, House, 512 Finley St., Dyersburg, 90001658

Hamilton County

Cravens-Coleman House, 1 Cravens Ter., Chattanooga, 90001655

Jackson County

Gainesboro Historic District, Roughly bounded by Cox, Minor, Montpelier and Mark Twain Sts., Gainesboro, 90001570

Knox County

Park City Historic District, Roughly bounded by Washington Ave., Cherry St., Woodbine Ave., Beaman St., Magnolia Ave. and Winona St., Knoxville, 90001578

Madison County

Northwood Avenue Historic District, 1–38 Northwood Ave., Jackson, 90001659

Marion County

South Pittsburg Historic District, Roughly bounded by Elm & Walnut Aves. and 2nd & 7th Sts., South Pittsburg, 90001573

Maury County

Derryberry House, New Lasea Rd. E of jct. with I–65, Spring Hill vicinity, 90001656

Rutherford County

Hill, Walter, Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee MPS), US 231 at Stones R., Murfreesboro, 90001660

Shelby County

Fairview Junior High School, 750 E. Parkway S., Memphis, 90001571

Pinch-North Main Commerical District (Boundary Increase), 122 Jackson Ave., Memphis 90001637

Sumner County

Greenfield, 663 Rock Springs Rd., Castalian Springs vicinity, 90001579

VIRGINIA

Petersburg Independent City

Petersburg Courthouse Historic District, Roughly bounded by W. Bank, N. Adams, W. Washington and N. Market Sts., Petersburg, 90001572

WASHINGTON

Grant County

Stratford School (Rural Public Schools of Washington State MPS), Just off WA 7, Stratford, 90001606

Spokane County

Cheney Odd Fellows Hall, 321 First St., Cheney, 90001639

Walla Walla County

Green Park School, 1105 Isaacs Ave., Walla Walla, 90001604

Yakima County

Brackett, E. William, House, 2806 Tieton Dr., Yakima, 90001605

McAllister, Alexander, House, 402 W. White St., Union Gap, 90001603

WEST VIRGINIA

Fayette County

Kay Moor, Along the New R. S of US 19, Fayetteville vicinity, 90001641

Raleigh County

Trump—Lilly Farmstead, WV 26/3m 2.5 mi. from WV 26, Hinton vicinity, 90001640

[FR Doc. 90-23709 Filed 10-5-90; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 22, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments

concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by October 24, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Fire Station No. 10 (Historic Fire Stations of Birmingham MPS), 4120 2nd Ave. S., Birmingham, 90001556

Fire Station No. 11 (Historic Fire Stations of Birmingham MPS), 1350 13th St. N., Birmingham, 90001557

Fire Station No. 12 (Historic Fire Stations of Birmingham MPS), 15 57th St. S., Birmingham, 90001558

Fire Station No. 15 (Historic Fire Stations of Birmingham MPS), 1345 Steiner Ave., SW., Birmingham, 90001559

Fire Station No. 16 (Historic Fire Stations of Birmingham MPS), 1621 Ave. G, Birmingham, 90001560

Fire Station No. 19 (Historic Fire Stations of Birmingham MPS), 7713 Division Ave., Birmingham, 90001561

Fire Station No. 22 (Historic Fire Stations of Birmingham MPS), 3114 Clairmont Ave., Birmingham, 90001562

Fire Station No. 3 (Historic Fire Stations of Birmingham MPS), 2210 Highland Ave., Birmingham, 90001554

Fire Station No. 6 (Historic Fire Stations of Birmingham MPS), 317 15th N., Birmingham, 90001555

Fire Station (Historic Fire Stations of Birmingham MPS), NE Corner 8th Ave. and Huron St., Birmingham, 90001563

ALASKA

Bethel Borough-Census Area

First Mission House, 291 Third Ave., Bethel, 90001551

MARYLAND

Somerset County

Grace Episcopal Church, Mt. Vernon Rd. N of jct. with Ridge Rd., Mt.Vernon vicinity, 90001565

St. John's Methodist Episcopal Church and Joshua Thomas Chapel, Deal Island Rd. N of jct. with Tangier Rd., Deal Island, 90001550

MASSACHUSETTS

Middlesex County

Framingham Centre Common Historic District, Roughly centered on Framingham Centre Common, between MA 9 and I-90, Framingham, 90001564

MINNESOTA

Hennepin County

Swinford Townhouses and Apartments, 1213-1221, 1225 Hawthorne Ave., Minneapolis, 90001552

NEW JERSEY

Bergen County

Ackerman-Dennett House (Saddle River MRA), 81 W. Saddle River Rd., Saddle River, 90001553

Burlington County

Fenwick Manor, 15 Springfield Rd. (Pemberton township), New Lisbon, 90001549

VIRGINIA

Colonial Heights Independent City

Conjurer's Field Archeological Site (44CF20), Address Restricted, Colonial Heights (Independent City), 90001139

A proposed move is being considered for the following property:

INDIANA

Huntington County

Chief Richardville House W of Huntington on US 24 & IN 9/37 Huntington 85002446

[FR Doc. 90-23770 Filed 10-5-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated August 20, 1990, and published in the Federal Register on August 29, 1990 (55 FR 35376), Abbott Laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23687 Filed 10-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated August 6, 1990, and published in the Federal Register on August 17, 1990, (55FR33763), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-ethylamphetamine (1475)	I
cis-4-Methylaminorex (1590)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-methylenedioxyamphetamine (MDA) (7400).	I
N-hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-methylenedioxy-N-ethylamphetamine (7404).	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethylamine analog of phencyclidine (7455).	I
Pyrrolidine analog of phencyclidine (7458).	I
Thiophene analog of phencyclidine (7470).	I
Dihydromorphine (9145)	I
Thebacon (9315)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23688 Filed 10-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice on July 11, 1990, Radian Corporation, P.O. Box 201088, 8501 Mopac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Pentobarbital (2270).

The firm plans to manufacture small quantities of a deuterated form of this material that will be made into exempt deuterated drug reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 8, 1990.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23689 Filed 10-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated March 20, 1990, and published in the Federal Register on April 2, 1990, (55FR12299), Smithkline Chemicals, Division Smithkline Beckman Company, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine, its salts, optical isomers and salts of its optical isomers (1100).	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 3030 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23690 Filed 10-5-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a public meeting of the Work Group on Pension Fund Investment Behavior of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m. Tuesday, October 23, 1990, in room C-2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine member Working Group was formed by the Advisory Council to study issues relating to Pension Fund Investment Behavior for employee benefit plans covered by ERISA.

The purpose of the October 23, meeting is to review the work group's final report that provides background information on their preliminary findings and recommendations approved at the September 25, 1990 Advisory council meeting. In addition, the work group will discuss possible items for next year's agenda. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 19, 1990, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 19, 1990.

Signed at Washington, DC, this 3rd day of October, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90-23783 Filed 10-5-90; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Annuities of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1 p.m. Tuesday, October 23, 1990. In room C-2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine member Working Group was formed by the Advisory Council to study issues relating to Annuity Purchases for employee benefit plans covered by ERISA.

The purpose of the October 23 meeting is to follow up the meeting of August 21, and to receive further testimony and or submissions from interested individuals or groups as well as the general public regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 19, 1990 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington,

DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 19, 1990.

Signed at Washington, DC, this 3rd day of October, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90-23784 Filed 10-5-90; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, October 24, 1990, in room S-4215, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Sixty-Fifth meeting of the Secretary's ERISA Advisory Council which will begin at 9:30 a.m., is to review and discuss a status report being prepared by each of the Council's work group i.e., Annuities; Pension Fund Investment Behavior; Enforcement, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 19, 1990 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 19, 1990.

Signed at Washington, DC, this 3rd day of October, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90-23785 Filed 10-5-90; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Application for License to Export Utilization Facility

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application", please take notice tht the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene must be served by the requestor or petitioner upon the applicant; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Executive Secretary, Department of State, Washington, DC 20520; and participants, if any.

In its review of the application for a license to export utilization facilities noticed herein, the Commission does not evaluate the health, safety or environmental effects within the recipient nation of the facility to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application number	Description and value	Country of destination
Combustion Eng., 08/31/90, 09/05/90, XR153.	Two civilian nuclear power plants—950 MWe each $300,000,000.	Republic of Korea.

Dated this 28 day of September 1990 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Acting Assistant Director for International Security, Exports and Materials Safety, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 90-23786 Filed 10-5-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Rel. No. 28492/September 28, 1990]

Order Granting Accelerated Approval of a Application for Registration Until September 30, 1991

In the Matter of The Registration as a Clearing Agency of MBS Clearing Corp. File No. 600-19.

On February 2, 1987, the Securities and Exchange Commission granted the application of MBS Clearing Corporation ("MBSCC") for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"), and rule 17Ab2-1(c) thereunder, for a period of 18 months.[1] At that time, the Commission granted MBSCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[2]

On August 2, 1988, the Commission extended MBSCC's registration as a clearing agency and the exemption from compliance with section 17A(b)(3)(C) of the Act until August 2, 1989.[3] By letter, dated July 18, 1989, MBSCC withdrew its request for an exemption from compliance with section 17A(b)(3)(C).

On July 31, 1989, the Commission extended MBSCC's registration as a clearing agency until September 30, 1989.[4] On September 13, 1990, MBSCC filed an amendment to its application for registration as a clearing agency requesting an extension of registration for a period of 12 months and permanent registration as a clearing agency.[5]

[1] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[2] Section 17A(b)(3)(C) requires that MBSCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[3] Securities Exchange Act Release No. 25957 (August 2, 1988), 53 FR 29537.

[4] *See* Securities Exchange Act Release No. 27076 (July 31, 1989), 54 FR 33412.

[5] *See* letter from Jeff Lewis, Associate Counsel, MBSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, dated September 13, 1990.

Notice of MBSCC's amended application and request for extension of temporary registration appeared in the **Federal Register** on September 26, 1990.[6]

As discussed in detail in the order granting MBSCC's temporary registration, one of the primary reasons for MBSCC's registration was to enable it to provide for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. MBSCC is currently revising its systems and procedures to enhance the safety and efficiency of its operations. For example, MBSCC has filed two rule proposals that would assure MBSCC and its participants that it has sufficient sources of liquidity to fund end-of-day settlement in the event of participant default.[7] In addition, MBSCC is in the process of establishing an off-site disaster recovery facility, and expects this facility to become operational in 1991.

MBSCC has functioned effectively as a registered clearing agency for over three years. Accordingly, in light of the past performance of MBSCC, as well as the need for MBSCC to provide continuity of service to its participants, the Commission believes that "good cause" exists, pursuant to Section 19, for extending MBSCC's registration for an additional 12 months before the expiration of the comment period on such extension.[8] Any comment received concerning MBSCC's amended application will be considered in conjunction with the Commission's consideration of whether to grant MBSCC permanent registration as a clearing agency under section 17A of the Act.

It is therefore ordered, that MBSCC's registration as a clearing agency be, and hereby is, approved until September 30, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23700 Filed 10-5-90; 8:45 am]

BILLING CODE 8010-01-M

[6] *See* Securities Exchange Act Release No. 28461 (September 18, 1990), 55 FR 38339.

[7] *See* File Nos. SR-MBSCC-90-01 and SR-MBSCC-90-03.

[8] On or before the end of 12 months, the Commission expects to consider whether to grant MBSCC permanent registration as a clearing agency. In advance of taking any such action, the Commission will solicit comment and will consider any comments it may receive from interested persons.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA emergency Order No. 14, Notice No. 2]

Eureka Southern Railroad Co., Inc.; Passenger Service Allowed Between Milepost 142.5 and Milepost 145.5, and between Milepost 216.6 and Milepost 284.1

Based on Federal Railroad Administration (FRA) inspections of the Eureka Southern mainline, I have concluded that an emergency condition no longer exists on the segments between mileposts 142.5 and 145.5, and between mileposts 216.6 and 284.1. I am accordingly lifting FRA Emergency Order No. 14 (Order), which was issued June 7, 1990, as it applies to the trackage between mileposts 142.5 and 145.5, and between mileposts 216.6 and 284.1.

On August 16, 1990, the Eureka Southern notified FRA by telephone that its track was ready for inspection. FRA conducted in inspection in response to this oral request, rather than requiring written notification as specified in paragraph 2 of the Relief section of the Order. On August 24, at the conclusion of a four-day inspection, FRA advised the Eureka Southern that the railroad's track did not meet safety standards for Class I track specified at 49 CFR part 213.

After making further repairs, the Eureka Southern notified FRA by letter dated September 11, 1990, that it was ready for a second inspection of portions of its track. A second inspection was conducted by FRA beginning September 17, 1990.

This partial lifting of Emergency Order No. 14, based on this September inspection, is contingent on the Eureka Southern's continued maintenance of these segments in accordance with FRA's Class I standards. The issuance of this Notice should not be taken to preclude imposition of another emergency order should conditions between mileposts 142.5 and 145.5, and between mileposts 216.6 and 284.1 fall below Class I standards.

FRA has continued concerns for the condition of Tunnel 40, particularly with regard to the resumption of passenger service in the Spring of 1991. Further failure of the tunnel could result in FRA's issuing an additional emergency order if the Eureka Southern does not take adequate remedial measures to assure the safety of the tunnel.

Issued in Washington, DC, on October 1, 1990.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 90-23774 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S-867]

American President Lines, Ltd.; Notice of Extension of Time for Comments

Notice is hereby given that the closing date for comments in the Docket S-867 application of American President Lines, Ltd. is extended to October 18, 1990. The Notice of Application of Docket S-867 was published in the **Federal Register** of July 13, 1990 (55 FR 28690).

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: October 3, 1990.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 90-23773 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. T84-01; Notice 24]

Passenger Motor Vehicle Theft Data for 1989; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice seeks public comment regarding data on passenger motor vehicle thefts that occurred in 1989. These data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI). These 1989 theft data indicate that vehicle thefts in 1989 decreased about 5 percent from the 1988 level. However, of the 164 lines sold in the United States during 1989, 107 of the lines (65 percent) had theft rates that exceeded the median theft rate for 1983/1984.

DATES: All comments on this notice must be received by NHTSA not later than November 23, 1990.

ADDRESSES: Comments should refer to Docket No. T84-01; Notice 24, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590 (202 366-4949).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202 366–4806).

SUPPLEMENTARY INFORMATION: Title VI of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act) 15 U.S.C. 2021 *et seq.*, directs NHTSA to promulgate a motor vehicle theft prevention standard applicable to high-theft car lines. Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies that three types of car lines are high theft lines within the meaning of title VI:

(1) Existing lines that had a theft rate exceeding the median theft rate for the 1983–1984 period;

(2) New lines that are likely to have a theft rate exceeding the 1983–84 median theft rate; and

(3) Lines with theft rates below the 1983–84 median theft rate or (in the case of new lines) likely to be below the 1983–84 median theft rate, but which have a majority of major parts interchangeable with lines whose theft rates exceeded or are likely to exceed the median theft rate.

Section 603(b) of the Cost Savings Act explains how the agency is to determine whether existing lines had a theft rate that exceeded the 1983–84 median theft rate. Section 603(b)(3) directs NHTSA to

> obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment. To the greatest extent possible, [NHTSA] shall utilize theft data reported by Federal, State, or local police. After such publication and opportunity for comment, [NHTSA] shall utilize the theft data to determine the median theft rate under this subsection.

In accordance with this statutory directive, NHTSA published a final notice on November 12, 1985, setting forth the 1983–1984 theft data, 50 FR 46666. Based on those data, NHTSA calculated the median theft rate for purposes of title VI as 3.2712 thefts per 1000 vehicles produced.

Although the Cost Savings Act provides that the calculation of the median theft rate is a one-time event, section 603(b)(3) directs the agency to continue to collect and publish theft data on a periodic basis. The publication of national data should serve to inform the public, particularly law enforcement groups, automobile manufacturers, and Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts as a result of the Federal motor vehicle theft prevention standard. To carry out this purpose, this notice sets forth the theft rates for the 164 lines of passenger motor vehicles sold in the United States for the 1989 model year, based on information provided by the NCIC.

These 1989 theft data show a decrease in vehicle thefts from the levels experienced in 1988, but are above the levels in 1983/1984. As earlier noted, for 1983/1984, the median theft rate was 3.2712 thefts per 1000 vehicles produced. For model years 1985 through 1988, the median increased to 3.4539, 3.6023, 4.1476, and 4.4158, respectively. The corresponding percentage of car lines per year that exceeded the 1983/1984 median theft rate also increased to 55 percent, 58.6 percent, 67.2 percent, and 70.2 percent, respectively. For 1989, however, this trend was reversed, and only 107 of the 164 lines, or 65.2 percent, exceeded 3.2712 thefts per 1000 vehicles produced. For model year 1989, the third effective year of the theft prevention standard, the 4.1959 median theft rate is a figure 28 percent higher than the median of model years 1983/1984, but a 5 percent decrease over model year 1988.

In calculating the 1989 theft data, the agency followed the same approach it used in calculating the 1983–1984 median theft rate, in that it has sought to eliminate multiple countings of the same theft by excluding all duplicate vehicle identification numbers (VINs) of stolen vehicles reported within seven calendar days of each other. This approach takes into account the possibility that a vehicle might actually be stolen more than once during a particular calendar year, but that it is highly unlikely to be stolen more than once in a week.

Interested persons are invited to submit comments on these data. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the data will be considered, and will be available for examination in the docket at the above address both before and after that data. To the extent possible, comments filed after the closing date will also be considered before publication of the final 1989 theft data. Comments on this notice will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelop with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 2023; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on October 2, 1990.

Barry Felrice,

Associate Administrator for Rulemaking

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
1. Chrysler Corp	Chrysler Conquest	109	4,953	22.0069
2. Volkswagen	Cabriolet	147	10,531	13.9586
3. General Motors	Geo Prizm	36	2,820	12.7660
4. Toyota	Supra	211	17,899	11.7884
5. Ford Motor Co	Ford Mustang	2,149	189,500	11.3404
6. Chrysler Corp	Lebaron	990	90,360	10.9538

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989—Continued

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
7. General Motors	Chevrolet Corvette	271	24,901	10.8831
8. Honda	Prelude	622	60,737	10.2409
9. Hyundai	Excel	1,845	181,911	10.1423
10. Mazda	323	838	83,306	10.0593
11. General Motors	Pontiac Grand AM	2,214	232,717	9.5137
12. Chrysler Corp	Chrysler New Yorker	827	91,476	9.0406
13. General Motors	Pontiac Firebird/Trans Am	526	58,462	8.9973
14. Chrysler Corp	Dodge Shadow	672	76,375	8.7983
15. General Motors	Chevrolet Camaro	924	106,338	8.6893
16. Chrysler Corp	Dodge Dynasty	997	115,292	8.6476
17. Hyundai	Sonata	299	34,756	8.6028
18. Mitsubishi	Mirage	203	23,759	8.5441
19. Nissan	Sentra	2,086	249,026	8.3768
20. General Motors	Cadillac Seville	185	22,267	8.3083
21. General Motors	Geo Spectrum	493	60,721	8.1191
22. Alfa Romeo	Milano	4	494	8.0972
23. Isuzu	Impulse	32	4,273	7.4889
24. Porsche	911	44	5,936	7.4090
25. Isuzu	I-Mark	220	30,000	7.3333
26. Chrysler Corp	Plymouth Sundance	610	84,489	7.2199
27. Toyota	MR2	43	6,145	6.9976
28. Chrysler Corp	Dodge Aries	371	53,294	6.9614
29. Chrysler Corp	Dodge Daytona	477	68,611	6.9522
30. General Motors	Chevrolet Cavalier	2,260	325,508	6.9430
31. Jaguar	XJ-S	30	4,551	6.5920
32. Mitsubishi	Sigma	14	2,131	6.5697
33. Subaru	Subaru	254	38,832	6.5410
34. General Motors	Pontiac Bonneville	624	95,883	6.5079
35. Chrysler Corp	Dodge Spirit	389	60,223	6.4583
36. Nissan	240SX	436	68,118	6.4007
37. Suzuki	Swift	62	9,795	6.3298
38. Volkswagen	Jetta	355	56,295	6.3061
39. Mazda	626/MX-6	546	86,899	6.2832
40. Nissan	Stanza	187	30,544	6.1223
41. Mazda	RX-7	53	8,706	6.0878
42. General Motors	Chevrolet Caprice	808	136,813	5.9059
43. General Motors	Pontiac Parisienne/Safari S/W	27	4,596	5.8708
44. Honda/Acura	Integra	281	47,907	5.8655
45. Ford Motor Co	Ford Thunderbird	623	106,288	5.7532
46. Ford Motor Co	Ford Probe	1,144	201,706	5.6716
47. MBW	3	206	36,526	5.6396
48. General Motors	Cadillac Fleetwood/Deville	952	170,903	5.5704
49. Ford Motor Co	Merkur XR4T1	16	2,878	5.5594
50. Mitsubishi	Galant	199	36,259	5.4883
51. Chrysler Corp	Eagle Medallion	53	9,717	5.4544
52. Chrysler Corp	Plymouth Acclaim	377	69,767	5.4037
53. Ford Motor Co	Lincoln Town Car	668	124,295	5.3747
54. General Motors	Pontiac 6000	427	79,749	5.3543
55. General Motors	Oldsmobile Custom Cruiser Wagon	45	8,451	5.3248
56. Nissan	Pulsar	145	27,447	5.2829
57. General Motors	Pontiac Lemans	327	62,856	5.2022
58. Chrysler Corp	Plymouth Reliant	272	52,448	5.1861
59. Nissan	Maxima	513	98,999	5.1819
60. Mercedes-Benz	300CE	12	2,317	5.1791
61. Nissan	300ZX	22	4,274	5.1474
62. Toyota	Cressida	144	28,059	5.1302
63. General Motors	Pontiac Grand Prix	650	128,102	5.0741
64. General Motors	Geo Metro	227	45,000	5.0444
65. Ford Motor Co	Ford Escort/Exp	1,730	343,543	5.0356
66. Chrysler Corp	Dodge Lancer	14	2,781	5.0342
67. General Motors	Oldsmobile Cutlass Supreme	466	94,521	4.9619
68. Ford Motor Co	Lincoln Mark VII	139	28,622	4.8564
69. General Motors	Oldsmobile 98/Touring	327	68,148	4.7984
70. General Motors	Chevrolet Beretta/Corsica	1,776	375,030	4.7356
71. Ford Motor Co	Mercury Cougar	439	92,817	4.7297
72. General Motors	Buick Skylark	281	59,590	4.7156
73. Chrysler Corp	Eagle Premier	194	41,269	4.7009
74. Porsche	928	5	1,067	4.5998
75. Subaru	XT/XT6	48	10,484	4.5740
76. General Motors	Oldsmobile Delta 88 Royale	630	136,915	4.5351
77. General Motors	Buick Lesabre	619	138,033	4.4844
78. Ford Motor Co	Ford Tempo	1,069	242,074	4.4160
79. General Motors	Buick Electra/Lesabre Estate Wagon	31	7,298	4.2477
80. Toyota	Corolla/Corolla Sport	940	221,578	4.2423
81. Honda	Civic	689	164,143	4.1976
82. General Motors	Buick Skyhawk	98	23,366	4.1943
83. Mercedes-Benz	560SEL	25	5,967	4.1897
84. Honda/Acura	Legend	194	46,485	4.1734

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989—Continued

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
85. General Motors	Chevrolet Celebrity	782	190,849	4.1542
86. Ford Motor Co	Mercury Tracer	266	64,575	4.1190
87. General Motors	Oldsmobile Cutlass Ciera	901	219,829	4.0986
88. BMW	6	6	1,495	4.0936

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989—Continued

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
153. Mercedes-Benz	300TE	0	2,484	0.0000
154. Maserati	228	0	12	0.0000

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989—Continued

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
85. General Motors	Chevrolet Celebrity	782	190,649	4.1542
86. Ford Motor Co	Mercury Tracer	266	64,578	4.1190
87. General Motors	Oldsmobile Cutlass Ciera	901	219,829	4.0986
88. BMW	6	6	1,466	4.0928
89. Mercedes-Benz	560SL	35	8,557	4.0902
90. Peugeot	405	22	5,433	4.0489
91. BMW	7	43	10,985	3.9504
92. General Motors	Buick Electra	306	78,089	3.8700
93. Toyota	Camry	1,053	272,308	3.8669
94. Toyota	Tercel	486	127,087	3.8242
94. General Motors	Buick Century	557	146,986	3.7921
96. Toyota	Celica	229	61,969	3.6954
97. Ford Motor Co	Ford Festiva	275	74,994	3.6670
98. Chrysler Corp	Eagle Summit	99	27,151	3.6463
99. Ford Motor Co	Mercury Topaz	336	93,828	3.6023
100. General Motors	Buick Regal	286	83,915	3.5512
101. Mercedes-Benz	190D/E	51	14,899	3.4230
102. Ford Motor Co	Mercury Sable	406	119,216	3.4223
103. Mazda	929	72	21,422	3.3610
104. Volvo	780	6	1,795	3.3426
105. General Motors	Oldsmobile Toronado Brougham	32	9,588	3.3340
106. Chrysler Corp	Chrysler Fifth Avenue	48	14,523	3.3051
107. Alfa Romeo	Spider Veloce 2000	5	1,527	3.2744
108. Chrysler Corp	Dodge Omni	133	41,371	3.2148
109. Volvo	740/760	154	48,763	3.1581
110. Ford Motor Co	Lincoln Continental	173	55,153	3.1367
111. BMW	5	46	15,712	3.0550
112. Jaguar	XJ6	32	10,509	3.0453
113. Chrysler Corp	Plymouth Horizon	124	41,154	3.0123
114. Honda	Accord	1,027	346,647	2.9627
115. Mercedes-Benz	300SE	22	7,500	2.9216
116. Mercedes-Benz	300E	52	18,254	2.8471
117. Peugeot	505	7	2,471	2.8329
118. Volkswagen	Fox	109	38,511	2.8304
119. Mercedes-Benz	300SEL	12	4,268	2.8116
120. Ford Motor Co	Mercury Grand Marquis	346	127,365	2.7323
121. Ford Motor Co	Ford Taurus	1,013	371,115	2.7296
122. Mercedes-Benz	420SEL	22	8,191	2.6859
123. Mercedes-Benz	260E	15	5,846	2.6587
124. General Motors	Buick Reatta	18	6,895	2.6106
125. Mercedes-Benz	560SEC	5	1,930	2.5828
126. Yugo	GV/GVX/GVL/GVS	2	800	2.5000
127. Chrysler Corp	Plymouth Colt/Colt Vista	106	42,428	2.4995
128. Chrysler Corp	Dodge Colt/Colt Vista	111	45,715	2.4281
129. Saab	9000	21	8,864	2.3691
130. General Motors	Cadillac Eldorado	71	30,273	2.3453
131. Volvo	240 DL/GL	99	43,237	2.2897
132. Saab	900	51	22,567	2.2599
133. Ferrari	328	1	449	2.2272
134. Daihatsu	Charade	35	15,812	2.2135
135. General Motors	Cadillac Brougham	83	38,363	2.1641
136. General Motors	Buick Riviera	44	20,341	2.1631
137. Ford Motor Co	Ford LTD/Crown Victoria	224	108,785	2.0977
138. Audi	80/90	9	5,036	1.7871
139. Porsche	944	5	3,084	1.6207
140. Subaru	Justy	40	24,841	1.6102
141. Chrysler Corp	Plymouth Gran Fury	7	4,487	1.5601
142. Chrysler Corp	Chrysler TC	5	3,764	1.3284
143. Audi	100/200	15	12,191	1.2304
144. Ford Motor Co	Merkur Scorpio	7	5,915	1.1834
145. Sterling	Sterling 825/827	4	3,532	1.1325
146. General Motors	Oldsmobile Cutlass Calais	111	105,291	1.0542
147. Volkswagen	Golf/GTI	22	25,146	0.8749
148. Chrysler Corp	Chrysler Lebaron GTS	3	5,405	0.5550
149. Chrysler Corp	Dodge Diplomat	3	5,707	0.5257
150. General Motors	Pontiac Sunbird	45	105,984	0.4246
151. Ferrari	Testarossa	0	251	0.0000
152. Mitsubishi	Starion	0	159	0.0000
153. Maserati	Spyder	0	32	0.0000
154. Rolls-Royce/Bentley	Silver Spirit/Silver Spur	0	864	0.0000
155. Aston Martin	Saloon/Vantage/Volante	0	48	0.0000
156. Ferrari	Mondial	0	208	0.0000
157. Aston Martin	Lagonda	0	17	0.0000
158. Lotus	Esprit/Turbo	0	800	0.0000
159. Rolls-Royce/Bentley	Corniche/Continental/Mulsanne	0	768	0.0000
160. General Motors	Cadillac Allante	0	3,162	0.0000
161. Maserati	430	0	25	0.0000
162. Ferrari	348	0	117	0.0000

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989—Continued

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
163. Mercedes-Benz	300TE	0	2,484	0.0000
164. Maserati	228	0	12	0.0000

[FR Doc. 90-23771 Filed 10-5-90; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: October 2, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0298.
Form Number: ATF REC 5120/1.
Type of Review: Extension.
Title: Specific Export Bond-Distilled Spirits or Wine.
Description: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government (wine excise taxes).
Respondents: Business or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respoonse: 1.
Frequency of Response: Other.
Estimated Total Reporting Burden: 6 minutes.
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR DOC. 90-23747 Filed 10-5-90; 8:45 am]
BILLING CODE 4810-31-M

Internal Revenue Service

[Delegation Order No. 42 (Rev. 23)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.
ACTION: Delegation of authority.

SUMMARY: This delegation order clarifies the authority to execute consent agreements for fixing the period of limitations involving partnerships and S corporations and eliminates the delegated authority for certain job positions phased out due to reorganization of the function. The text of the delegation order appears below.

EFFECTIVE DATE: September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichaski, CC:AP:TS, Room 227, 901 D Street, SW., Washington, DC 20024-2518, telephone (202) 252-8165 (not a toll-free telephone number).

Order No. 42 (Rev. 23)

Effective date: 9-17-90

Authority to Execute Consents Fixing the Period of Limitations on assessment or Collection Under Provisions of the 1939, 1954, and 1986 Internal Revenue Codes

Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Order 150-10; 26 U.S.C. 6229 (b); 26 CFR 301.6501(c)-1; 26 CFR 301.6502-1; 26 CFR 301.6901-1(d); and 26 CFR 301.7701-9; the authority to sign all consents fixing the period of limitations on assessment or collection is delegated to the following officials:

a. Associate Chief Counsels (Technical and International);
b. Assistant Commissioner (International);
c. Assistant Commissioner (Employee Plans and Exempt Organizations) but limited to Form 872-C, Consent Fixing Period of Limitation Upon the Assessment of Tax Under Section 4940 of the Internal Revenue Code;
d. Regional Counsel;
e. Regional Directors of Appeals;
f. Service Center Directors;
g. Director, Austin Compliance Center; and
h. District Directors

2. This authority may be redelegated but not below the following levels for each activity:

a. *Service centers*—Chief Accounting Branch; Chief, Quality Assurance; Chief, Correspondence and Processing; Revenue Officers and Collection Branch managers Grade GS-9 or higher; Chief, Classification function; and personnel assigned to the Examination Support Unit, Grade GS-11 or higher;

b. *Austin compliance center*—Underreporter Division—Branch Chiefs; Collection Division—all Branch Chiefs and Chief, Quality Assurance Staff; Examination Division—Chiefs, Examination Branches, Chief, Quality Assurance Staff, Chief, Classification Branch; and personnel assigned to the Windfall Profits Staff, GS-11;

c. *Collection*—Revenue Officers; Collection Support function managers Grade GS-9 or higher; Automated Collection Branch managers Grade GS-9 or higher;

d. *Examination*—Reviewers, Grade GS-11 or higher; Group managers (including large case managers); Chiefs, Planing and Special Programs and personnel assigned thereto Grade GS-11 or higher; Returns Classification Specialists and Returns Classification Officers, Grade GS-11;

e. *Criminal investigation*—Chiefs, Criminal Investigation Divisions, except in those districts where the Criminal Investigation Group managers report directly to the District Directors, the authority is limited to the District Director.

f. *Appeals*—Appeals Officers;

g. *Assistant Commissioner (international)*—Representatives at foreign posts; Revenue Agents, Tax Auditors, and Special Agents on foreign assignments; and levels indicated in c, d, and e above.

h. *EP/EO*—For Form 872-C, Exempt Organizations Technical Division Group Managers and Conferee/Reviewers and

1. *District employee plans and exempt organizations*—Reviewers, Grade GS–11 or higher; and Group Managers.

3. No authority is delegated under this Order to the District Counsel.

4. Delegation Order No. 42 (Rev. 22) effective February 9, 1988, is superseded.

Dated: August 31, 1990.

Approved

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 90-23780 Filed 10-5-90; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 209 (Rev. 4)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

SUMMARY: This delegation order extends the authority to execute settlement agreements involving partnership and S corporation affected items to appeals officers at service centers and the Austin Compliance Center. The previous delegation order limited such appeals officers authority to partnership and S corporation items only. In addition, authority to execute consents extending the period for filing a refund suit pursuant to request for administrative adjustment that has been denied by the Service is being redelegated. The text of the delegation order appears below.

EFFECTIVE DATES: September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichaski, CC: AP: TS, room 227, 901 D Street SW., Washington, DC 20024–2518, telephone (202) 252–8165 (not a toll-free telephone number).

Order No. 209 (Rev. 4)

Effective date: 9-19-90

Delegation of Authority in Partnership and S Corporation Matters

Pursuant to the authority vested in the Commissioner of Internal Revenue by IRC 6223, 6224, 6228, 6229, 6231(a)(7), 6232, 6243, and 6244, and Treasury Order 150–10:

1. Authority to sign the notice to partners or shareholders at the beginning of an administrative proceeding at the partnership or S corporation level with respect to a partnership or subchapter S item is delegated to revenue agents (grade GS–11 and higher).

2. Authority to sign the notice of final partnership or S corporation administrative adjustment is delegated to:

a. Chiefs and associate chiefs of appeals offices;

b. Appeals team chiefs as to their respective cases;

c. Appeals officers in service centers and the Austin Compliance Center.

d. Revenue agents (reviewers), (grade GS–11 and higher), in Examination Division or in Office of Taxpayer Service and Compliance, Assistant Commissioner (International); and

e. Revenue agents (grade GS–11 and higher) in service center and the Austin Compliance Center.

3. Authority to enter into and approve a written settlement agreement with one or more partners or shareholders with respect to the determination of partnership or subchapter S items and any items affected by such items for such partnership or S corporation taxable year is delegated to:

a. Chiefs and associate chiefs of appeals offices;

b. Appeals team chiefs, as to their respective cases; and

c. Appeals officers in service centers and the Austin Compliance Center but not as to their respective cases;

d. Revenue agents (reviewers), (grade GS–11 and higher), in Examination Division or Office of Taxpayer Service and Compliance, Assistant Commissioner (International); and

e. Revenue agents (grade GS–11 and higher) in service center and the Austin Compliance Center.

4. Authority to designate a Tax Matters Partner with respect to a partnership or a Tax Matters Person for an S Corporation, is delegated to:

a. Chiefs and associated chiefs of appeals offices;

b. Appeals team chiefs as to their respective cases;

c. Group managers in Examination Divison.

5. Authority to sign consents fixing the period of limitations on assessment and collection of any tax under subtitle A attributable to any partnership item, subchapter S item (or affected items), or to extend the period for filing a civil action for adjustment of partnership items pursuant to IRC 6228, is delegated to:

a. Appeals officers;

b. Appeals team chiefs, as to their respective cases; and

c. The Examination Division as indicated in Delegation Order No. 42, as revised.

6. To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

The authority delegated herein may not be redelegated.

Delegation Order No. 209 (Rev. 3) (Correction), effective October 31, 1987, is hereby superseded.

Dated: August 31, 1990.

Approved.

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 90-23781 Filed 10-5-90; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

VOA Broadcast Advisory Committee Meeting

The United States Information Agency announces an open meeting of the VOA Broadcast Advisory Committee meeting on October 11, 1990, 11 a.m.–3 p.m. at Voice of America, 300 C Street, SW., Washington, DC.

The Agenda will include:

Overview of activities since 6/21/90 meeting, discussion of proposed draft letter to members of Congress, targetting the private sector for Committee activities, private sector support for satellite dishes in Europe, private-sector support for printing of "VOICE" Magazine, status report on the study of international broadcasting and committee support for VOA's 50th anniversary celebration.

For additional information call Louise G. Wheeler or Nancy Starr at 619–6069.

Copies of minutes can be obtained by calling 619–6069.

Dated: October 2, 1990.

Douglas Wertman,

Committee Management Officer.

[FR Doc. 90-23703 Filed 10-5-90; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 34–90, Bankruptcy Procedures—Education Overpayments

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, the veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(a) Has the Veterans Administration the authority to refrain from filing a claim against a debtor who is filing for bankruptcy if the amount owed is below a certain set figure; (b) Is it proper to charge entitlement in education cases without formal notification that the debt was discharged in backruptcy; (c) What date should be used in calculating the refund of monies withheld during the bankruptcy proceedings in the event of a discharge in bankruptcy; and (d) Can District Counsels be directed to notify the appropriate office of the actual discharge in bankruptcy?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3–78, dated October 25, 1977, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The context of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 34–90, Bankruptcy Procedures—Education Overpayments, requested by Controller, is as follows: HELD: (a) Subject to some exceptions, the VA does have the authority to refrain from referring to the Department of Justice a claim against the debtor who is filing for bankruptcy (1) if the amount owed is less than $600, or (2) if the cost of collecting the amount would be more than the amount itself, or (3) if the veteran has no assets; (b) It is proper to charge entitlement in education cases (1) when the District Counsel determines that the debt will not be referred to the Department of Justice, and (2) when formal notification is received that the debt was discharged from bankruptcy; (c) The date to use in calculating the amount of money that was withheld during the bankruptcy proceedings that may be used to set off the debt is the date the petition in bankruptcy was filed; and (d) The District Counsels have been directed to notify the appropriate office of the actual discharge in bankruptcy.

Dated: August 27, 1990

Raoul L. Carroll.

General Counsel.

[FR Doc. 90-23715 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 35–90, Limitations on Educational Assistance Under 38 U.S.C. 1781

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether payment of VA educational assistance benefits to veterans enrolled under the National Program of Apprenticeship for Prosthetists, Orthotists and Restoration Technicans is barred by the limitation contained in section 1781 of title 38, United States Code.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 12–73, dated November 21, 1973, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 35–90, Limitations on Educational Assistance under 38 U.S.C. 1781, requested by Chief Benefits Director, is as follows:

Held: Training provided under the National Program of Apprenticeship for Prosthetists, Orthotists and Restoration Technicans which is registered as meeting the basic standards and policies of the Bureau of Apprenticeship and Training of the Department of Labor is not within the limitation set out in 38 U.S.C. 1781 barring payment of educational assistance allowance. That limitation does not apply to apprentice and other on-job training programs.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23716 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 36–90, Limitations on Educational Assistance Under 38 U.S.C. 1781

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the

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Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(a) Whether veterans in internships or residency training programs at a Veterans Administration Hospital or under the supervision of such hospital personnel are barred by section 1781 of title 38, United States Code, from receiving educational assistance allowances; and (b) whether veterans, who are federal employees in apprenticeship or other program conducted by government installations, are barred by section 1781 of title 38 from receiving educational assistance allowances.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11–73, dated August 16, 1973, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 36–90, Limitations on Educational Assistance Under 38 U.S.C. 1781, requested by Chief Benefits Director, is as follows:

Held: (1) The authority of the Administrator to conduct training for interns and residents is contained in section 4114(b) of title 38. Such training does not come within the purview of the Government Employees' Training Act, and it therefore is not within the scope of the limitation of section 1781 of title 38.

(2) Apprentice and other on-job training are not within the scope of the limitation of section 1781.

(3) We recognize that Federal agencies may conduct training programs, other than those involving substantial productive labor, under specific statutory authority as distinguished from those conducted under general provision of the Government Employees' Training Act. Such agencies are in a better position than the Veterans Administration to make at least the initial determination as to whether or not their program come under the Government Employees' Training Act. The Administrator would have the legal authority to promulgate regulations under which such determinations, absent unusual circumstances, may be accepted. Whether such an approach should be adopted is, of course, for administrative determination.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23717 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 37–90, Applicability of Government Employees Training Act as a Limitation Under 38 U.S.C. 1781 to Payment of Educational Assistance Allowance

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—"Are veterans attending the Federal Mine Health and Safety Academy operated by the Bureau of Mines barred from receiving educational assistance allowances by 38 U.S.C. 1781?"

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3–73, dated February 22, 1973, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with force of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 37–90, Applicability of Government Employees Training Act as a Limitation Under 38 U.S.C. 1781 to Payment of Educational Assistance Allowance, requested by Chief Benefits Director, is as follows:

Held: Veterans attending the Federal Mine Health and Safety Academy are barred by the provisions of section 1761 of title 38, United States Code, from receiving veterans educational assistance allowances.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23718 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 38–90, Liability of a Training Establishment for Overpayments

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether a training establishment may be held liable for an overpayment to a veteran engaged in an approved on-job training program where the employer continued certifying the veteran as being engaged in his approved training program when, in actuality, the veteran had been switched to another program not approved for GI training.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Liberty, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 13–74, dated March 20, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 38–90, Liability of a Training Establishment for Overpayments, requested by Chief Benefits Director, is as follows:

Held: (1) Under VA Regulation 14200, a training establishment is considered by definition to be the same as a school or educational institution; (2) premised on the provisions of section 1785 of title 38, United States Code, a training establishment may be held liable for overpayments resulting from failure of the training establishment to report termination of a veteran in an approved on-job training program and for false certifications made to the VA; (3) in view of the provisions of VA Regulation 14009, an overpayment may be declared against the training establishment; (4) based on the provisions of VA Regulation 5214, and since the United States Attorney has declined criminal prosecution, procedures may be undertaken to collect the overpayment; (5) the liability of the training establishment for repayment of the unauthorized training assistance allowance is independent of the liability of the veteran; and (6) any amount collected from the training establishment shall be reimbursed if the overpayment is recovered from the veteran.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23719 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 39–90, Payment of CLEP Test Administration Fees

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether authority exists for the Veterans Administration to provide funds to pay for the administration of College Level Examination Programs (CLEP) tests to veterans eligible for GI Bill benefits.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11–74, dated March 18, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 39–90, Payment of CLEP Test Administration Fees, requested by Chief Benefits Director, is as follows:

Held: The utilization of College Level Examination Program (CLEP) tests by veterans eligible for GI Bill benefits would be legally permissible under the

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authority of section 1663 of title 38 where the objective of the examination is the counseling of a veteran to enable him to be placed in a program of education best suited for him. It would not be legally permissible, however, to authorize benefits for the administration of such a test for the purpose of enabling the counselee to obtain advanced credit, nor would it be legally permissible to authorize benefits for administration of a test for the purpose of enabling the counselee to be awarded a degree as the result of passing such an examination.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23720 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 41-90, Continuity of Service Within the Meaning of VA Regulation 11040

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Do interruptions in periods of active service by reason of the situations enumerated in VA Regulation 1015, or due to an individual being placed in an excess leave status, break the continuity of the period of active service of more than 180 days required for educational benefit purposes under 38 U.S.C. 1652(a) and VA Regulation 11040?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretation on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 9-74, dated March 8, 1974, is reissued as Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 41-90, Continuity of Service Within the Meaning of VA Regulation 11040, requested by Chief Benefits Director, is as follows:

Held: For the purpose of computing 181 days of continuous service under VA Regulation 11040, time spent in excess leave, or for any of the reasons set out in VA Regulation 1015, does not constitute a break in active duty or interrupt the continuity of the period of active duty service.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23721 Filed 10-05-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretations of the General Counsel-Precedent Opinion 42-90, Nonapplication of Section 1789(b)(4), Title 38, U.S.C.

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does title 38, section 1789(b)(4), apply to a specific set of facts concerning the proposed offering of a course by an educational institution?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 24-75, dated July 29, 1975, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 42-90, Nonapplication of section 1789(b)(4), title 38, U.S.C., requested by Chief Benefits Director, is as follows:

Held: In answer to the question prescribed, it is our opinion that where a course is offered pursuant to a contract entered into between a nonprofit educational institution and another educational institution or organization which permits (a) outside recruiters furnished by the outside institution or organization to be utilized to obtain students for the course; (b) payments of substantial fees to the other institutions or organization for material with "profits" paid to the nonprofit school offering the course; (c) conducting of the training in nonacademic surroundings, such as motels; or (d) the expansion of course offerings by the nonprofit institution well beyond its normal boundary, then such a course clearly does not fall within the criteria of the exception in clause (4) of 38 U.S.C. 1789 and must comply with the 2-year operation requirement of section 1789(a) of title 38.

It is also our opinion that, when the Administrator is required to make a determination concerning the exemption of courses offered by nonprofit institutions from the operation of the 2-year requirement, and the nonprofit institution has entered into any arrangement which would raise questions concerning its status under 38 U.S.C. 1789(b)(4), the Administrator has the legal authority to examine the effect of such arrangement on the school's claim to the exemption afforded by section 1789(b)(4). Where a determination is made that the questioned arrangement does not come within the Congressional intent of the exemption, the Administrator may not approve the enrollment of veterans and dependents in such a course until it meets the 2-year operation requirement.

On November 17, 1975, this opinion was approved by the Administrator of Veterans Affairs.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23722 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 43-90, Work-Study Program—Proper Utilization and Supervision of Veteran-Students

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) May veteran-students properly be assigned to work for any organization which is engaged in rendering services to veterans and dependents? (2) If so, what would constitute proper supervision by a VA employee as required by subsection (a)(1) of section 1685? Would *indirect* supervision as outlined by Veterans Assistance Service meet the intent of the law? (3) Is it appropriate to assign veteran-students to work in the Veterans Cost of Instruction (VCI) Outreach Program rather than in paperwork processing at educational institutions (subsection (a)(2) of section 1685)?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 18-75, dated June 20, 1975, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 43-90, Work-Study Program—Proper Utilization and Supervision of Veteran-Students, requested by Chief Benefits Director, is as follows:

Held: (1) Under 38 U.S.C. 1685, work-study students must work for VA and may not work for an organziation just because that organization renders services to veterans and dependents.

(2) The hours of work and the quality and nature of the work must be under the direct supervision and control of a VA employee.

(3) Subject to certain restrictions, work-study students may be assigned to assist in outreach services in the VCI program.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23723 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 44-90, Application of North Carolina Sales Tax to Sales of Books and Supplies to VA Vocational Rehabilitation Students

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Is the VA liable for the North Carolina State sales tax on books furnished to veterans enrolled in the VA Vocational Rehabilitation program?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion,

previously issued as General Counsel Opinion 13–75, dated February 10, 1975, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 44–90, Application of North Carolina Sales Tax to Sales of Books and Supplies to VA Vocational Rehabilitation Students, requested by District Counsel/Winston-Salem, NC, is as follows:

Held: The VA is not liable for the sales tax on books furnished to veterans enrolled in the VA Vocational Rehabilitation program.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23724 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 45–90, Application of Dual Compensation to Veteran-Student Services Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Should there be a reduction in service retired pay under the Dual Compensation Act, 5 U.S.C. 5532, because of a veteran's receipt of a work-study allowance under 38 U.S.C. 1685?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3–75, dated December 13, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 45–90, Application of Dual Compensation to Veteran-Student Services Program, requested by Chief Benefits Director, is as follows:

Held: The Congress never intended that the allowances paid to veteran-students under the work-study program (38 U.S.C. 1685) should be considered wages, nor that such veteran-students should be considered Federal employees (except for the limited purposes set forth in the statute). Manifestly, the question of a reduction in retirement pay under the Dual Compensation Act is for consideration by the military. And, we agree with the Coast Guard that a binding interpretation of the application of the Dual Compensation provisions to the veterans' work-study program should ultimately be sought from the Comptroller General of the United States. We presume that such submission will be made by the Coast Guard, some other branch of the military, or by the Department of Defense.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23725 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 46–90, Application of 38 U.S.C. 1775, VAR 14200, and VAR 14280

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Should 38 U.S.C. 1775 be applied when approving courses offered by educational institutions which are candidates for accreditation by a nationally recognized accrediting agency? (2) May eligible persons enrolled in independent study courses offered by a school which is a candidate for accreditation by one of the six regional accrediting agencies be paid on the basis of VAR 14280?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel

Opinion 14–76, dated April 28, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA published summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official names above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 46–90, Application of 38 U.S.C. 1775, VAR 14200, and VAR 14280, requested by Chief Benefits Director, is as follows:

Held: (1) Section 1775 of title 38 should not be applied to educational institutions which are candidates for accreditation until such time as they are fully accredited.

(2) Eligible persons enrolled in independent study courses offered by a school which is a candidate for accreditation may not be paid on the basis of VAR 14280 until the institution is fully accredited.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23726 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 47–90, Utilization of a Work-Study Veteran-Student To Provide Transportation for a Service-Disabled Veteran

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May a work-study veteran-student be utilized to provide transportation to school for a service-disabled veteran training under the provisions of chapter 31 of title 38, United States Code?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 12–76, dated March 23, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 47–90, Utilization of a Work-study Veteran-student to Provide Transportation for a Service-disabled Veteran, requested by Chief Benefits Director, is as follows:

Held: There is no legal authority under 38 U.S.C. 1685 for the utilization of a work-study veteran-student to provide transportation to school for a service-disabled veteran training under the vocational rehabilitation program.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23727 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 48–90, Prison Training

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Must educational assistance be provided incarcerated veterans even though the State provides full tuition and/or subsistence for their education? (2) May the Veterans Administration, under certain circumstances, restrict educational assistance benefits without specific legislation authorizing such restriction?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 7–76, dated March 2, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be

followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 48-90, Prison Training, requested by Chief Benefits Director, is as follows:

Held: (1) The fact that the State pays the full tuition for incarcerated veterans to attend college or other schools for training does not in any way abrogate their entitlement to educational assistance benefits if otherwise so qualified.

(2) Since the law is silent as to the breakdown of how a veteran must spend his educational allowance and there is no provision for reduction of such an allowance because of incarceration, specific legislation would be necessary to restrict assistance benefits.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23728 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 49-90, Discontinuance of Educational Benefits Payments

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA.This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Is there legal authority to pay educational benefits to the end of the term when a decision has been made under VAR 14207 to terminate enrollments and benefits effective prior to the end of the term?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, [202] 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 5-76, dated March 9, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 49-90, Discontinuance of Educational Benefits Payments, requested by Chief Benefits Director, is as follows:

Held: (1) Unless there were to be a change in current regulations there is no authority to pay educational benefits to the end of the term in view of the decision already made pursuant to VA Regulation 14207 to terminate enrollments and benefits effective prior to the end of the term.

(2) While the Administrator has delegated his authority to act in the case of violations under section 1790(b), he does reserve to himself the final determination authority where he deems it appropriate to exercise such a decision. We believe, however, that such an exercise of authority should not be made absent a strong showing for such action to be taken. We do not believe such to be the case here, since the discretionary authority, which has been exercised by those to whom the authority was delegated, was proper and the school has failed to exhaust the administrative remedies available to it.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23729 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 50-90, Eligibility for Educatinal Benefits Under Chapter 32—12 Months' Participation Restriction

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal mater at issue—(1) A serviceperson suspends participation in the Post-Vietnam Era Veterans' Educational Assistance Program due to a hardship situation without participating for 12 months. The servicepersons resumes participation, but does not have sufficient months left in the current obligated tour to provide 12 months' participation. Upon discharge, the person had participated for 11 months. Would there be eligibility for chapter 32 educatinal benefits? (2) A serviceperson has completed the obligated period of active duty or 6 years of active duty which began after December 31, 1976 (whichever is less), as provided for in 1631(a)(4) of chapter 32. He/she is still on active duty and is participating by making monthly contributions to the fund as provided for in section 1622(a). However, less than 12 monthly contributions has been made. Is the person entitled to chapter 32 educational benefits before 12 consecutive monthly contributions have been made?.

EFFECTIVE DATES: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, [202] 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11-77, dated December 8, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 50-90, Eligibility for Educational Benefits Under chapter 32—12 Months' Participation Restriction, requested by Controller, is as follows:

Held: (1) The individual who has not participated for 12 consecutive months, who suspends participation because of a hardship situation, and upon discharge has participated for 11 months would be eligible for chapter 32 educational benefits. Our opinion is based upon the following:

a. Under the provisions of section 1631(b), the individual is permitted to suspend participation before completing 12 months of participation on grounds of personal hardship.

b. It is clear that where the individual suspends participation because of personal hardship he or she has not forfeited the right to benefits under chapter 32.

c. Benefits are payable where the individual is discharged prior to the completion of the 12 months' requirement.

(2) The law, as well as pertinent excerpts from the Senate Veterans Affairs Committee report to accompany S. 969 (S. Rep. No. 1243, 94th Cong., 2d Sess. 104, 105), all speak of the 12 months' consecutive participation requirement. These are directed primarily at points in time when the individual can make a decision to suspend participation or to disenroll in the program. In the absence of any specific expression to the contrary, we are of the view that the Administrator may, in an individual's second enlistment, authorize a shorter period of time before the individual may become eligible for chapter 32 participation. Therefore, a serviceperson who has completed an obligated period of active duty, but who is still on active duty and participating in the program by making monthly contributions, may, upon a determination by the Administrator, be eligible for educational benefits before 12 consecutive monthly contributions have been made.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23730 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 51-90, School Liability

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Should the Veterans Administration continue its present practice of withholding benefits from veterans and dependents reentering training, and reimburse educational institutions, where overpayments have been declared against such veterans and dependents? (2) Should our procedure be revised, as suggested by the General Accounting Office, to provide that, where the overpayment has been collected from the school, the veteran's or dependent's indebtedness should be written off?.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, [202] 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 10-77, dated October 20, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veteran's benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsels' opinion designated O.G.C. Prec. 51-90, School Liability, requested by Controller, is as follows:

Held: Based upon the legislative history of pertinent law governing the chapter 34 and chapter 35 educational assistance programs, VA would continue to withhold benefits for overpayments from individuals reentering training, even though the amount of the overpayment has already been collected from the educational institution, and reimburse the school pursuant to 38 U.S.C. 1785. To purge the veteran's or other eligible person's account would not follow the Congressional intent.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23731 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 52-90, Application of 38 U.S.C. 1781 to the Related Instruction Portion of an Apprentice Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Is there legal authority to pay educational benefits to the end of the term when a decision has been made under VAR 14207 to terminate enrollments and benefits effective prior to the end of the term?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, [202] 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 6-77, dated November 22, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 52-90, Application of 38 U.S.C. 1781 to the Related Instruction Portion of an Apprenticeship Program, requested by Chief Benefits Director, is as follows:

Held: Apprenticeship and other on-job training programs do not come within the scope of the limitation of 38 U.S.C. 1781(a)(2) regarding training paid under

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and

situation must be determined on its individual merits. As a matter of practice, we understand that schools are currently permitted some leeway in the area of clerical errors and administrative delays.

Dated: August 27, 1990.

Raoul L. Carroll,

with notice of VA's interpretation regarding the legal matter at issue—(1) Can an eductional institution be allowed 30 days from the date of a veteran's reduction or termination of training or 30 days from the end of an official registration period or short drop/add period (not to exceed 30 days) at the

BEST COPY AVAILABLE

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does the limitation of section 1781 of title 38, United States Code, apply to programs of apprenticeship and other on-the-job training given by an agency of the United States Government where some part or all of the period on which benefit payments may otherwise be based consists of related instruction for which the Government pays the tuition?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 9–77, dated October 12, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 52–90, Application of 38 U.S.C. 1781 to the Related Instruction Portion of an Apprenticeship Program, requested by Chief Benefits Director, is as follows:

Held: Apprenticeship and other on-job training programs do not come within the scope of the limitation of 38 U.S.C. 1781(a)(2) regarding training paid under the Government Employees Training Act for a person in receipt of full salary while so training.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23732 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 53–90, School Liability-Reporting Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) If an eligible student ceases pursuit without officially withdrawing from a course, may a school be liable for any portion of the resulting overpayment if the school's change of status report is received by the Veterans Administration within 30 days after the certifying official knew of the change, which may not be until the end of the term? (2) Pursuant to an annual inspection, may schools be granted a one-year certificate which, in effect, would guarantee that the school not be held liable for administrative delays and clerical errors since we have found progress policy and reporting procedures to be satisfactory?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 7–77, dated November 22, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary fo the General Counsel's opinion designated O.G.C. Prec. 53–90, School Liability-Reporting Requirements, requested by Chief Benefits Director, is as follows:

Held: (1) There are many ways in which a school can determine that a student has ceased pursuit of his or her program of education even though he or she has not officially withdrawn. Examples of such methods are attendance records, grading reports, last date on which examination or other papers are filed, last day of activity recorded in the instructor's records, or a statement from the student as to the last date of his or her attendance. Thus, we believe that, with these many potential sources of notice available to the school, a date when a student interrupts or terminates his or her pursuit without officially withdrawing should be ascertainable and the 30-day rule should be applied as of the date when the school through the exercise of due diligence could have determined that the student was no longer pursuing his or her program.

(2) We do not find any legal authority under which a school could, after the annual inspection, be guaranteed that it would not be held liable for administrative delays or clerical errors where VA has found its progress policy and reporting procedures to be satisfactory. We believe that each

situation must be determined on its individual merits. As a matter of practice, we understand that schools are currently permitted some leeway in the area of clerical errors and administrative delays.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23733 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 54–90, Enrollment Limitations—38 U.S.C. 1673(a)(2)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) May the Veterans Administration approve and pay benefits for enrollments after November 1, 1975, in courses for which valid justification, required by section 1673(a)(2) of title 38, United States Code, has not been submitted, where such enrollments occurred prior to notice to the school that its justification was invalid? (2) If the answer to the first question is in the negative, is equitable relief under 38 U.S.C. 210(c) available for consideration in such cases?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 6–77, dated November 22, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 54–90, Enrollment Limitation—38 U.S.C. 1673(a)(2), requested by Chief Benefits Director, is as follows:

Held: The Veterans Administration has authority to pay benefits to those veterans who have eligibility and who were properly enrolled in certain sales or sales management courses or in a course with a vocational objective prior to the first date the school was put on notice that its employment justification required under 38 U.S.C. 1673(a)(2) was invalid. Equitable relief under 38 U.S.C. 210(c) is for consideration.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23734 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 55–90, Proper Interpretation of 38 U.S.C. 1784, 1785, and VA Regulations 14009 and 14203

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Can an educational institution be allowed 30 days from the date of a veteran's reduction or termination of training or 30 days from the end of an official registration period or short drop/add period (not to exceed 30 days) at the beginning of a term to report the reduction or termination to the Veterans Administration? (2) Can an educational institution, which does not timely report a veteran's reduction or termination, be held liable for the entire resulting overpayment?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 2–77, dated September 17, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 55–90, Proper Interpretation of 38 U.S.C. 1784, 1785, and VA Regulations 14009 and 14203, requested by Chief Benefits Director, is as follows:

Held: (1) Allowing an educational institution 30 days from the date of a veteran's reduction or termination of

training is a reasonable period of time and would meet the 38 U.S.C. 1784 requirement of "without delay"; and allowing an educational institution a period not to exceed 30 days from the beginning of a new term to report a veteran's reduction in course load or termination of training or, where applicable, from the end of the school's

Sunshine Act Meetings

Federal Register
Vol. 55, No. 195
Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine

October 26, 1990.

PLACE: 2033 K St., N.W., Washington,

foam plastic beads or other granular material.

training is a reasonable period of time and would meet the 38 U.S.C. 1784 requirement of "without delay"; and allowing an educational institution a period not to exceed 30 days from the beginning of a new term to report a veteran's reduction in course load or termination of training or, where applicable, from the end of the school's drop/add period (not to exceed 30 days) to report a veteran's reduction in course load, represents a reasonable period of time.

(2) There is no legal basis to hold an educational institution liable for any benefit, including advance payment or prepayment, paid to a veteran prior to the end of the 30-day period allowed schools to report a reduction or termination.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23735 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 40-90, Payment of Educational Assistance Allowances to Individuals Participating in the Health Professions Scholarship Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May individuals participating in the Health Professions Scholarship Program be paid GI Bill Educational assistance benefits while enrolled in such a program?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 10-74, dated March 18, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

The VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 40-90, Payment of Educational Assistance Allowances to Individuals Participating in the Health Professions Scholarship Program, requested by Administrative Law Division, Office of the Judge Advocate General, Department of the Air Force, is as follows:

Held: Where the individual meets all of the requisite requirements, including active duty service of more than 180 days, attendance at an approved institution, and pursuit of an approved program of education, payments may be made to him under the GI Bill. It is further held that payment of such benefits must be charged against the individual's period of entitlement.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23755 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 195

Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITIES FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 16, 1990.

PLACE: 2033 K St., N.W., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application of the Chicago Board of Trade for contract designation in Two-Year Treasury Note futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-23872 Filed 10-4-90; 11:18 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, October 16, 1990.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-23873 Filed 10-4-90; 11:18 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, October 16, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-23874 Filed 10-4-90; 11:18 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, October 26, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-23875 Filed 10-4-90; 11:18 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION:

TIME AND DATE: 10 a.m., Wednesday, October 10, 1990 (Recess at noon and resume at 2:00 p.m. as necessary.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: All-Terrain Vehicle Vountary Standards Status Report.

The staff will brief the Commission on the All-Terrain Vehicle Voluntary Standards/Lateral Stability Status Report.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301-492-6800.

Dated October 3, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-23885 Filed 10-4-90; 1:54 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 11, 1990.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: ANPR on Infant Bean Bag Cushions.

The Commission will consider an Advance Notice of Proposed Rulemaking (ANPR) concerning the risk of injury and death which may be presented by infant cushions filled with foam plastic beads or other granular material.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: October 3, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-23886 Filed 10-4-90; 1:54 pm]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

October 4, 1990.

FCC To Hold Open Commission Meeting, Thursday, October 11, 1990

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, October 11, 1990, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W. Washington, DC.

Item No., Bureau, and Subject

1—Mass Media—Title: Definition of a Cable Television System (MM Docket No. 89-35). Summary: The Commission will consider whether to issue a *Report and Order* in this proceeding, concerning interpretation of the statutory definition of a cable television system.

2—Mass Media—Title: *Report and Order and Further Notice of Proposed Rulemaking* in GEN Docket Nos. 90-54 and 80-113; Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands. Summary: The Commission will consider whether to revise and conform its rules governing MDS, OFS, and ITFS, which affect "wireless cable" service.

3—Private Radio—Title: Amendment of Parts 13 and 80 of the Commission's Rules to implement the Global Maritime Distress and Safety System (GMDSS) to improve the safety of life at sea. Summary: The Commission will consider whether to propose to amend the maritime mobile service rules to incorporate the provisions of the GMDSS for United States vessels. The changes would affect all cargo ships of 300 gross tons and over and all passenger ships that carry more than 12 passengers, regardless of size.

4—Private Radio—Title: Construction, Licensing, and Operation of Private Land Mobile Radio Stations (RM-6910). Summary: The Commission will consider adoption of a Notice of Proposed Rule Making addressing compliance rules and procedures relating to station construction and operation, license cancellation, and license reinstatement in the Private Land Mobile Radio Services. The Commission will consider whether to establish a preference for relicensing recovered channels.

This meeting may be continued the following work day to allow the

seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10), and the Commission's rules, 47 CFR 0.603(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

CONTACT PERSON FOR MORE INFORMATION: Federal Communications Commission, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-23897 Filed 10-4-90; 1:55 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording) (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: October 3, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-23871 Filed 10-4-90; 11:18 am]

BILLING CODE 7590-01-M

procedures relating to station construction and operation, license cancellation, and license reinstatement in the Private Land Mobile Radio Services. The Commission will consider whether to establish a preference for relicensing recovered channels.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Issued: October 4, 1990.

William F. Caton,

Acting Secretary.

[FR Doc. 90-23907 Filed 10-4-90; 2:13 pm]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" 5 U.S.C. 552b), notice is hereby given that at 2:07 p.m. on Tuesday, October 2, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

A recommendation concerning an administrative enforcement proceeding.

Matters relating to the probable failure of certain insured banks.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,806

American Diversified Savings Bank, Costa Mesa, California

Application of Pearl River County Bank (in Organization), Picayune, Mississippi, for Federal deposit insurance, for consent to purchase assets and assume the liability to pay deposits made in the Picayune and Poplarville Branches of Southeast Mississippi Bank, Quitman, Mississippi, and for consent to establish one branch.

Matters relating to an assistance agreement with a depository institution.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Vice Chairperson Andrew C. Hove, Jr., concurred in by Director Robert L. Clarke (Comptroller of the Currency), Mr. John Downey, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 3, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-23858 Filed 10-4-90; 11:18 am]

BILLING CODE 6714-01-M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, October 16, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 30800 (Sub-No. 19), *UP/MKT Merger—MKT Debentures—"Available Income" Calculation*

Docket No. 37038, *Bituminous Coal—Hiawatha, Utah, to MOAPA, Nevada, and Docket No. 37409, Aggregate Volume Rate On Coal—Acco, Utah, to MOAPA, Nevada*

Finance Docket No. 31717, *Iowa Power, Inc.—Construction Exemption—Council Bluffs, Iowa*, and Finance Docket No. 31716, *Iowa Power, Inc.—Petition Under 49 U.S.C. 10901(d)*, and Docket No. AB-296 (Sub-No. 1X) *Iowa Southern Railroad Company—Exemption—Abandonment in Pottawattamie, Mills, Fremont, and Page Counties, Iowa*

Finance Docket 31581, *Wheeling Acquisition Corporation—Acquisition and Operation Exemption—Lines of Norfolk & Western Railway Company* and Finance Docket No. 31675, *Wertheim Schroder & Co., Incorporated—Continuance in Control Exemption—Wheeling & Lake Erie Railway Company*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-23897 Filed 10-4-90; 1:55 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 8, 15, 22, and 29, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 8

There are no Commission meetings scheduled for the Week of October 8.

Week of October 15—Tentative

Monday, October 15

10:00 a.m.
Briefing on Regulatory Impact Survey Recommendations (Public Meeting)

2:00 p.m.
Briefing on Decoupling Siting Requirements from Future Designs and Update of Source Term Matters (Public Meeting)

Wednesday, October 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Petitions to Intervene and Requests for Hearing in Shoreham Operating License Amendment Proceeding (postponed from October 2)

Week of October 22—Tentative

Thursday, October 25

10:00 a.m.
Periodic Briefing on Industry Implementation of Generic Safety Issues (Public Meeting)

Friday, October 26

10:00 a.m.
Briefing on NUMARC's Perspective of the State of the Nuclear Industry (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 29—Tentative

Monday, October 29

10:00 a.m.
Briefing on Issued Raised by the Provision Requiring Title Transfer of Low Level Waste (Public Meeting)

Tuesday, October 30

10:00 a.m.
Briefing on Nonprescriptive Nuclear Safety Regulation (Public Meeting)

Wednesday, October 31

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording) (301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: October 3, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-23871 Filed 10-4-90; 11:18 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 55, No. 195
Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. The corrections are prepared by the agencies of the document or by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90M-0279]

CIBA Vision Corp.; Premarket Approval of CIBA Vision® Cleaner

Correction

In notice document 90-19898 beginning on page 34816 in the issue of Friday, August 24, 1990, make the following correction:

On page 34816, in the third column, in the last paragraph, in the last line, "Rockville, MD 20857" should read "Rockville, MD 20852".

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Notice of Systems of Records

Correction

In notice document 90-19898 beginning on page 34816 in the issue of Friday, August 24, 1990, make the following correction:

On page 34816, in the third column, in the last paragraph, in the last line, "Rockville, MD 20857" should read "Rockville, MD 20852".

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 90-17]

Minimum Capital Ratios

Correction

In rule document 90-19896 beginning on page 34788 in the issue of Friday, August 24, 1990, make the following corrections:

1. On page 34788, in the third column, in the last paragraph, in the last line, "Rockville, MD 20857" should read "Rockville, MD 20852".
2. On page 34789, in the first column, in the first paragraph, in the last line, the reference to § 1735.1 "Telephones" should read "Telephone".
3. On page 39396, in the first column, in the first paragraph, in the last line, the reference to § 1735.1 "Telephones" should read "Telephone".
4. On page 39396, in the first column, in the first paragraph, in the last line, the reference to § 1735.1 "Telephones" should read "Telephone".

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

Correction

In rule document 90-19895 beginning on page 34927 in the issue of Monday, August 27, 1990, make the following correction:

On page 34927, in the third column, in the last paragraph, in the last line, "Rockville, MD 20857" should read "Rockville, MD 20852".

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

Correction

In rule document 90-19894 beginning on page 34930 in the issue of Monday, August 27, 1990, make the following correction:

On page 34930, in the third column, in the last paragraph, in the last line, "Rockville, MD 20857" should read "Rockville, MD 20852".

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

Correction

In rule document 90-19893 beginning on page 34933 in the issue of Monday, August 27, 1990, make the following correction:

On page 34933, in the third column, in the last paragraph, in the last line, "Rockville, MD 20857" should read "Rockville, MD 20852".

Corrections

Federal Register
Vol. 55, No. 195
Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1765

RIN 0572-AA31

Telephone Materials, Equipment, and Construction—Telephone Program

Correction

In rule document 90-2387 beginning on page 3570 in the issue of Friday, February 7, 1990, make the following correction:

§ 1765.86 Certification addendum.

On page 3575, in the third column, in the 13th line, the section heading is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Chapter XVI

Rural Electrification Administration

7 CFR Chapter XVII

Electric and Telephone Programs, Redesignation of Regulations

Correction

In rule document 90-22901 beginning on page 39393 in the issue of Thursday, September 27, 1990, make the following corrections:

§ 1745.1 [Removed]

1. On page 39395, in the second column, among the part headings preceding amendatory instruction 13, the section heading following part 1728 should read as set forth above.

§ 1735.1 [Corrected]

2. On the same page, in the third column, in the last line of paragraph (a) of § 1735.1 "Telephones" should read "Telephone".

3. On page 39396, in the first column, in the table, at entry "1749.20-1749.22" the first line of the second-column entry should read "1737.20-1737.22".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900795-0235]

RIN 0648-AD59

Snapper-Grouper Fishery of the South Atlantic

Correction

In proposed rule document 90-22415 beginning on page 39023 in the issue of Monday, September 24, 1990, in the third column, under the "**DATES**" caption, the date should read "November 2, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Harold Bennett

Correction

In notice document 90-22150 beginning on page 38574 in the issue of Wednesday, September 19, 1990, in the second column, in the second from last paragraph, on the first and second lines "26 Ironwood Street" should read "25 Ironwood Street".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Louisiana Coastal Management Program, et al.; Intent to Evaluate Performance

Correction

In notice document 90-20641 beginning on page 35923 in the issue of Tuesday, September 4, 1990, the heading of the document should read as set forth above and the **Federal Register** document number appearing at the end of the document should read "FR Doc. 90-20641".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-0033]

Over-the-Counter Dental and Oral Health Care Drug Products for Antiplaque Use; Safety and Efficacy Review

Correction

In proposed rule document 90-21986 beginning on page 38560 in the issue of Wednesday, September 19, 1990, make the following corrections:

On page 38562, in the second column, in the second full paragraph, in the first line, "view" should read "review".

On the same page, in the third column, in the first full paragraph, in the second line, "53 FR 50940" should read "53 FR 50949"; and in the last line of that paragraph, "pursuant" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 90-22139 beginning on page 38583 in the issue of Wednesday, September 19, 1990, make the following correction:

On page 38584, in the third column, in the first line, "split" should read "splint".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90M-0279]

CIBA Vision Corp.; Premarket Approval of CIBA Vision® Cleaner

Correction

In notice document 90-22138 beginning on page 38582 in the issue of Wednesday, September 19, 1990, make the following corrections:

On page 38582, in the third column, under **SUMMARY**, in the fifteenth line, "Contract" should read "Contact"; and under **DATES**, in the second line, "October 9, 1990." should read "October 19, 1990."

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Notice of Systems of Records

Correction

In notice document 90-19898 beginning on page 34816 in the issue of Friday, August 24, 1990, make the following corrections:

1. On page 34826, in the third column, above the heading "**SYSTEM NAME:** insert the system of records number "**TVA-13**".

2. On page 34837, in the first column, above the heading "**SYSTEM NAME:**" change the system of records number from "**TVA 31**" to "**TVA-32**".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 90-17]

Minimum Capital Ratios

Correction

In rule document 90-22488 beginning on page 38797 in the issue of Friday, September 21, 1990, make the following correction:

On page 38800, in the second column, in amendatory instruction 5, in the first line "Section 2.6" should read "Section 3.6".

BILLING CODE 1505-01-D

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federal register

Tuesday
October 9, 1990

Part II

Department of Transportation

Urban Mass Transit Administration

49 CFR Part 665

Bus Testing Program; Modification of Interim Final Rule; Interim Final Rule

DEPARTMENT OF TRANSPORTION

Urban Mass Transportation Administration

49 CFR Part 665

[Docket No. 89-B]

RIN 2132-AA30

Bus Testing Program; Modification of Interim Final Rule

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Interim final rule.

SUMMARY: On May 25, 1989, the Urban Mass Transportation Administration (UMTA) published a proposed rule on its bus testing facility program, and issued interim guidance on August 23, 1989, to ensure timely implementation of the program. Based on experience gained from the facility as it progresses toward full operation, today's document clarifies and expands the scope of those interim procedures for the bus testing program.

DATES:

Effective date: These procedures become effective November 8, 1990.

Comment due date: Comments must be submitted by January 7, 1991.

FOR FURTHER INFORMATION CONTACT: For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366-0090; for legal issues, Daniel Duff, Assistant Chief Counsel for Legislation and Regulation, Office of the Chief Counsel, (202) 366-4011. The test facility can be reached by contacting James C. Wambold, Director of Automotive Research, (814) 863-1889.

ADDRESSES: For comments, UMTA, Department of Transportation, Office of the Chief Counsel, Docket No. 89-B, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. For the bus testing facility, Penn State Automotive Research Division, Research Building B, University Park, PA 16802.

SUPPLEMENTARY INFORMATION:

I. Background

On May 25, 1989, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) to implement section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). Section 317 directs the Secretary of DOT (as delegated to UMTA) to establish a bus testing facility at Altoona, Pennsylvania, and provides that no funds obligated by UMTA after September 30, 1989, under the Urban Mass Transportation Act of 1964, as amended, may be used to purchase a "new bus model" unless a bus of such model has been tested at the facility.

To ensure that bus testing procedures were in place before the statutory deadline of October 1, 1989, the agency indicated in the NPRM that it would issue interim guidance in advance of the agency's final rule. The guidance was provided in the interim final rule issued on August 23, 1989 (54 FR 35158). Comments on the interim procedures were due on November 21, 1989. However, due to the complex nature of the issues involved, a specific request on behalf of the industry by the American Public Transit Association, and UMTA's belief that it should give commenters maximum opportunity to comment, the comment period was extended for 90 days.

The agency's NPRM was expansive, proposing that all vehicles used in mass transit after April 2, 1987 (the effective date of STURAA) be subject to testing at the facility. In addition, the agency specifically requested comment on a range of issues.

The interim final rule narrowed the scope of the proposed rule somewhat, and provided that, during the interim start-up period, only certain larger-sized buses would be subject to the bus testing procedures. The interim final rule also stated that the agency, after appropriate notice and as conditions warranted, might expand the scope of vehicles to be tested at the facility during the interim period. In this connection, we have decided to make certain changes in the interim final rule both in terms of types of vehicles to be tested and extension of the interim period. Comments are being solicited on these modifications, and UMTA will consider them along with previously received comments before it issues a final rule.

II. Overview of the modifications

This section contains a discussion and summary of the issues to be modified.

A. Length of the transition period (§ 665.3). The transition period for the bus testing facility began October 1, 1989, with the anticipation that a final rule would be published no later than September 1, 1990. Information gathered from the start-up operations of the bus testing facility, as well as from comments to the docket, indicate that additional time is needed before the facility will be ready to test all sizes of buses. Therefore, the interim period is extended to no later than July 1, 1991, by which time the agency intends to publish a final rule containing the final requirements for the bus testing program.

UMTA, however, reserves the right to end the interim period earlier than July 1, 1991. Before doing so, however, the agency would publish a final rule outlining the specific final requirements applicable to this program, and establish the effective date for all operations at the bus testing facility in accordance with traditional notice requirements. Furthermore, the agency also continues to reserve the right, after appropriate notice, to make further modifications to the interim period procedures.

B. Types of vehicles covered in interim program (§ 665.11). One of the key issues identified in the proposed rule was the definition of "bus," which determines the vehicles to be tested at the facility. The agency had proposed a comprehensive definition ranging from large buses to small vans. During the start-up phase of the facility, however, the agency recognized that there were certain limitations affecting the ability of the facility to test comprehensively all vehicles, and thus only three categories of vehicles were covered by the interim final procedures.

The operations of the facility, however, now are able to accommodate an additional category of vehicle. Accordingly, the medium-duty bus test category identified in the interim final rule at § 665.11(b)(3) is expanded by this modification from only the purpose-built medium-duty bus type designs to include also the medium-duty body-on-chassis bus type designs. To reflect this change, the new medium-duty bus type category is defined at new § 665.11(b)(3) as medium-duty buses with a minimum service life of seven years or 200,000 miles. This change now makes all new model medium-duty buses subject to bus testing as of the effective date of this document, and subject to the requirements of the bus testing program contained in 49 CFR part 665.

C. Definitions of new bus model and major changes in configuration or components (§ 665.5). Under the interim procedures, a new bus model is defined as one which has not been used in mass transportation service in the United States before October 1, 1988, or one which has been used in mass transportation service but which, after September 30, 1988, is being produced with a major change in configuration or components. In this document, the definition of a new bus model is being modified in response to questions on what constitutes a major change in configuration or components sufficient to require a bus to be tested at the facility.

Specifically, the second part of the definition of "New Bus Model" in § 665.5 is revised by modifying the phrase "* * * is being produced with a change of major components or significant structural modifications" to read "* * * is being produced with a major change in configuration or components." In light of this modification, the definition of "major changes in configuration or components" is deleted and is being replaced with separate definitions of the new phrases added to the definition of "new bus model,"—"major change in components" and "major change in configuration."

Major change in configuration is defined as a change which may have a significant impact on vehicle handling and stability, or structural integrity. A significant impact is any effect which could result in an unsafe vehicle characteristic, such as a dangerous operating condition or failure of a structural element. A major change in components is defined as a change in one or more of the vehicle's major components such as the engine, transmission, suspension, axle or steering.

Within the context of these definitions, the following examples of "major changes" are provided; changes such as these would require a vehicle to be tested at the facility.

1. Examples of a major change in configuration include, but are not limited to:

a. Replacement of metal structural elements with new materials, such as composites or wood.
b. Fabrication of structural elements in a substantially different manner, such as two piece mullion instead of a single one.
c. Relocation of the wheelchair lift from the back of the bus to the front (or vice versa).
d. Changing the width (96 inches to 102 inches) or length (35 foot to 40 foot) of the bus (or vice versa).
e. Change in vehicle weight distribution that changes the center of gravity, *e.g.*, raising the roof or adding extra weight on the roof.
f. A bus made from a different shell material, *e.g.*, a change from aluminum to a composite material.
g. A bus with a major change in floor height, *e.g.*, a new low floor bus.

2. Examples of a major change in engine include, but are not limited to:

a. An engine design that has not been used in transit service.
b. Powerplant configuration change such as a change from a "T" Drive to an angle drive (or vice versa).

3. Examples of a major configuration in transmission include, but are not limited to:

a. A transmission design that has not been used in transit service.
b. Change from "V" drive to in-line (or vice versa).
c. Engine/transmission combination that results in a major change in the torque delivered to the rear drive axle.

4. Examples of a major change in axle include, but are not limited to:

a. Change in total drive train plus rear axle to provide for major torque change at drive wheels.
b. Major redesign of rear drive axle.
c. Change from a two-axle design to a three-axle design (or vice versa).
d. Change in location of bus drive axle, or going from a rear to front drive (or vice versa).

5. Examples of a major change in suspension include, but are not limited to:

a. Change in front suspension from solid axle to independent suspension (or vice versa).
b. Change from standard axle suspension system to "A" frame or "H" frame at rear.
c. Major change in distance between air bags in support system.
d. Addition or deletion of radius rods and sway bars, or changing from solid radius rod to hydraulic and spring action bars.
e. Addition or removal of the bus kneeling system.

6. Examples of major change in steering include, but are not limited to:

a. Addition or deletion of power assist steering system.
b. Major change in the number of turns of steering wheel from lock-to-lock.

The agency recognizes that these examples do not cover, nor are they intended to cover, every situation. If a manufacturer or grantee is uncertain whether a change is of a type to require testing at the facility, either party should refer the specific issue to UMTA for guidance. Inquiries should be addressed to the Office of Technical Assistance and Safety at the address provided in the Addresses section of this Preamble.

III. Regulatory Analyses and Certifications

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and UMTA has determined that this is not a major rule. As promulgated, this rule will not result in an annual effect on the economy of $100 million or more, nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises in domestic or export markets.

B. Regulatory Evaluation

This regulation is significant under the Department Regulatory Policies and Procedures because of the potential high level of public interest. A final regulatory evaluation will be prepared before the final rule is issued. These interim procedures will assist the agency in its continuing effort to collect specific cost data on the program. The agency docketed an Addendum to its preliminary regulatory evaluation outlining the data available to date at the time it issued its initial interim final rule on August 23, 1989. The agency will issue a final regulatory analysis at the time the final rule is issued.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96-354, UMTA believes that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Act, and accordingly has addressed this impact in its preliminary regulatory evaluation. The NPRM sought comment on the potential impact on this rule on small manufacturers of vans, paratransit vehicles and the like.

D. Paperwork Reduction Act

The collection of information requirements in this rule are subject to the Paperwork Reduction Act (44 U.S.C. chapter 35). Section 317 of STURAA specifically requires the establishment of the facility. The paperwork requirements contained in this rule have been submitted to the Office of Management and Budget and have received approval (OMB No. 2132-0550).

E. Federalism—Executive Order 12612

UMTA has reviewed this rule in light of the Federalism considerations set forth in Executive Order 12612. That Executive Order requires each Federal agency to address the impact of its regulations on State and local governments. Although this rule will have definite Federalism implications, because it will impose additional requirements on States, local governments, and public transit operators receiving Federal financial assistance from UMTA, this rulemaking is required by statute. UMTA considered the Federalism implications of this rulemaking during its

development, and has designed it to provide recipients with as much flexibility as possible under the law. UMTA does not expect that this rule will have a substantial direct effect on the relationship between the Federal Government and the States or the distribution of power and responsibilities among the various levels

PART 665—BUS TESTING

1. The authority citation for part 665 continues to read as follows:

Authority: Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*, 1608(h), section 317, Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR 1.51.

Major change in components means a change in a vehicle's engine, axle, transmission, suspension or steering components.

Major change in configuration means a change which may have a significant impact on vehicle handling and stability, or structural integrity.

* * * * *

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Tuesday, October 9, 1990

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development, and has designed it to provide recipients with as much flexibility as possible under the law. UMTA does not expect that this rule will have a substantial direct effect on the relationship between the Federal Government and the States or the distribution of power and responsibilities among the various levels of government.

In addition, UMTA has considered the Federalism implications of this rulemaking on public transit operators which are quasi-governmental or instrumentalities of States and local government, and UMTA does not expect that this rule will have a substantial direct effect on the relationship between those public operators and the governmental entities with which they are associated. Accordingly, UMTA has determined that the preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

Lists of Subjects in 49 CFR Part 665

Vehicle testing, Grant programs—transportation, Mass transportation.

Accordingly, for the reasons described in the Preamble, 49 CFR part 665 is amended, as set forth below:

PART 665—BUS TESTING

1. The authority citation for part 665 continues to read as follows:

Authority: Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*, 1608(h), section 317, Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR 1.51.

2. Section 665.3 is revised to read as follows:

§ 665.3 Scope.

This part applies to a recipient of Federal financial assistance under sections 3, 9, 16(b)(2), or 18 of the UMTA Act. These interim procedures shall be in effect from October 1, 1989, up to July 1, 1991, unless the agency, with appropriate notice, expands the scope of this rule to cover additional vehicles or makes the interim rule final at some earlier date.

3. Section 665.5 is amended by revising paragraph (2) in the definition of "new bus model", removing the definition of "major changes in configuration or components" and adding a definition of "major change in configuration" and "major change in components", as follows:

§ 665.5 Definitions.

* * * * *

Major change in components means a change in a vehicle's engine, axle, transmission, suspension or steering components.

Major change in configuration means a change which may have a significant impact on vehicle handling and stability, or structural integrity.

* * * * *

New Bus Model means a bus model which—

* * * * *

(2) Has been used in such service but which after September 30, 1988, is being produced with a major change in configuration or components.

* * * * *

4. Section 665.11 is amended by revising paragraph (b)(3), as follows:

§ 665.11 Testing requirements.

* * * * *

(b) * * *

(3) Medium-duty buses, approximately 25–35 foot with a minimum service life of seven years or 200,000 miles.

* * * * *

Issued on: October 2, 1990.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 90-23741 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-57-M

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H.R. 4962/Pub. L. 101-406

1992 Olympic Commemorative Coin Act. (Oct. 3, 1990; 104 Stat. 879; 3 pages) Price: $1.00

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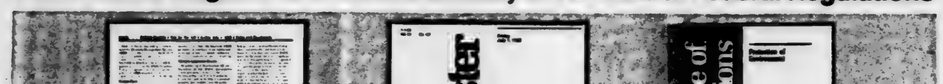

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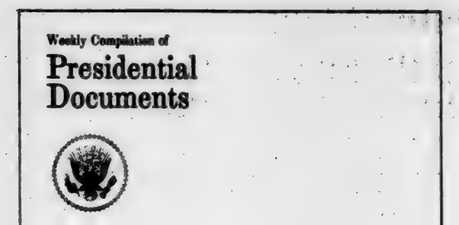

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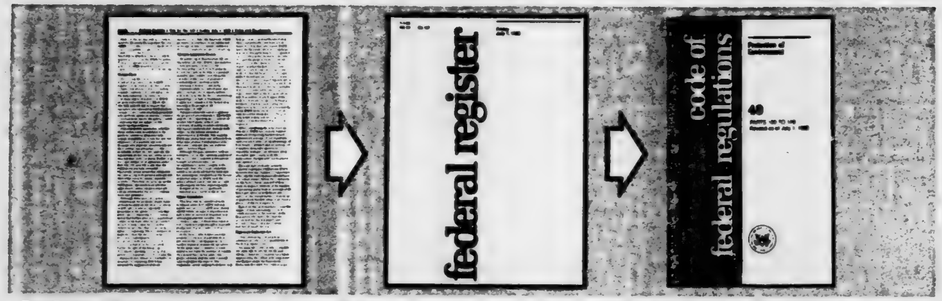

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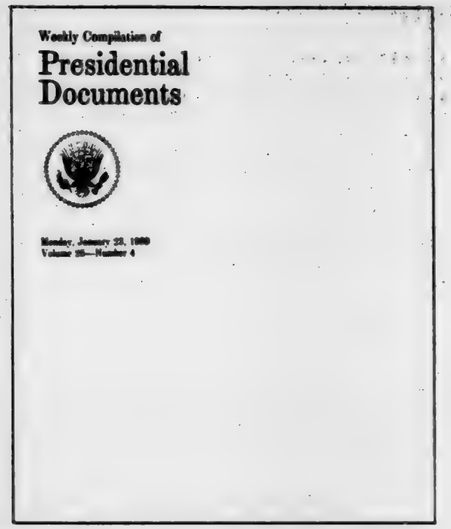

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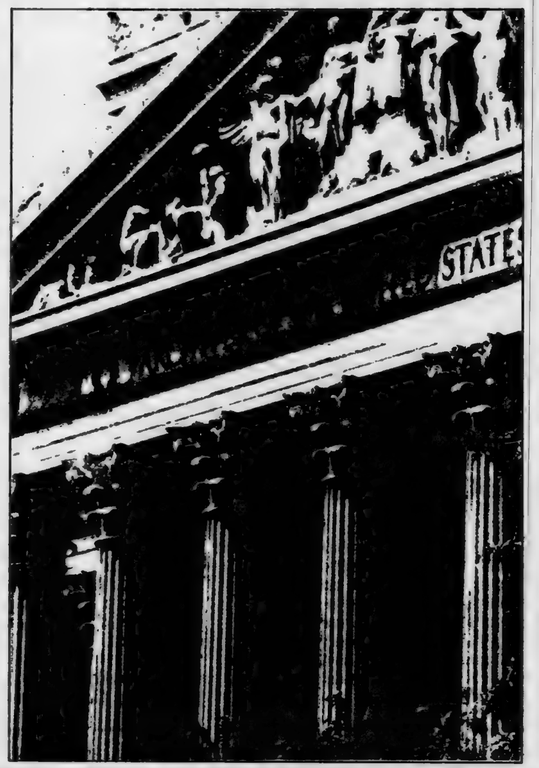

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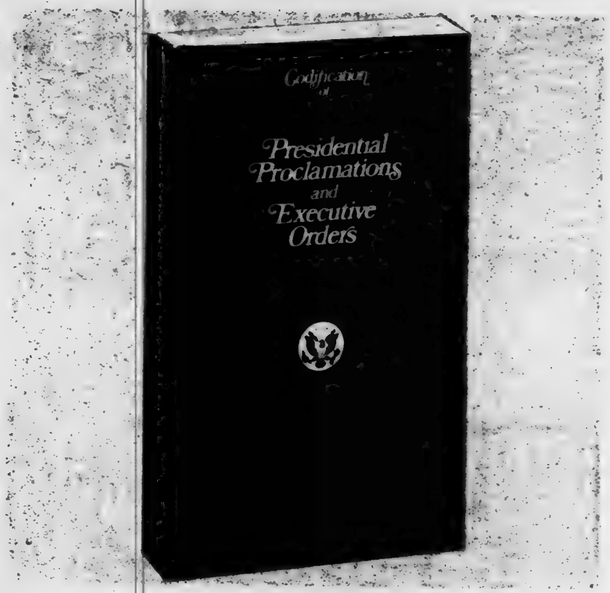

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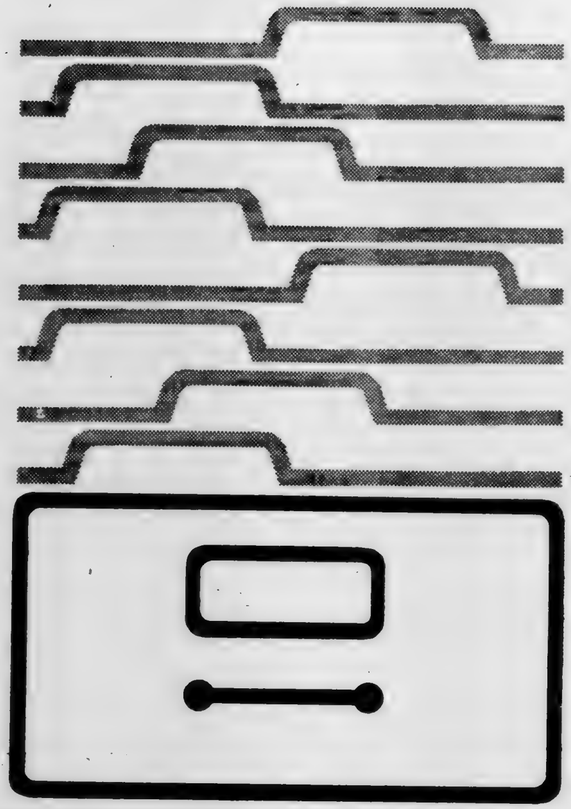

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Rules and Regulations

Federal Register
Vol. 55, No. 199
Wednesday, October 10, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AD67

Pay Administration (General); Annual Premium Pay for Administratively Uncontrollable Overtime Work

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the calculation of annual premium pay for administratively uncontrollable overtime (AUO) work. The regulations implement Public Law 101-173, November 27, 1989, which eliminate the rate of basic pay for GS-10, step 1 (currently $27,208 per year), as the maximum base for computing annual premium pay for AUO work. The final regulations require that annual premium pay for AUO work be calculated on the basis of the employee's actual rate of basic pay.

EFFECTIVE DATES: The first day of the first pay period beginning after September 30, 1990.

FOR FURTHER INFORMATION CONTACT: James R. Weddel, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Public Law 101-173, November 27, 1989, amends section 5545(c)(2) of title 5, United States Code, effective with the first pay period beginning after September 30, 1990, by removing the GS-10, step 1, limit on the rate of basic pay used to compute annual premium pay for administratively uncontrollable overtime (AUO) work.

To implement this statutory change, OPM published proposed regulations on June 6, 1990 (55 FR 23068), to remove the GS-10, step 1 limit as the maximum base for computing annual premium pay for AUO work and to eliminate the requirement that annual premium pay for AUO work be limited to the amount of premium pay (exclusive of pay for regular overtime work) that would otherwise be payable. The 60-day public comment period ended on August 6, 1990. Written comments were received from three individuals, one agency, and two labor organizations. These comments are summarized below.

Identical comments were received from three individuals stating that they agreed with the proposed regulations. However, the commenters recommended that members of the Federal law enforcement community be exempted from the limitation on premium pay in 5 U.S.C. 5547(a). This limitation provides that an employee may be paid overtime pay, premium pay for nightwork, and premium pay for Sunday and holiday work only to the extent that the payment does not cause the employee's aggregate rate of pay for any pay period to exceed the maximum rate for GS-15.

The commenters noted that the aggregate pay limitation does not apply to certain employees of the Federal Aviation Administration and the Department of Defense who are paid differentials under 5 U.S.C. 5546a for duties related to the operation and maintenance of an air traffic control system. However, OPM cannot adopt this recommendation since the GS-15, step 10, aggregate pay limitation has been established by law, and any exception for law enforcement personnel would require legislative action.

One agency and one labor organization expressed support for the regulations as proposed and recommended no changes.

Several individuals informally requested an explanation of the nature and purpose of AUO pay. AUO pay can be paid only to Federal employees in positions in which the hours of duty cannot be administratively controlled and which require substantial amounts of irregular, unscheduled overtime duty. For example, this authority is often used in certain law enforcement positions where employees are required to perform substantial amounts of irregular, unscheduled overtime work and are responsible for recognizing without supervision circumstances requiring them to remain on duty. Under these circumstances, agencies are authorized to pay premium pay on an annual basis *instead of* paying premium pay for each hour of irregular or occasional overtime work performed, as authorized by 5 U.S.C. 5542.

A labor organization pointed out that a conforming change eliminating a reference to the GS-10, step 1, limitation is needed in 5 CFR 550.154(a). This change has been incorporated in the final regulations.

Pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this amendment effective in less than 30 days. The 30-day delay in the effective date is being waived because the effective date of the statute is the first day of the first pay period beginning after September 30, 1990.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

1. The authority citation for subpart A of part 550 is revised to read as follows, and the authority citations following all the section in Subpart A are removed:

Authority: 5 U.S.C. 5545 and 6101(c).

2. Section 550.151 is revised to read as follows:

§ 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other

premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay.

§ 550.152 [Reserved]

3. Section 550.152 is removed and reserved.

4. In § 550.154, the introductory language of paragraph (a) is revised to read as follows:

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of the employee's rate of basic pay:

* * * * *

[FR Doc. 90-23882 Filed 10-9-90; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Parts 841, 870, 871, 872, 873, and 890

RIN: 3206-AD63

Survivor Benefits, Health Benefits, and Life Insurance for Certain Annuitants

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is making final its interim Federal Employees Retirement System (FERS), Federal Employees' Group Life Insurance (FEGLI) Program, and Federal Employees Health Benefits (FEHB) Program regulations regarding individuals eligible for an immediate annuity under the "Minimum Retirement Age (MRA) plus 10" provision of the FERS law. The regulations clarify the retirement and insurance status of individuals who qualify for certain retirement benefits. These regulations (1) Provide for reinstatement of life insurance and health benefits coverage for individuals who qualify for an immediate annuity when they leave Federal service but postpone the commencing date of the annuity, and (2) enable survivors of these individuals to qualify for survivor benefits and health insurance coverage as surviving family members.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 606-0780, extension 207.

SUPPLEMENTARY INFORMATION: Public Law 99-335, enacted June 6, 1986, established the Federal Employees Retirement System (FERS). Under a provision of FERS, known as the "MRA plus 10" provision (5 U.S.C. 8412(g)), employees who separate from service after attaining the minimum retirement age specified in 5 U.S.C. 8412(h) (currently age 55) and completing 10 years of creditable service (including at least 5 years of civilian service) are eligible for an immediate annuity. The annuity is reduced by 5/12 of 1 percent for each month the retiree is under age 62 when the annuity commences (5 U.S.C. 8415(f) and 5 CFR 842.404). To lessen this age reduction, separated employees may postpone the annuity commencing date to the first day of any month before they become age 62. The separated employees may apply for retirement immediately and then postpone the commencing date of the annuity or they may wait until they are ready for the annuity to begin to make application. On January 11, 1990, OPM published interim regulations in the **Federal Register** (55 FR 993) to clarify the circumstances under which health and life insurance may continue for employees who postpone their annuity commencing date under FERS and the status of their survivors if they die before they apply for the annuity. On February 16, 1990, OPM published a correction to the January 11 interim regulation in which § 890.301(bb) was redesignated as 890.301(cc).

OPM received comments from one Federal agency. The comments primarily concerned revisions in language rather than any substantive changes in the provisions themselves. We did not adopt most of these editorial changes because they did not improve clarity of the interim regulations.

The commenter expressed a concern that people might try to apply § 841.204(b), which provides that certain deceased former employees are considered as deceased annuitants, to entitlement to life insurance benefits. Therefore, we have revised § 841.204(b) to clarify that it applies only for the purpose of determining eligibility for a survivor annuity.

The commenter also suggested that a provision be added to part 890 (health benefits) to provide that a former employee who had exercised his or her conversion right or his or her right under the temporary continuation of coverage (TCC) provisions (5 CFR 890, subpart K) and whose regular health benefits coverage is restored when the MRA-plus-10 annuity begins would receive a refund of premiums for the conversion contract or TCC coverage for any time after the MRA-plus-10 annuity commenced. The stated reason for this is to parallel the life insurance provision in the last sentence of § 870.601(a)(4).

It is not necessary or desirable to make the health benefits provisions parallel to the life insurance provisions in this respect because the circumstances are different. Under the life insurance regulations, a conversion contract terminates when FEGLI coverage resumes under these regulations. Therefore, a refund of premiums covering a period after the termination is reasonable. However, the health benefits regulations do not require that a conversion contract terminate when FEHB coverage is restored. The termination of the contract is controlled by the former employee and any refunds are subject to the terms of the conversion contract.

The TCC regulations provide that TCC coverage stops whenever an enrollee becomes covered under a regular health benefits enrollment. Any premiums collected after that date would be erroneous, and therefore refundable.

OPM has revised the last sentence of § 890.301(cc) to correct a typographical error.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects

5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

5 CFR Part 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Life insurance, Health insurance.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is adopting its interim regulations under 5 CFR Parts 841, 870, 871, 872, 873, and 890 published on January 11, 1990, (55 FR 993) as corrected on February 16, 1990, (55 FR 5563), as final rules, with the following changes:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100-654; § 890.803 also issued under sec. 303 of Pub. L. 99-569, 100 Stat. 3190, sec. 188 of Pub. L. 100-204, 101 Stat. 1331, and sec. 204 of Pub. L. 100-238, 101 Stat. 1744; Subparts J and K also issued under titles I and II, respectively, of Pub. L. 100-654.

2. In § 841.204, paragraph (b) is revised to read as follows:

§ 841.204 Deemed application to protect survivors.

* * * * *

(b) For the purpose of determining entitlement to a survivor annuity, a former employee who is deemed to have filed an application under paragraph (a) of this section is considered to have died as a retiree.

* * * * *

3. In § 890.301, the last sentence of paragraph (cc) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(cc) *Reenrollment upon application for postponed MRA-plus-10 annuity.*

* * *

If such former employee dies before the end of the 60-day election period in the preceding sentence, a survivor who is entitled to a survivor annuity may register to enroll in a health benefits plan under this part within 60 days after OPM mails the survivor a notice of eligibility and the appropriate registration form.

[FR Doc. 90-23861 Filed 10-9-90; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) amends 7 CFR 1.123 by adding another system of records to those exempted from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(k). Notice of the amendment, inviting public comments, was published as a proposed rule in the **Federal Register** on August 1, 1990, at 55 FR 31191. No public comments were received. The final rule, as published, is identical to the proposed rule.

DATES: The amendment is effective November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Jinbee K. Wilde, Office of the General Counsel, USDA, (202) 447-3045.

SUPPLEMENTARY INFORMATION: This amendment is made necessary due to the fact that the Forest Service system of records entitled "Law Enforcement Investigation Records, USDA/FS-33" was inadvertently omitted when 7 CFR 1.123 was amended in 1988. This system contains investigations conducted pursuant to 16 U.S.C. 559, which authorizes Forest Service employees "to make arrests for the violation of the laws and regulations relating to the national forests * * *." The system, therefore, contains "investigatory material compiled for law enforcement purposes * * *" and may be exempted from certain sections of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k)(2).

This rule has been reviewed under the Secretary's Memorandum 1512-1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more. In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Privacy Act.

For the reasons set out in the preamble, 7 CFR, subtitle A, part 1, subpart G, § 1.123 of the Code of Federal Regulations is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for subpart G continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Part 1, subpart G—Privacy Act Regulations, § 1.123 is amended by adding a new entry for the Forest Service alphabetically to read as follows:

§ 1.123 Specific exemptions.

* * * * *

Forest Service

Law Enforcement Investigation Records, USDA/FS-33.

Done this 2nd day of October 1990, at Washington, DC.

Clayton Yeutter,
Secretary of Agriculture.

[FR Doc. 90-23843 Filed 10-9-90; 8:45 am]
BILLING CODE 3410-14-M

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV-90-114]

Irish Potatoes Grown in Colorado; Final Rule to Revise Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires reinspection of regraded, resorted and repacked lots of Colorado potatoes except in cases where such a reinspection requirement will result in unreasonably high inspection costs to repackers. The intent of this action is to ensure that all Colorado potatoes going to fresh market outlets meet the minimum quality and size requirements established under the marketing order.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement

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Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers and 395 producers of Colorado potatoes under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

This rule requires inspection of regraded, resorted or repacked lots of Colorado potatoes except in cases where such an inspection requirement will result in unreasonably high inspection costs to repackers. This action is authorized by § 948.40 of the marketing order, and was unanimously recommended by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), and the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) (committees), the agencies responsible for local administration of the Federal marketing order for potatoes grown in Colorado.

The marketing order covers the entire State of Colorado, but divides the State into three geographic areas for administrative and regulatory purposes. In Area 1, which is known as the Western Slope, potatoes are no longer grown in significant volume, and no handling requirements are currently in effect for potatoes grown in that area. Potatoes grown in the other two areas are currently required to meet minimum quality and size requirements prior to being shipped to fresh market outlets. For example, potatoes grown in Area 3, which consists of 37 counties in northeastern Colorado, are required to grade at least U.S. No. 2 and be at least 1⅞ inches in diameter or 4 ounces in weight. Similar requirements are in effect for potatoes grown in Area 2, which is commonly referred to as the San Luis Valley and is comprised of 9 counties in southcentral Colorado. Potatoes grown in both Area 2 and Area 3 are also required to be inspected by the Federal-State Inspection Service (FSIS) and be certified as meeting applicable grade and size requirements.

Historically, the required inspection is performed at shipping point in the area in which the potatoes are grown. In recent years, however, potatoes have been increasingly moving within the State for regrading, resorting and repacking. These potatoes are inspected at shipping point, shipped in bulk to another packing facility within the production area and then repacked in consumer size containers before reentering commercial channels.

When a lot of potatoes that has been inspected is subsequently regraded, resorted or repacked, it loses its identity with respect to the initial inspection certificate issued to cover the lot. Since the inspection certificate cannot be readily associated with the repacked lot, it is difficult to ascertain whether the repacked lot has been inspected and whether it is in compliance with the applicable grade and size requirements that are in effect.

Quality assurance is very important to the Colorado potato industry. The committees believe that providing the public with potatoes that are of acceptable quality and size is necessary in order to maintain the position of Colorado potatoes in the industry. This rule is expected to benefit Colorado potato producers and handlers by assuring consumers that all Colorado potatoes shipped to fresh market outlets, including those that have been regraded, resorted or repacked, meet the minimum quality and size requirements established under the applicable handling regulations.

The committees therefore recommended that regraded, resorted or repacked lots be required to be reinspected. This will ensure that all Colorado potatoes being handled are in compliance with the terms of the handling regulations.

While the committees recommended that regraded, resorted or repacked lots be subject to a reinspection requirement, they also recognized that such a requirement could result in unreasonably high inspection costs to repackers under certain circumstances. Some repacking facilities in Colorado are located at a considerable distance from an FSIS office, and it could be costly and difficult for such repackers to obtain the necessary inspection. The committees therefore recommended that such repackers be able to apply for a waiver from the reinspection requirement. To be entitled to a waiver, the repacker will have to be located at a site where inspection is not readily available, or such repacker's actual inspection costs will have to be unreasonably high.

The FSIS establishes its inspection fees on a per hundredweight basis. Typically, this standard fee covers all inspection costs. Under certain circumstances, however, additional fees are charged. For example, a handler who is located far from an FSIS office is also charged for the inspector's travel time and associated costs. The committees recommended that any repacker whose actual inspection costs will exceed 1⅓ times the established per hundredweight inspection fee should be entitled to a waiver because the reinspection requirement will impose an unreasonably high inspection cost.

Any repacker seeking an inspection waiver will have to meet these criteria. The repacker will be required to apply to the respective area committee for the waiver, and the committee shall give prompt consideration to each application received.

The committees recommended additional safeguard procedures to ensure that repackers operating under waivers remain in compliance with all other handling requirements in effect. To be eligible for a waiver, the repacker will be required to agree to comply with all handling requirements. Such repackers will also be required to file periodic reports of potato receipts and dispositions. The information provided in such reports will enable the respective area committee to determine whether the potatoes handled by a repacker had been previously inspected and whether they were in compliance with the quality and size requirements in effect.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection requirements included in this final rule were approved by the Office of Management and Budget (OMB) and have been assigned OMB number 0581–0111. It has been estimated that it will take an average of approximately 30 minutes for each handler applying for waiver of reinspection requirements to complete the waiver of inspection form and 10 minutes to complete the weekly shipment report form.

Based on the above, the Administrator of the AMS has determined that this section will not have a significant economic impact on a substantial number of small entities.

A proposed rule concerning this action was published in the July 23, 1990, **Federal Register** (55 FR 29850) affording interested persons until August 22, 1990, to file written comments. None were filed.

After consideration of all relevant matters, including the information set forth in the proposed rule and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register**, (5 U.S.C. 553) because (1) The shipping season has begun in Area 3 and will soon begin in Area 2, and this rule should apply to as many shipments as possible to be of maximum effect, and (2) the rule was discussed in public meetings held by the respective committees and all interested persons were given the opportunity to participate.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is hereby amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674.

2. Sections 948.386 and 948.387 are amended by adding a new paragraph (c)(3) to read as follows:

Note: This section will be published in the Code of Federal Regulations.

§ 948.386 Handling regulation.

* * * * *

(c) * * *

(3) Each handler who handles potatoes after such potatoes are regraded, resorted, or repacked shall have such potatoes reinspected, unless such handler has received a waiver from reinspection pursuant to rules established by the Secretary upon the recommendation of the committee.

* * * * *

§ 948.387 Handling regulation.

* * * * *

(c) * * *

(3) Each handler who handles potatoes after such potatoes are regraded, resorted, or repacked shall have such potatoes reinspected, unless such handler has received a waiver from reinspection pursuant to rules established by the Secretary upon the recommendation of the committee.

* * * * *

3. A new heading entitled "Modification of Inspection Requirements" and §§ 948.140, 948.141, 948.142, 948.143 are added to read as follows:

Modification of Inspection Requirements

§ 948.140 Application.

Any handler whose packing facilities are located in an area where inspection is not readily available or the actual cost for inspection would otherwise exceed 1⅓ times the current per hundredweight inspection fee, may apply to the respective area committee for a waiver from the reinspection requirements. Applications shall be made on forms furnished by the respective area committee and shall contain such information as the respective area committee, with the approval of the Secretary, may find necessary in making a determination regarding the issuance of such waiver.

§ 948.141 Issuance.

Each respective area committee shall give prompt consideration to each application for a waiver from reinspection. In granting a waiver, the handler shall agree to comply with all marketing order requirements. Approval of an application shall be evidenced by the issuance of an applicable waiver by the respective area commitee to the handler.

§ 948.142 Reports.

Each handler shipping potatoes pursuant to a waiver from reinspection shall report periodically as specified by the respective area committee on forms furnished by the respective committee the following information on each shipment: quantity of potatoes, variety or varieties, grade, size, type of container(s), date of shipment, carrier, destination, and name and address of receiver.

§ 948.143 Cancellation.

Whenever the respective area committee finds that shipments of potatoes pursuant to a reinspection waiver are not in accordance with the established application and safeguard provisions, such waiver may be cancelled.

Dated: October 3, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–23690 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1079

[DA–90–029]

Milk in the Iowa Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Iowa Federal milk marketing order for the months of September through November for an indefinite period. The action increases the amount of milk not needed for fluid use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association to avoid making costly and inefficient movements of milk that would otherwise be made to pool the milk of dairy farmers who have historically supplied the market.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 22, 1990; published August 28, 1990 (55 FR 35150).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 28, 1990 (55 FR 35150) concerning

Packers and Stockyards Administration

9 CFR Part 202

Rules of Practice Governing Proceedings Under the Packers and Stockyards Act Rules of Practice Applicable to Reparation Proceedings

The amendment also provides that all other documents and papers served by ordinary mail will be deemed to be served at the time of mailing.

The amendment also extends times for filing certain documents and papers, from 10 days to 20, since such times will be computed from the date of mailing,

cause it to be delivered to the address shown by ordinary mail, or by certified or registered mail if specified.

(p) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail.

3. Section 202.105 is amended by

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This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the Federal Register on August 28, 1990 (55 FR 35150) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Two comments were received supporting the suspension for 1990; however, one opposed an indefinite suspension.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through November, for an indefinite period, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each paragraph.

Statement of Consideration

This action for the months of September through November for an indefinite period suspends certain provisions of the Iowa Federal milk order that limit the amount of milk that may be shipped directly from farms to nonpool manufacturing plants and still be priced under the order. The order provides that cooperative associations and pool plant operators may divert up to 50 percent of milk receipts to nonpool plants during September–November and 70 percent of receipts during other months. This action removes the 50-percent diversion limitation and allows greater quantities of milk to be diverted to nonpool plants.

The action was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the market. AMPI maintains that the action is necessary because of the relationship between available milk production and fluid milk sales. AMPI points out that producer milk receipts during the first six months of 1990 were up about 4 percent from the previous year while fluid milk sales were at about the same level as a year earlier. As a result, the Class I utilization of producer milk for the first six months was about 26 percent, down slightly from the previous year. Consequently, AMPI projects that about 30 percent of the market's milk supply will be needed for Class I use during the September–November period this year, with about 70 percent of the milk supply being available for manufacturing uses. AMPI maintains that this reserve supply of milk can be most efficiently handled by diverting milk directly from farms to nonpool plants for processing. Absent a suspension action, AMPI contends that the costly and inefficient marketing practices of receiving and transferring milk from pool plants would be undertaken to continue to pool the milk of dairy farmers who supply the market. AMPI also requested that consideration be given to suspending the 50-percent diversion limitation for the September–November period for an indefinite duration since the same provision has been suspended during each of the last six years.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that also represents producers who supply the market, supported the proposed action for the months of September–November 1990. However, Mid-Am opposes suspending the language for an indefinite period due to the uncertainties associated with the national Federal order hearing on Class I differentials, the 1990 Farm Bill, and the GATT negotiations with respect to future milk production.

The diversion provisions of the producer milk definition recognize that reserve milk supplies that are associated with the fluid milk market can be most efficiently marketed by moving them directly from farms to manufacturing plants for processing. Absent a suspension action of the 50-percent diversion limit, the same quantities of milk would still be moved to manufacturing plants, although handlers would have to utilize the relatively inefficient and costly practice of first receiving milk at pool plants and transferring it to nonpool manufacturing facilities. Thus, the suspension of the 50-percent diversion limitation does not have a direct bearing on the availability of milk at distributing plants. Such availability is more a function of the standards for pooling the various categories of plants under the order. Although uncertainties were expressed by Mid-Am, past history warrants the suspension during the months of September through November for an indefinite period.

Further, an indefinite period of suspension is more likely to result in a reduction of suspension actions that occur in continuously adjusting these provisions of the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that uneconomic movements of milk would likely be made solely for the purpose of pooling the milk of producers who have regularly been associated with the Iowa market;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1079.13(d) (2) and (3) of the Iowa order are hereby suspended for the months of September through November for an indefinite period.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR part 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1079.13 [Suspended in part]

2. In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each such paragraph are suspended for the months of September through November for an indefinite period.

Signed at Washington, DC, on: October 3, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90–23891 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–02–M

Packers and Stockyards Administration

9 CFR Part 202

Rules of Practice Governing Proceedings Under the Packers and Stockyards Act Rules of Practice Applicable to Reparation Proceedings

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This is an amendment to the existing rules of practice for reparation proceedings. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items. It reduces requirements for use of certified or registered mail to what is necessary. It also provides that documents and papers served by ordinary mail will be deemed to be served at the time of mailing. It also extends times for filing certain documents and papers since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond.

EFFECTIVE DATE: October 10, 1990, except that these amendments shall not apply to any document or paper to be filed, for which a filing date has been set by order of a presiding officer or the Judicial Officer prior to such effective date, or for which a filing date has been specified in a written notice issued prior to such effective date and served, in a proceeding pending on such effective date.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, room 3408-South Building, U.S. Department of Agriculture, Washington, DC 20250; (202) 447–6951.

SUPPLEMENTARY INFORMATION: This is an amendment to the existing rules of practice for reparation proceedings. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items.

Requirements for use of certified or registered mail currently apply to all documents or papers served in such proceedings; such requirements are now being limited to a few such items:

1. A complaint or other document initially served on a person to make that person a party respondent in a proceeding;
2. A final order; and
3. Any other document specifically ordered by a presiding officer or the Judicial Officer to be served by certified mail.

The amendment also provides that all other documents and papers served by ordinary mail will be deemed to be served at the time of mailing.

The amendment also extends times for filing certain documents and papers, from 10 days to 20, since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond. No change is made in the method of filing, and filing of documents with the Agency or the Hearing Clerk will be considered made when the documents are received by such office.

Recent decisions supporting the changed method of service are *Atkins* v. *Parker*, 472 U.S. 115(1985); *U.S. Fire Ins. Co.* v. *Producciones Padosa, Inc.*, 835 F.2d 950(1st Cir. 1987); *Old Ben Coal Co.* v. *Luker*, 826 F.2d 688 (7th Cir. 1987); and *U.S.* v. *Bolton*, 781 F.2d 528 (6th Cir. 1985), *cert. den.*, 476 U.S. 1158(1986).

Notice of proposed rulemaking is not required by law for this amendment on the basis that it constitutes "rules of agency * * * procedure, or practice" under 5 U.S.C. 553(b)(A).

Executive Order 12291 and Regulatory Flexibility Act

This final rule is exempt from Executive Order 12291 since it relates to internal agency management concerning rules of procedure or practice in formal adjudicatory proceedings. Also, this action is exempt from the provisions of the Regulatory Flexibility Act since it is not a rule as defined by that Act.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this final rule since it does not seek answers to identical questions or reporting or recordkeeping requirements imposed on ten or more persons, and the information collected is not used for general statistical purposes.

List of Subjects in 9 CFR Part 202

Agriculture, Animals, Administrative practice and procedure, Reparation proceedings.

Accordingly, 9 CFR part 202 is amended as set forth below.

PART 202—[AMENDED]

1. The authority citation for 9 CFR part 202 is revised to read as follows:

Authority: 7 U.S.C. 228(a); 9 CFR 2.17(e); 2.56.

2. Section 202.102 is amended by adding new paragraphs (o) and (p) to read as follows:

§ 202.102 Rule 2: Definitions.

* * * * *

(o) *Mail* means to deposit an item in the United States mail with postage affixed and addressed as necessary to cause it to be delivered to the address shown by ordinary mail, or by certified or registered mail if specified.

(p) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail.

3. Section 202.105 is amended by revising paragraphs (e) and (f) and adding new paragraphs (g) and (h) to read as follows:

§ 202.105 Rule 5: Filing; time for filing; service.

* * * * *

(e) *Who shall make service.* Copies of all documents or papers required or authorized by the rules in this part to be filed with the Agency shall be served on the parties by the Agency, and copies of all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be served on the parties by the Hearing Clerk, unless any such document or paper is served by some other employee of the Department, or by a U.S. marshal or deputy marshal, or as otherwise provided herein, or as otherwise directed by the presiding officer or Judicial Officer.

(f) *Service on party.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, a final order, or other document specifically ordered by the presiding officer or Judicial Officer to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *provided that*, if any such document or paper is sent by certified on registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

(2) Any document or paper, other than one specified in paragraph (f)(1) of this section or written questions for a deposition as provided in § 202.109(c)(3) of this part, shall be deemed to be received by any party to a proceeding on the date of mailing by ordinary mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative or record of such party, or last known residence of such party if an individual.

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(3) Any document or paper served other than by mail on any party to a proceeding shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(g) *Service on another.* Any subpoena or other document or paper served on any person other than a party to a proceeding shall be deemed to be received by such person on the date of:

(1) Delivery by certified mail or registered mail to the last known principal place of business of such person, last known principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

(2) Delivery other than by mail to any responsible individual at, or leaving in a conspicuous place at, any such location; or

(3) Delivery to such party if an individual, to an officer or director of such party if a partnership, at any location.

(h) *Proof of service.* Any of the following, in the possession of the Department, showing such service, shall be deemed to be accurate:

(1) A certified or registered mail receipt returned by the postal service with a signature;

(2) An official record of the postal service;

(3) An entry on a docket record or a copy placed in a docket file by the Hearing Clerk of the Department or by an employee of the Hearing Clerk in the ordinary course of business;

(4) A certificate of service, which need not be separate from and may be incorporated in the document or paper of which it certifies service, showing the method, place and date of service in writing and signed by an individual with personal knowledge thereof, *Provided* that such certificate must be verified by oath or declaration under penalty of perjury if the individual certifying service is not a party to the proceeding in which such document or paper is served, an attorney or representative of record for such a party, or an official or employee of the United States or of a State of political subdivision thereof.

§ 202.107 [Amended]

4. Section 202.107(a) is amended by removing the number "10" and inserting in lieu thereof the number "20".

5. Section 202. 109 is amended by removing the number "10" and inserting in lieu thereof the number "20" in paragraphs (b) and (h), and by revising paragraphs (c) and (d) to read as follows:

§ 202.109 Rule 9: Depositions.

* * * * *

(c) *Written questions (interrogatories).* (1) If the examination will be oral, parties who will not be present or represented at it may file written questions with the officer prior to the time of the examination.

(2) The presiding officer may direct, or the parties may agree, that the deposition, if taken, shall be taken by means of written questions. If the presiding officer finds, upon the protest of a party to the proceeding, that such party has a principal place of business or residence more than 100 miles from the pace of the examination and that it would constitute an undue hardship on such party to be present or represented at an oral examination at such place, the deposition, if taken, shall be taken by means of written questions. In any such case, the presiding officer shall state on the record at the oral hearing that, or shall serve the parties with notice that, the deposition, if taken, shall be taken by means of written questions.

(3) If the examination is conducted by means of written questions, copies of the applicant's questions must be received by the other party to the proceeding and the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and any cross questions of a party other than the applicant must be received by the applicant and the officer at any time prior to the time of the examination.

(d) *Order.* The presiding officer, if satisfied that good cause for taking the deposition is present, may order its taking. The order shall be served on the parties and shall inlcude:

(1) The name and address of the officer before whom the examination is to be made;

(2) The name of the deponent;

(3) Whether the examination will be oral or on written questions; and

(4) The time, which shall be not less than 20 days after the issuance of the order, and place.

The officer, time and place need not be the same as those suggested in the application.

* * * * *

§ 202.111 [Amended]

6. Section 202.111 is amended by removing "10th"and inserting in lieu thereof "20th" in paragraph (b)(2), and by removing the number "10" and inserting in lieu thereof the number "20" in paragraph (c).

§ 202.112 [Amended]

7. Section 202.112(f)(2) is amended by removing the third sentence.

§§ 202.113 and 202.114 [Amended]

8. Sections 202.113(e) and 202.114(b) are each amended by removing the number "10" and inserting in lieu thereof the number "20".

Done at Washington, DC this 2nd day of October, 1990.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 90-23764 Filed 10-9-90; 8:45 am]

BILLING CODE 3410-KD-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0707]

Delegation of Authority to Staff Director for Banking Supervision and Regulation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Secretary of the Board, in accordance with 12 CFR 265.2(a)(11), has approved a technical amendment to the Board's Rules Regarding Delegation of Authority (12 CFR part 265) to conform a reference to the Board's Rules Regarding Availability of Information (12 CFR part 261) to the revised version of that part that became effective in 1988.

EFFECTIVE DATE: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendment will not have a significant economic impact on a substantial number of small entities. The amendment does not have particular effect on small entities.

Public Comment

The provisions of 5 U.S.C. 553 relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reason set forth above, 12 CFR part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: Section 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

§ 265.2 [Amended]

2. In section 265.2(c)(20), the reference "§ 261.6(a) (2) and (3)" is revised to read "§ 261.6(a) (2) and (3)."

By order of the Board of Governors, acting through its Secretary under delegated authority, October 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23869 Filed 10-9-90; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1409

Organization and Functions; Effective Date

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) published final regulations under part 1400, September 6, 1990 (55 FR 36609). The final regulations in part 1400 relate to the Corporation's organization and functions. The Corporation's Board of Directors provided that these regulations will be effective 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 9, 1990.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Bobbie Jean Norris, Project Analyst, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0628, (703) 883-4387, TDD (703) 883-4444.

Authority: 12 U.S.C. 2277a-7(10).

Dated: October 3, 1990.

James M. Morris,

Acting Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 90-23841 Filed 10-9-90; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-36-AD; Amdt 39-6752]

Airworthiness Directives; Boeing of Canada Ltd., de Havilland Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective to all persons an amendment adopting Airworthiness Directive (AD) 90-11-01, which was made effective as to all known U.S. owners and operators of Boeing of Canada, Ltd., de Havilland Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes. This AD specified a visual inspection followed by a high sensitivity fluorescent dye penetrant inspection to ensure that the elevator pushrod and rod ends are not bent, corroded, cracked, or damaged, and that the rod end bearings are free to rotate. The AD was issued based on an April 12, 1990, accident in Norway in which the aircraft experienced a fatigue fracture of the referenced elevator pushrod ends. This action will preclude failure of the elevator pushrod assembly and subsequent loss of the airplane.

EFFECTIVE DATE: November 16, 1990 as to all persons except those persons to whom it was made immediately effective by priority letter from the FAA, dated May 21, 1990.

ADDRESSES: This AD is not predicated on manufacturer's data. Other information on Boeing of Canada, Ltd., de Havilland Model DHC-6 airplanes is available from the manufacturer, Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. Information pertaining to the issuance of this AD may be examined at the Rules Docket at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, Airframe Branch, FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581, Telephone (516) 791-6220, FAX (516) 791-9024.

SUPPLEMENTARY INFORMATION: On May 21, 1990, the FAA issued Priority Letter AD 90-11-01, applicable to Boeing of Canada, de Havilland, Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes, that requires a visual and high sensitivity fluorescent dye penetrant inspection for cracks, corrosion, or any damage to the connection between the aft elevator control quadrant and the elevator control horn pushrod. The AD also requires a visual inspection of the rod end bearings to ensure that they are free to rotate.

This action was prompted by reports that an airplane involved in an accident in Norway on April 12, 1990, had a fatigue fracture of the subject elevator pushrod. As a result of this incident, Transport Canada, which has the responsibility for and authority to maintain the continuing airworthiness of these airplanes in Canada, issued Emergency Airworthiness Directive CF-90-10, which required a visual inspection followed by a high sensitivity flouorescent penetrant inspection to detect cracked pushrod ends or other deficiencies. The Civil Aviation Authority of Norway also issued a similar airworthiness directive. The FAA determined that pushrod fatigue is an unsafe condition that may exist on other airplanes of the same type design, certificated for operation in the United States. It was also determined that an emergency condition existed, that immediate corresponding action was required, and that notice and public procedure thereon was impracticable and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by AD 90-11-01 by priority mail letter, dated May 21, 1990. The AD became effective immediately as to those individuals who received the letter.

Since the unsafe condition described therein may still exist on other Boeing of Canada, de Havilland Models DHC-6-1,

DHC-6-100, DHC-6-200, and DHC-6-300 airplanes, the AD is being published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons who did not receive the letter notification. Because a situation still exists that

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

This amendment becomes effective on November 16, 1990 to all persons except those to whom it has already been made effective by priority letter from the FAA

Federal Register on May 15, 1990 (55 FR 20164).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the rule be revised to include the option to replaced to provide additional clearance from a pneumatic duct. The FAA concurs with this conclusion. Furthermore, accomplishment of the modifications described in Service Bulletin 747-29-2045 addresses chafing of the case drain line against some mounting clamps and not the pneumatic duct in question.

not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

DHC-6-100, DHC-6-200, and DHC-6-300 airplanes, the AD is being published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons who did not receive the letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The requirements of this AD do not relate to AD 80-13-11 R2, which relates to the inspection or replacement of elevator, flap and aileron control rods, and AD 80-13-11 R2 remains in effect.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilites among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation or analysis is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Boeing of Canada, Ltd., Dehavilland: Applies to Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 (all serial numbers) airplanes, certificated in any category.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD unless previously accomplished within the last 25 hours TIS prior to the effective date of this AD.

To prevent failure of the elevator pushrod assembly due to fatigue cracking, and the subsequent loss of control of the airplane, accomplish the following:

(a) Remove the aft elevator control quadrant to elevator control horn pushrod from the airplane and remove the rod ends from both ends of the pushrod.

(b) Visually inspect the pushrod and rod ends to ensure they are not bent, corroded, cracked, or damaged, and that the rod end bearings are free to rotate.

(c) Thoroughly clean the rod ends and inspect for cracks using a high sensitivity fluorescent dye penetrant.

(d) Prior to further flight, using serviceable parts, replace any pushrods, rod ends or bearings that are bent, corroded, cracked or seized. Retain all defective parts for possible future examination by the FAA for 60 days after the date of the inspection. If the FAA has not requested this part before that time, properly dispose of the defective parts.

(e) Within one week following the inspections specified in paragraphs (b) and (c) of this AD, submit a written report of the result of the inspections that indicates whether damage was found, part number(s) involved, and the extent, location, and description of any damage found. Submit the report to the FAA, Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220; Facsimile (516) 791-9024. If the inspections were made previous to this AD, forward the requested data within one week of receipt of this AD. (Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.)

(f) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(g) An equivalent means of compliance or an adjustment of the compliance time of this AD may be approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220; Facsimile (516) 791-9024.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

This amendment becomes effective on November 16, 1990 to all persons except those to whom it has already been made effective by priority letter from the FAA dated May 21, 1990, and is identified as AD 90-11-01.

Issued in Kansas City, Missouri, on September 26, 1990.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23861 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-67-AD; Amdt 39-6751]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires modifications of certain hydraulic lines in the number 2 and 3 struts. This amendment is prompted by reports of chafing of the hydraulic and pneumatic lines. This condition, if not corrected, could lead to loss of hydraulic power and damage to pneumatic ducts.

EFFECTIVE DATE: November 12, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mahinder K. Wahi, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2673. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires modification of certain hydraulic lines in the number 2 and 3 struts, was published in the

Federal Register on May 15, 1990 (55 FR 20164).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the rule be revised to include the option to perform the inspection every 3,000 flight hours or 12 months in lieu of the modification, since it is unlikely that both the hydraulic tubing and the pneumatic duct would chafe simultaneously and the chafing problem requires a long period of time to cause any leakage. The commenter claimed that its own experience demonstrates that an inspection of the area will prevent occurrences of pneumatic system contamination by hydraulic fluid. The FAA does not concur. A simultaneous chafing problem did occur in service and that is what prompted this AD action. While repeat inspections may or may not reveal a chafing problem, modification of the hydraulic lines will prevent it from occurring.

Several commenters requested that, to accommodate their regularly scheduled maintenance, the compliance time be expanded from the proposed 3,000 flight hours or 12 months, whichever occurs first. The FAA does not concur. The compliance time, as proposed, represents what the FAA determined to be the maximum interval of time allowable wherein the modification could reasonably be accomplished, parts could be obtained, and an acceptable level of safety could be maintained. However, the FAA has revised the number of flight hours specified in the compliance time from 3,000 to 4,000 to make the number comparable to 12 months time-in-service, based on average utilization rates of the affected fleet.

The Air Transport Association (ATA) of America, commenting on behalf of its members, made the following suggestions to the proposed rule:

First, it questioned the need to replace and reroute the case drain line in the number 2 strut, since there had never been a finding of mechanical interference in the number 2 strut location, and that accomplishment of modifications described in Boeing Service Bulletin 747-29-2045 addresses the concerns the FAA may have regarding chafing of the number 2 strut hydraulic lines. The FAA does not concur. The manufacturer has examined hydraulic lines in all four strut areas and concluded that, in order to preclude chafing problems, the number 2 case drain line should be rerouted and replaced to provide additional clearance from a pneumatic duct. The FAA concurs with this conclusion. Furthermore, accomplishment of the modifications described in Service Bulletin 747-29-2045 addresses chafing of the case drain line against some mounting clamps and not the pneumatic duct in question.

Second, it questioned the need to modify the hydraulic line at the number 3 strut location if accomplishment of the modifications described in Boeing Service Bulletins 747-29-2038 and 747-29-2024 has been completed. The FAA does not concur. This AD action requires modifications in accordance with Boeing Service Bulletin 747-29-2051, which states that concurrent or previous accomplishment of Service Bulletins 747-29-2038 and 747-29-2024 is also necessary, depending upon whether the affected airplane is identified as Group I, II, or III.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 296 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 136 airplanes of U.S. registry will be affected by this AD, that it will take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost for replacement parts is estimated at $3,250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $670,480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line position 001 through 331, identified in Boeing Service Bulletin 747-29-2051, Revision 1, dated August 8, 1990, certificated in any category. Compliance required within the next 4,000 flight hours or 12 months after the effective date of this AD, whichever occurs first, unless previously accomplished.

To prevent damage to hydraulic and pneumatic systems and flight deck/cabin air contamination, accomplish the following:

A. Modify the hydraulic system in the number 2 and 3 struts in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747-29-2051, Revision 1, dated August 8, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Inspector (PI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to The Boeing Commercial Airplane Group, P.O. Box 3707, Seattle,

Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 12, 1990.

microfiche service on an annual basis. Microfiche subscription prices are regulated by the Commission whether requested through the public reference room or directly from the contractor. Certain other microfiche services are provided at prices that are regulated by

Rather than contacting the contractor at the contractor's private facilities, members of the public requesting copies of public records at regulated prices should direct their written requests to the Commission's Washington, DC public reference room. Written requests

or contractor-operated basis, can be used to make immediate copies up to 8½ by 14 inches in size of materials that are available for inspection in the Washington, DC, New York and Chicago offices. Fees and levels of service are set out in the Commission's schedule of fees

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

[FPMR Amendment H-179]

Utilization and Disposal of Real

Accordingly, 41 CFR part 101-47 is amended as follows:

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for part 101-47 continues to read as follows:

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Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 12, 1990.

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23860 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. Nos. 33-6877, 34-28513, 35-25161, 39-2250, IC-17773, IA-1258]

Public Reference Room Dissemination Services

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is revising subpart D, part 200 of title 17 to direct the public how to obtain copies of certain publicly available documents from the Commission. In addition, the addresses of three regional offices are updated.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott, Assistant General Counsel (202-272-2472), or Fran L. Paver (202-272-2453), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: To facilitate the dissemination of public information, the Commission, through a contractor, makes copies of certain public records available through the Commission's public reference rooms, at prices and terms regulated by the Commission. In the past, the contractor provided a number of services at regulated prices regardless of where ordered. This is still true for microfiche subscriptions, and notification that a particular document has been filed ("watch services"). However, for services other than microfiche subscriptions and watch services, orders must be placed through the Commission's public reference rooms in order to obtain regulated prices. To ensure that these services are accurately reflected in the Code of Federal Regulations, certain changes to 17 CFR part 200, subpart D are warranted. Rather than contacting the contractor at the contractor's private facilities, members of the public requesting copies of public records at regulated prices should direct their written requests to the Commission's Washington, DC public reference room. Written requests directed to the Commission's public reference room will be filled by the contractor at regulated prices. Sections 200.80(c)(1), 200.80(e)(7) (i) and (ii), and 200.80e are revised to reflect these changes.

In addition, § 200.80(c)(1)(iii) is amended to correct the addresses of the Boston, New York and Philadelphia Regional Offices.

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment. Accordingly, it is effective upon publication in the **Federal Register**.

List of Subjects in 17 CFR Part 200

Organization and functions, Federal buildings and facilities.

Text of Amendments

For the reasons set out in the preamble, the Commission is amending part 200 of chapter II, title 17 of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

1. The authority citation for part 200, subpart D, continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 85, 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 78m(F)(3), 78w, 79t, 79v(a), 77sss, 80a-37, 80a-44(c), 80a-44(b), 80b-10(a), 80b-11.

2. Section 200.80(c)(1) introductory text is revised as follows:

§ 200.80 Commission records and information.

* * * * *

(c)(1) *Public reference facilities.* In order to disseminate records, including those listed in Appendix A to this section, the Commission has a specially staffed and equipped public reference room located at 450 Fifth Street NW., Room 1024, Washington, DC (202-272-3100) and public reference facilities in its New York and Chicago regional offices. Copying machines, which are available to requesters on a self-service or contractor-operated basis, can be used to make immediate copies up to 8½ by 14 inches in size of materials that are available for inspection in the Washington, DC, New York and Chicago offices. Fees and levels of service are set out in the Commission's schedule of fees in Appendix E to this section and in information available from the public reference room. The Commission accepts only written requests for copies of documents.

* * * * *

§ 200.80 [Amended]

3. Section 200.80(c)(1)(iii) is amended by revising the addresses of the Boston, New York, and Philadelphia Regional Offices as follows:

Boston Regional Office, John W. McCormack Post Office and Courthouse Building, Suite 700, Boston, Massachusetts 02109.

New York Regional Office, 75 Park Place, Room 1228, New York, New York 10007.

Philadelphia Regional Office, The Curtis Center, Suite 1005 E, 600 Walnut Street, Philadelphia, Pennsylvania 19106-3322.

4. Sections 200.80(e)(7) (i) and (ii) are revised as follows:

§ 200.80 Commission records and information.

* * * * *

(e) * * *

(7) * * *

(i) *Facsimile copies.* Requests for facsimile copies may be made either in person at the Commission's Washington, DC, New York, or Chicago public reference rooms, or by mail addressed to the Securities and Exchange Commission, Public Reference Room Branch, 450 Fifth Street, NW., room 1024, Washington, DC 20549. The contractor will send copies directly to the purchaser unless attestation is requested. Persons who request copies of documents through the public reference room will be billed by the contractor at regulated prices, and will be billed separately by the Commission for search, review and attestation charges, if any. Copies of documents requested directly from the contractor or from any other information service or vendor are not subject to regulated prices. Special classes of copying services, such as telecopies, not listed herein or in the current schedule of fees posted in the public reference room, are not provided or regulated by the Commission, but may be obtained from private vendors at market prices.

(ii) *Microfiche copies.* A contractor also makes available to the public microfiche copies of certain public documents on file with the Commission, at prices and on terms governed by its contract with the Commission. Microfiche services include subscription microfiche service on an annual basis. Microfiche subscription prices are regulated by the Commission whether requested through the public reference room or directly from the contractor. Certain other microfiche services are provided at prices that are regulated by the Commission only if ordered through the Commission's public reference room. The Commission will accept only subscription requests made in writing, although the contractor may elect to accept subscription requests by telephone. All microfiche subscription charges are payable directly to the contractor, whether placed through the Commission or not. Information concerning the types and cost of regulated microfiche services may be obtained by writing to the Commission at its public reference room located at 450 Fifth Street, NW., room 1024, Washington, DC 20549 or calling this facility at 202-272-3100.

* * * * *

5. Section 200.80e is amended by revising the paragraph entitled, "Other Services" as follows:

§ 200.80e Appendix E—Schedule of fees for records services.

* * * * *

Other services. The Commission's dissemination contractor also provides a wide range of additional regulated dissemination services through the Commission's public reference rooms. Two offsite services also are provided at prices that are regulated: microfiche subscriptions and watch services. Information concerning the availability of all dissemination services may be obtained by writing to the Commission's public reference room located at 450 Fifth Street, NW., room 1024, Washington, DC 20549 or calling 202-272-3100. Copies made pursuant to requests submitted to the Commission's public reference room will be filled by the contractor and sent directly to the purchaser, unless attestation is requested. The contractor will bill the purchaser directly for the cost of copies plus postage or other delivery charges, and applicable taxes. Purchasers shall make full payment directly to the contractor for these services. Search, review or attestation charges will be billed separately by the Commission.

By the Commission.

Dated: October 3, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23887 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

[FPMR Amendment H-179]

Utilization and Disposal of Real Property; Appraisal

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation increases the estimated fair market value threshold above which an appraisal must be obtained in disposing of Government-owned surplus real property through competitive sale procedures. This measure is intended to promote economy in property sales in instances where the cost of an appraisal would be disproportionate to realized proceeds.

EFFECTIVE DATE: This regulation is effective October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Marjorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Service, General Services Administration (202-501-0052).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) is amending its regulations to provide a more comprehensive specification of the circumstances where appraisals of Federal surplus real property are not required and to increase from $10,000 to $50,000 the estimated fair market value threshold at or beneath which an appraisal need not be obtained for Government-owned surplus real property that is to be disposed of through competitive sale procedures.

GSA has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-47

Government property management, Surplus Government property.

Accordingly, 41 CFR part 101-47 is amended as follows:

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for part 101-47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-47.3—Surplus Real Property Disposal

2. Section 101-47.303-4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101-47.303-4 Appraisal.

(a) Except as otherwise provided in this subpart 101-47.3, the disposal agency shall in all cases obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of property available for disposal.

(b) No appraisal need be obtained.

(1) When the property is to be disposed of without monetary consideration, or at a fixed price, or

(2) When the estimated fair market value of property to be offered on a competitive sale basis does not exceed $50,000;

Provided, however, That the exception in paragraph (b)(1) of this section shall not apply to disposals that take any public benefit purpose into consideration in fixing the sale value of the property.

* * * * *

Dated: August 13, 1990.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 90-21071 Filed 10-9-90; 8:45 am]

BILLING CODE 6820-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6803

[CO-930-00-4214-10; C-47115]

Withdrawal of Public Land for the Forest Service Sulphur Center Administrative Site; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 30 acres of public lands from surface entry and mining for a period of 20 years for protection of a proposed Forest Service administrative site nearby Granby,

BEST COPY AVAILABLE

Colorado. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the

4445, February 8, 1990) The agency tentatively concluded that amending the standard in this fashion would better address situations in which the maximum section width of passenger car tires is near the bead.

The only commenter to this rulemaking was the petitioner, which requested that the effective date be 30 days after publication of the notice. Because the amendment is a relaxation of the current requirements, NHTSA finds that it is in the public interest to make the amendment effective as soon as possible. Accordingly, the agency has decided to make the effective date of this final rule 30 days after publication of this notice.

NHTSA has analyzed this action under the principles and criteria of Executive Order 12612, and has determined that this final rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment. The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small businesses. Even the effect on small businesses, small organizations, and small governmental units through the purchase of motor vehicles, will be minimal.

NHTSA has analyzed this action under the principles and criteria of Executive Order 12612, and has determined that this final rule will not

(b Maximum permissible inflation pressure;

(c) Maximum load rating;

(d) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different;

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Colorado. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land, is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, and reserved for use by the Forest Service as an administrative site:

Sixth Principal Meridian

T. 1 N., R. 76 W.,
Sec. 8, NW¼NW¼NW¼, E½NW¼NW¼.

The area described contains approximately 30 acres of public land in Grand County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 27, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-23798 Filed 10-9-90; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-02; Notice 2]

RIN 2127-AD22

Federal Motor Vehicle Safety Standards; New Pneumatic Tires—Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This amendment implements the petition by the European Tyre and Rim Technical Organisation (E.T.R.T.O.) requesting that NHTSA amend its labeling requirements in Standard No. 109, *New Pneumatic Tires—Passenger Cars* to require a manufacturer to place the required markings between the bead and a point one-half the distance from the bead to the shoulder of the tire, if the tire's maximum section width is close to the bead. This amendment adds to Standard No. 109 a provision previously added by the agency to another tire standard, the one related to tires on vehicles other than passenger cars. This amendment will facilitate the marking of labeling information without any foreseeable adverse impact on safety.

DATES: This amendment is effective November 9, 1990.

Petitions for reconsideration must be filed by November 9, 1990.

ADDRESSES: Submit petitions for reconsideration to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4803.

SUPPLEMENTARY INFORMATION: Section S4.3 of Standard No. 109, *New Pneumatic Tires—Passenger Cars* (49 CFR 571.109) sets forth information labeling requirements for tires, including requirements regarding the positioning of the information on the sidewall to ensure that it is readily visible and to minimize the possibility that it will be scuffed off if the sidewall hits a curb or similar object. Until the effective date of this rule, it provides that the information shown in paragraphs S4.3 (a) through (e) (e.g., number of plies and inflation pressure) shall appear between the maximum section width and bead. Section S4.3.1 and S4.3.2 provide more extensive local requirements for other information (e.g., the DOT certification and the name of the manufacturer or brand name and number assigned to the manufacturer) to be placed on car tires. They provide that the labeling should be done "in the manner specified in part 574." Part 574, which applies to both car tires and tires for vehicles other than cars, begins in the same manner as S4.3 of Standard No. 109, specifying that the tire identification number shall appear between the maximum section width and bead. However, part 574 goes on to provide that if a tire's maximum section width falls within one-fourth of the distance from the bead to the tire shoulder, the tire identification number must appear between the bead and a point one half the distance from the bead to the shoulder of the tire. Section S4.3 does not refer to part 574 or otherwise provide guidance about the placing of the markings required by S4.3 (a)-(g) in situations where the tire has its maximum section width close to the bead.

The agency addressed the problem of labeling tires whose maximum section width is close to the bead in a 1985 rulemaking regarding tires for vehicles other than passenger cars. (49 FR 37616, September 26, 1984; 50 FR 10773, March 18, 1985). That rulemaking amended part 574, *Tire Identification and Recordkeeping* (49 CFR 574.4) and Standard No. 119, *New Pneumatic Tires for Motor Vehicles Other Than Passenger Cars* (49 CFR 571.119) to permit placing markings at a different location in order to permit the introduction of a new tire concept for vehicles other than cars where the tire's maximum section width is at the bead. In particular, figure 1 of part 574 was amended to specify the requirements for the label's position if a tire's maximum section width falls within one-fourth of the distance from the bead to the tire shoulder. In that case, a marking must appear between the bead and a point one half the distance from the bead to the shoulder of the tire. Amending part 574 had the practical effect of applying the new requirement to section S4.3.1 and S4.3.2 of Standard No. 109 given that these provisions state that tires must be labeled "in the manner specified in part 574." However, the 1985 final rule did not amend the labeling requirements for car tires in section S4.3 of Standard No. 109. Nevertheless, the notice did expressly amend section S6.5 of Standard No. 119 to permit this new tire technology.

On June 29, 1989, the European Tyre and Rim Technical Organisation (E.T.R.T.O.) notified NHTSA that a new type of pneumatic tire for passenger cars with its maximum section width close to the bead would not comply with the current requirements in S4.3 of Standard No. 109. As a result, E.T.R.T.O. petitioned the agency to amend section S4.3 to permit labeling on this new type of tire consistent with figure 1 of part 574.

After reviewing the petition, the 1985 rulemaking, and the existing regulations NHTSA decided to grant the petition and propose the petitioner's request to expressly include the marking location provisions of Figure 1 of Part 574 in section S4.3 of Standard No. 109. (55 FR

4445, February 8, 1990) The agency tentatively concluded that amending the standard in this fashion would better address situations in which the maximum section width of passenger car tires is near the bead.

The only commenter to this rulemaking was the petitioner, which requested that the effective date be 30 days after publication of the notice rather than the 180 days proposed in the NPRM. E.T.R.T.O. claimed that an earlier effective date should be permitted given that the proposal is not "major" nor "significant" and does not impose any new requirements. In addition, it stated that the 180 days between the effective date and the publication of the Final Rule would result in considerable delay in the availability of certain vehicles currently in production that are designed to be equipped with the tires relevant to this notice. Thus, it believed that the later effective date would impose an undue burden on both the vehicle and tire manufacturers concerned.

NHTSA has decided to adopt the amendment as proposed, except that it has decided to adopt the earlier effective date suggested by E.T.R.T.O. The agency finds that there is good cause for making this final rule effective in less than 180 days because the amendment permits the production of a new type of passenger car tire that is comparable to currently produced non-passenger car tires. The agency further notes that the amendment will facilitate the marking of labeling information without any foreseeable adverse impact on safety.

Impact Assessment

The agency has analyzed this rulemaking and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments do not impose new requirements for tires but instead permit more effective labeling on certain tires. Selection of this option is a discretionary decision made by the tire manufacturer and is not a mandatory safety requirement. A Regulatory Evaluation is not required, because this rule will have minimal economic impacts.

In accordance with the Regualtory Flexibility Act, NHTSA has evaluated the effect of this action on small entities. I certify that the amendment will not have a significant economic impact on a substantial number of small entities. The agency believes that few, if any, tire manufacturers qualify as small businesses. Even the effect on small businesses, small organizations, and small governmental units through the purchase of motor vehicles, will be minimal.

NHTSA has analyzed this action under the principles and criteria of Executive Order 12612, and has determined that this final rule will not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

Finally the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that the rule will not have any significant impact on the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor Vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403 and 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 [AMENDED]

2. S4.3 of § 571.109 is revised to read as follows:

§ 571.109 Standard No. 109; New pneumatic tires.

* * * * *

S4.3 *Labeling Requirements.* Except as provided in S4.3.1 and S4.3.2, each tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 0.078 inches high, the information shown in paragraphs S4.3 (a) and (g). On at least one sidewall, the information shall be positioned in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires where the maximum section width falls in that area, locate all required labeling between the bead and a point one-half the distance from the bead to the shoulder of the tire. However, in no case shall the information be positioned on the tire so that it is obstructed by the flange or any rim designated for use with that tire in Standard Nos. 109 and 110 (§ 571.109 and § 571.110 of this part).

(a) One size designation, except that equivalent inch and metric size designations may be used;

(b Maximum permissible inflation pressure;

(c) Maximum load rating;

(d) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different;

(f) The words "tubeless" or "tube type" as applicable; and

(g) The word "radial" if the tire is a radial ply tire.

* * * * *

Issued on: October 3, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-23837 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 900-248-0249]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interpretive rule.

SUMMARY: NOAA publishes this interpretive rule to clarify trawl gear definitions contained in an emergency interim rule as they affect the groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands. This action, which is necessary to reduce confusion concerning these gear definitions, emphasizes that any trawl with bobbins or rollers attached is a bottom trawl. It is intended to inform the fishing industry about NOAA's interpretation of measures designed to reduce bycatches of prohibited species in these groundfish fisheries.

EFFECTIVE DATE: August 14, 1990.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: On August 17, 1990, the Secretary of Commerce published an emergency interim rule under section 305(e) of the Magnuson Fishery Conservation and Management Act that amended regulations implementing the fishery management plans for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (BSAI FMP) and the

Groundfish Fishery of the Gulf of Alaska (GOA FMP) (55 FR 33715). In part, the emergency interim rule amended regulations by redefining pelagic trawl gear. The emergency interim rule also amended regulations at § 675.21(c) that formerly had prohibited directed fishing for pollock and Pacific cod in the Bering Sea and Aleutian Islands with bottom trawls by prohibiting trawling with other than pelagic trawls.

The emergency interim rule definition of pelagic trawl gear is silent about whether bobbins or rollers are permitted on pelagic trawls. This omission has confused some fishing industry participants because the existing definition of bottom trawl in regulations codified at 50 CFR 672.2 and 675.2 specifically states that if bobbins or roller gear are attached to the ground rope of the net, the net is a bottom trawl.

NOAA clarifies the intent of the emergency interim rule that bobbins or rollers cannot be attached to a pelagic trawl. All trawls equipped with bobbins or rollers are bottom trawls under existing regulatory definitions and are consequently trawls other than pelagic trawls. Furthermore, bottom trawls are prohibited in directed fisheries for pollock and Pacific cod in the Bering Sea and Aleutian Islands Management Area for the duration of the emergency interim rule. Some fishermen apparently believe that they can circumvent § 675.20(c)(2) by attaching bobbins or rollers to a pelagic trawl. However, a trawl with this configuration is a bottom trawl.

Classification

This action is authorized by 50 CFR parts 672 and 675 and is taken in compliance with E.O. 12291. The Assistant Administrator for Fisheries, NOAA, has determined that because this action is an interpretive rule, notice and opportunity for comment and a 30-day delay of its effective date are not required pursuant to sections 553 (b)(A) and (d)(2) of the Administrative Procedure Act.

List of Subjects in 50 CFR Parts 672 and 675

Foreign fishing, Fisheries, Fishing vessels.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 3, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-23999 Filed 10-4-90; 3:52 pm]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 91160-0003]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces adjustments to restrictions on fishing in the ocean off Washington, Oregon, and California in 1990 for sablefish caught with either trawl or nontrawl gear and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and are necessary to prevent biological stress to this stock, which could occur if landings were not restricted, and to enable fishing quotas to be reached but not exceeded. These actions are intended to change fishing rates, to allow unavoidable incidental catches of sablefish in other fisheries to be landed, and to avoid or reduce the probability of a fishery closure before the end of the year while providing a reasonable opportunity for fishing quotas to be taken.

DATES: 0001 hours (local time) October 3, 1990, until 2400 hours (local time) December 31, 1990, unless modified, superseded, or rescinded. Comments will be accepted through October 25, 1990.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 213-514-6199, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR 663.22(a) authorize the Secretary of Commerce (Secretary) to reduce fishing levels to prevent or reduce biological stress in any species or species complex, consistent with the objectives and priorities of the FMP. Separate annual quotas have been designated for trawl and nontrawl landings of sablefish in 1990. Trip landing limits have been applied during the year on both the trawl and nontrawl fisheries to slow the rate of landings, avoid premature closure, minimize discards of incidental sablefish catches in excess of the desired harvest level, and thus lessen the likelihood of biological stress on the sablefish resource. In addition, trip limits were imposed to enable the gear quotas to be reached but not exceeded, to maintain trawl markets as long as possible during the year, and to enable nontrawl fishermen who land small amounts of sablefish to continue operating later in the year.

At its September 1990 meeting, the Pacific Fishery Management Council (Council) recommended reducing fishing levels for sablefish caught with trawl gear to prevent the trawl allocation from being reached before the end of the year. The Council also determined that the current nontrawl restrictions were too severe and would prevent the nontrawl quota from being reached.

The Council's Groundfish Management Team (GMT) monitors landings and recommends trip limit changes, as necessary, to meet the trawl and nontrawl quotas. Additional fishing restrictions may be imposed if needed to avoid exceeding these annual quotas or to minimize discards.

If total landings reach 8,900 metric tons (mt), the optimum yield (OY) quota, all further landings of sablefish will be prohibited.

Sablefish Caught with Trawl Gear. In 1990 to date, the trawl fishery for sablefish has been managed with a trip limit of 1,000 pounds or 25 percent of the deepwater complex, whichever is greater, which was designed to keep landings within the 4,966 mt annual trawl quota for sablefish. The deepwater complex, as defined in annual and inseason notice actions, includes sablefish, Dover sole, thornyheads, and arrowtooth flounder.

At the September 19-20, 1990, Council meeting, the GMT projected that 3,795 mt of sablefish had been landed by trawl gear through August 31, 1990, and, based on observed and expected rates of landings, projected that the trawl quota would be reached by November 8, 1990. Because sablefish are caught unavoidably in trawl fisheries for other ground fish species (especially Dover sole and thornyhead rockfish), prohibiting the retention of sablefish when the trawl quota is reached, or reducing the sablefish trip limit without reducing the catch of the species with which it is closely associated, is not likely to reduce substantially the fishing mortality of sablefish. It would only result in the continuing catch and discard of sablefish.

Consequently, the Council recommended the following adjustments to the trawl trip limit currently in effect: (1) Apply a 15,000 pound trip limit on the deepwater complex as a whole, intending to achieve a proportional decrease in sablefish, and therefore avoiding the discards that would occur if only the amount of sablefish were reduced; (2) maintain the current trip limit for sablefish of 1,000 pounds or 25 percent of the deepwater complex, whichever is greater; (3) reduce the frequency of landings by allowing only one landing per week of the complex above 1,000 pounds; (4) provide for biweekly and twice-weekly trip limit options, to minimize differential impacts on small and large vessels; and, (5) remove arrowtooth flounder from the deepwater complex, because it is not as closely associated with sablefish as previously thought, and its inclusion would be unnecessarily restrictive to the arrowtooth flounder fishery. This revised trip limit is similar to that imposed on April 26, 1989 (55 FR 18658, May 2, 1989).

The Council's rationale for restricting the deepwater complex harvest relies on the best available scientific information, which indicates that sablefish are unavoidably caught while fishing for the complex. Thus, the Council was left with no realistic alternative to prevent the excessive harvest, discard, and waste of sablefish except to constrain the harvest of the complex as a whole. This is not unprecendented as, for example, landings of the *Sebastes* complex or rockfish have been reduced since 1983 to protect yellowtail rockfish.

The recommended trawl trip limit was derived primarily from fish ticket data from Oregon and California for the second quarter of 1987 when no fishing restrictions were in effect (except for sablefish smaller than 22 inches). These data indicated that approximately 22 percent of the trawl trips containing the deepwater complex were greater than 15,000 pounds. The recommended trawl trip limit will eliminate trips greater than 15,000 pounds. The 25 percent limit on sablefish is the approximate coastwide average incidence of sablefish in a landing of the deepwater complex. Because the 25 percent limit is based on an average, some discards of sablefish are likely to occur. There is no limit on the number of landings less than 1,000 pounds of the deepwater complex so that boats that have little or no sablefish on board are not unduly restricted. Approximately 33 percent of the deepwater complex landings were under 1,000 pounds, and these contained about 22 percent of the sablefish landed with the complex. The 1,000 pound limit for sablefish is intended to allow small catches to be landed without encouraging targeting. These 1987 data included arrowtooth flounder in the deepwater complex. It is not known how these percentages would have differed if arrowtooth flounder had not been included, but, since arrowtooth flounder is not found as frequently with sablefish as previously thought and is uncommon in California trawl landings, the change should not be great.

All other provisions for sablefish caught with trawl gear off the coast of Washington, Oregon, and California announced at 55 FR 3747 (February 5, 1990) remain in effect.

Sablefish Caught with Nontrawl Gear. On June 24, 1990 (55 FR 25977, June 26, 1990), when 369 mt of the nontrawl sablefish quota (3,612 mt) was projected to remain, a nontrawl trip limit of 500 pounds was imposed and subsequently adjusted to 200 pounds on July 25, 1990 (55 FR 31053, July 31, 1990). The purpose of the trip limits was to extend the nontrawl quota as long as possible by discouraging target fishing for sablefish with most nontrawl gear, while enabling nontrawl fisheries that operate later in the year to continue landing small and often unavoidable catches of sablefish. The trip limit for sablefish smaller than 22 inches (1,500 pounds or three percent of all sablefish on board, whichever is greater) was removed because the new limits were more restrictive.

More recent data have revealed that more of the nontrawl quota remains than initially projected, 318 mt as of August 31, 1990. Consequently, the Council recommended that the nontrawl trip limit be increased as soon as possible from 200 to 2,000 pounds per trip to enable the nontrawl quota to be reached.

Because some targeting could occur under the 2,000 pound trip limit, the trip limit on sablefish smaller than 22 inches that was in effect earlier in the year when the target fishery was underway, is reinstated. This limit is necessary to avoid excessive harvest of juvenile sablefish that are needed to provide future brood stock.

All other provisions for sablefish caught with nontrawl gear off the coasts of Washington, Oregon, and California announced at 55 FR 31053 (July 31, 1990) remain in effect.

Secretarial Action: The Secretary concurs with the Council's recommendations and, pursuant to § 663.22(a)(3), adjusts the management measures: at 50 CFR 663.27(b)(3); at 55 FR 3747 (February 5, 1990) by replacing paragraph 4(a) to change the trip limit for trawl-caught sablefish; and at 55 FR 31053 (July 31, 1990) by replacing paragraph (4)(b) to change the trip limit for sablefish caught with nontrawl gear. Paragraphs (4)(a) and (4)(b) appear below in full as revised, and procedures for choosing biweekly or twice-weekly trip frequency options are repeated from 55 FR 1038 (January 11, 1990) to assist the public. As in the past, all weights and percentages are based on round weights or round weight equivalents.

(4) *Trip and Size Limits.*

(a) Trawl gear.

(i) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragaphs (4)(a)(ii) and (iii), no more than 15,000 pounds of the deepwater complex (including no more than 1,000 pounds or 25 percent of sablefish, whichever is greater) may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period. "One-week period" means 7 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Only one landing above 1,000 pounds of the deepwater complex may be made per vessel in that one-week period. There is no limit on the number of landings less than 1,000 pounds of the deepwater complex.

(A) "Deepwater complex" means sablefish (*Anoplopoma fimbria*), Dover sole (*Microstomus pacificus*), and thornybeads (*Sebastolobus spp.*).

Note: Twenty-five percent of the deepwater complex (including sablefish) is equivalent to 33.333 percent of all legal fish on board in the deepwater complex other than sablefish.

(ii) *Biweekly trip limit option.* If the fishery management agency of the State where the fish will be landed is notified as required by State law (WAC 220-44-050: OAR 635-04-033: CF&GCA 7652), no more than 30,000 pounds (round weight) of the deepwater complex (including no more than 25 percent or 1,000 pounds of sablefish, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip in a two-week period. After notification is given, and while it remains in effect, only one landing of the deepwater complex above 1,000 pounds (round weight) may be made per vessel in that two-week period. "Two-week period" means 14 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Notification procedures for biweekly landings of the deepwater complex are the same as for yellowtail rockfish and the *Sebastes* complex of rockfish, and are repeated at the end of this Federal Register notice.

(iii) *Twice-weekly trip limit option.* If the fishery management agency of the State where the fish will be landed is

notified as required by State law (WAC 220-44-050: OAR 635-04-033: CF&GCA 7652), no more than 7,500 pounds (round weight) of the deepwater complex (including no more than 25 percent or 1,000 pounds of sablefish, whichever is greater) may be taken and retained,

agency, prior to the two-week period in which the rescission is to occur.

Twice-weekly trip limit options. As required by State law, the fishery management agency of the State where the fish will be landed (Washington, Oregon, or California) must receive a

The biweekly and twice-weekly trip limit notifications for trawl-caught sablefish are required by state law and do not represent an additional collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These notifications are voluntary, and

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This section of the FEDERAL REGISTER contains notices to the public of the

the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-

it must be established at a rate which will produce sufficient income to pay the

notified as required by State law (WAC 220-44-050: OAR 635-04-033: CF&GCA 7652), no more than 7,500 pounds (round weight) of the deepwater complex (including no more than 25 percent or 1,000 pounds of sablefish, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip. After notification is given, and while it remains in effect, only two landings of the deepwater complex above 1,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means 7 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Notification procedures for twice-weekly landings of the deepwater complex are the same as for yellowtail rockfish and the *Sebastes* complex of rockfish, and are repeated at the end of this **Federal Register** notice.

(iv) Of those sablefish taken with trawl gear under paragraph (4)(a)(ii) above, no more than 5,000 pounds of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed per vessel per fishing trip.

(b) Nontrawl gear.

(i) No more than 2,000 pounds of sablefish caught with nontrawl gear may be taken, retained, possessed or landed per vessel per fishing trip.

(ii) Of those sablefish taken with nontrawl gear under paragraph (b)(i) above, no more than 1,500 pounds or 3 percent of all sablefish on board, whichever is greater, of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed per vessel per fishing trip.

Notifications for Biweekly and Twice-Weekly Trip Limit Options

Notifications for biweekly and twice-weekly trip limit options for the *Sebastes* complex of rockfish and yellowtail rockfish already are in effect, as required by State law. Notification procedures for widow rockfish (for the biweekly option) and trawl-caught sablefish (for biweekly and twice-weekly options), also required by State law, are identical. The notification procedures are repeated here.

Biweekly trip limit options. As required by State law, the fishery management agency of the State where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the biweekly limits before the first day of the first two-week period in which such landings are to occur. The notice is binding for subsequent consecutive two-week periods until revoked in writing, addressed to the appropriate State agency, prior to the two-week period in which the rescission is to occur.

Twice-weekly trip limit options. As required by State law, the fishery management agency of the State where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the twice-weekly limits before the first day of the first one-week period in which such landings are to occur. The notice is binding for subsequent consecutive one-week periods until revoked in writing, addressed to the appropriate State agency, prior to the one-week period in which the rescission is to occur.

Addresses. Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone (503) 867-4741; P.O. Box 5430, Charleston, OR 97420, telephone (503) 888-5515; 53 Portway Street, Astoria, OR 97103, telephone (503) 325-2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, telephone (206) 753-6623; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501, telephone (707) 455-6499.

Inseason Adjustments. At subsequent meetings, the Council will continue to review the best data available and may recommend further modifications to these management measures.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of this Notice of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02-10 because the alternatives and their impacts have not changed significantly.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291.

The biweekly and twice-weekly trip limit notifications for trawl-caught sablefish are required by state law and do not represent an additional collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These notifications are voluntary, and benefit the fishermen by minimizing the impact on their normal fishing operations by providing the choice of making smaller, shorter trips or larger, longer trips than under the weekly trip limits. Notifications are submitted to the appropriate state fishery management agency, not to the Federal government.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. Section 663.23 also states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. The Secretary has determined that, if left unrestricted, further catches in 1990 unquestionably will exceed the trawl quota for sablefish. Prompt action to limit this fishing rate is necessary to reduce the need to close the trawl fishery for sablefish before the end of the year. Furthermore, a delay in relaxation of the notrawl trip limit would unnecessarily deny the nontrawl fleet the opportunity to take its quota in 1990. Consequently, further delay of these actions is impracticable and contrary to the public interest, and they are taken in final form effective October 3, 1990.

The public has had opportunity to comment on these management actions. The public participated in the Groundfish Advisory Subpanel, GMT, Scientific and Statistical Committee, and Council meetings in August and September 1990 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 3, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23842 Filed 10-3-90; 5:14 pm]

BILLING CODE 3510-22-M

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Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV-90-206]

Florida Tomatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 966 for the 1990-91 fiscal period. Authorization of this budget would allow the Florida Tomato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by October 22, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule and small entities.

The purpose of the RFA is to fit regulatory actions to the scales of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers and 250 producers of Florida tomatoes covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1990-91 fiscal year was prepared by the Florida Tomato Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are producers of tomatoes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by divising anticipated expenses by expected shipments of Florida tomatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on September 6, 1990, an unanimously recommended a 1990-91 budget of $1,984,000. Last season's budget was $1,613,500. The major expense allocation is for education and promotion projects, which at a total of $1,288,600 accounts for about 65 percent of the budget. Other major budget items include administrative expenses in the amount of $384,500 and research expenses of $216,500.

The committee also unanimously recommended an assessment rate of $0.035 per 25-pound container, an increase of $0.01 from last year's rate. This rate, when applied to anticipated shipments of 55 million 25-pound containers, would yield $1,925,000 in assessment revenue. This amount, when added to $45,000 from interest and other income, would be more than adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the market order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990-91 fiscal period began in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable tomatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 966 be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-186-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained

airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Canadair Model CL-44D4 and CL-44J series airplanes. Service experience shows that transport category aircraft of this type require supplemental structural inspections and maintenance to compensate for the effects of prolonged time-in-service. As

required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

structural items defined in Canadair Document RBD-44-100, Revision B., dated February 27, 1990. Inspection results, when a crack is detected, must be reported to Canadair.

B. Cracked structure detected during the inspection required by paragraph A. of this AD must be repaired or replaced prior to further flight, in accordance with instructions in Canadair Document RBD-44-100, Revision

repair or replacement of defective connectors, if necessary. This proposal is prompted by reports of numerous intermittent failure annunciations while flying in turbulent Instrument Meteorological Conditions (IMC), due to defective connectors. This condition, if not corrected, could result in increased crew workload during adverse weather

For the reasons set forth in the preamble, it is proposed that 7 CFR part 966 be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 966.228 is added to read as follows:

§ 966.228 Expenses and assessment rate.

Expenses of $1,964,000 by the Florida Tomato Committee are authorized and an assessment rate of $0.035 per 25-pound container of tomatoes is established for the fiscal period July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: October 3, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-23692 Filed 10-9-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-186-AD]

Airworthiness Directives; Canadair, Ltd., Model CL-44D4 and CL-44J Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Canadair Model CL-44D4 and CL-44J series airplanes, which would require supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness. Some Canadair CL-44D4 and CL-44J series airplanes are approaching, or have exceeded, the manufacturer's original fatigue design life. This proposal is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and repaired, could result in reduced structural integrity of these airplanes.

DATES: Comments must be received no later than November 30, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-186-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Canadair, Ltd., P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-186-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Canadair Model CL-44D4 and CL-44J series airplanes. Service experience shows that transport category aircraft of this type require supplemental structural inspections and maintenance to compensate for the effects of prolonged time-in-service. As a result, the manufacturer has conducted a structural reassessment of the airplanes and has identified additional structural elements where fatigue damage is likely to occur. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91-56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes." This AD is proposed to ensure the continuing airworthiness of Model CL-44D4 and CL-44J aircraft by incorporating into the aircraft maintenance program, the inspection and maintenance actions specified in Canadair Document RBD-44-100, "Supplemental Structure Inspection Program—CL44 Aircraft," Revision B, dated February 27, 1990. This document was developed based on service experience with the purpose of extending the Model CL44 series airplanes' life beyond 50,000 hours. Transport Canada has issued Airworthiness Directive CF-90-02 making the inspection and maintenance requirements in Canadair Document RBD-44-100 mandatory.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require each operator to incorporate into their FAA-approved maintenance inspection program, the supplemental maintenance, inspection, replacement, and overhaul requirements specified in Canadair Document RBD-44-00, Revision B, dated February 27, 1990. Additionally, it would require reporting inspection results to Canadair and the FAA.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Canadair, LTD: Applies to all Model CL-44D4 and CL-44J series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for supplemental maintenance, inspections, replacement, and overhaul requirements of the significant structural items defined in Canadair Document RBD-44-100, Revision B., dated February 27, 1990. Inspection results, when a crack is detected, must be reported to Canadair.

B. Cracked structure detected during the inspection required by paragraph A. of this AD must be repaired or replaced prior to further flight, in accordance with instructions in Canadair Document RBD-44-100, Revision B., dated February 27, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York Aircraft Certification Office, ANE-170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York Aircraft Certification Office, ANE-170.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Canadair, Ltd., P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23862 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-187-AD]

Airworthiness Directives; Gulfstream Aerospace Model G-IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Gulfstream Model G-IV series airplanes, which would require detailed integrity testing of the Avionics Standard Communication Bus, and repair or replacement of defective connectors, if necessary. This proposal is prompted by reports of numerous intermittent failure annunciations while flying in turbulent Instrument Meteorological Conditions (IMC), due to defective connectors. This condition, if not corrected, could result in increased crew workload during adverse weather conditions that could cause hazardous operation during a critical phase of flight.

DATES: Comments must be recieved no later than November 30, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-187-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402-2206. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, Systems and Equipment Branch, ACE-130A; telephone (404) 991-3020. Mailing address: FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-187-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Recent incidents of failures of the Avionics Standard Communication Bus (ASCB) connectors on Gulfstream Model G-IV series airplanes have been reported. These connectors are susceptible to intermittent failures while flying in turbulent IMC, due to defective connectors. This condition, if not corrected, could result in increased crew workload during adverse weather conditions that could cause hazardous operation during a critical phase of flight.

Gulfstream has issued Service Bulletin SB.GIV-GER-276, dated April 2, 1990, which describes procedures for detailed integrity testing of the ASCB connectors, and repair or replacement of defective connectors, if necessary. The FAA has determined that long term continued operational safety will be adversely affected by the failure of the ASCB connectors, and that the proposed AD should be issued.

Since this condition is likely to exist or develop on other airplanes of the same type design, this proposal would require detailed integrity testing of the ASCB, in accordance with Gulfstream Aerospace Service Bulletin SB.GIV-GER-276, dated April 2, 1990, and repair or replacement of defective connectors, if necessary.

There are approximately 50 airplanes of the affected design in the worldwide fleet. It is estimated that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream Aerospace: Applies to all Model G-IV series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of primary control of either pilot's attitude and navigation displays, with concurrent emission of smoke from the pilot's glare shield, accomplish the following:

A. Within 30 days after the effective date of this AD, perform detailed integrity testing of the Avionics Standard Communication Bus (ASCB) connectors, in accordance with Gulfstream Aerospace Service Bulletin SB.GIV-GER-276, dated April 2, 1990.

B. If defective ASCB connectors are found, prior to further flight, repair or replace all defective connectors in accordance with Gulfstream Aerospace Service Bulletin SB.GIV-GER-276, dated April 2, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York Aircraft Certification Office, ANE-170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York Aircraft Certification Office, ANE-170.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402-2206. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23863 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

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summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-187-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: Gulfstream has recently reported that a manufacturing defect has been found in a large number of Avionic Standard Communication Bus (ASCB) connectors installed in the Gulfstream Model G-IV series airplanes. This defect can result in intermittent function of the communication link between the unit involved and the ASCB. The ASCB connects and integrates all of the major avionics components in the Gulfstream Model G-IV cockpit. This allows for inter-system monitoring to detect failed components. The problem usually occurs when a dynamic mechanical load is placed on the connector, e.g., the type of load generated during flight through turbulence. When the connection is interrupted, the equipment involved will be declared lost by the system and a failure annunciation will be generated. Since the problem manifests itself during turbulent flight operations, the annunciation will be intermittent and will probably not occur when the airplane is traveling through smooth air. This condition, if not corrected, could result in increased crew workload during adverse weather conditions that could cause hazardous operation during a critical phase of flight.

The FAA has reviewed and approved Gulfstream Aerospace Report No. GIV-GER-276, "ASCB Databus Cable, Coupler, and Connector Integrity Test: Phase II Incorporation," dated April 2, 1990, which describes procedures to perform the integrity test required to identify defective connectors, and repair or replacement of defective connectors, if necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require detailed integrity testing of the ASCB to identify defective connectors, and repair or replacement of defective connectors, if necessary, in accordance with the Gulfstream report previously described.

There are approximately 29 Gulfstream Model G-IV series airplanes of the affected design in the worldwide fleet. It is estimated that 26 airplanes of U.S. registry would be affected by this AD, that it would take approximately 80 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $83,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream: Applies to all Model G-IV series airplanes, Serial Numbers 1060 through 1089, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure proper operation of the Avionics Standard Communication Bus (ASCB) and to prevent hazardous operation due to increased crew workload during turbulent weather conditions (Instrument Meteorological Conditions), accomplish the following:

A. Within 180 days after the effective date of this AD, perform a detailed integrity test of the ASCB, in accordance with Gulfstream Aerospace Report No. GIV-GER-276, "ASCB Databus Cable, Coupler, and Connector Integrity Test: Phase II Incorporation," dated April 2, 1990. If defective ASCB connectors are found, prior to further flight, repair or replace all defective connectors in accordance with Gulfstream Aerospace Report No. GIV-GER-276, dated April 2, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Note: The request should be submitted directly to the Manager, Atlanta ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Atlanta ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402-2206. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Parkway, Suite 210C, Atlanta, Georgia.

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23863 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-164-AD]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which would require modification of the electronic flight instrument system (EFIS) control panel. This proposal is prompted by reports of electrical failure within this panel, resulting in smoke in the flight deck. This condition, if not corrected, could result in loss of primary control of either pilot's attitude and navigation displays, with concurrent emission of smoke from the pilot's glare shield.

DATES: Comments must be received no later than November 30, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-164-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and Collins Air Transport Division/Rockwell International, 400 Collins Road NE., Cedar Rapids, Iowa 52406. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Schroer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2795. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket No. 90-NM-164-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: There have been two reported incidents of failures of the EFIS control panel on Boeing Model 747-400 series airplanes, which resulted in emission of smoke from the pilot's glare shield. This condition was caused by the short circuit of a capacitor, which resulted in overheating of the control panel power supply transformer. The effects of this failure could result in emission of smoke without the automatic tripping of the circuit breaker.

The FAA has reviewed and approved Collins Service Bulletin DCP-7000-31-04, dated December 1, 1989, which describes procedures to upgrade component ratings on the power supply card (identified as "Modification 4"). In addition, Boeing has issued Service Letter 747-SL-31-11, dated June 27, 1990, informing the operators of the problem.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of certain serial numbered EFIS control panels in the flight deck, in accordance with the service bulletin previously described.

There are approximately 77 Model 747-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required modification parts would be provided by Collins at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747-400 series airplanes through line number 791, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of either pilot's electronic flight instrument system (EFIS) control panel, with resultant smoke in the flight deck, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect both EFIS control panels installed on the airplane and record the serial number and modification status. Control panels with serial numbers identified in Collins Service Bulletin DCP-7000-31-04, dated December 1, 1989, and which do not have Modification 4 implemented, must be removed and modified in accordance with the service bulletin before further flight.

Any EFIS control panel with serial numbers identified in Collins Service Bulletin DCP-7000-31-04, dated December 1, 1989, and which does not have Modification 4 implemented, must be modified in accordance with the service bulletin before installation on an airplane.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the

appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

RIN 0960-AD03

Privacy Act; Disclosure of Addresses to Blood Donation Facilities

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to amend our regulations to provide that we will disclose addresses of individuals to authorized blood donation facilities for the purpose of informing individuals of the need for blood donations. We will disclose addresses only when the individuals have given their written consent to the disclosure. We are publishing these regulations to implement section 1106(c) of the Social Security Act, as added by section 7(a) of the Privacy Act of 1974, as amended by section 2201 of the Omnibus Budget Reconciliation Act of 1990.

DATES: To be sure that your comments are considered, we must receive them no later than December 10, 1990.

ADDRESSES: Comments should be submitted to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Social Security Administration, Room 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8671.

FOR FURTHER INFORMATION CONTACT: Jack Schenberger, Social Insurance Specialist, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8671.

SUPPLEMENTARY INFORMATION:

Background

Section 1106(c) of the Social Security Act, as added by section 7(a) of the Privacy Act of 1974, as amended by section 2201 of the Omnibus Budget Reconciliation Act of 1990, provides that the Secretary of the Treasury must give us taxpayer mailing address information when we need such information to comply with a BDLS request.

The BDLS provisions of the Act require that an authorized blood donation facility must provide for notification procedures and counseling of blood donors with positive antibody

Attention: SSA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, OMB, NEOB, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Schenberger, room 3-B-2 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8671.

accept and to transmit to the Secretary requests for address information and to accept and to transmit such information to the State and to authorized blood donation facilities. We provide in these regulations that SSA, on behalf of the Secretary, will conduct the BDLS by arrangements with a State agency in each State which chooses to participate. Under these arrangements, the State

appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23884 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Chapter I

[Summary Notice No. PR-90-25]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 29, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 25, 1990.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26306
Petitioner: Clint Simpson
Regulations affected: 14 CFR 91.167 (b)(2) (previously § 91.23(b)(2))
Description of petition: To change the minimum ceiling requirement from 2,000 feet to 1,000 feet or be changed to read some combination of available instrument flight rules landing minima.
Petitioner's reason for the request: The petitioner believes the change should be made to more appropriate criteria to maintain flight safety and enhance efficiency.

Docket No.: 26330
Petitioner: Frank Goeddeke, Jr.
Regulations affected: 14 CFR 67.13, 67.15 and 67.17
Description of petition: To change, in cases of alcoholism, the period of sustained total abstinence from alcohol required to obtain a medical certificate from 2 years to 90 days.
Petitioner's reason for the request: The petitioner states that pilots who seek early treatment for, and do recover from alcoholism, are routinely and summarily denied airman privileges for much longer periods of time than those pilots who are actually caught drinking and flying. Petitioner feels that safety would be improved if pilots were encouraged to seek early recovery from alcoholism. Further past practice has demonstrated that recovering alcoholics who continue to remain abstinent from alcohol pose no significant threat to safety.

Docket No.: 26256
Petitioner: Richard C. Bartel
Regulations affected: 14 CFR part 1
Description of the petition: This petition amends a petition previously submitted by the petitioner to amend § 1.1 to define the terms "prescribed by the Administrator" and/or "approved by the Administrator. The petitioner now requests that the terms "acceptable" or "accepted" to or by the Administrator and "determined" by the Administrator also be included in the definitions of § 1.1
Petitioner's reason for the request: The petitioner believes the definitions are necessary for clarity.

[FR Doc. 90-23889 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 401

RIN 0960-AC79

Blood Donor Locator Service

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are issuing these regulations to govern the Blood Donor Locator Service, which we will establish and conduct, as required by section 8008 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Under these regulations, we will furnish to participating States at their request the last known personal mailing address (residence or post office box) of blood donors whose blood donation shows that they are or may be infected with the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome, if the State or an authorized blood donation facility has been unable to locate the donors. If our records or those of the Internal Revenue Service (IRS) contain an adequate personal mailing address for the donor, we will provide it to the State so that the State or the blood donation facility can inform the donor of the possible need for medical care and treatment.

DATES: We will consider your comments if we receive them by December 10, 1990.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

Comments regarding information collection requirements should be sent to:

Attention: SSA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, OMB, NEOB, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, room 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8471.

SUPPLEMENTARY INFORMATION: Section 8008 of Public Law 100-647, the Technical and Miscellaneous Revenue Act of 1988, amended section 205(c)(2) of the Social Security Act (the Act) and added section 1141. Section 8008 requires the Secretary of Health and Human Services (the Secretary) to establish and conduct a Blood Donor Locator Service (BDLS) under the direction of the Commissioner of Social Security. The purpose of the BDLS is to provide an additional means by which States and authorized blood donation facilities can notify blood donors whose blood donations show that they are or may be infected with HIV which causes acquired immune deficiency syndrome and, therefore, may need medical care and treatment. The statute permits States to require a blood donor to furnish his or her Social Security number to a State agency or to an authorized blood donation facility. With the Social Security number, an authorized blood donation facility may request the State, pursuant to an arrangement with the Secretary, to contact the BDLS to obtain the donor's personal mailing address (residence or post office box). The State agency may also make such a request to the BDLS on its own behalf.

The Social Security Administration (SSA), on behalf of the Secretary, will enter into arrangements with an agency of an interested State under which SSA will accept requests for the last known personal mailing addresses (residence or post office box) of blood donors whose blood donations show that they are or may be infected with HIV. The State agency will be the agency within the State that has the duty or authority under State law relating to the public health, or otherwise has the duty or authority under State law to regulate blood donations.

Sections 1141 (a) and (b) of the Act provide that a State or an authorized blood donation facility within a State may request and receive from the BDLS address information concerning a blood donor who is or may be infected with HIV. Subsection (e) of section 1141 of the Act provides that the Secretary, in carrying out his duties and functions under the statute, shall enter into arrangements with State agencies to accept and to transmit to the Secretary requests for address information and to accept and to transmit such information to the State and to authorized blood donation facilities. We provide in these regulations that SSA, on behalf of the Secretary, will conduct the BDLS by arrangements with a State agency in each State which chooses to participate. Under these arrangements, the State agency will agree to accept requests for address information from authorized blood donation facilities and forward the requests to the BDLS. The State agency with which we will enter into arrangements may also submit a request for address information on its own behalf to the BDLS.

Section 1141(e)(1) of the Act provides that the Secretary shall enter into arrangements with State agencies to accept and to transmit to the Secretary requests for address information under this section and to accept and to transmit such information to authorized persons. We believe this provision provides authority for us to establish the BDLS so that it will only respond to requests for address information from State agencies with which we have entered into arrangements. The BDLS will not respond to requests from any person located in a State with which we have not entered into such arrangements, and the BDLS will not respond directly to blood donor facilities. We believe that this approach will foster the efficient and effective implementation of section 1141. The State agencies with which we will enter into these arrangements will be familiar with other State agencies and with blood donor facilities within their respective States which may qualify as authorized persons that may request address information under the statute. The State agencies with which we will enter into these arrangements will be able to assist the BDLS by verifying the qualifications of a blood donation facility as an authorized person and helping to monitor the compliance of authorized persons with these regulations.

We will process a request from the participating State agency if the State or the authorized blood donation facility cannot locate the donor at the address he or she provided at the time of the blood donation. After we receive an address request from a participating State agency, we will check our records of beneficiaries. If we do not have a current personal mailing address for the blood donor in question, we will forward the request to the IRS, which will check its tax records. Section 8006(c) of Public Law 100-647 also provides that the Secretary of the Treasury must give us taxpayer mailing address information when we need such information to comply with a BDLS request.

The BDLS provisions of the Act require that an authorized blood donation facility must provide for notification procedures and counseling of blood donors with positive antibody HIV tests. The legislative history of section 1141 of the Act indicates that Congress expects blood donation facilities which use the BDLS to make reasonable efforts at notification, but does not expect facilities to use extraordinary means to reach individuals who may have moved out of the area in which the facility is located. The legislative history further indicates that blood donation facilities are required to provide counseling for donors under existing counseling programs, but are not required to establish new programs. H.R. Rep. No. 100-795, 100th Cong., 2d Sess. 620 (1988).

Section 205(c)(2) of the Act was amended by section 8008 of Public Law 100-647 to allow States to require anyone who donates blood within that State to furnish his or her Social Security number to the State or to an authorized blood donation facility. States and blood donation facilities registered with the Food and Drug Administraiton may utilize Social Security numbers for identification of blood donors. The Social Security number will be required information in requests to us for the donor's address.

Section 8008 of Public Law 100-647 also provides for stringent safeguards to protect the confidentiality and security of records of blood donors when address information is requested from the BDLS. These measures apply to States and authorized blood donation facilities that use the BDLS. They provide that State agencies and authorized blood donation facilities which use the BDLS must have a standardized system of records pertaining to BDLS requests, must store blood donors' addresses and related blood donor records in a secure area that is safe from access by unauthorized persons, must restrict access to the records to persons whose duties require access and to whom disclosure may be made, must destroy identifying information after the donor has been notified, and must report to us when requested the procedures used to ensure confidentiality. We list these safeguards in these proposed regulations. We also propose that States and authorized blood donation facilities that use the BDLS must explain the applicable

confidentiality standards and sanctions to personnel who will have access to any records pertaining to BDLS requests.

In addition to the confidentiality and security requirements for States and blood donation facilities, section 8008 of Public Law 100-647 and these regulations state that SSA is required to destroy all identifying information in its person will have 60 days after receiving our notice of refusal to provide the address information within which to request administrative review. In these regulations, we explain the review process, including the timeframe within which we will process the request for review.

Public Law 100-647 requires the BDLS

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Desk Officer for Social Security, Office

local agencies administering Aid to Families with Dependent Children, Medicaid, unemployment compensation, food stamps, and other programs.

3. The heading for Subpart F is revised to read as follows:

Subpart F—Disclosures of Addresses by Blood Donor Locator Service

and a finding has been made that they are or may be infected with the human immunodeficiency virus; and

(iii) Counseling services for such individuals who have been found to have such virus.

Related blood donor records means any record, list, or compilation established in connection with a request

6103(m)(6) of the Internal Revenue Code. After completing these searches, we will provide to the requesting State agency either the latest mailing address available for the donor or a response stating that we do not have this information. We will then destroy the records or delete all identifying donor information related to the request and

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confidentiality standards and sanctions to personnel who will have access to any records pertaining to BDLS requests.

In addition to the confidentiality and security requirements for States and blood donation facilities, section 8008 of Public Law 100–647 and these regulations state that SSA is required to destroy all identifying information in its records related to the address request after the BDLS has responded to the requesting State agency. Similarly, under section 8006 the IRS must destroy its records related to the request after it has responded to us in those situations where we requested the address from IRS tax records because our records did not contain a current personal mailing address. We also state in these regulations that under section 8006 there are criminal penalties for unauthorized disclosure of information related to a blood donor. These criminal penalties will apply to any official or employee of the Federal Government, a State, or a blood donation facility.

To monitor compliance with the confidentiality and security requirements of the statute and these regulations, we provide in these regulations that we reserve the right to make onsite inspections of the blood donor records of State agencies and blood donation facilities concerning persons with positive HIV results. We also describe other measures we may take to ensure that the safeguards required by the law are being met. Section 1141(d)(5) of the Act requires that an authorized person which receives address information from the BDLS must furnish a report to the Secretary at such time and containing such information as prescribed by the Secretary, describing the procedures established and utilized for ensuring the confidentiality of address information provided by the BDLS and related blood donor records. Under the statute and these regulations, an authorized person, after receiving address information from the BDLS and either notifying or attempting to notify the donor, must destroy the address information and any record, list or compilation it established in connection with the request that indicates the identity of the donor with respect to whom the request for address information was made.

Participation in the BDLS by State agencies and blood donation facilities is voluntary, but participants must agree to comply with the provisions of the statute and these regulations. If the address request of an authorized person does not comply with the statute and these regulations, we will not disclose address information, and the authorized person will have 60 days after receiving our notice of refusal to provide the address information within which to request administrative review. In these regulations, we explain the review process, including the timeframe within which we will process the request for review.

Public Law 100–647 requires the BDLS to furnish the "mailing address" of a blood donor who is or may be infected with HIV, but does not define the term "mailing address". Because of the sensitive nature of the information disclosed through the use of the BDLS, we will consider a donor's "mailing address" to be his or her personal mailing address (residence or post office box). Therefore, we will not release any other address, such as an employment address.

We are deleting the material currently in subpart F of 20 CFR part 401 relating to the disclosure of wage information for the Aid to Families with Dependent Children Program because this material is obsolete. Subpart F implemented section 411 of the Social Security Act, and section 411 was repealed by section 2651 of Public Law 98–369 (1984).

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, because the costs, if any, are expected to be negligible. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only the release of addresses of certain blood donors. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

Section 401.600(d) of these proposed regulations imposes reporting requirements subject to Office of Management and Budget (OMB) review pursuant to the Paperwork Reduction Act of 1980. As required by section 3504(h) of the Act, we will submit a copy to OMB for its review. Comments regarding these requirements should be sent to the individual whose name appears in the address section of this preamble.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Desk Officer for Social Security, Office of Management and Budget, Paperwork Reduction Project (XXXX-XXXX), Washington, DC 20503.

(Catalog of Federal Domestic Assistance Program—No listing)

List of Subjects in 20 CFR Part 401

Administrative practice and procedure; Aid to families with dependent children, Freedom of information; Medicare; Old–age, Survivors, and disability insurance; Privacy; Supplemental security income.

Dated: September, 17, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: September 20, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts B and F of part 401 of 20 CFR chapter III are proposed to be amended as follows:

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

1. The authority citation for subpart B is revised to read as follows:

Authority: Secs. 205(a), 1102, 1106, and 1141 of the Social Security Act; Sec. 413(b) of the Federal Mine Safety and Health act of 1977; 5 U.S.C. 552 and 552a, 8 U.S.C 1360, 26 U.S.C. 6103, 30 U.S.C. 923, 42 U.S.C. 405(a), 1302, 1306, and 1341.

2. Section 401.205 is revised to read as follows:

§ 401.205 Disclosures required by law.

We disclose information when a law specifically requires it. The social Security Act requires us to disclose information for certain program purposes. These include disclosures to the Office of Inspector General, HHS, the Parent Locator Service, and to States pursuant to an arrangement regarding use of the Blood Donor Locator Service. Also, there are other laws which require that we furnish other agencies information which they need for their programs. These include the Department of Veterans Affairs for its benefit programs, the Immigration and Naturalization Service to carry out its duties regarding aliens, the Railroad Retirement board for its benefit programs, and to Federal, State, and local agencies administering Aid to Families with Dependent Children, Medicaid, unemployment compensation, food stamps, and other programs.

3. The heading for Subpart F is revised to read as follows:

Subpart F—Disclosures of Addresses by Blood Donor Locator Service

4. The authority citation for subpart F is revised to read as follows:

Authority: Sec. 8008, Pub. L. 100–647; Secs. 205(c)(2), 1102, and 1141 of the Social Security Act; 42 U.S.C. 405(c)(2),1302, and 1341, and 26 U.S.C. 6103.

5. Section 401.600 is revised to read as follows:

§ 401.600 Blood donor locator service.

(a) *General.* We will enter into arrangements with State agencies under which we will furnish to them at their request the last known personal mailing addresses (residence or post office box) of blood donors whose blood donations show that they are or may be infected with the human immunodeficiency virus which causes acquired immune deficiency syndrome. The State agency or other authorized person, as defined in paragraph (b) of this section, will then inform the donors of the possible need for medical care and treament. The safeguards that must be used by authorized persons as a condition to receiving address information from the Blood Donor Locator Service are in pargraph (g) of this section, and the reuirements for a request for address information are in paragraph (d).

(b) *Definitions.*

State means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

Authorized person means—

(1) Any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations; and

(2) Any entity engaged in the acceptance of blood donations which is registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which provides for—

(i) The confidentiality of any address informaton received pursuant to these rules and section 1141 of the Social Security Act and related blood donor records;

(ii) Blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they are or may be infected with the human immunodeficiency virus; and

(iii) Counseling services for such individuals who have been found to have such virus.

Related blood donor records means any record, list, or compilation established in connection with a request for address information which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to these rules.

(c) *Use of Social Security number for identification.* A State or an authorized person in the State may require a blood donor to furnish his or her Social Security number when donating blood. The number may then be used by an authorized person to identify and locate a donor whose blood donation indicates that he or she is or may be infected with the human immunodeficiency virus.

(d) *Request for address of blood donor.* An authorized person which has been unable to locate a blood donor at the address he or she may have given at the time of the blood donation may request assistance from the State agency which has arranged with us to participate in the Blood Donor Locator Service. The request to the Blood Donor Locator Service must—

(1) Be in writing;

(2) Be from a participating State agency either on its own behalf as an authorized person or on behalf of another authorized person;

(3) Indicate that the authorized person meets the confidentiality safeguards of paragraph (g) of this section; and

(4) Include the donor's name and Social Security number, the addresses at which the authorized person attempted without success to contact the donor, the date of the blood donation if available, a statement that the donor has tested positive for the human immunodeficiency virus according to the latest Food and Drug Administration standards or that the history of the subsequent use of the donated blood or blood products indicates that the donor has or may have the human immunodeficiency virus, and the name and address of the requesting blood donation facility.

(e) *SSA response to request for address.* After receiving a request that meets the requirements of paragraph (d) of this section, we will search our records for the donor's latest personal mailing address. If we do not find a current address, we will request that the Internal Revenue Service search its tax records and furnish us any personal mailing address information from its files, as required under section 6103(m)(6) of the Internal Revenue Code. After completing these searches, we will provide to the requesting State agency either the latest mailing address available for the donor or a response stating that we do not have this information. We will then destroy the records or delete all identifying donor information related to the request and maintain only the information that we will need to monitor the compliance of authorized persons with the confidentiality safeguards contained in paragraph (g) of this section.

(f) *SSA refusal to furnish address.* If we determine that an authorized person has not met the requirements of paragraphs (d) and (g) of this section, we will not furnish address information to the State agency. In that case, we will notify the State agency of our determination, explain the reasons for our determination, and explain that the State agency may request administrative review of our determination. The Commissioner of Social Security or a delegate of the Commissioner will conduct this review. The review will be on the record and there will not be an opportunity for an oral hearing. A request for administrative review, which may be submitted only by a State agency, must be in writing. The State agency must send its request for administrative review to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, MD 21235, within 60 days after receiving our notice refusing to give the donor's address. The request for review must include supporting information or evidence that the requirements of these rules have been met. If we do not furnish address information because an authorized person failed to comply with the confidentiality safeguards of paragraph (g) of this section, the State agency will have an opportunity to submit evidence that the authorized person is now in compliance. If we then determine, based on our review of the request for administrative review and the supporting evidence, that the authorized person meets the requirements of these rules, we will respond to the address request as provided in paragraph (e) of this section. If we determine on administrative review that the requirements have not been met, we will notify the State agency in writing of our decision. We will make our determination within 30 days after receiving the request for administrative review, unless we notify the State agency within this 30-day time period that we will need additional time. Our determination on the request for administrative review will give the

findings of fact, the reasons for the decision, and what actions the State agency should take to ensure that it or the blood donation facility is in compliance with these rules.

(g) *Safeguards to ensure confidentiality of blood donor records.* We will require assurance that authorized persons have established

the unauthorized disclosure of tax information.

[FR Doc. 90–23883 Filed 10–9–90; 8:45 am]
BILLING CODE 4190–11–M

ENVIRONMENTAL PROTECTION AGENCY

Copies of the proposed FIP and the draft technical support document are also available at the County and State offices listed below:

Arizona Department of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, Phoenix, Arizona 85004.

Maricopa Association of Governments,

improvements. Emission reductions from other measures within the Pima plan (the travel reduction program, transit improvements, ridesharing, etc.) and measures adopted later by the State legislature (loaded-mode I/M testing, and oxygenated fuels program, and a voluntary no-drive-day program) were not factored into either the attainment or maintenance demonstrations but

travel reduction program, transit improvements, a ridesharing program, and several other TCMs. In addition to the twelve measures to which it approved an explicit emission reduction credit, EPA also incorporated into the SIP numerous other measures which were adopted by the cities, towns, and the County of Maricopa. These

outstanding EPA guidance. See 53 FR 30224, 30235 (August 10, 1988).

B. ACLPI's Petition for Review and the Ninth Circuit's Order

On September 22, 1988, the Arizona Center for Law in the Public Interest (ACLPI) filed a petition for review, *Delaney* v. *EPA*, in the U.S. Court of

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findings of fact, the reasons for the decision, and what actions the State agency should take to ensure that it or the blood donation facility is in compliance with these rules.

(g) *Safeguards to ensure confidentiality of blood donor records.* We will require assurance that authorized persons have established and continue to maintain adequate safeguards to protect the confidentiality of both address information received from the Blood Donor Locator Service and related blood donor records. The authorized person must, to the satisfaction of the Secretary—

(1) Establish and maintain a standardized system of records which includes the reasons for requesting the addresses of blood donors, dates of the requests, and any disclosures of address information;

(2) Store blood donors' addresses received from the Blood Donor Locator Service and all related blood donor records in a secure area or place that is physically safe from access by persons other than those whose duties and responsibilities require access;

(3) Restrict access to these records to authorized employees and officials who need them to perform their official duties related to notifying blood donors who are or may be infected with the human immunodeficiency virus that they may need medical care and treatment;

(4) Advise all personnel who will have access to the records of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for unauthorized use or disclosure of the information;

(5) Destroy the address information received from the Blood Donor Locator Service, as well as any related blood donor records, after notifying or attempting to notify the donor at the address obtained from the Blood Donor Locator Service; and

(6) Upon request, report to us the procedures established and utilized to ensure the confidentiality of address information and related blood donor records. We reserve the right to make onsite inspections and to request such information as we may need to ensure that the safeguards required in this section are being met.

(h) *Unauthorized disclosure.* Any official or employee of the Federal Government, a State, or a blood donation facility who discloses blood donor information, except as provided for in this section or under a provision of law, will be subject to the same criminal penalty as provided in section 7213(a) of the Internal Revenue Code of 1986 for the unauthorized disclosure of tax information.

[FR Doc. 90-23885 Filed 10-9-90; 8:45 am]
BILLING CODE 4160-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3836-1]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa and Pima Nonattainment Areas; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA today is proposing a federal implementation plan (FIP) under section 110(c) of the Clean Air Act (CAA) for the Maricopa (Phoenix) and Pima (Tucson) carbon monoxide (CO) nonattainment areas. EPA is taking this action to comply with the Ninth Circuit Court of Appeals order in *Delaney* v. *EPA*. This court order requires EPA to promulgate plans that utilize all "available" measures to attain the National Ambient Air Quality Standards (NAAQS) for CO "as soon as possible."

DATES: EPA will conduct a public hearing on this notice of proposed rulemaking (NPRM) the week of October 15, 1990. EPA will soon publish a notice for this hearing in newspapers in Tucson and Phoenix. Written comments on the NPRM must be submitted to EPA at the address below by November 9, 1990. The comment period will remain open until approximately November 14, 1990 for submission of rebuttal and supplemental comments relating only to comments raised at the public hearing.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Attention: Air and Toxics Division, Technical Evaluation Section, A-2-1, U.S. Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, California 94103.

The rulemaking docket for this notice, Docket No. 90-AZ-MAPI-1, including the draft technical support document, may be inspected at the following location between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket. U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, Technical Evaluation Section, A-2-1, 1235 Mission Street, San Francisco, California 94103.

Copies of the proposed FIP and the draft technical support document are also available at the County and State offices listed below:

Arizona Department of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, Phoenix, Arizona 85004.

Maricopa Association of Governments, 1820 West Washington, Phoenix, Arizona 85007.

Maricopa County Bureau of Air Pollution Control, 1845 East Roosevelt Street, Phoenix, Arizona 85006.

Pima Association of Governments, Suite 405, Transamerica Building, 177 North Church Street, Tucson, Arizona 85701.

Pima County Department of Environmental Quality, 150 West Congress, Tucson, Arizona 85701.

FOR FURTHER INFORMATION CONTACT: Julia Barrow, Chief, Technical Evaluation Section, A-2-1, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, California 94103, (415) 556-5154, FTS: 556-5154.

SUPPLEMENTARY INFORMATION:

I. Background

For a history of EPA's actions on the Arizona Carbon Monoxide (CO) State Implementation Plan (SIP) up to August 10, 1988, see the proposed approval of the SIP revision for Pima County, 53 FR 14818 (April 26, 1988), and the proposed approval of the SIP and proposal of a federal implementation plan (FIP) for Maricopa County, 53 FR 17378 (May 16, 1988).

A. 1988 SIP Approvals

1. Pima County

On August 10, 1988 (53 FR 30220) EPA fully approved the 1987 CO SIP revision for the Tucson Air Planning Area ("Pima plan") which was developed by the Pima Association of Governments (PAG). In approving the Pima plan, EPA concluded that the control measures and the attainment and maintenance demonstrations in the plan fully met the requirements of section 110 and part D of the Clean Air Act (CAA).

Based on the then most current population and traffic forecasts, the Pima plan demonstrated attainment of the CO NAAQS by early 1990 and maintenance of the standard until after 2000. Both demonstrations relied solely on emission reductions from the federal motor vehicle control program (FMVCP), the State inspection and maintenance (I/M) program without the loaded-mode component, existing traffic flow improvements, and programmed road improvements. Emission reductions from other measures within the Pima plan (the travel reduction program, transit improvements, ridesharing, etc.) and measures adopted later by the State legislature (loaded-mode I/M testing, and oxygenated fuels program, and a voluntary no-drive-day program) were not factored into either the attainment or maintenance demonstrations but rather considered extra assurance of attainment and maintenance.

The Pima plan contained contingency procedures which required tracking trends in air quality and traffic data, evaluation of the adopted major transportation control measures (TCMs), and identification of any tightening of control measures necessary to sustain progress toward attainment or maintenance. In addition, EPA noted in its approval that the loaded-mode I/M testing, oxygenated fuels program, voluntary no-drive-day program, and travel reduction program would together provide significant additional emission reductions that would compensate for any unanticipated shortfalls in planned emission reductions. The Pima plan did not explicitly address conformity although PAG does annually perform an air quality analysis of its transportation improvement program.

2. Maricopa County

On August 10, 1988 (53 FR 30224), EPA also fully approved the 1987 Maricopa Association of Governments (MAG) Carbon Monoxide Plan and 1988 Addendum ("MAG plan") and withdrew its May 16, 1988 proposal of a FIP for the Maricopa area. In approving the MAG plan, EPA concluded that the control measures and attainment demonstration submitted with the plan fully met the requirements of section 110 and part D of the CAA.

The MAG plan used a combined regional and hot-spot modeling approach to determine the emission reductions needed for attainment. The modeling was performed during 1987 and used the then most current population and traffic forecasts. The modeling indicated that a 22 percent decrease in emissions from the 1991 baseline would provide for attainment within three years of plan approval. For reasons which are discussed in detail in the May 16, 1988 proposal (53 FR 17378), EPA concluded at the time that three years from plan approval was the appropriate planning period for attainment in Maricopa County.

The attainment demonstration in the MAG plan was based on a combination of measures: the FMVCP, an oxygenated fuels program, the State I/M program including a loaded-mode component, a travel reduction program, transit improvements, a ridesharing program, and several other TCMs. In addition to the twelve measures to which it approved an explicit emission reduction credit, EPA also incorporated into the SIP numerous other measures which were adopted by the cities, towns, and the County of Maricopa. These measures consisted of commitments to implement many of the 45 measures identified as potentially available in the MAG plan. Unfortunately, because of the nature of many of these measures and their often very small emission reductions, specific emission reduction estimates were impossible to calculate. See 53 FR 30224, 30229 (August 10, 1988). In its approval notice, EPA concluded that no measures beyond those it was approving into the Maricopa SIP would both be practicable for implementation in Maricopa County and capable of advancing the 1991 attainment date.

The MAG plan as submitted only demonstrated maintenance through 1995. In order to comply with Agency guidance, EPA believed that the plan needed to demonstrate attainment for at least ten years past the date of approval or, effectively, 1998. Using data contained in the plan, EPA was able to determine that, with measures being approved into the SIP, the air quality standards could be maintained in Maricopa for the required ten-year period.

The contingency plan in the MAG plan required that the MAG Air Quality Planning Committee review annually the progress made to reduce CO pollution and if necessary consider either strengthening existing measures or adopting additional measures. EPA noted in its approval that this plan did not fully comply with its SIP guidance requirements for contingency procedures but also noted that the MAG plan contained two measures for which EPA did not give emission reduction credit: a requirement in the oxygenated fuels program for a minimum market share for gasohol and a voluntary no-drive-day program. EPA believed that these two measures would provide sufficient emission reductions to offset any potential emission reduction shortfall. They, therefore, functioned as already-adopted contingency measures and obviated the need for further contingency procedures.

EPA stated in its approval notice that the conformity procedures in the MAG plan were adequate to insure compliance with section 176(c). EPA also stated that it would continue to work with MAG to incorporate into the SIP additional conformity procedures and criteria consistent with all outstanding EPA guidance. See 53 FR 30224, 30235 (August 10, 1988).

B. ACLPI's Petition for Review and the Ninth Circuit's Order

On September 22, 1988, the Arizona Center for Law in the Public Interest (ACLPI) filed a petition for review, *Delaney* v. *EPA*, in the U.S. Court of Appeals for the Ninth Circuit challenging EPA's August 10, 1988 final actions approving the CO SIPs for Maricopa and Pima Counties. In its petition, ACLPI claimed that, in approving the plans, EPA failed to comply with the CAA and with Agency guidance. Specifically, ACLPI argued that (1) EPA acted illegally in approving attainment deadlines far beyond the 1987 date specified by Congress, failed to require the implementation of every available control measure to provide for attainment as quickly as possible, and failed to consider increased vehicle travel projections in evaluating the attainment demonstration in the MAG plan; (2) the MAG plan failed to provide for long-term maintenance of the CO standard; and (3) the MAG plan contained no contingency and conformity provisions to ensure attainment and maintenance of the CO standard.

On March 1, 1990, the Ninth Circuit issued its initial opinion in *Delaney* v. *EPA*, No. 88-7368. The court concluded that, after the passage of the statutory attainment date of December 31, 1987, "the national ambient air quality standards must be attained as soon as possible with every available measure, including those that EPA identified in its criteria for approving 1982 plans" 46 FR 7182, 7186 (January 22, 1981). 898 F.2d. at 691.

In noting that neither the MAG nor the Pima plan adopted most of the 57 measures recommended by MAG and Cambridge Systematics, an EPA consultant, the court concluded that EPA had arbitrarily shifted from the State the burden of demonstrating that the control measures would not advance the attainment date. The court cited an EPA guidance document, 44 FR 20372, 20375 (April 4, 1979), providing that a control measure would be deemed not reasonably available only if it would not advance attainment, would cause substantial widespread and long-term adverse impact, or would take too long to implement. 898 F.2d at 692. The court also relied on additional EPA guidance and cited in particular a passage stating that the plans for certain areas having difficulty projecting attainment by 1987 "must demonstrate that all possible measures will be implemented * * * ."

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898 F.2d. at 692 (quoting 46 FR 7182, 7188).

In its Delaney opinion, the court also concluded that EPA arbitrarily and capriciously approved the MAG plan in the absence of conformity and contingency provisions required by EPA's January 22, 1981 SIP guidance on approval of 1982 SIPs (46 FR 7182, 7187–8). The court, however, upheld EPA's approval of the provision in the MAG plan providing for maintenance of the standard for ten years into the future.

Because the court's holding on other issues would require EPA to develop a FIP, the court made no determination regarding EPA's failure to consider revised traffic projections. Rather, the court required that the most current projections be considered in developing the new plans.

Finally, the court vacated EPA's August 10, 1988 approvals of the Arizona SIPs and directed EPA to disapprove the Maricopa and Pima Counties' plans and to develop FIPs consistent with its opinion within six months. 898 F.2d at 695. In summarizing, the court stated that the new plans must utilize "all available control measures" to attain the CO ambient air quality standard "as soon as possible." The new plans must also contain contingency and conformity plans in accordance with EPA guidelines and must be based on the most recent traffic projections currently available.

On March 15, 1990, the State of Arizona filed a Motion for Clarification of the court's initial March 1, 1990 opinion. The State sought to clarify that the new plans required by the Opinion could be developed and submitted by the State in lieu of an EPA-developed FIP. Further, the State requested clarification concerning whether EPA (or the State) in developing an approvable plan must propose regulations or promulgate final regulations within six months.

On April 11, 1990, the Ninth Circuit amended its opinion in response to the State's Motion. 898 F.2d 687 (9th Cir. 1990). The court made clear that EPA must promulgate the Arizona FIPs within six months, although the court did allow in a footnote that the State may submit proposal to EPA for consideration in developing the plans.

On March 27, 1990, EPA filed a Petition for Rehearing in the Ninth Circuit arguing that the federal district courts have exclusive jurisdiction to order EPA to carry out non-discretionary duties under the CAA, such as promulgation of a FIP, and that even assuming circuit court jurisdiction to order EPA to promulgate a FIP, the six-month deadline is inconsistent with the CAA. In the Petition, EPA advised the court that it did not read the Delaney opinion as requiring it to implement any measures that either (1) would not advance the attainment date; (2) are not within the power of the federal government to implement, or (3) are not "available" in the sense that they would result in absurdly severe economic and social disruptions, e.g. gas rationing. On May 16, 1990, the court denied EPA's petition for rehearing without comment.

On September 13, 1990, the Solicitor General on behalf of EPA filed a petition with the Supreme Court seeking a writ of *certiorari* to review certain aspects of the judgment the opinion of the Ninth Circuit insofar as it orders the Administrator to promulgate a FIP within a specified time period.

C. 1990 SIP Actions

In a separate notice, EPA is taking two approval actions. The first action is to restore its approval of the control measures for the Maricopa and Pima CO nonattainment areas whose original approval by EPA on August 10, 1988 was vacated by the Ninth Circuit in *Delaney v. EPA*. This action will retain these measures as enforceable portions of the Arizona SIP. The second action is EPA's final approval of two measures for Pima County, an oxygenated fuels program and a travel reduction program, which were proposed for approval on August 10, 1988 (53 FR 30239).

D. EPA's SIP Guidance

EPA has published several notices describing the standards on which it would judge the adequacy of SIPs. See 44 FR 20372 (April 4, 1979) on requirements for 1979 SIP submittals required of all nonattainment areas under Part D of the CAA ("1979 SIP guidance") and 46 FR 7182 (January 22, 1981) on requirements for the 1982 SIP revisions required of all CO and ozone nonattainment areas receiving attainment date extensions to December 31, 1987 ("1982 SIP guidance"). EPA also published on November 24, 1987 (52 FR 45044) proposed guidance for SIPs for areas that failed to attain by 1987. This proposed policy laid out EPA's reasoning on the appropriate attainment dates for such areas after the passage of the last attainment date specified in the Clean Air Act, i.e., December 31, 1987.

Each of these guidance documents covers the major sections of a SIP including the requirements for stationary, mobile and transportation control measures; attainment and reasonable further progress demonstrations; modeling; conformity procedures; and contingency procedures. In approving the Arizona CO SIPs in 1988, EPA believed it was acting consistently with its 1979 and 1982 SIP guidance and with its reading of the CAA in the post-1987 era as outlined in the November 1987 policy proposal. In Delaney, the Ninth Circuit thought otherwise. In its opinion, the court focused on EPA's 1982 SIP guidance; the parts of that guidance which the court highlighted are described in more detail below.

1. Control Strategies

EPA's 1982 SIP guidance set up a hierarchy of control requirements depending on the level of controls needed for attainment and whether attainment could be demonstrated prior to the end of 1987. All 1982 CO SIPs had to contain at a minimum reasonably available control technology (RACT) on all stationary sources emitting over 1,000 tons CO per year potential emissions, and I/M program whose elements met EPA policy, and all reasonably available TCMs.

If an area could not demonstrate attainment by 1987 with just these minimum controls, the state had to identify, evaluate, and adopt additional measures which could be implemented by no later than 1987. Examples of such measures are more stringent RACT on major stationary sources, extension of controls to stationary sources and source categories not then subject to RACT, a broader range of TCMs, and increased coverage and stringency of the I/M program.

Finally, for areas which could not demonstrate attainment by 1987 with all measures that could be implemented by then, the state was required to "analyze the transportation and other measures possible in a longer time frame that * * * would result in attainment as quickly as possible after 1987." (46 FR 7182, 7188) Areas with post-1987 attainment dates were also required to provide more extensive evidence on why any of the TCMs identified in section 108(f) of the CAA were not available given the additional time possible to implement them.

In Delaney, as discussed below, the court extended this requirement to the situation in Arizona. However, there is a great difference between the situation EPA was envisioning when developing its guidance in 1981 and the set of circumstances faced by EPA in Arizona in 1988. The 1982 SIP guidance was intended for states which were writing plans in 1981 for areas which could not demonstrate attainment before the CAA deadline of December 31, 1987 with reasonable measures that could be adopted and implemented within the five years before 1987. EPA intended states in this situation evaluate other reasonable measures with adoption and implementation schedules longer than five years. The 1982 SIP guidance was never meant to imply that such plans include socially or economically disruptive measures that would provide for attainment after 1987 as quickly as possible.

EPA has decided, independently of today's proposal, however, that to the extent that the 1982 SIP guidance can be interpreted to require every conceivable measure—including gas rationing, widespread source shutdowns, and the like—such an interpretation does not reflect the Agency's original or current intent, and hence should not govern state or federal air quality planning. For that reason, the EPA Administrator signed on September 13, 1990, a policy clarification which revokes the portion of the 1982 SIP guidance that requires implementation of "all possible measures."[1] This policy clarification will soon be published in the **Federal Register.**

2. Contingency Plans

Section 110(a)(2)(B) of the CAA requires that SIPs contain such measures as are necessary to ensure attainment and maintenance of the standards. To meet this CAA requirement, EPA specified in its 1982 SIP guidance that SIPs include a two-part contingency plan:

> The first part * * * [is] a list of planned transportation measures and projects that may adversely affect air quality and that will be delayed, while the SIP is being revised, if expected emission reductions or air quality improvements do not occur. The second part * * * consists of a description of the process that will be used to determine and implement additional transportation measures beneficial to air quality that will compensate for the unanticipated shortfalls in emission reductions. 46 FR 7182, 7187 (January 22, 1981).

The contingency provisions are to be initiated whenever the EPA Administrator determines that a SIP is inadequate to attain the NAAQSs and that additional emission reductions are needed.

3. Conformity Plans

The 1982 SIP guidance also requires a two-part conformity plan. The first part is "administrative and technical procedures and agency responsibilities for ensuring, in response to section 176(c) of the Clean Air Act, that transportation plans, programs, and projects approved by a metropolitan planning organization (MPO) are in conformance with the SIP." (46 FR 7182, 7187) The second part requires that the direct and indirect emissions associated with major federal actions that will take place over the period covered by the SIP are identified and quantified to the extent possible. This last part is intended to ease the making of conformity determinations required by CAA section 176(c) by federal agencies.

4. Requirement for All Reasonably Available TCMs

In reviewing EPA's conclusion that the Arizona plans provided for sufficient control measures, the Ninth Circuit quoted the 1979 SIP guidance:

> [I]f a state adopts less than all [reasonably available control measures] *and demonstrates* (a) that reasonable further progress and attainment of the NAAQS are assured, and (b) that application of all [reasonably available control measures] would not result in attainment any faster, then a plan with less than all [reasonably available control measures] may be approved. 898 F.2d at 692 quoting 44 FR 20375 (emphasis added by the court)

EPA's 1982 SIP guidance divides control requirements among stationary sources, I/M, and transportation measures. The guidance requires implementation of all reasonably available control measures with special requirements for demonstrating that all reasonably available TCMs have been implemented. Reasonably available TCMs are described presumptively as the categories of transportation measures identified in section 108(f) of the CAA. The 1982 guidance also required the states to submit documentation, based on technical analysis, of the basis for not implementing any of the measures identified in section 108(f). For areas that could not demonstrate attainment by the end of 1987, the 1982 SIP guidance required the state to submit more extensive evidence to support the rejection of any section 108(f) measure.

5. Maintenance

EPA's regulations on air quality maintenance plans (40 CFR 51.42) require that such plans extend over at least a 20-year period; however, the EPA administrator, on request or at his own initiative, can shorten the demonstration period to no less than ten years. In determining if a shorter time period is appropriate, the Administrator may consider "all relevant factors" (40 CFR 51.63(a)). In the preamble to these regulations, these "relevant factors" are described as including state resources, other planning programs that may significantly affect air quality, *the reliability of projections*, and the extent of present and potential air quality problems. 41 FR 18386 (May 3, 1976), emphasis added.

EPA noted in its approval of the MAG plan that projections extending beyond ten years become too speculative to be reliable. 53 FR 30224, 30234 (August 10, 1988). This finding is borne out by the fact that population and vehicle miles traveled projections for the Maricopa area have been revised at least twice since February, 1987. The situation is similar in Pima County; the recently revised population projections are substantially less than the levels assumed in the 1987 Pima plan.

A small change in annual growth rates compounds into a large change ten or more years into the future. Planning in areas where estimates of annual growth rates are revised frequently, such as Pima and Maricopa Counties, is especially sensitive to the compounding effect of these small changes. For this reason, EPA believes that projections more than ten years into the future for the Maricopa and Pima nonattainment areas are not reliable. EPA, therefore, believes that a maintenance demonstration for the ten years from plan approval (which in this case will be FIP promulgation) is appropriate.

II. Attainment and Maintenance of the CO NAAQS in Maricopa County

A. Emission Reductions Needed for Attainment

1. Air Quality Modeling

The starting point for determining the level of emission reductions necessary to attain the NAAQS is the establishment of a design concentration. The design concentration (or design value) is the highest ambient CO concentration among the second-highest, running non-overlapping 8-hour CO concentrations recorded at area monitors in the most recent two years. In order for the SIP to demonstrate attainment, the control measures in the SIP must be sufficient to reduce the design value to the level of the CO NAAQS.

Under EPA policy, the design value should be selected from concentrations recorded in Maricopa County over the most recent two years for which data are available; in this case EPA used data from 1988 and 1989. Normally, the approach used to select the design value

[1] Specifically, EPA is deleting: 46 FR 7182, col. 2–3, the section entitled "Attaining NAAQS After 1987"; (2) 46 FR 7185, col. 3, the final sentence beginning "If all measures * * *" through 7186, col. 1, the carryover paragraph ending "effective control measures"; and (3) 46 FR 7188, col. 1, the last full paragraph beginning "If implementation * * *" through col. 3, the carryover paragraph ending "attainment by 1987."

would be a straight forward review of the monitoring data for these two years and identification of the highest second-high 8-hour CO value. This process, however, may not yield the true design value in Maricopa County for several reasons.

The magnitudes of ambient CO concentrations are greatly influenced by meteorology. In the Phoenix region, the meteorology in the past two years has been such that conditions in 1989 yielded higher ambient CO levels than those in 1988 even though CO emission decreased from 1988 to 1989. Also, the microscale monitor on Indian School Road, which traditionally has measured the highest CO concentrations, was temporarily moved or out of service for much of 1988; therefore, CO monitoring data for 1988 is somewhat incomplete. Finally, the Maricopa oxygenated fuels program began in October, 1989. This program, which produced substantial CO emission reductions, makes Co concentrations monitored previous to October, 1989 not readily comparable to concentrations measured after that date.

As seen in Table 1, these factors result in the highest second-high concentration over the last two years occurring at a neighborhood-scale monitoring site during the period before the oxygenated fuels program began. Basing a control strategy on the conditions of January 17, 1989, which produced the ostensible design concentration, will not necessarily result in attainment of the CO NAAQS under all conditions, since the lower concentrations recorded in the last quarter of 1989 are not readily comparable with the data from previous quarters. Therefore, a method of making these concentrations comparable must be established to ensure that control strategies are identified which are sufficient to attain the NAAQS.

TABLE1.—CO CONCENTRATIONS AT THE HIGHEST NEIGHBORHOOD AND MICRO-SCALE SITES IN MARICOPA COUNTY IN 1988 AND 1989

	1988 high ppm	1988 second ppm	1989 high ppm (date)	1989 second ppm (date)
Neighborhood	12.4	11.0	13.9 (1/1)	12.6(1/17)
Micro-Scale	12.1	12.0	13.1 (2/25)	[1] 12.2(12/14)

[1] After implementation of the oxygenated fuels program

One approach to compare values before and after the start of the oxygenated fuels program is to normalize the ambient CO concentrations recorded in the last quarter of 1989 to remove the effect of the oxygenated fuels program. This normalization is done by determining the fractional reduction in CO emissions caused by the oxygenated fuels program and then adjusting the ambient CO concentration by this proportion. The effect of the oxygenated fuels program on CO emissions is calcualted using EPA's MOBILE4 mobile source emission factor model. The result of normalizing the fourth quarter, 1989 monitoring data is shown in Table 2. The highest second-high concentration becomes 13.3 ppm, after normalization, which corresponds to the un-normalized value of 11.2 ppm.

TABLE 2.—ACTUAL AND NORMALIZED HIGH CO CONCENTRATIONS MARICOPA COUNTY, 1989 (PPM)

1st quarter	1st act	2nd act	4th quarter 1st act	4th quarter 1st nrm	4th quarter 2nd act	4th quarter 2nd nrm
Neighborhood	13.9	12.6	11.0	13.1	10.6	12.6
Micro-Scale	13.1	.....	[1] 12.2	14.5	11.2	[2] 13.3

Act = Actual, Nrm = Normalized
[1] Design concentration based on actual concentrations
[2] Design concentration based on normalized concentrations.

Similarly, the design value could be considered the ambient CO concentration which would result in the second-highest emission reduction requirement. This approach yields the same design value as the first approach, 11.2 ppm, which normlises to 13.3 ppm. Therefore, 11.2 ppm is the appropriate design value for an attainment analysis.

EPA modeling guidance for CO analyses is primarily focused on the modeling of hot-spots, i.e., highly-localized areas of high CO concentrations. Modeling hot-spots entails the use of a line-source model to simulate the impacts of nearby congested roadways and intersections on ambient CO levels. If it is determined that high ambient CO concentrations are more of an area-wide phenomenon, then an appropriate area-wide model needs to be used in conjunction with the hot-spot analyses.

The air quality analysis in the 1987 MAG plan indicated that high ambient CO concentrations are the result of an area-wide buildup of emissions, with a relatively small contribution from the localized road conditions. As a result, the modeling approach in the MAG plan used the Urban Airshed Model (UAM) to model the area-wide emissions and a hot-spot model, CALINE-4 (modified to meet EPA guidance) to model the localized impact of roadways.

Given the very short time frame available to EPA to prepare this proposal, it was not possible to complete a new UAM and hot-spot analysis. Instead, rollback analysis, modified to account for the results of the previous UAM analysis, was used to estimate the emission reduction needed to attain the CO NAAQS in Maricopa County.

There are two basic conditions that must be met for a rollback analysis to be valid. The first is that there be no substantial changes in the distribution of emissions that affect the design value from the modeling base year until the attainment date. There are a number of new freeway routes opening to traffic in Maricopa County in the next few years; however, their primary effect will be to increase average vehicle speeds rather

then to change the distribution of the emissions.

The second condition for a rollback analysis to be valid is that the design value is the actual highest second-high concentration in the area. The modeling done for the 1987 MAG plan indicated that an area southeast of the micro-scale monitor at Indian School Road would likely experience slightly higher area-wide CO concentrations than those recorded at the monitor under the meteorological conditions modeled. Currently, there is no analysis to indicate that the meteorological conditions on the selected design day are significanty different than those in the previous UAM analysis. Therefore, the assumption is made that the area-wide component of the ambient CO concentrations will be proportionally the same as in the previous analysis. This assumption implies a further adjustment to the design concentration. This adjustment results in a normalized concentration of 15.3, which corresponds to a concentration of 12.9 when the current oxygenated fuels program is considered.

EPA guidance allows for the use of a rollback analysis if the federal motor vehicle control program (FMVCP) alone will bring the area into attainment. Fuels programs, such as the two EPA is proposing in this notice, have the same kind of effect on the emission inventory as the FMVCP in that emission changes are uniform over the vehicle fleet. In this case the rollback analysis, modified by previous dispersion modeling results, yields a good, but potentially conservative, approximation to what new dispersion modeling would yield and, therefore, provides an adequate technical analysis for this proposal.

In order to provide an upgraded technical base for this rulemaking, EPA is now working on a new dispersion modeling analysis for the Maricopa area. This modeling approach will use the Urban Airshed Model (UAM) in combination with a hot-spot model and is similar to the approach used for the 1987 MAG plan. Once the final results from this modeling are available, EPA intends to issue a supplementary proposal to today's notice. This supplementary notice would describe the result of the modeling analysis and propose any changes to the control strategy that the new modeling may show are appropriate.

2. Emission Reduction Shortfalls in Future Years

The basic assumption in a rollback analysis is that ambient CO concentrations vary linearly with CO emissions; therefore, the emission reduction neded for attainment is directly proportional to the ratio of the design value and the standard. Calculating the reduction needed to bring the design value down to the standard provides the proportional reduction in emission levels needed to attain in the base year, that is, the year the design value was recorded. To determine emission reductions needed in future years, one must first project the design concentration to future years.

There are two sets of variables that can affect the determination of future ambient air quality levels. The first set is meteorological variables such as temperature, wind speed, and inversion height. The careful selection of the design day (that day on which the design value was recorded) in part insures that the meteorological parameters most likely to result in exceedances are chosen.

The second set of variables affects the calculation of mobile source emissions. This set includes the rate at which older cars are retired from the vehicle fleet ("fleet turnover"), the operational characteristics of the I/M program, VMT levels, the average vehicle speeds, and fuel characteristics (RVP level and oxygen content). the effects of fleet turnover, the I/M program vehicle speeds, and fuel characteristics on vehicle tailpipe CO emission rates are included in EPA's MOBILE4 emission factor model. The effect of increased VMT is taken into account when total mobile source CO emissions are calculated.

To project a future year ambient concentration, the design value is factored by the expected change in total CO emissions between the base and future years. The variables affecting mobile sources emissions are adjusted for the future year conditions. Using estimates of future speeds and VMT provided by the State of Arizona, EPA has projected baseline ambient concentrations for several future years assuming that no further controls are implemented. Table 3 shows these projections.

TABLE 3.—PROJECTED BASELINE CO CONCENTRATION IN MARICOPA COUNTY

January 1, Year	VMT [1] (x 10^6)	Speed (mph)	Total emissions [2] (Mg)	CO concentration (ppm)
1990	18.6	20.8	316	13
1991	19.2	23.9	261	11
1992	19.7	23.8	252	10
1993	20.3	23.6	249	10
1996	22.1	26.1	220	9
2001	26.5	23.6	223	9

[1] Total VMT between 3 p.m. and 5 a.m.
[2] Total emissions between 3 p.m. and 5 a.m. Assumes 2.3 percent oxygenated fuel, 11.2 psi RVP, and 12% of the vehicle fleet are out-of-state/out-of-area and not subject to an I/M program. The emission levels do not reflect emission reductions from the travel reduction program.

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The information in Table 3 indicates that the CO NAAQS will not be attained in the Maricopa area until some time after 1993, and probably not until late 1994/early 1995 under the existing control program. To advance attainment, additional emission reductions are needed. Table 4 shows these needed emission reductions from the baseline in future years.

three measures can, therefore, be credited towards attainment.

3. Proposed Action on Maricopa's Voluntary No-Drive-Day Program

As part of its action on the 1987 MAG plan, EPA approved a voluntary-no-drive day program, "The Clean Air Campaign," but did not approve an emission reduction credit stating that it

a similar manner, concluding that Delaney simply restates the statutory test requiring attainment as expeditiously as practicable. See *Citizens For A Better Environment, et al.* v. *Deukmejian, et al.*, N. D. Calif. No C89-2064, August 28, 1990, slip op. at 21.

In order to apply the Delaney test to Arizona, EPA must screen the universe of possible measures for the candidate

110(c). EPA discussed generally the resource constraints associated with federal implemetation of transportation control measures in its recent proposal of a FIP for Los Angeles. See 55 FR 36458, 36517.

EPA is limited in its ability to divert pesonnel and funds to implement and enforce a FIP in Maricopa County, Pima County, or anywhere else. There are

in non-criteria pollutant programs and that many areas violate more than one NAAQS and EPA must oversee separate SIPs for each of these pollutants. This calculation also ignores the fact that pollution levels vary greatly among nonattainment areas and that the allocation of funds and personnel needs to consider the relative severity of

conversion of vehicles to alternative fuels, EPA will first determine the state of the necessary technology and then, if the technology is feasible, the potential emission reductions in Maricopa County. Measures for which the technology is infeasible or which cannot provide emission reductions in the ten-year period covered by the FIP would

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The information in Table 3 indicates that the CO NAAQS will not be attained in the Maricopa area until some time after 1993, and probably not until late 1994/early 1995 under the existing control program. To advance attainment, additional emission reductions are needed. Table 4 shows these needed emission reductions from the baseline in future years.

TABLE 4.—CO EMISSION REDUCTIONS FROM BASELINE NEEDED FOR ATTAINMENT

January 1, Year	CO concentration (ppm)	CO reduction needed for attainment (percent)
1990	13	30
1991	11	16
1992	10	13
1993	10	12
1996	9	N/A
2001	9	N/A

The design value is a monitored value and therefore reflects the impact of all control measures in place the day the design value was recorded. In Maricopa County in mid-December, 1989 the oxygenated fuels program was operating at 2.3 percent oxygen, average gasoline volatility was 11.2 psi, a majority of the TCMs which EPA credited in the 1987 MAG plan were in place, and the voluntary no-drive-day program, the Clean Air Campaign, was in full swing. The design value reflects the impact of all these programs and, because they are based on the design value, future year projections already account for the impact of these measures. Unless these measures are strengthened, additional emission reduction credits from them cannot be used to close the gap to attainment.

There are only three measures for which EPA granted emission reduction credit in its 1988 SIP approval which are not implicitly included in the design value or future year projections: The travel reduction program (TRP), freeway high occupancy vehicle (HOV) lanes, and freeway operationally flow improvements. The TRP had just begun receiving travel reduction plans from the very largest employers (i.e., greater than 500-employees) in late 1989; the majority of employers had not yet been required to submit plans. It is, therefore, unlikely that any measurable emission reductions were being realized by the TRP in mid-December, 1989. The latter two measures are not reflected because they either had not yet been constructed or not opened to traffic in December, 1989. Emission reductions from these three measures can, therefore, be credited towards attainment.

3. Proposed Action on Maricopa's Voluntary No-Drive-Day Program

As part of its action on the 1987 MAG plan, EPA approved a voluntary-no-drive day program, "The Clean Air Campaign," but did not approve an emission reduction credit stating that it needed several years of data to determine the appropriate credit for the program. The Clean Air Campaign has now been in operation for four years and will shortly begin its fifth year. Traffic data, bus passenger counts, and market research surveys indicated that the program has been successful in reducing vehicle miles traveled. MAG has requested that EPA consider granting the program an emission reduction credit in the SIP. EPA agrees that it may now be appropriate to consider granting credit.

The data on the program's effectiveness indicate that a numerical credit could be granted. It is not, however, completely clear, because of variations in the data, what credit to grant. To determine the appropriate credit, EPA will work with MAG, ADEQ, and the Regional Public Transportation Authority (which operates the Clean Air Campaign). Once an appropriate value has been determined, EPA would propose to amend the Maricopa SIP to reflect this credit.

It should be noted that EPA has already relied upon the Clean Air Campaign in its attainment and maintenance demonstrations. The design value used to determine the needed emission reductions comes from a period when the program was operating and thus intrinsically includes the effect of the Campaign.

B. Analysis of "Available" Measures

1. Definition of "Available"

In *Delaney* v. *EPA* the court ordered EPA to "utilize all available measures to attain the ambient air quality standard for carbon monoxide as soon as possible." In its recent proposal of a FIP for the Los Angeles area, EPA interpreted the court test to require a demonstration of attainment as expeditiously as practicable utilizing all measures available to the federal government that are capable of advancing the attainment date, short of those producing absurd results, such as severe socioeconomic disruptions. 55 FR 36458, 36503 (September 5, 1990. The reader is referred to this discussion which applies generally to today's proposal. A District Court in California recently interpreted the Delaney test in a similar manner, concluding that Delaney simply restates the statutory test requiring attainment as expeditiously as practicable. See *Citizens For A Better Environment, et al.* v. *Deukmejian, et al.*, N. D. Calif. No C89–2064, August 28, 1990, slip op. at 21.

In order to apply the Delaney test to Arizona, EPA must screen the universe of possible measures for the candidate measures which it could effectively implement in Maricopa county. Next, EPA must select from this set of candidate measures, the subset of measures which are necessary to attain as soon as possible. EPA would consider this resulting subset to be the "all available measures" required by Delaney.

EPA has developed a list of six criteria, discussed below, on which it would judge whether a measure is a candidate for availability. These criteria are derived from either Clean Air Act requirements or long-standing EPA policy.

While EPA believes the requirements of Delaney apply to states, it should be understood that the following analysis is meant to apply only in the limited instance of this CO FIP for Maricopa County and only to determine the availability of measures to EPA not to the State of Arizona or to other states. In contrast to EPA's limited authority as an executive-branch agency, the concept of "states" as used in the Clean Air Act embodies both the state's executive and legislative functions and therefore includes the authority not only to regulate but also to establish new legal authority and to tax in order to fund necessary programs. As a result, application of the Delaney test by the states would yield a broader range of available measures.

Criteria for Selecting Candidate Measures—a. Legal Authority. In order to consider it a candidate measure, EPA must have the legal authority under the Clean Air Act to promulgate, implement, and enforce the measure and must not be pre-empted from promulgating, implementing, or enforcing the measure by other federal statutes, regulations, or court orders. EPA's grant of authority under the CAA is broad, see section 301(a)(1); however, it is constrained in specific instances by the Act itself, see e.g., section 110(a)(5)(A)(i) and 110(c)(2)(B).

b. Resources. Both CAA sections 110(a)(2)(F) and 172(b)(7) require SIPs to assure that adequate personnel and funding are available to carry out provisions of the SIP. EPA believes that this same requirement applies to it when it promulgates a FIP under section 110(c). EPA discussed generally the resource constraints associated with federal implementation of transportation control measures in its recent proposal of a FIP for Los Angeles. See 55 FR 36458, 36517.

EPA is limited in its ability to divert pesonnel and funds to implement and enforce a FIP in Maricopa County, Pima County, or anywhere else. There are currently over 140 areas in the United States that are nonattainment for one or more of the six criteria pollutants. EPA's statutory duty to assure attainment of NAAQS in these areas and maintenance of the standards in other areas is not alleviated because of its FIP obligations. Equally, EPA's statutory duties in regulating non-criteria pollutants are also not eliminated.[8]

Many state and local air pollution control programs are dependent on funds provided by EPA through contracts and the CAA section 105 grant program. State and local agencies use these funds to hire personnel, monitor air quality, issue permits, and develop and enforce rules and regulations. A sudden withdrawal of these funds would leave many States and local agencies without adequate resources to operate their air programs.

The projected fiscal year 1991 budget allocates $207.3 million for contracts and grants (including section 105 grants) and 1,658 work years to the EPA air programs nationally.[9] The Maricopa CO nonattainment area has an estimated 1987 population of 2.0 million or roughly 1.5 percent of the 138 million people who live in nonattainment areas in the United States. Based on these figures, one could simplistically calculate that EPA could divert 1.5 percent or $3.11 million [6] and 25 work years to implement and enforce a FIP in Maricopa County.

This calculation, of course, ignores the considerable resources EPA must invest in non-criteria pollutant programs and that many areas violate more than one NAAQS and EPA must oversee separate SIPs for each of these pollutants. This calculation also ignores the fact that pollution levels vary greatly among nonattainment areas and that the allocation of funds and personnel needs to consider the relative severity of attainment problems. With these caveats, the calculation does provide an upper limit on the resources EPA could potentially divert to the Maricopa FIP; therefore, any measure or combination of measures which would require resources above this level, would not be considered a candidate measure.

One potential method to provide resources for implementing and enforcing FIP measures is to impose fees on the regulated sources. Although EPA may have the authority to impose permit fees on sources, such fees would be deposited into the U.S. Treasury's general fund and would require a congressional appropriation to make them available to EPA. In essence then, EPA would be put to the extra expense of collecting fees but could not count on using them; therefore, fees are not currently a workable option for implementing and enforcing FIP measures.

c. Technical Feasibility. As the term is used here, technical feasibility means that the technology for mobile source controls or the infrastructure for TCMs is currently available or can be made available *and* that implementation of the measure would materially reduce CO emissions in Maricopa County during the ten-year period covered by the FIP. The TCMs in CAA section 108(f) are, by definition, generally considered to be technically feasible. However, the actual technical feasibility of each TCM must be considered in light of the current and future transportation system in Maricopa County to determine if the measure could be implemented and would in fact reduce CO emissions. TCMs which cannot be implemented within ten years or would be ineffective if implemented would not be considered as candidate measures.

Technical feasibility for mobile source controls depends on the type of control contemplated. For measures for which the technology has been demonstrated—most I/M program enhancements, gasoline volatility limits, and oxygenated fuels—EPA will use its mobile source emissions model, MOBILE4, with Arizona-specific inputs to determine the emission reductions and their time tables for each measure. For measures involving new emission standards, retrofitting controls, or conversion of vehicles to alternative fuels, EPA will first determine the state of the necessary technology and then, if the technology is feasible, the potential emission reductions in Maricopa County. Measures for which the technology is infeasible or which cannot provide emission reductions in the ten-year period covered by the FIP would not be considered candidate measures.

d. Economic or Social Impacts. While EPA believes that areas should impose all reasonably available measures which will result in attainment as expeditiously as practicable, it does not believe that attainment needs to be brought about immediately by draconian measures. To this effect, EPA stated in its August 10, 1988 notice approving the MAG plan:

> If EPA were to adopt [the] position that post-1987 planning should provide for attainment at the soonest time, many post-1987 nonattainment areas would have to resort to draconian measures with drastic social and economic impacts—such as plant closings, gasoline rationing and mandatory no-drive-day restrictions—simply because such measures are physically available to bring about attainment. EPA does not believe that Congress, if it had addressed the post-1987 nonattainment situation now being faced, would have required such a result, even after passage of the [CAA] Part D dates [i.e., 1982 or 1987]. EPA believes that Congress would instead have regarded the "as expeditiously as practicable" required to be still in place. . . . (53 FR 30224, 30233)

The Ninth Circuit order in Delaney requires EPA to utilize all available control measures to attain the [CO NAAQS] as soon as possible. EPA does not read this requirement to include measures with severe economic and social impacts. In its Petition for Rehearing on Delaney, EPA advised the Ninth Circuit that its does not read the opinion as requiring it to implement any measures that would among other things are not "available" in the sense that they would result in absurdly severe economic and social disruptions. Although the court in denying EPA's petition said nothing about this interpretation, it is consistent with the U.S. District Court's interpretation of Delaney in *Citizens For A Better Environment, et al.* v *Deukmejian, et al.*, N.D. Calif. No C89–2064, August 28, 1990, slip op. For this reason, EPA did not even consider or analyze for availability measures with absurd socioeconomic impacts, such as gas rationing.

Congress in fact is now addressing the post-1987 attainment issue in proposed amendments to the Clean Air Act. Although Congress continues to view the nation's failure to attain air quality standards with great concern,

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[8] For criteria pollutants, these duties include review and setting of national ambient air quality standards; development of control technology guidelines; development of guidance on emission inventories, modeling, monitoring, etc.; development and enforcement of mobile source control programs and fuel standards; oversight of the prevention of significant deterioration program; management of the section 105 grants program; review and action on SIP revisions; enforcement of SIP measures; etc. For non-criteria pollutants, EPA must maintain programs, for example, to establish and enforce emission standards for hazardous air pollutants and to protect visibility.

[9] These figures do not include funds for the radiation program or research and development. These figures also do not consider any cuts which may become necessary under the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings), Pub. L. 99–177.

[6] EPA has already allocated $2.08 million in section 105 gants to Arizona Agencies in FY 1991.

both proposed amendments (H.R. 3030 and S. 1630) would extend attainment dates rather than require immediate attainment with draconian measures. Therefore, EPA believes that it need not consider as a candidate measure, any measure with severe economic or social impacts.

e. *Environmental or Public Safety Impacts.* The purpose of the Clean Air Act is "to protect and enhance the quality of the Nation's air resources so as *to promote public health and welfare* * * *" CAA section 101(b)(1), emphasis added. It would be counterproductive if, in protecting public health through clearing the air, EPA were to create or exacerbate conditions that endangered public health or safety.

In its major regulatory rulemakings, EPA has carefully weighed any potential adverse environmental and public safety impacts against the benefits from its actions. EPA will extend the same careful consideration to analysis of candidate control measures. EPA would, therefore, not consider as a candidate measure any measure if its resulting degradation of the environment and decline in public safety outweigh its air quality benefits.

f. *Pre-emption of State Regulations.* EPA does not believe that federal regulation is inherently superior to state or local regulation. In most situations, the Clean Air Act gives preference to state and local adoption of air quality plans and grants EPA authority to promulgate plans only when it is clear the state has failed to adopt adequate ones. EPA, therefore, will not consider a measure as a candidate measures where it is apparent that the State of Arizona or local governments have effectively adopted, implemented, and enforced the measure to the same degree that a federal regulation is likely to achieve.

Criterion for Determining "As Soon As Possible" The second part of the process for establishing which measures are available is to determine if a candidate measure will result in attainment "as soon as possible." EPA interprets this test to mean that only those candidate measures which will result in the earliest attainment date practicable must be considered available. A measure cannot result in an earlier attainment date unless it can be implemented and achieve emission reductions (i.e., become effective) prior to the projected attainment date. EPA, therefore, will not consider any candidate measure as available unless its expeditious implementation would reduce emissions prior to the projected date of attainment.

2. Measures Subject to Screening

EPA has developed a list of 55 measures it is screening for availability in Maricopa County.[5] These measures are listed in the Appendix to this notice. In developing this list, EPA selected measures from a number of sources.

In the Delaney opinion, the Court cites three sets of potentially available controls. These are the 45 measures recommended in the MAG plan, the twelve TCMs identified as potentially effective for the Maricopa area by an EPA contractor, Cambridge Systematics, Inc. (CSI) [6], and the eighteen TCMs in CAA section 108(f). These lists overlap to a great extent. For example, all twelve CSI measures are among MAG's forty-five, and eleven are section 108(f) TCMs. Even with this extensive overlap, measures from these three sources make up the bulk of the fifty-five measures on EPA's list.

EPA also identified two other sources of potential measures. MAG considered and/or analyzed a number of measures which were not among the forty-five recommended. These measures are included in EPA's list. In addition, EPA has recently proposed a CO and ozone FIP for the South Coast (Los Angeles) Air Basin, 55 FR 36458 (September 5, 1990). This FIP proposal contains several CO measures including two with potential application to the Maricopa area: a wintertime gasoline volatility limit and a mandatory no-drive-day program.[7] These two measures are also included in EPA's list.

3. Initial Results of Screening

Given the limited time which EPA had to prepare today's proposal, a complete review of each of the 55 measures for each of the six criteria and its potential implementation and effectiveness dates was impossible. However, each of the measures was reviewed for candidacy based on the first three criteria discussed above: legal authority, resources required for implementation and enforcement, and technical feasibility. Where EPA found a measure to be a candidate under these three criteria, it went on to analyze the measure under the remaining three criteria. The results of this screening are tabulated in the Appendix to this notice. More detailed information for each measure is given in the draft technical support document.

Through its screening, EPA identified sixteen candidate measures. These measures are listed in Table 5 along with their most likely effectiveness date. The effectiveness date means the date on which the measure would begin to achieve measurable emission reductions in Maricopa County. This date is not always the implementation date, that is, the date on which the measure first becomes enforceable. For measures which take months to build to their full effectiveness, I/M program enhancements for example, the effectiveness date can be much later than the implementation date.

EPA found that it lacked legal authority or resources to implement most of the 55 measures and found that several measures were not technical feasible in Maricopa County. Very few measures required review on the last three criteria for candidacy. Appendix A indicates the reasons EPA determined that each measures was or was not a candidate measure. EPA requests comments on its findings for these measures.

TABLE 5.—CANDIDATE MEASURES AND POTENTIAL EFFECTIVENESS DATES

Measure	Potential effectiveness date
Fuel/Vehicle Measures	
43. Wintertime volatility limit	October 1, 1991.
44. Higher average gasoline oxygen level.	October 1, 1991.
52. Conversion of vehicle fleets to alternative fuels.	After October 1, 1993.
54. Retrofit of pre-1975 vehicles with catalytic convertors.	After October 1, 1993.
I/M Program Enhancements	After January 1, 1992.
47. Elimination I/M waivers.	
49. Expansion of the I/M program county-wide.	
50. Increased stringency of the I/M program.	
TRP Enhancements [1]	After October 1, 1992.
24. More stringent travel reduction program (TRP).	
25. Financial incentives to employees in lieu of parking spaces.	
26. Preferential parking for car/van-pools.	
27. Free transit passes to employees.	
28. Alternative workhours/weeks	
29. Telecommuting	
30. Teleconferencing	
31. Encourage bicycle usage	
32. Encourage pedestrian travel	

[1] These measures would most likely be implemented as a combination of a higher trip reduction goal (i.e. greater than the 10 percent reduction in signle-occupant-vehicle trips which is the current maximum requiremeint in the existing Maricopa TRP) and a requirement that these measures be considered in every employer trip reduction plan.

[5] EPA is not screening measures for Pima County because, as described later, it is proposing to find that no additional measures are needed to attain as soon as possible and maintain the CO NAAQS in the County.

[6] Cambridge Systematics, Inc. "Improved Air Quality in Maricopa and Pima Counties—The Applicability of Transportation Measures." Prepared for the U.S. EPA, Region IX. November, 1988.

[7] The notice for this FIP also discussed a third CO measures, cold-temperature CO tailpipe emission standards. On September 11, 1990, the Administrator signed a notice proposing this measure nationally. As a national rulemaking, the measure will automatically apply to Arizona; therefore, the impact of the cold-temperature emission standards has been assumed in the maintenance demonstrations for both Pima and Maricopa County.

After arriving at the list of candidate measures, EPA next determined which of these sixteen candidate measures would result in attainment as soon as possible and would therefore be considered available under Delaney. To do this, EPA evaluated the impact of implementing the two measures with the earliest effectiveness dates: A 2.7 percent oxygenated fuels program and a 10 psi volatility limit. As is discussed later in this notice, these two measures are sufficient when combined with existing SIP measures to advance attainment in Maricopa County from late 1994/early 1995 to December 31, 1991. This December 31, 1991 attainment date is before the potential effectiveness date of any of the other fourteen candidate measures, that is, none of these fourteen measures could become effective prior to the projected date of attainment and therefore their implementation could not advance attainment.

Based on its screening of an extensive list of possible control measures and its evaluation of the emission reductions needed for attainment and maintenance in Maricopa County, EPA is today proposing an oxygenated fuels program at an average oxygen content of 2.7 percent and a wintertime gasoline volatility limit of 10 psi (with a 1 psi exemption for 3.5 percent oxygen and above ethanol blends). These measures combined with existing SIP measures will result in attainment of the CO NAAQS in Maricopa County by December 31, 1991 and maintenance until after 2001. EPA is also proposing today to make the finding under *Delaney* that these two measures constitute all available measures to attain the CO standard as soon as possible in Maricopa County and that there are no other possible measures at EPA's disposal whose implementation would result in attainment any sooner than December 31, 1991.

C. Proposed Federal Measures

1. Oxygenated Fuel Program

Introduction. Oxygenated fuels is becoming a widely accepted control strategy for reducing CO emission from motor vehicles in a timely and cost effective manner. Several programs, such as those in Maricopa and Pima Counties, have been successfully implemented by State and local governments around the country, with the required oxygen content of gasoline ranging from 1.8 to 2.6 percent by weight. (The Maricopa program is described in detail later.) In the future, other areas of the country may have similar programs. As part of the proposed Clean Air Act amendments, the U.S. Congress has been reviewing the merits of requiring gasoline with 2.7 to 3.1 percent oxygen content in numerous CO nonattainment areas. Also, on September 5, 1990, EPA proposed a FIP for the South Coast (Los Angeles) Air Basin that included a 2.7 percent oxygen content requirement for gasoline (55 FR 36458). Because of the recognized benefits of oxygenated fuels and because the infrastructure for such a program already exists in Phoenix, EPA is proposing to enhance the current program for the Maricopa County nonattainment area by requiring a higher oxygen content than is currently mandated under Arizona statute. Specifically, today's proposal would establish a 2.7 percent oxygen content standard in lieu of the State's 2.3 percent requirement.

EPA is unable to unilaterally revise Arizona's oxygen content minimum, which is prescribed by State statute; therefore, EPA is proposing to promulgate a complete regulation and to implement an enforcement program itself. While not preferred by EPA, this will have the legal effect of pre-empting State enforcement under its own statute. Nonetheless, Arizona may prevent this from happening if the State statute is amended to be identical to the FIP program or otherwise establish a program of equal effectiveness, either of which would allow EPA to withdraw the federal oxygenated fuels requirement. EPA encourages the State of Arizona to explore such action prior to the implementation date of the federal program.

The Basics of Oxygenated Fuels. Oxygenated gasoline causes a motor vehicle engine to run with a slightly leaner overall fuel/air mixture thereby reducing the amount of CO generated during the combustion process. An oxygenated fuels program takes advantage of this phenomenon by requiring higher than normal levels of oxygen in gasoline during the period of the year when exceedances of the ambient air quality standard for CO are most likely to occur. Such oxygen concentrations can only be achieved by adding chemical compounds to gasoline that contain oxygen and are miscible in gasoline. The most suitable, available, and economical compounds for this purpose are aliphatic alcohols and ethers, generally referred to as oxygenating compounds or oxygenates.

Presently, the types and permissible amounts of oxygenating compounds in unleaded gasoline are regulated by EPA under section 211(f) of the CAA. EPA's current "substantially similar" requirements prohibit unleaded gasoline from containing more than 2.0 percent oxygen by weight. This prohibition may be waived by the Administrator upon specific request by a manufacturer, or a waiver is automatically granted if EPA fails to deny such a request within 180 days of receipt. Leaded gasoline is not subject to these regulations.

Several waivers have been granted, with 3.7 percent oxygen by weight being the maximum permissible legal concentration at this time. The most commonly used oxygenating compounds are methyl tertiary butyl ether (MTBE) and ethanol (ethyl alcohol). The maximum oxygen content using these compounds is 2.7 and 3.5 percent for MTBE and ethanol blends, respectively. (The maximum legal concentration for ethanol in gasoline is 3.7 percent but practical considerations generally limit in-use blends to 3.5 percent.)

It is also possible that additional oxygenated fuels may be available in the future. For example, EPA is currently reviewing a request by the Oxygenated Fuels Association to change the substantially similar rule, mentioned above, from 2.0 up to 2.7 percent oxygen. This would allow much higher oxygen concentrations without the need to obtain a special waiver for each oxygenate. It would also provide greater flexibility in blending fuels up to 2.7 percent because of the possibility that more than one oxygenate of choice could be used in a single gasoline blend. Also, a new compound called ethyl tertiary butyl ether (ETBE) shows promise as an oxygenate. This ether, which is produced with ethanol as a feed stock, seems to offer some advantages over other blending agents such as low volatility and high octane content. EPA believes it is advantageous for consumers to have a choice of oxygenated fuels and is encouraged that several oxygenates appear suitable for use in oxygenated fuels programs.

The benefit of any oxygenated fuel in reducing CO emissions is based on a complex set of interactions involving the properties of the base gasoline, the type and quantity of the oxygenating compounds, the resulting combustion process within the motor vehicle engine, and the vehicle's emission control system. Although still under study, EPA

compensated for by using special low RVP blending stock or by otherwise accounting for this effect at the refinery.

The Current Oxygenated Fuels Program in Arizona. In 1988, both EPA and the State of Arizona were actively evaluating oxygenated fuels programs for the Maricopa County nonattainment area. As discussed in the May 16, 1988

analysis of available measures shows that the attainment date can be advanced to 1991 by adopting a somewhat more stringent oxygenated fuels program as an increment to the existing State program. EPA has identified an oxygen content of 2.7 percent by weight as providing the requisite emission reduction, in

straightforward for the affected industry; (2) there is a minimum of consumer confusion over the level of oxygenate being marketed; and (3) enforcement is greatly simplified. Regarding this last point, compliance could be directly monitored through sampling and testing of gasoline at all points in the distribution system, rather than relying on oversight of a self-

to provide a mechanism for program enforcement. Even with such reporting and recordkeeping requirements, however, program enforcement will be of a different nature than in the current program and may be difficult. Generally, the infrastructure and gasoline marketing patterns in Phoenix are favorable to successful enforcement of

considerations, this is likely to occur in Phoenix only if a regulatory constraint forced such fuels to be made with low-volatility gasoline as the blending stock.

The relative difference in the air quality benefits between ethanol and other blending agents must be accounted for in the program design to: (1) Ensure the required emission

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The benefit of any oxygenated fuel in reducing CO emissions is based on a complex set of interactions involving the properties of the base gasoline, the type and quantity of the oxygenating compounds, the resulting combustion process within the motor vehicle engine, and the vehicle's emission control system. Although still under study, EPA summarized much of the available information on this topic and presented methodologies for evaluating emission effects on various fuels in "Guidance on Estimating Motor Vehicle Emissions Reductions from the Use of Alternative Fuels and Fuels Blends." That document is available for review in the rulemaking docket. A few of the more salient effects of oxygenated fuels that are important in understanding today's proposal are briefly summarized below.

Basically, the ability of an oxygenated fuel to reduce CO emissions increases as the oxygen content is increased. Also, within certain constraints, all oxygenating compounds appear to have the same CO reduction potential at a given oxygen content. Therefore, the ability to reduce CO emissions is generally related to the oxygen content of the fuel and not the type of oxygenate. However, some oxygenates can directly or indirectly affect other fuel properties, which in turn may affect the CO reduction potential of the final blend.

Of primary interest here are changes in gasoline volatility, i.e., the tendency of gasoline to evaporate at various temperatures. One widely used measure of this effect is Reid Vapor Pressure (RVP). While all oxygenates show some tendency to increase fuel volatility under certain conditions, from a practical perspective, it is a special concern only for alcohol-based blends. It also appears more relevant to ethanol blends, because this compound is the most commonly used alcohol for this purpose, and it has been granted a special exemption from meeting the Federal summertime RVP standards. See 55 FR 23658 (June 11, 1990).

If an oxygenated fuel has a higher volatility than the baseline gasoline, its CO reduction will be less than a comparably oxygenated fuel (i.e., fuel with the same oxygen content) with a volatility equal to the base gasoline. The RVP boost associated with ethanol blends is not linear with alcohol content. Instead, any alcohol level above 2 percent by volume tends to have the same absolute effect on RVP. The average effect with ethanol is about 0.8 pounds per square inch (psi). The volatility boost of alcohol-based oxygenating compounds can be compensated for by using special low RVP blending stock or by otherwise accounting for this effect at the refinery.

The Current Oxygenated Fuels Program in Arizona. In 1988, both EPA and the State of Arizona were actively evaluating oxygenated fuels programs for the Maricopa County nonattainment area. As discussed in the May 16, 1988 Federal Register notice (53 FR 17370), EPA's involvement was prompted by a court order to implement a FIP in Phoenix. After careful study, EPA proposed to require an oxygen content of 2.57 to 2.70 percent by weight in all gasoline marketed within the Maricopa County nonattainment area. Subsequent to that proposal, the Arizona State Legislature enacted a state-run oxygenated fuels program, which along with other control measures, was approved by EPA as a SIP revision on August 10, 1989 (53 FR 30224). As part of that approval, EPA withdrew the proposed FIP.

The current State oxygenated fuels program began in late 1989. Specifically, the program required that all gasolines in the Maricopa County nonattainment area contain a minimum of 2.3 percent oxygen by weight from October 1, 1989 through March 31, 1990, and during the same period for all subsequent years. In addition, during these months ethanol blends were granted a 1 psi RVP exemption from otherwise applicable State volatility standards.

During the first year of the State's program, about 20 percent of the gasoline marketed in the control area was blended with ethanol. Nearly all of this fuel contained the minimum oxygen content, with a very small fraction being blended at 3.5 percent. The ethanol-based gasolines were blended on-site at the Phoenix terminal. The remaining fuel (i.e., about 80 percent) was blended at the minimum required concentration with MTBE. Most of the MTBE-based gasolines were also apparently blended on-site. At least some portion of the MTBE-blended gasoline was reportedly transported from refineries in the Los Angeles area via pipeline to Phoenix. The current State program appears to be effective and well administered.

Oxygenated Fuels Program Selection—a. Required Oxygen Content. In today's action, EPA's goal is to propose a control program tht will bring about attainment of the CO NAAQS in Maricopa County by as soon as possible. EPA's preliminary air quality modeling results for this area indicate that under the State's current air pollution control program, the ambient standard will not be attained until late 1994/early 1995. At the same time, EPA's analysis of available measures shows that the attainment date can be advanced to 1991 by adopting a somewhat more stringent oxygenated fuels program as an increment to the existing State program. EPA has identified an oxygen content of 2.7 percent by weight as providing the requisite emission reduction, in conjunction with the wintertime gasoline volatilty controls discussed in the next section. Therefore, EPA is proposing 2.7 percent as the required minimum level of oxygen for gasoline marketed in the Maricopa nonattainment area. Nonetheless, comments are requested on the desirability and technical feasibility of oxygen contents below this level, as well as up to 3.1 percent by weight.

The choice of 2.7 percent may have certain other advantages beyond providing for attainment. The recently proposed South Coast FIP would also require the same (2.7 percent) oxygen content for gasoline marketed in the Los Angeles area. To the extent that refiners can supply both markets with comparable products, production efficiencies (e.g., economies of scale) could potentially reduce the costs associated with both proposals. A section later in this notice contains information on the costs of today's action.

b. Program Options and Issues. In addition to identifying the requisite oxygen content, it is necessary to decide on the design or implementation of the program. In deciding among the alternatives, EPA finds that the predominate considerations in making this decision are similar to those faced by EPA in designing the 1988 FIP proposal. Therefore, EPA's preferred approach to implementing the current FIP oxygenated fuels program is largely patterned after this earlier proposed rulemaking.

i. *Basic Program Designs.* There are two basic options for the overall design on an oxygenated fuels program: 1) establish a 2.7 percent minimum oxygen concentration for all gasoline; or 2) establish an average concentration of 2.7 percent that must be met by gasoline suppliers. Each option is described below and EPA's preferred option for the proposal is identified.

The first option, setting a single minimum specification, is currently used in all existing oxygenated fuels programs, including the State of Arizona. This option offers several advantages, especially at the lower oxygen content requirements of the present programs. Among these are: (1) The regulatory requirements are

straightforward for the affected industry; (2) there is a minimum of consumer confusion over the level of oxygenate being marketed; and (3) enforcement is greatly simplified. Regarding this last point, compliance could be directly monitored through sampling and testing of gasoline at all points in the distribution system, rather than relying on oversight of a self-reporting system. The disadvantage of this option is that it limits the marketing flexibility of fuel suppliers. It also may reduce competition between various oxygenating compounds. These effects could result in higher than necessary costs. These disadvantages appear to become more prevalent as the minimum oxygen content increases.

The second option, establishing an averaging program, is similar to the type of program used by EPA in the gasoline lead phasedown program. With this program, gasoline suppliers must, at a minimum achieve the sales-weighted average value over a specified time period. This can be done by always selling fuel with an oxygen content at or above the requisite value or by adjusting the quantities and types of fuel sold over the averaging period to attain the requisite value.

Although not actually required to achieve the desired air quality results at the oxygen content standard being proposed, an averaging program has certain benefits. The principal advantage of this program design is that it entails a minimum of regulatory intrusion into the marketplace. It also appears to retain the maximum degree of marketing flexibility and competition between blending agents. The advantageous aspects of this approach can be further enhanced by allowing suppliers to trade "oxygen credit" among themselves, with a supplier of relatively low oxygen fuels being able to purchase such credits from a supplier of relatively high-oxygen fuel. Finally, in the event that the final rule for this action were to include a minimum oxygen content above 2.7 percent, certain oxygenating compounds such as MTBE would be essentially locked out of the market without an averaging mechanism. Under current law, MTBE blends over 2.7 percent oxygen by weight are currently not allowed in unleaded gasoline.

The primary disadvantage of this option is the associated recordkeeping and reporting burden for gasoline suppliers. A significant amount of additional data is required under this program design for suppliers to track their average oxygen concentrations, to allow for trading of oxygen credits, and to provide a mechanism for program enforcement. Even with such reporting and recordkeeping requirements, however, program enforcement will be of a different nature than in the current program and may be difficult. Generally, the infrastructure and gasoline marketing patterns in Phoenix are favorable to successful enforcement of an averaging program, in that the links to outside sources of supply are quite limited.

In weighing the apparent advantages and disadvantages of the two basic program options in the context of the relatively high oxygen content requirement, EPA believes that providing suppliers with an averaging and trading scheme is desirable. Therefore, EPA proposes to establish a minimum 2.7 percent oxygen requirement, with an optional averaging and trading program.

ii. *Volatility Exemption for Ethanol Blends (3.5 percent or higher oxygen content).* As discussed previously, various oxygenated fuels may exhibit different clean air potentials. Current oxygenated fuels made with ether-based compounds as the blending agent yield equivalent CO reductions, by EPA estimates, for each percent oxygen they contain. This is not necessarily the case, however, for oxygenated fuels made with alcohol-based compounds such as ethanol.

These latter blends can increase the volatility of the gasoline. This natural volatility increase was recognized by EPA in its national summertime RVP regulations, which included a 1 psi exemption from the otherwise applicable volatility standards for ethanol blends of 9 percent ethanol by volume (3.5 percent or more oxygen by weight). The State of Arizona has also recognized this effect by granting a similar exemption for ethanol blends as part of its oxygenated fuels program. The higher RVP of ethanol blends acts in the opposite direction of the oxygen content in reducing CO emissions. An 11 psi, 3.5 percent oxygen ethanol blend, for example, might give only the same CO reduction as a 10 psi, 3.1 percent oxygen MTBE blend. However, the 11 psi ethanol fuel at this level of oxygen would provide a larger percentage reduction from its 11 psi non-oxygenated baseline fuel than would the 10 psi ether blend from its 10 psi baseline. The only way to limit or avoid the CO offset is to use a low-volatility gasoline as the blending stock so that the resulting fuel is no more volatile that the non-oxygenated gasoline, or account for the effect at the refinery using other methods. Due to economic and technical considerations, this is likely to occur in Phoenix only if a regulatory constraint forced such fuels to be made with low-volatility gasoline as the blending stock.

The relative difference in the air quality benefits between ethanol and other blending agents must be accounted for in the program design to: (1) Ensure the required emission reduction is attained, and (2) properly value oxygen credits that may be generated and sold by ethanol blenders to other suppliers. There are three basic options for addressing this issue. Each is discussed below.

The first option is to not exempt 3.5 percent oxygen ethanol blends from the wintertime RVP standards being proposed elsewhere in today's notice thereby avoiding the volatility increase completely. This approach appears to be the most stringent and provides the greatest air quality benefits of the options considered. However, competition between oxygenates may be substantially reduced, because of the potential difficulty and cost associated with the required use of a special low-RVP base gasoline for ethanol blending at the Phoenix terminal. It is also inconsistent with current practice in the Maricopa area. State law presently provides ethanol blends with a 1 psi RVP allowance from the otherwise applicable volatility standards.

The second option is to provide an exemption from the proposed RVP standards and account for the relative difference in air quality benefits of the various oxygenated gasolines by expressing the "actual" oxygen content of each fuel in terms of its "equivalent" oxygen content. The equivalent oxygen content is then used in determining compliance with the program. This approach was proposed by EPA in the 1988 FIP proposed rulemaking. Although this properly values the oxygen regardless of blending agent, it does so at the expense of adding a degree of complexity to the program. The conversion factor used in the equivalence determination is sensitive to the mix of motor vehicles (different technologies respond differently to oxygenated fuels) and to temperature conditions. Therefore, the equivalence of any ethanol blend may be different for each year and may have to be based on "worst case" temperatures.

The third option is to allow the RVP exemption for 3.5 percent oxygen ethanol blends while establishing tradeable credits based on the actual oxygen content of the fuel. The primary disadvantage of this approach is that a significant air quality loss could occur if the market share of 3.5 percent oxygen

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ethanol blends is large and ethanol blenders sell their excess oxygen credits to MTBE blenders (or low-level ethanol blenders with no RVP exemption) that in turn reduce the actual oxygen content of their products accordingly.

EPA's analysis shows that an ethanol blend of 3.5 percent oxygen by weight with an expected average volatility increase of about 0.8 psi RVP would result in slightly lower CO emissions than a 10 psi MTBE blend of 2.7 percent oxygen by weight at the design day temperature of 53 degrees fahrenheit or below. For higher temperatures, the effect is the same or slighly worse. Yet the blender of the 10.8 psi ethanol blend would, under this option, be entitled to sell the equivalent of a full 0.8 psi oxygen credit. However, EPA does not contemplate a high ethanol blend market share in the Phoenix area under the oxygenated fuels program.

Based on the above considerations, EPA is proposing to implement the third option, i.e., allow a 1 psi exemption from the wintertime RVP standards for ethanol blends of 3.5 percent oxygen by weight.[8]

This discussion has focused on ethanol because it appears to be the only alcohol likely to be used to in the Maricopa County nonattainment area oxygenated fuels program. The issues are somewhat similiar with regard to other alcohol-based oxygenated fuels. Therefore, EPA requests comments on the likelihood that other alcohol blends may be offered for sale in this area, and the need and desirability of including them in one of the volatility options described above.

Description of the Oxygenated Fuels Program. EPA is proposing to implement an oxygenated fuels program requiring 2.7 percent oxygen content by weight in gasoline, an exemption from the wintertime volatility standards of 1 psi RVP for certain ethanol blends, and an optional averaging and trading scheme. EPA has endeavored to make the proposed regulatory text for this program as complete as possible. Nonetheless, additional regulatory details may be required than are contained in this notice. To the extent necessary, EPA will provide additional implementing details in the final rule and propose others as may be necessary for public comment in a subsequent rulemaking notice. The specific program elements are described in more detail below.

a. Program Duration. The mandatory compliance period for the current oxygenated fuels program begins on October 1 of each calender year and ends on March 31 of the subsequent calendar year. This same period was also suggested by EPA in the 1988 FIP proposal and is being reproposed as part of today's action.

During this compliance period, all gasoline first introduced into commerce within the control area (including gasoline deliveries to public or private refueling facilities) must meet the requirements of the oxygenated fuels program as prescribed by regulation. Any other regulatory requirements that may specifically apply to refueling entities (e.g., labeling) must also be adhered to during this period.

b. Geographic Scope. The requirements of the oxygenated fuels program would apply to all gasoline first introduced into commerce within the boundaries of the Maricopa County carbon monoxide nonattainment area as prescribed in the Federal Register by EPA on March 3, 1978 (43 FR 8964). The area encompasses 22 cities and towns including the City of Phoenix and portions of unincorporated area with Maricopa County.

C. Oxygen Content Specification. The proposed oxygen content standard is 2.7 percent by weight. Persons subject to this standard may choose either of two compliance options. The first option requires that each batch of gasoline contain at least 2.7 percent oxygen, except for certain ethanol blends as discussed below. The second option requires that the oxygen content of all fuel sold by each regulated party during the specified compliance period average 2.7 percent. Oxygen credits could be traded and used to comply with the averaging requirement.

Ethanol blends may be subject to an alternative oxygen content specification. To qualify for the proposed 1 psi RVP exemption, ethanol blenders would have to meet a minimum oxygen content of approximately 3.5 percent oxygen by weight (i.e., a minimum of 9 percent ethanol by volume). Credits generated through such blending activities could be used or traded under the optional averaging scheme. Of course, ethanol blenders choosing to comply with the otherwise applicable winter volatility standards would not be subject to this alternative oxygen content specification. Each of the compliance options are discussed in more detail below.

Comments are requested on the feasibility of blending MTBE to the required oxygen content, while remaining in compliance with the maximum allowable concentrations for these gasoline blends under the associated section 211(f) waiver provisions.

d. Effective Date. In practical terms, the oxygenated fuels program should start on the earliest possible date that will not disrupt the supply of gasoline or cause unreasonable price increases. Within this context, longer leadtimes reduce the risk of such adverse effects. Then again, an oxygenated fuels program already exists in the Phoenix area, and the FIP will require a reasonably modest incremental change in oxygen content from 2.3 percent to 2.7 percent. This suggests that a near-term implementation date may be possible.

The longest leadtime requirement appears associated with the possibility of any physical constraints on supplying gasoline. The proposed FIP will increase the amount of oxygenate blended into gasoline, which may translate into more storage tank capacity or more frequent oxygenate deliveries at the Phoenix fuel terminal. Presently, EPA lacks detailed information on whether such constraints exist. To the extent they do, EPA noted in the 1988 FIP proposal that one year should be sufficient to add any required facilities to the Phoenix terminal. Assuming a final rule on today's proposal is published in November, 1990, an effective date of October 1, 1991 would be feasible.

In the absence of more obvious technical constraints, an earlier effective date may be possible. Here some of the primary considerations involve the near-term availability of oxygenates (e.g., MTBE and ethanol) without unreasonable price increases. Also important is how rapidly suppliers wishing to participate in the averaging and trading scheme could do so after a final rule is published. Complicating this latter issue is the possibility that a supplemental rulemaking may be necessary to provide additional regulatory details as discussed above.

Given the current uncertainties involved at this time, EPA proposes an effective date of October 1, 1990. Comments are specifically requested on the desirability and feasibility of an earlier state date or the need for additional time.

e. Regulated Parties and Activities. Regulatory requirements would apply to all parties in the gasoline and oxygenate distribution networks in the Maricopa County nonattainment area during the control season. Four specific types of regulatory requirements are proposed:

i. *Registration.* All persons in the control area gasoline distribution network would be required to submit a registration form to EPA no later than one month before the start of the first control season. For the first control season only, parties subject to the regulatory standard, as defined below, would be required to provide information on how they intend to comply with such standard. Other parties (e.g., most retailers) would have to submit generally less specific information on their planned role in distributing, transporting, selling, or dispensing oxygenated fuel during the first control season. In subsequent control seasons, the above requirements apply only for new regulated parties entering the market. In addition, persons selling or supplying oxygenates (e.g., alcohols and ethers in pure, diluted, denatured, or additive-improved form) to be used within the control area would be required to register.

(ii) *Regulatory Standard.* The 2.7 percent oxygen content standard would apply to all persons who first introduce gasoline into commerce within the Maricopa County nonattainment area. This would include persons who first sell, supply, offer for sale, or offer for supply gasoline within such area (e.g., distributors). The standard would also apply to persons who produce gasoline (e.g., refiners) or who alter its quality and/or oxygen content (e.g., alcohol blenders), and then; sell or supply such product, within the control area. Finally, the standard would apply to any person who "imports" product into the control area for direct sale or supply (e.g., a party who transports or causes to be transported gasoline by truck from outside the control area to a retail station or wholesale purchaser-consumer within the area).

iii. *Reporting and Recordkeeping.* All persons subject to the oxygen content standard would be required to submit monthly reports containing information on their compliance with the standard. Persons transporting gasoline into the control area (e.g., pipelines) and those selling or supplying oxygenates within the control area would also be required to submit monthly reports on such activities. Persons subject to reporting requirements would have to maintain adequate records to support the information contained in their reports. Other persons in the control area gasoline distribution network would be required to maintain specified records on their activities during the control period and make them available for EPA review, but would not be required to submit monthly reports.

iv. *Labeling.* Retailers and wholesale purchaser-consumers (parties purchasing gasoline in bulk for their own ultimate use) would be required to label pump stands from which gasoline is dispensed with the type of oxygenate used in the gasoline. Invoices and similar documents which accompany the shipment of gasoline in the control area would also have to be labeled as to the oxygenate type and content. Comments are requested on the need for additional pump label details such as the specific oxygen content of the fuel.

These and other regulatory requirements are discussed in more detail below.

f. Registration. As noted above, all persons in the gasoline distribution network in the control area would be required to register with EPA at least one month prior to the starting date of each control season. Persons subject to registration would include refiners, pipeline and terminal operators, distributors, resellers, carriers, retailers and wholesale purchaser-consumers. Prior to the first control season only, such persons would have to supply basic information on their facilities and on their activities during the previous one-year period. Persons subject to registration but not subject to the oxygen content standard (e.g., most retailers) would be required to submit information on their plans regarding oxygenated fuel during the first control season.

Persons subject to the oxygen content standard would be required to provide information on how they intend to comply with the standard during the first control season. Such parties would have two compliance options. Under the first option, each batch of gasoline sold, supplied, or offered for sale or supply during the control season would have to have a minimum oxygen content of 2.7 percent by weight. Under the second option, all gasoline sold or supplied during each monthly compliance period would be required to have an average oxygen content of 2.7 percent. Monthly compliance periods would be on a calendar month basis. In meeting this monthly average standard, regulated parties would be allowed to trade oxygen credits during the monthly compliance period (as discussed more fully below).

Parties who elect the second compliance option would be required to submit a statement indicating their agreement that any violation of the monthly average standard would be treated as violations committed on each and every day of the averaging period (e.g. if the monthly averaging period is December 1 to December 31, a violation of the standard for this period constitutes 31 days of violation). Parties selecting the second option would also have to submit detailed information on their planned product mix during the first control period (e.g., X percent of product will contain 11 percent MTBE with 2.0 percent oxygen content, and Y percent will contain 10 percent ethanol with 3.7 percent actual oxygen content) and on how any shortfall in meeting the average standard will be met through the purchase of oxygen credits or a change in product mix.

It is EPA's intent that generally only one party in the distribution network would be responsible for the compliance of any particular quantity of gasoline with the oxygen content standard. Problems may arise, however, where a second party alters the oxygen content of a quantity of gasoline first introduced into commerce within the control area by another party (e.g., a carrier adds ethanol to a truck load of finished gasoline purchased from a distributor). EPA requests comments on the best means to prevent such "double reporting".

Persons who intend to sell or supply oxygenates that are used within the control area during the coming control season would also be required to register with EPA. They would be required to submit detailed information on their planned activities within the control area, including location of storage and dispensing facilities, type(s) of oxygenate(s) to be sold or supplied, and the names and addresses of known customers within the control area.

All parties will be required to revise their registration forms within 15 days of a significant change in operations. Significant changes requiring revision of registration would include any changes in location or ownership of a facility, commencing or ceasing use of a particular oxygenate, a significant change in planned product mix or in use of oxygen credits, and other circumstances to be specified in the regulations.

g. Sampling and Testing. The sampling methodologies are identical to those listed in the Agency's gasoline volatility control program. See 40 CFR part 80 appendix D. Methodologies include the ASTM sampling methodologies for gasoline products and a service station nozzle sampling procedure.

The ASTM methodologies are used by EPA in sampling gasoline and

[8] In order to qualify for the 1 psi RVP exemption, fuel would have to contain at least 9 percent ethanol by volume. A minimum ethanol content is being specified to assure that fuel containing only trace amounts of alcohol does not qualify for this treatment. The 9 percent minimum ethanol content is based on the 10 percent maximum ethanol content allowed by section 211(f) gasohol waiver with some allowance for blending variations. These proposed marketing requirements would also aid enforcement.

oxygenated fuels at facilities such as refineries, blending facilities, pipelines, bulk terminals, and bulk plants. These sampling procedures include bottle sampling, tap sampling, and manual line sampling. The nozzle sampling procedure is used at service stations and similar dispensing facilities (e.g., fleets).

h. Alternative Compliance through Averaging and Trading. As noted above, persons subject to the oxygen content standard would have the option of meeting this standard on a monthly average basis provided certain registration requirements were met. Under this option, compliance would be based on a weighted average of the oxygen content of all gasoline sold or supplied within the control area during a monthly period. The following procedures are proposed for the determination of such monthly average:

1. The oxygen content (by weight) of each discrete quantity of gasoline in the possession of the regulated party (e.g., each storage tank at a bulk terminal) at the beginning of each compliance period would be sampled and tested according to the procedures described in this notice.

2. The oxygen content of gasoline would also be tested each time there is a change in its quantity and/or quality that would tend to affect its oxygen content. This would require testing upon addition of any quantity of gasoline to a storage tank, but not upon removal of product for sale. It would also require testing upon the addition of any amount of oxygenate(s) to the gasoline.[9]

3. The amount of gasoline sold or supplied within the control area between the dates and times of oxygen content tests would be recorded.[10]

4. At the end of the compliance period, the quantities of gasoline recorded per (3) above would be multiplied by the relevant oxygen content. The resulting "total oxygen" amounts would then be added together and divided by the total amount of gasoline sold or supplied during the compliance period to determine the monthly average oxygen content.

In the case of in-line or in-truck blending of oxygenates, the oxygen content of each discrete quantity of final blended product (e.g., a truck load) would have to be determined and included in the monthly average calculations. Similarly, when gasoline is "imported" from outside the control area for direct sale or supply (e.g., a tank truck load brought from Los Angeles directly to a service station Phoenix) the oxygen content of each such discrete quantity of product must be determined and included in monthly average calculations.

The following example illustrates how this averaging mechanism would work. Assume that Distributor A receives gasoline via pipeline from outside the Phoenix control area, stores the product in storage tanks at its Phoenix terminal, and sells the product to retail stations within the control area.

On Day 1 of the compliance period Distributor A tests the oxygen content of product in its storage tanks and finds the following results:

Tank X (leaded regular)—2.9 percent; Tank Y (unleaded regular)—2.0 percent; and Tank Z (unleaded premium)—2.0 percent. Distributor A receives other shipments of product in each grade from the pipeline on Day 16 of the compliance period and tests each tank promptly with the following oxygen content results: Tank X—3.0 percent; Tank Y—2.2 percent; and Tank Z—0 percent. No other shipments were received during the compliance period. Compliance is calculated as follows, using the gallonage of gasoline sold during relevant periods:

A. Days 1 to 16 (until testing): [Oxygen contents below are expressed as decimals, e.g. 2.9 percent=0.029].

Tank	Oxygen content		Gallonage		Total oxygen
X	0.029	X	25,000	=	725
Y	0.020	X	55,000	=	1,100
Z	0.020	X	20,000	=	400
Total			100,000		2,225

B. Days 16 (after testing) to 30:

Tank	Oxygen content		Gallonage		Total oxygen
X	0.030	X	30,000	=	900
Y	0.022	X	60,000	=	1,200
Z	0.0	X	25,000	=	0
Total			115,000		2,100

C. Monthly Average:

Days	Total equivalent oxygen	Total gallonage		Total equivalent oxygen content
1–16	2,225	100,000		
16–30	2,100	115,000		
Total	4,325	215,000	=	0.0201

In this simple example, Distributor A's monthly average oxygen content would be 2.01 percent. In order to meet the standard of 2.7 percent, he would have to purchase (or otherwise obtain) oxygen credits from another regulated party.

Under the proposal, oxygen credits would be allowed to be sold or traded among regulated parties. Oxygen credits would be earned by parties to the extent that the average oxygen content of gasoline sold or supplied during a monthly compliance period exceeds 2.7 percent. Oxygen credits could only be traded and used during the compliance period in which they are earned. Oxygen credits are calcuated by first computing the total oxygen content of the regulated party's monthly gallonage. The product of the party's monthly gallonage and 0.027 (2.7 percent) is then subtracted from the party's monthly total oxygen content, and the difference is the amount of oxygen credits available for sale or trade (if the difference is zero or a negative number, the party has no oxygen credits available for sale or trade.)

The trading mechanism is illustrated by the following example. Assume Distributor B complies with all sampling and testing requirements and determines that all gasoline sold or supplied during monthly compliance period has a uniform oxygen content of 3.29 percent.

The amount of product sold/supplied during the compliance period is 280,000 gallons. Distributor B's total oxygen content for this period is 8554, determined by multiplying its gallonage (280,000) by its average oxygen content (0.0329). In order to meet the 2.7 percent regulatory standard, its total oxygen content must be 7020 (280,000 × 0.027). Thus, Distributor B has 1534 oxygen credits (8554–7020) available for sale or trade during the compliance period. If 1480 of these oxygen credits were traded or sold by Distributor B to Distributor A in the above example, Distributor A could then demonstrate compliance with the 2.7 percent standard by adding these credits to the total oxygen content of his product (4325) and dividing the sum (5805) by his gallonage (215,00), resulting in an average monthly oxygen content (with trading) of 0.027 (2.7 percent).

i. Labeling. The proposed regulations would require the labeling of pumps from which gasoline is dispensed at retail outlets and wholesale purchaser-consumer facilities during the control season. The pump label, at a minimum, would have to include the type of oxygenate which is contained in the fuel being dispensed from that pump. Comment is requested on the desirability of also requiring some form of content label (e.g., actual oxygen content by weight to the nearest 0.1 percent, or the minimum/maximum percent oxygen content by weight). Such labeling would allow consumers to know what type of oxygenate they are purchasing and provide them with flexibility in choosing a product most compatible with the operation of their vehicles. Labeling could also aid enforcement by allowing EPA to monitor whether parties are selling product in accordance with their registration statements. It could also provide a partial cross-check on compliance with the regulatory standard, if adequate numbers of inspections can be carried out. The proposed regulations would also require that invoices and other gasoline delivery documents be similarly labelled. Such documents would have to be retained by regulated parties for at least two years and be available for inspection by EPA personnel or contractors during that period.

j. Reporting and Recordkeeping. All persons subject to the oxygen content standard would be required to submit monthly reports containing compliance information. Reports would be due no later than 15 days after the close of each compliance period. Parties who have selected the option of meeting the standard on a "per batch" basis would be required to submit test results and other information relevant to determining compliance (e.g., gallonage, introduced into commerce in the control area during the month, and type and quantity of purchased oxygenates).

Parties who have selected the option of meeting the standard on a monthly average basis (with or without trading) would be required to submit more detailed information because of the greater complexities of determining compliance. Information to be submitted would include data on product received by the party (e.g., date, source, type, gallonage), test results, and sale/supply of product by the party (e.g., date, type, gallonage, person to whom sold/supplied, and oxygen content). The party would also be required to calculate the monthly average oxygen content of its product based on such information and according to the procedure outlined above.

Parties engaged in trading oxygen credits during a monthly compliance period would be required to supply additional information in their monthly reports. Such information would include the name and address of the other party in each trade and the quantity of oxygen credits traded. The party selling or otherwise transferring oxygen credits would have to demonstrate how such credits were calculated. The party buying or otherwise receiving oxygen credits would be required to calculate its compliance with the regulatory standard through the use of these credits. Both parties to an oxygen credit trade would have to submit supporting documentation adequate to demonstrate the agreement of the other party to the trade and to transfer the credits during the compliance period for which the trade is reported (e.g., a contract signed by both parties no later than the last day of the compliance period). EPA will not recognize a purported trade as valid unless both parties report and adequately document it. As in the lead phasedown program, the requirement that credits be traded by the end of the compliance period is based on EPA's view of trading as a planning tool rather than a means to cure violations. Comments on any special hardships this would create are requested. Only parties subject to the monthly average compliance option would be allowed to trade oxygen credits.

Persons who sold or supplied oxygenates for use within the control area during a compliance period would also be required to submit monthly reports to EPA. These reports would have to include information on the type of oxygenate sold (e.g., ethanol), date of sale, and the party to whom sold. Such reports would provide a partial cross-check on reports submitted by regulated parties.

Persons who transport gasoline into the control area but who are not subject to the regulatory standard (e.g., pipelines) would also be required to submit monthly reports to EPA. These reports would have to include information on the type (e.g., unleaded regular) and gallonage of gasoline transported during each compliance period, the party and location (and the specific tank, if known) to which transported, and the type (and concentration, if known) of oxygenate(s) contained in the gasoline transported. Such reports would provide a partial crosscheck on reports submitted by persons subject to the regulatory standard.

All parties subject to monthly reporting requirements would also be required to maintain adequate records (including oxygen content test results) to support the information contained in their reports. Such records would have to be retained for at least a two-year period.

For all reports, EPA would have the authority to determine whether any report should be recognized as meeting regulatory requirements.

Other persons who must register (e.g., retailers who do not transport or cause to be transported gasoline from outside the control area) are not subject to monthly reporting. However, as noted above, all parties in the gasoline distribution network would be required to retain (and make available for EPA inspection) invoices and other gasoline delivery documents for a two-year period. Comments are requested on the need for other recordkeeping requirements for such parties.

k. Violations and Defenses. The regulations will specify what constitutes violations of the regulatory requirements. Such violations are proposed to include:

1. Failure to submit a registration statement by the date due;
2. Failure to submit a revised registration statement (when required to do so) by the date due;
3. Submittal or an incomplete or incorrect initial or revised registration statement;
4. Failure to sample or test gasoline in accordance with prescribed regulatory methodologies;
5. Failure to sample or test gasoline when required to do so;
6. Selling, supplying, offering for sale, offering for supply or otherwise first introducing into commerce within the contorl area gasoline whose oxygen content does not comply with the regulatory standard after any allowable averaging and trading calculations (by a party subject to such standard);
7. Failure to properly label a retail outlet or wholesale purchaser-consumer pump stand;
8. Failure to properly label an invoice or other gasoline delivery document;
9. Failure to submit a required monthly report by the date due;
10. Submittal of an incomplete or incorrect monthly report;
11. Failure to maintain required records for the applicable time period;
12. Transfer of oxygen credits which have not been created in accordance with regulatory requirements;
13. Use of improperly created or transferred oxygen credits to demonstrate compliance with regulatory requirements;
14. Transfer of oxygen credits after the end of the monthly compliance period in which they are created; and
15. Failure to comply with any other regulatory requirements.

EPA believes that the large majority of violations listed above are within the power of regulated parties to control and thus should not be subject to

[9] EPA requests comments on other changes to gasoline quantity that should (or should not) trigger the testing requirement.

[10] EPA is considering a requirement that the oxygen content of gasoline be known and provided to the purchaser (or person supplied) prior to sale or supply, and requests comments on such a requirement. This would facilitate compliance with labeling and other regulatory requirements.

specific regulatory defenses. The regulations do not provide a defense for exceedances of the regulatory oxygen content standard, since the availability of monthly averaging and oxygen credit trading provides a great deal of flexibility to regulated parties in meeting this standard.

orders can be issued or civil actions brought may mean that only violations which occur early in the control season and extend beyond the 30th day after the NOV (and if the 30th day is also within the control season) would be subject to effective enforcement action. In normal SIP enforcement EPA's

chromatograph equipped with two columns and a column switching valve. The sample first passes onto a polar TCEP column which elutes lighter hydrocarbons to vent and retains the oxygenated and heavier hydrocarbons. After methylcyclopentane, but before MTBE elutes from the polar column, the

engine for combustion, the enrichment of the fuel/air mixture can result in increased carbon monoxide. This increase in CO emissions can be alleviated by controlling the volatility of gasoline. A gasoline's volatility is measured as Reid vapor pressure (RVP), the higher a fuel's RVP the greater the likelihood of any potential technical constraint that may make it difficult to supply Phoenix with the requisite 10.0 psi RVP fuel one year earlier than has been proposed for California's South Coast Air Basin. (Phoenix currently is supplied via pipeline from refiners in the Los Angeles area.)

cents per gallon for each 1 psi reduction in RVP. This number takes into account both the increase in the cost of producing lower RVP gasoline and the savings in fuel economy associated with this fuel. Based on an average RVP of 11.2 psi observed during the 1989/90 oxygenated fuels season, the net

specific regulatory defenses. The regulations do not provide a defense for exceedances of the regulatory oxygen content standard, since the availability of monthly averaging and oxygen credit trading provides a great deal of flexibility to regulated parties in meeting this standard.

Certain violations, however, may not be fully within the control of a regulated party. This group may include violations of pump and document labeling requiremetns where a party has reason to believe fuel provided to him by another party complies with the label. It may also include the use of transferred oxygen credits where the using party does not know (or could not reasonably be expected to know) that the credits were not lawfully generated. EPA requests comments on what defenses (if any) should be provided for these types of violations.

1. *Federally Assumed Enforcement.* Federal enforcement of air quality implementation plans generally commences with issuance of a notice of violation (NOV) to the violator and the state under section 113(a)(1) of the CAA. If the violation extends beyond the 30th day after the date of the NOV, EPA may issue a compliance order to bring a civil action under section 113(b) of the CAA. Section 113(b) provides for temporary or permanent injunctive relief, or a civil penalty of up to $25,000 per day of violation, or both.

The CAA also provides for "federally assumed enforcement. Section 113(a)(2) provides that whenever "the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State." If EPA finds that such failure extends beyond the 30th day after notification, EPA is required to issue a public notice of such finding. Beginning with the date of such public notice, EPA may issue compliance orders to, or bring civil actions against, violators without prior issuance of individual NOV's under section 113(a)(1).

EPA is concerned that the requirements of section 113(a)(1) of the CAA, in combination with proposed program design elements, may limit enforcement of the proposed federal oxygenated fuels program. The combination of a seasonal control program, a monthly averaging compliance demonstration alternative, report submittal and processing times, and the requirements that individual NOV's be issued to violators and that violations extend beyond the 30th day after NOV issuance before compliance orders can be issued or civil actions brought may mean that only violations which occur early in the control season and extend beyond the 30th day after the NOV (and if the 30th day is also within the control season) would be subject to effective enforcement action. In normal SIP enforcement EPA's enforcement authority under section 113(a)(1) operates in conjunction with a state enforcement program that generally is not subject to requirements concerning NOVs. However, in this case the state appears to have no authority to enfore EPA's oxygenated fuels program.

Furthermore, EPA believes that the conditions for "federally assumed enforcement" under section 113(a)(2) of the Act will in all likelihood exist in the Maricopa area. EPA is not aware of any plans by the State of Arizona to enforce any FIP regulations nor is it apparent what legal authority the State could use even if it wanted to do so. In the absence of State enforcement EPA anticipates that widespread violations of the FIP provisions will occur, particularly if federal enforcement is based only on the section 113(a)(1) individual NOV requirements.

EPA therefore intends to carefully scrutinize compliance reports during the first few months of the oxygenate fuels program. If EPA sees violations that are so widespread as to appear to result from the absence of any state enforcement program, it will promptly notify the state as required by section 113(a)(2). If such violations are continuing 30 days later, EPA will give public notice that it is initiating a period of federally assumed enforcement. EPA will then enforce the requirements of the oxygenated fuels program directly against violators without prior issuance of NOVs (and hence without the 30-day post—NOV waiting period) as provided by section 113(a)(2).

This period if federally assumed enforcement will continue until such time as the state satisfies EPA that it will enforce the oxygenated fuels program. EPA does not anticipate that the state will be able to do this since it apparently has no authority to enforce a federal program that is not supported by any state legislation.

m. Oxygenation Measurements. The proposed alcohol content laboratory testing method is the same as the ASTM Designation D 4815–88 method which utilizes gas chromatography for the determination of C1 to C4 Alcohols and MTBE in gasoline. This method is proposed as a new Appendix B to 40 CFR part 52, subpart D. Under this method, an internal standard, tertiary amyl alcohol, is added to the sample which is then introduced into a gas chromatograph equipped with two columns and a column switching valve. The sample first passes onto a polar TCEP column which elutes lighter hydrocarbons to vent and retains the oxygenated and heavier hydrocarbons. After methylcyclopentane, but before MTBE elutes from the polar column, the valve is switched to backflush the oxgenates onto a WCOT non-polar column. The alcohols and MTBE elute from the non-polar column in boiling point order, before elution of any hydrocarbon constituents. After benzene elutes from the non-polar column, the column switching valve is switched back to its original position to backflush the heavy hydrocarbons. The eluted components are detected by a flame ionization or thermal conductivity detector. The detector response, proportional to the component concentration, is recorded; the peak areas are measured; and the concentration of each component is calculated with reference to the internal standard.

Table 6 shows the oxygen contents by mass of the most common oxygen containing compounds that have either been approved in EPA waivers or are considered substantially similar to gasoline at concentrations less than 2.0 percent oxygen.

TABLE 6.—OXYGEN CONTENTS OF COMMON COMPOUNDS IN GASOLINE

Oxygenate	Molecular formula	Oxygen mass fraction
Methanol	CH_4O	0.4993
Ethanol	C_2H_6O	0.3473
Propanols	C_3H_8O	0.2662
Butanols	$C_4H_{10}O$	0.2158
Pentanols or MTBE	$C_5H_{12}O$	0.1815
Hexanols or TAME [1]	$C_6H_{14}O$	0.1566
Ethyl tertiary-butyl ether	$C_6H_{14}O$	0.1569

[1] Tertiary amyl methyl ether.

As an example, suppose the GC analysis of a leaded gasoline sample finds an ethanol mass concentration of 9.65 percent and an MTBE mass concentration of 1.10 percent. The fuel oxygen content would then be:

Fuel oxygen content
$= (0.965) \times (0.3473) \times (0.0110) \times (0.1815)$
$= 0.0362$
$= 3.62$ mass percent oxygen

2. Wintertime Gasoline RVP Limit

Description of Volatility Control Program. In vehicles equipped with evaporative controls, high-volatility fuel can result in higher CO tailpipe emissions. When the hydrocarbons adsorbed on the carbon in the evaporative canister are purged to the engine for combustion, the enrichment of the fuel/air mixture can result in increased carbon monoxide. This increase in CO emissions can be alleviated by controlling the volatility of gasoline. A gasoline's volatility is measured as Reid vapor pressure (RVP), the higher a fuel's RVP the greater the tendency of the fuel to evaporate.

Under Arizona state law wintertime RVP levels are controlled to the recommended American Society of Testing and Materials levels: October, 10 psi; November, 11.5 psi; December, January, and February, 13.5 psi; March, 11.5 psi. January, 1990 Motor Vehicle Manufacturers Association fuel survey data give a sales-weighted, in-use, wintertime RVP value of 11.2 psi for Phoenix which EPA has assumed when determining the additional emission reductions needed for attainment.

After review of drivability and safety issues, EPA believes that an RVP level as low as 10.0 psi is feasible for the winter months in the Maricopa region. EPA is, therefore, proposing to limit to RVP of gasoline sold in the Maricopa CO nonattainment area to a maximum of 10.0 psi for each period of October 1 through March 31 beginning October 1, 1991.

On June 11, 1990 (55 FR 23658) EPA promulgated the second phase of a two-phase program for national, summertime gasoline volatility control. Under EPA's final rulemaking for Phase II RVP control, the temporary 1.0 psi summertime RVP allowance provided in the Phase I program for gasoline containing 9 to 10 percent ethanol was made permanent for the reasons discussed in the June 11, 1990 notice. For the same reasons, EPA is today proposing to provide a similar 1.0 psi allowance for ethanol blends during the wintertime volatility control season in the Maricopa nonattainment area. This exemption issue discussed more fully in the section on the oxygenated fuels.

Finally, EPA proposes to use the same enforcement scheme for this program as for its national Phase II volatility control program. See 55 FR 23658 (June 11, 1990). It should be noted that the enforcement regulations promulgated for the Phase I national RVP program have been changed for the Phase II program such that EPA will take enforcement action only when RVP is measured at more than 0.3 psi above the applicable standard, provided that the responsible party measured the RVP at or below the standard. This policy takes into account the 0.3 psi average reproducibility of the RVP test method.

Comments are specifically requested in three areas related to volatility control. The first area concerns the likelihood of any potential technical constraint that may make it difficult to supply Phoenix with the requisite 10.0 psi RVP fuel one year earlier than has been proposed for California's South Coast Air Basin. (Phoenix currently is supplied via pipeline from refiners in the Los Angeles area.)

The second area involves the potential use of low volatility gasoline that is destined for the Phoenix terminal, in colder attainment areas (e.g., Flagstaff with a record winter low temperature of –23 degrees Fahrenheit). Under certain ambient conditions, low volatility fuels may have adverse effects on driveability and safety. The Agency's preliminary analysis suggests no special concerns in this area are warranted. At least one major supplier has marketed 10.0 psi gasoline in Phoenix during January 1989–1990, with several others marketing fuels from 10.2–10.5 psi.

The third area involves the range of temperatures at which exceedances of the CO ambient standard occur in the Phoenix area, relative to the emission reductions that are needed for full attainment. EPA's attainment demonstration uses an ambient temperature of 53 degrees Fahrenheit. However, significant exceedances also occur around 40 degrees and 70 degrees. The benefits of RVP control increase at higher temperatures, but decrease at lower temperatures. Comments are requested on the adequacy of the control measures at lower temperatures.

3. Cost of the Proposed Control Measures

EPA estimates that the increase from 2.3 to 2.7 percent oxygen content will result in a 0.8 cents per gallon increase in the price of gasoline. The estimate is based on a 5.0 cents per gallon increase in the price of gasoline for a 2.7 percent oxygen-content program in an area with no existing oxygenated fuels program used in the Council of Economic Advisors' analysis of oxygenated fuels program in the new Clean Air Act. Using an alternative analysis based on spot market prices of MTBE and gasoline as of August 29, 1990, the price increase would be 0.66 cent per gallon. Based on expected 1991 gasoline consumption during the oxygenated fuels season of 475.3 million gallons in the Maricopa County non-attainment area, the incremental cost of the program during the first year should be $3.8 million. Factors which might lower this cost in the future include the expansion in the production of MTBE and a trend toward more cost-efficient refinery blending of oxygenates.

EPA estimates that the limit on gasoline volatility would cost about 0.27 cents per gallon for each 1 psi reduction in RVP. This number takes into account both the increase in the cost of producing lower RVP gasoline and the savings in fuel economy associated with this fuel. Based on an average RVP of 11.2 psi observed during the 1989/90 oxygenated fuels season, the net increase in the price of gasoline as a result of the RVP control program would be 0.324 cents per gallon. Using the Maricopa County gasoline consumption figure given above, the incremental cost of the RVP control program during the first year should be $1.5 million.

4. Federal Pre-Emption of Arizona's Oxygenated Fuels and RVP Control Programs

EPA understands that by implementing the aforementioned oxygenated fuels and volatility programs it is creating standards which are more stringent than the existing State standards. Under CAA, section 116, "* * * if an emission standard or limitation is in effect under an applicable implementation plan * * *, [a] state or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." The existing State standards will become "less stringent" than the federal standards and EPA therefore recognizes that the proposed Arizona federal implementation plan will have the effect of pre-empting existing State regulations.

EPA wishes to make it clear that it will honor any State regulations which, when approved by the State legislature, adopt any of the new federal standards so long as the State regulations are not "less stringent" than those in the federal plan. Once new State standards have been established, EPA welcomes the return of State and local enforcement.

EPA welcomes any comments on any of these issues.

D. Attainment and Maintenance Demonstrations

The two measures being proposed today, a 10-psi RVP limit and an increase in the oxygen content of fuels from 2.3 percent to 2.7 percent, combined the existing SIP measures including the trip reduction program (TRP), will provide sufficient emission reductions to reduce the ambient CO concentration in Maricopa County to the level of the NAAQS by December 31, 1991. No other measures are available to produce additional emission reductions in Maricopa County prior to that date.

As discussed previously the design value upon which this analysis is based

is an adjusted monitored value and therefore reflects the impact of all control measures in place the day the design value was recorded. In Maricopa County in mid-December, 1989, the oxygenated fuels program was operating at 2.3 percent oxygen, the majority of the TCMs which EPA credited in the 1987 MAG plan were in place, and the voluntary no drive day program, the

concentrations, however, remain under the standard until at least 2001.

Under EPA regulation and policy, an approvable implementation plan must demonstrate maintenance for the ten-year period after plan approval. For this plan, the approval date will be in November, 1990; therefore, maintenance must be demonstrated until November, 2000. As shown in Table 7, the proposed

found in the draft technical support document (TSD) for this notice.

To add to its ambient air quality database for the 1987 Pima plan, PAG established a number of special-purpose monitoring sites at intersections with higher average daily traffic counts than the intersections with permanent monitors. It was the special purpose

and an oxygenated fuels program at 1.8 percent oxygen.

The hot-spot modeling showed that ambient CO concentrations at these two intersections in late 2000 should be well below the CO NAAQS even under "worst-case" meteorological conditions. More detailed information on this modeling can be found in the draft TSD for this notice.

plan are triggered when the EPA Administrator determines that a SIP is inadequate. See 46 FR 7187, 7192 (January 22, 1981).

The 1987 MAG plan included as Measure 46 a contingency plan which requires the MAG Air Quality Policy Committee to review on an annual basis the progress made to reduce carbon monoxide pollution and, if necessary,

period when no violations of the CO NAAQS would be expected to occur.

EPA, therefore, is proposing that the initial trigger for its contingency process be a certified violation of the CO NAAQS occurring after December 31, 1991 in Maricopa County or after November 26, 1990 (the date of final promulgation of this proposal) in Pima

is an adjusted monitored value and therefore reflects the impact of all control measures in place the day the design value was recorded. In Maricopa County in mid-December, 1990, the oxygenated fuels program was operating at 2.3 percent oxygen, the majority of the TCMs which EPA credited in the 1987 MAG plan were in place, and the voluntary no drive day program, the Clean Air Campaign, was in full swing. Because the design value reflects the impact of all these programs, the attainment demonstration implicitly includes the benefits of these programs.

There are only three measures for which EPA granted emission reduction credit in its 1988 Maricopa SIP approval that can still be explicitly included in this attainment demonstration: the TRP (starting in 1990), HOV lanes, and freeway flow improvements (both starting in 1995). For simplicity, the attainment demonstration in Table 7 considers only the TRP. HOV lanes and freeway flow improvements will, therefore, provide an additional margin of reductions after 1995 to ensure maintenance.

The estimate of the emission reductions necessary to achieve attainment is somewhtat imprecise due to the nature of the modified rollback analysis. The current ambient impact analysis built in reasonable, conservative assumptions about the extent to which ambient concentration may be higher than those recorded at the existing monitoring sites. More refined analysis may prove these assumptions wrong, which could imply the need for further emission reductions or for less emission reductions than proposed in today's notice.

TABLE 7—PROJECTED CONTROLLED CO EMISSIONS AND CONCENTRATIONS IN MARICOPA COUNTY

Date	Total controlled emissions [1] (tpd)	CO concentration (ppm)
December, 1989	316	13
December, 1990	241	10
December, 1991	233	9
December, 1992	230	9
December, 1995	183	6
December, 2001	202	8

[1] Total emissions between 3 p.m. and 5 a.m. Increasing emissions after 1995 reflect increased VMT and congestion.

Table 7 indicates that emissions levels and ambient concentrations continue to go down in Maricopa County until sometime after 1995, then start increasing as growth in vehicle traffic and congestion overcome the emission reductions from fleet turnover. Ambient concentrations, however, remain under the standard until at least 2001.

Under EPA regulation and policy, an approvable implementaiton plan must demonstrate maintenance for the ten-year period after plan approval. For this plan, the approval date will be in November, 1990; therefore, maintenance must be demonstrated until November, 2000. As shown in Table 7, the proposed 10 psi RVP limit and 2.7 percent oxygenated fuels program, combined with reductions from the travel reduction program and other SIP measures, are sufficient to demonstrate maintenance for the required ten years.

III. Attainment and Maintenance of the CO NAAQS in Pima County

A. Demonstration of Attainment

The 1987 Pima plan projected attainment of the CO NAAQS in early 1990 and maintenance through 2000 relying solely on emission reductions from the federal motor vehicle control program (FMVCP), the State I/M program without the loaded-mode component, then existing traffic flow improvements, and programmed road improvements. The Pima plan did not rely for either attainment or maintenance upon any of the additional measures being proposed in the plan or later adopted by the State legislature.

New population forecasts for the Pima area have recently been completed and are predicting substantially less population both in 1990 and future years than was assumed in the 1987 Pima plan. Lower population figures mean that vehicle miles traveled (VMT), vehicle trips, and thus CO emission levels are also lower than those assumed in the attainment and maintenance demonstrations in the PAG plan.

There are three EPA-approved CO monitoring sites in Pima County: 151 West Congress Street, 22nd Street at Craycroft Road, and 22nd Street at Alvernon Way. Data from these monitoring sites show only three exceedances of the 8-hour CO NAAQS in the past five years, none of which are considered violations of the standards.[11] The monitoring data can be found in the draft technical support document (TSD) for this notice.

To add to its ambient air quality database for the 1987 Pima plan, PAG established a number of special-purpose monitoring sites at intersections with higher average daily traffic counts than the intersections with permanent monitors. It was the special purpose monitoring site at Broadway at Craycroft Road which yielded the CO value upon which PAG built its attainment and maintenance demonstrations.

Since the special-purpose monitoring in the winter of 1986/87, the Pima County Department of Environmental Quality (PCDEQ) has established permanent monitoring stations at Broadway at Craycroft Road and Cherry Avenue at Glenn Street. While these stations do not yet report data into EPA's air quality information system, AIRS (Aerometric Information Retrieval System), PCDEQ has requested site numbers and will soon be adding them to AIRS. EPA has received from PCDEQ monitoring data from these two sites for the past year. This data, which is available in the TSD for this rulemaking, shows no exceedances of the CO standard.

The attainment demonstration in the Pima plan is conservative not only because it did not rely on the full range of adopted control measures but also because it was based on what are now known to be too-high population and VMT estimates. This conservatism argues strongly that the plan accurately predicted attainment would occur in or before early 1990. Ambient air quality data for the past several years also supports this prediction. Therefore EPA is concluding today that sufficient emission reductions have already been achieved in Pima County to assure that current CO emission levels are below those needed to attain the CO NAAQS and that no additional control measures are needed to ensure attainment.

B. Demonstrotion of Maintenance

EPA performed hot-spot modeling to determine if sufficient measures were in place to ensure maintenance in Pima County for the required ten-year period after plan approval, i.e., until December, 2000. EPA used its guideline hot-spot model, CALSQHC, to model conditions in 2000 at two intersection with high average daily vehicle counts: Broadway at Craycroft Road and 22nd Street at Alvernon Way. Mobile source emsenons were determined through MOBILE4 assuming the current Arizona I/M program including loaded-mode testing and an oxygenated fuels program at 1.8 percent oxygen.

[11] EPA defines the 8-hour CO NAAQS as 10 milligrams CO per cubic meter (9 ppm)—maximum 8-hour concentration not be exceeded more than once per year. See 40 CFR 50.8(a). This definition means the first time CO concentrations exceed 9 ppm is considered an exceedance and the second and subsequent times are considered violations. Violations are determined for each monitor separately. For Pima, the Congress Street monitor recorded an exceedance in 1988 and the 22nd and Alvernon monitor recorded an exceedance in 1985 and again in 1988. Because there was no more than one exceedance at each monitor in any one year, none of the exceedances is considered a violation.

The hot-spot modeling showed that ambient CO concentrations at these two intersections in late 2000 should be well below the CO NAAQS even under "worst-case" meteorological conditions. More detailed information on this modeling can be found in the draft TSD for this notice.

C. Finding on Need for Federal Measures

EPA is concluding today that sufficient emission reductions have already been achieved in Pima County to ensure that current emission levels are below those needed to attain the CO NAAQS. Under the Delaney test described earlier in this notice, EPA can find no measures available to it that will result in attainment sooner and, therefore, is not proposing any measures for Pima County.

EPA has long interpreted section 172(b)(2) of the CAA to require implementation of only those reasonably available control measures necessary to provide for attainment by the applicable attainment date. This is because it would be unreasonable to require states to implement measures that, although technically available, would not materially advance an area's attainment date. See 44 FR 20372, 20375 (April 4, 1979). It would be equally unreasonable to require states to implement measures that are not needed to maintain an ambient air quality standard simply because the measures are considered reasonably available. This logic extends to EPA's promulgation of implementation plans under CAA section 110(c).

While arguably there are available measures that can reduce emissions in Pima County in the future, EPA has demonstrated above that there are already sufficient measures approved in the Pima SIP to ensure maintenance for the required ten-year period. EPA, therefore, is proposing to find that no additional control measures are necessary for maintenance in Pima County.

IV. Contingency Provisions

A. Current Contingency Provisions in the Arizona SIPs

As discussed earlier, EPA's guidance requires SIPs to contain a two-part contingency plan which includes a list of transportation projects that would be delayed while an inadequate SIP is being revised and a process to adopt measures to compensate for unanticipated emission reduction shortfalls. Both parts of this two-part plan are triggered when the EPA Administrator determines that a SIP is inadequate. See 46 FR 7187, 7192 (January 22, 1981).

The 1987 MAG plan included as Measure 46 a contingency plan which requires the MAG Air Quality Policy Committee to review on an annual basis the progress made to reduce carbon monoxide pollution and, if necessary, consider strengthening existing measures and adopting additional measures (see MAG plan, July 1987). The MAG plan included commitments to support the contingency plan from seventeen towns and cities in Maricopa County. The MAG plan did not include any further specifics on how and when additional transportation measures would be adopted nor did it include a list of transportation projects that would be delayed.

The Pima plan also did not include much detail in its contingency procedures. The plan's contingency procedures required tracking of air quality and traffic trends, an evaluation of adopted transportation measures, and the identification of any necessary tightening of measures. A list of transportation projects subject to delay, however, was not included.

In approving the SIPs, EPA found that each plan contained two measures beyond those necessary to demonstrate attainment and maintenance that functioned as already-adopted contingency measures. In *Delaney*, the court found in the case of Maricopa that the the two measures were of such speculative benefit that they did not equate with the 1982 SIP guidance requirement for contingency plans. In ordering new plans for Pima and Maricopa, the court specifically required contingency procedures in accordance with EPA guidelines.

B. Discussion of the Proposed Procedures

To ensure that the contingency procedures in the Maricopa and Pima implementation plans comply with Agency guidance, EPA is today proposing contingency procedures that will ensure that any emission reduction shortfalls which may occur during the ten-year period covered by these FIPs are identified and corrected. For Pima, EPA has determined that emission levels are already below those needed to attain the CO standard. The federal measures being proposed today by EPA, along with existing SIP measures, should provide sufficient emission reductions for attainment in Maricopa County by December 31, 1991. As a result, most of the 10-year period covered by these FIPs will be a maintenance period, that is, a period when no violations of the CO NAAQS would be expected to occur.

EPA, therefore, is proposing that the initial trigger for its contingency process be a certified violation of the CO NAAQS occurring after December 31, 1991 in Maricopa County or after November 26, 1990 (the date of final promulgation of this proposal) in Pima County. A certified violation not caused by an exceptional even [12] would then trigger a determination by EPA of whether additional control measures are necessary to assure attainment and maintenance of the CO standard. Upon a finding by EPA that additional measures are necessary, the process to identify, propsoe, and promulgate such measures would be triggered as would the requirement to delay highway projects.

There are two primary reasons why an implementation plan can fail to attain or maintain an air quality standard. The first reason is that actual emissions levels may exceed those projected in the implementation plan because either control measures have not been implemented or are not as effective as anticipated and/or growth in emissions is greater than predicted in the implementation plan. The second reason is that although emission levels may be at or below the level projected for attainment in the implementation plan, this projected attainment level is not adequate to assure attainment and maintenance (e.g., the modeling in the existing implementation plan failed to correctly predict the attainment level).

If EPA finds that unanticipated growth or failure of measures to be implemented or achieve expected emission reductions are the primary cause of the violation, EPA would first estimate the magnitude of the emissions shortfall. Next EPA would determine if additional control measures are needed to correct the shortfall. Conditions may be that the existing control strategy would correct the shortfall in the period prior to the time EPA could promulgate and implement additional measures. Only if additional measures are needed would the process to identify, propose, and promulgate additional measures and the delay of transportation projects be triggered.

On the other hand, if EPA determines that emission levels are at or below those projected for attainment, a new determination of the attainment level is needed. In this case, EPA would need to

[12] As defined in EPA's "The Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events", EPA-450/4-86-007, July 1987.

perform new air quality modeling before it could determine the shortfall in emission reductions. Once the modeling was completed, EPA could then identify what, if any, additional measures are needed to correct the shortfall.

The process that EPA is proposing to identify additional transportation measures parallels that used to identify emissions above the level needed to maintain the standards, within two months EPA would determine the shortfall in CO emission reductions and whether additional control measures are necessary to correct this shortfall after to the time EPA could reasonably promulgate these additional measures. Should EPA find that additional control

5. Promulgation of Additional Measures (NFRM)

Within six months of the NPRM and in consideration of comments received, EPA would issue a NFRM promulgating all additional measures available to EPA which could correct the emission reduction shortfall. Publication of this

Implement Section 176(a)" (December 12, 1980);

(d) projects that implement TCMs in the 1988 SIP or the proposed PM10 plans;

(e) Transit projects;

(f) Aviation projects;[13] and

EPA seeks comment on the

2. List of Projects Subject to Delay—Maricopa County

Project numbers are from the 1989/90–1993–94 Maricopa County Transportation Improvement Program, Maricopa Association of Governments, September 27, 1989.

Project	Project description

considering to ensure the conformity of federal actions. These courses of action were methods of assuring that other federal agencies had conformity processes in place and that appropriate state and local air quality agencies were consulted before conformity determinations were made. As part of this ANPRM, EPA listed eight items

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perform new air quality modeling before it could determine the shortfall in emission reductions. Once the modeling was completed, EPA could then identify what, if any, additional measures are needed to correct the shortfall.

The process that EPA is proposing to identify additional transportation measures parallels that used to identify measures in today's notice. EPA would conduct a systematic evaluation of each measure listed in the Appendix to this notice and of any other measures it might identify by using the definition of "available" described above to determine which measures should be selected for promulgation.

The time needed for EPA to certify a NAAQS violation, determine if additional control measures are needed, analyze additional measures, and complete the rulemaking and public comment process is, in total, approximately fourteen to sixteen months.

C. Proposed Contingency Procedures

1. Finding of CO NAAQS Violation

After December 31, 1991 for the Maricopa CO nonattainment area or November 26, 1990 in the Pima CO nonattainment area, should the nonattainment area experience a violation of the CO NAAQS during a CO season (October 1 through March 31) at a monitoring site that is part of an EPA-certified monitoring system, EPA would first verify the monitoring data. Upon verification that the violation was not due to an exceptional event as defined in "The Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events," EPA–450/4–86–007, July 1987, EPA would publish a finding in the Federal Register that the area has exceeded the CO NAAQS and, therefore, the implementation plan may be inadequate. Such a finding would be made within two months of the end of the quarter in which the violation occurred. In making the finding, EPA would solicit information from the appropriate agencies and the public to determine the cause of the violation and potential corrective actions.

2. Determination of the Need for Additional Measures

After making a finding that a CO violation has occurred, EPA would determine the cause of the violation by determining the implementation status of the plan control strategy and by comparing the current emissions inventory to the plan projections.

(a) If incomplete or non-implementation of plan measures or unanticipated growth have increased emissions above the level needed to maintain the standards, within two months EPA would determine the shortfall in CO emission reductions and whether additional control measures are necessary to correct this shortfall after to the time EPA could reasonably promulgate these additional measures. Should EPA find that additional control measures are necessary, it would then publish the finding in the Federal Register and would initiate the delay of transportation projects. Should it find that no additional measures are needed, EPA would conclude the contingency process by publishing this finding in the Federal Register.

(b) If emission levels are found to be at or below those needed for maintenance, EPA would perform the air quality modeling necessary to determine a new attainment level. Within four months, EPA would determine the shortfall in CO emission reductions and whether additional control measures are necessary to correct this shortfall after to the time EPA could reasonably promulgate these additional measures. Should EPA find that additional control measures are necessary, it would publish its finding in the Federal Register and would initiate the delay of transportation projects. Should it find that no additional measures are needed, EPA would conclude the contingency process by publishing this finding in the Federal Register.

3. Project Delay

Notification by EPA in the Federal Register that additional control measures are necessary to maintain the CO NAAQS in either Maricopa County or Pima County would trigger the requirement to delay projects on the list of projects with potentially adverse air quality impacts appearing below. Under Department of Transportation (DOT) regulations at 23 CFR 770.9(e)(2), the Federal Highway Administration (FHWA) would not authorize construction of any project contained on the contingency list.

4. Proposal of Additional Measures (NPRM)

Within four months of a determination that additional control measures are needed, EPA would issue a NPRM proposing all additional measures available to EPA which could correct the emission reduction shortfall. The measures would be chosen from the list appearing in the Appendix to this notice and from other measures that may be identified in the future. Each measure would be examined for availability based upon the criteria put forth earlier in this notice.

5. Promulgation of Additional Measures (NFRM)

Within six months of the NPRM and in consideration of comments received, EPA would issue a NFRM promulgating all additional measures available to EPA which could correct the emission reduction shortfall. Publication of this NFRM would lift the requirement to delay transportation projects.

D. List of Highway Projects Subject to Delay

Given below are the proposed lists of transportation projects in Maricopa and Pima Counties that may adversely affect air quality and would be delayed under the contingency process if EPA finds that additional control measures are necessary to ensure maintenance of the CO NAAQS. Projects on these lists are drawn from each County's Transportation Improvement Program (TIP) for FY 1990/90–1993/94.

To select projects for listing, EPA used two guides to determine whether a project should or should not be listed. The first guide was the language in its 1982 SIP guidance that projects that may have adverse air quality impacts should be listed. EPA interprets this to mean that it need not list projects that do not by their nature have adverse air quality impacts, e.g., landscaping projects, right-of-way acquisitions, and design and engineering studies.

The second guide was the language relating to highway funding sanctions in section 176(a) of the CAA. Section 176(a) prohibits the Secretary of Transportation from approving "any projects or award[ing] any grants under title 23, United States Code, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance" when the EPA Administrator makes certain findings. Based on this language, EPA is proposing to exempt from delay projects that do not receive funding or approval under title 23, U.S.C., safety projects, transit projects, and TCMs in the SIP.

In total, these proposed exemptions are:

(a) Road rehabilitation projects which do not increase capacity, landscaping projects, right-of-way acquisitions, design and engineering studies, and other projects which do not by their nature adversely impact air quality;

(b) projects not requiring any federal action, approval, or funding under title 23 U.S.C.;

(c) safety projects as defined in "EPA/FHWA Region IX Procedures to Implement Section 176(a)" (December 12, 1980);

(d) projects that implement TCMs in the 1988 SIP or the proposed PM10 plans;

(e) Transit projects;

(f) Aviation projects;[18] and

EPA seeks comment on the appropriateness of these exemptions.

(g) Projects outside of the CO nonattainment area as defined for Maricopa in 43 FR 8964 (March 3, 1978) and for Pima in 51 FR 27843 (August 4, 1986).

Projects which are proposed for listing are primarily capacity-enhancing projects scheduled for construction in federal fiscal year (FY) 1992 and later in Maricopa and FY 1991 and later in Pima.[19] While it can be argued that capacity-enhancing projects by reducing congestion may reduce emissions and therefore benefit air quality in the short-term, EPA is concerned that these projects may also induce additional vehicle travel and thus increase emissions and harm air quality in the long-term.

EPA solicits comments on the listed projects including whether any additional projects should be listed or whether any listed projects should be removed. Such comments should include information on the impact of the project on air quality or, if appropriate, the exempt status of the project.

1. List of Projects Subject to Delay—Pima County

Project numbers are from the 1989/90–1993/94 Pima County Transportation Improvement Program, Pima Association of Governments, July, 1989.

Project	Project description
H26	Moore Rd: Sandario Rd to I–10 Frontage Road, grade, drain, pave two 12-foot lanes (1.75 miles)
H44	Orange Grove Rd: I–10 to Thornydale Rd., construct new 6-lane with median (0.3 miles)
H84	I–10: West Miracle Mile to Speedway, construct frontage roads and ramps (2.0 miles)
H136	I–10: East Frontage Road: St. Marys to Congress, construct, east frontage road (0.7 miles)
H136	I–10: Orange Grove Road to Prince Road widen to 8 lanes (2.0 miles)
H136	I–10: Speedway to St. Marys, construct frontage roads and ramps (0.5 miles)
H140	I–10: West Frontage Road: Ina to Miracle Mile, new frontage road, bridges (6.5 miles)

[18] Aviation projects are proposed for exemption because they are not approved or funded under title 23, U.S.C.

[19] Because EPA's contingency program could not be triggered prior to December 31, 1991 in Maricopa (during federal FY 1992) and November 26, 1990 in Pima (during federal FY 1991), projects schedule before these dates are also effectively exempted.

2. List of Projects Subject to Delay—Maricopa County

Project numbers are from the 1989/90–1993–94 Maricopa County Transportation Improvement Program, Maricopa Association of Governments, September 27, 1989.

Project	Project description
209	I–10 Maricopa Fwy, S.R. 380, interchange reconstruction/mainline widening (1.0 mile)
211	I–10 Maricopa Fwy, Queen Creek Grade Separation, interchange construction (0.2 mile)
256	I–10 Maricopa Fwy, Baseline Rd, widening roadway and interchange, (0.7 mile)
292	I–10 Maricopa Fwy, Baseline Rd to Chandler Blvd, addition of median lanes (5.2 miles)
294	I–17 Black Canyon Fwy, Camelback Rd Interchange, Grand Canal, widening, signage, and right-of-way (0.10 mile)
400	Lindsay Road, Guadalupe Rd/Western Canal, reconstruct to 4 lanes (0.5 miles)
555/569	Maricopa Road, I–10 to Pinal County Line reconstruction from 2 to 4 lanes (5.2 miles)
559	Queen Creek Road, Maricopa Rd to Price Rd., construction of 4 lanes (2.2 miles)

V. Conformity Provisions

A. Current Guidance on SIP Conformity Provisions

In its Delaney order, the Ninth Circuit directed EPA to promulgate FIPs for Maricopa and Pima Counties which contained conformity plans in accordance with EPA guidelines. The court cites in its opinion EPA's 1982 SIP guidance which requires SIPs to contain two elements to assure conformity:

(1) Administrative and technical procedures and agency responsibilities for ensuring in response to section 176(c) of the Clean Air Act, that transportation plans, programs, and projects approved by a metropolitan planning organization (MPO) are in conformance with the SIP. 46 FR 7182, 7187; and

(2) Identif[ication], *to the extent possible*, of the direct and indirect emissions associated with major federal actions, * * * that will take place during the period covered by the SIP. 46 FR 7182, 7186 (emphasis added).

The requirement for conformity plans in SIPs is drawn from the general condition in CAA section 176(c) that "[n]o metropolitan planning organization * * * shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110." Section 176(c) also prohibits any federal department, agency, or instrumentality from taking supportive actions on any activity that does not conform to a plan approved or promulgated under section 110.

On April 1, 1980 (45 FR 21590), EPA published an advance notice of proposed rulemaking (ANPRM) to request comments on several courses of action which the Agency was then considering to ensure the conformity of federal actions. These courses of action were methods of assuring that other federal agencies had conformity processes in place and that appropriate state and local air quality agencies were consulted before conformity determinations were made. As part of this ANPRM, EPA listed eight items which it believed a federal department should verify in a formal conformity determination.[15] The ANPRM did not specifically address MPO conformity procedures; however, the parallel between federal agency and MPO responsibilities under section 176(c) would imply that the suggestions for federal agencies in the ANPRM are also appropriate for MPOs.

Both the House (H.R. 3030) and Senate (S. 1630) versions of the proposed Clean Air Act amendments currently under debate in Congress have more detailed conformity requirements than the 1977 CAA amendments. Both bills define conformity and, while they vary slightly, the definitions have the same basic concepts in common. Under the proposed amendments conformity means conformity to an implementation plan's purpose eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards and assuring that federal activities will not, considering any growth likely to result from them, cause or contribute to a failure to attain any standard in any area or delay timely attainment of any standard or any required interim emission reductions.

The bills also in common retain the requirement that MPOs not approve any project, program, or plan which does not conform to the applicable implementation plan. Both require annual conformity determinations on every transportation plan and program.

[15] These items are: (1) All necessary state and federal air quality permits have been obtained for the activity, or if a state variance has been issued, it is in conformity with the requirements of the Clean Air Act; (2) all population projections provided in the supporting data base for the action are consistent with the population projections used in the SIP; (3) the stationary, area and mobile source emission growth rates that are provided in the supporting data base for the action are consistent with the emission growth rates used in the SIP; (4) the increased emissions resulting from the action do not conflict with the emission reduction requirements of the SIP; (5) the increased emissions resulting from the action do not exceed the Prevention of Significant Deterioration increments for the area; (6) the increased emissions resulting from the action do not contribute to the violation of any NAAQS; (7) the action is consistent with the TCMs that are provided for in the SIP; and (8) the action complies with all other special provisions and requirements of the SIP. 45 FR 21590, 21593 (April 1, 1980).

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Both bills provide criteria, although somewhat different, for meeting project-level conformity requirements. Both bills also instruct the EPA Administrator to promulgate criteria and procedures for demonstrating and assuring conformity and require states to include conformity criteria and procedures in all CO and ozone SIPs. Copies of the proposed House and Senate conformity sections can be found in the docket for this proposal.

In developing the conformity procedures it is proposing today, EPA considered not only its 1982 SIP guidance and 1980 ANPRM but also the direction Congress is taking in amending the CAA conformity requirements. It should be noted that the ANPRM was merely an advance notice on conformity procedures and that EPA did not follow up with a formal proposal and final rule although the methods were incorporated into its 1982 SIP guidance cited by the Ninth Circuit in its Delany order. Thus, the procedures proposed under today's notice apply only to Arizona to respond to the Ninth Circuit's order. At such time as the amendments to the CAA are passed, EPA will issue national criteria on conformity following standard procedures to respond to any new requirements contained in the amendments.

B. EPA's Proposed Conformity Procedures

1. Breadth of Application

Today's proposed conformity regulation is intended to amend only the Maricopa and Pima portions of the Arizona CO SIP. This action is being proposed in order to establish procedures to be used by MPOs when they approve transportation plans, programs, and projects. Therefore, the proposed regulation is to apply only to MPOs in the Pima and Maricopa CO nonattainment areas or, more specifically, the Pima Association of governments (PAG) and the Maricopa Association of Governments (MAG) in their capacity as MPOs. The proposed procedures are to be used by MAG and PAG when they make a conformity finding prior to approving any transportation plan, program, or project. In keeping with EPA's 1982 SIP guidance which requires procedures only for transportation plans, programs, and projects, these procedures are not intended to apply to other non-transportation-related federal activities which these MPOs may approve.[10] The scope of these proposed procedures is also limited to determinations of conformity for carbon monoxide.

The key transportation plans and programs developed by MPOs are the regional transportation plan (RTP) and the transportation improvement program (TIP) including the annual (biennial) element.

MPOs generally do not take approval actions on individual projects; however, to complete its obligation to fill the gap in the SIP for conformity procedures for "plans, programs, and projects" as required by both CAA section 176(c) and its own 1982 SIP guidance, EPA is proposing conformity procedures for individual projects consistent with its guidance and the pending Clean Air Act amendments.

2. Conformity Procedures for Transportation Plans and Programs

The proposed regulations would require that the same conformity procedure be followed for transportation improvement programs as for transportation plans. The proposed procedures would need to be applied separately to each plan and program approved by the MPO. In outline, the proposed conformity procedures would require that MPOs document certain information from the applicable implementation plan and the transportaiton plan/program and make certain findings regarding the plan/program based on this documented information. "Applicable implementation plan" or "applicable plan" as the terms are used throughout this proposed regulation, mean the Pima and Maricopa portions of the Arizona Carbon Monoxide SIP as it has been approved or promulgated by EPA and includes the data used by EPA to project attainment and/or maintenance of the CO NAAQS for Maricopa and Pima Counties.

To allow for public review and comment on the MPOs' conformity findings, preliminary documentation and findings on conformity should be made available to the public when draft plans and programs are issued. The MPOs should also assure that the Arizona Department of Environmental Quality (ADEQ) and PCDEQ or Maricopa County Bureau of Air Pollution Control, as well as EPA, are given the opportunity to comment on the preliminary documentation and findings. The MPO should respond to all public comments prior to finalizing its conformity determination.

Documentation Requirements. The proposed procedures would require the MPO to first document, for the period covered by the applicable implementation plan, basic planning assumptions that are intrinsic to transportation plans and programs: Population estimates, number of vehicle miles traveled (VMT), number of vehicle trips (VT), and congestion levels. Reductions in congestion along with the potential trip-inducing effect of increased capacity should be considered by the MPO when evaluating the impact of the plan/program.

Next, the MPO would be required to document, for each major TCM in the applicable implementation plan, the TCM's implementation schedule and expected effectiveness in reducing CO emissions from the applicable plan the the TCM's current implementation status and, if feasible, its current effectiveness. The MPO would also have to identify, for each major TCM in the applicable plan, any actions in the plan/program which would have either beneficial or adverse impacts on the TCM's implementation or effectiveness.

The MPO would also need to determine the emission levels expected from implementation of the plan/program during the period of time covered by the applicable plan and compare them to levels projected in the applicable plan. The same EPA-approved emission factor model used in the applicable plan should be used to determine emission levels under the transportation plan/program. Where the impact of TCMs are included in calculating these emission levels, their effectiveness should reflect their actual effectiveness rather than their effectiveness assumed in the plan.

Finally, the MPO would be required to determine using air quality modeling the ambient CO levels, both regional and micro-scale, which would result from implementation of the plan/program during the period covered by the applicable plan. In determining micro-scale CO impacts, EPA would not expect the MPO to model every intersection or link in the plan/program but rather exercise its judgment to determine where projects within the plan/program may exacerbate CO concentrations. Factors the MPO could use to make this judgment include current and projected background CO concentrations at or near the projects, VMT and VT intended to be served by the projects, and the level of service before and after the project. In modeling ambient concentrations, the MPO should use EPA-approved models and techniques.

Require Findings. Prior to finding the plan/program conforming, the MPO would be required to make and document three findings:

(1) That the implementation of the transportation plan/program will provide for the implementation of TCMS is the applicable plan on the schedule set forth in the applicable plan,

(2) That the plan/program does not increase emissions regionally or locally during the period covered by the applicable plan so as to delay attainment or any plan-required interim emission reduction or interfere with maintenance of the CO standards, and

(3) That the plan/program does not cause or contribute to a violation of the CO NAAQS anywhere within the nonattainment area during the period covered by the applicable plan.

The first finding is premised on the fact that many TCMs are funded and implemented through the transportation planning process. Without assurances that TCMs are being planned and programmed as scheduled in the applicable plan and that other transportation activities support these TCMs, timely and effective implementation of TCMs would be difficult to achieve. The U.S. Department of Transportation (U.S. DOT) has long considered timely programming and implementation of TCMs in transportation plans and program as evidence of conformity (see 23 CFR 770.9). Requiring this finding is also consistent with EPA's 1980 ANPRM and both the House and Senate proposed revisions to section 176(c).

The second finding is derived from the primary purpose of a implementation plan: reducing emissions sufficiently to demonstrate expeditious attainment and long-term maintenance of the NAAQS. Where a transportation plan/program results in emissions above the levels expected in the implementation plan, the plan/program is in direct conflict with the implementation plan and cannot conform. For CO, both local and regional emission levels are important to demonstrating attainment and maintenance; therefore, the MPOs' need to show as part of the conformity findings that emission levels resulting from implementation of the plan/program will not increase emissions during the period covered by the applicable plan, either regional or locally, above the levels predicted in the applicable plan. Requiring this finding is consistent with EPA's 1980 ANPRM and the definition of conformity in both proposed revisions to the CAA.

The final finding is derived from the primary goal of an implementation plan: the protection of public health by eliminating violations of the NAAQS. Again, where a transportation plan/program causes or contributes to violations of the NAAQS, the plan/program is in direct conflict with the implementation plan and cannot conform. For the purpose of this finding, "cause" means resulting in an exceedance of the CO NAAQS in an area which previously did not have ambient CO concentrations above the standard and "contribute" means resulting in measurably higher average 8-hour ambient CO concentrations over the NAAQS or an increased number of hours with ambient concentrations over the NAAQS in an area which currently experiences CO levels above the standard. Requiring this finding is again consistent with EPA's 1980 ANPRM and the definition of conformity in both proposed revisions to the CAA.

This last finding would require the showing that the plan or program does not cause or contribute to a violation anywhere within the nonattainment area. "Anywhere within the nonattainment area" is especially important with carbon monoxide because transportation projects can cause or contribute to CO violations on a local scale even as they improve CO emission levels and ambient concentrations on a regional scale.

Under section 176(c), MPOs are prohibited from approving plans, programs, or projects which do not conform to an implementation plan approved or promulgated under CAA section 110. Where an MPO could not make each of the findings under these proposed conformity procedures, it could not approve a plan, program, or project until it was modified so as to conform. Modifications could include elimination of the projects that cause the non-conformance, modifications to such projects, modifications to other projects in the TIP sufficient to offset emissions or ambient concentration increases from projects causing the non-conformance, or expeditious implementation of sufficient additional control measures to eliminate excess emissions or reduce ambient concentrations to the levels anticipated in the applicable implementation plan.

3. Plan/Program Amendments

As with all plans, transportation plans and programs are subject to changes as new or better information becomes available. The proposed conformity procedures would require that the MPO ensure, before approving any plan/program amendment, that the amendment would not substantially change the previously documented information and would not change the findings made with respect to the original plan/program.

4. Transportation Projects

The proposed procedures for project-level conformity review would apply only when: a project is not in a conforming TIP, the project's design or scope has changed from that described in the TIP; or the project descriptions at the RTP or TIP level are inadequate to determine emissions or ambient concentrations. Experience with the Southern California Association of Governments' conformity procedures has shown that project descriptions in the TIP are sometimes inadequate to determine the design and scope of a project; therefore, the Arizona MPOs are encouraged to provide more detailed descriptions of projects in their TIPs so that the conformity finding on the plan/program would be sufficient for the project.

The proposed regulation would exempt certain specific types of projects from project-level conformity review even if they are not in a conforming TIP. Exempt projects include projects outside the nonattainment area, TCMs, and specific safety projects.

Like the procedures outlined previously for plans/programs, the proposed regulation would require that the MPO document certain information on the project and make certain findings about the project. The proposed documentaion and findings are identical to those required for plans/programs except now focused on the impact of the individual project.

C. The Impact of the Proposed Regulation on MPOs

These proposed procedures would not place a new requirement on the MPOs in Arizona. The Clean Air Act and existing U.S. DOT regulations have long required MPOs to certify conformity of their plans and programs. The purpose of this proposed regulation is to provide the explicit procedures and specific findings necessary for making a conformity determination with an applicable implementation plan as required by EPA's 1982 SIP guidance and the Ninth Circuit opinion in *Delaney*.

Both PAG and MAG currently make conformity findings on their TIPs. As part of its 1990-94 TIP, PAG calculated the emission impact of each of the TIP projects. In its TIP, MAG identified and listed each project that implements a SIP TCM. In addition, both MPOs perform air quality analyses of their regional transportation plans. For example, as part of the system analysis for the 1990 Freeway/Expressway Plan Update, MAG undertook an extensive air quality analysis of the eight transportation planning alternatives under consideration.

EPA recognizes that the proposed procedures would require more

[10] Although EPA's proposed regulation only applies to MPO's approval of transportation plans, programs, and projects, this does not remove the requirement in CAA section 176(c) that federal departments, agencies, and instrumentalities must determine conformity of their actions or that MPOs must determine the conformity of any non-transportation project that they may approve.

The purpose of identify federal activities in the SIP is to ease the making of conformity determinations by the appropriate federal agency. The identification of a project below does not subject the project to any funding or approval sanctions.

1. List of Federal Activities for Pima County

less than $100 million annually, will cause no major price increases, and should not have a significant adverse effect on competition, productivity, or investment. Accordingly, no regulatory impact analysis is necessary. However, the Agency has prepared a draft technical support document (TSD) that contains additional technical information supporting the FIP proposal

substantial number of small entities. I certify that this proposed regulation will not have such an effect for three primary reasons. First, many of the entities affected by the proposed rule are not "small." Refiners, large distributors, and service stations owned by major oil companies or large independent companies (accounting for about 25

relating to this proposal have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA and a copy may be obtained from the Information Policy Branch (PM-223); U.S. Environmental Protection Agency;

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transportation plans. For example, as part of the system analysis for the 1990 Freeway/Expressway Plan Update, MAG undertook an extensive air quality analysis of the eight transportation planning alternatives under consideration.

EPA recognizes that the proposed procedures would require more extensive analysis than that which the MPOs currently perform. This year, EPA Region 9 is earmarking funds in the CAA section 105 grant program for local and state transportation/air quality planning including the development of conformity procedures. While MAG and PAG are not direct grantee agencies under the section 105 program, they are eligible to receive EPA funds passed through their local air pollution control agencies or ADEQ. On request, EPA Region 9 will consider changes to the program objective for transportation/air quality planning to provide additional funds to assist the MPOs in carrying out this proposed regulation. This funding, however, is not intended to replace current funding sources used by the MPOs to do air quality analyses on TIPs, transportation plans, or projects. In order to determine the appropriate level of additional funding, EPA requests comments from both PAG and MAG on the resources needed by them to undertake these procedures.

D. Identification of Federal Facilities

Neither the 1987 Pima plan nor the 1987 MAG plan explicitly identified potential federal activities or the emissions associated with them as EPA's 1982 SIP guidance required. To fill this gap, EPA has attempted to identify potential future federal activities in the Maricopa and Pima area during the ten-year period covered by the FIP. Because of time constraints, EPA can only identify potential federal activities in this proposal. The final notice will, to the extent feasible, quantify the emissions associated with these activities.

Information on future federal activities is difficult to attain because few agencies maintain readily available county-level summaries of their activities and none had developed long-range plans (beyond 1995) for their activities in the two counties. The most extensive federal activity identified in both Pima and Maricopa Counties is the approval and funding of transportaion projects (including highway, transit, and aviation projects) by the U.S. Department of Transportation. Many of the federal activities identified are minor and will have little to no impact on CO levels.

The purpose of identify federal activities in the SIP is to ease the making of conformity determinations by the appropriate federal agency. The identification of a project below does not subject the project to any funding or approval sanctions.

1. List of Federal Activities for Pima County

Federal agency	Federal activity
Dept. of Agriculture Forest Service.	Construction of trailhead parking area and Abbey Road cut-off well in Coronado National Forest (planned, no date scheduled)
Dept. of Transportation.	Repairs/improvements of existing highways/arterials (24 projects, FY 90/94)
	Construction of new highways/arterials (17 projects, FY 90/94)
	Repairs/improvements of existing transit facilities (2 projects, FY 90/94)
	Construction of new transit facilities (5 projects, FY 90/94)
	Repairs/improvements of existing airports (8 projects, FY 90/94)
	Construction of new airport facilities (6 projects, FY 90/94)
	Land Acquisition (3 projects, FY 90/94)

2. List of Federal Activities for Maricopa County

Federal agency	Federal activity
Dept. of Defense Army Corp of Engineers.	Construction of AZ Canal Diversion Channel (current)
Armed Forces	Rebuilding for Fort Wachuka in Sierra Vista (Planned, 1991)
Dept. of Housing and Urban Development.	Construction of an elderly nursing home in Phoenix (current)
Dept. of Interior Bureau of Reclamation.	Construction of a canal from Lake Havasu to Tucson and Phoenix; repairs to three dams: Coolidge, Waddell, and Roosevelt (current)
Dept. of Transportation.	Repairs/improvements of existing highways/arterials (152 projects, FY 90/94)
	Repairs/improvements of existing transit facilities (407 projects, FY 90/94)
	Construction of new transit facilities (4 projects, FY 90/94)
	Repairs/improvements of existing airports (19 projects, FY 90/94)
	Land Acquisition (7 projects, FY 90/94)
EPA	Construction of a new wastewater treatment plant and expansion of four existing plants (current)

VI. Delegation or Substitution of FIP Measures

The Administrator of the Environmental Protection Agency has the authority to delegate implementation and enforcement of a FIP measure to a State agency, to a regional agency in Arizona or to a local government within its jurisdictional boundaries. Prior to any delegation, the Administrator would have to determine that the agency or jurisdiction requesting the delegation has legal authority to implement and enforce the measures and has committed the necessary staffing and resources to implement and enforce them. EPA would encourage agencies who meet these criteria to apply for delegation.

Following promulgation of the FIP for Maricopa and Pima Counties, the State of Arizona may wish to submit to EPA procedures and/or regulations to substitute for part or all of the federal plan. Such procedures and/or regulations would need to comply with all applicable CAA requirements and EPA guidance but would not need to follow the implementation and enforcement schemes proposed today by EPA. The State would also need to show that any regulation(s) intended to replace a federal measure would achieve, in total, at least the equivalent emission reductions on the same or faster schedule than the FIP measure.

There are at least two reasons why the State of Arizona may wish to submit an implemntation plan which fully complies with all CAA requirements and EPA guidance beyond the desire to remove the onerousness of a federal plan. One reason is that the pending disapproval of the Pima and Maricopa portions of the Arizona CO SIP will automatically trigger the construction ban in CAA section 110(a)(2)(I) on major new sources or major modifications of sources of CO. This construction ban can only be lifted when EPA approves a state-submitted implementation plan that meets the applicable requirements of Part D of the CAA. The other reason is that, under the language of the Clean Air Act, as long as Arizona fails to submit an approvable SIP or fails to make reasonable efforts to submit an approvable SIP, the nonattainment areas remain potentially subject to other sanctions under the CAA, including highway fund restrictions under section 176(a) and wastewater treatment grant restrictions under section 316(b).

Arizona State and local officials have already stated in meetings with EPA that they wish to correct the deficiencies in the SIP noted by the Ninth Circuit. Arizona State and local agencies including ADEQ, PAG, and MAG have been helpful in providing information needed by EPA to prepare this proposal. EPA will continue to work with these agencies in finalizing this proposal and in developing corrective SIPs.

VII. Administrative Designation and Regulatory Analysis

The Administrator has determined that this proposal does not constitute a major proposed regulation, as defined in section 1(b) of Executive Order 12291. Specifically, the proposed rules will cost less than $100 million annually, will cause no major price increases, and should not have a significant adverse effect on competition, productivity, or investment. Accordingly, no regulatory impact analysis is necessary. However, the Agency has prepared a draft technical support document (TSD) that contains additional technical information supporting the FIP proposal as described in today's **Federal Register**.

The draft TSD has been placed in the public docket and is available for review in Maricopa and Pima Counties at the locations referenced in the beginning of today's notice. In addition, interested parties may obtain single copies from the public contact listed at the beginning of this notice.

This proposed regulation also was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 1291. Any written comments from OMB and EPA response to those comments have been placed in the public docket for this rulemaking.

VIII. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify that regulations do not have a significant impact on a substantial number of small entities. I certify that this proposed regulation will not have such an effect for three primary reasons. First, many of the entities affected by the proposed rule are not "small." Refiners, large distributors, and service stations owned by major oil companies or large independent companies (accounting for about 25 percent of public refueling facilities) do not constitute small entities. Second, the geographic scope of the proposed regulations as they may affect small entities is limited to a portion of Maricopa County, Arizona. Third, compliance with the oxygenated fuels program and RVP limit generally will not have a significant impact on a substantial number of small entities because of the limited capital investment required. Fourth, and finally, there are no significant reporting requirements for service stations under the averaging scheme of the proposed alternative fuels program and none at all for the RVP limit. Nonetheless, EPA requests comments on the economic effects of this proposed rulemaking on small businesses in the Phoenix area.

IX. Reporting and Recordkeeping Requirements

The information collection provisions relating to this proposal have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA and a copy may be obtained from the Information Policy Branch (PM–223); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460 or by calling (202) 382–2740. Comments on the ICR may be submitted to EPA at the above address and should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7462.

Dated: September 20, 1990.

William K. Reilly,

Administrator.

Appendix A—Preliminary Results of Candidate Screening

Measure	Legal auth	Res	Tech feas.	Pot cand.	Comment
1. Short-range transit improvements	?	N	Y	N	
. Long-range transit improvements	?	N	Y	N	
3. Exclusive bus lanes on arterials and freeways	?	N	?	N	
4. Park and ride lots	?	N	?	N	
5. HOV lanes on freeways	?	N	Y	N	
6. HOV lanes on arterials	?	N	?	N	
7. Freeway ramp metering with HOV bypass	?	N	Y	N	
8. Freeway surveillance, ramp metering, & signage	?	N	Y	N	State already implementing.
9. Signal synchronization	?	N	Y	N	
10. Reversible lanes on arterial	?	N	?	N	
11. One-way streets	?	N	?	N	
12. Intersection improvement	?	N	Y	N	
13. On-street parking restrictions	?	N	?	N	
14. Bus pullouts in curbs	?	N	N	N	
15. Bicycle travel and support facilities	?	N	Y	N	
16. Pedestrian pathways and support facilities	?	N	Y	N	
17. Auto free zones	?	N	?	N	
18. Toll roads	?	N	?	N	
19. Measures to reduce idling at drive-up facilities	Y	?	N	N	
20. Mitigation of freeway construction impacts	Y	Y	N	N	Legal authority for federally-funded facilities only.
21. Expanded regional ridesharing program	Y	N	Y	N	See Note 1.
22. Voluntary no-drive-day programs (VNND)	Y	N	Y	N	See Note 1.
23. Areawide public awareness programs	Y	N	Y	N	Program incorporated into VNDD program.
24. More stringent travel reduction program (TRP)	Y	Y	Y	Y	
25. Financial incentives to employees in lieu of parking spaces	Y	Y	Y	Y	Imp. as part of TRP.
26. Preferential parking for car/vanpools	Y	Y	Y	Y	Imp. as part of TRP.
27. Free transit passes to employees	Y	Y	Y	Y	Imp. as part of TRP.
28. Alternative workhours/weeks	Y	Y	Y	Y	Imp. as part of TRP.
29. Telecommuting	Y	Y	Y	Y	Imp. as part of TRP.
30. Teleconferencing	Y	Y	Y	Y	Imp. as part of TRP.
31. Encourage bicycle usage	Y	Y	Y	Y	Imp. as part of TRP.
32. Encourage pedestrian travel	Y	Y	Y	Y	Imp. as part of TRP.
33. Parking fees	N	n/a	Y	N	Prohibited by CAA 110(c)(2)(B).
34. Winter daylight savings time	N	n/a	Y	N	Regulated by DOT.

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Measure	Legal auth	Res	Tech feas.	Pot cand.	Comment
35. Evaluation and mitigation of air quality impacts on new development (indirect source review)					
—general development	?	N	Y	N	Prohibited by CAA (110(a)(5)(A).
—federal facilities	Y	?	N	N	Negligible reductions.
36. Land use patterns which support transit	N	?	Y	N	
37. Relocation of major traffic generators from highly congested areas	?	Y	?	N	Severe economic impacts for effected sources.
38. Mandatory no-drive-day programs	Y	N	Y	N	
39. Truck restrictions during peak periods (arterial and/or freeway)	Y/?	N	Y	N	
40. Increased enforcement of traffic, parking, and air pollution regulations	Y/N	Y	N	N	Note 2.
41. Increased gasoline tax	?	N	Y	N	
42. Increased vehicle registration fees	?	N	Y	N	
43. Wintertime RVP limit	Y	Y	Y	Y	
44. Higher average gasoline oxygen level	Y	Y	Y	Y	
45. Expension of the oxygenated fuels program county-wide	Y	Y	N	N	Effectively occurs already, additional red unlikely.
46. Expension of the oxygenated fuels program statewide	Y	?	N	N	
47. Elimination I/M waivers	Y	Y	Y	Y	Note 3.
48. Expension of the I/M program statewide	Y	N	Y	N	
49. Expension of the I/M program county-wide	Y	Y	Y	Y	Note 3.
50 Increased stringency of the I/M program	Y	Y	Y	Y	Note 3.
51. Composite in-use emission standard	N	Y	Y	N	Note 4.
52. Conversion of vehicle fleets to alternative fuels	Y	Y	Y	Y	
53. Conversion of buses to alternative fuels/electricity	Y	Y	N	N	Duplicate state program, additional red. unlikely.
54. Retrofit of pre-1975 vehicles with catalytic converters	Y	Y	Y	Y	
55. Purchase and removal of pre-1980 vehicles	Y	N	Y	N	

Y = Yes N = No n/a = not applicable ? = unclear

Note 1. Implementation would be by granting additional funds to the existing State programs. Given the low level of funding available to EPA for these measures, the marginal increase in effectiveness of these programs would be negligible.

Note 2. EPA has no legal authority to enforce local measures, such as traffic and parking regulations, which are not in the SIP. Most CO air pollution regulations are considered as separate items on this list.

Note 3. EPA can prohibit the State from registering certain vehicles which do not pass the I/M program.

Note 4. EPA would only have legal authority for this measure if it promulgated and implemented the similar measure which it proposed for the South Coast (Los Angeles) Air Basin, 55 FR 36458 (September 5, 1990).

For the reasons set forth in the preamble, subpart D, part 52, Subchapter C, Chapter I of Title 40, Code of Federal Regulations, is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart D—Arizona

2. New §§ 52.136, 52.137, and 52.138 are proposed to be added to read as follows:

§ 52.136 Oxygenated fuels program.

(a) *Regulatory standard.* No person shall first introduce into commerce within the Maricopa CO nonattainment area ("control area") during the period October 1, 1991, to March 31, 1992, and each period of October 1 to March 31 thereafter ("control period") gasoline whose oxygen content is less that 2.7% (by weight), as determined pursuant to paragraphs (b) and (c) of this section.

(b) *Sampling, testing, and oxygen content calculations.* (1) For the purpose of determining compliance with the standards listed in paragraphs (a) and (h) of this section, the oxygen content of gasoline shall be determined by:

(i) Use of one of the sampling methodologies specified in Appendix A of this subpart to obtain a representative sample of the gasoline to be tested;

(ii) Use of the testing methodologies specified in Appendix B of this subpart to determine the mass concentration of each oxygenate in the gasoline sampled; and

(iii) Calculation of the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen mass concentration of the oxygenate set forth in paragraph (b)(2) of this section.

(2) For purposes of this section, the oxygen mass concentrations of oxygenates are the following:

Oxygenate	Oxygen mass
Methanol	0.4993
Ethanol	.3473
Propanols	.2662
Butanols	.2158
Pentanols	.1815
Methyl Tertiary-Butyl Ether (MTBE)	.1815
Hexanols	.1566
Tertiary Amyl Methyl Ether (TAME)	.1566
Ethyl Tertiary-Butyl Ether	.1569

(3) *Examples*—(i) *Example 1.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A of this subpart and tested by use of the test methodologies set forth in Appendix B of this subpart. The gas chromatograph analysis indicates that the gasoline sampled contains an ethanol mass concentration of 9.85% (0.0985). The oxygen contents of the gasoline sampled is calculated as follows:

Oxygen Content—
= (Ethanol Mass concentration in Gasoline Sample) × (Oxygen Mass Concentration of Ethanol)
= (0.0985) × (0.3473)
= 0.0342
= 3.42%

(ii) *Example 2.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A of this subpart and tested by use of the methodologies set forth in Appendix B of this subpart. The gas chromatograph analysis indicates that the gasoline sampled contains a methanol mass concentration of 4.50% (0.0450) and an ethanol mass concentration of 2.25% (0.0225). The oxygen content of the gasoline sample is calculated as follows:
Oxygen Content—
= (Methanol Mass concentration in Gasoline Sample) × (Oxygen Mass Concentration of Methanol) + (Ethanol Mass Concentration in Gasoline Sample) × (Oxygen Mass Concentration of Ethanol)
= (0.0450) × (0.4993) + (0.0225) × (0.3473)
= 0.0225 + 0.0078
= 0.0303
= 3.03%

(c) *Alternative Compliance Options.* (1) Each person subject to the standard specified in paragraph (a) of this section shall comply with such standard by means of the method set forth in either paragraph (c)(2) or (c)(3) of this section. Such person shall select the method he will use to determine compliance by means of the registration statement submitted pursuant to paragraph (d) of this section. A person subject to such standard who fails to submit a timely and complete registration statement as required by paragraph (d) of this section shall be deemed to have selected the compliance method set forth in paragraph (c)(2) of this section.

(2) As one alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during the control period shall have an oxygen content of at least 2.7% (by weight), as determined by calculating the oxygen content of each discrete quantity of such gasoline according to the procedures set forth in paragraph (b) of this section.

(3)(i) As the second alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during each calendar month of the control period shall have an average oxygen content of at least 2.7% (by weight).

(ii) The average oxygen content of gasoline first introduced into commerce by a person during a calendar month shall be calculated as follows:

(A) The oxygen content of each discrete quantity of gasoline in the possession of such person at the beginning of the calendar month shall be calculated according to the procedures set forth in paragraph (b) of this section.

(B) The oxygen content of each discrete quantity of gasoline in the possession of such person shall also be calculated according to the procedures set forth in paragraph (b) of this section each time during the calendar month that there is a change in its quantity and/or its characteristics that would tend to affect its oxygen content. Such changes shall include, but not be limited to, the addition of any quantity of gasoline or of any quantity of an oxygenate to gasoline in the possession of such person.

(C) The number of gallons of gasoline first introduced into commerce within the control area during the calendar month at each oxygen content level determined according to paragraph (c)(3)(ii)(A) or (B) of this section shall be multiplied by such content to determine the total oxygen content of each such quantity of gasoline.

(D) The total oxygen content of all gasoline first introduced into commerce within the control area during the calendar month shall be determined by adding together the total oxygen content amounts determined in paragraph (c)(3)(ii)(C) of this section.

(E) The total oxygen content determined in paragraph (c)(3)(ii)(D) of this section be added to any oxygen credits lawfully transferred to such person pursuant to paragraph (c)(3)(iii) of this section.

(F) The total oxygen content determined in paragraph (c)(3)(ii)(E) of this section shall be divided by the total number of gallons of gasoline first introduced into commerce within the control area during the calendar month, resulting in the average oxygen content of such gasoline.

(iii) A person subject to the standard specified in paragraph (a) of this section who elects to demonstrate compliance under paragraph (c)(3) of this section may create oxygen credits, and may transfer such credits to another person for use in demonstrating compliance under this paragraph, in accordance with the following requirements:

(A) The amount of oxygen credits created by a person shall be equal to the difference between:

(*1*) The total oxygen content of all gasoline first introduced into commerce within the control area during the calendar month by such person, as determined according to paragraph (c)(3)(ii) (A) through (D) of this section; and

(*2*) The total oxygen content required by paragraph (a) of this section, determined by multiplying the number of gallons of such gasoline by 0.027.

(B) No transfer or use of oxygen credits shall be made by any person later than the final day of the calendar month in which such credits are created.

(d) *Registration* [Reserved]

(e) *Labeling.* (1) Each gasoline pump stand from which gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility in the control area shall be affixed during the control period with a legible and conspicuous label which states the type(s) of oxygenate contained in such gasoline. If the gasoline being dispensed from a pump stand does not contain any oxygenate, the pump stand shall be so labeled.

(2) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies the shipment of gasoline within the control area during the control period shall contain a legible and conspicuous statement which states the type(s) of oxygenate contained in such gasoline and the oxygen content of such gasoline (percentage by weight). If the gasoline being shipped does not contain any oxygenate, the document accompanying the shipment shall be so labeled. Such documents shall be retained by distributors, resellers, carriers, retailers and wholesale purchaser-consumers for at least two years, and shall be available for inspection by the Administrator or his authorized representative during such period.

(f) *Reporting and Recordkeeping* [Reserved].

(g) *Prohibited Acts* [Reserved].

(h) *Definitions* [Reserved].

Appendix A to § 52.136—Sampling Procedures

EPA's sampling procedures are detailed in Appendix D of 40 CFR part 80.

Appendix B to § 52.136—Testing Procedures

Method—ASTM Standard Test Method for Determination of C_1 to C_4 Alcohols and MTBE in Gasoline by Gas Chromatography

1. Scope

1.1 This test method covers a procedure for determination of methanol, ethanol, isopropanol, n-propanol, isobutanol, sec-butanol, tert-butanol, n-butanol, and methy tertiary butyl ether (MTBE) in gasoline by gas chromatography.

1.2 Individual alcohols and MTBE are determined from 1.0 to 10 volume %.

1.3 SI (metric) units of measurement are preferred and used throughout this standard. Alternative units, in common usage, are also provided to improve the clarity and aid the user of this test method.

1.4 This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability or regulatory limitations prior to use.

2. Referenced Documents

2.1 ASTM Standards:

D4057 Practice for Manual Sampling of Petroleum and Petroleum Product
D4307 Practice for Preparation of Liquid Blends for Use as Analytical Standards
D4626 Practice for Calculation of Gas Chromatographic Response Factors
E260 Practice for Packed Column Gas Chromatographic Procedures

E355 Practice for Gas Chromatography Terms and Relationships

3. Descriptions of Terms Specific to This Standard

3.1 MTBE—methyl tertiary butyl ether.

3.2 Low Volume Connector—a special union for connecting two lengths of tubing 1.6 mm inside diameter and smaller. Sometimes this is referred to as a zero dead volume union.

3.3 TCEP-1,2,3,-tris-2-cyanoethoxypropane—a gas chromatographic liquid phase.

4. Summary of Test Method

4.1 An internal standard, tertiary amyl alcohol, is added to the sample which is then introduced into a gas chromatograph equipped with two columns and a column switching valve. The sample first passes onto a polar TCEP column which elutes lighter

and the concentration of each component is calculated with reference to the internal standard.

5. Significance and Use

5.1 Alcohols and other oxygenates may be added to gasoline to increase the octane number. Type and concentration of various oxygenates are specified and regulated to ensure acceptable commercial gasoline quality. Drivability, vapor pressure, phase separation, and evaporative emissions are

7.2 Standards for Calibration and Identification—Standards of all components to be analyzed and the internal standard are required for establishing identification by retention time as well as calibration for quantitative measurements. These materials shall be of known purity and free of the other components to be analyzed.

Note 1: Warning—These materials are flammable and may be harmful or fatal if

10. Sampling

10.1 Gasoline samples to be analyzed by this test method shall be sampled using procedures outlined in Practice D 4057.

11. Preparation of Apparatus and Establishment of Conditions

11.1 Assembly—Connect the WCOT column to the valve system using low volume connectors and narrow bore tubing. It is

eluted in the C_4 alcohol section of the chromatogram. When the valve BACKFLUSH is switched too late, part of or all of the MTBE component is vented resulting in an incorrect MTBE measurement.

12. Calibration and Standardization

12.1 Identification—Determine the retention time of each component by injecting small amounts either separately or in

E355 Practice for Gas Chromatography Terms and Relationships

3. Descriptions of Terms Specific to This Standard

3.1 MTBE—methyl tertiary butyl ether.

3.2 Low Volume Connector—a special union for connecting two lengths of tubing 1.6 mm inside diameter and smaller. Sometimes this is referred to as a zero dead volume union.

3.3 Oxygenates—used to designate fuel blending components containing oxygen, either in the form of alcohol or ether.

3.4 Split Ratio—a term used in gas chromatography using capillary columns. The split ratio is the ratio of the total flow of the carrier gas to the sample inlet versus the flow of carrier gas to the capillary column. Typical values range from 10:1 to 500:1 depending upon the amount of sample injected and the type of capillary column used.

3.5 WCOT—abbreviation for a type of capillary column used in gas chromatography that is wall-coated open tubular.

This type of column is prepared by coating the inside of the capillary with a thin film of stationary phase.

3.6 TCEP-1,2,3,-tris-2-cyanoethoxypropane—a gas chromatographic liquid phase.

4. Summary of Test Method

4.1 An internal standard, tertiary amyl alcohol, is added to the sample which is then introduced into a gas chromatograph equipped with two columns and a column switching valve. The sample first passes onto a polar TCEP column which elutes lighter hydrocarbons to vent and retains the oxygenated and heavier hydrocarbons. After methylcyclopentane, but before MTBE elutes from the polar column, the valve is switched to backflush the oxygenates onto a WCOT non-polar column. The alcohols and MTBE elute from the non-polar column in boiling point order, before elution of any major hydrocarbon constituents. After benzene elutes from the non-polar column, the column switching valve is switched back to its original position to backflush the heavy hydrocarbons. The eluted components are detected by a flame ionization or thermal conductivity detector. The detector response, proportional to the component concentration, is recorded; the peak areas are measured; and the concentration of each component is calculated with reference to the internal standard.

5. Significance and Use

5.1 Alcohols and other oxygenates may be added to gasoline to increase the octane number. Type and concentration of various oxygenates are specified and regulated to ensure acceptable commercial gasoline quality. Drivability, vapor pressure, phase separation, and evaporative emissions are some of the concerns associated with oxygenated fuels.

5.2 This test method is applicable to both quality control in the production of gasoline and for the determination of deliberate or extraneous oxygenate additions or contamination.

6. Apparatus

6.1 Chromatograph:

6.1.1 A gas chromatographic instrument which can be operated at the conditions given in Table 1, and has a column switching and backflushing system. Carrier gas flow controllers shall be capable of precise control where the required flow rates are low (Table 1).

TABLE 1—CHROMATOGRAPHIC OPERATING CONDITIONS

Temperatures	Flows, mL/min	Other parameters carrier gas helium
Column Oven, °C 80	To injector 75	Sample size, µL 3.
Injector, °C 200	Column 5	Split ratio, 15:1.
Detector-TCD, °C 200	Auxiliary 3	Backflush, min 0.2–0.3.
—FID, °C 250	Makeup 18	Valve reset time, 8–10 min.
Valve, °C 80		Total analysis time, 18–20 min.

Pressure control devices and gages shall be capable of precise control for the typical pressures required.

6.1.2 Detector—A thermal conductivity detector or flame ionization detector, may be used. The system shall have sufficient sensitivity and stability to obtain a recorder deflection of at least 2 mm at a signal-to-noise ratio of at least 5 to 1 for 0.005 volume % concentration of an oxygenate.

6.1.3 Switching and Backflushing Valve—A valve, to be located within the gas chromatographic column oven, capable of performing the functions described in section 11.0 and illustrated in Fig. 1. The valve shall be of low volume design and not contribute significantly to chromatographic deterioration.

6.1.3.1 Valco Model No. CM–VSV–10–HT, 1.6-mm (1/16-in.) fittings. This particular valve was used in the majority of the analyses used for the development of Section 15.

6.1.3.2 Valco Model No. C10W, 0.8-mm (1/32-in.) fittings. This valve is recommended for use with columns of 0.32-mm inside diameter and smaller.

6.1.4 Although not mandatory, an automatic valve switching device is strongly recommended to ensure repeatable switching times. Such a device should be synchronized with injection and data collection times. If no such device is available, a stopwatch, started at the time of injection, should be used to indicate the proper valve switching time.

6.1.5 Injection System—The chromatograph should be equipped with a splitting-type inlet device. Split injection is necessary to maintain the actual chromatographed sample size within the limits of column and detector optimum efficiency and linearity.

6.1.6 Sample Introduction—Any system capable of introducing a representative sample into the split inlet device. Microlitre syringes, automatic syringe injectors, and liquid sampling valves have been used successfully.

6.2 Data Presentation or Calculation, or Both:

6.2.1 Recorder—A recording potentiometer or equivalent with a full-scale deflection of 5 mV or less. Full-scale response time should be 1 s or less with sufficient sensitivity and stability to meet the requirements of 6.1.2.

6.2.2 Integrator or Computer—Devices capable of meeting the requirements of 6.1.2, and providing graphic and digital presentation of the chromatographic data are recommended for use. Means shall be provided for determining the detector response. Peak heights or areas can be measured by computer, electronic integration or manual techniques.

6.3 Columns, two as follows:

6.3.1. Polar column—This column performs a preseperation of the oxygenates from volatile hydrocarbons in the same boiling point range. The oxygenates and remaining hydrocarbons are backflushed onto the non-polar column in section 6.3.2. Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.1.1 can be used. The column shall perform at the same temperatures as required for the column in 6.3.2.

6.3.1.1 TCEP Micro-Packed Column, 500 mm (22 in.) by 1.6-mm (1/16-in.) outside diameter by 0.38-mm (0.015-in.) inside diameter stainless steel tube packed with 0.14 to 0.15 g of 20% (mass/mass) TCEP on 80/100 mesh Chromosorb P(AW). This column was used in the cooperative study to provide the Precision and Bias data referred to in Section 15.

6.3.2 Non-polar (Analytical) Column—Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.2.1 can be used.

6.3.2.1 WCOT Methyl Silicone Column, 30m (1181 in.) long by 0.53 mm (0.021-in.) inside diameter fused silica WCOT column with a 2.6 um film thickness of cross-linked methyl siloxane. This column was used, in the cooperative study to provide the Precision and Bias data referred to in Section 15.

7. Reagents and Materials

7.1 Carrier Gas—Carrier gas appropriate to the type of detector used. Helium has been used successfully. The minimum purity of the carrier gas used must be 99.95 mol %.

7.2 Standards for Calibration and Identification—Standards of all components to be analyzed and the internal standard are required for establishing identification by retention time as well as calibration for quantitative measurements. These materials shall be of known purity and free of the other components to be analyzed.

Note 1: Warning—These materials are flammable and may be harmful or fatal if ingested or inhaled.

7.3 Preparation of Calibration Blends—For best results, these components must be added to a stock gasoline or petroleum naphtha, free of oxygenates (Warning—See Note 2). Refer to Test Method D 4307 for preparation of liquid blends. The preparation of several different blends, at different concentration levels covering the scope of the method, is recommended. These will be used to establish the linearity of the component response.

Note 2: Warning—Extremely flammable. Vapors harmful if inhaled.

7.4 Methylene Chloride—Used for column preparation. Reagent grade, free of non-volatile residue.

Note 3: Warning—Harmful if inhaled. High concentrations may cause unconsciousness or death.

8. Preparation of Column Packings

8.1 TCEP Column Packing:

8.1.1 Any satisfactory method, used in the practice of the art that will produce a column capable of retaining the C_1 to C_4 alcohols and MTBE from components of the same boiling point range in a gasoline sample. The following procedure has been used successfully.

8.1.2 Completely dissolve 10 g of TCEP in 100 mL of methylene chloride. Next add 40 g of 80/100 mesh Chromosorb P(AW) to the TCEP solution. Quickly transfer this mixture to a drying dish, in a fume hood, without scraping any of the residual packing from the sides of the container. Constantly, but gently, stir the packing until all of the solvent has evaporated. This column packing can be used immediately to prepare the TCEP column.

9. Preparation of Micro-packed TCEP Column

9.1 Wash a straight 500 mm length of 1.6-mm outside diameter (0.38-mm inside diameter) stainless steel tubing with methanol and dry with compressed nitrogen.

9.2 Insert 6 to 12 strands of silvered wire a small mesh screen or stainless steel frit inside one end of the tube. Slowly add 0.14 to 0.15 g of packing material to the column and gently vibrate to settle the packing inside the column. When strands of wire are used to retain packing material inside the column, leave 6.0 mm (0.25 in.) of space at the top of the column.

9.3 Column Conditioning—Both the TCEP and WCOT columns are to be briefly conditioned before use. Connect the columns to the valve (see 11.1) in the chromatographic oven. Adjust the carrier gas flows as in 11.3 and place the valve in the RESET position. After several minutes, increase the column oven temperature to 120 °C and maintain these conditions for 5 to 10 min. Cool the columns below 80 °C before shutting off the carrier flow.

10. Sampling

10.1 Gasoline samples to be analyzed by this test method shall be sampled using procedures outlined in Practice D 4057.

11. Preparation of Apparatus and Establishment of Conditions

11.1 Assembly—Connect the WCOT column to the valve system using low volume connectors and narrow bore tubing. It is important to minimize the volume of the chromatographic system that comes in contact with the sample, otherwise peak broadening will occur.

11.2 Adjust the operating conditions to those listed in Table 1, but do not turn on the detector circuits. Check the system for leaks before proceeding further.

11.3 Flow Rate Adjustment:

11.3.1 Attach a flow measuring device to the column vent with the valve in the RESET position and the pressure to the injection port to give 5.0 mL/min flow (14 psig). Soap bubble flow meters are suitable.

11.3.2 Attach a flow measuring device to the split injector vent and adjust the flow from the split vent using the A flow controller to give a flow of 70 mL/min. Recheck the column vent flow set in 11.3.1 and adjust if necessary.

11.3.3 Switch the valve to the BACKFLUSH position and adjust the variable restrictor to give the same column vent flow set in 11.3.1 This is necessary to minimize flow changes when the valve is switched.

11.3.4 Switch the valve to the inject position RESET and adjust the B flow controller to give a flow of 3.0 to 3.2 mL/min at the detector exit. When required for the particular instrumentation used, add makeup flow or TCD switching flow to give a total of 21 mL/min at the detector exit.

11.4 When a thermal conductivity detector is used, turn on the filament current and allow the detector to equilibrate. When a flame ionization detector is used, set the hydrogen and air flows and ignite the flame.

11.5 Determine the Time to Blackflush—The time to backflush will vary slightly for each column system and must be determined experimentally as follows. The start time of the integrator and valve timer must be synchronized with the injection to accurately reproduce the backflush time.

11.5.1 Initially assume a valve BACKFLUSH time of 0.23 min. With the valve RESET, inject 3uL of a blend containing at least 0.5% or greater oxygenates (7.3), and simultaneously begin timing the analysis. At 0.23 min, rotate the valve to the BACKFLUSH position and leave it there until the complete elution of benzene is realized. Note this time as the RESET time, which is the time at which the valve is returned to the RESET position. When all of the remaining hydrocarbons are backflushed the signal will return to a stable baseline and the system is ready for another analysis.

11.5.2 It is necessary to optimize the valve BACKFLUSH time by analyzing a standard blend containing oxygenates. The correct BACKFLUSH time is detrmined experimentally by using valve switching times between 0.2 and 0.3 min. When the valve is switched too soon, C_5 and lighter hydrocarbons are backflushed and are co-eluted in the C_4 alcohol section of the chromatogram. When the valve BACKFLUSH is switched too late, part of or all of the MTBE component is vented resulting in an incorrect MTBE measurement.

12. Calibration and Standardization

12.1 Identification—Determine the retention time of each component by injecting small amounts either separately or in known mixtures or by comparing the relative retention times with those in Table 2.

12.2 Standardization—The area under each peak in the chromatogram is considered a quantitative measure of the corresponding compound. Measure the peak area of each oxygenate and of the internal standard by either manual method or electronic integrator. Calculate the relative volume response factor of each oxygenate, relative to the internal standard, according to Test Method D 4626.

13. Procedure

13.1 Preparation of Sample—Precisely add a quantity of the internal standard to an accurately measured quantity of sample. concentrations of 1 to 5 volume % have been used successfully.

13.2 Chromatographic Analysis—Introduce a representative aliquot of the sample, containing internal standard, into the chromatograph using the same technique as used for the calibration analyses. An injection volume of 3 uL with a 15:1 split ratio has been used successfully.

13.3 Interpretation of Chromatogram—Compare the results of sample analyses to those of calibration analyses to determine identification of oygenates present.

TABLE 2—RETENTION CHARACTERISTICS FOR TCEP/WCOT COLUMN SET CONDITIONS AS IN TABLE 1

Component	Retention time, min	Relative [1]
Methanol	3.21	0.44
Ethanol	3.58	.50
Isopropanol	3.95	.56
tert-Butanol	4.31	.61
n-Propanol	4.75	.68
MTBE	5.26	.76
sec-Butanol	5.63	.82
Isobutanol	6.33	.93
n-Butanol	7.55	1.10
Benzene	7.88	1.17

[1] Relative retention time (t-Amyl Alcohol = 1.00).

14. Calculation

14.1 After identifying the various oxygenates, measure the area of each oxygenate peak and that of the internal standard. Calculate the volume percent of oxygenate as follows:

$$V_i = \frac{V_s X P A_i X 100}{P A_s X S_i X V_s}$$

where:

V_i = volume percent of oxygenate to be determined,

V_s = volume of internal standard (tert-amyl alcohol) added,
V_G = volume of gasoline sample taken,
PA_i = peak area of the oxygenate to be determined,
PA_s = peak area of the internal standard (tert-amyl alcohol), and
S_i = relative volume response factor of each component (relative to the internal standard).

14.2 Report the volume percent of each oxygenate.

15. Precision and Bias

15.1 Precision—The precision of this test method as determined by the statistical examination of the interlaboratory test results is as follows:

15.1.1 Repeatability—The difference between successive results obtained by the same operator with the same apparatus under constant operating conditions on identical test material would, in the long run, in the normal and correct operation of the test method exceed the following values only in one case in twenty (see Table 3).

Methanol 0.086 × (V+0.070).
Ethanol 0.083 × (V+0.000).
Isopropanol 0.052 × (V+0.150).
n-Propanol 0.040 × (V+0.028).
Isobutanol 0.064 × (V+0.086)
sec-Butanol 0.014 × √V
tert-Butanol 0.052 × (V 0.358)
n-Butanol 0.043 × (V + 0.020)
MTBE 0.104 × (V + 0.028)

where V is the mean volume percent.

TABLE 3—PRECISION INTERVALS—DETERMINED FROM COOPERATIVE STUDY DATA SUMMARIZED IN SECTION 15

Components	Volume (percent)							
	0.20	0.50	1.00	2.00	3.00	4.00	5.00	6.00
Repeatability								
Methanol	0.02	0.05	0.09	0.18	0.26	0.35	0.44	0.52
Ethanol	0.02	0.04	0.08	0.17	0.25	0.33	0.42	0.50
Isopropanol	0.02	0.03	0.06	0.11	0.16	0.22	0.27	0.32
n-Propanol	0.01	0.02	0.04	0.08	0.12	0.16	0.20	0.24
tert-Butanol	0.03	0.05	0.07	0.12	0.18	0.23	0.28	0.33
sec-Butanol	0.01	0.01	0.01	0.02	0.02	0.03	0.03	0.03
Isobutanol	0.02	0.04	0.07	0.13	0.20	0.26	0.33	0.39
n-Butanol	0.01	0.02	0.04	0.09	0.13	0.17	0.22	0.26
MTBE	0.02	0.05	0.11	0.21	0.31	0.42	0.52	0.63
Reproducibility								
Methanol	0.10	.021	0.39	0.75	1.11	1.47	1.83	2.19
Ethanol	0.07	0.19	0.37	0.75	1.12	1.49	1.87	2.24
Isopropanol	0.07	0.14	0.25	0.48	0.67	0.89	1.10	1.32
n-Propanol	0.04	0.09	0.17	0.33	0.49	0.66	0.82	0.98
tert-Butanol	0.10	0.16	0.25	0.43	0.60	0.78	0.96	1.14
sec-Butanol	0.12	0.20	0.28	0.39	0.48	0.55	0.62	0.68
Isobutanol	0.05	0.10	0.19	0.37	0.55	0.73	0.91	1.09
n-Butanol	0.09	0.22	0.42	0.84	1.25	1.67	2.08	2.50
MTBE	0.05	0.12	0.23	0.45	0.68	0.90	1.13	1.35

15.1.2 Reproducibility—The difference between two single and independent results obtained by different operators working in different laboratories on identical material would in the long run, exceed the following values only in one case in twenty (see Table 3).

Methanol 0.361×(V+0.070).
Ethanol 0.373×(V+0.000).
Isopropanol 0.214×(V+0.150).
n-Propanol 0.163×(V+0.028).
Isobutanol 0.179×(V+0.086)
sec-Butanol 0.277×√V
tert-Butanol 0.178×(V+0.368)
n-Butanol 0.145×(V+0.020)
MTBE 0.344×(V+0.028)

where V is the mean volume percent.

15.2 Bias—Since there is no accepted reference material suitable for determining bias for the procedure in this test method, bias cannot be determined.

For additional information please see ASTM Designation D 4815—88.

§ 52.137 Controls and prohibitions on gasoline volatility and liability for violations.

(a) *Definitions.* For the purpose of this section:

(1) *Carrier* means any distributor who transport or stores or causes the transportation or stores or storage of gasoline without taking title to or otherwise having any ownership of the gasoline, and without altering either the quality of quantity of the gasoline.

(2) *Distributor* means any person who transport or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

(3) *Ethanol blending plant* means any refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality and quantity of gasoline is not altered in any other manner.

(4) *Ethanol blender* means any person who owns, leases, controls, or supervises an ethanol blending plant.

(5) *Maricopa County nonattainment area* means the carbon monoxide nonattainment area in Maricopa County as described in 40 CFR 81.303 (i.e., the MAG urban planning area).

(6) *Refiner* means any person who owns, leases, operates, controls, or supervises a refinery.

(7) *Retailer* means any person who owns, leases, operates, controls, or supervises a retail outlet.

(8) *Reseller* means any person who purchases gasoline identified by the corporate, trade, or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumer displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased, or controlled by such refiner.

(9) *Wholesale purchaser-consumer* means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

(b) *Prohibited Activities.* During regulatory control periods no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard within Maricopa nonattainment area. As used in this section "applicable standard" means the standard listed in this paragraph for the time period in which gasoline is intended to be dispensed to motor vehicles or, if such time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is sampled. As used in this section, "regulatory control periods" mean the following period: October 1, 1991 to March 31, 1992 and each October 1 to March 31 period thereafter.

APPLICABLE STANDARDS

State	Oct.	Nov.	Dec.	Jan.	Feb.	March
Arizona—Maricopa CO. Nonattainment area	10.0	10.0	10.0	10.0	10.0	10.0

(c) *Determination of Compliance.* Compliance with the standards listed in paragraph (b) of this section shall be determined by use of one of the sampling methodologies specified in Appendix D to 40 CFR part 80 and one of the testing methodologies specified in Appendix E to 40 CFR part 80.

(d) *Liability.* Liability for violations of paragraph (b) of this section shall be determined according to the provisions of paragraphs (e) through (k) of this section.

(e) *Special provisions for alcohol blends.* (1) Any gasoline which meets the requirements of paragraph (e)(2) of this section and which is marketed in accordance with the requirements of paragraph (e)(3) of this section shall not be in violation of this section if its Reid vapor pressure does not exceed the applicable standard in paragraph (a) of this section by more than one pound per square inch.

(2) In order to qualify for the special regulatory treatment specified in paragraph (e)(1) of this section, gasoline must contain at least 9 percent ethanol (by volume). The ethanol content of gasoline shall be determined by use of one of the testing methodologies specified in Appendix F to 40 CFR part 80. The maximum ethanol content of gasoline shall not exceed any applicable waiver conditions under section 211(f)(4) of the Clean Air Act.

(3) In order to qualify for the special regulatory treatment specified in paragraph (e)(1) of this section, gasoline must be marketed in accordance with each of the following requirements:

(i) Each gasoline pump stand from which such gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility shall be affixed with a legible and conspicuous label which states that the gasoline dispensed from the pump contains ethanol and the percentage concentration of ethanol.

(ii) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies the shipment of such gasoline shall contain a legible and conspicuous statement that gasoline being shipped contains ethanol. Such documents shall be retained by distributors, resellers, carriers, retailers, and wholesale purchaser-consumers for at least one year, and shall be available for inspection by the Administrator or his authorized representative during such period.

(f) *Violations at Refineries or Importer Facilities.* Where a violation of the applicable standard set forth in paragraph (b) of this section is detected at a refinery that is not an ethanol blending plant or at an importer's facility, the refiner or importer shall be deemed in violation.

(g) *Violations at Carrier Facilities.* Where a violation of the applicable standard set forth in paragraph (b) of this section is detected at a carrier's facility, whether in a transport vehicle, in a storage facility, or elsewhere at the facility, the following parties shall be deemed in violation:

(1) The carrier, except as provided in paragraph (l)(1) of this section; and

(2) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose facility the gasoline was imported, except as provided in paragraph (l)2) of this section; and

(3) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (l)(6) of this section.

(h) *Violations at branded Distributor or Reseller Facilities, or Ethanol Blending Plants.* Where a violation of the applicable standard set forth in paragraph (l)(6) is detected at a distributor facility, a reseller facility, or an ethanol blending plant which is operating under the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor or reseller, except as provided in paragraph (l)(3) of this section; and

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(3) The refiner under whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) the distributor, reseller, or ethanol blender is operating, except as provided in paragraph (l)(4) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in (k)(6) of this section.

(i) *Violations at Unbranded Distributor Facilities or Ethanol Blending Plants.* Where a violation of the applicable standard set forth in paragraph (l)(6) is detected at a distributor facility or an ethanol blending plant not operating under a refiner's corporate, trade, or brand name, or that of any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor, except as provided in paragraph (l)(3) of this section;

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(3) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose import facility the gasoline was imported, except as provided in paragraph (l)(2) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (l)(6) of this section.

(j) *Violations at Branded Retail Outlets or Wholesale Purchaser-Consumer Facilities.* Where a violation of the applicable standard set forth in paragraph (l)(6) is detected at a retail outlet or at a wholesale purchaser-consumer facility displaying the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (l)(5) of this secion;

(2) The distributor (if any) and/or reseller (if any) except as provided in paragraph (l)(3) of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(4) The refiner whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) is displayed at the retail outlet or wholesale purchaser-consumer facility, except as provided in paragraph (l)(4) of this section; and

(5) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (l)(6) of this section.

(k) *Violations at Unbranded Retail Outlets or Wholesale Purchaser-Consumer Facilities.* Where a violation of the applicable standard set forth in paragraph (l)(6) of this section is detected at a retail outlet or at a wholesale purchaser-consumer facility not displaying the corporate, trade, or brand name of a refinery or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (l)(5) of this section;

(2) The distributor (if any), except as provided in paragraph (l)(3) of this section; of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in the paragraph (l)(6) of this section.

(l) *Defenses.* (1) In any case in which a carrier would be in violation under paragraph (g)(1) of this section, the carrier shall not be deemed in violation if he can demonstrate:

(i) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner or importer at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller, or distributor from whom the gasoline was received, which represented to the carrier that that gasoline was in compliance with the applicable standard when delivered to the carrier; and

(ii) Evidence of an oversight program conducted by the carrier, such as periodic sampling and testing of incoming gasoline, for monitoring the volatility of product stored or transported by that carrier; and

(iii) That the violation was not caused by the carrier or his employee or agent.

(2) In any case in which a refiner or importer would be in violation under paragraphs (g)(2) or (i)(3) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendices D and E to 40 CFR 80, which evidence that gasoline determined to be in violation was in compliance with the applicable standard when it was delivered to the next party in the distribution system.

(3) In any case in which a distributor or reseller would be in violation under paragraphs (h)(1), (i)(1), (j)(2), or (k)(2), of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or a carrier, reseller or distributor from whom the gasoline was received, which represented to the distributor or reseller that the gasoline was in compliance with the applicable standard when delivered to the distributor or reseller; and

(iii) Evidence of an oversight program conducted by the distributor or reseller, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the distributor or reseller sells, supplies offers for sale or supply, or transports.

(4) In any case in which a refiner would be in violation under paragraphs (h)(3) or (j)(4) of this section, the refiner shall not be deemed in violation if he can demonstrate all of the following:

(i) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendices D and E to 40 CFR 80 at the refinery at which the gasoline was produced, which evidence that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery; and

(ii) That the violation was not caused by him or his employee or agent; and

(iii) That the violation:

(A) Was caused by an act in violation of law (other than the Act or this part), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the requirements of this part occurred, or

(B) Was caused by the action of a reseller, an ethanol blender, or a retailer supplied by such reseller or ethanol blender, in violation of a contractual undertaking imposed by the refiner on such reseller or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(C) Was caused by the action of a retailer who is supplied directly by the refiner (and not by a reseller), in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(D) Was caused by the action of a distributor or an ethanol blender subject to a contract with the refiner for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(E) Was caused by a carrier or other distributor not subject to a contract with the refiner but engaged by him for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner (such as specification or inspection of equipment) to prevent such action, or

(F) Occurred at a wholesale purchaser-consumer facility: Provided, however, that if such wholesale purchaser-consumer was supplied by a reseller or ethanol blender, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller as provided in paragraph (l)(4)(iii)(B) of this section.

(iv) In paragraphs (l)(4)(iii) (A) through (E) of this section, the term "was caused" means that the refiner must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(5) In any case in which a retailer or wholesale purchaser-consumer would be in violation under paragraph (j)(1) or (k)(1) of this section, the retailer or wholesale purchaser-consumer shall not be deemed in violation if he can demonstrate that the violation was not caused by him or his employee or agent.

(6) In any case in which an ethanol blender would be in violation under paragraphs (g)(3), (h)(4), (i)(4), (j)(5) or (k)(4) of this section, the ethanol blender shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller, or distributor from whom the gasoline was received, which represented to the ethanol blender that the volatility of the gasoline when delivered to the ethanol blender was such that the addition of ethanol to the gasoline would not result in an exceedance of the applicable standard; and

(iii) Evidence of an oversight program conducted by the ethanol blender, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the ethanol blender sells, supplies, offers for sale or supply, or transports; and

(iv) That the gasoline determined to be in violation contained no more than 10 percent ethanol (by volume) when it was delivered to the next party in the distribution system. (7) In paragraphs (l)(1)(iii), (l)(2)(i), (l)(3)(i), (l)(4)(ii), (l)(5), and (l)(6)(i) of this section the respective party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that it or its employee or agent did not cause the violation.

§ 52.138 Conformity Procedures.

(a) *Purpose.* The purpose of this regulation is to provide procedures as part of the Arizona implementation plans for metropolitan transportation planning organizations (MPOs) to use when determining conformity of transportation plans, programs, and projects. Section 176(c) of the Clean Air Act (as amended in 1977) (42 U.S.C. 7506(c)) prohibits MPOs from approving any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 110.

(b) *Definitions.* (1) *Applicable implementation plan* or *applicable plan* means the plan, or most recent revision of this plan, which has been approved by the Administrator under section 110(a) of the Clean Air Act, 42 U.S.C. 7410(a), or promulgated by the Administrator under section 110(c) of the CAA.

(2) *Carbon monoxide national ambient air quality standard (CO NAAQS)* means the standards for carbon monoxide promulgated by the Administrator under section 108, 42 U.S.C. 7409, of the Clean Air Act and found in 40 CFR 50.8.

(3) *Cause* means resulting in an exceedance of the CO NAAQS in an area which previously did not have ambient CO concentrations above the CO NAAQS.

(4) *Contribute* means resulting in measurably higher average 8-hour ambient CO concentrations over the NAAQS or an increased number of hours with ambient concentrations over the NAAQS in an area which currently experiences CO levels above the standard.

(5) *Metropolitan planning organization (MPO)* means the organization designated under 23 U.S.C. section 134 and 23 CFR part 450.106. For the specific purposes of this regulation, MPO menas either the Maricopa Association of Governments or the Pima Association of Governments.

(6) *Nonattainment area* means for the specific purpose of this regulation either the Pima County carbon monoxide nonattainment area as described in 40 CFR 81.303 or the Maricopa County carbon monoxide nonattainment area as described in 40 CFR 81.303 (i.e., the MAG urban planning area).

(7) *Transportation control measure (TCM)* means any measure in an applicable implementation plan which is intended to reduce emissions from transportation sources.

(8) *Transportation improvement program (TIP)* means the staged multiyear program of transportation improvements including an annual (or biennial) element which is required in 23 CFR part 450.

(c) *Applicability.* These procedures shall apply only to the Maricopa Association of Governments in its role as the designated metropolitan planning organization for Maricopa County, Arizona, and the Pima Association of Governments in its role as the designated metropolitan planning organization for Pima County, Arizona.

(d) *Procedures*—(1) *Transportation Plans and Transportation Improvement Programs*—(i) *Documentation.* The MPO shall prepare for each transportation plan and program (except for the unified planning work program), as part of the plan or program, a report documenting for each plan and program the following information: (A) the disaggregated population projections used in—

(*1*) The applicable plan, and

(*2*) Preparing the transportation plan/program;

(B) the levels of vehicle trips, vehicle miles traveled, and congestion that were—

(*1*) Assumed in the applicable plan, and

(*2*) Expected to result from the implementation of the plan/program over the period covered by the applicable plan considering any growth likely to result from the implementation of the plan/program;

(C) For each major transportation control measure in the applicable implementation plan—

(*1*) The TCM's implementation schedule and expected effectiveness in reducing CO emissions,

(*2*) The TCM's current implementation status and, if feasible, its current effectiveness in reducing CO emissions, and

(*3*) Actions in the plan/program which may beneficially or adversely effect the implementation and/or effectiveness of the TCM;

(D) The Co emission levels resulting from the implementation of the plan/program over the period covered by the applicable plan considering any growth likely to result from the implementation of the plan/program; and

(E) The ambient carbon monoxide concentration levels, micro-scale and regional, resulting from the implementation of the plan/program over the period covered by the applicable plan considering any growth likely to result from the implementation of the plan or program.

(ii) *Findings.* Prior to approving a transportation plan/program, the MPO shall determine if the plan/program conforms to the applicable implementation plan. In making this determination, the MPO shall make and support the following findings for each transportation plan and program using the information documented in section (d)(1)(i) of this section:

(A) That implementation of the transportation plan/program will provide for the implementation of TCMs in the applicable plan on the schedule set forth in the applicable plan;

(B) That CO emission levels, microscale and regional, resulting from the implementation of the plan/program will not delay attainment or achievement of any interim emission reductions needed for attainment, and/or interfere with maintenance of the CO NAAQS throughout the nonattainment area during the period covered by the applicable plan; and

(C) That implementation of the plan/program would not cause or contribute to a violation of the CO NAAQS anywhere within the nonattainment area during the period covered by the applicable plan.

(2) *Amendments to a Transportation Plan or Transportation Implementation Program.* Prior to approving any amendment to a transportation plan or TIP, the MPO shall first determine that the amendment does not substantially change the information provided under paragraph (d)(1) of this section and does

(*ii*) Its current implementation status and, if feasible, its current effectiveness, and

(*iii*) Any actions as part of the project which may beneficially or adversely affect the implementation and/or effectiveness of the TCM;

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delay project implementation, possible straining relations with host government officials.

In an effort to prevent medically at-risk individuals from arriving at post with the expectation of receiving medical care from the embassy health unit, several posts have instituted their own clearance procedures. However,

Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 453.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

shall he make loans or investments to or in any business, profession or occupation in the Cooperating Country or other foreign countries in which he/she is assigned. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

[The following paragraphs (f) and (g) are applicable only to cost reimbursement

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(2) *Amendments to a Transportation Plan or Transportation Implementation Program.* Prior to approving any amendment to a transportation plan or TIP, the MPO shall first determine that the amendment does not substantially change the information provided under paragraph (d)(1) of this section and does not change the findings in paragraph (d)(2) of this section with respect to the original plan or TIP.

(3) *Transportation Projects.* As part of any individual transportation project approval made by the MPO, the MPO shall determine whether the project conforms to the applicable implementation plan using the following procedure:

(i) For projects from a TIP that has been found to conform under procedures in paragraph (d)(1) of this section within the last two years, the MPO shall document as part of the approval document:

(A) the TIP project number;

(B) whether the project is an exempt project as defined in paragraph (e) of this section; and

(C) whether the design and scope of the project has changed from the design and scope of the project as described in the conforming TIP—

(*1*) If the design and scope of the project has not changed, the MPO may find the project conforming; or the design and scope of the project could not be determined from the TIP, the MPO shall use the procedures in paragraph (d)(3)(ii) of this section to determine if the project conforms to the applicable implementation plan.

(ii) For projects not exempted under paragraph (e) of this section and not in a TIP that has been found to conform under procedures in paragraph (d)(1) of this section within the last two years:

(A) *Documentation.* The MPO shall document as part of the approval document for each such project:

(*1*) The disaggregated population projections, to the extent it is used in—

(*i*) The applicable plan, and

(*ii*) Designing and scoping the project;

(*2*) The levels of vehicle trips, vehicle miles traveled, and congestion that were—

(*i*) Assumed in the applicable plan, and

(*ii*) Expected to result over the period covered by the applicable plan from the construction of the project considering any growth likely to result from the project:

(*3*) For each transportation control measure in the applicable plan likely to be affected by the project:

(*i*) Its implementation schedule and expected emission reduction effectiveness from the applicable plan,

(*ii*) Its current implementation status and, if feasible, its current effectiveness, and

(*iii*) Any actions as part of the project which may beneficially or adversely affect the implementation and/or effectiveness of the TCM;

(*4*) CO emission levels which will result from the project over the period covered by the applicable plan considering any growth likely to result from the project; and

(*5*) Ambient CO concentration levels which will result from the project over the period covered by the applicable plan considering any growth likely to result from the project.

(B) *Findings.* Prior to approving any transportation project, the MPO shall determine if the project conforms to the applicable implementation plan. In making this determination, the MPO shall make and support the following findings for each project using the information documented in paragraph (d)(2)(ii)(A) of this section:

(*1*) That the project will provide for the implementation of TCMs affected by the project on the schedule set forth in the applicable plan;

(*2*) That CO emission levels, microscale and regional, resulting from the implementation of the project during the period covered by the applicable plan will not delay attainment or any required interim emission reductions and/or interfere with maintenance of the CO NAAQS through the nonattainment area; and

(*3*) That the project will not cause or contribute to a violation of the CO NAAQS during the period covered by the applicable plan near the project.

(e) *Exempt Projects.* An individual project is exempt from the requirements of paragraph (d) of this section if it is:

(1) Located completely outside the nonattainment area;

(2) A local- or state-funded project for which no federal funding or approval is necessary;

(3) A safety project which is included in the statewide safety improvement program, will not alter the functional traffic capacity or capability of the facility being improved, and does not adversely affect the TCMs in the applicable plan;

(4) A transportation control measure from the approved applicable plan; or

(5) A mass transit project funded under the Urban Mass Transportation Act, 49 U.S.C.

[FR Doc. 90-22984 Filed 9-9-90; 8:45 am]

BILLING CODE 6560-50-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

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[AIDAR Case 90-1]

Physical Fitness and Medical Privileges

AGENCY: Agency for International Development, IDCA.

ACTION: Proposed rule.

SUMMARY: The Agency for International Development (AID) proposed to amend the AID Acquisition Regulation (AIDAR) to reflect current Department of State requirements regarding physical fitness of and medical services available to Contractor employees, U.S. Personal Service Contractors, and their dependents. This will require full medical examination and completion of a comprehensive standardized form prior to departure for post.

DATES: Comments must be received by November 26, 1990, in order to be considered in formulation of the final rule.

ADDRESSES: Comments should be addressed to the Agency for International Development, Washington, DC 20523-1435, Attention: MS/PPE, room 1600I, SA-14. Please cite AIDAR Case 90-1 in all correspondence related to this proposed rule.

FOR FURTHER INFORMATION CONTACT: MS/PPE, Mrs. Elizabeth Cordaro, (703) 875-1535.

SUPPLEMENTARY INFORMATION: The AIDAR currently requires that all Contractor employees, U.S. Personal Service Contractors, and their authorized dependents who will be assigned overseas shall have obtained a physician's certification that the employee or dependent is fit to work and/or live in the country in question prior to assuming an overseas assignment. Despite this certification, individuals have arrived at post with medical conditions for which treatment is inadequate or nonexistent. Harsh living conditions in many AID posts aggravate less severe medical problems which are easily treated in more developed countries. When medical crises occur, the health unit may be unable to provide effective treatment and the individual may have to be medically evacuated at considerable risk, expense, and effort by Government personnel. Arranging for replacements for employees may take months and

delay project implementation, possible straining relations with host government officials.

In an effort to prevent medically at-risk individuals from arriving at post with the expectation of receiving medical care from the embassy health unit, several posts have instituted their own clearance procedures. However, the individual is already at post when the decision is made, and the Mission and the health unit face the problem of not being able to provide the level of medical services required or expected. Some posts have tried to prevent this problem by requesting the State Department Office of Medical Services' (M/MED) cooperation in reviewing the individual's examination form before the individual arrives at post. M/MED had agreed to do so for these posts, but they expect that more posts will request this service. Because of the volume of reviews for just these few posts (approximately 750 examinations have been filed with M/MED over the past 30 months, M/MED has informed us that they can no longer provide this service without a consistent Agency policy, which will require Contractors and dependents to obtain a medical examination and provide information on a comprehensive standardized form which would be submitted to M/MED for review and determination of access to State Department health units. AID solicits comments on this proposed procedure.

We do not believe this proposed rule will have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act; nor do we consider this to be a major rule as defined in Executive Order 12291.

The medical examination form which will be used under the proposed rule constitutes an information collection. It has been submitted to an approved by OMB, and has been assigned Control Number 0412-0536, with an expiration date of 5/31/91. A copy of the form may be obtained upon request from the address specified above. It would be appreciated if the request was accompanied by a stamped, self-addressed envelope.

List of subjects in 48 CFR part 752 and Appendices C and D

Government procurement.

Therefore it is proposed that 48 CFR Chapter 7 be amended as follows:

1. The authority citations in part 752 and Appendices C and D continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 453.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

2. Section 752.7027 is revised as follows:

752.7027 Personnel.

For use in all AID contracts involving performance overseas. Note that paragraphs (f) and (g) of this clause are for use only in cost reimbursement contracts.

Personnel (_____ 1990)

(a) *Clearance*—(1) *Individuals Engaged or Assigned Within the United States.* The Contractor will obtain written notification from the Contracting Officer of Cooperating Country clearance of any employee sent outside the United States to perform duties under this contract.

(2) *Individuals Engaged or Assigned When Outside the United States.* No individual shall be engaged or assigned when outside the United States to perform work outside the United States under this contract unless authorized in the schedule or otherwise approved by the Contracting Officer or Mission Director. However, when services are performed in the Cooperating Country on a casual or irregular basis or in an emergency, exception to this provision can be made in accordance with instructions or regulations established by the Mission Director.

(b) *Physical fitness of employees and dependents.* See the clause of this contract entitled Physical Fitness.

(c) *Conformity to laws and regulations of Cooperating Country.* Contractor agrees to use its best efforts to assure that its employees and their dependents, while in the Cooperating Country, abide by all applicable laws and regulations of the Cooperating Country and political subdivisions thereof.

(d) *Importation or sale of personal property or automobiles.* To the extent permitted by Cooperating Country laws, the importation and sale of personal property or automobiles by Contractor employees and their dependents in the Cooperating Country shall be subject to the same limitations and prohibitions which apply to U.S. nationals employed by the Mission. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

(e) *Economic and Financial Activities.* Other than work to be performed under this contract for which an employee or consultant is assigned by the Contractor, no such employee or consultant of the Contractor shall engage, directly or indirectly, either in his/her own name or in the name or through the agency of another person, in any business, profession or occupation in the Cooperating Country or other foreign countries to which he/she is assigned, nor shall he make loans or investments to or in any business, profession or occupation in the Cooperating Country or other foreign countries in which he/she is assigned. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

[The following paragraphs (f) and (g) are applicable only to cost reimbursement contracts.]

(f) *Duration of Appointments.* (1) Regular employees will normally be appointed for a minimum of 2 years which period includes orientation (less language training) in the United States and authorized international travel under the contract except:

(i) An appointment may be made for less than 2 years if the contract has less than 2 years but more than 1 year to run provided that if the contract is extended the appointment shall also be extended to the full 2 years. This provision shall be reflected in the employment agreement prior to employment under this contract.

(ii) When a 2-year appointment is not required, appointment may be made for less than 2 years but in no event less than 1 year.

(iii) When the normal tour of duty established for AID personnel at a particular post is less than 2 years, then a normal appointment under this contract may be of the same duration.

(iv) When the Contractor is unable to make appointments of regular employees for a full 2 years, the Contractor may make appointments of less than 2 but not less than 1 year, provided that such appointment is approved by the Contracting Officer.

(2) Services required for less than 1 year will be considered short-term appointments and the employee will be considered a short-term employee.

(g) *Employment of Dependents.* If any person who is employed for services in the Cooperating Country under this contract is either (1) a dependent of an employee of the U.S. Government working in the Cooperating Country, or (2) a dependent of a Contractor employee working under a contract with the U.S. Government in the Cooperating Country, such person shall continue to hold the status of a dependent. He or she shall be entitled to salary for the time services are actually performed in the Cooperating Country, and differential and allowances as established by the Standardized Regulations (Government Civilians, Foreign Areas).

(End of Clause)

3. Section 752.7029, Post Privileges, is amended by revising the clause heading and paragraph (a) of the clause to read as follows:

752.7029 Post privileges.

* * * * *

Post Privileges (_____ 1990)

(a) Health room services may be available, subject to post policy and review of medical examination results by the State Department Office of Medical Services in accordance with the clause of this contract entitled "Physical Fitness", to U.S. citizen Contractors and their authorized dependents (regardless

of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

individual, depending on his or her medical condition. The Contractor is responsible for providing the M/MED decision to the health unit in question. No travel to post may be initiated until the health unit has received the M/MED decision and the Contracting Officer authorizes such travel in writing.

(2) [The following information is provided for two purposes: to assist fixed price

entitled "Physical Fitness and Health Room Privileges."

* * * * *

7. Paragraph 7(j)(3) of Appendix D is revised to read as follows:

7. Executing a Personal Services Contract

* * * * *

(j) * * *

reimbursed in an amount not to exceed half of the cost of the examination up to a maximum AID share of $300, plus reimbursement of charges for immunizations for himself/herself and each authorized dependent 12 years of age and over. For dependents under 12 years of age the AID contribution shall not exceed half of the cost of the examination up to a maximum AID share of $120 per individual, plus

insurer's report will not significantly contribute to carrying out the purposes of Title VI. To carry out the reporting requirements, NHTSA has exempted all those insurance companies that are statutorily eligible to be exempted and published a listing of those insurance companies that are required to file

SW, Washington, DC 20590. Ms. Gray's telephone number is (202) 366-4808.

SUPPLEMENTARY INFORMATION: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing

of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

* * * * *

4. A new section 752.7033 is added to read as follows:

752.7033 Physical fitness.

For use in all AID contracts involving performance overseas.

Physical fitness (_____ 1990)

(The requirements of this provision do not apply to employees hired in the Cooperating Country or to authorized dependents who were already in the Cooperating Country when their sponsoring employee was hired.)

(a) *Assignments of less than 60 days in the Cooperating Country.* The Contractor shall require employees being assigned to the Cooperating Country for less than 60 days to be examined by a licensed doctor of medicine. The Contractor shall require the doctor to certify that, in the doctor's opinion, the employee is physically qualified to engage in the type of activity for which he/she is employed and the employee is physically able to reside in the country to which he/she is assigned. Under a cost reimbursement contract, if the Contractor has no such medical certificate on file prior to the departure for the Cooperating Country of any employee and such employee is unable to perform the type of activity for which he is employed or cannot complete his/her tour of duty because of any physical disability (other than physical disability arising from an accident while employed under this contract), the Contractor shall be responsible for returning the disabled employee to his/her point of hire and providing a replacement at no additional cost to the Government. In addition, in the case of a cost reimbursement contract, the Contractor shall not be entitled to reimbursement for any additional costs attributable to delays or other circumstances caused by the employee's inability to complete his/her tour of duty.

(b) *Assignments of 60 days or more in the Cooperating Country.* (1) The Contracting Officer shall provide the Contractor with a reproducible copy of the "A.I.D. Contractor Employee Physical Examination Form." The Contractor shall reproduce the form as required, and provide a copy to each employee and authorized dependent proposed for assignments of 60 days or more in the Cooperating Country. The Contractor shall have the employee and all authorized dependents obtain a physical examination from a licensed physician, who will complete the form for each individual and mail it to the address on page three of the form. All envelopes must be marked "A.I.D. Contractor Employee Examination Form—Privileged Medical Information." After reviewing the form, the State Department Office of Medical Services (M/MED) will advise the Contractor as to whether or not the embassy health unit is adequate to provide routine care to the individual, depending on his or her medical condition. The Contractor is responsible for providing the M/MED decision to the health unit in question. No travel to post may be initiated until the health unit has received the M/MED decision and the Contracting Officer authorizes such travel in writing.

(2) (The following information is provided for two purposes: to assist fixed price offerors to develop their price proposal, and to provide cost reimbursement Contractors with guidance in determining reasonable and allowable costs.) As a contribution to the cost of medical examinations, AID shall reimburse the Contractor for the physical examinations authorized in paragraph (a) of this clause in an amount not to exceed $100 for the physical examination, plus reimbursement of charges for immunizations to the extent not covered by the Contractor's health insurance policy. For physical examinations authorized in paragraph (b)(1) of this clause the AID contribution to the cost of the examination shall be as follows:

(i) For the employee and authorized dependents 12 years of age and over, one-half of the cost of each examination up to a maximum AID share of $300 per individual, plus reimbursement of charges for immunizations to the extent not covered by the Contractor's health insurance policy.

(ii) For authorized dependents under 12 years of age, one-half of the cost of each examination up to a maximum AID share of $120 per individual, plus reimbursement of charges for immunizations to the extent not covered by the Contractor's health insurance policy.

(iii) The Contractor must obtain the prior written approval of the Contracting Officer to receive any AID contributions higher than these limits.

(End of Clause)

Appendices to Chapter 7

5. Appendix C is amended by revising paragraph 2.(c) and by removing paragraph 4. *Additional Instructions for Medical Support* in its entirety to read as follows:

Appendix C—Logistic Support Overseas to AID-Direct Contractors

* * * * *

2. Policy

* * * * *

(c) *Medical facilities.* Medical facilities may be made available in accordance with post policy, subject to compliance with the clause of the contract entitled "Physical Fitness".

* * * * *

Appendix D—Direct AID Contracts With A U.S. Citizen Or A U.S. Resident Alien For Personal Services Abroad

6. Paragraph 4(c)(2)(vi) of Appendix D is revised to read as follows:

4. Policy

* * * * *

(c) * * *

(2) * * *

(vi) Health room services may be provided in accordance with the clause of this contract entitled "Physical Fitness and Health Room Privileges."

* * * * *

7. Paragraph 7(j)(3) of Appendix D is revised to read as follows:

7. Executing a Personal Services Contract

* * * * *

(j) * * *

(3) Medical examinations and certifications as required by the contract general provision entitled "Physical Fitness and Health Room Privileges".

* * * * *

8. In Appendix D, Section 11, 3. Physical Fitness (Dec. 1985) is revised to read as follows:

Section 11. General Provisions

* * * * *

3. Physical Fitness and Health Room Privileges (_____ 1990)

(a) *Physical Fitness.*

(1) For assignments of less than sixty (60) days in the Cooperating Country, the Contractor shall be required to be examined by a licensed doctor of medicine, and the Contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the Contractor is physically able to engage in the type of activity for which he/she is to be employed under the contract and is physically able to reside in the Cooperating Country. A copy of the certificate shall be provided to the Contracting Officer prior to the Contractor's departure for the Cooperating Country, or if this contract is entered into in the Cooperating Country, the Contractor shall provide the certificate before he/she starts work under the contract.

(2) For contract periods of sixty (60) days or more, prior to departure for such assignment, the Contracting Officer shall provide to the Contractor for himself/herself plus any authorized dependents the form entitled "A.I.D. Contractor Employee Physical Examination Form". The Contractor shall obtain a physical examination from a licensed physician, who will complete the form and mail it to the address on page three of the form. All envelopes must be marked "A.I.D. Contractor Employee Examination Form—Privileged Medical Information". After reviewing the form, the State Department Office of Medical Services (M/MED) will advise the Contractor as to whether the embassy health unit is adequate to provide routine care to the individual, depending on his or her medical condition. The Contractor is responsible for providing the M/MED decision to the health unit in question. No travel to post may be initiated until the health unit has received the M/MED decision and the Contracting Officer authorizes such travel in writing.

(b) *Reimbursement.* (1) As a contribution to the cost of medical examinations required by paragraph (a)(1) of this clause, AID shall reimburse the Contractor not to exceed $100 for the physical examination, plus reimbursement of charges for immunizations.

(2) As a contribution to the cost of medical examinations required by paragraph (a)(2) of this clause the Contractor shall be reimbursed in an amount not to exceed half of the cost of the examination up to a maximum AID share of $300, plus reimbursement of charges for immunizations for himself/herself and each authorized dependent 12 years of age and over. For dependents under 12 years of age the AID contribution shall not exceed half of the cost of the examination up to a maximum AID share of $120 per individual, plus reimbursement of charges for immunizations. The Contractor must obtain the prior written approval of the Contracting Officer to receive any AID contributions higher than these limits.

(c) *Health Room Privileges.* Health room services may be available, subject to post policy and review of medical examination results by M/MED in accordance with paragraph (a) of this clause, to U.S. citizen Contractors and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

(End of Clause)

Dated: August 7, 1990.

John F. Owens,

Procurement Executive.

[FR Doc. 90-23786 Filed 10-9-90; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 90-24; Notice 1]

RIN 2127-AD31

Insurer Reporting Requirements: List of Insurers Required to File Reports in October 1990

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires insurers to file annual reports with this agency, unless NHTSA exempts an insurer from filing such reports. This law also specifies that NHTSA can exempt only those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State, or for which NHTSA determines that: (1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and (2) the insurer's report will not significantly contribute to carrying out the purposes of Title VI. To carry out the reporting requirements, NHTSA has exempted all those insurance companies that are statutorily eligible to be exempted and published a listing of those insurance companies that are required to file annual reports. Appendix A includes a list of issuers of motor vehicle policies subject to the reporting requirements in each state in which they do business. Appendix B includes a list of issuers of motor vehicle insurance policies subject to the reporting requirements only in designated states. Appendix C includes a list of motor vehicle rental and leasing companies (including licensees and franchisees) subject to the reporting requirements of part 544.

However, an insurance company's eligibility for exemption from the reporting requirements may vary annually, as its national and State-by-State market shares change, or the size of its motor vehicle fleet changes. To address this situation, NHTSA has stated that it will publish annual updates of the list of insurance companies that are required to file annual reports. If these listings are adopted as a final rule, those insurance companies included on any list would be required to file reports for the 1989 calendar year not later than October 25, 1990. Any insurance company not on any of the final lists would *not* be required to file a report for the 1989 calendar year.

DATES: Comments on this notice must be received by this agency not later than October 22, 1990. This comment period takes into account both the need for the affected parties to have a meaningful opportunity to comment on the proposal and the need to make the rule final by October 25, 1990. The agency believes the comment period provided is sufficient since most of the companies that are proposed to be required to report have already filed reports in previous years.

The final rule on this subject will be effective upon publication in the **Federal Register**. The agency will accept petitions for reconsideration up to thirty days after publicaiton of the final rule in the **Federal Register**.

ADDRESSES: Comments on this notice should refer to Docket No. 90-24; Notice 1, and be submitted to: Docket Section, NHTSA, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray's telephone number is (202) 366-4808.

SUPPLEMENTARY INFORMATION: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of section 612, consisting of two broad groups of entities. The first broad group is included within the term "insurer" by virtue of section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. The second of these broad groups is included in the definition of "insurer" by virtue of section 612(a)(3). That section specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by insurers of passenger motor vehicles.

Exemptions From Reporting

Two provisions in section 612 authorizes the agency to exempt certain insurers from these reporting requirements.

1. Insurers of Passenger Motor Vehicles

The first exemption provision is set forth at section 612(a)(5). Section 612(a)(5) provides that the agency shall exempt small insurers from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled, either nationally or on a state-by-state basis. The term "small insurer" is defined in section 612(a)(5)(C) as one whose premiums account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also provides that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurers' market shares nationally and in each State. The A.M.

Best data were chosen because they are both accurate and timely, and its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from the reporting requirements and that were not licensed in any State in which the insurer's market share exceeded 1 percent. The agency has also exempted all those companies that were licensed in a State in which the insurer's market share exceeded 1 percent, but which wrote insurance in that State only in amounts that were less than $1 million in premiums. The agency has also exempted all those companies that were licensed in a State in which the insurer's market share exceeded 1 percent, but which wrote insurance in that State only in amounts that were less than 1 percent of the total premiums written in that State.

2. Insurers of Rental and Leasing Companies

Section 612(a)(4) provides that the agency shall exempt insurers of rental and leasing companies from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled, either nationally or on a state-by-state basis. The term "insurer of rental and leasing companies" is defined in section 612(a)(4)(C) as one whose premiums account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also provides that if an insurance company satisfies this definition of an "insurer of rental and leasing companies," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting insurers of rental and leasing companies, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurers' market shares nationally and in each State. The A.M. Best data were chosen because they are both accurate and timely, and its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from the reporting requirements and that were not licensed in any State in which the insurer's market share exceeded 1 percent. The agency has also exempted all those companies that were licensed in a State in which the insurer's market share exceeded 1 percent, but which wrote insurance in that State only in amounts that were less than $1 million in premiums. The agency has also exempted all those companies that were licensed in a State in which the insurer's market share exceeded 1 percent, but which wrote insurance in that State only in amounts that were less than 1 percent of the total premiums written in that State.

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title VI.

In the final rule published on June 22, [illegible]

leasing company not listed in appendix C will not be required to file a theft report under part 544.

Part 544 limits the information that rental and leasing companies must provide in their theft reports, for the reasons explained in the final rule implementing part 544 (52 FR 59, at 75;

2. Rental and Leasing Companies

The list of self-insured rental and leasing companies proposed to be included in Appendix C was derived, in all but one case, from the information in *Automotive Fleet Magazine* and *Travel Trade Business Travel News* for the most recent year for which such data

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and

exempted all small businesses from reporting. NHTSA believes that any insurance company that does not qualify as a "small insurer" within the meaning of section 612 of the Act would also not qualify as a small entity within the meaning of the Regulatory Flexibility Act.

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Best data were chosen because they are both accurate and timely, and its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemptions from these reporting requirements. This determination was based on the fact that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis, and that the data in the insurer reports provided by the insurance companies that were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an appendix A and appendix B in the final rule for insurer reports published January 2, 1987 (52 FR 59). The most recent listing, for insurers required to file reports in October 1989, appeared as a final rule in the Federal Register of November 2, 1989 (54 FR 46252). In the January 2, 1987 final rule, NHTSA stated, "The agency will update these appendices annually, shortly after A.M. Best published its revised listings, to reflect changes in premium shares for the insurance companies." (52 FR 62). This rulemaking action implements that pledge. The agency would like to emphasize that this rulemaking does not affect its prior determination that those insurance companies that are statutorily eligible to be exempted from these reporting requirements should, in fact, be exempted therefrom. Instead, this rulemaking simply uses more current data to determine which insurance companies are eligible for such exemptions.

2. Self-Insured Rental and Leasing Companies

Section 612(a)(4) is the second provision in section 612 that allows NHTSA to exempt insurers from reporting requirements. NHTSA has used this authority to reduce the number of companies that are subject to the reporting requirements because each has a fleet of more than 20 vehicles that is used primarily for rental and lease and that is not covered by theft insurance policies issued by an insurer. For convenience, these companies will be referred to as "rental and leasing companies."

Section 612(a)(4) authorizes NHTSA to exempt any insurer from reporting requirements if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title VI.

In the final rule published on June 22, 1990 (55 FR 25606), NHTSA announced that the agency had been able to gather the necessary data in order to make the two statutory determinations required in section 612(a)(4). NHTSA learned that information on the size of the fleets of rental and leasing companies and the market share for these companies are voluntarily supplied to, and tabulated by two national publications; *Automotive Fleet Magazine* (for both rental and leasing companies) and *Travel Trade Business Travel News* (for rental companies only). The agency's use of the information in these publications to make the statutory determinations required in section 612(a)(4) is discussed in detail in the final rule of June 22, 1990.

To summarize, in the final rule, NHTSA had determined that the costs of preparing and filing theft reports are excessive for rental and leasing companies with fewer than 50,000 vehicles in their fleet, and that reports from such companies would not significantly contribute to carrying out the purposes of title VI of the Cost Savings Act. The 50,000 vehicle threshold is applied, in the case of a franchisor, to the total number of vehicles in the fleets of all of the franchisor's franchisees and in the case of a licensor, to the total number of vehicles in the fleets of all of the licensor's licensees. Based on those determinations, NHTSA decided to exempt all rental and leasing companies with fewer than 50,000 vehicles in their fleet (as reported by *Automotive Fleet Magazine* and *Travel Trade Business Travel News*) from insurer reporting requirements. As a result of the final rule, a new appendix C, which consists of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in part 544, was added. As in the case with new additions to appendices A and B, a rental and leasing company that was not formerly subject to these reporting requirements and whose name is added to appendix C by virtue of its fleet being reported as 50,000 or more vehicles would have to file a theft report in the year following the year in which its name was added to the appendix. For example, if a rental and leasing company's name is added to appendix C in November 1989, the company would have to file a report for calendar year 1989 in October 1990. Any rental and leasing company not listed in appendix C will not be required to file a theft report under part 544.

Part 544 limits the information that rental and leasing companies must provide in their theft reports, for the reasons explained in the final rule implementing part 544 (52 FR 59, at 75; January 2, 1987).

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

Based on the 1988 calendar year A.M. Best data for market shares, it is proposed that appendix A, which lists companies which must report based on the fact that each insurer had at least one percent of the national market for motor vehicle insurance premiums, be changed slightly from the November 2, 1989, filing listing. Two companies, Continental Group and Fireman's Fund Group, that were included in appendix A in the November 1989 listing, are proposed to be deleted from appendix A, and one company, Hanover Insurance Companies, that was not previously listed in appendix A, is proposed to be added. It is proposed that each of the 19 companies listed in appendix A in this notice be required to file a report not later than October 25, 1990, setting forth the information required by part 544 for each State in which it did business in the 1989 calendar year.

Appendix B lists those insurers that would be required to report for particular States for 1989, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1988 calendar year A.M. Best data for market shares, it is proposed that all eight of the insurance groups listed in the November 1989 final listing for appendix B again be required to report on their activities in those States in which they had a 10 percent or greater market share. Two additional insurance groups are proposed to be added to appendix B. The Indiana Farm Bureau Group would be required to report on its activities in the State of Indiana and Erie Insurance Group would be required to report on its activities in the State of Pennsylvania. Accordingly, it is proposed that, for calendar year 1989, each of these ten groups report on their activities in every State in which they had a 10 percent or greater market share, pursuant to section 612 of the Cost Savings Act. These reports must be filed no later than October 25, 1990, and set forth the information required by part 544.

2. Rental and Leasing Companies

The list of self-insured rental and leasing companies proposed to be included in Appendix C was derived, in all but one case, from the information in *Automotive Fleet Magazine* and *Travel Trade Business Travel News* for the most recent year for which such data are available. That year is 1988.

The single exception is U-Haul International, which did not report any data to either of those publications for 1988. In the final rule of June 22, 1990, the agency included U-Haul on the list of rental and leasing companies required to report. Its inclusion was based largely on a letter dated March 27, 1987, in which U-Haul had informed the agency that it operates "a fleet in excess of 65,000 motor vehicles." In the absence of information from either of the industry publications or from U-Haul itself showing that U-Haul's combined fleet has fallen below the 50,000 threshold, NHTSA will continue to include it in the list of companies which must submit reports. Continued inclusion of U-Haul seems particularly appropriate in light of its statement in a March 17, 1989 letter to the agency that it has a rental fleet in excess of 65,000 trucks, of which approximately 59,000 are heavy trucks and 6,000 are light trucks. U-Haul further indicated that all of the rental trucks are Class 6 or smaller, i.e., none are rated at higher than 18,000 lbs. gross vehicle weight rating.

Based on the above, since the final rule published on June 22, 1990, it is proposed that appendix C be changed slightly. In the 1989 listing, the company that was called Enterprise Leasing Co., with subsidiaries Enterprise Fleets, Inc. and Rent A Car Co., is called Enterprise Rent-A-Car in the 1990 listing. The company called Peterson, Howell & Heather, Inc. in the 1989 listing is now called PHH Fleet America in the 1990 listing. The company called Security Pacific Credit Corporation is now called Security Pacific Auto Finance in the 1990 listing. All these changes are due to name changes by each company. Based on the 1988 calendar year data from *Automotive Fleet Magazine* and *Travel Trade Business Travel News*, two new companies are proposed to be included in appendix C, GE Capital Auto Lease, Inc., and Rental Concepts, Inc.

Accordingly, it is proposed that for calendar year 1989, each of these 23 rental and leasing companies (including franchisees and licensees) file reports no later than October 25, 1990, and set forth the information required by part 544.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, this listing would ensure that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Those companies that are not statutorily eligible for an exemption would be expresely required to file reports.

NHTSA does not believe that this proposed rulemaking to reflect more current data from A.M. Best, *Automotive Fleet Magazine*, and *Travel Trade Business Travel News* would affect the impacts described in the final regulatory evaluation prepared for part 544. Accordingly, a separate regulatory evaluation has not been prepared for this proposal. Using the cost estimates in the final regulatory evaluation for part 544, the agency estimates that it would cost the two companies that would be added to appendix B about $20,000 each to file a report, and th two companies that would be added to appendix C about $5,770 each to file a report. This would be counterbalanced by the fact that one less company would be required to report in appendix A, resulting in a savings of $50,000. Thus, the net total impact of these changes is estimated to be a cost increase of about $1,540 for insurance companies as a group. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

As noted above, a full regulatory evaluation was prepared for the final rule establishing part 544. Interested persons may wish to examine that evaluation in connection with this proposal. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

The agency has also considered the effects of this proposed rulemaking under the Regulatory Flexibility Act. I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. In formulating the reporting requirements, the agency attempted to exempt as many businesses as possible from the reporting requirements, and has exempted all small businesses from reporting. NHTSA believes that any insurance company that does not qualify as a "small insurer" within the meaning of section 612 of the Act would also not qualify as a small entity within the meaning of the Regulatory Flexibility Act.

The Final Regulatory Flexibility Analysis for the final rule (55 FR 25609) that exempted most rental and leasing companies from reporting noted that the U.S. Small Business Administration considered as small business those rental and leasing companies that grossed less that $12.5 million a year. Because the 50,000 vehicle fleet cutoff point for reporting is attained by only approximately two dozen companies, all the companies proposed to be included in appendix C exceed the $12.5 million small business size standard. Furthermore, this proposed action simply applies more current information to determine which insurance companies are statutorily eligible to be exempted from these reporting requirements. It does not in any way change the criteria by which companies are selected for inclusion on the Appendices.

In accordance with the National Environmental Policy Act, the agency has considered the environmenal impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812 of "Federalism," and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies of the comments be submitted. If applicable, it is requested that 2 copies of films, tapes, and other similar materials be provided.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business

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information, should be sumbitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after than date. To the extent possible, comments fill after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking ection. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed that 49 CFR part 544 be amended as follows:

1. The authority citation for part 544 would continue to read as follows:

Authority: 15 U.S.c. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to part 544 would be revised to read as follows:

Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CIGNA Group
CNA Insurance Companies
Crum & Forster Companies
Farmers Insurance Group
Geico Corporation Group
Hanover Insurance Companies
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
State Farm Group
Travelers Insurance Group
United States F & G Group
USAA Group

3. Appendix B to part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Island Insurance Group (Hawaii)
Indiana Farm Bureau Group (Indiana)
Kentucky Farm Bureau Group (Kentucky)
Commercial Union Insurance Companies (Maine)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Casualty Group (Mississippi)
Erie Insurance Group (Pennsylvania)
Amica Mutual Insurance Company (Rhode Island)
Concord Group Insurance Companies (Vermont)

4. Appendix C to part 544 would be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent-A-Car Corp./ANSA
Automotive Rentals, Inc. (subsidiary of ARI, Inc.)
Avis Car Leasing-USA (subsidiary of Avis, Inc.)
Avis Rent-A-Car System, Inc. (subsidiary of Avis, Inc.)
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Enterprise Rent-A-Car
GE Capital Auto Lease, Inc.
GE Capital Fleet Services
Hertz Penske Truck Leasing, Inc. (subsidiary of Hertz Corporation)
Hertz Rent-A-Car (subsidiary of Hertz Corporation)
Lease Plan USA
Lend Lease Cars
McCullagh Leasing
National Car Rental System, Inc.
PHH Fleet America
Rental Concepts, Inc.
Ryder Truck Rental (both rental and leasing operations)
Security Pacific Auto Finance
U-Haul International, Inc. (subsidiary of AMERCO)
United States Fleet Leasing, Inc.
Wheels, Inc.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 90-23636 Filed 10-9-90; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Extension of Public Comment Period on Proposed Threatened Status under "Similarity of Appearance" Provisions for Panthers (Felis concolor) in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule: Notice of extension of public comment period.

SUMMARY: The dates originally given in the Service's proposed rule to designate threatened status under "similarity of appearance" provisions for panthers (*Felis concolor*) in Florida are extended for 21 days. The purpose of this action is to allow additional time for the publication of legal notices as required by the Endangered Species Act (Act) of 1973, as amended.

DATES: The date for submitting comments on the proposed rule was originally set to close on October 26, 1990. The date is now extended to close on November 16, 1990. Requests for a public hearing must be submitted by November 1, 1990.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580; or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1990, the Service published in the **Federal Register** (55 FR 34943) a proposal to list all panthers (also known as mountain lions, pumas, cougars, etc.) of the species *Felis concolor* in Florida as threatened by similarity of appearance to the endangered Florida panther (*Felis concolor coryi*). The proposed action would protect Florida panthers from illegal take. It is difficult to distinguish Florida panthers from unprotected subspecies of *Felis concolor*, many of which are held in captivity in Florida. There is risk that Florida panthers will be killed under the assumption they are escapees of other subspecies. If the regulation becomes final, the take provisions of the Act will apply to all free-living *Felis concolor* in Florida.

Section 4(b)(5)(D) of the Act requires that a summary of proposed listing regulations be published in a newspaper of general circulation in the area in which the species occurs. Since this was not done promptly after publicaiton of the proposal, the dates for public hearing requests and comments are being extended to allow adequate time for any public response to publication of the required legal notices.

Author

The primary author of this notice is Thomas Turnipseed, U.S. Fish and Wildlife Service, 75 Spring street, SW., Atlanta, Georgia 30303.

Authority

The authority for this notice is the Endangered Species Act (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Dated: September 28, 1990.
James W. Pulliam, Jr.,
Regional Director.
[FR Doc. 90-23794 Filed 10-9-90; 8:45 am]
BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for the Plant Astragalus bibullatus (Guthrie's ground-plum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for Guthrie's ground-plum. This rare plant is presently known from only three sites in Tennessee. All sites are threatened by habitat alteration; residential, commercial, or industrial development; and livestock grazing. This proposal, if made final, would extend the protection of the Endangered Species Act of 1973 (Act), as amended, to Guthrie's ground-plum. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by December 10, 1990. Public hearing requests must be received by November 26, 1990.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259-0321 or FTS 672-0321.

SUPPLEMENTARY INFORMATION:

Background

Astragalus bibullatus Barneby and Bridges (Guthrie's ground-plum) is a perennial member of the pea family (Fabaceae) that is presently known to exist only in Rutherford County in Tennessee's Central Basin. The plant has short stems (5 to 15 centimeters, 2 to 6 inches) that arise from a tap root. Each stem supports 5 to 10 leaves. The leaves are 5 to 10 cm (2 to 4 inches) long and are composed of about 24 small leaflets. The inflorescence is a raceme supporting 10 to 16 purple flowers. The plants flower in April and May. During flowering, the peduncle supporting the inflorescence arches upward. After flowering and as the fruits mature, this peduncle gradually arches downward. The fruits are fleshy pods that usually mature in May and June. At maturity the pods are colored red above and yellow below. *Astragalus bibullatus* superficially resembles the widespread *A. tennesseensis*. However, *A. tennesseensis* can be readily distinguished by its yellow rather than purple flowers, its yellow-brown rather than reddish topped fruits, and the copious number of hairs found on the plant (Somers and Gunn 1990).

Specimens that would now be assigned to *A. bibullatus* were apparently first collected in about 1861 by the early Tennessee botanist, Augustin Gattinger. For over 100 years this material was assigned to *A. crassicarpus*, which is a related but morphologically and geographically distinct species. The Rutherford County, Tennessee, type locality for the species was rediscovered in 1980, by Milo J. Guthrie of the Tennessee Department of Conservation (Department). Botanists familiar with the genus *Astragalus* determined that the plants found by Guthrie represented a new species. Barneby and Bridges described *Astragalus bibullatus* in 1987 using material collected from Guthrie's 1980 site by Jerry and Carol Baskin (University of Kentucky at Lexington) and others (Barneby and Bridges 1987).

Guthrie's ground-plum is endemic to the cedar glades of middle Tennessee. All sites are associated with thin bedded, fossiliferous Lebanon limestone outcroppings that support the unique cedar glade communities found in Tennessee's central basin. The species only grows along the deeper soiled glade margins or in areas within the glades that are partially shaded. Soil depths vary between 5 and 20 cm (2 to 8 inches) at the known sites. Cedar glades are typically wet in winter and spring, and dry and very hot in summer and fall (Somers and Gunn 1990, Quarterman 1986).

A description of the species' status at each of the three known sites is provided below. This information is extracted in part from Somers and Gunn (1990).

Population 1

Population 1 consists of two colonies. The first colony was discovered by Guthrie and was referred to as the type locality in the above discussion. In 1986 this colony contained 171 plants on a 1.5-acre glade. The site is in private ownership and is not formally protected. The second colony occurs along one edge of a privately owned residential lot located about 0.25 mile from the first colony. In 1990 the site supported about 50 plants. Twenty-five of these occurred within a 100 square foot area, while the remaining plants were scattered along a road that crosses the site.

In addition to the two colonies described above, there is a group of about 100 plants on a glade located approximately 1 mile northwest of colony 1. The owner of this site is a wildflower enthusiast and is believed to have established this colony with seeds collected from the nearby natural population (Somers, *in litt.*, 1990).

Population 2

This population is located about 12 miles from population 1. The site is privately owned and appears to support a declining population of Guthrie's ground-plum. In 1984 several dozen plants were observed by biologists from the Department. In 1988 only five plants were observed during a visit to the site by Guthrie. The years between 1985 and 1988 were very dry in central Tennessee, and this may account for the observed decline in population 2. It is not known

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if the return of normal rainfall in 1989 and 1990 has resulted in a reversal of the decline observed in the previous years.

Population 3

Population is located about 3 miles from population 1. It was discovered in the spring of 1990 by the Department. Subsequent visits to the site by the Department's botanists revealed the presence of two colonies in this population. Colony 1 contains about 40 plants while Colony 2 contains about 200 plants. The 240 plants in population 3 make it the largest known for *A. bibullatus*. Additionally, Somers (*in litt.*, 1990) describes the glades at this site as pristine.

Extirpated Populations

There are believed to be two extirpated populations of Guthrie's ground-plum. The first was in Rutherford County and is represented by material collected near the La Vergne railroad station in 1901 by Augustin Gattinger. The landscape in this area has been radically changed since 1901, and it is unlikely that the species still survives at this location.

Another population is believed to have been extirpated from Davidson County, Tennessee. Vegetative material that was collected in 1948 from a site just north of the Rutherford/Davidson County line by botanists from the University of Tennessee at Knoxville has been identified by Barneby as *A. bibullatus*. The site from which the plant was collected is now under the waters of Percy Priest Reservoir. An examination of the glades adjacent to this part of the reservoir revealed that they were badly abused by vehicle travel. *A. bibullatus* was not found in this area, and it is unlikely that the species still exists in Davidson County.

Federal government actions on this species began in 1987 with issuance of a contract to the Department for a status survey. The Department conducted the survey during the 1987, 1988, and 1989 field seasons. During this survey they visited over 300 cedar glades and cedar glade remnants. Based upon the preliminary results of the Department's survey, *A. bibullatus* was added as a category 2 species to the Service's Notice of Review for Native Plants when it was revised in February 1990 (55 FR 6184).

Category 2 species are those for which the Service has information which indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. This was the case with *A. bibullatus* in February 1990. Information on current threats, biological vulnerability, distribution, and status was provided by the Department's final report on the status of Guthrie's ground-plum. This report was received and accepted by the Service in the spring of 1990.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus bibullatus* Barneby and Bridges (Guthrie's ground-plum) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The three known naturally occurring populations of *Astragalus bibullatus* are within a short distance of the rapidly growing middle Tennessee city of Murfreesboro. Residential, commercial, and industrial development associated with this growth threaten to destroy or adversely modify the remaining habitat for the species. All of the known *A. bibullatus* locations are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants, such as cedar, that produce shade and compete for limited water and nutrients. Active management to reduce or eliminate this encroachment is required to ensure tht the species continues to survive at all sites. The species is vulnerable to livestock grazing, and this factor is a threat to all populations. Direct destruction of habitat for commercial, residential, or industrial development; intensive right-of-way maintenance activities; and off-road-vehicle traffic are the most significant threats to the species at this time (Somers and Gunn 1990).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is little or no commercial trade in *Astragalus bibullatus* at this time. All populations are very small and cannot support collection of plants for scientific or other purposes. Inappropriate collecting for scientific purposes or as a novelty is a potential threat to the species.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Astragulus bibullatus* is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act of 1985. This protects the species from taking without the permission of the landowner or land manager. Should the species be added to the Federal list of endangered and threatened species, additional protection from taking will be provided by the Act when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate commercial trade would also be provided.

E. *Other natural or manmade factors affecting its continued existence.* The only other additional factor that threatens *Astragalus bibullatus* is the extended drought condition that the species faced through the fall of 1988. This extremely dry weather may be responsible for the decline observed in population 2 and may have adversely affected the other populations. These conditions probably caused higher than normal mortality of mature plants and seedlings and could, if they had continued to the present time, have an adverse effect on the survival of *A. bibullatus*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Astragalus bibullatus* as an endangered species. The species is known to occur in only three small, geographically limited populations that are threatened by factors which could render the plant extinct throughout all or a significant portion of it range. The appropriate classification for such species is endangered, as defined in section 3(6) of the Act. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. All populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from its known locations. Taking without permits, is prohibited by the Act from locations under Federal jurisdiction; however, none of the known populations are under Federal jurisdiction. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Astragalus bibullatus* have been made aware of the plant's location and of the importance of protecting the plant and its habitat. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Astragalus bibullatus*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All of the known populations of *Astragalus bibullatus* are on privately owned land. The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implamented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or resolution, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits woud ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22201 (703/358-2104).

In some instances, permits may be issued for a specified time to relieve undue economic hardship. However, since *Astragalus bibullatus* is not in commercial trade, no such permits are anticipated.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevent data concerning any threat (or lack thereof) to *Astragalus bibullatus*;

(2) The location of any additional populations of *Astragalus bibullatus* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Astragalus bibullatus*.

Final promulgation of the regulation on *Astragalus bibullatus* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Barneby, R.C., and E.L. Bridges. 1987. A new species of *Astragalus* (Fabaceae) from Tennessee's Central Basin. Brittonia 39(3):358-363.

Quarterman, Elsie. 1980. Biota, Ecology, and Ecological History of Cedar Glades: Introduction. ASB Bulletin 33(4):124-127.

Somers, Paul, and Scott C. Gunn. 1990. Status Report *Astragalus bibullatus* Barneby and Bridges. Unpublished report to the Southeast Region, U.S. Fish and Wildlife Service. 33 pp.

Author

The primary author of this proposed rule is Mr. Robert R. Currie, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801 (704/258-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–154; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Fabaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
Astragalus bibullatus	Guthrie's ground-plum	U.S.A. (TN)	E		NA	NA

Dated: September 14, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 23833 Filed 10-9-90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for Lepanthes eltorensis and Cranichis ricartii, Two Endemic Puerto Rican Orchids

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Lepanthes eltorensis* and *Cranichis ricartii* to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Both *Lepanthes eltorensis* and *Cranichis ricartii* are orchids endemic to mountain forests in Puerto Rico. *Lepanthes eltorensis* is a small epiphytic orchid which grows on trunks at upper elevations in the Luquillo Mountains of eastern Puerto Rico. Only two populations, approximately 140 individuals, are known today from the palo colorado and dwarf forests of these mountains. *Cranichis ricartii*, a terrestrial orchid, has been found at only three locations in the Maricao Forest of western Puerto Rico. Both species are threatened by forest management practices, hurricane damage, and collection. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Lepanthes eltorensis* and *Cranichis ricartii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 10, 1990. Public hearing requests must be received by November 26, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Thomas Turnipseed at the Atlanta Regional Office address (404/331–3583 or FTS 841–3583).

SUPPLEMENTARY INFORMATION:

Background

Lepanthes eltorensis was described by William Stimson in 1969 (Stimson 1969) in his study of the genus *Lepanthes* in Puerto Rico. All species belonging to this genus had previously been considered to be conspecific with *L. selenitepala* until it was recognized that the variability observed in the field indicated the presence of several species. *L. eltorensis* was named for the El Toro Trail in the Luquillo Mountains, the only location from which this species was known (Vivaldi et al. 1981). The orchid has been reported from three locations, the palm forest to the east of El Toro, and the palo colorado and dwarf forests to the west and south of this same peak. Collectors apparently eliminated the palm forest population between 1969 and 1975.

Lepanthes eltorensis is a small, epiphytic orchid found growing on moss-covered trunks of upper elevation forests in the Luquillo Mountains. The orchid is approximately 4 centimeters tall, with numerous, slender, 3 to 7 sheathed stems terminated by a single leaf. Leaves are 9 to 24 millimeters long and 4 to 9 millimeters wide, entire, chartaceous, and obovate to oblanceolate. The inflorescence is a long peduncled flat raceme, about ⅓ as long as the leaves, and usually appressed to the back of these leaves. The sepals are narrowly deltoid to deltoid-lanceolate, ciliate, and acute at the apices. The dorsal sepal is 3.2 to 3.8 millimeters long and 1.2 to 2.0 millimeters wide, 3-nerved, and slightly adnate to the 2-nerved lateral sepals, which are about 3 millimeters long and 1.0 to 1.6 millimeters wide. The petals are transversely 2-lobed, 1 nerved, and reddish. The posterior lobes are somewhat longer than the anterior, the lip is 3-lobed, and the lateral lobes linear-ovate and about 1 millimeter long and .25 millimeters wide. *Lepanthes eltorensis* is distinguished from other members of the genus by its obovate to oblanceolate leaves, the ciliate sepals, and the length of the inflorescence (Vivaldi et al. 1981).

In the Luquillo Mountains *Lepanthes eltorensis* has been reported from the sierra palm, palo colorado, and dwarf forest associations, all at elevations greater than 850 meters. It has been reported from several species of trees, all supporting abundant mosses and liversworts. Relative humidity in these forests ranges from 90 to 100 percent and cloud cover is continuous during evening hours and the majority of the day. Annual precipitation ranges from 313 to 450 centimeters in the mountains. Igneous rocks cover the majority of the area.

Although this is an inconspicuous orchid, collectors apparently devastated the original population known from the sierra palm forest (Vivaldi et al. 1981). All known populations are found within the Caribbean National Forest (managed by the U.S. Forest Service) where collecting is not permitted, but these inaccessible areas are difficult to monitor. All known individuals occur along the El Toro Trail and a small trail to the south, and may be impacted by forest management practices, including trail maintenance and shelter construction. Hurricane Hugo (1989) recently devastated this National Forest, and although the storm apparently did not affect any of the known host trees, it did create numerous gaps along the El Toro Trail, felling huge trees. The extreme rarity of this orchid makes the species extremely vulnerable to the loss of any one individual.

Cranichis ricartii, a small terrestrial orchid, was first discovered by Ruben Padrón and Dr. Juan Ricart in 1979 in the Maricao Commonwealth Forest of the western mountains of Puerto Rico. In this Forest it is found growing in humus of moist serpentine scrub forests of montane ridges at elevations above 680 meters. Found growing with *Cranichis tenuis*, this new species was described in 1989 (Ackerman 1989). In the Maricao Forest is has been reported from three locations, but it has not been observed at all of these sites every year. A total of approximately 30 individual plants have been observed (R. Padrón, personal communication). Selective cutting and the establishment of plantations in the Maricao Commonwealth Forest continue to be proposed as a management alternative.

Plants of *Cranichis ricartii* may reach 27 centimeters in height. The roots are few, fleshy, cylindric and villous. The several leaves are basal, erect, and about 2 to 3 centimeters long. The green, spreading blades are ovate to broadly elliptic, and 21 to 35 millimeters long and 14 to 20 millimeters wide. Infloresences are terminal, scapose, spicate, and pubescent. The raceme is many flowered and may reach up to 10 centimeters in length. Flowers are small, erect, non-resupinate, and green. The dorsal sepal is elliptic, obtuse, and about 1.8 millimeters long and 1.0 millimeter wide. The lateral sepals are broadly ovate, obtuse, adpressed to the lip, and about 1.9 millimeters long and 1.1 millimeters wide. The petals are filiform-oblanceolate, 1.9 millimeters long 0.2 millimeters wide, reflexed and addressed along the margins of the dorsal sepal but becoming somewhat free with age. The lip is green with a white margin, simple, short-clawed, pinched near the base, fleshy, essentially glabrous, and 2.0 to 2.5 millimeters long. The column is short, stout, and conspicuously winged. The fruit is an ellipsoid capsule, 5 to 7 millimeters long (Ackerman 1989).

Lepanthes eltorensis was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and the revised notices of September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). The species was designated Category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the four notices. *Cranchis ricartii* was recommended for listing by Dr. James Ackerman, University of Puerto Rico, during a September 1988 meeting concerning the revision of candidate plant species list in Puerto Rico and the U.S. Virgin Islands.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently made petition findings in each October from 1983 to 1989 that listing *Lepanthes eltorensis* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lepanthes eltorensis* Stimson and *Cranchis ricartii* Ackerman are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Although *Lepanthes eltorensis* and *Cranichis ricartii* are both found in protected areas, the Caribbean National Forest and the Maricao Commonwealth Forest, forest management practices such as the establishment and maintenance of plantations, selective cutting, trail maintenance, and shelter construction may affect these orchids. The extreme rarity of both these species makes the loss of any one individual even more critical.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Both these orchids are small and easily overlooked; however, taking has been documented for *Lepanthes eltorensis*. Although plant collecting is prohibited in the Caribbean National Forest, as it is in the Maricao Commonwealth Forest, Vivaldi et al. (1981) reported that collectors had apparently eliminated the population which was known in the palm forest. Scars were evident in more than 50 palms.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Lepanthes eltorensis* and *Cranichis ricartii* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, it would enhance their protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* Probably the most important factor affecting *Lepanthes eltorensis* and *Cranichis ricartii* in Puerto Rico is their limited distribution. Only two populations of *Lepanthes* and three of *Cranichis* are currently known to exist. *Cranichis* flowers in the fall, and preliminary studies indicate that seed set was only 32 percent, suggesting that the pollination mechanism may be inefficient. Hurricane Hugo recently devastated the Caribbean National Forest, creating microclimatic conditions unfavorable for *Lepanthes eltorensis* by causing numerous canopy gaps in the areas of the known populations. Because so few individuals are known to occur, the risk of extinction is extremely high.

The Service has carefully assessed the best scientific and commercial information available regarding the past present, and future threats faced by these species in determining to propose

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this rule. Based on this evaluation, the preferred action is to list *Lepanthes eltorensis* and *Cranichis ricartii* as endangered. Only two populations are known for *Lepanthes* and three for *Cranichis*. Collecting is known to have severely impacted one population of *Lepanthes*. Habitat modification, altering microclimatic conditions, may dramatically affect both these species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatend. The Service finds that designation of critical habitat is not prudent for these species at this time. The number of individuals of *Lepanthes eltorensis* and *Cranichis ricartii* are sufficiently small that vandalism and collection could seriously affect the survival of these species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Lepanthes eltorensis* and *Cranichis ricartii*, as discussed above. Federal involvement relates to activities to be conducted by the U.S. Forest Service in the Caribbean National Forest.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Lepanthes eltorensis* and *Cranichis ricartii* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22201 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lepanthes eltorensis* and *Cranichis ricartii*;

(2) The location of any additional populations of *Lepanthes eltorensis* and *Cranichis ricartii*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on *Lepanthes eltorensis* and *Cranichis ricartii*.

Final promulgation of the regulation of *Lepanthes eltorensis* and *Cranichis ricartii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ackerman, James D. 1989. *Prescotia* and *Cranichis* of Puerto Rico and the Virgin Islands. Lindleyana (1):42–47

Ayensu, E.S., and R.A. Defilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund. Washington, DC. xv + 403 pp.

Stimson, W. 1969. A revision of the Puerto Rican species of *Lepanthes* (Orchidaceae). Brittonia 21: 332–345.

Vivaldi, J.L., R.O. Woodbury, and H. Diaz-Soltero. 1981. Status report on *Lepanthes eltorensis* Stimson. Submitted to U.S. Fish and Wildlife Service, Atlanta, Georgia. 31 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

Part 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Orchidaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	special rules
Orchidaceae—Orchid Family:						
Cranichis ricartii	None	U.S.A. (PR)	E		NA	NA
Lepanthes eltorensis	None	U.S.A. (PR)	E		NA	NA

Dated: September 14, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–23634 Filed 10–9–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 196
Wednesday, October 10, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Agribusiness Promotion Council; Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council, advisory committee to the Secretary of Agriculture on matters pertaining to the Caribbean Basin, will meet from 8:30 a.m. to 5 p.m. on Monday, October 29, 1990. The meeting will be held in room. 104–A Administration Building, U.S. Department of Agriculture. The agenda for the meeting includes: Report on previous activities, discussion of issues of concern to the entire Council, and recommendations on the future direction of the program and specific projects. The meeting is open to the public. The public may participate as time and space permit.

Comments may be submitted to Dr. Duane Acker, Administrator, Office of International Cooperation and Development, until November 15, 1990. Further information may be obtained by calling Avram E. Guroff, Assistant to the Administrator, Office of International Cooperation and Development, (202–653–7710).

Done at Washington, DC, this 3rd day of October 1990.

Duane Acker,

Administrator.

[FR Doc. 90–23894 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–OP–M

Animal and Plant Health Inspection Service

[Docket No. 90–154]

U.S. Veterinary Biological Product and Establishment Licenses, and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses and veterinary biological product permits by the Animal and Plant Health Inspection Service during the month of June 1990. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8674.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to the regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of June 1990:

Product license code	Date issued	Product	Establishment	Establishment license No.
1185.20	06–13–90	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$-Respiratory Syncytial Virus Vaccine, Killed Virus.	Boehringer Ingelheim Animal Health, Inc	124
1431.50	06–25–90	Coccidiosis Vaccine, Live Oocysts	Vetech Laboratories of Buffalo, Inc	374
1431.56	06–25–90	Coccidiosis Vaccine, Live Oocysts	Vetech Laboratories of Buffalo, Inc	374
1541.01	06–27–90	Erysipelothrix Rhusiopathiae Vaccine, Avirulent Live Culture.	Bio-Vac Laboratories, Inc	307
1771.18	06–11–90	Newcastle-Bronchitis Vaccine B$_1$ Type, Lasota Strain, Mass. Type, Live Virus.	Intervet America, Inc	286
1871.03	06–25–90	Pasteurella Multocida Vaccine, Avirulent Live Culture, Avian isolate.	Arko Laboratories Ltd	337
1895.RO	06–14–90	Pseudorabies Vaccine, Killed Virus	Syntrovet Incorporated	314
1961.00	06–11–90	Transmissible Gastroenteritis Vaccine, Modified Live Virus	Schering-Plough Animal Health Corporation	165–A
19E5.20	06–11–90	Porcine Rotavirus Vaccine, Killed Virus	Schering-Plough Animal Health Corporation	165–A
19H7.20	06–11–90	Porcine Rotavirus-Transmissible Gasteroenteritis Vaccine, Modified Live and Killed Virus.	Schering-Plough Animal Health Corporation	165–A
2112.01	06–04–90	Bordetella Bronchiseptica-Escherichia Coli Bacterin	Rhone Merieux, Inc	298
2126.00	06–13–90	Borrelia Burgdorferi Bacterin	American Home Products Corporation	112
2659.01	06–04–90	Haemophilus Somnus Bacterin	Grand Laboratories, Inc	303
49B9.20	06–11–90	Porcine Rotavirus-Transmissible Gastroenteritis Vaccine—Clostridium Perfringens Type C-Escherichia Coli Bacterin-Toxoid, Modified Live and Killed Virus.	Schering-Plough Animal Health Corporation	165–A
49C5.20	06–11–90	Porcine Rotavirus Vacine—Clostridium Perfringens Type C-Escherichia Coli Bacterin-Toxoid, Killed Virus.	Schering-Plough Animal Health Corporation	165–A
502A.01	06–11–90	Feline Leukemia Virus Antigen-Feline Immunodeficiency Virus Antibody Test Kit.	IDEXX Corp	313
5112.00	06–18–90	Pseudorabies Virus gpIII Antibody Test Kit	Fermenta Animal Health Company	272
A961.00	06–11–90	Transmissible Gastroenteritis Vaccine, Modified Live Virus	Diamond Scientific Co	213

Product license code	Date issued	Product	Establishment	Establishment license No.
G054.00	06–04–90	Bordetella Bronchiseptica-Erysipelothrix Rhusiopathiae-Pasteurella Multocida Bacterin-Toxoid.	SmithKline Beckman Corporation	188

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedure for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. No U.S. Veterinary Biologics Establishment Licenses were issued during the month of June 1990.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

Pursuant to the regulations, APHIS issued the following U.S. Veterinary Biological Product Permit during the month of June 1990:

Establishment	Permit No.	Date issued
Vetech Laboratories of Buffalo, Inc	374	6–25–90

The regulations in 9 CFR Parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product and Establishment Licenses, and U.S. Veterinary Biological Product Permits. Pursuant to these regulations, APHIS terminated the following U.S. Veterinary Biological Product License during June 1990:

Product license code	Date terminated	Product	Establishment	Establishment License No.
1565.00	6–18–90	Feline Panleukopenia Vaccine, Killed Virus	Beecham laboratories	225

No establishment licenses were suspended, revoked, or terminated during June 1990; and no product licenses or product permits were suspended or revoked during June 1990.

Done in Washington, DC, this 3rd day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–23893 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–34–M

Soil Conservation Service

Thirtymile Creek Watershed, MT: Environmental

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFS part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Thirtymile Creek Watershed, Blaine County, Montana.

FOR FURTHER INFORMATION CONTACT: Richard J. Gooby, State Conservationist, Soil Conservation Service, 10 East Babcock, Bozeman, Montana, 59715, telephone (406) 587–6813.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard J. Gooby, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for a flood prevention, primarily to benefit the city of Harlem and surrounding agricultural lands. The planned works of improvement include about 1.2 miles of channel improvement, a drop structure, and diking. Flood damages will be reduced by 92 percent. All flood damages will be eliminated during a 50-year event.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Scott V. Hoag, Jr.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: September 28, 1990.

James S Johnson,

Acting State Conservationist.

[FR Doc. 90–23792 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Information Collections Under Review by the Office of Management and Budget (OMB); Expedited Review

Doc has submitted to OMB for expedited clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The collections are for the National Oceanic and Atmospheric Administration of the Department of Commerce.

Title: Permits for Pelagic Longline Vessels in the Western Pacific Region.

Form Number: Agency—N/A; OMB—0648–0204.

Type of Request: Revision.

Burden: 150 new respondents; 38 new burden hours—average hours per response 15 minutes.

Needs and Uses: The information requirements; 12 hours for notification requirements—Average hours per response—60 minutes per trip for completing daily log, submission of log, and trip notification requirements.

Needs and Uses: The logbooks will be used to evaluate the status of stocks and to prevent overfishing. They will also be used to determine if there are any

Hawaiian Islands. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day. In addition, the operator of a fishing vessel carrying an observer

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

FISHING VESSEL PERMIT APPLICATION
LONGLINE FISHING VESSEL PERMIT APPLICATION

OMB CONTROL NO:
EXPIRATION DATE:

Date Received
Permit No.

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Title: Permits for Pelagic Longline Vessels in the Western Pacific Region.
Form Number: Agency—N/A; OMB—0648-0204.
Type of Request: Revision.
Burden: 150 new respondents; 38 new burden hours—average hours per response 15 minutes.
Needs and Uses: The information collected from the Longline fleet will be used by the National Marine Fisheries Service to monitor the level of activity in the fishery by tracking the number of active vessels. It will also be used to determine those vessels on which observers should be placed to determine the nature and extent of impact on protected species (monk seals, sea turtles, etc.).
Affected Public: Individuals; Small businessess or organizations; Businesses or other for-profit institutions.
Frequency: Annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Ron Minsk, 395-3084.
Title: Logbooks and Observers for Pelagic Longline Fishery Vessels in the Western Pacific Region.
Form Number: Agency—N/A; OMB—0648-0214.
Type of Request: Revision.
Burden: 150 new respondents; 2,264 new burden hours; 2,252 for logbook requirements; 12 hours for notification requirements—Average hours per response—60 minutes per trip for completing daily log, submission of log, and trip notification requirements.
Needs and Uses: The logbooks will be used to evaluate the status of stocks and to prevent overfishing. They will also be used to determine if there are any interactions with protected species. The pre-trip notification requirements will be used to place observers aboard vessels to collect detailed information about the fishery. The post-trip notification is required so that a briefing by the observer can be arranged upon return to port.
Affected public: Individuals; Small businesses or organizations; Businesses or other for-profit institutions.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Ron Minsk, 395-3084.

The pre-trip and post-trip requirements are as follows: Operators of fishing vessels shall inform the Regional Director at least 72 hours (not including weekends and holidays) before leaving port of his or her intent to fish within 50 nautical miles off French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands and Kure Island off the Northwestern Hawaiian Islands. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day. In addition, the operator of a fishing vessel carrying an observer must contact the U.S. Coast Guard at least 24 hours before landing, and report the estimated time and date and port at which the permitted vessel will land billfish and associated species.

Copies of the information collection proposals (logbook and permit application) are published below. Any questions can be directed to Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments for the proposed information collections should be sent to Ron Minsk, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503. You can also telephone him on (202) 377-3084.

Dated: October 2, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510-22-M

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

FISHING VESSEL PERMIT APPLICATION
LONGLINE FISHING VESSEL PERMIT APPLICATION

OMB CONTROL NO:
EXPIRATION DATE:

Date Received
Permit No.

APPLICATION INFORMATION — PLEASE PRINT		
Name of Applicant (Last, First, Middle)		Telephone No.
Name of Vessel Owner (Last, First, Middle)		Telephone No.
Mailing Address of Owner	City and State	Zip Code
Operator's Name (Last, First, Middle)		Telephone No.
Operator's Mailing Address	City and State	Zip Code

PERMIT INFORMATION - PLEASE PRINT		
Primary Fishing Area MHI____ A. Samoa____ NWHI____ Guam____	Prior Permit No.	Expiration Date of Permit

VESSEL INFORMATION - PLEASE PRINT			
Vessel Name	Vessel Number	Radio Call Sign	Home Port
Gross Reg. Tons	Registered Length	Beam of Vessel	Fuel Capacity
Avg. Cruising Speed	Max. Range	Horsepower	Age of Vessel
Date Vessel Purchased	Purchase Price	Number of Crew	

FISHING INFORMATION - PLEASE PRINT	
Vessel Fish Hold Capacity (tons)	Type of Refrigeration and Capacity (tons) a. Ice ____ d. Plate Freeze ____ b. Onboard Ice Plant____ e. Blast Freeze ____ f. Other (specify)____
Type and Amount of Gear	a. Handline ____ c. Bottom Longline ____ b. Traps ____ d. Other (specify) ____
APPLICANT'S SIGNATURE_____ DATE_____	

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INSTRUCTIONS FOR DAILY LONGLINE FISHING LOGBOOK

1. VESSEL: Enter name of vessel

2. PERMIT NO.: Enter longline fishing permit number

3. DATE OF HAUL: Enter date of haul of longline

4. SET: Enter time (using 24 hour clock) and latitude and longitude of location when the longline set began

5. HAUL: Enter time (using 24 hour clock) and latitude and longitude of location when the longline haul began

6. NO. OF HOOKS SET: Enter total number of hooks set

7. NO. OF LIGHTSTICKS USED: Enter total number of lightsticks used

8. SURFACE TEMP.: Enter surface water temperature (if taken)

9. SPECIES: For each listed species, enter the numbers kept and released in the TOTAL columns; the TALLY columns are work space for your convenience in tallying the catch as the haul is carried out

10. PROTECTED SPECIES INTERACTION OBSERVATION: For each species or species category, enter in the appropriate columns the number sighted in the vicinity of the gear (not including birds) and the number released alive and uninjured, alive and injured, and dead; the TALLY columns again are provided for work space for your convenience

11. CAPTAIN: Signature of the captain

12. DATE: Date of completion of the log

Public reporting burden for this collection of information:

Completion of this report is required to obtain a benefit. The information collected is used for fishery management and research purposes. The public reporting burden for this collection is estimated to average 60 minutes per trip, including the time to complete the daily log sheet, submit log forms to the National Marine Fisheries Service (NMFS), and notify the NMFS prior to and on return from a trip. Any comments you may have on this burden estimate or on any other aspect of this data collection should be sent to the Pacific Area Office, SWR, NMFS, 2570 Dole Street, Honolulu, Hawaii 96822, and to the Office of Management and Budget, Paperwork Reduction Project (0648-0214), Washington, D.C. 20503.

OMB CONTROL NO:
EXPIRATION DATE:

DAILY LONGLINE FISHING LOG

Vessel_____Permit No._____Date of Haul__/__/__

Set: Time_____Location_____
Latitude/Longitude

Haul: Time_____Location_____
Latitude/Longitude

No. of Hooks Set_____No. of Light Sticks Used_____Surface Temp._____

Species	Number Kept		Number Released	
	Tally	Total	Tally	Total
BILLFISHES Marlin, Blue				
Marlin, Striped				
Marlin, Black				
Sailfish				
Spearfish				
Swordfish				
SHARKS Blue				
Mako				
Thresher				
Other				
MISC. Mahimahi				
Moonfish				
Wahoo				
Other				
TUNAS Albacore				
Bigeye				
Yellowfin				
Other				

PROTECTED SPECIES INTERACTION OBSERVATION

Species	Sighted in Area of Gear		Released or Lost					
			Alive		Injured		Dead	
	Tally	Total	Tally	Total	Tally	Total	Tally	Total
Dolphin								
Monk Seal								
False Killer Whale								
Green Turtle								
Leatherback Turtle								
Albatross								
Booby								
Others								

I certify that the above information is complete and true to the best of my knowledge.

Captain_____Date_____

[FR Doc. 90-23803 Filed 10-9-90; 8:45 am]
BILLING CODE 3510-22-C

International Trade Administration

[A-588-816]

Preliminary Determination of Sales at Less Than Fair Value: Benzyl P-Hydroxybenzoate From Japan

AGENCY: Import Administration,

On August 17 and August 31, 1990, Ueno submitted letters notifying the Department that it did not intend to reply to the Department's questionnaire.

Scope of Investigation

The product covered by this investigation is benzyl p-hydroxybenzoate (benzyl paraben)

Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown

written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1990 the Department of Commerce ("the Department") published in the Federal Register (55 FR 22367) the preliminary results of its administrative reviews of, and intent to revoke in part, the antidumping duty order on calcium hypochlorite from

accounts for only a small percentage of total home market sales of calcium hypochlorite.

Olin further argues that for the foregoing reason, this case should not be regarded as "normal" within the meaning of 19 CFR 353.55(a), which states that in comparing U.S. price with foreign market value, the Department

International Trade Administration

[A-588-816]

Preliminary Determination of Sales at Less Than Fair Value: Benzyl P-Hydroxybenzoate From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that imports of benzyl p-hydroxybenzoate (benzyl paraben) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of benzyl paraben from Japan, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by December 12, 1990.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Ross L. Cotjanle, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2815 or (202) 377-3534, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that imports of benzyl paraben from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the notice of initiation on July 27, 1990, (55 FR 30732), the following events have occurred. On August 23, 1990, the ITC published its determination that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports from Japan of benzyl paraben (55 FR 34828).

On August 24, 1990, the Department forwarded a questionnaire to Ueno Fine Chemicals Industry, Ltd. (Ueno). This manufacturer accounts for all exports of the subject merchandise to the United States during the period of investigation (POI).

On August 17 and August 31, 1990, Ueno submitted letters notifying the Department that it did not intend to reply to the Department's questionnaire.

Scope of Investigation

The product covered by this investigation is benzyl p-hydroxybenzoate (benzyl paraben). Benzyl paraben is currently classified under HTS item number 2918.29.50 (previously classified under item number 404.47 of the Tariff Schedules of the United States). The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the investigation.

Period of Investigation

The period of investigation is January 1, 1990, through June 30, 1990.

Fair Value Comparisons

To determine whether sales of benzyl paraben from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We used best information available as required by section 776(c) of the Act because Ueno refused to respond to the Department's request for information. We determined that the best information available was information submitted by the petitioner.

United States Price

U.S. price is based on an alleged actual price from Ueno's related U.S. distributor to a U.S. customer, as reported in the petition. We adjusted this price for credit costs, other direct selling expenses, indirect selling expenses, U.S. inland freight, U.S. import duty, handling charges, ocean freight and insurance based on information contained in the petition.

Foreign Market Value

We based FMV on price quotes regarding Ueno's sales in Japan as reported in the petition. We adjusted the homemarket price for credit costs, other direct selling expenses, indirect selling expenses up to the amount of the selling expenses incurred on U.S. sales, and Japanese inland freight based on information contained in the petition.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of benzyl paraben from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Ueno Fine Chemicals Industry, Ltd.	126.00
All Others	126.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, or are materially retarding the establishment of, an industry in the United States before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than October 22, 1990, and rebuttal briefs no later than October 29, 1990. In addition, a public version in five copies should be submitted by the appropriate date, if the submission is business proprietary. In accordance with 19 CFR 353.38(b), we will hold a hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 10 a.m. on November 1, 1990, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. section 1673(f)).

Dated: September 28, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23804 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-401]

Calcium Hypochlorite From Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On June 1, 1990 the Department of Commerce published the preliminary results of two administrative reviews of the antidumping duty order on calcium hypochlorite from Japan. The reviews cover three manufacturers and/or exporters of this merchandise to the United States and the periods of April 1, 1986 through March 31, 1987 and April 1, 1987 through March 31, 1988.

We gave interested parties an opportunity to comment on the preliminary results. At the request of petitioner Olin Corporation and respondent Tohoku Tosoh Chemical Co., Ltd., we held a hearing on July 18, 1990. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1990 the Department of Commerce ("the Department") published in the Federal Register (55 FR 22367) the preliminary results of its administrative reviews of, and intent to revoke in part, the antidumping duty order on calcium hypochlorite from Japan (50 FR 15470, April 18, 1985). The Department has now completed the administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Reviews

Imports covered by this review are shipments of calcium hypochlorite from Japan. During the review periods such merchandise was classifiable under item number 418.2200 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS item number 2828.10.00.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods April 1, 1986 through March 31, 1987 and April 1, 1987 through March 31, 1988. Three manufacturers/exporters, Tohoku Tosoh Chemical Co., Ltd. ("Tohoku Tosoh"), Nippon Soda Co., Ltd. ("Nippon Soda"), and Nankai Chemical Industry Co., Ltd. ("Nankai"), of Japanese calcium hypochlorite were reviewed. The manufacturer known to the Department as Tohoku Tosoh Chemical Co., Ltd., during the review period April 1, 1987 through March 31, 1988 ("third review") was known as Nissin Denka Co., Ltd., during the review period April 1, 1986 through March 31, 1987 ("second review").

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of petitioner Olin Corporation ("Olin") and respondent Tohoku Tosoh, we held a public hearing on July 18, 1990. We received comments from Olin Corporation, Tohoku Tosoh, and Nippon Soda.

Comment 1: Olin argues that the Department abused its discretion in calculating Nippon Soda's FMV based on sales to only one home market customer, and not on all sales to all customers in the home market, including those to the septic tank market. Olin argues that by limiting the sales employed in calculating FMV, the Department allowed Nippon Soda to reduce its FMV, and thus its antidumping duties, by lowering its price to a single home market customer who accounts for only a small percentage of total home market sales of calcium hypochlorite.

Olin further argues that for the foregoing reason, this case should not be regarded as "normal" within the meaning of 19 CFR 353.55(a), which states that in comparing U.S. price with foreign market value, the Department normally will use sales of comparable quantities of merchandise. Thus, one of the Department's stated reasons for employng sales to only one customer in calculating FMV is not valid.

Nippon Soda argues that the methodology the Department used in calculating FMV is in fact mandated by two Departmental regulations. The first is 19 CFR 353.55(a) cited above; the other is 19 CFR 353.58, which states that the Secretary normally will calculate foreign market value and United States price based on sales at the same commercial level of trade.

Department's Position: We disagree with Olin. As stated in the Department's file memorandum of May 30, 1990, the Department determined that sales to one home market customer, a repackager, were an adequate basis for calculating FMV. The level of trade to the repackager more closely approximated the level of trade of sales to the U.S. customer than did sales to Nippon Soda's other home market customers, all wholesalers, because of the functional similarity of the home market repackager to the trading company that exports to the United States. Furthermore, Nippon Soda performed various services for its wholesaler customers that it did not perform for its repackager customer. Additionally, the lot sizes of sales to the repackager were generally closer to the lot sizes of sales to the U.S. than were the lot sizes of sales to Nippon Soda's home market wholesaler customers.

Olin's arguments are unsubstantiated by any evidence that Nippon Soda is in fact manipulating the price to the repackager in order to lower its antidumping duties. On the contrary, evidence on the record indicates that the price differential between sales to the repackager and sales to wholesalers during the second and third review periods was smaller than during the investigation. Furthermore, the total volume of sales to the repackager during the second and third reviews constituted a higher proportion of the total volume of home market granular sales than did the volume of sales to the repackager during either the investigation or the first administrative review. In both of these prior proceedings the Department calculated FMV based on sales only to

the repackager. Given these facts, our decision is that this situation is "normal" within the meaning of the Department's regulations, and that both 19 CFR 353.55(a) and 19 CFR 353.58 are applicable.

Regarding Olin's contention that sales to the home market septic tank market

for the difference in chlorine content between the granular-form calcium hypochlorite consisting of 65 percent chlorine (type 65G) sold in the United States and the granular-form calcium hypochlorite consisting of 70 percent chlorine (type 70G) sold in the home

purposes of administrative equity, we have made difmer adjustments based on the information submitted by the respondents in their questionnaire responses. The new dumping margins listed in this notice reflect this change.

Comment 4: Tohoku Tosoh argues that

irrelevant because Tohuku Tosoh's dumping margin for the first administrative review period was *de minimis*. Thus, it would not have been paying antidumping duty deposits during the second and third reviews.

Department's Position: We agree with

of estimated antidumping duties based on the above margins shall be required for these firms. Since we are revoking the order with respect to Nippon Soda, no cash deposit shall be required for this firm. For any shipments from the remaining known manufacturers and

[A-475-703]

Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade

the repackager. Given these facts, our decision is that this situation is "normal" within the meaning of the Department's regulations, and that both 19 CFR 353.55(a) and 19 CFR 353.58 are applicable.

Regarding Olin's contention that sales to the home market septic tank market should be included in the reviews, the Department did not base FMV for any respondent on sales to a particular market. Rather, we based FMV on sales of identical merchandise. If any sales of granular calcium hypochlorite were made to the septic tank market among the subset of identical merchandise sales used as the basis for calculating FMV, then they were included in our calculation of FMV.

Comment 2: Olin argues that by requiring Nippon Soda to report all home market sales for the fourth administrative review period ("fourth review"), the Department implicitly acknowledged the validity of Olin's concerns about Nippon Soda's not reporting all its home market sales in the second and third reviews. Thus, the Department must complete its analysis for the fourth review, utilizing all home market sales in calculating FMV while making any appropriate adjustment for differences in quantities, and place the results on the public record for review and comment. Until it has done so the Department cannot justifiably conclude that future dumping is unlikely to occur, in which case the antidumping duty order cannot be revoked with respect to Nippon Soda at the completion of the third review without violating the Department's regulations at 19 CFR 353.25(b).

Nippon Soda argues that Olin is reading too much into the Department's request for all home market sales during the fourth review. The Department's request need imply nothing more than that the Department wanted to confirm the striking difference in quantities between the home market repackager sales and sales to the wholesalers.

Department's Position: We disagree with Olin. The Department's request for all home market sales for the fourth review is not evidence that future dumping is likely, nor is it confirmation that the Department considers that dumping will reoccur. The Department requested all home market granular sales for the fourth review as a check on Nippon Soda's claimed home market lot sizes. This objective was accomplished for the third review at the verification.

Comment 3: Nippon Soda argues that it should have been granted a difference in merchandise ("difmer") adjustment for the difference in chlorine content between the granular-form calcium hypochlorite consisting of 65 percent chlorine (type 65G) sold in the United States and the granular-form calcium hypochlorite consisting of 70 percent chlorine (type 70G) sold in the home market. It argues that it presented the same type of difmer information in the second and third reviews that it had presented during the investigation, in which the Department made a difmer adjustment. Nippon Soda claims that it was not given any reason to believe that the Department required any different information in these reviews.

Tohoku Tosoh argues that it, too, should be granted a difmer adjustment for the five percent difference in chlorine content between some of the U.S. product it sells in the U.S. and its home market product. It alleges that the basis for the Department's decision not to grant the adjustment—that input quantities of chlorine were not reported—is not valid because the regulatory basis for the difmer adjustment is the difference between the end products, not between the input quantities.

Olin argues in the case of Nippon Soda that no difmer adjustment should be granted because Nippon Soda failed to meet the required burden to receive a difmer adjustment. That burden, according to Olin, was for Nippon Soda to articulate its approach to the difmer adjustment in its questionnaire response. By simply submitting a questionnaire response identical in format to that which it submitted in the investigation, Nippon Soda has, according to Olin, "slept on its rights."

In the case of Tohoku Tosoh, Olin argues that it was Tohoku Tosoh's responsibility to submit the necessary data and ensure that the Department verified that data. As Tohoku Tosoh did not do so, the difmer adjustment is barred.

Department's Position: The Department evaluates claims for difmer adjustments on their individual merits, based on the information submitted for the record of each review. The Department is not required to grant a difmer adjustment merely because it granted one in a prior review based on similar information. Moreover, the Department believes that input quantities is the better basis for calculating the amount of any adjustment. Nevertheless, the Department's attempt to obtain the input quantities was subject to misinterpretation. Therefore, for purposes of administrative equity, we have made difmer adjustments based on the information submitted by the respondents in their questionnaire responses. The new dumping margins listed in this notice reflect this change.

Comment 4: Tohoku Tosoh argues that the Department should calculate its FMV based on only large-quantity sales in the home market. This method is justified, it argues, because the same situation exists among its home market customers as exists among Nippon Soda's home market customers, i.e., that the bulk of its home market sales are in quantities much smaller than the quantities of sales to the United States. Furthermore, the Department is required under 19 CFR 353.55(a) to compare U.S. price with home market sales of comparable quantities.

Olin argues that is is too late for Tohoku Tosoh to make this request, and that the relevant regulation is not mandatory. If the Department acceded to this request, it would set an undesirable precedent, allowing vast numbers of respondents in other cases to manipulate their home market sales structures to ensure that only a tiny fraction of home market sales need be adjusted downward to eliminate the dumping margins established in the investigation phase of the case.

Department's Position: There is no regulatory or statutory requirement that requests such as that submitted here by Tohoku Tosoh be submitted prior to publication of the preliminary results. Moreover, Olin's argument that acceding to Tohoku Tosoh's request would set a bad precedent is an argument that could be used against ever implementing 19 CFR 353.55(a). Furthermore, Olin has presented no evidence that Tohoku Tosoh has manipulated prices of comparison merchandise. Therefore, we have determined that Tohoku Tosoh's recommended approach is consistent with the intent of 19 CFR 353.55(a), which states that the Secretary normally will compare comparable quantities, and have recalculated Tohoku Tosoh's dumping margin, using only large quantity home market sales of granular calcium hypochlorite.

Comment 5: Tohoku Tosoh argues that the Department erred by including in the deduction for U.S. duty the amount of the deposit for estimated antidumping duties. Tohoku Tosoh requests that its U.S. price be recalculated without this deduction.

Olin argues that Tohoku Tosoh's claimed adjustment, while possibly valid in theory, may be factually irrelevant because Tohoku Tosoh's dumping margin for the first administrative review period was *de minimis*. Thus, it would not have been paying antidumping duty deposits during the second and third reviews.

Department's Position: We agree with the respondent. The dumping margins listed below reflect a recalculation of Tohoku Tosoh's U.S. duty adjustment for those sales in which antidumping duty deposits were inadvertently included in the U.S. duty adjustment. As for Olin's argument that Tohoku Tosoh's claim may be factually irrelevant, we note that the final results of the first administrative review were not published until October 29, 1987. Thus, Tohoku Tosoh would have been paying antidumping duty deposits until that date.

Final Results of Review and Revocation in Part

Based on our analysis of the comments received and the correction of certain clerical errors, the final results are revised from those presented in the preliminary results for the periods April 1, 1986 through March 31, 1987 and April 1, 1987 through March 31, 1988 as follows:

Manufacturer/exporter	Period	Margin (percent)
Second Review Period:		
Nissin Denka Co., Ltd.	04/01/86-03/31/87	1.19
Nippon Soda Co., Ltd.	04/01/86-03/31/87	0.00
Nankai Chemical Industry Co., Ltd.	04/01/86-03/31/87	0.65
Third Review Period:		
Tohoku Tosoh Chemical Co., Ltd. (a/k/a/ Nissin Denka Co., Ltd.)	04/01/87-03/31/88	10.56
Nippon Soda Co., Ltd.	04/01/87-03/31/88	0.04
Nankai Chemical Industry Co., Ltd.	04/01/87-03/31/88	1.50

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since we are revoking the order with respect to Nippon Soda, no cash deposit shall be required for this firm. For any shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the rate for each of those firms published in the final results of the last administrative review. (52 FR 41600; October 29, 1987).

For any entries of this merchandise from a new exporter, not covered in the administrative review covering the period of April 1, 1986 through March 31, 1987, whose first shipment occurred after March 31, 1987 and before April 1, 1988, and who is unrelated to any reviewed firm, a cash deposit of 1.19 percent shall be required.

For any future entries of this merchandise from a new exporter, not covered in the administrative review covering the period April 1, 1987 through March 31, 1988, whose first shipment occurred after March 31, 1988, and who is unrelated to any reviewed firm, a cash deposit of 10.56 percent shall be required.

These deposit requirements are effective for all shipments of Japanese calcium hypochlorite entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

In accordance with 19 CFR 353.25 (1990) we are revoking the antidumping duty order with respect to Nippon Soda on the basis of three years of no dumping or dumping at *de miminis* levels, Nippon Soda's certified statement, and our determination that future dumping is not likely. The revocation applies to all unliquidated entries of this merchandise manufactured by Nippon Soda and entered, or withdrawn from warehouse, for consumption on or after April 1, 1988.

This admininstrative review, revocation in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and 19 CFR 353.22 (1990) and 353.25 (1990).

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23805 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-703]

Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by Montefluos S.p.A. (Montefluos), a respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Italy. The review covers one manufacturer/exporter of this merchandise to the United States and the period April 20, 1988 through July 31, 1989.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1988, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 33163) an antidumping duty order on granular PTFE from Italy. A manufacturer/exporter, Montefluos S.p.A. (Montefluos), requested in accordance with 19 CFR 353.22 that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on September 20, 1989 (54 FR 38712). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.*, of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or

after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of granular polytetrafluoroethylene resin, filled and unfilled, which during the period was provided for in Tariff Schedules of the United States (TSUS) item number 445.54, and is currently classifiable

Manufacturer/exporter	Period	Margin (percent)
Montefluos S.p.A.	04/20/88-07/31/79	27.72

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On June 27, 1990, the Department of Commerce published the final results of its administrative review of the antidumping duty order on certain iron construction castings from Brazil.

Amended Final Results of Review

Based on our correction of the ministerial error, the cash deposit rate for new exporters not covered in this administrative review, whose first shipments occurred after April 30, 1988 and who are unrelated to the reviewed firms, will be 8.46 percent.

Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-4922.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1990, the Department published in the **Federal Register** (55 FR

October 1, 1988 through September 30, 1989.

Use of Best Information Available

We have determined, in accordance with section 776(c) of the Act and 19 CFR 353.37, that the use of best information available is appropriate for entries of the subject merchandise from

after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of granular polytetrafluoroethylene resin, filled and unfilled, which during the period was provided for in Tariff Schedules of the United States (TSUS) item number 445.54, and is currently classifiable under HTS item number 3904.61.00. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this order. The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter to the United States of Italian PTFE and the period April 20, 1988 through July 31, 1989.

United States Price

The Department based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Tariff Act. We calculated ESP based on packed, delivered prices to unrelated purchasers in the United States. We made deductions where appropriate for foreign inland freight, ocean freight, brokerage and handling charges, U.S. duty, U.S. inland freight, credit expenses, and other U.S. selling expenses pursuant to 19 U.S.C. 772(e) (1) and (2).

Foreign Market Value

In calculating foreign market value the Department used home market prices, as defined in section 773(a) of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. When possible, we compared sales of identical merchandise in the two markets. When identical merchandise was not sold in the home market, we based our comparison on the most similar merchandise, and, where applicable, we made an adjustment for differences in merchandise. Foreign market value was based on the packed, delivered prices to unrelated purchasers in Italy, with appropriate deductions for inland freight and insurance, discounts, and rebates. We also made adjustments, where applicable, for differences in packing and credit expenses. We deducted indirect selling expenses incurred on home market sales up to the amount of U.S. selling expenses, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/exporter	Period	Margin (percent)
Montefluos S.p.A.	04/20/88-07/31/89	27.72

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any issues raised in such comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may differ from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after July 31, 1989, and who is unrelated to Montefluos, a cash deposit of 27.72 percent shall be required. These deposit requirements are effective for all shipments of Italian granular PTFE resin, filled and unfilled, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23606 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-503]

Certain Iron Construction Castings From Brazil; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On June 27, 1990, the Department of Commerce published the final results of its administrative review of the antidumping duty order on certain iron construction castings from Brazil. The review covered one manufacturer of the merchandise for the period October 21, 1985 through April 30, 1987, and a second firm for the period October 21, 1985 through April 30, 1988.

In those results of review, the Department stated that the cash deposit for new exporters whose first shipment occurred after April 30, 1988 is 25.50 percent. The correct cast deposit rate for new exporters is 8.46 percent.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:.

Background

On June 27, 1990, the Department of Commerce (the Department) published in the Federal Register (55 FR 26240) the final results of its administrative review of the antidumping duty order on certain iron construction castings from Brazil (51 FR 8197, May 9, 1986). After publication of our final results, we noted a ministerial error in the notice. We used the wrong rate for new exporters (25.50 percent). The correct rate is 8.46 percent, the highest rate for responsive firms with shipments during the most recent period reviewed.

Section 1333 of the Omnibus Trade and Competitiveness Act of 1988, which amended section 735 of the Tariff Act of 1930 (the Act), authorizes the Department to establish procedures for the correction of ministerial errors in final determinations. On February 26, 1988 (53 FR 5813) and October 24, 1988 (53 FR 41617), the Department published these procedures in the Federal Register. Congress defined the term "ministerial error" to specifically include errors in addition, subtraction, or other arithmetic functions, clerical errors resulting from inaccurate copying, duplication, or the like.

Accordingly, pursuant to the Department's regulations and section 735(e) of the Act, we are amending the cash deposit rate for new exporters to correct this ministerial error.

Amended Final Results of Review

Based on our correction of the ministerial error, the cash deposit rate for new exporters not covered in this administrative review, whose first shipments occurred after April 30, 1988 and who are unrelated to the reviewed firms, will be 8.46 percent.

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23607 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-059]

Preliminary Results of Antidumping Duty Administrative Review of Pressure Sensitive Plastic Tape from Italy

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In response to a request filed by the petitioner, Minnesota Mining and Manufacturing Company (3M), the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on pressure sensitive plastic tape (PSPT) from Italy. The review initially covered three manufacturers/exporters of this merchandise to the United States for the period October 1, 1988, through September 30, 1989. Subsequently, on February 21, 1990, the Department revoked the antidumping finding with respect to one respondent, Boston S.p.A. Another respondent, Manuli S.p.A., made no shipments during the review period. Only one respondent, NAR S.p.A., made shipments to the United States during the review period.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October, 10, 1990.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, Jr., Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-4929.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1990, the Department published in the Federal Register (55 FR 6031) the final results of the October 1, 1987, through September 30, 1988, review of the antidumping duty finding on PSPT from Italy (42 FR 56110, October 21, 1977). On October 30, 1989, the petitioner, 3M, requested, in accordance with 19 CFR 353.53(a), that the Department conduct an administrative review for the period October 1, 1988, through September 30, 1989. We published a notice of initiation of this antidumping duty administrative review on November 20, 1989 (54 FR 48010) covering three manufacturers/exporters—Boston S.p.A. Manuli S.p.A., and NAR S.p.A. Subsequently, we revoked the antidumping finding with respect to Boston S.p.A. in the final results of the administrative review covering the period October 1, 1987, through September 31, 1988, published on February 21, 1990 (55 FR 6031). Another respondent, Manuli S.p.A., made no shipments during the review period. Only NAR S.p.A. made shipments to the United States during the review period. The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of PSPT measuring over 1⅝ inches in width and not exceeding 4 mils in thickness. During this review period such merchandise was provided for under items 790.5530, 790.5545, and 790.5555 in the *Tariff Schedules of the United States Annotated* (TSUSA) and under 3919.90.20 and 3919.90.50 of the Harmonized System (HTS). The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers two manufacturers/exporters of Italian PSPT to the United States and the period October 1, 1988 through September 30, 1989.

Use of Best Information Available

We have determined, in accordance with section 776(c) of the Act and 19 CFR 353.37, that the use of best information available is appropriate for entries of the subject merchandise from NAR S.p.A. in this review.

In deciding what to use as best information available, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's review, the Department assigns to that company the higher margin for the subject merchandise of either (1) the highest margin calculated for that company in any previous review; or (2) the highest calculated margin for any respondent within that country that supplied adequate responses.

When a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department may assign the affected company the highest margin assigned that company in any previous review.

Because NAR attempted to cooperate, but failed to provide an adequate questionnaire response in a timely manner, we used the highest calculated margin for that firm from all past reviews, 6.39%. This calculated margin may, however, be subject to change prior to the final results for this review, because the September 1, 1985, through September 30, 1986, review that generated that margin is pending approval of remand results.

Preliminary Results of the Review

Based on the untimely and deficient submission of NAR's responses, as best information available, we are assigning the highest dumping margin NAR received in any prior review. Therefore, we preliminarily determine the margins to be:

Manufacturer/exporter	Time period	Margin (percent)
NAR S.p.A.	10/1/88-9/30/89	6.39%
Manuli S.p.A.	10/1/88-9/30/89	0%[1]

[1] No shipments during the period; margin is from last review in which there were shipments.

The Department will issue appraisement instructions concerning NAR directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of Italian PSPT entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the most recent rate applicable for each of those firms (55 FR 6031, February 21, 1990); (2) the cash deposit rate for the companies included in this notice will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after September 30, 1989, and who is unrelated to any reviewed firm, will be 6.39 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of this administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 1, 1990, and rebuttal briefs no later than November 8, 1990. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Such hearing will be held at 2 p.m. on November 15, 1990, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) of the Department's regulations, an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 353.22(c)(5).

Dated: September 28, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23606 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-DS-M

Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for several of the countries for which subsidies were identified in our last quarterly update to the annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (¢/lb.)	Net [2] subsidy (¢/lb.)
Belgium	European Community (EC) Restitution Payments	43.8	43.8
Canada	Export Assistance on Certain Types of Cheese	30.1	30.1
Denmark	EC Restitution Payments	56.7	56.7
Finland	Export Subsidy	142.1	142.1
France	EC Restitution Payments	52.9	52.9
Greece	do	36.1	36.1
Ireland	do	42.8	42.8
Italy	do	71.2	71.2
Luxembourg	do	43.8	43.8
Netherlands	do	43.7	43.7
Norway	Indirect (Milk) Subsidy	19.2	19.2
	Consumer Subsidy	42.5	42.5
Portugal	EC Restitution Payments	61.7	61.7
Spain	do	41.6	41.6
Switzerland	Deficiency Payments	47.0	47.0
U.K.	EC Restitution Payments	104.0	104.0
W. Germany	do	39.9	39.9

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS—Continued

Country	Program(s)	Gross [1] subsidy (¢/lb.)	Net [2] subsidy (¢/lb.)
Portugal	EC Restitution Payments	61.7	61.7
Spain	do	41.6	41.6
Switzerland	Deficiency Payments	47.0	47.0
U.K.	EC Restitution Payments	104.0	104.0
W. Germany	do	39.9	39.9
		53.1	53.1

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 90-23610 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-406]

Certain Round-Shaped Agricultural Tillage Tools (DISCS) From Brazil; Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances countervailing duty administrative review and intent not to revoke countervailing duty order.

SUMMARY: The Department of Commerce has conducted a changed circumstances administrative review of the countervailing duty order on certain round-shaped agricultural tillage tools from Brazil. We preliminarily determine that changed circumstances do not exist sufficient to warrant revocation of the countervailing duty order. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1985, the Department of Commerce (the Department) published in the **Federal Register** (50 FR 43008) a countervailing duty order on certain round-shaped agricultural tillage tools (discs) from Brazil.

On November 8, 1988, we received a request from Ingersoll Products Company (Ingersoll), a domestic producer, for revocation of the order based on changed circumstances. Ingersoll stated that, as the major U.S. producer of the subject merchandise, it was no longer interested in maintaining the order. On December 5, 1988, Osmundson Manufacturing Company (Osmundson), the only other known domestic producer, objected to revocation. On April 12, 1990, we received clarification that Marktill Corporation, the parent company of Ingersoll, is the party requesting revocation.

Based on the information submitted, the Department determined that changed circumstances may exist, sufficient to warrant initiation of a review in accordance with 19 CFR 355.22(h). On May 25, 1990, the Department published in the **Federal Register** (55 FR 21640) a notice of initiation of changed circumstances administrative review and consideration of revocation of the countervailing duty order on certain round-shaped agricultural tillage tools from Brazil to determine whether changed circumstances exist sufficient to warrant revocation of the countervailing duty order.

Scope of Review

Imports covered by this review are shipments from Brazil of certain round-shaped agricultural tillage tools (discs) with plain or notched edge such as colters and furrow-opener blades. This merchandise is currently classifiable under item numbers 5432.90.00, 8432.21.00 and 8432.90.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis

The requirements for revocation of a countervailing duty order are set forth in 19 CFR 355.25(d). Under § 355.25(d)(1), the Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties or that other changed circumstances exist sufficient to warrant revocation. The preamble to § 355.25(d) states that the opposition of one or more domestic parties should be evaluated in the context of the continuing requirement that the order have the support of the industry (53 FR 52333; December 27, 1988).

The Department has on numerous occasions revoked countervailing duty and antidumping orders on the basis of no industry interest. (*See, e.g.*, Canned Tuna from the Philippines; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order (58 FR 9788; March 25, 1988); Bricks from Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order (54 FR 53163; December 27, 1989) and Stainless Steel Plate from the United Kingdom; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order (51 FR 29144; August 14, 1986).) In only one instance has the Department revoked an order over the objection of a domestic producer (Carbon Steel Plate from Korea; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order (51 FR 13042; April 17, 1986)). In that instance, the Department took into account the presence of an overriding national interest combined with a lack of interest on the part of a substantial majority of the domestic industry in maintaining the order and the compensatory effect of a Voluntary Restraint Agreement (VRA) as an alternative form of import relief.

In this proceeding, while one of the producers has submitted an affirmative statement of no interest in maintaining the order, the only other domestic producer strongly advocates the continuation of the protection granted to the domestic industry by the countervailing duty rate of 8.08 percent *ad valorem*. Unlike in Carbon Steel Plate from Korea, there is no overriding national interest involved, nor is there an alternative form of import relief in place, should the protection to the domestic industry provided by the order by removed.

Section 355.25(d)(4) further upholds the Department's requirement that no interested party be adversely affected by the revocation of an existing order when information on the record indicates the continued existence of countervailable subsidies. Under the so-called "sunset provision," the Department may revoke an order it no interested party has requested a review for five consecutive years. According to § 355.25(d)(4), the Department is required to publish a notice of intent to revoke an order when administrative review have not been requested for four consecutive anniversary months. At that time, an objection by any interested party is sufficient ground for the Department not to revoke the order. The objection of any interested party, without further qualification, represents "interest" sufficient to maintain the existing countervailing duty order. (*See, e.g.*, Certain Apparel from Thailand; Determination Not to Revoke Countervailing Duty Order (55 FR 22053; May 31, 1990) and Certain Textiles and Textile Products from Argentina; Determination Not to Revoke Countervailing Duty Order (55 FR 462; January 5, 1990).)

Furthermore, Osmundson has challenged the ability of Marktill to speak on behalf of the domestic industry, alleging a relationship between Marktill and the major Brazilian exporter of discs and alleging Marktill's increasing reliance on imports from Brazil. The Department has ascertained from information on the record in this review that Marktill is related to the largest U.S. importer of Brazilian discs and that Marktill has been increasing its role as an importer of Brazilian discs.

The preamble to § 355.25(d) of the Department's regulations states that if the parties take conflicting positions, the Department may find that circumstances have not changed sufficiently to warrant revocation of the order (53 FR 52333). In this review, we determine that in view of the opposition to revocation of this order by the only other domestic producer of discs and the evidence of Marktill's relationship with the major U.S. importer of Brazilian discs, the Department cannot conclude that Marktill's lack of interest constitutes lack of domestic industry interest in maintaining the countervailing duty order on Brazilian discs.

Preliminary Results of Review

As a result of our review, we preliminarily determine that changed circumstances do not exist sufficient to warrant revocation of the countervailing duty order on certain round-shaped agricultural tillage tools from Brazil. Therefore, we do not intend to revoke the countervailing duty order.

The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of the next administrative review.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). The Department will publish the final results of the review and its decision on revocation, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(b)(1) of the Tariff Act (19 U.S.C. 1675(b)(1)) and 19 CFR 355.22(h) and 355.25(d)(3).

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23809 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions, Availability for Licensing

United States Patent Application Serial Number 7-471,764, "Device and Method for Providing Accurate Time and/or Frequency" is owned by the Department of Commerce of the United States Government and is available for licensing in the United States in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. This concept provides the means for optimum control of a local clock through infrequent comparisons with a remotely located standard clock. Data acquired in the process of these infrequent comparisons is used to develop a model of the local clock performance. This model is then used continuously to improve upon the accuracy of the local clock. The automated process can be used to maximize the local clock performance or to achieve some fixed performance with a minimum number of comparisons. A broad range of software/hardware implementations of this concept are possible. Examples of potential areas of impact include personal computer and mainframe clocks, synchronization of networks, frequency and/or time measurement systems in standards laboratories, and consumer products including such items as appliance clocks, wall clocks, wrist watches and clocks in telephone handsets and television sets. Accuracy is limited by the characteristics of the clocks involved and the performance of the link between the local clock and the standard clock. A device synchronized in this way makes optimum use of the external calibration data and will therefore maintain the desired time and/or frequency tolerance at minimum cost.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, United States Department of Commerce, Post Office Box 1423, Springfield, Virginia 22151. A copy of the patent application may be purchased specifying the serial number, by writing the National Technical Information Service at 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the National Technical Information Service Sales Desk at (703) 487-4650.

Douglas J. Campion,

Potent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service.

[FR Doc. 90-23795 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Draft Program Environmental Impact Statement for Future 404 Permit Actions by Valencia Co. in the Santa Clara River and its Associated Tributaries, Los Angeles County, CA

AGENCY: Department of Defense, Department of the Army, Corps of Engineers Los Angeles District Regulatory Branch.

ACTION: Notice of intent to prepare a Draft Program Environmental Impact Statement (DEIS).

SUMMARY: The Corps will prepare a program EIS on future 404 permit activities associated with the phased development of the Valencia Master Plan along a portion of the Santa Clara River, Los Angeles County, California. The EIS will address cumulative impacts and less environmentally damaging project alternatives at a subregional level that will provide direction for future 404 permitting.

FOR FURTHER INFORMATION CONTACT: Mr. David Castanon, Regulatory Branch, CESPL-CO-R, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, CA 90053-2325, AC (213) 894-5606.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Valencia Company is currently planning and constructing various component projects of the Valencia Master Plan along with Santa Clara River and Castaic Creek. Certain projects along the river and its tributaries may result in the discharge of fill or dredged material into waters of the United States as defined in 33 CFR 320-330 under provisions of section 404 of the Clean Water Act. These discharges will require a Department of the Army permit. Projects resulting in discharges include channel lining for flood control, drainage structures, bridges, drop structures, grading, mechanical vegetative clearing, fill or encroachment into the River or tributary thereof.

The Valencia Master Plan is a ten to fifteen year development of a planned community. It includes an orderly development of residential, commercial, industrial, and recreational land uses. Most of Valencia's planned development is in upland areas.

Until the EIS is complete, Valencia Company will not submit any 404 permit applications for Master Plan projects. Instead, the Corps has determined that an EIS should be completed prior to issuance of individual 404 permits for the Master Plan because: (1) There are significant wetland and endangered species resources along the river; (2) there is a need to evaluate cumulative impacts on such resources from many unrelated 404 discharges; and (3) the individual 404 permit process in the watershed has been substantially prolonged in the past due to such issues.

The objective of the EIS is to assist in an orderly, complete and timely NEPA review and 404 permit evaluation for projects associated with the Valencia Master Plan. This will be particularly useful for evaluating secondary and cumulative impacts on the aquatic resources in the area.

2. Study Area and 404 Projects

The study area for the EIS will include (1) the Santa Clara River and immediately adjacent lands from the upstream, eastern boundary of Valencia Company properties, downstream to the confluence with Castaic Creek; (2) the South fork of the Santa Clara River from its confluence with the River to a point 5.7 miles upstream; and (3) San Francisquito Creek from its confluence with the River to the northern boundary of Valencia Company property, a distance of about 4.9 miles.

3. Scope of Analysis in the EIS

A program EIS will be prepared pursuant to 40 CFR 1502.20 because much of the remaining portions of the Valencia Master Plan have only been designated to a conceptual level, and specific discharge activities have not been precisely identified or described. The scope of the EIS will follow the directives in 33 CFR 325, appendix B, section 7(b) that require the scope to be restricted to the impacts of the specific activities requiring a Corps permit and those portions of the entire project over which the Corps has sufficient control and responsibility to warrant Federal review. The latter include portions of the project beyond Corps jurisdiction where cumulative Federal involvement is sufficient to turn an essentially private action into a Federal one.

The EIS will address the project at a conceptual level and therefore will represent a Program EIS. The EIS will examine environmental impacts of the discharge activities as well as any related activities outside Corps jurisdiction which are clearly dependent on the discharge. Potentially significant issues to be addressed in the DEIS include:

a. Riparian habitat and wetlands—Future flood control activities could result in the loss of riparian vegetation. The EIS will include a delineation of existing wetlands and an evaluation of their values.

b. Endangered species—Riparian habitat along the Santa Clara River provides potentially suitable habitat for the Federally listed endangered least Bell's vireo (*Vireo belli pusillus*). In addition, much of the river supports the Federally listed endangered unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*). These species could be affected by loss of wetlands, change in hydrologic conditions upstream or within their habitat, and the increased discharge of urban stormwater runoff.

c. Hydrology and Water Quality—The effect of channel lining and upland development on hydrological conditions (discharge quantities and velocities) and water quality conditions of the Santa Clara River will be addressed.

d. Public Safety—The potential flood control benefits of the proposed channel improvements on the adjacent land development, utilities and roads will be evaluated.

e. Cultural Resources—The EIS will evaluate potential impacts to pre-historic and historic resources in areas where the Corps permit evaluation for impacts to waters will trigger federal review of cultural resources over the rest of the project, in accordance with 33 CFR 325 appendix C.

f. Cumulative Impacts—Potential cumulative impacts of the Valencia Master Plan with other projects both upstream and downstream of Valencia's holdings that involve discharges into U.S. waters along the Santa Clara River will be identified.

g. Alternatives—The EIS will address alternative methods of flood control, bank protection and floodplain development that may be less environmentally damaging. It will also explore alternative ways of mitigating unavoidable impacts.

4. Scoping

There are no plans at this time to conduct a scoping meeting. Federal, state and local agencies and other interested parties are encouraged to send written comments to the above addressee concerning the scope of the EIS.

5. Schedule

The draft program EIS is currently scheduled for public review at the end of 1990.

Charles S. Thomas,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 90-23793 Filed 10-9-90; 8:45 am]

BILLING CODE 3710-KF-M

DEPARTMENT OF ENERGY

Notice of Renewal of the Charter of The American Statistical Association Committee on Energy Statistics

Pursuant to the Federal Advisory Committee Act (Public Law 92-463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR 101-6.1029.

The purpose of the Committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration (EIA), including:

1. Periodic reviews of elements of EIA information collection and analysis

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programs and the provision of recommendations;

2. Advice on priorities of technical and methodological issues in the planning, operation, and review of EIA statistical programs; and

3. Advice on matters concerning improved energy modeling and forecasting tools, particularly regarding their functioning, relevancy, and results.

Further information concerning this Committee can be obtained from Elinor Donnelly (202) 586-3448.

Issued in Washington, DC on: October 4, 1990.

J. Robert Franklin,

Deputy Advisory Committee, management Officer.

[FR Doc. 90-23867 Filed 10-9-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CI90-167-000, et al.]

Paragon Gas Corp., et al.; Natural Gas Certificate Filings

October 1, 1990.

Take notice that the followng filings have been made with the Commission:

1. Paragon Gas Corp.

[Docket No. CI90-167-000]

Take notice that on September 20, 1990, Paragon Gas Corporation (Paragon) of 520 Post Oak Boulevard, Suite 120, Houston, Texas 77027, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all NGPA categories of gas subject to the Commission's jurisdiction, including imported natural gas, liquified natural gas and gas purchased from suppliers other than producers (e.g., interstate pipeline system supply gas sold to marketers and others under Commission-approved interruptible sales service rate schedules), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: October 19, 1990, in accordance with Standard Paragraph J at the end of this notice.

2. Inland Steel Co.

[Docket No. CI90-150-000]

Take notice that on August 3, 1990, as supplemented on September 5, 1990, Inland Steel Company (Inland), c/o Inland Steel Industries, Inc., 30 West Monroe Street, Chicago, Illinois 60603, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of gas subject to the Commission's NGA jurisdiction, including gas imported from Canada and other sources, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: October 19, 1990, in accordance with Standard Paragraph J at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP90-2314-000]

Take notice that on September 27, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511 filed a request with the Commission in Docket No. CP90-2314-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate minor sales tap facilities needed to transport natural gas for Odeco Oil & Gas Company (Odeco), an end-user, under Tennessee's blanket certificates, issued in Docket Nos. CP82-413-000 and CP87-115-000, respectively, all as more fully set forth in the request which is open to public inspection.

Tennessee proposes a firm natural gas transportation service, under its FERC Rate Schedule FT-A, of 120 dekatherms on peak and average days, and 43,800 dekatherms annually for Odeco. Tennessee would receive the gas for Odeco's account in Ship Shoal Block 167, offshore Louisiana, and deliver equivalent volumes at a proposed facility located at Tennessee's Station Yard 523 (Cocodrie Station Yard), Terrebonne Parish, Louisiana. Tennessee estimates that it would spend $5,323 to construct and operate the proposed tie-in assembly to an existing blow-off valve and 800 feet of 2-inch pipeline between an existing measurement facility and the proposed tie-in assembly. Odeco would reimburse Tennessee for all construction costs.

Comment date: November 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Eastern Transmission Corp., et al.

[Docket No. CP90-2296-000, et al.]

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 15, 1990, in accordance with Standard Paragrah G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (Date filed)	Applicant	Shipper	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date (Rate schedule)	Related dockets[2]
CP90-2296-000 (9-25-90)	Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521.	Phibro Distributors Corporation.	400,000, 400,000 146,000,000	Various	Various	(IT-1)	CP88-136-000, ST90-4517-000
CP90-2297-000 (9-25-90)	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251.	Arco Natural Gas Marketing, Inc.	1,400,000 Mcf 1,400,000 Mcf 511,000,000 Mcf	LA	LA	8/11/90, (IT)	Order 509, ST90-4704-000
CP90-2298-000 (9-25-90)	Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	Citrus Industrial Sales Co. Inc.	75,000 40,000 14,600,000	TX, LA, MS, AL	AL	6/27/90, (IT)	CP88-316-000, ST90-4253-000
CP90-2299-000 (9-25-90)	Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	Citrus Industrial Sales Co., Inc.	75,000 40,000 14,000,000	TX, LA, MS, AL	TX, LA	6/27/90, (IT)	CP88-316-000, ST90-4256-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Texas Gas Transmission Corp.

[Docket No. CP88-686-001]

Take notice that on September 24, 1990, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-686-001 pursuant to section 7(c) of the Natural Gas Act a petition to amend the order of September 15, 1988, 44 FERC ¶ 62,265, issuing to Texas Gas a blanket certificate of public convenience and necessity for certain transportation of natural gas pursuant to Order Nos. 436 and 500. Texas Gas states that the amendment requested herein would authorize the assignment of capacity by Texas Gas' FT Rate Schedule FT customers, to third parties, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Texas Gas states that FT customers would be allowed to assign the firm capacity available to them on the Texas Gas system to third parties, provided that such FT customers notify Texas Gas in writing of such assignment. Texas Gas states that FT customers would have the right for any length of time to assign any or all of their rights to tender gas for transportation under their FT service agreement(s) with Texas Gas, to any third parties, subject to the following conditions:

(1) FT customers and assignees agree that they will comply with all the terms and conditions of the amended blanket certificate issued by the Commission in this docket;

(2) The FT customer agrees (as assignor) to be responsible to Texas Gas for compliance with all terms and conditions of the Rate Schedule FT and service agreement, including nominations, balancing of receipts and deliveries of gas, and payment of any and all transportation related charges, penalties and fees, for the service rendered under the FT customer's service agreement, and to be responsible for requesting any amendment(s) to such FT service agreement.

(3) FT customers warrant that they or their assignees will have title to all the gas delivered to Texas Gas under the FT service agreements, free and clear of all liens, encumbrances and claims. FT customers agree, further, that they will protect, indemnify, and hold harmless Texas Gas against any damages, claims, demands or losses incurred by Texas Gas on account of such liens, encumbrances or claims; and

(4) FT customers agree to notify Texas Gas when scheduling firm transportation service pursuant to Article III of their FT service agreements, of the quantity of gas which is owned by the FT shipper and the quantity of gas which is owned by an assignee.

Texas Gas states that multiple reassignment of capacity would be allowed by assignees and that the maximum rate that may be charged for any assigned FT capacity may not exceed the total of the "as-billed" rates charged by Texas Gas to its FT customers under their FT service agreement(s). Texas Gas further states that with regard to FT customers receiving standby transportation service under Texas Gas' Rate Schedule FT, Texas Gas proposes to allow these customers to charge that portion of the D-1 or D-2 charge any portion of the D-1 or D-2 charge which represents the FT demand charge attributable to the transportation service. FT customers would not be allowed to charge any portion of the D-1 or D-2 charge which is attributable to standby sales service.

Texas Gas states that its capacity assignment program would allow all of its FT customers, including those FT customers who would receive standby transportation service pursuant to the standby option contained in Texas Gas' Sales Rate Schedules SGN, GN and CDN, to assign their firm capacity on Texas Gas' system, on a non-discriminatory basis, and thus share the benefit of their FT capacity with their customers or any third party, thereby promoting competition and increasing access to pipeline capacity.

Comment date: October 22, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. High Island Offshore System

[Docket No. CP90-2323-000, et al.]

Take notice that High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commissioner's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-

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000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

[3] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by HIOS and is summarized in the attached appendix.

Comment date: November 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (Date filed)	Shipper name (Type)	Peak day, average day, annual Mcf	Points of		Contract date, rate schedule, service type	Related docket, start up date
			Receipt [1]	Delivery		
CP90-2323-000 (9-27-90)	NGC Intrastate Pipeline Company (Intra PL).	2,800,000 2,800,000 1,022,000,000	OTX, OLA	OTX, OLA	4-1-90, IT, Interruptible.	ST90-4284-000 8-7-90
CP90-2324-000 (9-27-90)	Wisconsin Southern Gas Company (LDC).	75,000 75,000 27,375,000	OTX, OLA	OTX, OLA	4-1-90, IT, Interruptible.	ST90-4281-000 8-1-90
CP90-2325-000 (9-27-90)	Phillips Petroleum Company (Producer).	68,000 68,000 24,820,000	OTX	OLA	4-1-90, IT, Interruptible.	ST90-4280-000 8-7-90
CP90-2326-000 (9-27-90)	CNG Producing Company (Producer).	103,000 103,000 37,595,000	OTX	OTX, OLA	4-1-90, IT, Interruptible.	ST90-4279-000 8-1-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

7. KN Energy, Inc.

[Docket Nos. CP90-2330-000, CP90-2331-000]

Take notice that on September 28, 1990, KN Energy, Inc. (Applicant), P.O. Box 150265, Lakewood, Colorado 80215, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-1043-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

[3] These prior notice requests are not consolidated.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: November 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (Date filed)	Shipper name	Peak day,[2] avg. annual	Points of [2]		Start up date, rate schedule, service type	Related [2] docket contract date
			Receipt	Delivery		
CP90-2330-000 (9-26-90)	Arkla Energy Marketing	35,000 35,000 12,775,000	OK, TX	TX	9-1-90, IT-1, IT-2, IT-3, Interruptible.	ST90-4823-000 8-31-90
CP90-2331-000 (9-28-90)	Coastal Gas Marketing Company	30,000 30,000 10,950,000	OK, TX	OK, TX	8-28-90, IT-1, IT-2, IT-3, Interruptible.	ST90-4822-000 8-10-90

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in Mcf.
[3] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing there must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois. D. Cashell,

Secretary.

[FR Doc. 90-23825 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 28, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1990:

Fourth Revised Sheet Nos. 30D1 through 30D5
Fifth Revised Sheet Nos. 30G1 through 30G5

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP88-187, *et al.*, in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformatiou costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to supplement and modify its earlier filings in Docket Nos. RP88-187, *et al.*, to permit it to flow through revised take-or-pay and contract reformation costs from Texas Gas Transmission Corporation (Texas Gas) pursuant to a filing made on July 25, 1990, which was accepted by Commission order dated August 24, 1990 in Docket No. TM90-6-18. Copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187, RP89-181, RP89-214, RP89-229, TM89-3-21, TM89-4-21, TM89-5-21, TM89-7-21, RP90-26, TM90-2-21, TM90-5-21, TM90-6-21, TM90-7-21, TM90-8-21, TM90-10-21, TM90-12-21 and TM90-13-21.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23828 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 2, 1990.

Take notice that on September 28, 1990, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective November 1, 1990:

FERC Gas Tariff, Second Revised Volume No. 1

Sixth Revised Sheet No. 8
First Revised Sheet No. 223
First Revised Sheet No. 227

Reason for Filing

FGT states that Sixth Revised Sheet No. 8 is being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Quarterly PGA filing, Docket No. TQ90-4-34-000 effective August 1, 1990, as revised by compliance filing dated July 13, 1990 in RP88-50, *et al.* to reflect FGT's conversion to a unit-of-sales PGA methodology and to reflect as-billed treatment of pipeline supplier demand costs on FGT's newly established demand-commodity rate design.

FGT's further states that projected purchase cost of gas for the period November 1, 1990 through January 31, 1991 represents an increase from $2.4420/MMBtu saturated, as reflected in FGT's PGA filing in Document No. TQ90-4-34-000 effective August 1, 1990, to $2.6654/MMBtu saturated in the instant filing.

FGT also states that is has included changes in First Revised Sheet Nos. 223 and 227 to update its Index of Entitlements pursuant to section 9 of the General Terms and Conditions of its tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23827 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

October 2, 1990.

Take notice that on September 28, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Thirty-Ninth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on October 1, 1990.

According to Granite State, it filed its regular quarterly purchased gas cost adjustment on September 5, 1990 and,

since then, the costs for its projected purchases, particularly for spot gas, have risen sharply. It is stated that the rates on Thirty-Ninth Revised Sheet No. 7 reflect revised projected purchase gas costs applicable to the same estimated fourth quarter sales volumes on which the prior quarterly adjustment was based.

It is stated that the proposed [illegible]

Texas Gas notes that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

[Docket No. RP88-115-000; et al.]

Texas Gas Transmission Corp.; Informal Settlement Conference

October 2, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on October 30, 1990,

Office of Hearings and Appeals Cases Filed With the Office of Hearings and Appeals During the Week of August 3 Through August 10, 1990

During the week of August 3 through August 10, 1990, the relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of

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since then, the costs for its projected purchases, particularly for spot gas, have risen sharply. It is stated that the rates on Thirty-Ninth Revised Sheet No. 7 reflect revised projected purchase gas costs applicable to the same estimated fourth quarter sales volumes on which the prior quarterly adjustment was based.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional wholesale services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determinig the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervent. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23828 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-15-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

October 2, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on September 28, 1990, tendered for filing First Revised Thirtieth Revised Sheet Nos. 57(i) and 57(ii) and First Revised Sixteenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected revised current PGA rates for the months of September and October, 1990. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada Pipelines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective September 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23829 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-161-002]

Northern Natural Gas Co. Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1990.

Take notice that on September 27, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern) tendered for filng to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

First Revised Sheet No. 52E.5

Northern states that such tariff sheet is being submitted in response to the Commission's Order dated September 13, 1990, in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23830 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-192-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1990.

Take notice that on September 28, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, FPC Gas Tariff, Original Volume No. 2, and FERC Gas Tariff, First Revised Volume No. 2-A, effective November 1, 1990:

FERC Gas Tariff, Original Volume No. 1

Ninth Revised Sheet No. 1
First Revised Sheet No. 3
First Revised Sheet No. 7
First Revised Sheet No. 99
First Revised Sheet No. 100
First Revised Sheet No. 101
First Revised Sheet No. 102
First Revised Sheet No. 140

FPC Gas Tariff, Original Volume No. 2

Fourth Revised Sheet No. 1-B
Third Revised Sheet No. 1-C
Third Revised Sheet No. 1-D
First Revised Sheet No. 1-E
First Revised Sheet No. 355
First Revised Sheet No. 915
First Revised Sheet No. 1097
First Revised Sheet No. 1153

FERC Gas Tariff, First Revised Volume No. 2-A

Original Sheet Nos. 1-208

The revised tariff sheets are being filed to correct minor errors in the Tables of Contents in Volume Nos. 1 and 2, as well as modify section 13 of the General Terms and Conditions of Volume No. 1 regarding requests for firm sales service and to cancel Rate Schedules X-32, X-73, X-84 and X-85 contained in Volume No. 2, effective December 22, 1989, by order issued on the same date in Docket No. CP89-1834. First Revised Volume No. 2-A is being filed to incorporate technical and administrative revisions to the provisions under which Texas Gas performs transportation service under Rate Schedules FT and IT.

Texas Gas notes that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23831 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-115-000, et al.]

Texas Gas Transmission Corp.; Informal Settlement Conference

October 2, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on October 30, 1990, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt (202) 208-0248 or Joanne Leveque (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23832 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals Cases Filed With the Office of Hearings and Appeals During the Week of August 3 Through August 10, 1990

During the week of August 3 through August 10, 1990, the relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 3, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of August 3 through August 10, 1990]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 6, 1990	Aminoil USA, Inc./Jim Thomas Enterprises, Inc., St. Louis, MO.	RR139-72	Motion for Reconsideration. If Granted: The May 20, 1987 Decision and Order (RF139-107) issued to Jim Thomas Enterprises, Inc., would be modified regarding the firm's Application for Refund submitted in the Aminoil USA, Inc. refund proceeding.
Aug. 10, 1990	Texaco, Inc./Elks Texaco, Bedford, Virginia	RM321-13	Motion for Reconsideration. If Granted: The July 30, 1990 Decision and Order (RF321-5043 and RF321-8201) issued to Elks Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco, Inc. proceeding.

Refund Applications Received

Dated received	Name of refund proceeding/Name of refund application	Case No.
7/20/90	Michel Kimek	RF304-11952.
8/3/90 thru 8/10/90	Crude Oil Refund, applications received	RF272-79542 thru RF272-79878.
8/3/90 thru 8/10/90	Texaco Oil refund, applications received	RF321-8614 thru RF321-8814.
8/3/90 thru8/10/90	Gulf Oil refund, applications received	RF300-11207 thru RF300-11402.
8/6/90	Amoco Oil Co.	RF322-3.
8/6/90	Simmons Oil Corp	RF304-11953.
8/6/90	Whitaker Oil Company	RF307-10144.
8/7/90	Independence Crown	RF213-322.
8/10/90	Dow Sheppard's Exxon	RF307-10145.
8/10/90	Waimalu Shell Service	RF315-10033.

[FR Doc. 90-23866 Filed 10-9-90; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

"Excludable Aliens" (8 U.S.C. 1182), with respect to HIV may be granted under the waiver provision of section 212(d)(3) whenever the Secretary of Health and Human Services advises that attendance at a scientific, professional, or academic conference in the United States is in the public interest.

Dated: September 28, 1990.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 90-23864 Filed 10-9-90; 8:45 am]

BILLING CODE 4160-01-M

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expense rates prevailing for Government employees.

FOR FURTHER INFORMATION: Nan Morrison, Bureau of Land Management (150), MS-5560, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone: [202]

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 3, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507)

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 652–7513. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0225.

Title: Section 90.131(b), Amendment or dismissal of applications.

Action: Extension.

Respondents: Individuals or households, state or local governments, nonprofit institutions and businesses or other for-profit (including small businesses).

Frequency of Responses: On occasion.

Estimated Annual Burden: 25 responses; 10 minutes average burden per response; 4 hours total annual burden.

Needs and Uses: Section 90.131(b) enumerates the applicant's right to dismiss any pending application without prejudice by sending a written request for dismissal to the Commission. Enables FCC staff processing to be discontinued when an applicant no longer desires to pursue obtaining an authorization.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–23906 Filed 10–9–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200416–001.

Title: Georgia Ports Authority/ Jugolinija Terminal Agreement.

Parties: Georgia Ports Authority, Jugolinija.

Synopsis: The Agreement provides a revised rate schedule reflecting rate increases for certain terminal services in accordance with the terms of the basic agreement.

By Order of the Federal Maritime Commission.

Dated: October 2, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90–23790 Filed 10–9–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200422.

Title: Virginia International Terminals, Inc./Concorde Shipping, Inc. Terminal Agreement.

Parties:

Virginia International Terminals, Inc.

Concorde Shipping, Inc. (Concorde).

Synopsis: The Agreement provides Concorde the non-exclusive use of the marine terminal facilities at Newport News Marine Terminals, VA. Terminal services and charges shall be as published in the Terminal Operators Conference of Hampton Roads Terminal Tariff No. 2, except for certain incentive rates that are indicated in the Agreement.

By Order of the Federal Maritime Commission.

Dated: October 4, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90–23904 Filed 10–9–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's next open season will commence on November 15, 1990, and will end on January 31, 1991. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from January 1 to January 31, 1991.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 523–6367.

Dated: October 2, 1990.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 90–23835 Filed 10–9–90; 8:45 am]

BILLING CODE 6760–01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority

Notice is hereby given that on May 9, 1990, the Commissioner, Immigration and Naturalization Service, issued a memorandum CO 234–P, "Admission of Individuals Who are HIV Positive." The memorandum states that the Attorney General has determined that a waiver of the applicability of section 212(a)(6) of the Immigration and Nationality Act, "Excludable Aliens" (8 U.S.C. 1182), with respect to HIV may be granted under the waiver provision of section 212(d)(3) whenever the Secretary of Health and Human Services advises that attendance at a scientific, professional, or academic conference in the United States is in the public interest.

I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authority to designate attendance at a scientific, professional, or academic conference in the United States as being in the public interest and to advise the Immigration and Naturalization Service accordingly.

This delegation is effective immediately.

Dated: September 28, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–23883 Filed 10–9–90; 8:45 am]

BILLING CODE 4160–17–M

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), 49 **Federal Register** 35247, September 6, 1984, is amended to include the Secretary's delegation to the Administrator, HCFA, the authority under section 429 of the Medicare Catastrophic Coverage Act (MCCA) of 1988. Although the Medicare Catastrophic Coverage Repeal Act of 1989 rescinded much of the legislation in the MCCA, section 429, as amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), was unaffected. The delegation under this section authorizes HCFA to conduct at least five demonstration projects to review the appropriateness of classifying chronic ventilator-dependent units in hospitals as rehabilitation units under the Medicare program.

The specific change to part F. is described below:

EE. The authority under section 429 of the Medicare Catastrophic Coverage Act of 1988 Pub. L. 100–360, as amended by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to provide for at least five demonstration projects, of at least 3 years each, to review the appropriateness of classifying chronic, ventilator-dependent units in hospitals as rehabilitation units. Such projects shall be conducted in consultation with the Prospective Payment Assessment Commission.

Dated: September 28, 1990.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 90–23884 Filed 10–9–90; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–150–4830–11–24 1A]

National Public Lands Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for National Public Lands Advisory Council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the Bureau of Land Management's National Public Lands Advisory Council.

The Council consists of 21 members. Under the established staggered-term arrangement, the terms of seven members on the Council will expire on December 31, 1990. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for 3 years, beginning January 1, 1991, and expiring December 31, 1993.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATES: Nominations should be received by the Bureau of Land Management by November 5, 1990.

ADDRESSES: Persons wishing to nominate individuals to serve on the Council should send biographical data that includes name, address, profession, and other relevant information about the candidate's qualifications to: Director (150), Bureau of Land Management, MS–5558, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The function of the Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Management, on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the Bureau of Land Management.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expense rates prevailing for Government employees.

FOR FURTHER INFORMATION: Nan Morrison, Bureau of Land Management (150), MS–5558, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone: (202) 208–5101.

Date Signed: October 4, 1990.

Cy Jamison,

Director.

[FR Doc. 90–23889 Filed 10–9–90; 8:45 am]

BILLING CODE 4310–84–M

[NV–060–00–4320–02]

Battle Mountain District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: In accordance with Public Law 94–579 and Section 3, Executive Order 12548 of February 14, 1986, a meeting of the Battle Mountain District Grazing Advisory Board will be held.

DATES: November 15, 1990, beginning at 10 a.m. in the Tonopah Convention Center, 301 Brougher St., Tonopah, Nevada.

SUPPLEMENTARY INFORMATION: The meeting agenda will include:

1. Election of Chairperson and Vice Chairperson.
2. Status of FY 90 range improvements and allotment evaluations/decisions.
3. FY 91 and 92 range improvements—review and recommendations.
4. FY 91 and 92 allotment evaluations/decisions—review and recommendations.

The meeting is open to the public. Interested persons may make oral statements to the board between 4 and 4:30 p.m. on November 15, 1990, or file written statements for the board's consideration. If you wish to make oral comments, please contact James D. Currivan by November 8, 1990.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635–4000.

Dated: October 1, 1990.

James D. Currivan,

District Manager.

[FR Doc. 90–23812 Filed 10–9–90; 8:45 am]

BILLING CODE 4310–HC–M

[CO–920–90–4111–15; COC41602]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC41602 for lands in Routt County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from October 1, 1990, the date of termination.

examined and found suitable for leasing under the provisions of section 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR part 2920, is described as within:

Sec. 12, T. 13 N., R. 15 E., Kateel River Meridian. An application will only be accepted from Gary Bamford who presently uses this area for trapping.

Dated: October 2, 1990.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 90–23905 Filed 10–9–90; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Antitrust Division

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in

to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without

and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total

[CO-920-90-4111-15; COC41602]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC41602 for lands in Routt County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from October 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective October 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239-3783.

Janet M. Budzilek,
Chief, Fluid Minerals Adjudication Section.

[FR Doc. 90-23870 Filed 10-9-90; 8:45 am]
BILLING CODE 4310-JB-M

[AK-070-00-4230-23; F86888]

Lease of Public Land; Pah River Flats, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a 16 year renewable lease to Gary Wayne Bamford. The lease is intended to authorize construction, maintenance and operation of a trapping cabin.

DATES: Comments and an application must be received by November 26, 1990.

ADDRESSES: Comments and an application must be submitted to the Kobuk District Manager, 1150 University Avenue, Fairbanks, Alaska 99709-3844.

FOR FURTHER INFORMATION CONTACT: Betsy Bonnell (907) 474-2337.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for leasing under the provisions of section 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR part 2920, is described as within:

Sec. 12, T. 13 N., R. 15 E., Kateel River Meridian. An application will only be accepted from Gary Bamford who presently uses this area for trapping. The comments and application must include a reference to this notice. A category II processing fee of $300.00 must be submitted with the application and a monitoring fee of $75.00 will be due prior to issuance of the lease. Annual rental shall be fair market value as determined by appraisal.

Dated: July 31, 1990.

Helen M. Hankins,
Kobuk District Manager.

[FR Doc. 90-23925 Filed 10-9-90; 8:45 am]
BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any enity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1990, through April 30, 1991. The list of Restricted Joint Bidders published in the Federal Register on April 9, 1990, at 55 FR 13197 covered the bidding period of May 1 through October 31, 1990.

Group I: Chevron Corp.; Chevron U.S.A. Inc.

Group II: Exxon Corp.; Exxon San Joaquin Production Co.

Group III: Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.

Group IV: Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobile Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group V: BP America Inc.; The Standard Oil Co.; BP Exploration Inc.; BP Exploration (Alaska) Inc.

Dated: October 2, 1990.

Barry Williamson,
Director, Minerals Management Service.

[FR Doc. 90-23905 Filed 10-9-90; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Deepwater, Aramid Mooring Line Joint Industry Project, Phase Two

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Omega Marine Services International, Inc. ("OMSI") on August 15, 1990, filed an additional written notification with the Attorney General and the Federal Trade Commission disclosing (1) the addition of a new party and the deletion of former parties to OMSI's Deepwater, Aramid Mooring Line Joint Industry Project and (2) the nature and objectives of phase two of the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following party has joined the Project: E.I. Du Pont de Nemours. The following are no longer participants in the Project: Chevron Corporation, Exxon Production Research Company, and Texaco Inc.

The purpose of phase two is laboratory testing of large aramid ropes. Cycles-to-failure testing in laboratory conditions of one-million-pound break strength aramid ropes is the primary thrust of phase two. This information is needed to permit use of aramid rope in future deepwater mooring designs.

The second effort of phase two is the design of the at-sea test of phase three.

On January 25, 1989, OMSI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 1, 1989, 54 FR 8606-07. OMSI filed an additional notification on November 9, 1989, notice of which was published by the Department on January 18, 1990, 55 FR 1740-41.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 90-23797 Filed 10-9-90; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11 a.m. Tuesday, October 23, 1990, in room C-2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This ten member Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee welfare plans covered by ERISA.

The purpose of the October 23, meeting is to invite and hear comments from interested groups and the general public concerning proposals to amend the current ERISA enforcement scheme. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and or groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 19, 1990, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting received on or before October 19, 1990.

Signed at Washington, DC, this 3rd day of October, 1990.

David George Ball,
Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90-23876 Filed 10-9-90; 8:45 am]
BILLING CODE 4510-29-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix of this notice. Upon receipt of these petitons, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdividion of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 22, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 22, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 24th day of September 1990.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AJK Mfg. Co., Inc. (Workers)	Alberta, VA	9/24/90	9/11/90	24,868	Clothing.
Cabinet Industries, Inc. (Workers)	Danville, PA	9/24/90	9/17/90	24,869	Entertainment Cabinets.
Cardinal Knitting Mills, Inc. (Workers)	Brooklyn, NY	9/24/90	9/05/90	24,870	Sweaters.
Fleck Inc. (Workers)	Fayette, MS	9/24/90	9/13/90	24,871	Wiring Harnesses.
Ford New Holland (Workers)	Troy, MI	9/24/90	9/10/90	24,872	Tractors.
Friedrich Refrigeration Co. (IUE)	San Antonio, TX	9/24/90	8/26/90	24,873	Refrigerators.
Friedrich Air Conditioning Co.	San Antonio, TX	9/24/90	8/26/90	24,874	Air Conditioners.
Hamilton Digital Controls, Inc. (Company)	Utica, NY	9/24/90	9/14/90	24,875	Magnetic Tape Heads.
Hamilton Production Equipment, Inc. (Company)	Midland, TX	9/24/90	9/11/90	24,876	Oilfield Equip.
Mayer China Co. (GMP)	Beaver Falls, PA	9/24/90	9/10/90	24,877	Tableware.
Oxford Industries (Workers)	Atlanta, GA	9/24/90	9/07/90	24,878	Sportswear.
Parker Gas Treating Co. (A&B Gas Plant) (Workers)	Ft. Stockton, TX	9/24/90	9/17/90	24,879	Oil & Gas.
Pincock, Allen & Holt, Inc. (Workers)	Lakewood, Co	9/24/90	9/12/90	24,880	Software.
Radel Leather Div. of Seton Co., Inc.	Newark, NJ	9/24/90	8/27/90	24,881	Dog Bones.
Randle Shake & Shingles (Company)	Randle, WA	9/24/90	8/29/90	24,882	Shakes & Shingles.
R.E. Dietz Co. (Workers)	Syracuse, NY	9/24/90	9/11/90	24,883	Auto Lights.
Rollic of Virginia (Workers)	Lawrenceville, VA	9/24/90	8/16/90	24,884	Clothing.
Sunbelt Specialized Services (Workers)	Roby, TX	9/24/90	9/05/90	24,885	Steel Casing.
Talon, Inc. (AMIMW)	Jersey City, NJ	9/24/90	8/13/90	24,886	Zippers.
Tektronix, Inc. (CRT)	Beaverton, OR	9/24/90	7/24/90	24,887	Oscilloscopes.
Unit Drilling & Exploration Co.	Tulsa, OK	9/24/90	9/13/90	24,888	Oil & Gas.
Webb-Rack Storage Systems Div. (Workers)	Port Huron, MI	9/24/90	9/07/90	24,889	Storage Racks.
W.R. Case & Sons Cutlery Co. (IAMAW)	Bradford, PA	9/24/90	9/13/90	24,890	Knives.

[FR Doc. 90-23899 Filed 10-9-90; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-140-C]

Kenellis Energies, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kenellis Energies, Inc., Route 2, Box 74, Galatia, Illinois 62935-9620, has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Brushy Creek Mine (I.D. No. 11-02636) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures or areas and that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, the petitioner proposes to house permanent electrical installations in fireproof structures equipped with automatic fire suppression, an automatic alarm system, and two-way communication between the surface and the affected working sections.

4. The proposed alternate method would provide the same degree of safety for the workers as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1990. Copies of the petition are available for inspection at that address.

Dated: October 1, 1990.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-23900 Filed 10-9-90; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-90-18-M]

Kennecott Utah Copper; Petition for Modification of Application of Mandatory Safety Standard

Kennecott Utah Copper Corporation, 8362 West 10200 South, Bingham Canyon, Utah 84006-0525, has filed a petition to modify the application of 30 CFR 56.14211 (blocking equipment in a raised position) to its Copperton Concentrator (I.D. No. 42-01998) and Bingham Canyon Mine (I.D. No. 42-00149) located in Salt Lake County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that equipment be blocked in a raised position.

2. The application of this standard would result in a diminution of safety.

3. As an alternate method, the petitioner proposes to use friction or hydraulic cranes or derricks to hoist work platforms.

4. In support of this request, the petitioner states that:

(a) Suspended work platforms will be used only in unique work situations where their use will afford the least hazardous exposure to employees.

(b) Workers will use a body belt/harness system with lanyard appropriately attached to the load block or other structural part of the work platform capable of supporting full impact.

(c) Only a work platform that has been properly certified will be used. The work platform will be securely attached to the crane hook.

(d) No lifts will be made on another of the crane load lines while workers are suspended on a platform.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1990. Copies of the petition are available for inspection at that address.

Dated: October 1, 1990.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-23901 Filed 10-9-90; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-90-141-C]

Shamrock Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Shamrock Coal Company, P.O. Box 130, Manchester, Kentucky 40962-0130 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high voltage cables and transformers) to its Beech Fork Mine (I.D. No. 15-02502) located in Leslie County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that high-voltage cables be kept at least 150 feet from pillar workings and not be located inby the last open crosscut.

2. The longwall system requires 3,800 horsepower. In order to supply this horsepower limited to medium voltage (1,000 volts), the following problems arise:

(a) The ampacity requirements at 1,000 volts are such that very large and heavy cables are required. These large, heavy cables can cause congested work space, handling problems, and accidents associated with sprains and strains;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be supplied to the face conveyor; and

(c) At 1,000 volts, the interrupting limits of the available circuit breakers are approached resulting in a diminished safety factor.

3. As an alternate method, petitioner proposes to continue using high-voltage (2,400 volt) cables to supply power to longwall mining equipment inby the last open crosscut and within 150 feet of pillar workings. The petitioner outlines specific equipment and procedures in the petition.

4. In support of this request, petitioner states that the cables used would have a grounded metallic shield conductor, be at least 5,000 V, and have an MSHA approved outer jacket.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1990. Copies of the petition are available for inspection at that address.

Dated: October 1, 1990.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-23902 Filed 10-9-90; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-90-143-C]

Tara K Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tara K Coal, Inc., P.O. Box 558, Norton, Virginia 24273 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-06425) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summer of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Due to soft and uneven bottom, the use of canopies would result in a diminution of safety because canopies would:

(a) Dislodge roof support;

(b) Tear down check or line curtains;

(c) Decrease the operator's visibility; and

(d) Create discomfort to the operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1990. Copies of the petition are available for inspection at that address.

Dated: October 2, 1990.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-23903 Filed 10-9-90; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before November 9, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington DC 20506, (202-786-0494), and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3201, Washington, DC 20503, (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506, (202-786-0494), from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is used by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Information Survey Form and Instructions for Panelists and Reviewers.

Form Number: 3136-0123.

Frequency of Collection: Ad Hoc.

Respondents: Individuals: academic scholars, writers, teachers, and other experts in the humanities.

Use: Peer review process and application evaluation.

Estimated Number of Respondents: 800.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 0.25 per respondent.

Estimated Total Annual Reporting and Recording Burden: 200.

Thomas S. Kingston,
Assistant Chairman for Operation.

[FR Doc. 90-23886 Filed 10-9-90; 8:45 am]
BILLING CODE 7536-01-M

Meetings; Opera-Musical Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Panel (New American Works Pre-screening Section) to the National Council on the Arts will be held on October 23-25, 1990 from 9 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: September 24, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-23791 Filed 10-9-90; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the

Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On June 29, 1990, the National Science

That the proceeding is dismissed."

In view of the foregoing Licensing Board Order and pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR parts 2 and 50, it is hereby ordered that:

Construction Permit No. CPEP-1, dated February 10, 1989, and amended on June 20, 1989, is revoked.

Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the

determination. Any comments received within 30 days after the date of publication of tis notice will be considered in making any final determination. The Commission will not normally make a final detemination unless it receives a request for a hearing.

Written comments may be submitted

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the

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Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On June 29, 1990, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to Gerald L. Kooyman on October 2, 1990.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 90-23611 Filed 10-9-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-603, Docket No. 50-604, License No. CPEP-1, License No. CPEP-2]

All Chemical Isotope Enrichment, Inc.; Order Revoking Construction Permits

By Order dated August 18, 1989, All Chemical Isotope Enrichment, Inc. (the licensee) was ordered to show cause why the above referenced licenses should not be revoked (54 FR 35544–35546, August 28, 1989). The licensee had been ordered to show cause why its Construction Permit No. CPEP–1, allowing modification on an existing U.S. Department of Energy (DOE) facility at Oak Ridge, Tennessee, for operation as a stable isotope enrichment production plant and Construction Permit No. CPEP–2, allowing construction of an additional facility at Oliver Springs, Tennessee, using DOE furnished equipment for the same production purpose, should not be revoked.

Pursuant to 10 CFR 2.202, the licensee filed its Response to the Order Modifying Licenses and Order To Show Cause Why Licenses Should Not Be Revoked and a Request for Hearing (docketed on September 13, 1989).

On May 18, 1990, the NRC staff filed a motion for summary disposition and dismissal of the proceeding. The licensee did not file a response to this motion.

By Memorandum and Order (Ruling on NRC Staff Motion for Summary Disposition and Dismissal of Proceeding), dated July 24, 1990, the Atomic Safety and Licensing Board ruled as follows:

"That Staff's Motion for summary disposition is granted.

That an order revoking Construction Permits CPEP–1 and CPEP–2 shall be sustained, and

That the proceeding is dismissed."

In view of the foregoing Licensing Board Order and pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR parts 2 and 50, it is hereby ordered that:

Construction Permit No. CPEP–1, dated February 10, 1989, and amended on June 20, 1989, is revoked.

Construction Permit No. CPEP–2, dated February 10, 1989, is revoked.

For the Nuclear Regulatory Commission.2

Dated at Rockville, Maryland, this 1st day of October 1990.

Robert M. Bernero, Director,

Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-23678 Filed 10-9-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District, Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–54 issued to Sacramento Municipal Utility District (the licensee) (the District), for operation of the Rancho Seco Nuclear Generating Station located in Sacramento County, California. The request for amendment was submitted by letter dated April 26, 1990.

A notice of the licensee's proposed amendment was previously published in the **Federal Register** on September 5, 1990 (55 FR 36349); however, this notice contained inadvertent errors. This notice corrects the September 5, 1990 notice in its entirety.

The licensee has decided to permanently cease operations at the Rancho Seco Nuclear Generating Station. The Rancho Seco Reactor has been defueled and the reactor fuel is currently stored in the on-site spent fuel pool. The proposed amendment would modify the license to a possess-but-not-operated status ("possession only license"). This proposed amendment would allow the licensee to possess special nuclear material, but not operate the nuclear reactor by removing the authority to operate.

Additionally, the licensee submitted a status report on the prelimiary planning for decommissioning the Rancho Seco Nuclear Generating Station.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application.

This proposed amendment to the Facility Operating License prohibits operation of the Rancho Seco Reactor at any power level. The District has no intention of taking the reactor critical again. Existing analyses address potential accident scenarios from a reactor shutdown condition through power operation. Maintaining the fuel subcritical results in an increase in margins of safety from an accident analysis standpoint. No new accidents or failure modes are created by maintaining the reactor in the defueled mode.

The District has reviewed this proposed amendment against each of the criteria of 10 CFR 50.92 and concludes that this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated since it imposes additional operation restrictions while not modifying the present plant protection systems and controls necessary to preserve and protect the integrity of the spent fuel and spent fuel pool; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated since it does not modify the facility or permit activities of a different kind than those that are presently allowed; or (3) involve a significant reduction in a margin of safety since it allows no new activities, and adds additional conservative restrictions on plant operations.

Therefore, the District concludes that proposed amendment * * * involves no significant hazards consideration.

The Commission has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed

determination. Any comments received within 30 days after the date of publication of tis notice will be considered in making any final determination. The Commission will not normally make a final detemination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 8, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding insofar as such interest may be affected by the corrections made by this notice, and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jan Schori, Sacramento

Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Comments received also may be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: The

enhanced by the Postal Service's need to control access to logon ID assignments for computer security reasons.

A new system report, as required by subsection (r) of the Privacy Act (5 U.S.C. 552a) is being submitted pursuant to paragraph 4b of Appendix I to OMB

access, and the level of access granted; user screening and/or security clearances; verification of status of contractor employee; and approvals by ADP security personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility that manages the ADP system to which they have been given access. Inquiries should

20230–5010, or delivered to Room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–

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Municipal Utility District, 6201 S Street, P.O. Box 15670, Sacramento, California 95813, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 26, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Dated at Rockville, Maryland, this 2nd day of October 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulations.

[FR Doc. 90-23877 Filed 10-9-90; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purpose of this document is to publish notice of a new system of records, USPS 150.030, Records and Information Management Records—Computer Logon ID Records. This system is a collection of information linking a user of a Postal Service computer to an assigned computer logon ID for the purpose of controlling access to computer data and/or files.

DATES: This proposal will become effective without further notice 60 days from the date of this publication (December 10, 1990) unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5010, or delivered to room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to establish a new system of records, USPS 150.030, Records and Information Management Records—Computer Logon ID Records, pursuant to the Privacy Act. The system will contain identifying information about persons (users) who have been authorized access to USPS computer systems, the computer logon ID assigned to those persons, and the level of access granted to them. The computer logon ID is a code that identifies an individual as an authorized user, programmer, or operator to a computer system for use in conducting Postal Service business. To obtain access to a computer system, a user completes a Request for Computer Logon ID., After all necessary approvals are obtained, the request is submitted to a facility Computer Systems Security Officer (CSSO) for processing. The CSSO enters the information provided into a new system of records (database) and uses the supplied information in formulating the user's computer access requirements and assignments. The CSSO is required to maintain the source document in a secured area that restricts access by others. The CSSO uses access assignments to protect against unauthorized access to Postal Service computer data and resources. The CSSO is charged with the responsibility of maintaining the currency of information and the security of the database(s), which is protected by an authorized access code accessible and alterable only by the CSSO. Read access may also be given to authorized Inspection Service personnel for auditing purposes. Further, the Social Security Number of the computer user will be compared with records within the system to establish positive identification when resolving access problems by phone.

The Postal Service does not expect use of this system to have any effect on individual privacy rights. Personal information collected within the system is generally limited to the name, address and Social Security Number of the individual who is granted computer access privileges. Other information maintained about the individual relates to his or her official duty status and level of access permitted. Nevertheless, the information will be maintained as a Privacy Act system of records. Protection of the privacy interests of persons covered by the system will be enhanced by the Postal Service's need to control access to logon ID assignments for computer security reasons.

A new system report, as required by subsection (r) of the Privacy Act (5 U.S.C. 552a) is being submitted pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

The Postal Service has established and applied to most of its systems of records general routine use statements representing potential uses of information in the conduct of official business. These routine uses, referenced in the proposed system notice, appear in the Postal Service's last published compilation of its records systems at 54 FR 43654 dated October 26, 1989.

It is proposed that the following new system of records be adopted:

USPS 150.030

SYSTEM NAME:

Records and Information Management Records—Computer Logon ID Records, 150.030.

SYSTEM LOCATION:

Computer logon ID records are maintained at all postal facilities and certain contractor sites that access USPS computers. However, primary postal ADP sites are the Postal Data Centers, the National Information Systems Support Center in Raleigh, NC, the Address Information Center in Memphis, TN, the National Test Administration Center in Alexandria, VA, and the Materiel Distribution Centers in Topeka, KS and Somerville, NJ. In addition, these records are part of a database of an internal computer security package that uses them in conjunction with rules to control access.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of USPS computer systems who sign on with a computer logon ID. These are primarily USPS employees (including temporary and casual) and contractor employees, but may include nonpostal persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for computer access and for computer logon ID and other access control records. These records contain identifying user information such as name, Social Security Number, job title, BA Code, work telephone number and address; employing facility finance number; the name of the data or application systems the user may access, and the level of access granted; user screening and/or security clearances; verification of status of contractor employee; and approvals by ADP security personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401; Pub. L. 100–235, Computer Security Act of 1987.

PURPOSES:

To assign computer logon IDs by which access to data and/or files on computer systems is limited to authorized persons through the use of computer security access control products. Used by computer security officers in determining various schemes and control of user computer logon IDs; as a positive user identifier in resloving access problems by phone; and by Postal Inspectors and authorized personnel in auditing compliance with access rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records that include preprinted forms and lists. Summary information from paper records is stored on magnetic disks or tapes in ADP equipment.

RETRIEVABILITY:

Name, logon ID, and Social Security Number of individual who has been assigned a computer logon ID.

SAFEGUARDS:

Hardcopy records are maintained within lockable filing cabinets under the general scrutiny of designated postal personnel (such as CSSOs) responsible for security of the ADP system to which they pertain. Access to automated records is restricted by authorized access code (password).

RETENTION AND DISPOSAL:

Retained for one year after computer access privileges are cancelled and then destroyed by shredding (paper records) or deletion (automated records).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Postmaster General Information Resource Management Department Headquarters, 475 L Enfant Plaza SW., Washington DC 20260–4200.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility that manages the ADP system to which they have been given access. Inquiries should contain full name, Social Security Number, and logon ID. Headquarters employees should submit requests to: Assistant Computer Systems Security Officer, Office of Information Services Information Resource Management Department Headquarters, 475 L Enfant Plaza SW., Washington DC 20260–1550.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is furnished by record subjects requesting access to computer files or data and a computer logon ID, and by postal personnel charged with ADP security responsibilities.

Stanley F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 90-23799 Filed 10-9-90; 8:45 am]

BILLING CODE 7710-12-M

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purpose of this document is to publish notice of a new system of records, USPS 0.40.040, Customer Programs—Customer Holiday Address List File. This system is a collection of names and addresses of customers who have submitted their holiday mailing lists for conversion to pre-barcoded mailing labels as part of a limited test.

DATES: This proposal will become effective without further notice 30 days from the date of this publication (November 9, 1990) unless comments are received on or before that date which result in a contrary determination, or unless a waiver request of the 60-day period is denied by the Office of Management and Budget.

ADDRESSES: Comments may be mailed to the Records Officer RM 10670, USPS, 475 L'Enfant Plaza SW., Washington, DC 20260–5010, or delivered to Room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: Holidays, particularly Christmas, are peak household mail volume periods for the Postal Service. The volume of mail with handwritten addresses and colored envelopes increases significantly during these periods. Because this mail will not "read" on our automated equipment, the non-OCR readable mail will increase mechanized and manual processing at our busiest times. The proposed system is developed in connection with a test program under which the Postal Service will assist customers in the preparation of their holiday mail for acceptance by our automated equipment.

Customers will submit their mailing lists to the Postal Service for conversion to pre-barcoded mailing lables formatted using Postal Service-approved addressing standards. The Postal Service will match the customer's address list against its address database, use the address standards, and convert the addresses to pre-barcoded mailing labels. The list will be returned to the customer with the labels and instructions to deposit correspondence during a particular time period. Deposit during the designated period will help the Postal Service handle the increased volume, and the pre-barcoded labels will permit automated processing rather than mechanized or manual distribution of the mailpieces. The expected results are more efficient use of resources, better productivity, and improved holiday service.

To ensure use of deliverable addresses, the Postal Service will generate labels only where a valid address match has been found and will notify the customer of those addresses which cannot be matched to the Address Management System database for ZIP+4 assignment. Correction action is expressly limited to that notification and the Postal Service will *not* otherwise correct, supplement, or verify name or address information on the list.

The original list submitted by the customer will not be copied and will be returned to the customer after conversion. One copy of the converted list will be maintained on magnetic media to be stored "off-line" under secured conditions and used only by authorized postal personnel for updating

and further processing at the customer's request. Lists may be updated annually using information supplied by the customer; the Postal Service will not compile or supplement a customer's mailing list. Controls have been established to track internal handling of the lists. Other than the converted list, the only information kept about the ordering customer will be name and

2. To improve service and reduce operating costs through increased use of automation in peak volume periods; and

3. To provide management with statistical data to resolve operations problems created by peak volume periods.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF

converted to mailing labels. Name, address, and address list of ordering customer will be automated during conversion and then stored off-line on magnetic media.

RETRIEVABILITY:

USPS-assigned account number and customer name.

conversion of their holiday address lists to mailing labels.

Stanely F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 90-23800 Filed 10-9-90; 8:45 am]

BILLING CODE 7710-12-M

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its rules to allow the Exchange to trade, both on a listed as well as an Unlisted Trading Privileges ("UTP") basis, index warrants based on the Financial Times-Stock Exchange 100 Index ("FT–SE 100" or

issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the financial listing criteria of the BSE; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public

and further processing at the customer's request. Lists may be updated annually using information supplied by the customer; the Postal Service will not compile or supplement a customer's mailing list. Controls have been established to track internal handling of the lists. Other than the converted list, the only information kept about the ordering customer will be name and address. The system is not maintained in a manner that permits retrieval of information about individuals on the customer lists. Under these conditions, the Postal Service does not expect use of this system to have any effect on individual privacy rights.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation. Because the Postal Service plans to collect data within 040.040 for customers' 1990 Christmas mailings, a waiver of the 60-day advance period, pursuant to OMB Circular A-130, has been requested. If the waiver is granted, and unless comments suggest the need for revisions, it is expected that the system of records will become effective as proposed below upon expiration of the 30-day comment period.

USPS 040.040

SYSTEM NAME:

Customer Programs—Customer Holiday Address List File, 040.040.

SYSTEM LOCATION:

Maintained temporarily at the National Address Information Center in Memphis, TN for data entry and label creation; stored "off line" on magnetic media at post offices participating in program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who provide holiday address lists to be converted to pre-barcoded address labels.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, phone number, and USPS-assigned customer number of customer ordering address labels; address list provided by the customer for conversion to address labels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

1. To prepare pre-barcoded mailing lables for customers from their holiday address lists;

2. To improve service and reduce operating costs through increased use of automation in peak volume periods; and

3. To provide management with statistical data to resolve operations problems created by peak volume periods.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records from this system may be disclosed to the Department of Justice or to other counsel representing the Postal Service, or may be disclosed in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any postal employee in his or her official capacity; or (c) any postal employee in his or her individual capacity whom the Department of Justice has agreed to represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be arguably relevant to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected.

This routine use specifically contemplates that information may be released in response to relevant discovery and that any manner of response allowed by the rules of the forum may be employed.

2. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the prompting of that individual.

3. Records or information from this system may be disclosed to an expert, consultant, or other person who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any person with whom the Postal Service contracts to reproduce, by typing, photocopy or other means, any record for use by Postal Service officials in connection with their official duties or to any person who performs clerical or stenographic functions relating to the official business of the Postal Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records that include an order form and address list submitted by customer will be kept only until list is converted to mailing labels. Name, address, and address list of ordering customer will be automated during conversion and then stored off-line on magnetic media.

RETRIEVABILITY:

USPS-assigned account number and customer name.

SAFEGUARDS:

Access to these records is limited to those persons whose official duties require such access. Access to automated records is restricted by authorized access codes. Contractors who perform data-entry conversion are forbidden by contract to use information collected by the system for any purpose other than to produce mailing labels for the Postal Service. Hard copy records are maintained within lockable filing cabinets.

RETENTION AND DISPOSAL:

Information is maintained indefinitely as long as the customer places an order at least once annually. Information will be destroyed two years from the date the customer last placed an order if no order has been made in that time period. Destruction will be by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

USPS Headquarters, Director, Office of Address Information Systems, 475 L'Enfant Plaza SW, Washington, DC 20260-5902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility at which they submitted their holiday address list order. Inquiries should contain name, address, and customer number, if known.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is furnished by record subjects (customers) requesting conversion of their holiday address lists to mailing labels.

Stanely F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 90-23800 Filed 10-9-90; 8:45 am]

BILLING CODE 7710-12-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting; Subcommittee on Hospital Productivity and Cost-Effectiveness

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, October 23–24, 1990, at The Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Subcommittee on Hospital Productivity and Cost-Effectiveness will meet in Executive Chambers 1, 2 and 3 at 9 a.m. on Tuesday, October 23, 1990. The Subcommittee on Diagnostic and Therapeutic Practices will convene its meeting at 9 a.m. on Tuesday, October 23, 1990 at 9 a.m. in the Arlington Room.

The Full Commission will meet on Wednesday, October 24, 1990 at 9 a.m. in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young, MD

Executive Director.

[FR Doc. 90-23813 Filed 10-9-90; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28497; International Series Release No. 161; File No. SR-BSE-90-12]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Listing and Trading of Index Warrants Based on the Financial Times-Stock Exchange 100 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1990, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its rules to allow the Exchange to trade, both on a listed as well as an Unlisted Trading Privileges ("UTP") basis, index warrants based on the Financial Times-Stock Exchange 100 Index ("FT-SE 100" or "Index").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The BSE is submitting the proposed rule change in order to allow the Exchange to trade index warrants based on the FT-SE 100 Index. The FT-SE 100 Index is an internationally recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized and actively traded British stocks traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE"). The Commission has approved the listing of FT-SE 100 Index warrants on the American Stock Exchange ("AMEX"),[1] the Pacific Stock Exchange ("PSE"),[2] and the New York Stock Exchange ("NYSE").[3]

Each of the FT-SE 100 warrant issues will conform to the BSE listing guidelines proposed in BSE filing SR-BSE-90-2,[4] which provide that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the financial listing criteria of the BSE; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and shall have an aggregate market value of $4,000,000. In addition, warrants which have been approved for trading on another national securities exchange would be eligible for listing.

FT-SE 100 Index warrants will be direct obligations of their issuer subject to cash settlement during their term, and either exercisable throughout their life (*i.e.*, American-style) or exercisable only on their expiration date (*i.e.*, European-style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the related index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the related index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Trading in the index warrants would be subject to several safeguards designed to ensure investor protection. In filing SR-BSE-90-2, the BSE proposed amendments to adopt options suitability rules which will apply to recommendations to buy or sell index warrants. The suitability standard will require that the member or member organization have reasonable grounds to believe that the recommended index warrant transaction is suitable for the customer and that the customer is able to evaluate and bear the risk of the proposed transaction. For warrants based on the FT-SE 100 Index, the BSE also recommends that these warrants be sold only to options-approved accounts. In addition, the BSE is requiring that all index warrant transactions in discretionary accounts be approved and initialled by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP") on the day it is executed. Due to the fact that the BSE is not the Designated Options Examining Authority ("DOEA") for any of its member firms, BSE membes with public customers trading in FT-SE 100 warrants will be required to have a SROP and ROP designated and qualified in accordance with the rules of the self-

[1] *See* Securities Exchange Act Release No. 27769 (March 6, 1990), 55 FR 9380 (order approving File No. SR-AMEX-90-3).

[2] *See* Securities Exchange Act Release No. 28106 (June 12, 1990), 55 FR 24055 (order approving File No. SR-PSE-90-15).

[3] *See* Securities Exchange Act Release No. 28399 (August 30, 1990), 55 FR 37360 (order approving File No. SR-NYSE-90-37).

[4] *See* Securities Exchange Act Release No. 28258 (July 30, 1990), 55 FR 31920 (notice of filing of proposed index warrant listing guidelines).

regulatory organization ("SRO") that is the DOEA for the BSE member. Accordingly, BSE members with public customers must have a DOEA in order to trade index warrants on behalf of their customers. This will ensure that BSE members with public customers trading index warrants will have an options compliance infrastructure in

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve the proposed rule change, or

the agreement between the members of the Intermarket Surveillance Group, and has entered into bilateral information-sharing agreements for regulatory purposes with other domestic and foreign exchanges, associations and regulators. The Exchange intends for the proposed rule to set forth this policy of

Commission believes the CBOE already has the authority to enter into such agreements, the proposed rule change will clarify the Exchange's authority to coordinate with domestic and foreign SROs in developing a surveillance system appropriate to today's increasingly linked and globalized

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commisison's Public Reference Section,

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regulatory organization ("SRO") that is the DOEA for the BSE member. Accordingly, BSE members with public customers must have a DOEA in order to trade index warrants on behalf of their customers. This will ensure that BSE members with public customers trading index warrants will have an options compliance infrastructure in place to ensure compliance with the warrants' suitability and account opening requirements. This requirement will also ensure that BSE members trading warrants will be subject to oversight by an SRO experienced in regulating options. Finally, prior to the commencement of trading in FT-SE warrants, the BSE will distribute a circular to its membership calling attention to the specific risks associated with FT-SE warrants.

The Commission has noted that the trading of warrants based on a foreign index requires an adequate mechanism for sharing surveillance information with respect to the index's component securities. In this regard, the BSE is in the process of ensuring that there will be an adquate mechanism for the sharing of surveillance information with respect to the FR-SE 100's component stocks. This will comply with and reflect the same obligations imposed upon the AMEX, the PSE and the NYSE when their applications for FR-SE 100 Index warrants were approved. The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the rules governing the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedngs to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should filed six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the commission's Public Reference Section, 450 Fifth Street NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 1, 1990.

[FR Doc. 90-23815 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28498; International Series Release No. 152; File No. SR-CBOE-90-23]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Cooperative Agreements With Domestic and Foreign Self-Regulatory Organizations.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 29, 1990, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a new rule codifying the Exchange's authority to enter into surveillance-sharing agreements with domestic and foreign self-regulatory organizations ("SROs"), associations and contract markets, and the regulators of such marketplaces. This proposed rule is consistent with the Exchange's existing policy with respect to cooperation with these organizations and associations.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to adopt new Rule 15.9 which sets out Exchange policy concerning cooperation with domestic and foreign SROs, associations and contract markets and the regulators of such marketplaces. The Exchange states that the need to develop a surveillance system that is appropriate to the realities of today's international and domestic securities and contract markets and associations requires close cooperation between the Exchange and such other markets and regulators. The Exchange represents that for this reason, the Exchange routinely shares surveillance and investigative information with several of such marketplaces and regulators pursuant to

the agreement between the members of the Intermarket Surveillance Group, and has entered into bilateral information-sharing agreements for regulatory purposes with other domestic and foreign exchanges, associations and regulators. The Exchange intends for the proposed rule to set forth this policy of cooperation by specifically codifying the Exchange's authority to enter into agreements with domestic and foreign SROs, associations and contract markets and the regulators of such marketplaces for the exchange of information and other regulatory purposes.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating transactions in such marketplaces.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[1] The Commission has stated before that it believes that U.S. national securities exchanges have the authority to enter into surveillance-sharing agreements with foreign SROs, and the Commission encourages the development of such agreements.[2] Thus, while the Commission believes the CBOE already has the authority to enter into such agreements, the proposed rule change will clarify the Exchange's authority to coordinate with domestic and foreign SROs in developing a surveillance system appropriate to today's increasingly linked and globalized markets. In this regard, the Commission notes that codification of the Exchange's authority to enter into bilateral surveillance agreements furthers the protection of investors and the public interest because it will ensure that the Exchange is able to conduct prompt investigations into possible trading violations and other regulatory improprieties. Specifically, the Commission believes that the exercise of this authority will enhance the CBOE's surveillance program and help to provide the Exchange with sufficient information for it to carry out its oversight responsibilities required by the Act with respect to enforcement-related matters in an efficient and expeditious manner.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can enter into bilateral information-sharing agreements with foreign SROs without delay. In addition, the CBOE's proposed rule change is virtually identical to a proposal by the American Stock Exchange that was approved January 10, 1989, and one by the New York Stock Exchange that was approved April 4, 1990.[3] Further, the Commission did not receive any comments in connection with these filings. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commisison's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 31, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [4] that the proposed rule change (SR-CBOE-90-23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: October 1, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23816 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28496; File No. SR-MCC-90-05]

Self-Regulatory Organizations; Midwest Clearing Corporation; Proposed Rule Change Relating to the Clearance of Securities Transactions Executed on the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1990, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an Agreement between the Chicago Board Options Exchange, Inc. ("CBOE") and MCC that permits MCC participants to clear and settle transactions at MCC in "Eligible Securities" (as the term is defined in MCC's rules) effected on the CBOE. The Agreement will cover the

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[1] 15 U.S.C. 78f(b)(5) (1982).

[2] *See* Securities Exchange Act Release No. 26430 (January 10, 1989), 54 FR 1329 (January 17, 1989) (order approving File No. SR-Amex-88-27).

[3] *See* Securities Exchange Act Release Nos. 25436, *supra* note 2, and 27877 (April 4, 1990) 55 FR 13344 (April 10, 1990) (order approving File No. SR-NYSE-90-14).

[4] 15 U.S.C. 78s(b) (1982).

[5] 17 CFR 200.30-3(a)(12) (1989).

CBOE's submission of Super Shares traded on the CBOE, as well as any other MCC Eligible Security traded on the CBOE. MCC attached the text of the proposed Agreement as Exhibit A to the proposal filed with the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to file the Agreement between the CBOE and MCC that permits participants of MCC to clear and settle transactions at MCC in "Eligible Securities" (as the term is defined in MCC's rules) effected on the CBOE. The Agreement will cover the CBOE's submission of Super Shares traded on the CBOE, as well as any other MCC Eligible Security traded on the CBOE.

Pursuant to MCC's rules, including MCC Article II, Rule 1 § 2, MCC may accept Contract Data reflecting securities trades (by or on behalf of participants) executed on the floor of any exchange, including contracts that have been pre-compared on such exchange. The MCC/CBOE Agreement reflects contracts executed at the CBOE between MCC participants, as well as such contracts between a MCC participant and a participant of another interfacing clearing corporation. Contracts regarding the latter will settle pursuant to the terms of the Interregional Interface Agreement entered into between MCC and the interfacing clearing corporation.

Finally, the CBOE-submitted trades will settle in the same manner as is the case for trades submitted to MCC by other exchanges or self-regulatory organizaitons. The trades are considered pre-compared, locked-in trades and will be reflected on a Participant's Purchase and Sales Reports.

The proposed rule change is consistent with section 17A of the Act in that it facilitates the prompt and accurate settlement of securities transactions by providing an efficient mechanism to clear and settle MCC eligible securities transactions that are executed on the CBOE, a national registered securities exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate, and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to file number SR-MCC-90-05 and should be submitted by October 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 28, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23817 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28505; File No. SR-NYSE-90-04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Permanent Approval of a Proposed Rule Change Adding Five Rules to the List of Exchange Rule Violations and Fines Under Rule 476A and Amending Minor Rule Violation Enforcement and Reporting Plan

I. Introduction

On January 31, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to renew until October 5, 1990 the operation of the Exchange's pilot program under which the Commission approved the addition of five substantive rules (NYSE Rules 408(a), 432(a), 451, 452, and 726) to the NYSE Rule 476A violations list. In addition, the Exchange requested that the Commission approve this proposal on a permanent basis upon expiration of the pilot program.[3]

In Securities Exchange Act Release No. 27702 (February 12, 1990), 55 FR 6139 (February 21, 1990) the Commission granted partial approval to the proposal in order to renew the operation of the pilot program until October 5, 1990, while at the same time noticing the Exchange's proposal for permanent approval of the proposed rule change. No comments were received on the proposal, and the Commission now grants permanent approval of the proposal.

II. Background

On July 10, 1986, the Exchange submitted its original proposal to add NYSE Rules 408(a), 432(a), 451, 452 and 726, as well as certain other NYSE Rules, to the violations list of Exchange Rule 476A.[4] Specifically, these five rules deal with the following important investor safeguards: Rule 408(a) sets forth requirements which represent essential customer protection safeguards against unauthorized trading; Rule 432(a) serves as part of an overall scheme of margin regulation designed to protect the markets, and specifically the margin purchaser, by preventing the purchase of securities with insufficient margin; Rules 451 and 452 require NYSE members to transmit proxy materials to beneficial owners of stock and establish procedures for delivery of proxies by a member organization for stock registered in its name; and, finally, Rule 726 mandates delivery to a customer of the current Options Disclosure Document at or prior to approval of the customer's account.

On October 5, 1987, the Commission approved the addition of the above-mentioned rules to the list for a pilot period of two years, ending October 5, 1989. During the two year pilot period, the Exchange was to submit two reports to the Commission on compliance activities concerning these five rules: one report submitted at the mid-point of the pilot and the other prior to the pilot's expiration.

According to the Exchange's reports, no violations of the five rules were handled pursuant to the provisions of NYSE Rule 476A during the two year pilot program.[5] Nevertheless, the Exchange believed that inclusion of the rules on the Rule 476A violations list provided a valuable enforcement tool and served a valid regulatory purpose during the two year period. Accordingly, the Exchange submitted a proposal to extend the pilot period for an additional year, until October 5, 1990, and to make the five rules a permanent part of the violations list after the pilot's expiration.

The Commission granted approval to the portion of the proposal which requested a renewal of the pilot period until October 5, 1990.[6] In so doing, the Commission noted that the renewal of the pilot furthers the protection of investors and the public interest by allowing for the pilot program to operate while the Commission considers the Exchange's request for permanent approval. In addition, during the extension, the Commission determined to continue its examination of whether summary disposition and quarterly reporting of violations of the above-cited rule enhances the NYSE disciplinary program and provides the Commission sufficient information by which to carry out its oversight responsibilities concerning the enforcement and disciplinary activities of the NYSE.[7] To aid in that examination, the NYSE agreed to submit a report to the Commission on disciplinary activities concerning these five rules. With regard to Rule 408(a), the report stated that in 1988 twelve decisions were rendered in connection with Exchange disciplinary proceedings, twenty-seven such decisions were rendered in 1989, and ten disciplinary proceedings were pending as of December 31, 1989.[8] With regard to the remaining four rules [NYSE Rules 432(a), 451, 452 and 726], there were no decisions rendered in either 1988 or 1989, nor any pending disciplinary proceedings as of December 31, 1989. Moreover, during the pilot program, no fines were imposed for violations of any of these five rules pursuant to the provisions of NYSE Rule 476A.

III. Commission Findings

The Commission finds that the proposal to make NYSE Rules 408(a) 432(a) 451, 452 and 726 a permanent part of the violations list of NYSE Rule 476A and to amend the Plan to include these five rules is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b)(1), (5), and (7), 6(d)(1) and 19(d).[9] The proposal is consistent with the section 6(b)(5) requirement that the rules of the exchange provide that its members and persons associated with its members shall be appropriately disciplined for violation of the rules of the exchange. In this regard, the proposal will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate.[10] Furthermore, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full disciplinary hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members which is consistent with sections 6(b)(7) and 6(d)(1) of the Act.

When the Commission originally decided to approve on a temporary basis the addition of the five rules to the NYSE Rule 476A list for a pilot period of two years, it had concerns over whether these rules were appropriate for a minor rule violation plan. In fact, when promulgating Rule 19d-1, the Commission expressed concern that the SROs would use the provision for the disposition of increasingly more significant violations.[11]

During the course of the pilot program, however, the Commission has become convinced that the inclusion on the violations list of the above-cited five rules provides a net benefit to the NYSE's enforcement efforts. The Commission has reviewed the enforcement record of these rules during the pilot period. While no enforcement actions were brought for most of these rules, 39 decisions were rendered for Rule 408(a) violations. The NYSE handling of all of these actions under regular disciplinary procedures indicates that the NYSE has been using its Rule 476A authority with respect to

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The NYSE also has requested approval, under Rule 19d-1(c)(2), 17 CFR 240.19d-1(c)(2), to amend its Rule 19d-1 minor rule violation enforcement and reporting plan ("Plan") to include these five rules. *See* letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated July 8, 1988.

[4] *See* Securities Exchange Act Release No. 24885 (October 5, 1987), 52 FR 38388 (October 15, 1987) (order approving File No. SR-NYSE-86-31). As a background note, in Securities Exchange Act Release No. 23815 (September 17, 1986), 50 FR 38390, the Commission approved an NYSE Plan for the abbreviated reporting of minor rule violations pursuant to Rule 19d-1(c) under the Act. The Plan relieves the NYSE of the current reporting requirements imposed under section 19(d)(1) for violations listed in Rule 476A. The NYSE Plan, as embodied in NYSE Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a violation of the delineated rules by issuing a citation with the specified penalty. Such person can either accept the penalty, or force a full disciplinary hearing on the matter. Fines assessed pursuant to NYSE Rule 476A in excess of $2,500 are not considered pursuant to the Plan and must be reported in a manner consistent with the current reporting requirements of section 19(d)(1) of the Act. Furthermore, the Exchange retains the option of bringing violations of rules included under NYSE Rule 476A to full disciplinary proceedings.

[5] *See* letters from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE to Sharon Lawson, Branch Chief, Exchange Regulation, SEC, dated December 7, 1988, and Mary Revell, Branch Chief, Exchange Regulation, SEC, dated October 25, 1988.

[6] *See* note 3, *supra*.

[7] The reporting of violations by self-regulatory organizations ("SROs") to the Commission is an essential means of SRO oversight that supplements the information obtained through inspections.

[8] *See* letter from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE to Mary Revell, Branch Chief, Exchange Regulation, SEC, dated July 27, 1990.

[9] 15 U.S.C. 78f(b)(1), (5), and (7), 78f(d)(1) and 78s(d) (1982).

[10] The Commission notes that the NYSE retains the discretion to bring full disciplinary proceedings for violations of the rules listed in Rule 476A and should do so when appropriate for the particular violation[s] involved.

[11] Indeed, in an attempt to limit the use of these plans to "matters of minimal regulatory concern," the Commission specifically rejected a recommendation made by the Chicago Board Options Exchange to raise the fine ceiling to $10,000. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

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these rules in a manner that is sensitive to the underlying goal of Rule 19d–1.

The Commission also believes that the proposal provides in alternate means by which to deter potential violations of the specified rules, thus furthering the purposes of section 6(b)(1) of the Act. An exchange's ability to enforce effectively compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. In this regard, the Commission believes that the inclusion of the above-cited five rules on the violations list of NYSE Rule 476A will provide a more effective means of deterrence than would the alternative system of either verbal or written cautions for lesser violations of the five rules.[12]

Even though the five rules are designed to provide important investor safeguards,[13] a particular violation of such rules may or may not rise to the level which would justify a full disciplinary proceeding. In addition, relying on the fact that the NYSE retains the discretion to bring a full disciplinary proceeding for any violation of these five rules, the Commission believes that adding these rules to its minor disciplinary plan only will enhance, rather than reduce, the NYSE's enforcement capabilities regarding such rules. Finally, the Commission believes that inclusion of these rules on the violations list will prove to be an effective alternative response to a violation when the initiation of full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation, if not the category of violation.

Although the Commission is approving the Rule 476A procedures for the five rules, this should not be interpreted as signalling the appropriateness of these procedures for any SRO rule. Moreover, the additional experience the NYSE gains in the future from use of these rules will be extremely valuable to the Commission in evaluating the necessity and usefulness of the Rule 476A procedures for violations of other similar types of rules.

It is therefore ordered, pursuant to section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[14] that the proposed rule change, and proposed amendments to the Plan, be, and hereby are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Dated: October 2, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23818 Filed 10–9–90; 8:45 am]

BILLING CODE 8010–01–M

[12] Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan not only can reduce reporting burdens of an SRO but also can make its disciplinary system more efficient in prosecuting violations of these rules.

[13] For example, Rules 451 and 452 require NYSE members to transmit proxy materials to beneficial owners of stock and establish procedures for delivery of proxies by a member organization for stock registered in its name. Strict compliance with these two rules is necessary to ensure that the member organization is in compliance with Section 14 of the Act and the rules and regulations promulgated thereunder (15 U.S.C. 78n (1982)).

[14] 15 U.S.C. 78s(b)(2) (1982) and 17 CFR 240.19d–1(c)(2) (1989).

[15] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–28499; File No. SR–Phlx–90–29]

Self-Regulatory Organizations; Notice of Filing and Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Rule 60, Regulation 6, Governing Dress Code for Exchange Personnel

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 17, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the dress code for Exchange personnel as set forth under Phlx Rule 60, Regulation 6.[1]

[1] Regulation 6 is an implementation of Phlx Rule 60, which provides that a Floor Official or exchange official may impose on members and member organizations assessments not to exceed $1,000.00 per occurrence for breaches by members or their employees of regulations which relate to the administration of order, decorum, health, safety and welfare on the exchange, or two Floor Officials may refer the matter to the Business Conduct Committee where such committee shall proceed in accordance with Phlx Rules 960.1–960.12 and higher fines and sanctions may be imposed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to maintain the proper transaction of business on the Exchange's trading floors, and to preserve the safety of members and Exchange personnel on the floors, it is necessary to impose rules of order and decorum. Consequently, the Phlx previously submitted a proposed rule change to the Commission which amended various rules of order and decorum.[2] Regulation 6, which relates to the dress requirement for Exchange floor personnel, was omitted inadvertently from this filing. Accordingly, the Phlx presently seeks to amend Regulation 6.

Specifically, the Phlx proposes to delete reference to the cloak room, in which outdoor clothing was required to be kept, because such room is no longer in existence at the Exchange. Second, the dress code currently is effective from 8 a.m. to 4:15 p.m., but the Exchange has extended hours of trading on its foreign currency options floor. Accordingly, the Phlx proposes to render the dress code applicable "for any floor open for trading" in order to encompass these extended hours of trading.

Third, the proposed amendments to Regulation 6 delete the requirement that floor personnel wear identification badges because Regulation 3 currently addresses the issues of floor access and security. Lastly, the Phlx proposes to amend Regulation 6 to indicate that upon the 5th occurrence (or any occurrence thereafter) of a violation of such regulation, the sanction imposed will be at the discretion of the Business Conduct Committee of the Exchange. Currently, Regulation 6 provides for a $400 fine upon a 5th violation and a $500 fine upon a 6th violation of this regulation.

The proposed rule change is consistent with section 6(b)(6) of the Act in that members of the Exchange shall be appropriately disciplined for violation of the rules of the Exchange. Additionally, the proposed rule change is consistent with, and is an implementation of, Phlx Rule 60, pertaining to regulations governing the administration of order, decorum, health, safety and welfare on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–90–29 and should be submitted by October 31, 1990.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

After careful review, the Commission has determined that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder pertaining to a national securities exchange, and in particular, Section 6 of the Act. Specifically, the Commission believes that the proposal to amend Phlx Rule 60, Regulation 6 is consistent with the requirements of section 6(b)(5) and (6) which provide that a national securities exchange have rules designed to promote just and equitable principles of trade, and, in general, protect investors and the public interest, and for the appropriate discipline of members for violations of the rules of the Exchange.

The order and decorum rules are an important means of maintaining the proper transaction of business on the Phlx's Floor. The Commission believes, therefore, that the portion of the proposal to apply Regulation 6 to the recently extended hours of trading on the floor will ensure the continued, necessary identification of active floor members and clerical employees, a result which will aid in the preservation of order on the floor.

In addition, the proposal is consistent with section 6(b)(6) of the Act in that members or the Exchange shall be appropriately disciplined for violation of the rules of the Exchange. Furthermore, because any fines assessed shall not exceed $1,000 per occurrence for violations by members of their employees of regulations which relate to the administration of order, decorum, health, safety and welfare on the Exchange, and because higher fines and sanctions may be imposed only by the Phlx Business Conduct Committee, the Commission finds that the proposed rule change is consistent with existing Phlx Rule 60.[3]

The Commission finds that there is good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the Federal Register. The Commission notes that those portions of the proposal which merely delete obsolete provisions (*i.e.*, the reference to the cloak room) or are presently covered by another Regulation (*i.e.*, the requirement that floor personnel wear identification badges) are not substantive changes. Accordingly, the Commission believes that these portions of the proposal warrant approval in the absence of prior public notice.

Additionally, the Commission agrees with the Exchange that there exists good cause for accelerated approval of the remainder of the proposed rule change. There is a compelling need to approve, as quickly as possible, that portion of the proposal which provides for the dress code to be in effect "for any floor open to trading." Because the hours of trading recently have been extended on the Phlx's foreign currency options floor, there is an urgent need to amend Regulation 6 to reflect this change.

Finally, the Commission believes that the portion of the proposal which would amend the table of fines for Regulation 6 violations should be granted accelerated approval. As discussed above, on July 28, 1989, the Commission published a notice of filing and immediate effectiveness of the Phlx's proposed rule change to adopt Regulations 1–5.[4] The table of fines for violations of these Regulations all provide that the sanction be assessed by the Business Conduct Committee upon either the 4th or 5th occurrence. This procedure has been in effect since July 10, 1989, on which date the Phlx filed the proposed rule change with the Commission, and no comments have been received to date on this proposal. Because the Phlx's proposal to amend the table of fines and sanctions under Regulation 6 will merely provide for conformity with Phlx Regulations 1–5, the Commission believes that the proposal should be granted accelerated approval.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the above mentioned proposed rule change be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: October 1, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23819 Filed 10–9–90; 8:45 am]

BILLING CODE 8010–01–M

[2] *See* Securities Exchange Act Release No. 27072 (July 28, 1989), 54 FR 32550 (notice of filing and immediate effectiveness of File No. SR–Phlx–89–41).

[3] *See* note 1, *supra.*

[4] *See* note 2, *supra.*

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1989).

[Rel. No. IC–17767; 812–7519]

The 59 Wall Street Fund, Inc.; Notice of Application

September 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("Act").

APPLICANT: The 59 Wall Street Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and Rule 12d3–1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived

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more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to Rule 12d3–1.

FILING DATE: The application was filed on September 25, 1990.

17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended Rule 12d3–1 would, among other things, facilitate the acquisition by applicant of equity securities issued by foreign securities companies. Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23820 Filed 10–9–90; 8:45 am]

BILLING CODE 8010–01–M

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 45(a) of the Act declaring that public disclosure of sections II through V of a report entitled "Fidelity Group of Funds Interfund Lending Facility Design Report," dated March 3, 1990, is neither necessary nor appropriate in the public interest or for the protection of

that cash to Funds seeking to borrow cash on a temporary basis (the "Interfund Lending Facility" or "Facility"). *Daily Money Fund,* Investment Company Act Release Nos. 17257 (December 8, 1989) (notice) and 17303 (January 11, 1990) (order).

3. As a condition to the order, FMR and the Funds agreed to prepare and

9. Section V of the report describes in detail the operational procedures devised by the Funds and FMR to help ensure compliance with each of the control objectives. It describes in greater detail than sections II and III the operational steps required and the parties responsible for each step.

10. The report has been and continues

more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to Rule 12d3–1.

FILING DATE: The application was filed on September 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1990, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 6 St. James Avenue, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Maryland corporation and is an open-end management investment company registered under the Act. Applicant's investment adviser is Brown Brothers Harriman & Co., a New York limited partnership licensed under the New York Banking Law.

2. Applicant seeks to diversify its portfolio further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicant seeks relief from section 12(d)(3) of the Act and Rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to Rule 12d3–1. *See* Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended Rule 12d3–1 would, among other things, facilitate the acquisition by applicant of equity securities issued by foreign securities companies. Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended Rule 12d3–1.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of Rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, applicant seeks an exemption from the "margin security" requirements of Rule 12d3–1.

2. Proposed amended Rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested:

Applicant will comply with the provisions of the proposed amendments to Rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23620 Filed 10–0–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17771; 812–7561]

Daily Money Fund, et al.; Notice of Application

October 2, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Daily Money Fund; Daily Tax-Exempt Money Fund; Equity Portfolio; Growth; Equity Portfolio: Income; Fidelity California Municipal Trust; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Fund; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Trust; Fidelity Court Street Trust; Fidelity Union Street Trust; Fidelity Destiny Portfolios; Fidelity Devonshire Trust; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Fund; Fidelity Government Securities Fund (a limited partnership); Fidelity Growth Company Fund; Fidelity Income Fund; Fidelity Institutional Cash Portfolios; Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Commonwealth Trust; Fidelity Investment Trust; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Tax-Free Fund; Fidelity Money Market Trust; Fidelity Municipal Trust; Fidelity New York Municipal Trust; Fidelity Puritan Trust; Fidelity Qualified Dividend Fund; Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Beacon Street Trust; Fidelity Trend Fund; Fidelity U.S. Investments: Government Securities Fund, L.P.; Fidelity U.S. Treasury Money Market Fund, L.P.; Financial Reserves Fund; Income Portfolios; Plymouth Fund; Plymouth Investment Series; Plymouth Securities Trust; Tax-Exempt Portfolios; Variable Insurance Products Fund; Variable Insurance Products Fund II; Fidelity Yen Perfomance Portfolio, L.P.; Zero Coupon Bond Fund; and Fidelity Management & Research Company.

RELEVANT ACT SECTION: Section 45(a).

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 45(a) of the Act declaring that public disclosure of sections II through V of a report entitled "Fidelity Group of Funds Interfund Lending Facility Design Report," dated March 3, 1990, is neither necessary nor appropriate in the public interest or for the protection of investors.

FILING DATE: The application was filed on July 13, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 29, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263 or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicants' Representations

1. Each Fund is a business trust formed under the laws of Massachusetts or a partnership formed under the laws of Nebraska or Delaware that has entered into a management or advisory and service contract with Fidelity Management & Research Company ("FMR").

2. On January 11, 1990, the SEC issued an order under sections 6(c) and 17(b) of the Act granting the Funds and FMR exemptions from the provisions of sections 12(d)(1), 17(a)(1), 17(a)(3), 17(d), 18(f), and 21(b) of the Act, and rule 17d–1 thereunder, to enable the Funds and FMR to establish a facility through which Funds having uninvested cash could, under certain circumstances, loan that cash to Funds seeking to borrow cash on a temporary basis (the "Interfund Lending Facility" or "Facility"). *Daily Money Fund,* Investment Company Act Release Nos. 17257 (December 8, 1989) (notice) and 17303 (January 11, 1990) (order).

3. As a condition to the order, FMR and the Funds agreed to prepare and submit to the Funds' boards of directors or general partners an initial special report on the design of the Interfund Lending Facility, including a report by their independent public accountants. FMR and the Funds further agreed that, following review of the initial report, the next individual Fund required to file its Form N–SAR would file the report as an exhibit and the other Funds would incorporate the report by reference in their next Form N–SAR filings.

4. In satisfaction of the above condition, Fidelity Select Portfolios designated the report as an exhibit to its Form N–SAR for the period ending April 30, 1990. The other Funds have incorporated or will incorporate the report by reference in their next Form N–SAR.

5. Applicants now request an order under section 6(c) and 45(a) of the Act granting confidential treatment to the report.[1]

6. Section II of the report describes the criteria used by the Funds and FMR to determine whether and when it would be appropriate for a Fund to make use of the Interfund Lending Facility. It outlines the preliminary steps taken by FMR to establish the managerial, legal, and operational controls, describes the computer hardware and software used, and the backup and record keeping systems. It also describes the responsibilities of each group within FMR or the Funds in implementing these controls.

7. Section III of the report summarizes the control objectives and the procedures used to accomplish each objective. It identifies the documentation required at each step, as well as the managerial, legal, and operational approvals required.

8. Section IV of the report describes in detail the management control procedures used to assure compliance with each of the control objectives. It describes in greater detail than sections II and III the legal and managerial approvals required, the documentation necessary, and the parties responsible for carrying out each step.

9. Section V of the report describes in detail the operational procedures devised by the Funds and FMR to help ensure compliance with each of the control objectives. It describes in greater detail than sections II and III the operational steps required and the parties responsible for each step.

10. The report has been and continues to be maintained by the Funds on a strictly confidential, non-public, need-to-know basis.

11. The Funds generated the report within the last year. As a result, the report reflects current methods and capabilities of management and control.

Applicants' Legal Analysis

12. Section 45(a) of the Act provides that the information contained in any application filed with the SEC under the Act shall be made available to the public, unless and except insofar as the SEC finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.

13. Applicants state that public disclosure of the report is not necessary to inform shareholders or potential investors in the Funds of the material facts regarding the Funds' participation in the Interfund Lending Facility. Each Fund participating in the Facility has added disclosures to its prospectus concerning the Facility and the Fund's participation therein.

14. The Freedom of Information Act, 5 U.S.C. 552, provides various exceptions to the general rule that all information provided to or generated by the government should be made available to the public.[2] One such exception is for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4).

15. Applicants state that the information contained in the report fits within the above mentioned exception because it has been obtained from a person, is both commercial and financial in nature, and is, and has been treated as, confidential.

16. Applicants state that becasue they are engaged in a highly competitive business, they would likely lose a significant competitive advantage as a result of the disclosure of the information contained in the report. The Interfund Lending Facility allows both borrowing and lending Funds to obtain a

[1] It is the Division of Investment Management's view that the requested treatment can be ordered under section 45(a) alone and that relief under section 6(c) is not necessary. Thus, any relief granted on this application will be under section 45(a) only.

[2] The Division of Investment Management recognizes that any order granting the confidential treatment requested by applicants will be issued under section 45(a) only, and that any such order will not be dispositive of any Freedom of Information Act request filed by a third party.

higher return for shareholders than they could obtain in the absence of such a facility. As the Interfund Lending Facility is the first and only facility of its kind to be permitted by the SEC, the Funds and FMR believe that no other investment company group has yet undertaken to develop similar

FILING DATE: The application on Form N–8F was filed on September 19, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a

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[Rel. No. IC–17770; 812–7573]

Provident Mutual Life Insurance Company of Philadelphia et al.

October 1, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for

SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; the Applicants, c/o Edward W. Diffin, Jr.,

premium payments under certain circumstances. The amount of the insurance coverage and the cash values under the Modified Premium Policy may increase or decrease depending on the premiums paid and the investment performance of the chosen Separate Accounts. PMLIC guarantees that the

Applicants' Legal Analysis and Conclusions

1. The Separate Accounts currently rely on Rule 6e–2 for exemptions from certain provisions of the Act under section (b) of the Rule. For a separate account to rely on Rule 6e–2, paragraph

higher return for shareholders than they could obtain in the absence of such a facility. As the Interfund Lending Facility is the first and only facility of its kind to be permitted by the SEC, the Funds and FMR believe that no other investment company group has yet undertaken to develop similar operational and control procedures. The report documents each of the steps necessary to establish such a system, and thus would enable other investment company complexes to develop such a system in a much shorter time and with far greater confidence in its soundness than they might have absent the report.

17. Applicants believe the report would be extraordinarily useful to their major competitors. The report as a whole would provide competitors a blueprint for the establishment and monitoring of an interfund lending facility. Operation of the facility is highly complex. The development of the Facility required FMR to review its entire system to identify problems that might occur in the operation of the Facility, develop controls to help insure that such problems would not occur, develop procedures to implement such controls, develop computer and manual techniques for carrying out these procedures, and instruct the relevant personnel in how to carry them out. This process required in excess of 12 months and cost approximately $100,000 to complete, and involved numerous meetings of FMR staff, as well as input from the Fund's auditors, counsel, and custodians.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 90-23821 Filed 10-9-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17766; 811-6092]

India Fund, Inc.; Application for Deregistration

September 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: The India Fund, Inc.

RELEVANT TO SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application on Form N-8F was filed on September 19, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1990, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 500 Plaza Drive, Secaucus, NJ 07094.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the state of New Jersey. On April 20, 1990, applicant filed a Notification of Registration on Form N-8A pursuant to section 8(a) of the Act. Applicant did not file a registration statement pursuant to section 8(b) of the Act. Applicant has never made a public offering of its securities.

2. Applicant has no shareholders and no assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 90-23822 Filed 10-9-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17770; 812-7573]

Provident Mutual Life Insurance Company of Philadelphia et al.

October 1, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (The "Act".

APPLICANTS: Provident Mutual Life Insurance Company of Philadelphia ("PMLIC") and Provident Mutual Variable Growth Separate Account ("Separate Account I"), Provident Mutual Variable Money Market Separate Account ("Separate Account II"), Provident Mutual Variable Bond Separate Account ("Separate Account III"), Provident Mutual Variable Managed Separate Account ("Separate Account IV"), Provident Mutual Variable Zero Coupon Bond Separate Account ("Separate Account V"), and Provident Mutual Variable Aggressive Growth Separate Account ("Separate Account VI") (collectively, the "Separate Accounts").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) exempting the Separate Accounts from the provisions of Rule 6e-2(a)(2) and Rule 6e-2(b)(15).

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) exempting the Separate Accounts from the provisions of Rule 6e-2(a)(2) and Rule 6e-2(b)(15) to the extent necessary to permit them to issue flexible premium variable life insurance policies in reliance upon the exemptions provided by Rule 6e-3(T) without the Separate Accounts losing their ability to rely on the exemptions provided by Rule 6e-2 with respect to the continued maintenance and issuance of certain other variable life insurance policies currently or previously issued by the Separate Accounts.

FILING DATE: The application was filed on August 3, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the Securities and Exchange Commission (the "SEC" or "Commission") by 5:30 p.m. on October 26, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; the Applicants, c/o Edward W. Diffin, Jr., Esq., Provident Mutual Life Insurance Company, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, (202) 275-2622, or Heidi Stam, Assistant Chief, (202) 272-2060 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. PMLIC, a mutual life insurance company, established Separate Accounts I, II, III, IV, V and VI under the provisions of the Pennsylvania Insurance Law. The six Accounts are collectively registered under the Act as a single unit investment trust. Separate Account V, through its three subaccounts, invests exclusively in units of interests of The Stripped U.S. Treasury Securities Fund, Provident Mutual Series A, a unit investment trust registered under the Act. The remaining five separate accounts each invest exclusively in corresponding shares of the Market Street Fund, Inc., an open-end investment company registered under the Act.

2. PMLIC currently offers one variable life insurance policy, a modified premium variable life insurance policy (the "Modified Premium Policy"), proposes to offer one or more versions of flexible premium variable life insurance policies ("Flexible Premium Policies"), and has previously offered two other types of variable life insurance policies: a single premium variable life insurance policy ("Single Premium Policy") and a scheduled premium variable life insurance policy ("Scheduled Premium Policy") (collectively, the "Policies"). In the future, PMLIC may offer other versions of modified, scheduled, single, or flexible premium variable life insurance policies.

3. The Modified Premium Policy provides a scheduled premium feature, but also allows payment of unscheduled premiums and permits an owner to skip premium payments under certain circumstances. The amount of the insurance coverage and the cash values under the Modified Premium Policy may increase or decrease depending on the premiums paid and the investment performance of the chosen Separate Accounts. PMLIC guarantees that the Policy will remain in force and that the death benefit will never be less than the initial face amount if scheduled premiums are paid and if there are no outstanding policy loans.

4. The Single Premium Policy, which is no longer offered, is a variable life insurance policy that provides for a single premium payment. The premium amount depends on the Policy's face amount and the insured's sex and insurance age. The amount of the insurance coverge and the cash values under the Single Premium Policy may increase or decrease depending on the investment performance of the chosen Separate Accounts. While there is no guaranteed minimum cash value for this Policy, the Policy will remain in force and the death benefit will never be less than the initial face amount, so long as there is no outstanding policy loan.

5. The Scheduled Premium Policy, which is no longer offered, is a variable life insurance policy which provides for scheduled, level premiums payable for life. The amount of the scheduled premiums payable depends upon the Policy's initial face amount and the insured's sex, age and risk classification at the time of issue. While there is no guaranteed minimum cash value for a Scheduled Premium Policy, the Policy cannot lapse nor will the guaranteed death benefit ever be less than the initial face amount, even if adverse investment experience results in a negative or zero cash value, so long as all scheduled premiums are paid when due and there are no outstanding policy loans.

6. The proposed Flexible Premium Policy or Policies will be variable life insurance policies for which the amount and timing of premium payments typically will not be fixed. However, there ordinarily will be no guarantee that the Policy will remain in force or that any minimum death benefit will be received by the owner. The cash values and the death benefits of the Flexible Premium Policies may vary to reflect the investment performance of the selected Separate Accounts. The insured will bear the risk that the investment performance of the selected Separate Accounts may cause the cash value of a Flexible Premium Policy to fall below the level needed to support periodic fees and thereby cause the Policy to lapse.

Applicants' Legal Analysis and Conclusions

1. The Separate Accounts currently rely on Rule 6e-2 for exemptions from certain provisions of the Act under section (b) of the Rule. For a separate account to rely on Rule 6e-2, paragraph (a)(2) of the Rule prescribes that, other than advances made by a life insurance company to establish and maintain the separate account, the assets of the separate account must be derived solely from the sale of variable life insurance contracts as defined in Rule 6e-2.

2. Rule 6e-2's definition of variable life insurance contracts arguably does not include flexible premium variable life insurance contracts such as the Flexible Premium Policies. Rule 6e-2(c)(1)(ii) defines a variable life insurance contract for purposes of the Rule as one which provides a guaranteed minimum death benefit. Flexible premium variable life insurance contracts as defined in Rule 6e-3(T)(c)(1) are not required to provide any guranteed minimum death benefit.

3. Applicants assert that Flexible Premium Polices meeting the Rule 6e-3(T) definition might not meet the definition of variable life insurance contracts as defined in paragraph (c)(1) of Rule 6e-2. As a result, Separate Accounts issuing, and thereby deriving funds from, flexible premium variable life insurance contracts (like the Flexible Premium Policies) permitted by Rule 6e-3(T) might be unable to rely on the Rule 6e-2 exemptions to the extent necessary to continue to derive funds from Scheduled, Single and Modified Premium Policies.

4. Paragraph (b)(15) of Rule 6e-2 provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act to the Separate Account, their sponsor or depositor and principal underwriter. The Separate Accounts and their affiliates rely on such relief in connection with the issuance of the Single, Scheduled, and Modified Premium Policies. The exemptions provided by paragraph (b)(15) are available only to separate accounts, the assets of which consist of shares of mutual funds which offer their shares exclusively to variable life insurance separate accounts. The Separate Accounts might be deemed not to be variable life insurance separate accounts (defined in paragraph (a)(2)) because they will issue the Flexible Premium Policies. Those Policies arguably do not meet the Rule 6e-2 (c)(1) definition of variable life insurance contracts invoked by paragraph (a)(2). If the Separate Accounts were deemed not

to be variable life insurance separate accounts under Rule 6e-2(b)(15), the Separate Accounts would lose the ability to rely on the exemptions granted by that paragraph.

5. Therefore, using the same Separate Accounts to support the Scheduled, Single, and Modified Premium Policies on the one hand, as well as the Flexible

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[Rel. No. IC-17765; 812-7555]

Salmon Brothers Fund, Inc., et al.; Notice of Application

October 1, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for

SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300.

Applicants' Representations

1. Each of Salomon Brothers Fund, Inc. ("SBF"), Salomon Brothers Capital Fund, Inc. ("SB Capital"), and Salomon Brothers Investors Fund, Inc. ("SB Investors") (collectively, the "Funds") is

Schlafly has advised the directors of the Funds that he is not involved in, responsible for, or (other than in general terms) familiar with, any matter relating to representation of SLH, and that all SLH matters are handled by another individual who is a partner of Peper Martin.

10. The concept of "interested person" was added to the Act in 1970 because

cannot be added to the boards at this time since each of the Funds would have nine directors, only six of which would not be interested persons of the investment adviser or predecessor investment adviser.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Exemptions

to be variable life insurance separate accounts under Rule 6e-2(b)(15), the Separate Accounts would lose the ability to rely on the exemptions granted by that paragraph.

5. Therefore, using the same Separate Accounts to support the Scheduled, Single, and Modified Premium Policies on the one hand, as well as the Flexible Premium Policies on the other hand, may bring into question the continued qualification of the Separate Accounts for the Rule 6e-2 exemptions.

6. Applicants submit that there is no reason why the Separate Accounts should be prohibited from issuing Policies qualifying under Rule 6e-2 as well as Policies qualifying under Rule 6e-3(T). The interests of Single, Scheduled, and Modified Premium Policy holders and Flexible Premium Policy holders, PMLIC's interests with respect to the two types of Policies, and the regulatory frameworks for the two types of Policies are sufficiently parallel that funding all Policies through a single set of separate accounts should not prejudice any Policy holder. Furthermore, the increased pooling, diversification, and economies of scale in expenses realized from the use of a single set of Separate Accounts should benefit all Policy holders.

7. Furthermore, Applicants state there are no apparent conflicts of interest that would arise as a result of one Policy having a single, scheduled, or modified premium feature and another having a flexible premium feature. In adopting Rule 6e-3(T), the Commission placed on restriction on separate accounts' ability to issue both types of policies, and such use is presently allowed under Rule 6e-3(T). In addition, the Commission has proposed an amendment to Rule 6e-2 to permit the use of the same separate account for both types of contracts. Finally, the Commission has granted identical relief to other separate accounts in the past. Therefore, Applicants submit that the funding of all Policies with a single set of separate accounts should be permitted.

8. For the reasons stated above, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23823 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17766; 812-7555]

Salmon Brothers Fund, Inc., et al.; Notice of Application

October 1, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Salomon Brothers Fund, Inc., Salomon Brothers Capital Fund, Inc., Salomon Brothers Investors Fund, Inc., and Thomas F. Schlafly.

RELEVANT ACT SECTIONS: Order requested under section 6(c) that would grant an exemption from section 2(a)(19)(B)(iv) for the purposes of section 15(f).

SUMMARY OF APPLICATION: Applicants seek an order exempting Mr. Thomas F. Schlafly from the definition of "interested person" in section 2(a)(19)(B)(iv) of the Act solely for the purpose of determining whether, under section 15(f) of the Act, 75% of the members of the board of directors of certain registered investment companies are not "interested persons" of the predecessor or successor investment adviser.

FILING DATE: The application was filed on July 5, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 29, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 55 Water Street, New York, NY 10041.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3022 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300.

Applicants' Representations

1. Each of Salomon Brothers Fund, Inc. ("SBF"), Salomon Brothers Capital Fund, Inc. ("SB Capital"), and Salomon Brothers Investors Fund, Inc. ("SB Investors") (collectively, the "Funds") is registered as a management investment company.

2. On March 14, 1990, Shearson Lehman Hutton, Inc. ("SLH") and Salomon Brothers Asset Management, Inc. ("SBAM") entered into an agreement which provided for the purchase by SBAM of substantially all of the business and assets of the Lehman Management Co. ("LEMCO") division of SLH, which was the Funds' investment adviser at the time.

3. In accordance with the requirements of section 15(a)(4) of the Act, the investment advisory contracts under which LEMCO rendered services to the Funds provided that they would terminate in the event of an assignment. The consummation of the acquisition resulted in an assignment, as that term is used in the Act.

4. Following approval by the Funds' directors, on March 15, 1990, and by the Funds' shareholders, on April 30, 1990, of a new advisory contract between each of the Funds and SBAM and a related change in each of the Funds' names, the acquisition was consummated on May 1, 1990.

5. Mr. Thomas F. Schlafly has been a member of the board of directors of SB Investors since 1983, SB Capital since 1984, and SBF since 1986. Since 1984, Mr. Schlafly also has served in an "of counsel" capacity with the law firm of Peper, Martin, Jensen, Maichel & Hetlage ("Peper Martin") of St. Louis, Missouri.

6. Peper Martin has rendered legal services to and received legal fees from SLH for various litigation matters primarily associated with retail brokerage, such as questions of suitability, churning, and collections. None of these matters relate in any way to SLH's prior services as an adviser to the Funds or to the business of the Funds, and Peper Martin has never provided legal services to or received legal fees from any of the Funds. Mr. Schlafly has represented that the fees paid to Peper Martin by SLH have represented less than 1 percent of the firm's total revenues in each of the last three years and that Peper Martin anticipates that the total revenues received from SLH in each year in the foreseeable future will not vary significantly from prior years. Mr. Schlafly has advised the directors of the Funds that he is not involved in, responsible for, or (other than in general terms) familiar with, any matter relating to representation of SLH, and that all SLH matters are handled by another individual who is a partner of Peper Martin.

7. Section 15(f) of the Act provides, in essence, that an investment adviser of a registered investment company may make a profit from the sale of its advisory business to another investment adviser, provided that (a) for the three years following the sale, at least 75% of the investment company's directors are not "interested persons" of either the predecessor or successor investment adviser, and (b) neither the transaction nor any express or implied term, condition, or understanding applicable thereto imposed an unfair burden on the investment company. Applicants do not seek any finding concerning whether the acquisition imposes an unfair burden on the Funds within the meaning of Section 15(f).

8. Section 2(a)(19)(B)(iv) of the Act provides that any person, or any partner or employee of that person, who has provided legal services to an investment adviser since the beginning of the last two completed fiscal years is an interested person of that investment adviser. Because Mr. Schlafly is employed by a law firm that provides legal services to SLH, he is an "interested person" of SLH.

9. At present, the board of each Fund meets the 75% requirement of section 15(f)(1)(A). However, each board wishes to add Mr. Michael F. Holland (the chairman, chief executive officer, and president of SBAM) to the board. Absent exemptive relief with respect to Mr. Schlafly's status, Mr. Holland cannot be added to the boards at this time since each of the Funds would have nine directors, only six of which would not be interested persons of the investment adviser or predecessor investment adviser.

10. The concept of "interested person" was added to the Act in 1970 because the definition of "affiliated person" was deemed insufficient to supply an independent check on management and to provide a means for the representation of shareholder interests in investment company affairs. However, the legislative history of section 2(a)(19) indicates that Congress intended that the Commission exercise its exemptive authority flexibly upon a showing that a person is in a position to act independently on behalf of the investment company and its shareholders.

11. The non-interested directors of the Funds have concluded that the interests of the Funds and their shareholders would be enhanced by a change in the status of Mr. Schlafly for the purpose of section 15(f). Peper Martin has never represented LEMCO or any of the Funds in question. Mr. Schlafly has never worked on a matter for SLH, and is not entitled to any share in the profits of Peper Martin. Applicants submit that Mr. Schlafly does not have the kind of ties to either SLH or SBAM that were of concern to the Congress and is in a position to act independently on behalf of the Funds and their shareholders.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23824 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1 - Motor vehicle, 2 - Rail freight, 3 - Cargo vessel, 4 - Cargo-only aircraft, 5 - Passenger-carrying aircraft.

DATES: Comments must be received on or before November 9, 1990.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW. Washington, DC

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10469-N	ICI Americas, Inc., Wilmington, DE	49 CFR 173.271(a)(11)	To authorize the transportation of phosphorous trichlorids, classed as corrosive material, in DOT Specification 105J300 tank cars with safety relief valves prescribed for corrosive material service. (mode 2)
10470-N	Buckeye International, Inc., Maryland Heights, MO.	49 CFR 178.21, 178.24, 178.27, 178.35, 178.35(a).	To authorize the shipment of compound, cleaning, liquid, classed as corrosive material, in an inner ply double-wall polyethylene bag with a wall thickness of 2 mils overpacked in a non-DOT specification fiberboard box. (mode 1)
10471-N	Chevron Resources Company, Hobeon, TX.	49 CFR 174.67(b)(3)(i)(j)	To authorize tank cars containing sulfuric and spent sulfuric acids to remain standing with unloading connections attached. (mode 2)
10472-N	General Chemical Corporation, Parsippany, NJ.	49 CFR 173.274	To authorize the transportation of fluosulfonic acid, classed as corrosive material, in DOT Specification 111A60W7 stainless steel tank cars. (mode 2)
10473-N	Progressive Technologies, Inc., Omaha, NE.	49 CFR 173.12, 173.25, 173.3(c), 175.3, 178.16, 178.19, 49 CFR part 173, subpart D, E, F, and H.	To authorize the manufacture, marking and sale of non-DOT specification polyethylene twin-sealed 85 gallon capacity drum to be used as a salvage drum, lab pack container and sole use container for shipment of those hazardous materials authorized in DOT Specification 34 or 35 container. (modes 1, 2, 3, 4)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10475-N	General Cylinder/Div. of Manchester Tank & Equip., Dallas, TX.	49 CFR 178.50-15, 178.50-16, 178.51-15, 178.61-15, 178.61-16.	To authorize the rebuilding and repairing of DOT Specification 4B, 4BA and 4BW steel cylinders, in sizes from 1 pound to 420 pounds, to be used for transportation of flammable gases. (mode 1)

Application No.	Applicant	Reasons of exemption
7446-X	Kaiser Aluminum and Chemical Corporation, Erie, PA	7446
7517-X	Trinity Industries, Inc., Dallas, TX	7517
7607-X	Dynamac Corporation, Fort Lee, NJ	7607
7721-X	Applied Companies, San Fernando, CA	

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10475-N	General Cylinder/Div. of Manchester Tank & Equip., Dallas, TX.	49 CFR 178.50-15, 178.50-16, 178.51-15, 178.61-15, 178.61-18.	To authorize the rebuilding and repairing of DOT Specification 4B, 4BA and 4BW steel cylinders, in sizes from 1 pound to 420 pounds, to be used for transportation of flammable gases. (mode 1)
10476-N	Syn-Tex B. A. G., Winnipeg, Manitoba, Canada.	49 CFR 172.245	To authorize the manufacture, marking and sale of bulk containers of woven polypropylene with polyethylene liner for transportation of commodities classed as oxidizers and corroeive solids. (modes 1, 2, 3)
10477-N	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 175.3, 178.57-21	To authorize the transportation of a non-DOT specification cylinder comparable to a DOT 4L cylinder, except the inner vessel is constructed of 304 material, to be used for shipment of materials classed as nonflammable gases. (modes 1, 2, 3, 4)
10478-N	Davis Engineering Company, Fresno, CA.	49 CFR 178.3409-3(a)(1)	To authorize the construction of a combination cargo tank trailer built to the specifications of MC-306 AL design with alternative aluminum used for shell, heads and baffles with bracing for transportation of combustible and flammable liquids. (mode 1)
10479-N	Premier Air Center, Inc., East Alton, IL	49 CFR 172.101, 175.3	To authorize the transportation of ammunition for cannon with empty projectile which is forbidden for shipment aboard cargo aircraft. (mode 4)
10480-N	Air Products and Chemicals, Inc., Bethlehem, PA.	49 CFR 173.318(a), 176.76(h)(4)	To authorize the use of a non-DOT specification 3,000 gallon portable tank for shipment of helium, refrigerated liquid. (modes 1, 3)
10481-N	M1 Engineering, Limited, Bradford, West Yorkshire, England.	49 CFR 178.338-10(c)(d), 178.338-13(1)(c), 178.338-14(c), 178.338-2(e).	To authorize the manufacture, marking and sale of cyrogenic portable tanks for shipment of liquefied oxygen, nitrogen and argon. (modes 1, 2, 3)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Material Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 3, 1990.

Joseph T. Herring,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials.

[FR Doc. 90-23857 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Notice of Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before October 25, 1990.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
3095-X	Dowell Schlumberger, Inc., Tulsa, OK	3095
4453-X	Mining Services International Corporation (MSI) Salt Lake City, UT	4453
4453-X	Atlas Power Company Dallas, TX	4453
4453-X	Reed Explosives, Inc, Blountsville, AL	4453
4453-X	A. M. Contracting, Grove City, PA	4726
4726-X	U.S. Department of Energy, Washington, DC	4803
4803-X	Dowell Schlumberger, Inc., Tulsa, OK	5206
5206-X	El Dorado Chemical Company, St. Louis, MO	5206
5206-X	Austin Powder Company, Cleveland, OH	6126
6126-X	Phone-Poulenc, Inc., Princeton, NJ	6773
6773-X	E. I. du Pont de Nemours and Company, Inc., Wilmington, DE	6963
6963-X	ISC Chemicals Limited, Bristol, England	7070
7070-X	American Chemical & Refining Company, Inc., Waterbury, CT	7413
7413-X	Chilton Metal Products Division, Chilton, WI	

Application No.	Applicant	Renewal of exemption
7448-X	Kaiser Aluminum and Chemical Corporation, Erie, PA	7448
7517-X	Trinity Industries, Inc., Dallas, TX	7517
7607-X	Dynamec Corporation, Fort Lee, NJ	7607
7721-X	Applied Companies, San Fernando, CA	7721
7808-X	Whitmire Research Laboratories, Inc., Saint Louis, MO	7808
7835-X	Linde Gases of Florida, Inc. Tampa, FL	7835
7835-X	Liquid Carbonic Specialty Gas Corporation, Chicago, IL	7835
7835-X	Scott Specialty Gases, Inc., Plumsteadville, PA	7835
7835-X	Matheson Gas Products, Inc., Secaucus, NJ	7835
7835-X	Air Products and Chemicals, Inc., Allentown, PA	7835
7835-X	Union Carbide Industrial Gases, Inc., Danbury, CT	7835
7835-X	Linde Gases of the Midwest, Inc., Hillside, IL	7835
7835-X	Liquid Air Corporation, Walnut Creek, CA	7835
7862-X	General Electric Company, Milwaukee, WI	7862
8126-X	Compagnie des Containers Reservoirs, Paris, France	8126
8214-X	Ford Motor Company, Dearborn, MI	8214
8236-X	Ford Motor Company, Dearborn, MI	8236
8450-X	LTV Aerospace and Defense Company, Dallas, TX [1]	8450
8480-X	Gillette Company, Boston, MA	8480
8498-X	Hunter Drums, Limited, Bramalea, Ontario, Canada	8498
8518-X	Unocal Oil & Gas Division, Ventura, CA	8518
8518-X	Shields Industries, Fontana, CA	8518
8518-X	Crosby & Overton, Inc., Long Beach, CA	8518
8518-X	Gallighen, Inc., Ventura, CA	8518
8555-X	Thiokol Corporation, Brigham City, UT	8555
8569-X	U.S. Department of the Army, Falls Church, VA	8569
8757-X	Y-Z Industries, Inc., Snyder, TX	8757
8815-X	Atlas Power Company, Dallas, TX	8815
8878-X	Amalgamet Canada—Division of Prometalco, Inc., Toronto, Ontario, Canada [2]	8878
8906-X	FMC Corporation, Philadelphia, PA	8906
8977-X	Eurotainer, USA, Somerset, NJ [3]	8977
8988-X	Dresser Industries, Inc., Houston, TX	8988
9010-X	United Technologies, Corporation, San Jose, CA	9010
9034-X	Airco, The BOC Group, Inc., Murray Hill, NJ	9034
9168-X	All-Pak, Inc., Buffalo, NY [4]	9168
9168-X	All-Pak, Inc., Pittsburgh, PA	9168
9220-X	Custom Packaging System, Inc., Manistee, MI	9220
9377-X	Atlas Power Company, Dallas, TX	9377
9387-X	Hub States Corporation, Indianapolis, IN	9387
9426-X	Rheem Container Corporation, Danbury, CT [5]	9426
9463-X	Guzzler Manufacturing, Inc., Birmingham, AL	9463
9507-X	Air Products and Chemicals, Inc., Allentown, PA	9507
9507-X	Liquid Air Corporation, Walnut Creek, CA	9507
9507-X	Linde Gases of Florida, Inc., Tampa, FL	9507
9507-X	Union Carbide Industrial Gases, Inc., Danbury, CT	9507
9603-X	Tennessee Eastman Company, Kingsport, TN	9603
9628-X	Degussa Corporation, Ridgefield Park, NJ	9628
9654-X	Interox America, Houston, TX	9654
9654-X	Degussa Corporation, Ridgefield Park, NJ	9654
9946-X	Linde Gases of the Mid-Atlantic, Inc., Moorestown, NJ	9946
9953-X	Fore Way Express, Inc., Wausau, WI	9953
9985-X	Taylor-Wharton Cryogenics, Theodore, AL	9985
10001-X	Airco, The BOC Group, Inc., Murray Hill, NJ	10001
10040-X	Atlas Power Company, Dallas, TX	10040
10046-X	Eveready Battery Company, Inc., Cleveland, OH	10046
10047-X	Taylor-Wharton Cylinders, Harrisburg, PA	10047
10065-X	E. I. du Pont de Nemours and Company, Inc., Wilmington, DE	10065

[1] To modify a non-DOT specification container used for shipment of rocket motors by drilling six 2-inch drain holes in the bottom to prevent accumulation of rainwater.
[2] To authorize an additionally designed steel outerpack for use in transporting corroive liquids.
[3] To authorize an additional commodity classed as flammable gas.
[4] To authorize a DOT-Specification 12A fiberboard box as an additional outer container for shipment of flammable liquids, flammable solids and a corroive material.
[5] To authorize a different cover design for removable head polyethylene drums for shipment of certain corroive materials and flammable liquids.

Application No.	Applicant	Parties to exemption
3330-P	United Nuclear Corporation, Uncasville, CT	3330
7052-P	Ross Laboratories, Inc., Seattle, WA	7052
7060-P	Ronson Aviation, Inc., Trenton, NJ	7060
8526-P	Ranger Transportation, Inc., Jacksonville, FL	8526
8554-P	Diversified Spreader Services, Centerville, UT	8554
9881-P	LND, Inc., Oceanside, NY	9881
9887-P	Containers and Vessels, Ltd., of Ireland, Monaghen, Ireland	9887
10239-P	Vista Chemical Company, Baltimore, MD	10239

This notice is receipt of applications for renewal of exemption and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 3, 1990.

Joseph T. Herring,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials.

[FR Doc. 90-23856 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-60-M

Office of the General Counsel; Opinion Letter

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is issued not only in response to a particular issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 984, dated December 16, 1963, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

HELD: We see no basis for cancelling VAR 14279 as being in conflict with either section 1652(b) or section 1780(a) of title 38.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23845 Filed 10-9-90; 8:45 am]

This notice is receipt of applications for renewal of exemption and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 3, 1990.

Joseph T. Horning,

Chief, Exemptions and Approval Division, Office of Hazardous Materials Transportation.

[FR Doc. 90-23856 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 63-90, Benefits for Blind Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does section 614, title 38, United States Code permit the furnishing of mechanical or electronic equipment to eligible blind veterans for the purpose of aiding them to overcome the economic handicap of blindness or is such equipment limited to that which will aid blind veterans in overcoming the physical handicap of blindness?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6 (e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 984, dated December 16, 1963, is reissued as a Precedent Opinion pursuant to 38 CFR 2. 6(e) (9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 63-90, Benefits for Blind Veterans Under 38 U.S.C. 614, requested by The Department, is as follows:

Held: Any mechanical or electronic equipment which, as determined by the proper authorites in the Veterans Administration, will aid otherwise eligible blind veterans to overcome the handicap of blindness may be furnished such veteran under the provisions of 38 U.S.C. 614. No distinction is to be drawn between "physical" or "economic" handicap in determining the need for such equipment but its intended use must, of course, be found to be an aid in overcoming the handicap of blindness. To the extent that earlier opinions may be in conflict with this holding, they are modified to accord herewith . Op. Sol. 116-47 is hereby overruled. (Opinion of the General Counsel, dated December 10, 1963, approved December 16, 1963, C-XXXXXXXXXX). [This decision is hereby promulgated for observance by all officials and employees of the Veterans Administration.]

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23852 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 58-90, Combination Correspondence-Residence Courses

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Should VA Regulation 14279 be cancelled and rescinded as being in conflict with sections 1652(b) and 1786(a) of title 38, United States Code.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW.; Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 1-77, dated July 16, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 56-90, Combination Correspondence-Residence Courses, requested by Chief Benefits Director, is as follows:

HELD: We see no basis for cancelling VAR 14279 as being in conflict with either section 1652(b) or section 1786(a) of title 38.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23845 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 65-90, Concurrent Payment of Employees' Compensation to Widow and Dependency and Indemnity Compensation to Child When He Attains Age 18

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether a child who is between the ages of 18 and 21 and attending school is eligible to receive dependency and indemnity compensation when the widow has elected and is receiving compensation from the Bureau of Employees' Compensation based on the veteran's military service.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 974, dated February 3, 1961, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 65-90, Concurrent Payment of Employees' Compensation to Widow and Dependency and Indemnity Compensation to Child When He Attains Age 18, requested by The Department, is as follows:

Held: Dependency and indemnity compensation benefits provided by 38 U.S.C. 413 for children of veterans are payable only in the event there is no widow with eligibility for dependency and indemnity compensation. Widow's eligibility may be terminated by death or remarriage; but receipt of Bureau of Employees' Compensation benefits does not terminate widow's basic eligibility for dependency and indemnity compensation.

Held Further: The dependency and indemnity compensation benefit authorized by 38 U.S.C. 414(c) may be properly paid to a school child, if the child is otherwise eligible, notwithstanding the continuing receipt of Bureau of Employees' Compensation benefits by the widow. (Opinion of the General Counsel, dated December 13, 1960, approved observance by all officers and employees of the Veterans Administration.)

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23854 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 66-90, Protection of Disability Ratings Assigned Under Superceded Criteria

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—a. Whether it is legally appropriate to revise the rating schedule as it applies to evaluating defective hearing while at the same time requiring by memorandum that the change in rating methods results in no decrease in any evaluation assigned under the old criteria, regardless of the results of current audiometric testing under the new criteria. b. Whether the Board of Veterans Appeals must maintain the prior rating levels under the old criteria if the audiometric findings under the new criteria would result in a reduction or discontinuance of compensation benefits.

EFFECTIVE DATES: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11-88, dated October 27, 1988, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to

assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 66-90, Payment Provision of Section 2, Public Law 87-574, requested by The Department, is as follows:

Held: The provision for utilization of

opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 1-77, dated July 16, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 64-90, Payment Provision of Section 2, Public Law 87-574, requested by The Department, is as follows:

Held: The provision for utilization of

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether a child who is between the ages of 18 and 21 and attending school is eligible to receive dependency and indemnity compensation when the widow has elected and is receiving compensation from the Bureau of Employees' Compensation based on the veteran's military service.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 974, dated February 3, 1961, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 65-90, Concurrent Payment of Employees' Compensation to Widow and Dependency and Indemnity Compensation to Child When He Attains Age 18, requested by The Department, is as follows:

Held: Dependency and indemnity compensation benefits provided by 38 U.S.C. 413 for children of veterans are payable only in the event there is no widow with eligibility for dependency and indemnity compensation. Widow's eligibility may be terminated by death or remarriage; but receipt of Bureau of Employees' Compensation benefits does not terminate widow's basic eligibility for dependency and indemnity compensation.

Held Further: The dependency and indemnity compensation benefit authorized by 38 U.S.C. 414(c) may be properly paid to a school child, if the child is otherwise eligible, notwithstanding the continuing receipt of Bureau of Employees' Compensation benefits by the widow. (Opinion of the General Counsel, dated December 13, 1960, approved observance by all officers and employees of the Veterans Administration.)

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23854 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 66-90, Protection of Disability Ratings Assigned Under Superceded Criteria

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—a. Whether it is legally appropriate to revise the rating schedule as it applies to evaluating defective hearing while at the same time requiring by memorandum that the change in rating methods results in no decrease in any evaluation assigned under the old criteria, regardless of the results of current audiometric testing under the new criteria. b. Whether the Board of Veterans Appeals must maintain the prior rating levels under the old criteria if the audiometric findings under the new criteria would result in a reduction or discontinuance of compensation benefits.

EFFECTIVE DATES: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11-88, dated October 27, 1988, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to

parties in determining status as a member of a veteran's household. Accordingly, it would not be unreasonable to assume that status as a member of a veteran's household, once established, will be considered as continuing the absence of affirmative evidence to the contrary.

assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 66-90, Protection of Disability Ratings Assigned Under Superceded Criteria, requested by Chairman, Board of Veterans Appeals, is as follows: HELD: The manual provision that purports to protect disability evaluations assigned under superceded regulations on defective hearing is neither legally appropriate nor binding upon the Board of Veterans Appeals.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23855 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 59-90, Power of Attorney to Flight School to Cash Government Checks for Educational Assistance Allowance

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does a requirement by a flight school for veteran-students enrolled in flight training under chapter 34 of title 38 to execute a power of attorney authorizing the school to cash their Government checks for educational assistance allowance violate the provisions of section 3101 of title 38, United States Code?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3-69, dated September 3, 1969, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 59-90, Power of Attorney to Flight School to Cash Government Checks for Educational Assistance Allowance, requested by Controller and Chief Benefits Director, is as follows:

Held: The combination of circumstances existing in the present cases, i.e., the direction by the veteran to mail his check in care of the flying school and his execution of a "special power of attorney" or an "assignment and power of attorney" authorizing the flying school to negotiate such check, results in what is tantamount to an assignment of veterans educational assistance allowance to the flying school in contravention of section 3101 of title 38, United States Code.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23848 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 64-90, Payment Provision of Section 2, Public Law 87-574

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May incompetent patients and members in VA hospitals and domiciliaries for whom guardians have been appointed, whose services are utilized for therapeutic and rehabilitation purposes, be paid directly the nominal remuneration authorized as payable under section 618 of title 38, United States Code, added by section 2, of Public Law 87-574, or is the VA accountable to the guardian for the amounts payable, if the State law so requires?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorizes the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 982, dated December 27, 1962, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 64-90, Payment Provision of Section 2, Public Law 87-574, requested by The Department, is as follows:

Held: The provision for utilization of the services of patients and members in VA hospitals and domiciliaries, at nominal remuneration, contemplates that, when medically indicated, payments will be made directly to the veterans as part of the cost of the therapeutic and rehabilitation program of VA and that, in such event, the guardian of an incompetent patient or member would have no right to demand these payments, irrespective of any provision of the guardianship laws of the State in which the guardian was appointed. (Opinion of the General Counsel dated December 21, 1962, approved December 27, 1962.) [This decision is hereby promulgated for observance by all officers and employees of the Veterans Administration.]

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23853 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 61-90, Reconsideration of General Counsel's Opinion 15-56 that Minor Stepchild Serving in Armed Forces not Considered Member of Veteran's Household

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Reconsideration of General Counsel's Opinion 15-56 that Minor Stepchild Serving in Armed Forces not Considered Member of Veteran's Household.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulations or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 7-63, dated May 14, 1963, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 61-90, Reconsideration of General Counsel's Opinion 15-56 that Minor Stepchild Serving in Armed Forces not Considered Member of Veteran's Household, requested by Chief Benefits Director, is as follows:

[Held:] Since the question whether the stepchild is a member of the stepparent's household must be determined in each instance on the basis of the facts in the individual case, it is not feasible to state any inflexible rules. As was noted, however, in AD 628, legislation such as that here considered is beneficial in character and should be liberally construed. While the bare relationship of stepchild and stepparent does not provide eligibility, we regard our precedents and those in decided cases where the courts have given a broader meaning to the applicable language respecting household, as justifying considerable liberally based on the intent of the parties in determining status as a member of a veteran's household. Accordingly, it would not be unreasonable to assume that status as a member of a veteran's household, once established, will be considered as continuing the absence of affirmative evidence to the contrary.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23850 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 62-90, Waiver of National Service Life Insurance Premiums

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether waiver of National Service Life Insurance premiums may be granted under 38 U.S.C. 712 for a total disability commencing while insurance was "deemed not to have lapsed" under subsection 602(m)(2) of the National Service Life Insurance Act of 1940, as amended.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a

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superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 990, dated February 16, 1968, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 62–90, Waiver of National Service Life Insurance Premiums Under 38 U.S.C. 712, requested by The Department, is as follows:

Held: A total disability which commenced while an insured's National Service Life Insurance policy was deemed not to have lapsed by reason of provisions of subsection 602(m)(2) must be treated as one commencing while the insurance was in force under premium-paying conditions within the purview of subsection 602(n) of the National Service Life Insurance Act (38 U.S.C. 712). Op. Sol. 241–51 is overruled to the extent that it is inconsistent with this conclusion. (Opinion of the General Counsel dated February 9, 1960, approved February 16, 1968, C–XXXXXXXXX.) [This opinion is hereby promulgated for observance by all officers and employees of the Veterans Administration".]

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23851 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 59–90, War Orphans Benefits for the Children of New Philippine Scouts Who Have Elected To Receive Lump-sum BEC Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claims matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May the deceased veteran's widow and children be paid dependents' educational assistance allowance provided by chapter 35 of title 38, United States Code under the facts stated below?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 4–69, dated November 6, 1969, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 58–90, War Orphans Benefits for the Children of New Philippine Scouts Who Have Elected to Receive Lump-sum BEC Benefits, requested by Chief Benefit Director, is as follows:

Held: (a) That the widow of the deceased veteran has no entitlement to educational assistance under chapter 35 of title 38, in force on November 8, 1989 (b) That the election by the widow, effective January 31, 1955, to receive on behalf of hereself and her children a lump-sum payment of FECA benefits would not bar payment of benefits under chapter 35 of title 38 to an otherwise eligible child over age 18.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23847 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 57–90, Definition of "Proprietary Educational Institution" in Section 1673(d) of Title 38, United States Code, Excludes Military Aero Flight Clubs Operated as Federal Instrumentalities

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Are those aero flight clubs which are organized, operated, and controlled pursuant to military regulations, "proprietary educational institutions" and subject to the student ratio requirements under section 1673(d) of title 38, United States Code, requiring that the Administrator shall not approve enrollment in a course given by a proprietary institution where more than 85 percent of the students enrolled in the course are receiving veterans' educational benefits?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 15–71, dated October 20, 1971, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 57–90, Definition of "proprietary educational institution" in section 1673(d) of title 38, United States Code, excludes military aero flight clubs operated as Federal instrumentalities, requested by Chief Benefits Director, is as follows:

Held: Aero flying clubs formed and operated pursuant to service department regulations as nonappropriated sundry fund activities (excluding those clubs established as private associations) are federal governmental instrumentalities, and in regard to those flight training and other related instrumental programs of education offered, the clubs are not "proprietary educational institutions" subject to the 85–15 student ratio requirements in section 1673(d) of title 38, United States Code.

Further, while the Administrator has the responsibility under section 1772(b) for approval of the flight training and other related educational programs of the clubs, there is authority under sections 213, 1773 and 1774 of title 38, United States Code, for the Administrator to either contract with, or accept uncompensated services of, state approving agencies for inspection and supervisory visits to the training facilities and to obtain the recommendations of the state agencies for his approval or disapproval of the courses.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23848 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 60–90, Entitlement to Special Monthly Compensation Pursuant to 38 U.S.C. 314; Specially Adapted Housing Pursuant to 38 U.S.C. 801; and Automobiles and Adaptive Equipment Pursuant to 38 U.S.C. 1901

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(a) Does a functional (as distinguished from organic) loss of use of lower extremities meet the statutory requirement of loss of use? (b) Does such functional loss of use satisfy the requisite standard of permanence?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 994, dated June 10, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 60–90, Entitlement to Special Monthly Compensation Pursuant to 38 U.S.C. 314; Specially Adapted Housing Pursuant to 38 U.S.C. 801; and Automobiles and Adaptive Equipment Pursuant to 38 U.S.C. 1901, requested by the Department, is as follows:

Held: In view of the foregoing, it is therefore, held: (1) When the requisite determination of "loss of use" is made with regard to a particular VA benefit, it controls respecting eligibility irrespective of whether such loss is functional or organic in origin. (2) The submitted assumption "that the prognosis for reversal is virtually nil from a medical standpoint" meets the requirements of permanence applicable to entitlement to the benefits in question. This opinion is hereby promulgated for observance by all officers and employees of the Veterans Administration.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23849 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 196

Wednesday, October 10, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

Consent Agenda—Hydro 924th Meeting—October 10, 1990, Regular Meeting (10:00 a.m.)

CAH–1.
Project Nos. 10675–002, 10678–002, 10677–

Docket No. QF86–1043–001, Desert Power Company

Docket Nos. RP88–33–000, RP89–93–000 and CP76–116–000, U–T Offshore System

CAG–11.
Docket No. PR90–6–000, Dow Intrastate Gas Company

CAG–12.
Docket No. RP90–153–002, El Paso Natural Gas Company

CAG–13.
Docket No. RP90–143–001, CNG Transmission Corporation

Docket No. CI84–1392–002, BHP Petroleum Company Inc.

Docket No. CI77–735–003, Odeco Oil & Gas Company

Docket No. CI85–32–001, Mobil Exploration and Producing North America Inc.

Docket Nos. CI86–256–000 and CI86–385–000, Amoco Production Company

Docket No. CI86–506–000, Phillips Petroleum Company

Docket No. CI85–813–000, BHP Petroleum

453–000, CI86–460–000, CI86–461–000, CI86–462–000, CI86–463–000, CI86–464–000, CI86–465–000, CI86–466–000, CI86–467–000, CI86–468–000, CI86–469–000, CI86–470–000, CI86–471–000, CI86–472–000, CI86–473–000, CI86–474–000, CI86–475–000, CI86–476–000, CI86–477–000, CI86–478–000, CI86–479–000, CI86–480–000, CI86–481–000, CI86–482–000, CI86–483–000, CI86–484–000, CI86–485–000,

Sunshine Act Meetings

Federal Register
Vol. 55, No. 196
Wednesday, October 10, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

October 3, 1990.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

DATE AND TIME: October 10, 1990, 8:30 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Project No. 2640-006, Flambeau Paper Company
(2) Docket No. E-7319-001, Wolverine Power Company

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400

Lois D. Cashell,

Secretary.

[FR Doc. 90-23924 Filed 10-5-90; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

October 3, 1990.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

DATE AND TIME: October 10, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 924th Meeting—October 10, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Project Nos. 10675-002, 10676-002, 10677-002 and 10678-002, Western Massachusetts Electric Company
Project Nos. 10731-002, 10732-002, 10733-002 and 10734-002, South Hadley Electric Light Department and Massachusetts Municipal Wholesale Electric Company
CAH-2.
Project No. 10845-001, Parcoal Energy, Inc.
CAH-3.
Project No. 10912-001, Bit River Hydro, Inc.
CAH-4.
Omitted.
CAH-5.
Project No. 2531-009, Central Maine Power Company.
CAH-6.
Project No. 2788-005, F.W.E. Stapenhorst, Inc.
CAH-7.
Docket No. UL89-24-001, City of Albany, Oregon.
CAH-8.
Docket No. EL89-20-001, Mauna Kea Power, Inc.
CAH-9.
Project No. 9022-005, JDJ Energy Company
CAH-10.
Omitted
CAH-11.
Project No. 2090-000, Green Mountain Power Corporation

Consent Agenda—Electric

CAE-1.
Docket No. ER90-540-000, Virginia Electric and Power Company
CAE-2.
Docket No. ER90-164-001, TECO Power Services Corporation and Tampa Electric Company
CAE-3.
Docket No. ER85-477-006, Southwestern Public Service Company
CAE-4.
Omitted
CAE-5.
Omitted
CAE-6.
Docket No. ER85-290-014, Connecticut Light and Power Company

Docket No. ER85-707-009, Western Massachusetts Electric Company

Docket No. ER85-689-009, Holyoke Water Power Company and Holyoke Power and Electric Company
CAE-7.
Docket No. EL90-38-000, Interstate Power Company
CAE-8.
Docket No. QF85-199-002, Vulcan/BN Geothermal Power Company

Docket No. QF86-727-003, Del Ranch, L.P.

Docket No. QF86-1043-001, Desert Power Company

Docket Nos. QF87-511-002 and QF89-297-001, Earth Energy, Inc.
CAE-9.
Docket No. QF88-295-004, Tenaska III Texas Partners
CAE-10.
Docket No. QF86-39-003, Turner Falls Limited Partnership
CAE-11.
Docket Nos. ER89-265 and EL 89-26-004, Arizona Public Service Company
CAE-12.
Docket No. ER90-284-002, New England Power Company
CAE-13.
Docket No. RM87-26-003, Revision of Rate Schedule Filings under Section 205 and 206 of the Federal Power Act
CAE-14.
Docket No. ER88-439-001, Central Illinois Public Service Company
CAE-15.
Docket No. ER89-571-001, Southwestern Electric Power Company
CAE-16.
Docket No. ER88-527-001, Union Electric Company
CAE-17.
Docket No. ER90-142-001, Arizona Public Service Company
CAE-18.
Docket No. ER90-127-001, Southwestern Electric Power Company

Consent Agenda—Gas and Oil

CAG-1.
Docket No. TA91-1-40-000, Raton Gas Transmission Company
CAG-2.
Docket No. RP90-186-000, Northwest Pipeline Corporation
CAG-3.
Docket Nos. TM90-13-22-002 and 003, CNG Transmission Corporation
CAG-4.
Docket No. GT90-46-000, Tennessee Gas Pipeline Company
CAG-5.
Docket No. RP90-132-002, United Gas Pipe Line Company
CAG-6.
Docket No. RP90-167-000, ANR Pipeline Company
CAG-7.
Docket Nos. RP88-27-024, 025, RP88-264-020, 021, RP89-138-009, 010, United Gas Pipe Line Company
CAG-8.
Docket Nos. RP90-145-001, RP89-33-008, 007 and 009, Northern Border Pipeline Company
CAG-9.
Docket Nos. RP90-12-005 and CP89-1554-004, Colorado Interstate Gas Company
CAG-10.
Docket Nos. RP90-38-000, RP90-69-000 and CP76-116-000, U-T Offshore System
CAG-11.
Docket No. PR90-8-000, Dow Intrastate Gas Company
CAG-12.
Docket No. RP90-153-002, El Paso Natural Gas Company
CAG-13.
Docket No. RP90-143-001, CNG Transmission Corporation
CAG-14.
Docket No. RP90-148-002, Williston Basin Interstate Pipeline Company
CAG-15.
Docket No. TM90-14-28-001, Panhandle Eastern Pipe Line Company
CAG-16.
Docket Nos. CP86-576-031, CP89-1740-005 and RP90-147-001, Northewest Pipeline Corporation
CAG-17.
Docket Nos. RP90-139-003, RP89-224-002 and RP89-203-005, Southern Natural Gas Company
CAG-18.
Docket Nos. RP90-124-003, RP86-259-035 and CP89-1227-004, Northern Natural Gas Company
CAG-19.
Docket Nos. RP87-33-010 and TA88-1-43-004, Williams Natural Gas Company
CAG-20.
Docket Nos. RP88-115-009, CP89-31-001, CP86-616-001 and CP89-59-002, Texas Gas Transmission Corporation
CAG-21.
Docket No. RP90-158-000, Trunkline, Gas Company
CAG-22.
Docket Nos. RP88-136-000, RP89-49-010, RP90-14-000 and CP89-1582-002, National Fuel Gas Supply Corporation
CAG-23.
Docket Nos. RP89-37-000, RP89-82-000, CP90-406-000 and CP75-104-055, High Island Offshore System
CAG-24.
Docket No. IS90-11-001, Amerada Hess Pipeline Corporation
Docket No. IS90-12-001, ARCO Pipeline Company
Docket No. IS90-13-001, BP Pipeline (Alaska) Inc.
Docket No. IS90-14-001, Exxon Pipeline Company
Docket No. IS90-15-001, Mobil Alaska Pipeline Company
Docket No. IS90-16-001, Phillips Alaska Pipeline Company
Docket No. IS90-17-001, Unocal Pipeline Company
CAG-25.
Docket Nos. G-4579-064 and G-2756-003, Mobil Exploration and Producing North America Inc., Texaco Inc. and Texaco Producing Inc., and OXY USA Inc.
Docket No. G-3244-000, Cabot Petroleum Corporation
Docket No. CI88-1045-000, Samson Resources Company
Docket No. G-4579-040, Cities Service Oil and Gas Corporation
Docket Nos. G-8751-000, G-12015-000 and CI60-580-000, The George R. Brown Partnership
Docket No. CI64-1292-002, BHP Petroleum Company Inc.
Docket No. CI77-735-002, Odeco Oil & Gas Company
Docket No. CI85-32-001, Mobil Exploration and Producing North America Inc.
Docket Nos. CI88-255-000 and CI88-396-000, Amoco Production Company
Docket No. CI86-508-000, Phillips Petroleum Company
Docket No. CI86-613-000, BHP Petroleum (Americas) Inc.
Docket No. CI87-166-000, TXO Production Corp.
Docket Nos. CI87-234-000 and CI87-235-000, Chevron U.S.A. Inc.
Docket No. CI87-312-000, CNG Producing Company
Docket No. CI87-313-000, Texaco Inc.
Docket Nos. CI87-333-000 and CI87-351-000, Texaco Producing Inc.
Docket No. CI87-377-000, Amoco Production Company
Docket No. CI87-393-000, Cabot Petroleum Corporation
Docket Nos. CI88-695-000 and CI88-728-000, Amoco Production Company
Docket Nos. CI87-571-000, CI87-575-000 and CI87-576-000, Texaco Producing Inc.
Docket No. CI87-647-000, Exxon Corporation
Docket No. CI86-769-000, Amoco Production Company
Docket No. CI87-193-000, Koch Exploration Company
Docket Nos. CI87-32-000, CI87-33-000, CI87-34-000, CI87-35-000, CI87-36-000, CI87-37-000, CI87-38-000, CI87-39-000, CI87-40-000, CI87-41-000, CI87-42-000, CI87-43-000 and CI87-44-000, ONEOK Exploration, Inc.
Docket No. CI87-775-000, Cities Service Oil and Gas Corporation
Docket Nos. CI87-274-000, CI87-275-000, CI87-276-000, CI87-277-000, CI87-278-000, CI87-279-000, CI87-280-000, CI87-281-000, CI87-282-000, CI87-283-000, CI87-284-000, CI87-285-000 and CI87-286-000, Anadarko Petroleum Corporation
Docket Nos. G-5044-000 and CI86-425-000, Samson Resources Company
Docket Nos. CI87-555-000 and CI87-556-000, Cities Service Oil and Gas Corporation
Docket No. CI88-197-000, Tenneco Oil Company
Docket No. CI88-283-000, Amoco Production Company
Docket No. CI85-313-000, Mobil Oil Exploration & Producing Southeast Inc.
Docket No. G-4579-040, Cities Service Oil and Gas Corporation
Docket No. CI85-749-000, Amoco Production Company
Docket No. CI88-361-000, Tenneco Oil Company
Docket No. CI86-453-000, Cabot Petroleum Corporation
Docket No. CI86-50-000, Anadarko Petroleum Corporation
Docket No. CI88-230-000, Mobil Producing Texas & New Mexico Inc.
Docket Nos. CI86-452-000, CI86-453-000, CI86-454-000, CI86-455-000, CI86-456-000, CI86-457-000, CI86-458-000, CI86-459-000, CI86-460-000, CI86-461-000, CI86-462-000, CI86-463-000, CI86-464-000, CI86-465-000, CI86-466-000, CI86-467-000, CI86-468-000, CI86-469-000, CI86-470-000, CI86-471-000, CI86-472-000, CI86-473-000, CI86-474-000, CI86-475-000, CI86-476-000, CI86-477-000, CI86-478-000, CI86-479-000, CI86-480-000, CI86-481-000, CI86-482-000, CI86-483-000, CI86-484-000, CI86-485-000, CI86-486-000, CI86-487-000, CI86-488-000, CI86-489-000, CI86-490-000, CI86-491-000, CI86-492-000, CI86-493-000, CI86-494-000, CI86-495-000, CI86-496-000, CI86-497-000, CI86-498-000 and CI86-499-000, Marathon Oil Company
Docket No. G-4579-050 OXY USA Inc. (formerly Cities Service Oil and Gas Corporation)
Docket No. G-6123-000, Shell Western E&P Inc.
Docket No. CI61-945-000, Pennzoil Products Company
Docket Nos. CI84-295-000 and CI84-323-001, Mesa Operating Limited Partnership
Docket Nos. CI88-839-000 and CI88-430-000, Amoco Production Company
Docket No. CI88-502-000, Terra Resources, Inc.
Docket Nos. CI89-67-000, CI89-68-000 and CI89-69-000, Amoco Production Company
Docket Nos. CI89-35-000 and CI84-283-000, Mesa Operating Limited Partnership
Docket No. CI89-197-000, Helmerich & Payne, Inc.
Docket No. CI61-1791-000, Mitchell Energy Corporation
Docket No. CI88-153-000, Amoco Production Company
Docket No. CI88-303-000, Samedan Oil Company
Docket No. CI89-287-000, CI89-288-000, CI89-289-000, CI89-290-000, CI89-291-000, CI89-292-000, CI89-293-000 and CI89-298-000, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. CI89-436-000, Exxon Corporation
CAG-26.
Docket No. CI85-813-012, Tennessee Gas Supply Company v. Southland Royalty Company
CAG-27.
Docket No. CP90-1390-001, National Fuel Gas Supply Corporation
CAG-28.
Docket No. CP88-663-001, East Tennessee Natural Gas Company
CAG-29.
Docket No. CP89-1929-001, Columbia Gas Transmission Corporation
CAG-30.
Docket Nos. CP84-474-013 and CP86-263-005, American Distribution Company (Alabama Division)
CAG-31.
Docket No. CP89-2067-001, Southern Natural Gas Company
CAG-32.
Docket No. CP90-1391-000, Arcadian Company v. Southern Natural Gas Company
CAG-33.

Docket No. CP90-139-000, Texas Gas Transmission Corporation
CAG-34.
Docket No. CP90-1354-000, Northern Natural Gas Company
CAG-35.
Docket No. CP89-1406-000, Upper Cumberland Gas Utility District of Cumberland County, Tennessee
CAG-36.
H-3.
Project No. 9555-002, Higley Corporation. Order on application for preliminary permit.
H-4.
Project No. 9552-002, Deferiet Corporation. Order on application for preliminary permit.
H-5.
Project No. 9567-002, Hannawa
Facilities. Order on requests for rehearing and/or clarification.
PC-3.
Docket No. RM90-13-001, Interim Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates. Order on requests for rehearing and/or clarification.

Corrections

Federal Register
Vol. 55, No. 196
Wednesday, October 10, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed

DEPARTMENT OF HEALTH AND HUMAN SERVICES

second column), "FR Doc. 90-20622" should read "FR Doc. 90-20322".

Docket No. CP90-139-000, Texas Gas Transmission Corporation
CAG-34.
Docket No. CP90-1354-000, Northern Natural Gas Company
CAG-35.
Docket No. CP89-1496-000, Upper Cumberland Gas Utility District of Cumberland County, Tennessee
CAG-36.
Docket No. CP90-772-000, Northwest Pipeline Corporation
CAG-37.
Docket No. TQ90-3-27-001, North Penn Gas Company
CAG-38.
Docket No. CP90-2345-000, Algonquin Gas Transmission Company
CAG-39.
Docket No. CP89-1684-001, Steuben Gas Storage Company
Docket No. CP90-177-001, CNG Transmission Corporation
Docket No. CP89-685-001, Transcontinental Gas Pipeline Corporation

Hydro Agenda

H-1.
Project No. 9558-002, Kamargo Corporation
Project No. 9557-002, Black River Hydro Corporation
Project No. 9564-002, Norwood Hydro Corporation
Project No. 9565-002, Raymondville Hydro Corporation
Project No. 9566-002, East Norfolk Hydro Corporation
Project No. 9553-002, School Street Hydro Corporation
Project No. 9563-002, Herrings Hydro Corporation
Project No. 9552-002, Deferiet Corporation
Project No. 9554-002, Colton Hydro Corporation
Project No. 9555-002, Higley Corporation
Project No. 9567-002, Hannawa Corporation
Project Nos. 2320, 2330, 2539 and 2569, Niagara Mohawk Power Corporation. Order on remand.
H-2.
Project No. 9554-002, Colton Hydro Corporation. Order on application for preliminary permit.
H-3.
Project No. 9555-002, Higley Corporation. Order on application for preliminary permit.
H-4.
Project No. 9552-002, Deferiet Corporation. Order on application for preliminary permit.
H-5.
Project No. 9567-002, Hannawa Corporation. Order on application for preliminary permit.

Electric Agenda

E-1.
Docket No. EC90-16-000, Kansas City Power & Light Company. Order on request for authorization and approval of merger.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Docket Nos. RP89-183-000, 002 and TC89-8-000, Williams Natural Gas Company. Order on interlocutory appeal concerning the application of Rule 602 and the Commission's decision in *Arkansas Louisiana Gas. Co.*, 48 FERC 61,062 (1989).

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket Nos. CP89-2047-003, CP89-2048-003, CP89-1794-000, CP89-1795-000, CP89-1796-000, CP89-1797-000, CP89-1798-000, CP89-1799-000, CP89-1800-000, CP89-1801-000, CP89-1802-000, CP89-1803-000, CP89-1804-000, CP89-1805-000, CP89-1806-000, CP89-1807-000, CP89-1808-000, CP89-1809-000, and CP89-1810-000, Kern River Pipeline Company. Order on compliance filing and prior notice request.
PC-2.
Docket No. RM90-14-001, Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities. Order on requests for rehearing and/or clarification.
PC-3.
Docket No. RM90-13-001, Interim Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates. Order on requests for rehearing and/or clarification.

Lois D. Cashell,
Secretary.
[FR Doc. 90-23926 Filed 10-5-90; 9:29 am]
BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, October 15, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 5, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR. Doc. 90-24000 Filed 10-5-90; 1:34 p.m.]
BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 55, No. 196
Wednesday, October 10, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP88-27-024, RP88-264-020, and RP89-138-009]

United Gas Pipe Line Co.; Tariff Filing

Correction

In notice document 90-20659 appearing on page 35950 in the issue of Tuesday, September 4, 1990, the **Federal Register** document number at the end of the document should have appeared as set forth herein.

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 616, 618, and 619

RIN 3052-AA94

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Coordination; General Provisions; Definitions

Correction

In rule document 90-13862 beginning on page 24861 in the issue of Tuesday, June 19, 1990, make the following correction:

On page 24862, in the first column, beginning in the third line, the **DATES** paragraph should read as follows:

"**DATES:** These regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81N-0257]

Studies of Adverse Effects of Marketed Drugs; Availability of Cooperative Agreements; Request for Applications

Correction

In notice document 90-16938 beginning on page 29669 in the issue of Friday, July 20, 1990, make the following correction:

On page 29669, in the third column, at "**SUPPLEMENTARY INFORMATION**", starting in the seventh line, the last sentence should read:

"Applications submitted under this program are not subject to the requirements of Executive Order 12372 and are exempted from regulation 45 CFR part 46—Protection of Human Subjects."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

Correction

In notice document 90-23309 appearing on page 40450 in the issue of Wednesday, October 3, 1990, at the end of the document "FR Doc. 90-23369" should read "FR Doc. 90-23309".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-00-4212-13; WYW-113713]

Realty Action; Exchange; Wyoming

Correction

In notice document 90-20322 beginning on page 35368 in the issue of Wednesday, August 29, 1990, at the beginning of the document, the docket line should read as set forth above and at the end of the document (page 35369, second column), "FR Doc. 90-20622" should read "FR Doc. 90-20322".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 25885; Amdt. 25-31]

RIN 2120-AC27

Rotorcraft Airworthiness Amendments Based on European Joint Airworthiness Requirements Proposals

Correction

In rule document 90-22421 beginning on page 38964 in the issue of Friday, September 21, 1990, make the following corrections:

§ 29.903 [Corrected]

1. On page 38967, in the first column, in the first line of § 29.903(c), "*Category A:*" should read "*Category A;*".

Appendix B to Part 29 [Corrected]

2. On the same page, in the third column, under appendix section VIII(c), in the fourth line, "while" should read "white".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-20; Notice 1]

RIN 2127-AD03

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Brake Failure Warning Indicators

Correction

In proposed rule document 90-21314 beginning on page 37497 in the issue of Wednesday, September 12, 1990, make the following corrections:

1. On page 37498, in the third column, in the first full paragraph, in the third line, "instrument" was misspelled.
2. On the same page, in the same column, in the last line "qualify" should read "quantify".

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3. On page 37499, in the first column, in the fifth line, "along" and "placed" should read "alone" and "replaced", respectively.

4. On the same page, in the third column, in the eighth line, "Interested" should begin a new paragraph.

BILLING CODE 1505-01-D

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§ 1.1502-75T [Corrected]

1. In the first column, in paragraph (d)(5)(ii), in the next-to-last line, insert a closing parenthesis after "not".

2. In the second column, in paragraph (d)(5)(iii)(B)(*1*), in the fourth line, insert a comma after "1986".

3. In the third column, in paragraph (d)(5)(v), in the seventh line "of" should read "on".

§ 1.6081-5 [Corrected]

On page 37227, in § 1.6081-5(a)(1), in the 2nd column, in the 10th line insert "the" after "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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3. On page 37400, in the first column, in the fifth line, "along" and "placed" should read "alone" and "replaced", respectively.

4. On the same page, in the third column, in the eighth line, "Interested" should begin a new paragraph.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8310]

RIN 1545-AL64

Consolidated Return Regulations; Coordination With Section 833

Correction

In rule document 90-20790 beginning on page 36274 in the issue of Wednesday, September 5, 1990, in § 1.1502-75T, on page 36276 make the following corrections:

§ 1.1502-75T [Corrected]

1. In the first column, in paragraph (d)(5)(ii), in the next-to-last line, insert a closing parenthesis after "not".

2. In the second column, in paragraph (d)(5)(iii)(B)(*1*), in the fourth line, insert a comma after "1986".

3. In the third column, in paragraph (d)(5)(v), in the seventh line "of" should read "on".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8312]

RIN 1545-AM07

Extension of Time To File for Taxpayers Outside the United States and Puerto Rico

Correction

In rule document 90-21107 beginning on page 37226 in the issue of Monday, September 10, 1990, make the following correction:

§ 1.6081-5 [Corrected]

On page 37227, in § 1.6081-5(a)(1), in the 2nd column, in the 10th line insert "the" after "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-62-89]

RIN 1545-AO11

Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

Correction

In proposed rule document 90-20984 beginning on page 36657 in the issue of Thursday, September 6, 1990, the heading of the document should read as set forth above, and in the third column, in the 13th line from the bottom, the section number should read "§ 1.382-2T".

BILLING CODE 1505-01-D

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federal register

Wednesday
October 10, 1990

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

Termination of the Multifamily Coinsurance Program; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

[Docket No. R-90-1471; FR-2763-F-02] RIN 2502-AE85

limited repair of existing projects. In October 1984, HUD extended coinsurance to the section 221(d) program (24 CFR part 251) for new construction and substantial rehabilitation of rental housing. In October 1988, HUD extended coinsurance to the section 232 program (24 CFR part 252) for new construction

units, the programs have been plagued by an unacceptable level of loan defaults and losses to the FHA General Insurance Fund. The Fiscal Year 1988 General Accounting Office Audit of the FHA Insurance Funds, prepared by Price Waterhouse, estimated that, in addition to coinsurance claims already paid,

COINSURED LOAN DEFAULTS AND CUMULATIVE CLAIM AMOUNTS PAID AS OF JUNE 30, 1990

Program	Defaults		Claims paid	
	Projects	Mortgage amount	Projects	Amount paid
223(f)	210	$1,226,495,700	68	$303,715,125
221(d)	33	402,906,000	2	25,488,468
232	0	0	0	0
Total	243	1,629,480,700	70	329,203,591

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

[Docket No. R-90-1471; FR-2763-F-02] RIN 2502-AE85

Termination of the Multifamily Coinsurance Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule terminates the authority of the FHA Commissioner, currently set out at 24 CFR parts 251, 252 and 255, to insure mortgage loans made for the construction and rehabilitation of multifamily housing and related facilities on a coinsurance basis. The rule also provides for a phased closedown of the coinsurance program to permit applications already in lenders' workload at the same time the program is terminated to be processed for coinsured mortgages, but with required precommitment review by the Department. The purpose of the rule is to terminate a program that has been found by the Department, after extensive analysis, to be structually flawed and fundamentally unsound.

EFFECTIVE DATE: November 12, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Acting Director, Office of Multifamily Housing Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; (voice) (202) 708-3000; (TDD) (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Coinsurance was authorized under the Housing and Urban Development Act of 1974, which added section 244 to the National Housing Act but not until 1983 that coinsurance became operational for HUD's multifamily programs. In May of that year, HUD implemented the section 223(f) coinsurance program (24 CFR part 255) for the purchase or refinancing and limited repair of existing projects. In October 1984, HUD extended coinsurance to the section 221(d) program (24 CFR part 251) for new construction and substantial rehabilitation of rental housing. In October 1988, HUD extended coinsurance to the section 232 program (24 CFR part 252) for new construction and substantial rehabilitation of nursing homes, intermediate care facilities and board and care homes. This program also allows loans for acquisition or refinancing of existing, fully insured facilities.

Coinsurance was intended to function as a joint venture between the private and public sectors, in which lenders and HUD would share mortgage insurance risk, thereby providing an alternative to traditional HUD full insurance financing. It was intended to augment, rather than replace, HUD's full insurance programs, and to serve as a means of encouraging the production and preservation of moderate-income rental housing and residential health care facilities.

Program Activity

Since 1983, more than 100 lenders have applied to participate in one or more of the multifamily coinsurance programs. However, only 39 lenders were fully approved to participate in one or more programs. Since 1983, close to 1,600 projects, with a total mortgage value of approximately $10 billion, have been coinsured. The following table provides a cumulative breakout of coinsured loans closed by program.

COINSURED LOANS CLOSED AS OF JUNE 30, 1990

Program	Projects	Units	Mortgage amount
223(f)	1,304	311,414	$7,568,710,475
221(d)	286	55,533	2,748,301,100
232	7	986	51,810,800
Total	1,597	367,933	10,368,822,375

Program Losses

While HUD's coinsurance programs have provided financing for a significant number of multifamily projects and units, the programs have been plagued by an unacceptable level of loan defaults and losses to the FHA General Insurance Fund. The Fiscal Year 1988 General Accounting Office Audit of the FHA Insurance Funds, prepared by Price Waterhouse, estimated that, in addition to coinsurance claims already paid, FHA would sustain losses of $960 million on coinsured loans closed through September 30, 1988. These losses are attributable to poor underwriting by the coinsuring lenders, as well as weak monitoring and enforcement by HUD. The GAO audit indicated that additional losses are likely from additional defaults of mortgages originated before Fiscal Year 1989. While the Fiscal Year 1989 audit results are not yet available, HUD expects the ultimate loss figure to be significantly higher than $960 million.

Since September 1988, ten coinsuring lenders with total coinsured portfolios of approximately $4.8 billion have experienced severe financial difficulties as a result of coinsured loan defaults and have either defaulted on their obligations to holders of Mortgage Backed Securities (MBS) guaranteed by the Government National Mortgage Association (GNMA) or have been unable to fund scheduled draws on construction loans. The financial collapse of these coinsuring lenders resulted from a combination of imprudent lending and under-capitalization. GNMA has been obligated, under its Guaranty Agreements, to take over the portfolios of these defaulted lenders and to make the required payments to securities holders. GNMA is authorized by HUD to assign defaulted loans to FHA (HUD) for full indemnity. These lender defaults have, in effect, raised HUD's exposure on their coinsured loans from approximately 80 percent to 100 percent.

The following table shows coinsured loan defaults as of June 30, 1990 and cumulative claim amounts paid through June 30, 1990. These figures confirm the GAO/Price Waterhouse estimates cited above.

COINSURED LOAN DEFAULTS AND CUMULATIVE CLAIM AMOUNTS PAID AS OF JUNE 30, 1990

Program	Defaults		Claims paid	
	Projects	Mortgage amount	Projects	Amount paid
223(f)	210	$1,238,495,700	68	$303,715,199
221(d)	33	402,995,000	2	22,488,492
232	0	0	0	0
Total	243	1,625,490,700	70	979,283,691

Efforts to Evaluate and Reform Coinsurance

Since taking office, Secretary Kemp has taken steps to evaluate coinsurance and to reduce HUD's financial exposure. On May 5, 1989, he ordered a comprehensive evaluation of the program and placed a moratorium on new entrants into the program. During this evaluation period, HUD increased its monitoring of all coinsuring lenders and reviewed lenders' processing and underwriting for all coinsured loans. In addition to reviewing current commitments, HUD evaluated the overall performance of all participating lenders to identify those who should be placed under close scrutiny or be made subject to administrative sanctions. As a result of this evaluation, eleven lenders were suspended and eleven others have been placed on probation to date.

HUD also engaged the accounting firm of Price Waterhouse to review the coinsurance programs' capital and financial reporting requirements. Price Waterhouse found that ". . . given presently apparent loss levels, system-wide capital is considered insufficient and, in our view, must be raised, at least on an interim basis, if the programs are to be continued." Price Waterhouse recommended that HUD establish capital requirements at a level no less than that required by the Federal National Mortgage Association (FNMA) under its Delegated Underwriting and Servicing (DUS) program. The accounting firm also found that the coinsurance programs "currently suffer from a lack of reliable financial information." Price Waterhouse recommended that HUD institute a quarterly call reporting requirement (similar to that required by the federal financial regulatory agencies from banks and savings and loan associations), with financial information reported in accordance with a uniform chart of accounts.

Material Weakness Finding and Intention to Terminate the Program

As a consequence of audit reports by HUD's Office of Inspector General, a GAO audit, the Price Waterhouse study and HUD's internal control reviews pursuant to the Federal Managers' Financial Integrity Act of 1982, Secretary Kemp, in a December 29, 1989 report to the President, identified coinsurance as HUD's "top material weakness." The report cited, as specific program defects: weak program standards which enabled inexperienced and undercapitalized lenders to participate; weak underwriting standards; ineffective monitoring; and lack of enforcement.

On January 17, 1990, Secretary Kemp announced publicly his intention to terminate the coinsurance program and to restructure the full insurance program. Secretary Kemp said at that time: "The coinsurance method is structurally flawed and fundamentally unsound as well as administratively unfixable."

On March 27, 1990, the Department published a proposed rule at 55 FR 11332 announcing its intention to terminate the coinsurance programs. The Preamble to that proposed rule and the Preamble of a companion rule, to establish precommitment review requirements for coinsuring lenders during the period until termination (55 FR 11342, March 27, 1990) give further information on HUD's rationale for this termination decision.

Public Comments on the Proposed Rule

A total of 20 written comments were received from the public on the March 27, 1990 proposed rule. None of the comments was favorable to the proposed rule as drafted. Commenters included: current coinsuring lenders; other private companies having an interest in the multifamily mortgage market; trade associations (Mortgage Bankers Association of America and the House Study Group); and law firms. What follows is a description of the major issues raised by these commenters and HUD's responses to them. Wherever feasible, the description of each issue is provided by directly quoting one or more of these commenters.

1. *HUD has failed to demonstrate that the coinsurance program has been other than profitable for the FHA insurance fund.*

Eight commenters raised this issue in greater or lesser detail. The most detailed comment set forth the issue as follows:

It is stated that the co-insurance programs have had "an unacceptable level of loan defaults and losses" with over $72 million in claims having been paid. This doesn't give any intelligent person any sense of whether claims have been excessive, because no mention is made of insurance premiums paid into the insurance fund.

This issue would generally be viewed in context of premiums paid relative to claims. The insurance fund receives a 0.65% premium in the first year, plus an on-going lesser premium annually. The proposed rule [chart] notes that $9.9 billion has been co-insured since 1983. To use some simplifying assumptions to guage whether losses really are obviously excessive, one might assume that FHA has received:

(a) Initial premium 0.65% on $9.9 billion is	$64,350,000
(b) Annual premium (assume 3 year average) (3 years (0.40% yr.) ($9.9 billion)) is	116,600,000
Total premium to FHA (about)	183,150,000
Claims paid	72,797,000
Net "profit" to FHA	$110,353,000

Consequently, it is difficult to conclude that the loss rate is unacceptable if premiums have been more than double the claims. While it is true that additional claims will be forthcoming, it is also true that additional premiums continue to be paid, and that the loss experience has been front-end loaded by some poorly performing participants who are not longer in the co-insurance business. With the improvement that has occurred in credit quality, it is likely that the co-insurance premiums paid to FHA always have and always will exceed the claims, period.

* * * * *

We also do not agree that the default level has been unacceptable. The real measure should be claims in the context of premiums. A secondary measure should be programmatic experience of full insurance versus co-insurance, for similar types of properties in similar geographic areas originated in the same time period. Such an examination would indicate that co-insurance default experience has been comparable to or better than full insurance.

with a few highly visible exceptions: Texas, and new construction of adult care facilities.

HUD Response: The multifamily coinsurance programs have not been "profitable" to FHA. As the following chart shows, while cumulative mortgage insurance premiums through September 30, 1989 slightly exceeded claims received and expenses incurred through

We believe that reforms that have already been made have been adequate to safeguard the on-going credit risk, and that termination based on 'unacceptable risk' to the insurance fund is an action completely and totally without any demonstration factual basis.

Another typical comment stated:

It should also be noted, particularly in context of the Price Waterhouse study, that

review" requirements do not apply to all loans, and have not precluded lending in soft markets. Finally, lenders successfully sued to enjoin HUD from enforcing a coinsuring lender letter that sought to halt new coinsurance commitments for Retirement Service Centers (ReSCs). Thus, ReSCs have continued to be a source of risk for

FNMA do provide a reasonable alternative for term loans on relatively new, well located, suburban upper-end apartments. Conversely, there are areas which will be essentially unserved. These include:

(1) New construction. Not done by Freddie Mac or Fannie Mae. Very rarely done by life companies or other institution sources. No longer done very much by banks or thrifts. Further, because of the ripple effect of new

In addition, the Office of Thrift Supervision has published rules which will slow the transition to new requirements bringing the maximum amount a solvent thrift may lend to any one borrower in line with the limits that have long applied to commercial banks. This should give builders ample time to complete projects or to establish new

mortgage loans were delayed in transition to the new system. Since its inception, the coinsurance program insured an average of $1.4 billion in new mortgage loans each year. If this level of demand were to continue, a delay of a month would affect almost $120 million in mortgage loans. However, construction and lending activity are

with a few highly visible exceptions: Texas, and new construction of adult care facilities.

HUD Response: The multifamily coinsurance programs have not been "profitable" to FHA. As the following chart shows, while cumulative mortgage insurance premiums through September 30, 1989 slightly exceeded claims received and expenses incurred through that date, projected losses, even on a discounted basis after considering future income, will approximate $1.4 billion:

ESTIMATE OF FHA LOSSES RESULTING FROM MULTIFAMILY COINSURANCE ACTIVITIES

	($ Millions)
Estimated Cumulative Premiums (through September 30, 1989)	$136
Less: Cumulative Losses on Claims Received (through September 30, 1989)	120
Estimated Cumulative Administrative Expenses (though September 30, 1989)	16
Estimated Surplus	$2
Present Value of Future Income Less Future Losses and Expenses (based on Insurance-in-Force as of September 30, 1989)	($1,385)
Estimated Deficit (as of September 30, 1989)	($1,383)

During Fiscal Year 1990, HUD experienced a geometric increase in coinsured defaults and claims. In the first nine months of Fiscal Year 1990, HUD received more than twice the dollar amount of claims that it had received cumulatively through Fiscal Year 1989. By the end of August 1990, coinsurance claims for Fiscal Year 1990 has risen to almost four times the amount received prior to this Fiscal Year. This phenomenal surge in claims confirms the GAO loss projections previously cited, as well as independent loss projections developed by HUD's actuarial staff.

2. *HUD has failed to demonstrate that administrative reforms currently in place are not adequate to assure a viable and prudent coinsurance program.*

Eight comenters made this argument. Typical was the following:

> A comparison of full and co-insurance experience would make it readily apparent that the principal underwriting deficiences were fully remedied by HUD prior to the end of 1989, by the imposition of market reviews on a prior approval basis (curing the soft loan problems by preventing new loans in such locations), and by elimination of the ACLF program.

We believe that reforms that have already been made have been adequate to safeguard the on-going credit risk, and that termination based on 'unacceptable risk' to the insurance fund is an action completely and totally without any demonstration factual basis.

Another typical comment stated:

> It should also be noted, particularly in context of the Price Waterhouse study, that losses don't yet exceed premiums, only because it takes some time to convert expected losses into realized losses, and that yearly loss experience had demonstrated that losses will ultimately exceed premiums. Any such discussion should be put into context. Early on, there were four major risk exposures: a few "bad apples", lack of HUD enforcement action, the absence of a market determination by HUD to preclude lending in soft markets, and inadequate forethought to the financing for adult congregate facilities. All four risk areas have now been remedied. Most of the insurance provided through the co-insurance delivery system was sound from the beginning, and will continue to pay premiums. If new business was allowed under co-insurance, it too would now generally be sound. To extrapolate from early loss experience is inherently unrealistic, because the early loss experience has in it the losses incurred by the very worst loans before the major risk areas were addressed by reform which is now complete.

HUD response: While commenters argue that HUD reform actions have "remedied" the four areas of "major risk exposure," the facts do not support this argument.

First, the list of risk exposure areas overlooks two of the most significant program flaws: delegation of underwriting/insurance commitment authority to entities that did not have HUD interests at heart; and under capitalization of participating lenders. HUD efforts to increase capital requirements were rejected by a substantial portion of the coinsuring lender community. Similarly, when HUD attempted to exercise control over lenders' underwriting through program-wide precommitment reviews, lenders successfully sued to enjoin HUD from such activity.

Second, review of what has happened in the four listed risk areas reveals that HUD's actions have not remedied the problems. If we consider the "bad apples" to be lenders that have defaulted on their obligations to GNMA securities holders, that number has grown from five, with loans totalling close to $2 billion in March 1990 when the proposed termination rule was published, to seven, with loans in excess of $4.3 billion (close to half of the coinsurance in force) as of the end of July 1990. HUD's enforcement actions have resulted in suspension or probation of 22 (56 percent) of the 39 lenders fully approved to participate. HUD's "market review" requirements do not apply to all loans, and have not precluded lending in soft markets. Finally, lenders successfully sued to enjoin HUD from enforcing a coinsuring lender letter that sought to halt new coinsurance commitments for Retirement Service Centers (ReSCs). Thus, ReSCs have continued to be a source of risk for HUD.

If we assume, for the sake of argument, that HUD's reform and enforcement actions were sufficient to remedy its exposure to risk, this should have been reflected in the quality of loans submitted for precommitment and post-endorsement review since the end of 1989. However, these reviews identified a significant number of loans which were not properly underwritten. The inescapable conclusion from these reviews is that HUD cannot prudently delegate its underwriting authority.

3. *Terminating coinsurance is especially ill advised at present, given the near-crisis situation in multifamily housing finance generally.*

Seven commenters made this point. Most specific was the following comment.

> The Federal Register comments grossly understate the impact on mortgage markets. There is today nearly a panic about the lack of multi-family finance programs, driven by an unprecedented combination of these adverse factors:
>
> (1) Lending by Savings and Loans. Traditionally a mainstay for apartment lending, FIRREA prompted a mass exodus from multifamily finance due to:
>
> (a) Massively reduced loan to one borrower limits
>
> (b) Increased capital requirements, generally prompting reductions in size as a survival strategy
>
> (c) Higher risk weighted capital requirements for such loans.
>
> (2) The current wholesale retreat of commercial banks from real estate lending, prompted in larger part by much greater regulatory pressure and increasingly unrealistic loan classifications, typified by the new substandard category of the "performing nonperforming loan".
>
> (3) The withdrawal of Freddie Mac as a viable multi-family financing source. The effective result in the marketplace was the termination of a principal source.
>
> (4) The swamping of FNMA. While some of the slack was taken up by FNMA, they have limited capacity to do more than they are presently doing.
>
> (5) Inadequate staffing for FHA full insurance. Most FHA offices simply don't have the multi-family staff to handle any volume.
>
> (6) Closing off co-insurance. The announced termination has largely shut down this delivery system.
>
> In addition, the impact is not uniform across the multi-family spectrum, but keenly focused. Life insurance companies and FNMA do provide a reasonable alternative for term loans on relatively new, well located, suburban upper-end apartments. Conversely, there are areas which will be essentially unserved. These include:
>
> (1) New construction. Not done by Freddie Mac or Fannie Mae. Very rarely done by life companies or other institution sources. No longer done very much by banks or thrifts. Further, because of the ripple effect of new construction on other industries such as lumber and durable goods, the lack of financing alternatives will have a large multiplier effect in slowing the national economy.
>
> (2) Rehabilitation. With the withdrawal of the banks and thrifts, FHA insurance is the primary remaining source.
>
> (3) Older properties. Properties over 10 or 15 years old (bread and butter housing for many Americans) were most commonly financed by thrifts, Freddie Mac, and FHA insurance. This area is also now nearly devoid of viable sources.
>
> (4) Health Care Facilities. FHA insurance and thrifts were again the mainstays.
>
> In these four areas, the termination of the co-insurance delivery system in advance of implementation of an alternative program for FHA insurance creates not a minor effect, but nearly a ruinous one, and does so at exactly the time that FHA insurance ought to be playing a larger role (not a smaller role!) to provide counter-cyclical support for the national economy.

HUD response: HUD acknowledges that there may be a reduction in the availability of financing for multifamily projects in many markets. This is, in large part, the predictable result of: (1) A great deal of overbuilding in those markets, with rental vacancy rates running at 20-year highs; (2) extensive overmortgaging stemming from an oversupply of "easy credit"; and (3) resultant unacceptable levels of defaults and losses to the sources of financing and credit enhancement (banks, S&L's, insurance companies, Freddie Mac, FNMA and FHA). A temporary construction of the credit supply for multifamily housing will permit demand to catch up with supply in overbuilt markets and will discourage the churning and overmortgaging of existing projects. However, HUD has concern that some of the reduction may be the result of overreaction by lenders to the new regulations and monitoring made necessary by the very costly lending excesses of imprudent and in some cases corrupt thrifts. Secretary Kemp has warned against such an overreaction, and Comptroller of the Currency Robert Clarke and Federal Reserve Chairman Alan Greenspan have sought to assure the financial system that government regulators have no intention of discouraging solvent lenders from making sound loans for real estate and other purposes.

In addition, the Office of Thrift Supervision has published rules which will slow the transition to new requirements bringing the maximum amount a solvent thrift may lend to any one borrower in line with the limits that have long applied to commercial banks. This should give builders ample time to complete projects or to establish new sources of financing.

Moreover, the Federal Reserve has announced its intention to increase reserves to the banking system, which should have the effect of lowering interest rates somewhat.

HUD's full insurance programs continue to be available for needed and credit-worthy projects. Already, full insurance has begun to absorb some of the demand resulting from the reduced availability of coinsurance. During the first six months of 1990, HUD full insurance commitments under sections 223(f), 221(d) and 232 totalled $309,790,600, a 48 percent increase over the $208,715,000 of full insurance mortgage commitments issued during the first six months of 1989.

4. *Major rule question.*

Five commenters asserted that it is inconceivable that the annual effect on the economy of this termination rule will not be well in excess of $100 million, thus subjecting the rule to a regulatory impact analysis under the Executive Order on Federal Regulation issued by the President on February 17, 1981.

HUD Response: There are three sources of possible economic impact arising from termination of the coinsurance program.

a. *Some multifamily rental units that might have been built or substantially rehabilitated under the program would not be built at all.* In 1988, it is estimated that under section 221(d) coinsurance program, more than 14,000 units were under construction with a total cost of more than $900 million. However, the Department plans to substitute a delegated processing system for the coinsurance program, and it is anticipated that the new system will have the capability of insuring from 50,000 to 60,000 units per year. This program allows for the purchase or refinancing of existing projects, as well as new construction or substantial rehabilitation, and will have the capability of absorbing the volume of new construction which would have taken place under the coinsurance program. Accordingly, it can be expected that terminating the coinsurance program will have no impact on the level of multifamily construction.

b. *A second source of economic impact would occur if the processing of mortgage loans were delayed in transition to the new system.* Since its inception, the coinsurance program insured an average of $1.4 billion in new mortgage loans each year. If this level of demand were to continue, a delay of a month would affect almost $120 million in mortgage loans. However, construction and lending activity are currently at the lowest levels since the 1982 recession, and there are many soft rental markets with high vacancy rates. Thus, the demand for new mortgage loans can be expected to be weak, and the delegated processing system should be able to bear the processing burden easily. Although HUD expects multifamily loan demand to be weak during the next 12 months, the Final Rule implements certain provisions to ease the transition from coinsurance to delegated processing. (See response to public comment 5 and the section entitled "Applications in Process", below.)

It should also be noted that there is a large reservoir of skilled real estate finance, valuation, architecture/engineering and other specialists developed during the booming multifamily construction and finance markets of the mid-1980s. This reservoir of talent will be available to undertake various delegated processing duties; the transition to delegated processing procedures should be smooth and undue delays should not occur. Even in the absence of a delegated processing structure, HUD's full insurance programs remain available, and will be expanded to meet shifts in credit demand.

c. *Certain high-risk projects that were financed under the coinsurance program will not be financed under the full insurance program.* This is true not because of a lack of capacity to conduct processing, but because of the excessive risk. While there may exist some socially worthy projects among the high-risk projects that will not now be insured, it is not the function of the FHA General Insurance Fund to take such risks. Furthermore, avoiding these losses will benefit not only the insurance fund, but also the economy generally. Housing and other credit will be allocated more efficiently, and the housing market will not longer suffer the disastrous effects of failed projects that should never have been undertaken.

Thus, on net, major economic losses will be averted through the termination of the coinsurance programs.

5. *Any program termination should terminate only authority to take coinsurance applications, so as to allow the orderly disposition of the good*

business presently enjoying contract rights in the fee-paid pipeline of coinsurers.

Four commenters asserted that the proposed rule is grievously deficient in its treatment of the fee-paid coinsurance pipeline. Two commenters state:

> Co-insurers take contract applications from

the sole reason that capital was committed irrevocably for such a tremendously long time period. There surely exists either a legal obligation or at least a moral obligation to release the co-insurer from its contract obligations in favor of HUD if HUD is to rescind its contract obligations to the co-insurer.

This can be best accomplished by allowing

coinsurance program. Lenders have no basis for expecting HUD to convert their coinsured loans to fully insured loans. Conversion would indeed have a cost to HUD, since HUD—

(1) Has foregone most of the "front-end" fees it would normally collect on fully insured loans;

District of Columbia issued a preliminary injunction enjoining HUD from enforcing the lender letters and a temporary restraining order staying the effectiveness of the Interim Rule. On May 6, 1990, the Court issued permanent injunctions to the same effect.

Secretary Kemp did not bargain "in bad faith" or deliberately mislead the

propose termination of coinsurance. But there were other significant factors as well. Between May 1989, when the program evaluation began, and January 1990, the amount of coinsured loans in default had risen from $914,066,800 to $1,386,707,800—an increase of 51 percent. It had become clear that the program was structurally flawed, and

supplement its Field Office staff capacity by contracting with companies that will provide technical services in the areas of valuation, architecture/engineering, cost, mortgage credit and management analysis. As delegated processing becomes established, the role of HUD Field Office staff will shift from the processing of applications for

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business presently enjoying contract rights in the fee-paid pipeline of coinsurers.

Four commenters asserted that the proposed rule is grievously deficient in its treatment of the fee-paid coinsurance pipeline. Two commenters state:

Co-insurers take contract applications from sponsors seeking FHA insurance. I understand that about $1 billion of proposed loans is presently in this stage. The co-insurer then has the unavoidable legal obligation to process the application. The sponsor always incurs significant costs and time commitment during this process.

Any program termination must allow this pipline of contract business to be processed to a conclusion, without undue delay or additional cost. Failure to do so will in many cases certainly cause economic injury to the sponsors, and therefore give rise to meritorious litigation against the co-insurer and against HUD for damages. This can be easily addressed by amending this proposed rule to terminate the authority of co-insurers to accept any new applications, rather than terminating the ability to issue commitments. The ultimate result is identical, with a complete avoidance of disruption, litigation, and loss which can be expected were the rule changes implemented as drafted.

HUD response: HUD accepts this comment and has revised the Final Rule accordingly. The Final Rule permits lenders to accept applications until the effective date, but required HUD precommitment review for all commitments to be issued on or after the effective date. These provisions will: (1) Enable lenders in an orderly manner, to clear their "pipelines" of pending cases; (2) ease the transition from coinsurance to delegated processing; and (3) provide HUD need protection for coinsurance commitments issued during the "phase down" period.

6. *The conversion of coinsurance portfolios is not addressed at all in the proposed rule.*

Four commenters raised this issue. Stating that such a conversion should be part of any termination and asserting that

. . . co-insurers became involved in the program in the first place because HUD offered the ability to build a good business over time using the delegated authority. The cost, however, was quite high, always requiring at least $1.5 million in capital and almost always indirectly causing the co-insurer to sustain several hundred thousand dollars more in start-up losses (due to the structure of the licensing requirements, with staff and premises costs incurred long in advance of approval).

The further requirement was that the $1.5 million continue to be invested as capital for as long as even one co-insured loan was left on the books—which would be 35 to 40 years. HUD now proposes to break its contract with co-insurers (those proven performers who are left) and take away the delegation which was the sole reason that capital was committed irrevocably for such a tremendously long time period. There surely exists either a legal obligation or at least a moral obligation to release the co-insurer from its contract obligations in favor of HUD if HUD is to rescind its contract obligations to the co-insurer.

This can be best accomplished by allowing co-insurers to convert their portfolios from co-insurance to full insurance status. That would release the 40 year capital claim. Further, such a conversion (at no cost, or at nominal cost) would serve as a proxy for reasonable liquidated damages. If HUD wishes to rescind its contract obligations, some provision for liquidated damages is reasonable. Conversion of the portfolios has no direct dollar cost to HUD, and so is not a budget item. It does have value to the co-insurers, in freeing up capital and in giving economic value to the mortgage servicing rights.

HUD response: HUD's termination of coinsurance as a delivery mechanism for providing multifamily mortgage insurance does not involve the breaking of any contract with coinsuring lenders. HUD's contract obligation, as set forth in the regulations, is to insure 85 percent (72.25 percent in certain cases involving reinsurance) of any loss remaining after the 5 percent lender deductible. HUD is committed to honoring its insurance obligations on all outstanding loans. Furthermore, HUD is obligated to honor all legally binding coinsurance commitments issued before the effective date of this final rule.

When HUD approved lenders to participate in the coinsurance program, there was no assurance, either written or implied, that HUD would continue the coinsurance delivery mechanism forever. However, as a condition for approval, lenders had to agree to establish and "maintain for the period of coinsurance" Sound Capital Resources (25 CFR 251.102(b)(2), 252.102(b)(2) and 255.102(b)(2)).

HUD approved coinsuring lenders to originate, process, underwrite, close and service loans and to share the risk with HUD. Lenders were compensated by being allowed to collect various application, financing, inspection and placement fees and a portion of the initial and annual mortgage insurance premiums. Termination of coinsurance does not alter these risk sharing and compensation arrangements. Lenders with sound loans will continue to receive compensation for their risk sharing and servicing through the lender's share of annual mortgage insurance premiums (MIP) and optional lender premiums.

Since HUD is not rescinding its contract obligations, it has no obligation to pay liquidated damages to lenders who chose to praticipate in the coinsurance program. Lenders have no basis for expecting HUD to convert their coinsured loans to fully insured loans. Conversion would indeed have a cost to HUD, since HUD—

(1) Has foregone most of the "front-end" fees it would normally collect on fully insured loans;

(2) Would be significantly increasing its insurance obligation; and

(3) Would be required by such an arrangement to assume responsibility for the acquisition, management and disposition of defaulted projects.

7. *Coinsuring Lenders Letters 90–1 and 90–2 and HUD "Good Faith".*

One commenter observed that the Preamble to the proposed rule quotes Secretary Kemp as saying that: the program is "administratively unfixable." The commenter then asks, if so, what was the purpose of the Secretary issuing Coinsuring Lender Letters 90–1 and 90–2? The commenter goes on to observe that the Secretary has already shut down the "bad apples" in the industry. "Their loans were closed a long time ago and will not be affected by the new rules. Loan losses affected by future regional economic changes will affect both full and coinsurance alike. The Secretary bargained in bad faith with the industry, leading people to believe new capital rules were to be promulgated when an end to the program was actually prepared instead. I suggest that 90–1 and 90–2 are administrative measures that can protect the legitimate interests of both HUD and the industry until a new program can be developed at a later date."

HUD response: Coinsuring Lender Letters 90–1 and 90–2 were not intended to be adminstrative "fixes". These letters were issued in conjunction with Secretary Kemp's announcement of his intention to initiate rulemaking to terminate insurance. The purpose of the precommitment reviews required by these letters was to afford HUD some measure of protection against further losses caused by improper underwriting on commitments issued following the Secretary's announcement and before the effective date of a final rule terminating the program.

While precommitment reviews added only about 45 days to the time it took a lender to issue a commitment, a group of coinsuring lenders sued to enjoin HUD from imposing such requirements via Coinsuring Lender Letters 90–1 and 90–2 and an Interim Final Rule, which was published March 27, 1990, *Housing Study Group* et al v. *Kemp*, Civ. Action No. 90–2044–JHG (D.D.C.). On April 25, 1990, the U.S. District Court for the

District of Columbia issued a preliminary injunction enjoining HUD from enforcing the lender letters and a temporary restraining order staying the effectiveness of the Interim Rule. On May 6, 1990, the Court issued permanent injunctions to the same effect.

Secretary Kemp did not bargain "in bad faith" or deliberately mislead the industry concerning coinsurance. On the contrary, he made every effort to evaluate the program objectively, and considered a variety of options to reform it. In May 1989, the Secretary launched a comprehensive evaluation of the program. One of the first steps in this evaluation was to engage Price Waterhouse to review the program's capital and financial reporting requirements.

Price Waterhouse recommended that, if the coinsurance programs were to be continued, HUD should: (1) Raise lenders' capital and liquidity requirements, at a minimum, to the levels required by the FNMA "DUS" program; (2) substantially increase coinsuring lenders' financial reporting requirements; and (3) strengthen all aspects of its monitoring of coinsurance lenders.

In September 1989, following receipt of the draft Price Waterhouse report, Secretary Kemp acknowledged the critical importance of adequate capitalization and announced that establishing higher capital requirements was the essential first step for reforming coinsurance. During the latter part of 1989 and into January of this year, the Department reviewed the Price Waterhouse recommendations, devised options for increasing capital and liquidity requirements, and discussed these options with representatives of coinsuring lenders. The Department, however, met with strong industry objections to its proposals. In fact, despite repeated efforts by HUD to reach a consensus on this issue, representatives of the industry serving as members of a HUD task force whose mission was to establish adequate capital requirements, announced at a meeting of that task force on December 13, 1989 that the Department's plan to implement enhanced capital and liquidity requirements was totally unacceptable. Should such requirements be imposed on the coinsurance program, these representatives stated, they would not participate. Thus, the essential first step toward reform was rendered impracticable.

The rejection, by a substantial portion of the coinsuring lender community, of HUD's plan to impose higher capital requirements was a significant factor in the Secretary's January 1990 decision to propose termination of coinsurance. But there were other significant factors as well. Between May 1989, when the program evaluation began, and January 1990, the amount of coinsured loans in default had risen from $914,066,800 to $1,386,707,800—an increase of 51 percent. It had become clear that the program was structurally flawed, and that no increase in capital requirements would be adequate to protect the Department, or lenders themselves, from the damage caused by years of aggressive underwriting and lax enforcement. It was also clear that the imprudent underwriting that led to these defaults and losses was not confined to a few "bad apples" but was spread throughout the program.

8. *Coinsurance Should Not be Terminated Until a Viable Alternative is in Place and Fully Operational.*

Four commenters addressed the issue of the transition from coinsurance to an alternative program. The following comment was typical.

HUD should not terminate this program without a viable alternative in place and fully operational. The full insurance programs should be adequately staffed by trained employees. After the staffing of the HUD field offices and the development and implementation of a viable alternative to coinsurance, we would not object to terminating coinsurance. We believe it would take at least 18 months to bring the field offices up to full operation effectiveness, and during this period, coinsurance should remain in effect, with appropriate staff levels and monitoring.

HUD has a fiduciary responsibility to assure the availability of multifamily mortgage credit for affordable housing on a continuous basis. Without coinsurance, and without restaffing of HUD field offices in the technical multifamily disciplines, the country will be without any national program for financing new construction and substantial rehabilitation for affordable housing or for refinancing and preserving the existing affordable housing stock.

HUD Response: The termination of coinsurance will not adversely affect the availability of full insurance for multifamily projects. In fact, as indicated in the Department's response to numbered comment 3, above, HUD's full insurance program has already begun to respond to a shift in demand resulting from the reduced availability of coinsurance during the first six months of 1990. This fact is reflected by a 48 percent increase in the dollar volume of multifamily full insurance commitments issued, as compared to the corresponding period in 1989.

HUD will enhance its ability to deliver full insurance commitments through a new delegated processing system. HUD will use delegated processing to supplement its Field Office staff capacity by contracting with companies that will provide technical services in the areas of valuation, architecture/engineering, cost, mortgage credit and management analysis. As delegated processing becomes established, the role of HUD Field Office staff will shift from the processing of applications for mortgage insurance to virtual full-time review of the work of contractors (the delegated processors), and to performance of the final underwriting analysis. It is anticipated that delegated processing will become operational in the spring of 1991.

HUD is also carefully assessing its regional and field office technical staff levels and capabilities, as well as the relationship between staff allocation and distribution of current and potential loan activity. This assessment will enable HUD to determine what actions are needed to ensure that the new program will be staffed adequately in all areas.

Applications in Process

The March 27, 1990 proposed rule provided that HUD's authority to coinsure would be terminated as of the effective date of the rule "except that the Department will honor legally binding and validly issued commitments issued before November 12, 1990."

It is the Department's position that HUD's only *legal* obligation is to honor legally binding firm or conditional commitments issued by lenders before the effective date of this final rule. However, the Department recognizes that lenders have continued to accept applications and to process loans, and, in some cases, may not be able to issue commitments before the effective date. The Department is also concerned about mitigating hardships that may result from the reduced availability of mortgage credit during the period between the termination of coinsurance and the implementation of delegated processing. The final rule therefore revises the proposed rule to provide an exception to HUD's basic position in cases where the lender (1) has accepted an application and a non-refundable application fee before November 12, 1990; and (2) submits the application to HUD for precommitment review. In such excepted cases lenders may issue commitments after the termination of the program by this rule, following receipt of HUD's precommitment review and approval, and after making any adjustments required by HUD as a condition of approval.

The condition that commitments issued after program close down must

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have been subject to precommitment review is consistent with HUD's strongly held position that such a review is the only truly effective means HUD has for protecting the FHA General Insurance Fund against excessive defaults or losses in the coinsurance programs.

In January of this year the Department issued Coinsuring Lender Letters 90–1

February 17, 1991. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment,

the methods under which such financing can be secured. No programmatic or policy changes would result from this rule's promulgation which affect existing relationships between the federal government and state and local governments.

Executive Order 12606, The Family. The General Counsel, as Designated Official under Executive Order 12606,

Part 251, as it existed immediately before November 12, 1990, will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban Development with respect to loans coinsured under this part.

(b) A precommitment review procedure applies to any application for

(1) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(2) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation. For any coinsurance application for which the lender has accepted an application and a non-

have been subject to precommitment review is consistent with HUD's strongly held position that such a review is the only truly effective means HUD has for protecting the FHA General Insurance Fund against excessive defaults or losses in the coinsurance programs.

In January of this year the Department issued Coinsuring Lender Letters 90–1 and 90–2, which would have imposed a general precommitment review requirement on future coinsurance applications. These letters were followed by further statements of the same HUD policy in the form of interim and proposed rules published in the Federal Register on March 27 and May 25, 1990 (55 FR 11342 and 55 FR 21621). The public comments received in response to these two publications raised issues which largely overlap the issues already described and responded to earlier in this Preamble. The precommitment issues raised in the context of the earlier publications have either already been covered earlier in this Preamble or are now moot in light of this rule terminating the entire coinsurance program.

It should be noted that the additional precommitment review required by this rule has a very limited application. Precommitment review requirements adopted here will only affect those coinsuring lenders that, on the effective date of the rule, are not already under a precommitment review status, whether because of probation or for other reasons. In addition, the review will apply only to coinsurance applications for which lenders have received an application fee, but on which a legally binding commitment has not been issued by the effective date of this rule. Unlike the precommitment review procedures proposed in the March 27, 1990 and May 25, 1990 publications (which would have applied to all lenders for an indefinite period), the procedure in this rule applies only after termination, and is intended to permit the continued processing of a limited category of applications.

This final rule also carries over from the earlier May 25, 1990 proposed rule on precommitment review (55 FR 21621) certain technical provisions relating to extension of commitments and the definition of a legally binding commitment concerning which no public comments were received by the Department.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. While the coinsurance program involves insured loan transactions involving mortgages with very large dollar amounts, the program has never been the exclusive source of FHA multifamily mortgage insurance. HUD's full insurance program has been, and will remain, available as a means of securing the benefits of FHA mortgage insurance on eligible projects.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Experience under the coinsurance programs affected by this rule has not demonstrated any substantial impact on small entities.

This rule was listed as item H12–90 (Sequence No. 1154) in the Department's Semiannual Agenda of rules, published on April 23, 1990 (55 FR 16226, 16242) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with a respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket clerk at the above address.

The information collection requirements contained in §§ 251.1, 252.1 and 255.1 of this rule have been approved by the OMB under the Paperwork Reduction Act of 1980 and assigned OMB approval number 2502–0437.

Executive Order 12612, Federalism. The General Counsel, as the Designed Official under section 67(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule will not affect the basic availability of FHA insured multifamily mortgage financing assistance—merely the methods under which such financing can be secured. No programmatic or policy changes would result from this rule's promulgation which affect existing relationships between the federal government and state and local governments.

Executive Order 12606, The Family. The General Counsel, as Designated Official under Executive Order 12606, *The Family*, has determined that this Rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule is limited to terminating a specific means for delivery of FHA insurance which has proved to be unworkable and a drain on the FHA insurance fund. Other multifamily programs of HUD, specifically full insurance, will be improved upon and reemphasized in conjunction with this rule.

(The Catalog of Federal Domestic Assistance program numbers are 14.129, 14.155, 14.173 and 14.176.)

List of Subjects

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

24 CFR Part 252

Mortgage insurance, Coinsurance of nursing homes, intermediate care facilities, and board and care homes.

24 CFR Part 255

Mortgage insurance.

Accordingly, 24 CFR parts 251, 252, and 255 are revised as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

1. The authority citation for part 251 continues to read as follows:

Authority: Sections 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. 24 CFR part 251 is revised to read, in its entirety, as follows:

§ 251.1 Termination of program.

(a) Effective on November 12, 1990, the authority to coinsure mortgages under this part is terminated, except that the Department

(1) Will honor legally binding and validly issued commitments issued before November 12, 1990 and

(2) Will accept for review the coinsurance applications described in paragraph (b) of this section.

Part 251, as it existed immediately before November 12, 1990, will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban Development with respect to loans coinsured under this part.

(b) A precommitment review procedure applies to any application for mortgage coinsurance for which a lender has accepted a non-refundable application fee before November 12, 1990 under this part and for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation. For any coinsurance application for which the lender has accepted an application and a non-refundable application fee before November 12, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(c) Extensions of commitments for projects which had outstanding legally binding commitments as of November 12, 1990 are limited as follows:

(1) Firm commitments for insurance of advances may be granted two 60-day extensions;

(2) Conditional commitments may be granted one 60-day extension;

(3) Firm commitments for insurance upon completion may not be extended. However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with paragraph (b) of this section. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in paragraph (b) of this section.

(d) Reopened expired commitments are subject to precommitment review under paragraph (b) of this section.

(e) HUD considers a commitment to be "legally binding" if:

(1) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(2) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(3) It conforms to HUD requirements pertaining to initial term and extension;

(4) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(5) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(6) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502–0437.)

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

3. The authority citation for part 252 continues to read as follows:

Authority: Sections 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. 24 CFR part 252 is revised to read, in its entirety, as follows:

§ 252.1 Termination of program.

Effective on November 12, 1990, the authority to coinsure mortgages under this part is terminated, except that the Department

(1) Will honor legally binding and validly issued commitments issued before November 12, 1990, and

(2) Will accept for review the coinsurance applications described in paragraph (b) of this section.

Part 252, as it existed immediately before November 12, 1990, will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban Development with respect to loans coinsured under this part.

(b) A precommitment review procedure applies to any application for mortgage coinsurance for which a lender has accepted a non-refundable application fee before November 12, 1990 under this part and for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation. For any coinsurance application for which the lender has accepted an application and a non-refundable application fee before November 12, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(c) Extensions of commitments for projects which had outstanding legally binding commitments as of November 12, 1990 are limited as follows:

(1) Firm commitments for insurance of advances may be granted two 60-day extensions;

(2) Conditional commitments may be granted one 60-day extension;

(3) Firm commitments for insurance upon completion may not be extended. However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with paragraph (b) of this section. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in paragraph (b) of this section.

(d) Reopened expired commitments are subject to precommitment review under paragraph (b) of this section.

(e) HUD considers a commitment to be "legally binding" if:

(1) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(2) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(3) It conforms to HUD requirements pertaining to initial term and extensions;

(4) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm

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commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(5) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(6) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0437.)

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

5. The authority citation for part 255 continues to read as follows:

Authority: Sections 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. 24 CFR part 255 is revised to read, in its entirety, as follows:

§ 255.1 Termination of program.

Effective on November 12, 1990, the authority to coinsure mortgages under this part is terminated, except that the Department:

(1) Will honor legally binding and validly issued commitments issued before November 12, 1990 and

(2) Will accept for review the coinsurance applications described in paragraph (b) of this section.

Part 255, as it existed immediately before November 12, 1990, will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban Development with respect to loans coinsured under this part.

(b) A precommitment review procedure applies to any application for mortgage coinsurance for which a lender has accepted a non-refundable application fee before November 12, 1990 under this part and for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation. For any coinsurance application for which the lender has accepted an application and a non-refundable application fee before November 12, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(c) Extensions of commitments for projects which had outstanding legally binding commitments as of November 12, 1990 are limited as follows:

(1) Firm commitments for insurance of advances may be granted two 60-day extensions;

(2) Conditional commitments may be granted one 60-day extension;

(3) Firm commitments for insurance upon completion may not be extended.

However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in paragraph (b) of this section, the case will be subject to the precommitment review process described in paragraph (b) of this section.

(d) Reopened expired commitments are subject to precommitment review under paragraph (b) of this section.

(e) HUD considers a commitment to be "legally binding" if:

(1) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(2) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(3) It conforms to HUD requirements pertaining to initial term and extension;

(4) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(5) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(6) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0437.)

Dated: October 1, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 90-23701 Filed 10-9-90; 8:45 am]

BILLING CODE 4210-27-M

federal register

Wednesday
October 10, 1990

Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Parts 420, 440, 455, 465

Grant Appeals Procedures for State Energy Conservation Program; Weatherization Assistance Program for Low-Income Persons; Grant Programs fo. Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions; and Energy Extension Service Program; Final Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Parts 420, 440, 455, 465

[Docket No. CE-RM-90-101]

resolution of preaward disputes over initial DOE field office decisions to deny financial assistance. The notice also revises existing procedures for resolving certain postaward disputes arising out of field office notices of enforcement actions, such as termination for cause, in light of dispute resolution procedures issued by the Assistant Secretary for Conservation and Renewable Energy or his or her designee. There are Headquarters program staff for the four programs who report to the Assistant Secretary through the Deputy Assistant Secretary for Technical and Financial Assistance (formerly the Director of the

limits begin not with the date of issuance of the Departmental determination but rather with the date of its receipt by the State. A number of States have experienced undue delays with mail delivery of time-sensitive documents, and the problem is even more acute with respect to participating U.S. Territories and possessions. Therefore, the language of the final Rule has been changed to provide that the time limits begin with the date of receipt by the State.

Assistance Programs have been allocated to a new Deputy Assistant Secretary for Technical and Financial Assistance. The definition of Director has been revised to be consistent with the new organization. Further, all decisions called for by the Deputy Assistant Secretary for Technical and Financial Assistance will be made by

management of DOE's State and local assistance programs and whose position is subject to Senate confirmation. To allay the commenter's concern that the Assistant Secretary might act merely out of an impulse to support his or her deputy, DOE is modifying the IFR to require concurrence by the Office of General Counsel, which should ensure

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Parts 420, 440, 455, 465

[Docket No. CE-RM-90-101]

Grant Appeals Procedures for State Energy Conservation Program; Weatherization Assistance Program for Low-Income Persons; Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions; and Energy Extension Service Program

AGENCY: Department of Energy.

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Energy gives notice of final amendments to establish clear, and to the extent practicable, uniform administrative review procedures, focusing principally on appeals of preaward denials of financial assistance to the State Energy Conservation Program (10 CFR part 420), the Weatherization Assistance Program for Low-Income Persons (10 CFR part 440), the Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions (10 CFR part 455), and the Energy Extension Service Program (10 CFR part 465). The amendments also conform existing postaward administrative review procedures to generally applicable administrative review procedures for the Department of Energy's financial assistance programs in 10 CFR part 600, which provide for review by the Department's Financial Assistance Appeals Board.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra Monje, State Energy Programs Division, Department of Energy, Mail Stop CE-522, 6A-081, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8295.

Neal J. Strauss, Office of General Counsel, Conservation and Regulations, Mail Stop GC-12, 6A-141, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE or Department) today gives notice of final amendments to the regulations for four State and local assistance programs to promote energy conservation which provide, pursuant to 42 U.S.C. 7254, clear and, to the extent practicable, uniform administrative review procedures for resolution of preaward disputes over initial DOE field office decisions to deny financial assistance. The notice also revises existing procedures for resolving certain postaward disputes arising out of field office notices of enforcement actions, such as termination for cause, in light of dispute resolution procedures in DOE's general financial assistance regulations which provide for administrative review by the DOE Financial Assistance Appeals Board. See 10 CFR 600.26.

The administrative review procedures have been revised principally to resolve inconsistencies between DOE Support Office decisions and to provide more effective remedies for the few cases where an applicant for financial assistance is unable to work out differences informally with DOE officials in field offices. DOE expects that informal settlement of issues in the field will continue to be the norm, with resort to administrative review procedures a rarity.

The four programs and their regulations are: (1) The State Energy Conservation Program (SECP), 10 CFR part 420; (2) the Weatherization Assistance Program for Low-Income Persons (WAP), 10 CFR part 440; (3) the Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions (Schools and Hospitals Program), 10 CFR part 455; and (4) the Energy Extension Service (EES), 10 CFR part 465. Today's amendments replace existing preaward administrative review procedures for SECP (10 CFR 420.9), WAP (10 CFR 440.30), and EES (10 CFR 465.10) which have proved confusing to the States and are unnecessarily inconsistent with each other. Today's amendments also revise SECP, WAP, and EES postaward administrative review procedures by reallocating the responsibility for conducting a public hearing required by program rule to the DOE Financial Assistance Appeals Board. Finally, today's amendments provide administrative review procedures in the Schools and Hospitals Program for preaward disputes where no administrative review procedures had previously existed.

Administration of these programs, operational for more than ten years, is largely decentralized. Applications for financial assistance, approvals of State plans and plan amendments, and other routine administrative functions are handled by a DOE Operations Office or, more often, a DOE Support Office (located in the field) which reports to an Operations Office Manager. National policy on programmatic matters, such as amendments to program regulations, is issued by the Assistant Secretary for Conservation and Renewable Energy or his or her designee. There are Headquarters program staff for the four programs who report to the Assistant Secretary through the Deputy Assistant Secretary for Technical and Financial Assistance (formerly the Director of the Office of State and Local Assistance Programs, or OSLAP).

All four programs are subject to DOE's general financial assistance regulations (10 CFR part 600). The general regulations provide that preaward appeals of denials of new applications for financial assistance are barred; that postaward appeals of suspensions (90 days or less) are barred; and that postaward appeals of enforcement actions, such as terminations for cause, go to the DOE Financial Assistance Appeals Board. See 10 CFR 600.26. The procedural rules of the Financial Assistance Appeals Board are set forth at 10 CFR part 1024. The general financial assistance regulations apply to all four programs except as otherwise provided in statute or program regulations.

On January 29, 1990, the Department issued a Notice of Interim Final Rulemaking, Public Hearings and Request for Public Comment on grant appeals procedures for SECP, WAP, Schools and Hospitals, and EES, 55 FR 3000–3007. In response to this notice, the Department received 3 letters of comment and heard testimony from four organizations at public hearing held: February 26, 1990, in Kansas City, MO; February 27, 1990, in Washington, DC; and March 1, 1990, in San Francisco, CA. As a result of the comments received, a number of changes have been made to the interim final amendments and those changes are reflected herein.

II. Amendments to the Interim Final Rule

The procedure both for filing a notice requesting administrative review and for processing such a notice, contained in today's final amendments, remains the same as described in the Interim Final Rule, 55 FR 3000, 3007, January 29, 1990, with minor modifications which are discussed below.

A significant number of comments received addressed the issue of time limits for States to submit appeal requests at the various levels of the administrative review process. The Interim Final Rule (IFR) provides that the time States have to request an appeal begins with the date of issuance of the Department's adverse decision. Six comments recommended that time limits begin not with the date of issuance of the Departmental determination but rather with the date of its receipt by the State. A number of States have experienced undue delays with mail delivery of time-sensitive documents, and the problem is even more acute with respect to participating U.S. Territories and possessions. Therefore, the language of the Final Rule specifies that the time States have to request an appeal begins with the receipt of the Departmental determination. The date of receipt may be established by the use of Certified Mail (Return-Receipt Requested) or Telefax (Confirmation Requested).

Eight comments were devoted to requests for additional time for States to ask for appeals. Four comments asked for 30 days (from 20) to request administrative review; three comments requested 20 days (from 15) to request discretionary review; and one comment requested 30 days (from 15) for discretionary review. The Department declines to alter the limits set in the IFR because in substituting "date of receipt" for "date of issuance," DOE is providing sufficient additional time for State authorities consistent with the need to resolve appeals quickly.

For comments requested clarification of the terms "administrative review" and "public hearing" and the difference between them. Administrative review refers to the generic appeals process described in today's final rule. A public hearing may constitute part of the administrative review. The public hearing always involves the opportunity for making oral statements in an open, public environment.

In addition, one comment sought clarification of the term "days." In all instances, the term refers to calendar days.

Three comments recommended modification of the definition for the term "Director" to ensure that if his or her responsibilities are delegated, then the recipient has the same level of expertise as the Director. The comments misapprehended the meaning and purpose of the redelegation language in the definition of the term "Director." That language was intended to avoid the need to amend the rule if the position of the Director were subject to a DOE reorganization. It does not authorize the Director to subdelegate his or her responsibilities. Accordingly, DOE is not modifying the IFR as the comments suggest.

However, since the issuance of the IFR, the Office of Conservation and Renewable Energy has undergone a reorganization and the functions of the Director of the Office of State and Local Assistance Programs have been allocated to a new Deputy Assistant Secretary for Technical and Financial Assistance. The definition of Director has been revised to be consistent with the new organization. Further, all decisions called for by the Deputy Assistant Secretary for Technical and Financial Assistance will be made by the incumbent of that position.

Three comments requested consistency with the treatment of funding decisions under the Stripper Well Settlement Agreement, i.e., that the appellate review be conducted by DOE's Office of Hearings and Appeals. An alternative recommendation was the establishment of an inter-divisional panel, including representation by DOE's Office of General Counsel, to review appeals of adverse decisions involving oil overcharge funds. Raising an issue of perceived unfairness, these recommendations noted that the Deputy Assistant Secretary, who is responsible for the first appellate review, reports directly to the final decisionmaker, the Assistant Secretary for Conservation and Renewable Energy, who acts unilaterally under the IFR; and they further suggested that the Assistant Secretary might deny review or affirm the initial appellate decision simply because it was made by a close subordinate.

These comments, in effect asking for separation of functions, add a new dimension to the issue in this rulemaking of fairness in the processing of appeals from Support Office decisions. A primary purpose of this rulemaking has been to provide a management mechanism for dealing with the unfairness which results from inconsistency among Support Offices in rare preaward decisions based on applications which cannot be significantly distinguished on the facts. In no DOE financial assistance program does a disappointed applicant for a grant have the right under a statute or regulation to more formal appellate review with separation of functions. As a matter of policy, DOE has decided, consistent with the need for expedited final decisions, that provision of a right of informal appeal to the headquarters officials principally responsible for the management of the state and local assistance programs is the appropriate method for dealing with this problem, which results from DOE's decentralized administrative organization.

The provision for final appeal to the Assistant Secretary was designed to ensure that the appellants who may be Governors have the opportunity to seek review by the DOE official who is primarily responsible for the management of DOE's State and local assistance programs and whose position is subject to Senate confirmation. To allay the commenter's concern that the Assistant Secretary might act merely out of an impulse to support his or her deputy, DOE is modifying the IFR to require occurrence by the Office of General Counsel, which should ensure that the Assistant Secretary acts consistent with applicable statutes and regulations.

Several comments addressed three issues specific to the Schools and Hospitals program related to § 455.110. First, it was recommended that under the Schools and Hospitals Program, appeals be permitted in the case of an adverse decision for either technical assistance grant awards or energy conservation measure grant awards. The Department concurs with this recommendation and has included the appropriate language in § 455.110(b).

Second, several comments suggested that States be permitted to file appeals on behalf of the clients, such as schools and hospitals. DOE agrees that State expertise and familiarity with the mechanics of the appeals process would be extremely useful to those schools and hospitals lacking the requisite experience and resources themselves to file an appeal. The Department has therefore amended § 455.110(b) to provide for State representation of such an institution.

Third, it was suggested that DOE amend the IFR to state categorically that it would not "recapture" the funding for an application which was denied while an appeal is in process. In responding to this comment, it is necessary to distinguish between appropriated funds and petroleum violation escrow funds, but the conclusion is the same. DOE is legally constrained not to accept this suggestion.

With regard to appropriated funds, the Schools and Hospitals program is required by its authorizing legislation to reallocate funs not obligated at the end of a grant cycle in the subsequent grant cycle, 42 U.S.C. 6371i(e). However, DOE believes it has structured the appeals process to provide for timely review and decisionmaking regarding disputed items. Every effort will be made to resolve such items before the end of a grant cycle to minimize adverse State impacts. In the unlikely event that an appeal should exceed this time frame, and is successful, the applicant in question could resubmit its application for approval and funding in the subsequent grant cycle.

With regard to petroleum violation escrow funds, the law is different. Those

funds are not subject to reallocation or "recapture" *by DOE* because they were transferred in lump sums to the States by court order or settlement agreement. Time limitations on the availability of such funds while an appeal is pending is a matter of State law and is not subject to DOE regulation.

One general comment recommended

have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. DOE has concluded that the rule will affect a few small entities (principally in Schools and Hospitals) who appeal denials of financial assistance, but that impact is not

Issued in Washington, D.C. October 1, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In 10 CFR, chapter II, parts 420, 440, 455, and 465 are amended as follows:

PART 420—STATE ENERGY CONSERVATION PROGRAM

application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under § 420.9 of this part.

(b) On or before 60 days from the date that a timely filed application is complete, the Operations Office Manager shall decide whether DOE

days, shall give actual notice to the State and **Federal Register** notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public

1150 (42 U.S.C. 6851 et seq.), as amended; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq.).

1a. Section 440.3 is amended by adding the definitions of "Assistant Secretary" and "Deputy Assistant Secretary" in the appropriate alphabetical order and by revising the

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funds are not subject to reallocation or "recapture" *by DOE* because they were transferred in lump sums to the States by court order or settlement agreement. Time limitations on the availability of such funds while an appeal is pending is a matter of State law and is not subject to DOE regulation.

One general comment recommended that States be given the right to make oral presentations at all levels on the "administrative review." While the right of oral presentation is preserved in the case of a "public hearing," given the unknown volume of appeal requests and the necessity for conserving the time of the Assistant Secretary, it was determined not to extend the right of oral presentations by the State beyond the public hearing portion of the administrative review process.

Finally, one comment requested that program "projects," similar to other projects already approved by DOE Support Offices, not be disapproved under the appeals process described here. DOE rejects this comment because the appeals process is supposed to resolve inconsistencies between DOE Support Offices on the basis of a correct interpretation of the governing statute and regulations rather than on the basis of the date of the earlier decision. Further, DOE wishes to preserve its options with respect to individual project approvals or disapprovals, the appropriateness of which might well lie in region- or even State-specific factors.

III. Other Matters

A. Review Under Executive Order 12291

Today's regulatory amendments were reviewed under Executive Order 12291. DOE has concluded that the rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic export markets. In accordance with the requirements of the Executive Order, this notice has been reviewed by the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

These regulations were reviewed under the Regulatory Flexibility Act, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. DOE has concluded that the rule will affect a few small entities (principally in Schools and Hospitals) who appeal denials of financial assistance, but that impact is not appreciably greater than the expense of appeal under existing regulations. DOE therefore certifies that there will not be a significant economic impact on a substantial number of small entities, and that preparation of a regulatory flexibility analysis is not warranted.

C. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by today's rules. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., or implementing regulations at 5 CFR part 1320.

D. Review Under National Environmental Policy Act

DOE has concluded that promulgation of these wholly procedural rules would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (42 U.S.C. 4321, et seq.), Council of Environmental Quality guidelines (40 CFR parts 1500-1508), and DOE environmental guidelines (10 CFR part 1021). Therefore, no environmental impact statement has been prepared.

E. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation.

Today's regulatory amendments will affect appeal rights of States on denials of financial assistance applications. However, they are purely procedural, and will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government.

List of Subjects in 10 CFR Parts 420, 440, 455, and 465

Appeals, Administrative review.

Issued in Washington, D.C. October 1, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In 10 CFR, chapter II, parts 420, 440, 455, and 465 are amended as follows:

PART 420—STATE ENERGY CONSERVATION PROGRAM

Part 420 is amended as follows:

1. The authority citation for part 120 continues to read as follows:

Authority: Title III, Part C, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.); Department of Energy Organization Act (42 U.S.C. 7101 et seq.).

1a. Section 420.2 is amended by adding the definitions of "Assistant Secretary" and "Deputy Assistant Secretary" in the appropriate alphabetical order and revising the definition of "Operations Office Manager" as follows:

§ 420.2 Definitions.

* * * * *

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or any official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

* * * * *

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

* * * * *

Operations Office Manager means the manager of a DOE Operations Office or the manager's designee, or any official to whom the manager's functions may be redelegated by the Secretary.

* * * * *

2. Section 420.5 is revised to read as follows:

§ 420.5 Review and approval of annual State applications and State plans.

(a) After receipt of an application for financial assistance or for approval of an amendment to a State plan, the Operations Office Manager may request the State to submit within a reasonable period of time any revisions necessary to make the application complete to bring the application into compliance with the requirements of this part. The Operations Office Manager shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete an application, the Operations Office Manager may reject the application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under § 420.9 of this part.

(b) On or before 60 days from the date that a timely filed application is complete, the Operations Office Manager shall decide whether DOE shall approve the application. The Operations Office Manager may—

(1) Approve the application in whole or in part to the extent that—

(i) The application conforms to the requirements of this part;

(ii) The proposed program measures are consistent with a State's achievement of its energy conservation goals in accordance with § 420.4; and

(iii) The provisions of the application regarding program measures satisfy the minimum requirements prescribed by § 420.6 and § 420.7 as applicable;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

3. Section 420.9 is revised to read as follows:

§ 420.9 Administrative review.

(a) An applicant shall have 20 days from the date of receipt of a decision under § 420.5 to file a notice requesting administrative review in accordance with paragraph (b) of this section. If an applicant does not timely file such a notice, the decision under § 420.5 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Operations Office Manager and shall be accompanied by a written statement containing supporting arguments. If the Operations Office Manager has disapproved an entire application for financial assistance, the State may request a public hearing.

(c) A notice or any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Operations Office Manager shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under § 420.5 as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

(e) If the State requests a public hearing on the disapproval of an entire application for financial assistance, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and **Federal Register** notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Operations Office Manager.

(g) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants a review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination or suspension of a grant award for failure to implement an approved State plan in compliance with the requirements of this part, a grantee shall have the right to written notice of the basis for the enforcement action and of the opportunity for public hearing before the DOE Financial Assistance Appeals Board notwithstanding any provisions to the contrary of 10 CFR 600.26, 600.28(b), 600.29, 600.121(c), and 600.443. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior Federal Register notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions to the contrary of Rule 2.

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Title IV, Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1150 (42 U.S.C. 6851 et seq.), as amended; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq.).

1a. Section 440.3 is amended by adding the definitions of "Assistant Secretary" and "Deputy Assistant Secretary" in the appropriate alphabetical order and by revising the definition of "Operations Office Manager" as follows:

§ 440.3 Definitions.

* * * * *

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

* * * * *

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

* * * * *

Operations Office Manager means the manager of a DOE Operations Office or the manager's designee, or any official to whom the manager's functions may be redelegated by the Secretary.

* * * * *

2. Section 440.12 is amended by removing the last sentence of paragraph (a) and adding in lieu thereof the following: "After receipt of an application for financial assistance or for approval of an amendment to a State plan, the Operations Office Manager may request the State to submit within a reasonable period of time any revisions necessary to make the application complete or to bring the application into compliance with the requirements of this part. The Operations Office Manager shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete the application, the Operations Office Manager may reject the application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under § 440.30 of this part"; and § 440.12 is further amended by adding paragraph (c) to read as follows:

§ 440.12 State application.

* * * * *

(c) On or before 60 days from the date that a timely filed application is complete, the Operations Office Manager shall decide whether DOE shall approve the application. The Operations Office Manager may—

(1) Approve the application in whole or in part to the extent that the application conforms to the requirements of this part;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the

(1) The applicant is ineligible, under § 455.41 or § 455.51 or for any other reason;

(2) An energy use evaluation submitted in lieu of an energy audit, pursuant to § 455.20, is unacceptable under the State plan; or

(3) A technical assistance program equivalent performed without the use of

decision of the Operations Office Manager—

(1) With respect to a notice filed pursuant to paragraph (a) of § 455.110, on or before 60 days from receipt of documents under § 455.112 or the conclusion of a public hearing, whichever is later; or

(2) With respect to a notice filed

1a. Section 465.2 is amended by adding the definitions of "Assistant Secretary" and "Deputy Assistant Secretary" in the appropriate alphabetical order and revising the definition of "Operations Office Manager" as follows:

§ 465.2 Definitions.

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shall approve the application. The Operations Office Manager may—

(1) Approve the application in whole or in part to the extent that the application conforms to the requirements of this part;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

§ 440.15 [Amended]

3. Section 440.15(c) is amended by removing the reference "§ 440.30(d)" and adding the reference "§ 440.30(i)" in lieu thereof.

4. Section 440.30 is revised to read as follows:

§ 440.30 Administrative review.

(a) An applicant shall have 20 days from the date of receipt of a decision under § 440.12 to file a notice requesting administrative review. If an applicant does not timely file such a notice, the decision under § 440.12 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Operations Office Manager and shall be accompanied by a written statement containing supporting arguments and requesting, if desired, the opportunity for a public hearing.

(c) A notice or any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Operations Office Manager shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under § 440.12 as to which administrative review is sought, a draft recommended final decision for the concurrence of the Deputy Assistant Secretary, and any other relevant material.

(e) If the applicant requests a public hearing, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and Federal Register notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Operations Office Manager.

(g) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application, with a supporting statement of reasons, for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE, and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination of eligibility for further participation in the program because of failure to comply substantially with the requirements of the Act or of this part, a grantee shall have the right to written notice of the basis for the enforcement action and the opportunity for a public hearing notwithstanding any provisions to contrary of 10 CFR 600.26, 600.28(b), 600.29, 600.121(c), and 600.443. A notice under this paragraph shall be mailed by the Operations Office Manager by registered mail, return-receipt requested, to the State, local grantee, and other interested parties. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior Federal Register notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions of Rule 2 to the contrary.

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

Part 455 is amended as follows:

1. The authority citation for part 455 continues to read as follows:

Authority: Title III of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3238 (42 U.S.C. 6371 et seq.); and Department of Energy Organization Act, Pub. L. 95–91 Stat. 565 (42 U.S.C. 7101 et seq.).

2. Section 455.2 is amended by adding the definitions of "Assistant Secretary", "Deputy Assistant Secretary" and "Operations Office Manager" in the appropriate alphabetical order as follows:

§ 455.2 Definitions.

* * * * *

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

* * * * *

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistant or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

* * * * *

Operations Office Manager means the manager of a DOE Operations Office or the manager's designee, or any official to whom the manager's functions may be redelegated by the Secretary.

* * * * *

3. Subpart J of 10 CFR Part 455 is added to read as follows:

Subpart J—Administrative Review

Sec.

455.110 Right to administrative review.
455.111 Notice requesting administrative review.
455.112 Transmittal of record on review.
455.113 Review by the Deputy Assistant Secretary.
455.114 Discretionary review by the Assistant Secretary.
455.115 Finality of decision.

Subpart J—Administrative Review

§ 455.110 Right to administrative review.

(a) A State shall have a right to file a notice requesting administrative review of a decision under § 455.83 by an Operations Office Manager to disapprove an application for a grant award for State administrative expenses subject to special conditions or a decision under § 455.91 of this part by an Operations Office Manager to disapprove a State plan or an amendment to a State plan.

(b) A school, hospital, coordinating agency or State acting as an institution's duly authorized agent shall have a right to file a notice requesting administrative review of a decision under § 455.82 by an Operations Office Manager to disapprove an application for a grant award to perform technical assistance programs or to acquire and install an energy conservation measure if the disapproval is based on a determination that—

(1) The applicant is ineligible, under § 455.41 or § 455.51 or for any other reason;

(2) An energy use evaluation submitted in lieu of an energy audit, pursuant to § 455.20, is unacceptable under the State plan; or

(3) A technical assistance program equivalent performed without the use of Federal funds does not comply with the requirements of § 455.42 for purposes of satisfying the eligibility requirements of § 455.51(a)(3).

§ 455.111 Notice requesting administrative review.

(a) Any applicant shall have 20 days from the date of receipt of a decision under § 455.110 to disapprove its application for a grant award to file a notice requesting administrative review. If an applicant does not timely file such a notice, the decision to disapprove shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Operations Office Manager and shall be accompanied by a written statement containing supporting arguments.

(c) If the applicant is a State appealing pursuant to paragraph (a) of § 455.110, the State shall have the right to a public hearing. To exercise that right, the State must request such a hearing in the notice filed under paragraph (b) of this section. A public hearing under this section shall be informal and legislative in nature.

(d) A notice or any other document shall be deemed filed under this subpart upon receipt.

§ 455.112 Transmittal of record on review.

On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Operations Office Manager shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision to disapprove as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

§ 455.113 Review by the Deputy Assistant Secretary.

(a) If a State requests a public hearing pursuant to paragraph (a) of § 455.110, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and Federal Register notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(b) The Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Operations Office Manager—

(1) With respect to a notice filed pursuant to paragraph (a) of § 455.110, on or before 60 days from receipt of documents under § 455.112 or the conclusion of a public hearing, whichever is later; or

(2) With respect to a notice filed pursuant to paragraph (b) of § 455.110, on or before 30 days from receipt of documents under § 455.112.

§ 455.114 Discretionary review by the Assistant Secretary.

On or before 15 days from the date of receipt of the determination under § 455.113(b), the applicant for a grant award may file an application, with a supporting statement of reasons, for discretionary review by the Assistant Secretary. If administrative review is sought pursuant to paragraph (a) of § 455.110, the Assistant Secretary shall send a notice granting or denying discretionary review within 15 days and upon granting such review, shall issue a decision no later than 60 days from the date discretionary review is granted. If administrative review is sought pursuant to paragraph (b) of § 455.110, the Assistant Secretary shall send a notice granting or denying discretionary review within 10 days, and upon granting such review shall issue a decision no later than 30 days from the date discretionary review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

§ 455.115 Finality of decision.

A decision under § 455.113 shall be final for DOE if there is no review sought under § 455.114. If there is review under § 455.114, the decision thereunder shall be final for DOE, and no appeal shall lie elsewhere in DOE.

PART 465—ENERGY EXTENSION SERVICE

Part 465 is amended as follows:

1. The authority citation for part 465 continues to read as follows:

Authority: National Energy Extension Service Act, enacted as title V of the Energy Research and Development Administration Authorization Act of 1977, title V of Pub. L. 95–39, 91 Stat. 191 et seq. (42 U.S.C. 7001 et seq.); Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 956 et seq. (42 U.S.C. 7101 et seq.); Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, 92 Stat. 3 *et seq.* (41 U.S.C. 501 et seq.); section 1007(b) of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, 95 Stat. 611 (42 U.S.C. 7270 Note); E.O. 12009 (42 FR 46267); E.O. 12291 (46 FR 13193).

1a. Section 465.2 is amended by adding the definitions of "Assistant Secretary" and "Deputy Assistant Secretary" in the appropriate alphabetical order and revising the definition of "Operations Office Manager" as follows:

§ 465.2 Definitions.

* * * * *

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

* * * * *

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

* * * * *

Operations Office Manager means the manager of a DOE Operations Office or the manager's designee, or any official to whom the manager's functions may be redelegated by the Secretary.

* * * * *

2. Section 465.8 is revised to read as follows:

§ 465.8 Approval of annual State applications and State plans.

(a) After receipt of an application, the Operations Office Manager may request the State to submit within a reasonable period of time any amendments necessary to make the application complete or amendments to bring the application into compliance with the requirements of this part. The Operations Office Manager shall attempt to resolve any dispute over an application informally and to seek voluntary compliance. If a State fails to submit timely appropriate amendments to complete the application, the Operations Office Manager may reject the application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under § 465.10 of this part.

(b) On or before 60 days from the date that a timely filed application is complete, the Operations Office Manager shall decide whether DOE shall make a financial assistance award. The Operations Office Manager may—

(1) Approve the application in whole or in part to the extend that—

(i) The State plan meets the objectives of the Act;

(ii) The annual State application and the State plan meet the requirements of §§ 465.6 and 465.7, respectively; and

(iii) Implementation of the State plan by the State conforms to the requirements of this part;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

(c) If the State requests a public hearing on the disapproval of an entire application, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and Federal Register notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(d) On or before 45 days from receipt of documents under paragraph (c) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Operations Office Manager.

(e) On or before 15 days from the date of receipt of the determination under paragraph (d) of this section, the Governor may file an application, with a supporting statement of reasons, for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(f) A decision under paragraph (d) of this section shall be final for DOE if there is no review under paragraph (e) of this section. If there is review under paragraph (e) of this section, the decision thereunder shall be final for DOE, and no appeal shall lie elsewhere in DOE.

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(iii) Implementation of the State plan by the State conforms to the requirements of this part;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

3. Section 465.10 is revised to read as follows:

§ 465.10 Administrative review.

(a) A State shall have 20 days from the date of receipt of a decision under § 465.8 to file a notice requesting administrative review. If the State does not timely file such a notice, the decision under § 465.8 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Operations Office Manager and shall be accompanied by a written statement containing supporting arguments. If the Operations Office Manager has disapproved the entire application, the State may request a public hearing.

(c) A notice of any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Operations Office Manager shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under § 465.8 as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

(e) If the State requests a public hearing on the disapproval of an entire application, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and Federal Register notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary, shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Operations Office Manager.

(g) On or before 15 days from the date of receipt of the determination under paragraph (f) to the section, the Governor may file an application for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination or suspension of a grant award for failure to implement an approved State plan in compliance with the requirements of this part, a grantee shall have the right to written notice of the basis for the enforcement action and of the opportunity for public hearing before the DOE Financial Assistance Appeals Board notwithstanding any provisions to contrary of 10 CFR 600.26, 600.28(b), 600.29, 600.121(c), and 600.443. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior Federal Register notice, in the election letter submitted under rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions to the contrary of rule 2.

[FR Doc. 90-23606 Filed 10-9-90; 8:45 am]
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H.R. 5725/Pub. L. 101–407
To extend the expiration date of the Defense Production Act of 1950. (Oct. 4, 1990; 104 Stat. 882; 1 page) Price: $1.00

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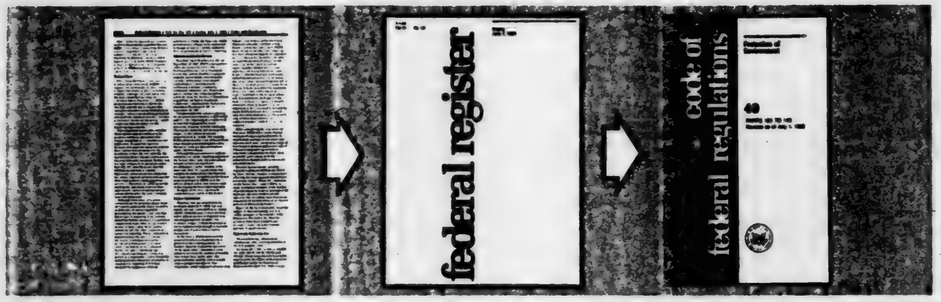

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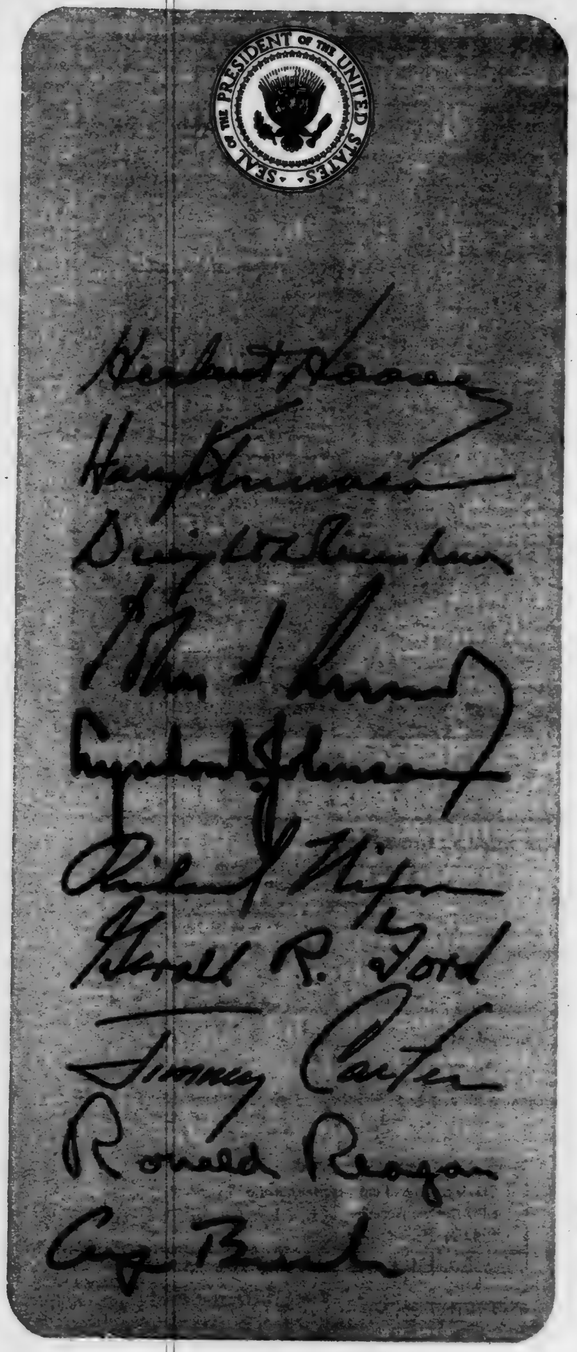

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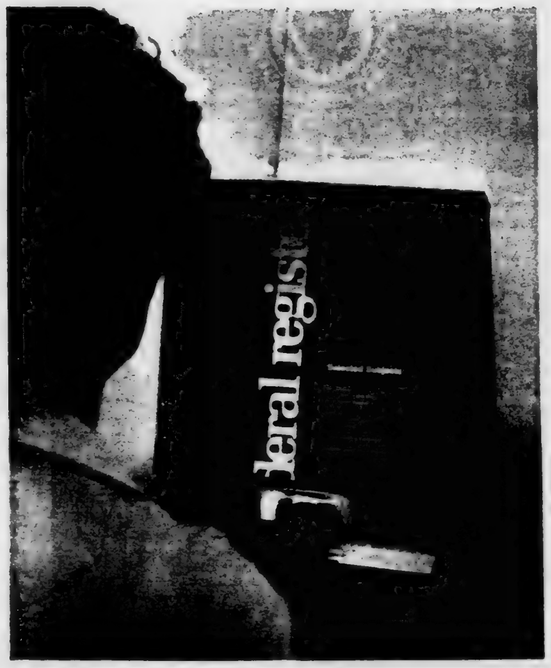

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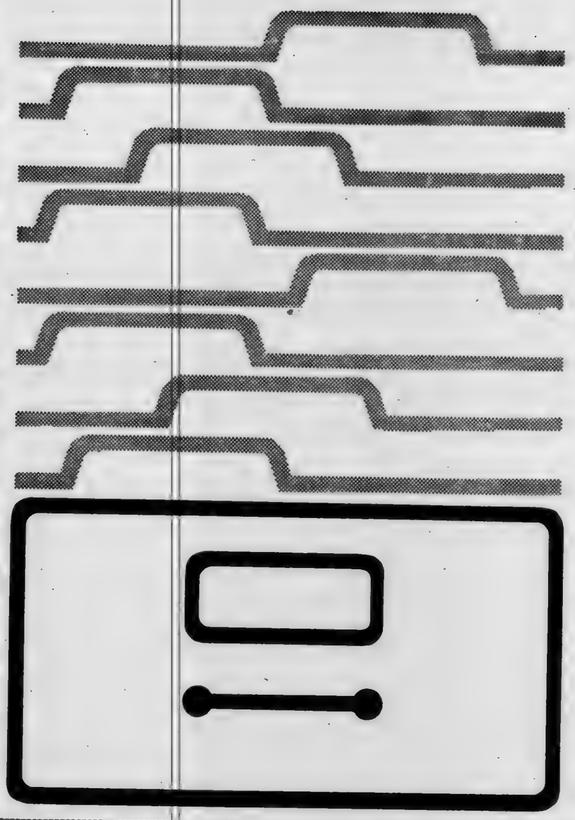

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10-11-90
Vol. 55 No. 197
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Thursday
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Presidential Documents

Title 3—

The President

Proclamation 6186 of October 9, 1990

Mental Illness Awareness Week, 1990

By the President of the United States of America

A Proclamation

Mental illnesses affect millions of adults, children, and adolescents throughout the United States. Striking without regard to race, gender, or economic status, mental illnesses not only deprive these Americans of full, happy, and productive lives but also inflict a heavy emotional and financial burden on them and their families as well. Mental illness has become one of the most costly public health problems in our country, both in terms of wasted human potential and suffering and in terms of the cost of health care and lost school or work hours.

Fortunately, however, recent progress in the study of the human brain has strengthened hopes that mental illness can be overcome. Basic research in the biomedical and behavioral sciences has produced astounding advances in our understanding of the causes, progression, and manifestations of mental illnesses. The implications for our ongoing efforts to develop means of preventing and even curing mental illnesses are profoundly heartening.

During the past 20 years, we have made great strides in treating mental disorders and in developing drugs that ameliorate the symptoms of such conditions as depression, schizophrenia, anxiety disorders, and obsessive compulsive disorders. New techniques are leading to improved assessments of intellectual functions, as well as effective drug therapies and vocational rehabilitation programs to help persons with mental illnesses.

The success of much of the basic and clinical research that has revolutionized neuroscience can be attributed to amazing new technologies. For example, through sophisticated imaging tools and computerized tomography, physicians and scientists are now able to trace the intricate pathways through which the brain's messages flow. By literally watching the brain function in this manner, they are learning more about normal and abnormal behavior, emotion, and thought.

Last year, I signed into law House Joint Resolution 174, which called for the observance of the 1990s as the "Decade of the Brain." This resolution recognized both the advances and the opportunities that have been generated through basic brain research. It also underscored our Nation's determination to continue working—through the efforts of Federal agencies, private research foundations, health care providers, and concerned voluntary organizations—to improve the diagnosis, treatment, and prevention of mental illnesses and to dispel the myths and misconceptions that too often prevent victims and their families from obtaining the help and acceptance they need and deserve.

To enhance public awareness of mental illness and to promote greater understanding for those who suffer from it, the Congress, by Senate Joint Resolution 256 (Public Law 101–348), has designated the week beginning October 7 and ending October 13, 1990, as "Mental Illness Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of October 7 through October 13, 1990, as Mental Illness Awareness Week. I call upon all Americans to observe this week with appropriate ceremonies and activities designed to foster greater understanding for mentally ill individuals and recognition of their need for treatment and rehabilitation.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-24090
Filed 10-09-90; 12:19 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6197 of October 9, 1990

National Children's Day, 1990

By the President of the United States of America

A Proclamation

Every child is a great and precious blessing, a unique individual of inestimable worth and potential. Given love, encouragement, and the opportunity to develop his or her own special gifts, every child will make a singular contribution to his family and to the world around him.

Parents have no greater or more rewarding responsibility than to welcome, nurture, and protect the children God has entrusted to their care. In addition to supplying the steady, reliable material support that is vital to their children's emotional and physical well-being, parents are charged with the stewardship of their little ones' spiritual and intellectual development.

Whether he or she is their biological, adoptive, or foster child, every youngster needs both parents' attention and affection, as well as praise and guidance. The time a child spends with his or her parents is priceless, because the lessons learned in their company will last a lifetime. Indeed, as their first teachers, best friends, and most influential role models, parents shape the course of their little ones' life's journey, helping them to grow in faith, self-discipline, self-esteem, and respect and concern for others. The importance of parents' example cannot be overstated, because without trust in God and a firm belief in what is right and good, a child is much like a ship without an anchor or a compass.

The government must not and, indeed, cannot arrogate to itself the primary responsibility of parents in caring for their children. However, it can help parents in their sometimes difficult role through wise and carefully developed measures that strengthen the family and give every child the opportunity to grow up safe, healthy, and well educated.

On this day set aside in honor of our Nation's youngest and most vulnerable citizens, let us remember that each and every child is a treasure from God. Let us also renew our determination to render our children the love and respect they need and deserve. Doing so is not only a moral imperative, it is also in our Nation's best interest. After all, the child who is treated in a just, loving, and thoughtful manner is most likely to become the kind of citizen and neighbor who treats others with the same.

The Congress, by Senate Joint Resolution 316 (Public Law 101-349), has designated the second Sunday in October 1990 as "National Children's Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Sunday, October 14, 1990, as National Children's Day. I call upon the American people to observe that day with appropriate programs, ceremonies, and activities designed to honor children and to emphasize the importance of their well-being to our entire Nation. I also urge all Americans to reflect upon the importance of children to our families, as well as the importance of strong families to our children

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-24185
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Billing code 3195-01-M

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[DA-90-033]

Milk in the Chicago Regional Marketing Area; Revision of Supply Plant Shipping Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action revises certain provisions of the Chicago Regional milk order for the months of September and October 1990. The action reduces the shipping percentages for pooling individual supply plants by 3 percentage points (from 5 to 2 percent of receipts) and units of supply plants by 5 percentage points (from 10 to 5 percent of receipts). The revision is made in response to a request by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants.

EFFECTIVE DATE: October 11, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of proposed Revision of Supply Plant Shipping Percentages; Issued September 18, 1990; published September 24, 1990 (55 FR 39002).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action reduces the regulatory impact on milk handlers and tends to insure that the market will be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1030.7(b)(5) of the Chicago Regional order.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentages should be lowered by 3 percentage points (from 5 to 2 percent of receipts) for individual supply plants and by 5 percentage points (from 10 to 5 percent of receipts) for supply plant units during the months of September and October 1990.

Currently, the order provides that individual supply plants must ship at least 5 percent of milk receipts to other plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes during the months of September through December. During other months the shipping standards are 3 percent for individual plants and 6 percent for a unit of plants.

The Chicago order provides that the market administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points for up to 3 months. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of the producers who supply the market. CMPC contends that a reduction of the shipping percentages is necessary to prevent uneconomic shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and sales estimates, CMPC requested that the market administrator reduce the shipping percentages by 2 percentage points during the months of August through October. CMPC indicates that the reduction for August by the market administrator permitted the use of nearby milk to satisfy fluid milk needs and saved transportation costs because milk did not have to be shipped from distant supply plants. An identical reduction of the shipping percentages for September has also been issued by the market administrator.

Based on the most recent supply and demand estimates, CMPC indicated that a further reduction of the shipping percentages for September was necessary. CMPC contends that in order to make the most efficient use of available milk supplies, as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the month of September, CMPC indicates that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to 2 and 5 percent of receipts, respectively. In addition, CMPC indicated that it may be necessary for the October shipping standards to be reduced in a similar fashion.

The Wisconsin Cheese Makers Association filed comments supporting the proposed reduction of the supply plant shipping percentages. The association indicates that the action will allow for savings in transportation costs because milk will not need to be shipped from distant supply plants. The association maintains that there are sufficient supplies of nearby milk available to satisfy the fluid milk needs of distributing plants. With the change in supply conditions, the association notes that spot shipments of milk during the week of September 14-20 this year are less than half of the shipments of milk that were made during the comparable week in 1989.

In view of the supply/demand

relationship for the market, the supply plant shipping percentages should be reduced for the months of September and October. A reduction of the shipping percentages will contribute to orderly marketing in that costly and inefficient shipments of milk from distant supply plants will not be

NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

RIN 3150-AD75

Submitting Applications for the Licensing of Test and Research

relating to TRR operator licensing applications is to the five Regional Administrator Offices, and is in need of amendment. This administrative amendment to the regulation (10 CFR part 55) clarifies this regulation by requiring applicants for TRR operator and senior reactor operator licenses to communicate their requests for license

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

to the Regional Administrator. The Regional Administrator or the Administrator's designee will transmit to the Director of Nuclear Reactor Regulation any matter that is not within the scope of the Regional Administrator's delegated authority.

(i) If the nuclear power reactor is located in Region I, submission must be

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-57-AD; Amdt. 39-6762]

Airworthiness Directives; Gulfstream Aerospace Model G-IV Series Airplanes

relationship for the market, the supply plant shipping percentages should be reduced for the months of September and October. A reduction of the shipping percentages will contribute to orderly marketing in that costly and inefficient shipments of milk from distant supply plants will not be necessary. Thus, dairy farmers who have supplied the market will continue to have their milk pooled under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the month of September and October;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded the opportunity to file written data, views, or arguments concerning this issue. No opposing views were received.

Therefore, good cause exists for making this revision effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

It is therefore ordered that the following provisions of § 1030.7(b) of the Chicago Regional milk order are hereby revised for the months of September and October 1990.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority for 7 CFR part 1030 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674)

§ 1030.7 [Amended]

2. In the introductory text of § 1030.7(b), the provision "5 percent" is revised to "2 percent" and the provision "10 percent" is revised to "5 percent" for the months of September and October 1990.

Signed at Washington, DC, on October 5, 1990.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 90-23368 Filed 10-10-90; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

RIN 3150-AD75

Submitting Applications for the Licensing of Test and Research Reactor Operators Directly to Headquarters

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to require that test and research reactor facility applications for operator and senior reactor operator licenses be submitted to the responsible Headquarters office. This action is necessary to improve efficiency and consistency of examination and licensing of test and research reactor operators by having a central office monitor the issuance and renewal of licenses.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: David J. Lange, Acting Chief, Operator Licensing Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1031.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Nuclear Regulatory Commission (NRC) has decided to consolidate and return the responsibility for the issuance and renewal of licenses for reactor operators and senior reactor operators of test and research reactors (TRR) to the Headquarters office. Currently this responsibility is being administered individually by the operator licensing sections in the five regional offices. Increased demands by the TRR community for improved efficiency and consistency of examination and licensing of TRR operators requires improved and dedicated oversight and management on a national scale, and from a central office. This administrative amendment does not affect existing licensing practice, pursuant to 10 CFR part 55, by requiring that each applicant submit their request for TRR reactor operator licenses directly to the NRC Headquarters.

As currently codified in 10 CFR part 55, "Communications," the communications path with the NRC relating to TRR operator licensing applications is to the five Regional Administrator Offices, and is in need of amendment. This administrative amendment to the regulation (10 CFR part 55) clarifies this regulation by requiring applicants for TRR operator and senior reactor operator licenses to communicate their requests for license examination directly to the responsible Headquarters office instead of submitting their requests to one of the five regional offices.

Waiver of Notice and Comment

Because these amendments deal solely with agency practice procedure, the notice and comment provisions of the Administrative Procedure Act do not apply as excepted by 5 U.S.C. 553(b)(A).

Environmental Impact: Categorical Exclusion

The NRC has determined that this amendment to the rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0018.

Regulatory Analysis

The regulations in 10 CFR part 55 establish procedures and criteria for the issuance of licenses to operators and senior operators of utilization facilities licensed pursuant to the Atomic Energy Act of 1954, as amended, or section 202 of the Energy Reorganization Act of 1974, as amended, and 10 CFR part 50. These established procedures provide for the terms and conditions upon which the Commission will issue, modify, maintain, and renew operator and senior operator licenses.

This amendment to the rule will not affect existing practice regarding TRR operator licensing pursuant to 10 CFR part 55. This amendment only serves to notify the applicants for 10 CFR part 55 TRR operator and senior reactor operator licenses to submit their requests directly to the Headquarters office.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 55

Criminal penalty, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 55.

PART 55—OPERATORS' LICENSES

1. The authority citation for part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273; §§ 55.3, 55.21, 55.49, and 55.53 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 55.9, 55.23, 55.25, and 55.53(f) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 55.5, paragraph (b) is revised to read as follows:

§ 55.5 Communications.

* * * * *

(b)(1) Except for test and research reactor facilities, the Director of Nuclear Reactor Regulation has delegated to the Regional Administrators of Regions I, II, III, IV and V authority and responsibility pursuant to the regulations in this part for the issuance and renewal of licenses for operators and senior operators of nuclear power reactors licensed under 10 CFR part 50 and located in these regions.

(2) Any application for a license or license renewal filed under the regulations in this part involving a nuclear power reactor licensed under 10 CFR part 50 and any related inquiry, communication, information, or report must be submitted by mail or in person to the Regional Administrator. The Regional Administrator or the Administrator's designee will transmit to the Director of Nuclear Reactor Regulation any matter that is not within the scope of the Regional Administrator's delegated authority.

(i) If the nuclear power reactor is located in Region I, submission must be made to the Regional Administrator, Region I, U.S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

(ii) If the nuclear power reactor is located in Region II, submission must be made to the Regional Administrator, Region II, U.S. Nuclear Regulatory Commission, 101 Marietta Street, suite 2900, Atlanta, Georgia 30323.

(iii) If the nuclear power reactor is located in Region III, submission must be made to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

(iv) If the nuclear power reactor is located in Region IV, submission must be made to the Regional Administrator, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, suite 1000, Arlington, Texas 76011.

(v) If the nuclear power reactor is located in Region V, submission must be made to the Regional Administrator, Region V, U.S. Nuclear Regulatory Commission, 1450 Maria Lane, suite 210, Walnut Creek, California 94596.

(3)(i) Any application for a license or license renewal filed under the regulations in this part involving a test and research reactor facility licensed under 10 CFR part 50 and any related inquiry, communication, information, or report must be submitted by mail or in person to the Division of Licensee Performance and Quality Evaluation at the U.S. Nuclear Regulatory Commission Headquarters in Washington, DC.

(ii) For all test and research reactor facilities located in Regions I, II, III, IV, and V, submissions must be made to the Director, Division of Licensee Performance and Quality Evaluation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Operator Licensing Branch.

Dated at Rockville, Maryland, this 27th day of September, 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90-23084 Filed 10-10-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-67-AD; Amdt. 39-6782]

Airworthiness Directives; Gulfstream Aerospace Model G–IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Gulfstream Aerospace Model G–IV series airplanes, which requires the application of additional sealant on the upper portion of the radome and fuselage mating structure; an inspection to verify the integrity of the rubber radome seal and aerodynamic seal, and repair or replacement, if necessary. This amendment is prompted by reports of in-flight failure of radio navigation and transponder equipment due to water intrusion into the radome equipment racks. This condition, if not corrected, could result in the inability to safely navigate within controlled airspace.

EFFECTIVE DATE: November 14, 1990.

ADDRESSES: The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: James H. Williams, Systems Branch, ACE–130A; telephone (404) 991–3020. Mailing address: FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Gulfstream Aerospace Model G–IV series airplanes, which requires the application of additional sealant on the upper portion of the radome and fuselage mating structure; an inspection to verify the integrity of the rubber radome seal and aerodynamic seal, and repair or replacement, if necessary, was published in the Federal Register on June 1, 1990 (55 FR 22358).

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the single comment received.

The commenter questioned the need for the rule since all responsible operators of the affected airplanes have (or will have in the near future) accomplished the proposed actions (as

12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon

56188, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–

copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority

operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-SCANIA, Aircraft Division, S-58188, Linköping, Sweden.

making of this amendment. Due consideration has been given to the single comment received.

The commenter questioned the need for the rule since all responsible operators of the affected airplanes have (or will have in the near future) accomplished the proposed actions (as specified in the Gulfstream Aircraft Service Change 183). The FAA does not concur. The FAA has received no documentation that all operators have accomplished the actions required by this rule. Furthermore, should additional Gulfstream Aerospace Model G–IV series airplanes be added to the U.S. registry in the future, an AD is necessary to ensure the accomplishment of these actions on all affected airplanes. Finally, in accordance with various bilateral airworthiness agreements, the FAA is obligated to advise foreign airworthiness authorities of unsafe conditions identified in products manufactured in the United States; the issuance of AD's is the means by which the FAA satisfies this obligation. Therefore, the issuance of this AD is necessary.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

There are approximately 130 Model G–IV series airplanes of the affected design in the worldwide fleet. It is estimated that 110 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $35,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream: Applies to Model G–IV series airplanes, Serial Numbers 1000 through 1130, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent in-flight failure of avionics equipment due to water intrusion, accomplish the following:

A. Within 25 hours time-in-service or within 30 days after the effective date of this AD, whichever occurs later, install additional sealant on the upper portion of the radome and fuselage mating structure, and inspect the integrity of the rubber radome seal and the aerodynamic seal, in accordance with Gulfstream Aerospace Aircraft Service Change [ASC] 183, dated March 15, 1990.

1. If defects are found in the rubber radome seal, replace prior to further flight, in accordance with ASC 183.

2. If defects are found in the aerodynamic seal, repair prior to further flight, in accordance with ASC 183.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE–115A, FAA, Central Region.

Note: The request should be submitted directly to the Manager, Atlanta ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Atlanta ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

This amendment becomes effective November 14, 1990.

Issued in Renton, Washington, on September 28, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23963 Filed 10-10-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-111-AD; Amendment 39-6763]

Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain SAAB-Scania Model SF–340A series airplanes, which currently requires installation of modified electrical engine control units (ECU). This amendment adds a requirement to remove certain relays and wiring that may be installed on certain modified airplanes. This amendment is prompted by analysis and field experience which indicates certain modifications accomplished on those airplanes may inhibit failure detection of the engine control unit (ECU) or may cause propeller pitch distrubances on the good engine if the other engine is shut down. This condition, if not corrected, could result in loss of climb performance during single engine operation (i.e. one engine failed), and latent failures in the engine control unit.

EFFECTIVE DATE: November 14, 1990.

ADDRESSES: The applicable service information may be obtained from SAAB–SCANIA, Aircraft Division, S. 58188, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing Address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89–22–08, Amendment 39–6361 (54 FR 42292, October 16, 1989), applicable to certain SAAB-Scania Model SF–340A series airplanes, to require the removal of certain relays and wiring that may be installed on certain modified airplanes, was published in the Federal Register on July 6, 1990 (55 FR 27828).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 89 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions related to the removal of the relays and wiring, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,360.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6361 (54 FR 42292, October 16, 1989), AD 89–22–08, with the following new airworthiness directive:

Saab-Scania: Applies to Model SF–340A series airplanes, Serial Numbers 004 through 159, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of climb performance during single engine operation (i.e. one engine failed), and latent failures in the engine control unit, accomplish the following:

A. Within 60 days after November 20, 1990 (the effective date of Amendment 39–6361, AD 89–22–08), install modified electrical control units (ECU) in accordance with General Electric Service Bulletin 76–16, dated March 22, 1988.

B. Within 60 days after the effective date of this amendment, remove any relays and associated wiring previously installed in accordance with SAAB-SCANIA Service Bulletins SAAB SF340–61–620 and SAAB SF340–77–003, in accordance with the procedures specified in SAAB-SCANIA Service Bulletin SF340–77–008, dated March 9, 1990.

C. After completion of paragraphs A. and B. of this AD, delete steps referencing "Applicable *With* Mod. No. 1551" in the Emergency Procedures Section and Normal Procedures Expanded Checklist of the FAA-approved Airplane Flight Manual (AFM).

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-SCANIA, Aircraft Division, S.58188, Linköping, Sweden.

These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39–6361, AD 89–22–08.

This amendment becomes effective November 14, 1990.

Issued in Renton, Washington, on September 28, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-23764 Filed 10-10-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-15; RM-7036]

Radio Broadcasting Services; Benton, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292B1 for Channel 292A at Benton, Illinois, and modifies the license of Station WQRL(FM) to specify operation on the higher class channel, at the request of Lamar Broadcasting, Inc. See FR 04288, February 7, 1990. Channel 292B1 can be allotted to Benton in compliance with the Commission's minimum distance separation requirements with a site restriction of 22 kilometers (13.6 miles) southeast of the community. The coordinates are North Latitude 37–57–05 and West Longitude 88–40–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–15, adopted September 21, 1990, and released October 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140,

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmer, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building,

excluded Class II carrier becomes a Class III carrier within the period under § 1039.14(c)(2)(ii)(B), that carrier will thereafter, for purposes of this rule, be treated as if it had been a Class III carrier on December 10, 1983.

* * * * *

§ 1039.14 [Amended]

3. In § 1039.14, paragraph (c)(3) is

an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1990 TAC specified for "Other

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Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 292A and adding Channel 292B1 at Benton.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Police and Rules Division, Mass Media Bureau.

[FR Doc. 90-24001 Filed 10-10-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-278; RM-C0146]

Radio Broadcasting Services; Louisville, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C3 for Channel 296A at Louisville, Mississippi, and modifies the license of Station WLSM–FM to specify operation on the higher class channel. The coordinates for Channel 296C3 are 33–07–20 and 89–01–05. The proposal for Louisville was included in a proceeding issued on the Commission's own motion, 4 FCC Rcd 5357 (1989). A *Report and Order* in the proceeding was released on April 4, 1990, upgrading the class of channel from A to C3 for 85 facilities. Louisville was inadvertently omitted from that *Order*. *See* 55 FR 1283, April 6, 1990.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–278, adopted September 21, 1990, and released October 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 296A and adding 296C3 at Louisville.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-24002 Filed 10-10-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-393; RM-6825]

Radio Broadcasting Services; Espanola, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Holt Corporation of New Mexico, substitutes Channel 272C3 for Channel 272A at Espanola, New Mexico, and modifies its license for Station KM10(FM) to specify operation on the higher powered channel. *See* 54 FR 39209, September 25, 1989. Channel 272C3 can be allotted to Espanola in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in the station's outstanding construction permit (BPH–890210IA). The coordinates for Channel 272C3 at Espanola are North Latitude 35–53–55 and West Longitude 105–53–52. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–393, adopted September 21, 1990, and released October 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under New Mexico, is amended by removing Channel 272A and adding Channel 272C3 at Espanola.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-24003 Filed 10-10-90; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 19)]

Boxcar Car Hire and Car Service

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The date of the car hire rate freeze on boxcars owned or leased by Class II carriers, and the exclusion for class II carriers from empty return charge and storage reclaim rules, is set to expire on October 15, 1990, 4 years from October 15, 1986 effective date in the regulations. 49 CFR 1039.14(c)(2)(ii)(B). The Association of American Railroads has petitioned to extend the expiration date for car hire rate freeze to October 31, 1990, to coincide with data input and accounting practices. We are granting this request and expanding it to extend the empty return charge and storage reclaim exclusions to October 31, 1990. We are amending 49 CFR 1039.14(c)(2)(ii)(B) and (c)(2)(iii) and 1039.14(c)(3) to reflect this extension.

EFFECTIVE DATE: The extension is effective on October 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmer, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services, (202) 275–1721.)

As required by the Regulatory Flexibility Act, it is certified that the extension of the expiration date of the car hire rate freeze on boxcars owned or leased by Class II carriers and the exclusion for Class II carriers from empty return charge and storage reclaim rules from October 15, 1990 to October 31, 1990 will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads, Manufactured commodities.

Decided: September 24, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXTEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10706, 10762, and 11105; and 5 U.S.C. 553.

2. Section 1039.14 is amended by revising paragraphs (c)(2)(ii)(B) and (c)(2)(iii) to read as follows:

§ 1039.14 Boxcar transportation exemption and rules.

* * * * *

(C) * * *

(2) * * *

(ii) * * *

(B) To an excluded boxcar owned or leased by an excluded Class II carrier beginning on October 16, 1986, and ending on October 31, 1990, so long as such boxcar has not been otherwise owned or leased by another carrier during this period.

(iii) The exclusion will not apply during any period in which an excluded boxcar is leased or assigned to a Class I or affiliated Class II carrier. If an excluded Class II carrier becomes a Class III carrier within the period under § 1039.14(c)(2)(ii)(B), that carrier will thereafter, for purposes of this rule, be treated as if it had been a Class III carrier on December 10, 1983.

* * * * *

§ 1039.14 [Amended]

3. In § 1039.14, paragraph (c)(3) is amended by adding the following language after the first sentence in that paragraph:

(C) * * *

(3) * * * With respect to an excluded boxcar owned or leased by an excluded Class II carrier, those car hire rates shall remain in effect through October 31, 1990. * * *

[FR Doc. 90-24033 Filed 10-10-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Secretary of Commerce (Secretary) announces the prohibition of further retention of "Other Rockfish" by vessels fishing in the Western Regulatory Area of the Gulf of Alaska. This action is necessary to prevent the total allowable catch (TAC) for "Other Rockfish" in the Western Regulatory Area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving "Other Rockfish" stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), October 5, 1990, through midnight, A.l.t., December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR 611.92 and part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1990 TAC specified for "Other Rockfish" in the Western Regulatory Area of the Gulf of Alaska (Western Gulf) is 4,300 mt (55 FR 3223, January 31, 1990). Under § 672.20(c)(3), when the Regional Director determines that the "Other Rockfish" TAC in a regulatory area or district has been reached, the Secretary will publish a notice in the Federal Register requiring that "Other Rockfish" must be treated in the same manner as a prohibited species under § 672.20(e) in all or part of that regulatory area or district for the remainder of that year.

Background

Under § 672.20(c)(3), the Regional Director previously determined that the TAC for "Other Rockfish" in the Western Gulf would be reached by August 3, 1990 (55 FR 32261, August 8, 1990). Catch rates were substantially lower than predicted, and 2,551 mt of "Other Rockfish" remained in the Western Gulf after the closure. Therefore, on August 16, 1990, the Secretary rescinded the August 3 closure for "Other Rockfish" in the Western Gulf to avoid underharvest of the TAC (55 FR 34283, August 22, 1990).

On August 31, 1990, the Regional Director determined that the TAC for "Other Rockfish" in the Western Gulf would be reached and consequently issued a notice prohibiting retention of "Other Rockfish" in the Western Gulf (55 FR 36651, September 6, 1990).

After the closure, the Regional Director determined that 570 mt of "Other Rockfish" remained unharvested in the Western Gulf and that ongoing groundfish operations were being constrained under the closure. Consequently, he rescinded the previously issued notice of closure, thereby allowing resumed directed fishing for "Other Rockfish" in the Western Gulf by vessels in DAP operations, effective September 27, 1990 (55 FR 40165, October 2, 1990).

The Regional Director now has determined that the TAC for "Other Rockfish" in the Western Gulf has been reached. Therefore, pursuant to § 672.20(c)(3) and (e), the Secretary is declaring that "Other Rockfish" must be treated in the same manner as prohibited species in the Western Gulf

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effective 12:00 noon, A.l.t., October 5, 1990.

Classification

This action is taken under § 672.20(c)(3) and (e) and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. The TAC for "Other Rockfish" for vessels using all gear in the Western Gulf will be exceeded unless this notice takes effect immediately.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 4, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23954 Filed 10-5-90; 10:47 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 197
Thursday, October 11, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-181-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection for cracks in the fuselage body station (BS) 1241 bulkhead splice strap and forging, and repairs, if necessary. This action would continue to require inspections of the splice strap and repair, if necessary; however, once the airplane has accumulated 20,000 cycles or more, the inspections would be required at more frequent intervals and, if cracks are found, the splice strap would be required to be replaced. The proposal is prompted by a structural review of the Model 747. This condition, if not corrected, could result in failure of the bulkhead forging, which could lead to loss of cabin pressure or the inability to withstand fail-safe loads.

DATES: Comments must be received no later than November 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-181-AD, 1601 Lind Avenue SW., Renton Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket number 90-NM-181-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 14, 1988, the FAA issued AD 88-16-01, Amendment 39-5963 (53 FR 27479, July 21, 1988), to require repetitive inspection for cracks in the fuselage body station (BS) 1241 bulkhead splice strap and forging, and repairs, if necessary. That action was prompted by reports indicating that a certain strap replacement modification installed on some airplanes was not effective and that splice straps of the original design were subject to cracking. This condition, if not corrected, could result in failure of the bulkhead forging, which could lead to loss of cabin pressure or the inability to withstand fail-safe loads.

Since issuance of that AD, the FAA, in conjunction with the manufacturer and the Boeing Model 747 Aging Fleet Structures Working Group, has conducted a structural review of the Model 747 and has determined that cracked splice straps must be replaced on airplanes that have accumulated 20,000 flight cycles, and that the repetitive inspection intervals must be shortened once the airplane has accumulated 20,000 flight cycles in order to detect cracking in a more timely manner, and to ensure the structural integrity of the BS 1241 bulkhead splice throughout the operational life of the airplane. Failure to detect and repair cracks, as necessary, could lead to loss of cabin pressure or the inability to withstand fail-safe loads.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, which describes the procedures to inspect BS 1241 bulkhead splice strap for cracking on Boeing Model 747 airplanes, manufacturing line numbers 1 through 689, and repair or replacement, if necessary. Airplanes, manufacturing line numbers 676, 679, and 685, were modified by the manufacturer to the improved configuration installed on line numbers 690 and subsequent. A modification is described in the service bulletin which consists of reworking certain bolt holes and replacing the bulkhead strap, if cracked.

The inspection procedures described in this service bulletin are divided into two programs: (1) The "Flight-Safety Inspection Progam" continues the inspections currently required by AD 88-16-01. (2) The "Aging Fleet Flight-Safety Inspection Program" is initiated upon the accumulation of 20,000 flight cycles on the airplane; at that time, the inspections are repeated at more frequent intervals, and if cracks are found, the splice straps are to be replaced.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 88-16-01 with a new airworthiness directive that would continue to require the inspection of the BS 1241 bulkhead splice strap, and repair, if necessary. Once the airplane has accumulated 20,000 or more flight cycles, the inspections would be

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required to be repeated at more frequent intervals and, if cracks are found, the splice strap would be required to be replaced. These procedures would be required to be accomplished, in accordance with the service bulletin previously described.

There are approximately 689 Model 747 series airplanes of the affected

88-16-01, with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes listed in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

Alert Service Bulletin 747-2283, Revision 3, dated November 1, 1989: Perform inspections and repairs, if necessary, as required by paragraph A. of this AD, except that the initial inspections must be conducted within 1,000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings since the modification, whichever occurs later.

D. For airplanes Group 9 through Group 18:

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-27-AD, 1601 Lind Avenue S.W., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA,

pneumatic ducts, as terminating action for the required inspections, was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on March 26, 1990 (55 FR 11028). That action was prompted by a reevaluation of the description of the terminating action specified in AD 88-

required to be repeated at more frequent intervals and, if cracks are found, the splice strap would be required to be replaced. These procedures would be required to be accomplished, in accordance with the service bulletin previously described.

There are approximately 689 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry would be affected by this AD, that it would take approximately 104 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $723,840.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5983, AD 88-16-01, with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes listed in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the bulkhead forging, which could lead to loss of cabin pressure or the inability to withstand fail-safe loads, accomplish the following:

A. For airplanes Group 1 through Group 8: Except as provided in paragraphs B. and C. of this AD, prior to the accumulation of 10,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 6,000 landings, perform an eddy current inspection of the body station (BS) 1241 bulkhead frame splice strap at the aft hole and visually inspect the aft edge of the strap, in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989.

1. If no cracks are found, repeat the inspection thereafter at intervals not to exceed 7,000 landings.

2. If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight, perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole, in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989.

a. If no cracks are found or if cracks are found only in the bulkhead splice strap when inspecting at the forward hole, then repeat the inspection at the forward hole thereafter at intervals not to exceed 3,000 landings.

b. If cracks are found at the forward hole in the bulkhead forging, repair as follows:

(1) If the cracks found in the forging do not exceed the forward hole rework limits specified in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, and the hole coldwork has not been previously accomplished, repair prior to further flight, in accordance with the service bulletin and then continue to reinspect in accordance with paragraph A.2. of this AD.

(2) If the cracks found in the forging exceed the forward hole rework limits, or if the hole coldwork has been previously accomplished, repair prior to further flight, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

B. For airplanes Group 1 through Group 8 on which the initial inspection requirements of AD 88-16-01, Amendment 39-5983, have been conducted as of the effective date of this AD, and which have not been modified by incorporation of a replacement strap in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989: Continue to perform the repetitive inspections, and make repairs, if necessary, as required by paragraph A. of this AD.

C. For airplanes Group 1 through Group 8 that have been modified by incorporation of a replacement strap in accordance with Boeing Alert Service Bulletin 747-2283, Revision 3, dated November 1, 1989: Perform inspections and repairs, if necessary, as required by paragraph A. of this AD, except that the initial inspections must be conducted within 1,000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings since the modification, whichever occurs later.

D. For airplanes Group 9 through Group 18: Within the next 1,000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings, whichever occurs later, perform an eddy current inspection of the BS 1241 bulkhead splice strap at the aft hole and visually inspect the aft edge of the strap in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989.

1. If no cracks are found, repeat the inspections thereafter at intervals not to exceed 7,000 landings.

2. If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight, perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989.

a. If no cracks are found or if cracks are found only in the bulkhead splice strap when inspecting at the forward hole, repeat the inspections at the forward hole thereafter at intervals not to exceed 3,000 landings.

b. If cracks are found at the forward hole in the bulkhead forging, repair, prior to further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

E. For airplanes Group 1 through Group 18: Prior to the accumulation of 20,000 total flight cycles or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish the eddy current or ultrasonic inspections (as applicable) of the forward and aft holes for cracking in the splice strap and bulkhead forging, in accordance with the "Aging Fleet Flight-Safety Inspection Program" specified in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989.

1. If no cracks are found in the splice strap, re-inspect at intervals not to exceed 3,000 flight cycles.

2. If cracks are found in the splice strap, replace the splice strap, prior to further flight, and re-inspect thereafter at intervals not to exceed 3,000 flight cycles.

Note: Compliance with Paragraph E. of this AD, constitutes terminating action for the inspections required by Paragraphs A. through D of this AD.

F. For Model 747SR airplanes: All inspection and re-inspection intervals specified in this AD may be multiplied by a 1.2 adjustment factor, based on mixed operation of cabin pressure differentials.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

Issued in Renton, Washington, on September 28, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23988 Filed 10-10-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-27-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); Reopening of Comment Period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, which would have superseded an existing AD to require replacement of titanium T-ducts with Inconel T-ducts, and stress relieving of all other leading edge pneumatic ducts, as terminating action for the currently required inspections for cracked ducts. This revised proposal would require that, in lieu of using the existing proof pressure test procedure, the flangeless ducts be tested using a new procedure developed by the manufacturer wherein the duct longitudinal and hoop strength are tested appropriately. Cracked or ruptured ducts, if not corrected, could led to damage to the wing leading edge and associated problems.

DATES: Comments must be received no later than November 13, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-27-AD, 1601 Lind Avenue S.W., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mahinder K. Wahi, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2673. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments, submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-27-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88-17-07, Amendment 39-5986 (53 FR 28856, August 1, 1988), applicable to certain Boeing Model 747 series airplanes, which would have required replacement of titanium T-ducts with Inconel T-ducts, and stress relieving of all other leading edge pneumatic ducts, as terminating action for the required inspections, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on March 26, 1990 (55 FR 11028). That action was prompted by a reevaluation of the description of the terminating action specified in AD 88-17-07. As written, the existing AD incorrectly implies that the stress-relieving procedures constitute terminating action for the required penetrant inspections of titanium T-ducts. The FAA determined that the effective terminating action for the penetrant inspections of titanium T-ducts is replacement with Inconel T-ducts, and that stress relieving of all other ducts must be required.

Since issuance of the proposal, the following new information has been received from the manufacturer:

1. The proof pressure test procedure as specified in Boeing Service Bulletin 747-36A2074, Revision 3, dated May 11, 1989 (the service bulletin cited in the NPRM), is inadequate for flangeless ducts as it does not test for duct longitudinal strength. A modified proof pressure test procedure has been developed and is described in Revision 4 of Boeing Service Bulletin 747-36A2074, dated September 13, 1990.

2. Proof pressure testing of the flangeless *bent* ducts was not addressed in previous versions of Boeing Service Bulletin 747-36A2074. The modified proof pressure test procedure addresses the flangeless bent ducts and is described in Revision 4 of that service bulletin.

3. Stress relieving of flangeless bent ducts conducted in accordance with the procedures specified in AD 88-17-07 does not constitute terminating action; these ducts also require the modified proof pressure test and penetrant inspection.

In the interest of issuing an AD with complete information, the manufacturer recommended that the FAA issue the final rule using Revision 4 of Boeing Alert Service Bulletin 747-36A2074. The FAA concurs. However, to include a requirement to perform the modified test procedure in accordance with the revised service bulletin described above, would go beyond the scope of the requirements originally proposed; therefore, the comment period has been reopened to provide additional time for public comment on the revised proposal.

Comments on the previous proposal were also received from the Air Transport Association (ATA) of America, on behalf of its members. The ATA had no objection to the requirement for stress relieving of all

leading edge pneumatic ducts. However, it objected to the requirement to replace titanium T-ducts with Inconel T-ducts for two reasons:

First, two operators with inspection programs in place have seen no indication of failure of the titanium T-ducts. From this service record, the ATA considers the replacement requirement unnecessary.

Second, the FAA should require initial inspection and testing of all ducts within 3,000 cycles instead of 1,850 cycles after the effective date of this AD, and should concurs and the proposed rule has been revised by specifying that the initial inspection, etc., would be required within 3,000 cycles after the last inspection and testing.

Second, the FAA should require initial inspection and testing of all ducts within 3,000 cycles instead of 1,850 cycles after the effective date of this AD, and should flanged and flangeless ducts. These actions would be required to be accomplished in accordance with the service bulletins previously described This AD would also eliminate the distinction between requirements for "Group 1" and "Group 2" airplanes specified in the existing AD.

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.31 is amended by

September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin. If the duct weld stress relieving has already been accomplished in accordance with AD 88-17-07 prior to the effective date of this AD, it constitutes terminating action for the requirements of this paragraph for flanged ducts.

3. For flangeless ducts: Conduct a penetrant

14 CFR Part 39

[Docket No. 90-NM-183-AD]

Airworthiness Directives; British Aerospace Model BAe 146 100A and 200A Series airplanes

AGENCY: Federal Aviation Administration (FAA), DOT

leading edge pneumatic ducts. However, it objected to the requirement to replace titanium T-ducts with Inconel T-ducts for two reasons:

First, two operators with inspection programs in place have seen no indication of failure of the titanium T-ducts. From this service record, the ATA considers the replacement requirement to be unjustified. The FAA does not concur. Several operators have found it necessary to replace the titanium T-ducts because the ducts could not pass the inspection criteria. Since 1983, the manufacturer has delivered Inconel T-ducts on production airplanes and has had no reports of in-service failures on airplanes equipped with these ducts. The damage caused by a T-duct failure has proven to be much more severe than any other pneumatic duct failure. In one case, control of both the inboard and the outboard engines was disabled.

Second, replacement costs are closer to $20,000/airplane, not $8,000/airplane as stated in the NPRM. In light of such high costs of replacement, the ATA stated that "it is understandable why operators would prefer to retain inspections of the T-ducts as an option." Based on cost figures obtained subsequent to the issuance of the Notice, the FAA agrees that the cost estimate should be increased to $15,000 per airplane. The increased cost of replacement, however, does not justify the reduced safety caused by the potential for duct failure. Furthermore, the degree of assurance necessary as to the adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position of continual inspection, the FAA has decided to require, whenever practicable, airplane modifications necessary to remove the source of the problem addressed. The modification requirements of this AD action are in consonance with that policy decision. The increased cost of parts has been reflected in the economic impact analysis paragraph below.

The manufacturer agreed with the proposed mandatory terminating action requirement for all ducts, but suggested changes in the compliance times as follows:

First, for ducts other than titanium T-ducts, the FAA should allow credit for inspection, testing, and stress relieving conducted under AD 88-17-08 prior to the effective date of this AD. The FAA concurs and the proposed rule has been revised by specifying that the initial inspection, etc., would be required within 3,000 cycles after the last inspection and testing.

Second, the FAA should require initial inspection and testing of all ducts within 3,000 cycles instead of 1,850 cycles after the effective date of this AD, and should require mandatory replacement of titanium T-ducts and inspection, testing, and stress relieving of all other ducts within 4,000 cycles in lieu of 3,000 cycles after initial inspection and testing, as proposed. The commenter stated that a requirement for 1,850 and 3,000 cycles compliance may be too restrictive. The FAA does not concur. Based on air carrier aircraft utilization data, 1,850 and 3,000 cycles respectively translate into 25 and 41 months calendar time. This, along with credit allowed for previous inspection/testing, allows adequate time for planning and compliance.

The manufacturer further stated that, for other than T-ducts, leading edge ducts replaced using Boeing kit parts in accordance with Boeing Alert Service Bulletin 747-36A2074, Revision 4, dated September 13, 1990, or in accordance with Boeing Service Bulletin 747-36-2092, dated June 28, 1990, should constitute terminating action since these ducts are already stress relieved. The FAA concurs and the proposed rule has been revised accordingly.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-36A2074, Revision 4, dated September 13, 1990, which describes procedures for penetrant inspection, proof pressure testing, weld stress relieving, repair, modification, and replacement, if necessary, of leading edge pneumatic ducts. The FAA has also reviewed and approved Boeing Service Bulletin 747-36-2092, dated June 28, 1990, which describes procedures for replacement of leading edge pneumatic ducts.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would supersede AD 88-17-07 with a new AD that would: (1) Reduce the compliance time for the next penetrant inspection of the wing leading edge pneumatic ducts, differentiating between the procedures for T-ducts, flanged, and flangeless ducts; (2) require that the revised proof pressure test be accomplished for flangeless ducts on *all* airplanes; (3) require the replacement of titanium T-ducts with Inconel ducts as terminating action for the penetrant inspections; and (4) require accomplishment of the previously optional terminating action (stress relief procedure) for all other ducts, including flanged and flangeless ducts. These actions would be required to be accomplished in accordance with the service bulletins previously described. This AD would also eliminate the distinction between requirements for "Group 1" and "Group 2" airplanes specified in the existing AD.

There are approximately 640 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 280 manhours per airplane to accomplish the required initial inspection and test, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators would be $1,926,400 for the initial required action.

Additionally, terminating action for the titanium T-ducts would require parts replacement at an estimated cost of $15,000 per airplane, for a total replacement parts cost of $2,580,000 for the affected fleet.

Based on the figures explained above, the total cost impact of this AD on U.S. operators is estimated to be $4,506,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.31 is amended by superseding AD 88-17-07, Amendment 39-5980 (53 FR 28856, August 1, 1988), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes except Model 747-400 airplanes, line position 2 and subsequent, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent damage to wing panels and/or electrical wiring as a result of failure of wing leading edge ducts, accomplish the following:

A. Prior to the accumulation of 5,850 flight cycles, or within the next 1,850 flight cycles after the effective date of this AD, whichever occurs later, conduct a penetrant inspection and proof pressure test as follows:

1. For titanium T-ducts and flanged ducts: Conduct the inspection and test in accordance with the Accomplishment Instructions, Items A. through F., J., and K. of Boeing Alert Service Bulletin 747-36A2074, Revision 3, dated May 11, 1989, or Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin.

2. For flangeless ducts: Conduct the inspection and test in accordance with the Accomplishment Instructions, Items A. through F., J., and K. of Boeing Alert Service Bulletin 747-36A2074, Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin.

Note: For both paragraph A.1. and A.2. of this AD: The duct weld stress relieving procedure specified in Items G., H., and I. of the referenced service bulletins (and required by paragraph B. of this AD) may be accomplished in conjunction with the penetrant inspection required by this paragraph, and constitutes terminating action for the requirements of paragraph B.2. and B.3 of this AD for flanged ducts.

B. Prior to the accumulation of 3,000 flight cycles after accomplishment of the initial inspection required by paragraph A. of this AD, accomplish the following:

1. For titanium T-ducts: Replace titanium T-ducts with Inconel T-ducts in accordance with Boeing Service Bulletin 747-36-2059, dated June 3, 1983. Accomplishment of this replacement constitutes terminating action for the requirements of this AD.

2. For flanged ducts, except T-ducts: Conduct a penetrant inspection, proof pressure test, and duct weld stress relieving in accordance with the Accomplishment Instructions, Items A. through K., of Boeing Alert Service Bulletin 747-36A2074, Revision 3, dated May 11, 1989, or Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin. If the duct weld stress relieving has already been accomplished in accordance with AD 88-17-07 prior to the effective date of this AD, it constitutes terminating action for the requirements of this paragraph for flanged ducts.

3. For flangeless ducts: Conduct a penetrant inspection, proof pressure test, and duct weld stress relieving in accordance with the Accomplishment Instructions, Items A. through K., of Boeing Alert Service Bulletin 747-36A2074, Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin. If the duct weld stress relieving has already been accomplished in accordance with AD 88-17-07 prior to the effective date of this AD, conduct only a proof pressure test in accordance with Boeing Alert Service Bulletin 747-36A2074, Revision 4, dated September 13, 1990.

C. For ducts other than T-ducts: Replacement of all leading edge pneumatic ducts by kits in accordance with Boeing Alert Service Bulletin 747-36A2074, Revision 3, dated May 11, 1989, or Revision 4, dated September 13, 1990; or in accordance with Boeing Service Bulletin 747-36-2092, dated June 28, 1990; constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received copies of the service bulletins cited herein may obtain copies upon request from the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23965 Filed 10-10-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-193-AD]

Airworthiness Directives; British Aerospace Model BAe 146 100A and 200A Series airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certan British Aerospace Model BAe 146 100A and 200A series airplanes, which would require the installation of additional mass balance weights to the elevators forward of the hinge line. This proposal is prompted by reports of control column oscillations. This condition, if not corrected, could result in oscillations (flutter) of the elevators and subsequent structural damage.

DATES: Comments must be received no later than November 26, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-193-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian, for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

to be $1,238 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $192,588.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, AMN-113, and a copy sent to the

flexibility in the processing of these products and will promote honesty and fair dealing in the interest of consumers.

DATES: Comments by December 10, 1990. The agency proposes that any final rule that may be issued based on this proposal shall become effective 60 days after date of publication of the final rule in the Federal Register.

and received an extension of the canned green beans temporary permit (June 2, 1989; 54 FR 23705) to allow the firm to continue the test marketing while the agency takes action on the petition to amend the standard of identity.

I. Statement of Grounds

The petitioners provided the following

II. The Proposal

FDA has reviewed the petition and the supplementary information submitted by the petitioners. Based upon the information provided, FDA is proposing to amend the standard of identity for canned green beans and canned wax beans in § 155.120 to

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Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–193–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146 100A and 200A series airplanes. There have been recent reports of control column oscillations at 5½ Hz frequency. This condition, if not corrected, could result in oscillations (flutter) of the elevators and subsequent structural damage.

British Aerospace has issued Service Bulletin 55–7–00955D, Revision 2, dated January 22, 1990, which provides for installation of additional mass balance weights to elevators forward of the hinge line. These additional mass balance weights assist in the damping out of control column oscillations. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installation of additional mass balance weights to the elevators forward of the hinge line in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of required parts is estimated to be $1,238 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $192,588.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR part 39

Air transportation, Aircraft, Aviation safety, Safety.

The proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146 100A and 200A series airplanes, as listed in British Aerospace Service Bulletin 55–7–00955D, Revision 2, dated January 22, 1990, certified in any catagory. Compliance is required as indicated, unless previously accomplished.

To prevent oscillations (flutter) of the elevators, accomplish the following:

A. Within 120 days after the effective date of this AD, install additional mass balance weights to the elevators forward of the hinge line, in accordance with British Aerospace Service Bulletin 55–7–0095D, Revision 2, dated January 22, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, AMN–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, AMN–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington.

Issued in Renton, Washington, on November 28, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–23997 Filed 10–10–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 88P–0373]

Canned Green Beans and Canned Wax Beans; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standard of identity for canned green beans and canned wax beans to permit the optional use of glucono delta-lactone. Glucono delta-lactone will serve to lower the pH, reduce the processing time and temperature, and thereby enhance the color, flavor, and texture of the product. The proposal is based upon a petition submitted jointly by the Seymour Canning Co., the American National Can Co., and Finnsugar Biochemicals Inc. This action will provide greater flexibility in the processing of these products and will promote honesty and fair dealing in the interest of consumers.

DATES: Comments by December 10, 1990. The agency proposes that any final rule that may be issued based on this proposal shall become effective 60 days after date of publication of the final rule in the **Federal Register**

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0112.

SUPPLEMENTARY INFORMATION: Seymour Canning Co., Seymour, WI; American National Can Co., Chicago, IL; and Finnsugar Biochemicals, Inc., Schaumburg, IL; submitted a joint petition, dated October 26, 1988, requesting that FDA amend the standard of identity for canned green beans and canned wax beans (21 CFR 155.120) to permit the optional use of added glucono delta-lactone, either alone or in combination with other acidulants permitted by the standard. According to the petition, glucono delta-lactone acts as a pH control agent and serves to lower the equilibrium pH to below 4.6, reduce the time and temperature parameters for thermal processing, and enhance the color, texture, and flavor of the canned green beans and canned wax beans.

FDA published several notices in the **Federal Register** announcing the issuance of temporary marketing permits for canned green beans and canned wax beans deviating from the standard of identity because they contained added glucono delta-lactone. A notice published in the **Federal Register** of January 6, 1987 (52 FR 706) stated that a temporary permit had been issued to the Seymour Canning Co. to test market experimental packs of canned wax beans containing glucono delta-lactone. That permit was amended later (September 10, 1987; 52 FR 34304) to increase the quantity of test product and to expand the area of distribution. The permit to test market wax beans expired and was reissued (May 15, 1989; 54 FR 20925). FDA also published a notice in the **Federal Register** of October 22, 1987 (53 FR 39563), announcing that a temporary permit had been issued to Seymour Canning Co. to test market experimental packs of canned green beans containing added glucono delta-lactone. Seymour Canning Co. requested and received an extension of the canned green beans temporary permit (June 2, 1989; 54 FR 23705) to allow the firm to continue the test marketing while the agency takes action on the petition to amend the standard of identity.

I. Statement of Grounds

The petitioners provided the following grounds in support of amending the standard of identity for canned green beans and canned wax beans:

1. Glucono delta-lactone is generally recognized as safe, and is regulated as a direct food ingredient, affirmed as generally recognized as safe under 21 CFR 184.1318, for use as a pH control agent as defined in CFR 170.3(o)(23) and is used at levels not to exceed current good manufacturing practice. The current level, as determined by the petitioner as necessary to maintain an equilibrium pH below 4.6, ranges from 0.06 to 0.10 ounce per 16 ounces (or from 1.70 to 2.84 grams per 453.6 grams) net weight of the finished product (0.37 to 0.62 percent).

2. The standard for certain other canned vegetables in 21 CFR 155.200 provides for the use of optional safe and suitable organic acids. This standard provides for the use of vinegar, or any safe and suitable organic acid, for all vegetables to permit effective processing by heat without discoloration or impairment of the food article. Therefore, the standard currently provides for the use of glucono delta-lactone as a source of organic acid in beets, carrots, and mixed vegetables which were part of the Seymour market test described in the petition.

3. Glucono delta-lactone is added to reduce the pH of the product and thereby permit the utilization of lower time and temperature parameters for thermal processing. The primary benefits to the consumer are improved and sweeter flavor, a firmer texture, and improved color, particularly with yellow wax beans.

4. The use of glucono delta-lactone is supported by actual experience under the Seymour Canning Co.'s temporary marketing permits. Supplementary information submitted by the petitioner summarizes the results of market tests which include wax beans. The summary states that when standard wax beans were replaced in the market by wax beans prepared by the process utilizing glucono delta-lactone as the acidulant, sales increased dramtically and maintained a level more than double the sales of the standard product. Consumer reaction to the new product was favorable in terms of "crispness" and "freshness" as product attributes.

II. The Proposal

FDA has reviewed the petition and the supplementary information submitted by the petitioners. Based upon the information provided, FDA is proposing to amend the standard of identity for canned green beans and canned wax beans in § 155.120 to provide for the use of glucono delta-lactone as a safe and suitable optional ingredient. The agency believes that it is reasonable to provide for the use of added glucono delta-lactone as a pH control agent in canned green beans and canned wax beans. The additive is affirmed as generally recognized as safe in 21 CFR 184.1318 for use as a pH control agent when used at levels that do not exceed current good manufacturing practice. Accordingly, FDA is proposing to amend the standard of identity for canned green beans and canned wax beans in § 155.120 to provide for the use of glucono delta-lactone as set forth below.

In addition, FDA is proposing to update the method of analysis in 21 CFR 155.120(b)(2)(i) to refer to the latest edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 15th Ed. (1990), as well as reference the new address of the AOAC office.

III. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), FDA has reviewed this proposed rule to determine the impact on small businesses. The proposed rule provides increased flexibility to the producer, and permits the optional use of an additional safe and suitable pH control agent. FDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Request for Comments

Interested persons may, on or before December 10, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received

comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 155

Food grades and standards, Vegetables.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

sieve and the drained material. Record in grams (oz) the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

* * * * *

intended to revise the regulations for the registration of apprenticeship programs under the National Apprenticeship Act. Interested persons were requested to submit comments on or before October 23, 1990.

Because of the continuing interest in this proposal, the agency believes that it is desirable to extend the comment

criteria of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

List of Subjects in 32 CFR Part 811

Classified information, Motion pictures, Television.

Therefore, 32 CFR part 811 is proposed to be revised as follows:

(b) The sale of completed productions. Send requests for purchase of completed Air Force productions to the National Archives and Records Administration, National Audivisual Center, Information Office, 8700 Edgeworth Drive, Capitol Heights, MD 20722–3701.

(c) VI materials made for the Air Force Office of Special Investigations (AFOSI) for use in an investigation or a

(4) Nonprofit organizations.

(5) Agencies outside the Federal Government.

(6) The general public (not associated with the news media).

(b) The Secretary of the Air Force, Office of Legislative Liaison (SAF/LL), arranges for the release of VI material through SAF/PA upon request from

comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 155

Food grades and standards, Vegetables.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 155 be amended as follows:

PART 155—CANNED VEGETABLES

1. The authority citation for 21 CFR part 155 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 155.120 is amended by redesignating existing paragraphs (a)(3)(xiii) and (a)(3)(xiv) as paragraphs (a)(3)(xiv) and (a)(3)(xv), respectively; by adding a new paragraph (a)(3)(xiii); and by revising paragraph (b)(2)(i) to read as follows:

§ 155.120 Canned green beans and canned wax beans.

(a) * * *
(3) * * *
(xiii) Glucono delta-lactone.
* * * * * *
(b) * * *
(2) * * *

(i) Determine the gross weight of the container. Open and distribute the contents of the container over the meshes of a U.S. No. 8 circular sieve with openings of 2.36 mm (0.0937 in), which has been previously weighed. The diameter of the sieve is 20.3 cm (8 in) if the quantity of the contents of the container is less than 1.36 kg (3 lb) and 30.5 cm (12 in) if such quantity is 1.36 kg (3 lb) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th Ed. (1990), Table 1, "Nominal Dimensions of Standard Test Sieves (USA Standard Series)," page xvi, under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the Association of Official Analytical Chemists, Suite 400, 2200 Wilson Blvd., Arlington, VA 22201-3301, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC. Without shifting the material on the sieve, incline the sieve 17 to 20° to facilitate drainage. Two minutes after drainage begins, weigh the sieve and the drained material. Record in grams (oz) the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

* * * * *

Dated: August 30, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-24000 Filed 10-10-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 29

Labor Standards for the Registration of Apprenticeship Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for filing comments regarding the proposed rule to revise the regulations for the registration of apprenticeship programs under the National Apprenticeship Act. This action is taken to permit additional comment from interested persons.

DATES: Comments must be received on or before November 23, 1990.

ADDRESSES: Send written comments on the proposed rule and the collection of information to: Assistant Secretary of Labor, Employment and Training Administration, U.S. Department of Labor, room N-4649, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Director, Bureau of Apprenticeship and Training. Written comments on the collection of information requirements also should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Minor R. Miller, Acting Director, Bureau of Apprenticeship and Training. Telephone: (202) 535-0540 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 1990, (55 FR 34868-34876), the Department of Labor published a proposed rule intended to revise the regulations for the registration of apprenticeship programs under the National Apprenticeship Act. Interested persons were requested to submit comments on or before October 23, 1990.

Because of the continuing interest in this proposal, the agency believes that it is desirable to extend the comment period for all interested persons. Therefore the comment period for the proposed rule, revising 29 CFR part 29 (Labor Standards for the Registration of Apprenticeship Programs) is extended through November 23, 1990.

Signed at Washington, DC this 3rd day of October 1990.

Robert T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 90-23094 Filed 10-10-90; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 811

RIN 0701-AA26

Release, Dissemination, and Sale of Visual Information Materials

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force revised the regulation establishing policy on the release, dissemination, and sale of Air Force visual information (VI) materials. It explains how reproductions may be sold, distributed, or released. This revision updates terminology, functional addresses and information on requesting visual material. The purpose of this notice is to inform the public of these changes.

DATES: Comments must be submitted on or before November 13, 1990.

ADDRESSES: HQ USAF/SCV, Washington, DC 20330.

FOR FURTHER INFORMATION CONTACT: Ray Dabney, HQ USAF/SCV, Washington, DC 20330, telephone (202) 695-0010.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act (5 U.S.C. 601-611), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

List of Subjects in 32 CFR Part 811

Classified information, Motion pictures, Television.

Therefore, 32 CFR part 811 is proposed to be revised as follows:

PART 811—RELEASE, DISSEMINATION, AND SALE OF VISUAL INFORMATION MATERIALS

Sec.
811.0 Purpose.
811.1 Exclusions.
811.2 Terms explained.
811.3 Agencies authorized to release VI materials.
811.4 Policy on the dissemination and sale of VI products.
811.5 Restrictions on the use of government VI records.
811.6 Procedures for requesting VI materials.
811.7 How to collect fees.
811.8 Schedule of fees.
811.9 Requests for motion media.
811.10 Requests for still media.

Authority: 10 U.S.C. 8013

§ 811.0 Purpose.

This part establishes policy on the release, dissemination, and sale of Air Force visual information (VI) materials. It explains how reproductions may be sold, distributed, or released. It implements 32 CFR 286 (Department of Defense (DOD) Instruction 7230.7), DOD Directive 4000.19, DOD Directive 7290.3-M, and DOD Directive 5040.2. It is used with 32 CFR part 806 (AFR 12-30, Air Force Freedom of Information Act Program); part 812 (AFR 12-32, Schedule of Fees for Copying, Certifying, and Searching Records and other Documentary Material); AFR 177-108,[1] Paying and Collecting Transactions at Base Level; part 837 (AFR 190-1, Public Affairs Policies and Procedures); and AFR 205-1, Information Security Program. It applies to all Air Force personnel including United States Air Force Reserve and Air National Guard units and members. The term major command (MAJCOM), when used in this part, includes separate operating agencies and direct reporting units.

§ 811.1 Exclusions.

This volume does not apply to:

(a) The sale of aerial reconnaissance or cartographic type photography. Request this photography from the Defense Mapping Agency/ODS, ATTN: DDCP, Washington, DC 20315-0020.

[1] Air Force publications are available through NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(b) The sale of completed productions. Send requests for purchase of completed Air Force productions to the National Archives and Records Administration, National Audiovisual Center, Information Office, 8700 Edgeworth Drive, Capitol Heights, MD 20722-3701.

(c) VI materials made for the Air Force Office of Special Investigations (AFOSI) for use in an investigation or a counterintelligence report. Part 806 and AFR 124-4, Requesting AFOSI Investigations and Safeguarding, Handling and Releasing Information from AFOSI Reports, show who may use these VI materials.

(d) VI materials made for aircraft and missile mishap investigators for investigations of Air Force aircraft and missile mishaps per AFR 127-4, Investigating and Reporting US Air Force Mishaps. Part 806 and AFR 124-4 show who may use these materials.

§ 811.2 Terms explained.

The following definitions apply to this part.

(a) *Release.* The responsible Air Force agency approval to disseminate copies of Air Force VI materials to public agencies, commercial concerns, governments, and so forth. Air Force agencies with releasing authority are listed in § 811.4 of this part. Depending on subject matter, some VI materials may receive automatic or prerelease approval.

(b) *Dissemination.* The DOD Records Center distribution of VI materials approved for release by the authorized Air Force agency. VI materials may be sold or distributed, with or without charge, depending on the circumstances listed in § 811.5 of this part.

(c) *Sale.* The collection of money by the DOD records centers for VI products disseminated to activities outside the Federal Government. See § 811.5 of this part for determining when the sale of materials is warranted.

(d) *VI materials.* Normally, still photography, motion pictures, and videos acquired by Air Force organizations as official documentation of Air Force operations and activities, and stored by the DOD still and motion media records centers.

§ 811.3 Agencies authorized to release VI materials.

(a) According to part 837 of this chapter (AFR 190-1), the Secretary of the Air Force, Office of Public Affairs (SAF/PA), may release VI materials to:

(1) News media, commercial publications, or electronic mail.
(2) Motion picture and television entertainment companies.
(3) Industries.
(4) Nonprofit organizations.
(5) Agencies outside the Federal Government.
(6) The general public (not associated with the news media).

(b) The Secretary of the Air Force, Office of Legislative Liaison (SAF/LL), arranges for the release of VI material through SAF/PA upon request from members of Congress and provides such material for official use.

(c) The International Affairs Division (HQ USAF/CVAII) (or, in some cases, MAJCOM Foreign Disclosure Office) must authorize release of classified and unclassified materials for use by foreign governments and international organizations or their representatives.

§ 811.4 Policy on the dissemination and sale of VI products.

(a) Sale of VI material. Although copies of Air Force VI products may be sold, Air Force policy prohibits competition with commercial industry. When VI materials are sold outside the Federal Government, charges and fees must be assessed according to part 812.

(b) Dissemination of VI material to state and local governments. Copies of VI materials that meet the requirements of this part may be loaned or sold to state and local governments, or any tax exempt organization under title III of the 1968 Intergovernmental Cooperation Act. The requester must certify that the materials are not available from commercial sources. The Air Force Central Visual Information Library (AFCVIL), managed by 1352d Audiovisual Squadron, Norton AFB CA 92409-5996, is the central source for loan of current, completed Air Force VI productions.

(c) Disseminating and selling activities. Dissemination and sale of Air Force VI documentation is accomplished by the DOD Motion Media Records Center, operated by the 1352d Audiovisual Squadron (AAVS) (MAC), Norton AFB CA 92409-5996 and the DOD Still Media Records Center, operated by the US Navy at the Anacostia Naval Station, Washington DC 20374-1681.

(d) Sale of original VI material. Original VI material is not for sale. Reproductions of the original may be sold. HQ USAF/SCV may authorize the loan of copies or duplicates of original material for Federal Government use. SAF/PA may lend copies of original material to agencies outside the Federal Government and to the public.

(1) DOD VI records centers use only government-owned VI material in servicing approved requests for dissemination and sale. The use of nongovernment VI material requires written permission from the owner.

(2) Production of material for sale must not stop or slow official Air Force work or be used to justify facility expansion or additional manpower.

(e) Requests and services exempt from fees. According to part 813, the sources below are exempt from paying fees if

from the records centers must also be observed:

(a) Materials must not be used to endorse a commercial service or product.

(b) Rights to officials Air Force VI material may not be claimed by any other government agency or person.

(c) The waiver of proprietary and

§ 811.8 Schedule of fees.

Fees are established by DOD and are as follows:

(a) **Still photography. Still pictorial or documentary photographic prints.** Unlisted standard sizes of prints may be furnished, if available, at prevailing contract or activity rates.

Quantity; Price Per Print	
1-10	$10.00
11-20	9.00
21-50	8.00
51-100	7.00
101-200	6.00
201-500	5.00
501-1000	4.00
1001-2000	3.00
2001-5000	2.00
5001-10000	1.00
10001-50000	.50
50001-100000	.25
100001 and over	.10

Note: DOD Still Records Center photographic services are not normally done in house by DOD. Charges for processing and services will be at prevailing contract or commercial rates or at government cost, whichever is higher. All prices are subject to change without notice. Fees for copies of photographs which are part of a patient's medical record should be coordinated with the Patient Affairs Officer at the Medical

	Price per foot contact
Color:	
16mm work print (positive work from an original negative)	$.20
16mm reversal work print	.20
16mm duplicate negative (from master positive)	.60
16mm interpositive/internegative	.85
16mm internegative (from reversal	

	Price per foot contact
Searching (first hour minimum then fraction thereof)	100.00/25.00
16mm film to videotape transfer	[2] 5.00
Videotape to videotape transfer	[2] 5.00

[1] + Basic price.
[2] Per minute.

nongovernment VI material requires written permission from the owner.

(2) Production of material for sale must not stop or slow official Air Force work or be used to justify facility expansion or additional manpower.

(e) Requests and services exempt from fees. According to part 813, the sources below are exempt from paying fees if funds are available for producing the material, production does not impair the mission of the furnishing agency, all clearances and releases specified by this part have been obtained, and the work can be done during normal duty hours. When requests cannot be accomplished within the above criteria, fees must be paid by the requester.

(1) DOD and other government agencies requesting VI materials for official activities (DOD Directive 4000.19 and DOD Directive 5040.2).

(2) Members of Congress requesting VI materials for use in official activities.

(3) VI records center materials or services furnished according to law or Executive order.

(4) Federal, state, territorial, county, or municipal governments, or their agencies, for functions related to or furthering an Air Force or other DOD objective.

(5) Nonprofit organizations for functions related to public health, education, or welfare.

(6) Members of the Armed Forces in a casualty status, their next of kin, or authorized representative, when the requested VI material relates to the member and does not compromise classified information or the work of an accident investigation board.

(7) The general public, to further the Armed Forces recruiting program or public understanding of the Armed Forces, when such VI materials or services are determined by SAF/PA to be in the best interest of the Air Force.

(8) Incidental or occasional requests for VI records center materials or services (including requests from residents of foreign countries) when it is determined that fees would be inappropriate. (For the distribution of VI materials to foreign nations, see AFR 190–1).

(9) Legitimate news organizations working on news-related productions, news documentaries, or print products intended to inform the public on Air Force activities.

§ 811.5 Restrictions on the use of government VI records.

Activities sending materials to the DOD VI records centers must make sure that any limitation on use is noted on the materials. The following restrictions on VI material disseminated or sold from the records centers must also be observed:

(a) Materials must not be used to endorse a commercial service or product.

(b) Rights to officials Air Force VI material may not be claimed by any other government agency or person.

(c) The waiver of proprietary and privacy rights cannot be granted with the sale or release of VI materials unless these rights and the rights of transfer are owned by the Air Force.

(d) VI materials received from Air Force contractors may be released, disseminated, or sold if not identified as proprietary material in the applicable contract.

(e) When provisions of formal agreements between the Air Force and other government agencies on release of VI materials differ from this part, the provisions of the formal agreements apply.

§ 811.6 Procedures for requesting VI materials.

(a) Informal inquiries may be made to the appropriate DOD record center on VI materials available in broad subject areas. Informal inquiries are not formal requests. Research of, or access to, materials are provided only in response to a formal request. Inquiries regarding motion picture or television materials should be sent to the DOD Motion Media Records Center (1352 AVS/DO, Norton AFB CA 92409–5006). Inquiries regarding still photo materials should be sent to the DOD Still Media Records Center, ATTN: Code SSRC, Washington DC 20374–1681.

(b) Submit formal requests according to § 811.9 and § 811.10. When notified of approval, the requester may communicate directly with the DOD Motion Media Records Center to select materials. Air Force still photography customers must contact the 1361st AVS/DOSC, Andrews AFB DC 20334 to select still photo materials.

§ 811.7 How to collect fees.

(a) When appropriate, the Air Force or DOD activity making the sale collects the funds in advance. Exceptions include requirements where actual cost cannot be determined until work is completed. For example, television and motion picture services where the charge is by minute or footage.

(b) The fees due the United States must be paid by cash, United States Treasury check, certified check, cashier's check, bank draft, or postal money order.

§ 811.8 Schedule of fees.

Fees are established by DOD and are as follows:

(a) Still photography. Still pictorial or documentary photographic prints. Unlisted standard sizes of prints may be furnished, if available, at prevailing contract or activity rates.

	Quantity; Price Per Print			
	1–9	10–20	21–50	50+
8"×10" single weight (RC type) paper	$4.50	$3.25	$2.50	$1.75
11"×14" single weight (RC type) paper	9.00	7.00	5.00	4.00
16"×20" single weight (RC type) paper	19.00	15.00	12.00	9.50
20"×24" single weight (RC type) paper	30.00	25.00	20.00	15.00
8"×10" single weight color paper	11.00	7.50	3.50	3.00
11"×14" single weight color paper	17.00	9.00	6.50	5.50
16"×20" single weight color paper	35.00	25.00	14.00	11.50
35mm color transparency slide made from color negative	5.00	3.50	3.00	3.00
35mm duplicate from 35mm slide	1.00	.50	.50	.45
Print mounted on 16"×20" cardboard	[1] 8.00			
Print mounted on 20"×24" cardboard	[1] 12.00			
8"×10" color transparencies	[2] 20.00			
4"×5" color transparencies	4.50			
4"×5" B&W negative	2.00			
70mm color negative	7.50			

[1] Unit price of print.
[2] (First); 16.00 each additional.

Note: DOD Still Records Center photographic services are not normally done in house by DOD. Charges for processing and services will be at prevailing contract or commercial rates or at government cost, whichever is higher. All prices are subject to change without notice. Fees for copies of photographs which are part of a patient's medical record should be coordinated with the Patient Affairs Officer at the Medical treatment facility.

(b) Motion picture.

	Price per foot contact
Color:	
16mm work print (positive work from an original negative	$.20
16mm reversal work print	.20
16mm duplicate negative (from master positive)	.60
16mm interpositive/internegative	.85
16mm internegative (from reversal original	.70
16mm tab-to-tab printing	[1] .20
Black and White:	
16mm master positive (fine grain)	.25
16mm duplicate negative	.25
16mm tab-to-tab printing	.10
Miscellaneous:	
Magnetic tape—dub from 16mm film	$65.00

	Price per foot contact
Searching (first hour minimum then fraction thereof)	100.00/25.00
16mm film to videotape transfer	[2] 5.00
Videotape to videotape transfer	[2] 5.00

[1] + Basic price.
[2] Per minute.

Note: Some motion picture services are not done in house by the DOD. Charges for these types of processing and services will be at prevailing contract or commercial rates or at government cost, whichever is higher. Prices are subject to change without notice.

BILLING CODE 3810-01-M

§811.9 Request for motion media.

RULE	A	B	C	D	E
		and material requested is			
				then furnish	and send

§811.10 Requests for still media.

RULE	A	B	C	D	E
		and material requested is			
				then furnish	and send

§811.9 Request for motion media.

RULE	A	B	C	D	E
		and material requested is			
	If the requester is	unclassified	classified	then furnish in writing the	and send the request to
1	news media	X	--	--	SAF/PA, Wash DC 20332-6468 for regional, national or international release; servicing PA for local release.
2	the general public including entertainment, documentary, advertisers, industrial media producers, editors & writers	X	--	sequence outline of script; intended use of the film/video; type of film stock needed (neg. interneg. print, 3/4" video tape); approx number of screen feet	SAF/PA, Wash DC 20332-6468
3	an Air Force or other Federal Government agency	X	--	intended use of the film/video type stock needed (neg, interneg, print, 3/4" video tape); approx number of screen feet/minutes	1352 AVS/DO, Norton AFB CA 92409-5996
4	a Federal Government contractor (to meet VI requirements specified in federal contract)	X	--	intended use of the material; type of material needed (print, neg, interneg, video); required number of prints, slides, negs, etc.; a full justification for access to classified material (if applicable)	USAF plant representative.
5	an Air Force contractor (to meet VI requirements specified in a USAF contract)	--	X		USAF plant representative
6	a Federal Government contractor (to provide material for public release)	X	--		
7	USAF plant representative (to provide material to Federal Government contractor that is specified in federal contract)	X	--		1352 AVS/DO, Norton AFB, CA 92409-5996
8	USAF plant representative (to provide material to Federal Government contractor for release to public)	X	--		SAF/PA, 1352 AVS/DO IN TURN
9	USAF plant representative (to provide material to an Air Force contractor that was specified in USAF contract)	--	X		AFLC (PMK) 1352 AVS/DO IN TURN
10	non-Federal Government agency (state, county, territorial, municipal)	X	--	intended use of VI materials; type of film, video tape stock needed (neg, interneg, print, 3/4", 1", etc.); approx number of screen feet/minutes; a certification that requested material cannot be procured reasonably and expeditiously through normal business channels	SAF/PA, Wash DC 20332-6468
11	members of Congress	X	X	intended use of VI products; type of film/video stock needed (neg, interneg, print, 3/4", 1", etc.); approx number of screen feet; full justification for access to classified material (if applicable)	SAF/LL, Wash DC 20332-6468
12	foreign governments, international organizations or their representatives	X	X		HQ USAF/CVAH or MAJCOM (if delegated authority)
13	foreign nationals or foreign industries (other than representatives of foreign governments or international organizations)	X	--		ICA office serving the foreign country (see note)
14	same as 13	--	X		HQ USAF/CVAII or MAJCOM (if delegated authority)
15	an Air Force activity	--	X		MAJCOM Functional OPR coordinated with MAJCOM VI Manager 1352 AVS/DO IN TURN
16	other non-Air Force activities	--	X	intended use of VI product; type of film stock/video tape needed (neg, interneg, print, 3/4", 1" tape, etc.); approx number of screen feet; full justification for access to classified material; a statement describing the measures to be taken—at least equal to those in DOD 5200.1R/AFR 205-1, to safeguard and protect the material against unauthorized disclosure	HQ USAF/SCV, Wash DC 20330-5190

Note: Requests originating within the United States may be sent to SAF/PA, Wash DC 20330-1080, for coordination with HQ USAF/CVAII and ICA clearance.

§811.10 Requests for still media.

RULE	A	B	C	D	E
		and material requested is			
	If the requester is	unclassified	classified	then furnish in writing the	and send the request to
1	news media	X	--		SAF/PA, Wash DC 20332-6468 for regional, national or international release, servicing PA for local release.
2	general public (including entertainment, documentary, advertisers, industrial media producers, editors, and writers)	X	--	story outline or ad copy; intended use of the material; type of material needed (print, neg, interneg, etc.); required number of prints, slides, etc.	SAF/PA, Wash DC 20332-6468
3	other DOD or Federal Government agency	X	--	intended use of material, type of material needed (print, neg, interneg, etc.), required number of prints, slides, etc., a full justification for access to classified material (if applicable)	DOD Still Media Records Center ATTN: Code SSRC Anacostia Naval Station Wash DC 20374-1681
4	Air Force activity	X	--		1361 AVS/DOSC, Andrews AFB DC 20331-5997
5	Federal Government contractor (to meet VI requirements specified in federal contract)	X	--		USAF plant representative
6	Federal Government contractor (to provide material for public release)	X	--		USAF plan representative
7	Air Force contractor (to meet VI requirements specified in a USAF contract)	--	X		USAF plant representative
8	USAF plant representative (to provide material to an Air Force contractor that is specified in a USAF contract)	--	X		AFLC/PMK, 1361 AVS/DOSC, Andrews AFB, DC 20331-5997 IN TURN
9	USAF plant representative (to provide material to a Federal Government contractor that is specified in a federal contract)	X	--		1361 AVS/DOSC, Andrews AFB, DC 20331-5997
10	USAF plant representative (to provide material to Federal Government contractor for release to public)	X	--		SAF/PA, 1361 AVS/DOSC, Andrews AFB, DC 20331-5997 IN TURN
11	non-Federal Government agency (state, county, territorial, municipal)	X	--	intended use of the material; type of material needed (neg, print, interneg, etc.); required number of prints, slides, etc; certification that requested material cannot be procured reasonably and expeditiously through ordinary business channels; full justification for access to classified material	SAF/PA, Wash DC 20332-6468
12	members of Congress	X	X		SAF/LL, Wash DC 20332-6468
13	foreign governments, international organizations or their representatives	X	X	intended use of the material; type of material needed (print, neg, interneg, etc.); required number of prints, slides, etc.; a full justification for access to classified material (if applicable)	HQ USAF/CVAII or MAJCOM (if delegated authority)
14	foreign nationals or foreign industries other than representatives of foreign governments or international organizations	X	--		ICA office serving the foreign country (see note), 1361 AVS/DOSC, Andrews AFB DC 20331-5997, IN TURN
15	same as 14	--	X		HQ USAF/CVAII or MAJCOM (if delegated authority)
16	Air Force activity	--	X		MAJCOM Functional OPR in conjunction with MAJCOM VI Manager, 1361 AVS/DOSC, IN TURN
17	non-Air Force activity	--	X	intended use of the material; type of material needed (neg, print, interneg, etc.); a full justification for access to classified material; a statement describing the measures taken to protect the material against unauthorized disclosure (must be at least equal to those in DOD 5200.1-R/AFR205-1)	HQ USAF/SCV, Wash DC 20330-5190

Note: Requests originating within the United States may be sent to SAF/PA, Wash DC 20332-6468 for coordination with HQ USAF/CVAII and PA clearance.

[FR Doc. 90-23055 Filed 10-10-90; 8:45 am]
BILLING CODE 3910-01-C

Corps of Engineers, Department of the Army

33 CFR Part 325

RIN 0710-AA23

Proposal To Amend Permit Regulations for Controlling Certain Activities in Waters of the United

present Corps regulatory program fee structure. On November 23, 1988, the Department of Defense (DOD), Office of the Inspector General, issued an audit report on user charges for DOD activities. This report concluded that the current Corps regulatory fee structure did not recover a sufficient level of the costs associated with operation of the

performing the analytical and administrative tasks associated with specific types of regulatory authorizations such as standard permits, letters of permission and general permits. We also propose fees for the costs incurred in performing several significant special services including wetlands jurisdictional delineations,

and Wildlife Coordination Act, Coastal Zone Management Act and other relevant Federal laws and Executive Orders. The evaluation also includes a public interest review. These applications require extensive coordination and work and are therefore charged a higher fee.

b. Applications for minor activities

obtaining a permit decision or other regulatory service; there are no hidden costs and only limited supplemental charges. Further, supplemental fees are charged only if any of the three identified special services are required: A wetlands jurisdictional delineation within an activity site, the conduct of a public hearing, or the preparation of an

information to issue a public notice (See 33 CFR 325.3(a)) and the total application fee has been paid (See 33 CFR 325.1(f)(2)). The issuance of a public notice will not be delayed to obtain information necessary to evaluate an application.

* * * * *

(f) *Fees.* (1) Fees are required for the

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Corps of Engineers, Department of the Army

33 CFR Part 325

RIN 0710-AA23

Proposal To Amend Permit Regulations for Controlling Certain Activities in Waters of the United States

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Proposed rule

SUMMARY: The Department of the Army (DA) is proposing to amend the regulations for the regulatory program of the Corps of Engineers at 33 CFR 325.1(f). The revisions will increase fees for permit evaluations, and add fees for making wetlands jurisdictional delineations, holding public hearings, and preparing environmental impact statements when required for specific permit applications.

The proposed fees are non-refundable (except as described in paragraph 4. b. below) and are based on an analysis of costs incurred by the Corps in implementing its regulatory program. Costs associated with a typical permit application include issuance of a public notice, coordination of the permit application with other agencies and the general public, the evaluation and documentation of an activity's impacts, and the preparation and issuance of documents authorizing or denying a proposed activity. The proposed fees reflect those costs and offset some costs incurred by the Corps in providing the above services to permit applicants and prospective permit applicants. The proposed fees will not affect or in any way reduce the costs an applicant may incur when providing the Corps with information it needs to complete its work. Further, fees paid for one service do not offset, wholly or in part, the fee required for another service. Fees periodically will be reevaluated and over time increased to recover a greater share of the cost of the Corps associated with the operation of the Regulatory program.

DATES: Written comments must be received by December 10, 1990.

ADDRESSES: Office of the Chief of Engineers, ATTN: CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Chowning, Regulatory Branch, (202) 272-1781.

SUPPLEMENTARY INFORMATION: The fees proposed herein were formulated in response to noted deficiencies in the present Corps regulatory program fee structure. On November 23, 1988, the Department of Defense (DOD), Office of the Inspector General, issued an audit report on user charges for DOD activities. This report concluded that the current Corps regulatory fee structure did not recover a sufficient level of the costs associated with operation of the regulatory program, nor did it appropriately reflect the value of the services provided by the Government.

The statutory authority for the establishment of the regulatory fee structure is set forth in the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, and implementing guidance is provided by the Office of Management and Budget in Budget Circular No. A-25. The IOAA directs agencies that provide a "service or thing of value" to recover fees to offset their administrative costs to the maximum extent practicable, but requires that such fees be "fair" and be based on:

1. Costs incurred by the Government to provide the service or thing of value;
2. The value of the service or thing to the recipient;
3. Public policy or interest served; and
4. Other relevant facts.

The fees proposed herein by the Corps of Engineers to offset partially the costs of administering its regulatory program meet the criteria of the IOAA. The proposed fees are based on average costs incurred by the Corps of Engineers in evaluating applications for standard or general permits, or for the provision of specific services associated with the evaluation of a particular permit application.

Value is conferred upon permit recipients since issuance of a permit authorizes the utilization of waters of the United States for private purposes and benefits. By protecting the integrity of water resources the regulatory process also helps protect the property value of the proposed site. Further, either a permit issuance or denial conveys the benefits of ensuring compliance with statutory requirements and providing a measure of protection from potential litigation.

This proposal reflects several significant considerations:

1. The proposal fees are based on the average costs incurred in the technical evaluation and administrative processing of a permit application, a wetlands jurisdictional delineation, or other service. The proposed fees reflect the approximate staff effort required to complete the evaluation of typical regulatory actions; in effect, they constitute a service fee based on the effective labor costs incurred in performing the analytical and administrative tasks associated with specific types of regulatory authorizations such as standard permits, letters of permission and general permits. We also propose fees for the costs incurred in performing several significant special services including wetlands jurisdictional delineations, public hearings, and environmental impact statements. Nationwide, the Corps annually evaluates approximately 15,000 permit applications, conducts 25,000 jurisdictional delineations, prepares fewer than 50 environmental impact statements, and holds fewer than 50 public hearings. When applicants or prospective applicants make wetlands jurisdictional delineations or prepare environmental impact statements which are acceptable to the Corps, fees may be reduced. We do not require a fee where the costs to the Corps are small and difficult to quantify.

2. These cost evaluations resulted in the proposed fees being based on the type of activity as described below:

a. Commercial activities as defined at 33 CFR 325.1(f)(1)(iii) are generally large in scope, complex, pose substantial impacts, generate controversy and require intensive evaluation. Consequently, these activities require a high level of regulatory review which results in increased costs.

b. Noncommercial activities as defined at 33 CFR 325.1(f)(1)(iii) are generally narrower in scope and impacts, less controversial, less complex, and require less staff effort than commercial activities. Thus, proposed fees for noncommercial activities are lower because the Corps incure less costs when evaluating such activities.

c. After-the-fact activities are generally more difficult to evaluate, and the proposed fees provide for a surcharge where all or a portion of the work has been undertaken prior to obtaining the requisite Department of the Army permit. The increased fee is justified by the additional effort required to perform a reconstruction analysis of the activity site to determine the values and functions that existed prior to the commencement of the unauthorized work, and to what degree any of those characteristics may be restored onsite or replicated at another site.

3. The cost evaluation also led to the proposed fees being based on the type of authorization being sought:

a. Applications for standard permits are individually evaluated to ensure compliance with the Clean Water Act, National Environmental Policy Act, Fish and Wildlife Coordination Act, Coastal Zone Management Act and other relevant Federal laws and Executive Orders. The evaluation also includes a public interest review. These applications require extensive coordination and work and are therefore charged a higher fee.

b. Applications for minor activities which can be reviewed under abbreviated regulatory procedures, i.e., letters of permission, nationwide permits or regional general permits, must comply with the same laws cited in 3. a. above. However, these applications can be managed more programmatically with less controversy and thus each authorization costs the Corps less. Many minor activities are authorized by general permits with no fee requirements. We consider a fee appropriate, however, if reporting is required to ensure compliance with the terms of the permit or if the applicant requests that some administrative action be taken that requires time and work effort (e.g., letters of verification from the Corps). No distinction is drawn between commercial or noncommercial activities in these cases, since the time and effort to verify compliance with the general permit is essentially the same.

4. Exceptions to charging fees have been provided as follows:

a. Pursuant to 31 U.S.C. 9701(a) the proposed regulations provide that Federal agencies are exempt from any fee.

b. District Engineers may waive the requirement for a fee at his discretion in the following circumstances:

(1) A fee to be charged to a State or local government entity may be waived when the District Engineer determines that under the principles of comity a fee is not warranted. "Principles of comity" refers to cases where the State or local government is authorized to charge the Corps a regulatory fee, but chooses to waive the requirement for the Corps. In such cases the District Engineer may determine that it would be appropriate to reciprocate the waiver.

(2) The fees may be reduced or waived for standard permit applications where the District Engineer determines that an applicant's activity will be minor in nature, noncontroversial and the required fee is disproportionate to the scope of the work. Such action would be taken to avoid undue hardship on permit applicants.

5. Major objectives of the proposed fees are equity, administrative simplicity, and predictability. To ensure these objectives, a fixed-fee is desirable so that the applicant will know, in advance, the approximate cost of obtaining a permit decision or other regulatory service; there are no hidden costs and only limited supplemental charges. Further, supplemental fees are charged only if any of the three identified special services are required: A wetlands jurisdictional delineation within an activity site, the conduct of a public hearing, or the preparation of an environmental impact statement. Finally, we are requiring that fees are paid prior to the evaluation of a permit application, the delineation of wetlands, or initiation of other special services requiring a fee. Fees are nonrefundable.

We estimate that the proposed fees would result in the recovery of 20 percent of the costs for implementation of the regulatory program. We developed the proposal after considering the costs of administering the program and providing the services listed, as well as fairness to the recipients of these services.

Note 1.—The Department of the Army has determined that the proposed regulations do not contain a major proposal requiring the preparation of a regulatory impact analysis under E.O. 12291.

Note 2.—The Department of the Army has determined that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 325

Fees, Permits, Permit applications, Wetlands jurisdictional delineations, Public hearing, Environmental impact statement, Environmental protection, Navigation, Water pollution control, Waterways, Wetlands.

Dated: September 11, 1990.

Approved

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

For the reasons set out in the preamble, 33 CFR part 325 is proposed to be amended as follows:

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

1. The authority citation for part 325 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413; and 31 U.S.C. 9701.

2. Section 325.1 is amended by revising paragraphs (d)(9) and (f) to read as follows:

§ 325.1 Application for permits.

* * * * *

(d) * * *

(9) *Complete application.* An application is complete when the District Engineer receives sufficient information to issue a public notice (See 33 CFR 325.3(a)) and the total application fee has been paid (See 33 CFR 325.1(f)(2)). The issuance of a public notice will not be delayed to obtain information necessary to evaluate an application.

* * * * *

(f) *Fees.* (1) Fees are required for the review and evaluation of permit applications under section 404 of the Clean Water Act, sections 9 and 10 of the Rivers and Harbors Act of 1899, and section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended. Additionally, fees are required for verification that activities are authorized by general permits, permit modifications, and other special services. The final decision concerning the basis and amount of a fee shall be solely the responsibility of the district engineer. Federal agencies will not be required to pay any fee in connection with permit applications and evaluations. State or local government agencies may receive a waiver from payment of fees at the sole discretion of the District Engineer. All applicable fees are nonrefundable, irrespective of whether the Corps final decision is to issue or deny the requested permit.

(i) *Waiver or reduction of fees.* The District Engineer may, in his sole discretion, waive the fee, or some portion thereof, upon written request for a waiver from the applicant, submitted at the time of application, if:

(A) In the case of a State or local government, or agency thereof, the District Engineer determines that under principles of comity the fee is not warranted; or

(B) The District Engineer determines that the fee is excessive relative to nature and scope of the proposed activity for which the permit is sought.

(ii) *Type of permit.* Standard permits are authorizations issued in accordance with the procedures of 33 CFR 325.2(a)(1). A Letter of Permission is an authorization issued in accordance with 33 CFR 325.2(e). General permits are defined at 33 CFR 322.2(f).

(iii) *Type of activity.* (A) Commercial activities are those where the planned or ultimate purpose of the activity is commercial or industrial in nature and is in support of operations that charge for the production, distribution, or sale of goods or services.

(B) Noncommercial activities are those that have no connection with a commercial enterprise and provide personal benefits, or involve commercial activities that are (*1*) narrow in scope and impacts; (*2*) noncontroversial; *and* (*3*) require a level of staff effort that

approximates that expended in the evaluation of noncommercial applications. Examples of small scale activities might include small farming operations or certain activities related to small family businesses; however, it must be determined by the District Engineer that the activity in question meets the three characteristics listed above.

(C) After-the-fact activities are those where all the work or a portion thereof has been undertaken prior to obtaining the requisite Department of the Army permit.

(iv) *Permit modifications.* All requests for permit modifications, including time extensions and transfers to another name, will require a fee of $100. In addition, modifications needing a public notice will be charged the full application fee from Table 1.

(2) *Application fees.*—(i) *General procedures.* Each application for a permit shall be accompanied by at least a $100 minimum application fee, and if appropriate, a request for waiver of the fee. No application for a permit or request for a letter of verification that an activity is authorized by a general permit will be accepted for evaluation without the minimum $100 being remitted. After the application has been examined and a determination made as to the specific type of permit required, the applicant will be notified prior to initiation of the evaluation process if any additional fee is required or if the waiver of fee is granted. Unless the District Engineer receives the required fee within thirty (30) days after the applicant receives written notification of the amount required, the application will be returned without evaluation, and the applicant forfeits the initial minimum fee. If a waiver or partial waiver is granted, the appropriate amount of any initial minimum fee will be refunded. To help ensure that delays will not result while fees are being determined, the applicant may, in advance and in consultation with the Corps, determine the type of permit that will be required and submit the full amount of the application fee with the application. Fees for general permits are required when there is a request for a letter of verification that an activity is covered by a general permit or there are reporting requirements in a general permit the result in a letter of verification. No fee is required for authorization under other general permits.

(ii) *Fee amounts.* The fees charged for permit applications are shown in Table 1 below:

TABLE 1

Type	Commercial	Noncommercial	After-the-Fact
Standard Permit	$2,000	$500	+30%
Letter of Permission	300	100	+30%
General Permit	100	100	—

(3) *Supplemental fees.* Special services which require a supplemental fee include: wetlands jurisdictional delineations, public hearings, and Environmental Impact Statements (EIS). Except for certain fees related to EIS preparation, supplemental fees are to be paid in advance of the particular service to be performed by the Corps and are nonrefundable. Under certain circumstances applicants or prospective applicants will be allowed to elect between performing the work with Corps verification which will reduce the fee or having the Corps provide the service at a higher fee.

(i) *Wetlands jurisdictional delineation fee.* A fee is assessed based on Table 2 below for wetlands jurisdictional delineations prepared by the Corps at the request of someone outside the Corps or for most verifications of delineations prepared by someone other than the Corps. Wetlands delineation fees are based on the size of the tract to be examined, as shown in Table 2 below. "Size of tract" refers to the entire area that will be directly modified or substantially affected by an activity requiring a permit, and is intended to include not only the area of wetlands but the total area that must be examined to determine the presence or absence of jurisdictional wetlands. Full and partial fees will be calculated in the same manner based on size. Any wetlands delineation fee must be paid prior to initiation of the Corps delineation or delineation verification. For greater than 500 acres the fee will be $1,500 or $750 (full or partial) plus any actual costs to the Corps that exceed that amount. In cases that involve greater than 500 acres, the applicant will be notified of the estimate of any actual costs that the Corps expects to incur over and above the 500 acres minimum fees. The applicant will pay the minimum fee and 75 percent of the cost estimate prior to initiation of the Corps delineation or delineation verification. Any difference between this payment (75 percent of the estimate) and the actual cost will be paid by or refunded to the applicant as appropriate upon completion of the delineation. If an application is under review and a delineation becomes necessary, failure to pay the appropriate fee will result in suspension of the evaluation of the application.

(A) *Full fee.* A full fee is charged for (*1*) a Corps-prepared delineation requiring an onsite visit, in accordance with the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Manual)*; and (*2*) whenever the Corps verifies a wetlands delineation, provided by someone other than the Corps, which requires an onsite visit and the use of more than the routine determination method in accordance with the Manual.

(B) *Partial fee.* A partial fee is charged (*1*) for a Corps prepared delineation requiring no onsite visit, in accordance with the Manual; (*2*) whenever the verification of a delineation provided by someone other than the Corps, requires an onsite visit and the use of the routine determination method in accordance with the Manual; and (*3*) whenever the verification of a delineation, provided by someone other than the Corps, requires no onsite visit and the size of the tract is 5 acres or more. If the Corps finds substantial errors during a verification, the Corps will require that a new delineation be completed. On request, the Corps will conduct the new wetlands delineation and charge the appropriate fee.

(C) *No fee.* No fee will be charged for verifications that do not involve an onsite visit and involve less than 5 acres.

TABLE 2

Size of tract, acres	Full fee	Partial fee
less than 10	$ 300	$150
from 10 up to 50	600	300
from 50 up to 100	800	400
from 100 up to 500	1,200	600
500	1,500	750
Greater than 500	(1)	(2)

[1] Minimum fee $1,500 plus actual costs which exceed the minimum fee.
[2] Minimum fee $750 plus actual costs which exceed the minimum fee.

(ii) *Public hearing fee.* A fee of $1,000 will be required for holding a public hearing in connection with a specific permit application. This will be payable prior to issuance of the public notice announcing the hearing. A fee will be assessed for each hearing held in connection with an application, including hearings held in connection with an environmental impact statement (EIS).

(iii) *EIS fee.* These fees will be applicable when the Corps is the lead agency in the EIS process or a participating agency during an EIS process.

(A) *Corps preparation of EIS.* If the Corps prepares an EIS (or supplemental EIS) document for a permit application, the applicant will be assessed the actual cost of preparation and coordination, including all labor, materials, and other costs incurred by the Corps. The applicant will be billed at 3-month intervals beginning with costs incurred to prepare for the public EIS scoping meeting. Each billing statement will identify the application and the costs related thereto up to the billing date. Payment will be due in 30 days in order for work efforts to continue on the EIS and the permit application. The last such billing and payment will be made before the final permit decision.

(B) *Applicant preparation of EIS.* A fee of $5,000 will be assessed when the applicant prepares or pays for the preparation of an EIS (or supplemental EIS) document by a contractor or other approved party, and provides that document to the Corps for appropriate modification, approval, and adoption. This fee will be payable in two amounts, $1,000 prior to issuance of the public notice of the scoping meeting and the remaining $4,000 at the end of the comment period following the scoping meeting, or when the Corps becomes a cooperating agency on another Federal agency's EIS for an application. If at the end of the scoping meeting comment period a decision is made that an EIS (or supplemental EIS) is not required, or the applicant withdraws the application, the remaining $4,000 will not be charged. This fee does not include any fee for a wetlands jurisdictional delineation or public hearing.

(4) *Effective date of fees.* All fees contained herein will become effective for complete applications and requests received by the Corps after (insert effective date of final rule).

[FR Doc. 90-23992 Filed 10-10-90; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 217

RIN 0596-AB15

Requesting Review of National Forest Plans and Project Decisions; Intervention

AGENCY: Forest Service, USDA.
ACTION: Proposed rule.

SUMMARY: The Forest Service proposes to amend its administrative appeal procedures at 3 CFR part 217 with regard to how interested persons or organizations intervene in appeals of decisions concerning the National Forest System. The intended effect is to bring certainty to establishing the period for intervention and to ensure that potential intervenors have a reasonable opportunity to learn of appeals in a timely manner. Public comment is invited.

DATES: Comments must be received in writing by November 26, 1990.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1570), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed rule in the Office of the Staff Assistant for Operations, National Forest System, Third Floor, NW. Wing, Auditors Building, 14th and Independence Avenue SW., Washington, DC, between the hours of 8 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead (382-9346) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kathryn Hauser, WO Appeals and Litigation Coordinator, National Forest System, (202) 382-9346.

SUPPLEMENTARY INFORMATION: On January 23, 1989, at 54 FR 3342, part VI, the Secretary of Agriculture gave notice of adoption of new rules at 36 CFR part 217 that provide a process for appeal of Forest Service decisions related to management of the National Forest System. Experience under the new rules indicates a need to revise 36 CFR part 217 with regard to requesting intervention in appeals of forest plan and project decisions.

Public comment on the proposed rule (53 FR 17310; May 16, 1988) strongly favored retention of an intervention process. Consequently, the final rule restored intervention in appeals, albeit, streamlined from previous practice. The rule currently states at 36 CFR 217.14 that intervention will be granted if requested within 20 days of the filing of a notice of appeal. Intervenors have an additional 30 days, after receiving a copy of the Notice of Appeal from the Reviewing Officer, to file comments on issues raised in the notice of appeal.

Several issues and problems have surfaced with regard to intervention under the new rule. The main issue concerns the absence of a reliable mechanism for potential intervenors to learn that appeals have been filed. Most potential intervenors rely on phone calls to Forest Service offices to ascertain if any new appeals in which they may wish to intervene have been filed. It is possible, due to mail delivery, that the deadline for requesting intervention—20 days from filing of an appeal—can end before a Reviewing Officer is even aware that a new appeal has been filed. Thus, potential intervenors inquiring about new appeals may be denied an opportunity to timely request intervention through no fault of their own.

A related issue is a technical one involving interpretation of timely filing of a request for intervention. The rule gives persons interested in intervening 20 days from the filing of a notice of appeal to request intervention. The agency bases the date of filing on the postmark not on receipt (§ 217.8(c)). However, some people interpret the postmark criterion to apply only to the filing of a Notice of Appeal, because § 217.8(c) addresses only the filing of appeals and does not specify that it also applies to intervenors. These persons argue that the 20 days available to intervenors begins from the date the Reviewing Officer receives the appeal, which could be from 1 day after it is postmarked to many days, rather than 20 days from the date it is filed—the date it is postmarked. An additional concern is privately metered mail, which is not a reliable way of determining whether something has been timely filed because the person who owns the meter controls what date appears. In considering these concerns, the agency has discovered that the language of the rule is not as clear as it might be and, therefore, is proposing an amendment to § 217.8(c) to make clear that the date of filing for an appeal or request to intervene shall be established by the United States Postal Service postmark, facsimile transmission date, date received by a recognized express carrier service, or Forest Service date stamp if hand-delivered to the Reviewing Officer's office. This proposal is consistent with the previous appeal regulation, 36 CFR 211.18, and was inadvertently deleted when 36 CFR part 217 was promulgated.

A similar issue has surfaced with regard to determining timely filing of intervenor comments. Section 217.14(c) provides that intervenors must submit comments within 30 days of acknowledgement. This has raised a question as to whether it is the date of acknowledgement or receipt of acknowledgement that defines the intervenor comment period.

Another problem concerns the actual comments that intervenors are to submit and arises from ambiguity between the preamble to the final rule and the language of the rule itself. Section 217.14 allows intervenors to submit comments "* * * about the appeal * * *" which

could be liberally interpreted as meaning the decision underlying the appeal. However, the intent of the agency to limit intervenor comments to the issues raised by the appellant is clear when reading the response to the public comment (54 FR 3347) which stated, in part, that "* * * intervenors can provide comments on issues raised if not received within a reasonable time period.

3. *Paragraph (c).* In contrast to the current rule, the proposed rule would provide that the 20-day period for filing a notice of intervention would start on the day following the end of the period available for filing an appeal. By interim rule published March 6, 1990 (55 FR must, in turn, be interpreted by the agency to ascertain which appeal they might belong with. This can lead to misinterpretation of intervenor's intent and places an inappropriate burden on agency personnel. Therefore, the language would be revised to clearly state that: (1) Intervenors are limited to commenting on issues raised in a

remains in the rule because this fosters communication among parties. However, this proposed rule would remove the penalty for not providing copies.

8. *Paragraph (h).* Under the proposed rule, existing paragraph (e) which provides that an intervenor cannot continue a dismissed appeal would be requiring advance notice of possible intent to intervene as cumbersome and difficult to administer. Alternative 4 was rejected because it could result in widely varying and inconsistent decisions on granting intervention. However, the Forest Service welcomes comment on these alternatives and the relative merits of each, as well as

List of Subjects in CFR Part 217

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 217 of title 36 of the Code of Federal Regulations as follows:

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could be liberally interpreted as meaning the decision underlying the appeal. However, the intent of the agency to limit intervenor comments to the issues raised by the appellant is clear when reading the response to the public comment (54 FR 3347) which stated, in part, that "* * * intervenors can provide comments on issues raised in the Notice of Appeal * * *". It is clear that without a Notice of Appeal there is no basis for intervention. If intervenors have issues they wish to raise that are not cited in a Notice of Appeal, the proper course of action for them is to appeal. Intervention, therefore, must be limited to comment on issues raised by appellants.

Other matters needing clarification addressed by the proposed changes are providing copies of intervenor comments to appellants, mailing delays, and closure of the record.

To resolve the problems related to the current intervention procedures, the agency proposes to amend § 217.14 in its entirety to provide the following:

1. *Paragraph (a).* The rule proposes to require the Reviewing Officer, upon request, to provide a list of pending appeals for specific decisions. Such a request may be made in person, in writing, or by telephone. If the request is received prior to the end of the period available for filing an appeal, the Reviewing Officer shall send the list as soon as the appeal period ends. Generic requests for a list of any pending appeals, without identifying a specific decision, shall not be honored. This requirement would ensure that potential intervenors have a mechanism for learning that a timely appeal has been filed.

2. *Paragraph (b).* Because the Forest Service is concerned about the administrative burden of providing all potential intervenors with copies of notices of appeal, the rule proposes that notices of appeal shall be made available for inspection and review at both the Deciding and Reviewing Officer's offices. Further, the Reviewing Officer shall mail a copy of a Notice of Appeal only upon written request. And, if the requested documents total more than 100 pages, a fee of 25 cents a page shall be charged for all pages over 100, in accordance with 7 CFR part 1, appendix A. This paragraph would also make clear that the time consumed in requesting or mailing a notice of appeal shall not alter the time period available for requesting intervention and that it is the potential intervenors' responsibility to request a notice of appeal in sufficient time to make a timely request to intervene. Intervenors are encouraged to follow-up requests for notices of appeal if not received within a reasonable time period.

3. *Paragraph (c).* In contrast to the current rule, the proposed rule would provide that the 20-day period for filing a notice of intervention would start on the day following the end of the period available for filing an appeal. By interim rule published March 6, 1990 (55 FR 7892), the agency established a requirement that legal notice of decisions be published in a newspaper of general circulation and that the notice specify the date the appeal period begins. And, the appeal rule at 36 CFR part 217 is very specific about how long the appeal period runs. This recent change, in concert with the revision proposed in paragraph (c), will bring certainty to establishing when intervenors must request intervention and submit their comments, and end the uncertainty created in the current rule.

4. *Paragraph (d).* Because a timely intervenor would no longer be dependent upon acknowledgement by the Reviewing Officer to know when comments are due, it would now be incumbent upon the agency to acknowledge when a request to intervene is untimely or otherwise cannot be accepted. For example, the appeal has subsequently been withdrawn. Therefore, paragraph (d) would be revised to require that all intervention requests will be acknowledged.

5. *Paragraph (e).* This paragraph would specify that intervenors would have 50 days from the end of the appeal filing period to provide their comments to the Reviewing Officer.

6. *Paragraph (f).* The language of the current rule at § 217.14(c) states that the Reviewing Officer shall accept "written comments about the appeal" from an intervenor. The stated intent of intervention as presented in the preamble of the Federal Register notice announcing the final rule (54 FR 3347, January 23, 1989) was clear. Intervention is provided to afford other interested or affected parties an opportunity to provide comments on issues raised in the notice of appeal. This is logical since, without the filing of a Notice of Appeal, there would be no opportunity to intervene. Agency experience to date indicates that in those instances when there are multiple appeals of the same decision, a potential intervenor usually requests blanket intervention on all appeals filed without being cognizant of the issues raised in the different Notices of Appeal. When the intervenor comments are received, sometimes they refer to the Notice of Appeal, but usually they are neither appeal- or issue-specific. Comments filed in this manner must, in turn, be interpreted by the agency to ascertain which appeal they might belong with. This can lead to misinterpretation of intervenor's intent and places an inappropriate burden on agency personnel. Therefore, the language would be revised to clearly state that: (1) Intervenors are limited to commenting on issues raised in a specific Notice of Appeal; and (2) when the comments are submitted, they must specifically identify the appeal control number and issue raised along with their comments. The agency provides intervenors the assigned appeal control number when it provides intervenors copies of Notices of Appeal. If an intervenor wishes to comment on issues raised in several appeals of one decision, the intervenor may either file separate comments on each Notice of Appeal for which intervention has been granted or discuss them in one document. In either case, the appeal control number and appellant's issue must be specifically identified. Comments that do not conform to this requirement will be returned.

7. *Paragraph (g).* Finally, § 217.14(d) currently provides that failure of intervenors to provide copies of submissions to appellants "may" be grounds for removing an intervenor's submission from the record. This provides a measure of discretion that can lead to widely varying rulings on accepting intervenor comments into the record and could be perceived by some as permitting an abuse of discretion. Additionally, in promulgating the current rule, it was the agency's stated intent to eliminate the legalistic features of 36 CFR 211.18 and intervention procedures in the current rule were structured less formally than those of the previous rule. Under 36 CFR part 217, appellants do not comment on intervenors' submissions. Therefore, appellants are not harmed or denied due process if an intervenor fails to provide an appellant a copy of comments submitted to the Reviewing Officer. Since appellants are not harmed, removing intervenor's comments from the record on the basis that appellants did not receive a copy is punitive and unduly harsh. Therefore, under this proposed rule, the discretion to remove intervenors' submissions for failure to provide them to all parties would be removed. Appellants may at any time request the names and addresses of intervenors and request the Reviewing Officer to send a copy of intervenors' comments if they do not receive them from the intervenors. It should be noted that the requirement for intervenors to submit copies of comments to appellants remains in the rule because this fosters communication among parties. However, this proposed rule would remove the penalty for not providing copies.

8. *Paragraph (h).* Under the proposed rule, existing paragraph (e) which provides that an intervenor cannot continue a dismissed appeal would be retained but redesignated as paragraph (h).

Attendant revisions are proposed at § 217.15. The rule proposes that, when intervenors are involved, the record would close at the end of day 50 following the end of the period available for filing an appeal. In addition, it is proposed that paragraph (e)(2) of § 217.15 be revised to be more precise about the appeal record closes in the absence of intervenors. In such case, the record would close at the end of the 20-day intervention period or, at the end of the 30-day period for transmitting the decision documentation, whichever is later. Lastly, a revision is proposed to address a dilemma under the existing rule: What does the agency do if comments from intervenors or decision documentation from the Deciding Officer are mailed in a timely manner, but are not received before the record closes? For example, if an intervenor's comments are postmarked on day 50. Recognizing that delays in mail handling will occur and are beyond the control of intervenors or Deciding Officers, the proposed rule provides that the appeal record shall be reopened to accept intervenor comments and decision documentation if a legible postmark or certified receipt indicates they were timely sent.

In addressing ways to alleviate the problems associated with intervention, several alternatives were identified. These includes: (1) Starting the intervention time period from the date an appeal is received and logged in by the Forest Service; (2) having no timeframe, anyone could request to intervene and submit comments until such time as the record was closed; (3) requiring potential intervenors to request notices of appeal during the period available for appeal as a basis for being recognized later as a timely intervenor; or (4) allowing the Reviewing Officer discretion to grant intervention under extraordinary circumstances such as when there are extenuating circumstances as to why the request to intervene was late. The agency did not adopt the first two alternatives because they would not provide a clear and consistent method for establishing a readily identifiable time period for intervention. The agency rejected requiring advance notice of possible intent to intervene as cumbersome and difficult to administer. Alternative 4 was rejected because it could result in widely varying and inconsistent decisions on granting intervention. However, the Forest Service welcomes comment on these alternatives and the relative merits of each, as well as suggestions of additional alternatives.

Public Comment

The Forest Service is interested in hearing from individuals, organizations, and other public agencies about these proposed changes. Respondents should be aware that, in analyzing and considering comments in promulgation of the final rule, more weight will be given to substantive comments than to simple "yes," "no," or "check-off" responses to form letters or questionnaire-type submissions.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rule is limited to rules of administrative procedure and, as such, would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded form documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4; 7 CFR lb).

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and therefore imposes no paperwork burden on the public.

List of Subjects in CFR Part 217

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 217 of title 36 of the Code of Federal Regulations as follows:

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

1. The authority citation for part 217 continues to read:

Authority: 16 U.S.C. 551, 472.

2. In § 217.8(c), revise the second sentence to read as follows:

§ 217.8 Appeal process sequence

* * * * *

(c) *Evidence of timely filing.* * * * The date of filing on all submissions under this rule and, therefore, evidence of timely filing, shall be established by the United States Postal Service postmark, date received by a recognized express carrier service, facsimile transmission date, or Forest Service date stamp if hand delivered to the Reviewing Officer's office

* * * * *

3. Revise § 217.14 To read as follows:

§ 217.14 Intervention

(a) A Reviewing Officer shall provide any person or organization who so requests a list of currently pending appeals of any specific decision. The Reviewing Officer shall send the list as soon as the appeal period ends. Generic requests for a list of any pending appeals, without identifying a specific decision, shall not be honored.

(b) Notices of appeal shall be made available for inspection and review at both the Deciding and Reviewing Officer's offices. Written requests for a copy of a specific notice of appeal shall also be accepted. Upon receipt of a written request for a copy of a specific notice of appeal, a Reviewing Officer shall promptly mail a copy of the specified notice(s). If the requested documents total more than 100 pages, a fee of 25 cents a page shall be charged for all pages over the original 100 pages, in accordance with 7 CFR part 1, appendix A. It is the responsibility of potential intervenors to request a copy of a notice of appeal in a timely manner. The Reviewing Officer shall not adjust the deadlines for requesting intervention or for filing of intervenor comments to offset the time consumed in the mailing and delivery of notices of appeal to potential intervenors.

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(c) Any person or organization wishing to intervene in a first-level appeal must file a request to intervene with the Reviewing Officer no later 20 days from the deadline for filing the appeal. In event of multiple appeals of the same decision, the requester must clearly identify each appeal in which intervention is requested. Request to intervene in an appeal at the second level (§ 217.7(c)) or during a discretionary review (§ 217.7(e)) shall be denied.

(d) A Reviewing Officer shall promptly acknowledge, in writing, a request to intervene. If the request is untimely or is for intervention in a second-level or discretionary review, the Reviewing Officer shall notify the requester, as part of the acknowledgement, that the request is denied and the reason therefore.

(e) Intervenors must file written comments on issues raised in an appeal no later than 50 days from the date of the appeal period closed (§ 217.8(a)).

(f) An intervenor must limit comments submitted for the record to specific issues raised in a notice of appeal. Comments submitted for the record shall specifically identify the Forest Service-assigned appeal control number and the specific issue which the intervenor is addressing. In multiple appeals of the same decision, an intervenor may either file separate comments on each Notice of Appeal for which intervention has been granted or discuss them in one document. In either case, intervenors must cite the relevant appeal control number and identify the specific issue(s) being addressed. Intervenor comments that do not conform to the requirements of this paragraph will be returned.

(g) Intervenors must concurrently furnish copies of all their submissions to the appellant(s).

(h) An intervenor cannot continue an appeal if the appeal is dismissed (§ 217.11).

4. In § 217.15, revise paragraph (e) to read as follows:

§ 217.15 Appeal record.

* * * * *

(e) *Closing the record.* (1) In appeals with intervenors, the appeal record shall close upon receipt of the decision documentation and comments on the appeal by recognized intervenors, but not later than 50 days after the close of the appeal period (§ 217.8(a)).

(2) In appeals without intervenors, the appeal record shall close either at the end of the 20-day intervention period or at the end of the 30-day period for transmittal of the decision documentation from the Deciding Officer, whichever is later.

(3) The appeal record shall be reopened to accept comments from intervenors or to accept the decision documentation from the Deciding Officer if a legible postmark or certified mail receipt indicates they were timely mailed.

* * * * *

Dated: October 4, 1990.

George M. Leonard,

Associate Chief, Forest Service.

[FR DOC. 90-23967 Filed 10-10-90; 8:45 am]

BILLING CODE 3410-11-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Conservation Grants to Museums

AGENCY: Institute of Museum Services, NFAH.

ACTION: Proposed revised regulations for conservation grants.

SUMMARY: The Institute of Museum Services proposes to issue an amendment to its regulations governing awards in excess of the normal $25,000 ceiling amount for the conservation grant program. 45 CFR 1180.20. Section 1180.20(f)(1) authorizes the Director and the National Museum Services Board to make awards in excess of $25,000 in exceptional circumstances. It is proposed that the National Museum Services Board establish the authority to set annually a maximum award for any grant awarded through the Conservation Project Support Grant Program under the exceptional circumstances provision of § 1180.20(f)(1). Establishing a ceiling for exceptional projects will better enable IMS to address the needs of individual museums seeking IMS support for conservation activities to improve the care of their individual collections.

DATES: Comments must be received on or before November 13, 1990.

ADDRESSES: Comments should be addressed to Daphne Wood Murray, Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca W. Danvers, Program Director. Telephone: (202) 786-0539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act"), title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976, and was amended in 1980, 1982, 1984, and 1985. The purpose of the Act is stated in section 202, in pertinent part, as follows:

> It is the purpose of the Museum Services Act * * * to assist museums in * * * modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage * * *

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public.

The Need for the Amendment

The Institute's regulations contain provisions regarding the Institute's conservation grant program, which has been conducted since fiscal year 1984. 45 CFR 1180.20. The conservation grant program is designed to provide matching grants for projects to carry out conservation activities in museums, as more fully set forth in 1180.20 of the regulations. IMS normally makes a conservation grant which obligates no more than $25,000 in Federal funds. For fiscal year 1987 and succeeding years, the National Museum Services Board established an exceptional project category under the program. The Board established this category in order to encourage museums to apply for projects that would benefit a broad category of museums or that would have broad applicability for conservation care beyond the individual museum applicant. 45 CFR 1180.20(f)(1).

Under current regulations, applications to carry out exceptional projects under the IMS conservation grant program are not governed by the normal ceiling of $25,000. An applicant for such a project may request any amount of grant funds. A match of at least one-to-one for the Federal funds must be provided by the applicant museum if it receives an award.

The National Museum Services Board (Board) has determined that its earlier policy regarding exceptional projects should be revised in order to ensure that the program funds are appropriately distributed to all applicants. Over 60% of all applications to the IMS conservation grant program were funded in 1986. In 1990, only 45% of all applications to the IMS conservation grant program were funded. Under these circumstances, the Board has determined that permitting grants for exceptional projects without an established maximum award may affect the ability of IMS to support all proposals that warrant funding.

The amendment set forth below establishes by regulation a process for limiting the amount of Federal funds that can be awarded annually to any one applicant to carry out an exceptional project under the conservation program in accordance with the above-described policy determination of the Board. IMS believes that establishing a ceiling amount annually for exceptional projects will not place an unreasonable restriction on proposals to carry out projects of broad benefit to museums generally, or that would have broad applicability for conservation care beyond the individual museum applicant. Establishing a ceiling for exceptional projects will better enable IMS to address the needs of individual museums seeking IMS support for conservation activities to improve the care of their individual collections.

Executive Order 12291

This amendment has been reviewed in accordance with Executive Order 12291. It is classified as non-major because it does not meet the critieria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Director certifies that the amendment will not have a significant economic impact on a substantial number of museums. The amendment will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, it will not have significant economic impact on the entities affected, because it does not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

This regulation does not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed amendment. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before 30 days will be considered before final regulations are issued.

All comments submitted in response to the proposed amendment will be available for public inspection, during and after the comment period, at the Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue, NW., Washington, between the hours of 9 a.m and 4 p.m., Monday through Friday of each week except Federal Holidays.

List of Subjects in 45 CFR Part 1180

Government contracts, Grant programs—education, Museums, National boards, Nonprofit organizations, Reporting and recordkeeping requirements, Sunshine Act.

(Catalog of Federal Domestic Assistance No. 45.301 Museum Services Program)

Dated: October 4, 1990.

Daphne W. Murray,

Director, Institute of Museum Services.

The Institute of Museum Services proposes to amend subchapter E of chapter XI of title 45 of the Code of Federal Regulations as set forth below:

PART 1180—[AMENDED]

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 U.S.C. 961 et seq.

2. 45 CFR 1180.20(f)(1) is revised to read as follows:

§ 1180.20 Guidelines and standards for conservation projects.

* * * * *

(f) *Limits on Federal funding.* (1) IMS normally makes a conservation grant which obligates no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, consistent with the policy direction of the Board, may award a conservation grant which obligates an amount in excess of $25,000 in Federal funds. IMS may establish a maximum award level for exceptional project grants for a particular fiscal year through information made available in guidelines or other material distributed to all applicants.

* * * * *

[FR Doc. 90-23962 Filed 10-10-90; 8:45 am]

BILLING CODE 7036-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-514; RM-6878]

Radio Broadcasting Services; Gardner, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document hereby dismisses the petition of David B. Knoll, requesting the allotment of Channel 273A to Gardner, Illinois, because no comments expressing continuing interest in Channel 288A, the channel actually proposed by the Commission, were filed by the petitioner or any other party. See 54 FR 48854, November 28, 1989. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-514, adopted September 21, 1990, and released October 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, 20037.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-24004 Filed 10-10-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-473; RM-6831]

Radio Broadcasting Services; Chamberlain, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the request of Les Kleven to allot Channel 260C1 to Chamberlain, South Dakota, as the community's first local FM service. *See* 54 FR 47798, November 17, 1989. Neither Kleven nor any other party filed comments expressing continuing interest in use of the allotment. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-473, adopted September 21, 1990, and released October 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

BEST COPY AVAILABLE

Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-24005 Filed 10-10-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 197
Thursday, October 11, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes, Committee on Judicial Review, and Working Group on Model Rules; Public Meetings

Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. I (1988), Pub. L. No. 92-463), notice is hereby given of meetings of the Committee on Governmental Processes, Working Group on Model Rules and the Committee on Judicial Review of the Administrative Conference of the United States.

Committee on Governmental Processes

Date: Wednesday, October 17, 1990.
Time: 3:15 p.m.
Location: Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC (Library, 5th floor).
Agenda: The committee will meet to discuss possible recommendations based on a draft report on electronic records management in the federal government, prepared by Professor Henry H. Perritt, Jr. of Villanova University School of Law.
Contact: David M. Pritzker, 202-254-7020.

Committee on Judicial Review

Date: Thursday, October 18, 1990.
Time: 10:00 a.m.
Location: Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC (Library, 5th floor).
Contact: Mary Candace Fowler, 202-254-7020.
Agenda: The Committee will meet to discuss a draft report on licensing procedures and judicial review under the Export Administration Act prepared by Professor Howard N. Fenton, of Ohio Northern University, Pettit College of Law.

Working Group on Model Rules

Date: Friday, December 7, 1990.
Time: 12:00 Noon.
Location: Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC (Library, 5th floor).
Agenda: The committee will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.
Contact: Gary J. Edles or Jeffrey Lubbers, 202-254-7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after a meeting. Minutes of the meetings will be available on request. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: 202-254-7020.

Dated: October 4, 1990.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 90-24099 Filed 10-10-90; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 4, 1990.

The Department of Agriculture has submitted to *OMB* for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

- National Agricultural Statistics Service.
  Floriculture Survey.
  Annually.
  Farms; businesses or other for-profit; 13,500 responses; 9,000 hours; not applicable under 3504(h).
  Larry Gambrell (202) 447-7737.
- Foreign Agricultural Service.
  Licensing of Sugar Free From Quota.
  FAS-942.
  On occasion; weekly; monthly; quarterly; annually; variable frequency.
  Businesses or other for-profit; 1,898 responses; 2,530 hours; not applicable under 3504(h).
  Cleveland Marsh (202) 447-2916.

Reinstatement

- Rural Electrification Administration
  Acceptance of Standards and Specifications for Electric and Telephone.
  On occasion.
  Businesses or other for-profit; non-profit institutions; small businesses or organizations; 259 responses; 5,180 hours; not applicable under 3504(h).
  George J. Begnall (202) 382-8660.
  James C. Arnold (202) 382-8668.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR DOc. 90-23945 Filed 10-10-90; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Siouxon Timber Sales and Other Integrated Resource Projects, Gifford Pinchot National Forest, Skamania County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to implement one or more timber sales and other integrated resource projects within the Siouxon planning area. The EIS will tier to the 1990 Land and Resource Management Plan (Forest Plan) for the Gifford

Timber Production—49% (full timber harvest); (4) Spotted Owl—22% (no timber harvest); and (5) Wild and Scenic River Designation—12% (no timber harvest).

Appendix A of the Forest Plan contains activity schedules for various types of projects for the Forest. The activities listed here are excerpts from Appendix A that apply to the Siouxon

alternative. Based on the issues gathered through scoping, the action alternatives will vary in (1) the amount and location of acres considered for treatment, (2) the amount of road constructed for access, (3) the silvicultural and post-harvest treatments prescribed, and (4) the number, type, and location of other integrated resource projects.

meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 U.S. 519, 633 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by courts. *City of Angoon* v. *Hodel*, 803 f. 1016, 1022 (9th Cir. 1986) and *Wisconsin*

suppression projects pertaining to the recovery from the Clover-Mist fire on the Shoshone National Forest are exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, page 3342.

EFFECTIVE DATE: Effective on Issuance.

FOR FURTHER INFORMATION CONTACT:

as possible to minimize a potential major outbreak from occurring over the next several years.

The following types of bark beetle suppression actions are being planned:

Salvage of green infested trees, as well as scorched or burned bark beetle infested trees;

Preventive sprays in selected

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to implement one or more timber sales and other integrated resource projects within the Siouxon planning area. The EIS will tier to the 1990 Land and Resource Management Plan (Forest Plan) for the Gifford Pinchot National Forest, which provides the overall management direction for the area. The Forest Service proposed action will be in compliance with this direction. The planning area is located on the Wind River Ranger District, within the Siouxon Creek drainage, encompassing an area commonly known as the Siouxon roadless area. The 22,000-acre area is located within a one-hour drive from the Portland, Oregon-Vancouver, Washington, metropolitan area and is a popular year-round, low-elevation recreation area. The Forest Service proposal includes: (1) Harvest of timber, (2) development of associated road systems, and (3) other integrated resource projects (trail construction, camp site development, wildlife habitat improvements). Implementation of the proposed action would begin in May 1993. To initiate the scoping process for this proposal, the Wind River Ranger District will mail an overview of this proposed action to those who participated in previous District scoping efforts connected with the Siouxon area, and to those who provided related comments to the Draft Forest Plan. The Gifford Pinchot National Forest invites written comments on the scope of the analysis. The agency gives notice of this analysis and decisionmaking process so that interested and affected people are aware of how they may participate and contribute to the planning process and the final decision.

DATE: Comments concerning the scope and implementation of this proposal should be received by March 1, 1991.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Geof Wilson, District Ranger, Wind River Ranger District, Carson, WA 98610.

FOR FURTHER INFORMATION CONTACT: Direct questions and comments about the proposed action and EIS to Julie Knutson, Project Leader, Wind River Ranger District, Carson, WA 98610; phone (509) 427–5645.

SUPPLEMENTARY INFORMATION: The Forest Plan allocates the Siouxon area into five management area categories: (1) Unroaded Recreation—7% (no timber harvest); (2) Dear and Elk Winter Range—9% (limited timber harvest); (3) Timber Production—49% (full timber harvest); (4) Spotted Owl—22% (no timber harvest); and (5) Wild and Scenic River Designation—12% (no timber harvest).

Appendix A of the Forest Plan contains activity schedules for various types of projects for the Forest. The activities listed here are excerpts from Appendix A that apply to the Siouxon planning area and provide a very broad framework for this proposed action. Project scoping and analysis will determine the actual range of activities and outputs for the various alternatives.

Forest Plan Activity Schedules

Timber Sale Schedule

Fiscal year	Sale name	Legal description	Volume MBF
1993	West	T5N, R5E	4,000
1993	Siouxon II	T6N R5E	17,500
1993	Chinook	T5N R6E	5,000

Trail Capital Investments and Activity Plan

Fiscal year.....1993
Project name.....Siouxon Creek
Miles.....3.0

Abbreviations used above:

T=Township; N=North; R=Range; E=East

The Siouxon planning area contains about 12,000 undeveloped acres that were originally part of the Siouxon Roadless Area, considered, but not selected, for wilderness designation in the Washington Wilderness Act of 1984. Over 60 Siouxon-related comments were received in response to the Draft Forest Plan in 1987. The majority of commenters were opposed to activities that would change the roadless character of the area or degrade the water quality of Siouxon Creek.

The District began recent scoping efforts in 1988 for the Siouxon area, prior to the decision to prepare an EIS. An open house was held, and Position Statements were mailed to 450 individuals and organizations. From the responses, seven general issues have been identified. These issues include the potential effects that proposed management activities would have on the : (1) Integrity of the roadless character; (2) water quality and fish habitat, particularly in Siouxon Creek; (3) biological diversity at genetic, population, and community levels; (4) short and long-term site productivity; (5) wildlife habitat condition, particularly in winter range; (6) local timber supply and economic stability; and (7) application of "new perspective" approaches to achieve Forest Plan objectives.

A range of project alternatives will be considered, including a no-action alternative. Based on the issues gathered through scoping, the action alternatives will vary in (1) the amount and location of acres considered for treatment, (2) the amount of road constructed for access, (3) the silvicultural and post-harvest treatments prescribed, and (4) the number, type, and location of other integrated resource projects.

The timing of a mailing will closely coincide with the publication of this notice. Public response to the mailing will serve the District in identifying those who wish to be kept informed and involved with the planning process. Periodic newsletters will be used to outline development of the proposal. A series of field trips and public meetings will be held in the upcoming year to identify issues. Two meetings have been scheduled. The first will be held November 1, 1990, 7:00 p.m., at the Skamania County Public Utility District Office, Carson, Washington. The second will be held November 29, 7:00 p.m., at the Gifford Pinchot National Forest Supervisor's Office in Vancouver, Washington.

Continued scoping and public participation efforts will be used by the interdisciplinary team to identify new issues, determine alternatives in response to the issues, and determine the level of analysis needed to disclose potential biological, physical, economic, and social impacts associated with the project. The Forest Service is seeking information, comments, and assistance from other agencies, organizations or individuals who may be interested in or affected by the proposed project. The input will be used in preparation of the draft EIS.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July 1992. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in the management of the Gifford National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 U.S. 519, 633 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by courts. *City of Angoon* v. *Hodel*, 803 f. 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the EIS. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion by March, 1993. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. Robert W. Williams, Forest Supervisor, is the Responsible Official. He will decide which, if any, of the proposed project alternatives will be implemented. His decision and reasons for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: October 3, 1990.

Robert W. Williams,

Forest Supervisor.

[FR Doc. 90-23980 Filed 10-10-90; 8:45 am]

BILLING CODE 3410-11-M

Rocky Mountain Region; Exemption of Pest Suppression Projects From Appeal; Shoshone National Forest

AGENCY: Forest Service, USDA.

ACTION: Notification that certain pest suppression projects are exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that decisions to implement certain pest suppression projects pertaining to the recovery from the Clover-Mist fire on the Shoshone National Forest are exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, page 3342.

EFFECTIVE DATE: Effective on Issuance.

FOR FURTHER INFORMATION CONTACT: Barry Davis, Forest Supervisor, Shoshone National Forest, P.O. Box 2140, Cody, WY 82414–2140

Background

In 1988, the Clover-Mist fire burned over 120,000 acres of the Shoshone National Forest. In September and October 1988, an interdisciplinary team surveyed much of the burned area, in part to identify emergency and long term rehabilitation needs. The risk of insect and disease infestations in both the short and long run was noted by the team. Because of the drought leading up to the fires in 1988, population of insects that attack trees were increasing. If left unabated, these pests could cause extensive loss to much of the unburned vegetation.

The area has been monitored for insect activity since the fire and salvage sales have been scheduled for many of the high risk sites. As expected, a buildup of Spruce beetle (*Dendroctonus rufipennis*, Kirby), mountain pine beetle (*Dendroctonus ponderosae*, Hopk.) and Douglas-fir beetle (*Dendroctonus pseudotsugae*, Hopk.) is ongoing.

However, the Douglas-fir bark beetle (*Dendroctonus pseudotsugae*, Hopk.) has exploded in a population outbreak. It had been expected to build up in the fire scorched trees which were scheduled for salvage. The population has increased dramatically and green trees are under attack in all size classes down to an eight-inch diameter breast height. The potential for significant loss of the remaining unburned forest is serious. The need to suppress this pest prior to beetle flights in 1991 commencing in April is of paramount importance in retaining the management options on the Forest and the continuation of the recovery activities associated with the Clover-Mist fire. Over 100 acres of green, beetle-infested, Douglas-fir producing up to 19 adult beetles per square foot of bark have been located in the Clarks Fork of the Yellowstone River and North Fork of the Shoshone River drainages. The potential for significant tree loss in unburned Douglas-fir stands is high.

It is critically important to remove as much beetle-infested wood from the forest and treat beetle population centers prior to next year's adult flight as possible to minimize a potential major outbreak from occurring over the next several years.

The following types of bark beetle suppression actions are being planned:

Salvage of green infested trees, as well as scorched or burned bark beetle infested trees;

Preventive sprays in selected Campgrounds;

Trapping bark beetles in traps and trees for later removal or harvest;

Sanitation thinning of high risk stands.

No direct chemical control of beetle infested trees is contemplated during the period of this exemption.

Therefore, I am exempting all bark beetle pest suppression projects pertaining to the recovery from the Clover-Mist fire on the Shoshone National Forest from appeals under 36 CFR parts 217 through 1991.

Dated: October 4, 1990.

Tom L. Thompson,

Deputy Regional Forester.

[FR Doc. 90-23981 Filed 10-10-90; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Seminole Electric Cooperative, Inc.; Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Draft Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), as lead Federal agency, is issuing a Draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. section 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and REA Environmental Policy and Procedures (7 CFR part 1794). This DEIS is being issued in connection with potential REA action related to Seminole Electric Cooperative, Inc.'s (Seminole) involvement in the construction, ownership and operation of the Hardee Power Station and related facilities. The U.S. Environmental Protection Agency (EPA) and the Federal Energy Regulatory Commission (FERC) have acted as cooperating agencies during the NEPA process.

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Director, Southeast Area—Electric, Room 0268–S, South Agriculture Building, Rural Electrification Administration,

Washington, DC 20250; telephone (202) 382-8436 or Mr. Michael Opalinski, Manager of Environmental Affairs, Seminole Electric Cooperative, Inc., P.O. Box 272000, Tampa, Florida 33688–2000, telephone (813) 963–0994.

SUPPLEMENTARY INFORMATION: On January 19, 1989, TECO Power Services Corporation (TECO) announced its intention to withdraw from participation in the Hardee Power Station project. Seminole has since assumed TECO's responsibilities for the project. The Hardee Power Station will be a 370 megawatt coal-fired generating facility. The proposed project will require the construction of a 230 kV transmission line, a 230 kV switchyard, and a 230 kV substation. The proposed project will also require the construction of a railroad spur, a railroad yard, and a railroad bridge. The proposed project encompasses approximately 5,200 hectares (1,300 acres). Approximately 0.09 hectares (.22 acres) of a shallow wetland swale on the proposed Hardee Power Station site will be displaced by construction. Mitigation measures have been developed to establish another wetland swale on the proposed Hardee Power Station site to replace the displaced wetland swale. The proposed project is located in Hardee County. The boundary of the site encompasses approximately 5,200 hectares (1,300 acres). Approximately 0.09 hectares (.22 acres) of a shallow wetland swale on the proposed Hardee Power Station site will be displaced by construction. Mitigation measures have been developed to establish another wetland swale on the proposed Hardee Power Station site to replace the displaced wetland swale. The DEIS has been incorporated by reference into the DEIS and is available for inspection by interested parties at REA or Seminole at the addresses provided in the notice. The document, along with the DEIS, will also be available for review at the following libraries:

Boston Public Library, 315 E. Parker

Order Temporarily Denying Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (15 CFR parts 768–799) (1990), has requested the issuance of an order temporarily denying the export privileges of Sanders and Grandia. The administrative proceedings against Govaerts, Grandia and Sanders are pending before the Administrative Law Judge.

In addition, on June 28, 1990, Grandia entered a plea of guilty to one count of

equipment from the United States through the Netherlands to Bulgaria, by falsely declaring that the country of ultimate destination was the Netherlands and that the equipment could be exported under general license C–DEST. Each of those individuals has been indicted for his respective role in

Washington, DC 20250, telephone (202) 382-8436 or Mr. Michael Opalinski, Manager of Environmental Affairs, Seminole Electric Cooperative, Inc., P.O. Box 272000, Tampa, Florida 33688-2000, telephone (813) 963-0994.

SUPPLEMENTARY INFORMATION: On January 18, 1990, TECO Power Services Corporation and Tampa Electric Company filed a "Petition of TECO Power Services Corporation and Tampa Electric Company for Order Accepting Rates for Filing, Determining Rates to be Just and Reasonable and Waiving Certain Rate and Non-rate Regulations and for Expedited Consideration" with FERC. On August 15, 1990, the commission issued an order rejecting the proposed rates and dismissing the request for waiver (Docket Number ER 90-184-000). TECO Power Services Corporation and Tampa Electric Company filed a petition for rehearing on September 10, 1990. As of the date of the issuance of the Draft Environmental Impact Statement, the commission has not rendered its decision on the petition. Should FERC let its order rejecting rates and dismissing the request for waiver stand, Tampa Electric Company and/or Seminole propose to construct and operate the Hardee Power Station and related facilities as described in the Draft Environmental Impact Statement.

Seminole Electric Cooperative, Inc., (Seminole), has requested REA approval of an agreement between itself and TECO Power Services, Inc., for the sale and purchase of capacity and energy. As part of the agreement, TECO Power Services proposes to construct and operate 295 MW of generating capacity at the Hardee Power Station to be operational in 1993. Seminole has also requested financing assistance from REA to construct is portion of the transmission facilities to be connected to the Hardee Power Station.

The proposed Hardee Power Station will consist of natural gas and/or oil fired combustion turbines utilizing heat recovery steam generators that will operate efficiently by recovering heat from the combustion turbines. When completed, the Hardee Power Station will be made up of three, 220 MW combined cycle units for a total of 660 MW. Each 220 MW unit will have two 75 MW combustion turbines and a 70 MW steam turbine fed by the two heat recovery steam generators. Each turbine will drive an electric generator.

The Rural Electrification Administration's preferred site for the Hardee Power Station is located approximately 11 kilometers (7 miles) due west of Bowling Green, Florida, in Hardee County and extends into Polk County. The boundary of the site encompasses approximately 5,200 hectares (1,300 acres). Approximately 0.09 hectares (.22 acres) of a shallow wetland swale on the proposed Hardee Power Station site will be displaced by construction. Mitigation measures have been developed to establish another wetland area of the same size to offset the loss to wetlands.

Three 230 kilovolt (kV) transmission lines will be required to connect the Hardee Power Station into the Florida transmission grid. These lines will originate from the 230 kV switchyard at the Hardee Power Station. One will traverse north for the Hardee Power Station. One will traverse north for approximately 28 kilometers (18 miles) to Tampa Electric Company's Pebbledale Substation located in Polk County near Pebbledale, one will go south for approximately 13 kilometers (8 miles) to Florida Power Corporation's Vandolah Substation located in Hardee County near Vandolah, and another will parallel the Hardee Power Station to Vandolah Substation line and proceed an additional 112 kilometers (69 miles) to Lee County Cooperative's Lee Substation located in Lee County in North Fort Myers.

The primary fuel to be used to power the plant will be natural gas. It is proposed that it be transported via a new 46 centimeter (18 inch) diameter, underground gas pipeline to be connected from the St. Petersburg Lateral (an existing natural gas pipeline) north of Polk City, Florida, to the Hardee Power Station. The total length of the proposed pipeline is approximately 80 kilometers (50 miles).

Alternatives to the project as proposed included no action, demand side alternatives, load management, conservation, interruptible load, reserve capacity and alternative sites and transmission line corridors.

In accordance with REA's Environmental Policies and Procedures, Seminole has provided REA with information describing the potential environmental impacts of the proposed project. The information provided by Seminole is contained in the Hardee Power Station Site Certification Application/Environmental Assessment which was the primary support document used by REA to develop its DEIS. REA has concluded that the Hardee Power Station Site Certification Application/Environmental Assessment represents an accurate assessment of the potential environmental impacts related to the proposed project. The Hardee Power Station Site Certification Application/Environmental Assessment has been incorporated by reference into the DEIS and is available for inspection by interested parties at REA or Seminole at the addresses provided in the notice. The document, along with the DEIS, will also be available for review at the following libraries:

Bartow Public Library, 315 E. Parker Street, Bartow, Florida 33830.
De Soto County Library, 519 Hickory Street, Arcadia, Florida 33821.
Charlotee-Glades, Library System, 18400 Murdock Circle, Port Charlotte, Florida 33948.
Hardee County Library, 315 N. 6th Avenue, Suite 114, Wauchula, Florida 33837.
Lee County/Fort Myers, Public Library, 2050 Lee Street, Ft. Myers, Florida 33901.

Persons, organizations, and agencies wishing to comment on the DEIS should do so in writing within 45 days to REA at the address provided in this notice. The 45 day comment period will begin on the date of the EPA's notice of availability of the DEIS in the Federal Register or the date the notices are published by Seminole in newspapers of general circulation in the proposed project area, whichever comes later.

All comments received within the 45-day comment period will be considered in the formulation of final determinations regarding REA's action related to the project. Based on these comments and other information which may be brought to REA's attention, a Final Environmental Impact Statement (FEIS) will be prepared.

Dated: September 28, 1990.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 90-23998 Filed 10-10-90; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges: Franciscus B. Govaerts, et al.

In the Matter of: Franciscus B. Govaerts, individually and doing business as Printlas Europa, Torenakker 8-5731 CC, Mierlo, Netherlands and Goris Christiaan Grandia, individually and doing business as Grandia Project Services with addresses at Laurierstraat 59 1016 PH, Amsterdam, Netherlands, and Gudrunstrasse 121, A 1100 Vienna, Austria, and Marcel Sanders, individually and doing business as Belgian Trading Company Lokeren S.A., Sijpstraat 8, 9101 Lokeren, Belgium and Roger Van Alphen, Populierenlaantje 6, Huizen, Netherlands, Respondents.

Order Temporarily Denying Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (15 CFR parts 768-799 (1990)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (Supp. 1990)) (Act), has asked the Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Franciscus B. Govaerts (Govaerts), individually and doing business as Printlas Europa (Printlas Europa); Goris Christiaan Grandia (Grandia), individually and doing business as Grandia Project Services; Marcel Sanders (Sanders), individually and doing business as Belgian Trading Company Lokeren S.A. (Belgian Trading), and Roger Van Alphen (Van Alphen) (collectively referred to as respondents). The initial order was issued on April 6, 1989 (54 FR 14867, April 12, 1989). The first renewal order was issued on October 4, 1989 (54 FR 41660, October 11, 1989); the second renewal was issued on April 2, 1990 (55 FR 14330, April 17, 1990).

In its third renewal request of September 10, 1990, the Department states that it continues to have reason to believe that an order temporarily denying the export privileges of Govaerts, individually and doing business as Printlas Europa; Grandia, individually and doing business as Grandia Project Services; Sanders, individually and doing business as Belgian Trading, and Van Alphen is necessary in the public interest to prevent an imminent violation of the Regulations.

In its initial request, as well as in its first and second requests for renewal, the Department stated that, as the result of an investigation conducted with the U.S. Customs Service (Customs), the Department has reason to believe that, from a data unknown to on or about December 8, 1988, Govaerts, Grandia, Sanders and Van Alphen, while doing business under the names of their respective companies, sought to obtain U.S.-origin equipment, controlled for reasons of national security, and to export that equipment from the United States and Bulgaria, knowing that the Department would not likely authorize the export of the equipment of Bulgaria.

The investigation revealed that, on or about December 8, 1988, Sanders and Van Alphen, in fact attempted to export the equipment from the United States through the Netherlands to Bulgaria, by falsely declaring that the country of ultimate destination was the Netherlands and that the equipment could be exported under general license G-DEST. Each of those individuals has been indicted for his respective role in this matter.

The investigation also has given the Department reason to believe that Govaerts, Grandia, Sanders and Van Alphen have access to large sums of money and that, given the opportunity, they would use that money in the near future to acquire U.S.-origin equipment similar to that which Govaerts attempted to export in December 1988, and export that equipment to Bulgaria. Moreover, the Department has reason to believe that, if necessary, Govaerts, Grandia, Sanders and Van Alphen would use Belgian contacts to effect the export of that equipment to Bulgaria.

As a result of the investigation, on June 28, 1989, Govaerts plead guilty to five counts of transporting monetary instruments for an unlawful purpose (18 U.S.C. 1956(2)(A)); one count of attempting to violate section 2410(b) of the Act, and one count of conspiracy (18 U.S.C. 371). On August 17, 1989, Govaerts was sentenced to time served (approximately four months) and was allowed to return to Europe.

On August 16, 1989, Sanders plead guilty to one count of conspiracy (18 U.S.C. 371), one count of violating section 2410(b) of the Act, and one count of transporting monetary instruments for an unlawful purpose (18 U.S.C. 1956(2)(A)). On October 11, 1989, Sanders was sentenced to time served (approximately nine months). Sanders was allowed to return to Europe.

Sanders was also indicted for trying to bribe Govaerts, in prison in Cambridge, Massachusetts, by offering Govaerts, through a third party, $400,000 not to testify against him. The charges were dismissed and the details of this alleged violation were taken into consideration with respect to the final sentencing of Sanders on the original export violation.

On March, 1, 1990, Grandia was extradited to the United States and formally presented with the charges listed in his January 9, 1989, indictment. Crandia's detention hearing was held on March 7, 1990.

Since its initial request and subsequent renewal requests, there have been several developments. On June 16, 1990, the Department issued a charging letter against Govaerts. On September 10, 1990, the Department initiated administrative proceedings against Sanders and Grandia. The administrative proceedings against Govaerts, Grandia and Sanders are pending before the Administrative Law Judge.

In addition, on June 28, 1990, Grandia entered a plea of guilty to one count of attempting to violate section 2410(b) of the Act. Grandia was sentenced to time served (he had been in prison in the United States for approximately four months since his extradition). Grandia was allowed to return to Europe. Van Alphen remains at large.

Govaerts, Sanders, Grandia and Van Alphen are at liberty in Western Europe and, absent the renewal of the temporary denial order the Department is seeking, one or more of them might purchase and illegally export U.S.-origin equipment to Bulgaria. The Department believes that, viewed as a whole, the past activities of Govaerts, Grandia, Sanders, and Van Alphen demonstrate that they are involved in a scheme to obtain controlled U.S.-origin commodities, and to export that equipment from the United States to Bulgaria.

Govaerts filed an opposition to the Department's third request for renewal of an order temporarily denying export privileges. In his opposition, Govaerts asserted that he does not pose a threat to the United States and that the temporary denial order should not be renewed against him. However, based on the record before me, which includes the initial request for a temporary denial order and all of the subsequent renewal requests, I find that there is still reason to believe that a temporary denial order is required in the public interest to prevent an imminent violation of the Act and the Regulations against Govaerts, as well as the other named parties. I note in this regard that the issues raised by Govaerts in his opposition may be more appropriate for the administrative proceeding currently pending before the Administrative Law Judge. None of the other parties against whom the Department requested renewal of the temporary denial order filed an opposition.

Therefore, based on the showing made by the Department, I find that an order temporarily denying export privileges to Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgian Trading Company Lokeren S.A., and Roger Van Alphen is necessary in the public interest to prevent an imminent violation of the Act

and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

II. After notice and opportunity for comment, such denial may be made within the United States or abroad to any person, firm, corporation, or business organization related to the respondents by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. Such denial may also be made applicable to any person, firm, corporation, or business organization with a common interest with the respondents. These restrictions may be applied to any activity subject to the Regulations, including, but not limited to, the procurement, acquisition or purchase of any commodity or technical data, or other thing of value, exported or to be exported from the United States, the obtaining of any service, the participation in any export transaction, and the obtaining of any benefit from any export transaction. A violation of this order may be prosecuted as an offense against the United States, or may result in the imposition of administrative sanctions.

III. Respondents have been convicted of violating the Act, and are currently fugitives. Given the nature of the violations, the likelihood of future violations, and the fugitive status of the respondents, I find that the public interest requires that this order be made effective immediately.

IV. Accordingly, it is hereby ordered:

A. All United States export privileges are denied for a period of 180 days from the date of publication in the Federal Register to Franciscus B. Govaerts, individually and doing business as Printlas Europa, Torenakker 8-5731 CC, Mierlo, Netherlands and Goris Christiaan Grandia, individually and doing business as Grandia Project Services with addresses at Laurierstraat 59 1016 PH, Amsterdam, Netherlands, and Gudrunstrasse 121, A 1100 Vienna, Austria, and Marcel Sanders, individually and doing business as Belgian Trading Company Lokeren S.A., Sijpstraat 8, 9101 Lokeren, Belgium and Roger Van Alphen, Populierenlaantje 6, Huizen, Netherlands, Respondents.

B. No person, firm, corporation, or business organization related to the respondents by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services may, directly or indirectly, do any of the following: export or reexport or cause to be exported or reexported any commodity or technical data from the United States to or through any country or destination, or take any action that facilitates the acquisition or attempted acquisition by the respondents of the ownership, possession, or control of any commodity or technical data that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the respondents acquire or attempt to acquire such ownership, possession or control; take any action that facilitates the export or reexport or cause to be exported or reexported any commodity or technical data from the United States to or through any country or destination, or take any action that facilitates the acquisition or attempted acquisition by the respondents of the ownership, possession, or control of any commodity or technical data that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the respondents acquire or attempt to acquire such ownership, possession or control; obtain from the respondents in the United States any commodity or technical data exported from the United States; or engage in any transaction to service any aircraft, vessel, or vehicle of any kind in which the respondents have an interest.

C. After notice and opportunity for comment as provided in § 788.19(c) of the Regulations, any person, firm, corporation, or business organization related to the respondents by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services may also be made subject to the provisions of paragraph B of this order.

D. This order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technical data.

E. This order is effective immediately and shall remain in effect for 180 days from the date of publication in the Federal Register. The Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the order. A renewal request and opposition will be considered within 20 days of the receipt of the renewal request.

F. A copy of this order shall be delivered to each of the respondents. This order shall be published in the Federal Register.

Dated: October 3, 1990.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90-23999 Filed 10-10-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Panel Decision

Upon examination of the record and after consideration of the arguments presented by the participants in their briefs and at a hearing held in Washington, DC on July 5, 1990, the Panel affirmed in part and remanded in part Commerce's final determination.

1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the Federal Register on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, *It is Hereby Ordered.*

I. All outstanding validated export licenses in which Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgian Trading Company Lokeren S.A., and Roger Van Alphen appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgian Trading Company Lokeren S.A., and Roger Van Alphen, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Govaerts, Grandia, Sanders, Van Alphen or any of their respective companies is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States and subject to the Act and the Regulations.

V. In accordance with the provisions of § 788.19(e) of the Regulations, respondents may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, room H-6716, 14th Street and Constitution Avenue NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 180 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the Federal Register.

Dated: September 28, 1990.

Quincy M. Kreeby,

Assistant Secretary for Export Enforcement.

[FR Doc. 90-23919 Filed 10-10-90; 8:45 am]

BILLING CODE 3510-DT-M

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held November 1, 1990; 9:30 a.m., in the Herbert C. Hoover Building, Room 1629, 14th Street and Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in the section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying the the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: October 5, 1990.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90-23949 Filed 10-10-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[Secretariat File No. USA-89-1904-06]

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel in binational panel review of the final affirmative countervailing duty determination made by the U.S. Department of Commerce, International Trade Administration, Import Administration, respecting Fresh, Chilled and Frozen Pork from Canada.

SUMMARY: By a decision dated September 28, 1990, the Binational Panel affirmed in part and remanded in part for reconsideration the Department of Commerce's final affirmative countervailing duty determination respecting Fresh, Chilled and Frozen Pork from Canada. A copy of the complete Panel decision is available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the Federal Register on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the Federal Register on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

On July 24, 1989, the Department of Commerce ("Commerce") issued its final affirmative countervailing duty determination respecting Fresh, Chilled and Frozen Pork from Canada, which was published in 54 FR 30,774. On August 22, 1989, the Canadian Pork Council and its Members and Moose Jaw Packers (1974) Ltd. filed a Request for Panel Review with the United States section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Also requesting panel review were the federal government of Canada, the provincial governments of Alberta, Ontario and Quebec, the Canadian Meat Council and its members and Canada Packers, Inc. The National Pork Producers Council participated in this panel review in support of the investigating authority.

The Panel reviewed Commerce's final determination with respect to seven Canadian federal and provincial government programs that had been found to confer countervailable subsidies. In addition, the Panel identified two overarching concerns raised by the complainants in the case. First, the Panel noted that only a fraction of the subsidy programs found by Commerce to be countervailable provided subsidies directly to pork processors; the great majority of the programs were directed toward producers of live swine. Accordingly, for most programs, Commerce relied upon section 771B of the Tariff Act of 1930, 19 U.S.C. 1677-2, to determine that subsidies provided to swine producers conferred benefits on pork processors.

Second, the Panel noted that the Department's determination of countervailability with respect to each program involved a finding under section 771(5)(B) of the Tariff Act, 19 U.S.C. 1677(5)(B), that the program benefits were targeted to a specific enterprise, industry or group of enterprises or industries. The complainants challenged these findings, as well as Commerce's use of a conversion factor which allocated all of the alleged subsidies to only a portion of the swine.

Panel Decision

Upon examination of the record and after consideration of the arguments presented by the participants in their briefs and at a hearing held in Washington, DC on July 5, 1990, the Panel affirmed in part and remanded in part Commerce's final determination. The Panel affirmed Commerce's determinations of countervailability as to two of the government programs and also affirmed Commerce's interpretation and application of section 771B as supported by substantial evidence on the record.

The Panel remanded for reconsideration Commerce's determinations as to five of the government programs, in some instances based on the failure of Commerce to formulate and apply an adequate test for specificity under 771(5)(B). The Panel also remanded Commerce's determination on the use of a particular benefit conversion factor as unreasonable and not in accordance with law.

The panel ordered that the results of the remand be provided by Commerce within 60 days (by November 27, 1990). Each other party was given 15 days thereafter to provide the panel with any comments on the remand results.

Dated: October 4, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90-23958 Filed 10-10-90; 8:45 am]

BILLING CODE 3510-DT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final determination of sales at less than fair value made by the Department of Commerce, International Trade Administration, Import Administration, respecting New Steel Rail, Except Light Rail, from Canada, Secretariat File No. USA-89-1904-08.

SUMMARY: Pursuant to Rule 81 of the *Article 1904 Panel Rules* ("Rules"), the Panel Review of the final determination described above was completed on October 1, 1990.

FOR FURTHER INFORMATION CONTACT: James. R. Holbein, United States Secretary, Binational Secretariat, Suite

4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: By a decision dated August 30, 1990, the Binational Panel affirmed the Department of Commerce's final determination of sales at less than fair value. Notice of the panel decision was published in the Federal Register on

ADDRESSES: Comments may be mailed to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, Oregon 97201.

The hearings will be held at the following locations:

1. Olympia—Office Building II, Auditorium, 14th and Jefferson Streets, Olympia,

call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1072, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain

Category	Adjusted twelve-month limit [1]
335	240,726 dozen.
336/636	584,406 dozen.
338/339/340	1,447,316 dozen.
341	3,137,813 dozen of which not more than 1,789,104 dozen shall be in Category 341-Y [2]

maximum daily price limits, which are applicable to futures price increases and declines, in accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by the Commodity Futures Trading Commission ("Commission") Regulation 140.96, the Acting Director of the Division of Economic Analysis

reopening from such a trading halt, similar price limit, halt and reopening procedures would be used for DJIA declines of 400 points below its previous day's closing level, except that the halt would last two hours instead of one.

In October 1988, the Commission approved price limit and trading halt proposals (*i.e.*, circuit breakers)

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4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: By a decision dated August 30, 1990, the Binational Panel affirmed the Department of Commerce's final determination of sales at less than fair value. Notice of the panel decision was published in the **Federal Register** on September 18, 1990 (55 FR 38375).

No request for an extraordinary challenge committee has been filed with the responsible Secretary. Accordingly, pursuant to Rule 81, this Notice of Completion of Panel Review shall be effective on October 1, 1990, the 31st day following the filing of the Panel Decision. Pursuant to Rule 85, the panelists are discharged from their duties effective October 1, 1990.

Dated: October 4, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90–23059 Filed 10–10–90; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Hearings

AGENCY: National Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and requests for comments.

SUMMARY: The Pacific Fishery Management Council will hold hearings to receive public comments on draft Amendment 10 to the "Fishery Management Plan for Commerical and Recreatinal Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978". A draft environmental assessment, regulatory impact review/initial regulatory flexibility analysis, statement of consistency with coastal zone management programs, and review of other applicable law is incorporated in the document. Those wishing to submit oral or written testimony may do so at the hearings or by sending written comments to the address below.

DATES: Written comments will be accepted until November 8, 1990. All hearings will begin at 7 p.m. and are scheduled as follows:

1. Wednesday, October 24, 1990, Olympia, Washington.
2. Thursday, October 25, 1990, Astoria, Oregon.
3. Thursday, October 25, 1990, Eureka, California.
4. Friday, October 26, 1990, Coos Bay, Oregon.

ADDRESSES: Comments may be mailed to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, Oregon 97201.

The hearings will be held at the following locations:

1. Olympia—Office Building II, Auditorium, 14th and Jefferson Streets, Olympia, Washington.
2. Astoria—Astoria Middle School, 1100 Klaskanine Avenue, Astoria, Oregon.
3. Eureka—Red Lion Inn, 1929 Fourth Street, Eureka, California.
4. Coos Bay—Thunderbird Motor Inn, 1313 North Bayshore Drive, Coos Bay, Oregon.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 503–326–6352.

SUPPLEMENTARY INFORMATION: Draft Amendment 10 contains four issues: (1) Achievement of recreational season duration goals between Cape Falcon and Humbug Mountain following inseason reallocation to the commercial fishery; (2) modification of the Klamath River fall chinook salmon spawning escapement goal; (3) modification of criteria guiding the nontreaty catch allocation north of Cape Falcon; and (4) definition of overfishing.

Dated: October 5, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–23991 Filed 10–10–90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in India

October 4, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive of the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1072, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward, carryover and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 53351, published on December 28, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of December 21 1989, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on October 5, 1990 you are directed to adjust the limits for textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I:	
218	8,495,210 square meters.
219	33,240,226 square meters.
313	22,557,420 square meters.
314	4,392,907 square meters.
315	9,309,833 square meters.

Category	Adjusted twelve-month limit [1]
335	240,726 dozen.
336/636	584,406 dozen.
336/339/340	1,447,316 dozen.
341	3,137,813 dozen of which not more than 1,759,104 dozen shall be in Category 341–Y [2]
342	521,783 dozen.
347/348	368,383 dozen.
Group II: 200, 201, 220–229, 237, 239, 300/301, 317, 326, 330–334, 345, 349–352, 359–362, 600–607, 611–635, 638–652, 659, 665–O, [3] 666–670 and 831–858, as a group.	105,809,785 square meters equivalent.
Sublevels in Group II:	
640	152,865 dozen.
641	92,985 dozen.
642	283,874 dozen.
647/648	400,086 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, and 6206.30.3030.

[3] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000 (rugs exempt from the Bilateral Agreement).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–23960 Filed 10–10–90; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments Relating to Stock Index Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT") and the Chicago Mercantile Exchange ("CME") have submitted for those exchanges' stock index futures and option contracts proposed rule amendments relating to modifications to the exchanges' existing circuit breakers, which include price limit and trading halt provisions. The proposals would provide, for each affected stock index contract, a trading halt of two minutes if the market is limit offered thirty minutes after the relevant market is first offered at the initial price decline limit. The proposals also would reduce the current maximum daily price limits, which are applicable to futures price increases and declines. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by the Commodity Futures Trading Commission ("Commission") Regulation 140.96, the Acting Director of the Division of Economic Analysis ("Division"), on behalf of the Commission, has determined that the proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATES: Comment must be received on or before November 13, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to circuit breaker provisions of the CME and CBT stock index futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Contact Ronald Hobson, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–6990.

SUPPLEMENTARY INFORMATION: The Interim Report of the Working Group on Financial Markets dated May 1988 recommended that coordinated trading halts and reopenings be adopted by all domestic markets for equity and equity-related products as a means of dealing with large, rapid market declines that threaten to create panic conditions.[1] In broad outline, the Working Group recommended (1) That stock index futures markets set downward price limits at levels comparable to a 250-point Dow Jones Industrial Average (DJIA) decline below its previous days's closing value, (2) that broad-based stock index option markets establish either comparable price limits or procedures under which all trading in the index options will cease at levels comparable to a 250-point DJIA, and (3) that all U.S. markets for equity-related products halt trading for one hour if the DJIA declines 250 points from its previous day's closing level. Under the Working Group's recommendations, after reopening from such a trading halt, similar price limit, halt and reopening procedures would be used for DJIA declines of 400 points below its previous day's closing level, except that the halt would last two hours instead of one.

In October 1988, the Commission approved price limit and trading halt proposals (*i.e.*, circuit breakers) submitted by the futures exchanges in direct response to the recommendations of the Working Group. Coordinated provisions also in direct response to the recommendations of the Working Group were approved by the Securities and Exchange Commission (SEC) for equity and equity-related markets under the SEC's jurisdiction.

In addition to the circuit breaker provisions noted above, the Commission also has approved for the CME, the CBT, and the New York Futures Exchange ("NYFE"), "initial price decline" limits which are at index levels generally comparable to a 100-point movement in the DJIA.[2] A price decline limit is a price level below which trades cannot be executed while the limit is in effect. These initial price decline limits apply for thirty minutes from the time the market is limit offered.[3]

On June 15, 1990, the Commission approved amendments to the futures exchanges' circuit breaker provisions. The exchanges adopted new "interim" price decline limits and new, tighter overall daily price limits. The new limits are stated in index points for the index underlying each respective futures market. These modified circuit breaker provisions are currently in effect on a pilot basis for 180 days from the date of Commission approval—*i.e.* until December 12, 1990. Thereafter, absent further action, these pilot rules, approved on June 15, 1990, will cease to be in effect. The pilot rules are summarized below.

Exchange	Affected futures market	Initial price limit	Pilot interim price limit	Pilot overall daily price limit
CME	S&P 500.	12	20	30

[1] On March 18, 1988, the Working Group on Financial Markets was established by Executive Order to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the stock market break in October of 1987. The Working Group was charged with developing effective mechanisms to enhance investor confidence, to protect the quality and fairness of markets for all participants, and to preserve the continued orderliness, integrity, competitiveness, and efficiency of our nation's financial markets.

[2] The initial price decline limits for the CME and NYFE were approved by the Commission at the same time that the aforementioned circuit breakers were approved. The CBT's initial price decline limit was approved by the Commission after the close of the market on October 13, 1988 and implemented by the CBT on October 25, 1988.

[3] The CME and NYFE also have opening price limits for their stock-index futures contracts which are in effect during the first 10 minutes of trading. These opening limits are 5 points and 3 points, respectively. The current proposal of the CME will not change the opening price limit provisions.

Exchange	Affected futures market	Initial price limit	Pilot interim price limit	Pilot overall daily price limit
CBT	MMI (Maxi)	20	30	50
	CBOE 50	12	20	30
	CBOE 250	12	20	30
KCBT	VLA	NA	20	30
	Mini VLA	NA	20	30
NYFE	NYSE Composite	7	12	18
Equivalent DJIA Level		100	150	250

The CBT and CME propose to readopt the pilot rules as final, with the following modifications. With the currently proposed amendments, the CME and the CBT intend to establish for each affected contract a provision for a two-minute trading halt in connection with the existing initial price decline limit. The two-minute halt would go into effect if the relevant market is limit offered at the end of the 30-minute period when the initial price decline limit is first hit. In addition, the CME and CBT have proposed to reduce the overall daily price limits, which are applicable to both price increases and declines, to the same levels as the existing pilot interim price decline limits. The proposed amended circuit breaker provisions of the CME and CBT are summarized below:

Exchange	Affected futures market	Proposed initial price limit	Proposed overall daily price limit
CME	S&P 500	12	20
CBT	MMI (Maxi)	20	30
	CBOE 50	12	20
	CBOE 250	12	20
Equivalent DJIA Level		100	150

The CME and CBT have each proposed to make the amendments effective for newly listed and existing contracts at the time of Commission approval. The current proposals do not affect the trading halt provisions of these exchanges' contracts.

In support of the proposals, the CME and the CBT noted that the rationale for reducing the maximum daily price limits involves the new NYSE rule 80A which effectively prohibits index arbitrage after there has been a 50-point DJIA move. According to the CME and CBT, given that this rule can lead to a disconnection of the cash and futures markets, concerns exist that a large market move can have a significant negative influence toward relative pricing efficiency. Hence, the CME and CBT reason that reducing the maximum daily price limits better preserves coordination across both the cash and futures markets.

The Commission is requesting comment on the proposed changes to the circuit breaker provisions of the CME and the CBT. In particular, the Commission requests comment on the following questions:

1. Are the tighter futures price limits appropriate as circuit breakers?
2. Do such tigher limits adversely affect the markets' risk-shifting or price discovery mechanisms?
3. An alternative to the CME and CBT approach was recommended by the NYSE's Special Panel on Market Volatility and Investor Confidence (the Blue Ribbon Panel). Would this or some other approach better achieve the "coordination principle" that appears to be embodied in virtually all public policy pronouncements on the structure of the U.S. equity markets since October 1987?[4]

Copies of each of the proposed amendments to the price limit and trading halt rules of the CME and the CBT will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of these proposed price limit and trading halt rules can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

The materials submitted by the CBT and the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, on October 5, 1990.

Paul M. Architzel,

Acting Director.

[FR Doc. 90-24036 Filed 10-10-90; 8:45 am]

BILLING CODE 6351-01-M

[4] It is noted that both the CME and the CBT submitted rule change proposals on July 16, 1990, that would have replaced the previous rules with a system of price limits and trading halts that were patterned after the recommendations of the NYSE Blue Ribbon Panel. Those proposals, however, were predicated upon adoption of the same trading halt system by the NYSE. To date the NYSE has not moved toward this adoption. Therefore, the proposals discussed in this notice were submitted to supersede the proposals of July 16, 1990.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-588-000, et al.]

CEI-GPU Parties Power Supply Agreement, et al.; Electric Rate, Small Poor Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. CEI-GPU Parties Power Supply Agreement

[Docket No. ER90-588-000]

October 1, 1990.

Take notice that on September 19, 1990, the Cleveland Electric Illuminating Company (CEI) filed, on behalf of Jersey Central Power and Light Company (JC), Metropolitan Edison Company (ME), and Pennsylvania Electric Company (PN) (all referred to as General Public Utilities or GPU Parties), tendered for filing a notice of sale of CEI's ownership share (nominally 304 MW) of the capacity and associated energy of Seneca Pumped Storage Hydro Electric Plant (Seneca) to the GPU Parties.

This Agreement provides a reliable power supply to the GPU Parties for a minimum term of three years. The parties have requested an effective date of January 1, 1991 or the day after receipt of notice of its acceptance for filing by the Federal Energy Regulatory Commission (FERC).

Comment date: October 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Vermont Electric Power Company, Inc.

[Docket No. ER90-591-000]

October 1, 1990.

Take notice that on September 25, 1990, Vermont Electric Power Company, Inc., as agent for three utilities—Citizens Utilities Company, Franklin Electric Light Company, Inc., and Green Mountain Power Corporation—that jointly own a portion of a dedicated, metallic-neutral-return conductor (the DMNRC), used to provided a neutral-return path as part of a direct-current transmission interconnection between Hydro-Quebec and utilities that are participants in the New England Power Pool (the "Quebec-New England Interconnection"), tendered for filing a proposed contract that when accepted will provide a support agreement for the use of the conductor by New England Hydro-Transmission Corporation, an affiliate of New England Electric System organized to own, construct, and operate part of the Quebec-New England Interconnection under a support agreement with New England utilities participating in the project.

The contract filed with this Commission for approval is the Phase II Vermont DMNRC Support Agreement dated January 1, 1988. The joint owners of the DMNRC are three utilities providing service in Vermont: Citizens Utilities Company, Franklin Electric Light Company, Inc., and Green Mountain Power Corporation. The ownership share of the DMNRC held by each utility is 39.8%, 1% and 59.4%, respectively. Copies of the filing were served on New England Hydro-Transmission Corporation and the Vermont Public Service Board and Vermont Department of Public Service and are on file at the joint-owner utilities' main offices.

Comment date: October 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Minerals, Inc.

[Docket No. QF90-184-000]

October 3, 1990.

On September 28, 1990, Consolidated Minerals, Inc., of P.O. Box 490300, Leesburg, Florida 34749-0300, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility will be located in DeSoto County, Florida. The facility will consist of coal-fired broiler(s) and four steam turbine generators. Steam recovered from the facility will be used for chemical processes at the Phosphoric Chemical Plant. The primary energy source will be coal. The net electric power production capacity will be 594 megawatts. Construction of the facility will begin in October 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23922 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1547-001, et al.]

High Island Offshore System, et al.; Natural Gas Certificate Filings

October 3, 1990.

Take notice that the following filings have been made with the Commission:

1. High Island Offshore System

[Docket No. CP90-1547-001]

Take notice that on September 25, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-1547-001 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for PSI, Inc. (PSI), a marketer of natural gas, under HIOS' blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

HIOS proposes to transport on an interruptible basis up to 249,750 Mcf of natural gas on a peak day, 249,750 Mcf on an average day and 91,158,750 Mcf on an annual basis for PSI. HIOS indicates that it would receive the gas at existing points in the High Island and West Cameron Areas, offshore Texas and Louisiana, respectively, and deliver the gas for the account of PSI at points located offshore Texas and Louisiana. HIOS indicates that it would transport the gas for PSI pursuant to HIOS' Rate Schedule IT for a primary term of ten years and on a yearly basis thereafter.

HIOS states that the subject filing has been made in order to correct its previous filing in Docket No. CP90-1547-000 in which the volumes were incorrectly reported in the application. It is indicated that the transportation agreement between HIOS and PSI showed the correct volumes.

It is explained that the service commenced April 1, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-2704. HIOS indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Algonquin Gas Transmission Co., et al.,

[Docket Nos. CP90-2345-000; CP90-2346-000; CP90-2347-000]

Take notice that Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135, and Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicants), filed with the Commission in the above-referenced dockets prior notice requests pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP89-948-000 and Docket No. CP88-316-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[1]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; the initiation service dates; and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90-2345-000 (9-28-90)	Calumount National Gas, Inc. (Marketer).	100,000 100,000 36,500,000	MA, NJ	CT, RI	10-27-89, AIT-1, interruptible.	ST90-5107, 6-1-90, ST90-5109, 7-1-90, ST90-5108, 8-31-90.
CP90-2346-000 (9-28-90)	Howell Gas Management Company (Marketer).	50,000 5,479 2,000,000	AL, LA, OLA, MS, TX, OTX.	LA	7-3-90, IT, interruptible.	ST90-4254, 8-4-90
CP90-2347-000 (9-28-90)	Rhino Distribution Company (Marketer).	50,000 5,479 2,000,000	CT, MA, NJ, NY	MA	9-18-90, AIT-1, interruptible.	ST90-4840, 9-1-90

Docket number (date filed)	Applicant	Shipper name	Peak day [1] average, annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets [2]
CP90-2320-000 9-27-90	U-T Offshore System, P.O. Box 1396, Houston, TX 77251.	NGC Transportation, Inc.	225,000 225,000 82,125,000	Off LA	LA	8-7-90, IT	RP89-99-000, ST90-4610-000.
CP90-2321-000 9-27-90	U-T Offshore System, P.O.	Chevron U.S.A., Inc.	67,000 67,000	Off LA	LA	8-7-90, IT	RP89-99-000, ST90-4606-000.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90-2345-000 (9-28-90)	Calamcuni National Gas, Inc. (Marketer).	100,000 100,000 36,500,000	MA, NJ	CT, RI	10-27-89, AIT-1, Interruptible.	ST90-5107, 8-1-90, ST90-5109, 7-1-90, ST90-5108, 8-31-90.
CP90-2346-000 (9-28-90)	Howell Gas Management Company (Marketer).	50,000 5,479 2,000,000	AL, LA, OLA, MS, TX, OTX.	LA	7-3-90, IT, Interruptible.	ST90-4254, 8-4-90
CP90-2347-000 (9-28-90)	Phibro Distributors Corporation (Marketer).	50,000 50,000 18,250,000	CT, MA, NJ, NY	MA	8-18-90, AIT-1, Interruptible.	ST90-4940, 8-1-90, ST90-4941, 8-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

3. ENSA Corp.

[Docket Nos. CP91-9-000 and CP91-13-000]

Take notice that on October 1, 1990, ENSA Corporation (ENSA), 3131 Turtle Creek Boulevard, Suite 1200, Dallas, Texas 75219, filed an application pursuant to section 3 of the Natural Gas Act (NGA), Executive Order No. 10485, as amended by Executive Order No. 12038, Delegation Order No. 0204-112 of the Secretary of Energy, and §§ 153.1 *et seq.* and 153.10 *et seq.* of the Commission's Regulations. ENSA requests authorization under section 3 of the NGA and a Presidential Permit for; the siting, construction, operation, maintenance and connection of natural gas facilities at the international boundary between the United States and Mexico in Zapata County, Texas. ENSA's proposals are more fully set forth in the applications which are on file with the Commission and open to public inspection.

ENSA states that the facilities to be constructed (the Laredo Pipeline) will consist of about 250 feet of 16-inch diameter pipeline constructed under the Rio Grande River. ENSA states that the Laredo Pipeline will have capacity of up to 500,000 Mcf/d. ENSA further states that the Laredo Pipeline will connect its Laredo Meter Station Facility and a new pipeline to be constructed and operated by Petroleos Mexicanos (Pemex), the Mexican national oil and natural gas corporation from the international boundary to Monterey, Mexico.

ENSA states that intrastate natural gas suppliers will connect to the Laredo Meter Station Facility and sell natural gas to ENSA, which ENSA will in turn deliver to Pemex through the Laredo Pipeline in exchange for residual fuel oil. ENSA also states that it has concurrently filed with the Department of Energy for approval of this natural gas export arrangement.

ENSA states that the Laredo Meter Station Facility and the Laredo Pipeline are intrastate natural gas facilities. ENSA further states that these facilities will be under the jurisdiction of the Texas Railroad Commission and that ENSA's sales, gathering and transportation activities related to these intrastate natural gas facilities will be exempt from the NGA, under sections 1(b) and 1(c) of the NGA.

Comment date: October 18, 1990, in accordance with Standard Paragraph F at the end of this notice.

4. U-T Offshore System et al.

[Docket Nos. CP90-2318-000 [2]; CP90-2319-000; CP90-2320-000; CP90-2321-000]

Take notice that on September 27, 1990, U-T Offshore System (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.303 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the authorization issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the United and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the United would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Applicant	Shipper name	Peak day [1] average, annual	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP90-2318-000 9-27-90	U-T Offshore System, P.O. Box 1396, Houston, TX 77251.	Union Exploration Partners, Ltd.	20,000 20,000 7,300,000	Off LA	LA	8-1-90, IT	RP89-99-000. ST90-4490-000.
CP90-2319-000 9-27-90	U-T Offshore System, P.O Box 1396, Houston, TX 77251	Phillips Petroleum Company	68,500 68,500 25,002,500	Off LA	LA	8-7-90, IT	RP89-99-000. ST90-4609-000.

[1] These prior notice requests are not consolidated

Docket number (date filed)	Applicant	Shipper name	Peak day [1] average, annual	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP90-2320-000 9-27-90	U-T Offshore System, P.O. Box 1396, Houston, TX 77251.	NGC Transportation, Inc.	225,000 225,000 82,125,000	Off LA	LA	8-7-90, IT	RP89-99-000. ST90-4610-000.
CP90-2321-000 9-27-90	U-T Offshore System, P.O. Box 1396, Houston, TX 77251.	Chevron U.S.A., Inc.	67,000 67,000 24,455,000	Off LA	LA	8-7-90, IT	RP89-99-000. ST90-4608-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The RP docket corresponds to applicant's OCS blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. North Country Gas Pipeline Corporation

[Docket Nos. CP89-362-001 and CP89-363-001

Take notice that on September 26, 1990, North Country Gas Pipeline Corporation (North Country-NY), Five Post Oak Park, Suite 1400, Houston, Texas 77027, filed in Docket Nos. CP89-362-001 and CP89-363-001 an amendment to the applications of North Country Pipeline Corporation, filed December 8, 1988, for authorization pursuant to section 3 of the Natural Gas Act, 15 U.S.C. 717(b), and Executive Order No. 10485, as amended by Executive Order No. 12038 and Delegation Order No. 0204-112 of the Secretary of Energy; § 153.1 *et seq.* and 153.10 *et seq.* of the Commission's Regulations, to construct, operate and maintain natural gas facilities at the point of entry at the United States/Canada border near the Town of Champlain, New York, and for a Presidential Permit. North Country-NY proposes to change the owner and operator of the facilities proposed in these proceedings from North Country Pipeline Corporation, a Texas Corporation (North Country-TX) to North Country-NY, all as more fully set forth in the request on file with the Commission and open to public inspection.

On December 8, 1988, North Country-TX (then known as Falcon Seaboard Pipeline Company) filed in Docket Nos. CP89-362-000 and CP89-363-000 requesting authorization under section 3 of the Natural Gas Act and for a Presidential Permit to construct, connect, operate and maintain natural gas pipeline facilities at the United States/Canada border near Champlain, New York. A notice of the initial applications was issued by the Commission on December 29, 1988 and published in the Federal Register at 54 FR 323 on January 5, 1989.

North Country-NY indicates that a corporate reorganization involving North Country-NY and North Country-TX has occurred. North Country-NY states that the purpose of this reorganization is to convert the owner and operator of the facilities proposed in these proceedings from North Country-TX to North Country-NY, a New York pipeline corporation organized under the New York Transportation Law. North Country-NY further states that the sole purpose of this action is to provide that North Country-NY's has eminent domain authority under New York State law, following issuance of the necessary regulatory authorizations.

North Country-NY indicates that it, like North Country-TX, is a wholly-owned subsidiary of Falcon Seaboard Pipeline Corporation.

North Country-NY states that it will be bound by all the positions taken and commitments made by North Country-TX in Docket Nos. CP89-362-000 and CP89-363-000. Further, North Country-NY states that it is not making any changes to the proposal to construct, connect, operate and maintain natural gas pipeline facilities at the United States/Canada border.

Comment date: October 24, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. National Fuel Gas Supply Corporation

[Docket Nos. CP90-989-002 and CP90-1380-002

Take notice that on September 24, 1990, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed a petition in Docket Nos. CP90-989-002 and CP90-1380-002 to amend its existing authorizations issued on June 8, 1990, and August 13, 1990, Docket Nos. CP90-989-000 and CP90-1380-000, respectively, to extend the authorized term, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, National Fuel requests authorization to extend for a one-year term commencing December 8, 1990, the interruptible transportation service for Kane Gas Light and Heat Co., Columbia Gas Transmission Corporation, Pine-Roe Natural Gas Company, Highland Land and Minerals, Inc., Elizabethtown Gas Company, New Jersey Natural Gas Company, Empire Exploration Inc., North East Heat and Light Company, and on behalf of National Fuel Gas Distribution Corporation (Distribution) for the account of 685 end-user customers of Distribution and Rochester Gas and Electric Corporation. In addition, National Fuel requests a one-year extension of its authorization to perform three separate transportation arrangements with respect to Distribution's system supply and to continue with no term limitation deliveries under National Fuel's Rate Schedule X-30 on behalf of UGI Corporation (UGI) at Wharton, Pennsylvania.

No other changes are proposed to the existing authorization.

Comment date: October 24, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Northern Natural Gas Co., Division of Enron Corp.

[Docket CP90-2234-000; CP90-2235-000

Take notice that Northern Natural Fuel Gas Company, Division of Enron Corp., 1400 Smith Street, P.O Box 1188, Houston, Texas 77251-1188, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with

the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP90-2234-000 (9-21-90)	Arco Natural Gas Marketing, Inc. (Marketer).	200,000 150,000 73,000,000	OLA	TX, KS, IA, OK	8-1-90, IT-1, Interruptible.	ST90-4272, 8-1-90.
CP90-2236-000 (9-21-90)	Lyte Energy Sources (Marketer).	41,000 30,750 14,965,000	IA, TX, KS, NO	TX	8-3-90, IT-1, Interruptible.	ST90-4271, 8-3-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

8. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90-2344-000]

Take notice that on September 28, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-2344-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Texas-Ohio Gas, Inc. (Texas-Ohio), under Transco's blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Transco requests authorization to transport, on an interruptible basis, up to a maximum of 1,000 dt of natural gas per day for Texas-Ohio pursuant to a transportation agreement dated June 25, 1990. Transco states that it would transport the gas from receipt points located in Offshore Louisiana, Louisiana, Mississippi, Pennsylvania and New Jersey to a delivery point located in New Jersey. Transco indicates that the total volume of gas to be transported for Texas-Ohio on a peak day would be 1,000 dt; on an average day would be 1,000 dt; and on an annual basis would be 365,000 dt.

Transco states that it commenced the transportation of natural gas for Texas-Ohio on August 17, 1990, at Docket No. ST90-4674-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Transco indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

9. Questar Pipeline Co.

[Docket No. CP90-2313-000]

Take notice that on September 27, 1990, Questar Pipeline Company (Questar), 79 South State Street, Lake City, Utah 84111, filed in Docket No. CP90-2313-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point on Questar's transmission pipeline system to serve the transportation needs of Barrett Energy Company (Barrett Energy) under Questar's blanket certificate issued in Docket No. CP82-491-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Questar proposes to construct and operate one three-inch tap and appurtenant facilities on and adjacent to its Main Line No. 65 in Rio Blanco County, Colorado. Questar explains that it will utilize these facilities to deliver up to 3,000 Dth per day of natural gas for Barrett Energy, on an interruptible basis, under Rate Schedule T-2 of Original Volume No. 1-A of Questar's FERC Gas Tariff. It is further stated that NaTec Resources, Inc. (NaTec) will utilize the natural gas, delivered at the NaTec delivery point for Barrett Energy, for space heating and boiler fuel in its nahcolite mining and processing operation.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the

Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23923 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2290-000, et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

October 2, 1990.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP90-2290-000]

Take notice that on September 25, 1990, K N Energy, Inc. (K N), P. O. Box 150265, Lakewood, Colorado, 80215, filed a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon natural gas sales to Farmland Industries, Inc. (Farmland), a direct sales customer, under its blanket authorization issued in Docket No. CP83-140-000, *et al.*, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to abandon natural gas sales to Farmland at two locations noted below:

Farmland, (Hasting, NE), CP61-142
Farmland, (Phillipsburg, KS), CP79-228

K N indicates that the respective delivery points are no longer needed, as deliveries to the customer have ceased and advises that the customer has agreed and consented to such abandonment.

Comment date: November 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. K N Energy, Inc.

[Docket No. CP90-2285-000]

Take notice that on September 25, 1990, K N Energy, Inc. (K N), P. O. Box 1500265, Lakewood, Colorado, 80215, filed a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon metering stations and appurtenant facilities for the service to certain direct sales customers under its blanket authorization issued in Docket No. CP83-140-000, *et al.*, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to abandon by removal the metering stations and appurtenant facilities which were installed to delivery natural gas to the following direct sales customers:

The Amalgamated Sugar Co. (Ovid, CO), G-1857
Birdwood Products Co. (Hershey, NE), G-250
Mid America Dairymen, Inc. (O'Neill, NE), G-1532
Morrison Enterprises Alfalfa Mill (Lexington, NE), G-1160
Nebraska Public Power District (Scottsbluff, NE), G-63-89
Western Sugar Company (Mitchell, NE), G-63-89

K N indicates that the respective delivery points are no longer needed, as deliveries to these customers have ceased and advises that each customer has agreed and consented to such abandonment.

Comment date: November 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Gas Marketing Co.

[Docket No. CI87-738-005]

Take notice that on September 27, 1990, Williams Gas Marketing Company (WGM) of P.O. Box 3102, Tulsa, Oklahoma 74101, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's [Commission) regulations thereunder to amend its limited-term blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI87-738-004 to include authorization to make sales for resale in interstate commerce of imported gas and gas obtained through interstate pipeline discount interruptible sales programs, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: October 22, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. High Island Offshore System

[Docket No. CP90-2328-000]

Take notice that on September 27, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit Michigan 48243, filed in Docket No. CP90-2328-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Chevron U.S.A., Inc. (Chevron), under HIOS' blanket certificate issued in Docket Nos. RM88-14-001 and RM86-15-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

HIOS proposes to transport, on an interruptible basis, up to 65,000 Mcf of natural gas per day for Chevron. HIOS states that construction of facilities would not be required to provide the proposed service.

HIOS further states that the maximum day, average day, and annual transportation volumes would be approximately 65,000 Mcf, 65,000 Mcf and 23,725,000 Mcf respectively.

HIOS advises that service under section 284.223(a) commenced August 7 1990, as reported in Docket No. ST90-4282-000.

Comment date: November 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Texaco Inc., et al.

[Docket No. G-4616-003, et al.]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Comment date: October 22, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.[1]

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket no. and date filed	Applicant	Purchaser and location	Description
G-4516-003 D 8-29-90	Texaco Inc., P. O. Box 4700, Houston, TX 77210-4700.	Phillips Petroleum Company, Hugoton Field, Hansford and Sherman Counties, Texas.	Assigned 6-1-90 to Kaiser-Francis Oil Company.
CI60-205-001 D 8-3-90	Oryx Energy Company, P. O. Box 2880, Dallas, TX 75221-2880.	Arkla Energy Resources, a division of Arkla, Inc., Zion Southeast Field, Garfield County, Oklahoma.	Assigned 5-1-89 to South Timbers Limited Partnership and West Timbers Limited Partnership.
CI64-976-001 D 8-4-90	Texaco Inc.	K N Energy, Inc., Bradshaw Field, Hamilton County, Kansas.	Assigned 1-1-90 to Amkan Acquisition Corp.
CI67-36-000 D 9-4-90	Texaco Producing Inc., P. O. Box 4700, Houston, TX 77210-4700.	Zenith Natural Gas Company, Aetna Field, Barber County, Kansas.	Assigned 5-1-90 to Oil Producers Inc. of Kansas.
CI67-30-001 D 9-4-90	Texaco Producing Inc.	Zenith Natural gas Company, Aetna Field, Barber County, Kansas.	Assigned 5-1-90 to OXY USA Inc.
CI67-1085-006 D 8-3-90	Oryx Energy Company	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	Assigned 10-1-89 to Headington Minerals, Inc.
CI68-176-001 D 8-3-90	Oryx Energy Company	Lone Star Gas Company, Doyle East Field, Stephens County, Oklahoma.	Assigned 3-1-85 to Fond Petroleum Company.
CI72-466-001 D 8-3-90	Oryx Energy Company	Arkla Energy Resources, a division of Arkla, Inc. Calhoun Field, Ouachita Parish, Louisiana.	Assigned 10-1-89 to Headington Minerals, Inc.
CI75 424-001 D 8-3-90	Oryx Energy Company	Western Transmission Corporation, Browning Field, Carbon County, Wyoming.	Assigned 11-1-86 to 88 Energy, Inc.
CI90-159-000 (CI66-571) D 9-4-90	Texaco Producing Inc.	Williams Natural Gas Company, NW Bogg Mise. Field, Barber County, Kansas.	Assigned 5-1-90 to Oil Producers Inc. of Kansas.
CI90-161-000 (CI60-85) D 9-10-90	Exxon Corporation, P. O. Box 2180, Houston, TX 77252-2180.	Williams Gas Supply Company, Green River Bend Unit, Lincoln and Sublette Counties, Wyoming.	Assigned 1-1-89 to Enron Oil & Gas Company.
CI90-162-000 (CI70-874) D 9-10-90	Exxon Corporation	ANR Pipeline Company, South Marsh Island Block 6, Offshore Louisiana.	Assigned 3-31-89 to W & T Offshore, Inc.
CI90-163-000 (CI72-508) D 9-10-90	Exxon Corporation	ANR Pipeline Company, South Marsh Island Block 6, Offshore Louisiana.	Assigned 3-31-89 to W & T Offshore, Inc.
CI90-168-000 (CI65-179) D 9-14-90	Texaco Producing Inc.	Florida Gas Transmission Company, Matagorde Island Block 556, Offshore Texas.	Assigned 1-1-90 to Enron Oil & Gas Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D)—Assignment of acreage; E—Succession; F—Partial Succession.

6. Trunkline Gas Co.

[Docket No. CP90-2350-000]

Take notice that on September 28, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-2350-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coast Energy Group, Inc. (Coast Energy), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated June 27, 1990, under its Rate Schedule PT, it proposes to transport up to 30,000 Mcf per day of natural gas for Coast Energy. Trunkline states that it would transport the gas from various existing receipt points from areas of offshore Louisiana, and would deliver the gas, less fuel and unaccounted for line loss, to the Shell Calumet Plant in St. Mary Parish, Louisiana.

Trunkline advises that service under §§ 284.223(a) commenced August 20, 1990, as reported in Docket No. ST90-4560. Trunkline further advises that it would transport 30,000 Mcf on an average day and 10,950,000 Mcf annually.

Comment date: November 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Co. of America

[Docket No. CP90-2280-000]

Take notice that on September 24, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-2280-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing delivery point, and associated delivery facilities as a sales tap to provide services including transportation for Grain Processing Corporation (GPC) an end user, under Natural's blanket certificates issued in Docket Nos. CP82-402-000 and CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that the delivery facilities were originally constructed for, and have been used solely for, the transportation of natural gas pursuant to section 311(a)(1) of the NGPA and subpart B of part 284 of the Commission's Regulations.

Natural states further that the delivery facilities consists of two 8-inch taps, 2,490 feet of 8-inch lateral from Natural's Amarillo mainlines and a 6-inch meter facility connecting to GPC's plant facilities in Muscatine County, Iowa.

Comment date: November 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. High Island Offshore System

[Docket No. CP90-2329-000]

Take notice that on September 27, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit Michigan 48243, filed in Docket No. CP90-2329-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Pacific Resources Company (Union Pacific), under HIOS' blanket certificate issued in Docket Nos. RM88-14-001 and RM88-15-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

HIOS proposes to transport, on an interruptible basis, up to 100,000 Mcf of natural gas per day for Union Pacific. HIOS states that construction of facilities would not be required to provide the proposed service.

HIOS further states that the maximum day, average day, and annual transportation volumes would be approximately 100,000 Mcf, 100,000 Mcf and 36,500,000 Mcf respectively.

HIOS advises that service under § 284.223(a) commenced August 1, 1990, as reported in Docket No. ST90-4283-000.

Comment date: November 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. High Island Offshore System

[Docket No. CP90-2327-000]

Take notice that on September 27, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit Michigan 48243, filed in Docket No. CP90-2327-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Panhandle Trading Company (Panhandle Trading), under HIOS' blanket certificate issued in Docket Nos. RM88-14-001 and RM88-15-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

HIOS proposes to transport, on an interruptible basis, up to 50,000 Mcf of natural gas per day for Panhandle Trading. HIOS states that construction of facilities would not be required to provide the proposed service.

HIOS further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 Mcf, 50,000 Mcf and 18,250,000 Mcf respectively.

HIOS advises that service under § 284.223(a) commenced August 4, 1990, as reported in Docket No. ST90-4285-000.

Comment date: November 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23927 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23927 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-48-000]

ANR Pipeline Co., Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that ANR Pipeline Company ("ANR"), on October 1, 1990, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective November 1, 1990.

Thirty-First Revised Sheet No. 18
Alternate Thirty-First Revised Sheet No. 18

The above referenced tariff sheets reflect an Annual Charge Adjustment (ACA) charge of $0.0022 per dekatherm, pursuant to the Commission's Order of September 26, 1990, at Docket No. TM91-1-48-000.

On September 4, 1990, ANR made a compliance filing, in Docket Nos. RP89-161-010, RP89-161-004 and RP89-161-014, to implement the required elimination from its currently effective base rates, effective November 1, 1989, of the amount included in Account No. 858 that is related to certain conversions from sales to transportation entitlements as ordered by the Commission. As of the date of the instant PGA filing, the Commission has not acted upon ANR's September 4, 1990 filing.

In the instant filing, ANR requests that Thirty-First Revised Sheet No. 18 be made effective November 1, 1990 if the Commission acts upon ANR's September 4, 1990 Compliance filing on or before November 1, 1990. This tariff sheet incorporates rate changes from ANR's Account No. 858 compliance filing and ANR's $0.0022 ACA charge. In the event that the Account No. 858 compliance filing is not accepted by the Commission on or before November 1, 1990, ANR tenders the above referenced "alternate" Tariff sheet.

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

This filing reflects a $0.6813 per dekatherm ("dth") increase in the gas

cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, from rates effective August 1, 1990. There is no change in the monthly D-1 demand rate and the D-2 demand rate decreased by $0.0040, from August 1 rates.

The filing further reflects an increase in ANR's one-part rate applicable to Stipulation and Agreement dated August 16, 1989 in the above captioned dockets, whereby ANR's X-rates are to be recalculated effective November 1, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23944 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

submitted to FGT by 10 a.m. CST two working days prior to the first of the month. FGT states that at the request of several of its customers and based on FGT's experience during its first two months as an open-access transporter, FGT proposes to revise these rate schedules to require that nominations and estimates of service to commence

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cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, from rates effective August 1, 1990. There is no change in the monthly D-1 demand rate and the D-2 demand rate decreased by $0.0040, from August 1 rates.

The filing further reflects an increase in ANR's one-part rate applicable to Rate Schedule SGS-1 of $0.6665 per dth, from rates in effect August 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23939 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-169-017, RP86-105-015 & RP87-25-006]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that, on October 1, 1990, ANR Pipeline Company ("ANR") tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the below listed tariff sheets with a requested effective date of November 1, 1990:

Primary Tariff Sheets

Seventh Revised Sheet No. 16
Seventh Revised Sheet No. 17
Seventh Revised Sheet No. 18
Seventh Revised Sheet No. 19
Ninth Revised Sheet No. 20
Eighth Revised Sheet No. 21
Third Revised Sheet No. 22

Alternate Tariff Sheets

Alternate Seventh Revised Sheet No. 16
Alternate Seventh Revised Sheet No. 17
Alternate Seventh Revised Sheet No. 18
Alternate Seventh Revised Sheet No. 19
Alternate Ninth Revised Sheet No. 20
Alternate Eighth Revised Sheet No. 21
Alternate Third Revised Sheet No. 22

The tariff sheets are filed in compliance with the Article XII of the Stipulation and Agreement dated August 16, 1989 in the above captioned dockets, whereby ANR's X-rates are to be recalculated effective November 1, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 (1990). All such protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23940 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-1-001, TM91-1-1-001]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

October 3, 1990.

Take notice that on September 28, 1990, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Twenty Second Revised Sheet No. 4
Second Revised Sheet No. 4B

The tariff sheets are proposed to become effective October 1, 1990. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to reflect the Commission's Annual Charge Adjustment (ACA) effective on October 1, 1990 in compliance with the Commission's September 27, 1990 Letter Order in Docket Nos. TQ91-1-000, *et al.* and the order issued on September 26, 1990 in Docket Nos. RM87-3-000, *et al.* Alabama-Tennessee specifically requests a waiver of § 154.22 of the Regulations to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected State Regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23943 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-22-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on September 28, 1990, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations (18 CFR part 154), the Commission's Order of August 31, 1990, and section 12 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheet to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Substitute First Revised Sheet No. 31
CNG proposes an effective date of September 1, 1990.

The purpose of the filing is to comply with the August 31, 1990, order in this proceeding. The filing would increase CNG's RQ/CD commodity rate by 6.61 cents per dekatherm, decrease the RQ/CD D-1 rate by 12 cents, and increase the RQ/CD D-2 rate by 1.87 cents as compared to those found in the original filing. Other rates will change accordingly.

CNG states that copies of the filing were served upon affected customers and interested state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23944 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-21-000 and TM91-4-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 1, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective November 1, 1990:

Fourth Revised Substitute Second Revised Sheet No. 26
Fourth Revised Substitute Second Revised Sheet No. 26A
Third Revised Substitute Second Revised Sheet No. 26B
Third Revised Substitute Second Revised Sheet No. 26C
Sixth Revised Sheet No. 163

Columbia states that the sales rate set forth on Fourth Revised Substitute Second Revised Sheet No. 26 reflects an overall increase of 59.92¢ per Dth in the Commodity rate and an increase of $.689 per Dth in the Demand rate. In addition, the transportation rates set forth on Third Revised Substitute Second Revised Sheet No. 26C reflect an increase in the Fuel Component of 1.05¢ per Dth.

The purpose of the revised tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;
(2) A continuation of certain surcharges which were accepted by the Commission to be effective through April 30, 1991; and
(3) A Transportation Fuel Charge Adjustment.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23941 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-1-000]

Florida Gas Transmission Co.; Changes in FERC Gas Tariff

October 3, 1990.

Take notice that Florida Gas Transmission Company (FGT) on October 1, 1990 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective November 1, 1990

First Revised Sheet No. 53
First Revised Sheet No. 54
First Revised Sheet No. 60
First Revised Sheet No. 60A
First Revised Sheet No. 63
First Revised Sheet No. 69
First Revised Sheet No. 70
First Revised Sheet No. 72
First Revised Sheet No. 73
First Revised Sheet No. 110
First Revised Sheet No. 111
First Revised Sheet No. 137
First Revised Sheet No. 138
First Revised Sheet No. 179
First Revised Sheet No. 180

Statement of Purpose, Nature and Reason for Filing

On June 15, 1990, the Federal Energy Regulatory Commission issued the "Order Approving and Rejecting Settlements, Granting Abandonments and Issuing Certificates" in RP89-50 *et al.* which accepted, subject to certain modifications, FGT's October 17, 1989 Stipulation and Agreement that resolved issues from thirty dockets and authorized FGT to provide open-access transportation, which FGT implemented on August 1, 1990.

FGT Rate Schedules FTS-1, PTS-1, ITS-, ISS-1, G, I, SGS, and WPPS in its FERC Gas Tariff, Second Revised Volume No. 1 currently require that nominations for transportation service and estimates of sales service for the first calendar day of any month must be submitted to FGT by 10 a.m. CST two working days prior to the first of the month. FGT states that at the request of several of its customers and based on FGT's experience during its first two months as an open-access transporter, FGT proposes to revise these rate schedules to require that nominations and estimates of service to commence on the first calendar day of any month must be submitted to FGT by 10 a.m. CST five working days prior to the first of the month. FGT further states that in contrast, nominations of new service to commence during the month and revisions to prior nominations during the month would still require two days prior notice.

FGT states that the following sheets were amended:

First Revised Sheet Nos. 53, 54, 60, 60A, 63, 69, 70, 72, 73, 110, 111, 137, 138, 179, and 180 have been revised to require that nominations for transportation service and estimates of sales service for the first calendar day of any month must be submitted to FGT by 10 a.m. CST five working days prior to the first of the month.

FGT respectfully requests waiver of any and all Commission rules, regulations and orders that may be necessary so as to permit the tariff sheets to become effective on November 1, 1990.

FGT states that copies of the filing were served on FGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE.; Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission, and are available for public inspection in the Public reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23932 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

[Docket no. RP90-89-014]

Florida Gas Transmission Co.; Compliance Filing

October 3, 1990.

Take notice that Florida Gas Transmission Company (FGT) on September 28, 1990 tendered for filing as part of its FERC Gas Tariff, Second

Substitute Original Sheet No. 463 has been modified to reflect the correct effective date.

Substitute Original Sheet No. 142 has been corrected to read "Rate Schedule G as," instead of "Rate Schedule Gas."

First Revised Sheet Nos. 150, 153, 156 and 160 have been updated pursuant to the terms of § 3.3(a) of the PTS-1 Rate

According to Granite State, the revised tariff volumes are filed in compliance with Order No. 493 and will supersede entirely existing First Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. It is stated that the tariff volumes being superseded became effective April, 1982, and numerous changes have occurred since

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23933 Filed 10-10-90; 8:45 am]

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are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23928 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-46-000]

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

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[Docket no. RP90-50-014]

Florida Gas Transmission Co.; Compliance Filing

October 3, 1990.

Take notice that Florida Gas Transmission Company (FGT) on September 28, 1990 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective August 1, 1990

Substitute Original Sheet No. 142
Substitute Original Sheet No. 463
2nd Substitute Original Sheet No. 531
Substitute Original Sheet No. 535
Substitute Original Sheet No. 537
Substitute Original Sheet No. 539
Substitute Original Sheet No. 540

Effective October 1, 1990

First Revised Sheet No. 6C
First Revised Sheet No. 150
First Revised Sheet No. 153
First Revised Sheet No. 156
First Revised Sheet No. 160

Statement of Purpose, Nature and Reason for Filing

On June 15, 1990, the Federal Energy Regulatory Commission issued the "Order Approving and Rejecting Settlements, Granting Abandonments and Issuing Certificates" ("Order") in RP89-50 et al. which accepted, subject to certain modifications, FGT's October 17, 1989 Stipulation and Agreement that resolved issues from thirty dockets including a service restructuring and the implementation of open-access transportation. As part of the October 17 Stipulation, the Order approved FGT's revised FERC Gas Tariff in Second Revised Volume No. 1, subject to certain modifications. Pursuant to the Order, FGT has made two compliance tariff filings, the first was filed on July 13, 1990 and approved by Letter Order dated August 15, 1990, and the second was filed on September 4, 1990.

FGT states that the purpose of the instant filing is to update certain tariff sheets pursuant to the terms of FGT's tariff, as approved by the June 15 Order, and to correct several typographical errors which FGT discovered after filing both of the previous compliance filings.

FGT states that the following sheets were amended:

Substitute Original Sheet Nos. 531, 535, 537 and 539 (Index of Requirements) have been corrected due to the inadvertent omission of CF Industries from the July 13, 1990 compliance filing. In addition, Substitute Original Sheet No. 540 has been corrected to reflect Basic, Inc.'s correct priority of "4," rather that the incorrect priority of "6" cited in the original sheet.

Substitute Original Sheet No. 463 has been modified to reflect the correct effective date.

Substitute Original Sheet No. 142 has been corrected to read "Rate Schedule G as," instead of "Rate Schedule Gas."

First Revised Sheet Nos. 150, 153, 156 and 160 have been updated pursuant to the terms of § 3.3(a) of the PTS-1 Rate Schedule to reflect changes to the receipt point listing set forth in appendix A of the PTS-1 Rate Schedule.

First Revised Sheet No. 6C has been modified to reflect conversions from Rate Schedule G to Rate Schedule FTS-1, pursuant to section 16A of the General Terms and Conditions.

FGT respectfully requests waiver of any and all Commission rules, regulations and orders that may be necessary so as to permit the tariff sheets described above to become effective as stated above.

FGT states that copies of the filing were served on FGT's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23936 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-2-000]

Granite State Gas Transmission, Inc.; Tariff Filing

October 3, 1990.

Take notice that on October 1, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission its proposed FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2, for effectiveness on November 1, 1990.

According to Granite State, the revised tariff volumes are filed in compliance with Order No. 493 and will supersede entirely existing First Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. It is stated that the tariff volumes being superseded became effective April, 1982, and numerous changes have occurred since then including the addition of new rate schedules for additional services and revisions that have been made to the original tariff provisions. It is further stated that the revised volumes restate all currently effective tariff provisions in the existing volumes with only minor editorial and clarifying changes that are not intended to have substantive effect, except for the changes throughout both volumes necessary to convert rates and volumes from a volumetric (Mcf) basis to a thermal (dekatherm) basis.

Granite State further states that its principal suppliers operate now on a thermal basis and a conversion by Granite State to the same basis will simplify transactions with suppliers and with its customers. It is also stated that the revised rates are converted on a thermal basis equivalent to the volumetric basis and are intended to be revenue neutral and will not result in an increase in costs for Granite State's services to its customers.

Granite State states that the revised tariff volumes provide the rates, terms and conditions for the jurisdictional sales, storage and storage-related transportation services that Granite State provides for its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. It is stated that copies of the revised tariff volumes have been served on the customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23933 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that K N Energy, Inc. ("K N") on October 1, 1990 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, Original Volume No. 1-B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	0.1897	0.1897
D1 Demand	0.0032	0.0038
D2 Demand	(0.0076)	(0.0122)
WPS Demand	0.0064	0.0076
IOR Commodity	0.1853	0.1813

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending February 28, 1990. The proposed effective date for the rate changes is December 1, 1990.

K N states that copies of the filing were served upon K N's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before October 24, 1990, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.311, 385.314). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23928 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

October 3, 1990.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on October 1, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) a quarterly PGA filing, which includes Twenty-Fourth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1990. The revised tariff sheet reflects no change in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.4807. It also reflects a Deferred Gas Cost Adjustment of ($.0016) in accordance with the Federal Energy Regulatory Commission's regulations.

Kentucky West states that, effective November 1, 1990, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.4926 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any right to collect amounts, nor the rights to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 8, 1988, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F. 2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23934 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-45-000 and TM91-1-45-001]

Pacific Gas Transmission Co.; Change in Sales Rates Pursuant to Purchased Gas Adjustment

October 3, 1990.

Take notice that on October 1, 1990, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations, a proposed change in rates applicable to service rendered under Rate Schedules PL-1 and S-1, affected by and subject to Paragraph 21, "Purchased Gas Cost Adjustment" (PGA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such change is for the purpose of revising its purchased gas costs to become effective November 1, 1990.

PGT states that a copy of this filing has been served on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23945 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-4-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 1, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the tariff sheets:

3rd Revised 23rd Revised Sheet No. 50.1
3rd Revised 23rd Revised Sheet No. 50.2
2nd Revised 16th Revised Sheet No. 50A.1

[Docket No. TA90-1-29-001]

Transcontinental Gas Pipe Line Corp.; Filing of Supplemental Supporting Information to Annual Purchased Gas Adjustment

October 3, 1990.

Take notice that Transcontinental Gas

[Docket No. TQ91-1-52-000 & TM91-1-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that on October 1, 1990, Western Gas Interstate Company ("Western"), pursuant to section 4 of the

6A and Substitute Twentieth Revised Sheet No. 7 to its FERC Gas Tariff, Original Volume No. 1. WNG states that it proposes to amend its August 31, 1990, filing in this docket to reflect an increase in the FERC Annual Charge Adjustment from $.0017 to $.0022 for the fiscal year beginning October 1, 1990.

WNG states that copies of its filing

Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before October 11, 1990. Protests will be

[Docket No. RP91-4-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 1, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

1st Revised Second Revised Sheet No. 314
1st Revised 5th Revised Sheet No. 400
Third Revised Sheet No. 439
First Revised Sheet No. 465
Second Revised Sheet No. 466
Fifth Revised Sheet No. 467
Original Sheet 467A
Original Sheet 467B

Texas Eastern states that the purpose of this filing is to establish a procedure to implement a monthly "no bump" tariff provision for transportation under New Interruptible Agreements, as defined in Texas Eastern's FERC Gas Tariff, and for firm transportation from receipt points subject to reduction pursuant to section 10 of Rate Schedule FT-1.

The proposed effective date of the tariff sheets listed above is November 1, 1990.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23937 Filed 10-10-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ91-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that Texas Eastern Transmission Corporation, (Texas Eastern) on October 1, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the tariff sheets:

3rd Revised 23rd Revised Sheet No. 50.1
3rd Revised 23rd Revised Sheet No. 50.2
2nd Revised 16th Revised Sheet No. 50A.1
2nd Revised 16th Revised Sheet No. 50B.1
2nd Revised 16th Revised Sheet No. 50C.1
2nd Revised 16th Rrvised Sheet No. 50D.1

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's Regular Quarterly PGA filing to be effective November 1, 1990 pursuant to 18 CFR 154.308.

Texas Eastern states that these revised tariff sheets filed herewith reflect a Demand-1 decrease of $0.047/dth with a decrease of $0.0026/dth in Demand-2, and a commodity increase of $0.2212 per dth, representing the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's last scheduled PGA filing effective August 1, 1990 in Docket No. TQ90-3-17.

The proposed effective date of the above tariff sheets is November 1, 1990.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23935 Filed 10-10-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA90-1-29-001]

Transcontinental Gas Pipe Line Corp.; Filing of Supplemental Supporting Information to Annual Purchased Gas Adjustment

October 3, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on October 1, 1990 revised filing Schedules A1, B1, C1, C2, D1, and G1, as well as supporting information to its annual Purchased Gas Adjustment (PGA) filing of June 1, 1990 in Docket No. TA90-1-29-000 effective August 1, 1990. By order issued July 31, 1990, the Federal Energy Regulatory Commission (Commission) accepted Transco's June 1 filing and directed Transco to file supplemental PGA supporting information and provide written explanations regarding certain issues within 60 days.

Transco further states that it has filed revised filing schedules and supporting information in its 9-track magnetic tape in the format required by FERC Form 542 pursuant to the July 31 order.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties to Docket No. TA90-1-29-000. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 11, 1990)). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23936 Filed 10-10-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ91-1-52-000 & TM91-1-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that on October 1, 1990, Western Gas Interstate Company ("Western"), pursuant to section 4 of the Natural Gas Act, the Commission's Regulations thereunder and Western's FERC Gas Tariff, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for the tariff sheet is November 1, 1990.

Western states that its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause and Annual Charge Adjustment Clause ("ACA") of its FERC Gas Tariff.

Western further states that the proposed changes provide for: (1) An increase in rates under Western's Rate Schedule G-N of 27.21 cents per Mcf; and (2) an increase in rates under Western's Rate Schedule G-S of 41.16 cents per Mcf.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23929 Filed 10-10-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM91-1-43-001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that Williams Natural Gas Company (WNG) on September 28, 1990, tendered for filing Substitute Twenty First Revised Sheet No. 6, Substitute Seventh Revised Sheet No. 6A and Substitute Twentieth Revised Sheet No. 7 to its FERC Gas Tariff, Original Volume No. 1. WNG states that it proposes to amend its August 31, 1990, filing in this docket to reflect an increase in the FERC Annual Charge Adjustment from $.0017 to $.0022 for the fiscal year beginning October 1, 1990.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23930 Filed 10-10-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TQ90-3-43-000, RP89-148-009]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that Williams Natural Gas Company (WNG) on September 28, 1990, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Original Sheet Nos. 6E1 and 6E2
Third Revised Original Sheet No. 6F
Second Revised First Revised Sheet Nos. 6E1, 6E2, and 6F

WNG proposes effective dates of May 1, 1990, and July 1, 1990, as indicated on the tendered tariff sheets.

WNG states that it is submitting revised tariff sheets in compliance with the Commission's May 30, 1990 Order, 51 FERC Paragraph 61,244, as modified by the September 18, 1990 Order, in the above referenced proceeding.

WNG states that public copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-23931 Filed 10-10-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-43-000 and TM91-2-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 3, 1990.

Take notice that Williams Natural Gas Company (WNG) on September 28, 1990, tendered for filing Twenty Second Revised Sheet No. 6, Eighth Revised Sheet No. 6A and Twenty First Revised Sheet No. 7 to its FERC Gas Tariff, Original Volume No. 1. WNG states that pursuant to the Purchased Gas Adjustment in article 21 of its FERC Gas Tariff, it proposes to increase its rates effective November 1, 1990, to reflect:

(1) A $.0508 per Dth decrease in the Cumulative Adjustment due to a decrease in WNG's projected gas purchase costs.

(2) A $.1093 per Dth increase in the Surcharge Adjustment (to a positive $.2805 per Dth from a positive $.1542 per Dth) to amortize over the six month period November 1990 through April 1991, $9.2 million in pricing disputes being moved into the Deferred Purchase Gas Cost subaccount.

(3) A $.0058 per Dth decrease in the TOP Volumetric Surcharge (from a positive $.0291 per Dth to a positive $.0233 per Dth).

WNG states that public copies of its filing were served on all jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be

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taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23942 Filed 10-10-90; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-011213-017.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
d'Amico Societa de Navigazione, S.p.A.
Nordana Line AS
Sea-Land Service, Inc.

Synopsis: The proposed modification would (1) add a new Article 5.C.6 which authorizes the pool membership committee to extend any pool period for a specified duration by unanimous vote; (2) add a new Article 5.F.6 to establish guidelines under which a member would not be responsible for overcarriage payments and (3) amend Article 5.F.4(a) to allow the pool members, by unanimous vote, to delay the issuance of the pool administrator's statement and to allow payment of overcarriage obligations by letter of credit or other security upon the unanimous consent of the pool members.

Agreement No.: 217-011300.

Title: Farrell Lines, Inc./Ocean Lines of Azores, Inc./Slot Charter Agreement.

Parties:

Farrell Lines, Inc.
Ocean Lines of Azores, Inc.

Synopsis: The proposed Agreement would permit the parties to charter space to one another aboard their respective vessels in the trade between U.S. Atlantic ports and inland points and the Azores, Portugal. It would also authorize the establishing of booking, documentation and administrative procedures including procedures covering the interchange of containers and related equipment. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 5, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-23995 Filed 10-10-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Maryland Port Administration/Rare Properties, Inc., Crown Auto Processing, Inc. Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 224-200182-001.

Title: Maryland Port Administration (MPA)/Rare Properties, Inc./Crown Auto Processing, Inc. Terminal Agreement.

Parties:

Rare Properties, Inc. (RPI)
Crown Auto Processing, Inc. (Crown)

Synopsis: The Agreement provides for RPI to assign and transfer to Crown all of its rights and interest in RPI's basic lease agreement with MPA for certain terminal facilities at the Dundalk Marine Terminal.

Agreement no.: 224-200419-001.

Title: Georgia Ports Authority/Evergreen Marine Corporation (Taiwan), Ltd./Italia di Navigazione/Compagnie Generale Maritime Terminal Agreement.

Parties:

Georgia Ports Authority
Evergreen Marine Corporation (Taiwan), Ltd. (Evergreen)
Italia di Navigazione/Compagnie Generale Maritime

Synopsis: The Agreement amends the parties' basic agreement to provide Evergreen a field services consolidated rate per container (on/off vessel) of $14.26. The rate is effective October 1, 1990 through September 30, 1991.

Agreement no.: 224-200424.

Title: South Carolina State Ports Authority/Concorde Line, Inc. Terminal Agreement.

Parties:

South Carolina State Ports Authority (SCSPA)
Concorde Line, Inc. (Concorde)

Synopsis: The Agreement provides for SCSPA to furnish Concorde containers and chassis with certain marine terminal services in SCSPA's common use area. Concorde agrees to pay for such services at rates published in SCSPA's Terminal Tariff No. 6, subject to a sliding rate schedule agreed to by the parties. The term of the Agreement is for three years.

Agreement no.: 224-010684-003.

Title: Port Authority of New York and New Jersey/Maher Terminals, Inc. Terminal Agreement.

Parties:

Port Authority of New York and New Jersey
Maher Terminals, Inc.

Synopsis: The Agreement extends the term of the basic lease agreement until October 31, 1990.

Agreement no.: 224-200419-002.

Title: Georgia Ports Authority/Evergreen Marine Corporation/Italia di Navigazione/Compagnie Generale Maritime Terminal Agreement

Parties:

Georgia Ports Authority
Evergreen Marine Corporation
Italia di Navigazione (Italia)
Compagnie Generale Maritime

Synopsis: The Agreement provides a schedule of rates effective October 1, 1990, reflecting a field services consolidated rate for Italia only.

Agreement no.: 224-200425.

Title: Tampa Bay International Terminals, Inc./Eller & Company, Inc. Terminal Agreement.

Parties:

Tampa Bay International Terminals, Inc. (TBIT)
Eller & Company, Inc. (Eller)

Synopsis: The Agreement provides for TBIT to purchase substantially all of Eller's operating assets used in the dry cargo marine terminal business of Eller at the Port of Tampa and in the Hillsborough County Port District, Florida. The Agreement provides that Eller and its affiliates, unless permitted by TBIT, will not own, manage, acquire, operate or be connected with any marine terminal or stevedoring business which would compete with TBIT within a radius of 100 miles from Tampa for a period of five years.

By Order of the Federal Maritime Commission.

Dated: October 4, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-23912 Filed 10-10-90; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations; D.V. Arguimbau and Co. Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License number: 759
Name: D.V. Arguimbau & Co., Inc.
Address: P.O. Box 618, 46 Sellers St., Kearny, NJ 07032
Date revoked: August 24, 1990
Reason: Surrendered license voluntarily

License number: 3280
Name: World Ocean Cargo, Inc.
Address: 751 Sullivan Rd., Build., B, #104, College Park, GA 30349
Date revoked: September 8, 1990
Reason: Surrendered license voluntarily

License number: 3174R
Name: Betncort Forwarding, Inc.
Address: 225 W. 34th St., Suite 1610, New York, NY 10122
Date revoked: September 12, 1990
Reason: Failed to maintain a valid surety bond

License number: 3122
Name: Murray International, Ltd.
Address: 54 Stone St., New York, NY 10004
Date revoked: September 20, 1990
Reason: Failed to maintain a valid surety bond

License number: 1974
Name: Joseph A. Andrel dba Joseph A. Andrel Company.
Address: P.O. Box 87, Essington, PA 19029.
Date revoked: September 20, 1990.
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Acting Director, Bureau of Domestic Regulation.

[FR Doc. 90-23911 Filed 10-10-90; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants, Jet Shipping Co., et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Jet Shipping Company, 80 East 44th Street, Hialeah, FL 33013
Officer: Jesus Espinosa, President/Secretary/Treasurer.

Atlanta Customs Brokers & International Freight Forwarders, Inc., 5099 Southridge Parkway, Suite 110, Atlanta, GA 30349
Officers: Harold Hagans, President, Peggy J. Dobson, Vice President, Linda C. Davis, Vice President, Gail R. Hagans, CEO/Stockholder.

Pioneer Express Line, 15111 S. Figueroa Street, Gardena, CA 90248
Officer: Ki Suck Chae, Sole Proprietor.

The Myers Group (U.S.), Inc., 72 Lake Street, Rouses Point, NY 12979
Officers: Keven C. O'Shea, President/Chairman/CEO, Rosalyn J. Duley, Vice President/Controller, John Sundfelt, Vice President.

C. Itoh Express (America) Inc., 335 Madison Ave., New York, NY 10017
Officers: K. Fukushima, President/Director, M. Niihara, Secretary, M. Ohmori, Treasurer.

Griffin & Associates, Ltd., 1001-P Nicholas Blvd., Elk Grove Village, IL 60007
Officers: Patrick M. Griffin, President, Harry William Dohner, Vice President, Fran Cruz, Vice President, John A. Delaney, Vice President.

Gunther George Schmid Associates, Inc., 2839 El Presidio Street, Carson, CA 90810
Officer: Gunther George Schmid, President/Director/Stockholder.

Tradewinds Connections, Inc., 732 105th Avenue, Oakland, CA 94603
Officers: Pacita Stiehl, President, Jesus Macaraeg, Secretary, Erick J. Norman, Finance-Officer.

By the Federal Maritime Commission.

Dated: October 4, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-23910 Filed 10-10-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0705]

Federal Reserve Bank Services; Interdistrict Transportation Service Price Structure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of comment period.

SUMMARY: On August 21, 1990, the Board requested public comment on a proposed change to the pricing structure for the Federal Reserve's Interdistrict Transportation Service (55 FR 34078). The Board has received a request for a 90-day comment period extension to allow commenters more time to analyze the proposal and provide more meaningful comments. The Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), has extended the comment period for 90 days.

DATES: Comments must be submitted on or before January 18, 1991.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3872), Gayle Brett, Manager (202/452-2934), or Kathleen Connor, Senior Analyst (202/452-3174), Division of Federal Reserve Bank Operations; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

By order of the Secretary of the Board of Governors of the Federal Reserve System, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), October 4, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-23951 Filed 10-10-90; 8:45 am]

BILLING CODE 6210-01-M

Midwest R&S Corp.; Formations of; Acquisitions by; and Mergers Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90-19618) published at page 34078 of the issue for Tuesday, August 21, 1990.

Under the Federal Reserve Bank of Minneapolis, the entry for Midwest R&S Corporation is amended to read as follows:

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1. *Midwest R&S Corporation*, Brookings, South Dakota; to become a bank holding company by acquiring 99.39 percent of the voting shares of Home Trust Savings and Loan Association, Vermillion, South Dakota; and to engage in general insurance activities through Home Trust Service Corporation, a wholly owned subsidiary of Home Trust Savings and Loan Association, pursuant to section 4(c)(8)(F) of the Bank Holding Company Act (12 U.S.C. 4(c)(8)(F)) and § 225.25(b)(8)(vi) of Regulation Y (12 CFR 225.25(b)(8)(vi)). These activities will be conducted in Vermillion, South Dakota.

Comments on this application must be received by October 26, 1990.

Board of Governors of the Federal Reserve System, October 4, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-23852 Filed 10-10-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claim collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 15⅛% for the quarter ended September 30, 1990. This interests rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 3, 1990.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 90-23918 Filed 10-10-90; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in November

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of November 1990.

The initial review committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Pub. Law 92-463.

Committee Name: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: November 1-2: 9 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—November 1: 9-10 a.m. Closed—Otherwise.

Contact: Barbara Smothers, room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4375.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities, and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.

Date and Time: November 7-9: 9 a.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Status of Meeting: Open—November 7: 9-10 a.m. Closed—Otherwise.

Contact: Monica Woodfork, room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843.

Purpose: The Subcommittee is charged with the initial review of applications for research in all disciplines pertaining to mental health for support of research in the areas of psychology, psychiatry, and the biological sciences and neurosciences.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.

Date and Time: November 7-9: 9 a.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Status of Meeting: Open—November 7: 9-10 a.m. Closed—Otherwise.

Contact: Monica Woodfork, room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843.

Purpose: The Subcommittee is charged with the initial review of applications for research in all disciplines pertaining to mental health for support of research in the areas of psychology, psychiatry, the behavioral sciences, and epidemiology.

Committee Name: Sociobehavioral Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA.

Date and Time: November 14-15: 9 a.m.

Place: Crowne Plaza Holiday Inn, Montrose room, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—November 14-15: 9-9:30 a.m. Closed—Otherwise.

Contact: H. Noble Jones, room 10-22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-9042.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Biobehavioral/Clinical Subcommittee of the Drug Abuse AIDS Review Committee, NIDA.

Date and Time: November 15-16: 9 a.m.

Place: Crowne Plaza Holiday Inn, Twinbrook room, 1750 Rockville Pike, Rockville, MD. 20852.

Status of Meeting: Open—November 15: 9-9:30 a.m. Closed—Otherwise.

Contact: Iris W. O'Brien, room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Clinical, Psychosocial, and Behavioral Sciences Subcommittee of the Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH.

Date and Time: November 15-16: 8:30 a.m.

Place: The Governor's House, Holiday Inn, Rhode Island Avenue at 17th Street, NW., Washington, DC 20036.

Status of Meeting: Open—November 15: 8:30-9:15 a.m. Closed—Otherwise.

Contact: Regina Thomas, room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6470.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and activities in the areas of clinical, psychosocial, and behavioral sciences aspects of AIDS as they relate to mental health, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psycholobiological, Biological, and Neurosciences Subcommittee of the Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH.

Date and Time: November 15-16: 8:30 a.m.

Place: The Governor's House, Holiday Inn, Rhode Island Avenue at 17th Street, NW., Washington, DC 20036.

Status of Meeting: Open—November 15: 8:30-9:30 a.m. Closed—Otherwise.

Contact: Michelle Burns, room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6470.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and activities in the area of psychobiological, biological, and neurosciences aspects of AIDS as they relate to mental health, and makes recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, room 16C-20, 443-4375; Ms. Camilla Holland, NIDA Committee Management Officer room 10-42, (301) 443-2755; Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9-105, (301) 443-4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: October 4, 1990.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-23808 Filed 10-10-90; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC), announces the following committee meeting:

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and date: 8:30 a.m.-5 p.m., November 19, 1990. 8:30 a.m.-12 noon, November 20, 1990.

Place: Holiday Inn Decator Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The Committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters to be discussed: The Committee will discuss Year 2000 objectives for injury control, development of a national agenda for injury control and a strategic plan for the Division of Injury Control (DIC), progress reports from injury control programs, scientific oversight of DIC activities, recommendations made in the Interagency Head Injury Task Force Report, coding of hospital discharge records for external cause of injury, and other program related matters.

Agenda items are subject to change as priorities dictate.

Contact person for more information: John F. Finklea, M.D., Executive Secretary, ACIPC, DIC, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE, Mailstop F-36, Atlanta, Georgia 30333, telephone, 404/488-4690 or FTS 236-4690.

Dated: October 4, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-23979 Filed 10-10-90; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics, Centers for Disease Control, announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS)

Time and Date: 1:30 p.m.-5:30 p.m., November 7, 1990. 9 a.m.-5 p.m., November 8, 1990. 9 a.m.-1 p.m., November 9, 1990.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the committee to receive and consider reports from each of its subcommittees and to address new business as appropriate.

Contact person for more information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number (301) 436-7050.

Dated: October 4, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-23978 Filed 10-10-90; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Program Announcement for Nurse Anesthetist Faculty Fellowship Grants

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1991 Nurse Anesthetist Faculty Fellowship Grants will be accepted under the authority of section 831(b) of the Public Health Service Act.

Purpose

Section 831(b) of the Public Health Service Act includes authority for grants for the purpose of providing financial assistance and support (fellowships) to certified registered nurse anesthetists (CRNA) who are faculty members of accredited programs to enable such nurse anesthetists to obtain advanced education relevant to their teaching functions.

The Administration's budget request for fiscal year 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Applicants

Public or private nonprofit institutions for the education of nurse anesthetists, which are accredited by an entity or entities designated by the Secretary of Education, may apply for grants to cover the cost of tuition and fees and certain stipends for currently employed CRNA faculty who qualify for a fellowship.

The following Criteria for Fellows, Policy on Payment of Stipends, Funding Preferences and Review Criteria were established in fiscal year 1990 after public comment and are being extended in fiscal year 1991.

Criteria for Fellows

Potential fellows must:

1. Be a CRNA employed by or affiliated with the applicant institution as a faculty member during the period of the awarded fellowship.
2. Be enrolled or accepted for enrollment in a master's degree program or in a doctoral degree program to obtain advanced education relevant to the faculty member's teaching functions.

Policy on Payment of Stipends

A faculty member may be paid a stipend for living costs if attending an educational institution as a full-time student; no stipend would be available for a faculty member who is enrolled in part-time study or who is employed on a full-time basis. This policy is designed to target stipend assistance to the individuals who are most in need of such aid.

Funding Preferences

A funding preference will be given first to minority faculty, second to faculty who will complete degree requirements before or by the end of the funded budget year, third to faculty who are full-time students, and fourth, to faculty who are part-time students.

Review Criteria

Applications will be reviewed by staff in the Division of Nursing and in the Grants Management Office of the Bureau of Health Professions, taking into consideration:

1. The eligibility of applicants;
2. The eligibility of faculty; and
3. The extent to which an applicant meets the funding preferences.

Application Deadline

One review cycle will be held annually for Grants for Nurse Anesthetist Faculty Fellowships. The deadline date for receipt of applications for fiscal year 1991 is November 15, 1990. Applications shall be considered as meeting the deadline if they are either

(1) Received on or before the deadline, or

(2) Postmarked on or before the deadline data, and received in time for submission for review. A legibly dated receipt from a commercial carrier of U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline date will be returned.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Requests for application materials should be directed to: Grants Management Officer (A–22), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

For technical assistance and other information regarding this program, contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763.

The *Catalog of Federal Domestic Assistance* number is 13.907. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 17, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–24007 Filed 10–10–90; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of November 1990:

Name: National Advisory Council on Health Professions Education.

Date and Time: November 14 and 16, 1990, 9:30 a.m.

Place: Conference room D and E, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open on November 14, 9:30 a.m.–Noon. Open on November 16, 9–Noon. Closed November 14 & 16 1 p.m.–5 p.m.

Purpose: The Council advises the Secretary with respect to the administration of programs of Financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, legislative update, report on Bureau initiatives, futures agenda items, and several foundation presentations. The meeting will be closed November 14 and 16, 1990, from 1 p.m. to adjournment for the review of applications for financial assistance for Graduate Training in Family Medicine, Residency Training in General Internal Medicine and General Pediatrics, Faculty Development in Family Medicine, Geriatric Faculty Fellowships and Faculty Development in General Internal Medicine and General Pediatrics. The closing is in accordance with the provisions set forth in section 552(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant ot Public Law 92–463.

Anyone requring information regarding the subject Council should contact Mrs. Wilma Johnson, Executive Secretary, National Advisory Council on Health Professions Education, room 8C–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857, Telephone (301) 443–6880.

Name: Advisory Council on Nurses Education.

Date and Time: November 14 and 16, 1990, 9 a.m.

Place: Conference room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open on November 14, 9 a.m.–10 a.m. Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (Pub. L. 99–92). The Council also preforms final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will cover announcements; considerations of minutes of previous meeting; report by the Acting Director, Division of Nursing and staff reports. The meeting will be closed to the public on November 14, at 10 a.m. for the remainder of the meeting for the review of grant applications for Special Project Grants, Advance Nurse Education Grants, Nurse Practitioner and Nurse Midwifery Grants, and Nursing Education Opportunities for Individuals from Disadvantaged Background Grants. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857, Telephone (301) 443–6193.

Name: Joint Meeting of the National Advisory Council on Health Professions Education and the Advisory Council on Nurses Education.

Date and Time: November 15, 1990, 9 a.m.

Place: Conference room G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. The entire meeting is open.

Purpose: The Councils advise the Secretary concerning general regulations and policy matters arising in the administration of title VII and VIII of the Public Health Service Act. The Council also preform final reviews of grant applications for Federal assistance and make recommendations to the Secretary.

Agenda: The agenda for the meeting will include: administrative and special reports. Attention will be focused on activities dealing with health promotion, disease prevention and rurual health issues.

Agenda Items are subject to change as priorities dictate.

Dated: October 2, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90–23909 Filed 10–10–90; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1076–0084), Washington, DC 20503, telephone (202) 395–7340.

Title: Housing Improvement Program (HIP), 25 CFR 256.

OMB Approval Number: 1076–0084.

Abstract: The Bureau's HIP provides housing assistance to needy Indians who are not eligible for housing assistance from other Federally assisted programs. To determine eligibility and priority in terms of need, certain information must be provided by each applicant. On the basis of this information and in accordance with 25 CFR 256.5, tribes determine eligibility, priority and the amount of HIP funds to be granted to each applicant.

Bureau Form Number: BIA 6407.

Frequency: Occasionally.

Description of Respondences: Indians who need new or better housing.

Annual Responses: 3,500.

Annual Burden Hours: 1,750.

Bureau Clearance Officer: Gail Sheridan, (202) 208–2685.

Dated: July 6, 1990.

A. Ronald Thurman,

Acting Chief, Division of Housing Assistance.

[FR Doc. 90–23953 Filed 10–10–90; 8:45 am]

BILLING CODE 4310–02–M

Plan for the Use of Pueblo of Santa Clara Judgment Funds in Docket 356, Before the United States Claims Court

September 25, 1990.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This plan was effective on June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS 4627–MIB, 1849 C Street, NW., Washington, DC, 20240.

SUPPLEMENTARY INFORMATION:

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated of pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on April 6 1989, in satisfaction of the award granted to the Pueblo of Santa Clara before the United States Court in Docket 356. The plan for the use of the funds was submitted to Congress with a letter dated April 3, 1990, and was received by the Senate on April 19, 1990, and by the House of Representatives on April 18, 1990. The plan became effective on June 29, 1990, as provided by the 1973 Act, as amended by Public Law 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use of Judgment Funds—Awarded to the Pueblo of Santa Clara in Docket 356 before the United States Claim Court

The funds appropriated April 6, 1989, in satisfaction of the award granted to the Pueblo of Santa Clara in Docket 356, before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used as follows.

The funds shall be transferred to the Pueblo of Santa Clara to be managed under an investment plan. Such transfer will take place following approval of the investment plan by the Secretary of the Interior. The investment plan may restruct use of the funds to only the interest and investment income accrued. Under such a restriction, the principal will remain continually invested. The investment plan will contain or be subject to the requirements of sound investments, responsible accounting, and adequate controls to obtain maximum benefit for the Pueblo of Santa Clara.

The funds shall be invested by the Pueblo of Santa Clara until such time as the Tribal Council authorizes their use for tribal economic development programs, especially land purchases.

All responsibility of the United States for the judgment funds or the investment or use of the judgment funds after their transfer to the Pueblo pursuant to the investment plan shall cease at the time the funds are transferred to the Pueblo of Santa Clara.

None of the funds shall be distributed as per capita or dividend payments.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 90–23957 Filed 10–10–90; 8:45 am]

BILLING CODE 4310–02–M

Plan for the Use of the Walker River Paiute Tribe Indian Judgment Funds in Docket 87–A (Irrigation Claim) Before the United States Claims Court

September 25, 1990.

AGENCY: Bureau of Indian Affairs, Interior.

on the effective date of this plan, except that individuals who have received per capita payments from any other federally recognized tribe or tribes, by virtue of tribal membership, shall not be eligible to participate in the per capita payment aspect of this plan.

The tribal governing body shall

shares in excess of $2,000, any Federal or federally assisted programs.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 90–23956 Filed 10–10–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

and the West Rand Mountains ACEC. Human activities include but are not limited to camping, hiking, vehicle use (on or off roads and trails), shooting, hunting, rockhounding, sightseeing, livestock grazing, etc. Exceptions to the exclusions would be administratively-approved access for actions such as monitoring, research studies, educational tours, and mining activities

management plan, is being prepared to insure that the best possible management protection will be provided for the remaining Desert Tortoise population while allowing for other multiple-use activities. It was anticipated the management plan for the area would be finalized prior to October 1, 1990. Upon completion of the plan and

of propagation and survival of the species.

PRT 751330

Applicant: Wildland Resource Managers, Round Mountain, CA.

The applicant requests a permit to take (radio-tag) the Northern spotted owl (*Strix occidentalis caurina*) in the

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Plan for the Use of the Walker River Paiute Tribe Indian Judgment Funds in Docket 87–A (Irrigation Claim) Before the United States Claims Court

September 25, 1990.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This Notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This plan was effective on June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS 4627–MIB, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973 (Pubic Law 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on April 11, 1989, in satisfaction of the award granted to the Walker River Paiute Tribe before the United States Claims Court in Docket 87–A (Irrigation Claim). The plan for the use and distribution of the funds was submitted to Congress with a letter dated March 23, 1990, and was received (as recorded in the Congressional Record) by the Senate on March 30, 1990, and by the House of Representatives on March 27, 1990. The plan became effective on June 22, 1990, as provided by the 1973 Act, as amended by Public Law 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use and Distribution of the Walker River Paiute Tribe Judgment Funds in Docket 87–A (Irrigation Claim), before the United States Claims Court

The funds appropriated on April 11, 1989, in satisfaction of the award granted in Docket 87–A (Irrigation Claim) granted to the Walker River Paiute Tribe before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

Per Capita Aspect

Eighty (80) percent of the funds shall be distributed in the form of per capita payments by the Secretary of the Interior (hereinafter the "Secretary") in sums as equal as possible to all tribal members born on or prior to and living on the effective date of this plan, except that individuals who have received per capita payments from any other federally recognized tribe or tribes, by virtue of tribal membership, shall not be eligible to participate in the per capita payment aspect of this plan.

The tribal governing body shall establish, with the approval of the Secretary, procedures and a deadline for the filing of applications for tribal enrollment. Such deadline shall not be established on a Saturday, Sunday or legal holiday.

Programing Aspect

Twenty (20) percent of the funds, and any amounts remaining from the per capita payments provided above, shall be invested by the Secretary, and the principal, interest, and investment income accrued shall be available on a budgetary basis to the tribal governing body, subject to the approval of the Secretary, to be utilized for tribal administration, social and economic programs.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

The Secretary, in arranging for the per capita payments to be made, shall withhold sufficient shares for individuals, whose eligibility may be in question. Those shares shall be held at interest in separate Individual Indian Money (IIM) accounts, pending determination of an individual's enrollment appeal. The amount of any shares not used to pay successful appellants shall be available for use in the programing aspect of this plan.

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 90–23956 Filed 10–10–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA–060–91–4352–12]

Temporary Emergency Quarantine in Desert Tortoise Natural Area and West Rand Mountains Area of Critical Environmental Concern (ACEC); Ridgecrest Resource Area, Kern County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of continuation of temporary emergency closure on public lands in eastern Kern County, California.

SUMMARY: On October 1, 1989, a temporary emergency quarantine was put into affect for all public land in the Desert Tortoise Natural Area (DTNA) and the West Rand Mountains Area of Critical Environmental Concern (ACEC). Additionally, use restrictions were placed on adjacent public lands in the Rand Mountain/Fremont Valley management area. This area is bordered on the west, south, and southeast by private lands. The DTNA fence, Koehn Lake, and the Willis Well road constitute the physical boundaries of the quarantine area. The adjacent public lands in the Rand Mountain/Fremont Valley management area are bounded by private land on the south, U.S. Highway 395 on the east (excluding the communities of Randsburg, Johannesburg, Red Mountain, and Atolia), the quarantine area on the west, and the El Paso Mountains on the north.

The quarantine area encompasses approximately 37,700 acres of public land and 640 acres of state land. The Rand Mountain/Fremont Valley management area encompasses approximately 31,800 acres of public lands. A map of the quarantine area and the adjacent Rand Mountains/Fremont Valley management area is available at the Bureau of Land Management (BLM), Ridgecrest Resource Area, 300 South Richmond road, Ridgecrest, California.

ORDER: Notice is hereby given that effective October 1, 1990, the temporary emergency restrictions will be extended until November 21, 1990. All human activities, except for those administratively authorized, will continue to be excluded from the DTNA and the West Rand Mountains ACEC. Human activities include but are not limited to camping, hiking, vehicle use (on or off roads and trails), shooting, hunting, rockhounding, sightseeing, livestock grazing, etc. Exceptions to the exclusions would be administratively-approved access for actions such as monitoring, research studies, educational tours, and mining activities. Other actions would be considered on a case-by-case basis. The BLM also encourages application for deferment of assessment work on mining claims during the quarantine period. The Willis Well road on the east side of the West Rand Mountains ACEC will remain open for public use.

Notice is hereby given that effective October 1, 1990, the following use restrictions on adjacent public lands in the Rand Mountains/Fremont Valley management area will be in effect until November 21, 1990. All roads and trails, except for the Willis Well, Goler Wash, Garlock, Red Rock/Randsburg, and Randsburg/Mojave roads, will be closed to public use until BLM can sign roads or trails open to public use. Exceptions to the road and trail closure, in addition to those noted, are access to residences, active mining operations, and communication sites (Government Peak). Access to mining claims can be approved under mining plans of operation, however, the BLM encourages mining claimants to file an application for deferment of assessment work until the restrictions are lifted.

Authority for the temporary closure and interim use restrictions is contained in 43 CFR part 8364. Violation of these restrictions is punishable of a fine not-to-exceed $1,000 and/or 12 months in jail.

SUPPLEMENTARY INFORMATION: The purpose of the temporay emergency closure and use restrictions was to provide increased protection for the Desert Tortoise populations and its habitat in the DTNA, West Rand Mountains ACEC, and the Rand Mountains/Fremont Valley management area. Recent data from studies in the area have shown there to be at least a 50% decline in tortoise numbers since 1982. There are indications that current activities, coupled with four years of drought, may be raising the level of stress in the tortoise, making them more susceptible to an upper respiratory disease that has reached epidemic proportions.

This area contains some of the highest known population densities of Desert Tortoises and is highly crucial habitat. A comprehensive management plan for the area, excluding the DTNA which has a management plan, is being prepared to insure that the best possible management protection will be provided for the remaining Desert Tortoise population while allowing for other multiple-use activities. It was anticipated the management plan for the area would be finalized prior to October 1, 1990. Upon completion of the plan and designation of the route network in the area, the quarantine and use restrictions would be lifted and management actions stipulated in the Rand Mountains/Fremont Valley management plan will be implemented and enforced. The route network identified in the Rand Mountains/Fremont Valley plan will be marked during October 1990. Indications are that consultation with the U.S. Fish and Wildlife Service will be completed in early October 1990 and implementation of management actions can proceed.

FOR FURTHER INFORMATION, CONTACT:

Gerald E. Hillier, District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507, (714) 276–6386

or

Lee Delaney, Area Manager, Bureau of Land Management, 300 South Richmond Road, Ridgecrest, California 93555, (619) 375–7125.

Dated: October 4, 1990.

Gerald E. Hillier,

District Manager.

[FR Doc. 90–23987 Filed 10–10–90; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 750908

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import 2 male captive born Arabian oryx (*Oryx leucoryx*) from Al Ain Zoo, Emirate of Abu Dhabi, United Arab Emirates of the purpose of captive propagation.

PRT 751842

Applicant: Southwest Texas University, San Marcos, TX.

The applicant requests a permit to export seeds of *Zizania texana* to Great Britain for the purpose of enhancement of propagation and survival of the species.

PRT 751330

Applicant: Wildland Resource Managers, Round Mountain, CA.

The applicant requests a permit to take (radio-tag) the Northern spotted owl (*Strix occidentalis caurina*) in the Northern California counties of Humboldt, Shasta, Lassen, Trinity, and Siskiyou for the purpose of conducting habitat utilization studies in managed timber stands.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: October 5, 1990.

Karen Wilson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90–23988 Filed 10–10–90; 8:45 am]

BILLING CODE 4310–55–M

Availability of Draft Recovery Plan for Mississippi Sandhill Crane for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Mississippi sandhill crane. The crane occurs on private and Federal lands in Jackson County, Mississippi. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before December 10, 1990, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Complex Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213 (601/965–4900). Written comments and materials

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regarding the plan should be addressed to the Complex Field Supervisor at the above address. The plan, and comments and materials received, are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ren Lohoefener at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Mississippi sandhill crane (*Grus canadensis pulla*) is an endangered species under the Endangered Species Act of 1973, as amended. Today, this population of cranes is only found on or near the Mississippi Sandhill Crane National Wildlife Refuge in Jackson County, Mississippi. It is endangered because of loss of habitat, small population, and low natural recruitment. The plan is a draft of the third revision of the original plan, which was approved in 1976. The third revision updates what is known about the crane's life history and defines new recovery tasks and criteria to recover the species.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 1, 1990.

Robert G. Bowker,

Complex Field Supervisor.

[FR Doc. 90-23950 Filed 10-10-90; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-303]

Certain Polymer Geogrid Products and Processes Therefor; Commission Decision to Suspend the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to suspend the above-captioned investigation pending the return of certain physical exhibits loaned to the U.S. District Court for the District of Maryland for use in an imminent jury trial in that court.

ADDRESSES: Copies of the Commission's order of suspension and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Frances Marshall, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1089. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On September 27, 1990, and October 2, 1990, respondents and complainant in the above-captioned investigation asked to borrow 67 exhibits from the Commission's record for use in a jury trial in the U.S. District Court for the District of Maryland scheduled to begin October 11, 1990. The Commission determined to grant the requests in order not to interfere with the concurrent litigation in the district court. The unavailability of these exhibits to the Commission while they are on loan to the district court is likely to prevent the Commission while they are on loan to the district court is likely to prevent the Commission from being able to determine whether to review the initial determination issued by the presiding administrative law judge on September 20, 1990. For this reason, the Commission has suspended its investigation until the exhibits in question are returned to the Commission after the jury trial in *Tenax Corporation* v. *The Tensar Corporation*, Civil Action No. H-89-424. The period of suspension will be excluded from the statutory time period mandated for the Commission to complete its investigation.

This action is taken under the authority of section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and Commission interim rule 210.59 (19 CFR 210.59).

By order of the Commission.

Issued: October 4, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-23989 Filed 10-10-90; 8:45 am]

BILLING CODE 7020-02-M

Services: Compilation and Identification of U.S. Measures That May Not Conform With Principles the United States Is Seeking in the Uruguay Round

AGENCY: United States International Trade Commission.

ACTION: Extension of investigation and amendment of scope.

EFFECTIVE DATE: October 2, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Kollins (202-252-1441), Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND AND SCOPE OF INVESTIGATION: The Commission instituted investigation No. 332-293, following receipt on May 29, 1990 of a letter from the United States Trade Representative (USTR), requesting, under authority delegated by the President, that the Commission conduct an investigation pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), to provide information for use by USTR in connection with trade negotiations on services in the Uruguay Round of multilateral trade negotiations.

As requested by USTR, the Commission undertook a study to provide a report which—

(1) Compiles information provided to USTR by State governments in response to a USTR questionnaire on state services regulations and examines applicable information on State and Federal regulations included in the Commission's previously submitted report (Service Sector Profiles and Barriers to Trade in Services: Phase II, investigation No. 332-257); and

(2) Identifies, to the extent practical, from the information reported to USTR by State governments, U.S. measures (State and Federal) that may not be in conformity With the principles governing trade in services proposed by the U.S. Government in the Uruguay Round. These principles include the 10 principles identified in the U.S. services proposal which accompanied the USTR request letter.

USTR requested that the Commission submit a preliminary interim staff report containing a tabulation of the questionnaire responses and a preliminary assessment. This preliminary report was provided to USTR on July 31, 1990. The USTR determined that the tables in the interim report contained, for most sectors, sufficient information for USTR to use for the Uruguay round.

In a letter dated September 17, 1990, the USTR requested that the Commission amend the original request to consider only those sectors where more information was needed based on the preliminary interim report. The USTR also asked the Commission to add the banking and securities sector as a new sector. The USTR extended the deadline for the final report for this investigation and asked that the Commission submit its final report by January 30, 1991.

The Commission was asked by USTR to focus on the State regulations affecting the treatment of foreigners rather than nonconformity to the GATT principles. The USTR asked that the Commission provide more information for the following sectors: Insurance, architecture, engineering, accounting, and legal services. The USTR also asked the Commission to add the banking and securities sector as a new sector. In her letter the USTR said that the submission of information on the banking and securities sector is contingent on the Treasury Department's releasing information and providing assistance to Commission staff.

WRITTEN SUBMISSIONS: No public hearing has been scheduled in this matter. However, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rule of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but no later than December 10, 1990. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal at (202) 252-1810.

By order of the Commission.

Issued: October 5, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-23990 Filed 10-10-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31729]

Norfolk and Western Railroad Co.—Trackage Rights Exemption—Consolidated Rail Corporation

Consolidated Rail Corporation has agreed to grant overhead trackage rights to Norfolk and Western Railway Company over track in Buffalo, NY: (a) Between the connection track at CP Draw (milepost 1.5 of the Chicago Line) and the connection track at Bison Yard (milepost 420.0 of the Bison Running Track), a distance of approximately 3.87 miles; and (b) between the connection track at CP Draw (milepost 1.5 of the Chicago Line) and the connection track at the Delaware and Hudson Railway Company's SK Yard (milepost 421.8 of the Bison Running Track), a distance of approximately 2.07 miles. The trackage rights were to become effective on September 28, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: F. Blair Wimbush, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 1, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-23999 Filed 10-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 350X)]

CSX Transportation, Inc.; Abandonment Exemption in Muskegon County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc., of 2.89 miles of rail line between mileposts 9.09 and 11.98, in Muskegon County, MI, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 10, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 22, 1990, petitions to stay must be filed by October 26, 1990, and petitions for reconsideration must be filed by November 5, 1990. Requests for a public use condition must be filed by October 22, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 350X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Patricia Vail—J150, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987)

the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Bulding, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

bulk manufacturer of 2,5-dimethoxyamphetamine (DMA) (7396), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations,

development of a 100 ft. block under this procedure, a minimum of twenty-one machine moves will be made, thereby exposing the operating crew to a greater number of caught-by and struck-by hazards.

3. As an alternate method, petitioner proposes to drill one long rib hole, which would allow completion of the entry

information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: October 4, 1990.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Date(s)	Times	Room [1]
Advisory Panel for Ocean Sciences Research	Proposal Review	October 25-26	8:30 a.m.	543

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the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Bulding, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Decided: October 3, 1990.

By the Commission, Chairman Philbin, Vice Chairman, Commissioners Simmons, Lamboley, and Emmett. Commissioner Lamboley did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-24034 Filed 10-10-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 2, 1990, and published in the **Federal Register** on May 14, 1990, (55 FR 19999), Norac Company Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code, of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: October 2, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23914 Filed 10-10-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Registration

By notice dated February 15, 1990, and published in the **Federal Register** on March 1, 1990, (55 FR 7387), Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (DMA) (7396), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: October 2, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23915 Filed 10-10-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-90-139-C]

Eastern Associated Coal Corp., Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.701 (abandoned areas, adjacent mines; drilling of boreholes) to its Federal No. 2 Mine (I.D. No. 46-01456) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys, or within 50 feet of abandoned areas in the mine as shown by surveys, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, boreholes are required to be drilled to a distance of at least 20 feet in advance of the working face of such working place and continually maintained to a distance of at least 10 feet in advance of the advancing working face.

2. Petitioner states that compliance with the standard would require drilling two rib holes necessitating three major equipment moves before a cut of coal would be mined. To complete development of a 100 ft. block under this procedure, a minimum of twenty-one machine moves will be made, thereby exposing the operating crew to a greater number of caught-by and struck-by hazards.

3. As an alternate method, petitioner proposes to drill one long rib hole, which would allow completion of the entry development with no intermediate equipment moves as the entry would be roof bolted from the mining machine. An additional hole would be drilled in the rib as noted to maintain a minimum depth of 14.2 feet inside the rib at all times. The entire face drilling operation would be completed when mining takes place in the adjacent entries.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 1990. Copies of the petition are available for inspection at the address.

Dated: October 3, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-23993 Filed 10-10-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advance advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: October 4, 1990.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Date(s)	Times	Room [1]
Advisory Panel for Ocean Sciences Research	Equatorial Pacific Proc.	10/30/90 10/31/90	8 a-5 p 8 a-5 p	536

[1] At 1800 G Street NW., Washington DC.

Committee name	Date(s)	Time	Location
Special Emphasis Panel in Research Career Development	10/25/90	8 a—5:30 p	Sheraton Washington Hotel, Woodley and Connecticut Ave., Washington, DC.
Agenda: Young Scholars Proposals	10/26/90	8 a—3:30 p	
Advisory Review Panel for Engineering Research Centers	11/07/90	8 a-5 p	Maryland University, College Park, MD.
Agenda: ERC Site Visit	11/09/90	8 a-5 p	
Advisory Review Panel for Engineering Research Centers	11/14/90	8:30 a-5 p	Purdue University, Purdue, IN.
Agenda: ERC Site Visit	11/16/90	8:30 a-5 p	
Advisory Review Panel for Engineering Research Centers	11/14/90	8:30 a—5 p	Columbia University, Columbia, NY.
Agenda: ERC Site Visit	11/16/90	8:30 a-5 p	
Advisory Review Panel for Engineering Research Centers	11/27/90	8:30 a—5 p	8:30 a—5 p
Agenda: ERC Site Visit	11/29/90		

[FR Doc. 90-23920 Filed 10-10-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-413 and 50-414]

Duke Power Co., et al., Withdrawal of Applications for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Duke Power Company, *et al.* (the licensee) to withdraw its July 26, 1988, and April 23, 1990 applications for proposed amendments to Facility Operating License Nos. NPF-35 and NPF-52 for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would have revised the following Technical Specifications (TSs): (1) 3/4.7.6 regarding the control room area ventilation system, (2) 4.9.4.2 regarding the containment purge system, (3) 3/4.6.1.8 regarding the annulus ventilation system, and (4) 3/4.7.7 regarding the auxiliary building filtered exhaust system. The associated Bases for TSs 3/4.6.1.8, 3/4.7.6 and 3/4.7.7 also would have been revised.

The Commission has previously issued Notices of Consideration of Issuance of Amendments published in the **Federal Register** on November 16, 1988 (53 FR 46142) and May 10, 1990 (55 FR 20353). However, by letters dated August 30, 1990 and May 23, 1990, and two letters dated June 13, 1990, respectively, the licensee withdrew the proposed amendments.

For further details with respect to this action, see the applications for amendments dated July 26, 1988, and April 23, 1990, (three applications) and the licensee's letters dated August 30, 1990 and May 23, 1990, and two letters dated June 13, 1990, which withdrew the applications for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland this 26th day of September 1990.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-23983 Filed 10-10-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-05980-OM et al.]

Safety Light Corporation, et al. (Byproduct Material Licenses); Reconstitution of Board

In the matter of Docket Nos. 030-05980-OM, 030-05981-OM, 030-05982-OM, 030-06335-OM, 030-08444-OM, 030-05980-OM-2, 030-05981-OM-2, 030-05982-OM-2, 030-06335-OM-2, 030-08444-OM-2; ASLBP Nos. 89-590-01-OM and 90-596-01-OM-2

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Safety Light Corporation, et al.* (Byproduct Material Licenses), with the above-identified Docket Nos., is hereby reconstituted by appointing Administrative Judge James H. Carpenter a Member of this Licensing Board in place of Administrative Judge Oscar H. Paris who I regret to state died on September 26, 1990.

As reconstituted, the Board is comprised of the following Administrative Judges:

Marshall E. Miller, Chairman
James H. Carpenter, Member
Frederick J. Shon, Member

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new member is: Administrative Judge James H. Carpenter, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 4th day of October 1990.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-23985 Filed 10-10-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-12319-CIVP, ASLBP No. 90-618-03-CIVP]

Atomic Safety and Licensing Board; Prehearing Conference

In the matter of Tulsa Gamma Ray, Inc. (material License No. 35-17178-01, EA No. 89-223) Before Administrative Judges: Morton B. Margulies, chairman, Dr. A. Dixon Callihan, Dr. Jerry R. Kline October 4, 1990.

Please take notice that on October 16, 1990, at 10 a.m., local time, a prehearing conference by telephone will be held in the captioned proceeding.

The parties will be heard on: The identification and simplification of the issues; the establishment of a schedule for further actions in the proceeding to include discovery; the identification of

members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt

character of each of the Postal Service's systems of records appeared in the **Federal Register** of October 26, 1989 (54 FR 43652).

The Postal Service has determined that it is necessary to make certain editorial corrections and revisions to various systems of records to reflect

changes to the descriptions themselves for the purpose of presenting to the public a clearer picture of the records maintained. They do not change the general characteristics or purposes of any systems as described nor do they expand the population of individuals to whom the systems apply. The following constitutes final notice of the necessary

USPS 030.010 EQUAL EMPLOYMENT OPPORTUNITY—EEO DISCRIMINATION COMPLAINT FILES, 030.010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Change the word "complaints" to "complainants" at the end of the last sentence.

answer sheets, booklets) are destroyed upon transcription to magnetic media, usually within six months of collection."

NOTIFICATION PROCEDURE:

Change to read "Employees wishing to gain access to their records should submit requests to the facility head

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Please take notice that on October 16, 1990, at 10 a.m., local time, a prehearing conference by telephone will be held in the captioned proceeding.

The parties will be heard on: The identification and simplification of the issues; the establishment of a schedule for further actions in the proceeding to include discovery, the identification of witnesses and the setting of the time for hearing; and any other matters that may aid in the orderly disposition of the proceeding. The parties have not been able to agree previously on any of these matters.

The prehearing conference will be recorded verbatim. Parties or their representatives are directed to participate.

It is so *Ordered.*

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, October 4, 1990.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 90-23988 Filed 10-10-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, December 13, 1990
Thursday, January 10, 1991
Thursday, January 24, 1991

The meetings will start at 10:30 a.m. and will be held in Room 5A06A, Office of Personnel Management Building 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415 (202) 606-1500.

Dated: October 5, 1990.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 90-23977 Filed 10-10-90; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records Modification

AGENCY: Postal Service.

ACTION: Editorial corrections and revisions to systems of records.

SUMMARY: This document provides final notice of editorial corrections and revisions to several Postal Service systems of records.

EFFECTIVE DATE: October 11, 1990.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter, 202-268-4872.

SUPPLEMENTARY INFORMATION: A complete statement of the existence and character of each of the Postal Service's systems of records appeared in the **Federal Register** of October 26, 1989 (54 FR 43652).

The Postal Service has determined that it is necessary to make certain editorial corrections and revisions to various systems of records to reflect more accurately the nature and scope of the systems described.

The October 26, 1989 **Federal Register** publication of system USPS 010.020 (54 FR 43658) contained bracketed material in the system notice. That material was intended to be deleted and the changes below are merely to provide a clean copy of the system notice as it should appear. The changes to USPS 030.010 are made to correct a typographical error and to clarify the safeguards applied to records within that system.

The "Categories of Records" segment of the current description of USPS 120.070 includes "records of disciplinary actions." The system continues to contain such records, but some formerly contained in the general personnel folder are contained in an automated system that tracks all disciplinary acions. This notice supplements the "categories of records" to show the existence of the automated system. The uses of information collected remain unchanged except that the automated system will generate statistical reports for personnel management. Changes to the "Retention and Disposal" and "Notification Procedure" sections of USPS 120.070 relate to the automated system. Further, system notice USPS 120.070 is modified to correct an earlier typographical omission in the "system location" section.

The changes to USPS 120.120 and 120.151 are to clarify the nature of testing records kept within each system. Records within USPS 120.120 support personnel research and development projects and are not used to make individual personnel decisions. To the extent that testing materials are covered by this system, their use is for research and validation only. Individual test results used for recruiting purposes are covered by USPS 120.151.

Lastly, USPS 120.153 was established to maintain various records used in appraising employee performance in all staffing categories, including that of Post Career Executive Service (developed to fill key management positions). The system changes specify the maintenance for appraisals for this level as well and add "coworkers" as a source for information kept within USPS 120.153.

These modifications do not reflect any changes in the operation or function of the described system. They are only

changes to the descriptions themselves for the purpose of presenting to the public a clearer picture of the records maintained. They do not change the general characteristics or purposes of any systems as described nor do they expand the population of individuals to whom the systems apply. The following constitutes final notice of the necessary changes.

USPS 010.020 COLLECTION AND DELIVERY RECORDS—BOXHOLDER RECORDS, 010.020.

PURPOSE:

Change to read: "To provide post office box services to post customers."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Routine Use—Change to read "1. The recorded name, address, and telephone number of the holder of a post office box being used for the purpose of doing or soliciting business with the public, and any person applying for a box in behalf of a holder, will be furnished to any person upon request."

Routine Use 2—Change to read "2. Disclosure of Boxholder information may be made to a federal, state, or local government agency upon prior written certification that the information is required for the performance of its official duties. A copy of the PS Form 1093 may be furnished."

Routine Use 3—Change to read "3. The name or address of the holder of a post office box may be disclosed to a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*, upon receipt of written information that meets prescribed certification requirements. A copy of the PS Form 1093 will not be furnished.

Routine Use 5—Change to read "5. Disclosure of boxholder information may be made, upon prior written certification from a foreign government agency citing the relevance of the information to an indication of a violation or potential violation of law and its responsibility for investigating or prosecuting such violation, and only if the address is (1) outside the United States and its territories, and (2) within the territorial boundaries of the requesting foreign government. A copy of the PS Form 1093 may be furnished."

SAFEGUARDS:

Change to read "Access limited to employees working in the boxholder section. Automated records are subject to computer access controls (passwords) that restrict access to authorized personnel."

USPS 030.010 EQUAL EMPLOYMENT OPPORTUNITY—EEO DISCRIMINATION COMPLAINT FILES, 030.010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Change the word "complaints" to "complainants" at the end of the last sentence.

SAFEGUARDS:

Change to read "Case files are maintained in lockable file cabinets within locked rooms. ADP records are protected with password security."

USPS 120.070 PERSONNEL RECORDS—GENERAL PERSONNEL FOLDER (OFFICIAL PERSONNEL FOLDERS AND RECORDS RELATED THERETO), 120.070. SYSTEM LOCATION:

Change to read "Personnel offices of all USPS facilities; National Personnel Records Center, St. Louis, MO; E&LR Information Centers; Postal Data Center, Minneapolis, MN; and National Test Administration Center, Alexandria, VA."

CATEGORIES OF RECORDS IN THE SYSTEM:

Change to read "Applications, resumes, merit evaluations, promotion/salary change and other personnel actions, letters of commendation, records of disciplinary actions, health benefit and life insurance elections and other documents pertaining to preemployment, prior Federal employment and current service as prescribed by USPS directives.

Note: This system also contains an automated tracking system which is used primarily to control and document disciplinary action and to provide statistical information."

RETENTION AND DISPOSAL:

Delete quotation mark after the word "employee" in item d. Insert the following item e: "e. Disciplinary Tracking System Records—Until research purposes are served, not to exceed 30 years. Destruction is by electronic erasure."

USPS 120.120 PERSONNEL RECORDS—PERSONNEL RESEARCH AND TEST VALIDATION RECORDS, 120.120.

RETRIEVABILITY:

Change to read "Depending on the research project, employee name, social security number, batch number, employee's date of examination, location, or respondent identification code."

RETENTION AND DISPOSAL:

Change item "a" to read "a. Hard-copy—Paper response forms (scannable answer sheets, booklets) are destroyed upon transcription to magnetic media, usually within six months of collection."

NOTIFICATION PROCEDURE:

Change to read "Employees wishing to gain access to their records should submit requests to the facility head where employed. Headquarters employees should submit requests to the System Manager. Former Postal Service employees wishing to gain access to their Official Personnel Folder should submit request to any Postal Service facility head giving name, date of birth and social security number. Former Post Office Department employees having no Postal Service employment (prior to July 1971) should submit the request to the Office of Personnel Management (formerly the U.S. Civil Service Commission), Compliance and Investigations Group, Washington, DC 20415-0001."

USPS 120.151 PERSONNEL RECORDS—RECRUITING, EXAMINING, AND APPOINTMENT RECORDS, 120.151.

SYSTEM LOCATION:

Change to read "U.S. Postal Service personnel offices, National Test Administration Center (NTAC); Minneapolis Postal Data Center, and/or other offices within Postal Service facilities authorized to engage in recruiting or examining activities or to make appointments to positions."

RETENTION AND DISPOSAL:

Add—

"e. Answer Sheets

(i) Hard Copy—Destroy 6 months after processing

(ii) Magnetic Tape—Maintain for 30 years—DO NOT TRANSFER TO A FEDERAL RECORDS CENTER."

USPS 120.153 PERSONNEL RECORDS—INDIVIDUAL PERFORMANCE EVALUATION/MEASUREMENT, 120.153.

CATEGORIES OF RECORDS IN THE SYSTEM:

Change to read "Individual performance evaluation and measurement records that include audit sheets, performance ratings, performance appraisals for PCES candidates, self-appraisals, statements of goals and objectives, and related correspondence."

RECORD SOURCES CATEGORIES:

Change to read "Information is obtained from subject, the subject's

employment records and his/her co-workers."

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-23961 Filed 10-10-90; 8:45 am]

BILLING CODE 7715-12-M

15 U.S.C. 78s(b)(1), notice is hereby given that on September 17, 1990, the American Stock Exchange ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The

respect to its stock indices.[1] Since October 19, 1987, the Exchange has been trading long-term options on its Institutional Index having up to 36 months to expiration. The Exchange is now proposing to list long-term equity options which would expire within two years of their initial listing. The Exchange believes that this proposal is

exchange, and, in particular, the requirements of section 6(b)(5).[2] In particular, the Commission believes that the proposed rule change is designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and contributing to the protection of investors and the

rules to the long-term options in one year's time.[4]

The Commission, however, notes that although specific bid/ask differential and continuity rules do not apply to long-term equity options over nine months to expiration, the AMEX's general rules that obligate registered options traders and specialists to

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

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employment records and his/her co-workers."

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-23961 Filed 10-10-90; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272-2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002

Reinstatement, Rule 17Ad-10, File No. 270-265

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501 *et seq.*), the Securities and Exchange Commission has submitted for reinstatement of OMB approval Rule 17Ad-10. (17 CFR 240.17Ad-10) promulgated under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) requiring transfer agents to create and maintain accurate securityholder files. Eighteen-hundred recordkeepers incur a total of 36,000 burden hours to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0273), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 25, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23960 Filed 10-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28514; File No. SR-AMEX-90-18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Long-Term Equity Options.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 17, 1990, the American Stock Exchange ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX proposes to amend Exchange Rule 903 to provide for the listing on the Exchange of long term equity options. The proposed amendment is set forth below. (Italics indicate additions; brackets indicate deletions.)

Rule 903. No Change.

Commentary .01-.02. No Change.

.03. The Exchange may list, with respect to any class of stock options, series of options having up to twenty-four months from the time they are listed until expiration. There may be up to four additional expiration months. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months. Further, such option series will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations need to be posted for such option series until they are opened for trading.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, the Exchange has the authority to list long-term options with respect to its stock indices.[1] Since October 19, 1987, the Exchange has been trading long-term options on its Institutional Index having up to 36 months to expiration. The Exchange is now proposing to list long-term equity options which would expire within two years of their initial listing. The Exchange believes that this proposal is responsive to the continuing needs of portfolio managers and other institutional customers by providing protection from long-term market moves and offering an alternative to hedging portfolios with futures positions or off-exchange customized options.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange since it will add liquidity to the market by allowing institutional investors to hedge the risks of their stock portfolios over a longer period of time with a known and limited cost. Therefore, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change. Other written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[2] In particular, the Commission believes that the proposed rule change is designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets.

Specifically, institutional customers currently use options to hedge the risks associated with holding diversified equity portfolios. The Commission believes that by allowing investors to lock in their hedges for up to two years, the Exchange's proposal for long-term equity options will permit institutions to protect better their portfolios from adverse long-term market moves. Further, the Commission believes that long-term options will allow this protection to be provided at a known and limited cost. Finally, the proposal will provide institutions with an alternative to hedging portfolios with futures positions or off-exchange customized options. Accordingly, the Commission believes that the proposed rule change will better serve the long-term hedging needs of institutional investors.

The Commission notes that strike price interval, bid/ask differential, and continuity rules will not apply to such long term options series until the time to expiration is less than nine months. This approach is consistent with the approach taken by the Amex with regard to its long-term index options and by the Chicago Board Options Exchange ("CBOE") with regard to its long-term equity and index options.[3] This approach is being taken initially because of the lack of historical pricing data for long-term equity options. Strike price interval requirements and bid/ask differential rules applicable to equity options currently are based on options that expire nine to twelve months from the time they begin trading. Therefore, there currently is no basis for establishing accurate prices for long-term equity options that will expire 24 months from the time they being trading.

The AMEX has, however, stated that it will monitor the trading in long-term equity options closely to gain experience with regard to these options, and that it will reexamine the applicability of these rules to the long-term options in one year's time.[4]

The Commission, however, notes that although specific bid/ask differential and continuity rules do not apply to long-term equity options over nine months to expiration, the AMEX's general rules that obligate registered options traders and specialists to maintain a fair and orderly market will continue to apply.[5] the Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and continuity requirements, to provide the Exchange with the authority to make a finding of inadequate registered option trader or special performance should these market makers enter into transactions or make bids or offers (or fail to do so) in long-term equity options that are inconsistent with the maintenance of a fair and orderly market. Finally, the Commission notes that the bid/ask differential and continuity rules will apply to the long-term equity options when the time remaining until expiration is less than nine months.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The AMEX's proposed rule change is identical to a proposal by the CBOE to trade-long term equity options that was approved on August 27, 1987.[6] The CBOE's long-term equity options proposal was subject to the full notice and comment period and did not receive any comments. Thus, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can begin trading long-term equity options by October 5, 1990, which is the date that the CBOE has announced it will begin trading its long-term equity options. This will facilitate competition between the exchanges for product services, which should be a benefit to public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 1, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [7] that the proposed rule change (SR-AMEX-90-18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated October 3, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23975 Filed 10-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28515; File No. SR-DTC-90-08]

Self-Regulatory Organizations; The Depository Trust Co.; Order Granting Partial Temporary Approval of Proposed Rule Change Implementing Commercial Paper Program

I. Introduction

On May 8, 1990, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-90-08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would permit DTC to add commercial paper ("CP") transactions to its same-day funds settlement ("SDFS") system. Notice of the proposed rule change appeared in the **Federal Register** on July

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[1] *See* Securities Exchange Act Release No. 25041 (October 16, 1987), 52 FR 40008 (October 26, 1987) (order approving SR-Amex-87-22) ("Long-term Index Options Approval Order").

[2] 15 U.S.C. 78f(b)(5) (1982).

[3] *See* Long-term Index Options Approval Order, *supra* note 1, and Securities Exchange Act Release No. 24853 (August 27, 1987) 52 FR 33486 (September 3, 1987) (order approving SR-CBOE-87-24) ("CBOE Long-Term Options Approval Order").

[4] Conversation between Howard Baker, Senior Vice President, Amex, and Thomas R. Gira, Branch Chief, Options Regulation, SEC, on September 27, 1990.

[5] Amex Rules 950(a) and 958(b).

[6] Securities Exchange Act Release No. 24853, *supra* note 3. This rule filing was noticed for comment in Securities Exchange Act Release No. 24662 (June 30, 1987) 52 FR 25678 (July 8, 1987).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1982).

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27, 1990.[2] No comments were received.[3] As discussed below, the Commission is approving three aspects of the proposal that would modify the rules and procedures applicable to all transactions in DTC's SDFS system.

II. Description

DTC proposes to begin processing CP in the SDFS system on October 5, 1990. In an effort to minimize the impact of the operational changes that DTC and its paticipants must make to accommodate the addition of CP to SDFS, DTC has requested that the Commission approve four components

This, in turn, may reduce the possibility that a participant's transactions may be blocked for reasons unrelated to the risk exposure associated with such transactions.

B. Valued Pledge

Currently, DTC participants effecting

default experience since the inception of the SDFS system.[9]

IV Discussion

Section 17A of the Act provides that the rules of a clearing agency must promote the prompt and accurate clearance and settlement of securities transactions.[10] In addition, Section 17A

on an expedited basis without increasing DTC's aggregate risk exposure. Finally, the Commission notes that participants that decide to organize their various SDFS accounts into one or more families of accounts remain liable to DTC as principals with respect to each such account. Consequently, the

Division of Market Regulation's standards for review of clearing agency registration applications,[11] one way to protect participants from risk is for clearing agencies to establish, by rule, an appropriate level of clearing fund contributions based, among other things,

27, 1990.[2] No comments were received.[3] As discussed below, the Commission is approving three aspects of the proposal that would modify the rules and procedures applicable to all transactions in DTC's SDFS system.

II. Description

DTC's proposal amends its rules to include CP transactions in its SDFS system.[4] Under DTC's proposal, those CP issues made eligible for SDFS will be distributed in book-entry only form upon the electronic instruction of the issuer's issuing agent bank. The issuer's paying agent bank, acting also as DTC's custodian, will hold master CP certificates for DTC.

DTC's SDFS system contains certain controls and safeguards that are designed to minimize DTC's losses in the event of participant default. These controls include: (1) net debit collateralization, (2) required contributions to the SDFS component of the participants fund, (3) net debit caps, (4) receiver-authorized delivery procedures, (5) net-net settlement, and (6) failure-to-settle procedures.[5] All of these safeguards will be applicable to CP transactions. In addition, DTC proposes to add additional controls to the SDFS system to address the particular risks arising from the addition of CP to the SDFS system.[6]

DTC proposes to begin processing CP in the SDFS system on October 5, 1990. In an effort to minimize the impact of the operational changes that DTC and its paticipants must make to accommodate the addition of CP to SDFS, DTC has requested that the Commission approve four components of its proposal before October 5, 1990. These components are (1) increasing its participants' adjustable net debit caps from 10 to 15 times the participant's required and voluntary deposits to the SDFS fund, (2) allowing those participants with multiple SDFS accounts to organize them into one or more families of accounts, (3) permitting participants to effect a pledge versus payment transaction in the SDFS system, and (4) capping the SDFS fund at $400 million. The Commission has issued a separate order addressing the first of these components.[7] Accordingly, this order addresses the last three components comprising DTC's request.

A. Family of Accounts

Under DTC's current SDFS rules and procedures, a participant with more than one SDFS account cannot allocate, on an intra-day basis; collateral available in one account is not available to cover transactions in another account because each account is treated separately in determining net debit and collateral limits. Because the participant may be unable to predict accurately the dollar amount of transactions that may be flowing through each of its accounts, the participant may inadvertently allocate insufficient net debit cap or collateral monitor to a certain account on a particular day. As a result, securities movements into and out of these accounts may be blocked by DTC, even though the participant has sufficient net debit cap and collateral on an aggregate basis to permit those movements to be processed.

DTC's proposal attempts to ameliorate this situation by permitting a participant with multiple SDFS accounts to organize such accounts into one or more families of accounts. Under this proposal, those participants that organize their accounts into a family of accounts would be permitted to aggregate the collateral and net debit caps relating to each of such accounts.[8] This, in turn, may reduce the possibility that a participant's transactions may be blocked for reasons unrelated to the risk exposure associated with such transactions.

B. Valued Pledge

Currently, DTC participants effecting pledge transactions in the SDFS system cannot deliver securities for pledge against payment at DTC. Accordingly, the funds associated with the pledge must be paid ex-DTC or as a distinct payment order transaction at DTC. DTC proposes to allow participants to effect a pledge versus payment transaction through SDFS.

C. Limiting Mandatory Contributions to the SDFS Fund

All participants in the SDFS system must contribute to the SDFS fund. The required contribution for each participant is an amount equal to 5% of its previous month's average daily gross settlement debits and credits. In addition, the first $200,000 of such required contribution must be made in the form of cash.

DTC proposes to cap the aggregate level of the SDFS fund at $400 million. Thus, once the average daily gross settlement debits and credits for all SDFS participants exceeds $8 billion, the effective rate of required deposits to the SDFS fund for all participants will begin to decline from the 5% level specified in DTC's current formula.

III. DTC's Rationale

DTC believes that its proposal to permit SDFS participants to organize their various SDFS accounts into families of accounts will facilitate the flow of transaction processing through the SDFS system and reduce the potential liquidity burdens that may result from its current account structure without increasing DTC's aggregate risk exposure. Similarly, DTC believes that its proposal to permit participants to effect pledge versus payment transactions through the SDFS system will enhance its participants' ability to finance their trading activity while providing DTC with additional controls over such activity.

Finally, DTC believes that its proposal to cap the aggregate level of the SDFS funds at $400 million is reasonable in light of DTC's commitment to monitor the adequacy of its liquid resources, the other risk management controls that exist and are proposed to be added to the SDFS system and the DTC's actual

[2] See Securities Exchange Act Release No. 28250 (July 20, 1990), 55 FR 30773.

[3] The Commission notes that DTC sent an initial CP proposal to its participants and others for consideration in October 1988, and received 37 written responses. After a series of meetings with some of the respondents, DTC modified and expanded the CP proposal and reissued it in July 1990. DTC received 11 written comments on the revised proposal. In general, these commentators urged DTC to proceed with its proposal to offer a CP program and encouraged DTC to do so as expeditiously as possible.

[4] DTC's SDFS system currently encompasses municipal notes, municipal variable-rate bonds, zero-coupon bonds backed by U.S. government securities, medium term notes, auction rate and tender-rate preferred stocks, collateralized mortgage obligations, and government agency securities not eligible for the book-entry system operated by the Federal Reserve Banks. For a complete description of DTC's SDFS system, see Securities Exchange Act Release No. 26988 (July 9, 1987), 52 FR 26613.

[5] *Id.* at 26614.

[6] DTC's default procedures assume that securities returned to delivering participants will not have market values so far below their settlement values as to cause those participants to fail to settle with DTC. This assumption is not valid when a failure to settle is caused by a CP issuer's bankruptcy. To guard against this risk, DTC will, among other things, only make highly rated CP eligible for SDFS, admit only well-capitalized CP issuers, dealers and paying agents to the SDFS system, devalue to zero all of an issuer's CP the actual or potential downgrading of the issuer's CP below DTC's eligibility standards, and prohibit free transactions in CP received versus payment until settlement is completed.

[7] See Securities Exchange Act Release No. 28424 (September 11, 1990), 55 FR 38428 (September 18, 1990).

[8] A DTC participant who maintains a family of accounts is liable to DTC as a principal for activity in each of those accounts. As applied under the proposal, DTC will not permit a transaction to proceed if the participant's available collateral in the entire family of accounts is insufficient to offset the resulting debits, on an aggregate basis, in the family of accounts.

default experience since the inception of the SDFS system.[9]

IV Discussion

Section 17A of the Act provides that the rules of a clearing agency must promote the prompt and accurate clearance and settlement of securities transactions.[10] In addition, Section 17A also provides that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds for which it is responsible.[11] As discussed below, the Commission believes that DTC's proposals are consistent with these provisions.

A. Family of Accounts

Under DTC's current account structure, deliveries of SDFS securities may be blocked because the particular account to which the deliveries relate has reached its net debit cap or exceeded the collateral limit allocated to it by a participant, even if the participant's net debit cap or collateral in other accounts would be sufficient to permit the deliveries to be processed. To unblock such a delivery, a participant may increase the net debit cap and collateral monitor associated with this account by wiring funds or depositing collateral with DTC on an intra-day basis. Although this method is effective, it may cause intra-day liquidity problems for a participant who already has collateral available in another account at DTC by requiring it to move securities among its accounts or to raise funds quickly without advance notice.

The Commission believes that DTC's proposal to permit participants with multiple accounts to organize those accounts into one or more families of accounts may ameliorate this situation. Specifically, permitting participants to consolidate the net debit cap and available collateral from individual accounts may prevent deliveries from being blocked for reasons unrelated to the potential risk exposure created by such deliveries. Moreover, because all deliveries occurring with respect to a family of accounts will remain subject to the risk management controls built into the SDFS system, DTC's proposal may enhance the liquidity of its participants by reducing the probability that they may need to procure funds or securities on an expedited basis without increasing DTC's aggregate risk exposure. Finally, the Commission notes that participants that decide to organize their various SDFS accounts into one or more families of accounts remain liable to DTC as principals with respect to each such account. Consequently, the Commission believes that this proposal is consistent with Section 17A.

B. Valued Pledge

Under DTC's current SDFS rules and procedures, participants can effect free pledges through the SDFS system, but cannot effect pledge-versus-payment transactions in SDFS securities. The Commission believes DTC's proposal to permit valued pledge transactions in the SDFS system promotes the prompt and accurate clearance and settlement of securities transactions and enhances DTC's safeguards against loss in the event of a participant default.

DTC takes title to securities delivered versus payment on an intra-day basis pending settlement, but must relinquish title to those securities when the participant records a pledge on DTC's books. Thus, in the event of participant default, DTC may be at risk because collateral supporting the participant's debits is no longer subject to DTC's control. Although DTC expects that participants who pledge securities will use the resulting funds to pay their DTC settlement obligations, it is possible that those funds will not be used for that purpose. This can result in a liquidity crisis if the participant's available collateral and participants fund deposit are insufficient to pay off the defaulting participant's net debit to DTC. The Commission believes that ultimately DTC should prohibit free pledges in circumstances where a participant's net debit exceeds its participants fund deposit and available, non-pledge assets. Accordingly, the Commission urges DTC to consider the costs and benefits of such a requirement and report, within six months, on the feasibility of implementing such a requirement in both the SDFS and next day funds settlement system.

C. SDFS Fund

Section 17A of the Act provides that the rules of a clearing agency must be designed, among other things, to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible.[12] As explained in the Division of Market Regulation's standards for review of clearing agency registration applications,[13] one way to protect participants from risk is for clearing agencies to establish, by rule, an appropriate level of clearing fund contributions based, among other things, on an assessment of the risks to which it is subject.[14] Although the Commission traditionally has not attempted to determine whether a specific dollar amount of aggregate clearing fund contributions are appropriate,[15] the Commission must review whether the aggregate level of the SDFS fund proposed by DTC is reasonable in relation to the risks posed to DTC by the activity of its participants and is consistent with DTC's obligation to safeguard funds and securities in its custody and control under Section 17A of the Act.

Capping the fund at a particular dollar amount serves to limit potential financial losses of non-defaulting participants in the event of a participant default. In the event of a participant default, non-defaulting participants are liable for any losses, on a pro-rata basis, that cannot be satisfied by the defaulting participant's assets, assuming the non-defaulting participants determine to continue to participate in DTC. If non-defaulting participants determine to withdraw from participation in DTC, their liability for the loss is limited to twice their mandatory contribution to the participants fund. By capping the fund at $400 million, DTC not only limits the maximum liability of non-defaulting participants, DTC also limits the mandatory deposit of each participant (if the fund would otherwise exceed $400 million), thereby reducing the collateral DTC holds in the event of a participant default.

Under DTC's procedures, a participant's required contribution to the SDFS fund is equal to 5% of the participant's average daily gross debits and credits in the SDFS system for the prior month.[16] DTC's proposal retains this formula, but caps the aggregate value of the SDFS fund at $400 million. Thus, once the dollar amount of the average daily gross debits and credits of all SDFS participants reaches $8 billion, each individual participant's required contribution to the SDFS fund will

[9] DTC has experienced only three defaults in the SDFS system since its inception in 1987. The dollar amount of these defaults were $4.8 million, $2.3 million and $614,000, respectively, and were satisfied through use of the cash deposits to the SDFS fund. These defaults were cured the next day and did not require DTC to cease to act for the defaulting participant in those instances.

[10] 15 U.S.C. 78q–1(b)(3)(F) (1982).

[11] *Id.*

[12] 15 U.S.C. 78q–1(b)(3)(F) (1982).

[13] See Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41220.

[14] *Id.* at 41229.

[15] See Securities Exchange Act Release No. 19998 (July 21, 1983), 48 FR 34554.

[16] See DTC's SDFS system procedures.

decrease below the 5% benchmark noted above.

Having determined to establish participant fund contributions at a 5% level, the Commission is uncertain whether it is appropriate for DTC to establish a cap that could vitiate the protections inherent in that percentage requirement. Given the potential Alternatively, if all of DTC's settling banks in the debit positions on an average settlement day failed to settle, DTC would have to finance and resolve a final net-net settlement debit of $72 million. Thus, until substantial CP issuances are processed in DTC's SDFS system, it seems likely that DTC's SDFS

V. Conclusion

For the reasons stated above, the Commission finds that DTC's proposed rule change is consistent with Section 17A of the Act.

It therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR–DTC–90–08) be, and

statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the

Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23970 Filed 10-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28001; File No. SR-MSTC-90-

VOL 55 ISS 197 OCT 11 1990 UMI

decrease below the 5% benchmark noted above.

Having determined to establish participant fund contributions at a 5% level, the Commission is uncertain whether it is appropriate for DTC to establish a cap that could vitiate the protections inherent in that percentage requirement. Given the potential increase in participant activity in DTC's SDFS system, it is possible that an individual participant's required contribution, after taking account of the $400 million cap, could be less than 1% of the participant's average daily gross debits and credits. Even though DTC's SDFS and CP systems require full collateralization of debits, the potential for issuer defaults and other events affecting the liquidity of available collateral may warrant requiring participants to make deposits at levels higher than would be the case if the cap applied, although not necessarily at the 5% level DTC initially established as a part of the SDFS system.

The Commission believes it is appropriate to approve the proposed cap on a temporary basis to permit DTC to obtain further data on this matter.[17] In the interim, DTC believes that the potential impact of the proposal will not significantly reduce DTC's safeguards. Based on its 1990 settlement figures through June 1990, DTC has represented that if all of its participants in a debit position failed to settle on an average settlement day, DTC would have to finance and resolve their final net settlement debits of $246 million.[18] Alternatively, if all of DTC's settling banks in the debit positions on an average settlement day failed to settle, DTC would have to finance and resolve a final net-net settlement debit of $72 million. Thus, until substantial CP issuances are processed in DTC's SDFS system, it seems likely that DTC's SDFS fund on an individual and aggregate basis will provide adequate protection against financial losses arising from a participant default.

During the next eighteen months, DTC has undertaken to monitor and assess the implications of the proposed cap for DTC's safeguards against participant defaults[19] and a potential shortfall in sources of liquidity.[20] As a part of this analysis, DTC will analyze the potential consequences of a combination of issuer and participant defaults.[21]

V. Conclusion

For the reasons stated above, the Commission finds that DTC's proposed rule change is consistent with Section 17A of the Act.

It therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR–DTC–90–08) be, and hereby is, partially approved on a temporary basis for a period of 18 months.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 3, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90–23913 Filed 10–10–90; 8:45 am]
BILLING CODE 8010–01–M

[17] DTC's SDFS fund is just one of the controls DTC will employ to protect against the risks posed by its participants' CP activity. In addition to the SDFS fund, DTC also imposes net debit caps on its participants, requires all delivery versus payment transactions in the SDFS system to be fully collateralized, requires all receive versus payment transactions worth over $25 million to be specifically authorized by the receiver and reduces the dollar amount of settlement payments flowing through the SDFS system through its net-net settlement procedures. In addition, DTC plans to limit CP that is eligible for inclusion in the SDFS system and to permit only well-capitalized issuers, paying agents and dealers to participate in the CP program.

Moreover, DTC's ability to assess its participants is not limited by the size of the SDFS fund. Under DTC's rules, those participants that participate in the SDFS system may be assessed in an amount equal to two times their required SDFS fund contribution before they are permitted to withdraw from DTC without further liability. *See* DTC Rule 4. Nevertheless, during the temporary approval period, the Commission urges DTC to consider requiring each participant to contribute to the SDFS fund an amount not less than 3% of each participant's average daily gross debits and credits for the prior month.

[18] *See* letter from James V. Reilly, Vice President, DTC, to Ernest T. Patrikis, Executive Vice President and General Counsel, Federal Reserve Bank of New York ("FRBNY"), dated August 8, 1990 ("FRBNY Letter").

[19] DTC has made a commitment to the FRBNY to monitor the adequacy of its liquidity cushion on an ongoing basis as the CP program matures. DTC's liquidity cushion is equal to the difference between its liquid resources (*i.e.*, currently $100 million in lines of credit plus approximately $299 million of cash deposits in the SDFS fund) minus 75% of such liquid resources (*i.e.*, the level of DTC's fixed net debit cap). For any individual participant, this liquidity cushion is supplemented by the difference between a participant's actual net debit and DTC's fixed net debit cap. *See* FRBNY Letter, *id.*

[20] DTC has represented that it will take the following actions during the course of the temporary approval period: (1) promptly notify the Commission of any default by a SDFS participant, describe the circumstances surrounding such default and the actions taken by DTC to resolve such default; (2) provide the Commission with copies of all reports relating to the SDFS system furnished by DTC to the FRBNY; (3) provide the Commission with copies of all correspondence between DTC and the FRBNY relating to the SDFS system; and (4) prior to the expiration of the temporary approval period, furnish the Commission with a report analyzing what impact the cap on the SDFS fund has had on DTC's ability to protect against participant default in relation to the volume of CP transactions being processed in the SDFS system at that time and in relation to the volume of CP transactions reasonably anticipated to be processed in the SDFS system. *See* letter from Richard Nesson, General Counsel, DTC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated September 28, 1990.

[21] Specifically, DTC will produce a daily report showing each participant's actual net debit at the end of the day plus debits due to the simulated reversals ("adjusted net debits") for combinations of assumed issuer/participant defaults. Although a participant's actual net debit cannot exceed DTC's fixed net debit cap, the participant's net debit could exceed its actual net debit adjusted because of these simulated reversals.

DTC will use these adjusted net debit figures to determine whether its liquidity cushion would be adequate to cover these adjustable net debits. This will permit DTC to determine whether it needs to increase its lines of credit, reduce its fixed net debit cap, or reduce the fixed net debit caps of certian participants in order to provide it with a larger liquidity cushion. While the foregoing analysis does not directly address the issue of whether the $400 million level of the SDFS fund continues to be adequate to cover the risks posed by DTC's participants' CP activity, it does provide DTC an alternative basis for measuring the adequacy of its liquid resources in light of such risks.

[Rel. No. 34–28502; File No. SR–MCC–90–06]

Self-Regulatory Organizations; the Midwest Clearing Corp.; Notice of a Proposed Rule Change Relating to Penalty Fees for Participant's Failure To Provide Requested Financial Information

October 1, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 24, 1990, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MCC has filed a proposed rule change, as described below, which establishes penalty fees for a participant's failure to provide requested financial information.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish penalty fees for a participant's failure to provide MCC with requested financial information. Under MCC's participants agreements and rules, including Article VIII, Rule 1 section 3, a participant is required to provide MCC information with respect to such participant's business and transactions as MCC may require. MCC has historically interpreted its rules to require: (i) Broker-dealer participants to provide copies of applicable Form X–17A–5 FOCUS Reports and Annual Audited Reports and (ii) bank participants to provide copies of Consolidated Reports of Condition and Income (CALL Reports).

To avoid charges and other actions, participant should take necessary steps to insure that reports are filed when due, as follows:

Reports	Date due
Form X–17A–5; FOCUS I	10 Business days after month-end.
Form X–17A–5; FOCUS II.	17 Business days after quarter.
Consolidated Reports of Condition and Income (CALL REPORTS).	45 Calendar days after quarter.
Form X–17A–5; Annual audited report.	60 Calendar days after end of fiscal year.

MCC will impose the following penalty fees for the failure to timely provide the above-referenced financial information:

Days late	Amount
1–30	$100
31–60	200
61–90	400

The proposed rule filing is consisent with section 17A(b)(3)(F) of the Act in that it is designed to promote the prompt and accurate clearance and settlement of securities transactions and reduce clearing agency risk by encouraging participants to provide MCC with financial information on a timely basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which MCC consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to file number SR–MCC–90–06 and should be submitted by November 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90–23870 Filed 10–10–90; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. 34–28501; File No. SR–MSTC–90–05]

October 1, 1990.

Self-Regulatory Organizations; Midwest Securities Trust Corporation; Notice of a Proposed Rule Change Relating to its Penalty Fees for a Participant's Failure To Provide Requested Financial Information

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 24, 1990, the Midwest Securities Trust Corporation ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC has filed a proposed rule change, as described below, which establishes penalty fees for a participant's failure to provide requested financial information.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish penalty fees for a

participant's failure to provide MSTC with requested financial information. Under MSTC's participants agreements and rules, including Article VIII, Rule 1, section 3, a participant is required to provide MSTC information with respect to such participant's business and transactions as MSTC may require. MSTC has historically interpreted its rules to require: (i) Broker-dealer participants to provide copies of applicable Form X–17A–5 FOCUS Reports and Annual Audited Reports and (ii) bank participants to provide copies of Consolidated Reports of Condition and Income (CALL Reports).

To avoid charges and other actions, participant should take necessary steps to insure that reports are filed when due, as follows:

Reports	Date due
Form X–17A–5; FOCUS I	10 Business days after month-end.
Form X–17A–5; FOCUS II.	17 Business days after quarter.
Consolidated Reports of Condition and Income (CALL REPORTS).	45 Calendar days after quarter.
Form X–17A–5; Annual audited report.	60 Calendar days after end of fiscal year.

MSTC will impose the following penalty fees for the failure to timely provide the above-referenced financial information:

Days late	Amount
1–30	$100
31–60	200
61–90	400

The proposed rule filing is consisent with section 17A(b)(3)(F) of the Act in that it is designed to promote the prompt and accurate clearance and settlement of securities transactions and reduce clearing agency risk by encouraging participants to provide MSTC with financial information on a timely basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which MSTC consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to file number SR–MSTC–90–05 and should be submitted by November 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90–23869 Filed 10–10–90; 8:45 am]
BILLING CODE 8010–01–M

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

[Release No. 34–28500; File No. SR–OCC–90–07]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Amendments to its Stockholders Agreement and By-Laws Providing for the Disbursement of after-tax proceeds

Stockholders Agreement pertaining to the disbursement of after-tax proceeds received by the Stockholders in the event of a Transaction. Proposed section 9(b) also provides that the Transaction Committee shall have the authority to agree with the Exchanges as to the amount they are obligated to deliver in

participant's failure to provide MSTC with requested financial information. Under MSTC's participants agreements and rules, including Article VIII, Rule 1, section 3, a participant is required to provide MSTC information with respect to such participant's business and transactions as MSTC may require. MSTC has historically interpreted its rules to require: (i) broker-dealer participants to provide copies of applicable Form X-17A-5 FOCUS Reports and Annual Audited Reports and (ii) bank participants to provide copies of Consolidated Reports of Condition and Income (CALL Reports).

To avoid charges and other actions, participants should take necessary steps to insure that reports are filed when due, as follows:

Reports	Date due
Form X-17A-5; FOCUS I	10 business days after month-end.
Form X-17A-5; FOCUS II.	17 business days after quarter.
Consolidated Reports of Condition and Income (CALL reports).	45 calendar days after quarter.
Form X-17A-5; annual audited report.	60 calendar days after end of fiscal year.

MSTC will impose the following penalty fees for the failure to timely provide the above-referenced financial information:

Days late	Amount
1-30	$100
31-60	200
61-90	400

The proposed rule filing is consistent with section 17A(b)(3)(F) of the Act in that it is designed to promote the prompt and accurate clearance and settlement of securities transactions and reduce clearing agency risk by encouraging participants to provide MSTC with financial information on a timely basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which MSTC consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to file number SR-MSTC-90-06 and should be submitted by November 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23974 Filed 10-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28509; File No. SR-NSCC-90-19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Securities Clearing Corp. Relating to Modification of Fees for its PC Access System

October 3, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1990, the Natonal Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-NSCC-90-19) as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify the fees being charged for NSCC's PC Access System. Currently, the charge for the PC platform and the first application are bundled together. The revised fee schedule separates the fee for the PC platform from the fee for applications. The revised fee for the PC platform includes the fee for the Recaps application.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the fees being charged for NSCC's PC Access System. This system and the fees were described in NSCC rule filings 89-10, 89-14 and 89-15.

Currently, the charge for the PC platform and the first application are bundled together. The revised fee schedule separates the fee for the PC from the fee for applications. The revised fee for the PC platform includes the fee for the RECAPS application.

The proposed rule filing provides for the equitable allocation of reasonable fees among NSCC participants for the PC Access System and, therefore, is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(2)(A) of the Act because the proposal establishes or changes a due, fee or other charge imposed by NSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-90-19 and should be submitted by November 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23971 Filed 10-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28500; File No. SR-OCC-90-07]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Amendments to its Stockholders Agreement and By-Laws Providing for the Disbursement of Funds Upon Acquisition or Liquidation.

I. Introduction

The Options Clearing Corporation ("OCC"), on June 7, 1990, filed a proposed rule change (File No. SR-OCC-90-07) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on June 28, 1990, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal.

II. Description of the Proposal

The proposal adopts an agreement to OCC's By-Laws providing for the establishment of a transaction committee ("Transaction Committee") to administer the disbursement by OCC stockholders ("Stockholders") to OCC members ("Members") of certain proceeds received by the Stockholders in the event of (1) the sale or exchange of a majority of the Stockholders' shares, (2) OCC's merger or consolidation, or (3) an OCC distribution to its Stockholders (collectively "Transaction"). The proposal also adopts an amendment to OCC's Stockholders Agreement that provides a procedure for such disbursement of funds in the event of a Transaction. The following will describe the salient features of the proposed Transaction Committee and disbursement procedure.

A. Transaction Committee

In order to effectuate the distribution of Transaction proceeds to Members, OCC has proposed to amend its By-Laws to establish a "Transaction Committee" of the Board of Directors ("Board"). The Transaction Committee is a vehicle to protect the Members interests throughout the disbursement process.

Specifically, proposed section 9(b) of the By-Laws sets forth that the Board, on or before the effective date of a Transaction, shall designate not less than three Member directors to serve on a Transaction Committee and perform the functions set forth in the Stockholders Agreement pertaining to the disbursement of after-tax proceeds received by the Stockholders in the event of a Transaction. Proposed section 9(b) also provides that the Transaction Committee shall have the authority to agree with the Exchanges as to the amount they are obligated to deliver in the disbursement, as well as the binding effect of the Committee's, or an arbitrator's, final decision concerning the disbursement.

B. Disbursement Procedure

Under OCC's proposal, the OCC Stockholders Agreement would be amended by adding a new section—section 17—that sets forth, among other things, the procedure to be followed for the distribution to Members of proceeds received by Stockholders in the event of Transaction. Specifically, pursuant to proposed section 17(c), any after-tax proceeds realized by the Stockholders in a Transaction wold be disposed of as follows:

(1) Initially, and prior to any distribution to Members, each Stockholder would be entitled to retain an amount of after-tax proceeds equal to the value of its initial investment, or $333,333 per Stockholder.

(2) If excess after-tax proceeds exist, the Stockholders must pay to the Members such excess not exceeding the amount of retained earnings on the books of the Corporation for the prior year, and

(3) If excess after-tax proceeds still exist (i.e., after-tax proceeds exceeding the amount of the Stockholders aggregate initial investment plus retained earnings), the Stockholders would be entitled to retain an amount equal to twenty-five (25%) percent of such excess and would be required to pay over to the Members the remaining seventy-five (75%) percent.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 28139 (June 21, 1990) 55 FR 28525.

[3] As an illustration of the mechanics of proposed Section 17(c), assume, hypothetically, that OCC was sold and that the shareholders received after-tax proceeds in the amount of $12.5 Million. Additionally, assume that retained earnings were recorded for the previous year in the amount of $5.5 Million. Pursuant to section 17(c), the $12.5 Million in after-tax proceeds would be distributed as follows:

(1) The Stockholders would retain the aggregate amount of their initial investment, or approximately $2 Million (6 Stockholders times $333,333).

(2) The Stockholders would then disburse to the Members the excess after-tax proceeds not exceeding the amount of retained earnings, or $3.5 Million ($5.5 Million minus $2 Million), and

(3) The Stockholders would then retain 25% of the remaining $7 Million, or $1.75 Million, and pay over to the Members 75% of the $7 Million, or $5.25 Million.

Proposed section 17(d) of the Stockholders Agreement sets forth the formula for distributing proceeds to eligible Members. Generally, each Member will receive an amount equal to the proportion of clearing fees, less refunds, paid by the Member during such fiscal year.

Proposed section 17 also sets forth operations through retained earnings in lieu of higher Stockholder contributions and lower transaction fees or annual refunds. Thus, if OCC's retained earnings are converted into proceeds received by Stockholders as a result of a Transaction, the Commission believes such proceeds should be properly

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[Release No. 34-28516; File No. SR-Phlx-90-18]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Increasing the Eligible order Size of AUTOM.

December 31, 1989.[5] On January 9, 1990, the Commission approved a proposed rule change that added an automatic execution feature to AUTOM for certain market and marketable limit orders, made day orders eligible for delivery through the system, and extended the pilot program until June 30, 1990.[6] Most recently, the Commission approved SR-Phlx-90-16, extending the pilot program

the eligible order size.[10] Further, since the AUTOM system is completely independent from the Phlx's Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system for routing and executing stock orders, neither AUTOM nor PACE should impact on the other during periods of high volume.

February 7, 1990, the FAA determined that the noise exposure maps submitted by the city of Fresno under part 150 were in compliance with applicable requirements. On September 14, 1990, the Assistant Administrator for Airports approved the Fresno Air Terminal noise compatibility program. Most of the recommendations of the program were

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Proposed section 17(d) of the Stockholders Agreement sets forth the formula for distributing proceeds to eligible Members. Generally, each Member will receive an amount equal to the proportion of clearing fees, less refunds, paid by the Member during such fiscal year.

Proposed section 17 also sets forth various procedural matters governing a disbursement; such as notice, objections, arbitration and the form of payout (*i.e.*, securities or cash). Under proposed section 17(e), the Shareholders must deliver written notice ("Transaction Notice") to the Transaction Committee describing, among other things, the terms of the Transaction and the aggregate value of the after-tax proceeds. Proposed section 17(g) provides that the Transaction Committee may object to matters set forth in the Transaction Notice and that should a dispute remain unresolved for thirty days after delivery of an objection notice, the dispute must be submitted for arbitration.

III. OCC's Rationale for the Proposal

OCC believes the proposed rule change is consistent with section 17A of the Act, and the rules and regulations thereunder applicable to OCC, because the proposed rule change (1) assures the safeguarding of securities and funds which are in the custody and control of the clearing agency and (2) provides a rational plan of distribution in the event of a consolidation, merger or dissolution of OCC.

IV. Discussion

The Commission believes that OCC's proposed rule change is consistent with the Act, and in particular, with section 17A of the Act. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

The Commission believes the proposal is consistent with OCC's obligation to safeguard securities and funds which are in its custody and control as required by section 17A(b)(3)(F) of the Act.[4] OCC's retained earnings, which represent a significant portion of the value of OCC, are funds technically under the custody and control of OCC. Although no absolute right to retained earnings exists in favor of OCC's Members, as between the Stockholders and Members, the proposal represents an agreement pertaining to the disposition of such retained earnings. This may reflect, in part, an implicit agreement between OCC's Stockholders and users that OCC's users will provide substantial capital to fund OCC's operations through retained earnings in lieu of higher Stockholder contributions and lower transaction fees or annual refunds. Thus, if OCC's retained earnings are converted into proceeds received by Stockholders as a result of a Transaction, the Commission believes such proceeds should be properly safeguarded throughout the distribution process. Because the proposal provides a mechanism for the return of Member contributions to OCC's capital in the event of a Transaction, the Commission believes that the proposed disbursement procedure and Transaction Committee facilitate this goal.

The Commission also believes the proposal is consistent with OCC's obligation, under section 17A(b)(3)(C) of the Act, to assure a fair representation of its shareholders, members and participants in the administration of its affairs.[5] First, Member interests will be fairly represented during a disbursement in the event of a Transaction. As described in OCC's proposal, a Transaction Committee would be comprised of three Member directors and given the mandate of protecting the Members interests throughout a disbursement. Second, the proposal was approved by the Board, a majority of which represents Members,[6] and by the Stockholders. Consequently, these groups have been fairly represented in this matter dealing with the administration of OCC's affairs.

V. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) [7] of the Act, that OCC's proposed rule change (SR–OCC–90–07) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 1, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23972 Filed 10–10–90; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] OCC is managed by a sixteen member board of directors, consisting of nine directors who represent OCC clearing members, six directors representing the OCC stockholders (Chicago Board Options Exchange, American Stock Exchange, Philadelphia Stock Exchange, Pacific Stock Exchange, National Association of Securities Dealers and the New York Stock Exchange) and the chief executive officer of OCC.

[7] 15 U.S.C. 78s(b)(2).

[Release No. 34–28516; File No. SR–Phlx–90–18]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Increasing the Eligible order Size of AUTOM.

I. Introduction

On July 19, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the eligible order size of the Exchange's Automated Options Market ("AUTOM") system, a pilot program.

The proposed rule change was published for comment in Securities Exchange Act Release No. 28300 (August 2, 1990), 55 FR 32523 (August 9, 1990). No comments were received on the proposed rule change.

II. Description of Proposal

The AUTOM system is an online system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Phlx options trading floor, with electronic confirmation of order executions. All orders entered into the system are executed manually by the specialist who, upon execution of the order, enters the relevant trade information into the system. An execution report is then automatically sent to the firm that placed the order.

On March 31, 1988, the Commission approved a proposed rule change establishing AUTOM on a pilot basis for market orders of up to five contracts for all exercise prices in the near month covering twelve Phlx equity options until June 30, 1988.[3] On June 30, 1988, the Commission approved a proposed rule change authorizing an expansion of AUTOM to 37 Phlx equity options and extending the pilot through December 31, 1988.[4] On December 13, 1988, the Commission approved a proposed rule change that made all orders in all exercise prices and months in 37 options eligible for AUTOM, increased the eligible order size from five to ten contracts, and extended the pilot until December 31, 1989.[5] On January 9, 1990, the Commission approved a proposed rule change that added an automatic execution feature to AUTOM for certain market and marketable limit orders, made day orders eligible for delivery through the system, and extended the pilot program until June 30, 1990.[6] Most recently, the Commission approved SR–Phlx–90–16, extending the pilot program until December 31, 1990.[7]

The current proposal would increase from 10 to 100 the size of orders eligible to be routed through the AUTOM system.[8] the Phlx believes that increasing the eligible order size will increase overall AUTOM order flow and extend the system's benefits to additional firms and customers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and section 11A.[9] The Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in Phlx equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission also believes that increasing the eligible order size should increase overall AUTOM order flow and extend the system's benefits, such as increased order routing efficiencies, to more Phlx member firms and customers. In addition, increasing the eligible order size for AUTOM to 100 contracts should enable the Exchange to assess better the effectiveness of the AUTOM system.

Finally, the Commission believes, based on representations by the Exchange, that increasing the eligible order size for AUTOM will not expose the Phlx's options markets or equity markets to risk of failure or operational break-down. In particular, the Exchange represents that the AUTOM system will be able to handle the increased volume that should accompany the increase in the eligible order size.[10] Further, since the AUTOM system is completely independent from the Phlx's Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system for routing and executing stock orders, neither AUTOM nor PACE should impact on the other during periods of high volume. Moreover, the Phlx has asserted that AUTOM's order handling and disc capacity is more than adequate to address foreseeable needs including any additional traffic which might be generated as a result of increasing the eligible order size to 100 contracts.[11]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–90–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: October, 3, 1990

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23976 Filed 10–10–90; 8:45 am]

BILLING CODE 8011-01-M

[1] 15 U.S.C. 78s(b)(1) (1982)

[2] 17 CFR 240.19b–4 (1989).

[3] *See* Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988).

[4] *See* Securities Exchange Act Release No. 25868 (June 30, 1988), 53 FR 25563 (July 7, 1988).

[5] *See* Securities Exchange Act Release No. 26354 (December 13, 1988), 53 FR 51185 (December 20, 1988).

[6] *See* Securities Exchange Act Release No. 27509 (January 9, 1990), 53 FR 1751 (January 18, 1990).

[7] *See* Securities Exchange Act Release No. 28265 (July 20, 1990), 53 FR 31274 (August 1, 1990).

[8] Although the current proposal increases the eligible order size of AUTOM, the number of contracts eligible for automatic execution under the system is not being increased. Currently, automatic execution through AUTOM is available only to certain customer market and marketable limit orders of up to ten contracts.

[9] 15 U.S.C. 78f and 78k–1 (1982).

[10] Letter from Michael A. Finnegan, Senior Vice President, Phlx, to Eugene Lopez, Special Counsel, Office of Automation and International Markets, Division of Market Regulation, SEC, dated August 7, 1990.

[11] The Phlx represents that AUTOM's capacity is 48,000 orders for a six hour forty minute trading day although the system has been initially configured to handle 10,000 orders per day. The Phlx also represents that the system currently is processing 400 orders per day. The Phlx does not expect that the proposed rule change will increase the system's order flow to the extent that AUTOM would be required to process more than 2,000 orders per day. Id.

[12] 15 U.S.C. 78s(b)(3) (1982).

[13] 17 CFR 200.30–3(a)(12) (1988).

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Fresno Air Terminal (FAT), Fresno, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Fresno under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Reprot No. 96–52 (1980). On February 7, 1990, the FAA determined that the noise exposure maps submitted by the city of Fresno under part 150 were in compliance with applicable requirements. On September 14, 1990, the Assistant Administrator for Airports approved the Fresno Air Terminal noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: Approval of the Fresno Air Terminal noise compatibility program is September 14, 1990.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 9410–1303, Telephone (415) 876–2779. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces tht the FAA has given its overall approval to the noise compatibility program for Fresno Air Terminal, effective September 14, 1990.

Under section 104(a) of the Act, an airport operator who has previously submitted a noise exposure maps may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign

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commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Assistant Administrator for Airports prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA San Francisco Airports District Office in Burlingame, California.

The city of Fresno submited to the FAA on October 10, 1988, the noise exposures maps, descriptions, and other documentation produced during the noise compatibility planning study constructed from June 1985 through September 1988. The city of Fresno noise exposure maps were determined by the FAA to be in compliance with applicable requirements on February 7, 1990. Notice of this determination was published in the Federal Register on February 7, 1990.

The study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 23, 1990, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such a program.

The submitted progam contained forty-three (43) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective September 14, 1990.

Outright approval was granted for thirty-five (35) of the specific program elements, partial approval of one (1) element, and disapproval of nine (9) elements. Approved actions on and off airport include: Most of those noise control elements contained in the existing agreement between the city of Fresno and the California Air National Guard, use minimum reverse thrust, use of quieter fire suppression aircraft, modify existing helicopter Visual Flight Rules routes, limitation on military helicopter training, restriction on touch-and-go operations, preferential runway use, limitation on intersection departures, limitation on engine runups, military departure procedures, increase minimum altitudes before turns, minimum arrival altitudes applicable to civil and military jet operations, military jet operations and helicopter pattern, evaluate specific land use plans, soundproof schools, purchase/purchase assurance, acoustical treatment and avigation easement, land use zoning, noise monitoring, airport noise report, special studies, airport/community/user information programs, obtain funding for implementation, airport/community user information program, airport/community forum, and periodic noise compatibility program review and update. Pilot information program was approved with respect to providing pilots with information but disapproved with respect to intent to "establish corrective action." Disapproved elements include: Implementation of the airport master plan, single even noise level standard, restriction on military helicopter training operations, southeast depatures, install an ILS on runway 11L, establish scenario 6 noise contour, neighborhood enhancement, and user fees.

These determination are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on September 14, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the city of Fresno.

Issued in Hawthorne, California on September 27, 1990.

James J. Wiggins,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 90-23062 Filed 10-10-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 26-90]

Treasury Notes, Series AE-1992

September 26, 1990.

The Secretary announced on September 25, 1990, that the interest rate on the notes designated Series AE-1992, described in Department Circular—Public Debt Series—No. 26-90 dated September 20, 1990, will be 8⅛ percent. Interest on the notes will be payable at the rate of 8⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-23047 Filed 10-10-90; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 28-90]

Treasury Notes of October 15, 1997, Series G-1997

Washington, October 4, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $8,500,000,000 of United States securities, designated Treasury Notes of October 15, 1997, Series G-1997 (CUSIP No. 912827 ZK 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 15, 1990, and will accrue interest from that date, payable on a semiannual basis on April 15, 1991, and each subsequent 6 months on October 15 and April 15 through the date that the principal becomes payable. They will mature October 15, 1997, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adpoted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1 p.m., Eastern Daylight Saving time, Wednesday, October 10, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 9, 1990, and received no later than Tuesday, October 9, 1990, and received no later than Monday, October 15, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting non-competitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide à fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, October 15, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be

received from institutional investors no later than Thursday, October 11, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount

[Supplement to Department Circular—Public Debt Series—No. 27-90]

Treasury Notes, Series P-1994

Washington, September 27, 1990.

The Secretary announced on September 26, 1990, that the interest rate on the notes designated Series P-1994,

for USIA; and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-5563; and OMB review; Mr. C.

Sunshine Act Meetings

Federal Register
Vol. 55, No. 197
Thursday, October 11, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine

THE FOLLOWING ITEM HAD BEEN ADDED TO THE AGENDA:

TIME AND DATE: 9:00 a.m., Tuesday, October 16, 1990.

received from institutional investors no later than Thursday, October 11, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-24062 Filed 10-9-90; 10:08 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 27-90]

Treasury Notes, Series P-1994

Washington, September 27, 1990.

The Secretary announced on September 26, 1990, that the interest rate on the notes designated Series P-1994, described in Department Circular—Public Debt Series—No. 27-90 dated September 20, 1990, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-23948 Filed 10-10-90; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements for OMB review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency in accordance with Executive Order 12048 (dated March 27, 1978). USIA is requesting approval of the extension of OMB 3116-0163 entitled "USIA Survey." Estimated burden hour per response averages 24 minutes.

DATES: November 13, 1990.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA; and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-5563; and OMB review; Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 24 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for USIA.

Title: USIA Surveys.

Form number: No form used for this information collection.

Abstract: Foreign public opinion, media use and related data are collected by means of sample surveys among representative population groups for statistical analysis purposes. Respondents participate voluntarily and anonymously. The findings are important to foreign policy deliberations and also serve to guide USIA programs activities abroad.

Proposed Frequency of Responses

No. of Respondents—40,000.
Recordkeeping hours—0.
Total annual burden—320,000.

Dated: October 3, 1990.

Rose Royal,

Federal Register Liaison.

[FR Doc. 90-23913 Filed 10-10-90; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 197
Thursday, October 11, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:43 p.m. on Thursday, October 4, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

A recommendation concerning an administrative enforcement proceeding.

Matters related to the probable failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Vice Chairperson Andrew C. Hove, Jr., M. Paul M. Homan, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board room of the FDIC Building located at 550 — 17th Street, NW., Washington, DC.

Dated: October 5, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-24058 Filed 10-9-90; 9:13 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 90-23064

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 4, 1990, 10 a.m.

Meeting open to the public.

THE FOLLOWING ITEM HAD BEEN ADDED TO THE AGENDA:

AO 1990-16—
Robert T. Markowski on behalf of Citizens for Thompson.

"FEDERAL REGISTER NUMBER: 90-23064

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, October 2, 1990, 10 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

By direction of the Commission, the above closed meeting, originally scheduled for October 2, 1990, convened on October 4, 1990, at the close of the open meeting.

DATE AND TIME: Tuesday, October 16, 1990, 10 a.m.–

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26 U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 18, 1990, 10 a.m.

PLACE: 999 E Street NW., Washington, DC. (Ninth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and approval of minutes
Draft advisory opinions.
AO 1990-19—
Gordon M. Strauss on behalf of the Suarez Corporation.
AO 1990-20—
James K. Wilkens on behalf of Bradbury, Bliss & Riordan PAC.
Status of Presidential audits.
Administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 90-24144 Filed 10-9-90; 2:24 pm]

BILLING CODE 6715-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:00 a.m., Tuesday, October 16, 1990.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Appeal by a CU of Field of Membership Overlap Decision. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Appeal by a CU of Insurance Determination under Section 201 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under Part 747 of NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).
5. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90-24145 Filed 10-9-90; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Friday, October 19, 1990.

PLACE: Howard Johnson's Hotel & Conference Center, 383 S. Center Street, Windsor Locks, CT 06096 (203) 623-9811.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Request under Freedom of Inforamtion Act (FOIA) through the National Technical Information Service.
6. Final Rule: Sections 701.14, 741.8, and Part 747, Subpart L, Reporting Requirements for Newly Chartered and Troubled Credit Unions, NCUA's Rules and Regulations.

Final Rule: Section 741.14, Prohibition on Uninsured Membership Shares, NCUA's Rules and Regulations.

8. Revised Operating Fee Scale.

9. Fiscal Year 1991 Overhead Transfer Rate.

10. Legislative Update.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90-24146 Filed 10-9-90; 2:34 pm]

BILLING CODE 7535-01-M

closed session to consider matters relating to: (1) The resolution of a failed thrift institution; and (2) staff recommendations regarding financing the sale of assets.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), concurred in by Director Robert L. Clarke (Comptroller of the Currency), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board

Corrections

Federal Register
Vol. 55, No. 197
Thursday, October 11, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

$$\mu_{ar} = \frac{2W}{\rho C_{g\alpha} S_c}\left(\frac{K}{l}\right)^2 =$$ lateral mass ratio:

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9. Fiscal Year 1991 Overhead Transfer Rate.

10. Legislative Update.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90-24146 Filed 10-9-90; 2:34 pm]

BILLING CODE 7535-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:10 p.m. on Thursday, October 4, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) The resolution of a failed thrift institution; and (2) staff recommendations regarding financing the sale of assets.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Mr. Paul M. Homan, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency) that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: October 5, 1990.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 90-24119 Filed 10-9-90; 12:50 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 197
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-22]

Rules of Practice for FAA Civil Penalty Actions

Correction

In rule document 90-17895 beginning on page 31175 in the issue of Wednesday, August 1, 1990, make the following correction:

On page 31176, in the second column, in the authority citation for part 13, in the next-to-last line "(g)" should read "(q)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24344; Amdt. No. 25-72]

RIN 2120-AA47

Special Review: Transport Category Airplane Airworthiness Standards

Correction

In the correction to rule document 90-16852 appearing on page 37607 in the issue of Wednesday, September 12, 1990, make the following correction:

§ 25.351 [Corrected]

In § 25.351(b), on page 37606, in the second column, the last two equations should have appeared as follows:

where—

L_v = vertical tail load (lbs.);

$$K_g = \frac{0.88\mu_g}{5.3+\mu_g} = \text{gust alleviation factor;}$$

$$\mu_g = \frac{2W}{\rho C_{lg} a_t S_t}\left(\frac{K}{l}\right)^2 = \text{lateral mass ratio;}$$

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 25905; Amdt. No. 61-57, 67-14]

RIN 2120-AC51

Pilots Convicted of Alcohol- or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures

Correction

In rule document 90-17827 beginning on page 31300 in the issue of Wednesday, August 1, 1990, make the following correction:

§ 61.15 [Corrected]

On page 31309, in the third column, in § 61.15(f)(2), "Suspension of" should read "Suspension or".

BILLING CODE 1505-01-D

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Part II

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date for Applications; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 900940-0240]

Public Telecommunications Facilities Program: Closing Date for Applications

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

II. Closing Date

Pursuant to § 2301.5(c) of the PTFP Final Rules (52 FR 31496, 31501 (1987) codified at 15 CFR part 2301), the public telecommunications services to geographic areas which are presently unserved—i.e., areas which do not receive any public telecommunications services whatsoever. An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved should indicate the

already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is

proposals are so unique or innovative that they do not clearly fall within any of the listed priorities. Innovative projects submitted under this category must address demonstrated and substantial community needs (e.g., services to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services

application will be processed to coincide with NTIA's grant cycle. NTIA will return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before January 16, 1991.

Effective October 1, 1988, OMB Circular A-102, as it applies to grant

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 900940-0240]

Public Telecommunications Facilities Program: Closing Date for Applications

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Public Telecommunications Facilities Program: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program administered by NTIA.

Applicants for grants under the PTFP must file their applications on or before January 16, 1991. Congress has not completed action on the appropriation for this program. If, however, funds are made available for the program for the fiscal year, NTIA anticipates making grant awards by late summer 1991.

Final Rules for the Public Telecommunications Facilities Program were published on August 20, 1987 (52 Fed. Reg. 31496–31505, No. 161). Those rules will be in effect for 1991 applications.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, PTFP/NTIA/DOC, Room 4625, Washington, DC 20230. Telephone (202) 377–5802.

SUPPLEMENTARY INFORMATION:

I. Eligibility

A. To be eligible to apply for or receive a construction grant under the PTFP, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or,

(5) A State or local government or agency or a political or special purpose subdivision of a State.

B. To be eligible to apply for and receive a PTFP planning grant, an applicant must be:

(1) Any of the organizations described in the preceding paragraph; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

II. Closing Date

Pursuant to § 2301.5(c) of the PTFP Final Rules (52 FR 31496, 31501 (1987) codified at 15 CFR part 2301), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. *The closing date selected for the submission of applications for 1991 is January 16, 1991.*

III. Program Goals and Priorities

The goals of this program, as stated in section 390 of the Communications Act (47 U.S.C. 390) are:

> (T)o assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:
>
> (1) (E)xtend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;
>
> (2) (I)ncrease public telecommunications services and facilities available to, operated by, and owned by minorities and women; and
>
> (3) (S)trengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

The Agency has established the following priorities for the PTFP:

Priority I—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area

There are two subcategories:

A. *Projects which include local origination capacity.* This subcategory includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects which do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of exiating stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved—i.e., areas which do not receive any public telecommunications services whatsoever. An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project. (Television and radio are considered separately for the purposes of determining coverage.)

Under Priority 1B, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of 50 percent.

Priority II—Replacement of Basic Equipment of Existing Essential Broadcast Stations

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast stations which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (i.e., copies of maintenance logs. Letters documenting non-availability of parts should also be included). Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential stations. Where an applicant seeks to "improve" basic equipment in its station (i.e., where the equipment is not "worn out"), or where the applicant is not an essential station, NTIA would consider the applicant's project undr Priority IV.

Priority III—Establishment of First Local Origination Capacity in a Geograpical Area.

Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the originating facility.)

Priority IV—Replacement and Improvement of Basic Equipment for Existing Broadcast Stations

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., improvements to signal quality and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in maintenance logs).

Priority V—Augmentation of Existing Broadcast Stations

Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. Projects to Equip Auxiliary Studios at Remote Locations, or to Provide Mobile Origination Facilities

An applicant must demonstrate that significant expansion in public participation in programming will result. This category includes mobile units, neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. Projects to Augment Production Capacity Beyond Basic Level in Order to Provide Programming or Related Materials for Other Than Local Distribution

This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Special Applications. NTIA posseses the discretionary authority to award grants to eligible applicants whose proposals are so unique or innovative that they do not clearly fall within any of the listed priorities. Innovative projects submitted under this category must address demonstrated and substantial community needs (e.g., services to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text).

IV. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the Agency.

In August 1987, PTFP published the most recent version of its Final Rules. Since then, the program has revised its application materials and new information collection requirements have been imposed by the Office of Management and Budget (OMB). *Therefore, no previous versions of the PTFP Application Form may be used.* (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.)

All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred will be mailed pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate SPOC on or before January 16, 1991. Applicants are encouraged to contact the appropriate SPOC well before the NTIA closing date.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC), must tender an application to the FCC for such authority on or before January 16, 1991. (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) However, applicants are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance the FCC application will be processed to coincide with NTIA's grant cycle. NTIA will return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before January 16, 1991.

Effective October 1, 1988, OMB Circular A–102, as it applies to grant recipients, has been superseded by Department of Commerce regulations, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments (53 FR 8034, codified at 15 CFR Part 24 (1988)). Applicants should note that PTFP grant recipients, depending on their type of organization, are subject to the provisions of diverse Office of Management and Budget (OMB) Circulars; i.e., A–87 "Cost Principles for State and Local Governments," A–21 "Cost Principles for Educational Institutions," A–110, A–122, A–128, and A–133. In addition, any applicant organizations with outstanding accounts receivable with the Department of Commerce will not receive a new award until the debt is paid or debt repayment arrangements satisfactory to the Department are made.

Potential PTFP grant recipients may be required to submit an "Identification—Applications for Funding Assistance" form (Form CD–346), which is used to ascertain background information on key individuals associated with the potential grantee. The CD–346 form requests information to reveal if any key individuals in the organization have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity. Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

Potential PTFP recipients are also subject to the provisions of 15 CFR 2b, Department of Commerce Nonprocurement Debarment and Suspension; the provisions of the Drug-Free Workplace Act of 1988, 15 CFR 26 (F); and to the provision of 31 U.S.C. 1352 entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", more commonly known as the "lobbying disclosure" rule.

Awards granted under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Applicants are reminded that a false statement on the application may be

grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

V. Funding Criteria

All PTFP funding criteria are equal in weight. The funding criteria for construction applications are as follows:

In determining whether to approve or

staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(j) The extent to which the project

and set forth in the award document. Such amount may not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

Special Note: At the time the Final Rules for PTFP were adopted, NTIA announced a policy which did not

VII. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria listed in Section V above. The Agency determines the selection of grantees according to the Priorities listed in Section III above and the evaluation of

PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

VIII. Filing Applications

Applications delivered by mail must be received no later than 5 p.m., January 16, 1991, and must be addressed to: Public Telecommunications Facilities

not be considered in the current grant cycle and will be returned.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390–394, 397–399b (Act), as amended by the Public Broadcasting Amendments of 1981, Pub. L. No. 97–35, 95 Stat. 725 (1981 Amendments), and the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272,

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grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

V. Funding Criteria

All PTFP funding criteria are equal in weight. The funding criteria for construction applications are as follows:

In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the project meets the program purposes set forth in the Final Rules, 15 CFR 2301.2, as well as the specific program priorities set forth in the Appendix of those Rules;

(b) The adequacy and continuity of financial resources for long-term operational support;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available;

(2) Evaluated alternative technologies and the basis upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition or replacement;

(4) Provided documentation of an increasing pattern of substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for whom the applicant produces or will produce programs or other materials;

(e) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(f) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(g) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(j) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and,

(k) The readiness of the FCC to grant any necessary authorization.

The funding criteria for planning applications are as follows:

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local, state, regional and national levels;

(3) Evalute alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and,

(e) The feasibility of the proposed procedure and timetable for achieving the expected results.

VI. Matching Requirements

(a) *Planning grants.* A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) *Construction grants.* (1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the award document. Such amount may not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

Special Note: At the time the Final Rules for PTFP were adopted, NTIA announced a policy which did not require any rule change, but which is intended to encourage stations reporting substantial non-Federal revenues to increase the matching percentage in their proposals for replacement of equipment from 25% to 50%. The Agency emphasized that applicants proposing to provide first service to a geographic area encounter considerable ineligible costs, including construction or renovation of buildings or other similar expenses. NTIA, therefore, expects to continue funding projects to extend service at up to 75% of the total project cost. Applicants from small community-licensed stations, or those who can show that a station licensed to a large institution cannot obtain direct or in-kind support from the larger institution, also will not be subject to this preference. Otherwise, a showing of extraordinary need or emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost, but the presumption of 50% funding will be the general rule for replacement applications.

(2) No part of the grantee's matching share of the eligible project cost may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(4) The expenditure of any local matching funds prior to the filing of an application will be disallowed.

(5) *The Applicants should note that expenditure of local matching funds prior to the award of a grant is at the applicant's own risk.* The exact amount of the match will not be known with certainty until the final award agreement is negotiated. Therefore, should the applicant's expenditure of non-Federal funds exceed the non-Federal share which will be established in the final award agreement, then either the Federal share of the total project cost may be reduced by a corresponding amount, or no Federal award may be offered.

VII. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria listed in Section V above. The Agency determines the selection of grantees according to the Priorities listed in Section III above and the evaluation of the applications by the various review panels.

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods commonly range up to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

VIII. Filing Applications

Applications delivered by mail must be received no later than 5 p.m., January 16, 1991, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Applications delivered by hand must be delivered to the above address between 8:30 a.m. and 5 p.m. on or before January 16, 1991. Applicants whose applications are not received by 5 p.m., January 16, 1991, will be notified that their applications will not be considered in the current grant cycle and will be returned.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390–394, 397–399b (Act), as amended by the Public Broadcasting Amendments of 1981, Pub. L. No. 97–35, 95 Stat. 725 (1981 Amendments), and the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, Section 5001, 100 Stat. 82, 117 (1986).

(Catalog of Federal Domestic Assistance No. 11.550)

Dennis R. Connors,

Director, Public Telecommunications Facilities Program.

[FR Doc. 90–23921 Filed 10–10–90; 8:45 am]

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federal register

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Part III

Department of Education

School, College, and University Partnership Program; Invitations for Applications for New Awards for Fiscal Year 1991; Correction; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.204]

School, College, and University Partnership Program; Invitations for Applications for New Awards for Fiscal Year 1991; Correction

ACTION: *Correction*—School, College, Partnerships Program was published in the Federal Register at 55 FR 38218. That notice was a complete application package and contained various forms for the applicant to sign and return. Each form should have been published on a separate page, but, instead, was printed along with the narrative. This notice contains the forms as they should

FOR FURTHER INFORMATION CONTACT: May J. Weaver, Chief, Special Services Branch, Division of Student Services, Office of Postsecondary Education, Department of Education, Room 3066, ROB-3, 400 Maryland Avenue, SW., Washington, DC 20202-5249. Telephone: (202) 708-4808.

(Catalog of Federal Domestic Assistance

PART IV — PARTNERSHIP AGREEMENT

INSTRUCTIONS: Applicants are required to submit a written partnership agreement with the application for funding under the School, College, and University Partnerships program. The partnership agreement must be signed by all partners and must detail the responsibilites of each participant in the partnership

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DEPARTMENT OF EDUCATION

[CFDA No. 84.204]

School, College, and University Partnership Program; Invitations for Applications for New Awards for Fiscal Year 1991; Correction

ACTION: *Correction*—School, College, and University Partnerships Program; Invitations for Application for New Awards for Fiscal Year 1991.

SUMMARY: On September 17, 1990 a notice inviting applications under the School, College, and University Partnerships Program was published in the Federal Register at 55 FR 38218. That notice was a complete application package and contained various forms for the applicant to sign and return. Each form should have been published on a separate page, but, instead, was printed along with the narrative. This notice contains the forms as they should have appeared and should be used by applicants instead of the material published on pages 38226, 38227, 38228, and 38229. The deadline for transmittal of applications and all other information remains the same as published in the notice on September 17, 1990.

FOR FURTHER INFORMATION CONTACT: May J. Weaver, Chief, Special Services Branch, Division of Student Services, Office of Postsecondary Education, Department of Education, Room 3066, ROB-3, 400 Maryland Avenue, SW., Washington, DC 20202-5249. Telephone: (202) 708-4808.

(Catalog of Federal Domestic Assistance number 84.204, School, College, and University Partnerships Program)

Dated: October 2, 1990.

Leonard L. Haynes, III,

Assistant Secretary for Postsecondary Education.

BILLING CODE 4000-01-M

PART IV -- PARTNERSHIP AGREEMENT

INSTRUCTIONS: Applicants are required to submit a written partnership agreement with the application for funding under the School, College, and University Partnerships program. The partnership agreement must be signed by all partners and must detail the responsibilites of each participant in the partnership and the resources to be contributed by each participant. Applicants may develop their own partnership agreement form or may use the form provided below and attach to it a description of the responsibilities of each partner and the resources to be contributed by each partner.

PARTNERSHIP AGREEMENT

As authorized representatives of our institutions and organizations, we agree to the following terms with respect to our application submitted by _____.

As a condition of receiving a grant under the School, College, and University Partnerships program, we:

-- will perform the activities outlined in the application;

-- will provide the resources as indicated in the application narrative and budget;

-- will provide a representative to the project's governing body; and

-- will be bound by all other statements and commitments contained in the application.

_____ _____
Signature and Title Date

_____
Organization

_____ _____
Signature and Title Date

_____
Organization

_____ _____
Signature and Title Date

_____
Organization

(Note: Add or delete signature spaces as necessary)

PART V -- LISTING OF SECONDARY SCHOOLS

INSTRUCTIONS: Applicants are required to submit with the application for funding a listing of the public and private nonprofit secondary school or schools to be involved in the project.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

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PART V -- LISTING OF SECONDARY SCHOOLS

INSTRUCTIONS: Applicants are required to submit with the application for funding a listing of the public and private nonprofit secondary school or schools to be involved in the project.

PART VI -- SCUP PROGRAM ASSURANCES

INSTRUCTIONS: Applicants are required to provide the following assurances. This assurance form must be signed by an authorized representative of the legal applicant.

ASSURANCES

The applicant hereby assures and certifies that:

--The partnership will establish a governing body that includes one representative of each participant in the partnership.

--Federal funds will provide no more than 70 percent of the cost of the project in the first year, 60 percent of such costs in the second year, and 50 percent of such costs in the third and any subsequent year.

--A local educational agency receiving funds under this program will not reduce its combined fiscal effort per student or its aggregate expenditure on education.

--A local educational agency receiving funds under this program will use the Federal funds so as to supplement and, to the extent practical, increase the resources that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of students participating in the project, and in no case will the Federal funds be used to supplant such non-Federal funds.

_____ Date

_____ Name & Title of Authorized Official

_____ Name of Applicant/Recipient

_____ City, State, Zip Code

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

1. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required f ancial and compliance audits in accordance · ith the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing,

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

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Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name — PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature — Date

ED Form GCS-009, (REV. 12/88)

-1-

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other

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Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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ED Form GCS-009, (REV. 12/88)

[FR Doc. 90-23844 Filed 10-11-90; 8:45 am]
BILLING CODE 4000-01-C

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Thursday
October 11, 1990

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9
Federal Acquisition Regulation (FAR): Preaward Survey for the Blind and Other Severely Handicapped; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Therefore an Initial Regulatory

9.107 Surveys of blind and other severely handicapped workshops.

(a) The Committee for Purchase from the Blind and Other Severely Handicapped (Committee), as authorized by 41 U.S.C. 46-48c, determines what supplies and services Federal agencies are required to

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

Federal Acquisition Regulation (FAR): Preaward Survey for the Blind and Other Severely Handicapped

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to subpart 9.1 to include guidance on capability surveys for the blind and other severely handicapped workshops. The purpose of such guidance is to inform contracting officers as to their role in determining the responsibility of blind and other severely handicapped workshops.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 10, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18 & F Streets, NW., Room 4041, Washington, DC 20405. Please cite FAR Case 90–47 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Edward C. Loeb, Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (202) 501–4547. Please cite FAR Case 90–47.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Therefore an Initial Regulatory Flexibility Analysis has not been performed. However, comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–47) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed change to the FAR does not impose recordkeeping information collection requirements or collection of information for offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: October 3, 1990.

Albert A. Vicchiolla,

Director, Office of Federal, Acquisition Policy.

Therefore, it is proposed that 48 CFR part 9 be amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.107 is added to read as follows:

9.107 Surveys of blind and other severely handicapped workshops.

(a) The Committee for Purchase from the Blind and Other Severely Handicapped (Committee), as authorized by 41 U.S.C. 46–48c, determines what supplies and services Federal agencies are required to purchase from workshops for the blind and other severely handicapped (see subpart 8.7). The Committee is required to find a workshop capable of producing the supplies or providing the services before the workshop can be designated as a mandatory source under the Committee's program. The Committee may request a contracting office to assist in assessing the capabilities of a workshop.

(b) The contracting office upon request from the Committee shall conduct a survey to determine the technical and production capabilities of the workshop to furnish specific supplies or services being considered for addition to the Procurement List, or notify the Committee that the workshop is capable and the survey is waived.

(c) The contracting office shall use the Standard Form 1403 to document a survey of blind and other severely handicapped organizations. In performing a survey, the contracting office should emphasize the technical and production capabilities of the workshop to furnish the proposed supplies and services.

(d) The contracting office shall furnish a copy of the completed survey to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped.

[FR Doc. 90–23917 Filed 10–10–90; 8:45 am]

BILLING CODE 6820–34–M

federal register

Thursday,
October 11, 1990

Part V

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States

In accordance with the Impoundment Control Act of 1974, I herewith report seven deferrals of budget authority now

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	BUDGET

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OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States

In accordance with the Impoundment Control Act of 1974, I herewith report seven deferrals of budget authority now totalling $1,120,243,883.

The deferrals affect the International Security Assistance program, as well as programs of the Departments of Agriculture, Defense, Health and Human Services, State, and Transportation. The details of the deferrals are contained in the attached report.

Dated: October 4, 1990.

George Bush,

The White House.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET * AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D91-1	Economic support fund	149,319
	Department of Agriculture:	
	Forest Service:	
D91-2	Expenses, brush disposal	135,955
D91-3	Cooperative work	273,468
	Department of Defense, Civil:	
D91-4	Wildlife conservation	1,186
	Department of Health and Human Services:	
	Social Security Administration:	
D91-5	Limitation on administrative expenses (construction)	7,127
	Department of State:	
	Bureau of Refugee Programs:	
D91-6	United States emergency refugee and migration fund	14,529
	Department of Transportation:	
	Federal Aviation Administration:	
D91-7	Facilities and equipment, Airport and airway trust fund	538,659
	Total, deferrals	1,120,244

* Detail does not add to total due to rounding.

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SUMMARY OF SPECIAL MESSAGES
FISCAL YEAR 1991
(in thousands of dollars)

	RESCISSIONS	* DEFERRALS
First special message:		
New items	—	1,120,244
Revisions to previous special messages	—	---
Effects of the first special message	—	1,120,244
Amounts from previous special messages	—	---
TOTAL amount proposed to date in all special messages	—	1,120,244

* Detail does not add to total due to rounding.

Deferral No. 91-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ ___
BUREAU: International Security Assistance	Other budgetary resources..... 149,319,284
Appropriation title and symbol: Economic support fund 1/ 11X1037 110/11037	Total budgetary resources..... 149,319,284
	Amount to be deferred: Part of year..... $ 149,319,284
	Entire year..... ___
OMB identification code: 11-1037-0-1-152	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other ___
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1991 (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund	11x1037	11-1037-0-1-152	$ ---
Economic support fund	110/11037	11-1037-0-1-152	149,319,284
			149,319,284

JUSTIFICATION: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1990 (D90-1C).

Deferral No. 91-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:	

Deferral No. 91-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:	

Deferral No. 91-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 66,279,000 (16 U.S.C. 490)
BUREAU: Forest Service	Other budgetary resources..... 138,651,224
Appropriation title and symbol: Expenses, brush disposal 1/ 12X5206	Total budgetary resources..... 204,930,224
	Amount to be deferred: Part of year..... $ ____ Entire year..... 135,954,980
OMB identification code: 12-9922-0-2-302	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: ____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Purchasers of National Forest timber are required to deposit the established cost to the Forest Service for disposing of brush and other debris resulting from timber cutting operations by 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year-to-year program which will require $69.0 million in 1991. The current fiscal year reserve of $136.0 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1990 (D90-2).

Deferral No. 91-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 326,551,000 (16 U.S.C. 576b)
BUREAU: Forest Service	Other budgetary resources..... 280,016,145
Appropriation title and symbol: Cooperative Work 1/ 12X8028	Total budgetary resources..... 606,567,145
	Amount to be deferred: Part of year..... $ 273,468,457 Entire year..... ____
OMB identification code: 12-9922-0-2-302	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: ____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where timber operators have not completed all of the contract obligations during the year funds are deposited. As a result restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1990 (D90-3A).

BEST COPY AVAILABLE

Deferral No. 91-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Civil	New budget authority..... $ 2,504,000 (16 U.S.C. 670l)
BUREAU: Wildlife Conservation	

D91-4

project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project

Deferral No. 91-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Civil	New budget authority..... $ 2,504,000 (16 U.S.C. 670f)
BUREAU: Wildlife Conservation Military Reservations 1/	Other budgetary resources..... $ 1,586,000
Appropriation title and symbol: Wildlife Conservation, Army 21X5095; Wildlife Conservation, Navy 17X5095; Wildlife Conservation, Air Force 57X5095	Total budgetary resources..... $ 4,090,000
	Amount to be deferred: Part of year..... ; Entire year..... $ 1,186,000
OMB identification code: 97-5095-0-2-303	Legal authority (in addition to sec. 1013): [X] Antideficiency Act; [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual; [ ] Multi-year: (expiration date); [X] No-Year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Wildlife Conservation, Army.....	21X5095	97-5095-0-2-303	$ 700,000
Wildlife Conservation, Navy.....	17X5095	97-5095-0-2-303	172,000
Wildlife Conservation, Air Force....	57X5095	97-5095-0-2-303	314,000
			1,186,000

JUSTIFICATION: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law – to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major

1/ These accounts were the subject of a similar deferral in 1990 (D90-4A).

D91-4

project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U S C 1512)

Estimated Program Effect: None

Outlay Effect: None

Deferral No. 91-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $
BUREAU: Centers for Disease Control	Other budgetary resources..... $
Appropriation title and symbol: Preventive Health and Health Services Block Grant 75X0894	Total budgetary resources..... $
	Amount to be deferred: Part of year..... $; Entire year..... $
OMB identification code: 75-0894-0-1-551	Legal authority (in addition to sec. 1013): [ ] Antideficiency Act; [ ] Other
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual; [ ] Multi-year: (expiration date); [X] No-Year	Type of budget authority: [ ] Appropriation; [ ] Contract authority; [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Preventive Health and Health Services Block Grant.....	75X0894	75-0894-0-1-551	$ 1,000,000

JUSTIFICATION: Funds are deferred pending receipt of applications from States.

Deferral No. 91-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	New budget authority..... $
BUREAU: International Organizations and Conferences	Other budgetary resources..... $
Appropriation title and symbol: Contributions to International Organizations 19X1037	Total budgetary resources..... $
	Amount to be deferred: Part of year..... $; Entire year..... $
OMB identification code: 19-1037-0-1-153	Legal authority (in addition to sec. 1013): [ ] Antideficiency Act; [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual; [ ] Multi-year: (expiration date); [X] No-Year	Type of budget authority: [ ] Appropriation; [ ] Contract authority; [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Contributions to International Organizations.....	19X1037	19-1037-0-1-153	$ 1,000,000

JUSTIFICATION: Funds are deferred pending receipt of applications from States.

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Deferral No. 91-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... _____
BUREAU: Social Security Administration	Other budgetary resources..... $ 7,126,818
Appropriation title and symbol: Limitation on administrative expenses (construction) 1/ 75X8704	Total budgetary resources..... $ 7,126,818
	Amount to be deferred: Part of year..... _____
	Entire year..... $ 7,126,818
OMB identification code: 20-8007-0-7-651	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office replacement projects. It has been determined that obligation authority in the amount of this deferral is not needed at the present time. Some additional obligations will occur in fiscal year 1991 for roof repair and replacement. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1990 (D90-5A).

Deferral No. 91-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	New budget authority..... $ _____
BUREAU: Bureau of Refugee Programs	Other budgetary resources..... 14,529,000
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources..... 14,529,000
	Amount to be deferred: Part of year..... $ 14,529,000
	Entire year..... _____
OMB identification code: 11-0040-0-1-151	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund not to exceed $50,000,000 to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1990 (D90-6B).

Deferral No. 91-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... _____

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Deferral No. 91-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority.....
BUREAU: Federal Aviation Administration	Other budgetary resources..... $ 1,370,827,000
Appropriation title and symbol: Facilities and equipment (Airport and airway trust fund) 1/ 69X8107 699/38107 697/18107 690/48107 698/28107	Total budgetary resources..... $ 1,370,827,000
	Amount to be deferred: Part of year..... Entire year.....2/ $ 538,659,324
OMB identification code: 69-8107-0-7-402	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [X] Multi-year: 9/30/91 9/30/92 9/30/93 9/30/94 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, and the purchase of new equipment for new or improved air traffic control towers, automation of the enroute airway control system, and expansion/ improvement of navigational and landing aid systems. Funds to continue these activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress. Because of the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with FAA's full funding approach and Congress' intent to provide resources for a project's total cost, and is taken under provision of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1990 (D90-7A).

2/ None of the deferred funds expire at the end of FY 1991.

[FR Doc. 90-24032 Filed 10-10-90; 8:45 am]
BILLING CODE 3110-01-C

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October 11, 1990

Part VI

Congressional Budget Office

Final Sequestration Report for Fiscal Year 1991 to Office of Management and Budget and Congress; Transmittal

CONGRESSIONAL BUDGET OFFICE

Final Sequestration Report for Fiscal Year 1991 to Office of Management and Budget and Congress; Transmittal

AGENCY: Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the final sequestration report for Fiscal Year 1991 to the Office of Management and Budget and the Congress in accordance with the procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119

Stanley L. Greigg,
Director, Office of Intergovernmental Relations, Congressional Budget Office.

BILLING CODE 1430-01-M

FINAL SEQUESTRATION REPORT FOR FISCAL YEAR 1991

A Congressional Budget Office Report to the Congress and the Office of Management and Budget

October 10, 1990

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CONGRESSIONAL BUDGET OFFICE

Final Sequestration Report for Fiscal Year 1991 to Office of Management and Budget and Congress; Transmittal

AGENCY: Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the final sequestration report for Fiscal Year 1991 to the Office of Management and Budget and the Congress in accordance with the procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

BILLING CODE 1450-01-M

FINAL SEQUESTRATION REPORT FOR FISCAL YEAR 1991

A Congressional Budget Office Report to the Congress and the Office of Management and Budget

October 10, 1990

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NOTES

All years referred to in this report are fiscal years, unless otherwise noted.

Details in the text and tables of this report may not add to totals because of rounding.

The Balanced Budget and Emergency Deficit Control Act of 1985 (commonly known as Gramm-Rudman-Hollings) is referred to in this report more briefly as the Balanced Budget Act. This act was amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

The source for all data in this report is the Congressional Budget Office, unless otherwise noted.

This report was transmitted on October 10, 1990, by Robert D. Reischauer, Director of the Congressional Budget Office, to the Honorable Dan Quayle, President of the Senate; the Honorable Thomas S. Foley, Speaker of the House of Representatives; and the Honorable Richard G. Darman, Director of the Office of Management and Budget.

FINAL SEQUESTRATION REPORT FOR FISCAL YEAR 1991

A CONGRESSIONAL BUDGET OFFICE REPORT TO THE CONGRESS AND THE OFFICE OF MANAGEMENT AND BUDGET

October 10, 1990

SUMMARY

This report updates CBO's initial sequestration report to reflect laws enacted and regulations promulgated since August. As specified in the Balanced Budget Act, this report uses the same economic and technical estimating assumptions as the August report. The August report, which was published in the *Federal Register* on August 21 (pages 34158-34204), provides further details on the sequestration process and the assumptions underlying the estimates presented here.

The projected 1991 federal budget deficit under laws and regulations in effect on October 5 is $163.4 billion--$99.4 billion above the statutory target of $64 billion. If CBO's estimates were controlling, and if no further changes were made in taxing and spending policies, across-the-board reductions of 41.1 percent in defense programs and 37.3 percent in nondefense programs would be required to achieve the target. On October 15, the Office of Management and Budget will issue a final estimate of the projected deficit and will determine the necessity for across-the-board spending cuts.

CBO's deficit estimate is based on economic assumptions prepared in June. The deficit estimate does not include sufficient resources to resolve the hundreds of insolvent savings and loan institutions whose deposits are federally insured. New legislation will be required to provide for these additional spending needs, which if included would add $70 billion or more to the 1991 deficit. The estimate also does not include any deficit reduction that may emerge from the budget resolution that was approved by the Congress on October 9.

BUDGET BASELINE TOTALS

The CBO budget baseline estimates of total revenues, outlays, and the deficit for fiscal year 1991 are shown in Table 1. Separate budget baseline estimates are provided for laws and regulations in effect on January 1, 1990; August 15, 1990; and October 5, 1990. The economic and technical assumptions used for these baseline estimates are identical. The differences between the estimates, therefore, result only from laws enacted and final regulations promulgated since January 1. Laws enacted and final regulations promulgated between August 15 and October 5 have reduced the projected 1991 deficit by $1.8 billion. The baseline deficit as of October 5 is the same as the deficit as of January 1.

REQUIRED OUTLAY REDUCTIONS

CBO's deficit projection of $163.4 billion would call for outlay reductions of $99.4 billion in 1991. One-half of the required outlay reduction must be taken from defense programs (budget accounts in the national defense function, excluding the Federal Emergency Management Agency) and the other half from nondefense programs. Table 2 shows how the required outlay reductions would be achieved.

If sequestration is required, the law provides that the automatic spending increases in three programs --the National Wool Act, the special milk program, and vocational rehabilitation--be eliminated and the resulting savings be applied to the required reduction in outlays for nondefense programs. Eliminating these increases would produce $56 million in outlay savings in 1991. The outlay savings to be obtained by applying four special rules are also credited to the required spending reductions in nondefense programs. These special rules are for guaranteed student loans, foster care and adoption assistance, Medicare, and certain health programs. Applying the special rules to these programs would achieve $2 billion in outlay savings in 1991.

The outlay reductions of $49.7 billion in defense programs and the remaining reductions of $47.7 billion in nondefense programs must be taken as a uniform percentage of all sequesterable budgetary resources in each category. According to CBO estimates, the 1991 outlays associated with sequesterable budgetary resources for defense programs are $121.0 billion. From this base amount, $49.7 billion in across-the-board outlay reductions must be made. The uniform percentage to be applied to sequesterable defense budgetary resources is 41.1 percent, as shown in Table 2. The Balanced Budget Act allows the President to exempt military personnel spending from sequestration, and he has chosen to do so this year. The 1991 outlays associated with sequesterable budgetary resources for nondefense programs are estimated to be $127.8 billion. To achieve $47.6 billion in nondefense outlay reductions, a 37.3 percent cut is required.

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TABLE 1. SUMMARY OF CBO BUDGET ESTIMATES FOR FISCAL YEAR 1991
(In billions of dollars)

	Revenues	Outlays	Deficit
Budget Baseline as of January 1, 1990	1,123.2	1,286.6	163.4
Effect of New Laws and Regulations			
Dire Emergency Supplemental Appropriations Act of 1990 (P.L. 101-302)	0	0.7	0.7
Iraqi sanctions	a	1.1	1.1
Other laws and regulations	a	a	a
Debt service costs	0	0.1	0.1
Subtotal	a	1.8	1.8
Budget Baseline as of August 15, 1990	1,123.2	1,288.4	165.2
Effect of New Laws and Regulations			
Customs and Trade Act (P.L. 101-382)	-0.2	-0.6	-0.3
Continuing Appropriations for Fiscal Year 1991 (P.L. 101-403)	0	0.3	0.3
Bank Insurance Fund premium regulations	0	-1.1	-1.1
Establishment of Fiscal Year 1991 pay raise	0	-0.6	-0.6
Other laws and regulations	0.1	a	-0.1
Debt service costs	0	0.1	0.1
Subtotal	-0.1	-1.9	-1.8
Budget Baseline as of October 5, 1990	1,123.1	1,286.5	163.4
Balanced Budget Act Deficit Target			64.0
Excess Deficit			99.4

a. Less than $0.05 billion.

SPECIAL RULES

The three programs with automatic spending increases currently subject to sequestration were listed in Table 6 of CBO's August sequestration report. The scheduled percentage increases were shown, as well as the amount of estimated outlay savings to be gained by eliminating those increases.

The Balanced Budget Act also provides special rules for the sequestration of budgetary resources for certain other federal programs. The estimated outlay savings derived from the first four rules are shown separately in Table 2. The outlay savings resulting from the remaining special rules are included in the amount to be achieved from the uniform percentage reductions.

With the exception of the child support enforcement (CSE) program, the descriptions of the special rules contained in CBO's August sequestration report still apply. The Balanced Budget Act provides that sequestration of CSE payments to states is to be accomplished by reducing the federal matching rate for state administrative expenses. For 1991, the federal

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TABLE 2. CBO SEQUESTRATION CALCULATIONS FOR FISCAL YEAR 1991
(In millions of dollars)

matching rate on most expenditures under CBO estimates would be reduced from 66 percent to 35 percent, and the rate for computer-related and laboratory expenditures would be reduced from 90 percent

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Legislative Branch		
Senate		
Senate Items		
00 0111 0 1 801		
Budget Authority	292,500	146,403
Outlays	273,497	139,314
Congressional use of foreign currency, Senate		
Architect of the Capitol		
Salaries and expenses		
01 0100 0 1 801		
Budget Authority	131,454	49,825
401(C) Auth--Off. Coll.	120	45
Outlays	100,464	37,473
Library of Congress		
Salaries and expenses		

TABLE 2. CBO SEQUESTRATION CALCULATIONS FOR FISCAL YEAR 1991
(In millions of dollars)

	Defense Programs	Nondefense Programs
Total Required Outlay Reductions	49,717	49,717
Savings from Eliminating Automatic Spending Increases	0	56
Savings from the Application of Special Rules		
Guaranteed student loans	0	26
Foster care and adoption assistance	0	5
Medicare	0	1,757
Other health programs	0	215
Subtotal	0	2,006
Remaining Reductions Required	49,717	47,654
Estimated Sequestration Outlay Base	121,014	127,760[a]
Uniform Percentage Reduction	41.1	37.3

a. Includes $6,440 million in estimated 1992 outlays for the Commodity Credit Corporation that can be affected by a 1991 sequestration. Also includes an estimated $2,091 million in outlays from the spending of offsetting collections.

matching rate on most expenditures under CBO estimates would be reduced from 66 percent to 35 percent, and the rate for computer-related and laboratory expenditures would be reduced from 90 percent to 48 percent.

SEQUESTRATION REDUCTIONS

A detailed list of the sequestration base and reductions by agency, budget account, and type of spending authority follows. This report does not contain a listing of sequestration reductions by program, project, and activity for defense accounts, because appropriation bills for 1991 have not yet been enacted.

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Legislative Branch		
Senate		
Senate items		
00 0111 0 1 801		
Budget Authority	392,580	146,403
Outlays	373,497	139,314
Congressional use of foreign currency, Senate		
00 0188 0 1 801		
401(C) Authority	1,560	582
Outlays	1,560	582
House of Representatives		
Mileage of Members		
00 0208 0 1 801		
Budget Authority	217	81
Outlays	109	41
Salaries and expenses		
00 0400 0 1 801		
Budget Authority	561,223	209,334
Outlays	538,774	200,963
Congressional use of foreign currency, House of Representatives		
00 0488 0 1 801		
401(C) Authority	3,313	1,234
Outlays	3,313	1,234
Joint Items		
Capitol Guide Service		
00 0170 0 1 801		
Budget Authority	1,415	528
Outlays	1,358	507
Joint Committee on Printing		
00 0180 0 1 801		
Budget Authority	1,256	468
Outlays	1,156	431
Joint Economic Committee		
00 0181 0 1 801		
Budget Authority	3,699	1,380
Outlays	3,514	1,311
Special services office		
00 0190 0 1 801		
Budget Authority	252	94
Outlays	232	87
Office of the Attending Physician		
00 0425 0 1 801		
Budget Authority	1,455	543
Outlays	583	217
Joint Committee on Taxation		
00 0440 0 1 801		
Budget Authority	4,631	1,727
Outlays	4,399	1,641
Salaries, Capitol Police		
00 0474 0 1 801		
Budget Authority	58,198	21,708
Outlays	56,452	21,057
General expenses, Capitol police		
00 0476 0 1 801		
Budget Authority	1,951	728
Outlays	1,656	618
Statements of appropriations		
00 0499 0 1 801		
Budget Authority	21	8
Official mail costs		
00 0825 0 1 801		
Budget Authority	102,978	38,410
Outlays	102,978	38,410
Congressional Budget Office		
Salaries and expenses		
08 0100 0 1 801		
Budget Authority	20,451	7,628
Outlays	18,406	6,865

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AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Architect of the Capitol		
Salaries and expenses		
01 0100 0 1 801		
Budget Authority	131,434	49,025
401(C) Auth--Off. Coll.	120	45
Outlays	100,464	37,473
Library of Congress		
Salaries and expenses		
03 0101 0 1 503		
Budget Authority	165,067	61,578
401(C) Auth--Off. Coll.	5,060	1,887
Outlays	140,415	52,374
Copyright Office: Salaries and expenses		
03 0102 0 1 376		
Budget Authority	12,808	4,777
401(C) Auth--Off. Coll.	14,509	5,412
Outlays	25,396	9,475
Congressional Research Service: Salaries and expenses		
03 0127 0 1 801		
Budget Authority	48,911	18,244
Outlays	44,020	16,419
Books for the blind and physically handicapped: Salaries and expenses		
03 0141 0 1 503		
Budget Authority	38,732	14,447
Outlays	17,429	6,501
Furniture and furnishings		
03 0144 0 1 503		
Budget Authority	2,674	997
Outlays	1,390	518
Gift and trust fund accounts		
03 9971 0 7 503		
401(C) Other--incl ob lim	328	122
Outlays	328	122
Government Printing Office		
Office of Superintendent of Documents: Salaries and expenses		
04 0201 0 1 808		
Budget Authority	25,347	9,454
Outlays	15,969	5,954
Congressional printing and binding		
04 0203 0 1 801		
Budget Authority	77,115	28,764
Outlays	64,005	23,874
Government Printing Office revolving fund		
04 4505 0 4 808		
401(C) Auth--Off. Coll.	38,383	14,317
Outlays	38,383	14,317
General Accounting Office		
Salaries and expenses		
05 0107 0 1 801		
Budget Authority	386,138	144,029
Outlays	335,940	125,306
United States Tax Court		
Salaries and expenses		
23 0100 0 1 752		
Budget Authority	29,688	11,074
Outlays	23,750	8,859
Tax courts independent counsel, U.S. Tax Court		
23 5023 0 1 752		
401(C) Authority	10	4
Outlays	10	4
Legislative Branch Boards and Commissions		
Commission on Security and Cooperation in Europe: Salaries and expenses		
09 0110 0 1 801		
Budget Authority	894	333
Outlays	804	300
Copyright Royalty Tribunal: Salaries and expenses		
09 0510 0 1 376		
Budget Authority	107	40
Outlays	36	13

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Biomedical Ethics: Salaries and expenses		
09 0400 0 1 801		
Budget Authority	622	232
Outlays	449	167
International conferences and contingencies: House and Senate expenses		
09 0500 0 1 801		
401(C) Authority	335	125
Outlays	335	125
Courts of Appeals, District Courts, and other Judicial Services		
Salaries and expenses		
10 0920 0 1 752		
Budget Authority	1,330,264	496,189
401(C) Authority	7,500	2,798
401(C) Auth--Off. Coll.	37,100	15,838
Outlays	1,247,044	472,904
Defender services		
10 0940 0 1 752		
Budget Authority	1,000,000	373,000
Outlays	1,000,000	373,000
Fees of jurors		
10 0944 0 1 752		
Budget Authority	1,000,000	373,000
Outlays	1,000,000	373,000
Court security		
10 0946 0 1 752		
Budget Authority	1,000,000	373,000
Outlays	1,000,000	373,000
Gifts and bequests		
10 8928 0 7 752		
401(C) Other--incl ob lim	1,000	373
Outlays	1,000	373

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Council on Environmental Quality and Office of Environmental Quality		
Council on Environmental Quality and Office of Environmental Quality		
11 1455 0 1 802		
Budget Authority	1,558	581
Outlays	1,402	523
Office of Policy Development		
Salaries and expenses		
11 0001 0 1 802		
Budget Authority	1,558	581
Outlays	1,402	523
Unanticipated needs		
11 0057 0 1 802		
Budget Authority	1,040	388
Outlays	520	194
Investment in Management Improvement		
Investment in management improvement		
11 0061 0 1 802		
Budget Authority	520	194
Outlays	390	145

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Biomedical Ethics: Salaries and expenses		
09 0400 0 1 801		
Budget Authority	622	232
Outlays	449	167
International conferences and contingencies: House and Senate expenses		
09 0500 0 1 801		
401(C) Authority	335	125
Outlays	335	125
National Commission on Children		
09 1050 0 1 801		
Budget Authority	1,401	522
Outlays	250	93
United States Bipartisan Commission on Comprehensive Health Care		
09 1100 0 1 801		
Budget Authority	497	185
Outlays	497	185
National commission on acquired immune deficiency syndrome		
09 1300 0 1 801		
Budget Authority	1,058	395
Outlays	846	314
Office of Technology Assessment		
Salaries and expenses		
09 0700 0 1 801		
Budget Authority	19,465	7,260
Outlays	15,377	5,736
U.S. Capitol Preservation Commission		
Capitol Preservation Comission Trust Fund		
09 8300 8 7 801		
401(C) Authority	1,500	560
John C. Stennis Center for Public Service Training and Development		
John C. Stennis Center for Public Service Development trust fund		
09 8275 8 7 801		
401(C) Authority	656	245
Outlays	656	245
TOTAL FOR LEGISLATIVE BRANCH		
Budget Authority	2,092,207	780,390
401(C) Authority	7,374	2,752
401(C) Auth--Off. Coll.	58,072	21,661
401(C) Other--incl ob lim	328	122
Outlays	1,934,736	721,656

The Judiciary

Supreme Court of the United States		
Salaries and expenses		
10 0100 0 1 752		
Budget Authority	17,399	6,490
Outlays	13,919	5,192
Care of the buildings and grounds		
10 0103 0 1 752		
Budget Authority	4,582	1,709
Outlays	3,437	1,282
United States Court of Appeals for the Federal Circuit		
Salaries and expenses		
10 0510 0 1 752		
Budget Authority	7,956	2,968
Outlays	7,160	2,671
United States Court of International Trade		
Salaries and expenses		
10 0400 0 1 752		
Budget Authority	7,752	2,891
Outlays	6,977	2,602
Courts of Appeals, District Courts, and other Judicial Services		
Salaries and expenses		
10 0920 0 1 752		
Budget Authority	1,330,266	496,189
401(C) Authority	7,500	2,798
401(C) Auth--Off. Coll.	37,100	15,838
Outlays	1,267,044	472,904
Defender services		
10 0923 0 1 752		
Budget Authority	127,520	47,565
Outlays	121,144	45,187
Fees of jurors and commissioners		
10 0925 0 1 752		
Budget Authority	61,333	22,877
Outlays	55,200	20,590
Court security		
10 0930 0 1 752		
Budget Authority	60,253	22,467
Outlays	39,151	14,603
Registry administration		
10 5101 0 2 752		
401(C) Authority	12,000	4,476
Outlays	12,000	4,476
Administrative Office of the United States Courts		
Salaries and expenses		
10 0927 0 1 752		
Budget Authority	35,467	13,304
Outlays	32,100	11,973
Federal Judicial Center		
Salaries and expenses		
10 0928 0 1 752		
Budget Authority	13,150	4,905
Outlays	10,520	3,924
Judiciary Retirement Funds		
Payment to judicial officers' retirement fund		
10 0941 0 1 752		
401(C) Authority	5,000	1,865
TOTAL FOR THE JUDICIARY		
Budget Authority	1,665,858	621,365
401(C) Authority	24,500	9,139
401(C) Auth--Off. Coll.	37,100	13,838
Outlays	1,569,452	585,404

Executive Office of the President

The White House Office		
Salaries and expenses		
11 0110 0 1 802		
Budget Authority	32,002	11,937
Outlays	28,802	10,743
Executive Residence at the White House		
Operating expenses		
11 0210 0 1 802		
Budget Authority	7,219	2,693
401(C) Auth--Off. Coll.	540	201
Outlays	7,398	2,759
Official Residence of the Vice President		
Operating expenses		
11 0211 0 1 802		
Budget Authority	598	223
Outlays	407	152
Special Assistance to the President		
Salaries and expenses		
11 1454 0 1 802		
Budget Authority	2,430	906
Outlays	2,138	797
Council of Economic Advisers		
Salaries and expenses		
11 1900 0 1 802		
Budget Authority	3,041	1,134
Outlays	2,737	1,021

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Council on Environmental Quality and Office of Environmental Quality		
Council on Environmental Quality and Office of Environmental Quality		
11 1453 0 1 802		
Budget Authority	1,558	581
Outlays	1,402	523
Office of Policy Development		
Salaries and expenses		
11 2200 0 1 802		
Budget Authority	3,262	1,217
Outlays	2,838	1,059
National Security Council		
Salaries and expenses		
11 2000 0 1 802		
Budget Authority	5,641	2,104
Outlays	4,513	1,683
National Space Council		
Salaries and expenses		
11 0020 0 1 802		
Budget Authority	1,041	388
Outlays	729	272
National Critical Materials Council		
Salaries and expenses		
11 0111 0 1 802		
Budget Authority	420	157
Outlays	382	142
Office of Administration		
Salaries and expenses		
11 0038 0 1 802		
Budget Authority	19,498	7,275
Outlays	14,059	5,237
Office of Management and Budget		
Office of Federal Procurement Policy: Salaries and expenses		
11 0201 0 1 802		
Budget Authority	2,790	1,041
Outlays	2,511	937
Salaries and expenses		
11 0300 0 1 802		
Budget Authority	47,030	17,542
Outlays	43,268	16,139
Office of National Drug Control Policy		
Salaries and expenses		
11 1457 0 1 802		
Budget Authority	38,588	14,393
Outlays	23,654	8,823
Special forfeiture fund		
11 5001 0 2 802		
Budget Authority	113,340	42,283
Outlays	56,680	21,142
Office of Science and Technology Policy		
Salaries and expenses		
11 2600 0 1 802		
Budget Authority	2,999	1,119
Outlays	1,799	671
Office of the United States Trade Representative		
Salaries and expenses		
11 0400 0 1 802		
Budget Authority	18,777	7,004
Outlays	15,960	5,953
TOTAL FOR EXECUTIVE OFFICE OF THE PRESIDENT		
Budget Authority	300,254	111,995
401(C) Auth--Off. Coll.	540	201
Outlays	209,257	78,053

Funds Appropriated to the President

Unanticipated Needs		
Unanticipated needs for natural disasters		
11 0033 0 1 453		
Budget Authority	206,759	77,122
Outlays	82,703	30,849
Unanticipated needs		
11 0057 0 1 802		
Budget Authority	1,040	388
Outlays	520	194
Investment in Management Improvement		
Investment in management improvement		
11 0061 0 1 802		
Budget Authority	520	194
Outlays	390	145
International Security Assistance		
Peacekeeping operations		
11 1032 0 1 152		
Budget Authority	34,084	12,713
Outlays	34,084	12,713
Economic support fund		
11 1037 0 1 152		
Budget Authority	4,086,628	1,524,313
Outlays	2,284,425	852,091
International military education and training		
11 1081 0 1 152		
Budget Authority	49,084	18,308
Outlays	24,542	9,154
Foreign military financing		
11 1082 0 1 152		
Budget Authority	5,021,232	1,872,919
Direct Loan Limitation	420,424	156,818
Outlays	1,840,878	689,632
Multilateral Assistance		
Contribution to the Inter-American Development Bank		
11 0072 0 1 151		
Budget Authority	98,730	36,826
Outlays	1,320	492
Contribution to the International Development Association		
11 0073 0 1 151		
Budget Authority	999,285	372,733
Outlays	99,929	37,274
Contribution to the Asian Development Bank		
11 0076 0 1 151		
Budget Authority	181,972	67,876
Contribution to the International Bank for Reconstruction and Developmen		
11 0077 0 1 151		
Budget Authority	51,777	19,313
Outlays	5,178	1,931
Contribution to the International Finance Corporation		
11 0078 0 1 151		
Budget Authority	77,591	28,941
Contribution to the African Development Fund		
11 0079 0 1 151		
Budget Authority	108,730	40,556
Contribution to the African Development Bank		
11 0082 0 1 151		
Budget Authority	9,873	3,683
Outlays	9,873	3,683
International organizations and programs		
11 1005 0 1 151		
Budget Authority	285,103	106,343
Outlays	169,266	63,134
Agency for International Development		
Operating expenses Agency for International Development		
11 1000 0 1 151		
Budget Authority	484,928	169,688
Outlays	341,196	127,266
Operating expenses of the Agency for International Development, Office o		
11 1007 0 1 151		
Budget Authority	32,071	11,962
Outlays	24,053	8,972
American schools and hospitals abroad		
11 1013 0 1 151		
Budget Authority	36,244	13,519
Outlays	12,069	4,502

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Sub-Saharan Africa development assistance		
11 1014 0 1 151		
Budget Authority	594,696	221,821
Outlays	50,549	18,855
Functional development assistance program		
11 1021 0 1 151		
Budget Authority	1,290,484	481,348
Outlays	109,689	40,914
International disaster assistance		
11 1035 0 1 151		
Budget Authority	247,000	92,131
Outlays	210,000	78,311
Peace Corps		
11 1031 0 1 153		
Budget Authority	186,000	69,378
Outlays	186,000	69,378
Trade and development program		
11 1091 0 1 151		
Budget Authority	30,000	11,190
Outlays	3,000	1,119
Overseas Private Investment Corporation		
Noncredit account		
11 4184 0 3 151		
Budget Authority	4,000	1,492
Outlays	4,000	1,492
Credit liquidating account		
11 4185 0 3 151		
Budget Authority	1,000	373
Outlays	1,000	373
Trade and Development Agency		
Trade and development agency		
11 1001 0 1 151		
Budget Authority	30,000	11,190
Outlays	3,000	1,119
TOTAL FOR FUNDS APPROPRIATED TO THE PRESIDENT		
Budget Authority	14,229,412	5,307,570
401(C) Auth--Off. Coll.	300,964	112,259
Direct Loan Limitation	444,759	165,895
Guarntd. Loan Limitation	834,751	311,362
Obligation Limitation	284,375	106,018
Outlays	5,608,287	2,091,891

Department of Agriculture

National Agricultural Library		
National Agricultural Library		
12 0300 0 1 352		
Budget Authority	15,441	5,767
Outlays	11,673	4,384
National Agricultural Statistics Service		
National agricultural statistics service		
12 1001 0 1 352		
Budget Authority	70,628	26,341
401(C) Auth--Off. Coll.	1,700	634
Outlays	70,628	26,341
Agricultural Stabilization and Conservation Service		
Salaries and expenses		
12 1002 0 1 352		
Budget Authority	1,000	373
Outlays	1,000	373
Rural Electrification Administration		
Rural electrification and telephone loans		
12 4120 0 3 452		
Budget Authority	1,000	373
Outlays	1,000	373
Rural electrification and telephone loans		
12 4121 0 3 452		
Budget Authority	1,000	373
Outlays	1,000	373
Soil Conservation Service		
Watershed and flood prevention operations		
12 1070 0 1 301		
Budget Authority	100,000	37,300
Outlays	20,000	7,460
Farmers Home Administration		
Rural housing insurance fund		
12 4141 0 3 371		
Budget Authority	1,000	373
Outlays	1,000	373
Rural housing insurance fund		
12 4142 0 3 371		
Budget Authority	1,000	373
Outlays	1,000	373
Rural development insurance fund		
12 4155 0 3 452		
Budget Authority	1,000	373
Outlays	1,000	373
Rural development insurance fund		
12 4156 0 3 452		
Budget Authority	1,000	373
Outlays	1,000	373
Agricultural credit insurance fund		
12 4165 0 3 351		
Budget Authority	1,000	373
Outlays	1,000	373
Agricultural credit insurance fund		
12 4166 0 3 351		
Budget Authority	1,000	373
Outlays	1,000	373
Agricultural Research Service		
Salaries and expenses		
12 1000 0 1 352		
Budget Authority	1,000	373
Outlays	1,000	373
Cooperative State Research Service		
Payments to agricultural experiment stations under the Hatch Act		
12 1801 0 1 352		
Budget Authority	1,000	373
Outlays	1,000	373
Extension Service		
Payments to States and Puerto Rico		
12 1601 0 1 352		
Budget Authority	1,000	373
Outlays	1,000	373
Food and Nutrition Service		
Special supplemental food program for women, infants, and children (WIC)		
12 3510 0 1 605		
Budget Authority	1,000	373
Outlays	1,000	373
Child nutrition programs		
12 3539 0 1 605		
Budget Authority	1,000	373
Outlays	1,000	373
Forest Service		
Forest service		
12 1106 0 1 302		
Budget Authority	1,000	373
Outlays	1,000	373

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Water bank program		
12 3320 0 1 302		
Budget Authority	12,731	4,749
Outlays	1,897	708
Forestry incentives program		
12 3336 0 1 302		
Budget Authority	12,944	4,828
Outlays	4,996	1,864
Federal Crop Insurance Corporation		
Federal crop insurance corporation fund		
12 4336 0 3 351		
Budget Authority	1,000	373
Outlays	1,000	373
Commodity Credit Corporation		
Commodity credit corporation fund		
12 4336 0 3 351		
Budget Authority	1,000	373
Outlays	1,000	373
Agricultural Marketing Service		
Payments to States and possessions		
12 3700 0 1 352		
Budget Authority	1,000	373
Outlays	1,000	373
Animal and Plant Health Inspection Service		
Salaries and expenses		
12 3600 0 1 352		
Budget Authority	1,000	373
Outlays	1,000	373
TOTAL FOR DEPARTMENT OF AGRICULTURE		
Budget Authority	232,744	86,824
401(C) Auth--Off. Coll.	1,700	634
Outlays	146,194	54,538

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AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Sub-Saharan Africa development assistance		
11 1014 0 1 151		
Budget Authority	594,696	221,821
Outlays	50,549	18,855
Functional development assistance program		
11 1021 0 1 151		
Budget Authority	1,290,404	481,340
Outlays	109,689	40,914
International disaster assistance		
11 1035 0 1 151		
Budget Authority	31,089	11,597
Outlays	7,710	2,876
Special assistance initiatives		
11 1042 0 1 151		
Budget Authority	165,604	61,800
Outlays	31,314	11,680
Housing and other credit guaranty programs		
72 4340 0 3 151		
401(C) Auth--Off. Coll.	7,300	2,723
Guarntd. Loan Limitation	520,000	193,960
Outlays	7,132	2,660
Private sector revolving fund		
72 4341 0 3 151		
Budget Authority	5,177	1,931
Direct Loan Limitation	3,624	1,352
Guarntd. Loan Limitation	94,753	35,343
Outlays	304	113

Trade and Development Program

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Trade and development program		
11 1001 0 1 151		
Budget Authority	32,798	12,234
Outlays	6,789	2,532

Peace Corps

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Peace Corps		
11 0100 0 1 151		
Budget Authority	174,634	65,138
401(C) Auth--Off. Coll.	690	257
Outlays	143,941	53,690

Overseas Private Investment Corporation

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Overseas Private Investment Corporation		
71 4030 0 3 151		
401(C) Auth--Off. Coll.	12,974	4,839
Direct Loan Limitation	20,711	7,725
Guarntd. Loan Limitation	219,998	82,059
Outlays	14,931	5,570

Inter-American Foundation

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Inter-American Foundation		
11 4031 0 3 151		
Budget Authority	17,594	6,563
401(C) Auth--Off. Coll.	10,000	3,730
Outlays	11,038	4,117

African Development Foundation

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
African Development Foundation		
11 0700 0 1 151		
Budget Authority	9,247	3,449
Outlays	5,086	1,897

International Monetary Programs

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Contribution to enhanced structural adjustments facility of the internat		
11 0005 0 1 155		
Budget Authority	144,974	54,075

Military Sales Programs

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Special defense acquisition fund		
11 4116 0 3 155		
Obligation Limitation	286,375	106,818
Outlays	2,864	1,068
Foreign military sales trust fund		
11 8242 0 7 155		
401(C) Auth--Off. Coll.	270,000	100,710
Outlays	251,100	93,660

Special Assistance for Central America

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Central American reconciliation assistance		
11 1038 0 1 152		
Budget Authority	27,414	10,225
Outlays	27,414	10,225

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
TOTAL FOR FUNDS APPROPRIATED TO THE PRESIDENT		
Budget Authority	14,229,412	5,307,570
401(C) Auth--Off. Coll.	300,964	112,259
Direct Loan Limitation	444,759	165,895
Guarntd. Loan Limitation	834,751	311,362
Obligation Limitation	286,375	106,818
Outlays	5,608,287	2,091,891

Department of Agriculture

Office of the Secretary

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Office of the Secretary		
12 0115 0 1 352		
Budget Authority	7,748	2,889
Outlays	7,451	2,779

Departmental Administration

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Rental payments and building operations and maintenance		
12 0117 0 1 352		
Budget Authority	74,996	27,974
Outlays	64,647	24,113
Advisory committees		
12 0118 0 1 352		
Budget Authority	1,570	586
Outlays	1,140	425
Departmental administration		
12 0120 0 1 352		
Budget Authority	23,443	8,744
Outlays	19,488	7,258
Hazardous waste management		
12 0500 0 1 304		
Budget Authority	20,724	7,730
Outlays	10,362	3,865
Office of budget and program analysis		
12 0503 0 1 352		
Budget Authority	4,825	1,800
Outlays	4,082	1,523

Office of Public Affairs

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Office of public affairs		
12 0130 0 1 352		
Budget Authority	9,009	3,360
Outlays	6,847	2,584

Office of the Inspector General

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Office of the Inspector General		
12 0900 0 1 352		
Budget Authority	55,003	20,516
Outlays	49,228	18,362

Office of the General Counsel

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Office of the General Counsel		
12 2300 0 1 352		
Budget Authority	22,928	8,552
Outlays	20,704	7,723

Agricultural Research Service

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Agricultural Research Service		
12 1400 0 1 352		
Budget Authority	618,535	230,714
401(C) Auth--Off. Coll.	3,600	1,343
Outlays	488,531	182,222
Buildings and facilities		
12 1401 0 1 352		
Budget Authority	11,102	4,141
Outlays	1,110	414

Cooperative State Research Service

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Cooperative State Research Service		
12 1500 0 1 352		
Budget Authority	398,276	148,557
401(C) Authority	2,850	1,063
Outlays	205,971	76,827

Extension Service

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Extension Service		
12 0502 0 1 352		
Budget Authority	384,215	143,312
401(C) Auth--Off. Coll.	245	91
Outlays	326,828	121,906

National Agricultural Library

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
National Agricultural Library		
12 0300 0 1 352		
Budget Authority	15,461	5,767
Outlays	11,673	4,354

National Agricultural Statistics Service

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
National agricultural statistics service		
12 1801 0 1 352		
Budget Authority	70,628	26,341
401(C) Auth--Off. Coll.	1,700	634
Outlays	63,218	23,577

Economic Research Service

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Economic research service		
12 1701 0 1 352		
Budget Authority	53,784	20,061
Outlays	45,716	17,052

World Agricultural Outlook Board

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
World agricultural outlook board		
12 2100 0 1 352		
Budget Authority	2,030	757
Outlays	1,577	588

Foreign Agricultural Service

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Foreign agricultural service and general sales manager		
12 2900 0 1 352		
Budget Authority	106,455	39,708
Outlays	61,850	23,070

Office of International Cooperation and Development

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Scientific activities overseas (foreign currency program)		
12 1404 0 1 352		
Budget Authority	910	339
Outlays	592	221
Office of international corporation and development		
12 3200 0 1 352		
Budget Authority	6,382	2,380
Outlays	6,376	2,378

Foreign Assistance Programs

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Expenses, Public Law 480, foreign assistance programs, Agriculture		
12 2274 0 1 151		
Budget Authority	1,017,277	379,444
Direct Loan Limitation	821,184	306,302
Obligation Limitation	1,582,424	590,244
Outlays	1,440,086	537,122

Agricultural Stabilization and Conservation Service

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Salaries and expenses		
12 3300 0 1 351		
Budget Authority	110	41
401(C) Auth--Off. Coll.	51,998	19,395
Outlays	52,108	19,436
Dairy indemnity program		
12 3314 0 1 351		
Budget Authority	100	37
Outlays	100	37
Agricultural conservation program		
12 3315 0 1 302		
Budget Authority	189,664	70,745
Outlays	87,245	32,542
Emergency conservation program		
12 3316 0 1 453		
Budget Authority	31,124	11,609
Outlays	14,006	5,224
Colorado river basin salinity control program		
12 3318 0 1 304		
Budget Authority	10,755	4,012
Outlays	5,378	2,006
Conservation reserve program		
12 3319 0 1 302		
Budget Authority	1,423,443	530,944
Outlays	1,424,943	531,504
Water Bank program		
12 3320 0 1 302		
Budget Authority	12,731	4,749
Outlays	1,897	708
Forestry incentives program		
12 3336 0 1 302		
Budget Authority	12,944	4,828
Outlays	4,996	1,864

Federal Crop Insurance Corporation

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Administrative and operating expenses		
12 2707 0 1 351		
Budget Authority	248,325	92,625
Outlays	139,592	52,068

Commodity Credit Corporation

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Commodity Credit Corporation Fund		
12 4336 0 3 351		
401(C) Authority	11,235,000	4,190,655
Direct Loan Limitation	7,919,000	2,953,787
Guarntd. Loan Limitation	5,300,000	1,976,900
Outlays	11,235,000	4,190,655
National Wool Act (special fund)		
12 5210 0 2 351		
401(C) Auth--Spec. Rules	3,200	3,200
Outlays	3,200	3,200

Rural Electrification Administration

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Salaries and expenses		
12 3100 0 1 271		
Budget Authority	33,315	12,426
Outlays	30,050	11,209
Reimbursement to the Rural electrification and telephone revolving fund		
12 3101 0 1 271		
Budget Authority	250,387	93,394
Purchase of Rural Telephone Bank capital stock		
12 3102 0 1 452		
Budget Authority	29,858	11,137
Outlays	29,858	11,137
Rural electrification and telephone revolving fund		
12 4230 0 3 271		
Budget Authority	5,192	1,937
Direct Loan Limitation	3,478,504	1,297,482
Direct Loan Floor	1,866,072	696,045
Outlays	91,936	34,292
Rural telephone bank		
12 4231 0 3 452		
Direct Loan Limitation	218,962	81,673
Direct Loan Floor	184,127	68,679
Outlays	9,200	3,432

Farmers Home Administration

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Salaries and expenses		
12 2001 0 1 452		
Budget Authority	449,528	167,676
Outlays	400,080	149,229
Rural housing for domestic farm labor		
12 2004 0 1 604		
Budget Authority	11,296	4,213
Outlays	452	169
Mutual and self-help housing		
12 2006 0 1 604		
Budget Authority	8,979	3,349
Outlays	718	268
Very low income housing repair grants		
12 2064 0 1 604		
Budget Authority	13,000	4,849
Outlays	12,350	4,607
Rural development grants		
12 2065 0 1 452		
Budget Authority	17,062	6,364
Outlays	1,706	636
Rural water and waste disposal grants		
12 2066 0 1 452		
Budget Authority	216,008	80,571
Outlays	4,320	1,611

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AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Rural community fire protection grants		
12 2067 0 1 452		
Budget Authority	3,215	1,199
Outlays	1,447	540
Rural housing preservation grants		
12 2070 0 1 604		
Budget Authority	19,906	7,425
Outlays	1,194	445
Compensation for construction defects		
12 2071 0 1 371		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Miscellaneous contributed funds (Conservation and land management)		
12 8210 0 7 302		
401(C) Authority	99	37

Animal and Plant Health Inspection Service

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Salaries and expenses		
12 1600 0 1 352		
Budget Authority	375,331	139,998
401(C) Auth--Off. Coll.	23,112	8,621
Outlays	330,866	123,416

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Food donations programs for selected groups		
12 3503 0 1 605		
Budget Authority	211,748	78,982
401(C) Authority	32,000	11,936
Outlays	199,281	74,332
Food stamp program		
12 3505 0 1 605		
401(C) Authority	53,332	19,893
Outlays	21,333	7,957
Food program administration		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Range betterment fund		
12 5207 0 2 302		
Budget Authority	4,870	1,817
Outlays	3,896	1,453
Acquisition of lands for national forests, special acts		
12 5208 0 2 302		
Budget Authority	1,097	409
Outlays	923	345

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Rural community fire protection grants		
12 2067 0 1 452		
Budget Authority	3,218	1,199
Outlays	1,447	540
Rural housing preservation grants		
12 2070 0 1 604		
Budget Authority	19,906	7,425
Outlays	1,194	445
Compensation for construction defects		
12 2071 0 1 371		
Budget Authority	520	194
Outlays	520	194
Agricultural credit insurance fund		
12 4140 0 3 351		
Budget Authority	3,546	1,323
401(C) Auth--Off. Coll.	192,000	71,614
Direct Loan Limitation	1,654,744	617,220
Guarntd. Loan Limitation	3,158,214	1,178,014
Outlays	1,109,371	413,795
Rural housing insurance fund		
12 4141 0 3 371		
401(C) Auth--Off. Coll.	48,630	18,139
Direct Loan Limitation	1,981,959	739,271
Obligation Limitation	309,040	115,279
Outlays	1,274,002	475,948
Rural development insurance fund		
12 4155 0 3 452		
401(C) Auth--Off. Coll.	1,000	373
Direct Loan Limitation	462,461	172,498
Guarntd. Loan Limitation	201,044	74,989
Outlays	18,000	6,714
Self-help housing land development fund		
12 4222 0 3 371		
Direct Loan Limitation	520	194
Outlays	340	127
Rural development loan fund		
12 4233 0 3 452		
Direct Loan Limitation	20,049	7,486
Outlays	1,986	741
Soil Conservation Service		
Conservation operations		
12 1000 0 1 302		
Budget Authority	506,861	189,059
401(C) Auth--Off. Coll.	10,079	3,759
Outlays	477,405	178,072
Resource conservation and development		
12 1010 0 1 302		
Budget Authority	28,803	10,744
401(C) Auth--Off. Coll.	1,000	373
Outlays	18,224	6,798
Watershed planning		
12 1066 0 1 301		
Budget Authority	9,370	3,495
401(C) Auth--Off. Coll.	234	88
Outlays	8,350	3,115
River basin surveys & investigations		
12 1069 0 1 301		
Budget Authority	13,054	4,869
401(C) Auth--Off. Coll.	269	100
Outlays	12,488	4,658
Watershed and flood prevention operations		
12 1072 0 1 301		
Budget Authority	252,311	94,112
401(C) Auth--Off. Coll.	8,892	3,317
Outlays	122,336	45,632
Great plains conservation program		
12 2268 0 1 302		
Budget Authority	21,899	8,168
401(C) Auth--Off. Coll.	20	7
Outlays	9,940	3,707
Miscellaneous contributed funds (Water resources)		
12 8210 0 7 301		
401(C) Authority	480	179
Outlays	480	179

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Miscellaneous contributed funds (Conservation and land management)		
12 8210 0 7 302		
401(C) Authority	99	37
Animal and Plant Health Inspection Service		
Salaries and expenses		
12 1600 0 1 352		
Budget Authority	375,331	139,998
401(C) Auth--Off. Coll.	23,112	8,621
Outlays	330,866	123,414
Buildings and facilities		
12 1601 0 1 352		
Budget Authority	14,152	5,279
Outlays	9,340	3,484
Federal Grain Inspection Service		
Salaries and expenses		
12 2400 0 1 352		
Budget Authority	8,659	3,230
Outlays	7,100	2,648
Inspection and weighing services		
12 4050 0 3 352		
401(C) Auth--Off. Coll.	37,164	13,862
Outlays	37,164	13,862
Agricultural Marketing Service		
Marketing services		
12 2500 0 1 352		
Budget Authority	35,181	13,123
401(C) Auth--Off. Coll.	42,084	15,697
Outlays	65,690	24,502
Payments to States and possessions		
12 2501 0 1 352		
Budget Authority	1,285	479
Outlays	334	125
Perishable Agricultural Commodities Act fund		
12 5070 0 2 352		
401(C) Authority	5,675	2,117
Outlays	5,675	2,117
Funds for strengthening markets, income, and supply (section 32)		
12 5209 0 2 605		
401(C) Authority	373,984	139,496
Outlays	83,000	30,959
Milk market orders assessment fund		
12 8412 0 8 351		
401(C) Auth--Off. Coll.	41,032	15,305
Outlays	41,032	15,305
Miscellaneous trust funds		
12 9972 0 7 352		
401(C) Authority	87,689	32,708
Outlays	87,689	32,708
Office of Transportation		
Office of Transportation		
12 2800 0 1 352		
Budget Authority	2,547	950
Outlays	2,099	783
Food Safety and Inspection Service		
Salaries and expenses		
12 3700 0 1 554		
Budget Authority	447,790	167,026
401(C) Auth--Off. Coll.	54,000	20,142
Outlays	461,489	172,135
Expenses and refunds, inspection and grading of farm products		
12 8137 0 7 352		
401(C) Authority	1,200	448
Outlays	1,200	448
Food and Nutrition Service		
Special milk program		
12 3502 0 1 605		
401(C) Auth--Spec. Rules	106	106
Outlays	85	85

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Food donations programs for selected groups		
12 3503 0 1 605		
Budget Authority	211,748	78,982
401(C) Authority	52,898	11,954
Outlays	199,281	74,332
Food stamp program		
12 3505 0 1 605		
401(C) Authority	55,332	19,093
Outlays	21,333	7,957
Food program administration		
12 3508 0 1 605		
Budget Authority	97,551	36,387
Outlays	87,796	32,748
Special supplemental food program for women, infants, and children (WIC)		
12 3510 0 1 605		
Budget Authority	5,000	1,865
Outlays	5,000	1,865
State child nutrition payments		
12 3539 0 1 605		
401(C) Authority	9,944	3,709
Outlays	9,944	3,709
Temporary emergency food assistance program		
12 3635 0 1 551		
Budget Authority	51,815	19,327
Outlays	30,850	11,506
Human Nutrition Information Service		
Human nutrition information service		
12 3501 0 1 352		
Budget Authority	9,504	3,545
Outlays	5,227	1,950
Packers and Stockyards Administration		
Packers and Stockyards Administration		
12 2600 0 1 352		
Budget Authority	10,163	3,791
Outlays	9,289	3,472
Agricultural Cooperative Service		
Agricultural cooperative service		
12 3000 0 1 352		
Budget Authority	5,000	1,865
Outlays	3,570	1,332
Forest Service		
Construction		
12 1103 0 1 302		
Budget Authority	233,046	86,926
401(C) Auth--Off. Coll.	2,835	1,057
Outlays	138,701	51,736
Forest research		
12 1104 0 1 302		
Budget Authority	158,601	59,085
401(C) Auth--Off. Coll.	1,081	403
Outlays	120,158	44,823
State and private forestry		
12 1105 0 1 302		
Budget Authority	116,145	43,340
401(C) Auth--Off. Coll.	604	225
Outlays	84,238	31,167
National forest system		
12 1106 0 1 302		
Budget Authority	1,218,035	454,327
Outlays	1,054,036	393,901
Firefighting		
12 1111 0 1 302		
Budget Authority	854,200	318,617
Outlays	408,843	152,498
Working capital fund		
12 4605 0 4 302		
401(C) Auth--Off. Coll.	10,101	3,768
Outlays	10,101	3,768
Land acquisition		
12 5004 0 2 303		
Budget Authority	66,044	24,634
Outlays	26,418	9,854

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Range betterment fund		
12 5287 0 2 302		
Budget Authority	4,870	1,817
Outlays	3,894	1,453
Acquisition of lands for national forests, special acts		
12 5208 0 2 302		
Budget Authority	1,097	409
Outlays	925	345
Acquisition of lands to complete land exchanges		
12 5216 0 2 302		
Budget Authority	1,065	397
Outlays	965	332
Operations and maintenance of quarters		
12 5219 0 2 302		
401(C) Authority	6,057	2,259
Outlays	4,864	1,814
Cooperative work trust fund		
12 8028 0 7 302		
401(C) Authority	329,502	122,904
Outlays	272,284	101,551
Gifts, donations and bequests for forest and rangeland research		
12 8034 0 7 302		
Budget Authority	31	12
Outlays	31	12
Forest Service permanent appropriations		
12 9921 0 2 806		
401(C) Authority	338,955	126,430
Outlays	238,285	88,888
Forest Service permanent appropriations		
12 9922 0 2 302		
Budget Authority	9,062	3,380
401(C) Authority	148,164	55,265
Outlays	118,427	44,174
Reforestation trust fund		
20 8044 0 7 302		
401(C) Authority	30,000	11,190
Outlays	29,580	11,033
TOTAL FOR DEPARTMENT OF AGRICULTURE		
Budget Authority	10,644,370	3,970,555
401(C) Authority	12,654,951	4,720,289
401(C) Auth--Off. Coll.	531,682	198,315
401(C) Auth--Spec. Rules	5,306	5,306
Direct Loan Limitation	16,557,403	6,175,913
Direct Loan Floor	2,050,199	764,724
Guarntd. Loan Limitation	8,659,258	3,229,903
Obligation Limitation	1,891,484	705,523
Outlays	23,465,534	8,754,702

Department of Commerce

General Administration		
Salaries and expenses		
13 0120 0 1 376		
Budget Authority	29,450	10,985
Outlays	27,978	10,436
Office of the Inspector General		
13 0126 0 1 452		
Budget Authority	14,143	5,275
Outlays	13,436	5,012
Economic Development Administration		
Grants and loans administration		
13 0125 0 1 452		
Budget Authority	26,878	10,025
Outlays	23,599	8,802
Economic development assistance programs		
13 2250 0 1 452		
Budget Authority	199,159	74,279
Guarntd. Loan Limitation	198,000	72,738
Outlays	19,914	7,428

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Bureau of the Census		
Salaries and expenses		
13 0401 0 1 376		
Budget Authority	105,919	39,508
401(C) Auth--Off. Coll.	8,000	2,984
Outlays	92,735	34,590
Periodic censuses and programs		
13 0402 0 1 376		
Budget Authority	30,766	11,476
Outlays	30,766	11,476
National Oceanic and Atmospheric Administration		
Operations, research, and facilities		
13 1450 0 1 306		
Budget Authority	1,000,000	373,000
Outlays	1,000,000	373,000
Promote and develop fishery products and research pertaining to American		
13 5139 0 2 376		
401(C) Other--incl ob lim	1,916	715
Outlays	1,084	195
Aviation weather services program		
13 8105 0 7 306		
Budget Authority	30,766	11,476
Outlays	30,766	11,476
Patent and Trademark Office		
Salaries and expenses		
13 0900 0 1 376		
Budget Authority	1,000	373
Outlays	1,000	373
Minority Business Development Agency		
Minority business development		
13 0800 0 1 376		
Budget Authority	3,000	1,119
Outlays	3,000	1,119
Economic Development Administration		
Grants and loans administration		
13 0125 0 1 452		
Budget Authority	26,878	10,025
Outlays	23,599	8,802
Economic development assistance programs		
13 2250 0 1 452		
Budget Authority	199,159	74,279
Guarntd. Loan Limitation	198,000	72,738
Outlays	19,914	7,428

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
National Board for the Promotion of Rifle Practice, Army		
21 1705 0 1 051		
Budget Authority	4,835	1,987
Outlays	2,659	1,093
Operation and maintenance, Army		
21 2020 0 1 051		
Budget Authority	23,781,123	9,774,041
Outlays	23,781,123	9,774,041
Aircraft procurement, Army		
21 2031 0 1 051		
Budget Authority	5,519,634	2,268,578
Unobligated Bal--Defense	1,831,479	752,758
Outlays	1,376,459	565,714
Missile procurement, Army		
21 2032 0 1 051		
Budget Authority	1,000,000	411,000
Outlays	1,000,000	411,000
Other procurement, Army		
21 2033 0 1 051		
Budget Authority	5,000,000	2,055,000
Outlays	5,000,000	2,055,000
Research, development, test and evaluation, Army		
21 2040 0 1 051		
Budget Authority	4,000,000	1,644,000
Outlays	4,000,000	1,644,000
Military construction, Army		
21 2051 0 1 051		
Budget Authority	1,000,000	411,000
Outlays	1,000,000	411,000
Family housing, Army		
21 2052 0 1 051		
Budget Authority	1,000,000	411,000
Outlays	1,000,000	411,000
Operation and maintenance, Navy		
17 1506 0 1 051		
Budget Authority	23,781,123	9,774,041
Outlays	23,781,123	9,774,041
Aircraft procurement, Navy		
17 1506 0 1 051		
Budget Authority	9,638,849	3,961,867
Unobligated Bal--Defense	1,831,479	752,758
Outlays	1,376,459	565,714
Weapons procurement, Navy		
17 1507 0 1 051		
Budget Authority	5,519,634	2,268,578

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Bureau of the Census		
Salaries and expenses		
13 0401 0 1 376		
Budget Authority	105,919	39,508
401(C) Auth--Off. Coll.	8,000	2,984
Outlays	92,735	34,590
Periodic censuses and programs		
13 0450 0 1 376		
Budget Authority	1,509,059	542,879
Outlays	1,225,156	457,058
Economic and Statistical Analysis		
Salaries and expenses		
13 1500 0 1 376		
Budget Authority	32,798	12,234
401(C) Auth--Off. Coll.	395	147
Outlays	29,913	11,157
International Trade Administration		
Operations and administration		
13 1250 0 1 376		
Budget Authority	190,487	71,052
401(C) Auth--Off. Coll.	14,600	5,446
Outlays	147,941	55,182
Export Administration		
Operations and administration		
13 0300 0 1 376		
Budget Authority	43,702	16,301
Outlays	37,147	13,856
Minority Business Development Agency		
Minority business development		
13 0201 0 1 376		
Budget Authority	41,570	15,506
Outlays	21,118	7,877
United States Travel and Tourism Administration		
Salaries and expenses		
13 0700 0 1 376		
Budget Authority	14,839	5,535
401(C) Auth--Off. Coll.	1,450	541
Outlays	12,876	4,803
National Oceanic and Atmospheric Administration		
Operations, research, and facilities		
13 1450 0 1 306		
Budget Authority	1,341,897	500,527
401(C) Auth--Off. Coll.	15,315	5,712
Outlays	900,805	335,999
Coastal energy impact fund		
13 4315 0 3 452		
401(C) Auth--Off. Coll.	8,000	2,984
Outlays	8,000	2,984
Federal ship financing fund, fishing vessels		
13 4417 0 3 376		
401(C) Auth--Off. Coll.	4,550	2,443
Guarntd. Loan Limitation	104,000	38,792
Outlays	4,550	2,443
Fishing vessel and gear damage compensation fund		
13 5119 0 2 376		
Budget Authority	1,043	389
Outlays	1,043	389
Fisherman's contingency fund		
13 5120 0 2 376		
Budget Authority	765	285
Outlays	727	271
Foreign fishing observer fund		
13 5122 0 2 376		
Budget Authority	2,060	768
Outlays	1,978	738
Fisheries promotional fund		
13 5124 0 2 376		
Budget Authority	2,082	777
Outlays	1,145	427
Promote and develop fishery products and research pertaining to American		
13 5139 0 2 376		
401(C) Other--incl ob lim	1,916	715
Outlays	1,084	393
Aviation weather services program		
13 8105 0 7 306		
Budget Authority	30,766	11,476
Outlays	30,766	11,476
Patent and Trademark Office		
Salaries and expenses		
13 1006 0 1 376		
Budget Authority	90,748	33,849
401(C) Auth--Off. Coll.	241,420	90,050
Outlays	277,719	103,590
Technology Administration		
Salaries and expenses		
13 1100 0 1 376		
Budget Authority	4,106	1,532
Outlays	3,531	1,317
Information products and services		
13 8546 0 7 376		
401(C) Authority	52,472	19,572
Outlays	34,107	12,722
National Institute of Standards and Technology		
Scientific and technical research and services		
13 0500 0 1 376		
Budget Authority	172,139	64,208
Outlays	132,700	49,497
Working capital fund		
13 4650 0 4 376		
Budget Authority	569	212
Outlays	285	106
National Telecommunications and Information Administration		
Salaries and expenses		
13 0550 0 1 376		
Budget Authority	14,839	5,535
Outlays	11,871	4,428
Public telecommunications facilities, planning and construction		
13 0551 0 1 503		
Budget Authority	20,826	7,768
Outlays	2,916	1,088
TOTAL FOR DEPARTMENT OF COMMERCE		
Budget Authority	3,889,824	1,450,905
401(C) Authority	52,472	19,572
401(C) Auth--Off. Coll.	295,730	110,307
401(C) Other--incl ob lim	1,916	715
Guarntd. Loan Limitation	299,000	111,527
Outlays	3,067,210	1,144,069

Department of Defense--Military

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Operation and Maintenance		
Operation and maintenance, Marine Corps		
17 1106 0 1 051		
Budget Authority	1,887,435	775,736
Outlays	1,453,325	597,316
Operation and maintenance, Marine Corps Reserve		
17 1107 0 1 051		
Budget Authority	80,595	33,125
Outlays	58,028	23,850
Operation and maintenance, Navy		
17 1804 0 1 051		
Budget Authority	25,644,597	10,540,150
Outlays	20,275,031	8,333,038
Operation and maintenance, Navy Reserve		
17 1806 0 1 051		
Budget Authority	961,412	395,140
Outlays	607,612	249,728

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
National Board for the Promotion of Rifle Practice, Army		
21 1705 0 1 051		
Budget Authority	4,835	1,987
Outlays	2,659	1,093
Operation and maintenance, Army		
21 2020 0 1 051		
Budget Authority	23,781,123	9,774,041
Outlays	19,147,886	7,877,878
Operation and maintenance, Army National Guard		
21 2065 0 1 051		
Budget Authority	1,943,616	798,826
Outlays	1,510,198	620,688
Operation and maintenance, Army Reserve		
21 2080 0 1 051		
Budget Authority	911,289	374,540
Outlays	692,580	284,650
Restoration of the Rocky Mountain Arsenal		
21 5098 0 2 051		
401(C) Authority	21,300	8,754
Unobligated Bal--Defense	29,880	12,281
Outlays	21,300	8,754
Operation and maintenance, Air Force		
57 3400 0 1 051		
Budget Authority	22,343,719	9,191,469
Outlays	17,152,972	7,049,872
Operation and maintenance, Air Force Reserve		
57 3740 0 1 051		
Budget Authority	1,054,611	433,445
Outlays	850,017	349,357
Operation and maintenance, Air National Guard		
57 3840 0 1 051		
Budget Authority	2,113,076	868,474
Outlays	1,705,252	700,859
Operation and maintenance, Defense agencies		
97 0100 0 1 051		
Budget Authority	8,151,698	3,350,347
Outlays	7,175,444	2,949,107
Court of Military Appeals, Defense		
97 0104 0 1 051		
Budget Authority	4,141	1,702
Outlays	3,478	1,429
Drug interdiction and counter-drug activities, Defense		
97 0105 0 1 051		
Budget Authority	462,006	189,884
Outlays	184,802	75,954
Goodwill games		
97 0106 0 1 051		
Budget Authority	15,103	6,207
Outlays	12,082	4,964
Office of the Inspector General		
97 0107 0 1 051		
Budget Authority	100,672	41,376
Unobligated Bal--Defense	19	8
Outlays	75,518	31,038
Foreign currency fluctuations, Defense		
97 0801 0 1 051		
Unobligated Bal--Defense	299,186	122,966
Environmental restoration, Defense		
97 0810 0 1 051		
Budget Authority	625,144	256,954
Unobligated Bal--Defense	211	87
Outlays	343,945	141,362
Humanitarian assistance		
97 0819 0 1 051		
Budget Authority	13,359	5,491
Outlays	9,792	4,025
Procurement		
Procurement, Marine Corps		
17 1109 0 1 051		
Budget Authority	1,182,383	483,080
Unobligated Bal--Defense	207,181	85,151
Outlays	205,601	84,503
Aircraft procurement, Navy		
17 1506 0 1 051		
Budget Authority	9,638,849	3,961,847
Unobligated Bal--Defense	1,831,479	752,758
Outlays	1,376,459	565,716
Weapons procurement, Navy		
17 1507 0 1 051		
Budget Authority	5,519,634	2,268,570
Unobligated Bal--Defense	1,383,274	554,194
Outlays	618,562	254,229
Shipbuilding and conversion, Navy		
17 1611 0 1 051		
Budget Authority	11,972,304	4,920,617
Unobligated Bal--Defense	8,439,096	3,468,448
Outlays	816,454	335,564
Other procurement, Navy		
17 1810 0 1 051		
Budget Authority	8,071,775	3,317,498
Unobligated Bal--Defense	3,801,415	1,562,382
Outlays	1,296,177	531,906
Aircraft procurement, Army		
21 2031 0 1 051		
Budget Authority	3,844,099	1,568,145
Unobligated Bal--Defense	686,757	282,249
Outlays	591,609	243,151
Missile procurement, Army		
21 2032 0 1 051		
Budget Authority	2,547,492	1,047,019
Unobligated Bal--Defense	601,260	247,118
Outlays	157,438	64,708
Procurement of weapons and tracked combat vehicles, Army		
21 2033 0 1 051		
Budget Authority	2,685,172	1,103,606
Unobligated Bal--Defense	1,091,834	448,744
Outlays	37,770	15,524
Procurement of ammunition, Army		
21 2034 0 1 051		
Budget Authority	2,031,997	835,151
Unobligated Bal--Defense	201,135	82,666
Outlays	759,265	312,058
Other procurement, Army		
21 2035 0 1 051		
Budget Authority	3,655,117	1,502,254
Unobligated Bal--Defense	1,062,611	436,753
Outlays	306,652	126,034
Aircraft procurement, Air Force		
57 3010 0 1 051		
Budget Authority	16,096,413	6,615,625
Unobligated Bal--Defense	7,067,694	2,904,822
Outlays	924,545	380,018
Missile procurement, Air Force		
57 3020 0 1 051		
Budget Authority	6,854,195	2,817,074
Unobligated Bal--Defense	2,408,909	990,062
Outlays	2,223,144	913,712
Other procurement, Air Force		
57 3080 0 1 051		
Budget Authority	8,591,464	3,531,092
Unobligated Bal--Defense	2,029,804	834,249
Outlays	6,096,607	2,505,706
Procurement, Defense agencies		
97 0300 0 1 051		
Budget Authority	1,310,934	538,794
Unobligated Bal--Defense	562,333	148,919
Outlays	485,248	199,437
National guard and reserve equipment		
97 0350 0 1 051		
Budget Authority	986,649	405,521
Unobligated Bal--Defense	476,630	195,977
Outlays	158,058	64,962
Defense production act purchases		
97 0360 0 1 051		
Budget Authority	45,218	18,585
Unobligated Bal--Defense	47,627	19,575

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AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Chemical agents and munitions destruction, Defense		
97 0390 0 1 051		
Budget Authority	264,390	108,644
Unobligated Bal--Defense	17,287	7,105
Outlays	107,319	44,108
Research, Development, Test, and Evaluation		
Research, development, test, and evaluation, Navy		
17 1319 0 1 051		
Budget Authority	9,787,918	4,022,834
Unobligated Bal--Defense	414,048	170,174
Outlays	5,815,412	2,390,154
Research, development, test, and evaluation, Army		
21 2040 0 1 051		
Budget Authority	5,566,718	2,287,917
Unobligated Bal--Defense	269,349	110,702
Outlays	3,093,111	1,271,268
Research, development, test, and evaluation, Air Force		
57 3400 0 1 051		
Budget Authority	13,959,866	5,737,505
Unobligated Bal--Defense	1,693,934	696,297
Outlays	9,392,280	3,860,227
Research, development, test, and evaluation, Defense agencies		
97 0400 0 1 051		
Budget Authority	8,396,726	3,451,055
Unobligated Bal--Defense	889,699	365,666
Outlays	4,830,579	1,985,348
Developmental test and evaluation, Defense		
97 0450 0 1 051		
Budget Authority	185,350	76,179
Unobligated Bal--Defense	32,733	13,453
Outlays	46,086	19,271
Operational test and evaluation, Defense		
97 0460 0 1 051		
Budget Authority	13,234	5,439
Unobligated Bal--Defense	1,909	785
Outlays	605	248
Military Construction		
Military construction, Navy		
17 1205 0 1 051		
Budget Authority	1,165,411	478,984
Unobligated Bal--Defense	399,542	164,212
Outlays	258,217	106,126
Military construction, Naval Reserve		
17 1235 0 1 051		
Budget Authority	58,864	24,193
Unobligated Bal--Defense	10,545	4,334
Outlays	9,717	3,994
Military construction, Army		
21 2050 0 1 051		
Budget Authority	760,515	312,572
Unobligated Bal--Defense	246,758	101,418
Outlays	322,328	132,477
Military construction, Army National Guard		
21 2065 0 1 051		
Budget Authority	239,710	98,521
Unobligated Bal--Defense	100,727	41,399
Outlays	24,511	10,074
Military construction, Army Reserve		
21 2086 0 1 051		
Budget Authority	103,147	42,393
Unobligated Bal--Defense	38,015	15,624
Outlays	19,054	7,832
Military construction, Air Force		
57 3300 0 1 051		
Budget Authority	1,218,148	500,459
Unobligated Bal--Defense	521,050	214,152
Outlays	286,967	117,943
Military construction, Air Force Reserve		
57 3730 0 1 051		
Budget Authority	48,048	19,748
Unobligated Bal--Defense	12,163	4,999
Outlays	6,442	2,648
Military construction, Air National Guard		
57 3830 0 1 051		
Budget Authority	245,302	100,819
Unobligated Bal--Defense	104,179	42,818
Outlays	27,958	11,490
Base realignment and closure account		
97 0103 0 1 051		
Budget Authority	520,000	213,720
Unobligated Bal--Defense	85,000	34,935
Outlays	203,280	83,548
Military construction, Defense agencies		
97 0500 0 1 051		
Budget Authority	530,224	217,922
Unobligated Bal--Defense	347,886	142,981
Outlays	122,935	50,526
Foreign currency fluctuations, construction		
97 0603 0 1 051		
Unobligated Bal--Defense	152,404	62,671
North Atlantic Treaty Organization infrastructure		
97 0804 0 1 051		
Budget Authority	418,901	172,168
Outlays	83,781	34,434
Family Housing		
Family housing, Navy and Marine Corps		
17 0703 0 1 081		
Budget Authority	830,254	341,234
Unobligated Bal--Defense	137,094	56,346
Outlays	415,022	170,574
Family housing, Army		
21 0702 0 1 051		
Budget Authority	1,506,237	619,063
Unobligated Bal--Defense	86,640	35,609
Outlays	1,048,979	431,130
Family housing, Air Force		
57 0704 0 1 051		
Budget Authority	904,804	371,873
Outlays	514,761	211,567
Family housing, Defense agencies		
97 0706 0 1 051		
Budget Authority	21,969	9,030
Unobligated Bal--Defense	70	29
Outlays	15,087	6,201
Revolving and Management Funds		
Air Force stock fund		
57 4921 0 4 051		
Budget Authority	115,544	47,488
Outlays	45,062	18,520
National defense stockpile transaction fund		
97 4555 0 3 051		
Unobligated Bal--Defense	421,828	173,371
Emergency response fund		
97 4965 0 4 051		
Budget Authority	104,000	42,744
Unobligated Bal--Defense	100,000	41,100
TOTAL FOR DEPARTMENT OF DEFENSE--MILITARY		
Budget Authority	222,077,416	91,273,816
401(C) Authority	21,300	8,754
Unobligated Bal--Defense	38,081,455	15,651,480
Outlays	114,045,501	46,872,700

Department of Defense--Civil

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Cemeterial Expenses, Army		
Salaries and expenses		
21 1805 0 1 705		
Budget Authority	12,994	4,847
Outlays	9,687	3,613
Corps of Engineers--Civil		
Inland waterways trust fund		
20 8861 0 7 301		
Budget Authority	122,609	45,733
Outlays	85,826	32,013

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Flood control, Mississippi River and tributaries		
96 3112 0 1 301		
Budget Authority	346,190	129,189
401(C) Auth--Off. Coll.	400	149
Outlays	284,968	106,295
General investigations		
96 3121 0 1 301		
Budget Authority	136,730	51,000
Outlays	94,891	35,394
Construction, general		
96 3122 0 1 301		
Budget Authority	1,009,172	376,421
401(C) Auth--Off. Coll.	235	88
Outlays	395,812	146,892
Operation and maintenance, general (Water resources)		
96 3123 0 1 301		
Budget Authority	1,256,809	469,535
401(C) Auth--Off. Coll.	3,500	1,306
Outlays	1,015,545	378,798
Operation and maintenance, general (Recreational resources)		
96 3123 0 1 303		
Budget Authority	20,735	7,734
Outlays	16,173	6,033
General expenses		
96 3124 0 1 301		
Budget Authority	150,486	56,132
Outlays	120,389	44,905
Flood control and coastal emergencies		
96 3125 0 1 301		
Budget Authority	20,953	7,815
Outlays	10,477	3,908
Regulatory program		
96 3126 0 1 301		
Budget Authority	72,678	27,109
Outlays	69,044	25,753
Revolving fund		
96 4902 0 4 301		
Budget Authority	10,256	3,825
Outlays	8,205	3,060
Rivers and harbors contributed funds		
96 8862 0 7 301		
401(C) Authority	145,600	54,309
Outlays	90,272	33,671
Harbor maintenance trust fund		
96 8863 0 7 301		
Budget Authority	192,500	71,803
Outlays	192,500	71,803
Permanent appropriations (Water resources)		
96 9921 0 2 301		
401(C) Authority	7,000	2,611
Outlays	4,506	1,681
Permanent appropriations (Other general purpose fiscal assistance)		
96 9921 0 2 806		
401(C) Authority	5,000	1,865
Soldiers' and Airmen's Home		
Operation and maintenance		
84 8932 0 7 705		
Budget Authority	41,132	15,342
401(C) Auth--Off. Coll.	144	54
Outlays	37,163	13,862
Capital outlays		
84 8932 0 7 705		
Budget Authority	9,750	3,637
Outlays	195	73
Forest and Wildlife Conservation, Military Reservations		
Wildlife conservation		
97 5095 0 2 305		
401(C) Authority	2,200	821
Outlays	1,320	492

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
The Mildred and Claude Pepper Foundation		
Mildred and Claude Pepper Foundation		
97 0826 0 1 552		
Budget Authority	10,400	3,879
Outlays	10,400	3,879
TOTAL FOR DEPARTMENT OF DEFENSE--CIVIL		
Budget Authority	3,415,394	1,273,941
401(C) Authority	159,600	59,606
401(C) Auth--Off. Coll.	4,279	1,597
Outlays	2,445,375	912,125

Department of Health and Human Services, except Social Security

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Food and Drug Administration		
Program expenses		
75 0600 0 1 554		
Budget Authority	627,039	233,885
Outlays	520,442	194,125
Buildings and facilities		
75 0603 0 1 554		
Budget Authority	8,684	3,239
Outlays	1,216	454
Revolving fund for certification and other services		
75 4309 0 3 554		
401(C) Auth--Off. Coll.	3,338	1,245
Outlays	3,338	1,245
Health Resources and Services Administration		
Vaccine improvement program trust fund		
20 8175 0 7 551		
Budget Authority	4,735	1,766
Outlays	4,735	1,766
Health resources and services (Health care services)		
75 0350 0 1 551		
Budget Authority	1,072,591	400,077
Budget Auth--Spec. Rules	10,552	10,552
401(C) Auth--Off. Coll.	365	136
Outlays	596,094	225,982
Health resources and services (Education and training of health care wor		
75 0350 0 1 553		
Budget Authority	221,944	82,785
Outlays	133,166	49,671
Indian Health Service		
Tribal health administration		
75 0390 0 1 551		
Budget Authority	91,547	34,154
Budget Auth--Spec. Rules	22,917	22,917
401(C) Auth--Spec. Rules	60	60
Outlays	91,623	45,693
Indian health facilities		
75 0391 0 1 551		
Budget Auth--Spec. Rules	1,493	1,493
Outlays	299	299
Centers for Disease Control		
Disease control, research, and training (Health care services)		
75 0943 0 1 551		
Budget Authority	1,035,221	386,138
401(C) Auth--Off. Coll.	1,000	373
Outlays	549,667	205,025
Disease control, research, and training (Health research)		
75 0943 0 1 552		
Budget Authority	138,655	51,718
Outlays	83,193	31,031
National Institutes of Health		
National Library of Medicine (Health research)		
75 0807 0 1 552		
Budget Authority	29,708	11,081
Outlays	18,122	6,760

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
National Library of Medicine (Education and training of health care work		
75 0807 0 1 553		
Budget Authority	56,118	28,952
Outlays	24,232	12,769
John E. Fogarty International Center		
75 0819 0 1 552		
Budget Authority	16,226	6,052
Outlays	7,626	2,844
Buildings and facilities		
75 0838 0 1 552		
Budget Authority	63,484	23,680
Outlays	15,871	5,920
National Institute on Aging (Health research)		
75 0843 0 1 552		
Budget Authority	239,185	89,205
Outlays	74,138	27,653
National Institute on Aging (Education and training of health care work		
75 0843 0 1 553		
Budget Authority	10,447	3,897
Outlays	3,239	1,208
National Institute of Child Health and Human Development (Health researc		
75 0844 0 1 552		
Budget Authority	442,775	165,155
Outlays	144,116	54,501
National Institute of Child Health and Human Development (Education and		
75 0844 0 1 553		
Budget Authority	18,684	6,947
Outlays	1,862	695
Office of the Director (Health research)		
75 0846 0 1 552		
Budget Authority	105,560	39,376
Outlays	49,613	18,504
Office of the Director (Education and training of health care work force		
75 0846 0 1 553		
Budget Authority	7,209	2,689
Outlays	3,388	1,264
Research resources (Health research)		
75 0848 0 1 552		
Budget Authority	365,338	136,271
Outlays	189,976	70,861
Research resources (Education and training of health care work force)		
75 0848 0 1 553		
Budget Authority	2,689	1,003
Outlays	134	50
National Cancer Institute (Health research)		
75 0849 0 1 552		
Budget Authority	1,664,590	620,892
Outlays	799,003	298,028
National Cancer Institute (Education and training of health care work fo		
75 0849 0 1 553		
Budget Authority	38,852	14,492
Outlays	1,554	580
National Institute of General Medical Sciences (Health research)		
75 0851 0 1 552		
Budget Authority	620,318	231,379
Outlays	217,111	80,982
National Institute of General Medical Sciences (Education and training o		
75 0851 0 1 553		
Budget Authority	88,950	33,178
Outlays	31,133	11,613
National Institute of Environmental Health Sciences (Health research)		
75 0862 0 1 552		
Budget Authority	227,875	84,997
Outlays	134,725	50,998
National Institute of Environmental Health Sciences (Education and train		
75 0862 0 1 553		
Budget Authority	11,421	4,260
Outlays	6,853	2,556
National Heart, Lung and Blood Institute (Health research)		
75 0872 0 1 552		
Budget Authority	1,067,850	398,308
Outlays	469,854	175,256
National Heart, Lung and Blood Institute (Education and training of heal		
75 0872 0 1 553		
Budget Authority	48,699	18,165
Outlays	1,948	727
National Institute of Dental Research (Health research)		
75 0875 0 1 552		
Budget Authority	135,128	50,403
Outlays	75,672	28,226
National Institute of Dental Research (Education and training of health		
75 0875 0 1 553		
Budget Authority	6,576	2,453
Outlays	3,683	1,374
National Institute of Diabetes and Digestive and Kidney Diseases (Health		
75 0884 0 1 552		
Budget Authority	580,118	216,384
Outlays	197,240	73,571
National Institute of Diabetes and Digestive and Kidney Diseases (Educat		
75 0884 0 1 553		
Budget Authority	25,596	9,547
Outlays	7,167	2,673
National Institute of Allergy and Infectious Diseases (Health research)		
75 0885 0 1 552		
Budget Authority	848,498	316,490
Outlays	263,034	98,112
National Institute of Allergy and Infectious Diseases (Education and tra		
75 0885 0 1 553		
Budget Authority	19,153	7,144
Outlays	3,064	1,143
National Institute of Neurological Disorders and Stroke (Health research		
75 0886 0 1 552		
Budget Authority	496,820	185,314
Outlays	198,728	74,126
National Institute of Neurological Disorders and Stroke (Education and t		
75 0886 0 1 553		
Budget Authority	14,199	5,296
Outlays	3,976	1,483
National Eye Institute (Health research)		
75 0887 0 1 552		
Budget Authority	238,542	88,976
Outlays	88,261	32,921
National Eye Institute (Education and training of health care work force		
75 0887 0 1 553		
Budget Authority	7,775	2,900
Outlays	700	261
National Institute of Arthritis and Musculoskeletal and Skin Diseases (H		
75 0888 0 1 552		
Budget Authority	168,563	62,874
Outlays	64,084	23,892
National Institute of Arthritis and Musculoskeletal and Skin Diseases (E		
75 0888 0 1 553		
Budget Authority	7,310	2,727
Outlays	1,828	682

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
National Center for Nursing Research (Health research)		
75 0869 0 1 552		
Budget Authority	30,120	11,235
Outlays	4,518	1,685
National Center for Nursing Research (Education and training of health c		
75 0869 0 1 553		
Budget Authority	4,795	1,789
Outlays	719	268
National Institute on Deafness and Other Communicative Disorders (Health		
75 0890 0 1 552		
Budget Authority	118,980	44,388
Outlays	48,782	18,194
National Institute on Deafness and Other Communicative Disorders (Educat		
75 0890 0 1 553		
Budget Authority	3,405	1,270
Outlays	1,396	521
National center for human genome research (Health research)		
75 0891 0 1 552		
Budget Authority	58,744	21,912
Outlays	20,560	7,669
National center for human genome research (Education and training of hea		
75 0891 0 1 553		
Budget Authority	5,217	1,298
Outlays	1,124	420
Alcohol, Drug Abuse, and Mental Health Administration		
Federal subsidy for Saint Elizabeths Hospital		
75 1300 0 1 553		
Budget Authority	18,720	6,983
Outlays	18,720	6,983
Alcohol, drug abuse, and mental health (Health care services)		
75 1341 0 1 551		
Budget Authority	1,725,182	643,495
Outlays	603,814	225,223
Alcohol, drug abuse, and mental health (Health research)		
75 1341 0 1 552		
Budget Authority	934,359	348,516
Outlays	345,713	128,951
Alcohol, drug abuse, and mental health (Education and training of health		
75 1341 0 1 553		
Budget Authority	73,833	27,540
Outlays	14,767	5,508
Assistant Secretary for Health		
Public health service management (Health care services)		
75 1101 0 1 551		
Budget Authority	56,612	21,062
Outlays	32,237	12,024
Public health service management (Health research)		
75 1101 0 1 552		
Budget Authority	21,318	7,952
Outlays	15,430	5,689
Medical treatment effectiveness		
75 1105 0 1 552		
Budget Authority	27,962	10,422
Outlays	15,348	5,732
Health Care Financing Administration		
Federal supplementary medical insurance trust fund		
20 8004 0 7 571		
401(C) Other--incl ob lim	27,899	10,294
401(C) Auth--Spec. Rules	884,000	324,000
Obligation Limitation	1,340,037	807,294
Outlays	1,851,412	1,030,604

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Federal hospital insurance trust fund		
20 8005 0 7 571		
401(C) Other--incl ob lim	103,825	38,727
401(C) Auth--Spec. Rules	1,205,000	1,205,000
Obligation Limitation	1,021,734	381,187
Outlays	2,275,280	1,468,961
Program management (Health care services)		
75 0511 0 1 551		
Budget Authority	91,475	34,120
Outlays	77,754	29,002
Program management (Health research)		
75 0511 0 1 552		
Budget Authority	13,410	5,002
Outlays	10,728	4,002
Social Security Administration		
Supplemental security income progrm		
75 0406 0 1 609		
Budget Authority	849,576	316,892
Outlays	849,576	316,892
Special benefits for disabled coal miners		
75 0409 0 1 601		
401(C) Authority	7,000	2,611
Outlays	7,000	2,611
Family Support Administration		
Program administration		
75 1500 0 1 609		
Budget Authority	99,284	33,676
401(C) Auth--Off. Coll.	488	149
Outlays	68,113	25,406
Family support payments to States		
75 1501 0 1 609		
401(C) Authority	1,586,000	591,578
Outlays	1,586,000	591,578
Low income home energy assistance		
75 1502 0 1 609		
Budget Authority	1,500,720	559,769
Outlays	1,365,655	509,389
Refugee and entrant assistance		
75 1503 0 1 609		
Budget Authority	389,815	145,481
Outlays	253,380	94,511
Grants to States for special services		
75 1504 0 1 506		
Budget Authority	412,372	153,814
Outlays	280,413	104,594
Work incentives		
75 1505 0 1 504		
Budget Authority	20,800	7,758
Outlays	19,552	7,292
Interim assistance to States for legalization		
75 1506 0 1 506		
401(C) Authority	910,000	339,430
Outlays	273,000	101,829
Payments to states for family support activities (Other income security)		
75 1509 0 1 609		
401(C) Authority	650,000	242,450
Outlays	520,000	193,960
Human Development Services		
Social services block grant		
75 1634 0 1 506		
401(C) Authority	2,800,000	1,044,680
Outlays	2,661,840	992,886
Human development services		
75 1636 0 1 506		
Budget Authority	3,055,309	1,139,630
Outlays	1,778,147	663,249
Payments to States for foster care and adoption assistance		
75 1645 0 1 506		
401(C) Auth--Spec. Rules	10,000	10,000
Outlays	7,500	7,500

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Office of the Secretary		
General Departmental management		
75 0120 0 1 609		
Budget Authority	84,140	31,384
Outlays	58,898	21,969
Policy research		
75 0122 0 1 609		
Budget Authority	5,212	1,944
Outlays	2,086	778
Office of the Inspector General		
75 0128 0 1 609		
Budget Authority	84,140	31,384
Outlays	58,898	21,969
Office for Civil Rights		
75 0130 0 1 609		
Budget Authority	18,000	6,714
Outlays	12,600	4,700
Medicare hearings and appeals		
75 0134 0 1 571		
Budget Authority	84,140	31,384
Outlays	58,898	21,969
Office of the Secretary		
75 0140 0 1 609		
Budget Authority	84,140	31,384
Outlays	58,898	21,969
Miscellaneous permanent appropriations (Conservation and land management		
14 9921 0 2 302		
401(C) Authority	7,600	2,835
Outlays	7,326	2,733
Miscellaneous permanent appropriations (Other general purpose fiscal ass		
14 9921 0 2 806		
401(C) Authority	129,539	48,318
Outlays	117,890	43,969

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Colorado River dam fund, Boulder Canyon project		
14 5656 0 2 301		
401(C) Authority	30,488	11,361
Outlays	17,388	6,472
Reclamation trust funds		
14 8070 0 7 301		
401(C) Authority	54,244	20,986
Outlays	42,850	16,549
Miscellaneous permanent appropriations (Other		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Miscellaneous permanent appropriations		
14 9923 0 2 303		
401(C) Authority	144,288	53,787
Outlays	50,470	18,825
National Park Service		
Operation of the national park system		
14 1036 0 1 303		
Budget Authority	813,366	303,178
401(C) Auth--Off. Coll.	2,400	1,044

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Office of the Secretary		
General Departmental management		
75 0120 0 1 809		
Budget Authority	84,140	31,384
Outlays	58,898	21,969
Policy research		
75 0122 0 1 809		
Budget Authority	5,212	1,944
Outlays	2,085	778
Office of the Inspector General		
75 0128 0 1 809		
Budget Authority	53,540	19,970
Outlays	40,155	14,978
Office for Civil Rights		
75 0135 0 1 751		
Budget Authority	18,376	6,854
Outlays	14,722	6,257
Office of Consumer Affairs		
75 0137 0 1 506		
Budget Authority	1,937	723
Outlays	1,356	506
TOTAL FOR DEPARTMENT OF HEALTH AND HUMAN SERVICES, EXCEPT SOCIAL SECURITY		
Budget Authority	20,540,795	7,661,718
Budget Auth--Spec. Rules	34,962	34,962
401(C) Authority	5,953,000	2,220,449
401(C) Auth--Off. Coll.	5,105	1,903
401(C) Other--incl ob lim	131,424	49,021
401(C) Auth--Spec. Rules	1,767,060	1,767,060
Obligation Limitation	2,381,771	888,401
Outlays	20,227,454	8,666,529
Department of the Interior		
Bureau of Land Management		
Management of lands and resources		
14 1109 0 1 302		
Budget Authority	461,446	172,127
Outlays	402,860	150,267
Construction and access		
14 1110 0 1 302		
Budget Authority	8,917	3,326
Outlays	2,229	831
Payments in lieu of taxes		
14 1114 0 1 806		
Budget Authority	109,200	40,732
Outlays	109,200	40,732
Oregon and California grant lands		
14 1116 0 1 302		
Budget Authority	99,364	37,063
Outlays	73,529	27,426
Special acquisition of lands and minerals		
14 1117 0 1 302		
401(C) Authority	1,352	504
Outlays	1,352	504
Firefighting		
14 1119 0 1 302		
Budget Authority	362,069	135,052
Outlays	257,362	95,996
Service charges, deposits, and forfeitures		
14 5017 0 2 302		
Budget Authority	6,346	2,367
Outlays	4,493	1,676
Land acquisition		
14 5033 0 2 302		
Budget Authority	16,014	5,973
Outlays	8,007	2,987
Operation and maintenance of quarters		
14 5048 0 2 302		
401(C) Authority	260	97
Outlays	217	81
Range improvements		
14 5132 0 2 302		
Budget Authority	9,866	3,680
Outlays	6,235	2,326

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Miscellaneous permanent appropriations (Conservation and land management		
14 9921 0 2 302		
401(C) Authority	7,400	2,835
Outlays	7,326	2,735
Miscellaneous permanent appropriations (Other general purpose fiscal ass		
14 9921 0 2 806		
401(C) Authority	129,539	48,318
Outlays	117,880	43,969
Miscellaneous trust funds		
14 9971 0 7 302		
Budget Authority	105	39
401(C) Authority	624	233
Outlays	370	138
Minerals Management Service		
Leasing and royalty management		
14 1917 0 1 302		
Budget Authority	185,784	69,297
Outlays	120,760	45,043
Payments to States from receipts under Mineral Leasing Act		
14 5003 0 2 806		
401(C) Authority	464,770	173,359
Outlays	427,588	159,490
Office of Surface Mining Reclamation and Enforcement		
Regulation and technology		
14 1801 0 1 302		
Budget Authority	107,831	40,221
Outlays	65,737	24,520
Abandoned mine reclamation fund		
14 5015 0 2 302		
Budget Authority	200,857	74,920
Outlays	54,433	20,378
Bureau of Reclamation		
Loan program		
14 0667 0 1 301		
Budget Authority	35,004	13,056
Direct Loan Limitation	32,734	12,210
Outlays	21,527	8,030
Construction program		
14 0684 0 1 301		
Budget Authority	680,952	253,995
401(C) Auth--Off. Coll.	34,000	12,682
Outlays	606,000	226,038
Lower Colorado River Basin development fund		
14 4079 0 3 301		
401(C) Auth--Off. Coll.	96,821	36,114
Outlays	96,821	36,114
Upper Colorado River Basin fund		
14 4081 0 3 301		
401(C) Auth--Off. Coll.	31,604	11,788
Outlays	31,604	11,788
Working capital fund		
14 4524 0 4 301		
Budget Authority	8,780	3,275
Outlays	7,024	2,620
Emergency fund		
14 5043 0 2 301		
Budget Authority	1,025	382
Outlays	620	231
General investigations		
14 5060 0 2 301		
Budget Authority	11,960	4,461
Outlays	7,702	2,873
Operation and maintenance		
14 5064 0 2 301		
Budget Authority	220,097	82,096
401(C) Auth--Off. Coll.	8,145	3,037
Outlays	179,158	66,826
General administrative expenses		
14 5065 0 2 301		
Budget Authority	50,049	18,668
Outlays	45,044	16,801

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Colorado River dam fund, Boulder Canyon project		
14 5656 0 2 301		
401(C) Authority	30,488	11,361
Outlays	17,388	6,472
Reclamation trust funds		
14 8070 0 7 301		
401(C) Authority	54,244	20,984
Outlays	43,850	16,349
Miscellaneous permanent appropriations (Other general purpose fiscal ass		
14 9922 0 2 806		
401(C) Authority	280	104
Outlays	280	104
Geological Survey		
Surveys, investigations and research		
14 0804 0 1 306		
Budget Authority	525,069	195,850
401(C) Authority	250	93
401(C) Auth--Off. Coll.	78,488	29,844
Outlays	577,462	215,395
Operation and maintenance of quarters		
14 5055 0 2 306		
401(C) Authority	51	19
Outlays	41	15
Bureau of Mines		
Mines and minerals		
14 0959 0 1 306		
Budget Authority	188,194	70,196
Outlays	124,200	46,330
Helium fund		
14 4053 0 3 306		
401(C) Auth--Off. Coll.	3,465	1,288
Outlays	3,451	1,288
United States Fish and Wildlife Service		
Resource management		
14 1611 0 1 303		
Budget Authority	416,348	155,223
401(C) Auth--Off. Coll.	5,776	2,154
Outlays	338,692	126,332
Construction		
14 1612 0 1 303		
Budget Authority	71,658	26,728
Outlays	14,332	5,346
Land acquisition		
14 5020 0 2 303		
Budget Authority	102,990	38,415
Outlays	38,695	14,433
Operation and maintenance of quarters		
14 5050 0 2 303		
401(C) Authority	1,769	660
Outlays	1,238	462
National wildlife refuge fund		
14 5091 0 2 806		
Budget Authority	9,291	3,466
401(C) Authority	6,040	2,253
Outlays	11,707	4,367
Migratory bird conservation account		
14 5137 0 2 303		
401(C) Authority	30,600	11,414
Outlays	21,420	7,990
North American wetlands conservation fund		
14 5241 0 2 303		
401(C) Authority	7,300	2,723
Outlays	5,110	1,906
Sport fish restoration		
14 8151 0 7 303		
401(C) Authority	206,000	76,838
Outlays	72,100	26,895
African elephant conservation fund		
14 8154 0 7 303		
401(C) Authority	500	187
Outlays	100	37
Contributed funds		
14 8214 0 7 303		
401(C) Authority	4,165	1,554
Outlays	2,916	1,088

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Miscellaneous permanent appropriations		
14 9925 0 2 303		
401(C) Authority	144,298	53,787
Outlays	50,478	18,825
National Park Service		
Operation of the national park system		
14 1036 0 1 303		
Budget Authority	813,346	303,178
401(C) Auth--Off. Coll.	2,800	1,044
Outlays	612,618	228,378
John F. Kennedy Center for the Performing Arts		
14 1038 0 1 303		
Budget Authority	9,564	3,567
Outlays	5,758	2,148
Construction		
14 1039 0 1 303		
Budget Authority	258,291	96,303
401(C) Auth--Off. Coll.	11,000	4,101
Outlays	49,764	18,555
National recreation and preservation		
14 1042 0 1 303		
Budget Authority	16,891	6,300
Outlays	12,668	4,725
Illinois and Michigan canal national heritage-corridor Commission		
14 1043 0 1 303		
Budget Authority	862	98
Outlays	197	73
Land acquisition		
14 5035 0 2 303		
Budget Authority	121,947	45,467
401(C) Authority	30,000	11,190
Outlays	42,681	15,920
Operation and maintenance of quarters		
14 5049 0 2 303		
401(C) Authority	8,795	3,281
Outlays	5,717	2,132
Historic preservation fund		
14 5140 0 2 303		
Budget Authority	33,601	12,533
Outlays	13,440	5,013
Miscellaneous permanent appropriations		
14 9924 0 2 303		
401(C) Authority	980	366
Outlays	335	126
Bureau of Indian Affairs		
Operation of Indian programs (Conservation and land management)		
14 2100 0 1 302		
Budget Authority	145,655	54,329
Outlays	121,039	45,148
Operation of Indian programs (Area and regional development)		
14 2100 0 1 452		
Budget Authority	614,907	229,360
401(C) Auth--Off. Coll.	2,000	746
Outlays	502,534	187,445
Operation of Indian programs (Elementary, secondary, and vocational educ		
14 2100 0 1 501		
Budget Authority	312,217	116,457
Outlays	218,552	81,520
Construction		
14 2301 0 1 452		
Budget Authority	167,415	62,446
Outlays	38,505	14,362
Payment to the Navajo Rehabilitation Trust Fund		
14 2360 0 1 452		
Budget Authority	852	318
Outlays	852	318
Revolving fund for loans		
14 4409 0 3 452		
Direct Loan Limitation	9,000	3,357
Outlays	9,000	3,357

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Indian loan guaranty and insurance fund		
14 4410 0 3 452		
Budget Authority	4,907	1,830
Guarntd. Loan Limitation	45,000	16,785
Outlays	898	335
Operation and maintenance of quarters		
14 5081 0 2 452		
401(C) Authority	6,749	2,517
Outlays	5,399	2,014
Department of Justice		
General Administration		
Salaries and expenses		
15 0129 0 1 751		
Budget Authority	101,894	38,006
Outlays	91,705	34,206
Office of the Inspector General		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Federal Bureau of Investigation		
Salaries and expenses		
15 0200 0 1 751		
Budget Authority	1,783,742	665,336
401(C) Auth--Off. Coll.	20,352	7,591
Outlays	1,447,346	539,859
Drug Enforcement Administration		
Salaries and expenses		
15 1100 0 1 751		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Department of Labor		
Employment and Training Administration		
Program administration		
16 0172 0 1 504		
Budget Authority	68,435	25,601
Outlays	54,290	20,250
Training and employment services		
16 0174 0 1 504		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Indian loan guaranty and insurance fund		
14 4410 0 3 452		
Budget Authority	4,907	1,830
Guarntd. Loan Limitation	45,000	16,785
Outlays	898	335
Operation and maintenance of quarters		
14 5051 0 2 452		
401(C) Authority	6,749	2,517
Outlays	5,399	2,014
Cooperative fund (papago)		
14 8366 0 7 452		
401(C) Authority	868	324
Navajo rehabilitation trust fund		
14 8368 0 7 452		
401(C) Authority	870	325
Outlays	870	325
Miscellaneous permanent appropriations (Area and regional development)		
14 9925 0 2 452		
401(C) Authority	62,500	23,313
Outlays	12,500	4,663
Miscellaneous permanent appropriations (Other general government)		
14 9925 0 2 806		
401(C) Authority	1,000	373
Outlays	986	368
Territorial and International Affairs		
Administration of territories		
14 0412 0 1 808		
Budget Authority	44,255	16,507
Outlays	25,221	9,407
Trust Territory of the Pacific Islands		
14 0414 0 1 808		
Budget Authority	34,244	12,773
Outlays	18,149	6,770
Compact of free association		
14 0415 0 1 808		
Budget Authority	11,232	4,190
401(C) Authority	10,000	3,730
Outlays	21,232	7,920
Office of the Secretary		
Salaries and expenses		
14 0102 0 1 306		
Budget Authority	53,235	19,857
Outlays	47,912	17,871
Construction management		
14 0103 0 1 306		
Budget Authority	1,901	709
Outlays	1,711	638
Oil spill emergency fund		
14 0119 0 1 306		
Budget Authority	7,570	2,824
Outlays	3,785	1,412
Office of the Solicitor		
Office of the Solicitor		
14 0107 0 1 306		
Budget Authority	26,876	10,025
Outlays	24,188	9,022
Office of Inspector General		
Office of Inspector General		
14 0104 0 1 306		
Budget Authority	21,713	8,099
Outlays	19,542	7,289
National Indian Gaming Commission		
National Indian gaming commission		
14 0118 0 1 806		
Budget Authority	789	294
Outlays	710	265
TOTAL FOR DEPARTMENT OF THE INTERIOR		
Budget Authority	6,590,687	2,458,324
401(C) Authority	1,213,784	452,744
402(C) Auth--Off. Coll.	274,808	102,202
Direct Loan Limitation	41,734	15,567
Guarntd. Loan Limitation	45,000	16,785
Outlays	5,795,575	2,161,749

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Department of Justice		
General Administration		
Salaries and expenses		
15 0129 0 1 751		
Budget Authority	101,894	38,006
Outlays	91,705	34,206
Office of the Inspector General		
15 0328 0 1 751		
Budget Authority	21,814	8,137
Outlays	19,433	7,323
United States Parole Commission		
Salaries and expenses		
15 1061 0 1 751		
Budget Authority	11,099	4,140
Outlays	9,545	3,560
Legal Activities		
Salaries and expenses, Foreign Claims Settlement Commission		
15 0100 0 1 153		
Budget Authority	466	174
Outlays	375	139
Salaries and expenses, General Legal Activities		
15 0128 0 1 752		
Budget Authority	311,679	116,256
Outlays	271,161	101,163
Fees and expenses of witnesses		
15 0311 0 1 752		
Budget Authority	70,628	26,344
Outlays	49,440	18,441
Salaries and expenses, Antitrust Division		
15 0319 0 1 752		
Budget Authority	36,307	13,543
401(C) Auth--Off. Coll.	20,000	7,460
Outlays	49,772	18,565
Salaries and expenses, United States Attorneys		
15 0322 0 1 752		
Budget Authority	549,730	205,049
Outlays	483,762	180,443
Salaries and expenses, United States Marshals Service		
15 0324 0 1 752		
Budget Authority	259,959	96,964
401(C) Auth--Off. Coll.	3,000	1,119
Outlays	236,963	88,387
Independent counsel		
15 0327 0 1 752		
401(C) Authority	4,000	1,492
Outlays	4,000	1,492
Civil liberties public education fund		
15 0329 0 1 808		
401(C) Authority	500,000	186,500
Outlays	500,000	186,500
Salaries and expenses, Community Relations Service		
15 0500 0 1 752		
Budget Authority	30,263	11,288
Outlays	21,184	7,902
Support of United States prisoners		
15 1020 0 1 752		
Budget Authority	164,774	61,461
Outlays	98,864	36,876
Assets forfeiture fund		
15 5042 0 2 752		
Budget Authority	102,903	38,383
401(C) Authority	271,479	101,336
Outlays	285,472	106,556
United States trustees system fund		
15 5073 0 2 752		
Budget Authority	63,572	23,712
Outlays	54,036	20,155
Interagency Law Enforcement		
Organized crime drug enforcement		
15 0323 0 1 751		
Budget Authority	223,518	83,372
Outlays	172,109	64,197

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Federal Bureau of Investigation		
Salaries and expenses		
15 0200 0 1 751		
Budget Authority	1,783,742	665,336
401(C) Auth--Off. Coll.	20,352	7,591
Outlays	1,447,544	539,859
Drug Enforcement Administration		
Salaries and expenses		
15 1100 0 1 751		
Budget Authority	578,558	215,802
401(C) Auth--Off. Coll.	1,500	560
Outlays	435,419	162,412
Immigration and Naturalization Service		
Salaries and expenses		
15 1217 0 1 751		
Budget Authority	891,864	332,665
401(C) Auth--Off. Coll.	1,020	380
Outlays	714,511	266,512
Immigration emergency fund		
15 1218 0 1 751		
Budget Authority	34,400	13,577
Immigration legalization		
15 5086 0 2 751		
401(C) Authority	37,568	14,013
Outlays	37,568	14,013
Immigration user fee		
15 5087 0 2 751		
401(C) Authority	109,200	40,732
Outlays	98,280	36,658
Immigration examinations fee		
15 5088 0 2 751		
401(C) Authority	90,000	33,570
Outlays	81,000	30,213
Federal Prison System		
Buildings and facilities		
15 1003 0 1 753		
Budget Authority	1,453,763	542,254
Outlays	145,376	54,225
National Institute of Corrections		
15 1004 0 1 754		
Budget Authority	10,426	3,889
Outlays	4,170	1,555
Salaries and expenses		
15 1060 0 1 753		
Budget Authority	1,194,265	445,461
401(C) Auth--Off. Coll.	12,744	4,754
Outlays	1,087,504	405,669
Federal Prison Industries, Incorporated		
15 4500 0 4 753		
Obligation Limitation	3,020	1,126
Outlays	3,020	1,126
Office of Justice Programs		
Justice assistance		
15 0401 0 1 754		
Budget Authority	639,360	238,481
Outlays	140,689	52,466
Public safety officers' benefits		
15 0403 0 1 754		
Budget Authority	25,811	9,628
Outlays	25,811	9,628
Crime victims fund		
15 5041 0 2 754		
401(C) Authority	125,000	46,625
Outlays	62,500	23,313
TOTAL FOR DEPARTMENT OF JUSTICE		
Budget Authority	8,562,795	3,195,922
401(C) Authority	1,137,447	424,268
401(C) Auth--Off. Coll.	38,616	21,864
Obligation Limitation	3,020	1,126
Outlays	6,631,463	2,473,534

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Department of Labor		
Employment and Training Administration		
Program administration		
16 0172 0 1 504		
Budget Authority	68,435	25,401
Outlays	54,290	20,250
Training and employment services		
16 0174 0 1 504		
Budget Authority	4,087,252	1,524,545
Outlays	155,316	57,955
Community service employment for older Americans		
16 0175 0 1 504		
Budget Authority	381,494	142,272
Outlays	70,027	26,120
State unemployment insurance and employment service operations (Training		
16 0179 0 1 504		
Budget Authority	22,880	8,534
Outlays	5,745	2,142
Federal unemployment benefits and allowances (Training and employment)		
16 0526 0 1 504		
Budget Authority	75,000	27,975
Outlays	75,000	27,975
Federal unemployment benefits and allowances (Unemployment compensation)		
16 0326 0 1 603		
401(C) Authority	186,000	69,378
Outlays	186,000	69,378
Unemployment trust fund (Training and employment)		
20 8042 0 7 504		
Obligation Limitation	1,142,000	425,966
Outlays	497,000	185,381
Unemployment trust fund (Unemployment compensation)		
20 8042 0 7 603		
401(C) Other--incl ob lim	104,800	39,090
Obligation Limitation	1,896,524	706,658
Outlays	1,999,324	745,746
Labor-Management Services		
Salaries and expenses		
16 0104 0 1 505		
Budget Authority	78,099	29,131
Outlays	66,228	24,705
Pension Benefit Guaranty Corporation		
Pension Benefit Guaranty Corporation fund		
16 4204 0 3 601		
Obligation Limitation	74,652	27,845
Outlays	74,652	27,845
Employment Standards Administration		
Salaries and expenses		
16 0105 0 1 505		
Budget Authority	229,209	85,495
401(C) Auth--Off. Coll.	1,500	560
Outlays	198,161	73,915
Special workers' compensation expenses		
16 9971 0 7 601		
Obligation Limitation	1,051	392
Outlays	1,051	392
Black lung disability trust fund		
20 8144 0 7 601		
Obligation Limitation	54,019	20,149
Outlays	54,019	20,149
Occupational Safety and Health Administration		
Salaries and expenses		
16 0400 0 1 554		
Budget Authority	280,994	104,811
Outlays	241,658	90,137
Mine Safety and Health Administration		
Salaries and expenses		
16 1200 0 1 554		
Budget Authority	178,629	66,629
Outlays	162,582	60,632

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Bureau of Labor Statistics		
Salaries and expenses		
16 0200 0 1 505		
Budget Authority	202,344	75,474
401(C) Auth--Off. Coll.	1,100	410
Outlays	173,295	64,639
Departmental Management		
Office of the Inspector General		
16 0106 0 1 505		
Budget Authority	21,497	8,019
401(C) Auth--Off. Coll.	1,500	560
Outlays	19,161	7,147
Special workers' compensation expenses		
16 9971 0 7 601		
Obligation Limitation	1,051	392
Outlays	1,051	392
Black lung disability trust fund		
20 8144 0 7 601		
Obligation Limitation	54,019	20,149
Outlays	54,019	20,149
Occupational Safety and Health Administration		
Salaries and expenses		
16 0400 0 1 554		
Budget Authority	280,994	104,811
Outlays	241,658	90,137
Mine Safety and Health Administration		
Salaries and expenses		
16 1200 0 1 554		
Budget Authority	178,629	66,629
Outlays	162,582	60,632

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Department of the Treasury		
Departmental Offices		
Salaries and expenses		
20 0101 0 1 803		
Budget Authority	61,497	22,958
401(C) Auth--Off. Coll.	306	114
Outlays	51,501	19,956
Office of the Inspector General		
20 0104 0 1 803		
Budget Authority	52,960	19,754
Outlays	52,960	19,754
Bureau of Engraving and Printing		
Bureau of Engraving and Printing fund		
20 4502 0 4 803		
401(C) Auth--Off. Coll.	32,331	12,059
Outlays	32,331	12,059
United States Mint		
Salaries and expenses		
20 1616 0 1 803		
Budget Authority	52,960	19,754
Outlays	52,960	19,754

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Bureau of Labor Statistics		
Salaries and expenses		
16 0200 0 1 505		
Budget Authority	202,344	75,479
401(C) Auth--Off. Coll.	1,100	410
Outlays	173,295	64,639
Departmental Management		
Office of the Inspector General		
16 0106 0 1 505		
Budget Authority	43,167	16,101
Outlays	37,898	14,024
Special foreign currency program		
16 0151 0 1 505		
Budget Authority	1	0
Outlays	1	0
Salaries and expenses		
16 0165 0 1 505		
Budget Authority	124,023	46,261
Outlays	102,443	38,211
TOTAL FOR DEPARTMENT OF LABOR		
Budget Authority	5,771,927	2,152,929
401(C) Authority	186,000	69,378
401(C) Auth--Off. Coll.	2,600	970
401(C) Other--incl ob lim	104,800	39,090
Obligation Limitation	5,166,246	1,181,010
Outlays	4,154,355	1,549,574
Department of State		
Department of State		
FMS interest buydown		
11 0882 0 1 152		
Budget Authority	270,000	100,710
Administration of Foreign Affairs		
Salaries and expenses		
19 0113 0 1 153		
Budget Authority	1,890,188	705,038
Outlays	1,549,951	578,132
Protection of foreign missions and officials		
19 0520 0 1 153		
Budget Authority	9,464	3,530
Outlays	3,786	1,412
Emergencies in the diplomatic and consular service		
19 0522 0 1 153		
Budget Authority	4,821	1,799
Direct Loan Limitation	642	239
Outlays	3,375	1,259
Payment to the American Institute in Taiwan		
19 0523 0 1 153		
Budget Authority	11,588	4,323
Outlays	6,374	2,377
Office of the Inspector General		
19 0529 0 1 153		
Budget Authority	21,906	8,201
Outlays	18,029	6,725
Acquisition and maintenance of buildings abroad		
19 0535 0 1 153		
Budget Authority	305,519	113,959
401(C) Auth--Off. Coll.	2,000	746
Outlays	63,104	23,538
Representation allowances		
19 0545 0 1 153		
Budget Authority	4,784	1,785
Outlays	4,118	1,535
International Organizations and Conferences		
Contributions for international peacekeeping activities		
19 1124 0 1 153		
Budget Authority	84,322	31,452
Outlays	84,322	31,452
International conferences and contingencies		
19 1125 0 1 153		
Budget Authority	6,507	2,427
Outlays	3,254	1,214
Contributions to international organizations		
19 1126 0 1 153		
Budget Authority	639,550	238,552
Outlays	607,572	226,625
International Commissions		
Salaries and expenses, IBWC		
19 1049 0 1 301		
Budget Authority	11,104	4,142
Outlays	9,849	3,562
Construction, IBWC		
19 1078 0 1 301		
Budget Authority	11,944	4,456
Outlays	2,389	891
American sections, international commissions		
19 1082 0 1 301		
Budget Authority	4,691	1,750
Outlays	3,172	1,183
International fisheries commissions		
19 1087 0 1 302		
Budget Authority	12,633	4,712
Outlays	12,620	4,707
Other		
United States emergency refugee and migration assistance fund		
11 0040 0 1 151		
Budget Authority	77,776	29,010
Outlays	56,621	21,119
International narcotics control		
11 1022 0 1 151		
Budget Authority	117,742	43,918
Outlays	41,445	15,459
Anti-terrorism assistance		
19 0114 0 1 152		
Budget Authority	10,373	3,869
Outlays	6,742	2,515
Soviet-East European research and training		
19 0118 0 1 153		
Budget Authority	4,784	1,784
Outlays	478	178
Payment to the Asia Foundation		
19 0525 0 1 154		
Budget Authority	14,456	5,393
Outlays	12,288	4,583
Migration and refugee assistance		
19 1143 0 1 151		
Budget Authority	461,351	172,084
Outlays	335,863	125,277
U.S. bilateral science and technology agreements		
19 1151 0 1 153		
Budget Authority	4,130	1,541
Outlays	4,130	1,541
Fishermen's protective fund		
19 5116 0 2 376		
Budget Authority	1,040	388
Outlays	1,040	388
Fishermen's guaranty fund		
19 5121 0 2 376		
Budget Authority	272	101
Outlays	210	78
International Center, Washington, D.C.		
19 5151 0 2 153		
401(C) Authority	1,284	479
Outlays	1,284	479
TOTAL FOR DEPARTMENT OF STATE		
Budget Authority	3,981,022	1,484,924
401(C) Authority	1,284	479
401(C) Auth--Off. Coll.	2,000	746
Direct Loan Limitation	642	239
Outlays	2,831,713	1,056,229

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Department of the Treasury		
Departmental Offices		
Salaries and expenses		
20 0101 0 1 803		
Budget Authority	61,497	22,956
401(C) Auth--Off. Coll.	306	114
Outlays	53,501	19,956
Office of the Inspector General		
20 0106 0 1 803		
Budget Authority	16,131	6,017
Outlays	14,082	5,253
International affairs		
20 0171 0 1 803		
Budget Authority	26,536	9,898
401(C) Auth--Off. Coll.	5,632	2,101
Outlays	28,586	10,665
Federal Law Enforcement Training Center		
Salaries and expenses		
20 0104 0 1 751		
Budget Authority	37,391	13,947
Outlays	33,652	12,552
Acquisitions, construction, improvements, and related expenses		
20 0105 0 1 751		
Budget Authority	15,600	5,819
Outlays	6,552	2,444
Financial Management Service		
Salaries and expenses		
20 1801 0 1 803		
Budget Authority	299,333	111,651
Outlays	260,420	97,157
St Lawrence Seaway toll rebate program		
20 0865 0 7 808		
Budget Authority	10,425	3,889
Outlays	10,425	3,889
Federal Financing Bank		
Federal Financing Bank		
20 4521 0 4 803		
401(C) Auth--Off. Coll.	2,000	746
Outlays	2,000	746
Bureau of Alcohol, Tobacco and Firearms		
Salaries and expenses		
20 1000 0 1 751		
Budget Authority	279,623	104,299
Outlays	243,272	90,740
United States Customs Service		
Salaries and expenses		
20 0602 0 1 751		
Budget Authority	1,129,111	421,158
401(C) Authority	164,141	61,225
401(C) Auth--Off. Coll.	16,550	6,175
Outlays	1,138,435	424,637
Operation and maintenance, air interdiction program		
20 0604 0 1 751		
Budget Authority	239,578	89,365
Outlays	131,768	49,149
Customs forfeiture fund		
20 5693 0 2 803		
Budget Authority	15,820	5,789
401(C) Authority	34,510	12,872
Outlays	48,478	18,082
Customs services at small airports		
20 5694 0 2 806		
Budget Authority	2,280	850
Outlays	2,280	850
Payments from forfeited assets		
20 5696 0 2 803		
401(C) Authority	40,000	14,920
Outlays	40,000	14,920
Refunds, transfers and expenses, unclaimed, and abandoned goods		
20 8789 0 7 803		
401(C) Authority	19,032	7,099
Outlays	19,032	7,099
Bureau of Engraving and Printing		
Bureau of Engraving and Printing fund		
20 4502 0 4 803		
401(C) Auth--Off. Coll.	32,331	12,059
Outlays	32,331	12,059
United States Mint		
Salaries and expenses		
20 1616 0 1 803		
Budget Authority	52,960	19,754
401(C) Auth--Off. Coll.	106,419	39,694
Outlays	144,021	53,720
Bureau of the Public Debt		
Administering the public debt		
20 0540 0 1 803		
Budget Authority	203,777	76,009
Outlays	173,210	64,607
Internal Revenue Service		
Administration and management		
20 0911 0 1 803		
Budget Authority	75,317	28,095
Outlays	64,019	23,879
Processing tax returns and assistance		
20 0912 0 1 803		
Budget Authority	1,950,730	727,622
Outlays	1,658,121	618,479
Tax law enforcement		
20 0913 0 1 803		
Budget Authority	3,809,983	1,421,184
Outlays	3,505,184	1,307,434
Federal tax lien revolving fund		
20 4413 0 3 803		
401(C) Auth--Off. Coll.	6,000	2,238
Outlays	6,000	2,238
Reimbursement to state and local law enforcement agencies		
20 5099 0 2 754		
401(C) Authority	100	37
Outlays	100	37
United States Secret Service		
Contribution for annuity benefits		
20 1407 0 1 751		
401(C) Authority	18,458	6,885
Outlays	18,458	6,885
Salaries and expenses		
20 1408 0 1 751		
Budget Authority	387,620	144,582
Outlays	329,477	122,895
TOTAL FOR DEPARTMENT OF THE TREASURY		
Budget Authority	8,613,412	3,212,802
401(C) Authority	276,241	103,058
401(C) Auth--Off. Coll.	169,238	61,125
Outlays	7,963,404	2,970,350
Department of Health and Human Services, Social Security		
Social Security		
Federal old-age and survivors insurance trust fund		
20 8006 0 7 651		
401(C) Other--incl ob lim	234,626	87,515
Obligation Limitation	1,492,894	556,850
Outlays	1,241,121	462,958
Federal disability insurance trust fund		
20 8007 0 7 651		
401(C) Other--incl ob lim	29,163	10,878
Obligation Limitation	518,026	193,224
Outlays	462,347	172,484
TOTAL FOR DEPARTMENT OF HEALTH AND HUMAN SERVICES, SOCIAL SECURITY		
401(C) Other--incl ob lim	263,789	98,393
Obligation Limitation	2,010,920	750,074
Outlays	1,703,468	635,394

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Department of Education		
Office of Elementary and Secondary Education		
Indian education		
91 0101 0 1 501		
Budget Authority	76,629	28,583
Outlays	11,188	4,173
Impact aid		
91 0102 0 1 501		
Budget Authority	761,646	284,094
Outlays	613,887	228,980
Compensatory education for the disadvantaged		
91 0900 0 1 501		
Budget Authority	5,583,095	2,082,494
Outlays	669,971	249,899
School improvement programs		
91 1000 0 1 501		
Budget Authority	1,474,395	549,949
Outlays	176,927	65,994
Office of Bilingual Education and Minority Languages Affairs		
Bilingual and immigrant education		
91 1300 0 1 501		
Budget Authority	196,221	73,190
Outlays	23,547	8,783
Office of Special Education and Rehabilitative Services		
Education for the handicapped		
91 0300 0 1 501		
Budget Authority	2,137,465	797,274
Outlays	265,046	98,862
Rehabilitation services and handicapped research		
91 0301 0 1 506		
Budget Authority	262,790	98,021
401(C) Auth--Spec. Rules	68,782	68,782
Outlays	255,310	128,438
Payments to institutions for the handicapped (Elementary, secondary, and		
91 0400 0 1 501		
Budget Authority	5,890	2,197
Outlays	5,890	2,197
Payments to institutions for the handicapped (Higher education)		
91 0401 0 1 502		
Budget Authority	37,513	13,992
Outlays	37,513	13,992
Payments to institutions for the handicapped (Higher education)		
91 0402 0 1 502		
Budget Authority	70,349	26,240
Outlays	69,927	26,083
Promotion of education for the blind		
91 0893 0 7 501		
401(C) Authority	10	4
Outlays	5	2
Office of Vocational and Adult Education		
Vocational and adult education		
91 0400 0 1 501		
Budget Authority	1,167,369	435,429
401(C) Authority	7,148	2,666
Outlays	140,942	52,571
Office of Postsecondary Education		
Student financial assistance		
91 0200 0 1 502		
Budget Authority	6,325,536	2,359,425
Outlays	1,669,175	622,602
Higher education		
91 0201 0 1 502		
Budget Authority	649,512	242,268
Outlays	96,777	36,098
Guaranteed student loans		
91 0230 0 1 502		
401(C) Auth--Spec. Rules	43,107	43,107
Outlays	26,334	26,334
College housing and academic facilities loans		
91 0242 0 1 502		
Budget Authority	39,649	14,789
Direct Loan Limitation	31,200	11,638
Outlays	8,449	3,151
Howard University		
91 0403 0 1 502		
Budget Authority	189,744	70,775
Outlays	180,824	67,448
College housing loans		
91 4250 0 3 502		
401(C) Auth--Off. Coll.	650	242
Outlays	650	242
Office of Educational Research and Improvement		
Libraries		
91 0104 0 1 503		
Budget Authority	142,112	53,008
Outlays	56,845	21,203
Research, statistics, and improvement of practice		
91 1100 0 1 503		
Budget Authority	99,051	36,946
Outlays	40,413	15,074
Departmental Management		
Office for civil rights		
91 0700 0 1 751		
Budget Authority	47,411	17,684
Outlays	39,351	14,678
Program administration (Research and general education aids)		
91 0800 0 1 503		
Budget Authority	289,030	107,808
Outlays	241,340	90,020
Office of the Inspector General		
91 1400 0 1 751		
Budget Authority	24,511	9,143
Outlays	20,344	7,588
TOTAL FOR DEPARTMENT OF EDUCATION		
Budget Authority	19,579,918	7,303,309
401(C) Authority	7,158	2,670
401(C) Auth--Off. Coll.	650	242
401(C) Auth--Spec. Rules	111,889	111,889
Direct Loan Limitation	31,200	11,638
Outlays	4,650,657	1,784,412
Department of Energy		
Atomic Energy Defense Activities		
Atomic energy defense activities		
89 0220 0 1 053		
Budget Authority	8,255,714	3,393,098
Unobligated Bal--Defense	500,000	205,500
Outlays	5,691,214	2,339,089
Atomic energy defense activities		
89 0221 0 1 053		
Budget Authority	1,780,172	731,651
Outlays	1,157,112	475,573
Energy Programs		
Geothermal resources development fund		
89 0206 0 1 271		
Budget Authority	79	29
Outlays	79	29
Federal Energy Regulatory Commission		
89 0212 0 1 276		
Budget Authority	121,701	45,394
Outlays	103,446	38,565
Fossil energy research and development		
89 0213 0 1 271		
Budget Authority	434,312	161,998
Outlays	173,725	64,799

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Energy conservation		
89 0215 0 1 272		
Budget Authority	425,533	180,724
Outlays	166,383	59,681
Energy information administration		
89 0216 0 1 276		
Budget Authority	67,860	25,280
Outlays	43,914	16,360
Economic regulation		
89 0217 0 1 276		
Budget Authority	19,356	7,220
Outlays	12,194	4,548
Strategic petroleum reserve		
89 0218 0 1 274		
Budget Authority	200,372	74,739
Outlays	110,205	41,104
Naval petroleum and oil shale reserves		
89 0219 0 1 271		
Budget Authority	197,189	73,548
Outlays	118,295	44,124
General science and research activities		
89 0222 0 1 251		
Budget Authority	1,142,878	426,291
Outlays	800,015	298,406
Energy supply, R&D activities		
89 0224 0 1 271		
Budget Authority	2,273,537	848,029
Outlays	1,136,769	424,015
Uranium supply and enrichment activities		
89 0226 0 1 271		
Budget Authority	1,469,091	547,971
Outlays	1,260,566	470,191
SPR petroleum		
89 0233 0 1 274		
Budget Authority	360,787	134,574
401(C) Authority	90,000	33,570
Outlays	246,375	91,898
Emergency preparedness		
89 0234 0 1 274		
Budget Authority	6,931	2,585
Outlays	5,545	2,068
Clean coal technology		
89 0235 0 1 271		
Budget Authority	956,000	356,588
Outlays	0	0
Isotope production and distribution fund		
89 4180 0 3 271		
Budget Authority	16,657	6,213
Payments to states under Federal Power Act		
89 5105 0 2 806		
401(C) Authority	2,339	872
Outlays	2,339	872
Nuclear waste disposal fund		
89 5227 0 2 271		
Budget Authority	307,322	114,631
Outlays	153,661	57,316
Power Marketing Administration		
Operation and maintenance, Southeastern Power Administration		
89 0302 0 1 271		
Budget Authority	932	348
Outlays	848	316
Operation and maintenance, Southwestern Power Administration		
89 0303 0 1 271		
Budget Authority	8,196	3,057
Outlays	4,713	1,758
Operation and maintenance, Alaska Power Administration		
89 0304 0 1 271		
Budget Authority	763	285
Outlays	366	137
Bonneville Power Administration fund		
89 4045 0 3 271		
401(C) Auth--Off. Coll.	45,800	17,083
Outlays	45,800	17,083
Colorado river basins power marketing fund, Western Area Power Administr		
89 4452 0 3 271		
401(C) Auth--Off. Coll.	7,668	2,860
Outlays	7,668	2,860
Construction, rehabilitation, operation and maintenance, Western Area Po		
89 5068 0 3 271		
Budget Authority	45,083	16,816
Outlays	15,717	5,862
Departmental Administration		
Departmental administration		
89 0228 0 1 276		
Budget Authority	368,515	137,484
Outlays	221,109	82,474
Office of the Inspector General		
89 0234 0 1 276		
Budget Authority	25,942	8,958
Outlays	20,351	7,591
TOTAL FOR DEPARTMENT OF ENERGY		
Budget Authority	18,482,592	7,275,369
401(C) Authority	92,339	34,442
401(C) Auth--Off. Coll.	53,468	19,943
Unobligated Bal--Defense	500,000	205,500
Outlays	11,438,409	4,526,761
Environmental Protection Agency		
Environmental Protection Agency		
Hazardous substance superfund		
20 8145 0 7 304		
Budget Authority	1,595,697	575,195
401(C) Auth--Off. Coll.	13,200	4,924
Obligation Limitation	228,800	85,342
Outlays	428,081	159,675
Leaking underground storage tank trust fund		
20 8153 0 7 304		
Budget Authority	77,121	28,764
Obligation Limitation	6,240	2,328
Outlays	19,280	7,191
Construction grants		
68 0103 0 1 304		
Budget Authority	2,025,950	755,679
Outlays	70,908	26,449
Research and development (Energy supply)		
68 0107 0 1 271		
Budget Authority	30,697	11,450
Outlays	8,902	3,320
Research and development (Pollution control and abatement)		
68 0107 0 1 304		
Budget Authority	208,451	77,752
Outlays	72,958	27,213
Abatement, control, and compliance		
68 0108 0 1 304		
Budget Authority	830,644	309,837
Outlays	373,798	139,427
Buildings and facilities		
68 0110 0 1 304		
Budget Authority	15,238	5,684
Outlays	2,590	966
Office of the Inspector General		
68 0112 0 1 304		
Budget Authority	32,842	12,158
Outlays	21,152	7,890
Salaries and expenses		
68 0200 0 1 304		
Budget Authority	914,669	341,172
401(C) Auth--Off. Coll.	2,200	821
Outlays	788,815	294,228
Reregistration and expedited processing revolving fund		
68 4110 0 3 304		
401(C) Auth--Off. Coll.	16,000	5,968
Outlays	16,000	5,968

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Revolving fund for certification and other services		
68 4311 0 3 304		
401(C) Auth--Off. Coll.	1,200	448
Outlays	1,200	448
TOTAL FOR ENVIRONMENTAL PROTECTION AGENCY		
Budget Authority	5,731,029	2,137,673
401(C) Auth--Off. Coll.	32,600	12,161
Obligation Limitation	235,040	87,670
Outlays	1,803,684	672,775
Highway traffic safety grants		
69 8020 0 7 401		
401(C) Authority	126,000	46,998
Obligation Limitation	135,047	50,671
Outlays	52,258	19,493
Federal Railroad Administration		
Northeast corridor improvement program		
69 0123 0 1 401		
Budget Authority	25,420	9,482

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Aircraft purchase loan guarantee program		
69 1399 0 1 402		
Budget Authority	150	56
Outlays	150	56
Trust fund share of FAA operations		
69 8104 0 7 402		
Budget Authority	856,184	319,357
Outlays	856,184	319,357
Grants-in-aid for airports (Airport and airway trust fund)		
69 8106 0 7 402		
Federal ship financing fund		
69 4301 0 3 403		
401(C) Auth--Off. Coll.	7,300	2,725
401(C) Other--incl ob lim	3,820	1,425
Outlays	10,758	4,012
Saint Lawrence Seaway Development Corporation		
Saint Lawrence Seaway Development Corporation		
69 4089 0 3 405		
401(C) Auth--Off. Coll.		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Revolving fund for certification and other services		
69 4311 0 3 304		
401(C) Auth--Off. Coll.	1,200	448
Outlays	1,200	448
TOTAL FOR ENVIRONMENTAL PROTECTION AGENCY		
Budget Authority	5,731,029	2,137,675
401(C) Auth--Off. Coll.	32,600	12,161
Obligation Limitation	235,040	87,670
Outlays	1,803,604	672,775

Department of Transportation

Federal Highway Administration

Motor carrier safety		
69 0552 0 1 401		
Budget Authority	35,225	13,139
Outlays	28,180	10,511
Railroad-highway crossings demonstration projects		
69 0557 0 1 401		
Budget Authority	5,146	1,919
Outlays	1,029	384
Trust fund share of other highway programs		
69 8009 0 7 401		
Budget Authority	10,295	3,839
Outlays	2,059	768
Baltimore-Washington P. Hwy		
69 8014 0 7 401		
Budget Authority	12,443	4,641
Outlays	2,489	928
Highway safety research and development		
69 8017 0 7 401		
Budget Authority	6,304	2,351
Outlays	1,261	470
Highway-related safety grants		
69 8019 0 7 401		
401(C) Authority	10,000	3,730
Obligation Limitation	9,761	3,641
Outlays	1,952	728
Motor carrier safety grants		
69 8048 0 7 401		
401(C) Authority	60,000	22,380
Obligation Limitation	62,420	23,283
Outlays	21,700	8,094
University transportation centers		
69 8065 0 7 401		
Budget Authority	5,184	1,934
Outlays	1,037	387
Federal-aid highways		
69 8083 0 7 401		
Budget Authority	1,040,000	387,920
401(C) Authority	14,101,000	5,259,673
401(C) Auth--Off. Coll.	1,500	560
Obligation Limitation	12,703,000	4,738,219
Outlays	2,692,500	1,004,303
Right-of-way revolving fund (trust revolving fund)		
69 8402 0 8 401		
Direct Loan Limitation	44,068	16,437
Outlays	33,051	12,328
Miscellaneous appropriations		
69 9911 0 1 401		
Budget Authority	151,934	56,671
Outlays	30,387	11,334
Miscellaneous highway trust funds		
69 9972 0 7 401		
Budget Authority	65,698	24,505
Outlays	13,140	4,901

National Highway Traffic Safety Administration

Operations and research		
69 0650 0 1 401		
Budget Authority	76,876	28,675
Outlays	49,969	18,638
Operations and research (trust fund share)		
69 8016 0 7 401		
Budget Authority	33,310	12,425
Outlays	21,652	8,076
Highway traffic safety grants		
69 8020 0 7 401		
401(C) Authority	126,000	46,998
Obligation Limitation	135,847	50,671
Outlays	52,258	19,493

Federal Railroad Administration

Northeast corridor improvement program		
69 0123 0 1 401		
Budget Authority	25,420	9,482
Outlays	5,084	1,896
Office of the Administrator		
69 0700 0 1 401		
Budget Authority	22,588	8,425
Outlays	17,439	6,505
Railroad safety		
69 0702 0 1 401		
Budget Authority	33,401	12,459
Outlays	26,721	9,967
Grants to National Railroad Passenger Corporation		
69 0704 0 1 401		
Budget Authority	628,872	234,569
Outlays	581,076	216,741
Settlements of railroad litigation		
69 0708 0 1 401		
401(C) Authority	265	99
Outlays	265	99
Amtrak corridor improvement loans		
69 0720 0 1 401		
Budget Authority	10	4
Direct Loan Limitation	3,630	1,354
Outlays	1,820	679
Railroad research and development		
69 0745 0 1 401		
Budget Authority	9,888	3,688
Outlays	5,933	2,213
Conrail commuter transition assistance		
69 0747 0 1 401		
Budget Authority	5,117	1,909
Outlays	563	210
Regional rail reorganization program		
69 4100 0 3 401		
Budget Authority	10,256	3,825
Outlays	10,256	3,825

Urban Mass Transportation Administration

Administrative expenses		
69 1120 0 1 401		
Budget Authority	33,744	12,587
Outlays	30,370	11,328
Research, training, and human resources		
69 1121 0 1 401		
Budget Authority	10,369	3,868
Outlays	2,074	774
Interstate transfer grants-transit		
69 1127 0 1 401		
Budget Authority	165,901	61,881
Outlays	5,318	1,238
Washington metro		
69 1128 0 1 401		
Budget Authority	88,135	32,874
Outlays	1,763	658
Formula grants		
69 1129 0 1 401		
Budget Authority	1,690,114	630,413
Outlays	629,697	234,877
Discretionary grants		
69 8191 0 7 401		
401(C) Authority	1,400,000	522,200
Obligation Limitation	1,182,043	440,902
Outlays	28,462	10,616

Federal Aviation Administration

Operations		
69 1301 0 1 402		
Budget Authority	3,199,868	1,193,631
401(C) Auth--Off. Coll.	14,800	5,520
Outlays	2,727,660	1,017,417

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Aircraft purchase loan guarantee program		
69 1399 0 1 402		
Budget Authority	150	56
Outlays	150	56
Trust fund share of FAA operations		
69 8104 0 7 402		
Budget Authority	856,184	319,357
Outlays	856,184	319,357
Grants-in-aid for airports (Airport and airway trust fund)		
69 8106 0 7 402		
401(C) Authority	1,800,000	671,400
Obligation Limitation	1,482,000	552,786
Outlays	237,120	88,446
Facilities and equipment (Airport and airway trust fund)		
69 8107 0 7 402		
Budget Authority	1,791,565	668,234
401(C) Auth--Off. Coll.	49,860	18,598
Outlays	264,048	98,489
Research, engineering and development (Airport and airway trust fund)		
69 8108 0 7 402		
Budget Authority	177,048	66,137
401(C) Auth--Off. Coll.	350	131
Outlays	107,059	39,933

Coast Guard

Operating expenses		
69 0201 0 1 403		
Budget Authority	2,149,049	801,602
401(C) Auth--Off. Coll.	5,718	2,133
Outlays	1,724,975	643,415
Acquisition, construction, and improvements		
69 0240 0 1 403		
Budget Authority	462,549	172,531
Outlays	50,081	18,679
Retired pay		
69 0241 0 1 403		
401(C) Authority	37,539	14,002
Outlays	37,539	14,002
Reserve training		
69 0242 0 1 403		
Budget Authority	75,885	28,305
Outlays	66,020	24,625
Research, development, test, and evaluation		
69 0243 0 1 403		
Budget Authority	21,429	7,993
Outlays	7,284	2,718
Alteration of bridges		
69 0244 0 1 403		
Budget Authority	2,416	901
Outlays	1,208	451
Offshore oil pollution compensation fund		
69 5167 0 2 304		
Obligation Limitation	62,213	23,205
Pollution fund		
69 5168 0 2 304		
401(C) Authority	6,700	2,499
Outlays	1,675	625
Deepwater port liability fund		
69 5170 0 2 304		
Obligation Limitation	51,844	19,338
Boat safety		
69 8149 0 7 403		
Budget Authority	62,618	23,357
Outlays	35,767	13,341

Maritime Administration

Ready reserve force		
69 1710 0 1 054		
Budget Authority	92,540	38,042
Outlays	71,271	29,292
Operations and training		
69 1750 0 1 403		
Budget Authority	70,988	26,468
Outlays	60,314	22,497

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Federal ship financing fund		
69 4301 0 3 403		
401(C) Auth--Off. Coll.	7,300	2,723
401(C) Other--incl ob lim	3,620	1,425
Outlays	10,736	4,005

Saint Lawrence Seaway Development Corporation

Saint Lawrence Seaway Development Corporation		
69 4089 0 3 405		
401(C) Auth--Off. Coll.	1,400	522
Outlays	1,400	522
Operations and maintenance		
69 8083 0 7 403		
Budget Authority	12,027	4,486
Outlays	12,027	4,486

Office of the Inspector General

Salaries and expenses		
69 0130 0 1 407		
Budget Authority	33,612	12,537
Outlays	29,242	10,907

Research and Special Programs Administration

Research and special programs		
69 0104 0 1 407		
Budget Authority	18,072	6,741
Outlays	11,928	4,449
Pipeline safety		
69 5172 0 2 407		
Budget Authority	10,632	3,966
Outlays	8,506	3,173

Office of the Secretary

Salaries and expenses		
69 0102 0 1 407		
Budget Authority	58,459	21,806
Outlays	52,613	19,625
Transportation, planning, research and development		
69 0142 0 1 407		
Budget Authority	7,081	2,641
Outlays	2,852	1,064
Payments to air carriers, DOT		
69 0150 0 1 402		
Budget Authority	31,869	11,887
Outlays	29,519	10,936
Commission on aviation security and terrorism		
69 1850 0 1 407		
Budget Authority	1,044	389
Outlays	1,044	389
Working capital fund		
69 4520 0 4 407		
Budget Authority	4,632	1,728
Outlays	4,632	1,728
TOTAL FOR DEPARTMENT OF TRANSPORTATION		
Budget Authority	13,306,435	4,966,817
401(C) Authority	17,541,504	6,542,981
401(C) Auth--Off. Coll.	88,928	30,187
401(C) Other--incl ob lim	3,620	1,425
Direct Loan Limitation	47,698	17,791
Obligation Limitation	15,689,128	5,852,045
Outlays	10,711,741	3,998,188

General Services Administration

Real Property Activities

Federal buildings fund		
47 4542 0 4 804		
Budget Authority	26,229	9,783
401(C) Auth--Off. Coll.	7,900	2,947
Outlays	7,900	2,947

Personal Property Activities

Federal supply service		
47 0116 0 1 804		
Budget Authority	50,578	18,866
Outlays	45,520	16,979

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Expenses of transportation audit contracts		
47 5250 0 2 804		
401(C) Authority	15,894	5,928
Outlays	795	297

Information Resources Management Service

Operating expenses, information resources management service		
47 0900 0 1 804		
Budget Authority	34,318	12,801
Outlays	22,307	8,321
Nonprofit sponsor assistance		
86 4042 0 3 604		
Direct Loan Limitation	1,112	415
Outlays	262	98
FHA mutual mortgage and cooperative housing insurance funds		
86 4070 0 3 371		
Direct Loan Limitation	77,109	28,762
Guarntd. Loan Limitation	65,272,000	24,346,456
Obligation Limitation	224,253	83,646
Outlays	207,240	77,320

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Rehabilitation loan fund		
86 4036 0 3 451		
401(C) Auth--Off. Coll.	13,867	5,060
Direct Loan Limitation	75,000	27,975
Outlays	36,067	13,453

Policy Development and Research

Research and technology		
86 0105 0 1 451		
Budget Authority	21,243	7,924

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Space flight, control, and data communications (Space flight)		
80 0105 0 1 255		
Budget Authority	3,630,121	1,354,035
Outlays	2,583,180	963,496
Space flight, control, and data communications (Supporting space activit		
80 0105 0 1 255		
Budget Authority	1,014,224	378,304

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Expenses of transportation audit contracts		
47 5250 0 2 804		
401(C) Authority	15,894	5,928
Outlays	795	297
Information Resources Management Service		
Operating expenses, information resources management service		
47 0900 0 1 804		
Budget Authority	34,318	12,801
Outlays	22,307	8,321
Federal Property Resources Activities		
Operating expenses, federal property resources service		
47 0533 0 1 804		
Budget Authority	11,719	4,371
Outlays	8,790	3,279
Real property relocation		
47 0535 0 1 804		
Budget Authority	8,260	3,081
Expenses, disposal of surplus real and related personal property		
47 5254 0 2 804		
401(C) Authority	3,897	1,454
Outlays	2,923	1,090
General Activities		
Allowances and office staff for former Presidents		
47 0105 0 1 802		
Budget Authority	1,895	707
Outlays	1,706	636
Office of Inspector General		
47 0108 0 1 804		
Budget Authority	27,770	10,358
Outlays	23,882	8,908
General management and administration, salaries and expenses		
47 0110 0 1 804		
Budget Authority	143,294	53,449
Outlays	104,409	38,945
Consumer information center fund		
47 4549 0 3 376		
Budget Authority	1,400	522
401(C) Auth--Off. Coll.	551	206
Outlays	761	284
TOTAL FOR GENERAL SERVICES ADMINISTRATION		
Budget Authority	305,463	113,958
401(C) Authority	19,791	7,382
401(C) Auth--Off. Coll.	8,451	3,153
Outlays	218,993	81,684

Department of Housing and Urban Development

Housing Programs

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Housing counseling assistance		
86 0154 0 1 506		
Budget Authority	3,584	1,337
Subsidized housing programs (Community development)		
86 0164 0 1 451		
Budget Authority	2,548	958
Subsidized housing programs (Housing assistance)		
86 0164 0 1 604		
Budget Authority	8,921,285	3,327,640
Outlays	84,560	31,541
Congregate services program		
86 0178 0 1 604		
Budget Authority	6,062	2,261
Section 8 moderate rehabilitation, single room occupancy		
86 0196 0 1 604		
Budget Authority	76,112	28,390
Outlays	640	239
Rental housing assistance fund		
86 4061 0 3 604		
401(C) Auth--Off. Coll.	50,000	18,650
Outlays	50,000	18,650
Nonprofit sponsor assistance		
86 4042 0 3 604		
Direct Loan Limitation	1,112	415
Outlays	262	98
FHA mutual mortgage and cooperative housing insurance funds		
86 4070 0 3 371		
Direct Loan Limitation	77,109	28,762
Guarntd. Loan Limitation	65,272,000	24,346,456
Obligation Limitation	224,253	83,644
Outlays	207,849	77,528
Nehemiah housing opportunity fund		
86 4071 0 1 604		
Budget Authority	25,173	9,390
FHA general and special risk insurance funds		
86 4072 0 3 371		
Direct Loan Limitation	13,607	5,075
Guarntd. Loan Limitation	11,519,000	4,296,587
Obligation Limitation	183,479	68,438
Outlays	118,337	44,140
Housing for the elderly or handicapped fund		
86 4115 0 3 371		
Direct Loan Limitation	491,571	183,354
Interstate land sales		
86 5270 0 2 376		
401(C) Authority	624	233
Outlays	624	233
Manufactured home inspection and monitoring		
86 5271 0 2 376		
401(C) Authority	7,613	2,840
Outlays	6,243	2,329
Public Housing Commission		
86 7880 0 1 604		
Budget Authority	2,080	776
Outlays	1,560	582

Public and Indian Housing Programs

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Payments for operation of low income housing projects		
86 0163 0 1 604		
Budget Authority	1,939,630	723,482
Outlays	892,220	332,798
Native American Housing Commission		
86 7888 0 1 604		
Budget Authority	520	194
Outlays	390	145

Government National Mortgage Association

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Guarantees of mortgage-backed securities		
86 4238 0 3 371		
401(C) Auth--Off. Coll.	5,588	2,084
Guarntd. Loan Limitation	84,982,040	31,698,301
Outlays	4,848	1,816

Community Planning and Development

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Community development grants		
86 0162 0 1 451		
Budget Authority	3,043,575	1,135,253
Guarntd. Loan Limitation	147,439	54,995
Outlays	121,386	45,277
Urban homesteading		
86 0171 0 1 451		
Budget Authority	13,515	5,041
Outlays	13,515	5,041
Emergency shelter grants program		
86 0181 0 1 604		
Budget Authority	76,090	28,382
Outlays	11,410	4,256
Rental rehabilitation grants		
86 0182 0 1 451		
Budget Authority	133,104	49,648
Outlays	6,455	2,482
Rental housing assistance for the homeless		
86 0187 0 1 451		
Budget Authority	11,263	4,201
Outlays	2,253	840
Transitional housing program		
86 0188 0 1 604		
Budget Authority	131,900	49,199

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Rehabilitation loan fund		
86 4056 0 3 452		
401(C) Auth--Off. Coll.	13,867	5,060
Direct Loan Limitation	75,000	27,975
Outlays	36,067	13,453

Policy Development and Research

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Research and technology		
86 0108 0 1 451		
Budget Authority	21,243	7,924
Outlays	6,373	2,377

Fair Housing and Equal Opportunity

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Fair housing activities		
86 0144 0 1 751		
Budget Authority	12,906	4,814
Outlays	3,872	1,444

Management and Administration

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Salaries and expenses, Including transfer of funds (Community developmen		
86 0143 0 1 451		
Budget Authority	181,196	67,585
Outlays	150,391	56,096
Salaries and expenses, Including transfer of funds (Housing assistance)		
86 0143 0 1 604		
Budget Authority	163,395	60,946
Outlays	125,814	46,929
Salaries and expenses, Including transfer of funds (Federal law enforcem		
86 0143 0 1 751		
Budget Authority	21,446	7,999
Outlays	16,513	6,159
Office of the Inspector General		
86 0189 0 1 451		
Budget Authority	25,271	9,426
Outlays	23,249	8,672
TOTAL FOR DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
Budget Authority	14,811,916	5,524,846
401(C) Authority	8,237	3,073
401(C) Auth--Off. Coll.	69,155	25,794
Direct Loan Limitation	658,399	245,583
Guarntd. Loan Limitation	161,920,479	60,396,339
Obligation Limitation	407,732	152,084
Outlays	1,885,051	703,125

National Aeronautics and Space Administration

National Aeronautics and Space Administration

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Research and program management (Space flight)		
80 0103 0 1 253		
Budget Authority	964,572	359,785
401(C) Auth--Off. Coll.	4,091	1,526
Outlays	831,693	310,222
Research and program management (Space science, applications, and techno		
80 0103 0 1 254		
Budget Authority	680,736	253,914
Outlays	584,072	217,859
Research and program management (Supporting space activities)		
80 0103 0 1 255		
Budget Authority	77,420	28,878
Outlays	64,427	24,777
Research and program management (Air transportation)		
80 0103 0 1 402		
Budget Authority	418,816	156,106
Outlays	359,087	133,959
Space flight, control, and data communications		
80 0105 0 1 250		
401(C) Auth--Off. Coll.	26,075	9,726
Outlays	26,075	9,726
Space flight, control, and data communications (Space flight)		
80 0105 0 1 253		
Budget Authority	3,630,121	1,354,035
Outlays	2,583,100	963,496
Space flight, control, and data communications (Supporting space activit		
80 0105 0 1 255		
Budget Authority	1,014,224	378,326
401(C) Authority	113,829	42,458
Outlays	722,343	269,441
Construction of facilities (Space flight)		
80 0107 0 1 253		
Budget Authority	189,051	70,516
Outlays	18,905	7,052
Construction of facilities (Space science, applications, and technology)		
80 0107 0 1 254		
Budget Authority	21,403	7,983
Outlays	2,140	798
Construction of facilities (Supporting space activities)		
80 0107 0 1 255		
Budget Authority	241,500	90,080
Outlays	24,150	9,008
Construction of facilities (Air transportation)		
80 0107 0 1 402		
Budget Authority	63,877	23,826
Outlays	6,388	2,383
Research and development (Space flight)		
80 0108 0 1 253		
Budget Authority	2,400,997	895,372
401(C) Auth--Off. Coll.	10,781	4,021
Outlays	1,187,269	442,851
Research and development (Space science, applications, and technology)		
80 0108 0 1 254		
Budget Authority	2,520,128	940,007
Outlays	1,335,667	498,204
Research and development (Supporting space activities)		
80 0108 0 1 255		
Budget Authority	20,176	7,526
Outlays	14,587	5,441
Research and development (Air transportation)		
80 0108 0 1 402		
Budget Authority	495,872	184,960
Outlays	275,209	102,653
Office of the Inspector General		
80 0109 0 1 255		
Budget Authority	9,232	3,444
Outlays	7,903	2,948
Science, space, and technology education trust fund		
80 8978 0 7 503		
401(C) Authority	1,000	373
Outlays	1,000	373
TOTAL FOR NATIONAL AERONAUTICS AND SPACE ADMINISTRATION		
Budget Authority	12,747,825	4,754,958
401(C) Authority	114,829	42,831
401(C) Auth--Off. Coll.	40,947	15,273
Outlays	8,046,038	3,001,171

Office of Personnel Management

Office of Personnel Management

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Salaries and expenses		
24 0100 0 1 805		
Budget Authority	117,548	43,845
Outlays	111,671	41,655
Government payment for annuitants, employees health benefits		
24 0206 0 1 551		
401(C) Authority	3,509,863	1,309,067

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Office of the Inspector General		
24 0400 0 1 805		
Budget Authority	3,042	1,135
Outlays	2,890	1,078
Government payment for annuitants, employee life insurance benefits		
24 0800 0 1 602		
Budget Authority	8,700	3,245
Outlays	7,700	2,872

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Medical administration and miscellaneous operating expenses		
36 0152 0 1 703		
Budget Authority	49,472	18,453
Outlays	35,419	13,206
Medical care		
36 0160 0 1 703		
Budget Authority	990,750	369,550
Budget Auth--Spec. Rules	221,851	221,851

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Advisory Commission on Intergovernmental Relations		
Salaries and expenses		
55 0100 0 1 808		
Budget Authority	1,363	508
Outlays	1,227	458
Advisory Committee on Federal Pay		
Salaries and expenses		
95 1800 0 1 805		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Commission for the Study of International Migration and Cooperative Econ		
Salaries and expenses		
48 1400 0 1 153		
Budget Authority	1,334	986
Outlays	812	388
Commission of Fine Arts		
Salaries and expenses		
95 2600 0 1 451		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Office of the Inspector General		
24 0400 0 1 805		
Budget Authority	3,042	1,138
Outlays	2,890	1,078
Government payment for annuitants, employee life insurance benefits		
24 0500 0 1 602		
Budget Authority	8,700	3,245
Outlays	7,700	2,872
Civil service retirement and disability fund		
24 8135 0 7 602		
Obligation Limitation	71,655	26,728
Outlays	71,655	26,728
Employees life insurance fund		
24 8424 0 8 602		
401(C) Other--incl ob lim	1,165	435
Outlays	1,165	435
Employees health benefits fund		
24 8440 0 8 551		
Obligation Limitation	14,478	5,400
Outlays	14,478	5,400
TOTAL FOR OFFICE OF PERSONNEL MANAGEMENT		
Budget Authority	129,290	48,225
401(C) Authority	3,509,563	1,309,067
401(C) Other--incl ob lim	1,165	435
Obligation Limitation	86,133	32,128
Outlays	209,589	78,166

Small Business Administration

Small Business Administration

Salaries and expenses		
73 0100 0 1 376		
Budget Authority	363,337	135,525
Outlays	265,962	99,204
Office of the Inspector General		
73 0200 0 1 376		
Budget Authority	7,880	2,939
Outlays	7,486	2,792
Disaster loan fund		
73 4153 0 3 453		
Direct Loan Limitation	411,000	153,303
Outlays	197,000	73,481
Business loan and investment fund		
73 4154 0 3 376		
Direct Loan Limitation	77,480	28,908
Guarntd. Loan Limitation	4,675,436	1,743,958
Outlays	41,000	15,293
Surety bond guarantees revolving fund		
73 4156 0 3 376		
Guarntd. Loan Limitation	1,500,000	559,500
TOTAL FOR SMALL BUSINESS ADMINISTRATION		
Budget Authority	371,217	138,464
Direct Loan Limitation	488,480	182,203
Guarntd. Loan Limitation	6,175,436	2,303,438
Outlays	511,448	190,770

Department of Veterans Affairs

Veterans Benefits Administration

Readjustment benefits		
36 0137 0 1 702		
401(C) Authority	353,000	131,669
Outlays	323,302	120,592
Burial benefits and miscellaneous assistance		
36 0155 0 1 701		
401(C) Authority	128,908	48,080
Outlays	128,732	48,017

Veterans Health Services and Research Administration

Grants to the Republic of the Philippines		
36 0144 0 1 703		
Budget Authority	512	191
Outlays	256	95
Medical administration and miscellaneous operating expenses		
36 0152 0 1 703		
Budget Authority	49,472	18,453
Outlays	35,619	13,286
Medical care		
36 0160 0 1 703		
Budget Authority	990,750	369,550
Budget Auth--Spec. Rules	221,831	221,831
401(C) Auth--Spec. Rules	507	507
Outlays	1,101,509	530,004
Medical and prosthetic research		
36 0161 0 1 703		
Budget Authority	225,321	84,045
Outlays	148,991	43,034

Departmental Administration

Construction, major projects		
36 0110 0 1 705		
Budget Authority	424,911	158,499
Outlays	19,122	7,133
Construction, minor projects		
36 0111 0 1 703		
Budget Authority	96,352	35,940
Outlays	56,016	21,660
General operating expenses		
36 0151 0 1 705		
Budget Authority	860,805	321,080
Outlays	774,725	288,972
Office of the Inspector General		
36 0170 0 1 705		
Budget Authority	23,106	8,619
Outlays	20,795	7,757
Grants for construction of state extended care facilities		
36 0181 0 1 703		
Budget Authority	43,003	16,040
Grants for the construction of State veterans cemeteries		
36 0183 0 1 705		
Budget Authority	4,460	1,664
Nursing home revolving fund		
36 4013 0 3 705		
Budget Authority	-73	-27
Parking garage revolving fund		
36 4536 0 3 705		
Budget Authority	29,685	11,073
Outlays	1,484	554
TOTAL FOR DEPARTMENT OF VETERANS AFFAIRS		
Budget Authority	2,748,324	1,025,127
Budget Auth--Spec. Rules	221,831	221,831
401(C) Authority	481,908	179,749
401(C) Auth--Spec. Rules	507	507
Outlays	2,632,551	1,101,804

Other Independent Agencies

ACTION

Operating expenses		
44 0103 0 1 506		
Budget Authority	183,899	68,596
Outlays	110,339	41,156

Administrative Conference of the United States

Salaries and expenses		
95 1700 0 1 751		
Budget Authority	1,978	738
Outlays	1,582	590

Advisory Commission on Conferences in Ocean Shipping

Salaries and Expenses		
48 2500 0 1 403		
Budget Authority	317	118
Outlays	285	106

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER

Advisory Commission on Intergovernmental Relations

Salaries and expenses		
55 0100 0 1 808		
Budget Authority	1,363	508
Outlays	1,227	458

Advisory Committee on Federal Pay

Salaries and expenses		
95 1800 0 1 805		
Budget Authority	217	81
Outlays	200	75

Advisory Council on Historic Preservation

Salaries and expenses		
95 2300 0 1 303		
Budget Authority	2,011	750
Outlays	1,812	676

American Battle Monuments Commission

Salaries and expenses		
74 0100 0 1 705		
Budget Authority	17,038	6,355
Outlays	13,631	5,085

Appalachian Regional Commission

Appalachian regional development programs		
46 0200 0 1 452		
Budget Authority	153,876	57,395
Outlays	10,849	4,046

Architectural and Transportation Barriers Compliance Board

Salaries and expenses		
95 3200 0 1 751		
Budget Authority	2,049	764
Outlays	1,580	589

Arms Control and Disarmament Agency

Arms control and disarmament activities		
94 0100 0 1 153		
Budget Authority	35,248	13,148
Outlays	23,616	8,809

Barry Goldwater Scholarship and Excellence in Education Foundation

Barry Goldwater Scholarship and Excellence in Education Foundation		
95 8281 0 7 502		
401(C) Other--incl ob lim	1,619	604
Outlays	1,575	587

Board for International Broadcasting

Grants and expenses		
95 1145 0 1 154		
Budget Authority	197,628	73,715
Outlays	189,723	70,767
Israel relay station		
95 1146 0 1 154		
Budget Authority	190,352	71,001
Outlays	57,104	21,301
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	785,976	293,167
401(C) Other--incl ob lim	1,619	604
Outlays	413,525	154,245

Other Independent Agencies

Christopher Columbus Quincentenary Jubilee Commission

Salaries and expenses		
76 0800 0 1 376		
Budget Authority	232	87
Outlays	209	78

Commission for the Preservation of America's Heritage Abroad

Salaries and expenses		
95 3700 0 1 153		
Budget Authority	210	78
Outlays	210	78

Commission for the Study of International Migration and Cooperative Econ

Salaries and expenses		
48 1400 0 1 153		
Budget Authority	1,184	868
Outlays	812	303

Commission of Fine Arts

Salaries and expenses		
95 2600 0 1 451		
Budget Authority	539	201
Outlays	495	185
National capital arts and cultural affairs		
95 2602 0 1 503		
Budget Authority	5,644	2,105
Outlays	5,644	2,105

Commission on Agricultural Workers

Salaries and expenses		
48 0057 0 1 352		
Budget Authority	809	302
Outlays	681	254

Commission on Civil Rights

Salaries and expenses		
95 1900 0 1 751		
Budget Authority	6,045	2,255
Outlays	5,441	2,029
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	14,833	5,533
Outlays	13,492	5,032

Other Independent Agencies

Commission on the Bicentennial of the U.S. Constitution

Salaries and expenses		
76 0054 0 1 808		
Budget Authority	15,575	5,809
Outlays	12,117	4,520

Commission on the Ukraine Famine

Salaries and expenses		
48 0050 0 1 153		
Budget Authority	106	40
Outlays	64	24

Committee for Purchase from the Blind and other Severely Handicapped

Salaries and expenses		
95 2000 0 1 505		
Budget Authority	1,111	414
Outlays	1,055	394

Commodity Futures Trading Commission

Commodity Futures Trading Commission		
95 1400 0 1 376		
Budget Authority	41,576	15,508
Outlays	36,171	13,492

Competitiveness Policy Council

Competiveness Policy Council		
95 3750 0 1 376		
Budget Authority	796	297
Outlays	716	267

Consumer Product Safety Commission

Salaries and expenses		
61 0100 0 1 554		
Budget Authority	37,298	13,912
401(C) Auth--Off. Coll.	10	4
Outlays	31,713	11,829

Corporation for Public Broadcasting

Public broadcasting fund		
20 0151 0 1 503		
Budget Authority	298,870	111,479
Outlays	298,870	111,479

Court of Veterans Appeals

Salaries and expenses		
95 0300 0 1 705		
Budget Authority	4,110	1,533
Outlays	3,699	1,380

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Practice registration fee		
95 5113 0 1 705		
401(C) Authority	5	2
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	399,442	148,992
401(C) Authority	5	2
401(C) Auth--Off. Coll.	10	4
Outlays	384,486	143,385

Other Independent Agencies

Emergency management planning and assistance		
(Disaster relief and insura		
58 0101 0 1 453		
Budget Authority	79,336	29,592
Outlays	43,635	16,276
Emergency food and shelter program		
58 0103 0 1 605		
Budget Authority	135,296	50,445
Outlays	135,296	50,445
Disaster relief		

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER

Institute of Museum Services

Institute of Museum Services: Grants and administration		
59 0300 0 1 503		
Budget Authority	23,602	8,804
Outlays	6,137	2,289

Intelligence Community Staff

Intelligence community staff		
95 0400 0 1 054		

Merit Systems Protection Board

Salaries and expenses		
48 0100 0 1 805		
Budget Authority	22,210	8,284
Outlays	20,483	7,622
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	384,138	132,992
401(C) Other--incl ob lim	1,200	448
Outlays	315,982	117,879

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AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Practice registration fee		
95 5113 0 1 705		
401(C) Authority	5	2
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	399,442	148,992
401(C) Authority	5	2
401(C) Auth--Off. Coll.	10	4
Outlays	384,408	143,185

Other Independent Agencies

Defense Nuclear Facilities Safety Board

Salaries and expenses		
95 3900 0 1 053		
Budget Authority	7,269	2,988
Outlays	6,906	2,838

Delaware River Basin Commission

Salaries and expenses		
44 0100 0 1 301		
Budget Authority	224	84
Outlays	208	78
Contribution to Delaware River Basin Commission		
44 0102 0 1 301		
Budget Authority	354	132
Outlays	354	132

District of Columbia

Federal payment to the District of Columbia		
20 1700 0 1 806		
Budget Authority	579,848	216,284
Outlays	569,698	212,498

Equal Employment Opportunity Commission

Salaries and expenses		
45 0100 0 1 751		
Budget Authority	196,039	73,125
Outlays	173,102	64,567

Export-Import Bank of the United States

Export-Import Bank of the United States		
83 4027 0 3 155		
Budget Authority	134,619	50,213
Direct Loan Limitation	636,850	237,545
Guarntd. Loan Limitation	10,599,044	3,953,451
Obligation Limitation	22,948	8,560
Outlays	116,748	43,547
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	918,353	342,824
Direct Loan Limitation	636,850	237,545
Guarntd. Loan Limitation	10,599,044	3,953,451
Obligation Limitation	22,948	8,560
Outlays	867,016	323,640

Other Independent Agencies

Federal Communications Commission

Salaries and expenses		
27 0300 0 1 376		
Budget Authority	114,244	42,621
Outlays	107,410	40,064

Federal Election Commission

Salaries and expenses		
95 1400 0 1 808		
Budget Authority	16,261	6,065
Outlays	14,635	5,459

Federal Emergency Management Agency

Salaries and expenses (Defense-related activities)		
58 0100 0 1 054		
Budget Authority	75,119	28,019
Outlays	67,407	25,217
Salaries and expenses (Disaster relief and insurance)		
58 0100 0 1 453		
Budget Authority	85,397	31,107
Outlays	75,057	27,996
Emergency management planning and assistance (Defense-related activities		
58 0101 0 1 054		
Budget Authority	249,767	93,163
Outlays	137,372	51,240
Emergency management planning and assistance (Disaster relief and insura		
58 0101 0 1 453		
Budget Authority	79,336	29,592
Outlays	43,635	16,276
Emergency food and shelter program		
58 0103 0 1 605		
Budget Authority	135,296	50,445
Outlays	135,296	50,445
Disaster relief		
58 0104 0 1 453		
Budget Authority	1,298,388	484,299
Outlays	519,355	193,719
Office of the Inspector General		
58 0300 0 1 453		
Budget Authority	2,732	1,019
Outlays	2,595	968
National insurance development fund		
58 4235 0 3 451		
401(C) Authority	450	168
Outlays	450	168

Federal Labor Relations Authority

Salaries and expenses		
54 0100 0 1 805		
Budget Authority	18,687	6,970
Outlays	17,192	6,413

Federal Maritime Commission

Salaries and expenses		
46 0100 0 1 403		
Budget Authority	16,384	6,111
Outlays	14,746	5,500

Federal Mediation and Conciliation Service

Salaries and expenses		
95 0100 0 1 505		
Budget Authority	28,184	10,513
Outlays	25,619	9,554

Federal Mine Safety and Health Review Commission

Salaries and expenses		
95 2800 0 1 554		
Budget Authority	4,276	1,595
Outlays	3,763	1,404

Federal Trade Commission

Salaries and expenses		
29 0100 0 1 376		
Budget Authority	59,821	22,314
401(C) Auth--Off. Coll.	20,000	7,460
Outlays	75,036	27,988

Franklin Delano Roosevelt Memorial Commission

Salaries and expenses		
76 0700 0 1 808		
Budget Authority	29	11
Outlays	24	9
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	2,181,943	813,844
401(C) Authority	450	168
401(C) Auth--Off. Coll.	20,000	7,460
Outlays	1,239,792	462,442

Other Independent Agencies

Harry S Truman Scholarship Foundation

Harry S Truman memorial scholarship trust fund		
95 8296 0 7 502		
401(C) Other--incl ob lim	3,061	1,142
Outlays	3,058	1,141

Institute of American Indian and Alaska Native Culture and Arts Develops

Salaries and expenses		
95 2900 0 1 502		
Budget Authority	4,477	1,678
Outlays	4,477	1,678

Institute of Museum Services

Institute of Museum Services: Grants and administration		
59 0300 0 1 503		
Budget Authority	23,602	8,804
Outlays	6,137	2,289

Intelligence Community Staff

Intelligence community staff		
95 0400 0 1 054		
Budget Authority	29,839	12,141
Outlays	19,791	8,134

Interagency Council on the Homeless

Interagency Council on the Homeless		
48 1300 0 1 604		
Budget Authority	1,137	424
Outlays	1,023	382

International Cultural and Trade Center Commission

Salaries and expenses		
48 1800 0 1 004		
401(C) Authority	927	346
Outlays	826	308

International Trade Commission

Salaries and expenses		
34 0100 0 1 153		
Budget Authority	40,765	15,208
Outlays	35,444	13,228

Interstate Commerce Commission

Salaries and expenses		
50 0100 0 1 401		
Budget Authority	46,971	17,520
Outlays	42,274	15,768

Interstate Commission on the Potomac River Basin

Contribution to Interstate Comission on the Potomac River Basin		
46 0446 0 1 304		
Budget Authority	308	115
Outlays	308	115
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	146,797	55,879
401(C) Authority	927	346
401(C) Other--incl ob lim	3,061	1,142
Outlays	113,348	43,851

Other Independent Agencies

James Madison Memorial Fellowship Foundation

James Madison Memorial Fellowship Trust Fund		
95 8282 0 7 502		
401(C) Other--incl ob lim	1,200	448
Outlays	1,200	448

Japan-United States Friendship Commission

Japan-United States friendship trust fund		
95 6025 0 7 154		
Budget Authority	1,408	525
Outlays	1,408	525

Legal Services Corporation

Payment to the Legal Services Corporation		
20 0501 0 1 752		
Budget Authority	329,186	122,786
Outlays	289,684	108,052

Marine Mammal Commission

Salaries and expenses		
95 2200 0 1 302		
Budget Authority	1,017	379
Outlays	903	337

Martin Luther King, Jr. Federal Holiday Commission

Salaries and expenses		
76 0600 0 1 808		
Budget Authority	317	120
Outlays	254	95

Merit Systems Protection Board

Salaries and expenses		
48 0100 0 1 805		
Budget Authority	22,218	8,284
Outlays	20,483	7,622
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	384,186	152,892
401(C) Other--incl ob lim	1,200	448
Outlays	313,882	117,079

Other Independent Agencies

National Archives and Records Administration

Operating expenses		
88 0300 0 1 804		
Budget Authority	131,839	49,044
Outlays	105,231	39,251
National archives trust fund		
88 8414 0 8 804		
401(C) Auth--Off. Coll.	11,181	4,171
Outlays	11,181	4,171

National Capital Planning Commission

Salaries and expenses		
95 2500 0 1 451		
Budget Authority	3,281	1,224
Outlays	3,019	1,126

National Commission on Libraries and Information Science

Salaries and expenses		
95 2700 0 1 503		
Budget Authority	796	297
Outlays	637	238
White House conference on library and information services		
95 2701 0 1 503		
Budget Authority	3,420	1,276
Outlays	684	255

National Commission to Prevent Infant Mortality

National Commission to Prevent Infant Mortality		
48 1500 0 1 806		
Budget Authority	424	158
Outlays	339	126
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	139,460	52,019
401(C) Auth--Off. Coll.	11,181	4,171
Outlays	121,091	45,167

Other Independent Agencies

National Council on Disability

Salaries and expenses		
95 3500 0 1 506		
Budget Authority	1,618	604
Outlays	1,294	483

National Endowment for the Arts

National endowment for the arts: Grants and administration		
59 0100 0 1 503		
Budget Authority	178,423	66,552
Outlays	60,664	22,628

National Endowment for the Humanities

National endowment for the humanities: Grants and administration		
59 0200 0 1 503		
Budget Authority	163,585	60,987
Outlays	73,877	27,544

National Institute of Building Sciences

Payment to the National Institute of Building Sciences		
95 3601 0 1 376		
Budget Authority	512	191
Outlays	512	191

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AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
National Labor Relations Board		
Salaries and expenses		
63 0100 0 1 505		
Budget Authority	148,868	55,528
Outlays	140,085	52,252
National Mediation Board		
Salaries and expenses		
95 2400 0 1 505		
Budget Authority	6,784	2,530
Outlays	5,183	1,933
National Science Foundation		
Research and related activities		
49 0100 0 1 251		
Budget Authority	1,775,457	662,245
Outlays	958,747	357,613
Science and engineering education activities		
49 0104 0 1 251		
Budget Authority	212,436	79,239
Outlays	21,244	7,924
Academic research facilities		
49 0150 0 1 251		
Budget Authority	20,478	7,638
Outlays	11,058	4,125
U.S. Antarctic program activities		
49 0200 0 1 251		
Budget Authority	74,831	27,912
Outlays	37,041	13,816
U.S. Antarctic logistical support activities		
49 0202 0 1 251		
Budget Authority	82,918	30,928
Outlays	41,044	15,309
Office of the Inspector General		
49 0300 0 1 251		
Budget Authority	2,703	1,008
Outlays	2,568	958
National Transportation Safety Board		
Salaries and expenses		
95 0310 0 1 407		
Budget Authority	28,883	10,773
Outlays	25,995	9,696
Neighborhood Reinvestment Corporation		
Payment to the Neighborhood Reinvestment Corporation		
82 1300 0 1 451		
Budget Authority	27,616	10,301
Outlays	27,616	10,301
Nuclear Regulatory Commission		
Salaries and expenses		
31 0200 0 1 276		
Budget Authority	459,213	171,286
Outlays	344,410	128,465
Office of the Inspector General		
31 0300 0 1 276		
Budget Authority	3,031	1,131
Outlays	2,576	961
Nuclear Waste Technical Review Board		
Salaries and expenses		
48 0500 0 1 271		
Budget Authority	2,082	777
Outlays	1,770	660
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	3,189,358	1,189,630
Outlays	1,755,384	654,759

Other Independent Agencies

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Occupational Safety and Health Review Commission		
Salaries and expenses		
95 2100 0 1 554		
Budget Authority	6,341	2,365
Outlays	5,390	2,010
Office of Government Ethics		
Salaries and expenses		
95 1100 0 1 805		
Budget Authority	3,576	1,334
Outlays	3,397	1,267
Office of Navajo and Hopi Indian Relocation		
Salaries and expenses		
48 1100 0 1 806		
Budget Authority	37,971	14,163
Outlays	23,922	8,923
Office of Special Counsel		
Salaries and expenses		
62 0100 0 1 808		
Budget Authority	5,430	2,025
Outlays	4,996	1,864
Office of the Nuclear Waste Negotiator		
Salaries and expenses		
48 0070 0 1 271		
Budget Authority	2,124	792
Outlays	1,805	673
Pennsylvania Avenue Development Corporation		
Salaries and expenses		
42 0100 0 1 451		
Budget Authority	2,513	937
Outlays	2,036	759
Public development		
42 0102 0 1 451		
Budget Authority	3,281	1,224
Outlays	2,461	918
Land acquisition and development fund		
42 4084 0 3 451		
Budget Authority	104	39
401(C) Auth--Off. Coll.	3,000	1,119
Outlays	3,104	1,158
Postal Service -- Payments to the Postal Service		
Payment to the Postal Service fund		
18 1001 0 1 372		
Budget Authority	471,562	175,893
Outlays	471,562	175,893
Payment to the Postal Service fund for nonfunded liabilities		
18 1004 0 1 372		
Budget Authority	38,142	14,227
Outlays	38,142	14,227
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	571,044	212,999
401(C) Auth--Off. Coll.	3,000	1,119
Outlays	556,815	207,692

Other Independent Agencies

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Railroad Retirement Board		
Railroad social security equivalent benefit account		
60 8010 0 7 601		
Obligation Limitation	30,230	11,276
Outlays	30,230	11,276
Rail Industry Pension Fund		
60 8011 0 7 601		
Obligation Limitation	37,999	14,174
Outlays	37,999	14,174
Supplemental Annuity Pension Fund		
60 8012 0 7 601		
Obligation Limitation	2,400	895
Outlays	2,400	895
Securities and Exchange Commission		
Salaries and expenses		
50 0100 0 1 376		
Budget Authority	176,544	65,852
Outlays	4,457	89,925

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
Selective Service System		
Salaries and expenses		
90 0400 0 1 054		
Budget Authority	27,412	11,266
Outlays	22,505	9,250
Smithsonian Institution		
Salaries and expenses		
33 0100 0 1 503		
Budget Authority	238,926	89,119
Outlays	210,255	78,425
Construction and improvements, National Zoological Park		
33 0129 0 1 503		
Budget Authority	6,681	2,492
Outlays	3,006	1,121
Repair and restoration of buildings		
33 0132 0 1 503		
Budget Authority	27,528	10,268
Outlays	11,011	4,107
Construction		
33 0133 0 1 503		
Budget Authority	8,653	3,228
Outlays	3,461	1,291
Salaries and expenses, National Gallery of Art		
33 0200 0 1 503		
Budget Authority	42,541	15,868
Outlays	35,734	13,329
Repair, restoration, and renovation of buildings		
33 0201 0 1 503		
Budget Authority	1,870	698
Outlays	449	167
Salaries and expenses, Woodrow Wilson International Center for Scholars		
33 0400 0 1 503		
Budget Authority	4,879	1,820
Outlays	2,976	1,110
Endowment challenge fund		
33 8188 0 7 503		
401(C) Authority	270	101
Outlays	270	101
Canal Zone biological area fund		
33 8190 0 7 503		
401(C) Authority	150	56
Outlays	135	50
State Justice Institute		
State Justice Institute: Salaries and expenses		
48 0052 0 1 752		
Budget Authority	12,364	4,612
Outlays	3,338	1,245
Susquehanna River Basin Commission		
Salaries and expenses		
46 0500 0 1 301		
Budget Authority	209	78
Outlays	197	73
Contribution to Susquehanna River Basin Commission		
46 0501 0 1 301		
Budget Authority	283	106
Outlays	283	106
Tennessee Valley Authority		
Tennessee Valley Authority fund (Energy supply)		
64 4110 0 3 271		
401(C) Auth--Off. Coll.	58,954	21,990
Outlays	51,880	19,351
Tennessee Valley Authority fund (Area and regional development)		
64 4110 0 3 452		
Budget Authority	124,801	46,551
Outlays	30,701	11,451
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	672,693	251,958
401(C) Authority	420	157
401(C) Auth--Off. Coll.	58,954	21,990
Obligation Limitation	70,629	26,345
Outlays	607,487	227,447

Other Independent Agencies

AGENCY, BUREAU, AND ACCOUNT TITLE	BASE	SEQUESTER
United States Holocaust Memorial Council		
Holocaust Memorial Council		
95 3300 0 1 808		
Budget Authority	2,419	902
Outlays	1,935	722
United States Information Agency		
Salaries and expenses		
67 0201 0 1 154		
Budget Authority	670,285	250,016
401(C) Auth--Off. Coll.	6,240	2,328
Outlays	541,220	201,675
East West Center		
67 0202 0 1 154		
Budget Authority	21,247	7,925
Outlays	20,610	7,688
Radio construction		
67 0204 0 1 154		
Budget Authority	87,553	32,657
Outlays	14,650	5,475
Radio broadcasting to Cuba		
67 0206 0 1 154		
Budget Authority	13,244	4,941
Outlays	9,272	3,459
Educational and cultural exchange programs		
67 0209 0 1 154		
Budget Authority	160,504	59,868
Outlays	76,082	28,379
National Endowment for Democracy		
67 0210 0 1 154		
Budget Authority	17,442	6,506
Outlays	7,849	2,928
Office of the Inspector General		
67 0300 0 1 154		
Budget Authority	3,855	1,438
Outlays	3,084	1,150
United States Institute of Peace		
Operating expenses		
95 1300 0 1 153		
Budget Authority	7,914	2,952
Outlays	7,123	2,657
United States Sentencing Commission		
Salaries and expenses		
10 0938 0 1 752		
Budget Authority	7,557	2,819
Outlays	6,801	2,536
TOTAL FOR OTHER INDEPENDENT AGENCIES		
Budget Authority	992,022	370,024
401(C) Auth--Off. Coll.	6,240	2,328
Outlays	688,636	256,849

REPORT TOTAL

Budget Authority	410,977,441	162,120,843
Budget Auth--Spec. Rules	256,793	256,793
401(C) Authority	43,445,256	16,213,384
401(C) Auth--Off. Coll.	2,125,515	792,613
401(C) Other--incl ob lim	513,122	191,398
401(C) Auth--Spec. Rules	1,882,762	1,882,762
Direct Loan Limitation	18,907,165	7,052,374
Direct Loan Floor	2,050,199	764,724
Guarntd. Loan Limitation	188,532,988	70,322,805
Guaranteed Loan Floor	0	0
Obligation Limitation	26,251,426	9,791,784
Unobligated Bal--Defense	38,561,455	15,856,980
Outlays	250,835,805	99,452,905

[FR Doc. 90-24233 Filed 10-10-90; 12:27 pm]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 4773/Pub. L. 101–409

White House Conference on Small Business Authorization Act. (Oct. 5, 1990; 104 Stat. 885; 5 pages) Price: $1.00

S. 535/Pub. L. 101–410

Federal Civil Penalties Inflation Adjustment Act of 1990. (Oct. 5, 1990; 104 Stat. 890; 3 pages) Price: $1.00

S. 3155/Pub. L. 101–411

To extend the expiration date of the Defense Production Act of 1950 to October 20, 1990. (Oct. 6, 1990; 104 Stat. 893; 1 page) Price: $1.00

H.J. Res. 666/Pub. L. 101–412

Making further continuing appropriations for the fiscal year 1991, and for other purposes. (Oct. 9, 1990; 104 Stat. 894; 4 pages) Price: $1.00

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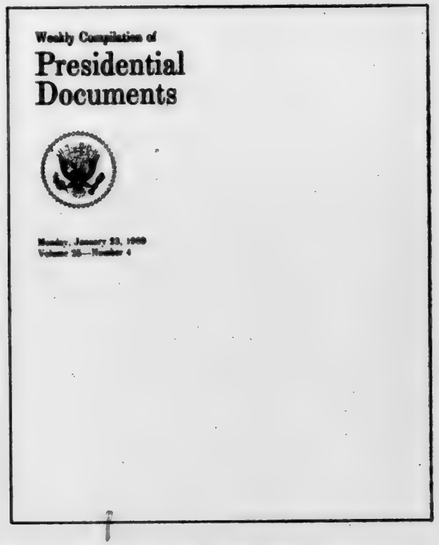

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Title 3—

The President

Proclamation 6186 of October 10, 1990

United Nations Day, 1990

By the President of the United States of America

A Proclamation

This year, as we commemorate the founding of the United Nations nearly half a century ago, we also celebrate recent progress toward the noble goals set forth in both its Charter and the Universal Declaration of Human Rights, which was adopted by the U.N. General Assembly on December 10, 1948. Those goals are based on principles that have been cherished and defended by the American people for more than 2 centuries.

Noting that "recognition of the dignity of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world," the United Nations General Assembly provided in its Universal Declaration of Human Rights a resounding affirmation of the timeless ideals enshrined in our Constitution. This historic Declaration established a common standard of conduct for all peoples and all governments. Its signatories agreed to respect freedom of thought and freedom of conscience, as well as freedom of religion and belief. They also recognized an individual's right to freedom of movement and assembly, as well as his right to participate in the government of his country and to own property, either alone or in association with others.

During the past several years, efforts to implement internal reforms at the United Nations have helped to bring this body closer to the ideals envisioned by its founders when they adopted the U.N. Charter and "reaffirmed their faith in fundamental human rights, [and] in the dignity and worth of the human person." The United States has welcomed these reforms, as well as the recent decline in ideological confrontation among U.N. members, and we have applauded moves toward consensus and cooperation, in the search for practical solutions to serious global problems.

During the past year alone, prospects for international peace, understanding, and cooperation have improved greatly in regions where they once seemed remote. A significant portion of the credit for these positive developments must be given to the United Nations. Indeed, the United Nations has proved to be helpful in achieving regional peace and stability by promoting constructive dialogue between nations and the nonviolent resolution of conflicts. Through its peacekeeping efforts and monitoring of the electoral process, the United Nations has helped the people of countries such as Namibia and Nicaragua to chart their own course in a genuine exercise of self-determination. The United Nations has also helped to promote the social and economic development of countries beset by strife and poverty. Nevertheless, great challenges lie ahead in places as far-flung as Cambodia, El Salvador, and the Western Sahara.

Many of the challenges faced by the United States and other U.N. members transcend national and even regional boundaries. Most recently, for example, the United Nations has played a central role in international efforts to meet the grave threat posed by Iraq's invasion of Kuwait. The United Nations has spoken firmly and without hesitation through eight Security Council Resolutions condemning the invasion, demanding Iraq's immediate and unconditional withdrawal from Kuwait, and mandating economic sanctions against the government of Saddam Hussein.

In addition to efforts designed to help restore peace and stability to the Persian Gulf region, the United Nations agenda includes plans to protect the global environment and to combat the scourge of drug trafficking. We look to the United Nations as a valuable forum for the discussion of such issues, and we welcome the aid of its specialized agencies in developing and implementing specific programs to enhance international cooperation in these and other areas.

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having

exported in Sugar Containing Products" (7 CFR 1530.200 et seq.), that were in

(2) Major increases in costs or prices

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In addition to efforts designed to help restore peace and stability to the Persian Gulf region, the United Nations agenda includes plans to protect the global environment and to combat the scourge of drug trafficking. We look to the United Nations as a valuable forum for the discussion of such issues, and we welcome the aid of its specialized agencies in developing and implementing specific programs to enhance international cooperation in these and other areas.

The United Nations is also helping to lead a new campaign for the eradication of illiteracy. The U.N. General Assembly has proclaimed 1990 as the "International Year of Literacy," and the United States has enthusiastically joined other member-states in a concerted effort to promote education and learning.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 1990, as United Nations Day. I invite all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-24205
Filed 10-10-90; 3:20 pm]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Foreign Agricultural Service

7 CFR Part 1530

Sugar To Be Re-exported in Refined Form, Sugar To Be Re-exported in Sugar Containing Products, and Sugar for Production of Polyhydric Alcohol

AGENCY: Office of the Secretary and Foreign Agricultural Service, USDA.

ACTION: Interim rule.

SUMMARY: Presidential Proclamation No. 6179 of September 13, 1990, 55 FR 38293, converted the U.S. sugar import quota into a tariff-rate quota, effective October 1, 1990. This Proclamation provided for raw cane sugar described in subheading 1701.11.02 of the Harmonized Tariff Schedule of the United States (HTS) to be imported subject to the lower duty rates (or duty free) of the tariff-rate quota, and exempt from the quota limitations otherwise applicable to sugars imported at such lower duty rates, provided that such sugar is used only for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or is re-exported in refined form or in sugar containing products and further provided that duties paid at the higher duty rates are not refunded, as drawback, on the basis, or as a result, of the exportation of such polyhydric alcohol, refined sugar or sugar containing products. Accordingly, the Proclamation enables the Department of Agriculture to renew three programs—"Sugar for Production of Polyhydric Alcohol" (7 CFR 1530.300 et seq.), "Sugar to be Re-exported in Refined Form" (7 CFR 6.100 et seq.), and "Sugar To Be Re-exported in Sugar Containing Products" (7 CFR 1530.200 et seq.)—that were in effect under the former absolute import quota.

This interim rule amends the regulations governing these programs primarily in order to conform the regulations to the provisions of the HTS, as modified by Proclamation No. 6179. In addition to the requirements previously applicable, license holders will be required to certify whether or not any drawback refunds of higher rate duties under the tariff-rate quota have or will be claimed on the basis, or as result, of the exportation of polyhydric alcohol, refined sugar, or sugar containing products produced or exported pursuant to these programs. The amendments are necessary to provide additional safeguards in the administration of these programs. In addition, this interim rule makes numerous minor amendments to update or clarify former provisions and transfers the regulations in 7 CFR part 6, "Subpart—Importation of Sugar Free From Quota" to 7 CFR part 1530—"Sugar Import Licensing" in order to consolidate in one part of the CFR all of the regulations governing the programs referred to above.

DATES: Interim rule effective October 9, 1990; comments must be submitted on or before November 13, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments should be mailed or delivered to the Team Leader, Import Quota Programs, Foreign Agricultural Service, Room 6095, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may also be inspected at Room 6095 between 9 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Cleveland Marsh (Team Leader, Import Quota Programs), 202-447-2916 or Dale McNeil (Attorney), 202-447-3780.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the provisions of this interim rule will not result in:

(1) An annual effect of the economy of $100 million or more;

(2) Major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

The Administrator, Foreign Agricultural Service (FAS), certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. There are not a substantial number of small entity participants in the programs. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601). It has been determined by an environmental evaluation that this action will not have any significant impact on the quality of human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this interim rule.

The paperwork and recordkeeping requirements imposed by this interim rule have been submitted to the Office of Management and Budget (OMB) for emergency and expedited processing under the Paperwork Reduction Act of 1980. Pursuant to the provisions of 5 CFR 1320.18, OMB has approved the collection of information and recordkeeping requirements for a period of 90 days, beginning on the effective date of this interim rule, and has assigned OMB approval number 0551-0015. Comments concerning the paperwork and recordkeeping burdens imposed by the provisions of the regulations promulgated by this interim rule may be submitted, during the comment period for this interim rule, to the Desk Officer for the U.S. Department of Agriculture, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503 or to the Chief, Information Management Division, Office of Information Resource Management, Room 404-W, U.S. Department of Agriculture, Washington, DC 20250.

These programs are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Soon after Presidential Proclamation No. 4941 of May 5, 1982 (47 FR 19661), established a restrictive, absolute import quota for sugars, syrups and molasses, it became evident that this could have adverse consequences for certain participants in the U.S. sugar market. In

quota, and exempt from the quota limitations otherwise applicable to sugars imported at such duty rates, provided that such sugar is used only for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food

First, program participants will be required to certify, at the time that they apply to participate, that they will notify the Licensing Authority, within 95 days of the exportation of any refined sugar, sugar containing products, or polyhydric alcohols, if such exportation has resulted in, or has been used as the

cases, any drawback claims for refunds of any duties paid on the importation of sugars, syrups, and molasses subject to either the lower or higher rates of duty of the tariff-rate quota must be filed with the U.S. Customs Service's New York City office within 90 days of the date of the exportation on which the claim is

who held licenses under the previous programs will result from the disruption of contracts and established marketing relationships if these programs are not resumed on an immediate basis. Accordingly, I am issuing these regulations in the form of an interim rule, pending comments from interested

1530.305 Proof of production of polyhydric alcohols.
1530.306 Charges and credits to licenses.
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Background

Soon after Presidential Proclamation No. 4941 of May 5, 1982 (47 FR 19661), established a restrictive, absolute import quota for sugars, syrups and molasses, it became evident that this could have adverse consequences for certain participants in the U.S. sugar market. In particular, domestic refiners and end users of sugar only had access to sugar which was much higher in price than sugar which could be obtained on the world market by foreign competitors. Such domestic entities—for example, refiners of raw sugar and manufacturers of sugar containing products—could not compete on an equal footing in the world market with their foreign counterparts who had access to raw and refined sugar at the lower world prices. If this situation were allowed to continue for a prolonged period of time, the capacity utilization of domestic refining and manufacturing facilities would decline and this would jeopardize the viability of such domestic industries.

These considerations led to the issuance of Presidential Proclamation No. 5002 on November 30, 1982 (47 FR 54289). This proclamation authorized the Secretary of Agriculture to allow entry of sugar exempt from the import quotas, provided that the sugar is re-exported in refined form or in sugar containing products or is used for the production of polyhydric alcohols (except polyhydric alcohols for use as a substitute for sugar in human food consumption). The proclamation further specified that such sugar would be entered under licenses issued pursuant to regulations promulgated by the Secretary of Agriculture.

Presidential Proclamation No. 6179 of September 13, 1990, 55 FR 38293, converted the U.S. sugar import quota into a tariff-rate quota, effective October 1, 1990, and terminated Proclamation No. 5002. As a consequence, the three "quota-exempt" licensing programs that were established under the former absolute import quota—"Sugar for Production of Polyhydric Alcohol" (7 CFR 1530.300 et seq.), "Sugar to be Re-exported in Refined Form" (7 CFR 6.100 et seq.), and "Sugar To Be Re-exported in Sugar Containing Products" (7 CFR 1530.200 et seq.)—terminated effective October 1, 1990. Pursuant to the transitional provisions of this interim rule, all licenses previously issued to participants in these three programs are canceled.

However, Proclamation No. 6179 provided for raw cane sugar described in subheading 1701.11.02 of the HTS to be imported subject to the lower duty rates (or duty free) of the tariff-rate quota, and exempt from the quota limitations otherwise applicable to sugars imported at such duty rates, provided that such sugar is used only for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or is re-exported in refined form or in sugar containing products.

The provisions of paragraph (c) of additional U.S. note 3 to chapter 17 of the HTS, as modified by the President in Proclamation No. 6179, authorize the Secretary of Agriculture to resume the three licensing programs that were established under the former absolute import quota. However, it is not possible to simply republish the existing regulations, principally because of the need to adapt the programs to a tariff-rate quota, rather than an absolute quota, but also because of completely new conditions that must be placed upon participation in these programs with respect to drawback claims.

Proclamation No. 6179 provided that such sugar could not be entered and liquidated at the low duty rates (or duty free [1]) provided for in subheading 1701.11.02 of the HTS if the exportation of the refined sugar, sugar containing products, or polyhydric alcohol was used as the basis of, or resulted in, the drawback (refund) of duties paid on sugar imported at the higher duty rates of the tariff-rate quota. If drawback of duties at the higher rates is claimed, the U.S. Customs Service is directed to liquidate the corresponding import entries at the higher rates of duty applicable under subheading 1701.22.03 of the HTS. Proclamation No. 6179 also limited the time period for filing all drawback claims for refunds of duties paid on articles subject to the tariff-rate quota to 90 days from the date of the exportation on which the claim is based.

Moreover, the Department of Agriculture will not be able to credit the licenses of refiners and manufacturers participating in the revised programs if the exportation of the refined sugar, sugar containing products, or polyhydric alcohol is used as the basis of, or results in, the drawback of duties paid on sugar imported at the higher duty rates of the tariff-rate quota. To carry out this responsibility and to assist the U.S. Customs Service, I have determined that it is necessary to make numerous changes in the requirements of the Department's programs.

[1] Raw cane sugar entered under subheading 1701.11.02 of the HTS, imported from all beneficiary countries of the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI), will receive duty free treatment.

First, program participants will be required to certify, at the time that they apply to participate, that they will notify the Licensing Authority, within 95 days of the exportation of any refined sugar, sugar containing products, or polyhydric alcohols, if such exportation has resulted in, or has been used as the basis of a claim by the program participant or any other person for, a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses entered subject to the higher duty rates of the tariff-rate quota (i.e., sugars, syrups, and molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS) and the amount of such refund. Second, program participants will be required to make similar certifications when requests are made for credits to their licenses and subsequently if such drawback claims for refunds of higher rate duties are filed. Third, program participants will be required to reserve their rights to claim drawback in order to facilitate the Department's monitoring of such claims. Fourth, if refunds of higher rate duties are claimed by a program participant, the Licensing Authority will deny credit to the participant's license, revoke credits previously granted, draw on the participant's bond, or assess liquidated damages, as appropriate; in addition, civil remedies or criminal sanctions might be appropriate in such circumstances. Fifth, the documentation and record-keeping provisions are enhanced to assure that the Department will have adequate evidence to trace import entries through to drawback claims to verify program participants' certifications.

Finally, the time limits for refining and re-exporting or transferring refined sugar, and for producing sugar containing products and polyhydric alcohols, have been shortened in some respects. Refiners will continue to have 90 days to re-export refined sugar, but they will be required to make transfers to sugar containing product manufacturers within 45 days of the date of entry of the imported sugar. Manufacturers of sugar containing products will have 180 days from the date of transfer of refined sugar, rather than 18 months, to complete their manufacturing processes and export the sugar containing products. Sugar containing product manufacturers will not be issued import licenses. Manufacturers of polyhydric alcohol will have 180 days from the date of entry of imported sugar to complete their manufacturing processes. In all cases, any drawback claims for refunds of any duties paid on the importation of sugars, syrups, and molasses subject to either the lower or higher rates of duty of the tariff-rate quota must be filed with the U.S. Customs Service's New York City office within 90 days of the date of the exportation on which the claim is based.

Several less substantial amendments to the regulations for the previous programs derive from a need to strengthen administration of these programs, clarify vague provisions, remove obsolete material, update definitions and nomenclature, harmonize the regulations for these three programs, and consolidate them in one Part of the Code of Federal Regulations.

Among the more significant of these changes is a revision of the method for calculating bond amounts and liquidated damages for all three programs. Bond amounts will be a fixed 20 cents per pound of sugar charged to the license. Claims on the bonds and the assessment of liquidated damages will both be based on a formula using the spread between the nearby Number 11 and Number 14 contracts of the New York Coffee, Sugar and Cocoa Exchange. These new formulas will afford a better measure of the actual harm caused to domestic prices when violations of the programs result in the diversion of imported sugar onto the domestic market. In addition, the licenses for producers of polyhydric alcohols will be issued on an indefinite basis, rather than an annual basis, to improve the administration of this program.

Because all licenses have expired and must be canceled, refiners and manufacturers desiring to participate in the new programs will be required to apply for new licenses. New licenses may be issued to those applicants who agree to fully settle the balances, if any, outstanding on their previous licenses, by bringing such balances to zero (i.e., credits equal to charges) and to comply with all the provisions of the new regulations, subheading 1701.11.02 of the HTS, and additional U.S. note 3 to chapter 17 of the HTS and with any terms, conditions and procedures imposed by the Licensing Authority in order to assure an orderly transition. The interim rule provides the Licensing Authority with ample authority to waive minor departures from the regulations in order to facilitate the transition between old and new programs with as little disruption to the affected industries as possible.

It has been determined that serious harm to the refiners and manufacturers who held licenses under the previous programs will result from the disruption of contracts and established marketing relationships if these programs are not resumed on an immediate basis. Accordingly, I am issuing these regulations in the form of an interim rule, pending comments from interested persons.

List of Subjects in 7 CFR Parts 6 and 1530

Imports, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1530 is amended as follows:

1. 7 CFR part 1530 is revised to read as follows:

PART 1530—SUGAR IMPORT LICENSING

Subpart A—Sugar To Be Re-exported in Refined Form

Sec.
1530.100 Definitions.
1530.101 Application for a license.
1530.102 Issuance of a license.
1530.103 Bond requirements.
1530.104 Entry of sugar.
1530.105 Proof of export and notice of drawback claims.
1530.106 Transfer of sugar.
1530.107 Charges and credits to licenses.
1530.108 Replacement of sugars; substitution of sugars.
1530.109 Records.
1530.110 Enforcement.
1530.111 Appeals.
1530.112 Waivers.
1530.113 Expiration of licenses.
1530.114 Paperwork Reduction Act Assigned Number.
1530.115 Transitional provisions.

Subpart B—Sugar To Be Re-exported in Sugar Containing Products

1530.200 Definitions.
1530.201 Application for a license.
1530.202 Issuance of a license.
1530.203 Bond requirements.
1530.204 Transfer of sugar.
1530.205 Proof of export and notice of drawback claims.
1530.206 Charges and credits to licenses.
1530.207 Replacement of sugars; substitution of sugars.
1530.208 Records.
1530.209 Enforcement.
1530.210 Appeals.
1530.211 Waivers.
1530.212 Expiration of licenses.
1530.213 Paperwork Reduction Act Assigned Number.
1530.214 Transitional provisions.

Subpart C—Sugar for the Production of Polyhydric Alcohol

1530.300 Definitions.
1530.301 Application for a license.
1530.302 Issuance of a license.
1530.303 Bond requirements.
1530.304 Entry of sugar.
1530.305 Proof of production of polyhydric alcohols.
1530.306 Charges and credits to licenses.
1530.307 Replacement of sugars; substitution of sugars.
1530.308 Records.
1530.309 Enforcement
1530.310 Appeals.
1530.311 Waivers.
1530.312 Expiration of licenses.
1530.313 Paperwork Reduction Act Assigned Number.
1530.314 Transitional provisions.

Authority: Presidential Proclamation No. 6179, 55 FR 38293; additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Subpart A—Sugar To Be Re-exported in Refined Form

§ 1530.100 Definitions.

For purposes of this subpart, unless the context indicates otherwise, the following words and phrases have the meaning ascribed to them:

(a) *Additional U.S. note 3* means paragraph (c) of additional U.S. note 3 to chapter 17 of the HTS, unless otherwise described.

(b) *Agent* means a licensed customhouse broker, freight forwarder, or other person authorized to act on behalf of the licensee.

(c) *Date of entry* is the date when the U.S. Customs Service entry form is properly executed and deposited, together with any estimated duties and special import fees and any related documents required by law or regulation to be filed with such form at the time of entry with the appropriate customs official.

(d) *Date of export* means the on-board date of an ocean carrier bill of lading or an airway bill or on-board date of an intermodal bill of lading; if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country; or the date of export established by such other proof of export as is acceptable to the Licensing Authority.

(e) *Date of Transfer* means the date of shipment of sugar transferred from a refiner to a manufacturer.

(f) *Department* means the United States Department of Agriculture.

(g) *Drawback* and *drawback entry* have the meanings ascribed to them in 19 CFR part 191.

(h) *Enter* or *entry*, with respect to sugar imported into the customs territory of the United States, refers to sugar that is entered or withdrawn from warehouse for consumption.

(i) *HTS* means the Harmonized Tariff Schedule of the United States.

(j) *License* means a license, issued by the Secretary through the Licensing Authority, which permits the entry, in accordance with the provisions of this subpart, of raw cane sugar described in subheading 1701.11.02 of the HTS for the purpose of being refined and re-exported in refined form or of being transferred to a manufacturer under the provisions of subpart B of this part.

(k) *Licensee* means a refiner to whom a license has been issued pursuant to the provisions of this subpart.

(l) *Licensing Authority* means the Team Leader, import Quota Programs, import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, or the Team Leader's designee.

(m) *Manufacturer* means a person who is the recipient of a transfer of refined sugar from a refiner, who uses the sugar to produce a sugar containing product within the customs territory of the United States, and who exports or causes to be exported such product under a license issued under the provisions of subpart B of this part.

(n) *Notice of Transfer* means a document, in form and substance satisfactory to the Licensing Authority, that is signed by both the licensee and a manufacturer certifying delivery of a specified quantity of refined sugar, corresponding to sugar imported under the provisions of this subpart, from the licensee to the manufacturer.

(o) *Number 11 contract price* means the daily closing price per pound of raw sugar for the nearby Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange.

(p) *Number 14 contract price* means the daily closing price per pound of raw sugar for the nearby Number 14 contract of the New York Coffee, Sugar and Cocoa Exchange.

(q) *Person* means any individual, partnership, corporation, association, estate, trust or any other business enterprise or legal entity.

(r) *Program* means the licensing program provided for in the regulations in this subpart and includes the requirements and limitations of HTS subheading 1701.11.02 and additional U.S. note 3.

(s) *Raw value* means, for a given quantity of sugar, the equivalent of that quantity of sugar in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury (19 CFR part 151, subpart B).

(t) *Refined sugar* means commercial refined sugar testing 99.7 degrees or above by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury.

(u) *Refiner* means any person in the United States who engages in the processing (refining) of raw sugar into refined sugar by substantially subjecting the raw sugar to the processes of affination or defecation, clarification, and further purification by absorption or crystallization.

(v) *Sugar containing product* means any product (other than articles described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 of the HTS) to which sugar has been added as an ingredient and which is to be exported without further processing.

§ 1530.101 Application for a license.

(a) An applicant for a license must apply in writing to the Licensing Authority. The letter of application shall contain at a minimum the following information:

(1) The name and address of the applicant and of the refinery or refineries at which the raw cane sugar entered under subheading 1701.11.02 will be processed (refined);

(2) The license amount requested, not to exceed the maximum license amount;

(3) A description of the kind and polarity of refined sugars to be exported or transferred;

(4) The name of the firm that will establish a performance bond in favor of the United States Government on behalf of the applicant; and

(5) A certification that the refiner shall:

(i) Refine a quantity of sugar equal to the quantity of sugar entered under the license;

(ii) Export or transfer such sugar or corresponding sugar within the applicable time limits; and

(iii) Shall not request credit on the refiner's license, if such license is issued, for the exportation or transfer of any refined sugar, or if such credit has been granted, shall promptly (within 5 business days of the filing of a drawback entry) notify the Licensing Authority and request that such credit be revoked, if the exportation of such refined sugar or any sugar containing product manufactured with the use of such transferred sugar has resulted in, or has been used as the basis of a claim by the licensee or any other person for, a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS.

(b) A licensee shall promptly notify the Licensing Authority if any of the information described in paragraph (a) of this section has changed and shall submit an amended application upon the request of the Licensing Authority.

(c) The Licensing Authority may waive any provisions of this section for good cause if it is determined that such a waiver will not adversely affect the purposes of this program.

§ 1530.102 Issuance of a license.

(a) The Secretary of Agriculture, through the Licensing Authority, may issue a license to a refiner under which the refiner may import sugar described in HTS subheading 1701.11.02 in accordance with the provisions of this program. The license may contain such conditions, limitations or restrictions as the Licensing Authority determines to be appropriate for the purposes of this program. The Licensing Authority may add or modify such conditions, limitations or restrictions at such time and in such manner as the Licensing Authority, in his or her discretion, determines to be necessary or appropriate for the purposes of this program. A refiner may hold only one license at any given time.

(b) A quantity of refined sugar equivalent to the quantity of sugar, raw value, imported under a license, adjusted in accordance with § 1530.107 of this subpart, must be exported within 90 days of the date of entry of such sugar or must be transferred to a manufacturer within 45 days of the date of entry of such sugar.

(c) The maximum license amount is 50,000 metric tons of sugar, raw value. Quantities of sugar imported under the license will be charged to the license and quantities of refined sugar exported or transferred will be credited to the license as provided in § 1530.107. At no time may the outstanding balance of charges or credits exceed the maximum license amount except as a result of adjustments for polarization made pursuant to § 1530.107(c).

(d) The licensee shall reserve all rights, if any, to claim drawback refunds with respect to the exportation or transfer of refined sugar under this program. No credit on a license shall be made if any refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS is claimed or received on the basis, or as a result, of the exportation of such refined sugar or any sugar containing products manufactured with the use of such transferred sugar.

(e) If a licensee has made a full settlement of the balance on a license, the licensee may surrender the license on terms and conditions acceptable to the Licensing Authority. A licensee may, with the written permission of the Licensing Authority, transfer a license to another refiner who does not hold a license, subject to such terms and conditions as the Licensing Authority may impose as he or she determines to be necessary or appropriate to carry out the purposes of this subpart.

(f) The licensee may utilize an agent to import, export or make transfers of sugar, provided that such actions are taken in the name of the licensee. The licensee must provide to the Licensing Authority a written authorization designating such person to act as an agent for the purpose of importing, exporting or transferring sugar. If the licensee uses an agent to export the refined sugar, the licensee shall notify the Licensing Authority in writing of the agent's identity, and the agent shall certify to the Licensing Authority in writing that the refined sugar has been exported from the customs territory of the United States.

§ 1530.103 Bond requirements.

(a) Unless the licensee has posted a performance bond with the U.S. Customs Service which is satisfactory to the Licensing Authority with respect to the requirements of this program, the licensee shall post a performance bond which meets the requirements of this section with the Licensing Authority. However, no bond will be required for the quantity of any sugar imported under license that corresponds to a quantity of sugar that has been exported or transferred prior to the importation of such sugar and credited to the license in accordance with § 1530.107, provided that the Licensing Authority issues a written waiver of the bond requirement.

(b) A bond may cover entries made either during the period of time specified in the bond (term bond) or for a specified entry (single entry bond).

(c) Only the licensee who will process (refine) the sugar may be the principal on a bond to cover such sugar to be re-exported in refined form. The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(d) The obligation under the bond shall be made effective as of the date of entry of the imported sugar.

(e) The amount of the bond shall be equal to 20 cents per pound of sugar imported under the license.

(f) The appropriate customs official or the Licensing Authority, as appropriate, will release the obligation under the bond by 20 cents per pound for the quantity of sugar credited to the license in accordance with § 1530.107.

(g) If the licensee fails to qualify for a credit to the license within 95 days of the date of export of corresponding sugar in an amount sufficient to offset the charge to the license for that corresponding sugar or if such a credit initially granted is subsequently revoked, payment will be made to the United States of America under the bond of a monetary amount equal to up to 3 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but was not, exported in timely compliance with the requirements of this subpart. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(h) Within 10 business days of the date of issuance of a license, the licensee shall submit to the Licensing Authority a copy of the performance bond.

§ 1530.104 Entry of sugar.

(a) The licensee shall be permitted to enter imported sugar under subheading 1701.11.02 of the HTS in conformity with the conditions, limitations and restrictions of the license, the provisions of this subpart and additional U.S. note 3, and any other procedures specified by the Licensing Authority.

(b) The licensee must present the license to the appropriate U.S. Customs Service official at the time of entry. Such customs official will mark on the license:

(1) The quantity of sugar entered;

(2) The date of entry; and

(3) The customs entry number.

(c) The licensee shall submit to the Licensing Authority a copy of the license, as marked by the customs official, within 10 business days after each entry of sugar.

(d) The licensee shall submit to the Licensing Authority a statement, certified as true and accurate, of the polarization and weight of the imported sugar to be charged to the license. This statement must adequately identify the imported sugar and state the basis for the determination of the polarization of the sugar. The basis for such determination must be either the settlement polarization or some other means approved by the Licensing Authority.

§ 1530.105 Proof of export and notice of drawback claims.

(a) The proof of export will consist of:

(1) *Certification of export.* The licensee shall provide a written certification that he or she has exported a specified quantity of refined sugar. The certification shall include:

(i) The licensee's name, address, and license number;

(ii) A description of the refined sugar exported, the polarity of such sugar, and its weight;

(iii) An identification of the imported sugar to which the exported sugar corresponds, including the quantity and polarization of the imported sugar;

(iv) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(v) The country of destination and foreign consignee;

(vi) The entry number of a claim, if any, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the refined sugar and the amount of such refund; and

(vii) A statement that the sugar has been exported from the customs territory of the United States, that the licensee has reserved all rights to claim drawback refunds, and that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the refined sugar.

(2) *Documentation of export.* The licensee shall submit the following documentation:

(i) An original, certified U.S. Customs Service Form 7512; and

(ii) An original bill of lading or copy of a U.S. Customs Service Form 7511.

(b) The certification must accompany the documentation submitted to the Licensing Authority. The certification and documentation must be submitted

to the Licensing Authority within 95 days of the date of export. The Licensing Authority will not credit the license for sugar exported unless satisfactory and timely certification and documentation is received.

(c) Notice of drawback claims. Whenever the licensee knows or has

part, and any other procedures specified by the Licensing Authority.

(b) Refined sugar transferred under a license must be shipped by the licensee to the manufacturer within 45 days of the date of entry of the sugar entered under subheading 1701.11.02 of the HTS to which the refined sugar corresponds.

and refined sugar exports credited to the license will be made as follows:

(1) To obtain the raw value for imported sugar with a polarization of 92 degrees or above, the adjustment will be made by multiplying the polarization times 0.0175, subtracting 0.68 from this product, and multiplying the difference

(5) The quantity of sugar, refined basis, transferred to a manufacturer under the provisions of this subpart, and the identify of such manufacturer;

(6) The country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents

contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but

1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar under this program or if any other claim under 19 CFR part 191 is denied on the basis that the refined sugar was not exported.

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to the Licensing Authority within 95 days of the date of export. The Licensing Authority will not credit the license for sugar exported unless satisfactory and timely certification and documentation is received.

(c) Notice of drawback claims. Whenever the licensee knows or has reason to know that any claim has been made, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar under this program or of sugar containing products produced from sugar transferred from the licensee to a manufacturer, under the provisions of subpart B of this part, the licensee shall within 5 business days provide a written notification to the Licensing Authority. This notification shall include the following information, if known or reasonably believed to be true by the licensee:

(1) The licensee's name, address, and license number;

(2) A description of the refined sugar or sugar containing products exported, and the weight of such refined sugar or sugar containing products;

(3) An identification of the imported sugar to which the exported sugar or sugar contained in the exported sugar containing products corresponds, including the quantity of the imported sugar;

(4) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(5) The country of destination and foreign consignee;

(6) The entry number of the drawback claim and the amount of such refund of duties; and

(7) The identity of the person who filed such drawback entry.

(d) The Licensing Authority may waive any of the provisions of this section if compliance with the relevant provisions of HTS subheading 1701.11.02, additional U.S. note 3, and all other regulations in this subpart is otherwise established to the Licensing Authority's satisfaction.

§ 1530.106 Transfer of sugar.

(a) Transfers of sugar from a licensee to a manufacturer must conform with the conditions of the license, the provisions of this program and the program provided for in subpart B of this part, and any other procedures specified by the Licensing Authority.

(b) Refined sugar transferred under a license must be shipped by the licensee to the manufacturer within 45 days of the date of entry of the sugar entered under subheading 1701.11.02 of the HTS to which the refined sugar corresponds.

(c) The licensee shall submit to the Licensing Authority, within 10 business days of the transfer of sugar, a Notice of Transfer which must adequately identify the refined sugar transferred by the licensee, including the polarization and weight of the transferred sugar and the date of transfer.

(d) The licensee may make transfers of refined sugar to more than one manufacturer, as specified on the application for a license; however, the combined total of such transfers may not exceed the maximum license amount.

§ 1530.107 Charges and credits to licensee.

(a) Charges will be made to a license, effective as of the date of entry, for quantities of sugar (adjusted on the basis set forth in paragraph (c) of this section to determine raw value) entered under the license, when the licensee submits the information required by § 1530.104 or when the Licensing Authority otherwise determines that the licensee has made an entry under subheading 1701.11.02 of the HTS.

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the requirements of this program, the Licensing Authority will credit a licensee for:

(1) Quantities of refined sugar, adjusted pursuant to paragraph (c) of this section, for which proof of export has been submitted in accordance with the provisions of § 1530.105 of this subpart, but only if the Licensing Authority is satisfied that no refund, as drawback, of any duties paid on the importation of any sugar, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the refined sugar; and

(2) Quantities of sugar charged to the license which the Licensing Authority determines have been destroyed, lost in processing the sugar, or otherwise disposed of so as to render the exportation or transfer of a corresponding quantity of sugar impossible or unnecessary.

(c) Adjustments of the quantities of imported sugar charged to the license and refined sugar exports credited to the license will be made as follows:

(1) To obtain the raw value for imported sugar with a polarization of 92 degrees or above, the adjustment will be made by multiplying the polarization times 0.0175, subtracting 0.68 from this product, and multiplying the difference by the weight. Expressed algebraically, this formula is: [(polarization X 0.0175) −0.68] X weight.

(2) To obtain the raw value for imported sugar with a polarization of less than 92 degrees, the adjustment will be made by dividing the total sugar content by 0.972.

(3) To determine the quantity of refined sugar that must be exported to equal a corresponding quantity of imported sugar charged to a license, the adjustment will be made by dividing the quantity of sugar imported, expressed in raw value, by 1.07.

(d) The Licensing Authority may revoke any credit previously made to a license is the Licensing Authority determines, on the basis of evidence obtained after the credit was granted, that the licensee had not complied with all of the requirements of this subpart or if the exported sugar is re-exported or returned to the customs territory of the United States without having undergone a substantial transformation.

§ 1530.108 Replacement of sugars; substitution of sugars.

(a) The sugar exported or transferred does not have to be the same sugar that was entered under subheading 1701.11.02 of the HTS.

(b) Exportation or transfer of sugar for credit to the license may occur any time after the date on which the license was issued by the Licensing Authority. Any quantity of sugar exported or transferred after the date on which the license was issued, but prior to the entry of the corresponding sugar, will be treated as having been exported or transferred within the time limits of § 1530.102(b).

§ 1530.109 Records.

(a) Each licensee requesting credit in accordance with § 1530.107(b) shall keep records to establish for all refined sugar exported under the provisions of this program:

(1) The quantity and identify of the sugar, raw value, entered under subheading 1701.11.02 of the HTS;

(2) The date or inclusive dates of processing (refining);

(3) The quantity and description of the articles produced, and their polarities;

(4) The quantity of sugar, refined basis, exported under the provisions of this subpart;

(5) The quantity of sugar, refined basis, transferred to a manufacturer under the provisions of this subpart, and the identify of such manufacturer;

(6) The country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and

(7) Any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the refined sugar and the amount of any such refund paid.

(b) All records required by this section to be kept by a licensee shall be retained for at least 5 years after a license is credited for the exportation or transfer of the refined sugar.

(c) The licensee must, upon request, make the records covered by this section available for inspection and copying by the Licensing Authority or other appropriate official of the Federal Government.

(d) If, after inspection of the records, the Licensing Authority determines that such records are inadequate to establish that the imported sugar was refined by the licensee, valueless sugar was lost or destroyed, refined sugar was exported, drawback of duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS was not claimed or received on the basis, or as a result, of the exportation of the refined sugar, or any other requirement of this program was complied with, the Licensing Authority may revoke credits granted for the appropriate quantity of sugar.

§ 1530.110 Enforcement.

(a) If at any time after receiving the proof of export described in § 1530.105 of this subpart, the Licensing Authority determines that the export of a quantity of refined sugar corresponding to the quantity of sugar entered under the license did not occur, and if the bond has been released under § 1530.103, the Licensing Authority may hold the licensee liable for up to 3 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but was not, exported. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the refined sugar, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other person, and if the bond has been released under § 1530.103, the Licensing Authority may hold the licensee liable for up to 3 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(c) If at any time the Licensing Authority determines that a licensee has failed to comply with the requirements of this subpart, including the requirements of HTS subheading 1701.11.02 and of the relevant provisions of additional U.S. note 3, the Licensing Authority may, after notice to the licensee, suspend or revoke the license issued to the licensee under this program and may refuse to issue a license to that refiner. The Licensing Authority may suspend or revoke a license if claims are filed under 19 CFR part 191 for the refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar under this program or if any other claim under 19 CFR part 191 is denied on the basis that the refined sugar was not exported.

§ 1530.111 Appeals.

(a) Any action or determination of the Licensing Authority under this subpart may be appealed to the Director, Import Policies and Trade Analysis Division, Foreign Agricultural Service (FAS), within 30 days from the date of notification. The appeal must be presented in writing and must specifically state any reason as to why such determination should not stand. The Director, Import Policies and Trade Analysis Division, FAS, will provide such person with an opportunity for an informal hearing on such matter.

(b) A further appeal from the final decision of the Director, Import Policies and Trade Analysis Division, FAS, may be made to the Administrator, FAS, within five business days of the notification of the decision of the Director, Import Policies and Trade Analysis Division, FAS.

§ 1530.112 Waivers.

Upon written application of the licensee, the Licensing Authority may extend the period for the export of refined sugar, may temporarily increase the maximum amount of the license, may extend the period for submitting proof of export, or may temporarily waive or modify any other requirement imposed by this subpart if such waiver or modification is necessary or appropriate under unusual, unforeseen or extraordinary circumstances and will not frustrate the purposes of this program and if compliance with the relevant provisions of HTS subheading 1702.11.02, additional U.S. note 3 is established to the Licensing Authority's satisfaction. The Licensing Authority may specify additional requirements or procedures in place of the requirements or procedures waived or modified.

§ 1530.113 Expiration of licenses.

(a) The licenses issued under this program shall expire upon written notice to the licenses by the Licensing Authority. The notice will state the date on which the licensees will expire and any other details applicable to the expiration of the licenses.

(b) If there have been no charges or credits on the License within 12 months of the date on which the license was issued, or any subsequent period of 18 months, the license may be deemed to have expired.

§ 1530.114 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection

to manufacture the sugar containing product(s);

(2) The license amount requested, not to exceed the maximum license amount;

(3) A description of the kind and polarity of refined sugar to be received from a refiner(s);

(4) The name of the firm that will

program. The Licensing Authority may add or modify such conditions, limitations or restrictions at such time and in such manner as the Licensing Authority, in his or her discretion, determines to be necessary or appropriate for the purposes of this

products have been exported from the customs territory of the United States.

§ 1530.203 Bond requirements.

(a) A licensee shall post a performance bond, which meets the requirements of this section, with the

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months, the license may be deemed to have expired.

§ 1530.114 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. chapter 35 and OMB number 0551–0015 has been assigned.

§ 1530.115 Transitional provisions.

(a) All licenses issued to refiners prior to October 1, 1990, pursuant to the former provisions of 7 CFR 6.101, are canceled effective October 9, 1990.

(b) Any refiner who, on September 30, 1990, held a license which had a balance of charges and credits other than zero and which is canceled pursuant to paragraph (a) of this section may be issued a new license upon such refiner's agreement to:

(1) Fully settle the balance outstanding on such previous license, by bringing such balance to zero;

(2) Comply with all the provisions of this subpart, subheading 1701.11.02 of the HTS, and additional U.S. note 3; and

(3) Comply with any terms, conditions and procedures imposed by the Licensing Authority in order to assure an orderly transition.

(c) During the transitional period between October 1, 1990, and the promulgation of a final rule to replace the interim rule issued on October 9, 1990, the Licensing Authority may modify or waive any requirement of this subpart, including the requirements that a refiner make a written application for a license prior to the issuance of the license and make a written application for a waiver under § 1530.111 of this subpart, if the Licensing Authority determines such modification or waiver is necessary or appropriate to assure an orderly transition and will not frustrate the purposes of this program.

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§ 1530.200 Definitions.

For purposes of this subpart, unless the context indicates otherwise, the following words and phrases have the meanings ascribed to them:

(a) *Additional U.S. note 3* means paragraph (c) of additional U.S. note 3 to chapter 17 of the HTS.

(b) *Agent* means customs house broker, freight forwarder, sugar refiner, or other person authorized to act on behalf of the licensee.

(c) *Corresponding sugar* means the identical sugar entered under subheading 1701.11.02 of the HTS, such sugar after having been refined, or other sugar substituted for, or in replacement of, such imported or refined sugar in accordance with §§ 1530.108 and 1530.207 of this part.

(d) *Date of entry* is the date when the U.S. Customs Service entry form is properly executed and deposited, together with any estimated duties and special import fees and any related documents required by law or regulation to be filed with such form at the time of entry with the appropriate customs official.

(e) *Date of export* means the on-board date of an ocean carrier bill of lading or an airway bill or on-board date of an intermodal bill of lading; if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country; or the date of export established by such other proof of export as is acceptable to the Licensing Authority.

(f) *Date of Transfer* means the date of shipment of sugar transferred from a refiner to a manufacturer.

(g) *Drawback* and drawback entry have the meanings ascribed to them in 19 CFR part 191.

(h) *Enter* or *entry*, with respect to sugar imported into the customs territory of the United States, refers to sugar that is entered or withdrawn from warehouse for consumption.

(i) *HTS* means the Harmonized Tariff Schedule of the United States.

(j) *License* means a license, issued by the Secretary through the Licensing Authority, which permits the transfer, in accordance with the provisions of this subpart, of refined sugar, corresponding to sugar imported under subpart A of this part, from a refiner to a manufacturer.

(k) *Licensee* means a manufacturer to whom a license has been issued pursuant to the provisions of this subpart.

(l) *Licensing Authority* means the Team Leader, Import Quota Programs, Import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, or the Team Leader's designee.

(m) *Manufacturer* means a person who is the recipient of a transfer or refined sugar from a refiner, who uses the sugar to produce a sugar containing product within the customs territory of the United States, and who exports or causes to be exported such product.

(n) *Notice of Transfer* means a document, in form and substance satisfactory to the Licensing Authority, that is signed by both a refiner and the licensee certifying delivery of a specified quantity of refined sugar, corresponding to sugar imported under the provisions of subpart A of this part, from the refiner to the licensee.

(o) *Number 11 contract price* means the daily closing price per pound of raw sugar for the nearby Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange.

(p) *Number 14 contract price* means the daily closing price per pound of raw sugar for the nearby Number 14 contract of the New York Coffee, Sugar and Cocoa Exchange.

(q) *Person* means any individual, partnership, corporation, association, estate, trust or any other business entity.

(r) *Program* means the licensing program provided for in the regulations in this subpart and includes the requirements and limitations of HTS subheading 1701.11.02 and additional U.S. note 3.

(s) *Raw value* means, for a given quantity of sugar, the equivalent of that quantity of sugar in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury.

(t) *Refiner* means any person in the United States who engages in the processing (refining) of raw sugar into refined sugar by substantially subjecting the raw sugar to the processes of (1) affination or defecation, (2) clarification, and (3) further purification by absorption or crystallization and who holds a license issued under the regulations in subpart A of this part.

(u) *Sugar* means commercial refined sugar testing 99.7 degrees or above by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury.

(v) *Sugar containing product* means any product (other than articles described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 of the HTS) to which sugar has been added as an ingredient and which is to be exported without further processing.

(w) *Valueless sugar* means sugar which has no commercial recovery value.

§ 1530.201 Application for a license.

(a) An applicant for a license must apply in writing to the Licensing Authority. The letter of application shall contain as a minimum the following information:

(1) The name and address of the applicant and of the facility or facilities at which transferred sugar will be used to manufacture the sugar containing product(s);

(2) The license amount requested, not to exceed the maximum license amount;

(3) A description of the kind and polarity of refined sugar to be received from a refiner(s);

(4) The name of the firm that will establish a performance bond in favor of the United States Government on behalf of the applicant;

(5) A description of the sugar containing product(s) to be exported and estimated sugar content of such product(s); and

(6) A certification that the manufacturer shall:

(i) Use a quantity of sugar equal to the quantity of sugar transferred under the license to manufacture sugar containing products;

(ii) Export such sugar containing products within the applicable time limits; and

(iii) Shall not request credit on the manufacturer's license, if such license is issued, for the exportation of any sugar containing products, or if such credit has been granted, shall promptly (within 5 business days of the filing of a drawback entry) notify the Licensing Authority and request that such credit be revoked, if the exportation of such sugar containing product manufactured with the use of such transferred sugar has resulted in, or has been used as the basis of a claim by the licensee or any other person for, a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS.

(b) A licensee shall promptly notify the Licensing Authority if any of the information described in paragraph (a) of this section has changed and shall submit an amended application upon the request of the Licensing Authority.

(c) The Licensing Authority may waive any provisions of this section for good cause if it is determined that such a waiver will not adversely affect the purposes of this program.

§ 1530.202 Issuance of a license.

(a) The Secretary of Agriculture, through the Licensing Authority, may issue a license to a manufacturer under which the manufacturer, in accordance with the provisions of this program, may receive transfers of sugar from refiners for the purpose of manufacturing sugar containing products to be exported. The license may contain such conditions, limitations, or restrictions as the Licensing Authority determines to be appropriate for the purposes of this program. The Licensing Authority may add or modify such conditions, limitations or restrictions at such time and in such manner as the Licensing Authority, in his or her discretion, determines to be necessary or appropriate for the purposes of this program.

(b) A quantity of sugar equivalent to the quantity of sugar transferred under a license must be exported in a sugar containing product within 180 days of the date of transfer from the refiner. However, the Licensing Authority may credit a license for valueless sugar lost in normal product manufacture.

(c) The maximum license amount is 10,000 short tons (20 million pounds) of sugar. Quantities of sugar transferred under the license will be charged to the license and quantities of sugar contained in sugar containing products exported will be credited to the license as provided in § 1530.208. At no time may the outstanding balance of charges or credits exceed the maximum license amount.

(d) The licensee shall reserve all rights, if any, to claim drawback refunds with respect to the exportation of sugar containing products under this program. No credit on a license shall be made if any refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS is claimed or received on the basis, or as a result, of the exportation of the sugar containing product.

(e) If a licensee has made a full settlement of the balance on a license, the licensee may surrender the license on terms and conditions acceptable to the Licensing Authority. A licensee may, with the written permission of the Licensing Authority, transfer a license to another manufacturer who does not hold a license, subject to such terms and conditions as the Licensing Authority may impose as he or she determines to be necessary or appropriate to carry out the purposes of this subpart.

(f) The licensee may utilize an agent for the transfer of refined sugar or the exportation of sugar containing products. The agent must, upon request, produce for inspection by the Licensing Authority written authorization designating such person to act as an agent for the purpose of receiving transferred sugar. If the licensee uses an agent to export sugar containing products, the licensee shall notify the Licensing Authority in writing of the agent's identity, and the agent shall certify to the Licensing Authority in writing that the sugar containing products have been exported from the customs territory of the United States.

§ 1530.203 Bond requirements.

(a) A licensee shall post a performance bond, which meets the requirements of this section, with the Licensing Authority. However, no bond will be required for the quantity of any sugar transferred under license that corresponds to a quantity of sugar that has been exported in sugar containing products prior to the transfer of such sugar and credited to the license in accordance with § 1530.208, provided that the Licensing Authority issues a written waiver of the bond requirement.

(b) A bond may cover transfers made either during the period of time specified in the bond (term bond) or for a specified transfer (single entry bond).

(c) Only the licensee who will use the sugar may be the principal on a bond to cover such sugar to be transferred. The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(d) The obligation under the bond shall be made effective as of the date of transfer of the corresponding sugar.

(e) The amount of the bond shall be equal to 20 cents per pound of sugar transferred under the license.

(f) The Licensing Authority will release the obligation under the bond for transferred sugar by 20 cents per pound for the quantity of sugar credited to the license in accordance with § 1530.208, as determined by the Licensing Authority.

(g) If the licensee fails to qualify for a credit to the license within 95 days of the date of transfer of corresponding sugar in an amount sufficient to offset the charge to the license for that corresponding sugar or if such a credit initially granted is subsequently revoked, payment will be made to the United States of America under the bond of a monetary amount equal to up to 1.5 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but was not, exported in the form of sugar containing products in timely compliance with the requirements of this subpart. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate

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such price as he or she deems appropriate.

(h) Within 10 business days of the date of issuance of a license, the licensee shall submit to the Licensing Authority a copy of the performance bond.

§ 1530.204 Transfer of sugar.

(a) Transfers of sugar from a refiner to a licensee must conform with the conditions of the license, the provisions of this program and the program provided for in subpart A of this part, and any other procedures specified by the Licensing Authority.

(b) Refined sugar transferred under a license must be shipped by the refiner to the licensee within 45 days of the date of entry of the sugar entered under subheading 1701.11.02 of the HTS to which the refined sugar corresponds.

(c) The licensee shall submit to the Licensing Authority, within 10 business days of the transfer of sugar, a Notice of Transfer which must adequately identify the refined sugar received from a refiner, including the weight of the transferred sugar and the date of transfer.

(d) The licensee may receive transfers of refined sugar from more than one refiner, as specified on the application for a license; however, the combined total of such transfers may not exceed the maximum license amount.

§ 1530.205 Proof of export and notice of drawback claims.

(a) The proof of export will consist of:

(1) Certification. The licensee shall provide a written certification that he or she has exported a specified quantity of sugar in sugar containing products. The certification shall include:

(i) The licensee's name, address, and license number;

(ii) The product description, the percentage of sugar in such product, and the total weight of sugar contained in the sugar containing product exported;

(iii) The percentage of valueless sugar lost in normal product manufacture and the quantity of valueless sugar actually lost in the manufacture of the product exported;

(iv) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(v) The country of destination and foreign consignee;

(vi) An identification of the transferred sugar which corresponds to the sugar exported in the sugar containing product, including the quantity of the transferred sugar;

(vii) The entry number of a claim, if any, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the sugar containing product and the amount of such refund;

(viii) A statement that the sugar containing products have been exported, that the licensee has reserved all rights to claim drawback refunds, and that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the sugar containing product.

(2) Documentation. The licensee shall submit the following information

(i) An original, certified U.S. Customs Service Form 7512; and

(ii) An original bill of lading or copy of a U.S. Customs Service Form 7511

(b) The certification must accompany the documentation submitted to the Licensing Authority. The certification and documentation must be submitted to the Licensing Authority within 95 days of the date of export. The Licensing Authority will not credit the license for sugar exported in sugar containing products unless satisfactory and timely certification and documentation is received.

(c) Notice of drawback claims. Whenever the licensee knows or has reason to know that any claim has been made, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of sugar containing products produced from sugar transferred from a refiner to the licensee or corresponding sugars, under the provisions of § 1530.204 of this subpart, the licensee shall within 5 business days provide a written notification to the Licensing Authority. This notification shall include the following information, if known or reasonably believed to be true by the licensee:

(1) The licensee's name, address, and license number;

(2) A description of the sugar containing products exported, and the weight of such sugar containing products;

(3) An identification of the imported sugar to which the sugar contained in the exported sugar containing products corresponds, including the quantity of the imported sugar;

(4) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(5) The country of destination and foreign consignee;

(6) The entry number of the drawback claim and the amount of such refund of duties; and

(7) The identity of the person who filed such drawback entry.

(d) The Licensing Authority may waive any of the provisions of this section if compliance with the relevant provisions of HTS subheading 1701.11.02, additional U.S. note 3, and all other regulations in this subpart is otherwise established to the Licensing Authority's satisfaction.

§ 1530.206 Charges and credits to licensee.

(a) Charges will be made to a license for quantities of sugar transferred under the license, effective as of the date of transfer, when the licensee submits the information required by § 1530.204 or when the Licensing Authority otherwise determines that a transfer has been made.

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the requirements of this program, the Licensing Authority will credit a license for:

(1) Quantities of sugar in the sugar containing products for which proof of export has been submitted in accordance with the provisions of § 1530.205 of this subpart, but only if the Licensing Authority is satisfied that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the sugar containing product; and

(2) Quantities of sugar charged to the license which the Licensing Authority determines have been destroyed, lost in the production process, or otherwise disposed of so as to render the use or exportation of a corresponding quantity of sugar in sugar containing products impossible or unnecessary.

(c) The Licensing Authority may revoked any credit previously made to a license if the Licensing Authority determines, on the basis of evidence obtained after the credit was granted, that the licensee had not complied with all of the requirements of this subpart or if the exported sugar containing products are re-exported or returned to the customs territory of the United States without having undergone a substantial transformation.

§ 1530.207 Replacement of sugars; substitution of sugars.

(a) The sugar exported in sugar containing products does not have to be identical to the sugar transferred.

(b) Exportation of sugar in sugar containing products for credit to the license may occur any time after the date on which the license was issued by the Licensing Authority. Any quantity of sugar exported in sugar containing products after the date on which the license was issued, but prior to the transfer of the corresponding sugar, will be treated as having been exported within the time limits of § 1530.202(b).

§ 1530.208 Records.

(a) Each licensee requesting credit in accordance with § 1530.206(b) shall keep records to establish for all sugar containing products exported under the provisions of this program:

(1) The date or inclusive dates of manufacture;

(2) The quantity and identity of the sugar, refined basis, transferred to the licensee under the provisions of this subpart;

(3) The quantity and description of the articles manufactured;

(4) The quantity of sugar, refined basis, contained in the sugar containing products exported;

(5) The country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and

(6) Any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups, or molasses described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the sugar containing product and the amount of any such refund paid.

(b) Each licensee requesting credit for valueless sugar lost in normal product manufacture, or destroyed or otherwise disposed of, shall also keep records to establish the quantity of valueless sugar lost, disposed of, or destroyed.

(c) All records required by this section to be kept by a licensee shall be retained for at least 5 years after a license is credited for the exportation of the sugar containing product.

(d) The licensee must, upon request, make the records covered by this section available for inspection and copying by the Licensing Authority or other appropriate official of the Federal Government.

(e) If, after inspection of the records, the Licensing Authority determines that such records are inadequate to establish that refined sugar was transferred, an appropriate sugar containing product was manufactured, valueless sugar was lost or destroyed, appropriate sugar containing products were exported, drawback of duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS was not claimed or received on the basis, or as a result, of the exportation of the sugar containing product, or any other requirement of this program was complied with, the Licensing Authority may revoke credits granted for the appropriate quantity of sugar.

§ 1530.209 Enforcement.

(a) If at any time after receiving the proof of export described in § 1530.205 of this subpart, the Licensing Authority determines that the export of sugar in the form of sugar containing products corresponding to the quantity of sugar transferred under the license did not occur, and has not been otherwise disposed of or lost in the manufacturing process as valueless sugar, and if the bond has been released under § 1530.203, the Licensing Authority may hold the licensee liable for up to 1.5 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of transfer of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported in sugar containing products. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, the exportation of the sugar containing product, the Licensing authority determines that a refund of such customs duties has been claimed or received by the licensee or any other person, and if the bond has been released under § 1530.203, the Licensing Authority may hold the licensee liable for up to 1.5 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of transfer of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported in sugar containing products. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(c) If at any time the Licensing Authority determines that a licensee has failed to comply with the requirements of this subpart, including the requirements of HTS subheading 1701.11.02 and of the relevant provisions of additional U.S. note 3, the Licensing Authority may, after notice to the licensee, suspend or revoke the license issued to the licensee under this program and may refuse to issue a license to that manufacturer. The Licensing Authority may suspend or revoke a license if claims are filed under 19 CFR part 191 for the refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of a sugar containing product under this program or if any other claim under 19 CFR part 191 is denied on the basis that the sugar containing product was not exported.

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§ 1530.210 Appeals.

(a) Any action or determination of the Licensing Authority under this subpart may be appealed to the Director, Import Policies and Trade Analysis Division, Foreign Agricultural Service (FAS), within 30 days from the date of notification. The appeal must be

chapter 35 and OMB number 0551–0015 has been assigned.

§ 1530.214 Transitional provisions.

(a) All licenses issued to manufacturers prior to October 1, 1990, pursuant to the provisions of 7 CFR 1530.201, under the program for "Sugar to be Re-exported in Sugar Containing

entry with the appropriate customs official.

(d) *Drawback* and *drawback entry* have the meanings ascribed to them in 19 CFR part 191.

(e) *Enter* or *entry*, with respect to sugar imported into customs territory of the United States, refers to sugar that is

(1) The name and address of the applicant and of the facility or facilities at which imported sugar will be used to produce polyhydric alcohols;

(2) The license amount requested, not to exceed the anticipated requirements of the manufacturer on an annual basis;

(3) The name of the person that will establish a performance bond in favor of

sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption. The license shall state the maximum amount of sugar which may be imported under the license. The license may contain such additional conditions, limitations or restrictions as

person. Any attempt to transfer or assign a license shall be null and void and shall be grounds for the revocation of the license by the Licensing Authority.

(f) The licensee may utilize an agent to enter imported sugar. The licensee must provide to the Licensing Authority a copy of a written authorization

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§ 1530.210 Appeals.

(a) Any action or determination of the Licensing Authority under this subpart may be appealed to the Director, Import Policies and Trade Analysis Division, Foreign Agricultural Service (FAS), within 30 days from the date of notification. The appeal must be presented in writing and must specifically state any reason as to why such determination should not stand. The Director, Import Policies and Trade Analysis Division, FAS, will provide such person with an opportunity for an informal hearing on such matter.

(b) A further appeal from the final decision of the Director, Import Policies and Trade Analysis Division, FAS, may be made to the Administrator, FAS, within five business days of the notification of the decision of the Director, Import Policies and Trade Analysis Division, FAS.

§ 1530.211 Waivers.

Upon written application of the licensee, the Licensing Authority may extend the period for the export of sugar containing products, may temporarily increase the maximum amount of the license, may extend the period for submitting proof of export, or may temporarily waive or modify any other requirement imposed by this subpart if such waiver or modification is necessary or appropriate under unusual, unforeseen or extraordinary circumstances and will not frustrate the purposes of this program and if compliance with the relevant provisions of HTS subheading 1701.11.02, additional U.S. note 3 is established to the Licensing Authority's satisfaction. The Licensing Authority may specify additional requirements or procedures in place of the requirements or procedures waived or modified.

§ 1530.212 Expiration of licenses.

(a) The licenses issued under this program shall expire upon written notice to the licensees by the Licensing Authority. The notice will state the date on which the licenses will expire and any other details applicable to the expiration of the licenses.

(b) If there have been no charges or credits on the license within 12 months of the date on which the license was issued, or any subsequent period of 18 months, the license may be deemed to have expired.

§ 1530.213 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. chapter 35 and OMB number 0551-0015 has been assigned.

§ 1530.214 Transitional provisions.

(a) All licenses issued to manufacturers prior to October 1, 1990, pursuant to the provisions of 7 CFR 1530.201, under the program for "Sugar to be Re-exported in Sugar Containing Products," are canceled effective October 9, 1990.

(b) Any manufacturer who, on September 30, 1990, held a license which had a balance of charges and credits other than zero and which is canceled pursuant to paragraph (a) of this section may be issued a new license upon such manufacturer's agreement to:

(1) Fully settle the balance outstanding on such previous license, by bringing such balance to zero;

(2) Comply with all the provisions of this subpart, subheading 1701.11.02 of the HTS, and additional U.S. note 3; and

(3) Comply with any terms, conditions and procedures imposed by the Licensing Authority in order to assure an orderly transition.

(c) During the transitional period between October 1, 1990, and the promulgation of a final rule to replace the interim rule issued on October 9, 1990, the Licensing Authority may modify or waive any requirement of this subpart, including the requirements that a manufacturer make a written application for a license prior to the issuance of the license and make a written application for a waiver under § 1530.210 of this subpart, if the Licensing Authority determines such modification or waiver is necessary or appropriate to assure an orderly transition and will not frustrate the purposes of this program.

Subpart C—Sugar for the Production of Polyhydric Alcohol

§ 1530.300 Definitions.

For purposes of this subpart, unless the context indicates otherwise, the following words and phrases have the meanings ascribed to them:

(a) *Additional U.S. note 3* means paragraph (c) of additional U.S. note 3 to chapter 17 of the HTS.

(b) *Agent* means a licensed customs house broker, freight forwarder, or other person authorized to act on behalf of the licensee.

(c) *Date of entry* is the date when the U.S. Customs Service entry form is properly executed and deposited, together with any estimated duties and special import fees and any related documents required by law or regulation to be filed with such form at the time of entry with the appropriate customs official.

(d) *Drawback* and *drawback entry* have the meanings ascribed to them in 19 CFR part 191.

(e) *Enter* or *entry*, with respect to sugar imported into customs territory of the United States, refers to sugar that is entered or withdrawn from warehouse for consumption.

(f) *HTS* means the Harmonized Tariff Schedule of the United States.

(g) *License* means a license, issued by the Secretary of Agriculture, through the Licensing Authority, which permits the entry, in accordance with the provisions of this subpart, of raw cane sugar described in subheading 1701.11.02 of the HTS for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption.

(h) *Licensee* means a manufacturer to whom a license has been issued pursuant to the provisions of this subpart.

(i) *Licensing Authority* means the Team Leader, Import Quota Programs, Import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, or the Team Leader's designee.

(j) *Manufacturer* means a person who is engaged in the production (other than by distillation) of polyhydric alcohols from sugar.

(k) *Number 11 contract price* means the daily closing price per pound of raw sugar for the nearby Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange.

(l) *Number 14 contract price* means the daily closing price per pound of raw sugar for the nearby Number 14 contract of the New York Coffee, Sugar and Cocoa Exchange.

(m) *Person* means any individual, partnership, corporation, association, estate, trust or any other business enterprise or legal entity.

(n) *Program* means the licensing program provided for in the regulations in this subpart and includes the requirements and limitations of HTS subheading 1701.11.02 and additional U.S. note 3.

(o) *Sugar* means raw cane sugar described in subheading 1701.11.02 of the HTS.

§ 1530.301 Application for a license.

(a) An applicant for a license must apply in writing to the Licensing Authority. The letter of application shall contain as a minimum the following information:

(1) The name and address of the applicant and of the facility or facilities at which imported sugar will be used to produce polyhydric alcohols;

(2) The license amount requested, not to exceed the anticipated requirements of the manufacturer on an annual basis;

(3) The name of the person that will establish a performance bond in favor of the United States Government on behalf of the applicant;

(4) The anticipated requirements of the manufacturer for sugar to be used in the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, on an annual basis; and

(5) The total quantity of polyhydric alcohol produced (other than by distillation), except polyhydric alcholols for use as a substitute for sugar in human food consumption, by the manufacturer during the previous 12-month period, and the total quantity of polyhydric alcohol produced by the manufacturer during the previous 12-month period.

(b) An application for a license shall contain a certification that the manufacturer shall use the quantity of sugar entered under a license solely for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, and that the manufacturer shall notify the Licensing Authority, within 95 days of the exportation of any polyhydric alcohols, if such exportation has resulted in, or has been used as the basis of a claim by the licensee or any other person for, a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.92, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS and the amount of such refund.

(c) A licensee shall promptly notify the Licensing Authority if any of the information described in paragraph (a) of this section has changed and shall submit an amended application upon the request of the Licensing Authority.

(d) The Licensing Authority may waive any provisions of this section for good cause if it is determined that such a waiver will not adversely affect the purposes of this program.

§ 1530.302 Issuance of a license.

(a) The Secretary of Agriculture, through the Licensing Authority, may issue a license to a manufacturer under which the manufacturer, in accordance with the provisions of this program, may enter raw cane sugar described in subheading 1701.11.02 of the HTS for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption. The license shall state the maximum amount of sugar which may be imported under the license. The license may contain such additional conditions, limitations or restrictions as the Licensing Authority determines to be appropriate for the purposes of this program. The Licensing Authority may add or modify such conditions, limitations or restrictions at such time and in such manner as the Licensing Authority, in his or her discretion, determines to be necessary or appropriate for the purposes of this program.

(b) The total quantity of sugar imported under a license must be used or the sole purpose of producing (other than by disillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, within 180 days of the date of entry of such sugar.

(c) The maximum amount of sugar which may be imported under the license will be the requirements of the manufacturer for sugar to be used in the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, during the 12-month period following the effective date of the license, as determined by the Licensing Authority. Quantities of sugar imported under the license will be charged to the license and quantities of sugar used for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, will be credited to the license as provided in § 1530.306. At no time may the charges to the license exceed the maximum license amount specified in the license.

(d) The licensee shall reserve all rights, if any, to claim drawback refunds with respect to the exportation of polyhydric alcohols under this program. No credit on a license shall be made if any refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS is claimed or received on the basis, or as a result, of the exportation of such polyhydric alcohols.

(e) If a licensee has made a full settlement of the balance on a license, the licensee may surrender the license on terms and conditions acceptable to the Licensing Authority. A licensee may not transfer a license to any other person. Any attempt to transfer or assign a license shall be null and void and shall be grounds for the revocation of the license by the Licensing Authority.

(f) The licensee may utilize an agent to enter imported sugar. The licensee must provide to the Licensing Authority a copy of a written authorization designating such person to act as an agent for the purpose of entering sugar, and the agent shall produce such authorization for inspection by the appropriate U.S. Customs Service official at the time of entry. If the licensee uses an agent to export polyhydric alcohol, the licensee shall notify the Licensing Authority in writing of the agent's identity.

§ 1530.303 Bond requirements.

(a) Unless the licensee has posted a performance bond with the U.S. Customs Service which is satisfactory to the Licensing Authority with respect to the requirements of this program, the licensee shall post a performance bond, which meets the requirements of this section, with the Licensing Authority.

(b) A bond may cover entries made either during the period of time specified in the bond (term bond) or for a specified entry (single entry bond).

(c) Only the licensee who will use the sugar may be the principal on a bond to cover such sugar to be imported. The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(d) The obligation under the bond shall be made effective as of the date of entry of the sugar.

(e) The amount of the bond shall be equal to 20 cents per pound of sugar imported under the license.

(f) The appropriate customs official or the Licensing Authority, as appropriate, will release the obligation under the bond by 20 cents per pound for the quantity of sugar used in the production of polyhydric alcohols and credited to the license in accordance with § 1530.306, as determined by the Licensing Authority.

(g) If the licensee fails to qualify for a credit to the license within 95 days of the date of production of polyhydric alcohols in a quantity sufficient to offset the charge to the license for the imported sugar used for producing such polyhydric alcohols, or if such a credit initially granted is subsequently revoked, payment will be made to the United States of America under the bond of a monetary amount equal to up to 1.5 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of

raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which production of polyhydric alcohol was required, whichever difference is greater, times the quantity of raw sugar that should

(3) The date(s) on which such polyhydric alcohols were produced; and

(4) The following certification, with all blank spaces appropriately filled in as indicated by the instructions placed in brackets:

'The undersigned hereby certifies that

(c) If polyhydric alcohols produced with sugar imported under the license are exported, the licensee shall provide to the Licensing Authority, within 95 days of the date of exportation of the polyhydric alcohols, the following documentation:

license as required by § 1530.304(c) or when the Licensing Authority otherwise determines that the licensee has made an entry under subheading 1701.11.02 of the HTS.

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the

exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and all drawback entries, if any, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any

market day before the date of entry of the sugar or the last market day before the end of the period during which production of polyhydric alcohol was required, whichever difference is greater, times the quantity of sugar that should have been, but was not, used in

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raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which production of polyhydric alcohol was required, whichever difference is greater, times the quantity of raw sugar that should have been, but was not, used in the production of polyhydric alcohol in timely compliance with the requirements of this subpart. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(h) Within 10 business days of the date of issuance of a license, the licensee shall submit to the Licensing Authority a copy of the performance bond.

§ 1530.304 Entry of sugar.

(a) The licensee shall be permitted to enter imported sugar under subheading 1701.11.02 of the HTS in conformity with the conditions, limitations and restrictions of the license, the provisions of this subpart and additional U.S. note 3, and any other procedures specified by the Licensing Authority.

(b) The licensee must present the license to the appropriate U.S. Customs Service official at the time of entry. Such customs official will mark on the license:

(1) The quantity of sugar entered;

(2) The date of entry; and

(3) The customs entry number.

(c) The licensee shall submit to the Licensing Authority a copy of the license, as marked by the customs official, within 10 business days after each entry of sugar.

§ 1530.305 Proof of production of polyhydric alcohols.

(a) Certificate of use. Within 30 days of the date of production of polyhydric alcohols from sugar imported under a license, the licensee shall provide a written certification, signed by the licensee, to the Licensing Authority that he or she has used, within 180 days of the date of entry of sugar under the license, such sugar for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption. The certification shall include:

(1) The licensee's name, address, and license number;

(2) The customs entry number(s), date(s) of entry, and total weight of sugar used in the production of such polyhydric alcohols;

(3) The date(s) on which such polyhydric alcohols were produced; and

(4) The following certification, with all blank spaces appropriately filled in as indicated by the instructions placed in brackets:

The undersigned hereby certifies that between [insert date(s) of production of polyhydric alcohols] _____, 19____, and _____, 19____, the undersigned has used [insert total weight of imported sugar] _____ pounds of sugar, imported on [insert date of entry] _____, 19____, for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption. The undersigned further certifies that the quantity of sugar shown on this certificate of use does not include any sugar previously covered by another certificate of use.

(b) If polyhydric alcohols produced with sugar imported under the license are exported, the licensee shall provide an additional written certification, signed by the licensee, to the Licensing Authority, within 95 days of the date of exportation of the polyhydric alcohols. The certification shall include:

(1) The licensee's name, address, and license number;

(2) The customs entry number(s), date(s) of entry, and total weight of sugar used in the production of such polyhydric alcohols;

(3) The date(s) on which such polyhydric alcohols were produced;

(4) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(5) The country of destination and foreign consignee;

(6) The entry number of a claim, if any, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the polyhydric alcohol and the amount of such refund; and

(7) A statement that the licensee has reserved all rights to claim drawback refunds with respect to the exportation of the polyhydric alcohol, and that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the polyhydric alcohol.

(c) If polyhydric alcohols produced with sugar imported under the license are exported, the licensee shall provide to the Licensing Authority, within 95 days of the date of exportation of the polyhydric alcohols, the following documentation:

(1) An original, certified U.S. Customs Service Form 7512; and

(2) An original bill of lading or copy of a U.S. Customs Service Form 7511.

(d) Notice of drawback claims. Whenever the licensee knows or has reason to know that any claim has been made, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of polyhydric alcohol, whether or not such polyhydric alcohol was produced from sugar imported under the licensee's license, the licensee shall within 5 business days provide a written notification to the Licensing Authority. This notification shall include the following information, if known or reasonably believed to be true by the licensee:

(1) The licensee's name, address, and license number;

(2) A description, and the weight, of such polyhydric alcohol exported;

(3) An identification of the imported sugar which was used in the production of the polyhydric alcohol, including the quantity of the imported sugar;

(4) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(5) The country of destination and foreign consignee;

(6) The entry number of the drawback claim and the amount of such refund of duties; and

(7) The identity of the person who filed such drawback entry.

(e) The Licensing Authority may waive any of the provisions of this section if compliance with the relevant provisions of HTS subheading 1701.11.02, additional U.S. note 3, and all other regulations in this subpart is otherwise established to the Licensing Authority's satisfaction.

§ 1530.306 Charges and credits to licenses.

(a) Charges will be made to a license, effective as of the date of entry, for quantities of sugar entered under the license, when the licensee submits the license as required by § 1530.304(c) or when the Licensing Authority otherwise determines that the licensee has made an entry under subheading 1701.11.02 of the HTS.

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the requirements of this program, the Licensing Authority will credit a license for quantities of sugar for which a Certificate of Use has been submitted in accordance with the provisions of § 1530.305 of this subpart, but only if the Licensing Authority is satisfied that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the polyhydric alcohol.

(c) The Licensing Authority may revoke any credit previously made to a license if the Licensing Authority determines, on the basis of evidence obtained after the credit was granted, that the licensee had not complied with all of the requirements of this subpart.

§ 1530.307 Replacement of sugars; substitution of sugars.

The sugar used in the production of polyhydric alcohols under this program must be the identical sugar imported under the license. The licensee shall not substitute other sugar for sugar imported under the license or replace such imported sugar with other sugar.

§ 1530.308 Records.

(a) Each licensee requesting credit in accordance with § 1530.306(b) shall keep records to establish for all sugar imported, and for all polyhydric alcohol produced, under the provisions of this program:

(1) The quantity and identity of the sugar imported by the licensee under the provisions of this subpart, including the customs entry numbers;

(2) The quantity and description of the polyhydric alcohols manufactured and the date or inclusive dates of manufacture;

(3) The quantity of sugar actually used in the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption; and

(4) If any polyhydric alcohols have been exported, the country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and all drawback entries, if any, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11, and 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the polyhydric alcohol and the amount of any such refund paid.

(b) All records required by this section to be kept by a licensee shall be retained for at least 5 years after a license is credited for the production of the polyhydric alcohol.

(c) The licensee must, upon request, make the records covered by this section available for inspection and copying by the Licensing Authority or other appropriate official of the Federal Government.

(d) If, after inspection of the records, the Licensing Authority determines that such records are inadequate to establish that the sugar imported under the license was used for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or that drawback of duties on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS was not claimed or received on the basis, or as a result, of the exportation of the polyhydric alcohol, or that any other requirement of this program was complied with, the Licensing Authority may revoke credits granted for the appropriate quantity of sugar.

§ 1530.309 Enforcement.

(a) If at any time after receiving the proof of production of polyhydric alcohol described in § 1530.305 of this subpart, the Licensing Authority determines that the sugar entered under the license was not used for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, and if the bond has been released under § 1530.305, the Licensing Authority may hold the licensee liable for up to 1.5 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which production of polyhydric alcohol was required, whichever difference is greater, times the quantity of sugar that should have been, but was not, used in such production of such polyhydric alcohol. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of polyhydric alcohol, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other person, and if the bond has been released under § 1530.305, the Licensing Authority may hold the licensee liable for up to 1.5 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar used in the production of such polyhydric alcohol. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(c) If at any time the Licensing Authority determines that a licensee has failed to comply with the requirements of this subpart, including the requirement of HTS subheading 1701.11.02 and of the relevant provisions of additional U.S. note 3, the Licensing Authority may, after notice to the licensee, suspend or revoke the license issued to the licensee under this program and may refuse to issue a license to that manufacturer.

§ 1530.310 Appeals.

(a) Any action or determination of the Licensing Authority under this subpart may be appealed to the Director, Import Policies and Trade Analysis Division,

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Foreign Agricultural Service (FAS), within 30 days from the date of notification. The appeal must be presented in writing and must specifically state any reason as to why such determination should not stand. The Director, Import Policies and Trade Analysis Division, FAS, will provide such person with an opportunity for an informal hearing on such matter.

(b) A further appeal from the final decision of the Director, Import Policies and Trade Analysis Division, FAS, may be made to the Administrator, FAS, within five business days of the notification of the decision of the Director, Import Policies and Trade Analysis Division, FAS.

§ 1530.311 Waivers.

Upon written application of the licensee, the Licensing Authority may extend the period for the production of polyhydric alcohols, may temporarily increase the maximum amount of the license, may extend the period for submitting proof of use, or may temporarily waive or modify any other requirement imposed by this subpart if such waiver or modification is necessary or appropriate under unusual, unforeseen or extraordinary circumstances and will not frustrate the purposes of this program and if compliance with the relevant provisions of HTS subheading 1701.11.02, additional U.S. note 3 is established to the Licensing Authority's satisfaction. the Licensing Authority may specify additional requirements or procedures in place of the requirements or procedures waived or modified.

§ 1530.312 Expiration of licenses.

(a) The licenses issued under this program shall expire upon written notice to the licensees by the Licensing Authority. The notice will state the date on which the licenses will expire and any other details applicable to the expiration of the licenses.

(b) If there have been no charges or credits on the license within 12 months of the date on which the license was issued, or any subsequent period of 18 months, the license may be deemed to have expired.

§ 1530.313 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements in these regulations in accordance with 44 U.S.C. chapter 35 and OMB number 0551-0015 has been assigned.

§ 1530.314 Transitional provisions.

(a) All licenses issued to manufacturers prior to October 1, 1990, pursuant to the provisions of 7 CFR 1530.201, under the program for "Sugar for Production of Polyhydric Alcohol," are canceled effective October 9, 1990.

(b) Any manufacturer who, on September 30, 1990, held a license which had a balance of charges and credits other than zero and which is canceled pursuant to paragraph (a) of this section may be issued a new license upon such manufacturer's agreement to:

(1) Fully settle the balance outstanding on such previous license, by bringing such balance to zero;

(2) Comply with all the provisions of this subpart, subheading 1701.11.02 of the HTS, and additional U.S. note 3; and

(3) Comply with any terms, conditions and procedures imposed by the Licensing Authority in order to assure an orderly transition.

(c) During the transitional period between October 1, 1990, and the promulgation of a final rule to replace the interim rule issued on October 9, 1990, the Licensing Authority may modify or waive any requirement of this subpart, including the requirements that a manufacturer make a written application for a license prior to the issuance of the license and make a written application for a waiver under § 1530.210 of this subpart, if the Licensing Authority determines such modification or waiver is necessary or appropriate to assure an orderly transition and will not frustrate the purposes of this program.

PART 6—[AMENDED]

§§ 6.90–6.93 [Removed]

2. In 7 CFR part 6, subpart—Sugar Import Quotas, consisting of §§ 6.90 through 6.93, is removed.

§§ 6.100–6.113 [Removed]

3. In 7 CFR part 6, the subpart heading "Subpart—Importation of Sugar Free from Quota" is revised to read "Subpart—Calculation of Market Stabilization Price"; the undesignated centerheading "Sugar to be Re-Exported in Refined Form", the authority citation following the centerheading, and §§ 6.100 through 6.113 are removed; and the undesignated centerheading which reads "Calculation of Market Stabilization Price" is removed.

§§ 6.300–6.302 [Redesignated as §§ 6.100–6.102]

4. In 7 CFR part 6, the authority citation preceding §§ 6.300 through 6.302 is redesignated as the authority citation for "Subpart—Calculation of Market Stabilization Price" and §§ 6.300 through 6.302 are redesignated as §§ 6.100 through 6.102, respectively.

Signed at Washington, DC on October 5, 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90-24143 Filed 10-9-90; 4:57 pm]

BILLING CODE 3410-10-M

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; Pilot Project Exemptions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR part 210, the National School Lunch Program, to permit the Department to exempt those State agencies or school food authorities selected for the pilot projects mandated under section 205 of Public Law 101–147 from some or all of the regulatory requirements relating to the counting of meals and the applications for free and reduced price eligibility. Additionally, this rule extends the approved exemptions to the School Breakfast and/or Special Milk Programs, if pilot project schools also operate these programs. This rule responds to a directive to the Secretary of Agriculture in section 205 of Public Law 101–147 to issue final regulations implementing the pilot projects.

EFFECTIVE DATE: This rule is effective July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 515, Alexandria, Virginia 22302 or phone (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

Section 205(b) of Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, directs the Secretary of Agriculture to issue final regulations, not later than July 1, 1990, implementing the pilot projects authorized under section 18(d) of the National School Lunch Act (42 U.S.C. 1769(d)). Further, the provisions in this rule are nondiscretionary and interpretive in nature. For these reasons, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b)(3) (A) and (B), that it is impracticable, unnecessary and contrary to public interest to take prior public comment and that good cause therefore exists for publishing this rule without prior public comment. For the same reasons, the Administrator has determined in accordance with 5 U.S.C. 553(d) (1) and (3) that good cause exists for making this rule effective without a 30 day post-publication waiting period. Finally, because section 205 of Public Law 101–147 charges the Secretary to issue final regulations implementing the pilot projects not later than July 1, 1990, this rule is being made effective retroactive to July 1, 1990.

This final rule has been reviewed by the Assistant Secretary for Food and Consumer Services under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This rule will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule imposes no new reporting or recordkeeping requirements requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule related notice at 48 FR 29114, June 24, 1983.)

Background

Section 205(a) of Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, amended section 18(g) (later redesignated as section 18(d)) of the National School Lunch Act (NSLA) [42 U.S.C. 1769(d)] to require the Secretary to conduct pilot projects seeking to simplify the paperwork burden incurred by State agencies and school food authorities relating to the requirements for daily lunch counts and annual applications for free and reduced price meals.

The first pilot program, authorized under section 18(d)(1) of the NSLA, requires the Department to solicit proposals for State agencies and school food authorities to conduct pilot programs which test alternatives to daily meal counts and annual applications. The second and third pilot programs, authorized under paragraphs (d)(2) and (d)(3) of section 18 of the NSLA, require the Department to carry out pilot programs under which a limited number of schools participating under Provision 1 and Provision 2 of the special assistance certification and reimbursement alternatives have the option of determining the number of free, reduced price and paid meals served daily by multiplying the daily total meal counts by percentages determined on the basis of current enrollment and eligibility status. In addition to the three required pilot programs, section 18(d)(4) of the NSLA authorizes the Department to conduct any other pilot programs to test alternative counting and claiming procedures which do not fall into the pilot programs otherwise authorized under section 18(d).

Accordingly, the Department published a notice on June 11, 1990 (55 FR 23572) soliciting proposals from State agencies and school food authorities wishing to conduct pilot projects under the authority of section 18(d)(1) of the NSLA. The Department will notify State agencies and school food authorities by August 10, 1990 if their proposals are approved. In addition, the Department sent a targeted mailing to school food authorities with schools currently participating in the special assistance certification and reimbursement alternatives under 7 CFR 245.9 soliciting their participation in the pilot projects authorized under paragraphs (d)(2) and (d)(3) of section 18 of the NSLA.

In addition to the mandate to conduct pilot projects, section 205(b) of Public Law 101–147 also directed the Secretary of Agriculture to issue final regulations implementing the pilot projects. In order to implement the pilot projects under section 18(d)(1), section 205(a) allows the Department to permit selected school food authorities and State agencies to depart from some or all of the statutory requirements relating to daily meal counts, by type, and annual applications for free and reduced price meals. Unlike the projects authorized under section 18(d)(1), the conditions for the pilot projects under sections 18(d) (2) and (3) are specifically described in the statute. Therefore, no statutory waiver authority is necessary. In order to comply with the statutory mandates for these projects, however, it will be necessary to waive certain regulatory provisions. In addition, while no projects are currently contemplated under section 18(d)(4), any projects instituted in the future could require deviations from the regulations (although no statutory provisions could be waived). Therefore, this rule responds to this additional directive by amending the National School Lunch Program regulations to permit the Department to exempt those State agencies or school food authorities selected for the pilot projects mandated under section 18(d) of the NSLA from some or all of the requirements relating to the counting of meals and the applications for free and reduced price eligibility requirements of 7 CFR parts 210 and 245.

This rule further allows the Department to extend the approved exemptions to the School Breakfast and/or Special Milk Programs requirements, when those Programs operate in an approved pilot program school. Eligibility and counting requirements for those Programs are similar to those requirements under the National School Lunch Program and the extension of the exemptions is necessary to ensure that pilot program schools need only administer one set of procedures. The Department emphasizes that exemptions will be authorized only when necessary to carry out the approved demonstration projects.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grants programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities. Accordingly, 7 CFR part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: The provisions of Part 210 issued under secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

2. Part 210.28 Regional Office addresses and § 210.29 OMB control numbers are redesignated as §§ 210.29 and 210.30, respectively, and a new § 210.28 is added to read as follows:

§ 210.28 Pilot project exemptions.

Those State agencies or school food authorities selected for the pilot projects mandated under section 18(d) of the Act may be exempted by the Department from some or all of the counting and free and reduced price application requirements of this part and 7 CFR part

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 90-178]

Brucellosis in Cattle; State and Area Classifications

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§ 210.28 Pilot project exemptions.

Those State agencies or school food authorities selected for the pilot projects mandated under section 18(d) of the Act may be exempted by the Department from some or all of the counting and free and reduced price application requirements of this part and 7 CFR part 245, as necessary, to conduct an approved pilot project. Additionally, those schools selected for pilot projects that also operate the School Breakfast Program (7 CFR part 220) and/or the Special Milk Program for Children (7 CFR part 215), may be exempted from the counting and free and reduced price application requirements mandated under these Programs. The Department shall notify the appropriate State agencies and school food authorities of its determination of which requirements are exempted after the Department's selection of pilot projects.

Dated: October 5, 1990.

Betty Jo Nelsen,

Administrator.

[FR Doc. 90-24101 Filed 10-11-90; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1079

[DA-90-027]

Milk in the Iowa Marketing Area; Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action revises certain provisions of the Iowa Federal milk order for the months of September through November. The action reduces the shipping percentage for pooling supply plants by 5 percentage points from 35 to 30 percent of receipts. The revision is made in response to a request by Beatrice Cheese, Inc., the operator of a supply plant who ships milk to distributing plants regulated under the order. The action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants. In addition, since these shipping percentages have been reduced during the months of September-November for each of the last five years, the shipping percentage are being reduced during these months for an indefinite period.

EFFECTIVE DATE: October 12, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Supply Plant Shipping Percentages; Issued August 2, 1990; published August 8, 1990 (55 FR 32263).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action reduces the regulatory impact on milk handlers and tends to ensure that the market will be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1079.7(b)(1) of the Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (55 FR 32263) concerning a proposed decrease in the shipping percentage for pool supply plants for the months of September through November. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 15, 1990.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentage should be lowered by 5 percentage points from the present 35 to 30 percent of milk receipts during the months of September through November.

Section 1079.7(b)(1) of the Iowa order provides that the Director of the Dairy Division may increase or reduce the supply plant shipping percentage by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

A reduction of 5 percentage points to the supply plant shipping percentage for the months of September-November 1990 was proposed by Beatrice Cheese, Inc., a handler who operates a pool supply plant under the order. The handler contends that the reduction of the shipping standard is necessary to prevent uneconomic shipments from supply plants to distributing plants. The handler points out that receipts of producer milk under the order during the first six months of 1990 were up about 4 percent from the previous year. In addition, about 26 percent of producer milk pooled under the order was used in Class I during the first six months, compared to 26.5 percent the previous year. The handler also points out that receipts for milk at its supply plant during the first six months were about 5 percent greater than the previous year. Based on the relationship of fluid milk sales to the receipts of milk, the handler contends that a reduction of the supply plant shipping percentage is necessary to prevent uneconomic shipments during the months of September-November 1990. Absent a reduction, the handler contends that it would have to engage in the uneconomic backhauling of 2.0 to 2.5 million pounds of milk per month in order to pool its supply of milk. The handler maintains that distributing plants would be adequately supplied with milk with a lowering of the supply plant shipping percentage by 5 percentage points to 30 percent of receipts.

The notice of proposed rulemaking noted that these supply plant shipping percentages had been reduced during the months of September through November during each of the last five years. As a result of this history of the supply/demand relationship for the market during these months, consideration was given to reducing the shipping percentage for the months of September through November for an indefinite period.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply the market, filed comments opposing the requested action. Mid-Am expressed the view that a reduction of the shipping percentage could result in a shortage of milk for Class I use at distributing plants. Basically, Mid-Am contends that a review of the market's supply/demand relationship for the first six months of the year is not necessarily indicative of the supply/demand relationship that will exist during the last half of the year. Mid-Am notes that during the last half of 1989, producer receipts declined by about 14 percent from the same period in 1988 resulting in a Class I utilization of more than 36 percent compared to a 30 percent Class I utilization during the last half of 1988. As a result, Mid-Am contends that a reduction of the supply plant shipping percentage is unwarranted for the September-November 1990 period, particularly since increased fluid milk sales can be anticipated with the opening of schools. In addition, Mid-Am contends that an indefinite reduction is not warranted in view of a number of uncertainties associated with milk production and marketing.

In a separate action, Associated Milk Producers Inc., (AMPI), a cooperative association that represents producers who supply the market, requested a suspension of certain provisions that limit the amount of milk that can be moved directly from farms to nonpool plants and still be priced under the order. In supporting this request, AMPI cited the same marketing conditions expressed by Beatrice Cheese. AMPI projects that, based on the first six months of the year, about 30 percent of the market's milk supply will be needed for Class I use during September-November this year. AMPI maintains that the normal historical utilization increase should be assumed rather than the aberration from the historical trend that occurred during 1989 when a significant quantity of milk was removed from the market because of pricing considerations.

The reasons presented by Mid-Am do not provide a sufficient basis for denying the request to reduce the supply plant shipping percentage during the months of September-November. The best available indicator of the market's potential supply/demand relationship for the months involved is an extension of the marketing conditions experienced during the first six months of the year and the historical relationship between marketing conditions during the first and second half of the year. In this regard, the experience of 1989 is a clear aberration from the normal trend. Consequently, the marketing conditions indicated by Beatrice Cheese and AMPI reflect a need to reduce the supply plant shipping percentage to avoid uneconomic shipments of milk during the September-November period.

A reduction of the shipping percentage this year results in a reduction during each of the last six years. Thus, it appears that a lower shipping standard during the months of September-November is more reflective of marketing conditions than the 35-percent shipping standard. Thus, the lower shipping standard should be established for these months for an indefinite period. Mid-Am's concerns that an indefinite lowering of the shipping standard may not reflect future marketing conditions are not persuasive since the order provides a remedy to either increase or reduce the shipping standard as a result of changes in marketing conditions. Further, an indefinite duration in view of the history or revision actions, is more likely to result in a reduction of rulemaking actions that occur in continuously adjusting these provisions of the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest is that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September through November;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded the opportunity to file written data, views, or arguments concerning this revision.

Therefore, good cause exists for making this revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

It is therefore ordered that the following provisions of § 1079.7(b) of the Iowa milk order are hereby revised for the months of September through November.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority for 7 CFR part 1079 continues to read as follows:

Authority: Sections 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

§ 1079. [Amended]

2. In the introductory text of § 1079.7(b), the provision "35 percent" is revised to "30 percent" for the months of September, October and November.

Signed at Washington, DC on: October 5, 1990.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 90-24057 Filed 10-11-90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 90-178]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Idaho from Class A to Class Free. We have determined that Idaho now meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Idaho.

DATES: Interim rule effective October 9, 1990. Consideration will be given only to comments received on or before December 11, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies of written comments to Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-178. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6188.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella.*

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucellosis infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards

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for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of Brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining (1) a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the effective date of this interim rule, Idaho was classified as a Class A State because of its herd infection rate and its MCI reactor prevalence rate. However, after reviewing its brucellosis program records, we have concluded that the State of Idaho meets the standards for Class Free status.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer, (2) maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent), and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. Idaho now meets the standards for classification as Class Free.

Therefore, we are removing Idaho from the list of Class A States in § 78.41(b) adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Idaho.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Idaho.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Idaho from Class A to Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Idaho. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Idaho, as well as buyers and importers of Idaho cattle.

There are an estimated 16,000 herds in Idaho, 98 percent of which are owned by small entities that would be affected by this rule. Most of these herds are not certified-free. Test-eligible cattle offered for sale from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. Last year Idaho tested 86,454 cattle under the Class A status regulations for change-of-ownership. This testing costs approximately $3.50 per head, or $302,589. If such testing were distributed equally among all herds affected by this rule, Class Free status would save less than $19 per herd.

Therefore, we have determined that changing Idaho's brucellosis status to Class Free should not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (a) is amended by adding "Idaho," after "Hawaii,".

§ 78.41 [Amended]

3. Section 78.41, paragraph (b) is amended by removing "Idaho,".

Done in Washington, DC, this 9th day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-24099 Filed 10-11-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-94-AD; Amdt. 39-6771]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, which requires replacement of the ram air turbine (RAT) ejection jack with a new or modified ejection jack. This amendment is prompted by a report of a RAT failing to deploy on command in flight due to a malfunction of the ejection jack. This condition, if not corrected, could result in the RAT failing to deploy due to ejection jack overload, and subsequently, the RAT failing to provide hydraulic power in an emergency situation.

EFFECTIVE DATE: November 19, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A320 series airplanes, which requires replacement of the ram air turbine (RAT) ejection jack with a new or modified ejection jack, was published in the **Federal Register** on June 7, 1990 (55 FR 23218).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America supported the rule. The other commenter, Airbus Industrie, recommended that the rule be modified to be consistent with the revised French Airworthiness Directive (AD) 90-026-07(B)R1, dated April 18, 1990. The revised French AD introduced a rigging adjustment on the RAT, to be performed within 30 days after the effective date of the AD and furthermore required replacement of the ejection jack prior to June 30, 1991 (rather than the 30-day compliance time proposed in this AD action). The FAA does not concur that the rigging adjustment must be incorporated into the proposed rule since the rigging adjustment has already been accomplished on all currently-operating Model A320 series airplanes in the U.S. fleet. The FAA also does not concur with the recommendation to extend the compliance time for replacement of the ejection jack, since failure of the RAT to deploy following the loss of generated electrical power could result in the loss of electrical power. The FAA has determined that the interval proposed is the maximum permissible time allowable without compromising air safety. However, if an individual operator can provide substantiating data and/or alternative inspection procedures to the FAA that will justify a change in the compliance time specified in the AD and still maintain an acceptable level of safety, that request will be considered under the provisions of paragraph B of the final rule.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternative means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification of the ejection jack will be performed by Dowty Rotol at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,320.

The regulations adopted will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034), February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended].

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A320 series airplanes, which have not incorporated Modification 21882, certificated in any category. Compliance is requried within 30 days after the effective date of this AD, unless previously accomplished.

To prevent failure of the ram air turbine (RAT) to deploy on command due to a malfunction of the extention jack, accomplish the following:

A. Remove ejection jack, Part Number (P/N) 114160003, and replace it with a new or modified ejection jack, P/N 114160004 or 114160005, in accordance with Air Industrie Service Bulletin A320-29-1030, dated February 15, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW.,

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the

49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A320-

14 CFR Part 39

[Docket No. 90-NM-105-AD; Amdt 39-6765]

Airworthiness Directives; Boeing Model 727 and 727-100 Series Airplanes, Equipped with Main Deck Cargo Door Installed in Accordance with Supplemental Type Certificate

introduced by Revision "N" to the Aeronautical Engineers, Inc. (AEI), Drawing List, Report Number B-937, dated September 15, 1987. This revision authorized removal of six of the seven locking mechanisms approved as part of the original STC. Service history has shown that airplanes that do not have a

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provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 19, 1990.

Issued in Renton, Washington, on October 2, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 90-24077 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-91-AD; Amdt 39-6770]

Airworthiness Directives; Airbus Industrie Model A320-111, A320-211, and A320-231 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Industrie Model A320-111, A320-211, and A320-231 series airplanes, which requires disconnecting the two wires controlling the test function of certain angle of attack sensors. This amendment is prompted by a safety analysis which disclosed that there is insufficient segregation of the test control circuits of the angle of attack sensors. This condition, if not corrected, could result in simultaneous activation in flight of the test function of two of the angle of attack sensors and a subsequent incorrect pitch-down command to the elevator.

EFFECTIVE DATE: November 19, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Airbus Industrie Model A310-111, A320-211, and A320-231 series airplanes, which requires disconnecting the two wires controlling the test function of certain angle of attack sensors, was published in the Federal Register on June 7, 1990 (55 FR 23228).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

Since the issuance of the Notice, Airbus Industrie has issued Revision 2 to Service Bulletin A320-34-1012, dated June 8, 1990. This revision clarifies the procedures for disconnecting the two wires controlling the test function of certain angle of attack sensors. The final rule has been revised to reflect the latest revision to the service bulletin as an additional service information source.

Airbus Industrie has also issued Service Bulletin No. A320-34-1013, dated June 1, 1990, which describes procedures for rerouting the test control wires to eliminate the risk of failure to a wire loom. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has not classified this service bulletin as mandatory, but considers these procedures to be equivalent to those required by this AD. The FAA concurs that the accomplishment of Modification 21824P1953 serves as an optional means of compliance for the requirements of this AD. Consequently, paragraph A.2. has been added to the final rule to provide for an optional means of compliance; i.e., the accomplishment of Modification 21824P1953, which entails rerouting the test control wires on the angle of attack sensors.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. The FAA has determined that these changes will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 17 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,380.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A320-111, A320-211, and A320-231 series airplanes, certificated in any category. Compliance is required within the next 350 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent the simultaneous activation in flight of two angle of attack sensors and subsequent incorrect pitch-down command to the elevator, accomplish the following:

A. Perform one of the following:

1. Disconnect and modify the wiring in the relay box 103VU, in Zone 127, and in Zone 232, in accordance with Airbus Industrie Service Bulletin A320-34-1012, Revision 1, dated April 10, 1990; or Revision 2 dated June 8, 1990; or

2. Accomplish Modification No. 21824P1953, which consists of moving the test control wires of the angle of attack sensors, in accordance with Airbus Industrie Service Bulletin A320-34-1013, dated June 1, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 19, 1990.

Issued in Renton, Washington, on October 2, 1990.

Darrell M. Pederson

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-24076 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-105-AD; Amdt 39-6765]

Airworthiness Directives; Boeing Model 727 and 727-100 Series Airplanes, Equipped with Main Deck Cargo Door Installed in Accordance with Supplemental Type Certificate (STC) SA1366SO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 and 727-100 series airplanes, equipped with a main deck cargo door installed in accordance with STC SA1366SO, which requires a one-time inspection to determine if cargo door latch lockpins have been removed; interim repetitive inspections of various cargo door components to ensure continued integrity, and repair, if necessary; and eventual installation of six latch locking mechanisms in those doors from which they were previously removed. This amendment is prompted by the results of an audit of the cargo door installation which revealed that six cargo door latch lockpins were removed by virtue of a revision to the STC. This condition, if not corrected, could result in inadvertent in-flight opening of the main deck cargo door, with resultant major structural damage and possible loss of controllability of the airplane.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The applicable service information may be obtained from Aeronautical Engineers, Inc., P.O. Box 661027, Miami, Florida 33166. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Rich Jennings, Systems and Equipment Branch, ACE-130A; telephone (404) 991-3020. Mailing address: FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: During an audit of a cargo door installation on a Boeing Model 727 series airplane, an unsafe condition was discovered with respect to the latch locking mechanism installed in accordance with Supplemental Type Certificate (STC) SA1366SO. The unsafe condition was introduced by Revision "N" to the Aeronautical Engineers, Inc. (AEI), Drawing List, Report Number R-697, dated September 15, 1987. This revision authorized removal of six of the seven locking mechanisms approved as part of the original STC. Service history has shown that airplanes that do not have a means to lock each latch of an outward opening cargo door are subject to in-flight failures of the doors. This condition, if not corrected, could result in an inadvertent in-flight opening of the main cargo door, with resultant major structural damage and possible loss of controllability of the airplane.

The FAA has reviewed and approved Aeronautical Engineers, Inc., Service Bulletin Report No. R-690, dated August 22, 1990, which describes procedures for installing six latch locking mechanisms to STC SA1366SO cargo doors.

Since this condition is likely to exist on other airplanes of the same type design, this AD requires (1) A one-time inspection to determine if each of the seven door latches has a locking mechanism; (2) if locking mechanisms have been removed, requires the installation of a warning placard in the cockpit, verification that the cargo door is properly secured prior to each takeoff that is preceded by cargo door operation, repetitive inspections of various cargo door components to ensure continued integrity, and repair of any discrepancies, if necessary; and (3) eventual installation of the six latching mechanisms in those doors from which they were previously removed.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has

been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final

view port indicating that the torque tube has rotated to the latched position.

b. Prior to takeoff after operation of the main cargo door: From inside the airplane:

(1) Verify that all seven latches are engaged; that latch alignment marks, which indicate latch in overcenter position, are aligned; and that the lockpin in the forward latch position (Position No. 1) is properly

comments or concurrence to the Manager, Atlanta, ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the

Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial

12,000 or fewer landings as of March 31, 1989, unless previously accomplished within the last 5,000 landings.

Adequate lighting must be used for this inspection. The eddy current inspections may be conducted without removal of the paint, provided the paint does not interfere with the inspections. Paint must be removed, using an approved chemical stripper, in any situation

been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 and 727-100 series airplanes, equipped with main deck cargo doors installed in accordance with Supplemental Type Certificate (STC) SA1368SO, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inadvertent in-flight opening of the main deck cargo door, accomplish the following:

A. Within 5 days after the effective date of this AD, perform a visual inspection of the main deck cargo door to determine the number of cargo door latch lockpins installed. If 7 latchpins are installed, no further action is required.

B. If fewer than 7 latch lockpins are installed, within 10 days after the effective date of this AD, accomplish the following:

1. Install a warning placard in a prominent place in the cockpit stating: "Main Deck Cargo Door Latch Locks Missing—See AFM Limitations Section for Instructions."

2. Incorporate the following into the Limitations section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

a. Prior to takeoff after operation of the main cargo door: From outside the airplane, verify that the door in the closed position is flush with the fuselage and that the torque tube position indicator is visible through the view port indicating that the torque tube has rotated to the latched position.

b. Prior to takeoff after operation of the main cargo door: From inside the airplane:

(1) Verify that all seven latches are engaged; that latch alignment marks, which indicate latch in overcenter position, are aligned; and that the lockpin in the forward latch position (Position No. 1) is properly engaged.

(2) On the cargo door control panel, verify that all lights are extinguished, and that the door master power switch, if installed, is in the OFF position. If the master power switch is not installed, prior to each flight, pull the three cargo door hydraulic pump circuit breakers located on the P6-12B circuit breaker panel. These circuit breakers are to remain pulled during flight.

Warning: Do not pull the cargo door control circuit breaker located on the P6-2 circuit breaker panel. This deactivates the cargo door warning annunciator system.

C. Within 10 days after the effective date of this AD, and thereafter at intervals not to exceed 30 days, accomplish the following:

1. Verify proper rigging of the door latches in accordance with the procedures specified in section IV, page 8, of Aeronautical Engineers, Inc. (AEI), Service Bulletin Report No. R-690, dated August 22, 1990.

2. Perform a visual inspection of the cargo door warning annunciator system wiring, connectors, and switches for continued proper installation and continued integrity. If deficiencies are found, including broken or frayed wiring, repair prior to further flight.

3. Perform a functional inspection of the cargo door warning annunciator system, to verify that:

a. The "door closed," "latch lock," and "pin lock" limit switches (and corresponding lights on the door control panel) are functioning properly and in sequence; and

b. The cargo door warning light on the cargo door control panel and the cargo door warning light on the flight engineer's panel are illuminated when the main cargo door is open, and extinguished when the door is verified closed, latched, and locked.

4. With the cargo door properly rigged and in the closed, latched, and locked position, verify that the torque tube position indicator is properly indexed, and visible through the external view port.

D. Within 60 days after the effective date of this AD, install six cargo door latch locking mechanisms in accordance with AEI Service Bulletin Report No. R-690, dated August 22, 1990. Once this installation is accomplished, the repetitive inspections required by paragraph C. of this AD may be terminated, and the placard and the AFM revision required by paragraph B. of this AD may be removed.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE-130A, FAA, Central Region.

Note: The request should be submitted directly to the Manager, Atlanta ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Atlanta, ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aeronautical Engineers, Inc., P.O. Box 661027, Miami, Florida 33166. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

This amendment becomes effective October 29, 1990.

Issued in Renton, Washington, on October 1, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-24075 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-105-AD; Amdt 39-6768]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection of the fuselage skin lap splice between body station (BS) 400 and BS 520 at stringers (S) 6L or S-6R and repair, if necessary. This action deletes the option of reinspecting known small cracks in lieu of repairing them before further flight. This amendment is prompted by further FAA consideration of the crack repair deferral option in the existing AD. This condition, if not corrected, could lead to sudden loss of cabin pressurization and the inability of the airplane fuselage to withstand fail-safe loads.

EFFECTIVE DATE: November 16, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 89-05-03, Amendment 39-6146 (54 FR 7397, February 21, 1989), applicable to Boeing Model 747 series airplanes, to require inspection of the fuselage skin lap splice between BS 400 and BS 520 at stringer S-6L and S-6R and repair, if necessary, was published in the Federal Register on June 29, 1990 (55 FR 26701).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, commenting on behalf of its members, expressed no objection to the rule.

Paragraph G. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described above. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 628 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 202 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 89-05-03, Amendment 39-6146 (54 FR 7397, February 21, 1989), AD 89-05-03, with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line number 001 through 628, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a failure of the fuselage skin lap splice between body station (BS) 400 and BS 520 at stringer S-6L and S-6R, accomplish the following:

A. Conduct close visual and high frequency eddy current (HFEC) inspection of the fuselage skin lap splice between BS 400 and BS 520, at stringers S-6L and S-6R for cracking, in accordance with Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, or Revision 1, dated March 29, 1990, at the following thresholds:

1. Within the next 100 landings after March 31, 1989 (the effective date of Amendment 39-6146, AD 89-05-03), for airplanes that have accumulated 16,000 or more landings as of March 31, 1989, unless previously accomplished within the last 4,900 landings.

2. Within the next 1,800 landings after March 31, 1989, or prior to the accumulation of 16,000 landings, whichever occurs first, for airplanes that have accumulated between 12,800 and 16,000 landings, as of March 31, 1989, unless previously accomplished within the last 4,000 landings.

3. Prior to the accumulation of 13,000 landings for airplanes that have accumulated 12,000 or fewer landings as of March 31, 1989, unless previously accomplished within the last 5,000 landings.

Adequate lighting must be used for this inspection. The eddy current inspections may be conducted without removal of the paint, provided the paint does not interfere with the inspections. Paint must be removed, using an approved chemical stripper, in any situation where the inspector determines that the paint is interfering with the proper functioning of the inspection instrument.

B. On airplanes which have been modified to the stretched-upper-deck configuration, as identified in Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, or Revision 1, dated March 29, 1990, the accumulated landing threshold for compliance with paragraph A. of this AD is measured from the time of the stretched-upper-deck modification.

C. If no cracking is detected, repeat the close visual and HFEC inspections required by paragraph A. of this AD, at intervals not to exceed 5,000 landings.

D. If cracks are detected, accomplish the repair or preventive modification of the affected lap splice in accordance with Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, or Revision 1, dated March 29, 1990, prior to further pressurized flight. If cracks are repaired in local areas without accomplishing preventive modification of the entire affected lap area, continue inspections of the unmodified and unrepaired areas of the affected lap splice in accordance with paragraph C. of this AD.

E. For airplanes incorporating the preventative modification, as described in Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, or Revision 1, dated March 29, 1990, accomplish the inspections required by paragraph A. of this AD, prior to accumulation of 10,000 landings after the modification and thereafter at intervals not to exceed 5,000 landings. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further pressurized flight.

F. For purposes of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 1.5 psi.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon

request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective October 29, 1990.

Issued in Renton, Washington, on October 1, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-24076 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-104-AD; Amdt 39-6769]

Airworthiness Directives; Boeing Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model ATP series airplanes, which currently requires repetitive applications of Icex to the propeller blades. This action deletes the option of repetitive applications of Icex to the propeller blades. This condition, if not corrected, could result in reduced structural intergrity of the Model ATP series airplanes. There have been recent reports of vibration and/or fuselage skin damage on in-service airplanes due to the shedding of ice accretion from the propeller blades. This condition, if not corrected, could result in sudden loss of cabin pressurization and the inability of the airplane fuselage to withstand fail-safe loads.

EFFECTIVE DATE: November 16, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 89-05-04, Amendment 39-6147 (54 FR 7399, February 21, 1989), applicable to Boeing Model ATP series airplanes, to require repetitive applications of Icex to the propeller blades, was published in the Federal Register on June 29, 1990 (55 FR 26703).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, commenting on behalf of its members, expressed no objection to the rule.

Paragraph G. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described above. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 628 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 202 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

with British Aerospace Service Bulletin ATP-53-10, dated March 7, 1990, constitutes terminating action for the repetitive applications of Icex to the propeller blades required by paragraph A. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may

fractured due to overload induced by excessive stiffness in the torque link pivots. This condition, if not corrected, could result in failure of a link pin, and subsequent reduced structural integrity of the MLG.

EFFECTIVE DATE: November 19, 1990.

to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

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request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 16, 1990.

Issued in Renton, Washington, on October 1, 1990.

Darell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-24081 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-184-AD; Amdt 39-6764]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which requires repetitive applications of an icing inhibitor to each propeller blade. This amendment is prompted by reports of vibration and/or fuselage skin damage due to the shedding of ice accretion for the propeller blades. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model ATP series airplanes. There have been recent reports of vibration and/or fuselage skin damage on in-service airplanes due to the shedding of ice accretion from the propeller blades. This condition, if not corrected, could result in reduced structural intergrity of the fuselage.

British Aerospace has issued Service Bulletin ATP-61-2, dated Revision 1, October 31, 1989, which describes procedures for repetitive applications of Icex, an icing inhibitor, to the propeller blades to reduce the amount of ice buildup prior to shedding. The United Kingdom CAA has classified this service bulletin as mandatory.

British Aerospace has also issued Service Bulletin ATP-53-10, dated March 7, 1990, which describes procedures for the installation of ice guards on both the left side (Station 180FS and 128FS, and Stringers 6P to 22P) and right side (between Stations 180FS and 141.2FS, and Stringers 11S to 28S) of the fuselage. The accomplishment of this modification terminates the need for the repetitive applications of Icex. The United Kingdom CAA has not classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive applications of Icex to the propeller blades, in accordance with Service Bulletin ATP-61-2, Revision 1, previously described.

The FAA considers the mandatory use of Icex to be an interim action to protect against propellers shedding ice particles large enough to damage the fuselage, until permanent action is accomplished to protect the fuselage from damage or prevent the ice buildup.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To reduce ice accretion on the propeller blades and prevent subsequent damage to the fuselage, accomplish the following:

A. Within 50 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 50 hours time-in-service, apply Icex to the propeller blades, in accordance with British Aerospace Service Bulletin ATP-61-2, Revision 1, dated October 31, 1989.

B. Incorportion of Modification 10129A, the installation of ice guards on both the left (between Station 180FS and 128FS, and Stringers 6P to 22P) and right (between Station 180FS and 141.2FS, and Stringers 11S and 28S) sides of the fuselage, in accordance with British Aerospace Service Bulletin ATP-53-10, dated March 7, 1990, constitutes terminating action for the repetitive applications of Icex to the propeller blades required by paragraph A. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, PLC, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective October 29, 1990.

Issued in Renton, Washington, on October 1, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-24074 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-136-AD; Amdt. 39-6772]

Airworthiness Directive; British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 125-800A series airplanes, which requires a lubrication inspection of the main landing gear (MLG) upper and lower torque link pivots; visual and dye penetrant inspections to detect cracks or defects of the pivot pins and bolts, and repair or replacement, as necessary; and repetitive lubrication procedures thereafter. This amendment is prompted by reports of two instances in which a MLG torque link pin fractured due to overload induced by excessive stiffness in the torque link pivots. This condition, if not corrected, could result in failure of a link pin, and subsequent reduced structural integrity of the MLG.

EFFECTIVE DATE: November 19, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAe 125-800A series airplanes, which requires a lubrication inspection of the main landing gear (MLG) upper and lower torque link pivots; visual and dye penetrant inspection, to detect cracks or defects in the pivot pins and bolts, and repair or replacement, as necessary; and repetitive lubrication procedures thereafter, was published in the **Federal Register** on July 19, 1990 (55 FR 29387).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 119 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,760.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe 125-800A series airplanes, on which British Aerospace Modification 253244A has not been incorporated, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of a link pin and subsequent reduced structural integrity of the main landing gear (MLG), accomplish the following:

A. Within 30 days after the effective date of this AD, with the airplane on wheels, lubricate the right and left MLG upper and lower torque link pivots (three per landing gear), in accordance with British Aerospace Service Bulletin 32-222, dated November 10, 1989.

1. If grease *does appear* in all places indicated in the service bulletin, no further action in accordance with this AD is required and the airplane may be returned to service.

2. If grease *does not* appear in all places indicated in the service bulletin, prior to further flight, disassemble that MLG, perform visual and dye penetrant inspections to detect defects (scoring, wear, necking, ovality, and/or blocked grease holes) and cracks in the pivot pins and bolts, and hand lubricate the torque link pivots, in accordance with the service bulletin.

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a. If the condition of the torque link pin or bolt reveals defects or cracks, prior to further flight, replace it with a serviceable part in accordance with the service bulletin.

b. If the clearance between any torque link and the MLG is less than 0.002 inch, carefully abrade the surfaces of the bushes in the torque link to achieve the required .002 inch minimum/.010 inch maximum condition, in accordance with the service bulletin.

c. At intervals not to exceed 50 landings, disassemble and repeat the special hand lubrication of the MLG upper and lower torque links, in accordance with the service bulletin.

B. Incorporation of Modification 253244A, in accordance with British Aerospace Service Bulletin 33-223-3244A, Revision 1, dated March 5, 1990, constitutes terminating action for the repetitive lubrication procedures required by paragraph A.2.c. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 19, 1990.

Issued in Renton, Washington, on October 2, 1990.

Darrel M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-24078 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-75-AD; Amdt. 39-6767]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires inspection and repair of the horizontal stabilizer center section rear spar upper chord, and includes a modification which, if accomplished, would terminate the requirement for the repetitive inspections. This action deletes the previous terminating provision and requires repetitive inspections of the modified or replaced structure. This amendment is prompted by a structural reevaluation which indicates that repetitive inspections of the modified and/or repaired structure are required to maintain safety. Undetected cracking in this structure could ultimately result in failure of the horizontal stabilizer.

EFFECTIVE DATE: November 16, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2785. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 82-21-02, Amendment 39-4473 (47 FR 44713, October 12, 1982), applicable to certain Boeing Model 737 series airplanes, to delete the previous terminating provision and require repetitive inspections of the modified or replaced structure, was published in the Federal Register on June 1, 1990 (55 FR 22353).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The Air Transport Association (ATA) of America, on behalf of its members, expressed no obligation to the proposed rule.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described above. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 198 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 153 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,960.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034), February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-4473, AD 82-21-02, with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, listed in Boeing Alert Service Bulletin 737-55A1031, Revision 2, dated November 30, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking in the horizontal stabilizer center section rear spar upper chord, accomplish the following:

A. Prior to the accumulation of 35,000 landings, or within 350 landings after October 18, 1982 (the effective date of AD 82-21-01, Amendment 39-4473), whichever occurs later, unless accomplished within the last 4,150 landings, and thereafter at intervals not to exceed 4,500 landings since the last inspection, eddy current or dye penetrant inspect the upper surface of the forward flange of the horizontal stabilizer center section rear spar upper chord for cracks in the area of each beam gusset plate in accordance with "Part A-Inspection" of Boeing Alert Service Bulletin 737-55A1031, Revision 2, dated November 30, 1989, or previous FAA-approved revisions. If cracks are found, repair, modify, or replace the damaged chord before further flight, in accordance with Boeing Model 737 Structural Repair Manual, Subject 51-30-09, or Boeing Alert Service Bulletin 737-55A1031, Revision 2, dated November 30, 1989, or previous FAA-approved revisions.

B. After repair, modification, or replacement, resume the repetitive inspections required by paragraph A. of this AD, at the following schedule or within the next 1,000 landings, whichever occurs later:

1. Prior to the accumulation of 9,000 landings after repair.

2. Prior to the accumulation of 35,000 landings after modification.

3. Prior to the accumulation of 50,000 landings after replacement.

Thereafter, repeat the inspections at intervals not to exceed 4,500 landings.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

This amendment supersedes Amendment 39-4473, AD 82-21-02.

This amendment becomes effective November 16, 1990.

Issued in Renton, Washington, on October 1, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-24079 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-106-AD; Amdt. 39-6766]

Airworthiness Directives: Boeing Model 747-200 and 747-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-200 and 747-300 series airplanes, which requires replacement of a pneumatic duct aluminum bracket with a steel bracket in the engine struts. This amendment is prompted by reports of an engine fire after landing, due to a fuel line leak. The fuel line had chafed as a result of contact with a pneumatic duct, due to a broken bracket. This condition, if not corrected, could result in an engine fire.

EFFECTIVE DATE: November 16, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Seattle Aircraft Certification Office, Seattle Aircraft Certification Office Branch, ANM-140S; telephone (206) 227-2686. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747-200 and 747-300 series airplanes equipped with General Electric CF6-45 or CF6-50 engines, which requires replacement of a pneumatic duct aluminum bracket with a steel bracket in the engine struts, was published in the Federal Register on July 3, 1990 (55 FR 27471).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter had no objection to the adoption of the amendment as proposed.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 132 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,900.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

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amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, equipped with General Electric CF6-45 and CF6-50 engines, as listed in Boeing Service Letter 747-SL-54-32, dated December 4, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential for an engine fire due to a fuel leak, accomplish the following:

A. Within the next 60 days or 450 hours time-in-service after the effective date of this AD, whichever occurs first, replace the aluminum pneumatic duct brackets, P/N 69B94023-1, in the outboard struts, with steel brackets, P/N 69B94023-2, in accordance with Boeing Service Letter 747-SL-54-32, dated December 4, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW. Renton, Washington 98055-4056.

This amendment becomes effective November 16, 1990.

Issued in Renton, Washington, on October 1, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-24080 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

RIN 1076-AC21

Preparation of Rolls of Indians

September 7, 1990.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is amending the regulations contained in 25 CFR part 61 which governs the preparation of rolls of Indians. The Coquille Restoration Act of 1989 directs the Secretary of the Interior to prepare within one year of enactment a tribal membership roll of the Coquille Indian Tribe. The regulations in part 61 provide general enrollment procedures that can be made applicable to the preparation of a specific roll of Indians by amending the regulations to include the qualifications for enrollment and the deadline for filing applications for the particular roll. The BIA is amending part 61 by adding a paragraph (j) to § 61.4 to include the qualifications for enrollment and the deadline for filing applications so that the procedures contained in part 61 will govern the preparation of the tribal membership roll of the Coquille Indian Tribe.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380, telephone number: (503) 444-2679 (FTS 423-4111).

SUPPLEMENTARY INFORMATION: The authority to issue these rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and Public Law 101-42. This final rule is published in exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary-Indian Affairs in the Departmental Manual at 209 DM 8.

The Coquille Restoration Act (Restoration Act) of June 28, 1989, Public Law 101-42, 103 Stat. 91, provides for the restoration of the Federal trust relationship with, and assistance to, the Coquille Tribe of Indians and the individual members of the tribe. Section 7 directs the Secretary to compile a tribal membership roll of the Coquille Indian Tribe within one year of enactment. The tribal membership roll is to be comprised of Coquille Indian descendants who meet certain requirements. To be eligible for enrollment, Coquille Indian descendants must be living on the date of the Restoration Act, must not be members of another federally recognized tribe, and must possess at least one-eighth (⅛) degree Indian blood. In addition the person must be listed on or must have met the requirements to be listed on the Coquille roll prepared under the Act of August 30, 1954 (68 Stat. 979; 25 U.S.C. 771), and approved by the BIA on August 29, 1960, or be the lineal descendant of such a perdon.

To establish eligibility for enrollment the amendment requires all persons to file or have filed on their behalf an application form with the Superintendent, Siletz Agency, Bureau of Indian Affairs, by the deadline specified in § 61.4(j)(2). The deadline will be 60 days from the effective date of the Final Rule to govern the preparation of the Coquille tribal membership roll which will actually be 90 days from date of publication in the **Federal Register** of the Final Rule. Applications filed after that date will be rejected for failure to file on time regardless of whether the applicants otherwise meet the qualifications for enrollment.

It should be noted the Restoration Act does provide that after the Coquille tribal membership roll provided for in the Act has been completed, membership in the Coquille Indian Tribe shall be governed by the tribal constitution adopted in accordance with the provisions of Section 9 of the Restoration Act. Thereafter, however, in addition to any other membership requirements contained in the tribal constitution, persons must be of Coquille Indian ancestry and not be members of any other federally recognized tribe to establish eligibility for membership in the Coquille Indian Tribe. Consequently, applicants who are rejected for failure to file on time may be considered for membership after the adoption of the tribal constitution.

In addition to general public notice, the BIA attempts to provide actual notice to as many potentially eligible beneficiaries as possible. Section 61.5(c) of part 61 provides that, when applicable, the Director or Superintendent shall "mail notices of the preparation of the roll to previous enrollees or tribal members at the last address of record or, in the case of tribal members, the last address available." The last roll of Coquille Indians prepared by BIA was a descendancy roll which was approved in 1960. Because the roll is so out-of-date, it would not be practical to provide notice to persons whose names appear on that roll. However, the Coquille Indian Tribe does maintain a list of individuals who have been affiliated with the Tribe through the restoration process which is more current. Consequently, the Superintendent, Siletz Agency, Bureau of Indian Affairs, shall send notices to those persons whose names and addresses are furnished to him by the Coquille Indian Tribe. The notice shall advise individuals of the preparation of the roll and the relevant procedures to be followed, including the qualifications for enrollment and the deadline for filing application forms. An application form will be mailed with each notice.

The regulations in part 61 provide general enrollment procedures and contain provisions which are not applicable in the preparation of all rolls. As a matter of clarification, because the BIA is preparing a tribal membership roll of the Coquille Indian Tribe under this proposed amendment, review of applications by tribal authorities under § 61.10 is authorized to provide for maximum tribal participation in the enrollment process.

Comments and Changes

A proposed rule to amend 25 CFR part 61 to add paragraph (j) to § 61.4 to include the qualifications for enrollment and the deadline for filing applications for the tribal membership roll of the Coquille Indian Tribe was published for public comment in the **Federal Register** on Tuesday, May 1, 1990, 55 FR 18128. The period for commenting on the proposed amendment closed on May 31, 1990. The only comments received were from the Coquille Indian Tribe by its Tribal Chairman. Stated simply the comments address three issues: (1) Who must file applications for membership, (2) how the requirement that persons not be enrolled members of another federally recognized tribe will be implemented, and (3) what evidence is acceptable for establishing Indian ancestry.

1. Two different comments were received from the Tribe with regard to who had to file applications for enrollment. An early comment urged that persons recognized as members by the Tribe whose names listed on the Coquille roll prepared pursuant to the Act of August 30, 1954, and approved by the BIA on August 29, 1960 (1960 Roll), not be required to file applications to establish eligibility for enrollment. The Tribe's other comment was that the text of the proposed amendment to part 61 did not clearly state who must file applications.

The Coquille Indian Tribe does maintain a list of individuals who have been affiliated with the Tribe through the restoration process as indicated above. However, the Restoration Act makes no reference to the tribally maintained membership information, but directs the Secretary to prepare a tribal membership roll. The Tribe believes that persons whom they currently recognized as members who were named on the 1960 Roll "should not have to go through the enrollment process again."

The 1960 Roll was prepared for the sole purpose of a onetime per capita distribution of Coquille judgment funds and required applicants only to establish that they were of Coquille Indian descent, not that they were of any specific degree of Indian blood. The Restoration Act requires applicants to establish that they possess at least ⅛ degree Indian Blood in addition to being of Coquille Indian descent to qualify for membership. Consequently, the inclusion of an individual's name on the 1960 Roll does not necessarily establish that the individual is eligible for membership in the Coquille Indian Tribe under the Restoration Act.

Furthermore, any attempt to relieve some individuals of the burden of actually filing applications for membership could result in confusion and uncertainty. Persons who are currently recognized as members by the Coquille Indian Tribe and who were named on the 1960 Roll might presume nothing more was required by them to establish eligibility for membership. This could result in these individuals disregarding requests from the BIA for additional information or taking no action to appeal their rejection for membership. On the other hand, individuals who were named on the 1960 Roll, but who are not currently recognized by the Coquille Indian Tribe may nevertheless consider themselves affiliated with the Coquille Indian Tribe. As a result they might presume that they did not have to file applications for membership. There is no way of knowing who might be in this latter category of individuals.

Consequently, the final rule requires that all persons file applications to establish eligibility for inclusion on the Coquille tribal membership roll. The intent of the proposed rule, as has been suggested, may not have been entirely clear. For that reason the first sentence of paragraph (j)(2) of § 61.4 has been reworded in an attempt to make the intent clearer.

The regulations contained in part 61 provide in § 61.(c) that "[a]pplication forms may be filed by sponsors on behalf of other persons." Under § 61.1 "sponsor" is defined as "any person who files an application for enrollment or appeal on behalf of another person." Consequently, under the regulations the Tribe plainly can file applications on behalf of individuals they recognize as members and relieve the individuals of the burden.

2. The Tribe stated that the rule did not address who determines if an individual is an enrolled member in another Tribe. The concern by the Tribe is probably as a result of the preparation of a membership roll for another group in Oregon which was restored a few years ago. Dual enrollment or more precisely what constituted dual enrollment became an issue. In that instance the dual enrollment prohibition contained in the restoration statute was interpreted to include persons who were members or claiming membership in any other Indian tribe, either federally recognized or acknowledged or not federally recognized or acknowledged. This resulted in the rejection of persons for membership who claimed not to know or not to consider themselves enrolled with any other tribe.

In this instance, however, the dual enrollment prohibition in the Restoration Act, which the regulations reflect, is limited to persons who are enrolled members of another federally recognized tribe. There is little room for interpretation. Generally, individuals know whether they are enrolled with a federally recognized tribe. From a strictly procedural standpoint, applicants "proving" they are not enrolled with another federally recognized tribe is a requirement for membership the same as proving they possess at least one-eighth degree Indian blood. Applicants will be asked on the application form whether they are enrolled with another federally recognized tribe.

In accordance with the regulations contained in part 61, both the BIA and the Tribe will review the applications. If either the BIA or the Tribe have any reason to believe that the individual may be dually enrolled, either the BIA or the Tribe may check out the status of the applicant's possible enrollment with another federally recognized tribe. Under the regulations the Superintendent will accept the recommendation or determination of the "Tribal Committee" with regard to an applicant's eligibility unless clearly erroneous.

No changes have been made to the regulations as a result of this first comment concerning dual enrollment. However, the Tribe did raise another issue with regard to dual enrollment which does need to be addressed to prevent any confusion or misunderstanding and has resulted in the addition of paragraph (j)(4) to the

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amendment to § 61.4 from what was proposed.

As was pointed out by the Tribe, the House Report on the Restoration Act indicated that it was Congress' intent that individuals be permitted to relinquish their membership in another Tribe to establish their eligibility for membership in the Coquille Indian Tribe. The Tribe's concern is that the regulations do not address who determines if an individual is an enrolled member in another Tribe. The concern by the Tribe is probably as a result of the preparation of a membership roll for another group in Oregon which was restored a few years ago. Dual enrollment or more precisely what constituted dual enrollment became an issue. In that instance the dual enrollment prohibition contained in the restoration statute was interpreted to include persons who were members or claiming membership in any other Indian tribe, either federally recognized or acknowledged or not federally recognized or acknowledged. This resulted in the rejection of persons for membership who claimed not to know or not to consider themselves enrolled with any other tribe.

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herself unless the person is legally incompetent, in which case the legal guardian, and only the legal guardian, may execute the relinquishment document. In the case of minors, only the parent or legal guardian may execute a relinquishment document.

If an applicant is determined eligible for membership in the Coquille Indian Tribe, the example given was an affidavit from a tribal elder stating personal knowledge that the applicant was of Coquille Indian ancestry would not establish Coquille Indian ancestry for the purposes of eligibility under the Coquille Restoration Act if Bureau records clearly showed that the

requirements contained in this part 61 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501, et seq.).

The Department of the Interior has determined that this is not a major rule under E.O. 12291 because only a limited number of individuals will be affected

listed on the Coquille roll prepared pursuant to the Act of August 30, 1954, and approved by the Bureau of Indian Affairs on August 29, 1960; or

(vi) Who are lineal descendants of persons, living or dead, identified in paragraphs (j)(1)(iv) and (j)(1)(v) of this section.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 43 and 47

[T.D. 8314]

RIN 1545-AO67

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amendment to § 61.4 from what was proposed.

As was pointed out by the Tribe, the House Report on the Restoration Act indicated that it was Congress' intent that individuals be permitted to relinquish their membership in another Tribe to establish their eligibility for membership in the Coquille Indian Tribe. As stated in H.R. Rep. No. 101–61, 101st Cong., 1st Sess. (1989) at page 5:

> Regarding the prohibition against enrollment in another Indian tribe, the Committee does not intend this requirement to deprive any individual of his/her rights as an individual tribal member. Relinquishment of membership in another Tribe may occur concurrently with or an soon as possible after enrollment in the Coquille Indian Tribe.

Relinquishment of membership in a Tribe is basically a unilateral action by the individual. In instances where an individual is relinquishing membership in one tribe to establish eligibility for membership in another, as would be the case here, the BIA recommends that the individual submit a "conditional relinquishment." A conditional relinquishment from one tribe would become effective if and when the individual was accepted as a member in the other tribe.

The BIA is usually not included in the process. However, in this case because the BIA will be making determinations of eligibility for membership in the Coquille Indian Tribe, it is only reasonable for the BIA to be involved.

The additional paragraph (j)(4) of the amendment to § 61.4 provides that persons who are enrolled members of another federally recognized tribe(s) may file conditional relinquishment forms with their applications to satisfy the enrollment requirement contained in paragraph (j)(l)(iii).

Unlike application forms which can be filed by sponsors, as was discussed above, paragraph (j)(4) prohibits the "sponsoring" of relinquishment forms. Where the BIA is preparing a roll and there is a deadline for filing applications, it is considered to the benefit of individuals to allow the sponsoring of applications. Although it can result in individuals being enrolled without their knowledge, it has been thought that the beneficial effects outweigh any adverse effects.

However, relinquishment results in membership rights being taken away from an individual. Such a decision should only be made by the individual. Consequently, the amendment provides that in the case of an adult, the relinquishment document can only be executed by the individual himself or herself unless the person is legally incompetent, in which case the legal guardian, and only the legal guardian, may execute the relinquishment document. In the case of minors, only the parent or legal guardian may execute a relinquishment document.

If an applicant is determined eligible for membership in the Coquille Indian Tribe, the BIA will notify the appropriate federally recognized tribe and furnish the tribe the individual's relinquishment. Otherwise the relinquishment will be retained with the application form.

3. The Tribe's comment with regard to what evidence was acceptable for establishing Indian ancestry was not so much directed at the proposed amendment as at the comments made in the **"SUPPLEMENTARY INFORMATION"** portion of the proposed rulemaking document. The amendment to § 61.4 basically restates the provisions contained in the Restoration Act with regard to establishing Coquille Indian ancestry and Indian blood degree.

Section 7(c) provides that the Coquille roll approved by the BIA on August 29, 1960, shall be accepted as conclusive evidence of Coquille Indian ancestry of all those listed on the roll. Further, Indian blood degree information shown on the January 1, 1940, census roll of nonreservation Indians of the Grande Ronde-Siletz Agency shall be conclusive evidence in determining the degree of Indian blood for applicants. Section 7(c) also provides that the Secretary shall accept any available evidence establishing Coquille Indian ancestry and Indian blood degree.

The Tribe took particular exception to the example that was given under the **"SUPPLEMENTARY INFORMATION"** portion and indicated the belief that such an example could lead to confusion and misinterpretation of the rule. The example given was deliberate and was intended to prevent any misunderstanding by individual applicants as to how the BIA would implement the proposed amendment to § 61.4.

As was indicated in the proposed rulemaking document, the burden of proof is on applicants to establish that they meet the requirements for enrollment. Consequently, although a document such as an affidavit supporting an applicant's eligibility must be accepted as evidence, in and of itself, it may not be sufficient to meet the burden of proof. It is important that individual applicants realize that something more than self-proclamation or self-serving affidavits is necessary to establish eligibility for enrollment. Thus, the example given was an affidavit from a tribal elder stating personal knowledge that the applicant was of Coquille Indian ancestry would not establish Coquille Indian ancestry for the purposes of eligibility under the Coquille Restoration Act if Bureau records clearly showed that the applicant was of Coos Indian ancestry.

Applicants not on the specified rolls will need to submit evidence acceptable to the Secretary to establish Coquille Indian ancestry and the required degree of Indian blood. Moreover, even descendants of persons named on the specified rolls will need to submit documentary evidence establishing their relationship to persons named on the specified rolls.

BIA records are the most acceptable form of evidence for establishing Indian ancestry. However, as was stated in the **"SUPPLEMENTARY INFORMATION"** of the proposed rulemaking document, BIA records can contain conflicting information which would need to be evaluated and weighed. For establishing relationship to ancestors, birth certificates, death certificates, copies of probate findings and BIA records are the most acceptable form of evidence. Baptismal records can sometimes be used.

Under the provisions of the Coquille Restoration Act other evidence such as affidavits, newspaper articles, and published books will be accepted. Consequently, all evidence submitted and records available to BIA officials will be used in evaluating an applicant's eligibility. The determination of eligibility will be made on the basis of the preponderance of evidence except that being named on or having a lineal ancestor named on the Coquille roll approved by BIA on August 29, 1960, is conclusive evidence of Coquille Indian ancestry for the purposes of eligibility under the Coquille Restoration Act regardless of what other documents or records show and the January 1, 1940, census roll of nonreservation Indians of the Grande Ronde-Siletz Agency is conclusive evidence of degree of Indian blood.

No other changes have been made to the amendment to add a paragraph (j) to § 61.4 of part 61, from what was proposed.

The primary author of this document is Kathleen L. Slover, Tribal Enrollment Specialist, Division of Tribal Government Services.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in this part 61 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501, et seq.).

The Department of the Interior has determined that this is not a major rule under E.O. 12291 because only a limited number of individuals will be affected and this rule provides only for the enrollment of those individuals as members of the Coquille Indian Tribe which will not have a significant gross annual effect on the economy.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because of the limited applicability as stated above.

The Department of the Interior has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and that neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 25 CFR Part 61

Indians—enrollment.

Accordingly, part 61 of subchapter F of chapter I of title 25 of the Code of Federal Regulations is amended as shown.

1. The authority citation for part 61 is revised to read as following:

> **Authority:** 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 1401 et seq., as amended; Pub. L. 100–139; Pub. L. 100–580; Pub. L. 101–42.

2. Section 61.4 is amended by adding a new paragraph (j) to read as follows:

§ 61.4 Qualifications for enrollment and the deadline for filing application forms.

* * * * *

(j) *Coquille Tribe of Indians.* (1) Pursuant to section 7 of the Coquille Restoration Act of June 28, 1989, Public Law 100–139, a tribal membership roll is to be prepared comprised of persons of Coquille Indian ancestry:

(i) Who were born on or before and living on June 28, 1989;

(ii) Who possess at least one-eighth (⅛) degree or more Indian blood;

(iii) Who are not enrolled members of another federally recognized tribe; and

(iv) Whose names were listed on the Coquille roll prepared pursuant to the Act of August 30, 1954 (68 Stat. 979; 25 U.S.C. 771), and approved by the Bureau of Indian Affairs on August 29, 1960;

(v) Whose names were not listed on but who met the requirements to be listed on the Coquille roll prepared pursuant to the Act of August 30, 1954, and approved by the Bureau of Indian Affairs on August 29, 1960; or

(vi) Who are lineal descendants of persons, living or dead, identified in paragraphs (j)(1)(iv) and (j)(1)(v) of this section.

(2) To establish eligibility for inclusion on the tribal membership roll, all persons must file an application form with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380 by January 10, 1991. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(3) For the purposes of establishing eligibility under paragraph (j) of this section, any available evidence establishing Coquille ancestry and the required degree of Indian blood shall be accepted. However, information shown on the Coquille roll prepared pursuant to the Act of August 30, 1954, shall be accepted as conclusive evidence of Coquille ancestry and blood degree information shown on the January 1, 1940, census roll of nonreservation Indians of the Grand Ronde-Siletz Agency shall be accepted as conclusive evidence in determining degree of Indian blood for applicants.

(4) For the purposes of establishing eligibility under paragraph (j) of this section, persons who may be enrolled members of another federally recognized tribe or tribes may submit a conditional relinquishment of membership document in the other tribe or tribes with their application forms. A conditional relinquishment of membership document in the other tribe or tribes with their application forms. A conditional relinquishment will be accepted by the Superintendent only if it is executed by the person himself or herself unless the person is legally incompetent, in which case the legal guardian and only the legal guardian may execute the conditional relinquishment document. In the case of minors, only the parent or legal guardian may execute a conditional relinquishment document.

* * * * *

Walter L. Mills,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 90–24091 Filed 10–11–90; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 43 and 47

[T.D. 8314]

RIN 1545–AO67

Final and Temporary Regulations Regarding the Tax on Transportation by Water

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that implement the tax on the transportation of passengers on covered voyages by certain vessels under section 4471 of the Internal Revenue Code as enacted by section 7504 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106, 2362). This document also removes the existing regulations under 26 CFR part 47 (relating to documentary stamp taxes), which are obsolete.

EFFECTIVE DATES: These regulations are effective for voyages beginning on or after January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden, Jr., 202–566–4077 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations on the Excise Tax on Transportation by Water (26 CFR part 43) under sections 4471 and 4472 of the Internal Revenue Code relating to the excise tax on the initial embarkation or disembarkation of passengers on certain commercial passenger vessels and on certain other commercial vessels transporting passengers engaged in gambling.

As a final action this document also removes the existing regulations under 26 CFR part 47 (relating to documentary stamp taxes), which are obsolete.

Need for Temporary Regulations

Immediate guidance is needed on the imposition of tax on transportation of persons by water. Therefore, good cause is found to dispense with the public notice requirement of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(b).

Explanation of Provisions

The temporary regulations provide taxpayers with rules for complying with

the tax imposed by section 4471 of the Code. Section 4471 of the Code imposes a tax of $3 per passenger on a covered voyage, as that term is defined in section 4472, to be paid by the person providing the covered voyage. The tax is to be imposed only for each passenger that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of

§ 43.4471–1T Imposition of tax (temporary).

(a) *In general.* Section 4471 imposes a tax of $3 per passenger on a covered voyage as is defined in section 4472.

(b) *By whom paid.* The tax is imposed

use of government depositaries, see § 43.6302(c)–1T.

§ 43.6011(a)–2T Final returns (temporary).

Any person required by § 43.6011(a)–1T to make a return who in any return period ceases operations in respect of

§ 43.6101–1T Period covered by returns (temporary).

See § 43.6011(a)–1T for the rules relating to the period covered by the return.

§ 43.6109(a)–1T Identifying numbers

underpayment for the current quarter on or before the last day of the first calendar month following the end of the quarter. This safe harbor rule does not apply to any person who did not report liability for tax under section 4471 for

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the tax imposed by section 4471 of the Code. Section 4471 of the Code imposes a tax of $3 per passenger on a covered voyage, as that term is defined in section 4472, to be paid by the person providing the covered voyage. The tax is to be imposed only for each passenger on a covered voyage, either at the time of first embarkation or disembarkation in the United States. Under section 4472(1) of the Code, the term "covered voyage" means a voyage of (a) a commercial passenger vessel that extends over one or more nights, or (b) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States. A passenger vessel is any vessel with stateroom or berth accommodations for more than 16 passengers.

Requirements for Filing Returns, Paying Tax, and Using Government Depositories

Sections 6011 (relating to requiring returns), 6071 (relating to the time for filing returns), and 6302 (relating to the use of government depositories) provide that regulations are required in order to impose rules for filing returns and making deposits of tax.

Under temporary § 43.6011(a)–1T, any person liable for the tax imposed by section 4471 must file Form 720, *Quarterly Federal Excise Tax Return*, to report that liability. The procedures for filing are contained in the instructions to the form. Temporary § 43.6071(a)–1T(a) provides that returns must be filed by the last day of the month following the end of the calendar quarter.

Under temporary § 43.6302(c)–1T, semimonthly deposits of tax are required to be made by all persons liable for the tax imposed under section 4471. The deposit for each semimonthly period is due on or before the 9th day of the following semimonthly period.

Temporary §§ 43.6071(a)–1T(c) and 43.6151(a)–1T provide special rules for filing returns and for paying the tax due for the period January 1, 1990, through November 15, 1990.

In the Proposed Rules portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing a companion Notice of Proposed Rulemaking that announces proposed regulations to address additional issues not addressed in these temporary regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Edward B. Madden, Jr., Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. Other personnel from the Service and Treasury Department, however, participated in their development.

List of Subjects

26 CFR Part 43

Excise taxes, Gambling, Transportation by water, Vessels.

26 CFR Part 47

Documentary stamp taxes, Excise taxes, Insurance, Reporting and recordkeeping requirements, Securities.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR ch. I, is amended as follows:

Paragraph 1. A new part 43 of the Code of Federal Regulations is added as follows:

PART 43—EXCISE TAX ON TRANSPORTATION BY WATER

Sec. 43.4471–1T Imposition of tax (temporary).
Sec. 43.6011(a)–1T Returns (temporary).
Sec. 43.6011(a)–2T Final returns (temporary).
Sec. 43.6071(a)–1T Time for filing returns (temporary).
Sec. 43.6091–1T Place for filing returns (temporary).
Sec. 43.6101–1T Period covered by returns (temporary).
Sec. 43.6109(a)–1T Identifying numbers (temporary).
Sec. 43.6151(a)–1T Time and place for paying tax shown on return (temporary).
Sec. 43.6302(c)–1T Use of government depositaries (temporary).

Authority: 26 U.S.C. 7805. §§ 43.6011(a)–1T and 43.6011(a)–2T also issued under 26 U.S.C. 6011; § 43.6071(a)–1T also issued under 26 U.S.C. 6071; § 43.6091–1T also issued under 26 U.S.C. 6091; § 43.6109–1T also issued under 26 U.S.C. 6109; § 43.6302(c)–1T also issued under 26 U.S.C. 6302.

§ 43.4471–1T Imposition of tax (temporary).

(a) *In general.* Section 4471 imposes a tax of $3 per passenger on a covered voyage as is defined in section 4472.

(b) *By whom paid.* The tax is imposed on the person providing the covered voyage (the operator of the vessel).

§ 43.6011(a)–1T Returns (temporary).

(a) *In general.* Liability for tax imposed under section 4471 shall be reported on Form 720, *Quarterly Federal Excise Tax Return*, (or any other form designed by the Commissioner subsequent to publication of these regulations for reporting such liability). Except as provided in paragraph (b) of this section and § 43.6071(a)–1T(c), a return shall be made for a period of one calendar quarter in which the person incurs liability for tax imposed under section 4471, and for each subsequent calendar quarter, whether or not liability was incurred under section 4471 during that quarter, until the person has filed a final return in accordance with § 43.6011(a)–2T.

(b) *Monthly and semimonthly returns*—(1) *Requirement.* If the district director determines that any person that is required to make deposit of taxes under the provisions of § 43.6302(c)–1T has failed to timely deposit those taxes, that person shall be required, if so notified in writing by the district director, to file a monthly or semimonthly return. Every person so notified by the district director shall make a return for the calendar month or semimonthly period (as defined in § 43.6302(c)–1T(c)) in which the notice is received and for each calendar month or semimonthly period thereafter until that person has filed a final return (as defined in § 43.6011(a)–2T) or is notified to make returns for a different return period as provided in paragraph (b)(2) of this section.

(2) *Change of requirement.* As circumstances dictate, the district director may notify a person in writing that the person is required to make quarterly or monthly returns instead of semimonthly returns or to make quarterly or semimonthly returns instead of monthly returns.

(3) *Return for period change takes effect.* The first return required pursuant to the notice of a change of requirement shall include all prior periods for which the person has not filed a return.

(c) *Cross reference.* For provisions relating to the time to file returns, see § 43.6071(a)–1T. For provisions relating to the place for filling returns, see § 43.6091–1T. For provisions relating to

use of government depositaries, see § 43.6302(c)–1T.

§ 43.6011(a)–2T Final returns (temporary).

Any person required by § 43.6011(a)–1T to make a return who in any return period ceases operations in respect of which a return is required, shall make a final return in accordance with the instructions to the return. Each final return shall be marked "Final Return" by the person filing the return. A person who has only temporarily ceased to incur liability for tax shall not make a final return but shall continue to file returns.

§ 43.6071(a)–1T Time for filing returns (temporary).

(a) *Quarterly returns.* Each return required to be made under § 43.6011(a)–1T(a) for a return period of one calendar quarter shall be filed on or before the last day of the first calendar month following the close of the quarter for which it is made.

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.* Each return required to be made under § 43.6011(a)–1T(b) for a monthly period shall be filed not later than the last day of the month following the period for which it is made.

(2) *Semimonthly returns.* Each return required to be made under § 436011(a)–1T(b) for a semimonthly period shall be filed not later than the last day of the semimonthly period following the period for which it is made.

(c) *Returns for the period January 1, 1990, through November 15, 1990.* Liability for tax incurred during the period January 1, 1990, through November 15, 1990 shall be reported on a single return filed not later than November 30, 1990.

(d) *Cross reference.* For provisions relating to timely mailing treated as timely filing and paying, see section 7502. For provisions relating to time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see section 7503.

§ 43.6091–1T Place for filing returns (temporary).

(a) *Quarterly returns.* Quarterly returns shall be filed according to the instructions applicable to those returns.

(b) *Monthly and semimonthly returns.* Monthly and semimonthy returns required under § 43.6011(a)–1T(b) shall be filed in accordance with the instructions of the district director requiring such filing.

§ 43.6101–1T Period covered by returns (temporary).

See § 43.6011(a)–1T for the rules relating to the period covered by the return.

§ 43.6109(a)–1T Identifying numbers (temporary).

Every person required by § 43.6011(a)–1T to make a return shall provide the taxpayer identifying number required by the instructions applicable to the return.

§ 43.6151(a)–1T Time and place for paying tax shown on return (temporary).

The tax required to be reported on each tax return under this subpart is due and payable at the time prescribed in § 43.6071(a)–1T and the place prescribed in § 43.6091–1T for filing the return. The tax required to be reported for the period January 1, 1990, through November 15, 1990, shall be due and payable not later than November 30, 1990. See the applicable sections in part 301 of this chapter (Regulations on Procedure and Administration) for provisions relating to interest on underpayments, additions to tax, and penalties. For provisions relating to the use of Federal Reserve banks and authorized financial institutions in depositing the taxes, see § 43.6302(c)–1T.

§ 43.6302(c)–1T Use of government depositaries (temporary).

(a) *In general.* This section provides rules relating to deposits of tax imposed by section 4471. The provisions of this section shall not apply to taxes for the month or the semimonthly period in which the taxpayer receives notice from the district director that returns are required under § 43.6011(a)–1T(b), or for any subsequent month or semimonthly period for which such a return is required.

(b) *Semimonthly deposits*—(1) *In general.* Each person required by § 43.6011(a)–1T(a) to file a return shall make semimonthly deposits of the tax imposed by section 4471. The taxes payable under section 4471 for a semimonthly period (as defined in paragraph (c) of this section) shall be deposited (except as provided in paragraph (d) of this section) on or before the 9th day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(2) *Safe harbor rule.* A person will be considered to have complied with the semimonthly deposit requirement if the deposit for such semimonthly period is not less than ⅙ (16.67 percent) of the total tax liability under section 4471 for the second preceding calendar quarter, and the person deposits any underpayment for the current quarter on or before the last day of the first calendar month following the end of the quarter. This safe harbor rule does not apply to any person who did not report liability for tax under section 4471 for the second preceding quarter.

(c) *Semimonthly period.* The term "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of that month.

(d) *No deposits of tax for the period January 1, 1990, through November 15, 1990.* No person required to file an excise tax return for any part of the period beginning January 1, 1990, and ending November 15, 1990, is required under this section to deposit the amount of liability for excise taxes imposed under section 4471 incurred during that period, but shall make payment of the tax as provided by § 43.6151(a)–1T. Any person required to file a return to report taxes incurred under section 4471 for any part of the period beginning January 1, 1990 and ending November 15, 1990 may, however, deposit the amount of that liability with a Federal Reserve bank or authorized financial institution on or before November 30, 1990.

(e) *Depositary forms and procedures*—(1) *In general.* A person required by this section to make deposits may make one or more remittances with respect to the amount required to be deposited. An amount of tax that is not otherwise required by this section to be deposited may, nevertheless, be deposited if the person liable for the tax so desires.

(2) *Remittance of deposits.* Each depost shall be accompanied by Form 8109, *Federal Tax Deposit Coupon* (or any other form designated by the Commissioner for making deposits) and remitted in accordance with the instructions applicable to that form and to the return.

(3) *Procurement of prescribed forms.* Copies of the Federal Tax Deposit Coupon will be furnished, so far as possible, to persons required to make deposits under this section. Those persons will not be excused from making a deposit, however, if no coupon has been furnished. A person not supplied with the coupon is required to apply for it in ample time to make the required deposits within the time prescribed. Copies of the Federal Tax Deposit Coupon may be obtained by applying for them with the district director or the director of a service center.

PART 47—[REMOVED]

Par. 2. Title 26, part 47, of the Code of Federal Regulations is removed

Approved: October 1, 1990.

Charles H. Brosman,

Acting Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-24049 Filed 10-5-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone, San Clemente Island, Pacific Ocean, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing a danger zone in the waters of the Pacific Ocean offshore the northwest tip of San Clemente Island, California. The purpose of the danger zone is to protect persons, vessels and property from hazards associated with the establishment of a Naval small arms range. The danger zone restriction is in effect for 40 days each year according to a prearranged schedule. During the remaining time of the year the area is open to the public.

ADDRESS: HQUSACE, ATTEN: CECW-OR, Washington, DC 20314-1000.

DATES: Effective on November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Holt at (213) 894-5606 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Commander, Naval Facilities Engineering Command (NFEC), San Diego, California, has requested the Corps to establish a danger zone in the waters off the northwest tip of San Clemente Island, California. The U.S. Navy is constructing a small arms range facility at the northwest corner of the island. The area is to protect persons, vessels and property from the possibility of an errant round which could strike the water area. It is not intended to use the area encompassed by the danger zone as a range impact area.

In March 1988, the Commander, NFEC requested the U.S. Coast Guard establish a permanent safety zone in the waters off the northwest tip of San Clemente Island to protect boat traffic and mariners from dangers associated with the proposed small arms range. The Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** on 26 July 1988 (53 FR 28019-28020) soliciting comments on the proposed safety zone. The safety zone boundaries were similar to the proposed rules published herein. The coordinates have been modified slightly to remove land areas from the danger zone and to remove an overlap with an existing danger zone. After close of the comment period of 19 September 1989, the Commander, Marine Safety Office, San Diego, notified the Commander, NFEC, that (1) No comments were received in response to the NPRM and, (2) that due to resource limitations and the potential for confusing the public with both the Coast Guard and Navy enforcing the regulations, it would be in the best interest of the public and the U.S. Navy for the area to be established as a restricted area or danger zone by the Corps of Engineers. The Corps of Engineers concurs with the recommendations of the Coast Guard.

On 17 October 1988, the Commander, NFEC requested that the Corps of Engineers establish a danger zone off San Clemente Island. The danger zone would be closed to all vessels except those expressly allowed entrance by the Navy. The Corps published an Interim Final Rule in the **Federal Register** establishing the danger zone on 13 February 1989 (54 FR 6519), with concurrent local public notice published by the Corps Los Angeles District Engineer. In view of the objections received in response to the interim final rule and the Los Angeles District public notice, the interim final rule was suspended on 20 September 1989. Most of the respondents expressed concern about impacts to commercial and recreational fishing, impacts to recreational diving, and impacts to charter boat services. In addition, on 30 July 1990, the Corps published final rules in the **Federal Register** amending the danger zones location off the southern tip of San Clemente Island. Although the Corps did not receive any comments during the proposed rule comment period it did receive two letters of objection and a request for a public hearing after the comment period. The comment clearly did not pertain to the danger zones located at the southern end of San Clemente Island, but were directed at the earlier proposed danger zone located on the northwest end of the San Clemente Island. The Corps has also considered those comments in reaching its final decision on the Navy's revised proposal. The Los Angeles District Engineer has denied the request for a public hearing because the issues have already been resolved; are therefore insubstantial and there is no valid reason to be served by a hearing. The comments are similar to those addressed by the Navy and changes have been made to the regulations to accommodate those concerns.

In response to comments received, the Navy has re-evaluated their project and has modified their request from total closure to a partial, 40-day per year closure divided into eight five-day periods. Closures of the area will be advertised in the U.S. Coast Guard's Notice to Mariners. In addition, the Navy will establish a point of contact who will be available to inform callers of the status and scheduling of closures.

Although the small arms range does not yet exist, the Navy urgently needs approval for the danger zone prior to soliciting bids for the construction of the range facilities and expending public funds. The Navy has examined several alternatives to the proposed location of the range. For reasons of increased costs, logistical constraints and safety concerns, none of the other alternatives are considered feasible by the Navy.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply.

I hereby certify that this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers is amending part 334 of title 33 to read follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 226; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Part 334 is amended by adding section 334.961 to read as follows:

§334.961 Pacific Ocean, San Clemente Island, California, naval danger zone off the northwest shore.

(a) The danger zone: The waters of the Pacific Ocean adjacent to San Clemente Island, California, bounded by the following coordinates and San Clemente Island:

Point A—33°01'38"N ..... 118°36'20"W
Point B—33°01'11"N ..... 118°37'25"W
Point C—33°00'11"N ..... 118°37'00"W
Point D—33°00'05"N ..... 118°36'53"W
Point E—33°02'55"N ..... 118°39'05"W
Point F—33°04'25"N ..... 118°37'41"W
Point G—33°02'02.5"N ..... 118°35'53"W

(b) The regulations:

(1) No vessel or other craft, except vessels of the U.S. Government or vessels duly authorized by the enforcing agency shall enter this area during closure periods.

(2) The regulations in this section shall be enforced by the commander, Naval Base, San Diego, California, and such agencies as he/she shall designate.

Dated: September 20, 1990.

Approved.

Patrick J. Kelly,

Major General, U.S. Army,

Director of Civil Works.

[FR Doc. 90-24092 Filed 10-11-90; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3834-6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Approval of Volatile Organic Compound Regulation Revisions Specific to Automobile and Light-duty Truck Surface Coating in Tarrant County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a State Implementation Plan (SIP) revision request submitted by the State of Texas on July 16, 1990. More specifically, EPA is approving revisions of Texas Air Control Board Regulation V, § 115.421 and § 115.429 that specify alternative equivalent emission limitations for automobile and light-duty truck surface coating operations. EPA is also approving revisions to § 115.425 that specify additional procedures for determining compliance with the emission limitations. The intended effect of this action is to allow automobile and light-duty truck surface coating operations in Tarrant County, Texas to meet alternate volatile organic compound emission limits that are equivalent to those limits in the existing federally approved SIP.

DATES: This rule will become effective on December 11, 1990 unless notice is received on or before November 13, 1990. That someone wishes to submit adverse comments. Such notice may be submitted to Thomas H. Diggs at the EPA Regional Office contact's address and telephone number listed below. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the SIP revision and EPA's evaluation report (Evaluation Report for Provisions Specific to Automobile and Light-Duty Truck Coating Operations in Tarrant County, Texas, August 1990) are available for public review during normal business hours at the following locations:

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723;

U.S. Environmental Protection Agency, Region 6 Office, 12th floor, 1445 Ross Avenue, Dallas, Texas 75202; and

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Those wishing to view the documents at the EPA Region 6 office are requested to call the contact named below at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Jim Callan (6T-AP), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; telephone (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION: On July 16, 1990, Governor Clements of Texas submited to EPA a package of revisions to the Texas State Implementation Plan (SIP). This submission contained revisions adopted by the Texas Air Control Board on June 22, 1990, to the volatile organic compound regulations entitled Texas Air Control Board Regulation V (31 TAC Chapter 115) Control of Air Pollution from Volatile Organic Compounds, subchapter E: Solvent Using Processes, Surface Coating Processes, § 115.421, § 115.425, and § 115.429. In today's **Federal Register** notice, EPA is approving a portion of these regulation revisions as part of the SIP.

Revisions to § 115.421 deal with emission limits for automobile and light-duty truck primer surfacer, topcoat, and final repair operations. Section 115.425 specifies the test methods for determining compliance with the emission limits. Section 115.429 establishes the compliance schedule for the revised limits in § 115.421.

A. Background

Texas' July 16, 1990, submittal contains revisions to the ozone SIP adopted by the State. These specific revisions were submitted at this time for one primary reason. Texas revised these sections pursuant to a Settlement Agreement between the United States and General Motors Corporation in the case of *United States* v. *General Motors Corporation,* Civil Action No. 4-87-580-E, which had been filed in the U.S. District Court for the Northern District of Texas, Fort Worth Division. As part of that Settlement Agreement, General Motors agreed to petition the Texas Air Control Board for specific revisions to Texas' rules controlling volatile organic compounds from surface coating, §§ 115.421 through 115.429. As part of the Settlement Agreement, EPA agreed to review and take action on the State's submittal of these specific revisions affecting the General Motors Corporation assembly plant in Arlington, Tarrant County, Texas within sixty days of such submittal.[1] Therefore, EPA is acting today on those portions necessary to satisfy the requirements of the Settlement Agreement.

B. EPA Action

EPA is approving the following revisions that were submitted by Texas on July 16, 1990. Confusin may arise when understanding the effect of these revisions since the current federally approved version of Texas' VOC regulation follows the State's old codification scheme (i.e., surface coating regulations are numbered as § 115.191). The revisions being approved today, on the other hand, follow the new codification (i.e., surface coating regulations are now numbered as § 115.421).

1. Section 115.421(8)(A) is approved

This section now allows an automobile and light-duty truck surface coating operation to meet alternate emission limits of 15.1 pounds of VOC per gallon of solids deposited for its primer surfacer and topcoat applications. This alternate limit has been determined by EPA to be equivalent to the emission limit of 2.8 pounds of VOC per gallon of coating minus water.[2]

[1] For additional information about the settlement agreement, refer to the November 9, 1989, **Federal Register** (54 FR 47145).

[2] A July 3, 1979, memo from Richard G. Rhoads, then Director of EPA's Control Program Development Division, entitled "Appropriate Transfer Efficiency for 'Waterborne Equivalency' ", explains why these two limits may be considered equivalent. Briefly, a coating that contains 2.8 pounds VOC per gallon of coating, is applied at a transfer efficiency of 30 percent, and consists of 62 percent solids by volume, will have VOC emissions at the rate of 15.1 pounds VOC per gallon of solids deposited.

This section also now allows final repair coatings to meet an alternative to the emission limit of 4.8 pounds VOC per gallon of coating (less water) based on a daily weighted average. The alternate limit is 4.8 pounds VOC per gallon of coating (less water) on an clearcoat. Occurrence weighted averages are calculated daily, for all materials sprayed, using the following three factors specific to each material: Pounds of VOC per gallon of coating, percentage of solids in the coating, and the target dry film builds.

this action will become effective December 11, 1990.

Final Action

EPA approves a portion of the VOC regulation revisions in the SIP revision request submitted by the State of Texas

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2270 is amended by adding paragraph (c)(74) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

simplify reimbursement procedures and ease the administration of official travel.

EFFECTIVE DATE: This final rule is effective December 1, 1990, and applies for travel (including travel incident to a change of official station) which begins on or after December 1, 1990.

the Northern Mariana Islands from a foreign Trust Territory of the Pacific Islands to a nonforeign area. In recognition of that status change, the Commonwealth of the Northern Mariana Islands is now identified in the Federal Travel Regulation as a nonforeign area.

This section also now allows final repair coatings to meet an alternative to the emission limit of 4.8 pounds VOC per gallon of coating (less water) based on a daily weighted average. The alternate limit is 4.8 pounds VOC per gallon of coating (less water) on an occurrence weighted average basis. This alternate procedure may be used to demonstrate compliance, each day, if the facility does not compile sufficient records to enable daily weighted average VOC content determinations to be made. Compliance procedures for this occurrence weighted average are specified in § 115.425 which is also being approved today as is discussed below.

EPA requires that a State's VOC regulations specify the pounds per gallon of coating (kilogram per liter of coating) emission limits for VOC on a less water and less exempt solvent basis. Section 115.421(8)(A) does not state this. However, exempt solvents are not used in coatings that are subject to § 115.421(8)(A) and which are in use at the General Motors facility. The calculation used to establish these alternate emission limits, and the calculation to determine if the coatings in use at a facility are in compliance with those limits, are both on a solid deposited basis. These calculations do not consider exempt solvents. Furthermore, General Motors' Arlington facility is the only facility subject to § 115.421(8)(A). None-the-less, for clarity, EPA is requiring Texas to revise this section as well as all other surface coating provisions under § 115.421 in the near future to treat exempt solvents as water. Texas must make these revisions in order to satisfactorily respond to Phase I of the Post 1987 SIP Call.

2. Revisions to § 115.425 are approved, with the exception of § 115.425(1)

Section 115.425(3)(A) is added to specify the procedure for determining compliance with the new alternate emission limits for primer surfacer and topcoat coatings. That procedure is the EPA publication Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations, EPA 450/3–88–018, December, 1988. This publication also specifies the appropriate test methods and necessary records for determining compliance with the alternative emission limit. Section 115.425(3)(B) is added to specify the procedure for determining compliance with the alternative final repair coating emission limit of 4.8 pounds of VOC per gallon of coating (less water) on an occurrence weighted average basis. Final repair coatings consist of prime, basecoat, and clearcoat. Occurrence weighted averages are calculated daily, for all materials sprayed, using the following three factors specific to each material: Pounds of VOC per gallon of coating, percentage of solids in the coating, and the target dry film builds.

As discussed above, EPA requires that a State's VOC regulations specify the pounds per gallon of coating (kilogram per liter of coating) emission limits for VOC on a less water and less exempt solvent basis. Section 115.425(3)(B) fails to consistently specify "less water and exempt solvent" in determining compliance with the final repair coating alternate emission limits. However, similar to the situation described above, waterborne coatings and coatings with exempt solvents are not currently used in the final repair process at the General Motors facility. EPA is requiring Texas to clarify these sections in the near future to discount exempt solvents and water in the compliance calculations when appropriate. Texas must make these revisions in order to satisfactorily respond to Phase I of the Post 1987 SIP Call.

EPA is taking no action on § 115.425(1) at this time. When EPA acts to recodify the entire surface coating rule, § 115.425(1) may be addressed at that time.

3. Section 115.429(2)(E) is approved

This new section requires all affected facilities in Tarrant County to comply with § 115.421(8)(A) no later than September 30, 1990.

These revisions being approved by EPA today allow automobile and light-duty truck surface coating operations to meet equivalent alternative emission limits. In no way should these revisions be construed as relaxing current federally approved limitations affecting VOC emissions from automobile and light-duty truck surface coating operations in Texas.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective December 11, 1990 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will become effective December 11, 1990.

Final Action

EPA approves a portion of the VOC regulation revisions in the SIP revision request submitted by the State of Texas on July 16, 1990. Those portions are identified above and in the amendments to 40 CFR part 52, § 52.2270, given below.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 11, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 14, 1990.

Harless Benthul,

Acting Regional Administrator.

40 CFR part 52, subpart SS, is amended as follows:

PART 52—[AMENDED]

Subpart SS—Texas

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2270 is amended by adding paragraph (c)(74) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(74) Revisions to Texas Air Control Board's volatile organic compound regulations were submitted by the Governor of Texas on July 16, 1990.

(i) Incorporation by reference

(A) Revisions to Texas Air Control Board Regulation V (31 TAC Chapter 115) Control of Air Pollution from Volatile Organic Compounds, Subchapter E: Solvent-Using Processes, Surface Coating Processes, § 115.421 introductory paragraph, § 115.421(8)(A), § 115.425 introductory paragraph, § 115.425(3), § 115.429 introductory paragraph, and § 115.429(2)(E), as adopted by the Texas Air Control Board on June 22, 1990.

(B) Texas Air Control Board Order No. 90–07 as adopted by the Texas Air Control Board on June 22, 1990.

(ii) Additional material

(A) Texas Air Control Board July 10, 1990, certification signed by Steve Spaw, P.E., Executive Director, Texas Air Control Board.

[FR Doc. 90–24031 Filed 10–11–90; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–1, 301–3, 301–7, 301–8, 301–11, 301–12, 301–14, Appendixes A and B to Ch. 301, Parts 302–1, 302–2, 302–5, and 302–6

[FTR Amdt. 10]

RIN 3090-AD52

Federal Travel Regulation; Worldwide Lodgings-plus Per Diem System

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the FTR to implement a uniform worldwide lodgings-plus per diem computation system. The General Services Administration committed to conduct a thorough review of the per diem reimbursement system for travel outside CONUS concurrent with establishing lodgings-plus as the predominant reimbursement system for travel within CONUS in July 1986. The worldwide lodgings-plus system is a direct result of that review which indicated that a uniform reimbursement system would simplify reimbursement procedures and ease the administration of official travel.

EFFECTIVE DATE: This final rule is effective December 1, 1990, and applies for travel (including travel incident to a change of official station) which begins on or after December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Doris Jones, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: Public Law 99–234 (99 Stat. 1756), January 2, 1986, among other things, provided the Administrator of General Services with authority to establish the type of reimbursement system for agencies to use in reimbursing subsistence expenses incurred by Federal civilian employees during official travel. The General Services Administration (GSA) amended the Federal Travel Regulation (FTR) on July 1, 1986, establishing lodgings-plus per diem as the predominant reimbursement system for travel within CONUS. At that time GSA indicated it would conduct a thorough review of the quarter-day per diem reimbursement system used for travel outside CONUS to determine the desirability, feasibility, and potential cost effectiveness of developing and implementing a single worldwide system. The review indicated that a uniform method of paying per diem expenses to Federal travelers would result in simplified and equitable reimbursement procedures and both ease and reduce the cost of travel administration. This amendment establishes lodgings-plus as a single worldwide system to be used in computing reimbursement for per diem expenses, and incorporates corresponding changes in all affected parts of subtitle F, Federal Travel Regulation System, to produce a smooth interface with the new worldwide system. Certain editorial changes have been made as well to improve readability.

This amendment also updates the Federal Travel Regulation to reflect the General Services Administration as the civilian executive agency with exclusive contracting authority for the use of travel agents. This brings the regulation in line with policy that has existed since the General Accounting Office lifted its prohibition on the use of travel agents and conferred the contracting authority upon GSA.

Additionally, in 1986 the President established the Northern Mariana Islands as a Commonwealth in political union with the United States. The President's action effectively changed the Northern Mariana Islands from a foreign Trust Territory of the Pacific Islands to a nonforeign area. In recognition of that status change, the Commonwealth of the Northern Mariana Islands is now identified in the Federal Travel Regulation as a nonforeign area.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects

41 CFR Parts 301–1, 301–3, 301–7, 301–8, 301–11, 301–12, and 301–14

Government employees, Travel, Travel allowances, Travel and transportation expenses.

41 CFR Parts 302–1, 302–2, 302–5, and 302–6

Government employees, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR chapters 301 and 302 are amended as set forth below.

PART 301–1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301–1 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–1.6 [Amended]

2. Section 301–1.6(e) is amended by removing the phrase "or other agency approved by the General Accounting Office".

PART 301–3—USE OF COMMERCIAL TRANSPORTATION

3. The authority citation for part 301–3 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–3.2 [Amended]

4. Section 301–3.2(c)(1) is amended by removing the phrase "the Commonwealth of Puerto Rico, or the

United States territories and possessions." and adding in its place "the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, or a United States territory or possession.".

§ 301–3.6 [Amended]

5. Section 301–3.6(b)(1)(iii) is amended by removing the phrase "§ 301–1.3(c)(5)" and adding in its place "§ 301–1.3(c)(5) as the 48 contiguous States and the District of Columbia. (See 5 U.S.C. 5701(6).)

(3) *Destination rate.* Destination rate is the rate applicable to the next location where the employee will perform temporary duty or where the employee makes an en route stopover to

when such charges are not included in the room rate.

(ii) The term *lodging* does not include accommodations on airplanes, trains, buses, or vessels. The cost of accommodations furnished aboard common carriers is included in the transportation cost and is not

stopover or official rest stop location when such arrival or departure affects the per diem allowance or other travel expenses. Other points visited should also be shown, but the time of arrival and departure need not be entered.

(3) *Use of standard time.* The hours of departure and arrival recorded on the

reflected in the listings of per diem rates identified in paragraphs (a) through (c) of this section.

(a) *Continental United States (CONUS).* The per diem allowances payable for official travel within CONUS shall not exceed the maximum per diem rates established by the

and submitting to GSA any requests from bureaus or subagencies.

(b) Requests for rate adjustments shall include a city designation and a description of the surrounding location involved (county or other defined area) and a recommended rate supported by a statement explaining the circumstances

United States territories and possessions." and adding in its place "the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, or a United States territory or possession.".

§ 301-3.6 [Amended]

5. Section 301-3.6(b)(1)(iii) is amended by removing the phrase "(49 U.S.C. App. 1301(38))." and adding in its place "(49 U.S.C. App. 1301(41)).".

6. Part 301-7 is revised to read as follows:

PART 301-7—PER DIEM ALLOWANCES

Sec.

301-7.1 General.
301-7.2 Employee and agency responsibilities.
301-7.3 Maximum per diem rates.
301-7.4 Rate adjustment requests for travel within CONUS.
301-7.5 General rules affecting entitlement to per diem.
301-7.6 Lodgings-plus per diem system.
301-7.7 Computation rules for travel of more than 10 hours, but not exceeding 24 hours.
301-7.8 Computation rules for travel of more than 24 hours.
301-7.9 Lodging—location, receipt requirements, and allowable expenses.
301-7.10 Deviation from lodgings-plus per diem system.
301-7.11 Rest stops when travel outside CONUS is involved.
301-7.12 Reductions in maximum per diem rates when appropriate.
301-7.13 Mixed travel reimbursements.
301-7.14 Per diem allowance computations for special situations.
301-7.15 Interruptions of per diem entitlement.

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301-7.1 General.

This part applies worldwide (both within and outside CONUS) except as specifically provided herein.

(a) *Authority.* Per diem allowances shall be paid as prescribed in this part for official travel away from the official station (including travel incident to a change of official station), except when actual subsistence expense reimbursement is authorized or approved as provided in part 301-8 of theis chapter.

(b) *Definitions.* For purposes of this part, the following definitions apply:

(1) *Calendar day.* Calendar day means the 24-hour period from one midnight to the next midnight. The calendar day technically begins one second after midnight (reflected in this part as 12:01 a.m.) and ends at 12:00 midnight.

(2) *CONUS.* CONUS refers to the *continental United States*, defined in § 301-1.3(c)(5) as the 48 contiguous States and the District of Columbia. (See 5 U.S.C. 5701(6).)

(3) *Destination rate.* Destination rate is the rate applicable to the next location where the employee will perform temporary duty or where the employee makes an en route stopover to obtain overnight lodging.

(4) *Locality rates.* Locality rates are maximum per diem rates prescribed for specific localities.

(5) *Standard CONUS rate.* Generally, the standard CONUS rate is prescribed for any location within CONUS that is not included in one of the defined localities or areas for which a specific rate is prescribed in appendix A of this chapter. The standard CONUS rate is also prescribed for all locations within CONUS when permanent change of station travel is involved.

(6) *Per diem allowance.* The per diem allowance is a daily payment instead of actual expenses for lodging, meals and related incidental expenses (see paragraph (c) of this section). The per diem allowance is distinguished from transportation expenses and other miscellaneous travel expenses as described in paragraphs (b)(5) (i) and (ii) of this section.

(i) *Transportation expenses.* Transportation expenses include commercial bus, air, rail, or vessel/steamship fares and are reimbursable in addition to the per diem allowance. Transportation expenses also include local transit system and taxi fares; cost of commercial rental cars and other special conveyances; and mileage and other allowances to cover operating expenses for use of privately owned conveyances, including fees for parking, ferries, etc. (See parts 301-2, 301-3, and 301-4 for governing provisions.)

(ii) *Other miscellaneous travel expenses.* Other miscellaneous travel expenses are those described in part 301-9 that are directly attributable and necessary to the travel and temporary duty as authorized and performed. When authorized or approved by the agency concerned, these expenses are reimbursable in addition to the per diem allowance and transportation expenses.

(c) *Types of expenses covered by per diem.* The per diem allowance covers all charges, including taxes and service charges where applicable, for the following types of expenses (also referred to as *subsistence expenses* in other parts of this subtitle).

(1) *Lodging.* (i) The term *lodging* includes expenses for overnight sleeping facilities; baths; personal use of the room during daytime; and service charges for fans, air conditioners, heaters, and fires furnished in rooms when such charges are not included in the room rate.

(ii) The term *lodging* does not include accommodations on airplanes, trains, buses, or vessels. The cost of accommodations furnished aboard common carriers is included in the transportation cost and is not considered an expense covered by per diem. However, in determining the overall cost to the Government when authorizing the mode of transportation to be used (see § 301-2.2), the availability of these accommodations shall be considered.

(2) *Meals.* Expenses for breakfast, lunch, and dinner and related tips and taxes (specifically excluded are alcoholic beverage and entertainment expenses, and any expenses incurred for other persons).

(3) *Incidental expenses covered by per diem.* (i) Fees and tips to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on vessels, and hotel servants in foreign countries.

(ii) Laundry and cleaning and pressing of clothing.

(iii) Transportation between places of lodging or business and places where meals are taken except as provided in § 301-2.3(b) of this chapter.

(iv) Telegrams and telephone calls necessary to reserve lodging accommodations. (See part 301-6 of this chapter for allowable telegram and telephone expenses incurred for other purposes.)

§ 301-7.2 Employee and agency responsibilities.

(a) *Employee responsibility*—(1) *Duty to exercise care in incurring expenses.* An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business and expending personal funds. Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Employees will be responsible for excess costs and any additional expenses incurred for personal preference or convenience. (See § 301-1.3(a) of this chapter.)

(2) *Duty to record pertinent times.* The date and hour of departure from and arrival at the official station or any other place at which official travel begins or ends must be shown on the travel voucher. The same information also must be shown for points at which temporary duty is performed or for a stopover or official rest stop location when such arrival or departure affects the per diem allowance or other travel expenses. Other points visited should also be shown, but the time of arrival and departure need not be entered.

(3) *Use of standard time.* The hours of departure and arrival recorded on the voucher shall be those of the standard time in effect at the place involved. (See 15 U.S.C. 262.)

(b) *Agency responsibilities for authorizing/approving rates.* It is the responsibility of the head of each agency, or his/her designee, to authorize or approve only those per diem allowances that are justified by the circumstances affecting the travel and are allowable under the specific rules in this part. However, the per diem rates provided for under these rules represent the maximum allowable. To prevent authorization or approval of per diem allowances in excess of amounts required to meet the necessary per diem expenses of official travel, consideration shall be given to factors such as those listed in paragraph (b) of this section that reduce the necessary expenses of employees (see specific guidelines in § 301-7.12 for reducing rates):

(1) Known arrangements or established cost experience at temporary duty locations showing that lodging and/or meals can be obtained without cost or at reduced cost to the employee;

(2) Situations in which special rates for accommodations have been made available for a particular meeting, conference, training or other temporary duty assignment;

(3) Traveler's familiarity with establishments providing lodging and meals at a lower cost in certain localities, particularly where repetitive travel or extended stays are involved;

(4) Modes of transportation where accommodations are provided as part of the transportation cost; and

(5) Situations in which the Government furnishes lodging, such as Government quarters or other lodging procured for the employee by means of an agency purchase order. (See § 301-7.12(a).)

§ 301-7.3 Maximum per diem rates.

Per diem allowances for official travel authorized or approved under this part shall be at daily rates not in excess of the maximum per diem rates established as provided in paragraphs (a) through (c) of this section. Per diem rates include a maximum amount for lodging expenses and a fixed allowance for meals and incidental expenses (M&IE). Maximum lodging amounts and the fixed M&IE allowances are separately reflected in the listings of per diem rates identified in paragraphs (a) through (c) of this section.

(a) *Continental United States (CONUS).* The per diem allowances payable for official travel within CONUS shall not exceed the maximum per diem rates established by the Administrator of General Services and listed in appendix A of this chapter. (See instructions in § 301-7.4 for requesting rate adjustments within CONUS.)

(b) *Nonforeign areas outside CONUS.* The per diem allowances payable for official travel in nonforeign areas shall not exceed the maximum per diem rates established by the Secretary of Defense and listed in Civilian Personnel Per Diem Bulletins published periodically in the Federal Register. The term *nonforeign areas* includes the States of Alaska and Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the territories and possessions of the United States. Maximum per diem rates for nonforeign areas also are listed for convenience in section 925, a per diem supplement to the Standardized Regulations (Government Civilians, Foreign Areas).

(c) *Foreign areas.* Per diem allowances payable for official travel in foreign areas shall not exceed the maximum per diem rates established by the Secretary of State and published in section 925, a per diem supplement to the Standardized Regulations (Government Civilians, Foreign Areas). The term *foreign areas* includes any area (including the Trust Territory of the Pacific Islands) situated both outside CONUS and the nonforeign areas as described in paragraphs (a) and (b) of this section.

§ 301-7.4 Rate adjustment requests for travel within CONUS.

(a) Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in appendix A of this chapter will be surveyed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Federal Supply Service, Attn: Travel Management Division (FBT), Washington, DC 20406. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies.

(b) Requests for rate adjustments shall include a city designation and a description of the surrounding location involved (county or other defined area) and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations.

§ 301-7.5 General rules affecting entitlement to per diem.

(a) *No allowance at official station.* A per diem allowance shall not be allowed within the limits of the official station (see definition in § 301-1.3(c)(3) of this chapter) or at, or within the vicinity of, the place of abode (home) from which the employee commutes daily to the official station. Agencies may define a radius or commuting area that is broader than the limits of the official station within which per diem will not be allowed for travel within 1 calendar day.

(b) *Travel of 10 hours or less (10-hour rule).* A per diem allowance shall not be allowed when the period of official travel is 10 hours or less. (This rule also applies to travel incident to a change of official station.)

(c) *Exception to 10-hour rule.* Per diem shall not be allowed for employees who qualify for per diem solely on the basis of working a nonstandard workday (e.g., four 10-hour days or any other compressed or flexible schedule). In such instances, per diem shall not be allowed for travel periods less than or equal to the employee's workday hours plus 2 hours.

(d) *Beginning and ending of entitlement.* For computing per diem allowances, official travel begins at the time an employee leaves his/her home, office, or other authorized point of departure and ends when the traveler returns to his/her home, office, or other authorized point at the conclusion of the trip.

(e) *International date line.* In cases where the traveler crosses the international date line (180th meridian), the actual elapsed time shall be used to compute per diem rather than calendar days.

§ 301-7.6 Lodgings-plus per diem system.

Per diem allowances for all official travel, including travel incident to a change of official station, shall be computed under the lodgings-plus per

diem system, except as otherwise provided in this part. Under this system, the per diem allowance for each travel day is established on the basis of the actual amount the traveler pays for lodgings plus an allowance for meals and incidental expenses (M&IE), the total not to exceed the applicable authorized point upon conclusion of the trip. The per diem allowance for the trip will be calculated as follows:

(a) *Lodging not required.* If lodging is not required, the per diem allowable shall be the M&IE rate applicable to the location of the temporary duty assignment prorated as provided in the traveler, limited to the applicable maximum lodging allowance prescribed for the location of the lodging, plus the applicable M&IE rate.

(2) *Lodging not required.* For each full calendar day that the traveler is in a travel status and lodging is not required (such as when the traveler is en route

partial day, the calendar day (midnight to midnight) shall be the unit. For each 6-hour period (or fraction thereof at the beginning or end of a partial travel day) that the employee is in a travel status on that day, one-fourth of the applicable M&IE rate shall be allowed. A quarter day, although reflected here as

higher than the maximum per diem rate for the location of the temporary duty point. In such instances, the agency may make an administrative determination on an individual case basis to authorize or approve the higher maximum per diem rate. If the higher maximum rate is not justified and authorized in advance,

double occupancy, see paragraph (b)(1) of this section). (See § 301-7.14(a) for computing daily lodging expense when lodging is rented on a weekly or monthly basis.)

(2) *Government quarters.* A fee or service charge paid for the use of Government quarters is an allowable

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diem system, except as otherwise provided in this part. Under this system, the per diem allowance for each travel day is established on the basis of the actual amount the traveler pays for lodgings plus an allowance for meals and incidental expenses (M&IE), the total not to exceed the applicable maximum per diem rate for the location concerned. The rules provided in paragraphs (a) and (b) of this section and in §§ 301–7.7 through 301–7.10 shall be applied in the specific situations covered.

(a) *Maximum per diem rates*—(1) *For travel within CONUS.* Maximum per diem rates prescribed under § 301–7.3(a) for travel within CONUS are listed in appendix A of this chapter. For all CONUS locations not specifically listed or encompassed by the defined boundaries of a listed location, the standard maximum per diem rate (standard CONUS rate) is prescribed.

(2) *For travel outside CONUS.* Maximum per diem rates prescribed under §§ 301–7.3(b) and 301–7.3(c) apply to travel outside CONUS.

(3) *Maximum rate applicable to change of official station travel.* The standard CONUS rate shall be the applicable maximum per diem rate for en route travel performed in CONUS incident to a change of official station. Locality rates prescribed for locations outside CONUS will apply for en route travel performed outside CONUS incident to a change of official station.

(b) *Elements of per diem allowance*—(1) *Maximum lodging expense allowance.* The maximum per diem rates include a maximum amount for lodging expenses. The employee will be reimbursed for actual lodging costs incurred up to the applicable maximum amounts. Receipts for lodging are required as provided in § 301–7.9(b).

(2) *Meals and incidental expenses (M&IE) allowance.* The maximum per diem rates include a fixed allowance for meals and for incidental expenses (M&IE rate). The M&IE rate, or fraction thereof, is payable to the traveler without itemization of expenses or receipts. For partial days of travel, the M&IE rate shall be prorated as provided in § 301–7.8(e).

§ 301–7.7 Computation rules for travel of more than 10 hours, but not exceeding 24 hours.

When the travel period (entire trip) for which per diem has been authorized is 24 hours or less, but more than 10 hours, the travel period will be prorated as shown in § 301–7.8(e) starting with the quarter day in which travel begins and ending with the quarter day in which the traveler arrives at home, office, or other authorized point upon conclusion of the trip. The per diem allowance for the trip will be calculated as follows:

(a) *Lodging not required.* If lodging is not required, the per diem allowable shall be the M&IE rate applicable to the location of the temporary duty assignment prorated as provided in § 301–7.8(e). If more than one temporary duty point is involved, the per diem allowance will be calculated using the highest of the M&IE rates prescribed for the locations where official business is performed.

(b) *Lodging required.* If lodging is required, the rules for travel of more than 24 hours apply.

§ 301–7.8 Computation rules for travel of more than 24 hours.

The applicable maximum per diem rate for each calendar day of travel shall be determined by the travel status and location of the employee at 12:00 midnight and whether lodging is required at such location. When lodging is required, the applicable maximum per diem rate shall be the maximum rate prescribed for the temporary duty location, or a stopover point where lodging is obtained while en route to, from, or between temporary duty locations (see §§ 301–7.9 and 301–7.6(a)(3) for rules on lodging location and maximum per diem rates applicable to change of official station travel, respectively). Only one maximum rate will be applicable to a calendar day or fraction thereof. Per diem for travel of more than 24 hours shall be calculated as provided in paragraphs (a) through (g) of this section.

(a) *Day travel begins*—(1) *Lodging required.* When lodging is required on the day travel begins (day of departure from the home, office, or other authorized point), the per diem allowable shall be the actual cost of lodging incurred by the traveler, limited to the applicable maximum lodging allowance prescribed for the location of the lodging, plus the applicable M&IE rate prescribed for the location of the lodging prorated as provided in paragraph (e) of this section.

(2) *Lodging not required.* When lodging is not required on the day travel begins, (day of departure from the home, office, or other authorized point), the per diem allowable shall be the destination M&IE rate prorated as provided in paragraph (e) of this section.

(b) *Full calendar days of travel*—(1) *Lodging required.* For each full calendar day that the employee is in a travel status and lodging is required (whether en route or at a temporary duty location), the per diem allowable shall be the actual cost of lodging incurred by the traveler, limited to the applicable maximum lodging allowance prescribed for the location of the lodging, plus the applicable M&IE rate.

(2) *Lodging not required.* For each full calendar day that the traveler is in a travel status and lodging is not required (such as when the traveler is en route overnight to the next temporary duty location), the per diem allowance shall be the destination M&IE rate.

(c) *Returning from travel*—(1) *Lodging required.* For each full calendar day of travel when lodging is required at an en route location while the employee is returning to the official station, home, or other authorized point, the per diem allowable shall be the actual cost of lodging incurred by the traveler, limited to the applicable maximum lodging allowance prescribed for the location of the lodging, plus the applicable M&IE rate.

(2) *Lodging not required.* For any full calendar day of travel when lodging is not required while the traveler is en route overnight returning to the official station, home, or other authorized point, the per diem allowable shall be the M&IE rate applicable to the preceding calendar day.

(3) *Day travel ends.* For the day travel ends (day traveler returns to the official station, home, or other authorized point) the per diem allowable shall be the M&IE rate applicable to the preceding calendar day prorated as provided in paragraph (e) of this section.

(d) *Travel incident to a change of official station*—(1) *En route travel to new official station.* The rules in § 301–7.8 (a) and (b) apply when computing per diem allowances for en route travel (24 hours or less and 24 hours or more) to a new official station (see part 302–2). The M&IE rate applicable to the new official station on the day of arrival at that location, or the standard CONUS M&IE rate, as appropriate, will be prorated as provided in paragraph (e) of this section. When travel begins and ends on the same day, the rule in paragraph (a)(2) of this section will apply and the M&IE rate applicable to the new official station, or the standard CONUS M&IE rate, as appropriate, will also be prorated as provided in paragraph (e) of this section.

(2) *Travel to seek residence quarters.* The rules in § 301–7.8 (a) through (c) apply when computing per diem for travel to seek residence quarters (see part 302–4).

(e) *Method of prorating M&IE rate for partial days.* The applicable M&IE rate for a partial day of travel shall be prorated using the following table. In computing the per diem allowance for a partial day, the calendar day (midnight to midnight) shall be the unit. For each 6-hour period (or fraction thereof at the beginning or end of a partial travel day) that the employee is in a travel status on that day, one-fourth of the applicable M&IE rate shall be allowed. A quarter day, although reflected here as beginning one minute after the hour, technically begins one second after the stated hour.

First quarter	12:01 a.m.	- 06:00	a.m.
Second quarter	06:01 a.m.	- 12:00	noon
Third quarter	12:01 p.m.	- 06:00	p.m.
Fourth quarter	06:01 p.m.	- 12:00	midnight

(f) *Lodging obtained after midnight.* Although per diem generally is based on the employee's location at midnight, there will be instances in which he/she is en route and does not arrive at the lodging location (either temporary duty location or en route stopover point) until after midnight. In such cases, the lodging shall be claimed for the preceding calendar day and the applicable maximum per diem for the preceding day will be determined as if the employee had been at the lodging location at 12:00 midnight of that day.

(g) *Commercial vessel.* For vessel travel, except for the day of arrival on board (day of embarkation) and the day of departure from the vessel (day of debarkation), the allowable per diem rate will be $6 per day. When the $6 rate is not sufficient to meet the traveler's per diem expenses, a per diem rate equal to the anticipated expenses, not to exceed $9 per day, may be authorized or approved; except that the rate for travel by the Alaska Ferry System shall not exceed the standard M&IE rate for CONUS. Per diem will be computed under the lodgings-plus system on the days of embarkation and debarkation.

§ 301–7.9 Lodging—location, receipt requirements, and allowable expenses.

(a) *Lodging location rules*—(1) *Lodging at temporary duty location.* It is presumed that the employee will obtain lodging at the temporary duty location. However, if the employee obtains lodging away from or outside the temporary duty location because of personal preference or convenience, the allowable per diem shall be limited to the maximum per diem rate prescribed for the temporary duty location.

(2) *Lodging not available at temporary duty location.* In certain circumstances, lodging accommodations may not be available at the temporary duty location and the employee must obtain lodging in an adjacent locality where the prescribed maximum per diem rate is higher than the maximum per diem rate for the location of the temporary duty point. In such instances, the agency may make an administrative determination on an individual case basis to authorize or approve the higher maximum per diem rate. If the higher maximum rate is not justified and authorized in advance, the employee must furnish a statement with the travel voucher satisfactorily explaining the circumstances that caused him/her to obtain lodging in an area other than at the temporary duty point designated in the travel authorization.

(b) *Receipt requirements.* Receipts shall be required to support all lodging costs for which an allowance is claimed under the lodgings-plus per diem system except that a statement instead of a receipt may be accepted for the fee or service charge incurred for the use of Government quarters. Receipts are not required when a specific or reduced rate has been authorized in advance of the travel as provided in §§ 301–7.10 and 301–7.12.

(1) *Double occupancy.* If the lodging receipt shows a charge for double occupancy, such fact shall be shown on the travel voucher with the name, and employing agency or office, of the person sharing the room if such person is a Government employee on official travel. One-half of the double occupancy charge shall be allowable for each employee. If the person sharing the room is not another Government employee on official travel, identification of the person sharing the room is not required and the employee may be allowed the single room rate.

(2) *Receipts lost or impractical to obtain.* If receipts have been lost or destroyed or are impractical to obtain, a statement acceptable to the agency explaining the circumstances shall be furnished with the travel voucher, including the name and address of the lodging facility, the dates the lodging was obtained, and the cost incurred. Agencies may require employees to obtain copies of lost or destroyed receipts from the lodging establishment. (See also § 301–11.3(d).)

(c) *Allowable lodging expenses.* As provided in § 301–7.6(b)(1), the traveler will be reimbursed only for his/her actual cost of lodging up to the maximum amount. Expenses incurred in the situations described in paragraphs (c) (1) through (5) of this section will be allowed as lodging expenses:

(1) *Conventional lodging.* When an employee uses conventional lodging facilities (hotels, motels, boarding houses, etc.), the allowable lodging expense will be based on the single room rate for the lodging used (for double occupancy, see paragraph (b)(1) of this section). (See § 301–7.14(a) for computing daily lodging expense when lodging is rented on a weekly or monthly basis.)

(2) *Government quarters.* A fee or service charge paid for the use of Government quarters is an allowable lodging expense.

(3) *Lodging with friends or relatives.* When the employee obtains lodging from friends or relatives (including members of the immediate family) with or without charge, no part of the per diem allowance will be allowed for lodging unless the host actually incurs additional costs in accommodating the traveler. In such instances, the additional costs substantiated by the employee and determined to be reasonable by the agency may be allowed as a lodging expense. Neither costs based on room rates for comparable conventional lodging in the area nor flat *token* amounts will be considered as reasonable.

(4) *Lodging in nonconventional facilities.* When no conventional lodging facilities are present (e.g., in remote areas) or when there is a shortage of rooms because of an influx of attendees at special events (e.g., world's fairs or international sports events), costs of lodging obtained in nonconventional facilities may be allowed. Such facilities may include college dormitories or similar facilities and rooms generally not offered commercially that are made available to the public by area residents in their homes. In such cases, the traveler must provide an explanation of the circumstances which is acceptable to the agency.

(5) *Use of travel trailer or camping vehicle for lodgings.* A per diem allowance for lodging may be allowed when the traveler uses a travel trailer or camping vehicle while on temporary duty assignments away from his/her official station. (See § 301–7.14(b) for per diem computations in such situations.)

§ 301–7.10 Deviation from lodgings-plus per diem system.

An agency may determine that the lodgings-plus per diem system as prescribed in this section is not appropriate for certain travel assignment situations, such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the per diem costs to be incurred by the employee can be determined in advance. (For example, see situations described in §§ 301–7.12 and 301–7.14.) In such instances, a specific per diem rate may be established within the

maximum per diem otherwise applicable to the travel situation and any appropriate reductions made in accordance with § 301–7.12, provided the exception from the lodgings-plus per diem system and the specific per diem rate are authorized in advance on the travel authorization by an appropriate

responsibilities outlined in § 301–7.2(b), the agency should consider any known factors that will cause the traveler's per diem expenses in a specific situation to be less than the applicable maximum rates prescribed under § 301–7.3. If it can be determined in advance of the travel that such factors are present, the

not cause the employee to receive less than the amount allocated for incidental expenses.

(i) *CONUS locations.* The applicable M&IE rate for CONUS locations shall be reduced by the dollar amount shown in the following table when meals are furnished to the employee without

assignments of more than 30 calendar days at temporary duty locations.

(2) Generally the OPM guidelines require a reduced per diem of not more than 55 percent of the applicable maximum per diem rate prescribed in this regulation (see § 301–7.3). Per diem above these levels (not to exceed the

month, and that the cost to the Government does not exceed the cost of renting conventional lodging at a daily rate. Otherwise the daily lodging cost shall be computed by dividing by the number of days in the rental period; e.g., 7 or 30 days, as appropriate.

(3) *Per diem allowable.* (i) Under the

when the employee is on an extended temporary duty assignment in a remote area or where conventional lodging facilities are limited or not available. If use of a rented recreational vehicle is not authorized or approved as advantageous, only those expenses listed in paragraph (b)(1)(i) of this

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maximum per diem otherwise applicable to the travel situation and any appropriate reductions made in accordance with § 301–7.12, provided the exception from the lodgings-plus per diem system and the specific per diem rate are authorized in advance on the travel authorization by an appropriate official of the agency concerned. Such specific per diem rate authorized on the travel authorization shall be the per diem rate payable on the travel voucher without receipts and/or itemization by the employee.

§ 301–7.11 Rest stops when travel outside CONUS is involved.

(a) When travel is direct between authorized origin and destination points which are separated by several time zones and either the origin or destination point is outside CONUS, a rest period not in excess of 24 hours may be authorized or approved when air travel between the two points is by less-than-premium-class accommodations and the scheduled flight time, including stopovers, exceeds 14 hours by a direct or usually traveled route.

(b) The rest stop may be authorized at any intermediate point, including points within CONUS, provided the point is midway in the journey or as near to midway as requirements for use of U.S. flag air carriers and carrier scheduling permit.

(c) A rest stop shall not be authorized when an employee, for personal convenience, elects to travel by an indirect route resulting in excess travel time.

(d) The per diem rate for the rest stop shall be the rate applicable for the rest stop location.

(e) When carrier schedules or the requirements for use of U.S. flag air carriers preclude an intermediate rest stop, or a rest stop is not authorized, it is recommended that the employee be scheduled to arrive at the temporary duty point with sufficient time to allow a reasonable rest period before reporting for duty. (See § 301–3.6 of this chapter for guidelines on the use of U.S. flag carriers.)

§ 301–7.12 Reductions in maximum per diem rates when appropriate.

An agency may, in individual cases or situations, authorize a reduced per diem rate under certain circumstances, such as when lodgings and/or meals are obtained by the employee at a reduced cost or furnished to the employee at no cost or a nominal cost by the Government; or when for some other reason the per diem costs to be incurred by the employee can be determined in advance. In exercising its responsibilities outlined in § 301–7.2(b), the agency should consider any known factors that will cause the traveler's per diem expenses in a specific situation to be less than the applicable maximum rates prescribed under § 301–7.3. If it can be determined in advance of the travel that such factors are present, the agency should authorize a reduced rate that is commensurate with the known expense levels. Such reduced rate authorized on the travel authorization shall be the per diem rate payable on the travel voucher without receipts and/or itemization by the employee. When reduced rate situations involve partial days, per diem for such days may be the reduced rate prorated by quarters, a special reduced rate prescribed for the partial days, or an amount determined under the lodgings-plus system, as considered appropriate by the agency. Guidelines for reducing rates and situations where reduced rates may be appropriate include but are not limited to those provided in paragraphs (a) through (d) of this section.

(a) *When lodgings/meals are furnished by the Government*—(1) *Lodgings furnished.* Normally when all or part of the lodging is furnished at no cost or at a nominal cost to the employee by the Government, the lodgings-plus per diem system automatically reduces the maximum per diem rate to the M&IE rate (or fraction thereof). When lodging is furnished at no cost to the employee through use of an agency purchase order, the agency shall not authorize or approve a per diem allowance for other per diem expenses that will, when combined with the cost of lodging furnished, exceed the applicable maximum per diem rate prescribed under § 301–7.3.

(2) *Meals furnished.* When all or part of the meals are furnished at no cost or at a nominal cost to the employee by the Federal Government, the applicable maximum per diem rate or the M&IE rate, as appropriate, shall be reduced to a daily amount commensurate with the expenses expected to be incurred by the employee. If a reduced per diem rate was not authorized in advance of the travel and meals were furnished at no cost or at a nominal cost by the Federal Government, the appropriate deduction prescribed in paragraph (a)(2) (i) or (ii) of this section shall be made from the total per diem payable on the travel voucher. If there is a charge for the meal for which a deduction has been made under this paragraph, reimbursement shall be allowed for the amount paid, not to exceed the amount allocated for the meal in paragraph (a)(2) (i) or (ii) of this section. The total amount of the deductions made on partial days shall not cause the employee to receive less than the amount allocated for incidental expenses.

(i) *CONUS locations.* The applicable M&IE rate for CONUS locations shall be reduced by the dollar amount shown in the following table when meals are furnished to the employee without charge or at a nominal cost (see paragraph (a)(2) of this section) by the Federal Government.

	M&IE RATES	
	$26	$34
Breakfast	$5	$7
Lunch	5	7
Dinner	14	18
Incidentals	2	2

(ii) *Outside CONUS locations.* The M&IE rates for localities in both nonforeign and foreign areas shall be reduced by the applicable dollar amount shown in appendix B of this chapter when meals are furnished to the employee without charge or at a nominal cost (see paragraph (a)(2) of this section) by the Federal Government.

(b) *Extended stays.* When travel assignments involve extended periods at temporary duty locations and travelers are able to secure lodging and/or meals at lower costs (e.g., weekly or monthly rentals), the per diem rate should be reduced accordingly. If the extended temporary duty is for training, see paragraph (d) of this section. (See also § 301–7.14 for allowable expenses in special situations.)

(c) *Meetings and conventions.* In the interest of uniform treatment of employees, whenever a meeting or conference is arranged which will involve the travel of attendees from other agencies or components of the same agency, and reduced cost lodging accommodations have been prearranged at the meeting or conference site, the agency or agencies sponsoring the meeting or conference shall recommend to the other participating agencies or components a per diem allowance that would be reasonable.

(d) *Per diem for extended training assignments.* (1) The Government Employees Training Act (5 U.S.C. 4101–4118) authorizes agencies to pay all or a part of the per diem expenses of an employee assigned to training at a temporary duty station. Implementing regulations prescribed by the Office of Personnel Management (OPM) in 5 CFR 410.603 provide specific guidelines for payment of per diem expenses for employees on extended training assignments of more than 30 calendar days at temporary duty locations.

(2) Generally the OPM guidelines require a reduced per diem of not more than 55 percent of the applicable maximum per diem rate prescribed in this regulation (see § 301–7.3). Per diem above these levels (not to exceed the maximum per diem rates) must be justified. Agencies shall refer to the OPM guidelines in 5 CFR 410.603 for specific criteria to determine the appropriate per diem. Guidelines also are published by OPM in the Federal Personnel Manual, chapter 410, section 6–3.

§ 301–7.13 Mixed travel reimbursements.

Mixed travel occurs when official travel within a single trip is subject to payment of per diem under the lodgings-plus system and an actual expense allowance under the actual expense system. Reimbursement will be computed under only one system for each calendar day except when the provisions of § 301–8.2(b) or 301–8.3(a)(2)(ii) of this chapter apply. When actual subsistence expense reimbursement for certain travel days is intermittent with the per diem method for others, the rules in § 301–8.6 of this chapter govern.

§ 301–7.14 Per diem allowance computations for special situations.

(a) *Per diem for weekly or monthly rentals*—(1) *Types of expenses included in lodging costs.* When an employee rents a room, apartment, house, or other lodging incident to a temporary duty assignment, the following expenses may be considered part of the lodging cost: the rental cost; if unfurnished, the rental cost of appropriate and necessary furniture and appliances, such as a stove, refrigerator, chairs, tables, bed, sofa, television, and vacuum cleaner; cost of connection, use, and disconnection of utilities; cost of reasonable maid fee and cleaning charges; monthly telephone use fee (does not include installation and long-distance calls); and, if ordinarily included in the price of a hotel or motel room in the area concerned, the cost of special user fees, such as cable TV charges and plug-in charges for automobile head bolt heaters.

(2) *Computation of daily lodging costs.* When the employee obtains lodging on a weekly or monthly rental basis, the daily lodging cost shall be computed by dividing the total lodging cost for the expenses listed in paragraph (a)(1) of this section by the number of days the accommodations are actually occupied, provided that the employee acts prudently in renting by the week or month, and that the cost to the Government does not exceed the cost of renting conventional lodging at a daily rate. Otherwise the daily lodging cost shall be computed by dividing by the number of days in the rental period; e.g., 7 or 30 days, as appropriate.

(3) *Per diem allowable.* (i) Under the lodgings-plus system, the allowable per diem consists of the daily lodging cost calculated under paragraph (a)(2) of this section plus the applicable M&IE rate not to exceed the maximum per diem rate prescribed for the location involved.

(ii) When a reduced per diem rate is being established (see § 301–7.12) in advance of the travel, the daily lodging cost calculated in paragraph (a)(2) of this section shall be added to the amount determined by the agency to be necessary for meals and incidental expenses.

(b) *Per diem allowances for use of a recreational vehicle for lodging.* The term *recreational vehicle* includes mobile homes, campers, camping trailers, or self-propelled mobile recreational vehicles.

(1) *Privately owned*—(i) *Lodging costs.* When an employee uses a privately owned camping or recreational vehicle while on official travel, allowable expenses which may be considered as a lodging cost include parking fees; fees for connection, use, and disconnection of utilities (electricity, gas, water, and sewage); bath or shower fees; and dumping fees. Depreciation shall not be considered as a lodging cost.

(ii) *Meals and incidental expenses.* The agency shall determine an appropriate amount for meals and incidental expenses based on whether the type of recreational vehicle used by the employee has meal preparation facilities. Such amount shall not exceed the applicable M&IE rate.

(iii) *Per diem computation.* The daily lodging costs plus an appropriate rate for meals and incidental expenses determined under paragraph (b)(1)(ii) of this section shall be the per diem rate, limited to the applicable maximum rate prescribed under § 301–7.3 for the locality involved. An agency may authorize a reduced per diem rate within the applicable maximum per diem rate if the actual costs expected to be incurred can be determined in advance of the travel.

(2) *Rented recreational vehicle.* When the use of a rented recreational vehicle is authorized or approved as advantageous to the Government, the rental fee and the allowable expenses shown in paragraph (b)(1)(i) of this section may be considered as lodging costs. Advantageous use might occur when the employee is on an extended temporary duty assignment in a remote area or where conventional lodging facilities are limited or not available. If use of a rented recreational vehicle is not authorized or approved as advantageous, only those expenses listed in paragraph (b)(1)(i) of this section may be considered as lodging costs.

(c) *Per diem computations when temporary duty is curtailed, canceled, or interrupted for official purposes.* When an employee has made advance arrangements for lodging (such as those described in paragraph (a) or (b) of this section), with reasonable expectation of the travel assignment being completed as ordered or directed, and subsequently the temporary duty assignment is curtailed, canceled, or interrupted for official purposes, or for other reasons beyond the employee's control that are acceptable to the agency, lodging costs may be calculated and paid as follows:

(1) *Travel assignment curtailed or interrupted.* When the temporary duty assignment is curtailed or interrupted for the benefit of the Government or for other reasons beyond the employee's control and the employee is unable to obtain a refund of prepaid rent, expenses incurred for unused lodging may be reimbursed under the following conditions:

(i) *Determination of reasonableness.* The agency must determine that the employee acted reasonably and prudently in incurring allowable lodging expenses pursuant to temporary duty travel orders. Included in this determination should be a consideration of whether the employee sought to obtain a refund of the prepaid lodging cost or otherwise took steps to minimize the costs once the temporary duty was officially curtailed or interrupted.

(ii) *Adjusted calculation and reimbursement of lodging costs.* If the agency determines that the employee acted reasonably, the unused portion of the prepaid lodging cost may be reimbursed as follows:

(A) The daily lodging costs for the period covered by the voucher shall be calculated by dividing the total cost for the rental period by the number of days of actual occupancy. The total of the lodging costs thus calculated plus the appropriate daily amount authorized for meals and incidental expenses may be reimbursed not to exceed the per diem rate authorized in the employee's travel orders for the days that the lodging was occupied.

(B) If the authorized per diem rate is insufficient for the days of occupancy,

the daily lodging cost calculated in paragraph (c)(1)(ii)(A) of this section plus the amount authorized for meals and incidental expenses may be reimbursed on an actual expense basis not to exceed appropriate maximum daily rates determined as provided in § 301–8.3.

(C) The excess amount (if any) of the

which the employee commutes daily to the official station.

(a) *Leave and nonworkdays*—(1) *General.* Leave of absence (other than as provided in paragraph (d) of this section) for one-half, or less, of the prescribed daily working hours shall be disregarded for per diem purposes.

may, at agency discretion and within the limits of appropriations available for payment of travel expenses, be authorized round-trip transportation expenses and per diem en route for periodic return travel to their official stations or places of abode for nonworkdays. Agencies are cautioned

exceed that which would have been allowed on uninterrupted travel by a direct or usually traveled route except as provided in part 301–12 of this chapter for certain emergency travel situations. (See §§ 301–2.5, 301–7.2(a)(2), and 301–11.5(a)(3) of this chapter.)

(d) *Illness or injury or a personal emergency situation.* Provisions

unusual circumstances are involved. If the travel is to a location where § 301–8.3 (b)(1)(ii) or (d) applies under special or unusual circumstances, the authorizing agency shall determine an appropriate limitation on the amount of reimbursement. Each agency shall establish necessary administrative procedures for travel under these

(i) 150 percent of the M&IE rate applicable to the temporary duty location; or

(ii) $25 plus the M&IE rate applicable to the temporary duty location when the daily maximum rate authorized is established under paragraph (a)(2)(ii) of this section.

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the daily lodging cost calculated in paragraph (c)(1)(ii)(A) of this section plus the amount authorized for meals and incidental expenses may be reimbursed on an actual expense basis not to exceed appropriate maximum daily rates determined as provided in § 301–8.3.

(C) The excess amount (if any) of the unrefunded lodging cost not reimbursed under paragraph (c)(1)(ii)(B) of this section may be paid as a miscellaneous travel expense incident to the travel assignment, if otherwise proper.

(D) In instances where the travel assignment was interrupted for official purposes (e.g., when the employee is directed to perform temporary duty at another location), allowable per diem expenses (if any) incurred during the interruption may be reimbursed separately from those reimbursements outlined in paragraphs (c)(1)(ii) (A) through (C) of this section, if otherwise proper and in conformance with the provisions of this part.

(2) *Travel assignment canceled.* When the employee incurs lodging expenses in reasonable expectation of a travel assignment being completed as ordered or directed, and due to a change in travel orders the travel assignment is canceled before its commencement, the prepaid lodging expenses may be reimbursed as a miscellaneous travel expense provided the amounts are reasonable and the conditions in paragraph (c)(1)(i) of this section are met.

(3) *Forfeited rental deposits.* If, in situations described in paragraphs (c)(1) and (2) of this section, the employee was required by the terms of a lease or rental agreement to pay a rental deposit and all or part of the deposit is forfeited to cover unpaid lodging costs, the amount of the forfeited deposit may be reimbursed as a miscellaneous travel expense provided the conditions in paragraph (c)(1)(i) of this section are met. Reimbursement for deposits forfeited for damages to lodging accommodations shall not be allowed.

(d) *Per diem while aboard Government vessel.* For temporary duty aboard Government vessels where meals and lodgings are furnished at no cost or at a reduced cost, agencies shall prescribe an appropriate per diem rate within the provisions of this part. The term *Government vessel* includes vessels owned and operated, leased and operated, or chartered by the Government.

§ 301–7.15 Interruptions of per diem entitlement.

For purposes of this section, the term *place of abode* means the place from which the employee commutes daily to the official station.

(a) *Leave and nonworkdays*—(1) *General.* Leave of absence (other than as provided in paragraph (d) of this section) for one-half, or less, of the prescribed daily working hours shall be disregarded for per diem purposes. Where the leave is more than one-half of the prescribed daily working hours, no per diem shall be allowed for that day.

(2) *Nonworkdays.* Legal Federal Government holidays and weekends or other scheduled nonworkdays are considered nonworkdays. Employees are considered to be in a per diem status on nonworkdays except when they return to their official station or place of abode (see paragraph (b) of this section), or except under conditions stated in paragraphs (a)(2) (i) and (ii) of this section.

(i) *Leave before and after nonworkdays.* Per diem shall not be paid for nonworkdays when:

(A) Employees are in a leave status at the end of the workday before the nonworkdays and at the beginning of the workday following the nonworkdays, and

(B) The period of leave on either of those days is more than one-half of the prescribed working hours for that day.

(ii) *Leave between nonworkdays.* Per diem shall not be paid for more than two nonworkdays in cases where leave of absence is taken for all of the prescribed working hours between the nonworkdays.

(b) *Return to official station for nonworkdays*—(1) *Required return—official business.* An employee who is required by appropriate agency officials to return to his/her official station for the nonworkdays to perform official business or because it is otherwise advantageous to the Government shall be allowed the round-trip transportation expenses and per diem for the en route travel.

(2) *Authorized return—substantial cost savings.* An agency may authorize per diem and transportation expenses to an employee to return home for nonworkdays where a significant cost savings will be achieved. Travel time shall be scheduled within the employee's duty hours to the extent practicable. The cost of lost productivity attributable to the duty hours involved in traveling to and from the employee's residence for nonworkdays shall be considered in determining the cost savings.

(3) *Authorized return incident to extended temporary duty.* Employees who are required to routinely perform extended periods of temporary duty may, at agency discretion and within the limits of appropriations available for payment of travel expenses, be authorized round-trip transportation expenses and per diem en route for periodic return travel to their official stations or places of abode for nonworkdays. Agencies are cautioned that this authority is to be used with the utmost discretion and consideration of the length and purpose of the temporary duty assignments and the distance of the return travel. The periodic return travel may be authorized if the conditions specified in paragraphs (b)(3) (i) and (ii) of this section are met.

(i) The head of the agency or his/her designee has determined, based on an appropriate cost analysis, that the costs of periodic weekend return travel (including the costs of potential overtime, if applicable) are outweighed by savings in terms of increased employee efficiency and productivity, as well as reduced costs of recruitment and retention of employees. This cost analysis shall be conducted no less frequently than every other year.

(ii) Return travel for nonworkdays authorized under these provisions constitutes an exception to the directive on scheduling of travel contained in 5 U.S.C. 6101(b)(2) and therefore should be performed outside the employee's regularly scheduled duty hours or during periods of authorized leave. However, in the case of employees not exempt from the Fair Labor Standards Act overtime provisions, consideration should be given to scheduling the authorized travel to minimize payment of overtime, including scheduling of travel during regularly scheduled duty hours when necessary. (See Office of Personnel Management regulations for further guidelines covering overtime during travel.)

(4) *Voluntary return.* When an employee voluntarily returns to his/her official station or place of abode for nonworkdays, the maximum reimbursement for the round-trip transportation and per diem en route shall be limited to the per diem allowance and travel expenses which would have been allowed had the employee remained at the temporary duty station. The employee shall perform any such voluntary return travel during nonduty hours or periods of authorized leave.

(c) *Indirect route or interrupted travel.* If there is an interruption of travel or deviation from the direct route resulting in excess travel time because of an employee's personal preference or convenience or through the taking of leave, the per diem allowed shall not exceed that which would have been allowed on uninterrupted travel by a direct or usually traveled route except as provided in part 301–12 of this chapter for certain emergency travel situations. (See §§ 301–2.5, 301–7.2(a)(2), and 301–11.5(a)(3) of this chapter.)

(d) *Illness or injury or a personal emergency situation.* Provisions governing per diem allowable for emergency travel performed due to an employee's incapacitating illness or injury or because of a personal emergency situation, as well as the continuation of per diem due to incapacitating illness or injury of the employee, are found in part 301–12 of this chapter.

PART 301–8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

7. The authority citation for part 301–8 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E. O. 11609, July 22, 1971 (36 FR 13747).

8. Section 301–8.1 is revised to read as follows:

§ 301–8.1 General.

This part applies worldwide (both within and outside CONUS) except as specifically provided herein.

9. Section 301–8.2 is amended by revising the first sentence of the introductory text of paragraph (a) and the text of paragraph (b) to read as follows:

§ 301–8.2 Conditions warranting authorization or approval of actual expenses.

(a) *Travel assignments involving special or unusual circumstances.* Travel on an actual subsistence expense basis may be authorized or approved for travel assignments when the applicable maximum per diem rate (see § 301–7.3 of this chapter) is inadequate due to special or unusual circumstances. * * *

* * * * *

(b) *Situations requiring reimbursement for occasional lodging and/or meals.* Although lodging and/or meals are furnished without cost (or at a nominal cost) for a particular assignment, the employee may necessarily incur expenses for occasional lodgings and/or meals. The agency may approve reimbursement of appropriate expenses incurred for occasional meals or lodging that are determined to be necessary and justified by the circumstances involved. The actual expense allowable for lodging or each meal may not exceed the applicable lodging or individual meal allowance provided in part 301–7, or 150 percent of those amounts if special or unusual circumstances are involved. If the travel is to a location where § 301–8.3 (b)(1)(ii) or (d) applies under special or unusual circumstances, the authorizing agency shall determine an appropriate limitation on the amount of reimbursement. Each agency shall establish necessary administrative procedures for travel under these provisions.

10. Section 301–8.3 is revised to read as follows:

§ 301–8.3 Maximum daily rates and reimbursement limitations.

This section establishes the maximum amount of reimbursement for actual subsistence expenses that may be authorized or approved for each calendar day or fraction thereof. Agencies shall determine appropriate and necessary daily maximum rates not to exceed these amounts when authorizing or approving travel under this part. Maximum daily rates need not be prorated for fractions of a day; however, see paragraphs (b) (1) and (2) of this section for reimbursement limitations.

(a) *Maximum daily rates*—(1) *Travel within CONUS.* For travel within CONUS, the maximum daily rate for subsistence expenses shall not exceed 150 percent of the applicable maximum per diem rate (rounded to the next higher dollar) prescribed in appendix A of this chapter for the travel assignment location.

(2) *Travel outside CONUS.* For travel outside CONUS, the maximum daily rate for subsistence expenses shall not exceed the greater of the amounts prescribed by the Departments of Defense and State, respectively, for nonforeign and foreign areas as set forth in paragraphs (a)(2) (i) and (ii) of this section:

(i) 150 percent of the applicable maximum per diem rate (rounded to the next higher dollar) prescribed under § 301–7.3 (b) or (c); or

(ii) $50 plus the applicable maximum per diem rate prescribed under § 301–7.3 (b) or (c).

(b) *Reimbursement limitation*—(1) *General limitation.* When the actual subsistence expenses incurred during any 1 day are less than the maximum daily rate authorized, the employee shall be reimbursed only for the lesser amount. Expenses incurred and claimed (including those for fractional days) shall be reviewed and allowed only to the extent determined to be necessary and reasonable by the agency. (See § 301–8.5(b).) Reimbursement for meals and incidental expenses shall not exceed:

(i) 150 percent of the M&IE rate applicable to the temporary duty location; or

(ii) $25 plus the M&IE rate applicable to the temporary duty location when the daily maximum rate authorized is established under paragraph (a)(2)(ii) of this section.

(2) *Specific meals and incidental expenses limitation.* The agency may limit reimbursement for meals and incidental expenses to 100 percent of the applicable M&IE rate and deviate from the requirement for receipts and/or itemization of such expenses as provided in § 301–8.5(a)(3). In such instances, the M&IE rate shall be prorated for partial days of travel as provided in § 301–7.8(e) of this chapter.

(c) *Travel to a Presidentially declared disaster area.* For travel to a Presidentially declared disaster area, the Director of the Federal Emergency Management Agency (FEMA) may request establishment of a maximum daily rate for subsistence expenses above the maximum rate prescribed in paragraph (a) of this section. The Administrator of General Services may establish an appropriate maximum daily rate, not to exceed 300 percent of the maximum per diem rate prescribed for the area under § 301–7.3, pursuant to a review of the justification supporting the request. Such higher established rate shall apply for all official travel to the disaster area and will be effective for a period not to exceed 30 days. The Administrator of General Services may extend the period of effectiveness in increments of 30 days upon the request of the Director of FEMA. Requests should be submitted to the Administrator of General Services, Washington, DC 20405, and must contain the following information:

(1) A copy of the Presidential disaster declaration and a specification of the geographic area encompassed;

(2) A recommended maximum daily rate not to exceed 300 percent of the maximum per diem rate prescribed for the area under § 301–7.3 of this chapter;

(3) A description of the specific circumstances which justify the establishment of the recommended rate; and

(4) A recommended time period for effectiveness of the maximum daily rate requested to be established under this paragraph.

(d) *When lodging is procured through use of an agency purchase order.* When actual subsistence expense reimbursement is authorized or approved under this part 301–8 and lodging is furnished to the employee at no cost through use of an agency purchase order, the agency shall not authorize or approve reimbursement for other subsistence expenses that will, when combined with the cost of lodging furnished, exceed the maximum daily rate authorized under paragraph (a) of this section.

§ 301–8.5 [Amended]

11. In § 301–8.5 revise the following references:

In paragraph:	Revise reference:	To read:
(a)(2)	§ 301–7.5(c)(1) (i) and (ii)	§ 301–7.9(b) (1) and (2) of this chapter
(e)(2)	Part 301–8	part

chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c).

* * * * *

[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate

M&IE Rate	Breakfast	Lunch	Dinner	Incidentals
$30	$6	$7	$12	$5
34	7	8	14	5
38	8	9	16	5
42	9	10	18	5
46	10	11	20	5
50	11	12	22	5
54	12	13	24	5
58	13	14	26	5
62	14	15	28	5
66	15	16	30	5
70	16	17	32	5
74	17	18	34	5
78	18	19	36	5
82	19	20	38	5
86	20	21	40	5

M&IE Rate	Breakfast	Lunch	Dinner	Incidentals
$90	$21	$22	$42	$5
94	22	23	44	5
98	23	24	46	5
102	24	25	48	5
106	25	26	50	5
110	26	27	52	5
114	27	28	54	5
118	28	29	56	5
122	29	30	58	5
126	30	31	60	5
130	31	32	62	5
134	32	33	64	5
138	33	34	66	5
142	34	35	68	5
146	35	36	70	5

purchase order, the agency shall not authorize or approve reimbursement for other subsistence expenses that will, when combined with the cost of lodging furnished, exceed the maximum daily rate authorized under paragraph (a) of this section.

In paragraph:	Revise reference:	To read:
(a)(2)	§ 301–7.5(c)(1) (i) and (ii)	§ 301–7.9(b) (1) and (2) of this chapter
(a)(2)	Part 301–8	part
(a)(3)	§ 301–8.3(a)(2)(ii)	§ 301–8.3(b)(2)

12. Section 301–8.6 is amended by revising paragraph (b) to read as follows:

§ 301–8.6 Mixed travel (per diem and actual subsistence expense) reimbursement.

* * * * *

(b) If actual expense reimbursement authorized for particular locations is intermingled with per diem at other locations in a single trip, the agency shall determine when the transition between reimbursement systems occurs. Only one method or system is authorized for any given calendar day except as provided in § 301–8.2(b) or § 301–8.3(b)(2).

13. Section 301–8.7 is revised to read as follows:

§ 301–8.7 Interruption of subsistence entitlements.

The provisions of § 301–7.15 of this chapter applicable to interruptions of per diem entitlement (leave and nonworkdays, return to official station for nonworkdays, indirect route or interrupted travel, and illness or injury or a personal emergency situation) shall apply to travel on an actual subsistence expense basis.

PART 301–11—CLAIMS FOR REIMBURSEMENT

14. The authority citation for part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–11.6 [Amended]

15. Section 301–11.6 is amended as follows:

In paragraph:	Revise reference:	To read:
(b)(1)	§ 301–7.5(c)(2)	§ 301–7.9(c) of this chapter
(b)(2)	§ 301–7.9	§ 301–7.14 of this chapter
(d)(2)(i)	§ 301–7.2	§ 301–7.3 of this chapter

a. In paragraphs (a)(1), (a)(4), (b)(26), and (b)(27) remove the reference "301–7.11(d)" and add in its place "301–7.15(d)".

b. In paragraph (b)(15) remove the reference "§ 301–7.7" and add in its place "§ 301–7.12 of this chapter".

c. Revise paragraph (b)(16) to read as follows:

§ 301–11.6 Administrative approvals.

* * * * *

(b) * * *

(16) Additional per diem for travel by commercial vessel when the $6 rate is insufficient. (See § 301–7.8(g) of this chapter.)

* * * * *

PART 301–12—EMERGENCY TRAVEL OF EMPLOYEE DUE TO ILLNESS OR INJURY OR A PERSONAL EMERGENCY SITUATION, WITHIN OR OUTSIDE CONUS

16. The authority citation for part 301–12 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–12.1 [Amended]

17. Section 301–12.1 is amended by removing the term "subsistence" and replacing it with "per diem", and by removing the reference to "Part 301–12" and replacing it with "part".

18. Section 301–12.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 301–12.5 Incapacitating illness or injury of employee.

* * * * *

(a) *Continuation of per diem at point of interruption.* An employee who interrupts the temporary duty assignment because of an incapacitating illness or injury and takes leave of any kind shall be allowed a per diem allowance under the provisions of § 301–7.6 of this chapter not to exceed the maximum rates prescribed under § 301–7.3 of this chapter for the location where the interruption occurs * * *

* * * * *

PART 301–14—PAYMENT OF SUBSISTENCE AND TRANSPORTATION EXPENSES FOR THREATENED LAW ENFORCEMENT/INVESTIGATIVE EMPLOYEES

19. The authority citation for part 301–14 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

20. Section 301–14.6 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 301–14.6 Eligibility conditions and limitations.

(a) *Limits on duration of temporary living accommodations.* Subsistence payments may begin as soon as the agency decides to invoke the provisions of this part in a particular situation.

* * *

* * * * *

§ 301–14.7 [Amended]

21. In § 301–14.7 revise the following references:

In paragraph:	Revise reference:	To read:
(b)(1)	§ 301–7.5(c)(2)	§ 301–7.9(c) of this chapter
(b)(2)	§ 301–7.9	§ 301–7.14 of this chapter
(d)(2)(i)	§ 301–7.2	§ 301–7.3 of this chapter

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rate for CONUS

22. Appendix A to chapter 301 is amended by revising the introductory text and the text of footnote 4 to read as follows:

The maximum rates listed below are prescribed under § 301–7.3 of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301–7 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c).

* * * * *

[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be surveyed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Federal Supply Service, Attn: Travel Management Division (FBT), Washington, DC 20406. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations.

23. Appendix B to chapter 301 is added to read as follows:

Appendix B to Chapter 301—Allocation of M&IE Rates to Be Used in Making Deductions from the M&IE Allowance

M&IE rates for localities in nonforeign areas (prescribed in Civilian Personnel Per Diem Bulletins published periodically in the **Federal Register** by the Secretary of Defense) and for localities in foreign areas (established by the Secretary of State in section 925, a per diem supplement to the Standardized Regulations (Government Civilians, Foreign Areas)) shall be allocated as shown in this table (§ 301–7.12(a)(2)(ii) of this chapter) when making deductions from nonforeign or foreign area per diem rates.

M&IE Rate	Breakfast	Lunch	Dinner	Incidentals
$ 1	$0	$0	$0	$1
2	0	0	1	1
3	0	1	1	1

M&IE Rate	Breakfast	Lunch	Dinner	Incidentals
4	1	1	1	1
5	1	1	2	1
6	1	2	2	1
7	1	2	3	1
8	1	2	3	2
9	1	2	4	2
10	2	2	4	2
11	2	3	4	2
12	2	3	5	2
13	2	3	5	3
14	2	4	5	3
15	2	4	6	3
16	2	4	7	3
17	3	4	7	3
18	3	5	7	3
19	3	5	8	3
20	3	5	8	4
21	3	5	9	4
22	3	6	9	4
23	3	6	9	5
24	4	6	9	5
25	4	6	10	5
26	4	7	10	5
27	4	7	11	5
28	4	7	11	6
29	4	7	12	6
30	5	7	12	6
31	5	8	12	6
32	5	8	13	6
33	5	8	13	7
34	5	9	13	7
35	5	9	14	7
36	5	9	15	7
37	5	9	15	7
38	6	10	15	7
39	6	10	16	7
40	6	10	16	8
41	6	10	17	8
42	6	11	17	8
43	6	11	17	9
44	7	11	17	9
45	7	11	18	9
46	7	12	18	9
47	7	12	19	9
48	7	12	19	10
49	7	12	20	10
50	8	12	20	10
51	8	13	20	10
52	8	13	21	10
53	8	13	21	11
54	8	14	21	11
55	8	14	22	11
56	8	14	23	11
57	9	14	23	11
58	9	15	23	11
59	9	15	24	11
60	9	15	24	12
61	9	15	25	12
62	9	16	25	12
63	9	16	25	13
64	10	16	25	13
65	10	16	26	13
66	10	17	26	13
67	10	17	27	13
68	10	17	27	14
69	10	17	28	14
70	11	17	28	14
71	11	18	28	14
72	11	18	29	14
73	11	18	29	15
74	11	19	29	15
75	11	19	30	15
76	11	19	31	15
77	12	19	31	15
78	12	20	31	15
79	12	20	32	15
80	12	20	32	16
81	12	20	33	16
82	12	21	33	16
83	12	21	33	17
84	13	21	33	17
85	13	21	34	17
86	13	22	34	17
87	13	22	35	17
88	13	22	35	18
89	13	22	36	18
90	14	22	36	18
91	14	23	36	18
92	14	23	37	18
93	14	23	37	19
94	14	24	37	19
95	14	24	38	19
96	14	24	39	19
97	15	24	39	19
98	15	25	39	19
99	15	25	40	19
100	15	25	40	20
101	15	25	41	20
102	15	26	41	20
103	15	26	41	21
104	16	26	41	21
105	16	26	42	21
106	16	27	42	21
107	16	27	43	21
108	16	27	43	22
109	16	27	44	22
110	17	27	44	22
111	17	28	44	22
112	17	28	45	22
113	17	28	45	23
114	17	29	45	23
115	17	29	46	23
116	17	29	47	23
117	18	29	47	23
118	18	30	47	23
119	18	30	48	23
120	18	30	48	24
121	18	30	49	24
122	18	31	49	24
123	18	31	49	25
124	19	31	49	25
125	19	31	50	25
126	19	32	50	25
127	19	32	51	25
128	19	32	51	26
129	19	32	52	26
130	20	32	52	26
131	20	33	52	26
132	20	33	53	26
133	20	33	53	27
134	20	34	53	27
135	20	34	54	27
136	20	34	55	27
137	21	34	55	27
138	21	35	55	27
139	21	35	56	27
140	21	35	56	28
141	21	35	57	28
142	21	36	57	28
143	21	36	57	29
144	22	36	57	29
145	22	36	58	29
146	22	37	58	29
147	22	37	59	29
148	22	37	59	30
149	22	37	60	30

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M&IE Rate	Breakfast	Lunch	Dinner	Incidentals
150	23	37	60	30
151	23	38	60	30
152	23	38	61	30
153	23	38	61	31
154	23	39	61	31
155	23	39	62	31
156	23	39	63	31
157	24	39	63	31
158	24	40	63	31
159	24	40	64	31
160	24	40	64	32
161	24	40	65	32
162	24	41	65	32
163	24	41	65	33
164	25	41	65	33
165	25	41	66	33
166	25	42	66	33
167	25	42	67	33
168	25	42	67	34
169	25	42	68	34
170	26	42	68	34
171	26	43	68	34
172	26	43	69	34
173	26	43	69	35
174	26	44	69	35
175	26	44	70	35
176	26	44	71	35
177	27	44	71	35
178	27	45	71	35
179	27	45	72	35
180	27	45	72	36
181	27	45	73	36
182	27	46	73	36
183	27	46	73	37
184	28	46	73	37
185	28	46	74	37
186	28	47	74	37
187	28	47	75	37
188	28	47	75	38
189	28	47	76	38
190	29	47	76	38
191	29	48	76	38
192	29	48	77	38
193	29	48	77	39
194	29	49	77	39
195	29	49	78	39
196	29	49	79	39
197	30	49	79	39
198	30	50	79	39
199	30	50	80	39
200	30	50	80	40
201	30	50	81	40
202	30	51	81	40
203	30	51	81	41
204	31	51	81	41
205	31	51	82	41
206	31	52	82	41
207	31	52	83	41
208	31	52	83	42
209	31	52	84	42
210	32	52	84	42
211	32	53	84	42
212	32	53	85	42
213	32	53	85	43
214	32	54	85	43
215	32	54	86	43
216	32	54	87	43
217	33	54	87	43
218	33	55	87	43
219	33	55	88	43
220	33	55	88	44
221	33	55	89	44
222	33	56	89	44
223	33	56	89	45
224	34	56	89	45
225	34	56	90	45
226	34	57	90	45
227	34	57	91	45
228	34	57	91	46
229	34	57	92	46
230	35	57	92	46
231	35	58	92	46
232	35	58	93	46
233	35	58	93	47
234	35	59	93	47
235	35	59	94	47
236	35	59	95	47
237	36	59	95	47
238	36	60	95	47
239	36	60	96	47
240	36	60	96	48
241	36	60	97	48
242	36	61	97	48
243	36	61	97	49
244	37	61	97	49
245	37	61	98	49
246	37	62	98	49
247	37	62	99	49
248	37	62	99	50
249	37	62	100	50
250	38	62	100	50
251	38	63	100	50
252	38	63	101	50
253	38	63	101	51
254	38	64	101	51
255	38	64	102	51
256	38	64	103	51
257	39	64	103	51
258	39	65	103	51
259	39	65	104	51
260	39	65	104	52
261	39	65	105	52
262	39	66	105	52
263	39	66	105	53
264	40	66	105	53
265	40	66	106	53

For M&IE rates greater than $285, allocate 15%, 25%, and 40% of the total to breakfast, lunch, and dinner, respectively. The remainder is the incidental expense allowance.

PART 302–1—APPLICABILITY, GENERAL RULES, AND ELIGIBILITY CONDITIONS

24. The authority citation for part 302–1 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 302–1.12 [Amended]

25. Section 302–1.12(b)(1) is amended by removing the phrase "the Commonwealth of Puerto Rico, or a territory or possession of the United States." and adding in its place "the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana islands, or a United States territory or possession.".

§ 302–1.12 [Amended]

26. Section 302–1.12(c)(1) is amended by removing the phrase "who claims residence at another location in the United States or its possessions or in the Commonwealth of Puerto Rico at time of appointment," and adding in its place "who claims residence at another location in the United States, the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, or a United States territory or possession at time of appointment,".

§ 302–1.12 [Amended]

27. Section 302–1.12(e)(1) is amended by removing the phrase "the Commonwealth of Puerto Rico, or the United States territories or possessions." and adding in its place "the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, or a United States territory or possession.".

§ 302–1.12 [Amended]

28. Section 302–1.12(e)(5) is amended by removing the phrase "the Commonwealth of Puerto Rico, or to a United States territory or possession" and adding in its place "the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, or a United States territory or possession".

§ 302–1.12 [Amended]

29. Section 302–1.12(e)(6) is amended by removing the phrase "the Commonwealth of Puerto Rico," and adding in its place "the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands,".

30. Section 302–1.13 is amended by revising the first sentence of paragraph (b)(3) to read as follows:

§ 302–1.13 Overseas tour renewal agreement travel.

* * * * *

(b) * * *

(3) *Alternate destination.* An employee and his/her family may travel to a location in the United States, the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, a United States territory or possession, or another country in which the place of actual residence is located other than the location of the place of actual residence; however, an employee whose actual residence is in the United States must spend a substantial amount of time in the United States, the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, or a United States territory or possession incident to travel under this section to be entitled to the allowance authorized. * * *

* * * * *

PART 302–2—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

31. The authority citation for part 302–2 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E. O. 11609, July 22, 1971 (36 FR 13747).

32. Section 302–2.1 is revised to read as follows:

§ 302–2.1 For the employee.

Except as specifically provided in this chapter, per diem, transportation costs, and other travel expenses of the employee shall be allowed in accordance with the provisions of 5 U.S.C. 5701–5709 and chapter 301 of this title; the maximum per diem rate allowable for travel within CONUS shall be the standard CONUS rate prescribed under § 301–7.3 of this title (see also § 301–7.6(a)(3) of this title). The prohibition on paying per diem for travel of 10 hours or less will apply to change of official station travel (see § 301–7.5(b) of this title). This part applies to travel of transferred employees, new appointees (including those covered in § 302–1.11 of this chapter), and employees assigned to posts of duty outside the continental United States in connection with either overseas tour renewal agreement travel or return travel to place of residence for the purpose of separation.

33. Section 302–2.2 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 302–2.2 For members of an employee's immediate family.

(a) *Transportation.* Except as specifically provided in this chapter, allowable travel expenses for the employee's immediate family, including transportation, are governed by chapter 301 of this title. Travel of the immediate family may begin at the employee's old official station or some other point, or partially at both, and may end at the new official station or some other place selected by the employee, or partially at both. However, the cost to the Government for transportation of the immediate family shall not exceed the allowable cost by the usually traveled route between the employee's old and new official stations.

(b) *Per diem allowance when en route between employee's old and new official station.* When an employee is transferred, an allowance shall be paid for per diem expenses incurred by the employee's immediate family while traveling between the old and new official stations regardless of where the old and new stations are located. If the actual travel involves departure and/or destination points other than the old or new official station, the per diem allowance shall not exceed the amount to which members of the immediate family would have been entitled if they had traveled by a usually traveled route between the old and new official stations. In computing the per diem allowance under chapter 301 of this title, the prohibition on paying per diem for travel of 10 hours or less will apply to permanent change of station travel. The maximum allowable per diem rates are as follows:

* * * * *

PART 302–5—SUBSISTENCE WHILE OCCUPYING TEMPORARY QUARTERS

34. The authority citation for part 302–5 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E. O. 11609, July 22, 1971 (36 FR 13747).

35. Section 302–5.2 is amended by revising paragraphs (a)(1), (g) (1) and (2), and the first sentence of paragraph (i) to read as follows:

§ 302–5.2 Conditions and limitations for eligibility.

(a) * * *

(1) *Initial period of temporary quarters.* An employee for whom a permanent change of station is authorized or approved shall be allowed subsistence expenses for himself/herself and for each member of his/her immediate family (defined in § 302–1.4(e) of this chapter) for a period of not more than 60 consecutive days when occupancy of temporary quarters is determined to be necessary and the new official station is located within the United States, the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, a United States territory or possession, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States under the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)), provided a written agreement as required in § 302–1.5 of this chapter is signed in connection with the transfer. The period of consecutive days may be interrupted for the time that is allowed for travel between the old and new official stations; for circumstances attributable to official necessity as, for example, an intervening temporary duty assignment or military duty; or for non-official necessary interruptions such as hospitalization, approved sick leave, or other reason beyond the employee's control and acceptable to the agency concerned.

* * * * *

(g) * * *

(1) *Claim for temporary quarters when occupancy begins the same day en route travel ends.* The eligibility period for reimbursement for temporary quarters subsistence expenses shall start at the beginning of the same calendar day quarter in which en route travel per diem ends. (See paragraph (i) of this section regarding the prohibition on duplicating payment of subsistence expenses under both the en route travel and temporary quarters subsistence expense authorities.)

(2) *Claims for temporary quarters occupancy in all other cases.* In all cases other than those covered in paragraph (g)(1) of this section (e.g., when occupancy of temporary quarters occurs at the old official station or when reimbursement for occupancy of temporary quarters is not claimed on the same day that en route travel per diem begins or ends), the temporary quarters period shall start at 12:01 a.m. of the calendar day (see § 301–7.1(b)(1) of this title) in which temporary quarters subsistence expense reimbursement is claimed, provided the temporary quarters are occupied during that calendar day.

* * * * *

(i) *Duplication of other allowances.* In no cases shall subsistence expenses under these provisions be allowed which duplicate, in whole or in part, payments received under other parts of this subtitle or under other laws or regulations covering similar costs. * * *

36. Section 302–5.4 is amended by revising paragraphs (c) (1) (i) and (ii), by removing paragraph (c)(2)(v), and by revising paragraphs (c) (3) and (4) to read as follows:

§ 302–5.4 Allowable amount.

* * * * *

(c) * * *

(1) * * *

(i) For temporary quarters located in the continental United States the applicable maximum per diem rate is the standard CONUS rate prescribed under § 301–7.6(a)(3) of this title.

(ii) For temporary quarters in applicable locations outside the continental United States, the maximum

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per diem rate is the rate prescribed by the Secretary of Defense or by the Secretary of State under § 301–7.3 (b) or (c) of this title for the locality of the temporary quarters.

* * * * *

(3) *For the second 30 days.* The daily rates for the second 30-day period for

allowable contract cost, imputed interest costs determined in accordance with generally accepted accounting principles (GAAP) when, under GAAP, the M&O contractors' leases are required to be classified and accounted for as capital leases, unless such capital lease arrangements are specifically

M&O contractor enters into any such contractual lease arrangement and/or records a lease's imputed interest expense as an allowable contract cost. In such cases, the DOE's objective is to ensure that the decision to lease is, in fact, fully justified and proper in accordance with applicable DOE

on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. Pursuant to OMB Bulletin 85–7, dated December 14, 1984, all procurement regulations, except those named therein, are not subject to the Office of Management and Budget

a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional

DOE approval of a Contractor's Purchasing System (e.g., via a CPSR) would not constitute such approval or authorize an M&O contractor to enter into a capital leasing arrangement. The contractual leasing document itself continues to be subject to DOE authorization and approval in accordance with existing DOE

per diem rate is the rate prescribed by the Secretary of Defense or by the Secretary of State under § 301–7.3 (b) or (c) of this title for the locality of the temporary quarters.

* * * * *

(3) *For the second 30 days.* The daily rates for the second 30-day period for the employee and each member of the immediate family shall be three-fourths of the daily rates prescribed under paragraph (c)(2) of this section.

(4) *Additional 60 days.* When the agency authorizes an extension of time for occupancy of temporary quarters beyond the first 60 days (not to exceed an additional 60 days) due to compelling reasons as provided in § 302–5.2(a)(2), the additional days shall be computed at the same daily rates allowed for the second 30-day period in paragraph (c)(3) of this section for the employee and each member of the immediate family.

PART 302–6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

37. The authority citation for part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 302–6.1 [Amended]

38. Section 302–6.1(a) is amended by removing the phrase "the territories and possessions of the United States, the Commonwealth of Puerto Rico," and adding in its place "the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, a United States territory or possession,".

Dated: August 13, 1990.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 90-24097 Filed 10-11-90; 8:45am]

BILLING CODE 6820-24-M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation; Management and Operating Contractors Leasing Arrangements

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Energy Acquisition Regulation (DEAR), and establishes that the Department of Energy (DOE), under its Management and Operating (M&O) contracts, will not recognize, as allowable contract cost, imputed interest costs determined in accordance with generally accepted accounting principles (GAAP) when, under GAAP, the M&O contractors' leases are required to be classified and accounted for as capital leases, unless such capital lease arrangements are specifically authorized and approved, in advance, by the DOE.

EFFECTIVE DATE: This regulation will be effective October 12, 1990.

FOR FURTHER INFORMATION CONTACT:

Rudolph J. Schuhbauer, Business and Financial Policy Division (PR–122), Office of Procurement, Assistance and Program Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8175.

Judith A. Sukol, Office of the Assistant General Counsel for Procurement and Finance (GC–34), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR chapter 9.

The purpose of this final rule is to revise the DEAR to clarify the DOE's policy concerning the allowability of lease payments, including imputed interest expenses determined in accordance with GAAP when, under GAAP, the lease must be accounted for as a capital lease, and to specifically preclude M&O contractors from entering into any such capital lease arrangements without first obtaining DOE authorization and approval to do so.

It is the DOE's intent to require specific DOE authorization and approval of all M&O contractor plans to lease property, plant or equipment under a capital lease arrangement before the M&O contractor enters into any such contractual lease arrangement and/or records a lease's imputed interest expense as an allowable contract cost. In such cases, the DOE's objective is to ensure that the decision to lease is, in fact, fully justified and proper in accordance with applicable DOE regulations and directives.

A brief description of the DEAR amendments to part 970 follows: Under subpart 970.31, Contract Costs Principles and Procedures, subsection 970.3102–15, "Procurement: Subcontracts and contractor affiliated sources," is amended to include a new provision setting forth conditions under which lease payments may be recognized as allowable cost.

Under DEAR subpart 970.52, Contract Clauses for Management and Operating Contracts, subsection 970.5204–13, "Allowable costs and fixed-fee (Management and Operating contracts)," and subsection 970.5204–14, "Allowable costs and fixed-fee (support contracts)," are amended to incorporate certain language clarifications and additions required to make imputed interest costs associated with certain DOE authorized lease arrangements an allowable contract cost. Also, the contract clause at DEAR subsection 970.5204–22, "Contractor purchasing system," is amended to include a new provision which prohibits the M&O contractor from entering into any lease arrangement which, under GAAP, is considered to be a capital lease, unless a capital leasing arrangement is specifically authorized and approved in advance by the DOE.

Under DEAR subpart 970.71, Management and Operating Contractor Purchasing, DEAR subsection 970.7104–4, "Leasing of Property, Plant or Equipment," is added to establish that M&O contractors are to seek the DOE's authorization and approval for any proposed lease arrangement which, under GAAP, is considered to be a capital lease.

II. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared prior to the promulgation of a "major rule." The DOE has concluded that this action is not a major rule because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects

on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. Pursuant to OMB Bulletin 85–7, dated December 14, 1984, all procurement regulations, except those named therein, are not subject to the Office of Management and Budget (OMB) regulatory review. The DOE has determined that this action is not subject to OMB review.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. The DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No information collection or recording requirements are imposed by this final rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under the National Environmental Policy Act (NEPA)

The DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the NEPA of 1969 (42 U.S.C. *et seq.* (1976), or the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

III. Public Comments

This final rule is based on the Notice of Proposed Rulemaking (NOPR) that DOE published in the **Federal Register** on July 23, 1990 (55 FR 29863) wherein public comments were invited for the 30-day period ending August 22, 1990. Public comments were received from a university. The public comments, DOE's responses thereto and resulting actions taken are summarized below.

Comment: The commenter felt that the proposed phrases "is authorized by the DOE prior to execution in accordance with applicable DOE Procedures" was confusing. The commenter believed the rule would not be objectionable if DOE authorization in accordance with an approved automated data processing plan, as approved transportable facility, or an approval within the existing authorities granted the contractor within its last Contractor Procurement System Review (CPSR) satisfied this criteria. However, the rule would be objectionable if its intent was to have all "capital lease" contractual arrangements authorized and approved by DOE. Such actions would, in the commenter's view, impose additional burdens and programmatic time delays. The commenter believed that DOE-approved M&O contractor purchasing systems are fully sufficient to address issuance of capital leases, and that in such cases specific DOE-approval was not necessary. Editorial changes to that effect were recommended.

Response: The commenter's objections appear to be based on the erroneous premise that the thrust of DOE proposal was to establish a new requirement whereby the contractual lease between the M&O contractor and a third party must be authorized and approved by DOE. That was not the DOE's intent. Rather, it is the decision to acquire an asset by use of a capital lease, not the contractual leasing document(s) per se, that is addressed in this rule. The DOE approvals provided pursuant to existing DOE procedures which direct or authorize the M&O contractor to pursue a planned leasing arrangement would constitute such a review and approval. However, general DOE approval of a Contractor's Purchasing System (e.g., via a CPSR) would not constitute such approval or authorize an M&O contractor to enter into a capital leasing arrangement. The contractual leasing document itself continues to be subject to DOE authorization and approval in accordance with existing DOE procedures, i.e., indirectly through specific DOE approval of the Contractor's Purchasing System or directly for leasing actions in excess of delegated dollar levels of authority.

To clarify the forgoing distinction, the proposed language was changed in amended DEAR subsection 970.7104–4, DEAR paragraphs 970.3102–7(c) and 970.5204–22(g), and DEAR subparagraphs 970.5204–13(e)(15) and 970.5204–14(e)(13). In particular, as deemed appropriate, the words "lease" or "leasing arrangement" were revised and/or preceded with the phrase "the decision to enter into a capital." The proposed phraseology in DEAR subparagraphs 970.5204–13(e)(15) and 970.5204–14(e)(13) was also rearranged to make it clearer that it is the imputed interest cost that is being exempted from the general interest cost prohibition when the cited circumstances are met.

Comment: The commenter stated that the DOE laboratories depend on "* * * capital leases to obtain equipment items for which there are no monies available." Supercomputers and ADP resources were cited as examples where capital leases were being used. The commenter also stated that the proposed rule will "* * * limit the flexibility of contractors to use capital leases as an alternative to using capital funds." The commenter recommended deleting any such restrictive language.

Response: The unavailability of appropriated funds is not an acceptable justification for using a leasing arrangement to acquire assets under an M&O contract. Appropriated funds must be applied solely to the objects for which they were made (31 U.S.C. 628 (section 3678 of the Revised Statutes)). Therefore, no change in the proposed language relating to properly restricting the use of funds will be made.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended, as set forth below.

Issued in Washington, DC on October 4, 1990.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose), bond discounts and expenses, and costs of financing and refinancing operations.

* * * * *

in the best interest of the DOE, the contractor must submit documentation justifying, on a case-by-case basis, each such decision, including a lease-versus-purchase analysis, to the DOE and request that an authorizing letter of approval be issued.

E. O. 12291

The NTSB has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation Requirements.

Paperwork Reduction Act

for damages growing out of any matter mentioned in such reports.

Factual accident report means an investigator's report of his investigation of the accident.

§ 835.2 Scope of permissible testimony.

the Board's office to which the employee is assigned, and at a time arranged with the employee reasonably fixed to avoid substantial interference with the performance of his duties.

(c) Board employees are authorized to

Issued in Washington, DC on October 4, 1990.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99-145 (42 U.S.C. 7256a), as amended.

2. In subsection 970.3102-15, the section heading is revised and a new paragraph (c) is added as follows:

970.3102-15 Procurement: Subcontracts, contractor-affiliated sources, and leases.

* * * * *

(c) *Leases.* Contractor lease payments will be considered an allowable cost when a leasing arrangement is not prohibited by the contract terms (*e.g., see* 970.5204-22). If a lease for property, plant or equipment (land and/or depreciable assets) is required to be classified as a capital lease under generally accepted accounting principles (GAAP), imputed interest costs determined in accordance with GAAP for any such contractor lease shall be an allowable contract charge if the following are met:

(1) The specific decision to enter into a capital leasing arrangement is authorized by DOE in accordance with applicable DOE procedures, prior to execution of the lease,

(2) The lease is accounted for in accordance with GAAP, and

(3) The imputed interest costs are separately accounted for in special DOE accounts established for the recordation of such costs.

970.5204-13 [Amended]

3. In subsection 970.5204-13, the title to the clause and subparagraph (e)(15) are revised to read as follows:

Allowable Costs and fixed-fee (Management and operating contracts) (October 1990)

* * * * *

(e) * * *

(15) Interest, however represented (except (i) Interest incurred in compliance with the contract clause entitled "State and local Taxes" or, (ii) imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP), provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose), bond discounts and expenses, and costs of financing and refinancing operations.

* * * * *

970.5204-14 [Amended]

4. In subsection 970.5204-14, the clause is amended by revising the title and subparagraph (e)(13) to read as follows:

Allowable Costs and Fixed-Fee (Support Contracts) (October 1990)

* * * * *

(e) * * *

(13) Interest, however represented (except (i) Interest incurred in compliance with the contract clause entitled "State and local Taxes" or, (ii) imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP), provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose), bond discounts and expenses, and costs of financing and refinancing operations.

* * * * *

970.5204-22 [Amended]

5. In subsection § 970.5204-22, the clause is amended by revising the title and subparagraph (g) as follows:

Contractor Purchasing System (October 1990)

* * * * *

(g) (Name of Contractor) shall not enter into any lease for property, plant, or equipment when the lease must be classified and accounted for as a capital lease under generally accepted accounting principles, unless the decision to enter into a capital leasing arrangement is specifically authorized and approved in advance by the DOE.

6. Add new subsection 970.7104-42, as follows:

970.7104-4 Leasing of Property, Plant or Equipment.

Notwithstanding any prior purchasing system acceptance or thresholds that may be approved by the HCA, management and operating contractors are not permitted to enter into any lease for property, plant or equipment (land and/or depreciable assets) when the lease must be classified and accounted for as a capital lease under generally accepted accounting principles, unless the decision to enter into a capital leasing arrangement is specifically authorized and approved in advance by the DOE. Should the contractor determine that a capital lease arrangement may result in a cost advantage for the DOE, or is otherwise in the best interest of the DOE, the contractor must submit documentation justifying, on a case-by-case basis, each such decision, including a lease-versus-purchase analysis, to the DOE and request that an authorizing letter of approval be issued.

[FR Doc. 90-24011 Filed 10-11-90; 8:45 am]

BILLING CODE 6450-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 835

Testimony of Board Employees

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: This revision to part 835 is designed to preclude an interpretation of § 835.3 which would permit employees to testify as experts or give any opinion testimony, and it sets forth in greater detail the administrative and policy considerations underlying the regulation of employee testimony. The revision was prompted by a judicial decision which concluded that § 835.3 did not prohibit all opinion testimony by Safety Board employees.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Daniel D. Campbell, General Counsel, National Transportation Safety Board, room 818, 800 Independence Avenue SW., Washington, DC 20594 (202) 382-6540.

SUPPLEMENTARY INFORMATION: On July 30, 1990, the National Transportation Safety Board (NTSB) published in the **Federal Register** (55 FR 30941), a notice of proposed rulemaking to revise § 835.3 to prohibit Board employees from rendering any opinion testimony and to revise §§ 835.1 and 835.3 to elaborate on the rationale for restricting the scope of testimony. No comments have been received, and the NTSB is hereby adopting the proposed revisions without change. For convenience, part 835 is republished in its entirety. The only change is minor, i.e., the definitions in § 835.2 are now listed in alphabetical order to conform to current **Federal Register** format.

Regulatory Flexibility Act

Because this rulemaking will not have a significant economic impact on a substantial number of small entities, no Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) analysis is required.

E. O. 12291

The NTSB has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation Requirements.

Paperwork Reduction Act

This regulation will not impose any additional information collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 49 CFR Part 835

Courts, Government employees.

Accordingly, 49 part 835 is revised to read as follows:

PART 835—TESTIMONY OF BOARD EMPLOYEES

Sec.

835.1 Purpose.
835.2 Definitions.
835.3 Scope of permissible testimony.
835.4 Use of reports.
835.5 Manner in which testimony is given.
835.6 Request for testimony.
835.7 Testimony of former Board employees.
835.8 Procedure in the event of a subpoena.
835.9 Testimony in State or local investigations.

Authority: 5 U.S.C. 301; 49 U.S.C. 1441; and 49 U.S.C. 1901 *et seq.*

§ 835.1 Purpose.

This part prescribes the policies and procedures regarding the testimony of employees of the National Transportation Safety Board (Board) in suits or actions for damages and criminal proceedings arising out of transportation accidents. The purpose of this part is to ensure that the time of Board employees is used only for official purposes, to avoid embroiling the Board in controversial issues that are not related to its duties, to avoid spending public funds for non-Board purposes, to preserve the impartiality of the Board, and to prohibit the discovery of opinion testimony.

§ 835.2 Definitions.

Accident for purposes of this part includes "incident."

Board's accident report means the report containing the Board's determinations, including the probable cause of an accident, issued either as a narrative report or in a computer format (briefs of accidents). Pursuant to section 701(e) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1441(e)) (FA Act) and section 304(c) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(c)) (Safety Act), no part of these reports may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such reports.

Factual accident report means an investigator's report of his investigation of the accident.

§ 835.3 Scope of permissible testimony.

(a) Section 701(e) of the FA Act and section 304(c) of the Safety Act preclude the use or admission into evidence of Board accident reports in any suit or action for damages arising from accidents. These sections reflect Congress' "strong * * * desire to keep the Board free of the entanglement of such suits." Rep. No. 93-1192, 93d Cong., 2d Sess., 44 (1974), and serve to ensure that the Board does not exert an undue influence on litigation. The purposes of these sections would be defeated if expert opinion testimony of Board employees, which may be reflected in the views of the Board expressed in its reports, were admitted in evidence or used in litigation arising out of an accident. The Board relies heavily upon its investigators' opinions in its deliberations. Furthermore, the use of Board employees as experts to give opinion testimony would impose a significant administrative burden on the Board's investigative staff. Litigants must obtain their expert witnesses from other sources.

(b) For the reasons stated in paragraph (a) of this section and § 835.1, Board employees may only testify as to the factual information they obtained during the course of an investigation, including factual evaluations emobdied in their factual accident reports. However, they shall decline to testify regarding matters beyond the scope of their investigation, and they shall not give any expert or opinion testimony.

§ 835.4 Use of reports.

(a) A Board employee may use a copy of his factual accident report as a testimonial aid, and may refer to that report during his testimony or use it to refresh his memory.

(b) Consistent with section 701(e) of the FA Act and section 304(c) of the Safety Act, a Board employee may not use the Board's accident report for any purpose during his testimony.

§ 835.5 Manner in which testimony is given.

(a) Testimony of Board employees may be made available for use in actions or suits for damages arising out of accidents through depositions or written interrogatories. Board employees are not permitted to appear and testify in court in such actions.

(b) Normally, depositions will be taken and interrogatories answered at the Board's office to which the employee is assigned, and at a time arranged with the employee reasonably fixed to avoid substantial interference with the performance of his duties.

(c) Board employees are authorized to testify only once in connection with any investigation they have made of an accident. Consequently, when more than one lawsuit arises as a result of an accident, it shall be the duty of counsel seeking the employee's deposition to ascertain the identity of all parties to the multiple lawsuits and their counsel, and to advise them of the fact that a deposition has been granted, so that all interested parties may be afforded the opportunity to participate therein.

(d) Upon completion of the deposition of a Board employee, a copy of the transcript of the testimony will be furnished, at the expense of the party requesting the desposition, to the Board's Counsel for the Board files.

§ 835.6 Request for testimony.

(a) A request for testimony of a Board employee relating to an accident by deposition or interrogatories shall be addressed to the General Counsel, who may approve or deny the request. Such request shall set forth the title of the case, the court, the type of accident (aviation, railroad, etc.), the date and place of the accident, the reasons for desiring the testimony, and a showing that the information desired is not reasonably available from other sources.

(b) The General Counsel shall attach to his approval such reasonable conditions as he may deem appropriate in order that the testimony will be limited to the matters delineated in § 835.3, will not interfere with the performance of the duties of the employees as set forth in § 835.5, and will otherwise conform to the policies of this part.

(c) A subpoena shall not be served upon a Board employee in connection with the taking of his deposition.

§ 835.7 Testimony of former Board employees.

It is not necessary to request Board approval for testimony of a former Board employee. However, the scope of testimony of former Board employees is limited to the matters delineated in § 835.3, and use of reports as prescribed by § 835.4.

§ 835.8 Procedure in the event of a subpoena.

(a) If a Board employee has received a subpoena to appear and testify, a request for his deposition shall not be approved until the subpoena has been withdrawn.

(b) Upon receipt of a subpoena, the employee shall immediately notify the General Counsel and provide the data identifying the accident; the title of the case, the name of the judge, if available, and the title and address of the court; the type of accident (aviation, railroad, etc.); the date on which the employee is

level for coho salmon north of Cape Falcon, Oregon.

DATES: *Effective:* Modification of the subarea quota and the landing limit for coho salmon in the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective 0001 hours local time September 25, 1990.

In accordance with the framework allocation provisions in 50 CFR part 661, inseason transfers may be permitted between commercial and recreational fishery quotas to reallocate fish not caught in one fishery to the other. The four recreational subarea quotas for coho salmon north of Cape Falcon are

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding these inseason adjustments. The States of Washington and Oregon will manage the commercial fishery in

Ocean perch complex (POP) by vessels fishing in the Bering Sea (BS) subarea. This action is necessary to prevent the total allowable catch (TAC) for POP in the Bering Sea subarea from being exceeded before the end of the year. The intent of this action is to ensure optimum use of groundfish while

or the "other species" category provided that such apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category.

The initial 1990 TAC specified for POP in the Bering Sea subarea was 5,355 mt

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(b) Upon receipt of a subpoena, the employee shall immediately notify the General Counsel and provide the data identifying the accident; the title of the case, the name of the judge, if available, and the title and address of the court; the type of accident (aviation, railroad, etc.); the date on which the employee is directed to appear; the name, address, and telephone number, if available, of the attorney representing the party who caused the issuance of the subpoena; the scope of the testimony, if known; and a statement as to whether a prior deposition on the same accident has been given.

(c) The General Counsel shall determine the course of action to be taken and will so advise the employee.

§ 835.9 Testimony in State of local investigations.

Board employees may testify at a coroner's inquest, grand jury, or criminal proceeding conducted by a State of local government. Testimony shall be limited to the matters delineated in § 835.3.

Signed at Washington, DC on this 5th day of October, 1990.

James L. Kolstad,

Chairman.

[FR Doc. 90-24053 Filed 10-11-90; 8:45 am]

BILLING CODE 7533-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces two inseason adjustments to the commercial fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, effective 0001 hours local time, September 25, 1990. The Director, Northwest Region, NMFS (Regional Director), has determined that: (1) The subarea quota for coho salmon should be increased from 23,600 to 24,600 fish, and (2) the landing limit for coho salmon should be increased to 100 fish per landing, with no more than one landing per day. This action is intended to maximize the harvest of coho salmon in this subarea without exceeding the total allowable non-treaty ocean harvest level for coho salmon north of Cape Falcon, Oregon.

DATES: *Effective:* Modification of the subarea quota and the landing limit for coho salmon in the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective 0001 hours local time September 25, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until October 22, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. Management measures for 1990 were effective on May 1, 1990 (55 FR 18894, May 7, 1990). The 1990 commercial fishery for all salmon species in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, opened on August 30, subject to an adjusted quota of coho salmon of 23,600 fish (55 FR 39416, September 27, 1990) and a single daily landing limit of 50 coho salmon.

Of the four recreational fishing seasons scheduled north of Cape Falcon, Oregon, three subareas closed on September 9 upon the projected attainment of subarea coho salmon quotas, and only the subarea between the Queets River and Leadbetter Point, Washington, remained open through the scheduled season ending date of September 20. According to the best available information on recreational catches and analysis by the Salmon Technical Team following the closure of the recreational fishery north of Cape Falcon, by modifying the subarea quotas for the three subareas, which closed on September 9 to actual catch levels, 88,500 coho salmon were available for harvest in the subarea between the Queets River and Leadbetter Point, for the remainder of that season. When the subarea between the Queets River and Leadbetter Point closed on September 20, 1,982 fish remained unharvested of the 88,500 coho salmon available.

In accordance with the framework allocation provisions in 50 CFR part 661, inseason transfers may be permitted between commercial and recreational fishery quotas to reallocate fish not caught in one fishery to the other. The four recreational subarea quotas for coho salmon north of Cape Falcon are herein modified to equal the actual catch levels in each of the subareas. In order to achieve no net increase in impacts on critical Washington coastal and Puget Sound natural coho salmon stocks, the 1,982 fish not caught in the recreational fishery in the subarea between the Queets River and Leadbetter Point result in an increase of only 1,000 fish to the coho salmon quota for the commercial fishery in the subarea between Leadbetter Point, Washington, and Cape Falcon, Oregon, from 23,600 to 24,600 fish.

Based on the agreement of the affected states and the commercial fishing industry, and the analysis by the Salmon Technical Team, the Regional Director has determined that this inseason transfer of coho salmon is warranted. This action is intended to maximize the harvest of coho salmon without exceeding the total allowable non-treaty ocean harvest level for coho salmon north of Cape Falcon, Oregon.

The Regional Director also has determined that the restriction of a single daily landing limit of 50 coho salmon should be modified to 100 coho salmon per landing with no more than one landing per day. While this modified restriction changes only the number of coho salmon per landing, it also clarifies Table 1, Note D.5, 55 FR 18901 (May 7, 1990) (which does not require daily landings), limits the number of coho salmon per landing, and restricts landings to one per day. Inseason modification of landings restrictions is authorized by 50 CFR 661.21(b)(1)(ii).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, September 25, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of modification of the subarea quota and landing limit for coho salmon in the commercial fishery in the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, which is effective 0001 hours local time, September 25, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding these inseason adjustments. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 29, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-24054 Filed 10-5-90; 4:59 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention of groundfish.

SUMMARY: The Secretary of Commerce (Secretary) announces that he is prohibiting further retention of Pacific Ocean perch complex (POP) by vessels fishing in the Bering Sea (BS) subarea. This action is necessary to prevent the total allowable catch (TAC) for POP in the Bering Sea subarea from being exceeded before the end of the year. The intent of this action is to ensure optimum use of groundfish while conserving POP stocks.

EFFECTIVE DATES: 12:00 noon, A.l.t., October 5, 1990, through midnight, A.l.t., December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Bering Sea/Aleutian Islands Area Groundfish (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands (BSAI) management area under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR § 611.93 and part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. Total allowable catches (TACs) for target species and the "other species" category are specified annually within the OY range and apportioned by subarea under § 675.20(a)(2).

Under § 675.20(a)(3), 15 percent of the TAC for each target species and the "other species" category is automatically placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category is apportioned between domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF). The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species or the "other species" category provided that such apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category.

The initial 1990 TAC specified for POP in the Bering Sea subarea was 5,355 mt (55 FR 1434, January 16, 1990), all of which was apportioned to DAP. On September 12, 1990, it was determined that fishermen in DAP operations would need amounts of the operational reserve, and therefore, under § 675.20(b)(1)(i), the Secretary apportioned 945 mt of reserve to DAP for POP (55 FR 38331, September 18, 1990), bringing the current TAC for management to 6,300 mt which is equal to the allowable biological catch for POP.

The Regional Director has determined that the TAC for POP has been reached. Therefore, the Secretary is issuing this notice under authority of § 675.20(a)(9) and (c) and is prohibiting retention of POP by vessels in the Bering Sea subarea from noon, A.l.t., October 5, 1990 through midnight, A.l.t., December 31, 1990.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice.

This action is taken under § 675.20(a)(9) and (c) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 5, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-24055 Filed 10-5-90; 4:59 pm]

BILLING CODE 3510-22-M

VOL 55 ISS 198 OCT 12 1990 UMI

Proposed Rules

Federal Register
Vol. 55, No. 198
Friday, October 12, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AAL-9]

Proposed Establishment of VOR Federal Airway; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish new VOR Federal Airway V-357 located between Kodiak and Homer, AK. This proposal would improve the flow of traffic between Kodiak and Homer, AK, by providing an additional navigable airway for departures with sufficient divergence from arrivals to reduce delays at Kodiak. The establishment of this airway would improve the flow of traffic between Kodiak and Homer, AK, and reduce controller workload.

DATES: Comments must be received on or before November 12, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL-600, Docket No. 90-AAL-9, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined durng normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AAL-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish new VOR Federal Airway V-357 located between Kodiak and Homer, AK. Departures from Kodiak are often delayed by arrivals due to the lack of a navigable airway with sufficient divergence to apply the required lateral separation between opposite direction traffic. Due to the limitatins of radar coverage in this area, an alternate route with a lower minimum en route altitude is essential to enhance safety, reduce delays, and reduce controller workload. Section 71.125 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "'major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.125 [Amended]

2. Section 71.125 is amended as follows:

V-357 [New]

From Kodiak, AK, 27 miles 12 AGL, 24 miles 35 MSL, 4 miles 65 MSL, INT Kodiak 033°T(010°M) and Homer, AK, 179°(155°M) radials, 30 miles 65 MSL, 40 miles 12 AGL, to Homer.

Issued in Washington, DC, on September 2, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-24082 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 43

[PS-069-90]

RIN 1545-AP03

Tax on Transportation by Water

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of proposed rulemaking relating to definitions under section 4472 of the Internal Revenue Code for purposes of the tax on the transportation of passengers on covered voyages by certain vessels under sections 4471 and 4472 as enacted by section 7504 of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239,103 Stat. 2106, 2362).

DATES: Written comments and requests for a public hearing must be received by December 11, 1990.

ADDRESSES: Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Room 4429, Attn: CC:CORP:T:R (PS-069-90), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:CORP:T:R (PS-069-90), Internal Revenue Service, Room 4429, 1111 Constitution Avenue, NW., Washington DC 20224.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden Jr., 202-566-4077 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains a proposed regulation on the Excise Tax on Transportation by Water (26 CFR part 43) under section 4472 of the Internal Revenue Code.

Explanation of Provisions

The proposed regulation would provide taxpayers with definitions of terms under section 4472 for purpsoes of the tax imposed by section 4471 of the Code. Section 4471 of the Code imposes a tax of $3 per passenger on a covered voyage, as that term is defined in section 4472, to be paid by the person providing the covered voyage. The tax is to be imposed only once for each passenger on a covered voyage, either at the time of first embarkation or disembarkation in the United States. Under section 4472(1) of the Code, the term "covered voyage" means a voyage of (a) a commercial passenger vessel that extends over one or more nights, or (b) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States. Proposed § 43.4472-1(b) defines the term "voyage" as an outward and a homeward passage of the vessel, but states that a voyage may be a covered voyage with respect to a passenger even if the passenger does not make both an outward and a homeward passage. Under proposed § 43.4472-1(c) a voyage extends over 1 or more nights if it extends for 18 or more hours including midnight. Under proposed § 43.4472-1(d) of the regulations a passenger on a commercial vessel will be considered to be engaged in gambling aboard the vessel if that person is participating as a player in a game of chance, for money or other things of value, that is conducted, sponsored, or operated by the owner or operator of the vessel. There is an exception for persons who participate with other passengers in casual, "friendly" games of chance to which the owner or operator of the vessel is not connected. Under proposed § 43.4472-1(e), a vessel is considered to be beyond the territorial waters of the United States if it is beyond the international boundary line between the United States and any contiguous foreign country or it is over 3 nautical miles (3.45 statute miles) from the low tide on the coastline. The regulations provide for a 3 nautical mile territorial limit to coincide with existing federal and state jurisdiction over gambling activities.

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written requests by any person who submits written comments on the proposed rules. Notice of the time and place for the hearings will be published in the Federal Register.

Drafting Information

The principal author of this regulation is Edward B. Madden, Jr., Office of Assistant Chief Counsel (Passthroughts & Special Industries), Internal Revenue Service. Other personnel from the Service and Treasury Department, however, participated in its development.

List of Subjects in 26 CFR part 43

Excise taxes, Gambling, Transportation by water, Vessels.

Proposed Regulations

Accordingly, title 26, part 43, of the Code of Federal Regulations is amended as follows:

PART 43—[AMENDED]

Paragraph 1. The authority for part 43 continues to read in part:

Authority: 26 U.S.C. 7805. * * *.

Par. 2. A new § 43.4472-1 is added to read as follows:

§ 43.4472-1 Definitions.

(a) *In general.* For definitions of the terms "covered voyage" and "passenger vessel," see sections 4472(1) and (2).

(b) *Voyage.* For purposes of this section the term "voyage" means a journey of a vessel that includes the outward and homeward trips or passages. The voyage commences when the vessel begins to load passengers and continues during the entire ensuing period until the vessel has made one outward and one homeward passage (including intermediate passages, if

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made). A voyage may be a covered voyage with respect to a passenger even if the passenger does not make both an outward and homeward passage or if the point of first embarkation or disembarkation by the passenger in the United States is at an intermediate stop of the vessel.

(c) *Over 1 of more nights.* A voyage is considered to extend over 1 or more nights if it extends for 18 or more hours including midnight.

(d) *Engaged in gambling.* A passenger is engaged in gambling aboard a vessel if that person is participating as a player in any policy game or other lottery, or any other game of chance, for money or other thing of value, provided that the policy game, other lottery, or game of chance is conducted, sponsored, or operated by the owner or operator of the vessel, as either principal or agent, or by an employee, agent, or franchisee of the owner or operator of the vessel. A passenger is not engaged in gambling abroad a vessel if the passenger participates with other passengers in a casual, "friendly" game of chance that is not conducted, sponsored, or operated by the owner or operator of the vessel or by an employee, agent, or franchisee of the owner or operator.

(e) *Territorial waters.* For purposes of sections 4471 and 4472, the territorial waters of the United States are those waters within the international boundary line between the United States and any contiguous foreign country or within 3 nautical miles (3.45 statute miles) from low tide on the coastline. No inference is intended as to the extent of the territorial limits for other federal tax purposes.

Charles H. Brennan,

Acting Commissioner of Internal Revenue.

[FR Doc. 90-24050 Filed 10-5-90; 4:35 pm]

BILLING CODE 4830-01-M

26 CFR Part 43

[PS-003-90]

RIN 1545-AO41

Proposed Regulations Regarding the Tax on Transportation by Water

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing final and temporary regulations that implement the tax on the transportation of passengers on covered voyages by certain vessels under sections 4471 and 4472 of the Internal Revenue Code as enacted by section 7504 of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239, 103 Stat. 2106, 2362). The text of the final and temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by December 11, 1990.

ADDRESSES: Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4429, Attn: CC:CORP:T:R (PS-003-90), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:COPR:T:R (PS-003-90), Internal Revenue Service, room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden, Jr., 202-566-4077 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations on the Excise Tax on Transportation by Water (26 CFR part 43) under sections 4471 and 4472 of the Internal Revenue Code. Final and temporary regulations containing the text of the proposed regulations are published in the Rules and Regulations portion of this issue of the Federal Register, see T.D. 8314. The temporary regulations contain rules concerning the excise tax on the initial embarkation or disembarkation of passengers on certain commercial passenger vessels and on certain other commercial vessels transporting passengers engaged in gambling. The preamble to the final and temporary regulations explains the regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearings will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Edward B. Madden, Jr., Office of the Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. Other persons from the Service and Treasury Department, however, participated in their development.

Charles H. Brennan,

Acting Commissioner of Internal Revenue.

[FR Doc. 90-24051 Filed 10-5-90; 4:34 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-3851-6]

Preparation, Adoption, and Submittal of State Implementation Plans; Method for Measurement of Condensible Particulate Emissions from Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: On April 17, 1990 EPA promulgated two methods for measuring particulate matter (PM) with an aerodynamic diameter of 10 μm or less (PM_{10}). Since condensible particulate matter (CPM) emissions form very fine particles in the PM_{10} size range and are considered PM_{10} emissions, the Agency proposes to add a method for measuring CPM emissions from stationary sources, to appendix M in 40 CFR part 51. The purpose of this proposed rule is to provide the States with a method for measuring CPM.

A public hearing will be held, if necessary, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before December 17, 1990.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by November 2, 1990, a public hearing will be held November 26, 1990 at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by November 2, 1990.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention: Docket Number A-90-03, U.S. Environmental Protection Agency, Room M-1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Candace Sorrell, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1064.

Docket. Docket No. A-90-03, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M-1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell or Roger Shigehara, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1064.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

The EPA is proposing to add a method for measuring CPM emissions to appendix M in 40 CFR part 51 to provide a method that States can use in their State Implementation Plans.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal hours at EPA's Air Docket in Washington, DC. (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principle purposes of the docket are to: (1) Allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review except for interagency review materials.

(Section 307(d)(7)(A)

C. Office of Management and Budget Review

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking would not result in any of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a "major rule." It will neither have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as review as required by Executive Order 12291.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Dated: September 27, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

The EPA proposes to amend title 40, chapter I, part 51 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: Section 110 of the Clean Air Act as amended (42 U.S.C. 7410).

2. Appendix M in the Table of Contents is amended by adding an entry to read as follows:

Method 202—Determination of Condensible Particulate Emissions from Stationary Sources

3. By adding Method 202 to Appendix M in part 51 to read as follows:

Method 202—Determination of Condensible Particulate Emissions from Stationary Sources

1. Applicability and Principle

1.1 Applicability. This method applies to the determination of condensible particulate matter (CPM) emissions from stationary sources. It is intended to represent condensible matter as material that condenses after passing through an in-stack filter and as measured by this method (Note: The filter catch can be analyzed according to Method 17 procedures). This method may be used in conjunction with Method 201 or 201A if the probes are glass lined. This method may also be modified to measure material that condenses at other temperatures by specifying the filter and probe temperature.

1.2 Principle. The CPM is collected in the impinger portion of a Method 17 (Appendix A, 40 CFR Part 60) type sampling train. The impinger contents are immediately purged after the run with nitrogen (N_2) to remove dissolved sulfur dioxide (SO_2) gases from the impinger contents. The impinger solution is then extracted with methylene chloride ($MeCl_2$). The organic and aqueous fractions are then taken to dryness and the residues weighed. The total of both fractions represents the CPM.

2. Precision and Interference

2.1 Precision. The precisions based on method development tests at a wood waste burner and two coal-fired boilers are 13.0 ± 2.1 mg/m^3, 3.5 ± 1.1 mg/m^3, and 39.5 ± 9.0 mg/m^3, respectively.

2.2 Interference. Ammonia. In sources that use ammonia injection as a control technique for hydrogen chloride (HCl), the ammonia interferes by reacting with HCl in the gas stream to form ammonium chloride (NH_4Cl) which would be measured as CPM. The sample may be analyzed for chloride and the equivalent amount of NH_4Cl can be subtracted from the CPM weight.

3. Apparatus

3.1 Sampling Train. Same as in Method 17, Section 2.1, with the following exceptions noted below (see Figure 202–1).

Note: Mention of trade names or specific products does not constitute endorsement by EPA.

3.1.1 The probe extension shall be glass-lined.

3.1.2 Both the first and second impingers shall be of the Greenburg-Smith design with the standard tip.

3.1.3 All sampling train glassware shall be cleaned prior to the test with soap and tap water, water, and rinsed using tap water, water, acetone, and finally, $MeCl_2$. It is important to remove completely all silicone grease from areas that will be exposed to the $MeCl_2$ during sample recovery.

3.2 Sample Recovery. Same as in Method 5, Section 2.2, with the following additions:

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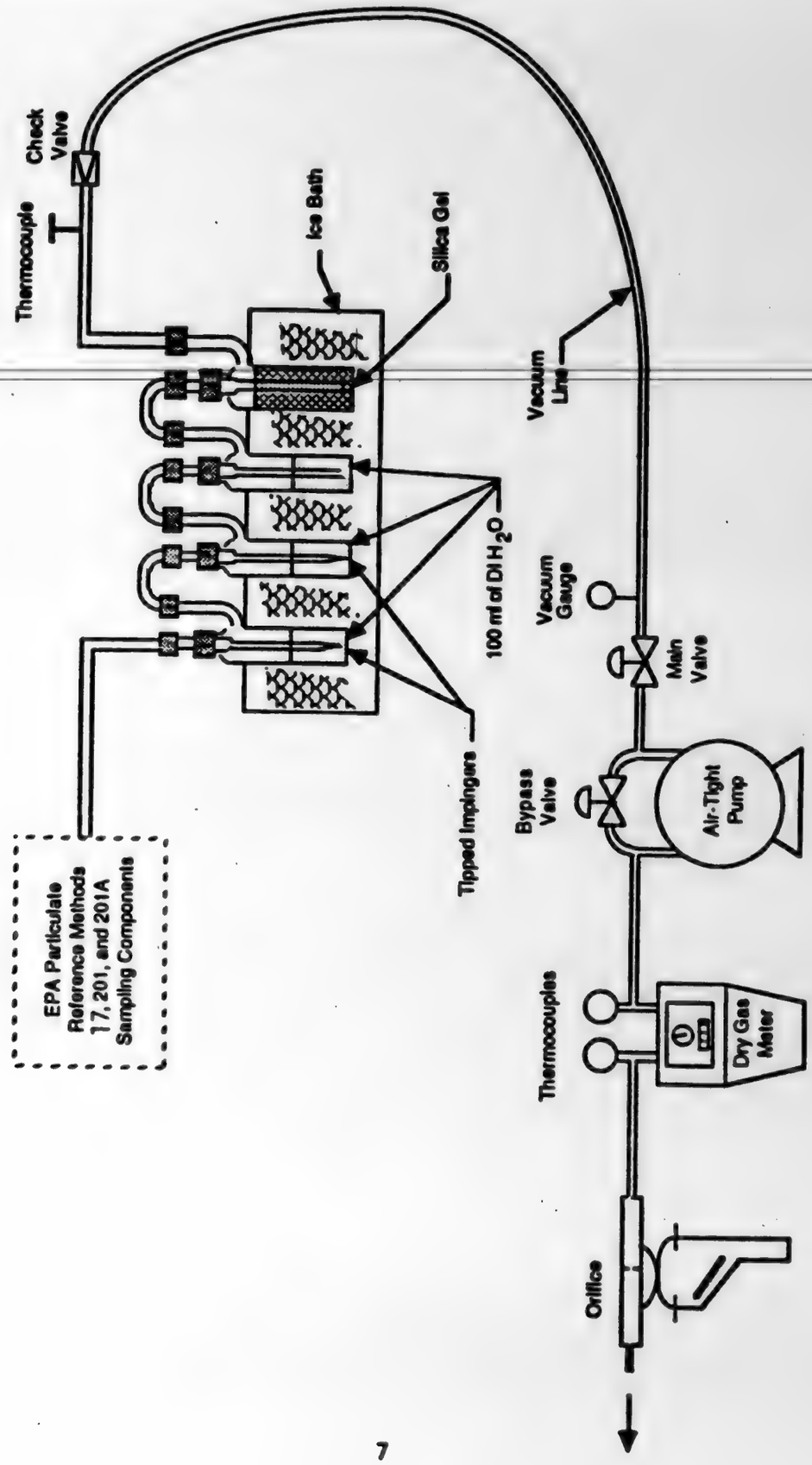

Figure 202-1. Schematic of condensible particulate sampling train.

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3.2.1 N_2 Purge Line. Inert tubing and fittings capable of delivering 0 to 28 liters/min of N_2 gas to the impinger train from a standard gas cylinder (see Figure 202–2). Standard 0.95 cm (⅜-inch) plastic tubing and compression fittings in conjunction with an adjustable pressure regulator and needle valve may be used.

3.2.2 Rotameter. Capable of measuring gas flow at 20 liters/min.

3.3 Analysis. The following equipment is necessary in addition to that listed in Method 5, Section 2.3:

3.3.1 Separatory Funnel. Glass, 1-liter.

3.3.2 Weighing Tins. 350-ml.

3.3.3 Drying Equipment. Hot plate and oven with temperature control.

3.3.4 Pipets. 5-ml.

3.3.5 Ion Chromatograph. Same as in Method 5F, Section 2.1.6.

4. Reagents

Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. Where such specifications are not available use the best available grade.

4.1 Sampling. Same as in Method 5, Section 3.1, with the addition of deionized distilled water to conform to the American Society for Testing and Materials Specification D 1193–74, Type II.

4.2 Sample Recovery. Same as in Method 5, Section 3.2, with the following additions:

4.2.1 N_2 Gas. N_2 gas at delivery pressures high enough to provide a flow of 20 liters/min for 1 hour through the sampling train.

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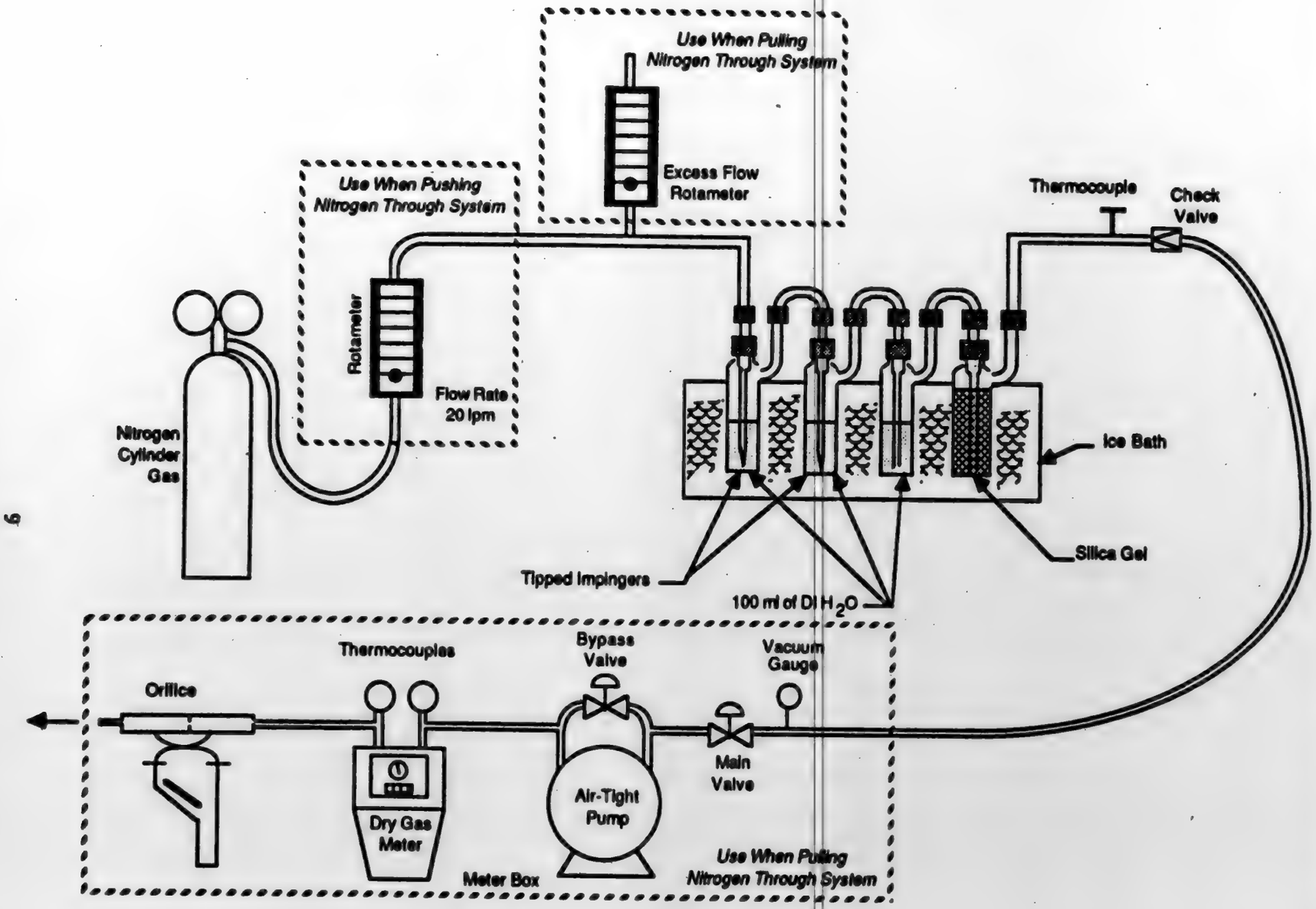

Figure 202-2. Schematic of post-test nitrogen purge system.

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4.2.2 Methylene Chloride.
4.2.3 Water. Same as in Section 4.1.
4.3 Analysis. Same as in Method 5, Section 3.3, with the following additions:
4.3.1 Methylene Chloride.
4.3.2 Ammonium Hydroxide. Concentrated (14.8 M) NH_4OH.
4.3.3 Water. Same as in Section 4.1.
4.3.4 Phenolphthalein. The pH indicator solution, 1.0 percent in 60 percent alcohol.

5. Procedure

5.1. Sampling. Same as in Method 5, Section 4.1, with the following exceptions:
5.1.1 Place 100 ml of water in the first three impingers.
5.1.2 The use of silicone grease in train assembly is not recommended. Teflon tape or similar means may be used to provide leak-free connections between glassware.
5.2 Sample Recovery. Same as in Method 17, Section 4.2 with the addition of a post-test N_2 purge and specific changes in handling of individual samples as described below.
5.2.1 Post-test N_2 Purge for Sources Emitting SO_2. (*Note:* This step is recommended, but is optional. When little or no SO_2 is present in the gas stream, i.e., the pH of the impinger solution is greater than 4.5, purging has been found to be unnecessary.) As soon as possible after the post-test leak check, detach the probe and filter from the impinger train. Leave the ice in the impinger box to prevent removal of moisture during the purge. If necessary, add more ice during the purge to maintain the gas temperature below 20°C. With no flow of gas through the clean purge line and fittings, attach it to the input of the impinger train (see Figure 202–2). To avoid over- or under-pressurizing the impinger array, slowly commence the N_2 gas flow through the line while simultaneously opening the meter box pump valve(s). Adjust the pump bypass and N_2 delivery rates to obtain the following conditions: (1) 20 liters/min or $\Delta H_@$ and (2) an overflow rate through the rotameter of less than 2 liters/min. Condition (2) guarantees that the N_2 delivery system is operating at greater than ambient pressure and prevents that possibility of passing ambient air (rather than N_2) through the impingers. Continue the purge under these conditions for 1 hour, checking the rotameter and ΔH value(s) periodically. After 1 hour, simultaneously turn off the delivery and pumping systems.
5.2.2 Sample Handling.
5.2.2.1 *Container Nos. 1, 2, and 3.* If filter catch is to be determined, as detailed in Method 5, Section 4.2.
5.2.2.2 *Container No. 4* (Impinger Contents). Measure the liquid in the first three impingers to within 1 ml using a clean graduated cylinder or by weighing it to within 0.5 g using a balance. Record the volume or weight of liquid present to be used to calculate the moisture content of the effluent gas. Quantitatively transfer this liquid into a clean sample bottle (glass or plastic); rinse each impinger and the connecting glassware, including probe extension, twice with water. recover the rinse water and add it to the same sample bottle. Mark the liquid level on the bottle.
5.2.2.3 *Container No. 5* ($MeCl_2$ Rinse). Follow the water rinses of each impinger and the connecting glassware, including the probe extension with two rinses of $MeCl_2$; save the rinse products in a clean, glass sample jar. Mark the liquid level on the jar.
5.2.2.4 *Container No. 6* (Water Blank). Once during each field test, place 500 ml of water in a separate sample container.
5.2.2.5 *Container No. 7* ($MeCl_2$ Blank). Once during each field test, place in a separate glass sample jar a volume of $MeCl_2$ approximately equivalent to the volume used to conduct the $MeCl_2$ rinse of the impingers.
5.2.2.6 *Container No. 8* (Acetone Blank). As described in Method 5, Section 4.2.
5.3 Analysis. Record the data required on a sheet such as the one shown in Figure 202–3. Handle each sample container as follows:

Moisture Determination

Volume or weight of liquid in impingers ..... ml or g
Weight of moisture in silica gel ..... g

Sample Preparation (Container No. 4)

Amount of liquid lost during transport ..... ml
Final volume ..... ml
pH of sample prior to analysis ..... ml
Addition of NH_4OH required? ..... ml
Sample extracted 2X with 75 ml $MeCl_2$? ..... ml

For Titration of Sulfate

Normality of NH_4OH ..... N
Volume of sample titrated ..... ml
Volume of titrant ..... ml

Sample Analysis

Container number	Weight of condensible particulate, mg		
	Final weight	Tare weight	Weight gain
4 (Inorganic)			
4 & 5 (Organic)			
Total			
Less Blank			
Weight of Condensible Particulate			

Figure 202–3. Analytical data sheet.

5.3.1 *Container Nos. 1, 2, and 3.* If filter catch is analyzed, as detailed in Method 5, Section 4.3.
5.3.2 *Container Nos. 4 and 5.* Note the level of liquid in the containers and confirm on the analytical data sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Measure the liquid in Container No. 4 either volumetrically to ±1 ml or gravimetrically to ±0.5 g. Remove a 5-ml aliquot and set aside for later ion chromatographic (IC) analysis of sulfates. (Note: Do not use this aliquot to determine chlorides since the HCl and some NH_4Cl will be evaporated during the first drying step; Section 8.2 details a procedure for this analysis.)
5.3.2.1 Extraction. Separate the organic fraction of the sample by adding the contents of Container No. 5 ($MeCl_2$) to the contents of Container No. 4 in a 1000-ml separatory funnel. After mixing, allow the aqueous and organic phase to fully separate, and drain off most of the organic/$MeCl_2$ phase. Then add 75 ml of $MeCl_2$ to the funnel, mix well, and drain off the lower organic phase. Repeat with another 75 ml of $MeCl_2$. This extraction should yield about 250 ml of organic extract. Each time, leave a small amount of the organic/$MeCl_2$ phase in the separatory funnel ensuring that no water is collected in the organic phase. Place the organic extract in a tared 350-ml weighing tin.
5.3.2.3 Organic Fraction Weight Determination (Organic Phase from Container Nos. 4 and 5). Evaporate the organic extract at room temperature and pressure in a laboratory hood. Following evaporation, desiccate the organic fraction for 24 hours in a desiccator containing anhydrous calcium sulfate. Weigh to a constant weight and report the results to the nearest 0.1 mg.
5.3.2.3 Inorganic Fraction Weight Determination. Using a hot plate, or equivalent, evaporate the aqueous phase to approximately 50 ml; then evaporate to dryness in a 105°C oven. Redissolve the residue in 100 ml of water. Add five drops of phenolphthalein to this solution, then add concentrated (14.8 M) NH_4OH until the sample turns pink. Any excess NH_4OH will be evaporated during the drying step. Evaporate the sample to dryness in a 105°C oven, desiccate the sample for 24 hours, weigh to a constant weight, and record the results to the nearest 0.1 mg. (Note: The addition of NH_4OH is recommended, but is optional when little or no SO_2 is present in the gas stream, i.e., when the pH of the impinger solution is greater than 4.5, the addition of NH_4OH is not necessary.)
5.3.2.4 Analysis of Sulfate by IC to Determine Ammonium Ion (NH_4^+) Retained in the Sample. (Note: If NH_4OH is not added, omit this step.) Determine the amount of sulfate in the aliquot taken from Container No. 4 earlier as described in Method 5F (Appendix A, 40 CFR part 60). Based on the IC $SO_4^=$ analysis of the aliquot, calculate the correction factor to subtract the NH_4^+ retained in the sample and to add the combined water removed by the acid-base reaction (see Section 7.2).
5.3.3 Analysis of Water and $MeCl_2$ Blanks (Container Nos. 6 and 7). Analyze these sample blanks as described above in Sections 5.3.2.3 and 5.3.2.2, respectively.
5.3.4 Analysis of Acetone Blank (Container No. 8). Same as in Method 5, Section 4.3.

6. Calibration

Same as in Method 5, Section 5, except calibrate the IC according to the procedures in Method 5F, Section 5.

7. Calculations

Same as in Method 5, Section 6, with the following additions:
7.1 Nomenclature. Same as in Method 5, Section 6.1 with the following additions.
C_{cpm} = Concentration of the CPM in the stack gas, dry basis, corrected to standard conditions, g/dscm (g/dscf).
C_{sot} = Concentration of $SO_4^=$ in the sample, mg/ml.
m_b = Sum of the mass of the water and $MeCl_2$ blanks, mg.
m_c = Mass of the NH_4^+ added to sample to form ammonium sulfate, mg.
m_i = Mass of inorganic CPM matter, mg.
m_o = Mass of organic CPM, mg.
m_r = Mass of dried sample from inorganic fraction, mg.
V_b = Volume of aliquot taken for IC analysis, ml.
V_{ic} = Volume of impinger contents sample, ml.

7.2 Correction for NH_4^+ and H_2O. Calculate the correction factor to subtract the NH_4^+ retained in the sample and to add the combined water removed by the acid-base reaction based on the IC $SO_4^=$.

$$m_c = KC_{sot}V_{ic} \qquad \text{Eq. 202–1}$$

where:
K = 0.020502
7.3 Mass of Inorganic CPM.

$$m_i = m_r\left\{\frac{V_{ic}}{V_{ic}-V_b}\right\} + m_c \qquad \text{Eq. 202–2}$$

7.4 Concentration of CPM.

$$C_{cpm} = \frac{m_o + m_i - m_b}{V_{m\ std}} \qquad \text{Eq. 202–3}$$

8. Alternative Procedures

8.1 Determination of NH_4^+ Retained in Sample by Titration.
8.1.1 An alternative procedure to determine the amount of NH_4^+ added to the inorganic fraction by titration may be used. After dissolving the inorganic residue in 100 ml of water, titrate the solution with 0.1 N NH_4OH is made as follows: Add 7 ml of concentrated (14.8 M) NH_4OH to 1 liter of water. Standardize against standardized 0.1 N H_2SO_4 and calculate the exact normality using a procedure parallel to that described in Section 5.5 of Method 6 (Appendix A, 40 CFR part 60). Alternatively, purchase 0.1 N NH_4OH that has been standardized against a National Institute of Standards and Technology reference material.
8.1.2 Calculate the concentration of $SO_4^=$ in the sample using the following equation.

$$C_{sot} = \frac{48.03V_tN}{100} \qquad \text{Eq. 202–4}$$

where.
N = Normality of the NH_4OH, mg/ml.
V_t = Volume of NH_4OH titrant, ml.
48.03 = mg/meq.
100 = Volume of solution, ml.
8.1.3 Calculate the CPM as described in Section 7.
8.2 Analysis of Chlorides by IC. At the conclusion of the final weighing as described in Section 5.3.2.3, redissolve the inorganic fraction in 100 ml of water. Analyze an aliquot of the redissolved sample for chlorides by IC using techniques similar to those described in Method 5F for sulfates. Previous drying of the sample should have removed all HCl. Therefore, the remaining chlorides measured by IC can be assumed to be NH_4Cl, and this weight can be subtracted from the weight determined for CPM.
8.3 Air Purge to Remove SO_2 from Impinger Contents. As an alternative to the post-test N_2 purge described in Section 5.2.1, the tester may opt to conduct the post-test purge with air at 20 liter/min. Note: The use of an air purge is not as effective as a N_2 purge.

9. Bibliography

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6. Commonwealth of Pennsylvania, Department of Environmental Resources. Chapter 139, Sampling and Testing (Title 25, Rules and Regulations, Part I, Department of Environmental Resources, Subpart C, Protection of Natural Resources, Article III, Air Resources). January 8, 1960.
7. Wisconsin Department of Natural Resources. *Air Management Operations Handbook, Revision 3.* January 11, 1988.

[FR Doc. 90–24023 Filed 10–11–90; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[A–1–FRL–3858]

Approval and Promulgation of Implementation Plans, Massachusetts; Revision to Massachusetts' Automobile Surface Coating Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts on August 17, 1989, which amend the Massachusetts Automobile Surface Coating Regulation, 310 CMR 7.18(7). Additionally, EPA is proposing to disapprove portions of the compliance dats for the topcoat and final repair applications in the Automobile Surface Coating Regulation. The intended effect of this action is to propose both approval and disapproval of different portions of Massachusetts' revised SIP for ozone. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 13, 1990. Public comments on this document are requested and will be considered before taking action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Pesticides, and Toxics Management Division, room 2313, Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Region I, room 2311, JFK Federal Bldg., Boston, Massachusetts 02203 and the Division of Air Quality Control, Massachusetts Department of Environmental Protection, One Winter Street, 8th Floor, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Emanual Souza, Jr., (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On August 17, 1989, the Massachusetts DEP submitted revisions to its SIP for its Ozone Attainment Plan. The submittal included the Massachusetts Automobile Surface Coating Regulation, 310 CMR 7.18(7).

Background

On November 24, 1987, EPA proposed a new policy on how EPA and the States should address the failure of many areas to attain the National Ambient Air

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Quality Standards (NAAQS) for ozone and carbon monoxide (CO), two major contributors to urban air pollution. On May 3, 1988, EPA released the latest data on the degree to which areas throughout the nation have attained the standards. The data indicate that the entire Commonwealth of Massachusetts has failed to attain the ozone standard despite the passage of the December 31, 1987 attainment date in the Clean Air Act.

On May 25, 1988, EPA sent a letter to Governor Dukakis indicating that the Massachusetts SIP is substantially inadequate to attain the ozone standard. The SIP call letter requested that the State respond in two phases. The first phase includes correcting deficiencies and inconsistencies in existing regulations, adopting regulations previously required or committed to but never adopted, and updating the base year emission inventory for those areas identified as nonattainment. The second phase of the response will follow promulgation of EPA's final policy on post-1987 ozone and CO nonattainment or amendments to the Clean Air Act.

On June 16, 1988, EPA sent a letter to the Acting Director of the Massachusetts Department of Environmental Quality Engineering's (now Massachusetts Department of Environmental Protection (DEP)) Division of Air Quality Control and identified the corrections that needed to be made in the existing regulations for the control of volatile organic compound (VOC) emissions.

The Commonwealth of Massachusetts submitted two SIP revision packages on August 17, 1989: Revised regulations controlling VOC emissions and the Automobile Surface Coating Regulation. EPA is proposing approval of these SIPs in two separate actions. Today's action proposes to approve portions of the Automobile Surface Coating Regulation and to disapprove the final compliance dates for the topcoat and final repair. In a separate action, EPA is proposing to approve the revised regulations controlling VOC emissions.

Content of Revised Regulation

Massachusetts' DEP made the following changes to the Automobile Surface Coating Regulation:

(1) Five definitions were changed to improve the clarity of the State's Automobile Surface Coating Regulation and to make the definitions consistent with EPA's national guidance and requirements. These definitions were submitted concurrently under a separate cover with the remainder of the amended VOC regulations. EPA is proposing to approve them in a separate notice.

(2) Light duty trucks have been included under the applicability section of this regulation. Language was also added which requires any person who *operates* an automobile and/or light duty truck manufacturing plant to be subject to the regulation.

(3) The applicability cutoff has been reduced to 15 pounds of VOC per day. This will subject all automobile/light duty truck manufacturing plants in the State to the regulation. In addition, the DEP has added recordkeeping requirements, and continuous compliance and daily compliance averaging times. The emission limits are in units of pounds of VOC per gallon of solids applied and are to be met on a daily weighted average basis.

(4) The compliance dates for topcoat and final repair applications, that were extended to August 31, 1987 in a December 30, 1985 submittal and disapproved by EPA in the **Federal Register** on September 16, 1988 (53 FR 36011), were submitted again.

(5) Testing requirements were added which require that transfer efficiency testing be conducted in accordance with the EPA protocol document entitled *Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations (EPA–450/3–88–018).*

For further details on these changes, please refer to the Technical Support Document prepared for this revision which may be obtained from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

Amendments Necessary Prior to Final Rulemaking

EPA has reviewed the submittal and has determined that the regulation is consistent with EPA's national guidance and requirements with the exception of three issues. These issues are discussed below:

(1) The DEP must amend this regulation to clarify that the EPA's *Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations* (EPA–450/3–88–018) is to be used for calculating the daily topcoat emission rate, and not just for transfer efficiency testing as specified in the regulation.

(2) The emission limit for the topcoat application must be listed in Table 2 as "15 pounds of VOC per gallon of solids deposited." Footnote 2 should further specify that 15 pounds of VOC per gallon of solids deposited, at a transfer efficiency of 30% is equivalent to 4.5 pounds of VOC per gallon of solids applied.

(3) Footnote 1 should be further clarified so that it states that compliance is determined on a line-by-line basis and that compliance with the noted emission limitations shall be determined through the daily weighted average of the coatings used in each coating operation for each separate line.

Unapprovable Section of Revised Regulation

The compliance date extensions for topcoat and final repair applications are not approvable. The reasons why these dates are not approvable are explained in the **Federal Register** notice dated September 16, 1988 (53 FR 36011) and will not be restated here. That notice disapproved the compliance date extensions applicable to the General Motors facility in Framingham, Massachusetts. Since this regulation has already been approved on September 16, 1990 (45 FR 61293), the federally approved compliance dates for the topcoat and final repair applications are still enforceable.

EPA is soliciting public comments on the issues discussed in this notice and on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this notice.

Proposed Action: EPA is proposing to approve the Massachusetts' Automobile Surface Coating Regulation provided that the necessary changes are made as stated in this notice. EPA is also proposing to disapprove the compliance date extensions for topcoat and final repair applications.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities since the automobile surface coating regulation is only applicable to one facility in the State.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone,

Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: February 9, 1990.

Julia D. Dalzen,

Regional Administrator, Region I.

[FR Doc. 90–24024 Filed 10–11–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF LABOR

Wage and Hour Division

41 CFR Part 50–202

Adjustment to Walsh-Healey Public Contracts Act; Minimum Wage Determinations To Reflect the Fair Labor Standards Amendments of 1989

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; wage determination under the Walsh-Healey Public Contracts Act.

SUMMARY: The Walsh-Healey Public Contracts Act (PCA) requires payment of minimum wages on Federal and District of Columbia contracts over $10,000 which call for manufacturing or the furnishing of materials, supplies, articles, or equipment. Wage determinations historically issued under the PCA have required payment of not less than the minimum wage prescribed by the Fair Labor Standards Act of 1938, as amended (FLSA). The Fair Labor Standards Amendments of 1989 increased the minimum wage required to be paid under the FLSA. The Department therefore proposes to increase the minimum wage required to be paid under PCA to correspond to the FLSA minimum wage requirements contained in the 1989 FLSA Amendments.

DATES: Any request for a hearing must be received on or before November 13, 1990.

ADDRESSES: Address requests for hearings to Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523–6305 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Effective April 1, 1990, the Fair Labor Standards Amendments of 1989 (Pub. L. 101–157; 103 Stat. 938) provide for the payment of a minimum wage of not less than $3.80 per hour, except as otherwise provided, to each employee who is engaged in commerce or in the production of goods for commerce (as these terms are defined in the FLSA), or who is employed in certain enterprises so engaged, and who does not come within the terms of one of the FLSA's exemptions from the minimum wage requirements. The 1989 FLSA Amendments further increase the minimum wage to $4.25 per hour beginning on April 1, 1991.

Based upon the experience of over 50 years of administration, investigations, and litigation under the FLSA, including administration and enforcement of 16 previous statutory minimum wage increases, economic studies and statutory reports to the Congress, it is the Department's informed judgment that, for the most part, employees working on contracts calling for the manufacturing or furnishing of materials, supplies, articles, or equipment which would be covered by the PCA would also be covered concurrently today by the FLSA's minimum wage provisions. Employees working on contracts covered by the PCA would normally themselves be individually engaged in commerce or in the production of goods for commerce, or employed in covered enterprises so engaged, such that the FLSA's statutory tests for minimum wage coverage would be satisfied. Accordingly, in order to simplify the problems of compliance and the administration and enforcement of the two Acts, the Department proposes to find, under section 7(d) of the Administrative Procedure Act (5 U.S.C. 556(d)), that the level of prevailing minimum wages payable in any of the industries operating in any locality in which materials, supplies, articles, or equipment are to be manufactured or furnished under any contracts subject to the PCA shall be raised to $3.80 per hour (the FLSA section 6(a)(1) minimum wage effective on April 1, 1990), and shall be further raised to $4.25 effective on April 1, 1991. It is proposed that a final prevailing minimum wage determination will be made under section 1(b) of the PCA (41 U.S.C. 35(b)), which will be codified at 41 CFR 50–202.2, to reflect the foregoing statutory increases in the FLSA minimum wage prescribed by the 1989 FLSA Amendments.

In accordance with section 10(b) of the PCA (41 U.S.C. 43a(b)), any person adversely affected or aggrieved by the adoption of this proposal (who shall be deemed to include any manufacturer of, or regular dealer in, materials, supplies, articles, or equipment purchased or to be purchased by the Government from any source, who is in any industry to which this proposal is applicable, and any employee or representative of employees of any such person) shall have a hearing and an opportunity to make a showing contrary to the facts officially noticed herein as provided in section 7(d) of the Administrative Procedure Act (5 U.S.C. 556(d)), upon the submission of a timely request for a hearing. Such requests for a hearing shall be written and filed (in triplicate) with the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC, 20210, by no later than November 13, 1990. Any such request shall contain a clear and concise statement of the facts as to which the applicant will make a showing, setting forth in detail the minimum wage the applicant will show to be prevailing in the applicable industry and locality and the basis therefor. Each such request shall have attached to it a copy of each document the applicant intends to introduce in evidence at the hearing, an identification of each witness the applicant intends to call, a summary of the testimony the applicant intends to develop from each such witness, the name and address of the person selected to present such evidence, and the applicant's estimate of the time such presentation will require. A hearing will be scheduled only in response to a request that is timely filed which contains all of the information specified above.

Executive Order 12291

This proposed rule is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

This proposed rule will have no "significant economic impact on a

substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73–20; Notice 14]

The alternative fuels under consideration in this ANPRM are two alcohol fuels: Methanol and ethanol.

Increasing attention is being given to the use of such alternative fuels in motor vehicles to help achieve a cleaner and more healthy environment. In addition to legislation on this subject there are

exhaust emission standards apply to the following new motor vehicles:

- Light-duty methanol cars,
- Light-duty methanol trucks,
- Heavy-duty methanol vehicles and engines, and
- Methanol motorcycles.

With few exceptions the standards for

must be able to demonstrate that fuel loss will not exceed one ounce per minute in a static rollover test following the barrier crash tests, and will not exceed these limits after, and incidental to, the crash tests. The standard also requires a moving contoured barrier crash test for school buses over 10,000

There are also alternative fueled vehicles being made, particularly for various experimental and demonstration programs, which are dual-fuel or dedicated. The dual-fuel type operates on the alternative fuel or conventional fuel, but not various combinations of the two fuels. The dedicated alternative fuel

substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This proposed rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

Document Preparation

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

In the absence of requests for hearings, it is proposed to amend the wage determination in § 50-202.2 of title 41 to read as set forth below.

List of Subjects in 41 CFR Part 50-202

Government contracts, Minimum wages, Wages.

Signed at Washington, DC, on this 9th day of October, 1990.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

PART 50-202—MINIMUM WAGE DETERMINATIONS

1. The authority citation for part 50-202 is revised to read as follows:

Authority: Secs. 1, 4, and 6, 49 Stat. 2036, 2038; 41 U.S.C. 35, 38, 40. Sec. 10, 66 Stat. 306; 41 U.S.C. 43a.

2. Section 50-202.2 is proposed to be revised to read as follows:

§ 50-202.2 Minimum wage in all industries.

In all industries, the minimum wage applicable to employees described in § 50-201.102 of this chapter shall be not less than $3.35 per hour commencing January 1, 1981, $3.80 per hour commencing April 1, 1990, and $4.25 per hour commencing April 1, 1991.

§ 50-202.16 [Removed and reserved]

3. Subpart C, consisting of § 50-202.16, is proposed to be removed and reserved.

[FR Doc. 90-24121 Filed 10-11-90; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73-20; Notice 14]

RIN-2127-AD47

Fuel System Integrity; Alcohol Fuels

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Increasing attention is being given to the use of alternative fuels in motor vehicles to help achieve a cleaner and more healthy environment. Under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (the Act), NHTSA is responsible for establishing motor vehicle safety standards for new vehicles and equipment to reduce motor vehicle accidents, deaths, and injuries. In this regard, NHTSA wishes to have any necessary safety standards in place, that would support the safe introduction and operation of alternative fuel vehicles, and not impede the development and advancement of such vehicles and the associated technology. The purpose of this notice is to solicit comments to help NHRSA determine whether Standard 301, Fuel System Integrity, should be amended to set specialized requirements for vehicles using methanol or ethanol as a motor fuel.

DATES: Comments on this notice must be received by NHTSA no later than December 11, 1990.

ADDRESSES: Comments should refer to the docket number and notice number shown above and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5111, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-9422. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM-01.01, Special Projects Staff, Rulemaking, National Highway Traffic Safety Administration, room 5320, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4804.

SUPPLEMENTARY INFORMATION:

I. Introduction

The National Highway Traffic Safety Administration (NHTSA) is considering whether there is a need for regulating fuel system integrity performance for vehicles using alternative motor fuels. The alternative fuels under consideration in this ANPRM are two alcohol fuels: Methanol and ethanol.

Increasing attention is being given to the use of such alternative fuels in motor vehicles to help achieve a cleaner and more healthy environment. In addition to legislation on this subject there are already more stringent emissions standards for trucks and buses, which become effective in 1991 and 1994. The new standards call for major reductions in both particulate matter and nitrogen oxides. The automotive, and truck and bus industries are actively engaged in research and demonstration programs involving such cleaner burning fuels.

The Department of Energy (DOE), under the authority of the Alternative Motor Fuels Act of 1988, is conducting a number of demonstration programs to encourage the use of alternative motor fuels, particularly natural gas, methanol, and ethanol. The Urban Mass Transportation Administration (UMTA) of the U.S. Department of Transportation, through its Alternative Fuels Initiative program, is also encouraging the use of such fuels among local transit authorities.

The Alternative Motor Fuels Act of 1988 also called for the establishment of a minimum driving range for the operation of dual energy and natural gas dual energy passenger automobiles when operated on non-petroleum fuel. Dual energy passenger automobiles are those capable of operating on alcohol and on either gasoline or diesel fuel. Natural gas dual energy passenger automobiles are those capable of operating on natural gas and on either gasoline or diesel fuel. A final rule was published by NHRSA on April 26, 1990, which established the minimum range for dual energy passenger automobiles at 200 miles and the minimum range for natural gas dual energy passenger automobiles at 100 miles. A new passenger automobile which meets the applicable range and other criteria established by the 1988 amendments qualifies to have its fuel economy calculated according to a special procedure. Under that procedure, a relatively high fuel economy figure is assigned the vehicle. This encourages the production of such vehicles by facilitating a manufacturer's compliance with the Corporate Average Fuel Economy Standards.

On April 11, 1989, EPA published a final rule on Standards for Emissions From Methanol-Fueled Motor Vehicles and Motor Vehicle Engines. The rule provides emission standards and test procedures for vehicles operating on methanol fuels. The evaporative and exhaust emission standards apply to the following new motor vehicles:

- Light-duty methanol cars,
- Light-duty methanol trucks,
- Heavy-duty methanol vehicles and engines, and
- Methanol motorcycles.

With few exceptions the standards for these vehicles set exhaust and evaporative emission levels comparable to those of current petroleum-fueled diesel engines or gasoline fueled vehicles. The regulations are effective beginning with the 1990 model year. The new rule noted that this action was taken to remove the possibility that the absence of emission standards could hinder the development of methanol as a transportation fuel.

Under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (the Act), NHTSA is responsible for establishing motor vehicle safety standards for new vehicles and equipment to reduce motor vehicle accidents, deaths, and injuries. In this regard, NHTSA wishes to have any necessary safety standards in place that would support the safe introduction and operation of alternative fuel vehicles, and not impede the development and advancement of such vehicles and the associated technology. Therefore, NHTSA must determine if adequate safety requirements for these vehicles are provided by existing safety requirements or if new requirements should be developed.

The purpose of this notice is to solicit comments to help NHTSA determine whether Standard 301 should be amended to set specialized requirements for vehicles using methanol or ethanol as a motor fuel.

II. Background

NHTSA currently has a fuel system integrity standard, Standard No. 301, the purpose of which is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes. The standard applies to vehicles which use fuel with a boiling point above 32 degrees Fahrenheit. These include the conventional motor fuels, gasoline and diesel fuel, as well as methanol and ethanol.

Standard No. 301 specifies requirements for the integrity of the entire fuel system, including the fuel tanks, emission controls, lines, and connections, by requiring front, rear moving, or lateral moving barrier crash tests of the vehicle. These tests apply to passenger cars, multipurpose passenger vehicles, school buses, trucks, and buses (other than school buses) with GVWR of 10,000 pounds or less. Manufacturers must be able to demonstrate that fuel loss will not exceed one ounce per minute in a static rollover test following the barrier crash tests, and will not exceed these limits after, and incidental to, the crash tests. The standard also requires a moving contoured barrier crash test for school buses over 10,000 pounds GVWR.

For purposes of reference throughout this notice, definitions of the following terms are provided (49 CFR 571.3):

Bus means a motor vehicle designed for carrying more than 10 persons.

Multipurpose passenger vehicle (MPV) means a motor vehicle designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation.

Passenger car means a motor vehicle, except a multipurpose passenger vehicle, motorcycle, or trailer, designed for carrying 10 persons or less.

School bus means a motor vehicle designed for carrying more than 10 persons that is sold for purposes that include carrying school children, except common carriers in urban transportation.

Truck means a motor vehicle, except a trailer, designed primarily for the transportation of property or special purpose equipment.

Truck tractor means a truck designed primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn.

III. Description of Fuel System

The fuel systems of vehicles being introduced today to run on alcohol fuels are similar to those in use with the more conventional fuels: Gasoline or diesel fuel. They are, however, somewhat more complex. One major reason for the similarity is that, as with gasoline or diesel fuel, methanol and ethanol are both liquids at ambient temperature and pressure conditions. Thus, the method of on-board vehicle storage of these fuels is the same as for conventional fuels. However, one reason for the increased complexity of the fuel system is that many of the vehicles being introduced today for use with methanol or ethanol are capable of operating on an alcohol fuel, conventional fuel, or some combination thereof. This requires a sensor on-board the vehicle to detect what percentage of alcohol is present in the fuel at a given time so that engine parameters, e.g., spark timing, can be adjusted accordingly for optimum engine performance. These vehicles are referred to as flexible-fueled vehicles, FFVs, or variable-fueled vehicles, VFVs.

There are also alternative fueled vehicles being made, particularly for various experimental and demonstration programs, which are dual-fuel or dedicated. The dual-fuel type operates on the alternative fuel or conventional fuel, but not various combinations of the two fuels. The dedicated alternative fuel vehicle operates on one fuel blend only, such as 100 percent methanol (M100), 85 percent methanol with 15 percent gasoline (M85), or ethanol, etc.

IV. Potential Problem Areas and Possible Solutions

As stated earlier, the purpose of this notice is to solicit comments to help NHTSA determine whether specific rulemaking is needed relative to the fuel system integrity of vehicles using methanol or ethanol as a motor fuel.

Although vehicles using methanol or ethanol are covered under current Standard No. 301, Fuel System Integrity, there are certain properties of these fuels which are different than those of gasoline or diesel fuel, and may not be addressed under this Standards. The safety performance of these unique properties needs to be examined to assure adequate fuel system integrity of vehicles using such fuels. These properties are discussed under the following categories below:

A. Flame and Explosive Characteristics
B. Toxicity
C. Flame Luminosity
D. Energy Potential
E. Corrosiveness
F. Other Characteristics
G. General Issues

For categories A though E, a short description of the potential safety problems is presented, along with factors influencing those problems. Some possible solutions or general approaches are discussed, and specific questions are posed. It is hoped that responses to these questions will provide NHTSA with additional information and insight on this subject to help in determining whether any rulemaking is needed with respect to the use of methanol or ethanol as a motor fuel.

Category F, Other Characteristics, is an open category for commenters to provide information on potential safety problems which are not addressed in Categories A through E. Category G, General Issues, poses questions which are not specific to any one of the other categories, A through F.

Information and comments are requested from users and suppliers, manufacturers, government agencies, and all other interested parties. Motor vehicle safety standards established by

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NHTSA, under the authority of the Act, are by definition performance type standards in that they establish a minimum level or performance for a motor vehicle or an item of motor vehicle equipment. In commenting on a particular option or in responding to a particular question, interested parties

produced at a slower rate and disperses more rapidly than that of gasoline.

In enclosed spaces gasoline is virtually incombustible. In a fuel tank, for example, the vapor/air mixture is typically too rich for ignition to occur. M85 would act more like gasoline in this situation. In contrast to gasoline, M85,

required, in light of the increased flammability of alcohol base fuels within confined spaces? What should this level or performance be? Should such requirements differ for vehicles using M100 vs. those using M85 or other combinations of gasoline and alcohol?

(2) What technology is currently

mandating that warning labels be placed at appropriate locations on the vehicle, e.g., near the filler neck. Another precaution could be to assure adequate protection of the vehicle's occupant space from seepage of the fuel. An additional means of minimizing contact with the fuel may be the installation of

properly blended, should remain visible throughout the burn. Although the visibility of M85 diminishes with time, it can be considered readily visible in daylight. Lack of flame luminosity could lead to crash occupants or other persons being burned by a source which, at least

vehicle fuel tanks be expected to increase appreciably through 1995? If so, how much of an increase can be expected during this time? What impact will such an increase have on motor vehicle safety? Is there a potentially serious safety problem requiring NHTSA's attention?

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NHTSA, under the authority of the Act, are by definition performance type standards in that they establish a minimum level or performance for a motor vehicle or an item of motor vehicle equipment. In commenting on a particular option or in responding to a particular question, interested parties are requested to provide all relevant and factual information to support their conclusions or opinions. This should include, but is not limited to, statistical data, estimated costs and benefits, necessary manufacturer leadtimes, availability of technology, accident data, including vehicles fires, injuries, and deaths, and the sources of such information.

Methanol and ethanol are presented together because of their great similarities. Both are alcohol base fuels. However, where appropriate, their differences are pointed out.

NHTSA emphasizes that this is an advance notice of proposed rulemaking. If the agency were ultimately to issue a final rule, it would do so only after further notice of proposed rulemaking and an opprtunity to comment. It is also pointed out that whatever upgrade the agency will consider for alcohol fuels may also be considered for conventional fuels.

A. Flame and Explosive Characteristics

There are significant differences in the flammability and ignition characteristics of various fuels, because of their differing properties. Flame and ignition characteristics are also a function of whether the fire occurs in an open or enclosed area. An open area such as outdoors typically has greater ventilation, which makes difficult the accumulation of fuel vapor. Examples of open areas with limited or poor ventilation include mechanic pits or engine compartments. Enclosed areas would be situations such as sealed fuel containers and fuel tanks.

In open air situations, both well ventilated and poorly ventilated, diesel fuel is the least likely to ignite, when compared to gasoline M85, and M100. This is due primarily to the relatively low volatility of diesel fuel. On the contrary, gasoline represents a significant flammability hazard in open air situations. Its volatility allows for the production of combustible concentrations of fuel vapor when the fuel is exposed to the atmosphere at any temperature above approximately −43 degrees Centrigrade. M85 is expected to act similar to gasoline in open air situations. In contrast, methanol (M100) is less likely to ignite than gasoline in open air situations. Its vapor is produced at a slower rate and disperses more rapidly than that of gasoline.

In enclosed spaces gasoline is virtually incombustible. In a fuel tank, for example, the vapor/air mixture is typically too rich for ignition to occur. M85 would act more like gasoline in this situation. In contrast to gasoline, M85, and diesel fuel; M100 is the most likely to ignite in an enclosed space based on its fuel properties. Its volatility and flammability limits allow a combustabile mixture to exist in the fuel tank between approximately 45 and 108 degress Fahrenheit. Ethanol fuel is also flammable inside a fuel tank between approximately 5 and 108 degress Fahrenheit.

With respect to fire serverity gasoline's high volatility enables immediate eruption of a fully developed fire. Although diesel fuel fires begin slowly due to the fuel's extremely low volatility, additional fuel is quickly vaporized causing and actual burn to progress much more violently. Thus, with the exception of volatility, once ignition occurs, gasoline and diesel fuel fires are violent and severe. The heat release rates of gasoline and diesel fuel fires are also relatively high. M100 represents the other extreme, burning at a slower rate and in a much more controlled manner. Its heat release rate, ignoring situational effects such as flame geometry, is estimated to be approximately one-eighth that of gasoline. M85 likely represents a compromise between methanol and gasoline in aspects related to the hazard of a fire once it occurs. Its volatility is high enough to cause the fire to develop fully, immediately following ignition, but its other properties tend to limit the severity with which it burns.

There are a number of precautions that could be taken to reduce the chance of methanol or ethanol ignition in the fuel tank:

- Removing electric fuel pumps and fuel level sending units from contact with the fuel tank vapor space, thereby eliminating internal ignition sources;
- Extending the filler neck to the bottom of the tank thereby cutting off external ignition sources from contact with the vapor space;
- Applying flame arresters to the fuel tank vents and filler neck, preventing fire from progressing into the fuel tank; and
- Installing a bladder type fuel tank to effectively eliminate the vapor space, such as with race bars. Foam fillers within the tank are another option.

Questions:

(1) Should a specific level of vehicle fuel tank flame arrester performance be required, in light of the increased flammability of alcohol base fuels within confined spaces? What should this level or performance be? Should such requirements differ for vehicles using M100 vs. those using M85 or other combinations of gasoline and alcohol?

(2) What technology is currently available to effect such requirements with respect to fuel tank flame arrester preformance? To what extent is this technology being applied among current vehicles using alcohol fuels? How do current flame arresters operate, and where in the vehicle fuel system are they located? What is the feasibility of using fuel tank foam fillers and bladder type fuel tanks in improving vehicle fuel system safety?

(3) If fuel tank flame arrester performance should be required, on which vehicle types, e.g., passengers car, MPV, truck, truck tractor, bus, and school bus, should this requirement be applied?

(4) What has been the experience of users of alcohol fuel powered vehicles in (1) crash and (2) non-crash situations, relative to the flammability of alcohol fuels in fuel tanks, i.e., fires, accidents, deaths, and injuries?

(5) If fuel tank flame arrester performance was to be required among vehicles using alcohol fuels, what leadtime, costs, and benefits would be involved? How would these leadtimes, costs, and benefits vary among various vehicle types, i.e., passenger car, MPV, truck, truck tractor, bus, and school bus?

(6) How would fuel tank flame arrester performance be tested for compliance e.g., fuel tank full level, temperature, ignition source, and methodolgy?

B. Toxicity

Available information indicates that while the ingestion toxicity of gasoline causes it to be of concern, the increased toxicity of methanol highlights this concern. Methanol is an extremely toxic substance when ingested or absorbed through the skin. If it is accidentally swallowed, for example, during fuel siphoning, or absorbed through the skin when fuel spills, it could, in some cases, cause blindness or death. Momentary splashes on the skin should evaporate before they can become a serious concern, and incidental spitbacks should not be a major concern unless they soak a significant amount of clothing which is not subsequently removed. In any case, vehicle occupant contact and pedestrian contact with the fuel in an accident need to be avoided.

As these vehicles are introduced, toxicity protection could be achieved by mandating that warning labels be placed at appropriate locations on the vehicle, e.g., near the filler neck. Another precaution could be to assure adequate protection of the vehicle's occupant space from seepage of the fuel. An additional means of minimizing contact with the fuel may be the installation of "anti-spitback" or "anti-siphoning" devices in the filler neck system of the fuel tank.

Spillage during refueling may be less of a concern among large truck and bus operators, where trained personnel are employed to re-fuel vehicles. Some centralized fueling facilities employ the use of specialized "dry break" nozzles that eliminate fuel spills during refueling. One such device, employed by the Southern California Rapid Transit District, Los Angeles, California, provides a positive lock between the fuel nozzle and vehicle filler neck, along with a vapor recovery line back to the underground fuel supply tank.

Questions

(7) Is the increased toxicity of alcohol fuels over conventional fuels a potentially serious safety problem requiring NHTSA's attention? Should there be performance requirements for vehicle labeling, "antispitback" or "anti-siphoning" devices, or increased occupant compartment protection, due to the toxicity level of alcohol fuels? Can flame arresters, referenced above, also serve effectively as "anti-siphoning" or "anti-spitback" devices? If so, what type of flame arresters?

(8) How should these requirements differ among various vehicle types, e.g., passenger car, MPV, truck, truck tractor, bus, and school bus. Should these requirements apply to conventional fuels, i.e., gasoline or diesel fuel?

(9) What has been the experience of users relative to the toxicity of methanol and ethonol in motor fuel applications?

C. Flame Luminosity

Methanol, M100, burns with a light blue flame which is invisible in daylight with no contaminants present and with nothing else burning along with the fuel. With other combustibles involved in the fire, there should be varying degrees of smoke emanating from the product being burned. However, recent testing by Transport Canada [1] indicates that oils in asphalt are not adequate to provide luminosity to M100 flame, at least not shortly after the spill. Ethanol flames are fairly luminous even in broad daylight, burning with a yellowish flame. M85, if properly blended, should remain visible throughout the burn. Although the visibility of M85 diminishes with time, it can be considered readily visible in daylight. Lack of flame luminosity could lead to crash occupants or other persons being burned by a source which, at least initially, cannot be seen. Development of an additive which would increase the flame luminosity is a possible solution.

[1] "Study of Safety Aspects of the Use of Alcohol Fuels in Road Vehicles—Phase II", H. J. Campbell, E. W. Simmons, R. J. Lederle, March 31, 1988.

Questions

(10) How frequently would fires not be luminous, i.e., no other combustibles involved? Could the lack of flame luminosity cause potentially more, or less, serious effects from motor vehicle crashes which result in fires? What are the advantages to the lack of smoke production? Is lack of flame luminosity a potentially serious safety problem requiring NHTSA's or other federal agency's attention? If so, please specify. What additives are currently available which would provide flame luminosity?

D. Energy Potential

One of the major differences between methanol or ethanol, and gasoline or diesel fuel, is their energy content. The energy contents of methanol and ethanol are about 50 and 60 percent, respectively, that of gasoline or diesel fuel. Therefore, approximately twice as much methanol or ethanol is needed to produce the same energy as gasoline. In order to make the distance travelled per tank of methanol or ethanol comparable to that of gasoline, the fuel tank capacity of the vehicle would have to be approximately doubled, assuming equal engine efficiency. Possible efficiency gains with the use of methanol and ethanol could negate some of this reduction in energy content.

In the event the increased use of these alcohol based fuels leads to larger tanks, it may be appropriate to examine the vehicle safety implications of having this increased amount of fuel on-board with its corresponding weight. This is of special concern for flexible-fueled vehicles since larger tanks may lead to additional gasoline and/or diesel fuel being transported, potentially allowing larger fuel spills. Based on comments received in response to NHTSA's rulemaking on minimum driving range for dual energy passenger automobiles, manufacturers likely will not move toward the larger fuel tanks in the near future, since this would require major vehicle design changes and a long leadtime.

Questions

(11) In light of the lower energy density of alcohol base fuels relative to gasoline or diesel fuel, can the size of vehicle fuel tanks be expected to increase appreciably through 1995? If so, how much of an increase can be expected during this time? What impact will such an increase have on motor vehicle safety? Is there a potentially serious safety problem requiring NHTSA's attention?

E. Corrosiveness

When designing a vehicle to run on alcohol fuel, its corrosive properties must be taken into account. Components which can affect safety and which come into contact with the fuel should be adequately protected from degeneration. Since alcohol fuel will deteriorate various metal, plastic, and rubber components which are designed for use with gasoline, the vehicles must be equipped with fuel tanks, fuel lines, and injector nozzles that are resistant to such deterioration. Appropriate protection may also have to be considered for non-fuel related components which are nearby, critical to vehicle safety, and may be detrimentally affected by the fuel, should a leak occur.

Questions

(12) What modifications to the vehicle fuel system and related components are necessary to assure fuel system integrity in light of the increased corrosiveness of alcohol fuel? Please specify? Is this a potentially serious safety problem requiring NHTSA's attention?

F. Other

As stated earlier, this category is an open category for commenters to provide information on potential safety problems which are not addressed in Categories A through E. In describing any additional safety problems relative to the use of methanol or ethanol as motor fuels, commenters are requested to limit their discussion to those areas which could be addressed through a possible safety performance standard under NHTSA's purview. For each such category the following information is requested.

Questions

(13) A description of the potential safety problem, and its consequences to motor vehicle safety in (1) crash and (2) non-crash situations.

(14) A description of how the potential safety problem should be addressed through a Federal motor vehicle safety performance requirement.

(15) The leadtimes, costs, and benefits of implementing such a performance requirement.

G. General

As stated earlier, there are a number of questions which fall into a more general category, and are not specific to the categories discussed above. The general questions which apply to all of these areas are listed below. Please provide information, as appropriate, for

applies to notices of proposed rulemaking and final rules only.

NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The notice concerns a matter in which there is substantial

All comments must not exceed 15 pages in length. (49 CFR 552.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Issued: October 4, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-24025 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

Requests to make a presentation and a copy of the presentation, or outline thereof, should be sent to: Mr. Cary R. Woodford, NRM-01.01, Special Projects Staff, Rulemaking, National Highway Traffic Safety Administration, room 5320, 400 Seventh Street, SW., Washington, DC 20590.

Additionally, the Department of Energy (DOE), under the authority of the Alternative Motor Fuels Act of 1988, is involved in a number of demonstration programs to encourage the use of alternative motor fuels, particularly natural gas, methanol, and ethanol. The Urban Mass Transportation

G. General

As stated earlier, there are a number of questions which fall into a more general category, and are not specific to the categories discussed above. The general questions which apply to all of these areas are listed below. Please provide information, as appropriate, for each of the categories A through F discussed above.

Questions

(16) Should any of the requirements above differ among the types of vehicles which can be expected to use methanol or ethanol as a motor fuel, i.e., passenger car, MPV, truck, truck tractor, bus, school bus, and motorcycle?

(17) Should any of the requirements discussed above differ among the types of vehicle fuel systems expected to use methanol or ethanol as a motor fuel?

- Dual fuel (alcohol and gasoline or diesel fuel)
- Flexible fuel (methanol, ethanol, gasoline, or combinations thereof)
- M100
- M85 (85% methanol, 15% gasoline)

(18) Are there special considerations among manufacturers of vehicles built in multiple stages, i.e., multi-stage manufacturers? If so, please specify.

(19) What are the current vehicle populations and projected market demands through 1995 for alcohol fuel powered vehicles with respect to each of the following categories? Within each category please provide current populations and projected demands according to fuel system type (dual fuel, flexible fuel, or dedicated) and alcohol fuel (M100, M85, ethanol, etc.).

- Passenger cars
- Light trucks
- Medium trucks
- Heavy trucks
- School buses
- Transit buses
- Motorcycles

(20) How would the kind of requirements discussed above affect the consumer acceptance of these vehicles?

(21) Should there be different compliance test requirements among the various vehicle categories referenced above? Are there any special considerations with respect to vehicles built in multiple stages? Please specify.

(22) With respect to the issues of toxicity and flame luminosity, should NHTSA's role extend to requirements for safety related additives to alcohol fuels, i.e., to impart odor, taste, flame luminosity, etc.? If so, please explain. If not, why?

V. Potential Regulatory Impacts

This ANPRM is not subject to Executive Order 12291, since that order applies to notices of proposed rulemaking and final rules only.

NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The notice concerns a matter in which there is substantial public interest. Most, if not all, of the alcohol fueled vehicles built for demonstration purposes have been designed and produced with features that address some or all of the unique characteristics of alcohol fuels discussed in this notice, i.e., flame arresters, corrosiveness, etc.). To the extent that performance standards which address these characteristics are adopted by NHTSA, the costs of application to these vehicles would be minimal. However, a number of issues are discussed in this notice concerning alcohol fuels, and the agency does not have sufficient information to identify specific costs associated with each of the possible performance options which may be developed as a result of this notice. One of the purposes of the notice is to seek comments and information from the public on the costs, benefits, and feasibility of the various options presented. However, based on available information, the agency believes that the costs which would be associated with the various performance options presented in this notice, would not be significantly more than those now being incurred by manufacturers and users of current alcohol fueled vehicles built for demonstration purposes.

NHTSA has concluded the federalism implications of this proposal, as required by Executive Order 12612, and determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The agency will review any future rulemaking notice under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to determine whether any provisions would have a significant impact on the quality of the human environment.

Review of this notice under the Regulatory Flexibility Act is not required because the Regulatory Flexibility Act does not apply to an advance notice of proposed rulemaking. Should the agency decide to proceed with a notice of proposed rulemaking, review of that notice under the Regulatory Flexibility Act would be made that time.

VI. Comments

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 552.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information as been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the post card by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

Issued: October 5, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-24023 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 73-28; Notice 15]

RIN 2127-AD48

Fuel System Integrity; Compressed Natural Gas (CNG) and Liquefied Petroleum Gas (LPG)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking, and notice of public meeting.

SUMMARY: This advance notice of proposed rulemaking requests comments on potential safety-related issues associated with the use of CNG or LPG (such as propane) as a motor fuel and solicits ideas on whether NHTSA needs to, and if so how it might address those problems through a possible new or amended fuel system integrity standard. NHTSA also announces a public meeting on these issues. NHTSA desires that any safety performance standard, which may be established for the fuel system integrity of vehicles using CNG or LPG as a motor fuel, be in harmony with the activities and regulatory authority of others to the extent possible. The information gathered at this meeting will help in deciding what further action NHTSA should take in this area.

DATES: Comments on the ANPRM must be received by NHTSA's docket section no later than December 11, 1990.

The public meeting will be held on November 28, 1990. If additional time is needed, the meeting will be continued on November 29, 1990. For the public meeting, those persons or organizations desiring to make presentations at the meeting should let the agency, through Mr. Gary R. Woodford at the address shown below, know by November 14, 1990. Copies of the presentations, or an outline thereof, should be submitted to the contact person shown below by November 21, 1990. Written comments on the subjects discussed at the meeting must be received not later than December 11, 1990.

ADDRESSES: The public meeting, which will begin at 9:30 a.m., will be held at the following address: Third Floor Auditorium, FAA Building, 800 Independence Ave., SW., Washington, DC.

Requests to make a presentation and a copy of the presentation, or outline thereof, should be sent to: Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, Rulemaking, National Highway Traffic Safety Administration, room 5320, 400 Seventh Street, SW., Washington, DC 20590.

Written comments on the meeting or on the ANPRM should refer to the docket number and notice number shown above and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5111, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–6422. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, Rulemaking, National Highway Traffic Safety Administration, room 5320, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4804.

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Introduction

The National Highway Traffic Safety Administration (NHTSA) is considering possible rulemaking with respect to fuel system integrity among vehicles using alternative motor fuels. The alternative fuels under consideration include the gaseous fuels: Compressed natural gas (CNG) and liquefied petroleum gas (LPG), which this notice addresses.

Increasing attention is being given to the use of such alternative fuels in motor vehicles to help achieve a cleaner and more healthy environment. In addition to legislation on this subject, which is described below, there are already more stringent emissions standards for trucks and buses, which become effective in 1991 and 1994. The automotive, and truck and bus industries are actively engaged in research and demonstration programs involving such cleaner burning fuels.

Additionally, the Department of Energy (DOE), under the authority of the Alternative Motor Fuels Act of 1988, is involved in a number of demonstration programs to encourage the use of alternative motor fuels, particularly natural gas, methanol, and ethanol. The Urban Mass Transportation Administration (UMTA) of the U.S. Department of Transportation, through its Alternative Fuels Initiative program, is also encouraging the use of such fuels among local transit authorities. There are an estimated 30,000 CNG and 300,000 LPG vehicles in commercial application in the United States.

The Alternative Motor Fuels Act of 1988 also called for the establishment of a minimum driving range for the operation of dual energy and natural gas dual energy passenger automobiles when operated on non-petroleum fuel. Dual energy passenger automobiles are those capable of operating on alcohol and either gasoline or diesel fuel. Natural gas dual energy passenger automobiles are those capable of operating on natural gas and either gasoline or diesel fuel. A final rule was published by NHTSA on April 28, 1989, which established the minimum range for dual energy passenger automobiles at 200 miles and the minimum range for natural gas dual energy passenger automobiles at 100 miles. A new passenger automobile which meets the applicable range and other criteria established by the 1988 amendments qualifies to have its fuel economy calculated according to a special procedure. Under that procedure, a relatively high fuel economy figure is assigned the vehicle. This encourages the production of such vehicles by facilitating a manufacturer's compliance with the Corporate Average Fuel Economy Standards.

Under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (the Act), NHTSA is responsible for establishing motor vehicle safety performance standards for new vehicles and equipment to reduce motor vehicle accidents, deaths, and injuries. In this regard NHTSA wishes to have appropriate safety standards in place, to support the safe introduction and operation of alternative fuel vehicles, and to not impede the development and advancement of such vehicles and the associated technology.

The purposes of this notice are to announce a public meeting to obtain comments on potential regulations for the safety of CNG and LPG powered vehicles, and to explore approaches that might be used if the agency were to

establish a safety performance standard for the fuel system integrity of vehicles using CNG or LPG as a motor fuel.

Public Meeting

All interested persons are invited to attend the meeting. To assist interested persons in preparing comments, the agency has prepared a list of questions which are discussed in this notice. Comments are not limited to these questions. At this time, however, NHTSA welcomes comments on other gaseous fuels; these comments may be considered for future rulemaking.

For purposes of reference throughout this notice, definitions of the following

Potential Problem Areas and Possible Solutions

There are a number of potential safety problems to be addressed in determining whether to establish a safety performance standard for the fuel

I. Crash Integrity—Vehicle Fuel System

Because of the relatively high pressure under which CNG or LPG is stored on board the vehicle, NHTSA is concerned about the potential for fuel leakage and catastrophic fire or explosion in a crash

minutes *after* motion of the vehicle has ceased.

The requirement for no allowable fuel leakage is similar to the vehicle fuel system integrity requirements of Canadian Motor Vehicle Safety

Should a fuel system overpressurization test be added, following the following referenced barrier crash and rollover tests?

(4) For both CNG fuel systems and for LPG fuel systems, what nonflammable

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establish a safety performance standard for the fuel system integrity of vehicles using CNG or LPG as a motor fuel.

Public Meeting

All interested persons are invited to attend the meeting. To assist interested parties to prepare for the meeting, the agency has an outline, presented below, of the three major topics to be covered at the meeting. The agency intends to conduct the meeting informally. The agency will begin the discussion of each topic by first summarizing what is currently happening in the area in terms of issues, testing, and safety practices. Then, persons wishing to make a presentation can do so, and are asked to limit their remarks to 20 minutes. A verbatim transcript of the meeting will be prepared and placed in the docket.

The agency requests that persons planning to use visual aids, such as slides or motion pictures, in their presentation indicate those plans to the agency by November 14, 1990, and provide a copy of the visual aid for the docket by the comment closing date of this notice.

Outline of Topics for Public Meeting

I. Crash Integrity—Vehicle Fuel System for CNG and LPG
II. Integrity—Fuel Storage Cylinder for CNG and LPG
III. Pressure Relief—Storage Cylinders for CNG and LPG

Background

NHTSA currently has a fuel system integrity standard, Standard No. 301. The purpose of Standard No. 301 is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes. However, CNG and LPG powered vehicles are not covered under the current requirements of Standard No. 301. That Standard applies only to vehicles that use fuels which have boiling points above 32 degrees Fahrenheit, while the boiling points of natural gas (methane) and LPG (propane) are −259 degrees and −44 degrees Fahrenheit, respectively.

This notice addresses two gaseous motor fuels, CNG and LPG. Gaseous motor fuels are those which exist as a vapor at standard temperature and pressure. Standard temperature and pressure are 32 degrees Fahrenheit and 14.7 lb./sq. in. (one atmosphere), respectively. NHTSA recognizes that there are gaseous fuels other than CNG and LPG which are used as motor fuels. However, this ANPRM will focus on CNG and LPG because of their increasing use and prominence as alternative motor fuels. At the same time, however, NHTSA welcomes comments on other gaseous fuels; these comments may be considered for future rulemaking.

For purposes of reference throughout this notice, definitions of the following terms are provided (49 CFR 571.3):

Bus means a motor vehicle designed for carrying more than 10 persons.

Multipurpose passenger vehicle (MPV) means a motor vehicle designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation.

Passenger car means a motor vehicle, except a multipurpose passenger vehicle, motorcycle, or trailer, designed for carrying 10 persons or less.

School bus means a motor vehicle designed for carrying more than 10 persons that is sold for purposes that include carrying school children, except common carriers in urban transportation.

Truck means a motor vehicle, except a trailer, designed primarily for the transportation of property or special purpose equipment.

Truck tractor means a truck designed primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn.

Description of Fuel System

CNG, when used as a motor fuel, is natural gas that is typically stored on board the vehicle in cylindrical tanks at a pressure of approximately 3,000 psig and at ambient temperature. Natural gas at standard temperature and pressure is a vapor which is lighter than air. It is stored on board the vehicle in this compressed state to attain a sufficient quantity of the fuel for a driving range comparable to that of conventional fuels.

The principal LPG gases are propane and butane. LPG that is commonly used in automotive engines is a special grade known as HD–5. HD–5 consists of a minimum of 95 percent propane. However, there may be other grades of LPG used in automotive applications, and therefore the term LPG is used throughout this notice. LPG is also a vapor at standard temperature and pressure, but is heavier than air. As with CNG, LPG is stored on board the vehicle in cylindrical tanks, when used as a motor fuel. In the case of LPG, however, the storage pressure is approximately 250 psig. At this storage pressure, LPG exists as a liquid.

Potential Problem Areas and Possible Solutions

There are a number of potential safety problems to be addressed in determining whether to establish a safety performance standard for the fuel system integrity of vehicles using CNG or LPG as a motor fuel. These potential problems can be divided into three categories:

I. Crash Integrity—Vehicle Fuel System
II. Integrity—Fuel Storage Cylinder
III. Pressure Relief—Storage Cylinders

Presented below for each of these categories is a short description of the potential safety problems involved, based on currently available information, along with factors influencing those problems. Possible solutions or optional approaches are also given, and specific questions are posed. It is hoped that responses to these questions will help NHTSA gain additional information and insight on this subject. Although there are various options presented, these are not intended to be mutually exclusive. Instead, the agency will consider combinations of approaches in its assessment of whether to establish a fuel system integrity standard for vehicles using CNG or LPG as a motor fuel.

Information and comments are requested from users and suppliers, manufacturers, government agencies, and all other interested parties, to assist NHTSA in considering relevant potential safety problems and their possible solutions. Motor vehicle safety standards established by NHTSA, under the authority of the Act, are by definition performance type standards in that they establish a minimum level of performance for a motor vehicle or an item of motor vehicle equipment. In commenting on a particular option or in responding to a particular question, interested parties are requested to provide all relevant and factual information to support their conclusions or opinions. This should include, but is not limited to, statistical data, estimated costs and benefits, necessary manufacturer leadtimes, availability of technology, accident data, including vehicle fires, injuries, and deaths, and the sources of such information.

In addition to specific questions which apply to each of the various options described below, there are a number of questions which fall into a more general category. These are listed later in this notice.

I. Crash Integrity—Vehicle Fuel System

Because of the relatively high pressure under which CNG or LPG is stored on board the vehicle, NHTSA is concerned about the potential for fuel leakage and catastrophic fire or explosion in a crash situation. The location and safety performance of fuel lines and fittings, fuel components, and fuel storage cylinders, along with that of the mounting hardware for these components, must be such that fuel leakage is minimized during and after a crash. The following are possible approaches to assure a minimum level of safety performance for CNG or LPG vehicles in a crash situation.

Option A

This option would require a level of performance comparable to that of current Standard No. 301, the purpose of which is to reduce deaths and injuries occurring from fires that result from spillage during and after motor vhicle crashes of those fuels with a boiling point above 32 degrees Fahrenheit.

Each passenger car, multipurpose passenger vehicle, truck, and bus with a GVWR of 10,000 pounds or less would have to be capable of meeting the requirements of frontal, rear moving, or lateral moving barrier crash tests followed by a static rollover test, without alteration of the fuel system during the test sequence. A particular vehicle would not have to meet further requirements after having been subjected to a single barrier crash test and a static rollover test. Each school bus with a GVWR exceeding 10,000 pounds would have to be capable of meeting the requirements of the moving contoured barrier crash test. In any of the tests the fuel storage cylinders would not be allowed to become detached from the vehicle at any attachment point.

The frontal, rear moving, lateral moving, and moving contoured barrier crash tests, and static rollover test, would be as currently specified in Standard No. 301 with the exception of the performance requirement for fuel leakage, which would be as specified below. Procedures would include use of the 50th-percentile test dummies, as specified in Standard No. 301, for the frontal, rear moving barrier, and lateral moving barrier crash tests. A copy of Standard No. 301 is available at NHTSA's Docket Section, at the address cited above.

There would be no allowable fuel leakage *during* the barrier crashes or static rollover tests. In the case of the barrier crash tests, there also would be no fuel leakage allowed for up to 30 minutes *after* motion of the vehicle has ceased.

The requirement for no allowable fuel leakage is similar to the vehicle fuel system integrity requirements of Canadian Motor Vehicle Safety Standards 301.1 and 301.2 for LPG and CNG, respectively. These two standards were issued by Transport Canada in July 1982 and became effective in January 1983. The standards apply to all motor vehicles except motorcycles. The requirements include 30 mph frontal, rear moving, and lateral moving barrier crash tests for vehicles with a GVWR of 10,000 pounds or less. For vehicles with a GVWR greater than 10,000 pounds the requirements include a 30 mph moving contoured barrier crash test at any impact angle to the vehicle.

Test conditions would also be as specified in Standard No. 301, i.e., the fuel storage cylinders would be filled to any level from 90 to 95 percent of service pressure. However, for testing safety purposes, nonflammable gases would be used for compliance testing. These gases should have properties similar to CNG and LPG. All testing would be done within an ambient temperature range of 60 to 70 degrees Fahrenheit.

Questions

(1) In light of available technology, are the requirements in Option A appropriate for those vehicles expected to use CNG or LPG as a motor fuel?

(2) Vehicle applicability in Option A is consistent with current Standard No. 301 requirements. Standard 301 specifies that each passenger car, MPV, school bus, truck, and bus (other than school bus) with a GVWR of 10,000 pounds or less must be capable of meeting the requirements of the frontal, rear moving, or lateral moving barrier crash tests, followed by the static rollover test. Additionally, each school bus with a GVWR exceeding 10,000 pounds must be capable of meeting the requirements of the moving contoured barrier crash test. Are these appropriate? What vehicle types, e.g., passenger car, MPV, truck, truck tractor, bus, and school bus, should be required to meet each of the barrier crash and rollover tests specified in Option A?

(3) Should there be no allowable fuel leakage during and after the test sequences described in Option A? If some leakage should be allowed, what levels should be established and how should the leakage be measured for each of the test sequences described? Is 90 to 95 percent of service pressure for the fuel storage cylinder appropriate for compliance test purposes, or should a lower pressure range be specified? Should a fuel system overpressurization test be added, following the following referenced barrier crash and rollover tests?

(4) For both CNG fuel systems and for LPG fuel systems, what nonflammable gas or vapor should be used in the vehicle fuel system and fuel storage cylinders for compliance test purposes? What other precautions should be followed to assure the safety of compliance test personnel?

(5) At what temperatures should the testing in Option A be performed for compliance purposes? Is the 60 to 70 degree ambient temperature range for testing appropriate, or should this range be widened, e.g., 32 to 100 degrees?

(6) What leadtimes, benefits, and costs per vehicle type would be involved if Option A were to be adopted? How would these leadtimes, benefits, and costs vary among vehicle types, e.g., passenger car, MPV, truck, bus, and school bus?

Option B

Option B would involve the adoption of selected portions of two standards of the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269. The purposes of the NFPA include promoting the science and improving the methods of fire protection and prevention, and obtaining and circulating information on these subjects. Its primary effort toward meeting its purposes is in developing and updating standards covering all areas of fire safety. The NFPA has no enforcement power. Its standards are advisory in nature.

The two standards are NFPA 52, Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems, 1988 edition, and NFPA 58, Standard for the Storage and Handling of Liquefied Petroleum Gases, 1989 edition. Each standard contains sections which pertain to engine fuel systems for vehicles. Copies of these sections of the two standards are available at the NHTSA Docket. Both standards are voluntary industry guidelines, and have been approved by the American National Standards Institute. NFPA has no authority to enforce compliance to the standards.

In the case of vehicles using CNG as a motor fuel, Option B would adopt those portions of NFPA 52 which are relevant to the safe performance, location and securement of fuel system components and storage cylinders, for purposes of vehicle fuel system crash integrity. These would include the following sections from NFPA 52. Modifications

are contained in brackets, []. Omitted portions are indicated as ( ).

3–3.1 Fuel supply containers on vehicles may be located within, below or above the driver or passenger compartment, provided all connections to the container(s) are external to, or sealed and vented from, these

motor fuel contain similar requirements with some variations. LPG fuel containers must be mounted on the vehicle such that the container fastenings can withstand without permanent visible deformation static loading in any direction equal to four times (rather than eight times) the

program to certify natural gas vehicle conversion systems. The requirements apply to on-board CNG equipment designed to operate a dual fuel gasoline/CNG vehicle or dedicated CNG vehicle. The requirements are divided into two major sections. Part I presents criteria for evaluating minimal physical

CNG and LPG are stored on-board the vehicle in cylindrical containers at relatively high pressures, approximately 3000 psig for CNG and 250 psig for LPG. The fuels are stored in this compressed state to attain sufficient quantities for vehicle driving range to be comparable to that of conventional fuels. Because of these relatively high pressures, the

from that of being used for on-board storage of motor fuels. In the latter application the cylinders are attached to the vehicle like a conventional fuel tank. In transport applications, however, the cylinders are used as shipping containers to transport the fuel or other hazardous material from one destination to another. Here the cylinders are not

used to store LPG or CNG as a motor fuel. These are examples taken from RSPA Standard FRP–1, referenced above, and aluminum liner cylinder used in CNG applicatons. Cylinder capacity is not over 200 lbs. water, and service pressure is at least 900 psig but not greater than 5000 psig. Such cylinders

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are contained in brackets, []. Omitted portions are indicated as ( ).

3–3.1 Fuel supply containers on vehicles may be located within, below or above the driver or passenger compartment, provided all connections to the container(s) are external to, or sealed and vented from, these compartments.

3–3.2 ( ). No part of a [fuel supply] container or its appurtenances shall protrude beyond the sides or top of the vehicle [periphery] at the point where it is installed.

3–3.2.1 The fuel system shall be installed with as much road clearance as practical but not less than the minimum road clearance of the vehicle when loaded to its gross vehicle weight rating. This minimum clearance shall be measured from the lowest part of the fuel system.

3–3.2.2 No portion of a fuel supply container or container appurtenance shall be located ahead of the front axle or behind the rear bumper mounting face of a vehicle. ( ).

3–3.3 Each container rack shall be secured to the vehicle body, bed or frame to prevent damage from road hazards, slippage, loosening or rotation using a method capable of withstanding a static force in the six principal directions [Figure 3–3.3, NFPA 52] of eight times the weight of a fully pressurized container(s).

3–3.3.1 Each fuel supply container in the rack shall be secured to its cradle in such a manner that it is capable of withstanding a static force applied in the six principal directions [Figure 3–3.3, NFPA 52] of eight times the weight of the fully pressurized container with a maximum displacement of ½ in. [12.7 mm).

3–3.4 The container weight shall not be supported by outlet valves, manifolds, or other fuel connections.

3–3.5 Fuel supply containers located less than 8 in. (203 mm) from the exhaust system shall be shielded against direct heat.

3–3.6 The mounting system shall ( ). [preclude] fretting corrosion [i.e., corrosion due to abrasion] between the container and the mounting system.

3–5.6 ( ). A supply line shall be supported at least every 24 in. (610 mm).

3–7.2 A pressure gauge installed outside a driver or passenger compartment shall be equipped with a limiting orifice, a shatterproof dial lens and a body relief.

3–8.3 Regulators shall be installed so that their weight is not placed on, or supported by, the attached gaslines.

Sections 3–6.2.6 through 3–6.2.9 of NFPA 58 for vehicles using LPG as a motor fuel contain similar requirements with some variations. LPG fuel containers must be mounted on the vehicle such that the container fastenings can withstand without permanent visible deformation static loading in any direction equal to four times (rather than eight times) the weight of the container filled with fuel. NFPA 58 also has a specific section on the location of fuel containers mounted in the interior of vehicles.

Questions

(7) Are NFPA Standards 52 and 58 appropriate for the types of vehicles expected to use CNG or LPG as a motor fuel? Please specify. For example, locating the fuel storage cylinders on top of the vehicle may not be appropriate in all cases. Section 393.65(b)(6) of the Federal Motor Carrier Safety Regulations prohibits any part of the fuel system of a bus manufactured on or after January 1, 1973, to be located within or above the passenger compartment of a commercial motor vehicle which is subject to those regulations.

(8) Should there be other sections of NFPA Standards 52 and 58 included in Option B in order to provide adequate vehicle fuel system integrity in crash situations? If so, please specify.

(9) What vehicle types should have to meet the requirements specified in Option B, e.g., passenger car, MPV, truck, truck tractor, bus, and school bus?

(10) To what extent are NFPA Standards 52 and 58 currently being used among fleet users and others?

(11) Are the static force requirements for securing fuel supply containers (four to eight times their weight when filled with fuel), as specified in NFPA Standards 52 and 58, adequate for crash situations? Should these forces be increased to 20 or 30 times the weight of the fuel supply containers when full. What has been the experience of users of vehicles built to NFPA 52 and 58 requirements in accident situations?

(12) What leadtimes, benefits, and costs per vehicle would be involved if Option B was to be adopted? How would these leadtimes, benefits, and costs vary among vehicle types?

Option C

Option C would involve the adoption of selected portions of a set of requirements issued in 1985, by the American Gas Association (AGA) Laboratories, 8501 East Pleasant Valley Road, Cleveland, OH 44131.

These are titled, A.G.A. Requirements For Natural Gas Vehicle (CNG) Conversion Kits, No. 1–85, August 20, 1985, and form the basis for an AGA program to certify natural gas vehicle conversion systems. The requirements apply to on-board CNG equipment designed to operate a dual fuel gasoline/CNG vehicle or dedicated CNG vehicle. The requirements are divided into two major sections. Part I presents criteria for evaluating minimal physical attributes of component materials, labelling, and instructional material considered necessary for reasonable system life, proper identification of responsible parties, and safe installation. Part II covers performance requirements and methods of test for CNG vehicle conversion kits.

Option C would use those portions from part II of the AGA requirements which are relevant to the safe performance, location, and securement of fuel system components and storage cylinders, i.e., vehicle fuel system crash integrity. These would include the following sections and could be used in conjunction with NFPA 52 requirements referenced in Option B: AGA No. 1–85 sections 2.2.1, 2.3.1, 2.3.2, 2.4, 2.5, 2.6.1, 2.8.1, and 2.8.3. A copy of the complete AGA requirements is available at the NHTSA Docket.

Questions

(13) Are AGA No. 1–85 requirements appropriate for the types of vehicles expected to use CNG or LPG as a motor fuel?

(14) Should there be other sections of AGA No. 1–85 included in Option C in order to provide adequate vehicle fuel system integrity in crash situations? If so, please specify.

(15) What vehicle types should have to meet the requirements specified in Option C, e.g., passenger car, MPV, truck, truck tractor, bus, and school bus?

(16) To what extent are AGA No. 1–85 requirements currently being used among fleet users and others?

(17) Are the requirements specified in AGA No. 1–85 sufficient to provide for adequate vehicle fuel system integrity in crash situations? What has been the experience of users of vehicles built to these requirements in accident situations?

(18) What leadtimes, benefits, and costs per vehicle would be involved if Option C was to be adopted? How would these leadtimes, benefits, and costs vary among vehicle types?

II. Integrity—Fuel Storage Cylinder

While the previous section of this notice focuses on the entire fuel system, additional performance requirements may be appropriate for the fuel storage cylinder. This issue is addressed here.

CNG and LPG are stored on-board the vehicle in cylindrical containers at relatively high pressures, approximately 3000 psig for CNG and 250 psig for LPG. The fuels are stored in this compressed state to attain sufficient quantities for vehicle driving range to be comparable to that of conventional fuels. Because of these relatively high pressures, the integrity of the cylinders in which the fuels are stored is critical to vehicle safety, both in crash situations and under normal use. The relatively high fuel storage pressures could greatly increase the magnitude of any accident or fire.

There are several factors that can influence the integrity of these storage cylinders. One is gas quality, or the level of impurities found in the fuel. Because the cylinders are often mounted horizontally, any condensation of contaminants settles on the lowest sidewall. If, for example, compounds such as hydrogen sulfide (H_2S) and water (H_2) are present in the fuel, stress-corrosion cracking can result and possibly lead to cylinder failure. Another factor influencing cylinder integrity is the repeated pressure cycling to which the cylinders are exposed over their lifetime due to refueling, i.e., empty-to-full. This can also produce stress cracks in the cylinder walls. As the cylinders age, the stress cracks can propagate, thereby increasing the potential for cylinder failure.

Based on these potential problems, any performance standard which NHTSA would consider adopting to assure cylinder integrity should meet both strength and durability requirements. The strength requirements would have to assure a minimum level of integrity in vehicle crash situations and because of the relatively high fuel storage pressures. The durability requirements would have to assure a minimum level of cylinder performance against contaminant stress-corrosion cracking and repeated pressure cycling.

Currently, there are a number of standards in existence specifying requirements for CNG and LPG cylinders. These include standards issued by (1) the Office of Hazardous Materials Transportation within the Department of Transportation's Research and Special Programs Administration (RSPA), and those referenced by (2) NFPA in its Standards 52 and 58, and AGA in its No. 1–85 requirements for CNG vehicle conversion kits.

RSPA establishes and enforces specifications and standards for cylinders used to transport hazardous materials, including CNG and LPG. This application of the cylinders is different from that of being used for on-board storage of motor fuels. In the latter application the cylinders are attached to the vehicle like a conventional fuel tank. In transport applications, however, the cylinders are used as shipping containers to transport the fuel or other hazardous material from one destination to another. Here the cylinders are not permanently fixed to the vehicle. Under RSPA regulations, the cylinders used for transport must be marked and certified to DOT specifications, and periodically retested and reinspected. This is done under the authority of the Hazardous Materials Transportation Act. However, this authority does not apply when such cylinders are used for on-board vehicle storage of a motor fuel. In other words, there are no federal fuel system integrity standards involving these fuels when used as motor fuels on-board vehicles.

The RSPA standards for cylinders are very specific in their requirements. They include specifications for the design, manufacture, performance testing, and inspection of new cylinders. For commonly used steel cylinders these standards are DOT–4B, 4BA, and 4BW for LPG, and DOT–3AA for CNG, which are described in 49 CFR 178.50, 178.51, 178.61, and 178.37, respectively. For lighter weight cylinders, made with an aluminum liner rather than the steel construction, there are two RSPA standards, DOT FRP–1 and FRP–2. Cylinders built to Standard FRP–1 have resin impregnated continuous filament windings in both the longitudinal and circumferential directions (full wrapped) over a seamless aluminum liner. Cylinders built to Standard FRP–2 are made of the same materials except that the continuous filament windings are in the circumferential direction only (hoop wrapped). Finally, RSPA has cylinder qualification, maintenance, and use requirements, which are described in 49 CFR 173.34. These include requirements for the retesting of used cylinders, including retest intervals. Retest intervals are five years for steel cylinders and three years for the aluminum liner cylinders.

In the case of NFPA Standards 57 and 58, and AGA No. 1–85 requirements, reference is made to the cylinder standards and regulations of others, including DOT, CTC (Canadian Transport Commission), and ASME (The American Society of Mechanical Engineers). See section 2–4 of NFPA 52, Section 3–6.2.2 of NFPA 58, and section 1.3.1 of AGA No. 1–85 (available at NHTSA docket).

The following are possible approaches or performance options which could be taken to assure a minimum level of strength and durability for cylinders used to store LPG or CNG as a motor fuel. These are examples taken from RSPA Standard FRP–1, referenced above, and aluminum liner cylinder used in CNG applications. Cylinder capacity is not over 200 lbs. water, and service pressure is at least 900 psig but not greater than 5000 psig. Such cylinders are becoming more commonly used in motor vehicle applications, in contrast to steel cylinders, because of their lighter weight. The types of RSPA performance tests required of these cylinders are considered representative of other cylinder requirements referenced above. However, certain of the test requirements may have to be modified for purposes of on-board storage of fuel. This is because the standards were developed for a different purpose, that is, the transport of fuel in a cylinder that is consistently full. NHTSA encourages the submission of data from cylinder designers and manufacturers concerning any recommended changes or increases in the test requirements. Section numbers, when shown below, refer to those in FRP–1. Items in brackets, [], indicate modifications made by NHTSA in this ANPRM. Omitted portions are indicated as (. . . .). Options D, E, and F pertain to cylinder strength performance, while Options G and H pertain to durability performance. Complete copies of RSPA Standards FRP–1 and FRP–2 are available at the NHTSA Docket.

Option D

This option would involve cylinder strength requirements.

178.AA–11(a) Hydrostatic Test

(1) By water-jacket, operated so as to obtain accurate data. Pressure gauge must permit reading to accuracy of 1 percent in the range of 80 percent to 120 percent of test pressure. Expansion gauge must permit reading of total expansion to accuracy either 1 percent of 0.1 cubic centimeter.

(2) The accuracy of the test equipment must be maintained by periodic reclaibration. Records must be maintained to verify that the test equipment is calibrated on a regular basis.

(i) A calibration cylinder capable of verifying the equipment accuracy for the material, size and test pressure of the cylinders to be tested must be used for checking the equipment at the beginning of each day.

(3) Pressure must be maintained for 30 seconds and sufficiently longer to insure complete expansion. Any internal

pressure applied after autofrettage [1] and previous to the official test must not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure can not be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower. Not mote than 2 such repeated tests are permitted.

(4) Each cylinder must be tested to at least 5/3 times service pressure. In no case may the test pressure exceed the autofrettage pressure.

178.AA–13(a) Acceptable Results of Tests

(1) The permanent volumetric expansion of the cylinder must not exceed 5 percent of the total volumetric expansion at test pressure.

(2) All cylinders failing to pass the hydrostatic test must be rejected.

178.AA–18(e) Hydraulic Burst Test

(1) One representative cylinder shall be hydrostatically pressurized to failure as follows: Pressure shall be increased at a uniform rate up to minimum prescribed burst pressure, held constant at minimum burst pressure for 60 seconds; and increased to failure. The pressurizaton rate throughout the test must not exceed 200 psi per second.

(2) Burst pressure must be at least 3 times the service pressure, and in no case less than the value necessary to meet the stress criteria of 178.AA–7(b). Failure must initiate in the side wall. Cylinders with marked service pressure not exceeding 2200 psig must remain in one piece. Actual burst pressure must be recorded.

Option E

This option would involve cylinder strength requirements.

178.AA–12(a) Physical Test-Applies to Aluminum Liner Only

(1) To determine yield strength, tensile strength and elongation of the aluminum liner material. Required on 2 specimens cut form one liner taken at random out of each lot of 200 liners or less. [However, all liners must be capable of meeting the test requirements.]

(2) Specimens must be: Gauge length 2 inches with width not over 1½ inches; or gauge length 4 times the specimen diameter (4D bar); provided, that gauge length at least 24 times thickness with width not over 6 times thickness is authorized when liner wall is not over 3/16 inches thick. The specimen, exclusive of grip ends must not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section. When size of liner does not permit securing straight specimens, the specimens may be taken in any location of direction and may be straightened or flattened cold, by pressure only, not by blows. ( ). Heating of specimens for any purpose is not authorized.

(3) The yield strength in tension shall be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. [The procedure for yield strength determination shall be in accordance with 178.AA–12(3)(i) through 178.AA–12(3)(IV).]

10178.AA–13 (b) Acceptable Results of Tests

(1) Elongation must be at least 14 percent; except that an elongation of 10 percent is acceptable when the authorized specimen size is 24t×6t.

(2) When the test results fail to meet requirements, the liner lot must be rejected.

(3) A retest of a rejected lot is authorized if an improper test was made due to the presence of a defect in the specimen or if the equipment or procedure was faulty. The retest must be performed on specimens taken from the same cylinder liner.

178.AA–7 Wall Thickness

(a) Minimum thickness of the liner must be such that after autofrettage, the compressive stress in the sidewall of the liner at zero pressure will not exceed 95 percent of the minimum yield strength of the aluminum as determined in 178.AA–12(a) or 95 percent of the minimum design yield strength shown in 178.AA–18(h). The maximum tensile stress of the liner at operating pressure must not exceed 60 percent of the yield strength.

(b) The maximum filament stress at service pressure must not exceed 30 percent of the filament stress at the virgin burst pressure of the lot test cylinder.

(c) The end designs must incorporate added materials to assure the stresses in these areas are less than the stresses found in the cylindrical portion.

(d) Stresses shall be computed from Computer Code NASA CF–72124 "Computer Program for the Analysis of Filament-Wound Reinforced Metal Shell Pressure Vessels" May 1966, or other suitable analysis techniques.

Option F

This option would involve cylinder strength requirements. The purpose of this test is to avoid fragmentation failure.

178.AA–18(f) Gunfire Test

One representative cylinder charged with air or nitrogen to service pressure shall be impacted by a 0.30 caliber armor-piercing projectile having a velocity of approximately 2800 feet per second. Cylinder shall be so positioned that the projectile impact point is in the cylinder sidewall at approximately 45 degree angle and aimed to exit at the cylinder sidewall. Distance from firing location to test cylinder not to exceed 50 yards. Tested cylinder shall reveal no evidence of a fragmentation failure. Approximate size of entrance and exit openings must be recorded.

Question

(19) In addition to a gunfire test with an armor piercing round to test fuel tank ductility, would a gunfire test at low tank pressure with a standard round also be appropriate to analyze puncture resistance?

Option G

This option would involve cylinder durability requirements.

178.AA–12(b) Cycling Test

(1) One cylinder taken at random out of each lot of 200 cylinders must be subjected to cyclic pressurization test by hydrostatically pressurizing the cylinder between approximately zero psig and the designated pressure at a rate not to exceed 4 cycles per minute. Adequate recording instrumentation must be provided if the equipment is to be left unattended for periods of time. All cylinders used in the cycle test must be destroyed.

178.AA–13(c) Acceptable Results of Tests

(2) When the test cylinder fails to withstand the cycle test, the lot represented must be rejected.

178.AA–18(d)

(1) Cycling test at ambient temperature. One representative cylinder shall be cycle tested at ambient temperature without showing evidence of distortion, deterioration or failure, as follows: Pressurize from 0 to service pressure for 10,000 cycles; then pressurize from 0 to test pressure for 30 cycles. After successfully passing this test the cylinder must be pressurized to burst in accordance with paragraph (e) (1) of this section and the burst pressure recorded.

(2) Environmental cycling test. One representative cylinder free of any protective coating shall be cycle tested without showing evidence of distortion, deterioration or failure, as follows:

(i) Condition for 48 hours at zero pressure, 140 degrees Fahrenheit or higher and 95 percent or greater relative humidity.

(ii) Pressurize from zero to service pressure for 5,000 cycles at 140 degrees Fahrenheit or higher and 95 percent or greater relative humidity.

(iii) Stabilize at zero pressure and ambient conditions.

(iv) Then pressurize from zero to service pressure for 5,000 cycles at −60 degrees Fahrenheit or lower.

(v) Stabilize at zero pressure and ambient conditions.

(vi) Then pressurize from zero to test pressure for 30 cycles at ambient temperature.

Any cylinder subjected to this cycling test must be destroyed.

(3) Thermal cycling test. One representative cylinder shall be tested without showing evidence of distortion, deterioration or failure as follows:

(i) Cycle test, at ambient temperature, by performing 10,000 pressurizations from zero to service pressure and 30 pressurizations from zero to test pressure.

(ii) Then hydrostatically pressurize to service pressure; and submerge the pressurized cylinder in 200 degrees Fahrenheit fluid, soak for 10 minutes; transfer and submerge in −60 degrees Fahrenheit fluid and soak for 10 minutes. Subject the cylinder to 20 such cycles restricting the transfer time to at least one minute but not more than three minutes. The pressure in the cylinder may be controlled so that it does not exceed test pressure nor be less than marked service pressure.

After successfully passing this test, the cylinder must be pressurized to burst in accordance with paragraph (e)(1) of this section and burst pressure recorded.

Question

(20) At what level should the maximum number of pressurization cycles be set for cylinders used in CNG and LPG motor fuel applications? Should the 10,000 cycles described in Option G be modified to reflect the likely maximum number of vehicle refuelings over the operating life of the vehicle? Please specify.

Option H

This option would involve the kind of cycle testing of cylinders, described in Option G, but with the use of a liquid or vapor compound that would simulate fuel of minimum gas quality, i.e., maximum allowable impurities. The test would consist of an accelerated life cycle to determine minimum levels of cylinder performance under conditions of minimal gas quality.

In conjunction with this, NHTSA could consider requiring appropriate labeling on both the cylinder and at the vehicle fuel-filler connection, specifying minimum fuel quality levels for safe use in the vehicle fuel system.

Questions

For each question, please address each Option D through H individually.

(21) Are the test procedures or approaches described in Options D through H appropriate and sufficient for assuring cylinder integrity in motor vehicle applications, CNG or LPG? If not, why not? Could they be modified to better achieve the purpose? How?

(22) Are the minimum test results and performance levels described in Options D through G appropriate for cylinders used in CNG motor fuel applications? The results and performance levels shown were taken, by example, from RSPA Standard FRP–1. FRP–1, however, is for cylinder transport applications. Additionally, how should these results and performance levels be modified for LPG motor fuel applications?

(23) Should hoop wrapped composite cylinders, built to Standard FRP–2, also be considered here? If so, how should the above proposed testing requirements, which have been taken in part from RSPA Standard FRP–1 (full wrapped composite cylinders), be modified for use with the hoop wrapped composite cylinders? Please specify.

(24) Is the kind of test described in Option H feasible? What gas quality limits are appropriate for test purposes in light of commercially available CNG for motor fuel applications? Similarly, what gas quality levels are appropriate for test purposes with LPG? Please specify. Also see question 44.

(25) Would it be appropriate to adopt such cylinder requirements for all vehicle types, e.g., passenger car, MPV, truck, truck tractor, bus, and school bus? If not, which vehicle types should be included.

(26) In light of available technology, are the requirements in Options D through H appropriate for those vehicles expected to use CNG or LPG as a motor fuel?

(27) What leadtimes, benefits, and costs per vehicle would be involved if Options D through H were to be adopted? How would these leadtimes, benefits, and costs vary among vehicle types, i.e., passenger car, MPV, truck, truck tractor, bus, and school bus?

(28) What has been the experience of users of cylinders which were built to current RSPA Standards and used in motor fuel applications, with respect to fires, explosions, and accidents?

(29) Should storage cylinders used in CNG and LPG motor fuel applications be periodically inspected and retested, or is it feasible to design and manufacture the cylinders from materials which are not susceptible to stress corrosion cracking? Please explain.

(30) If the fuel storage cylinders should be periodically inspected and retested, which agency and at what level should these be performed, i.e., federal, state, local, voluntary, etc.? Please specify. What technology is currently available for performing such inspection and retest, and how much time and cost would be involved in each case? What should be the retest intervals?

III. Pressure Relief—Storage Cylinders

As referenced above, CNG and LPG are stored on-board the vehicle in cylindrical containers at relatively high pressures, approximately 3000 psig for CNG and 250 psig for LPG.

In any motor vehicle crash situation there is the potential for fire. If a cylinder and its contents were to increase in temperature, due to a vehicle fire for example, pressure inside the cylinder would increase. If this pressure becomes too high, the cylinder could burst due to high stresses. The high temperatures could also weaken the cylinder to the point of rupture. Therefore, there is a need to have a means of pressure relief for the storage cylinders, to reduce the possibility of an explosion. The pressure relief system would provide a means of venting the cylinder contents at a controlled rate, rather than possibly having the cylinder burst with an accompanying explosion of its contents. Pressure relief may also be needed to prevent overfill during refueling operations.

Under current RSPA regulations, cylinders used to transport CNG or LPG are required to have a pressure relief device. The requirements provide for a pressure relief device capable of preventing rupture of a fully charged cylinder under fire conditions. However, a relief device based on requirements for a fully charged cylinder, such as is the case when the fuel is being transported but not being used on-board, may not be adequate for use with a cylinder under partial charge. The latter is often the case with cylinders used to store motor fuels. A partially charged cylinder, under fire conditions, i.e., in an environment of high heat and fire from a crash, may require a longer time for the pressure of its contents to increase sufficiently to activate the pressure relief device. This longer period

[1] Autofrettage refers to an increase in the yield point of a material, after compressive residual stresses have been induced in the material due to tensile load.

of time, during which the cylinder is exposed to heat, may weaken the cylinder and cause failure before the relief device is activated. Thus, NHTSA requests information on whether CNG or LPG cylinders used in motor fuel applications should be equipped with a pressure relief system capable of

cylinder, under fire conditions, or if the cylinder were to become overcharged during refueling. The devices could be set to activate at a predetermined cylinder pressure, i.e., higher than cylinder service pressure but much lower than burst pressure. The other two pressure relief devices would be

pressure relief devices necessary to assure safe pressure relief of CNG or LPG motor fuel cylinders?

(34) At what specific temperature and pressure should the pressure relief stem devices be sent to assure adequate cylinder pressure relief under all conditions of cylinder charge level? How

with relief devices on both ends, the bottom relief devices must be shielded from any flame impingement.

(2) Horizontal tests. Place the test cylinder in the horizontal position and subject the entire length to flame impingement except that flame shall not allowed to impinge directly on any relief device. Shielding of the pressure relief

so that fuel leakage can be more readily detected among users? If not, how could this be achieved? Please specify. In conjunction with this, would it be appropriate to require automatic shutoff of fuel from the storage cylinder(s) when the vehicle is not operating?

(38) If pressure relief devices are desirable, would it be appropriate to

at the Federal level? If so, by whom? Please specify.

(45) What are the current vehicle populations and projected market demands through 1995 for dual fuel vehicles (gaseous and gasoline or diesel fuel) and for dedicated gaseous fuel vehicles with respect to each of the

of time, during which the cylinder is exposed to heat, may weaken the cylinder and cause failure before the relief device is activated. Thus, NHTSA requests information on whether CNG or LPG cylinders used in motor fuel applications should be equipped with a pressure relief system capable of preventing cylinder rupture, under fire conditions, and at all fill levels.

The RSPA regulations for pressure relief devices are described in 49 CFR 173.34(d). They require one or more pressure relief devices sized and selected as to type, location, and quantity and tested in accordance with CGA Pamphlet S–1.1 (Compressed Gas Association, 1235 Jefferson Davis Highway, Arlington, Virginia 22202). The pressure relief device system must be capable of preventing rupture of the normally or fully charged cylinder when subjected to a fire test conducted in accordance with CGA Pamphlet C–14. One exception to using the fire test described in CGA Pamphlet C–14 involves the aluminum liner cylinders made in accordance with RSPA Standards FRP–1 and FRP–2. For those cylinders the adequacy of the pressure relieving devices may be verified in accordance with a Bonfire test described in those standards.

NFPA Standards 52 and 52, and AGA No. 1–85 requirements refer to the cylinder and pressure relief device standards and regulations of others, including DOT, CTC, ASME, and CGA. NFPA 52 and 58, and AGA 1–85, include strength and locations of pressure relief vent lines on the vehicle, so that any vented fuel is directly away from passenger and luggage compartments. See sections 2–5 and 3–4 of NFPA 52, sections 3–6.2.3, 3–6.2.6(i), 3–6.2.7, 3–6.2.8(h), and appendix E of NFPA 58, and section 1.3.1 of AGA No. 1–85.

The following are possible approaches or performance options which NHTSA could require to assure a minimum level of pressure relief, under fire conditions or during refueling operations. These are examples, taken in part, from CGA, RSPA, and AGA standards and requirements.

Option I

This option would require that each cylinder used in CNG or LPG motor fuel applications be equipped with two pressure relief devices at each end of the cylinder: Two pressure sensitive and two temperature sensitive. Two of each kind would provide a safety factor in the event that one failed to function. Two of the pressure relief devices would be pressure sensitive, regardless of cylinder temperatures. These would provide for pressure relief of a fully charged cylinder, under fire conditions, or if the cylinder were to become overcharged during refueling. The devices could be set to activate at a predetermined cylinder pressure, i.e., higher than cylinder service pressure but much lower than burst pressure. The other two pressure relief devices would be sensitive to cylinder temperature, regardless of fuel pressure inside the cylinder. These would provide for pressure relief, under fire conditions and when the cylinder is at less than full charge, by relieving cylinder contents if the cylinder were to become overheated. These devices could be set to activate at a temperature well below the yield temperature of the cylinder material.

As stated earlier, CGA Pamphlet S–1.1, Pressure Relief Device Standards Part 1—Cylinders For Compressed Gases, describes various types of pressure relief devices, and their applications, design and construction, and testing procedures. Among the types of pressure relief devices listed in CGA Pamphlet S–1.1, are a Rupture Disc Device and a Fusible Plug Device. These would operate in the manner described above. CGA Pamphlet S–1.1 defines these as follows:

Rupture Disk Device: a non-closing pressure relief device actuated by inlet static pressure and designed to function by the bursting of a pressure containing disk.

Fusible Plug Device: a non-reclosing pressure relief device designed to function by the yielding or melting of a plug of suitable melting temperature material.

This option would require minimum flow capacity of these pressure relief devices when activated, such as the kind specified in sections 5.5 and 5.6 of CGA Pamphlet S–1.1 Similarly, it would require that such devices be tested in accordance with sections 6.1, 6.2, 6.3, and 6.6 of CGA Pamphlet S–1.1. The test procedures involve the selection and testing of samples from lots to assure that the devices activate at the intended pressure or temperature, and that once activated, flow capacity is as intended. A copy of CGA Pamphlet S–1.1 is available at the NHTSA Docket.

Questions

(31) Is there a problem that has been experienced or is anticipated with pressure relief? If so, should NHTSA regulate pressure relief?

(32) Are the pressure relief device tests described in CGA Pamphlet S–1.1 appropriate for pressure relief devices used in motor fuel applications? If not, how should they be modified?

(33) Are two each of the pressure sensitive and temperature sensitive pressure relief devices necessary to assure safe pressure relief of CNG or LPG motor fuel cylinders?

(34) At what specific temperature and pressure should the pressure relief stem devices be sent to assure adequate cylinder pressure relief under all conditions of cylinder charge level? How should these levels differ between CNG and LPG applications?

Option J

This option would require fire tests on cylinders fitted with the types of pressure relief devices described in Option I. The fire tests would first be conducted under fully charged conditions to verify performance of the pressure sensitive relief devices. The fire tests would then be repeated at a charge level less than one-half of full charge to verify performance of the temperature sensitive relief devices. These tests would, in effect, test the cylinder and pressure relief devices as a system, thereby verifying adequate pressure relief to preclude cylinder failure. The fire tests would be conducted in a manner similar to the Bonfire test described in RSPA Standard FRP–1:

178.AA–18(g) Bonfire Tests

Test cylinders must be fitted with pressure relief devices in accordance with the intended lading to the prescribed filling pressure or density. Charging with nitrogen or air to service pressure is authorized if cylinders are to be charged only with nonliquefied gases. Fire for tests shall be generated by kerosine-soaked wood, gasoline or JP–4 fuel. The lowest part of the cylinder shall be approximately 4 inches above the base of the fire when the wood fire is used and shall be approximately 4 inches above the liquid surface in the case of gasoline of JP–4 fuel. Test cylinder shall be exposed to fire until completely vented. Time-pressure readings must be recorded at 30 second intervals from start of fire until venting is completed. Test results are unacceptable if contents vent from any location other than through a pressure relief device. After satisfactorily passing the fire test, each cylinder must be pressurized to burst and burst pressure recorded. Tests must be performed as follows:

(1) Vertical test. Place the test cylinder in the upright position and subject to total fire engulfment but in no case shall the flame be allowed to impinge directly on any relief device. Shielding or pressure relief devices with a metal plate may be used but is not a requirement. For cylinders equipped with relief devices on both ends, the bottom relief devices must be shielded from any flame impingement.

(2) Horizontal tests. Place the test cylinder in the horizontal position and subject the entire length to flame impingement except that flame shall not allowed to impinge directly on any relief device. Shielding of the pressure relief devices with a metal plate may be used but is not a requirement.

(3) Cylinders for liquefied gas service. At least one representative cylinder must be subjected to the horizontal test and two to the vertical test.

(4) Cylinders for non-liquefied gas service only. At least 2 cylinders must be subjected to the vertical test Horizontal test is not required.

An allowable alternative to using the bonfire test described in this option would be to use the fire test procedures descibed in CGA Pamphlet C–14, Procedures For Fire Testing of D.O.T. Cylinder Safety Device Systems. However, this option would still require on set of tests under fully charged conditions and one set of tests with the cylinder charge level at less than one-half, so that performance of both the pressure sensitive and temperature sensitive pressure relief devices could be verified. A copy of CGA Pamphlet C–14 is available at the NHTSA Docket.

Question

(35) Are these two tests, bonfire and CGA–14, appropriate for cylinder used in motor fuel applications? If not, why not? Is one of these two tests more appropriate than the other? If so, please specify. Are there other tests, or performance requirements for pressure relief, which would be better alternatives? Please specify.

Option K

This option would require the following with respect to vehicle pressure relief venting:

(a) All pressure relief devices shall be vented to the outside of the vehicle, and be directed away from passenger compartments, luggage, or other compartments which could result in the exposure of occupants to fuel.

(b) A vent line must not restrict the operation of a pressure relief device so as to reduce its required flow capacity.

Questions

(36) Should the requirements described in Option K be different for various vehicle types, i.e., passenger car, MPV, truck, truck tractor, bus, and school bus?

(37) With respect to Option K, how can an odor with CNG and LPG, when used as a motor fuel, always be assured so that fuel leakage can be more readily detected among users? If not, how could this be achieved? Please specify. In conjunction with this, would it be appropriate to require automatic shutoff of fuel from the storage cylinder(s) when the vehicle is not operating?

(38) If pressure relief devices are desirable, would it be appropriate to adopt such pressure relief device requirements for all vehicle types, i.e., passenger car, MPV, truck, truck tractor, bus, and school bus? If not, which vehicle types should be included?

(39) If all of the requirements in Options I through K were adopted, are the requirements appropriate, in light of available technology, for those vehicles expected to use CNG or LPG as a motor fuel?

(40) What leadtimes, benefits, and costs per vehicle would be involved if Option I, J, or K were to be adopted? How would these leadtimes, benefits, and costs apply to specific vehicle types, i.e., passenger car, MPV, truck, truck tractor, bus, and school bus?

General Questions

As mentioned earlier, there are a number of questions which fall into a more general category, and are not necessarily specific to the three major areas which have been discussed above. Those areas are:

(I) Crash Integrity—Vehicle Fuel System
(II) Integrity—Fuel Storage Cylinder
(III) Pressure Relief—Storage Cylinder

The general questions which apply to all of these areas are listed below.

Questions

(41) Are there other potential problem areas which NHTSA should consider in determining whether to adopt a fuel system integrity standard for CNG or LPG powered vehicles? For example, should there be a performance requirement involving the vibration testing of fuel lines and fittings to preclude fatigue failure of such components, or leak detection capability. Please specify.

(42) Are there any special considerations that should be given to dual fuel vehicles (gaseous and gasoline or diesel fuel) vs dedicated CNG or LPG fueled vehicles?

(43) Are there special considerations for vehicles built in multiple stages, i.e., by multi-stage manufacturers?

(44) How can gas quality levels be assured among users of CNG and LPG as motor fuels? What are the allowable impurities and their levels in each of these fuels while still assuring fuel system component integrity? Please specify. Should fuel quality be regulated at the Federal level? If so, by whom? Please specify.

(45) What are the current vehicle populations and projected market demands through 1995 for dual fuel vehicles (gaseous and gasoline or diesel fuel) and for dedicated gaseous fuel vehicles with respect to each of the following categories?

⅛ Passenger cars
⅛ Light trucks
⅛ Medium trucks
⅛ Heavy trucks
⅛ School buses
⅛ Other buses

(46) How would the existence of a fuel system integrity standard for CNG or LPG fueled vehicles affect the consumer acceptance of these vehicles?

(47) How can the above described tests be made more objective? Please specify, according to Option (A through K).

Potential Regulatory Impacts

This ANPRM is not subject to Executive Order 12291, since that order applies to notices of proposed rulemaking and final rules only.

NHTSA believes that this advance proposal is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The notice concerns a matter in which there is substantial public interest. Many of the CNG or LPG vehicles on the road have fuel systems that comply totally or in part with NFPA or other standards which are among those proposed in this ANPRM. To the extent that these standards are adopted by NHTSA, the costs of application to these vehicles would be minimal. However, many options are proposed in the ANPRM, of which the NFPA standards are only a part. Therefore, the agency does not have sufficient information to identify specific costs associated with each of the possible options which may be developed as a result of this notice. One of the purposes of the notice is to seek comments and information from the public on the costs, benefits, and feasibility of the various options presented. However, based on available information, the agency believes that the costs which would be associated with the various performance options presented in this notice, would not be significantly more than those now being incurred by manufacturers and users of current CNG or LPG powered vehicles.

NHTSA has considered the federalism implications of this action, as required by Executive Order 12612, and determined that the proposal does not have sufficient federalism implications

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to warrant the preparation of a Federalism Assessment.

The agency will review any future rulemaking notice under the Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to determine whether any provisions would have a significant impact on the quality of the human environment.

Review of this notice under the Regulatory Flexibility Act is not required because the Regulatory Flexibility Act does not apply to an advance notice of proposed rulemaking. Should the agency decide to proceed with a notice of proposed rulemaking, review of that notice under the Regulatory Flexibility Act would be made at that time.

Comments

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the post card by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of subjects in 49 CFR part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

Issued: October 5, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-24026 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 900936-0236]

RIN 0648-AD26

Fee Schedule for Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes the 1991 fee schedule for foreign vessels fishing in the U.S. exclusive economic zone (EEZ). NOAA proposes to adopt a fee schedule similar to fee schedules implemented from calendar years 1988 through 1990. Under these schedule, owners or operators of foreign vessels paid $354 per fishing permit application and poundage fees in foreign directed fisheries in relation to the exvessel value of the species taken. No surcharge was proposed for the Fishing Vessel and Gear Damage Compensation Fund. Comments are requested on this fee schedule proposal. This action complies with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

DATES: Comments must be received by November 13, 1990.

ADDRESSES: Send comments to the Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910 or telex comments to telex no. 467858 US COM FISH CL. Mark envelopes "Foreign Fees."

Copies of a regulatory impact review (RIR) related to the impact of fees set at the levels proposed are available at this address.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 301–427–2337.

SUPPLEMENTARY INFORMATION: NOAA proposes a schedule of permit application and poundage fees consistent with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) for fishing in 1991 by foreign vessels in the EEZ. Section 204(b)(10) requires that the fees recover costs of carrying out the purposes of the Magnuson Act which are attributed to foreign fishing. This schedule targets fee receipts of about $1.9 million in 1991.

No additional amounts are proposed to be collected under provisions of section 204(b)(10)(C). This paragraph requires that any fishing nation found to be harvesting anadromous species at a level that is unacceptable to the Secretary or failing to take sufficient action to benefit the conservation and development of the U.S. fisheries shall pay a higher rate of fees.

The bases for fee amounts are set forth below. NOAA has consulted with the Coast Guard and the Department of State (DOS) on this proposal. Neither agency has objected to its publication.

Background

Subparagraph 204(b)(10) of the Magnuson Act addresses the requirements for imposing fees on owners or operators of foreign vessels applying to fish in the EEZ. The provision requires that NOAA set a schedule to recover U.S. costs for such foreign fishing. Revisions of section 204(b)(10) have been considered in association with Congressional reauthorization of the Magnuson Act. To date, however, the Magnuson Act has not been so amended, and the current requirement to recover the costs of foreign fishing remains in effect. This proposed schedule is based on the current law and is designed to recover costs. NOAA is prepared to amend the fee schedule if section 204(b)(10) is amended.

The requirement specifies the minimum amounts to be collected by foreign fishing fees under current law and has been described in notices of proposed fees in prior years. (See for example 53 FR 44047, published on November 1, 1988.) Generally stated, the Magnuson Act requires that the

Secretary set a fee schedule to recover a portion of the Federal costs for carrying out the purposes of the Magnuson Act (i.e., Magnuson Act costs), determined by the ratio of the foreign catch in the EEZ during the prior year to the total catch in the EEZ and U.S. territorial waters during that year. U.S. territorial waters are defined to include the U.S. territorial sea and marine internal waters.

Until 1988, NMFS compiled data annually for determining the total Magnuson Act costs by surveying all its field units, other NOAA units, and requesting similar cost data from the Coast Guard and the Department of State. The fee-setting process was changed when NOAA prepared the 1989 fee schedule because allocations for directed foreign fishing were steadily being reduced and greater uncertainties were introduced in the amounts which would be made available for foreign directed fishing during that year. Current allocations now are less than two percent of the allocations for foreign directed fishing allowed in the early 1980s. The result of these reductions is that virtually all foreign directed fishing and a significant portion of the joint venture fishery (whereby foreign vessels purchase fish such as mackerel at-sea from U.S. fishermen) have been phased out of the EEZ.

The fee burden now falls almost exclusively on the foreign Atlantic mackerel fishery. Joint ventures are an integral part of the foreign fishing operations in this fishery, and the costs of the foreign directed fishery influence the ability of foreign owners and operators to purchase mackerel at-sea from U.S. fishermen at the current ex-vessel value. Fees set for directed fishing at prohibitively high levels could adversely affect U.S. fishermen engaged in joint ventures and U.S. opportunities to develop the mackerel fishery, for which markets currently exist only abroad. NOAA has therefore adopted a process designed to set fees at the lowest levels that will still recover an approximate amount estimated as the portion of the Magnuson Act costs related to foreign fishing.

The most recent catch statistics (i.e., for calendar year 1989) indicate that the foreign catch in the EEZ was 0.7 percent of the total catch taken in the EEZ and U.S. territorial waters. Past estimates of the total Federal costs for carrying out the purposes of the Magnuson Act were just under $200 million. Under the formula contained in paragraph (B) of section 204(b)(10), the fee schedule should, therefore, be designed to recover about $1.4 million to satisfy provisions of the Magnuson Act in 1991.

As indicated earlier, only Atlantic mackerel is currently available for directed foreign fishing, although a possibility still exists that a small directed fishing effort may be approved in the Bering Sea snail fishery. NOAA believes that a fee schedule which reasonably seeks to recover the required target without adversely affecting U.S. fishery development objectives in the Atlantic mackerel fishery is the most desirable schedule.

The Mid-Atlantic Fishery Management Council recently adopted 1991 fishery specifications under the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP). Under these specifications, 24,000 mt of Atlantic mackerel could be available for the total allowable level of foreign fishing (TALFF) and allocated for directed foreign fishing in certain circumstances. Foreign directed fishing in 1991 under other fishery management plans is presently not contemplated except as mentioned possibly in the Bering Sea snails fishery.

The reduction in the fees required by the Magnuson Act from $2.2 million in 1990 to $1.4 million in 1991, while making the same amount of fish available in TALFF in 1991 as in 1990, provides an opportunity to reduce the poundage fees for Atlantic mackerel. NOAA is informed by representatives of foreign fishing nations and U.S. fishermen who operate with vessels of these nations in "joint ventures" that a reduction in the poundage fees for Atlantic mackerel would spur U.S. development of this fishery. NOAA has calculated that poundage fees of $58.33/mt for 24,000 mt of Atlantic mackerel would recover an amount of $1.4 million, if the entire amount of the mackerel TALFF is allocated and caught by foreign vessels.

Mackerel fishing also results in a limited bycatch of other species. NOAA has estimated that a directed fishery for 24,000 mt of Atlantic mackerel could result in a bycatch of as much as 13 percent of the mackerel caught, or 3,120 mt of other species. Holding bycatch fees at 1988–1990 levels and assuming an average fee of $150/mt for the bycatch species, NOAA estimates that an additional $468,000 might be collected if the entire amount of mackerel and the allowed bycatch of other species was taken in the mackerel fishery. Together with application fees of $129,000, the maximum receipts from foreign fishing fees in 1991 could amount to approximately $1.997 million under this schedule, plus an additional amount of up to $128,000 if Bering Sea snails are allocated and then taken in a directed fishery. Actual receipts from the bycatch in the mackerel fishery will likely fall well below the maximum amount estimated above since historical data indicate that bycatch rates actually run only about two percent in this fishery. Only $90,000 would be derived from the bycatch if past rates are continued in 1991, but the entire mackerel TALFF is taken. Similarly, past experience would indicate that there will not be any receipts from the snail fishery.

Nevertheless, NOAA concludes that a schedule which reduces the mackerel fee by $10.10/mt from the amount charged in 1990 but maintains the remaining poundage fees at 1990 levels for bycatch species (and snails if taken) offers a reasonable expectation that the required fee receipts of $1.4 million would be achieved in 1991. That amount might be achieved even if the entire 24,000 mt TALFF for Atlantic mackerel is not allocated since the bycatch fees, permit application fees (discussed below) and possibly receipts from the snails fishery could offset the reduction in the mackerel fee. Requirements of the Magnuson Act will be met while still promoting development of the U.S. mackerel fishery with the reduction in the fee for mackerel.

The Fee Target

Based on the above, NOAA proposes that the permit application fees and poundage fees for all bycatch or other allocated species, if any, except Atlantic mackerel be maintained at their current levels. NOAA proposes that the poundage fee for Atlantic mackerel be reduced to $58.33/mt in 1991. It concludes that such a fee schedule target, which would result in $1.9 million if all the Atlantic mackerel TALFF is taken, would satisfy requirements of the Magnuson Act.

Provisions of Subparagraph 204(b)(10)(C)

Subparagraph (C) of section 204(b)(10) requires higher fees for nations which meet criteria for such fees related to the taking of anadromous species of U.S. origin and to the conservation and development of U.S. fisheries. The higher fees are determined by assigning costs to foreign fishing as a portion of the total Magnuson Act costs determined by the ratio of the catch taken by foreign vessels in the EEZ to the total catch in the EEZ—that is, by removing the U.S. catch taken in U.S. territorial waters in the denominator of the ratio used in Subparagraph (B). The "higher fee" ratio (based on 1989

statistics) is 1.2 percent and increases the costs attributed to foreign fishing to $2.4 million, as compared to $1.4 million under the provisions of subparagraph (B). Using the methods applied in prior years for calculating the incremental amount to be paid by nations meeting the above criteria, NOAA has determined that such nations should pay an incremental amount of 71(%) percent of their poundage fees in addition to the poundage fees for fish harvested by their vessels. However, as in FY 1988, FY 1989, and FY 1990, NOAA has not required any nation to pay these higher fees. Therefore, NOAA proposes that no nation be assessed the higher fees in 1991, since the situation is not changed.

Lastly, NOAA proposes that the surcharge for the Fishing Vessel and Gear Damage Compensation Fund be effectively waived in 1990 as it was in 1988 and in 1989.

Classification

NOAA prepared a regulatory impact review (RIR) for the 1988 fee schedule which discussed the economic consequences and impacts of that fee schedule and alternatives. Copies of that RIR are available at the above address. Based on that RIR, the Administrator, NOAA, determined that the 1988 fee schedule complied with the requirements of section 2 of E.O. 12291. Since the species fees proposed for 1989 and 1990 were not changed, NOAA anticipated no new economic impacts. It has reached a similar conclusion for the 1991 schedule, particularly since fees are proposed to be reduced.

The General Counsel of the Department of Commerce has certified that the proposed fee schedule will not have significant economic impact upon a substantial number of small domestic entities for purposes of the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*). Because the proposed fee schedule will not have a significant economic impact upon a substantial number of small domestic entities, a regulatory flexibility analysis is not required, and has not been prepared.

NOAA Directive 02-10 published at 45 FR 49312 (July 24, 1980) adopts internal procedures to implement the National Environmental Policy Act (NEPA), as amended, (43 U.S.C. 4321 *et seq.*). Under those procedures, programmatic functions with no potential for significant environmental impacts are generally excluded from NEPA requirements. The proposed fee schedule has no significant environmental impact on the fishery resources in the EEZ. At most, the fee schedule might affect the harvesting strategy of foreign fishing vessels and result in a different species mix being removed from the environment; however, the proposed schedule meets the criterion that fees should minimize disruption of traditional fishing patterns on target species. The environmental impact of harvesting this very small TALFF is described in the fishery management plan for Squid, Butterfish and Mackerel. Consequently, no further environmental assessment is necessary.

This proposed rule has no information collection provisions covered by the Paperwork Reduction Act, (44 U.S.C. 3501, *et seq.*).

This proposed rule would not directly affect the coastal zone of any state with an approved Coastal Zone Management program. Neither does the proposed rule contain policies with federalism implications sufficient to warrant a federalism assessment under Executive Order 12612.

List of Subjects 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 5, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons above, 50 CFR part 611 is proposed to be amended as follows:

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

§ 611.22 [Amended]

2. Paragraphs (b)(1), (c) and (d) of § 611.22 are revised as follows:

* * * * *

(b) *Poundage fees*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (d) of this section.

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring	61.76
5. Mackerel, Atlantic	56.33
6. Other groundfish	119.09
7. Squid, *Illex*	103.98
8. Squid, *Loligo*	245.73
Alaska fisheries:	
21. Snails	128.42

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b) of the Magnuson Act (16 U.S.C. 1824(b)(10)(C)). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1991 will be 71 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraphs (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has effectively waived the surcharge on 1991 fees.

* * * * *

[FR Doc. 90-24128 Filed 10-11-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 55, No. 198

Friday, October 12, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agricultural Biotechnology Research Advisory Committee.

Date: November 26-27, 1990.

Time: 9 a.m. to approximately 5 p.m. on November 26. 9 a.m. to approximately 3 p.m. on November 27.

Place: The Mills House Hotel, Planter's Suite, 115 Meeting Street, Charleston, South Carolina 29401.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major item to be considered at this meeting is a summary of public comments on proposed Guidelines for Assessing the Environmental Impact of Research Involving the Planned Introduction into the Environment of Organisms with Deliberately Modified Hereditary Traits.

Contact Person: Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 3[illegible]-A, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone (202) 447-9165.

Done at Washington, DC, this 27th day of September, 1990.

Charles E. Hess,

Assistant Secretary, Science and Education.

[FR Doc. 90-24126 Filed 10-11-90; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held November 1, 1990, at 9:30 a.m., in the Herbert C. Hoover Building, room 4830, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Work Plan for the Next Fiscal Year.
5. Report of the Committee Chairmen's Meeting.
6. CORE List Status Summary.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th and Constitution Avenue NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1980, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4958.

Dated: October 5, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-24027 Filed 10-11-90; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Termination of Bilateral Textile Agreement with the Government of Macau

October 8, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcing the termination of the bilateral textile agreement with the Government of Macau.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Consultations were held September 26-28, 1990 between the Governments of the United States and Macau concerning circumvention of the Bilateral Cotton

of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-24073 Filed 10-11-90; 8:45 am]

BILLING CODE 3510-DR-M

Department of the Army

Environmental Assessment, Kinetic Energy Anti-Satellite (KE ASAT) Demonstration/Validation (Dem/Val)

AGENCY: U.S. Army Strategic Defense Command (USASDC).

ACTION: Notice of Availability of Finding

will conduct systems integration flight simulation testing of the KV.

To assess the significance of potential environmental impacts of the KE ASAT Dem/Val program, the test requirements were compared with the adequacy of the facilities to be utilized at the proposed test locations and the sensitivity of their affected

quantities of liquid propellants will be transferred using a totally contained system, stored and handled in adequate above-ground containment areas, and equipment to decontaminate and neutralize them is on site, there will be no significant hazardous materials and waste impacts. Because of facility safety features and mandatory safety

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Consultations were held September 26–28, 1990 between the Governments of the United States and Macau concerning circumvention of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated December 28, 1983 and January 9, 1984, as amended and extended. Inasmuch as the consultations did not result in a mutually satisfactory agreement, the U.S. Government advised the Government of Macau that, effective on January 1, 1991, it intends to terminate the existing bilateral agreement, in accordance with paragraph 19 of the agreement.

The U.S. Government reserves the right to withdraw the termination of the bilateral agreement prior to January 1, 1991 pending a satisfactory conclusion of consultations with the Government of Macau on circumvention of the bilateral agreement.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889. (See 46 FR 57105, published on November 20, 1981.)

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–24199 Filed 10–10–90; 10:44 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

October 5, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATES: October 15, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 47546, published on November 15, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 5, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on October 15, 1990, the directive of November 9, 1989 is being amended to adjust the limits for the following categories, under the terms of the current bilateral textile agreement between the Governments of the United States and the Philippines:

Category levels in group I	Adjusted 12-month limit [1]
237	496,184 dozen.
239	10,622,925 kilograms.
341/641	710,435 dozen.
351/651	410,901 dozen.
369–S [2]	167,969 kilograms.
443	12,055 numbers.
604	39,599 kilograms.
633	25,848 dozen.
634	271,714 dozen.
636	619,419 dozen.
638/639	1,541,631 dozen.
643	164,074 numbers.
645/646	463,050 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–24073 Filed 10–11–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on the Extension of Dormant Munitions Storage Life and Insensitive High Explosives Research and Development will meet on 7–9 November 1990, from 8 a.m. to 5 p.m. at the Ogden Air Logistics Center, Hill AFB UT.

The purpose of this meeting is to gather information in support of the SAB study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4).

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–24089 Filed 10–11–90; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on the Extension of Dormant Munitions Storage Life and Insensitive High Explosives Research and Development will meet on 30–31 October 1990, from 8 a.m. to 5 p.m. at Sierra Army Depot, Herlong, CA.

The purpose of this meeting is to gather information in support of the SAB study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (1).

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–24090 Filed 10–11–90; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Environmental Assessment, Kinetic Energy Anti-Satellite (KE ASAT) Demonstration/Validation (Dem/Val)

AGENCY: U.S. Army Strategic Defense Command (USASDC).

ACTION: Notice of Availability of Finding of No Significant Impact.

SUMMARY: Pursuant to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR parts 15000–1508), Department of Defense Directive 6050.1 and Army Regulation 200–2, the USASDC has conducted an assessment of the potential environmental consequences of the Dem/Val testing activities for the KE ASAT weapon system. A no-action alternative was also considered.

The ASAT Joint Program Office, within the U.S. Army Strategic Defense Command, has the responsibility of developing a land-based weapon system to satisfy the near-term KE ASAT requirements. The mission of the KE ASAT weapon system is to provide a capability to disrupt, degrade, or destroy hostile forces operating in space. The KE ASAT weapon system would use non-nuclear kill vehicles to intercept and destroy hostile space vehicles.

KE ASAT Dem/Val testing will evaluate the performance of certain critical aspects of the kill vehicle (KV) components through means of ground testing only.

DATES: Written comments are required on or before November 13, 1990.

POINT OF CONTACT: Mr. R.D. Barreneau Address: U.S. Army Strategic Defense Command, CSSDEN, Post Office Box 1500, Huntsville, AL 35807–3801, Fax: (205) 895–3958.

SUPPLEMENTARY INFORMATION: The KE ASAT Dem/Val testing will consist of analyses, simulations, and component/assembly testing. All test activities will be conducted in existing facilities, with no major modifications or new construction required.

Test activities will be conducted at two different facilities. A system development contractor, selected in August 1990, is responsible for KV test development, including simulated environmental testing of the KV, deployment and lethality testing of the KV's kill mechanism, hardware-in-the-loop computer simulations, and testing of the attitude control and divert propulsion system. Additionally, the U.S. Air Force Astronautics Laboratory at Edwards Air Force Base, California, will conduct systems integration flight simulation testing of the KV.

To assess the significance of potential environmental impacts of the KE ASAT Dem/Val program, the test requirements were compared with the adequacy of the facilities to be utilized at the proposed test locations and the sensitivity of their affected environments.

Potential impacts were evaluated for the following environmental components: air quality, biological resources, cultural resources, hazardous materials, and waste, health and safety, infrastructure, land use, noise, physical resources, socioeconomics, and water resources. As a result of the evaluation, consequences were assigned to one of the three categories: Not significant, potentially significant but mitigable, or potentially significant.

Environmental consequences were determined to be not significant if no serious concerns existed for the affected area. Consequences were deemed potentially significant but mitigable if concerns existed but it was determined that all of those concerns could be readily mitigated through standard procedures or by measures recommended in existing environmental documentation. If serious concerns were identified that could not be readily mitigated, the activity was determined to represent potentially significant consequences.

FINDINGS: Although the handling, storage, and transport of small quantities of the KE ASAT KV's liquid propellants at the system development contractor facilities could create potential hazardous materials/waste and health and safety impacts, the terms of the ASAT contract require that the contractor conduct all activities in compliance with all Federal, state and local hazardous materials/waste regulations. Prior to initiating any KE ASAT Dem/Val test activities, independent verification of contractor compliance by USASDC environmental personnel will ensure that there will be no significant hazardous materials and waste, or health and safety impacts from these activities.

ASAT activities at Edwards Air Force Base with potential environmental consequences are the handling of the KV's liquid propellants, the combustion of these fuels during flight simulation, and the flight simulation test itself. Because of the short duration, infrequency, and limited number of flight simulation tests, and because of the small amount of pollutants produced, there will be no significant impact to air quality. Because the small quantities of liquid propellants will be transferred using a totally contained system, stored and handled in adequate above-ground containment areas, and equipment to decontaminate and neutralize them is on site, there will be no significant hazardous materials and waste impacts. Because of facility safety features and mandatory safety requirements, there will be no significant impact to health and safety from the flight simulation test.

In summary, analysis of the proposed KE ASAT Dem/Val test activities results in a determination of no significant environmental consequences.

Robert D. Hammond,

Lieutenant General, USA.

[FR Doc. 90–24056 Filed 10–11–90; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Record of Decision for New Construction Dredging Projects at Naval Air Station Alameda and at Naval Supply Center, Oakland, CA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department of the Navy announces its decision to award construction contracts for dredging projects P–202 at Naval Air Station Alameda and P–082 at Naval Supply Center Oakland, California. Final regulatory approval of the ocean disposal site is subject to specified conditions as discussed below. The Final Environmental Impact Statement (FEIS) addressing the impacts of this action was distributed for public review on August 24, 1990.

The action is to dredge a combined total of 1.6 million cubic yards of sediments from the Naval Air Station (NAS) Alameda and Naval Supply Center (NSC) Oakland in order to attain needed safe operating depths for Navy ships. Deeper depths are needed at NAS Alameda and at NSC Oakland to provide adequate clearance for aircraft carriers and supply ships, respectively. At NAS Alameda, new dredging will deepen the carrier berthing areas to –50 feet mean lower low water (MLLW) from the present –42 feet. At NSC Oakland, new dredging will deepen the present –35 feet maintenance level for supply ships to –38 feet and –41 feet MLLW in pier and channel areas respectively. Dredging quantity is approximately 600,000 cubic yards at NAS Alameda and 1,000,000 cubic yards at NSC Oakland. Sediments will be

dredged by clamshel. dredge and transported to an approved ocean disposal site for deposition by barge.

The alternative to the dredging action was that of not dredging below the current maintenance depths. This alternative would not meet the project needs and so was not selected. The greater project issues focused more on conduct additional studies to better define site characteristics at the ocean disposal site. The Navy agreed with this proposal and has conducted a number of the studies, with the remainder in progress. Results continue to support the conclusion that this site will meet ocean disposal criteria.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

Dated: October 5, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: National Study of Before and After

Abstract: This information will used to describe the early educational experiences of young children and the educational experiences of adults. The data will be used to monitor trends in these experiences and activities over time.

[FR Doc. 90–24028 Filed 10–11–90; 8:45 am]

will end at the conclusion of business at approximately 12 noon.

On October 15–16, 1990, the Council will meet, in conjunction with the Indian Nations At Risk Task Force, to conduct special issues sessions. Each of the two days of sessions will be attended by at least one Council Member and one Task Force Member. Most of the sessions will

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dredged by clamshel. dredge and transported to an approved ocean disposal site for deposition by barge.

The alternative to the dredging action was that of not dredging below the current maintenance depths. This alternative would not meet the project needs and so was not selected. The greater project issues focused more on disposal site options and impacts. Several disposal site alternatives were considered. These included:

(1) Disposal at the approved sediment disposal site just west of Alcatraz Island (the Alcatraz site) in San Francisco Bay,

(2) Disposal at an ocean site. Nearshore options were considered but eliminated because of concerns over significant turbidity and fisheries impacts. A former Navy munitions site 40 miles offshore at an average depth of about 7,000 feet was selected as the most feasible site. Initial and supplemental Navy studies led to a conclusion that there are not likely to be significant impacts from disposal at this site,

(3) Disposal at an upland site. Several alternative locations were evaluated but eliminated out of concern for adverse effects. The site studied as most feasible was at the Navy Security Group Activity (NSGA) Skaggs Island facility at the north end of San Pablo Bay. Disposal could use up to 250 acres of the 3,000-acre facility, which is below sea level and protected from tidal flooding by dikes. Disposal could be configured to create wetlands of considerably greater value than the Navy-leased hay farming currently at the site, and

(4) The No-Action alternative of not conducting the proposed dredging. This would result in no disposal site impacts.

The Navy considered all oral and written public and agency comments received during the EIS process. In summary, there is considerable regulatory agency and public opposition to new construction dredge sediment disposal at the in-bay Alcatraz site out of concern for water and sediment quality, fisheries, and capacity/mounding issues. There is general support for either the ocean disposal site or the upland site, but with conditions. The ocean site appeared to the Navy to be free of prohibitive impacts under Section 103 of the Marine Protection, Research and Sanctuaries Act criteria for ocean disposal, and was acceptable to fishing associations and most other groups. The Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Bay Conservation and Development Commission requested the Navy to conduct additional studies to better define site characteristics at the ocean disposal site. The Navy agreed with this proposal and has conducted a number of the studies, with the remainder in progress. Results continue to support the conclusion that this site will meet ocean disposal criteria.

The upland appeared generally acceptable to most agencies and groups, but caused considerable concern among affected local landowners and public officials. It has also recently been confirmed to be considerably more expensive than the proposed ocean site and exceeds the Congressionally authorized budget by a large amount.

The Navy has concluded that the dredging action is not likely to result in significant adverse effects and that the ocean site is the only feasible disposal site for this project. Contract award regulations require that the disposal site be specified at the time of award and that sufficient funds be available prior to award. As a result, the Navy will award the construction contract using the ocean site for disposal. However, no dredging will occur until all needed additional studies are completed and until the regulatory agencies concur that the site is acceptable and issue needed permits for the dredging and disposal actions. The Navy will cooperate with the Army Corps of Engineers in the preparation of an EIS associated with the permit process. Mitigation in the form of monitoring sediment disposal to avoid physical impacts to the Gulf of the Farallones National Marine Sanctuary will be performed by the Navy. The Navy has further decided that disposal of new-construction dredged material from this project at the in-Bay Alcatraz site could result in significant adverse impacts and has eliminated this as a disposal alternative.

Dated: September 25, 1990.

Jacqueline E. Schafer,

Assistant Secretary of the Navy. (Installatiion and Environment).

Dated: October 25, 1990.

Guy B. Roberts,

LTCOL USMC, Federal Register Liaison Officer.

[FR Doc. 90-24019 Filed 10-11-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 13, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: October 5, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: National Study of Before and After School Program.
Frequency: One time.
Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.
Reporting Burden:
Responses: 1624.
Burden Hours: 880.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0
Abstract: The purpose of this study is to examine the prevalence of such programs and to obtain extensive data on the programs's structural and programmatic features. The Department uses this information to report to Congress.

Office of Educational Research and Improvement

Type of Review: New.
Title: National Education Longitudinal Study of 1988, (NELS:88) Second Follow-up Survey Field Test and Main Survey.
Frequency: Biennially.
Affected Public: Individuals or households; State or local governments.
Reporting Burden:
Responses: 3858.
Burden Hours: 8564.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.
Abstract: The purpose of this study is to collect data from twelfth graders and their parents and school administrators to inform policy makers of the educational, vocational and personal development of these students.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: National Household Education Survey (NHES).
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 66,000.
Burden Hours: 9,334.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This information will used to describe the early educational experiences of young children and the educational experiences of adults. The data will be used to monitor trends in these experiences and activities over time.

[FR Doc. 90-24028 Filed 10-11-90; 8:45 am]

BILLING CODE 4000-01-M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of Meeting and Issues Sessions.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting and issues sessions of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of opportunity to attend the meeting.

DATES:

October 14, 1990, 9 a.m. until 12 noon
October 15, 1990, 9 a.m. until 4:30 p.m.
October 16, 1990 9 a.m. until 6 p.m.

ADDRESSES: Town and Country Hotel, 500 Hotel Circle North, San Diego, California 92108 (619-291-7131).

FOR FURTHER INFORMATION CONTACT: Jo Jo Hunt, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., Room 4072, Switzer Building, Washington, DC 20202-7556 (202-732-1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Public Law 100-297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

On October 14, 1990, the National Advisory Council on Indian Education will meet in open session, starting at approximately 9 a.m., for a general business session, including reports of the Chairman and Executive Director, action on previous minutes, election of officers of the Council, finalization of Council work agenda for fiscal year 1991, and other business. The meeting will end at the conclusion of business at approximately 12 noon.

On October 15-16, 1990, the Council will meet, in conjunction with the Indian Nations At Risk Task Force, to conduct special issues sessions. Each of the two days of sessions will be attended by at least one Council Member and one Task Force Member. Most of the sessions will be repeated to allow more opportunity for the public and American Indian/Alaska Native educators to present comments in small groups on a variety of issues.

During these sessions, the audience is invited to address the specific issue that is the subject of the session in a discussion format moderated by the chair of the session. Discussion should be limited to the subject issues for the session. The discussion format will allow the presentation and development of ideas with comments from a number of individuals as in a committee or council meeting. This format is expected to allow many people from all areas of the country to participate in an organized discussion of important issues.

Individuals interested in participating in the issues sessions will be asked to complete a brief identification card as they enter the session. The card will be used by participants to indicate to the session chair a desire to speak to the issue through a microphone. The chair will moderate the discussion by recognizing speakers and limiting the time of each speaker as necessary to ensure broad participation in the discussion. The intent is to allow maximum opportunity for the audience to address the issues and for the Task Force and Council Members to listen.

All discussions will be recorded for the public record and for use by the Council and Task Force in preparing reports and recommendatoins. The participants are not expected to have written comments.

The Council and Task Force are conducting these issues sessions in conjunction with the 22nd Annual Conference of the National Indian Education Association. Times and session topics are tentative and subject to change pending finalization of the conference schedule. Approximately 2 hours 30 minutes are scheduled for each topic.

On October 15, 1990, from 9 a.m. until 4:30 p.m., the theme is "Successes in American Indian/Alaska Native Education." The Task Force and the Council invite presentation and discussion of specific programmatic innovations and mehtods that have produced significant achievement in

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critical areas of Native education. The time, location, and subject of each issues session are as follows:

9 a.m.–10:15 a.m.
- De Anza Room—Academic performance
- Mesa Room—Native culture and languages
- Adobe Room—Health, wellness, and substance abuse prevention
- El Camino Room—Teacher and administrator training, recruitment, and retention

10:45 a.m.—12 noon
- De Anza Room—Academic performance
- Mesa Room—Native culture and languages
- Adobe Room—Health, wellness, and substance abuse prevention
- El Camino Room—Teacher and administrator training, recruitment, and retention

1:30 p.m.–2:45 p.m.
- De Anza Room—Dropout prevention
- Mesa Room—Instructional technology
- Adobe Room—Education of exceptional children
- El Camino Room—Partnership of schools, tribes, communities, parents, and business

3:15 p.m.–4:30 p.m.
- De Anza Room—Dropout prevention
- Mesa Room—Instructional technology
- Adobe Room—Education of exceptional children
- El Camino Room—Partnership of schools, tribes, communities, parents, and business

On October 10, 1990, from 9 a.m. until 4:30 p.m., the theme is "Effective Strategies for Improvements in American Indian/Alaska Native Education." In addition, a general wrap-up session will be held at the end of the day. The Council and Task Force invite presentation and discussion of strategies and ideas to improve the educational achievement of Native students in specific levels of education through involvement of parents and Elders. The time, location, and subject of each issues session are as follows:

9 a.m.–10:15 a.m.
- De Anza Room—Early childhood education
- Mesa Room—Elementary school
- Adobe Room—Middle/high school
- El Camino Room—Parental involvement

10:45 a.m.–12 noon
- De Anza Room—Early childhood education
- Mesa Room—Elementary school
- Adobe Room—Middle/high school
- El Camino Room—Parental involvement

1:30 p.m.–2:45 p.m.
- De Anza Room—Adult and vocational/technical education
- Mesa Room—Postsecondary education
- Adobe Room—Special session for Elders to address the Task Force and Council
- El Camino Room—Open discussion with Council and Task Force Members

3:15 p.m.–4:30 p.m.
- De Anza Room—Adult and vocational/technical education
- Mesa Room—Postsecondary education
- Adobe Room—Special session for Elders to address the Task Force and Council
- El Camino Room—Open discussion with Council and Task Force Members

5 p.m.–6 p.m.
- De Anza Room—Wrap-up discussion with Task Force and Council Members

The public is being given less than 15 days notice due to the special nature of this meeting of the Council and the delay in approval of the meeting due to the lack of an approved continuing resolution.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 330 C Street SW., Room 4072, Washington, DC 20202–7556.

Dated: October 10, 1990.

Signed at Washington, DC.

Jo Jo Hunt,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 90–24282 Filed 10–11–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Thursday, October 18, 1990, at the Hamilton Park Executive Conference Center, 175 Park Avenue, Florham Park, New Jersey 07923, beginning at 9 a.m. The agenda for the meeting is as follows:

1. Adoption of Agenda.
2. Approval of Record Notes of IAB Meetings of May 29 and August 30, 1990.
3. International oil supply/demand situation, particularly in IEA countries.
4. IAB organization.
5. Next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, or the IEA.

Issued in Washington, DC, October 4, 1990.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 90–24012 Filed 10–11–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time:

Thursday, October 25, 1990, 1:45 p.m.–5:30 p.m.

Friday, October 26, 1990, 8:45 a.m.–1 p.m.

Place: Holiday Inn, 550 C Street, SW., Washington, DC.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 586–2088.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda:

Thursday, October 25, 1990

A. Opening Remarks

B. Major Topics:
1. Update on the National Energy Modeling System
2. New Developments
   a. Renewables
   b. Experimental Economics as an Alternative to Forecasting

(Public Comments)

Friday, October 26, 1990

3. Model Evaluation
   a. Uncertainty and Sensitivity Analysis
   b. Confidence Intervals for the Transportation Model
   c. Model Acceptance Standard
4. Data Development: Industry Round Tables

(Public Comments)

C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contract Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. April Young at (202) 586–2315.

Transcripts: Available for public review and copying at the Public Reading Room, (room 1E–290), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Issued at Washington, DC on October 5, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90–24010 Filed 10–11–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP91–38–000]

Algonquin Gas Transmission Co.; Notice of Application

October 5, 1990.

Take notice that on October 3, 1990, Algonquin Gas Transmission Company (Algonquin) 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91–38–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Algonquin to sell natural gas on a firm basis to Bay State Gas Company (Bay State) and Yankee Gas Services Company (Yankee) under proposed Rate Schedule LFS for a limited term of one year commencing November 1, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin states that Providence Gas Company (Providence), a Rhode Island LDC, chose to permanently convert its Rate Schedule F–4 entitlement from Algonquin to firm transportation service under Rate Schedule AFT–1 pursuant to Section 284.10 of the Commission's Regulations. It is states that Providence's conversion, effective November 1, 1990, results in the availability of up to 12,808 MMBtu per day (MMBtud) an 4,674,920 MMBtu annually of natural gas to Bay State and Yankee.

In anticipation of Providence's release of its Rate Schedule F–4 supply, Algonquin avers that it canvassed its firm sales customers to solicit nominations for the purchase of such undedicated supply. Algonquin states that this process resulted in Bay States and Yankee executing service agreements under Rate Schedule LFS for the full supply made available by Providence's conversion. According to Algonquin, it would sell on a firm basis up to 9,212 MMBtud by Bay State and up to 3,596 MMBtud to Yankee at Texas Eastern Transmission Corporation's (Texas Eastern) Lambertville, New Jersey delivery point to Algonquin.[1] Algonquin states that it would deliver the subject gas to such customers at existing points of delivery on its system on an interruptible basis. However, in light of the firm character of the sales service and the willingness of the customers to pay the demand charge for service under Rate Schedule LFS, Algonquin proposes that the delivery of gas under Rate Schedule LFS have priority over all other interruptible services. Algonquin states that the proposed Rate Schedule LFS would be available for one year commencing November 1, 1990.

Algonquin further states that Bay State and Yankee have executed service agreements in anticipation of receiving such service on November 1, 1990. It is submitted that Commencement of service after that date would reduce the value of the service and would hamper their ability to seek alternative supplies which may not be as secure.

Algonquin proposes to charge a three part rate for Rate Schedule LFS service which will consist of a demand charge ($8.562) and a commodity charge ($2.7023) reflecting Algonquin's average cost of gas on a rolled-in basis subject to PGA adjustment; and an interruptible commodity charge (29.79 cents), plus the ACA and GRI charges, for transportation on Algonquin's system. It is stated that such rates are based on Algonquin's Docket No. RP90–22 motion rates to be in effect as of October 1, 1990, and the currently effective cost of gas as reflected in Docket No. TM91–20–000.

It is stated that authorization of Algonquin's proposal herein will enable Bay State and Yankee to diversify their supply options. Algonquin states that this winter it will allow them to displace expensive supplemental fuels such as propane-air and liquefied natural gas, thus providing service at a more economical price for the benefit of their customers. According to Algonquin, Rate Schedule LFS service will also allow those customers to preserve their firm contract quantities and storage quantities until later in the heating season, potentially avoiding shortfalls if a colder than normal winter occurs.

In addition to the increased flexibility to Bay State and Yankee, Algonquin states that Rate Schedule LFS is in the public convenience and necessity as it will increase the natural gas available for consumption in the Northeast United States and relieve the pressure to purchase higher priced supplemental fuels which may be in short supply.

Finally, Algonquin requests that the Commission waive its regulations to the extent necessary to accept the related tariff sheets for effectiveness at the same time the service proposed herein is authorized.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1990, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 384.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public

[1] Algonquin states that this is one of its principal receipt points from Texas Eastern.

convenience and necessity. If a motion for leave to invervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or

protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before October 12, 1990.

[Docket No. TM91–3–21–000]

Columbia Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

October 4, 1990.

Take notice that on October 1, 1990, Columbia Gas Transmission Corporation (Columbia) tendered for

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–24015 Filed 10–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7182–003]

Revised Volume No. 1A, (Tariff), the below listed tariff sheets to become effective November 1, 1990:

Original Sheet Nos. 119 and 120
Reserved for Future Use Sheet Nos. 121 through 200

Natural states the purpose of this filing is to add a penalty provision for

("Northwest") tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Seventy-Third Revised Sheet No. 10
Sixth Revised Sheet No. 10.1
Forty-First Revised Sheet No. 10–A

Original Volume No. 1–A

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convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24041 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-22-000]

Algonquin Gas Transmission Co.; Informal Settlement Conference

October 4, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, October 25, 1990, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208-2215 or David R. Cain (202) 208-0917.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24013 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-61-000]

Bayou Interstate Pipeline System; Proposed Change in Rates

October 4, 1990.

Take notice that on October 1, 1990, Bayou Interstate Pipeline System (Bayou) tendered as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) Nineteenth Revised Sheet No. 4 to be effective November 1, 1990.

The proposed tariff sheet is filed pursuant to the Purchased Gas Cost Adjustment provisions contained in section 15 of Bayou's tariff. Bayou states that a copy of this filing was mailed to Bayou's jurisdictional customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before October 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24014 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

Caprock Pipeline Co.; Proposed Changes in FERC Gas Tariff

[Docket No. TM91-1-84-000]

October 5, 1990.

Take notice that on October 3, 1990 Caprock Pipeline Company, (Caprock Pipeline) filed proposed changes in its F.E.R.C. Gas Tariff. The purpose of these changes is to establish the ACA surcharge in its rates for fiscal year 1990.

Caprock states that a copy of this filing has been served upon all Caprock's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24072 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-21-000]

Columbia Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

October 4, 1990.

Take notice that on October 1, 1990, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1:

Fifth Revised Substitute Second Revised Sheet No. 26
Fifth Revised Substitute Second Revised Sheet No. 26A
Fourth Revised Substitute Second Revised Sheet No. 26B
Fourth Revised Substitute Second Revised Sheet No. 26C

The foregoing revised tariff sheets bear an issue date of October 1, 1990 and a proposed effective date of November 1, 1990.

Section 26.3 of the General Terms and Conditions of Columbia's FERC Gas Tariff, First Revised Volume No. 1, requires Columbia at the end of each 12 month billing period commencing August 1, 1988, to recalculate the volumetric surcharge to reflect revisions for the actual FERC published interest rates during such 12 month period. This instant filing is being made to reconcile the period August 1, 1989 through July 31, 1990. As reflected on Fifth Revised Substitute Second Revised Sheet Nos. 26, 26A; and Fourth Revised Substitute Second Revised Sheet Nos. 26B, and 26C, the adjusted volumetric surcharge is 4.29¢ per Dth. This results in a .07¢ reduction to the 4.36¢ surcharge filed in Docket No. RP90-106.

Columbia states that copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and to each of the parties set forth on the Official Service List in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Transmission's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24015 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7192-003]

Eagle Hydro Partners; Notice Of Complaint

October 5, 1990.

Take notice that on July 25, 1990, the State of California, Department of Fish and Game (complainant) filed a complaint in which it contends that Eagle Hydro Partners (Eagle) has violated and continues to violate certain terms of Eagle's exemption for the Canyon Creek Hydroelectric Project, located in El Dorado County, California. Specifically, complainant alleges that these violations include, *inter alia*, an improperly operating fish screen, an inadequate flow gauge, incomplete and inadequate flow records, absence of an agency approved erosion control plan, and an unauthorized modification to the project.

Any person may submit comments or a protest regarding this complaint with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. The respondent, Eagle, shall file an answer to the complaint pursuant to Rules 206 and 213, 18 CFR 385.206 and 385.213. No replies to respondent's answer will be accepted. In determining the appropriate action to take, the Commission will consider all protests or other comments filed. Copies of the complaint are on file with the Commission and are available for public inspection.

Comments, protests, and the answer to the complaint are due on or before November 13, 1990.

For further information, contact William Blome at (202) 208-0462.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24043 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-5-000]

Natural Gas Pipeline Co. of America; Changes in Tariff

October 4, 1990.

Take notice that on October 2, 1990 Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, (Tariff), the below listed tariff sheets to become effective November 1, 1990:

Original Sheet Nos. 119 and 120
Reserved for Future Use Sheet Nos. 121 through 200

Natural states the purpose of this filing is to add a penalty provision for Unauthorized Gas (section 16) to the Transportation General Terms and Conditions of this tariff.

Natural states that the penalty is required due to the significant amount of gas that has been tendered to Natural that is not part of Natural's system supply and gas that cannot be identified as being delivered pursuant to a valid transportation agreement. The penalty, as more fully explained in the filing, would take effect after three business days' notice on Natural's Electronic Bulletin Board. The charge would be 50¢ per MMBtu for gas not claimed within sixty days and $1.00 per MMBtu for gas not claimed within one hundred twenty calendar days. After one hundred twenty calendar days, Natural would purchase the unauthorized gas at a Market Index Price less the $1.00 penalty.

Natural states that a copy of the filing was mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24016 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-37-001]

Northwest Pipeline Corp; Notice of Proposed Change in FERC Gas Tariff

October 5, 1990.

Take notice that on October 3, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Seventy-Third Revised Sheet No. 10
Sixth Revised Sheet No. 10.1
Forty-First Revised Sheet No. 10-A

Original Volume No. 1-A

Thirtieth Revised Sheet No. 201

Original Volume No. 2

Eighteenth Revised Sheet No. 2.3
Twenty-First Revised Sheet No. 2-B

The Commission, by letter order issued on September 28, 1990 in the dockets referenced above, allowed Northwest to refile the referenced tariff sheets to increase the ACA surcharge rate from .19¢ per MMBtu to .22¢ per MMBtu. The .03¢ per MMBtu adjustment is further explained in the Commission's order in Docket Nos. RM87-3-000, TM91-1-20-000, *et al.* dated September 28, 1990.

Northwest states that a copy of this filing is being served upon Northwest's jurisdictional customer list and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24044 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

October 3, 1990.

Take notice that on October 1, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Seventy-Second Revised Sheet No. 10
Fifth Revised Sheet No. 10.1

Northwest states that the purpose of this filing is to eliminate the 13.95¢ per MMBtu SSP surcharge credit that relates to Northwest's sales rate schedules. The surcharge credit, effective only for the twelve months commencing November 1, 1989, relates to a $8.6 million buydown of Northwest's processing obligation under gas supply contracts with Amoco Production Company. The removal of the 13.95¢ per MMBtu credit, results in a revised positive SSP surcharge of 4.17¢ per MMBtu. The sales surcharge, as revised, will be equal to the SSP charge that applies to Northwest's transportation rates.

Northwest states that a copy of this filing is being mailed to all jurisdictional sales customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24020 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-38-001]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

October 4, 1990.

Take notice that on August 1, 1990, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed a Second Revised Sheet No. 4C to its FERC Gas Tariff and FERC Form No. 542-PGA pursuant to 18 CFR § 154.305 to become effective October 1, 1990.

Ringwood states that copies of the filing were served upon Ringwood jurisdictional customers and interested state agencies.

Ringwood's Annual PGA filing reflects an estimated $1.6812 per Mcf cost of gas, a current credit adjustment of ($.0012) per Mcf; a cumulative credit adjustment of ($.2437) per Mcf; a credit surcharge adjustment of ($.0012) per Mcf and a total sales rate of $2.0520 per Mcf.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24017 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-80-001]

Tarpon Transmission Co.; Notice of Compliance Tariff Filing

October 5, 1990.

Take notice that on October 3, 1990, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 2A, to be effective on November 1, 1990. Tarpon states that this tariff sheet has been submitted pursuant to Ordering Paragraph (D) of the order issued by the Commission on September 26, 1990 in *Annual Charges Under the Omnibus Budget Reconciliation Act of 1986*, Docket No. RM87-3-000 in order to allow Tarpon to readjust its ACA surcharge from $0.0019 per Mcf (effective October 1, 1990) to $0.0022 per Mcf. Tarpon further states that it will include a billing adjustment in its November invoices to account for any ACA surcharge underrecoveries that occur during October.

Tarpon has requested that the Commission waive all applicable regulations to permit Fifth Revised Sheet No. 2A to be effective on November 1, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24045 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-9-003]

Tennessee Gas Pipeline Co.; Notice of Tariff Filing

October 5, 1990.

Take notice that on October 3, 1990, Tennessee Gas Pipeline Company (Tennessee) tendered for filing Substitute Twenty-Sixth Revised Sheet No. 21 of Second Revised Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1990.

The purpose of the filing is to revise Tennessee's 191 Account surcharge effective October 1, 1990 and to detail the amount credited to the refund subaccount of Account No. 191 as required by the September 18, 1990 Commission Order in Docket No. TA90-1-9-002. The Commission's Order requires Tennessee to remove $15,959,176 in costs which were included in the development of its surcharge effective January 1, 1990 in the above referenced docket. To the extent the currently effective surcharge has not collected the full amount from Tennessee's customers, Tennessee is required to make a credit to the refund subaccount of Account No. 191 of the amount actually collected plus carrying charges from January 1, 1990. Further, Tennessee is required to revise its surcharge prospectively.

As reflected on the Appendix A attached to the filing, Tennessee proposes to reduce its surcharge $.0947 effective October 1, 1990 from $.5166 to $.4219. Tennessee has also included in the filing as Appendix B a workpaper which details the credit, inclusive of carrying charges, to the refund subaccount of the 191 Account to refund the amount actually collected through September 1990. In addition, Tennessee will credit to the refund subaccount the amount collected for September 1990 invoices that will be paid by its customers in October 1990. Due to Tennessee's large debit balance in its refund subaccount of Account 191, the credit as shown on Appendix B does not produce the refund disbursement requirements of Section 154.305 of the Commission's Regulations; however, it will reduce the basis of Tennessee's surcharge that will become effective January 1, 1991.

On September 28, 1990, Tennessee filed Third Revised Volume No. 1 in Docket No. GT90-48, to be effective October 18, 1990. Upon Commission acceptance of Third Revised Volume No. 1, Tennessee will make a compliance filing to conform those tariff sheets to reflect the outcome of this filing.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24046 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-23-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on October 2, 1990, revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are included in Appendix A attached to the filing. Such tariff sheets are proposed to be effective November 1, 1990.

The proposed tariff sheets reflect a 110.6¢ per dt increase in Transco's adjusted unit current commodity cost of gas compared to the annual Purchased Gas Adjustment (PGA) filing which became effective August 1, 1990 and a 147.9¢ per dt increase compared to Transco's Interim PGA filing of August 2, 1990 which became effective August 3, 1990. The instant PGA filing reflects an average cost of gas of 339.78¢ per dt for the quarterly period commencing November 1, 1990.

Transco requests a waiver of § 22.4 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 and § 154.308(c) of the Commission's regulations in order to calculate the commodity Current Gas Cost Adjustment to its PGA affected rate schedules in the manner provided in the instant filing.

Transco states that it has filed the necessary schedules in order to comply with §§ 154.305, 154.308 and FERC Form 542. Transco has also filed a 9-track magnetic tape containing such schedules.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24018 Filed 10-11-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures From Evcon Industries, Inc. (F-024)

AGENCY: Conservation and Renewable Energy Office, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Evcon Industries, Inc. (Evcon) from the existing Department of Energy (DOE) test procedures for furnaces. DOE is granting an Interim Waiver regarding blower time delay on start up and blower time delay on shut-down for Evcon's 7900 B series mobile home furnaces.

Today's notice also publishes a "Petition for Waiver" from Evcon. Evcon's Petition for Waiver requests relief from the DOE test procedures relating to the blower time delay specification. Evcon seeks to test using a blower delay time of (i) 30 seconds on start up and (ii) 4 minutes delay time for shut-down for its 7900 B series mobile home furnaces instead of the specified 1.5 minute delay for start up and the specified 3 minute delay or until the temperature drops to a value of 40° F above the inlet air temperature for shut down. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than November 13, 1990.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-024, Mail Stop CE-43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Section GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3206, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent

of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver

ignition of the burner and starting of the circulating air blower. Evcon requests the allowance to test using a 30 second blower time delay when testing its 7900 B series mobile home furnaces. Evcon states that the 30 second delay is indicative of how these furnaces actually operate. Since current DOE test procedures do not address this variable

furnace makes it better able to recover flue losses beyond the time delay between burner shut-down and blower shut-down, i.e., 3 minutes or until the supply air temperature drops to a value of 40°F above the inlet air temperature specified in the test procedure. Evcon further claims that if it were not granted an Interim Waiver, this would have a

Regulations, the following letter granting the Application for Interim Waiver was issued to Evcon Industries, Inc.

Issued in Washington, DC, October 3, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy

manufacturers's recommended on-period draft.

(ii) Section 9.2.1.2 of ANSI/ASHRAE Standard 103-1982 is deleted and replaced with the following paragraph:

During this off-period, for mobile home furnaces, allow a time delay, t+, between burner shut-down and blower shut-down of four minutes. However, if the furnace employs a single motor to drive a power

transfer process begins sooner, and an overall increase in efficiency results. The current cool-down test procedure requires a time delay between burner shut-down and blower shut-down of either three minutes or until the supply temperature drops to a value of 40°F above the inlet air temperature, whichever results in the largest blower on-time. Evcon Industries, Inc. is requesting authorization to use a fixed four minute delay

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of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim wavier from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An interim waiver remains in effect for a period of 180 days or until DOE issues its determination, and may be extended for an additional 180 days if necessary.

On April 4, 1990, Evcon filed an application for an Interim Waiver regarding: (a) blower time delay on start up and (b) blower time delay on shut-down. On June 22, 26, and 28 and July 5, 1990, Evcon provided additional written material to supplement its Application for Interim Waiver and Petition for Waiver. On July 3, 1990, representatives of Evcon met with DOE concerning the Application for Interim Waiver and Petition for Waiver.

Evcon seeks an Interim Waiver from the DOE test provision that requires a 1.5 minute time delay between the ignition of the burner and starting of the circulating air blower. Evcon requests the allowance to test using a 30 second blower time delay when testing its 7900 B series mobile home furnaces. Evcon states that the 30 second delay is indicative of how these furnaces actually operate. Since current DOE test procedures do not address this variable blower time delay, Evcon asks that the Interim Waiver be granted. In addition, Evcon requests the allowance to test using a 4 minute delay between burner shut-down and blower shut-down. Evcon states that the 7900 B series furnaces are designed to operate in this manner.

Evcon's request concerning timed blower delay control on start up is similar to those that have been granted by DOE to the Coleman Company, 50 FR 2710, January 18, 1985, Magic Chef Company, 50 FR 41553, October 11, 1985, Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990, Trane Company, 54 FR 19228, May 4, 1989, DMO Industries, 55 FR 4004, February 6, 1990, Heil-Quaker Corporation, 55 FR 13184, April 9, 1990, and Carrier Corporation, 55 FR 13182, April 9, 1990. Thus, it appears likely that the Petition for Waiver will be granted for start up blower time delay.

Evcon's petition regarding the test procedure provision that requires a time delay between burner shut-down and blower shut-down of 3 minutes or until the supply air temperature drops to a value of 40°F above the inlet air temperature, whichever results in the longest blower on-time, is the first to address this issue. Evcon requests that it be allowed to test the 7900 B series mobile home furnace with a fixed 4 minute delay between burner shut-down and blower shut-down. Evcon contends that testing the 7900 B series mobile home furnaces according to the extant test procedure gives results that are not comparable to other furnaces. Evcon claims this is due to the unique design of its 7900 B series mobile home furnaces. The 7900 B series mobile home furnaces is a gravity combustion, direct vent furnace. The 7900 B series mobile home furnace incorporates an annular vent system with a central flue that is larger than other mobile home furnaces; a cylindrical drum type heat exchanger with the fuel mixture entering the drum ⅓ of the distance from the bottom of the drum; a 12 inch diameter rain cap; a secondary heat exchanger, ⅓ of which is isolated from the discharge side of the circulating blower; and a combustion air intake chute external to the heat exchanger and exposed to the conditioned air. Evcon claims that the design of the 7900 B series mobile home furnace makes it better able to recover flue losses beyond the time delay between burner shut-down and blower shut-down, i.e., 3 minutes or until the supply air temperature drops to a value of 40°F above the inlet air temperature specified in the test procedure. Evcon further claims that if it were not granted an Interim Waiver, this would have a major and catastrophic economic hardship on the company and the mobile home industry. Evcon claims that without the waiver it would not be able to manufacture mobile home furnaces once the energy efficiency standards for mobile home furnaces go into effect on September 1, 1990; and since it manufactures more than 50 percent of all mobile home furnaces, more than 50 percent of mobile home manufacturers would have to close. Evcon claims it would lose gross sales revenue in excess of a million dollars per month and would be forced to immediately lay off hundreds of employees.

Further, DOE finds, based on the information provided, that without an interim waiver, Evcon and, in turn, the mobile home industry would suffer significant economic hardship.

Therefore, based on the above, DOE is granting Evcon an Interim Waiver for its 7900 B series mobile home furnaces.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the Petition for Waiver in its entirety, including the subsequent materials submitted to DOE by Evcon. The Petition for Waiver contains no confidential information. DOE solicits comments, data, and information respecting the Petition. Specifically, DOE seeks comments with respect to the following:

- The specification of a four minute delay time between burner shut-down and blower shut-down in lieu of the existing requirement of 3 minutes or until the supply air temperature drops to a value of 40°F above the inlet air temperature;
- Information on blower controls and actual field-installed blower shut-down delay times, particularly with respect to the uniqueness of the Evcon design;
- Applicability of extended blower delay times to furnaces in general; and
- Comment on whether the test procedure waiver provision should be used to allow a manufacturer to meet the standard requirements of NAECA in view of section 323(e), which provides that whenever DOE amends a test procedure and such amendment alters the measure of efficiency, the standard is to be revised accordingly.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to Evcon Industries, Inc.

Issued in Washington, DC, October 3, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy

Washington, DC 20585

October 3, 1990.

Mr. Tom Chase,

Design Engineer, Evcon Industries, Inc., P.O. Box 19014, Wichita, KS 67204–9014

Dear Mr. Chase: This is in response to your April 4, 1990, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces when testing Evcon Industries, Inc. 7900 B series mobile home furnaces.

Previous waivers for start up blower time delay have been granted to Coleman Company, 50 FR 2710, January 18, 1985, Magic Chef Company, 50 FR 41553, October 11, 1985, Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990, Trane Company, 54 FR 19228, May 4, 1989, DMO Industries, 55 FR 4004, February 6, 1990, Heil-Quaker Corporation, 55 FR 13184, April 9, 1990, and Carrier Corporation, 55 FR 13182, April 9, 1990.

Based on review of the information provided by Evcon, DOE finds that Evcon would suffer economic hardship if the Interim Waiver is denied. Therefore, Evcon Industries' Application for an Interim Waiver for its 7900 B series mobile home furnaces is granted. Evcon Industries shall be permitted to test its line of 7900 B series mobile home furnaces on the basis of the test procedures specified in 10 CFR part 430, with the modification set forth below.

(i) Section 9.3.1. of ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ±0.01 inch of water gauge of the manufacturers's recommended on-period draft.

(ii) Section 9.2.1.2 of ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

During this off-period, for mobile home furnaces, allow a time delay, t+, between burner shut-down and blower shut-down of four minutes. However, if the furnace employs a single motor to drive a power burner and an indoor air circulation blower, turn off the blower and the burner together. Measure the time, t+, between burner shut-off and blower shut-off using a stop watch. For a direct vent system with a flue damper or a furnace equipped with both a stack damper and a barometric damper, close the flue or stack damper during the cool-down test. Keep the main burner(s) off until equilibrium conditions are attained, as indicated by variations in the flue gas temperature of not more than 3°F between three successive readings taken 15 minutes apart. For units employing a continuously burning pilot light, take a third flue gas temperature measurement and determine the off-period minimum flue gas temperature ($T_{f,off,(60)}$) equal to the room temperature T_{RA}. During the cool-down test, measure the energy input rate to the pilot light (Q_p), if the unit is so equipped, within an accuracy of ±3 percent. Record all measured values.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

This Interim Waiver is for a period of one hundred eighty (180) days after issuance or until DOE issues its determination, and may be extended for an additional one hundred eighty (180) day period if necessary.

Sincerely,

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

EVCON INDUSTRIES, INC.

Manufacturers of Coleman Heating and Air Conditioning Products

April 4, 1990.

Dr. John R. Berg,

Assistant Secretary, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC. 20585.

Dear Dr. Berg: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to 10 CFR 430.27. Waiver is requested from the Uniform Test Method for Measuring the Energy Consumption of Furnaces, appendix N to subpart B of part 430.

The current heat-up test procedure requires a 1.5 minute time delay between burner and blower startup. Evcon Industries, Inc. (formerly Coleman Heating & Air Conditioning Products, Inc.) is requesting authorization to use a 30 second blower delay instead of 1.5 minutes on our 7900B Series downflow gas furnaces. By activating the blower sooner, the forced convection heat transfer process begins sooner, and an overall increase in efficiency results. The current cool-down test procedure requires a time delay between burner shut-down and blower shut-down of either three minutes or until the supply temperature drops to a value of 40°F above the inlet air temperature, whichever results in the largest blower on-time. Evcon Industries, Inc. is requesting authorization to use a fixed four minute delay between burner shut-down and blower shut-down on the same 7900B Series downflow gas furnaces. This additional blower on-time serves to transfer additional heat from the heat exchanger to the circulating air that would otherwise be lost through the vent system.

These units are equipped with a non-adjustable timing control which activates the circulating blower 30 seconds after the burner comes on and shuts off the blower four minutes after the burner shut-down occurs. When tested using these blower delay timings, these furnaces show a increase in efficiency of approximately 1 to 3.5 AFUE points. Current test procedures do not give credit for this increase in efficiency, thus providing inaccurate comparative data. Evcon Industries, Inc. feels that its competitive position in the marketplace will be damaged if our petition is not accepted.

Evcon Industries, Inc. requests an interim waiver because it seems likely that our waiver will be granted. Similar waivers to allow fixed blower timings have been granted to Coleman and other central furnace manufacturers. In addition, proposed ASHRAE/ANSI Standard 103–1982R of April 30, 1988 specifically address the use of fixed blower delay timings allowing the use of fixed blower off delay timings in the cool-down test in paragraph 9.5.1.2.2 and fixed blower on delay timings in the heat-up test in paragraph 9.6.1.

Confidential comparative test data which confirm the above test results are available to you upon your request.

A copy of this Petition for Waiver and Application for Interim Waiver are being sent to other domestic manufacturers of similar products. Attached please find a copy of the letter and a list of the manufacturers known to us that we will notify.

Sincerely,

Tom Chase,

Design Engineer, Evcon Industries, Inc.

Evcon Industries, Inc.

Manufacturers of Coleman Heating and Air Conditioning Products

April 4, 1990.

Sirs: Please find attached a copy of the Petition for Waiver and Application for Interim Waiver submitted to DOE pursuant to CFR 430.27 by Evcon Industries, Inc. on April 4, 1990.

In accordance with CFR 430.27, DOE will receive and consider timely written comments on these requests. Such comments should be directed to: Dr. John R. Berg, Assistant Secretary, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Sincerely,

Tom Chase,

Evcon Industries, Inc., Design Engineer.

List of Central Furnace Manufacturers

Mr. V. C. Knight, Addison Products Co., 215 N. Talbot St., Addison, MI 49220
Mr. Charles M. Peters, Amana Refrigeration, Inc., Amana, IA 52204
Mr. B. William Bonnivier, Snyder General Corporation, 2001 Roes Ave., Dallas, TX 75201–2916
Mr. Robert E. Johnson, Armstrong Air Cond. Inc., 421 Monroe St., Bellevue, OH 44811
Mr. Richard O. Bard, Bard Mfg. Company, 520 Evansport Rd., P.O. Box 607, Bryan, OH 43506
Mr. William A. Wilson, Carrier Corporation, P.O. Box 4808, Syracuse, NY 13221
Mr. Richard C. Barnet, Central Environmental Systems, P.O. Box 1592, York, PA 17405
Mr. Richard H. Weber, Consolidated Industries Corp., P.O. Box 7800, Lafayette, IN 47903
Mr. John McFadden, GlowCore Corporation, P.O. Box 6971, Cleveland, OH 44136
Mr. Daniel H. Burke, Goettl Air Conditioning, Inc., 5401 E. Washington St., Phoenix, AZ 85034
Mr. Harold V. Goodman, Goodman Mfg. Corporation, 1501 Seamist, Houston, TX 77008
Mr. J. A. Knight, Heat Controller, Inc., 1900 Wellworth Ave., P.O. Box 1068, Jackson, MI 49203
Mr. Henry J. Forrest, Heil-Quaker Corp., 1136 Heil-Quaker Blvd., P.O. Box 300 S, La Vergne, TN 37086–1985
Mr. Donald W. Munson, Lennox Industries, Inc., P.O. Box 80000, Dallas, TX 75380–0000
President, Metzger Machine & Engineering Co., 8156 N. 76th Street, Milwaukee, WI 53223
Mr. Robert E. G. Ractliffe, Nordyne, Inc., 10820 Sunset Office Drive, St. Louis, MO 63127
Mr. Donald F. Foster, Rheem Air Conditioning Division, 5600 Old Greenwood Rd., P.O. Box 6444, Fort Smith, AR 72903
Mr. Jack R. Cunningham, Thermo Products, Inc., P.O. Box 217, North Judson, IN 46366
Mr. H. Thompson Smith, The Trane Co., Dealer Products Group, 6200 Troup Hwy., Tyler, TX 75711
Mr. John D. Carroll, Jr., The Williamson, Co., 3500 Madison Rd., Cincinnati, OH 45209
President, Yukon Energy Corporation, 376 W. County Rd., "D", St. Paul, MN 55112

Evcon Industries, Inc.

Manufacturers of Coleman Heating and Air Conditioning Products

June 22, 1990.

Cyrus Nasseri,

United States Department of Energy, 1000 Independence Avenue SW., Mail Station CE–43, 5H048, Washington, DC 20585.

Dear Cyrus: During your Evcon Industries, Wichita plant inspection last week you discussed our waiver request; we promised to send you the additional information clarifying our request.

Due to the extreme shortage of time, we are sending by fax, supplementary information which should enable you to allow our interim waiver.

On April 4, 1990, we applied for a waiver on our 7900 B Series Mobile Home Furnaces. This was based upon the technical logic of operating the circulating blower longer than prescribed in the DOE test standard in order to recover additional thermal energy from the flue gases. DOE accepted this logic three years ago, and allowed us a waiver.

We accordingly, based this same technical principle on our April 4, 1990 request. This is the same design principle used while we redesigned our line of mobile home furnaces to meet the September 1990 75% AFUE deadline.

Since we had received no communications from DOE during the previous three years, we assumed the same logic would be acceptable now, whether applied to start up or stop timing of the blower.

We were amazed to hear for the first time, during your factory inspection on June 14, 1990, that DOE was considering a refusal of our April 4, 1990 waiver. If that were to happen just sixty days ahead of the national deadline, we would be put out of business.

We would endure major and catastrophic economic hardship for several reasons:

1. We would have *no* inventory to ship which met the September 1, 1990 AFUE.
2. We would shut down over 50 percent of the industries' factories, which produce manufactured homes, thus forcing into unemployment thousands of production workers.
3. We would immediately lay off hundreds of Evcon Industries' employees.
4. We would lose gross sales revenue in excess of a million dollars per month.
5. We would be faced with "loss of business" law suits from over fifty manufacturers, totaling tens of millions of dollars in direct liability, plus possible punitive damage claims of double or triple that amount, because absolutely no pre-warning had been issued.
6. It would require major redesign of the product, adding $50.00 to $60.00 per furnace, or a raw increase of 30 to 35 percent.
7. The time required to redesign would be in excess of six months and cost an additional $150,000 to $200,000 in direct design expense.
8. We would require field test of the new design through at least the 1991 heating season.

There are other negative factors too numerous to list.

To avoid this economic hardship, we have virtually completed a full set of tests to document and supplement our request for an interim waiver, and will supply test reports by June 26, 1990.

These tests, conducted and virtually completed this week, and per the DOE procedure, have documented that *the thermal energy saved in our extended blower timing exceeds the additional blower electrical energy consumed.*

We believe this complies with your request during the Wichita plant inspection and, therefore, allows Evcon Industries the interim waiver.

Because we have a major timing crisis, and to avoid economic disaster, will you please confirm by phone or fax, your acceptance of this supplementary information and your agreement to an interim waiver for Evcon Industries, Inc.

Our FAX No.: 316–832–6566. Our phone No.: 316–832–6540.

Sincerely,

Alan Zimmerman,

Vice President of Canadian Operations and Customer Services.

EVCON INDUSTRIES, INC.

Manufacturers of Coleman Heating and Air Conditioning Products

June 26, 1990.

Cyrus Nasseri,

U.S. Department of Energy, 1000 Independence Avenue SW., Mail Station CE–43 5HO48, Washington, DC 20585

Dear Cyrus: Following are the test reports mentioned in our June 22, 1990 fax. As discussed on the phone with you today, we believe these tests conclusively substantiate our request for interim waiver, as well as the extreme hardships which will result without the interim waiver.

Sincerely,

Alan Zimmerman,

Vice President of Canadian Operations and Customer Services.

Summary

The attached report describes the results of testing performed on four different models of Coleman gas-fired mobile home furnaces. The furnaces were tested with the DOE furnace efficiency test method using both the standard three minute blower off timing and a four minute blower off timing. It is clearly shown that use of the longer blower delay timing results in a gain in efficiency (AFUE) of .8 to 1.5 percentage points. Since the AFUE rating alone does not include electrical usage, the report also compares the heating efficiency gained by using the longer blower delay timing to the additional electrical energy used by the furnace blower. Again, it is clearly shown that use of the longer blower delay timing saves more heat energy than it spends in electrical energy. This net energy gain results in higher overall operating efficiency and lower operating costs for the consumer.

The report further points out that these results may not apply to furnaces of other types. Furnaces equipped with induced draft or forced draft blowers are unlikely to show the same degree of efficiency improvement from the use of longer blower delay timings.

Abstract

The off-cycle and on-cycle sensible heat losses of four models of direct vent mobile home furnaces were measured using both the current DOE test method and a modified DOE test method with a longer blower off time delay. The heat energy saved by using the longer blower delay timing was compared to the additional electrical energy consumed by the blower motor. In all models tested, the heat energy saved by using the longer blower delay timing was greater than the additional energy consumed by the blower.

Background

ANSI/ASHRAE Standard 103–1982, Methods of Testing for Heating Seasonal Efficiency of Central Furnaces and Boilers, was published and approved in 1983. Part of the test procedure for central furnaces in this standard requires a fixed 1.5 minute delay from burner on to blower on and a fixed three minute delay from burner off to blower off, regardless of the normal operating timings of the furnace being tested. Subsequent to the publication of the standard, several furnace manufacturers have noted that their furnaces operate more efficiently with blower on timings shorter than 1.5 minutes. While some additional electrical energy is used by starting the blower sooner than usual, the additional heat energy transferred to the heated space rather than lost out the vent is reflected in higher efficiency (AFUE) ratings and lower overall operating costs. In order that the published AFUE ratings of these furnaces can reflect their true operating efficiency, several manufacturers, including Coleman, Rheem, Trane, and Lennox, have applied for and been granted waivers to allow certain of their units to be tested using blower timings other than those specified in ANSI/ASHRAE 103–1982. These waivers have been granted to allow blower on timings less than the specified 1.5 minutes, without necessarily requiring that the applicant prove that the heat energy saved exceeds the additional electrical energy usage.

To date, no waivers have been granted to allow blower off timings other than the three minute delay specified by the standard. However, the same rationale used to justify shorter blower on timings also applies to the use of slightly longer blower off timings, that of sacrificing a small amount of additional electrical energy usage in exchange for a relatively larger amount of heat energy saved, resulting in a higher AFUE rating and lower overall operating cost.

Objective

The objective of this report is to compare the sensible heat losses that are measured when a furnace uses a four minute blower off delay to those losses measured using the three minute delay specified by the test standard. A further objective is to compare the heat energy saved by using the longer blower delay to the electrical energy consumed by the blower motor during its additional minute of operation.

Test Units

Four gas-fired, downflow, direct vent mobile home furnaces were used in these tests. Their model numbers and input ratings are shown in Table 1 below:

TABLE 1

Furnace model	Input (BTU/Hr)
7956B856	56,000
7966B856	66,000
7970B856	70,000
7975B856	75,000

Measurement Procedures

Testing was performed using the current DOE test procedure described in ANSI/ASHRAE 103–1982. This procedure involves measurement of flue gas temperatures during a heat-up from a cold start condition, a steady-state efficiency test during which flue gas temperature and carbon dioxide (CO_2) are measured, and a cool-down test from steady-state. The cool-down test involves using a tracer gas and flue temperatures to calculate the off-cycle flow rate through the system and thus determine the off-cycle heat losses. An additional cool-down test was performed on each of the four units per the DOE test procedure *except* that a four minute delay from burner off to blower off was used.

Calculation Procedure

The on-cycle heat losses (infiltration, latent, and sensible) and the off-cycle heat losses (infiltration and sensible) were calculated using the current DOE method. The Annual Fuel Utilization Efficiency (AFUE) rating yielded by these calculations allows for the cyclic nature of actual furnace operation, assuming an average burner on time of 3.87 minutes per cycle and an average burner off time of 13.3 minutes per cycle.

The furnaces tested for this report are all direct vent units and thus have no on-cycle or off-cycle infiltration losses. The on-cycle latent heat losses are not affected by variations in the blower off timings and thus will not be discussed here. Only the sensible heat losses (on-cycle and off-cycle) need be addressed.

The current DOE calculations yield a value for on-cycle sensible heat loss, $L_{s\text{-}on}$, and for off-cycle sensible heat loss, $L_{s\text{-}off}$, stated in percent. For purposes of comparison, these percent values can be stated as BTU per cycle by using the following equations:

$$Q_{s\text{-}off} = \frac{L_{s\text{-}off}(Q_{in})(t_{off})}{6000\ (t_{on})}$$

and

$$Q_{s\text{-}on} = \frac{L_{s\text{-}on}(Q_{in})(t_{off})}{6000\ (t_{on})}$$

where:

$Q_{s\text{-}off}$ is the off-cycle sensible heat loss per cycle in BTU
$Q_{s\text{-}on}$ is the on-cycle sensible heat loss per cycle in BTU
$L_{s\text{-}off}$ is the off-cycle sensible heat loss in percent
$L_{s\text{-}on}$ is the on-cycle sensible heat loss in percent
Q_{in} is the furnace input rate in BTU/Hr
t_{off} is the average burner off time of 13.3 minutes
t_{on} is the average burner on time of 3.87 minutes
6000 is a factor used to convert hours to minutes and to convert percent to a fraction.

The measured energy usage of the blower motor can be converted to BTU/min. for comparison purposes with the following equation:

$$Q_B = \frac{3413\ BE}{60}$$

where:

Q_B is the energy usage of the blower motor in BTU/min.
BE is the energy usage of the blower motor in KW.
3413 is a conversion from electrical units to heat units.
60 converts hours to minutes.

Data

Table 2 below shows the measured sensible heat losses (on-cycle, off-cycle, and total) for the four test furnaces using the burner off timing of three minutes specified by the test standard:

TABLE 2

Furnace model	$Q_{s\text{-}on}$,3	$Q_{s\text{-}off}$,3	$Q_{s\text{-}tot}$,3
7956B856	169	224	393
7966B856	239	250	489
7970B856	270	249	519

TABLE 2—Continued

Furnace model	$Q_{S,SS,3}$	$Q_{S,OFF,3}$	$Q_{S,TOT,3}$
7975B856	336	280	606

Table 3 below shows the sensible heat losses for the four furnaces using an alternate blower off timing of four minutes:

TABLE 3

Furnace model	$Q_{S,SS,4}$	$Q_{S,OFF,4}$	$Q_{S,TOT,4}$
7956B856	166	197	363
7968B856	237	195	432
7970B856	268	197	465
7975B856	324	215	539

The electrical usage of the blower motors of each of the four furnaces was measured and is shown in Table 4 below:

TABLE 4

Furnace model	BE (KW)
7956B856	.365
7968B856	.562
7970B856	.586
7975B856	.596

Results and Analysis

Table 5 below shows the sensible heat loss for each of the four test furnaces and the difference in heat losses between the tests using the three minute blower off timing and the tests using the four minute blower off timing. This difference, $\Delta Q_{S,TOT}$, represents the heat energy that is saved each burner cycle by allowing the blower to run longer. Table 5 also shows the energy, Q_B, consumed by the blower motor during the additional minute of operation each cycle.

TABLE 5

Furnace model	$\Delta Q_{S,TOT}$ (BTU)	Q_B (BTU)
7956B856	30	20.8
7968B856	57	32.0
7970B856	54	33.4
7975B856	67	33.9

In all four furnaces, the heat energy saved by allowing the circulating air blower to remain on one additional minute is greater than the energy used by the blower motor during that minute. This net energy saving occurs every burner cycle, an average of every 16.67 minutes during the entire heating season. Thus a seemingly small amount of energy saved each cycle can have a significant impact on the overall efficiency of the furnace and can significantly reduce operating costs for the user. Table 6 below shows the AFUE's of the test furnaces with the two blower timings.

TABLE 6

Furnace model	$AFUE_A$	$AFUE_A$
7956B856	74.4	75.2
7968B856	74.2	75.6
7970B856	74.4	75.7
7975B856	73.2	74.7

The results described above certainly justify the use of a four minute blower off timing for these furnaces. However, the same results may not hold true for other types of furnaces. The furnaces tested here utilize the natural buoyancy of the flue gases for venting, and are not equipped with forced draft or induced draft blowers. With very little restriction to off-cycle flow, they have a relatively high flow rate during the off-cycle and thus a relatively high off-cycle sensible heat loss of 6–7%, leaving considerable room for efficiency improvement. Forced draft and induced draft systems, on the other hand, generally offer considerable restriction to flow during the off-cycle and typically have off-cycle sensible heat losses of 3% or less. Therefore, it cannot be assumed that longer blower delay timings always result in a net energy savings. This can be proven by test.

Reference

1. ANSI/ASHRAE Standard 103–1982, Methods of Testing for Heating Seasonal Efficiency of Central Furnaces and Boilers, American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc., Atlanta, Ga., 30329.

Evcon Industries, Inc.

Manufacturers of Coleman Heating And Air Conditioning Products

June 28, 1990.

Mike McCabe,

U.S. Department of Energy, 1000 Independence Avenue SW., CE–43, Washington, DC 20585

Dear Mr. McCabe: After several discussions with Cyrus Nasseri this week, we believe he has problems accepting our interim waiver request, and at his suggestion, are appealing to you for emergency help.

Background: Evcon, earlier this year, applied for an interim waiver on its new mobile home furnaces designed to meet the NAECA 75% minimum efficiency level.

Up until last Thursday, June 21, 1990, we had heard nothing from D.O.E., and assumed all was well. Last Thursday, during a visit to our factory with a team from Lawrence Berkeley, Cyrus mentioned he was considering turning down our request. At that time, we expressed amazement and verbally outlined our case and the hardships which would result, if the request were denied. We documented that discussion, promised additional substantiating test data, and outlined our economic hardship in a fax to Cyrus, dated June 22, 1990. (Copy attached—Schedule (A).

On June 25, 1990, we faxed our technical test justification for the waiver. Documenting that the tests do substantiate our request. (Our fax letter to Cyrus Nasseri is attached—Schedule (B).

Our reasons for appeal are as follows:

There are recent precedents for acceptance:

Lennox was granted a waiver in the December 7, 1989 issue of Federal Register on the issue of extended blower "on" time.

That request for waiver, dated August 1, 1989, as well as the grant, occurred *after the NAECA was published.*

That grant is vital to Lennox meeting the NAECA minimum 78% level for residential furnaces.

The December 7, Federal Register cites as one of the reasons for the Lennox grant, the earlier 1985 waiver precendents to Coleman, Rheem, etc., regarding longer blowing timing.

In May 1989, Trane was granted a waiver on extended blower timing, after the NAECA was published.

Our latest request embodies the same technical principles of energy saved through longer blower timing, cited in our 1985 waiver, and as cited in the Lennox waiver in December 1989, and the Trane waiver in May 1989.

Nothing in the industry discussions of intent regarding an interim waiver or in the final printed version, would require a change in the minimum efficiency level of NAECA if an interim waiver is granted. Only when and if the test standard was ultimately and legislatively *amended* would a change in minimum efficiency levels be appropriate.

Given the precedent of our 1985 waiver the December 1989 waiver to Lennox, the May 1989 waiver to Trane, and the absence of any D.O.E. indications to the contrary, we assumed in our design process, the same principles of energy saving through longer blower timing would be accepted.

Now, suddenly and unexpectedly, we understand you are considering a reversal and not allowing our request, just sixty days prior to the deadline.

Mike, we have no technical or economic recourse. Our statements of econmic hardship are accurate and if anything, understated. The provisions exist under the law for your department to grant emergency waivers. We implore you to consider all of the above and allow our interim waiver. Our request is technically correct, our efficiency claims results are legitimate and substantiated. We cannot accept a discriminatory refusal.

In order to avoid shutting down our production line, September 1, 1990, we will be happy to fly to Washington to meet personally with you at any hour. Please call.

Sincerely,

Alan Zimmerman,

Vice President of Customer Services & Canadian Operations.

ss

cc. CAMA—
Jack Langmead
Bill Meadows
Morrison, Hecker, Curtis, Kuder & Parrish

Evcon Industries, Inc.

Manufacturers of Coleman Heating and Air Conditioning Products

July 5, 1990.

Mr. Mike McCabe,

U.S. Department of Energy, 1000 Independence Avenue, SW., Mail Station CE–43, Washington, D.C. 20585.

RE: Evcon Industries, Inc., Petition for Waiver and Application, for Interim Waiver, April 4, 1990

Dear Mr. McCabe: During our meeting in Washington on July 3, you and your colleagues expressed concerns about the sufficiency of technical information contained in Evcon's April 4, 1990 Petition for Waiver and Application for Interim Waiver. In specific, you suggested that Evcon had not conclusively established that current DOE efficiency testing standards unfairly assess the efficiency of the Evcon Model 7900 B series of mobile home furnaces. Pursuant to the July 3 meeting, we submit this letter for your further consideration.

We contend, and hope you will conclude, that because of the unique design characteristics of mobile home furnaces generally, and the Evcon model 7900 B in specific, that current efficiency testing standards yield an unrepresentative measure of its true energy consumption characteristics and provide materially inaccurate comparative data.

The 7900 B series mobile home furnace is a gravity combustion, direct vent furnace, designed specifically for the specialized needs of the manufactured housing industry. As discussed during our meeting, the manufactured housing industry, its applications, installation and product needs, is substantially different from the residential industry furnace needs. At least 95% of the gas furnaces installed in the manufactured housing industry are the gravity combustion, direct vent type on which this waiver is requested. The majority of the approximately 8,000 to 10,000 mobile home furnaces sold per month, are gas fueled and of the 7900 B series type. None of todays furnaces of the residential type, are to our knowledge, approved for use in the manufactured housing industry.

The gravity combustion, direct vent furnace is different from all residential furnaces in two fundamental principles. First, it incorporates an annular gravity vent system which is certified by national testing agencies exclusively for the 7900 B series, and is exclusively manufactured by Evcon for the 7900 B series mobile home application. The roof vent design is patented under two patent numbers: 4,522,191 and 4,693,605. No other vent system, whether residential or of a competitive mobile home type, is interchangeable in the 7900 B series design.

Second, there do not exist in today's residential industry, any gravity combustion, direct vent furnaces. Natural draft or gravity combustion, direct vent furnaces have been previously recognized by D.O.E. as having unique design characteristics, which standard test procedure does not fully recognize. All other types of direct vent furnaces have powered combustion.

There are two other mobile home furnaces which are of the gravity combustion, direct vent type, marketed under the name of Miller and Intertherm, both manufactured by Nordyne.

The Evcon 7900 B series mobile home furnace is different in its design characteristics from the Miller and the Intertherm, as follows:

1. It incorporates a large single cylindrical drum type heat exchanger with the fuel gas mixture entering the drum ⅓ of the distance from the bottom of the drum in a horizontal monoport burner, while the other competitive models import the fuel gas mixture at the lowest portion of their rectangular heat exchanger.

2. The Evcon incorporates a large annular vent system with a central flue pipe 56% larger than the others.

3. The Evcon vent terminal incorporate a 12 inch diameter rein cap whose outlet configuration creates 2.5 times more flue gas egress area than the others.

4. The Evcon design has ⅓ of its large secondary heat exchanger isolated from the discharge side of the circulating blower, while the others have a substantially smaller heat transfer area not exposed to discharge blower air. Therefore, the Evcon heat exchanger requires an additional minute of blower operation to achieve recovery of stack losses.

5. The Evcon design incorporates a combustion air intake chute which transports air from the top intake opening to the burner intake within a separate channel external to the heat exchanger and exposed to conditioned air. While the others' combustion air intake chute is within the internal space and adjacent to the heat exchanger and is directly exposed to the radiant effect of the residual heat of the heat exchanger.

The effect of these design differences is to make the Evcon 7900 B series furnaces better able to recover substantial flue losses during the additional minute of blower operation than are the competitive models. Our testing has shown that the Evcon mobile home furnaces enjoy a much higher percentage of energy savings through the use of the extended blower timing, than could be expected from the competitive design concept. By not allowing us to take full credit for the true operating efficiency of our furnaces, the standard test procedure provides materially inaccurate comparative data.

To the best of our knowledge, the Evcon 7900 B series mobile home furnace is the only furnace, residential or mobile home, which uses an electronic blower control with a four minute off timing to increase its efficiency. The competitors model mobil home furnace uses a thermally activated fan switch to control the circulating air blower.

There is an additional vital issue of non-comparative ratings: The design characteristics of the Evcon 7900 B series are such that its performance is unfairly evaluated and results in an AFUE rating less than 75% thus making it substandard to the minimum NAECA level, and would therefore, be unfavorably compared by the consumer or buyer when making the purchase decision.

Evcon has further demonstrated in tests that the circulating air temperature at the end of the additional one minute blower operation is at least equal to or greater than air temperatures resulting from the standard test procedure when applied to certain other furnace designs.

We appreciate the opportunity of having the meeting with your team, Tuesday, and to review personally with you, the reasoning behind our request. We cannot over-emphasize the critical timing deadline we face and the financial hardships we face without a grant for an interim waiver. Please call me if you have any questions regarding our clarification.

Sincerely,

Alan Zimmerman,

Vice President of Customer Service & Canadian Operations.

ss

cc: Cyrus Nasseri

[FR Doc. 90–24132 Filed 10–11–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures from Trane Company (F–026)

AGENCY: Conservation and Renewable Energy Office, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Trane Company (Trane) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for its TUN(–) upflow models and TDN(–) downflow models of atmospheric furnaces.

Today's notice also publishes a "Petition for Waiver" from Trane. Trane's Petition for Waiver requests DOE to grant relief from the Department's test procedures relating to the blower time delay specification. Trane seeks to test using a blower delay time of 45 seconds for TUN(–) TDN(–) atmospheric furnaces instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than November 13, 1990.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–026, Mail Stop CE–43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43,

inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the

Therefore, based on the above, DOE is granting Trane an Interim Waiver for its TUN(–) upflow models and TDN(–) downflow models of atmospheric furnaces.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential

(i) Section 9.3.1 of ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the

for more accurate representation of efficiency. Confidential supporting test data is available upon request.

An interim waiver is requested because it seems likely that our waiver will be granted. Similar waivers have been granted to Evcon, Rheem, Carrier, and Lennox. All central furnace manufacturers known to Trane have been notified by letter of our application. A copy of the letter and a list of the manufacturers is attached.

Mr. Charles L. Green, President, Ford Products Corporation, Valley Cottage, New York 10989

Mr. John V. McFadden, President, Glowcore Corporation, P.O. Box 6971, Cleveland, Ohio 44138

Mr. Peter H. Alexander, Vice President, Engineering, Goodman Manufacturing Corporation, 1501 Seamist, Houston, Texas 77008

of Energy, Office of Conservation and Renewable Energy, Case No. F–026, Mail Stop CE–43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9127 or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisons. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedures requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. An interim waiver remains in effect for a period of 180 days or until DOE issues its determination, and may be extended for an additional 180 days if necessary.

On July 5, 1990, Trane filed an Application for an Interim Waiver regarding blower time delay. Trane's application seeks an interim waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Trane requests the allowance to test using a 45-second blower time delay when testing its TUN(–) and TDN(–) atmospheric furnaces. Trane states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Trane asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by the Department to the Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; and Inter-City Products Corporation, 55 FR 31100, July 31, 1990. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Trane an Interim Waiver for its TUN(–) upflow models and TDN(–) downflow models of atmospheric furnaces.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to Trane Company.

Issued in Washington, DC, October 3, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

October 3, 1990.

Mr. James T. Vershaw,
Manager, Furnace System Technology,
Dealer Products Group,
The Trane Company,
Troup Highway,
Tyler, TX 75711.

Dear Mr. Vershaw: This is in response to your July 5, 1990, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay when testing Trane Company's TUN(–) and TDN(–) atmospheric furnaces.

Previous waivers for timed blower delay control have been granted to the Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; and Inter-City Products Corporation, 55 FR 31100, July 31, 1990.

Trane's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Trane will likely experience absent a favorable determination on the application for interim waiver. However, in those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Trane's Application for an Interim Waiver from the DOE test procedures for its TUN(–) and TDN(–) series atmospheric furnaces regarding blower time delay is granted.

Trane shall be permitted to test its line of TUN(–) and TDN(–) atmospheric furnaces on the basis of the test procedures specified in 10 CFR part 430, with the modification set forth below.

(i) Section 9.3.1 of ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t–), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t–), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ±0.01 inch of water gauge of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days after issuance or until DOE issues its determination, and may be extended for an additional 180-day period if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

July 5, 1990.

Assistant Secretary, Conservation and Renewable Energy,
United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Gentlemen: This petition for waiver and interim waiver is submitted pursuant to 10 CFR 430.27. Waiver is requested from the furnace test procedure found at appendix N to subpart B of part 430. The Heat-Up Test procedure requires a 1.5 minute time delay between burner and blower-startup. Significant energy is lost during the delay period. Starting in August 1990, Trane will manufacture atmospheric furnaces having fixed timing controls which will activate the blower 0.75 minutes after burner start-up. These furnaces will include the TUN (–) upflow and TDN (–) downflow model families. These controls reduce energy losses by an average of 1 percent. The current procedures do not recognize such controls causing energy losses to be overstated. This petition requests that the true delay be used for more accurate representation of efficiency. Confidential supporting test data is available upon request.

An interim waiver is requested because it seems likely that our waiver will be granted. Similar waivers have been granted to Evcon, Rheem, Carrier, and Lennox. All central furnace manufacturers known to Trane have been notified by letter of our application. A copy of the letter and a list of the manufacturers is attached.

Sincerely,

James T. Ver Shaw,

Manager, Furnace System Technology.

July 5, 1990.

Mr. J.P. Norton,
Director of Engineering, The Williamson Company, 3500 Madison Road, Cincinnati, Ohio 45209.

Dear Mr. Norton: Attached is a copy of The Trane Company's Application for Waiver and Interim Waiver from DOE test procedures for central furnaces. The Assistant Secretary for Conservation and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver. A copy of the comments sent to DOE must also be sent to the applicant.

Sincerely,

James T. Ver Shaw,

Manager, Furnace System Technology.

List of Manufacturers

Mr. J.P. Norton, Director of Engineering, The Williamson Company, 3500 Madison Road, Cincinnati, Ohio 45209
Mr. Allen Kessler, Chief Engineer Environmental Products, Amana Refrigeration, Inc., Amana, Iowa 52204
Mr. Edward A. Baily, Director of Government and Industrial Relations, Carrier Corp., P.O. Box 4808, Syracuse, New York 13221
Mr. Richard O. Bard, President, Bard Manufacturing Company, P.O. Box 607, Bryan, Ohio 43506
Mr. Allan Zimmerman, Vice President of Canadian Operations and Customer Service, EVCON Industries, Inc., Heating and Air Conditioning Group, 3110 N. Mead, P.O. Box 19014, Wichita, Kansas 67204–9014
Mr. John M. Wiese, Vice President of Engineering, Comfortmaker, SynderGeneral Corporation, 401 Randolph Street, Red Bud, Illinois 62278
Mr. Richard H. Weber III, President, Consolidated Industries Corp., A Subsidiary of Welbilt Corporation, 800 South Segamore Parkway, P.O. Box 7800, Lafayette, Indiana 47903
Mr. David B. Schumacher, Engineering Manager, Arcoaire, SnyderGeneral Corporation, 401 Randolph Street, Red Bud, Illinois 62278.
Mr. Ronald Laffler, Manager, Product Engineering, The Dometic Corporation, 509 South Poplar Street, LaGrange, Indiana 46761
Mr. John Ducate, Jr., Ducane Heating Division, The Ducane Company, suite 200, Dutch Plaza, 800 Dutch Square Boulevard, Columbia, South Carolina 29210
Mr. Michael E. Bryant, National Sales Manager, DMO Industries, 56 Squirrel Road, Pontiac, Michigan 48057–1942
Mr. Charles L. Green, President, Ford Products Corporation, Valley Cottage, New York 10989
Mr. John V. McFadden, President, Glowcore Corporation, P.O. Box 6971, Cleveland, Ohio 44139
Mr. Peter H. Alexander, Vice President, Engineering, Goodman Manufacturing Corporation, 1501 Seamist, Houston, Texas 77008
Mr. Charles H. Findley, Vice Chairman, 1136 Heil-Quaker Boulevard, P.O. Box, 3003, LaVergne, Tennessee 37086
Mr. Donald W. Munson, Executive Vice President of Division Operations, Lennox Industries, Inc., P.O. Box 809000, Dallas, Texas 75380–9000
Mr. Robert E. G. Ratcliffe, President, Nordyne, Inc., A Nortek Company, 10829 Sunset Office Drive, St. Louis, MO 63127
Mr. Edward E. Schott, President, Rennor, A Division of FL Industries, Inc., McKinley 1 Avenue, Mercer, PA 16137
Mr. Donald F. Foster, President, Rheem Air Conditioning Division, 5600 Old Greenwood Road, P.O. Box 8444, Ft. Smith, Arkansas 72908
Mr. Paul H. McGinnes, Product Manager, Gas-Fired Products, Sterling Gas-Fired Heating Equipment, Division of Reed National Corp., 280 North Elm St., Westfield, Mass 01085
Mr. Bobby D. Vincent, Vice President-Engineering, Suburban Manufacturing Company, P.O. Box 380, Dayton, TN 37321
Mr. Everett E. James, Director of Engineering, Thermo-Products, Inc., P.O. Box 217, North Judson, Indiana 46366
Mr. Edward H. Yuma, Chairman, XXth Century Heating & Ventilating Co., 203 Erie Street, P.O. Box 117, Wellington, Ohio 44090.
Mr. Theron C. Stroka, President, Victa Hytemp Industries, Inc., 35 Neoga Street, Depew, New York 14043
Mr. Clem J. Luebke, Vice President, Welbilt Corporation, 125 Northshore Drive, Burlington, Vermont 05401
Mr. Richard C. Barnett, President, York International Corporation, Central Environmental Systems Division, P.O. Box 1592, York, PA 17405

[FR Doc. 90–24133 Filed 10–11–90; 8:45 am]
BILLING CODE 6450–01–M

Office of Energy Research

University Research Instrumentation Program; Solicitation Announcement

AGENCY: Department of Energy, Office of Energy Research.

ACTION: Program solicitation announcement.

SUMMARY: The purpose of this notice is to announce the availability of the University Research Instrumentation (URI) program solicitation, and to inform potential applicants of the closing date and location for transmittal of applications for awards under this program. For more detailed background information about the URI solicitation, please refer to the following related documents: (1) DOE request for public comment on the URI program, June 7, 1983 (48 FR 26328–26331), (2) October 18, 1983, DOE changes to the program (48 FR 48277–48281); and (3) December 15, 1983, DOE program solicitation

1. Biomedical and Environmental Research

a. *Nuclear Medicine:* (1) Research on the applications of radiation, radioisotopes and stable isotopes in the diagnosis, study and treatment of human diseases; (2) production of radionuclides, new radiopharmaceuticals, automated

resolved spectroscopy, reaction mechanisms of complex hydrocarbons and hazardous byproducts, and high temperature reaction dynamics/rapid time-resolved spectroscopies; (2) surface chemistry studies including the chemistry of adsorbates, surface compositions, and studies of molecules at solid-solution interfaces; (3) organic

4. Materials Research

Synthesis, processing and characterization of advanced materials, including: Ceramics and ceramic matrix composites, photovoltaic semiconductors, polymers, and ceramic intermetallic, or polymeric superconductors.

peripheral interest during the application's review procedure.

Eligibility and Limitations

Participation in the URI program is limited to U.S. universities and colleges that currently have active, ongoing DOE-funded research support (including subcontracts) totalling at least $150,000

Washington, DC 20585; Telephone Number: (202) 586–8910.

Closing Date for Transmittal of Applications

To be eligible, applications must be received at the following address by 4:30 p.m., local prevailing time, December 10, 1990.

program. For more detailed background information about the URI solicitation, please refer to the following related documents: (1) DOE request for public comment on the URI program, June 7, 1983 (48 FR 26328–26331), (2) October 18, 1983, DOE changes to the program (48 FR 48277–48281); and (3) December 15, 1983, DOE program solicitation announcement (48 FR 55774–55775).

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to:

Ms. Susan Black, Procurement and Contracts Division, Department of Energy, Oak Ridge Operations Office, Post Office Box 2001, Oak Ridge, TN 37831–8758, Telephone Number: (615) 576–0792.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the University Research Instrumentation program is to assist university and college scientists in strengthening their capabilities to conduct long-range research in specific energy research and development areas of direct interest to DOE through the acquisition of specialized research instrumentation. This program is consistent with, and part of, a government-wide effort to increase the availability of advanced research instrumentation in unversities and colleges. For FY 1991, the appropriation recommended in the conference report for the Energy and Water Development Appropriations Bill is $5.0 million. In anticipation of enactment of this bill, DOE invites all qualified universities to write for a copy of its University Research Instrumentation program solicitation, DOE–ER–0184/6, Notice of Program Announcement Number DE–PS05–91ER75608. Selection for award under this solicitation is subject to the availability of funds.

Principal Research Areas

While all areas of energy research are eligible, in FY 1991 the URI program's funds will be concerned primarily with capital equipment costing $100,000 or more needed for on-campus research in one of five specific energy areas (listed below in alphabetical order). In order to indicate the potential breadth of the research in each area, a number of example of related research topics are given. Within each topic area no preference is given to any of the examples.

1. Biomedical and Environmental Research

a. *Nuclear Medicine:* (1) Research on the applications of radiation, radioisotopes and stable isotopes in the diagnosis, study and treatment of human diseases; (2) production of radionuclides, new radiopharmaceuticals, automated chemical synthesis systems, studies of biodistribution and pharmacokinetics of radiolabeled compounds; (3) improvement of biomedical imaging techniques (SPECT, PET, NMR spectroscopy, and magnetoencephalography, etc.) for diagnosis and physiologic and metabolic studies; (4) development of boronated compounds with higher selectivity for tumor tissue to ascertain clinical merit of boron neutron capture therapy.

b. *Life Science Studies:* (1) DNA damage and repair; (2) mapping and sequencing the human genome; (3) characterizing the structure and function of biological macromolecules; (4) health and environmental effects of radon exposure; (5) computer applications for analyzing biological data.

c. *Environmental Processes and Effects:* (1) Subsurface microbiology, contaminant transport, and factors affecting mobilization and immobilization of mixed waste regimes in systems, including new technologies to characterize microbes and the groundwater systems within which they grow; (2) determination of the movement and fate of contaminants and naturally occurring materials introduced along the ocean margins; (3) development of integrated ecological studies focusing on water and nutrient relations in large scale ecosystem research that will contribute to global, and regional research activities.

d. *Atmospheric and Climate Research:* (1) Measurement and control systems for experimental research of biological effects of CO_2 and climate variables; instrumentation to produce and measure tracer material (e.g., C^{11} isotope) for real time studies of carbon fixation and metabolism with plants; (2) ground base remote sensing instruments such as: Radio Acoustical Sounder (RASS) for temperature profiles; Differential Absorption Lidar (DIAL) for water vapor profiles, Raman Lidars for water vapor profiles; Doppler Wind Systems and High Resolution Interferometer Sounder (HIS) for solar and infrared spectral measurements.

2. Chemical and Coal Sciences

a. *Chemical Sciences:* (1) Dynamics and kinetics of high temperature chemical reactions and rapid time-resolved spectroscopy, reaction mechanisms of complex hydrocarbons and hazardous byproducts, and high temperature reaction dynamics/rapid time-resolved spectroscopies; (2) surface chemistry studies including the chemistry of adsorbates, surface compositions, and studies of molecules at solid-solution interfaces; (3) organic and organometallic molecules used in separation processes, including solvent extraction; (4) correlation effects which accompany multi-electron transfer and excitation in laser assisted atomic ion collisions.

b. *Coal Sciences:* (1) Fundamental and thermodynamic effects of temperature and pressure on transport phenomena with or without chemical reactions; measurement and correlation of thermodynamic and transport properties pertinent to coal conversion and utilization; supercritical phase behavior; (2) environmental regeneration chemistry of flue gas cleanup sorbents, reactivity of lime/limestone when used in wet scrubbers, elimination of sulfur, nitrogen, halide, alkali and heavy metal compounds from coal conversion and utilization processes; (3) new reaction sequences for coal liquefaction, including configurations to optimize critical intermediates; novel catalytic approaches to selective conversion of coal gasification products to condensable fuels; new chemistries for coal liquefaction, including coal pretreatment, cleavage of specific bonds and non-poisoned or regenerable catalysts; predictive methods for thermophysical and thermodynamic properties of coal derived liquids.

3. Geosciences

Research on the geology, geophysics and geochemistry of rock/fluid systems, especially particular systems related to discovery and recovery of energy resources or to isolation of energy-related wastes.

a. *Borehole Instrumentation:* (1) In-situ chemistry; (2) pH; (3) In-situ measurement of rock permeability, porosity and strain.

b. *Coupled geoscience processes:* The development of integrated geological models for determining hydrocarbon and geothermal potentials or for understanding dispersion of pollutants; including: (1) Reservoir delineation; (2) assessment of formation stability; and (3) flow in fractured reservoirs or repositories.

c. *Underground imaging:* Research utilizing either seismic or electromagnetic methods.

4. Materials Research

Synthesis, processing and characterization of advanced materials, including: Ceramics and ceramic matrix composites, photovoltaic semiconductors, polymers, and ceramic intermetallic, or polymeric superconductors.

a. Synthesis of controlled ceramic powder or fiber with reduced levels of impurity and foreign particulate contamination and in compliance with relevant health, environment, and safety concerns.

b. Microstructural and microchemical analysis of solids, solid surfaces, solid-solid interfaces, and the characterization of point, line and planar defects and pore structure.

c. Elevated temperature mechanical behavior characterization and processing techniques.

d. Structure and dynamics of materials in relation to properties and phenomena of underlying significance in energy systems.

e. Non-destructive evaluation techniques for porous ceramics used in high temperature filters and membrane separation processes.

5. Plant and Microbial Molecular Research

a. *Basic plant sciences:* Research devoted to understanding the fundamental cellular and molecular mechanisms of plant conversion of solar energy into chemical energy. This would include studies on growth and development, as well as other physiological processes that determine plant productivity as renewable resources (biomass).

b. *Fermentative microbiology:* (1) Examination of the various basic biochemical processes involved in the broad spectrum of metabolic, both anaerobic and aerobic, transformations carried out by non-medical microorganisms; (2) research on the physiology, biochemistry and molecular biology of both monocultures and complex consortia; (3) organisms occupying unique, exotic niches with the potential to be exploited in future energy-related biotechnologies.

While the equipment requested will be equally suitable and may be used for research on other energy-related topics, the need for the instrument(s) must be justified (and the application will be reviewed) in terms of its value and ability to enhance the institution's capabilities in the principal designated energy-related research area specified on the cover sheet. The instrument's utility in advancing other areas of scientific or technical research is of peripheral interest during the application's review procedure.

Eligibility and Limitations

Participation in the URI program is limited to U.S. universities and colleges that currently have active, ongoing DOE-funded research support (including subcontracts) totalling at least $150,000 in value in the specific area for which the equipment is requested during the past two fiscal years (October 1, 1988 to September 30, 1990).

DOE is establishing this limitation to ensure that the instrumentation acquired with these grants will significantly expand the research capability of institutions which have already demonstrated the capability to perform long-range energy research. The Office of Energy Research believes that restricting eligibility to institutions which have performed $150,000 of DOE supported research over a two-year period will limit eligibility in this grant program to those institutions which, because of their existing commitment to energy research, are best able to incorporate advanced instrumentation into their research programs. Special consideration will be given to Historically Black Colleges and Universities (HBCU's) which meet the institutional eligibility criteria, and have significant research capabilities in the selected research area. DOE will consider only requests for larger instruments, costing about $100,000 or more, which are required to advance research in the designated area. Small research instruments (less than $100,000 each) will not be eligible for consideration in this program. General purpose computing equipment is also not eligible under this program. However, laboratory computers and associated peripherals dedicated for use directly with the istrument(s) requested (or for use with existing research instrument(s) in the selected area may be considered. Computer equipment for theoretical research will be eligible under this program, but will be given secondary consideration relative to instrumentation for experimental research.

Application Forms

Program solicitations are expected to be ready for mailing by October 10, 1990. Applications must be prepared and submitted in accordance with the instructions and forms included in the program soliciation. Copies may be obtained by writing to: Office of University and Science Education Programs, Office of Energy Research, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone Number: (202) 586–8910.

Closing Date for Transmittal of Applications

To be eligible, applications must be received at the following address by 4:30 p.m., local prevailing time, December 10, 1990.

DOE University Research Instrumentation Program, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402.

Authority for the University Research Instrumentation Program is contained in section 31 (a) and (b) of the Atomic Energy Act of 1954 (42 U.S.C. 2051) and section 209 of the Department of Energy Organization Act (42 U.S.C. 7139).

(Catalog of Federal Domestic Assistance No. 81.077, University Research Instrumentation Program)

Issued in Washington, DC on October 1, 1990.

Ira M. Adler,

Director, Office of Management, Office of Energy Research.

[FR Doc. 90–24135 Filed 10–11–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Coal Policy Committee, National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Wednesday, November 7, 1990, 8:30 a.m. to 11:25 a.m.

Place: Ritz-Carlton Pentagon City Hotel, 1250 South Hayes Street, Arlington, VA.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To discuss new studies.

Tentative Agenda:

—Call to order by William Wahl, Chairman.
—Address by the Honorable Robert H. Gentile, Assistant Secretary for Fossil Energy.
—Discussion of new studies tc be undertaken.
—Discussion of any other business properly brought before the National Coal Council Coal Policy Committee.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate

—Discussion of any other business properly brought before the National Coal Council Coal Policy Committee.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any

phase of the cogeneration facility, expected to be November 1, 1991, which would initiate the term of the requested import authorization.

The gas would enter the United States at the international border near Iroquois, Ontario/Waddington, New York, where the pipeline facilities of TransCanada PipeLines Limited (TCPL)

Corporation (Niagara Mowhawk). Thermal energy recovered from the facility would be used by Kraft, Inc.

The gas purchase agreement between L&J Energy and Morgan dated March 9, 1990, is for a term of 15 years with provision for a five-year extension. Under its terms, L&J Energy would pay a two-part price consisting of a demand

during the contract year times the volumes not taken below that minimum quantity. In addition, the amount which Morgan is obligated to supply is subject to reduction if L&J Energy takes less than 70 percent of the annual contract quantity.

Under the gas purchase agreement, Morgan is required by July 15, 1991 (but

preparation of the FEIS and will independently review the results of the FERC environmental evaluation of these facilities in the course of making its own environmental determination. No final decision will be issued in this proceeding will the DOE has met its NEPA responsibilities.

—Discussion of any other business properly brought before the National Coal Council Coal Policy Committee.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wished to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 5, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90–24009 Filed 10–11–90; 8:45 am]

BILLING CODE 6450–01–M

National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Thursday, November 8, 1990, 9:30 a.m. to 12 Noon.

Place: Ritz-Carlton Pentagon City Hotel, 1250 South Hayes Street, Arlington, VA.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:
—Call to order by William Carr, Chairman of the National Coal Council.
—Remarks by Chairman Carr.
—Remarks by the Honorable James D. Watkins, Secretary of Energy.
—Report of the Coal Policy Committee.
—Report of the Finance Committee.
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wished to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 5, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90–24008 Filed 10–11–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–63–NG]

L&J Energy Systems, Inc.; Application for Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Long-Term Authorization to Import Natural Gas From Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on July 16, 1990, and supplemented on September 14, 1990, by L&J Energy Systems, Inc. (L&J Energy), requesting authorization to import up to 11,700 Mcf per day of natural gas from Canada over a period of 20 years. The imported gas would be purchased from Morgan Hydrocarbons, Inc. (Morgan) and used to fuel the applicant's new 40-megawatt, combined-cycle cogeneration facility in the Village of Lowville, New York. The L&J Energy plant is under construction and scheduled for commercial operation January 1, 1992. Delivery of the gas would begin on the first day of the test phase of the cogeneration facility, expected to be November 1, 1991, which would initiate the term of the requested import authorization.

The gas would enter the United States at the international border near Iroquois, Ontario/Waddington, New York, where the pipeline facilities of TransCanada PipeLines Limited (TCPL) and the proposed Iroquois Gas Transmission System (Iroquois) interconnect, and then would be transported by Iroquois to Watson, New York. A six-mile tie pipeline would be built by L&J Energy between the facilities of Iroquois and the cogeneration plant site.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 13, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

P. J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: L&J Energy is a New York corporation with its principal place of business in Tampa, Florida. Its cogeneration facility was certified by the Federal Energy Regulatory Commission (FERC) as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA). *See L&J ENERGY SYSTEMS, INC.*, 45 FERC Para. 62,029 (1988). In addition, L&J Energy has certified to the DOE pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended (54 FR 52886, December 22, 1989), that the cogeneration facility would be capable of using coal or another alternate fuel as a primary energy source. The electricity produced by the cogeneration facility would be sold to Niagara Mowhawk Power Corporation (Niagara Mowhawk). Thermal energy recovered from the facility would be used by Kraft, Inc.

The gas purchase agreement between L&J Energy and Morgan dated March 9, 1990, is for a term of 15 years with provision for a five-year extension. Under its terms, L&J Energy would pay a two-part price consisting of a demand and commodity component. L&J would receive the gas near the Alberta-Saskatchewan border at Burstall, Saskatchewan, where the pipeline facilities of Nova Corporation of Alberta (Nova) interconnect with TCPL. Transportation beyond Burstall to the Iroquois system would be covered by a separate transportation service agreement that L&J Energy intends to enter into with TCPL. The monthly demand charge would be the product of the average of the daily contract quantities on each day of the relevant month (excluding quantities delivered to the cogeneration facility during its test phase) and the monthly demand rate. The demand rate would be the sum of the demand charges paid by Morgan to Nova for deliveries at the Alberta border and a supply reservation fee of $0.20 (U.S.) per MMBtu. The commodity charge is set initially at $1.60 (U.S.) per MMBtu and would be adjusted quarterly pursuant to a formula which is based equally on the percentage change in Niagara Mohawk's average annual marginal avoided energy cost above or below a base cost of $0.0253 per kilowatthour and the percentage change in CNG Transmission Corporation's gas commodity component in its RQ Rate Schedule above or below a base cost of $2.4146 (U.S.) per MMBtu. L&J Energy is entitled to a monthly credit against the commodity charges and fuel charges billed by TCPL directly to L&J Energy. There is a provision for renegotiation of the pricing terms every two years and binding arbitration, if necessary.

Under the pricing scheme, L&J Energy estimated that the price on January 1, 1990, for deliveries of this gas at the Alberta border, if deliveries had then taken place, would have been approximately $2.25 [U.S.) per MMBtu. Based on TransCanada's current transportation rates, the total delivered cost of the imports at the U.S./Canada border near Waddington, New York would have been approximately $2.87 (U.S.) per MMBtu at a 100 percent load factor.

If L&J Energy's gas purchases from Morgan fall below 60 percent of the aggregate of the annual contract quality (11,700 x 365 days), L&J Energy must pay a deficiency charge equal to the average of the commodity charges in effect during the contract year times the volumes not taken below that minimum quantity. In addition, the amount which Morgan is obligated to supply is subject to reduction if L&J Energy takes less than 70 percent of the annual contract quantity.

Under the gas purchase agreement, Morgan is required by July 15, 1991 (but in no event later than July 15, 1992), to dedicate sufficient reserves to suply the cogeneration facility throughout the term of agreement. L&J Energy indicates that Morgan has already dedicated sufficient reserves to the import project for the first twelve contract years. It is noteworthy that with respect to the decision to select Morgan as a supplier, L&J Energy states that it contacted several potential domestic and Canadian gas suppliers, but was not able to find terms that were as competitive as those negotiated with Morgan.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that its proposed import arrangement is and would remain competitive over the term of the requested authorization and that the gas supply is secure. Parties opposing the proposed import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the application is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and purchase price in order to facilitate monitoring of the operation of the DOE's natural gas import program.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC, on June 1, 1990, issued a Final Environmental Impact Statement (FEIS) on the impacts of constructing and operating the Iroquois pipleine facilities (FERC/EIS–0054). The DOE participated as a cooperating agency during the preparation of the FEIS and will independently review the results of the FERC environmental evaluation of these facilities in the course of making its own environmental determination. No final decision will be issued in this proceeding will the DOE has net its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to itnervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be used based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of L&J Energy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., October 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-24136 Filed 10-11-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-55-NG]

JMC Fuel Services, Inc.; Application To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 10, 1990, of an application filed by JMC Fuel Services, Inc. (JMC Fuel), requesting blanket authorization to export from the United States to Canada up to 12 Bcf of natural gas on an interruptible basis over a two-year period commencing with the date of first delivery. JMC Fuel intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported natural gas. JMC Fuel states that it will notify the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 13, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1789.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: JMC Fuel, a Delaware corporation and wholly owned subsidiary of J. Makowski Company, Inc., is a marketing company created to purchase and market natural gas in both the United States and Canada. The applicant states that the contractual arrangements will be based solely on prevailing market prices and gas supply conditions.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of JMC Fuel's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 9, 1990.

Clifford L. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-24139 Filed 10-11-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-04-NG]

Rochester Gas and Electric Co.; Amendment To Pending Natural Gas Export and Import Application

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of amendment to pending natural gas export and import application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on June 15, 1990, of an amendment to Rochester Gas and Electric Company's (RG&E) pending application to export natural gas to and import natural gas from Canada. The amendment would increase the volumes which RG&E seeks authorization to export to Canada at St. Clair, Michigan, from up to 185 MMcf per day of natural gas to up to 227.5 MMcf per day, for subsequent import from Canada at Grand Island, New York, over a 15-year period. The remaining terms of the proposed export and import of natural gas would remain essentially the same as described in the notice of RG&E's original application issued March 16, 1990, (55 FR 10662, March 22, 1990). The increased volumes, like the volumes in RG&E's original request, would be a means of supplying gas for RG&E's system supply and would not result in a net export or import of natural gas except for small amounts supplied to TransCanada PipeLines Limited (TransCanada) for fuel gas to transport the exported volumes in Canada. Transportation arrangements have been modified to the extent necessary to reflect the amended volumes for which RG&E seeks to export and import. The gas would be moved for export at St. Clair, Michigan, utilizing existing facilities of Great Lakes Gas Transmission Company (Great Lakes) and ANR Pipeline Company. Transportation of the gas to RG&E after it reenters the U.S. at Grand Island, New York, would be via the proposed Empire State Pipeline, a 155-mile, 24-inch pipeline to be constructed jointly by Empire State Pipeline Company, Inc. and St. Clair Pipeline Company, Inc.

Motions to intervene, notices of intervention and written comments are invited. Commentors who filed motions to intervene in response to the notice of RG&E's original export/import proposal need not file additional motions or comments on the amended application to retain their intervention status. Such commentors may file additional comments if they wish to do so.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than November 13, 1990.

ADDRESSES: Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Stanley C. Vass, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 353-3166.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: In response to the notice of RG&E's original export/import application, a motion to intervene, without comment, was filed by Great Lakes. CNG Transmission Corporation (CNG) filed a motion to intervene in opposition to RG&E's export/import proposal and requested a trial-type hearing. National Fuel Gas Supply Corporation (National Fuel) filed a motion to intervene and requested additional proceedings if it is determined that the Federal Energy Regulatory Commission (FERC) does not have jurisdiction over the proposed Empire State Pipeline or over a proposed alternative pipeline arrangement to transport the gas to RG&E filed by National Fuel.

On July 10, 1990, CNG filed a motion requesting FE to reject the amendment to RG&E's application increasing the volumes of natural gas which RG&E seeks to export to Canada and subsequently import back into the U.S. CNG contends that the amendment should be rejected because: (1) RG&E did not disclose in the amendment that RG&E's proposed exportation of natural gas to and importation of gas from Canada was being considered at the FERC; and (2) RG&E does not have firm transportation arrangements for all of the gas RG&E proposes to export and import. On July 25, 1990, RG&E filed an answer to CNG's motion contending that: (1) RG&E had disclosed in its amendment that its export/import proposal was under consideration at the FERC; and (2) that the regulations applicable to RG&E's export/import application do not restrict FE's authority to review and approve applications to situations in which all transportation arrangements have been finalized prior to the filing of the applications.

Since, according to the application, the same gas would be exported and imported solely as part of a transportation arrangement, and would not be sold or stored in Canada, the DOE does not believe that it is necessary to consider in its evaluation domestic need for the gas with respect to the proposed export, nor competitiveness, need for the gas, or security of supply with respect to the proposed import. The DOE will consider the impact of the transportation arrangement on the availability of gas in markets served by Great Lakes' and ANR's pipeline systems, and by the proposed Empire State Pipeline.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC is currently performing an environmental review of the impacts of constructing and operating the proposed facilities related to this project in FERC Docket Nos. CP90-316-000 and CP90-317-000. The DOE will independently review the results of the FERC evaluation of this project in the course of making its own environmental determination. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities regarding the RG&E application.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. For those who have already filed motions to intervene in this proceeding, this is an opportunity to file further comments or revise previous comments based on the amendment to the application. Any other person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be

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taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional

Issued in Washington, DC, October 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-24140 Filed 10-11-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-57-NG]

Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 9, 1990.

Clifford P. Tomaszewski,

monitor the movement of radionuclides through the trenches and vadose zone. EPA stated that potentially significant adverse impacts to ground water would be sufficiently reduced if an adequate monitoring system to ensure early detection and correction of such problems were a part of the proposed project.

accordance with the substantive requirement of the Clean Water Act, NEPA and potentially, the Clean Air Act. Furthermore, EPA believes that the draft EIS does not fulfill NEPA's requirements for disclosure of significant environmental impacts and evaluation of less damaging

Sanctuaries Act section 103 Permit). EPA requested the opportunity to review a draft copy of the Navy's Record of Decision before it is officially issued.

ERP No. FA-FHW-B40050-MA Central Artery/I-93 and Third Harbor Tunnel/I-90, South Boston Haul Road Construction Dorchester Avenue to

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taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.s.t., November 13, 1990.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of RG&E's amended application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–24140 Filed 10–11–90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90–57–NG]

Tejas Power Corp.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tejas Power Corporation (Tejas Power) blanket authorization to export from the United States to Mexico up to 200 Bcf of natural gas over a two-year period commencing on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–24137 Filed 10–11–90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90–58–NG]

Transco Energy Marketing Co.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an Order granting blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Transco Energy Marketing Company (TEMCO) blanket authorization to export from the United States to Canada up to 73Bcf of natural gas over a two year period commencing on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–24138 Filed 10–11–90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3852–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 24, 1990 Through September 28, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D–AFS–J65162–MT Rating EC2, Mill-Lion Project area Timber Sale, Implementation, Lewis and Clark National Forest, Musselshell Ranger District, Meagher County, MT.

Summary. EPA believes the Forest Service's preferred alternative would impact water quality/fisheries on several creeks, one river, and potentially a storage reservoir. No water quality monitoring is proposed for this project and overgrazing of livestock appears to contribute to existing unacceptable sediment loading in the sale are drainages.

ERP No. D–BLM–K00001–00 Rating E02, Ward Valley Low-Level Radioactive Waste Disposal Facility, Site Selection, Construction and Operation, Funding and Right-of-Way Grants, San Bernardino County, CA.

Summary. EPA expressed environmental objections because of the potential for significant adverse impacts associated with the migration of radionuclides to ground water and the vadose zone. The draft EIS lacked sufficient information on the procedures and methodology that would be used to

monitor the movement of radionuclides through the trenches and vadose zone. EPA stated that potentially significant adverse impacts to ground water would be sufficiently reduced if an adequate monitoring system to ensure early detection and correction of such problems were a part of the proposed project.

ERP No. D–FHW–E40732–NC Rating EC2, North Charlotte Outer Loop Construction NC–27/Mount Holly Road to I–85 near U.S. 29 Connection, Funding, section 404 Permit, Mecklenburg County, NC.

Summary. EPA believes that the potential noise impacts should be reduced and mitigation measures proposed. Wetland losses should also be reduced. EPA also had concerns over the potential impact to area drinking water supplies.

ERP No. D–FHW–E40733–NC Rating EC2, West Charlotte Outer Loop Construction, I–77 South near Westinghouse Boulevard to NC 27, Funding, section 404 Permit, Mecklenburg County, NC.

Summary. EPA's review concluded that additional air quality analysis and clarification of wetland losses and mitigation potential should be completed in the final EIS. Additionally, clarification of the noise analysis and greater examination of potential mitigation options should be completed.

ERP No. D–USA–K11042–00 Rating EC2, Presidio of San Francisco Army Base, Closure and Relocation to other Facilities, Implementation, Alternates are in CA, CO, GA, HI, KY, MD, MO, NC, PA, SC, TX, WA and DC.

Summary. EPA expressed concerns that since the 1985 Presidio of San Francisco has had unresolved compliance problems due to the improper disposal of polychlorinated biphenyls (PCBs). EPA asked that the final EIS contain more information on the contamination and cleanup of PCBs and other hazardous wastes.

ERP No. DB–FHW–B40050–MA Rating EU2, Central Artery/I–93 to Third Harbor Tunnel/I–90 Extension, Design Modifications, Updated and Additional Information, Funding, COE section 10 and 404 Permits, U.S. CGD Permits, and EPA NPDES Permit, Suffolk County, MA.

Summary. EPA does not object to the proposed project as a whole. However, EPA believes that certain key elements of the project as currently proposed, (i.e., material disposal, and construction impacts), would cause adverse environmental impacts. These impacts are of sufficient magnitude that the project should not proceed until they are resolved in the supplemental final EIS in accordance with the substantive requirement of the Clean Water Act, NEPA and potentially, the Clean Air Act. Furthermore, EPA believes that the draft EIS does not fulfill NEPA's requirements for disclosure of significant environmental impacts and evaluation of less damaging alternatives. Finally, EPA encourages FHWA to take a creative approach to evaluating the myriad mitigation and environmental enhancement measures appropriate for a project of this magnitude.

Final EISs

ERP No. F–AFS–G65050–NM Eagle Peak and Buzzard Timber Sales Management Plan, Implementation, Reserve Ranger District, Gila National Forest, Catron County, NM.

Summary. EPA has no objections to the proposed action as described.

ERP No. F–SFW–K64015–CA Seal Beach National Wildlife Refuge and Seal Beach Naval Weapons Station Endangered Species Management and Protection Plan, Development and Implementation, Orange County, CA.

Summary. Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F–UAF–K11040–CA Beale Air Force Base Realignment Relocation of 323rd Flying Training Wing out of Mather AFB, Implementation, Yuba County, CA.

Summary. EPA stated that the final EIS did not provide sufficient information to determine the selected alternatives' compliance with section 404 of the Clean Water Act which regulates the discharge of dredged or fill material into waters of the United States. EPA also requested the implementation of mitigation measures to protect water quality, air quality, wetlands and biological resources, and mitigation regarding solid waste recycling and hazardous waste minimization.

ERP No. F–USN–K35030–CA P–202 Naval Air Station Alameda and P–082 Naval Supply Center Oakland Dredging Projects, Implementation.

Summary. EPA raised a number of issues on the draft EIS that was not addressed in the final EIS. Accordingly, EPA agreed with the Navy's commitment to prepare subsequent EISs to address the environmental impacts of dredged materials disposal at either an uplands site (Skaggs Island) or an ocean disposal site. The Navy needs to provide additional information in order to receive either an uplands site disposal permit (Clean Water Act section 404 Permit) or an ocean disposal permit (Marine Protection, Research and Sanctuaries Act section 103 Permit). EPA requested the opportunity to review a draft copy of the Navy's Record of Decision before it is officially issued.

ERP No. FA–FHW–B40050–MA Central Artery/I–93 and Third Harbor Tunnel/I–90, South Boston Haul Road Construction Dorchester Avenue to Congress Street Funding, COE section 404 Permit and EPA NPDES Permit, City of Boston, Suffolk County, MA.

Summary. EPA believes that our concerns raised on the draft EIS have been satisfactorily resolved.

ERP No. FS–AFS–K65065–NV Humboldt National Forest, Land and Resource Management Plan, Implementation, Elko, Humboldt, Nye, Lincoln and White Pine, NV.

Summary. Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

Dated: October 9, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90–24142 Filed 10–11–90; 8:45 am]

BILLING CODE 6560-50-M

[ER–FRL–3852–1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities. General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed October 01, 1990 Through October 05, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900370, FINAL EIS, AFS, CA, Sherwin Bowl Ski Area Development, Alpine Skiing, Special Use Permit, Inyo National Forest, Mammoth Ranger District, Mono County, CA, Due: November 12, 1990, Contact: John Ruopp (619) 873–5841.

EIS No. 900371, DRAFT EIS, GSA, MI, Internal Revenue Service Detroit Computing Center Expansion, Construction, Wayne County, MI, Due: November 26, 1990, Contact: Ms. Sharon Malloy (312) 353–5610.

EIS No. 900372, FINAL EIS, MMS, AK, 1991 Beaufort Sea Outer Continental Shelf (OCS) Oil and Gas Sale 124, Lease Offering, AK, Due: November 12, 1990, Contact: Richard H. Miller (703) 787–1674.

EIS No. 900373, DRAFT EIS, AFS, WI, Sunken Camp Area, Management Plan, Implementation, Chequamegon National Forest, Washburn Ranger District, Bayfield County, WI, Due: December 01, 1990, Contact: Steven J. Christiansen (715) 373–2667.

EIS No. 900374, DRAFT EIS, FHW, AR, Siloam Springs Highway Construction, Siloam Springs to Springdale, Funding, Section 404 Permit, Benton and Washington Counties, AR, Due: December 03, 1990, Contact: Marion Butler (501) 569–2281.

EIS No. 900375, DRAFT EIS, REA, FL,

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement

Dated: September 27, 1990.

Richard L. Caspe,

Director, Emergency and Remedial Response Division.

[FR Doc. 90–24022 Filed 10–11–90; 8:45 am]

BILLING CODE 6560-50-M

Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the

EIS No. 900374, DRAFT EIS, FHW, AR, Siloam Springs Highway Construction, Siloam Springs to Springdale, Funding, Section 404 Permit, Benton and Washington Counties, AR, Due: December 03, 1990, Contact: Marion Butler (501) 569–2281.
EIS No. 900375, DRAFT EIS, REA, FL, Hardee Power Station and Related Facilities, 230kV Transmission Line and Natural Gas Pipeline, Construction and Operation, Loan Guarantee, NPDES Permit, Hardee, Polk, DeSoto, Lee and Charlotte Counties, FL, Due: November 26, 1990, Contact: Alex M. Cockey (202) 382–8437.
EIS No. 900376, DRAFT EIS, AFS, MT, Montanore Mine/Mill Project, Construction and Operation, Permit Approval, section 404 Permit, Special Use Permit, Kootenai National Forest, Lincoln and Sanders Counties, MT, Due: December 11, 1990, Contact: Ron Erickson (406) 293–6211.
EIS No. 900377, DRAFT EIS, BPA, WA, ID, WY, OR, MT, UT, Initial Northwest Power Act, Power Sales an Residential Exchange Contracts, WA, OR, ID, MT, WY and Ut, Due: December 10, 1990, Contact: Carol M. Borgstrom 1(800) 841–5867.
EIS No. 900378, FINAL EIS, UAF, MA, OTIS Air National Guard Base Wastewater Treatment Facility, Continuing Operation, Barnstable County, MA, Due: November 12, 1990, Contact: Dick Masse (301) 981–8160.
EIS No. 900379, FINAL SUPPLEMENT, AFS, CA, Mt. Shasta Ski Area Development, Selecting National Forest System Land for Alpine Skiing, Implementation, Siskiyou County, CA, Due: November 12, 1990, Contact: Duane H. Lyon (916) 246–5499.
EIS No. 900380, DRAFT EIS, USN, WA, Naval Station Puget Sound (NSPS) Sand Point Realignment to NSPS Everett, Implementation, City of Seattle, WA, Due: November 26, 1990, Contact: Don Morris (206) 476–1091

Dated: October 09, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90-24141 Filed 10-11-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3851-9]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Malone Service Company, Texas City, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Malone Service Company, for the Class I injection wells located at Texas City, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Malone Service Company, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Texas City, Texas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued August 1, 1990. A public hearing was held September 5, 1990, and a public comment period ended on September 14, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of September 28, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Municipal Facilities Branch, EPA—Region 6, telephone (214) 655–7110, (FTS) 255–7110.

Myron O. Knudson, P.E.,

Director, Water Management Division (6W).

[FR Doc. 90-24021 Filed 10-11-90; 8:45 am]

BILLING CODE 6560-50-M

CFRL-3851-21

Proposed Settlement Under Section 122(h) of Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve past liabilities of six parties for costs incurred by EPA at The Canny Superfund Site.

DATES: Comments must be provided on or before November 12, 1990.

ADDRESSES: comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York City, New York, 10278 and should refer to: In Re: The Canny Site in Binghamton, New York, U.S. EPA Index No. II CERCLA–122–00201.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York City, New York, 10278, FTS 264–9858, (212) 264–9858, Attention: Douglas Fischer.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning The Canny Site in Binghamton, New York. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States. Below are listed the parties committed to participate in this settlement.

Dorothy Conlon, William Canny, Mary Louise Hacker, Franklin D. Fletcher, Joseph Canny, Barbara Broggs.

These six Settling Parties will pay $22,345.56 in settlement payments under this agreement which represents all of EPA's expenditures for response actions at The Canny Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York City, New York 10278.

Dated: September 27, 1990.

Richard L. Caspe,

Director, Emergency and Remedial Response Division.

[FR Doc. 90-24022 Filed 10-11-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200235–002.

Title; Port of Palm Beach District/Palm Beach Steamship Company Agency, Inc. Terminal Agreement.

Parties:

Port of Palm Beach District (PPBD)
Palm Beach Steamship Company Agency, Inc. (PBSC)

Synopsis: The Agreement amends the parties' basic agreement to provide for PPBD to grant PBSC 4,883 additional square feet of warehouse space and 954 additional square feet of office space in Warehouse A for its exclusive use. The Agreement also defines the additional premises and certain rental terms.

By Order of the Federal Maritime Commission.

Dated: October 5, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-24064 Filed 10-11-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement nos.: 224–002810–004.

Title: Tampa Port Authority/Harborside Refrigerated Services, Inc. Terminal Agreement.

Parties:

Tampa Port Authority
Harborside Refrigerated Services (RSI)

Filing party: Edward J. Sheppard, Garvey, Schubert & Barer, Fifth Floor, 1000 Potomac Street, NW., Washington, DC 20007.

Synopsis: The Agreement amends the basic agreement to revise the permitted uses of the terminal facilities and to allow RSI to mortgage or pledge its leasehold interest in the premises.

Agreement nos.: 224–003079–010.

Title: Tampa Port Authority/Eller & Company, Inc. Terminal Agreement.

Parties:

Tampa Port Authority
Eller & Company, Inc. (Eller).

Filing party: Edward J. Sheppard, Garvey, Schubert & Barer, Fifth Floor, 1000 Potomac Street, NW., Washington, DC 20007.

Synopsis: The Agreement amends the basic agreement to: (1) Revise the permitted uses of the terminal facility; (2) decrease the acreage and compensation for the leased premises; (3) eliminate the minimum annual guarantee; (4) provide that the parties relinquish certain other rights and obligations; and (5) allow Eller to mortgage or pledge its leasehold interest in the premises.

By Order of the Federal Maritime Commission.

Dated: October 5, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-24065 Filed 10-11-90; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Frontier Cruises Limited, 133 E. 55th Street, New York, NY 10022.
Vessel: Frontier Spirit.

Dated: October 5, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-24063 Filed 10-11-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Garfield County Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

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accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 1990.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Garfield County Bancshares, Inc.*, Jordan, Montana; to engage *de novo* in real estate and personal property appraising § 225.25(b)(13), and making and servicing loans § 225.25(b)(1) in Jordan, Montana.

Board of Governors of the Federal Reserve System, October 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-24066 Filed 10-11-90; 8:45 am]

BILLING CODE 6210-01-M

Libanco, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 6, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Libanco, Inc.*, Gowrie, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank of Gowrie, Gowrie, Iowa.

2. *Peotone Bancorp, Inc.*, Peotone, Illinois; to acquire 15.62 percent of the voting shares of Founders Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Founders Bank of Arizona, Scottsdale, Arizona.

3. *Scott County Bancorp, Inc.*, Winchester, Illinois; to acquire 9.09 percent of the voting shares of Founders Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Founders Bank of Arizona, Scottsdale, Arizona.

4. *Terrapin Bancorp, Inc.*, Elizabeth, Illinois; to acquire 8.66 percent of the voting shares of Founders Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Founders Bank of Arizona, Scottsdale, Arizona.

5. *Valley Bancorporation*, Appleton, Wisconsin; to acquire 100 percent of the voting shares of Exchange State Bank of LaCrosse, LaCrosse, Wisconsin.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Taylor Bancshares, Inc.*, North Mankato, Minnesota; to acquire 100 percent of the voting shares of Valley Bank Minnesota, Jordon, Minnesota.

Board of Governors of the Federal Reserve System, October 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-24067 Filed 10-11-90 8:45 am]

BILLING CODE 6210-01-M

Mr. David B. Lilly, Sr., et al., Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 29, 1990.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261

1. *Mr. David B. Lilly, Sr.*, Middleburg, Virginia; to acquire 18.63 percent of the voting shares of Harvest Bancorp, Inc., Hamilton, Virginia, and thereby indirectly acquire The Farmers & Merchants National Bank of Hamilton, Hamilton, Virginia.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Don A. Brockmeier*, Holdredge, Nebraska; to acquire an additional 6.57 percent of the voting shares of Eustis Bancshares, Inc., Eustis, Nebraska, for a total of 25.94 percent, and thereby indirectly acquire Farmers State Bank, Eustis, Nebraska.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *E. Paul DeTray*, Olympia, Washington; to acquire 15.9 percent of the voting shares of First Community Bancorp, Lacey, Washington, and thereby indirectly acquire First Community Bancorp, Lacey, Washington, and First Community Bank of Washington, Lacey, Washington.

Board of Governors of the Federal Reserve System, October 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-24068 Filed 10-11-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: GSA Board of Contract Appeals (GA), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0221, GSA Board of Contract Appeals Rules of Procedure. The Board of Contract Appeals requires the background information collected so that it will be properly informed to hold hearings on contract appeals and bid protests.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 420; *annual responses:* 1.0; *average hours per response:* 0.1000; *burden hours:* 42.

FOR FURTHER INFORMATION CONTACT: Thomas R. Sisti, (202) 501-0890. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2727, or by faxing your request to (202) 501-2727.

Dated: September 28, 1990.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 90-24030 Filed 10-11-90; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Advisory Committee on Childhood Lead Poisoning Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee Meeting:

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Time and date:

8:30 a.m.-5 p.m., November 1, 1990.

8:30 a.m.-3:30 p.m., November 2, 1990.

Place: The Northlake Holiday Inn, 4156 LaVista Road, Capitol Ballroom, Atlanta, Georgia 30084.

Statute: Open to the public, limited only by the space available.

Purpose: This Committee will provide advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director, CDC, on revisions to the policy statement entitled "Preventing Lead Poisoning in Young Children," dated January 1985. The revised policy statement will reflect research findings since 1985.

Matters To Be Discussed: This statement is used by pediatricians and lead screening programs throughout the United States. The Committee will consider new research findings on lead toxicity in making recommendations for updating the statement.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Sue Binder, M.D., Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop: F28, Atlanta, Georgia 30333, telephone: 404/488-4880, (FTS) 236-4880.

Dated: October 5, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-24123 Filed 10-11-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Orlando District Office, chaired by Douglas Tolen, District Director. The topic to be discussed is food labeling proposals.

DATES: Friday, October 26, 1990, 10 a.m. to 12 m. .

ADDRESSES: Brevard County Agricultural Center Auditorium, 3695 Lake Dr., Cocoa, FL 32926.

FOR FURTHER INFORMATION CONTACT: Lynne Issacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809, 407-855-0900.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 5, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-24090 Filed 10-11-90; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Orlando District Office, chaired by Douglas Tolen, District Director. The topic to be discussed is food labeling proposals.

DATES: Thursday, October 18, 1990, 6:30 p.m. to 6:30 p.m.

ADDRESSES: Cooperative Extension Service, Agricultural Center Auditorium, 2350 East Michigan St., Orlando, FL 32806.

FOR FURTHER INFORMATION CONTACT: Lynne Issacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809, 407-855-0900.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 5, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-24091 Filed 10-11-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OACT-034-N]

RIN 0938-AE65

Medicare Program; Part A Premium for the Uninsured Aged for 1991

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the hospital insurance premium for the uninsured aged for calendar year 1991 under Medicare's hospital insurance program (Part A). The monthly Medicare Part A premium for the 12 months beginning January 1, 1991 for individuals who are not insured under the Social Security or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Part A is $177. Section 1818(d) of the Social Security Act specifies the method to be used to determine this amount.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966-6388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare hospital insurance program (Medicare Part A),

subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to Part A. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act, as amended by section 103 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988), requires the Secretary to determine and publish, during September of each calendar year, the amount of the monthly premium for the following calendar year for persons who voluntarily enroll in Medicare Part A.

Section 1818(d) of the Act, as amended by section 103 of Public Law 100-360, requires the Secretary to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and for related administrative costs incurred in the following year with respect to individuals age 65 and over who will be entitled to benefits under Part A. The Secretary must then, during September of each year, determine the monthly actuarial rate (the per capita amount estimated above divided by 12) and publish the dollar amount to be applicable for the monthly premium in the succeeding year. If the premium is not a multiple of $1.00, the premium is rounded to the nearest multiple of $1.00 (or if it is a multiple of 50 cents but not of $1.00, it is rounded to the next highest $1.00). The 1990 premium under this method was $175 and was effective January 1990. (See 54 FR 48322, November 22, 1989.)

II. Premium Amount for 1991

Under the authority of section 1818(d)(2) of the Act (42 U.S.C. 1395i-2(d)(2)), the Secretary has determined that the monthly Medicare Part A hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1991 is $177.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Premium Rate

As discussed in section I of this notice, the monthly premium for the uninsured aged for 1991 is equal to the estimated monthly actuarial rate for 1991 rounded to the nearest multiple of $1. The monthly actuarial rate is defined to be one-twelfth of the average per capita amount that the Secretary estimates will be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in 1991 for individuals age 65 and over who will be intitled to benefits under the hospital insurance program. Thus, the number of individuals age 65 and over who will be entitled to hospital insurance benefits and the costs incurred on behalf of these beneficiaries must be projected to determine the premium rate.

The principal steps involved in projecting the future costs of the hospital insurance program are (a) establishing the present cost of services provided to beneficiaries, by type of service, to serve as a projection base; (b) projecting increases in payment amounts for each of the various service types; and (c) projecting increases in administrative costs. Establishing historical Part A enrollment and projecting future enrollment, by type of beneficiary, is part of this process.

We have completed all of the above steps, basing our projections for 1991 on (a) current historical data and (b) projection assumptions under current law from the Midsession Review of the President's Fiscal Year 1991 Budget. It is estimated that in calendar year 1991, 30.586 million people age 65 and over will be entitled to Part A benefits (without premium payment), and that these individuals will, in 1991, incur $65.048 billion of benefits for services performed and related administrative costs. Thus, the estimated monthly average per capita amount is $177.23 and the monthly premium is $177.

IV. Costs to Beneficiaries

The 1991 Part A premium is about 1 percent higher than the $175 monthly premium amount for the 12-month period beginning January 1, 1990. This increase results from the recalculation of the monthly actuarial rate described in section III of this notice. The increase is small because the premium for 1990 included estimated costs expected to be incurred in 1990 under Public Law 100-360, while the premium for 1991 does not include such costs. (The premium amount for each year is set prospectively, in the manner required by law, based on the law in place at the time of its determination. Although the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101-234, enacted on December 13, 1989), which repealed most of the cost-producing provisions of Public Law 100-360, was enacted before the start of calendar year 1990, Public Law 100-360 was in place when the 1990 premium was determined and promulgated.)

We estimate that there are, as of July 1, 1990, approximately 63 thousand enrollees who are voluntarily enrolled in Medicare's hospital insurance program (Part A) by paying the premium, who do not otherwise meet the requirements for entitlement. The estimated cost of the increase in the premium to these enrollees will be about $1.5 million. However, as a result of section 6013 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239, enacted on December 19, 1989), "Buy-In Under Part A for Qualified Medicare Beneficiaries," we expect, based on preliminary data, that approximately 200 thousand individuals who do not otherwise meet the requirements for entitlement and who are not currently enrolled will be enrolling in Medicare's hospital insurance program by premium payment (with payment of the premium being made by the States).

V. Regulatory Impact Statement

This notice merely announces required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

Authority: Section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 24, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: September 27, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-24102 Filed 10-9-90; 8:45 am]

BILLING CODE 4120-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, October 5, 1990.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. The 1991 Longitudinal Followup to the 1988 National Maternal and Infant Health Survey—NEW—The 10,000 women who had live births in 1988 and participated in the MNIHS will be reinterviewed about the health and development of their children. Of the respondents to the MNIHS who had an infant or fetal death, 2,000 are being reinterviewed about their health and subsequent replacement fertility. For women with live births, their children's pediatricians and any hospitals which treated the children will be mailed questionnaires. Respondents: Individuals or households, businesses or other for-profit, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Mothers	10,800	.61	1
Medical Care Providers & Hospitals	11,512	.4004	1

Estimated Annual Burden ..... 11,197 hours

2. AIDS Prevention and Surveillance Project Reports—0920-0208—Information and data gathered by recipients of AIDS cooperative agreements are reported to CDC in narrative or summary statistical reports. Project activities include AIDS Surveillance, assessment of AIDS-related knowledge, attitudes and behavior, AIDS public information and education, counseling and HIV testing and special activities to reach minorities at risk. Respondents; State or local governments; Number of Respondents: 64; Number of Responses per Respondent: 4; Average Burden per Response: 3.5 hours; Estimated Annual Burden: 896 hours.

3. Washington, DC Metropolitan Area Drug Study (DC*MADS)—NEW—The Washington , DC Metropolitan Area Drug Study will collect data about the prevalence, incidence, and consequences of drug abuse among non-household and hard-to-reach populations in one metropolitan area, and will integrate the findings with the National Household Survey on Drug Abuse data about the household population subgroups such as the homeless, institutionalized, and school dropouts. Respondents; Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; Number of Respondents: 16,047; Number of Responses per Respondent: 1; Average Burden per Response: 0.51 hours; Estimated Annual Burden: 8,558 hours.

4. Use of Impact-Resistant Lenses in Eyeglasses or Sunglasses—0910-0132—This regulation requires that eyeglasses and sunglasses be fitted with impact-resistant lenses in order to adequately protect the public from potential eye injury resulting from shattering of ordinary glass lenses. Respondents: Businesses or other for-profit, small businesses or organizations; Number of Respondents: 50; Number of Responses per Respondent: 1; Average Burden per Response: 428.28 hours; Estimated Annual Burden: 21,414 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: October 9, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-24173 Filed 10-11-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2905-N-03]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: October 12, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing-and-speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the Federal Register identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the

homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a

Comment: 6525 sq. ft.; one story; wood frame; possible asbestos; needs major rehab; secured area w/alternate access.

Bldg. 523,
Fort George Meade.
Fort Meade, MD Co: Anne Arundel.
Landholding Agency: Army.
Property Number: 219040002.
Status: Unutilized.

location and entry under the United States mining laws, subject to valid existing rights:

Principal Meridian, MT

Kootenai National Forest

Howard Lake Recreation Area (35 acres)
Unsurveyed, but when surveyed will

written request to the Montana State Director at the address specified above. Upon determination by the Montana State Director that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 130 days before the scheduled date of the meeting. The application will

1916. In regard to waterfowl, cooperative arrangements have functioned well because of administrative mechanisms such as advisory councils and liaison specialists. These mechanisms facilitate the exchange of views and information and foster close working relationships.

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Meeting.

homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; room 1E671 Pentagon, Washington, DC 20360–2600; (202) 693–4583; *U.S. Navy:* John Carr, Code 2041C, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332; (202) 325–0474; *GSA:* Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067. (These are not toll-free numbers.)

Dated: October 5, 1990.

Audrey E. Scott,

Deputy Assistant Secretary for Program Development.

Suitable Land (by State)

Oklahoma

Radar Microwave Link Rep. Site,
Stratford, OK Co: Garvin.
Location: 5½ miles west of Stratford on Hwy. 19.
Landholding Agency: GSA.
Property Number: 549040001.
Status: Excess.
Comment: 7.24 acres w/1063 sq. ft. wood/brick frame residence; other structures on land in poor condition.
GSA No. 7–W–OK–553.

Suitable Buildings (by State)

Maryland

Bldg. 533,
Fort George Meade.
Fort Meade, MD Co: Anne Arundel.
Landholding Agency: Army.
Property Number: 219040001.
Status: Unutilized.
Comment: 6525 sq. ft.; one story; wood frame; possible asbestos; needs major rehab; secured area w/alternate access.

Bldg. 523,
Fort George Meade.
Fort Meade, MD Co: Anne Arundel.
Landholding Agency: Army.
Property Number: 219040002.
Status: Unutilized.
Comment: 4307 sq. ft.; one story; wood frame; possible asbestos; needs major rehab; secured area w/alternate access.

New Mexico

Bldg. 1 and 4,
U.S. Navy Reserve Center,
512 N 12th Street.
Carlsbad, NM Co: Eddy.
Landholding Agency: Navy.
Property Number: 779040001.
Status: Excess.
Comment: 2460 sq. ft.; one story; frame/concrete block bldg; most recent use-office; presence of asbestos; and 152 sq. ft. metal storage shed on 1.03 acres.

[FR Doc. 90–24052 Filed 10–11–90; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[E–930–1–4214–10; MTM 067221]

Proposed Withdrawal, Opportunity for Public Meeting, and Correction; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 95 acres of National Forest System (NFS) lands for protection of the Yaak Falls, Ross Creek, and Howard Lake Recreation Areas. The notice of proposed withdrawal first published in the Federal Register on September 29, 1964, Volume 29, Page 13434 (corrected in 34 FR 19772), temporarily segregated the lands from location and entry under the United States mining laws until October 20, 1991. The lands remain open to all uses other than the mining laws.

DATES: Comments and requests for a public meeting must be received by January 10, 1990.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION:

1. On August 23, 1990, the U.S. Department of Agriculture resubmitted an application to withdraw the following described NFS lands from location and entry under the United States mining laws, subject to valid existing rights:

Principal Meridian, MT

Kootenai National Forest

Howard Lake Recreation Area (35 acres)

Unsurveyed, but when surveyed will probably be:
T. 27 N., R. 31 W.,
Sec. 13, that part of SW¼NE¼NE¼, SE¼NW¼NE¼, and SE¼NE¼, lying north of Howard Lake.

Yaak Falls Recreation Area (40 acres)

Unsurveyed, but when surveyed will probably be:
T. 33N., R. 33W.,
Sec. 8, NE¼NE¼.

Ross Creek Recreation Area (20 acres)

Unsurveyed, but when surveyed will probably be:
T. 28N., R. 34 W.,
Sec. 12, S½NE¼NE¼.

The areas described aggregate approximately 95 acres in Lincoln County.

2. The description in Paragraph 1 for Yaak Falls Recreation Area is a correction from that published in 34 FR 19772. Therefore, at 9 a.m. on November 13, 1990, the land unsurveyed, but when surveyed will probably be T. 33 N., R. 33 W., sec. 9, w½NW¼NW¼, will be opened to location and entry under the United States mining laws.

Appropriation of any of this land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The purpose of the proposed withdrawal is to proect the Yaak Falls, Ross Creek, and Howard Lake Recreation Areas.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing with the proposed withdrawal may present their views in writing to the Montana State Director, Bureau of Land Management, at the address specified above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director at the address specified above. Upon determination by the Montana State Director that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

The lands will be segregated from location and entry under the mining laws unless the application is denied or canceled or the withdrawal is approved prior to that date. During the segregative period, all uses other than the mining laws will be permitted.

Dated: September 28, 1990.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90–24094 Filed 10–11–90; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

American Woodcock Management Plan; Availability of Document

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that a final document, "American Woodcock Management Plan", is available for public review. Loss of woodcock habitat and declines of some woodcock populations prompted the development of a Woodcock Management Plan (Plan) by the U.S. Fish and Wildlife Service (hereinafter the Service). The Plan should facilitate cooperative efforts to conserve woodcock in the United States.

ADDRESSES: Copies of this document can be obtained from the Woodcock Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, MD 20708–0619.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Department of Interior has principal responsibility and authority for managing migratory birds, including woodcock. This authority was established by the Migratory Bird Treaty between the United States and Great Britain (on behalf of Canada). The Migratory Bird Treaty has been the cornerstone of cooperative management of migratory birds since its signing in 1916. In regard to waterfowl, cooperative arrangements have functioned well because of administrative mechanisms such as advisory councils and liaison specialists. These mechanisms facilitate the exchange of views and information and foster close working relationships. For woodcock, cooperation has always existed in spirit and in more tangible forms such as survey work and periodic symposia for the exchange of ideas and information. However, effective continuous cooperation on a region-wide, operational basis has been hampered by the lack of administrative mechanisms such as those that exist for waterfowl. This plan was designed to build upon existing mechanisms to promote shared cooperation and responsibility in the management of woodcock.

The purpose of this Plan is to guide the conservation of woodcock in the United States. It describes ways in which the Service, State conservation agencies, other public agencies, and private organizations can work cooperatively in addressing problems, developing management programs, and otherwise assuring the future well-being of woodcock. Primarily due to habitat losses, woodcock are now less abundant than in recent decades. Although the effect of hunting on woodcock populations is unknown, available data do not indicate that hunting has affected regional population status. Populations continue to decline in some parts of North America, and recreational opportunities have been lost. Public concern over this loss stimulated action to address this situation, and prompted the development of a Woodcock Management Plan by the Service.

Once the Plan is operational, it is anticipated that cooperative mangement will become easier and perhaps systematic. Although the Plan is being published in final form, the Service welcomes comments at any time. Periodic revision of the Plan will be necessary as situations, priorities, and strategies change. The Service and cooperators will review and update the Plan every 5 years. Annual work plans will be a logical consequence of the Plan.

Dated: October 5, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–24070 Filed 10–11–90; 8:45 am]

BILLING CODE 4310–55–M

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99–294, May 12, 1986). The meeting is open to the public. Interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The Garrison Diversion Unit Federal Advisory Council will meet from 8 a.m. to 4 p.m. on Tuesday, October 30, 1990, and from 8 a.m. to 5 p.m. on Wednesday, October 31, 1990.

PLACES: On Tuesday, October 30, 1990, the meeting will be held at the North Dakota Game and Fish Department, 100 North Bismarck Expressway, Bismarck, North Dakota. On Wednesday, October 31, 1990, the Council members will tour some of the project features and National Wildlife Refuges in southeast North Dakota and northeast South Dakota.

AGENDA: On October 30, 1990, the Council will receive briefings on subjects such as FY–90 budget accomplishments, FY–91 budget, status of United States/Canada consultations, mid-Dakota Reservoir Impact Analysis, Mitigation and Enhancement Plan status, the Lonetree Area, the mitigation process for Audubon and Arrowwood National Wildlife Refuges including the effects of the project on Dakota Lake and Sand Lake National Wildlife Refuges, Kraft Slough, and canal side wetland development. The agenda for October 31, 1990, will consist of short meetings at each stop on the tour.

For further information individuals may contact Dr. Grady Towns, Fish and Wildlife Enhancement, at (303) 236–8186.

Dated: October 5, 1990.

Galen L. Buterbaugh,

Regional Director, Region 6, U.S. Fish and Wildlife Service.

[FR Doc. 90–24124 Filed 10–11–90; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named

Dated: October 3, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90–24035 Filed 10–11–90; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

The Department of Labor has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). Copies of these individual ICR's, with applicable supporting documentation, may be obtained by calling the Department of Labor, Acting Departmental Clearance Officer, Theresa M. O'Malley (202) 523–6331. Comments and questions about the ICR's listed below should be directed to OMB, Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (202) 395–6880.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOL Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of these forms/collections, including suggestions for reducing this burden, should be directed to the OMB reviewer and the DOL Clearance Officer.

Extension

Supplemental Registration Statement of Individuals (OBD–64), 2,400 annual respondents at 1.375 hours per response. Total estimated annual burden: 3,300 hours.

Reinstatement

Application for Benefits Under the Longshore and Harbor Workers' Compensation Act and Extensions, LS–203, 1,000 annual respondents at 1.5 hours per response. Total estimated annual burden: 150 hours.

Revision

Application for Benefits Under the Longshore and Harbor Workers' Compensation Act and Extensions, LS–203, 1,000 annual respondents at 1.5 hours per response. Total estimated annual burden: 150 hours.

Revision

Ground Control Plan, 1,780 annual respondents; 17,780 total burden hours; 40 average hours per response. The ground control plan is used as an enforcement tool to ensure that surface coal mine operators' methods of controlling highwalls, pits, and spoil bans are consistent with prudent engineering designs and will ensure

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INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: BRUCE TELEPHONE COMPANY, INC., North Side of Square, Bruce, Mississippi 38915

2. Wholly-owned subsidiaries which will participate in the P.C. TRANSPORT, Mississippi

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-24100 Filed 10-11-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

October 9, 1990.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514-4312.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of Expiration Date of a Currently Approved Collection Without any Change in Subetance or in Method of Collection

(1) Application To File Petition for Naturalization.

(2) N-400, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The data collected is required to establish a petitioner's eligibility for naturalization and the information enables the designated examiners of the INS to make appropriate recommendations to the Naturalization Courts.

(5) 500,000 estimated responses at 1.0 hours per response.

(6) 500,000 estimated annual public burden hours.

(7) Not applicable under 3504(h).

(1) Guam Visa Waiver Information.

(2) I-736. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. Public Law 99-396 provides for certain aliens to be exempt from the nonimmigrant visa requirements if seeking entry into and stay on Guam as a visitor for a maximum stay of fifteen days, provided no potential threats exists to the welfare, safety, or security of the United States, its territories, and commonwealths.

(5) 300,000 annual respondents at .083 hours per response.

(6) 24,900 estimated annual public burden hours.

(7) Not applicable under 3504(h).

The following seven forms are included in one notice as they all relate to the Foreign Agents Registration Program, Criminal Division, Department of Justice, and are all required by 22 U.S.C. 611, *et seq.*:

Registration Statement of Individuals (OBD-63), 100 annual respondents at 1.5 hours per response. Total estimated annual burden: 150 hours.

Supplemental Registration Statement of Individuals (OBD-64), 2,400 annual respondents at 1.375 hours per response. Total estimated annual burden: 3,300 hours.

Exhibit B to Registration Statement (OBD-65), 75 annual respondents at .33 hours per response. Total annual burden: 25 hours.

Short Form Registration Statement of Individuals (OBD-66), 350 annual respondents at .429 hours per response. Total annual burden: 150 hours.

Exhibit A to Registration Statement (OBD-67), 75 annual respondents at .5 hours per response. Total annual burden: 38 hours.

Amendment to Registration or Supplemental Registration Reports (OBD-68), 200 annual respondents at 1.5 hours per response. Total annual burden: 300 hours.

Dissemination Report (Transmittal of Political Propaganda) (OBD-69), 3,600 annual responses at .5 hours per response. Total annual burden: 1,800 hours.

Larry E. Miesse,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 90-24059 Filed 10-11-90; 8:45 am]

BILLING CODE 4410-10-M

Drug Enforcement Administration

[Docket No. 90-42]

Walker L. Whaley, M.D., Jacksonville, FL; Notice of Hearing

Notice is hereby given that on May 11, 1990, the Drug Enforcement Administration, Department of Justice, issued to Walker L. Whaley, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application, executed on March 7, 1989, for a DEA Certificate of Registration.

Thirty days, have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on October 25, 1990, commencing at 9:30 a.m., at the U.S. Post Office & Courthouse, Room 137, 311 West Monroe Street, Jacksonville, Florida.

Dated: October 3, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-24035 Filed 10-11-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

Evaluation of the Trade Adjustment Assistance Programs

Affected public	Respondents	Frequency	Average time per Response
Questionnaire States.	15	One-time	4 hrs.
Questionnaire Individuals.	4,050	One-time	40 mins.

4065 respondents; 2760 total hours

4,500 recipients of benefits under the Trade Adjustment Assistance Program, and for comparison, unemployment compensation will be interviewed. The data will be used to provide information on the labor market impact of alternative unemployment strategies for workers dislocated by import competition.

Extension

Mine Safety and Health Administration.

Gamma Radiation Exposure Records (30 CFR 57.5047).

1219-0039.

Quarterly.

Small businesses or organizations.

15 respondents; 240 total burden hours; 16 average hours per response.

Requires records to be kept of cumulative individual gamma radiation exposure to ensure that annual exposure does not exceed 5 Rems per year. It is intended to protect the health of workers in mines with radioactive ores.

Mine Safety and Health Administration.

Ground Control Plan (30 CFR 77.1000 and 77.1000-1).

1219-0026.

On occasion.

Businesses or other for profit; small businesses or organizations 444 respondents; 17,760 total burden hours; 40 average hours per response.

The ground control plan is used as an enforcement tool to ensure that surface coal mine operators' methods of controlling highwalls, pits, and spoil bans are consistent with prudent engineering designs and will ensure safe working conditions.

Mine Safety and Health Administration.

Impoundment and Refuse Pile Plans and Revisions (30 CFR 77.215-2(a) and (b)(1) through (3), 77.216, and 77.216-2).

1219-0060.

On occasion.

Businesses or other for profit; Small businesses or organizations 210 respondents; 79,300 total burden hours; 377.62 average hours per response.

Requires coal mine operators to submit plans, and revisions thereof, for construction of refuse piles and impoundment structures to MSHA for approval.

Mine Safety and Health Administration.

Escape and Evacuation Plans.

1219-0046.

Semi-annually.

Businesses or other for profit; small businesses or organizations.

400 respondents; 8 hours per response; 9,600 total burden hours.

Requires operators of underground coal mines to keep records of the results of mandatory weekly examinations of emergency escapeways. The records are used to determine that the intergrity of the escapeways is being maintained.

Reinstatement

Pension and Welfare Benefits Administration.

Summary Annual Report.

Businesses or other for-profit; non-profit institutions; small businesses or organizations.

982,000 responses; 5,045,075 hours; 0.027 hours per response; 0 forms.

Employee benefit plans are required to provide, with some exceptions, summary annual reports to participants and beneficiaries for purposes of communicating basic financial information about the plan's operations and performance.

Signed at Washington, DC this 9th day of October, 1990.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 90-24104 Filed 10-11-90; 8:45 am]

BILLING CODE 4510-23-M

Bureau of Labor Statistics

Business Research Advisory Council; Meetings and Agenda

The regular Fall meetings of the Board and Committees of the Business Research Advisory Council will be held on October 23, 24 and November 15, 1990. All of the meetings will be held in the General Accounting Office Building, 441 G Street, NW., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Tuesday, October 23, 1990

10 a.m.—Committee on Price Indexes, Room 2736

1. Home ownership costs in the Consumer Price Index
2. Producer Price Program Status
3. International Price Program Status
4. Other Business

1:30 p.m.—Committee on Compensation and Working Conditions, Room 2736

1. New measure of compensation adjustments
2. Measuring union/nonunion earnings differences
3. Highlights from the Employment Benefits Survey: Family benefits become more widespread
4. Other business

1:30 p.m.—Committee on Productivity/Foreign Labor, Room 2734

1. Election of new Chairperson
2. BLS program of assistance to Poland and Hungary
3. Research on capital stocks in agriculture
4. Productivity comparisons by industry, U.S. and Europe
5. Other business

Wednesday, October 24, 1990

9:30 a.m.—Committee on Economic Growth, Room 2734

1. Review of study of impact of expected defense spending alternatives in 2000 (MLR Oct. 1990)
2. Review of selected important assumptions for new 1990–2005 projections
3. Discussion of alternative projections scenarios for key variables in new projections
4. Other business

9:30 a.m.—Committee on Employment and Unemployment, Room 2736

1. Revisions to establishment survey data
2. Report on results of conversion to new SIC codes
3. Standardized, simplified reporting for business initiatives
4. New study of foreign direct investment impact
5. Other business

1 p.m.—Board of the Business Research Advisory Council, Room 2736

1. Chairperson's opening remarks
2. Commissioner's remarks
3. Committee reports
   a. Committee on Price Indexes
   b. Committee on Compensation and Working Conditions
   c. Committee on Productivity/Foreign Labor
   d. Committee on Economic Growth
   e. Committee on Employment and Unemployment
4. Other business
5. Chairperson's closing remarks

Thursday, November 15, 1990

1 p.m.—Committee on Occupational Safety and Health Statistics, Room 2736

1. Transfer of recordkeeping function
2. 1989 Annual Survey results
3. Redesign of occupational safety and health statistical system (ROSH)
4. Census of Fatal Occupational Injuries (CFOI)
5. Mine safety and health statistics
6. Work injury reports (WIR)
7. Other business

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area code (202) 523–1347.

Due to difficulties in making arrangements with the Council's membership, we are unable to provide the full fifteen days of advance notice of this meeting.

Signed at Washington, DC the 4th day of October 1990.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 90–24103 Filed 10–11–90; 8:45 am]

BILLING CODE 4510–24–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the David-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public itneresl.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Florida:
- FL90–5 (Jan. 5, 1990) ..... p. 115; p. 116.
- FL90–6 (Jan. 5, 1990) ..... p. 117; p. 118.
- FL90–7 (Jan. 5, 1990) ..... p. 119; p. 120.
- FL90–11 (Jan. 5, 1990) ..... p. 127; p. 128.
- FL90–20 (Jan. 5, 1990) ..... p. 151; p. 152.
- FL90–23 (Jan. 5, 1990) ..... p. 157; p. 158.
- FL90–26 (Jan. 5, 1990) ..... p. 163; p. 164.
- FL90–28 (Jan. 5, 1990) ..... p. 167; p. 168.
- FL90–31 (Jan. 5, 1990) ..... p. 173; p. 174.
- FL90–32 (Jan. 5, 1990) ..... p. 175; p. 176.

Pennsylvania:
- PA90–5 (Jan. 5, 1990) ..... p. 951; pp. 952–953.
- PA90–6 (Jan. 5, 1990) ..... p. 965; pp. 966–966.
- PA90–8 (Jan. 5, 1990) ..... p. 987; p. 990.

Volume II

- Indiana, IN90–6 (Jan. 5, 1990). p. 303.
- Missouri, MO90–5 (Jan. 5, 1990). p. 671; pp. 672–676.

Ohio:
- OH90–1 (Jan. 5, 1990) ..... p. 777; p. 781.
- OH90–3 (Jan. 5, 1990) ..... p. 813; p. 815.
- OH90–28 (Jan. 5, 1990) ..... p. 867; p. 869.
- OH90–29 (Jan. 5, 1990) ..... p. 873; p. 833.
- OH90–34 (Jan. 5, 1990) ..... p. 918a; p. 918b.

Wisconsin:
- WI90–1 (Jan. 5, 1990) ..... p. 1157; pp. 1158–1159.
- WI90–2 (Jan. 5, 1990) ..... p. 1161; p. 1162.
- WI90–3 (Jan. 5, 1990) ..... p. 1165; p. 1166.
- WI90–5 (Jan 5, 1990) ..... p. 1173; pp. 1174–1175.
- WI90–6 (Jan. 5, 1990) ..... p. 1177; p. 1178.
- WI90–7 (Jan. 5, 1990) ..... p. 1181; p. 1182.
- WI90–10 (Jan. 5, 1990) ..... p. 1207; pp. 1209, 1212.
- WI90–11 (Jan. 5, 1990) ..... p. 1219; p. 1220.
- WI90–12 (Jan. 5, 1990) ..... p. 1223; p. 1224.
- WI90–14 (Jan. 5, 1990) ..... p. 1231; p. 1232.

Volume III

California:
- CA90–1 (Jan. 5, 1990) ..... p. 31, pp. 32–36, 39–40b.
- CA90–2 (Jan. 5, 1990) ..... p. 41, pp. 42–53, 58–63.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 5th day of October 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90–23996 Filed 10–11–90; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Summary of Decision Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted interested persons and a field investigation of the conditions at the mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: October 4, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Docket No.: M–86–164–C
FR Notice: 51 FR 44391
Petitioner: Southern Ohio Coal Company
Reg affected: 30 CFR 75.328
Summary of findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in the belt entry and use the air in the belt haulage and/or track entries to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–171–C
FR Notice: 52 FR 28615
Petitioner: BethEnergy Mines, Inc.
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish monitoring stations in return air courses in lieu of requiring these air courses to be traveled in their entirety considered acceptable alternate method.

Docket No.: M–87–289–C
FR Notice: 53 FR 7437
Petitioner: Mid-Continent Resources, Inc.
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to install an environmental

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monitoring system to continuously monitor methane and carbon monoxide in lieu of preshift examinations considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-297-C
FR Notice: 53 FR 4789
Petitioner: Jim Walter Resources, Inc.
Reg affected: 30 CFR 75.1105
Summary of findings: Petitioner's proposal to use dry-type transformers and install an early warning fire detection system capable of providing both visual and audible alarm signals, which will be examined and tested at regular intervals, considered acceptable alternate method. Granted with conditions.

Docket No.: M-88-100-C
FR Notice: 53 FR 25304
Petitioner: Colorado Westmoreland, Inc.
Reg affected: 30 CFR 75.1105
Summary of findings: Petitioner's proposal to use a dry-type transformers and install an early warning fire detection system capable of providing both visual and audible alarm signals, which will be examined and tested at regular intervals, considered acceptable alternate method. Granted with conditions.

Docket No.: M-88-111-C
FR Notice: 53 FR 2874
Petitioner: Cyprus Emerald Resources Corporation
Reg affected: 30 CFR 75.1101-8
Summary of findings: Petitioner's proposal to use a single line of automatic sprinklers for fire protection systems at main and secondary belt conveyor drives considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-162-C
FR notice: 53 FR 37066
Petitioner: Consolidation Coal Company
Reg affected: 30 CFR 75.1103-4(a)
Summary of findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-171-C
FR notice: 53 FR 37058
Petitioner: Bitter Creek Resources, Inc.
Reg affected: 30 CFR 75.1105
Summary of findings: Ventilation of a preexisting installation that houses a dry-type underground transformer station by neutral belt air that cannot be coursed directly to a return aircourse because of the configuration of the intake entries, considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-186-C
FR notice: 53 FR 40880
Petitioner: Old Ben Coal Company
Reg affected: 30 CFR 75.1002
Summary of findings: Petitioner's proposal to use 2400-volt A.C. electricity to power longwall mining equipment inby the last open crosscut and within 150 feet of gob areas considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-189-C
FR notice: 53 FR 45408
Petitioner: U.S. Steel Mining Company, Inc.
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish monitoring stations in lieu of traveling the aircourse in its entirety considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-199-C
FR notice: 53 FR 46512
Petitioner: McElroy Coal Company
Reg affected: 30 CFR 75.1700
Summary of findings: Petitioner's proposal to seal coal seam from surrounding strata at affected wells by using specific techniques and procedures outlined in petition considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-202-C
FR notice: 53 FR 45404
Petitioner: S. and S. Contracting (Formerly Roark Contracting, Inc.)
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-205-C
FR notice: 53 FR 46513
Petitioner: Pyro Mining Company
Reg affected: 30 CFR 75.507
Summary of findings: Petitioner's proposal to use a nonpermissible submersible pump in a return air shaft with the motor and all motor connections below water level considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-211-C
FR notice: 53 FR 47277
Petitioner: BethEnergy Mines, Inc.
Reg affected: 30 CFR 77.216-5
Summary of findings: Petitioner's proposal to abandon a fine coal refuse impoundment and create a small pond within a portion of the area formerly occupied by the impoundment considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-212-C
FR notice: 53 FR 47779
Petitioner: Pyro Mining Company
Reg affected: 30 CFR 75.507
Summary of findings: Petitioner's proposal to use a nonpermissible submersible pump in a borehole under water considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-216-C
FR notice: 53 FR 49256
Petitioner: R & F Coal Company
Reg affected: 30 CFR 77.216-5
Summary of findings: Petitioner's proposal to permanently abandon impoundments in lieu of draining considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-219-C
FR notice: 53 FR 50137
Petitioner: Kerr-McGee Coal Corporation
Reg affected: 30 CFR 75.1805
Summary of findings: Petitioner's proposal to use computer-generated forms in hanging book binders as permanent records in lieu of an approved book considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-221-C
FR notice: 53 FR 49256
Petitioner: Rhen Coal Company
Reg affected: 30 CFR 75.301
Summary of findings: Petitioner's proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-222-C
FR notice: 53 FR 51332
Petitioner: Peabody Coal Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to install a continuous monitoring system with an audible warning device considered acceptable alternate methods. Granted with conditions.

Docket no.: M-88-225-C
FR notice: 53 FR 51940
Petitioner: Rickco Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-227-C
FR notice: 53 FR 53084
Petitioner: Pyro Mining Company
Reg affected: 30 CFR 75.1700
Summary of findings: Petitioner's proposal to clean out, plug and mine

through oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-228-C
FR notice: 53 FR 1808
Petitioner: Consolidation Coal Company
Reg affected: 30 CFR 75.1105
Summary of findings: Petitioner's proposal to house electrical equipment in fireproof enclosures with automatic closing doors and an alarm system considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-229-C
FR notice: 53 FR 212
Petitioner: Consolidation Coal Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish checkpoints where tests for methane and the quantity of air would be determined weekly by a certified person considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-231-C
FR notice: 53 FR 212
Petitioner: Island Creek Coal Company
Reg affected: 30 CFR 75.1002
Summary of findings: Petitioner's proposal to use high-voltage cables in by the last open crosscut and within 150 feet of pillar workings considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-232-C
FR notice: 53 FR 871
Petitioner: Island Creek Coal Company
Reg affected: 30 CFR 75.326
Summary of findings: Petitioner's proposal to use belt haulage entries as intake aircourses in continuous and longwall mining sections, with an early warning fire detection system installed, considered acceptable alternate methods. Granted with conditions.

Docket no.: M-88-233-C
FR notice: 53 FR 1804
Petitioner: Quarto Mining Company
Reg affected: 30 CFR 75.1105
Summary of findings: Petitioner's proposal to house electrical equipment in a fireproof structure, equiped with automatically closing fire doors activated by thermal devices, considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-234-C
FR notice: 53 FR 50802
Petitioner: Christian Energies, Inc.
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-235-C
FR notice: 53 FR 3266
Petitioner: Jim Walter Resources, Inc.
Reg affected: 30 CFR 75.1002
Summary of findings: Petitioner's proposal to use high-voltage cables in or inby the last open crosscut with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-241-C
FR notice: 53 FR 3165
Petitioner: Rhen Coal Company
Reg affected: 30 CFR 75.1714
Summary of findings: Petitioner's proposal to have available for use by each miner a properly maintained filter type self-rescuer considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-244-C
FR notice: 53 FR 1803
Petitioner: L and W Coal Company, Inc.
Reg affected: 30 CFR 75.301
Summary of findings: Petitioner's proposal airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-246-C
FR notice: 54 FR 6459
Petitioner: Kerr-McGee Coal Corporation
Reg affected: 30 CFR 75.1700
Summary of findings: Petitioner's proposal to seal wells from surrounding strata considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-247-C
FR notice: 54 FR 3165
Petitioner: New Era Coal Company, Inc.
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish evaluation points and conduct weekly examinations of water level and quantity and quality of air used to ventilate idled area considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-251-C
FR notice: 54 FR 6775
Petitioner: Helvetia Coal Company
Reg affected: 30 CFR 1100-3
Summary of findings: Petitioner's proposal to use a dry waterline system from October 1 through May 1 considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-252-C
FR notice: 54 FR 7301
Petitioner: Consolidation Coal Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish checkpoints and conduct weekly tests for methane and quantity of air considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-1-C
FR notice: 54 FR 3164
Petitioner: B. and B. Coal Company
Reg affected: 30 CFR 75.1405
Summary of findings: Installation of automatic couplers on the track haulage cars would result in a diminution of safety. Granted with conditions.

Docket no.: M-89-2-C
FR notice: 54 FR 6779
Petitioner: Manalapan Mining Company, Inc.
Reg affected: 30 CFR 75.326
Summary of findings: Petitioner's proposal to use intake air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-3-C
FR notice: 54 FR 6460
Petitioner: Manalapan Mining Company, Inc.
Reg affected: 30 CFR 75.1103-4(a)
Summary of findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-4-C
FR notice: 54 FR 7301
Petitioner: BethEnergy Mines, Inc.
Reg affected: 30 CFR 75.1002
Summary of findings: Petitioner's proposal to use 4160-volt alternating current to operate permissible face equipment considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-5-C
FR notice: 54 FR 6460
Petitioner: Utah Power and Light Company
Reg affected: 30 CFR 75.1805
Summary of findings: Petitioner's proposal to establish a computer program for recording results of examinations of electrical equipment considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-6-C
FR notice: 54 FR 5696
Petitioner: B. and D. Coal Company
Reg affected: 30 CFR 77.1605(k)
Summary of findings: Petitioner's proposal to conduct daily inspections of all coal-hauling vehicles and

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institute a traffic system requiring that loaded trucks have the right-of-way on the highwall side of roads considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-9-C
FR notice: 54 FR 7303
Petitioner: Twentymile Coal Company
Reg affected: 30 CFR 75.1002

of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-19-C
FR notice: 54 FR 12298
Petitioner: Arch of West Virginia, Inc.
Reg affected: 30 CFR 75.811
Summary of findings: Petitioner's

Summary of findings: The use of cabs or canopies would result in a diminution of safety. Granted with conditions.

Docket no.: M-89-42-C
FR notice: 54 FR 20655
Petitioner: Sunnyside Reclamation and Salvage, Inc.
Reg affected: 30 CFR 75.1105

diminution of safety. Granted in part with conditions.

Docket no.: M-89-56-C
FR notice: 54 FR 18612
Petitioner: Utah Power and Light Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's

device activated by heat sensors, with ventilation openings that would close automatically if the fire suppression device is activated, considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-60-C
FR notice: 54 FR 23303

tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-64-C
FR notice: 54 FR 27776
Petitioner: East Franklin Coal Company
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's

institute a traffic system requiring that loaded trucks have the right-of-way on the highwall side of roads considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–9–C
FR notice: 54 FR 7303
Petitioner: Twentymile Coal Company
Reg affected: 30 CFR 75.1002
Summary of findings: Petitioner's proposal to power longwall mining equipment with 2400-volt alternating current with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–10–C
FR notice: 54 FR 7302
Petitioner: Cyprus Shoshone Coal Corporation
Reg affected: 30 CFR 75.1002
Summary of findings: Petitioner's proposal to power longwall mining equipment with 2400-volt alternating current with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–14–C
FR notice: 54 FR 12298
Petitioner: Castle Gate Coal Company
Reg affected: 30 CFR 75.1105
Summary of findings: Petitioner's proposal to allow a transformer station to be ventilated to the beltline considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–15–C
FR notice: 54 FR 12300
Petitioner: Peabody Coal Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to examine seals by making a daily quantity check of the amount of air entering the mine through the drift opening considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–16–C
FR notice: 54 FR 10467
Petitioner: SBM Coal Company
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–18–C
FR notice: 54 FR 10468
Petitioner: Whitley Gap Mining, Inc.
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–19–C
FR notice: 54 FR 12298
Petitioner: Arch of West Virginia, Inc.
Reg affected: 30 CFR 75.811
Summary of findings: Petitioner's proposal to use a trailer-mounted portable generator to provide power to move large electric mining shovels and draglines considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–23–C
FR notice: 54 FR 12302
Petitioner: Tara K Coal, Inc.
Reg affected: 30 CFR 75.1710–1
Summary of findings: Use of cabs and canopies on electric face equipment would result in a diminution of safety. Granted with conditions.

Docket no.: M–89–25–C
FR notice: 54 FR 12300
Petitioner: Pyro Mining Company
Reg affected: 30 CFR 75.328
Summary of findings: Petitioner's proposal to use belt air at the face considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–31–C
FR notice: 54 FR 12510
Petitioner: Gorenty Tunneling Company
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device, considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–34–C
FR notice: 54 FR 12299
Petitioner: Gorenty Tunneling Company
Reg affected: 30 CFR 75.301
Summary of findings: Petitioner's proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–36–C
FR notice: 54 FR 18611
Petitioner: Peabody Coal Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to monitor the air through boreholes near seals considered acceptable alternate method. Granted in part with conditions.

Docket no.: M–89–41–C
FR notice: 54 FR 18341
Petitioner: Tri-Star Mining Company, Inc.
Reg affected: 30 CFR 75.1710–1
Summary of findings: The use of cabs or canopies would result in a diminution of safety. Granted with conditions.

Docket no.: M–89–42–C
FR notice: 54 FR 20655
Petitioner: Sunnyside Reclamation and Salvage, Inc.
Reg affected: 30 CFR 75.1105
Summary of findings: Petitioner's proposal to house electrical equipment in a fireproof structure with an automatic fire-suppression system, equipped with automatically closing fire doors activated by thermal devices, considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–47–C
FR notice: 54 FR 20655
Petitioner: Eastern Associated Coal Corporation
Reg affected: 30 CFR 75.1002
Summary of findings: Petitioner's proposal to use high-voltage cables to supply power in or inby the last open crosscut considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–50–C
FR notice: 54 FR 16433
Petitioner: Double D. Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–51–C
FR notice: 54 FR 16434
Petitioner: Westerman Coal Company, Inc.
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–52–C
FR notice: 54 FR 16433
Petitioner: G. B. Mining Company
Reg affected: 30 CFR 75.1405
Summary of findings: Installation of automatic couplers on track haulage cars would result in a diminution of safety. Granted with conditions.

Docket no.: M–89–55–C
FR notice: 54 FR 18611
Petitioner: Kelly Energy Company, Inc.
Reg affected: 30 CFR 75.1710–1
Summary of findings: The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety. Granted in part with conditions.

Docket no.: M–89–56–C
FR notice: 54 FR 18512
Petitioner: Utah Power and Light Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish air quality monitoring stations where air entering and exiting the affected area would be monitored weekly considered acceptable alternate method. Granted with conditions.

Docket no.: MN–89–58–C
FR notice: 54 FR 19477
Petitioner: Dana Coal Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to install an environmental monitoring system to continuously monitor methane, oxygen, and carbon monoxide considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–59–C
FR notice: 54 FR 22640
Petitioner: Powderhorn Coal Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish evaluation points to monitor for hazardous conditions at locations which are not accessible for inspection in their entirety considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–62–C
FR notice: 54 FR 20656
Petitioner: Four M Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–67–C
FR notice: 54 FR 23304
Petitioner: The Ohio Valley Coal Company
Reg affected: 30 CFR 75.1700
Summary of findings: Petitioner's proposal to clean out and plug oil and gas wells using specific techniques and procedures considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–68–C
FR notice: 54 FR 23719
Petitioner: Birchfield Mining, Inc.
Reg affected: 30 CFR 75.1805
Summary of findings: Petitioner's proposal to house electrical equipment in a fireproof structure with an automatic fire-suppression device activated by heat sensors, with ventilation openings that would close automatically if the fire suppression device is activated, considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–69–C
FR notice: 54 FR 23303
Petitioner: Elijah Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–79–C
FR notice: 54 FR 25640
Petitioner: AMAX Coal Company
Reg affected: 30 CFR 77.216–3(a)
Summary of findings: Petitioner's proposal to inspect reservoirs on a quarterly basis when they are dry and on a weekly basis when they retain one acre-foot or more of water considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–83–C
FR notice: 54 FR 25642
Petitioner: J. and B. Coal Company, Inc.
Reg affected: 30 CFR 75.902
Summary of findings: Petitioner's proposal to install a bare conductor as a safety ground conductor with specific conditions and equipment considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–85–C
FR notice: 54 FR 23718
Petitioner: A.K.A. Coal Company, Inc.
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–86–C
FR notice: 54 FR 25641
Petitioner: H. L. and W. Coal Company
Reg affected: 30 CFR 75.301
Summary of findings: Petitioner's proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–91–C
FR notice: 54 FR 27777
Petitioner: Minton Hickory Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–94–C
FR notice: 54 FR 27776
Petitioner: East Franklin Coal Company
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–95–C
FR notice: 54 FR 27777
Petitioner: Inferno Coal, Inc.
Reg affected: 30 CFR 75.1710–1
Summary of findings: The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety. Granted with conditions.

Docket no.: M–89–100–C
FR notice: 54 FR 28730
Petitioner: H. L. and W. Coal Company
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–101–C
FR notice: 54 FR 28732
Petitioner: West End Coal Company
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–103–C
FR notice: 54 FR 28731
Petitioner: Mountain Run Enterprises
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–108–C
FR notice: 54 FR 32632
Petitioner: Westerman Coal Company, Inc.
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–107–C
FR notice: 54 FR 34264
Petitioner: Rocky Hollow Coal Company
Reg affected: 30 CFR 75.900
Summary of findings: Petitioner's proposal to use contractors and voltage monitors in lieu of circuit breakers to obtain undervoltage protection with specific equipment and procedures considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–108–C
FR notice: 54 FR 33633
Petitioner: East Franklin Coal Company
Reg affected: 30 CFR 75.301
Summary of findings: Petitioner's proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–120–C
FR notice: 54 FR 35732
Petitioner: Christian Energies, Inc.
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–121–C
FR notice: 54 FR 35733
Petitioner: Rebecca Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–124–C
FR notice: 54 FR 37391
Petitioner: Webster County Coal Corporation
Reg affected: 30 CFR 75.1103–4(a)
Summary of findings: Petitioner's proposal to install an early warning fire detection system and use intake air at the face considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–125–C
FR notice: 54 FR 37391
Petitioner: Consolidation Coal Company
Reg affected: 30 CFR 75.1105
Summary of findings: Petitioner's proposal to house electrical equipment in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices, considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–134–C
FR notice: 54 FR 37843
Petitioner: Pyro Mining Company
Reg affected: 30 CFR 75.1103–4(a)
Summary of findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–138–C
FR notice: 54 FR 38917
Petitioner: Wolf Creek Collieries Company
Reg affected: 30 CFR 75.1002
Summary of findings: Petitioner's proposal to use high-voltage cables to supply power to permissible longwall face equipment in or inby the last open crosscut considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–139–C
FR notice: 54 FR 38916
Petitioner: Consolidation Coal Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish monitoring stations in return air courses in lieu of requiring these air courses to be traveled in their entirety considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–140–C
FR notice: 54 FR 39062
Petitioner: Block Coal Corporation
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–141–C
FR notice: 54 FR 38916
Petitioner: Jentina Coal
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–143–C
FR notice: 54 FR 40920
Petitioner: Aero Energy, Inc.
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish evaluation points at specific locations where the air passing over the falls would be evaluated considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–146–C
FR notice: 54 FR 41355
Petitioner: Mine Hill Coal Company, No. 50
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–147–C
FR notice: 54 FR 43149
Petitioner: Cross Mountain Coal, Inc.
Reg affected: 30 CFR 75.1701
Summary of findings: Petitioner's proposal to drill probe boreholes prior to the face advancing to within 200 feet of the abandoned workings considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–154–C
FR notice: 54 FR 43678
Petitioner: Southern Light Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–156–C
FR notice: 54 FR 43369
Petitioner: F. and S. Coal
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–159–C
FR notice: 54 FR 47594
Petitioner: Twentymile Coal Company
Reg affected: 30 CFR 75.300–4
Summary of findings: Petitioner's proposal to use a computerized mine monitoring system to remotely monitor and record the fan motor amperage, fan bearing temperatures and fan water guage considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–161–C
FR notice: 54 FR 46784
Petitioner: Consolidation Coal Company
Reg affected: 30 CFR 77.902
Summary of findings: Petitioner's proposal to provide ground phase protection by dropping out a magnetic motor starter in lieu of tripping a circuit breaker, and to provide short-circuit protection by a circuit breaker considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–163–C

FR notice: 54 FR 47593
Petitioner: Dominion Coal Corporation
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish monitoring stations in the return aircourse on both side of existing roof fall considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–166–C
FR notice: 54 FR 48165
Petitioner: Island Creek Coal Company
Reg affected: 30 CFR 75.305
Summary of findings: Petitioner's proposal to establish monitoring stations to allow effective evaluation of area being ventilated considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–167–C
FR notice: 54 FR 48040
Petitioner: Tudy Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–168–C
FR notice: 54 FR 48039
Petitioner: Granny Rose Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–169–C
FR notice: 54 FR 49827
Petitioner: Soldier Creek Coal Company
Reg affected: 30 CFR 75.1101–8
Summary of findings: Petitioner's proposal to use a single line sprinkler system considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–172–C
FR notice: 54 FR 52472
Petitioner: Arch of Kentucky, Inc.
Reg affected: 30 CFR 75.1102(b)
Summary of findings: Petitioner's proposal to locate the entire waterline, including the fire outlets, in the intake travelway with mandoors installed in the permanent stoppings directly across from the fire outlets considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–175–C
FR notice: 54 FR 53196
Petitioner: Gordon Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–183C
FR notice: 54 FR 53395
Petitioner: Consolidation Coal Company
Reg affected: 30 CFR 77.900
Summary of findings: Petitioner's proposal to provide ground phase protection by dropping out a magnetic motor starter in lieu of tripping a circuit breaker, and to provide short-circuit protection by a circuit breaker considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–186–C
FR notice: 54 FR 52861
Petitioner: Foley Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–189–C
FR notice: 44 FR 2426
Petitioner: Cutter Coal Company
Reg affected: 30 CFR 75.313
Summary of findings: Petitoner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–89–192–C
FR notice: 55 FR 2426
Petitioner: B. and B. Coal Company
Reg affected: 30 CFR 75.1405
Summary of findings: The installation of automatic couplers on the track haulage cars would result in a diminution of safety. Granted with conditions.

Docket no.: M–90–6–C
FR notice: 55 FR 4034
Petitioner: Leeco, Inc.
Reg affected: 30 CFR 75.1701
Summary of findings: Petitioner's proposal to drill probe boreholes prior to the face advancing to within 200 feet of the abandoned workings considered acceptable alternate method. Granted with conditions.

Docket no.: M–90–15–C
FR notice: 55 FR 4736
Petitioner: Shingara Coal Company
Reg affected: 30 CFR 75.1400
Summary of findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections considered acceptable alternate method. Granted with conditions.

Docket no.: M–90–17–C
FR notice: 55 FR 5705
Petitioner: Quarto Mining Company
Reg affected: 30 CFR 75.1700
Summary of findings: Petitioner's proposal to clean out, plug and mine through oil and and gas wells considered acceptable alternate method. Granted with conditions.

Docket no.: M–90–23–C
FR notice: 55 FR 6848
Petitioner: Serendipity Mining, Inc.
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–90–26–C
FR notice: 55 FR 6848
Petitioner: K and M Coal Company, Inc.
Reg affected: 30 CFR 75.313
Summary of findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket no.: M–86–1–M
FR notice: 51 FR 11851
Petitioner: United Salt Corporation
Reg affected: 30 CFR 57.4760
Summary of findings: Petitioner's proposal of a three-part fire response in which the main fan would immediately shut off, an alarm would sound, and a second fan on the surface would be activated considered acceptable alternate method. Granted with conditions.

Docket no.: M–87–9–M
FR notice: 52 FR 34437
Petitioner: Ziegler Chemical & Mineral Corporation
Reg affected: 30 CFR 57.4760
Summary of findings: Petitioner's proposal to perform underground work using only pneumatic or hydraulic mining equipment and to detonate no explosives while persons are underground considered acceptable alternate method. Granted with conditions.

Docket no.: M–88–5–M
FR notice: 53 FR 19351
Petitioner: Tg Soda Ash, Inc.
Reg affected: 30 CFR 57.22305
Summary of findings: Petitioner's proposal to use a nonpermissible spad driver powered by a .27 caliber explosive booster to drive the spads to hang ventilation tubing as the face advances considered acceptable

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alternate method. Granted with conditions.

Docket no.: M–89–7–M
FR notice: 53 FR 27779
Petitioner: Copper Range Company
Reg affected: 30 CFR 57.11052
Summary of findings: Petitioner's proposal to use downcast airflow from the emergency escape shaft for the

to the award of a Cooperative Agreement for the development, implementation, and administration of an arts teachers fellowship program. It is expected that the recipient of the Cooperative Agreement will raise matching funds for the project. Between approximately 8 and 25 fellowships of $3,000 each will be awarded during the

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the

Location

Cape Crozier, Arrival Heights, and Linnaeus Terrace Sites of Special Scientific Interest, Antarctica.

Dates

December 1990–January 1991.

Charles Myers,

post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed

[Docket No. 40–2061]

Environmental Assessment, Findings of No Significant Impact, and Opportunity for Hearing Related to Amendment of Materials License No. STA–583; Kerr-McGee Chemical Corp., West Chicago, IL

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alternate method. Granted with conditions.

Docket no.: M-88-7-M
FR notice: 53 FR 27779
Petitioner: Copper Range Company
Reg affected: 30 CFR 57.11052
Summary of findings: Petitioner's proposal to use downcast airflow from the emergency escape shaft for the refuge chamber instead of installing compressed air lines and to substitute bottled drinking water for waterlines considered acceptable alternate method. Granted with conditions.

Docket no.: M-88-16-M
FR notice: 53 FR 49257
Petitioner: Southwestern Portland Cement Company
Reg affected: 30 CFR 56.14107
Summary of findings: Petitioner's proposal to install a metal gate to enclose the gears, sprockets and drives considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-1-M
FR notice: 54 FR 7300
Petitioner: Cominco Alaska, Inc.
Reg affected: 30 CFR 56.9300
Summary of findings: Petitioner's proposal to reduce the speed limit to 30 miles per hour along the overburden dump access road, install road markers with reflectors, widen the road to a crown width of 60 feet and berm along the downhill shoulder considered acceptable alternate method. Granted with conditions.

Docket no.: M-89-25-M
FR notice: 54 FR 53395
Petitioner: Bad Creek Constructors
Reg affected: 30 CFR 56.9300(d)
Summary of findings: Petitioner's proposal to install a locked gate at the entrance to the roadway, erect signs stating that the speed limit is 10 miles per hour, and install road markers with reflectors considered acceptable alternate method. Granted with conditions.

[FR Doc. 90-24122 Filed 10-11-90; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for an Arts Teachers Fellowship Program

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the development, implementation, and administration of an arts teachers fellowship program. It is expected that the recipient of the Cooperative Agreement will raise matching funds for the project. Between approximately 8 and 25 fellowships of $3,000 each will be awarded during the first year. Those interested in receiving the Solicitation package should reference Program Solicitation PS 91-01 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: The Program Solicitation is scheduled for release approximately November 5, 1990 with proposals due on December 5, 1990.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, or Anna Mott, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682-5482).

William I. Hummel,
Director, Contracts and Procurement Division.

[FR Doc. 90-24088 Filed 10-11-90; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by November 13, 1990. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

Lowell E. Starr, National Mapping Division, U.S. Geological Survey, Reston, VA 22092.

Activity for Which Permit Requested

Enter Sites of Special Scientific Interest and Specially Protected Areas. The U.S. Geological Survey is expanding its control network for 1:50000 scale topographic mapping covering the Ross Island area. Access to specially protected areas is requested to set up Global Positioning System (GPS) equipment inside and near protected areas.

Location

Cape Crozier, Cape Bird, Cape Royds, Post Office Hill, Ross Island, Antarctica.

Dates

December 1990-January 1991.

2. Applicant

Mark D. Kurz, Woods Hole Oceanographic Institution, Woods Hole, MA 02543.

Activity for Which Permit Requested

Enter Sites of Special Scientific Interest. The applicant is conducting a study of the history of Antarctic glaciation. He requests permission to enter protected areas to collect rock samples for geochemistry and geochronology. No biological samples will be taken.

Location

Cape Crozier, Arrival Heights, and Linnaeus Terrace Sites of Special Scientific Interest, Antarctica.

Dates

December 1990-January 1991.

Charles Myers,
Permit Office.

[FR Doc. 90-24095 Filed 10-11-90; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

Carolina Power & Light Co., H.B. Robinson Steam Electric Plant, Unit No. 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix R to 10 CFR part 50 to Carolina Power & Light Company (the licensee) for the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would revise the combustible loading value identified for the component cooling water (CCW) pump room.

The exemption is responsive to the licensee's application for exemption dated July 30, 1990, as supplemented by letter August 16, 1990.

The Need for the Proposed Action

The proposed exemption is needed because the existing cable trays cannot accommodate the additional fire loading from installation of new cables and routing of the new cables in dedicated conduits would not be practical. The features described in the licensee's request regarding the existing fire protection at their plant for these items are the most practical method for meeting the intent of appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of fire protection that is equivalent to that required by appendix R for other areas of the plant so there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased, and the post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement Related to the Operation of H. B. Robinson Nuclear Steam-Electric Plant, Unit 2, dated April 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see the application for the exemption dated July 30, 1990, as supplemented by letter dated August 16, 1990, which is available for public inspection at the Commission's Public Document, 2120 L Street, NW., the Gelman Building, Washington DC, and at the Hartsville Memorial Library, Home and Fifth Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland this 9th day of October, 1990.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,
Director, Project Directorate II-1, Division of Reactor Projects I/II, Officer of Nuclear Reactor Regulation.

[FR Doc. 90-24087 Filed 10-11-90; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 40-2061]

Environmental Assessment, Findings of No Significant Impact, and Opportunity for Hearing Related to Amendment of Materials License No. STA-583; Kerr-McGee Chemical Corp., West Chicago, IL

The United States Nuclear Regulatory Commission (the Commission) is considering issuing an amendment of Materials License No. STA-583, held by Kerr-McGee Chemical Corporation (Kerr-McGee), to authorize the receipt and storage at the Kerr-McGee Facility in West Chicago, Illinois, of thorium-contaminated materials which are being removed from off-site residential and commercial locations in DuPage County, Illinois.

Summary of Environmental Assessment

Identification of the Proposed Action

By letter dated July 18, 1990, Kerr-McGee, the licensee, requested authorization to receive, store, and dispose of thorium-contaminated soils currently located in off-site residential and commercial locations in DuPage County.

The Need for the Proposed Action

The areas of thorium-contaminated soil are relatively small in area, but are a source of radiation exposure and concern to the nearby residents. In recognition of this situation, Kerr-McGee has undertaken a program to remove these deposits and store them on the Kerr-McGee Rare Earths Facility. An amendment to Kerr-McGee's Material License STA-583 is required to permit Kerr-McGee to receive and store the thorium-contaminated material onsite.

Environmental Impacts of the Proposed Action

Currently, the contaminated soils are located at approximately 40 different locations offsite. Removal of the soils would result in the consolidation of material, thereby improving control.

Kerr-McGee will excavate the thorium-contaminated material in accordance with approved procedures. Water sprays and/or dust control measures will be used as needed to control airborne particulate emissions during excavation, transportation, loading/unloading, and storage activities. Air samples will be collected during all work activities to determine the airborne particulate concentrations in work areas. Kerr-McGee's existing environmental monitoring program will be continued to confirm that the

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material is not dispersing offsite once stored.

The disposal site at the Kerr-McGee Facility is a restricted area so that unauthorized people will not be able to gain access to the contaminated material. The thorium-contaminated

exposure and concern to the nearby residents, this alternative is not favored.

Another alternative would be to move the thorium-contaminated material to another location. Any location to which the material is ultimately moved will have to be restricted to control access to

filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as

Company. These changes are administrative in nature since both companies are co-licensees.

The Need for the Proposed Action

The proposed amendments are required to allow the administrative

Environmental Statement related to the operation of San Onofre Nuclear Generating Station Units 2 and 3, dated April 1981 and its Errata dated June 5, 1981.

Agencies and Persons Consulted

forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the Federal Register on August 30, 1990 (55 FR 35483). No request for a hearing or petition for leave to intervene was filed following

material is not dispersing offsite once stored.

The disposal site at the Kerr-McGee Facility is a restricted area so that unauthorized people will not be able to gain access to the contaminated material. The thorium-contaminated material will be stored separately from other materials onsite, and documentation will be maintained showing the origin of the excavated material, quantities received, date of receipt, and level of radiation.

Transportation accidents could result in the spillage of the thorium-contaminated soils. However, spilled soils can be readily cleaned up, and the short-term effect of dust dispersion at an accident site would be insignificant.

Previous permission to receive and store thorium-contaminated material from small scattered sites in the City of West Chicago and the West Chicago Sanitary Treatment Plant was authorized in License Amendments No. 10 and No. 11, dated July 10, 1984, and May 13, 1986, respectively. Estimates based on experience with the earlier clean-up programs indicate quantities of off-site contaminated soils, exclusive that in Reed-Keppler Park and at the Sanitary Treatment Plant, would be roughly 20,000 cubic meters. This is a small increment to the 376,400 cubic meters which the licensee is currently authorized to dispose, and would not significantly alter the evaluation of the environmental impacts and costs presented in the April 1989 Supplement to the Final Environmental Statement related to the decommissioning of the Rare Earths Facility, West Chicago, Illinois. Indeed, the quantity is appreciably less than the 48,600 cubic meters which is included as a contingency amount in the 376,400 cubic meters.

Conclusion

The staff believes that receipt and storage of the thorium-contaminated material can be accomplished in an environmentally safe manner and that the operation is expected to have an insignificant environmental impact. Therefore, the staff concludes there will be no significant impacts associated with the proposed action. Consequently, consolidating the various deposits of off-site thorium-contaminated soils onto a restricted site will provide greater protection to the public.

Alternative to the Proposed Action

One alternative to the proposal is to leave the thorium-contaminated material where it is now. Due to the unrestricted areas in which the material currently is located and the radiation exposure and concern to the nearby residents, this alternative is not favored.

Another alternative would be to move the thorium-contaminated material to another location. Any location to which the material is ultimately moved will have to be restricted to control access to the material. Measures would also have to be taken to prevent the spread of contaminated material. Any location chosen would have to be dedicated to the purpose and would become unavailable for other activities. Because the thorium-contaminated material originated from the Rare Earths Facility and the disposal site is already restricted, storage at the Kerr-McGee West Chicago Facility would appear to be the best solution.

Agencies and Persons Contacted

The NRC staff held informal discussions with State of Illinois and City of West Chicago agencies.

Finding of No Significant Impact

Based on the foregoing Environmental Assessment, the Commission has determined not to prepare an Environmental Impact Statement and has determined that a Finding of No Significant Impact is appropriate.

Opportunity for a Hearing

Any person whose interests may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the Federal Register; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee Kerr-McGee Chemical Corporation, ATTN: Mr. John Stauter, Kerr-McGee Center, Oklahoma City, Oklahoma 73125; and must comply with the requirements for requesting a hearing set forth in NRC regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." These requirements, which the requestor must describe in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the requests of hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effects of any order that may be entered in the proceeding upon the requestor's interest.

The July 18, 1990, application, and the Commission's Finding of No Significant Impact and the Environmental Assessment are available for public inspection and copying at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC 20555 and the Local Public Document Room at the West Chicago Public Library, 325 E. Washington Street, West Chicago, Illinois 60185

Dated at Rockville, Maryland, this 4th day of October 1990.

For the Nuclear Regulatory Commission.

Charles J. Hughes,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-24086 Filed 10-11-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-206, 50-361 and 50-362]

Southern California Edison Co. et al.; San Onofre Nuclear Generating Station, Unit Nos. 1, 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13, Facility Operating License No. NPF-10 and Facility Operating License No. NPF-15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Unit Nos. 1, 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would reflect changes in the ownership of San Onofre Nuclear Generating Station which will result from the merger of Southern California Edison Company and San Diego Gas and Electric Company. These changes are administrative in nature since both companies are co-licensees.

The Need for the Proposed Action

The proposed amendments are required to allow the administrative action of merging licensee San Diego Gas and Electric Company into licensee Southern California Edison Company.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The notice in connection with this action was published in the Federal Register on September 6, 1989 (54 FR 37053). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit 1 dated October 1973, and in the Final Environmental Statement related to the operation of San Onofre Nuclear Generating Station Units 2 and 3, dated April 1981 and its Errata dated June 5, 1981.

Agencies and Persons Consulted

The NRC staff has advised the State Department of Health Services, State of California of the proposed determination of no significant hazards consideration. No comments were received.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated April 28, 1989, as supplemented May 15, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland this 1st day of October 1990.

For the Nuclear Regulatory Commission.

James E. Tatum,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-24004 Filed 10-11-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-148]

Renewal of Facility License No. R-78; University of Kansas

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Facility License No. R-78, issued to the University of Kansas (the licensee), which renews the possession-only license for the facility located on the university campus in Lawrence, Kansas. The renewed license will expire on January 1, 1995.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the Federal Register on August 30, 1990 (55 FR 35483). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a related Safety Evaluation for the renewal of Facility License No. R-78 and has, based on that evaluation, concluded that the facility can continue to be maintained by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment which was published in the Federal Register on September 21, 1990 (55 FR 38683) for the renewal of Facility License No. R-78 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) The application for amendment dated December 12, 1989, as supplemented on July 12, 1990; (2) Amendment No. 16 to Facility License No. R-78; (3) the related Safety Evaluation; and (4) the Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 5th day of October 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-24085 Filed 10-11-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF GOVERNMENT ETHICS

Public Information Collection Form Revision Submitted for OMB Approval

AGENCY: Office of Government Ethics.

ACTION: Notice of proposed revision of a public information collection form submitted to OMB for clearance.

SUMMARY: The Office of Government Ethics (OGE) has submitted to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), a proposed revised version of the SF 278 Public Financial Disclosure Report, that collects information from the public. Since the form is also a Standard Form, OGE is submitting the proposed reprint revisions to the General Services Administration (GSA) for its clearance as well.

DATES: Comments on this proposal should be received by November 13, 1990.

OPM version of the form was reprinted in a quantity estimated to meet the remaining needs for 1990. This current request for revision of the SF 278 is necessary in order to provide the form to collect the information required by the new Reform Act title I reporting source in order to trigger the reporting requirement. Other changes to the form include notation of a $200 late penalty fee, limited reporting for excepted investment funds, indication of transactions pursuant to certificates of divestiture, and some modification of

OFFICE OF NATIONAL DRUG CONTROL POLICY

President's Drug Advisory Council; Meeting

AGENCY: President's Drug Advisory

OFFICE OF PERSONNEL MANAGEMENT

Notice of Proposed Extension of Forms Submitted to OMB for Clearance

been postponed until November 8-9, 1990. The agenda will remain the same.

Dated: October 5, 1990.

Ms. Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

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submitting the proposed reprint revisions to the General Services Administration (GSA) for its clearance as well.

DATES: Comments on this proposal should be received by November 13, 1990.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503, telephone (202/FTS) 395-7316.

FOR FURTHER INFORMATION CONTACT: Karen L. Bovard, Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325. A copy of OGE's request for approval from OMB, including the proposed revised form, may be obtained by contacting Ms. Bovard.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics sponsors the SF 278 Financial Disclosure Report which collects pertinent financial information from certain officials and high-level employees in the executive branch for conflicts of interest review and public disclosure in order to promote the public trust in the integrity of Government employees. OGE formerly sponsored this form as a part of the Office of Personnel Management until October 1, 1989, when it became a separate agency in the executive branch.

Notice of a prior proposed revision of the current 1/87 (OPM) edition of the SF 278 was given at 55 FR 5664, February 16, 1990. The proposed 1990 revision/reprint reflected the need to renew paperwork clearance for the form, to change the form from an OPM to an OGE sponsored one, and to update certain citations, as well as to restock the form to meet the executive branch demand for the remainder of 1990.

At the time of that prior proposed revision, it was not clear under the original language of the Ethics Reform Act of 1989 (Pub. L. 101-194) whether the Reform Act provisions or the Ethics in Government Act provisions governed executive branch public financial disclosure reporting for the time period between January 1, 1990 and January 1, 1991. This matter was resolved on May 4, 1990 by the technical amendments to the Ethics Reform Act (Pub. L. 101-280), extending the current Ethics Act title II reporting provisions through the end of 1990. OGE's request for revisions to the SF 278 was cancelled soon thereafter. With OMB and GSA approval, the 1/87 OPM version of the form was reprinted in a quantity estimated to meet the remaining needs for 1990. This current request for revision of the SF 278 is necessary in order to provide the form to collect the information required by the new Reform Act title I reporting provisions which take effect next January 1, 1991.

The SF 278 Financial Disclosure Report collects information which is required to be reported by candidates, nominees, new entrants, incumbents and terminees of certain high-level positions within the executive branch of the Federal Government. Approximately 20,000 SF 278 forms are filed on an annual basis. While the majority of those who file the form are Government employees at the time they complete the form, certain candidates, nominees, and terminees complete the form either before or after their Government service. Thus, Paperwork Reduction Act clearance is required for the SF 278 Public Financial Disclosure Report. The number of non-Government filers whose reports are transmitted to the Director, OGE, is estimated at 280. This would include a majority of the candidates and nominees, and almost all terminees.

The average response time for completion of the SF 278 has also been increased from one hour to two hours as a result of an OGE reassessment of the complexity of the form, particularly for non-Government employee reporting individuals. This now presents a total annual public reporting burden at OGE of 560 hours.

A related form to the SF 278 has been the supplemental Schedule A (Assets & Income) sheet (the SF 278 Sch. A). Because this supplemental form has not been widely used in recent years, OGE will be cancelling this form. OGE anticipates that SF 278 filers and their agencies will continue to use photocopies of the individual schedules as the need for more than one page of any schedule arises.

The information filed on the current version of the SF 278 is required by title II of the Ethics in Government Act of 1978, as amended. The Ethics Reform Act of 1989, as amended, makes certain changes to the financial disclosure provisions of the Ethics in Government Act which will affect all reports submitted starting January 1, 1991. The Ethics Reform Act provided for additional categories of values of assets, amounts of income, amounts of liabilities, and amounts of transactions. It also raised the reporting threshold for income and the threshold value for gifts required to be aggregated from one source in order to trigger the reporting requirement. Other changes to the form include notation of a $200 late penalty fee, limited reporting for excepted investment funds, indication of transactions pursuant to certificates of divestiture, and some modification of exclusions in reporting gifts, reimbursements, liabilities, income, transactions, and assets. The form and instructions are being modified to incorporate these changes and to provide further clarification on some reporting items as needed based on administrative experience over the prior decade of public financial disclosure reporting.

The proposed revisions to the SF 278 reflect other changes as well. Some modifications are the change to letter size paper, the resulting changes to accommodate the smaller size form, the change of the name of the form to the SF 278 Public Financial Disclosure Report, the change of the citations to reflect the relocation of 5 CFR part 734 to 5 CFR part 2634 of OGE's regulations (see 54 FR 50229-50231, Dec. 5, 1989), the addition of a public burden statement, the notation that OGE rather than OPM now sponsors this form (pursuant to OGE's new separate agency status provided for in sections 3 and 10 of the amendment to the Ethics in Government Act of 1978 which reauthorized OGE in 1988 (Pub. L. 100-598)), and the clarifications to the instruction sections not related to changes due to the Ethics Reform Act provisions.

These changes will also be reflected in future changes to the OGE regulations regarding executive branch public financial disclosure reporting at 5 CFR part 2634. However, because the form must be available for use by those affected individuals on January 1, 1991, it is being submitted for clearance at this time in order to allow for its printing and stocking by GSA and the agencies once the clearance process is complete. In order to ensure that there will be no time lapse, OGE is also requesting permission from GSA to locally reproduce and distribute this form (once it is cleared by OMB and GSA), if necessary, until stock is available through GSA.

Approved: October 4, 1990.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 90-24047 Filed 10-11-90; 8:45 am]

BILLING CODE 6345-01-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

President's Drug Advisory Council; Meeting

AGENCY: President's Drug Advisory Council; Office of National Drug Control Policy.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix), of the third meeting of the President's Drug Advisory Council.

DATE AND TIME: October 24, 1990 from 10 a.m. to 4 p.m. (with a 90-minute lunch break at 12).

PLACE: Room 180, Old Executive Office Building (OEOB), Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Cooney, Staff Assistant, President's Drug Advisory Council, Executive Office of the President, Washington, DC 20503, (202) 466-3100.

SUPPLEMENTARY INFORMATION: The President's Drug Advisory Council was created by Executive Order 12696 of November 13, 1989 (54 FR 47507, November 15, 1989), with the general purpose of advising the President and the Director of the Office of National Drug Control Policy on the development, dissemination, explanation and promotion of national drug policy.

At the morning portion of the October 24 meeting, the Council will receive a report from the National Coalition Subcommittee on the National Leadership Forum which it is planning for November 9 and 10, 1990, and a report from the Volunteer Organizations Subcommittee. In the afternoon portion of the meeting the Council will discuss the general issue of drugs in the workplace.

Members of the public interested in attending the meeting should contact the President's Drug Advisory Council, (202) 466-3100, at least one day prior to the meeting. Callers should be prepared to give their birthdate and Social Security number over the telephone, in order to facilitate clearance into the Old Executive Office Building. Due to unforeseen scheduling difficulties, notice of this meeting was delayed.

John Walters,

Chief of Staff, Office of National Drug Control Policy.

[FR Doc. 90-24127 Filed 10-11-90; 8:45 am]

BILLING CODE 3180-02-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Proposed Extension of Forms Submitted to OMB for Clearance

AGENCY: U.S. Office of Personnel Managment.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), this notice announces a proposed extension of forms used to collect information from the public. The Establishment Information Form, the Wage Data Collection Form, and the Continuation Form are wage survey forms developed by the Office of Personnel Management and used by three lead agencies, the Department of Defense, the Department of Veterans Affairs, and the National Aeronautics and Space Administration, to survey private sector business establishments. The surveys are conducted annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and Government. The lead agencies use this information to establish rates of pay for Federal Wage System employees. For copies of this proposal, call C. Ronald Trueworthy, Agency Clearance Officer, on (202) 606-2261.

DATES: Comments on this proposal should be received within 10 working days after the date of this notice.

ADDRESSES: Send or deliver written comments to: C. Ronald Trueworthy, Chief, Reports and Forms Management Branch, U.S. Office of Personnel Management, 1900 E Street, NW., room 6410, Washington, DC 20415 and Joseph Lackey, Information Desk Officer, Office of Management and Budget, Paperwork Reduction Project (3206-0031), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 606-2848.

U.S. Office of Personnel Management

Constance Berry Newman,

Director.

[FR Doc. 90-24120 Filed 10-11-90; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Notice of Postponement

The meeting of the President's Council of Advisors on Science and Technology (PCAST) scheduled for October 11-12, 1990 as announced in the Federal Register, October 2, 1990, page 40251 has been postponed until November 8-9, 1990. The agenda will remain the same.

Dated: October 5, 1990.

Ms. Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 90-24037 Filed 10-4-90; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Extension, Rule 10b-6, File No. 270-313

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval a requirement that certain members of the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited ("ISE") notify the ISE and the Commission and retain certain transaction information for two years as conditions to relying on an exemption from Rule 10b-6 (17 CFR 240.10b-6) promulgated under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*). The exemption allows an ISE member firm to engage in "passive market making" transactions whenever it is participating in a multinational offering of a security designated "alpha" or "beta" by the ISE, with a portion to be distributed in the U.S., or whenever the ISE firm's U.S. affiliates are participating in a distribution in the U.S. of such security. Rule 10b-6 prohibits persons participating in a distribution from bidding for or purchasing the security being distributed, or a related security, during the distribution. Rule 10b-6(h) permits the Commission to exempt transactions from Rule 10b-6 either unconditionally or on specified terms or conditions. Presently, fifteen broker-dealers rely on the exemption and incur a total of 150 annual burden hours.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange

Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0355), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24105 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension, Rule 17a–11, File No. 270–94

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–11 (17 CFR 240.17a–11) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*), which requires certain exchange members, brokers, and dealers to furnish supplemental current financial and operational reports when they start to experience financial or operational difficulties. A total of 600 respondents incur an annual total of 6,600 burden hours in complying with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0085), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24106 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension, Rule 17f–2(c), File No. 270–35

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f–2(c) (17 CFR 240.17f–2(c)), which requires registered national securities exchanges and associations to submit plans for collecting, processing, and forwarding fingerprint cards to the FBI. One respondent incurs one burden hour annually to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0029), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24107 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension, Rule 15Aj–1, Forms X–15Aj–1 and X–15Aj–2, File No. 270–25

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15Aj–1 (17 CFR 240.15Aj–1) and Forms X–15Aj–1 and X–15Aj–2 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which provide for registered securities associations to file annual amendments to their registration statements to reflect changes made during the preceding year in the information contained in those statements. One respondent incurs three annual burden hours to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0044), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24108 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash, (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension, Rule 17a–13, File No. 270–27

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–13 (17 CFR 240.17a–13) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which requires quarterly security counts by certain exchange members, brokers, and dealers. A total of 5,000 respondents incur an annual total of 500,000 burden hours in complying with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0035), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24109 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash, (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension, Rule 19b–4 and Form 19b–4, File No. 270–38

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 19b–4 (17 CFR 240.19b–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*), which requires the various self-regulatory organizations to file their rule proposals on Form 19b–4. A total of 25 respondents incur an annual total of 12,390 burden hours in complying with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0045), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24110 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash, (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension, Rule 15b3–1, File No. 270–11

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15b3–1 (17 CFR 240.15b3–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which requires brokers or dealers to amend the information contained in Form BD whenever such information becomes inaccurate for any reason. A total of 6,300 respondents incur a cumulative total of 2,825 annual burden hours to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC. 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0013), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24111 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash, (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension, Rule 11Ab2–1 and Form SIP, File No. 270–23

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 11Ab2–1 and Form SIP (17 CFR 240.11Ab2–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*), which outline the requirements for filing an application to register as an exclusive processor of securities information. One respondent incurs 440 annual burden hours to comply with this rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0043), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24112 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash, (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension, Rule 15Aa–1, Form X–15AA–1, File No. 270–24

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15Aa–1 (17 CFR 240.15Aa–1) and Form X–15AA–1 (17 CFR 249.801) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*), providing for the application for registration of an association as a national securities association or as an affiliated securities association. One respondent incurs a total of 150 annual burden hours to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0030), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24113 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549

Extension

File No. 270–121, Form T–1
File No. 270–122, Form T–2
File No. 270–123, Form T–3
File No. 270–127, Rule 14f–1
File No. 270–54, Form 8–A
File No. 270–117, Regulation F
File No. 270–120, Form SR

File No. 270–70, Regulation 12B
File No. 270–116, Rule 12d1–3
File No. 270–115, Rules 7a–15 through 7a–37

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has

[Rel. No. 34–28517; File No. SR–NASD–90–41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Voting Rights for Issuers Whose Securities are Listed in NASDAQ/NMS

In a petition for review brought by the Business Roundtable,[6] the U.S. Court of Appeals for the District of Columbia Circuit held that the statutory authority cited by the Commission was not sufficient to support the adoption of Rule 19c–4 and ordered the Rule vacated.[7] The Commission chose not to

considered the broader question of permanent approval of the proposal.

III. Description of Proposal

As noted above, the NASD's proposal would amend Part III, section 5 of its Schedule D by adopting, for NASDAQ/NMS stocks only, the language set forth in Rule 19c–4.[9] In this regard, the

regarding the NASD's proposal.[13] The NASD also submitted a comment letter in response.[14] All three comment letters were in support of the NASD's basic proposal to adopt the prohibitions against shareholder disenfranchisement set forth in Rule 19c–4 for NASDAQ/NMS stocks. Both USA and AIMR, however, urged the Commission and the

("MOU") between it and the North American Securities Administrators Association regarding a model uniform marketplace exemption from state securities registration requirements.[16] The MOU specifically states that blue sky security law exemptions to NASDAQ/NMS stocks should be

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File No. 270-70, Regulation 12B
File No. 270-116, Rule 12d1-3
File No. 270-115, Rules 7a-15 through 7a-37

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval extension of the following: Form T-1; Form T-2; Form T-3; Form 8-A; Regulation F; Form SR; Regulation 12B; Rule 12d1-3; Rule 14f-1; and Rules 7a-15 through 7a-37. The rules, forms and regulations provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly traded securities provide investors and the marketplace with adequate information. Regulation F provides an exemption from registration under the Securities Act in connection with assessable stock if specified conditions are met. Form T-1 affects 1665 filers for a total 73,260 burden hours; Form T-2 affects 36 filers for a total of 1,008 burden hours; Form T-3 affects 55 filers for a total of 2,420 burden hours; Regulation 12B and Rules 7a-15 through 7a-37 have been assigned one burden hour for administrative purposes; Form 8-A affects 1,940 filers for a total of 15,520 burden hours; Regulation F affects 7 filers for a total of 21 burden hours; Form SR affects 2,566 filers for a total of 14,113 burden hours; Rule 12d1-3 affects 688 filers for a total of 344 burden hours; and Rule 14f-1 affects 44 filers for a total of 792 burden hours. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the cost of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0056, 0062, 0094, 0105, 0108, 0109, 0124, 0132, 0110, 0111], Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24114 Filed 10-11-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28517; File No. SR-NASD-90-41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Voting Rights for Issuers Whose Securities are Listed in NASDAQ/NMS

I. Introduction

On July 25, 1990, the National Association of Securities Dealers ("NASD" or "Association") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Schedule D, part III, section 5 of the NASD By-Laws in order to adopt prohibitions against shareholder disenfranchisement for issuers included in the National Association of Securities Dealers Automated Quotation/National Market System ("NASDAQ/NMS").[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 28277 (July 27, 1990), 55 FR 31465 (August 2, 1990). The Commission received three comment letters on the proposal, and a response to the comment letters from the NASD, which are all discussed below.

II. Background

On July 7, 1988, the Commission promulgated Rule 19c-4, pursuant to section 19(c) of the Act, which prohibits an issuer from being or remaining listed on a national stock exchange or remaining authorized for quotation and/or transaction reporting through an automated inter-dealer quotation system operated by a national securities association [4] if such company issues securities or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share voting rights of existing common stock shareholders of the company.[5] The Rule, by its terms, applied to all NASDAQ-quoted stocks.

In a petition for review brought by the Business Roundtable,[6] the U.S. Court of Appeals for the District of Columbia Circuit held that the statutory authority cited by the Commission was not sufficient to support the adoption of Rule 19c-4 and ordered the Rule vacated.[7] The Commission chose not to appeal that decision and the Court entered an order to vacate Rule 19c-4 on August 3, 1990.

On July 25, 1990, the NASD submitted the proposal being considered herein seeking approval to adopt similar prohibitions against shareholder disenfranchisement for issuers included in NASDAQ/NMS after the issuance of the Court's mandate vacating Rule 19c-4.[8] Unlike Rule 19c-4, which applied to all NASDAQ issuers, the NASD proposal would apply the substance of Rule 19c-4 only to NASDAQ/NMS issuers. Under this proposal and the current NASD Rules, therefore, there would be no voting rights listing standard for non-NMS quoted stocks.

Concurrent with this proposal, the NASD also submitted another proposal that requested accelerated approval by the Commission to continue the terms of Rule 19c-4 for NASDAQ/NMS stocks for a temporary 90 day period, while the Commission considered the NASD's proposal to adopt this standard on a permanent basis. The Commission granted accelerated approval to this proposal in order to allow the NASD to continue operations as usual with regard to NASDAQ/NMS issuers. In granting the temporary approval, the Commission relied on the fact that the NASD had submitted a proposed rule change to adopt prohibitions on shareholder disenfranchisement on a permanent basis. The Commission stated that good cause existed to accelerate a temporary adoption of the standards to prevent NASDAQ/NMS issuers from taking actions that could disenfranchise shareholders while the Commission considered the broader question of permanent approval of the proposal.

III. Description of Proposal

As noted above, the NASD's proposal would amend Part III, section 5 of its Schedule D by adopting, for NASDAQ/NMS stocks only, the language set forth in Rule 19c-4.[9] In this regard, the proposal prohibits the disenfranchisement of existing holders of an outstanding class or classes of common stock of an NASDAQ/NMS issuer. Further, the proposal sets forth the following actions which are presumed to be disenfranchising: (1) "Time-phased" voting; (2) "capped" voting plans; (3) super voting stock distributions; and (4) exchange offers.[10] In addition, under the proposal, the following actions are presumed not to be disenfranchising, and thus permitted: (1) Initial public offerings; (2) subsequent issuances of lower voting stock; (3) bona fide mergers and acquisitions; and (4) stock dividends.[11]

In its filing requesting permanent approval to adopt voting rights standards for NASDAQ/NMS stocks, the NASD indicated its desire to continue applying the standards set forth under Rule 19c-4 in order to prohibit corporate actions which disenfranchise existing shareholders. In this regard, the NASD stated that it intends to apply the proposed rule change in a manner consistent with the application of Rule 19c-4 since its adoption in July, 1988. Accordingly, the NASD emphasized that it will continue to look to the interpretive discussion of the Rule in the Commission's adopting release [12] and to prior NASD interpretive summaries for guidance in the application of the proposed rule changes.

IV. Comment Letters

The United Shareholders Association ("USA"), the Association for Investment Management and Research ("AIMR") and the Institutional Shareholder Services, Inc. ("ISS") submitted comment letters to the Commission regarding the NASD's proposal.[13] The NASD also submitted a comment letter in response.[14] All three comment letters were in support of the NASD's basic proposal to adopt the prohibitions against shareholder disenfranchisement set forth in Rule 19c-4 for NASDAQ/NMS stocks. Both USA and AIMR, however, urged the Commission and the NASD to apply the proposal to all NASDAQ issuers. USA stated that it saw no justification for the distinction made between NMS and non-NMS securities and that, although it commended the NASD for submitting the proposal, it believes that the proposal is only a half-step without the added inclusion of non-NMS issuers. USA further stated that, in its view, failure to include all NASDAQ issuers would be discriminatory and unfair to the non-NMS shareholders. AIMR stated that shareholders of all issuers quoted on NASDAQ should be afforded the same protections as NASDAQ/NMS issuers.

The NASD submitted a letter responding to these three comment letters.[15] The NASD's response focused directly on the commentators' concerns regarding the application of the Rule 19c-4 standards to only NASDAQ/NMS stocks. Specifically, the NASD stated that in considering whether to place such a voting rights listing standard upon issuers, the NASD Board determined that it was appropriate to impose a standard premised on Rule 19c-4 in a manner consistent with its application of other similar standards. In this regard, the NASD noted that its non-quantitative listing standards currently are imposed only on NASDAQ/NMS issuers.

In addition, the NASD stated that it believed the limitation to only NASDAQ/NMS issuers will strike an appropriate balance between impeding a company's ability to create a desired capital structure and the protections which such a standard affords to shareholders in the NMS issuers constitute the group of NASDAQ securities which are most widely held by the public. Finally, the NASD articulated the necessity of the existence of such a standard due to the Memorandum of Understanding ("MOU") between it and the North American Securities Administrators Association regarding a model uniform marketplace exemption from state securities registration requirements.[16] The MOU specifically states that blue sky security law exemptions to NASDAQ/NMS stocks should be granted, among other things, because of the application of shareholder corporate governance standards, including Rule 19c-4, to NASDAQ/NMS securities. Currently, 39 states have granted NASDAQ/NMS securities exemptions from registration under their respective blue sky securities laws.[17] Accordingly, the NASD believes that the proposal to adopt such a standard should apply only to NASDAQ/NMS issuers because it is these issuers that would lose valuable benefits in the absence of its existence.

V. Commission Findings

The Commission believes that the NASD's proposal to adopt the standards set forth in Rule 19c-4 against shareholder disenfranchisement for NASDAQ/NMS securities is an important step toward increasing shareholder protection, thereby enhancing investor confidence in the U.S. securities market system.[18] Currently, the New York Stock Exchange, Inc. ("NYSE") is the only other SRO which has adopted similar voting rights listing standards.[19] The Commission continues to encourage the adoption of such standards by the remaining SROs,[20] and remains confident that such a voting rights listing standard is a beneficial step toward strengthening the U.S. securities market.

After careful consideration, therefore, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations pertaining to a national securities association and, in particular, the requirements of section 15A(b)(6) and section 15A(b)(9). In this regard, the Commission believes that the NASD's proposal to incorporate

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] As discussed *infra*, the NASD proposes to adopt the exact language of former SEC Rule 19c-4 as its voting rights listing standard for NASDAQ/NMS stocks.

[4] Currently, the NASD is the only national securities association registered under Section 15A of the Act. 15 U.S.C. 78o-3(a).

[5] *See* Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376 (July 12, 1988) ("Adopting Release"). Upon its adoption by the Commission, Rule 19c-4 automatically became a rule of the national securities exchanges and associations pursuant to Section 19(c) of the Act which grants to the Commission the authority to abrogate, add to, and delete from the rules of a self-regulatory organization ("SRO").

[6] *See Business Roundtable* v. *S.E.C.*, Fed. Sec. L. Rep. (CCH) ¶ 96,291 (D.C. Cir. June 12, 1990).

[7] The Commission notes that the Court of Appeals decision did not focus upon the merits of a disenfranchisement rule or upon whether a national securities exchange or association could adopt such a rule pursuant to Section 19(b), but rather upon the Commission's authority to promulgate Rule 19c-4 under its Section 19(c) powers. The decision, however, does make clear that voting rights listing standards are rules that are subject to the Commission's authority, including Section 19(b).

[8] NMS securities are those equity securities, both listed on a national securities exchange and in the over-the-counter market, for which last sale transaction reporting is required. *See*, Section 11A of the Act and Rules 11Aa3-1 and 11Aa3-1 thereunder.

[9] The proposal would adopt the exact language of Rule 19c-4 into the NASD's rules. Specifically, it would prohibit the quotation of an NASDAQ/NMS issuer's common stock or other equity securities if the issuer issues any class of stock or takes other corporate action which would have the effect of nullifying, restricting or disparately reducing the per share voting rights of outstanding common stock shareholders.

[10] For an in-depth explanation and description of these actions, *see* Adopting Release, 53 FR 26376, at 26384.

[11] *See* Adopting Release, 53 FR 26376, at 26383 for an indepth explanation and description of these permitted transactions.

[12] *See* Adopting Release, 53 FR 26376, at 26382.

[13] *See* letters from Ralph V. Whitworth, Director, USA, dated August 23, 1990; Anthony T. Cope, CFA and Chairman, AIMR, dated August 23, 1990; and Eric M. Ovsiew, Deputy General Counsel, ISS, dated August 17, 1990, to Jonathan G. Katz, Secretary, SEC.

[14] *See* letter from T. Grant Callery, Vice President and Deputy General Counsel, NASD, to Katherine England, Branch Chief, SEC, dated September 28, 1990.

[15] *See* note 14, *supra*.

[16] *See* Securities Act Release No. 6810 (December 15, 1988), 53 FR 52350.

[17] These exemptions are contingent upon the continued application of a Rule 19c-4 standard to NASDAQ/NMS securities.

[18] The Commission believes the analysis contained in the release adopting Rule 19c-4 (*see* note 5, *supra*) demonstrates clearly that the NASD's proposal is consistent with the Act.

[19] *See* Securities Exchange Act Release No. 27564 (December 20, 1989), 54 FR 53227 [order approving the NYSE's proposal to adopt the standards set forth in Rule 19c-4 (File No. SR-NYSE-89-19)].

[20] The Commission notes that the American Stock Exchange, Inc. recently has formed a committee to study the issue of what standards to adopt as the basis of its voting rights listing policy.

prohibitions against shareholders disenfranchisement into the NASD's Schedule D for NASDAQ/NMS issuers does not unfairly discriminate among issuers in contravention of section 15A(b)(6) of the Act, nor does it impose any burden on competition not necessary or appropriate in furtherance of the Act in contravention of section 15A(b)(9).[21]

In reviewing a proposed rule change of an SRO, the Commission is directed under Section 19(b) of the Act to approve proposed rule changes that it finds are consistent with the requirements of the Act.[22] As noted above, two of the three commentators expressed reservations about applying the prohibitions of Rule 19c–4 to only NASDAQ/NMS issuers, as opposed to all NASDAQ issuers.[23] Accordingly, the Commission has carefully reviewed this portion of the proposal and has taken into account the commentators' concerns regarding this issue, and the NASD's response to these concerns, in light of the section 19(b) standards for reviewing rule proposals of SROs.

As an initial matter, we note that the Commission believes that it would have been consistent with the Act if the NASD had proposed to apply voting rights standards to all NASDAQ issues, and that this, in the Commission's view, would have been the preferable approach.[24] Such protections would be beneficial to shareholders of non-NMS NASDAQ companies as well as shareholders of NASDAQ/NMS companies. Moreover, we are aware of no evidence that the application of Rule 19c–4 to all NASDAQ issuers unnecessarily impeded the operations of non-NMS issuers. On the other hand, the Commission believes that the NASD's proposal limiting the application to NASDAQ/NMS issues should be approved pursuant to section 19(b) of the Act because it also is consistent with the Act's requirements for the reasons set forth below.

The Commission believes that applying prohibitions on shareholder disenfranchisement to only NASDAQ/NMS issues is not inconsistent with the Act because the proposal does not unfairly discriminate between issuers in the NASDAQ markets, under Section 15A(b)(6).[25] First, the Act recognizes that U.S. securities markets will develop their own eligibility standards for securities traded on their markets and that these standards may differ among markets.[26] It is within this context that the NASD has developed important distinctions between NMS and non-NMS NASDAQ securities. For example, there are significant differences in the quantitative eligibility standards [27] and qualitative eligibility standards [28] which apply to each market, NMS and non-NMS. Further, the standards for NASDAQ/NMS designation are currently, and traditionally have been, higher than the standards for quoting a security simply on NASDAQ. Second, the Act also treats differently, for certain purposes, NASDAQ/NMS and NASDAQ/non-NMS stocks. For example, under section 11A of the Act there are different transaction reporting requirements for NMS stocks as compared to non-NMS stocks. These differences all reflect the fact that NMS securities are expected to be securities with a broad national, rather than local, trading interest and which are part of a more organized, visible market which is more likely to be followed by professional securities analysts and the public. It is reasonable, therefore, for the NASD to impose additional requirements for shareholder protection only upon the group of securities with a broad, national shareholder base, that is NASDAQ/NMS securities.

Furthermore, in light of the above stated differences between NMS and non-NMS securities, the Commission also concludes that the proposal is consistent with section 15A(b)(9) in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the NASDAQ's non-NMS market is predominately comprised of less capitalized companies, leading the Commission to believe that the Act does not compel the NASD to place the same voting rights listing standards upon non-NMS issuers as opposed to issuers of NMS securities.

In summary, the Commission believes that the NASD's proposal to apply prohibitions against shareholder disenfranchisement to only NASDAQ/NMS issues adheres to the NASD's past practice of applying heightened standards for listing securities in NASDAQ/NMS.[29] In reaching this conclusion, we refer to our previously stated belief that the Act allows an SRO sufficient flexibility to proceed cautiously in implementing potentially significant structural changes in the marketplace.[30] The Commission views this proposal as within the discretion afforded to the NASD when it formulates the distinct eligibility criteria applicable to NMS versus non-NMS issuers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Dated: October 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24118–Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M.

[21] When adopting Rule 19c–4, the Commission stated its belief that the issue of shareholder voting rights has far-reaching implications, and that a rule ensuring a minimum level of shareholder protection from disenfranchising actions is appropriate and consistent with the purposes of the Act. The Commission remains confident that a rule premised on the prohibitions embodied in Rule 19c–4 is a necessary addition to the standards for quotation of NASDAQ/NMS stocks.

[22] *See* section 19(b) of the Act, 15 U.S.C. 78s(b) (1982).

[23] In its notice of the NASD's rule filing, the Commission specifically solicited comment on the issue of whether the voting rights standard should apply to all NASDAQ-quoted stocks or should be limited, as proposed, to NASDAQ/NMS stocks.

[24] As noted above, as promulgated by the Commission, Rule 19c–4 applied to all NASDAQ quoted stocks.

[25] Section 15(b)(6) stated that a national securities association cannot have rules that unfairly discriminate between any customers, issuers, brokers or dealers.

[26] The Act does not set forth specific eligibility or listing standards, but instead permits the SROs to develop their own standards, subject to Commission review and approval under Section 19(b).

[27] For example, to be listed in NASDAQ/NMS issuers are required to have at least 500,000 publicly held shares with a minimum of 800 holders and net tangible assets of $4 million, while non-NMS issuers are required to maintain 100,000 publicly held shares with a minimum of 300 holders and total assets of $2 million. *See NASD Manual,* Schedule D, Parts II and III.

[28] For example, the NASD requires that only NASDAQ/NMS issuers establish and maintain an Audit Committee composed of a majority of independent directors. Additionally, only NASDAQ/NMS issuers are required to obtain shareholder approval of certain issuances of securities. *See NASD Manual,* Schedule D, Part III, Section 3, paragraph 1812.

[29] As indicated in note 28, *supra,* this is consistent with the Commission's approval of other NASDAQ/NMS corporate governance standards such as shareholder approval requirements, which apply only to NASDAQ/NMS issuers. *See* Securities Exchange Act Release No. 28232 (July 19, 1990), 55 FR 30346 (order approving File No. SR–NASD–89–42).

[30] *See* Securities Exchange Act Release No. 23788 (November 3, 1986), 51 FR 41183 (order approving an NYSE proposed rule change to amend its Rules relating to approved persons of specialists).

[31] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–17781; Int'l Series Release No. 164; (812–7502)]

New Germany Fund; Notice of Application

October 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of filing of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The New Germany Fund, Inc. (the "New Germany Fund") and the Future Germany Fund, Inc. (the "Future Germany Fund") (collectively referred to as the "Existing Funds"); and each other investment company for which Deutsche Bank Capital Corporation ("DBCC"), DB Capital Management International GmbH ("CMI"), Deutsche Bank AG ("Deutsche Bank") or any of Deutsche Bank's other subsidiaries or affiliates may in the future serve as investment adviser or manager ("Prospective Funds").

RELEVANT SECTIONS: Order requested under section 6(c) for an exemption from section 12(d)(3) of the 1940 Act.

SUMMARY: Applicants seek an order under Section 6(c) to permit them to invest in securities of the following major West German Banks, which are publicly traded on one or more of the West German Stock Exchanges: Berliner Bank, Bayerische Hypotheken- und Weschelbank, Bayerische Vereinsbank, Berliner Handels- und Frankfurter Bank, Commerzbank, Dresdner Bank, and DSL Holdings (collectively hereinafter referred to as the "Banks"). Such investments would have the same quantitative limits as, and comparable conditions to, those imposed on investments in United States companies deriving more than 15% of their gross annual revenues from securities-related activities by Rule 12d3–1 under the 1940 Act.

FILING DATES: The application was filed on March 29, 1990, and amended on September 4, 1990 and September 20, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 2, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a cetificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, The New Germany Fund, Inc. and the Future Germany Fund, Inc., c/o Richard A. Pollack, Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004. J. Eric Maki, Esq., Sullivan & Cromwell, 250 Park Avenue, New York, NY 10177 or John T. Bostleman, Esq., Sullivan & Cromwell, 250 Park Avenue, New York, NY 10177.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272–7324 or Stephanie M. Monaco, Branch Chief (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Both of the Existing Funds are non-diversified closed-end management companies registered under the 1940 Act.

2. The investment objective of each of the Existing Funds is to seek long-term capital appreciation through investment in equity and equity-linked securities of companies domiciled in West Germany.

3. The investment Adviser of the Existing Funds is CMI, a corporation organized under the laws of West Germany. The Manager of the Existing Funds is DBCC, a corporation organized under the laws of the State of New York. Both are wholly owned subsidiaries of Deutsche Bank, a corporation organized under the laws of West Germany. Both CMI and DBCC are registered as investment advisers under the Investment Advisers Act of 1940.

4. Pursuant to investment advisory agreements with each of the Existing Funds, CMI makes recommendations to DBCC with respect to the Existing Funds' investments, and upon instructions given by DBCC as to suitable securities for investment by the Existing Funds, transmits purchase and sale orders and selects brokers and dealers to execute portfolio transactions on behalf of the Existing Funds. Pursuant to management agreements, DBCC acts as the corporate manager and administrator of the Existing Funds and, subject to the supervision of the Existing Funds' Boards of Directors and pursuant to the recommendations made by CMI, determines suitable securities for investment by the Existing Funds.

5. West German commercial and banking laws permit banks to act, either directly or indirectly, as securities broker/dealers, investment bankers/underwriters, mutual and other investment funds managers and investment advisers. All the major West German commercial and central savings banks, including the Banks, are members of the West German stock exchanges. Therefore, investment in such Banks by the Existing Funds would be subject to the prohibitions of section 12(d)(3). It is not possible for Applicants to ascertain definitively whether the banks derive more or less than 15% of their gross revenues from securities-related activities for any given period. Because of the extent of the Banks' participation in securities-related business at the present time, Applicants have assumed for purposes of this application that investment in the Banks would be subject to the conditions of Rule 12d3–1(b).

6. As of December 29, 1989, the Banks, not including Berliner Bank and DSL Holdings, represented 9.49% of F.A.Z. Index, which includes a broadly representative list of major industrial, mining, financial and utility stocks. In addition, as of November 1989, Dresdner Bank, Commerzbank, Bayerische Hypotheken- und Weschelbank, Bayerische Vereinsbank and Berliner Handels- und Frankfurter Bank were the 11th, 17th, 18th, 24th, and 45th largest companies in West Germany, respectively, based on market capitalization.

Applicants' Legal Analysis

7. Applicants have reviewed all of the conditions set forth in Rule 12d3–1(b) and represent that they will be able to satisfy all but one of the conditions. Applicants cannot satisfy the condition that any equity security acquired must be a "margin security" as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System. Because the equity securities of the Banks are not listed on a United States securities exchange or traded in the United States in the over-the-counter market, they cannot be "margin securities." Because Applicants are unable to satisfy all of the conditions of Rule 12d3–1(b), they argue that they are unable to take advantage of good investment opportunities and to increase the diversification of their portfolios, particularly diversification within the financial sector of the West German economy.

8. In support of the requested relief, Applicants submit that the securities of the Banks clearly have at least the degree of investor interests and depth and breadth of market as certain securities traded on United States national securities exchanges or in the United States over-the-counter market

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which have been designated as "OTC margin stock." Applicants further submit that their investment in securities issued by the Banks would have no adverse effect on the liquidity of their portfolios.

9. Applicants assert that the public information available about the Banks in West Germany is at least equal to information available in West German issuers in nonregulated industries in which Applicants regularly invest, including those listed on West German stock exchanges. Applicants submit that the requirements imposed by the West German Banking Act, Commercial Code and Stock Exchange Act, while not in all respects as comprehensive as United States securities laws, provide significant disclosure in connection with the issuance of securities which is the "substantial equivalent" of the disclosure required by the Securities Act of 1933.

10. Based on the foregoing, Applicants assert that the Banks and their securities would meet the criteria necessary to qualify as "OTC margin stock" if they were United States issuers. Thus, the policy for the requirement that equity securities acquired must be "margin securities" would not be compromised by allowing Applicants to invest in these well-established and highly-regulated companies.

11. Applicants also submit that their proposed investment in the Banks would satisfy the conditions of the proposed amendments to Rule 12d3–1 as set forth in Investment Company Act Release No. 17096 (August 3, 1989).

12. Applicants submit that, given the significant market share of the Banks and their prominence in the financial services sector of the West German economy, they would be able to take advantage of good investment opportunities and increase the diversification of their portfolios if they are permitted to invest in equity and debt securities of the Banks. Applicants assert that the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that if the requested order is granted, such order will be subject to the following conditions:

1. Applicants will not invest in any securities issued by Deutsche Bank, or any other affiliate of CMI or DBCC that is engaged in a securities-related business, except as otherwise permitted under section 12(d)(3) (A) and (B) of the 1940 Act; and

2. Applicants will comply with the proposed amendments to Rule 12d3–1 under the 1940 Act as they are currently proposed, or as they may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24115 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28519; File No. SR–NYSE–90–31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Extension of Public Comment Period for Proposed Rule Change

On June 25, 1990, the New Stock Exchange, Inc, ("NYSE" or "Exchange") submitted a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b–4 thereunder, that would allow specialists on the floor of the Exchange to expand their use of options for hedging purposes. The proposal would permit specialists the choice of using either fixed hedge ratios, deltas or any other hedging convention approved by the Exchange to offset risk in an existing specialty stock position. Notice of the proposed rule change was provided in Securities Exchange Act Release No. 28260 (July 24, 1990), 33 FR 31268.

The Commission received one request for an extension of the period for public comment.[1] The Chicago Board Options Exchange, Inc. ("CBOE"), citing their extensive comments in 1985 when the NYSE changed the 50 year ban on specialists holding an interest in options on their specialty stocks, states that they seek to provide additional comments with respect to the proposed changes to expand specialists options transactions. In addition, the CBOE contends that the complexity of the filing and its effect on maket volatility justifies an extension of the comment period.

The NYSE consented to an extension of the period for public comment on the proposed rule change.[2]

The Commission hereby extends the period for public comment on the proposed rule change until October 15, 1990.

For the Commission, by the Division of Market Regulation, purusant to delegated authority.

Dated: October 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24117 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 17778; International Series Rel. No. 163; 812–7500]

The Mexico Equity and Income Fund, Inc.; Notice of Application

October 4, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: The Mexico Equity and Income Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and Rule 12d3–1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more that 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to Rule 12d3–1.

FILING DATE: The application was filed on September 28, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 30, 1990, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.

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[1] *See* letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Robert P. Ackermann, Vice President, Chicago Board Options Exchange, Inc., dated August 24, 1990.

[2] Conversation between Jeffrey P. Burns, Options Regulation, SEC, and Brian McNamara, Managing Director, Market Surveillance Division, NYSE, on September 28, 1990.

Applicant, 200 Liberty Street, New York, NY 10281.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300)..

Applicant's Representations

1. Applicant is a Maryland corporation and a closed-end management investment company registered under the Act. Applicant's investment advisers are Acci Worldwide, S.A. de C.V. (the "Mexican Adviser") and Advantage Advisers, Inc. (the "U.S. Co-Adviser"). The Mexican Adviser is a newly-formed Mexican subsidiary of Acciones y Valores de Mexico, S.A. de C.V., a Mexican brokerage firm, and is organized under the laws of the United Mexican States. The U.S. Co-Adviser is a newly-formed subsidiary of Oppenheimer & Co., Inc., and is organized under the laws of the State of Delaware. Both the Mexican Adviser and the U.S. Co-Adviser are registered as investment advisers under the Investment Advisers Act of 1940.

2. Applicant seeks to diversify its portfolio further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicant seeks relief from section 12(d)(3) of the Act and Rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to Rule 12d3–1. *See* Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended Rule 12d3–1 would, among other things, facilitate the acquisition by applicant of equity securities issued by foreign securities companies. Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended Rule 12d3–1.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, applicant seeks an exemption from the "margin security" requirements of Rule 12d3–1.

2. Proposed amended Rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested:

Applicant will comply with the provisions of the proposed amendments to Rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24036 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17779; 812–7414]

October 5, 1990.

Piper Jaffray Inc., et al.; Notice of Application

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Piper Jaffray Incorporated ("Piper Jaffray"); Piper Capital Management Incorporated (the "Adviser"); Piper Jaffray & Hopwood Incorporated (the "Distributor"); and Piper Jaffray Investment Trust Inc. ("Investment Trust," including the following ten series: Institutional Government Income Portfolio, U.S. Government Money Market Fund, Tax-Exempt Money Market Fund, Money Market Fund, National Tax-Exempt Fund, Minnesota Tax-Exempt Fund, Sector Performance Fund, Value Fund, Balanced Fund, and Government Income Fund), American Government Income Fund Inc. ("Income Fund"), American Government Income Portfolio, Inc. ("Income Portfolio"), American Government Term Trust Inc. ("Term Trust"), American Opportunity Income Fund Inc. ("American Opportunity"), and all future series of Investment Trust and all future investment companies for which subsidiaries or affiliates of Piper Jaffray serve as investment adviser and/or principal underwriter (collectively, the "Funds").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 17(b) from section 17(a) and pursuant to section 17(d) and Rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order permitting the indemnification by Piper Jaffray of the fidelity bond issuer for the Adviser, the Distributor, and the Funds, and future similar arrangements, and permitting claims under the fidelity bonds to be settled in accordance with guidelines set forth in the application.

FILING DATE: The application was filed on October 20, 1989 and amended on May 25, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Hearing requests should be received by the SEC by 5:30 p.m. on November 2, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Interested persons may request notification of the hearing date by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549;

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Applicants, c/o Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272–7324, or Stephanie M. Monaco, Branch Chief, (202) 272–3022 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier (800) 231–3282 (in Maryland (301) 738–1400).

Applicants' Representations

1. Piper Jaffray is a publicly held corporation engaged through its subsidiaries in various aspects of the financial services industry.

2. The Adviser and the Distributor are wholly-owned subsidiaries of Piper Jaffray. The Adviser furnishes investment advice to open-end and closed-end investment companies, pension and profit sharing funds, corporate funds, and individuals. The Distributor is a full-service broker dealer.

3. Investment Trust is a registered diversified open-end management company which has one class of capital stock that is currently issued in ten separate series (Institutional Government Income Portfolio, U.S. Government Money Market Fund, Tax-Exempt Money Market Fund, Money Market Fund, National Tax-Exempt Fund, Minnesota Tax-Exempt Fund, Sector Performance Fund, Value Fund, Balanced Fund, and Government Income Fund). The Adviser manages Investment Trust. The Distributor serves as the distributor of the ten series of Investment Trust's capital stock.

4. Income Fund, Income Portfolio, Term Trust and American Opportunity are registered closed-end management investment companies whose shares are traded on the New York Stock Exchange. The Adviser is the investment adviser and manager of these companies. The Distributor serves as one of several underwriters for Income Fund, Income Portfolio, Term Trust, and American Opportunity.

5. The Adviser, the Distributor, all series of Investment Trust except the Money Market Fund, and Term Trust are currently joint insureds under a $2 million fidelity bond issued by The Aetna Casualty and Surety Company ("Aetna"); the Adviser, the Distributor, and the Money Market Fund series of Investment Trust are currently joint insureds under a second $2 million fidelity bond issued by Aetna; the Adviser, the Distributor, Income Fund, Income Portfolio, and American Opportunity are currently joint insureds under a third $2 million fidelity bond issued by Aetna (collectively, the "Bonds"). The Bonds meet the requirements set forth in Rule 17g–1 under the 1940 Act.

6. Aetna has no affiliation with Piper Jaffray or with any of Piper Jaffray's affiliates. Aetna's business relationship with these entities is as insurance carrier for the three $2 million Bonds, a $25 million fidelity bond, a $10 million fiduciary liability insurance policy, an excess SIPC policy, and a mail insurance policy covering Piper Jaffray and its affiliates, and a $2 million fidelity bond for the Piper Jaffray Trust Company.

7. One of the Bonds was originally issued in 1987 and covered the insureds then in existence. The remaining two Bonds were originally issued in 1989. There have been no claims submitted to Aetna under the three $2 million Bonds since the Bonds were originally issued.

8. For each of the 1987 and 1988 policy years, the premium for the one $2 million Bond was $1,500. Aetna provided the Bonds at no cost for the 1989 policy year.

9. For each policy year, Piper Jaffray entered into agreements to indemnify Aetna for all loss and expense which Aetna may incur or sustain under the Bonds in order to obtain coverage for the Funds at the lowest cost. Such agreements and similar future agreements are hereinafter referred to as "Indemnification Agreements." In connection with renewing the Indemnification Agreements for the 1989 policy year, Piper Jaffray requested an estimate from its insurance broker of the premium that would be charged for three $2 million fidelity bonds without any indemnity agreements. According to the insurance broker, the insured would be required to pay an estimate of $125,000 to purchase three $2 million fidelity bonds without any indemnity agreements. Aetna was willing to write three $2 million fidelity bonds, with Indemnificatin Agreements, for no cost.

10. In order to obtain coverage for the Funds for no cost, Piper Jaffray entered into the Indemnification Agreements with Aetna for the 1989 policy year. Although the Bonds were issued by Aetna, Piper Jaffray could be regarded as the effective insurer of the Funds, since Piper Jaffray will be obligated to indemnify Aetna for all loss and expense under the Bonds. However, the Bonds are independent contracts between Aetna and the insureds under such Bonds, the validity and effectiveness of which does not depend upon the Indemnification Agreements. Aetna is fully liable to the insureds whether or not Piper Jaffray honors the Indemnification Agreements.

11. The Boards of Directors of Piper Jaffray, the Adviser, the Distributor, and the Funds (the "Boards") concluded, and Applicants hereby represent, that the purchase of the Bonds from Aetna and the execution by Piper Jaffray of the Indemnification Agreements provides the best available protection for the shareholders of the Funds at the lowest cost consistent with such coverage.

12. The Funds also propose the following procedures to permit them to settle claims arising under the Bonds without further exemptive relief:

a. *Reporting of loss.* The officers of each Fund will be required to report all losses covered under the Bonds to the Board.

b. *Determination of the Amount of Loss.* A majority of the disinterested directors who are not "interested persons" as the term is defined under the 1940 Act (the "Disinterested Directors"), with the advice of independent counsel, will determine the amount of loss. The determination will then be submitted to the entire Board for majority approval, and if a majority of the Board and a majority of the Disinterested Directors agree to the amount thereof, the fund will submit a claim for payment for that amount to Aetna.

c. *Settlement of Claim.* If Aetna agrees to pay the amount submitted, the Fund will accept payment and relieve Aetna from further liability with respect to the loss. If Aetna proposes a settlement offer in an amount less than the amount submitted, the Board, including the Disinterested Directors of the Fund, will evaluate the adequacy of the settlement offer. If a majority of the Board and a majority of the Disinterested Directors (upon the advice of their independent counsel) conclude that the proposed settlement offer meets the elements of section 17(b) and section 17(d), then the settlement offer will be accepted without the need for an exemptive order or any other action. The reasons for such Board actions will be recorded in the minutes of the Board, and made available for inspection by the staff of the SEC. Otherwise the Board would reject the proposed settlement offer and continue negotiations with Aetna or institute litigation or other appropriate proceedings. All settlement negotiations will be conducted by the Fund directly with Aetna without the participation of Piper Jaffray. Piper Jaffray will not attempt to influence the negotiations in any way.

Applicants' Legal Conclusions

13. Because subsidiaries or affiliated persons of Piper Jaffray serve as investment adviser and/or principal underwriter for the Funds, if the Indemnification Agreements were viewed as a sale of property to the Funds, such agreements might be prohibited under section 17(a). Further, the Indemnification Agreements and the settlement of any claims by the Funds could be construed as a joint enterprise or other joint arrangement between Piper Jaffray, the Adviser, the Distributor, and the Funds prohibited by section 17(d).

14. Applicants contend that granting the requested relief for future Indemnification Agreements is appropriate under section 17(a) of the 1940 Act because it is reasonable, fair, and does not involve overreaching on the part of any entity concerned, and is consistent with the policy of the Funds and the purposes of the 1940 Act. Applicants argue that the relief is also appropriate under section 17(d) and Rule 17d–1 because the transaction is consistent with the provisions, policies and purposes of the 1940 Act and is not on a basis different from or less advantageous than that of other participants. The coverage provided by Aetna is the best available protection for the shareholders at the lowest cost available.

15. Applicants also submit that granting the requested relief for the proposed settlement procedures is also appropriate. The reliance placed on the Disinterested Directors in the settlement process, similar to that used in Rules 17a–7 and 17e–1, alleviates any possibility of overreaching or unfairness while at the same time sparing the Funds the additional expenses that would be incurred by the necessity of having to file an exemptive application each time a settlement offer is made.

Applicants' Conditions

Applicants agree that any relief will be subject to the following conditions:

16. Before Piper Jaffray is asked to enter into similar Indemnification Agreements in connection with a renewal of the Bonds, a majority of the Disinterested Directors of each of the Funds, as well as a majority of the directors, must determine that such arrangement would provide the best available protection for the shareholders of the Funds at the lowest cost consistent with such coverage. To make this determination, the Boards will obtain a quote for fidelity bonds without any indemnification arrangements, and compare such quotes and fidelity bonds to the cost and coverage provided by the current or similar fidelity bonds and indemnification arrangements. A Fund that does not approve of the current or similar indemnification arrangement will obtain a separate fidelity bond without any indemnification arrangement.

17. Any future agreements of indemnity with Aetna in connection with the purchase of future, similar bonds will be on substantially the same terms and conditions as the Indemnification Agreements. In connection with such future agreements, each of the Boards will be required to make the determination described in the preceding paragraph.

18. The premiums for the Bonds are to be paid by the insured directly to Aetna. Piper Jaffray has not been and will not be compensated by Aetna or the Insureds, directly or indirectly, for entering into Indemnification Agreements.

19. Applicants acknowledge that the granting of the requested exemptive order does not imply or constitute Commission approval or authorization of, or acquiescence in, any transactions that occured prior to the issuance of the exemptive order.

20. The representations above regarding the proposed settlement of claims under the Bonds, *see* ¶12, are made express conditions to the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24116 Filed 10–11–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

[Docket No. 47090]

United States-United Kingdom Regional Airport Case; Notice of Revised Hearing Date

Notice is hereby given that the hearing in this matter that was to have commenced on October 9, 1990 is postponed because of the substantial doubt whether funding for this Department for the new fiscal year will have been effected, either temporarily or permanently, by that date. The new hearing date is October 15, 1990, at 9 a.m. (local time) in Room 5332, 400 7th Street, SW., Nassif Building, Department of Transportation, Washington, DC.

There will be a new hearing site for the second week of the hearing that will be orally announced when the hearing begins.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 90–24039 Filed 10–11–90; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

Privacy Act; Statement of General Routine Uses Proposed Amendment

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Proposed amendment of a Privacy Act routine use.

SUMMARY: DOT proposes to amend its General Routine Use on use in litigation of information covered by the Privacy Act to conform with Office of Management and Budget (OMB) advice. Public comment is invited.

DATES: Comments should be received by November 13, 1990. If no comments are received, the amended Routine Use will take effect on November 21, 1990. If comments are received, the unamended Routine Use will remain in effect pending resolution of the comments and further publication in the Federal Register.

ADDRESSES: Comments should be sent to Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, (202) 366–9154.

SUPPLEMENTARY INFORMATION: Under the Privacy Act, a routine use is a use to which information subject to the Act is put that is compatible with the original purpose for collecting the information. DOT has a number of routine uses that apply to all DOT Privacy Act systems unless otherwise noted (General Routine Uses). DOT proposes to amend General Routine Use #4, on use in litigation of information covered by the Privacy Act, to reflect, in large part, current OMB advice.

DOT's current General Routine Use for Litigation reads as follows:

"4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations."

OMB advises that a routine use such as this one may not be specific enough, thereby permitting inappropriate

disclosure. Therefore, DOT proposes to adopt the following language:

4.a. *Routine use for disclosure for use in litigation:* It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when

compatible with the purpose for which the records were collected.

Public comment is invited.

Issued in Washington, DC, on September 24, 1990.

Paul T. Weiss,

Deputy Assistant Secretary for Administration.

Issued in Washington, DC, on October 2, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket no.: 23356

Petitioner: Clarke Outdoor Spraying

Sections of the FAR affected: 14 CFR 121.411; 121.413; and part 121, Appendix H

Description of relief sought: To allow petitioner to use certain highly qualified instructor pilots and, if appropriate, flight engineer instructors, trained by petitioner, to

Petitioner: American Flyers

Sections of the FAR affected: 14 CFR 141.65

Description of relief sought/disposition: To extend and amend Exemption No. 4287, as amended, which permits petitioner to hold examining authority for flight instructor and airline

kilowatt-minutes per square meter, rather than the definitive maximum peak release rate of 65 kilowatts per square meter, the maximum total heat release of 65 kilowatt-minutes per square meter, and the maximum smoke emission specific optical smoke density (D_s) of 200.

disclosure. Therefore, DOT proposes to adopt the following language:

4.a. *Routine use for disclosure for use in litigation:* It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when

(a) The Department of Transportation (DOT), or any agency thereof, or

(b) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her official capacity, or

(c) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her individual capacity where the Department of Justice has agreed to represent the employee, or

(d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

b. *Routine use for Agency disclosure in other proceedings:* It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which the Department of Transportation (DOT) or any agency thereof, appears, when

(a) DOT, or any agency thereof, or

(b) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her official capacity, or

(c) any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her individual capacity where DOT has agreed to represent the employee, or

(d) the United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States,

is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

Public comment is invited.

Issued in Washington, DC, on September 24, 1990.

Paul T. Weiss,

Deputy Assistant Secretary for Administration.

[FR Doc. 90-24040 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-90-41]

Petitions for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior pettions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 1, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 2, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket no.: 23358
Petitioner: Clarke Outdoor Spraying Company, Inc.
Sections of the FAR affected: 14 CFR 91.313(c)
Description of relief sought: To extend Exemption No. 5010, which allows petitioner, under certain conditions, to carry passengers in restricted category aircraft, namely two Bell 47G5 helicopters, while performing aerial service. Exemption No. 5010 will expire on January 31, 1991.

Docket no.: 23492
Petitioner: United States Hang Gliding Association, Inc.
Sections of the FAR affected: 14 CFR 103.1 (a) and (b)
Description of relief sought: To extend Exemption No. 4721, as amended, which allows USHGA members to operate two-place unpowered ultralight vehicles for the purpose of sport and recreation or flight instruction conducted by USHGA certified instructors. Exemption No. 4721, as amended, will expire on October 31, 1990.

Docket no.: 23901
Petitioner: General Motors Corporation
Sections of the FAR affected: 14 CFR 21.197(a)(1)
Description of relief sought: To extend Exemption No. 5136, which allows petitioner to operate its Cessna Model 650 airplanes without obtaining a special flight permit when the flaps fail in the up position. Exemption No. 5136 will expire on February 28, 1991.

Docket no.: 25351
Petitioner: USAir
Sections of the FAR affected: 14 CFR 121.371(a) and 121.378
Description of relief sought: To extend Exemption No. 5005A, which allows petitioner to utilize certain foreign equipment manufacturers and related repair facilities to perform maintenance, preventive maintenance, and alterations on the components, parts, and appliances that are produced by such manufacturers, which are used on the BAe-146, B737, MD-80, F-28, F-100, and B767 aircraft operated by petitioner. Exemption No. 5005A will expire on December 28, 1990.

Docket no.: 26223
Petitioner: Airbus Service Company/ Training Center, Inc.
Sections of the FAR affected: 14 CFR 121.411; 121.413; and part 121, Appendix H
Description of relief sought: To allow petitioner to use certain highly qualified instructor pilots and, if appropriate, flight engineer instructors, trained by petitioner, to train the initial cadre of pilots and, if appropriate, flight engineers of part 121 certificate holders. In addition, the exemption, if granted, would allow the petitioner to train part 121 certificate holders' airmen in initial, transition, upgrade, differences, and recurrent training in an approved simulator and in turbojet-powered airplanes manufactured by petitioner without the instruction meeting all of the applicable training requirements of subpart N and the employment requirements of appendix H of part 121 and without petitioner holding an air carrier operating certificate.

Dispositions of Petitions

Docket no.: 15590
Petitioner: Embry-Riddle Aeronautical University
Sections of the FAR affected: 14 CFR part 141, appendixes A, C, D, F, and H
Description of relief sought/disposition: To extend Exemption No. 2329 that exempts students in petitioner's pilot training courses from the minimum flight time requirements of appendixes A, C, D, F, and H of part 141.
Grant, September 21, 1990, Exemption No. 2329G

Docket no.: 21802
Petitioner: Sowell Aviation Company, Inc.
Sections of the FAR affected: 14 CFR 141.65
Description of relief sought/disposition: To amend and extend Exemption No. 4551, as amended, which permits petitioner to hold examining authority for flight instructor and airline transport pilot written tests.
Grant, September 27, 1990, Exemption No. 4551C

Docket no.: 23647
Petitioner: Embry-Riddle Aeronautical University
Sections of the FAR affected: 14 CFR 141.65
Description of relief sought/disposition: To extend Exemption No. 3859, as amended, that permits petitioner to recommend graduates of its flight instructor certification courses for flight instructor certificates (with the associated ratings) without having to take the FAA written or flight tests.
Grant, September 28, 1990, Exemption No. 3859E

Docket no.: 24283
Petitioner: American Flyers
Sections of the FAR affected: 14 CFR 141.55
Description of relief sought/disposition: To extend and amend Exemption No. 4287, as amended, which permits petitioner to hold examining authority for flight instructor and airline transport pilot written tests.
Grant, September 27, 1990, Exemption No. 4287C

Docket no.: 24741
Petitioner: United Airlines
Sections of the FAR affected: 14 CFR part 121, Appendix H
Description of relief sought/disposition: To amend Exemption No. 5171 to allow petitioner to utilize as flight instructors former military pilots of high performance aircraft who have not been employed by the petitioner as pilot in command or second in command for 1 year. Exemption No. 5171 limits the petitioner to the use of flight instructors who had been employed by another certificate holder for 1 year.
Grant, September 26, 1990, Exemption No. 5219A

Docket no.: 24993
Petitioner: Mountain Air Cargo, Ltd.
Sections of the FAR affected: 14 CFR 21.197
Description of relief sought/disposition: To renew Exemption No. 4751, which permits issuance of a special flight permit with continuing authorization. Exemption No. 4751 expired on September 30, 1988.
Denial, September 21, 1990, Exemption No. 4751A

Docket no.: 25080
Petitioner: Capitol City Express
Sections of the FAR affected: 14 CFR 43.3(g)
Description of relief sought/disposition: To allow petitioner's pilots to change the seat configuration in air taxi aircraft.
Partial Grant, September 17, 1990, Exemption No. 5237

Docket no.: 26087
Petitioner: Boeing Commercial Airplanes
Sections of the FAR affected: 14 CFR 121.312
Description of relief sought/disposition: To amend Exemption No. 5176, which extends the applicability of § 121.312(a)(1) from August 19, 1990, to November 8, 1990, for airplanes manufactured by the petitioner. The exemption permits the petitioner to manufacture airplanes meeting only the interim requirements of a maximum peak heat release rate of 100 kilowatts per square meter and a maximum total heat release of 100 kilowatt-minutes per square meter, rather than the definitive maximum peak release rate of 65 kilowatts per square meter, the maximum total heat release of 65 kilowatt-minutes per square meter, and the maximum smoke emission specific optical smoke density (D_s) of 200.
Grant, September 17, 1990, Exemption No. 5176A

Docket no.: 26337
Petitioner: Embraer Empresa Brasileira de Aeronautica S.A.
Sections of the FAR affected: 14 CFR 121.312(a)(2)
Description of relief sought/disposition: To permit operation by current and future U.S. operators of 35 EMB-120 airplanes that do not fully comply with the heat release and smoke density requirements for interior materials as specified in the regulation. The exemption would also permit the operation of 35 airplanes, whose dates of manufacture are after August 20, 1990, with certain specified interior components that do not comply with the heat release and smoke emissions requirement.
Partial Grant, September 14, 1990, Exemption No. 5236

Docket no.: 08SCE
Petitioner: Burkhart Grob
Sections of the FAR affected: 14 CFR 23.841 (a) and (b)(6)
Description of relief sought/disposition: To allow the Grob Model Egrett G 520 airplane, for operation over 31,000 feet, to have a cabin pressure altitude of more than 15,000 feet in the event of any probable failure or malfunction in the pressurization system. For operation over 29,000 feet, to allow the warning indication to be for a cabin pressure altitude of 20,000 feet instead of 10,000 feet. When the airplane is operating above 29,000 feet, the pilot will be wearing a full pressure suit.
Grant, September 13 , 1990, Exemption No. 5223

[FR Doc. 90-24083 Filed 10-11-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an

international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986). The list reflects the recent union of the Arab Republic of Yemen and the Peoples Democratic Republic of Yemen, the new state being named the Republic of Yemen.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: October 1, 1990.

Kenneth W. Gideon,

Assistant Secretary for Tax Policy.

[FR Doc. 90-24072 Filed 10-11-90; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Performance Review Board Membership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1990.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 566-4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Office of the Chief Inspector are as follows:

Michael J. Murphy, Senior Deputy Commissioner, Chairperson, Helen L. White, Assistant to the Commissioner (Equal Opportunity), Donald E. Kirkendall, Inspector General, Department of the Treasury

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Frederick T. Goldberg, Jr.,

Commissioner.

[FR Doc. 90-24129 Filed 10-11-90; 8:45 am]

BILLING CODE 4830-01-M

Performance Review Board Membership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1990.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, room 3515, 111 Constitution Avenue NW., Washington, DC 20224, Telephone No. (202) 566-4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Assistant Commissioners, Regional Commissioners and senior executives in the Office of the Commissioner are as follows:

Teddy R. Kern, Chief Inspector
John D. Johnson, Deputy Commissioner (Planning & Resources)/Chief Financial Officer
David L. Jordon, Deputy Chief Counsel
Richard J. Mihelcic, Associate Chief Counsel (Finance and Management)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Frederick T. Goldberg, Jr.,

Commissioner.

[FR Doc. 90-24130 Filed 10-11-90; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

English Teaching Advisory Panel; Meeting

The United States Information Agency announces the following meeting:

Name: English Teaching Advisory Panel.

Date and time: November 14, 1990, 9 a.m. to 5 p.m., November 15, 1990, 9 a.m. to 5 p.m.

Place: Room 840, U.S. Information Agency, 301 4th Street SW., Washington, DC.

Type of meeting: Part Open. Open: November 14, 1990, 9 a.m. to 5 p.m., Closed: November 15, 9 a.m. to 3 p.m.

Contact person: William Royer, Chief, English Language Programs Division, Room 304, U.S. Information Agency, 301 4th Street SW., Washington, DC., Tel. 619-5877.

Minutes: William Royer, Chief, English Language Programs Division, Room 304, U.S. Information Agency, 301 4th Street SW., Washington, DC., Tel. 619-5877.

Purpose of meeting: The purpose of the Advisory Panel meeting is to review overseas English Teaching programs conducted by USIA during FY 90. The Panel will review these programs as a response to the world-wide demand for English. It will prepare a report for the Director of USIA, making recommendations for improving and refining the Agency's activities in the field of Teaching English as a Foreign Language.

Agenda: The panel will discuss USIA's world wide English teaching programming, especially as executed by the English Language Programs Division. In doing this the panel will review the activities of the Program, Materials Development and the English Teaching Forum Branches of the Division. The Division's budget for FY-91 will also be discussed.

The English Language Teaching By Broadcast project, which was developed jointly with Maxwell Macmillan, will be reviewed as well as the Agency's English Teaching Fellow program.

There will be an open discussion on topics of professional concern affecting the execution of Division responsibilities.

In addition to reviewing USIA programs the Panel will discuss the role played in English teaching overseas by other US government agencies, in particular, the Peace Corps and USAID.

Reason for closing: In its final session on November 15, in preparing its reports to the Director of USIA, the Panel will review information of a proprietary nature, including technical information and financial data, such as salaries. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Richard A. Murphy,

Deputy Chief, English Language Programs Division.

[FR Doc. 90-24039 Filed 10-11-90; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 13, 1990.

Dated: October 5, 1990.

By direction of the Secretary

Frank E. Lalley,

Director, Office of Information Resources Policies.

Revision

1. Veterans Benefits Administration
2. Homeless Veteran Contact
3. VA Form 27-0528
4. The form is completed by Regional Office personnel to identify homeless veterans who request services from VA and provide VA with basic data to develop additional initiatives, programs and services if warranted. The Homeless Veteran Contact form will provide information relative to the numbers of homeless veterans receiving services and benefits from VA or to substantiate the effectiveness of VA benefit programs as they relate to homeless veterans.
5. On occasion
6. Individuals or households
7. 6,000 responses
8. 1/12 hour
9. Not applicable.

[FR Doc. 90-24069 Filed 10-11-90; 8:45 am]

BILLING CODE 8320-01-M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 55, No. 198
Friday, October 12, 1990

This section of the FEDERAL REGISTER contains notices of meetings published

entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551

Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning

Corrections

Federal Register
Vol. 55, No. 198
Friday, October 12, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously

in the second line, "describes" should read "describe".

a. In paragraph (a), in the 9th line

VOL 55 ISS 198 OCT 12 1990 UMI

Sunshine Act Meetings

Federal Register
Vol. 55, No. 196
Friday, October 12, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: 10:00 a.m., Wednesday, October 17, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a record announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 10, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-24226 Filed 10-10-90; 8:45 am]
BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 55, No. 196
Friday, October 12, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections

Correction

In rule document 90-21348 beginning on page 37616 in the issue of Wednesday, September 12, 1990, make the following corrections:

1. On page 37619, in the second column, in the fourth line, "of" should read "in".
2. On page 37620, in the third column, in the fourth paragraph, in the fourth line, insert "resulting" after "thereby".
3. On page 37621, in the first column, in the first full paragraph, in the eighth line, "defined" should read "defines".
4. On the same page, in the same column, in the third line of the last paragraph, insert "a" after "for".
5. On page 37622, in the second column, in the 14th line from the bottom, the first "in" should read "is".
6. On the same page, in the third column, in the next-to-last paragraph, in the second line, the complete section citation should read "§ 79.8(e)".
7. On page 37623, in the second column, in the fifth complete paragraph, in the second line, "describes" should read "describe".
8. On the same page, in the third column, in the third complete paragraph, starting in the 13th line at "within" and continuing through the 15th line, ending with "collections", remove all text; it is a duplication of text in the 11th through 13th lines.
9. On page 37624, in the first column, in the seventh line, "paragraph" was misspelled.
10. On the same page, in the same column, in the sixth complete paragraph, in the 11th line "paragraph (1)" should read "paragraph (l)".
11. On page 37627, in the second column, in the third complete paragraph, in the sixth line, insert "if" after "asked".
12. On page 37628, in the second column, in the first full paragraph, in the seventh line, "the" should read "they".
13. In the same column, in the third complete paragraph, in the ninth line, "at" should read "as".
14. In the same column, in the next-to-last line, "section 208(e)" should read "section 208(3)".
15. On the same page, in the third column, in the 12th line, insert "for" after "caring".
16. On the same page, in the same column, in the third full paragraph, in the 14th line "not" should read "no".
17. On page 37630, in the second column, in the authority citation to part 79, "15 U.S.C." should read "16 U.S.C.".

§ 79.1 [Corrected]

18. In the same column, in § 79.1(a), in the 10th line, insert "110" after "section".

§ 79.2 [Corrected]

19. On the same page, in the third column, in § 79.2:

a. In paragraph (a), in the 9th line insert "110" after "section"; and

b. In the 12th line of paragraph (a) and the 3rd line of paragraph (b) "Archaeological" is the preferred spelling.

§ 79.3 [Corrected]

20. On page 37630, in the third column, in the 10th-from-last line, insert "110" after "section", and in the seventh-from-last line, the correct name of the act is "Archaeological Resources Protection Act".

§ 79.4 [Corrected]

21. In § 79.4(j) on page 37632, in the second column, in the seventh line from the bottom, "of" should read "or".

§ 79.6 [Corrected]

22. In § 79.6, on page 37633, in the second column, in the first line of paragraph (a)(4), insert "into" after "Entering".

§ 79.7 [Corrected]

23. In § 79.7(a)(4), on the same page, in the third column, in the next-to-last line, insert "agency" after "State".

§ 79.9 [Corrected]

24. On page 37635, in the first column, in § 79.9(b)(1)(ix), "properly" should read "property", and in paragraph (b)(2) "property" should read "properly".

§ 79.11 [Corrected]

25. On page 37637, in the first column, in § 79.11(b)(9), in the 13th line, "and" should read "of".

Appendix A to Part 79 [Corrected]

26. On the same page, in the third column, in the 8th and 18th lines from the bottom, "specin.ents" should read "specimens".

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Part II

Department of Education

The Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990; Notice of Regional Meetings

DEPARTMENT OF EDUCATION

The Carl D. Perkins Vocational and Applied Technology Education Act Amendment of 1990

AGENCY: Department of Education.

ACTION: Notice of Regional meetings.

issue areas. The Secretary has requested names of attendees from each State Director of Vocational Education and each State Director of Community, Technical and Junior Colleges and from the following educational organizations and interest groups:

American Association of Community and

Meeting Information

The regional meetings will be open to the public, and no registration fee will be required. The meetings are scheduled to be held as follows:

(a) *October 30–31, 1990,* The Barclay Hotel, on Rittenhouse Square,

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DEPARTMENT OF EDUCATION

The Carl D. Perkins Vocational and Applied Technology Education Act Amendment of 1990

AGENCY: Department of Education.

ACTION: Notice of Regional meetings.

SUMMARY: The Secretary of Education will convene four regional meetings to solicit input on the content of proposed regulations to implement the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Act), Public Law 101-392, 104 STAT. 753 (1990). The Secretary invites educators, parents, Federal, State, tribal and local administrators, teachers, members of local boards of education, members and representatives of special populations, and other interested parties to express their views on a variety of regulatory issues.

SUPPLEMENTARY INFORMATION: Section 504 of the Act requires the Secretary to identify at least four key issues for discussion. Information obtained at the meetings will be considered in the development of the proposed regulations. A negotiated rulemaking process will be conducted on draft regulations for at least two key issues. Participants in the negotiation process must be chosen by the Secretary from among participants at the regional meetings. A summary of the comments from the regional meetings will be published in the **Federal Register** along with the notice of proposed rulemaking.

The following four issue areas will be considered at the regional meetings:

(a) Standards and Measures; Assessment and Evaluation
(b) State Administration and Leadership
(c) Use of Funds and Allocations among Eligible Recipients
(d) Special Populations

Please note that although some meeting participants were notified by letter of a fifth issue area called "Special Requirements," the Secretary has decided to consolidate the regulatory questions to be addressed into four issue areas. The Secretary has requested names of attendees from each State Director of Vocational Education and each State Director of Community, Technical and Junior Colleges and from the following educational organizations and interest groups:

American Association of Community and Junior Colleges
American Association of School Administrators
American Federation of Teachers
American Home Economics Association
American Public Welfare Association
American Vocational Association
Business Professionals of America
Center for Law and Education
Correctional Education Association
Council for Exceptional Children
Council of Chief State School Officers
Council of the Great City Schools
Distributive Education Clubs of America
Furture Farmers of America
Furture Homemakers of America
Health Occupations Students of America
Legal Defense Fund
National Advisory Council on Indian Education
National Alliance of Business
National Association for Trade and Industrial Education
National Association of Secondary School Principals
National Association of State Boards of Education
National Association of State Councils on Vocational Education
National Association for the Advancement of Black Americans in Vocational Education
National Business Education Association
National Coalition for Advanced Technology Centers
National Council of La Raza
National Council on Occupational Education
National Education Association
National Governors' Association
National Parent Teachers Association
National School Boards Association
National Vocational Agricultural Teachers Association
Opportunities Industrialization Centers of America, Inc.
Technology Student Association
Vocational Industrial Clubs of America

As a result of this solicitation, approximately 1200 invitations have been mailed.

Meeting Information

The regional meetings will be open to the public, and no registration fee will be required. The meetings are scheduled to be held as follows:

(a) *October 30-31, 1990,* The Barclay Hotel, on Rittenhouse Square, Philadelphia, Pennsylvania 19103, Telephone: (215) 545-0300.

(b) *November 5-6, 1990,* Northwest Atlanta Hilton, 2055 South Park Place, Atlanta, Georgia 30339, Telephone: (404) 953-8300.

(c) *November 7-8, 1990,* Holiday Inn Financial District, 750 Kearny Street, San Francisco, California 94108-1887, Telephone: (415) 433-6600.

(d) *November 14-15, 1990,* Ritz Carlton Kansas City, 401 Ward Parkway, Kansas City, Missouri 64112, Telephone: (816) 756-1500.

The meetings will begin at 8 a.m. both days and conclude at noon on the second day.

Because of the need to issue a notice of proposed rulemaking at the earliest possible time, the Secretary is scheduling regional meetings despite the uncertainty of this Department's fiscal year 1991 funding. Depending on how this uncertainty is resolved, it may be necessary to cancel or postpone one or more of the regional meetings. Participants should plan accordingly.

FOR FURTHER INFORMATION CONTACT: Persons desiring additional information on the meetings or on issues that may be discussed at the meetings should contact Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, Room 4525), 400 Maryland Avenue, SW., Washington, DC 20202-7120. Telephone: (202) 732-2237.

Dated: October 4, 1990.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 90-24029 Filed 10-11-90; 8:45 am]

BILLING CODE 4000-01-M

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States; Final Rule Supplement

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Late Seasons,

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION: In the September 28, 1990, **Federal Register** (55

terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. All of the selections are consistent with the final frameworks published in the August 14, 1990, (55 FR 33284) and the September 21, 1990, (55 FR 38898) **Federal Register**

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DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States; Supplement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; supplement.

SUMMARY: This rule supplements the final rule published in the September 28, 1990, Federal Register (55 FR 39828) by prescribing the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl and common snipe seasons in the State of California. The State was unable to make selections early enough to be included in the late-season selection document. This rule is necessary to permit the taking of the designated species during the 1990–91 season because the taking of migratory birds is prohibited unless specifically provided.

EFFECTIVE DATE: October 12, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the September 28, 1990, Federal Register (55 FR 39828), the Fish and Wildlife Service (hereinafter the Service) published a final rule containing the late-season selections from the States and amending subpart K of 50 CFR part 20 to set hunting seasons, hours, areas, and limits for waterfowl and certain other game species for which seasons were not previously selected. In that document the Service reviewed the steps it had taken to provide for public comment and to fulfill procedural requirements for this rulemaking activity.

The State of California was unable to make selections during the normal time period and thus the Service was unable to publish selections for California until this late date. If there were a delay in the effective date of these regulations after this final rulemaking, the State would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. All of the selections are consistent with the final frameworks published in the August 14, 1990, (55 FR 33264) and the September 21, 1990, (55 FR 38898) Federal Register documents.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: October 4, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K is amended as follows.

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755; 16 U.S.C. 701–711) and the Fish and Wildlife Improvement Act of 1978, (92 Stat. 3112; 16 U.S.C. 712).

BILLING CODE 4310-55-M

Note - The following annual hunting regulations provided for by §§ 20.104, 20.105, and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.104 is amended as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

Note: The following seasons are in addition to other seasons published previously in the August 28, 1990, (55 FR 35266) and the September 28, 1990, (55 FR 39828) Federal Register.

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	See footnote (2).	5 (3)	8
Possession limit	25 (1)	See footnote (2).	10 (3)	16

Shooting and Hawking Hours: One-half hour before sunrise until sunset daily on all species, unless otherwise restricted.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

* * * * *

Seasons in the Pacific Flyway:

* * * * *

California	Closed	Closed	Closed	Oct. 6-Jan. 20

* * * * *

3. Section 20.105 is amended as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Note: The following seasons are in addition to other seasons published previously in the September 28, 1990, (55 FR 39828) Federal Register.

PACIFIC FLYWAY

Definitions

The Pacific Flyway includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

White geese include lesser snow (including blue) geese, greater snow geese, and Ross' geese.
Dark geese include Canada geese, white-fronted geese, emperor geese, and brant.

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily, except as otherwise noted--Check State regulations for further restrictions. States that further restrict shooting hours (in specified seasons, dates, or locations) include, but are not limited to: Nevada, Oregon, Idaho, Utah, and Washington.

Duck and Merganser Limits: Daily bag limits for ducks (including mergansers) may include no more than 3 mallards but only 1 female (hen) mallard, 1 pintail, and either 2 redheads or 2 canvasbacks, or 1 of each. The possession limit is twice the daily limit.

Goose Limits:
Aleutian Canada Geese: The season is closed on Aleutian Canada geese throughout the Flyway.
Cackling Canada Geese: The season is closed in California, Oregon, and Washington.
White Geese and Dark Geese: Unless otherwise noted, seasons and limits for white geese are either singly or in the aggregate; and seasons and limits for dark geese are either singly or in the aggregate, except in Washington, Oregon, and California where there are separate seasons and limits on brant.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATION OF GEOGRAPHICAL AREAS OR ZONES WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits: Bag	Limits: Possession
* * * * *			
California			
Ducks:			
Northeastern Zone	Oct. 13-Dec. 10	4	8
Colorado River Zone	Oct. 12-Nov. 16 &	4	8
	Dec. 15-Jan. 6	4	8
Southern Zone	Oct. 27-Nov. 18 &	4	8
	Dec. 1-Jan. 5	4	8
Balance-of-State Zone	Oct. 27-Nov. 18 &	4	8
	Dec. 1-Jan. 5	4	5

	Season Dates	Limits Bag	Possession
California (cont.)			
Coots and common moorhens (singly or in the aggregate)			
Northeastern Zone	Same as for ducks	25	25
Colorado River Zone	Same as for ducks	25	25
Southern Zone	Oct. 27-Jan. 5	25	25
Balance-of-State Zone	Oct. 27-Jan. 5	25	25
Aleutian and Cackling			
Canada Geese	Closed	-	-
Brant	Nov. 1-Nov. 30	2	4
Other Geese:			
Northeastern Zone:		3	6
Canada Geese	Oct. 13-Jan. 13	2	4
White-fronted Geese	Oct. 13-Nov. 4	1	2
White Geese	Oct. 13-Jan. 13	3	6
Colorado River Zone:		5	5
Canada Geese	Oct. 25-Jan. 20	2	2
White-fronted Geese	Closed	-	-
White Geese	Oct. 25-Jan. 20	3	3
Southern Zone:		6	6
Dark Geese:		3	3
Canada:			
District 22	Oct. 20-Jan. 13	1	2
Remainder of Southern Zone	Oct. 20-Jan. 13	2	2
White-fronted	Oct. 13-Jan. 13	3	3
White Geese	Oct. 13-Jan. 13	3	3
Balance-of-the-State:		3	3
Dark Geese(5)(13):		1	1
Canada:			
Del Norte and Humboldt	Closed	-	-
Sacramento Valley	Closed	-	-
San Joaquin Valley	Oct. 27-Nov. 22	1	1
Remainder of Balance-of-the-State	Oct. 27-Jan. 13	1	1
White-fronted:			
Sacramento Valley	Oct. 27-Nov. 30	1	1
Remainder of Balance-of-the-State	Oct. 27-Dec. 30	1	1
White Geese	Oct. 27-Jan. 13	3	3

• • • • •

(5) In California, Oregon, and Washington; the season is closed on cackling and Aleutian Canada geese.

• • • • •

(13) In California, the dark goose limits may be expanded to 2 per day and 4 in possession provided they are Canada geese, except for cackling Canada and Aleutian Canada geese for which the season is closed.

• • • • •

4. Section 20.109 is amended as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit ..... 3 singly or in the aggregate.
Possession limit ..... 6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons--unless further restricted by State Regulations. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Most States also permit falconry during the regular gun seasons. Please consult State regulations for details.

Hawking hours: One-half hour before sunrise to sunset daily--unless otherwise restricted.

Zones: Boundaries are described in the September 12, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS

• • • • •

Pacific Flyway

California:

Ducks and mergansers:	
Northeastern Zone	Dec. 11-Jan. 27
Colorado River Zone	Nov. 17-Dec. 14 & Jan. 7-Jan. 26
Southern Zone	Nov. 19-Nov. 30 & Jan. 6-Feb. 10
Balance-of-the-State	Nov. 19-Nov. 30 & Jan. 6-Feb. 10
Coots:	
Northeastern Zone	Dec. 11-Jan. 27
Colorado River Zone	Nov. 17-Dec. 14 & Jan. 7-Jan. 26
Southern Zone	Jan. 6-Feb. 10
Balance-of-the-State	Jan. 6-Feb. 10

Canada geese (9):	
Northeastern Zone	Jan. 14-Jan. 27
Colorado River Zone	Oct. 12-Oct. 24 & Jan. 21-Jan. 26
Southern Zone	No Extended Season
Balance-of-the-State	Jan. 14-Feb. 10
White-fronted geese (9):	
Northeastern Zone	Nov. 5-Jan. 27
Colorado River Zone	Closed
Southern Zone	No Extended Season
Balance-of-the-State	Dec. 31-Feb. 10
Brant:	
Northeastern Zone	Oct. 13-Oct. 31 & Dec. 1-Jan 27
Colorado River Zone	Oct. 12-Oct. 31 & Dec. 1-Jan. 26
Southern Zone	Oct. 27-Oct. 31 & Dec. 1-Feb. 10
Balance-of-the-State	Oct. 27-Oct. 31 & Dec. 1-Feb. 10
White geese:	
Northeastern Zone	Jan. 14-Jan. 27
Colorado River Zone	Oct. 12-Oct. 24 & Jan. 21-Jan. 26
Southern Zone	No Extended Season
Balance-of-the-State	Jan. 14-Feb. 10

* * * * *

(9) In California, the falconry season for Canada geese is closed in Del Norte and Humboldt Counties and in the Sacramento Valley Area; and will extend from November 23, 1990-February 10, 1991, in the San Joaquin Valley Area. The falconry season for white-fronted geese in the Sacramento Valley Area is December 1, 1990-February 10, 1991. The season is closed on Aleutian and cackling Canada geese.

[FR Doc. 90-24071 Filed 10-11-90; 8:45 am]
BILLING CODE 4310-55-C

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Part IV

The President

Proclamation 6199—Dwight D. Eisenhower Day, 1990

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Presidential Documents

Title 3—

The President

Proclamation 6199 of October 10, 1990

Dwight D. Eisenhower Day, 1990

By the President of the United States of America

A Proclamation

October 14, 1990, marks the 100th anniversary of the birth of Dwight David Eisenhower, the 34th President of the United States, the commander of Allied Forces in Europe during World War II, and one of this country's most distinguished statesmen and public servants. A small-town boy who proudly came from "the heart of America," Dwight Eisenhower earned a special place of honor in our history through his courageous and determined efforts to defend the universal cause of freedom. He also set a standard of leadership that other military professionals and elected officials have since strived to emulate.

Dwight Eisenhower's career began in our Nation's military. He graduated from the United States Military Academy at West Point in 1915, and later ranked first in his class at the Command and General Staff School, Fort Leavenworth, Kansas. As a staff officer, he served the Generals Fox Conner, John Pershing, Douglas MacArthur, and George Marshall.

During World War II, after serving as Chief of the War Plans Division of the War Department, Eisenhower was entrusted with the command of the Allied Forces landing in North Africa in 1942. At the end of 1943, he was named Supreme Allied Commander of the Allied Expeditionary Forces in Europe. His leadership and example in that post animated the most successful wartime coalition in history and paved the way for an unprecedented military feat: the successful invasion of Normandy by land, sea, and air on June 6, 1944. In June 1945, one month after accepting the unconditional German surrender, Dwight Eisenhower returned home to a hero's welcome.

For 3 years after his return to the United States, General Eisenhower served as Army Chief of Staff. He then devoted his talent and energy to education, becoming President of Columbia University in June 1948. By December 1950, however, duty called again, and Eisenhower took leave from his academic post to become Supreme Allied Commander of the North Atlantic Treaty Organization. Organizing the defense forces of NATO member nations, he helped to lay a strong foundation for the Alliance. In 1952, upon accepting the Republican nomination for the Presidency and after more than 3 decades of distinguished service, Ike resigned from the military.

During his two terms as President, Dwight Eisenhower ably handled the tensions and uncertainties of the postwar era and administered policies leading to unprecedented growth and prosperity here at home. Crises in Suez, Berlin, and Lebanon tested his remarkable leadership abilities; yet, in each case, Eisenhower responded with characteristic courage and resolve. On the domestic front, Ike not only met challenges such as those of 1957 in Little Rock, Arkansas, but also helped to launch the Nation's civil space program and the Interstate Highway System. He also helped to balance the Nation's budget—three times.

Even in retirement Ike continued to serve the Nation, generously accommodating those successors who sought his counsel and sharing with an attentive Nation his views on matters of foreign policy. He died on March 28, 1969, but his legacy continues to enrich and inspire us.

How pleased Dwight Eisenhower would be to know that freedom's holy light, borne so bravely by American and Allied troops in battle, now burns brightly in countries that once suffered under the shadow of tyranny. Indeed, the

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Even in retirement Ike continued to serve the Nation, generously accommodating those successors who sought his counsel and sharing with an attentive Nation his views on matters of foreign policy. He died on March 28, 1969, but his legacy continues to enrich and inspire us.

How pleased Dwight Eisenhower would be to know that freedom's holy light, borne so bravely by American and Allied troops in battle, now burns brightly in countries that once suffered under the shadow of tyranny. Indeed, the positive developments we have witnessed around the world during the past year would not have been possible without his leadership at a critical moment in history. Neither would they have been possible without the vigilance, strength, and resolve of free nations, rooted in ideals Ike cherished.

In 1990, we do well to honor the memory of Dwight Eisenhower by rededicating ourselves to the principles he fought so hard to uphold. This great man himself once observed:

> We know—and all the world constantly reminds us—that the future well-being of humanity depends directly upon America's leadership. I say emphatically that this leadership depends no less directly upon the faith, the courage, the love of freedom, and the capacity for sacrifice of every American citizen, every home, every American community.

Today we can be greatful for the extraordinary example he set.

The Congress, by Public Law 101–258, has designated October 14, 1990, the 100th anniversary of his birth, as "Dwight D. Eisenhower Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 14, 1990, as Dwight D. Eisenhower Day. I call upon the people of the United States to observe that day with appropriate ceremonies and activities in remembrance of his devotion to freedom and democracy and his many contributions to our Nation and the world.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-24311
Filed 10-11-90; 11:03 am]
Billing code 3195-01-M

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Part V

Commission on Civil Rights

Sunshine Act Meeting; Notice

U.S. COMMISSION ON CIVIL RIGHTS.

October 11, 1990.

DATE AND TIME: Monday, October 15, 1990, 11:00 A.M.–1:00 P.M.

PLACE: 1121 Vermont Avenue, NW, Room 512, Washington, DC 20425.

STATUS: Telephonic Conference

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U.S. COMMISSION ON CIVIL RIGHTS.

October 11, 1990.

DATE AND TIME: Monday, October 15, 1990, 11:00 A.M.–1:00 P.M.

PLACE: 1121 Vermont Avenue, NW, Room 512, Washington, DC 20425.

STATUS: Telephonic Conference Meeting. Open to the Public.

MATTER TO BE CONSIDERED: Statement by Commission on Civil Rights Regarding Budgetary Reduction by Congress as Pertains to Civil Rights.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Emma Monroig,

Solicitor.

[FR Doc. 90–24324 Filed 10–11–90; 12:17 pm]

BILLING CODE 6335–01–M

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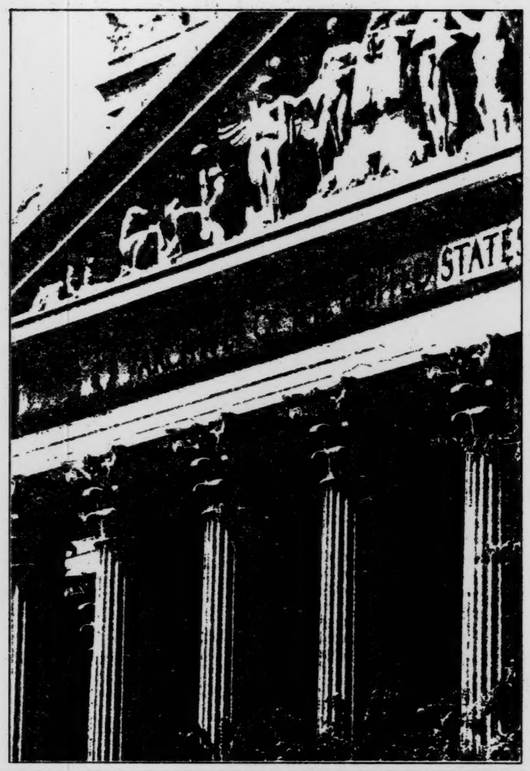

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